

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD SAMUEL PUNDYK,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Appeal from a Judgment of Conviction in Case Number CR16-1290
The Second Judicial District Court of the State of Nevada
The Honorable Connie J. Steinheimer, District Judge

JOINT APPENDIX VOLUME ONE

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Washoe County Public Defender

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No. 77587 Elizabeth A. Brown
Clerk of Supreme Court

TABLE OF CONTENTS

1.	Indictment <u>filed</u> on August 24, 2016	1JA 1
2.	Judgment <u>filed</u> on November 2, 2018	1JA 221
3.	Jury Instructions (1-43) <u>filed</u> on July 25, 2018	1JA 172
4.	Minutes: Decision on the Motion to Exclude Expert Expert Testimony and Motion to Prohibit Ultimate Issue Testimony (Winiarz) <u>filed</u> on May 21, 2018	1JA 168
5.	Motion to Prohibit Ultimate Issue Testimony (<i>Winiarz</i>) <u>filed</u> on October 26, 2017	1JA 19
6.	Notice of Appeal <u>filed</u> on November 30, 2018	1JA 223
7.	Notice of Defense <u>filed</u> on June 9, 2017	1JA 4
8.	Opposition to State's Motion to Prohibit Ultimate Issue Testimony (<i>Winiarz</i>) <u>filed</u> on November 14, 2017	1JA 24
9.	Order After Hearing <u>filed</u> on May 23, 2018	1JA 169
10.	Order Granting Stipulation Waiving Sentencing by Jury <u>filed</u> on July 25, 2018	1JA 220
11.	Reply in Support of Motion to Prohibit Ultimate Issue Testimony (Winiarz) <u>filed</u> on November 20, 2017	1JA 31
12.	Stipulation Waiving Sentencing by Jury <u>filed</u> on July 25, 2018	1JA 218
15.	Transcript of Proceedings: Pretrial Motions <i>held</i> on June 14, 2017, <u>filed</u> on March 6, 2018	1JA 35
16.	Transcript of Proceedings: Status Hearing <i>held</i> on June 14, 2017, <u>filed</u> on June 29, 2017	1JA 7

17. Transcript of Proceedings: Trial <i>held</i> on July 16, 2018	2JA 225
18. Transcript of Proceedings: Trial <i>held</i> on July 17, 2018	3JA 294
19. Transcript of Proceedings: Trial <i>held</i> on July 18, 2018	4JA 548
20. Transcript of Proceedings: Trial <i>held</i> on July 19, 2018	5JA 648
21. Transcript of Proceedings: Trial <i>held</i> on July 20, 2018	6JA 704
22. Transcript of Proceedings: Trial <i>held</i> on July 23, 2018	7JA 845
23. Transcript of Proceedings: Trial <i>held</i> on July 24, 2018	8JA 1062
24. Transcript of Proceedings: Trial <i>held</i> on July 25, 2018	9JA 1161
25. Verdict <u>filed</u> on July 25, 2018	1JA 216

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DC-09500079900-001
STATE VS. EDWARD SAMUEL PUNDYK 3 Pages
District Court 08/24/2016 09:50 AM
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DA #15-13105

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CODE 1795

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ORIGINAL

FILED

AUG 24 2016

JACQUELINE BRYANT, CLERK

By: *[Signature]*
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No.: CR16-1290

v.

Dept. No.: D08

EDWARD SAMUEL PUNDYK,

Defendant.

INDICTMENT

The defendant, EDWARD SAMUEL PUNDYK, is accused by the Grand Jury of Washoe County, State of Nevada, of the following:

COUNT I. MURDER WITH USE OF A DEADLY WEAPON, a violation of NRS 200.010, NRS 200.030, NRS 193.165, a category A felony, (50001) in the manner following, to wit:

That the said defendant on or about the 7th day of October, 2015, at Reno, within the County of Washoe, State of Nevada, did willfully, unlawfully, and with malice aforethought, deliberation, and premeditation, kill and murder DELPHINA MEDEIROS, a human being, by means of shooting into the body of DELPHINA MEDEIROS, with the use of a deadly weapon, to wit: a rifle or other firearm, thereby

1 inflicting mortal injuries upon the said DELPHINA MEDEIROS from which
2 she died on October 7th, 2015.

3 COUNT II. DISCHARGING A FIREARM AT OR INTO OCCUPIED
4 STRUCTURE, a violation of NRS 202.285, a category B felony, (51442) in
5 the manner following, to wit:

6 That the said defendant on or about the 7th day of October,
7 2015, at Reno, within the County of Washoe, State of Nevada, did
8 willfully, unlawfully, and maliciously discharge a firearm, to wit: a
9 shotgun, at or into ~~a~~^{an} occupied structure, to wit: a house or other
10 building located at 11903 Rocky Mountain Street, Washoe County,
11 Nevada.

12 AFFIRMATION PURSUANT TO NRS 239B.030

13 The undersigned does hereby affirm that the preceding
14 document does not contain the social security number of any person.

15 Dated this 24th day of August, 2016.

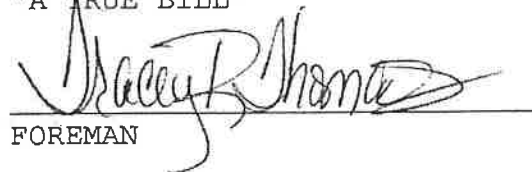
16 CHRISTOPHER J. HICKS
17 District Attorney

18
19 By 
20 AMOS SVEGE
21 9200
22 DEPUTY District Attorney
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1 The following are the names of witnesses examined before
2 the Grand Jury:

3
4 EDDIE FRANCO
5 JOSEPH GROSS
6 DANIEL BROWN
7 JACOB BOHART
8 ERIC HOLBY
9 STEVEN MAYFIELD
10 DANIEL PARKER
11 BERNARD LAMERE
12 DAVID MILLSAP
13 PATRICK BLAS
14

"A TRUE BILL"


FOREMAN

"NO TRUE BILL"

FOREMAN

1 CODE 1770
2 WASHOE COUNTY PUBLIC DEFENDER
3 LINDA M. NORDVIG, BAR # 5084
4 PAIGE A. DOLLINGER, BAR # 8048
5 P.O. BOX 11130
6 RENO, NV 89520-0027
7 (775)337-4800
8 ATTORNEY FOR DEFENDANT

9 IN THE SECOND JUDICIAL DISTRICT COURT OF
10 THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

11 THE STATE OF NEVADA,
12 Plaintiff,

13 vs.

Case No.: CR16-1290

Dept. No.: 4

14 EDWARD SAMUEL PUNDYK,
15 Defendant.

16 NOTICE OF DEFENSE

17 COMES NOW, Defendant, EDWARD SAMUEL PUNDYK, by and through his
18 counsel of record JEREMY T. BOSLER, Washoe County Public Defender, LINDA M.
19 NORDVIG and PAIGE A.DOLLINGER, Deputy Public Defenders, and hereby offers its
20 notice of defense, pursuant to NRS 174.035(5). By this Notice the State of Nevada is advised
21 that Mr. Pundyk will request to change his plea of "not guilty" to "not guilty by reason of
22 insanity." Mr. Pundyk requests leave of Court to formally amend his plea on the record during

23 ///

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1 the hearing presently set for June 14, 2017, which will be more than twenty-one days before
2 trial.

3 **AFFIRMATION PURSUANT TO NRS 239B.030**

4 The undersigned hereby affirm that the preceding document does not contain the social
5 security number of any person.

6
7 DATED the 9th day of June, 2017.

8
9 JEREMY T. BOSLER
10 Washoe County Public Defender

11 By /s/ Paige A. Dollinger
12 PAIGE A. DOLLINGER
13 Deputy Public Defender

14 By /s/ Linda Nordvig
15 LINDA NORDVIG
16 Deputy Public Defender
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Amos Stege
Deputy District Attorney
Via ECF System

DATED this 9th day of June, 2017

/s/ Brianda Gomez
BRIANDA GOMEZ

1 4185

2 JUDITH ANN SCHONLAU

3 CCR #18

4 75 COURT STREET

5 RENO, NEVADA

6
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9 BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

10 -oOo-

11 THE STATE OF NEVADA,)

12 Plaintiff,)

13 vs.)

14 EDWARD SAMUEL PUNDYK,)

15 Defendant.)

) CASE NO. CR16-1290
) DEPARTMENT NO 4
)
)
)
)
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)

16
17 TRANSCRIPT OF PROCEEDINGS

18 STATUS HEARING

19 WEDNESDAY, JUNE 14, 2017, 1100 A.M.

20 Reno, Nevada

21
22 Reported By: JUDITH ANN SCHONLAU, CCR #18
23 NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
24 Computer-aided Transcription

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A P P E A R A N C E S

FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY

 BY: AMOS R. STEGE, ESQ.

 DEPUTY DISTRICT ATTORNEY

 WASHOE COUNTY COURTHOUSE

 RENO, NEVADA

FOR THE DEFENDANT: OFFICE OF THE PUBLIC DEFENDER

 BY: LINDA NORDVIG, ESQ.

 PAIGE DOLLINGER, ESQ.

 DEPUTY PUBLIC DEFENDERS

 350 S. CENTER STREET

 RENO, NEVADA

1 RENO, NEVADA; WEDNESDAY, JUNE 14, 2017; 11:00 A.M.

2 -oOo-

3 THE COURT: State versus Edward Pundyk. Good
4 morning, counsel. This is the time set for a status hearing,
5 but I think there are some other things going on, so I will
6 let you tell me what we are going to do this morning.

7 MS. NORDVIG: I would leave it up to the Court. The
8 main reason we set this hearing was to determine a trial date.

9 It would appear that any movement in our calendars,
10 after speaking with Mr. Stege yesterday briefly and this
11 morning, any movement in our calendars has either worsened,
12 definitely not made them better. I contacted your clerk this
13 morning regarding possible dates. So that is where we are at.

14 THE COURT: Did you want to enter a new plea to the
15 charges?

16 MS. NORDVIG: I would leave that to the Court. We
17 did file notice that we were hoping to do that. Whether we do
18 it today or a later hearing is inconsequential.

19 THE COURT: It doesn't make a difference to me. Is
20 there anything you believe has to be done before changing this
21 plea?

22 MS. NORDVIG: Not that I am aware. I think we have
23 done everything we need to.

24 THE COURT: Mr. Stege.

1 MR. STEGE: I think we should do it today. I do
2 concur we had hoped the calendar would open up, but it just
3 didn't happen.

4 THE COURT: Well, if your calendar hasn't opened up
5 for September, then the Court's calendar hasn't opened up for
6 September, and you had some other things also.

7 MS. NORDVIG: I have several things. One I thought
8 might resolve. It looks like it will not resolve now. So the
9 last week of August and first week of September looks like I
10 will be busy as well.

11 THE COURT: Well, it makes sense. As I understand,
12 the clerk kind of tentatively talked about a date in February,
13 early February. And I think if that is the date we are going
14 to use, we should get it. It is hard to believe, but the
15 calendar is filling up, and I know your calendars will fill up
16 between now and then. So what I would like to do is start
17 with the notice of defense and the request to change plea and
18 get that resolved, and then once that plea is the plea of
19 record, we'll set the case for trial.

20 Mr. Pundyk, there is a Notice of Defense that has
21 been filed by your counsel and pursuant to NRS 174.035(5).
22 Your counsel has requested that your plea be changed. Do you
23 understand what is going on here today?

24 THE DEFENDANT: Yes.

1 THE COURT: Are you comfortable with the
2 representation you received from your counsel so far?

3 THE DEFENDANT: Yes, I am.

4 THE COURT: Are you aware of the plea that your
5 counsel is suggesting that you should change your plea of not
6 guilty today?

7 THE DEFENDANT: I am aware of that, yes. Some
8 details are questionable. I don't know. She'll explain those
9 to me. I feel confident with her decision and also with me
10 agreeing with that.

11 MS. NORDVIG: Just for the record, I did have an
12 opportunity to go up to Washoe County Jail Friday morning with
13 the investigator assigned to this case. We did review the
14 consequences of his change of plea, what it would mean to his
15 case. Obviously, I haven't had a follow-up conversation with
16 him, because I have been off the last two days, but my
17 investigator was up yesterday, so I'm sure he has some
18 questions, but I think he understands the basics of what we
19 are doing.

20 THE COURT: Okay. Mr. Pundyk, with all of that in
21 mind, do you still want to go forward with the jury trial we
22 currently have scheduled or did have scheduled, I guess we are
23 going to schedule today?

24 THE DEFENDANT: Yes.

1 THE COURT: What is your formal entry of plea today
2 to the charge?

3 THE DEFENDANT: That would be not guilty by reason
4 of insanity.

5 THE COURT: Then we'll go ahead and allow, pursuant
6 to the Notice of Defense and your representations today, we
7 will formally allow you to amend your plea on the record and
8 in the record of the Court. That being said, we also have the
9 Notice of Expert Witnesses that was filed June 9th, so that is
10 in the file. And there is a motion that is not submitted yet.
11 It hasn't been briefed. That can all be handled in the
12 future. We'll have a hearing at some point to resolve it.

13 But I think the first thing to do today, perhaps the
14 most important thing is to go forward and set this for trial.
15 You currently have a two-week trial. Do you still think that
16 will be necessary?

17 MR. STEGE: Yes.

18 MS. NORDVIG: At this point, yes.

19 THE COURT: So the date the clerk told me that
20 worked for the defense, and I don't know, Mr. Stege, if it
21 works for you, was February 5th to start the trial. So it
22 would be the weeks of February 5th and February 12th.

23 MR. STEGE: That works for me, Your Honor.

24 MS. NORDVIG: Your Honor, that works for me. I have

1 one question that I wasn't able to answer, I believe the
2 holiday is the 19th; is that correct?

3 THE COURT: That is correct. So that is why I
4 thought when the clerk told me well this works, you all didn't
5 think you would really need all ten days.

6 MS. NORDVIG: That's correct. I'm guessing at the
7 most probably eight.

8 THE COURT: Which gives you time for deliberation
9 and all that.

10 MS. NORDVIG: Right.

11 THE COURT: That will be the trial date. We'll
12 start February 5th at 10:00 a.m. Then I think, in light of
13 the new Notice of Defense, there may be a motion you had
14 filed, there may be more motion practice in this case, so I
15 will set a deadline for additional motions, something new that
16 you just figured out. That deadline will be September 29th.
17 Tell me if you need it later.

18 MS. NORDVIG: Can we do one week later?

19 THE COURT: Sure. October 5th.

20 MS. NORDVIG: Thank you.

21 THE COURT: And then Opposition to that motion will
22 be due October 18th. Now if you need to have argument or an
23 evidentiary hearing, we will set that sometime in November. I
24 am getting the trial schedule here.

1 MS. NORDVIG: Just for the Court's information, I
2 have a jury trial scheduled the week of the 13th.

3 THE COURT: Okay.

4 THE COURT: What about November 2nd at 3:00 p.m.?

5 MS. DOLLINGER: I am out of the office that day. I
6 am out the two weeks between Nevada Day and Veterans Day.

7 MS. NORDVIG: I will be in a murder trial in
8 Department 7.

9 THE COURT: Okay.

10 MS. NORDVIG: I will be living in Department 7 the
11 month of October and just the first few days of November.

12 MR. STEGE: Might I suggest a time other than 3:00
13 o'clock?

14 THE COURT: Do you think there is going to be some
15 evidentiary presentation?

16 MR. STEGE: Yes.

17 THE COURT: Okay. Well then let's go into December.

18 MR. STEGE: I request we avoid the first week of
19 December.

20 THE COURT: Are you thinking the first week of
21 December or the first week after Thanksgiving?

22 MR. STEGE: I have a trial starting the 27th in
23 Department 3. It is scheduled for two weeks of November.

24 THE COURT: All right. Let's see. When you say

1 3:00 o'clock doesn't work, you think you need more time?

2 MR. STEGE: I think with experts, you know, I
3 imagine or foresee the possibility of challenges on the
4 experts or having expert testimony.

5 THE COURT: Okay.

6 THE COURT: December 15th at 9:30 a.m. We are closed
7 in the afternoon. If we need to do it a whole day, we'll do
8 it all day. Just plan on being with us depending on what we
9 need to do.

10 And I guess we need a Motion to Confirm date.

11 THE CLERK: I am looking at January 18th at 9:00
12 o'clock.

13 THE COURT: Since I have given you new dates, I will
14 enter a new scheduling order, pretrial order. It will just
15 change the dates your motion is to be filed. All the other
16 things that are in the other Pretrial Order will be the same
17 and we'll just note the new trial date.

18 MR. STEGE: The Court typically notes if Replies are
19 available.

20 THE COURT: I can. We have so much time.

21 MR. STEGE: That's right.

22 THE COURT: I am not going going to have any
23 problem. The date we picked for the Opposition was October
24 18th.

1 THE CLERK: That's correct.

2 THE COURT: We could do Replies due October 26th.

3 MS. NORDVIG: Court's indulgence. May we approach
4 briefly?

5 THE COURT: Certainly.

6 (Discussion at the bench.)

7 THE COURT: Mr. Pundyk, at the bench we were talking
8 about more dates. We are trying to schedule all those
9 motions, and that was the content of our discussion at the
10 bench. Based upon that discussion and no opposition from your
11 counsel and the State in agreement, I am going to order that
12 all motions that are filed between -- that have been filed
13 that we have not resolved up to the date of the final time for
14 filing those motions will be opposed by the date that I gave
15 earlier. So there is time. If there are any motions that are
16 filed within the period of time between last week or the week
17 before until the deadline that I gave which was October 5th
18 must be opposed no later than the October 18th date. And then
19 there will be Replies allowed by the date that I gave, and
20 then you will have oral argument and evidentiary hearing on
21 those motions, all of them, at the date I gave in December. So
22 that will be in the pretrial order just so you can remember
23 that. But it will be the supplement to my original orders.

24 So anything further for this morning?

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MS. NORDVIG: No. Thank you.

MS. NORDVIG: No, thank you, Your Honor.

THE COURT: All right. Mr. Pundyk, you will go back to the jail with the sheriff and we'll see you back at your next hearing.

Thank you, counsel. Court's in recess.

(Whereupon, the proceedings were concluded.)

--o0o--

1 STATE OF NEVADA,)
2) ss.
3 COUNTY OF WASHOE.)

4 I, Judith Ann Schonlau, Official Reporter of the
5 Second Judicial District Court of the State of Nevada, in and
6 for the County of Washoe, DO HEREBY CERTIFY:

7 That as such reporter I was present in Department
8 No. 4 of the above-entitled court on Wednesday, June 14, 2017,
9 at the hour of 11:00 a.m. of said day and that I then and
10 there took verbatim stenotype notes of the proceedings had in
11 the matter of THE STATE OF NEVADA vs. EDWARD SAMUEL PUNDYK,
12 Case Number CR16-1290.

13 That the foregoing transcript, consisting of pages
14 numbered 1-12 inclusive, is a full, true and correct
15 transcription of my said stenotypy notes, so taken as
16 aforesaid, and is a full, true and correct statement of the
17 proceedings had and testimony given upon the trial of the
18 above-entitled action to the best of my knowledge, skill and
19 ability.

20 DATED: At Reno, Nevada this 29th day of June, 2017.

21
22 /s/ Judith Ann Schonlau
23 JUDITH ANN SCHONLAU CSR #18
24

1 CODE: 2490
Christopher J. Hicks
2 #7747
P.O. Box 11130
3 Reno, NV 89520
(775) 328-3200
4 Attorney for Plaintiff

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR16-1290

11 v.

Dept. No. D04

12 EDWARD SAMUEL PUNDYK,
also known as
13 "ED",

14 Defendant.
15 _____/

16 MOTION TO PROHIBIT ULTIMATE ISSUE TESTIMONY (WINIARZ)

17 COMES NOW, the State of Nevada, by and through CHRISTOPHER
18 HICKS, District Attorney of Washoe County and AMOS STEGE, Deputy
19 District Attorney, and files this Motion to Prohibit Ultimate Issue
20 Testimony. This Motion is made and based on the memorandum of Points
21 and Authorities submitted herewith.

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1 POINTS AND AUTHORITIES

2 The defendant has noticed Dr. Piasecki as an expert witness
3 in support of the defendant's NGRI plea. Dr. Piasecki concludes,
4 after a partial summary of the NGRI standard, that "[i]n his
5 delusional state, [Pundyk] was unable to appreciate that his conduct
6 was wrong, meaning not authorized by law". Per the Nevada Supreme
7 Court¹ such ultimate issue expert opinions are prohibited.

8 Expert testimony cannot go to the ultimate issue

9 Under Nevada case law, expert testimony that a defendant
10 had the mental state constituting an element of the crime charged is
11 not admissible². This is an area where the Nevada Supreme Court has
12 adopted the Federal Rules of Evidence standard as it relates to
13 expert opinion. In Winiarz v. State the Court found error in a
14 prosecution expert testifying that the defendant "killed her husband
15 in cold blood in a premeditated fashion", holding such testimony was
16 "[A] usurpation of the jury function"³.

17 The Winiarz court referenced FRE 704(b), which states:

18 "No expert witness testifying with respect to the mental state
19 or condition of a defendant in a criminal case may state an
20 opinion or inference as to whether the defendant did or did
21 not have the mental state or condition constituting an element
of the crime charged or of a defense thereto. Such ultimate
issues are matters for the trier of fact alone."⁴

22 ///

23
24 ¹ The line of cases includes Winiarz v State, 104 Nev. 43 (1988), Estes v. State,
25 122 Nev. 1123, 1136 (2006), Mitchell v State, 124 Nev. 807 (2008), and Pimentel v.
State, 396 P.3d 759 (2017).

26 ² See Estes v. State, 122 Nev. 1123, 1136, (2006); Pineda v. State, 120 Nev. 204,
214 n. 30 (2004); Winiarz v. State, 104 Nev. 43, 50-51 & n. 6 (1988).

³ Winiarz, supra at 51 (1988).

⁴ Id. at 51, n. 6.

1 This ultimate issue rule is a clear exception to Nevada's general
2 rule under NRS 50.295.

3 Later in Estes, the Court took up the issue of the scope of
4 expert testimony in an insanity defense⁵. After Estes had been
5 through competency proceedings he pleaded NGRI. In rebuttal, the
6 prosecution called the competency evaluators. Even though the
7 evaluators did not relay statements made by Estes as to the crimes
8 charged and surrounded his behavior during evaluation and his mental
9 health the Court found error in Dr. Neighbors' testimony that the
10 underlying incident struck her as "deliberate and thoughtful"⁶. The
11 Court held that such testimony "violates the rule in Winiarz
12 prohibiting psychiatric testimony that a defendant had the mental
13 state constituting an element of the crime charged"⁷.

14 Lastly the Nevada Supreme Court in Pimentel⁸ confirmed that
15 "an expert may not opine as to the ultimate question of any element
16 of a charged offense because to do so usurps the jury's function."⁹

17 As a result, Nevada prohibits ultimate issue opinion in
18 insanity cases. Therefore, Dr. Piasecki's conclusion in referral
19 question 4 that Pundyk lacked the capacity to appreciate that his
20 conduct was wrong is improper and must be excluded.

21 The Court should also be wary, as the Winiarz¹⁰ court was,
22 of testimony which comes so close to an ultimate question opinion
23

24 ⁵ Winiarz explored and was evaluated for insanity, but ultimately did not plead
NGRI.

25 ⁶ Estes, supra at 1136.

26 ⁷ Id. and noting again at n 36 the FRE 704(b) source of the rule.

⁸ Pimentel v. State, 133 Nev. Adv. Opn. 31, 396 P.3d 759 (2017).

⁹ Citing Winiarz, supra at 51.

¹⁰ Winiarz at 50 (In finding error in Dr. Master's opinion the Court noted "Dr.
Master was not asked: "Doctor, in your opinion, based upon your examination of

1 that it is in fact an opinion on the ultimate question. This theme
2 of caution around near ultimate issue testimony is repeated in Estes,
3 namely if "deliberate and thoughtful" is verboten, so too should
4 similar negative statements (unintentional, nonvolitional, etc.).
5 For this reason the conclusion in referral question 3: "Mr. Pundyk
6 acted on the delusions of evil and threat as if they were real. He
7 removed his weapons from the safe, did military type exercises and
8 shot his rifles at the perceived threats" should be stricken and
9 prohibited at trial. The statement is tantamount to "Pundyk was is
10 not legally responsible for the offense".

11 CONCLUSION

12 For the reasons stated the Court should exclude any opinion
13 testimony from any expert that goes to the ultimate issue.
14

15 AFFIRMATION PURSUANT TO NRS 239B.030

16 The undersigned does hereby affirm that the preceding
17 document does not contain the social security number of any person.

18 Dated this 26th day of October, 2017.
19

20 CHRISTOPHER J. HICKS
21 District Attorney
Washoe County, Nevada

22
23 By /s/ Amos Stege
24 AMOS STEGE
25 9200
Deputy District Attorney

26 _____
Consuelo Winiarz, is she or is she not guilty of murder?", but Dr. Master's
testimony comes very close to answering this question").

1 CERTIFICATE OF SERVICE BY E-FILING

2 I certify that I am an employee of the Washoe County
3 District Attorney's Office and that, on this date, I electronically
4 filed the foregoing with the Clerk of the Court by using the ECF
5 system which will send a notice of electronic filing to the
6 following:

7 PAIGE DOLLINGER, ESQ.
8 LINDA NORDVIG, ESQ.
9 WASHOE COUNTY PUBLIC DEFENDER'S OFFICE
10 350 S CENTER STREET, 5TH FLOOR
11 RENO, NV 89501

12 DATED this 26th day of October, 2017.

13 /s/Alicia Nottingham
14 ALICIA NOTTINGHAM

1 CODE 2645
2 WASHOE COUNTY PUBLIC DEFENDER
3 LINDA M. NORDVIG, BAR NO. 5084
4 PAIGE A. DOLLINGER, BAR NO. 8048
5 P.O. BOX 11130
6 RENO, NV 89520-0027
7 (775) 337-4800
8 ATTORNEYS FOR DEFENDANT

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF WASHOE

11 THE STATE OF NEVADA,

12 Plaintiff,

13 v.

Case No. CR16-1290

14 EDWARD SAMUEL PUNDYK,

Dept. No. 4

15 Defendant.
16 _____/

17 **OPPOSITION TO STATE'S MOTION TO PROHIBIT ULTIMATE ISSUE**

18 **TESTIMONY (WINIARZ)**

19 COMES NOW, EDWARD SAMUEL PUNDYK, by and through his counsel of record,
20 Jeremy T. Bosler, Washoe County Public Defender, LINDA M. NORDVIG, and PAIGE A.
21 DOLLINGER, Deputy Public Defenders, and hereby Opposes the State's Motion To Prohibit
22 Ultimate Issue Testimony and moves this Court for an order denying the same in conformity
23 with applicable Nevada law.

24 This Motion is based on the attached Points and Authorities, all other documents and
25 papers filed herein, and relevant statutory and constitutional provisions.

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1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 Edward Samuel Pundyk was arrested on October 7, 2015, and charged with Murder
4 with a Deadly Weapon and Discharging a Firearm at or into an Occupied Structure, both
5 felonies. Mr. Pundyk subsequently was evaluated and was found incompetent to proceed to
6 trial in CV15-02059 on December 16, 2015. On July 12, 2016, he was found competent to
7 proceed and his case was remanded for further proceedings. Mr. Pundyk was charged by
8 Indictment on August 24, 2016, and entered pleas of Not Guilty on September 27, 2016. He
9 later changed his plea to Not Guilty by Reason of Insanity on June 14, 2017. Trial is currently
10 set for February 5, 2018, with a Motion hearing set for December 15, 2017.

11 ARGUMENT

12 Nevada law allows for expert testimony that embraces the ultimate issue to be decided by
13 the jury. In fact, NRS 50.295 states:

14 testimony in the form of an opinion or inference otherwise admissible is *not*
15 *objectionable* because it embraces an ultimate issue to be decided by the trier
16 of fact.

17 Further, a close review of *State v. Winiarz* does not change the admissibility of expert
18 opinion as to the ultimate issue under NRS 50.295, and the State misinterprets the case and/or its
19 applicability here. The State argues the Supreme Court found error where prosecution expert
20 testified that the defendant, “killed her husband in cold blood in a premeditated fashion,”
21 usurping jury function. However, the doctor in *Winiarz* actually and problematically testified
22 that, “*she [Winiarz] was a liar* and that she *murdered* her husband in cold blood in a
23 *premeditated* fashion.” *Winiarz v. State*, 104 Nev. 43, 46, 752 P.2d 761, 763 (1988)(emphasis
24 added.)

25 The distinction between the State’s rendition of *Winiarz* and the actual quote is slight, but
26 substantial. The Court took issue with this testimony that Winiarz was a “liar and a cold blooded

1 murderer,” for three reasons. First, it was improper for the Doctor to remark on Winiarz’
2 credibility, which is wholly a jury function. *Id.* Second, it was improper for the Doctor to use
3 confidential psychiatric information to aid prosecution. *Id.* Third, the State doctor’s testimony
4 that Winiarz “was a cold blooded murderer” was an improper expression of opinion that went to
5 the ultimate issue *and* was highly prejudicial to Winiarz. *Id.*

6 Focusing on the third issue, improper expression of opinion, the Court had several issues
7 with the testimony ultimately concluding it was improper. First, Winiarz and counsel were never
8 contesting sanity. *Id.* at 47. Instead, they contested whether the incident was willful or
9 accidental, largely in part to Winiarz’ alcohol consumption. *Id.* Defense’s problem arose when
10 they asked their expert whether or not Winiarz was so intoxicated as to prevent her from forming
11 intent. *Id.* The State, in turn, used this as an opportunity to call Dr. Master to testify about her
12 state of mind at the time of the incident. *Id.* But, instead, the prosecution “opened up a chamber
13 of horrors,” by then asking Dr. Masters to opine between one of the two State’s limited options:
14 1) accidental shooting or 2) cold-blooded murder. *Id.* at 48. To make matters worse, the State
15 used hypothetical and embellished factual scenarios, inflaming the jury, continuing to ask the
16 doctor to opine between the two options, and the doctor continued to opine “cold-blooded
17 murderer”. *Id.*

18 Therefore, based on the totality of all the facts, the Court held it was improper for Dr.
19 Master to opine on guilt or innocence under the “guise” of describing mental state that Winiarz
20 was a cold blooded murderer who did, in fact, premeditate and deliberately murder her husband
21 in cold blood. *Id.* at 51-52.

22 In *Estes*, Dr. Neighbors improperly testified that Estes’ knew right from wrong, and
23 particularly, that his behavior seemed deliberate and thoughtful. *Estes v. State*, 122 Nev. 1123,
24 1130, 146 P.3d 1114, 1119 (2006). Notably, the Doctor’s reached their conclusion and opinion
25 based on their review of the police reports and reported statements. *Id.* The Court took issue
26 with this testimony for two reasons 1) The Doctor testified under the incorrect or incomplete

1 standard for insanity and 2) The Doctor improperly testified that the defendant had the mental
2 state constituting an element of the crime charged i.e. “deliberately.” *Id.* at 1135-1136.

3 Here, as indicated above, the State filed an Indictment against Mr. Pundyk alleging
4 Murder with the Use of a Deadly Weapon. (*See* Indictment filed into the record on August 24th,
5 2016). Further, the State alleges one theory in the indictment, that Mr. Pundyk did willfully,
6 unlawfully, and with malice aforethought, deliberation and premeditation, kill Delphina
7 Medeiros with the use of a deadly weapon...*Id.* As a result, no expert can testify to the ultimate
8 issue of fact, thereby usurping jury function. For example, an expert could not testify that Mr.
9 Pundyk did or did not act deliberately, like in *Estes*. Further, no expert could testify that Mr.
10 Pundyk committed murder in cold blood or did not commit murder in cold blood, like in
11 *Winiarz*.

12 However, here, Dr. Piasecki’s report and likely proffered testimony does not go to the
13 ultimate issue like the Dr. Master’s and Dr. Neighbor’s testimony. The ultimate question in
14 every trial is, clearly, whether an individual committed a lawful killing or a murder. Thus, the
15 State of Nevada is left to prove, beyond a reasonable doubt, the charge was “murder,” by proving
16 beyond a reasonable doubt the killing was willful, deliberate and premeditated. Dr. Piasecki’s
17 statements aid the trier of fact, the jury, in determining whether the incident was deliberate, but
18 does not usurp the jury’s function.

19 Again, the court should compare the statements of Dr. Masters, in *Winiarz*, and Dr.
20 Neighbors, in *Estes*, to the proffered statements here. In *Winiarz*, Dr. Masters testified that “in
21 his opinion she (Winiarz) was a liar and that she murdered her husband in cold blood in a
22 premeditated fashion” which the Court held to be improper expert testimony and “undeniably
23 reversible error.” *Winiarz* at 46, 51. The testimony of Dr. Neighbors in *Estes* was that *Estes*
24 knew right from wrong and particularly, that his behavior seemed deliberate and thoughtful.
25 *Estes* at 1136. The Court held that Dr. Neighbors’ testimony was an improper but harmless error.
26 In this case Dr. Piasecki’s report states that in “his delusional state, Pundyk was unable to

1 appreciate that his conduct was wrong, meaning authorized by law” and that “Mr. Pundyk acted
2 on the delusions of evil and threat as if they were real. He removed his weapons from the safe,
3 did military type exercises and shot his rifles at the perceived threats.” (Dr. Piasecki’s report
4 dated June 8, 2017, at p. 7, previously filed June 9, 2017, Notice of Expert Witnesses, Ex. 1 by
5 the Defense.) No direct reference to ultimate issues i.e. elements of premeditation, deliberation
6 or a finding of “murder.” These statements contain no direct reference to ultimate issues i.e.
7 elements of premeditation, deliberation or a finding of “murder.”

8 As the court can see, the State’s objection is not founded in law. The proffered testimony
9 here embraces the ultimate issues to be decided by the trier of fact, per NRS 50.295, but does not
10 usurp the jury’s function like in *Winiarz* and/or *Estes* or their progeny. Additionally, the *Winiarz*
11 court found an undue prejudice to the defendant not only because the expert usurped jury
12 function, but because of the inflammatory and prejudicial way the district attorney elicited such
13 testimony. Here, the proffered testimony is not inflammatory, nor unduly prejudicial to the
14 State, nor has the State made any such argument. Therefore, based on above, the testimony
15 should be permitted.

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CONCLUSION

Accordingly, Mr. Pundyk submits that this Court should deny the State’s Motion.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 14th Day of November, 2017.

JEREMY T. BOSLER
Washoe County Public Defender

By /s/ Linda Nordvig
LINDA NORDVIG
Deputy Public Defender

By /s/ Paige Dollinger
PAIGE DOLLINGER
Deputy Public Defender

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office,
Reno, Washoe County, Nevada, and that on this date I electronically served a true copy of the
attached document, addressed to:

AMOS STEGE
Deputy District Attorney
Via ECF System

DATED this 14th day of November, 2017.

/s/ Brianda Gomez
BRIANDA GOMEZ

1 CODE 3790
Christopher J. Hicks
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P.O. Box 11130
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4 Attorney for Plaintiff

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR16-1290

11 v.

Dept. No. D04

12 EDWARD SAMUEL PUNDYK,
13 also known as
"ED",

14 Defendant.

15 _____ /
16 REPLY IN SUPPORT OF MOTION TO PROHIBIT ULTIMATE ISSUE TESTIMONY
17 (WINIARZ)

18 COMES NOW, the State of Nevada, by and through CHRISTOPHER J.
19 HICKS, District Attorney of Washoe County and AMOS STEGE, Deputy
20 District Attorney, and files this Reply in support of the State's
21 Motion to Prohibit Ultimate Issue Testimony (Winiarz) filed October
22 26, 2017. This reply is made and based on the memorandum of Points
23 and Authorities submitted herewith.

24 ///

25 ///

26 ///

1 POINTS AND AUTHORITIES

2 The defendant fails to appreciate that an NGRI defense goes
3 directly to the ultimate issue in the case, namely mens rea¹. The
4 Nevada Supreme Court in Winiarz, Estes, etc. found error in experts
5 saying that the defendant was sane at the time of the killing. The
6 Winiarz Court noted as its final basis for reversing the conviction
7 was Dr. Master's "expression as to Consuelo's guilt or **innocence**"².

8 Even though "Dr. Master was not asked "Doctor, in your
9 opinion, based upon your examination of Consuelo Winiarz, is she or
10 is she not guilty of murder?", but Dr. Master's testimony comes very
11 close to answering this question"³ but he nonetheless exceeded the
12 bounds of permissible expert opinion. Finally Winiarz refers
13 directly to FRE 704(b):

14 (b) No expert witness testifying with respect to the mental
15 state or condition of a defendant in a criminal case may state
16 an opinion or inference as to whether the defendant did or
17 **did not** have the mental state or condition constituting an
element of the crime charged or of a defense thereto. Such
ultimate issues are matters for the trier of fact alone⁴.

18 Legal insanity negates criminal intent⁵. Dr. Piasecki's proposed
19 testimony that Pundyk "was unable to appreciate that his conduct was

20
21 ¹ See, e.g., Finger v. State, 117 Nev. 548, 574-75(2001) (indicating that a legally
insane person is in a delusional state which "prohibits him from forming the
requisite mens reas").

22 ² Winiarz at 50 (emphasis added).

23 ³ Winiarz at 49.

24 ⁴ Id. at 49 footnote 6 (emphasis added). Compare current (2011) version of FRE 704,
which reads:

25 (b) Exception. In a criminal case, an expert witness must not state an opinion
about whether the defendant did or did not have a mental state or condition
that constitutes an element of the crime charged **or of a defense**. Those matters
are for the trier of fact alone (emphasis added).

26 ⁵ Finger v. State, 117 Nev. 548, 572 (2001) ("Legal insanity negates criminal
intent..."). See also Finger at 575 ("But so long as a crime requires some
additional mental intent, then legal insanity must be a complete defense to that
crime.").

1 wrong, meaning not authorized by law" (aping the language of NRS
2 174.035 (5)) is the same as saying "he is not guilty of murder" which
3 goes to the ultimate issue and must be excluded. If otherwise
4 admitted by the Court, Dr. Piasecki's testimony should be limited to
5 "general observations⁶" about the defendant.

6
7 AFFIRMATION PURSUANT TO NRS 239B.030

8 The undersigned does hereby affirm that the preceding
9 document does not contain the social security number of any person.

10 Dated this 20th day of November, 2017.

11
12 CHRISTOPHER J. HICKS
13 District Attorney
14 Washoe County, Nevada

15 By /s/ Amos Stege
16 AMOS STEGE
17 9200
18 Deputy District Attorney
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26 ⁶ Estes v. State, 122 Nev. 1123, 1136 (2006) (determining that Dr. Neighbors crossed the Winiarz line when testimony went beyond "general observations of his mental state").

1 CERTIFICATE OF SERVICE BY E-FILING

2 I certify that I am an employee of the Washoe County
3 District Attorney's Office and that, on this date, I electronically
4 filed the foregoing with the Clerk of the Court by using the ECF
5 system which will send a notice of electronic filing to the
6 following:

7
8 PAGE DOLLINGER, ESQ.
9 LINDA NORDVIG, ESQ.
10 WASHOE COUNTY PUBLIC DEFENDER'S OFFICE
11 350 SOUTH CENTER ST.
12 RENO, NV 89509

13
14 DATED this 20TH day of November, 2017.

15
16
17 /s/Alicia Nottingham
18 ALICIA NOTTINGHAM
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1 4185

2 JUDITH ANN SCHONLAU

3 CCR #18

4 75 COURT STREET

5 RENO, NEVADA

6
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9 BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

10 -o0o-

11 THE STATE OF NEVADA,)

12 Plaintiff,)

13 vs.)

14 EDWARD SAMUEL PUNDYK,)

15 Defendant.)

CASE NO. CR16-1290

DEPARTMENT NO. 4

16
17 TRANSCRIPT OF PROCEEDINGS

18 PRETRIAL MOTIONS

19 TUESDAY, MARCH 6, 2018, 9:30 A.M.

20 Reno, Nevada

21
22 Reported By: JUDITH ANN SCHONLAU, CCR #18
23 NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
24 Computer-aided Transcription

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A P P E A R A N C E S

FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY

 BY: AMOS STEGE, ESQ.

 DEPUTY DISTRICT ATTORNEY

 WASHOE COUNTY COURTHOUSE

 RENO, NEVADA

FOR THE DEFENDANT: OFFICE OF THE PUBLIC DEFENDER

 BY: LINDA NORDVIG, ESQ.

 PAIGE DOLLINGER, ESQ.

 DEPUTY PUBLIC DEFENDERS

 350 S. CENTER STREET

 RENO, NEVADA

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
MELISSA PIASECKI	7	50	94	101
			40	

<u>EXHIBITS:</u>	<u>MARKED FOR IDENTIFICATION</u>	<u>ADMITTED INTO EVIDENCE</u>
A	9	9

1 RENO, NEVADA; TUESDAY, MARCH 6, 2018; 9:30 A.M.

2 -oOo-

3
4 THE COURT: This is the time set for three pending
5 motions that we currently have. We have the State's Motion to
6 Prohibit Ultimate Issue Testimony. We have the Public
7 Defender's Motion to Strike Cumulative Expert Testimony from
8 the State, and we have the State's Motion to Prohibit
9 Introducing Hearsay evidence through the expert. So I know we
10 have Dr. Piasecki today. And how do you want to proceed?

11 MS. DOLLINGER: Your Honor, Paige Dollinger and Linda
12 Nordvig on behalf of Mr. Pundyk who is present in custody this
13 morning. By our review, there were four outstanding, also the
14 State's Motion to Exclude Expert Testimony for a Hallmark
15 hearing. So we are prepared to argue four of those this
16 morning. And as a housekeeping matter, with regard to the
17 Hallmark motion and the State's Motion to Prohibit Ultimate
18 Issue Testimony, I will be conducting a direct examination of
19 Dr. Piasecki on those motions. Ms. Nordvig will be conducting
20 examination of her with regard to the State's Motion to
21 Prohibit Introduction of Hearsay. So we are arguing, each
22 arguing two motions.

23 THE COURT: I usually allow one lawyer to inquire of
24 one witness. I mean --

1 MS. NORDVIG: That is fine.

2 THE COURT: You can have her leave and come back.

3 MS. DOLLINGER: Or she can step down and be
4 recalled, if you please. That is what the attorneys are
5 prepared to do today. Doctor Piasecki is present.

6 THE COURT: I couldn't allow to you do that in trial,
7 so each lawyer takes a witness that is their witness.

8 MS. DOLLINGER: Will you allow it for purposes of
9 this hearing today?

10 THE COURT: I don't -- It is probably not a
11 significant --

12 MS. NORDVIG: Court's indulgence.

13 THE COURT: I have no problem for today. Yes, go
14 ahead.

15 MS. NORDVIG: Thank you. Thank you, Your Honor.

16 THE COURT: Okay. So tell me again which ones you
17 wanted to deal with?

18 MS. DOLLINGER: I will be doing the State's Motion to
19 Exclude Expert Testimony for a Hallmark hearing, and the
20 State's Motion to Prohibit Ultimate Issue Testimony.

21 THE COURT: Okay. And then Ms. Nordvig is going to
22 handle the cumulative?

23 MS. NORDVIG: That's correct.

24 THE COURT: And then you the hearsay?

1 MS. NORDVIG: The hearsay.

2 THE COURT: The hearsay.

3 MS. NORDVIG: Your Honor, if it would be more
4 convenient for the Court, when Ms. Dollinger is done with her
5 direct, I would have just a brief amount of questions for
6 Dr. Piasecki if that makes it more efficient.

7 THE COURT: However it works. Mr. Stege, can you
8 live with that?

9 MR. STEGE: Yes.

10 THE COURT: For today's hearing?

11 MR. STEGE: Yes, of course.

12 MS. NORDVIG: Thank you, Your Honor.

13 THE COURT: Go ahead. Shall we start?

14 MS. DOLLINGER: Yes, Your Honor. I would call
15 Dr. Melissa Piasecki to the stand.

16 THE COURT: How do you pronounce your client's last
17 name?

18 MS. DOLLINGER: Pundyk.

19 THE COURT: Okay. Thank you.

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MELISSA PIASECKI

called as a witness, having been first duly sworn,
took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MS. DOLLINGER:

Q Good morning, Dr. Piasecki. Would you please state
and spell your full name for the record?

A Melissa Piasecki. M-E-L-I-S-S-A. P-I-A-S-E-C-K-I.

Q Doctor Piasecki, what is your profession?

A I am a psychiatrist.

Q And what type of psychiatry do you practice?

A Forensic psychiatry.

Q What does a forensic psychiatrist do?

A A forensic psychiatrist is a sub specialist who
works in the intersection of psychiatry and the law.

Q Where are you currently employed?

A By the University of Nevada Reno.

Q What is your job at the University of Nevada Reno?

A My primary role is an administrative role as an
Executive Associate Dean.

Q And do you also hold faculty positions there?

A I do. I am a professor of psychiatry.

Q Are you a tenured professor?

1 A I am.

2 Q Doctor Piasecki, in this case, did you conduct a
3 criminal responsibility evaluation of Mr. Pundyk?

4 A I did.

5 Q Without stating your opinion right now, do you have
6 an opinion regarding Mr. Pundyk's mental state at the time of
7 the killing in this case?

8 A I do.

9 Q And do you also have an opinion as to whether, as a
10 result of Mr. Pundyk's mental state, he could appreciate that
11 his conduct was wrong?

12 A Yes.

13 Q Before we get to your opinion, I want to go over
14 your qualifications and expertise that would enable you to
15 render such an opinion. So let's talk about your education
16 and training. For your undergraduate studies, did you attend
17 Washington University in St. Louis?

18 A Yes.

19 MR. STEGE: We can dispense with the education
20 requirements and her experience. That is on her CV. I have
21 seen it. I am familiar with it.

22 THE COURT: Okay.

23 MS. DOLLINGER: Your Honor, despite the State's
24 stipulation, the defense would like to make a complete record

1 about her qualifications.

2 THE COURT: Do you have a CV?

3 MS. DOLLINGER: I do.

4 THE COURT: If you have it, we'll mark it, admit it
5 and we have a complete record.

6 MS. DOLLINGER: May I approach the clerk to have it
7 marked?

8 THE COURT: Yes.

9 THE CLERK: Exhibit A marked.

10 (Exhibit A marked for identification.)

11 THE COURT: Understanding you may have other issues
12 in front of the jury. For purposes of today's hearing, that
13 should stay the record.

14 MR. STEGE: I will stipulate to its admission.

15 THE COURT: Exhibit A is admitted.

16 (Exhibit A admitted in evidence.)

17 MS. NORDVIG: I am sorry, A?

18 THE COURT: A is admitted and that is the CV of
19 Dr. Piasecki, and it shows her qualifications to testify.

20 MS. NORDVIG: Thank you, Your Honor.

21 THE COURT: You're welcome. Okay, counsel.

22 BY MS. DOLLINGER:

23 Q Doctor Piasecki, you are Board Certified in general
24 and forensic psychiatry; is that correct?

1 A Yes.

2 Q What does it mean to be Board Certified?

3 A It means that you have completed the required
4 training program for that clinical specialty and the
5 fellowship program for that subspecialty area, and that you
6 have passed the required examinations.

7 Q Are your Board certifications with the American
8 Board of Psychiatry and Neurology?

9 A Yes.

10 Q You successfully completed all the requirements to
11 become Board Certified in general and forensic psychiatry?

12 A Yes and I renewed in 2017.

13 Q What do you have to do to remain Board Certified in
14 the areas of general and forensic psychiatry?

15 A Every ten years there is a renewal process that
16 includes self-evaluation with exams, self-administered exams.
17 It requires correspondence with the Board about what your
18 activities are in terms of patient volume or other kinds of
19 activities. And it requires sitting for an exam which, in my
20 case, was a combined examination of both psychiatry and
21 forensic psychiatry were part of the same exam.

22 Q Have you completed all those requirements you just
23 described to keep your Board Certification active?

24 A Yes.

1 Q As part of your training on requirements in general
2 psychiatry, did that include study in the area of addiction
3 psychiatry?

4 A It did.

5 Q Would you describe for the Court how your training
6 in addiction psychiatry is relevant to your practice as a
7 forensic psychiatrist?

8 A In forensic psychiatrist or psychiatry and the law,
9 there are many, many issues that come up regarding substance
10 use. It could be issues related to the impact of substance
11 intoxication on a person's conduct. It could be the need for
12 treatment or the risk factor that a substance abuse disorder
13 presents in a legal case. So there are a number of areas there
14 is an intersection between the two.

15 Q Doctor Piasecki, are you licensed to practice
16 medicine in the State of Nevada?

17 A I am.

18 Q What year did you obtain your license?

19 A 1995.

20 Q Are you licensed to practice medicine in any other
21 states?

22 A Yes, Hawaii and Vermont.

23 Q Do you recall when you obtained those licenses?

24 A Vermont, my temporary or my training license in

1 Vermont was 1981. I received a full license I believe in
2 1983. Hawaii my license became active in 2004.

3 Q And I think it is very evident on your Curriculum
4 Vitae you certainly spend a lot of time teaching others. I
5 want to talk about that a little bit. You already stated you
6 hold a faculty position; is that true?

7 A Yes.

8 Q And could you talk about some of the courses you
9 teach for the University of Nevada School of Medicine?

10 A I have been with the University for 22, 23 years
11 now. So over the course of that time, I have taught a number
12 of different courses for medical students. I teach in courses
13 related to neuroscience, psychology, psychiatry, addiction,
14 patient interviews. I teach residents in areas of
15 pharmacology, forensic psychiatry. In the past, I have done
16 neuropsychiatry with residents. And I have taught faculty or
17 continuing medical education in areas related to mental
18 health, psychiatry, diagnosis and forensic psychiatry.

19 Q In addition to the faculty position you hold at the
20 University of Nevada School of Medicine, do you hold faculty
21 positions at any other institutions?

22 A I do. I have an adjunct appointment or volunteer
23 appointment at the University of Hawaii and the National
24 Judicial College.

1 Q What courses do you teach both at the University of
2 Hawaii and the National Judicial College?

3 A I am a guest lecturer at the University of Hawaii
4 related to forensic psychiatry topics that occur every few
5 years. Some of those courses are actually administered through
6 a conference call type of approach.

7 With the National Judicial College, I have
8 participated in a number of courses related to co-occurring
9 disorders with defendants with co-occurring disorders. I was
10 part of a grant with regard to best practices in death
11 penalty. I participated in a number of courses regarding that
12 topic as well as driving under the influence.

13 Q Do you also teach lawyers as part of their
14 continuing legal education requirements?

15 A Yes. I am a CLE speaker, continuing education
16 credit speaker, and I have provided courses for the Boyd
17 School of Law and for the Nevada Bar Association.

18 Q And do you recall teaching a three-hour continuing
19 legal education seminar that was sponsored, co-sponsored by
20 the State Bar of Nevada on Not Guilty by Reason of Insanity,
21 Understanding Psychiatric Diversities?

22 A Yes.

23 Q So you teach lawyers and judges, and then you
24 mentioned you teach students at Boyd Law School in Las Vegas?

1 A I have been a guest lecturer in courses at Boyd.

2 Q What was the course you were a guest lecturer there?

3 A I have had a couple of courses at Boyd. One was Not
4 Guilty by Reason of Insanity. Another was The Role of a
5 Forensic Psychiatrist. Another was regarding substance use.

6 Q We talked about all the groups of individuals that
7 you teach and how long you have spent teaching and working at
8 the University of Nevada, their School of Medicine.

9 Now I want to turn to your practice as a clinician.
10 Do you maintain a clinical practice where you see patients?

11 A I do not.

12 Q If not now, did you in the past practice as a
13 clinician?

14 A I did for the ten years between 1995 and 2004.
15 Maybe less than ten years. I had a clinical practice here in
16 Reno with inpatient and outpatient psychiatry.

17 Q Could you describe your clinical practice as it
18 related to seeing patients on an inpatient basis in the
19 hospital?

20 A Yes. I worked part time at the VA. As part of the
21 University Faculty member, we had an arrangement with the VA.
22 I practiced inpatient psychiatry with the VA, as well as a
23 limited practice at Renown and West Hills hospital. My duties
24 were admitting patients, caring for patients during the course

1 of hospitalization and discharging patients.

2 Q While you were caring for patients during the course
3 of their hospitalization, did you also prescribe medication to
4 them?

5 A I did.

6 Q Please talk about your clinical practice where you
7 see patients on an outpatient basis?

8 A During that same period, 1995 to 2004, I had an
9 outpatient practice where I treated patients who were less
10 ill, because they didn't require inpatient care, and this was
11 typically medication treatment. I continued that outpatient
12 practice for a short period of time after 2005, and
13 discontinued it altogether in 2006 or 7.

14 Q Did you prescribe medication for patients that you
15 saw on an outpatient basis?

16 A I did.

17 Q Is it fair to say you are familiar with all the
18 different types of psychotropic medication?

19 A Yes.

20 Q Do psychotropic medications include a class of
21 medications called benzodiazepines?

22 A Yes.

23 Q And what are those?

24 A Benzodiazepines are a class of medications that are

1 central nervous system depressants. They act on nerve cells to
2 quiet nerve activity. They are for a variety of conditions,
3 some neurological such as seizure disorder, some psychiatric
4 such as anxiety or sleep disorder.

5 Q Could you give us an example of the name of drugs
6 that are benzodiazepines a lay person might recognize?

7 A Probably the most commonly known is Valium, another
8 is Adivan, Clonopine, Xanax, Serax.

9 Q Doctor Piasecki, over the course of your career, can
10 you approximate how many criminal cases you have consulted on
11 in the area of not guilty by reason of insanity?

12 A I have been asked to consult or do evaluations on
13 probably close to 200 defendants.

14 Q And in some of those cases that you consulted on,
15 was it your opinion that the defendant in those cases did not
16 suffer from delusions at the time the crime was committed
17 therefore the not guilty by reason of insanity plea was
18 inappropriate?

19 A The majority of the evaluations my opinion is that
20 the Defendant's presentation was not consistent with not
21 guilty by reason of insanity. Most of the times I do an
22 evaluation, my report is I do not find evidence this person
23 meets the Nevada criteria or whatever state I am in, for not
24 guilty by reason of insanity.

1 Q Doctor Piasecki, have you previously been accepted
2 in the area of general and forensic psychiatry in the courts
3 of Washoe County?

4 A I have.

5 Q Have you testified as an expert in general and
6 forensic psychiatry for the prosecution?

7 A Yes.

8 Q About how many times?

9 A In general, probably about ten times. In Washoe
10 County, it would be probably closer to four.

11 Q Have you testified as an expert in general and
12 forensic psychiatry for the defense?

13 A I have.

14 Q Could you approximate how many times?

15 A It would be -- In general for the defense, or with
16 regard to not guilty by reason of insanity or just for the
17 defense in general?

18 Q Maybe you could make both distinctions. For the
19 defense in general?

20 A The defense in general would be a significant
21 number, over two hundred. For not guilty by reason of
22 insanity, probably closer to twenty.

23 Q Have you been qualified to testify as an expert in
24 other jurisdictions besides Washoe County?

1 A I have.

2 Q As an expert in the areas of general and forensic
3 psychiatry, would you talk to the court about what subjects
4 you testified on?

5 A I have testified with regards to adjudicative
6 competencies. I testified with regards to mental state at the
7 time of the offense. The impact of substances on a person's
8 thinking and behavior. I testified on mitigation testimony. I
9 have testified with regards to an individual's risk. I have
10 testified with regards to specific diagnoses. I have testified
11 to, I think I mentioned substances. The different substances
12 I have been an expert to testify on include LSD, marijuana,
13 alcohol, PCP, the stimulants such as methamphetamine and
14 cocaine. And I have also testified with regards to civil
15 commitment criteria. I was a court appointed expert for a
16 number of years in Washoe County for civil commitments and
17 testified in a number of other civil matters such as need for
18 of guardianship.

19 Q Focusing on two of those areas, please describe for
20 the Court what the difference is between doing a competency
21 evaluation and a criminal responsibility evaluation?

22 A Competence is a here and now evaluation. At this
23 time does this person function at a level where they can be
24 competent according to the criteria set forth by the State.

1 Criminal responsibility is a retrospective
2 evaluation. It is looking back in time at a person's mental
3 state at a specific point in time and using all the data
4 points available to develop an opinion about whether or not at
5 that time they were suffering from a mental disorder or
6 defect, and, as a result, had the kind of thought disturbance
7 that would meet the criteria for the State of the definition
8 of NGRI.

9 Q You have been qualified to testify in the area of a
10 person's competency?

11 A Yes.

12 Q And qualified as an expert in regard to giving an
13 opinion relating to whether a person is criminally responsible
14 for a crime they committed?

15 A Yes.

16 Q You have also been qualified as an expert to testify
17 in the area of addiction psychiatry?

18 A Yes.

19 Q Have you testified in a murder case before?

20 A I have.

21 Q Were you qualified as an expert in that case?

22 A Yes.

23 Q Doctor Piasecki, is it true you have been hired by
24 the Public Defender's Office to complete a criminal

1 responsibility examination of Mr. Pundyk?

2 A Yes.

3 Q Is a criminal responsibility examination something
4 that all forensic psychiatrists are trained to do?

5 A Yes.

6 Q So you didn't make up how to do a criminal
7 responsibility evaluation?

8 A Correct.

9 Q Are there standards for how a criminal
10 responsibility examination is to be conducted?

11 A There are.

12 Q What are those standards?

13 A Those standards are published by the Academy for
14 Forensic Psychiatry, the American Academy for Psychiatry, the
15 American Academy or AAPL. I am sorry. The American Academy
16 for Psychiatry and the Law. AAPL is the short name for that
17 organization, and they have published standards.

18 Q How do you conduct a criminal responsibility
19 evaluation or examination?

20 A A criminal responsibility examination is based on
21 data, and to conduct the examination, you need to have an
22 adequate data base, and you need to personally evaluate the
23 defendant.

24 Following those two activities, you then create a

1 summary of the evaluation. This is straight from the report.
2 This is just in terms of your own thinking and evaluate the
3 evidence for and against whether or not the person had the
4 type of disorder that would lead to delusions, whether the
5 delusions were present, if so, have they met the criteria. It
6 is a three-step process. In general, the reviewing of data,
7 evaluating the individual and then reviewing all of the data
8 with regard to the standard.

9 Q Did you follow that three-step process in this case?

10 A I did.

11 Q Approximately how many criminal responsibility
12 examinations have you conducted over the course of your
13 career?

14 A I don't have an exact number. Fifty to sixty.

15 Q Once you conduct a criminal responsibility
16 evaluation, do you typically generate a report detailing your
17 findings?

18 A The fifty to sixty would be a report with my
19 findings. There are a large number of evaluations I do that do
20 not fit criminal responsibility in terms of NGRI where I don't
21 complete a full report. When I am asked to do that, I give
22 feedback, usually a short document that says this is my
23 finding. But in terms of creating a complete report, that
24 would be the fifty to sixty.

1 Q Did you generate a report in this case?

2 A I did.

3 Q Did you also obtain further information and generate
4 a supplement to your original report in this case?

5 A I did.

6 Q Now, Dr. Piasecki, let's talk about who you
7 interviewed and what you reviewed in the course of conducting
8 the criminal responsibility evaluation of Mr. Pundyk. Did you
9 personally interview Mr. Pundyk?

10 A I did, on two occasions.

11 Q Do you recall when you interviewed him?

12 A I believe one was in the summer of 2016. The second
13 was in 2017.

14 Q Was your role during the interview process with
15 Mr. Pundyk forensic or clinical or both?

16 A My role was a forensic examination, so I was not
17 there to provide any clinical services. It was a very
18 restricted role.

19 Q In addition to interviewing Mr. Pundyk, did you
20 administer any testing?

21 A I did not.

22 Q That you're aware, is there a test that can be used
23 to retrospectively measure a person's psychosis?

24 A There is not.

1 Q In addition to interviewing Mr. Pundyk on the two
2 occasions you mentioned, did you also review numerous
3 additional items related to him in this case?

4 A I did.

5 Q All of that other information you reviewed, whether
6 in the form of review reports or talking to others, what is
7 that called generally?

8 A It is called the collateral data base.

9 Q What's the significance of reviewing a collateral
10 data base?

11 A Because the evaluation is retrospective, the
12 information that is timely or coincident with the event is the
13 most important, in my opinion, source of information regarding
14 the individual's mental state at the time.

15 Q Is it fair to say that in your examination of
16 Mr. Pundyk, you reviewed numerous sources of collateral
17 information?

18 A I did.

19 Q Did you review Mr. Pundyk's medical record from the
20 Washoe County Detention Facility?

21 A I did.

22 Q Were those the NaphCare records?

23 A Yes.

24 Q Did you review radiological reports of a magnetic

1 resonance imaging of Mr. Pundyk's brain?

2 A Yes.

3 Q Did you review video tape recordings of Mr. Pundyk's
4 interview with law enforcement following his arrest?

5 A I did.

6 Q Do you recall how long those video tape recordings
7 were you reviewed?

8 A I believe it was about six hours.

9 Q Did you review audio reporting of Mr. Pundyk's blood
10 draw at his arrest?

11 A I did.

12 Q Did you review coroner photos of the victim
13 Mederios?

14 A I did?

15 Q Did you review photographs from FIS?

16 A FIS?

17 Q Forensic Division of the Washoe County Sheriff's
18 Office?

19 A Yes.

20 Q Did you review an audio recording of detective Pat
21 Laws' interview with a man named Dana Hamilton?

22 A Yes.

23 Q Did you review Mr. Pundyk's dental record from John
24 DiGracia?

1 A I did.

2 Q Did you review Mr. Pundyk's arrest report and
3 Declaration of Probable Cause?

4 A Yes.

5 Q Did you review Mr. Pundyk's criminal history report?

6 A Yes.

7 Q Did you review police reports in this case?

8 A Yes.

9 Q Did you review a police report that was dated from
10 2015 that Mr. Pundyk filed against a neighbor of his?

11 A Yes. I believe it was June 2015.

12 Q Did you also review Washoe County Sheriff's Office
13 forensic laboratory report dated October 2015?

14 A Yes.

15 Q Did you review Affidavits and transcripts of phone
16 calls related to the Application for Search Warrant in this
17 case?

18 A Yes.

19 Q Did you review the Death Certificate and autopsy
20 reports of Delphina Mederios?

21 A Yes.

22 Q Did you listen to recorded phone calls from the
23 Washoe County Jail between Mr. Pundyk and his aunt Toni Sinai?

24 A Yes.

1 Q Did you observe an I-web visit that occurred in
2 December 2017 between Mr. Pundyk and Ms. Nordvig and myself?

3 A Yes.

4 Q Did you review all of Mr. Pundyk's competency
5 evaluations and reports from Lake's Crossing?

6 A Yes, as well as the Lake's Crossing admission
7 record.

8 Q Did you personally speak with Mr. Pundyk's aunt Toni
9 Sinai by telephone in August 2017?

10 A I did.

11 Q Did you review Mr. Pundyk's medical record from his
12 admission to Lake's Crossing for treatment to competency when
13 he was admitted in 2016?

14 A Yes.

15 Q So all of those items of collateral information that
16 we just reviewed, which of those items held the most
17 significance for you when you were in the process of
18 conducting the criminal responsibility examination of
19 Mr. Pundyk?

20 A One of the documents or one of the sources of
21 information that was particularly important was the NaphCare
22 record.

23 Q Why is that?

24 A The NaphCare records were completed by licensed

1 mental health practitioners, and what that allowed me to see
2 was around the time of his admission, what was his mental
3 state. That was documented in very systematic, clinically
4 objective terms. How was he described. How was he diagnosed.
5 What kind of treatment did he receive. And that was the best
6 snapshot for me about his clinical state and, therefore, very
7 close to the time of the incident, what was his mental state
8 around that time.

9 Q I would ask you to describe some of the impressions
10 that you gleaned from those medical record regarding his
11 mental state?

12 A What I saw in the NaphCare record is Dr. Lawrence
13 diagnosed Mr. Pundyk as being psychotic, having psychotic
14 disorder. Having erratic and bizarre behavior. And he was
15 put into a special Washoe cell. He was put on a higher level
16 of supervision. And he was receiving care from the mental
17 health team. So there was a social worker as well as a
18 psychiatrist who were involved in his care and providing
19 documentation of their observations.

20 Q Was that also important to you because those records
21 about Mr. Pundyk's mental state and behavior he was exhibiting
22 happened close in time to the arrest in this case?

23 A Yes. Those were in the hours and days following his
24 arrest.

1 Q Why was your review of his video interview with law
2 enforcement, six hour video you referenced earlier
3 significant?

4 A The videotaped interview was significant because it
5 was even closer to the time of the event, prior to him going
6 to jail, and it allowed me to see a recording, not just a
7 clinical documentation of his mental state, but a recording of
8 what he looked like and sounded like in those hours following
9 his arrest.

10 Q What were some of the observations you made about
11 what he looked like and sounded like during that
12 interrogation?

13 A On that video recording, Mr. Pundyk has periods of
14 time where he has very bizarre, disorganized behavior. He
15 makes comments that, in my opinion, represent disorganized
16 thinking and psychotic thought processes.

17 Q You also testified that you listened to an audio
18 recording of detective Laws' interview with the man by the
19 name of Dana Hamilton?

20 A Yes.

21 Q Do you recall who Dana Hamilton is, what his
22 relationship is to Mr. Pundyk?

23 A Mr. Hamilton is a long-term friend of Mr. Pundyk who
24 has maintained over a number of years a friendship that

1 included phone calls as well as personal visits.

2 Q Why was listening to that interview with Dana
3 Hamilton significant to you?

4 A That interview was significant because it painted a
5 picture, along with some other documents in the discovery of
6 Mr. Pundyk's behavior just prior to the incident. So it
7 allowed me to have some data to understand what his behavior
8 was and, therefore, what his thinking was in the hours prior
9 to the incident.

10 Q Was there anything about listening to that interview
11 you can recall that stuck out, that sticks out in your memory
12 about some of those behaviors he was exhibiting just prior to
13 shooting his mother?

14 A The behaviors that were described that were
15 significant included him waking down the road of Stead
16 Boulevard, so very unsafe behavior, and making odd gestures
17 such as if he was signaling to someone. There are other
18 reports that talk about these gestures. But Mr. Hamilton had
19 been in touch with a neighbor and was worried about Mr. Pundyk
20 because of all of these reports that were coming in. So in
21 his interview, he summarized those.

22 Q You also reviewed the Washoe County Sheriff's Office
23 forensic report from October 2015. Do you recall what was on
24 that report as it related to Mr. Pundyk's blood specimen?

1 A So the original, the screening report I believe
2 showed that his, or the blood test showed that his blood
3 contained trace amounts of a metabolite of benzodiazepine
4 called Dor-diazepine.

5 Q Do you recall the level of Dor-Diazapine in
6 Mr. Pundyk?

7 A Twenty-seven nanograms per milliliter.

8 Q Is twenty-seven nanograms per milliliter, is that a
9 high or a low amount in someone's blood?

10 MR. STEGE: Objection. Beyond the scope of her
11 expertise.

12 THE COURT: She has testified she's a pharmaceutical
13 and neurological psychiatrist, so you can establish if she can
14 testify to that.

15 BY MS. DOLLINGER:

16 Q Doctor Piasecki, as a doctor that is licensed to
17 practice medicine, are you qualified to review someone's
18 toxicology report?

19 A I believe I am.

20 Q You already testified that as a Board Certified
21 general and forensic psychiatrist, you are an expert in the
22 area of psychotropic medications?

23 A Yes.

24 Q Is benzodiazepine a psychiatric medication?

1 A Yes.

2 Q When you look at the toxicology report of someone's
3 blood, are you qualified to discuss what Dor-diazepine is as
4 it relates to the class of drugs benzodiazepines?

5 A My training and my experience have allowed me to
6 believe that I am qualified and competent in reading,
7 understanding and translating those reports, yes.

8 Q So I will ask you again, do you have an opinion
9 related to the amount of Dor-diazapine that was in
10 Mr. Pundyk's blood?

11 A It was a low amount that reflected previous use, but
12 the parent drug was not present, so it was previous use that
13 was hours and hours prior to the blood test.

14 Q Did you review any other reports that indicated that
15 any other substances were present in Mr. Pundyk's blood?

16 A Yes. There was a follow-up report that screened for
17 synthetics such as bath salts and other synthetic drugs. That
18 blood test used a very sensitive screening threshold for
19 detecting drugs or metabolite. Mr. Pundyk screened positive
20 on that test for THC and metabolite of THC. So he tested
21 positive for previous marijuana use.

22 Q When you saw that report there was evidence there
23 was some amount of THC in Mr. Pundyk's blood, did that cause
24 you any concern? Do you have an opinion about that?

1 A I noted that it was a low level, and I factored that
2 in to my consideration of whether or not -- what the
3 underlying cause was of his mental state, and whether or not
4 he met the criteria for Nevada's standard for insanity.

5 Q Doctor Piasecki, when you talk about all the people
6 you talked to in conducting a criminal responsibility
7 evaluation and review of this case, the medical records you
8 reviewed, other reports that you reviewed and eventually
9 coming to some opinions about Mr. Pundyk's mental state at the
10 time he shot his mother, let's talk about those opinions.

11 Do you have an opinion as to whether Mr. Pundyk
12 suffered from a mental illness at the time he shot his mother?

13 A Yes.

14 Q What mental illness did he suffer from in your
15 opinion?

16 A He suffered from episodes of psychosis, therefore
17 psychotic disorder.

18 Q How many different types -- What is psychosis?

19 A Psychosis is a break with reality. It's a period of
20 brain disfunction where a person's brain is not able to
21 accurately perceive and interpret the environment, and what
22 they perceive and interpret is something that isn't real. It
23 could be hallucination, it could be delusions, could be both.

24 Q Are there different types of psychoses a person can

1 suffer from?

2 A There are.

3 Q Could you describe those for the Court?

4 A One category of psychoses are the false sensory
5 perceptions such as auditory hallucinations or visual
6 delusions. Another type of psychosis is a delusion which is a
7 fixed, false belief. It means that somebody has a thought or
8 belief that is not reality based. It is fixed in the sense
9 that if you challenge it with logic or evidence to the
10 contrary, that person cannot accept that evidence and
11 continues to have that fixed belief.

12 Q In your opinion, was Mr. Pundyk's psychosis drug
13 induced?

14 A No.

15 Q Why is that your opinion?

16 A My opinion it is not drug induced is because the
17 amount of Dor-diazapine is trivial in terms of it doesn't
18 represent any kind of major intoxication with benzodiazepine.
19 There is no evidence of intoxication with an hallucinogen such
20 as PCP, LSD or stimulants. And the test that is positive for
21 marijuana, in my opinion, the levels are low and marijuana
22 would be very unlikely to produce the kinds of mental symptoms
23 he was experiencing around the time of the incident.

24 Q As a result of Mr. Pundyk's psychotic disorder, was

1 he suffering from delusions at the time he killed his mother?

2 A I believe he was, yes.

3 Q Do you think Mr. Pundyk knew what he was doing when
4 he shot his mother?

5 A I believe he knew some -- He was able to identify
6 what his actions were. I don't think he was able to
7 appreciate the reality of the situation that he was in.

8 Q Could you describe in a little more detail some of
9 the delusions he was under at the time?

10 A I believe Mr. Pundyk was under delusions of threat
11 and believed that there was an evil threat that he was facing
12 imminent risk from.

13 Q Do you recall what kind of threat?

14 A I believe he perceived there to be an evil threat
15 that included both animals and his mother and possibly his
16 neighbor.

17 Q Is it your opinion then that, due to the delusional
18 state Mr. Pundyk was under at the time he committed the act,
19 that he couldn't appreciate that his conduct was wrong?

20 A That is correct.

21 Q Regarding some of the methodologies you base your
22 opinions on that you use, these go to the Hallmark factors, do
23 the opinions you have offered today and might offer at trial
24 fall within a recognized field of expertise?

1 A Yes. Within the area of forensic psychiatric
2 expertise.

3 Q Why do they fall within the forensic psychiatric
4 expertise?

5 A Because that field is focused on the intersection
6 between mental health and the law, and these opinions relate
7 to his mental state as well as the legal standard for
8 insanity.

9 Q And are the opinions that you have reached in this
10 case subject to testing?

11 A No.

12 Q Why not?

13 A Because there is no validated test for legal
14 insanity.

15 Q Are the subjects that you have testified on today
16 examined in any way in any published journals?

17 A Yes. There is a great deal of publication regarding
18 the insanity defense in a number of peer review journals.

19 Q What would some of those journals be?

20 A Those would include the Journal of Law and Behavior.
21 The Journal from the American Academy of Psychiatry and the
22 Law. There is a Journal of Forensic Psychology Research and
23 Practice. So there is a number of journals that are dedicated
24 to this area of forensic mental health.

1 Q Is it fair to say the articles that are published in
2 the journals you just mentioned are susceptible to peer
3 review?

4 A The journals are peer reviewed, yes.

5 Q Are those journals you mentioned, are those
6 mainstream journals?

7 A Mainstream in the sense they are indexed or included
8 in PubMed. PubMed is the main repository for peer review
9 journals. When I think of mainstream, I think of journals
10 within that PubMed index, yes.

11 Q Is the way in which you conducted Mr. Pundyk's
12 criminal responsibility evaluation generally accepted within
13 the behavioral scientific community?

14 A Yes.

15 Q In this case, did you base your opinions on
16 particularized facts?

17 A I did, yes.

18 Q Did you base your opinions on assumptions or
19 conjecture or generalizations?

20 A No.

21 Q Now I want to turn to just a few questions relating
22 to the State's motion to prevent ultimate issue testimony.

23 Doctor Piasecki, as we discussed, your opinion you
24 would testify to at trial, is that Mr. Pundyk, as a result of

1 the delusional state he was in at the time he killed his
2 mother, couldn't appreciate that his conduct was wrong. Why
3 did you phrase your opinion in such a way?

4 A So I believe my opinion was his conduct was wrong.
5 That it is not authorized by law. And I used that specific
6 language, because that is the Nevada standard which was
7 articulated in the Finger opinion and then further documented
8 in the Nevada statutes.

9 Q Is the Nevada statute you are referring to the
10 statute that discusses the process by which somebody enters a
11 not guilty by reason of insanity plea?

12 A Yes.

13 Q Doctor Piasecki, do you understand it is the jury's
14 job as the fact finder in this case to make the ultimate
15 decision, that being whether or not Mr. Pundyk is guilty or
16 not guilty of murder?

17 A Yes.

18 Q Do you understand that your role is to educate and
19 teach the jury regarding the subject matters you are deemed an
20 expert in and offer your opinion on those subject matters?

21 MR. STEGE: Objection. That is for the Court to
22 decide.

23 THE COURT: It is very leading also.

24 MS. DOLLINGER: I will withdraw the question.

1 BY MS. DOLLINGER:

2 Q Do you understand that the jury, as the fact finding
3 body, could ultimately disagree with any opinion that you
4 offer?

5 MR. STEGE: Objection as to relevance.

6 THE COURT: What is the relevance to all of this
7 inquiry?

8 MS. DOLLINGER: Well it goes --

9 THE COURT: Why do we care what she understands?

10 MS. DOLLINGER: -- to the State's Motion to Prohibit
11 Ultimate Testimony

12 THE COURT: Why is it relevant what the doctor's
13 understanding of the jury's role is?

14 MS. DOLLINGER: Well, because she's testified as an
15 expert before that she understands her role as an expert in
16 this case would be not to tell the jury whether Mr. Pundyk's
17 guilty or not guilty, but offer an opinion certainly to help
18 them understand the evidence in this case.

19 THE COURT: I am going to sustain the objection as
20 to relevance.

21 MS. DOLLINGER: Okay.

22 BY MS. DOLLINGER:

23 Q Doctor Piasecki, if you are qualified to testify as
24 an expert in the trial in this case, in your testimony in

1 front of the jury would you refer to Mr. Pundyk as someone who
2 is not guilty of murder?

3 A No.

4 Q Would you refer to Mr. Pundyk, in your testimony in
5 front of the jury as an innocent man?

6 A No.

7 Q Do you plan to use language to bolster or solidify
8 your opinions as they relate to Mr. Pundyk's mental state such
9 as it is my opinion beyond a reasonable doubt?

10 A No.

11 Q Or it is my opinion by clear and convincing
12 evidence?

13 A No.

14 Q Or it is my opinion by a preponderance of the
15 evidence?

16 A No.

17 MS. DOLLINGER: Your Honor, I don't have any further
18 questions for Dr. Piasecki.

19 THE COURT: You wanted to ask a couple of questions?

20 MS. NORDVIG: If that is all right with the Court.

21 THE COURT: Yes.

22 ///

23 ///

24 ///

1 DIRECT EXAMINATION

2 BY MS. NORDVIG:

3 Q Good morning, Dr. Piasecki?

4 A Good morning.

5 Q You discussed earlier with Ms. Dollinger the
6 information and data you used to make your opinion in this
7 case, correct?

8 A Yes.

9 Q Part of that was documentation provided by my office
10 including police reports, reports from prior medical treatment
11 or hospitalizations, videos, photos, all of that, correct?

12 A Yes.

13 Q Part of that was also your meetings with Mr. Pundyk,
14 correct?

15 A Yes.

16 Q And you met with him two times, correct?

17 A Yes.

18 Q And you also observed and partially participated in
19 what we call an I-web presentation; is that correct?

20 A Yes.

21 MR. STEGE: I have objection to the number of
22 leading questions.

23 THE COURT: Where are you going?

24 MS. NORDVIG: Thank you, Your Honor. I will

1 rephrase.

2 THE COURT: We have got what she's looked at. Move
3 on.

4 MS. NORDVIG: Thank you.

5 BY MS. NORDVIG:

6 Q With your -- strike that. During your questioning or
7 interview of Mr. Pundyk, how did you do that interview?

8 A It is a semi-structured interview. So it is not so
9 structured that I read questions verbatim then write down his
10 response to the questions that have been constructed. But
11 there are specific areas which I will address in generally the
12 same order with every evaluation that I do of this type. And
13 so my semi-structured interview will address his background,
14 address his legal, family, mental health, medical, substance
15 use, also developmental histories. I will do what is called a
16 mental status exam which is a series of questions about his
17 thinking at the time of the evaluation. And I will also ask
18 for his narrative of the events prior to, during and following
19 the incident.

20 Q Okay. Can I go back for just a minute? You
21 discussed his background regarding from childhood on?

22 A I usually ask for someone's entire developmental
23 history. So I like to know whether or not their family of
24 origin was intact, what their growing up experience was like,

1 what their school experience was like.

2 Q This was all done in your 2016 evaluation interview
3 with him?

4 A 2016 was the baseline interview. I did a
5 semi-structured evaluation in 2017. When I saw him again, I
6 revisited some of those topics to some degree for more
7 details.

8 Q And are the components of your interview accepted as
9 general practice for this type of criminal responsibility
10 evaluation?

11 A Yes.

12 Q Is there any kind of test that is required to be
13 part of a criminal responsibility evaluation?

14 A No.

15 Q You said you used a mental status examination during
16 the interview; is that correct?

17 A Yes.

18 Q Can you tell us what that is?

19 A That is a systematic assessment of an individual's
20 current mental functioning. It includes observations and
21 specific questions. So an example would be today at this time
22 are you experiencing auditory hallucinations? At this time,
23 how would you describe your mood? It is to try and get a
24 snapshot of that individual's mental functioning on the date

1 of the interview.

2 Q Okay. And the majority of the topics that you said
3 you went through in this baseline interview, are they for
4 purposes of his mental status at the time of the interview or
5 at the time of the event?

6 A So the mental status at the time of the events is in
7 some ways the question that has been asked of me, the referral
8 question that has been asked of me. But in order to get
9 there, I believe I need to do a comprehensive interview which
10 includes mental status at the time of the interview. So my
11 answer really is both.

12 Q Okay. One of the other areas you go into was mental
13 health?

14 A Yes?

15 Q If I recall correctly.

16 A Yes.

17 Q What type of mental health issues do you look for?

18 A On a routine basis, I look for a history of mental
19 health problems. That is really a very broad area of inquiry.
20 So I look for whether or not there were developmental
21 problems. If somebody was in special education. I look for
22 mental health problems in terms of what might be thought of as
23 a personality disorder. Self-harm behaviors. I look for
24 mental health history, whether or not someone has ever been

1 diagnosed or treated for mental health issues such as mood
2 disorder and psychotic disorder. And I am always interested
3 whether or not somebody has had suicide attempts, whether or
4 not they have been to the emergency room on a mental health
5 need, and whether or not they have ever been hospitalized.

6 Q The majority of your questions regarding mental
7 health during this interview would have been background
8 information and historical, is that safe to say?

9 A Yes.

10 Q Also you mentioned that you discuss or have in this
11 case, Mr. Pundyk, tried to discuss a narrative of the event.
12 Did you do that in this case?

13 A Yes.

14 Q Were you able -- Was he able to answer your
15 questions or participate?

16 A He was able to partially answer questions about the
17 event prior to and during the incident. But his recall was not
18 complete.

19 Q And in 2016, I believe it was mid year if I'm not
20 mistaken, your first interview with him; is that correct?

21 A Yes.

22 Q It was around August?

23 Q That would be approximately ten months after the
24 event or incident that we are here for today?

1 A Yes.

2 Q And you have testified in hearings like this before,
3 correct?

4 A Yes.

5 Q Regarding hearsay testimony through an expert
6 witness; is that correct?

7 A Yes.

8 Q And is it your normal practice -- strike that. Have
9 you ever been asked to answer specific questions regarding
10 your conversation during interviews with a client or a
11 defendant?

12 A I don't recall that I have.

13 Q Is it more common to discuss general areas of topics
14 that you base your opinion on?

15 A Yes.

16 Q And you testified earlier you don't write down
17 questions and specific answers during interviews like this,
18 correct?

19 A What I do is I ask a number of questions, and then
20 based on that original question, I follow up with a number of
21 additional questions. So I do write down the specific answers
22 when it is relevant. But I don't limit the structure of the
23 interview to pre-determined questions for the entire
24 interview.

1 Q And why is that?

2 A Because you can never anticipate what is relevant in
3 an interview. In my opinion, you always need to pursue
4 narrative of the details in whatever direction they go.

5 Q So depending on what the individual's response is
6 would control where your line of questioning goes?

7 A Exactly.

8 Q And you are not eliciting or you are not using
9 questions to elicit specific answers; is that a fair
10 statement?

11 A Most of the questions are only questions. And so I
12 don't know what answer I am going to receive, and there is no
13 specific or pre-determined answer that I am looking for.

14 Q So do you take into consideration how the person
15 you're interviewing is responding and acting?

16 A Absolutely.

17 Q Do you screen for possible exaggeration?

18 A I listen for possible exaggeration, but what I am
19 really listening for are inconsistencies.

20 Q How so?

21 A So this would not be true of this individual, but
22 there have been individuals where I will do an interview and
23 they will describe an event that is very frightening or very
24 traumatic, but there won't be any kind of emotional context in

1 which they are describing that. So a disconnect between
2 someone's belief or psychosis and someone's emotional state
3 would be unusual. So I would look for that as a possible
4 indication that this person could be exaggerating or
5 embellishing the report.

6 Q Do you also look for signs of malingering?

7 A I do.

8 Q And how do you do that?

9 A You look for atypical symptoms. You look for
10 symptoms unlikely to be true even in a person who had a
11 psychotic disorder or a measured psychosis.

12 Q Did you see any of those during your interview or
13 interviews with Mr. Pundyk?

14 A I did not.

15 Q You review lots of information before you are
16 prepared to form an opinion, correct?

17 A Correct.

18 Q At least in this case you did. As far as the type of
19 information that you get from this interview, do you consider
20 it fact, do you consider it -- How do you mesh it into the
21 information that you have?

22 A I consider it to be data, and I consider it to be
23 data that is based on recall and, therefore, needs to be
24 interpreted in terms of how consistent it is, how complete it

1 is, so I consider it data not factual information.

2 Q So how would you then define factual information in
3 this setting?

4 A Factual information would be what does the autopsy
5 record include, what does the lab report of blood screening
6 include. It is information that is not subject to as much
7 interpretation or result by an individual.

8 Q So objective versus subjective?

9 A In general, yes.

10 Q The subjective portion of the data that you received
11 from Mr. Pundyk, how do you go about weighing that and how do
12 you determine how much of that to use as far as forming your
13 opinion?

14 A I look for information that triangulates. Several
15 pieces of information come together and support the same
16 conclusion. An example would be in a case for criminal
17 responsibility, is there data previous to the incident,
18 following the incident that suggests a psychotic state and,
19 therefore, is consistent with an individual's report of
20 psychosis during the incident. I look for those areas of
21 concordance and triangulation to support an opinion.

22 Q Did you do that in this case?

23 A I did?

24 Q Did you find that to be true?

1 A I did.

2 Q And did you use that with the collateral data that
3 you were provided?

4 A So the data that allowed for that triangulation
5 included the collateral data.

6 Q And when you evaluate or interview a client that is
7 sent to you, you interview them to see if they -- whatever
8 state they were in at the time is consistent with both the
9 statutory definition as well as the case law, correct?

10 A Correct.

11 Q And did you find that to be true in this case?

12 A I did.

13 Q And you didn't need specific -- strike that. That
14 was not due to any one specific statement; is that a correct?
15 An assumption of mine?

16 A It is based on the aggregate of the data base.

17 Q So were you to testify at the trial in this matter
18 as an expert for Mr. Pundyk, you would be able to answer
19 questions without specifics as to individual statements that
20 he made?

21 A That's correct.

22 Q Have you ever testified where you used specific
23 statements?

24 A I have.

1 Q And during those cases, were they criminal cases?

2 A I believe they were.

3 Q Has the judge ever issued a limiting Instruction?

4 A Yes.

5 Q And, obviously, did you follow that?

6 A Of course.

7 MS. NORDVIG: Nothing further. Thank you.

8 THE COURT: Okay. So I think we can go straight
9 through until quarter to 12:00. That is two hours, over two,
10 close to two hours from the time Dr. Piasecki started. We are
11 going to recess from quarter to 12 until 1:30. We can come
12 back at 1:30.

13 MS. NORDVIG: Thank you. We appreciate that.

14 THE COURT: So cross.

15

16 CROSS-EXAMINATION

17 BY MR. STEGE

18 Q Does that time framework for you?

19 A That's perfect. Thank you.

20 Q Very good. I will start with some follow up on
21 their questions and go into some of mine. I noticed on your
22 CV, and I think you testified you did renew your AAPL or
23 American Board of Psychiatry and Neurology certificate in
24 forensic psychiatry?

1 A Yes.

2 Q That was up in '17?

3 A It was.

4 Q Is there a clinical portion of that certification?

5 A There is some clinical questions on the examination
6 but no other clinical portion.

7 Q Is there clinical questions on the examination
8 related to NGRI?

9 A There are.

10 Q I assume you passed the testing?

11 A I did, thank you.

12 Q And have you ever had privileges or worked at Lake's
13 Crossing Center?

14 A I have not.

15 Q Do you currently do psychiatric rounds?

16 A I do not.

17 Q Do you have privileges at any local hospitals?

18 A I do.

19 Q Which ones?

20 A Renown Health.

21 Q When was your guest lecture at Boyd? You don't
22 teach an actual course for forensic psychiatry, forensics on
23 the law or anything like that?

24 A Correct.

1 Q When was the last I am calling it NGRI, criminal
2 responsibility examination you did before this one?

3 A I don't recall. It would have been, I would
4 estimate I do an evaluation of this sort every one to two
5 months.

6 Q Okay. When was the last one you did in Washoe
7 County on this subject?

8 A I am trying to recall. The last couple of
9 evaluations I did in Washoe County were adjudicative
10 competency evaluations, so 2017.

11 Q When was the last criminal responsibility exam you
12 did anywhere in the State of Nevada?

13 A I don't have those records with me. I would estimate
14 in 2017, Summer or Fall.

15 Q Was that -- Did you end up writing a report for I
16 guess the defendant or prosecution in that case?

17 A No.

18 Q When was -- So was that an instance you were
19 consulted, then the party decided not to proceed on that line
20 of defense?

21 A Correct.

22 Q Is there a list somewhere of the cases where you
23 provided a report to either party on the subject of criminal
24 responsibility?

1 A Although I keep a list of records of testimony, I
2 don't keep a specific list regarding criminal responsibility
3 evaluations.

4 Q Okay. May I have a copy of that list you were just
5 talking about?

6 A So I have the record of testimony which is the four-
7 year rolling list, and I am happy to provide that as
8 requested.

9 Q Okay. Thank you. When was the last time you
10 testified in front of a jury regarding this issue of insanity
11 or criminal responsibility?

12 A I believe it was in Clark County, and it was last
13 Summer or Fall.

14 Q Was that the Pimentel case?

15 A No. It was the Daniel Slaughter case.

16 Q You admit the insanity defense is a rare bird. You
17 don't see it very often; is that true?

18 A Correct.

19 Q And even fewer times do you actually get retained
20 and -- Well, if you were retained, do you write a report on
21 your opinion as to criminal responsibility?

22 A Correct.

23 Q Still the number of times you actually proceeded to
24 trial you testified in front of the jury on the issue of

1 insanity?

2 A Correct.

3 Q What do you think the total number of times you
4 testified in front of a jury on criminal responsibility is?

5 A Ten to fifteen.

6 Q You stated that I think it was up until 2004 or
7 2004-2009 you worked at the VA or you had privileges there at
8 the VA?

9 A The VA was 1995 until 2004.

10 Q Is there a forensic aspect of psychiatry specific to
11 the VA?

12 A Not really.

13 Q That is really like clinical psychiatry?

14 A Yes.

15 Q In fact, has most of your hospital experience been
16 clinical?

17 A Most of it has, yes.

18 Q And at the time -- Have you eve had a private
19 practice that was all clinical?

20 A I have.

21 Q But it was clinical?

22 A Yes.

23 Q And the majority of what you teach the students is
24 clinical?

1 A Currently, yes.

2 Q And Nevada is not I guess known for being a medical
3 school, a titan or a school known for its forensic psychiatry
4 program?

5 A That is true. We do not have a forensic psychiatry
6 program such as a fellowship training program.

7 Q As a result, the school focus is more on clinical
8 psychiatry and general psychiatry?

9 A Yes.

10 Q Now we did sort of touch on this or the defense did
11 a little bit about the issue of when you testified before
12 whether there has been a limiting Instruction, I want to ask
13 you specifically has there been times the Court has limited
14 your testimony?

15 A Yes.

16 Q As courts can do, right?

17 A Yes.

18 Q Have they previously limited your ability to relate
19 the defendant's version of events to the jury?

20 A I don't recall that specifically.

21 Q Have they limited, in the past, your ability to give
22 basically everything that is in your report?

23 A Yes.

24 Q I want to talk briefly about the evaluation process.

1 You said that you want all the data points available; is that
2 accurate?

3 A Yes.

4 Q Do you feel you have all the data points available?

5 A I believe there are some videos that I do not
6 currently have. I have descriptions of the videos, but I
7 don't have the actual videos.

8 Q Would those be like the video surveillance from the
9 house?

10 A Yes.

11 Q Where the killing occurred?

12 A Yes.

13 Q So you have not seen those?

14 A I have only read descriptions.

15 Q Besides that, do you feel there is anything else
16 that is a missing data point?

17 A I'm not aware of any major missing data points.

18 Q Besides anything you testified to today, are there
19 any other data points you looked at that you haven't already
20 talked about?

21 A I believe, when I was asked whether or not I
22 listened to telephone recordings, I said yes. So that was a
23 data point that wasn't reflected in my report. If I looked
24 through my files, I could answer that definitively. I believe

1 that is a pretty good summary of the data points.

2 Q Okay. So you feel you have reviewed all of them and
3 you talked about all of them today. Do all the data points you
4 consider make it into your report?

5 A All the data points considered are reflected in my
6 report.

7 Q You didn't for example list out every single thing,
8 every data point that you considered?

9 A Correct.

10 Q In your report?

11 A Correct.

12 Q But you did list some of them in your report, right?

13 A Yes.

14 Q How did you make that decision what to include and
15 what not to include?

16 A I identified what appears relevant to showing my
17 thinking for my conclusions.

18 Q And how is it you determine what is relevant to your
19 determination?

20 A If I considered it as an important factor for my
21 conclusion, then I considered it relevant.

22 Q Is there a standard by which you determine what is
23 relevant and what is not or just your own what you think is
24 relevant?

1 A There is no standard.

2 Q So if I had another forensic psychiatrist equally
3 skilled as you, would they agree that the same data points are
4 relevant?

5 A I don't know.

6 Q Is AAPL kind of like the big group for forensic
7 psychiatrists?

8 A It is.

9 Q Across AAPL, is there agreement to what is a
10 relevant data point in this area?

11 A There is some identification of data points which
12 are generally considered relevant such as intoxication,
13 history of certain kinds of behaviors, certain kinds of
14 histories prior to an event. Those would be considered
15 relevant. Whether or not the specific item in any particular
16 case could be called out and matched to those, I think there
17 would be some difference of opinion.

18 Q I guess in broad terms there is probably agreement
19 you want to know about the guy's history, I think you
20 described. On a particular case you would agree with me there
21 would be between any group of forensic psychiatrists
22 differences in opinion as to what is relevant?

23 A That's true.

24 Q And that determination what is relevant is made

1 without reference to a specific standard?

2 A Although there are some high level standards such as
3 you must consider substance use, under those highest level
4 standards, I don't believe you would find consistent or that
5 you would assume there would be consistent agreement or
6 consensus of relevance.

7 Q And across psychiatry in general, just talking
8 clinical psychiatry, the same thing happens, isn't that true,
9 where you have a particular patient or case and you have a
10 divergent opinion?

11 A You can, yes.

12 Q And that brings me to this issue: Have there been
13 any studies or publications on the issue of rate of error in
14 diagnosis by psychiatrists in a clinical setting?

15 A So the way the research is framed is not necessarily
16 error, but interrelated reliability. They are given a certain
17 diagnosis, how many people would arrive at the same diagnosis
18 or what is the reliability between one evaluator and the next.
19 And what the research shows is some disorders such as
20 schizophrenia disorder have a very high rate of interrelated
21 reliability. The symptoms are very distinct and general
22 clarity about what those symptoms represent. Other diagnoses
23 such as personality disorder, where the symptoms may be more
24 nuanced, more contextual, there the interrelated reliability

1 may be much lower, because there is so much subjective
2 interpretation that needs to go along with that.

3 Q A related issue is confirmation bias; is that true?

4 A Yes.

5 Q Could you tell the Court what confirmation bias is
6 in this area?

7 A So confirmation bias in general is where an
8 individual who is coming to a conclusion is influenced by very
9 early information about the decision. So for example if
10 somebody goes into a decision with information about what
11 other people believe the outcome is going to be, that person
12 may be biased towards that information in reaching their own
13 opinion. So it is the evaluation of information as seen
14 through the lens of that early information.

15 Q So sort of ignoring evidence to the contrary during
16 the course of the investigation or diagnosis because of your
17 own bias?

18 A Correct.

19 Q That is found to be, the studies have found to be
20 rather high, hasn't it, within psychiatry?

21 A It is found to be an important source of bias in all
22 medical decision making including psychiatry.

23 Q What is countertransference? Am I using the right
24 word?

1 A Countertransference is a psychodynamic term that
2 relates to one of the intangible findings in the practice of
3 psychotherapy. And what it means is, countertransference is
4 an emotional response a practitioner has regarding the client
5 they are working with. If there is something about the client
6 that evokes an emotional or personalized response that isn't
7 specific to the client. It is something more in that person's
8 life.

9 THE COURT: The client's life?

10 THE WITNESS: I am sorry, in the practitioner's
11 life. Thank you.

12 BY MR. STEGE:

13 Q And so what measures -- Did you have to employ any
14 measures to countertransference, confirmation bias or error,
15 diagnostic error rate?

16 A So in general, my approach to the evaluation is to
17 balance the inquiry by use of the semi-structured approach,
18 making sure I am not neglecting any important area of
19 interview and requesting and reviewing all the data points.
20 Those are two of the approaches to try to counter or balance
21 the human nature aspect of bias and countertransference.

22 Q Back to this issue of confirmation bias. In the
23 clinical context, the cross medicine in both clinical
24 psychiatry and clinical medicine, is another, Doctor, one way

1 to solve that is to have more evidence, right? In the clinical
2 setting you can often get more evidence contemporaneous
3 usually; is that a fair statement?

4 A Yes.

5 Q Do you agree with that?

6 A I do.

7 Q For example, if there is a debate among the doctors
8 about what the diagnosis should be, they can order more tests,
9 consult additional experts, stuff like that, right?

10 A Yes.

11 Q And within psychiatry, what sort of things are done
12 in a clinical setting when there are issues of uncertainty?

13 A The same type of approaches. So you could refer an
14 individual for additional testing. Or you could do additional
15 tests. So for example if you thought perhaps that an
16 individual had an underlying neurological disorder, you could
17 consult with a neurologist and have neurological testing.

18 Q Because it is true often times a person can present
19 or certain mental illness have similar looking symptoms?

20 A There are many symptoms that are not specific to a
21 particular diagnosis but are present in multiple diagnoses.

22 Q Isn't it common in the clinical context that it
23 takes a matter of time to arrive at an accurate diagnosis?

24 A Sometime it takes time, sometimes it takes data.

1 Often it takes both.

2 Q Is it a common sort of experience that it takes,
3 like in a medication context, it takes a couple of different
4 trials with a clinical patient to arrive at the proper result
5 or the most effective treatment?

6 A That's true.

7 Q Is that also the case that you might go through a
8 number of perspective diagnoses in that process?

9 A It is possible you might revise the diagnosis over
10 the course of treatment, yes.

11 Q For example, I don't really know what I am talking
12 about, you could go from schizoaffective disorder to
13 schizophrenia to bipolar disorder as three general examples?

14 A That's true, yes.

15 Q Being similar in presentation but more data needing
16 to be made available?

17 A Exactly, yes.

18 Q It is also the case it can be a matter of
19 experimenting with the medication if it is a medication case?

20 A True.

21 Q I want to talk about, you used a number of terms, a
22 structured interview. You also used the term of baseline
23 interview. Are all psychiatrists' structured interviews the
24 same?

1 A No.

2 Q Is there, if I want to go look up and say well what
3 do you ask in a structured interview, is there a place I can
4 go to give me an idea where that is?

5 A You would be able to look at the guidelines of what
6 should be included in an interview, then you could structure
7 the interview according to your preference in terms of the
8 inquiry and specific type questions you have during your
9 inquiry.

10 Q Did you do that in this case, look to what the
11 general questions should be, or is it the case you have done
12 it so many times you know it by heart?

13 A I have a general format that I use in order to
14 ensure that I cover all the relevant bases, and I believe all
15 of the areas in my general outline are reflected in the
16 practice guidelines.

17 Q The AAPL practice guidelines?

18 A Yes.

19 Q Do you believe you followed the practice guidelines,
20 AAPL practice guidelines?

21 A In general, yes.

22 Q Are there any areas you diverged from the AAPL
23 guidelines?

24 A I haven't reviewed the guidelines recently. I can't

1 identify any at this time.

2 Q Do you recall AAPL guidelines saying anything about
3 how you should express your opinion?

4 A No.

5 Q About the qualification of your opinion, it should
6 be stated to a reasonable degree of medical certainty?

7 A I do recall that being in the AAPL guidelines for
8 all the evaluations, but I also believe it somewhat states
9 specific.

10 Q It says or a reasonable degree of medical
11 probability. Would that be a similar thing as to a medical
12 certainty?

13 A It does mean a similar thing.

14 Q Depending on the jurisdiction?

15 A Exactly.

16 Q Do you believe that in this jurisdiction it doesn't
17 require that?

18 A I believe that it does not, because it is not for
19 criminal cases. At least it hadn't been communicated to me it
20 applies to criminal cases in this jurisdiction.

21 Q And this is, going way back, you got your training
22 as a psychiatrist, medical school, etcetera, where did you get
23 the legal training? You said forensic psychiatry is law plus
24 psychiatry. Where do you get the legal part of your training?

1 A My fellowship was at the University of Hawaii.

2 Q That was two years?

3 A One year fellowship program.

4 Q That is where you get sort of the law education part
5 of it?

6 A Yes.

7 Q And the other law specific part of your training
8 program?

9 A Continuing education but not a stand alone
10 educational experience.

11 Q Reasonable degree of medical certainty, what does
12 that mean?

13 A More likely than not.

14 Q Okay. Is your opinion in this case, is your opinion
15 to a reasonable degree of medical certainty?

16 A It is.

17 Q Is it beyond a reasonable degree of medical
18 certainty?

19 A If a reasonable degree of medical certainty is more
20 likely than not?

21 Q Right?

22 A Is it beyond more likely than not?

23 Q Right?

24 A It is, you know, it is more likely than not.

1 Q Okay. Great. I think you stated you personally
2 interviewed the defendant on two occasions?

3 A Yes.

4 Q You have viewed the I-web video?

5 A I was present at the time of an I-web video call.

6 Q Between the defendant and his counsel?

7 A Yes.

8 Q Approximately how long was that?

9 A I believe it is about a forty-five minute video.

10 Q Did you report that in either of your reports?

11 A It may be in the addendum. I believe the date was
12 December 26, 2017.

13 MR. STEGE: I will be seeking a court order for that.

14 THE COURT: Counsel, do you have that?

15 MS. NORDVIG: Do we have it currently?

16 THE COURT: Did you preserve it?

17 MS. NORDVIG: It is not up to us to preserve. It is
18 through the company. We do not have a specific copy of that.
19 I can see if we can get it.

20 MR. STEGE: Your Honor, can we push this
21 conversation later?

22 THE COURT: Yes.

23 MR. STEGE: I don't want to waste Dr. Piasecki's time
24 listening to us?

1 THE COURT: Go ahead.

2 BY MR. STEGE:

3 Q Would you agree not all forensic psychiatrists'
4 structured interviews would be the same?

5 A I would agree, yes.

6 Q And psychiatrists tend to be reluctant to talk about
7 what is in a structured interview. When I have them on the
8 stand, they kind of never want to say what is in them. Is that
9 because there are secret stuff in there, or it is just so
10 general that it is sort of the same in every case?

11 A Now I am sure -- I am not sure why the reluctance of
12 others.

13 Q Is it kind of like saying how are you feeling today?
14 Tell me about your background. Have you ever been in the
15 hospital? How did you do in school? Stuff like that? Or is
16 it kind of trickier questions only psychiatrists know?

17 A I would say there is nothing mysterious about it.
18 It is all pretty straightforward, and they are pretty much
19 straightforward questions that are both closed ended factual
20 questions and open ended narrative questions.

21 Q Is that similar to a mental status examination? Is
22 it a similarly open ended kind of therapy like questions?

23 A I think a mental examination is more focused and
24 more specific to quantitative or closed ended questions.

1 Q Again, across psychiatrists, both clinical and
2 forensic, that would vary, the mental examination would vary
3 by psychiatrists?

4 A They would vary some. The general areas would be
5 the same across individuals.

6 Q When was the last time you, I guess, treated someone
7 who was psychotic?

8 A I don't recall.

9 Q Did you treat anyone who was psychotic at the time
10 in 2017?

11 A No.

12 Q Or '16?

13 A I don't believe I was consulting on-call during a
14 weekend where I was participating in someone's care as a
15 consultant. I don't recall clinically treating anyone in
16 2017.

17 Q Is there-- How do you measure psychosis?

18 A Psychosis is both observed and reported. So you can
19 observe an individual's behavior consistent with psychosis in
20 terms of disorganized behavior, behavior in which they are
21 responding to some kind of internal stimulus. People report
22 it by reporting their beliefs and reporting their experiences
23 such as hallucinations.

24 Q Are there mildly psychotic people and extremely

1 psychotic people?

2 A We can describe psychosis in terms of severity, but
3 there is no scale we can tie that to.

4 Q Does psychosis mimic other mental illnesses or
5 mental problems?

6 A It can, yes.

7 Q Such as?

8 A Somebody who is psychotic and paranoid may appear
9 quite fearful, and that could mimic somebody with an anxiety
10 disorder.

11 Q Does psychosis mirror symptoms of schizophrenia?

12 A Psychosis is often present in the disorder of
13 schizophrenia.

14 Q You would agree with me, I think you stated on
15 direct examination you do want the best information available
16 in conducting your evaluation?

17 A That's true.

18 Q Now among the data points was the NaphCare record,
19 Lake's Crossing reports and the others. I want to ask you
20 about the NaphCare records. I will ask you this general
21 question: Did you see an agreement across the mental health
22 personnel who saw the defendant as to his diagnosis?

23 A No.

24 Q You saw varied diagnoses?

1 A Correct.

2 Q That is a function of the nature of psychiatry?

3 A Yes.

4 Q And you have testified before as to competency
5 issues, right?

6 A Yes.

7 Q You are aware in many of those cases there is often
8 a difference of opinion?

9 A Yes.

10 Q Even among the highest practitioners of forensic
11 psychiatry?

12 A Yes.

13 Q Is that sort of the nature of the discipline?

14 A Yes.

15 Q You saw no evidence of prior mental health diagnoses
16 as to the defendant, did you, prior to this killing?

17 A Correct.

18 Q Are you aware, do you have any evidence that he has
19 suffered psychosis since this case?

20 A Yes.

21 Q When?

22 A So after he was admitted to or put into Parr
23 Boulevard, there is evidence of psychosis there. There also
24 has been suggestions of psychosis in the months and years

1 following his arrest.

2 Q Okay. Where did you get that information?

3 A Both from his report and others' reports.

4 Q So I understand that he was arrested. He was, when
5 he was initially in Parr, he was treated by the jail
6 psychiatrist. That resolved; is that correct?

7 A Yes.

8 Q Have you seen anything since the time it resolved?

9 A Yes. I believe there is some lingering
10 suspiciousness and beliefs that may represent psychosis.

11 Q Is it your opinion the defendant is currently
12 psychotic or undergoing psychosis?

13 A So I haven't evaluated the defendant personally
14 since last year, so I couldn't say about current. But in 2017
15 I believe there were ongoing suggestions of low level paranoia
16 and odd beliefs.

17 Q Is that coming from, that information coming from
18 his attorneys?

19 A It is coming in part from my observations when I met
20 with him.

21 Q Okay. And so would that still be psychosis if he
22 has odd beliefs?

23 A Possibly.

24 Q As to this toxicology question, I will save that for

1 later. Is marijuana a hallucinogen?

2 A It is classified as a hallucinogen, yes.

3 Q Are there instances of marijuana induced psychosis?

4 A There are.

5 Q Are there instances of marijuana withdrawal
6 psychosis?

7 A There are.

8 Q Are there-- So what were the specific types of
9 delusions you believe the defendant was suffering from?

10 A I believe there was evidence he was suffering from a
11 number of different kinds of delusions around the time of the
12 killing. Some of the delusions that preceded the actual
13 incident included it appeared he was having religious
14 delusions and having beliefs that he was supposed to meet
15 someone, and he was experiencing or describing paranoia
16 delusions to other people as well.

17 Q Did you see evidence that he was experiencing
18 delusions of grandiosity?

19 A Possibly. Some grandiose delusions and religious
20 delusions go hand in hand.

21 Q Now let's talk about his interview. Would you agree
22 that the interview with the police is probably the best data?

23 A I believe they are very important data points. I am
24 not sure they are the best data point.

1 Q Because the video is right after the killing, right
2 after he murdered his mom?

3 A It is very close in time, yes.

4 Q And it is a long time, six hours of his behavior.

5 A It's a very good sample of documented behavior, yes.

6 Q You would agree with me there are both delusional
7 and non-delusional statements made by the defendant in that
8 interview?

9 A That's true.

10 Q So how is there agreement within the field of
11 forensic psychiatry as to the efficacy of past tense or
12 looking back for evidence of mental illness?

13 A Is there agreement about the efficacy?

14 Q Right?

15 A Yes.

16 Q Is there, within the field of forensic psychiatry,
17 is there a -- strike that. How is this issue of, within
18 clinical psychiatry, it can take a couple of times to get the
19 diagnosis, right? How does that relate, and that is in
20 realtime, how does that relate to forensic psychiatry when you
21 can't do anymore tests and all you can do is talk to the guy
22 and talk to his friends?

23 A In clinical psychiatry, you typically do not obtain
24 collateral information. You usually don't see what the

1 neighbors were observing. You usually don't have video tape
2 of what someone was doing outside of the office. It is all by
3 self-report. And so the self-reporting nature of clinical
4 psychiatry serves the relationship in that usually the
5 practitioner supports the individual, validates their symptoms
6 and that usually leads to a clinical diagnosis.

7 Forensic psychiatry, there is no dynamic or
8 expectation that you are to support the individual or validate
9 their symptoms, and you're relying much more on collateral
10 information. My personal opinion is that collateral
11 information, especially when extensive over time, includes
12 different types of information for you to make a more valid
13 diagnosis, the subjective assessment.

14 Q One of the big issues with forensic psychiatry is
15 the client or patient having a vested interest in the outcome;
16 isn't that true?

17 A Yes.

18 Q And that is the big distinction between clinical and
19 forensic psychiatry is a clinical patient wants to be there,
20 wants your help. Whereas a forensic client or patient is
21 often motivated by things other than treatment?

22 A That's true.

23 Q And one issue you run into is malingering, right?

24 A That's true.

1 Q You and I have had a case where we had an issue of
2 malingering, right?

3 A Absolutely.

4 Q But another issue is, is there a term for that where
5 the client or patient has a vested interest in the outcome of
6 the evaluation that you are doing?

7 A I am not sure of the specific term, but I understand
8 what you are saying.

9 Q And so are there recognized countermeasures to deal
10 with that?

11 A There are in realtime, yes.

12 Q And so you had, in this case, the defendant telling
13 you that he wants to go to Lake's Crossing?

14 A Yes.

15 Q That the defendant wants to be found not guilty by
16 reason of insanity?

17 A I don't recall the defendant saying that.

18 Q Well didn't Toni Sinai say he wanted to be NGRI so
19 he go to Lake's Crossing?

20 A I interviewed her. I don't recall her saying that
21 to me, but I could look to see what she reported to the
22 interviewers.

23 Q You would agree with me the defendant, you found the
24 defendant to be motivated by a desire to either be acquired or

1 be found not guilty or NGRI?

2 A I am not sure I would come to that same conclusion.
3 What I would say is that most defendants are looking for
4 defenses that make sense to them. And I believe that in this
5 case this defendant had an experience which he could not
6 understand and was looking for a defense that made sense to
7 him.

8 Q And so with that in mind, how do you-- Let's talk
9 about your interview, your defendant's version of events
10 portion of your report. With that in mind, that the subject,
11 Mr. Pundyk, or anyone in his situation is motivated, has a
12 motivation in the case, how do you determine what is relevant
13 from his version of events through that glass or through that
14 window?

15 A So I listen for inconsistencies, and I look for
16 obvious embellishment.

17 Q Is there a special tool or instrument you use to
18 make that determination?

19 A There is not.

20 Q Is there a special tool or instrument to determine
21 the credibility, or do you make a credibility assessment of
22 the defendant's version of the event?

23 A I don't make a specific credibility assessment.

24 Q What if the defendant makes a statement that is

1 obviously at odds with the evidence?

2 A It would depend on exactly what type of statement
3 and what type of evidence. But I may confront the individual
4 on that gap.

5 Q Did you confront the defendant as to any gaps in
6 this case?

7 A I believe that I probed certain areas of the
8 narrative in order to understand the missing pieces.

9 Q Did you find the defendant's version of events in
10 the section in your report to be credible?

11 A I found them to be consistent with other data points
12 and, therefore, part of the data base I could consider.

13 Q But aren't there competing data points?

14 A There are in some cases competing data points, yes.

15 Q Are there competing data points in this case?

16 A Yes, there are.

17 Q How did you resolve those?

18 A I looked at all of the information together, and,
19 based on the aggregate of information what makes most sense,
20 what allows for a rational conclusion, integration of the
21 facts.

22 Q And so by doing that, you have to ignore or choose
23 one competing set of data points over another; isn't that
24 true?

1 A There are times that is true, yes.

2 Q That's true in this case, isn't it?

3 A Very likely.

4 Q Yes, it is true.

5 MS. NORDVIG: Objection.

6 THE COURT: Argumentative, is that your objection?

7 MS. NORDVIG: Badgering, to be perfectly honest.

8 THE COURT: One question I am not sure is badgering.

9 I will sustain the objection.

10 BY MR. STEGE:

11 Q Okay. So within the field of forensic psychiatry,
12 is there a standard to resolve competing data points or
13 competing conclusions from data points?

14 A There is not.

15 Q Same series of questions, if I were to call another
16 qualified forensic psychiatrist, they might embrace a
17 different set of data points; isn't that true?

18 A They may. They may have rationale for why they
19 embrace that set of data points.

20 Q And also believe it to be more likely than not,
21 true?

22 A They may.

23 Q And do you feel like you reported in your report the
24 competing data points?

1 A I'm not sure if I did or not.

2 Q So for example, I notice you didn't put in your
3 report some testimony that came out at the Grand Jury. Did
4 you review the Grand Jury testimony?

5 A I did not.

6 Q Were you aware that witnesses reported hearing the
7 defendant yelling things like "Get down or I'll kill you?"
8 Were you aware of that?

9 A I recall seeing that in one of the statements, but
10 not Grand Jury testimony.

11 Q Or, "In the name of God, get on the ground," things
12 like that?

13 A I recall seeing that in one of the statements.

14 Q Or neighbors hearing him say stuff, arguing about
15 the sandwich. The sandwich argument?

16 A I don't recall hearing about the sandwich argument.

17 Q Okay. So some of those statements would be
18 competing data points against the narrative evil, right? "Get
19 down or I'll kill you," might be a competing data point
20 against the the delusions of evil?

21 A It might be.

22 Q The legal standard that you put in your report, do
23 you think that is the accurate legal standard?

24 A That is the general legal standard. There could be

1 some wording that is imperfect or imprecise, but that is the
2 general legal standard.

3 Q Did the defense provide that legal standard to you
4 or is that something that you are aware of independently?

5 A That is something I was aware of independently.

6 Q How does a forensic psychiatrist, when conducting a
7 criminal responsibility exam, know if they are right?

8 A How does the individual know if they are right?

9 Q How do you know you're right, if you're right or
10 wrong in this case?

11 A I don't think an individual has some type of litmus
12 test to allow them to know whether or not they have
13 independently arrived at the truth. I believe they do the
14 best work they can to provide their honest opinion.

15 Q In your past cases, have you assessed was I right or
16 was I wrong about my opinion?

17 A I am not sure what the litmus test of my opinion
18 would be. I'm not sure if there is a source of ultimate truth
19 I could access to test against my opinion.

20 Q Well for example you could take the jury's
21 determination. Have you done that to see if--

22 MS. NORDVIG: Objection, relevance.

23 THE COURT: What?

24 MS. NORDVIG: Relevance. How is this relevant?

1 THE COURT: I don't know why it is relevant.

2 MR. STEGE: It is exactly relevant, because this is
3 the exact crux of my motion which is there is no known error
4 rate. There is no, they don't know if they are right or
5 wrong.

6 THE COURT: Okay. I will allow you to inquire
7 generally.

8 BY MR. STEGE:

9 Q Right?

10 A So there are times when I do learn of the jury
11 verdict.

12 Q Right?

13 A And there are times when I learn about the
14 debriefing of the jury and what they based their opinions or
15 their vote on. And so sometimes I do receive feedback on the
16 outcome of the trial. However, I do realize that my testimony
17 may only be one of many pieces of evidence that the jury
18 considers, so I try not to overvalue the influence of my
19 testimony on the decision the jury makes.

20 Q Can you think of anything else that would determine
21 whether you were right or wrong about your determination
22 whether the person was NGRI or not?

23 A I don't believe that there is a source of truth on
24 this.

1 Q Have there been any studies about the accuracy of
2 criminal responsibility examinations?

3 A Again, I don't believe there is any litmus test that
4 can say whether or not an individual is accurate or
5 inaccurate, only whether or not the conclusions that they
6 arrived at were valid given the evidence that was used to
7 support the conclusion.

8 Q Is there -- So you would agree with me there is no
9 known error rate with these kinds of exams?

10 A I would say that, within the field of psychiatry, we
11 do not have a scientific method to prove right versus wrong or
12 correct versus incorrect, and as a result, these exams are not
13 subject to an error rate.

14 Q Because they are not subject really to the
15 scientific method?

16 A There is no scientific test for those evaluations.

17 THE COURT: I am sorry, I don't really, maybe I was
18 gathering wool when you answered that question. The question
19 was, what Mr. Stege said was that is not really subject to a
20 scientific method. What was your response?

21 THE WITNESS: Scientific method? Well perhaps my
22 response was not specific to the scientific method in terms of
23 the way it is defined in terms of the hypotheses, the testing
24 of the hypotheses against the evidence. Because I believe that

1 general approach is part of the formulation of psychiatric
2 opinion and forensic psychiatry opinions, but in terms of
3 being able to test an opinion against a scientific test such
4 as a blood test or an imaging test in psychiatry and forensic
5 psychiatry, we don't have those kinds of scientific tests such
6 as imaging or blood tests to utilize to assess whether or not
7 someone has arrived at a correct or incorrect diagnosis or a
8 correct or incorrect formulation.

9 BY MR. STEGE:

10 Q Is it possible to give your opinion at trial without
11 relating what the defendant's version of events was? You
12 could do that, right?

13 A I can summarize without specifically relating, yes.

14 Q And is there a recognized-- So going back to this
15 idea that the defendant had both psychotic and rational
16 thoughts in his interview, right?

17 A Yes.

18 Q Are you able to look at one statement -- Let me
19 withdraw that.

20 So why then did you make the assumption that he was
21 psychotic at the time of the killing as to rationale?

22 A So I inferred he was psychotic at the time of the
23 killing, because he had acts of psychotic disorder at the time
24 of the killing. An act of psychotic disorder is accompanied by

1 delusions in a case. Delusions may not need to be communicated
2 continuously to be present. So the fact that an individual
3 several hours later may have both rational and irrational
4 statements does not mean that the person doesn't have ongoing
5 delusions. And delusions really are the core here. Someone
6 may have delusions and never communicate any irrational
7 content in which these delusions would be undetectable by
8 other people other than perhaps through careful observation of
9 behavior. So just the presence of rational thought does not
10 undo or negate the presence of delusion.

11 Q But just the presence of delusions does not negate
12 the possibility of a person ignoring those delusions; isn't
13 that true?

14 A Delusions are fixed false beliefs, so a person
15 typically does not ignore beliefs. They may or may not act on
16 a belief, but they typically are unable to remove the belief
17 from their thinking.

18 Q Right. So by what method or methodology are you
19 determining at the interview he had both rational and
20 psychotic thoughts, and at the time of the killing, he was
21 having only delusional and psychotic thoughts?

22 A Based on examination of recall of his mental state
23 and the behaviors that are observed prior to and following the
24 incident.

1 Q So you looked at the evidence and you listened to
2 what he said to make that determination?

3 A I looked at all of the data points, and I listened
4 to what he said, yes.

5 Q Did you specifically ask the defendant what was
6 going through your mind when you shot your mom?

7 A It may not have been those particular questions, but
8 that would have been an area of inquiry, yes.

9 Q Did you ask a pointed question as a detective would,
10 why did you kill her, what was going through your mind?

11 A I probably asked a question if not exactly worded
12 that way, but very similar.

13 Q Of course you would report that question or that
14 line of questioning in your first or second report?

15 A I would summarize my findings, not necessarily my
16 questions.

17 Q You know that is the key issue here, right, what is
18 on your mind at the exact time of the killing?

19 A Yes.

20 Q And you asked that?

21 A Yes.

22 Q But you just decided to summarize in your report,
23 not put down exactly what he said, what was on his mind?

24 A I don't recall if I used any verbatim quote or not,

1 but it may have been a summary.

2 Q Is there a special tool or methodology or experience
3 that allows you to investigate the defendant's credibility
4 better than say myself or someone like me?

5 A I think my experience in psychiatry allows me to
6 tell which symptoms are consistent or inconsistent with
7 underlying mental disorders. I think that is mainly the basis
8 of my ability to assess the credibility of symptoms that he
9 reported.

10 Q You would agree that a lay person, non-psychiatrist,
11 can consider the evidence and listen to what the defendant
12 says and make a determination as to the credibility of his
13 statements?

14 A I believe that is the case of the jury.

15 Q How do you translate these psychiatric terms into
16 legal ones?

17 A Can you give me an example?

18 Q Psychoses into insanity?

19 A Insanity is defined as delusions which is a
20 psychiatric term and a kind of delusion. So I translate it by
21 probing the delusion to see if the content of the delusion is
22 consistent with the description laid out in the legal terms.

23 Q It is true delusions are, there are like classic
24 delusions like delusions of grandiosity, delusions of

1 persecution? Delusions, are there like classical delusions?

2 A There are.

3 Q If the ones I read are accurate, will you complete
4 that list?

5 A Sure. So in addition to grandiose, persecution,
6 there is a type of delusion called somatic delusion. Somebody
7 may have a false belief about part of their body or bodily
8 function. They may have delusions relating to what is called
9 jealous delusion or romantic delusion which is a delusion of a
10 false relationship with another person. An individual may have
11 religious delusions. So those are the general types of classic
12 delusions. There are many sub type delusions. So a paranoia
13 delusion could be a delusion of infestation.

14 Q You called it in your report delusion of evil.
15 Which of those does that fall under?

16 A So delusions of evil is not necessarily put into a
17 category one of those we described. It is more of a
18 descriptive. That he had delusions there was evil in the
19 presence. He had a fixed false belief that he was threatened
20 by some people of force.

21 Q What did it mean to you you had to go back and write
22 a supplemental report? What does that say about the accuracy
23 of your initial report?

24 A I don't think it relates to the accuracy. It just

1 relates to my duty to be-- to respond both to the referring
2 questions, but also to the data as more data emerges. I
3 believe the supplemental report reflected additional
4 evaluations by the Lake's Crossing evaluators, and it was
5 enough additional information that was relevant to document.

6 Q Did you have to make any credibility determinations
7 as to his version of the events in evaluation one and that in
8 evaluation two?

9 A Not so much credibility, but try to understand what
10 happened as he tried to fill in the gaps of his memory at the
11 same time that he had access to discovery documents.

12 Q You would agree he tells a different version in the
13 second report as opposed to the first report?

14 A Yes.

15 Q And that takes place after, as you just said,
16 reviewing discovery and having been to court a number of
17 times?

18 A Yes.

19 Q And so how do you weigh that data point in your
20 universe of data points?

21 A In general, I take the report that is closest in
22 time to the incident as the one that is least affected by
23 discovery court processes. Conversations with outside people
24 and perhaps as a result of that, more reflective of the actual

1 recall of the event.

2 Q His desire for a specific outcome is obviously
3 increased in the second report?

4 A I'm not sure I would come to that same conclusion.
5 I would say that his reporting changed. There may be a number
6 of reasons for that change.

7 Q Right. He goes from, in the first interview,
8 delusion of evil, he was under attack, to the second one it
9 was an accident. It was about cats. You agree that is a
10 pretty big distinction?

11 A There is some distinction. I think there are some
12 things in common as well.

13 Q So is there a specific tool or method you use to
14 investigate the credibility of those competing statements?

15 A There is no specific tool, no.

16 Q There is no class you attended in all your training
17 about determining which of those is most accurate?

18 A There is no class or tool to determine which is most
19 accurate.

20 Q That is a thing anyone can do is weigh the
21 credibility of each statement?

22 MS. NORDVIG: Objection. She's not testifying as to
23 the credibility. She's testifying as to her opinion based
24 upon all of the data that she had.

1 THE COURT: Her impression of the credibility of the
2 data she's looking at certainly goes into her evaluations.
3]If she's looking at data she thinks is not valid, she
4 certainly isn't going to base her testimony on that. Today I
5 have heard she's either going to give it less credibility, no
6 credibility, not consider it.

7 MS. NORDVIG: Or not give it.

8 THE COURT: Objection is overruled. It is time for
9 us to take our break. We'll see you back at 1:30. Court is
10 in recess.

11 (Whereupon the Court adjourned for the noon recess.)

12 THE COURT: Mr. Stege, you may continue your
13 cross-examination.

14 BY MR. STEGE:

15 Q Doctor, we had spoken about something I called like
16 a rate of error in diagnosis. You called it something else.

17 A Interrelated reliability.

18 Q You gave me one area where that has been shown to be
19 prevalent. My question is is that also prevalent in the area
20 of psychosis?

21 A It is.

22 Q Do you know what that rate is?

23 A I don't know, but it is knowable.

24 Q Is it high?

1 A It is high for psychosis, yes.

2 Q In fact, within the DSM, there is organized a
3 chapter on psychotic disorder?

4 A Yes.

5 Q It includes a multitude of illnesses?

6 A Yes.

7 Q Schizophrenia. And you in your first report
8 indicate the psychiatric diagnosis that best fits the
9 presentation is other psychotic disorders?

10 A Yes.

11 Q Looking -- Is that a DSM V diagnosis?

12 A It may be under other nonspecified at the end of the
13 psychotic disorder chapter.

14 Q Right. There are two at the end of the chapter.
15 One says other specified schizophrenia spectrum and other
16 psychotic disorders. The last is unspecified schizophrenia
17 spectrum and other psychotic disorders. Which of those two is
18 it?

19 A I'd have to look at the actual text to tell you
20 that.

21 Q Would you like to borrow my DSM?

22 A Very much so.

23 THE COURT: You may approach.

24 MS. STEGE: Thank you, Your Honor.

1 THE WITNESS: So it is under the second unspecified
2 schizophrenia spectrum and other psychotic disorders.

3 BY MR. STEGE:

4 Q So the very last entry in that chapter?

5 A Yes.

6 Q Thank you. And am I reading this correctly to
7 borrow sort of a math analogy, if it doesn't fit any of the
8 other ones, this is sort of what is left over?

9 A It is a description of a finding that this
10 individual has symptoms of a psychotic disorder, but either
11 the symptoms don't fit the profile or the pattern of the other
12 psychotic disorders, or there is not enough data to show
13 whether or not this person has the complete data or the
14 complete criteria set for some of the other psychotic
15 disorders.

16 Q Would you agree what I am calling rate of error is
17 also present looking retrospectively in a forensic context?

18 A Yes.

19 Q To follow up on something that we talked about
20 earlier, you agree that during the defendant's interview he
21 had both rational and irrational thoughts?

22 A Just to clarify, this is the interview with police
23 shortly after arrest?

24 Q Yes?

1 A He had both rational and irrational statements that
2 he made.

3 Q Do you agree with that statement?

4 A Yes.

5 Q And are there any types of psychology that enables
6 you to say whether he had rational or irrational thought at
7 the time of the killing?

8 A There is no tool.

9 MR. STEGE: Thank you. I will pass the witness.

10 THE COURT: Okay. Redirect.

11 MS. DOLLINGER: I do have some redirect based on
12 Mr. Stege's cross of Dr. Piasecki.

13

14 REDIRECT EXAMINATION

15 BY MS. DOLLINGER:

16 Q Doctor Piasecki, does the University of Nevada
17 Medical School offer a course on forensic psychiatry?

18 A There is a seminar series, but not a four-credit
19 course.

20 Q Did you teach that seminar series?

21 A I participate in it.

22 Q Do you currently teach it?

23 A I do.

24 Q How long have you been teaching that?

1 A Since 2005-2006.

2 Q Is that course taught to residents or medical
3 students or both?

4 A It is for residents. Sometimes there are topics
5 that are also presented to medical students but in a different
6 classroom setting.

7 Q Prior to your comprehensive review of all of the
8 data points we have discussed today and collateral information
9 in this case, did you have a pre-existing belief or hypothesis
10 of Mr. Pundyk's mental state at the time of the killing?

11 A I did not. All I had was the referral questions.

12 Q And you are not treating Mr. Pundyk as a clinical
13 psychiatrist?

14 A I am not.

15 Q You explained that your role in interviewing him was
16 a forensic role not a clinical role?

17 A Correct. It was limited to assessment for the
18 purposes of the Court.

19 Q Nevertheless, did you experience any emotional
20 entanglement with Mr. Pundyk in your conducting an evaluation
21 of him?

22 A Not that I am aware of.

23 Q The killing in this case occurred in October of
24 2015. Do you feel you have had an adequate amount of time and

1 received an adequate amount of data to accurately opine
2 Mr. Pundyk was suffering from a mental illness at the time of
3 the killing of his mother?

4 A Because in this case, there is more information than
5 is typically available, such as the extended video. I have
6 video recorded immediately following his arrest. I would say I
7 have not only adequate, but more than typical information
8 available for an evaluation of criminal responsibility.

9 Q Do you follow the guidelines that are put forth by
10 the American Academy of Psychiatry and the Law regarding what
11 should be included in the semi-structured interview format?

12 A Generally, yes.

13 Q Absent the specialized education and training and
14 experience that you have, would a lay person be able to
15 conduct a criminal responsibility evaluation?

16 A I don't believe so, no.

17 Q Would you be able to prepare a list of questions
18 that you could hand to a lay person and tell them go and ask
19 this person these questions? Let's say they follow your
20 instructions and do that and ask the person the questions,
21 would that sufficiently qualify as a criminal responsibility
22 evaluation?

23 A I don't think that would be true for a medical
24 doctor. I think you need specialized training in psychiatry

1 first, then special training in forensic psychiatry forward to
2 do an adequate assessment and analysis upon which to form an
3 opinion.

4 Q Is part of that because the interview process that
5 you follow is fluid?

6 A It is fluid, and it is informed by a background of
7 training and experience not just in psychiatry but in the
8 particular types of findings that are associated or documented
9 as part of the insanity criteria.

10 Q With regard to measuring psychoses, in this case you
11 were able to observe Mr. Pundyk's behavior very close in time
12 to when he was arrested?

13 A That's correct.

14 Q That was the six hour videotape of the interrogation
15 by law enforcement?

16 A Yes, that's correct.

17 Q Did Mr. Pundyk, himself, report to you symptoms you
18 determined eventually were symptoms of psychosis?

19 A Yes.

20 Q What is your opinion regarding where Mr. Pundyk fell
21 on the spectrum of psychoses? I think Mr. Stege asked you
22 questions is there mild psychoses and extreme psychoses.
23 Where does Mr. Pundyk's psychosis fall at the time of the
24 killing, in your opinion.

1 A So the way that we formulate the descriptions of
2 severity of the illness include both a number of symptoms and
3 the functional impairment that a person has associated with
4 the symptom. Because he was by neighbors' reports walking down
5 the center of the street and by his report unable to
6 distinguish between reality and delusional thoughts to the
7 point where he was behaving in very abnormal and bizarre ways,
8 my conclusion is he had severe psychosis at the time of the
9 incident.

10 Q During your interviews with Mr. Pundyk, did you note
11 inconsistencies based on his recall and the collateral
12 information that you reviewed?

13 A Yes.

14 Q What were those inconsistencies?

15 A I don't think that is in my report because it didn't
16 seem like it was relevant to the referral question. But when
17 I first interviewed him, it was eight months, ten months after
18 the incident, but I asked him why did you shoot the cat or the
19 cats, because there was a lot of documentation about cats and
20 cats that were shot. And he, at the time of that assessment,
21 appeared surprised and grieved, like shock and grief over the
22 death of his cats. So that was surprising to me in terms of
23 his recall of events were somehow not linear and not
24 integrated with the evidence that was available in other

1 places. Does that answer your question?

2 Q Yes. Did that further confirm your opinion that he
3 was suffering from a mental defect or mental illness at the
4 time of the killing?

5 A It did, because when someone is in a delusional
6 state, their thoughts are so fragmented and so erratic it is
7 difficult to lay down consistent linear memories. So somebody
8 who would have an emotional response to information that I
9 thought they would be very familiar with but didn't track, lay
10 down or access that information at the time, that would be
11 consistent with somebody who was having to use sort of general
12 term brain disfunction. Delusions are a form of brain
13 dysfunction such they can't create consistent memories.

14 Q In your interviews with Mr. Pundyk, did you notice
15 any obvious embellishment?

16 A I did not notice obvious embellishment, however,
17 there have been reports by him to me directly and to others
18 with regards to visual symptoms that are atypical that is not
19 typically found in psychotic disorders. Usually people who
20 have psychotic disorders have auditory delusions. The visual
21 delusions he's described, he's described consistently and
22 vividly, but they don't quite fit with the typical
23 presentation of specific psychotic disorders.

24 Q Could you name some examples of disciplines you

1 would consider to be labeled or categorized as hard science?

2 A Hard science would be all the engineering fields
3 where they have very specific tools. They can measure
4 specific things like weight, height. In the medical area, it
5 would be toxicology, lab science where they have very specific
6 quantitative measures that relate to chemistries.

7 Another example would be in medicine with regards to
8 radiology where, again, you have again identifiable
9 measurements that you can draw from images.

10 Other kinds of radiological studies those would be
11 quantitative and objective types of fields.

12 Q What is the difference between those types of
13 disciplines that we are categorizing as hard science and
14 behavior science?

15 A Behavioral science relies on observations and
16 measurement that are more qualitative than quantitative. Human
17 behavior is on a spectrum. And the approach in behavioral
18 science is looking at the spectrum and trying to identify
19 where someone deviates from what is considered normal. When
20 someone's behavior enters into the dysfunctional or abnormal
21 realm and it is creating those cut points or those boundary
22 lines which are somewhat culturally determined. Another part
23 of behavioral science that is very limiting in terms of what
24 is relative to the other fields that we mentioned is that some

1 of the approaches in what you described as hard science
2 require testing and retesting of a material or an animal. In
3 behavioral science, it is not possible. Sometimes when it is
4 possible it is not ethical to subject humans to certain kinds
5 of trauma, stressors, chemicals and then see what happens. So
6 for example if we had a drug that could make someone
7 psychotic, then we could experiment on that psychotic state.
8 It may not be ethically permissible to do that experiment, so
9 we are limited in some ways by the fact behavioral science in
10 humans, the subject matter would be humans and we respect the
11 right of humans not to be experimented on in ways that would
12 be very harmful to them.

13 MS. DOLLINGER: No further questions.

14 THE COURT: Anything further, Mr. Stege?

15 MR. STEGE: Yes.

16

17 RE CROSS-EXAMINATION

18 BY MR. STEGE:

19 Q I was provided some notes from the defense I believe
20 were your notes. I believe they relate to your first
21 evaluation or report. Are they the same things? Are there
22 notes you took during the second evaluation for Mr. Pundyk?

23 A So there are handwritten notes from my second
24 evaluation, yes.

1 Q Are you willing to provide those to Ms. Nordvig so I
2 can have them?

3 A Yes.

4 MS. STEGE: Thank you. That is all I have.

5 THE COURT: Okay. Anything further?

6 MS. DOLLINGER: Just regarding argument, Your Honor.

7 THE COURT: No, with this witness.

8 MS. DOLLINGER: No, Your Honor.

9 THE COURT: Thank you. You may step down. You are
10 excused

11 THE WITNESS: Thank you, Your Honor.

12 (Witness excused.)

13 THE COURT: Is there any other witnesses to be heard
14 today?

15 MS. DOLLINGER: Not from the defense, Your Honor.

16 MR. STEGE: No.

17 THE COURT: Okay. Then let's talk about, we have
18 some motions. Since we have been dealing with this particular
19 motion the State filed, let's go ahead and argue that. Your
20 Motion to Exclude Expert Testimony.

21 MR. STEGE: Yes. The burden, of course, is on the
22 defense to show or expert to show they are reliable, all the
23 prongs of Hallmark. I propose that Dr. Piasecki, this kind of
24 leads into some other of the motions, but she be allowed to

1 testify as to psychiatry in general, what psychosis is, the
2 various causes. And I think after that it gets kind of
3 sketchy. I would concede though I think for the purposes of
4 this hearing, as to her ability to say what specific type of
5 psychosis or mental illness she believes the defendant was
6 suffering from at the time. But I think beyond that, getting
7 into what he was thinking at the time of the crime is not
8 reliable. There is no recognized methodology for it. It is
9 speculation on her part to say what he was thinking at the
10 moment he pulled the trigger. We don't have to look far to
11 know that by her own admission Pundyk had both rational and
12 irrational thoughts, delusional and non-delusional thoughts
13 during the course of his interview. And she admitted there is
14 no way to tell at the time of the killing which of those
15 thoughts was active in his mind. You have to show a reliable
16 methodology. She admitted there is no methodology for that.
17 There is no methodology for that. And the risk, of course,
18 here is that in our society, people trust doctors. People
19 trust people in white coats. And it really, there is that risk
20 of bringing in an untested and untestable theory into the
21 Court. So I think beyond that, she fails, and it is, really
22 the discipline fails in the ability to have a reliable
23 methodology and that retrospective what was the guy thinking
24 at the time.

1 So on the Hallmark, that is my argument.

2 THE COURT: Okay. Counsel.

3 MS. DOLLINGER: There are certainly, as this Court is
4 aware as we see as practitioners in our daily practice,
5 forensic psychiatrists are qualified to testify as experts in
6 the courts of this jurisdiction on a routine basis. Doctor
7 Piasecki, herself, testified that she's testified and been
8 qualified as an expert to testify in front of a jury 'at least
9 ten for fifteen times, and she's consulted with both the State
10 and the defense in numerous other cases. I believe she
11 testified upward of two hundred times. She certainly -- You
12 have her Curriculum Vitae that I admitted into evidence. It
13 is twenty-five pages long and details all of the specialized
14 knowledge, training and experience that she has in areas of
15 general and forensic psychiatry.

16 I would submit that, based on both what she
17 testified to today as well as the additional qualifications
18 that are present in her Curriculum Vitae, that she's more than
19 qualified in the area of scientific, technical or otherwise
20 specialized knowledge pursuant to Nevada Revised Statute
21 50.275. So certainly she meets the qualifications prong
22 outlined in Hallmark versus Eldridge.

23 Then we get to the prong of assistance to the trier
24 of fact. I think her specialized knowledge and training and

1 experience certainly would help the jury as the fact finding
2 body in this case in understanding the evidence before it.
3 And that she's not testifying to matters outside the scope of
4 her specialized knowledge.

5 She testified, I mean her Board certifications speak
6 for themselves. She also testified about her specialized
7 knowledge and practical experience in the area of addiction
8 psychiatry. In addition to the fact that she's a licensed
9 doctor who is licensed to practice medicine in the State of
10 Nevada, Vermont and Hawaii.

11 Going back to Hallmark versus Eldridge, her
12 testimony must be relevant and the product of reliable
13 methodology. Hallmark looks at five different factors to
14 determine what the reliability of an expert's methodology is.
15 One of those, well the first factor is that the proffered
16 opinion is within a recognized field of expertise which I
17 think her testimony establishes. That she testified that the
18 way she conducts semi-structured interviews and criminal
19 responsibility evaluations, that those guidelines for such a
20 procedure are published and subject to peer review. That her
21 opinions are generally accepted in the scientific community
22 and certainly within the behavioral scientific community.

23 I think. When I went through the list of all the
24 different pieces of. Collateral pieces of information or data

1 points, we are using those interchangeably, she reviewed at
2 least twenty items of collateral information that were based
3 on particularized facts of this case. The one factor that was
4 missing or subject to calling into question by the State was
5 whether her opinion was testable and has been tested, and I
6 would point Your Honor to the decision in Hallmark where that
7 court emphasizes, I am quoting: "We again note that these
8 factors are not exhaustive, may be according to varying
9 weights and may not apply equally in every case." I think that
10 is exactly what is true in this case regarding that second
11 factor, that the opinion or methodology is testable and has
12 been tested.

13 Behavioral science is not a hard science. It is not
14 based on number crunching or being able to plug numbers into a
15 formula. As she just testified on recross and redirect, you
16 can't do those kinds of testing and retest on human beings. In
17 many cases it is unethical. We wouldn't want people subjected
18 to those types of tests. I think the fact that, I mean I know
19 the State wants you to limit Dr. Piasecki's testimony to
20 simply the area of general psychiatry. If that is true, why
21 would, or if you should do that, why would either party, be it
22 the defense or the State in any given case, need to hire a
23 forensic psychiatrist when we know that both parties hire
24 forensic psychiatrists to testify as experts in cases all the

1 time in criminal cases and it happens routinely. It is not
2 junk science. I mean it is something that, forensic
3 psychiatry, she's a Board Certified expert and the whole point
4 of forensic psychiatry is to, certainly when they are
5 testifying in the presence of a jury, to explain the evidence
6 in such a way of how the medicine of psychiatry interfaces
7 with the law and legal standards that are inherent in cases.

8 Mr. Pundyk, in this case, by entering a plea of not
9 guilty by reason of insanity, has put his mental state at
10 issue which is different than some of the cases that are
11 cited. And, specifically, I will talk about the New Years
12 case in a little bit, but he, putting forth that affirmative
13 defense, has the burden of proving by a preponderance of the
14 evidence that he suffered from a delusion at the time he
15 killed his mom. And because of that delusion, he either
16 didn't know what he was doing at all or that he couldn't
17 appreciate his conduct was wrong and he's entitled to present
18 expert testimony at trial to support his affirmative defense
19 in that regard. Certainly the State can, in addition to cross-
20 examining Dr. Piaseki about her opinion and trying to point
21 out the inconsistencies or discrepancies which they can do on
22 cross-examination, the State can present their expert at trial
23 to rebut Dr. Piasecki's testimony.

24 I think one of the last times we were in front of

1 you, Your Honor, the State indicated it would have the expert
2 report by the end of January 2018. Here it is March 6th and
3 the defense has received no notice of a State expert, no
4 report, nothing. So I think that Your Honor can and should
5 look at the factors regarding the liability methodology
6 outlined in Hallmark and see even in that Opinion not all of
7 those factors need to be present on equal or given equal
8 weight so that it is testable. The Opinion has been tested or
9 is subject to testing is a factor that doesn't apply or isn't
10 given as great deal of weight in a discipline like behavioral
11 science discipline as we have here.

12 Doctor Piasecki, through her testimony today, is
13 more than qualified to testify as an expert in the fields of
14 general and forensic psychiatry and her specialized knowledge,
15 training and experience. And the methodology she used to
16 reach her opinion in the case would absolutely assist the jury
17 in understanding the evidence and helping it to determine a
18 fact in issue. That is, what Mr. Pundyk's mental state was at
19 the time of the killing and how it affected his ability to
20 appreciate whether his conduct was wrong.

21 Therefore, we request Your Honor deny the State's
22 motion to exclude Dr. Piasecki's testimony as an expert in
23 this case.

24 THE COURT: Okay. Mr. Stege.

1 MR. STEGE: With all due respect to Ms. Dollinger
2 and to this Court, I don't want the tone to be wrong on this,
3 but the argument this is what we do is a weak argument, right?
4 Oh, she testifies in court a lot, therefore, she should be
5 able to testify in this Court. That is a weak argument. You
6 must pass Hallmark, and our courts have never retreated from
7 the idea whether there is a reliable methodology. On my
8 cross-examination, she admitted there is no methodology for
9 that last part of it, right, or the part saying this is what
10 he was in his head at the time. It must be helpful to the
11 jury. The real risk here, and Dr. Piasecki admitted as much,
12 is she's doing the exact same thing that the jury is doing
13 which is gathering the evidence and making assumptions or
14 making credibility determinations to come to a result. She's
15 not doing anything different than what the jury does. The
16 helpful part is I know more about psychiatry than anyone. I
17 know a lot about diagnosing mental illnesses, and I know what
18 the symptoms of mental illness are. It is up to the defense
19 then to fill in the rest through argument or other testimony
20 about specific delusions and what the defendant was thinking
21 at the time.

22 It is a similarly weak argument to say this is his
23 defense, right? Because it is your defense doesn't mean you
24 don't have to comply with the rules of evidence and associated

1 case law. I would agree she's helpful but only to a point.
2 The argument about soft science, I mean it still has to be
3 reliable, still has to be science. There is a point in her
4 proposed testimony where science and conjecture is unreliable
5 and evidence without methodology comes in. That is where it
6 should stop. I submit it.

7 THE COURT: Okay. Totally unrelated, I am going to
8 take it under submission, what is the status of the order I
9 entered?

10 MR. STEGE: I have been e-mailing with Dr. Sokolski.
11 It has been probably two weeks or so, ten days, two weeks
12 where he indicated he had been to visit the defendant and was
13 contemplating a second visit. He inquired of me about are
14 there additional jail calls, so I had additional jail calls
15 pulled off from the last batch, and rather than overwhelm him
16 with them, I have tasked myself with going through those. But
17 I have not gotten to that point.

18 MS. NORDVIG: And we have not received those.

19 THE COURT: Okay. And then you also requested a
20 copy of the video that was utilized by I think Dr. Piasecki.

21 MS. STEGE: Right. Here is my understanding of how
22 it works: They are -- Actually I don't know if there are-- We
23 can see an entry often if there is an attorney visit. Of
24 course we can't access it. And I don't know if they are

1 actually ordered, so I propose an order from the Court
2 directing the Washoe County Jail to provide that if it is
3 recorded.

4 THE COURT: It was my understanding we entered years
5 ago when the I-web process began they specifically were not
6 recording any attorney-client conversations.

7 MR. STEGE: That's right. If that is the case, then
8 it doesn't exist.

9 THE COURT: The doctor said she had the video. Is
10 there a video of that conversation or was it in realtime?

11 MS. NORDVIG: If I might clarify. It is done in
12 realtime. He's on a terminal up at the jail. We have a
13 terminal at our desk. She came into our office. All three of
14 us were in one room. I believe I was the only one on camera
15 with him. So she was more listening than viewing, because my
16 office doesn't facilitate that kind of -- It is not big enough
17 to do that. So a majority I believe was all she would have
18 done was hear his answers. And I think it was approximately
19 forty-five to fifty minutes. I am not aware of them keeping
20 videotapes of confidential communications. The same as with
21 phone calls before we had the video terminals. So I can check
22 into it. I would be happy to.

23 THE COURT: You didn't record it? You did not have
24 video ongoing at the same time?

1 MS. NORDVIG: There is no way for us to record from
2 our office.

3 THE COURT: Unless you turn your cellphone on and
4 did a video or use a video camera.

5 MS. NORDVIG: No, I did not record it outside of the
6 camera.

7 THE COURT: The I-web system?

8 MS. NORDVIG: The I-web system. I did not record it
9 directly onto my computer. I hate to say it, but I wouldn't
10 even know how.

11 THE COURT: Well it does cause a little bit of a
12 problem. The expert has reviewed something that is not
13 available to the prosecution expert to look at. So we'll see
14 how far it goes.

15 MS. NORDVIG: If it assists the Court, I will call
16 her tonight and ask her if she took notes from that I-web
17 visit that we could make available. I don't believe anybody
18 asked that, and I think that would be appropriate under these
19 circumstances.

20 THE COURT: Yes, do that. And I also will order, if
21 there is a recording, that it be turned over to the parties. I
22 will enter that minute order now. Counsel, if the jail needs
23 a written order, you can let me know. I think that we need to
24 at least to inquire as to whether one exists. I really doubt

1 it, but it is possible I guess.

2 Now with regard to the Motion to Exclude Expert
3 Testimony, I am going to take this under submission, but I
4 want to let you know that I am much more inclined to look at
5 the conclusion that would be allowed before the jury as
6 opposed to the actual testimony. I think that is kind of in
7 your argument. It certainly was part of your
8 cross-examination of the doctor when you were talking about to
9 a reasonable degree of medical certainty, but I will review
10 that more. And I want to hear your argument on the other
11 motions.

12 So we also have a Motion to Prohibit Introduction of
13 Hearsay by the Expert. That is really the defendant's
14 statements coming in through this expert is what your concern
15 is?

16 MR. STEGE: Yeah. I mean it is unfair and contrary
17 to authority to allow her to be a vehicle for the Defendant's
18 after the fact version without me being able to cross-examine
19 him. She said she could give her testimony to the extent the
20 Court allows it, of course, without saying what he said. I
21 think it is a strong argument. There is not a whole lot more
22 to it. She can rely on it to form her opinion. That doesn't
23 mean you get to come out and spill it out in front of the
24 jury.

1 THE COURT: Okay.

2 MS. NORDVIG: And, Your Honor, as we stated in our
3 Opposition to his motion, I don't anticipate asking her what
4 did you ask him, what did he say. As we did today, I will
5 restrict the questions we have as to how she did her
6 evaluation, that yes, he was a part of it, yes they touched on
7 different subjects and that is what she based her opinion on.
8 If something happens to open the door, which I do not
9 anticipate, but obviously, the State has the right to cross
10 and make up their own witness on rebuttal. Obviously, we
11 would ask the Court for a limiting Instruction as we have
12 suggested, and I believe Mr. Stege agreed to it in his Reply,
13 so I would submit it on those notes.

14 THE COURT: Mr. Stege.

15 MS. STEGE: It does ring an interesting tactical
16 decision which is he's now made two different versions of a
17 statement which may be helpful for the State, I am going to
18 lay that aside for now. I think, as briefed, I would expect
19 the Court to grant that motion.

20 THE COURT: Maybe I might want to address what
21 Ms. Nordvig argues in that you agree in your Reply that a
22 limiting Instruction of some kind would be sufficient.

23 MR. STEGE: I agreed a limiting Instruction on -- I
24 don't know that I did that. I don't see I would agree to a

1 limiting Instruction when I am trying to keep it out
2 altogether. I don't support that. My position is his version
3 of the event coming in through Dr. Piasecki is not
4 appropriate.

5 THE COURT: And she testified that she could give
6 her opinion without his version of the events.

7 MS. NORDVIG: Your Honor I believe she would testify
8 that they discussed the narrative, his narrative of the
9 events. That she used that in formulating her opinion but
10 would not have to go into the specific issues discussed. Is
11 that the same as what you understand?

12 THE COURT: What I understand is that she would
13 testify that she reached a conclusion based on lots of data
14 points, lots of data information of which included his
15 statements to the police officers and his ultimate interview
16 that she conducted. However, she did not feel it necessary to
17 tell the jury the specifics of any of those conversations in
18 reaching her conclusion.

19 MS. NORDVIG: That is correct. That is my
20 understanding.

21 THE COURT: That was the hearsay. That is the
22 specifics of what Mr. Stege's motion really goes to. In other
23 words, he's psychotic because he told me X, Y, Z. Actually
24 probably the comment about the cats, being surprised at the

1 shooting of the cat, that is probably the hearsay that we are
2 talking about. That was the only part of her testimony today I
3 heard that would have gotten into that area and elicited by
4 the defense. If it is elicited by the State, if he asks those
5 questions, of course, it is not hearsay. As it relates to
6 statements made by the defendant, specific statements made by
7 the defendant to the defendant's witnesses, that is hearsay
8 and I will exclude it. And no matter what I rule with regard
9 to the extent of her availability to testify, it would apply
10 to her testimony. And clearly today she has testified she can
11 give her opinion, if I allow her to give the ultimate opinion
12 she gave or any of the sub opinions that she offered, she
13 could offer that opinion to the jury without going into
14 specific instances of the defendant's statements. So that
15 motion is granted with regard to hearsay.

16 Now we have a Motion to Strike Cumulative Testimony,
17 cumulative expert testimony from the Public Defender. I'm not
18 sure if we know for sure. I will hear your argument with
19 regard to that.

20 MS. NORDVIG: Your Honor, at this point I would
21 rather make that -- It is difficult without a report from a
22 State's expert, and I think maybe if we table that one for
23 later in time when we hear what, assuming the State it going
24 to hire and present Dr. Sokolski, I assume still there may be

1 other issues which may tie in with that.

2 THE COURT: Your motion specifically went to Drs.
3 Fletcher, Veath and Hanson. That is as to competency.

4 MS. NORDVIG: It was to competency however-- well --

5 THE COURT: I mean I am not sure competency--

6 MS. NORDVIG: Is really an issue at this point. And
7 that is why I brought up those particular doctors, because
8 they would be testifying as to something that isn't relevant
9 to this case anymore. It used to be, but it is no longer. If
10 they want to be presented as lay witnesses as to observations
11 but not opinions, that is a different story.

12 THE COURT: Mr. Stege.

13 MS. STEGE: That is not the argument at all. I am
14 looking at their Notice of Expert Witness. They are calling
15 some of the competency doctors or claiming they are going to
16 call Dr. Bissett who is a competency doc. Dr. Pearson is
17 competency doc. So the substance of the argument, I think
18 competency is in play. If the idea is he had this mental
19 illness at some point, I think it is certainly relevant in my
20 case, rebuttal case, to point out, well, wait a minute, no,
21 you didn't because all these doctors said he had no mental
22 health diagnosis, right?

23 THE COURT: I don't off the top of my head remember
24 their report. Normally, competency reports are not dealing

1 with any psychoses. They are just dealing with the issue of
2 whether or not you understand the charges against you and you
3 can assist counsel. In fact, they all have, at least almost
4 always have a caveat that says we are not talking about any
5 other mental illness.

6 MR. STEGE: I don't know specifically, but I am sure
7 they have that caveat they are not talking about a diagnosis.
8 But the issue here is here is a man who has no mental health
9 history leading up to this incident, then suddenly it is
10 claimed he has psychosis which resolved itself by reports.
11 And then in the time since then. He has no mental health
12 issues, right?

13 THE COURT: Competency does not equate as a mental
14 health issue.

15 MR. STEGE: Except we have, I think it is Dr. Henson
16 gives a diagnostic impression.

17 MS. NORDVIG: That was not, if I might interrupt,
18 that was not an initial or a determination of competency.
19 That was the return from competency report when he came back
20 to the Court and they were recommending that he is competent
21 and returned for, what is the word I want, adjudication.

22 MR. STEGE: I believe it is Dr. Fletcher or Veath
23 indicates he has no diagnosable mental health issues.

24 THE COURT: I have to read their reports to see if

1 it really normally would exclude competency.

2 MR. STEGE: No, I understand that. And I think it
3 does go to the heart of my attack on Dr. Piasecki which is
4 none of these doctors can agree on anything. It is so
5 unreliable, you put three doctors on one case and they can't
6 even agree on what is going on. Here you have the, including
7 the jail psychiatrist, leading up all the way to Dr. Piasecki
8 and Dr. Sokolski, this wide variation of opinion which I think
9 is their subject of rebuttal. I also think I can -- I also
10 think that when the defendant opens his door, opens the door
11 by pleading insanity, the competency stuff is by case law the
12 subject of, I think it is fair to bring in.

13 THE COURT: Which case?

14 MR. STEGE: I don't know.

15 THE COURT: That would be important to me, because I
16 just off the top of my head, I don't think a plea of not
17 guilty by reason of insanity would bring in the issue of
18 competency to proceed to trial. I think they are completely
19 different considerations and criteria. If there is some case
20 law that allows you to go into that, you're going to have to
21 give it to me. For now, though, the motion to strike as
22 redundant will be held in abeyance pending who you are
23 actually going to try to call and what you want them to
24 testify to.

1 MR. STEGE: Right. Right.

2 THE COURT: But we'll need specifics when we get
3 closer. That is a thirty day, those have to be filed at least
4 thirty days before trial.

5 MR. STEGE: The expert?

6 THE COURT: Yes. Which is going to take it very,
7 very close for us in terms of being ready to proceed to trial,
8 if you want to reinstitute your motion at that point.

9 MS. NORDVIG: I won't know until --

10 THE COURT: Right. I understand.

11 MS. NORDVIG: Thank you.

12 THE COURT: Okay. So then we have the Motion to
13 Prohibit Testimony on the Ultimate Issue. I think you kind of
14 dealt with that when you were talking about striking the
15 expert testimony.

16 MR. STEGE: I did.

17 THE COURT: But I hope you understand my ruling with
18 regard to striking the expert isn't the same as how far the
19 expert can testify.

20 MR. STEGE: Right. Right. My real argument across
21 the board with Dr. Piasecki is how far she can go along this
22 path. And I think saying I think he was under delusion, he
23 could not appreciate the wrongfulness of his actions is the
24 ultimate issue in the case. I think Nevada on this area has

1 adopted the Federal rule. I point in my briefs to a cite with
2 authority the idea an expert can embrace the ultimate issue,
3 although in a general case that is not the rule. But in this
4 line of cases on insanity, they seem to have embraced that
5 Federal rule. And so I think that is the rule we should
6 follow.

7 THE COURT: That they can or cannot?

8 MR. STEGE: That they cannot embrace the ultimate
9 issue. Generally you can, but I think in insanity cases based
10 on this line of cases, you cannot.

11 THE COURT: Counsel.

12 MS. DOLLINGER: First of all, I definitely disagree
13 with the State's opinion in that regard as far as Nevada
14 adopting the Federal Rules of Evidence. In fact, the State on
15 page 2 in its Motion to Prohibit Ultimate Issue Testimony
16 (Winiarz) highlights Federal Rule of Evidence 704B saying the
17 Winiarz court reference to the rule, the portion that is
18 referenced in a footnote in that case, the Court did not adopt
19 the Federal rule. In fact, I also noticed about the State's
20 motion, the State does not cite to a Nevada statute that is
21 directly on point with regard to this issue, and that is
22 Nevada Revised Statute 50.295. That is opinions of ultimate
23 testimony, ultimate issues, excuse me. Testimony in the form
24 of an opinion or an inference otherwise admissible is not

1 objectionable because it embraces an ultimate issue to be
2 decided by the trier of fact. In Winiarz, that was a case from
3 1988 where a wife who was the defendant shot her husband and
4 claimed it was an accident. She did not plead not guilty by
5 reason of insanity. The defense said it was an accident. The
6 Court then appointed a psychiatrist who was Dr. Master to
7 examine Mrs. Winiarz regarding her mental condition and
8 competency to stand trial. The State ended up calling that
9 psychiatrist, Dr. Master, to rebut testimony that was given by
10 one of the defense experts in that case. Doctor Master took
11 the stand in that case and testified it was his opinion that
12 Mrs. Winiarz, the defendant, was a liar and that she "murdered
13 her husband in cold blood and a premeditated fashion." So the
14 Court in Winiarz reversed the murder conviction. And one of
15 the bases for reversal specifically talked about Dr. Master's
16 expressing of opinion as to her guilt over innocence and said
17 that the doctor's diagnosis of her as a murderer, that is the
18 direct verbatim word that was used in front of jury, goes
19 considerably beyond the bounds of permissible expert opinion.

20 So I think there is a huge distinction to be made
21 between what Dr. Piasecki's opinion testimony regarding
22 ultimate issue would be in this case and what was testified to
23 in a case where the expert got on the stand and flat out
24 called the defendant a murderer, that she murdered her husband

1 in cold blood. That is why, when I was eliciting testimony
2 from Dr. Piasecki, I went through those questions, do you plan
3 to testify in front of the jury Mr. Pundyk is an innocent man.
4 Are you going to call him a murderer? Those types of
5 inflammatory words and phrases or thinking certainly cannot be
6 used in the jury's presence. And she certainly has testified
7 numerous times before as an expert. She understands that
8 those kinds of opinions would be impermissible. But her
9 opinion with regard to Mr. Pundyk, the ultimate issue in this
10 case which is that he, at the time that he killed his mom,
11 suffered from a mental illness or defect that caused him to be
12 in a delusional state or psychotic state such he could not
13 appreciate his conduct was wrong or not authorized by law,
14 that is permissible opinion testimony, that it is the
15 defense's position, she can offer in front of the jury. So I
16 would urge Your Honor to take another look at the Winiarz case
17 as the State relies on in its motion and look to the Nevada
18 statute that is directly on point that the State fails to cite
19 in the motion.

20 And in accordance with those arguments, I would ask
21 for Your Honor to deny the State's motion.

22 THE COURT: Yes?

23 MR. STEGE: It is the same language as the
24 Instruction they are going to get, which that language comes

1 from Finger. That is going to be the Instruction that the
2 jury gets. She's using the same language. So it is six of
3 one, half a dozen of the other. She's saying the same thing.
4 He's not guilty because he was insane at the time. I think
5 that is prohibited. Winiarz is a case in the line of cases to
6 include Estes which is a case where they pled insanity. What
7 did the State do? They called the competency docs. So I think
8 that is one source of this idea you can't call the competency
9 doc.

10 THE COURT: Estes was before our current insanity
11 statute, correct?

12 MR. STEGE: I don't know that. I don't know.

13 THE COURT: Current insanity statute is after 2006.

14 MS. NORDVIG: I believe it was either 2006 or 2007. I
15 don't have my statute book with me.

16 MS. DOLLINGER: Estes was decided in 2006. As far as
17 when the Nevada legislature reinstituted not guilty by reason
18 of insanity, that was the 2003 legislative session.

19 THE COURT: 2003?

20 MS. DOLLINGER: Yes.

21 THE COURT: Time flies.

22 MS. NORDVIG: When you're having fun.

23 MR. STEGE: Right. The testimony of Dr. Neighbors
24 was that the defendant's actions seemed deliberate and

1 thoughtful. Said that violates the rule in Winiarz
2 prohibiting psychiatric testimony that the defendant had a
3 mental state at the time of the crime. Pimentel as well as
4 case law involving Dr. Piasecki going on the State's side.
5 That is the real risk is she's going to be using the same
6 language as the defense proposes as the Instruction which is
7 the same thing as saying not guilty which is the ultimate
8 issue.

9 THE COURT: Okay. It seems to me there is a way to
10 get her opinion in to a reasonable degree of medical
11 certainty, which by the way, would be required if we allowed
12 her testimony in which was not in her report. But she did
13 talk about that on cross-examination. It seems to me like
14 there is a way to get an expert opinion with regard to that
15 without being so prejudicial that it would taint the jury's
16 determination. We do it in civil cases where doctors give
17 testimony that ultimately relates to the opinion of whether or
18 not there was, for instance, malpractice, but it doesn't come
19 right out and say that the person was responsible for it in a
20 manner that matches the Instruction. So I am a little
21 concerned about the utilization of the language that matches
22 the actual findings that the jury has to have. But I'm not
23 sure what I am going to do. I will take it under submission,
24 and I want to review these cases.

1 So we have from today one motion that was granted,
2 one motion that is being, I am going to say it is withdrawn
3 with leave to renew, the cumulative expert.

4 MS. NORDVIG: You just want notice of renewal?

5 THE COURT: That is all. You don't have to re-brief
6 it.

7 MS. NORDVIG: Thank you.

8 THE COURT: Except I think you're probably going to
9 need to re-brief it when you find out who the experts are.
10 Then we have the Motion to Prohibit Ultimate Testimony as well
11 as prohibit any testimony from Dr. Piasecki regarding the
12 forensic psychology issue, psychiatry issue. Those two have
13 been taken under submission.

14 Is there anything else for today? How are we coming
15 with this case in terms of being ready to go in July?
16 Obviously, you are going to wait for my ruling, and we still
17 are waiting for the State's experts and determination of what
18 you are going to do. What else is pending?

19 MS. NORDVIG: At this point, nothing, however, the
20 State's expert may result in additional motion work.

21 THE COURT: So, Mr. Stege, I don't know if I gave --
22 Did I give you a deadline other than the statutory deadline
23 for disclosing your expert?

24 MR. STEGE: I moved for expanded witness notice.

1 The Court granted that which is 30 days.

2 THE COURT: I said you could have up to 30 days
3 before trial.

4 MS. NORDVIG: That's correct. We stipulated to that.

5 THE COURT: Okay. That's kind of hard if you don't
6 disclose until 30 days before trial for us to get any motion
7 work done.

8 MR. STEGE: I appreciate that, the Court's position.
9 I would urge you to take that position in all cases, because I
10 think we can all agree 21 days before trial makes it difficult
11 to go to trial.

12 MS. NORDVIG: I am a proponent of expanding that
13 outward. My issue in this case is just, I have spent too much
14 time in Department 4 lately so I haven't been able --

15 THE COURT: I hope you didn't mean that personally.

16 MS. NORDVIG: No. As a practical matter, it has been
17 difficult to get to that particular issue that he is
18 requesting.

19 THE COURT: So today we heard that a case that we
20 weren't sure was going to trial, a criminal case is going, and
21 that is at the end of June and beginning of July, and then the
22 department is dark the week before trial starts. So in July.
23 So that means if you don't disclose until June 18th, absent a
24 two-day turn around for a motion and opposition, we wouldn't

1 be able to get it done before the trial.

2 MR. STEGE: Right. And, of course, as I invited in
3 my motion, the same should be true on both parties.

4 THE COURT: Absolutely.

5 MR. STEGE: I have no, I'm not, I want it out there
6 as well. I just need to get that done.

7 THE COURT: Well do you think, I don't want to cause
8 a problem, but I would prefer to move that deadline to June
9 4th. That is about six weeks before trial. And that way that
10 gives us a little bit more time to deal with that given my
11 trial calendar and the Fourth of July holiday.

12 The other thing I would say is that if you disclose
13 on June 4th, any motions with regard to your disclosure would
14 have to be filed no later than June 8th, and then the
15 opposition time would be shortened to June 2nd. I am sorry,
16 June 12th. I tend to do that when I book plane tickets, too.
17 Then we would hear it June 13th.

18 THE CLERK: June 13th at 1:30 p.m.

19 MS. NORDVIG: Replies due the 12th. Hearing the 13th
20 in the afternoon.

21 THE COURT: Correct.

22 MS. DOLLINGER: Opposition?

23 THE COURT: It is Opposition. No replies.

24 MS. NORDVIG: Excuse me. Notice on the 4th.

1 THE COURT: Of June.

2 MS. NORDVIG: Motions on the 8th. Opposition on the
3 12th, hearing on the 13th.

4 THE COURT: Right. Okay. I know it is tight, but
5 that way we can get it and hold on to our trial date. I am in
6 trial then, but I will just recess the trial or find someone
7 else to do the trial so we can stay on point. We may not have
8 any motions. There may not be additional motions with regard
9 to the experts, but then again, there may be.

10 MS. NORDVIG: Would all other filing dates stay the
11 same as far as five days before.

12 THE COURT: I don't know what I put in my pretrial
13 order. Sometimes I put ten days before.

14 MS. NORDVIG: We haven't gotten one for the most
15 recent trial date. I haven't. I looked everywhere for it.
16 The last one I have was filed in February regarding the
17 February date I believe.

18 THE COURT: Okay. I don't know what I said, if you
19 had to file your trial memorandum five days before trial.

20 MS. NORDVIG: I believe so.

21 THE COURT: Sometimes I say ten.

22 MS. NORDVIG: It would be the same days as you said
23 on previous orders, correct?

24 THE COURT: Yes. I don't usually give you a

1 definite date on the pre-trial order. I do for the motion
2 practice, but I don't for filing of Jury Instructions or
3 submitting the Jury Instructions to the court or filing your
4 trial memorandum.

5 MS. NORDVIG: We can figure it out. If there is a
6 problem, we will do a quick contact to your clerk.

7 THE COURT: One thing that is very helpful to the
8 court, because this is a not guilty reason of insanity case,
9 we don't see them that often, you actually meet and confer
10 over the insanity Instructions you are proposing. And if you
11 want to present it to the Court early, we don't -- it isn't
12 something we have to wait till the close of evidence to
13 decide. It would be extremely helpful if we are not trying to
14 do that in the middle of the jury trial. When we get to
15 together in June, I think I would like those Jury Instructions
16 with regard to the insanity.

17 MS. NORDVIG: Another housekeeping matter, Your
18 Honor. In bringing up those dates, I know normally we set
19 evidence marking the Thursday or Friday before trial. You
20 said your department is dark. I don't want anyone to have to
21 come in off vacation as we have done in the past.

22 THE COURT: Okay. Your trial is the 23rd. We are
23 not dark -- I am sorry, the 16th. Yes. We'll probably be
24 marking, probably change that, we may be marking exhibits like

1 July 3rd or something.

2 MS. NORDVIG: Are you gone?

3 MR. STEGE: No.

4 MS. NORDVIG: I am. Your Honor, I am scheduled to be
5 out of town.

6 THE COURT: When?

7 MS. NORDVIG: From June 22nd through July 5th. But I
8 will make arrangements to be here if I can know in advance.

9 THE COURT: No, it looks like we might be able to do
10 it around July 12th or 13th, the marking of the exhibits.

11 MS. NORDVIG: Thank you. We can sort it out. It is
12 something to think about, because I know we have run into this
13 problem before. Marci don't come in on vacation.

14 THE COURT: We'll work it out.

15 THE CLERK: Do you have a Motion to Confirm in this
16 case, do you recall?

17 MS. NORDVIG: It is June 22nd, I believe.

18 MS. NORDVIG: June 28th, 8:00 a.m.

19 THE COURT: So I said I would prefer, I am really
20 ordering you to have those on the date June 13th, whatever
21 date you are coming, I want those. You two have met and
22 discussed it, hopefully, and tell me these are the ones we
23 think the law allows. If you disagree, you present them and
24 tell me why you disagree, then I can have some time to look at

1 them.

2 MS. NORDVIG: You want Jury Instructions regarding
3 insanity only or all of them?

4 THE COURT: I think the insanity is the one I am
5 concerned about unless there is something else the plea
6 creates. The stock Instructions are pretty much the stock
7 Instructions. We don't usually have much discussion on those.
8 If you have something special by way of a limiting Instruction
9 or special Instruction that you want to offer with regard to
10 experts because of the nature of the expert testimony that is
11 different than the stock Instructions on experts, then you
12 should bring it to the June 13th hearing.

13 MS. NORDVIG: Be safe and bring all specials in on
14 the 13th.

15 THE COURT: Probably a good idea. Anything else for
16 today?

17 MR. STEGE: No, thank you.

18 THE COURT: Courts in recess. Thank you.

19 (Whereupon, the proceedings were concluded.)

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1 STATE OF NEVADA,)
2 COUNTY OF WASHOE.) ss.

3 I, Judith Ann Schonlau, Official Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, DO HEREBY CERTIFY:

6 That as such reporter I was present in Department
7 NO. 4 of the above-entitled court on Tuesday, March 6, 2018,
8 at the hour of 9:30 of said day and that I then and there took
9 verbatim stenotype notes of the proceedings had in the matter
10 of THE STATE OF NEVADA vs. DWARD SAMUEL PUNDYK, Case Number
11 CR16-1290.

12 That the foregoing transcript, consisting of pages
13 numbered 1-133 inclusive, is a full, true and correct
14 transcription of my said stenotypy notes, so taken as
15 aforesaid, and is a full, true and correct statement of the
16 proceedings had and testimony given upon the trial of the
17 above-entitled action to the best of my knowledge, skill and
18 ability.

19 DATED: At Reno, Nevada this 4th day of April, 2018.
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22 /s/ Judith Ann Schonlau
23 JUDITH ANN SCHONLAU CSR #18
24

CASE NO. CR16-1290

**TITLE: THE STATE OF NEVADA VS. EDWARD SAMUEL
PUNDYK**

**DATE, JUDGE
OFFICERS OF**

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

5/9/18	<u>DECISIONS ON THE MOTION TO EXCLUDE EXPERT TESTIMONY and</u>	
HONORABLE	<u>THE MOTION TO PROHIBIT ULTIMATE ISSUE TESTIMONY (WINIARZ) -</u>	6/13/18
CONNIE	<u>TELEPHONIC</u>	1:30 p.m.
STEINHEIMER	Deputy District Attorney Amos Stege represented the State. Deputy Public	Ongoing
DEPT. NO.4	Defender Linda Nordvig represented the Defendant.	Pre-Trial
M. Stone	COURT ENTERED ORDER denying the Motion to Exclude Expert	Motions
(Clerk)	Testimony.	
Not Reported	COURT ENTERED ORDER granting in part/denying in part the Motion to	6/28/18
	Prohibit Ultimate Issue Testimony (Winiarz). The Expert Witness may testify	9:00 a.m.
	as to the Ultimate Issue without testifying as to the conclusion of guilt or	Motion to
	innocence.	Confirm Trial
	Defense counsel to prepare and submit proposed Orders to the Court	Date
	regarding the above decisions.	
	State's counsel advised the Court that the State does intend to file a Notice	7/16/18
	of Expert Witnesses by the deadlines established previously by the Court.	10:00 a.m.
	The Expert will be available for a Hallmark hearing in deemed necessary at	Jury Trial
	the next hearing date.	(2 weeks)
	Court recessed.	

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
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9 THE STATE OF NEVADA,

Case No. CR16-1290

10 Plaintiff,

11 vs.

Dept. No. 4

12 EDWARD SAMUEL PUNDYK,

13 Defendant.
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16 ORDER AFTER HEARING

17 On March 6, 2018, this Court held a pretrial motions hearing ahead of trial,
18 which is currently scheduled to commence on July 16, 2018. At the hearing, the
19 Defendant, EDWARD SAMUEL PUNDYK, presented evidence in the form of
20 testimony and documentary evidence, and the parties presented argument. This
21 Court subsequently ruled telephonically on the following pretrial motions, this
22 Order shall serve as the written memorialization of those rulings.

23 The State filed a *Motion to Exclude Expert Testimony* on October 26, 2017.
24 Defendant filed an *Opposition* on November 14, 2017 and the State filed at *Reply* on
25 November 21, 2017. A hearing was held on March 6, 2018 and was taken under
26 advisement. The Court issued its decision on May 9, 2018. That motion is DENIED.

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1 The State filed a *Motion to Prohibit Ultimate Issue Testimony* on October 26,
2 2017. Defendant filed an *Opposition* on November 14, 2017 and the State filed a
3 *Reply* on September 18, 2017. T A hearing was held on March 6, 2018 and was
4 taken under advisement. The Court issued its decision on May 9, 2018. That motion
5 is GRANTED in part and DENIED in part. The expert will be allowed to testify as
6 to their opinion as to Mr. Pundyk's ability to form the requisite intent at the time of
7 the offense but cannot provide a conclusion as to his mental state and, therefore his
8 guilt or innocence.

9 IT IS SO ORDERED.

10 DATED this 22 day of May, 2018.

11 Connie J. Steinheimer
12 District Judge
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I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

✓ Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the efile User Agreement:

Linda Nordvig, Esq.
Deputy Public Defender

Placed a true copy in a sealed envelope for service via:

Inter-Office Mail – [NONE]

Marshall

1 CODE 1885

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR16-1290

11 v.

Dept. No. D04

12 EDWARD SAMUEL PUNDYK,

13 Defendant.

14 _____ /
15 LADIES AND GENTLEMEN OF THE JURY:

16 It is my duty as judge to instruct you in the law that
17 applies to this case, and it is your duty as jurors to follow the law
18 as I shall state it to you, regardless of what you may think the law
19 is or ought to be. On the other hand, it is your exclusive province
20 to determine the facts in the case, and to consider and weigh the
21 evidence for that purpose. The authority thus vested in you is not
22 an arbitrary power, but must be exercised with sincere judgment,
23 sound discretion, and in accordance with the rules of law stated to
24 you.

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26 Instruction No. 1

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

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26 Instruction No. 2

1 If, during this trial, I have said or done anything which
2 has suggested to you that I am inclined to favor the position of
3 either party, you will not be influenced by any such suggestion.

4 I have not expressed, nor intended to express any opinion as
5 to which witnesses are or are not worthy of belief, what facts are or
6 are not established, or what inference should be drawn from the
7 evidence. If any expression of mine has seemed to indicate an
8 opinion relating to any of these matters, I instruct you to disregard
9 it.

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26 Instruction No. 3

1 Nothing that counsel say during the trial is evidence in the
2 case.

3 The evidence in a case consists of the testimony of the
4 witnesses and all physical or documentary evidence which has been
5 admitted.
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26 Instruction No. 4

1 It is the duty of attorneys on each side of a case to object
2 when the other side offers testimony or other evidence which counsel
3 believes is not admissible.

4 When the court has sustained an objection to a question, the
5 jury is to disregard the question and may draw no inference from the
6 wording of it or speculate as to what the witness would have said if
7 permitted to answer.

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26 Instruction No. 5

1 An Indictment is a formal method of accusing a defendant
2 of a crime. It is not evidence of any kind against the accused
3 and does not create any presumption or permit any inference.

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Instruction No. 6

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1 The defendant in this matter, EDWARD SAMUEL PUNDYK, is
2 being tried upon an Indictment which was filed on the 24th
3 day of August, 2016, in the Second Judicial District Court,
4 charging the said defendant, EDWARD SAMUEL PUNDYK, with:

5 COUNT I. MURDER WITH USE OF A DEADLY WEAPON, a violation
6 of NRS 200.010, NRS 200.030, NRS 193.165, a category A felony, in
7 the manner following, to wit:

8 That the said defendant on or about the 7th day of October,
9 2015, at Reno, within the County of Washoe, State of Nevada, did
10 willfully, unlawfully, and with malice aforethought, deliberation,
11 and premeditation, kill and murder DELPHINA MEDEIROS, a human
12 being, by means of shooting into the body of DELPHINA MEDEIROS,
13 with the use of a deadly weapon, to wit: a rifle or other firearm,
14 thereby inflicting mortal injuries upon the said DELPHINA MEDEIROS
15 from which she died on October 7th, 2015.

16 COUNT II. DISCHARGING A FIREARM AT OR INTO OCCUPIED
17 STRUCTURE, a violation of NRS 202.285, a category B felony, in the
18 manner following, to wit:

19 That the said defendant on or about the 7th day of October,
20 2015, at Reno, within the County of Washoe, State of Nevada, did
21 willfully, unlawfully, and maliciously discharge a firearm, to wit:
22 a shotgun, at or into an occupied structure, to wit: a house or
23 other building located at 11903 Rocky Mountain Street, Washoe
24 County, Nevada.

25 To the charge stated in the Indictment, the defendant, EDWARD
26 SAMUEL PUNDYK, pled "NOT GUILTY BY REASON OF INSANITY".

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28 Instruction No. 7

1 Every person charged with the commission of a crime shall be
2 presumed innocent unless the contrary is proved by competent evidence
3 beyond a reasonable doubt.
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Instruction No. 8

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

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26 Instruction No. 9

1 There are two types of evidence from which a jury may
2 properly arrive at a verdict. One is direct evidence, such as the
3 testimony of an eyewitness. The other is circumstantial evidence,
4 the proof of a chain of circumstances pointing to the existence or
5 nonexistence of a fact in issue.

6 The law makes no distinction between direct and
7 circumstantial evidence, but requires that before convicting a
8 defendant, the jury be satisfied of the defendant's guilt beyond a
9 reasonable doubt from all the evidence in the case.

1 In every crime there must exist a union or joint operation
2 of act and intent.

3 The burden is always upon the prosecution to prove both act
4 and intent beyond a reasonable doubt.

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26 Instruction No. 11

1 Intent may be proved by circumstantial evidence. It rarely
2 can be established by any other means. While witnesses may see and
3 hear and thus be able to give direct evidence of what a defendant
4 does or fails to do, there can be no eyewitness account of a state of
5 mind with which the acts were done or omitted, but what a defendant
6 does or fails to do may indicate intent or lack of intent to commit
7 the offense charged.

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26 Instruction No. 12

1 To hold a defendant criminally liable for a specific
2 intent crime, Nevada requires proof that he possessed the state
3 of mind required by the statutory definition of the crime.

4 In the present case, only Murder in the First Degree and
5 Discharging a Firearm at or into an Occupied Structure are
6 specific intent crimes.

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26 Instruction No. 13

1 The burden rests upon the prosecution to establish every
2 element of the crime with which the defendant is charged, and every
3 element of the crime must be established beyond a reasonable doubt.
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26 Instruction No. 14

The elements of the crime of Murder are:

1. The defendant did willfully and unlawfully;
2. kill a human being;
3. with malice aforethought, either express or implied.

Instruction No. 15

1 To constitute the crime of Murder there must be in addition
2 to the death an unlawful act which was a proximate cause of the
3 death. The proximate cause of a death is a cause which, in natural
4 and continuous sequence, produces the death, and without which the
5 death would not have occurred.

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Instruction No. 16

1 Malice aforethought, as used in the definition of murder,
2 means the intentional doing of a wrongful act without legal cause or
3 excuse, or what the law considers adequate provocation. The
4 condition of mind described as malice aforethought may arise, not
5 alone from anger, hatred, revenge or from particular ill will, spite
6 or grudge toward the person killed, but may also result from any
7 unjustifiable or unlawful motive or purpose to injure another, which
8 proceeds from a heart fatally bent on mischief, or with reckless
9 disregard of consequences and social duty.

10 Malice Aforethought may be inferred from the intentional
11 use of a deadly weapon in a deadly and dangerous manner.

12 "Aforethought" does not imply deliberation or the lapse of
13 considerable time. It only means the required mental state must
14 precede rather than follow the act.

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26 Instruction No. 17

1 Express malice is that deliberate intention to unlawfully
2 take away the life of a fellow creature, which is manifested by
3 external circumstances capable of proof.

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

Murder is divided into two degrees.

Murder of the first degree is murder which is willful,
deliberate and premeditated.

Murder of the second degree is all other kinds of murder.

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

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

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

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

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

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

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

6 The true test is not the duration of time, but rather the
7 extent of the reflection. A cold, calculated judgment and decision
8 may be arrived at in a short period of time, but a mere unconsidered
9 and rash impulse, even though it includes an intent to kill, is not
10 deliberation and premeditation as will fix an unlawful killing as
11 murder of the first degree.

1 If you believe that at the time of the shooting in
2 this case that the defendant intended to kill any person, it is of no
3 legal consequence that he mistakenly killed a different person. His
4 intent to kill transfers to the person actually killed.
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Instruction No. 21

1 If you find the defendant committed an offense as to Count I
2 then you must further determine whether a deadly weapon was used
3 during the commission of the offense. You should indicate your
4 finding by checking the appropriate box on the verdict form.

5 The burden is on the State to prove beyond a reasonable doubt
6 that a deadly weapon was used during the commission of the offense.

7 A deadly weapon is defined as follows:

8 A firearm, meaning any device designed to be used as a weapon
9 from which a projectile may be expelled through the barrel by the
10 force of any explosion or other form of combustion.

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28 Instruction No. 22

1 The elements of discharging a firearm into an occupied
2 structure are:

- 3 1) The defendant did willfully and maliciously;
- 4 2) discharge a firearm at or into;
- 5 3) any occupied house or other building.

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26 Instruction No. 23

1 The word "willfully" when used in Count II refers simply to a
2 purpose or willingness to commit the act in question. The word does
3 not require in its meaning any intent to violate the law, or injure
4 another.

5 This definition does not apply to Count I, the Murder charge.
6 When used in Count I, the word "willful" has a different and more
7 specific definition contained in instruction number 20.

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28 Instruction No. 24

1 The Indictment in this case charges two counts, Count I and
2 Count II. Count I, Open Murder includes the offense of Murder in the
3 First Degree and also necessarily includes the lesser included
4 offense of Murder in the Second Degree. The defendant may only be
5 convicted of one.

6 You should first examine the evidence as it applies to
7 Murder in the First degree. If you unanimously agree that the
8 defendant is guilty of Murder in the First Degree, you should sign
9 the appropriate verdict form and request the bailiff to return you to
10 court.

11 If you cannot agree that the defendant is guilty of Murder
12 in the First Degree, you should then examine the evidence as it
13 applies to Murder in the Second Degree. If you unanimously agree
14 that the defendant is guilty of Murder in the Second Degree, you
15 should sign the appropriate verdict form and ask the bailiff to
16 return you to court.

17 The defendant, of course, can be found Not Guilty of all
18 the offenses enumerated.

19 If you unanimously agree that the defendant has proven by a
20 preponderance of the evidence that he meets the definition of legal
21 insanity, you should sign the appropriate verdict form for Not Guilty
22 by Reason of Insanity.

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26 Instruction No. 25

1 You are instructed that a defendant is presumed sane until
2 the contrary is shown. Insanity is an affirmative defense, and the
3 defendant has the burden of proving his/her legal insanity by a
4 preponderance of the evidence.

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28 Instruction No. 26

1 To be legally insane, a defendant must establish that, due to
2 a disease or defect of the mind, he/she was in a delusional state
3 when he/she committed his/her crimes, and that, due to the
4 delusional state, he/she either did not:

5 (1) Know or understand the nature and capacity of his/her
6 act, or

7 (2) Appreciate that his/her conduct was wrong, meaning not
8 authorized by law.

9 The ability to understand right from wrong under part (2) of
10 the legal insanity standard is directly linked to the nature of
11 the defendant's delusional state. Delusional beliefs can only be
12 the grounds for legal insanity when the facts of the delusion, if
13 they were true, would justify the commission of the criminal act.
14 For example, a person suffering from a delusion that someone is
15 shooting at him/her, so he/she shoots back in self-defense, would
16 meet the standard for legal insanity. However, a person who is
17 paranoid and believes that the victim is going to get him/her at
18 some time in the future, so he/she hunts the victim down and kills
19 the victim first, would not meet the standard for legal insanity.
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28 Instruction No. 27

1 Under an insanity plea, the burden of proof is upon the
2 defendant to establish by a preponderance of the evidence that
3 he/she was legally insane at the time he/she committed his/her
4 crimes.

5 To prove something by the preponderance of the evidence is to
6 prove that it is more likely true than not true. It is determined
7 by considering all of the evidence on the issue and deciding which
8 evidence is more believable.

9 This is a lesser burden than proof beyond a reasonable doubt.
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1 Regardless of its duration, legal insanity which existed
2 at the time of the commission of the crime is a defense to the
3 crime.
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26 Instruction No. 29

1 A verdict of not guilty by reason of insanity would result in
2 the defendant being taken into protective custody and transported
3 to a forensic facility for evaluation and a hearing as to whether
4 he/she is mentally ill and subject to commitment to a mental
5 facility.

6 If the court finds, after a hearing, that the defendant is
7 not a person with mental illness, the court must order his/her
8 discharge. If the court finds that the defendant is a person with
9 mental illness, the court must order that he/she be committed to
10 the custody of the Administrator of the Division of Mental Health
11 and Developmental Services of the Department of Health and Human
12 Services until such time as the defendant can establish that he/she
13 would not be a danger, as a result of any mental disorder, to
14 himself/herself or to the person or property of another if
15 discharged.

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28 Instruction No. 30

1 You may also find the defendant guilty but mentally ill. You
2 may find the defendant guilty but mentally ill if you find all of
3 the following:

4 (a) The defendant is guilty beyond a reasonable doubt of the
5 offense;

6 (b) The defendant has not established by a preponderance of
7 the evidence that he/she is not guilty by reason of insanity; and

8 (c) The defendant has established by a preponderance of the
9 evidence that due to a disease or defect of the mind, he/she was
10 mentally ill at the time of the commission of the offense.

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28 Instruction No. 31

1 Actual danger is not necessary to justify a killing in self-
2 defense. A person has a right to defend from apparent danger to
3 the same extent as he would from actual danger. The person
4 killing is justified if:

5 1. He/she is confronted by the appearance of imminent
6 danger which arouses in his/her mind an honest belief and fear
7 that he/she is about to be killed or suffer great bodily injury;
8 and

9 2. He acts solely upon these appearances and his/her fear
10 and actual beliefs; and

11 3. A reasonable person in a similar situation would believe
12 himself/herself to be in like danger.

13 In these circumstances, the killing is justified even if it
14 develops afterward that the person killing was mistaken about the
15 extent of the danger.

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28 Instruction No. 32

1 The killing of another person in self-defense is justified
2 and not unlawful where the person who does the killing actually and
3 reasonably believes:

4 1. That there is imminent danger that the assailant will
5 either kill him/her or cause him/her great bodily injury; and

6 2. That it is absolutely necessary under the circumstances
7 for him/her to use in self-defense force or means that might cause
8 the death of the other person, for the purpose of avoiding death or
9 great bodily injury to himself/herself.

1 Neither the prosecution nor the defense is required to call
2 as witnesses all persons who may appear to have some knowledge of the
3 matters in question in this trial.
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26 Instruction No. 34

1 It is a constitutional right of a defendant in a criminal
2 trial that he may not be compelled to testify. Thus the
3 decision as to whether he should testify is left to the
4 defendant on the advice and counsel of his attorney. You must
5 not draw any inference of guilt from the fact that he does not
6 testify, nor should this fact be discussed by you or enter into
7 your deliberations in any way.

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Instruction No. 35

1 To the jury alone belongs the duty of weighing the evidence
2 and determining the credibility of the witnesses. The degree of
3 credit due a witness should be determined by his or her character,
4 conduct, manner upon the stand, fears, bias, impartiality,
5 reasonableness or unreasonableness of the statements he or she makes,
6 and the strength or weakness of his or her recollections, viewed in
7 the light of all the other facts in evidence.

8 If the jury believes that any witness has willfully sworn
9 falsely, they may disregard the whole of the evidence of any such
10 witness.

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26 Instruction No. 36

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

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

10 The opinions of experts are to be considered by you in
11 connection with all other evidence in the case. The same rules apply
12 to expert witnesses that apply to other witnesses in determining the
13 weight or value of such testimony.

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26 Instruction No. 37

1 The penalty provided by law for the offense charged is not
2 to be considered by the jury in arriving at a verdict.
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26 Instruction No. 38

1 Each count charges a separate and distinct offense. You
2 must decide each count separately on the evidence and the law
3 applicable to it, uninfluenced by your decision as to any other
4 count. The defendant may be convicted on any or all of the
5 offenses charged. Your findings as to each count must be stated
6 in the verdict.

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Instruction No. 39

1 It is your duty as jurors to consult with one another and to
2 deliberate, with a view of reaching an agreement, if you can do so
3 without violence to your individual judgment. You each must decide
4 the case for yourself, but should do so only after a consideration of
5 the case with your fellow jurors, and you should not hesitate to
6 change an opinion when convinced that it is erroneous. However, you
7 should not be influenced to vote in any way on any question submitted
8 to you by the single fact that a majority of the jurors, or any of
9 them, favor such a decision. In other words, you should not
10 surrender your honest convictions concerning the effect or weight of
11 evidence for the mere purpose of returning a verdict or solely
12 because of the opinion of the other jurors.

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26 Instruction No. 40

1 Although you are to consider only the evidence in the case
2 in reaching a verdict, you must bring to the consideration of the
3 evidence your everyday common sense and judgment as reasonable men
4 and women. Thus, you are not limited solely to what you see and hear
5 as the witnesses testify. You may draw reasonable inferences which
6 you feel are justified by the evidence, keeping in mind that such
7 inferences should not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, passion,
9 prejudice, or public opinion. Your decision should be the product of
10 sincere judgment and sound discretion in accordance with these rules
11 of law.

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26 Instruction No. 41

1 Except for discussing the case with your fellow jurors during
2 your deliberations:

3 Do not communicate with anyone in any way and do not let anyone
4 else communicate with you in any way about the case or its merits.
5 This includes discussing the case in person, in writing, by phone
6 or electronic means, via email, text messaging, or any Internet chat
7 room, blog, website or other feature. This applies to communicating
8 with your family members, your employer, and the media or press. If
9 you are asked or approached in any way about your jury service or
10 anything about this case, you must respond that you have been ordered
11 not to discuss the matter.

12 Do not read, watch, or listen to any news or media accounts or
13 commentary about the case. Do not do any research, such as
14 consulting dictionaries, searching the Internet or using other
15 reference materials. No juror is to make investigation on your own,
16 test a theory of the case or your own, re-create any aspect of the
17 case on your own, or in any other way try to learn about the case
18 on your own. Further, the jury as a group may not make
19 any investigation or conduct any experiments.

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28 Instruction No. 42

Upon retiring to the jury room you will select one of your number to act as foreperson, who will preside over your deliberations and who will sign a verdict to which you agree.

When all twelve (12) of you have agreed upon a verdict, the foreperson should sign and date the same and request the Bailiff to return you to court.

Connie J. Steinheimer
DISTRICT JUDGE

Instruction No. 43

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8 THE STATE OF NEVADA,

9 Plaintiff,

CASE NO.: CR16-1290

10 vs.

DEPT. NO.: 4

11 EDWARD SAMUEL PUNKYK,

12 Defendant.

13
14 VERDICT

15 (PROCEED TO NEXT PAGE)

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1 We, the jury in the above entitled case, find as to the
2 Defendant EDWARD SAMUEL PUNDYK, as follows:

3 COUNT I. MURDER WITH THE USE OF A DEADLY WEAPON

4 Please check the box that reflects your verdict, (select only one)

- 5 ☐ Guilty of FIRST DEGREE MURDER
6 ☒ Guilty but Mentally Ill of FIRST DEGREE MURDER
7 ☐ Guilty of SECOND DEGREE MURDER
8 ☐ Guilty but Mentally Ill of SECOND DEGREE MURDER
9 ☐ Not Guilty by Reason of Insanity
10 ☐ Not Guilty

11 If you find the Defendant guilty of MURDER, First or Second
12 Degree, please answer the following question.

13 Was a deadly weapon used in the commission of MURDER?

14 Please check the box that reflects your verdict, (select only one)

- 15 ☒ Yes
16 ☐ No

17 COUNT II. DISCHARGING A FIREARM AT OR INTO OCCUPIED STRUCTURE

18 Please check the box that reflects your verdict, (select only one)

- 19 ☐ Guilty of DISCHARGING A FIREARM AT OR INTO OCCUPIED
20 STRUCTURE
21 ☒ Guilty but Mentally Ill of DISCHARGING A FIREARM AT OR
22 INTO OCCUPIED STRUCTURE
23 ☐ Not Guilty by Reason of Insanity
24 ☐ Not Guilty

25 DATED this 25 day of July, 2018.

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27
28 FOREPERSON

1 CODE 4050

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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE
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9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

Case No. CR16-1290

12 EDWARD SAMUEL PUNDYK,

Dept. No. 4

13 Defendant,
14 _____ /

15 **STIPULATION WAIVING SENTENCING BY JURY**

16 COMES NOW, Defendant, by and through JEREMY T. BOSLER, Washoe County
17 Public Defender, LINDA M NORDVIG and JENNIFER RAINS, Deputy Public Defenders, along
18 with CHRISTOPHER J. HICKS, Washoe County District Attorney and AMOS STEGE, Deputy
19

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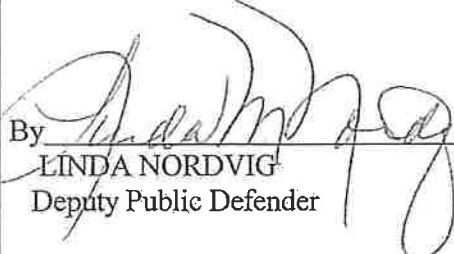
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1 District Attorney, and hereby stipulate to waive the sentencing by jury, if a conviction of Murder
2 in the First Degree is rendered by the jury.

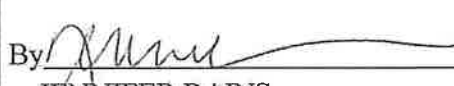
3 **AFFIRMATION PURSUANT TO NRS 239B.030**

4 The undersigned does hereby affirm that the preceding document does not contain the
5 social security number of any person.

6
7 DATED this _____ of July, 2018

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9
10 By 
11 LINDA NORDVIG
12 Deputy Public Defender

13 By 
14 AMOS STEGE
15 Deputy District Attorney

16
17 By 
18 JENNIFER RAINS
19 Chief Deputy Public Defender

20 By 
21 EDWARD PUNDYK
22 Defendant

1 CODE 3105
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

Case No. CR16-1290

12 EDWARD SAMUEL PUNDYK,

Dept. No. 4

13 Defendant.
14

ORDER GRANTING STIPULATION WAIVING SENTENCING BY JURY
15

16 The Defendant, by and through JEREMY T. BOSLER, Washoe County Public Defender,
17 LINDA M NORDVIG and JENNIFER RAINS, Deputy Public Defenders, along with
18 CHRISTOPHER J. HICKS, Washoe County District Attorney and AMOS STEGE, Deputy
19 District Attorney, filed a Stipulation Waiving Sentencing by Jury.
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21 IT IS HEREBY ORDERED that the Stipulation Waiving Sentencing by jury is hereby
22 GRANTED.

23 DATED this 25 of July, 2018

24 Connie J. Steinheimer
25 DISTRICT JUDGE
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1 **CODE 1850**

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **STATE OF NEVADA,**

10 **Plaintiff,**

Case No. CR16-1290

11 **vs.**

Dept. No. 4

12 **EDWARD SAMUEL PUNDYK,**

13 **Defendant.**

14 **JUDGMENT**

15 The Defendant, having been found Guilty, but Mentally Ill, by a Jury, and no
16 sufficient cause being shown by Defendant as to why judgment should not be pronounced
17 against him, the Court renders judgment as follows:
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19 That Edward Samuel Pundyk is guilty of the crimes of Murder with the Use of
20 a Deadly Weapon, a violation of NRS 200.010, NRS 200.030 and NRS 193.165, a
21 category A felony, as charged in Count I and Discharging a Firearm at or into Occupied
22 Structure, a violation of NRS 202.285, a category B felony as charged in Count II of the
23 Indictment, and that he be punished by imprisonment in the Nevada Department of
24 Corrections for the term of Life With the Possibility of Parole after twenty (20) years has
25 been served, with credit for one thousand one hundred twenty-three (1,123) days time
26 served, for Count I, with a consecutive term of imprisonment in the Nevada Department of
27 Corrections for maximum term of two hundred forty (240) months with the minimum parole
28 eligibility of ninety-six (96) months, with credit for zero (0) days time served, for the use of

1 a deadly weapon; and by imprisonment in the Nevada Department of Corrections for
2 maximum term of sixty (60) months with the minimum parole eligibility of twelve (12)
3 months, with credit for zero (0) days time served, for Court II, to be served consecutively to
4 the prison sentences imposed in Count I. The aggregated sentence imposed is Life with
5 the Possibility of Parole after the minimum of twenty-nine (29) years has been served.
6 Further, the Defendant is ordered to pay restitution in the amount of Two Thousand One
7 Hundred Sixty-Eight Dollars and Thirty-Four Cents (\$2,168.34) to Victims of Crime for
8 Count I; pay restitution in the amount of Six Hundred Ninety-Two Dollars and Ninety-Four
9 Cents (\$692.94) to victim VC2256066 for Count II; and pay attorney's fees in the amount
10 of One Thousand Dollars (\$1,000.00) for reimbursement of legal expenses. Defendant is
11 further ordered to pay a Three Dollar (\$3.00) administrative assessment for obtaining a
12 biological specimen and conducting a genetic marker analysis, a Twenty-Five Dollar
13 (\$25.00) administrative assessment fee and a One Hundred Fifty Dollar (\$150.00) DNA
14 analysis fee to the Clerk of the Second Judicial District Court.

15 The fees and restitution are subject to removal from the Defendant's inmate
16 accounts at the Washoe County Jail and/or Nevada Department of Corrections.

17 Dated this 2 day of November, 2018.

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20 Conrad J. Steinheimer
21 DISTRICT JUDGE
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1 CODE NO. 2515
2 WASHOE COUNTY PUBLIC DEFENDER
3 JOHN REESE PETTY, State Bar Number 10
4 350 South Center Street, 5th Floor
5 Reno, Nevada 89501
6 (775) 337-4827
7 jpetty@washoecounty.us
8 Attorney for Defendant

9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11
12 IN AND FOR THE COUNTY OF WASHOE
13

14 THE STATE OF NEVADA,

15 Plaintiff,

16 vs.

Case No. CR16-1290

17 EDWARD SAMUEL PUNDYK,

Dept. No. 4

18 Defendant.
19 _____/

20 NOTICE OF APPEAL

21 Defendant, EDWARD SAMUEL PUNDYK, appeals to the Supreme Court of
22 Nevada from the judgment of conviction entered in this action on November 2, 2018.

23 The undersigned hereby affirms, pursuant to NRS 239B.030, that this
24 document does not contain the social security number of any person.

25 DATED this 30th day of November 2018.

26 JOHN L. ARRASCADA
WASHOE COUNTY PUBLIC DEFENDER

By: /s/ John Reese Petty
JOHN REESE PETTY, Chief Deputy

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EDWARD SAMUEL PUNDYK (#1207257)
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, Nevada 89702

ADAM LAXALT
Attorney General State of Nevada
100 N. Carson Street
Carson City, Nevada 89701

/s/ John Reese Petty
JOHN REESE PETTY

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 5th day of July 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Jennifer P. Noble, Chief Appellate Deputy,
Washoe County District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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John Reese Petty
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