

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO MERINO OJEDA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
May 16 2019 04:25 p.m.
No. 77917 Elizabeth A. Brown
Clerk of Supreme Court

**Appeal from a Judgment of Conviction, Case No. CR15-0829
The Second Judicial District Court of the State of Nevada
Honorable Lynne K. Simons, District Judge**

JOINT APPENDIX

JOHN L. ARRASCADA
Washoe County Public Defender

JOHN REESE PETTY
Chief Deputy

350 South Center Street, 5th Floor
Reno, Nevada 89501

Attorneys for Appellant

CHRISTOPHER J. HICKS
Washoe County District Attorney

JENNIFER P. NOBLE
Chief Appellate Deputy

One South Sierra Street, 7th Floor
Reno, Nevada 89501

Attorneys for Respondent

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¹ Not included in this appendix are the eight exhibits attached to the State’s motion, which constitute approximately 371 pages. The exhibits are identified at page 47 of this appendix. The factual claims in the State’s motion that reference these exhibits are not contested

DA #15-2756
RPD RP04-36689

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7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
8 IN AND FOR THE COUNTY OF WASHOE

9 * * *

10 THE STATE OF NEVADA,

11 Plaintiff,

Case No.: CR15-0829

12 v.

Dept. No.: D06

13 FRANCISCO MERINO OJEDA,

14 Defendant.

15 INFORMATION

16 CHRISTOPHER J. HICKS, District Attorney within and for the
17 County of Washoe, State of Nevada, in the name and by the authority
18 of the State of Nevada, informs the above entitled Court that
19 FRANCISCO MERINO OJEDA, the defendant above named, has committed the
20 crime of:

21 MURDER WITH THE USE OF A DEADLY WEAPON, a violation of NRS
22 200.010, NRS 200.030, and NRS 193.165, a felony, (F720) in the manner
23 following:

24 That the said defendant, FRANCISCO MERINO OJEDA, on
25 September 17 to September 23, 2004, or thereabout, and before the
26 filing of this Information, at and within the County of Washoe, State

1 of Nevada, did willfully, unlawfully, and with malice aforethought,
2 deliberation, and premeditation, kill and murder Kyla Annan, a human
3 being, in that the defendant strangled the victim, and/or asphyxiated
4 the victim by compressing her chest or abdomen or using his hands or
5 arms to cover her mouth and nose, or the defendant killed the victim by
6 other unknown means, thereby inflicting mortal injuries upon Kyla Annan
7 from which she died between September 17, 2004, and September 23, 2004,
8 and the Defendant did use a deadly weapon in the commission of the
9 crime, which was a bat, rod, dowel, or electric cable, which the
10 defendant used to subdue and incapacitate Annan, and to cut off her
11 oxygen, by forcefully placing the implement across and pressing it
12 against her neck and throat or chest; or

13 That the defendant FRANCISCO MERINO OJEDA did willfully and
14 unlawfully kill Kyla Annan in the perpetration or attempted
15 perpetration of the felony crimes of burglary and/or sexual assault,
16 in that the killing occurred when the defendant entered Annan's
17 residence at 624 Quincy Street in Reno, with the intent to commit
18 sexual assault, assault and/or battery upon a person, sexual
19 penetration of a dead human body, or larceny therein, and thereafter
20 the defendant did beat and strike Annan about the face, head, and
21 extremities; did bite Annan about the breast; did use a deadly weapon,
22 which was a bat, rod, dowel, or electric cable, which the defendant
23 used to subdue and incapacitate Annan, and to cut off her oxygen, by
24 forcefully placing the implement across and pressing it against her
25 neck and throat or chest; did subject Annan to sexual penetration
26 against her will by forcibly causing her to submit to anal and/or

1 vaginal intercourse or did sexually penetrate Annan's dead body; and
2 did inflict mortal injuries upon Annan by strangling and/or
3 asphyxiating her, from which she died.

4 All of which is contrary to the form of the Statute in such
5 case made and provided, and against the peace and dignity of the
6 State of Nevada.

7
8 CHRISTOPHER J. HICKS
9 District Attorney
10 Washoe County, Nevada

11 By: /s/ LUKE PRENGAMAN
12 LUKE J. PRENGAMAN
13 6094
14 CHIEF DEPUTY DISTRICT ATTORNEY
15
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17
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26

1 The following are the names and addresses of such witnesses
2 as are known to me at the time of the filing of the within
3 Information:

4 RENO POLICE DEPARTMENT

5 DUSTIN ALLEN
6 RON CHALMERS
7 ROYA MASON
8 JEFFREY HOYT
9 WENDY VAN DIEST
10 LYLE STEPHENS
11 DEBORAH THOMPSON
12 TERRY K. NAUGHTON
13 L. DUKE STEFFENS

14 TONI LEAL-OLSEN, WASHOE COUNTY CRIME LABORATORY

15 TRAVIS GORDON MILLER, 50 BUTTE PL., RENO, NV 89503

16 REMSA,

17 MARIKIA MORRIS, WASHOE COUNTY MEDICAL EXAMINER'S OFFICE

18 CHRISTIE ELLIOTT, WASHOE COUNTY MEDICAL EXAMINER'S OFFICE

19 LUIS ALTAMIRANO, FEDERAL BUREAU OF INVESTIGATION

20 The party executing this document hereby affirms that this
21 document submitted for recording does not contain the social security
22 number of any person or persons pursuant to NRS 239B.230.

23 CHRISTOPHER J. HICKS
24 District Attorney
25 Washoe County, Nevada

26 By: /s/ LUKE PRENGAMAN
LUKE J. PRENGAMAN
6094
CHIEF DEPUTY DISTRICT ATTORNEY

PCN: RPD1504378C-OJEDA

DA #15-2756
RPD RP04-36689

FILED

AUG 07 2018

JACQUELINE BRYANT, CLERK
By: *Jacqueline Bryant*
DEPUTY CLERK

CR15-0829 DC-09900087227-001
STATE VS. FRANCISCO MERINO O J Pages
District Court 08/07/2018 02:00 PM
Washoe County 1095
JIMARTIN
DOC

CODE 1800
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No.: CR15-0829.

v.

Dept. No.: D06

FRANCISCO MERINO OJEDA,

Defendant.

AMENDED INFORMATION

CHRISTOPHER J. HICKS, District Attorney within and for the
County of Washoe, State of Nevada, in the name and by the authority
of the State of Nevada, informs the above entitled Court that
FRANCISCO MERINO OJEDA, the defendant above named, has committed the
crime of:

MURDER OF THE FIRST DEGREE, a violation of NRS 200.010 and
NRS 200.030, a felony, (50005) in the manner following:

That the said defendant, FRANCISCO MERINO OJEDA, on
September 17 to September 23, 2004, or thereabout, and before the
filing of this Information, at and within the County of Washoe, State
of Nevada, did willfully, unlawfully, and with malice aforethought,

1 deliberation, and premeditation, kill and murder Kyla Annan, a human
2 being, in that the defendant strangled the victim, and/or asphyxiated
3 the victim by compressing her chest or abdomen or using his hands or
4 arms to cover her mouth and nose, or the defendant killed the victim by
5 other unknown means, thereby inflicting mortal injuries upon Kyla Annan
6 from which she died between September 17, 2004 and September 23, 2004;
7 or

8 That the defendant FRANCISCO MERINO OJEDA did willfully and
9 unlawfully kill Kyla Annan in the perpetration or attempted
10 perpetration of the felony crimes of burglary and/or sexual assault,
11 in that the killing occurred when the defendant entered Annan's
12 residence at 624 Quincy Street in Reno, with the intent to commit
13 sexual assault, assault and/or battery upon a person, or larceny
14 therein, and thereafter the defendant did beat and strike Annan about
15 the face, head, and extremities; did bite Annan about the breast; did
16 subject Annan to sexual penetration against her will by forcibly
17 causing her to submit to anal and/or vaginal intercourse or did

18 ///

19 ///

20 ///

21 ///

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23 ///

24 ///

25 ///

26 ///

1 sexually penetrate Annan's dead body; and did inflict mortal injuries
2 upon Annan by strangling and/or asphyxiating her, from which she
3 died.

4 All of which is contrary to the form of the Statute in such
5 case made and provided, and against the peace and dignity of the
6 State of Nevada.

7
8 CHRISTOPHER J. HICKS
9 District Attorney
10 Washoe County, Nevada

11 By: /s/ LUKE PRENGAMAN
12 LUKE J. PRENGAMAN
13 6094
14 CHIEF DEPUTY DISTRICT ATTORNEY
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1 The following are the names and addresses of such witnesses
2 as are known to me at the time of the filing of the within
3 information:

4 RENO POLICE DEPARTMENT

5 DUSTIN ALLEN
6 RON CHALMERS
7 ROYA MASON
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9 WENDY VAN DIEST
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17 MARIKIA MORRIS, WASHOE COUNTY MEDICAL EXAMINER'S OFFICE

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21 document submitted for recording does not contain the social security
22 number of any person or persons pursuant to NRS 239B.230.

23 CHRISTOPHER J. HICKS
24 District Attorney
25 Washoe County, Nevada

26 By: /s/ LUKE PRENGAMAN
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR15-0829

11 v.

Dept. No. 6

12 FRANCISCO MERINO OJEDA,

13 Defendant.
14 _____/

15 GUILTY PLEA MEMORANDUM

16 1. I, FRANCISCO MERINO OJEDA, understand that I am
17 charged with the offense of: Murder of the First Degree, a violation
18 of NRS 200.010 and NRS 200.030, a category A felony.

19 2. I desire to enter a plea of guilty to the offense of
20 Murder of the First Degree, a violation of NRS 200.010 and NRS
21 200.030, a category A felony, as more fully alleged in the Amended
22 Information filed against me.

23 3. By entering my plea of guilty I know and understand
24 that I am waiving the following constitutional rights:

25 A. I waive my privilege against self-incrimination.

26 B. I waive my right to trial by jury, at which trial the

1 State would have to prove my guilt of all elements of the offense
2 beyond a reasonable doubt.

3 C. I waive my right to confront my accusers, that is, the
4 right to confront and cross examine all witnesses who would testify
5 at trial.

6 D. I waive my right to subpoena witnesses for trial on my
7 behalf.

8 4. I understand the charge against me and that the
9 elements of the offense which the State would have to prove beyond a
10 reasonable doubt at trial are: That I, FRANCISCO MERINO OJEDA, on
11 September 17 to September 23, 2004, or thereabout, within Washoe
12 County, Nevada, did willfully, unlawfully, and with malice
13 aforethought, deliberation, and premeditation, kill and murder Kyla
14 Annan, a human being, in that I strangled the victim, and/or
15 asphyxiated the victim by compressing her chest or abdomen or using my
16 hands or arms to cover her mouth and nose, or I killed the victim by
17 other unknown means, thereby inflicting mortal injuries upon Kyla Annan
18 from which she died between September 17, 2004 and September 23, 2004;
19 or

20 That I did willfully and unlawfully kill Kyla Annan in the
21 perpetration or attempted perpetration of the felony crimes of
22 burglary and/or sexual assault, in that the killing occurred when I
23 entered Annan's residence at 624 Quincy Street in Reno, with the
24 intent to commit sexual assault, assault and/or battery upon a
25 person, or larceny therein, and thereafter I did beat and strike Annan
26 about the face, head, and extremities; did bite Annan about the breast;

1 did subject Annan to sexual penetration against her will by forcibly
2 causing her to submit to anal and/or vaginal intercourse or did
3 sexually penetrate Annan's dead body; and did inflict mortal injuries
4 upon Annan by strangling and/or asphyxiating her, from which she
5 died.

6 5. I understand that I admit the facts which support all
7 the elements of the offense by pleading guilty. I admit that the
8 State possesses sufficient evidence which would result in my
9 conviction. I have considered and discussed all possible defenses
10 and defense strategies with my counsel. I understand that I have the
11 right to appeal from adverse rulings on pretrial motions only if the
12 State and the Court consent to my right to appeal in a separate
13 written agreement. I understand that any substantive or procedural
14 pretrial issue(s) which could have been raised at trial are waived by
15 my plea.

16 6. I understand that the consequences of my plea of guilty
17 are that I may be imprisoned in the state prison: (1) For life
18 without the possibility of parole; (2) For life with the possibility
19 of parole, with eligibility for parole beginning when a minimum of 20
20 years has been served; or (3) For a definite term of 50 years, with
21 eligibility for parole beginning when a minimum of 20 years has been
22 served. I understand that I am not eligible for probation.

23 7. In exchange for my plea of guilty, the State, my
24 counsel and I have agreed to recommend the following: The State and
25 I will each be free to argue for an appropriate sentence. The State
26

1 will not file additional criminal charges or enhancements resulting
2 from the arrest in this case.

3 8. I understand that, even though the State and I have
4 reached this plea agreement, the State is reserving the right to
5 present arguments, facts, and/or witnesses at sentencing in support
6 of the plea agreement.

7 9. I also agree that I will make full restitution in this
8 matter, as determined by the Court. Where applicable, I additionally
9 understand and agree that I will be responsible for the repayment of
10 any costs incurred by the State or County in securing my return to
11 this jurisdiction.

12 10. I understand that the State, at their discretion, is
13 entitled to either withdraw from this agreement and proceed with the
14 prosecution of the original charges or be free to argue for an
15 appropriate sentence at the time of sentencing if I fail to appear at
16 any scheduled proceeding in this matter OR if prior to the date of my
17 sentencing I am arrested in any jurisdiction for a violation of law
18 OR if I have misrepresented my prior criminal history. I represent
19 that I do ^{NOT} have a prior criminal record, ~~which includes one felony~~ ^{KH F. 0}

20 ~~conviction.~~ I understand and agree that the occurrence of any of
21 these acts constitutes a material breach of my plea agreement with
22 the State. I further understand and agree that by the execution of
23 this agreement, I am waiving any right I may have to remand this
24 matter to Justice Court should I later withdraw my plea.

25 11. I understand and agree that pursuant to the terms of
26 the plea agreement stated herein, any counts which are to be

1 dismissed and any other cases charged or uncharged which are either
2 to be dismissed or not pursued by the State, may be considered by the
3 court at the time of my sentencing.

4 12. I understand that the Court is not bound by the
5 agreement of the parties and that the matter of sentencing is to be
6 determined solely by the Court. I have discussed the charge, the
7 facts and the possible defenses with my attorney. All of the
8 foregoing rights, waiver of rights, elements, possible penalties, and
9 consequences, have been carefully explained to me by my attorney. My
10 attorney has not promised me anything not mentioned in this plea
11 memorandum, and, in particular, my attorney has not promised that I
12 will get any specific sentence. I am satisfied with my counsel's
13 advice and representation leading to this resolution of my case. I
14 am aware that if I am not satisfied with my counsel I should advise
15 the Court at this time. I believe that entering my plea is in my
16 best interest and that going to trial is not in my best interest. My
17 attorney has advised me that if I wish to appeal, any appeal, if
18 applicable to my case, must be filed within thirty days of my
19 sentence and/or judgment.

20 13. I understand that this plea and resulting conviction
21 will likely have adverse effects upon my residency in this country if
22 I am not a U. S. Citizen. I have discussed the effects my plea will
23 have upon my residency with my counsel.

24 14. I offer my plea freely, voluntarily, knowingly and
25 with full understanding of all matters set forth in the Amended
26 Information and in this Plea Memorandum. I have read this plea

1 memorandum completely and I understand everything contained within
2 it.

3 15. My plea of guilty is voluntary and is not the result
4 of any threats, coercion or promises of leniency.

5 16. I am signing this Plea Memorandum voluntarily with
6 advice of counsel, under no duress, coercion, or promises of
7 leniency.

8 17. I do hereby swear under penalty of perjury that all of
9 the assertions in this written plea agreement document are true.

10
11 AFFIRMATION PURSUANT TO NRS 239B.030

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

14 DATED this 7 day of August, 2018.

15
16 Francisco-Ojeda
17 DEFENDANT

18 Martin C. Luis
19 TRANSLATOR/INTERPRETER NVDMC636

20 [Signature]
21 Attorney Witnessing Defendant's Signature

22
23 _____
24 Prosecuting Attorney
25
26

A P P E A R A N C E S

FOR THE STATE:

LUKE J. PRENGAMAN
Deputy District Attorney
1 South Sierra Street
Reno, Nevada

FOR THE DEFENDANT:

KATHERYN HICKMAN
Deputy Public Defender
350 South Center Street
Reno, Nevada

THE DEFENDANT:

FRANCISCO MERINO OJEDA

THE INTERPRETER:

MARIA DAVIS

1 RENO, NEVADA, TUESDAY, AUGUST 7, 2018, 2:35 P.M.

2 -o0o-

3
4 THE COURT: This is Case No. CR15-0829, state of Nevada
5 versus Francisco Merino Ojeda.

6 Good afternoon, Mr. Ojeda.

7 THE DEFENDANT: Good afternoon, Your Honor.

8 THE COURT: And the record will reflect that Mr. Ojeda
9 is here with a certified court interpreter.

10 And Miss Interpreter, have you had an opportunity to
11 speak with Mr. Ojeda today?

12 THE INTERPRETER: Yes, Your Honor, I have. This is the
13 interpreter speaking.

14 THE COURT: Have you had any difficulty understanding
15 him or conversing with him?

16 THE INTERPRETER: No, Your Honor.

17 THE COURT: Please state your appearances.

18 MR. PRENGAMAN: Good afternoon, Your Honor. Luke
19 Prengaman for the State.

20 MS. HICKMAN: Good afternoon, Your Honor. Kate Hickman
21 on behalf of Mr. Ojeda.

22 THE COURT: As I indicated, this was the time set for
23 pretrial motions. We had an upcoming jury trial set for
24 September 10, 2018. I understand from my clerk that a guilty
25 plea memorandum has been entered into; is that correct?

1 MS. HICKMAN: That is correct.

2 THE COURT: And an amended information has been filed
3 or just provided to the Court, Mr. Prengaman?

4 MR. PRENGAMAN: Provided to be filed in open court,
5 Your Honor.

6 THE COURT: The minutes will reflect that the amended
7 information will be filed in this case.

8 Do you need a copy of it, Miss Hickman, or do you have
9 one?

10 MS. HICKMAN: Thank you, Your Honor. I am in receipt
11 of that amended information. Mr. Ojeda's name is correctly
12 spelled on line 12. We are familiar with what is in the amended
13 information.

14 THE COURT: If I can ask you just to slow down for the
15 interpreter.

16 MS. HICKMAN: We waive a formal reading and advisement.
17 In exchange for his pleading guilty, the parties will be free to
18 argue for an appropriate sentence.

19 I do have a signed guilty plea memo. There's one
20 correction on page 4. It was corrected via interlineation, and
21 all parties have initialed it. If I may approach. It is signed.

22 THE COURT: The record will reflect that Miss Hickman
23 has provided the Court with a copy of the guilty plea memorandum.
24 In reviewing it, I do see at page 4 the initials of both counsel
25 as well as Mr. Ojeda. And that will be entered into the minutes

1 that that is an appropriate interlineation.

2 All right. Would you please swear Mr. Ojeda.

3 (Defendant sworn.)

4 THE COURT: Mr. Ojeda, did you hear what your counsel
5 described as the negotiations in this case?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And did you agree with them?

8 THE DEFENDANT: Yes.

9 THE COURT: At any time during the course of this
10 canvass regarding your plea if you don't understand something,
11 please ask the interpreter to advise me. Okay?

12 THE DEFENDANT: Uh-huh. Okay. Thank you.

13 THE COURT: Is the language that you read, write, and
14 understand the best Spanish?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you speak any English, sir?

17 THE DEFENDANT: No, very little.

18 THE COURT: How old are you?

19 THE DEFENDANT: 36.

20 THE COURT: How far did you get in school?

21 THE DEFENDANT: Sixth grade.

22 THE COURT: In this case the guilty plea memorandum is
23 written in English. And so were you able to read it or unable to
24 read it?

25 THE DEFENDANT: Yes.

1 THE COURT: You are unable to read it.

2 THE DEFENDANT: Is this the same one?

3 THE COURT: Yes. I'm going to ask the question next.
4 This is in English, so you were not able to read it in English;
5 is that correct?

6 THE DEFENDANT: But it was translated.

7 THE COURT: I'm going to ask you that next.

8 So you were able to fully discuss it with your counsel
9 and to read it with an interpreter; is that correct?

10 THE DEFENDANT: Yes.

11 THE COURT: After you had it read to you by an
12 interpreter, did you have any questions or did you have anything
13 you didn't understand?

14 THE DEFENDANT: No, everything is okay.

15 THE COURT: And you were able to address all of its
16 provisions with your counsel; is that correct?

17 THE DEFENDANT: Yes.

18 THE COURT: I'm turning to the last page of the guilty
19 plea memorandum, which is page 6. There's a line that says
20 defendant. I'm showing you that. Do you see it?

21 THE DEFENDANT: Uh-huh.

22 THE COURT: Is that a yes?

23 THE DEFENDANT: Yes.

24 THE COURT: Is that your signature, Mr. Ojeda?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: By signing this were you telling the Court,
2 one, that you complete understand the guilty plea memorandum?

3 THE DEFENDANT: Yes.

4 THE COURT: And two, that you agree with each and every
5 term and condition?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Now, under your signature there's a line
8 that says translator/interpreter. Is that your signature, Miss
9 Interpreter?

10 THE INTERPRETER: Yes, Your Honor, it is.

11 THE COURT: And you were present when Mr. Ojeda signed
12 the document; is that right?

13 THE INTERPRETER: Yes, Your Honor.

14 THE COURT: And it's one and the same as the document
15 that you interpreted, correct?

16 THE INTERPRETER: Yes, Your Honor.

17 THE COURT: Mr. Ojeda, do you understand that by
18 pleading guilty you are giving up important constitutional
19 rights?

20 THE DEFENDANT: Yes, I understand.

21 THE COURT: Do you understand that you are waiving your
22 right to go forward by jury trial?

23 THE DEFENDANT: Yes, I understand.

24 THE COURT: You understand that the jury trial that is
25 presently set in this case will be vacated.

1 THE DEFENDANT: Yes.

2 THE COURT: Meaning that it will be taken off calendar.

3 THE DEFENDANT: Uh-huh, yes, it's okay.

4 THE COURT: Do you understand that you are waiving your
5 right to require the State to prove the charges against you
6 beyond a reasonable doubt?

7 THE DEFENDANT: Yes, I understand.

8 THE COURT: Do you also understand that you are waiving
9 your right against self-incrimination?

10 THE DEFENDANT: Yes, I understand.

11 THE COURT: What do you understand self-incrimination
12 to be?

13 THE DEFENDANT: That I am saying I'm guilty.

14 THE COURT: So you understand that by admitting these
15 charges you are in fact incriminating yourself.

16 THE DEFENDANT: Yes, I understand.

17 THE COURT: Do you understand you are giving up your
18 right to cross-examine all of the State's witnesses?

19 THE DEFENDANT: Yes, I understand.

20 THE COURT: Do you also understand you are giving up
21 your right to subpoena witnesses in and compel their attendance
22 in court at the time of trial?

23 THE DEFENDANT: Yes, I understand, Your Honor.

24 THE COURT: Mr. Prengaman, would you please advise
25 Mr. Ojeda what the State would be prepared to prove beyond a

1 reasonable doubt if the case would go to trial, were to go to
2 trial. And for the record, you will be reading from the amended
3 information, correct?

4 MR. PRENGAMAN: Yes, Your Honor.

5 THE COURT: I just ask you to keep your pace slow
6 enough for the interpreter to fully advise Mr. Ojeda.

7 MR. PRENGAMAN: Mr. Ojeda, if this matter were to
8 proceed to trial, the State would prove beyond a reasonable doubt
9 that you, on or about September 17 to September 23, 2004, in
10 Washoe County, Nevada, did willfully unlawfully and with malice
11 aforethought, deliberation, and premeditation kill and murder
12 Kyla Annan, a human being, in that you strangled the victim
13 and/or asphyxiated the victim by compressing her chest or abdomen
14 or using your hands or arms to cover her mouth and nose, or you
15 killed the victim by other unknown means, thereby inflicting
16 mortal injuries upon Kyla Annan from which she died between
17 September 13 and September 23, 2004, or that you did willfully
18 and unlawfully kill Kyla Annan in the perpetration or attempted
19 perpetration of the felony crimes of burglary and/or sexual
20 assault, in that the killing occurred when you entered Annan's
21 residence at 624 Quincy Street in Reno with the intent to commit
22 sexual assault, assault and/or battery upon a person or larceny
23 therein, and thereafter you did beat and strike Annan about the
24 face, head, and extremities, did bite at and about the breast,
25 did subject Annan to sexual penetration against her will by

1 forcibly causing her to submit to anal and/or vaginal intercourse
2 or did sexually penetrate Annan's dead body and did inflict
3 mortal injuries on Annan upon by strangling and/or asphyxiating
4 her, from which she died.

5 THE COURT: Mr. Ojeda, do you understand the elements
6 the State was prepared to prove against you should this matter go
7 to trial?

8 THE DEFENDANT: Yes, I understand, Your Honor.

9 THE COURT: You have reviewed the amended information
10 with your counsel, correct?

11 THE DEFENDANT: Yes, correct.

12 MS. HICKMAN: Sorry, if I may interject. It is charged
13 in the alternative. Mr. Ojeda would be, he has maintained that
14 it's the first of the second, that he didn't enter the house
15 under the felony murder rule, but both are in there.

16 THE COURT: Mr. Ojeda, you understand that the term
17 "or" is included in the amended information?

18 THE DEFENDANT: Yes, I understand.

19 THE COURT: In other words, there's one set of elements
20 the State was prepared to prove or another set of elements.

21 THE DEFENDANT: Yes, I understand.

22 THE COURT: Did you commit the crime with the intent as
23 described in the charges stated by the deputy district attorney
24 under one set of those elements?

25 THE DEFENDANT: Yes, I understand.

1 THE COURT: So the answer is yes or no. Did you commit
2 the crime with the intent as described under the charges stated
3 by the deputy district attorney under one of those fact sets or
4 elements?

5 THE DEFENDANT: Yes, Your Honor. Yes, I understand.

6 THE COURT: So yes, you did commit the crime, correct?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Do you understand as set forth in the
9 guilty plea memorandum and reviewed by both counsel that the
10 maximum penalty in this case for the crime to which you are
11 pleading is that you may be imprisoned in the Nevada Department
12 of Corrections, one, for life without the possibility of parole?
13 Do you understand that?

14 THE DEFENDANT: Yes, I understand.

15 THE COURT: Or two, for life with the possibility of
16 parole with eligibility for parole beginning when a minimum of 20
17 years has been served.

18 THE DEFENDANT: Yes, I understand, Your Honor.

19 THE COURT: Or three, for a definite term of 50 years,
20 with eligibility for parole beginning when a minimum of 20 years
21 has been served.

22 THE DEFENDANT: Yes, I understand.

23 THE COURT: And do you understand that you are not
24 eligible for probation?

25 THE DEFENDANT: Yes, I understand.

1 THE COURT: And your counsel have talked to you about
2 the maximum and minimums, correct, that are available to the
3 Court for sentencing?

4 THE DEFENDANT: Yes.

5 THE COURT: And do you understand that the negotiations
6 in this case indicate that both parties will be free to argue to
7 the Court for an appropriate sentence?

8 THE DEFENDANT: Yes, I understand.

9 THE COURT: And do you understand that the Court is not
10 bound by any arguments or recommendations that are made at the
11 time of sentencing, but the Court alone will determine your
12 sentence?

13 THE DEFENDANT: Yes, I understand, Your Honor.

14 THE COURT: And do you understand that may result in
15 your incarceration for life without the possibility of parole?

16 THE DEFENDANT: Yes, I understand.

17 THE COURT: With all those rights in mind that you have
18 waived and all the information that I have provided you,
19 Mr. Ojeda, do you still wish to plead guilty?

20 THE DEFENDANT: Yes. Yes.

21 THE COURT: As you stand here today, do you have any
22 reservations about entry of your plea of guilt?

23 THE DEFENDANT: No.

24 THE COURT: Have you had sufficient time to fully
25 discuss this case with your attorney?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Are you satisfied with the representation
3 that's been provided to you by your attorney throughout this
4 entire proceeding, including today?

5 THE DEFENDANT: Yes.

6 THE COURT: Has anyone promised you anything in order
7 to get you to plead guilty?

8 THE DEFENDANT: No.

9 THE COURT: Has anyone threatened you or anyone close
10 to you in order to get you to plead guilty?

11 THE DEFENDANT: No.

12 THE COURT: Are you pleading guilty freely and
13 voluntarily?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Are you under the influence of any alcohol
16 or drugs, or do you have any condition that would preclude you
17 from hearing me, understanding me, and understanding what's
18 happening to you today in court?

19 THE DEFENDANT: No.

20 THE COURT: Do you have any questions for me about
21 these proceedings, Mr. Ojeda?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: What is your plea to murder of the first
24 degree, a violation of NRS 200.010 and NRS 200.030?

25 THE DEFENDANT: What? I'm sorry.

1 THE COURT: Let me just say, what is your plea to
2 murder of the first degree?

3 THE DEFENDANT: Oh, guilty.

4 THE COURT: The Court finds that Mr. Ojeda fully
5 understands the guilty plea memorandum, understands what was
6 stated in the amended information and all of the information
7 that's been presented to the Court today, understands the nature
8 of the offense charged, the consequences of his plea, and he has
9 made a knowing, voluntary, and intelligent waiver of his
10 constitutional rights. The Court accepts his guilty plea, and we
11 will set a date for sentencing.

12 Before we set that date for sentencing, Mr. Ojeda, the
13 division of parole and probation will contact you, and they will
14 prepare a presentence investigation report. It's a report that
15 has a lot of information all about you that I read thoroughly
16 before sentencing. So it's very important that you cooperate
17 with them. Do you understand?

18 THE DEFENDANT: Yes, I understand, Your Honor.

19 THE COURT: And I'm ordering you to do that.

20 Counsel, have you consulted your respective calendars
21 and anyone else who wishes to appear, and do you have any
22 proposed dates?

23 MS. HICKMAN: Judge, we talked about October 12.

24 THE COURT: And how long do you need?

25 MS. HICKMAN: I anticipate a half day.

1 THE COURT: You have, you think yours is a half day or
2 less?

3 MR. PRENGAMAN: Your Honor, I don't think -- the State
4 will definitely have a presentation. I would suggest we just set
5 it for a day, so just in case.

6 THE COURT: Okay. And do you have a start time, or is
7 anyone traveling that needs to be here?

8 MR. PRENGAMAN: The State would have witnesses
9 traveling.

10 THE COURT: So would it be better to start at 10:00 or
11 start in the afternoon?

12 MR. PRENGAMAN: Your Honor, I think starting at 9:00 or
13 around that time would be sufficient.

14 THE COURT: What day of the week is that?

15 THE CLERK: That's a Friday.

16 THE COURT: Let's start at 9:30, just to make sure that
17 everyone is here, and we have an interpreter here.

18 So the Court will vacate the trial at this time. And I
19 don't have on here if we had another motion to confirm, but that
20 will be vacated. There's numerous, I issued an order because I
21 wanted to address all the pretrial motions today, and I believe
22 that order took it off of the submit list, but if it didn't, all
23 of your motions will be taken off the submit list.

24 The writ is still at the supreme court? And I don't
25 know whether they will still issue any type of decision on that,

1 so I suppose we will wait until sentencing, but for purposes of
2 this trial, it won't affect any of your trial actions on your
3 part.

4 Thank you very much. You have the amended information,
5 and that will be filed in.

6 Any questions or anything else to address, counsel?

7 MR. PRENGAMAN: Not for the State. Thank you, Your
8 Honor.

9 MS. HICKMAN: No.

10 THE COURT: Thank you. We will be in recess.

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1 STATE OF NEVADA)
2 COUNTY OF WASHOE) ss
3)
4)

5 I, LESLEY A. CLARKSON, Official Reporter of the
6 Second Judicial District Court of the State of Nevada, in
7 and for the County of Washoe, DO HEREBY CERTIFY:

8 That I was present in Department No. 6 of the
9 within-entitled Court on Tuesday, August 7, 2018, and took
10 stenotype notes of the proceedings entitled herein and
11 thereafter transcribed them into typewriting as herein appears;

12 That the foregoing transcript is a full, true and
13 correct transcription of my stenotype notes of said hearing.

14 Dated this 31st day of August, 2018.

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18
19 /s/ Lesley A. Clarkson
20 Lesley A. Clarkson, CCR #182
21
22
23
24
25

1 CODE 2610
2 Christopher J. Hicks
3 #7747
4 P.O. Box 11130
5 Reno, NV 89520
6 (775) 328-3200
7 Attorney for State of Nevada

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10 IN AND FOR THE COUNTY OF WASHOE.

11 * * *

12 THE STATE OF NEVADA,

13 Plaintiff,

Case No. CR15-0829

14 v.

Dept. No. 7

15 FRANCISCO MERINO OJEDA,

16 Defendant.

17
18 SENTENCING MEMORANDUM

19 Comes now the State of Nevada, by and through Luke J. Prengaman, Chief Deputy
20 District Attorney, and hereby offers this Memorandum of evidence the State will rely upon
21 at the Defendant's sentencing hearing.

22 DATED this 12th day of December, 2018.

23 Christopher J. Hicks
24 Washoe County District Attorney

25 By /s/ LUKE PRENGAMAN
26 Luke Prengaman
27 6094
28 Chief Deputy District Attorney

1 POINTS AND AUTHORITIES

2 I. EVIDENCE THAT MAY BE CONSIDERED AT SENTENCING

3 “Few limitations are imposed on a judge's right to consider evidence in imposing a
4 sentence, and courts are generally free to consider information extraneous to the
5 presentencing report. Possession of the fullest information possible concerning a
6 defendant's life and characteristics is essential to the sentencing judge's task of
7 determining the type and extent of punishment.”¹ “The sentencing proceeding is not a
8 second trial and the court is privileged to consider facts and circumstances which clearly
9 would not be admissible at trial.”² A defendant’s character and history of criminal conduct
10 are relevant to the determination of an appropriate sentence, and other criminal conduct,
11 even conduct the defendant was never charged with or convicted of, is relevant and may be
12 considered by the sentencing court.³

13 The United States Supreme Court’s *Williams v. New York*⁴ decision is the seminal case
14 dealing with the broad amount of information a trial court is entitled to consider in
15 imposing a sentence. It has been cited with approval in dozens of subsequent United
16 States Supreme court decisions as well as in literally hundreds of other decisions from
17 other federal and state appellate courts.⁵ In *Williams*, the United State Supreme Court
18 offered an extended discussion regarding the broad discretion trial judges have in
19 admitting character evidence pertaining to the defendant:

20 Tribunals passing on the guilt of a defendant always have been
21 hedged in by strict evidentiary procedural limitations. But both
22 before and since the American colonies became a nation, courts in

23 ¹ *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). *See also Martinez v. State*, 114 Nev.
24 735, 737–38, 961 P.2d 143, 145 (1998) (“The sentencing judge is accorded wide discretion in imposing a
25 sentence . . . This discretion enables the sentencing judge to consider a wide, largely unlimited variety of
26 information to insure that the punishment fits not only the crime, but also the individual defendant”).

27 ² *Silks v. State*, 92 Nev. 91, 93-94, 545 P.2d 1159, 1161 (1976)(“So long as the record does not
28 demonstrate prejudice resulting from consideration of information or accusations founded on facts supported
29 *only* by impalpable or highly suspect evidence, this court will refrain from interfering with the sentence
imposed” (emphasis added)).

³ *See Silks*, 92 Nev. at 94 n.2, 545 P.2d at 1161 n.2.

⁴ 337 U.S. 242, 69 S. Ct. 1529 (1949).

⁵ *See, e.g., Williams v. Oklahoma*, 358 U.S. 576, 584 (1959); *Gregg v. Georgia*, 428 U.S. 153, 189
(1976); *United States v. Grayson*, 438 U.S. 45, 48-49 (1978); *Unites States v. Plisek*, 657 F.2d 920, 927 (7th
Cir. 1986); *United States v. Wise*, 603, F.2d 1101, 1105 (4th Cir. 1979); *Eyman v. Alford*, 448 F.2d 306 314,
315 (9th Cir. 1969); *Arizona v. Cawley*, 648 P.2d 142, 144 (Arizona 1982).

1 this country and in England practiced a policy under which a
2 sentencing judge could exercise a wide discretion in the sources and
3 types of evidence used to assist him in determining the kind and
4 extent of punishment to be imposed within limits fixed by law. Out-
5 of-court affidavits have been used frequently, and of course in the
6 smaller communities sentencing judges naturally have in mind their
7 knowledge of the personalities and backgrounds of convicted
8 offenders. A recent manifestation of the historical latitude allowed
9 sentencing judges appears in Rule 32 of the Federal Rules of
10 Criminal Procedure, 18 U.S.C.A. That rule provides for consideration
11 by federal judges of reports made by probation officers containing
12 information about a convicted defendant, including such information
13 'as may be helpful in imposing sentence or in granting probation or in
14 the correctional treatment of the defendant * * *.'

15 In addition to the historical basis for different evidentiary
16 rules governing trial and sentencing procedures there are sound
17 practical reasons for the distinction. In a trial before verdict the issue
18 is whether a defendant is guilty of having engaged in certain criminal
19 conduct of which he has been specifically accused. Rules of evidence
20 have been fashioned for criminal trials which narrowly confine the
21 trial contest to evidence that is strictly relevant to the particular
22 offense charged. These rules rest in part on a necessity to prevent a
23 time consuming and confusing trial of collateral issues. They were
24 also designed to prevent tribunals concerned solely with the issue of
25 guilt of a particular offense from being influenced to convict for that
26 offense by evidence that the defendant had habitually engaged in
27 other misconduct. A sentencing judge, however, is not confined to the
28 narrow issue of guilt. His task within fixed statutory or
29 constitutional limits is to determine the type and extent of
punishment after the issue of guilt has been determined. Highly
relevant-if not essential-to his selection of an appropriate sentence is
the possession of the fullest information possible concerning the
defendant's life and characteristics. And modern concepts
individualizing punishment have made it all the more necessary that
a sentencing judge not be denied an opportunity to obtain pertinent
information by a requirement of rigid adherence to restrictive rules of
evidence properly applicable to the trial.⁶

The United States Supreme Court has also held that even evidence of a crime that was
tried and resulted in acquittal may be admissible at a sentencing hearing so long as the

⁶ *Williams*, 337 U.S. at 246-50, 69 S. Ct. at 1082-85. See also *United States v. Tucker*, 404 U.S. 443, 446, 92 S. Ct. 589 (1972) ("[B]efore making [a sentencing] determination, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider, or the source from which it may come").

1 evidence is relevant and reliable.⁷ Additionally, “those courts of appeals that have decided
2 the issue – the Fourth, Sixth, Seventh, and Eleventh Circuits – have all held that
3 statements obtained by the police in violation of *Miranda* are admissible at sentencing, if
4 otherwise reliable.”⁸

5 As the Fourth Circuit has explained, although “statements obtained in violation
6 of *Miranda* are inadmissible in the government's case-in-chief,” this rule does
7 not inexorably apply in other contexts. Beyond the government's case-in-chief,
8 courts must balance “the deterrent effect expected to be achieved by extending
9 the *Miranda* exclusionary rule against the harm resulting from the exclusion of
10 reliable evidence from the truth-finding process.” At the sentencing phase, that
11 balance will “normally” tilt in favor of admitting “illegally obtained but reliable
12 evidence” because excluding the un-*Mirandized* statement “from the
13 government's case-in-chief at trial will provide ample deterrence against police
14 misconduct,” and “the additional deterrent effect of excluding [the] evidence
15 from sentencing usually would be minimal.” Significantly, “absent coercive
16 tactics by police, there is nothing inherently unreliable about otherwise
17 voluntary statements obtained in violation of *Miranda* and *Edwards*.”⁹

18 The Nevada legislature has also made clear that a broad amount of information may be
19 considered by the sentencing court. NRS 176.145(1)(a)(b) provides that the pre-sentence
20 report compiled to assist the judge at sentencing must contain information regarding the
21 prior criminal record of the defendant and “such information about his characteristics, his
22 financial condition, the circumstances effecting his behavior and the circumstances of the
23 offense, as may be helpful in imposing sentence.”

24 Thus, while evidence at trial is generally confined to the narrow issue of guilt or
25 innocence, evidence of a defendant's past misconduct, whether charged or uncharged, is
26 relevant to sentencing, because the defendant's character, past and present, is in issue.

27 ⁷ See *United States v. Watts*, 519 U.S. 148, 151-152, 117 S. Ct. 633 (1999). See also *Watts v. United*
28 *States*, 515 U.S. 389, 399, 115 S. Ct. 2199 (1995) (prior uncharged conduct may be admissible at a
29 sentencing).

30 ⁸ *United States v. Taylor*, 289 F. Supp. 3d 55, 70-71 (D.D.C. 2018) (citing *United States v. Nichols*,
438 F.3d 437, 439-445 (4th Cir. 2006); *United States v. Graham-Wright*, 715 F.3d 598, 601 (6th Cir. 2013);
31 *Del Vecchio v. Ill. Dep't of Corr.*, 31 F.3d 1363, 1388 (7th Cir. 1994) (*en banc*); *United States v. Jackson*, No.
32 17-10302, 713 Fed.Appx. 963, 967-68, 2017 WL 5495499 *4-*5 (11th Cir. Nov. 16, 2017); also citing for
33 comparison *United States v. McCrory*, 930 F.2d 63, 68-69 (D.C. Cir. 1991) (permitting consideration of
34 evidence obtained in violation of the Fourth Amendment at sentencing)). Cf. *Oregon v. Elstad*, 470 U.S. 298,
35 307, 105 S. Ct. 1285 (1985) (“the *Miranda* presumption, though irrebuttable for purposes of the prosecution's
case in chief, does not require that the statements and their fruits be discarded as inherently tainted”).

1 II. DEFENSE COUNSEL’S PERSONAL BELIEFS OR OPINIONS ABOUT THE
2 DEFENDANT ARE NOT EVIDENCE NOR WITHIN THE SCOPE OF PROPER
3 ARGUMENT

4 Statements, arguments, and personal opinions of counsel are not evidence, and “it is
5 improper for either the prosecutor *or defense counsel* to “ma[ke] statements as to facts not
6 proven” or to put his or her “personal knowledge and belief ... on the scales.”¹⁰
7 Additionally, neither prosecutor nor defense attorney can vouch for witnesses or refer to
8 matters outside the record evidence.¹¹

9 The Defendant’s lawyer may attempt to offer personal anecdotes about representing
10 the defendant, or personal opinions or beliefs about his conduct or character. The State
11 will object to such personal anecdotes, opinions, or beliefs, as they exceed the scope of
12 proper argument, and, unless the attorney testifies as a witness at the hearing, address
13 matters not properly in evidence.¹²

14 III. EVIDENCE THE STATE WILL RELY UPON AT SENTENCING

15 A. Victim Kyla Annan

16 Kyla Anna was twenty-eight years old on the day the Defendant murdered her, which
17 was in September of 2004. She worked at Little Golden Goose preschool and lived alone at
18 624 Quincy Street in Reno. She had been dating Travis Miller. Travis was the one who
19

20 ⁹ *Taylor*, 289 F. Supp. 3d at 71 (quoting *United States v. Nichols*, 438 F.3d 437, 442-43 (4th Cir. 2006)).

21 ¹⁰ *See Glover v. District Court*, 125 Nev. 691, 705, 220 P.3d 684, 694 (2009) (“The prohibition against
22 arguing facts not in evidence applies to the prosecution and the defense alike. “[I]t is improper for either the
23 prosecutor or defense counsel to “ma[ke] statements as to facts not proven” or to put his or her “personal
24 knowledge and belief ... on the scales” (quoting *United States v. Hoffman*, 964 F.2d 21, 24 (D.C. Cir. 1992)
(quoting *United States v. Latimer*, 511 F.2d 498, 503 (10th Cir.1975)) (emphasis added). *See also Flanagan*
v. State, 112 Nev. 1409, 1420, 930 P.2d 691, 698 (1996) (Referring to instruction of law that “[s]tatements,
arguments and opinions of counsel are not evidence in the case”).

25 ¹¹ *Id.*; *Young v. District Court*, 107 Nev. 642, 650, 818 P.2d 844, 849 (1991) (“Criminal defendants and
their lawyers must abide by the rules that apply to other litigants”).

26 ¹² For example, an anecdotal and opinion-laden statement like “every time I met with Francisco at the
27 jail, he was polite and expressed his desire to take responsibility for what he did – I could see how repentant
28 and remorseful he was, and if it was up to him, he would have pled guilty a year ago” would be improper
29 unless the lawyer testified as a witness. Absent actual testimony by the lawyer at the hearing, such a
statement improperly refers to matters not evidence, improperly seeks to place the lawyer’s prestige,
position, and reputation behind the defendant, and improperly puts defense counsel’s “personal knowledge
and belief . . . on the scales.” *Glover*, 125 Nev. at 705, 220 P.3d at 694. This not only violates the rules, but
because the underlying basis of the anecdote and opinion are not properly in evidence, it also unfairly
prejudices the State’s ability to address and rebut the substance and credibility of the claims and opinions.

1 found Kyla's dead body. When he could not reach her on the phone and had received no
2 response to his messages, Travis went to Kyla's house to check on her. He called the police
3 after finding her dead.

4 This is Kyla before the Defendant got his hands on her:¹³



12
13 This is how the Defendant left Kyla:



28
29 ¹³ The photographs and documents included and attached to this Memorandum have been previously provided to the defense in discovery.



8 Pathologist Dr. Christie Elliott performed the autopsy on Kyla's body. Doctor Elliott
9 concluded that "Kyla Annan, age 28 years, died of asphyxia due to manual strangulation.
10 The autopsy also showed other blunt trauma."¹⁴ Kyla, in other words, was beaten and
11 strangled to death. Doctor Elliott documented the following injuries inflicted upon Kyla:

12 I. Evidence of strangulation:

- 13 A. Fractures of right hyoid bone.
14 B. Hemorrhage into anterior strap muscles of neck.
15 C. Bilateral abrasions and contusions of neck.
16 D. Bilateral petechial hemorrhages of sclera.

17 II. Evidence of blunt force injuries:

- 18 A. Multiple abrasions and contusions of head, including forehead, eyes, nares,
19 lips, cheeks, chin, and ears.
20 B. Subgaleal hemorrhage.
21 C. Bilateral temporalis muscle hemorrhage, greater on left than right.
22 D. Multiple abrasions and contusions of torso, including shoulders, chest, back,
23 and right hip.
24 E. Partial bite mark of right breast.
25 F. Multiple abrasions and contusions of upper and lower extremities.¹⁵

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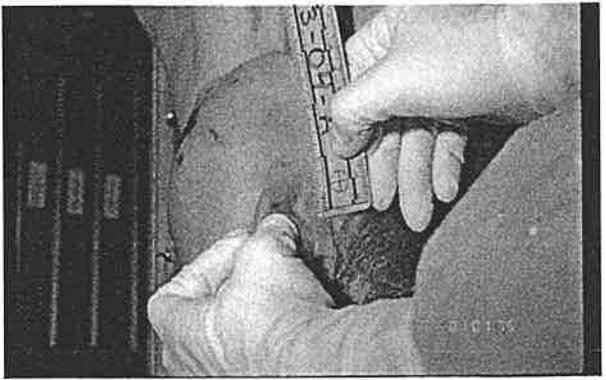
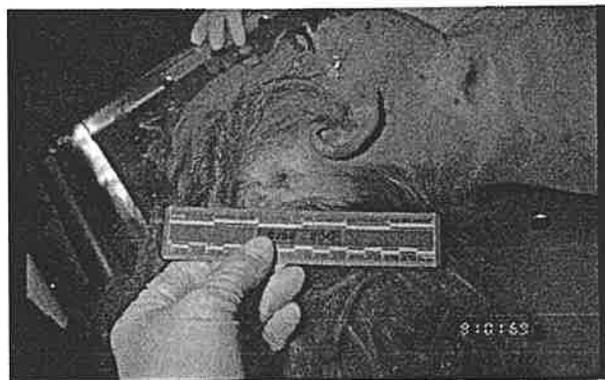
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¹⁴ See Record of Death Narrative, Case No. 0993-04A, at p.2. A copy of this report is attached as Exhibit 1.

¹⁵ *Id.* at p.1.

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1 The area of the “partial bite mark of right breast” documented by Dr. Elliott was found
2 to contain the Defendant’s DNA. The Defendant also left his sperm in/on Kyla.¹⁶

3 The last time Kyla’s parents, Steve and Cheryl Annan, spoke to their daughter, it was
4 over the phone on the morning of Friday, September 17, 2004. Travis Miller last spoke to
5 Kyla that Friday night. Kyla was scheduled to work at Little Golden Goose daycare on
6 Monday, September 20, but did not show up and did not respond to her boss’s calls. Her
7 body was found on September 23.

8 **B. The Defendant’s first attempt to rape Kyla Annan the week before he murdered**
9 **her.**¹⁷

10 On September 13, 2004, the Defendant entered Kyla Annan’s house to rape her. He
11 entered at the back of her home just after midnight, and started removing his shirts on his
12 way to her bedroom.

13 Unbeknownst to the Defendant, Travis Miller was spending the night, and he was
14 asleep in bed with Kyla at the time. The Defendant entered Kyla’s room, approached the
15 bed, removed his undershirt, then put his hand over the mouth of the figure in the bed.
16 This happened to be Travis, however, who was sleeping on the side of the bed nearest the
17 Defendant. Travis woke up, and the Defendant fled. Travis saw only a figure in the dark
18 running out of the room, then heard the Defendant go out the back door.¹⁸

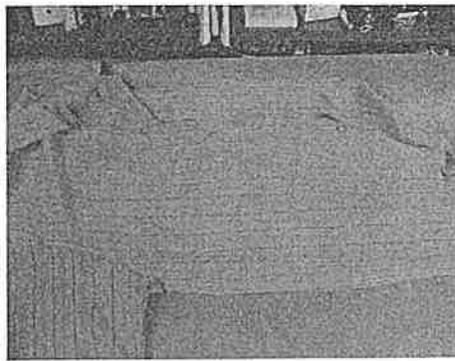
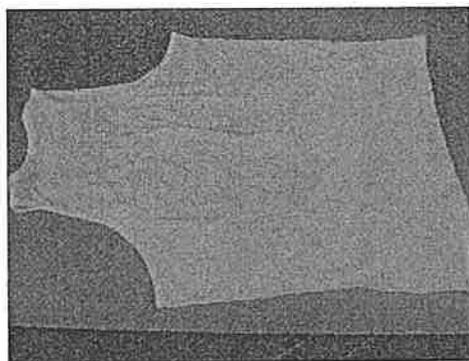
19 After calling the police, Travis and Kyla searched the house to see if anything was
20 missing. They found nothing missing, but did find two things that clearly conveyed the
21 Defendant’s intent: a white ribbed tank top undershirt that was at the foot of the bed and
22

23 ¹⁶ DNA Criminalist Dr. Brittany Baguley determined that the Defendant’s DNA profile matched DNA
24 from the sperm located on the rectal swabs taken from Kyla’s body and the DNA profile foreign to Kyla
25 Annan from the right breast swabs. *See* Report L4702-04-26,27,28 of DNA Criminalist Brittany Baguley,
attached as Exhibit 2.

26 ¹⁷ *See* report of Reno Police Officer Lyle Stephens, case no. 04-35206, attached as Exhibit 3; Transcript
of Proceedings: Preliminary Hearing, May 28, 2015, at pp.9-40 (testimony of Travis Miller), attached as
27 Exhibit 4.

28 ¹⁸ *Id.* During the Defendant’s extradition to Reno, he admitted to entering Kyla’s house on this prior
occasion and removing his shirt, stating that “I entered from the back side and I opened a door and I went in
and, um, I took off my shirt that I had on.” He also told Det. Allen the following: “So I was there thinking
whether to do it or not to do it, and in the end, I did go in and like I tried to grab her, but she moved and I
29 felt fear at that point. That’s when I ran.” *See* Transcript of Defendant’s Extradition Interview at pp.12-14 (a
copy is attached as Exhibit 5).

1 a short sleeve collared button-down shirt that had been left on a sewing manikin in the
2 rear of the house near the rear door:



10 Neither shirt belonged to Kyla or Travis, and neither shirt had been there when they
11 went to bed. The Defendant's DNA was later linked to the white ribbed tank top
12 undershirt.¹⁹

13 **C. The Defendant's return to Kyla's house to accomplish his goal.**

14 Approximately a week after his aborted attempt to rape Kyla, the Defendant returned
15 to her residence to accomplish his goal. To avoid detection, the Defendant entered Kyla's
16 property/yard from the back by jumping over the fence around 2:00 a.m., then cased the
17 house by moving around it in a "U" pattern multiple times to determine who was home
18 and to find a way into the house.²⁰ The Defendant broke one of the window screens to
19 remove it, then entered through the window.²¹

20 The Defendant believed Kyla must have heard him entering, because she confronted
21 him in the hallway shortly after he had gotten into the house. Kyla "tried to defend
22 herself," but the Defendant subdued her by repeatedly beating and striking her, grabbing
23 her and throwing her on the bed, then using his body weight and fists to control her.²² In
24

25 ¹⁹ See Report L4702-04-26,27,28 of DNA Criminalist Dr. Brittany Baguley, attached as Exhibit 2.

26 ²⁰ See Transcript of Defendant's Interview at the Orange County Sheriff's Office, at pp.40-41, 47-50; 92
27 (a copy is attached as Exhibit 6). The Defendant had been watching Kyla at her home over a period of time
28 from the vantage point of an acquaintance's rental house that was across the street from Kyla's. See *id.* at
29 pp.10; 19-25.

²¹ See *id.* at pp.11, 45-50.

²² *Id.* at pp.11-12; 50-56. The Defendant downplayed the beating he inflicted upon Kyla during the
Orange County interview, but later, while being extradited, he acknowledged beating Kyla after she tried to
defend herself. See Transcript of Extradition Interview at pp.16-17.

1 the Defendant's words: "I then took off her underwear and I started to rape her."²³ The
2 Defendant assaulted Kyla both "vaginal and anal."²⁴ The Defendant claimed Kyla was not
3 moving at this point, and that this may occurred after Kyla had stopped breathing,
4 although he could not remember for sure.²⁵

5 **D. The Defendant's flight and ten years of freedom.**

6 The Defendant went to work the next day after killing Kyla.²⁶ Two weeks later, fearful
7 of being apprehended, he fled to Santa Ana, California.²⁷ He began working and living his
8 life, including having a relationship with his girlfriend and having kids. After killing Kyla,
9 the Defendant enjoyed over a decade of freedom.

10 While the Defendant was free, Kyla's parents, family, friends, and loved ones were left
11 with the aftermath of his actions. They faced not only the loss of Kyla, who was in the
12 prime of her young life, and not only the knowledge that she spent her last minutes alive
13 in terror, being violated, beaten, and having her breath and life strangled out of her by a
14 predatory stranger in her own home. They were also left with the knowledge that the man
15 responsible had gotten away, and, as a decade wore on, with the appearance that he might
16 never be brought to justice.

17 After the Defendant fled, the police continued to investigate and follow any leads they
18 could identify. They interviewed and collected DNA samples from many individuals – the
19 report of then Detective Ron Chalmers, attached as Exhibit 8, is an example of the
20 investigation that continued after the Defendant fled from Nevada.

21 It was not a crisis of conscience that resulted in the identification and apprehension of
22 the Defendant in 2015. The Defendant never, in over ten years, came forward with the
23 truth due to any internal impetus based upon any sense of right, truth, or justice; he never
24 took, in the real sense, responsibility for what he had done. Instead, it was an informant
25 who came to the Reno Police Department in January of 2015 who tipped the police toward
26

27 ²³ *Transcript of Orange County Interview* at p.58.

28 ²⁴ *Id.* at p.59.

29 ²⁵ *See id.* at pp.56-62.

²⁶ *See id.* at p.69.

²⁷ *See Transcript of Extradition Interview* at pp.17-19.

1 the Defendant. By all indications, but for the informant, the Defendant would have been
2 content to live his life of freedom, to leave Kyla's murder unsolved, and to leave Kyla's
3 parents and family without closure or justice.

4 When the police contacted the Defendant on March 11, 2015, in California to ask him
5 about Kyla, his reaction was not to come clean – it was to lie. The Defendant denied
6 knowing or having seen Kyla, even after he was told that the police had DNA evidence,
7 and demanded to know who was accusing him. It was only after the police told the
8 Defendant they had a warrant for his arrest and began handcuffing him that he
9 acknowledged that he had killed Kyla, and in almost the same breath, offered drug use as
10 an excuse:

11 Chalmers: Tell him actually that I've got a warrant for his arrest.
12 Altamirano: (Look, we have a warrant for your arrest.)
13 Merino-Ojeda: **Uh-huh. (That's fine.)**
14 Altamirano: Okay.
15 Chalmers: We're going to go back and (inaudible)
16 Altamirano: (We'll talk more, okay.)
17 Merino-Ojeda: **(I already. . .damn it. I...I already walked. It was me, man.)**
18 Altamirano: (What?)
19 Merino-Ojeda: **(Yes, it was me, man.)**
20 Altamirano: He says it was him.
21 Merino-Ojeda: **(There's no use.)**
22 Altamirano: (What was...)
23 Merino-Ojeda: **(I was also drugged up, you know. I was bad. I was admitted to the hospital for
24 drugs. I didn't know what I did.)**
25 Altamirano: (Inaudible) that it was you?
26 Merino-Ojeda: **Hey...**
27 Altamirano: Uh-huh.
28 Merino-Ojeda: **(I killed her, man.)**
29 Altamirano: He says, "I killed her."²⁸

30 The excuse of drug use would be a refrain of the Defendant's throughout his interview
31 at the Orange County Sheriff's Office and during his discussion about Kyla's murder
32 during his extradition to Reno. Even if true, however, this has little mitigating weight in
33 this particular case. The Defendant acknowledged that he knew how drugs affected him,
34 and had reflected upon things he had done after using them.²⁹ If it is true that he chose to
35 use drugs the night he killed Kyla – whether or not he did so specifically to get up the
36 gumption to enter Kyla's home and rape her after his previous aborted attempt – that
37
38

29 ²⁸ Transcript of Field Contact with Defendant at p.64 (Spanish omitted; translation from Spanish in parenthesis). A copy of this transcript is attached as Exhibit 7.

1 knowing choice to use drugs fails to diminish his responsibility for what he did. It
2 arguably aggravates what he did, as (if what he says is true) he chose to use a substance
3 he knew would increase the likelihood of the crimes being committed. The risk and
4 consequence of that knowing choice should fall on squarely on the Defendant, the
5 wrongdoer, not upon the victim and community by way of diminished punishment for the
6 wrongdoer's crime.

7 Additionally, the evidence in this case shows that the defendant's decisions and actions
8 were not the product of drug use, but of the Defendant's selfish desires and fact that he
9 was covetous of Kyla. The Defendant's aborted attempt to rape Kyla the week before he
10 killed her evinces that the intent and determination to act upon it were fully formed in the
11 Defendant's mind before he set foot in Kyla's home.³⁰

12 **IV. POSSIBLE UNTIMELY DISCLOSURE OF PSYCHOLOGICAL EVALUATION(S)**

13 The defense sometimes obtains psychological evaluations of a defendant to be used at
14 sentencing. It is not uncommon for the defense to delay disclosure of such evaluations
15 until a day or so before sentencing, even when the report has been complete for weeks or
16 months.³¹

17 Some of these reports appear to contain very little application of science or expertise,
18 instead consisting mostly recitations of the defendant's versions and interpretations of
19 events, selective and uncorroborated self-reported anecdotes about the defendant's history,
20 and selected and uncorroborated anecdotes about the defendant's history elicited from
21 family members. However, because these things are recited under the auspices of an
22 expert witness, there can be a tendency to attach more weight to them than if the same
23 verbiage were delivered via actual testimony from the source witnesses. These reports also
24 sometimes refer to diagnoses, commonly substance-abuse and stress-related ones, and
25 they sometimes include citations to the DSM or other sources. Very often, the statements
26 included in the report have never been previously disclosed.

27
28
29 ²⁹ See, e.g., Transcript of Orange County Interview at p.88.

³⁰ See, e.g., *People v. Gerks*, 153 N.E. 36, 38 (N.Y. 1926) (repetition of an act affords an "opportunity for reflection and for foresight of the consequences").

1 The State is entitled to fair notice and a fair opportunity to rebut such evidence, and
2 the tactic of deliberately delaying disclosure should not be allowed to deprive the State of a
3 meaningful opportunity to do so.³² If a psychological evaluation or evaluations are
4 disclosed within a day or two of the sentencing in this case, the State will seek exclusion of
5 the report or alternative continuance to have a full and fair opportunity to address the
6 content of such a report. However, the State submits that the Court should lean toward
7 exclusion when victims have planned and scheduled to appear for sentencing and the
8 defense could have disclosed the report or reports earlier.

9 AFFIRMATION PURSUANT TO NRS 239B.030

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

12 DATED this 12th day of December, 2018.

13 Christopher J. Hicks
14 Washoe County District Attorney

15 By /s/ LUKE PRENGAMAN
16 Luke Prengaman
17 6094
18 Chief Deputy District Attorney

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³¹ An alternative strategy is to deliberately orchestrate completion of the report very close to the
22 sentencing hearing, even when it has been pending for quite a long time.

23 ³² *Cf. Sampson v. State*, 121 Nev. 820, 828, 122 P.3d 1255, 1260 (2005) (“Fairness during trial is not
24 one-sided and applies to both the defendant and the State”); *Hallinan v. United States*, 182 F.2d 880, 885
25 (9th Cir. 1950) (“A trial court has the duty of safeguarding the rights of all parties before it, and the United
26 States of America was a party to the criminal action”), *cert. denied*, 341 U.S. 952, 71 S. Ct. 1010 (1951);
27 *Homick v. State*, 108 Nev. 127, 137, 825 P.2d 600, 606 (1992) (“justice, though due to the accused, is due to
28 the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep
29 the balance true”) (quoting *Snyder v. Massachusetts*, 291 U.S. 97, 122, 54 S. Ct. 330, 338 (1934)); *United*
States v. Day, 524 F.3d 1361, 1370-1372 (D.C. Cir. 2008) (approving trial court’s order precluding defense
expert testimony because of defense’s failure to comply with expert notice requirements of Fed.R.Crim.Proc.
16; trial court did not believe the defense had acted in good faith regarding its expert notice, and the failure
to provide required notice “made it virtually impossible for the Government to engage in meaningful cross-
examination” at *Daubert* hearing) (citing *Taylor v. Illinois*, 484 U.S. 400, 414-16, 108 S. Ct. 646 (1988));
Order Granting Motion for Equal Access to Juror Information, CR15-0829, Feb. 12, 2016, at pp.3-4 (“As this
Court indicated during the February 10, 2016 proceeding, it believes in the fundamental right to fair play”;
expressing importance of “adherence to parity in the parties’ positions”).

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1 CODE 2650
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7 *ATTORNEY FOR DEFENDANT*

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10
11 IN AND FOR THE COUNTY OF WASHOE

12 THE STATE OF NEVADA,
13 Plaintiff,

14 vs.

Case No. CR15-0829

15 FRANCISCO OJEDA,
16 Defendant.

Dept. No. 6

17
18 **OBJECTION TO THE STATE’S “SENTENCING MEMORANDUM” AND**
19 **MOTION FOR “SENTENCING MEMORANDUM” TO BE FILED AS A**
20 **CONFIDENTIAL DOCUMENT**

21 Comes now, FRANCISCO OJEDA, by and through his attorney of record,
22 Katheryn Hickman, Chief Deputy Public Defender, and files this objection to the
23 State’s “Sentencing Memorandum;” and Motion for the “Sentencing Memorandum”
24 to be filed as a Confidential Document.

25 **POINTS AND AUTHORITIES**

26 **STATEMENT OF THE CASE**

The State filed its sentencing memorandum on December 12, 2018 at 3:30
p.m. The memorandum contains arguments regarding appropriate and
inappropriate arguments the Court should or should not consider at sentencing,
the State’s interpretation of the crime, including the State’s opinion of Mr. Ojeda’s
mental state, his personal thoughts, and his motivations during the commission of

1 the crime, and an objection to the “possible untimely disclosure of psychological
2 records.”

3 Generally, the State is correct in its citation to *Williams v. New York*, 337
4 U.S. 242, 69 S. Ct. 1529 (1949), in that the Court has broad discretion in
5 considering evidence that would not be admissible at trial at sentencing, and that
6 the same evidentiary rules are not applicable at a sentencing. It is important for
7 the Court to consider not just the facts of the crime that a defendant is being
8 sentenced for, but all mitigating factors such as education, reliability as a family
9 member, employee, employment, religious conversion or repentance, good behavior
10 in custody, medical conditions or factors, a troubled childhood, alcohol dependence,
11 cooperating in the criminal investigation leading to the conviction, and the effect
12 that the sentence will have on members of the defendant’s family and friends.
13 *Leonard v. State*, 117 Nev. 52 (2001); *Thomas v. State*, 122 Nev. 1361, 1366 (2006).

14 However, the State argues that it would be improper argument for defense
15 counsel to offer personal anecdotes, regarding the representation of a defendant *at*
16 *sentencing*, citing to *Glover v. District Court*, 125 Nev. 691, 220 P.3d 684 (2009).
17 *Glover* does not support the position that the State takes in its memorandum. In
18 fact, *Glover* does not address any issue regarding sentencing at all, in that it is
19 regarding a case that ended in a mistrial, due to defense counsel referencing
20 evidence that the Court had already ruled should not be referenced in front of a
21 jury. It is absolutely inapplicable to the case, or situation, argued by the State. The
22 same is true for the other three cases cited by the State in footnote 10. Defense
23 Counsel may offer the exact type of information the State attempts to preclude.

24 Next, the State presents “evidence the State will rely upon at sentencing.” It
25 is clear that this is the State’s interpretation of Mr. Ojeda’s mental state, and his
26 reasoning in committing the crime. There is no dispute regarding the violence and

1 brutality of this murder, and that Ms. Annan did not deserve what happened to
2 her. However, the State argues that Mr. Ojeda intended to rape Ms. Annan the
3 first time he entered the house, and then returned to complete that act. The State
4 uses select quotes from Mr. Ojeda's confessions to support this version of events.
5 Looking at the transcript as a whole, in conjunction with the interrogation of Mr.
6 Ojeda in Orange County, he tells the detectives what his intent was in entering
7 Ms. Annan's home, and the delusions he was having at that time. When
8 intoxicated, he believed that Ms. Annan wanted him to come into her home, and
9 that she was signaling to him that he should enter the house. His intention was to
10 have consensual sex with her, if he was reading her signals correctly, and if he
11 wasn't she would kick him out.

12 The State further argues that Mr. Ojeda's drug use, at the time of murder,
13 is not a mitigating factor that this court should consider. This is not true.
14 Intoxication at the time of the offense, even if not relieving or reducing liability in
15 the trial phase, is a valid and effective mitigating factor at sentencing. See
16 generally *Hernandez v. State*, 118 Nev. 513 (2002); see also *Geary v. State*, 110
17 Nev. 261, 269 (1994). There is no evidence, or reasonable argument that Mr. Ojeda
18 "chose to use a substance he knew would increase the likelihood of the crimes
19 being committed," or that he in some way was abusing massive amounts of drugs
20 to allow himself to commit this crime.

21 Finally, the State argues that a psychological evaluation may be untimely
22 filed, and should be excluded. There is no timeline, or disclosure requirement
23 regarding sentencing, and the psychological evaluation in this case was filed prior
24 to the State's sixteen-page sentencing memorandum. There is no law supporting
25 the exclusion of such a document. All the cases cited by the State refer to trial
26 disclosures. This is not the situation.

1 Finally, Mr. Ojeda would request that the Court order the State's
2 Sentencing Memorandum be filed *Confidentially*, as it contains medical records of
3 Ms. Annan, including both autopsy photos, and the autopsy protocol, and should
4 not be accessible to the general public.

5 AFFIRMATION PURSUANT TO NRS 239B.030

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

8 DATED this 13th day of December, 2018.

9 JOHN L. ARRASCADA
10 Washoe County Public Defender

11 By /s/ Katheryn Hickman
12 KATHERYN HICKMAN
13 Chief Deputy Public Defender
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, and that on this date I electronically filed the foregoing document with the Clerk of the Court by using the ECF system which will send a Notice of Electronic Filing to the following:

Luke Prengaman
Chief Deputy District Attorney

DATED this 13th day of December, 2018.

/s/ Misty Best
MISTY BEST

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

9 IN AND FOR WASHOE COUNTY

10 HONORABLE LYNNE K. SIMONS, JUDGE

11 -oOo-

12 STATE OF NEVADA,

13 Plaintiff,

Case No. CR15-0829

14 Dept. No. 6

15 vs.

16 FRANCISCO MERINO OJEDA,

17 Defendant.
/

18
19 TRANSCRIPT OF PROCEEDINGS

20 SENTENCING

21 DECEMBER 14, 2018

22 RENO, NEVADA
23
24

25 REPORTED BY: AMY JO TREVINO, CRR #825

A P P E A R A N C E S

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FOR THE PLAINTIFF:

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337-4800

1 WASHOE COUNTY, NEVADA, DECEMBER 14, 2018, 9:00 A.M.

2 -oOo-

3
4 THE COURT: Good morning everyone, please be seated.
5 This is the time set for -- are you ready? This is the time
6 set in case number CR15-0829, the State of Nevada versus
7 Francisco Merino Ojeda. This is the time set for sentencing.
8 State your appearances, please.

9 MS. HICKMAN: Kate Hickman on behalf of Mr. Ojeda who
10 is present in this, assisted by interpreter.

11 MR. PRENGAMAN: Luke Prengaman for the State.

12 P&P OFFICER KELLY: Barbara Kelly for the Division.

13 THE COURT: Good morning. Good morning, Mr. Ojeda.

14 THE DEFENDANT: Good morning, Your Honor.

15 THE COURT: And the record will reflect that we do
16 have two certified interpreters here to assist today.
17 Ms. Hickman if at anytime Mr. Ojeda is having difficulty with
18 the technology, would you notify the Court, and we will make
19 the appropriate adjustment. Now I understand you, I gave some
20 extra time this morning in order for you to go through and test
21 the computer. Everyone has done that, is that right?

22 MS. HICKMAN: Yes.

23 THE COURT: All right, before we go any further, I
24 want to hear from you from the State. Under Article 1, Section
25 8, which has now been amended under Section 8A under either

1 versions, has the State given notice of persons that would be
2 defined as victims family of this event?

3 MR. PRENGAMAN: Yes, they are present in the courtroom
4 today.

5 THE COURT: Okay. And, of course, since this matter
6 was pending, I just want to make sure that we all understand
7 the appropriate notice has been given. And secondly, in this
8 case while this matter was pending and prior to Mr. Ojeda's
9 entry of his plea, the State sought writ relief, either writ of
10 prohibition or mandamus against this Court and regarding the,
11 this Court's order on disclosure of jury venire member
12 information. It was filed in February 2017, I believe, and it
13 was heard January 2018. Recently the Supreme Court in case
14 number 72456, the State of Nevada versus the Second Judicial
15 District Court, an opinion was entered of Advanced Opinion 94
16 on December 6, 2018. This, obviously, was entered after
17 Mr. Ojeda entered his plea on August 7th, 2018, and I just want
18 to make sure that that has not affected or changed his desire
19 to enter a plea of guilty as he did.

20 MS. HICKMAN: It has not.

21 THE COURT: Okay, and he is ready to go forward?

22 MS. HICKMAN: He is.

23 THE COURT: In addition, this sentencing was
24 originally set for October 18, 2018, it was changed to
25 December 14, 2018. Now, I understand you have some matters you

1 want to address. Would you like to do that before or after I
2 get representations from Parole and Probation regarding the
3 PSI?

4 MS. HICKMAN: Whatever the Court prefers.

5 THE COURT: So I want to address to the Department of
6 Parole and Probation, the presentence investigation report in
7 this matter was prepared on September 14, 2018. It was filed
8 on September 25th, 2018. It indicates a credit for time served
9 have 1,312 days up until today. And in addition it reflects
10 extradition costs of \$1,951.12. Are there any changes,
11 corrections or additions?

12 P&P OFFICER KELLY: Yes, Your Honor. We need to
13 update the credit for time served 1,375 days.

14 THE COURT: Through today's date? I misspoke, the
15 prior calculation was through October 12th.

16 P&P OFFICER KELLY: Correct.

17 THE COURT: And has any further information been
18 received regarding restitution?

19 P&P OFFICER KELLY: No, Your Honor.

20 THE COURT: All right. Ms. Hickman, do you have any
21 changes, corrections, or additions to the presentence
22 investigation report?

23 MS. HICKMAN: Thank you, Judge. We are in receipt of
24 that presentence investigation report. I did review that with
25 Mr. Ojeda with the use of an interpreter. We don't have any

1 additions or corrections to make to that.

2 THE COURT: All right, and you stipulate to the
3 calculation of 1,375 days?

4 MS. HICKMAN: That's correct.

5 THE COURT: And my recollection of the negotiations
6 was that Mr. Ojeda would make full restitution in this matter.
7 I have no information about any restitution amounts be separate
8 and apart from extradition.

9 MR. PRENGAMAN: There is nothing.

10 THE COURT: All right. So for purposes of this
11 hearing and that agreement, there is no further information for
12 the Court to determine. With regard to extradition \$1,951.12,
13 is the defendant stipulating to that amount?

14 MS. HICKMAN: He would.

15 THE COURT: All right. So let's move on to the fire
16 storm of filings that occurred before today. And I'm going to
17 describe it as a variable paperwork, and while I understand
18 that both parties are protecting their respective interests and
19 were upset about late filings, what was disregarded was my
20 staff and this Court and the time it takes to read all these
21 documents, and I'm going to indicate to you that you are lucky
22 that I am energetic and I have been up early and I have read
23 every single page as well as the cases that support your
24 positions. So I am ready to go forward but am not happy with
25 the position it placed my staff in yesterday. Do you

1 understand it won't happen again?

2 MS. HICKMAN: Absolutely, I apologize.

3 THE COURT: All right. So first I have reviewed the
4 12-12-2018 letters submitted by the defense to be considered at
5 sentencing. There was a series of letters. There were two I
6 believe that were translated. I don't have information on
7 whether they were translated accurately. And the second one
8 there was no signature, and I interpret it to be related to the
9 statement prior to that.

10 MS. HICKMAN: That's how we filed it is how it was
11 written in Spanish and then the translation that we had, so
12 we -- the translation was our translation and then the Spanish
13 written document was the original.

14 THE COURT: And is there any reason to believe that it
15 was not fully and accurately translated?

16 MS. HICKMAN: Not to my knowledge.

17 THE COURT: Okay, and Mr. Ojeda had an opportunity to
18 review all those letters?

19 MS. HICKMAN: He has.

20 THE COURT: All right, now, in addition I have the
21 photos that were submitted. I have them both in copy here and
22 as well on my monitor. The State sentencing memorandum that
23 was filed on 12-12, 2018, and I neglected to indicate also on
24 the same date was I think before those other documents was
25 Dr. Mahaffey's evaluation, and then yesterday the defendant's

1 objections to the State's sentencing memorandum and memorandum
2 for motion for sentencing memorandum to be filed as a
3 confidential document.

4 And lastly I received today the State's objection to
5 exhibits untimely disclosed and exceeding the scope of
6 allocution.

7 Are there any other documents that either party wanted
8 before the Court for purposes of sentencing? Other than what
9 you are going to present during the course of your argument?

10 MR. PRENGAMAN: No, not for the State.

11 MS. HICKMAN: No.

12 THE COURT: So first shall we address the defendant's
13 objection to the State's sentencing memorandum? You may
14 proceed.

15 MS. HICKMAN: Thank you, Judge. I don't have a lot to
16 add on top of what I put in here. Obviously, the State's
17 sentencing memorandum outlines what is not appropriate argument
18 for sentencing. I think it also ties in a lot to the objection
19 that was filed this morning. The State's memo recognizes that
20 the Court is given very broad discretion what it can hear
21 during the sentencing. The one objection I had, obviously, is
22 to the statements of defense counsel can make at sentencing.
23 The cases cited by the State don't support that. Those are
24 trial cases. The closing argument, where the defense attorney
25 routinely referenced a recorded police interview that would

1 have been self-serving hearsay despite being admonished over
2 and over to not do so. Obviously, at trial it would be
3 inappropriate for a defense attorney to say I know this person,
4 here are my impressions of him, but that is different at
5 sentencing.

6 The only other thing, obviously, is the State laid out
7 its argument as to the crime that happened and, obviously,
8 Mr. Ojeda has pled guilty to the crime. We don't dispute the
9 majority of the facts of the crime. Obviously, we have
10 different arguments as to why it happened. What was happening
11 in Mr. Ojeda's mind at the time. Just as the State has
12 arguments as to what they believe the evidence let's them
13 argue.

14 And then the only thing I would argue is that the
15 sentencing memo should be filed under seal given the nature of
16 the photos and the autopsy reports. I think those are
17 confidential documents and should not be accessible to the
18 general public.

19 THE COURT: So you concur that the Court has wide
20 discretion that it can consider at sentencing?

21 MS. HICKMAN: Absolutely.

22 THE COURT: Counsel.

23 MR. PRENGAMAN: Your Honor, as to the lawyer's
24 statements not evidence, the facts of the individual case I
25 cited are the issue as to proposition of law that where

1 statements are in evidence if they are not evidence at trial,
2 they are certainly not evidence at sentencing. A lawyer can't
3 come in and testify essentially. Testimony comes from the
4 witness stand, and the only exception -- there is few
5 exceptions to that. Victim impact statements being one, and
6 the defendant's allocution being the other. So in terms of the
7 type of representations I speak of there, I submit that the
8 law, well regarded, we instruct injuries in every trial that
9 lawyer's arguments aren't evidence. And they are not.

10 So my objection remains if counsel starts making
11 personal anecdotes or representations that is testimony
12 about --

13 THE COURT: So let's distill this down for a moment.
14 I only indicated I was talking about the defense's objections
15 to your sentencing memorandum. And it seems that you are
16 speaking as to your objection to the exhibits that were
17 untimely disclosed and exceeding the scope.

18 MR. PRENGAMAN: Then I, that's my fault for not being
19 clear. But I, in a nutshell, Your Honor, the proposition of
20 law which is Bedrock law, is that lawyer's statements are not
21 evidence. And that's my point is that counsel can't start
22 talking about the defendant or talk about things that she has
23 seen, heard, discussed with the defendant, that is testimony.
24 So if that is going to occur, I submit that that has to occur
25 from the witness stand. A lawyer cannot testify and provide

1 factual testimony. This is a sentencing. The rules of
2 evidence don't apply, but it is still an evidentiary hearing,
3 and I submit that if there is going to be any type of anecdotal
4 testimony from counsel, it has to be subject to the oath and
5 cross-examination. So that's the State's position based on
6 that objection that the defense made.

7 As to the request to seal, it should not be sealed.
8 This is a public record. If I mark autopsy photos in a trial,
9 or the autopsy protocol at trial, those are public documents.
10 The photos and documents I marked at the preliminary hearing in
11 this case are public documents. Any member of the public could
12 come and say I want to see the exhibits that were marked in
13 this case and those are public and they must be shown.

14 So there is no basis, certainly none that the defense
15 has standing to invoke to close those. And in fact our Supreme
16 Court is quite, I would say hostile towards sealing otherwise
17 public records without a strong basis of good cause for doing
18 so. So I would submit that that request to seal that should be
19 denied.

20 THE COURT: So what's the prejudice to the State? If
21 I were to stray your sentencing memorandum, because you can
22 introduce it all today, correct, and you can argue everything
23 in your sentencing memorandum.

24 MR. PRENGAMAN: Well, I could, Your Honor. I would
25 ask why would the court strike it? Why -- would you strike the

1 pleadings the defense filed in the case? Maybe I'm not
2 following that. The defense didn't ask to strike it, they just
3 asked for it to be sealed. So perhaps I'm not --

4 THE COURT: This indicated an objection, so I'm just
5 asking if there is any prejudice. It seems to me that
6 competing -- I understand what is argument and what is
7 evidence, and I looked at every one of those cases, and I
8 appreciate the distinction between trial and sentencing. I
9 also center on the fact that this Court has wide discretion,
10 and we don't have a jury here, and the Court is charged with
11 considering what is appropriate and not appropriate. I'm not
12 saying I'm going to strike anything. I was asking what the
13 prejudice is, because it seems to me whether or not it was
14 filed early it can still be raised today, correct?

15 MR. PRENGAMAN: Well, I think that's true, Your Honor.

16 THE COURT: Right. And I have to sift through what is
17 appropriate to consider, whether it's her statements or any of
18 these documents. So I forego her both sides objection, because
19 I want to be as fully informed as I can be, and I don't want
20 any prejudice to accrue to a party. That being said, I am
21 denying any objections, and I'm considering this information,
22 because both parties have agreed that this Court has
23 discretion, and I will make, I'm taking all the appropriate
24 considerations under the Nevada Revised Statute for what I can
25 consider in sentencing and also case law. And so I am denying

1 the objections with regard to filing as a confidential
2 document. It's a public record. I understand the perception
3 that then the State can manipulate what is easier to find
4 online, but I'm, all of the exhibits would potentially be
5 public as well, and I'm denying that motion as well. I am
6 carefully considering everything, and I'm also understanding
7 this is a public forum and the documents filed are in public
8 forum. We have a wealth of people here, because this is a
9 proceeding that is a public proceeding.

10 In addition, I'm going to allow Dr. Mahaffey's
11 evaluation and her testimony. So that being said, are there
12 any other matters before we proceed from your side? I do just
13 want to make clear that I could not recall, I thought it was
14 the defendant that asked for a continuance from October to
15 December, and so he is waiving any objection under NRS 176.015
16 with regard to unreasonable delay, correct?

17 MS. HICKMAN: Correct.

18 THE COURT: Okay. Now, anything else that we need to
19 consider before you commence?

20 MS. HICKMAN: Not from me, Judge, but I think the
21 State has an objection to a video that we intend to show.

22 THE COURT: And have you met and conferred over that
23 to try to resolve or redact or correct?

24 MR. PRENGAMAN: Well, Your Honor, I just got it
25 yesterday mid afternoon, so that's part of my objection,

1 unfairness of the last minute and the State having to go
2 forward. Those are significant things, and I know the Court
3 has ruled on Mahaffey's report, but those are significant
4 documents and the Court mentioned the time it took your staff
5 and I feel the same. I mean I don't feel like I had a full
6 chance to go through Dr. Mahaffey's report in the full detail
7 that I would. So my objection is partially to the notice, the
8 late notice, especially when things have been available and
9 could have been turned over long ago, but in terms of the
10 content, I am objecting to his -- he does exceed his allocution
11 in the State's view having watched it last night. He does talk
12 about a number of things about the crime, about background,
13 about things that in my opinion clearly exceed the scope of
14 allocution.

15 THE COURT: So what's the prejudice to the State?

16 MR. PRENGAMAN: Well, Judge, one thing is that I can't
17 cross-examine him. And that's the heart of what the case law
18 talks about. Again, testimony from the witness stand. So the
19 defendant is allowed, he gets an exception to testifying so he
20 can give an allocution showing remorse. That's the purpose of
21 it. It's not to talk about the facts. It's not to get into
22 the underlying facts of the case. If he wants to do that, he
23 has to take the witness stand and I have the opportunity to
24 cross-examine him about those. So that is the prejudice to the
25 State is that he in the context of these out of court channels

1 he is getting to provide information that I can't test that any
2 other witness who testified would be subject to
3 cross-examination. So that's the prejudice to the State, Your
4 Honor.

5 THE COURT: But if I give you latitude to argue, I
6 mean you are very familiar with this case and all of the
7 evidence. If I give you latitude to argue to the Court
8 regardless of what is presented, doesn't that eliminate any
9 prejudice?

10 MR. PRENGAMAN: I would submit not, Your Honor. Well,
11 for one thing it's the law. It's the law and it should be
12 enforced.

13 THE COURT: But isn't a sentencing hearing much
14 different than a trial, and aren't the rules of evidence
15 relaxed in that sense?

16 MR. PRENGAMAN: They are, Your Honor, but nonetheless
17 testimony still is cross-examined. It's still subject to the
18 oath and cross-examination. And so even if I am given latitude
19 to argue, there is no replacement. He gets to say things, and
20 he has. He gets to say things there that I can't cross-examine
21 him about. There is some things that is inconsistent what he
22 said before. If he was on the witness stand, I would be able
23 to pursue that. I am forbidden to do that. This is getting
24 around basically protecting him from having to take the stand
25 and testify to the facts that he wants the Court to consider.

1 So that is the prejudice to the State. I should be able -- it
2 would be no different than me calling a witness and saying,
3 Judge, the defense can't cross-examine that witness. Prevent
4 them from cross-examining. What is really the harm. They will
5 get some latitude and argument, what's the big deal if they
6 don't get to cross-examine. I submit if you look at it from
7 that perspective, and there is no difference, you look at it in
8 that perspective, if the Court would find there is no way I
9 would let the State call a witness and not let that witness be
10 subject to cross-examination. It's no different just because
11 it's the State that happens to be making the motion based on
12 existing law.

13 THE COURT: All right, overruled. I'm going to allow
14 you to present it. Okay. So that being said, you may -- after
15 this discussion, I just want to clarify no additional changes
16 to the facts or anything else pursuant to Stockmeier, correct?

17 MS. HICKMAN: That's correct.

18 THE COURT: You may proceed.

19 THE CLERK: For the record, prior to the hearing I
20 marked Exhibit 1 through 38.

21 THE COURT: Thank you. Any objection to admissions of
22 those exhibits?

23 MS. HICKMAN: No.

24 THE COURT: They are admitted.

25 MS. HICKMAN: Thank you, Judge. What we're asking the

1 Court to do today is sentence Mr. Ojeda to a term of years in
2 the Nevada Department of Corrections. Do you mind if I -- I
3 can't see below me if I stay at the table.

4 THE COURT: That's fine.

5 MS. HICKMAN: Term of years in the Nevada Department
6 of Corrections. The Court, obviously --

7 THE INTERPRETER: I could not catch the term of the
8 years.

9 MS. HICKMAN: Just a term of years. The Court has the
10 option to sentence him to possible three sentences under the
11 plea. He entered, he pled guilty to first degree murder and
12 the Court can sentence him to a term of 50 years with parole
13 possible after 20 years, to life in prison with parole possible
14 after 20 years, or life without the possibility of parole. And
15 we are asking the Court to sentence him to the first one, which
16 would be 50 years in the Nevada Department of Corrections with
17 parole possible after 20 years.

18 We are here today because Mr. Ojeda pled guilty to
19 first degree murder. He has admitted what he did in this case.
20 He has shown his remorse for what he did in this case, and what
21 we are asking the Court for today in essence is the ability for
22 Mr. Ojeda and his family to move forward with hope, mercy, and
23 for the Court to recognize that Mr. Ojeda, who is the defendant
24 in this case and who the Court has to consider despite the
25 terrible acts in this case, is deserving of just an

1 opportunity, not a guarantee, but an opportunity that one day
2 he would be released from prison and he would be able to be
3 reunited with his family.

4 In this case, obviously, the State filed their
5 sentencing memorandum. I know that the Court read it, we read
6 it, and it lays out a number of facts in this case, and there
7 is nothing that we can say that neutralizes some of the
8 terrible facts of this case. The hard truth is of what
9 happened to Ms. Annan at the last moments of her life, but from
10 the very first interview that Mr. Ojeda gave to the police when
11 he was contacted in Orange County to today he has acknowledged
12 what he did. He has accepted responsibility, and he has
13 accepted the horrible nature of the crime that was inflicted on
14 her.

15 He doesn't remember all of it. He doesn't remember a
16 lot of the details of it. And I know that the Court during
17 litigation in this case has watched his interview, is familiar
18 with the things that he said. There were motions to suppress
19 both statements that he gave to the police, and the Court can
20 see in those interviews who Mr. Ojeda is today and the impact
21 that what he did, what he has carried with him for the years
22 since it happened. As I was preparing what I was going to say
23 today, one of the things --

24 THE COURT: Mr. Ojeda, can you hear now?

25 THE DEFENDANT: (Through interpreter) Yes, Your Honor.

1 THE COURT: Do you need anything repeated?

2 THE DEFENDANT: (Through interpreter) No, that's
3 fine, thank you.

4 THE COURT: Continue.

5 MS. HICKMAN: I kept thinking about in this job for
6 the Court, for the prosecutor, for me, all the tragedies that
7 we see every day and that there is some tragedies that the
8 criminal justice system can handle, can deal with, can help all
9 the parties move forward, and there is some that the criminal
10 justice system is so ill equipped to manage and mitigate
11 tragedies that happen. That as the years go by I feel, I think
12 that the tragedies keep getting compounded on as we litigate,
13 as we try to resolve cases, as we come to court, we leave
14 people like Mr. Ojeda, like Ms. Annan's family to deal with
15 their own senses of grief until the case is resolved.

16 There is no sentence that the Court can impose on
17 Mr. Ojeda that will bring back the life of Ms. Annan. There is
18 no sentence that the Court can impose on Mr. Ojeda so that it
19 will make it so that he doesn't miss the childhood of his
20 daughters. There is no way to do any of the things that both
21 parties ultimately would want in this Court.

22 The Court can't impose a sentence that would walk back
23 the actions, not of this man sitting here today, who he is, how
24 he has come in his life, but a much younger man who is addicted
25 to drugs, who obviously, did the worse thing he has ever done

1 in his life in 2004.

2 I want to take some time to tell the Court Mr. Ojeda's
3 story. He came to the United States when he was approximately
4 19 or 20 years old. And he came to join his brother and his
5 dad to be able to start working. By the time he came to the
6 United States he was already using drugs, and when he came to
7 Reno, he started to use drugs very heavily. He used
8 methamphetamine, alcohol, crack cocaine. He usually used it
9 daily unless he couldn't afford it, and he was sometimes using
10 it up to seven to ten times a day.

11 There were multiple times where he wouldn't sleep for
12 days at a time. And close in time to the time in this case he
13 overdosed, was taken to the hospital and had what sounded like
14 a stroke because of the amount of drugs he was using. That
15 didn't stop him. He was, obviously, addicted at that time. He
16 continued to use drugs, and, Judge, you see in Dr. Mahaffey's
17 report and in listening to Mr. Ojeda in his interviews, in the
18 statements he makes to Dr. Mahaffey, that at the time the crime
19 occurred when he would be using drugs, drinking alcohol, he had
20 these drug related perceptual distortions. And he had this
21 impression based on the drugs that he was using that there was
22 something about Ms. Annan that was calling to him that she
23 wanted him to come to his house, and then when he was sober he
24 would think that wasn't right, but when he was using he would
25 see there are ways that her curtains moved and things she was

1 calling to him, and he thought I would go into her house, I
2 would offer her drugs. If she wanted me there, that would be
3 something that would happen. If she didn't want me there, she
4 would just tell me and I would leave.

5 He perceived on the night that the crime happened that
6 the curtains were moving because he sat outside his uncle's
7 house that was across the street and he thought, yes, she is
8 calling to me, she wants me to come in. And it's important for
9 the Court to know at that time how intoxicated he was. How
10 much methamphetamine had affected him, and not that there is
11 anything that she did that invited him in, but that the
12 irrational thoughts that he made were irrationalized at that
13 time because of the level of intoxication that he had.

14 When sober Mr. Ojeda acknowledges that those are not
15 rational thoughts. Today he realizes no, she never called me
16 to her house, no, she never wanted me there. No, it wouldn't
17 have made any sense that I speaking Spanish and her speaking
18 English would have been able to communicate about why I was
19 there. But at the time that he committed the crime those
20 things made sense in his mind.

21 And, Judge, what I'm pointing out is irrational
22 thinking that is rationalized when somebody is under the
23 influence and the significant role that drugs played in this
24 case. Obviously, after this crime occurred he left Reno. He
25 went to Santa Ana where his family is. And the years that have

1 passed he has been stuck in this world of his own where he
2 knows what he did, where he suffers with what he did, and where
3 every day he had to confront who he was and the effects that it
4 would have on his family. He knew some day he would be sitting
5 here. He knew that his daughters would pay for his actions,
6 his wife, his family. He knew that when his daughters were
7 born he had a realization more so than he had before of how
8 terrible what he had done was, and he believed God gave him
9 four daughters so that he would know the suffering of her
10 family, so that he would know the fear and the danger that his
11 family would now face the rest of his life. And every time he
12 looked at his daughters he was reminded of what he did.

13 But in the years, and I keep saying ten years, because
14 he was arrested in 2015, but it is now almost 14 years since
15 the crime occurred, the Court can see who Mr. Ojeda really is
16 and the changes he has made in his life, and the Court can see
17 there is a seed of hope that there is a life and a family and
18 the opportunity to one day be part of the community can be
19 nurtured.

20 His four daughters and his wife are here today. His
21 oldest daughter is Itzel.

22 THE COURT: How do you spell that?

23 MS. HICKMAN: I-T-Z-E-L.

24 THE COURT: Thank you.

25 MS. HICKMAN: She was nine months old when his second

1 daughter Kimberly was born. His next daughter is Flor,
2 F-L-O-R, and his baby is Guadalupe, and all four of them are
3 here with their mother today.

4 THE COURT: And, counsel, I understood from my staff
5 that there was a motion to continue that you withdrew that and
6 am I correct in perceiving that everyone is here that you
7 wanted to be here that was the basis of that motion to continue
8 that you were concerned they could not get here?

9 MS. HICKMAN: That's correct, Judge, his family lives
10 in Santa Ana. He has a very wide family network. We
11 interviewed a number of them in Santa Ana because we knew it
12 would be difficult for many them to all come, and that's what
13 is on the video that we will show. But his wife, his
14 daughters. His sister, Janet is here. His niece, Stephanie is
15 here. His nephew's wife Marayna, M-A-R-A-Y-N-A, is here. His
16 nephew, Alfredo. His nephew, Francisco. His niece, Dulce.
17 D-U-L-C-E, and his niece's husband, Ernesto are all here today.
18 They all came from Santa Ana last night. They were able to get
19 a ride and be here this morning.

20 THE COURT: Thank you for coming.

21 MS. HICKMAN: And, Judge, I did file some photos, and
22 I'm not going to show them all, because I think that the Court
23 looked at them, but I want to tell the Court a little bit about
24 who Mr. Ojeda is and his family, which is Exhibit 27. This is
25 Mr. Ojeda and his wife, his two daughters, Itzel and Kimberly,

1 at their baptism. And when you look at these photos, you can
2 almost see a change in Mr. Ojeda as his daughters were born and
3 as he starts to take care of his family.

4 This is Exhibit 29. This is him and his wife Maria
5 when she was pregnant with Itzel. Exhibit 28, this is Mr.
6 Ojeda, his wife, and his two oldest daughters at the fair in
7 Santa Ana. Exhibit 31, Mr. Ojeda holding his baby not for the
8 first time, that is his first baby. This is Exhibit 30, this
9 is Mr. Ojeda, his three oldest daughters. For the baptism of
10 Flor. And, Judge, this family that Mr. Ojeda has, these girls,
11 his wife, what he dedicated his life to when he went back to
12 Santa Ana was raising his family and being the type of person
13 who they can depend on. He is loved, he is cherished, he is
14 supported. Like we talked before, his family did everything
15 they could to be here today.

16 There is more people that support him that aren't
17 here. He has family in Mexico. He has family in Santa Ana. I
18 do have a couple people here today who would like to speak if I
19 could do that now.

20 THE COURT: Any objection, counsel, to that occurring?

21 MR. PRENGAMAN: No, Your Honor.

22 THE COURT: You may.

23 MS. HICKMAN: The first person is his wife Maria.

24 THE BAILIFF: Stand here, face the court clerk.

25 ///

MARIA IZQUIERTO

1
2 BEING FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:
3

4 THE COURT: You may proceed.

5 MS. HICKMAN:

6 Q If you could state your first name and spell your last
7 name.

8 (Following answers given through interpreter:)

9 A My name is Maria Izquierto.

10 Q Can you spell your last name for me?

11 A I-Z-Q-U-I-E-R-T-O.

12 Q Did you have a statement you wanted to make?

13 A Yes.

14 Q Go ahead.

15 THE INTERPRETER: May the interpreter request that the
16 interpreter be moved closer to the microphone so the defendant
17 can hear her in her own words?

18 THE COURT: Yes, pull forward a little bit.

19 THE WITNESS: Well, I, what I am hearing about him
20 well, well, I recognize that because the ten years that he
21 lived with us he was very good to us. He was very attend to
22 us. Very responsible with us.

23 THE COURT: There is some Kleenex there if you need
24 it.

25 THE WITNESS: And like I said, the years that he lived

1 with us he was very good to us. I mean I don't recognize what
2 I'm hearing about him, because he was, for my daughters and for
3 me he was give all his attention. He would take care of us a
4 lot.

5 MS. HICKMAN:

6 Q Do you have anything else you want to say?

7 A Well, no.

8 Q Thank you.

9 THE COURT: Mr. Prengaman, do you have any questions?

10 MR. PRENGAMAN: No, Your Honor.

11 THE COURT: You may step down.

12 MS. HICKMAN: Could I have a minute to speak with her?

13 THE COURT: Yes.

14 MS. HICKMAN: I want to call his oldest daughter
15 Itzel.

16 THE BAILIFF: Raise your right hand for the clerk,
17 please.

18 MAITZEL O.

19 BEING FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:
20

21 THE COURT: You may proceed.

22 MS. HICKMAN:

23 Q Are you okay? Can you tell me your first name and
24 then just the first letter of your last name?

25 A My name is M-A-I-T-Z-E-L.

1 Q Can you spell your first name?

2 A M-A-I --

3 Q T?

4 A T-Z-E-L.

5 Q Thank you. And Ms. Itzel, is Mr. Ojeda your dad?

6 A Yes.

7 Q Did you have something you wanted to say about him?

8 A I want to say, I just want to say that my dad was a
9 good guy and I never seen him do bad stuff. He always took
10 care of us.

11 Q While your dad has been in Reno, have you had the
12 opportunity to talk to him?

13 A (Witness nods head.)

14 Q Have you talked --

15 THE COURT: Just a moment. Take your time, but you
16 must answer out loud. The court reporter can't take down
17 shaking of heads so you need to answer out loud. Okay, so
18 answer her last question.

19 MS. HICKMAN:

20 Q Have you had a chance to talk to your dad?

21 A No.

22 Q Do you guys video screen chat with him?

23 A Yes.

24 Q How often?

25 A I think three times a month.

1 Q About three times a month? And when you talk to him,
2 does he continue to act as a dad to you?

3 A Yes.

4 Q Does he -- do you tell him about your day?

5 A Yes.

6 MS. HICKMAN: Thank you, Judge. I have nothing
7 further.

8 THE COURT: Mr. Prengaman, any questions?

9 MR. PRENGAMAN: No questions.

10 THE COURT: Thank you. You can step down.

11 MS. HICKMAN: Judge, I do have a video to present.
12 This has been admitted as Exhibit 38.

13 **(Video played.)**

14 MS. HICKMAN: Mr. Ojeda doesn't feel sorry for
15 himself. He doesn't feel that he doesn't deserve to be
16 punished. He doesn't feel anything for himself. The remorse
17 that he feels goes directly to Ms. Annan, to her family, and
18 the incredible guilt that he feels for his own family, for his
19 daughters, and from what his actions in 2004 will take away
20 from them for the rest of their life.

21 In the time between 2004 to when Mr. Ojeda was
22 arrested he raised a beautiful family. In the video there is a
23 portion where he is wearing the vest and he is hugging his
24 daughters. That was after his first interrogation in Orange
25 County when he says good-bye to his daughters, when he knows he

1 is being arrested, and he is telling them to be good, that he
2 is going away for a long time. That he loves them. And,
3 Judge, that was the last time he seen his daughters in person
4 until today. He has talked to them over the video screen but
5 today is the first time he has seen them in person since that
6 day.

7 Mr. Ojeda has been kind. He has been loving. He has
8 been a hard working man who has been employed doing a number of
9 things. The most recent was landscaping. He supported his
10 wife, he supported his girls and he has shown the Court who he
11 is, and he is not simply a person who was using drugs, who
12 killed Kyla Annan and who has no redeeming qualities.

13 He has shown us he is living not just as a productive
14 member of our society but is much more. He can be trusted to
15 make sure his daughters do well in school. To walk them home
16 from school, to tuck them in at night, and to kiss them good
17 night.

18 His wife is here and she can attest that he has been a
19 reliable and loving husband for all the years since this
20 happened. He is a family member. He is loved. He is an
21 employee that can be counted on, and he is a human being that
22 when he is not incarcerated, which he is going to be for a
23 significant period of time no matter what this Court does, but
24 when he is not, he is capable of following our social contract.
25 He is able to follow the law. He has stopped using drugs. He

1 can be part of society.

2 And I'm not asking the Court to set him free with a
3 minimal punishment. I'm not asking the Court to not punish him
4 for the acts that he did. The Court can see in the time
5 between when he said good-bye to his daughters in the video
6 until today that they have grown. They are different people.
7 They are not babies anymore, and every single day that he is
8 away from his family he is paying for what he did. His family
9 pays for what he did.

10 Being away from his daughters is punishment, and
11 that's the type of punishment that comes with doing something
12 that he did, and he understands that and he is taking
13 responsibility for that. In the minimum time that the Court
14 can give him, in 20 years his baby will be almost 30 years old.
15 He will have missed his children's childhoods because of what
16 he did, and he accepts that punishment and takes responsibility
17 for having to miss that. But what I'm asking the Court to do
18 is not just consider the facts of this crime, because like I
19 said earlier they are horrible, they are brutal, they are
20 terrible, and if we had been here in 2004, I think the
21 sentencing would be much different, but we're not. We are here
22 in 2018 with a man who has proved who he is, who he can be, and
23 what he will do once he has finished the punishment that he is
24 going to serve for the crime that he did.

25 So I'm asking the Court not just to consider that

1 crime but consider all the mitigation in the case. Consider
2 his remorse, consider his cooperation with the police.
3 Remember those videos the Court watched where he tells them
4 exactly what happened. He tells them what he remembers. He
5 tells them what he doesn't remember. When they remind him of
6 details, he says yes, I remember that. And he doesn't just
7 confess once, he confesses once in Orange County then on the
8 ride back up to Reno.

9 Remember in those videos the same thing I am telling
10 the Court here today, is that he is not sorry for himself, he
11 is sorry for his family, he is sorry for her family. Every day
12 he feels what he did. He had begged God for forgiveness. He
13 felt God sent him daughters so that he would fully understand
14 what he did.

15 Judge, what we are asking the Court to do is sentence
16 him in a way that honors the life that he took but also
17 nurtures the part of the criminal justice system that can
18 reflect the best, not just in Mr. Ojeda but in all of us, that
19 there is hope, there is mercy, and that if he is who he has
20 shown he can be, he will have the opportunity, again, not the
21 guarantee, but simply the opportunity to one day be reunited
22 with his family.

23 THE COURT: Thank you, counsel. We'll be in recess
24 for ten minutes.

25 (Break taken.)

1 THE COURT: Anything further, Ms. Hickman?

2 MS. HICKMAN: Nothing for me. I believe Mr. Ojeda has
3 a letter he would like to read.

4 THE COURT: Would you like to then proceed,
5 Mr. Prengaman?

6 MR. PRENGAMAN: I am happy to let him read it.

7 THE COURT: And his letter will be his right of
8 allocution at this time, correct?

9 MS. HICKMAN: Correct.

10 THE COURT: Please stand, sir. The law gives you the
11 opportunity to speak to the Court to tell me anything I should
12 consider before imposing sentence. Would you like to address
13 the Court, sir?

14 **(Defendant speaking through interpreter:)**

15 THE DEFENDANT: Yes.

16 THE COURT: You may. Just a moment. Go ahead. I
17 want to make sure that I get every single thing he is saying.

18 THE DEFENDANT: My name is Francisco Ojeda. I want
19 for you to take into account and analyze in great detail these
20 words that I'm writing at this time. It's something very
21 difficult to explain for me since at this time I'm going
22 through something that I never thought I would go through in my
23 life. I have been in this country for 15 years and my life
24 changed radically when I arrived in the City of Reno, Nevada.
25 I came with the hope of working to get ahead. To have

1 something saved up for when I would have my family.

2 I arrived in Reno. I started to work to get together
3 some money, a bit of money to help out my parents. Everything
4 was fine. And then the drugs started to influence my life
5 again. I started to isolate myself when I arrived. When I
6 would use drugs, my personality would change, my way of
7 thinking, I would react totally differently. I was destroying
8 myself, my life, my family, everything that was around me, and
9 I could not tell what was going on.

10 I came to realize what I had done too late. It was
11 like a dream I was living. I couldn't believe in fact, in
12 spite of what had happened I couldn't believe it. It was
13 difficult for me to understand the evil that I had committed.
14 That was when I moved to California with my sister. I started
15 to work again to help my parents. And so I met a marvelous
16 woman who is my wife. She has been a very important piece in
17 my life. Thanks to her advice and her words everything started
18 to change in my life.

19 Even greater was my surprise when she became pregnant
20 with my first daughter. At that moment is when I realized that
21 I had somebody to fight for, for whom to change, for whom to be
22 a different person. That person had arrived in my life. There
23 was somebody in my life now that way. My wife, my daughter,
24 thanks to them I started to get over my addiction to drugs.
25 And during one year, and in one year later my second daughter

1 arrived. I started to go to church. I got close to God, and
2 since then I have asked for forgiveness every day. There is
3 not a day that goes by that I do not ask for forgiveness for
4 what happened.

5 My third and fourth daughter arrived who are now at
6 the ages of 12, 11, 9, and 6. I feel so overjoyed to have a
7 family who is so marvelous, to have a wife who has been with me
8 throughout my good and bad moments of my live and has given me
9 such wonderful daughters. I have turned into a father, a
10 responsible hard worker. I even had two jobs to try to provide
11 the best for my family. There was now a reason to work hard
12 and fight for -- to fight for and make an effort.

13 Now at these moments of my life I don't know how I
14 would react if something were to happen to one of my daughters.
15 I don't know how I would think in this moment. I don't know
16 what I would do. I don't know how I would react. It would be
17 something very painful. Now that I'm a father I don't know if
18 I would be able to overcome such a great pain.

19 I know that my words are not going to change any of
20 what happened. Today I realize what a great pain I would feel
21 if I were to lose one of my daughters. I realize the pain that
22 I made them feel, the pain that they feel today. During this
23 time that I have been in prison I have had the time to think
24 that there is no way for them to be able to accept an I'm
25 sorry, forgive me, since I'm sorry and I forgive me do not

1 justify the loss of a loved one.

2 I have no words with which to say how I feel. But
3 today I am here to receive my punishment and to say that I am
4 very sorry for the wrong that I caused. I deeply ask for
5 forgiveness both to the parents and to justice.

6 I ask you, Madam Judge, to grant me an opportunity to
7 be anew with my family since in these last ten years my life
8 has changed and I have created a family.

9 This letter is addressed to the family. I want this
10 letter for you to take into consideration these words. They
11 are words that perhaps you will not accept words from somebody
12 who caused such a terrible ill upon your family. I don't know
13 if they will, if they are the right words, because for me it is
14 very difficult to address the parents since they are the most
15 affected people. I dared to write this letter to tell you and
16 let you know that I am profoundly remorseful for what happened.
17 I hope one day to be able to reach the forgiveness of God from
18 justice and especially yours. I know that the forgiveness that
19 I'm asking for does not justify the damage.

20 But at the time and moment that this, that this all
21 happened, I don't know what was going through my mind since I
22 was an alcoholic and a drug addict. I would like for you to
23 consider that throughout these ten years before my arrest my
24 life had radically changed. I met my wife, I have four
25 daughters, they are the ages of 12, 11, 9, and 6 years old. I

1 feel a great sadness for my daughters and my wife, that they,
2 without having anything to do with any of this, will have to
3 pay for the consequences of my actions. Since they will be
4 left alone, unprotected, without help. They will not have
5 their father when they will most need me. When they will most
6 need an unconditional support.

7 THE COURT: Any further words you would like to say?

8 THE DEFENDANT: There is a little bit left. Myself
9 today I am here in front of the judge and before you to receive
10 my punishment. I ask forgiveness, to ask you for forgiveness
11 and tell you how I feel. I ask for compassion so I may be
12 given an opportunity to be, to be able to be once again with my
13 family.

14 THE COURT: Anything else you would like to add,
15 Mr. Ojeda?

16 THE DEFENDANT: No, that I'm sorry that here I am so
17 that you can decide whatever it is that you are going to do.

18 THE COURT: All right. Mr. Prengaman.

19 MR. PRENGAMAN: Thank you, Your Honor. Your Honor,
20 the defendant does not deserve the chance at parole. Exhibits
21 No. 1 and 2 show Kyla Annan as she looked in 2004, 28 years
22 old. The photos show what the defendant did to her.
23 Exhibit 10, Exhibit 9 in her own home. Exhibit 11.
24 Exhibit 18. Exhibit 19. Your Honor, there are other photos
25 which have been admitted into evidence which I know the Court

1 will consider.

2 Your Honor on September 13th of 2004 this defendant
3 entered Kyla Annan's home. He entered her house at night. On
4 his way -- he went through a back door. On his way he stripped
5 off his shirt, he stripped off one shirt and left it in the
6 back area near where he made entry. He made his way to her
7 bedroom and as he got to the foot of her bed he stripped off
8 his undershirt and left it at the foot of the bed. He placed
9 his hand over the figure he saw in the bed, over the mouth, and
10 then realized that it was actually Kyla's boyfriend who
11 happened to be there unbeknown to him. So he ran, he left.
12 Travis Miller, Kyla's boyfriend at the time, woke up when he
13 felt the hand over his mouth, looked up to see a dark figure
14 leaving the residence. He ran out, followed to see where he
15 went, lost him. Then he and Kyla proceeded to search. They
16 are thinking it might be a robbery or burglary. They start
17 searching their residence. They find nothing missing, but they
18 find things that weren't there when they went to bed, the two
19 shirts.

20 Now, this defendant is linked, DNA is linked to the
21 shirt. We know in addition that he went into that house from
22 his own mouth. He talked about going in. He talked about
23 considering and deliberating on going in. In his interview
24 with the police when he was being extradited to Reno, when he
25 was talking about that prior incident, he said so I was there

1 thinking whether to do it or not to do it, and in the end I did
2 go in, and like I tried to grab her but she moved and I felt
3 fear at that point. That's when I ran.

4 So he ran. A week or so later, and we know that
5 Kyla's body was found on the 23rd, and sometime between the
6 20th and the 23rd, the last time anyone had talked to her, her
7 parents earlier in the day, that Friday, Travis later that
8 night, the last ones to talk to her alive. We know she was
9 expected at work the following Monday and never showed up. So
10 she died that weekend. She was killed that weekend.

11 We know that the defendant entered Kyla's residence
12 after casing it. He approached it around 2:00 a.m. He walked
13 around it multiple times checking to see if anyone was home,
14 who was home. He significantly, given what he would represent
15 that you have seen here in Court, significantly the back door
16 that he entered through before was locked, so he went around
17 the house and he found a window, and he had to actually break
18 the screen off to make entry into the residence.

19 He got in and he made his way. There is a sort of a
20 little hallway area leading to where the living room and
21 bedrooms are. Where he said he described she must have heard
22 me come in, because she confronted me there. She met me there
23 in that little hallway area. And he described that she tried
24 to defend herself. She had what he described as a bat, but
25 what we know was sort of a tape covered heavy piece of conduit

1 wire that her boyfriend had fastened to keep in the house. And
2 he easily disarmed her and he beat her. He took her, threw her
3 in the bed, in her own bed, in her own bedroom, and he
4 proceeded to beat her and rape her. And then killed her. He
5 strangled her. Face to face. His hand or hands on her throat.
6 And we know that it takes time to strangle somebody. It
7 doesn't happen in an instance. It's not like pulling a trigger
8 of a gun or stabbing somebody. It's more intimate than that,
9 because he is face to face with her watching her as the seconds
10 tick by that it takes to squeeze the life out of her. He
11 watches her go, and he leaves her there in her bed and takes
12 off.

13 Now, based on what you have heard today, the defense
14 has portrayed this as the defendant having irrational thoughts,
15 that it's due to drug use. That this is a drug induced
16 situation. And what you have been provided has been suggested
17 that because he was taking drugs, he had this on and off, and
18 that's actually how it's described in the paperwork, that it's
19 not a break with reality, because he is still in touch with
20 reality, but it's described as he uses drugs and he has this
21 described as an irrational thought that Kyla Annan actually
22 wants him, wants to have sex with him, is enticing him to come
23 over. And then when he is off of drugs he realizes that that
24 is wrong, that's wrong, that it's not true. And then he uses
25 drugs again, irrational thought process back on. And then off.

1 That's how it is literally described in the paperwork you have,
2 Your Honor. But what we do know about that, taking that for
3 the moment, for argument sake that that is what happened,
4 although I will submit to you the facts show a more rational
5 and reasonable explanation of what happened. But let's take
6 that. What we know is that he appreciated what drugs did to
7 him. We know that because he admitted what I just read to you.
8 I entered from the back side and I opened the door and I went
9 in and I took my shirt off that I -- the shirt that I had on.
10 So I was there thinking whether to do it or not to do it, and
11 in the end I did go in there and I tried to grab her. And he
12 talks about leaving the house and recognizing that that was
13 wrong. Recognizing that he shouldn't have done it. And yet he
14 goes back, and consider the irrational thought process, so the
15 explanation provided to you today is that he believed that she
16 wanted him, and so he goes into her house through the back door
17 late at night after midnight. All the lights are off. He
18 strips off his shirt, not as he described I wanted to talk to
19 her see, if she maybe she wanted to date me and we could do
20 some drugs. Strips off his shirt almost right away, because
21 that mannequin where he discarded it is pretty close to the
22 back door. Makes his way to the bedroom, goes to the foot of
23 the bed, and not in a conversational way but he puts his hand
24 over what he thinks at the time it's her mouth, and he would
25 have us based on what he provided in doing all of that he was

1 suffering under the irrational belief that all this was because
2 she wanted him. She wanted him to have sex with him.

3 But he leaves. He says he recognizes what he did was
4 wrong. He describes on page 88 of his interview with then
5 Sergeant Chalmers sometimes it would happen to me as I would do
6 things like this when I drink and use drugs and then later I
7 would react and I would say why did I do it, why did I do it.
8 Like when I am running shirtless. Like he is talking about the
9 prior incident where he left shirtless because he had taken off
10 his shirts, discarding it by Kyla's bed. I mean I would think
11 the fear of just to think that I was inside the house and to
12 touch someone, why am I doing this. Why do I do it. And I
13 would start to think about the way I would run through the city
14 shirtless.

15 So he certainly appreciated what he was doing was
16 wrong. And if you take the perspective of this irrational
17 thought process using methamphetamine, he certainly knew, as I
18 would suggest if he was using regularly as he claimed, as any
19 methamphetamine user knows, he knows what it does to him. But
20 he certainly knew exactly what it did to him on this occasion
21 because he acknowledged reflecting upon it.

22 Nonetheless, a week or so or not too much longer than
23 a week later he goes back to her house at 2:00 a.m. and again
24 from the irrational thought process it would be represented to
25 you that he believed she wanted to get together with him again.

1 And so he goes around 2:00 a.m. and he makes his way not
2 through the front but he goes around to the back. Makes his
3 way over a fence to get into the back part of her property.
4 Walks around the house, checks the back door, it's locked, and
5 again, he would have the Court believe that due to this
6 irrational thought process locked back door, she still wants me
7 to get in. So he goes around to he find a place to break and
8 breaks the screen so that he can climb into her house through
9 the window. Then he meets her, she confronts him. She heard
10 him, she confronts him with an item looking like a bat, and
11 again, he would have as has been represented to you that he
12 believed then that she still wanted him. That was some kind of
13 overture that he believed she still wants him. So then he
14 proceeds to strike her, disarm her, throw her into the bed and
15 beat her. And Your Honor knows from looking at the photos that
16 although he did talk about beating her, he massively downplayed
17 it every time he talked about it. Because this is what he did
18 to her as found by Dr. Christy Elliott.

19 So, in addition to the strangulation injuries, the
20 fracture to the hyoid bone, the hemorrhage to the strap muscles
21 of her neck, the bilateral abrasions you see in the pictures,
22 essentially the finger marks on the sides of her neck from
23 being strangled.

24 So in addition to that, the following. Multiple
25 abrasions and contusions of head, including forehead, eyes,

1 nose, lips, cheeks, chin, and ears. Subchorial hemorrhage in
2 the head. Bilateral temporalis muscle hemorrhage, greater on
3 left than right. Again, head injury. Multiple abrasions and
4 contusions of torso, including shoulders, chest, back, and
5 right hip. Partial bite mark of right breast. Multiple
6 abrasions and contusions of upper and lower extremities.

7 So you know from these photos that he didn't just
8 simply disarm her, he didn't as he would have the Court or has
9 been suggested in the documents you received, simply react. He
10 beat her into submission. And the last, how she spent her last
11 moments alive was being terrorized in her own home, violated
12 and then strangled face to face with this defendant.

13 And, Your Honor, for that he does not deserve the
14 opportunity to be on parole. He does not deserve the
15 opportunity. If you believe what has been represented about
16 the drug use, he does not deserve the opportunity at parole
17 because he knew what he was doing. He knew again in that
18 argument that using drugs would result in exactly what
19 happened. He, and from that perspective what we are talking
20 about is who, to whom do you assign the burden of the
21 defendant's drug use? Who suffers the burden? When a
22 defendant like this defendant uses drugs and then does a
23 violent crime or any crime, who do you assign the risk of that
24 drug use? Do you say well, sorry, victim, this defendant is
25 going to get a lighter sentence because he used drugs so less

1 justice for you, but don't worry, it's all because he was using
2 drugs at the time. Or do you assign the burden of that drug
3 use to the offender, the wrong doer. And I submit however you
4 answer that generally in this case, you assign it to this
5 defendant because he knew. Again, you accept everything that
6 has been represented in the defense argument to you and it
7 means he knew exactly what using drugs would result in. It
8 would result in him going into Kyla's house and sexually
9 assaulting her.

10 So where you assign that burden of that risk to this
11 defendant, because he knew exactly what he was doing, it is
12 like pointing a loaded gun, he knew exactly what he was doing
13 or what would happen if he used drugs.

14 Now, you heard from Dr. Piasecki on that video, I
15 submit that is entitled to very, very, very little weight.
16 It's not really consistent with what you see in the other
17 evaluation that you have. And Dr. Piasecki doesn't actually --
18 she talks about some generalities, she doesn't actually tie it
19 to this defendant. We know you can test for injury or symptoms
20 of frontal lobe damage, obviously, if there were any tests done
21 they weren't reported. She suggests that somebody with frontal
22 lobe damage might be essentially a reckless danger that
23 essentially taking time off. And if you want to take that,
24 then I submit you should put this defendant in prison without
25 the possibility of parole to protect the community. Because

1 now again, there is not much reason to put a lot of weight in
2 what you heard on that part of that video, but if that's true,
3 you know that if he has got frontal lobe damage, nobody says he
4 does, that's just Dr. Piasecki saying people with that could do
5 this or that, but if you want to go down that road if he does,
6 you know what could happen should he act out on that, because
7 you have seen it and you should protect the community from
8 that. But, again, I submit that is entitled to very little
9 weight.

10 But there is a much more rational, reasonable
11 explanation for what happened, and it's just simply that this
12 defendant saw Kyla and he coveted her and he intended to have
13 sex with her against her will, and that's the reason that he
14 waited until night time and he went into her house on the 13th.
15 That's why he went in through the back door and that's why he
16 started taking off his shirts because he was going to sexually
17 assault her, stripping off his clothes, because he was going to
18 have sex with her. That's why he put his hand over the mouth
19 of the person that he thought was her. And when he saw that it
20 wasn't, it was a man, he ran. That's also why he came back a
21 week or so later and came back again surreptitiously 2:00 in
22 the morning, makes his way to the house, cases it, makes sure
23 the coast is clear, breaks a window to get in. That's because
24 he is going to follow through on what he didn't get to
25 accomplish the last time, and this time he does it. And he

1 does it and he subdues her. He severely beats her to subdue
2 her, and he doesn't leave a witness behind.

3 And, again, this strangling somebody is not like
4 pulling a trigger, it takes time. And he strangled the life
5 out of her while he watched the life go out of her right there
6 on top of her in her own bed.

7 Now, that's the rational, reasonable explanation of
8 what happened, he coveted Kyla and he took what he can't and
9 terrorized her to get it. He did one of the most horrible and
10 that word as used doesn't do justice what he did to another
11 human who had done nothing to him, who was really a bystander
12 for his conduct. For that the punishment for that, Your Honor,
13 should be life without the possibility of parole. Just for
14 that, but also considering everything else that goes along with
15 it. The loss to her family. Just knowing that she died, how
16 she died. But this defendant escaped. There is no witness, he
17 escaped, and he stayed, according to him in Reno for a short
18 time, realized the police were actively investigating around
19 Kyla's house and he fled to California and he stayed in
20 California for over ten years. He had over a decade of
21 freedom.

22 Now, during that decade of freedom he left Kyla's
23 family, her parents, her boyfriend at the time, her loved ones,
24 aggravated what he had done in killing her. Not did they just
25 know how she died, how awful to lose a daughter, to lose a

1 loved one, but they know that the killer is out and that he is
2 not being brought to justice. And you heard it represented
3 that I think Ms. Hickman said it that every day that he was in
4 California living his life, having a job, even starting his own
5 business, that he was, he was suffering every day. Well, Your
6 Honor, who was really suffering was Kyla's parents and loved
7 ones. Because every day of that decade plus was another day
8 that there was no justice for them and that the longer time
9 went on, beginning to wonder if there ever will be justice,
10 will we ever get closer of knowing who did this to our
11 daughter. And even though it's not true justice of anything
12 that could replace what was done, at least the knowledge of
13 knowing that he is held accountable, that the law is going to
14 find him and hold him accountable.

15 Also the police, the police continued to investigate.
16 They investigated high and low. There was -- they used the
17 press to try to locate people who might be suspects, and over a
18 hundred DNA samples were gathered in the course of the
19 investigation to be tested just in the hope following up any
20 lead, no matter how slim. So while he was in California, the
21 police were working very hard to try to solve the crime. But
22 they couldn't because they -- he got out. No witness. They
23 had DNA evidence but no one to link it to.

24 So, again, it's been represented today that he was
25 remorseful, that while he was in California he was very

1 remorseful. But he didn't come forward. It was no crisis of
2 conscience that solved the case. He didn't come to Reno, admit
3 what he had done, he didn't do any of that. And I submit, Your
4 Honor, that's the real litmus test of remorse in this case.
5 I'm not saying it's easy in the sense that it is easy to --
6 well, it is easier when you have been caught, when the police
7 have a strong case, when they have DNA, your DNA in and on the
8 victim. It's easy in that circumstance to feel remorse when
9 you are forced into it. It's easy to feel sorry, because you
10 are sorry. You are sorry you got caught. Sorry for yourself,
11 sorry for your family certainly, but it's not the same. It is
12 not the same feeling sorry when you have been caught, when you
13 your back is against the wall, when the police have you cold
14 because they have your DNA, your sperm on the victim. That's
15 not the same as feeling remorse and actually doing something
16 about it. Having an internal compass, a moral compass that
17 says I did wrong and I need to take responsibility. That's the
18 test of remorse. And that did not happen in this case. It was
19 an informant who came forward and pointed the police in
20 Mr. Ojeda's direction, and the police gathering a surreptitious
21 sample, the DNA sample that solved the case. It was not this
22 defendant.

23 The police then obtained an arrest warrant for the
24 defendant, based on the evidence they found when they had
25 linked his DNA, that surreptitious sample to the sperm, to the

1 shirt, DNA from the prior invasion, home invasion of, back on
2 the 13th. So they linked his DNA to that. And they went down
3 to speak to him, and the Court has heard hours of, in the
4 course of the case, the hours listening. You've seen the
5 interviews.

6 Now, it's been suggested in some of the paperwork that
7 this individual is not the highest functioning. I submit you
8 have seen evidence far to the contrary. He has his own
9 business. You saw him interact with the police. The first
10 contact he was -- it was at that, we were refer to it during
11 the litigation case, the field contact where he was not in
12 custody, he was working at his job. The police approached him
13 and had a lengthy conversation with him, and in the course of
14 that conversation they asked him about Kyla, they showed him a
15 picture. He lied. He said I don't know her, never seen her.
16 They told him that they had DNA from the person, and he again
17 going both to whether he had real remorse and how cagey he
18 could be, because he was very cagey in that interview, dodgy.
19 He was no dummy. He sparred so to speak with the police,
20 telling them you are free to go ahead and keep investigating,
21 try to get some investigation about who was accusing him. It
22 was not until the police then showed him we have a warrant for
23 your arrest and started to put him in handcuffs, he knew they
24 had his DNA, they had a warrant for him, and they started
25 putting him in handcuffs, and that's when he said you got me, I

1 did it. In almost the same breath gave his I was high, and
2 started in on saying I was drug induced. But again the test,
3 the reaction was not when the police approached him and showed
4 him Kyla's picture, I have been waiting for this day, here you
5 are, I did it, I need to take responsibility for it what I did.
6 None of that. He lied until the police cornered him and they
7 had him and then he talked. And he did talk. And, again, he
8 downplayed an awful lot. We know from the other evidence in
9 the case, he downplayed. He acknowledged what he had to,
10 because he knew they had his DNA. He knew where he left it.
11 But he certainly downplayed what he had done to Kyla.

12 So essentially, Your Honor, the defense has posed to
13 you two things. Said this has been drug induced, give him a
14 lighter sentence. You should not do that. The other thing
15 they said is look at the mitigation. The mitigation is that
16 while he had ten years of freedom, he had a family, he had a
17 job and they are essentially saying to you, Judge, give him a
18 lighter sentence because it's bad for his family. Give him
19 some hope. He built a family. Give him a lighter sentence.

20 Now, I'm not going to -- I'm not going to sit here and
21 say that every criminal, even murderers that they are a hundred
22 percent bad through and through. You can find redeeming
23 qualities in everyone, but that's not really the question here,
24 Your Honor. The question is when you talk about mitigation,
25 how does it mitigate? What is the relationship of what has

1 been represented as mitigation to the crime?

2 The relation is that the defendant should have been in
3 custody and in prison in 2004 after he did this to Kyla. He
4 should have been in prison then, but because he got away, he
5 was able to grab, really steal ten years of freedom. That's
6 really what happened. He stole ten years of freedom and
7 enjoyed that freedom at the expense of Kyla's parents and loved
8 ones. At the expense of the police really trying to solve the
9 crime. And really at the expense of this community, because
10 one of this community's daughters was brutally raped and
11 murdered in her own home and nobody had been apprehended for it
12 and that was an unsolved case.

13 He stole all that for ten years and he had a life!
14 Kyla did not have a life. Her parents were truly, that is the
15 true torture here when that word is used by you, truly tortured
16 during that time. Kyla's family suffered that whole time. But
17 he took that. That is being argued to you that you should
18 lighten his sentence because he took advantage of stealing that
19 time at everyone else's expense. And you should not do that,
20 Your Honor. You should give him life without parole because he
21 deserves it first and foremost for this crime, just for what he
22 did to this girl. He deserves it. If he was in prison then
23 and repented and changed his life, that would be great, but
24 anything you can say about him, the weight to assign to this as
25 a mitigating circumstance does not even come close, and I'm not

1 going to say there is no weight to be assigned, that there is
2 nothing there, but what I am telling the Court is that the
3 weight that should be assigned, the relationship of that to the
4 crime and whether it should lessen the sentence, it does not
5 even come close, it does not mitigate what he did far enough
6 down to give him an opportunity at parole.

7 And that's especially true, because he got, what he
8 got is priceless. He stole it, and he got ten years, over ten
9 years of freedom that he shouldn't have had. He got his parole
10 early in the prime of his life. He killed Kyla in the prime of
11 hers and he enjoyed a decade in the prime of his. So the
12 message that this Court should send is that if you do this, if
13 you turn this, one of this community's daughters into this, if
14 you force her to spend and force her family to know how she
15 spent the last time on this Earth alive, terrorized, subdued,
16 beaten, in pain, violated, the message that this Court sends
17 should be that you do this and you forfeit your own life. You
18 go to prison for life. We can't do to you what you did to this
19 girl, but you forfeit your life when you do something like that
20 to a fellow human being.

21 Your sentence, Your Honor, should also send the
22 message that drug abuse is not an excuse. That you don't get
23 to go out and make bad choices, especially when you know the
24 consequence of those choices, then come into Court and say,
25 Judge, give me a lighter sentence because this crime was the

1 result of my own bad choices. Your sentence should send the
2 opposite and send a message that you bear the burden, you the
3 wrongdoer bear the burden of your bad choices. If you choose
4 to use drugs, especially if you know what could happen, the
5 burden is assigned to you and no one else.

6 Now, the defendant also talked about his family, what
7 has happened to them. That's his fault. He did this to his
8 family. Now, again, I'm not saying he is not remorseful about
9 what happened. I think I have described the reasons for that.
10 Why it is not the true remorse, but I have no doubt that he is
11 sorry for his family and what has happened. No doubt. I have
12 no doubt what he has done to his family is sorry, but he did
13 it. But, again, what the defense is asking you because he did
14 something to harm his family situation, give this defendant a
15 lighter sentence. Take some time away from justice. Take some
16 time away from what the victims deserve and give that to the
17 defendant, because of what he did to his own family. And,
18 again, it is sad what he did, but that's something that he
19 inflicted and what should not come out of the justice that is
20 due for what he did.

21 And, Your Honor, the Court's sentence should also send
22 a message that you don't get a benefit if you run. If you flee
23 from justice, the message of getting parole, what that sends is
24 if you can get away and stay away long enough, when you end up
25 getting held responsible if you do, then you are going to get a

1 benefit out of that. And your sentence should not send that
2 message. It should send the message if you run, it doesn't
3 matter what you do, when you are caught, if you are caught, but
4 if the law catches up with you, you are going to be right back
5 where you were before, and you are going to get the sentence
6 you would have deserved if we caught you at the time and that's
7 what this Court's sentence should send. Loud and clear. You
8 don't get to benefit by your own bad choices. You don't get a
9 lesser sentence because you ran and stayed gone.

10 So Your Honor, the State is asking this Court, as is
11 P&P in their recommendation, to impose a sentence of live
12 without parole.

13 If I may I would like to call Cheryl Annan.

14 THE COURT: And I want to clarify one choice of words
15 that you were saying that he stole those ten years, but during
16 that, you are not inferring in any way that he was anything but
17 presumed innocent during that period of time, correct?

18 MR. PRENGAMAN: No. What I'm saying he should have
19 been in prison for what he did. He should have been punished
20 for what he did, because he ran, left no witness. He stole
21 that time in the sense it was borrowed time is maybe a better
22 word for the Court, he was on borrowed time. He shouldn't have
23 it. It wasn't his. He took it at a cost to the victims, to
24 the community. That's what I meant by that, Your Honor.

25 THE COURT: All right, thank you.

1 initially takes the life of another should be made to forfeit
2 his own. Since the State will not carry out the death
3 sentence, life in prison without the possibility of parole is
4 appropriate. This will never bring back my baby or give me
5 closure. It will give me peace that she got some justice that
6 she deserves. I hope at the end of this hearing I will be
7 rewarded this for all the pain and suffering which Kyla and we
8 have endured. I will never see Kyla again or see her grand
9 babies, as that's what would have happened. Thank you for
10 listening.

11 THE COURT: Thank you.

12 MR. PRENGAMAN: I will call Steve Annan.

13 THE BAILIFF: Face the clerk and be sworn.

14 STEVEN ANNAN

15 BEING FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:
16

17 MR. PRENGAMAN:

18 Q Would you please state your full name for the record?

19 A Steven Annan.

20 Q Mr. Annan, what is your relationship to Kyla?

21 A Her father.

22 Q Do you have a statement you would like to make to the
23 Court about the impact her murder has had on you and your
24 family?

25 A Yes.

1 Q Please.

2 A We received a form to complete, a victim impact
3 statement. The impact seemed to be mainly financial but this
4 is not about money at all. We suffer no significant financial
5 loss rather the toll was and is emotional and it was and
6 remains massive, continues to this day and likely continue for
7 the rest of our lives. Initially in 2004 and for a year or two
8 the effects were profound feelings of disorientation, pain,
9 guilt, even suicidal ideation. We felt that we had, had we
10 acted differently we might have saved Kyla. For example, we
11 were uncomfortable with the neighborhood where she lived but
12 she being a strong-willed young woman insisted that it was
13 okay. We experienced random breakdowns. We felt sadness
14 attacks for over a year, sudden feelings of melancholy and
15 bouts of crying. These tapered in intensity and mostly
16 subsided, then ten years later when the offender was
17 apprehended, another big thanks to the tireless efforts of Ron
18 Chalmers and others at the Reno PD, much of that emotional
19 turbulence was rekindled. We were greatly relieved and glad
20 that justice would be served, yet though this was supposed to
21 mean a sort of closure, it was also a reminder that Kyla was
22 still gone forever and no means of punishment could bring her
23 back.

24 Ultimately the responsibility for all of this loss and
25 turmoil as well as for the actual crime falls on Ojeda. We are

1 unopposed to capital punishment for crimes as egregious as this
2 one, but realize that in Nevada today would not be carried out.
3 The next most harsh sentence life in prison is the best choice.
4 We believe that one who intentionally and not in self-defense
5 takes the life of another should be made to forfeit his own
6 life. Consider also that Ojeda has already enjoyed a decade of
7 freedom from the time of the murder to the time of his
8 apprehension, the remainder of his life should be spent in
9 prison.

10 MR. PRENGAMAN: Thank you.

11 THE COURT: Anything further?

12 MR. PRENGAMAN: Nothing further for the State, Your
13 Honor.

14 THE COURT: Is there any reason why judgment should
15 not be imposed at this time?

16 MS. HICKMAN: No, Judge, thank you.

17 THE COURT: Mr. Ojeda, are you satisfied with the
18 representation that has been provided to you throughout this
19 entire proceeding, including today?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Is there anything of mitigation that your
22 attorneys have not raised that you wish to raise?

23 THE WITNESS: No, everything is fine, Your Honor.

24 THE COURT: Do you need any time to speak with your
25 attorney before I impose sentence?

1 THE DEFENDANT: I don't think so, everything is all
2 right, Your Honor.

3 THE COURT: These facts are egregious, and I cannot
4 render a judgment without taking each and every fact into
5 consideration. Tragically drugs play a huge part in our
6 community, and it's clear they played a huge part in your life,
7 but it's not an excuse. This was a heinous crime and you
8 can't, or you claim you can't remember it. The facts, the
9 pictures, the terror that you invoked for Ms. Annan is
10 reprehensible, and I deeply looked for remorse, and what I
11 wrote down is what Mr. Prengaman said. As you stand here it's
12 forced remorse. You fled and now you claim you can't remember,
13 but looking at the facts, and what is compelling to this Court
14 is aside from a life you built, the love you have for your
15 children, the love for your wife, and the love that all them
16 have for you, you ran.

17 You were calculated in how you did this. It is beyond
18 belief how you would assess that this victim wanted you with
19 locked doors, standing in the hallway with what you thought was
20 a bat, what you knew was a weapon, and used against her at 2:00
21 in the morning. It is unbelievable she wanted you. You climb
22 in the window to get to her. You had time between the first
23 visit and the second visit. You had time during that period
24 that you weren't under the influence.

25 The letters say you are a good man. Your own

1 admission was you described yourself as a bad man. You are
2 correct, you are not going to see your daughters in person.
3 The Annans family can't see their daughter ever, and you are
4 sentenced to life without the possibility of parole.

5 Fees will be imposed of \$25 administrative assessment
6 fee, \$3 DNA administrative assessment, \$500 attorney's fees,
7 \$1,951.12 in extradition, \$150 DNA fee. The presentence
8 investigation report indicates that it would be concurrent with
9 RCR 1687703. And you have credit for time served of
10 1,375 days. That's the order. Court will be in recess.

11 (Proceedings concluded.)
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1 **CODE 1850**
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5

6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **STATE OF NEVADA,**

10 **vs. Plaintiff,**

11 **vs.**

Case No. CR15-0829

12 **FRANCISCO MERINO OJEDA,**

Dept. No. 6

13 **Defendant.**
14 _____ /

15 **JUDGMENT OF CONVICTION**

16 The Defendant, having entered a plea of guilty, and no legal reason or cause
17 existing to preclude entry of judgment against him, the Court rendered judgment as
18 follows:
19

20 1. Francisco Merino Ojeda, is guilty of the crime of Murder of the First
21 Degree, a violation of NRS 200.010 and NRS 200.030, a category A felony, as charged in
22 the Amended Information.

23 2. He is punished by:

24 a) Imprisonment in the Nevada Department of Corrections for a
25 term of life without the possibility of parole, to be served concurrently with the sentence
26 imposed in RCR16-87703, with credit for one thousand three hundred seventy-five (1375)
27 days time served.

28 b) Payment to the Clerk of the Second Judicial District Court of
the following amounts:

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1. Twenty-Five Dollar (\$25.00) administrative assessment fee; and
2. Three Dollar (\$3.00) administrative assessment for obtaining a biological specimen and conducting a genetic marker analysis; and
3. One Thousand Nine Hundred Fifty-One and 12/100ths Dollars (\$1,951.12) for extradition cost; and
4. Five Hundred Dollars (\$500.00) for legal representation; and
5. One Hundred Fifty Dollar (\$150.00) DNA Analysis fee.

Defendant shall submit to a DNA analysis to determine the presence of genetic markers, if not previously ordered.

Any fine, fee or administrative assessment imposed upon the Defendant as reflected in this Judgment of Conviction constitutes a lien, as defined in Nevada Revised Statutes (NRS 176.275). Should the Defendant not pay these fines, fees, or assessments, collection efforts may be undertaken.

Dated the 14th day of December, 2018.


DISTRICT JUDGE

1 CODE NO. 2515
2 WASHOE COUNTY PUBLIC DEFENDER
3 JOHN REESE PETTY, State Bar Number 10
4 350 South Center Street, 5th Floor
5 Reno, Nevada 89501
6 (775) 337-4827
7 jpetty@washoecounty.us
8 Attorney for Defendant

9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11
12 IN AND FOR THE COUNTY OF WASHOE

13 THE STATE OF NEVADA,

14 Plaintiff,

15 vs.

16 Case No. CR15-0829

17 FRANCISCO MERINO OJEDA,

18 Dept. No. 6

19 Defendant.

20
21 **NOTICE OF APPEAL**

22 Defendant, FRANCISCO MERINO OJEDA, appeals to the Supreme Court of
23 Nevada from the judgment of conviction entered in this action on December 14, 2018.

24 The undersigned hereby affirms, pursuant to NRS 239B.030, that this
25 document does not contain the social security number of any person.

26 DATED: January 14, 2019.

JOHN L. ARRASCADA
WASHOE COUNTY PUBLIC DEFENDER

By: /s/ John Reese Petty
JOHN REESE PETTY, Chief Deputy

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 16th day of May 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Jennifer P. Noble, Chief Appellate Deputy
Washoe County District Attorney's Office

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Francisco Merino Ojeda (#1209411)
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

John Reese Petty
Washoe County Public Defender's Office