

IN THE SUPREME COURT OF THE STATE OF NEVADA

KATHERINE DEE FLETCHER

Appellant,

v.

STATE OF NEVADA

Respondent.

CASE NO. 82047

Appeal from a Judgment of Conviction After Jury Verdict
in Case CR17-0690A
Second Judicial District Court of the State of Nevada, Washoe County
Honorable Egan Walker, District Judge

APPELLANT'S APPENDIX VOLUME 2

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1 to my past experience with that person in making a
2 decision. So it has to be something outside of the
3 judge's role in order to disqualify that judge.

4 I actually found another case. Curiously enough,
5 it's Walker versus State. It has nothing to do with
6 Judge Walker. It's Walker versus State, 113 Nevada
7 853, 944 P.2d, 762, a case from the year 2000, where
8 they discussed some of the issues that are raised in
9 In Re Dunleavy.

10 And the judge in the Walker case was the presiding
11 judge. And then it appears from the way they
12 reported -- or, excuse me -- the opinion is written,
13 that judge, Judge Guy, down in Las Vegas, also sat on
14 the three-judge panel that decided that Mr. Walker was
15 going to get life without the possibility of parole.
16 Mr. Walker was charged with murder with the use of a
17 deadly weapon.

18 In the Walker case at page 864 of the Nevada
19 Reporter it says, quote, "Third, Walker argues that the
20 district court improperly denied his motion to
21 disqualify Judge Guy, thereby denying his right to due
22 process and a fair trial."

23 Judge Guy was on the panel which sentenced Riker.
24 So Riker is a co-offender, though not a co-defendant.

1 The Nevada Supreme Court says, quote, "The burden
2 on the party asserting the challenge to establish
3 sufficient factual grounds warranting
4 disqualification." I should say "the burden is on the
5 party," citing back to Dunleavy at page 788.

6 "Generally what a judge learns in his official capacity
7 does not result in disqualification," citing Kirskey
8 versus State, 112 Nevada 980, at page 1007, 923 P.2d
9 1102, at page 1119, a 1996 case.

10 The Nevada Supreme Court goes on in Walker to
11 state, quote, "However, an opinion formed by a judge on
12 the basis of facts introduced or evidence occurring in
13 the course of the current proceedings or of prior
14 proceedings constitutes a basis for a bias or partial
15 motion" -- or partiality. I got the word wrong -- "or
16 partiality motion where the opinion displays, quote, a
17 deep-seated favoritism or antagonism that would make
18 fair judgment impossible," citing back to Kirskey. And
19 then Kirskey was quoting Liteky, L-i-t-e-k-y, versus
20 the United States, 510 U.S. 540, at page 555, 114
21 Supreme Court 1147, at page 1157, a 1994 case.

22 So I guess theoretically there could be a case
23 where a judge's bias rises to such a high level based
24 on his or her interaction with a defendant that

1 disqualification would be appropriate, but that seems
2 to be a very high hurdle that someone would need to
3 vault.

4 So with all of that now in mind, what are your
5 thoughts?

6 MR. PICKER: Thank you, Your Honor.

7 With all due respect to your research, I'm
8 wondering if you have read the August 2nd, 2018,
9 decision in Rippo versus State.

10 THE COURT: Yes.

11 MR. PICKER: Because I have a copy of it here for
12 you should you need it. And the reason I bring that up
13 is it directly addresses the point that you've made is
14 that, as noted in that decision, the federal courts
15 have decided for three straight times that the Nevada
16 Supreme Court is using the wrong standard when it comes
17 to that.

18 So this impossibility idea or very high hurdle idea
19 has been -- in our reading of the cases and in our
20 opinion has been dismissed. And it is recognized in
21 Rippo, the U.S. Supreme Court's hope for a different
22 standard, which is what we cited in our response both
23 in Echavarria, but in looking at the other cases,
24 Caperton, which is a much earlier case, but also in

1 Williams versus Pennsylvania which is a 2016 case.

2 Basically the question becomes -- and this is where
3 the concern is in this case. The question becomes
4 whether there's a significant risk that an average
5 judge would possibly be tempted, not -- and it is
6 something that they've learned while on the bench --
7 would possibly be tempted to lean in favor of the
8 prosecution or to potentially have an interest in the
9 outcome of the case. And that really is a large part
10 of where we're at.

11 Judge Walker made a number of observations while
12 sitting in family court, things like stating as a fact
13 in making at least one order that Ms. Fletcher's
14 daughter, Bay, was the daughter of the victim Robert
15 Trask which is absolutely untrue. He also made an
16 observation that it had been -- it was an undisputed
17 fact that Ms. Fletcher had lured Robert Trask to the
18 place where he died.

19 THE COURT: But that's not true. With all due
20 respect, Mr. Picker, that's not true. I'm looking at
21 the February 1st, 2017, order that Judge Walker
22 entered. And regarding the allegation that he made a
23 conclusion about a fact that Ms. Fletcher lured the
24 decedent to the spot where he was eventually -- or

1 where he eventually met his demise, on page 1 it says,
2 quote, "Ms. Fletcher is currently detained after
3 allegedly luring the father of Bay and Max Trask to a
4 downtown Reno park where she alleged murdered him in
5 front of Bay's older brother Max." He's not saying
6 it's a fact. He's saying it's an alleged fact. That's
7 why she's in custody right now I would assume. Where
8 is it that he says that it's a proven fact or it's
9 something that he has concluded?

10 MR. PICKER: Your Honor, that order is a reflection
11 of various hearings within the family court. And in
12 the minutes and in talking to the attorneys that were
13 in court with Ms. Fletcher at that time, those were --
14 while the "allegedly" is in the order, those were not
15 the words used within the hearing. And that -- and
16 that's a concern.

17 It is also a concern where "accused of committing
18 the extremely violent act." You know, the flavor of
19 the words -- you can say something is alleged and then
20 use very inflammatory language in front of it to, I
21 guess, lessen the -- to allege it as opposed to just
22 saying "allegedly murdered."

23 The point is that the bias comes through in the
24 language. That language is repeated in the Young

1 hearing which I -- I would like to know if Your Honor
2 has reviewed the entire Young hearing transcript.

3 THE COURT: I haven't. I know I have the ability
4 to do it, even though it's sealed, but I have not
5 looked at that.

6 MR. PICKER: And, Your Honor, that may be something
7 that Your Honor would wish to do, and we would actually
8 request that you do, prior to rendering a decision
9 here.

10 We took two very short excerpts out of that hearing
11 to give the flavor of it, but it is a sealed
12 transcript. We didn't want to unseal it. We didn't
13 want to reveal everything that was in there, because
14 there was a lot of other issues, but there are a lot of
15 comments in there.

16 And that's kind of the problem is that as noted in
17 our motion and in the response that we filed, Judge
18 Walker specifically and repeatedly notes that "in other
19 cases," specifically the child welfare case, "in other
20 cases, in my prior dealings with you."

21 It is a message very clearly stated that Judge
22 Walker has reached a point where those prior decisions
23 which were in family court, which is a different
24 standard, are flavoring the decisions he is making in

1 the criminal case. And that is our concern.

2 It is specifically where he says things like that
3 he claimed -- he claims that Ms. Fletcher's competency
4 was appropriately questioned based on the facts in
5 front of him but does not note -- and says that in the
6 family court case this should have been done but never
7 orders it sua sponte which is his authority if he has a
8 question of competency. He also has the authority to
9 order a competency evaluation. Nor did he question the
10 family court attorneys on why they weren't questioning
11 competency.

12 So there's -- it is only now after a number of
13 competency evaluations done previously by -- heard by
14 Judge Flanagan and now a couple of them heard by Judge
15 Walker that we've reached, I guess, a tipping point,
16 because Judge Walker questions Ms. Fletcher's
17 competency, questions her mental ability, yet
18 subsequently he wants to order her out of Lakes
19 Crossing at the soonest possible point and in fact
20 requested a specific order from -- or a specific letter
21 from Lakes Crossing to justify her to stay there,
22 because as he stated in the hearing where I first
23 appeared, it was his intention that day to remove
24 Ms. Fletcher from Lakes Crossing without any input from

1 the people at Lakes Crossing. I was able to convince
2 him that we needed a report from her treating physician
3 before he should do that.

4 Again, these are all small building blocks. And I
5 understand there's nothing overt, there's nothing where
6 he says, "Ms. Fletcher, you're guilty. I don't know
7 why you're wasting my time." But there are small
8 things that add up that as shown in the Ripppo decision
9 and specifically in Echavarria that lead to a
10 conclusion that there is a bias or a prejudice that has
11 entered into this situation.

12 THE COURT: But the Echavarria decision for me is
13 so factually distinctive from the facts of this case.
14 With all due respect to the judge down in Las Vegas who
15 actually heard the case originally -- I know it was
16 affirmed on appeal and it was affirmed after writs were
17 denied. It went to the Nevada Supreme Court on a
18 number of occasions and each time it was found
19 everything was fine.

20 To me it seemed pretty obvious that Judge Lehman
21 shouldn't have been presiding over that case at all
22 based on his involvement completely outside of the
23 judicial process, because Judge Lehman was being
24 investigated by the FBI agent who winds up getting

1 killed in an attempted bank robbery. And so there's
2 this whole allegation of extrajudicial reason to think
3 about should Judge Lehman be in that case.

4 This case in my mind is so distinctive. It's made
5 me kind of reflect on some of the other judges that
6 I've appeared in front of in my career. And the
7 perfect example would be Judge Kosach who I am
8 incredibly fond of and think was an excellent judge,
9 but everybody knew that Judge Kosach had a way of
10 interacting with people.

11 I remember when I was sitting there as a
12 prosecutor, and if Judge Kosach really was going after
13 somebody at a sentencing or at a probation revocation
14 hearing, really giving them the business, so to speak,
15 you knew he was giving them probation or he was going
16 to reinstate the person on probation. It was his way
17 of interacting with people and motivating those people.

18 Conversely with Judge Kosach if -- and I don't know
19 if Mr. Dreiling had the same opinion in his career as a
20 prosecutor with Judge Kosach, but if Judge Kosach sat
21 there and listened to the person and nodded his head
22 and said, "Are you finished?" and the person said,
23 "Yes," and he said, "God bless you. I really mean
24 that," the next thing was either your probation was

1 revoked or you were going to prison.

2 So judges interact with people differently all the
3 time. Different judges have different styles of
4 interaction. And I'm concerned in a broad macro sense
5 that if Judge Walker were removed from this case for
6 the reasons identified, if I find that there's bias,
7 wouldn't there be some chilling effect to the rest of
8 the judges on how we interact with people?

9 If my thought process always has to be not to be
10 judicially appropriate pursuant to the Code of Judicial
11 Conduct but be so very careful about every single word
12 you utter because somebody is going to come in later
13 and say, "Look, he's biased against my defendant," or,
14 "He's biased against the State" --

15 A perfect example occurred in here last Thursday.

16 Was his name Mr. Grayson? Daesjhon -- what's his
17 last name?

18 THE CLERK: Yes, Your Honor.

19 THE COURT: Daesjhon Grayson. I placed him on
20 probation over the objection of the State. And he's a
21 super nice guy. I mean, he really comes in with a big
22 smile on his face, always happy to see you, always
23 pleasant, did abysmally on probation, his probation was
24 revoked.

1 I told him, I said, "Mr. Grayson, I like you. I
2 don't know if I should say that or not, but I like you.
3 You seem to be an engaging and a nice person. You just
4 couldn't work probation."

5 Well, now should the State be able to come in if
6 Mr. Grayson appears in front of me again and say, "We
7 need to recuse Judge Sattler. He's biased in favor of
8 Mr. Grayson. He's identified the fact that he
9 personally likes Mr. Grayson"?

10 I think I told him, you know, "If I met you at the
11 grocery store or at the coffee shop you would probably
12 be a great person to talk to." And then I told him, "I
13 can't let my thoughts of you're a nice guy interfere
14 with my responsibility as a judge. I think you
15 violated the conditions of your probation. You're
16 revoked."

17 But could the State use that against me at some
18 later time because I made that comment to Mr. Grayson?

19 MR. PICKER: Well, I guess there's a couple --

20 THE COURT: That's a long spiel, I understand.

21 MR. PICKER: And I have a direct answer. That last
22 statement you made is clearly the answer. It is "I
23 like you, but that doesn't come into account when I'm
24 considering whether to revoke your probation because

1 you did abysmally on probation. You didn't do the
2 terms."

3 You applied it then to the law. Whether you like
4 him or not, you applied the law.

5 Here's the problem. And there's -- and so I'm
6 going to go backwards through your argument. I too
7 like Judge Kosach, but I too recall any number of
8 reversals by the Nevada Supreme Court because his
9 language went too far, because his berating went too
10 far, even if he reinstated somebody. There are moments
11 and there are clear moments within the Nevada Supreme
12 Court where they told Judge Kosach, "That's
13 inappropriate." So that's the response is that, yes,
14 the Nevada Supreme Court has addressed that and sent it
15 back.

16 THE COURT: Mr. Prengaman got to do a murder trial
17 again because during voir dire Judge Kosach started
18 talking about Al-Qaeda or Osama -- or comparing the
19 defendant to Osama bin Laden.

20 MR. PICKER: So Your Honor answers my -- you make
21 my point.

22 THE COURT: That's at the extreme end.

23 MR. PICKER: Right. As to the Echavarria case and
24 full disclosure, I know a lot more about that case than

1 probably everybody else in this room, because I
2 represented Carlos Gurry, the co-defendant who is still
3 doing life in prison, for the very same reason that I
4 raised in his case, the Judge Lehman situation. We
5 argued that and lost again. And I'm hoping on federal
6 habeas he will have the same result as Mr. Echavarria,
7 because he needs his new sentencing or a new trial
8 because of how inappropriate Judge Lehman handled that
9 case.

10 But Judge Lehman was on the bench when the FBI
11 agent died. He was on the bench throughout that entire
12 situation. Those are things he knew while on the
13 bench. It is not that he only knew them prior to that
14 and nobody else was investigating so he was home free.
15 That's not what was happening. So in this situation --

16 THE COURT: But the court of appeals even
17 acknowledged in the opinion itself that -- at least as
18 I interpreted their analysis, one of the giant concerns
19 is that Judge Lehman in the case that you are familiar
20 with, number one, wanted to be perceived as being tough
21 on crime because an FBI agent was the victim of the
22 homicide and, number two, Judge Lehman knew that he
23 could still be investigated and/or indicted
24 theoretically by the FBI while this case was pending.

1 So to put it another way, as the judge -- if I'm
2 Judge Lehman, I've got to bend over backwards for the
3 FBI and for the State because I'm worried that the FBI
4 if I don't do what they want me to do could come back
5 and indict me because they had only referred to it the
6 state prosecutors. By "it" I mean their investigation
7 of alleged perjury in front of the Gaming Control Board
8 and some other stuff. They only referred it. Nothing
9 had happened. So theoretically Judge Lehman could have
10 still been charged.

11 MR. PICKER: And I understand your fact specific
12 analysis, but I look at the language that the Ninth
13 Circuit used which was much broader than just this
14 case. It was here is the bar. It is not what has been
15 used previously in Nevada. It is a question of
16 perceived bias. It is not a question of actual bias.
17 It is not a question of overt activity. It is a
18 question of perceived bias.

19 Can it be perceived by the average person sitting
20 in a courtroom that this judge would have some reason
21 to rule differently than the facts would militate if he
22 is asked to make those decisions?

23 We are in a situation where there are -- as Your
24 Honor knows, in an alleged murder case there are any

1 number of judicial rulings that can change the flavor
2 of the case in a moment, any number of them during the
3 course of a case. Here we have a judicial officer who
4 has voiced certain conclusions even if he puts
5 "alleged" in front of them. He has voiced certain
6 things in the Young hearing; he has voiced certain
7 things to us in the hearing where we discussed our
8 office's appointment.

9 Our concern on behalf of Ms. Fletcher is that an
10 average person would look and say, you know -- and let
11 me step back before I reach that conclusion. There is
12 also now -- under the rules of judicial ethics, as we
13 cite, there's a question of has this judicial officer
14 ruled or -- ruled on cases involving the same defendant
15 in a different court.

16 Now, the question in Nevada becomes is family court
17 different than general jurisdiction court. Well, it's
18 differentiated. We know that.

19 THE COURT: I think the supreme court has said no,
20 they're district court judges just like we are.

21 MR. PICKER: Correct.

22 THE COURT: I forget the name of the case.

23 MR. PICKER: Even though it is a different context.
24 So automatically -- I'm not saying that automatically

1 that provision applies, but it is something this Court
2 should consider is whether -- it's the same question we
3 ask jurors. You've sat in a civil case. You know that
4 criminal cases are a different standard. It's a
5 different burden of proof.

6 Can you set aside what you did over there and have
7 a fresh start over here on the burden of proof? Can
8 you set aside, you know, 51 percent versus beyond a
9 reasonable doubt?

10 Here what we have is a judicial officer who has
11 made a number of decisions based on a different
12 standard but has referred back to them repeatedly in
13 this case. That raises a question which is now the
14 conclusion I put off a couple of minutes ago. Would an
15 average person perceive bias based on the fact that
16 this judicial officer made decisions over here under a
17 different standard but keeps referring to them here
18 where the burden of proof is different?

19 Your Honor, I believe that is not a hurdle that
20 Judge Walker has been able to meet in his response and
21 I believe we have leaped over it with plenty of space,
22 because it raises the question.

23 Now we all know the image of impropriety is
24 everything -- as applied to proper actions by judicial

1 officers is another question. I'm not saying there's
2 impropriety here, but what I'm saying is that's an
3 analogous situation of if it looks improper, then the
4 Nevada Supreme Court has said, well, that's enough.
5 The Ninth Circuit has said in this case and the Nevada
6 Supreme Court has said in Rippo in recognizing the
7 standard is different now that perceived bias is a
8 question, it is enough to meet to change it.

9 So now going back to your question, do judicial
10 officers have to watch what they say --

11 THE COURT: We have to watch what we say.

12 MR. PICKER: -- that's always been the case. But
13 it is a level of how it is delivered and the context.
14 The problem in this case is the context is in referring
15 back to decisions made in family court and factual --
16 and factual findings, because even though the "alleged"
17 is in here, recognize that the order went against
18 Ms. Fletcher, recognize that that was one of a number
19 of decisions that rightfully, wrongfully -- that's not
20 what we're here to argue -- went against Ms. Fletcher.

21 So there has got to be some basis that Judge Walker
22 took to reach the decisions he did. He has to have
23 made some findings. Whether he announced them or not,
24 he made some findings. There was enough there, there

1 was enough smoke to believe there was a fire. He has
2 carried that over by his very comments in this case or
3 in these three criminal cases. He has brought that
4 over enough to create the image and the perception of
5 bias. That is our concern.

6 THE COURT: It's not just the fact that Judge
7 Walker was a family jurisdiction judge and now is
8 here -- and I would also note Judge Hardy was a family
9 jurisdiction judge and now is here. I think they're
10 the only two judges in Nevada who have gone from the
11 family division to the general jurisdiction. We only
12 have here and down in the Eighth, but I don't think
13 anyone has done it down in the Eighth to the best of my
14 recollection. Maybe they have.

15 You're not saying that just because you were in a
16 family division department and presided over a
17 litigant's case there and now you've transferred across
18 the street and are presiding over the same
19 litigant/defendant's case that the judge is biased.

20 MR. PICKER: Absolutely not.

21 THE COURT: Just based on the facts of this case
22 alone and what Judge Walker has articulated on the
23 record that there is evidence which would lead a
24 reasonable person to conclude that he -- that there is

1 the appearance of bias.

2 MR. PICKER: Correct, Your Honor. That sums it up
3 very succinctly and much better than I did.

4 THE COURT: I don't know about that.

5 MR. PICKER: So, Your Honor, the other part of that
6 concern, and it is a small part, but we did reference
7 it and I want to bring it to the fore is that as the
8 family court judge Judge Walker was privy to various
9 records and various pleadings that neither the State
10 nor the defense currently have access to because of the
11 nature of those proceedings.

12 THE COURT: But could you get access to them if you
13 wanted to? Could you petition the court?

14 MR. PICKER: Quite frankly, if Judge Walker stays
15 on the case, that would be entirely up to Judge Walker.

16 THE COURT: Well, not whether or not it gets
17 granted. I'm saying whether or not you could petition
18 and seek access to those. Wouldn't it be Judge
19 Grossman who would make that decision, not Judge
20 Walker?

21 MR. PICKER: I don't believe so. I think it would
22 be Judge Walker. I think he would have to grant the --
23 he would, because it would arise in this case to get
24 access to those records. So, again, we're in a

1 situation where the person who made the decision gets
2 to decide whether we get information. And I don't
3 know, nor am I going to guess, on what that decision
4 would be, but the situation again raises a perception
5 that there is the opportunity for Judge Walker then to
6 look back and say, "You know, maybe I was wrong there,
7 so I don't want them to have that, because then that
8 opens up that whole family law thing and I just want to
9 keep this clean."

10 Now, I'm not saying he would do that, but that is
11 the perception that the average person might have. It
12 is also the average person who is going to perceive
13 that in the position he is in Judge Walker would make
14 decisions that would support what he's previously done.
15 And that is the second part of -- now the third part of
16 that small part of our argument.

17 THE COURT: But how would Judge -- I don't
18 understand that analysis. Why would somebody believe
19 that Judge Walker now would do something to support a
20 decision that he made in the past? Judge Walker
21 clearly would be able to know what his previous
22 decision was, know if it was based on some standard of
23 proof below proof beyond a reasonable doubt or clear
24 and convincing evidence or whatever the standard is

1 that he's looking at in Ms. Fletcher's current criminal
2 case.

3 Judges are able to compartmentalize things like
4 that all the time. It's one of the things we're called
5 upon to do, to disregard things that we hear, to apply
6 the rules in specific ways. So why should I conclude
7 that Judge Walker -- if he is doing a Petrocelli
8 hearing, for example, and the State has to show by
9 clear and convincing evidence that the other act
10 evidence is present, why would I conclude that he
11 wouldn't do that, he wouldn't be able to do that just
12 based on his interaction with Ms. Fletcher in the past
13 where he may have modified the conditions of the
14 custody of her children or taken any other acts
15 regarding her children based on the standard in the
16 family court case?

17 MR. PICKER: Because in the transcript he has
18 clearly referred back to those. He has not
19 compartmentalized the family court matters. He has
20 himself shown us that he not only has not
21 compartmentalized it, he has not -- that he's not
22 compartmentalizing it in the past. He is referring to
23 those matters in making his current decisions, in
24 making his current observations. That's the problem.

1 I mean, you hit on one of the most serious issues
2 here is -- I would agree with you if there was evidence
3 that he was compartmentalizing and he would say, "I
4 understand that there were things that went on in the
5 family court. That is separate and apart. I'm not
6 going to consider that. I'm going to consider what's
7 in front of me, because it's a different standard.
8 Those facts may not have been proven beyond a
9 reasonable doubt. Here's the issues in front of me."

10 That would be -- if that was the situation, I would
11 have absolutely no basis to bring a motion to recuse.
12 I would have nothing to stand on in front of you. But
13 that has not been the situation. That's part of the
14 problem is that even if Judge Walker can
15 compartmentalize them, he has not.

16 And throughout my client's case and since he took
17 over in Department 7, she has listened to those
18 comments which has raised the perception of bias. And
19 I will tell you that, you know, Your Honor, I have
20 brought exactly two of these motions in 31 years. And
21 I was led to bring this motion after the very first
22 appearance I had in front of Judge Walker in
23 Ms. Fletcher's case. And that is my concern and that's
24 why it needed to be decided by an independent

1 magistrate to review the situation and decide whether
2 the perception of that bias is enough to put
3 Ms. Fletcher in a detrimental position.

4 THE COURT: Well, Mr. Picker, I appreciate the fact
5 that filing a motion to recuse a sitting judge who you
6 know you'll have to appear in front of on a regular
7 basis is not something that any trial attorney does
8 lightly. So obviously in your mind and in
9 Ms. Fletcher's mind there is something there to be
10 concerned about. I'm just not in a position yet to
11 make a decision whether or not I think it rises to the
12 level of recusing Judge Walker from these proceedings.

13 Anything else, Mr. Picker?

14 MR. PICKER: No, thank you, Your Honor.

15 THE COURT: The advocate for the devil,
16 Mr. Dreiling.

17 MR. DREILING: Part of the three big issues as I
18 see them as they were argued today, you asked basically
19 what would Judge Walker want to back up that he's done
20 before in essence, whether he did it personally or he
21 was supervising the courts or the masters who did it.
22 They removed her son, the defendant's son, Max, from
23 their custody. Theoretically, and this is devil's
24 advocate, he would want to do whatever he could to back

1 that up to show that, yes, I was right, yes, it was
2 justified. That's the type of argument. I don't know
3 that that frankly carries the day.

4 I don't think the judge has a -- or any judge has a
5 personal investment in that. They can't read the tea
6 leaves and know what's going to happen in the future
7 and what's not going to happen in the future. And they
8 are presumed to be able to compartmentalize.

9 The question about Judge Walker being privy to
10 information that we're not, whether or not we can get
11 it and whether or not Judge Walker is the gatekeeper.
12 The more delicate and interesting question is when we
13 argue in front of him in light of the fact that he
14 knows more than we do. Normally the judge knows less
15 than what the parties do. It's a frustrating position
16 to get what you are given and not be able to know more.
17 The situation is somewhat reversed, to know what he
18 knows and how he believes it.

19 Then, again, I'm not sure that that carries the
20 day, because judges routinely, as we have the
21 one-judge/one-defendant rule, they see them over and
22 over and over. Attorneys change. They have the
23 opportunity -- or the parties in those cases have the
24 opportunity to go back and look at the records and to

1 see what the judge knows. That is theoretically
2 available in this case as well.

3 In the compartmentalizing, the final issue that was
4 hit on by Mr. Picker, is it's shown that he hasn't. We
5 don't have the luxury of having the entire transcript
6 of the Young hearing, but what it appears to be is a
7 response to the defendant's complaint that, "Hey, my
8 attorneys sent me out for competency evaluations
9 multiple times."

10 This isn't a true reflection that he was having to
11 rule on those. Those had already been ruled on and he
12 had, in fact, already ruled upon them. This was an
13 hour-and-a-half back and forth delving into their
14 relationship. And it appears that this excerpt in
15 Exhibit 1 to the defendant's motion shows some --
16 definitely some almost relationship between them or
17 understanding between them, some flavor of Ms. Fletcher
18 that is unique to him, but it appears to be an excerpt
19 of how he's attempting to communicate and explain his
20 rationale to her, not actually using those as the basis
21 for any particular decision.

22 As you pointed out, judges are called upon and
23 they're required to compartmentalize. Otherwise
24 anytime there's a motion to suppress and an

1 incriminating statement, "I did it," is suppressed, the
2 system would fall apart if you required a new judge
3 every time there was a decision like that where the
4 judge couldn't then hear the trial or couldn't do a
5 sentencing.

6 THE COURT: Well, sometimes in the past, I go
7 back -- and I can tell you, and Mr. Picker knows this,
8 I go back and look at old PSIs. I have access to them.
9 So either I was the sentencing judge or maybe even
10 Judge Elliott, my predecessor, was the sentencing
11 judge. So sometimes I think it's helpful to go back
12 and gain access to information that I have. I always
13 tell the parties when I've done it. If they want to
14 see it, they can see what's in it. But I don't think
15 there's anything wrong with knowing other things about
16 the defendant than are presented by the attorneys.
17 You're not the gatekeepers to my information either.
18 If I have access -- if I have lawful access to it, I
19 think I can consider it.

20 MR. DREILING: Correct. And from the defense's
21 perspective here the question is what information does
22 he have and what conclusions and impressions would he
23 have made, but that's all speculative, and we're back
24 to more of a nonspeculative standard. It's not even a

1 reasonable person. The average judge in Judge Lehman's
2 position is likely to be neutral, someone who is
3 trained to separate and compartmentalize, whether that
4 average judge -- or that average judge in that position
5 presents an unconstitutional potential for bias.
6 That's one of the most unhelpful standards I've frankly
7 ever come across.

8 THE COURT: You can take it up with the Ninth
9 Circuit.

10 MR. DREILING: Yeah. The troubling part for me is
11 where it continues in Echavarria when they're
12 describing that. They talk about it being a stringent
13 standard. They go on to say that "It reaches every
14 procedure which would offer a possible temptation to
15 the average judge to forget the burden of proof or
16 which might lead him to not hold the balance nice,
17 clear and true between the State and the accused. It
18 also requires a realistic appraisal of psychological
19 tendencies and human weakness."

20 Judge Walker -- I feel like I'm presenting facts,
21 so I have to walk delicately -- he's an average judge.
22 He is careful in what he does. He's firm. What I
23 would assume is that if he's going to rely on something
24 outside the record, he would make it known to the

1 parties. And in his statement attached to the
2 defendant's motion regarding the Young hearing he did.
3 "We've had a relationship." And there's an opportunity
4 for the defense in that Young hearing to delve into it
5 and ask about that and see what the basis for his
6 opinion is.

7 You had first brought up must the question that's
8 being raised be from an external source. That was
9 basically the crux of what I was going to talk to the
10 Court about. When I looked at all the cases, there was
11 some sort of external influence, whether it was the FBI
12 investigating in Echavarria, whether it was the D.A.'s
13 Office and the local law enforcement investigating in I
14 believe it was the Ripppo case.

15 THE COURT: That was in the Dunleavy case.

16 MR. DREILING: Whether in the Williams versus
17 Pennsylvania -- the judge there was the then D.A. who
18 authorized the prosecuting attorneys to seek the death
19 penalty. There was something outside and something
20 objective to point to outside of the proceedings.

21 THE COURT: And he was the presiding judge in the
22 trial.

23 MR. DREILING: Yeah.

24 THE COURT: I mean, again, that seems to me to be

1 one of those no-brainer moments for a judge, but I
2 wasn't in his shoes, so I don't know.

3 MR. DREILING: So the question here would be
4 whether what the judge has learned and his impressions
5 that we don't know what they are from family court,
6 whether those rise to the level of him not being able
7 to compartmentalize. The State frankly has confidence
8 that the judge can compartmentalize.

9 If there was an error in facts such as one of the
10 first ones brought up, that the defendant's daughter,
11 Bay, was actually the decedent's as opposed to someone
12 else, that's frankly of little to no consequence. The
13 luring suggestion that the judge ruled upon that, it's
14 interesting.

15 In the first page of his order that you cited he
16 does cite it as allegedly. And then on the fourth page
17 of it he refers to it again, she's being accused of
18 allegedly killing a person and allegedly luring. So at
19 page 4 he relies on that, but the State is frankly
20 embracing the allegedly there in supporting his
21 conclusion to not allow more contact between the
22 defendant and her children, at least on the equal level
23 she was asking for at the time. He knows the
24 difference and there's a clear standard difference.

1 They are operating on allegations unless there's a full
2 blown hearing which there wasn't.

3 THE COURT: Thank you, Mr. Dreiling.

4 Mr. Picker, something popped into my head while you
5 were talking and I forgot to raise it with you, but now
6 I will. And then you're also, of course, free to
7 respond to Mr. Dreiling's arguments.

8 What does your argument regarding this case say
9 about the Project One program that Judge Walker is the
10 assigned and presiding judge over?

11 MR. PICKER: He's no longer the presiding judge
12 over Project One, Your Honor. That's my understanding.
13 But, quite frankly, I'll tell you what it is. Within
14 about a year after Project One was put into motion, our
15 office, the District Attorney's Office and the Public
16 Defender's Office all withdraw from that court.

17 THE COURT: I remember that.

18 MR. PICKER: And we did that for this very reason.
19 Judge Walker was in a position to access information
20 within the family court that none of us had access to.
21 And in opposition to Mr. Dreiling's argument,
22 unfortunately, he did not disclose that he had that
23 information until he used it to rule in cases.

24 It became extremely problematic in that we opposed,

1 and we continue to oppose, any cases being assigned to
2 that court because of that, because it puts us in a
3 position where we have one hand, sometimes two hands
4 tied behind our back and the judge does not disclose
5 that he has that information until he rules one way or
6 the other citing the information.

7 That is extremely problematic. And, unfortunately,
8 Mr. Dreiling's argument in that sense fails as to Judge
9 Walker, because Judge Walker when the State argues if
10 he relied upon other information outside the record we
11 believe he would disclose that, he has not. In fact,
12 he has specifically not done so.

13 That is the pattern. I don't expect that pattern
14 to change. With all due respect to Judge Walker, it
15 has not changed since he's been on the criminal bench,
16 the general jurisdiction bench. And it is a concern
17 that we continue to have about Project One which is why
18 we don't -- other than the cases that have been -- that
19 were already assigned to it, we have not agreed to any
20 other assignments.

21 Now, Judge Walker -- we have been asked by this
22 court generally, the Second Judicial District Court, to
23 take part in a new process of revisiting and revamping
24 Project One. We were invited to do so along with the

1 District Attorney's Office and the Public Defender's
2 Office. We all agreed to the meeting. And my family
3 court chief did attend that, but we have not agreed to
4 any further participation within that court because of
5 that.

6 THE COURT: Let me just check one thing. One
7 moment.

8 I apologize for my misstatement. I just went back
9 and pulled up what I believe is the most recent
10 administrative order regarding judicial assignments.
11 It's Administrative Order 2018-09, and it was filed
12 May 8th of 2018. And attached to that as an exhibit is
13 the assignment that we all have for different
14 responsibilities within the district, and it does show
15 that Judge Humke is assigned as the judge for Project
16 One. As we know, Judge Humke is not available.

17 For some reason, Mr. Picker, in the back of my mind
18 I seem to have this thought that recently there was
19 some order that involved Judge Walker presiding over
20 Department 1 cases -- or Project One cases.

21 MR. PICKER: Project One, Judge Walker was
22 temporarily assigned to cover for Judge Humke in
23 Project One cases. He was, I guess, reassigned back to
24 that, that is true. But he was -- once he took the

1 general jurisdiction bench he was taken off of Project
2 One with that order that you were just referring to.

3 THE COURT: I remember that.

4 MR. PICKER: I'm sure you do.

5 THE COURT: Hold on.

6 MR. PICKER: The Project One docket has shrunk
7 significantly after over the last two years.

8 THE COURT: Yeah, I remember. Oh, here's the
9 order. It just took me a second to find it. It's
10 Administrative Order 2018-10. It's entered
11 June 26th of 2018. And all it says is that Judge
12 Walker was presiding over Project One from July 1st of
13 2018 through September 30th of 2018. So he is
14 presiding now until Judge Humke is back on
15 October 1st is my understanding or the beginning of
16 October. October 1st is a Monday, so I think he's back
17 on October 1st.

18 The point that you made about Judge Walker not
19 being able to compartmentalize and to doing things that
20 would support your argument, Mr. Picker, is not
21 anywhere in the case that I have, and so I don't know
22 how you would direct the Court to any examples of where
23 that has occurred. Absent that, it's just anecdotal
24 information that this happened with Judge Walker in the

1 past and we were unhappy.

2 MR. PICKER: Could I have one moment, Your Honor?

3 THE COURT: Sure.

4 MR. PICKER: Your Honor, what I can do is my deputy
5 who is assigned to Project One, I can provide an
6 affidavit from her, because this has been the ongoing
7 concern. It has been voiced to us, to me personally.
8 It has been voiced to Judge Walker in the past. And I
9 would be very happy to provide an affidavit from Cindi
10 Smith that would support that allegation. You know, as
11 an officer of the court I can represent to you that
12 that is one of the reasons we pulled out of Project
13 One.

14 THE COURT: My recollection is that the district
15 attorney's reasoning behind their withdrawal from
16 Project One was different. They were concerned -- if
17 memory serves me correctly, they were concerned about
18 some of the cases that were being assigned to Project
19 One, the nature of the offenses, significant crimes of
20 violence and things like that. So it was different
21 reasons.

22 MR. PICKER: But it was two-fold. One was --
23 actually it was three-fold. One is that the District
24 Attorney's Office and our office shared that concern,

1 that we had a family court judge making decisions in
2 criminal cases in which there were different standards,
3 but the family court judge, Judge Walker, was applying
4 different standards within that criminal case and the
5 family case, kind of melding the two, which was
6 problematic for both offices.

7 It was also that there was information that neither
8 office was privy to that he was using. It was also the
9 nature of some of the cases. Initially when everybody
10 agreed to Project One, it was supposed to be a certain
11 demographic of cases.

12 THE COURT: Right.

13 MR. PICKER: Unfortunately, the court, that court,
14 reached out to capture some cases that the district
15 attorney had great problems with being heard in that
16 arena.

17 THE COURT: What about the argument that you
18 yourself touched on in your motion to recuse Judge
19 Walker, that there are judges in this state, three of
20 whom we can all think of, who do everything in their
21 department? Judge Shirley, Judge Montero and Judge
22 Stockard in Winnemucca, Fallon and out in Lyon
23 County -- not in Lyon County -- Pershing County, in
24 Lovelock for Judge Shirley, they do all of this stuff

1 all themselves. They hear everything. It's not even
2 like down in the First Judicial District where we have
3 Judge Russell and Judge Wilson or in the Ninth we've
4 got Judge Young and Judge Gregory. You can hand things
5 off if there's some question.

6 We have three judges in the state who do
7 everything. They know things. They form opinions.
8 Especially in those smaller jurisdictions, they
9 probably have a greater opportunity to know who the
10 defendant is or the petitioner is. They know more
11 about them just based on living in the community and
12 being citizens of their county.

13 MR. PICKER: Your Honor, I would go back to the
14 comment I pointed out that you made when you said that
15 you liked the defendant from last week. Having
16 appeared in front of both Judge Stockard and Judge
17 Montero, only having opposed Judge Shirley when he was
18 the district attorney out there, I can offer to you
19 that both of those judges do exactly what you do which
20 is make their personal observations but then say, "That
21 is not something that I can add into the equation,
22 because the law is X. The facts that have been proven
23 to me are X. The law applies to X in this way."

24 And they are both very careful about the fact that

1 they are members of the community. They do know
2 things, but they reveal them. You know, they have had
3 interactions with Mr. Smith or Mr. Jones or
4 Ms. Fletcher in that situation. They have had those
5 interactions, and this is what their observations were
6 but that the law is X and that is what will be applied.

7 That is again the concern we have here. And it is
8 evidenced in part by that February 1st, 2017, order
9 denying motion to modify visitation that you yourself
10 noted that you had looked at where Judge Walker
11 referred to Mr. Trask as the father of Ms. Fletcher's
12 children despite there being a number of pleadings that
13 say the opposite and despite, based on the minutes that
14 I can see, Ms. Fletcher's attorney correcting the
15 situation. Ms. Fletcher I think actually spoke up
16 herself at that time and corrected Judge Walker when he
17 made that statement.

18 Later on in the Young hearing there are comments
19 about Ms. Fletcher's veracity and credibility. And I
20 think that that adds to it. That's why in part --
21 well, I would request that prior to reaching any
22 decision regarding this motion that you do read the
23 Young hearing transcript in this case.

24 I think there are -- no, I know there are a number

1 of other items that we would have raised, but they
2 were -- they were unable to be removed out of context
3 and would have revealed other information. The two
4 excerpts that we did provide were items that we could
5 pull out and were complete in and of themselves.

6 THE COURT: Well, and Judge Walker even
7 acknowledged that in his reply to the motion for
8 recusal. He didn't even want to talk about the Young
9 hearing because it's sealed, so he -- you know, I will
10 go look at the full transcript of that hearing to put
11 the two excerpts that you provided into context and to
12 see if there's something more there that would
13 demonstrate either a bias on the part of Judge Walker
14 that I can determine or the appearance of bias that a
15 judge should be concerned about.

16 Before you submit any additional pleadings to me,
17 that being the affidavit of Ms. Smith -- I called her
18 Ms. Heron the last time she was here and I had to
19 apologize -- Ms. Smith, let me think about that,
20 because I don't know if it's appropriate to supplement
21 the record in that fashion.

22 I appreciate why you want to do so. It's an issue
23 that came up pursuant to one of my questions during
24 this hearing, so it's not something that you raised,

1 but if it's something that I talk about and then you
2 respond to my question and you can't direct me
3 specifically to something, then I don't know -- either
4 I'll, number one, disregard it all together and not
5 base my decision on it or, number two, possibly give
6 you the opportunity to supplement the record.

7 MR. PICKER: And I guess my only other comment
8 would be, Your Honor, because of the position I was
9 named to last year that I hold now as being the head of
10 the Alternate Public Defender's Office, I get certain
11 information regarding what goes on in judges' meetings.
12 Not a lot, but I get some.

13 THE COURT: You wish you knew, Mr. Picker.

14 MR. PICKER: No, in fact I'm really happy not to
15 know at all. But I don't know if Mr. Dreiling is also
16 privy to that. And I want to put that on the record,
17 that it is my understanding that Judge Walker's role
18 within Project One has been an ongoing discussion item
19 within the judges' meetings in the last couple of
20 years, year and a half. And the decision to remove him
21 from Project One was also a matter of discussion which
22 Your Honor has a lot more knowledge about than I do.
23 So now Mr. Dreiling --

24 THE COURT: True enough.

1 MR. PICKER: -- is on notice.

2 THE COURT: True enough.

3 MR. PICKER: And some day Mr. Dreiling will also --
4 come January he will also have those meetings where he
5 wishes he didn't have to attend.

6 THE COURT: That's probably true as well,
7 Mr. Dreiling.

8 Anything else, Mr. Picker?

9 MR. PICKER: No. Thank you.

10 THE COURT: Okay. Counsel, I'll take this under
11 advisement.

12 Was there something else you wanted to say,
13 Mr. Dreiling, or are you just stretching your legs?

14 MR. DREILING: It depends on how you finish.
15 Basically timing. We're looking at two back-to-back
16 jury trials on October 22nd and 29th and we're trying
17 to figure out whether those are going or not.

18 MR. PICKER: Well, Your Honor, we are in a
19 position -- I think I presented this to your
20 administrative assistant. I had talked to Ms. Fletcher
21 about that, and we are prepared to vacate both the
22 October 22nd and 29th trial dates knowing that this
23 decision kind of runs us up against that. There is the
24 issue of speedy trial. It has been to some extent

1 waived by prior counsel and the Court. It was not
2 waived personally by Ms. Fletcher, but this motion does
3 raise the issue that this Court can hold that there is
4 a waiver of -- at least a tolling of the speedy trial
5 rights should they still exist because of this motion
6 and because of the fact that it creates uncertainty
7 regarding future court proceedings.

8 THE COURT: What I would say, Mr. Drailing, in
9 response to your inquiry is I will endeavor to get you
10 an answer as quickly as possible. If I deny the motion
11 to recuse Judge Walker, there's no reason to vacate the
12 trial dates. There's no reason to do anything. The
13 case would simply go back to Judge Walker and it would
14 continue on its current schedule.

15 So I think that the parties should operate under
16 that assumption until you receive an order from the
17 Court to the contrary. That's not a preliminary
18 finding. I want you to know that. I'm just saying I
19 wouldn't do anything other than just keep assuming that
20 you're going to go to trial in October in Department 7
21 until you get an order from me that directs you to the
22 contrary.

23 If, let's say for the sake of argument, I have
24 Judge Walker recused, then the case would have to be

1 randomly reassigned to another department. And knowing
2 my colleagues' schedules are basically the same as
3 mine, it ain't going to happen in October. I mean,
4 it's just not going to happen. And we can't use a
5 senior judge because it's a murder case. So the case
6 would of necessity be continued.

7 I would assume any judge would find that good cause
8 exists to continue the trial once he or she receives it
9 at the last minute. But I would also say it might be
10 that -- let's say just for the sake of argument it gets
11 randomly assigned to Judge Drakulich and miraculously
12 she's got some space in her calendar. You guys still
13 might be going to trial on that same day in October,
14 just in Department 1 instead of Department 7. So
15 that's why I say just keep going forward as if the
16 trial is on and it's in Department 7 until something
17 else happens.

18 Is that nonanswer sufficient for your question,
19 Mr. Dreiling?

20 MR. DREILING: It's what I expected. I've just
21 been trying to get that answer for quite some time. We
22 knew that Mr. Picker was unavailable for the murder.
23 We have no idea what his current schedule is relative
24 to the new trials. So it's just been a frustrating

1 holding pattern. Frankly, if I were the defendant, I
2 wouldn't want to risk two felony convictions prior to a
3 murder trial and I would do anything I can to continue
4 it, but those are my frustrations to bear alone.

5 THE COURT: We shall wait and see.

6 Anything else on behalf of the State, Mr. Dreiling?

7 MR. DREILING: No.

8 THE COURT: Mr. Picker, anything on behalf of
9 Ms. Fletcher?

10 MR. PICKER: No, thank you, Your Honor.

11 THE COURT: Thank you very much, counsel. Court is
12 in recess.

13 (The proceedings were concluded.)

14 --o0o--

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

4 I, LORI URMSTON, Certified Court Reporter, in and
5 for the State of Nevada, do hereby certify:

6 That the foregoing proceedings were taken by me
7 at the time and place therein set forth; that the
8 proceedings were recorded stenographically by me and
9 thereafter transcribed via computer under my
10 supervision; that the foregoing is a full, true and
11 correct transcription of the proceedings to the best
12 of my knowledge, skill and ability.

13 I further certify that I am not a relative nor an
14 employee of any attorney or any of the parties, nor am
15 I financially or otherwise interested in this action.

16 I declare under penalty of perjury under the laws
17 of the State of Nevada that the foregoing statements
18 are true and correct.

19 DATED: At Reno, Nevada, this 18th day of
20 October, 2018.

21
22 LORI URMSTON, CCR #51

23 -----
24 LORI URMSTON, CCR #51

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR17-0690A

CR17-0690B

CR17-1127

KATHERINE DEE FLETCHER,

Dept. No. 10

Defendant.

ORDER

Presently before the Court is a MOTION TO RECUSE ("the Motion"). The Motion was filed by Defendant KATHERINE DEE FLETCHER ("the Defendant") on July 30, 2018.¹ The Honorable Egan K. Walker ("Judge Walker") filed the RESPONSE TO MOTION FOR DISQUALIFICATION ("the Response") on August 2, 2018. Judge Walker filed the ADDENDUM TO RESPONSE TO MOTION FOR DISQUALIFICATION ("the Addendum") on August 2, 2018. The Defendant filed the REPLY TO RESPONSE TO MOTION FOR RECUSAL ("the Reply") on August 8, 2018. The matter was referred to the undersigned on August 9, 2018. See ORDER REFERRING DISQUALIFICATION QUESTION and NRS 1.235(6)(a). The Court heard oral argument on the Motion on September 11, 2018, and took the matter under advisement. This ORDER follows. The Motion will be denied.

¹ The Motion was filed by the Defendant in cases CR17-0690A, CR17-0690B and CR17-1127.

1 The Defendant faces numerous felony charges. In CR17-0690A, she is charged with
2 MURDER WITH THE USE OF A DEADLY WEAPON, a violation of NRS 200.010, NRS 200.030
3 and NRS 193.165. In CR17-0690B, the Defendant is charged with BURGLARY IN POSSESSION
4 OF A FIREARM, a violation of NRS 205.060(1)(4) and GRAND LARCENY OF A FIREARM, a
5 violation of NRS 205.226. *See generally* ORDER entered July 20, 2017 (severing the charges from
6 an original 3 count INFORMATION into two separate cases) and ORDER entered January 29, 2018
7 (assigning the Murder offense the “A” case number and the remaining two counts the “B” number).
8 In CR17-1127, the Defendant is charged with BATTERY BY A PRISONER, a violation of NRS
9 200.481(2)(f) and UNLAWFUL ACT RELATED TO BODILY FLUID BY PRISONER IN
10 CONFINEMENT, a violation of NRS 212.189(1)(d)(3).
11

12 The Honorable Patrick Flanagan (“Judge Flanagan”) was the presiding judge in Department 7
13 at the inception of these proceedings. Judge Flanagan presided over multiple hearings and procedural
14 matters, including numerous hearings regarding the Defendant’s competence to stand trial. Judge
15 Flanagan died unexpectedly in October of 2017. Governor Brian E. Sandoval appointed Judge
16 Walker to replace Judge Flanagan in December of 2017. Judge Walker was a presiding judge in the
17 Family Division of the Second Judicial District Court (“the Family Division”) at the time of his
18 appointment to Department 7. Judge Walker presided over a number of matters involving the
19 Defendant’s family in his role as a Family Court Judge.²
20

21 The Defendant avers Judge Walker should be recused from these proceedings because of his
22 involvement in her Family Division matters and opinions he has allegedly developed as a result of
23 their interaction. “In the instant case, Judge Walker has made certain comments during certain
24

25 ² The Defendant has been associated with no fewer than nine cases in the Family Division. The Court has not thoroughly
26 investigated each of these cases. It appears Judge Walker was directly involved in GR15-00192 and JV10-00351A. He
may have also been involved in FV12-01228. The Defendant has two previous criminal cases, both of which were
assigned to Department 7: CR11-1473 and CR11-1592. Only the latter case resulted in a conviction.

1 proceedings that reasonably raise the question of whether his past involvement in [the Defendant's]
2 cases has tainted or skewed his current outlook on [the Defendant's] innocence.” The Motion 4:3-5.
3 The Defendant directs the Court to limited portions of a sealed transcript from a hearing conducted
4 on June 7, 2018 (“the *Young* hearing”).³ The Defendant argues Judge Walker has relied on unrelated
5 matters (which are confidential in nature) from the Family Division to influence his decisions in the
6 instant proceedings. The Defendant also argues Judge Walker’s comments about her competency
7 based on their prior interaction in the Family Division demonstrates he is unable to be neutral and
8 “put aside previous interactions with [the Defendant] in order to render unbiased judicial decisions in
9 her current case.” The Motion 5:5-6. The Defendant additionally directs the Court to an order
10 entered February 1, 2017, wherein the Defendant alleges Judge Walker “ruled that [the Defendant]
11 had used her son ‘to lure the alleged victim to a park where she allegedly killed him in front of
12 Max.’” The Motion 5:10-11.

14 Judge Walker raises numerous procedural issues regarding the Motion. Specifically, Judge
15 Walker notes the Motion is both untimely and was not properly served. The Response 7:15-27; NRS
16 1.235(1)(b) and (4).⁴ Judge Walker offers a detailed analysis of the allegations contained in the
17 Motion. He provides context to some of the comments used in the Motion as demonstrations of bias
18 on his part. Judge Walker “unequivocally denies” any preconceived notions about the Defendant’s
19 case. The Response 11:8-9. Judge Walker argues his comments made during the instant proceedings
20 were based on information gathered in judicial proceedings, which is not improper. The Response
21

22 ³ The hearing was conducted pursuant to *Young v. State*, 120 Nev. 963, 102 P.3d 572 (2004). Judge Walker eventually
23 granted the Defendant’s request to replace the Washoe County Public Defender’s Office. See ORDER GRANTING
DISCHARGE OF ATTORNEY filed June 25, 2018.

24 ⁴ The Court elects to overlook any procedural deficiencies, should they exist. The Nevada Supreme Court has found
25 “good public policy dictates that cases be adjudicated on their merits.” *Kahn v. Orme*, 108 Nev. 510, 516, 835 P.2d 790,
26 794 (1992) (citing *Hotel Last Frontier v. Frontier Prop.*, 79 Nev. 150, 155–56, 380 P.2d 293, 295 (1963) *overruled in part by Epstein v. Epstein*, 114 Nev. 1401, 950 P.2d 771 (1997)). The Court believes a review of the merits of the Motion is warranted given the significant issues presented therein.

1 11:17-22. Judge Walker directs the Court to a number of Nevada cases and the Nevada Code of
2 Judicial Conduct (“NCJC”) in support of the proposition a district judge in this state has an
3 “obligation to sit” absent a compelling ethical reason to recuse him/herself. The Response 5:20-24.

4 The Defendant counters Judge Walker’s arguments by noting they demonstrate Judge
5 Walker’s bias. The Reply 4:16-17. The Defendant avers Judge Walker would be “asked to ignore
6 his own previous rulings, decisions and factual findings in favor of an objective review of the law and
7 facts in the pending criminal case. His previous comments in the instant cases show that he has not
8 been able to do so.” The Reply 4:9-12. The Defendant argues the core of the Motion “is not simply
9 that Judge Walker presided over her other cases and therefore may carry over previously disclosed
10 information or bias, it’s that Judge Walker has made statements and orders that raise the question of
11 whether there is an unconstitutional potential for bias.” The Reply 5:1-4. The Defendant further
12 argues Judge Walker has misapprehended the proper standard to apply when challenging a judge for
13 potential bias. The Defendant directs the Court to *Echavarria v. Filson*⁵ regarding the proper federal
14 standard to apply in challenges regarding judicial bias. The *Echavarria* Court notes the Nevada
15 Supreme Court has previously been found to apply the wrong standard to cases of implied judicial
16 bias (as opposed to actual bias). *Id.* 896 F.3d at 1130.

17
18 The United States Supreme Court has held it is “axiomatic that ‘[a] fair trial in a fair tribunal
19 is a basic requirement of due process.’” *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 876,
20 129 S.Ct. 2252, 2259 (2009) (citing *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625 (1955)).
21 The *Murchison* Court observed, “[f]airness of course requires an absence of actual bias in the trial of
22 cases. But our system of law has always endeavored to prevent even the probability of unfairness.”
23
24
25

26 ⁵ 896 F.3d 1118 (9th Cir. 2018).

1
2 *Id.* 349 U.S. at 136, 75 S.Ct. at 625. In *Williams v. Pennsylvania*, 579 U.S. ___, 136 S.Ct. 1899
3 (2016), the United States Supreme Court addressed the inherent difficulty in determining one’s own
4 bias. The *Williams* Court held:

5 Bias is easy to attribute to others and difficult discern in oneself. To establish an enforceable
6 and workable framework, the Court’s precedents apply an objective standard that, in the usual
7 case, avoids having to determine whether actual bias is present. The Court asks not whether a
8 judge harbors an actual, subjective bias, but instead whether, as an objective matter, “the
average judge in his position is ‘likely’ to be neutral, or whether there is an unconstitutional
‘potential for bias.’”

9 *Id.* 136 S.Ct. at 1905 (citing *Caperton*, 556 U.S. at 881, 129 S.Ct. at 2262). *Accord Echavarria*, 896
10 F. 3d at 1118; *Rippo v. Baker*, ___ U.S. ___, 137 S.Ct. 905 (2017); *Rippo v. State*, 134 Nev. Adv. Op.
11 53, 423 P.3d 1084 (2018).

12 The *Caperton* Court acknowledged the Due Process Clause is only implicated in extreme
13 cases of potential bias. The judicial officer at the heart of *Caperton* was a Justice on the West
14 Virginia Supreme Court. The West Virginia Supreme Court is popularly elected. The Justice had
15 received campaign contributions of a shockingly disproportionate amount from Don Blankenship, the
16 chairman, chief executive officer, and president of the Respondent.⁶ *Caperton*, 556 U.S. at 873, 129

17
18
19 ⁶ The *Caperton* Court described the contributions:

20 In addition to contributing the \$1,000 statutory maximum to Benjamin’s campaign committee, Blankenship
21 donated almost \$2.5 million to “And For The Sake Of The Kids,” a political organization formed under 26
22 U.S.C. § 527. The § 527 organization opposed McGraw and supported Benjamin. 223 W.Va. 624, 700, 679
23 S.E.2d 223, 299 (2008) (Benjamin, Acting C.J. concurring). Blankenship’s donations accounted for more than
two-thirds of the total funds it raised. App. at 150a. This was not all. Blankenship spent, in addition, just over
\$500,000 on independent expenditures—for direct mailings and letters soliciting donations as well as television
and newspaper advertisements—“to support ... Brent Benjamin.” *Id.*, at 184a, 186a, 200a (quoting
Blankenship’s state campaign financial disclosure filings; bold typeface omitted).

24 To provide some perspective, Blankenship’s \$3 million in contributions were more than the total amount spent
25 by all other Benjamin supporters and three times the amount spent by Benjamin’s own committee. *Id.*, at 288a.
Caperton contends that Blankenship spent \$1 million more than the total amount spent by the campaign
committees of both candidates combined. Brief for Petitioners 28.

26 *Caperton*, 556 U.S. at 873, 129 S.Ct. at 2257 (Benjamin was the challenger and McGraw was the sitting justice).

1 S.Ct. at 2257. The *Caperton* Court found the facts of the case were “extreme by any measure.” *Id.*
2 556 U.S. at 887, 129 S.Ct at 2265. The *Caperton* Court emphasized the United States Supreme Court
3 traditionally has been “careful to distinguish the extreme facts of the cases before it from those
4 interests that would not rise to a constitutional level.” *Id.* 556 U.S. at 887, 129 S.Ct. at 2266 (citing
5 *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 106 S.Ct. 1580 (1986) (holding Due Process Clause
6 requires recusal of Alabama Supreme Court Justice who cast deciding vote to uphold a punitive
7 damages award against an insurance company for bad-faith refusal to pay claim while
8 contemporaneously being the lead plaintiff in a similar class action suit pending at the trial level);
9 *Murchison*, 349 U.S. at 133, 75 S. Ct. at 623 (holding Due Process Clause does not permit judge to
10 both investigate and preside over criminal case); *Mayberry v. Pennsylvania*, 400 U.S. 455, 91 S.Ct.
11 499 (1971) (holding Due Process Clause requires a judge other than the subject of contemptuous
12 behavior in a criminal contempt proceeding)).⁷ The *Caperton* Court concluded, “[b]ecause the codes
13 of judicial conduct provide more protection than due process requires, *most disputes over*
14 *disqualification will be resolved without resort to the Constitution.* Application of the constitutional
15 standard implicated in this case will thus be confined to rare instances.” *Id.* 556 U.S. at 890, 129
16 S.Ct. at 2267 (emphasis added).

17
18 The Court must review the NCJC and Nevada’s jurisprudence on bias because not every
19 implied bias case is viewed through the prism of the Due Process Clause; only the “extreme” cases
20 receive this analysis. A trial judge in Nevada has an obligation to sit. “As a general rule, a judge has
21 a duty to ‘preside to the conclusion of all proceedings, in the absence of some statute, rule of court,
22 ethical standard, or other compelling reason to the contrary.’” *City of Las Vegas Downtown*

23
24 ⁷ See also *Rippo*, ___ U.S. at ___, 137 S.Ct. at 906 (holding Due Process Clause mandates recusal when trial judge is
25 being investigated for criminal activity by prosecuting authority); *Williams*, 136 S. Ct. at 1899 (holding Due Process
26 Clause mandates recusal of supreme court justice who participated in decision to seek death penalty); *Ward v.*
Monroeville, 409 U.S. 57, 93 S.Ct. 80 (1972) (holding Due Process Clause mandates recusal for judge who may benefit
from fines imposed); *Echavarria*, 896 F.3d at 1118 (holding Due Process Clause mandates recusal for judge who was the
subject of an FBI investigation where investigating agent is murdered and case is assigned to judge being investigated).

1 *Redevelopment Agency v. Eighth Judicial Dist. Ct.*, 116 Nev. 640, 643, 5 P.3d 1059, 1061 (2000)
2 (quoting *Ham v. District Court*, 93 Nev. 409, 415, 566 P.2d 420, 424 (1977)). Further, a judge is
3 presumed to be impartial, and the party asserting a challenge carries the burden of establishing
4 sufficient factual and legal grounds warranting disqualification. *City of Las Vegas*, 116 Nev. at 643,
5 5 P.3d at 1061. See also, *Hogan v. Warden*, 112 Nev. 553, 916 P.2d 805 (1996) and NCJC 2.7 (“A
6 judge shall hear and decide matters assigned to the judge, except when disqualification is required by
7 Rule 2.11 or other law”).

8
9 The Nevada Supreme Court addressed alleged bias predicated on the information a judge has
10 learned in conjunction with judicial duties in *Walker v. State*, 113 Nev. 853, 944 P.2d 762 (1997).
11 The petitioner in *Walker* was convicted of first degree murder with the use of a deadly weapon and
12 robbery with the use of a deadly weapon. He was sentenced to consecutive sentences of life without
13 the possibility of parole for the homicide and two consecutive sentences of fifteen years for the
14 robbery. *Id.* 113 Nev. at 861, 944 P.2d at 767. The appellant argued he was entitled to a new trial
15 because his trial judge sat on a sentencing panel for the appellant’s co-defendant. The trial judge
16 made comments during the trial which were based on his knowledge of the co-defendant’s case. The
17 *Walker* Court found the appellant was not entitled to a new trial because of judicial bias. The *Walker*
18 Court held:

19
20 Generally, “what a judge learns in his official capacity does not result in disqualification.”
Kirksey v. State, 112 Nev. 980, 1007, 923 P.2d 1102, 1119 (1996). However,

21 [A]n opinion formed by a judge on the basis of facts introduced or events occurring in
22 the course of the current proceedings, or of prior proceedings, constitutes a basis for a
23 bias or partiality motion where the opinion displays “a deep-seated favoritism or
antagonism that would make fair judgment impossible.”

24 *Id.*, (quoting *Liteky v. United States*, 510 U.S. 540, 555, 114 S.Ct. 1147, 1157 (1994)).
25 *Walker*, 113 Nev. at 864, 944 P.2d at 769.
26

1 The Nevada Supreme Court provided additional insight on this issue in *In re Dunleavy*, 104
2 Nev. 784, 769 P.2d 1271 (1988). The *Dunleavy* Court held:

3 Moreover, rulings and actions of a judge during the course of official judicial proceedings do
4 not establish legally cognizable grounds for disqualification. The personal bias necessary to
5 disqualify must “stem from an extrajudicial source and result in an opinion on the merits on
6 some basis other than what the judge learned from his participation in the case.” To permit an
7 allegation of bias, partially founded upon a justice’s performance of his constitutionally
8 mandated responsibilities, to disqualify that justice from discharging those duties would
9 nullify the court’s authority and permit manipulation of justice, as well as the court.

10 *Id.* 104 Nev. at 789-90, 769 P.2d at 1275 (internal citations omitted). *Accord Greene v. State*, 2016
11 WL 3524623 (Nev. 2016).

12 A judge’s obligation to hear cases is balanced by the ethical considerations outlined by the
13 NCJC. Specifically, judges are advised they should “uphold and apply the law, and shall perform all
14 duties of judicial office fairly and impartially.” NCJC 2.2. A judge “shall perform the duties of
15 judicial office, including administrative duties, without bias or prejudice.” NCJC 2.3(A). A judge
16 “shall act at all times in a manner that promotes public confidence in the independence, integrity, and
17 impartiality of the judiciary and shall avoid impropriety *and the appearance of impropriety*.” NCJC
18 1.2 (emphasis added). A judge “shall disqualify himself or herself in any proceeding in which the
19 judge’s impartiality *might reasonably be questioned*.” NCJC 2.11(A) (emphasis added).

20 The Defendant identifies four instances which she feels demonstrates Judge Walker harbors
21 bias against her:⁸

- 22 1) Judge Walker made comments during the *Young* hearing which demonstrate his past
23 involvement in the Family Division with the Defendant have “skewed” his current outlook
24 regarding the Defendant’s innocence. Judge Walker “admonished” and “lectured” the

25 ⁸ The Court will only address the issues raised in the Defendant’s pleadings. The Court has not traversed the entire record
26 of the instant proceedings, nor of any of the other matters involving the Defendant and Judge Walker. The Court does not
feel such an investigation is its responsibility. *Cf. Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 438,
245 P.3d 542, 545 (2010) (explaining “a district court is not obligated to wade through and search the entire record for
some specific facts which might support the nonmoving party’s claim” (internal citation omitted)). *See also City of Las
Vegas*, 116 Nev. at 643, 5 P.3d at 1061 (explaining the party asserting a challenge carries the burden of establishing
sufficient factual and legal grounds warranting disqualification).

1 Defendant during the *Young* hearing. He took “umbrage” with the Defendant regarding
2 *ad hominem* personal attacks made by her against her prior counsel;

- 3 2) Judge Walker has knowledge about the Defendant based on his Family Court involvement
4 which is not available to all parties;
- 5 3) Judge Walker referenced his knowledge of the Defendant’s possible mental health issues
6 based on his previous interaction with her; and
- 7 4) Judge Walker entered an order in the Family Division in which he opined about the
8 evidence in the instant proceedings.⁹

9 The Court has reviewed the entirety of the sealed transcript of the *Young* hearing.

10 Additionally, the Court has reviewed the transcript of the status hearing held on July 6, 2018. The
11 Court finds nothing in these documents which evinces bias on the part of Judge Walker necessitating
12 his recusal from these cases. It is clear Judge Walker has familiarity with the Defendant.

13 Additionally, Judge Walker has had some issues with the Defendant’s behavior in this cases. The
14 Court does not find, however, that any of these facts lead to the conclusion Judge Walker should be
15 recused under any standard. Judge Walker’s questions were probing and appropriate given the nature
16 of the inquiry at the *Young* hearing. He gave the Defendant broad latitude to discuss her concerns
17 and only limited her when it appeared she may veer into areas of privilege or self-incrimination.

18 While Judge Walker did state he took “umbrage” with the way the Defendant attacked her previous
19 counsel, such a comment was appropriate in the context of the discussion.

20 The Court finds there is nothing inappropriate about Judge Walker presiding over both the
21 Defendant’s earlier Family Division matters and the instant proceedings. As was noted by Judge
22 Walker, three judicial districts in Nevada have only one district judge responsible for all proceedings
23

24 ⁹ The Reply argues the thorough nature of the Response is an indication of Judge Walker’s lack of impartiality. The
25 Court is not persuaded. NRS 1.235(6) states, “[a] judge may challenge an affidavit alleging bias or prejudice by filing a
26 written answer with the clerk . . . admitting or denying any or all of the allegations contained in the affidavit and setting
forth any additional facts which bear on the question of the judge’s disqualification.” Judge Walker’s pleading was not
improper, and the Court draws no negative inference therefrom.

1 therein.¹⁰ By necessity, these judges may hear multiple civil, family, and criminal cases involving the
2 same parties. The simple act of presiding over diverse, and often intertwined, cases is not *ipso facto*
3 grounds for recusal. Judges are frequently required to hear evidence in one matter which they are
4 later required to disregard in coming to a decision in a separate case: it is part of the job. Further, the
5 Defendant has not demonstrated to the Court Judge Walker's previous knowledge of her
6 circumstances have so contaminated Judge Walker's outlook he can no longer be fair and impartial in
7 the instant proceedings.

8 Judge Walker's familiarity with the Defendant's mental health issues, and the suggestion he
9 may have ordered a competency evaluation had she not had one already, is of no moment. NRS
10 178.405(1) states:

11 Any time after the arrest of a defendant, including, without limitation, proceedings before
12 trial, during trial, when upon conviction the defendant is brought up for judgment or when a
13 defendant who has been placed on probation or whose sentence has been suspended is
14 brought before the court, if doubt arises as to the competence of the defendant, the court shall
15 suspend the proceedings, the trial or the pronouncing of the judgment, as the case may be,
16 until the question of competence is determined.

17 The statute on its face does not limit the issue of competency to be raised only by a defendant or
18 his/her counsel. The court can of its own volition, based on its own observation, cause the
19 proceedings to be suspended and competency to be reviewed. Judge Walker was acting within his
20 discretion to inform the Defendant of this fact. Further, the Court finds Judge Walker was respectful
21 of the Defendant's feelings regarding her mental health issues. He was not showing any bias.

22 Finally, the Court has reviewed the ORDER DENYING MOTION TO MODIFY
23 VISITATION ("the Order") entered in GR15-00192, which is the subject of concern for the
24 Defendant. Judge Walker does not make any final conclusions about the Defendant's guilt or

25 ¹⁰ The Court acknowledges a judge in one of these districts can still be challenged for bias. There is a mechanism in place
26 to determine how such a challenge is resolved. See NRS 1.235(6)(d). Should a judge from one of these districts be
disqualified for any reason, the Chief Justice of the Nevada Supreme Court would assign a district judge from one of the
remaining districts to preside over the case. See NRS 3.040(2).

1 innocence in the instant proceedings in the Order; he does not even offer an opinion on the subject.
2 Such a determination was not the subject of the inquiry. Judge Walker was judicious in the way he
3 described the facts of the cases *sub judice* in the Order. Judge Walker refers to the Defendants acts as
4 “allegedly” occurring. The Order 1:26; 1:27; 4:5-6. Judge Walker states the Defendant is the
5 “suspect” in the murder. The Order 3:26. Judge Walker indicates the Defendant has been
6 incarcerated because “she has been accused of committing the extremely violent act of murdering the
7 father of her children.” The Order 4:3-5. The Court declines the invitation offered by the Defendant
8 at oral argument to “read between the lines” to determine what Judge Walker really meant when he
9 used these terms. The Court believes Judge Walker meant exactly what he said in the Order: the
10 charges are merely allegations.
11

12 The Court finds the Defendant has failed to carry her burden regardless of the test applied to
13 the claims. The Court concludes the identified areas of bias are not even remotely close to the
14 “extreme” facts implicating the Due Process Clause. Assuming the facts are of such a character, the
15 Court concludes the average judge in Judge Walker’s position is likely to be neutral, and there is no
16 unconstitutional potential for bias. The Court concludes the risk of basis is not too high under the
17 circumstances such that Judge Walker remaining on the case would be constitutionally intolerable.
18 Assuming the Due Process Clause is not implicated, and the Court is to rely on the NCJC and
19 Nevada’s jurisprudence on the issue, the Court concludes the Defendant has failed to carry her
20 burden to demonstrate any bias in the instant proceedings which would necessitate Judge Walker’s
21 recusal. Judge Walker has not done or said anything in these proceedings which would lead a
22 reasonable person to question his impartiality toward the Defendant. His knowledge of the
23 Defendant, and her overall circumstances, has been developed from her appearances before him. The
24 Court finds nothing inappropriate about such a circumstance. There is no impropriety, nor is there
25
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1 the appearance of impropriety, necessitating Judge Walker's recusal from these cases.

2 IT IS HEREBY **ORDERED** the MOTION TO RECUSE is **DENIED**. These matters are
3 referred back to Department 7 for all further proceedings.

4 DATED this 21 day of September, 2018.

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7 ELLIOTT A. SATTLER
8 District Judge
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 21 day of September, 2018, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Chief Judge Scott Freeman
Dept. 9
(interoffice mail)

Judge Egan Walker
Dept. 7
(interoffice mail)

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 21 day of September, 2018, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

DEREK DREILING, ESQ.

MARC PICKER, ESQ.


Sheila Mansfield
Judicial Assistant

1 4185
2 STEPHANIE KOETTING
3 CCR #207
4 75 COURT STREET
5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE EGAN WALKER, DISTRICT JUDGE

10 --oOo--

11 STATE OF NEVADA,)	
)	
12 Plaintiffs,)	
)	
13 vs.)	Case No. CR17-0690A,
)	CR17-0690B and CR17-1127
14 KATHERINE DEE FLETCHER,)	
)	Department 7
15 Defendant.)	
_____)	

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18 TRANSCRIPT OF PROCEEDINGS

19 STATUS HEARING

20 October 15, 2018

21 9:00 a.m.

22 Reno, Nevada

23
24 Reported by: STEPHANIE KOETTING, CCR #207,
Computer-Aided Transcription

1 APPEARANCES:

2 For the State:

3 OFFICE OF THE DISTRICT ATTORNEY
4 By: DEREK DREILING, ESQ.
5 By: MATT LEE, ESQ.
6 P.O. Box 30083
7 Reno, Nevada

8 For the Defendant:

9 OFFICE OF THE ALTERNATE PUBLIC
10 DEFENDER
11 By: MARC PICKER, ESQ.
12 By: BILL HART, ESQ.
13 350 S. Center
14 Reno, Nevada
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1 RENO, NEVADA, October 15, 2018, 9:00 a.m.

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3 --oOo--

4 THE CLERK: CR17-0690A, CR17-0690B and CR17-1127,
5 all cases, State versus Katherine Dee Fletcher. Matter set
6 for motion to set trial. Counsel and the Division, please
7 state your appearance.

8 MR. DREILING: Derek Dreiling and Matt Lee on
9 behalf of the State.

10 MS. LUTZOW: Heather Lutzow with the Division of
11 Parole and Probation.

12 MR. PICKER: Marc Picker and Bill Hart on behalf
13 of Ms. Fletcher who is present.

14 THE COURT: Good morning, all. My name is Egan
15 Walker. I have the privilege of being responsible for
16 Ms. Fletcher's cases. This is the time and date to set
17 trial. Previously this year, we had set the trial in the
18 order that the cases were just announced, which was the
19 murder allegation first, the burglary and grand larceny
20 second, battery by a prisoner and unlawful act related to
21 bodily fluid third. Is that still your desire, counsel?

22 MR. PICKER: Yes, it is, your Honor.

23 THE COURT: Any objection to that from the State's
24 perspective?

1 MR. DREILING: No, your Honor.

2 THE COURT: How long for each trial?

3 MR. PICKER: Your Honor, we're thinking that the
4 murder trial will probably take at most six or seven days,
5 court days. So we have a suggested schedule of that case
6 being heard on March 4th, the burglary and grand larceny half
7 of the case being heard on March 18th, with the battery by a
8 prisoner case being heard on March 25th.

9 THE CLERK: March 4th is not going to work. I can
10 tell you what will work. March 11th will work.

11 MR. PICKER: If we do that, then, we would have to
12 do the burglary and grand larceny on the 25th.

13 THE CLERK: Let's start with the murder. So
14 March 11th, are we all in agreement that will work?

15 MR. PICKER: Actually, no.

16 THE COURT: Is there a witness conflict? Is that
17 what I'm discerning?

18 MR. DREILING: One of the main detectives in
19 charge of the scene will be a few important aspects of that,
20 he's gone out of town from March 17th to the 24th. I think
21 we would be able to call him in that first week easily if
22 Mr. Picker's concern is that there's a need for rebuttal.
23 It's fairly static evidence. The State, frankly, would be
24 willing to gamble.

1 THE COURT: Should it come to pass that there
2 would be a need for rebuttal, I realize rebuttal often is
3 necessary at the end of the case, I would give latitude,
4 certainly, to Ms. Fletcher's counsel and to the State to call
5 a witness out of order if it came to pass. Let's go ahead
6 and set that week, then.

7 THE CLERK: Yes, your Honor. March 11th, counsel,
8 for trial as to the murder charge and that would be 9:30 and
9 you said to schedule it for seven days?

10 MR. PICKER: Yes.

11 THE CLERK: The motion to confirm on that case
12 will be February 27th at 9:00 a.m..

13 I'm next looking at the burglary and grand larceny
14 case and you had suggested the 25th, however, that won't
15 work. We would need to go into the month of April. Would
16 April 1st or April 8th work? April 8th would work better for
17 judge.

18 MR. DREILING: The 1st would be better. Mr. Lee
19 has a murder trial late in April.

20 THE CLERK: We have a civil trial scheduled that
21 week, but I'll defer to the judge on that.

22 THE COURT: I'm looking at the calendar as we
23 speak. How many days?

24 MR. PICKER: Burglary and grand larceny case is

1 probably three to four days at most.

2 MR. DREILING: Exactly.

3 THE COURT: How long is Kaufmann set for?

4 THE CLERK: Kaufmann is set for five days. You
5 would be assured of -- there's no other sets the week of the
6 8th, counsel, or if judge is comfortable setting it on the
7 1st, we can find a home for the other case.

8 THE COURT: My preference would be the 8th. If
9 you're telling me it can't be accommodated in either office,
10 I'll bend to that.

11 MR. DREILING: The 8th will work for the State.

12 THE COURT: Thank you for that courtesy

13 THE CLERK: April 8th, counsel, at 9:30 and for
14 four days and with a motion to confirm scheduled for I'm
15 going to say April 3rd at 9:00 a.m..

16 Next, moving to the battery and unlawful act case,
17 counsel, I have available the week of April 15th.

18 MR. PICKER: I'll defer to the State, since
19 Mr. Lee has another trial going in April.

20 THE CLERK: Or the 29th, April 29th?

21 MR. DREILING: Mr. Lee is out. If the State would
22 set it, we would find another prosecutor to handle it. It
23 doesn't have any of the same witnesses carrying over. I
24 don't see why we couldn't find another home for it if need

1 be.

2 THE COURT: Let's do the 29th.

3 THE CLERK: We have several civil trials, your
4 Honor, but if you're comfortable setting it then, that would
5 be the only criminal trial we have.

6 THE COURT: Let's do it the week of the 29th.

7 MR. DREILING: We'll just find another prosecutor.

8 THE CLERK: So that would be 4/29 at 9:30 for how
9 many days?

10 THE COURT: Two, I would think. That's the
11 battery by a prisoner allegation?

12 MR. DREILING: I think three.

13 MR. PICKER: I think three days is probably
14 sufficient.

15 THE CLERK: Three days. Let's schedule the motion
16 to confirm for April 17th at 9:00 a.m.. Are we good?

17 MR. DREILING: I believe we're good.

18 THE COURT: Okay. While we're here, when last we
19 spoke in these cases, there was some significant conversation
20 about the status of the transfer of discovery and I wanted to
21 make sure that's still working for you and for your client.

22 MR. PICKER: We had some discussions. We're
23 actually going to try to set up a meeting in the next couple
24 of weeks to make sure that we have everything the State has.

1 Mr. Dreiling and I have been corresponding back and forth
2 about that.

3 In addition, your Honor, at the last hearing, you
4 raised the question and I'm sure Mr. Dreiling was about to
5 raise it, so I'll raise it first, is the question of where
6 Ms. Fletcher is housed. I have had a series -- Mr. Hart and
7 I both have had a series of meetings with her treatment team
8 at Lakes Crossing. They were going to wait until today to
9 determine when trial dates were to determine their
10 therapeutic needs and whether there's going to be some
11 transition of Ms. Fletcher out of Lakes Crossing.

12 I wanted to let you know that we've had ongoing
13 discussions and we're due to have another one next week, I
14 think, after they hear about what today's determinations
15 were.

16 THE COURT: Before I transition to that topic, I
17 just want to make sure, gentlemen, that you don't think on
18 either side you need me in the way of the discovery issues.
19 I had set some status hearings previously. I don't hear a
20 need to set another status hearing related to the transition
21 of discovery, is that accurate?

22 MR. PICKER: That's accurate, your Honor.

23 MR. DREILING: That's correct.

24 THE COURT: From your perspective, Mr. Dreiling,

1 about the where she is housed pending trial?

2 MR. DREILING: I guess I just point out the
3 obvious, it's unusual, she's competent. There's scarce beds
4 at that facility, there are people often waiting to get into,
5 so the State doesn't understand why she would remain at that
6 facility. And from what I heard at the last hearing, almost
7 all of her needs could be met. Medical, there wouldn't be
8 the, I guess, the freedom that could theoretically help her
9 relax or some of the counseling I guess you could say,
10 one-on-one.

11 Outside of that, I'm not sure what potential
12 logistical problems it would present for the defense
13 regarding the quantity of time. I know that was an
14 allegation earlier in the case as far as availability to meet
15 with their client. We think she should be treated like
16 anyone else I guess is, I guess, the bottom line.

17 THE COURT: Mr. Picker.

18 MR. PICKER: Your Honor, we've met with Ms.
19 Fletcher, I believe, probably five or six times now at Lakes
20 Crossing. We've had no problem making appointments to get in
21 and to spend time with her. We've had sufficient time to
22 meet with her. So that part is no longer a concern.

23 In talking to her therapeutic team, I would prefer
24 to leave it up to them, but what's been pointed out to us is

1 that the discussion was the concern of the difference in
2 atmospheres and for her treatment, she does receive
3 treatment, she has a sizable treatment team, actually, at
4 Lakes. We met with five professionals -- six professionals
5 over there, including Dr. Neighbors and the head of the
6 facility or the head of the Division, who is the head of her
7 treatment team.

8 So while I understand the State's concern and what
9 the Court expressed at the last hearing, I will reiterate my
10 stance from the last hearing, which is I believe we should
11 leave it up to the professionals to make that decision.
12 Certainly, they recognize the State's concerns and they have
13 similar concerns about whether Ms. Fletcher's continuing stay
14 at Lakes is beneficial enough for her to occupy a bed there.

15 As I said, we'll be having a meeting with them
16 next week and I'm sure they will at some point notify the
17 Court as to what their intentions are.

18 THE COURT: I want to strike an appropriate
19 balance in the end and by that I mean the resources are
20 limited, the Lakes Crossing resources in particular. That is
21 not of Ms. Fletcher's doing. So I certainly don't want to
22 hold that against her or any other person in her
23 circumstance. But the resources are limited.

24 It is as a consequence a stretch for someone to be

1 at Lakes as long as she has been at Lakes after being found
2 competent. Is it an appropriate stretch, I can't say. I
3 think I simply again need more information as I indicated
4 last time. I likely will give great deference, of course, to
5 the recommendations of her treatment team. I know that
6 Dr. Neighbors in particular and others are more than aware of
7 the limitations on their resources and the precious nature of
8 the real estate there.

9 My inclination would be simply to set a status
10 hearing for about a month. That should give you time.
11 Obviously, the State won't be, I assume, a part of the
12 meeting you're talking about, so they won't have that
13 information whatever it might be. And, again, I would expect
14 that there would be some written feedback from Lakes
15 Crossing. I'll matriculate this into some form of an order
16 to them to report to me on the continued efficacy and need
17 for Ms. Fletcher's placement at Lakes Crossing. I intend it
18 to be fairly innocuous, the order, but I just need to get
19 some more information.

20 MR. PICKER: I think that's appropriate, your
21 Honor. Basically, just the same procedure we went through
22 last time and make sure Dr. Hansen will send you a letter.
23 He is her direct treatment provider. So he'll be able to
24 provide that update. We'll mention that to him when we meet

1 with him next week.

2 THE COURT: Thank you for that courtesy.

3 THE CLERK: Your Honor, I'm looking at
4 November 28th for a status hearing.

5 THE COURT: Gentlemen, will that work for your
6 calendars?

7 MR. PICKER: That should work, your Honor.

8 MR. DREILING: Yes, your Honor.

9 THE COURT: Thank you for that. I'll look forward
10 to seeing you all then for that status hearing.
11 Ms. Fletcher, do you have any questions, ma'am, about what
12 we've done here today?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: All right. Thank you all, then, very
15 much for your time.

16 MR. PICKER: Thank you, your Honor.

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1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 7 of the
7 above-entitled Court on October 15, 2018, at the hour of 9:00
8 a.m., and took verbatim stenotype notes of the proceedings
9 had upon the status hearing in the matter of THE STATE OF
10 NEVADA, Plaintiff, vs. KATHERINE DEE FLETCHER, Defendant,
11 Case No. CR17-0690A, CR17-0690B and CR17-1127, and
12 thereafter, by means of computer-aided transcription,
13 transcribed them into typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 13, both inclusive, contains a full, true and
16 complete transcript of my said stenotype notes, and is a
17 full, true and correct record of the proceedings had at said
18 time and place.

19
20 DATED: At Reno, Nevada, this 4th day of January 2021.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24

1 4185
2 STEPHANIE KOETTING
3 CCR #207
4 75 COURT STREET
5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE EGAN WALKER, DISTRICT JUDGE

10 --oOo--

11 STATE OF NEVADA,)	
)	
12 Plaintiffs,)	
)	
13 vs.)	Case No. CR17-0690A,
)	CR17-0690B and CR17-1127
14 KATHERINE DEE FLETCHER,)	
)	Department 7
15 Defendant.)	
_____)	

16
17
18 TRANSCRIPT OF PROCEEDINGS

19 STATUS HEARING

20 November 28, 2018

21 9:00 a.m.

22 Reno, Nevada

23
24 Reported by: STEPHANIE KOETTING, CCR #207,
Computer-Aided Transcription

1 APPEARANCES:

2 For the State:

3 OFFICE OF THE DISTRICT ATTORNEY
4 By: AMOS STEGE, ESQ.
5 P.O. Box 30083
6 Reno, Nevada

7 For the Defendant:

8 OFFICE OF THE ALTERNATE PUBLIC
9 DEFENDER
10 By: MARC PICKER, ESQ.
11 350 S. Center
12 Reno, Nevada
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1 RENO, NEVADA, November 28, 2018, 9:00 a.m.

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3 --oOo--

4 THE CLERK: Case numbers CR17-0690A, CR17-0690B
5 and CR17-1127, State versus Katherine Dee Fletcher. These
6 matters are set for status hearing. Counsel and the
7 Division, please state your appearance.

8 MR STEGE: Amos Stege for the State.

9 MR. JENNINGS: Billy Jennings for the Division,
10 your Honor.

11 MR. PICKER: Marc Picker and Bill Hart on behalf
12 of Ms. Fletcher, who is present.

13 THE COURT: Good morning, Ms. Fletcher and
14 gentlemen. This is the time and date set for a status
15 hearing. Dr. Henson was very kind to me in my opinion and
16 did as I requested through you, thank you, gentlemen, for
17 making that happen, he has suggested that Ms. Fletcher
18 transition back into the custody of the Washoe County Jail
19 over the next 30 days. Do you have any quarrel with that,
20 Mr. Picker?

21 MR. PICKER: Well, your Honor, I do. But as your
22 Honor has made clear in previous hearings, I don't have a lot
23 of argument with the statement that we leave it up to the
24 doctors to make these decisions. I still have my concerns,

1 as stated in the two previous hearings, that Ms. Fletcher may
2 very well encounter some difficulties at the jail that may
3 lead to some kind of decompensation. I'm hoping that does
4 not happen. I have had this discussion with Ms. Fletcher.
5 We have discussed Dr. Henson's report and she understands
6 where we're at. So we'll leave it up to the Court at this
7 point.

8 THE COURT: Thank you for that. Mr. Stege.

9 MR STEGE: I have no quarrel with the findings.
10 I'd ask the Court to follow the recommendations.

11 THE COURT: Ms. Fletcher, I don't really want you
12 to say anything, but I'm going to give you an opportunity to
13 ask any question or make any statement if you like. Please
14 talk to your attorneys before you do that.

15 MR. PICKER: Your Honor, Ms. Fletcher has asked me
16 to reflect the fact she's very scared at what might happen at
17 the jail and she has some apprehension.

18 THE COURT: I hear that apprehension. I don't
19 know what and I can't know what you and folks who end up at
20 the jail may feel. So I understand that as a human being.
21 I'll simply indicate that I intend that Ms. Fletcher should
22 transition back to the care, custody and control of the
23 Washoe County Sheriff through the Washoe County Jail as Dr.
24 Henson has indicated. I'm going to leave it to you and to

1 Dr. Henson the timing for that and process for that. I trust
2 the two of you, although of course disagreeing with that
3 order, give effect to Dr. Henson's recommendation. I'm not
4 going to put any more boundaries around it, because I want to
5 leave it to Dr. Henson, quite candidly. Any question about
6 that?

7 MR. PICKER: No, your Honor. That's totally what
8 I expected

9 THE COURT: Thank you very much for your time,
10 this morning. Good day, Ms. Fletcher.

11 MR STEGE: Thank you, your Honor.

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1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 7 of the
7 above-entitled Court on November 28, 2018, at the hour of
8 9:00 a.m., and took verbatim stenotype notes of the
9 proceedings had upon the status hearing in the matter of THE
10 STATE OF NEVADA, Plaintiff, vs. KATHERINE DEE FLETCHER,
11 Defendant, Case No. CR17-0690A, CR17-0690B and CR17-1127, and
12 thereafter, by means of computer-aided transcription,
13 transcribed them into typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 6, both inclusive, contains a full, true and complete
16 transcript of my said stenotype notes, and is a full, true
17 and correct record of the proceedings had at said time and
18 place.

19
20 DATED: At Reno, Nevada, this 30th day of January 2019.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24

Code: 2610
MARC PICKER, BAR #3566
WASHOE COUNTY ALTERNATE PUBLIC DEFENDER
BILL HART, BAR #11986
DEPUTY ALTERNATE PUBLIC DEFENDER
350 S. CENTER ST., 6TH FLOOR
RENO, NV 89501
(775) 328-3955
COUNSEL FOR DEFENDANT
KATHERINE DEE FLETCHER

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. CR17-0690A

v.

KATHERINE DEE FLETCHER,

Dept. No. 7

Defendant,

NOTICE OF DEFENSE

Defendant KATHERINE DEE FLETCHER, by and through her attorneys, above-named, hereby offers its notice of defense, pursuant to NRS 174.035(6). By this Notice, the State of Nevada is advised that Ms. Fletcher will request to add an additional plea of “not guilty by reason of insanity.”¹ Ms. Fletcher requests that the Court set a hearing before February 15,

¹ NRS 174.035(6) specifically contemplates an additional plea of not guilty by reason of insanity as well as a simple not guilty plea.

1 2019 so that she may enter this plea on the record the required twenty-one (21) days before
2 trial.

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

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

6 DATED this 1st day of February, 2019.

7 MARC PICKER
8 Washoe County Alternate Public Defender

MARC PICKER
Washoe County Alternate Public Defender

9 By: /s/ Bill Hart
10 Bill Hart
Chief Deputy Alternate Public Defender

By: /s/ Marc Picker
Marc Picker
Alternate Public Defender

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Washoe County
3 Alternate Public Defender's Office, over the age of 21 years and not a party to nor interested in
4 the within action. I certify that on this date, I will deposit for mailing in the U.S. Mail, with
5 postage fully prepaid, or by interoffice mail, or by court-run delivery, or facsimile, or e-filing
6 where indicated, a true and correct copy of the foregoing document to the following:

7
8 Washoe County District Attorney's Office
9 **Via E-filing**

10 DATED this 1st day of February, 2019.

11 /s/ Shannon Hambright
12 Shannon Hambright
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26

1 4185
2 STEPHANIE KOETTING
3 CCR #207
4 75 COURT STREET
5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE EGAN WALKER, DISTRICT JUDGE

10 --oOo--

11 STATE OF NEVADA,)
12 Plaintiffs,)
13 vs.) Case No. CR17-0690A,
14 KATHERINE DEE FLETCHER,) CR17-0690B and CR17-1127
15 Defendant.) Department 7
16 _____)
17

18 TRANSCRIPT OF PROCEEDINGS

19 HEARING

20 February 13, 2019

21 1:30 p.m.

22 Reno, Nevada
23

24 Reported by: STEPHANIE KOETTING, CCR #207,
Computer-Aided Transcription

1 APPEARANCES:

2 For the State:

3 OFFICE OF THE DISTRICT ATTORNEY
4 By: AMOS STEGE, ESQ.
5 P.O. Box 30083
6 Reno, Nevada

7 For the Defendant:

8 OFFICE OF THE ALTERNATE PUBLIC
9 DEFENDER
10 By: BILL HART, ESQ.
11 350 S. Center
12 Reno, Nevada
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1 RENO, NEVADA, February 13, 2019, 1:30 p.m.

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3 --oOo--

4 THE CLERK: Case number CR17-0690A. State versus
5 Katherine Dee Fletcher. Matter set for hearing. Counsel,
6 please state your appearances.

7 MR STEGE: Amos Stege for the State of Nevada.

8 MR. HART: Bill Hart from the Alternate Public
9 Defender's Office on behalf of Ms. Fletcher, who is also
10 present, your Honor.

11 THE COURT: Ms. Fletcher, good afternoon. This is
12 the time set for a hearing at the defense request to add an
13 additional plea. Mr. Hart, first, would you clarify to which
14 case or cases does your client intend to add the additional
15 plea?

16 MR. HART: Right now, the additional plea would
17 just be CR17-0690A case, the murder case.

18 THE COURT: Before we go there, let me ask if you
19 can or will indicate whether or not you intend to enter the
20 same pleas or seek to enter the same pleas in the two related
21 cases? So by that I mean, the murder case is CR17-0690A and
22 then the burglary and grand larceny cases are CR17-0690B.
23 The B cases, of course, are set for trial on April 8th for
24 four days. And then we have an amended information on a

1 case, which alleges battery by a prisoner and unlawful act
2 related to bodily fluid in CR17-1127 set to commence on
3 April 29th.

4 MR. HART: Without locking us into a permanent
5 position, it's our position today we would not be entering
6 into a not guilty by reason of insanity on the other two
7 cases.

8 THE COURT: So let's, first things first, then,
9 deal with the arraignment. Ms. Fletcher was previously
10 arraigned on the information that was filed April 4th, 2017.
11 And as to Count One, murder with the use a deadly weapon,
12 entered a plea of not guilty. Ms. Fletcher, would you please
13 stand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you wish to add to your previous
16 plea of not guilty? So as to Count One, murder with the use
17 of a deadly weapon, a category A felony, how do you wish to
18 plead?

19 THE DEFENDANT: Not guilty by reason of insanity.

20 THE COURT: Do you wish that that be a plea in
21 addition to the not guilty plea?

22 THE DEFENDANT: Yes.

23 THE COURT: Thank you very much. I'll enter a not
24 guilty by reason of insanity plea as a secondary plea in this

1 case. Go ahead and have a seat, Ms. Fletcher. Thank you for
2 that.

3 Next, logically, we would move then to Mr. Stege's
4 motion for continuance. Mr. Stege, you're in the unenviable
5 position of having inherited this case from now a judicial
6 colleague of mine and a friend I think of both of ours and
7 here's my question. I understand the motion for continuance,
8 but let me recite some basic facts and give you an
9 opportunity to respond.

10 First, NRS 174.035 contemplates that a defendant
11 in Ms. Fletcher's seat could seek to add not guilty by reason
12 of insanity even at trial. She would have to show good
13 cause, but nonetheless, there's a contemplation that she
14 could have done that.

15 And so here's the difficult question I have and I
16 don't -- I mean in no way to cast any aspersions against you
17 or anyone else in the District Attorney's Office. But we had
18 to know this was a possibility. And Ms. Fletcher has been
19 evaluated by my count ten times related to her competency
20 and/or psychiatric status by Dr. Molton, Dr. Vieth,
21 Dr. Bissett, Dr. Piasecki, Dr. Laney, Dr. Zuchowski, Dr.
22 Dillinger, Dr. Pearson, Dr. Henson twice. And how is it that
23 any additional information is needed by the District
24 Attorney's Office in order to, my words, rebut the claim of

1 insanity now?

2 MR STEGE: Like I say, the primary one is, again,
3 not throwing blame or throwing darts at anyone here, but the
4 lack of a report supporting such a finding due 30 days before
5 trial, which we have now passed, the absence of an expert
6 witness notice, which we are fast approaching, and the bigger
7 thing for me is gathering evidence besides competency related
8 evidence to rebut or assess the validity of the insanity
9 claim, an examination of the defendant would be part of that.

10 I would rebut or push back on the Court's idea
11 that this isn't a surprise to the State, because looking at
12 the evaluations, there's not a concurrence of opinion. I
13 mean, you have to get to that level to get to any sort of,
14 let's say, clear and convincing evidence that she was not
15 competent to proceed to trial.

16 In addition, we all know that's a separate inquiry
17 from insanity and really lacking or missing from that
18 information is insanity requires a mental disease or defect.
19 And I don't really see a lot of evidence of sort of your
20 classic serious mental illness diagnosis that would lead one
21 to believe an insanity plea is coming.

22 I'm in the, I guess, also unenviable position of
23 having recently tried a case of the same plea and I sort of
24 have an understanding from that and from working with experts

1 in the field of sort of which clients or which defendants you
2 might suspect would go there. And you and I don't know each
3 other, but just my own interpretation of sort of the tea
4 leaves that we had leading up to today, I would not have
5 expected this defense.

6 Now, the Court is right, the statutory framework
7 does contemplate it, but I think we would have to admit that
8 this is -- it's advanced criminal litigation. It does open
9 up, I think, for both sides a whole different area, including
10 an area of motion practice that would -- that this triggers.
11 So I would hope the Court would agree with me that a
12 continuance I think would bring the best product before the
13 Court and before the jury.

14 Otherwise, we're going to have a hearing very
15 shortly on whether any evidence that they intend or expert
16 they intend to call would even be admissible for the lack of
17 a report or evidence supporting the claim 30 days before
18 trial. And I sort of -- I didn't know sort of the
19 temperature I was walking into today, because I do know and
20 recognize that this, even though I'm new to this case, the
21 Court is probably not going to put much weight in that and
22 the Court is going to say, wait a minute, it's going on three
23 years old here. But it's big. I mean, an insanity plea is
24 big and I think it really changes the focus of everyone's

1 approach.

2 THE COURT: I appreciate the answer. In the end,
3 here's where I come down. This case has been continued once.
4 In fact, all three cases were continued once and that creates
5 no small amount of havoc in any particular department's
6 calendar. What it does is inconvenience all the other people
7 looking for court time.

8 Now, that continuance was not at the State's
9 request. That continuance was at the defense request. And,
10 candidly, was well taken given the timing of the replacement
11 of counsel. So it's not the fault of the Alternate Public
12 Defender's Office or the Public Defender's Office for that
13 matter either. It just happened.

14 This one is a little bit different to my eye, but,
15 Mr. Stege, I think while I would have anticipated it, I think
16 any two people looking at these facts in this case would
17 agree that at best, this is an unusual case in terms of
18 process. And so people can guess wrong about what the tea
19 leaves are and I guess I accept that.

20 You're right that I wouldn't accept as an excuse
21 the fact that a change from Mr. Dreiling to you, because the
22 State is the State is State from where I sit.

23 All things considered, I think it would be an
24 abuse of discretion when the defense does not object to the

1 continuance to not grant a continuance. And so I find myself
2 in the unenviable position of doing that as to the murder
3 case only. I have no intention of continuing the other two
4 trials.

5 MR. HART: In talking outside, your Honor, this
6 was in contemplation of all three trials being continued.

7 THE COURT: I suspected it was, but I can tell you
8 I have no intention of moving the other two trials. Let me
9 get it into the record, I apologize, and I promise I'll let
10 you go. Even if Ms. Fletcher were to add not guilty by
11 reason of insanity to either of the other two specific intent
12 allegations, I would not continue the case. So go ahead.

13 MR. HART: Again, we're coming before the Court
14 both sides agreeing to continue all three cases and I'm sure
15 Mr. Stege would stand up and submit to that as well. The
16 reasoning behind that is based on our strategy as far as the
17 murder case does go. We do see the murder case as the most
18 egregious of all cases and I think the Court would probably
19 recognize that.

20 In our talking with the State and understanding
21 the State's position and being compromising to that position
22 and understanding where they're coming from and also being a
23 human being and being a lawyer having to prepare for a trial,
24 we understand what that all goes into. In exchange for that

1 understanding and our nonopposition, we were expecting for
2 all three trials to be continued.

3 If the other two trials were not going to be
4 continued, our nonopposition would probably go away, your
5 Honor. We would be wanting to do the murder trial first.

6 THE COURT: I appreciate that. I'll give you an
7 opportunity to confer with your client and confer with
8 Mr. Stege, if you want. We can take a break to do that.
9 But, again, to be unequivocal about it as I can, the
10 CR17-0690B case or allegation, that being burglary and
11 possession of a firearm and grand larceny of a firearm are
12 set to commence trial April 8th for four days. That's almost
13 60 days, fully 60 days from now.

14 The battery by a prisoner and unlawful act related
15 to bodily fluid are set to commence trial April 29th, which
16 is almost 80 days from now. There is adequate time between
17 now and then to develop whatever evidence needs to be
18 developed related to those and I have no intention of
19 continuing those cases. Recognizing that you all have
20 stipulated to it, I have no intention of doing so.

21 If you'd like, I'm happy now to take a break to
22 give you an opportunity to confer with your client and/or
23 Mr. Stege if you need to.

24 MR. HART: I would just need clarification on that

1 refusal, I guess. You're saying basically you're refusing
2 that because there's time?

3 THE COURT: There is no manifest prejudice to your
4 client to trying the other allegations before the murder
5 case. She is already a convicted felon. So, for example, if
6 she were to testify --

7 MR. HART: No, she's not. I want to be clear on
8 that, your Honor, she is not a convicted felon. That is the
9 purpose of this.

10 THE COURT: Then my recollection may be in error,
11 and I'm happy to be corrected, but she was on probation at
12 the time of all of these alleged acts as I understood it and
13 from that I assumed she had a conviction.

14 Irrespective, the only potential prejudice to her
15 then would be if she chose to testify at the murder case and
16 had a conviction. There is, I believe, clear caselaw which
17 indicates she has no constitutional right to protect herself
18 from that consequence, i.e., the timing of these cases is
19 such, there's a continuance now requested because of a late,
20 my words, no one else's, not late under the statute, but a
21 late request to add a not guilty by reason of insanity plea.
22 That has a cascade of consequences for the State. I've
23 indicated I intend to continue that case. I find no manifest
24 legal reason to continue the other cases.

1 The other cases are three years and two years old,
2 have been continued once, and I find no detriment to either
3 side, candidly, by maintaining the trial dates that are
4 currently set. Please go ahead and set a record if you'd
5 like.

6 MR. HART: I would, your Honor, because I don't
7 believe that's the standard. What we're looking at is good
8 cause to continue any kind of hearing, especially when
9 there's not one that is being opposed and that's what we're
10 suggesting to the Court today.

11 The good cause on that is two-fold. One, we have
12 a murder case coming up. We just pled not guilty by reason
13 of insanity. There's a high likelihood when you plead that,
14 that we have the defendant actually testify in a trial like
15 that without obviously locking us into a position that is a
16 very common thing to happen going forward, and having any
17 kind of felony conviction upon her is a detriment to our
18 client to take the stand in that case, that being the most
19 severe case.

20 When we continued the original murder trial back,
21 I believe, in October, I might be wrong on that date, but
22 around then, it was understood to this Court and again to the
23 State, Mr. Dreiling at the time, that we would be trailing,
24 I'll say it, the lesser crimes of the stealing of the firearm

1 and the battery by a prisoner to trail the murder case,
2 because the murder case was the one that was of paramount
3 importance.

4 I think if the Court is looking at that and saying
5 there's no reason to continue it when we've just expressed
6 our desire to continue it and we've given good cause to
7 continue it, I don't understand the Court's discretion in
8 denying that when it has little impact, I would think, upon
9 anything else besides rescheduling of two trials.

10 THE COURT: That's a giant impact I'm compelled to
11 say, particularly when the two trials have already been
12 scheduled. But before I respond further, was there any
13 argument you wanted to offer and I'll give Mr. Stege an
14 opportunity to respond.

15 MR. HART: No. I would just state that if the
16 Court is not going to grant the request to continue the other
17 two trials, we would not be wanting to continue the murder
18 trial.

19 THE COURT: Mr. Stege, do you want to respond?

20 MR STEGE: I came into today expecting sort of
21 they all get continued together, nothing more than the
22 rationale -- there seems to be a natural sort of progression
23 of the trials that the Court had set, already set and that
24 would sort -- that rationale would continue later on down the

1 road, the idea that the murder going first and the others
2 going behind them.

3 I won't go so far as to say we agreed to this in
4 my motion, but I agreed after the fact with Mr. Hart that
5 that was my expectation that the other two get continued to
6 have that progression from most to least serious offenses.

7 THE COURT: Well, there is no legal basis to
8 continue the two remaining cases. I'm unaware of any legal
9 authority that supports it. I understand and respect the
10 desire of the parties to conduct it in the order in which
11 they want to conduct it. But as I have to balance the
12 interest of all the persons who participate in the available
13 resources of Department Seven, which I must, including other
14 in custody defendants, of which there are many, and balanced
15 against that is simply Ms. Fletcher's desire that the cases
16 go in whatever order they go in so that she might realize an
17 advantage should she avoid being convicted of a felony
18 altogether or before she has to testify in a murder case, I'm
19 unaware of any legal authority that supports that.

20 I'm prepared and happy to be corrected, but I'm
21 unaware of any such legal authority. And it would be a
22 misuse of the resources of Department Seven to continue to
23 cascade these cases forward because of the needs
24 strategically to continue one, principally the murder case.

1 That's why I asked the question in the beginning
2 whether or not Ms. Fletcher intended to add not guilty by
3 reason of insanity to the two other cases that are both
4 specific intent crimes for which that defense would
5 potentially apply if that was her desire.

6 Given that she does not desire to add not guilty
7 by reason of insanity to those cases and I find no legal
8 basis to continue them, I will not continue them. I assume,
9 then, that means that the defense objects to a continuance of
10 the murder trial.

11 MR. HART: I think at this point I'd like to
12 recess to talk to the State.

13 THE COURT: We can do that. I'll step out of the
14 courtroom. As long as it's not going to take more than
15 15 minutes, just let the bailiff or my clerk know when you're
16 ready to return.

17 (A short break was taken.)

18 THE COURT: We're again on the record in
19 CR17-0690A. Actually, we're discussing CR17-0690B and
20 CR17-1127. I neglected in my comments previously to
21 acknowledge that the motion to continue was only filed in the
22 murder case. I don't know if that really matters, but that
23 also I think needs to be part of the record. Mr. Hart.

24 MR. HART: I just want to be clear, are we on the

1 record in all three cases at this point, your Honor?

2 THE COURT: We are now.

3 MR. HART: I would renew my request to continue
4 all three trials, your Honor. It's my opinion that when
5 asked and given good cause that the Court should
6 differentiate to the what we and the client needs.

7 THE COURT: I'm so sorry to interrupt. I just
8 want to make sure I understand you, Mr. Hart, because that's
9 a relatively extraordinary thing you just said. If I
10 understood what you're saying correctly, you're saying,
11 judge, when we agree to continue, you got to give it to us.

12 MR. HART: That's not what I said, your Honor.

13 THE COURT: That's what I heard. That's why I
14 stopped you.

15 MR. HART: I said when the two parties agree and
16 give good cause, I think that should give the Court a reason
17 to stop and think about that request.

18 THE COURT: I'm sorry. Mr. Stege is not giving me
19 any cause to continue the other two. What good cause do you
20 intend to give?

21 MR. HART: Your Honor, I've already stated on the
22 record. At this point, we're going to withdraw our
23 nonopposition to the motion to continue and want to go to
24 trial in March. As the Court has stated by statute, we've

1 given enough reason, we've given enough notice, we would like
2 to proceed in the order that we originally had the trials
3 set. Thank you.

4 THE COURT: You're welcome. Mr. Stege.

5 MR. STEGE: I don't have much to add. I came in
6 here in good faith with the defense with an understanding,
7 right, of the progression of cases. I sense that the
8 argument on that ship has sailed. So I'll move sort of to
9 the idea of an agreement from the defense to not oppose my
10 motion to continue to -- trying to choose my words carefully
11 here -- to now changing their mind based on how the Court
12 sees the progression issue.

13 My motion to continue the murder case is supported
14 by good cause. Although the statute contemplates, as the
15 Court has, we've talked about, contemplates insanity pleas at
16 this late date, given the complexity of such a plea, the
17 necessity of the State to secure a person to evaluate the
18 defendant, have the evaluation complete, and then have a
19 report properly discovered to the defense in addition to the
20 expert witness notice really, I think, puts the Court and
21 everyone in a precarious or a bad position.

22 I also have mentioned, here I am, what, 23 days
23 before trial. I am without -- I know nothing about the
24 methodology used to come up with the opinion that the

1 defendant was insane at the time of the crime, the
2 credentials or the identity of any person doing such an
3 evaluation, what evidence that person is using to come to the
4 conclusion. And we are now past the 30-day date for the
5 defense to provide that discovery.

6 So going forward, if we were to do that, I would
7 make and hope and I think expect the Court to say, there's no
8 report within 30 days, no one is testifying regarding that
9 report and the insanity defense is going to be unsupported at
10 trial by any defense evidence. So I do believe there is good
11 cause for my continuance and ask the Court to grant it as to
12 the murder case.

13 THE COURT: Well, first things first. As to the
14 request to continue CR17-0690A, CR17-0690A exists as an A
15 case because the defense made a motion to sever the
16 allegations that are Counts Two and Three into a B case,
17 which was granted at the defense request. Implicit in that
18 is an acknowledgment that the two cases are disconnected
19 factually and legally and they are disconnected factually and
20 legally.

21 The A case is the most serious by far of the
22 allegations as it implicates murder with the use of a deadly
23 weapon. Notwithstanding a plethora of evidence related to
24 the mental health about Ms. Fletcher, she has understandably,

1 at least to my eyes, determined within the statutory time
2 frame allowed to her to add a plea of not guilty by reason of
3 insanity. So be it.

4 That plea comes on February 13th when trial in
5 this case was set for March 11th. The timing of that was
6 uniquely within her control. And I have no desire to know or
7 right to know the reasons behind or the consultation between
8 she and her attorneys related to that. But it comes late in
9 this case, particularly in a case in which issues related to
10 her mental health have been so prevalent and so heavily
11 litigated to include three separate incidents of evaluations
12 of her competency to stand trial.

13 The State is entitled to traverse an opinion
14 offered to support her claim that she is not guilty by reason
15 of insanity. There has been no reporting produced to date
16 about or in support of her claim. And if I understand
17 Mr. Stege's representations, no one has yet been identified
18 to the prosecution.

19 Now, none of that is outside the statutory time
20 frame, I'll grant you, but the statutory time frame of
21 50 days for disclosure of experts does not provide an
22 adequate period of time in which to allow the State to have
23 Ms. Fletcher examined in such a serious case on such a
24 central issue, i.e., whether or not she is sane for purposes

1 of criminal responsibility.

2 She previously requested a continuance in this
3 case. I resisted that continuance and placed a great deal of
4 pressure on Mr. Picker, and I apologize, I don't remember if
5 you were there, Mr. Hart, but I believe on both Mr. Picker
6 and Mr. Hart, and raised the question at that time of the
7 coupling of these three cases and whether or not all three
8 needed to be continued. And made a point of mentioning that
9 I would continue all three because the reality of the
10 preparation time for Mr. Picker and Mr. Hart was essentially
11 the same for all three cases.

12 However, the State demonstrates good cause in this
13 case to continue the murder allegation in light of the
14 additional plea. Counsel are directed within the next -- no
15 later than close of business Friday to contact Ms. Kimberly
16 Oates, the court clerk for this department, to reset this
17 matter, to choose a date and time to reset this matter. And
18 to choose a date and time to establish disclosure of the
19 defense expert, disclosure of the prosecution expert or
20 experts, disclosure of the prosecution expert or experts and
21 their reporting.

22 There are also now percolating a number of
23 motions. Those motions and the hearings necessary for those
24 motions, I should mention, are a part of the reason for

1 finding good cause for a continuance, because the State has
2 sought to limit the defense's ability to examine or produce
3 evidence related to the alleged victim or the alleged
4 victim's alleged character to allow child testimony by
5 alternative means and related to prior bad acts, all of which
6 will require an evidentiary hearing and additional time which
7 would need to occur prior to the trial.

8 And so for all of those reasons, counsel, I'll
9 order that you meet and confer to set a trial with Ms. Oates.
10 You stand. I think you want to offer an objection?

11 MR. HART: Mr. Picker is out. We would ask it be
12 next Friday instead of this Friday.

13 THE COURT: I don't have any quarrel with that. I
14 trust all of you involved, so I think you won't be dilatory
15 in that. You can have until next Friday, certainly.

16 MR STEGE: I sometimes, now that we're talking
17 about the expert deadlines, will ask for I think 174.235, the
18 expert notice, allows the Court to expand that beyond 21 days
19 to 30 or 45 days.

20 THE COURT: My intention is that it would be
21 60 days in advance of any trial date you choose, assuming the
22 trial date isn't 60 days from now, which I can't imagine it
23 would be. So, again, you'll need to pick a trial date, a
24 pretrial conference date, hearing dates related to

1 evidentiary hearings. Right now they include the three I've
2 mentioned, but that's not to foreclose the defense from
3 motions in limine or any other motions that it would believe
4 would be necessary. But we'll call it a pretrial motions
5 evidentiary hearing date. And then expert identification and
6 reporting disclosures that should be no later than 60 days in
7 advance of trial. And, again, I'll give you until a week
8 from this Friday to meet and confer with Ms. Oates to do
9 that.

10 As to CR17-0690B, we have a motion to confirm date
11 for that, correct, Ms. Oates?

12 THE CLERK: We do, your Honor.

13 MR STEGE: I believe it's April 3rd.

14 THE CLERK: Yes, your Honor, April 3rd, and
15 April 8th for the trial.

16 THE COURT: And then we have trial set in
17 CR17-1127 for April 29th.

18 THE CLERK: Motion to confirm on that, your Honor,
19 is April 17th.

20 THE COURT: All right. Are there any issues
21 related to the production of discovery or the progress of
22 those trials that we need to discuss from your perspective,
23 Mr. Stege?

24 MR STEGE: No.

1 THE COURT: Mr. Hart.

2 MR. HART: We would renew our request to continue
3 them, your Honor. We haven't done any motion work on those
4 cases. There's been little to no discovery as far as I know
5 back and forth. I renew that request, your Honor, and ask
6 the Court to consider it.

7 THE COURT: That request is denied and without
8 prejudice to put it in writing and/or produce legal authority
9 or factual basis for it. I know both sides are disappointed
10 by this decision. I apologize for that. In the end, it is
11 my job to make sure we use the resources of this department
12 appropriately and that is my purpose for doing so. I
13 appreciate the opportunity to meet with all of you this
14 afternoon. Thank you for your time.

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1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 7 of the
7 above-entitled Court on February 13, 2019, at the hour of
8 1:30 p.m., and took verbatim stenotype notes of the
9 proceedings had upon the hearing in the matter of THE STATE
10 OF NEVADA, Plaintiff, vs. KATHERINE DEE FLETCHER, Defendant,
11 Case No. CR17-0690A, CR17-0690B and CR17-1127, and
12 thereafter, by means of computer-aided transcription,
13 transcribed them into typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 25, both inclusive, contains a full, true and
16 complete transcript of my said stenotype notes, and is a
17 full, true and correct record of the proceedings had at said
18 time and place.

19
20 DATED: At Reno, Nevada, this 21st day of February 2019.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24

1 CODE 2490
2 Christopher J. Hicks
3 #7747
4 One South Sierra St.
5 Reno, NV 89501
6 (775) 328-3200
7 Attorney for Plaintiff

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

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No: CR17-0690A

15 v.

Dept: D07

16 KATHERINE DEE FLETCHER,
17 also known as
18 KATHERINE JORGENSEN,
19 also known as
20 CATHY FLETCHER,

21 Defendant.
22 _____/

23 MOTION FOR MENTAL EXAMINATION

24 COMES NOW, the State of Nevada, by and through CHRISTOPHER HICKS,
25 District Attorney of Washoe County and AMOS STEGE, Deputy District
26 Attorney, and files this Motion for Mental Examination. This Motion
is made and based on the memorandum of Points and Authorities
submitted herewith.

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1 POINTS AND AUTHORITIES

2 The defendant pleaded not guilty by reason of insanity ("NGRI").
3 Under Mitchell¹ the prosecution is entitled to have the defendant
4 undergo a compulsory psychological/psychiatric evaluation related to
5 her mental state at the time of the crime. Such an examination does
6 not violate the Fifth Amendment².

7 An examination will provide the prosecution with the most
8 reliable means of confronting the defendant's insanity claim. The
9 Court should enter an order allowing the prosecution to select, at
10 its discretion a qualified expert(s) to examine and evaluate the
11 defendant on the subject of whether she was legally insane at the
12 time of this offense. The order should indicate that the designated
13 expert be permitted to select the time, location, and duration of
14 his/her choosing and to administer any testing deemed necessary by
15 the expert or the prosecuting attorney.

16 ///

17
18 ¹ Mitchell v. State, 124 Nev. 807, 814-15 (2008)(adopting the federal approach
19 permitting compelled examinations, on the rationale that "1) the defendant placed
20 his or her mental state into issue, (2) society requires the court to strike a
21 'fair state-individual balance,' and (3) the examination is the most reliable means
22 for the state to assess the defendant's mental capacity."). See also, Estes v.
State, 122 Nev. 1123, 1136 (2006) (Testimony of competency evaluators admissible to
rebut insanity plea because "their testimony primarily related to their general
observations of his mental state, which is permissible under Buchanan to rebut an
insanity defense")(Buchanan v. Kentucky, 483 U.S. 402, 422, 107 S. Ct. 2906
(1987)).

23 ² United States v. Byers, 740 F.2d 1104, 1115 (D.C. Cir. 1984) ("[W]hen a defendant
24 raises the defense of insanity, he may constitutionally be subjected to compulsory
examination by court-appointed or government psychiatrist..."). ..."). See also,
Kansas v. Cheever, 571 U.S. 87, 94, 134 S. Ct. 596, 601 (2013)

[W]here a defense expert who has examined the defendant testifies that
the defendant lacked the requisite mental state to commit an offense, the
prosecution may present psychiatric evidence in rebuttal. Any other rule
would undermine the adversarial process, allowing a defendant to provide
the jury, through an expert operating as proxy, with a one-sided and
potentially inaccurate view of his mental state at the time of the alleged
crime.

1 AFFIRMATION PURSUANT TO NRS 239B.030

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

4 Dated this 22nd day of February, 2019.

5
6 CHRISTOPHER J. HICKS
7 District Attorney
8 Washoe County, Nevada

9
10 By /s/ Amos Stege
11 AMOS STEGE
12 9200
13 DEPUTY DISTRICT ATTORNEY
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1 CERTIFICATE OF SERVICE BY E-FILING

2 Pursuant to NRCP 5(b), I certify that I am an employee of
3 the Washoe County District Attorney's Office and that, on this date,
4 I electronically filed the foregoing with the Clerk of the Court. A
5 notice will be sent electronically to the following:

6 Marc Picker
7 Alternate Public Defender

8 Bill Hart
9 Alternate Deputy Public Defender

10
11 Dated this 22nd day of February, 2019.

12
13
14 /s/DESTINEE ALLEN
15 DESTINEE ALLEN
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Code 3880
MARC PICKER, BAR #3566
WASHOE COUNTY ALTERNATE PUBLIC DEFENDER
BILL HART, BAR #11986
DEPUTY ALTERNATE PUBLIC DEFENDER
30 S. Center St., 6th Floor
RENO, NV 89501
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COUNSEL FOR DEFENDANT
KATHERINE DEE FLETCHER

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. CR17-0690A

v.

KATHERINE DEE FLETCHER

Dept. No. 7

Defendant,

RESPONSE TO MOTION FOR MENTAL EXAMINATION

Defendant KATHERINE DEE FLETCHER, by and through counsel, above-named, hereby provides her response to the state's Motion for Mental Examination. This response is based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary.

POINTS AND AUTHORITIES

I. The state only cites one case, *Mitchell*, in its support for an examination, but *Mitchell* is inapplicable¹

The state relies upon a case which is inapposite to the facts of this matter. In *Mitchell v. State*, the defendant therein did not plead not guilty by reason of insanity. In *Mitchell*, the Nevada Supreme

¹ *Mitchell v. State*, 124 Nev. 807 (Nev. 2008)

1 Court made a narrow finding that “it is within the district court's discretion to order a defendant to
2 undergo a psychiatric examination when a defendant claims that his criminal acts were justifiable
3 because he suffers from post-traumatic stress disorder.”

4 **II. Requiring Ms. Fletcher to undergo a mental examination with two trials scheduled**
5 **before the trial in this case and which do not involve Ms. Fletcher’s mental status**
6 **would be in violation of her constitutional rights.**

7 In *Mitchell*, the defendant was only facing a single trial with the charges therein. Ms. Fletcher
8 is facing three separate trials. In two of those, she has not pleaded not guilty by reason of insanity,
9 and therefore any information that would be gathered from the state’s proposed “mental exam”
10 would unduly prejudice Ms. Fletcher in her defense, especially given that those two trials are
11 scheduled months before the trial in this case. Ms. Fletcher’s mental status is not at issue in either of
12 those trials (CR17-0690B and CR17-1127), and requiring her to undergo an exam as proposed by the
13 state would directly impair Fletcher’s constitutional right against self-incrimination, as any
14 information she would provide in a psychiatric examination could be used against her.
15

16 During the mental exam, Ms. Fletcher will likely be encouraged to talk openly and honestly
17 about the events that surrounding the alleged homicide in 2016. The state has already stated in other
18 motions that it intends to call Jesse Henslee to testify against Ms. Fletcher in the murder trial, and he
19 is the alleged victim in CR17-0690B. So any information provided in an examination which might
20 relate to Mr. Henslee in any way would likely be sought to be used by the state in the trial in CR17-
21 0690B. This court should not require her to undergo a mental examination prior to the trials in
22 CR17-0690B or CR17-1127 unless it grants the pending motion to continue both of those trials. To
23 do otherwise would direct impair Ms. Fletcher’s 5th Amendment right against self-incrimination as
24 Mr. Henslee is alleged by the state to be a key witness in both CR17-0690A and CR17-0690B. Ms.
25 Fletcher’s information regarding her relationship and interactions with Mr. Henslee could provide
26 information and evidence to the state that it could use in two trials that are unrelated to her plea of not
27
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1 guilty by reason of insanity in this case. Ordering that she undergo a mental examination prior to
2 CR7-0690B or CR17-1127 would violate Ms. Fletcher's constitutional rights.

3 4 **CONCLUSION**

5 Ordering Ms. Fletcher to undergo a mental examination prior to her two trials in CR17-
6 0690A and CR17-0690B would violate Ms. Fletcher's constitutional right against self-incrimination.
7 Ms. Fletcher has not raised the defense of insanity in either of those trials and any examination by
8 the state could – and most likely would – be used against her in the unrelated charges based on the
9 similar witnesses involved and the close in time proximity to each other. The Court should instead
10 either continue both CR17-0690A and CR17-0690B until after the trial in this matter or order that no
11 mental examination may be performed by the state until both CR17-0690B and CR17-1127 have
12 been resolved as to preserve Ms. Fletcher's rights,.

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

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

16 Respectfully submitted March 8, 2019.

17
18 Washoe County Alternate Public Defender

19 By: /s/ Marc Picker

20 MARC PICKER, ESQ.
21 Alternate Public Defender

22 By: /s/ Bill Hart

23 BILL HART, ESQ.
24 Deputy Alternate Public Defender
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Amos Stege
Deputy District Attorney
Via Electronic filing

/s/ Randi M. Jensen

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1 4185
2 STEPHANIE KOETTING
3 CCR #207
4 75 COURT STREET
5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE EGAN WALKER, DISTRICT JUDGE

10 --oOo--

11 STATE OF NEVADA,)	
)	
12 Plaintiffs,)	
)	
13 vs.)	Case No. CR17-0690A
)	
14 KATHERINE DEE FLETCHER,)	Department 7
)	
15 Defendant.)	
_____)	

16
17
18 TRANSCRIPT OF PROCEEDINGS

19 PRETRIAL MOTIONS

20 May 1, 2019

21 9:00 a.m.

22 Reno, Nevada
23

24 Reported by: STEPHANIE KOETTING, CCR #207,
Computer-Aided Transcription

1 APPEARANCES:

2 For the State:

3 OFFICE OF THE DISTRICT ATTORNEY
4 By: AMOS STEGE, ESQ.
5 P.O. Box 30083
6 Reno, Nevada

7 For the Defendant:

8 OFFICE OF THE ALTERNATE PUBLIC
9 DEFENDER
10 By: MARC PICKER, ESQ.
11 By: BILL HART, ESQ.
12 350 S. Center
13 Reno, Nevada
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1 RENO, NEVADA, May 1, 2019, 9:00 a.m.

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3 --oOo--

4 THE CLERK: Case number CR17-0690A, State versus
5 Katherine Dee Fletcher. Matter set for a motion for
6 psychiatric examination. Counsel and the Division, please
7 state your appearance for the record.

8 MR. PICKER: Good morning, your Honor, Marc Picker
9 and Bill Hart on behalf of Ms. Fletcher, who is present.

10 MR. GLASS: Robert Glass for the Division.

11 MR STEGE: Amos Stege for the State.

12 THE COURT: Good morning, Ms. Fletcher. This is
13 the time and date set for a hearing really on pretrial
14 motion. The lay of the landscape has changed since the
15 opposition and the reply. I don't know if that changes the
16 defense's position about the motion, but I wanted to give you
17 an opportunity to address that.

18 MR. PICKER: Your Honor, our opposition and reply
19 really was based on not having the evaluation done before the
20 other two cases either went to trial or were resolved. Since
21 they are resolved, that satisfies our opposition.

22 THE COURT: I'll grant the motion, then. And
23 allow and require Ms. Fletcher to accommodate a request for
24 the an examination by an expert of your choosing, Mr. Stege.

1 MR. STEGE: Thank you.

2 THE COURT: If you'll prepare an order consistent
3 with your motions and points and authorities, I'd appreciate
4 it.

5 MR STEGE: Yes, your Honor.

6 THE COURT: Anything else we need to address?

7 MR. PICKER: Not today.

8 THE COURT: Are things still on track? Since we
9 have this meeting, it wasn't noticed, I'm not trying to catch
10 anybody by surprise, I wanted to make sure we're still on
11 track in terms of discovery and other issues that may be
12 percolating in the case.

13 MR STEGE: I think we are on track. We discussed
14 among ourselves the timing of other motion work in
15 preparation for trial. So I think we're on track.

16 THE COURT: I'm glad you're discussing it. I
17 trust all of you to keep it foremost so we can do things
18 sooner rather than later as we need to accomplish them.

19 MR. PICKER: That's the plan, your Honor.

20 THE COURT: I appreciate your time, gentlemen.
21 Good day to all of you. Good day to you, Ms. Fletcher.

22 --oOo--

23

24

1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 7 of the
7 above-entitled Court on May 1, 2019, at the hour of 9:00
8 a.m., and took verbatim stenotype notes of the proceedings
9 had upon the pretrial motions in the matter of THE STATE OF
10 NEVADA, Plaintiff, vs. KATHERINE DEE FLETCHER, Defendant,
11 Case No. CR17-0690A, and thereafter, by means of
12 computer-aided transcription, transcribed them into
13 typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 5, both inclusive, contains a full, true and complete
16 transcript of my said stenotype notes, and is a full, true
17 and correct record of the proceedings had at said time and
18 place.

19
20 DATED: At Reno, Nevada, this 14th day of June 2019.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24

1 Christopher J. Hicks
#7747
2 One South Sierra Street
Reno, NV 89501
3 (775) 328-3200
Attorney for Plaintiff
4
5

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

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR17-0690A

11 v.

Dept. No. D07

12 KATHERINE DEE FLETCHER,
also known as
13 KATHERINE JORGENSEN,
also known as
14 CATHY FLETCHER,

15 Defendant.
16 _____/

17 ORDER FOR CRIMINAL RESPONSIBILITY EXAMINATION

18 The defendant is charged with murder. On May 10, 2017, the
19 Court entered a plea of not guilty on Defendant's behalf. On February
20 13, 2019, the Defendant entered an additional plea of not guilty by
21 reason of insanity pursuant to NRS 174.035(5).

22 On February 22, 2019, the State filed a motion seeking a
23 mental evaluation of the Defendant. The Defendant filed a response to
24 the State's motion arguing that an examination would violate her
25 constitutional right against self-incrimination because the
26 information gained in such an evaluation could be used against

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1
2 her in two other pending cases (CR17-0690B and CR17-1127). Since
3 that time, the two other pending cases have been resolved.

4 On May 1, 2019, the Court held a hearing on the motion.

5 THE COURT FINDS that, in order that it may adequately
6 address the insanity defense, the State is entitled to an independent
7 psychiatric or psychological evaluation of the Defendant pursuant to
8 Mitchell v. State, 124 Nev. 807, 814-15(2008). The Defendant has
9 entered an additional plea of not guilty by reason of insanity, for
10 which the Defendant bears the burden of proof. The State bears the
11 burden of proving that defendant's conduct was not justifiable or
12 excusable. The State can only effectively rebut Defendant's defense
13 by presenting contradictory expert opinion testimony. A psychiatric
14 evaluation is the most reliable means for the State to assess
15 defendant's culpability. See, Mitchell at 815.

16 IT IS HEREBY ORDERED that the defendant shall submit to a
17 psychiatric/psychological evaluation by the state's expert(s) for
18 purposes of determining her mental state at the time of the alleged
19 crime. The designated expert shall select the time, location, and
20 duration of any examinations and administer any testing deemed
21 necessary.

22 DATED this 24 day of May, 2019.

23
24 
25 DISTRICT JUDGE
26

1 4185
2 STEPHANIE KOETTING
3 CCR #207
4 75 COURT STREET
5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE EGAN WALKER, DISTRICT JUDGE

10 --oOo--

11 STATE OF NEVADA,)
12 Plaintiffs,)
13 vs.) Case No. CR17-0690A,
14 KATHERINE DEE FLETCHER,) CR17-0690B and CR17-1127
15 Defendant.) Department 7
16 _____)
17

18 TRANSCRIPT OF PROCEEDINGS

19 STATUS HEARING

20 July 6, 2018

21 9:00 a.m.

22 Reno, Nevada
23

24 Reported by: STEPHANIE KOETTING, CCR #207,
Computer-Aided Transcription

1 APPEARANCES:

2 For the State:

3 OFFICE OF THE DISTRICT ATTORNEY
4 By: DEREK DREILING, ESQ.
5 P.O. Box 30083
6 Reno, Nevada

7 For the Defendant:

8 OFFICE OF THE ALTERNATE PUBLIC
9 DEFENDER
10 By: MARC PICKER, ESQ.
11 350 S. Center
12 Reno, Nevada
13
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1 RENO, NEVADA, July 6, 2018, 9:00 a.m.

2
3 --oOo--

4 THE CLERK: Case numbers CR17-0690A, case number
5 CR17-0690B and case number CR17-1127, State versus Katherine
6 Dee Fletcher. Matter set for status hearing. Counsel,
7 please state your appearance.

8 MR. DREILING: Derek Dreiling on behalf of the
9 State.

10 MR. PICKER: Thank you, your Honor. Marc Picker
11 on behalf of Ms. Fletcher, who is present.

12 THE COURT: Good morning to all. Ms. Fletcher,
13 good morning. Again, my name is Egan Walker. I have the
14 privilege of being responsible for all three cases.
15 Mr. Picker, my thanks to you and your office for being here.
16 Given your statement of representation, I assume you are in
17 fact able to accept representation of Ms. Fletcher.

18 MR. PICKER: We are, your Honor. Mr. Dreiling was
19 very pro-active. He provided us, even though there's been
20 some other difficulties that I'll mention in a minute, he's
21 provided a list of all the potential witnesses and parties
22 and we were able to do a conflict check last week, so we are
23 able to represent Ms. Fletcher in all three cases.

24 THE COURT: Thank you for that. I appreciate you

1 stepping in, as it were, in the middle of all three cases.
2 It is simply the best way to put it. We, of course, have
3 three trials set. I assume you would like to weigh in on
4 procedural issues related to that.

5 MR. PICKER: Yes, your Honor. I've talked to Mr.
6 Dreiling about this and as well I've consulted with
7 Ms. Fletcher, we met on Monday and then we discussed it again
8 this morning. Here's my proposal is that I know without a
9 doubt that we will not be ready for a murder trial on
10 September 10th. That goes without saying. That's the easy
11 part of this matter. So I'm going to ask you to vacate that
12 trial date. All the other trial dates, I would ask that you
13 maintain for the time being, and that we come back on
14 July 30th for another status hearing.

15 The reason I say that, your Honor, is even though
16 your Honor issued the order appointing our office about ten
17 days ago, we have not received anything from the Public
18 Defender's Office. We've received no files whatsoever. And
19 I have inquired a few times.

20 I understand there's some logistical issues in
21 them getting us the file, because it's voluminous, but it
22 puts us on the back foot over here on the defense side,
23 Ms. Fletcher and I, because she has an incomplete version of
24 discovery and I have nothing, although the State did release

1 an overwhelming amount of discovery yesterday that we started
2 to download electronically.

3 With that in mind, I believe that I need to have a
4 more complete picture of the case before I can decide the
5 order that I would request the trials to be in and how long
6 each of those would take.

7 If we come back on July 30th, I think I'll have a
8 much more complete picture. We can then speak with some
9 certainty about how we're going to proceed.

10 THE COURT: Thank you, Mr. Picker. Do you want to
11 weigh in in response to that?

12 MR. DREILING: Your Honor, frankly, I have no
13 objection. I think it's a reasonable request.

14 THE COURT: I concur. I simply will indicate --
15 first, let me confirm. Ms. Fletcher, what we're discussing
16 is vacating the trial date currently set for September 10th
17 at 9:30 a.m. on the murder allegations against you. When we
18 vacate it, that means it goes away, and we would have to
19 reset it.

20 Likely, we would have to reset it for a date in
21 the future after July 30th, when according to Mr. Picker's
22 proposal, we would meet again to talk about the dates and
23 times for various trials on the allegations against you. Are
24 you okay with that? Do you agree that we should give your

1 attorney time in order to prepare adequately for your defense
2 and we should vacate the trial date?

3 THE DEFENDANT: I thought that -- are they
4 reinstating my right to a fair and speedy trial? I thought
5 it wasn't up to me.

6 THE COURT: The issue about a speedy trial,
7 whether the trial against you would occur within 60 days,
8 passed two years ago almost. So that issue is long behind
9 us. If there was an error made or problem with it, we're not
10 going to remedy it today. I don't believe there has been any
11 error.

12 The fact of the matter is, long ago your right to
13 a trial within 60 days passed. That is off the table and
14 shouldn't, I suspect or I would recommend not be a part of
15 our conversation today.

16 Instead, again, when we're talking about is this,
17 you asked for and I granted relief of your counsel.
18 Mr. Picker hasn't even received the file yet from the Public
19 Defender's Office. And, Mr. Picker, if you need me to weigh
20 in to incentivize the transfer of that information, I'm happy
21 to do so. I want to be sensitive to the hard work already
22 done and I'm not casting any aspersions, but ten days is
23 plenty long enough and I would expect you to receive that
24 file with alacrity. If you don't and you need my help, let

1 me know.

2 The fact of the matter is he hasn't even gotten
3 the file yet from your former attorneys and I want and I'm
4 sure you want him to be prepared for trial. He
5 understandably is telling me no way that can happen when I
6 don't even have the file yet and we're moving in the middle
7 of July.

8 So I need to know, though, if you're in agreement
9 with all of this. You can say, well, I insist on what you're
10 describing as a speedy trial and we go to trial on
11 September 10th, we would then have to have a different
12 conversation. I likely wouldn't allow that to occur, but I
13 certainly would respect your voice, that, no, I want the
14 trial to go. Do you understand what's going on?

15 THE DEFENDANT: Yes.

16 THE COURT: I'm asking you again, is it okay with
17 you, are you in agreement that we would vacate the trial and
18 reset it for a later date?

19 THE DEFENDANT: Yes.

20 THE COURT: Thank you for that. Do you have any
21 other questions about that before I move on?

22 THE DEFENDANT: No.

23 THE COURT: So I'll grant the request to vacate
24 the trial date for the murder allegations currently set, as I

1 indicated, September 10th. We'll set a -- I'll call it a
2 status hearing for July 30th, as long as we have it.

3 THE CLERK: You're not available, your Honor. I
4 would suggest August 1st if that works with counsel.

5 MR. PICKER: That's fine with me, your Honor.

6 MR. DREILING: I was hoping to avoid that day.
7 There's a slight chance of an out-of-town trip with the wife,
8 but it is slight. We can set it.

9 THE COURT: I note the appearance of Mr. Lee. I
10 suspect being assiduous and I appreciate a good planner that
11 you are, Mr. Dreiling, you're planning for eventual
12 matriculation of this case or these cases to another person
13 possibly. So perhaps Mr. Lee could cover it on that day as
14 well.

15 MR. DREILING: Yes, I assume so.

16 THE COURT: Let's go to that first date.

17 THE CLERK: August 1st at 9:00. If we're vacating
18 the September 9th trial, will we vacate August 31st motion to
19 confirm?

20 THE COURT: Yes, please. I appreciate as well,
21 Mr. Picker, in your request to keep the other trial dates in
22 place, likely you anticipated that would be my preference
23 anyway. I will apply some, I don't mean to apply too much,
24 but I will apply some pressure to maintain those trial dates

1 related, my words, no one else's, collateral charges that
2 have been severed.

3 MR. PICKER: I understand that, your Honor, and I
4 believe the way the trials were set as they stood before you
5 just vacated that trial date was so that they were done in a
6 certain order and that would be strategically that I need to
7 revisit and I need to discuss with Ms. Fletcher once I know
8 more about the case.

9 THE COURT: I will certainly respect your request
10 and hear from the State and proceed at pace. But the request
11 this morning, as I say, as Mr. Dreiling has indicated are
12 reasonable. They are reasonable to me. I appreciate you
13 stepping in. If you need my assistance, as I said, related
14 to the matriculation of the case file information, please let
15 me know.

16 MR. PICKER: Thank you, your Honor. I appreciate
17 it.

18 THE COURT: Is there anything else we need to
19 discuss this morning, gentlemen?

20 MR. DREILING: No, your Honor.

21 THE COURT: One final thing I'd like to discuss
22 before we finish is the current location of Ms. Fletcher's
23 custodial status. She remains at Lakes. That was, as I
24 recall, at the recommendation of Mr. Henson, over the

1 objection of the State, if I recall, I maintained her status
2 at Lakes.

3 The rationale at that time was to prepare for the
4 then upcoming trial or trials in this case and to facilitate
5 or better facilitate Ms. Fletcher's communication with her
6 attorneys. Here's my perspective and then, of course, I want
7 your response, Mr. Picker.

8 Ms. Fletcher is competent, has now been twice
9 found competent to answer these allegations. The resources
10 at Lakes Crossing are limited and should be husbanded closely
11 by all parties to the system. It has not assisted, in fact,
12 to have her at Lakes from where I sit. What I mean by that
13 is her communication with her attorneys, if anything, got
14 worse and not better, notwithstanding the convenience, if you
15 will, of her being at Lakes.

16 So my intention would be return her to the Washoe
17 County Jail, but before I make that decision finally, I want
18 to know your perspective, please.

19 MR. PICKER: First of all, your Honor, it is my
20 understanding that Ms. Fletcher continues to receive
21 treatment while at Lakes and it was their director's
22 recommendation that she stay there to continue that treatment
23 to maintain her, if you will, mental health equilibrium, that
24 Ms. Fletcher has the danger at the jail of decompensating

1 when she does not receive the kind of treatment she does at
2 Lakes. So that was my understanding and it continues to be
3 my understanding.

4 Second of all, as to access to Ms. Fletcher, I
5 will tell you that I visited with her at Lakes Crossing on
6 Monday. I had no difficulty setting up an appointment. I
7 had no difficulty meeting with her alone in a visiting room
8 where we could discuss matters that were confidential.

9 So I don't know what difficulties had been
10 presented to you previously, but I don't -- I have not
11 encountered any. I believe that I can meet with Ms. Fletcher
12 just fine at Lakes. And if it is better for her mental
13 health and in order to be, continue to be competent and
14 continue to be in the right condition for trial, I would
15 prefer that she stay at Lakes.

16 THE COURT: I suspect I wasn't clear. Actually,
17 what I understood the representation of Ms. Nordvig and
18 Ms. Meyer to me to be was that it was easier to see her at
19 Lakes than it is to see her at the jail. So like you, for
20 the reasons you just articulated, they also thought that it
21 enabled more frequent or more easy contact.

22 MR. PICKER: The only thing it does is eliminate
23 iWeb visits, electronic visits over the Internet. But
24 Ms. Fletcher and I actually did discuss that on Monday. We

1 basically set up a meeting schedule that I will come and meet
2 with her every other week. I would meet with her weekly,
3 every other week personally, or every other week iWeb, which
4 is what I normally do in these serious type of cases. I
5 don't think this is an impediment.

6 And I don't know, you know, I had been told by
7 members of the Public Defender's Office that it was difficult
8 to set up meetings at Lakes. I've encountered no difficulty
9 in any of the times I've had clients there.

10 So at the moment, I would like to see it
11 maintained, but I understand your Honor's concern. And if it
12 is continued concern that maybe what we can do is before the
13 August 1st hearing request some kind of a report from the
14 facility itself saying whether their director still believes
15 it is appropriate that she stay there.

16 THE COURT: Do you want to weigh in?

17 MR. DREILING: Yes, your Honor. I did check with
18 Lakes before the last hearing, the Young hearing in this
19 matter. I asked them, frankly, is she getting treatment? Is
20 she getting any better? From an outsider looking in, I know
21 my contact is limited, but what I've seen in court, what I've
22 seen in jail letters or letters to the Court, nothing has
23 changed whatsoever with regard to her. So I said, is she
24 getting better? What's happening? They said, well, that's

1 treatment related. We can tell you that she is getting
2 treatment. Regarding what it is and what its effect is,
3 we're not comfortable saying right now at least to the
4 prosecutor and I understand that.

5 As far as the timing, the complaints I heard from
6 the Public Defender's Office weren't that it was difficult to
7 do occasional short-term ones, but if they needed more than
8 an hour, more than a couple of hours and multiple days in a
9 row, that's where they believed that they were having
10 problems.

11 THE COURT: At Lakes or at the jail?

12 MR. DREILING: At Lakes. That it was more
13 difficult for that. And then I think you guys hit it on the
14 head, or at least Mr. Picker did, I was going to suggest
15 perhaps we have treating physician come in and weigh in on
16 any of those issues at the next hearing. I can't imagine it
17 would take long, and if there's confidences, obviously, the
18 State can step out.

19 THE COURT: Let me offer some reflections to the
20 two of you and then, again, I'll invite your feedback and
21 input. I reread all of the psychiatric and/or psychological
22 evaluations on Ms. Fletcher yesterday and last night and then
23 the transcript of the hearings that were conducted by Judge
24 Flanagan relating to her competence for the purpose of trying

1 to understand, why is she at Lakes, even though I was the one
2 that said she could stay there, again, on Dr. Henson's
3 suggestion. And my understanding of the nature of her
4 psychological and psychiatric challenges is that they trend
5 towards what we formally call axis two, or personality or
6 characterological diagnoses, and not axis one or mental
7 health diagnoses. She does receive some medication that is
8 mood stabilizing, but not necessarily antipsychotic and that
9 there is a therapeutic milieu, my words, at Lakes.

10 Given that her challenges are personality and/or
11 character trait challenges, meaning volitional, more than
12 they are traditional disease related, psychosis related, axis
13 one type, former actual axis one diagnosis related, I
14 questioned my own decision to allow her to stay at Lakes. I
15 sort of felt the way I did, because I want to enable her
16 relationship with her attorney and preparation for very
17 serious charges against her.

18 So I want to strike a balance appropriate to
19 protecting her rights and preparation for trial against the
20 most expensive placement I could put her in and what are we
21 getting for that?

22 Underneath that, Mr. Picker, a reflection I would
23 give to you is this, I have been worried and frustrated in my
24 interactions with Ms. Fletcher that she continually engages

1 in ex-parte communication with the courts, across all of the
2 courts. Despite admonitions from me and others, she files,
3 my words, fugitive documents. I think I have a different
4 perspective than perhaps did Judge Flanagan, because I noted
5 in one of the hearings about her competency, Judge Flanagan
6 actually invited her to correspond with him or to write
7 letters to him. I didn't appreciate that before or notice
8 that before. I don't appreciate that. She's represented by
9 you. She should not lodge anything with the Court, in my
10 view, but through you. And it has gotten worse and not
11 better, that pattern, if you will.

12 In addition, my concern is that she continually
13 advertently or inadvertently reveals confidential
14 communications with her attorneys and I fear with you going
15 forward in those communications. And I fear that by placing
16 her at Lakes, I've enabled that, not chilled it, if you will.

17 So that's a lot to reflect for the two of you.
18 I'm just trying to demonstrate, I want to strike the
19 appropriate balance, but for the right reasons, and I want to
20 make sure it's actually helping. Your thoughts.

21 MR. PICKER: Your Honor, I think a couple of
22 things. One is that in reviewing what's in the Court's
23 record, which is pretty much all I've had access to, a lot of
24 Ms. Fletcher's correspondence really does relate to her

1 unhappiness with prior counsel. That hopefully is now set
2 aside and we're starting fresh.

3 Second of all, I guess I would offer to you that
4 communication with the Court is actually easier from the jail
5 than it is from Lakes, because at the jail all they have to
6 do is get on the kiosk and send an e-mail and it comes to the
7 Court. So I don't know that you eliminate that issue by
8 sending her to the jail.

9 My concern, really, is in my dealings with the
10 jail and I think that while the medical services there are
11 adequate, the mental health services do not always meet that
12 same level of being adequate. I think your Honor has a lot
13 of experience through your prior stint on the family court
14 and now here is that the jail is just not equipped to handle
15 people with either personality related issues or mental
16 health issues. They're just, because of the numbers and
17 because of the situation, they're just not equipped for that.

18 I have a real concern, a serious concern about
19 somebody in Ms. Fletcher's position decompensating in a jail
20 atmosphere when she is receiving active treatment at Lakes,
21 because she will not receive active treatment at the jail.
22 She may receive those medications. And I say may, because
23 they don't always do that either. And that's a concern for
24 me.

1 So that's why I said, and that's why I stand by my
2 recommendation, is either as Mr. Dreiling said have one of
3 the doctors from Lakes come and tell us about it, or have
4 them provide a report that is confidential to the Court and
5 then the Court can decide how to disseminate it. But at
6 least that way, we get a better picture, because, quite
7 frankly, both Mr. Dreiling and I are standing here shooting
8 in the dark. And that's kind of where we're at.

9 THE COURT: I appreciate that. I think that's
10 actually the most cogent observation you both are offering to
11 me. Here's where I'm at, I'll indicate that she may remain
12 in her current placement until August 1st. I'll direct that
13 you communicate, Mr. Picker, with her treatment providers
14 that I want a report in camera to the Court prior to that
15 date about the specific medications and treatment she's
16 receiving and which if any of those cannot be provided at the
17 Washoe County Jail and why, if the treatment providers know.
18 I realize the treating psychiatrist may not know why the jail
19 can or can't, for example, as a financial matter provide
20 certain treatment.

21 But I want you to hear me to say, Ms. Fletcher,
22 this, being at Lakes Crossing is privilege to you that may be
23 reflective of needs you have, but also may be simply the
24 place you want to be. And I will not continue your placement

1 there if your behavior continues to be poor. More
2 specifically, if you continue to correspond with the Court
3 against your attorney's advice, which has repeatedly happened
4 in this and other cases, or things that are within your
5 control continue to happen that shouldn't, I will revisit
6 your placement having decided that the risk and benefit of
7 your placement no longer weighs towards continuing your
8 placement at Lakes.

9 You don't need to respond. I invite you to speak
10 privately and candidly with your attorney Mr. Picker about
11 it. I really don't want you to respond right now to me. I
12 just want you to know what I'm thinking.

13 I look forward to a report on August 1st. We'll
14 revisit, whatever else we do, the issue of where her
15 continued placement will be at that time.

16 That was all that I wanted to bring. One more
17 time, anything else, gentlemen, from you?

18 MR. DREILING: No, your Honor.

19 MR. PICKER: No, your Honor. Thank you.

20 THE COURT: Good day to you all. Thank you for
21 your time.

22 --oOo--
23
24

1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 7 of the
7 above-entitled Court on July 6, 2018, at the hour of 9:00
8 a.m., and took verbatim stenotype notes of the proceedings
9 had upon the status hearing in the matter of THE STATE OF
10 NEVADA, Plaintiff, vs. KATHERINE DEE FLETCHER, Defendant,
11 Case No. CR17-0690A, CR17-0690B and CR17-1127, and
12 thereafter, by means of computer-aided transcription,
13 transcribed them into typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 19, both inclusive, contains a full, true and
16 complete transcript of my said stenotype notes, and is a
17 full, true and correct record of the proceedings had at said
18 time and place.

19
20 DATED: At Reno, Nevada, this 24th day of July 2018.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24

1 CODE 2490
2 Christopher J. Hicks
3 #7747
4 One South Sierra St.
5 Reno, NV 89501
6 (775) 328-3200
7 Attorney for Plaintiff

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

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No: CR17-0690A

15 v.

Dept: D07

16 KATHERINE DEE FLETCHER,
17 also known as
18 KATHERINE JORGENSEN,
19 also known as
20 CATHY FLETCHER,

21 Defendant.

22 /

23 MOTION FOR DISCOVERY RELATED TO INSANITY DEFENSE

24 COMES NOW, the State of Nevada, by and through CHRISTOPHER HICKS,
25 District Attorney of Washoe County and AMOS STEGE, Deputy District
26 Attorney, and files this Motion for Discovery Related to Insanity
Defense. This Motion is made and based on the memorandum of Points
and Authorities submitted herewith.

27 ///

28 ///

29 ///

30 ///

1 **POINTS AND AUTHORITIES**

2 The State filed a request for discovery pursuant to NRS 174.245
3 on October 30, 2018. On February 1, 2019, the defendant provided
4 notice of the defense of not guilty by reason of insanity. Shortly
5 the parties will file their expert witness notices. The State
6 supplements its previous request (for defense case in chief
7 discovery) by moving the Court to order production of facts and data
8 underlying the expert opinion of the defendant's expert per NRS
9 50.305.¹ Under this statute the Court may order disclosure of such
10 underlying facts and data for the opinion. The Court should require
11 the defendant to disclose the underlying facts and data supporting
12 his/her opinion in order for the State to effectively meet the
13 defendant's case, to avoid trial delay, and because the request
14 mirrors the discovery requirement that the defendant provide
15 "[r]esults or reports of physical or mental examinations, scientific
16 tests or scientific experiments that the defendant intends to
17 introduce in evidence during the case in chief of the defendant".
18 NRS 174.245(1) (b) .

19 ///

20 ///

21 ///

22 ///

23 ///

24
25 ¹ NRS 50.305 Disclosure of facts and data underlying expert opinion.
26 The expert may testify in terms of opinion or inference and give his or her
reasons therefor without prior disclosure of the underlying facts or data,
unless the judge requires otherwise. The expert may in any event be required
to disclose the underlying facts or data on cross-examination.

1 AFFIRMATION PURSUANT TO NRS 239B.030

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

4 Dated this 18th day of September, 2019.

5
6 CHRISTOPHER J. HICKS
7 District Attorney
 Washoe County, Nevada

8
9 By /s/ Amos Stege
10 AMOS STEGE
 9200
11 DEPUTY DISTRICT ATTORNEY

1 CERTIFICATE OF SERVICE BY E-FILING

2 Pursuant to NRCP 5(b), I certify that I am an employee of
3 the Washoe County District Attorney's Office and that, on this date,
4 I electronically filed the foregoing with the Clerk of the Court. A
5 notice will be sent electronically to the following:

6 Marc Picker
7 Alternate Public Defender

8 Bill Hart
9 Alternate Deputy Public Defender

10 Dated this 18th day of September, 2019.

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13 /s/DESTINEE ALLEN
14 DESTINEE ALLEN
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