

MICHAEL LASHER, ESQ.
Michael Lasher LLC
Nevada Bar No. 13805
827 Kenny Way
Las Vegas, Nevada 89107
(510) 507-2869
Michaellasher2@gmail.com
Attorney for Appellant

Electronically Filed
Mar 16 2020 05:17 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAMON MURIL DORADO,) Supreme Court Case No.: 79556
) Dist. Ct. Case No.: C-17-323098-1
)
Petitioner,)
)
vs.)
)
THE STATE OF NEVADA,)
)
Respondent.)

APPELLANT'S APPENDIX

Volume 2

MICHAEL LASHER, ESQ.
Michael Lasher LLC
Nevada Bar No. 13805
827 Kenny Way
Las Vegas, Nevada 89107
(510) 507-2869
Michaelasher2@gmail.com
Attorney for Appellant

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAMON MURIL DORADO,)	
)	Supreme Court Case No.: 79556
Petitioner,)	Dist. Ct. No.: C-17-323098-1
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
<hr/>)	

APPELLANT'S APPENDIX

Alphabetical Index

<u>Description</u>	<u>Vol.</u>	<u>Page</u>
Judgment of Conviction, 8/19/19	2	181
Minutes, 6/20/19	2	180
Motion to Dismiss for Failure to Preserve Evidence, 6/20/17	1	1
Motion to Dismiss for Pre-Indictment Delay and Lack of Jurisdiction, 10/19/18	1	61
Recorder's Transcript of Hearing: Defendant's Motion to Dismiss for Failure to Preserve Evidence, 7/6/17	2	142
Recorder's Transcript of Hearing: Jury Trial – Day 1, 6/17/19 ¹	2	183
Recorder's Transcript of Hearing: Jury Trial – Day 2, 6/18/19 ²	5	422
Recorder's Transcript of Hearing: Jury Trial – Day 3, 6/19/19	8	715
Recorder's Transcript of Hearing: Jury Trial – Day 4, 6/20/19	9	882
Recorder's Transcript of Hearing: Sentencing, 8/13/19	10	966
Reply to State's Opposition to Defendant's Motion to Dismiss for Failure to Preserve Evidence, 8/14/17	1	54
State's Opposition to Defendant's Motion to Dismiss for		

¹ N.B. Volumes 3 and 4 of the Appellant's Appendix are comprised of Recorder's Transcript of Hearing: Jury Trial – Day 1, 6/17/19

² N.B. Volumes 6 and 7 of the Appellant's Appendix are comprised of Recorder's Transcript of Hearing: Jury Trial – Day 2, 6/18/19

Failure to Preserve Evidence, 6/29/17	1	14
State's Opposition to Defendant's Motion to Dismiss Indictment, 10/29/18	1	74

1 POINTS AND AUTHORITIES

2 STATEMENT OF FACTS

3 In the late hours of April 23, 1999, into the morning of April 24, 1999, M.L. went out
4 dancing with her friends Candy and Joanna to the Silver Saddle bar. Grand Jury Transcript
5 ("GJT") p. 7. While at the bar, M.L. met one of the members of the band playing that night,
6 who was introduced to her as Raymond aka Ray, later identified as Ramon Muril Dorado
7 ("Defendant"). Id. After talking to Defendant for a bit, M.L. left briefly to check on her son
8 who was staying at Candy's house right down the street. Id. When M.L. came back to the bar,
9 Candy, Joanna and others, including Defendant, were sitting down at the bar in the back. GJT
10 p. 8. M.L. sat between Candy and Defendant. Id. Later on in the night, the group discussed
11 going to PT's Pub when the bartender, who was hanging out with the group, got off work. Id.
12 M.L., who was the designated driver for Candy and Joanna, agreed to go as long as she was
13 back home by 10:00 am. Id.

14 Around 7:00 am the group decided to leave to PT's. Id. Joanna went with the bartender
15 in his car. Id. Candy last minute decided to call her boyfriend to pick her up and agreed to
16 meet up with M.L. in front of the house by 10:00am so the kids would not think anything. GJT
17 p. 9. On the way to PT's Defendant said that he had to cash his paycheck and stop by his
18 house to call in to work. Id. Not thinking anything of it at that time, M.L. drove to Defendant's
19 house. Id. When they got there, Defendant asked M.L. to come inside. Id. Inside the house
20 was a young man that did not speak English. Id. Defendant spoke to the young man in Spanish
21 and from what M.L. could understand, Defendant sent him to the store to get something. Id.
22 When the young man left, Defendant picked M.L. up and dragged her into the bedroom as she
23 was telling him to put her down. Id. Defendant refused to listen and brought M.L. into the
24 bedroom. GJT p. 10.

25 In the bedroom Defendant proceeded to try to kiss M.L. while she pushed him away.
26 Id. M.L. told Defendant that she had not done anything to suggest that is what she wanted and
27 that she was going to be leaving. Id. However, when M.L. went to walk out the door,
28 Defendant grabbed her and threw her on to the bed. Id. Defendant then laid on top of her and

1 started to try to kiss her neck again. Id. M.L. again pushed Defendant off and rushed to the
2 door. Id. Defendant grabbed M.L. again, pulled her shirt up and proceeded to try to take her
3 pants off. Id. M.L. fell to her side, once again pushed Defendant off and tried running for the
4 door. Id. Defendant grabbed her again, threw her against the wall and pulled her pants down
5 even more. Id. Defendant threw M.L.'s legs over her head and pulled her panty hose down.
6 Id. Defendant then put his mouth on M.L.'s vagina using both his mouth and tongue. GJT 10-
7 11. M.L. pushed Defendant forward and tried to find something to throw at him or something
8 to hit him with. GJT p.11. M.L. tried to shove clothes in Defendant's face, attempting to
9 smother him. Id.

10 As M.L. continued to struggle with Defendant, he got one of her legs out of her panty
11 hose, flipped her back on the ground and laid on top of her trying to push her legs apart. Id.
12 As M.L. was trying to hold her legs together, Defendant held her arms, pulled her legs apart
13 and proceeded to try to insert his penis inside her vagina. Id. M.L. continued to fight
14 Defendant and using her one free hand tried to find something to hit him with. GJT p. 12.
15 M.L. was ultimately able to find one of the safety pins from her pants, which held her pants
16 up, and stabbed Defendant in the shoulder and hand. Id. However, that did not stop Defendant
17 and he proceeded to use one of his hands to move his penis inside her vagina. Id. M.L. could
18 feel his penis and hand inside and outside of her vagina. Id. Defendant was not able to keep
19 his penis inside M.L.'s vagina because he was unable to keep his erection. Id. After a couple
20 of minutes of trying, Defendant got up and allowed M.L. to get her stuff. Id. As Defendant
21 sat there, he kept saying "she's right, she's right", while M.L. asked him what part of no means
22 no did he not understand. Id. Defendant responded that he was not talking about what just
23 happened but about his ex-wife telling him he will never be able to have sex with another
24 woman again. GJT 12-13. As M.L. walked out, she saw that the young man was back from
25 the store. GJT p. 13.

26 M.L. returned to Candy's house to check on her son and they immediately took her to
27 the police station. Id. M.L. told the police what happened and they took her to UMC, where
28 a Sexual Assault Nurse Examine ("SANE exam") was conducted. Id.

ARGUMENT

I. LAW ENFORCEMENT HAS NO DUTY TO COLLECT ALL POTENTIAL EVIDENCE IN AN INVESTIGATION

Defendant's request to dismiss this case is largely based upon an alleged failure to "preserve evidence." Motion at 5. However, throughout his motion Defendant fails to distinguish between collection and preservation of evidence. *See Daniels v. State*, 956 P.2d 111, 114-115 (1998).

In order to establish a due process violation resulting from the State's *loss or destruction of evidence*, a defendant must demonstrate either (1) that the state lost the evidence in bad faith; or (2) that the loss of evidence unduly prejudiced the defendant's case **and** the evidence possessed an exculpatory value that was apparent before the evidence was destroyed. *Sheriff, Clark County v. Warner*, 112 Nev. 1234, 1239-1240 (1996); *citing State v. Hall*, 105 Nev. 7, 9 (1989). Under these circumstances, it is Defendant's burden to show "that it could be reasonably anticipated that the evidence sought would be exculpatory and material to the defense." *Sparks v. State*, 104 Nev. 316 (1988), *citing Boggs v. State*, 95 Nev. 911 (1979).

Regarding *gathering potential evidence* in a case, law enforcement has no duty to collect all potential evidence in an investigation. *Randolph v. State*, 117 Nev. 970, 987 (2001); *Jackson v. State*, 128 Nev. 598 (2012). Failure to gather evidence may result in sanctions, but only under very limited circumstances. *Id.* First, it is a defendant's burden to show that the potential evidence at issue was material, meaning that there is a reasonable probability that the result of the proceedings would be different if the evidence was available. *Randolph* *citing Daniels v. State*, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998). Only if a defendant can meet that burden does the court need to determine whether such failure resulted from mere negligence, gross negligence or bad faith. *Id.* If it is a case of mere negligence, no sanctions are imposed. If gross negligence is shown, the defense is entitled to a presumption that the evidence would have been unfavorable to the State. Finally, if bad faith is shown dismissal may be warranted depending on the case. *Id.*

//

1 In Randolph, the defendant robbed and murdered a bartender in Las Vegas. A witness
2 testified that early in the morning on May 5, 1998, Randolph and Garner returned to a trailer
3 where the two had been earlier in the evening smoking crack cocaine. 117 Nev. at 986. The
4 trailer was a location where people regularly came to use cocaine. Id. Upon his return, Garner
5 changed out of a brown shirt and brown pants and put on a green shirt and green pants. Id.
6 After Garner's arrest, the green shirt and pants were impounded at the city jail and later tested
7 for the presence of blood. Id. The test was negative. Id. Garner's shoes were not impounded or
8 tested. Id. Although investigators were aware that Garner had changed out of brown clothes
9 after the crimes, they never searched for the clothes. Id. The trunk of Garner's car contained a
10 pile of clothing, but investigators did not look through the clothing to see if it included the
11 brown shirt and pants. Id.

12 On appeal, Randolph argued that it was error for the court to reject his proposed jury
13 instruction that stated because the State failed to seize and test brown clothing worn by Garner
14 on the night of the crimes "for the existence of blood evidence, the clothing is irrefutably
15 presumed to have contained blood evidence." Id. at 986. Randolph asserted that the State failed
16 to gather potentially exculpatory evidence because a finding of blood on Garner's clothing or
17 shoes would have supported Randolph's defense that Garner was the shooter. Id. at 987.
18 Randolph argued that he therefore had a right to the proposed jury instruction. Id. The Court
19 stated that if the evidence was material and the police acted out of gross negligence or bad
20 faith in not preserving it, Randolph would have had a right to an instruction that the ungathered
21 evidence was presumed to be unfavorable to the State. Id. However, the Court concluded that
22 Randolph did not show that the ungathered evidence was material. Id.

23 The Court found that if testing of Garner's clothing or shoes had revealed the victim's
24 blood, it was possible that Randolph might not have received a death sentence. Id. However,
25 Randolph did not demonstrate a reasonable probability that such testing would have revealed
26 any blood. Id. The Court found that Randolph offered no evidence to corroborate his allegation
27 that Garner was the shooter, and the possibility that testing Garner's clothing and shoes would
28 have been favorable to his case was mere speculation. Id. The Court went on to opine that even

1 assuming, *arguendo*, the evidence was material, the failure to collect it was “at worst”
2 negligent. Id. at 988. First, Randolph did not show that police could have collected the brown
3 shirt and pants, he simply assumed that a search of the trailer or the clothing in the trunk of
4 Garner's car would have uncovered them. Id. Second, Randolph did not show that the potential
5 evidentiary significance of Garner's shoes, which were available to police, was so obvious that
6 it was gross negligence not to impound and test them. Id. Thus, the Court held that even
7 assuming the evidence was material and police were negligent in not gathering it, Randolph's
8 remedy was to examine witnesses regarding the deficiency of the investigation, and the record
9 showed that he did so. Id.

10 Likewise, in Jackson v. State, 128 Nev. 598 (2012), the defense brought a similar
11 motion claiming that the State failed to preserve all video footage that defense believed
12 relevant to the proceedings. Defendant Jackson went to a tavern intending to rob the bar. Id.
13 at 602. Jackson coerced employee Duffy into helping him try to disable the security cameras.
14 Id. During the robbery, Jackson forced Duffy into the restroom and shot Duffy. Id. The two
15 men struggled, Jackson fled, and Duffy called police. Id. The bar's surveillance manager was
16 contacted by police and offered to provide a complete video for the evening. Id. The police
17 declined and asked him to prepare a composite video including only frames that showed
18 Jackson or Duffy, which resulted in omission of 12 to 15 hours of recordings from the
19 surveillance cameras. Id.

20 On appeal, Jackson claimed that the video surveillance was erroneously admitted. Id.
21 at 613. The Supreme Court disagreed and found that the exculpatory value of the omitted video
22 was minimal. Id. Jackson suggested that Duffy was complicit in the robbery and that the
23 omitted footage might somehow prove that. Id. The Court found that argument lacked merit
24 because the State provided all video footage that featured Duffy and Jackson, including
25 footage of their interaction before and during the robbery. Id. The surveillance manager also
26 testified that the omitted video did not contain any relevant footage. Id. Given that the omitted
27 footage had no apparent exculpatory value, the Court held that the evidence did not affect the
28 result of the trial, especially in light of the substantial evidence presented by the State. Id. at

614. The Court also found that Jackson did not establish bad faith, and nothing in the record on appeal indicated bad faith. Id. According to the Court, the decision to compile only parts of the surveillance recordings appeared to be the product of concern for efficiency, not bad faith. Id. Thus, the Court held that the State's failure to gather the full video surveillance footage did not result in injustice and the district court did not err by denying Jackson's motion to strike the video evidence or grant a mistrial. Id.

Here, Defendant cites the following "unpreserved" evidence that he believes would be material to his case: (1) information regarding the male witness who was present at the apartment before and after the rape; (2) information regarding the two ladies who were staring at the victim as she drove from the scene of the rape; (3) service of a search warrant on the residence to look for "signs of a struggle" and safety pins; (4) crime scene photos and analysis of the bedsheets; (5) video footage from the Silver Saddle that would corroborate M.L.'s story; (6) interviews with bartenders to see how much each party had to drink; (7) interview with M.L.'s friend "Candy" whom she was with the night in question; and (8) the lack of a 911 call. With regard to everything but the 911 call, Defendant's argument is limited to the standard for alleged failure to *gather* evidence, not alleged failure to *preserve* evidence.

1. Information regarding the male witness who was present at the apartment before and after the rape.

Defendant claims that police should have interviewed an unknown male witness, which may be true. However, there is nothing in the reports indicating that the police were aware of the identity of this unknown male. In fact, the police did not know Defendant's identity either. (See Case Monitoring Form attached as Exhibit 1). According to the Case Monitoring Form, LVMPD only knew the suspect as "Ray" or "Raymond" until they contacted the Silver Saddle Saloon on May 5, 1999 and received information that he was "Ramon accordion player who the band let go." Exhibit 1.

Additionally, LVMPD was unaware of the location of the rape. All the victim was able to tell them was the rape occurred at an "unknown apartment" located at 2101 Sunrise Ave. (See Officer's Report attached as Exhibit 2). Also, M.L. told officers that Defendant told her

1 the apartment was a "friend's apartment," not his. So, with the victim unable to tell police
2 which apartment she was in, they had information that there was an "unknown Latin male"
3 (not known if he was the owner or he was just visiting) in the apartment who had a friend
4 named "Ray." Exhibit 2, p. 5. This is simply not enough information to identify the "unknown
5 Latin male."

6 Moreover, Defendant is the person who is in the best position to identify this "unknown
7 Latin male" if he exists. M.L. certainly did not know who he was, and Defendant was
8 apparently familiar enough with the "unknown Latin male" that the "unknown Latin male"
9 was comfortable leaving Defendant in the apartment by himself with a woman. The State
10 would like to have information regarding this individual, but the fact that he remains
11 unidentified does not indicate there was a grossly negligent investigation. It would have been
12 excellent police work for detectives to go out to the apartment complex and knock on random
13 doors until they found Ray's Latin friend, but the fact that they did not is not negligent, and it
14 certainly does not rise to the level of bad faith. Neither the State nor Defendant knows what
15 resources LVMPD had available in 1999 to follow-up on such leads.

16 Using the Daniels standard, *supra*, it is a defendant's burden to show that the evidence
17 at issue was material. Here, neither Defendant nor the State has any information regarding
18 what the "unknown Latin male" saw or heard other than the information provided by the
19 victim. If the victim's version of events is accurate, it is very unlikely that the "unknown Latin
20 male's" statement would be favorable to the defense. This, coupled with the fact Defendant is
21 in the best position to identify this person, makes it impossible for Defendant to show that the
22 evidence would be material to his case. Therefore, with regard to the "unknown Latin male,"
23 Defendant cannot meet the first Daniels prong. While the fact that the "unknown Latin male"
24 was not interviewed may be good fodder for cross-examination, Defendant's claim that the
25 case should be dismissed because the "unknown Latin male" was not interviewed lacks merit.

26 //

27 //

28 //

1 **2. Information regarding the two ladies who were staring at the victim as she drove**
2 **from the scene of the rape.**

3 Likewise, Defendant cannot meet the first Daniels prong with regard to the two
4 unknown ladies who the victim said saw her walk out of the apartment when she was upset.
5 This information is referenced in M.L.'s voluntary statement on page 11 wherein she said: "I
6 know two ladies saw me walk out upset and they just stared at me" This is the only time
7 these potential witnesses are mentioned. Police had even less information to go on regarding
8 the identity of the "two ladies" than the "unknown Latin male." Thus, the same analysis applies
9 as the failure to interview the "unknown Latin male," *supra*. Given this, Defendant's claim
10 that the case should be dismissed because the two unidentified females were not interviewed
11 lacks merit.

12 **3. Service of a search warrant on the residence to look for "signs of a struggle" and**
13 **safety pins.**

14 Defendant claims the case should be dismissed because LVMPD failed to serve a search
15 warrant on the unknown residence and look for "signs of a struggle" and safety pins, which
16 M.L. said she tried to defend herself with.

17 First, the exact apartment where these events occurred was unknown to LVMPD. Thus,
18 a search warrant could not be obtained because the place to be searched for potential evidence
19 was unknown.

20 Second, even without searching the unknown residence LVMPD had evidence that a
21 struggle took place. Page 4 of Exhibit 2 notes:

22 As a result of this struggle and sexual assault, [M.L.] showed me a
23 small vertical scratch that appeared on her chest. [M.L.] also had
24 several fingernails that were broken. Upon further examination, it was
25 learned that [M.L.] had bruises on her left forearm, upper left arm,
 right wrist, and the back of her right arm. There was redness on
 [M.L.'s] lower back and a bruise on her right lower back. [M.L.]
 indicated that these injuries were a result of the struggle.

26 The injuries referenced above were documented in photographs taken by LVMPD.

27 //

28 //

1 Finally, officers did not have the information that M.L. used safety pins in an attempt
2 to defend herself at the time of the investigation. M.L. did not mention the safety pins other
3 than to say she was wearing black pants "and there's safety pins ... because I lost weight and
4 I wanted to fit them" Exhibit 3, p. 8 (Voluntary Statement of M.L.). The fact that the safety
5 pins were used as weapons was first mentioned during M.L.'s grand jury testimony in April
6 of 2017. *See* Reporter's Transcript of Proceedings filed 5/15/2017, p. 12, ln. 3. Thus, assuming
7 LVMPD located residence and could establish probable cause for a search warrant, safety pins
8 would not have been the focus of that search warrant.

9 Again, Defendant has failed to show the materiality or even what potential evidence a
10 search warrant would have obtained and cannot meet the first Daniels prong. It is possible that
11 Defendant cleaned up the scene after the rape and nothing would be found. Regardless, the
12 residence was unknown, a search warrant cannot be obtained on an unknown residence, and
13 failure to serve an impossible search warrant is not negligence. Therefore, Defendant's claim
14 that the case should be dismissed because "signs of a struggle" and safety pins were not
15 documented lacks merit.

16 4. Crime scene photos and analysis of the bed sheets.

17 Defendant claims the case should be dismissed because LVMPD did not take photos of
18 the crime scene or analyze the bed sheets. Similar to the "signs of a struggle" issue, *supra*,
19 Defendant fails to address the fact that LVMPD did not know the exact residence and could
20 not have taken photographs of an unknown residence. Thus, the absence of crime scene photos
21 of an unknown residence is not negligent.

22 Regarding the bed sheets, no relevant information would have been obtained even
23 assuming the sheets were collected. Assuming, *arguendo*, that Defendant's DNA was not
24 found on swabs of the bed sheets, this would not change the fact that Defendant's DNA *was*
25 found inside M.L.'s vagina. Exhibit 4. The probability that the DNA found inside M.L.'s
26 vagina did not belong to Defendant is approximately 1 in 1.45 sextillion. Given Defendant's
27 DNA was found inside M.L.'s vagina, whether it was also on the bed sheets is irrelevant.

28 //

1 Again, Defendant has failed to offer any basis for the materiality of the evidence he
2 complains was not collected. Documenting an unknown scene was impossible, and Defendant
3 has not shown that the evidence obtained from such documentation would have been favorable
4 to him and cannot meet the first Daniels prong. Also, the presence or absence of DNA on the
5 bed sheets would not change the presence of DNA in M.L.'s vagina. Therefore, Defendant's
6 claim that the case should be dismissed because crime scenes photos were not taken and bed
7 sheets were not collected lacks merit.

8 **5. Video footage from the Silver Saddle that would corroborate M.L.'s story.**

9 Defendant claims the case should be dismissed because LVMPD did not obtain video
10 footage from the Silver Saddle that would corroborate M.L.'s story. Again, Defendant chooses
11 to focus on evidence that is inculpatory instead of evidence that would be material to his case.

12 The State is not aware of any evidence that the Silver Saddle had a surveillance system
13 in use in 1999, or if it had such a system that the camera angles would have captured M.L. and
14 her friends. The evidence the State does have indicates Defendant played the accordion in a
15 band at the Silver Saddle in 1999. *See* Exhibit 1. This information tends to corroborate M.L.'s
16 account that she met Defendant at the Silver Saddle and he was in a band.

17 Again, Defendant has failed to show the materiality or even the existence of video
18 surveillance and cannot meet the first Daniels prong. There is no evidence that video
19 surveillance existed, or if it did exist that it would be favorable to Defendant. Therefore,
20 Defendant's claim that the case should be dismissed because video footage was not obtained
21 lacks merit.

22 **6. Interviews with bartenders to see how much each party had to drink.**

23 Defendant claims the case should be dismissed because LVMPD did not interview
24 bartenders to determine how much M.L. and Defendant had to drink. Sexual assault is a
25 general intent crime, thus voluntary intoxication is not a defense. *See Manning v. Warden,*
26 *Nev. State Prison*, 99 Nev. 82 (1983). Therefore, determining how much "Ray the accordion
27 player" had to drink that night was not germane to the investigation.

28 //

1 Likewise, whether LVMPD determined M.L.'s level of intoxication is irrelevant.
2 During M.L.'s interview, she noted that she was the designated driver, had one-and-a-half
3 drinks, and does not like to get drunk around people. *See* Exhibit 3, pp. 3, 12. There was no
4 intoxication noted in any other reports.

5 Again, Defendant has failed to show the materiality or exculpatory nature of the
6 bartenders' potential statements and cannot meet the first Daniels prong. There is no evidence
7 that the bartenders would have remembered anything, or if they did that it would be favorable
8 to Defendant. Therefore, Defendant's claim that the case should be dismissed because
9 bartenders were not interviewed lacks merit.

10 **7. Interview with M.L.'s friend "Candy" whom she was with the night in question.**

11 Defendant claims the case should be dismissed because LVMPD did not interview
12 M.L.'s friend "Candy." "Candy" is identified by name in the discovery, and may still be
13 available to interview. Therefore, if Defendant feels interviewing "Candy" will help his case,
14 he should do so.

15 Again, Defendant has failed to show the materiality or exculpatory nature of "Candy's"
16 potential statements and cannot meet the first Daniels prong. According to M.L.'s statement,
17 "Candy" would corroborate M.L.'s version of events. Moreover, if Defendant thinks
18 "Candy's" testimony will be helpful to him, he should seek her out and have an investigator
19 interview her, or at least have her subpoenaed to testify at trial. Unlike the "unknown Latin
20 male," "Candy" is identifiable. Therefore, Defendant's claim that the case should be dismissed
21 because "Candy" was not interviewed lacks merit.

22 **8. The lack of a 911 call.**

23 Defendant claims the case should be dismissed because LVMPD did not retain the 911
24 call in this case. Unlike Defendant's other claims, this claim is subject to analysis under the
25 "loss or destruction of evidence" standard set forth by State v. Hall, *supra*. This is because if
26 a 911 call existed, it was not retained by LVMPD due to their policy regarding retention of
27 911 calls.

28 //

1 The issue with this claim, however, is there is no solid indication that a 911 call was
2 placed by M.L. In fact, the information available indicates that M.L. drove to Southeast Area
3 Command to report the rape. See Exhibit 2, pp. 2, 6; Grand Jury Transcript, p. 13.

4 Even assuming, *arguendo*, that a 911 call was made, pursuant to Hall defendant must
5 demonstrate either (1) that the state lost the evidence in bad faith; or (2) that the loss of
6 evidence unduly prejudiced the defendant's case and the evidence possessed an exculpatory
7 value that was apparent before the evidence was destroyed. Here, even Defendant
8 acknowledges that any 911 call would have been purged pursuant to LVMPD policy, so "bad
9 faith" is not in play. Moreover, Defendant can't show that his case is unduly prejudiced or that
10 the evidence was exculpatory. The most likely scenario if a 911 call was made is that it would
11 corroborate M.L.'s statement given within hours of the alleged call. If the statements were
12 inconsistent, it is extremely unlikely that this fact would not be documented somewhere in a
13 report. Therefore, because Defendant cannot show with certainty that a 911 call was placed,
14 or if one was placed that it would be exculpatory, his claim that the case should be dismissed
15 because the State cannot produce the alleged 911 call lacks merit.

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

CONCLUSION

None of Defendant's claims address the most powerful evidence the State has in this case: Defendant's DNA inside of M.L.'s vagina. Regardless of whether any of the evidence Defendant cites as error existed, this fact does not change. One of the closest witnesses to the rape who was present at the time, the "unknown Latin male," is known only to Defendant. Everything else argued as error by Defendant does not change the fact that his DNA was in M.L.'s vagina, and she reported a man matching Defendant's description raped her on the night in question and had injuries consistent with being raped that were documented. LVMPD's investigation into this rape was not perfect, but this is not the standard. Defendant has failed to show that an imperfect investigation divested him of material evidence, and this is his burden under the law. Defendant's claim that this case should be dismissed due to an alleged failure to preserve evidence lacks merit, as Defendant has failed to meet his burden of showing that the evidence was material. Therefore, the State respectfully requests that this Court deny Defendant's motion.

DATED this 29th day of June, 2017.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ JACOB J. VILLANI
JACOB J. VILLANI
Chief Deputy District Attorney
Nevada Bar #011732

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 29th day of JUNE
2017, to:

VIOLET RADOSTA, DPD
harrolah@ClarkCountyNV.gov

BY /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

EXHIBIT "1"

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CASE MONITORING AND CLOSURE FORM

99093 01.484

☐ Misd.☐ G. Misd.☒ Felony

Crime: SEXUAL ASSAULT

Event #: 990424-1124

Victim: XXXXXXXXXX

Investigator: M. REDDON 4884

Date Assigned: 05/03/99

Review Date: 05/03/99

Suspect 1: RAY

Suspect 2:

Suspect 3:

Suspect 4:

Case/Suspect Status Section

Date	Case/Susp	Status	Dispo		Date	Case/Susp	Status	Dispo
06-08-99	CLOSED							

Evidence Section:

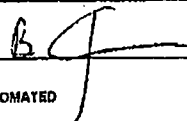
Was Evidence Impounded?:

☒ Yes☐ No

A	NO	ACTIVITY		X	NO	ACTIVITY
	1	Victim/Witness(s) Interviewed			11	County Clerk Records Checked
	2	Area of Crime/Neighborhood Canvassed			12	City/County Business License Checked
	3	Crime Scene Searched/Visited			13	FI Files/Crime Analysis Checked
	4	Fingerprint Search Conducted			14	Photos Ordered
	5	Photo Line-up with Victim/Witness			15	Social Services Checked
	6	P&P Files/Prison Releases Checked			16	Suspect(s) Interviewed
	7	Department Members/Other Police Departments Checked			17	AT/SCOPE/NCIC Entries Made
	8	SCOPE/WVBC/IN/NCIC/FBI Checked			18	Warrant Served or Attempted
	9	Pawn Files Checked			19	Warrant Information to Other Units
	10	DMV Files Checked			20	Order:

ACT#	DATE	Activity/Property and Evidence Release
1	05/03/99	CASE REVIEWED, MSG LEFT ON VICTIMS RECORDER TO CALL ME
	5-3-99	SPOKE W/ VICT.
	5-4-99	CONTACTED SILVER SADDLE SALOON 474-2900
		CHARLIE HOWELL WILL RECALL WITH BAND
		MEMBERS NAMES.
	5-5-99	HOWELL CALLED SAID "RAY" IS RAYMON
		ANACORDIAN PLAYER WHO THE BAND LET GO
	06-07-99	LEADS EXHAUSTED
	01-05-00	Dispo orders completed on Property in ACE K28046

Cleared by:



3662

Date: 06-08-99

Supervisor Initials:

JR

EXHIBIT "2"

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
OFFICER'S REPORT**

99028 01.181

DISTR.

INDEX

STATS

EVENT #: 990424-1124

SEXUAL ASSAULT

SUBJECT

DIVISION REPORTING:

ISD

DIVISION OF OCCURRENCE:

PD

DATE AND TIME OCCURRED:

04-24-99/0800HRS

LOCATION OF OCCURRENCE:

2101 SUNRISE AVE.
UNK APT. #
LAS VEGAS, NV 89101

DICTATING OFFICER:

DETECTIVE M. HNATUICK, P#3582
GENERAL ASSIGNMENT DETAIL

VICTIM:

DOB: [REDACTED]
SSN: [REDACTED]
WFA: 5'6", 165#, bro/haz
RES: [REDACTED]
Las Vegas, NV 89102
RES PH: [REDACTED]

SUSPECT:

RAY (first name only)
LMA, 28-30 yoa, 5'6", 180#, blk/bro
BUS: Silver Saddle Saloon
2510 E. Charleston Blvd.
Las Vegas, NV

I. SYNOPSIS:

On 04-24-99 at approximately 0800 hours [REDACTED] became the victim of a sexual assault at 2101 Sunrise Avenue in an unknown apartment.

II. PERSONS AT SCENE:**A. PATROL OFFICERS**

1. OFFICER V. WILLIAMS, P#4896
2. OFFICER K. WILEY, P#2663

Date and Time of Report:

04-25-99

Officer:

M. HNATUICK

P#: 3582

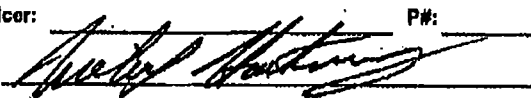
Approved:

Officer:

P#:

LVMPD 82 (REV. 1-91) - AUTOMATED

SIGNATURE:



99028 01.181

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/Event Number: 990424-1124

Page 2 of 6

B. ISD PERSONNEL

1. DETECTIVE M. HNATUICK, P#3582

C. CRIMINALISTICS

1. C.S.A. FLETCHER, P#5221

D. UNIVERSITY MEDICAL CENTER

1. S.A.N.E. NURSE MARIAN ADAMS

E. C.A.A.R. REPRESENTATIVE

1. ARLENE JEROUSEK

III. WITNESS/PERSON CONTACTED:A. PEREZ, MARIA

DOB: 06-05-68

LFA, 4'9", 175#, blk/bro

RES: 2851 E. Bonanza, Apt. 2156
Las Vegas, NV 89101

RES PH: 385-1438

BUS: 2400 Las Vegas Boulevard South
Las Vegas, NV 89109IV. EVIDENCE IMPOUNDED:

Pkg. 1, Item 1: Sexual assault kit recovered by S.A.N.E. Nurse Marian Adams and retained at University Medical Center.

Pkg. 2, Item 2: One (1) pair of black pantyhose.
Item 3: One (1) brown halter top.
Item 4: One (1) pair of black stretch pants.
Item 5: One (1) black jacket

V. DETAILS:

On 04-24-99 at approximately 1124 hours LVMPD Dispatch was notified by a [REDACTED] who stated she had been the victim of a sexual assault earlier in the morning. [REDACTED] responded to the Southeast Area Command where she was met by Officers Williams, P#4896, and Wiley, P#2663. And incident report was created

99028 01.181

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/Event Number: 990424-1124

Page 3 of 6

under the above event number. [REDACTED] informed officers that she had been sexually assaulted in an unknown apartment located at 2101 Sunrise Avenue. She stated that the suspect was known to her only as Ray. [REDACTED] stated she had met Ray at the Silver Saddle Saloon located at 2501 East Charleston. Lehr stated that Ray was a band member who was playing at the saloon. At this time Officer Wiley made a determination to notify General Assignment Detail.

VI. CRIME SCENE INVESTIGATION:**A. NOTIFICATION OF GENERAL ASSIGNMENT DETAIL**

On 04-24-99 at approximately 1345 hours I, Detective Hnatuick, P#3582, received a phone call from Officer Wiley who informed me that she was calling from the Southeast Area Command where she had a victim of a sexual assault present with her. Officer Wiley identified the victim as [REDACTED]

During this phone conversation with Officer Wiley, she informed me of the facts as she knew them. At that time I advised Officer Wiley to complete a crime report for sexual assault and transport victim [REDACTED] to University Medical Center where a sexual assault examination could be conducted. I informed Officer Wiley that I would meet them at the hospital.

I responded to University Medical Center where I was met by Officers Wiley and Williams, and the victim [REDACTED]. Officer Williams had completed a crime report under the above event number listing [REDACTED] as the victim of a sexual assault. I brought [REDACTED] into the quiet room at University Medical Center where we had a discussion reference her incident. Inside the quiet room I conducted a taped interview with [REDACTED]

During this taped interview [REDACTED] informed that at approximately 0800 hours she was inside an unknown apartment located at 2101 Sunrise Avenue with a male subject that she had just met that morning. [REDACTED] described the male subject as a Latin male adult, 28 to 30 years of age, known to her only as Ray. [REDACTED] stated that there was another unidentified Latin male adult inside the apartment whom she stated she did not know.

[REDACTED] stated that while they were inside this apartment, suspect Ray picked her up in a cradle-type position and carried her into the bedroom where he then forced himself on her sexually. During the struggle, [REDACTED] was pushed down to the ground, where suspect Ray pulled down her pants and her pantyhose below her knees. During the struggle, [REDACTED] stated she told Ray that she did not want this to happen and that she wanted to go. [REDACTED] stated

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

99028 01.181

ID/Event Number: 990424-1124

Page 4 of 6

she told the suspect this numerous times. [REDACTED] stated that once Ray had her pants and pantyhose below her knees, he performed oral sex on her, penetrating her vaginally with his tongue. [REDACTED] stated that when the suspect was finished doing this, he then attempted to penetrate her vaginally with his penis; however, complained that he could not get hard enough to make full penetration.

As a result of this struggle and sexual assault, [REDACTED] showed me a small vertical scratch that appeared on her chest. [REDACTED] also had several fingernails that were broken. Upon further examination, it was learned that [REDACTED] had bruises on her left forearm, upper left arm, right wrist, and the back of her right arm. There was redness on [REDACTED] lower back and a bruise on her right lower back. [REDACTED] indicated that these injuries were a result of the struggle.

After my interview with [REDACTED], she was taken to Fast Track where S.A.N.E. Nurse Marian Adams completed a sexual assault examination. After completing the examination, Adams informed me that the victim had little bruising in the vaginal area and that it was not definitive for sexual assault. The sexual assault kit was recovered by Nurse Adams and retained at University Medical Center.

While [REDACTED] was being examine, her friend Maria Perez responded to University Medical Center with the clothing the victim was wearing earlier in the morning. This clothing was the same clothing she had on during the assault earlier in the morning. After the incident occurred, [REDACTED] originally responded to her friend's house where she changed clothing. It was at University Medical Center, Fast Track, where I took possession of this clothing and impounded it as evidence. The clothing included one pair of black pantyhose, one brown halter top, one pair of black stretch pants, and a black jacket.

B. VISIBLE EVIDENCE AT CRIME SCENE

C.S.A. Fletcher, P#5221, responded to University Medical Center where I had her photograph the injuries that [REDACTED] had sustained during her altercation and sexual assault. Those injuries included the vertical scratch on her chest, the broken fingernails, and the above-mentioned bruising. For further information reference the photographs, please refer to the completed C.S.A. Report under the above event number.

99028 01.181

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

CONTINUATION REPORT

ID/Event Number: 990424-1124

Page 5 of 6

VII. INTERVIEW OF _____ BY DETECTIVE HNATUICK:

While at University Medical Center, I had an opportunity to conduct a taped interview with the victim _____ inside the quiet room adjacent to the emergency room.

During this taped interview, _____ informed me that she had had a baby approximately two years ago and had not gone out since that time. On the night of 04-23-99, she and her friend Maria Perez decided to go out for the evening. At approximately 0100, on 04-24-99, the victim _____ and Maria Perez were at the Silver Saddle Saloon located at 2501 East Charleston Boulevard. It was there that _____ was introduced to a Latin male adult known only to her as Ray. Ray was a member in the band that was playing at the saloon for the evening.

_____ stated that she had conversations with Ray and several drinks during the evening. Sometime around 0700 hours, it was decided by a group of people, to include _____, Perez, Ray, and some of the other employees of the Silver Saddle Saloon, that they would go out for the morning and go to another bar. _____ stated that she was a little unsure about this; however, she was assured that Ray was a decent person. Shortly after this, _____ went out to her vehicle and Ray went with her. It was determined that _____ would drive and Ray would get a ride with her. While in the vehicle, Ray informed her that he needed to stop by a friend's apartment and that it would only take a minute. He then directed _____ to drive to 2101 Sunrise Avenue.

Upon arriving at this address, suspect Ray stated that he would go in only for a minute and asked if _____ wanted to join him. _____ stated that she was not comfortable with the area of town that she was in and felt that it would be safer to go inside the apartment than to remain sitting in her vehicle. At that time she entered the unknown apartment with Ray. Inside this apartment was another Latin male adult, unknown to _____. _____ stated she was in the apartment for a short period of time when Ray picked her up in a cradling position and carried her into the bedroom. She stated this was approximately 0800 hours.

Once inside the bedroom of this apartment, Ray began fondling her breasts, attempting to take her clothes off. _____ stated that she told him numerous times that she did not want to do this and that he was to stop. It was at this time that Ray pushed her down to the ground and began removing her pants and pantyhose. Once the pants and pantyhose were down below her knees, Ray performed oral sex on her, penetrating her vaginally with his tongue and then attempted to penetrate her vaginally with his penis; however, _____ complained that he could not get enough of an erection to do so.

99028 01.181

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/Event Number: 990424-1124

Page 6 of 6

Once the incident was over, [REDACTED] left the apartment and went to her friend Maria Perez's house located at 2851 East Bonanza, Apt. 2156, where she changed clothing and subsequently later notified the police department.

MH:blw
991217

EXHIBIT "3"

99093 01.484

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 1

ENTERED
RD

EVENT #: 990424-1124

SPECIFIC CRIME: SEXUAL ASSAULTDATE OCCURRED: 04-24-99TIME OCCURRED: 0800-1000LOCATION OF OCCURRENCE: 2101 Sunrise Ave., Las Vegas, NV 89101 (unknown apartment number)

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: [REDACTED]

DOB: [REDACTED]

SOCIAL SECURITY #: [REDACTED]

RACE: W

SEX: F

HEIGHT: 5'6"

WEIGHT: 165

HAIR: BRO

EYES: HAZ

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS: [REDACTED]

HOME PHONE: [REDACTED]

Las Vegas, NV 89102

WORK ADDRESS:

WORK PHONE:

BEST PLACE TO CONTACT: residence

BEST TIME TO CONTACT:

RECEIVED
LVMPD
RECORDS SECTION
2000 JAN -6 P 6:12

The following is the transcription of a tape-recorded interview conducted by Detective M. Hnatulick, P#3582, LVMPD General Assignment Detail, on 04-24-99 at 1450 hours. The persons present during this interview are [REDACTED] and Detective Hnatulick

- Q. Okay, [REDACTED], if we could start, uh, just by, uh, I, I read the crime report and I understand a little bit about what happened. Start from the time that you and your friend arrived at the, uh, Silver Saddle is it, last night?
- A. Uhm, we went to the Silver Saddle. We got there about 1 a.m. and we were dancing and then I know she, early on that night had been dancing with him. He's a band member. I think he plays drums and bass and--

99093 01.484

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 2

EVENT #: 990424-1124

STATEMENT OF: [REDACTED]

Q. Do you know his name?

A. His name is Raymond. _____ Raymond.

Q. Okay. Can you describe for me?

A. Mhmm. He's a Hispanic male, about five six, five seven, uh, short black hair, black, uh, brown, brown _____ eyes, uh, dark color, medium-colored complexion. Uh, he was wearing a light shirt, black pants, uh, black tie and brown cowboy boots.

Q. Okay. Anything unusual about him? Uh, scars, marks, tattoos?

A. _____ all over his face.

Q. Scratches that he had--

A. _____

Q. Prior to you meeting him?

A. Prior to me meeting him.

Q. Okay. They look like new scratches, _____ scratches?

A. They looked like, uh, they had happened about four, five days ago.

Q. Okay. Were they--were they fairly deep scratches?

A. _____

Q. Okay.

A. _____

Q. Okay. Any other scars, marks, tattoos that you noticed?

99093 01.484

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 3

EVENT #: 990424-1124

STATEMENT OF: [REDACTED]

- A. Uh, no. _____ tattoos. He had been discussing that at the bar around... I turned around 5 a.m., checking on my son. Uh, I returned to the bar to pick up Candy and they were all talking and he discussed tattoos. He said he didn't have none. I didn't see any.
- Q. Okay. So there's a point in time after one o'clock in the morning that you left the bar and then came back.
- A. I returned my-- I had got a, my friend got a page that was with us that my son was awake and this first time I've ever left him alone in two years _____ gone out and I went and checked on him, made sure, he was upset and reassured him _____ back to sleep and returned to pick up Candy 'cause I was the designated driver. And I came back and she was here at the bar talking to them and they were very nice. There was bartender. _____ name starts with an A. And him, uh, Ray and off and on a security guard _____ I don't--I'm not re--really aware of them. They were all just sittin' there talking and then the bartender asked if after seven when he gets off work, if we all wanted to go to this other bar and--
- Q. I'm sorry. Who asked you that?
- A. The bartender.
- Q. _____
- A. I wanna say _____ or, uh, _____ with an A though.
- Q. Who was the friend that you were with at Silver Saddle?

99093 01.484

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 4

EVENT #: 990424-1124

STATEMENT OF: [REDACTED]

A. Uh, Maria. Maria. Call her Candy though, it's her nickname. I've known her for two years and we were--she, she goes there a lot, so everybody knows her. And I mean I felt comfortable with her and with the people there. Everyone was like yeah, he's a good guy, you know, _____, you know he'll take care of you, you know. And the bartender was really nice. He was a really nice gentleman. And Ray just very nice, you know never did anything disrespect any of us. And we had all decided that sure, we'll go. And I said I wanna be ____ you know back at Candy's house at ten, you know, and earlier than that because of my son and everything and they said okay. That's when _____ my son usually wakes up.

Q. What time did you leave the Silver Saddle with everyone?

A. We went outside approximately about seven, 7:15. Candy decided that she wanted to go see her friend Beto and have him come pick her up and she said meet me back at the house at ten, that way you know the kids don't think anything of us, you know we don't wanna give 'em a wrong impression, we show up at different times and anything like that. So I said okay, I'll meet you at your house at ten, okay. I'll meet you out, you know at, on the, at the parking lot. Says okay. And so I went with Ray.

Q. Did Ray drive? Was it his car?

A. _____ my car.

Q. Was your car. Okay.

99093 01.484

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 5

EVENT #: 990424-1124

STATEMENT OF: [REDACTED]

- A. Yes. Was my car. And he went with me and the bartender and his friend, which I had met yet, uh, we drive together and then there were other members of the bar that _____ also and wanna say P.T.'s Pub _____ and Ray said hey, he mentioned he had to go cash his paycheck _____ you know really _____ I said well, go to Showboat, they don't _____ okay. Now we were all gonna follow over there but the bartender forgot to take the stuff out of his car and I said well, why don't _____ just go there and head over there and cash paycheck and _____ you know _____ to the Showboat, we'll follow 'em over or... He says well, I know the bar too and then he just rolled down his window and said hey, you know what, we're gonna go ahead and take off. And I'm assuming that we're gonna go _____ at the bar, cash the check, you know at the bar. _____ stop by a friend's house real quick and _____ call my job and let them know that, uh, that you know he had option to come in or not on weekends and said I'm gonna call and tell I'm not gonna come in today, you know, _____ and I said okay. So he went over to Sunrise and 21st and _____ this neighborhood _____. He goes well, you wanna come in. I said yeah, I felt more comfortable being inside than I would sittin' out in my car. And so I went in there and _____ a young _____ 20-year-old Hispanic male. I don't remember his name. He was very nice.

99093 01.484

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 6

EVENT #: 990424-1124

STATEMENT OF: [REDACTED]

Q. Do you remember the apartment number?

A. _____ the apartment number. I know when you come in down Sunrise, that very first orange building with that pool and you got buildings to your right and buildings to your left. As you walk in, you go to the building on your left, door on your right _____.

Q. Now you say when you're heading down Sunrise, driving away from downtown or towards downtown?

A. Uh, I, I know how I got there was I took, uh, from, you go down Eastern from Bonanza going towards like Oakey and all that. Uh, you're gonna take a, a right on the street before that one-way and you go down and then it's, it's the second street. I think it's called Sunrise ____ it's one-way. You can only go one way. It's that first building, ah, on your left-hand side.

Q. Okay. Do you know if it's 2101 Sunrise?

A. Yes. It is 2101 Sunrise. I know that that's the particular building and it's the door on your right downstairs.

Q. Okay. So there came a time when you went into this apartment with him.

A. I went in there with him assuming that was gonna be just a couple minutes and you know I didn't feel any suspicions and he never touched me, never did anything to make me feel uncomfortable.

Q. About what time do you think this was?

99093 01.484

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 7

EVENT #: 990424-1124

STATEMENT OF: [REDACTED]

A. Probably between about I'd say maybe eight, 8:15, in that area. Uh, I did ask the time and they had said 8:30 and but it was like _____ minutes after I had been there and he said, uh, he talked to him and he introduced me to his friend. I don't remember the name. His friend was very nice, you know, tried to make me _____ I'm okay. And he said, they were speaking Spanish. I can't understand when they talk really, really fast. I _____ understand Spanish. They said something about him going _____, uh, him going, his friend going to the store real quick for him and coming back and I sat there, I said okay. You know he called his job and everything and we sat down for a few minutes talking and then, uh, he got up and started wantin' to dance. I said no, I think I need to go. _____ pick me up and started _____ in the bedroom and I said you know what, I don't need to go there, there's no reason for me to go there, can you put me down please. And I was trying to be nice, you know. And he just, said no, let's go in there. I said I have no reason to go in there.

Q. How many bedrooms were in apartment?

A. Uhm, I'm assuming two. He took me to the bedroom on, on _____ on the right. When you're walking in, you go to your right. And took me in there and I, I did struggle and attempt to try and get down but he had me on cradle position and he put me on the bed and lay on top of me and I said you know what, I never ever

99093 01.484

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 8

EVENT #: 990424-1124

STATEMENT OF: [REDACTED]

suggested this, gave you that impression, I was assuming we were going to meet your friends at the bar. I said will you please get off me, I don't do this.

Q. What type of clothing are you wearing _____

A. Uhm, I'm wearing a black cropped jacket. I have black pants and there's safety pins _____ because I lost weight and I wanted to fit them and I had a, uh, had a bra on and I had this, I wore the jacket because I had like a, it was a T-top but I don't feel comfortable having that much skin out, so I had this jacket to cover me. And I mean it wasn't anything _____ I mean it was sexy but it was not, you know revealing or anything like that and--

Q. Did you have any undergarments on?

A. Ahm, I had pantyhose on and... yeah, I had pantyhose on and my bra. And I had my black shoes. And he, uh, proceeded to try and _____ pushed him off and said _____ please stop, I don't wanna do this, I don't know you that well. And he started going to my neck and trying to lift up my shirt. I struggled and I know I pushed him off the bed and I got up to go and he turned me around and pinned me up against the wall and started _____ I said I don't care, you need to let me go. He wouldn't let me move _____ and that's when he flipped me over somehow and you know, uh, picking up my jacket, my shirt on my back and everything and, uhm, I tried to kick him and push him away and I don't remember but somehow I wound up on the floor and, uh, I did kick him. I kicked-- he got, he

99093 01.484

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 9

EVENT #: 990424-1124

STATEMENT OF:

started trying to pull off my pants _____ I remember stabbing him with it.

Q. Do you remember where?

A. Uhm, _____ right hand. It was kinda like on _____ back area. Didn't do anything. Didn't affect him. And, uh, I was just _____ I tried looking for things I could do to push him off and we did struggle. He kept trying to _____ my pants off. I kept grabbing them. Uhm, it was a back and forth battle. I tried kicking him. I couldn't get any leverage 'cause he was heavy and, uh, _____ I blanked out. He somehow got my pants down and had my legs up in the air and I tried taking him off and I mean I tried pushing him, squeezing my legs and _____. And, uh, I just blanked out after that. I bit my tongue and just cried. _____ Ahm, I tried reaching for objects. I got clothing. Nothing _____, you know I tried to put the clothing on his face and was just...

Q. Okay. Do you remember what sexual acts he performed on you?

A. Uhm, he did, uhm, _____ my breasts, uh, he did perform oral sex, tried to, I mean he did touch me there with his mouth and everything and I ____--

Q. You're talking on your vagina.

A. Yeah.

Q. Okay.

99093 01.484

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 10

EVENT #: 990424-1124

STATEMENT OF: [REDACTED]

- A. And I did kicked him and pushed him away, did what I could and I mean that's when he started unbuckling his pants, just threw my legs up and that's when I blanked out. And I remember _____
- Q. So, so there came a time when he either penetrated you vaginally with his penis or he attempted to.
- A. Uh-huh.
- Q. Okay. Do you know if he ejaculated?
- A. No, he did not. He didn't _____ He got up off me and I just... all of a sudden got up off me and just sat there _____ and I just grabbed my stuff and I kicked him and I said— he kept saying, uh, I shoulda listened, I shoulda listened and I said you're right, you shoulda listened, when I said no, no means no and now you're gonna get it. And _____--
- Q. How--- (Talking at same time)
- A. His head.
- Q. Do you know if he tried to put a condom on or anything like that?
- A. _____
- Q. Okay. About how long, from the time that he took you into the bedroom, 'til the incident was over? How long do you think that took?

99093 01.484

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 11

EVENT #: 990424-1124

STATEMENT OF: [REDACTED]

A. About 8:45, uhm, maybe approximately five minutes 'til ten or some-- I know when I got home at Candy's house, I went upstairs and I looked at the clock and it's 10:20

Q. And what happened after he apologized _____

A. He, he just sat there and he just was talking _____ when I say no, means no. He goes I wasn't referring to that. You know I'm like well, excuse me, I am, you know and grabbed my stuff. He said hey, don't you believe in fate. _____ just like off this rocker and he's like I guess my ex-wife was right, I'll never be able to have sex with another woman again. _____ I just looked at him and I said you know what, I don't care _____ I'm outta here _____ and took off and his friend was in the living room at the time and I was, I didn't even know he was back. And he saw me upset in tears and I was still struggling to, you know, arrange my clothes as I was walking out the door. I know two ladies saw me walk out upset and they just stared at me, you know, and like oh, God, I felt so dirty and I went in my car and he, the kid was asking me _____ was mad at him or somethin'. I'm like no, I'm not mad at you 'cause you know what, calling the police. _____ what, what, what. I told him _____ your friend's an asshole and he says what happened, I said, and I told him, he doesn't speak any English _____ Spanish. _____ tell him no, no is no. And he got the hint _____

99093 01.484

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 12

EVENT #: 990424-1124

STATEMENT OF: [REDACTED]

- Q. Okay. When you talk about being in the room, blacking out, did you actually lose consciousness?
- A. I didn't lose consciousness, I just couldn't believe this was happening.
- Q. You were just very, very upset?
- A. I was, I was in shock. I mean I was like, you know, I mean two years, I've not gone out two years, I had my son. The very first night I actually go out, this happens, you know.
- Q. Okay. While you were at Silver Saddle, did you have any drinks? Did anyone provide you with any drinks?
- A. Uhm, I had, when I first got there, I had a Nidori (phonetic spelling) that I didn't finish 'cause _____ too strong and I had one water. And then when I went back at five, I had, I ordered another one and I told make it lighter and still too strong. I never finished that. And we all did a shot _____ and that didn't even faze me. I mean it wasn't _____ to drink. I, I drank mostly water the whole night.
- Q. Do you normally drink alcohol?
- A. I, I don't feel comfortable getting drunk or out of my limit. Mean all that 'cause you're not in control of yourself. I did that when I was young, learned my lesson.
- Q. Okay. If you saw Ray again, you would remember what he looks like?
- A. Oh, yes, I would.
- Q. Okay. And you do wanna press charges, correct?

99093 01.484

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 13

EVENT #: 990424-1124

STATEMENT OF: [REDACTED]

A. I do.

Q. Okay. That ends this interview. Date and time is 04-24-99, at approximately 1505 hours.

I HAVE READ THIS STATEMENT CONSISTING OF 13 PAGES AND AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS VOLUNTARY STATEMENT WAS COMPLETED AT UNIVERSITY MEDICAL CENTER, 1800 WEST CHARLESTON BOULEVARD, LAS VEGAS, NEVADA 89102 ON THE 24TH DAY OF APRIL, 1999 AT 1505 HOURS.

WITNESS: _____

WITNESS: _____

MH/im
991212

EXHIBIT "4"

Las Vegas Metropolitan Police Department Forensic Laboratory Report of Examination Biology/DNA Forensic Casework		Distribution Date: November 17, 2016 Agency: LVMPD Location: Homicide & Sex Crimes Bureau Primary Case #: 990424-1124 Incident: Sexual Assault-Project Requester: Lora J Cody Lab Case #: 15-02847.3 Supplemental 1
Subject(s):	RAMON DORADO (Suspect) [REDACTED] (Victim)	

The following evidence was examined and results are reported below.

Lab Item #	Impound Pkg #	Impound Item #	Description
Item 6	007294 - 1	1	Reference standard from Ramon Dorado
*Refer to the supplemental report issued by Bode Cellmark Forensics dated 10/27/2016 for related information.			

DNA Results and Conclusions:

Item 6 was subjected to PCR amplification at the following STR genetic loci: D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S539, D2S1338, D19S433, vWA, TPOX, D18S51, D5S818, and FGA. The sex-determining Amelogenin locus was also examined.

LV15-0347-01.01.1-EF*

The full DNA profile obtained from the epithelial fraction of the vaginal swabs (LV15-0347-01.01.1-EF*) is consistent with [REDACTED] (LV15-0347-02.01.1*).

LV15-0347-01.01.1-SF*

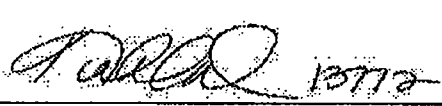
The DNA profile obtained from the sperm fraction of the vaginal swabs (LV15-0347-01.01.1-SF*) is consistent with a mixture of two individuals with at least one contributor being a male. The major DNA profile is consistent with Ramon Dorado (Item 6). The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the major DNA profile obtained from the evidence sample is approximately 1 in 1.45 sextillion. The minor alleles are consistent with [REDACTED] (LV15-0347-02.01.1*). The major DNA profile was previously searched against the Local DNA Index System (CODIS) and uploaded to the National DNA Index System (CODIS) for comparison.

The evidence is returned to secure storage.

Statistical probabilities were calculated using the recommendations of the National Research Council (NRC II) utilizing the FBI database (J Forensic Sci 44 (6) (1999): 1277-1286 and J Forensic Sci doi: 10.1111/1556-4029.12806; J Forensic Sci 46 (3) (2001) 453-489 and Forensic Science Communications 3 (3) (2001)). The probability that has been reported is the most conservative value obtained from the US Caucasian (CAU), African American (BLK), and Southwest Hispanic (SWH) population databases. These numbers are an estimation for which a deviation of approximately +/- 10-fold may exist. All random match probabilities, combined probability of inclusions/exclusions, and likelihood ratios calculated by the LVMPD are truncated to three significant figures.

Evidence collected directly from the body or personal items removed directly from the body are intimate sample(s); therefore, the donor may be reasonably assumed to be present should the item produce a DNA profile that is suitable for comparison. In instances in which contributors can be assumed, no statistical calculations were performed for the assumed contributors.

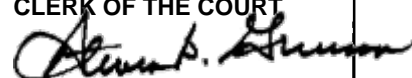
---This report does not constitute the entire case file. The case file may be comprised of worksheets, images, analytical data and other documents.---


 Kimberly D. Dannenberger, #13772
 Forensic Scientist II

- END OF REPORT -

EXHIBIT "3"

ORIGINAL

Electronically Filed
6/27/2017 11:21 AM
Steven D. Grierson
CLERK OF THE COURT

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JACOB J. VILLANI
Chief Deputy District Attorney
Nevada Bar #11732
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RAMON MURIL DORADO,
#1673321

Defendant.

CASE NO: C-17-323098-1

DEPT NO: II

RECEIPT OF COPY FOR DISCOVERY PROVIDED

RECEIPT OF COPY of the foregoing DISCOVERY:

1. One DVD labeled "Dorado Disc 1" containing files with the following names
(sizes):

- SANE Reports (4023KB)
- SANE Photos (223KB)
- EV - Archived Events - LLV990424001124 - - 4846 - PEREZ - MARIA
- 4_24_1999 (4043KB)
- EV - Courtesy Report_MP Affidavit - LLV990424001124 - - 4846 -
UNKNOWN - MARIA - 4_24_1999 (179KB)
- EV - Declaration of Warrant_Summons - LLV990424001124 - 1673321
- 4846 - UNKNOWN - MARIA - 11_22_2016 (65KB)
- EV - Forensic Lab Report_Analysis - LLV990424001124 - - 4846 -
UNKNOWN - MARIA - 10_23_2015 - (90KB)

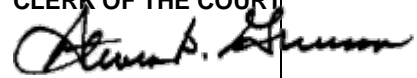
- EV - Forensic Lab Report_Analysis - LLV990424001124 - - 4846 - UNKNOWN - MARIA - 10_27_2015 - (92KB)
- EV - Forensic Lab Report_Analysis - LLV990424001124 - - 4846 - UNKNOWN - MARIA - 10_27_2016 - (59KB)
- EV - Forensic Lab Report_Analysis - LLV990424001124 - - 4846 - UNKNOWN - MARIA - 12_23_2015 - (61KB)
- EV - Forensic Lab Report_Analysis - LLV990424001124 - 0 - 4846 - UNKNOWN - MARIA - 11_17_2016 - (85KB)
- EV - Property Release_Temporary Release - LLV990424001124 - - 4846 - UNKNOWN - MARIA - 4_15_2015 (10KB)
- EV - Property Withdrawal_Return - LLV990424001124 - - 4846 - PEREZ - MARIA - 4_22_2015 (47KB)
- EV - Property Withdrawal_Return - LLV990424001124 - - 4846 - UNKNOWN - MARIA - 2_29_2016 (19KB)
- ID - Booking Voucher - LLV990424001124 - 1673321 - - DORADO - RAMON - 4_27_2017 (35KB)

is hereby acknowledged this 27 day of JUNE, 2017.

PUBLIC DEFENDER
ATTORNEY FOR DEFENDANT

BY 
PUBLIC DEFENDER

jv/SVU



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADATHE STATE OF NEVADA,
Plaintiff,

vs.

RAMON MURIL DORADO,
Defendant.CASE#: C323098-1
DEPT. IIBEFORE THE HONORABLE RICHARD F. SCOTTI, DISTRICT COURT JUDGE
THURSDAY, JULY 6, 2017**RECORDER'S TRANSCRIPT OF HEARING:
DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO PRESERVE
EVIDENCE**

APPEARANCES:

For the State:

JACOB J. VILLANI, ESQ.
Chief Deputy District Attorney

For the Defendant:

VIOLET R. RADOSTA, ESQ.

RECORDED BY: DALYNE EASLEY, COURT RECORDER

1 Las Vegas, Nevada, Thursday, July 6, 2017

2
3 [Hearing began at 10:06 a.m.]

4 MS. RADOSTA: Your Honor, I have another matter it's on
5 page 18. But it is another argument. I know you've had a bunch of them
6 I already called on your calendar this morning.

7 THE COURT: What page did you say?

8 MS. RADOSTA: 18, I believe.

9 THE COURT: I think we did 18.

10 MS. RADOSTA: Nope, 17. Sorry, my mistake.

11 THE COURT: Okay.

12 MS. RADOSTA: Dorado.

13 THE COURT: Yeah. Well, we can go forward without it,
14 might as well.

15 MS. RADOSTA: Thank you.

16 THE COURT: Let's go ahead and call it, State versus Ramon
17 Dorado C323098, Defendant's motion to dismiss for failure to preserve
18 evidence.

19 MR. VILLANI: Good morning, Your Honor, Jake Villani on
20 behalf of the State.

21 THE COURT: Hello, Mr. Villani. Alright. Give me a second to
22 get my folder here. Alright.

23 MS. RADOSTA: And for the record, Violet Radosta from the
24 Clark County Public Defender's Office on behalf of Mr. Dorado who is
25 present in custody.

1 THE COURT: Alright. So, two main issues here, I mean, on
2 the very first issue, is there a reasonable probability that if the supposed
3 evidence that's been identified by the defense had been available to the
4 defense then would the result have been different. So that has two parts
5 to it.

6 First of all, they have to -- you have to identify that there was
7 in fact evidence. You can't just speculate that something would have
8 been evidence. And then you're going to show that that evidence would
9 have provided a reasonable probability that the result would have been
10 different, which is a different standard than could have been different.
11 So, again, you can't speculate. And then if you meet that hurdle then
12 the next issue of course is, is was the State's failure to collect and
13 preserve the evidence, mere negligence, gross negligence, or bad faith.
14 And the State's position is you don't even get to the second issue, but
15 let's hear from the moving party first.

16 MS. RADOSTA: Thank you, Your Honor. Yeah, the -- our
17 position is that this is a case where it's not one or even two little pieces
18 of evidence that the State or that the Metro did not go and seek out,
19 such as in the case law that the State cites in their motion, a video or a --
20 some clothing or something like that. This is a complete and total lack of
21 investigation of an incredibly serious event. This is a sex assault case.
22 This is a woman saying that something happened against her will. And
23 the detectives in this particular case opted to just really not investigate at
24 all. They took her statement, they took her to the SANE exam, and then
25 they -- and I find this out from documents attached to the State's

1 opposition. There was a little bit of investigation beyond that, that they
2 went over to the Silver Saddle Saloon where the two --

3 THE COURT: Mm-hmm.

4 MS. RADOSTA: -- parties supposedly met. But beyond that,
5 that's it. There was no other real investigation in this case.

6 And the State consistently falls back on the position that, well
7 the detectives didn't know anything. How could they investigate
8 anything? And that's just simply not the case. They have their
9 complaining witness.

10 THE COURT: Well, and the State says that's all they -- that
11 was enough for them. That's all they needed to do. That all this other
12 supposed evidence that you wanted them --

13 MS. RADOSTA: Mm-hmm.

14 THE COURT: -- to collect would have been inculpatory not
15 exculpatory. That's their position, and that it's mere speculation for you
16 to assume that it would have been exculpatory. And there's nothing to
17 corroborate your position that this uncollected evidence would have
18 been exculpatory.

19 MS. RADOSTA: There's nothing to corroborate it, because
20 there was not investigation done. I mean, it's completely circular. How
21 can I prove that something would have been exculpatory if it was never
22 looked into? Sure, if you want to assume for the --

23 THE COURT: But how do we --

24 MS. RADOSTA: -- for the --

25 THE COURT: -- how do we meet the -- how do we meet the

1 reasonable probability standard if you don't have some corroboration
2 done? How do we -- how can I reach a conclusion that there might have
3 been a video at the Silver Spur Saloon --

4 MS. RADOSTA: Right.

5 THE COURT: -- and the video might have been exculpatory.
6 How do I reach the conclusion that this witness that they couldn't or that
7 they didn't try to find would have testified favorably to your client?

8 MS. RADOSTA: It --

9 THE COURT: How do -- how can I reach that conclusion that
10 it would have been -- number one, there would have been that evidence,
11 and number two it would have been exculpatory?

12 MS. RADOSTA: But the situation is, in all due respect, Your
13 Honor, you can't look at one or two individual little pieces of evidence.
14 This is everything. When you look at the entirety of what was not done
15 in this case there is no way my client can get a fair trial. They did not --
16 the State's position is they didn't know where to go look for this
17 evidence, and so that's just simply not the case. They had their
18 complaining witness who specifically identified a physical location of
19 2101 Sunrise Avenue. And then physically or then gave a physical --

20 THE COURT: Well the apartment complex and she
21 recollected that it was a downstairs corner unit somewhere --

22 MS. RADOSTA: A downstairs lower --

23 THE COURT: -- somewhere at the facility or --

24 MS. RADOSTA: -- she, and when she's speaking to the
25 detective she's like when you pull in you turn right and then you turn left

1 and then it's to this and this. And they also had her.

2 THE COURT: Right.

3 MS. RADOSTA: Put her in the car, drive her over to 2101
4 South -- Sunrise Avenue and have her point to the apartment where this
5 all allegedly happened. They just didn't bother. They have --

6 THE COURT: Yeah, but you're saying -- but you're saying
7 that in your brief you said that if they had gone to this place where she
8 was raped they could have checked the sheets and confirmed that his
9 DNA wasn't on the sheets. Well -- and the State says well that makes
10 no difference because his DNA was inside of her.

11 MS. RADOSTA: Not necessarily.

12 THE COURT: So I don't know how whether there was DNA or
13 not DNA, and then your position is well --

14 MS. RADOSTA: Signs of a struggle.

15 THE COURT: Well there -- that the bobby pin that she stuck
16 him with --

17 MS. RADOSTA: Mm-hmm.

18 THE COURT: -- maybe they wouldn't -- would or would not
19 have found it. If they didn't find it, I mean, that --

20 MS. RADOSTA: It's all about -- at this point the State --

21 THE COURT: -- is that -- yeah.

22 MS. RADOSTA: -- the State is in the position, Your Honor,
23 where well we have to take her word for it. Because that's the only
24 evidence there is. And the reason that's --

25 THE COURT: Okay.

1 MS. RADOSTA: -- the only evidence there is, is because no
2 further investigation was done. So the State gets to present this snowy
3 white version of her alleged story.

4 THE COURT: Yeah.

5 MS. RADOSTA: And there is absolutely nothing that the
6 defense can do to cross-examine her about it, because there was no
7 investigation done. If there -- the State's position is, oh this individual,
8 this roommate, or this friend that was inside the house well he very well
9 may have -- have backed up the complaining witnesses side of the story.
10 Or he may not have. There's no way to know, because nobody
11 investigated.

12 This is where the crux of cross-examination comes from. It
13 comes from the investigation and what was learned prior to charges
14 being filed. And in this case none of it was done. So they get to put her
15 on the stand, and this is her version of events, and how am I supposed
16 to argue against any of it? If -- I almost guarantee you, Your Honor, if I
17 would be able to locate the roommate, the friend, the unknown Latin
18 male. I almost guarantee you the authenticity of that witness would be
19 questioned by the State. That they would say, how in the world do we
20 know --

21 THE COURT: But he was your client's --

22 MS. RADOSTA: -- that this is the same individual?

23 THE COURT: -- he was your client's friend. Wouldn't your
24 client have a better way of tracking him down than Metro?

25 MS. RADOSTA: That's not -- not on that particular day, Your

1 Honor. If Metro had gone to the apartment on that particular day they
2 could have identified the person in the apartment. They could have
3 taken her and had her do a lineup. They could have done a million
4 things that they just didn't do. But if at this point and time, eighteen
5 years later I am able to locate that individual, I almost guarantee they're
6 going to question whether or not that's the same person. Or did I just
7 magically find a roommate, a friend of my client's.

8 And the problem -- therein lies the problem, because there
9 was no investigation done anything that I come up with the State is
10 going to be able to question. Because how do we know this is the same
11 person? To investigate, as the State put out there, or to go and
12 interview Candy, the friend of the alleged victim, now, nineteen, eighteen
13 years after the alleged incident. Wouldn't that -- what value is there to
14 her statement now? The value to her statement is the day her friend
15 went and reported the crime. What was her friend's demeanor like?
16 Was she upset about something else? Any number of a million things,
17 but today, she either won't know won't recall. She still could be friends
18 with this woman. She could know everything that's been going on in this
19 case.

20 The value of an interview with that woman now is not even in
21 the realm of how valuable it would have been had the detectives done it
22 back at the time when they are supposed to. I mean, she is somebody
23 that they absolutely knew existed. They didn't bother to go interview
24 her. And she spent time with the complaining witness before the police
25 report was filed. Before the charges were made.

1 THE COURT: So, I mean, I understand your argument there
2 that, I mean, certainly defense counsel would want to prove that there
3 was no struggle, because that suggests consent.

4 MS. RADOSTA: Right.

5 THE COURT: And the demeanor of the friend afterwards was
6 consistent with there being no rape. But, you know, I know --
7 understand why you would want all that evidence. And perhaps there
8 was negligence or even more than that by Metro at the time did not
9 pursuing it.

10 I'm still having trouble getting passed that first issue of, I
11 mean, we have all these things that you said. It would have been great
12 for me to go out and get all this evidence. I got to be convinced that
13 there is a reasonable probability that if the evidence had been available
14 the result would, would have been different. And it seems like a very
15 high standard that the Supreme Court has set.

16 MS. RADOSTA: I appreciate that.

17 THE COURT: And I don't know how --

18 MS. RADOSTA: I appreciate that point.

19 THE COURT: What are you providing me to help me be
20 convinced that the result would have been different based on, you know,
21 we don't know what these people would have said. We don't know what
22 would have been --

23 MS. RADOSTA: But --

24 THE COURT: -- found at the apartment. We don't know --

25 MS. RADOSTA: Right.

1 THE COURT: -- if there would have been evidence of a
2 struggle or not. We don't know these things.

3 MS. RADOSTA: Because the State did not do their job.

4 THE COURT: Right. But that's the second element.

5 MS. RADOSTA: And the State is now -- but the --

6 THE COURT: That's the second element. The Supreme
7 Court tells me, first of all get, you know, materiality and --

8 MS. RADOSTA: But so, the State gets to, for the sake of
9 argument, not investigate a case. Put together half or even a quarter of
10 the potential evidence, and then prosecute, and then say --

11 THE COURT: I don't like it either but that's not the --

12 MS. RADOSTA: -- and look there's nothing to contradict her
13 statement.

14 THE COURT: -- it's not a one factor test it's a two factor test.

15 MS. RADOSTA: But how in the world can the defense
16 produce evidence to show something would have been different
17 eighteen years after the fact of no investigation.

18 THE COURT: Well I've read some of the cases where it's
19 been done. And they have some -- there is some other corroborating
20 evidence that would suggest, you know, what this other evidence would
21 have been so I don't have to speculate. You know, there's a -- I didn't
22 see a case where defense counsel is simply arguing --

23 MS. RADOSTA: Because --

24 THE COURT: -- its theory of the case in arguing, Judge, this
25 evidence might have supported our theory of the case and we've been

1 denied that opportunity of presenting our theory of the case. And it was
2 just bad faith by Metro to collect this evidence. I haven't found a case,
3 and you didn't cite one that finds that there is a -- that there should either
4 be a presumption to the jury or dismissal in that situation.

5 MS. RADOSTA: And --

6 THE COURT: And if there is a case, but I didn't see one.

7 MS. RADOSTA: I --

8 THE COURT: And maybe there should be. But I don't --

9 MS. RADOSTA: Fair. And I think there should be. Because
10 in this particular situation, Your Honor, there's absolutely no way that my
11 client can get a fair trial in this scenario. There is multiple pieces of
12 evidence that were not followed up on and there's just no way.

13 Potentially the reason why there is no case out there is because in
14 situations like this prosecutor's offices decide that maybe this is not an --
15 this is not a case that should be tried. In a situation --

16 THE COURT: Right.

17 MS. RADOSTA: -- when their detectives did not follow
18 through with their end of the bargain. With their end of the -- I'm sorry
19 that was not -- that was inappropriate and I didn't mean with what I just
20 said, but did not follow up with their part of their job. This is not a
21 situation where the DA's Office at that point and time was even involved
22 in the case. This is a situation where Metro talked to the woman and
23 that was that and had her do an exam and that was that. And for
24 whatever reason, who knows why they didn't, maybe they themselves
25 had doubts about her credibility and they just put it in a drawer and didn't

1 deal with it.

2 Because at the time, for the sake of argument --

3 THE COURT: Yeah.

4 MS. RADOSTA: -- back in 1999 --

5 THE COURT: Yeah.

6 MS. RADOSTA: -- the State pointed out in their motion, you
7 know, we don't know what their resources were, we don't know this and
8 that and the other. I do. I've been a defense attorney. I've been a
9 Public Defender since before that. We were trying sex assault cases.
10 We were trying sex assault cases with DNA in them. We were trying sex
11 assault cases with SANE exams in them.

12 THE COURT: Okay.

13 MS. RADOSTA: And we were trying sex assault cases where
14 they went and investigated the crime scene, and went and interviewed
15 witnesses. They had the resources to do this, and for some reason in
16 this particular case they chose not to do it.

17 THE COURT: I'll let you have the last word. But let's get the
18 DA's take on this. But obviously it wasn't a very good investigation.

19 MR. VILLANI: Well --

20 THE COURT: So what do I do with that?

21 MR. VILLANI: And --

22 THE COURT: And it seems like their -- defense's hands are
23 tied. How can they get a fair -- how can they fairly cross-examine and
24 what does the Supreme Court think is the right thing to do under the
25 circumstance?

1 MR. VILLANI: Well and, Your Honor, I would disagree
2 respectfully with the fact that it wasn't a very good investigation. I would
3 say it wasn't an excellent investigation.

4 THE COURT: Okay.

5 MR. VILLANI: It would have been excellent police work for
6 these officers to go to that apartment complex, and knock on doors, and
7 try to find a young man who had a friend named Ray. That would have
8 been excellent police work. It would have been excellent police work for
9 them to go to the Silver Saddle, which they did, but to -- whether or not
10 the Silver Saddle had cameras I don't know, but if they did have
11 cameras, to collect that surveillance. And that's part of the problem is
12 we don't know if they had cameras.

13 So what I've done in my motion, and you've read it, Your
14 Honor, I just broken their argument down. I think accurately into about
15 eight points. And they're raising eight points in its entirety. And I think a
16 lot of these are a stretch.

17 So, first is the information regarding the male witness who was
18 present at the apartment before and after the rape. This is
19 unquestionably a friend of the defendant. The problem with locating this
20 young man is as we continue to fall back on they never had an exact
21 address. They had an apartment complex they perhaps had a floor that
22 the room was on. Like I said, would it had been excellent police work to
23 go out there and beat down doors? Absolutely it would have been. It
24 wasn't done.

25 What they did do, however, is they did collect the SANE exam,

1 okay. They took her over to collect the SANE exam. They did follow up
2 with the bar. Hey, you know, she said she met a guy here named Ray
3 who was in a band. Do you know a guy named, Ray, in the band?
4 Later, found out to be, Ramon, the accordion player who the band let go.
5 That's all documented in Metro evidence.

6 They did a recorded interview with the victim. Okay, did they
7 follow up with Candy? No, but they identified her by name, telephone
8 number, address, and it's all in the discovery. She is readily identifiable
9 and likely still around if the defense thinks it would help that case. I think
10 the elephant in the room is they don't. That's why they don't want to
11 follow up on that lead. Same with number one --

12 THE COURT: Or more likely she isn't going to remember
13 eighteen years later --

14 MR. VILLANI: Well I think it would be --

15 THE COURT: -- the details.

16 MR. VILLANI: -- a stretch to say she doesn't remember --

17 THE COURT: Well --

18 MR. VILLANI: -- when her friend was raped.

19 THE COURT: Well --

20 MR. VILLANI: Maybe not the details, right?

21 THE COURT: Details.

22 MR. VILLANI: But that's why the victim's statement being
23 recorded is important.

24 Stepping onto number two, information regarding the two
25 ladies who were staring at the victim as she drove from the scene of the

1 rape. This is a one sentence statement in her statement saying, as I ran
2 out I saw these two ladies and they were just staring at me, and then I
3 drove away. And that's all detectives had to go for. So, assuming they
4 were excellent, excellent detectives, went back to the scene, found two
5 ladies, and then interviewed these two ladies and said, hey did you see
6 another woman that you stared at as she ran away? What was her
7 demeanor? That would have been excellent police work. Is it
8 negligence not to do so, I don't think so with regard to number two.

9 Number three, service of a search warrant on the residence to
10 look for signs of a struggle and safety pins. What evidence do we have
11 of signs of a struggle? Well the CSA took photographs of the victim
12 afterwards. Broken finger nails, bruises everywhere, and then a SANE
13 exam nurse went in and found findings on her vagina from when she
14 had been raped. Semen was collected, that semen eventually ends to --
15 or ends up with the Defendant being arrested for this rape. So, service
16 of a search warrant on an unknown residence obviously problematic.
17 We argue that throughout our motion.

18 Number four, crime scene photos of an analysis of the bed
19 sheets, Your Honor hit this on the head. First of all, can't take crime
20 scene photos of a residence that's unknown. Second of all, what is the
21 bed sheet analysis going to show? Let's give it a best case scenario
22 somebody else's semen is on those bed sheets. Okay, now what is the
23 argument? Okay, so maybe somebody else had sex in that bed. The
24 problem with that argument is that his semen is inside of her vagina.
25 And so that's where that argument ends.

1 They can argue all they want about hey when Metro's up there
2 they can cross-examine them. You didn't collect those bed sheets, so
3 you don't know if anybody else's semen would be on those bed sheets.
4 They can absolutely make that argument. And they're wide open to do
5 so now. But what's the problem if we test those bed sheets and his
6 semen is on those bed sheets? Now it comes down against the
7 defense. So they don't have that wide open door to argue, so the bed
8 sheets aren't problematic for either side at this point.

9 Number four -- I'm sorry number five, the video footage, once
10 again, we don't have any evidence that either they did have cameras or
11 that those cameras were placed in positions where they would have
12 caught the interactions. Now what's the other problem with that is; we
13 know he was in a band at the Silver Saddle. We know that it's likely she
14 could have met him as he's in a band at the Silver Saddle. So if the
15 videos did show them together, or didn't show them together, what is
16 that going to show for either side?

17 THE COURT: Well, she's suggesting the -- well, alright, go
18 ahead.

19 MR. VILLANI: Well, and that's the problem with me not
20 knowing the defense's -- what defense the defense is going to mount in
21 speculating --

22 THE COURT: Alright.

23 MR. VILLANI: -- about that right is, is the defense that --

24 THE COURT: You can pass the video, what's the next one?

25 MR. VILLANI: Okay. Pass the video. Then we go to

1 interviews with bartenders to see how much each party had to drink.
2 Your Honor, I have a hard time believing that even today that would be
3 done. That is excellent, excellent, excellent police work if you're going to
4 go and interview the bartenders that gave these people drinks, okay.

5 One, because the victim's telling you that, look, I was a
6 designated driver I had one drink at the bar and that's it. And two, he's
7 not located. So they went back to bar to try to identify this man. But to
8 take that extra step to say, okay, so how much did Ray, the accordion
9 player, have to drink that night? Do you have the bartender on duty?
10 That's excellent police work. Is it negligent not to do so, I don't think so.

11 Again, number seven, the interview with Candy, I noted for the
12 Court, Candy is readily identifiable. Now, they obviously spoke to her to
13 be able to get her identifying information. Did they do a recorded
14 interview? No, they did not. Did she do a written statement or anything?
15 No, she didn't. Now, would that have been excellent police work? It
16 would have been. Is it negligent not to do so when she's identified, a
17 phone number is given, she's -- her name's given, she's readily
18 identifiable at that point, I don't think that's negligent either.

19 And then, number eight, the lack of a 911 call. This -- I
20 haven't been able to be -- to determine whether a 911 call was made or
21 not in this case. The discovery tends to indicate that she actually went
22 directly to the police station, and reported this. But then there is some
23 statement that 911 may have been made by the detective, the detective
24 who most recently did the buccal swab and all of that. So I've checked if
25 there was a 911 call, at this point it's been destroyed.

1 But what would that 911 call have shown? Okay, it's going to
2 be a 911 call from a victim who's, I'm guaranteeing you she is not going
3 to call 911 and say, hey I was not raped, and that's it. That's not what
4 that 911 call is going to say. It's going to say I was raped --

5 THE COURT: Well --

6 MR. VILLANI: -- and they're going tell her to come down and
7 report it. Now, would there have been inconsistencies, maybe, maybe
8 not. But then then that falls, the burden squarely, at this point is on the
9 defense to show that 911 call would have been exculpatory in some
10 fashion if it even exists. And they can't even show that it existed at this
11 point.

12 And finally, Your Honor, oh, actually that is the final point. So,
13 you take all of this in its entirety and it's all being stretched to make it
14 look like this huge deal, and this huge lack of investigation when it's just
15 not there. We're arguing this case as if there was no DNA. Now, if I had
16 a victim that came up and there was no DNA taken, and then years later,
17 Ray is identified, and comes in. There's zero DNA. It's her word against
18 his word, that's one thing. But here we have a lot of corroborating
19 evidence, and some of the most corroborating is the 1 in 1.4 sextillion
20 chance that he's not the guy that committed this rape.

21 So, that's what the State's relying on in this case. Just
22 because there's an over-abundance of evidence pointing his way does
23 not make it a bad investigation back when this was initially done. And I'll
24 submit it with that, Your Honor.

25 MS. RADOSTA: So, apparently the State's argument is, DNA

1 equals rape. That's it. DNA equals rape. DNA in --

2 THE COURT: Oh, no --

3 MS. RADOSTA: -- that's --

4 THE COURT: -- you have the victim's statement.

5 MS. RADOSTA: They have -- well sure, but every single --
6 every single point that he made was, because the victim is telling the
7 truth, this wouldn't have been helpful to the defense. Because the victim
8 is telling the truth, this wouldn't have been helpful to the defense. That's
9 their entirety. And that is exactly where the problem lays here, Your
10 Honor, because there was --

11 THE COURT: But where does it say in the law that the State
12 has an affirmative obligation to go out and seek and obtain impeachment
13 evidence? Where does it say that in the law?

14 MS. RADOSTA: No, not impeachment evidence, Judge.
15 Impeachment evidence comes from an investigation. They're not
16 seeking impeachment evidence. They are seeking evidence; they are
17 seeking the investigation. I can't tell you how many times the 911 call is
18 referenced in the police report as saying one thing, and then when you
19 listen to it, it says something completely different.

20 THE COURT: I've seen that, sure.

21 MS. RADOSTA: So, yeah, I will not dispute what Mr. Villani
22 said that it's not like she called up and said I wasn't raped. But she
23 might have called up and said, hey I just got into a big fight with
24 somebody, and you have no idea.

25 THE COURT: But, stop for a second, do you see what you

1 just said? You said it might --

2 MS. RADOSTA: It --

3 THE COURT: -- it might. Which --

4 MS. RADOSTA: But --

5 THE COURT: -- which is speculation. The test is would it
6 have been? Is there a reasonable probability, all right that that evidence
7 would have led to a different result? And we can't just say it might have.

8 MS. RADOSTA: But there's no way, with that standard when
9 the State --

10 THE COURT: That's the standard I have to follow.

11 MS. RADOSTA: No I --

12 THE COURT: I can't make up new law.

13 MS. RADOSTA: I am not refusing that, that's the standard.

14 But in this specific case, Your Honor, the State doesn't do the
15 investigation, and then they get to basically say, well, sorry defense
16 you're stuck with the really, really lackluster investigation here. Oh, by
17 the way, you're client's facing the rest of his life in prison but, you know,
18 burdens on you to do the investigation that you think is important here,
19 eighteen years after the fact. And by the way, they could have
20 submitted the DNA back then they didn't, they didn't. They're going to
21 say his DNA wasn't in the system back then. But they didn't submit it so
22 they didn't know his DNA wasn't in the system back then.

23 So, why once again, was there no -- wasn't that not done at
24 the time? It -- this is a situation, Judge, where there is something going
25 on here. The detectives either had real issues with this alleged -- with

1 this complaining witness or they are really bad at their job. But this is
2 the situation where they simply listen to her, did something for a day or
3 two and then put it in a drawer and didn't deal with it. They had the
4 ability to continue with this investigation and chose not to. And now, my
5 client, Mr. Dorado, is the one facing the repercussions of that completely
6 and -- complete and total lackluster investigation, Your Honor. And this
7 is not --

8 THE COURT: I suspect this isn't the only case where this
9 issue is --

10 MS. RADOSTA: This --

11 THE COURT: -- going to be addressed and there's obviously
12 very important public policy considerations here. And the Supreme
13 Court is going to -- because a lot of these, you know, these late DNA
14 tests are coming up.

15 MS. RADOSTA: I would disagree. I've had cases that were --
16 I'm not even kidding you, I tried a different case that was eighteen years
17 old.

18 THE COURT: Alright.

19 MS. RADOSTA: And that one they did do investigation on.

20 THE COURT: Okay.

21 MS. RADOSTA: And that investigation was done in 1982.

22 THE COURT: Alright.

23 MS. RADOSTA: And the trial was in like 2002. So, I've seen
24 this before and I've seen it done properly. This is just not that situation.

25 THE COURT: No. I appreciate your --

1 THE DEFENDANT: May I speak, Judge?

2 THE COURT: -- no, you don't get a chance to speak. You
3 have a lawyer here.

4 MS. RADOSTA: No.

5 THE COURT: Alright. I am respectfully denying your motion
6 to dismiss to preserve evidence. While I think that you have some valid
7 concerns, the remedy you seek is not something that I can grant.
8 Perhaps there some other remedy, but I don't know what it is. But for
9 what you're seeking now I can't grant it. Because I cannot find based on
10 the record before me that there is a reasonable probability that if the
11 evidence had been available to the defense that the result would have
12 been different. And that's the sole reason why I'm ruling. I'm not
13 reaching -- I'm not even reaching the second issue as to whether the
14 investigation was negligent, grossly negligent, or bad faith. So I'm
15 denying it on that sole issue, factor number one.

16 I'll ask the State to prepare the findings and
17 recommendations. And that stands to each of the pieces of evidence.
18 And as to, but let me further add, as to the following two things. As to
19 the one thing, the video tape, I'm not even convinced that a video tape
20 exists, so I'm not even convinced that, you know, that, that evidence
21 exists so that's another reason why you can't meet the standard. Alright.

22 So, you'll get the order and you can do with it what you can.

23 MS. RADOSTA: Excuse me, Your Honor, just for a second.

24 THE COURT: Yes, ma'am, go ahead. It's alright, Ms.
25 Rodosta.

1 [Colloquy between the defense attorney and the Defendant]

2 THE COURT: Alright. Just respectfully, I think you made a lot
3 of really good points, Ms. Radosta. But even in total it sounds like it's
4 speculative and we're merely arguing that certain evidence might have
5 been, or could have exculpatory. I don't think it -- it allows me to meet
6 the standard.

7 MS. RADOSTA: And, as I've said multiple times, it's -- I'm in
8 that position because of the original problem --

9 THE COURT: Maybe there's a different remedy.

10 MS. RADOSTA: -- of the lack of investigation.

11 THE COURT: I don't know what it is. But it's not this one.
12 So, I'm respectfully denying it. Alright.

13 MR. VILLANI: Thank you, Your Honor, will prepare it.

14 MS. RADOSTA: Thank you.

15 THE COURT: Thank you.

16 MR. VILLANI: And, Your Honor, I did have an oral request for
17 transcripts last time that I didn't receive yet. I just wanted to make sure
18 that that was noted.

19 THE COURT: I'm sure my court recorder is noting it now.

20 MR. VILLANI: Okay. Thank you, Your Honor.

21 MS. RADOSTA: Additionally, actually, slightly on the same
22 topic.

23 THE COURT: Yes, ma'am.

24 MS. RADOSTA: And it's something that I didn't raise in the
25 motion, but I should have. The audio recording of the complaining

1 witness's statement has not yet been provided to the defense. And this
2 is the situation where in the years the transcripts have gotten much,
3 much better coming out of Metro. This one, which I do have the
4 transcript but not the audio. There are huge blanks in her recitation of
5 the -- of the story that she gave to police, and so I'm making a formal
6 request for that audio to be turned over.

7 THE COURT: The actual audio that supports --

8 MS. RADOSTA: Yeah.

9 THE COURT: -- the transcript.

10 MS. RADOSTA: Yeah.

11 THE COURT: I think you're entitled to that. Can the State get
12 that --

13 MS. RADOSTA: Thank you.

14 THE COURT: -- to them promptly?

15 MR. VILLANI: Your Honor, the issue with that I don't know if
16 that audio is still around. But I will check into it, and if it exists --

17 THE COURT: Alright. Well, she's entitled to know if it exists.
18 So give her a written response as to whether the audio still exists, and
19 when you're willing to let her review it.

20 MR. VILLANI: Absolutely.

21 MS. RADOSTA: And, actually one other issue. I noticed
22 yesterday that the State has been filing ROC's regarding discovery
23 being picked up. And they're filing them in the case. Just for the record
24 the ROC's are be signed for by a runner from our office, not by me
25 personally.

1 THE COURT: Okay.

2 MS. RADOSTA: So, although the State is filing them and I'm
3 assuming at some point in the future might refer to them if discovery was
4 or was not turned over, they're not being signed by me so.

5 MR. VILLANI: Well, now, here's the issue with that, if they're
6 going to put it off on their runner, then I'm going to request that Ms.
7 Radosta come down and pick it up personally and sign for every one of
8 those personally. We're doing this as a courtesy. I'm doing it to record
9 it. But if the arguments going to be, my runner signed for that, that it
10 doesn't mean that I received all that discovery --

11 MS. RADOSTA: No, it's just that --

12 MR. VILLANI: -- then we have an issue.

13 THE COURT: Well it sounds like --

14 MS. RADOSTA: -- it's -- it's --

15 THE COURT: -- well it sounds like that is her position so you
16 just do --

17 MR. VILLANI: Okay.

18 THE COURT: -- whatever you need to do.

19 MS. RADOSTA: It's --

20 MR. VILLANI: Will do.

21 THE COURT: -- to preserve your --

22 MS. RADOSTA: Just to be clear, here's the problem, they're
23 listing out on the ROC what is on a disk. So there's no way in the world
24 my runner could know --

25 THE COURT: No, but when --

1 MS. RADOSTA: -- if what's on the disk is actually listed so.

2 THE COURT: -- but when you get it, I mean, if you want to
3 look over the disk and if there's something -- if you didn't receive what
4 he said you received why don't you --

5 MS. RADOSTA: And --

6 THE COURT: -- give them writing back saying --

7 MS. RADOSTA: And I --

8 THE COURT: -- you know, this is an error.

9 MS. RADOSTA: And I would just request, for the sake of
10 argument, that they put our name -- my individual name on something.
11 They're just --

12 THE COURT: Okay.

13 MS. RADOSTA: -- doing an ROC. Just for the sake of
14 argument, Mr. Villani knows I'm the attorney on this case and if he's
15 sending discovery over, just if you could put it to my --

16 THE COURT: But that --

17 MS. RADOSTA: -- there's 110 attorneys in the Public
18 Defender's Office, Judge, it could get lost.

19 THE COURT: That seems like a valid -- seems like a valid
20 request. I'm not going to make an order on that though.

21 MS. RADOSTA: Fair enough.

22 THE COURT: Because it's a discovery issue I don't think I
23 need to reach now --

24 MR. VILLANI: Okay.

25 THE COURT: -- but it does seem like a valid request.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. VILLANI: We'll handle it on our end.

MS. RADOSTA: Thank you.

MR. VILLANI: Thank you, Your Honor.

THE COURT: Okay, thank you.

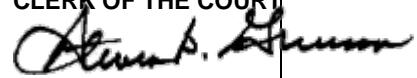
[Hearing concluded at 10:34 a.m.]

* * * * *

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



Rubina Feda
Court Recorder/Transcriber



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADATHE STATE OF NEVADA,
Plaintiff,

vs.

RAMON MURIL DORADO,
Defendant.CASE#: C-17-323098-1
DEPT. IIBEFORE THE HONORABLE RICHARD F. SCOTTI, DISTRICT COURT JUDGE
TUESDAY, AUGUST 15, 2017**RECORDER'S TRANSCRIPT OF HEARING:
DEFENDANT'S MOTION TO DISMISS FOR DESTRUCTION OF
EVIDENCE**

APPEARANCES:

For the State:

JACOB VILLANI, ESQ.
Chief Deputy District Attorney

For the Defendant:

VIOLET R. RADOSTA, ESQ.
Deputy Public Defender

RECORDED BY: DALYNE EASLEY, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, August 15, 2017

2
3 [Hearing began at 9:38 a.m.]

4 THE COURT: Page 4, State versus Ramon Dorado,
5 C323098.

6 MR. VILLANI: Good morning, Your Honor. Jake Villani on
7 behalf of the State.

8 MS. RADOSTA: Good morning, Your Honor. Violet Radosta
9 from the Clark County Public Defender's Office on behalf of Mr. Dorado.

10 THE COURT: Right. So I'm well familiar with this, I've read
11 all your papers. Any additional argument? If so, Ms. Radosta you may
12 go first.

13 MS. RADOSTA: Your Honor, I don't have much beyond what
14 I put in my initial motion and then my reply. But I do think it's worth
15 pointing out that there seems to be a bit of a circular reasoning on the
16 part of the State. That she's going to come in here and she's going to
17 testify at trial and I am perfectly able to cross-examine her at that point in
18 time based on any potential inconsistencies there are. But the problem
19 is without a complete transcript or the ability for us to make a complete
20 transcript by having the audio, I don't even know what the
21 inconsistencies are. How can I cross-examine her if I don't have the
22 answer to some of the questions that were asked initially by Detective,
23 and I couldn't even begin to pronounce his last name it's, H-A- or H-N-A-
24 T-U-I-C-K.

25 There is this idea, that oh well, I can just cross-examine with

1 what I've got and that should be fine. But I don't have her complete
2 statement, I just simply don't. And there is case law that states that, as I
3 pointed out in my reply there are cases that things like this have
4 happened here in the State of Nevada. And the case that I'm pointing to
5 specifically is *Cook v. State*. That when there are missteps by the
6 Detectives in a case and they do not maintain the audio recording of a
7 victim's statement along with other things in that particular case, that it
8 did rise to the level where dismissal of the charges was what was
9 proper.

10 In this particular case, Your Honor, it's not just that we don't
11 have the audio recording; it's that on top of all of the other things that
12 were not investigated. It's just -- it's piling on top of, piling on top of,
13 piling on top of, issue after issue after issue, of things that the State, --
14 I'm sorry, not the State. Mr. Villani wasn't involved in this case at the
15 investigation stage, but that the Detective did not do. And we are
16 completely now hamstrung in order to defend this case thoroughly and
17 properly, because we don't have any investigation that was done initially.

18 So okay, fine, we are then supposed to rely on her statement
19 and her testimony is the crux of the case. But we don't even have that
20 now. The State is saying that in their opinion that these blanks were
21 indiscernible, that that's why that they were not transcribed. That may
22 have been the case, but there's no way to know that any more than I can
23 know what's in the actual recording that no longer exists.

24 It's anecdotal evidence, Your Honor. But many, many times
25 I've listened to audio recordings when it's a blank and I can clearly make

1 out what was said, clearly make out what was said. Additionally this was
2 done in 1999. What could be done with an audio recording with today's
3 technology, it -- we could have the entire transcript if it had not been
4 destroyed.

5 Regarding whether or not this rises to the level of bad faith, as
6 I stated in my motion and the State agrees with this. It's done on a case
7 by case basis. There is no hard and fast rule as to what rises to bad
8 faith. And perhaps it's not the fact that it wasn't fully transcribed initially,
9 but it's the nonchalance with what apparently happened to this tape
10 down the line. Afterwards he takes the time to have it transcribed and
11 either doesn't check to see all of the blanks in it or doesn't care that
12 there are all these blanks in it and tosses it into a drawer in his desk, that
13 then presumably when he retires everything in his desk just gets thrown
14 away. It's just the nonchalance of that that I think brings this to the level
15 of bad faith.

16 He's a Detective with the Las Vegas Metropolitan Police
17 Department and who know's what other things were in his desk that
18 were just tossed away because he didn't have the time or the inclination
19 to go through all of that stuff. Why did he keep it if it wasn't important in
20 the first place? Why not just destroy it immediately upon the
21 transcription being done if there wasn't some value to it? Clearly there
22 was value to it otherwise the process would be transcribe, then we
23 destroy the audio. That's not what happened here. It was kept for a
24 period of time and they always do keep them. Whether or not they
25 booked them into evidence is another question.

1 But there -- as I stated, I think it's just the lack of care to a
2 critical piece of evidence in a case of sexual assault. Her version of the
3 facts is a critical version; it's a critical piece of evidence in this case. But
4 beyond that, Judge, this is the other -- the other standard is that this is,
5 you know, prejudicial to the Defense. As I stated already Judge, it's not
6 just this particular piece of evidence it's when you look at it in light of the
7 entirety of what hasn't been investigated in this case.

8 I can't cross-examine her about inconsistencies if they're not
9 on the page. It's just it's circular logic. How can I do that? What she's
10 testified to at the Grand Jury, was a few months ago, Judge. It wasn't
11 moments after or hours after the alleged assault occurred. That is the
12 most telling version of the events. And as I pointed out in my motion,
13 one of the more interesting questions that was asked that we don't know
14 the answer to in her transcript was, was this person wearing a condom.
15 And we have a blank space. We don't know the answer to that question.

16 I'm sure the State's answer to that question will be, well clearly
17 yes, because we have DNA. But maybe not, maybe her answer was,
18 I'm sorry, I'm sure the State's answer would be clearly, no, because we
19 have DNA. But maybe her answer was yes he was wearing a condom.
20 The person that attacked her at that apartment who she couldn't give a
21 name to and they never went and found that day. And she didn't identify
22 on that day.

23 But we have DNA now that links purportedly links my client to
24 the instance. But if she had answered yes, the person that attacked me
25 wore a condom then we're in a whole different ball game here, Judge.

1 Because then is my client even the person that was there that day?
2 Granted his DNA is there, but if she says that he wore a condom, the
3 person that attacked her wore a condom, then how did my client's DNA
4 -- how does my client's DNA fit into all of this. And we don't have the
5 answer to that question. Those are the situations that make this
6 prejudicial to the Defense, Your Honor. And I would submit to Your
7 Honor, that it rises to the level where a dismissal is warranted in this
8 case.

9 THE COURT: All right. Mr. Villani.

10 MR. VILLANI: And I addressed the majority of that in my
11 opposition, Your Honor. I just want to touch on a couple of points, first,
12 bad faith. I think this Court needs to really look into motivation when you
13 look into whether or not this was done in bad faith. Ms. Radosta made
14 the representation that these tapes were held for some time and then
15 destroyed. I don't know what the evidence of that is. They may have
16 been destroyed immediately. All I've been relayed is, I believe Your
17 Honor, has an email attached to one of the motions that's been filed in
18 this case is that, at a time, it was customary for them to get the tapes
19 transcribed and throw them in their desk.

20 Now you need to look at what would the detective have to gain
21 by having something that was exculpatory, for purposes of argument,
22 and going and having those tapes transcribed and then getting the tapes
23 back and destroying the tapes. The Defense has been unable to fill in
24 any of those blanks with something that would, I mean, this is the first
25 I'm hearing of the condom argument. But what does that matter? She

1 identified this man as the man who sexually assaulted her and there was
2 semen in her. Given that, I'm sorry, you're shaking your head?

3 MS. RADOSTA: She did not -- she's never identified at that
4 point in time my client as the person that assaulted her.

5 MR. VILLANI: She identified him at Grand Jury.

6 MS. RADOSTA: At Grand Jury, after --

7 MR. VILLANI: I'll clarify that.

8 MS. RADOSTA: -- she's most likely been made aware of the
9 fact that his DNA is a match, so.

10 MR. VILLANI: Okay. And part of my duty as a prosecutor I
11 will let this Court know, that I did not show her a picture beforehand and
12 say hey, this is the guy we have the DNA on. Does that look familiar to
13 you? That's not how that went. I never showed her a photograph until
14 in the Grand Jury.

15 But, moving on to the most telling version must be her version
16 right after the event. That used to be the way we thought of things. Now
17 there's a whole body of science called the neurobiology of trauma that it
18 actually informs us that as the trauma happens you get memories as the
19 distance between you and the trauma goes on. As you get therapy as
20 that sort of thing, because your mind actually blocks out what happened.
21 So I don't think that's something this Court should rely on.

22 And regarding the cumulateness of the evidence, Your
23 Honor, there is no cumulateness. Your Honor, has already ruled on
24 that first motion and found that the Defense did not meet their burden as
25 showing those items. They can't continue to come up with these items

1 that are non-pluses and push this Court over on a cumulativeness basis.
2 And with that Your Honor, I'll submit on that and my opposition.

3 THE COURT: What about the condom. How important is the
4 lack of a transcribed [sic] response to that question?

5 MR. VILLANI: Absolutely unimportant, because she can be
6 asked on the stand. And regardless of what her answer was, if her
7 answer was yes, well then it's also weird that his semen was in. Maybe
8 the condom broke. But how is that relevant one way or another as to
9 whether this is the man who she alleges raped her.

10 THE COURT: All right.

11 Let's hear the last word from Ms. Radosta.

12 MS. RADOSTA: Well, it could be very relevant. Maybe she
13 had sex with my client consensually the next day, later that day, who
14 knows. It's incredibly relevant. Once again, the State just presumes that
15 since the DNA is there that that is -- that equals the crime of sexual
16 assault, and that's simply not the way it works. That confirmed that
17 there was sexual contact, and that's it. There is an additional element to
18 the crime of sexual assault other than, you know, being there.

19 And sure, I can ask her the question on the stand at trial, but
20 her answer back at that point in time is the one that it would have been
21 the most truthful in my opinion, Your Honor. If she gets on the stand
22 now there is no doubt in my mind that she's going to say no, he wasn't
23 wearing a condom. I mean, I tell you my jaw would drop if she answered
24 yeah, he was wearing a condom. But they saw fit to ask her that
25 question, so the Detective thought that there was some amount of value

1 to that question, and yet we don't know what the answer was.

2 THE COURT: All right. Anything else?

3 All right. So this isn't an ideal -- it's not ideal obviously, but
4 you know, evidence is not always perfect and sometimes things get
5 missed and sometimes mistakes are made, you know. All this is why we
6 have a trial. We put it all before the jury and let the jury decide.

7 I think that the -- I've looked at the transcript here. I've looked
8 at all the blanks. I can figure out what, you know, in the context of -- I --
9 you can figure out what some of the blanks were supposed be or should
10 have been or most likely were. I see very little exculpatory value to the
11 loss of the audio tape here. I certainly don't see any -- I find there's no
12 bad faith. There's no evidence of any gross negligence by the State.
13 The Defense has failed to convince this Court that the audio tape itself is
14 exculpatory. There are some blanks in the transcript, as I said, I have
15 read it. I'm not convinced that any of the blanks are material here.

16 And I don't see that there's any prejudice, so I'm denying your
17 motion.

18 MS. RADOSTA: Just so that the Court's aware, Your Honor,
19 --

20 THE COURT: Mm-hmm.

21 MS. RADOSTA: -- we have no idea how long the blanks
22 lasted in all honesty.

23 MR. VILLANI: Your Honor, this is additional argument.

24 THE COURT: Yeah.

25 MR. VILLANI: I'd ask that your ruling stand.

1 MS. RADOSTA: And I just --

2 THE COURT: I think in context you can glean a lot, but say in
3 the context of the transcript I just don't see that the blanks are material
4 here. And so I'm denying your motion, okay.

5 MR. VILLANI: Thank you, Your Honor.

6 THE COURT: The State will prepare an order.

7 MR. VILLANI: Yes. Thank you, Your Honor.

8 MS. RADOSTA: Your Honor, yes actually if I can just raise
9 one quick issue and --

10 THE COURT: On this same case?

11 MS. RADOSTA: Yes, on the same case.

12 THE COURT: All right.

13 MS. RADOSTA: Mr. Dorado has routinely asked me if there
14 is, and with all apologies to the Court, if there is a basis to recuse Your
15 Honor as --

16 THE COURT: Okay.

17 MS. RADOSTA: -- Judge. It is my understanding and correct
18 me if I'm wrong, that there is not such a mechanism in place for criminal
19 judges. That that is only --

20 THE COURT: There is not a mechanism in place.

21 MS. RADOSTA: -- peremptory challenges are only for civil
22 judges and that is my understanding. Is that your understanding?

23 THE COURT: That's my understanding as well. You know, if
24 you thought that I had exhibited --

25 THE DEFENDANT: Prejudice.

1 THE COURT: -- if I have a conflict of interest you could raise
2 that. There's a mechanism to do that. You'd look at the Nevada Code
3 of Judicial Ethics for that.

4 MS. RADOSTA: Thank you, Your Honor.

5 THE COURT: Okay.

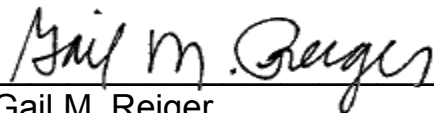
6 MR. VILLANI: Thank you, Your Honor.

7 THE COURT: Take a look at that. Thank you.

8 [Hearing concluded at 9:54 a.m.]

9 * * * * *

10
11
12
13
14
15
16
17
18
19
20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed
22 the audio/video proceedings in the above-entitled case to the best of my
23 ability.

24 
25 Gail M. Reiger
Court Recorder/Transcriber

C-17-323098-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 20, 2019

C-17-323098-1 State of Nevada
 vs
 Ramon Dorado

June 20, 2019 10:30 AM Jury Trial

HEARD BY: Jones, David M COURTROOM: RJC Courtroom 15A

COURT CLERK: Maldonado, Nancy

RECORDER: Murphy-Delgado, Melissa

REPORTER:

PARTIES PRESENT:

Bryan A. Schwartz	Attorney for Plaintiff
Genevieve C. Craggs	Attorney for Plaintiff
Jason Margolis	Attorney for Defendant
Mace J. Yampolsky	Attorney for Defendant
Ramon Muril Dorado	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

OUTSIDE THE PRESENCE OF THE JURY.
Jury Instructions SETTLED on the record.

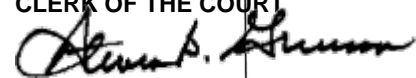
JURY PRESENT.
Testimony and exhibits presented (see worksheets). Defense RESTS. Jury Instructions read.
Closing arguments by State and Defense. At the hour of 1:09 PM, the jury retired to deliberate.

JURY PRESENT.
At the hour of 3:03 PM, the jury returned with a verdict in accordance with written verdict which was FILED IN OPEN COURT. Defendant Ramon Muril Dorado found GUILTY of Counts 1 - 3 SEXUAL ASSAULT.

OUTSIDE THE PRESENCE OF THE JURY.
Ms. Craggs requested Defendant's bail be revoked. COURT ORDERED, Defendant's bail REVOKED. COURT FURTHER ORDERED, matter referred to the Division of Parole and Probation (P&P) and SET for Sentencing.

CUSTODY

08/08/19 8:30 AM SENTENCING



JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

RAMON MURIL DORADO
#1673321

Defendant.

CASE NO. C-17- 323098-1

DEPT. NO. XXIX

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNTS 1, 2 and 3 – SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNTS 1, 2 and 3 – SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366; thereafter, on the 13th day of August, 2019, the Defendant was present in court for sentencing with counsel MACE J. YAMPOLSKY, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the \$25.00 Administrative Assessment Fee plus \$3.00 DNA Collection Fee, the Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows: **COUNT 1 – LIFE**

<input type="checkbox"/> Nolle Prosequi (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal
<input type="checkbox"/> Guilty Plea with Sent. (before trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input checked="" type="checkbox"/> Conviction
<input type="checkbox"/> Other Manner of Disposition	

1 with a MINIMUM parole eligibility of TEN (10) YEARS; **COUNT 2** - LIFE with a
2 MINIMUM parole eligibility of TEN (10) YEARS, CONSECUTIVE to COUNT 1; and
3 **COUNT 3** - LIFE with a MINIMUM parole eligibility of TEN (10) YEARS, CONCURRENT
4 with COUNTS 1 and 2; with EIGHTY HUNDRED FORTY-FOUR (844) DAYS credit for
5 time served. As the \$150.00 DNA Analysis Fee and Genetic Testing have been previously
6 imposed on 12/01/04, the Fee and Testing in the current case are WAIVED. The
7 AGGREGATE TOTAL sentence is LIFE with a MINIMUM PAROLE ELIGIBILITY OF
8 TWENTY (20) YEARS.
9

10 DATED this 19 day of August, 2019.
11

12
13
14 DAVID M. JONES
15 DISTRICT COURT JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28

CLERK OF THE COURT
Ann B. Gannon

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4

STATE OF NEVADA,
Plaintiff(s),
vs.
RAMON MURIL DORADO,
Defendant(s).

MONDAY, JUNE 17, 2019

APPEARANCES:

For the Defendants: MACE J. YAMPOLSKY
JASON MARGOLIS

Kennedy Court Reporters, Inc.
800.231.2682

1 Las Vegas, Nevada, Monday, June 17, 2019

2 [Case called at 11:04 a.m.]

3
4 [OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY.]

5 THE COURT: Morning, everyone.

6 MS. CRAGGS: Morning, Your Honor.

7 MR. YAMPOLSKY: Morning.

8 THE COURT: Go ahead and be seated, guys.

9 All right. As far as what we're going to tell this jury,
10 how long we looking at?

11 MS. CRAGGS: I think by the end of the week,
12 Your Honor, is what we think.

13 THE COURT: Okay. 'Cause --

14 MR. YAMPOLSKY: Easy.

15 THE COURT: Yeah. Tomorrow, I'm gonna be a little
16 bit late 'cause I have to cover, I believe, Judge Kephart's
17 calendar on top of mine. So we were hoping to start early,
18 but maybe start about 11:00 tomorrow, just in case.

19 MS. CRAGGS: Based on some stipulations we were
20 hoping to put on the record, we've been able to significantly
21 cut down our witness list.

22 THE COURT: Perfect. All right. We ready to go on
23 the record?

24 THE COURT RECORDER: Yeah, we're already --

1 THE COURT: Oh, all right.

2 C-17-323098, Counsel, appearances. Let's put the stuff
3 on the record we need to get to.

4 MS. CRAGGS: Genevieve Craggs for the State,
5 Your Honor, 13469.

6 MR. SCHWARTZ: Bryan Schwartz for the State, 13244.

7 MR. YAMPOLSKY: Mace Yampolsky and Jason Margolis
8 for Mr. Dorado. My bar number's 9245.

9 MR. MARGOLIS: 12439.

10 THE COURT: Thank you, Counsels.

11 MR. YAMPOLSKY: And seated at counsel table is
12 Maureen Alvarez, who's a paralegal from our office.

13 THE COURT: I know who the workers are.

14 MR. YAMPOLSKY: Got that right.

15 THE COURT: All right. Counsel, anything else that
16 needs to come before the bench before we get started?

17 MS. CRAGGS: Yes, Your Honor. We just wanted to put
18 on the record, talking with Defense counsel, they've
19 essentially stipulated to the DNA, that the Defendant's DNA
20 was found. So we are still calling one DNA person from
21 Metro's lab. But we've made an agreement that, you know, we
22 don't need to discuss chain of custody, call a bunch of other
23 people, get the folks from out of state to come in.

24 THE COURT: Perfect.

1 MS. CRAGGS: So that's cut down our witness list.

2 There's a motion in limine that was filed late last week
3 by the Defense that I can respond to orally this morning,
4 Your Honor, or I'd be happy to get a written opposition in to
5 you by the end of the day.

6 THE COURT: Well, I've already read through it and,
7 basically, if you want, Counsel, if you think you need a
8 written one or if you think you can do it orally, we can
9 handle it orally.

10 MS. CRAGGS: I can do it orally, Your Honor.

11 THE COURT: All right. Let's do it.

12 MS. CRAGGS: Your Honor, I believe, based on the
13 case law, it does appear that -- and the underlying facts of
14 this case, that it does appear that this goes to the victim's
15 truthfulness to some degree. My main concern is that, based
16 on the motion in limine filed by the Defense, they want to
17 talk about, it appears, what goes far beyond what would be
18 appropriate.

19 The Defense writes in their motion that they want to talk
20 about her probation, her -- what possibly caused her to get
21 revoked, what possibly caused her to get reinstated, all
22 records that we don't have I don't think would go to her
23 truthfulness at all.

24 You know, based on the statute that is out there, it does

1 talk about that they can ask specific questions, but that they
2 can't bring in extrinsic evidence that can't be collateral.
3 And there is a balancing test that the court needs to do to
4 determine whether or not it is more prejudicial than
5 probative.

6 So while we understand that, to some degree, this is
7 allowed to come in, I didn't understand, completely, what all
8 the Defense was planning on getting into because we would have
9 an objection to it going, you know, farther than just sort of
10 the basic "this was a bad check that was cashed," "there was a
11 conviction for conspiracy to commit a crime."

12 And based on the case law that was cited -- and that's
13 pretty much what's out there, Your Honor, which is why I
14 didn't do a written opposition at this point -- it appears
15 that that would be going far beyond what the Supreme Court
16 would be allowing.

17 THE COURT: Counsel?

18 MR. MARGOLIS: Your Honor, we feel like we're
19 entitled to inquire into the conviction because it goes to
20 credibility. Now, to the extent that we're not able to go
21 into extraneous activities, I would argue that that, to some
22 degree, is part and parcel the same thing. If she was brought
23 up on revocation at one point, it would have -- potentially,
24 she could have been dancing with a different conviction. And

1 if that was also dishonesty, to the extent that it was --

2 THE COURT: Counsel, do you have any proof of what
3 it is?

4 MR. MARGOLIS: I don't.

5 THE COURT: You're speculating.

6 MR. MARGOLIS: I don't.

7 THE COURT: All right. So you'd be speculating.
8 You'd be pushing speculation upon this jury, would you not?

9 MR. MARGOLIS: I would acquire the records before I
10 went and did any questions about it. But I mean, to the
11 extent all we have is the conviction, I'm perfectly happy to
12 inquire just the conviction.

13 THE COURT: Okay. This is what I'm going to allow
14 you to do: You're gonna allowed to be asked -- you're allowed
15 to ask questions in regards to the conviction because it goes
16 to a crime of dishonesty or untruthfulness; okay? And that's
17 where you're gonna be able to stop.

18 As far as revocations and everything else, I was able to
19 tell you -- look into it and I can tell you this: It's just
20 like any other revocation hearings. Some portions of it may
21 deal with dishonesty, some of it deal with, according to the
22 Defense counsel, a lazy PNP officer. We're not gonna get into
23 that.

24 MR. MARGOLIS: Okay.

1 THE COURT: I mean, it's the same argument that you
2 guys make in front of me almost on a daily basis, "Your Honor,
3 yeah, my guy did smoke a little bit of dope, but the PNP
4 officer never called him back." Okay. I'm not gonna allow
5 you to do that because you're gonna be speculating as to why
6 the judge may or may not have revoked, what the judge was
7 thinking, what was part of that process.

8 But as far as the conviction, in regards to that
9 conviction, you're allowed to ask in regards to that
10 conviction because it clearly goes to dishonesty. I looked at
11 it, the weighing of it, it is a dishonesty. It's in the time
12 span in which we're -- it's -- the problem is we have an old
13 case to begin with. And the acts that happened in that time
14 period, I'm going to allow you to ask questions about. But
15 anything else beyond that, absolutely not.

16 MR. MARGOLIS: Okay. Thank you, Your Honor.

17 THE COURT: Understood?

18 MS. CRAGGS: Thank you.

19 THE COURT: All right. Anything else that needs to
20 come before the Court?

21 MR. SCHWARTZ: Your Honor, I have one thing for jury
22 selection. For this case, if you wouldn't mind, when you ask
23 the jury about if they know anyone who had been convicted of a
24 crime or knew -- are they a victim or knew anyone who's a

1 victim, can you ask a separate question asking them if
2 anyone -- if they know or if they themselves have been the
3 victim of sexual assault? Just to add a kind of separate --
4 'cause seen in the past some jurors don't necessarily consider
5 that when you say, "Have you been convicted or a victim of a
6 crime." So that would be --

7 THE COURT: Counsel, any objection to that?

8 MR. YAMPOLSKY: We have no objection.

9 MR. MARGOLIS: Yeah, no.

10 THE COURT: What I'll do is -- and most of you guys
11 have tried cases in front of me. I ask very few questions
12 during voir dire. I allow the attorneys to earn their living
13 by doing the voir dire. I will ask whether or not they have
14 been a victim of a violent crime. Then I will ask a very
15 specific question whether or not they or a direct -- we want
16 to make it -- limit it to family members or do we want to
17 extend it beyond family members to -- 'cause otherwise you're
18 gonna get into, "Yeah, my third best friend that I had in high
19 school got," you know --

20 MR. SCHWARTZ: I think family or close friends is --

21 THE COURT: Okay.

22 MR. MARGOLIS: Yeah.

23 THE COURT: Okay. I have no problem with doing
24 that. I'll do family or close friendships.

1 Any other questions that you would like to come from the
2 bench rather than from the attorneys?

3 MR. SCHWARTZ: That's the only one. Thank you, Your
4 Honor.

5 THE COURT: Defense?

6 MR. YAMPOLSKY: No, Your Honor.

7 THE COURT: Okay. As you may have seen, coming in
8 this morning, we have a whole host of prospective jury pools
9 this morning. In fact, is there -- I don't want to say
10 "housing," but they're holding some of them in courtrooms
11 outside of just the jury selection area. So I'm sure it's
12 going to take us a while to get the group up here.

13 Because of the pending charges, of course, we're gonna be
14 qualifying 32. You'll have eight and one. This is how I do
15 all of this: Basically is -- because we cannot qualify 32 in
16 the box, so to speak. It's gonna be the box, plus this front
17 row, plus the additional people that are gonna be the 32 on
18 that front row.

19 When someone is taken from that, quote, "32," we don't
20 start with number 28 or something else. It's the very next
21 one that's available comes into the 32; okay? So don't get
22 confused with just because there's a group of individuals
23 sitting in the actual gallery, they're part of the 32.

24 So if number 31 gets taken out, it's not the one next

1 door to 32 that slides over. It's the first person available
2 in the rest of the jury pool that comes into that group of 32;
3 okay? So just make sure you understand.

4 The way I do my preemptives is really simple. We're
5 gonna qualify 32; okay? We're gonna seat 12 jurors and 2
6 alternates. Make sure you're paying attention, Counsel,
7 because this mistake happens about once every four or five
8 trials. We're gonna sit 12 jurors, 2 alternates. Even though
9 this is a short trial, we're getting into the summer
10 vacations. We're getting into holidays. We're getting into
11 the time period where -- for some reason, every time we try
12 cases in this time period, we always lose one.

13 So I don't ever want to lose one and then be, "hopefully
14 no one else gets sick the night before." So we'll do 12 and
15 2. You'll have eight for your main body, one for the
16 alternate. The last four people in the jury line -- so 32,
17 31, 30, and 29 -- are your alternate pool. Those last four
18 are your alternate pool. Each side gets one strike. The last
19 two of that four, those are your alternates. It's that
20 simple.

21 We don't do lottery. We don't do pick out of a hat.
22 It's the last four are your jury pool -- last four are your
23 alternate jury pool. Each get to strike one of that. Last
24 two remaining will be your alternates.

1 For some reason, someone the other day decided to use one
2 of their preemptory strikes on what would be a potential
3 alternate in their main body. I don't know why they decided
4 to do that, but they just wasted a strike. It didn't affect
5 anything because they never got to that person.

6 [DISCUSSION OFF THE RECORD.]

7 THE COURT: And, Counsel for the Defendant, we dress
8 out, always, behind the door. Never in my courtroom. Last
9 thing I want is a juror to accidentally step in here and seeing
10 your client dress out. So he dresses out, always, behind the
11 closed door.

12 [DISCUSSION OFF THE RECORD.]

13 [RECESS AT 11:16 A.M.; PROCEEDINGS RESUMED AT
14 11:36 A.M.]

15 [OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY.]

16 THE COURT: Counsel, are we ready?

17 MS. CRAGGS: Yes, Your Honor.

18 MR. MARGOLIS: Yes.

19 MS. CRAGGS: Well --

20 MR. MARGOLIS: Assuming --

21 MS. CRAGGS: Other than Mace and the Defendant, yes,
22 Your Honor.

23 MR. MARGOLIS: We are not ready.

24 [DISCUSSION OFF THE RECORD.]

1 THE COURT: Counsel, we ready? I got a jury sitting
2 out there for the last 40 minutes.

3 MR. YAMPOLSKY: Yes, Your Honor.

4 THE COURT: Okay. Go ahead and bring them in.

5 [DISCUSSION OFF THE RECORD.]

6 THE MARSHAL: All rise for the jury.

7 [IN THE PRESENCE OF THE PROSPECTIVE JURY.]

8 THE COURT: Thank you. Please be seated.

9 Good morning, everyone.

10 THE JURY: Good morning.

11 THE COURT: I apologize for delays. Usually it's
12 the four and a half an hour line that we have coming into the
13 building. I think I'm kind of like Disneyland sometimes. We
14 need to put little turn styles in there, let you guys come in
15 a lot quicker.

16 My name's David Jones. I am the judge in Department 29,
17 the 8th Judicial District Court. Now this is -- the important
18 part is usually before a jury trial starts. I actually get to
19 meet everyone and go over into the general introduction that
20 you guys had this morning.

21 And what's funny to me is, when you got your jury
22 summons, most of you probably thought, "Oh, anything besides
23 an IRS audit would be worse." What's funny is everybody who
24 ever says that has never once served on a jury. I don't know

1 where it started and when it started, but for some reason
2 everybody hears "jury summons" and they think it's the end of
3 the world.

4 I can tell you this: I've tried cases all over the
5 country and in different countries. What's amazing is I've
6 never once had a single juror -- and I've met tens of
7 thousands of you -- who after the jury experience said, "You
8 know what, Your Honor? That was terrible. That was a bad
9 experience. I can't believe I did that." Not a single one.

10 And fact is, those of you who have actually served on a
11 jury can educate the rest of your jurors and say, "Yes, it is
12 actually not a bad thing." It is one of the few things --
13 it's one of only two things that you get to do as citizens of
14 Clark County as part of your voice. The other is to vote.
15 And we know a lot of people don't do that. But what's amazing
16 is, you get the right to serve on a jury.

17 And the reason I think that's very important is, a lot of
18 countries are doing away with the jury system, mainly because
19 people don't show up. Well, in the United States, we have a
20 way to kind of make you show up. Some countries, they don't
21 do that. But what's amazing is, they're now doing away with
22 the jury system and they're making the decisions fall in the
23 lap of one person, such as myself.

24 I can tell you as that one person, I think that's a

1 horrible idea. The fact that if they had a person, such as
2 myself, that made all the determination, not just all the
3 evidentiary or the legal determinations, but actually made the
4 factual determinations, I think that day will be the day I
5 step off of the bench because it is up to you to make those
6 determinations.

7 What's amazing is all you have to do is look in the
8 crowd. This is who Clark County is. Some old guy like myself
9 is not Clark County; okay? Even though I was born and raised
10 here; okay? I've been here my entire life. I am only one
11 part of Clark County.

12 So what I'm going to do now is go through, basically, the
13 jury system. Have you guys -- this morning, if you were
14 waiting in line, saw all the rest of your jurors. I have been
15 told by the attorneys in this case, this case will be given to
16 the jury by the end of this week. Therefore, this is not one
17 of those cases that's gonna go over weeks and weeks.

18 There are those cases pending. There's one in one of the
19 departments here that I'm being told is going to go six
20 months. Those are always fun to try as an attorney and/or a
21 judge; okay?

22 So it's amazing the difference. This is a case that,
23 basically, is going to span this week. I, just like this
24 morning, have other matters that I hear. Most of the time,

1 the Court will start, for you, around 10:00 to 10:30 each of
2 the days. Okay. That's about it. We start a little bit
3 later because, in the morning, I have a bunch of attorneys
4 that appear in front of me for hours on end. And then we go
5 to jury trial.

6 What I do in my jury systems is quite simple. I
7 basically make sure that everybody in the room understands
8 that the jury is the most important people. As you noticed
9 when you first came in, we all stood when the jury walked in.
10 You haven't even been sworn in yet and all the officers of the
11 court, all the officers in their uniforms, and the judge
12 himself or herself stands for the jury. That shows you how
13 much respect we have for the jury. Okay?

14 Husbands, don't try it at home. It doesn't work. You
15 can't even wear a black robe and get your wife to stand. My
16 wife tells me one simple rule, the second I step into the
17 garage, she's in charge. I am number two. I think she means
18 that both ways, too.

19 So what I'm going to do now is right now is I have to
20 make sure that every one of you is allowed to be here as a
21 prospective juror. That means if you're not a citizen of the
22 United States and/or you're a felon who has not had or -- his
23 or her rights restored, I need to know. Does anybody qualify
24 in that position? Is either not a citizen of the

1 United States or is a convicted felon who has not had their
2 civil rights restored?

3 Perfect. Oh, sir. We're going to get my Mr. Microphone.
4 You kind of have to do the karaoke thing here.

5 JUROR 1086: No problem.

6 THE COURT: And, sir, just so the record's clear, I
7 need to know your last name and you should have a little
8 number on your badge that tells us a badge number.

9 JUROR 1086: Last name is [JUROR NO. 1086].

10 THE COURT: Okay.

11 PROSPECTIVE JUROR #1086: And do you want the juror
12 number or the badge number?

13 THE COURT: Just go with the badge number.

14 PROSPECTIVE JUROR #1086: The last four are 1086.

15 THE COURT: Thank you, [JUROR NO. 1086].

16 And which rule is to apply to you, sir?

17 PROSPECTIVE JUROR #1086: Convicted felon.

18 THE COURT: Okay. And you have not had your civil
19 rights restored to sit as a member of a jury?

20 PROSPECTIVE JUROR #1086: Not to my knowledge,
21 Judge. Could I expand a little?

22 THE COURT: Sure.

23 PROSPECTIVE JUROR #1086: I was in the colonoscopy
24 case about five years ago.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR #1086: I made it to the fifth day
3 and that's when the judge at that time brought me in for
4 interviews, just by myself.

5 THE COURT: Right.

6 PROSPECTIVE JUROR #1086: And we went through three
7 different series of interviews and they found out I had a
8 47-year-old marijuana conviction from Texas --

9 THE COURT: Okay.

10 PROSPECTIVE JUROR #1086: -- at that time. And they
11 dismissed [indiscernible] --

12 THE COURT: Okay.

13 PROSPECTIVE JUROR #1086: -- the jury. I would be
14 more than happy to serve and be proud to serve if that was the
15 case.

16 THE COURT: Okay. Thank you, sir.

17 Anyone else?

18 All right. Now, before I have -- and I know you guys
19 have probably heard it and everybody has this. All of us have
20 lives outside of what's going on in this courtroom; okay?
21 Even the attorneys. Even the judge; okay?

22 Now, understand this: If I sent you back -- if someone
23 comes and says, "Your Honor, you know what? I've got this
24 job. I just can't miss another day," or something like that.