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

OCT 22 2008

1:36pm

ORIGINAL

BY:

TINA HURD, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

NORMAN KEITH FLOWERS,

Defendant.

CASE NO: C228755

DEPT NO: VII

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

MEMBERS OF THE JURY:

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

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

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

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

4 In this case, it is charged in an Amended Indictment that on or about the 24th day of
5 March, 2005, the Defendant committed the offenses of BURGLARY, MURDER, SEXUAL
6 ASSAULT, and ROBBERY within the County of Clark, State of Nevada, contrary to the
7 form, force and effect of statutes in such cases made and provided, and against the peace and
8 dignity of the State of Nevada,

9 COUNT 1 - BURGLARY

10 did then and there wilfully, unlawfully, and feloniously enter, with intent to commit
11 assault or battery and/or a felony, to-wit: murder and/or robbery and/or sexual assault, that
12 certain building occupied by SHEILA QUARLES, located at 1001 North Pecos #H-63, Las
13 Vegas, Clark County, Nevada.

14 COUNT 2 - MURDER

15 did then and there wilfully, unlawfully, feloniously, without authority of law, and
16 with malice aforethought, kill SHEILA QUARLES, a human being, by manual strangulation
17 and/or drowning, with his hands and/or an unknown object, said killing having been (1)
18 wilfull, deliberate and premeditated; and/or (2) committed during the perpetration or
19 attempted perpetration of sexual assault as set forth in Count 3 and/or burglary as set forth in
20 Count 1 and/or robbery as set forth in Count 4, said acts being incorporated herein by this
21 reference as though fully set forth.

22 COUNT 3 - SEXUAL ASSAULT

23 did then and there wilfully, unlawfully, and feloniously sexually assault and subject
24 SHEILA QUARLES, a female person, to sexual penetration, to-wit: sexual intercourse, by
25 the said Defendant placing his penis and/or an unknown object into the genital opening of
26 the said SHEILA QUARLES, against her will.

1 COUNT 4 – ROBBERY

2 did then and there wilfully, unlawfully, and feloniously take personal property: to-wit:
3 a stereo and speakers, cell phone, and/or other personal property from the person of SHEILA
4 QUARLES or in her presence, by means of force or violence, or fear of injury to, and
5 without the consent and against the will of the said SHEILA QUARLES.

6 It is the duty of the jury to apply the rules of law contained in these instructions to the
7 facts of the case and determine whether or not the defendant is guilty of the offense charged.

8 Each charge and the evidence pertaining to it should be considered separately. The
9 fact that you find a defendant guilty or not guilty as to one of the offenses charged should not
10 control your verdict as to any other offense charged.

INSTRUCTION NO. A

Every person who, by day or night, enters any residence or structure with the intent to commit a larceny and/or an assault and/or a battery and/or a felony, such as sexual assault and/or robbery, therein is guilty of Burglary.

INSTRUCTION NO. 6

Consent to enter is not a defense to the crime of burglary so long as it is proven beyond a reasonable doubt that entry was made with the specific intent to commit a larceny and/or an assault and/or a battery and/or a felony therein.

INSTRUCTION NO. 6

Every person who, in the commission of a burglary, commits any other crime, may be prosecuted for each crime separately.

In this case the defendant is accused in an Indictment alleging an open charge of murder. This charge may include murder of the first degree and murder of the second degree.

The jury must decide if the defendant is guilty of any offense and, if so, of which offense.

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2 Murder is the unlawful killing of a human being with malice aforethought, either
3 express or implied. The unlawful killing may be effected by any of the various means by
4 which death may be occasioned.
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Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

Express malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

INSTRUCTION NO. 11

Murder of the First Degree is murder which is (a) committed in the perpetration or attempted perpetration of a burglary, sexual assault, or robbery or (b) perpetrated by any kind of willful, deliberate and premeditated killing.

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2 Murder of the first degree is murder which is perpetrated by means of any kind of
3 willful, deliberate, and premeditated killing. All three elements -- willfulness, deliberation,
4 and premeditation -- must be proven beyond a reasonable doubt before an accused can be
5 convicted of first-degree murder.

6 Willfulness is the intent to kill. There need be no appreciable space of time between
7 formation of the intent to kill and the act of killing.

8 Deliberation is the process of determining upon a course of action to kill as a result of
9 thought, including weighing the reasons for and against the action and considering the
10 consequences of the actions.

11 A deliberate determination may be arrived at in a short period of time. But in all
12 cases the determination must not be formed in passion, or if formed in passion, it must be
13 carried out after there has been time for the passion to subside and deliberation to occur. A
14 mere unconsidered and rash impulse is not deliberate, even though it includes the intent to
15 kill.

16 Premeditation is a design, a determination to kill, distinctly formed in the mind by the
17 time of the killing.

18 Premeditation need not be for a day, an hour, or even a minute. It may be as
19 instantaneous as successive thoughts of the mind. For if the jury believes from the evidence
20 that the act constituting the killing has been preceded by and has been the result of
21 premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

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2 The law does not undertake to measure in units of time the length of the period during
3 which the thought must be pondered before it can ripen into an intent to kill which is truly
4 deliberate and premeditated. The time will vary with different individuals and under varying
5 circumstances.

6 The true test is not the duration of time, but rather the extent of the reflection. A cold,
7 calculated judgment and decision may be arrived at in a short period of time, but a mere
8 unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation
9 and premeditation as will fix an unlawful killing as murder of the first degree.
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2 There are kinds of murder which carry with them conclusive evidence of malice
3 aforethought. One of these classes of murder is murder committed in the perpetration or
4 attempted perpetration of a burglary, sexual assault, or robbery. Therefore, a killing which is
5 committed in the perpetration of a burglary, sexual assault, or robbery is deemed to be
6 murder of the first degree, whether the killing was intentional or unintentional or accidental.
7 This is called the Felony Murder Rule.

8 The intent to perpetrate or attempt to perpetrate the burglary, sexual assault, or
9 robbery must be proven beyond a reasonable doubt.

10 For the purposes of the Felony Murder Rule, the intent to commit the robbery must
11 have arisen before or during the conduct resulting in death. However, in determining
12 whether the defendant had the requisite intent to commit robbery before or during the killing,
13 you may infer that intent from the defendant's actions during and immediately after the
14 killing. There is no Felony Murder where robbery occurs as an afterthought of the killing.
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2 Although your verdict must be unanimous as to the charge, you do not have to agree
3 on the theory of guilt. Therefore, even if you cannot agree on whether the facts establish
4 premeditated murder or felony murder, so long as all of you agree that the evidence
5 establishes the defendant's guilt of murder in the first degree, your verdict shall be Murder of
6 the First Degree.
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INSTRUCTION NO. 16

All murder which is not Murder of the First Degree is Murder of the Second Degree.
Murder of the Second Degree is Murder with malice aforethought, but without the admixture
of premeditation and deliberation.

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2 If you find that the State has established that the defendant has committed murder of
3 the first degree, you shall select murder of the first degree as your verdict.

4 The crime of murder of the first degree includes the crime of murder of the second
5 degree. You may find the Defendant guilty of the lesser-included offense of murder of the
6 second degree if:

7 1. after first fully and carefully considering the charge of murder of the first degree,
8 you either (a) find the defendant not guilty of that charge, or (b) are unable to agree whether
9 to acquit or convict on that charge; and

10 2. all twelve of you are convinced beyond a reasonable doubt the defendant is guilty
11 of murder of the second degree.

12 If you are convinced beyond a reasonable doubt that the crime of murder has been
13 committed by the defendant, but you have a reasonable doubt whether such murder was of
14 the first or of the second degree, you must give the defendant the benefit of that doubt and
15 return a verdict of murder of the second degree.
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2 A person who subjects another person to sexual penetration against the victim's will
3 or under conditions in which the perpetrator knows or should know that the victim is
4 mentally or physically incapable of resisting or understanding the nature of his conduct is
5 guilty of sexual assault.

6 As used in these instructions, "sexual penetration" means any intrusion, however
7 slight, of any part of a person's body or any object manipulated or inserted by a person into
8 the genital or anal openings of the body of another, including sexual intercourse.

9 Sexual intercourse is the placing of the penis of the perpetrator into the vagina of the
10 victim.

If a female yields to the sexual acts of a male aggressor because she reasonably believes that resistance would result in her death or serious bodily injury, her conduct does not constitute consent.

Physical force is not a necessary ingredient in the commission of sexual assault. The crucial question is not whether the victim was physically forced to engage in a sexual assault but whether the act was committed without her consent. There is no consent where the victim is induced to submit to the sexual act through fear of death or serious bodily injury.

Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. Such force or fear must be used to obtain or retain possession of the property, to prevent or overcome resistance to the taking, or to facilitate escape, in either of which cases the degree of force is immaterial if used to compel acquiescence to the taking of or escaping with the property.

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

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

6 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a
7 doubt as would govern or control a person in the more weighty affairs of life. If the minds of
8 the jurors, after the entire comparison and consideration of all the evidence, are in such a
9 condition that they can say they feel an abiding conviction of the truth of the charge, there is
10 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or
11 speculation.

12 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a
13 verdict of not guilty.
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2 It is a constitutional right of a defendant in a criminal trial that he may not be
3 compelled to testify. Thus, the decision as to whether he should testify is left to the
4 defendant on the advice and counsel of his attorney. You must not draw any inference of
5 guilt from the fact that he does not testify, nor should this fact be discussed by you or enter
6 into your deliberations in any way.
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2 The evidence which you are to consider in this case consists of the testimony of the
3 witnesses, the exhibits, and any facts admitted or agreed to by counsel.

4 There are two types of evidence; direct and circumstantial. Direct evidence is the
5 testimony of a person who claims to have personal knowledge of the commission of the
6 crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof
7 of a chain of facts and circumstances which tend to show whether the Defendant is guilty or
8 not guilty. The law makes no distinction between the weight to be given either direct or
9 circumstantial evidence. Therefore, all of the evidence in the case, including the
10 circumstantial evidence, should be considered by you in arriving at your verdict.

11 Statements, arguments and opinions of counsel are not evidence in the case. However, if the
12 attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and
13 regard that fact as proved.

14 You must not speculate to be true any insinuations suggested by a question asked a
15 witness. A question is not evidence and may be considered only as it supplies meaning to
16 the answer.

17 You must disregard any evidence to which an objection was sustained by the court
18 and any evidence ordered stricken by the court.

19 Anything you may have seen or heard outside the courtroom is not evidence and must also
20 be disregarded.
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2 Evidence that the Defendant committed offenses other than that for which he is on
3 trial, if proven to be clear and convincing, is not admitted and may not be considered by you
4 to prove that the Defendant is a person of bad character or to prove that he has a disposition
5 to commit crimes. Such evidence is admitted, and may be considered by you, only for the
6 limited purpose of proving the defendant's identity, intent, lack of consent on the part of the
7 victim, a common scheme, plan or motive, or the absence of mistake or accident, as it relates
8 to the charges before you. If you find the evidence to be clear and convincing, you must
9 weigh this evidence in the same manner as you do all other evidence in the case.
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2 A witness who has special knowledge, skill, experience, training or education in a
3 particular science, profession or occupation is an expert witness. An expert witness may
4 give his opinion as to any matter in which he is skilled.

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

1
2 You are here to determine whether the State has proven the guilty of the Defendant
3 beyond a reasonable doubt from the evidence in this case. You are not called upon to return
4 a verdict as to the guilt of any other person. So, if you believe the State has proven the guilt
5 of the Defendant beyond a reasonable doubt, you should so find, even though you may
6 believe one or more other persons are also guilty.
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INSTRUCTION NO. 31

In your deliberation, you may not discuss or consider the subject of punishment. At this time, your duty is confined to the determination of the guilt or innocence of the defendant.

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2 When you retire to consider your verdict, you must select one of your number to act
3 as foreperson who will preside over your deliberation and will be your spokesperson here in
4 court.

5 During your deliberation, you will have all the exhibits which were admitted into
6 evidence, these written instructions and forms of verdict which have been prepared for your
7 convenience.

8 Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it
9 signed and dated by your foreperson and then return with it to this room.
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2 The verdict must represent the considered judgment of each juror. In order to return a
3 verdict, your verdict must be unanimous.

4 It is your duty, as jurors, to consult with one another and to deliberate with a view to
5 reaching an agreement, if you can do so without violence to individual judgment. Each of
6 you must decide the case for yourself, but do so only after an impartial consideration of the
7 evidence with your fellow jurors.

8 In the course of your deliberations, do not hesitate to reexamine your own views and
9 change your opinion if convinced it is erroneous. But do not surrender your honest
10 conviction as to the weight or effect of evidence solely because of the opinion of your fellow
11 jurors, or for the mere purpose of returning a verdict.

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2 If, during your deliberation, you should desire to be further informed on any point of
3 law or hear again portions of the testimony, you must reduce your request to writing signed
4 by the foreperson. The officer will then return you to court where the information sought
5 will be given you in the presence of, and after notice to, the district attorney and the
6 Defendant and his/her counsel.

7 Readbacks of testimony are time-consuming and are not encouraged unless you deem
8 it a necessity. Should you require a readback, you must carefully describe the testimony to
9 be played back so that the court reporter can arrange her notes. Remember, the court is not
10 at liberty to supplement the evidence.
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Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:


DISTRICT JUDGE

OCT 21 2008

CASE NO. C228755

DEPT. NO. VII

ORIGINAL FILED
OCT 23 8 23 AM '08

DISTRICT COURT

CLERK OF THE COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

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

Reporter's Transcript
of
Verdict

Volume 6

BEFORE THE HON. STEWART BELL, DISTRICT COURT JUDGE

WEDNESDAY, OCTOBER 22, 2008

1:37 P.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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I N D E XPAGE

Verdict

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1 CASE NO. C228755

2 DEPT. NO. VII

3

4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)
8 Plaintiff,)

9 vs.)

10 NORMAN KEITH FLOWERS,)
11 aka NORMAN HAROLD)
12 FLOWERS, III,)
13 Defendant.)

Reporter's Transcript
of
Verdict
Volume 6

15 BEFORE THE HON. STEWART BELL, DISTRICT COURT JUDGE

16 WEDNESDAY, OCTOBER 22, 2008

17 1:37 P.M.

19 APPEARANCES:

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

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

25 Reported by: JoAnn Orduna, CCR No. 370

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1 LAS VEGAS, CL COUNTY, NV, WEDS, OCT 22, 2008

2 1:37 P.M.

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

5
6 THE COURT: Okay. Let's go back 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. All ladies and gentlemen of the jury are
12 back in the box.

13 Who would be the foreperson?
14 THE FOREPERSON: I am, Your Honor.

15 THE COURT: Sir, have you reached a
16 verdict?

17 THE FOREPERSON: Yes, we have.

18 THE COURT: Would you give the verdict to
19 the marshall, please?

20 THE COURT: Ms. Clerk.

21 THE CLERK: District Court, Clark County,
22 Nevada. The State of Nevada, plaintiff, versus
23 Norman Keith Flowers, defendant. Case No. C228755,
24 Department No. 7.

25 Verdict. We the jury in the

2
1 I N D E X

PAGE

3 Verdict

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4
1 above-entitled case find the defendant Norman Keith
2 Flowers as follows:

3 Count I, guilty of burglary.

4 Count II, guilty of first-degree

5 murder. The jury -- special verdict. The jury
6 unanimously finds the murder was committed during
7 the perpetration of a burglary, sexual assault or
8 robbery.

9 Count III, guilty of sexual assault.

10 Count IV, not guilty.

11 Dated this 22nd day of October,
12 2008. Todd Pierson, foreperson.

13 Ladies and gentlemen of the jury,

14 are those your verdicts as read so say you one, so
15 say you all?

16 THE JURY: Yes.

17 THE COURT: Either side desire to have
18 the jury polled?

19 MR. PIKE: Yes, Your Honor, please.

20 THE COURT: Ms. Clerk.

21 THE CLERK: Michael Murray, are those
22 your verdicts as read?

23 THE JUROR: Yes.

24 THE CLERK: Rita Asturi, are those your
25 verdicts as read?

1 THE JUROR: Yes.

2 THE CLERK: Zandra Bustamante, are those
3 your verdicts as read?

4 THE JUROR: Yes.

5 THE CLERK: Jeffrey Miller, are those
6 your verdicts as read?

7 THE JUROR: Yes, ma'am.

8 THE CLERK: Wyatt Wulff, are those your
9 verdicts as read?

10 THE JUROR: Yes.

11 THE CLERK: Vickie Nicholls, are those
12 your verdicts as read?

13 THE JUROR: Yeah.

14 THE CLERK: Todd Pierson, are those your
15 verdicts as read?

16 THE JUROR: Yes.

17 THE CLERK: Barbara Helton, are those
18 your verdicts as read?

19 THE JUROR: Yes.

20 THE CLERK: Sharon Hammond, are those
21 your verdicts as read?

22 THE JUROR: Yes.

23 THE CLERK: Shanna Burley, are those your
24 verdicts as read?

25 THE JUROR: Yes.

1 THE CLERK: James Knox, are those your
2 verdicts as read?

3 THE JUROR: Yes.

4 THE CLERK: Guy Stablein, are those your
5 verdicts as read?

6 THE JUROR: Yes, ma'am.

7 THE COURT: Okay. Thank you, ladies and
8 gentlemen. As you know, when I told you earlier as
9 a result of your verdict, we're gonna have what we
10 call a penalty phase of the trial.

11 It's like a mini trial in and of
12 itself. It goes the same way a trial goes. We have
13 opening statements, we have witnesses for the State,
14 witnesses for the defense, a little bit of
15 instructions and closing argument, but it's much
16 smaller in scope and much narrower.

17 A day and a half total start to
18 finish I'm saying. You know, I told you we'd be
19 done Thursday or Friday. If we'd had a verdict last
20 night, which is no reason we should or shouldn't
21 have, then we'd have started today and we'd probably
22 be done towards the end of business Thursday.

23 We're gonna have to start tomorrow
24 and be done towards the end of business Friday
25 because they have to line up witnesses and get

1 everything go and they can't really start that
2 process until A, we get to this point; and B, we
3 find out what it is.

4 So we'll be done for today. We've
5 got to start tomorrow at 10:00. Ms. Luzaich, can't
6 be here until 10:00, I've got a big calendar and I
7 really can't start until 10:00. If I start it at
8 9:30, you'd be sitting around for a half hour.

9 That's not fair to you.

10 So we'll start at 10:00, we'll have
11 opening statements, we'll have witnesses. We'll get
12 the witnesses done tomorrow. It will be a good
13 solid day.

14 You know, if there's one witness
15 that can't come in until the next morning kind of
16 like we did before, you know, fine. The arguments
17 don't take nearly as long. Nothing takes nearly as
18 long.

19 We should get you the case I'm
20 thinking sort of about noon Friday and then you're
21 gonna decide.

22 This is basically four punishments.
23 I'll lay it out, I'll tell you how to do it. This
24 is kind of what Paul Harvey would call the rest of
25 the story, okay. The decision's been made as to

1 what happened in March of '05. Now the issue is,
2 you know, who is the defendant, what is the
3 defendant, what else is there about him that the
4 good, bad, the ugly that affects what the overall
5 fair decision should be in light of what the conduct
6 was. And you'll hear, you'll hear anything that the
7 parties have that they think bears on that and then
8 you make your decision.

9 So we're still in trial. Rules are
10 still in play.

11 During this break, don't talk or
12 converse among yourselves or with anyone else on any
13 subject connected with this trial.

14 Don't read, watch or listen to any
15 report of or commentary on the trial or any person
16 connected with this trial by any medium of
17 information, including, without limitation,
18 newspapers, television, internet and radio.

19 Don't form or express any opinion on
20 any subject connected with the trial until the case
21 is finally submitted to you.

22 I'm positive Mr. Kahara will at
23 least write an article saying what your verdict was
24 tomorrow. So that will be the Nevada section.

25 We'll start at 10:00, we'll take all

1 the opening statements and the witnesses. We'll
2 probably be done 5:30-ish I'm guessing, but I could
3 be off 45 minutes.

4 MR. PIKE: We have one witness that is
5 not available until Friday morning.

6 THE COURT: That happens just like we had
7 happen the other day. If we have one short witness
8 Friday, it'll be fine. I'm sure we can get a good,
9 early start Friday morning and we'll still get them
10 the case by noon and that's the way it goes.

11 Okay. Moon, you want to take them
12 down?

13 OFFICER MOON: Yes, sir.

14 THE COURT: If you go with Officer Moon,
15 he'll take you down and out and escort you down.
16 We'll see you tomorrow. We're gonna start at 10:00
17 sharp.

18 Yeah, just kind of like we're in the
19 middle of trial because we are in the middle of
20 trial and we're going to finish consistent with the
21 original schedule that we had.

22 (Whereupon, the jury exited the
23 courtroom.)

24 THE COURT: Okay. The record should
25 reflect the jury has exited. It would seem to me in

1 light of the jury's verdict that the sexual assault
2 and robbery aggravators are out now.

3 Would you agree?

4 MS. WECKERLY: (Positive nod of the
5 head.)

6 MS. LUZAICH: (Positive nod of the head.)

7 THE COURT: So those we'd have to strike
8 and we're left with whatever the others are.

9 MS. WECKERLY: He has prior violent
10 felonies. He was under sentence of imprisonment
11 and --

12 THE COURT: There was one more though.

13 MS. WECKERLY: Yeah.

14 MS. LUZAICH: Well, the other murder, but
15 he wasn't convicted of that.

16 MS. WECKERLY: Right.

17 MR. PIKE: He wasn't convicted so I don't
18 think we're gonna talk about those.

19 THE COURT: So it's just prior violent
20 felonies. Because I -- oh, I thought I had them in
21 here.

22 MS. GORD: They're on my desk.

23 THE COURT: Okay. Well, I left that in
24 the potential jury instructions.

25 MS. WECKERLY: Right.

1 THE COURT: I've got to strike that.

2 MS. WECKERLY: Okay.

3 THE COURT: Okay. Let me advise Mr.
4 Flowers. I know you've been advised by your
5 counsel, because this is what they do for a living
6 and they know this better than I do, but when this
7 penalty phase occurs, you have the right to take the
8 stand and express remorse, pleas for leniency or
9 hopes for the future.

10 It's an unsworn statement, you won't
11 be subject to cross-examination, but you can kind of
12 tell them why they should give you a break if you
13 believe that's fair. I'm sure Mr. Patrick and Mr.
14 Pike will go over that with you.

15 You're not allowed to go beyond the
16 scope of that. You're not allowed to say you were
17 wrong, I'm innocent of any of that. In theory if
18 you do that, the State can cross-examine. I don't
19 go there. I just stop you if you go beyond it. I
20 just say okay, you're not allowed to do that.

21 So it's usually brief. You don't
22 have to do it if you don't want to, but that will be
23 between you and Mr. Pike and Mr. Patrick.

24 Are we clear on that, Mr. Flowers?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you have any questions
2 about that?

3 THE DEFENDANT: No.

4 THE COURT: Anything else?

5 MR. PIKE: Yes, Your Honor. I've got
6 a -- just very briefly. I forgot at the close of
7 the trial to make a record on the side bar that we
8 had when Detective Long was testifying and he
9 discussed the conversations, and during the course
10 of his testimony about conversations that he had
11 with Mr. Kinsey.

12 I went to the, approached the bench
13 indicating that I believe because that testimony was
14 elicited and specifically because he made reference
15 of people giving names and assisting and cooperating
16 that that would have opened the door for me to have
17 asked questions that would have elicited the hearsay
18 testimony regarding what Mr. Kinsey had told my
19 investigators about the individual or about the
20 relationship that the deceased was having with
21 Keith.

22 THE COURT: Okay.

23 MR. PIKE: The court, the court overheard
24 arguments from both sides, determined that that door
25 had not been opened.

1 THE COURT: Well, it's not so much that.
2 It's not so much that. I'm not sure that it had. I
3 really didn't get there.

4 I mean, the idea of the door being
5 opened is there is an area of substance about which
6 testimony is not allowed, but if one side goes into
7 it inadvertently or intentionally, the other side is
8 entitled to sort of even the playing field. But
9 that doesn't nonetheless make evidence that would be
10 otherwise inadmissible under the rules of evidence
11 admissible.

12 So I didn't really get to opening
13 the door. If they had opened the door, I would have
14 let you put in admissible evidence.

15 But the truth is I would have let
16 you put in admissible evidence through Mr. Kinsey
17 whether Long said that or not. If Kinsey in fact
18 had personal knowledge of any of these things that
19 would have arguably been helpful to your client, he
20 could have testified to that before they put on the
21 rebuttal.

22 The point was it doesn't make
23 inadmissible evidence admissible. It just gives the
24 other side the right to sort of even the playing
25 field on an issue.

1 But it wasn't an opening the door
2 issue. It was -- it still doesn't make any hearsay
3 information he has admissible.

4 I would have let you ask Kinsey if
5 Kinsey had known, but Kinsey couldn't have known any
6 of this because he'd been in jail since five months
7 before this incident. So that was the basis of the
8 rule.

9 But let me say this: You did timely
10 approach, you did timely make that issue. The
11 record you have made is a fair recitation of the
12 position that you asserted and I think the record's
13 preserved.

14 MR. PIKE: Thank you very much.

15 THE COURT: Ms. Weckerly, anything you
16 want to say on that?

17 MS. WECKERLY: Well, no, just -- I mean,
18 he's talking about two levels of hearsay at this
19 point, that something that Sheila told Kinsey that
20 Kinsey said to their investigator and me asking the
21 question about Detective Long about Kinsey not
22 providing information --

23 THE COURT: No.

24 MS. WECKERLY: -- couldn't open the door.

25 THE COURT: I think, I think -- I don't

1 see it as opening the door issue. I think what he
2 wanted to do is how can I recall Kinsey and ask him
3 were you aware of this.

4 But again, it's, it's two different
5 things. It's areas that you can go into and it's
6 what evidence is admissible to prove those things
7 and this hearsay information is not admissible,
8 regardless of what the State has proven.

9 Do you have anything else?

10 MR. PIKE: Yes. In order to save some
11 time for tomorrow, the State is going to bring in
12 the custodian of records and to bring forth the
13 records of any violations of conduct that Mr.
14 Flowers may have at the Nevada Department of
15 Corrections.

16 I'd object to those as being
17 hearsay. It's a standard objection that's made, but
18 we have to have a judge grant it.

19 THE COURT: Well, the general proposition
20 is hearsay is admissible to these things, but I
21 understand how you and your office does your job
22 which is very thorough, and that is we have to not
23 only comply with today's law, we have to anticipate
24 that there may be a change of the law and we have to
25 protect the record, so if there's a change in the

1 law, we don't lose the benefit of that change for
2 our client because we didn't anticipate it.

3 MR. PIKE: Right. And so for the record,
4 a non --

5 THE COURT: Your objection --

6 MR. PIKE: -- confrontation clause, I'd
7 make that objection both as to the record from the
8 Nevada Department of Corrections and the Clark
9 County Detention Center.

10 THE COURT: And that objection will be
11 overruled. And we made our record right now and
12 then you can make that argument -- well, there's
13 gonna be an appeal regardless.

14 MR. PIKE: Right. And in reference to
15 the due-process issues on the aggravators that
16 they're looking, that the State has evidenced in
17 their notice of intent to seek the death penalty,
18 the allegations of a prior, priant, prior -- excuse
19 me. It's been a rough couple of days. Prior
20 violent felony.

21 THE COURT: I mean, obviously the defense
22 is disappointed with the verdict, but I thought you
23 guys did a terrific job for your client. And
24 obviously the jury struggled with this case. They'd
25 been out for more than 24 hours.

1 MR. PIKE: Thank you. appreciate those
2 kind words.

3 THE COURT: Go ahead.

4 MR. PIKE: In reference to the prior
5 violent felonies, they are alleging both a first
6 degree arson and a robbery with the use of a deadly
7 weapon.

8 I'd object to those in reference to
9 due process and the narrowing requirements of
10 Witherspoon in particular with the robbery with use
11 of a deadly weapon.

12 The facts indicate that Mr. Flowers
13 did not have the weapon, but he participated as a
14 principal involved in that offense.

15 THE COURT: How is that not a crime of
16 violence then?

17 MR. PIKE: The crime is a crime of
18 violence. His acts weren't the violent acts of
19 producing the weapon and demanding that.

20 And so as it -- the statute fails to
21 distinguish between a major participant and then a
22 principal under liability for purposes similar.

23 And I draw the analogy to in the
24 event that the State was seeking the death penalty
25 against Mr. Flowers and there had been a shooting

1 and he had not been the actual shooter, then
2 they'd --

3 THE COURT: Is there a case law that
4 distinguishes those?

5 MR. PIKE: And I apply that analogously
6 to the situation for the aggravators. I think that
7 to just allow the fact that he was convicted and was
8 a participant or principal as it ultimately happened
9 to be, that that does not provide for a sufficient
10 narrowing of the offenses.

11 THE COURT: Let me ask you this: I mean,
12 I think that in the case of the getaway driver, at
13 least in most instances, I think it's jurisdiction.
14 You can't -- he is just not eligible for the death
15 penalty. And there may be exceptions of that, but I
16 think generally it's jurisdictional.

17 In the case of a prior and the issue
18 of that prior, if it is allowable, are you not still
19 free to point out his limited participation just
20 like the State would be free to point out his major
21 participation?

22 I mean, isn't it, isn't it matter
23 that the jury can give that weight rather than being
24 jurisdictional? It comes in, it is a crime of
25 violence and yet if he's a secondary or teshiary

1 (phonetic) play, maybe you're not gonna give it
2 the same weight as if he'd put the gun to the baby's
3 head and says I'm gonna blow your kid's head off if
4 you don't hand over your purse.

5 MR. PIKE: And the court's accurately
6 stated the current law that that is exactly what the
7 State would be able to do and then what we could do
8 is we can argue for the --

9 THE COURT: I understand what you're
10 saying.

11 MR. PIKE: It's not yet jurisdictional.
12 I think it should be.

13 THE COURT: And you know, me, I don't
14 have the real legal authority to say well, I think
15 the supreme court should do this or that. I have to
16 follow the law as it is. And if I follow the law as
17 it is, sometimes later they tell me I shouldn't
18 have.

19 But nonetheless, I'm gonna let that
20 in. And of course you're free to point out in
21 whatever fashion you want through whatever
22 admissible evidence you have what you think is
23 exculpatory in the sense of his total participation
24 and how should, that should be a make weight in
25 their decision, you know, tomorrow.

1 MR. PIKE: Thank you. And finally in
2 reference to the items that I believe they're going
3 to bring into evidence of some arrests or
4 misdemeanors that are involved and his other bad
5 acts, I think it's improper to bring in anything
6 other than, than prior violent felonies.

7 THE COURT: Well, the law says pretty
8 much the whole record can come in, but I don't know
9 that people place much weight on anything. But just
10 an arrest that doesn't amount to anything or
11 misdemeanors, who cares if he has a trespass or a
12 DUI.

13 MR. PIKE: Thank you.

14 THE COURT: But I think they can just
15 come it, put his rap sheet in.

16 MR. PIKE: Thank you. And the situation
17 with the, the older felonies in his record and the
18 rest of that is that, that because he is a prior
19 felon, an ex-felon, that whole aggravator almost
20 creates a status aggravator.

21 It's not articulated that way, it's
22 never put on there, but those are brought forward
23 and they become, they become in the juror's mind an
24 aggravating factor.

25 THE COURT: What does?

1 MR. PIKE: The fact that it occurred --
2 well, that he has these prior felonies.

3 THE COURT: Well, I mean, I hope that it
4 doesn't in this sense: I mean, I'm going to
5 instruct them that there's only these aggravators,
6 the specifically listed aggravators and those are
7 the only things they can consider in determining
8 aggravating circumstances and those are the only
9 things that they can weigh against any of the
10 mitigators that they have and they can't consider --
11 I mean, they're gonna get instructed on that
12 hopefully clearly enough that they understand and
13 all this other stuff can come into play after they
14 have determined whether they're making a decision
15 amongst four possibilities or three. Then they
16 weigh everything they want.

17 But I hope the instructions are
18 gonna be clear to say you cannot do that. And I've
19 taken what you've got, I've taken what Ms.
20 Weckerly's got. I've kind of put a package
21 together, but if you have some even better language
22 that you think makes that clear, I mean we don't
23 have any disagreement on the law and I have to
24 presume that they're gonna follow the law.

25 And the law says they cannot

1 consider that until they have decided whether the
2 aggravators outweigh the mitigators and then it
3 comes in as a make way.

4 So I don't disagree with you. If
5 you've got better language that makes it more clear
6 than what was already put in, I'll certainly be glad
7 to consider that because you're right.

8 MR. PIKE: Thank you. And it's obvious
9 from the time that they spent deliberating the
10 verdict that this is a thorough jury.

11 It seems as though that they are
12 following the instructions to the best of their
13 ability. So we, again we talked about trust
14 throughout that.

15 The final --

16 THE COURT: You know, you never know what
17 goes on in the jury room and hopefully we're never
18 gonna be in a position to know. Hopefully the
19 sanctity of that has some value.

20 I think not only the fact that they
21 spent time, but they did find the defendant not
22 guilty of one of these charges.

23 So they went through their mind. I
24 mean, they have some kind of scenario of what
25 happened and what the burden of proof is. And, you

1 know, I think the fact that they found him not
2 guilty of one of the charges and guilty of other of
3 the charges indicates to me they really thought this
4 through and they discussed it and they, you know,
5 they weighed everything. I don't know that's the
6 case. It just makes sense to me.

7 MR. PIKE: Thank you.

8 THE COURT: You know, sometimes it's all
9 one way or all the other way. You wonder if the
10 baby got thrown out with the bath water, but clearly
11 that didn't happen.

12 MR. PIKE: Thank you. And the final
13 matter, just to preserve it for the record in case
14 this does become an issue at some time, I know that
15 then raising in other cases that I haven't finished
16 litigating it yet is the equal protection argument
17 that -- it's because of the luxury of the financing
18 that Clark County has that the death penalty is
19 sought in Clark County, Nevada as opposed to many of
20 the other counties within the state.

21 There, I believe there's been one
22 death penalty in the last five years than any other
23 county except for Clark County.

24 So there's a, there's almost a de
25 facto aggravator by having the crime committed here

1 in Clark County, Nevada.

2 The supreme court has not ruled on
3 it, and I don't expect you to create or generate
4 this argument, but I think to preserve it --

5 THE COURT: Let me point out two things:
6 One is, I mean Clark County is the engine that
7 drives the train. I mean, Clark County is 70
8 percent of the population in the state. You're
9 gonna have more murders, you're gonna have more
10 murders prosecuted, you're gonna have more death
11 penalties sought. And whatever percentage of those
12 actually come about, it's gonna be -- Clark County
13 is gonna dominate just because of that number.

14 Number two, while it is the case
15 that the Clark County District Attorney's Office is
16 better funded and better capable of doing those
17 things, at least I can say from my experience during
18 the eight years I was district attorney, I loaned
19 deputies from our major violators unit to people in
20 Ely, to people in Lovelock, to -- DiGiacomo is here,
21 he went up someplace, Abby went someplace, Vicky
22 Monroe and Theresa Lowry went someplace.

23 When they were incapable of doing
24 that, I gave them our deputies for free to put them
25 on an even scale.

1 And thirdly, the defense in those
2 counties isn't nearly as well funded and capable as
3 the defense here. I mean, you have a terrific
4 office. David does a great job. I was very
5 impressed with the way you guys handled yourself.
6 You obviously know the rule. You're very
7 experienced and capable.

8 And so while the State may be a
9 little bit more capable in Clark County, the defense
10 is also equally more capable in Clark County.

11 And usually it's the case that
12 people are sort of on equal footing that justice
13 will out. So I'm not sure that's going too much of
14 anywhere.

15 MR. PIKE: Thank you very much. And I
16 appreciate you letting me make the record on that.

17 THE COURT: Listen. This is a death
18 case. It may not come to that. If I had to bet my
19 house, I don't expect it is, but it is potentially
20 that.

21 You can make a record of anything
22 you want, any time you want. And you know, if we're
23 not inconvenienced and if you come and approach the
24 bench as you then want to do, if we forget it, you
25 know, you can come in two weeks from now and say

1 judge, by the way I forgot to make a record on that,
2 do you remember when we approached the bench, and as
3 long as that's the case, we'll make a record because
4 that's the only fair way to do it to protect
5 everybody's rights.

6 MR. PIKE: And by way of appreciation,
7 the State has been -- they fulfilled their
8 responsibility in letting me make a record and
9 approaching the bench.

10 THE COURT: Yeah.

11 MR. PIKE: And making sure -- and we've
12 spent, we've spent an inordinate amount of time
13 appropriately before and after the jury has come in
14 making these records.

15 THE COURT: Well, not an inappropriate
16 amount. I mean, you guys, I've commented before,
17 all of you have done a nice job and you've all been
18 professional. A lot of times you get these lawyers
19 harping at one another instead of just doing their
20 job and being pleasant. It makes things a lot
21 better.

22 Obviously this is round one on this
23 case with this guy. I mean, there's more, a lot
24 more rounds to go. There's the appellate round,
25 there's the other trial round. I mean, this is just

1 round one.

2 So we'll pick up tomorrow at 10:00
3 and we'll just keep doing our job and that's all we
4 can do.

5 MR. PIKE: Thank you very much, Your
6 Honor.

7 THE COURT: Okay.

8

9 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
10 PROCEEDINGS.

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OCT 22 2008 1:36 PM

ORIGINAL

BY:

TINA HURD, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

NORMAN KEITH FLOWERS,

Defendant.

CASE NO: C228755

DEPT NO: VII

VERDICT

We, the jury in the above entitled case, find the Defendant NORMAN KEITH FLOWERS, as follows:

COUNT 1 – BURGLARY

(please check the appropriate box, select only one)

☒ Guilty of Burglary

☐ Not Guilty

///

///

///

///

///

///

///

///

///

1 **COUNT 2 – MURDER**

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

3 ☒ Guilty of First Degree Murder

4 ***SPECIAL VERDICT***

5 *(please check the appropriate box or boxes)*

6 ☐ The jury unanimously finds the murder willful, deliberate, and
7 premeditated.

8 ☒ The jury unanimously finds the murder was committed during the
9 perpetration of a burglary, sexual assault, or robbery.

10 ☐ The jury does not unanimously find the defendant guilty under a
11 single theory of murder of the first degree.

12 ☐ Guilty of 2nd Degree Murder

13 ☐ Not Guilty

14
15 **COUNT 3 – SEXUAL ASSAULT**

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

17 ☒ Guilty of Sexual Assault

18 ☐ Not Guilty

19
20 **COUNT 4 – ROBBERY**

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

22 ☐ Guilty of Robbery

23 ☒ Not Guilty

24
25 DATED this 22 day of October, 2008

26
27 
28 _____
FOREPERSON

ORIGINAL

OCT 24 12 12 PM '08

E. J. [Signature]
CLERK COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

NORMAN KEITH FLOWERS,

Defendant.

Case No. C228755
Dept. No. VII

Volume 5-B

Before the Honorable Stewart L. Bell

Thursday, October 23, 2008, 1:00 a.m.

Reporter's Transcript of

PENALTY HEARING

APPEARANCES:

For the State:

PAMELA WECKERLY, ESQ.
LISA LUZAICH, ESQ.
Deputies District Attorney

For the Defendant:

RANDALL PIKE, ESQ.
CLARK PATRICK, ESQ.
Deputies Special Public Defender

REPORTED BY: RENEE SILVAGGIO, C.C.R. No. 122

OCT 24 2008

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
Plaintiff,)
vs.) Case No. C228755
NORMAN KEITH FLOWERS,) Dept. No. VII
Defendant.) Volume 5-B

Before the Honorable Stewart L. Bell
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For the State: PAMELA WECKERLY, ESQ.
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Deputies District Attorney

For the Defendant: RANDALL PIKE, ESQ.
CLARK PATRICK, ESQ.
Deputies Special Public Defender

REPORTED BY: RENEE SILVAGGIO, C.C.R. No. 122

Las Vegas, Clark County, State of Nevada

Las Vegas, Clark County, Nevada

Thursday, October 23, 2008, 1:00 a.m.

P R O C E E D I N G S

* * * * *

(The following proceedings were had in open
court outside the presence of the jury panel:)

THE COURT: This is the continuation of Case Number
C228755, State of Nevada versus Norman Keith Flowers.

Let the record reflect the presence of the defendant, his
counsel; Miss Weckerly and Miss Luzaich for the State; the absence
of the jury.

Miss Weckerly, have you found the case that indicates
that the Supreme Court has approved the process whereby a victim
-- that you have put on some evidence this defendant may have
caused, but isn't a victim in this case and hasn't, in fact, been
adjudicated guilty -- is entitled to do victim impact?

MS. WECKERLY: I haven't found a case on point,
Your Honor.

THE COURT: I know it's short notice, but the
Supreme Court in this case should say the victim in this case or

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the victim in a case in which he has actually been adjudicated, so
I am going to say that you can only put on victim impact as it
relates to Sheila Quarles.

MS. WECKERLY: And then, Your Honor, with that, we just
have Deborah Quarles as our remaining witness.

THE COURT: Okay. I think Randy is ready with his, so
let's dance.

(The following proceedings were had in open
court in the presence of the jury panel:)

THE COURT: Back on the record in Case Number C228755,
State of Nevada versus Norman Keith Flowers.

Let the record reflect the presence of the defendant, his
counsel; counsel for the State; all the ladies and gentlemen of
the jury are back in the box.

Miss Luzaich, your next witness.

MS. LUZAICH: Debra Quarles.

THE COURT: Debra Quarles.

Come on up, ma'am.

(Witness sworn.)

THE CLERK: Thank you. You may be seated.

THE COURT: Please state your name, spell your name for

1 the court recorder.

2 THE WITNESS: Debra, D-e-b-r-a; last name Quarles,

3 Q-u-a-r-l-e-s.

4 THE COURT: All right. Miss Luzaich.

5 MS. LUZAICH: Thank you.

6
7 DEBRA QUARLES

8 called as a witness on behalf of the State,

9 having been first duly sworn,

10 was examined and testified as follows:

11
12 DIRECT EXAMINATION

13 BY MS. LUZAICH:

14 Q Good afternoon, Debra. Are you okay?

15 A Yes.

16 Q Okay. We talked in the last hearing about how you are

17 Sheila's mom.

18 A Yes.

19 Q And you are the one who found her the day that she was

20 killed?

21 A Yes.

22 Q Did you bring some pictures with you that you would like

23 to show the jury?

24 A Yes.

25 THE COURT: Miss Quarles, you can have that.

1 THE WITNESS: Thanks.

2 MR. PIKE: For the record, Your Honor, we've had a chance

3 to review the photographs. They will not be admitted into

4 evidence because they're family keepsakes. We'll just describe

5 them for the record and they will be able to be released with this

6 witness.

7 MS. LUZAICH: Okay. Thank you.

8 THE COURT: If you want, I would let the jury take them

9 and look at them, if they want, and release them back to you;

10 however you want to do it. But I will let them stay with her.

11 MR. PIKE: Either way is fine.

12 THE COURT: Okay.

13 BY MS. LUZAICH:

14 Q Debra, tell me what you brought for us.

15 A I brought my family pictures when she was really young.

16 This is her and this is my oldest son and my son next to

17 him and their younger brother. This is her picture when she was,

18 I think, seventh grade. (Indicating)

19 And the other photo is she was the Easter star at the

20 Easter program in church.

21 Q Do you know what? I'm going to put the three smaller

22 ones over here and let you talk about them. Is that okay?

23 Tell me about this picture.

24 A That's when she was the Easter star at our church and she

25 had to go up and give a program.

1 Q And here?

2 A That's when me and her was practicing doing each other's

3 hair one day.

4 Q Did you guys do that a lot?

5 A Yeah.

6 Q Did you do that for her hair?

7 A Yeah.

8 Q What did she do for your hair that day?

9 A Something like I got now.

10 Q And then here? (Indicating)

11 A We were at the park and she was tired -- and she didn't

12 like taking pictures. So when I called her name, she looked and I

13 took her picture really quick so she wouldn't turn away.

14 Q Did she do that a lot, turn away?

15 A Uh-huh.

16 Q Tell me about Sheila.

17 A She was funny. She kept you laughing. If you were

18 around her and you was down, she would bring you up and she would

19 bring a smile to your face. She was really -- me and her were

20 like best friends. I'm really close with all my kids like this.

21 My youngest baby Derrick, she named him DJ, and she just

22 wanted him to go to school and be good in school. For each A, she

23 would say tell your mamma to give you a hundred dollars. And she

24 went and got all As, so she kept her word with him. She was

25 really good.

1 And then one time, I had got laid off from my job and I

2 was just so depressed because the unemployment people say it

3 wasn't in accord. I didn't have enough hours to get unemployment.

4 That day, when she came home, she knew something was

5 wrong, but I didn't want to tell her. After a while, I told her.

6 She told me: Don't worry about it. She said: I'm here. She

7 said: Whatever you need, I will be able to do it. Don't worry.

8 Q Sounds like your family is very close.

9 A Yes.

10 Q Can you tell us how Sheila's loss has impacted your

11 family?

12 A Due to the ill fate that was brought upon my family and

13 myself, the murder of Pooka, my daughter and my best friend, my

14 children's only sister, I have been hospitalized several times.

15 I'm on various types of medicine. I have suicidal thoughts. Each

16 day, I think about my baby that was taken away from me forever.

17 Her life meant nothing to him, but she meant everything

18 to me. It's hard for me to keep any type of employment because of

19 my condition.

20 You came into our life as someone we put our trust in

21 and, with that trust, we were deceived, my family and myself and

22 my kids.

23 My kids find it hard now to trust my character or

24 judgment because I trusted this man. For that, they are kind of

25 distant from me, but not really, but we don't have the closeness

1 that we once had. But I want Norman Flowers to know that he was
2 not able to take the memories and the love we have in our hearts
3 for our Pooka.

4 MS. LUZAICH: Thank you, Debra.

5 THE COURT: Any questions, Mr. Pike?

6 MR. PIKE: No, Your Honor.

7 THE COURT: Thank you, Miss Quarles.

8 THE WITNESS: Okay.

9
10 (Witness excused.)

11
12 THE COURT: The State.

13 MS. WECKERLY: Your Honor, we would just move the
14 certified copies of the Judgments of Conviction, which are 156,
15 157 and 158, into evidence.

16 THE COURT: Any objection?

17 MR. PIKE: Subject to the Court's review of the
18 aggravators, no objection.

19 THE COURT: Well, I think they can come into evidence.
20 It's just in what way can they come into evidence?

21 MR. PIKE: Okay. So as long as the Court -- we'll
22 address that later.

23 THE COURT: I think they're all admissible; they will be
24 admitted. But, understand, they're probably going to argue on the
25 issue and we'll take care of that.

1
2 (State's Exhibits 156, 157, 158 admitted into evidence.)

4 MS. LUZAICH: Additionally, Judge, I have proposed
5 Exhibits 160 and 159, that I just did not -- I forgot to show
6 Detective Tremmel. I think they'll stipulate to their admission.

7 MR. PIKE: Yes.

8 THE COURT: That's great. Admitted.

9
10 (State's Exhibits 159, 160 admitted into evidence.)

11
12 THE COURT: The State.

13 MS. WECKERLY: With that, we'd rest, Your Honor.

14 THE COURT: The defense.

15 MR. PIKE: Thank you.

16 The defense would call Eleanor Flowers.

17 THE COURT: Eleanor Flowers.

18
19 (Witness sworn.)

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

22 THE COURT: Ma'am, please state your name and spell your
23 name for the record.

24 THE WITNESS: Eleanor Flowers; E-l-e-a-n-o-r,
25 F-l-o-w-e-r-s.

1 THE COURT: Okay. Miss Flowers, you have a nice soft
2 voice, but they are going to need to hear you, so try to speak up
3 and speak in that direction.

4 Mr. Pike, go ahead.

5 MR. PIKE: Thank you.

6
7 ELEANOR FLOWERS
8 called as a witness on behalf of the defendant,
9 having been first duly sworn,
10 was examined and testified as follows:

11
12 DIRECT EXAMINATION

13 BY MR. PIKE:

14 Q Miss Flowers, you know Norman here?

15 A That's my son.

16 Q How would you describe your son?

17 A I've seen the news and I've read the papers. That's not
18 the person that I know. My son is a loving person. He's always
19 been respected in his family. He respects me. He's loving to me
20 and his brothers and sisters.

21 What they say in the papers and what -- what I see on TV
22 is not who he is.

23 Q How do you feel about your son in this situation?

24 THE COURT: Miss Flowers.

25 THE WITNESS: Okay. I don't know what to say.

1 BY MR. PIKE:

2 Q Okay. How about if your son were executed, how would
3 that affect you?

4 A That would be one of the worst tragedies in my life.

5 Q Do you feel that you and your son have a bond between you
6 that can't be broken?

7 A We do have a bond. When you love someone, you love
8 someone unconditionally, no matter what.

9 Q If your son were to receive life in prison, how would
10 that affect you?

11 A That would give me hope. I can see him. I can talk to
12 him. I can write to him. I can visit him. He would still be in
13 my life.

14 Q If Norman were in prison, would his presence -- do you
15 believe that his presence would still be felt in your family?

16 A Most definitely.

17 Q How would that be?

18 A As I say, you can still keep in touch with him. You know
19 where he is. You can still visit and see him. You know that he's
20 alive.

21 MR. PIKE: I have no further questions.

22 THE COURT: Anything?

23 MS. WECKERLY: No, Your Honor.

24 THE COURT: Thanks, Miss Flowers. You are excused.

25 THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Next witness.

MR. PIKE: Court's indulgence so I can see if the witnesses are here.

Tami Bass.

THE COURT: Come on up, Miss Bass.

MS. BASS: Good afternoon.

THE COURT: How are you?

MS. BASS: Good. Thank you, Judge.

THE COURT: Many years ago, Miss Bass used to work for me, so we go way back.

MS. BASS: Many years ago.

(Witness sworn.)

THE CLERK: Thank you. You may be seated.

THE WITNESS: Thank you.

THE COURT: No opinions, but any facts.

MR. PIKE: Thanks, Judge.

THE COURT: We need to get the spelling of your name, please.

MR. PIKE: Would you please state your name and spell your last name for the record.

THE WITNESS: Tami Bass. The name is spelled T-a-m-i; Bass, like a fish, B-a-s-s.

TAMI BASS

called as a witness on behalf of the defendant,
having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PIKE:

Q Miss Bass, you've been employed with the State of Nevada and the Department of Corrections?

A Actually, no.

Q Okay.

A I am employed by the governor and it's just with the State of Nevada Parole Board. That's what I did for eight years.

Q And that's an independent organization or division of the state government, instead of the prison system?

A Totally autonomous, yes.

Q And what are the duties of an individual that's employed in that position?

A There are seven of us across the state. We are charged with -- when someone would become eligible for parole, due to the statutory time frame of their various sentences, we were the ones who review their files and conducted the hearings and made the

decision and handed that decision down as to whether or not someone would be granted parole or not.

Q And can you describe what parole is and what it means.

A Parole is the early release of someone who is in prison. So if a sentence was, say, two to ten, we would not see them until they have done the minimum two years; but then after that two years, their parole dates would start being triggered automatically.

So we would see them to see if, after that two year period, we thought the interest of public safety would be served by them going out.

We make that decision in the state of Nevada. It takes four of us to agree on that decision. So that's what we do. We did it close to 10,000 times every year. That's how many hearings we conducted.

Q Okay. And what types of things would you consider before you would recommend someone for parole?

A Well, the statute in Nevada is clear. Thank God our legislature has been quite insightful. But we must consider victim impact; we must consider the violence of the crime; we must consider write ups in prison; we must consider any programming the inmate had done; we have to look at the sentencing guidelines; we have to look at, of course, would public safety be served

So we have a whole list of things that we must consider when coming to our determination as to whether or not to grant

parole.

Q And if there is a component of that offense, that involves a sexual component, such as a sexual assault, are there additional requirements that must be met before a person could be considered eligible for parole?

A Well, there is a whole separate section for sexual assault, because there is a certain type of program work that has to have been accomplished before we can even consider them.

And just because of, you know, budgets or whatever, all sexual assault inmates cannot necessarily get into the programming in a timely fashion when it's coming up for their parole.

So, you know, you simply have to deny them until they can get into that sexual training; and that's a whole separate unit of the unit up at the prison. It's separate because, you know, all of the specialists say that there is a special kind of programming that needs to happen. And they have a great unit up there, but everybody can't fit into it at once.

So to answer your question, yes, there is a whole separate kind of process that we have to go through because of what's required for a sexual person -- a person who has been convicted of a sexual crime.

Q And part of that is an indication that the individual who is before the pardons board at that time has completed psychiatric treatment and, based upon the expert testimony of the reviewing psychologist or psychiatrist, that he would not present a danger

1 to the community?

2 A Absolutely. That's exactly what happens.

3 Q Okay. And that's something that you have to consider;
4 and in this case, because there was a conviction of sexual
5 assault, that would be a component part if Mr. Flowers was ever to
6 come before the board for consideration for parole?

7 A Absolutely.

8 Q Now, under a sentence of 20 years to 50 years or 20 years
9 to life, which are two of the potential sentences in this case,
10 when is the first time that Mr. Flowers would be even scheduled to
11 come before the pardons board?

12 A It has to be that minimum --

13 THE COURT: Parole board.

14 BY MR. PIKE:

15 Q I'm sorry. Parole board.

16 A Has to do that minimum 20 before he's even eligible; and
17 so, probably, from the time he starts his sentence, none of those
18 parole board commissioners would even be around.

19 But it won't be until that 20 is served before he's even
20 first eligible.

21 Q And based upon your experience, if there is a 50 year
22 sentence or if there is a life sentence, that may -- and that
23 doesn't mean that an individual would ever be paroled?

24 A Absolutely. I've seen that. Absolutely.

25 Q And so a sentence of 20 years to life could mean that the

1 inmate would serve the rest of his natural life in prison?

2 A Yes, sir.

3 Q There is another potential sentence, which is called life
4 without the possibility of parole.

5 Could you tell me what that means?

6 A Well, those are people that we never see because they
7 become never eligible for parole. Life without in Nevada means
8 life without, so when the door closes, that means that he pretty
9 much done.

10 Q That means they die in prison?

11 A Absolutely.

12 Q And I think we understand that a sentence of death by
13 execution means that that individual will be put -- will be
14 executed?

15 A That's my understanding, yes.

16 Q All right. There was some conversation about the parole
17 board releasing an individual as he was approaching an expiration
18 time, and rather than allowing a prisoner to just expire his
19 sentence, sometimes the parole board may place him on parole.

20 Can you describe that process and why that might happen.

21 A Well, I think what you have to understand is that we sit
22 there with our first charge being public safety and we
23 collectively believe that it's better for someone to be released
24 under supervision than not.

25 And so we have released folk just to give them time on

1 supervision so that the Department of Parole and Probation can
2 work with them, make sure that their reentry is successful and
3 their transition is successful. And that was very rare, but when
4 you have a unique case, we have to consider those kinds of things,
5 because public safety is our first charge and so it's almost
6 better to have them watched than to just have them released and we
7 call it with no tail.

8 We prefer to have them with a tail, because, at the very
9 least, what it would do is if Parole and Probation determines that
10 they're slipping, then they're going to bring them back before us
11 and then we have a whole slate of options to be able to get them
12 back on track or, in fact, put them back in and then let them
13 expire.

14 But, sometimes, it's just best to let them come out with
15 that supervision to assist them in that transition, rather than
16 having them not being watched at all.

17 Q And as you sit at every hearing, you indicated that there
18 was victim impact or that is part of what you would consider?

19 A Absolutely.

20 Q So you would have a chance to listen to the loved ones of
21 the deceased, again and again, encouraging whatever they thought
22 is the appropriate action?

23 A There are only two people that must, by statute, be
24 allowed to speak at our hearings and that's the inmate's and the
25 victim's family, the med family.

1 We take that very seriously. We understand that there
2 has been some type of a loss. We provide them with a non-hostile,
3 non-adversarial environment. They can come to us before the
4 hearing. They certainly have an opportunity to speak during the
5 hearing and they have an opportunity to speak to us after the
6 hearing.

7 We are very conscious of the fact that there is a
8 situation where victims need to be validated and need to
9 understand that they are part of the process.

10 So that's considered tremendously and, in fact, that's
11 one of the statutory requirements, that we do consider the victim
12 impact and that's taken very seriously.

13 MR. PIKE: Thank you.

14 I have no further questions.

15 THE COURT: Miss Weckerly.

16 MS. WECKERLY: Good afternoon, ma'am.

17 THE WITNESS: Hi.

19 CROSS-EXAMINATION

20 BY MS. WECKERLY:

21 Q You said the parole board is made up of seven people?

22 A Yes, ma'am.

23 Q And are all seven appointed by the governor?

24 A Yes, ma'am.

25 Q Do you serve for a certain term?

1 A Yes, ma'am. We serve staggered times of four years.
 2 Q So your term ends and someone else's maybe ends two years
 3 later?
 4 A Yes. That changed about ten years ago because, before,
 5 all seven used to be up and so the legislature thought that that
 6 was too unstable. That's when they went to staggered times. So
 7 four years each time you get appointed.
 8 Q The staggered is to give it a little bit more continuity?
 9 A Right; absolutely.
 10 Q And could the governor unilaterally remove someone?
 11 A No, ma'am. Our statute is clear.
 12 Q Okay.
 13 A Not even the governor can remove us.
 14 Q And how long have you been on the board?
 15 A I actually stopped serving June of last year.
 16 Q Okay.
 17 A I had served eight years. I was the longest sitting --
 18 the youngest and the longest sitting commissioner on the board
 19 when I left.
 20 Q Okay. And, obviously, then you will likely not be on the
 21 parole board 20 years from now?
 22 A Gosh, that means I would be 66. I would still be young
 23 and kicking. It's possible.
 24 Q Sure.
 25 A But probably not, absolutely.

1 Q And 20 years ago, you were not on the board?
 2 A Absolutely.
 3 Q I understand the staggered terms, but, obviously, the
 4 composition of whoever is on the board changes with the governor
 5 over time?
 6 A Absolutely.
 7 Q Okay. I'd like to ask you just a couple questions about
 8 the sexual assault offenders. Those people, I think you indicated
 9 to Mr. Pike, they're examined and get treatment up at the prisons?
 10 A Yes.
 11 Q And I assume if they've completed some sort of treatment,
 12 you are informed of that by a doctor or someone who has evaluated
 13 them?
 14 A We call them the psyche panel.
 15 Q Okay.
 16 A There is a whole hospital of doctors across the state
 17 that are employed by the state and that's what they do; they do
 18 nothing but go to all of the facilities where there are sexual
 19 offenders. There is only a few in the state that have sexual
 20 offenders and that's what they do. They are responsible for the
 21 treatment and the evaluation.
 22 In fact, we can't even see them until we get that
 23 evaluation and it's always a report.
 24 Q Okay. And the evaluation that they do, is it -- is the
 25 release premised on any sort of threshold, like -- like the level

1 of risk to re-offend? Do you understand what I'm saying?
 2 A There is several -- there is several things on the psyche
 3 panel's report that they have considered.
 4 Q Uh-huh.
 5 A One of them is the inmate's thoughts about his crime, the
 6 inmate's thoughts about his victim. There is all of these things
 7 that they consider and then they come collectively, as a group of
 8 doctors, together on all of the cases and then they make their
 9 determination or their recommendation to the parole board as to
 10 whether or not we should release them or not.
 11 Q Does the doctor inform the board or members of the board:
 12 In my opinion, this person is a high risk to re-offend, low risk,
 13 something like that?
 14 A That's all on the reports.
 15 Q And, obviously, you review the reports in that period?
 16 A We get stacks of them each month because we have so many
 17 hundreds that we see a month. So we get those stacks each month
 18 and they're disseminated to the various commissioners whose case
 19 it is.
 20 Q Okay.
 21 A And then, when we sit in a hearing, I brief the other
 22 commissioners on my cases; tell them what the psyche panel said
 23 and what their recommendation is and that kind of thing.
 24 Q And there is so many that it sounds like you divide the
 25 work amongst the board and you report on a certain number of

1 people; someone else reports about others?
 2 A Yes. On the 20th of every month, you can see a copy of our
 3 credenzas and they are stacked this high. We do almost 10,000
 4 hearings a year. And there is only seven of us.
 5 Q Right.
 6 A One of us is our chair and she pretty much just runs the
 7 hearing. So there is really just six of us doing the hearing.
 8 So, each day, I would have a stack of files that I have to prepare
 9 myself. I prepared our risk assessment. I prepared any tools
 10 that we need and that we use for that particular file.
 11 I was responsible for reading every piece of
 12 correspondence, every document. We have the PSIs in there, the
 13 presentence investigation reports. Everything about that
 14 particular inmate, it was my responsibility to know. All the
 15 victim letters, everything, I knew. So when someone called about
 16 that case, it was filtered to me so I could answer it. I was the
 17 one who did that?
 18 Q So you know everything about this case; someone else may
 19 know everything about another case?
 20 A Right; yes.
 21 Q And isn't the rule that a doctor has to certify that the
 22 sex offender isn't a high risk to re-offend before the person
 23 could be granted parole?
 24 A Before he could -- well, he just needs to have been seen
 25 before we can even consider him.

1 Q Okay.

2 A Now, the recommendation from the doctor, it has some
3 weight, of course, but above that, our first charge is public
4 safety and the doctor's say he is high, medium or low risk to
5 re-offend.

6 Q Okay.

7 A And so we were not above calling the doctors in to say:
8 You need to explain this even further because this doesn't make
9 sense to me.

10 Q Okay.

11 A And so it would be high, medium or low risk.

12 Q Okay. I understand that your charge is public safety,
13 but it is possible that someone could be paroled if they were
14 deemed a moderate risk to re-offend or a medium risk to re-offend?

15 A We can say that exclusively over here, but all of these
16 other things would have to line up in order for that to happen.

17 Q Right.

18 A But if you are asking have we ever paroled someone who is
19 a medium risk, we absolutely have, but there were a whole lot of
20 other things that have to have been in place for that to happen,
21 because that's one of those types of crimes that the parole board
22 is quite conscious of. Society would probably never want them to
23 be paroled. We're very conscious of that.

24 Q And I understand you are not looking at that one question
25 and making a decision. You are looking at it in totality.

1 But it certainly has occurred where a moderate risk has
2 been paroled?

3 A Yes, ma'am.

4 Q And have you encountered situations where someone is
5 paroled for a particular offense, they're violated, meaning
6 brought back to prison, and then they're reinstated again on
7 parole?

8 A Well, that has happened.

9 But what I need to tell you is that it depends on the
10 violation.

11 Q Sure.

12 A It's different than you turning in a dirty UA versus you
13 doing domestic violence.

14 Q Yes. And by UA, you mean?

15 A Urinalysis.

16 Q A drug test?

17 A A drug test.

18 Q Okay.

19 A Then we use some of our options and put them in an
20 in-house facility or something like that, versus somebody coming
21 back to us. And we consider a whole host of things as violent.

22 You know, if you are a parolee, we expect you to dot
23 every I and cross every T every day; you don't have any lapses of
24 judgment or anything.

25 So if you are caught in a vehicle that's not even your

1 vehicle and there is a weapon, we're probably going to re-roke you.

2 Q Okay.

3 A Because you are not being smart and you are not being the
4 kind of parolee that we can justify to any citizen who would come
5 up to us and say: Why did you parole him?

6 Well, he's doing this; look at this. You are actually
7 putting yourself in jeopardy.

8 So when they would do that, we were hard pressed to
9 determine that we could actually parole you again.

10 Q Right.

11 A I mean, reinstate. At that point, it's a reinstatement
12 of parole or revocation.

13 Q Sure.

14 A So, you know, it depends on the violation. If it's
15 non-violent, we would typically try to get some treatment in there
16 and that kind of thing. But if they came back with any kind of
17 weapons charge or violence, there is probably going to be some
18 type of some term of revocation.

19 Q Okay. But it is at least possible for someone to have
20 violated parole, go back into prison, and then be reinstated?

21 A Oh, are you talking about after we revoke their parole
22 and they serve whatever length of revocation?

23 Q Yes; uh-huh.

24 A Technically, what would happen is we put them back in
25 prison on a revocation and say: We revoke your parole for 18

1 months. Well, four months before that 18 month period ends, the
2 computer is going to spit them out on an agenda and then we would
3 have to then look at what they've done since the revocation, write
4 up free, have you programmed, have you been doing your drug
5 treatment, have you been working, those kinds of things.

6 What is your release plan? That's a huge part of it,
7 what's your release plan.

8 Q Right.

9 A We didn't typically like paroling people to halfway
10 houses; that's kind of unstable.

11 So when someone has a family who has been in the
12 community, who works and, you know, possibly church going and that
13 kind of thing, those are the kinds of things that we would look at
14 because the release plan is crucial.

15 We have denied people parole because they had an unstable
16 release plan, because that's crucial. And all the studies show
17 that if the release plan is not good, then probably the reentry is
18 probably not going to be successful.

19 Q Because you want them, weapon they get out, to have a
20 stable residence, get a job and become a productive member of
21 society?

22 A Absolutely.

23 Q And just two other questions:

24 You are the parole board, which is different than
25 pardons, correct?

1 A Well, the strange -- well, you know, the pardons is made

2 up of the governor and our Supreme Court.

3 Q Uh-huh.

4 A Now, we have a clerical position in our office who
5 prepares all of the pardons board agendas. That position receives
6 all pardon applications and that position then reviews those
7 pardon applications and sends out that initial correspondence as
8 to whether or not we're going to entertain your application or
9 not.

10 Then, you know, the Supreme Court and the governor, they
11 have a whole staff, but, you know, the statute says that our
12 person handles that part for the pardons board.

13 Q But the pardons board is another means or another vehicle
14 for adjusting someone's sentence?

15 A Absolutely; totally separate from the parole board.

16 Q You are the parole board, which is a different body?

17 A Absolutely.

18 Q And then my last question is: You were speaking to
19 Mr. Pike and you said that victims have a statutory entitlement to
20 speak to the parole board?

21 A Yes, ma'am.

22 Q And I certainly don't doubt that you take what they --
23 what they express to you into consideration, but is it possible
24 for the board to release, even over a victim's objections?

25 A You know, in the grand scheme of things, that does

1 A Absolutely.

2 Q And opposed to that, a life sentence, life with the
3 possibility of parole, that individual remains on and under
4 supervision of the Department of Parole for the rest of his life?

5 A Absolutely; provided that the judge says that at
6 sentencing.

7 And we don't hardly have a judge in this state that
8 doesn't say that when a sentence calls for a life sentence.

9 Then what happens is if he ever gets out on parole, then
10 he's under supervision until the day he dies. So that means
11 reporting, having to do all the things like that for forever.

12 Q And that means even if they're released at 60 years
13 old --

14 A It doesn't matter.

15 Q -- the rest of their life and they can go back to prison
16 for any of the violations you've talked about?

17 A Absolutely.

18 Q A dirty urine?

19 A Absolutely.

20 Q Being in a car that has a gun?

21 A Absolutely.

22 Q Anything like that?

23 A Absolutely.

24 Q And that individual can be put back to prison -- put back
25 in prison and have a hold put on him immediately by an officer?

1 happen.

2 Q Sure. Okay.

3 A But I thought it was important that everybody understands
4 that it's not taken lightly and we encourage victim participation.

5 Q Right. And I have no doubt that the board wants to hear
6 from the victims.

7 A Absolutely. We consider it very highly.

8 Q But they obviously don't control --

9 A No, ma'am.

10 MS. WECKERLY: Thank you.

11 THE COURT: Anything else?

12 MR. PIKE: Very briefly, Your Honor.

13

14 REDIRECT EXAMINATION

15 BY MR. PIKE:

16 Q In distinguishing a possible sentence of 20 to 50 years
17 and a life sentence with an eligibility of parole or an option
18 that would be seen by the parole board after 20 years, at some
19 point in time, a 50 year sentence may expire?

20 A Uh-huh.

21 Q Is that yes?

22 A Yeah. I'm sorry. Yeah. I thought you were going to
23 keep continuing, but absolutely, a 50 year sentence does expire.

24 Q And then that individual no longer would be under
25 supervision?

1 A Immediately.

2 Q For the rest of his life?

3 A Right.

4 MR. PIKE: Thank you. I have nothing further.

5 MS. WECKERLY: Thanks.

6 THE COURT: Thanks. Good to see you.

7 THE WITNESS: Good to see you.

8

9 (Witness excused.)

10

11 THE COURT: Next.

12 MR. PIKE: Thank you, Your Honor. Left me see who is out
13 there.

14 Katrina McKenna, Your Honor.

15 THE COURT: Okay.

16

17 (Witness sworn.)

18

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

20 THE COURT: Please state your name, ma'am, and spell your
21 name for the court reporter.

22 THE WITNESS: Katrina McKenna; K-a-t-r-i-n-a,
23 M-c-K-e-n-n-a.

24 THE COURT: Okay. Miss McKenna, you have a nice soft
25 voice. They need to hear you, so speak up and speak in that

1 direction, please.
 2 Go ahead, Mr. Patrick.
 3 MR. PATRICK: Thank you.
 4 THE COURT: In fact, that might help if you stood over
 5 there and that will direct her towards the jury.
 6 MR. PATRICK: Sure. Absolutely.

8 KATRINA MCKENNA

9 called as a witness on behalf of the State,
 10 having been first duly sworn,
 11 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. PATRICK:

15 Q Good afternoon, Miss McKenna.

16 A Good afternoon.

17 Q Do you mind if I call you Trina?

18 A That's fine.

19 Q Trina, how do you know Norman?

20 A That's my husband.

21 Q And you are still married?

22 A Yes.

23 Q You have a son together?

24 A Yes, sir.

25 Q What's your son's name?

1 care of him?

2 A Yeah, he would.

3 Q And he was devoted to his son?

4 A I would say he was devoted to him.

5 Q Since Norman has been in jail, you've been to see him?

6 A Yes.

7 Q And you've taken Gabriel to see him?

8 A Yes.

9 Q And do you think that even if -- even if Norman has to

10 spend the rest of his life in jail, would he still have a value to

11 Gabriel's life?

12 A Definitely.

13 Q Even though -- I mean, they could write letters?

14 A Oh, the baby, you mean? Like to --

15 Q Yeah.

16 A Oh, yeah, definitely.

17 Q As Gabriel gets older, he would be able to at least talk

18 to his father?

19 A Yes.

20 Q And get guidance?

21 A Yes.

22 Q And do you feel that would be valuable to Gabriel as he's

23 growing up?

24 A I do.

25 Q And as he becomes a young man?

1 A Gabriel.

2 Q How old is Gabriel?

3 A Four.

4 Q Four.

5 Tell us a little about your life with Norman?

6 A Well, when we met, we met through -- essentially through
 7 his sister, so to speak, and we started dating shortly thereafter.

8 I was pregnant, like, almost immediately, and he was happy about
 9 that because he wanted a son.

10 We had a lot of arguments, but we, you know, worked
 11 through problems. Sometimes, you know, when it was bad, it was
 12 bad, but when it was good, it was good. But it was just on and
 13 off pretty much.

14 I would say maybe it was when my son was a few months old
 15 when we decided, you know, to get married. Actually, I think he
 16 was like nine or ten months old when we decided to get married.

17 And the relationship, you know, tended to be the same
 18 thing, you know, it was up and down basically.

19 Q Norman was present when Gabriel was born?

20 A Yes, he was.

21 Q Was he excited about that?

22 A Yes.

23 Q Happy to have a son?

24 A Yes.

25 Q And when Gabriel was a baby, Norman would help you take

1 A He asks about his dad now, you know, where is daddy, you
 2 know. He doesn't -- he's only four. He doesn't understand any of
 3 what's going on. I'm going to have to tell him one day, you know,
 4 this story.

5 But he doesn't know, so, as he gets older, I think, you
 6 know, it would be beneficial to him to know his dad, talk to his
 7 dad.

8 Q Okay. A month or so ago, myself and Maribel Rosales came
 9 to visit you at your home?

10 A Yes.

11 Q And we talked to you and we talked to Gabriel?

12 A Uh-huh.

13 Q And during that time, Miss Rosales took a video tape of
 14 Gabriel?

15 A Yes.

16 Q And you are present when she did that?

17 A Yes.

18 Q And you had given your consent to allow her to do that?

19 A Yes, I did.

20 Q Okay. What I'd like to do is get it switched over
 21 please.

22 THE COURT: Okay.

23 MR. PATRICK: It should come up, too, Trina, on your
 24 screen right there.

25 THE WITNESS: Yeah.

(Video played.)

THE COURT: Mr. Patrick, if you would like to start over, I'll let you.

MR. PATRICK: Yeah. I don't know if the jury can hear that, Judge. If we could, that would be great.

THE COURT: See, what I will do, Mr. Patrick, if they've seen Gabriel -- obviously, the audio is a problem. She was there. I'll let you ask Miss McKenna generally what was discussed and generally what Gabriel said.

MR. PATRICK: That's fine.

THE COURT: That's about as fair as we can be. It doesn't look like we can get more audio.

BY MR. PATRICK:

Q Okay. Trina, you were present when Maribel took that video?

A Yes.

Q And you've seen it and the pictures -- first of all, that is Gabe?

A Yes.

Q That's Norman and your son?

A Uh-huh.

Q And the pictures he was looking at were pictures of him and his father?

A Yes.

Q And I don't know if the jury heard, but Maribel would ask who was in the pictures and he knew who his father was?

A Yes.

Q And he was able to point out this is my daddy and this is me?

A Uh-huh.

Q At one point during your relationship with Norman, you went down and got a temporary restraining order.

A Yes.

Q And that was the reason why Norman was revoked on his parole at one point?

A Yes.

Q Because he was caught with you?

A Yes.

Q Or the two of you were together?

A Yes.

Q Could you kind of explain that whole situation for us.

A What? The TPO or the --

Q Why you and Norman were together then that caused him to get revoked?

A I filed the TPO because of an argument that he and I was having that seemed to escalate. We got in a verbal altercation at my home and what he had said to me, I took as a threat at that time. And, essentially, I didn't feel as though -- you know, my

safety was negotiable. I filed the TPO and I filed the TPO with the understanding that, you know, I could modify, extend or resolve it after the 30 days, but that I could have no contact with him.

I had to submit copies to Gabriel's day care, my job; and he wasn't allowed, you know, at my home. But, during that time, I was also told that he would be served, you know, as well, and he never was.

One time, Gabriel was sick and had to be taken to the hospital. He took him to the hospital and I had to meet them there. We went in separate cars, but I had to meet him there and I knew, all the while, that I have the order, you know, on him, but I didn't want to tell him, you know, I have this order because I'm sure he would have been upset and so I didn't.

We had had an argument and I really can't remember, maybe a few days later, where he told me he was going to come by and pick up the baby. And I said: Well, no, because he's in school; you know, I want to take him to school.

And we got in another argument then and he showed up. And I was leaving early for work and I put the -- you know, my things -- it was actually my father's car and I was bringing the baby outside. He had pulled up and the argument started from there. We were kind of arguing back and forth and I just went inside and I closed the door and locked it and he waited in his car. And that's when I had called Metro and I notified the n that,

you know, I have the TPO on him and he had not been served with it.

So they send a couple units, I think, out and that is when -- he was still in his car when they came and, you know, I guess told him that he had this order.

Q So, to your knowledge, until that point when Metro came, he had no idea that there was a TPO between the two of you?

A I know he didn't know.

Q Okay. And when Gabriel was sick then, you needed his help to get him to the hospital and take care of Gabriel?

A Yeah. Well, actually, the school called him to pick him up because he had a fever, he needed to go to the hospital. And I can't remember if he notified me or the school called me as well, to say that his father was picking him up. But I know that I did talk to him upon leaving that he was bringing him to Sunrise, to take him, but I had to meet him there.

Q Okay. Now, you said that the TPO was for 30 days and that that -- at the end of that 30 days, you had your choice of what to do with it?

A Yeah.

Q Had you given any thought about what you were going to do at the end of that 30 days, in regards to the TPO?

A Yes. Well, I knew -- with he and I, I wanted to see -- I felt, at that time, we needed a break from each other to, you know, decide what we were going to do, that was going to be

1 beneficial to Gabriel.

2 If it wasn't working with us as a couple, then we needed
3 to find a better way to argue or talk or something because it
4 wasn't good for him.

5 I knew, even when we had went to court -- because I had
6 to go to court on it. I can't remember how many days after it was
7 filed, he was brought in as well -- that I was going to resolve --
8 you know, or dissolve the TPO after the 30 days.

9 Q So, basically, what are your feelings about Norman as a
10 father to your son?

11 A I know he loves my son. I think he was a good father
12 when he was with him. He was an excellent father. I knew he
13 would let nothing happen to him.

14 I didn't worry about Gabriel at all when he was with him.
15 I didn't have to worry about him at all.

16 Q Would you like to see Gabriel and Norman continue to have
17 a relationship?

18 A Yes, I would.

19 Q Even if it meant -- even if Norman was in jail the rest
20 of his life?

21 A Yes, I would.

22 Q He would still have value to your life and to Gabriel's
23 life?

24 A To all of my children because it affected all of my
25 children.

1 MR. PATRICK: Thank you. That's all I have.

2 THE COURT: Questions?

3 MS. LUZAICH: Briefly.

4

5 CROSS-EXAMINATION

6 BY MS. LUZAICH:

7 Q Good afternoon, Miss McKenna.

8 A You've met me before. I've seen you.

9 Q But you've never met me?

10 A Right.

11 Q What is Gabriel's date of birth?

12 A August 9th, 2004.

13 Q When did you meet the defendant?

14 A November of '03.

15 Q Was he in -- oh, he was just released from prison?

16 A I believe so.

17 Q Did you know that he had been in prison?

18 A Yes.

19 Q Are you and his sister friendly?

20 A I wouldn't say friendly.

21 Well, I haven't talked to them in a very long time, but
22 at the time of meeting him, I would say we were pretty friendly.

23 Q You were friendly with his sister and, therefore, you met
24 him?

25 A Well, no. Where I worked at the time, she was a client

1 and he had come up there with her.

2 Q Okay. At the time that you met and were dating him, were
3 you aware that he was dating somebody else?

4 A No.

5 Q When Gabriel was born, actually probably while Gabriel
6 was being born, were you aware he was dating someone else?

7 A No.

8 Q When you said when things were good, they were good, when
9 they were bad, they were bad, what did you mean by when they were
10 bad, they were bad?

11 A When we argued and fought, we argued and fought. It was,
12 you know, to the point where it's like get out of my house, you
13 know. I don't want to see you over here, you know, it's over type
14 of thing, you know, I don't want anything to do with you, you
15 know. It had got bad. It was never physical, but it was bad, I'm
16 saying, as far as the arguing between he and I.

17 Q Did that happen often?

18 A Not often, but enough.

19 Q It happened enough so that you got a protective order,
20 you said?

21 A I got the protective order, yes.

22 Q Because of something he said to you?

23 A Yeah.

24 Q That you took as a threat?

25 A During an argument, yes.

1 Q What did he say?

2 A Well, when we were arguing, I had told him why doesn't he
3 just leave Gabriel alone and let a real man raise him; and he took
4 offense to that and he had told me if I talk to him like that he
5 would break my neck.

6 Q Okay. Cause for concern, right?

7 A Uh-huh. He never had ever said nothing like that.

8 Q Okay. So you got a TPO.

9 Do you remember when that was that you actually got it?

10 A I don't remember when I got it.

11 Q If I told you that the day that he violated the TPO was
12 November 22nd of 2004, does that help you any?

13 A Yeah. I know when it was violated, when he was back in
14 custody. I believe it was the week of or the week before
15 Thanksgiving, so, yeah.

16 Q Was when he violated the TPO?

17 A Right.

18 Q But do you remember if that's when it was -- do you
19 remember when you got it?

20 A No. It hadn't been the 30 days. I'm pretty sure on
21 that.

22 Q Less than 30 days. Okay.

23 Well, the police came out to you twice that day, didn't
24 they, the day he violated it?

25 A Yes.

1 Q And do you remember writing a voluntary statement for
2 them?

3 A Yes.

4 Q I'd like you to read it.

5 Does this look familiar? Is that your handwriting?

6 A Yes.

7 Q Can you read what you wrote that day?

8 A I was leaving for work this morning and as I got to my
9 back door and went outside, I saw that Norman was there. I asked
10 him why he didn't call me first. He replies: I told you I was
11 coming to pick the baby up yesterday. I then went inside and
12 called 911.

13 When the officer got there, he gave Norman a copy that I
14 provided -- I gave him the copy of the TPO and he was asked to
15 leave.

16 I brought my son Gabriel to day care, spent a few minutes
17 there with him, gave them a copy and I left -- gave them a copy.

18 Q Gave them?

19 A And I left.

20 I pulled out of the parking lot and -- I can't even read
21 my own writing. And I don't know if this is I heard -- oh, I
22 heard him blow his horn and he was flagging me down, telling me
23 repeatedly to pull over, he only wanted to talk to me for a few
24 minutes.

25 I kept yelling no from my window and he kept getting in

1 front of my car --

2 Q Wait. Yelling no from my window?

3 A I was yelling no from my window. He then cut me off so
4 that I could not drive and appeared kept on getting in front of my
5 car with his.

6 I was terrified and pulled into -- pulled into a nearby
7 gas station and he pulled over as well. He was yelling at me and
8 someone called 911.

9 Continue?

10 Q Keep going, please.

11 A I was unaware that the police had been called. Norman
12 asked me to roll my window down and I repeatedly told him no.

13 He kept trying to reassure me that he wasn't going to do
14 anything to me, but I was scared and began to cry, yelling no, no.

15 He kept asking me to open the car door and I again kept
16 yelling no, please, no.

17 I'm not going to hurt you, he said.

18 He opened the car door and started yelling at me,
19 saying -- why didn't I tell him he had a TPO on him? He said he
20 would have not come to my house.

21 I knew he would -- or something -- I don't know. It's --
22 I knew -- I'm very afraid at this point.

23 I just told him please let me go to work. I guess from
24 the yelling and me crying, someone was concerned and called Metro.

25 When they arrived, they arrested Norman for violating the

1 TPO.

2 MS. LUZAICH: Thank you. Nothing further.

3 THE COURT: Anything else?

4 MR. PATRICK: Briefly.

5

6 REDIRECT EXAMINATION

7 BY MR. PATRICK:

8 Q So, Trina, that day, you are not the one who actually
9 called the police about Norman?

10 A From my home, I did. From the gas station, no.

11 Q Okay.

12 A I was told someone there notified the manager or
13 something.

14 Q Okay. When you wrote that statement, were those all your
15 own words or did you have help writing that?

16 A I wrote it, but I was told to write it over and over. I
17 wrote it once and the officer saw it and he asked me to -- I guess
18 elaborate more on what had happened. So I wrote it again.

19 This is what I wrote, but I think this is the last one
20 that I wrote.

21 Q Okay. And you wrote one and then the police officer was
22 telling you what more to write or to write more or how did that
23 work?

24 A Well, in his words, he said that a judge would be pissed,
25 upset, that we were in contact with one another and that our

1 stories had to match each other's were his words.

2 And I'm saying I'm telling you what happened.

3 And he was like, but I need you to tell me more in detail
4 what went on, how you ended up here essentially at the gas
5 station.

6 Q And did that police officer give you any idea what that
7 detail should be?

8 A If so, I don't remember really; just that, you know,
9 what had happened more or less. I guess because it was very short
10 the first time and I don't remember what I wrote, but it was
11 really short. So I had -- I rewrote it.

12 MR. PATRICK: Court's indulgence.

13 THE COURT: Do you need a five minute break after this
14 witness?

15 A JUROR: Yeah.

16 THE COURT: Are you all done?

17 MR. PIKE: We just need to have her identify the
18 photographs that were in the video so they can be admitted into
19 evidence.

20 THE COURT: Okay. Do you have them?

21 MR. PATRICK: No, Judge.

22 MR. PIKE: Oh, I'll bring them in through another
23 witness.

24 THE COURT: Okay. Next.

25 MS. LUZAICH: I just have a question, one question.

THE COURT: All right.

RECROSS-EXAMINATION

BY MS. LUZAICH:

Q What you wrote and just read, was it the truth? Was it accurate?

A Yes.

MS. LUZAICH: Thank you.

THE COURT: Okay. We'll take a five minute break.

(Jury admonished by the Court.)

(Recess in proceedings.)

THE COURT: Back on the record in Case Number C228755,

State of Nevada versus Norman Keith Flowers.

Let the record reflect the presence of the defendant, his counsel; counsel for the State; all ladies and gentlemen of the jury are back in the box.

Mr. Pike, call your next witness.

MR. PIKE: Your Honor, we have fixed the volume on this, if we can replay the short video.

THE COURT: I don't mind. I think they got it, but if you prefer, you can certainly do that. I think the jury understood it. I mean, they saw the kid and they -- the essence

A Fine. Thanks.

Q Good. May I call you Cherret?

A Yes.

Q How do you know Norman?

A He's my brother.

Q Okay. You have the same parents?

A Same mother.

Q Same mother, different fathers?

A Yes.

Q Okay. Where were you born?

A Belize, Central America.

THE COURT: You are going to have to speak up so they can hear you.

BY MR. PATRICK:

Q Can you speak up a little bit for us?

A Belize, Central America.

Q How old were you when you came to the United States?

A Eight.

Q Okay. So your step dad was Norman, Senior?

A Yes.

Q How many -- how many children were in your family?

A Eight.

MR. PATRICK: May I approach, Your Honor?

THE COURT: Sure.

BY MR. PATRICK:

was he recognized his father. If you want to play it, I'll certainly let you.

MR. PIKE: We disconnected it and we put it on again.

THE COURT: Call your next witness.

MR. PIKE: Cherret Ramos.

(Witness sworn.)

THE CLERK: Thank you. You may be seated.

THE COURT: State your name, ma'am, and spell your name for the court reporter.

THE WITNESS: Cherret Ramos; C-h-e-r-r-e-t, R-a-m-o-s.

THE COURT: Go ahead.

KATRINA MCKENNA

called as a witness on behalf of the State,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PATRICK:

Q Good afternoon, Miss Ramos.

A Good afternoon.

Q How are you doing?

Q I want to show you what's been marked as Defense proposed Exhibit L, M and N.

Could you look at those and tell me if you recognize them.

A These are my brothers and sisters.

Q And do you recognize the other two?

A Yeah, these are my brothers and my sisters.

Q Okay. And you represent those as being your brothers and sisters?

A Yes.

Q And at the time the pictures were taken, that would be a fair and accurate representation of how your family looked?

A Yes.

MR. PATRICK: Okay. Move to admit, Judge.

THE COURT: Any objection?

MS. WECKERLY: No.

THE COURT: Admitted.

(Defense Exhibits L, M, N admitted into evidence.)

BY MR. PATRICK:

Q Okay. I'm going to show you what's Defense N.

And this is a picture of all your brothers and sisters?

A Yes, it is.

Q And do you remember about when that was taken?

1 A I was 18, so about 22 years or 23 years.
 2 Q Okay. On your screen, you can kind of come along with
 3 me, but this would be you here? (Indicating)
 4 A No.
 5 Q No?
 6 A The bottom here.
 7 Q Okay. Down here, that's you? (Indicating)
 8 A Yes.
 9 Q And then who is the next oldest in the family?
 10 A Fiona. (Indicating)
 11 Q This one?
 12 A Yes, sir.
 13 Q Okay. And then --
 14 A Then Warren.
 15 Q Warren.
 16 A Then Norma and Norman, Charmaine, Dahlia and Colone.
 17 Q Okay. Norma and Norman are twins.
 18 A Yes.
 19 Q I'm going to show you what's been marked as Defense M.
 20 Do you recognize the people there?
 21 A Yes. That's Norman. It looks like Charmaine and Norma.
 22 (Indicating)
 23 Q Okay. And do you know who the minister is?
 24 A I can't see her.
 25 Q Yeah, it's kind of a bad picture, isn't it?

1 And then Defense L, do you recognize who they are?
 2 A That's Norma; that's Norman; and that is Dahlia.
 3 (Indicating)
 4 Q Okay. Being the oldest, were you ever put in charge of
 5 watching all the rest of the kids?
 6 A Yes.
 7 Q How did that come about?
 8 A My parents would leave and I would have to stay with all
 9 the kids and take care of them.
 10 Q Can you speak up a little bit for us?
 11 A When they would leave, I would have to stay at home and
 12 take care of the kids.
 13 Q Okay. What was the relationship like between your mom
 14 and step dad?
 15 A Volatile most of the time.
 16 Q Could you explain that?
 17 A They were always arguing. It's -- it's different things.
 18 He would -- my stepfather would make me lie to my mom about
 19 certain things, trying to find out where she's at. And she would
 20 make me to lie to him to find out where he's at. You know, they
 21 would play games with each other.
 22 Q What kind of things would they make you lie about?
 23 A Where she's at. If I knew, I wasn't supposed to tell
 24 him. He would put me on the phone to talk to her and ask
 25 questions to find out where she's at. Sometimes, she would make

1 me tell her that he's not at home or -- or if he was, he wasn't
 2 there.
 3 Q And where would they be that they wouldn't want the other
 4 one to know? Why would they make you lie for them?
 5 A I don't know.
 6 Q Can you kind of describe your step dad as a father.
 7 A He paid the bills. He was never emotional towards the
 8 kids, never a hug, a pat; very mean, very bad tempered, violent
 9 and very temperamental; anything could set him off.
 10 Q Okay. Do you remember telling a story about not being
 11 able to play outside?
 12 A Yes.
 13 Q Could you tell the jury that story and what happened.
 14 A Me and my sister Fiona just had gotten here from Belize.
 15 We didn't know anything about America. They left us in the house.
 16 We weren't allowed to go outside. I believe it was from morning
 17 until dusk. It was night. We were playing in the house. We had
 18 hit the ball. We knew we weren't allowed to play in the house.
 19 He walked in, went straight to his room, came back out with a big
 20 brown belt, leather belt, and proceeded to whip us. He beat me
 21 until my back was swollen and blood was running down my back.
 22 Q Now, is it just you and Fiona that he treated like this
 23 or did he treat the rest of the kids like this also?
 24 A He was very mean to the rest of the kids also, but not as
 25 intense.

1 Q When you saw Norman, Senior and Norman, Junior's
 2 interaction between each other, did you ever see your step dad
 3 give Norman any words of encouragement?
 4 A Never.
 5 Q Did he ever go to any of his football games?
 6 A No, that I know of.
 7 Q How did your stepfather treat Norman?
 8 A Like the rest of us basically, never hugged, never took
 9 him anywhere, never did anything with him, embarrassed him in
 10 front of friends, girlfriends.
 11 You know, he was always in trouble, so he always was on
 12 punishment or getting a whipping or being a punching bag.
 13 Q Okay. Do you remember telling me a story about your step
 14 dad and Norman involving a branch?
 15 A I was told by my other brothers and sisters that he
 16 strung him up in the garage, naked, and whipped him for something
 17 he did.
 18 Q You are stepfather did that to Norman?
 19 A Yes.
 20 Q Do you remember about how old Norman was when that
 21 happened?
 22 A No, I can't remember, but he was a young teenager.
 23 Q Okay. Do you remember telling me a story involving your
 24 stepfather and Norman and the stairs?
 25 A Could you elaborate?

1 Q Did you ever hear or see your stepfather push Norman down
2 a flight of stairs?

3 A No.

4 Q No. At some point, did you come to find out that, as a
5 child, Norman had been molested?

6 A Yes.

7 Q Could you tell us about that.

8 A After he was incarcerated for, I guess, 12 years, on a
9 visit, he told me that he was molested by a neighbor when he was
10 five years old. He was missing for some hours and we were looking
11 for him and we were calling him and calling him. He told me that
12 our neighbor Terrence had him in the bedroom, in the back bedroom,
13 and he could hear us, but Terrance was on top of him, had his
14 hands around his mouth so he couldn't scream or anything.

15 Q And you understood, from Norman's conversation, that
16 Terrance had sexually molested him?

17 A Yes, several occasions.

18 Q That's what I was going to say. Was it just the once?

19 A No.

20 Q No.

21 Do you know if Norman ever told your mom or dad?

22 A Yes, he did.

23 Q And what happened?

24 A I didn't find out until I was grown that they did go to
25 the police station, found out that he had a rap sheet on

1 time; broke it off. That person was constantly coming around. He
2 threatened them, I was told. I never saw the guy and they packed
3 up and went to Belize in the middle of the night. When I woke up,
4 they were gone.

5 Q At some point, did your mother come back?

6 A Yes, she came back about a month later.

7 Q Did she bring all the kids back with her?

8 A Everyone except for Norman.

9 Q And what happened to Norman?

10 A They left him there because -- I guess he was causing too
11 much trouble for them, so they left him out there.

12 Q In Belize?

13 A In Belize, yes.

14 Q Now, you said your mom was having problems with a man.
15 Was she still married to your stepfather at the time?

16 A Yes.

17 Q Did Norman ever talk to you about how being left in
18 Belize, when all the rest of the family came home, how that made
19 him feel?

20 A He felt abandoned and they didn't want him.

21 Q If you could use one word to describe the childhood that
22 you and Norman had as children, what would it be?

23 A Terrified.

24 Q Why is that?

25 A I was constantly afraid of my stepfather and that, in

1 molestation. I don't think he got therapy until he was older. My
2 father never acknowledged the fact that he was molested and really
3 didn't want to have anything -- no personal contact or intimacy
4 with Norman.

5 Q So then, after your parents found out about this sexual
6 molestation, they stopped sending Norman over to Terrance's?

7 A Yes.

8 Q Did Norman ever tell you how that experience made him
9 feel?

10 A He said that he felt like my mom and dad knew what was
11 going on and they allowed it to happen, because they kept sending
12 him over there. And this was before, I guess, he told them that
13 he thought that they knew already and they allowed him to do it.

14 Q And then you noticed, after that incident came to light,
15 a difference in the way your stepfather would treat Norman?

16 A Yes.

17 Q What was the difference?

18 A He never was close to him and he never hugged him, picked
19 him up, took him anywhere with him; never did anything with him.
20 He stayed at work to avoid being in the house with the family.

21 Q Now, at some point during your childhood, did your mom
22 pack up some of the kids or all of the kids and move back to
23 Belize?

24 A The five that belong to him and Norman -- her and Norman
25 rather, yeah, they packed up. My mom was seeing someone at the

1 turn, made me afraid of everything around me because I was
2 responsible for all of the children, from the age of eight, for a
3 long period of time during the day, from morning until night,
4 babies included. I had to change diapers, cook, clean, make
5 bottles. I was responsible for their life, so I was terrified of
6 everything, even as an adult.

7 Q Okay. As an adult, do you have problems because of your
8 childhood?

9 A Yes, I do.

10 Q Do you mind explaining those for us.

11 A I was diagnosed with bipolar disorder. I take medication
12 for it. It's hard for me to have a relationship with anyone,
13 sometimes even my children. It's hard to get intimate with my
14 children.

15 I know I love them, but it's hard to show it. It's hard
16 for me to feel compassion sometimes. It's hard for me to deal
17 with other people on a personal level; never intimate -- hardly
18 any intimacy.

19 Q Okay. And during your childhood, the punishments and the
20 beatings that you would get, that was only for major things or
21 what kind of things would you and Norman and the rest of the kids
22 be punished for?

23 A Any little thing, him not having his shoes on on the cold
24 floor, you know, he would get smacked for it. And then we would
25 get cussed out for allowing him to do it.

1 He would come home in a bad mood. Anything would set him
 2 off.
 3 Q Okay. Does your brother's life still have value to you?
 4 A Yes, it does.
 5 Q And would you stay in contact with your brother if he was
 6 in prison?
 7 A Yes, I would.
 8 Q Write him letters?
 9 A Yes, I would.
 10 Q Visit him when you were able?
 11 A Yes, I would.
 12 Q And you'd like to have that opportunity?
 13 A Yes, I would.
 14 Q I'm sorry?
 15 A I love my brother. I love him with all my heart. I
 16 brought him up, I think, more than my mom did and I believe I was
 17 more a mother to him than my mother and I would never want to see
 18 him die or -- I don't want to see him in this position.
 19 Q So even if he spent the rest of his life in prison, his
 20 life still has value to you?
 21 A Yes, it does.
 22 Q And you would like to be able to see him for the rest of
 23 his life?
 24 A Yes, I would.
 25 MR. PATRICK: Thank you. That's all I have, Judge.

1 THE COURT: Any questions?
 2 MS. WECKERLY: No questions. Thank you.
 3 THE COURT: Thank you, Miss Ramos. You are excused.
 4
 5 (Witness excused.)
 6
 7 THE COURT: Call your next witness.
 8 MR. PIKE: Maribel Rosales.
 9
 10 (Witness sworn.)
 11
 12 THE CLERK: Thank you. You may be seated.
 13 THE COURT: State your name, please; spell your name for
 14 the court reporter.
 15 THE WITNESS: Maribel Rosales; M-a-r-i-b-e-l,
 16 R-o-s-a-l-e-s.
 17
 18 MARIBEL ROSALES
 19 called as a witness on behalf of the State,
 20 having been first duly sworn,
 21 was examined and testified as follows:
 22
 23 DIRECT EXAMINATION
 24 BY MR. PIKE:
 25 Q Where are you employed?

1 A Office of the Special Public Defender.
 2 Q You need to speak up. You have a soft voice.
 3 A Sorry. Special Public Defender's office.
 4 Q And you are employed at my office in the capacity of a
 5 mitigation specialist; is that correct?
 6 A Correct, yes.
 7 Q As part of your duties as a mitigation specialist, you
 8 are assigned the responsibility of going and obtaining photographs
 9 and making contact with family members; is that correct?
 10 A Yes.
 11 Q I have a group of photographs. Rather than have them
 12 marked each individually, maybe we can just do it as next in order
 13 as a group?
 14 THE COURT: Is that okay with you?
 15 THE CLERK: Yeah.
 16 MR. PIKE: Thank you. If I can have this then marked.
 17 Where are we at, L or --
 18 THE CLERK: Actually at FF.
 19 MR. PIKE: Okay. Exhibit FF then.
 20 THE COURT: And how many are there, Mr. Pike, for the
 21 record, so I know how many there are.
 22 MR. PIKE: Twelve.
 23 THE COURT: Okay.
 24 BY MR. PIKE:
 25 Q I'm showing you these photographs, 12 photographs in all.

1 Do you recognize those as photographs that you obtained?
 2 A Correct; yes.
 3 MR. PIKE: Okay. I don't think there is any objection to
 4 these.
 5 MS. WECKERLY: No objection.
 6 THE COURT: They will be admitted as FF collectively. We
 7 will paper clip them together and give them that marking.
 8 MR. PIKE: Thank you.
 9
 10 (Defense Exhibit FF admitted into evidence.)
 11
 12 BY MR. PIKE:
 13 Q And this is a photograph of Norman Flowers?
 14 A Yes.
 15 Q And from whom did you obtain this?
 16 A I obtained this picture from his father.
 17 Q And approximately how old was Norman at that time?
 18 A Thirteen, 12, 13.
 19 Q And that photograph?
 20 A Gabriel, his son.
 21 Q We have a number of photographs of Gabriel.
 22 Do you recognize these photos?
 23 A Yes.
 24 Q The photos that you have obtained?
 25 A Yes. I obtained those from Gabriel's mother, Katrina.

1 Q That photograph shows Norman interacting with his son?
 2 A Yes, it looks like he's feeding him.
 3 Q Okay. Another photograph?
 4 A Yes.
 5 Q And that is, again, Norman interacting with his son?
 6 A Correct.
 7 Q I'm laying these out this way because, in the
 8 photograph -- or in the video tape that was shown, you were
 9 interviewing his son.
 10 A Correct.
 11 Q And you were video taping him and you laid out these
 12 pictures and these are the pictures that he was pointing at?
 13 A Yes.
 14 Q And he recognized his father?
 15 A Yes. He calls him daddy.
 16 Q Okay. And he recognized that photograph?
 17 A Yes.
 18 Q Did he say anything in particular about that photograph?
 19 A I asked him what they were doing and he said he was
 20 sleeping.
 21 Q Okay. And, again, they're playing there?
 22 A Uh-huh.
 23 Q That's a photograph of what?
 24 A It appears to be Norman and his son when his son Gabriel
 25 was born in the hospital.

1 Q Okay. And approximately how old was Norman when that
 2 happened?
 3 A I believe he was eleven.
 4 Q Okay. During the course of your investigation, you
 5 traveled to Compton, California; is that correct?
 6 A Correct, yes.
 7 Q Can you describe what Compton is like, as far as an area,
 8 and what you saw.
 9 A Well, we travel during the day and it's not very well
 10 kept up. And according to what, you know, we know with the
 11 interviews that we've done with several of our witnesses, it's a
 12 very dangerous area.
 13 Q And it's right next to an area called Watts also?
 14 A Correct.
 15 Q And does that look similar to Compton?
 16 A Yes.
 17 Q The dangerous place to be?
 18 A Yes.
 19 Q As part of your training, you've actually worked at
 20 prisons?
 21 A Yes.
 22 Q And Compton and Watts is not a place you travel in at
 23 night?
 24 A No.
 25 Q In going through this, you were able to visit the

1 locations that have been provided to you by the family.
 2 Were you able to find the home in which they were
 3 residing at the time that Norman Flowers was sexually molested as
 4 a child?
 5 A Yes.
 6 Q And you were able to determine that in that apartment or
 7 the home that they were living, the perpetrator lived in that same
 8 building?
 9 A Absolutely.
 10 Q How close was the perpetrator's door to Norman's door?
 11 A I think if you open the doors outwards, they'd probably
 12 touch. I'm talking probably within two, three feet of each other.
 13 Q And the other family members recounted for you their
 14 visited recollections of that individual?
 15 A Yes.
 16 Q And did that create a frightening condition for Norman
 17 Flowers?
 18 A I would say so, yes.
 19 Q The area, besides looking like a dangerous area, you
 20 actually have gone through and interviewed or attempted to
 21 interview a number of family members that are related to Norman?
 22 A Yes.
 23 Q Is that correct?
 24 And could you kind of outline the dynamics of the family.
 25 How many children are there; how many fathers and their

1 approximate age spread.
 2 A Eleanor, before coming to the United States, had
 3 conceived two children, Cherret and Fiona, with a gentleman in
 4 Belize. She came to Los Angeles with her two daughters and she
 5 met another gentleman here. Together, they conceived Warren.
 6 She then went back to Belize, left the two older girls
 7 with grandparents, came back only with Warren.
 8 Then she met Norman Flowers, Senior. They got married,
 9 brought the two girls from Belize, Cherret and Fiona, and then
 10 conceived -- or had five other children with Norman, Norman
 11 Flowers. So there was a total of eight siblings.
 12 Q And Norman had a twin sister or has a twin sister, Norma?
 13 A Yes; uh-huh.
 14 Q The dynamics of the family, how would you describe them?
 15 A I would say it's a dysfunctional family.
 16 Q Would you say it was a violent family?
 17 A There was violence perpetrated on the children, yes.
 18 Q And the recounts of the violence that you received from
 19 Cherret and others is consistent?
 20 A Absolutely.
 21 Q It's a consistent theme throughout this family?
 22 A Yes; uh-huh.
 23 Q Specifically, I'm going to ask you some questions about
 24 Norman's step brother.
 25 A Okay.

1 Q Did you go and meet with his step brother?

2 A Yes.

3 Q What is his name?

4 A Warren Rankin.

5 Q And can you identify Warren in this photograph?

6 A Yes. (Indicating)

7 Q Okay. Now, he's quite a bit older than Norman?

8 A Four years, yes.

9 Q And he felt that during the conversations Norman looked

10 up to his older brother?

11 A Yes.

12 Q His older brother, however, chose a very different

13 lifestyle?

14 A Correct.

15 Q He was involved in gangs in Compton; isn't that correct?

16 A Yes.

17 Q In fact, he introduced gangs and violence into the home

18 of Norman Flowers while he was growing up?

19 A Yes. That's what he told me, yes.

20 Q And he's unable to come in to court today and testify;

21 isn't that correct?

22 A Yes.

23 Q And why is he unable to come in?

24 A When Warren was 18 years old -- Norman would have been 14

25 years old -- Warren was involved in a gang related shoot out.

1 Warren was shot and is a paraplegic and has been wheelchair bound

2 ever since. His health is deteriorating and, as a result of that,

3 it is a hardship for him to travel anywhere at this point.

4 Q In the course of the interview that you had with Warren,

5 did he express to you what he felt bringing that violence into his

6 home did to Norman?

7 A Well, it had a very negative impact on Norman as Norman

8 looked up to his brother and instead of, you know, being a role

9 model for him, Warren was teaching him out to steal cars. So he

10 feels that he had a negative impact on his younger brother.

11 Q And did he express to you his remorse about what he had

12 taught his brother?

13 A Yes.

14 Q Did he express to you that he felt that he was, in part,

15 to blame as to the turns his younger brother's life had taken?

16 A Yes, he feels really bad for what is going on; and he

17 says he loves his brother and doesn't want to see him in this

18 situation.

19 Q By the same token, Warren now has been in a wheelchair

20 most of his life?

21 A Correct.

22 Q And did he express to you the fact that he learned from

23 that?

24 A Yes. He says that he didn't have anybody to blame where

25 he was at except himself.

1 Q And he understands he's going to spend every day for the

2 rest of his life in that wheelchair?

3 A Yes.

4 Q And it took him time to accept what had happened and to

5 mature and to understand and believe that those consequences were

6 of his own actions?

7 A Yes. That's what he expressed to me.

8 Q Did he express to you that he did not want his brother to

9 die?

10 A Yes. He said it very clearly: I don't want my brother

11 to die.

12 Q But he doesn't have any problem with Norman being

13 punished every day for what he has been convicted of?

14 A According to what he told me, like he said that he would

15 take -- says he has nobody to blame for him being in the

16 wheelchair, he should take responsibility, and if that's the

17 punishment that -- whatever is appropriate, then he should deal

18 with that every day.

19 Q And did he tell you that he thought that he could help

20 his brother understand this?

21 A Yes. He still loves his brother very much.

22 Q And he felt that he, Warren, would have value to his

23 brother in prison?

24 A Yes, absolutely.

25 Q And his brother would have value to him?

1 A Yes.

2 MR. PIKE: Court's indulgence.

3 Thank you very much. I don't have any further questions.

4 THE COURT: The State.

5

6 CROSS-EXAMINATION

7 BY MS. WECKERLY:

8 Q Good afternoon.

9 A Good afternoon.

10 Q You work exclusively for the Special Public Defender's

11 Office?

12 A Yes.

13 Q How long have you worked as a mitigation specialist?

14 A Three and a half years.

15 Q And can you explain to the members of the jury what a

16 mitigation specialist does?

17 A Sure. Basically, I will gather the social history of our

18 client, via interviews with our client, his family, teachers,

19 neighbors, et cetera. I also gather records. I compile all of

20 this information, give it to the attorneys, and later this

21 information is used primarily for the penalty phase of a capital

22 murder case.

23 Q And I would assume you call each individual person your

24 client?

25 A Yes.

1 Q Okay. How many clients do you have?

2 A Currently, probably 12.

3 Q Okay. And for each of them, you've done the same thing

4 that you have spoken of this afternoon?

5 A Yes.

6 Q You try to find out family history, school history, that

7 sort of thing?

8 A Absolutely; uh-huh.

9 Q Okay. In terms of this particular case, were you able to

10 get school records of Mr. Flowers?

11 A Yes.

12 Q And were you able to get IQ tests of Mr. Flowers?

13 A Yes.

14 Q And the school records that you got for him, did they

15 indicate any kind of deficit in terms of intellectual ability?

16 A If I recall correctly, no.

17 Q Okay. And, certainly, Mr. Flowers doesn't have any kind

18 of physical disability?

19 A No.

20 Q You visited Compton this year or --

21 A July of this year.

22 Q July of this year?

23 A Yes.

24 Q And when Mr. Flowers was living there, what year was it?

25 A It would have been the early '90s, I believe.

1 Q Okay. Maybe a little bit before that or --

2 A Okay. He was born in '74. It would be the '70s and

3 '80s, yes.

4 Q So we're talking decades ago when he lived there, so

5 conditions are probably not identical, 2008 versus then?

6 A True.

7 Q Maybe 20 years ago or maybe a little less than that,

8 about 18 years ago?

9 A Sure; true.

10 Q When you said you interviewed family members, I may have

11 it wrong, but my understanding is you interviewed the brother who

12 still lives in LA?

13 A Uh-huh; yes.

14 Q Okay. And Cherret, the sister, the young lady that

15 testified?

16 A Yes; uh-huh.

17 Q And his mother?

18 A Yes.

19 Q Any other family members?

20 A Father and -- I made every attempt to interview the rest

21 of the siblings and they did not want to talk to us.

22 Q Okay. With regard to Miss Ramos --

23 A Yes.

24 Q -- she's lives in Las Vegas?

25 A Correct.

1 Q And she has children?

2 A Yes.

3 Q And she raises her children here?

4 A Yes; uh-huh.

5 Q And, I guess, besides the family members that you just

6 listed for us, did you ever interview teachers or friends or other

7 associates of Mr. Flowers?

8 A No. We get that information from Mr. Flowers and he did

9 not give us the names of any of his friends.

10 Q Okay. The brother who you spoke of, who still lives in

11 Los Angeles, the man who is disabled --

12 A Yes.

13 Q -- I think you indicated, if I heard you correctly that

14 he started getting into the gang lifestyle at a time when

15 Mr. Flowers was about 14 years old.

16 A At that age is when he got shot.

17 Q Okay.

18 A Yeah.

19 Q And that's about 20 years ago.

20 A Yes.

21 Q Okay. When Mr. Flowers was living here in 1993, his

22 brother was still in LA?

23 A Correct, yes.

24 Q And so his brother was there when he did the series of

25 residential burglaries?

1 A Correct.

2 Q His brother was in LA when he did the robbery and the

3 attempt robbery?

4 A Yes; yes.

5 Q And his brother was certainly there when he committed the

6 crime that we're here for today?

7 A Yes.

8 MS. WECKERLY: Thank you.

9 THE COURT: Anything else, Mr. Pike?

10 MR. PIKE: Yes, Your Honor.

11

12 REDIRECT EXAMINATION

13 BY MR. PIKE:

14 Q As part of your training, the question was asked: Did

15 Norman have any physical disabilities?

16 A Correct.

17 Q He has emotional disabilities?

18 A I would gather, yes.

19 Q And that's what you are looking for. You are looking for

20 the dynamics within the family. You are looking for the parts in

21 the family?

22 A Right.

23 Q You are looking for the things that people want to keep

24 hidden?

25 A Yes.

1 Q Because those are the things that would explain, not --
 2 not forgive, but --
 3 THE COURT: Ask a question.
 4 MR. PIKE: Okay. Thank you.
 5 BY MR. PIKE:
 6 Q Just like you weren't asked about any physical scars, are
 7 you looking for emotional scars?
 8 A Yes.
 9 Q When the State asked you about looking for his friends,
 10 in going through this case, in preparing for it, you became aware
 11 that Norman went to prison when he was 18?
 12 A Correct.
 13 Q And up until today, a short period of time, the only
 14 acquaintances he would have would be in prison?
 15 A Yes.
 16 Q Except for Katrina?
 17 A That's his wife, yes.
 18 Q And you met with Katrina?
 19 A Yes.
 20 Q And you've tried to meet with everybody that would have
 21 been important to him --
 22 A Absolutely.
 23 Q -- within the last 20 years that he's been in prison?
 24 A Yes.
 25 Q Would that be a fair assessment?

1 A Yes.
 2 MR. PIKE: No further questions.
 3 THE COURT: Anything else, Miss Weckerly?
 4 MS. WECKERLY: Just one question.
 5
 6 RECROSS-EXAMINATION
 7 BY MS. WECKERLY:
 8 Q You haven't made a medical diagnosis of him, have you?
 9 A No.
 10 MS. WECKERLY: Thank you.
 11 THE COURT: Thank you, Miss Rosales. Appreciate it.
 12
 13 (Witness excused.)
 14
 15 THE COURT: Now, are we still --
 16 MR. PIKE: Let me see if the one last witness is here.
 17 May we approach, Your Honor?
 18 THE COURT: Yes.
 19
 20 (Sidebar conference at bench, not reported.)
 21
 22 THE COURT: Okay. Here's what we got:
 23 We have got one witness left for the defense this
 24 afternoon, who will be here at three o'clock. It's a local
 25 psychologist, who is in a deposition. He has called and he's been

1 cleared from that and he will be here in about ten minutes.
 2 So this will be perfect for taking our afternoon break.
 3 And after that witness, the State has one, potentially
 4 two -- we're not sure -- two more witnesses. They're fairly
 5 short. Can't do them until tomorrow morning, which we've seen
 6 this before, not a big deal. We can start fairly early tomorrow
 7 morning. I can start as early as ten after nine or as late
 8 thereafter as anybody wants to go.
 9 Instructions tomorrow, probably 10 or 15 minutes. I'm
 10 thinking the whole argument is an hour, an hour 15 minutes.
 11 So I'm thinking if we get a good start tomorrow, we can
 12 get you the case by 11:30, another free lunch, and we should be
 13 able to get this wrapped up.
 14 But let's take our afternoon break at this time and we'll
 15 start as soon as the witness gets here, which will be three
 16 o'clock.
 17
 18 (Jury admonished by the Court.)
 19
 20 THE COURT: We'll start at three o'clock or as soon
 21 thereafter as the witness gets here. And I'm guessing we'll be 40
 22 minutes maybe with the other witness.
 23 MR. PIKE: Okay.
 24 THE COURT: Okay.
 25

1 (Recess in proceedings.)
 2
 3 THE COURT: Back on the record in Case Number 228755,
 4 State of Nevada versus Norman Keith Flowers.
 5 Let the record reflect the presence of Mr. Flowers, with
 6 his counsel; counsel for the State; all the ladies and gentlemen
 7 of the jury are back in the box.
 8 Dr. Mortillaro is here.
 9 Tina, do you want to swear him in?
 10
 11 (Witness sworn.)
 12
 13 THE CLERK: Thank you. You may be seated.
 14 THE COURT: State your name and spell your name for the
 15 court reporter, please.
 16 THE WITNESS: Lewis Mortillaro; M-o-r-t-i-l-l-a-r-o.
 17 THE COURT: Go ahead.
 18
 19 LEWIS MORTILLARO
 20 called as a witness on behalf of the State,
 21 having been first duly sworn,
 22 was examined and testified as follows:
 23
 24 DIRECT EXAMINATION
 25 ///

1 BY MR. PATRICK:

2 Q Good afternoon, Doctor.

3 A Good afternoon.

4 Q What do you do for a living, sir?

5 A I'm a licensed psychologist.

6 Q And being a psychologist, was there any education and

7 training required to be able to do that?

8 A Yes, I had to get a Ph.D., pass a licensure exam and an

9 oral exam.

10 Q Okay. And do you have any specialized training in your

11 area?

12 A Yes. Clinical counseling, psychology, neuropsychology,

13 family psychology, forensic psychology.

14 Q Okay. And you are licensed to practice in Nevada?

15 A Yes, I am.

16 Q You've practiced for how long?

17 A I've been in Nevada since 1971. When I came, there was

18 two psychologists at the juvenile court; been here a long time.

19 Q And have you published any articles?

20 A Yes.

21 Q And what journals have you published in?

22 A Different peer journals.

23 Q Do you belong to any professional organizations?

24 A Yes, all the typical ones, American Psychological

25 Association, Nevada State Psychological Association;

1 Neuropsychological Association.

2 Q Have you previously testified as an expert in

3 Clark County?

4 A Yes.

5 Q Can you give us an idea of approximately how many times?

6 A Oh, geez, numerous times. When I was chief psychologist

7 at juvenile court, we had a judge named Judge John Mendoza and I

8 testified about every week in his court.

9 Probably well over three, 400 times, I would imagine,

10 over the course of my career.

11 Q Okay. And you were hired by our office to evaluate

12 Norman Flowers?

13 A Yes.

14 Q And you performed a neuropsychological exam on him?

15 A Yes.

16 Q And could you kind of explain to the jury what that is.

17 A A neuropsychological evaluation measures what we call

18 functional ability in areas such as attention, concentration,

19 memory, eye/hand coordination, motor skills, sensory perception,

20 executive functioning of decision making, problem solving and also

21 emotional functioning.

22 Q And as part of this, Norman was administered some tests?

23 A Yes, a number of tests, yes.

24 Q Okay. And you interviewed Norm?

25 A Yes.

1 Q And compiled some raw data?

2 A Yes.

3 Q But you did not do an actual report on this?

4 A No. I have work product, but not an actual report.

5 Q Okay. Now, one of the tests that you administered to

6 Norman is an MMPI-II?

7 A Yes.

8 Q Could you explain to the jury what that is.

9 A Yes. The Minnesota Multiphasic Personality Inventory II

10 is probably the most widely used personality test in the world.

11 It's been normed on thousands of people and it's used for child

12 custody evaluations, for criminal evaluations, for workers comp

13 evaluations, personal injury, just general psychological

14 functions. It measures levels of anxiety, depression, anti-social

15 personality disorders, paranoia, schizophrenia, a person's

16 response to pain, alcohol, drug, substance abuse. It measures a

17 number of different variables.

18 Q And from giving this test to Norman, what did you find

19 out about Norman? What was your diagnosis of Norman from that

20 test?

21 A Well, there were a number of aspects to this particular

22 test. He had some puzzling patterns of physical symptoms, a

23 number of physical complaints, but what came through were a large

24 number of anti-social personality factors. It looks like a so

25 there was suicidal thoughts, a vague — well, he thought that life

1 was unrewarding, hard to settle down. He viewed the world as a

2 threatening place.

3 Q Kind of low moral type things?

4 A Yeah, low morale; some addiction proneness, although he

5 didn't acknowledge the problem with addictive substances; tendency

6 to engage in irresponsible, immature, anti-social type of

7 behavior; rebellious attitude toward adult authority figures;

8 stormy family relationships; turbulent relationships; impulsivity;

9 low frustration tolerance; just a number of issues that kept

10 coming up.

11 Q Okay. And then you also administered a Beck Anxiety

12 Inventory?

13 A Yes. That's a 21 question measure of anxiety, and he has

14 a raw score of 41 which placed him in the severe range of anxiety.

15 Q Okay. And then there was also a Beck Depression

16 Inventory?

17 A Yes. His raw score of 36 placed him in the severe range

18 of depression.

19 Q When you interviewed Norman, did he report to you any

20 sexual molestation as a child?

21 A Yes. He did indicate that when he was younger, between

22 the ages of five and eight, he said his mother took him and his

23 sister to a lady next door, who was his babysitter, and the lady's

24 son, who was in his mid 20s, groped him when he was naked and

25 rubbed his penis on Mr. Flowers' penis.

1 He can't remember if there was anal sex. He says he
 2 doesn't recall engaging in oral sex or having oral sex performed
 3 on him.
 4 He said he thought his mother knew what was going on and
 5 this was his punishment for his acting out behavior in the home.
 6 Finally, at age 12, he said he told his mother, a police
 7 report was filed. And he said the man had been previously
 8 arrested because of complaints for the same behavior. He said the
 9 man did not go to court over it and Norman did receive some brief
 10 counseling for this abuse.
 11 Q Okay. Did you talk to Norman about the relationship he
 12 had with his father?
 13 A Yes. It was very problematic. He did not have a good
 14 relationship with his dad.
 15 Q Did he report any abuse, verbally or physical?
 16 A Yes. His dad was both physically and verbally abusive to
 17 him. He said his dad would constantly call him incompetent and so
 18 he didn't have a very good -- it was not very good bonding,
 19 emotional bonding, with Norman and his father.
 20 Q Okay. Now, with that, the history of physical violence
 21 and verbal abuse and molestation, would that cause somebody to
 22 have low self esteem?
 23 A Yes.
 24 Q Would that possibly cause a feeling of worthlessness on a
 25 person?

1 A Yes.
 2 Q Now, looking over all the tests that were given Norman
 3 and your interview, did you come to a diagnosis on what Norman's
 4 neuropsychological issues were?
 5 A Yes. I diagnosed him with what I call a major depressive
 6 disorder. He had a lot of depression and a generalized anxiety
 7 disorder, a lot of anxiety; and also he has an anti-social
 8 personality disorder.
 9 Q Now, would these be consistent with the abuse he faced as
 10 a child?
 11 A Yes.
 12 Q It's something you would expect from somebody who grows
 13 up like that?
 14 A Yes, especially with the lack of bonding and attachment
 15 to his father and those kinds of things, yes.
 16 Q Okay. Would this be consistent with somebody who has
 17 been depressed for a very long time?
 18 A Yes.
 19 Q In your professional opinion, do you think Norman has had
 20 those feelings since he was a child?
 21 A Yes.
 22 Q Can you kind of explain that to us a little bit.
 23 A Well, what happens when a child is treated like Norman
 24 was, from a young man on, with the molestation and the lack of
 25 good positive role models and male attachments, there would be a

1 tendency for him to have an emotional disconnect; and since he's
 2 not connected emotionally to anybody, he would have a tendency to,
 3 you know, be more focused on himself and the meeting of his needs
 4 rather than meeting the needs of others. So over time, he has had
 5 some problems as a juvenile and has also had, you know some
 6 problems as an adult.
 7 So his anti-social personality disorder is something
 8 that's probably a long term difficulty arising out of early
 9 childhood, early adolescence and continuing on as an adult.
 10 Q The disorders you were talking about you diagnosed him
 11 with, would those be disorders that would be treatable by
 12 medications?
 13 A Anxiety and depression, yes; the anti-social personality
 14 disorder, no. The anti-social personality disorder is best
 15 treated by a lot of structure.
 16 And, in fact, in the criminal justice field, the research
 17 says that most of your inmates in prisons have an anti-social
 18 personality disorder. So they need to be highly structured, you
 19 know, in an environment where they can't harm themselves or really
 20 harm others.
 21 A little structure, a lot of discipline works for people
 22 with that kind of personality disorder.
 23 Q And so the medications for the major depression, are
 24 those readily available by doctors in the prison system?
 25 A Oh, yes. In fact, the doctors, in my evaluating them in

1 major prisons, yes, there are anti-anxiety and anti-depressive
 2 medications are available and used.
 3 Q Okay. And so after all you know about Norman and the
 4 testing, in your professional opinion, is he someone that can be
 5 safely housed in prison for a long period of time?
 6 A Yes.
 7 Q And, in fact, I think you just testified that most of the
 8 people in prison kind of fit the pattern of most of the people
 9 that are in prison for long periods of time?
 10 A Yes.
 11 Q And he could be housed safely without creating a danger
 12 to others?
 13 A I would think so, yes.
 14 MR. PATRICK: Thank you. That's all I have.
 15 THE COURT: Cross?
 16 MS. LUZAICH: Thank you.
 17
 18 CROSS-EXAMINATION
 19 BY MS. LUZAICH:
 20 Q When you say safely housed in prison, what do you mean by
 21 that?
 22 A Safely housed means being part of the structure of a
 23 prison setting. I think that the chances for him to act out are a
 24 lot less in a prison setting like that than they would be in a
 25 community.

1 Q Well, why is that? If he's in prison, he's with other
2 dangerous people. Isn't it more of a chance that he would act
3 out?
4 A No, because in prison there is a hierarchy of individuals
5 in terms of how they interact with one another and they all -- the
6 guards are very careful and very solicitous about these kinds of
7 people. And so you don't see, especially in Nevada prisons, a lot
8 of, you know, riots or bad things happening there.

9 There is a structure there that the inmates, you know,
10 reasonably follow; otherwise, you would have chaos.

11 Q So people never get hurt in prison?

12 A No, I didn't say that.

13 Q People never get killed in prison?

14 A No.

15 Q Shanked?

16 A I'm not saying that.

17 Q Happens often, doesn't it?

18 A I don't think it's happened often. I mean, it does
19 happen, but I don't think it happens often.

20 Q Anyway, you talked about no chaos, no riots.

21 Obviously, that would be all over the news.

22 A Right.

23 Q But when somebody gets shanked in prison, that doesn't
24 necessarily make the news, does it?

25 A No. But from statistics that I have read at the Nevada

1 time with her on those.

2 Q Right, her, but not you?

3 A Her, but not me.

4 Q How much time did you personally spend?

5 A A couple hours.

6 Q And you did not prepare a report in this case, you said,
7 correct?

8 A That's correct. I just had work product. I wasn't asked
9 to prepare a report.

10 Q Were you asked not to prepare a report?

11 A Yes.

12 Q You talked about him being depressed.

13 A Yes.

14 Q Is he the only person that you treat that's depressed?

15 A No.

16 Q Of the other people that you treat that are depressed, do
17 they all kill people?

18 A No.

19 Q Do they all rape people?

20 A No.

21 Q You talked about him, I guess, feeling -- worthless, I
22 guess you said. Do you treat other people that feel worthless?

23 A Yes.

24 Q Do they all kill people?

25 A No.

1 State Prison, whenever you can get the statistics, I think they
2 have a pretty good record of supervision. They're careful and
3 they have a classification system for their inmates. He would be
4 initially evaluated and then classified and placed in the
5 appropriate institution with the appropriate safeguards.

6 Q Okay. Are you an expert on the Nevada prison system?

7 A No, but I've been up there enough doing evaluations that
8 I have had a chance to be actually physically in a number of these
9 prisons doing examinations to have a certain sense of the security
10 that they do offer.

11 Q But people still do slip through the cracks as it seems
12 to be?

13 A Yes.

14 Q Now, how much time did you actually spend with the
15 defendant?

16 A Let's see, we did testing with him three days --
17 actually, five days. Then I did an extensive interview. So I
18 probably spent a couple hours with him and then we had other
19 people in my office do the testing with him. So I spent a couple
20 hours with him.

21 Q So when you say we did the testing, you don't personally
22 do that; somebody else sits with him in a room, gives him a pencil
23 and he fills stuff out?

24 A That was part of the psychological testing; that's
25 one-on-one with the test examiner. So we spent quite a bit of

1 Q Do they all rape people?

2 A No.

3 Q Do you treat other people that have not bonded or been
4 attached to their father?

5 A Yes.

6 Q Do they all kill people?

7 A No.

8 MR. PIKE: Objection, Your Honor; argumentative.

9 THE COURT: Overruled. She can ask that.

10 Go ahead.

11 BY MS. LUZAICH:

12 Q Do they all kill people?

13 A No.

14 Q Do they all the rape people?

15 A No.

16 Q You talked about him being verbally and physically
17 abused.

18 Do you treat other people that have been verbally and
19 physically abused?

20 A Yes.

21 Q And do they all kill people?

22 A No.

23 Q Do they all rape people?

24 A No.

25 Q There are a lot of people out there that have been abused

1 or don't bond with their parents. They can lead productive,
 2 normal lives, can they not?
 3 A Yes.
 4 Q When you do these tests, are there people that fake the
 5 tests or don't answer truthfully?
 6 A Yes.
 7 Q Can you always tell?
 8 A Not always, no.
 9 Q So it's possible that somebody can flub the test or give
 10 the answers that they want you to have as opposed to the true
 11 answers?
 12 A Possible, yes.
 13 Q Do people malingering?
 14 A Yes.
 15 Q In your opinion?
 16 A Yes, they do.
 17 Q Often?
 18 A I'm sorry?
 19 Q Often?
 20 A The base rates for malingering aren't high in the
 21 criminal population; they're higher than they would be in the, you
 22 know, regular population; no doubt about that.
 23 Q So when it benefits them, often, they will malingering?
 24 A Yes.
 25 Q People in general, I should say?

1 A Yes.
 2 Q One of the things you said that was interesting, that he
 3 is more focused on himself and the meeting of his needs.
 4 Did I get this right?
 5 A Yes.
 6 Q So if he wants sex, he's going to take it whether the
 7 person wants to give it to him or not.
 8 That's consistent, correct?
 9 A Well, I really didn't talk to him about any of those
 10 kinds of issues. So I can only answer that hypothetically, I
 11 would not know that realistically.
 12 Q But that's consistent with that diagnosis?
 13 A It could be, yes, uh-huh.
 14 Q Did you ever interview any of the people he discussed,
 15 his father or family members?
 16 A No.
 17 Q Just him?
 18 A Yes.
 19 Q Did you ever make any effort to confirm the victimization
 20 that he described for you?
 21 A No.
 22 Q So you just take his word?
 23 A At this point, yes.
 24 Q For everything?
 25 A But I also had objective data for other aspects that I

1 was measuring, yes.
 2 Q Other aspects?
 3 A Yes.
 4 Q When did you perform your evaluation of the defendant?
 5 A It was in April, May and August of 2006. So it's been a
 6 couple years.
 7 Q Okay. So it was after he had been arrested; is that
 8 correct?
 9 A I don't remember when he was arrested.
 10 Q Was he in custody?
 11 A Yes, he was in custody.
 12 Q So he was in custody when you performed your
 13 evaluation --
 14 A Yes.
 15 Q -- your personal interviews.
 16 All the tests that were conducted, were they also
 17 conducted when he was in custody?
 18 A Yes, at the detention center.
 19 Q So your diagnosis of depression and things of that nature
 20 were while he was in custody?
 21 A I mean, there was a lot of variables, yes, but I believe
 22 he's had long term of feelings of depression and anxiety, not only
 23 situational but long-term anxiety.
 24 Q You mentioned that you dealt with a lot of people in the
 25 system.

1 The people that you interview in the system, are most of
 2 them depressed?
 3 A Yes.
 4 Q Being in custody?
 5 A Yes.
 6 MS. LUZAICH: Thank you. I have nothing further.
 7 THE COURT: Anything else.
 8 MR. PATRICK: Just briefly.
 9
 10 REDIRECT EXAMINATION
 11 BY MR. PATRICK:
 12 Q Dr. Mortillaro, the tests that you administered to
 13 Norman, they all have built in safeguards to detect malingering or
 14 faking?
 15 A Yes.
 16 Q Could you kind of explain how that works?
 17 A Yes. A lot of these tests have validity indicators,
 18 especially the MMPI-2; and the MMPI-2 is valid, in that there is a
 19 lot of, as I said, indicators that would indicate if someone is
 20 faking it, trying to make themselves look bad or make themselves
 21 look better and he didn't.
 22 So at least he gave good responses on that particular
 23 test; and some of these other tests, like the neuropsychological
 24 test, there was no indication that he attempted to make himself
 25 look worse, because, oftentimes, what they will do is try to make

1 themselves look like they have brain damage. He didn't make that
2 attempt.

3 We have, on my test, different batteries that are
4 sensitive to organic impairment of brain functioning and different
5 scales and so these scales indicated that he cooperated and he
6 gave a good effort.

7 So I'm reasonably confident that on the personality test
8 and the other tests that he took, he's giving us his best effort
9 and wasn't making an attempt to look worse or look better.

10 Q So in your professional opinion, he was not malingering?

11 A Not when he was doing our test, no.

12 Q Now, my office hired you to evaluate Norman, not to give
13 him therapy?

14 A Yes, that's correct.

15 Q So do you feel that the time you spent on the test and
16 the interviews that you did were enough to properly evaluate
17 Norman?

18 A Yes, I think they were sufficient.

19 Q You were not retained by my office or paid to evaluate
20 any of his family members?

21 A That's correct.

22 Q Now, would it surprise you, Doctor, that his sister came
23 in and testified to pretty much everything that Norman had told
24 you about his childhood?

25 A No, it wouldn't.

1 MR. PATRICK: Thank you. That's all I have.

2 THE COURT: Anything else?

3 MS. LUZAICH: No.

4 THE COURT: Thanks, Doc.

5 THE WITNESS: Thank you.

6
7 (Witness excused.)

8
9 THE COURT: Anything else.

10 MR. PIKE: If we've got time, I think we have the video
11 set up. We can play it and we can close for today.

12 THE COURT: Two minutes?

13 MR. PIKE: Yeah.

14 THE COURT: Go ahead.

15 MR. PIKE: Thank you.

16 THE COURT: Are you just kidding about having it set up?

17 MR. PIKE: No. Apparently, I had it going here.

18 Judge, while we're waiting for that --

19 THE COURT: They have seen it, and although they didn't
20 hear word-for-word, you had both Miss Rosales and Miss Ramos
21 explain what was on there. I think they've got it.

22 You put in the pictures they looked at.

23 MR. PIKE: We put in the pictures, Judge. I also marked
24 a copy of the video and I would move to admit that.

25 THE COURT: All right. Fine. It will be admitted.

1 (Defense Exhibit GG admitted into evidence.)

2

3 MR. PIKE: That's it, Your Honor.

4 THE COURT: Okay. Are you done?

5 MR. PIKE: Yes.

6 THE COURT: 9:10 work for everybody?

7

8 (Affirmative response.)

9

10 THE COURT: Okay. Come at nine o'clock. They'll take a
11 lunch order because we're going to have lunch in again tomorrow.

12 We'll start at 9:10. I'm guessing we will have you the
13 case with the argument and everything around 11:30. You can eat
14 lunch.

15 I will go over the process in some detail with you about
16 how this works tomorrow and, you know, all substantial decisions.

17 I think you will find the process quite a bit easier than the
18 first process. I don't expect it will take the same kind of time
19 and we'll be done sometime tomorrow afternoon.

20 Okay. Have a good evening.

21

22 (Jury admonished by the Court.)

23

24 THE COURT: We got the Journal here, so very likely,
25 there is going to be an article tomorrow.

1 We also had one of the TV media; and the way they work is
2 if one TV channel comes in and televises anything, they will have
3 to share it with all of them. So I'm guessing this will be on the
4 five or six or maybe eleven o'clock news, so you may want to take
5 a pass on it until tomorrow or Tivo it, but don't watch it.

6 Okay. Have a nice night. We'll see you tomorrow.

7

8 (The following proceedings were had in open
9 court outside the presence of the jury panel:)

10

11 THE COURT: Okay. Let the record reflect the jury has
12 exited. Let's do a little bit of work here.

13 Have a seat, Mr. Flowers.

14 I've read the Reveker case. It reads just the way my
15 common sense would guess; and that is, to me, the arson is
16 situational, whether it's a dangerous felony, and sometimes you
17 can have an arson in any degree and it isn't and sometimes it is.

18 I mean, it seems like the language is involving the use
19 of threat or violence to the person of another.

20 And so it seems to me if you set a fire with people in a
21 house and you know they're in there, whether you intend to hurt
22 them or not, you have sort of created a potential second degree
23 murder; and even if you set an apartment on fire and there is
24 other apartments in the building, that's the case.

25 In this particular case, it seems to me the facts are he

1 went in, did a burglary; he was all over the house; he was
2 perfectly aware that there were no people in the house. He
3 intended to kill the dog. But it says violence to the person of
4 another. It doesn't say living creature.
5 So it seems to me that when he set fire, he didn't --
6 now, I know fires can spread and he could be -- it could be
7 O'Leary's cow, but it seems to me if there is not persons in the
8 structure or a structure that is annexed by a common law, I find
9 it to meet that situation.

10 Miss Weckerly.

11 MS. WECKERLY: That's fine.

12 THE COURT: Well, with that in mind --

13 MS. WECKERLY: Well, I mean, for this case, I'm not
14 conceding that.

15 THE COURT: You are not conceding that's necessarily the
16 case.

17 MS. WECKERLY: I understand the ruling.

18 THE COURT: You submit on that.

19 Well, then, Mr. Pike, I'm going to grant your motion to
20 strike the first degree arson as an aggravator.

21 And so the only ones are under sentence of imprisonment
22 and violence to another, to-wit, robbery.

23 Do you want that to read robbery with use of a weapon?

24 MS. WECKERLY: Yes, please.

25 THE COURT: Okay. All right. Well, I will change the

1 THE COURT: Randy, have you had a chance to look at them?

2 MR. PIKE: I haven't had a chance to compare them with
3 the defense ones. We'll have that done.

4 THE COURT: Why don't we just -- you guys stay here and
5 look at them, because I want to get this right, and we will pick
6 up in about ten minutes. And we'll be done settling instructions
7 by 4:15 and I'll go home and watch the ball game.

9 (Recess in proceedings.)

11 THE COURT: Back on the record in Case Number C228755,
12 State of Nevada versus Norman Keith Flowers.

13 Flowers, present with his counsel, counsel for the State,
14 absence of the jury.

15 Mr. Pike, have you now had a chance to review the packet
16 of instructions proposed by the Court?

17 MR. PIKE: Yes, I have, Your Honor.

18 THE COURT: I've indicated that we're going to delete the
19 line items involving disciplinary issues or misdemeanor arrests
20 because there has been no evidence of those.

21 But other than deletion and that one instruction, do you
22 have any objection to the packet?

23 MR. PIKE: No, I do not, Your Honor.

24 THE COURT: Any additional instructions you want to
25 propose?

1 special verdict form accordingly.

2 Now, let's look at the verdicts. The special verdict
3 form on the aggravator has changed.

4 Does either side have any objection to either the special
5 verdict forms or the general verdict forms?

6 I'm taking out number two; and the other will read: A
7 person has been convicted of a murder of a victim, to-wit, robbery
8 with use of a deadly weapon --

9 MR. PIKE: No, we have no objection to that.

10 THE COURT: And the other one you put in, so I'm sure you
11 don't have any objection.

12 MR. PIKE: No, I don't have any objection.

13 THE COURT: All right. Now, then let's move on to the
14 instructions themselves.

15 I got a lot from the defense. I got a lot from the
16 State. Many of them were the same; some of them were different.

17 I used the number from each and I think I wrote one or
18 two myself. But I provided you with a packet, so let's start with
19 that as a starting point.

20 Miss Weckerly, have you had a chance to read them all?

21 MS. WECKERLY: No, but I'm pretty familiar with them.

22 THE COURT: Well, I know some of them came from the
23 defense; some of them I wrote.

24 Do you want ten minutes to look at them?

25 MS. WECKERLY: Yes, that would be great.

1 MR. PIKE: No.

2 THE COURT: Miss Weckerly, any objections you have to any
3 of the items in the packet?

4 MS. WECKERLY: Well, there is two -- three that I think
5 are repetitive.

6 THE COURT: Go ahead.

7 MS. WECKERLY: It looks like you have the in determining
8 whether mitigating circumstances exist, jurors have an obligation
9 to find their own mitigating circumstances.

10 THE COURT: Let me find it.

11 Yes.

12 MR. PIKE: What's the first line on it?

13 MS. WECKERLY: It's in determining whether.

14 THE COURT: And what is the --

15 MS. WECKERLY: I think that is -- I just want to make
16 sure. I think it is in there twice. It just is literally in
17 there twice.

18 THE COURT: Okay. Where is it also?

19 MR. PIKE: It is.

20 THE COURT: The same instruction is in there twice?

21 MS. WECKERLY: Yes.

22 THE COURT: Okay.

23 MS. WECKERLY: Okay. So that's my one.

24 THE COURT: We'll take the second one out.

25 MS. WECKERLY: Okay. The one right directly behind the

1 second time that instruction appears.

2 THE COURT: Yes, uh-huh, in balancing the aggravating
3 circumstances?

4 MS. WECKERLY: Yeah. That is covered in a prior
5 instruction, I think.

6 THE COURT: Okay. Which one?

7 Okay. It is.

8 MS. WECKERLY: Yes.

9 THE COURT: It's the third paragraph in the one that
10 begins mitigating circumstances.

11 MS. WECKERLY: Right.

12 THE COURT: Okay. I'll take that one out and leave the
13 other one in.

14 MS. WECKERLY: Okay.

15 THE COURT: That is already there.

16 MS. WECKERLY: And then the one that begins you have
17 evidence about the impact of this homicide on the family of the
18 decedent.

19 I think that instruction -- there is one that's very long
20 where it talks about what they can consider before he becomes
21 death eligible.

22 THE COURT: Uh-huh.

23 MS. WECKERLY: And that they're not to consider any other
24 evidence against the defendant besides, you know, the existence of
25 the aggravating circumstance.

1 a mitigating circumstance and you might feel that's proved, but
2 you don't feel it's mitigating. If one person at least thinks
3 that any of these or any others that you can list were proved and
4 are mitigating, then you check that.

5 Once that's done, you set that aside.

6 Now without anything else, you put these two on the scale
7 of justice. If the aggravators outweigh the mitigators, you go to
8 form three, which has four alternatives.

9 If the mitigators outweigh the aggravators, you go to
10 form four, which has three. And at that point, and at that point
11 only, you consider everything and you decide which among the
12 eligible on your paper is the appropriate verdict for this case,
13 all things considered. That's what I tell them.

14 Any problem with that, Mr. Pike?

15 MR. PIKE: No, Your Honor.

16 MS. WECKERLY: Could I just put on one more objection?

17 THE COURT: Sure. That's fine.

18 MS. WECKERLY: There is an instruction that begins the
19 jury must find the existence of the aggravating circumstances, if
20 any, unanimously, and must find the State of Nevada established
21 the existence of the aggravating circumstances beyond a reasonable
22 doubt.

23 It's probably like the fifth or sixth -- it's the seventh
24 instruction.

25 THE COURT: Okay.

1 THE COURT: Uh-huh.

2 MS. WECKERLY: So I think that concept is actually
3 covered at least in the long instruction and then certainly in
4 other instructions that explain the aggravating and mitigating
5 concept.

6 THE COURT: Okay. I don't think it hurts and I'm going
7 to -- I'm going to explain it to them. I mean, besides reading
8 the instruction when I give them the verdict, I'm going to explain
9 it to them exactly how to do it.

10 And what I'm going to tell them, unless there is a
11 serious objection, is you've got four pieces of paper there;
12 you've got two special verdicts and you've got two verdict forms.

13 And you start by taking the special verdict that's on top
14 as aggravating circumstances. You have to decide whether these
15 have been proved; they have to be decided unanimously beyond a
16 reasonable doubt.

17 If you decide beyond a reasonable doubt unanimously, put
18 a check in the box. Don't leave it blank.

19 If there are no -- neither of these boxes are checked, go
20 to a piece of paper, number four, and we're right there.

21 If either one of these boxes or both of them are checked,
22 set it aside and go to the mitigating circumstances.

23 Mitigating circumstances are: One, you believe it is
24 proved; and, number two, you believe it is mitigation.

25 I mean, the defense might assert that being red headed is

1 MS. WECKERLY: At the bottom of that instruction, it says
2 they're never required to impose death.

3 THE COURT: Uh-huh.

4 MS. WECKERLY: In the big long instruction, it says,
5 again in the fifth paragraph, you still have discretion to impose
6 a sentence less than death.

7 And then on the instruction directly behind that one, it
8 says, again, you are not required to impose the death penalty.

9 I understand that that is the law. I just think that
10 it's repetitive in like three instructions.

11 THE COURT: Okay. Well, actually, the first two
12 paragraphs are in the one right above it.

13 MS. WECKERLY: Right.

14 THE COURT: How about if we take the one in front of it
15 and take the third paragraph that says each juror is entitled to
16 individually determine the weight of each aggravating circumstance
17 and stick that in the one in front of it; and then we'll take out
18 the last line in the first two paragraphs. That way, we've got
19 every concept without duplication.

20 MS. WECKERLY: Okay.

21 THE COURT: Any objections to that?

22 Randy, okay with that?

23 MR. PIKE: No problem.

24 THE COURT: That's what we'll do.

25 Now, with those corrections in mind, is the State okay

1 with the packet?

2 MS. WECKERLY: Yes.

3 THE COURT: Any additional to oppose, to suggest?

4 MS. WECKERLY: No, Your Honor.

5 THE COURT: Okay. Charmaine will make up the
6 instructions. You will have them ready on your desk when you get
7 here in the morning.

8 We'll take the witness or witnesses, as the case may be;
9 read them, argue the case, and we'll give them the case on time
10 after eleven.

11 Okay. Anything else?

12 MR. PIKE: No.

13 THE COURT: Have a good evening.

14

15 (Proceedings concluded.)

16

17 * * * * *

18 ATTEST: Full, true and accurate transcript of proceedings.

19

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RENEE SILVAGGIO, C.C.R. 122

Official Court Reporter

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IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 68140

Electronically Filed
Oct 05 2015 01:11 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 IV

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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:

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Nevada Attorney General

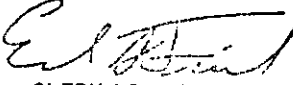
STEVEN S. OWENS
Chief Deputy District Attorney

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

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

NORMAN KEITH FLOWERS,

Defendant.

Case No. C228755

Dept. No. VII

VOLUME 4-B

Before the Honorable Stewart L. Bell

Monday, October 20, 2008, 1:00 p.m.

Reporter's Transcript of Proceedings

JURY TRIAL

APPEARANCES:

For the State:

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LISA LUZAICH, ESQ.
Deputies District Attorney

For the Defendant:

RANDALL PIKE, ESQ.
CLARK PATRICK, ESQ.
Deputies Special Public Defender

REPORTED BY: RENEE SILVAGGIO, C.C.R. No. 122

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
 Plaintiff,)
) Case No. C228755
 vs.) Dept. No. VII
)
 NORMAN KEITH FLOWERS,) VOLUME 4-B
)
 Defendant.)

Before the Honorable Stewart L. Bell
Monday, October 20, 2008, 1:00 p.m.
Reporter's Transcript of Proceedings

JURY TRIAL

APPEARANCES:

For the State: PAMELA WECKERLY, ESQ.
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For the Defendant: RANDALL PIKE, ESQ.
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Las Vegas, Clark County, Nevada
Monday, October 20, 2008, 1:00 p.m.

P R O C E E D I N G S

* * * * *

(The following proceedings were had in open
court outside the presence of the jury panel:)

THE COURT: Let's go on the record in Case Number
C228755, the State of Nevada versus Norman Keith Flowers.
Let the record reflect the presence of the defendant, his
counsel; counsel for the State; the absence of the jury.
Let's deal with the evidence first and then we'll do the
instructions.
What is the issue?
MR. PIKE: Well, the State is representing that.
I'd like to make a record at the bench, side bar at the
bench, in reference to the statement that was given.
We approached as the State felt that I was approaching
the area in which the defendant invoked his right to have an
attorney present, which is what I was approaching. I was going to
bring that in.
They objected. The Court sustained their objection and
made the --

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1 THE COURT: It's a right that he has, but the implication
2 could be that somehow, by exercising that right, he has something
3 to hide. So by doing that, I'm trying to protect the defendant is
4 all.

5 MR. PIKE: I understand that. That was a decision I had
6 made. The Court issued the ruling and we argued. I'm not
7 re-arguing the ruling or anything.

8 THE COURT: Okay.

9 MR. PIKE: To make the record complete, since we only had
10 part of the statement in, I'd like to indicate those were the
11 objections; that was the ruling. And in the event of a
12 conviction, that a copy of the transcript of that statement be
13 made a Court exhibit for appeal.

14 THE COURT: Okay. Sure.

15 MR. PIKE: That's all.

16 THE COURT: Anything to put on the record, Miss Luzaich?

17 MS. LUZAICH: Just as far as that goes, when I was
18 questioning Detective Sherwood regarding the statement, I stopped
19 on page five with his, the defendant's, answer: I have my own
20 case to deal with. The next question and answer was where the
21 defendant said: If I do anything, I have to talk to my lawyer
22 first before I do anything.

23 The rest of the statement, he continually says something
24 about his lawyer and maybe his lawyer would let him talk or
25 something along those lines.

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1 MR. PIKE: Thank you, Your Honor.

2 In reference to that, I am allowed to call Mr. Kir sey to
3 the stand, to indicate that he had a boyfriend/girlfriend
4 relationship with the deceased. It establishes the fact that they
5 were, in fact, boyfriend and girlfriend.

6 I have a right to say: Have you seen her with other
7 boyfriends? Do you know that she had other boyfriends, of your
8 own personal knowledge? Are you aware that she had a boyfriend by
9 the name of Keith?

10 THE COURT: Now, how is that hearsay?

11 MS. LUZAICH: Well, one, it's leading; and, two, it's
12 hearsay.

13 THE COURT: Well, forget about it. This is not your
14 first rodeo. The only way he would know is if she told him.

15 MR. PIKE: Or if he has seen Keith or if he had personal
16 knowledge.

17 Now, when I talked with him, he did, in fact, tell me:
18 Yes, I know that she had a boyfriend named Keith and she was
19 seeing a guy named Keith.

20 And I made that as an officer of the Court. I had a
21 witness present when he told us that. He went up there and
22 visited him in prison. He didn't cooperate with the police and we
23 just had to deal with that.

24 THE COURT: You are entitled to put on everything except
25 this last assertion, because she had to tell him.

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1 THE COURT: I think that there is -- there is a
2 potentially negative inference that can be drawn against the
3 defendant for doing something he's absolutely entitled to do. And
4 I think that it's in the defendant's best interest to let it in
5 and that's why I said you couldn't bring it in.

6 What else, issues on the evidence?

7 MS. LUZAICH: Well, what's already been or what's coming
8 this afternoon?

9 THE COURT: Is there something that's already been that
10 you have a concern about?

11 MS. LUZAICH: No, I don't.

12 THE COURT: Well, then, let's get to what's coming.

13 MS. LUZAICH: As far as what's coming this afternoon, we
14 received an e-mail from Mr. Pike on Friday at 4:37, where he lays
15 out the witnesses he intends to call this afternoon and sort of
16 what they're going to say.

17 The one that jumps out at us is Will Kinsey. And, in
18 fact, Mr. Pike made a comment in opening statement that William
19 Kinsey would say that he was aware that Sheila was dating someone
20 named Keith. That is absolutely, positively hearsay. There is no
21 way that that would be admissible.

22 So to call Mr. Kinsey, I would ask for an offer of proof.
23 He was in custody at the time of these events, so he couldn't have
24 possibly seen anything.

25 THE COURT: Mr. Pike?

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1 MR. PIKE: Right. And if I can ask all those other
2 questions, and if had seen him or he has personal knowledge. I
3 don't know that. I didn't ask him that. I didn't go through and
4 do it as though he was under cross-examination with her.

5 THE COURT: How could he have personal knowledge?

6 I mean, what you are talking about is a boyfriend with
7 whom she's having sexual relations, because it's meaningless
8 unless that's the case. You can't have personal knowledge of that
9 unless he was there. That would be pretty unusual.

10 MR. PIKE: Well, if he had seen them together in a social
11 circumstance --

12 THE COURT: That doesn't mean they're having sexual
13 relations.

14 MR. PIKE: Well, according to Mia, the witness, and
15 Debra Quarles, he wasn't having sexual relations with -- excuse
16 me -- Sheila was not having sexual relations with him.

17 THE COURT: They didn't know that. They didn't know
18 that.

19 MR. PIKE: Right. I'm not asking if she was having
20 sexual relations with him. I'm asking did she have a boyfriend;
21 were they seeing each other socially?

22 THE COURT: You can certainly put him on and say
23 everything up to Keith. She would have had to tell him.

24 MR. PIKE: Okay. So I am precluded from asking the
25 question: Do you know that she had a boyfriend --

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1 THE COURT: Does Kinsey even know your client?

2 MR. PIKE: No.

3 MS. LUZAICH: No. And he's been --

4 THE COURT: So if Kinsey hasn't seen your client with

5 Sheila Quarles, then --

6 MS. LUZAICH: He's been in custody since December 2004,

7 so four months prior to Sheila's death.

8 MR. PIKE: If he recognizes him, if he can do this --

9 THE COURT: So at what point in time is he going to be

10 aware, by his own personal knowledge, that she has a boyfriend

11 named Keith?

12 I mean, he couldn't be aware, of his own personal

13 knowledge, at or about the time of this crime, because he's been

14 in jail or prison long, long before that. I mean, if she had a

15 boyfriend named Keith in '02, it would be irrelevant.

16 MR. LUZAICH: Even in '04, it's irrelevant.

17 THE COURT: Right. I understand.

18 MR. PIKE: I understand. Respectfully, I disagree --

19 THE COURT: Well, you disagree because you think that he

20 can say what she told him?

21 MR. PIKE: One, yes. I think that he can say what she

22 told him. I know it's hearsay. I think that, number one, it's

23 almost like a statement against interest. She's telling an old

24 boyfriend, who hopes to get back together with her, that she has

25 another boyfriend.

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1 THE COURT: It's not a statement against interest. There

2 may be a lot of purposes why one would do that, but it's not a

3 statement against interest.

4 MR. PIKE: Okay. And so in going with that, we're

5 dealing with the fact that did he know that she was seeing other

6 men while he was in custody? And how did he know that?

7 THE COURT: Well, he couldn't know it of personal

8 knowledge because he couldn't see it -- unless somebody told him.

9 And when you are in custody, the only way you can find that out is

10 if somebody tells you.

11 MR. PIKE: Or if they bring him up to the visit and they

12 see him.

13 THE COURT: You can ask him that. You can ask him if

14 Sheila Quarles brought up another man to visit you in custody.

15 MS. LUZAICH: We have the visitation logs and she did

16 not.

17 MR. PIKE: I understand. I understand that. I

18 understand that.

19 THE COURT: Well, you can't --

20 MR. PIKE: So the record is clear then, what I can ask

21 him is you were a boyfriend --

22 THE COURT: Yes.

23 MR. PIKE: -- and do you have any personal knowledge --

24 of your own visual or your own viewing, your own knowledge, did

25 you ever see her with somebody else that you knew that she was

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1 dating?

2 THE COURT: At what point in time?

3 MR. PIKE: During 2005.

4 If he says no --

5 THE COURT: Well, of course, it's no, because he was in

6 jail.

7 MR. PIKE: I understand that. I understand that. I'm

8 making the record so I know what I can ask.

9 But I am not going to be allowed to ask him --

10 THE COURT: What somebody told him.

11 MR. PIKE: -- what she told him.

12 THE COURT: Sure.

13 MS. LUZAICH: But he also can't back door that

14 THE COURT: Oh, he can, but this isn't my first video

15 either.

16 I mean, the point is he's not going to add anything to

17 the defense because he was in custody the entire 2005, so at about

18 the relevant time --

19 MS. LUZAICH: Right.

20 THE COURT: -- he could have never seen anybody with her.

21 I mean, unless they came to the jail, which they didn't. Unless

22 he got out, he couldn't see it.

23 What may have happened a year or two earlier is

24 irrelevant. I'm letting you put him on, but the only thing you

25 are going to be able to say is, you know, within a couple months

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1 one way or the other of March 2005, did you ever see her with

2 another individual? And he's going to say no.

3 MR. PIKE: And so the record is clear, I'm not even

4 allowed to ask him did you know that she had another boyfriend

5 because that would be hearsay.

6 THE COURT: That would be hearsay.

7 MR. PIKE: I understand that. I'm just making the

8 record.

9 THE COURT: Okay.

10 MR. PIKE: I'm just making this proffer so I know not to

11 ask the question, because if I don't make a record, then I can, in

12 good faith, ask that question, you're going to object --

13 THE COURT: I very much appreciate your vast knowledge of

14 Rule 250 and exactly how to go about it. You did a good quality

15 job representing your defendant. Please make any record you want,

16 because I think that's not only your obligation, but your right.

17 MR. PIKE: I appreciate that.

18 THE COURT: I think we've made it, haven't we?

19 MR. PIKE: We have. I just know I won't be able to ask

20 that question and I won't ask it.

21 THE COURT: Do you still want to call him?

22 MR. PIKE: I do. I'll just put him up to show that he

23 exists. I may ask him: You were cooperative with the police; you

24 are upset that she died. We'll go there.

25 MS. LUZAICH: This is the guy that can't be heard until

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1 tomorrow.

2 THE COURT: I know, but tomorrow is going to take five
3 minutes.

4 MS. LUZAICH: Right. I'm just saying --

5 THE COURT: Mr. Pike said that he is willing to stipulate
6 that we go through with the instructions tonight, put him on for
7 five minutes tomorrow, argue the case.

8 I mean, given the fact that he's been in custody for the
9 entire time, four months before her death until after, he's going
10 to have nothing to add. I mean, it really is going to be two or
11 three minutes of direct and zero cross.

12 So your objection as to hearsay, in terms of his
13 assertion about Keith, is sustained. But that doesn't mean that
14 Mr. Patrick and Mr. Pike can't put him on the stand for whatever
15 they think they can glean from him.

16 You know, maybe just having him in a prison uniform, as
17 another sort of suspect out there in the netherland, maybe that's
18 helpful to him. I don't know. I'm not trying to tell them how to
19 present the case. I'm just ruling on hearsay.

20 MS. LUZAICH: And the last one, they're offering somebody
21 from Easy Pawn with a boatload of records for Robert Lewis pawning
22 things. They've provided us with records, I would submit, one --

23 THE COURT: Did he pawn a stereo?

24 MS. LUZAICH: No, he did not; lots of jewelry.

25 THE COURT: What did what he pawned have to do with

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1 anything?

2 MS. LUZAICH: Furthermore, the fact that he's repeatedly
3 pawning ladies' jewelry, ladies' jewelry, ladies' jewelry,
4 demonstrates -- that's another bad act. It's collateral evidence
5 of another bad act.

6 THE COURT: It may be and it may not be, but what is the
7 relevance?

8 MS. LUZAICH: There is no relevance.

9 MR. PIKE: Well, number one, he was a person of interest.
10 We think he should have been a suspect. He's a relative of George
11 Brass.

12 THE COURT: Why do you think he is suspect?

13 He goes up there with the mother; he's carrying the bags.
14 The mother discovers the body. He's helping her come out. What
15 about what he did would give anybody any reason to believe that he
16 was a suspect?

17 MR. PIKE: Well, you remember we were disallowed from
18 bring in the Crime Stoppers report where it was said she was
19 afraid of Robert Lewis. He had been trying to have sex with
20 Sheila Quarles and that --

21 THE COURT: Well, that's somebody's opinion.

22 MS. LUZAICH: Well, we believe it was Norman Flowers who
23 made that call.

24 THE COURT: It could be.

25 MR. PIKE: But if this --

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1 THE COURT: The fact that he pawns things, what is the
2 relevance of that to this case?

3 MR. PIKE: Number one, it shows that a person of interest
4 was pawning items during that period of time. It establishes him
5 as around that period of time. It shows that he pawns women's
6 jewelry. They have said that items of personal property were
7 stolen. They don't list all of them.

8 THE COURT: He pulls out a bank card, a telephone and a
9 stereo.

10 MR. PIKE: And other personal items. We don't know what
11 the other personal items were. There is not a list of a ring or
12 the rest of those things.

13 But to show that he had that, number one, those records
14 are, in fact, available, and we've talked with them, the police,
15 about that, it completes that loop.

16 Number two, that Robert Lewis does have a habit of doing
17 that at a pawn shop that is nearby and where that is located.

18 And, number three, that these are the records kept in the
19 normal course and they certainly could have investigated any of
20 these other suspects that have been developed.

21 MS. LUZAICH: The records that they provided are not
22 around the relevant time frame.

23 THE COURT: When are they?

24 MS. LUZAICH: They're from September 27, 2005 through
25 8/31/2008, six months past the relevant time frame.

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1 THE COURT: I don't see how this has any relevance.

2 You've made your record. I don't see that it has any
3 relevance. The police admitted that they have a pawn detail that
4 they go to. In fact, they won't even go to the pawn shop. They
5 go to their computer system at the pawn detail and pull up any
6 name they want to, but if they pull up a name of Robert Lewis at
7 or about the time of death, it shows nothing.

8 MR. PIKE: We don't know that. We just know from that
9 pawn shop.

10 THE COURT: All right. I think it's very remote. I
11 think it's a matter of materiality.

12 MR. PIKE: Our Easy Pawn guy is out. We're limited to
13 Kinsey. Okay.

14 THE COURT: Anything else?

15 MS. LUZAICH: No.

16 THE COURT: All right. Let's do the instructions, then.
17 Is the State familiar with the proposed packet of
18 instructions?

19 MS. WECKERLY: Yes, Your Honor.

20 THE COURT: Does the State have any objections to any of
21 those instructions?

22 MS. WECKERLY: No, Judge.

23 THE COURT: Does the State have any additional
24 instructions to offer?

25 MS. WECKERLY: No.

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1 THE COURT: Mr. Pike has submitted a number of
2 instructions, most of which I don't agree with; one of which I
3 thought we'd probably give.

4 Well, let's go through these, Mr. Pike, one by one and
5 give you a chance to make your pitch.

6 You submitted an instruction: A finding of guilt as to
7 any crime may not be based on circumstantial evidence unless the
8 proof circumstances are not consistent with the theory but cannot
9 be reconciled with any other rational conclusion.

10 This is sort of a rehash of the two reasonable theories
11 instruction, which we don't have to give here, and I never have
12 given, but it's also the case that I think it's a slight
13 misstatement in Nevada law, in that we give an instruction that
14 say evidence may be circumstantial and direct, we define what each
15 is and we tell them that they're to be given equal weight.

16 So I don't think there is a distinction between direct
17 and circumstantial evidence and this would be a misstatement of
18 the law.

19 But put anything in the record you want and I'll make
20 this whole packet that I am not going to give part of the record.

21 Anything you want to say on that?

22 MR. PIKE: No. I agree with the Court. I think it's an
23 issue that the Supreme Court may address; and as the Court has
24 noted under 250 cases, we have to look out towards this.

25 THE COURT: I agree. And you do quite a good job.

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1 You are instructed, because the State failed to test the
2 speaker wires that were found at the scene, the speaker wires
3 irrefutably presumed to be held by Jesse Navaro.

4 That's sort of bending the Sanborne case to fit your
5 need, but I understand your evidence in relation to Navaro. I
6 don't see that it applies to this case.

7 The State has to present circumstances surrounding the
8 commission of a crime and evidence of pending allegations of a
9 crime of which Mr. Flowers has not been convicted. If you believe
10 beyond a reasonable doubt that the other alleged crimes also must
11 be so interconnected to the act in question that the witness
12 cannot describe the act or controversy without referring to the
13 other alleged crime.

14 I don't think that's the law, for a couple reasons.

15 One is I think the standard is clear and convincing
16 evidence; and, number two, it doesn't have to be part of the full
17 story. There are a whole bunch -- or half a dozen different
18 things under NRS 48.045 that it can come in for, including
19 identity, lack of accident or mistake. So I think that --

20 MR. PIKE: That is correct, Your Honor.

21 As you describe it, I think that the clear and convincing
22 standard should be reconsidered by the Supreme Court and I'm using
23 this as a vehicle to do that.

24 THE COURT: Fair enough.

25 Then there is the two reasonable theories, which the law

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1 says we don't have to give and I don't give.

2 MR. PIKE: Thank you.

3 THE COURT: The prosecutor re/TPRAEUP /TPH, KPWR0P are
4 murders /-RS calculated to produce a wrongful /KWEUB as it is to
5 use every legitimate to bring about a just warrant.

6 That's true. I just don't know what applicability it
7 has. I'm guessing this came from a case where prosecutorial
8 misconduct was the subject of what the case was talking about.

9 What applicability does it have here?

10 MR. PIKE: Actually, in reference to that, it just
11 indicates -- I think it's an instruction that we can bring to
12 /HRAOET the efforts on behalf of officers as a -- as a hand or as
13 the instrument of the prosecution to do their full job, to use the
14 means that are available to them.

15 THE COURT: Well, you have the right to argue that.

16 MR. PIKE: Right.

17 THE COURT: And you've been arguing it as you went with
18 your cross-examination, very effectively. I don't think it's
19 something that the jury gets instructed on.

20 MR. PIKE: Okay.

21 THE COURT: Corroborating evidence must independently
22 connect the defendant with the offense.

23 Evidence corroborating what?

24 I mean, as a general proposition, the only thing I know
25 that has to be corroborated under the law is accomplice testimony.

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1 I don't think DNA has to be corroborated or fingerprints or a
2 single eyewitness or any of that. I think the law says that
3 evidence, if believed, in and of itself may not be corroborated.

4 What is it that you are suggesting that they should be
5 instructed needs to be corroborated?

6 MR. PIKE: I am sorry, Your Honor. In reference to the
7 accomplice's testimony --

8 THE COURT: We don't have an accomplice.

9 MR. PIKE: I know. I know.

10 That was meant to be redone, indicating corroborating
11 evidence independently connecting the defendant to the offense,
12 with burglary being in.

13 There has been no testimony required or indicating that
14 any sort of sexual connection between Mr. Flowers and the deceased
15 occurred at the apartment to warrant the burglary; that there
16 is -- that connects him with the house itself. There is no DNA in
17 there; there is no fingerprints there; there is no eye witnesses
18 there.

19 We've got simply the DNA that is present inside of the
20 deceased and a 72 hour window, based upon the testimony of their
21 experts.

22 THE COURT: And you think that somehow the law is that
23 DNA needs to be corroborated before a jury by something else
24 before a jury can convict based on that?

25 MR. PIKE: No. I'm just -- what I am saying is that

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1 there is nothing -- I think that something has to identify --
 2 corroborate the offense of burglary; something needs to
 3 corroborate the robbery. And they have not placed any property
 4 with him. They haven't placed him there. The DNA, in and of
 5 itself, is not sufficient to do that.

6 THE COURT: The flight of Jesus Navaro after the crime,
 7 the flight instruction that relates to one of your other suspects
 8 that you are holding out there.

9 MR. PIKE: Right.

10 THE COURT: Is there any evidence that he fled after this
 11 crime?

12 MR. PIKE: We've got -- we'll have the testimony of
 13 Martha Valdez, who will say that she didn't see him again shortly
 14 after this burglary; and Natalia, who'll say that he left, went to
 15 California.

16 THE COURT: And do you have any cases or anything that
 17 says that flight instruction is applicable to anybody other than
 18 the defendant?

19 MR. PIKE: I do not.

20 THE COURT: Okay. Lesser included offenses, I certainly
 21 am going to give a lesser included and say -- of second degree
 22 murder at least, and say that if the jury has a reasonable doubt
 23 as to whether it's first or second, they have to give the
 24 defendant the benefit of the doubt and find him guilty of the
 25 lesser one.

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1 The only issue is, I think, whether manslaughter should
 2 be put in.

3 Now, for manslaughter to be in, you need an adequate
 4 provocation.

5 I mean, is there any evidence that whoever killed here,
 6 there was provocation?

7 MR. PIKE: The only evidence that would indicate that it
 8 was acting or may have acted on provocation is based upon the
 9 number of injuries to the neck and that they were going around
 10 that.

11 That may physically present sufficient evidence necessary
 12 to allow him --

13 THE COURT: So if I shot Lisa once and killed her, you
 14 wouldn't get a manslaughter instruction, but if I shot her 20
 15 times, the mere shooting of her 20 times might get you a
 16 manslaughter instruction? Is that what you are saying?

17 MR. PIKE: No.

18 What I'm saying is --

19 THE COURT: It sounds like it.

20 Go ahead.

21 MR. PIKE: Well, you know, I hate having her as a target
 22 for anything, but what I'm looking at is saying that if you are
 23 talking about state of mind that's involved in this, I think that
 24 the physical evidence may support an interpretation of that beyond
 25 simply first or second degree murder.

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1 THE COURT: I don't see it.

2 Then you've got one where you kind of do robbery and you
 3 say the specific intent to take property from another. Robbery is
 4 not a specific intent crime. It's a general intent crime.

5 MR. PIKE: Right.

6 THE COURT: But then you put these -- it says, in
 7 essence, that if they didn't form the intent to commit the robbery
 8 until after the killing, then they can't be guilty under the
 9 felony murder rule. And you cited Thomas. I looked up Thomas and
 10 it holds just the opposite.

11 MR. PIKE: Well, it's good from --

12 THE COURT: Thomas says: Thomas asserts the instruction
 13 should have stated that the intent to rob was not formed until
 14 after the murders and then robbery did not occur and the felony
 15 murder rule did not apply.

16 The facts clearly show that the intent to rob did precede
 17 the murders; moreover, in robbery cases, it is irrelevant when the
 18 intent to steal the property is formed.

19 MR. PIKE: I think that that was subsequently modified in
 20 the Nay case.

21 THE COURT: Well, you cited Thomas, so I go read Thomas,
 22 and now you tell me I'm reading the wrong cases that you gave me.
 23 Go ahead.

24 MS. WECKERLY: But that is covered in the instruction
 25 that we submitted, that the intent to commit the robbery has to be

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1 before. I'm just trying to find that in the packet.

2 THE COURT: Now, then, you submitted one that says:
 3 Verdict must represent individual judgment; consult with one
 4 another, you know, but don't give up your honestly held
 5 conviction. I think that's okay one to give.

6 I wouldn't -- we already have an instruction that says
 7 the verdict must be -- you wrote twice the verdict must be
 8 unanimous -- so that's a typo -- but it says you are the judge of
 9 the facts.

10 The last sentence, I don't think, adds anything. You are
 11 the judge of the facts so as to ascertain the truth. But the idea
 12 that you got to talk, but don't give up a firmly held opinion, I
 13 think that's a fair statement of the law and I think you are
 14 entitled to that and I plan to give it unless the State can
 15 convince me otherwise.

16 MS. WECKERLY: This is the one that's entitled failure to
 17 reach a verdict.

18 THE COURT: Yeah.

19 MR. PIKE: Yes.

20 THE COURT: Scratch the last sentence. And I think --
 21 it's not in our stock stuff, but I have used it before through the
 22 years, something like that. It says: Do not hesitate to
 23 re-examine your own views and change your opinion if it's
 24 erroneous.

25 I think that's a fair statement of the law. I've seen it

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1 in cases before. And I'll put that third from the last.
 2 MR. PIKE: Thank you.
 3 THE COURT: Did you find that instruction?
 4 MS. WECKERLY: Yes.
 5 THE COURT: Which one?
 6 MS. WECKERLY: Well, the instruction is the felony murder
 7 instruction. There are kinds of murder which carry with them
 8 conclusive evidence of malice aforethought. And then it says:
 9 For the purpose of the felony murder rule, the intent to commit
 10 the robbery must have arisen before or during the conduct
 11 resulting in death.
 12 THE COURT: I think that comports with Nay.
 13 Okay. I'm going to add that one.
 14 MR. PIKE: On the stock ones, I have objections to make.
 15 THE COURT: Okay. Okay. Excuse me.
 16 MR. PIKE: The objections I'm making are based upon
 17 federal constitutional rights to due process.
 18 THE COURT: This packet will be Court exhibits, and all
 19 those that the Court didn't give will be available to the Supreme
 20 Court at the appellate process.
 21 Go ahead.
 22 MR. PIKE: Thank you.
 23 In reference to the instruction about consent to enter,
 24 it's not a defense of the crime of burglary, it misstates the jury
 25 decision is so long as the State proves beyond a reasonable doubt,

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1 instead of so long as it is shown.
 2 It's about the second instruction --
 3 THE COURT: So long as it is proven beyond a reasonable
 4 doubt. That's fine.
 5 MR. PIKE: So long as the State proves beyond a
 6 reasonable doubt, okay.
 7 THE COURT: As long as it's proved beyond a reasonable
 8 doubt, that's fine.
 9 MR. PIKE: Thank you.
 10 Two, I think, three sentences after that, it says: In
 11 this case the defendant is accused in an Indictment.
 12 THE COURT: Okay.
 13 MR. PIKE: Instead of the jury must decide if the
 14 defendant is guilty of any offense, we believe that that should
 15 read the jury must decide if the State has proven any offense or
 16 proven beyond a reasonable doubt any offense.
 17 THE COURT: You know, sometimes -- the way it used to say
 18 it is you are here to decide the guilt or innocence of the
 19 defendant, not of any other persons, I'm willing to take that out
 20 and put, you know, whether the State has proven beyond a
 21 reasonable doubt, take the word innocence out, but I don't think
 22 there is anything in here that's misleading, so I don't care to
 23 change it.
 24 MR. PIKE: On the instruction of malice aforethought, I
 25 object to that as being vague and ambiguous. And I know that the

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1 Nevada Supreme Court approved this, but --
 2 THE COURT: You got to talk to them.
 3 MR. PIKE: The next one is express malice.
 4 THE COURT: Okay.
 5 MR. PIKE: In reference to the implied intent on the
 6 murder of the first degree is murder which is caused by the
 7 perpetration of robbery, an after thought robbery, I don't think,
 8 would elevate it to or should be allowed to provide the express
 9 basis for a felony murder conviction.
 10 THE COURT: Well, that's the one you pointed out, the
 11 instruction that says the intent must be formed before, during,
 12 not after, so I think you are covered there.
 13 MR. PIKE: Okay. The next one, the last paragraph,
 14 premeditation need not be for a day, an hour, or even a minute.
 15 THE COURT: The Supreme Court has approved this.
 16 MR. PIKE: Yes, they have. That's a correct statement
 17 under Byford, but it muddles the distinction between first and
 18 second and I think that should be separated and clarified.
 19 Two more instructions past that, the State has the burden
 20 of proving specific intent should be required and committing any
 21 of the underlying felonies allowed for that.
 22 THE COURT: Burglary is a specific intent crime; robbery
 23 isn't.
 24 MR. PIKE: Right. Also, I'm saying for the purpose of
 25 future discussion with the Court.

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1 THE COURT: Okay. The objection is noted.
 2 MR. PIKE: Okay.
 3 On the next one, robbery is not defined or fixed, but may
 4 be spread over significant periods of time. That doesn't apply to
 5 this case.
 6 THE COURT: Why does it apply, Miss Weckerly?
 7 MS. WECKERLY: We don't know when -- I guess we can take
 8 it out because it's covered in the other instructions, but I don't
 9 think it's a misstatement of the law.
 10 THE COURT: I don't think it's a misstatement of the law.
 11 I just don't think it fits the facts.
 12 Your objection is sustained. I'll take it out.
 13 MR. PIKE: Let's see. On the next one, although your
 14 verdict must be unanimous, the Court has approved that.
 15 THE COURT: Yep.
 16 MR. PIKE: And those are the objections.
 17
 18 (Off the record.)
 19
 20 THE CLERK: Changing that one to a standard PI one.
 21 THE COURT: No, I don't think that one is in here.
 22 No, I already have that.
 23 What else? Are we done?
 24 MR. PIKE: That's it.
 25 THE COURT: Bring them in.

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(The following proceedings were had in open court in the presence of the jury panel:)

THE COURT: Back on the record in Case Number C228755, State of Nevada versus Norman Keith Flowers.

Let the record reflect the presence of Mr. Flowers, his counsel, counsel for the State; the ladies and gentlemen of the jury are in the box.

Sorry. We're running a little late.

Miss Weckerly, your next witness.

MS. WECKERLY: Kristina Paulette.

THE COURT: What we were doing while we were holding you up a little bit is what we call settling instructions; and that is, I've prepared the instructions as we went along, as I told you, but the lawyers have a right to argue with me and try to convince me to change them. We've got that all done. So we're getting it prepared in final form today. We expect to have all the testimony in and get the instructions read to you today. That's kind of our stopping point. And then, tomorrow, we'll come in and hear the final argument and deliberate tomorrow afternoon. That's kind of where we're at.

Where is Paulette?

(Witness sworn.)

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A I received a Bachelor's degree in biology from the University of Texas. I then went on to the University of Alabama at Birmingham, where I earned a Master's degree in forensic science with a concentration in DNA studies.

Q In your capacity in working as a DNA analyst for Celmark and also for Metro, are you called upon and do you complete continuing education in the area of DNA analysis and comparison?

A I do.

Q And is that done yearly or is there any kind of predictability in how often you are updated with your training?

A It's required that we have eight hours per year, but we typically have a full week at least once a year.

Q Have you testified as an expert before in the area of DNA analysis and comparison?

A I have.

Q Do you have any idea about how many times?

A Approximately 20.

Q Okay. I'd like to talk to you specifically about some analysis that you did with regard to two cases, but before we get that, can you explain, just generally, for the members of the jury what DNA is.

A DNA is a substance found in the body that allows genetic information to be passed down from generation to generation, so, essentially, it's a genetic blueprint.

Half of our DNA comes from our moms; half comes from our

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THE CLERK: Thank you. Please have a seat.

Please state your full name and spell your first and last name for the record.

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

KRISTINA PAULETTE

called as a witness on behalf of the State,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. WECKERLY:

Q Miss Paulette, how are you employed?

A I'm a forensic scientist for the Las Vegas Metropolitan Police Department forensic lab in the biology/DNA unit.

Q How long have you worked for Metro?

A Just under three and a half years.

Q Did you work for another agency or entity prior to Metro?

A I did. I was employed Orchid Celmark, a private DNA testing facility, for two years prior to my employment with Metro.

Q So you are a DNA analyst?

A I am.

Q What is your educational background that allows you to work as a DNA analyst?

dads. And, except for identical twins, each of us has a unique DNA profile.

Q And in a forensic setting, how is DNA used?

A We develop DNA profiles from items of evidence and compare those to DNA profiles of known individuals.

Q So it's just a comparison. You generate a profile off of a piece of questioned evidence and compare it to a known profile to see if it's consistent or inconsistent?

A Yes.

Q And then, at a point after that, is there a calculation made by yourself as to how rare the particular profile is within the population?

A Yes, there is.

Q Now, is someone's DNA -- does everyone have the same DNA profile or how does that work?

A Each person has a unique DNA profile and this profile remains the same over time.

So if I were to take your DNA today, it would be the same as if I were to take your DNA 20 to 30 years from now.

Q What if you take a blood sample of someone to generate their DNA profile, as opposed to maybe a cutting from an organ; would they still have the same DNA profile or semen even regardless of the origin of the source of the DNA?

A Yes.

Q It's always the same?

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1 A Yes.

2 Q Okay. And in the situation with victims of murder, is

3 their DNA typically acquired as a result of a buccal swab or an

4 organ?

5 A A buccal swab or an organ, yes.

6 Q Can you explain to the members of the jury what a buccal

7 swab is?

8 A A buccal swab is simply a swab that is scraped on the

9 inside of the cheek, just to obtain cheek cells, and we process

10 that for DNA and it's used as a known standard.

11 Q In regard to this particular case or cases, you worked on

12 a case involving a victim by the name of Sheila Quarles?

13 A I did.

14 Q And did you also perform an analysis on evidence of a

15 victim by the name of Merilee Koot?

16 A I did.

17 THE COURT: Let me stop again. She's going to testify to

18 both. Again, ladies and gentlemen, every time they testify about

19 the Merilee Koot case, I have to tell you that that evidence can

20 come in only to show identity, motive, knowledge, intent, absence

21 of mistake, and not to show disposition to commit crimes or bad

22 character.

23 Go ahead.

24 MS. WECKERLY: Thank you.

25 ///

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1 BY MS. WECKERLY:

2 Q Miss Paulette, I'm showing you what's been marked as

3 State's proposed Exhibits 137, 133 and 134, not in order.

4 Did you prepare these charts in preparation for today's

5 testimony?

6 A I did.

7 Q And do they reflect the DNA results in this case, as well

8 as the one in the Merilee Koot case?

9 A They do.

10 MS. WECKERLY: And I believe, Your Honor, Mr. Pike will

11 stipulate to the admission.

12 MR. PIKE: That's correct.

13 THE COURT: They will be admitted.

14

15 (State's Exhibits 133, 134, 137 admitted into evidence.)

16

17 BY MS. WECKERLY:

18 Q For the record, I'm putting on the overhead what's been

19 admitted as State's 137.

20 Can you see that, Miss Paulette?

21 A I can.

22 THE COURT: Do you want a laser pointer? Would that help

23 you?

24 THE WITNESS: That would help, actually.

25 MS. WECKERLY: Okay. Good.

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1 THE COURT: There you go.

2 THE WITNESS: Thank you.

3 BY MS. WECKERLY:

4 Q Now, looking at State's Exhibit 137, the first column

5 there is a color coded column.

6 What does that represent?

7 A Those are actually the DNA markers that we're looking at.

8 Q Okay. So when we're talking about a strand of DNA, each

9 one of those markers represents a segment or a location on the DNA

10 strand, correct?

11 A It.

12 Q And on each one of those markers, someone will have

13 genetic information from their mother and their biological father?

14 A Correct. Which is, if you see on the far left where we

15 have Mr. Flowers' DNA profile, there are two numbers in each

16 particular location and, one of them, he inherited from his mom

17 and the other he inherited from his dad; and, basically, the

18 number represents the times that the DNA repeats at that

19 particular fragment. He has 13 repeats right there and then 16.

20 And any time you see just one number at a location, it

21 means he inherited a 12 from both the mom and the dad.

22 Q And it's these markers that -- I mean, mathematically,

23 that make people unique? I mean, if someone could be like in the

24 top column, you could be a 12 or even a lower number, correct?

25 A Correct.

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1 Q And so that's how the huge genetic -- or the frequency is

2 sort of generated by the exponential power of these numbers?

3 A It is, because if you look at it, we have 30 pieces of

4 information looking at 15 different DNA locations, and then a

5 different allele or number -- or two different allele numbers at

6 each location.

7 Q Okay. Now, I want to talk -- you actually issued several

8 reports in this case; would that be correct?

9 A Yes.

10 Q Let me ask you this: You first got a vaginal swab

11 collected from the victim Sheila Quarles at autopsy?

12 A Yes.

13 Q And were you able to generate a DNA profile from the

14 vaginal swab of Sheila Quarles?

15 A I was.

16 Q And the initial generation or the initial results that

17 you got, what did it indicate?

18 A It indicated that it was a mixture of at least three

19 individuals and Miss Quarles could not be excluded as a

20 contributor to that mixture, but we also knew we had unknown males

21 involved.

22 Q Now, when we talk about Miss Quarles couldn't be

23 excluded, that middle column that we see, with the red numbers and

24 the black numbers, that is the results that you generated from the

25 vaginal swab itself, correct?

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1 A Correct.

2 Q Okay. And when you initially generated the sample, all

3 you had was the known profile of Miss Quarles?

4 A Correct.

5 Q Okay. And can you kind of point out for the members of

6 the jury how you know that she was a component of that vaginal

7 swab?

8 A Sure. If you look at the first marker, what is called D8

9 for short, you see a 12, 13, 15 and 16 there. Miss Quarles is a

10 12/15, so you see the 12 there and the 15 there. She can't be

11 excluded.

12 And if you move on to the next marker, D21, she is a 30

13 and a 35; there you see there is the 30 and there is the 35. It

14 continues all the way down. She can't be excluded from every

15 single location that we're looking at.

16 Q And probably not too surprising that her DNA would be

17 found in a vaginal swab taken if her?

18 A Correct.

19 Q At the time you did that very first report, did you have

20 known samples of DNA from an individual identified as Robert

21 Lewis?

22 A I did.

23 Q And were you able to exclude him as being a source of any

24 of the DNA collected from Miss Quarles?

25 A I was.

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1 Q And we don't have his profile up there, but can you

2 explain how you would be able to do that by looking at the swab

3 results?

4 A Certainly. Again, using D8, he could have easily had a

5 profile, maybe his profile was 11, 13, and because I don't see an

6 11 here, that's an exclusion; and, obviously, you would have to be

7 excluded at more than one location for me to exclude you all the

8 way down, but he was, in fact, excluded from this profile.

9 Q And when you use the phrase can't be excluded, can you

10 explain for non-scientists what that means?

11 A It's just a more conservative way of saying a person is

12 actually included, we just use word our reports and findings as

13 cannot be excluded.

14 Q So you concluded, based on the scientific evidence, that

15 Robert Lewis is not the source of the DNA from the vaginal swab?

16 A Correct.

17 Q What about an individual by the name of Quinese Toney,

18 did you have her DNA sample at the time you first generated the

19 DNA results from the vaginal swab?

20 A I did.

21 Q And was she eliminated as a contributor to the vaginal

22 swab as well?

23 A She was.

24 Q Okay. At some point, did you enter the results or the

25 profiles that you obtained from the vaginal swab into a data base

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1 that stores DNA information?

2 A I did.

3 Q And is that called CODIS?

4 A It is.

5 Q CODIS stores information of various people's DNA

6 profiles?

7 A It does.

8 Q And is that at a local, state and national level?

9 A Yes.

10 Q When you say you entered the profile that you got from

11 the vaginal swab of Sheila Quarles into CODIS, can you explain

12 literally what do you do? Do you just type those numbers in or

13 how does that work?

14 A Yes. I would type this entire profile into the program;

15 and any time it has a profile that's very similar or can't be

16 excluded from being a contributor to this profile, it will give me

17 that individual or that case that it connects to.

18 Q Okay. And as a result of putting the information in

19 CODIS, did CODIS identify a potential contributor of that DNA?

20 A It did.

21 Q Was that individual Norman Flowers?

22 A Yes.

23 Q Now, his profile is depicted on the chart in the second

24 column?

25 A Yes.

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1 Q Okay. And his profile was collected as a result of a

2 buccal swab by a detective, correct?

3 A It was.

4 Q And once you had the CODIS information, did you

5 re-examine the evidence or did you just take the information from

6 CODIS and move on from there?

7 A The sample was reworked.

8 Q What does that mean when you say it's reworked?

9 A It means we already had the sample in-house. We had a

10 DNA extract that had previously been extracted. Any of our DNA

11 that we keep in storage is kept in a tube to go back to at a later

12 point in time. So I took that tube and developed a DNA profile

13 from that and it was consistent with the vaginal swab.

14 Q And can you show us how he is included as a source of the

15 DNA in the vaginal swab?

16 A Sure. If you look at our first markers, we have a 13, 16

17 here and you can see the 13 and the 16 there. There is a 30,

18 33.2; and there is a 30; there is a 33.2; 8, 10, there is an 8 and

19 a 10. There is a 12 here, a 12 there, and all the way down.

20 Q All the way down that column, where this was depicted as

21 a column in terms of the DNA strand, where people have varying

22 numbers, he is consistent with -- his known profile is consistent

23 with all of the numbers or it's depicted in all of the numbers

24 from the vaginal swab?

25 A Yes.

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1 Q And someone like Robert Lewis, who you excluded, there
2 was obviously a variation in the numbers where he wouldn't have
3 been represented and that's why you were able to exclude him?

4 A Correct.

5 Q Now, in terms of the vaginal swab itself, you indicated
6 that it was a mixture of at least three individuals.

7 A Uh-huh.

8 Q Is that yes?

9 A Yes.

10 Q Okay. And one of them, obviously, is Miss Quarles; and
11 Mr. Flowers cannot be excluded as a contributor to that vaginal
12 swab?

13 A Correct.

14 Q Is there anything inconsistent about his genetic profile
15 with the vaginal swab?

16 A No. There is nothing inconsistent comparing his profile
17 to the vaginal swab, although there is additional information that
18 doesn't explain just the mixture of Mr. Flowers' DNA and Miss
19 Quarles' DNA.

20 Q And based on that, you thought there was another
21 contributor to the DNA taken from the vaginal swabs?

22 A Yes.

23 Q Now, in terms of Mr. Flowers' profile and the frequency
24 that it could occur in this vaginal swab -- I mean, did you
25 indicate what percentage of the population could be excluded as

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1 Q So her own DNA is under her fingernails?

2 A Correct.

3 Q What about in October of 2007; did you also test
4 additional items of evidence that were collected from the crime
5 scene?

6 A I did.

7 Q And I'm putting on the overhead right now what's been
8 admitted as State's 20. I don't know if you can see that. It's a
9 Gatorade bottle and some packages of snack food.
10 Do you recognize those items?

11 A Yes.

12 Q Did you test those for the presence of DNA?

13 A I did.

14 Q What were your findings?

15 A I obtained a partial DNA profile from the Gatorade bottle
16 that was consistent with Sheila Quarles.

17 I was unable to obtain a DNA profile from the beef and
18 cheese snack.

19 Q And did one of the crime scene analysts actually swab a
20 beef stick for the presence of DNA for you to later look at?

21 A Yes.

22 Q Was any DNA material collected that you could detect?

23 A I wasn't able to obtain a profile from that either

24 Q Okay. So in terms of these items, the only DNA that was
25 recoverable was taken from that Gatorade bottle and that was

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1 being a source of the DNA from the vaginal swab?

2 A 99.99 percent of the population can be excluded as
3 contributing to the DNA found on that vaginal swab.

4 Q But not Mr. Flowers?

5 A Correct.

6 Q I want to leave that up there.

7 In March of 2007, did you generate another DNA report
8 with respect to this murder investigation?

9 A I did.

10 Q And was that based on the fingernail clippings of Miss
11 Quarles?

12 A It was.

13 Q And why is it that DNA analysts look at fingernail
14 clippings as a possible source of DNA evidence?

15 A Often, in homicide cases, there can be a struggle and
16 victims can scratch their assailant and so we test fingernail
17 clippings to see whether or not there could be foreign DNA under
18 the fingernails.

19 Q And when you looked at Miss Quarles' fingernails, were
20 you able to detect any foreign DNA?

21 A I was not.

22 Q So you weren't able to even generate a profile to compare
23 with anybody else?

24 A I obtained DNA from the fingernail clippings; they were
25 existent with Miss Quarles.

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1 consistent with Miss Quarles?

2 A Correct.

3 Q In May of '08, did you issue another report with regard
4 to this incident?

5 A I did.

6 Q And was that based on an analysis of the bra and thong
7 panties collected from the victim -- or the victim's clothing,
8 essentially?

9 A Yes.

10 Q I'm putting on the overhead State's 37. That's a
11 photograph of the thong panties that you examined?

12 A Yes.

13 Q I actually think we can see the bra on the toilet seat
14 there.

15 In terms of the bra, what were your findings with regard
16 to the examination of that item?

17 A I looked at it with an alternative light source to see if
18 there was any semen on the bra and I didn't see any. And, again,
19 I did another presumptive test to see if there was semen there,
20 but I didn't detect any.

21 So, because I didn't find any semen, I didn't go ahead
22 and do DNA on this item.

23 Q And why would that mean you wouldn't do DNA testing on an
24 item when you don't detect semen?

25 A Because we are looking for semen in this particular case

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1 and since there was none, there was no need to do DNA, because,
 2 most likely, it would come back to the victim, who obviously was
 3 wearing a bra at some point in time.
 4 Q Her own skin cells would be likely to be on there and if
 5 there was no foreign DNA, there would be no need to test?
 6 A Correct.
 7 Q Okay. In terms of the thong panties, what were your
 8 findings with regard to that item?
 9 A I was able to obtain a DNA profile from those and I found
 10 mixtures.
 11 Q And when you say you find mixtures, that's a mixture of
 12 what kind of cells?
 13 A Both epithelial and sperm cells.
 14 Q What are epithelial cells?
 15 A Essentially skin cells.
 16 Q And the sperm cells are what you are able to generate a
 17 male DNA profile from, obviously?
 18 A Correct.
 19 Q And that's the finding we see reflected in 137 -- or, no,
 20 actually not. That's the vaginal swab.
 21 I'm putting on the overhead State's 133, is that the
 22 chart that you made with regard to your findings from the thong
 23 panties?
 24 A It is.
 25 Q And at the time that you generated the report with regard

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1 to the panties, you only had the known profile of Mr. Flowers,
 2 correct?
 3 A I did.
 4 Q Okay. And it's the same type of comparison that you have
 5 explained to us before, where he's a 13/16 and the profile
 6 generated from that under garment, his DNA is reflected as a
 7 possible source?
 8 A True, yes.
 9 Q And is there any kind of statistical frequency with
 10 regard to this item of evidence, in terms of how many people in
 11 the population you could exclude as being a source of the DNA
 12 profile from that item of evidence versus Mr. Flowers?
 13 A Again, 99.99 percent of individuals can be excluded as
 14 contributing DNA to the panties.
 15 Q 99.99?
 16 A Yes.
 17 Q But not Mr. Flowers?
 18 A Correct.
 19 Q At some point in 2008, did Detective Long impound a
 20 buccal swab from an individual identified as George Brass?
 21 A Yes.
 22 Q And from his buccal swab, were you able to generate his
 23 genetic profile?
 24 A I was.
 25 Q And that's reflected on the right side of the chart?

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1 A Yes.
 2 Q And so at the first marker he's a 13/14; and then he's a
 3 31 and a 31.2?
 4 A Correct.
 5 Q Once you had Mr. Brass' profile, were you able to compare
 6 that to the DNA results that you got from the panties?
 7 A Yes.
 8 Q And can he also not be excluded as a contributor to that
 9 DNA?
 10 A That's true.
 11 Q And similar to Mr. Flowers, there is no, I guess, points
 12 on the DNA strand where he's inconsistent with the findings?
 13 A No.
 14 Q How about the same type of number -- you tell us that
 15 99.99 percent of the population can be excluded as a source of the
 16 DNA prints of Mr. Flowers.
 17 Would that same number or a different number be applied
 18 to the percentage with regard to Mr. Brass?
 19 A It's the same number because you are doing the statistic
 20 on the DNA found in the panties. So it's overall of all those
 21 alleles included, it's the statistic we get, and since they both
 22 cannot be excluded from that, the statistic still remains 99.99
 23 percent.
 24 Q And I'm putting back on the overhead State's 137.
 25 Obviously, you also did a comparison of Mr. Brass's a

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1 source of the DNA from the vaginal swab?
 2 A I did.
 3 Q And he cannot be eliminated as a source of that DNA as
 4 well?
 5 A That's true.
 6 Q And is it the same statistic, the 99.99?
 7 A Yes.
 8 Q In terms of testing that you did in this case, are you
 9 familiar with a victim by the name of Merilee Koot?
 10 A I am.
 11 Q And have you reviewed reports generated by another DNA
 12 analyst, who used to work at Metro's lab, by the name of Thomas
 13 Wahl?
 14 A I have.
 15 Q And in terms of Merilee Koot's vaginal swabs taken from
 16 her at autopsy, what were Mr. Wahl's findings?
 17 MR. PIKE: Objection; hearsay, for the record.
 18 For the record, may I just ask a question?
 19
 20 VOIR DIRE EXAMINATION
 21 BY MR. PIKE:
 22 Q The records you are reading are records kept in the
 23 course of business with your lab?
 24 A Yes.
 25 Q Are you qualified, as a custodian of records, to review

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1 those and bring those forward?

2 A Yes.

3 MR. PIKE: Thank you.

4 THE COURT: Go ahead.

6 DIRECT EXAMINATION (Resumed)

7 BY MS. WECKERLY:

8 Q What were Mr. Wahl's findings from the vaginal swab taken
9 from Merilee Koot at autopsy?

10 A The source of the semen is Norman Flowers.

11 Q And in terms of --

12 MR. PIKE: Objection.

14 VOIR DIRE EXAMINATION

15 BY MR. PIKE:

16 Q You've been saying cannot be excluded.

17 A Correct.

18 Q And that you would not use that language in this case; is
19 it more correct to say that?

20 A This is a different statistic because it was a single
21 source profile.

22 Q Nevertheless, can that be the appropriate term? What is
23 the most appropriate term?

24 A For a single source profile or a major profile, it is
25 the -- in this particular case there was identity, so we assume

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1 Q And why would that be?

2 A Because you are only dealing with an exact profile,
3 because in this particular instance, I would enter the 13/16 as
4 opposed to the 12, 13, 14, 15, 16.

5 So the more you can narrow it down, the more astronomical
6 your number becomes.

7 Q And in terms of the frequency or how many people in the
8 population would have that genetic profile with regard to the
9 vaginal swabs taken from Merilee Koot, what was that frequency?

10 A It's rarer than one in 650 billion.

11 Q So one person, then you would have to go through another
12 650 billion people before you got that profile again or more than
13 that actually?

14 A Greater than that, yes.

15 Q And what is the earth's population?

16 A It's approximately six and a half billion.

17 Q And when you say there is an identity statement made,
18 explain what that means in terms of the numbers or why that is
19 made in this particular case?

20 A Once our numbers exceed a hundred times the world
21 population, we assume identity at that point in time.

22 Q So if the profile is rarer than a hundred times the
23 earth's population, the lab issues what's called an identity
24 statement, because they feel like it's, I guess, conservative
25 enough to make that type of conclusion?

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1 identity. But in a mixture where I cannot pull out the major
2 profile, we say cannot be excluded.

3 THE COURT: You can ask this in cross-examination.

4 MR. PIKE: Thank you. I'm sorry.

6 DIRECT EXAMINATION (Resumed)

7 BY MS. WECKERLY:

8 Q What were the findings with regard to the vaginal swab
9 taken from Merilee Koot at autopsy?

10 A The source of the semen is Norman Flowers.

11 Q And the findings in terms of that particular swab taken
12 from that victim, there was only single source of semen in her,
13 correct?

14 A Yes.

15 Q And that single source of semen that was a genetic
16 profile was amplified or generated in those swabs?

17 A Yes.

18 Q And that was compared to the known sample of Mr. Flowers?

19 A Correct.

20 Q And there was no indication of a third source of DNA?

21 A That is correct.

22 Q And when you have a single source of DNA at a particular
23 location, are the numbers or the frequency of that DNA more
24 discriminating?

25 A They are.

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1 A Yes.

2 Q But in the case of mixtures, the numbers can't get that
3 astronomical because of the varying combinations?

4 A Yes.

5 Q In terms of Mr. Wahl's examination, did he also examine
6 the rectal swabs collected from Merilee Koot at autopsy?

7 A He did.

8 Q And what were his findings with regard to that evidence?

9 A The source of the semen was also Norman Flowers.

10 Q And was he able to generate a numeric frequency as to
11 those swabs or that item of evidence?

12 A He was. Again, it was rarer than one in 650 billion.

13 Q So is that the same type of situation, where the lab
14 would conclude that it is him; he is the source of that DNA?

15 A Yes.

16 Q In terms of Mr. Wahl's initial findings in this case, did
17 he also examine a carpet stain taken from the apartment of Merilee
18 Koot?

19 A He did.

20 Q And what were his findings with regard to that item of
21 evidence?

22 A He found a mixture of DNA, in which Merilee Koot could
23 not be excluded and the DNA profile of Norman Flowers also could
24 not be excluded.

25 Q And when he examined that evidence, was he able to

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1 generate that same numeric frequency as to the likelihood of
2 someone else having that DNA profile as opposed to Mr. Flowers?

3 A He was because the major DNA profile was able to be
4 pulled out of that mixture. He also found a statistic of rarer
5 than one in 650 billion.

6 Q And sometime after Mr. Wahl examined the evidence, did
7 you actually retest or look at the carpet stain yourself taken
8 from Merilee Koot's apartment?

9 A I did.

10 Q And getting off the statistics for a second, when you
11 actually were examining the carpet for the presence of DNA, can
12 you describe how it is that you go about getting DNA off of a
13 particular piece of evidence?

14 A In this particular instance, I actually took a cutting of
15 the carpet fibers for analysis.

16 Q And when you examined the carpet, did you notice anything
17 unusual about it?

18 A Yes. When I was performing my presumptive testing, which
19 is how we locate semen stains, if they are on an item of evidence,
20 I was using an overlay method, which you lay down a piece of
21 filter paper and then wet it, and then a chemical is applied to
22 see if there is any coloration to determine semen. And when I did
23 this, I noticed that everything was bubbly, as if there was some
24 sort of detergent on the carpeting.

25 Q I'm putting on the overhead what has been admitted as
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1 billion?

2 A Yes.

3 MS. WECKERLY: Thank you.

4 I'll pass the witness.

5 THE COURT: Thank you.

CROSS-EXAMINATION

8 BY MR. PIKE:

9 Q Good afternoon.

10 Your function within this process is to just take the
11 items that you are given and perform the scientific testir g on
12 them; is that correct?

13 A It is.

14 Q You couldn't make an opinion as to when that DNA got
15 there, how it got there; your expertise is just basically
16 conducting the examination to determine whether or not it meets
17 that criteria to where you can either give an opinion of k entity
18 or you cannot exclude?

19 A True.

20 Q So that's kind of a fair statement of where we're at, so
21 it wouldn't be proper for me to ask you questions about leakage or
22 about how the carpet -- or how the stain may have gotten on the
23 carpet at a location. We're just going to be deal with DNA.

24 A Okay.

25 Q In reference to the Quarles case, your testing r.in over a
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1 State's 134.

2 Does that chart reflect your findings with regard to the
3 carpet stain?

4 A It does.

5 Q And the middle column is the known profile of
6 Mr. Flowers?

7 A Correct.

8 Q And the carpet stain is reflected on the right-hand side?

9 A Correct.

10 Q And that would be -- the source of that DNA was sperm or
11 semen?

12 A It was.

13 Q And he is consistent with all of those genetic areas of
14 the DNA strand, the genetic markers?

15 A Yes.

16 Q There is no indication of a mixture with regard to this
17 item of evidence?

18 A That's correct.

19 Q Based on that, are you able to tell the members of the
20 jury how rare that particular profile is?

21 A It's also rarer than one in 650 billion.

22 Q And with that statistic, are you -- similar to Mr. Wahl,
23 is the lab still rendering an identity statement where the lab
24 concludes he is the source of the DNA from that piece of carpet,
25 you know, based on that threshold of rarer than one in 650

1 period of time?

2 A It did.

3 Q And why wasn't everything done all at the same time?

4 A Because different items of evidence were requested at
5 different periods of time.

6 Q When were the panties examined?

7 A They were examined on March 12th of 2008.

8 Q So about six months ago?

9 A Yes.

10 Q All right. And the event occurred back in 2005.

11 The panties were associated with the body. Were you
12 requested to examine any other items of clothing beside: the
13 panties and the bra?

14 A I was not.

15 Q Were you requested to perform a DNA testing on the water
16 that was retrieved from the tub?

17 A I was not.

18 Q During the course of the profiles and the testing that
19 you have done, you've indicated and testified that it is possible
20 that the DNA could have come from more than three individuals?

21 A Any time we have DNA profiles that have five alleles or
22 more, that indicates possibly three contributors or more.

23 Any time you receive two contributors, you have to be
24 very careful about the assumptions you make with that particular
25 mixture because you have a lot of sharing going on; and so we say

- 1 at least two or at least three individuals.
- 2 Q It could be more?
- 3 A Yes. Especially when we don't have reference standards
- 4 to compare in the beginning.
- 5 Q And then you go through and you indicated that you
- 6 submitted the items for -- or to CODIS?
- 7 A Yes.
- 8 Q There are different levels of CODIS; is that correct?
- 9 A Yes.
- 10 Q What is the lowest level, the CODIS level, I guess?
- 11 That's a community?
- 12 A The lowest level is our local DNA index system and it
- 13 is all the profiles from southern Nevada.
- 14 Q Okay. The next level would be what?
- 15 A Would be the state level; both southern and northern
- 16 Nevada are included in those.
- 17 Q Okay. And the next level?
- 18 A Is the national level.
- 19 Q When you have a mixed profile like this, did you submit
- 20 this for consideration under the national?
- 21 A It was first submitted under the local and then it's
- 22 submitted based on our state administrator and national level, up
- 23 to national.
- 24 Q So was it submitted by you, in this case, to that level?
- 25 A I submitted it to local; and then beyond that, I didn't

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- 1 have any control over that.
- 2 Q And going through the CODIS levels, how many hits did you
- 3 get?
- 4 A Just one.
- 5 Q Just one.
- 6 Was there a partial match that was also made?
- 7 A May I refer to my notes?
- 8 Q Oh, absolutely.
- 9 What you are referring to, to refresh your recollection,
- 10 are the notes that you keep that pertain to this case?
- 11 A Yes. There was a partial match found and it's to a
- 12 person who was deceased in 1979.
- 13 Q And that's an example of a false hit?
- 14 A It is. And the reason this profile actually hits on
- 15 almost everything we enter is because we only have three loci of
- 16 information, but we can immediately look at it and know that it's
- 17 not included.
- 18 Q Okay. And going through -- you are talking about loci.
- 19 There is allele loci and what else that you are looking
- 20 at?
- 21 A Loci are the locations and the alleles are the numbers at
- 22 the bottom.
- 23 Q If you lay that out on a chart, it's kind of like a line
- 24 with little bumps in it?
- 25 A Yes.

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- 1 Q And you want those to match as much as possible?
- 2 A Yes.
- 3 Q Sometimes there is contaminants that may cause a false
- 4 hit?
- 5 A No. Contaminants aren't put into CODIS.
- 6 Q I understand. I'm not talking about in CODIS.
- 7 But if you have something and there is a contaminant, it
- 8 may give you the basis to have them if you submit it to CODIS;
- 9 then it may make a false hit to a known CODIS provider?
- 10 A It could.
- 11 Q Okay. All right. In going through the determination on
- 12 this, did you examine any other individuals than those individuals
- 13 that have been brought up to you by the District Attorney's Office
- 14 or by my questioning?
- 15 A No.
- 16 MR. PIKE: I have no further questions.
- 17

REDIRECT EXAMINATION

- 19 BY MS. WECKERLY:
- 20 Q Does the timing of the request for you to examine a piece
- 21 of evidence change the results?
- 22 A It does not.
- 23 Q Okay. So if we, ten years from now, said we want you to
- 24 look at a piece of evidence, the DNA is either there or not?
- 25 A That's true.

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- 1 Q Okay. Mr. Pike asked you about getting DNA from a
- 2 bathtub of water. He asked you that on cross-examination.
- 3 A From a sampling of water, yes.
- 4 Q Would that be something that would happen frequently in
- 5 your experience?
- 6 A Not typically, because if it's a large amount of water,
- 7 although we can develop DNA profiles from very small amounts of
- 8 DNA, water is a huge diluent, you know, and so it's really
- 9 difficult for us to be able to take a sample of water and
- 10 concentrate it down enough to even detect any sort of semen or
- 11 other DNA.
- 12 Q Okay. So that wouldn't be something you would expect,
- 13 scientifically, to get any reliable or informative results from?
- 14 A No.
- 15 Q Mr. Pike asked you about mixtures versus single source
- 16 DNA.
- 17 Do you recall being asked about this?
- 18 A I do.
- 19 Q I'm putting on the overhead again State's 133.
- 20 The findings that you got from the panties indicate a
- 21 mixture, correct?
- 22 A Yes.
- 23 Q And when we look at the middle column, the reason we know
- 24 it's a mixture is because basically there are more than two
- 25 numbers there?

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1 A Yes.

2 Q Okay. And the presence of that other number indicates

3 that there is at least one other person who is the source of the

4 DNA?

5 A Correct.

6 Q And that's how you know that's a mixture?

7 A Yes.

8 Q When your results only have two numbers at each of those

9 loci, that's how you know it's single source DNA, because they get

10 one number from mom and one number from dad?

11 A Correct.

12 Q I'm putting on the overhead State's 134.

13 The carpet stain is clearly a single source stain.

14 A Yes?

15 Q Because if it were a mixture, you would expect to see at

16 least one other number in this column, at one of the loci?

17 A Yes.

18 Q Now, going back to 134, when we're dealing with a mixture

19 situation, can you explain for members of the jury why you use the

20 terminology can't be excluded, versus the one in 600 billion

21 number?

22 A Right. Well, in a potential mixture, you have so many

23 different combinations. Just by looking at the first area, we

24 have the 13, 14, 16. We know that each person has two alleles.

25 So a person could be a 13/13; they could be a 13/14, 13/15 and it

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1 goes on.

2 So there is so many different combinations that that

3 person could be at that location. So we have to put all of those

4 possibilities into our statistics to know how often that occurs in

5 the population.

6 Q That is just sort of a fact of mixtures. When you have

7 mixture DNA, there is no way to separate out who is the 13/14

8 versus who is the 14/16 or something like that.

9 A Yes.

10 Q Because, in the mixture, it is all together in the

11 sample.

12 A Yes.

13 Q Then by contrast with a single source, it's just going to

14 be -- it's either going to match the person's profile or not,

15 because there is only going to be two of each of the loci?

16 A Right. And so you know exactly what the profile is at

17 that location. Instead of having a 13/14, we know there is a

18 13/16. And that is what I would enter into our statistics.

19 And we know, obviously, that because it is so limited the

20 percentage of people with 13 and then the percentage of people

21 with 16, we can get our final stat on those together.

22 Q And when we talk about the final statistic of the greater

23 than one in 600 billion, it moves sort of exponentially, right? I

24 mean, what are the odds of having someone as a 13/14 at the first

25 marker and a 30/32 at the second one and so on and so on, that

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1 would be the odds of it matching at each one of these locations?

2 A Right. It would be like if I were asked to find somebody

3 in the room with brown hair, it's not too hard to do. But if I

4 were to say find me somebody with brown hair, freckles, wearing

5 green socks and a purple hat, you know, that narrows it down.

6 Of each piece of information that I add to it makes it

7 that more rare.

8 Q And these are the pieces of information?

9 A Each of the alleles. Like I said before, we have 30

10 pieces of information.

11 Q Okay. And in your work, do you sometimes get, from a

12 particular item of evidence, incomplete information at the various

13 loci?

14 A Yes, it's possible.

15 Q So sometimes you can get no results, whether it's here or

16 one of the other loci?

17 A Yes.

18 Q And in that type of situation, the number of potential

19 contributors is even greater, right, because you can't

20 discriminate then at that loci because there is no information?

21 A Right. So then your number would be less astronomical.

22 So rather than one in 650 billion, it may be one in 280 billion.

23 Q So when Mr. Pike asked you about you got another CODIS

24 hit and you said it was a partial match, and you said it was only

25 three loci, explain what happened there.

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1 A Well, what happened is -- in a particular instance, so

2 maybe I have D8 and I get the 13/16 and at D2, I get the 16/20 and

3 then I had the sex determining marker and the logenim. So the

4 only thing that I would be able to put in the statistic is the

5 13/16 and the 16/20.

6 Basically what you would end up with is maybe one in

7 every six people could be a contributor to that particular sample.

8 Q So there is somebody -- when you got this hit of this

9 other individual who died in, I think you said --

10 A '79.

11 Q Okay. -- the profile was only represented at three

12 points on the DNA strand?

13 A Yes. And we're talking with the mixture. It wasn't the

14 single source stain that we found. It was the big mixture with

15 lots of different possibilities.

16 Q Okay. And so, obviously, you were able to exclude that

17 person, obviously, based on their death, but also because the

18 information isn't too informative if you only had the three

19 segments of their DNA profile?

20 A Yes. Working with the data base as much as I do, this

21 profile continually hit against other samples too, so we knew that

22 it continually came up and eventually deleted it from the data

23 base.

24 Q And with regard to the samples that we are talking about,

25 in the Quarles case and in the Merilee Koot case, I mean

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1 statistically, that's quite a bit different situation, because the
2 sample itself gave you a lot of detail about the sources of the
3 DNA?
4 A Yes.
5 Q And there was a complete sample; there was never a
6 portion here where you didn't get information regarding a
7 potential source?
8 A That's correct.
9 Q Now, Mr. Pike asked you about contaminants and whether
10 they can -- whether they can prompt a false positive or sort of
11 change the results of DNA.

12 Do you remember that?

13 A Yes.
14 Q Based on your review of the evidence, was that a factor
15 at all the that you think would affect the findings that you have
16 testified to this afternoon?

17 A No.
18 Q No indication of a contaminant? I mean, you said the
19 carpet was foamy, but you were still able to generate a profile?

20 A Yes.
21 Q Sometimes contaminants could degrade or destroy the DNA?

22 A Yes.
23 Q And that would mean you wouldn't get any information at
24 all?

25 A Right.

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1 Q But here, you got all the information?
2 A Yes.
3 Q And in terms of the vaginal swabs of Sheila Quarles and
4 the DNA taken from her underwear, that's the mixture where we can
5 eliminate 99.99 percent of the population, but Mr. Flowers and
6 Mr. Brass?

7 A That's true.
8 Q And by contrast or just for comparison purposes, with
9 regard to all the DNA in Merilee Koot's case or the vaginal/rectal
10 and carpet stains, those numbers are the one in 600 billion based
11 on the single -- by virtue sort of the single source of the semen?

12 A Yes.
13 MS. WECKERLY: Thank you.

14 THE COURT: Anything else, Mr. Pike?

15 MR. PIKE: Very briefly, Your Honor.

16 RECROSS-EXAMINATION

17 BY MR. PIKE:

18 Q Now you've indicated that you have been working with DNA
19 for how long?

20 A About five and a half years.

21 Q Okay. And as you've been going through with the DNA and
22 watching the technology develop, it has become more and more
23 precise over the years?

24 A Not more precise, but technologically advanced.

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1 Q Okay. In going through the DNA in the areas that you are
2 looking at, to make these identifications, both of the exhibits
3 that you have just have these specific numbers identifying areas
4 against which a comparison is done.

5 Is that the normal number of areas that you're looking
6 at?

7 A Yes, we look at 15 different areas, plus the sex
8 determination marker.

9 Q How many locations are there on the human genetic as you
10 described it?

11 A Actual genetic markers?

12 Q Yeah.

13 A I'm not sure. Thousands, but not used for identity
14 testing.

15 Q At this time?

16 A Correct.

17 MR. PIKE: Thank you. I don't have any further
18 questions.

19 THE COURT: Just one question. I don't know if you know
20 this: You developed DNA off of the panties that were recovered
21 from the Quarles scene.

22 THE WITNESS: Yes.

23 THE COURT: Could you tell from where or how you
24 recovered it whether or not those panties would have had to have
25 been worn and there would be leakage or whether they could have

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1 been sat or laid on? Do you have any idea how they got there or
2 you don't know?

3 THE WITNESS: I don't know.

4 MS. WECKERLY: Your Honor, could I ask a question based
5 on that?

6 THE COURT: Yeah.

7

8 FURTHER REDIRECT EXAMINATION

9 BY MS. WECKERLY:

10 Q In terms of Sheila Quarles' DNA, in terms of the vaginal
11 swab and the panties, was the level of DNA that you got from the
12 sample indicative of, I guess, the same amount of DNA that could
13 be attributed to the Flowers profile versus the Brass profile?

14 I mean, was there any differential in the result or were
15 they consistent like at the same level?

16 A They were pretty much even.

17 Q In both vaginal swabs and the panties?

18 A And the panties, yes.

19 MS. WECKERLY: Thank you.

20 THE COURT: Okay. Thanks. I appreciate your time.

21

22 (Witness excused.)

23

24 THE COURT: Any other witnesses, State?

25 MS. WECKERLY: No, Your Honor.

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THE COURT: The State rests?

MS. WECKERLY: Subject to just checking with stuff we've admitted, but I believe so.

THE COURT: Mr. Pike.

MR. PIKE: Thank you.

The defense would call George Schiro.

THE COURT: He's going to testify about some of this DNA stuff?

MR. PIKE: Yes.

THE COURT: He was allowed to be in here for that purpose; and if you want to have Miss Paulette in here when he's testifying, you will be allowed to do that too.

MR. PIKE: Already made that arrangement.

(Witness sworn.)

THE CLERK: Please be seated.

Please state your name and spell your first and last name for the record.

THE WITNESS: My name is George Schiro; first name G-e-o-r-g-e; last name S-c-h-i-r-o.

GEORGE SCHIRO

called as a witness on behalf of the State,

having been first duly sworn,

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1 latent fingerprint development, marijuana analysis, gunshot
2 residue detection, those sort of things. Eventually, I moved into
3 serology area, which is the study of blood and bodily fluids.
4 After working there for about three and a half years, I
5 then went to the Louisiana State Police Department laboratory in
6 Baton Rouge. I worked there approximately 14 years, continued to
7 do serology; and then eventually myself and Carolyn Barker, who I
8 work with, we set up the DNA labs at the Louisiana State Police
9 crime lab. We validated the systems and we trained the personnel
10 to conduct DNA analysis.

11 I myself was trained by Pat Cavits, who was a qualified
12 DNA technical leader as well.

13 We did all of this and then, eventually -- I was there
14 for about 14 years, and then the last seven years, I've been at
15 the Adiana crime lab and I also do private consulting work as
16 well.

17 Q During your career, you've been allowed to testify and
18 offer your expert opinion regarding DNA?

19 A Yes.

20 Q And you've been allowed to testify in courts in
21 Louisiana?

22 A Yes.

23 Q In which other counts have you been allowed to testify as
24 an expert?

25 A I've also testified in Polk County, Arkansas, St. Louis

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was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PIKE:

Q Mr. Schiro, how are you employed?

A I'm currently employed as the DNA technical leader at the
Adiana crime lab which is in New Iberia, Louisiana.

Q How long have you been so employed?

A I've been employed there for nearly seven years now.

Q And in the capacity of your employment there, what are
your duties?

A My duties as DNA technical leader are to oversee the
technical operations of the DNA lab, make sure that we're meeting
all the quality assurance standards, making sure that all the
tests are run properly.

I also function in the capacity of a DNA analyst and also
as part of my duties there, I do crime scene investigations as
well.

Q What sort of training have you received for that?

A I have a Bachelor of science degree in microbiology from
Louisiana State University. I have a Master of science in
industrial chemistry from the University of Central Florida. I
began my training at the Jefferson Parish Sheriff's Office crime
lab, which is just outside of New Orleans; started off in what was
called general criminalistics area, which included things like

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1 County, Missouri, Washington County, Mississippi, Lee County,
2 Florida, as well as Clark County here in Nevada.

3 Q Now, you had an opportunity at the request of my office
4 to review the DNA reports in this case; is that correct?

5 A Yes.

6 Q And as you've gone through and reviewed those reports,
7 you've had the opportunity to listen to the testimony that was
8 just offered in court today.

9 I'd like to ask you some questions about that.

10 In reviewing the reports, you noticed that there was that
11 false hit of the gentleman that -- or the person that had passed
12 away since '79; is that correct?

13 A Yes.

14 Q Can you describe how false hits occur.

15 A Well, false hits can occur if you have a mixture, as in
16 this case, you do; and what happens is there would be just a
17 random occurrence where, because there is so many markers that
18 someone happens to match and what happens is as these data bases
19 get bigger and bigger in size, there is going to be more and more
20 people who are included, so the chance of a false match could go
21 up.

22 Q And also as the data bases increase, do you anticipate
23 that there will be advances in technology that will allow for more
24 locations for identity?

25 A Yes.

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1 Q In going through the process that was done in this case
2 then, would it be an accurate statement that you can say that the
3 DNA that was provided just shows a person that may be a potential
4 contributor and cannot be identified with certainty that that is
5 the actual provider?

6 THE COURT: Are you talking about both cases or just --

7 MR. PIKE: Just the Quarles case.

8 THE COURT: Just the Quarles case.

9 MR. PIKE: Just this case.

10 THE COURT: Yes.

11 THE WITNESS: Yes. In this case, the most that can be
12 said when you are dealing with a mixture is that that person can't
13 be excluded.

14 BY MR. PIKE:

15 Q Based upon that description then, it is possible that the
16 hit to Norman Flowers may be a false hit?

17 A That's a possibility, yes.

18 Q George Brass also cannot be excluded in reference to
19 this; is that correct?

20 A Yes.

21 Q I'm going through -- are there other people who cannot be
22 excluded as a potential candidate?

23 A Yes. The statistics that I noticed when I was going
24 through the notes said that 99.9934 percent to the 99.998 percent
25 of the population could be excluded, but what that means is also

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1 have been contributors?

2 A No. The only thing you can do is give a minimum number,
3 as was done in this case, say at least three people.

4 Q In going through and in doing DNA analysis and
5 determining what the identifiers are, do you find that there are
6 similarities within families as to genetic makeup?

7 A There can be some of the same markers that are found
8 within one individual that could be found in another individual.

9 For example, if you think of a father and son, a son is
10 going to have half of the father's markers. One-half is going to
11 come from the mother; one-half is going to come from the father,
12 but they're going to have half their markers in common with each
13 other.

14 Q And is there a way to use that genetic similarity to
15 actually conduct an investigation?

16 A Yes. You could sample people of that family member to
17 see if they would be included or excluded as a possible
18 contributor to that mixture.

19 Q And are you familiar with cases -- familiar with the
20 cases in which that has been the nature of the investigation and
21 the investigation subsequently revealed a suspect?

22 A Yes.

23 Q In going through and assuming that this is a three person
24 mixture and that Sheila Quarles is a contributor to the mixture,
25 how many possible two person allele combinations could be used for

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1 .002 percent of the population could be included or .0066 percent
2 of the population could be included.

3 Q So assuming that the population of Las Vegas is roughly
4 about two million people at this time, what would that mean in
5 numbers?

6 A In terms of numbers, if you have a population of two
7 million and you have this exclusion frequency that we talked about
8 and this inclusion frequency, then we're talking perhaps somewhere
9 from 40 to 130 individuals we would expect that could be a
10 contributor to this mixture within that two million population.

11 True values, probably actually somewhere between four
12 and -- four people and 1300 people, but we just can't make those
13 determinations because what we do with the statistics is we make
14 an estimate based on population groups.

15 Q And so if you move the population group up as to the
16 population in the United States, what would the approximate
17 numbers be?

18 A It would range from 6,000 people to 20,000 people that
19 could possibly be included as part of this mixture.

20 A true value probably ranges somewhere from 60 people to
21 200,000 people.

22 Q Also, as the testimony was developed and the reports
23 regarding the DNA came into evidence, there was a reference to the
24 fact that the mixture was at least three persons.

25 Can you set a number as to actually how many people may

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1 this mixture using the peak values as the possible two person
2 combinations?

3 A There are about 64,800,000 possible combinations that you
4 could get from those markers that we saw in the mixed DNA profile
5 from the vaginal swab.

6 Q And how many of these combinations would not exclude
7 Norman Flowers?

8 A About 192 out of that 64,800,000 would not exclude Norman
9 Flowers.

10 Q Since you have a background both as a CSA and then moved
11 forward to the DNA analysis, during the course of your work as a
12 CSA, did you collect evidence for sexual assault cases?

13 A Yes.

14 Q So based upon that experience and knowledge, do you have
15 any way of telling how old the semen is or the DNA sample as the
16 DNA examiner?

17 A No. We can't tell how long a DNA sample has been there.
18 We can only tell if it's there and what markers are present.

19 Q And, similarly, with the mixture of the DNA, is there any
20 way for you to tell the order in which they were deposited, how
21 soon it was done after the other? Is there any way to tell that?

22 A No.

23 Q And based upon your experience and your training then, is
24 there any way to tell that information from either the vaginal
25 swabs or from the samples that were taken from the panties?

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1 A No. Again, you wouldn't be able to tell how long they
2 were deposited or in what order.
3 Q And what is the importance of examining the panties?
4 A Well, the panties, given that they're found right there,
5 are going to be a key piece of evidence, so you are going to want
6 to know whose DNA types those are.
7 Those, as well, could have been from, you know, previous
8 consensual encounters where there was drainage that occurred in
9 the panties.
10 Q And do you believe it may have been important to examine
11 the bath water?
12 A The bath water, not so much, again, because as Miss
13 Paulette pointed out, the dilutional factor would be pretty high
14 when dealing with bath water.
15 Q However, working your way back, the panties would be
16 important.
17 Would it be important to examine clothing that the
18 deceased may have worn from the night before or earlier in the day
19 to try to establish a timeline as to when the semen was introduced
20 into her?
21 A Yes. That would be an investigative tool that could be
22 used.
23 MR. PIKE: I have no further questions.
24 Thank you very much.
25 MS. WECKERLY: Your Honor, could I just have a five

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1 minute break?
2 THE COURT: Yeah. Why don't we take our afternoon recess
3 at this time. Then you can talk to Miss Paulette.
4
5 (Jury admonished by the Court.)
6
7 THE COURT: We'll pick up at a quarter to and we'll move
8 on.
9
10 (Recess in proceedings.)
11
12 THE COURT: Back on the record in Case Number C228755,
13 the State of Nevada versus Norman Keith Flowers.
14 Let the record reflect the presence of the defendant, his
15 counsel, counsel for the State; ladies and gentlemen of the jury
16 are back in the box.
17 Mr. Schiro, you are still under oath. Have a seat.
18 Miss Weckerly, go ahead.
19 MS. WECKERLY: Thank you.

CROSS-EXAMINATION

22 BY MS. WECKERLY:
23 Q Good afternoon, sir.
24 A Good afternoon.
25 Q You work at a state crime lab right now, right?

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1 A Well, it's a regional facility, but we service what we
2 call a parish area. We don't have counties; we have parishes. We
3 service that parish area.
4 Q Is it a police agency lab or is it a private lab?
5 A It's a police agency lab.
6 Q Okay. And prior to that, you worked at the Jefferson
7 County one?
8 A Jefferson Parish Sheriff's Office crime lab. Prior to
9 that, I was working at the Louisiana State Police crime lab; and
10 then prior to that was the Jefferson Parish office.
11 Q And when you worked at the Jefferson Parish Lab, from
12 reading your CV, it looked like you handled all types of evidence,
13 fingerprint evidence, you did DNA evidence, and maybe physical
14 evidence on top of that.
15 A That's correct.
16 Q In terms of analysis of sexual assaults in murder cases,
17 how many cases of that nature are you typically dealing with?
18 THE COURT: You mean in the whole lab?
19 BY MS. WECKERLY:
20 Q You personally?
21 A Myself personally, about 50 percent of the cases that I
22 deal with are sexual assault.
23 Q And how many would 50 percent be?
24 A Probably on the order of what I handle, it's probably
25 somewhere in the neighborhood of between one and 200 cases.

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1 Q One and 200 cases of sexual assault/homicide per year?
2 A Well, sexual assaults and probably another 25 percent you
3 could tack on for homicides; then combinations of both. It's
4 going to be somewhere in that cross-section.
5 Q Okay. And in that regional lab, how many cases of sexual
6 assault and homicides would you say occur each year for your lab
7 to handle?
8 A For our lab, we probably deal with -- are you saying
9 sexual assault/homicides or the --
10 Q The combination?
11 A The combination, probably somewhere in the neighborhood
12 of 30 to 40.
13 Q Thirty to 40 a year?
14 A Yeah.
15 Q Okay. You've been a consultant before to Mr. Pike's
16 office?
17 A Yes.
18 Q You were a consultant in the Ralph Goodman case?
19 A That's correct.
20 Q I think it was represented by Mr. Pike's office?
21 A I'm sorry?
22 Q He was also represented by Mr. Pike's office?
23 A Yes.
24 Q And he was a murder defendant?
25 A Yes.

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1 Q And did you consult on the Kristin Laboto case?

2 A Yes.

3 Q And she was also a murder defendant?

4 A Correct.

5 Q Any other murder defendants where you served as a

6 consultant in Clark County?

7 A There has been numerous that I have served as a

8 consultant. The only other one that I've actually testified on

9 was the Scott Dozer -- I think it was Scott Dozer case.

10 Q Always on behalf of the defense?

11 A That's correct. They're the only ones who have called

12 me.

13 Q And always for Mr. Pike's -- I know it's not his office

14 exclusively, but attorneys that work with Mr. Pike?

15 A Yes, and there have been other -- others throughout

16 Nevada, well, within Nevada, right.

17 Q You did not prepare any report in this case; is that

18 correct?

19 A That's correct.

20 Q Is there any written documentation anywhere of your

21 findings?

22 A No.

23 Q So none of your calculations or conclusions have been

24 subject to any kind of peer review?

25 A That's correct.

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1 Q You just did your own calculations?

2 A That's correct.

3 Q And then you reported them somehow to Mr. Pike and

4 Mr. Patrick?

5 A Yes.

6 Q How did you report them?

7 A Orally.

8 Q Just today or before today?

9 A Before today.

10 Q Have you ever been involved in a case where you did

11 prepare a report?

12 A Yes.

13 Q And that wasn't requested of you in this case?

14 A That's correct.

15 Q Now, you reviewed the statistical data or underlying data

16 of the DNA evidence in this case?

17 A Yes, for the vaginal swab, yes.

18 Q For the panties too?

19 A I was never provided with the information on the panties.

20 Q Okay. Did you request to be provided with that?

21 A I did request it and we did get the report, but I never

22 got any of the underlying data.

23 Q All right. You didn't actually examine any physical

24 evidence in this case?

25 A No.

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1 Q You could have done that, I assume, with your background

2 and experience, and actually analyzed the piece of evidence

3 yourself?

4 A Yes.

5 Q But that wasn't requested of you?

6 A No.

7 Q Okay. In terms of the statistical data you received,

8 that was all generated and provided to you through Mr. Pike, but

9 it was generated by the Las Vegas Metropolitan Police Department?

10 A Yes.

11 Q And in that statistical data, that includes the graphs

12 and, I guess, raw data from generating the various DNA profiles in

13 this case.

14 A Yes.

15 Q In your review of the data provided by the Las Vegas

16 Metropolitan Police Department, you don't have any dispute that

17 their method of extracting DNA and generating a DNA profile from a

18 particular sample is scientifically valid?

19 A I have no problem with their work, if that's what you are

20 asking me.

21 Q That's what I was asking. That's sort of a long way of

22 asking that.

23 How about with the statistical calculations made by Miss

24 Paulette, any dispute with those?

25 A No.

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1 Q That looked correct to you scientifically and

2 mathematically?

3 A Yes.

4 Q And population frequencies that Miss Paulette referred

5 to, about how rare or how -- I guess how rare a particular profile

6 would be in a population, you don't have any dispute with that, do

7 you?

8 A That's correct.

9 Q And those are data bases that are widely used in the DNA

10 field?

11 A Yes.

12 Q And so your -- in a nutshell, your review of the data

13 provided indicates that what they did was sound scientifically?

14 A Yes.

15 Q And statistically?

16 A Yes.

17 Q Now, in regard to the vaginal swab taken from Miss

18 Quarles at autopsy, you don't dispute that Mr. Flowers can't be

19 excluded as a source of that DNA, do you?

20 A As a possible contributor, I don't dispute that.

21 Q You don't dispute that?

22 A Right.

23 Q And you certainly don't dispute that George Brass is a

24 possible contributor to that -- those vaginal swabs, correct?

25 A That's correct.

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1 Q You don't dispute that 99.99 percent of the population
2 can be excluded, but not these two individuals?

3 A That's correct.

4 Q In regard to the vaginal swabs taken from the other
5 victim in this case, Merilee Koot, you don't dispute that that was
6 a single source DNA?

7 Or maybe you didn't review that yet. I'm not sure.

8 A I have reviewed that data.

9 Q Okay. With regard to Merilee Koot then, you don't
10 dispute that the swabs taken from her at autopsy reflect single
11 source DNA?

12 A I'm sorry. Repeat the question, please.

13 Q Okay. With regard to Merilee Koot, the vaginal swabs
14 taken from her at autopsy reflect a single source of male DNA?

15 A That's correct.

16 Q And you don't dispute that in terms of that single source
17 of DNA, that profile matches to Norman Flowers.

18 A That's correct.

19 Q And the likelihood or the potential frequency of that
20 profile occurring in the population is rarer than one in 600 or
21 650 billion?

22 A I would agree with that, yes.

23 Q Okay. So given your knowledge of what the earth's
24 population is and certainly your experience in the DNA field,
25 would you have any problem with the conclusion that he is the

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1 source of that DNA?

2 A Excluding an identical twin, yes.

3 Q Okay. And, in fact, does your lab have a similar type
4 threshold situation where you render what we would call an
5 identity statement?

6 A Yes, we do.

7 Q And what is that number?

8 A Our number is 300 billion.

9 Q So lower?

10 A Yes.

11 Q So at just one in 300 billion, your lab will say this is
12 the source of that DNA?

13 A Yes. We use a thousand times the population of the
14 United States.

15 Q Okay. So, certainly, you would have no dispute with her
16 conclusion that Mr. Flowers is the source of the DNA in the
17 vaginal and rectal swabs of Merilee Koot?

18 A No.

19 Q And of the carpet stain found right underneath her?

20 A No.

21 Q Now, I want to talk you to specifically about this bath
22 water situation, collecting DNA from that.

23 I think you said that that wouldn't be, in your
24 scientific opinion, necessarily too productive to try to generate
25 a DNA profile off of a sample of bath water?

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1 A That's correct.

2 Q In fact, have you ever done that in your lab?

3 A We have had requests to, for example, look at water
4 that's found in a pea trap or a drain trap to test that; and it's
5 usually not successful whenever we're dealing with a large
6 quantity of water.

7 Q And this is even bigger than a drain trap because this is
8 a whole bathtub of water, correct?

9 A Yes.

10 Q So the likelihood of getting anything scientifically
11 useful, I would assume, is pretty diminished by the amount of
12 water?

13 A Yes.

14 Q Now, when you were discussing the DNA result with regard
15 to the vaginal swabs collected from Miss Quarles, you and Mr. Pike
16 used the term false hit.

17 Do you recall saying that?

18 A Yes.

19 Q Okay. When you look at the vaginal swab results, is
20 there anything indicating to you that Mr. Flowers can be excluded
21 as a source of the vaginal swabs taken from Sheila Quarles?

22 A He can't be excluded as the potential contributor.

23 Q As a potential contributor?

24 A To the mixture that's found in the vaginal swab.

25 Q Okay. And so there is no indication that we have a false

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1 hit in this case, correct, because we have his known sample and it
2 was compared to the mixture recovered from autopsy and there is --

3 A Well, we don't know essentially if it's a false hit or
4 not. I mean, it could be -- just from the size of the database,
5 it is a possibility that it could be a random match.

6 Q A random match.

7 Now, do you take into account peak/hit ratios in your
8 analysis?

9 A Peak/height ratios. Yes, I did.

10 Q The peak/height ratios, do those suggest to you that
11 Norman Flowers' DNA in the vaginal mixture or vaginal swab mixture
12 reflects a false hit situation or do the peak/height ratios
13 actually reflect that there is actually DNA there that's
14 consistent with him?

15 A Well, from the peak/height ratio, it's not really going
16 to tell you if there is a false hit or not or a false possibility.
17 By false possibility, I should say a random match, just meaning
18 that it could happen to match someone within the database and
19 there is no way to tell just looking at the profile if that's the
20 case or not.

21 Q Well, based on the peak/height ratios and your review of
22 them, those certainly reflected the presence of DNA that matched
23 his profile, correct, or was consistent with it?

24 A That he cannot be excluded from, because in this case
25 much of the peak/heights were about the same for all of the

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1 contributors.

2 So it's not like we can say that more of this person's
3 DNA is present and less of this person's DNA is present. Trauma
4 markers are about the same and because that's -- because that's
5 the way it is, then it's hard to tell what sort of combinations
6 you have in that mixture.

7 Q Well, let me ask you this: In terms of this DNA sample,
8 I would assume, from the vaginal swabs, that the major contributor
9 to that is Sheila Quarles herself.

10 A Well, even given that -- you can't even really say that
11 given the mixture that I recall when I looked at the data, because
12 like I had said, most of the peaks were right around pretty much
13 the same height. But what we can do is we can assume that Sheila
14 Quarles is present because the swab came directly from her vagina.

15 Q Okay. And the presence of the other two -- or the other
16 alleles, those were at the same level, correct?

17 A That's correct.

18 Q One of those profiles happens to match to someone who we
19 know had sex with Sheila Quarles that morning or we've heard?

20 A Well, again, you can't say that it matched him. What you
21 can say is that he can't be excluded as a possible contributor.

22 Q And George Brass can't be excluded as a possible
23 contributor?

24 A That's correct.

25 Q So if you take out all of the alleles that match to his

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1 the -- I think you gave an example of if you had a population of
2 64,800,000 --

3 A No, wait. That was something different.

4 Q Okay. Tell me what that was.

5 A 64,800,000 combinations are the number of combinations of
6 two person contributors that you could get based on those alleles
7 that could be present after removing Sheila Quarles and assuming
8 only a two person mixture.

9 It's kind of like you think of a telephone number. Okay?
10 There is seven digits to your telephone number, but because there
11 are ten possibilities for each number, that means in a seven digit
12 phone number, you could have ten million possible combinations.

13 If you add an area code to that, it gives you a hundred
14 billion possible combinations?

15 Q And if you took out the alleles that were consistent or
16 matched George Brass, like if you removed Sheila Quarles from that
17 because it isn't shocking that her DNA is taken from her own
18 vaginal swab, and you take out George Brass, his alleles, what
19 would the number be?

20 A Oh, I don't know that.

21 Q You weren't asked to calculate that?

22 A Right. Well, no.

23 Q Okay. Let me ask you this: Are these results, as
24 reported by Miss Paulette, completely explained by the reasoning
25 that Mr. Flowers and Mr. Brass and Miss Quarles were the source of

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1 profile and you take out all the ones that match to Sheila
2 Quarles, you are left with just the alleles that are consistent
3 with Norman Flowers, correct?

4 A To a certain extent, because when you look at the profile
5 and you do subtract out Sheila Quarles, there is at least one area
6 that -- well, you can't exclude Mr. Flowers. It doesn't
7 necessarily include him either, because one of the alleles could
8 be shared by Miss Quarles and Mr. Flowers.

9 Q Does your lab report out mixture results?

10 A Yes.

11 Q And what is the criteria for that?

12 A In terms of --

13 Q Well, if you had a mixture like we have here, what would
14 your lab report?

15 A Our lab probably would have reported very similarly,
16 except in our report, we probably would have stated assuming that
17 Sheila Quarles is a contributor to this mixture, then the
18 remaining profile, Mr. Brass and Mr. Flowers cannot be excluded as
19 potential contributors.

20 Q Okay.

21 A And we give our statistic.

22 Q And would the statistic be the same, that 99.99 percent
23 of the population can be excluded, but not those two individuals?

24 A That's correct.

25 Q And there isn't any statistic -- I mean, when you give

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1 that DNA taken from her vaginal swab?

2 A That's one possible explanation, yes.

3 Q Okay. There is nothing at all in this data that suggests
4 that it's anything other than that.

5 A Well, again, because you are dealing with a mixture,
6 there are other possible combinations.

7 Q I understand it is possible, but there is nothing in the
8 science that would indicate that another possibility is present?

9 A Well, that's why we always report out can't be excluded
10 as a potential contributor because there are other possibilities.

11 Q Okay. But it is also completely explained by these three
12 individuals?

13 A Like I said, that is one possible explanation, yes.

14 Q And that would be true of the panties that were checked
15 as well, correct?

16 A Again, I didn't review the data from the panties, so I
17 don't know specifically.

18 Q Okay.

19 A But given the report, it was probably along the same
20 lines.

21 Q And you indicated, I think on direct examination with
22 Mr. Pike, that there is no way to look at a particular mixture of
23 semen and tell which semen was deposited first?

24 A That's correct.

25 Q So there is nothing about the tails being on the sperm or

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1 anything about visually looking at the sample that would tell you,
 2 oh, look, this is this profile that was put in, you know, that was
 3 deposited two hours before this other one?
 4 A No.
 5 Q No way to do that scientifically?
 6 A That's correct.
 7 Q Now, if someone was sexually assaulting another
 8 individual and had pulled her underwear to the side while the
 9 sexual assault was taking place, that could account for semen and
 10 DNA being on a pair of underwear, correct?
 11 A Yes, that's a possible explanation.
 12 Q And then another possible explanation for why DNA might
 13 be on a pair of underwear is prior sexual contact and then leakage
 14 once the person moves or starts walking around?
 15 A Yes, that's another explanation.
 16 MS. WECKERLY: Thank you.
 17 THE COURT: Anything else, Mr. Pike?
 18 MR. PIKE: Very briefly.

REDIRECT EXAMINATION

21 BY MR. PIKE:
 22 Q There are other items that you wouldn't disagree with on
 23 the reports from the State's witness, on the DNA profile obtained,
 24 that Norman Flowers could not be excluded as a possible minor
 25 contributor.

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1 130 individuals, most likely; and for the United States, it would
 2 be somewhere between 6,000 and 20,000 people nationwide, most
 3 likely.
 4 MR. PIKE: No further questions.
 5 THE COURT: Anything else?
 6 MS. WECKERLY: No. Thank you.
 7 THE COURT: Thanks, Mr. Schiro. Appreciate your
 8 testimony. You are excused.

(Witness excused.)

11
 12 THE COURT: Next.
 13 MR. PATRICK: Susan Garriott.

(Witness sworn.)

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

20 THE WITNESS: Susan Marie Garriott. It's spelled
 21 S-u-s-a-n, G-a-r-r-i-o-t-t.

22 THE COURT: Go ahead.
 23 MR. PATRICK: Thank you.

SUSAN GARRIOTT

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1 A Again, I didn't review the data in that particular
 2 instance. I believe that's from the panties. But I would have no
 3 reason to dispute that.
 4 Q Nor would you have any reason to dispute her statement
 5 that it could be a false hit, that matched what they know about
 6 Mr. Flowers DNA?
 7 MS. WECKERLY: I'm going to object. I don't think she
 8 stated that. That was Mr. Schiro.
 9 THE COURT: I'm sorry. I didn't hear the objection.
 10 MR. PIKE: I'll just ask it directly then.

11 BY MR. PIKE:
 12 Q Then based upon the reports that were prepared, your
 13 examination of them, the testimony that you heard, can you offer
 14 an opinion that it is possible that that was a false hit or a
 15 random match to Mr. Flowers?
 16 A That's a possibility.
 17 Q And based upon the population base and information that
 18 you have been provided in reference to the DNA, CODIS and the rest
 19 of those items, approximately how many people would that possibly
 20 come back to?

THE COURT: People in what sample?

22 BY MR. PIKE:
 23 Q In the sample within Nevada or within the United States.
 24 A Within the population of Las Vegas, which is
 25 approximately two million, it would be somewhere between 40 and

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1 called as a witness on behalf of the State,
 2 having been first duly sworn,
 3 was examined and testified as follows:

DIRECT EXAMINATION

6 BY MR. PATRICK:
 7 Q Good afternoon, Miss Garriott.
 8 A Good afternoon.
 9 Q How are you employed?
 10 A I am employed with Children's Choice Learning Center. I
 11 am the center director.
 12 Q And were you doing that job in March of 2005?
 13 A No. I was with the school, but I was not the director.
 14 Q Okay. And which location are you the director of?
 15 A Boulder Station.
 16 Q Okay. And where were you at in 2005 with the company?
 17 A I was working at the Children's Choice at Sunset Station
 18 at a front desk.
 19 Q Okay. But you are familiar with the company's
 20 operations?
 21 A Yes.
 22 Q And is there any way that the company keeps track of the
 23 children that come in and out every day?
 24 A We do it through the computer. They clock in and out.
 25 We also have them fill it out on paper. They sign in daily and

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1 they also fill out a daily care sheet so we can keep track of all
 2 the kids, diaper changes and what they eat and what they do
 3 throughout the day.
 4 Q And you are familiar with how this is entered in the
 5 computer every day for each child?
 6 A Absolutely.
 7 Q This is something you have done in the past?
 8 A Yes.
 9 Q Is there a way that you can go back in time and print out
 10 a report from those computer entries to find out if a child was at
 11 your day care during a specific day?
 12 A Yes.
 13 Q Are you familiar with how that's done?
 14 A Yes.
 15 Q And are you familiar with the form of the report as it
 16 would be printed out from that computer?
 17 A Yes.
 18 MR. PATRICK: Permission to approach, Judge.
 19 THE COURT: Yes.
 20 BY MR. PATRICK:
 21 Q I'm going to show you what's been marked as defense
 22 proposed Exhibit I.
 23 Does that look familiar to you?
 24 A It does.
 25 Q And how does it look familiar to you?

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1 A Well, actually, the one I have is just a small portion.
 2 I think it was just for March.
 3 Q Okay.
 4 A It just looks familiar because it says child detail
 5 report and it actually says our company and our tax ID number.
 6 Q And what does that represent?
 7 A When the child was clocked in and clocked out and who
 8 dropped off and who picked up.
 9 MR. PATRICK: Okay. Move move admission, Judge.
 10 THE COURT: Any objection?
 11 MS. LUZAICH: Well, foundation still.
 12 THE COURT: I'll conditionally admit it.
 13 Go ahead.
 14
 15 (Defense Exhibit A admitted into evidence.)
 16
 17 BY MR. PATRICK:
 18 Q By looking at that, can you tell what child this
 19 report pertains to?
 20 A The very left side, it's Gabriel Flowers.
 21 Q Okay. And if you look, going across, it tells you when
 22 he was checked in and out each day?
 23 A Yes.
 24 Q And who did that?
 25 A Right.

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1 Q And looking through this, it looks like most of the --
 2 most of the time it was Katrina McKenna that was checking him in
 3 and out?
 4 A Yes.
 5 Q But it looks like several times that Keith Flowers would
 6 do that?
 7 A Yes.
 8 Q Okay. And can you tell me what time Gabriel was checked
 9 in on March 24th, 2005?
 10 A According to the records, he did not attend the center.
 11 Q Okay. So according to your records, he wasn't there all
 12 day?
 13 A Right.
 14 THE COURT: Okay.
 15 MR. PATRICK: That's all I have, Judge.
 16 THE COURT: Okay. Cross.
 17 MS. LUZAICH: Thank you.
 18
 19
 20 CROSS-EXAMINATION
 21 BY MS. LUZAICH:
 22 Q Now, the record that you have does not indicate who
 23 actually has custody of this child?
 24 A Correct.
 25 Q So as far as you know, the only time the person, who on

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1 your piece of paper is named Keith Flowers, ever sees this child
 2 is the couple of days that he dropped him off at the center?
 3 A Right; right.
 4 Q Now, the exhibit that the defense gave to you, defense
 5 Exhibit I, on the bottom, it says total hours, 519 hours, is that
 6 correct?
 7 A Yes.
 8 Q And as you look at this single piece of paper that they
 9 provided you, does it appear that those hours add up to 519?
 10 A Well, like really quickly, no.
 11 Q Not even close, right?
 12 A I think it may have totaled hours the whole time the
 13 child was there. I think just from March on is what's being
 14 shown.
 15 Q Okay. Now, I have -- here is State's whatever next in
 16 order. It is what I would represent to you was provided to me by
 17 defense counsel, which would be a whole other page prior to that
 18 same date. And this is proposed Exhibit 138.
 19 MR. PIKE: No objection.
 20 THE COURT: Be admitted. Go ahead.
 21
 22 (State's Exhibit 138 admitted into evidence.)
 23
 24 BY MS. LUZAICH:
 25 Q So as I show you State's Exhibit 138, does that indicate

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1 also from November '04 through February '05?
 2 A Yes.
 3 Q And that would be that page; and then the top page is the
 4 same one that we've already looked at which just continues from
 5 February '05 to March?
 6 A September.
 7 Q Okay. Now, can you look at those two pieces of paper and
 8 tell me, of all of that period of time, how many times did Norman
 9 Flowers or Keith Flowers pick up or drop off?
 10 A On here, not at all, but there are old team members that
 11 looked like they clocked in and clocked out the child because the
 12 child wasn't clocked in by the parent.
 13 Q Okay.
 14 A So we do have records that we save for three years.
 15 Q But that's not before you. Before you, on the first
 16 page, the one with most of the entries, how many entries are on
 17 that page, the earlier time frame? Sorry?
 18 A None from Norman.
 19 Q Right, but how many total entries are there, on the first
 20 page, the longer one, '04 through February '05?
 21 A Thirty-four.
 22 Q Thirty-four total entries on that page?
 23 A Yes.
 24 Q And zero of those were Norman Keith Flowers?
 25 A Correct.

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1 Q Now, on the second page, how many total entries are
 2 there?
 3 A Twenty-six.
 4 Q And of those 26, how many involve Norman Keith Flowers?
 5 A None, zero.
 6 Q Well, he picked up at some point, didn't he?
 7 A According to this, no.
 8 Norman?
 9 MR. PIKE: Keith Flowers.
 10 THE WITNESS: Oh, Keith.
 11 BY MS. LUZAICH:
 12 Q Sorry.
 13 A One, two, three -- one, two, three times between March of
 14 '05 and September of '05; and then the time before that, no Keith.
 15 Q Okay. So of 26 and 34, which is somewhere in the
 16 vicinity of 60, three times?
 17 A Three times.
 18 Q And your record, like I said, doesn't indicate who had
 19 custody of him?
 20 A Right.
 21 Q You have absolutely no idea where that child was on
 22 March 24th of 2005?
 23 A No.
 24 MS. LUZAICH: Thank you.
 25 THE COURT: Anything else, Mr. Patrick?

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1 MR. PATRICK: Yeah. Thank you, Judge.

REDIRECT EXAMINATION

2
 3 BY MR. PATRICK:
 4 Q If both parents come to pick up a child at your day care,
 5 would they both have to check in and check out that they've picked
 6 him up or dropped him off?
 7 A Just one.
 8 Q So it is possible that a lot of these times when Katrina
 9 actually signed in and signed out, Norman could have been with
 10 her, Keith could have been with her?
 11 A I guess it's possible.
 12 MS. LUZAICH: Objection; speculation.
 13 THE COURT: Sustained. Well, overruled.
 14 MS. LUZAICH: Anything can happen.
 15 THE COURT: I guess you can say it's possible, but we
 16 don't have any evidence one way or the other.
 17 BY MR. PATRICK:
 18 Q So from looking at the record, you have no way to tell if
 19 the times that Katrina dropped off or picked up Gabriel, whether
 20 or not Keith was with her?
 21 A Correct.
 22 MR. PATRICK: Thank you. That's all I have, Judge.
 23 THE COURT: Anything else? Okay.
 24 Thanks. Appreciate your testimony.
 25

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1
 2 (Witness excused.)
 3 THE COURT: Next.
 4 MR. PATRICK: Next will be Natalia Sena.
 5 THE CLERK: Please state your name and spell your first
 6 and last name for the record.
 7
 8 (Witness sworn.)
 9
 10 THE WITNESS: Natalia Sena; N-a-t-a-l-i-a, S-e-n-a.

NATALIA SENA

11
 12 called as a witness on behalf of the State,
 13 having been first duly sworn,
 14 was examined and testified as follows:
 15
 16

DIRECT EXAMINATION

17 BY MR. PATRICK:
 18 Q Good afternoon, Miss Sena.
 19 Where did you live in March of 2005?
 20 A At Palm Village Apartments.
 21 Q And do you remember the address?
 22 A No. I think 1001.
 23 Q And what street?
 24 A Pecos.
 25

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1 Q During the month of March of '05, did anything unusual
 2 happen to you or at the apartments?
 3 A I think it was when the girl downstairs died.
 4 Q Okay. And you say the girl downstairs.
 5 In relation to that apartment, where was your apartment?
 6 A Upstairs, across.
 7 Q Okay. I think we've heard it described as a little
 8 breezeway between the two buildings?
 9 A Uh-huh.
 10 Q Then there was a stairway?
 11 A Well, our apartment was upstairs and there was stairs
 12 right next to our door; they lived downstairs on the other side of
 13 the building. (Indicating)
 14 Q Okay. From the bottom of the stairs, how close would you
 15 say that that girl's apartment was from your staircase?
 16 A From the bottom of the stairs?
 17 Q Yeah.
 18 A From right here to right to the desk. (Indicating)
 19 Q So our desk or --
 20 A Yeah.
 21 MR. PATRICK: For the record, I'm guessing 15 feet.
 22 THE COURT: Fifteen, 20.
 23 BY MR. PATRICK:
 24 Q Do you remember the day the girl died?
 25 A Yeah.

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1 Q And did anything else happen to you that day?
 2 A I went to jail.
 3 Q So it was a memorable day all the way around?
 4 A Yeah.
 5 Q Now, that day, on March 24th, after the police came and
 6 everything, you gave a statement to the police?
 7 A Yeah; yes.
 8 Q Ma'am?
 9 A Yes. I'm sorry.
 10 Q Okay. Did you go up to them or did they come up to you?
 11 A They came up to us.
 12 Q Were you in your apartment?
 13 A Yes.
 14 Q And what happened? They just knocked on the door?
 15 A They knocked on the door and they asked if we had seen
 16 anything go on downstairs.
 17 Q Okay. And do you remember if you had seen anything? Did
 18 you tell them if you saw anything?
 19 A I told them that I had seen a guy downstairs.
 20 Q Okay. Do you remember how you described the guy to the
 21 police?
 22 A That he was tall and skinny.
 23 Q Anything else?
 24 A I believe he was wearing like a flannel shirt or
 25 something.

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1 Q Okay. If you were to see a picture of this guy, do you
 2 think you would be able to recognize him?
 3 A Probably not.
 4 Q Probably not. Okay.
 5 Have you been showed a picture recently?
 6 A I've been showed quite a few pictures.
 7 Q Okay. Did any of them jar your memory as to who that guy
 8 might be?
 9 A Possibly, but it was a long time ago.
 10 Q Okay. Did you see anybody else around your apartment
 11 that day?
 12 A I seen a lot of people there that day. The guy that
 13 lived downstairs from me, I seen him.
 14 Q Okay. Do you remember what his name was?
 15 A Chicken.
 16 Q Okay. Do you remember when it was that you saw Chicken?
 17 A I know I seen him every day. I seen him before I went to
 18 go gamble and that was before 12 o'clock and I thought I seen him
 19 when I came back, but I can't -- I thought I seen him then.
 20 Q What time did you come back?
 21 A Twelve o'clock.
 22 Q So you think you saw him after 12 o'clock by your
 23 apartment?
 24 A I think so, uh-huh.
 25 Q When you saw Chicken, was he there with anybody?

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1 A Well, yeah. They were on the other stairs though, the
 2 apartments across from ours.
 3 Q Okay.
 4 A With some other guys.
 5 Q All right. Was he with that same guy that you described?
 6 A The one I had seen that day, yeah.
 7 Q Okay. After you came back from gambling, the tall guy
 8 that you saw, with the flannel shirt on, did you see him doing
 9 anything you thought was suspicious?
 10 A I just seen him where her apartment was at.
 11 Q Where whose apartment was?
 12 A The girl who died.
 13 Q Okay. I'm sorry. What did you see?
 14 A I don't recall if I seen them right when I was coming
 15 home or if I heard something and I looked outside. I thought I
 16 was in my apartment and I looked outside and seen somebody. I
 17 looked down, just like right there, like he was probably knocking
 18 on her door or he had just come out of her house.
 19 Q Okay. How was he acting, in your opinion?
 20 A Like he was creeping around.
 21 Q Would you explain that?
 22 A He was just looking around to see who was around, the
 23 same as I was looking around to see who was there.
 24 THE COURT: Excuse me.
 25 MS. LUZAICH: Bless you.

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1 BY MR. PATRICK:
 2 Q Who lived with you in your apartment?
 3 A Alfonso Sanchez lived with me; Jesus Navaro stayed with
 4 us; and two other people, they were staying there. They didn't
 5 live there. They had just been in for like less than a week.
 6 Q Okay. I'm going to show you what's been marked as
 7 Defense B.
 8 Do you recognize this individual?
 9 A Yes.
 10 Q Who is that?
 11 A He's my kid's cousin.
 12 Q And his name is?
 13 A Jesse.
 14 Q Or his full name is Jesus?
 15 A Yes.
 16 Q Is this the same gentleman that you were talking about
 17 living with you at that time?
 18 A Yeah.
 19 Q Okay. I believe you said that that day that --
 20 THE COURT: Do you want to admit that, Mr. Patrick?
 21 MR. PATRICK: It's already admitted, Judge.
 22 THE COURT: Okay.
 23 MS. LUZAICH: Objection; same objection. It's
 24 conditionally admitted.
 25 THE COURT: It's in until it's out.

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1 Go ahead.
 2 BY MR. PATRICK:
 3 Q I think you testified earlier that another reason you
 4 remembered that day is because you got arrested?
 5 A Yeah.
 6 Q How long were you in jail?
 7 A I don't recall if it was three -- two or three days.
 8 Q Okay. And when you got out of jail, you came home?
 9 A When I got out of jail, I went to my mom and dad's, where
 10 my kid's dad was at; and then -- I think it was that night that I
 11 got out, early in the morning. It was that day, that morning, we
 12 went back to the apartment to get our stuff because everybody had
 13 got kicked out of the apartment that day.
 14 Q Okay. And that day when you came back to your apartment,
 15 did you see Jesse?
 16 A Yep.
 17 Q And was Jesse holding anything?
 18 A He wasn't holding -- there was four apartments upstairs
 19 and four apartments downstairs and there was like a patio in
 20 between like all the apartments. He was outside and he had a
 21 radio with him.
 22 Q Okay. I'm going to show you what's been marked as
 23 State's proposed Exhibit 136. It's just a drawing, but the radio
 24 he's holding, is it similar to that?
 25 A I don't recall.

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1 Q You don't recall?
 2 A I remember he just had a radio.
 3 Q Okay. Did the radio have detachable speakers that you
 4 saw him with?
 5 A Yes.
 6 Q Did Jesse tell you where he got that radio?
 7 A I asked him --
 8 MS. LUZAICH: Objection; hearsay.
 9 MR. PATRICK: Judge, it's a statement against penal
 10 interest.
 11 THE COURT: Might be.
 12 BY MR. PATRICK:
 13 Q What did he tell you?
 14 A I asked him where he got it from.
 15 Q What did he tell you?
 16 A He told me he got it from the apartment downstairs, the
 17 girl's downstairs apartment.
 18 Q Okay. Also when you came back from jail, did you notice
 19 if there was anything missing from your apartment?
 20 A If there was stuff missing from our apartment?
 21 Q Your apartment.
 22 A Yeah, there was stuff missing.
 23 Q Could you tell us about that.
 24 A What was missing from our apartment?
 25 Q What was missing.

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1 A Drugs.
 2 Q Okay. And these specific drugs, were they hidden some
 3 place where everybody would not know where they're at?
 4 A I put them in the speaker before I got arrested.
 5 Q Did you ever come to a conclusion as to who stole them?
 6 MS. LUZAICH: Objection.
 7 THE COURT: Sustained.
 8 MR. PATRICK: Withdrawn.
 9 That's all I have, Judge.
 10 THE COURT: Questions?
 11 MS. LUZAICH: Thank you.

CROSS-EXAMINATION

14 BY MS. LUZAICH:
 15 Q Miss Sena, at the time that you were living in the Palm
 16 Village Apartments in 2005, did you participate in selling drugs?
 17 A Yes.
 18 Q Who did you participate in selling drugs with?
 19 A With my kid's dad, Alfonso Sanchez.
 20 Q Is he also called Poncho?
 21 A Yes.
 22 Q Now, earlier when you said that Jesse is your kid's
 23 cousin, would he also be Poncho's cousin?
 24 A He's Poncho's first cousin.
 25 Q Okay. So back in March of 2005 when you were living in

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1 the apartments and helping sell drugs, were you using drugs as
 2 well?
 3 A Yes.
 4 Q What kinds of drugs? What was your drug of choice at the
 5 time?
 6 A Crystal meth.
 7 Q Okay. Now, today, in whatever month this is, October of
 8 2008, are you clean and sober?
 9 A Yes.
 10 Q And have you been for quite some time?
 11 A Yes.
 12 Q So back in March of 2005 when you were using crystal
 13 meth, how often?
 14 MR. PIKE: Objection; assumes facts not in evidence.
 15 MS. LUZAICH: She just said that.
 16 THE COURT: She just said that.
 17 MR. PIKE: I'm sorry.
 18 BY MS. LUZAICH:
 19 Q How often did you use it?
 20 A All day long.
 21 Q Every day?
 22 A Every day, all day long.
 23 Q And you might find this hard to believe: I don't use
 24 that. But does crystal meth, when you use it, affect your ability
 25 to perceive things?

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1 A Like what do you mean?
 2 Q Well, does it affect your memory? Do you forget things?
 3 A Now I do. Back, then I remember everything.
 4 Q You thought you remembered everything?
 5 A Yeah, well, I guess.
 6 Q Okay. When you say that you would do crystal meth all
 7 day every day, was that the only drug of choice at the time?
 8 A That's all I did.
 9 Q How about drinking, did you ever drink?
 10 A No.
 11 Q So when you would go gamble, for example, on the morning
 12 of March 24th of 2005, when you went gambling, had you been
 13 drinking at all?
 14 A No.
 15 Q No alcohol?
 16 A I don't drink.
 17 Q Had you used the crystal meth that day before you went
 18 gambling?
 19 A Yes, ma'am.
 20 Q And when you got back from gambling?
 21 A Yes.
 22 Q Okay. And now, as you are sitting here and you say you
 23 think maybe you went or came back around noon, could you be
 24 mistaken as to the time?
 25 A I could be. I don't think so, because when I came back I

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1 was really sure it was 12 o'clock.
 2 Q You are really sure after having used crystal meth for
 3 quite some time?
 4 A I guess as sure as I could have been, yes.
 5 Q Okay. What does crystal meth do to you? Like what kind
 6 of high do you get?
 7 A Makes you not go to sleep.
 8 Q Does it make you paranoid?
 9 A Yeah. It makes you think the cops are always around.
 10 Q Okay. And were you always looking around to see if there
 11 were cops around, because, one, you were paranoid, right, because
 12 you are using it, and, two, because you are selling it?
 13 A Right.
 14 Q And is that also why you are kind of looking outside the
 15 apartment that day?
 16 A That is exactly why I was looking outside.
 17 Q So you saw some tall, skinny guy. Didn't he try to sell
 18 you something that day?
 19 A I tried to buy a weed from him that day.
 20 Q You tried to buy weed from him. Okay.
 21 Didn't you say a minute ago you don't use weed?
 22 A It wasn't for me.
 23 Q Who was it for?
 24 A It was more my kid's dad.
 25 Q It was for Poncho?

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1 A Yes.
 2 Q Is that yes, it was for Poncho?
 3 A Yes.
 4 Q You have to answer out loud for our court reporter.
 5 A I'm sorry. Yes.
 6 Q That's okay.
 7 So Poncho uses weed.
 8 Does he also use methamphetamine?
 9 A Yes.
 10 Q At what point was it that you tried to buy weed for him,
 11 before you gambled or after you gambled?
 12 A Before.
 13 Q Before. Do you know what time you went to gamble?
 14 A No.
 15 Q No. Didn't look at your watch?
 16 A No.
 17 Q And when you go to gamble, you go to a bar, local bar?
 18 A At the Point After.
 19 Q The Point After. Probably not a lot of clocks or the
 20 wall in there?
 21 A Probably not.
 22 Q So you have no idea what time you went?
 23 A No.
 24 Q Not really sure about what time you got back?
 25 A I thought I got back at 12 o'clock.

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1 Q You saw Chicken, you said, that morning, that morning
 2 before you went gamble?
 3 A Uh-huh.
 4 Q Is that a yes?
 5 A Yes. I'm sorry.
 6 Q In addition to having to answer out loud, we need a yes
 7 or no because she has a yes button and a no button, but no uh-huh
 8 button.
 9 A Yes.
 10 Q You saw Chicken, every day you said, because he lived
 11 there?
 12 A Yes.
 13 Q What about the girl who lived downstairs, Sheila Quarles,
 14 did you know her?
 15 A I didn't know her, but I had seen her.
 16 Q You had seen her, knew her by face?
 17 A Yeah. I knew she lived downstairs, yes.
 18 Q Okay. Did you see her that morning?
 19 A I didn't see her that morning.
 20 Q Did you see her that afternoon after you got home?
 21 A I seen her when all that stuff had happened.
 22 Q Okay. So before being deceased, did you see her alive at
 23 all that day?
 24 A Oh, I didn't see her walking around or nothing, no, I did
 25 not.

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1 Q Liz is one of them, the girl Liz?
 2 A Yeah.
 3 Q And did she go downstairs and talk to 911?
 4 A Yes.
 5 Q And did she have a guy with her?
 6 A Her kid's dad was with her too.
 7 Q And kids as well in the apartment?
 8 A Her one kid.
 9 Q Okay. Also, that day, you said you went to jail.
 10 What did you go to jail for?
 11 A Trespassing, a warrant for trespassing.
 12 Q Something that had occurred previously?
 13 A Way previously, yeah.
 14 Q And did you have something in your possession before you
 15 went to jail that you got rid of?
 16 A Oh, yeah. I had a pipe.
 17 Q Where was the pipe?
 18 A It was in my bra.
 19 Q And what did you do with it?
 20 A I shoved it in the couch.
 21 Q Because you knew the cops were coming up to your
 22 apartment?
 23 A I was already handcuffed when I did that.
 24 Q Okay. The person that you saw that you tried to buy the
 25 weed from, did you actually buy the weed from him?

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1 Q Did you hear anything coming out of that apartment?
 2 A No. All I remember is her mom outside. That's it.
 3 Q What did you hear?
 4 A I heard her mom screaming.
 5 Q Upset, hysterically upset?
 6 A Yes.
 7 Q And because you are kind of paranoid and look for cops,
 8 if there had been loud noises downstairs, you might have heard?
 9 A Yes.
 10 Q Do you know what time it was that you heard the mom?
 11 A I don't. I wasn't home for very long, I don't think.
 12 Q So you think that it was not long after you got home from
 13 gambling that you saw the mom?
 14 A It wasn't very long.
 15 Q Her mom?
 16 A I hadn't been home very long when I heard her mom scream.
 17 Q And less than an hour?
 18 A About, about less than an hour, an hour or less.
 19 Q Okay. Are you one of the ones who went downstairs and
 20 tried to help calling 911 and things of that nature?
 21 A No. I went downstairs to see what the girl that was
 22 staying with us was doing.
 23 Q Okay. So who was living in your apartment?
 24 A Poncho, me, Jesse and two other people were staying with
 25 us, like off --

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1 A No.
 2 Q How come?
 3 A Because he was an asshole.
 4 Q What do you remember about that?
 5 A He was a jerk. He was trying to -- I guess maybe he
 6 thought because I was Mexican.
 7 THE COURT: Seems like we're getting a little far afield.
 8 MR. PIKE: Yes, Your Honor.
 9 BY MS. LUZAICH:
 10 Q The time that you looked up and you saw him, was that
 11 before you tried to buy the dope or after?
 12 A When I seen him?
 13 Q You said you looked downstairs and saw him --
 14 A It was way after.
 15 Q You saw him way after you tried to buy the dope?
 16 A When I looked and I seen him downstairs, it was way
 17 afterwards.
 18 Q Okay. And you said you saw him downstairs. You never
 19 saw him in that girl's apartment, did you?
 20 A No.
 21 Q You never actually saw him walk out of that girl's
 22 apartment, did you?
 23 A No.
 24 Q You never actually saw him even near the door with the
 25 door open, did you?

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1 A I seen him by her doorway.
 2 Q Right, but her door was closed, right?
 3 A I couldn't even see her door from there. He could have,
 4 for all I know, been coming out of the other apartment --
 5 Q Because there was another apartment?
 6 A There is two right side by side to each other.
 7 Q Right next door. And he came in the other one?
 8 Is that yes?
 9 A Yes, I'm sorry.
 10 MS. LUZAICH: Okay. Thank you.
 11 THE COURT: Anything else?
 12 MR. PATRICK: Yes, Judge.

REDIRECT EXAMINATION

15 BY MR. PATRICK:
 16 Q When you got arrested that day and they took you to jail,
 17 what's the daily ration of meth that the jail gives you?
 18 A Huh?
 19 Q How much meth does the jail give you while you are in
 20 jail?
 21 A None.
 22 Q Okay. So the two or three days you are in jail, you had
 23 no access to meth?
 24 A No.
 25 Q So the day you got out and you came back and you saw

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1 Q But you said you could not see her actual apartment door?
 2 A No.
 3 Q So you have no idea whether it was open or closed?
 4 A I have no idea.
 5 MR. PATRICK: Court's indulgence.
 6 BY MR. PATRICK:
 7 Q The guy with the plaid shirt, had you ever seen him
 8 hanging out with Chicken?
 9 A Yeah, I seen him hanging out with all of the guys
 10 downstairs.
 11 Q On a daily basis?
 12 A I didn't say that I seen him every day, but I had seen
 13 him before.
 14 Q Okay. Several times?
 15 A More than once, yeah.
 16 MR. PATRICK: Okay. Thank you.
 17 That's all I have, Judge.
 18 THE COURT: Anything else?
 19 MS. LUZAICH: Just briefly.

RECROSS-EXAMINATION

22 BY MS. LUZAICH:
 23 Q Were you told that it's possible that Chicken was at
 24 work?
 25 A Was I told that? It's possible.

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1 Jesse, you had been clean for two to three days?
 2 A Yes.
 3 Q Okay. Now, did you see Chicken after you got home from
 4 gambling, by your apartment?
 5 A I thought I had seen him.
 6 Q Okay. Do you remember talking to my investigator, Joe
 7 Perez?
 8 A Yes.
 9 Q Do you remember telling him that you saw Chicken after
 10 12?
 11 A Yes.
 12 Q And do you remember telling him that you were certain it
 13 was after 12?
 14 A Yes.
 15 Q Why all of a sudden are you hedging that now?
 16 A Because when I talked to the other people, she told me
 17 that he was at work, so maybe I didn't see him. I don't know.
 18 Q So you are thinking you didn't see him specifically
 19 because of something somebody else told you, not because of your
 20 memory?
 21 A Yes.
 22 Q Thank you.
 23 Now, also you said that you saw the tall guy with the
 24 plaid shirt down near the girl's apartment?
 25 A Yes.

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1 Q Possible that Chicken was at work?
 2 A That he had punched in a time clock or something like
 3 that.
 4 Q What makes you think that it was 12 o'clock?
 5 A I just remember it being 12 o'clock. That's one thing --
 6 a lot of things were blurry, but I remember that it was 12 o'clock
 7 when I came home.
 8 Q But what causes you to remember that? I mean, did you
 9 look at a clock?
 10 A I never looked at a clock.
 11 Q Take some medicine?
 12 A I must have looked at a clock or might have been waiting,
 13 but I don't remember. It was a long time ago, but out of
 14 everything that happened that day, the 12 o'clock thing is the
 15 only thing I'm certain about. I know it was 12 o'clock.
 16 Q Okay. But you think that you heard the mom within an
 17 hour of -- and maybe even less than an hour of your coming home at
 18 12 o'clock.
 19 Okay. So if the mom was not home within an hour of 12
 20 o'clock, could you be mistaken about that?
 21 A I could be.
 22 THE COURT: Anything else?
 23 MR. PATRICK: Yes.
 24 THE COURT: Sorry.
 25 BY MS. LUZAICH:

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1 Q Did you see Chicken after you heard mom?

2 A No.

3 Q Not at all?

4 A I was trying to stay in the house after that.

5 MS. LUZAICH: Nothing further.

6 MR. PATRICK: Just one, Judge.

7

8 FURTHER REDIRECT EXAMINATION

9 BY MR. PATRICK:

10 Q Did you see Chicken between the time you got home and
11 between the time you heard the mom screaming?

12 A What do you mean by the time I got home?

13 I thought I had seen him when I got home.

14 Q Okay.

15 A That's what I thought.

16 THE COURT: Thanks. You are excused.

17 Call your next witness.

18 THE WITNESS: I am done?

19 THE COURT: Yeah, you are all done. Just go on home.

20 Have a nice day.

21

22 (Witness excused.)

23

24 MR. PATRICK: Martha Valdez, Judge.

25

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1 instead.

2 THE COURT: Okay. Just go on outside. We're going to
3 get an interpreter. We're going to do another witness while we're
4 waiting for the interpreter to come up here and we'll bring you
5 back in and do it in Spanish.

6 Fair enough?

7 THE WITNESS: Uh-huh.

8 THE COURT: All right.

9 Mr. Patrick, who are you calling?

10 MR. PATRICK: Veronica Sigala.

11 Judge, I'm sorry. Mr. Pike is checking; she may need the
12 interpreter also.

13 THE COURT: Okay. Come on up here, ma'am.

14

15 (Witness sworn.)

16

17 THE CLERK: Thank you. Please be seated.

18 State your full name and spell your first and last name
19 for the record.

20 THE WITNESS: Veronica Sigala; V-e-r-o-n-i-c-a,
21 S-i-g-a-l-a.

22 THE COURT: Go ahead.

23

24 VERONICA SIGALA

25 called as a witness on behalf of the State,

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1 (Witness sworn.)

2

3 THE CLERK: Please state your name and spell your first
4 and last name for the record.

5 THE WITNESS: Martha Valdez; M-a-r-t-h-a, V-a-l-d-e-z.

6 THE COURT: Okay.

7 THE CLERK: Thank you.

8 MR. PATRICK: Good afternoon, Miss Valdez.

9 THE WITNESS: Good afternoon.

10 MR. PATRICK: Would you be more comfortable with a
11 Spanish interpreter?

12 THE WITNESS: Yes.

13 THE COURT: Do we have one?

14 How well do you speak English?

15 THE WITNESS: Well --

16 THE COURT: How long have you lived in this country?

17 THE WITNESS: I've been living here 20 years. I can
18 speak it, but when I get nervous, it's like I get mixed up.

19 MR. PATRICK: That's why we requested the interpreter
20 this morning, Judge.

21 THE COURT: Well, we'll call them now. They're on their
22 way up, right?

23 We'll take a break.

24 Do you have any witnesses besides this one?

25 MR. PATRICK: Yes, Judge. We could call Veronica Sigala

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1 having been first duly sworn,
2 was examined and testified as follows:

3

4 DIRECT EXAMINATION

5 BY MR. PATRICK:

6 Q Good afternoon, Miss Sigala.

7 A Good afternoon.

8 Q What is your occupation?

9 A I'm the assistant manager at the apartments, Palm Village
10 Apartments.

11 Q Okay. And what is the address?

12 A 1001 North Pecos Road, Las Vegas, Nevada, 89101.

13 Q And were you working there in March of 2005?

14 A Yes.

15 Q Around that time, March of 2005, did you have a
16 maintenance employee named Norman or Keith Flowers?

17 A Norman Flowers, it does sound familiar, but I don't
18 remember.

19 Q Okay. Do you recognize this gentleman sitting next to
20 me? (Indicating)

21 A No.

22 Q Did he ever work maintenance for your apartments while
23 you worked there?

24 A No.

25 Q Was he ever any type of an employee at your apartments

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1 during the time that you have worked there?

2 A No.

3 Q I want to talk to you a little bit about March 24th,

4 2005.

5 A Okay.

6 Q Do you remember that day?

7 A March 2004?

8 Q Would it help recollect -- refresh your memory if I told

9 you that was the day that the girl died in the apartment complex?

10 A Okay. Yes, uh-huh.

11 Q Okay.

12 A Uh-huh.

13 Q Do you remember that day when the girl died?

14 A Yes.

15 Q Was there anything else unusual that happened earlier

16 that day in the early morning hours?

17 A No.

18 Q Were you ever notified of a burglary attempt that

19 happened that day?

20 MS. LUZAICH: Objection; hearsay.

21 THE COURT: Why would it be hearsay?

22 Sustained.

23 THE WITNESS: No.

24 BY MR. PATRICK:

25 Q I'm going to show you a picture and I want to ask you if

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1 Q Besides the breaking into the cars, what did you see him

2 do?

3 A Selling stuff, like car stereos.

4 MS. LUZAICH: Objection, foundation as to time and place.

5 BY MR. PATRICK:

6 Q Around this time, March of 2005, did you ever see him

7 threaten anybody?

8 A No.

9 MS. LUZAICH: Objection, leading.

10 THE COURT: What's the relevance of that?

11 MR. PATRICK: Propensity towards violence, Judge

12 THE COURT: No. Sustained.

13 BY MR. PATRICK:

14 Q Do you know what apartment he was staying in?

15 A Like I said, he used to break into the vacant apartments

16 and just stay there.

17 Q And this was around March of 2004?

18 A Yes.

19 MS. LUZAICH: Four?

20 MR. PATRICK: 2005. I'm sorry.

21 Court's Indulgence.

22 BY MR. PATRICK:

23 Q This would all be around the time that the lad / died in

24 the apartments?

25 A Yes.

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1 you recognize this gentleman.

2 Do you recognize him?

3 A Yes.

4 Q How do you recognize him?

5 A He used to break into the apartments and break into

6 people's cars and --

7 MS. LUZAICH: Well, objection; foundation.

8 THE COURT: How did you know that? Did you see it

9 happen?

10 THE WITNESS: Yeah, I used to walk the property.

11 THE COURT: You saw him do it?

12 THE WITNESS: Yeah.

13 THE COURT: Okay.

14 MS. LUZAICH: Well, foundation as to time.

15 THE COURT: In relation to March 4th, is this at or about

16 that same time?

17 THE WITNESS: Yes.

18 THE COURT: Okay. Overruled.

19 Go ahead.

20 BY MR. PATRICK:

21 Q Okay. And did he live in your apartment complex?

22 A No.

23 Q Okay. Do you know if he stayed with people in your

24 apartment complex?

25 A Yes.

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1 MR. PATRICK: That's all I have, Judge.

2 THE COURT: Cross.

3

4 CROSS-EXAMINATION

5 BY MS. LUZAICH:

6 Q Did you call the police and tell the police?

7 A Yes.

8 Q All the time?

9 A Not all the time, because of my days off; or sometimes I

10 would talk to him and just tell him to leave the property and he

11 would leave the property.

12 Q How often did you call the police?

13 A I'd say about three or four times.

14 Q You said that there were times that you talked to him

15 yourself?

16 A Yes.

17 Q So you would contact him and tell him to leave and he

18 would go?

19 A Yes, he would leave.

20 Q I mean, would he come back at some point?

21 A Yeah.

22 Q But he would leave when you told him to leave?

23 A Yeah; uh-huh.

24 Q You did not see him in the apartment where the young girl

25 died, did you?

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1 A No.

2 Q How many times do you think that you confronted him

3 yourself and told him to leave?

4 A About seven, eight times.

5 Q How many times do you think you called the police?

6 A I'd say about three or four.

7 Q Did they ever arrest him?

8 A He got arrested, but then he got out. He would get out

9 of jail.

10 Q How many times did he get arrested, each time you called

11 them?

12 A Yeah, but they never found anything on him and they would

13 just let him go.

14 Q The times that you called the police on him and they

15 arrested him or let him go, whatever, did they ever find property

16 on him?

17 MR. PATRICK: Objection; speculation.

18 MS. LUZAICH: Did you ever see them find property on him?

19 MR. PATRICK: Withdraw the objection.

20 THE WITNESS: No.

21 BY MS. LUZAICH:

22 Q Essentially what you saw him do is stay in vacant

23 apartments when he shouldn't have?

24 A Yes; uh-huh.

25 MS. LUZAICH: Thank you.

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1 MS. LUZAICH: Objection, relevance.

2 THE COURT: What's the relevance?

3 MR. PATRICK: It shows her state of mind on what this guy

4 did to her and her apartment complex.

5 MS. LUZAICH: That's not relevant.

6 THE COURT: Overruled.

7 Sustained. That isn't relevant.

8 MR. PATRICK: What did you call him?

9 MS. LUZAICH: Objection; relevance.

10 THE COURT: Sustained.

11 Her opinion of him is irrelevant.

12 MR. PATRICK: That's all I have, Judge.

13 THE COURT: Okay. Thanks. You are excused.

14

15 (Witness excused.)

16

17 THE COURT: Do we have our interpreter here?

18 Mr. Pike, do you have anybody else or is this other one

19 your last witness?

20 MR. PIKE: We have two witnesses. We need interpreters

21 on both of them.

22 The interpreter hasn't arrived.

23 THE COURT: Do you need the interpreter for both of these

24 witnesses?

25 MR. PIKE: Yes.

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1 THE COURT: Okay. Thanks. Appreciate your testimony.

2 MR. PATRICK: Sorry, Judge.

3

4 REDIRECT EXAMINATION

5 BY MR. PATRICK:

6 Q Did you ever see him in the apartments around where the

7 girl died?

8 A Yes.

9 Q When you would confront him and tell him to leave, how

10 would he react to you?

11 A He would be like: If I don't leave, what are you going

12 to do? I would say I'm going to call the cops and he would leave

13 and the same day come back and that's when I called the cops

14 sometimes.

15 Q Okay. Do you remember talking to my investigator, Joseph

16 Perez about Mr. Navaro?

17 A Yes; uh-huh.

18 Q Okay. And do you remember the first time he showed you a

19 picture of Mr. Navaro?

20 A The last time he went, I don't remember the --

21 Q No, just in general, do you remember the first time he

22 showed you a picture?

23 A Yes.

24 Q And what was your first reaction? What was the first

25 thing you told my investigator about him?

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1 THE COURT: We just have the one left and you need the

2 interpreter. Okay. We'll be at ease. It should be just a

3 second. We have a court interpreter office downstairs. We went

4 over a hundred English and Spanish interpreters that work there

5 and they actually have either full-time employees or part time

6 people that are available that speak every language in the United

7 States -- I mean, every language in the world. So they have Indo

8 Chinese, Tagalog. You name it, they've got it. But they're not

9 always down there.

10 The way this works is this: Mr. Patrick will ask the

11 question in English. The witness won't say anything. The

12 interpreter will ask the question in Spanish; she'll reply back in

13 Spanish; and then the interpreter will give the answer in English.

14 You are to just listen to Mr. Patrick's English and hear

15 English and deem that the witness' answer. The interpreters are

16 all certified. They have to go through a real difficult skills

17 test. They work for the Court. They are very credible. And

18 under the law, whatever the interpreter says is deemed the answer.

19

20 (Recess in proceedings.)

21

22 THE COURT: Mr. Pike, do you still intend to call in one

23 witness tomorrow?

24 MR. PIKE: Yes, Your Honor. I anticipate it won't be any

25 longer than five to ten minutes.

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1 THE COURT: Do you have any objection reading the
2 instructions tonight?
3 MR. PIKE: Absolutely. I think that would be a good use
4 of the Court's time.

5 THE COURT: Here's what we got: There is one -- other
6 than this lady who isn't going to be too long, there is one more
7 witness the defense has. That witness is in prison and the prison
8 has to bring him up, from whichever prison he's housed.

9 MR. PIKE: Indian Springs.

10 THE COURT: They have made arrangements to bring him
11 first thing tomorrow morning. So, normally, we would put on that
12 witness, it would be about 4:30; I would read you these
13 instructions for about 20 minutes; you go home. We come back and
14 just argue the case in the morning.

15 But to coordinate with the prison, just so we don't waste
16 any time, we're going to take this witness -- they won't quite
17 have rested. Everybody is going to agree I can give you the
18 instructions so we will get a decent day's work in. Tomorrow, we
19 will take that witness. It will be literally no more than ten
20 minutes. And then we will hear argument from the State, the
21 defense and the State.

22 We'll start at 9:30. I'm guessing we're going to be done
23 by 12 or a little after, but the way we're going to do it is we're
24 just going to start and go right through. So get a good breakfast
25 and be ready to go.

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1 One little benefit is that you will then be deliberating
2 at the lunch hour and so the county buys you lunch. So what we're
3 going to do is we will have you come in about 9:15 and you can
4 place your lunch orders with Officer Moon. And when you get to
5 deliberation, whether that be 12 or 12:45, your lunch will be
6 there waiting for you and you can go ahead and do your work.

7 So that's kind of the schedule and that's kind of why
8 it's a little out of whack, but we deal with doctors,
9 professionals or people out of prison, who just can't walk up
10 whenever it's convenient for the lawyers to come up and we have to
11 kind of work around it a little bit.

12 Let's see -- we'll get decent use of our time today and
13 tomorrow.

14 MR. PIKE: Thank you.

15 THE COURT: Okay.

16 THE CLERK: Please be seated.

17 THE COURT: Ma'am, when you answer, you answer to her in
18 Spanish. Don't answer in English because if you answer in
19 English, she's going to answer in Spanish. See?

20 THE CLERK: Please state your name for the record.

21 THE INTERPRETER: Martha Valdez.

22 THE COURT: She spelled it earlier.

23 Go ahead, counsel.

24

25

MARTHA VALDEZ

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1 called as a witness on behalf of the State,
2 having been first duly sworn,
3 was examined and testified as follows:
4

5
6 DIRECT EXAMINATION

7 BY MR. PATRICK:

8 Q Good afternoon, Miss Valdez.

9 A Good afternoon.

10 Q Where were you living the end of March of 2001?

11 A I was living around Pecos and Washington.

12 Q Do you remember the name of the apartments?

13 A I believe it was Palm Village, something like that.

14 THE COURT: Miss Valdez, don't listen to him. You just
15 listen to her. She's going to listen to him. You listen to her.

16 Go ahead, Mr. Patrick.

17 MR. PATRICK: Thank you.

18 BY MR. PATRICK:

19 Q Right after you moved into those apartments, did
20 something unusual happen that night?

21 A Yes.

22 Q And could you explain what that was.

23 A I think it was either on the first or second day that I
24 had moved there, somebody came into my apartment.

25 Q Do you remember approximately what time of day that was?

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1 A It was after midnight.
2 Q Okay. What happened when this person entered your
3 apartment?
4 A He stopped in my doorway off my bedroom. And he saw me
5 and I told him to get out or otherwise I would call the police.

6 Q Okay. What door did he come in to get into your
7 apartment?

8 A Through the balcony door.

9 Q And would that have been a sliding glass door?

10 A Yes.

11 Q And how was the lighting around your balcony?

12 A The balcony light was on and a lot of light came into my
13 bedroom.

14 Q Okay. So did you get a good look at this person?

15 A Yes.

16 Q After you told him that you were going to call the
17 police, what did he do?

18 A He turned around and he took off running.

19 Q Did you ever see him again in the apartment complex?

20 A No.

21 Q In the day or two that you had moved in prior to that,
22 had you seen him in the apartment complex?

23 A No, not that either.

24 Q Okay. Did you report that to the management of the
25 apartments?

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1 A Yes. The next day when they opened the office.
 2 Q Okay. Did you report it to the police?
 3 A No.
 4 Q Do you know if the apartment complex notified the police?
 5 A No, I don't know.
 6 Q Okay. If I was to show you a picture of the man that
 7 broke into your apartment that night would you recognize him?
 8 A Yes.
 9 MR. PATRICK: I'm going to approach -- may I approach,
 10 Judge?
 11 THE COURT: Sure.
 12 BY MR. PATRICK:
 13 Q I'm going to show you what's been marked as Defense
 14 Exhibit B.
 15 Do you recognize this as the man that broke into your
 16 apartment that night?
 17 A Yes.
 18 Q And can you tell me what his name is?
 19 A I didn't know his name.
 20 Q Okay. I mean, can you read what his name is for me now?
 21 MS. LUZAICH: Well, objection. She doesn't know that
 22 that's his actual name.
 23 MR. PATRICK: All right. Withdrawn.
 24 BY MR. PATRICK:
 25 Q And this is the man that you saw break into your

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1 Q And when you told him to leave, he left?
 2 A Yes.
 3 MS. LUZAICH: Thank you.
 4 THE COURT: Okay. Redirect.
 5
 6 REDIRECT EXAMINATION
 7 BY MR. PATRICK:
 8 Q How long was he in your apartment before you made verbal
 9 contact with him?
 10 A I think less than two minutes.
 11 MR. PATRICK: That's all I have, Judge.
 12 THE COURT: Thanks, Miss Valdez. Okay. You are all
 13 done. Appreciate your testimony.
 14 Thanks, Miss Interpreter.
 15
 16 (Witness excused.)
 17
 18 THE COURT: I think less than two minutes.
 19 MR. PATRICK: That's all I have, Judge.
 20 THE COURT: Thanks miss Valdez. Okay. You are all done.
 21 /PERMIT your testimony.
 22 Thanks miss Interpreter interpret /SPWERT you are well
 23 kill.
 24
 25

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1 apartment that night? (Indicating)
 2 A Yes.
 3 Q Now, did anything else unusual happen in your apartment
 4 complex later that day?
 5 A Yes. When I got up, I went to work. When I got back, I
 6 saw that the police were all around and I asked my boyfriend, who
 7 was living with me, what was going on.
 8 MS. LUZAICH: Objection if it's going to be he told me.
 9 THE COURT: Sustained.
 10 BY MR. PATRICK:
 11 Q Did it ever come to your knowledge why the police were at
 12 your apartment complex?
 13 A They were investigating the death of the girl.
 14 MR. PATRICK: Thank you. That's all I have, Judge.
 15 THE COURT: Questions?
 16 MS. LUZAICH: Thank you.
 17
 18 CROSS-EXAMINATION
 19 BY MS. LUZAICH:
 20 Q Miss Valdez, when he broke in or came into your
 21 apartment, how come you didn't call the police?
 22 A I didn't think it was necessary because he didn't take
 23 anything and he just took off quickly.
 24 Q Okay. So he didn't take anything from your apartment?
 25 A No.

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1 THE COURT: You have one more witness that you are
 2 going to call tomorrow.
 3 MR. PIKE: That's correct, Your Honor.
 4 THE COURT: Both sides agree that we can go ahead and
 5 read them the instructions so we don't waste time?
 6 MR. PIKE: Yes.
 7 MS. LUZAICH: Yes.
 8 THE COURT: Okay. Here is the way this works: It's my
 9 job to instruct you on the law that would apply to any conceivable
 10 spin I can conceive that you could put on the facts.
 11 You decide the facts, I give you the law, and then you
 12 put the two together make a decision.
 13 Understand this: I'm just the messenger. I don't make
 14 the law. I just go to these books and pull out each law that
 15 might apply to this situation and then give it to you.
 16 What the law says is I have to read you each of the
 17 statutes that could be applicable.
 18 What I have found after years and years of doing this is
 19 that the easiest way to do it is if I give you each a copy. When
 20 I read it you don't have to try to take notes. It makes a lot
 21 more sense as we go along.
 22 Tomorrow, when the lawyers argue they may say: Look at
 23 Instruction 10 or 29 or some number, you will have it right in
 24 front of you.
 25 Most importantly, when you go back to deliberate instead

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1 of just having this one set that's mine, you will each have your
2 own set that speeds things up.

3 I know you can all read. My preference would be to say
4 raise your hand when you are done, but they don't allowed to do
5 that, so bear with me. There are 21.

6 It is now my duty as judge to instruct you in the law
7 that applies to the case

8 It is your duty as jurors to follow these instructions
9 and to apply the law to the facts as you find from the evidence.

10 You must not be concerned with the wisdom of any rule of
11 law stated in these instructions.

12 Regardless of any opinion you may have as to what the law
13 ought to be, it would be a violation of your oath to base a
14 verdict upon any other view of the law than that given in the
15 Instructions of the Court.

16 If, in these instructions, any rule, direction, or idea
17 is repeated or stated in different ways, no emphasis thereon is
18 intended by me and none may be inferred by you.

19 For that reason you are not single out any certain
20 sentence or any individual point or instruction and ignore the
21 others, but you are to consider all the instructions as a whole
22 and regard each in the light of all the others.

23 The order in which the instructions are given has no
24 significance as to their relatives important.

25 Instruction three: An Indictment is but a formal method
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1 of accusing a person of a crime, and is not of itself any evidence
2 of his guilt.

3 In this case, it is charged in an Amended Indictment that
4 on or about the 24th day of March, 2005, the defendant committed
5 the offenses of: Burglary, murder, sexual assault, and robbery
6 within the County of CLark, State of Nevada, contrary to the form,
7 force and effect of statutes in such cases made and provided and
8 against the peace and dignity of the State of Nevada

9 Count I, burglary:

10 Did then and there willfully, unlawfully, and feloniously
11 enter, with the intent to commit assault or battery and/or a
12 felony, to-wit: Murder and/or robbery and/or sexual assault, that
13 certain building occupied by Sheila Quarles, located at 1001 North
14 Pecos, number H-63, Las Vegas, Clark County, Nevada.

15 Count II, murder:

16 Did then and there willfully, unlawfully without
17 authority of law and with malice aforethought, kill Sheila
18 Quarles, a human being, by manual strangulation and/or drowning,
19 with his hands and/or an unknown object, said killing having been,
20 one, wilful, deliberate and premeditated; and/or, two, committed
21 during the perpetration or attempted perpetration of sexual
22 assault as set forth in Count III and/or burglary as set forth in
23 Count I and/or robbery as set forth in Count IV, said acts being
24 incorporated herein by this reference as though fully set forth.

25 Count III, sexual assault.

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1 Did then a there willfully, unlawfully and feloniously
2 sexually assault and subject Sheila Quarles, a female person, to
3 sexual penetration, to-wit: Sexual intercourse, by the said
4 defendant placing his penis and/or an unknown object into the
5 genital opening of the said Sheila Quarles against her will.

6 Count IV, robbery:

7 Did then and there willfully, unlawfully, and feloniously
8 take personal property, to-wit: A stereo and speakers, cell
9 phone, and/or other personal property from the person of Sheila
10 Quarles, or in her presence, by means of force or violence or fear
11 of injury to and without the consent and against the will of said
12 Sheila Quarles.

13 It's the duty of the jury to apply the rules of law
14 contained in these instructions to the facts of the case and
15 determined whether or not the defendant is guilty of the offense
16 charged.

17 Each charge and the evidence pertaining to it should be
18 considered separately.

19 The fact that you find a defendant guilty to not guilty
20 as to one of the offenses charged should not control your verdict
21 as to any other offense charged.

22 Four: Every person who, by day or night, enters any
23 residence or structure with the intent to commit a larceny and/or
24 an assault and/or a battery and/or a felony, such as sexual
25 assault and/or robbery, therein is guilty of burglary.

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1 Five: Consent to enter is not a defense to the crime of
2 burglary so long as it is proven beyond a reasonable doubt that
3 this entry was made with the specific intent to commit a larceny
4 and/or an assault and/or a battery and/or a felony therein.

5 Six: Every person who, in the commission of a burglary,
6 commits any other crime, may be prosecuted for each crime
7 separately.

8 Seven: In this case the defendant is accused in an
9 Indictment alleging an open charge of murder. This charge may
10 include murder of the first degree and murder of the second
11 degree.

12 The jury must decide if the defendant is guilty of any
13 offense and, if so, of which offense.

14 Eight: Murder is the unlawful taking of a human being
15 with malice aforethought, either express or implied.

16 The unlawful killing may be effectuated -- effected by
17 any of the various means by which death may be occasioned.

18 Nine: Malice aforethought means the intentional doing of
19 a wrongful act without legal cause or excuse or what the law
20 considers adequate provocation.

21 The condition of mind described as malice aforethought
22 may arise from anger, hatred, revenge, or from a particular ill
23 will, spite or grudge toward the person killed.

24 It may also arise from any unjustifiable or unlawful
25 motive or purpose to injure another, proceeding from a heart

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1 fatally bent on mischief or with reckless disregard of
 2 consequences and social duty
 3 Malice aforethought does not imply deliberation or the
 4 lapse of any considerable time between the malicious intention to
 5 injure another, and the actual execution of the intent, but
 6 denotes an unlawful purpose and design as opposed to accident and
 7 mischance

8 Ten: Express malice is that deliberate intention
 9 unlawfully to take away the life of a human being, which is
 10 manifested by external circumstances capable of proof.

11 Malice may be implied when no considerable provocation
 12 appears, or when all the circumstances of the killing show an
 13 abandoned and malignant heart.

14 Eleven: Murder of the first degree is murder which is,
 15 A, committed in the perpetration or attempted perpetration of a
 16 burglary, sexual assault, or robbery; or, B, perpetrated by any
 17 kind of willful, deliberate and premeditated killing.

18 Twelve: Murder of the first degree is murder which is
 19 perpetrated by means in any kind of willful, deliberate and
 20 premeditated killing. All three elements -- willfulness,
 21 deliberation, and premeditation -- must be proven beyond a
 22 reasonable doubt before an accused can be convicted of first
 23 degree murder.

24 Willfulness is the intent to kill. There need be no
 25 appreciable space in of time between the formation of the intent

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1 to kill and the act of killing.

2 Deliberation is the process of determining upon a course
 3 of action to kill as a result of thought, including weighing the
 4 reasons for and against the action and considers the consequences
 5 of the actions.

6 A deliberate determination may be arrived at in a short
 7 period of time. But in all cases the determination must not be
 8 formed in passion; or formed in passion, it must be carried out
 9 after there has been time for the passion to subside and
 10 deliberation to occur.

11 A mere unconsidered and rash impulse is not deliberate,
 12 even though it includes the intent to kill

13 Premeditation is a design and a determination to kill
 14 distinctly formed in the mind by the time of the killing

15 Premeditation need not be for a day, an hour, or even a
 16 minute. It may be as instantaneous as suggestive thoughts of the
 17 mind. For if the jury believes from the evidence that the act
 18 constituting the killing has been preceded by and has been the
 19 result of premeditation, no matter how rapidly the act follows the
 20 premeditation, it is premeditated.

21 Thirteen: The law does not undertake to measure in units
 22 of time the length of the period during which the thought must be
 23 pondered before it can ripen into an intent to kill, which is
 24 truly deliberate and premeditated.

25 The time will vary with different individuals and under

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1 varying circumstances.

2 The true test is not duration of time, but rather the
 3 extent of the reflection.

4 A cold, calculated judgment and decision may be arrived
 5 at in short period of time, but a mere unconsidered and rash
 6 impulse, even though it includes an intent to kill, is not
 7 deliberation and premeditation as will fix the unlawful killing as
 8 murder in the first degree.

9 Fourteen: There are kinds of murder which carries with
 10 them conclusive evidence of malice aforethought. One of these
 11 classes of murder is murder committed in the perpetration or
 12 attempted perpetration of a burglary, sexual assault or robbery.

13 Therefore, a killing which is committed in the
 14 perpetration of a burglary, sexual assault, or robbery is deemed
 15 to be murder of the first degree, whether the killing was
 16 intentional or unintentional or accidental. This is called a
 17 felony murder rule.

18 The intent to perpetrate or attempt to perpetrate the
 19 burglary, sexual assault, or robbery must be proven beyond a
 20 reasonable doubt.

21 For the purposes of the felony murder rule, the intent to
 22 commit the robbery must have arisen before or during the conduct
 23 resulting in death. However, in determining whether the defendant
 24 had a requisite intent to commit robbery before or during the
 25 killing, you may infer that intent from the defendant's actions

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1 during and immediately after the kill.

2 There is no felony murder rule where robbery occurs as an
 3 afterthought of the killing.

4 Fifteen: Although your verdict must be unanimous as to
 5 the charge, you will not have to agree on the theory of guilt.

6 Therefore, even if you cannot agree on whether the facts
 7 establish premeditated murder or felony murder, so long as all you
 8 of you agree that the evidence establishes the defendant's guilt
 9 of murder in the first degree, your verdict shall be murder of the
 10 first degree.

11 Sixteen: All murder which is not murder of the first
 12 degree is murder of the second degree.

13 Murder of the second degree is murder with malice
 14 aforethought, but with the admixture of premeditation and
 15 deliberation.

16 Seventeen: If you find the State has established that
 17 the defendant has committed a murder of the first degree, you
 18 should select murder of the first degree as your verdict

19 The crime of murder of the first degree includes the
 20 crime of murder of the second degree.

21 You may find the defendant guilty of the lesser included
 22 offense of murder of the second degree if:

23 One, after first fully and carefully considering the
 24 charge of murder of the first degree you either, A, find the
 25 defendant not guilty of that charge; or, B, are unable to agree

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1 whether to acquit or convict on that charge;

2 And, two, all 12 of you are convinced beyond a reasonable
3 doubt that the defendant is guilty of murder of the second degree.

4 If you are convinced beyond a reasonable doubt that the
5 crime of murder has been committed by the defendant, but you have
6 a reasonable doubt whether such murder was of the first or second
7 degree, you must give the defendant the benefit of the doubt and
8 return a verdict of murder of the second degree.

9 Eighteen: A person who subjects another person to sexual
10 penetration against the victim's will or under conditions which
11 the perpetrator knows or should know that the victim is mentally
12 or physically incapable of resisting or understanding the nature
13 of this conduct is guilty of sexual assault.

14 As used in these instructions, sexual penetration means
15 any intrusion, however slight, of any part of the person's body or
16 any object manipulated or inserted by a person into the genital or
17 anal openings of the body of another, including sexual
18 intercourse.

19 Sexual intercourse is the placing of the penis of the
20 perpetrator into the vagina of the victim.

21 Nineteen: If a female yields to the sexual act of a male
22 aggressor because she reasonably believes that resistance would
23 result in her death or serious bodily injury, her conduct does not
24 constitute consent.

25 Twenty: Physical force is not a necessary ingredient in
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1 the commission of a sexual assault. And the crucial question is
2 not whether the victim was physically forced to engage in a sexual
3 assault, but whether the act was committed without her consent.

4 This is there is no consent where the victim is induced
5 to submit to the sexual act through fear of death or serious
6 bodily injury.

7 Twenty-one: Robbery is the unlawful taking of personal
8 property from the person of another, or in his presence, against
9 his will, by means of force or violence or fear of injury,
10 immediate or future, to his person or property, or the person or
11 property of a member of his family, or of anyone in his company at
12 the time of the robbery.

13 Such force or fear must be used to obtain or retain
14 possession of the property, to prevent or overcome resistance to
15 the taking, or to facilitate escape, in either of which cases the
16 degree of force is immaterial if used to compel acquiescence to
17 the taking of or escaping with the property.

18 Twenty-two: To constitute the crime charged there must
19 exist a union or joint operation of an act forbidden by law and an
20 intent to do the act.

21 The intent with which an act is done is shown by the
22 facts and circumstances surrounding the case

23 Do not confuse intent with motive. Motive is what
24 prompts the person to act. Intent refers to only the state of
25 mind with which the act is done.

1 Motive is not an element of the crime charged and the

2 State is not required to prove a motive on the part of the
3 defendant in order to convict

4 However, you may consider evidence of motive or lack of
5 motive as circumstance in the case.

6 Twenty-three: The defendant is presumed innocent until
7 the contrary is proved. This presumption placed upon the State
8 the burden of proving beyond a reasonable doubt every material
9 element of the crime charged and that the defendant is the person
10 who committed the offense.

11 A reasonable doubt is one based on reason. It is not
12 mere possible doubt, but is such a doubt as would govern or
13 control a person in the more weighty affairs of life.

14 If the minds of the jurors, after the entire comparison
15 and consideration of all of the evidence, are in such a condition
16 that they can say they feel an abiding conviction of the truth of
17 the charge, there is not a reasonable doubt.

18 Doubt to be reasonable must be actual, not mere
19 possibility or speculation.

20 If you have a reasonable doubt as to the guilt of the
21 defendant, he is entitled to a verdict of not guilty.

22 Twenty-four: There is a constitutional right of the
23 defendant in a criminal trial that he may not be compelled to
24 testify. Thus, the decision as to whether he should testify is
25 left to the defendant on the advice and counsel of his attorney.

1 You must not draw any inference of guilt from the fact
2 that he does not testify, nor should this fact be discussed by you
3 or entered into your deliberations in any way.

4 Twenty-five: The evidence which you are to consider in
5 this case consists of the testimony of the witnesses, the
6 exhibits, and any facts admitted or agreed to by counsel.

7 There are two types of evidence: Direct and
8 circumstantial.

9 Direct evidence is the testimony of a person who claims
10 to have personal knowledge of the commission of the crime which
11 has been charged, such as an eye witness.

12 Circumstantial evidence is the proof of a chain of facts
13 and circumstances which tend to show whether the defendant is
14 guilty or not guilty.

15 The law makes no distinction to the weight to be given by
16 either direct or circumstantial evidence. Therefore, all of the
17 evidence in this case, including the circumstantial evidence,
18 should be considered by you in arriving at your verdict.

19 Statements, arguments and opinions of counsel are not
20 evidence in the case. However, if the attorneys stipulate to the
21 existence of a fact you must accept that stipulation as evidence
22 and regard that fact as proved.

23 You must not speculate to be true any insinuations
24 suggested by a question asked a witness. A question is not
25 evidence and may be considered only as it supplies meaning to the

1 answer.

2 You must disregard any evidence to which an objection was
3 sustained by Court or any evidence ordered stricken by the Court.

4 Anything you may have seen or heard outside the courtroom
5 is not evidence and must also be disregarded.

6 Twenty-six: Evidence that the defendant committed
7 offenses other than that for which he is on trial, if proven to be
8 clear and convincing, is not admitted and may not be considered by
9 you to prove that the defendant is a person of bad character or to
10 prove that he has a disposition to commit crimes.

11 Such evidence is admitted and may be considered by you
12 only for the limited purpose of proving the defendant's identity,
13 intent, lack of consent on the part of the victim, a common
14 scheme, plan, or motive, or the absence of mistake or accident, as
15 it relates to the charges before you.

16 If you find the evidence to be clear and convincing you
17 must weigh this evidence in the same manner as you do all other
18 evidence in the case.

19 Twenty-seven: A witness who has special knowledge,
20 skill, experience, training, or education in a particular science,
21 profession or occupation is an expert witness.

22 An expert witness may give his opinion as to any manner
23 in which he is skilled.

24 You should consider such expert opinion and weigh the
25 reasons, if any, given for it.

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1 Your decision should be the product of sincere judgment
2 and sound discretion in accordance with these rules of law.

3 Thirty: You are here to determine whether the State has
4 proven the guilt of the defendant beyond a reasonable doubt from
5 the evidence in the case.

6 You are not called upon to return a verdict as to the
7 guilt of any other person.

8 So, if you believe the State has proven the guilt of the
9 defendant beyond a reasonable doubt, you should so find, even
10 though you may believe one or more persons are also guilty.

11 Thirty-one, in your deliberation you may not discuss or
12 consider the subject of punishment.

13 At this time your duty is confined to the determination
14 of the guilt or innocence of the defendant.

15 Thirty-two: When you retire to consider your verdict you
16 must select one of your number to act as foreperson, who will
17 preside over your deliberations and will be a spokesperson here
18 court.

19 During your deliberation you will have the exhibits which
20 were admitted into evidence, these written instructions, and forms
21 of verdict which have been prepared for your convenience.

22 Your verdicts must be unanimous.

23 As soon as you have agreed upon a verdict, have it signed
24 and dated by your foreperson and return with it to this room.

25 Thirty-three: The verdict must represent the considered

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1 You are not bound, however, by such opinion. Give it the
2 weight to which you deem it entitled, whether that be great or
3 slight; and you may reject it if, in your judgment, the reasons
4 given for it are unsound.

5 Twenty-eight: The credibility or believability of a
6 witness should be determined by his manner upon the stand, his
7 relationship to the parties, his fears, motives, interests or
8 feelings, his opportunity to have observed the matter to which he
9 testified, and the reasonableness of his statements and the
10 strength or weakness of his recollections.

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

15 Twenty-nine: Although you are to consider only the
16 evidence in the case in reaching a verdict, you must bring into
17 the consideration of the evidence your everyday common sense and
18 judgment as reasonable men and women.

19 Thus, you are not limited solely to what you see and hear
20 as the witnesses testify. You may draw reasonable inferences from
21 the evidence which you feel are justified in light of common
22 experience, keeping in mind that such inferences should not be
23 based on speculation or guess.

24 A verdict may never be influenced by sympathy, prejudice,
25 or public opinion.

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1 judgment of each juror.

2 In order to return the verdict your verdict must be
3 unanimous.

4 It is your duty, as jurors, to consult with one another
5 and to deliberate with a view to reaching an agreement, if you
6 do so without violence to individual judgment.

7 Each of you must decide the case for yourself, but do so
8 only after an impartial consideration of the evidence with your
9 fellow jurors.

10 In the course of your deliberation, do not hesitate to
11 reexamine your own views and change your opinion if convinced it
12 is erroneous. But do not surrender your honest conviction as to
13 the weight or effect of evidence solely because of the opinion of
14 your fellow jurors, or for the mere purpose of returning your
15 verdict.

16 Thirty-four: If, during your deliberation, you decide to
17 be further informed on any point of law or hear again portions of
18 the testimony, you must reduce your request to writing signed by
19 the foreperson.

20 The officer will then return you to Court where the
21 information sought will be given to you in the presence of, and
22 after notice to, the District Attorney and the defendant and his
23 counsel.

24 Read backs of testimony are time consuming and are not
25 encouraged unless you deem it a necessity.

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1 Should you require a read back you must carefully
2 describe the testimony to be played back so that the court
3 reporter can arrange her notes.
4 Remember, the Court is not at liberty to supplement the
5 evidence.

6 Thirty-five: Now you will listen to the arguments of
7 counsel, who will endeavor to aid you to reach a proper verdict,
8 by refreshing in your minds the evidence and by showing the
9 application thereof to the law.

10 But whatever counsel may say, you will bear in mind it is
11 your duty to be governed in your deliberation by the evidence as
12 you understand it and remember it to be and by the law as given to
13 you in these instructions, with sole, fixed and steadfast purpose
14 of doing equal and exact justice between the defendant and the
15 State of Nevada.

16 Okay. Take your instructions, put them with your clip
17 board, and your badge, because they will be on your chair
18 tomorrow. You don't take them home with you.

19 We'll be here about 9:15 time and Officer Moon and
20 Charmain, our staff assistant, will be out there. They will take
21 your lunch orders. We will come in. We will hear this one very
22 short witness. We'll hear the arguments for the State, then the
23 defense, then the State.

24 If it's running a little long, people are getting tired,
25 we may take a five minute restroom break in the middle, but as a

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1 Mr. Flowers, I take it that when Mr. Pike says he has one
2 more witness, that you have made a joint decision that you are not
3 going to testify in the case. Is that right?

4 THE DEFENDANT: Yes.

5 THE COURT: And that's your decision based on the advice
6 of your counsel, but ultimately it's your decision and you are
7 comfortable with that. Correct?

8 THE DEFENDANT: Yes.

9 THE COURT: All right. And it's been my observation that
10 your lawyers have been extremely well prepared, extremely well
11 versed on the legal rules of 250, and really did a fine job

12 I don't know how the outcome is going to be, but do you
13 agree with me that your lawyers have done a good job and presented
14 all the witnesses that you felt you had?

15 THE DEFENDANT: Yeah.

16 THE COURT: Okay. All right. Thanks.

17
18 (Sotto voce at this time.)

19
20 THE COURT: One thing about admitting something that is
21 actually irrelevant is it doesn't hurt anything. It's not
22 relevant, you know. Okay. Have a good night.

23 MR. PIKE: Thank you.

24 MS. LUZAICH: Good night, Judge.

25

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1 general proposition, it's considered good practice not to split
2 arguments.

3 In other words, don't hear one tonight and then two
4 tomorrow. You hear them in the right and consecutive order.

5 So other than a five minute potty break, we'll go
6 straight through.

7 We'll eat lunch somewhere between twelve and one.

8 Wear comfortable clothes, have a good breakfast, and
9 we'll get you the case by -- before one o'clock tomorrow.

10 Do not talk about the case with anyone or anyone else.

11 Please do not read, watch or listen to a report or any commentary
12 on the trial.

13 I noticed someone here earlier from the paper, so there
14 will be another article tonight in the Nevada section.

15 Please do not form or express any opinion on the case
16 until it's submitted to you.

17 Have a nice night. We'll see you in Court at 9:30, or
18 9:15 out in the hall with the officer.

19 Just leave your stuff on the chair. It will be there
20 when you get here in the morning.

21
22 (The following proceedings were had in open
23 court outside the presence of the jury panel:)

24
25 THE COURT: The jury has exited. They're not here.

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1 (Proceedings concluded.)
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7 ATTEST: Full, true and accurate transcript of proceedings.

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11 RENEE SILVAGGIO, C.C.R. 122
12 Official Court Reporter
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DISTRICT COURT
CLARK COUNTY, NEVADA

2008 OCT 21 A 9:04

THE STATE OF NEVADA
Plaintiff(s),

-VS-

NORMAN KEITH FLOWERS
Defendant(s).

CASE NO. C228755

DEPT. NO. VII

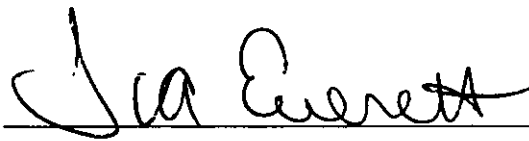
DEFENDANT'S PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL

Attached hereto are the proposed jury instructions which were offered to the Court, but not submitted to the jury in the above entitled action.

DATED: This 20TH day of October, 2008.

Edward A. Friedland, Clerk of the Court

By:



Tia Everett , Deputy Clerk

A finding of guilt as to any crime may not be based on circumstantial evidence unless the proved circumstances are not only (1) consistent with the theory that the defendant is guilty of the crime, but (2) cannot be reconciled with any other rational conclusion.

Further, each fact which is essential to complete a set of circumstances necessary to establish the defendant's guilt must be proved beyond a reasonable doubt. In other words, before an inference essential to establish guilt may be found to have been proved beyond a reasonable doubt, each fact or circumstance on which the inference necessarily rests must be proved beyond a reasonable doubt.

Also, if the circumstantial evidence [as to any particular count] permits two reasonable interpretations, one of which points to the defendant's and the other to his innocence, you must adopt that interpretation that points to the defendant's innocence, and reject that interpretation that points to his guilt.

If, on the other hand, one interpretation of this evidence appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable.

CALJIC 2.01 Sufficiency of Circumstantial Evidence

INSTRUCTION NO. ____

You are instructed that because the State failed to test the speaker wire that was found at the scene for blood and other biological evidence, the wire is irrebuttably presumed to have been held by Jessie Nava Jr.

Sanborn v. State, 107 Nev. 399, 812 P.2d 1279 (1991).

Instruction No. _____

The State in an effort to present the circumstances surrounding the commission of a crime, has presented evidence of pending allegations of crimes for which Mr. Flowers has not been convicted. You may consider this circumstantial evidence if you believe beyond a reasonable doubt that the other alleged crime must be so interconnected to the act(s) in question that a witness cannot describe the act in controversy without referring to the other alleged crime.

Note: NRS 48.035 (3) requires the giving of a cautionary instruction explaining the reason for its admission at the request of an interested party.

Language taken from Bletcher v. State, 111 Nev. 1477, 1480, 907 P.2d 978 (1995).

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2 If the evidence in this case is subject to two constructions of interpretations, each of
3 which appears to you to be reasonable, and one of which points to the guilt of the
4 defendant, and the other to innocence of the defendant and to the guilt of another, it is
5 your duty, to adopt the interpretation which will admit of the defendant's innocence, and
6 reject that which points to guilt.
7

8 You will notice the rule applies only when both of the two possible opposing
9 conclusions appear to you to be reasonable. If, on the other hand, one of the possible
10 conclusions should appear to you to be reasonable and the other to be unreasonable, it
11 would be your duty to adhere to the reasonable deduction and to reject the
12 unreasonable, bearing in mind, however, even if the reasonable deduction points to
13 defendant's guilt, the entire proof must be beyond a reasonable doubt to support a
14 verdict of guilty.
15
16

17 _____
18 In Crane v. State, 88 Nev. 684, 687; 504 P.2d 12 (1972), the court said it was permissible
19 to give this instruction when the evidence is circumstantial.
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INSTRUCTION NO. _____

It is as much a prosecutor's duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Mazzan v. State, 116 Nev. Adv. Op. No. 7, 30P.2d 1128, 1132 (September 17, 2000).

INSTRUCTION NO. _____

Corroborating evidence must independently connect the defendant with the offense; evidence does not suffice as corroborative if it merely supports the accomplice's testimony. If there is no independent, inculpatory evidence - evidence tending to connect the defendant with the offense, "there is no corroboration, though the accomplice may be corroborated in regard to any number of facts sworn to him. Where the connecting evidence shows no more than an opportunity to commit a crime, simply proves suspicion, or is equally consonant with the reasonable explanation pointing toward innocent conduct on the part of the defendant, the evidence is to be deemed insufficient.

Austin v. State, 87 Nev. 578, 585, 491 P.2d 724, 728-29 (1971).

111 Nev. at 1250-51 (quoting State v. Dannels, 226 Mont. 80, 734 P.2d 188, 194 (Mont. 1987) Quoting State v. Mitchell, 192 Mont. 16, 625 P.2d 1155, 1158 (Mont. 1980).

Instruction No. _____

The flight of Jesus Nava Jr. immediately after the commission of a crime, is not sufficient in itself to establish the guilt of Jesus Nava Jr., but is a fact which, if proved, may be considered by you in the light of all other proved facts in deciding whether Mr. Floers is guilty or not guilty.

caljic 2.52

LESSER INCLUDED OFFENSES¹

If the State proves a defendant guilty of the charged offense beyond a reasonable doubt the jury shall convict the defendant of that offense. However, if the jury is not convinced of the defendant's guilt of the charged offense, they may return a verdict of guilty on an offense, which was not charged, the commission of which is necessarily included in the offense charged, if the evidence is sufficient to establish the defendant's guilt of such offense beyond a reasonable doubt.

[In this case the defendant is accused in an [Information/Indictment]² alleging an open charge of murder. This charge may include murder of the first degree, murder of the second degree, voluntary manslaughter and involuntary manslaughter.

The jury must decide if the defendant is guilty of any offense and, if so, of which offense³.

2nd degree

murder

¹ This instruction is the general instruction a specific instruction should be given for each potential lesser included.

² Please select the appropriate language.

³ This language is for murder cases only.

MANSLAUGHTER DEFINED

1. Manslaughter is the unlawful killing of a human being without malice express or implied and without any mixture of deliberation. It is not divided into degrees but is of two kinds, namely, voluntary manslaughter and involuntary manslaughter.

NRS 200.040.

1
2 **MANSLAUGHTER DEFINED**

3 1. Manslaughter is the unlawful killing of a human being without malice express
4 or implied and without any mixture of deliberation. It is not divided into degrees but is of
5 two kinds, namely, voluntary manslaughter and involuntary manslaughter.

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MURDER AND VOLUNTARY MANSLAUGHTER DISTINGUISHED

The distinction between murder and voluntary manslaughter is that murder requires malice while voluntary manslaughter does not.

When the act causing the death, though unlawful, is done upon a sudden heat of passion caused by a provocation apparently sufficient to make the passion irresistible, the offense is voluntary manslaughter. In such a case (even if an intent to kill exists) the law is that malice, which is an essential element of murder, is absent.

To establish that a killing is murder and not voluntary manslaughter, the burden is on the state to prove beyond a reasonable doubt each of the elements of murder and that the act which caused the death was not done in a heat of passion as defined in these instructions.

This instruction should only be used when the issue of killing in a heat of passion has been properly raised by the evidence presented either by the State or the defense.

A sudden heat of passion can occur without a direct physical assault. Roberts v. State, 102 Nev. 170, 717 P.2d 1115 (1986).

MURDER AND VOLUNTARY MANSLAUGHTER DISTINGUISHED

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MURDER AND VOLUNTARY MANSLAUGHTER DISTINGUISHED

The distinction between murder and voluntary manslaughter is that murder requires malice while voluntary manslaughter does not.

The killing must be voluntary, upon a sudden heat of passion, and caused by a provocation apparently sufficient to make the passion irresistible. "Heat of passion" as the term is used in these instructions means such passion as naturally would be aroused in the mind of a reasonable person in the same or similar circumstances. The circumstances and facts must be such as would cause a reasonable person to act rashly, without reflection and deliberation, from passion rather than from judgment. If you determine that a reasonable person who was placed in the same position in which the defendant was found, and knew what the defendant then knew, would have been thrown into a heat of passion, then such a killing is voluntary manslaughter.

A sudden heat of passion can occur without a direct physical assault.

To establish that a killing is murder and not voluntary manslaughter, the burden is on the state to prove beyond a reasonable doubt each of the elements of murder and that the act which caused the death was not done in a heat of passion as defined in these instructions.

NRS 200.040, 200.050, 200.060. The crime of manslaughter does not require specific intent to kill. Hancock v. State, 80 Nev. 581, 397 P.2d 181 (1964)

A serious and highly provoking injury need not be a direct physical assault on the accused. Roberts v. State, 102 Nev. 170, 717 P.2d 1115 (1986).

This instruction should be used when the issue of killing in a heat of passion has been properly raised by the evidence presented either by the State or the defense.

A sudden heat of passion can occur without a direct physical assault. Roberts v. State, 102 Nev. 170, 717 P.2d 1115 (1986).

INSTRUCTION NO. _____

MURDER AND VOLUNTARY MANSLAUGHTER DISTINGUISHED

The distinction between murder and voluntary manslaughter is that murder requires malice while voluntary manslaughter does not.

The killing must be voluntary, upon a sudden heat of passion, and caused by a provocation apparently sufficient to make the passion irresistible. "Heat of passion" as the term is used in these instructions means such passion as naturally would be aroused in the mind of a reasonable person in the same or similar circumstances. The circumstances and facts must be such as would cause a reasonable person to act rashly, without reflection and deliberation, from passion rather than from judgment. If you determine that a reasonable person who was placed in the same position in which the defendant was found, and knew what the defendant then knew, would have been thrown into a heat of passion, then such a killing is voluntary manslaughter.

A sudden heat of passion can occur without a direct physical assault.

To establish that a killing is murder and not voluntary manslaughter, the burden is on the state to prove beyond a reasonable doubt each of the elements of murder and that the act which caused the death was not done in a heat of passion as defined in these instructions.

INSTRUCTION NO. _____

6.20 BENEFIT OF DOUBT (MANSLAUGHTER)

If you are satisfied beyond a reasonable doubt that the killing was unlawful, but you have a reasonable doubt whether the crime is murder or manslaughter, you must give the defendant the benefit of such doubt and find it to be manslaughter rather than murder.

INSTRUCTION NO. _____

6.20 BENEFIT OF DOUBT (MANSLAUGHTER)

If you are satisfied beyond a reasonable doubt that the killing was unlawful, but you have a reasonable doubt whether the crime is murder or manslaughter, you must give the defendant the benefit of such doubt and find it to be manslaughter rather than murder.

NRS 175.501.

Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, with the specific intent to permanently deprive the owner of his property. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resisting to the taking, in either of which cases the degree of force is immaterial. Such taking constitutes Robbery whenever it appears that although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

If the specific intent to take personal property from another was not formed until after the death of the victim a robbery has not been committed.

Not a Robbery
Crime

INSTRUCTION NO. _____

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If the intent to steal arose after the use of force, then the taking is not robbery.

INSTRUCTION NO. ____

A homicide committed while perpetrating or attempting to perpetrate a robbery is first-degree murder. This is known as the felony-murder rule.

To support a finding of felony-murder the State must prove beyond a reasonable doubt that the intent to rob was formed prior to the killing of the victim and that the killing occurred in the course of the robbery. If the State does not prove beyond a reasonable doubt that the intent to commit the alleged robbery was formed in advance of the killing, the jury may not find the defendant guilty of first-degree murder under the felony-murder rule.

Thomas v. State, 120 Nev. 37, 83 P.3d 818 (2004).

1 CASE NO. C228755

2 DEPT. NO. VII

ORIGINAL

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E. J. [Signature]
CLERK OF THE COURT

3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
6

7 THE STATE OF NEVADA,)
8 Plaintiff,)

9 vs.) Reporter's Transcript
10) of
11) Jury Trial
12)

13 NORMAN KEITH FLOWERS,)
14 aka NORMAN HAROLD)
15 FLOWERS, III,)
16 Defendant.)

Volume 5

17 BEFORE THE HON. STEWART BELL, DISTRICT COURT JUDGE

18 TUESDAY, OCTOBER 21, 2008

19 9:30 A.M.

20 APPEARANCES:

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

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

Reported by: JoAnn Orduna, CCR No. 370

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I N D E XPAGE

WITNESSES FOR THE DEFENSE:

WILLIAM KINSEY

Direct Examination by Mr. Pike 6

WITNESSES FOR REBUTTALRALPH QUARLES

Direct Examination by Ms. Luzaich 10

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E X H I B I T SSTATE'S EXHIBITMARKEDOFFEREDADMITTED

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140-142

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1 CASE NO. C228755

2 DEPT. NO. VII

3

4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6

7 THE STATE OF NEVADA,)
8 Plaintiff,) Reporter's Transcript
9 vs.) of
10) Jury Trial
11 NORMAN KEITH FLOWERS,) Volume 5
12 aka NORMAN HAROLD)
13 FLOWERS, III,)
14 Defendant.)

15 BEFORE THE HON. STEWART BELL, DISTRICT COURT JUDGE

16 TUESDAY, OCTOBER 21, 2008

17 9:30 A.M.

18

19 APPEARANCES:

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

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

26 Reported by: JoAnn Orduna, CCR No. 370

1 LAS VEGAS, CL COUNTY, NV, TUES, OCT 21, 2008

2

9:30 A.M.

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4

P R O C E E D I N G S

5

6 THE COURT: Okay. Let's go on the record
7 in Case C228755, State of Nevada versus Norman Keith
8 Flowers.

9

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

13

14 Any matters to come before the court
15 before the jury comes in?

16

17 MR. PIKE: Yes, Your Honor. I submitted
18 to court a copy of the transcript or of the
19 transcript of the recording of the statement of Mr.
20 Flowers. It's not to go to the jury --

21

22 THE COURT: All right.

23

24 MR. PIKE: -- but it's in, pursuant to
25 the our conversation.

26

27 THE COURT: For purposes of any argument
28 later, that's fine. We'll be glad to take that one
29 instead of the other one.

30

31 THE COURT: Anything else, Ms. Weckerly?

32

33 MS. WECKERLY: No, Your Honor.

1

I N D E X

2

P A G E

2

3 WITNESSES FOR THE DEFENSE:

4 WILLIAM KINSEY

5 Direct Examination by Mr. Pike 6

6 WITNESSES FOR REBUTTAL

7 RALPH QUARLES

8 Direct Examination by Ms. Luzaich 10

9 Cross-Examination by Mr. Pike 16

10 Redirect Examination by Ms. Luzaich 17

11 DAN LONG

12 Direct Examination by Ms. Weckerly 18

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14 Closing Argument by Ms. Luzaich 26

15 Closing Argument by Mr. Patrick 62

16 Rebuttal Argument by Ms. Weckerly 107

17

E X H I B I T S

18 STATE'S EXHIBIT MARKED OFFERED ADMITTED

19 139 14 15

20 140-142 19 19

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1 THE COURT: Whenever they're ready, we're
2 ready.

3

4 THE COURT: Wait a minute. He needs to
5 put on his tie.

6

7 MS. GORD: Do you want to put him on the
8 stand or no?

9

10 THE COURT: That's up to the officer.

11

12 Okay. Let's bring him in, let's put him up.

13

14 Are you Mr. Kinsey?

15

16 THE WITNESS: How are you doing?

17

18 THE COURT: Okay. I'm doing fine.

19

20 Apparently they've got a few questions they want to
21 ask you. And I don't think it's gonna take more
22 than a couple of minutes.

23

24 You do what you want, but just keep
25 yourself under control and we're good, okay.

26

27 Anything you want to ask of me, any

28

29 questions? Apparently you knew a woman named Sheila
30 Quarles and they're gonna ask you a couple of
31 questions about her; is that right?

32

33 THE WITNESS: Right.

34

35 THE COURT: Now, you went into custody of
36 December of '04; is that correct?

37

38 THE WITNESS: That's right.

39

40 THE COURT: Did you ever see Sheila since

1 you went into custody?

2 THE WITNESS: Yeah, she came to visit me.

3 THE COURT: She came to visit you once?

4 Was she by herself?

5 THE WITNESS: Yeah.

6 THE COURT: Okay. I think they're just
7 gonna ask you if you knew her, if you were her
8 boyfriend, then blah, blah, blah, blah, blah and you
9 haven't seen her since other than that.

10 MS. LUZAICH: Blah, blah, blah and then
11 we're yada, yada, yada?

12 THE COURT: Whatever. Let's go.

13 (Whereupon, the jury entered the
14 courtroom.)

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

18 Let the record reflect the presence
19 of the defendant, his counsel, counsel for the
20 State. All ladies and gentlemen of the jury are
21 back in the box.

22 Pretty good. End of day five and we
23 haven't lost a juror and nobody's got sick or had a
24 family emergency. That only happens about 25
25 percent of the time we get to this without losing

1 one.

2 Sir, will you stand and do your best
3 to raise your right hand.

4 (Whereupon, William Kinsey was duly
5 sworn to tell the truth, the whole
6 truth and nothing but the truth.)

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

10 THE WITNESS: William Jermaine Kinsey.
11 William, W-i-l-l-i-a-m. Kinsey, K-i-n-s-e-y.

12 THE COURT: Go ahead.

13 MR. PIKE: Thank you very much.

14 DIRECT EXAMINATION

15 BY MR. PIKE:

16 Q. Mr. Kinsey, you've been brought into
17 court today to testify about a Sheila Quarles.

18 Did you know Sheila Quarles before
19 she passed away?

20 A. Yes, sir.

21 Q. And how did you know her?

22 A. She was my girlfriend.

23 Q. And you have been in custody since
24 December of 2004; is that correct?

25 A. Yes, sir.

1 Q. You had to speak up just a little bit.

2 A. Yes, sir.

3 Q. While you were in custody, did Sheila
4 come to visit you?

5 A. Yes, sir.

6 Q. How long had you been her boyfriend
7 before you went into custody in 2004?

8 A. Six months.

9 Q. Six months. During that period of time,
10 you got to know her family, too?

11 A. Not really.

12 Q. Just her?

13 A. Just her.

14 Q. Okay. While you got to know her and she
15 came to visit you while you were in custody, did she
16 also write to you?

17 A. Yes, sir.

18 Q. And on some of the letters that she wrote
19 to you, did she in fact put your last name as her
20 last name as though you were married?

21 A. Yes, sir.

22 Q. So you would considered the two of you
23 very close?

24 A. Yes.

25 Q. If fact, before you went into custody,

1 were you intimate with her?

2 A. Yes, sir.

3 Q. During -- after you were in custody and
4 when you found out about her, her death, after that
5 time, me and another inves -- or an investigator
6 came in and spoke with you; is that correct?

7 A. Yes, sir.

8 Q. During our conversations, did you try to
9 answer all of our questions?

10 A. To the best of my ability.

11 Q. Okay. And during, during that
12 conversation, and up to that time that we met with
13 you, you hadn't met with any police officers?

14 A. No, not until after you all.

15 Q. Okay. And some police officers came to
16 talk with you afterwards?

17 A. Yeah.

18 Q. They came up to talk with you how long
19 ago?

20 A. Probably like the next Friday after you
21 all came. A week after you all came.

22 Q. All right. And you provided us with the
23 names of individuals who you may be helpful and
24 tried to give us any information that you thought
25 might be helpful to us in our investigation?

1 A. Yes.
 2 Q. And that's yes?
 3 A. Yes, sir.
 4 Q. Did you feel like you were cooperative
 5 with the police also?
 6 A. No, I didn't like them.
 7 Q. Okay.
 8 A. They said some harsh things.
 9 Q. Okay. And during -- and what are you
 10 currently serving time for?
 11 A. Voluntary manslaughter with the use of a
 12 deadly weapon.
 13 MR. PIKE: I have no further questions.
 14 THE COURT: Okay. Any questions?
 15 MS. WECKERLY: No questions.
 16 THE COURT: Thanks, Mr. Kinsey. You can
 17 go back with that fine officer.
 18 THE COURT: Any other witnesses, Mr.
 19 Pike? Mr. Pike, any other witness?
 20 MR. PIKE: No. The defense rests at this
 21 time.
 22 THE COURT: It's my understanding you
 23 have one or two one minute rebuttal witnesses.
 24 MS. LUZAICH: We do, judge. Can I just
 25 make sure that they're here?

1 THE COURT: Okay.
 2 MS. WECKERLY: Can we approach?
 3 THE COURT: Yeah.
 4 (Whereupon, an off-the-record
 5 discussion was had at the bench.)
 6 THE COURT: Come on up, sir.
 7 THE CLERK: Please remain standing and
 8 raise your right hand.
 9 THE COURT: Stand.
 10 (Whereupon, Ralph Quarles was duly
 11 sworn to tell the truth, the whole
 12 truth and nothing but the truth.)
 13 THE CLERK: Thank you. Please be seated.
 14 Please state your full name and spell your first and
 15 last name for the record.
 16 THE WITNESS: Ralph Quarles. R-a-l-p-h.
 17 Q-u-a-r-l-e-s.
 18 THE CLERK: Thank you.
 19 THE COURT: Go ahead.
 20 DIRECT EXAMINATION
 21 BY MS. LUZAICH:
 22 Q. Mr. Quarles, was Sheila your brother --
 23 or your sister?
 24 A. Yes.
 25 Q. At the time of her death, were you

1 actually living in the same home with her?
 2 A. No.
 3 Q. Was she living with your mother?
 4 A. Yes.
 5 Q. Were you living near by?
 6 A. Yes.
 7 Q. And did your mother come get you and tell
 8 you what happened and bring you back to the
 9 apartment?
 10 A. Yes.
 11 Q. After that night when the police finished
 12 doing what they were doing in the apartment --
 13 A. Right.
 14 Q. -- did they lock up the apartment and
 15 give your mom and you guys the keys?
 16 A. Yes.
 17 Q. And were you aware that there had been a
 18 new stereo in the apartment?
 19 A. Yes.
 20 Q. Where was that stereo located?
 21 A. As you would come in the door, you could,
 22 you could see it. It was like it would be sitting
 23 on, she had like a 15 inch speaker, a taller one,
 24 and the little radio over set up there and you would
 25 see that as you come in.

1 Q. About how big was that stereo?
 2 A. Well, for this, I would say like that.
 3 Q. For the record, you're pointing to the
 4 computer screen that's in front of you?
 5 A. Yes. A little bit like that same width
 6 and it holds three singles. Like you could put
 7 three different CDs in there and you could see them.
 8 Q. I'm sorry. Just for the record, you said
 9 it was the same width, but it was taller than the
 10 computer screen --
 11 A. Yeah --
 12 Q. -- in front of you?
 13 A. Right. A little taller.
 14 THE COURT: 15-to-18 inches tall and
 15 15-to-18 inches wide, is that fair?
 16 THE WITNESS: Right, yeah.
 17 THE COURT: All right.
 18 BY MS. LUZAICH:
 19 Q. And that held three CD areas?
 20 A. Yes.
 21 Q. And then there were also speakers with
 22 it?
 23 A. Yes.
 24 Q. And how big were the speakers?
 25 A. About that.

1 Q. Okay. That's like a foot and a half high
 2 maybe?
 3 A. Right. And like this on the side.
 4 THE COURT: Six to eight inches wide.
 5 THE WITNESS: Yeah.
 6 BY MS. LUZAICH:
 7 Q. Each speaker was that large?
 8 A. Right.
 9 Q. And were you aware that that was missing
 10 after Sheila's death before the police arrived?
 11 A. Yes.
 12 Q. Now, after your mother and the family
 13 left that night when the police locked up, where did
 14 your mother go?
 15 A. To my aunt's.
 16 Q. Did she stay with you thereafter?
 17 A. Yes.
 18 Q. In fact, does she still live with you?
 19 A. No.
 20 Q. Did she live with you for a long time?
 21 A. Yes.
 22 Q. Did she ever go back to that apartment?
 23 A. Never.
 24 Q. Did you guys, your family move your
 25 mother and the rest of the family out of the

1 apartment for her?
 2 A. Yes. Up to my house, yes.
 3 Q. And did you personally participate in
 4 doing that?
 5 A. Yes.
 6 Q. Was there another stereo or radio in that
 7 apartment before Sheila was killed?
 8 A. Yes. It was like a little boom box.
 9 Q. Showing you what's been marked as State's
 10 proposed Exhibit 139 which has been shown to the
 11 defense, do you recognize that?
 12 A. Yes.
 13 Q. What is that?
 14 A. The boom box, radio, before we got the
 15 new one, that's all I had to play my CDs on.
 16 Q. So that's what you guys had before the
 17 one your mom bought before you just described?
 18 A. Right.
 19 Q. And where was that located in the house?
 20 A. This one?
 21 Q. Yes?
 22 A. Where it's at there.
 23 Q. But where is that? Can you describe what
 24 room it's in.
 25 A. It's in the kitchen.

1 MS. LUZAICH: Move it into evidence.
 2 MR. PIKE: No objection.
 3 THE COURT: Admitted.
 4 BY MS. LUZAICH:
 5 Q. And showing you the exhibit, is this --
 6 what I'm pointing to, is that the boom box you're
 7 talking about?
 8 A. Yes.
 9 Q. And would that be the kitchen counter?
 10 A. Yes.
 11 Q. Now, when you went back to the apartment
 12 to move your mother out of the apartment, was that
 13 boom box still there?
 14 A. No.
 15 Q. Have you ever seen it since?
 16 A. I haven't seen it since.
 17 MS. LUZAICH: Thank you. I have no
 18 further questions.
 19 THE COURT: The one that was apparently
 20 stolen on the day that your sister was killed, was
 21 it hooked up to the big speakers or was it just
 22 sitting on the big speakers?
 23 THE WITNESS: It was just sitting there.
 24 It was like a stand to it.
 25 THE COURT: Okay, thanks.

1 MR. PIKE: Thank you very much.
 2 CROSS-EXAMINATION
 3 BY MR. PIKE:
 4 Q. Well, let me show you. With technology
 5 you can just look at this and see that.
 6 A. Uh-huh.
 7 Q. This boom box that is sitting right
 8 there, that was yours and you'd had it for about
 9 what, six months, a year?
 10 A. It was ours.
 11 Q. It was yours. Okay. The whole family?
 12 A. Right.
 13 Q. And that is just a single unit that you
 14 can pick up and carry?
 15 A. Yeah. Is if you have batteries, it would
 16 go outside with you, yeah.
 17 Q. Okay. And it didn't come apart into
 18 pieces, it's just one solid piece?
 19 A. Yeah.
 20 Q. Okay. Now, I'm showing you what has been
 21 also admitted into evidence, this, this diagram
 22 or -- okay.
 23 And this looks like the front page
 24 of an owners manual?
 25 A. Right.

1 Q. And does that fairly represent the stereo
2 that was missing at the time of your sister's death?
3 A. That's the new one that was missing.
4 Q. That's the new one?
5 A. Yes.
6 Q. This indicates that it was a whole hi-fi
7 system. Did it have an AM/FM radio?
8 A. Yes.
9 Q. Okay. And so it had the tuner and the
10 three CDs. And do you recall what that box down
11 there was? Was that a screen that showed --
12 A. I'm not sure. I just know you load the
13 CDs in there and play CDs. That's what I do. We
14 don't listen to the radio really.
15 Q. Okay.
16 THE COURT: Anything else?
17 MR. PIKE: I have nothing else. Sorry
18 for your loss.
19 REDIRECT EXAMINATION
20 BY MS. LUZAICH:
21 Q. Did you tell the police afterwards that
22 that was missing?
23 A. No.
24 Q. The boom box, that the boom box was
25 missing?

1 A. Oh, not the little one, but the one with
2 the CD loader, yes.
3 Q. Right. The big, new one you told them it
4 was missing?
5 A. Yes. I was noticed it was missing.
6 Q. Did you ever tell the police later on
7 that the little boom box was missing?
8 A. No.
9 MS. LUZAICH: Thank you.
10 THE COURT: Okay. Thanks, Mr. Quarles.
11 Who's next?
12 MS. WECKERLY: Dan Long.
13 THE COURT: And is this it?
14 MS. WECKERLY: Yes.
15 (Whereupon, Detective Dan Long was
16 duly sworn to tell the truth, the
17 whole truth and nothing but the
18 truth.)
19 THE CLERK: Thank you. Please be seated.
20 Please state your full name and spell your first and
21 last name for the record.
22 THE WITNESS: Dan Long. D-a-n. L-o-n-g.
23 DIRECT EXAMINATION
24 BY MS. WECKERLY:
25 Q. And Detective Long, you were present at

1 the apartment where Sheila Quarles was murdered on
2 March the 24th of 2005?
3 A. Yes, ma'am.
4 Q. Were you present obviously then when
5 crime scene analysts took pictures or overall
6 pictures of the apartment itself?
7 A. I was at or near, yes.
8 Q. And you also observed the apartment from
9 your walk through?
10 A. Yes, ma'am.
11 Q. Sir, showing you what's been admitted as
12 State's 139 and also what's been marked as 140 to
13 142, do you recognize those pictures as depictions
14 of the apartment on the 24th when you were there?
15 A. Yes, ma'am.
16 MS. WECKERLY: State moves to admit, I
17 think we didn't admit 140 to 142.
18 MR. PIKE: No objection.
19 THE COURT: Admitted.
20 BY MS. WECKERLY:
21 Q. Putting on the overhead State's 139, that
22 would be a photograph of the kitchen area?
23 A. Yes, ma'am.
24 Q. And we see a boom box there?
25 A. Right next to the microwave, yes, ma'am.

1 Q. So obviously that boom box was there when
2 Metro was there?
3 A. Yes, ma'am.
4 Q. Because the pictures being taken. I'm
5 putting on the overhead State's 140. Is that sort
6 of a Karaoke machine sort of by the bed in the
7 bedroom?
8 A. Yes, ma'am.
9 Q. And I'm putting on the overhead State's
10 141, and I want to direct your attention
11 specifically, there we go, to sort of the cabinet
12 area.
13 Does it look like there's an
14 electronic item as well in that cabinet area?
15 A. Yes, ma'am. I believe that's a receiver.
16 Q. And finally I'm putting on the overhead
17 State's 142. That's the couch in the living room?
18 A. Yes, ma'am.
19 Q. And it looks like there's a CD/DVD
20 player?
21 A. Yes.
22 Q. And that was there as well when Metro was
23 there?
24 A. Yes, ma'am.
25 Q. If any of these items were removed, it

1 was sometime obviously after the police cleared the
2 scene, otherwise you wouldn't have these photos of
3 them?

4 A. Yes, ma'am.

5 Q. Did Debra Quarles or any of her family
6 members ever report to you that that boom box I
7 showed you from the kitchen in State's 139 was
8 missing?

9 A. No.

10 Q. Sometime in -- well, let me ask you this:
11 At some point in the investigation, you took Ms.
12 Luzaich and I with yourself and Detective Sherwood
13 to go and see an inmate by the name of William
14 Kinsey?

15 A. Yes, ma'am.

16 Q. And he was in prison at the time?

17 A. Yes, ma'am.

18 Q. Do you recall when it was that we went?

19 A. It was, I believe it was September of
20 '07.

21 Q. Okay. When you and/or Detective Sherwood
22 questioned Mr. Kinsey, was that done in a harsh and
23 aggressive manner?

24 A. No.

25 Q. Why wouldn't you do that?

1 A. We wanted Mr. Kinsey to talk to us. We
2 went in there and again told him that he wasn't
3 involved in this murder, he had nothing to worry
4 about, we weren't gonna ask questions about anything
5 else, and we were pleading with him to give us any
6 information about anything that would help us in the
7 Sheila Quarles' case. Any boyfriends, anything he
8 might know about problems with her. Anything.

9 Q. And I guess would you describe him as
10 cooperative?

11 A. No. He, he just, he was not gonna give
12 us a statement, was not interested in talking to us
13 and he told us.

14 MS. WECKERLY: Thank you. Nothing else,
15 Your Honor.

16 THE COURT: Any questions?

17 MR. PIKE: May we approach the bench,
18 Your Honor?

19 (Whereupon, an off-the-record
20 discussion was had at the bench.)

21 THE COURT: Anything else?

22 MS. WECKERLY: No, Your Honor.

23 THE COURT: Thanks Detective Long.

24 Appreciate your time. State rests.

25 MR. PIKE: Well, I have a question.

1 THE COURT: I'm sorry. When I said
2 anything else --

3 MR. PIKE: I'm sorry.

4 THE COURT: You turned around and walked
5 back. I thought you were done. Excuse me, Mr.
6 Pike.

7 THE WITNESS: You got me all excited
8 there.

9 CROSS-EXAMINATION

10 BY MR. PIKE:

11 Q. When I use the term harsh, that's your
12 interpretation, you don't feel that you were unduly
13 harsh, and that's your testimony, correct?

14 A. That I wasn't harsh in any way, yeah.

15 Q. But that's your opinion. Now, it may be
16 the opinion of another individual that your tactics
17 to him were harsh and so you can't interpret how he
18 took that?

19 A. There's no way he could have taken it as
20 harsh.

21 Q. Again, you don't know him, he could have
22 taken it as harsh and you can't interpret what his
23 feelings were?

24 MS. WECKERLY: Objection, asked and
25 answered.

1 MR. PIKE: You may feel --

2 THE COURT: He can answer again, but I
3 mean --

4 BY MR. PIKE:

5 Q. You may feel that my cross-examination is
6 harsh?

7 THE COURT: I don't think so.

8 THE WITNESS: I don't either.

9 BY MR. PIKE:

10 Q. Okay. But somebody else might?

11 THE COURT: Nah. I don't think so.

12 MR. PIKE: Okay. Thank you very much.

13 THE COURT: You're always a gentleman.

14 MR. PIKE: That's quite a compliment.

15 BY MR. PIKE:

16 Q. And you know from your experience as a
17 detective that the sheer -- just the mirror presence
18 of police officers talking to an inmate at a
19 location in Nevada State Prison is an uncomfortable
20 situation for the inmate?

21 A. We were, we made specific -- we were in
22 the cafeteria. We weren't --

23 Q. The common area, the cafeteria?

24 A. We weren't in uniform. I was as gentle
25 as I could possibly about be. And I was sitting

1 down when he came in, I wasn't standing up.

2 Q. I'm asking --

3 A. We tried everything possible.

4 Q. Excuse me. I asked a yes or no question.

5 THE COURT: What's the relevance of this?

6 This gentleman's been in jail since December of '04.

7 He didn't have anything to do with this case. Who

8 cares what their various interpretations of their

9 questioning of him was?

10 MR. PIKE: That he's giving information.

11 He's giving important information. He gave

12 information to us, he didn't give information to

13 them and that, and that's explained under the

14 circumstances in which the investigation occurred.

15 Who was talking to him.

16 MS. WECKERLY: Objection.

17 THE COURT: I'm positive that they

18 understand that point. I'm positive they do.

19 MR. PIKE: All right. Thank you.

20 THE COURT: Okay. Anything else?

21 MS. WECKERLY: No.

22 THE COURT: Thanks, detective.

23 Appreciate it.

24 THE WITNESS: Thank you.

25 THE COURT: Any sur-rebuttal?

1 MR. PIKE: No, Your Honor.

2 THE COURT: Okay. Case stands submitted?

3 MS. WECKERLY: Yes.

4 THE COURT: Okay. Well, we've already
5 read the instructions last night. So you can pull
6 out your instructions and you're ready to go.

7 Ms. Luzaich.

8 MS. LUZAICH: Good morning, ladies and
9 gentlemen. I'd first like to thank you all for your
10 time, your attention and your patience in this case.

11 Being jurors as you've all
12 discovered at this point is a difficult job. It
13 calls for many sacrifices as well as some emotional
14 well being issues. But without people like
15 yourselves that are willing to take time out of your
16 lives and sit as jurors, our system simply couldn't
17 function. So for that we thank you.

18 The court told you yesterday while
19 reading the instruction that's this is the time set
20 for closing argument. And, you know, in all the
21 years I've been doing this, I never understood why
22 they call it closing argument. I'm not gonna stand
23 here and argue with you. I'm not gonna stand here
24 and argue with the defense.

25 What it is really is our opportunity

1 for the first time to explain to you how we perceive

2 the evidence turned out because we know you've been

3 sitting here and diligently listening for the last

4 few days, how the evidence turned out and how it

5 applies to the law that the court read you last

6 night.

7 Remember please, one very important
8 instruction the court read to you is that statements
9 of counsel are not evidence. What I say up here,
10 when Ms. Weckerly stands up, what she says up here
11 is not evidence. What Mr. Pike said in opening last
12 week, not evidence. What Mr. Patrick says when he
13 gets up, not evidence.

14 The only evidence that you can
15 consider in this case is what comes from here.
16 People stood here, they raised their right hand,
17 they swore to tell the truth and they told you
18 things and they showed you things. And this is all
19 that you can consider in deciding this case.

20 But also remember another very
21 important instruction, the court told you last night
22 that you must use your common sense. Just because
23 we're in a courtroom and the judge is in a robe and
24 there are flags doesn't mean you check your common
25 sense at the door. Use your common sense. You have

1 all lived lives and have daily experiences. You
2 don't forget about them. Use your common sense to
3 draw inferences from the evidence and the testimony
4 that you've heard.

5 Andrew Young once commented, It is a
6 blessing to die for a cause because you can so
7 easily die for nothing.

8 Often in cases of homicide, we are
9 left with a question why. And many times as in this
10 particular case, we will never know. What we do
11 know is that a young 18 year old girl died in a
12 completely senseless way. She had so much going for
13 her. She did not deserve what happened to her on
14 March 24th of 2005.

15 Today the State of Nevada is going
16 to ask you for justice. Now, I'm going to apologize
17 in advance, my comments to you this morning are
18 going to be fairly lengthy. I know that you have
19 sat diligently listening and taking notes over the
20 last few days, but a lot of information was shared
21 with you over the last few days.

22 This is a very serious case and I
23 just want to make sure that we are on the same page
24 when it comes to everything. So as you're sitting
25 there if you're getting kind of bored and antsy and

1 you're kind of wondering when is lunch coming, what
2 am I gonna have for lunch, please bear with me.
3 Sheila deserves this, the State of Nevada deserves
4 it.

5 In this case, you have several
6 charges to decide. The court read you the
7 instructions, and I'm not gonna read through
8 absolutely everything, I promise.

9 But Instruction No. 4 tells us
10 first, burglary, every person who by day or night
11 enters a house or building with the intent to commit
12 a larceny or an assault and or battery or felony
13 such as sexual assault or burglary -- or I'm sorry,
14 robbery, is guilty of burglary.

15 Now, folks, burglary is a crime of
16 entry. The crime of burglary is technically
17 complete when the person enters a building with some
18 evil intent. Now the evil intent has to be the
19 appropriate evil intent to steal, to commit a
20 felony, to commit an assault or battery, but if he
21 enters with that intent, it is a burglary.

22 Consent to enter is not a defense to
23 the crime of burglary as long as it is shown that
24 the entry was made with the specific intent to do
25 that bad thing; to steal, to commit an assault or

1 battery, to commit a felony.

2 So when on March 24th, 2005 the
3 police went to the residence and they looked at the
4 door and they saw no sign of forced entry, does that
5 mean that there was no burglary? No, it does not.

6 So for example if Sheila knew her
7 attacker and let him in, what is important is what
8 was his intent when he entered the residence. And
9 the facts that you have before you is that he had no
10 reason to be there. He did not work in that
11 complex. Veronica Sigala told you that. He never
12 worked there. He wasn't dating Debra. Although he
13 had been dating Debra, that was over months and
14 months and months ago.

15 Sheila is an 18-year-old girl. The
16 defendant at the time was a 31-year-old man. Sheila
17 is seeing somebody, Chicken. In fact, she had had
18 sex with him earlier.

19 So he had no reason to be there.
20 What was his intent when he entered? To get what he
21 wanted, whether she wanted to give it or not.

22 Instruction No. 8 starts talking
23 about the murder instruction. Murder is the
24 unlawful killing of a human being with malice
25 aforethought. Killing with malice is murder. So

1 what you have to decide was Sheila killed with
2 malice. Certainly she was.

3 Instruction No. 9 defines malice
4 aforethought for you. Now, I'm not gonna go through
5 that whole thing. It talks about a heart fatally
6 bent on mischief, it talks about reckless disregard
7 of consequences and social duty.

8 But what malice aforethought, it's
9 really a complex phrase for a simple concept. What
10 malice aforethought means is ill will. How can you
11 decide whether there was ill will in this case?

12 Well, Instruction No. 10 tells us
13 that malice can be expressed or implied. Expressed
14 malice is an intentional killing.

15 For example, I take a gun, I point
16 it at somebody's head, I pull the trigger. No one
17 will dispute that if I'm pointing a gun at
18 somebody's head and pulling the trigger that my
19 intent is to kill them. Expressed malice.

20 Was Sheila killed intentionally?
21 Well, how do we know what someone's intent is. How
22 can we prove it? We can't really crawl up inside
23 somebody's brain so what we do is we look at the
24 circumstances that surrounds the killing and that
25 gives us the correct information.

1 So think about this case. Sheila
2 was strangled. We know that based upon first the
3 multiple petechial in the surface of her eyes,
4 remember Dr. Simms talked about those punctate
5 hemorrhages, the little dots in her eyes and on her
6 lip. They indicated to Dr. Simms that pressure was
7 applied to the neck. The pressure causes a build up
8 of blood in the veins and they burst.

9 There were also numerous hemorrhages
10 in Sheila's neck. In the front of her neck, in the
11 back of her neck, in the internal structures of her
12 neck. Those hemorrhages also indicated to Dr. Simms
13 that a traumatic injury to the neck in form of
14 significant compression. Those were the words he
15 used, significant compression.

16 And in fact, he opined that the
17 pressure that was used was meant to cause injury.
18 Remember, he also talked about multiple points of
19 pressure. There were 12 to 15 different hemorrhages
20 in her neck.

21 What did that mean? It meant that
22 hands were around the neck, stopped and moved,
23 rearranged, stopped and moved, stopped and moved and
24 continued.

25 Remember, Dr. Simms told us that it

1 takes 15 to 20 seconds at least to strangle someone
2 into unconsciousness. It then takes minutes to
3 cause them to stop breathing. Imagine putting your
4 hands around somebody's neck for minutes and
5 squeezing and rearranging and squeezing and
6 rearranging for minutes. The only thing that can be
7 intended in that situation is to end someone's life.
8 Expressed malice.

9 First-degree murder -- or malice
10 aforethought can also be implied. Implied malice.
11 It's still ill will, but you don't actually intend
12 the death.

13 So for example, golden gloves
14 champion is at a restaurant with his girlfriend and
15 somebody's ogling his girlfriend and he gets really
16 angry and he gets up and he walks up to the guy and
17 wham. Two shots; one to the head, head hits floor
18 and the guy dies. Did he intend to kill the guy?
19 No. Implied malice.

20 So once you decide that Sheila's
21 killing was a murder, you have to decide was it
22 murder of the first degree or, or murder of the
23 second degree. Sorry about that.

24 In every case of murder in the State
25 of Nevada, that is the jury's decision. They have

1 to decide is it first or is it second.

2 In the instructions last night, we
3 distinguished or the court distinguished between
4 murder of the first degree and murder of the second
5 degree in several different instructions.

6 Instruction No. 11 tells us that
7 murder of the first degree is murder which is either
8 committed in the perpetration or attempted
9 perpetration of a burglary, sexual assault or
10 robbery or perpetrated by any kind of willful
11 deliberate and premeditated act.

12 So if we have a killing that is
13 willful deliberate and premeditated, that's
14 first-degree murder. It can also be murder during a
15 perpetration of a certain felony.

16 In the realm of murder, we have --
17 I'm sorry. First degree or second degree. Anything
18 that is not first-degree murder is second-degree
19 murder. First I'm gonna talk to you about willful,
20 premeditated and deliberated murder.

21 Instruction No. 12 discusses for you
22 when a killing is willful, deliberate and
23 premeditated.

24 And Instruction No. 12 is really
25 long and I'm gonna break it down for you much

1 easier. Willful is another word for intentional.
2 Hands around the neck moving and squeezing, moving
3 and squeezing. 12 to 15 separate hemorrhages in the
4 neck. Obviously intentional.

5 Deliberate. He could have stopped
6 at any time. As he sat there with his hands around
7 the neck squeezing and squeezing and squeezing and
8 squeezing and rearranging, he could have stopped and
9 did not.

10 Premeditated. Premeditation is
11 basically the determination to kill. By the time he
12 committed the intentional killing, the act of the
13 killing, he had the determination to do so. He had
14 decided to do so. It wasn't just a reflexive act,
15 it wasn't his hands around her neck -- I'm sorry. I
16 know I keep saying this, but it is so telling the
17 fact that the hands kept squeezing for so long.

18 Now, there's a misconception about
19 premeditated and deliberated murder that people have
20 had over all the years. Most people think that if
21 you find your wife is having an affair, you decide
22 you're gonna do something about it, and you spend
23 the next six months planning, you're gonna follow
24 them somewhere, you buy a gun, you buy duct tape,
25 you do all those things and then six months later

1 your plan takes effect, you follow them, you go to
2 the hotel, you break in, you shoot them, you tie
3 them up, obviously that would be premeditated and
4 deliberate.

5 However, Instruction No. 12 also
6 tells us that premeditation need not be for a day,
7 for an hour or even for a minute. It can be as
8 quick as successive thoughts of the mind.

9 So willful on purpose; deliberate,
10 he thought about it; premeditated, he made a
11 decision.

12 An easier example of premeditation
13 and deliberation -- and they're both so closely
14 intertwined, they're almost the same, but they're
15 not. You have to decide beyond a reasonable doubt
16 that each of those elements were met. That it was
17 willful, that it was deliberate and that it was
18 premeditated.

19 So for example, something happens
20 every day. You're driving down the street and
21 you're coming up to a light. The light turns
22 yellow. As you're driving, what goes through your
23 mind when you see that light turn yellow? Well,
24 you're thinking, how far away am I from the light.
25 How fast am I going. Can I make it. How late am I

1 for work. Am I gonna get pulled over. Is there a
2 police officer there. Is there somebody coming in
3 the other direction that's gonna hit me as I go
4 through and it's actually red.

5 These are all things that flip
6 through your mind in a split second. So when you
7 put your foot on the gas and you decide to go, you
8 have premeditated and deliberated that you're gonna
9 run that light.

10 Or if you put your foot on the brake
11 and decide to stop, again, you have premeditated and
12 deliberated that you're not going to run the light.
13 It only took seconds, but it was successive thoughts
14 of the mind.

15 With Instruction No. 12, we are
16 further told that deliberation is the process of
17 determining upon a course of action to kill as a
18 result of thought, including weighing the reasons
19 for and against the action and considering the
20 consequences. If I run the light am I gonna get a
21 ticket. Can I cause an accident. If I don't run
22 the light, no ticket, no accident, but I'm gonna be
23 late for work. Deliberation.

24 In Sheila's case, the hands
25 rearranged so many times on her neck instead of

1 merely removed and walked away, that is
2 deliberation. The State has proven beyond a
3 reasonable doubt that the act was premeditated and
4 deliberated.

5 However, you can also decide in this
6 case first-degree murder by means of the felony
7 murder rule.

8 Instruction No. 14 tells us there
9 are certain kinds of murder that carry with them
10 conclusive evidence of malice aforethought.

11 So where a killing occurs during the
12 perpetration of one of these felonies, you go right
13 to first-degree murder. Burglary, sexual assault,
14 robbery, are those felonies.

15 Now, although the State submits that
16 we have proven it by premeditation and deliberation,
17 I still want to talk to you a little bit about
18 first-degree murder by felony murder because you're
19 also gonna decide the other counts anyway.

20 Just as an aside, when you are
21 making your decision, you have to be unanimous only
22 that it was first-degree murder. Six of you can say
23 well, I believe it's first-degree murder because it
24 was premeditated and deliberated. Six of you can
25 say I believe it's first-degree murder because it

1 was felony murder. You just all twelve have to say
2 I believe it was first-degree murder.

3 Sexual assault. Instruction No. 18
4 tells us that a person who subjects another person
5 to sexual penetration against the victim's will is
6 guilty of sexual assault.

7 What is sexual assault? Basically
8 it's penetration without consent. Now, generally in
9 a sexual assault case, the victim will come in here
10 and she'll sit right there and she'll swear to tell
11 the truth and she'll tell you he put his penis in my
12 vagina, I didn't want to do it, I told him I didn't
13 want to do it and there's your sexual assault.

14 Well, in this particular case,
15 obviously because he then killed her, she can't come
16 in and say that. So what we do is we look to other
17 circumstances or other evidence to determine was
18 there penetration without consent.

19 Penetration is putting any part of a
20 body, for example the penis, or an object, into the
21 genital or anal opening of another; including sexual
22 intercourse obviously.

23 Physical force is not a necessary
24 ingredient. So when you think of sexual assault of
25 forced acts, somebody holding him down and beating

1 him up and big old fight ensuing. That is not the
2 case. There need not be anything like that. It
3 just has to be without consent. That's all.

4 What evidence do we have that shows
5 us that it was without consent?

6 First we heard from Dr. Simms. And
7 Dr. Simms told you when he observed the photographs
8 of the vagina that he believed that a violent sexual
9 assault had occurred. He described for you the
10 tears in the lining of Sheila's vagina. The type of
11 which he only sees in forcible sex situations.

12 But remember, he also told you that
13 he's not only been a pathologist, he's not only
14 examined the vaginas of women who are no longer
15 alive, but he had a general practice, that he did do
16 internal examinations, that he has seen sexual
17 assault victims alive, so he's seen what their
18 vaginas looked like after having being been
19 assaulted when he had told him, yeah, I didn't want
20 to do that, it was done against my will. So he's
21 got both experience.

22 He told you that based on what he
23 saw, something was inserted into Sheila's vagina at
24 a time that her vagina was not relaxed, and that is
25 what caused those lacerations in her vagina.

1 But furthermore to show you it was
2 not consensual, you heard about the blunt forced
3 trauma to her head that was contemporaneous with her
4 death, at the same time of her death, that was
5 contemporaneous with the sexual assault at the same
6 time as the sexual assault. You heard about the
7 contusion to her abdomen, you heard about the
8 abrasion on the back of the knee. All of these
9 things that occurred at the same time.

10 But not only did you hear from Dr.
11 Simms, you heard from Linda Ebbert. Linda Ebbert
12 the sexual assault nurse examined her who has
13 examined thousands of ladies who have been the
14 victims of sexual assault or nonconsensual sex.

15 Remember how she talked to you about
16 the human response, the human sexual response which
17 prevents injury to the vaginal area. How if a woman
18 is a willing participant, her vagina will lubricate,
19 it enables the penis to slide in. How the pelvis
20 will tilt, unknowingly the pelvis will tilt to
21 actually accommodate the penis. None of that
22 happened here and that is how those injuries
23 occurred.

24 Now, Linda Ebbert described for you
25 the multiple lacerations in Sheila's vagina. And

1 she was even more specific. She called them
2 remember, jagged cuts. Not just a rubbing of the
3 skin inside the vagina, not just a rubbing or
4 bruising, a cut, a jagged cut. She describes one as
5 significant, very significant because it was wide
6 and deep. And in fact that there were multiple
7 lacerations she told you means more force was used.
8 All of what she saw she told you was consistent with
9 nonconsensual sex.

10 In Sheila's case a penis was forced
11 inside of her vagina and left evidence behind.

12 Now, Dr. Simms talked to you about
13 the sexual assault being contemporaneous with her
14 death. And how he knows that is there were
15 hemorrhages there. Hemorrhages, the body bled and
16 therefore she was still alive at the time of the
17 assault.

18 So it's penetration of a live
19 person's body. And because there was no swelling
20 observed, we know that it was very close in time to
21 her death.

22 Remember how he told you, Dr. Simms,
23 that when something is inserted in the vagina and
24 the lacerations involuntary, forcibly inserted in
25 the vagina and it causes lacerations, they will

1 bleed immediately and will essentially immediately
2 begin to swell. You may not see the swelling at
3 first, but he said you will see the swelling within
4 20 to 30 minutes. And he saw no swelling yet. No
5 swelling. So the penis was forced inside her vagina
6 within 20 to 30 minutes of her death.

7 And again, the blunt forced trauma
8 to her head contemporaneous with her death, the
9 contusion to her abdomen, the abrasion to the back
10 of her knees, all of those things contemporaneous
11 with her death, with the forceful insertion in her
12 vagina. So not only was she sexually assaulted, but
13 because she was sexually assaulted during the
14 perpetration of -- or she was murdered, sorry,
15 during the perpetration of the sexual assault, you
16 further have first-degree murder by means of the
17 felony murder rule.

18 Instruction No. 21 talks to us about
19 robbery. And robbery is the unlawful taking of
20 personal property from the person of another or in
21 his or her presence against their will by means of
22 force or fear or injury.

23 Now, you've heard a lot about the
24 stereo that was stolen. The stereo that was just
25 recently bought and placed in the house. You heard

1 about the cell phones that was missing and never
2 found, and you heard about the bank card that was
3 missing and never found.

4 You heard about and saw pictures of
5 the pillow cases on the bed. There were multiple
6 pillows in the bedroom. Two of them did not have
7 pillow cases. Pillow cases. What a way to take a
8 large stereo out of the apartment without being
9 noticed.

10 All of this we know happened after
11 Sheila got home. We know that in the morning the
12 stereo was there, Debra saw it before she left for
13 work. We know that while Quince was on the phone,
14 Quince Toney was on the phone with Sheila she heard
15 music on the background. So the stereo was there.
16 The stereo is only missing when Sheila is found
17 dead. Robbery.

18 Now, because the evidence
19 demonstrates beyond a reasonable doubt that these
20 crimes have been committed, you also have to
21 determine who committed the crimes. I would submit
22 to you that the State has proven beyond a reasonable
23 doubt that it was Norman Flowers, the defendant, who
24 committed these crimes.

25 Now what do we know in this case?

1 Most of what we know, most facts are not at issue in
2 this case. We know that Sheila Quarles, who her
3 family and friends called Pooka, was 18 years old at
4 the time. We know that on the date of her death on
5 March 24th, 2005, she came home in the morning
6 having spent the night at Quince's house. Quince
7 her girlfriend.

8 We know that because one, Quince
9 told you about how she had picked her up the night
10 before, they spent the night, she took Sheila home
11 in the morning. We know that because Debra told you
12 that Sheila left the night before, went to Quince's
13 and came home in the morning at or about the time
14 that Debra was going to work. So we know that
15 Sheila got home around 6:30 in the morning?

16 We know that she had been ill and
17 had not been to work for a couple of days. We know
18 that both because Debra told us about that and
19 because Quince told us about that.

20 We know that Debra went to work and
21 Quince went to work. We know that both Debra and
22 Quince spoke with Sheila periodically through the
23 day. And we know that because both Debra told us
24 that and Quince told us that, but we know from
25 Detective Vacarro that when he went into the home

1 and he looked at the land line, the phone that was
2 in the house, the caller ID showed Debra had called.
3 We know that Quince had spoken to Sheila because
4 Detective Wildman when he spoke to Quince looked at
5 her cell phone and looked at the caller ID and it
6 corroborated what Quince had said about talking to
7 Sheila periodically throughout the day.

8 We know that the stereo was in the
9 apartment that morning. As I indicated, Debra saw
10 it that morning, Quince heard it while she spoke
11 with Sheila at either 11:00 or at 12:30.

12 We know that although Sheila had a
13 relationship had with Quince, she also had a
14 relationship with George Brass who many people have
15 affectionately refer to as Chicken.

16 We know that because Debra one, told
17 us that George Brass and Sheila were very close,
18 they were neighbors, they were very close, saw them
19 together all the time.

20 We heard from Ameia Fuller who is
21 Sheila's cousin and very close friend that she knew
22 about Chicken from Sheila.

23 And we knew from George Brass
24 himself who came in here, sat there and told you
25 that he had been seeing Sheila for quite sometime.

1 In fact that Ralph was his buddy, his really good
2 friend, Ralph, Sheila's brother, and that Ralph,
3 Sheila's brother, was seeing George Brass's sister
4 at the same time.

5 We know that they had a sexual
6 relationship, and we know that for several reasons.
7 One, like I said, George Brass sat there and told us
8 about that, but we also know because Christina
9 Paulette, remember the DNA analyst. She had
10 analyzed swabs from Sheila's vagina and found on
11 those swabs obviously a mixture of DNA, but she
12 found Sheila's DNA and she found George Brass's DNA.
13 So we know that he was telling the truth because the
14 scientific evidence supported it.

15 We know that Debra talks to Sheila
16 around 1 o'clock, 1:15. Remember Debra described
17 for you how she was talking to Sheila on the land
18 line and the phone went dead. Sheila was not heard
19 from again after that.

20 Now, Debra thought the phone went
21 dead because the battery had died which very
22 possible or because something bad happened to Sheila
23 right then.

24 So we know also that Debra came home
25 and then 911 was called at 2:51, 10 to 3:00. So we

1 know that Sheila was killed between 1:00 and a
2 quarter to 3:00.

3 Basically Debra talks to Sheila at
4 around 1 o'clock. The next thing we know for sure,
5 Debra comes home, she's got bags of groceries, she
6 honks thinking Pooka's gonna come out and help her,
7 but she doesn't. Debra doesn't really think
8 anything of it at that point because Robert Lewis
9 looks out, sees, comes out and helps.

10 And we know that because Debra told
11 us that he came down and helped and Robert Lewis
12 also came in and he talked to us about it. He came,
13 he helped, he brought Debra into the home with her
14 bags.

15 And remember, when Debra came home,
16 the door was not locked. It was closed, but it was
17 not locked. It was Sheila practice to lock the door
18 when she was home alone, but on this occasion, it
19 was not locked.

20 Now, at that very moment in time,
21 Debra didn't think anything of that. It wasn't
22 until she went inside, sat her bags down, calling
23 Pooka, Pooka, no answer. Then she looks here, then
24 she looks there, she noticed the stereo's gone.

25 Well, she goes into the bathroom and

1 it's feeling kind of steamy, the shower curtain is
2 closed, she opens the curtain and there is Sheila
3 under water, hot water.

4 Remember Debra told you the water
5 was hot to the touch, and the faucet, the knob was
6 turned as hot as it could go.

7 She is so distraught at that point
8 she has to get help from Robert. And when you look
9 at the pictures, you can see in the picture there's
10 a purse on the floor, contents spilled out. Robert
11 drags Sheila out of the tub and somebody covers her
12 for dignity purposes.

13 We know that Ebony and Marquita Carr
14 hear Debra screaming hysterically and they come
15 running. We know that one, Debra tells us, Robert
16 Lewis tells us, but also Marquita Carr also came in
17 and told us about that.

18 Now, remember, Marquita who had been
19 there for a little while heard nothing in the
20 apartment earlier. Quiet. As if Sheila knew her
21 intruder.

22 So we know that Sheila is murdered
23 between 1 o'clock and about a quarter to 3:00. Why
24 is that important? That is important because when
25 Sheila is examined, there is DNA from two people in

1 addition to herself, obviously; semen from two
2 people found inside her vagina because remember the
3 swabs go in and they swab the bath back of her
4 vagina. So there's semen found inside her vagina
5 and on her panties.

6 Now, we also all heard a lot about
7 DNA yesterday. Everybody has a unique DNA profile.
8 There are no two that are the same.

9 When Christina Paulette tested the
10 swabs that were taken from Sheila's vagina and from
11 her panties, whose DNA did she find? She found
12 George Brass, the person who came in here, swore to
13 tell the truth, and told you yeah, I had sex with
14 Sheila that day. I had sex with her in the morning,
15 and then I went to work. He didn't have to tell you
16 that, but he did.

17 So she found Sheila's DNA on the
18 swabs, she found George Brass's DNA on the swabs.
19 And who else's DNA, the only unexplainable DNA is
20 found on the swab and in the panties? His. The
21 person who has no legitimate reason to be in the
22 apartment.

23 Now, George Brass was spoken to by
24 the police. He could have said no, I'm not talking,
25 I have nothing to say. Remember he's in custody.

1 But he voluntarily spoke to the police and said,
2 yeah, I had sex with her and then I went to work.
3 George Brass who was in custody could have said
4 hell, no, I'm not giving you a DNA sample, but he
5 did. He voluntarily gave a DNA sample.

6 If he had not told them, yeah, I had
7 sex with her that day, if he had not given a sample,
8 we would be in the same place we were six months
9 ago, a year ago, two years ago, three years ago and
10 have no idea who the other sample was.

11 George Brass who has nothing to gain
12 by being cooperative and basically everything to
13 lose because the truth, and in fact, his DNA is
14 found in the vagina of a girl who had just been
15 murdered.

16 He voluntarily gives a statement,
17 gives a sample and then comes in here to testify.
18 He had nothing to hide. He told us that he was at
19 the apartments that morning, he told us that he was
20 living there, but he saw Sheila that morning, he
21 went into her apartment and he had sex with her he
22 thought between 10:30, 11 o'clock and then he went
23 to work.

24 Well, coincidentally Robert Lewis
25 came in and also told you that he saw George Brass

1 there that morning. He called it lunch, but he said
2 it was between 10:00 and 11:30 which is completely
3 consistent with what George Brass told you.

4 And then we know that he went to
5 work, George Brass. We know that because one, he
6 told you that; but two, his time card. And I'm
7 sorry. I tried so hard to get that to fit there.

8 Remember we heard not only him, but
9 Gabe Ubando who is the Wal-Mart assistant manager
10 and, you know, kind of in charge of time cards. We
11 heard that all Wal-Mart employees have a little
12 badge, kind of like the badges that you're wearing
13 right now, that they swipe when they get there and
14 it's computer.

15 So it's not as if they can mess
16 around with it, they swipe it, they're there. Then
17 when they go to lunch, they swipe out for lunch.
18 When they come back from lunch, they swipe back in.
19 And when they leave at the end of the day, they
20 swipe out. It's kind of big brotherish, but that's
21 what goes on in Wal-Mart.

22 And, although I don't know if you
23 can see this right here, when you go back, you'll
24 have this with you, it shows you that on March 24th
25 of 2005, the day that Sheila was murdered, just like

1 George Brass told you, he swiped in at 12:04. He
2 told you that, Gabe Ubando told you that and showed
3 you that. He swiped in at 12:04 and that's at Craig
4 and MLK. MLK and Simmons-ish.

5 You can see on there that he swiped
6 out for lunch at 4:04, that he came back from lunch
7 at 5:03. Remember he told you he grandma lives in
8 the area and he went to grandma's to lunch every
9 day. Very close. So easy. An hour out, grandma
10 makes him lunch he comes back, and he's in in an
11 hour. And then at the end of the day he swipes out
12 at 7:45.

13 Now Brass, George Brass mentioned to
14 us that he had left work when he got a phone call
15 about what happened to Sheila. Remember he told you
16 that his mom called and then Ralph, Sheila's
17 brother, his buddy, his best friend called and he
18 left work a little early, but the manager knew that.

19 And then he tells you when he gets
20 back to the apartments the police are there. Well,
21 you know, you heard from the police they were there
22 till at least 9 o'clock that night. So out at 7:45,
23 home, police still there. It all fits.

24 George Brass had no reason to hurt
25 Sheila. He'd been having sex with her all along.

1 His good friend Ralph, his buddy, it's his sister,
2 can he didn't kill his best friend's sister. In
3 fact, his bud is having sex and seeing his own
4 sister. George Brass had no reason whatsoever to
5 hurt Sheila.

6 The other part of the mixture
7 however did. She didn't want to have sex with him.
8 He was her mother's boyfriend. Do you think she
9 wants to have sex? 18 year old Sheila wants to have
10 sex with her mother's old boyfriend and he's 31?
11 George Brass obviously not 31. William Kinsey,
12 somebody else that she was involved with, obviously
13 not 31.

14 She had just had sex a couple of
15 hours ago with her own man. She didn't want to have
16 sex with him. He is the only one that had a reason
17 to hurt her, which brings us back to the DNA.

18 Can Christina Paulette tell you with
19 a hundred percent certainty that the mixture -- and
20 I'm sorry, just to go back. Remember the Wal-Mart
21 all the way up here, Pecos right here, you've got
22 the 15 and all that terrible area to drive through,
23 no way he could have driven all the way there, had
24 sex with her, strangled her, grabbed the stereo, run
25 out, driven back and clocked in in less than an

1 hour.

2 So back to the DNA. Sorry. Can she
3 tell you with a hundred percent certainty that the
4 mixture on the swabs and the panties are both George
5 Brass and the defendant? Well no, because it was a
6 mixture. So a hundred percent certainty, no.

7 99.99 percent of the population is
8 excluded from having been in Sheila's vagina and in
9 Sheila Quarles's panties. 99.99 percent of the
10 population.

11 The one that all of a sudden comes
12 back into Sheila's life almost immediately before
13 the murder is the one that is in her vagina.

14 Remember how Debra told you that a
15 week or two before the murder she and her daughter
16 Sheila were sitting outside the apartment on the
17 power box and they ran into, or the defendant ran
18 into them. And he was surprised to see them. Oh,
19 you mean you live here now. Because remember, when
20 he was dating Debra, they lived at this part of the
21 apartment. Then after they stopped dating, they
22 moved to a different part of the apartments. And
23 when she's like well, yeah, we live here now, but
24 what are you doing here. He tells her he's a
25 maintenance man, he works for them.

1 Well we know that's not true because
2 the apartment manager came in here, Veronica Sigala
3 and told you that. He never worked there.

4 So not only is it the one who
5 coincidentally finds Sheila two weeks earlier,
6 Sheila whose gotten a little older and you saw is
7 beautiful, he's also the one that all of a sudden
8 comes back into Debra's life after the murder.

9 Remember how she told you that
10 shortly thereafter she's at her job one day and he
11 comes up to her and says I heard what happened to
12 your daughter. He didn't live there, he didn't work
13 there. How's he know. I heard what happened to
14 your daughter, that's messed up, she's a good kid,
15 she didn't deserve that. He's the one who tells her
16 that she needs go to a grief counselor and tells --
17 and brings her to the grief counselor.

18 Now, this is a guy -- they haven't
19 seen each other in eight months, not dating anymore,
20 nothing like that. This is the guy who is poking
21 around asking questions of Debra. Have they found a
22 suspect, do they know anything about anyone who
23 killed your daughter.

24 Now why do you think he's doing
25 that? Because he wants to know if they're on to him

1 yet. This is also the reason that you have heard
2 about the other murder.
3 Oh, I'm sorry. Not everybody is
4 really technical logically advanced. I work at it,
5 but it doesn't work very well.

6 The other murder, you have been
7 instructed, I can't even remember how many times
8 about the murder of Marilee Coote. And again, I'm
9 gonna tell you, you absolutely can't, like the judge
10 tells, you use the fact that he killed, strangled
11 and raped Marilee Coote to say he's a bad guy,
12 therefore he had to have done it to Sheila, too.
13 You can't do that. Absolutely not.

14 But what you do is you take that
15 evidence and you look at it to see, hum, can we use
16 that information to figure out the identity of the
17 killer and the rapist of Sheila? You use that
18 information to say hum, what does it tell us about
19 the motive of the person who rapes and kills Sheila.

20 Now, you heard about Marilee at that
21 address and she's found dead in her apartment with
22 no signs of forced entry and no obvious sign of a
23 struggle. Hum, sound familiar?

24 You heard that she was violently
25 sexually assaulted. That there were lacerations in

1 her vagina and her rectum. Sound familiar?

2 She was strangled to death as
3 evidenced by multiple hemorrhages both in her neck
4 and in her eyes, the petechial hemorrhages. Sound
5 familiar?

6 You heard that her vaginal area was
7 burned, that a hot source was applied to her body,
8 maybe in an effort to hide evidence.

9 You heard about all of those items
10 that were found in her washing machine and in her
11 bathtub. In the washing machine, all those items
12 having been washed. Remember you heard that it had
13 been through the cycle, that there was soap on it,
14 appeared to be in the washing machine pretty much
15 anything that he could have touched. I mean ice
16 cubes. Ice cube trays, sorry. Touch it, leave
17 fingerprints behind. Touch it, leave fingerprints
18 behind. All sorts of items. The items in the
19 bathtub as well.

20 You heard that although her
21 apartment was exceptionally clean, it appeared to
22 Jeff Smink, the crime scene analyst who was out
23 there, who had been doing this for what, 20 some
24 years, it had appeared to him that the scene had
25 been wiped clean presumably in an effort to hide

1 evidence.

2 Remember all the stuff in the
3 bathtub? Well, when they went in, excuse me, the
4 next day and they were swabbing for prints, remember
5 the bath stub was where all those items were found,
6 it looked as if it had been wiped clean. Cleaned
7 off to get rid of fingerprints.

8 The washing machine, dryer, remember
9 that's where all the crazy stuff was found. Again,
10 look, streak marks, wiped clean.

11 The laundry detergent and things,
12 who if you're cleaning your house, you know, you
13 understand somebody cleans the tub, cleans the
14 washing machine, who wipes clean laundry detergent
15 unless you're trying to hide evidence.

16 Interestingly the one place where
17 there was nothing that was touched, that the sink,
18 was not wiped clean. So if somebody's cleaning the
19 whole house you're gonna clean the kitchen sink,
20 that's probably one of the first places you clean,
21 the kitchen area, but that is one place that there
22 was no streaking as if nobody tried to hide any
23 evidence there. Only the places where the odd
24 things were found.

25 The stain on the living room carpet.

1 Now why is that important in that case? I'll go
2 back. Sorry. Marilee Coote was found laying on the
3 floor in her apartment. And immediately under her
4 vagina is where the stain was found. Immediately
5 under because after being raped, she was strangled
6 and killed. That, the fact that it was right there
7 shows she never got up. She never moved again.

8 Now, you heard about the DNA
9 evidence in this case. Not only was the carpet
10 stain analyzed, but her vaginal and rectal swabs
11 were.

12 And what did Christina Paulette tell
13 you? 100 percent sure identity is presumed. Rarer
14 than 106 -- one in 650 billion people, it was the
15 defendant who left his semen not only in her vagina,
16 but in her rectum and on the carpet.

17 And you can see. And you have the
18 ones for Sheila as well. It matches all the way
19 down the line. So we know that the person who raped
20 and strangled Marilee Coote is the defendant.

21 We know that the defendant then went
22 through and cleaned up the apartment, hid evidence,
23 tried to hide evidence. Wiping down all the areas
24 that were touched when he put all the stuff in the
25 washing machine, in the bathtub.

1 Did he do it to make it look like
2 she was not only staged the scene a little bit.
3 Burned her vaginal area trying to get rid of the
4 evidence.

5 And you heard about the carpet, that
6 there was detergent used. He actually tried to get
7 rid of the stain. Unfortunately, for him anyway, it
8 didn't work.

9 The crime scene analyst noticed it
10 that day, smelled the floral detergent or whatever
11 it was, but not only that, Chr tina Paulette, when
12 she even years later went to reanalyze the stain
13 told you about how when she did the overlay, it
14 bubbled, foamed because of the detergent.

15 Then there's Sheila. Sheila is
16 assaulted, she is placed in a tub of hot water, hot
17 water, kind of like burning Marilee, trying to get
18 rid of the evidence. Fortunately for us what he,
19 the defendant didn't know, is that that does not get
20 rid of the evidence that's inside the vagina. The
21 one thing that points absolutely to him.

22 He staged the scene here, too, puts
23 the clothes down as if she just got in the shower
24 and was gonna relax, got undressed, got in the
25 shower. Maybe fell and hit her head. She has bad

1 asthma. Maybe she had an asthma attack. He's
2 staging the scene. But what he didn't realize was
3 that that makes no sense.

4 If Sheila was getting in the tub
5 herself, gonna take a shower herself, her underwear
6 are not gonna be on the outside of her jeans. She
7 would not have done that herself. Somebody did
8 that. Somebody. Him.

9 So ladies and gentlemen, over the
10 last couple of days, you've heard a lot of evidence.
11 You heard about Sheila, her horrible death. And
12 it's time to hold the person accountable.

13 We have proven to you beyond a
14 reasonable doubt that there's a killer in the
15 courtroom, folks. He's sitting there right there
16 and his name is Norman Flowers.

17 Thank you.

18 THE COURT: Thanks. Mr. Patrick. If
19 anyone ever needs a rest room break, raise your
20 hands. If I don't, I'll just good forward.

21 Go ahead, Mr. Patrick.

22 MR. PATRICK: From the words of victor
23 today, I will promise to be sincere, but I cannot
24 promise to be impartial.

25 Now, when we started this trial last

1 Wednesday, a couple of couple of things came to
2 light that it makes your job a lot harder than for
3 most jurors.

4 The first thing that I said the
5 first day of jury selection is that you were gonna
6 hear about another murder. Wow. I mean, you didn't
7 even really know what this case is about and bam, we
8 have another murder out there.

9 Whether or not you believe Norman is
10 guilty or not guilty in the Coote case, he's not
11 been adjudged guilty by a jury, by a court in
12 accordance with our laws. And the reason is because
13 he's not had a fair and impartial trial on the Coote
14 case.

15 If you disregard that, and you think
16 he's guilty in the Coote case, you're tearing down
17 the safeguards that are guaranteed to every one of
18 us by our society and by our constitution.

19 MS. WECKERLY: I'm gonna object, Your
20 Honor. That actually misstates the law.

21 THE COURT: Sustained. The law as I've
22 given you says you first have to find by clear and
23 convincing evidence that he has done that. And if
24 you do, there's a limited purpose only for which you
25 can consider the evidence and you're instructed to

1 follow that instruction.

2 MR. PATRICK: Thank you. Now, I guess
3 the witnesses aren't the only ones they are harsh
4 to.

5 Okay. The judge has told you
6 several times about the limited ways you can use the
7 Coote case in deciding this case. And that's what
8 you've got to do.

9 Norman has not been on trial for the
10 Coote case and as such today, and when you're done
11 deliberating this case, when you leave here at the
12 end of this trial, he will still be not guilty in
13 the Coote case.

14 For this case, this court, Randy,
15 myself, the prosecutors, the constitution and our
16 society trust this jury with deciding this case.

17 You have agreed not to find Norman
18 guilty or innocent of the case involving Ms. Coote.
19 You have given us your trust that you will only
20 decide his guilt or innocence in this case.

21 And we trust you. We must trust you
22 with that and that you will let another jury who
23 will get the full facts and the full evidence of the
24 Coote case to decide that case.

25 Now, the second thing you heard

1 about in jury selection was a penalty phase. And
 2 you heard about the penalty phase before you even
 3 got a chance to hear any of the evidence on this
 4 case, before you had any idea of what you were going
 5 do or what was going on before you had any time or
 6 reflection to determine whether Norman was guilty or
 7 innocent. That's almost like the old subliminal,
 8 subliminal advertisements telling that you that
 9 Norman's guilt or innocence was a foregone
 10 conclusion before we ever started this trial. And
 11 that is simply not the case.

12 The reason why we had to tell you
 13 about that is because that's only time we have as
 14 attorneys to talk to you about what may come at the
 15 end of the trial.

16 We can't pick a jury for the first
 17 part and then go pick a new jury for the second
 18 part. So we have to talk about you at the very
 19 onset of this trial, so that we know that Norman
 20 will get a fair and impartial jury. Not only to
 21 adjudge whether he's guilty or innocent, but a jury
 22 that can fairly and impartially decide individually
 23 whether what penalty they believe --

24 MS. WECKERLY: Objection, Your Honor.

25 MR. PATRICK: So as you go back and

1 deliberate --

2 THE COURT: Hold on. I think that he's
 3 okay. They've been instructed they are not in this
 4 phase even to consider penalty, not to discuss it,
 5 not to do anything, but I think he has a fair right
 6 to say look, the only reason we discussed that is
 7 this and don't consider that in the concession on
 8 our part of anything about the guilt or innocence of
 9 our client.

10 So I think he hasn't gone over the
 11 line so objection's overruled. Go ahead, Mr.
 12 Patrick.

13 MR. PATRICK: Now, you heard several
 14 times from the judge this week that the only time
 15 you'll even get to the penalty phase is if you find
 16 Norman guilty of first-degree murder. All other
 17 sentences and penalties will determine solely by our
 18 judge.

19 So you're presented here today, as
 20 you go back to deliberate right now only one thing,
 21 whether or not Norman is guilty or not guilty of the
 22 murder of Sheila Quarles.

23 And when you do that, when you come
 24 back today, tomorrow, whenever you come back after
 25 your full deliberations, I'm sure that you'll come

1 to the only conclusion that you can. That Norman is
 2 not guilty.

3 Now, the judge read you the jury
 4 instructions. You have a copy of them, I'm sure you
 5 all will read them when you go back to deliberate.
 6 And I'm not gonna bore you by going through them all
 7 again. We trust that you will read them and follow
 8 them and use them in the manner that prescribed.

9 Over the course of the trial, you've
 10 heard the judge give you the cautionary instruction
 11 about the Coote case. If you find by clear and
 12 convincing evidence that Norman committed that
 13 crime, then and only then can you use that
 14 information for very specific things. Intent, lack
 15 of consent on the part of the victim, common scheme
 16 or plan, motive, the absence or mistake or accident
 17 in the charges before you.

18 Well, clear and convincing is a
 19 lower standard than beyond a reasonable doubt which
 20 is what you have to do on the Coote case.

21 Now, you weren't given all the
 22 evidence -- I'm sorry. In the Quarles' case. You
 23 were not given all the evidence in the Coote case.
 24 You know, you did not hear from every witness the
 25 State has available in the Coote case.

1 MS. WECKERLY: Objection, Your Honor.

2 There should be no reference to --

3 THE COURT: Well --

4 MS. WECKERLY: Evidence outside this
 5 record.

6 THE COURT: Well, I think they understand
 7 that there hasn't been a complete trial on that case
 8 and they heard limited evidence, and let's just
 9 leave it at that.

10 Go ahead, Mr. Patrick.

11 MR. PATRICK: Thank you. Now, we all
 12 know how Mr. Kinsey felt.

13 Now, if you were not here during
 14 jury selection and if you were not here during the
 15 opening arguments, if you just came in and watched
 16 bits and pieces of this trial, you may actually
 17 thought that this trial was all about Marilee Coote.

18 Because the evidence you heard about
 19 Sheila Quarles was less than half of the evidence
 20 you heard over the week. And why is that? Well,
 21 it's because of the lack of evidence they have in
 22 the Sheila Quarles' case.

23 The evidence that they presented to
 24 you about Quarles has not, does not prove their
 25 theory beyond a reasonable doubt. Their theories of

1 the Quarles' case, and they admitted through their
2 witnesses, have changed over the years. And it
3 simply does not prove beyond a reasonable doubt that
4 Norman did this. So simply put, what they want to
5 you do is to take that Coote case and use it to
6 convict Norman on this case.

7 But that's not what the instructions
8 told you you are to do with the information from
9 Coote. That's what not what you told me you would
10 do during jury selection. And I'm gonna trust that
11 that's not what you're gonna do when you go back
12 today to deliberate. You're only here to decide
13 what happened to Sheila Quarles.

14 Now, Dr. Simms was the first witness
15 that testified in this trial, and he talked about
16 the medical findings in Sheila autopsy and the
17 medical findings in Ms. Coote's autopsy.

18 A couple of things that he said was
19 that in Sheila the petechial hemorrhages in her eyes
20 and her lip were all very small pinpoint.

21 He told you and showed you pictures
22 about Marilee Coote of the petechial hemorrhages,
23 while there were some of the pinpoint ones, there
24 were also some that were very large.

25 He talked about, and Ms. Luzaich

1 talked about, the person that strangled Sheila
2 grabbed her neck, but then had to rest and then
3 grabbed her neck again, but there was no evidence of
4 that in the Coote case. The person that grabbed
5 Marilee Coote and strangled her was strong enough to
6 do it all at one time.

7 So what this will show you, what the
8 physical evidence is showing you is that there was
9 two separate people involved in the strangulation of
10 Sheila Quarles and Marilee Coote. There were of
11 different sizes, different strengths and used
12 different amounts of force.

13 Now, you also heard that the coroner
14 did not collect all the evidence in this case. A
15 lot of the evidence was collected by the police
16 before Sheila ever got to the coroner. Things like
17 nail clippings, the vaginal swabs, the anal swabs
18 and fingerprints.

19 Detective Vacarro told you that that
20 was routinely done by the police prior to the
21 coroner seeing her or seeing anybody.

22 You also note that semen will stay
23 in the vaginal vault for a long period of time.
24 Nurse Ebbert told you that they would collect up to
25 72 hours after the alleged assault. Three days. So

1 we know that the semen will stay in that vault for
2 at least those three days. What we don't know is
3 when the semen that was found in Sheila Quarles was
4 put in there.

5 The only other thing Dr. Simms told
6 you about and you heard from Mr. Schiro, was that
7 after sex semen will leak out of the vaginal vault
8 and be deposited in the panties as we had here.

9 Dr. Simms talked about the bruise on
10 Sheila head and Detective Vacarro talked about this
11 mark on the wall of the tub.

12 Now, Detective Vacarro said it
13 looked like blood to him, but he didn't think it was
14 tested. And then CSA Horn and Detective Sherwood
15 came in and said well, it didn't look like blood to
16 us, but still wasn't tested.

17 Well, the thing to wonder is is
18 there any connection between that mark and what
19 happened to Sheila. Whether it's blood or not, it
20 was, it looked obviously like it was something from
21 her head. Did she slip in the tub and hit her head?
22 Was that part of the drowning part of her autopsy
23 report that Dr. Simms gave you?

24 We won't know because it was never
25 tested. We don't know if it's blood like Detective

1 Vacarro thought, we don't know if it wasn't like
2 Detective Sherwood thought.

3 We heard from a Marquita Carr. Now
4 she's related to the whole Lewis, Brass family that
5 you heard so much about over the last week. Her
6 Aunt Jannie Brass is cousins, Jasmine Brass, Ebony
7 Lewis, Uncle Robert Lewis, Anthony Culverson's
8 related, George Brass is related, they all live in
9 that apartment complex.

10 And she, Marquita Carr was in that
11 apartment complex around noon the day that Sheila
12 died. She was present when Sheila found and she was
13 actually in the bathroom before anybody else got
14 there.

15 Then we heard from Debra Quarles,
16 Sheila's mom. And rightfully so, she's very upset
17 about this. I mean, it was her 18 year old daughter
18 that died.

19 Debra knew about Quince Toney. She
20 thought Quince and Sheila were friends. Did not
21 know about their sexual relationship.

22 Debra knew George Brass, Chicken.
23 She did not know that Chicken and Sheila had a
24 sexual relationship.

25 Like Ms. Luzaich told you, George

1 was friends with Ralph and George. Was related to
2 Robert Lewis. Debra knew Robert Lewis. Robert
3 Lewis had spent the night with her the night before.
4 She just knew the entire Brass, Lewis family, most
5 of which were living in that very apartment complex
6 that she was.

7 So Debra leaves the apartment for
8 work that morning about 6:30. When she left, Sheila
9 was wearing a white sleeveless shirt and some white
10 pink pajama bottoms.

11 There was a new stereo in the
12 apartment. Debra comes home around 3 o'clock, give
13 or take, 2:51, 2:45. We're not arguing what time
14 she came home. It was around 3:00 in the afternoon.
15 She had should groceries, beeps the horn trying to
16 get somebody to help her with groceries. Robert
17 comes out, helps her out with the groceries.

18 After going through the house, they
19 discover Sheila in the tub. Well, between Debra and
20 Robert, they are pull her out of the tub. It's not
21 important which one does the actual lifting. They
22 just get her out of the tub. And notice the
23 stereo's gone.

24 What does Debra do next? Well, she
25 gets in her car and she drives at least five minutes

1 to her son Ralph's house. Ralph's not home. So she
2 said she drove another three minutes to the
3 7-Eleven. Finds Ralph, gets him in the car, drives
4 back to the apartment complex. Why?

5 The police come, Debra talks to the
6 police. She tells them about Quince. She doesn't
7 tell them about George or anybody else that she saw
8 around that apartment complex. Why is that? Well,
9 Debra knew the Lewis, Brass family.

10 Was she afraid of them? Was she
11 suspicious of them? Did she feel the need to
12 consult with Ralph before she talked to the police?

13 Debra knew Norman. At one point,
14 Debra and Norman had dated.

15 Now Debra did not know about a
16 sexual assault between Quince and Sheila. Debra did
17 not know about a sexual assault between George Brass
18 and Sheila.

19 Why would we think that if there was
20 a consensual sexual relationship between Norman and
21 Sheila that Debra would know about it.

22 After Sheila's death, Norman offered
23 support and sympathy to Debra. Where was George
24 Brass? Where was Robert Lewis? Why weren't they
25 offering support and sympathy to Debra Quarles?

1 Debra told you about a day she was
2 sitting on a power box with Sheila and she told you
3 that Norman came by, waived, talked, whatever they
4 did, and she wanted you to believe that that power
5 box is immediately in front of her front door.

6 We heard from Detective Vacarro that
7 Debra's apartment was not on the exterior of the
8 apartment complex. You heard from George Brass and
9 several others that if you were to walk out of Debra
10 Quarles' door, you were just a few feet from the
11 next apartment building where George lived
12 downstairs and Jessie Nava lived upstairs.

13 And we heard from Robert Lewis, he
14 was socializing in Debra's apartment the night
15 before, spent the night with Debra, saw Sheila the
16 next morning as Sheila was coming home.

17 Robert knew that Sheila was alone.
18 Robert saw George Brass come up to the apartment and
19 go inside. Robert saw George Brass leave the
20 apartment.

21 Now, the police talked to Robert
22 this day. Robert refused to give the police a
23 statement.

24 Now, Detective Long comes in here
25 and he wants you to believe that Robert was

1 forthcoming, honest, cooperative for the hours or so
2 that they talked, and that Robert was simply scared
3 either by the other people who didn't want to talk
4 to the cops, didn't want to be labeled a snitch.
5 Whatever.

6 You saw Robert on the stand. You
7 saw George Brass on the stand. You saw Anthony
8 Culverson on the stand. Did any of them look scared
9 to you?

10 Who would Robert be scared of? Most
11 of the people who lived around him was his family.
12 Either the Brasses or Lewises. If Robert were so
13 forthcoming, honest and cooperative, why didn't he
14 tell the police about George. He knew George was in
15 the apartment that day. He knew George was in the
16 apartment alone with Sheila that day. He knew that
17 George and Sheila were having a relationship, but he
18 told the police none of this.

19 Why is that? Well, he was
20 protecting George. He was protecting his family.
21 It wasn't because he was scared that somebody might
22 label him a snitch for talking to the police.

23 The next thing Detective Long told
24 you was that George -- Robert Lewis voluntarily gave
25 them a buckle swab.

1 Okay. Well, with that's the
2 definition of voluntarily. Detective Long knows
3 that if George -- if Robert does not give him that
4 buckle swab, he can take him into custody, take him
5 to jail, take him to the homicide office, make him
6 sit there until he either gives him a buckle swab or
7 until Detective Lewis (sic) gets a warrant to get
8 that buckle swab.

9 Robert Lewis knows this. Refusing
10 the buckle swab would have made Robert Lewis look
11 suspicious. So that's why he gave to him.

12 What Robert Lewis didn't give the
13 police was the fact was that George had been with
14 Sheila earlier that day and he did not give up
15 George to the police.

16 If he did not think George had done
17 anything wrong, there would have been no reason to
18 hide George from the police. Not just that day, but
19 for three years George was hidden from the police by
20 his family.

21 Detective Vacarro also talked a
22 little bit about the high concentration of police in
23 that area around 1001 North Pecos. When asked, he
24 said that's simply because there's more people
25 living there. More people equals more police.

1 Well Detective Long got on the stand
2 and he gave you the real reason why there's a high
3 concentration of police in that area. Because it's
4 a high crime and drug area. They need the police
5 presence there.

6 Next, Detective Vacarro kind of told
7 you about the apartment and how there was no visible
8 signs as he walked through the apartment, except for
9 in the bathroom which he characterized as a room
10 that was much more active. Well, of course it was.
11 You heard testimony about that.

12 You heard testimony how small that
13 bathroom was. Debra Quarles said she could reach
14 out and touch both walls with her hands.

15 And then think about the number of
16 people that were in that room prior to the
17 detectives and CSA coming and showing up. Debra was
18 in there. Robert Lewis was in there. Marquita Carr
19 was in there. Uniformed patrol officers were in
20 there. Medical personnel were delivering aid in
21 that room. Actually surprising, that room wasn't
22 torn up a lot more than it was.

23 Now, you heard a lot of testimony
24 about the lack of disservances (phonetic) in the
25 apartments. But what does that really tell you?

1 Well, I think tells you one or two things. It
2 tells you that Sheila knew her attacker, that Sheila
3 left the door unlocked because she knew her mother
4 was coming home with groceries. So that this was a
5 crime of opportunity, a smash and grab burglary that
6 went wrong and when the burglar discovered there was
7 someone else in the house.

8 Detective talked -- Detective
9 Vacarro talked about the letter that was addressed
10 to William Kinsey found on the bed in the apartment.

11 At the time Mr. Kinsey was staying
12 at the Clark County Detention Center. And you heard
13 from Detective Sherwood and from Mr. Kinsey himself
14 how Sheila would write those letters and put her
15 last name -- his last name in association when hers
16 as if they were married.

17 Detective Vacarro told you about a
18 lot of people that were in the apartment that day.
19 Debra Quarles, Jane Brass, Elizabeth Tolbers
20 (phonetic), the police, fire.

21 But at the time of the incident,
22 George Brass was not on that list. Why is that?
23 There were witnesses around that apartment complex
24 that whole day. Police talked to several of them.
25 No one was asked did you see anybody going in and

1 out of the apartment. No one came forth and said I
2 saw these people come in and out of that apartment.
3 No one came forward and said I had sex with Sheila
4 that day in that apartment.

5 Again, the detectives are trying to
6 pass this off to you that the people are afraid to
7 talk to the police because of who they are and what
8 they may have done in the past or because they don't
9 want to be labeled as a snitch.

10 Well that explanation works for the
11 police for everybody in this case except for Norman.
12 When the police came and talked to him and Detective
13 Sherwood came to talk to him at CCDC when he was
14 already in there for something else, and he didn't
15 want to talk to him, well, now it's not that because
16 he didn't want to talk to the police because he's
17 afraid of the police or because he didn't want to be
18 labeled as a snitch, now all of a sudden he don't
19 want to talk to the police because you're hiding
20 something, because you're guilty.

21 How do you rectify that? In this
22 case no one but Robert Lewis knew about George
23 Brass, Chicken, until three years later.
24 Everybody's tried to tell you this was an ongoing
25 investigation and they were just kind of going bam,

1 bam, bam, bam, bam, but the truth is George Brass's
2 name did not come to the police for three years.

3 Detective Sherwood told you that in
4 part of the investigation he was at, George Brass's
5 name never even came up. Why was that? Well, he
6 was being protected. He was being hidden.

7 All the police were just not asking
8 the right people about Chicken. The police didn't
9 know who he was or if he was a viable suspect. The
10 police didn't even look for George Brass until the
11 district attorneys told them he needed to.

12 The police had a suspect and they
13 simply stopped there. They were just interested in
14 getting this case off of their books. Right
15 suspect, wrong suspect, it doesn't matter.

16 George Brass had no idea whether or
17 not he was a suspect in this until the police talked
18 to him. George Brass never came forward and said I
19 have information about this.

20 It took detectives contacting Ameia
21 Fuller three years later who finally told them well,
22 I know about this guy Chicken that was having a
23 relationship with Sheila for two months prior to her
24 death.

25 Detective Long went and interviewed

1 George on August 12th, 2008 was when they first
2 talked to George Brass about this case. Detective
3 Long recorded that interview but only part of it.
4 He told George that hey, you know what, you're not a
5 suspect. And that he hammered that home because he
6 did not read George Brass his rights. Showing
7 George, look, you're not a suspect.

8 Well, now was George Brass
9 forthcoming on this and cooperative? Well, he
10 hadn't been for three years. He would have never
11 talked to the police to this day had Ameia Fuller
12 not told them about him, but yet he had valuable
13 information about Sheila death. But still during
14 that interview, he did not tell Detective Wildman
15 about any of his friends or family that were around
16 that apartment complex that day.

17 George told you and he testified
18 that in March of '05 he was living with his mother
19 in the same apartment complex, kind of across that
20 next building and over to the right from Sheila.

21 He saw Sheila that day and he told
22 you that she was wearing blue jeans and a red shirt.
23 He told you they had sex on the living room floor.
24 He told you they got, that she got dressed after
25 they had sex and he left and he saw Robert, and he

1 saw his Uncle Robert Lewis outside the apartment as
2 he was leaving. And then he tells you he went to
3 Wal-Mart and checked in, checked out.

4 And the assistant manager from
5 Wal-Mart came back, came in and told you, yeah,
6 George's time card showed you on the 24th he clocked
7 in here, clocked out for lunch, clocked back in.
8 But then he also told you about procedures where if
9 an employee forgets to clock out, goes home, well,
10 he can call them and they can go back in and access
11 the computer, access his time and put it in for
12 them.

13 He also told you that he knows of
14 instances in that Wal-Mart store where one employee
15 would clock in and out for the other employee. And
16 he made it very clear that if he did that and you
17 were caught that it was grounds for immediate
18 termination. Well, like everything else, it's only
19 bad, it's only illegal if you get caught.

20 Chicken was at work and he received
21 phone calls from his mother and Ralph Quarles. And
22 he came back to the apartment complex. He was asked
23 a few questions by the police officer, doesn't
24 remember if he was uniform or not. The officer did
25 not take his driver's license and say wait here, you

1 know, the detectives may want to talk to you. And
2 if you all remember, Detective Long kind of went
3 through that whole procedure how you're at the crime
4 scene, goes up to someone and says I want to talk,
5 you know, say okay, you know, the detectives need to
6 talk to you, let me have your driver's license,
7 we'll get the detectives, they want to talk to you,
8 whatever, and then hand the driver's license, like
9 that.

10 That never happened with George.
11 And that day when he talked to that officer, he
12 never said, I'm her boyfriend, I have a relationship
13 with her, we had sex today.

14 The other thing is that George
15 recognized his upstairs neighbor Jessie Nava. So we
16 go back to Detective Long and talking to
17 Detective -- or George Brass and he had, Detective
18 Long found out that George had sex with Sheila that
19 day. And then Detective Long did not go out and
20 follow-up with any of Brass's relatives regarding
21 what George had told him. He didn't go ask any of
22 his acquaintances, his family well, was George with
23 you that day, did you see him at the apartment
24 complex that day.

25 Today you heard from William Kinsey.

1 He told you that about six months prior to him going
2 to jail in 2004 that he had been dating Sheila. And
3 he told you about the letter that was found on the
4 bed that he never received.

5 Something you need to think about in
6 this case is that the only crime that was committed
7 and reported in that apartment complex on the 24th
8 of March 2005 was not just Sheila's death. Earlier
9 that morning there was a burglary. There was no
10 investigation into that burglary.

11 And we know it was a burglary
12 because Ms. Luzaich told you in her closing argument
13 the burglary is a crime of entry. Whether or not
14 you take anything, as long as you had an attempt to
15 do a felony when you walked in the door, it's a
16 burglary. So we know that this was a burglary that
17 morning.

18 It wasn't investigated, even though
19 Detective Vacarro told you there was a buzz around
20 the apartment complex about what had happened
21 earlier that morning. The police never identified a
22 suspect in that burglary.

23 And Detective Long told you that the
24 police didn't think that the burglary was connected
25 to Sheila's death. He said the ties between the

1 burglary and the homicide would be almost impossible
2 to find.

3 Detective Sherwood told you, yeah,
4 the police did not think the two were connected. We
5 know now they were connected. They were connected
6 by Jessie Nava. He was the early-morning burglar.
7 The person whose, whose apartment he broke into got
8 a clear look at him. She knew that this was the guy
9 that committed this burglary in her house that
10 morning.

11 He's the guy that was seen with the
12 stereo in Sheila's apartment. The stereo that he
13 admitted he got from the girl downstairs. The
14 stereo with detachable speakers. Not a boom box,
15 not a Karaoke machine, not a DVD player, a stereo
16 with detachable speakers.

17 The ties between the burglary and
18 the homicide were almost impossible to find. The
19 police just had to look for them. Just had to
20 really put an effort into finding the real person
21 that killed Sheila.

22 You heard from Natalia Sena. She
23 lived in the apartment above where -- in the
24 building that George Brass lived in upstairs which
25 would have been directly across from Sheila's

1 apartment and upstairs and kitty-corner from
2 George's apartment. She lived there with Jessie,
3 she lived there with Alfonso Sanchez.

4 And on the March 24th, she came home
5 from gambling around noon. She saw Chicken, George
6 Brass. She knew him as Chicken. And she saw Carl,
7 skinny guy, black guy, wearing a long sleeved
8 flannel shirt. She tried to buy weed from the guy
9 in the flannel shirt. She saw him looking around
10 like he was trying to check out the place, scope out
11 the place, I forget the exact words she used. He
12 looked like he was coming out of Sheila's apartment.

13 And she knew this was after 12:00
14 noon when she saw both this dark guy in the flannel
15 shirt and George Brass. She was very sure about
16 that time until after she talked to the district
17 attorneys. Then she started changing her story.

18 On that day, Natalia was arrested
19 for whatever they found in her apartment. She went
20 to jail for two days. When she got home, she
21 noticed a couple of things. She noticed that Jessie
22 had stolen some drugs that was hidden in a speaker
23 in their apartment and she saw Jessie with this
24 stereo. And again, Jessie told her where he got the
25 stereo, from the girl downstairs.

1 We heard from Veronica Sigala,
2 assistant manager for the Palm Village Apartments.
3 She knew Jessie. She knew that Jessie had broken
4 into several apartments. She'd seen him break into
5 several apartments. She knew that's what he did.

6 She also told you that unlike what
7 Debra told you, that Norman was never an employee of
8 the apartments, never worked maintenance for them.

9 We also heard from Quince Toney.
10 She told you how she had a sexual relationship with
11 Deb -- with Sheila and that that had been going on
12 for approximately several months. They would see
13 each other nearly every day during this time period.

14 Sheila would spend the night at
15 Quince's house nearly every night during this time
16 period, but Sheila did not stay with Quince the
17 three nights prior to the night before her death.
18 Three nights, three days, 72 hours.

19 As we heard, as we heard from nurse
20 Ebbert, we know that semen can stay in the vaginal
21 vault for up to 72 hours.

22 Could Norman have had sex with
23 Sheila during that period? Well, of course he
24 could. You've seen nothing this week that proves to
25 you any different.

1 So Quince dropped Sheila off at home
2 around 6:00 a.m., and Quince describes pretty much
3 the same thing about George Brass did, that Sheila
4 was wearing pajamas.

5 The two of them, Sheila and Quince,
6 talked on the phone throughout the day. Quince
7 remembers Sheila being happy, outgoing, remembers
8 hearing the music in the background during some of
9 the calls. And then she gets a call from Sheila
10 with nobody on the line. She calls back. Nobody
11 answers. Calls back again, still nobody answers.

12 So we heard about a lot of work this
13 CSA was doing in this case. CSA Fletcher came in to
14 Sheila's apartment, he impounded some items, dusted
15 for prints. They found latent prints on Gatorade
16 bottles, on a Gatorade bottle. Beef and cheese
17 package, peanut package, CD cases. The entire
18 bathroom was printed.

19 Now, Sheila's body and neck, they
20 didn't -- they never checked, never processed for
21 prints on that. CSA Green told you that well, you
22 know, latent prints may survive sometimes, even
23 after being submerged in hot water. And she also
24 testified that, that it would be very difficult but
25 not impossible to at least check for prints on a

1 body and not even recover them.

2 You heard from Fred Boyd. He
3 examined most of the prints from Sheila's apartment.
4 He was given 21 print cards that had been recovered
5 by either CSA Horn or Fletcher. None of these told
6 you it was the quality he needed to match with
7 exemplars. And he was given exemplars of Sheila and
8 Norman, Quince Toney, Robert Lewis and Debra
9 Quarles. He was not given at the time, nor has he
10 been given since, exemplars to check from George
11 Brass or Jessie Nava.

12 Ed Guenther came in and told you
13 about how he analyzed latent prints from Marilee
14 Coote's apartment. There was 69 print cards given
15 to him in that case. 36 of those were sufficient to
16 compare with exemplars, but one thing that's really
17 interesting about both the cases that all those
18 prints, all those cards, both of those apartments,
19 who's prints were never identified? Norman's. Not
20 one. Out of all those cards in both those
21 apartments did anybody ever find a print belonging
22 to Norman.

23 And in the Coote case, Mr. Guenther
24 actually had three prints that were nonidentified.
25 And even though these prints will be kept forever,

1 because it's a homicide or at least until one is
2 done with that case, the last time anybody looked at
3 those prints or tried to compare them with anything
4 was in August of 2005.

5 So you've heard, actually you've
6 heard from a lot of fingerprint experts in this
7 case. You heard from two that did the processing,
8 you heard from three, four, five that did the
9 collections and, and went around the apartment
10 looking for prints.

11 And again, the thing that strikes
12 you most about the fingerprint evidence in this case
13 is there is none. None that points to Norman as
14 ever being in either one of those apartments.

15 In fact, if you look at the evidence
16 that was shown to you, there is absolutely no
17 evidence in this case whatsoever that shows you
18 Norman was ever even in Sheila's apartment, let
19 alone on the 24th of March.

20 What do they have? Well, they have
21 his semen in her vaginal vault. Okay. They can't
22 tell you when that was put there, they can't tell
23 you where it was put there, they can't tell you
24 whether or not it was consensually put there. All
25 they can tell you is it's there. There's nothing

1 else that ties Norman to Sheila's apartment.

2 In Coote's apartment, they have a
3 carpet stain, okay.

4 In the Quarles' case, they didn't
5 even bother taking the ultimate light source that
6 they have that's available to all the CSAs in Las
7 Vegas. It's a common tool. I'm sure they all know
8 how to use it. And look, is there a carpet stain?
9 We don't know. Is there someplace else that they
10 can pinpoint that Norman was ever in that apartment
11 by his DNA evidence? Absolutely not.

12 So what wasn't done by the police
13 and the CSAs in this case? Well, none of Sheila's
14 previously worn clothing was impounded and checked.
15 Those pink pajamas never checked. If she had
16 underwear on under those pink pajamas, never
17 checked. And we know what value that could have
18 been.

19 If on those pajamas there was only
20 one source of DNA, one source of semen, then we'd
21 know when the sexual act occurred, or at least we'd
22 know who was first and who was second. But we'll
23 never know that.

24 The CSA was never directed to go
25 back and retest the apartment as more information

1 came about the case. The police never showed photos
2 or photo lineup around that apartment complex with
3 Norman's picture, with Jesse's picture, with
4 George's picture to ask the people, hey on March
5 24th did you see any of these people here.

6 Well, we know that a lot of them
7 probably saw Jessie because he live there. We know
8 a lot of them probably saw George because he lived
9 there. But why not show them Norman's picture and
10 say did you see him.

11 Like Ms. Luzaich said, he was the
12 one out of place, but they didn't show a picture and
13 nobody identified Norman as being in that apartment
14 complex that day.

15 None of George Brass's family that
16 came up here, none of Robert Lewis's family that
17 came up here and testified ever said I saw Norman in
18 the apartment that day.

19 Natalia Sena who saw Chicken, who
20 saw the guy in the black flannel shirt, she didn't
21 see Norman there that day. She knew who was coming
22 and going, she knew who was around.

23 The police did not look at the pawn
24 shops to see if anything had been pawned. You heard
25 about they don't even have to go to the pawn shops.

1 You heard about Metro's pawn patrol that has all the
2 information there. They don't have to go to a
3 hundred pawn shops. They've got to go to one place
4 in their own police department and say hey, we need
5 to see if anybody pawned something. We can give you
6 a name of somebody and see if they pawned anything
7 in the shops around where he shops anywhere.

8 Detective Sherwood told you, well,
9 if we had a name, we can go do that. Well guess
10 what? They have plenty of names. They had Robert
11 Lewis, they had George Brass, they had Jessie Nava
12 who has the stolen stereo from Sheila's apartment
13 two days after the attack. How many names do they
14 want to check?

15 They never followed up on Sheila's
16 stolen bank card. Was it ever used? Was it ever
17 tried to be used? Even though the account was
18 closed, was there ever a point where somebody tried
19 to use that card? I have no idea.

20 You heard about messages left, voice
21 mail messages left on Sheila's phone. Quince Toney
22 gave the police the access number to access those
23 messages. Were those messages preserved? No. Why
24 not? Did the police ever check to see if that phone
25 had been reactivated or tried to be reactivated?

1 No.

2 You heard a lot about the speaker
3 wire on the floor of the living room. You would,
4 you would assume that that speaker wire was pulled
5 out the back of the stereo that was stolen. If it
6 was pulled out of the back, there may have been some
7 skin cells left on that wire. Skin cells that would
8 lead to DNA. DNA that would lead to identifying the
9 person who took the stereo. Was any of that done?
10 No.

11 The police recovered the one pair of
12 Sheila jeans and panties that were actually in the
13 bathroom. Like we said, the pajamas that at least
14 two people say that she was wearing that morning
15 were never recovered. We don't even know if they
16 were ever looked for.

17 And again, the panties that she had
18 worn the day before, two days before, had they not
19 been washed could have led to very important DNA
20 evidence to give us a time line of what happened
21 prior to Sheila's death. Never even looked at.

22 Now, Ms. Ebbert told you about the
23 importance of collecting panties for these very
24 reasons: Biological fluids, DNA evidence. Things
25 that can point us in the direction of who actually

1 did this to Sheila.

2 Now, talking about nurse Ebbert for
3 a minute, she came in and give us some very good
4 testimony, told you a lot about sexual assault
5 nurse, what she does, how she does it.

6 The thing to remember about nurse
7 Ebbert is she never saw Sheila, she never saw
8 Marilee Coote. Whether they were dead, whether they
9 were alive, she never saw their actual bodies. But
10 she was given some time after the fact through
11 photographs taken during the autopsy, okay.

12 We don't know -- I mean we know that
13 the person taking those photographs was probably a
14 fairly good photographer, but we don't know what
15 differences in lighting or differences in shadows or
16 anomalies in the printing process that could have
17 come up to disguise, to make look worse, whatever,
18 the injuries that she was describing to you because
19 she never saw those injuries in person.

20 She couldn't even direct the
21 photographer and say well, these are the angles I
22 would like, these are the pictures I would like to
23 make my decision. She got what they had and she had
24 to work with that.

25 She also told you that similarities

1 for what she saw could happen with consensual sex.
 2 Maybe not as likely, maybe not all the time, but
 3 it's possible. And she talked to you about the
 4 injuries. What it boils down to, the injuries that
 5 you saw and the injuries to vaginal walls and things
 6 like that, come from a lack of lubrication in the
 7 female. They come from improper position. That's
 8 not to say they come only from sexual assault. It's
 9 quite possible to have consensual assault --
 10 consensual sex if the girl's not properly lubricated
 11 yet, not in the proper position.

12 So these injuries don't just mean
 13 sexual assault. All they mean is it wasn't the
 14 right time yet. It could have been in 30 seconds,
 15 but just not at the specific point of the sexual
 16 intercourse.

17 Nurse Ebbert talked a little bit
 18 about Sheila's injuries. She said there was several
 19 of them wide and deep, show more force and there
 20 were no anal injuries.

21 Then she talked about Marilee Coote.
 22 Fewer in number, no anal injuries and she didn't use
 23 the wide and deep. So again, as with the
 24 strangulation, physical evidence would indicate two
 25 different people. One much more lateral than the

1 other one, but still two separate people.

2 A lot of this case kind of goes,
 3 rests on the DNA evidence. Okay. The DNA shows
 4 that at a minimum Norman had sex with Sheila and
 5 Chicken had sex with Sheila within this three-day
 6 period, 72 hours as we talked about that.

7 Who else did? Well, Ms. Paulette
 8 said that this DNA mixture eliminates 99.98 percent
 9 of the population. Okay. Except, you know, except
 10 for Norman and Chicken. We know about them. But
 11 with the mixture, all it could be said is whether or
 12 not excluded. Not included as anywhere from another
 13 40 to a hundred and 30 people in the Las Vegas
 14 Valley. Could not be excluded.

15 The mixture recovered from Sheila
 16 and her panties, as you heard from George Schiro,
 17 contained enough information to come up with over 64
 18 billion possible combinations. Wow. Okay.

19 The mixture only tells us the
 20 minimum number of people. At least three. Because
 21 of the numbers on your little tables, we know there
 22 was at least, at least three. We have no idea if
 23 there was more than three. No idea. Never know.
 24 From the information that is in that mixture, we
 25 know at least three, but we will never know the

1 maximum number.

2 So there could be easily more than
 3 the two male deposits. And especially if you think
 4 about relatives whose DNA is gonna be closer to
 5 begin with. Father and son, half the DNA matches
 6 just right off the bat.

7 So you've got to look at not only
 8 the DNA for what it did tell you, but even more
 9 importantly what it can't tell you. It's not the
 10 magic bullet, it's not the end all of this whole
 11 case.

12 And we talked about this. The DNA
 13 cannot tell you what Sheila had sex. She can't tell
 14 you if she had sex first with Norman or first with
 15 George. She, it won't -- well, it probably could
 16 tell you, but we didn't do the investigation so we
 17 don't know if Sheila actually had sex with George on
 18 the floor of the living room, and we have absolutely
 19 no idea where Sheila had sex with Norman.

20 Did the police find a carpet stain
 21 in this case so they can say well, yeah, George is
 22 right, they had sex on the floor. They didn't find
 23 it. Hell, they didn't even look for it.

24 Sexual assault. That's a harsh
 25 term. I mean, there is an visceral gut reaction to

1 the words sexual assault.

2 But again, you've got to look at the
 3 evidence and what was proved beyond a reasonable
 4 doubt. Sheila's clothes weren't torn. We made a
 5 big deal -- well, the State made a big deal about
 6 the panties over the legs of the jeans. They didn't
 7 explain how that would happen, just that it was
 8 weird. It's weird.

9 Does it prove sexual assault?
 10 Absolutely not. They showed you the panties that
 11 Ms. Paulette looked at. And there was both Norman's
 12 and George's semen in it.

13 So what does that tell you? Well,
 14 that tells you that after she had sex with Norman,
 15 she put those panties on. After she had sex with
 16 George, she put those panties on? Again, not when,
 17 not where, not how. Just a simple fact that that
 18 happened.

19 There were no signs of struggle in
 20 the apartment. You heard that over and over and
 21 over, okay.

22 The bathroom was a mess. I told you
 23 why the bathroom was a mess. Does that indicate
 24 sexual assault? No.

25 Christina Paulette told you that she

1 had fingernail clippings from Sheila and that they
2 used those to see if there was any foreign DNA on
3 them. She told you there was none, okay.

4 Why do they do that? Well, they do
5 that because if the person being attacked scratches
6 their attacker, it's gonna get their skin underneath
7 their fingernails. And there was none. So if we
8 were to think that Sheila was fighting, maybe that
9 DNA would be there.

10 Let's talk about the burglary and
11 the robbery for a second. We know there were
12 unknown prints on the CD, CD cases that were in the
13 apartment. Whose are they? Could be Jessie Nava's.
14 They were never checked.

15 We talked about the speaker wire.
16 Who pulled that speaker wire out of the back of the
17 stereo? Again, we don't know. But we do know who
18 had the stereo two days later, and we do know that
19 it was a stereo with detachable speakers. It wasn't
20 a boom box. It wasn't a Karaoke machine. It wasn't
21 a DVD player. It wasn't a receiver. It was a
22 stereo with detachable speakers.

23 All those pictures they showed you
24 this morning, how many of those other components had
25 detachable speakers? We know what stereo Jessie had

1 in his hands.

2 And I mean the biggest reason we're
3 here this week of course is the murder. The motive.
4 The State does not have to prove beyond a reasonable
5 doubt a motive. It's not part of their job, it's
6 not in the description of murder. They don't even
7 have to show you one. But you know what, wouldn't
8 that be kind of helpful?

9 What was Norman's motive? They
10 didn't show you one. If they had one, they'd
11 certainly show it to you.

12 As you sit here today, the death of
13 Sheila Quarles, the investigation is not finished.
14 This case several times during the last year three
15 years should have been reopened. They should have
16 started looking at it again. It needs to be
17 reopened now. The real killer of Sheila Quarles
18 needs to be found and prosecuted.

19 Now, the easy part is for all of us
20 just to reconcile the fact, support their
21 conclusion, but you can't bend facts. You can't
22 mentally fill in all the huge gaps that are left in
23 this case. To do so is just like finding Norman
24 guilty just for the mere sake of convenience because
25 we're here, but that's not what we're supposed to

1 do. That's not what we can do.

2 We trust for you to fulfill the
3 promise, fulfill your oath, fulfill your duty, make
4 the correct decision in this case.

5 Sure, it may be a difficult decision
6 because Sheila has a grieving mother and she has a
7 grieving family. But what's more important?
8 Convicting the first person that they put up on the
9 stand or to find the real killer?

10 As we said before, there's another
11 jury at some point in the future that will be
12 charged with determining whether or not Norman's
13 guilty in the Coote case on its full evidence and
14 merits. Trust them and let them do their job in
15 that case like we're trusting you to do your job in
16 this case.

17 Now, you've heard this before, but
18 the State has a full and complete burden of proving
19 every element of every crime charged beyond a
20 reasonable doubt.

21 Even if you think that Norman might
22 have committed one of these crimes, that's not
23 enough. You need to think about what the State has
24 actually proven beyond a reasonable doubt in means
25 of the case.

1 Even if you believe that Norman
2 is -- if the State has proved beyond a reasonable
3 doubt that Norman's guilty of Sheila's murder, that
4 doesn't mean that he's guilty of the sexual assault.
5 You have to take that and look and see if they prove
6 that beyond a reasonable doubt.

7 It also doesn't mean that he's
8 guilty of the burglary and the robbery. Same thing.

9 If you think that Norman may be
10 guilty of the sexual assault or may be guilty of the
11 burglary, that still doesn't mean he's guilty of the
12 murder.

13 These are four separate counts, four
14 separate things, four separate beyond a reasonable
15 doubt.

16 And look at them each separately.
17 Deliberate on them each separately. Decide each on
18 its own merits and what the State has proven.

19 Think. Has the State proven to you
20 who the last person to have sex with Sheila was?
21 Did they prove that Norman ever had possession of
22 the stereo? Well, we know who had the stereo. It
23 wasn't Norman.

24 Did she show -- I mean, not even
25 prove beyond a reasonable doubt, did they even show

1 you that Norman was ever in that apartment complex
2 on March 24th?

3 In Great Expectations, Charles
4 Dickens wrote, Take nothing on its looks. Take
5 everything on evidence. There is no better rule.
6 And that's what I want you to do in this case.

7 Look at the evidence. Throughout
8 the entire investigation, nobody identifies Norman
9 as being at the apartment complex that day. Through
10 the cross-examine by the defense, they interviewed
11 several people. Some the police did not, some of
12 the police did know about that were at the apartment
13 complex that day. A lot of them were part of the
14 Brass, Lewis family.

15 Look at the evidence surrounding the
16 homicide and the sexual partners of Sheila and they
17 offer the following: Evidence of sexual intercourse
18 does not equal sexual assault. Evidence of sexual
19 intercourse does not equal burglary. Evidence of
20 sexual intercourse does not equal robbery. And
21 finally, evidence of sexual intercourse certainly,
22 certainly does not equal murder.

23 Now that all the evidence has been
24 presented, there's one fact that is crystal clear.
25 With all the people in that small area of the Palm

1 Village Apartments, most of who are related to
2 George Brass, on the day of March 24th, 2005, nobody
3 tells you Norman was there.

4 So your obligation is to go back
5 into the deliberation, break down each of the counts
6 and determine if the State has proven each and every
7 element contained in the amended indictment. Be
8 detailed, be thorough.

9 You're the judges of the facts.
10 Make your own decisions and do like you told me at
11 jury selection and stick by that decision. Examine
12 each fact and each count and know that suspicion,
13 suspicion is not a fact in which a verdict can be
14 reached. And it will lead you, this all lead you
15 unemotionally and logically to only one conclusion.

16 Take everything on evidence and you
17 can come to only one conclusion in this case, Norman
18 is not guilty of sexual assault, Norman is not
19 guilty of robbery, Norman is not guilty of burglary,
20 and above all, Norman is not guilty of murder.

21 THE COURT: Do you want a break? Okay.
22 Let's take a rest room break.

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 Pick up with Ms. Weckerly in five
10 minutes.

11 Whereupon, a recess was taken.)

12 THE COURT: Let's go back on the record
13 in Case No. C228755, State of Nevada versus Norman
14 Keith Flowers.

15 Let the record reflect the presence
16 of the defendant with his counsel, counsel for the
17 State. All ladies and gentlemen of the jury are
18 back in the box.

19 Ms. Weckerly.

20 MS. WECKERLY: Thank you. It's still
21 good morning. After the comments of Mr. Patrick and
22 after hearing a little bit of the information over
23 the last couple of days, I too feel it's important
24 to emphasize and maybe echo the emphasis that Ms.
25 Luzaich put on the two jury instructions that you've

1 been provided by Judge Bell in this case.

2 The first one was highlighted by Ms.
3 Luzaich and she explained to you in her closing
4 argument that in evaluating the evidence in this
5 case, in any criminal case, of course you are to
6 apply your own common sense.

7 Each of you ever day makes decisions
8 in your life, in your job, with your family and use
9 your own common sense and intelligence as you make
10 those decisions.

11 Certainly you're all capable of
12 making all kinds of determinations in your life
13 based on information that isn't established to some
14 sort of metaphysical imaginary certainty. And of
15 course you do this with logic and intelligence and
16 your common sense which you're instructed to apply
17 to your evaluation of the evidence in this case.

18 So what that instruction about
19 common sense is telling you is that your obligation
20 as a juror is not to blindly take in information.
21 Your obligation as a juror is to weigh it, is to
22 evaluate it. It's to assess it, it's to decide what
23 importance you assign to various pieces of evidence
24 in this case.

25 Another instruction that I'd like to

1 highlight, and it was also highlighted by Ms.
2 Luzaich, is that statements by counsel are not
3 evidence and you are not to speculate in this case.

4 Now, how does that figure into your
5 deliberations, the idea that you're not supposed to
6 be speculating?

7 Well, recall what Mr. Pike said in
8 opening statement. Certainly the defense has no
9 burden in this case. The defense never has any
10 burden in a criminal case. But what did he tell you
11 in opening statement. He said that you will hear
12 that people have reason to fear George Brass and his
13 family, and that George Brass never returned to that
14 apartment complex after the murder of Sheila
15 Quarles.

16 Was that how the evidence turned out
17 in this case? George Brass is still friends with
18 the Quarles family. In fact, the opposite was
19 proven. George Brass is still friends with Ralph
20 Fuller -- or with Ralph Quarles. He's still part of
21 the family. That wasn't established by the defense
22 in this case.

23 So when you're back in the
24 deliberation room, it's not your place to speculate
25 well, maybe this could have happened or maybe that

1 was the reason why this occurred. You're to decide
2 a case based on the evidence presented and nothing
3 else.

4 Mr. Pike also referenced William
5 Kinsey in his opening statement and he said to you
6 that William Kinsey knew about the social life of
7 Sheila Quarles. You heard from Mr. Kinsey he was in
8 custody as of December of 2004. He had no idea what
9 was going on, he had no personal knowledge of what
10 was going on in Sheila's life at the time she was
11 murdered.

12 You can't speculate as to why Mr.
13 Pike said that. You can't speculate that maybe
14 there's something out there that we don't know
15 about. You are to decide the case based on the
16 evidence.

17 Mr. Pike and Mr. Patrick told you
18 that the evidence in this case established that
19 Sheila Quarles was getting ready to take a bath and
20 that she left the front door unlocked for her mother
21 because she knew her mom would be returning home
22 from work.

23 What was the actual evidence you
24 heard in this case? Debra Quarles testified that it
25 was her daughter's habit to lock the door.

1 when Debra Quarles arrives home
2 that morning, when the door is unlocked, that is
3 something unusual. Sheila Quarles, I mean no one
4 would know her better than her mother, would lock
5 the door. So that tells you that she knew her
6 intruder. And I'll get to more of that later, but
7 certainly you can't speculate that maybe on the 24th
8 day of March in 2005, contrary to the evidence you
9 heard which is uncontroverted from Debra Quarles,
10 that maybe something was different on that day,
11 maybe the planets were aligned in a certain way and
12 maybe something occurred which Debra Quarles didn't
13 testify to.

14 You decide cases based on evidence
15 and evidence is testimony and of course the exhibits
16 that you have.

17 In my opinion, and certainly you're
18 all the true judges of the facts in this case, there
19 are two scientific realities of this case or two
20 salient facts that are the most important facts in
21 this case in terms of how to look at the evidence.

22 The first salient fact is the
23 uncontroverted testimony, absolutely uncontroverted
24 testimony by Dr. Simms that Sheila Quarles was
25 sexually assaulted within 30 minutes of her death.

1 That is a highly important fact, absolutely
2 uncontradicted by the defense. That means she was
3 sexually assaulted and murdered contemporaneously
4 because there's no other time for anyone else to get
5 there and murder her after she experiences the
6 sexual assault.

7 How do we know this? Well, Ms.
8 Luzaich explained to you of course that when --
9 after Miss -- oops. At autopsy, Ms. Quarles had
10 vaginal lacerations that bled, showing she was
11 alive, but there was no swelling, and that the
12 swelling would be visible and noticeable within 30
13 minutes. So she died within 30 minutes of being
14 sexually assaulted.

15 The second most salient fact in this
16 case was the time of her mother's 911 call which we
17 know was at 2:51 p.m. in the afternoon.

18 Okay. What does that tell us? The
19 mother of Debra -- or Debra Quarles explained to you
20 that when she found her daughter, which would be
21 right at about 2:51, her daughter was in a bathtub
22 of hot water. A little before 3:00 that water is
23 hot. Well, what does that tell you. At 2 o'clock
24 if the murder occurred then, maybe it would be warm,
25 it certainly wouldn't be hot. Earlier than that,

1 1:30, the water's not gonna be hot by 3 o'clock
2 later on in the day.

3 And so what this does is makes for a
4 very, very small, short time frame in which this
5 murder and sexual assault could be committed.
6 Probably about 2 o'clock, maybe past 2 o'clock, but
7 I doubt much earlier. 2 o'clock. So Debra comes
8 home at ten to 3:00 is the time period that we're
9 talking about for the murder.

10 And I would ask you to keep in mind
11 that time frame as you analyze the facts and the
12 evidence in this case, because they eliminate every
13 other possibility besides Norman Flowers as the
14 killer.

15 Now, Mr. Patrick suggested to you
16 that it was appropriate for you to disregard the
17 information you heard about the Marilee Coote case.

18 I have no doubt that Mr. Patrick
19 would like you to completely ignore the fact of the
20 Marilee Coote case, to completely ignore that his
21 client sexually assaulted Marilee Coote in May of
22 2005, five weeks after Sheila's murder, that his
23 client strangled Marilee Coote five weeks later
24 after murdering Sheila Quarles in 2005.

25 But Judge Bell has given you the

1 instruction that tells you why this information came
2 into evidence. This wasn't presented as sort of an
3 aside or something that may be you'd find
4 interesting in jury, in your jury deliberations. It
5 was evidence that you are to consider. And what you
6 do is consider it for the purpose in which that
7 instruction tells you it's offered. It is not to be
8 considered in a generalized sense.

9 So you cannot use it in the sense of
10 well, if Mr. Flowers committed this murder in May,
11 he must be a violent guy, therefore he's the guy
12 responsible for the Quarles' murder in March.
13 That's an improper use of the evidence.

14 But what you can use the information
15 for is it, is does it give you information regarding
16 the identity of Sheila Quarles's murderer. Does it
17 give you information regarding the intent of Sheila
18 Quarles murderer. And does it give you information
19 regarding whether Sheila Quarles consented to sex
20 with Norman Flowers similar to gee, did Marilee
21 Coote consent to that sex, too, with the anal tears
22 and the vaginal lacerations? Does it help you to
23 identify Sheila Quarles's murderer when you look at
24 what you know happened in May of 2005.

25 You know that Mr. Flowers knew

1 someone at both of these apartment complexes. He
2 knew Debra Quarles and he had a girlfriends named
3 Mawoose Ragland at the Marilee Coote complex.

4 You know in both of these cases
5 there was no sign of forced entry in either case.
6 Sheila certainly would have recognized him and
7 opened the door for him, Marilee Coote would have
8 recognized him from hanging out with a girlfriend,
9 wouldn't be afraid of him, would open the door for
10 him.

11 You know that in both of these cases
12 there was sorts of a minor low-grade type robbery
13 that occurred associated with the sexual assault and
14 the murder of the two victims.

15 In Marilee Coote's case, her car was
16 moved a little bit, the keys were gone and of course
17 we have the stereo and the cell phone that was taken
18 in the Sheila Quarles's case.

19 Do those similarities help you
20 identify who might be the killer in the Sheila
21 Quarles's case? Of course it does.

22 What about the fact that they're
23 both strangled? Does that give you information as
24 to who might be responsible, who might be the killer
25 of Sheila Quarles? Of course it does.

1 How about the fact that they were
2 both sexually assaulted? A sexually motivated
3 murder.

4 Mr. Patrick says there's no motive
5 in this case. It is a sexually motivated murder.
6 How do we know this? Look what happened to the
7 victim. Sheila Quarles is violently sexually
8 assaulted. That might be a motive for the murder.
9 And what happens five weeks later, oh, wow, Marilee
10 Coote is violently sexually assaulted and then she's
11 strangled as well.

12 Does the fact of the crime that
13 occurred five weeks later give you information that
14 is probative, that is clear and convincing and that
15 is important and relevant in terms of your
16 determination of just who might be responsible for
17 Sheila Quarles's murder? Of course it does.

18 You're not to disregard the
19 evidence. If you believe it was proven by clear and
20 convincing evidence, you're to apply it to your
21 evaluation of the evidence in the Quarles case.

22 And incidentally, this doesn't
23 rocket science. I mean, there are very obvious
24 similarities that occurred in both cases. Is that
25 something you think is probative or not?

1 Let's talk about George Brass. The
2 defense in this case is a little bit of a work in
3 progress or sort of a varying well, maybe it's
4 George Brass who did it and oh, no, it's Jessie Nava
5 who's the one who's really responsible. Oh, wait.
6 Maybe it was the guy who was dealing weed to Miss
7 Sena. Maybe some combination of those people.

8 Let's talk about George Brass.
9 Should the police have identified him sooner by
10 making those calls to the young ladies on Sheila
11 Quarles' cell phone records? Absolutely. That is a
12 fair valid criticism. Does it change any of the
13 information that we know about the case, about how
14 we discovered George Brass? No. George Brass will
15 a sexual relationship with Sheila Quarles.

16 Now, defense told you in opening
17 statement that Brass is the killer and that was
18 alluded to a little bit by Mr. Patrick, but then it
19 switched to Mr. Nava. But generally they said
20 George Brass kept himself hidden for three years and
21 his family kept him hidden, too, and everybody in
22 that entire complex was afraid. Even Debra Quarles
23 we'll hear. So no one, no one said that Sheila was
24 having sex with George Brass.

25 Well, what happens when the police

1 finally show up on George Brass's door step? He
2 tells them, yeah, I've had a sexual assault with
3 Sheila that's been going on a long time. He doesn't
4 ask for a lawyer, he doesn't ask to remain silent.
5 He's sitting in custody, but when the police come
6 and ask him, he gives it up. He says I had this
7 relationship. I mean, certainly by then, he knows
8 she's been murdered. If he really had something to
9 do with it, do you think he might have been a little
10 more evasive about yes, I had sex with her and
11 you're gonna find my DNA in her vaginal swabs as
12 well because I had sex with her that day? He
13 doesn't do any of that.

14 And you saw him testify. You're the
15 judges of his demeanor. How did he appear to you?
16 Did he appear evasive, did he appear like he just
17 might be the real killer or was he some guy who
18 didn't want to be here, who clearly said I had sex
19 with her and then I went to work.

20 You are to evaluate his demeanor and
21 you can certainly take that into account in the
22 deliberation room.

23 Now, how about the suggestion that
24 Brasses family kept him hidden for three years.
25 It's a little more accurate to say that maybe the

1 police weren't asking the right people the right
2 questions, but certainly there's been no evidence in
3 this case whatsoever that anyone has made any
4 attempt to hide George Brass from the police.

5 What happened to Mr. Lewis? He was
6 cooperative with the police, he gave his own buckle
7 swab up. He certainly wasn't trying to hide
8 anything about his nephew.

9 And what was the suggestion that Mr.
10 Patrick made? That people are frightened of George
11 Brasses family. Just how was it then that the
12 police learned of George Brass's existence. Well,
13 they learned it from Ameia Fuller. The young lady
14 who testified that she was Sheila's cousin and also,
15 you know, they were certainly friends as well. He's
16 the one that gives us George Brass's name.

17 Now, if people were so afraid of the
18 Brass family, is Ameia just braver than anybody else
19 or was it just not some big secret in a case where
20 the police are miscommunicating with people that
21 might know some information?

22 And to believe that George Brass is
23 the killer or the one responsible in this case,
24 you'd have to disregard his alibi. No one disputes
25 that. No one can say he wasn't at Wal-Mart. His

1 card was swiped in at 12:04. Sheila was alive
2 beyond that. He just cannot be the killer.

3 If you engage in some sort of
4 conspiracy theory, is it possible in this world that
5 his card wasn't swiped on that day by himself? Is
6 it possible that maybe his supervisor is some in
7 twisted conspiracy with George Brass to help him get
8 away with murder? I guess. But there's no evidence
9 in this case to suggest that.

10 And certainly when you have Brass's
11 demeanor and his willingness to cooperate with the
12 police, you can pretty much disregard that as rank
13 speculation, which you're not supposed to do in this
14 case.

15 And just as a side note, compare
16 George Brass's reaction to the police with the
17 defendant's. The police asked him, did you have a
18 sexual assault relationship with Sheila. Brass says
19 yes, I did. Did you have sex with her that day, the
20 day of the murder. Brass says yes, I did. In fact,
21 the relationship has been going on for awhile. Do
22 you know Sheila and her family. I'm friends with
23 her brother, I know her mom, her mom knows my mom.
24 No attempt to hide information. Were you there on
25 the day of the crime, George. Yeah, I was there on

1 the day of the crime and then I went to Wal-Mart to
2 go to work.

3 By contrast, what was Mr. Flowers'
4 response to the police when they started asking him
5 about Sheila Quarles' murder. Mr. Flowers, do you
6 know someone by the name of Debra Quarles? No
7 response. They show him a photo. Mr. Flowers, do
8 you know Debra. Do you know this woman. I'm not
9 saying.

10 MR. PIKE: Objection, Your Honor.

11 THE COURT: What's the objection?

12 MR. PIKE: Edwards versus State,
13 post-Miranda silence.

14 THE COURT: Well, he wasn't silent. He
15 was cooperative with the police and he was
16 discussing the matter with him. He just didn't say
17 anything as to that particular question. If he
18 exercised his right to remain silent, of course you
19 would have that right. Go ahead.

20 MS. WECKERLY: Mr. Flowers, do you know
21 Debra. And they show him the photo. I'm not
22 saying. Mr. Flowers, do you know someone named
23 Sheila. No, doesn't know Sheila. This woman that
24 he's supposed according to Mr. Patrick having a
25 consensual sexual assault relationship, he doesn't

1 know her real name. He only knows her nickname.
2 That's odd.

3 George Brass knows her real name and
4 he's having sex her. Quince Toney knows her real
5 name, but all of a sudden it's Mr. Flowers who can't
6 quite put together if he knows these people for the
7 police, for the benefit of the investigation.

8 Why is he so evasive? And why was
9 he Mr. Helpful to Debra Quarles right after the
10 murder? Why was he so willing and so concerned to
11 talk to her about the extent of the investigation
12 and how things were going and if she was getting
13 grief counseling? Why was he willing to do that
14 with Debra, but when the police show up to get
15 information about the investigation, he can't even
16 remember if he knows Debra. I wonder why that would
17 be?

18 Now, certainly that type of evidence
19 isn't like a mathematical calculation that you can
20 make like the DNA evidence, but you can consider it
21 and obviously should consider it in your evaluation
22 of all the evidence in this case.

23 Let's talk about Mr. Lewis. He is
24 Debra Quarles's friend who stayed the night with her
25 and also helped pull Sheila Quarles out of the

1 bathtub.

2 And I guess the suggestion made by
3 Mr. Patrick is that well, maybe he was, maybe he was
4 the killer because we didn't check whether he pawned
5 anything. Or if you don't buy that, he's part of
6 the conspiracy to hide his nephew George Brass who
7 admitted to being with Sheila Quarles on the day of
8 the murder.

9 Now, Mr. Patrick reviewed with you
10 his interpretation of George Brass or of Robert
11 Lewis's testimony. He said that Robert Lewis saw
12 Brass, that he pointed out to Chicken his nephew
13 that Sheila was alone in the apartment. And Mr.
14 Patrick also said that Robert Lewis sort of took
15 note of the comings and goings of his nephew at
16 Sheila Quarles's apartment on the day of the murder.

17 I trust you all took notes as to
18 Robert Lewis's testimony, and I would ask you to
19 rely on your own recollection of what his testimony
20 was in terms of who and what he was aware of on the
21 day of the murder and rely on that rather than Mr.
22 Patrick's characterization of what Mr. Lewis said he
23 saw with regard to his nephew.

24 And just aside from that, do you
25 really think Robert Lewis is involved in some

1 conspiracy to hide his nephew? His nephew said he
2 had the sexual relationship with Sheila Quarles.
3 What's to hide at this point?

4 Now, let's talk about Jessie or
5 Jesus Nava and Ms. Sena. And sort of mid-way
6 through the defense's closing argument, it was
7 alluded to you that this is the killer. It's now
8 Jessie Nava. Let's forget Brass, forget Robert
9 Lewis and concentrate on Jessie Nava because he's
10 the killer or maybe the guy who was dealing me.

11 Now, I have no doubt that Ms. Sena
12 who was the young lady who testified to you
13 yesterday -- or for you yesterday is doing her
14 absolute best to recall what she remembered on that
15 day.

16 But by her own admission, she was
17 doing methamphetamine 24 hours a day at that time.
18 And by her own admission that made her a little
19 paranoid. That alone should tell you that maybe
20 this young lady is not the most reliable source of
21 information as to times and who was there on the
22 24th.

23 And she, you know she's clearly off
24 with her times because she testified that she heard
25 Debra Quarles's screaming less than an hour after

1 she got home. She said she got home at noon and
2 within an hour she hears Debra Quarles screaming
3 about the death of her daughter.

4 Does that fit with our time frame
5 what I told you at the very beginning of that 911
6 call being at 2:51? No.

7 Ms. Sena is about two hours off at a
8 minimum. She also says that she thought she saw
9 George Brass there on the afternoon of the murder.
10 That's what she said, I thought I saw him. This is
11 someone she sees every day.

12 And she's someone who we know was
13 under the, you know, was under the influence at the
14 time she was observing all this and we also know
15 she's someone, is someone that wasn't too accurate
16 in terms of time.

17 So you as a jury have to decide
18 which version of events do you trust. Do you trust
19 George Brass saying I left and went to work which by
20 the way is corroborated by his work card or do you
21 trust Ms. Sena who is using methamphetamine at the
22 time who you know provided, although certainly not
23 in terms of a lie, but provided inaccurate
24 information as to time.

25 I would submit to you that George

1 Brass is the more likely source of information.

2 What about this mysterious man that
3 she sees, the tall guy and the flannel shirt? Well,
4 maybe he's the real killer says Mr. Patrick. He's
5 the guy or this is the guy that she's trying to buy
6 weed from for her boyfriend and in her paranoid
7 admittedly meth induced state, well, I see him
8 around the apartment. Not inside Sheila's
9 apartment, not inside the doorway of Sheila's
10 apartment, but between the two doors that face each
11 other at the apartment complex.

12 And what did she say? Oh, for all I
13 know, he could have been coming out of the other
14 apartment.

15 And what do you know about Sheila
16 Quarles? Her tox screen was clean. She wasn't
17 using any drugs at the time. So this weed dealer
18 did not have contact with her. She's home alone.
19 What other purpose would he have to contact her?

20 And it's interesting to me that the
21 defense is suggesting to you that you should
22 consider this person as a potential killer who has
23 no connection whatsoever to Sheila Quarles' body or
24 her apartment, but you're to speculate which you're
25 not supposed to do, that maybe somehow he's involved

1 in this.

2 Any evidence to support that? Zero.
3 None whatsoever. So you're to ignore all the
4 evidence and think oh, gosh, maybe it was this guy.

5 Let's talk about Jessie Nava and the
6 radio. Now, Mr. Patrick went to great lengths to
7 tell you that Jessie or that Ms. Sena saw Jessie
8 Nava with the stereo. Really?

9 Was that her testimony? Didn't they
10 show him or show Ms. Sena that picture of the stereo
11 itself and say is this what you saw with Jessie
12 Nava, is that what he was carrying? And what was
13 her response to that? I don't know. I don't know
14 what it looked like.

15 But he must have said 20 times, I
16 mean conservatively 20 times that she saw Jessie
17 Nava with that three CD stereo. Was that the
18 evidence in this case? No. Absolutely not.

19 And what did you learn this morning?
20 You learned that there was a boom box or, you know,
21 a way to play music that was also stolen from the
22 residence after the police did the investigation.
23 And of course that makes sense, right?

24 You know that Debra Quarles was so
25 distraught that she left that apartment and went to

1 her son's house and never went back. That apartment
2 was vacant until they went back a day or two later
3 and started packing up the stuff. And what's
4 missing at that point, the boom box. Is this
5 something that they reported to the police? No. Is
6 that surprising? Probably not given what they've
7 been through as a family when your daughter has been
8 sexually assaulted and murdered, maybe you're not
9 thinking, gosh, I really want to report that I lost
10 my \$30 boom box in connection with this.

11 What happened is Ms. Sena gets
12 arrested on the night or the day of the murder. She
13 comes back two days later and Jessie Nava says to
14 her, as she explained to you, that he took a radio
15 from the dead girl's apartment. Yeah, he took it
16 after the police were there when the Quarles were
17 all staying at the brother's house. He's not the
18 killer.

19 Besides that, to reiterate, use your
20 common sense. Do you think that this person who's
21 sort of the local thief, the manager sees him 20
22 times in the apartment complex, he's trespassing
23 here and there, the management's always telling him
24 to leave, do you think this is the guy that all of a
25 sudden was like I'm gonna steal a radio and while

1 I'm here, I'm gonna commit a sexual assault and
2 murder. Totally different than everything else,
3 totally different than what he's been known for
4 which is trespassing and very low-grade type crimes.
5 Is it him who's the killer or maybe it's the guy who
6 killed somebody and strangled and sexually assaulted
7 someone else five weeks later.

8 I mean, in essence for you to
9 believe that anyone, Jessie Nava, George Brass,
10 Robert Lewis, the guy who was dealing marijuana, for
11 you to believe that anyone other than the defendant
12 committed this crime, you would have to accept the
13 following facts. You would have to believe that
14 this stranger was invited in at Sheila's invitation
15 because it's undisputed that there's no sign of
16 forced entry. You would have to believe that they
17 sexually assaulted her because you know that sexual
18 assault occurred within 30 minutes of her death.
19 That someone this mystery person sexually assaulted
20 her without leaving a speck of DNA in her.

21 So I guess because we know once you
22 take out -- in that mixture, once you take out
23 Sheila's DNA and once you take out George Brass's
24 DNA, you're left with one profile. So somehow this
25 person sexually assaulted Sheila without leaving a

1 trace of DNA.

2 Maybe the person used a condom,
3 maybe they used an object, but you know, nurse
4 Ebbert said that if they used an object to sexually
5 assault, you'd see, you know, something different
6 than the injuries that we saw.

7 Is it possible the person used a
8 condom? Well what else would have to be true? You
9 would have to believe that even though this person
10 sexually assaulted Sheila Quarles and took steps to
11 make sure that not a trace of DNA was left in her,
12 that this phantom killer all of a sudden decided I'm
13 gonna put her in the bathtub for no apparent reason.

14 Because truly the only reason to put
15 her in a tub of hot water is to destroy DNA
16 evidence. If you haven't left any there because you
17 used a condom or you used an object, there is
18 absolutely no reason for her to be put in a tub of
19 hot water.

20 But it doesn't just stop there. Our
21 phantom killer according to the defense is pretty
22 much the luckiest person who's ever been in Las
23 Vegas because as luck would have it, right after
24 this phantom killer kills Sheila Quarles, Norman
25 Flowers commits a identical crime five weeks later

1 leaving his DNA in that victim. In the exact same
2 way, a manual strangulation, a robbery, a non-forced
3 entry, and a sexual assault.

4 And what luck for this phantom
5 killer, right? Because now it looks like Norman
6 Flowers did it instead of him.

7 But it doesn't just stop there.
8 This phantom killer gets even luckier because when
9 the police go to talk to Norman Flowers, as luck
10 would have it and for no apparent reason, he's
11 uncooperative with the police. He's evasive, he's
12 saying he doesn't know the family. He's not even
13 sure of the fame of the woman he allegedly had the
14 consensual sexual relationship with.

15 MR. PIKE: Objection, Your Honor.
16 Misstates the evidence. He said he had his other
17 case when they talked with him. And the fact that
18 there was no response, it doesn't mean that there
19 wasn't an attempt to respond.

20 THE COURT: I'm not disagreeing with you.
21 I mean, they can -- they heard exactly what was
22 said. It was read verbatim.

23 What the lawyers say is not
24 evidence, but if there's a slight misstatement one
25 way or the other by any of these people, they don't

1 intend it, but me recollection is, you're right, Mr.
2 Pike, my recollection is that wasn't exactly what
3 was said, but go ahead.

4 MS. WECKERLY: My recollection of what he
5 said when they said, when Detective Sherwood asked
6 him, do you know Sheila, his response was no, no
7 response. And then he said oh, I, I knew her only
8 by her nickname. Like this woman he's having this
9 consensual relationship with, boy, it's just a
10 mystery what her real name is even though I know her
11 mother and her family, but I don't know her real
12 name.

13 The reality is there's no phantom
14 killer in this case. And it's not Robert Lewis and
15 it's not Jessie Brass and it's not Jessie Nava and
16 it's not Kudos Who. It's Norman Flowers and it's no
17 one else.

18 Now, Mr. Patrick kind of in my
19 opinion stretched the boundaries of science and
20 certainly what was testified to by a Dr. Simms in
21 this case, he actually suggested to you that because
22 the strangulation marks on each of these victims
23 wasn't identical because they didn't have
24 measurement equal petechial hemorrhages that somehow
25 that told you they are strangled by two different

1 people.

2 Does that strike you as logical? Do
3 you think they might have had a different level of
4 fight in them?

5 Did Dr. Simms at all suggest that
6 gosh, this might not be done by the same one. My
7 goodness, look at this, the petechial hemorrhages
8 aren't identical. That means that the same person
9 couldn't have done both of these murders. It's
10 illogical. It makes no sense.

11 Mr. Patrick said we don't know when
12 the semen of Norman Flowers was put in Sheila
13 Quarles.

14 Well, what did you hear from
15 Christina Paulette? The level of semen for both
16 George Brass and Norman Flowers was identical from
17 this vaginal swab. You know George Brass had sex
18 with her that day. What does that tell you? Norman
19 Flowers had sex with her that day, too. The level
20 of DNA is the same.

21 Besides that, you know that when she
22 came home that morning, she was wearing pajamas and
23 that her jeans and panties are the clothes that are
24 found on the bathroom floor once she's been
25 murdered.

1 I don't think it's a big assumption
2 or a big leap in logic to suggest that maybe she
3 changed her underwear as well as her other clothes.
4 So when they find Norman Flowers' semen and George
5 Brass's semen on her panties, it's because those
6 were, that was the pair of underwear she was wearing
7 that day. That tells you when he sexually assaulted
8 her.

9 The mark on the bathtub, that, that
10 mark that, you know, Detective Vacarro said well, it
11 was a dark color, it looked like blood, but the
12 crime scene analyst, Detective Sherwood and those
13 who got a close look at it said it's not blood.
14 It's sort of an irrelevant point in this case, but.

15 Let's talk about the fingerprints.
16 Mr. Patrick said that there's no fingerprints at
17 Marilee Coote's apartment and so that suggests that
18 he wasn't even there on the day of her murder.

19 That's interesting. Remember
20 Juanita Curry? She was the lady who was disabled
21 who sat here? She identified him in a photographic
22 lineup. She saw him trying to come in her apartment
23 as the police are upstairs trying to investigate the
24 murder of her neighbor. He was there.

25 And the fact that his prints aren't

1 in Marilee's apartment isn't a really big shock
2 because the whole place was wiped down.

3 Let's talk about the carpet stains.
4 Now, Mr. Patrick spent time saying, you know, why
5 didn't they test the carpet and find out if George
6 Brass had sex with Sheila in the living room or in
7 the bedroom. They had a two year sexual
8 relationship. They could have found George Brass's
9 semen on the couch, on the floor or on the bed.

10 It would tell them nothing in terms
11 of timing because you can't time DNA out of the
12 human body. It wouldn't tell them anything. There
13 was no reason to do that type of a testing.

14 Then Mr. Patrick talks about the
15 speaker wire. Why wasn't that tested for DNA. Oh,
16 yes, by all means forget the DNA that's actually in
17 the sexually assaulted victim, forget the DNA that's
18 in the sexually assaulted strangled victim five
19 weeks later. It's the speaker that's gonna break
20 the case wide open. It's not logical.

21 Mr. Schiro -- I'm gonna talk just
22 briefly about the DNA statistics. Mr. Schiro and
23 Ms. Paulette essentially agreed on the statistical
24 analysis in this case.

25 And Mr. Schiro even agreed that

1 99.99 percent of the population can be excluded as a
2 source of that DNA in Sheila Quarles's vagina, but
3 not Norman Flowers.

4 Now, alone, is that, that piece of
5 information, 99.9 percent can be excluded by him?
6 Alone is that beyond a reasonable doubt? Some
7 people may say it is. Some may say it isn't. You
8 follow the instruction that Judge Bell gave you and
9 make your own determination.

10 But you, unlike the DNA analyst,
11 aren't analyzing this case in a vacuum. They look
12 at the one piece of evidence, they make a
13 calculation about that piece of evidence and they
14 report that; 99.9 percent can be excluded, but not
15 him.

16 They cannot factor into that
17 calculation that Debra Quarles knew Norman Flowers
18 and saw him hanging out at the apartment complex two
19 weeks before her daughter was murdered, but you can
20 consider that.

21 They can't put in the calculation
22 that there was no sign of forced entry into the
23 apartment and that Sheila Quarles would likely have
24 known her attacker which of course she would know
25 Norman Flowers.

1 They can't put that into the
2 calculation. They can't put into the calculation
3 that Marilee Coote was strangled and sexually
4 assaulted and killed the exact same way five weeks
5 later when they make their calculation. But
6 certainly you can consider that and you should
7 consider that when you're deciding whether this
8 defendant is guilty beyond a reasonable doubt.

9 Someone inexplicably, at least to
10 me, Mr. Patrick suggested to you well, maybe this
11 was all the result of rough sex. Maybe they
12 actually consented to it.

13 Sheila Quarles is dead, okay. She
14 didn't consent to anything that happened to her that
15 day. She didn't consent to having her vagina
16 lacerated, she didn't consent to getting strangled,
17 she didn't consent to being thrown in a bathtub and
18 drowned. Nothing that happened to that young lady
19 was consensual on that day.

20 And I don't think it's too different
21 for Marilee Coote either. Marilee Coote had
22 lacerations anally and on her vagina. A violent
23 sexual assault. There is no indication that she
24 consented to any of that as well.

25 And just in sort of closing, the

1 State is the only party with the burden in a
2 criminal case, but let's be clear what that burden
3 is. It is to prove that this defendant is guilty
4 beyond a reasonable doubt.

5 Our burden is not to prove a
6 negative. It's not to prove that no one else on the
7 planet that it's a metaphysical impossibility for
8 anyone else to have possibly committed this murder.

9 It is our burden to prove that he
10 did this. He did it beyond a reasonable doubt.

11 And you all know and you all live in
12 the real world. Crimes occur in the real world.
13 That's the world that you all make decisions in.

14 And the defense would ask you to
15 look at each piece of evidence and each fact you
16 know about this case in a vacuum.

17 The DNA alone isn't beyond a
18 reasonable doubt. The fact that there wasn't a
19 forced entry alone isn't beyond a reasonable doubt.

20 What about the fact that Norman
21 Flowers was hanging out and lying to Debra Quarles
22 about being a maintenance guy, maybe explaining his
23 presence at the apartment. Does that alone show
24 that he's the killer beyond a reasonable doubt? No.

25 But you don't look at each piece of

1 evidence separately. You're to look at it as a
2 totality. What does it tell you all put together?
3 Inexplicably his DNA is in the vaginal swabs of a
4 young woman who's been strangled and murdered. He's
5 that guy. 99 percent of the population can be
6 excluded. He's the guy that can't. Beyond a
7 reasonable doubt on its own? Maybe, maybe not.

8 The other guy. The other source of
9 the DNA in this young lady's vaginal swab, that
10 guy's got an alibi. He's at work.

11 When you couple that with the 99.9,
12 are you getting a little higher to a hundred
13 percent?

14 His DNA is in her underwear which
15 suggests that he had sex with her that day, probably
16 pulled her underwear to the side as he was sexually
17 assaulting her.

18 99.9 percent of the population can
19 be excluded. The other guy has an alibi, oh, and
20 his DNA is also in the underwear she wore that day.
21 Getting a little higher up to a hundred percent?

22 As you go through this, it's like
23 that list or that column that Christina Paulette
24 showed you of each of the points on the DNA strands.
25 At a certain point, the evidence becomes

1 exponential.

2 What else? Well, he's a guy who
3 Sheila Quarles would open a door for. He's a guy
4 that wouldn't have to make a forced entry. He's
5 that guy. He's the guy that can't be excluded.
6 He's the guy that's in, that's in the swabs from her
7 underwear. The other guy has an alibi and he's
8 someone she'd open the door for.

9 And of course, what else do you
10 know? He's the guy that committed the crime, an
11 identical crime five weeks later. Marilee Coote is
12 strangled. She's sexually assaulted and property is
13 taken from her, from her apartment.

14 I mean, what are the odds of that,
15 all those facts being true? He can't be excluded,
16 the other guy has an alibi, his DNA is present in
17 his underwear and oh, wait, he committed an
18 identical crime five weeks later in the exact same
19 way. Manual strangulation, sexual assault and
20 murder.

21 What are the odds of that? In what
22 universe is any other conclusion other than him
23 being the killer at all the product of rationale
24 thought and no speculation?

25 Murder trials, this isn't a game. I

1 mean, this isn't supposed to be an exercise in
2 creative possibilities, what scenario can I
3 configure with the facts.

4 Verdicts and decisions are supposed
5 to be based on evidence and rationale thought. It
6 is Norman Flowers who got Sheila Quarles to open
7 that door.

8 It is Norman Flowers who pulled her
9 underwear to the side and sexually assaulted her
10 within 30 minutes of her death.

11 It is Norman Flowers who
12 unsuccessfully tried to get her underwear back on
13 her clothing, although be it not successfully.

14 It's Norman Flowers who would have
15 known that Sheila Quarles could identify him as the
16 perpetrator of the sexual assault without question.
17 She knows who he is.

18 It is Norman Quarles (sic) who
19 strangled her, who took minutes to get her
20 unconscious and then minutes after that to kill her
21 and then ultimately she actually dies of the
22 drowning.

23 It's Norman Flowers who has a reason
24 to put her in that bathtub to try to hide his DNA.

25 It's Norman Flowers who tried to

1 hide his DNA five weeks later in Marilee Coote's
2 apartments.

3 And it's Norman Flowers who was
4 responsible for this crime and the crime that
5 occurred five weeks later.

6 This isn't about every conceivable
7 possibility. This is about an honest consideration
8 of the evidence in conjunction with the law that
9 Judge Bell read you.

10 There is no question that he is the
11 person who is responsible for this crime. The only
12 question left is whether you will hold him
13 accountable for it.

14 THE COURT: Thanks. Okay. The case goes
15 to you now, ladies and gentlemen of the jury.
16 You're gonna get a verdict form that of course as
17 you know there four counts. Burglary, sexual
18 assault, robbery or just up or down.

19 And the way you do it is you say to
20 yourself has the State proven beyond a reasonable
21 doubt that this defendant's guilty of burglary or
22 sexual assault or robbery.

23 In the murder category, it's
24 slightly different. You have to at first ask
25 yourself has the State proven beyond a reasonable

1 doubt this defendant is guilty of murder in the
2 first degree. If he is not, then you go and ask
3 yourself has the State proven he's guilty or murder
4 in the second degree. And if that's not, as with
5 any charge, not guilty is always the default
6 position.

7 So in the main column, you'll have
8 one box checked and one box not checked in each
9 these four. But if you do find the defendant guilty
10 of murder in the first degree, then there are three
11 possibilities in the special verdict form; whether
12 it was willful and deliberate, whether it was felony
13 murder or whether the jury didn't agree.

14 So it cold be that you could have
15 the first two checked. It could be both willful and
16 deliberate and felony murder or just one of the two.
17 or it could be the third.

18 So if you find the defendant guilty
19 of murder in the first degree, you need to sort of
20 answer these three questions; what was our thinking,
21 how did we get there.

22 Okay. With that in mind, Ms. Clerk,
23 will you swear the officer to take charge of the
24 jury and draw the alternates at random.

25 Now, we're gonna draw two

1 alternates. Obviously we've used the five days with
2 14 people. That's great. This case may or may not
3 go on. We may be done today, we may be done
4 tomorrow. We might go on for another couple of
5 days. And so the alternates are very important and
6 they -- they'll just stay and be part of the team.
7 Whoever's drawn as the alternates are not allowed to
8 talk with each other or anybody else about the case
9 because we never know at what point in time you're
10 going in as a pinch hitter. It happens all the
11 time.

12 So Ms. Clerk?

13 (Whereupon, the officer was sworn to
14 take charge of the jury.)

15 THE COURT: Ms. Clerk, draw two
16 alternates at random and give us a number. Tina has
17 numbers one through 14 in the cup. She just does a
18 blind draw. What number?

19 THE CLERK: Juror No. 10, Niklos Novotny.

20 THE COURT: Okay. That's one.

21 THE CLERK: Juror No. 13, Miadora Nelson.

22 THE COURT: Okay. You two will be the
23 alternates. You'll kind of be together and the
24 other 12 will kind of be together. You're not
25 allowed to talk about the case at all.

1 If the case goes on, all 14 will
2 reassemble and we'll go on. And it is the case that
3 sometimes we lose one at that juncture and we put
4 people in, but you have to kind of approach the case
5 as though the case is still in progress and we'll
6 just see how it plays out.

7 So Officer Moon will take you all
8 and take you where you need to go. The food is
9 already there. He'll bring in all the evidence and
10 the 12 deliberating jurors need to just tell us when
11 they've reached a verdict and we will reassemble and
12 take that verdict and we will decide what else if
13 anything we have.

14 Take all your stuff. Take your
15 coats, take your purses, take anything you have.

16 (Whereupon, the jury left the
17 courtroom to deliberate.)

18 THE COURT: Okay. The jury has exited.
19 Anything else?

20 MS. WECKERLY: No, Your Honor.

21 THE COURT: Okay. Give your numbers to
22 Tina.

23 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
PROCEEDINGS.

24 

25 JO ANN ORDUNA
CCR NO. 370

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