

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 3

VICTORIA T. OLDENBURG, ESQ.
OLDENBURG LAW OFFICE
P.O. Box 17422
Reno, NV 89511
Tel. (775) 971-4245

ATTORNEY FOR APPELLANT

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CHIEF APPELLATE DEPUTY
P.O. Box 11130
Reno, NV 89502
Tel. (775) 337-5750

ATTORNEY FOR RESPONDENT

INDEX TO APPELLANT'S APPENDIX

<i>Document</i>	<i>Date</i>	<i>Vol.</i>	<i>Page</i>
Addendum to Notice of Expert Witness Defense	09.23.19	3	0332
Addendum to Response to Motion for Disqualification	08.02.18	1	0101
Affidavit in Support of Defendant's Motion to Recuse Pursuant to NRS 1.235	08.01.18	1	0097
Information	05.04.17	1	0001
Judgment of Conviction	10.29.20	8	1488
Jury Instructions	01.31.20	8	1390
Motion for Discovery Related to Insanity Defense	09.18.19	2	0288
Motion for Mental Examination	02.22.19	2	0254
Motion to Recuse	07.30.18	1	0084
Motion Regarding Statements to Dr. Piasecki	01.17.20	3	0485
Notice of Appeal	10.29.20	8	1490
Notice of Appeal	11.16.20	8	1491
Notice of Appeal	11.19.20	8	1493
Notice of Defense	02.01.19	2	0227
Notice of Expert Witness	09.19.19	3	0292

INDEX TO APPELLANT'S APPENDIX (continued)

Opposition to Motion Regarding Defendant's Statements to Dr. Piasecki	01.22.20	3	0496
Order (Motion to Recuse)	09.21.18	2	0195
Order (Motion Re: Statements to Dr. Piasecki	01.27.20	3	0537
Order for Competency Evaluation	08.24.17	1	0018
Order for Criminal Responsibility Examination	05.24.19	2	0267
Order to Appoint An Alternate Doctor For Psychiatric Exam	10.23.17	1	0035
Order Referring Disqualifying Question	08.19.18	1	0141
Reply in Support of Motion for Discovery Related to Insanity Defense	10.09.19	3	0342
Reply in Support of Motion Re: Defendant's Statements to Dr. Piasecki	01.23.20	3	0498
Reply to Response to Motion for Recusal	08.08.18	1	0133
Response to Motion for Disqualification	08.02.18	1	0104
Response to Motion for Medical Examination	03.08.19	2	0258
Response to State's Motion for Discovery Related to Insanity Defense	10.04.19	3	0338
Third Order of Competency	04.05.18	1	0064
Transcript of Proceedings - Arraignment	05.10.17	1	0006

INDEX TO APPELLANT'S APPENDIX (continued)

Transcript of Proceedings – Arraignment	01.08.20	3	0479
Transcript of Proceedings – Hearing	02.21.19	2	0230
Transcript of Proceedings – Hearing	10.22.19	3	0441
Transcript of Proceedings – Hearing on Motion for Disqualification	10.18.18	1	0143- 0150
		2	0151- 0194
Transcript of Proceedings – Hearing on Transport	12.17.19	3	0469
Transcript of Proceedings – Motion for Appointment of Counsel	10.29.19	3	0457
Transcript of Proceedings – Pretrial Motions	05.01.19	2	0262
Transcript of Proceedings – Pretrial Motions	10.28.19	3	0346
Transcript of Proceedings – Pretrial Motions	01.24.20	3	0503
Transcript of Proceedings – Report on Psychiatric Evaluation	09.20.17	1	0028
Transcript of Proceedings – Report on Psychiatric Evaluation	01.23.18	1	0038
Transcript of Proceedings – Report on Psychiatric Evaluation	01.29.18	1	0047
Transcript of Proceedings – Sentencing	10.29.20	8	1420

INDEX TO APPELLANT'S APPENDIX (continued)

Transcript of Proceedings – Status Hearing	09.26.17	1	0020
Transcript of Proceedings – Status Hearing	07.06.18	1	0065
Transcript of Proceedings – Status Hearing	10.15.18	2	0208
Transcript of Proceedings – Status Hearing	11.28.18	2	0221
Transcript of Proceedings – Status Hearing	07.06.18	2	0269
Transcript of Proceedings – Trial Volume I	01.27.20	4	0542
Transcript of Proceedings – Trial Volume II	01.28.20	5	0789
Transcript of Proceedings – Trial Volume III	01.29.20	6	1018
Transcript of Proceedings – Trial Volume IV	01.30.20	7	1194
Transcript of Proceedings – Trial Volume V	01.31.20	8	1319
Verdict	01.31.20	8	1317

1 CODE: 2610
2 MARC PICKER, BAR# 3566
3 WASHOE COUNTYALTERNATE PUBLIC DEFENDER
4 BILL HART, BAR #11986
5 P.O. BOX 11130
6 RENO NV 89520-2027
7 (775) 328-3955
8 ATTORNEY FOR: DEFENDANT

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

11 THE STATE OF NEVADA,
12 Plaintiff,

13 vs.

Case No. CR17-0690A

14 KATHERINE DEE FLETCHER.
15 Defendant.

Dept. No. 7

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NOTICE OF EXPERT WITNESS

COMES NOW, Defendant, KATHERINE DEE FLETCHER, by and through her attorneys, above-named, and hereby offers her notice of expert witness the Defendant may call in his Trial, if applicable, pursuant to NRS 174.234.

"If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge, skill, experience, training or education may testify to matters within the scope of such knowledge."

The Nevada Supreme Court has distilled this statute into three main requirements for admissible expert testimony: (1) qualification, (2) assistance and (3) limited scope. *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008). The assistance requirement asks whether the proposed expert's testimony is relevant and the product of reliable methodology. *Id.* at 500, 189 P.3d at 651. In determining whether the testimony is a product of reliable methodology, the district court considers whether the opinion is:

(1) within a recognized field of expertise;

1 (2) testable and has been tested;
2 (3) published and subjected to peer review;
3 (4) generally accepted in the scientific community; and
4 (5) based more on particularized facts rather than assumption, conjecture, or
5 generalization.” *LVMPD v. Yeghiazarian*, 129 Nev., Advance Opinion 61 (2013).

- 6 1. Lindsey Belle, Marriage & Family Therapist, MS, MFT, CPC-I. Ms. Garrison will
7 testify as to the treatment that Ms. Fletcher was receiving before the alleged
8 incident and that was ongoing at the time of the incident. Ms. Belle would be able
9 to offer her expert opinion on Ms. Fletcher’s mental status and perceptions at the
10 time leading up to the incident. See Curriculum Vitae attached as Exhibit 1.
11 2. H. Hale Henson, MD, forensic psychiatrist. Dr. Henson will testify as to Ms.
12 Fletcher’s mental status before and during the period leading up to the alleged
13 incident. Dr. Henson will also testify about his mental health treatment of Ms.
14 Fletcher during her stay at Lake’s Crossing. He would be able to testify as to his
15 expert opinion on Ms. Fletcher’s ongoing mental status. See Curriculum Vitae
16 attached as Exhibit 2.
17 3. Melissa Piasecki, MD an expert in general and forensic psychiatry. Dr. Piasecki is
18 expected to testify regarding Ms. Fletcher’s mental status during the period leading
19 up to and during the alleged incident. Dr. Piasecki will testify with regard to Ms.
20 Fletcher’s beliefs and thoughts regarding the incident and how it may have affected
21 her actions such as to address her defense of not guilty by reason of insanity. See
22 Curriculum Vitae attached as Exhibit 3.

23 It is our position that all three experts’ testimony meets the standards set Forth in NRS
24 50.275. All three experts’ testimony is relevant and will assist the trier of fact,
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AFFIRMATION Pursuant to NRS 239B.030

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

DATED September 19, 2019.

MARC PICKER
Alternate Public Defender

By: Bill Hart
BILL HART
Deputy Alternate Public Defender

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/s/Shannon Hambright
Shannon Hambright

INDEX OF EXHIBITS

Exhibit No.	Description	No. of Pages
1	Curriculum Vitae for Lindsay A. Belle	3
2	Curriculum Vitae for H. Hale Henson, M.D.	1
3	Curriculum Vitae for Melissa Piasecki, M.D.	28

EXHIBIT 1

EXHIBIT 1

LINDSAY A. BELLE

2030 Bears Ranch Dr., Reno, NV 89521
775-224-7733, Lindsay@Zephyrwellness.org

RELEVANT EXPERIENCE

Zephyr Wellness

Reno, NV March 2015-Current

Co-Founder/Business Owner; Chief Operations Officer

Salary Range \$65,000 – \$85,000 Hours per Week: 40+

Duties and Responsibilities

- Supervises 21 employees including managerial staff
- Oversees daily business operations and manages finances and budget
- Conducts duties related to human resources and payroll
- Completes tasks with employee scheduling, insurance credentialing and maintains compliance and adherence to policies and procedures
- Participates in clinical staffing, supervision, and trainings
- Buyer for office supplies and materials
- Participates in community outreach and philanthropic endeavors
- Collaborates with CEO daily
- Supports CEO in networking and marketing

Qualifications, Skills and Knowledge

- Background in running previous mental health agencies
- Direct learning and research skills
- Passion to make systemic change in the mental health field and drive to improve the quality of life for the community at large
- Private practice experience
- Experience with insurance credentialing and billing
- Knowledge in billing codes and supportive clinical documentation
- Managerial skills

Marriage and Family Therapist

Duties and Responsibilities

- Provides outpatient therapy to children, adolescents, families, couples and individuals
- Specializes in issues associated with sexual abuse and trauma, domestic violence, PTSD, anxiety and depression
- Actively uses Trauma Focused – Cognitive Behavioral Therapy when appropriate
- Credentialed with most insurances
- Continues to attend trainings obtaining CEU's and seeks clinical supervision regularly
- Maintains licensure with State of Nevada Board of Examiners for Marriage Family Therapists and Clinical Professional Counselors
- Adherence to professional and ethical code of conduct

Qualifications, Skills and Knowledge

- Masters in marriage, family and child therapy
- 60 hours of post graduate training in domestic violence
- 50 hours of post graduate training in sexual abuse and trauma

LINDSAY A. BELLE

2030 Bears Ranch Dr., Reno, NV 89521
775-224-7733, Lindsay@Zephyrwellness.org

- Certified trauma focused – cognitive behavioral therapist
- 20+ Continuing education hours annually

Washoe County Child Advocacy Center, Washoe County DA Reno, NV 2015-Current
Marriage and Family Therapist

Duties and Responsibilities

- Actively collaborates with the Washoe County District Attorney's multidisciplinary team in the sex crimes unit.
- Provides short term therapy for sexual abuse trauma, physical and psychological abuse and neglect and trauma associated with witnessing domestic violence for children ages 3-18
- Provides education and support for the non-offending caregivers
- Provides advocacy for victims
- Compliance with VOCA and VOWA grant funding rules and regulations
- Maintains CEU's in trauma and sexual abuse

Qualifications, Skills and Knowledge

- Masters in marriage, family and child therapy
- 60 hours of post graduate training in domestic violence
- 50 hours of post graduate training in sexual abuse and trauma
- Certified trauma focused – cognitive behavioral therapist
- 20+ Continuing education hours annually
- Knowledge in the prosecution of sex crimes
- Provides advocacy and support for victims and non-offending care givers

Private Practitioner/Independent Contractor Silver Springs and Reno, NV 2014-2015

Marriage and Family Therapist Intern/ *Contracted with Sage Health Services*

- Provided therapeutic services to the disenfranchised and severely mentally ill in rural Nevada.
- Actively participated in supervision
- Collaborated with other community and mental health agencies
- Provided therapy in several settings: office, home and community
- Maintained proper clinical documentation
- Obtained hours toward full licensure

The Ridgeview Group (Private Practice)

Reno, NV 2014-2015

Marriage and Family Therapist Intern

- Co-facilitated domestic violence and substance abuse groups
- Obtained 60 hours of domestic violence training
- Provided outpatient therapy for children, adolescents, adults, families, couples and groups
- Obtained hours toward full licensure
- Actively participated in clinical supervision from primary and secondary supervisors

LINDSAY A. BELLE

2030 Bears Ranch Dr., Reno, NV 89521
775-224-7733, Lindsay@Zephyrwellness.org

The Ridgeview Group (Private Practice)

Reno, NV 2013-2014

University of Phoenix; MFT Practicum Student

- Provided outpatient therapeutic services to a diverse clientele; independently set schedule, provided a broad array of treatments for individuals, couples, family, and children
- Co-facilitated domestic violence and substance abuse groups
- Obtained hours toward full licensure
- Actively participated in clinical supervision from primary and secondary supervisors

ADDITIONAL EXPERIENCE

Vestige Project, LLC

Reno NV, 2011 – 2012

Program Coordinator

Impact Community Services, LLC

Reno NV, 2010 – 2011

Program Manager for Psychosocial Rehabilitation and Therapeutic Foster Care

Willow Springs Outpatient Services

Reno NV, 2010 – 2011

Mental Health Technician for Psychosocial Rehabilitation

Maple Star Nevada

Reno NV, 2008 – 2010

Rehabilitation Skills Worker

EDUCATION

Master of Science

2010-2014

Masters of Science in Counseling: Marriage, Family, and Child Therapy

– University of Phoenix Northern Nevada

10345 Professional Circle, Ste. 200, Reno, NV

Phone (866) 766-0766

Bachelor of Arts

2003-2008

B.A., Major in Psychology, and Minor in Criminal Justice

– University of Nevada, Reno

1664 North Virginia Street, Reno, NV

LICENSURE

Licensed Marriage and Family Therapist

State of Nevada Board of Examiners for Marriage Family Therapists and Clinical

Professional Counselors

License Number: 01468

Date of licensure: July 21, 2017

NATIONAL PROVIDER IDENTIFICATION

NPI Number: 1164720116

Taxonomy Code: 106H00000X

EXHIBIT 2

EXHIBIT 2

9/19/2018

CURRICULUM VITAE

H. Hale Henson, M.D.

June 1960	Graduate - University of Idaho Bachelor of Science – Pre-Med
June 1964	Graduate - University of Oregon – Medical School Doctor of Medicine
June 1964 - December 1967	Active Duty US Navy Medical Corps including: June 30, 1965 Completed One Year Rotating Internship US Naval Hospital #5, Philadelphia, PA
April 1966	Designated Naval Flight Surgeon
February 1968 - May 1971	Completed Three Year Residency in Psychiatry University of Oregon Medical School Department of Psychiatry
February 1971 - May 1981	Private Practice of Psychiatry – Bend, OR
June 1981 - February 1993	Private Practice of Psychiatry Reno, NV
December 1986 - Present	State of Nevada Lake's Crossing Center Medical Director
Past Medical Staff Memberships	Nevada Mental Health Institute Washoe Medical Center St. Mary's Medical Center Truckee Meadows Hospital

EXHIBIT 3

EXHIBIT 3

MELISSA PIASECKI, M.D.

Forensic Psychiatry

Telephone: (775) 722-1077 Fax: (866) 500-7716

piaseckimd@gmail.com

BOARD CERTIFIED IN PSYCHIATRY AND FORENSIC PSYCHIATRY

Please note that Dr. Piasecki is not acting in the name of any academic institution when she provides forensic services.

Current Position University of Nevada, Reno School of Medicine:

2015—present	Executive Associate Dean
2012—present	Senior Associate Dean, Office of Academic Affairs
2008— 2012	Associate Dean, Office of Faculty Affairs and Development
2007— 2008	Assistant Dean for Faculty Development
1995—present	Academic Appointments at University of Nevada, Reno School of Medicine —Assistant Professor of Psychiatry (1995) —Associate Professor of Psychiatry with Tenure (2002) —Professor of Psychiatry (2008)

Other Academic Affiliations:

2005—present	Associate Clinical Professor in Psychiatry, University of Hawai'i, John A. Burns School of Medicine
2005—present	Faculty, National Judicial College
2005—present	Faculty, National Council of Juvenile and Family Court Judges

Education:

Post Graduate:

2004—2005	Fellowship in Forensic Psychiatry University of Hawai'i School of Medicine
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1991—1995	University of Vermont, Burlington, Vermont General Psychiatry Residency
1994—1995	Chief Resident

Medical School:

1987—1991	Washington University in St. Louis —M.D. 1991 —Alpha Omega Alpha
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Undergraduate:

1983—1987	Washington University in St. Louis —Bachelor of Arts, 1987 —Scholar's Program in Medicine (combined undergraduate and medical school admission, 1983) —Phi Beta Kappa
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Certification:

1992	Diplomate of the National Board of Medical Examiners
1997	American Board of Psychiatry and Neurology Certification General Psychiatry (expiration 2027)
2007	American Board of Psychiatry and Neurology Certification Forensic Psychiatry (expiration 2027)

Active Licensure:

Nevada #7478
Vermont #042-0008698
Hawaii #MD12982

Memberships:

American Psychiatric Association
American Academy of Psychiatry and the Law
Gold Foundation Honor Society, Inducted 2009

Teaching Awards:

- 1995 Medical Student Teaching Award for Residents
- 1999 Tenth Annual Nancy Roeske Certificate for Excellence in Medical Education (American Psychiatric Association)
- 1999 Junior Faculty Development Award, Association for Academic Psychiatry
- 1999 Department of Psychiatry Residents' Faculty Teaching Award
- 1999 Teacher of the Year, Region X, Association for Academic Psychiatry
- 2000 University of Nevada, Reno School of Medicine's E.W. Richardson Excellence in Teaching Award
- 2002 Outstanding Full-time Clinical Teacher Award, University of Nevada School of Medicine Class of 2002
- 2004 Outstanding Full-Time Clinical Teacher Award, University of Nevada School of Medicine Class of 2004

Regular Teaching Activities:

Medical Students

- | | |
|-----------|--|
| 1995—2010 | Clerkship in Psychiatry, Coordinator, Supervisor, Instructor, Examiner |
| 1995—2010 | Electives in Psychiatry Coordinator |
| 1995—2010 | Introduction to Patient Care, small group leader MS1 and MS2 |
| 1995—2012 | Human Behavior: Instructor, small group leader, oral examiner MS1 |
| 1997—2002 | Psychiatric Medicine Course Coordinator and instructor MS2 |

Piasecki CV 2.19

1997—present	Instructor Medical Neuroscience Complex Brain Function MS1
1997—present	Instructor Med 610 MS4
2003—present	Psychiatric Medicine Instructor

Law Students

2016—present	Guest Instructor, University of Nevada Las Vegas Boyd School of Law (Immigration Law, Mental Health Law)
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Residents

1995—2008	Resident Seminars in Geriatric Psychiatry Psychopharmacology, Mood and Psychotic Disorders, Teaching Medical Students, Neuroscience of Emotions and Sexuality; Coordinator for Psychopathology seminar series (2004), Forensic Psychiatry seminar series (2006-present), and Psychopharmacology series (2007-2011)
1995—present	Resident Supervision: Consultation Liaison Psychiatry
1995—1999	Coordinator, Departmental Journal Club

Other

1997—present	Doctoral Dissertation Committees (Departments of Psychology, Social Psychology)
2000	Guest Instructor, Undergraduate Psychology Course

Clinical and Forensic Activities:

1992—1995	Vermont State Hospital; Waterbury, VT
1994—1995	Champlain Valley Physician's Hospital; Plattsburgh, NY
1994—1995	Psychiatric Consultant, Northwest Regional Correctional

Facility; St. Albans, VT

- 1995—2010 Outpatient Private Practice, University Health Systems, Reno, Nevada
- 1995—2002 Outpatient Psychiatry, Nevada Rural Clinics
- 1995—2004 Inpatient Psychiatry, Sierra Nevada Veterans Affairs Medical Center, Reno, Nevada
- 1995—2001 Department of Probation and Parole, Reno, Nevada
- 1998—present Consultation-Liaison Psychiatry, Renown Medical Center, Reno, Nevada
- 1998—2009 Consultant, Washoe County Detention Facility
- 2005—present Consultant Nevada State Board Medical Examiners
- 2006—2014 Court Appointed Evaluator, Washoe County Commitment Court, Sparks, NV
- 2012 Consultant Nevada State Board Veterinary Medical Examiners
- 2012—present Consultant Nevada State Board of Osteopathic Medicine
- 2013—present Board of Examiners for Social Workers
- 2014—present Consultant to the Department of Justice, Office of Civil Rights
- 2014—2015 Consultant to State of Alaska; Review Mental Health Statutes
- 2016—present Consultant to Monitor, *Franco v. Holder*

Selected Presentations:

For Legal Professionals:

"Alternatives to Juvenile Detention in Rural Communities," Workshop Sponsored by National Council Juvenile and Family Court Judges, Redding, CA 11.05

"Attorney Stress and Burnout," Washoe County Public Defenders, Reno, NV, 4.06.

"Psychiatric Diagnosis and Not Guilty by Reason of Insanity," Nevada Bar Association, Reno and Las Vegas, NV, 4.06.

"Methamphetamine in Tribal Lands," National Council of Juvenile and Family Court Judges, Annual Conference Milwaukee, WI, 7.06.

"Assessment and Treatment Alternatives for Addictions," National Council of Juvenile and Family Court Judges, Reno, NV, 9.06.

"Understanding Methamphetamine," National Council Women Judges, Las Vegas, NV, 10.06.

"Assessments for Dangerousness," Nevada Bar Association, Las Vegas and Reno, NV, 11.06.

"Methamphetamine: Science and Ceremony," with Richard Laughter, M.D., Navajo Tribal Judges, Window Rock, AZ, 12.06.

"Psychiatric Disabilities," National Judicial College, Reno NV, 10.05, 10.06, 6.07.

"Essentials of DUI," National Judicial College, Reno, Nevada, 2006 and 2007

"Pre and Post-Conviction Matters" National Judicial College, Reno, Nevada, 2007

"Substance Abuse and the Adolescent Brain," National Council of Juvenile and Family Court Judges, Fall College Reno, NV, 9.07.

"Mental Retardation in Capital Cases," Nebraska District Court Judges, Omaha, Nebraska, 8.07.

"Mentally Ill Youth in the Justice System," National Meeting Juvenile Probation Officers, Albuquerque, NM, 9.07.

"Understanding Mental Retardation in Capital Cases," Louisiana State Judicial Conference, Lafayette, LA, 4.08.

"The Many Faces of Malingering," State Bar of Nevada Annual Meeting, Santa Barbara, CA, 6.08.

"Impaired Driving Case Essentials: Drugs and Alcohol," National Judicial College and National Highway Traffic Safety Administration, Reno, Nevada, 8.08.

"Understanding Mental Retardation in Capital Cases," Alabama State Judicial Conference, Orange Beach, AL, 9.2008.

"Persuasive Use of teaching Technology," Nevada Bar Association, Reno and Las Vegas, NV, 11.08.

"Mental Retardation and Risk Assessment in Capital Cases," Managing the Capital Case in Virginia, Richmond, VA, 2.09.

"Adolescent Brain Development: A Field Guide for Juvenile Justice Professionals," Keynote, 36th National Conference on Juvenile Justice, National Council of Juvenile and Family Court Judges, Orlando, FL, 3.09.

"Impaired Driving Case Essentials," National Judicial College, Reno, NV, 8.09.

"Competency for Immigration Hearings," Department of Justice, Executive Office of Immigration Review Legal Training Conference, Washington D.C., 8.09.

"Driving Under the Influence," Arkansas AOC Impaired Driving Case Fundamentals, Eureka Springs, AR, 9.09.

"Mental Retardation in Capital Cases," Best practices in managing capital cases, National Judicial College, Oklahoma City, OK 8.09, Birmingham, AL, 10.09.

"Managing Sex Offenders," Judicial Council of California - Administrative Office of the Courts, Winter Judicial Education Program, San Francisco, CA, 1.10.

"Mental Health Law," Grant Sawyer Center for Justice Studies Judicial degree program, Reno, NV, 1.10.

"A Methamphetamine Primer for Legal Professionals," CACJ Conference, Monterey, CA, 2.10.

Piasecki CV 2.19

"Substances and the Adolescent Brain: A Field Guide for Judges," 37th National Conference on Juvenile Justice, National Council of Juvenile and Family Court Judges, Las Vegas, NV, 3.10.

"Impaired Driving Case Essentials: Drugs and Alcohol," National Judicial College, Albuquerque, NM, 7.10.

"Immigration Competency," Department of Justice, Executive Office of Immigration Review Legal Training Conference, Washington D.C., 7.10.

"Addiction: Updates and Strategies," National Judicial College, Special Courts, Reno, NV, 8.10.

"What were you thinking? Adolescent Brains and Behavior," Fall College, National Council of Juvenile and Family Court Judges, Reno, NV, 9.10.

"Understanding Psychiatric Diagnosis," Alaska Bar Association Meeting, Anchorage, AK, 10.10.

"Methamphetamine: Short and Long Term Impact on the Brain and Behavior," FDSI Conference, Boise, ID, 10.10.

"Updates on Sex Offender Assessment," Nevada State Public Defender's Office, Carson City, NV, 12.10.

"What Research Tells Us About Sex Offenders," (Webinar) National Judicial College, Reno, NV, 1.11.

"Mental Health Trends in Child Psychiatry," Washoe County Public Defender & Washoe County Dept of Social Services, Reno, NV, 1.11.

"Assessing Treatment Recommendations," Washoe County Public Defender & Washoe County Dept of Social Services, Reno, NV, 1.11.

"You Did What? Understanding the Adolescent Brain and Substance Abuse," 38th National Conference on Juvenile Justice, National Council of Juvenile and Family Court Judges, Reno, NV, 3.11.

"Trends in Child Psychiatry: Risks and Benefits of New Medications," 38th National Conference on Juvenile Justice, National Council of Juvenile and Family Court Judges, Reno, NV, 3.11.

Piasecki CV 2.19

"Co-Occurring Disorders," Alaska Bar Association Annual Meeting, Fairbanks, AK, 4.11.

"12 Step Programs," "Competency Evaluations and Reports," and Mock Competency Hearing," National Judicial College Course on Co-Occurring Mental and Substance Use Disorders, Reno, NV, 5.11.

"Managing the Capital Case in Oklahoma," National Judicial College, Oklahoma City, OK, 6.11.

"Advanced PowerPoint," Workshop with J. Sawyer, State Bar of Nevada, Las Vegas, NV and Reno, NV, 6.11.

"Co-Occurring Disorders," Court Improvement Conference, Reno, NV, 7.11.

"Impaired Driving for Arkansas," National Judicial College, Little Rock, AK, 7.11.

"Behavioral Science Evidence," National Judicial College Course on Scientific Evidence and Expert Testimony, Reno, NV, 8.11.

"Pharmacological Effects of Drugs and Alcohol," National Judicial College, Reno, NV, 8.11

"Mental Retardation," National Judicial College Course on Capital Cases for Appellate Judges, Reno, NV, 8.11.

"Impaired Driving Essentials," National Judicial College/ Arkansas Judicial Education Center, Hot Springs, AR, 9.11.

"What Research Tells Us About Sex Offenders," (Webinar) National Judicial College, Reno, NV, 10.2011

"New York: Sex Offender and Victim Issues," (Webinar) with Hon. J. McCarthy, National Judicial College, Reno, NV, 11.11.

"Mental Health Injuries," National Business Institute, Anatomy and Physiology 101 for Attorneys, Las Vegas, NV, 11.11.

"Mental Retardation in Capital Cases," (Webinar) Appellate Courts, National Judicial College, Reno, NV 5.12.

Piasecki CV 2.19

"Mental Health Issues in a Legal Setting," University of Nevada Reno (Judicial Studies Program), Reno, NV 1.13.

"The Adolescent Brain- Culpability and Competency," National Council of Juvenile and Family Court Judges, Reno, NV 4.13.

"Drugged Driving Essentials for New Mexico Municipal Court Judges," National Judicial College, Albuquerque, NM, 5.2013.

"Designer Drugs," National Conference on Juvenile Justice, National Council of Juvenile and Family Court Judges, Seattle, WA, 7.13.

National Judicial College Symposium, Reno, NV, 9.13.

"Understanding Co-Occurring Mental and Substance Abuse Disorders," Webcast, National Judicial College, Reno, NV, 9.13.

"Substance Abuse in the Legal Profession and the Affordable Care Act: Clinical and Legal Issues," with Stacey Torvino, J.D., Ph.D. and Chad Cross Ph.D.UNL, Boyd School of Law, Las Vegas, NV, 11.13.

"Addiction, Behavior and the Brain," with Julie Brain, CACJ/ CPDA Capital Case Defense Seminar, 2.14.

"Understanding Addiction," Ely Family Law Conference, 3.14.

"Mental State at the Time of the Crime," UNLV Boyd School of Law Faculty Conference Series, Las Vegas, NV, 3.14.

"Scientific Evidence and Expert Testimony," National Judicial College Reno, NV, 5.14.

Panel Moderator Interprofessional Symposium on Health Care Disparities, UNLV Boyd School of Law, Las Vegas, NV, 4.14.

"Advanced Issues Involving Co-Occurring Disorders," National Judicial College Reno, NV, 9.14.

"Risk Factors for Prescription Drug Addiction," Nevada HIDTA Summit, Las Vegas, NV, 12.14.

Piasecki CV 2.19

"The Science of Substance Abuse," Nevada Legal Services, Las Vegas, NV and Reno, NV, 12.2014.

"Inteprofessional Panel of Health Care Workforce Issues," Panelist with F. Marouf, and V. Carreon, UNLV Boyd School of Law, Las Vegas, NV, 2.15.

"Understanding Your Client's Addiction," CACJ/ CPDA Capital Case Defense Seminar, 2.15; NDIA, 4.15.

"History of Opioid Substitution," Southern Association for the History of Medicine and Science, Boyd School of Law, Las Vegas, NV, 3.16.

Annual Meeting, National Council of Juvenile and Family Court Judges, Las Vegas, NV, 3.16.

"Pharmacology of Drugs and Alcohol," National Judicial College Reno, NV, 5.2016, 7.16.

"Advanced Issues in Cases Involving Co-Occurring Mental Health & Substance Abuse Disorders," National Judicial College Reno, NV, 8.16.

"The Opioid Crisis," (Panel), National Judicial College, Las Vegas, NV, 10.16.

"Judicial Bias," Joint Military Judges Training, Tampa, FL, 2.17.

"The Balance," Nevada Legal Services' Children's Law Conference, Incline Village, NV, 4.17.

"Mental Health Matters," State Bar of Nevada, Reno, NV, 5.17.

"The Top 10 Risk Factors for Substance Abuse," Advisory Council for Prosecuting Attorneys Annual Conference, Laughlin, NV, 9.17.

"Risk Factors for Substance Use in Legal Professionals and What to do About Them", Nevada Population Health Conference, United Health, 12.17.

"Balancing Client Representation and Attorney Wellbeing," Second Annual Children's Law Conference, Reno, NV, 9.18.

"Complex Care Needs: Outcomes and Impact of Treatment Timing and Dosage," (Panel Presentation), American Society Bioethics and Health,

Piasecki CV 2.19

Annual Meeting, Anaheim, CA, 10.18

"Immigration Law and Mental Health," Guest Lecturer, UNLV Boyd School of Law, 10.18

"Managing Challenging Family Law Cases: Substance Abuse and Co-Occurring Disorders," National Judicial College and National Council for Juvenile and Family Court Justice, Reno, NV 10.18

"Traffic Issues in the 21st Century: Pharmacology of Drugs and Alcohol," National Judicial College, Reno, NV, 10.18

For Medical, Medical Education and Mental Health Professionals:

"Mixed Anxiety and Depression" at Depression Awareness Recognition and Treatment (DART) Conference, Stowe, VT, 1994.

"P450 Drug Interactions." University of Nevada Family Medicine Residency, Reno, NV, 1995.

"Anxiety in Geriatric Patients" Veterans Administration Medical Center, Reno, NV, 1996.

"Antidepressant Medications: Their Potential for Toxicity," Convention of the American Association of Applied and Preventative Psychology, University of Nevada, Reno, NV, 1996.

"Nicotine and Psychiatric Illness," University of Nevada, Reno School of Medicine Department of Psychiatry Grand Rounds, Reno, NV, 8.97.

"Depression in Primary Care," Carson Tahoe Hospital, Carson City, NV, 11.97.

"Pathological Gambling," American Medical Student Association Regional Conference, Sparks, NV, 10.97

"Nicotine and Psychiatric Illness," Nevada Mental Health Institute, Sparks, NV, 1.98.

"Bipolar Disorder and Look-Alikes," Carson Tahoe Hospital, Carson City, NV, 6.98.

"Treatment of Psychosis," Nevada Association of Family Practice, Annual Meeting, Lake Tahoe, NV, 2.99.

"Psychopharmacology in Women," First Lady's Conference on Women's Health, Las Vegas, NV, 9.99.

"Psychotropic Drug Interactions," Nevada Mental Health Institute, Sparks, NV, 10.99.

"Social Phobia," Nevada Association for Physician Assistants, Reno, NV, 11.99.

"Dopaminergic Agents for Depression," Nellis Hospital Department of Primary Care, Las Vegas, NV, 2.99.

"Smoking Cessation," University Medical Center, Las Vegas, NV 8.99

"What's New in Psychopharmacology," Vocational Rehabilitation, Reno, NV, 5.00.

"The Teaching Portfolio," Workshop, Association for Academic Psychiatry Meeting, Taos, NM, 10.00.

"Assessment of Suicide Risk," Elko General Hospital, Elko, NV, 10.00.

"Clinician-Patient Communications," Workshop with Kohlenberg, K., University of Nevada, Reno School of Medicine Psychiatry Resident Retreat, Reno, NV, 11.00.

"Evaluations of Not Guilty by Reason of Insanity," Workshop Nevada Division of Mental Health and Developmental Services, Reno and Las Vegas, NV, 11.05.

"NGRI and Antisocial Personality Disorder: A Challenge to State Hospitals," American Academy of Psychiatry and the Law Annual Meeting, Montreal, QC, Canada, 10.05.

"Prescription Drug Abuse," Workshops sponsored by the Nevada Bureau of Alcohol and Drug Treatment, Reno and Las Vegas, NV, 7.2005, 6.2006.

"Neuroscience of Addiction," Two Day Workshop Co-sponsored by Center for Substance Abuse Technology, Las Vegas, NV, 4.2006 and Phoenix, AZ, 3.07.

"Psychiatric and Legal Aspects of Methamphetamine," Northern Nevada Adult Mental Health Systems, Sparks, NV, 5.06.

"Correctional Psychiatry," CME Course American Psychiatric Association Annual Meetings, Co-Director Toronto, Canada, 5.06; Course Director San Diego, CA, 5.07.

"Methamphetamine: Science and Ceremony," with Richard laughter, M.D., Center for Substance Abuse Technology , Native American Consortium, Reno, NV, 11.06, Reno and Las Vegas, NV 6.07.

"Using Digital Video in Problem Based Learning," (Workshop) With Kohlenberg, B., Kha, M., Shull, J. and Matuzak, J. WGEA, Honolulu, HI, 4.07.

"Forensic Aspects of Antipsychotic Use," University of Nevada, Reno School of Medicine, Atypical Antipsychotics, Statewide CME Event, (Program Chair) Reno and Las Vegas, NV, 5.07.

"Capacity," Renown Medical Center CME Program, Reno, NV, 5.07.

"Forensic Aspects of Child Abuse," Queen's Hospital, Bangkok, Thailand, 11.07.

"Co-Occuring Disorders," Center for Application of Substance Abuse Technology, Reno and Las Vegas, NV, 2.08.

"Finding the Right Words: How to Document Professionalism Behaviors," Workshop with Dupey, P., Gillis, M., Hug-English, C., Jacobs, N.N., Western Group Educational Affairs annual meeting, Asilomar, CA, 4/08; American Association of Medical Colleges national meeting, San Antonio, TX, 11.08.

"Malpractice Stress," Nevada Independent Doctors Insurance Exchange, Las Vegas, NV, 4.08.

"Negotiation Skills for Faculty," Co-Facilitator with Andreea Seritan, M.D. University of Nevada, Reno School of Medicine, Reno, NV, 8.08.

"Crafting the Conversation: Faculty Feedback of Student Professionalism," Workshop Piasecki, M., Dupey, P., Gillis, M., Hug-English, C., Jacobs, N.N., Kuhls, D., Trong, H. Western Group Educational Affairs annual meeting, Santa Fe, NM, 4.09.

"Developing a case-based program addressing errors in reasoning in child and adolescent psychiatry," with M. Gillis, PhD. Annual Meeting Association for the Advancement of Philosophy and Psychiatry, San Francisco, CA, 5.09.

"Critical Tools for Psychiatrists: Borrowing From the Forensic Toolbox," U.S. Psychiatric and Mental Health Congress, Las Vegas, NV, 11.09.

"Post Traumatic Stress Disorder," International Conference: Military Medicine and Disaster, Phramongkutklao Hospital, Bangkok, Thailand, 11.00.

"Teaching Medical Professionalism: Using Technology to Create Tools," 10th Thai Medical Education Conference, Phramongkutklao Hospital Bangkok, Thailand, 11.09.

"Essential Skills in Medical Education," 10th Thai Medical Education Conference, Phramongkutklao Hospital Bangkok, Thailand, 11.09.

"Malpractice Myths and Evidence," Nevada Psychiatric Association Annual Meeting, Las Vegas, NV, 2.10.

"Medication Assisted Treatment," Center for the Application of Substance Abuse Technology workshop, Reno and Las Vegas, NV, 3.10.

"Six Easy Steps to Effective Feedback: A Guide for Addressing Professionalism Lapses," Piasecki, M., Dupey, P., Gillis, M., Hug-English, C., Jacobs, N.N., Kuhls, D., Trong, H. Western Group Educational Affairs annual meeting, Asilomar, CA, 4.10.

Visiting Professor, Tripler Army Medical Center, Department of Psychiatry, (Topics in Medical Student and Resident Education) Honolulu, HI, 9.10.

"Psychiatric Risk Assessment," Grand Rounds, Tripler Army Medical Center, Department of Psychiatry, Honolulu, HI, 9.10.

"Axis II Blues: Personality Disorders," Nevada Department of Vocational Rehabilitation Annual Meeting, Reno, NV, 9.10.

"DSM-IV: Friend or Foe?" Center for the Application of Substance Abuse Technology workshop, Reno and Las Vegas, NV, 11.10.

Visiting Professor, Khon Kaen University, Department of Psychiatry, (Topics in Medical Education and Forensic Psychiatry), Khon Kaen, Thailand, 1.2011.

"Medical Education in Psychiatry," Faculty of Medical Sciences, National University of Laos, Vientiane, Lao People's Democratic Republic, 1.11.

"Legal 2000 Updates," In-service, Northern Nevada Medical Center, Sparks, NV, 2.11.

"Ethical Issues in Informed Consent," Internal Medicine Updates, University of Nevada, Reno School of Medicine, Las Vegas, NV, 5.11.

"Teaching and Assessing Professionalism in Medical Education," 72nd Thai Congress of Pediatrics, Bangkok, Thailand, 10.11.

"In the Wake of War: Understanding the PTSD-Violence Connection in Veterans of Recent Wars," U.S. Psychiatric and Mental Health Congress, Las Vegas, NV, 11.11.

"From Sign-outs to Hand-offs: Risky Business for Busy Residents," M. Bar-on, M. Piasecki and S. Wahi-Guruj, AAMC Annual Meeting, Denver, CO, 11.11.

"Addiction: New Frontiers," Center for the Application of Substance Abuse Technology, Reno, NV, 11.11.

"Informed Consent and Monitoring of Psychiatric Medications: Beyond The Medical Visit," Roitman, N., Kalinowski, C., Piasecki, M., Clark County Department of Family Services, Las Vegas, NV, 11.11, 12.11.

"Legal 2000 for Health Care Professionals," (CME Webinar to rural Nevada sites), Rural Access/ Office of Continuing Medical Education, Reno, NV, 12.11.

"Trends of Psychotropic Medications Use in Children- What You Need to Know," CAN Prevention Conference, Reno, NV, 4.12.

"Drugs, Alcohol and Dementia in the Baby Boomer Generation," Washoe County Guardian Conference, Reno, NV, 3.12.

"Does methamphetamine cause brain damage?" Nevada DETR conference, Reno, NV, 9.12.

"Opioid Risk Management," IND Annual Training, Las Vegas, NV, 4.12 and 11.12; Reno, NV, 10.12.

"The utility of Mixed-Trial Implicit Relational Assessment Procedure (MT-IRAP) for decision making in organizations," Smith, G. S., Houmanfar, R., Reimer, D., Piasecki, M., Shonkwiler, G., & Jacobs, N. N., R. Houmanfar (Chair). The role of communication and verbal networks in organizational change. Symposium conducted at the Organizational Behavior Management Network, Garden Grove, CA, 2.13.

"The Insanity Plea: Mental State at the Time of the Crime," Department of Psychiatry Grand Rounds, University of Nevada, Reno School of Medicine, Reno, NV, 4.13.

"Implementation of a Mixed Trial-Implicit Relational Assessment Procedure (MT-IRAP) in medical education". Smith, G. S., Jacobs, N.N., Houmanfar, R., Piasecki, M., Shonkwiler, G., and Tolles, R. Paper presented at the Association of American Medical Colleges, Western Group on Educational Affairs, Irvine, CA, 4.13.

"A behavioral systems analysis of collaborative leadership during curricular restructuring at the University of Nevada, Reno School of Medicine: A story of faculty engagement and growth," Houmanfar, R., Piasecki, M., Shonkwiler, G., Remier, D., Jacobs, N.N and Tolles, R. Paper presented at the Association of American Medical Colleges, Western Group on Educational Affairs, Irvine, CA, 4.13.

"The Role of MT-IRAP as an Assessment Tool in the Design of Training Program in Medical School," Smith, G., Houmanfar, R., Shonkwiler, G., Jacobs, N.N., Tolles, R. & Piasecki, M. Paper presented at the Association for Behavior Analysis International (ABAI) 39th Annual Convention; Minneapolis, MN, 5.13.

"DSM 5 Classification, Criteria and Use," Panel Presentation, University of Nevada, Reno School of Medicine, Reno, NV, 8.13.

"Behavioral Systems Analysis to Inform Faculty Development," with J. Hagen et al, Group on Faculty Affairs Annual Meeting, Minneapolis, MN, 8.13.

"Culture Change in a Medical School: The Role of Behavioral Assessments," T. Schwenk, M. Piasecki, T. Baker. Skinner lecture, Association for Behavioral Analysis International, Annual Meeting, Chicago, IL, 5.14.

"Create, Adapt, Adopt: The Customized Adoption of the Association of American Medical College's Faculty Forward Survey," with J. Hagen et al. Association for Behavioral Analysis International, Annual Meeting, Chicago, IL, 5.14.

"Sharing Sensitive Data: Tools and Strategies," with J. Hagen et al, Group on Faculty Affairs 2014 Annual Meeting, Boston. MA, 7.14.

"What's New in Psychiatric Diagnosis?" Vocational Rehabilitation Annual Conference, Reno, NV, 9.14.

"Psychiatric Workforce in Nevada," UNLV-UNSOM Interprofessional Health Equity Symposium, Las Vegas, NV, 10.14.

"Mental Health Care, Immigration Detention and Deportation: Ethical, Clinical and Legal Issues," American Society for Bioethics and Humanities Annual Meeting, San Diego, CA, 10.14.

"The Ethics of Pro-Se Competency in Immigration Proceedings," American Academy of Psychiatry and the Law Annual Meeting, Chicago, IL, 10.14.

"Fitness for Duty Evaluations for Pilots: FAA Standards," American Academy of Psychiatry and the Law Annual Meeting, Chicago, IL, 10.14.

"Boundaries in the Digital Age," Update on Psychiatry, University of Arizona, Tucson, AZ 2.2015; Renown Medical Center, Reno, NV, 5.15.

"Collaborative Learning and Mental Health Law Reform in Alaska," Health Law Professor's Conference, American Society of Law, Medicine and Ethics, St. Louis, MO, 6.15.

"Project ECHO for Connected Care," Hitachi Social Innovation Forum, Connected Care: Advancing Healthcare through Social Innovation, Las Vegas, NV, 4.16.

Smith, G., Brayko, C., Kuhls, D. A., Jacobs, N., Houmanfar, R., Piasecki, M. P., "Assessing implicit attitudes of burnout among medical students," AAMC WGEA Tucson, AZ, 4.16.

Jacobs, N., Baker, T., Smith, G., Candido, A., Houmanfar, R., Kuhls, D. A., Piasecki, M. P. "The implicit relational assessment procedure (IRAP): How implicit bias is assessed and addressed at UNSOM," Diversity Summit, University of Nevada, Reno School of Medicine, Reno, NV, 4.16.

Szarko, A., Brayko, C., Houmanfar, R., Smith, G., Jacobs, N., Baker, T., Piasecki, M. P., Kuhls, D. A., "Determining the Effects of ACTraining on

Measures of Implicit Attitudes and Burnout: A New Spin on Curriculum Training in Medical Education" ABAI, Chicago, IL, 5.16.

Smith, G., Houmanfar, R., Szarko, A., Baker, T., Jacobs, N., Piasecki, M., Kuhls, D. A., "The Adaptation of the Implicit Behavioral Assessment Technology to Guide Curriculum Development" ABAI, Chicago, IL, 5.16.

Piasecki, M. "Balancing Career and Life," Find Your Mentor Program, Tokyo Medical Dental University, Tokyo, Japan, 1.17.

Piasecki, M. "Accreditation in Medical Education," Tokyo Medical Dental University, Tokyo, Japan, 1.17.

Piasecki, M. "The Multiple Mini-Interview," Tokyo Medical Dental University, Tokyo, Japan, 1.17.

Smith, A., Oates, K., Jacobs, N., Brayko, C., Piasecki, M. P., Harding, B., Glogovac, D. L., , "Rethinking diversity at one medical school: Narrowing the focus to increase impact," WGEA Annual Meeting, 2.17.

Szarko, A., Brayko, C., Houmanfar, R., Smith, G., Esquierdo-Leal, J., Froehlich, M., Jacobs, N., Baker, T., Piasecki, M. P., "Managing Burnout in the Curriculum at UNR Med," Northern Nevada Diversity Summit, University of Nevada, Reno, NV, 3.17.

Piasecki, M. P., "The role of implicit attitude assessment in a behavior analytic intervention of social issues", Association for Behavior Analysis International Annual Convention, 5.17.

Jacobs, N., Smith, G., Oates, K., Piasecki, M. P., "Inclusivity: Collaborative Mixed-Methods Approach Group on Diversity and Inclusion and Group on Women in Medicine and Science Summit, Palm Springs, CA, 5.17.

Hagen, J., Jacobs, N., Piasecki, M., "Diversity Now: Powerful searches," Group on Diversity and Inclusion and Group on Women in Medicine and Science Summit, Academic, AAMC, Palm Springs, CA, 5.17.

Hagen, J., Jacobs, N., Piasecki, M. P., "Standing Search Committee: Diversity Faster," Group on Diversity and Inclusion and Group on Women in Medicine and Science Summit, Palm Springs, CA, 5.17.

Piasecki, M "Burnout in Medical Education: Costs and Interventions," Grand

Piasecki CV 2.19

Rounds, University of Arizona College of Medicine, Tucson, AZ, 11.17.

Piasecki, M. P., Brayko, C., Houmanfar, R., Szarko, A., Smith, G., Jacobs, N., Baker, T., "Integrating Behavior Analytic Frameworks to Meet the Needs of a Medical School and the Medical Profession," Association for Behavior Analysis International 9th International Conference, Paris, France, 11.17

Visiting Professor, Department of Psychiatry, Faculty of Medicine, Khon Kaen University, Thailand, 1.18.

Piasecki, M., Oates, K. and Smith, A., "The LCME Self-Study: An Agent for School-Wide Engagement, Transparency and Innovation," WGEA Annual Meeting, Denver, CO, 3.18

Houmanfar, R., Croswell, L and Piasecki, M Interdisciplinary Collaboration in Behavior Analysis Association for Behavior Analysis International (ABAI) 38th Annual Convention, San Diego, CA, 5.18

Piasecki, M. Role of Psychiatrist in Fitness for Duty Evaluations, University of Hawaii Department of Psychiatry Grand Rounds 9.18

Publications:

Articles:

Thienhaus, O.J., Piasecki, M.P., "Suicide Risk Assessment." Psychiatric Services, 3.1997.

Thienhaus O.J., Piasecki, M.P., "Assessment of Psychiatric Patients--Risk of Violence." Psychiatric Services, 49:9, 1129-1147, 1998.

Potter, A., Corwin, J., Lang, J., Piasecki, M.P., Lenox, R., Newhouse, P.A., "Acute effects of the selective cholinergic channel activator (nicotine agonist) ABT-418 in Alzheimer's disease." Psychopharmacology, 142:334-342, 1999.

Netski, A., Piasecki, M.P.; "Lithium-Induced Exacerbation of Stutter." (letter) The Annals of Pharmacotherapy, 35:7 961 2001.

Piasecki, M.P. Steinagel, G., Antonuccio, D.O. and Kohlenberg, B.S; "Unblinding in a Study of an SSRI." Journal of Behavior Therapy and Experimental Psychiatry, 3 67-71 2002.

Piasecki, M.P., Steinagel, G, Thienhaus, OJ, and Kohlenberg, BS; "An Exploratory Study: The Use of Paroxetine for Methamphetamine Craving." Journal of Psychoactive Drugs, 34(3) July-Sept 301-304 2002.

Thienhaus, O.J., Piasecki, M.P.; "Assessment of Geriatric Patients in the Psychiatric Emergency Service." Psychiatric Services, 2004.

Kohlenberg, B.S., Antonuccio, D.O., Hayes, S.C., Gifford, E.V., & Piasecki, M.P. "Suitability of Bupropion SR for Nicotine Dependent Smokers: Problems in a Practice Setting." Psychotherapy and Psychosomatics, 73 252-254, 2004.

Gifford, E. V., Kohlenberg, B. S., Hayes, S. C., Antonuccio, D. O., Piasecki, M. P., Rasmussen-Hall, M. L., & Palm, K. "Applying a Functional Assessment Model to Smoking Cessation: An Initial Trial of Acceptance and Commitment Therapy." Behavior Therapy, 34 (4) 689-706, 2004.

Hayes, S.C., Wilson, K.G., Gifford, E.V., Bissett, R., Piasecki, M.P., Batten, S.V., Byrd, M. and Gregg, J. "A Preliminary Trial of Twelve-Step Facilitation and Acceptance and Commitment Therapy with Polysubstance-Abusing Methadone-Maintained Opiate Addicts." Behavioral Therapy, 35 667-688 2004.

Mason, M.N., Johnson, C.E. and Piasecki, M. "Ziprasidone-induced acute dystonia." (letter) American Journal Psychiatry, 162(3):625-6 2005.

Piasecki, M.P. "Death Row Inmates and Mental Health." (Legal Digest) The Journal of the American Academy of Psychiatry and the Law, 33(3) 406-408 2005.

Gifford, E.V., Kohlenberg, B., Hayes, S.C., Pierson, H., Piasecki, M., Antonuccio, D.O., & Palm, K.. Does Acceptance and Relationship Focused Behavior Therapy Contribute to Bupropion Outcomes? A Randomized Controlled Trial of FAP and ACT for Smoking Cessation. Behavior Therapy, 10.1016, 2011.

Baker, T., Schwenk, T., Piasecki, M., Smith, G., Reimer, D., Jacobs, N., Shonkwiler, G., Hagen, J. & Houmanfar, and R. Change in a Medical School: A Data-Driven management of Entropy. Journal of Organizational Behavior Management, 35:95-122, 2015.

Baker, T., Smith, G., Jacobs, N., Houmanfar, R, Tolles, R., Kuhls, D., Piasecki, M. A deeper look at implicit weight bias in medical students. Advances in Health Science Education Theory and Practice, 2016.

Maraccini, A, Houmanfar, R., Slonim, A., Williams, L., Piasecki, M. An Interprofessional Approach to Train and Evaluate Communication Accuracy and Completeness during the Delivery of Nurse-Physician Student Handoffs, Journal of Interprofessional Education & Practice, 2018

Abstracts and Poster Presentations:

Abstract: "Cognitive Effects of Nicotinic Agents in Alzheimer's and Parkinson's Disease," Newhouse, P.A., Potter, A., Corwin, J., Piasecki, M. American College of Neuropsychopharmacology Annual Meeting, 1994.

Poster: "Integrating PBL into a Psychiatry Clerkship: A Proposal" Piasecki M.P. presented at Western Group on Educational Affairs, Monterey, CA, 1996.

Poster: "The Self Assessment of Problem Solving Skills in a Problem Based Learning Curriculum," Piasecki M.P., Erickson B., presented Western Group on Educational Affairs, Asilomar, CA, 1998.

Poster: "The Difficult interview: A Curriculum for Second Year Medical Students"; presented Western Group on Educational Affairs, Piasecki M.P., Erickson B., Asilomar, CA, 1998.

Poster: "Factors Contributing to Patient Adherence in Smoking Cessation Treatment." Gifford, E.V., Walsh, K.M., Piasecki M.P., Kohlenberg B.S., Hayes S.C., & Antonuccio D.O., presented at the Association for the Advancement of Behavior Therapy, New Orleans, LA, 2000.

Poster: "Innovation in Behavior Therapy for Nicotine-Dependent Smokers: Experiential Avoidance, Acceptance, and Smoking Cessation." Gifford E.V., Piasecki M.P, Kohlenberg B.S., Antonuccio D.O. and Thienhaus O.J. presented at Nevada Biomedical Research and Education Conference, Las Vegas, NV, 2001.

Poster: "Bupropion SR for Nicotine Dependent Smokers: A Practical Treatment for Veterans?" Kohlenberg, B.S., Gifford, E.V., Antonuccio, D.O., Piasecki, M.P., Hayes, S.C., presented at Society for Research on Nicotine and Tobacco annual meeting, Seattle, WA 2001.

Poster: "FACT: Functional Analytic Therapy (FAP) and Acceptance and Commitment Therapy (ACT) Integration: Applications for Smoking Cessation," Gifford, E., Hayes, S., Antonuccio, D., & Piasecki, M. Presented at the

Association for the Advancement for Behavior Therapy, 35th Annual Convention, Philadelphia, PA, 2001.

Poster: "Posttreatment and Process Data from a Randomized Clinical Smoking Cessation Trial Comparing Acceptance and Commitment Therapy with Transdermal Nicotine Replacement," Gifford, E., Kohlenberg, B., Piasecki, M., Hayes, S., and Antonuccio, D. Presented at the Association for the Advancement for Behavior Therapy, 35th Annual Convention, Philadelphia, PA, 2001.

"Measuring the Process of Organizational Change: A Quantitative and Qualitative Analysis of Curricular Change in a Medical School," Reimer, D., Houmanfar, R., Shonkwiler, G., Jacobs, N., Tolles, R. & Piasecki, M. Behavior Analysis Research Faire; Reno, NV, 2012.

"Emerging Leadership: A Qualitative Analysis of Faculty Comments about Curricular Change at the University of Nevada, Reno School of Medicine," Shonkwiler, G., Houmanfar, R., Reimer, D., Jacobs, N., Tolles, R. & Piasecki, M. Paper presented at the Western Group for Educational Affairs (WGEA) Regional Meeting in Pacific Grove, CA, 2012.

Poster: "Measuring the Process of Organizational Change: A Quantitative and Qualitative Analysis of Curricular Change in a Medical School," Reimer, D., Houmanfar, R., Candido, A., Shonkwiler, G., Jacobs, N., Tolles, R. & Piasecki, M. Association for Behavior Analysis International (ABAI) 38th Annual Convention; Seattle, WA, 2012.

Poster: "Project ECHO Nevada: Using Interprofessional Teams to Improve Health Care in Nevada," Etchegoyhen, L., Klass, E., Packham, J., Piasecki, M., O'Brien, M. 4th Annual MedEdPORTAL Poster Session and Reception on Innovation in Health Education, AAMC Annual Meeting San Francisco, CA, 2012.

Poster: "Project ECHO Nevada: Using Interprofessional Teams to Improve Health Care in Nevada," Etchegoyhen, L., Klass, E., Ackerman, G., Redding, J., Piasecki, M., O'Brien, M. FLEX Annual Meeting, Kona, HI, 2013.

Poster: "Faculty Perspectives on Curricular Change: Institutions with Multiple Campuses," Hagen, J., Kuhls, D., Shonkwiler, G., Walvoord, E., Tolles, R., Jacobs, N., Houmanfar, R., Reimer, D., Palmer, Gusic, M.E., Piasecki, M. AAMC GRMC, Phoenix, AZ, 2014.

Piasecki CV 2.19

Poster: "Measuring Organization Culture and Change in a U.S. Medical School," Piasecki, M., Hagen, J., Reimer, D. and Houmanfar, R., On The Organization, Annual Meeting, Oxford, England, 2014.

Poster: "Shining A Light On Implicit Bias: The Use Of A Novel Assessment In Medical Education." Moore, S., Baker, T., Piasecki, M., Jacobs, N., Shonkwiler, G., Houmanfar, R. Smith, G. and Tolles, R. UNLV-UNSOM Interprofessional Health Equity Symposium, Las Vegas, NV, 2014.

Poster: "Revisions to Alaska Mental Health Statutes," Gordon, S., Piasecki, M., Kahn, G. and Nielsen, D., UNLV Academic Showcase, Las Vegas, NV, 2015.

Poster: "An Interprofessional Health Disparities Symposium," Kuhls, D., Tovino, S., Douinis, G., Piasecki, M., et al. UNLV Academic Gala, Las Vegas, NV, 2015.

Poster: "Dual-Role Conflicts in Forensic Mental Health Evaluations," Piasecki, M., Gordon, S. Neuroethics Network annual meeting, Paris, France, 2016.

Poster: "Ethical dilemmas surrounding physician wellness and burnout." Brayko, C., Smith, G., Szarko, A., Candido, A., Houmanfar, R., Jacobs, N., Baker, T., Ishibashi, K., Piasecki, M., Schwenk, T. Cambridge Consortium for Bioethics Education annual meeting, Paris, France, 2016.

Poster: "Engineering Inclusivity: A Standing Search Committee Looks at Candidate Data," Hagen, J., Jacobs, N., Piasecki, M. AAMC GFA conference, Vancouver, BC, Canada, 2016.

Poster: "Addressing Burnout in Medical School through Acceptance and Commitment Training Froehlich, M., Szarko, A., Jacobs, N., Smith, G. S. Houmanfar, R, Piasecki, M. Baker, T., ", AAMC Western Group of Educational Affairs (WGEA). Austin, TX, 2018.

Chapters:

Newhouse, P.A., Potter, A., Piasecki, M.P. et al. "Nicotinic Modulation of Cognitive Functioning in Humans." In: International Symposium on Nicotine: The Effects of Nicotine on Biologic Systems II, Clarke, PBS, Quik, M., Thureau, K., Aldkofer, F. (Eds.) Birkhauser, Boston, MA, 1995.

Piasecki, M.P., "Antidepressant Medications: A Review of their Potential Toxicities." In Prescription Privileges for Psychologists: A Critical Appraisal. (Eds.) Hayes, S.C. and Heiby, E.M., Context Press, Reno, NV, 1998.

Piasecki, M.P., "Classification of Mental Disorders." In Pearls of Wisdom. Rebecca Schmidt (Ed.), Boston Medical Publishing, 1999.

Antonuccio, D.O., Lewinsohn, P., Piasecki, M.P., Ferguson, R., "Major Depressive Episode." In Effective Brief Therapy: A Clinician's Guide. Academic Press, 1999.

Piasecki, M.P., "Nicotine and Mood." In Nicotine in Psychiatry: Emerging Trends in Psychopathology and Therapeutics (Eds.) Piasecki M.P., and Newhouse P.A., American Psychiatric Press, Washington D.C., 2000.

Gifford, E.V., Kohlenberg, B.K. Piasecki, M.P., and Webber, E.J. "The forensic assessment of substance abuse." In O'Donohue, W. & Levensky, E. (Eds.) Handbook of forensic psychology. Elsevier Press, 2004.

Piasecki, M.P. "Women in Corrections." In Thienhaus, O.J. and Piasecki, M.P.(Eds.) Correctional Psychiatry: Practice Guidelines and Strategies, Civic Research Institute Press, New York, NY, 2007.

Encyclopedia of Substance Abuse, Gary Fisher and Nancy Roget Eds., Sage Publishing, 2008.

Anxiolytics, Cardon, N., Sharp, S. and Piasecki, M.P.

Antidepressants, Prasad, C. and Piasecki, M.P.

Mood Stabilizers, Parras, M. and Piasecki, M.P.

Antipsychotics, Anit, L. and Piasecki, M.P.

Prevention Policy, Levin, M., Draper, C. and Piasecki, M.P.

Mental Retardation and the Death Penalty, Piasecki, M.P. and Elwyn, T., in Capital Cases: A Benchbook, Brunson, W., Burns, D. and Wosje, R. (Eds) National Judicial College, 2009.

Books:

Piasecki, M.P. and Newhouse, P.A. (Eds.) Nicotine in Psychiatry: Emerging Trends in Psychopathology and Therapeutics, American Psychiatric Press Inc., Washington D.C., 2000.

Piasecki, M.P. Clinical Communication Handbook, Blackwell Publishing, Malden MA, 2003.

Thienhaus, O.J. and Piasecki, M.P. (Eds.) Correctional Psychiatry: Practice Guidelines and Strategies, Civic Research Institute Press, New York, NY, 2007.

Guerrero, A. and Piasecki, M.P. (Eds.) Problem Based Learning in Psychiatry and Behavioral Science, Springer Publishing, New York, NY, 2008.

Thienhaus, O.J. and Piasecki, M.P. (Eds.) Correctional Psychiatry: Practice Guidelines and Strategies; Volume II, Civic Research Institute Press, New York, NY, 2013.

Jacobs, N.N., Alicata, D., Guerrero, A. and Piasecki, M.P. (Eds.) Problem Based Learning in Psychiatry and Behavioral Science 2nd Edition, Springer Publishing, New York, NY, 2016.

Other Publications:

Piasecki, M.P. and Zuchowski, S.J. "Not guilty by reason of insanity" Nevada Lawyer pp 21-23, 2006.

Piasecki, M.P. and Antonuccio, D.O. "The DSM Debate: Potential Harms Related to Psychiatric Diagnosis" AAPP newsletter, Volume 17(2), pp 15-18, 2010.

Contributor to National Judicial College Sentencing Sex Offenders: A Model Curriculum for Judges, CD/ DVD, 2010.

Grants:

Nancy Roget (Principal), Melissa Piasecki (Supporting), CDC Frontier Regional FASD Training Center 1U84DD000888-01 Project Period: 09.30.2011—9.29.2014.

Sara Gordon (Principal), Melissa Piasecki (Co-PI), Alaska Statutory Review, Alaska Mental Health Trust 2014—2015.

Administration and Service:

Department of Psychiatry

Chair, Department of Psychiatry Medical Education Committee 2000—2011

Vice Chair for Medical Education, Department of Psychiatry (Reno) 1998—2008

Chair, Continuing Medical Education Committee, Coordinator of Department
Grand Rounds Series 2005—2010

Assistant Medical Director, University Mental Health Professionals (Department
of Psychiatry outpatient practice group) 1997—2004

Residency Education Committee 2000—2011

University of Nevada, Reno School of Medicine

Clerkship Coordinator's Committee 1995—2008
Chair 1996—1999

Year 1 & 2 Course Coordinator's Committee 1996—2002

Chair, LCME Subcommittee on Clinical Departments 2001

Co-Chair, LCME Subcommittee on Faculty 2009

Faculty Council Psychiatry Representative 1998--2000

Search Committees: Family Medicine Chair 2001, Dean School of Medicine
1999, Chair of Pharmacology Department 1998, Chair of Psychiatry 2010,
Director of the UNR School of Community Health Science (Committee Chair)
2011, Director of Sanford Center 2012-2013, Chair of Psychiatry 2012—2013
(Committee Chair)

Professionalism Committee, Chair Faculty Development Subcommittee
2006—2011

Medical Director, Office of Continuing Medical Education, 2011—present

Chair, UNR Med LCME Steering Committee, 2016-18

University of Nevada, Reno

Excellence in Teaching Program Advisory Committee 2003—2004

Excellence in Teaching Program Faculty Consultant 2004

Conflict of Interest Committee 2010—present

Accreditation Task Force 2012—2013

Title IX Deputy Officer 2016—present

NSHE

Member, UNLV Boyd School of Law Health Law Advisory Board 2015—present

State of Nevada

Nevada Suicide Review Task Force member 2014—2015

Nevada Population Health Planning Committee member 2016—present

Nevada State Board of Medical Examiners consultant 2006—present

National

Editorial Board: National Psychiatric Resident In-service Training Examination (PRITE) 2005—2012

LCME Survey Team member, 2013, 2014, 2015, 2016, 2017

Department of Justice, consultant to Office of Civil Rights, 2014-2018

Consultant to Federal Monitor, Franco et al v Holder, 2016—2018

1 CODE: 1020
2 MARC PICKER, BAR# 3566
3 WASHOE COUNTY ALTERNATE PUBLIC DEFENDER
4 BILL HART, BAR #11986
5 P.O. BOX 11130
6 RENO NV 89520-2027
7 (775) 328-3955

8 ATTORNEY FOR: DEFENDANT

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

10 IN AND FOR THE COUNTY OF WASHOE

11 THE STATE OF NEVADA,
12 Plaintiff,

13 vs.

Case No. CR17-0690A

14 KATHERINE DEE FLETCHER.
15 Defendant.

Dept. No. 7

16 **ADDENDUM TO NOTICE OF EXPERT WITNESS AS TO DR. PIASECKI**

17 COMES NOW, Defendant, KATHERINE DEE FLETCHER, by and through her
18 attorneys, above-named, and hereby offers her addendum to notice of expert witness as to Dr.
19 Piasecki.

20 **AFFIRMATION Pursuant to NRS 239B.030**

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

23 DATED September 23, 2019.

24 MARC PICKER
25 Alternate Public Defender

26 By: Bill Hart
BILL HART
Deputy Alternate Public Defender

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CERTIFICATE OF SERVICE

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

Washoe County District Attorney's Office
Via Electronic Filing

DATED the 23rd day of September, 2019.

/s/Shannon Hambright
Shannon Hambright

INDEX OF EXHIBITS

Exhibit No.	Description	No. of Pages
1	Report of Dr. Piasecki	2

EXHIBIT 1

EXHIBIT 1

MELISSA PIASECKI, M.D.

FORENSIC PSYCHIATRY

561 KEYSTONE AVE. #104

RENO, NV 89503

775 722-1077 Fax 866 500-7716

piaseckimd@gmail.com

BOARD CERTIFIED IN PSYCHIATRY AND FORENSIC PSYCHIATRY

Marc Picker, Esq.

Bill Hart, Esq.

Washoe County Alternate Public Defender's Office

P.O. Box 11130

Reno, NV 89520-0027

September 22, 2019

Re: Katherine Dee Fletcher

Case No.: CV-16-01631

DOB 3.7.79

Dear Mr. Picker and Mr. Hart:

At your request I have completed an evaluation of your client, Katherine Fletcher, with regards to her mental state at the time of the events leading to her arrest. I met with Ms. Fletcher on 12.26.16, 2.27.17 and 3.4.19 at the Washoe County Detention Facility and 12.6.18 at Lakes Crossing Center. In addition I reviewed reports of evaluations by Drs. Moulton, Vieth, Bissett, Zuchowski, Leany and Carter-Hargrove. I reviewed discovery, outpatient medical records, medical records for K. Fletcher and Max Trask, Lakes Crossing Center clinical records, Unity case records, Reno Police Department reports, Washoe County Family Court and Department of Social Services records and documents produced by Ms. Fletcher.

Summary: Ms. Fletcher is a 40-year-old woman with a history of mental illness. She made allegations regarding the victim (who was her son's father) abusing her son for years prior to her arrest on the current charges. Beginning in 2012, she repeatedly alleged that the victim sexually assaulted her son during contact visits in the Washoe County courthouse when he son was under the state's supervision. She reported that her son was "raped consistently over two years." Her allegations were investigated and found to be unsubstantiated.

She also stated "I was his victim before my son was" and said that she was severely abused by her son's father in the past. She is charged with shooting him on 7.28.16. Ms. Fletcher was court-ordered to Lakes Crossing Center for competency restoration.

Referral question: Does Ms. Fletcher meet the Nevada criteria for Not Guilty by Reason of Insanity?

Ms. Fletcher meets the two prongs of the state's standard for Not Guilty by Reason of Insanity: a. she suffers from a mental illness with delusions, which if true, would justify her actions and b. she lacked of knowledge of the legal wrongfulness of his actions. I base these findings on the following:

1. Ms. Fletcher has a chronic mental illness characterized by delusional beliefs, hallucinations, irrational behaviors, irritability and grandiosity. Her psychotic symptoms are well-documented in her medical records. The best fit diagnosis is schizoaffective disorder. She has benefitted from treatment with antipsychotic and mood stabilizing medications. She also has a history of substance use. Her psychotic disorder is primary and independent of substance use.
2. At the time of the events leading to her arrest, Ms. Fletcher was delusional and believed that the victim had sexually abused her son in the past and would continue to abuse him in the imminent future. She had previously acted on this delusion multiple times in the past by alerting child protection services, medical professionals, law enforcement and other agencies in attempts to engage them in protecting her son from ongoing sexual abuse. She believed she had exhausted all available remedies offered by society to protect her son.

Ms. Fletcher reported a personal history of physical abuse from the victim. At the time of the events leading to her arrest, she believed that if she attempted to run away with her son, the victim would physically overpower her and that both she and her son would be further victimized.

3. As a result of her delusional beliefs, Ms. Fletcher did not know the wrongfulness, including the legal wrongfulness, of her behavior. Specifically, she believed that she was properly acting to defend her son from ongoing sexual abuse based on her delusions, her complete lack of insight and the lack of other alternatives.

Please contact me if you have any questions about this report.



Melissa Piasecki, M.D.

Code: 3880
MARC PICKER, BAR #3566
WASHOE COUNTY ALTERNATE PUBLIC DEFENDER
BILL HART, BAR #11986
DEPUTY ALTERNATE PUBLIC DEFENDER
350 SOUTH 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,
Defendant.

Dept. No. 7

RESPONSE TO STATE'S MOTION FOR DISCOVERY RELATED TO INSANITY
DEFENSE

Defendant KATHERINE DEE FLETCHER, by and through counsel, above-named,
hereby Responds to the States Motion for discovery related to insanity defense. This motion is
made and 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.

DATED October 4, 2019.

MARC PICKER
Washoe County Alternate Public Defender

By: /s/ Bill Hart, Esq.
BILL HART, ESQ.
Deputy Alternate Public Defender

1 **POINTS AND AUTHORITIES**

2 The state appears to have filed its motion to remind Ms. Fletcher of its duties as it
3 relates to NRS 174.245 (1)(b). As the court docket shows, a report from Dr. Piasecki was filed
4 on September 23, 2019, the same day the state filed its report from their proposed expert
5 witness, Dr. Zuchowski.
6

7 Dr. Henson has been a doctor for Ms. Fletcher throughout her time at Lake's Crossing,
8 and as has filed numerous reports as to Ms. Fletcher's mental status.¹ He is also a proposed
9 expert for the state.

10 The defense noted that the requirements of NRS 174.245 is specific to reports "the
11 defendant intends to introduce in evidence during the case in chief."

12 NRS 50.305 does not require an expert to hand over all notes or reports made to support
13 their testimony. All the experts' testimony will be based on numerous conversations they have
14 had with Ms. Fletcher over the course of many years. The state has been aware of Ms.
15 Fletcher's extensive and ongoing mental health treatment including but not limited to her past
16 NRS 432B case involvements. All relevant reports and disclosures have been made, timely.
17

18 **CONCLUSION**

19 Ms. Fletcher is aware of the statute and its requirements and will follow the proper
20 procedure for any admitted evidence in this trial.

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AFFIRMATION PURSUANT TO NRS 239B.030

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

Respectfully submitted October 4, 2019.

MARC PICKER
Washoe County Alternate Public Defender

By: /s/ Bill Hart, Esq.
BILL HART, ESQ.
Deputy Alternate Public Defender

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County
3 Alternate Public Defender, over the age of 21 years and not a party to nor interested in the
4 within action. I certify that on this date, I will deposit either for mailing in the U.S. Mails, with
5 postage fully prepaid, or by interoffice mail, or court-run delivery where indicated, a true and
6 correct copy of foregoing document to the following:
7

8 Amos Stege
9 Deputy District Attorney
Via Electronic Filing

10 DATED October 4, 2019

11
12 /s/ Shannon Hambright
13 SHANNON HAMBRIGHT
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1 CODE 3795
2 Christopher J. Hicks
3 #7747
4 P.O. Box 11130
5 Reno, NV 89520
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 REPLY IN SUPPORT OF 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 Reply in Support of its Motion for Discovery
Related to Insanity Defense. This Motion is made and based on the
memorandum of Points and Authorities submitted herewith.

///

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///

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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 9th day of October, 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 Dated this 9th day of October, 2019.

11
12
13 /s/Amos Stege
14 AMOS STEGE
15 9200
16 DEPUTY DISTRICT ATTORNEY
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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 October 17, 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 By: MARC PICKER, ESQ.
12 350 S. Center
13 Reno, Nevada
14
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1 RENO, NEVADA, October 17, 2019, 1:30 p.m.

2

3 --oOo--

4 THE CLERK: Case number CR17-0690A, State versus
5 Katherine Dee Fletcher. Matter set for pretrial motions and
6 motion to confirm trial. Counsel, please state your
7 appearance.

8 MR STEGE: Amos Stege here for the State of
9 Nevada.

10 MR. HART: Bill Hart from the Alternate Public
11 Defender's Office with Marc Picker, along with Ms. Fletcher
12 who is in custody.

13 THE COURT: Good afternoon, Ms. Fletcher. Good
14 afternoon, counsel. Welcome to you all. This is the time
15 and date set to do a number of things. First, I want to use
16 this as the motion to confirm trial. Counsel, are you
17 prepared to proceed to trial?

18 MR. HART: Yes, your Honor, we are. The one
19 request we would like to make based on that is an order to
20 keep Ms. Fletcher here in the Washoe County Jail. Since
21 there will be just a two-week pause there, we want to make
22 sure she doesn't get transported back and forth.

23 THE COURT: Mr. Stege.

24 MR STEGE: Yes.

1 THE COURT: I order that Katherine Fletcher remain
2 incarcerated in the Washoe County Jail pending trial.

3 MR. HART: Thank you, your Honor.

4 THE COURT: So we'll confirm trial. Let's talk
5 about the schedule of trial just briefly. We're set to
6 commence on November 4th. We have that whole week and the
7 second week begins with holiday on Monday. So we have a
8 truncated week the second week. How many witnesses, I'm not
9 going to hold you to the number, do you anticipate calling in
10 total number, Mr. Stege?

11 MR STEGE: I wish to answer that different way,
12 being I think we'll take the entirety of those two weeks set
13 out.

14 THE COURT: I know there are a number of
15 physicians that have been notified as expert witnesses.

16 MR STEGE: Right.

17 THE COURT: Folks who were involved in competency
18 evaluations of Ms. Fletcher and/or treatment of Ms. Fletcher
19 or both at NNAMHS, et cetera. I know we have a number of
20 physician or expert witnesses, but apart from that?

21 MR STEGE: Apart from that, I'd say roughly 20
22 between both of those cases.

23 THE COURT: Mr. Hart, any concerns about the
24 length of trial?

1 MR. HART: No. I think two weeks -- I think
2 Mr. Stege is right, it's going to go the full two weeks. We
3 have between 10 and 15 witnesses, we believe.

4 THE COURT: It sounds as though I should plan on
5 not conducting either criminal calendars on Wednesdays or the
6 Project One calendar on either of those two weeks, which is
7 Tuesday morning. I also have a guardianship calendar on
8 Friday that I can seek coverage for. It sounds like you
9 anticipate we'll need that time. Is that accurate?

10 MR STEGE: Yes. I would rather disappoint the
11 Court by going short than long.

12 THE COURT: I appreciate that. I'll just reassure
13 you that we'll have full trial days, then, each of the days
14 we conduct trial is really the purpose for this conversation.

15 Given that there are a number of experts, I'll
16 offer an entreaty to you all, the temperatures of the
17 pleadings is medium to high and I would expect all of you to
18 cooperate with one another about scheduling of those experts,
19 taking people out of turn and/or in one another's cases to
20 accommodate their needs.

21 I don't want to put too much more pressure on you
22 related to those experts or their identities at this juncture
23 with three weeks out, but any questions about that as an
24 overall guideline?

1 MR. HART: No, your Honor.

2 THE COURT: Any other issues you all want to raise
3 about the conduct of trial?

4 MR. HART: No.

5 THE COURT: I'll tell you, then, I'd like to begin
6 with the request for an early jury panel list. The original
7 motion was filed February 1st, 2019. I've consulted with the
8 jury trial commissioner about the request. It's an unusual
9 request, not an unheard of request, it's an unusual request.
10 Given that the request fundamentally as I understand from the
11 defense is because of scheduling concerns related to the
12 people who would evaluate the list, for lack of a better
13 term, I want to be sensitive to that. I also want to be
14 consistent with what the district has done.

15 Ms. Lane, the jury commissioner, tells me they've
16 never given a list more than a week in advance. I assume
17 that to be true. I don't know. So my inclination is to
18 grant the motion in part and make the jury trial list
19 available to both parties as of October 28th, the Monday
20 before the Monday trial. Anybody want to make a record about
21 that?

22 MR. HART: No, your Honor.

23 MR STEGE: No, thank you.

24 THE COURT: I'll grant that motion in part. I'll

1 ask the defense to craft an order consistent with that grant.

2 I believe there's an agreement as to equal access
3 to jury information. Traditionally, what I've done is
4 whenever you pull that, if you pull it, Mr. Stege, I ask that
5 a copy of the original be available to my clerk. She'll make
6 a copy of that available to the defense. They can use it and
7 then return that copy to me.

8 I make a copy of that information, not the
9 original, but a copy of that information a part of the record
10 in every case in which I do it. Will that process be
11 acceptable to the State?

12 MR STEGE: Yes.

13 THE COURT: And the defense?

14 MR. HART: Yes.

15 THE COURT: All right. Do either of you have any
16 witnesses you intend to adduce for any of the balance of the
17 motions this afternoon, Mr. Stege?

18 MR STEGE: Does the Court want witnesses on any of
19 the motions?

20 THE COURT: I would suggest I need some witnesses.
21 For example, the next in order motion is the defendant's
22 prior statements. There's some specific assertions by a
23 Mr. Hensle, as I understand it, that are the most probative
24 in my eye to this discussion. I know that there are topics

1 of other statements through other people, I'll call it, that
2 are a little more attenuated, at least two or three levels of
3 hearsay. Your thoughts.

4 MR STEGE: I agree. Mr. Hensle is present. I
5 want to tell the Court, if we might look at or ask the Court
6 if we might look at the alternative means of testimony motion
7 before that. As it relates to the counselor, Mr. Hicken, I
8 filed a request that he appear by telephone. He is prepared
9 to do that, sort of standing by at 2:00 if the Court is --
10 wants to do that.

11 THE COURT: My only -- let me say, I think the
12 rules related to telephonic appearance in criminal cases and
13 the Supreme Court's ADKT and a variety of other sources
14 mandate, and let me drop an aside, to my irritation, that I
15 allow limited and in certain circumstances alternative means
16 for testimony.

17 I hate it, because the phone lines are always
18 problematic. In the Family Division, I probably did 20 phone
19 calls a day in various hearings and it was just chaos, quite
20 honestly. You had mentioned very early on, I think February
21 of this year, that you might need to call him telephonically,
22 but then the motion was submitted two days ago. We'll just
23 smile about that.

24 MR STEGE: I put that issue out there for the

1 Court's consideration.

2 THE COURT: I intend to grant the motion. I'll
3 let you make a record on it and I'll give you my rationale
4 for it and then let you make a record, Mr. Hart.

5 First, as I understand it, the witness's name is
6 Mr. Hicken, H-i-c-k-e-n. And Mr. Hicken had provided a
7 report attached to the initial motion by you. What I
8 understand your desire to be is to let him supplement that
9 report today. Inasmuch as this is a pretrial decision about
10 whether or not I'll allow another witness to appear by
11 alternate means, I will grant the motion today. But I'll let
12 you to make a record, Mr. Hart.

13 MR. HART: I think the record really reflects our
14 objection. This is a major issue for this trial. The
15 testimony of Max Trask will be a vital witness for both State
16 and defense. I imagine his testimony might go all day.

17 Any support with that, I think, would really
18 require Mr. Hicken to be here to see his reactions, to see
19 how he does. I'm not a big fan of phone either, especially
20 when we have something that is going to be decided with
21 such weight to it and this is a very weighty motion. And so
22 that's our record.

23 THE COURT: I hear and understand that motion.
24 I'll tell you, I had a civil jury trial last week that had a

1 number of appearances by alternative means, there was a
2 problem with every one and it's just problematic. When I
3 talk to my colleagues on the Supreme Court about this issue,
4 I say, really, you want me to take credibility determinations
5 when I can't even hear the people?

6 Set that aside. To my eye, Mr. Hicken's personal
7 appearance is not required for this motion. I'll grant the
8 motion for him to appear telephonically for purposes of
9 whatever he's going to do. But you bring to mind a point I'm
10 going to want to discuss when we get to this motion, which
11 is: Young Mr. Trask is within your subpoena power and I
12 don't know if you intend to subpoena him and I would like to
13 know that before I rule on Mr. Stege's motion.

14 MR. HART: With Max residing in Utah, I don't
15 believe that he would --

16 THE COURT: You could seek a uniform process for
17 service of subpoena in another state just like the State does
18 in any case, as I understand it. I'm happy to be corrected
19 and I could always be wrong, but there is a process to
20 subpoena persons who are out of state.

21 MR. HART: I would think that we will explore that
22 option depending on how everything goes.

23 THE COURT: I ask, and we'll come back to this,
24 because it would seem to me to be kind of a futile thing for

1 me to decide whether or not the State can have this child
2 appear by alternative means if you intend to compel his
3 attendance by way of a subpoena.

4 MR. HART: We would.

5 THE COURT: We'll come back to that. So let's
6 begin -- how would you like to begin, Mr. Stege? What I mean
7 by that is do you want to break up Mr. Hensle's testimony or
8 do you want to begin on the motion that requires Mr. Hicken,
9 who is not available quite yet?

10 MR STEGE: I'm going to suggest we try Mr. Hicken
11 a little bit early.

12 THE COURT: Let's go ahead and do that.

13 MR STEGE: As we set up for this, your Honor,
14 there is a supplemental report of Mr. Hicken, it has been
15 provided in discovery, that I do wish the Court to review.

16 THE COURT: Would you approach? Have you seen
17 this, Mr. Hart?

18 MR. HART: I have, your Honor.

19 THE COURT: Do you have any objection to me
20 considering this for purposes of this hearing?

21 MR. HART: No, your Honor.

22 THE CLERK: Exhibit 1 marked for identification.

23 (Discussion off the record.)

24 MR STEGE: Away we go. Mr. Hensle, then.

1 THE COURT: Let's begin with Mr. Hensle. I
2 understand him to be in custody. If you would invite him
3 into the courtroom, please.

4 MR STEGE: Your Honor, I wonder if the Court might
5 highlight for me, the Court indicated it was particularly
6 interested in Mr. Hensle. I wonder if you might --

7 THE COURT: Of the prior statements of the
8 defendant that you mentioned, the one that seemed most
9 admissible, if any are admissible, are the statements of
10 Mr. Hensle. In particular your motion, I may have missed it,
11 but your motion didn't give much context to the timing of the
12 alleged statements of the defendant and I need context for
13 the timing and circumstances.

14 MR STEGE: Should I also address, I'm seeking
15 separately a bad act issue with Mr. Hensle.

16 THE COURT: I think you should address that, yes.
17 Mr. Hensle, welcome. Follow the directions of the bailiff,
18 please.

19 (One witness sworn at this time.)

20 MR STEGE: Your Honor, I don't know if the rule of
21 exclusion has been invoked. I would do so at this time.

22 THE COURT: Do you want to respond?

23 MR. HART: No objection.

24 THE COURT: So anyone in the courtroom currently

1 who has been identified as a witness or expects to be a
2 witness, I'll ask you to step outside the courtroom and
3 instruct that you may not discuss your testimony or the
4 testimony of any other witness with any other witnesses or
5 anyone other than the parties and their attorneys. If you
6 would step out? Thank you.

7 JESSE HENSLE

8 called as a witness and being duly sworn did testify as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. STEGE:

12 Q. Thank you. Sir, can I have your attention? Would
13 you please state and spell your name?

14 A. Jesse Hensle, J-e-s-s-e, H-e-n-s-l-e.

15 Q. You find yourself in custody this afternoon for
16 what reason is that?

17 A. Minor traffic infractions.

18 Q. You also have pretrial matters or matters that
19 have not resulted in either trial or some other resolution?

20 A. Oh, yes. I failed to appear, because I was off
21 duty on work.

22 Q. Related to what type of case?

23 A. I'm sorry?

24 Q. What's that case that you failed to appear on?

1 A. Traffic infractions.

2 Q. Are you familiar with Katherine Fletcher?

3 A. Yes.

4 Q. And how is it you're familiar with her? How do
5 you know her?

6 A. How do I know her?

7 Q. Yes.

8 A. We met -- we met online.

9 Q. Okay. And after you met online, did you have some
10 degree of relationship?

11 A. Yes.

12 Q. And what was the nature of that relationship?

13 A. At first, it was I needed her to baby-sit. I
14 needed to be -- I needed her to be a caregiver.

15 Q. Okay.

16 A. And it evolved into an intimate relationship.

17 Q. And do you know the time frame of this?

18 A. I don't recall.

19 Q. And during that period, it resulted in a case or a
20 report of her stealing guns from you?

21 A. I'm sorry?

22 Q. You reported that she stole guns from you during
23 your relationship?

24 A. No, not during. After.

1 Q. So you reported that after she had left?

2 A. Yes.

3 Q. Okay. After she had left living with your house,
4 did you still have occasion to meet with her?

5 A. Correct.

6 Q. And in what context? Why?

7 A. Purely sexual.

8 Q. And how did that work? Would she come over to
9 your house?

10 A. No.

11 Q. Would you go over to her house?

12 A. No.

13 Q. Besides having sexual intercourse, did you ever
14 like go on a date with her?

15 A. No.

16 Q. And were you in this sort of just having sex
17 relationship with her or just having sex phase when you
18 learned that she was charged with murder?

19 A. I'm not sure I understand the question.

20 Q. Did you ever learn that she was charged with
21 murder?

22 A. I did. I was sitting on my couch and it came on
23 the news.

24 Q. And when it came on the news, was this close to

1 the time that you and Fletcher were just having sex?

2 A. That was after -- that was after maybe two weeks
3 of our last encounter.

4 Q. I want to ask you if can reflect back to your time
5 with Ms. Fletcher. Was there a time where she ever showed
6 you a firearm?

7 A. Yes.

8 Q. And what did she do with that firearm? Did she
9 say anything while showing that to you?

10 A. Did she do anything with it?

11 Q. What did she do?

12 A. Showed me a firearm that was jammed.

13 Q. And how do you know it was jammed?

14 A. Because she told me.

15 Q. And what did she say besides it was jammed?

16 A. If I could fix it. Asked me if I could fix it.
17 Asked knee if I knew what was wrong with it, how to get it
18 unjammed.

19 Q. And what was your response?

20 A. I'm not touching it.

21 Q. Where did this happen? Where was it when this
22 happened?

23 A. It was in Red Rock, Reno.

24 Q. And were you guys at someone's house, out in

1 public?

2 A. Out in the desert.

3 Q. And what kind of gun was it?

4 A. I'm not sure exactly what kind of gun. It was
5 small.

6 Q. And --

7 A. I didn't take too close to look at it to see what
8 it was. I just remember it being small.

9 Q. Was it a rifle, pistol, revolver?

10 A. It was a smaller pistol.

11 Q. Not a revolver?

12 A. No.

13 Q. Did you have an impression or any knowledge of
14 what caliber that firearm was?

15 A. Well, given my experience, it was a smaller
16 caliber, maybe a 380 or a nine-millimeter.

17 Q. And you do have some experience with firearms?

18 A. Yes, sir.

19 Q. This issue where she showed you a -- well, do you
20 remember the color of it?

21 A. It was -- seemed like it was multi-colored,
22 multi-colored black and pink, maybe.

23 Q. Do you know or did Ms. Fletcher ever say where
24 that particular gun came from?

1 A. No.

2 Q. Was that gun she showed you either of the guns she
3 was accused of stealing from you?

4 A. No.

5 Q. When did this happen where she showed you the
6 jammed gun?

7 A. I thought I said it was maybe a couple of weeks
8 before that I saw that it on the Sunday night news.

9 Q. A few weeks before the news?

10 A. Right.

11 Q. I'm going to ask you about during your time
12 with -- knowing Ms. Fletcher, did she ever mention Rob or
13 Robert or the man who was the father of her child Max?

14 A. Yeah, we lived together, absolutely.

15 Q. And did she say -- what did she say about him?

16 A. She said he was not a very good person.

17 Q. Did she ever make statements about wanting to kill
18 him?

19 A. No.

20 Q. Did she ever make statements that she wished he
21 was dead or would die?

22 A. Yeah, but, I mean -- yes.

23 Q. Well, which one, that she wanted to kill him or
24 she wished he was dead?

1 A. The latter.

2 Q. You were interviewed by a detective in this case,
3 is that right?

4 A. I was interviewed by somebody. I don't know what
5 it was. I don't recall what his affiliation was.

6 Q. You don't recall what --

7 A. I don't recall what his affiliation was.

8 Q. Okay. In fact, you were interviewed by a man by
9 the name of Dustin Allen?

10 A. Okay.

11 Q. Well --

12 A. I don't recall. I can -- it took me a year to
13 learn my own name, so I'm terrible with names.

14 Q. So you don't remember the guy's name, but you do
15 remember being interviewed?

16 A. Correct.

17 Q. And this occurred at 24H Silver Lake? Is that an
18 address that is familiar to you?

19 A. Oh, yeah, that's my address.

20 Q. So did this person come out to your place and
21 interview you about this?

22 A. There wasn't an interview. I got served a piece
23 of paper by I think that gentleman right back there.

24 Q. Okay. And that's some relation to testifying in

1 this case?

2 A. That is a relation to the -- I believe it was a
3 relation to this case. I was just telling him that I just
4 wanted my gun back and you know.

5 Q. And do you remember what the guy looked like? Not
6 the gentleman here in court, but the other gentleman?

7 A. I don't remember anybody else coming into my house
8 and interviewing me.

9 Q. Do you remember in fact that you were given a copy
10 of the transcript of this interview?

11 A. Given a copy of the transcript of what interview?

12 Q. The interview that I'm about to show you.

13 THE COURT: Let's mark it if you're going to show
14 it to him.

15 THE CLERK: Exhibit 2 marked for identification.

16 MR. STEGE: May I approach the witness?

17 THE COURT: Have you shown it to counsel? And you
18 may approach the witness. And please approach freely after
19 the courtesy of asking.

20 MR STEGE: I appreciate that. I have shown it to
21 counsel.

22 BY MR. STEGE:

23 Q. In fact, you were shown this and given a copy of
24 this exact transcript, weren't you?

1 A. I don't recall that.

2 Q. Would you like to look at it?

3 A. Yeah.

4 Q. Please do.

5 MR. STEGE: I wonder, your Honor, if the deputies
6 are comfortable if we may remove one hand for Mr. Hensle?

7 THE COURT: It's your call, deputy. It might make
8 it easier for him to flip through it.

9 MR. PICKER: With that request, we'd ask the same
10 courtesy be shown to Ms. Fletcher so she can more comfortably
11 write notes.

12 THE COURT: I'm happy, as long as there's no
13 concern by the deputies present that one of her hands be
14 free. I thought it was. I'm sorry.

15 MR. PICKER: Thank you, your Honor.

16 THE WITNESS: Are you saying that I got a copy of
17 this?

18 BY MR. STEGE:

19 Q. I'm asking whether it's true you were in fact
20 given a copy of that by my office?

21 A. No. I never got a copy. If I had a copy of this,
22 I would have read through this and been upset that they
23 misspelled my name. No. I've never received a copy of this.

24 Q. Okay. But you were in fact interviewed at your

1 apartment on May 10th of 2017?

2 A. I was not interviewed. Some guy showed up behind
3 me and handed me a subpoena.

4 Q. Right. And that's related to this. I'm asking
5 after the murder, before you were subpoenaed for court, you
6 weren't you interviewed by Dustin Allen?

7 A. I don't know. I don't think so. There's nobody
8 that interviewed me at my house. There was a lady, her name
9 was -- she said she worked for the Public Defender's Office.
10 It was a little shorter older lady.

11 Q. Okay.

12 A. And her and I kind of had a little chat, but I was
13 not interviewed.

14 Q. Well, this was in fact the detective asked you
15 about a postcard you had recently received from Ms. Fletcher.

16 A. Okay.

17 Q. Right? And a police officer came and asked you
18 about that?

19 A. No. When I talked about the postcard, I was in
20 one of y'all's offices.

21 Q. In fact, you talked about it before, because in
22 response to being asked about it, you said, for example, I
23 can't read it, though, to the handwriting.

24 A. I believe that was over the phone with somebody I

1 was talking.

2 Q. Okay. So is this now becoming fresher in your
3 mind, this conversation with Detective Allen?

4 A. The conversation, yes, not at my house.

5 Q. Okay. And, in fact, you guys talked about your
6 relationship, how it came to be how she was living in your
7 house?

8 A. Right. I'm pretty sure I told him everything I
9 told y'all.

10 Q. Wasn't one of the things, for example, you said
11 that she wanted him to disappear?

12 A. Okay.

13 Q. Is that a thing that you stated to the officer?

14 A. Sounds familiar.

15 Q. Why does it sound familiar?

16 A. I mean, if I had somebody bad in my life, I would
17 probably want them to disappear as well.

18 Q. Does that sound familiar because that's a thing
19 she said?

20 A. Yeah.

21 Q. And, in fact, you talk about how she would say it
22 and the next month she would say, in your words, the same
23 damn thing, wanting him to disappear?

24 A. Oh, yeah. I mean, there was a lot of rambling

1 going on.

2 Q. Was there a lot of this rambling going on about
3 the subject of this guy disappearing or dying?

4 A. No. Just about how awful he was, how he was with
5 the kids.

6 Q. And did, in fact, she say -- or didn't you say,
7 there are a couple of times when she said she would love to,
8 and you say qua or you don't fully say what happens?

9 A. I'm sorry?

10 Q. Would you please read --

11 MR. PICKER: Your Honor, I didn't hear a question.
12 I'm not sure why the witness is being shown a document at
13 this point.

14 THE COURT: I'm a little, if I may suggest, you
15 might ask him: Do you recall saying, X, Y and Z? If not,
16 would looking at this help refresh your recollection? Please
17 go ahead.

18 BY MR. STEGE:

19 Q. Did you make the statement: There were a couple
20 of times when she said she would love to qua?

21 A. Qua -- what does qua mean?

22 Q. Do you recall making that statement?

23 A. There's a couple of times -- no, because I don't
24 know what qua means. I would never use that word.

1 Q. Then weren't you asked: Hey, well, what does that
2 mean, qua?

3 A. I don't recall ever using that word.

4 Q. And do you remember making the statement, kill
5 him?

6 A. No.

7 Q. Would it refresh your recollection to see the
8 transcript of that interview?

9 A. Yes.

10 Q. Please direct your attention here to page 12 of
11 37, line 41.

12 A. Oh, okay. I think I know what that is in
13 reference to. I don't know what the qua is, but --

14 Q. If I can ask you a question: Does that refresh
15 your recollection?

16 A. It does. Seems like I was talking on the phone
17 when I was at work with that guy.

18 Q. You think qua -- you said something else?

19 A. It could have been the way I speak, I mumble
20 sometimes.

21 Q. But you agree, what about this statement when the
22 detective asks: Well, what does that mean? And you said
23 kill him?

24 A. I don't recall that. Maybe I did. I do recall

1 those particular -- or that sort of statement.

2 Q. Okay.

3 A. Of crossing that sort of statement being a part of
4 one of our conversations.

5 Q. Okay. And coming from her more specifically that
6 she wanted to kill him?

7 MR. PICKER: Objection, leading and misstates the
8 testimony.

9 THE COURT: Hang on. When there's an objection if
10 you'll just stop talking, that would be great. I sustain the
11 leading objection. Rephrase.

12 BY MR. STEGE:

13 Q. And did that in fact statement -- who did that
14 statement come from?

15 A. That statement -- she didn't say that she wanted
16 to, quote, kill him, but I believe that's more or less gist
17 of it. Do you know what I'm saying?

18 Q. I don't quite know what you're saying.

19 A. It's a little vague.

20 Q. And maybe if you would tell us, what would she say
21 that would make you think that -- or if anything that she
22 wanted to kill him?

23 A. Because the words, I can't remember the exact
24 words, but it was more on the lines of it would be nice if he

1 weren't around to abuse the kids.

2 Q. Okay.

3 A. And that suggested to me that, yeah, kill, right.

4 Q. And do you recall her demeanor? Well, how many
5 times do you think she said -- made statements like that?

6 A. Every time she'd come back from court of dealing
7 with the whole situation.

8 Q. And was she dealing with the whole situation in
9 this time frame right up before she was -- you saw her on TV?

10 A. She was dealing with the whole situation the whole
11 time I knew her.

12 Q. And was she making these types of statements that
13 whole time that you knew her?

14 A. Yeah. I mean, she was saying he's a pretty bad
15 dude the whole time.

16 Q. And making further statements that you're not
17 quite sure of indicating that she wished he was dead?

18 A. Making statements in the way that she wanted him
19 to just disappear. Meaning, I put it in the context of kill,
20 I think just because I'm a guy, right. So it's -- it's -- I
21 don't recall the exact words that was exchanged between us,
22 but from my recollection, that's what I got out of it.

23 Q. Okay. But if that's what you're getting out of
24 it, why do you say kill him to the detective?

1 A. Because that would get him out of the children's
2 life. I mean, that would get him -- that would eliminate the
3 problems.

4 Q. And do you recall being asked: Did she ever say
5 how, meaning how to kill him? Do you recall being asked
6 that?

7 A. No.

8 Q. Did you ever in response to a question, that
9 question or one like it say: She mentioned different things
10 that you would see on TV, you know.

11 A. I don't recall saying that particular statement,
12 but, I mean, we definitely learn a lot of violence from TV.

13 Q. Would it refresh your recollection to see the
14 transcript as to whether you made that statement?

15 A. I read that statement when I had it.

16 Q. Okay. And did that refresh your recollection
17 about yourself having made that statement?

18 A. No.

19 Q. But you agree it is in the transcript?

20 A. Oh, yeah. I mean, if I can -- if I recall, I was
21 at work and I was trying to just get that guy off the phone,
22 just trying to, you know, be cooperative.

23 Q. So to get him off the phone, you said kill him, is
24 that right?

1 A. No.

2 Q. Okay. But you said kill him, because that was
3 what?

4 A. That was the easiest, in my mind, that was the
5 easiest way to fix the situation, because it sounds -- the
6 gist that I got of it is that he was winning custody of
7 children that he was being terrible to. So it's -- it only
8 fit.

9 Q. And the things she was saying led you to believe
10 that she wanted either him dead or to kill him?

11 A. At least out of the picture.

12 Q. How many times do you think she said statements
13 like this?

14 A. Like I said, I mean, every time she had to go to
15 court and come back or if she was having a bad day and she
16 wanted to talk.

17 Q. Okay. And what was her demeanor when she said
18 that?

19 A. Always nervous, always anxious, because it was --
20 it always revolved around the kids.

21 Q. Did she ever make -- did you ever tell the
22 detective that her demeanor when she said that was just
23 always hateful?

24 A. Well, I mean, wouldn't -- I mean, maybe I said

1 that and it makes sense if I wanted somebody out of my life,
2 I would probably be kind of hateful towards him.

3 Q. Was he in fact hateful towards him?

4 A. I never witnessed her being hateful, but I
5 witnessed verbal in just malice, I guess.

6 Q. Her statements about him that had malice in them?

7 A. Right.

8 Q. Including hateful statements?

9 A. I don't know what hateful is. I mean, what you're
10 trying to say hateful is, but I can't say that it was
11 hateful.

12 Q. Okay. Would it refresh your recollection on this
13 question of whether you described her demeanor as hateful to
14 see the transcript of this interview?

15 A. I believe you.

16 Q. You believe that --

17 THE COURT: So if you would answer the question?
18 The question was: Would seeing the transcript refresh your
19 recollection? You said, I believe you. It sounds like
20 you're saying, no, it wouldn't refresh your recollection. I
21 believe it's there, but it's not going to refresh your
22 recollection.

23 THE WITNESS: Okay. Yes.

24 THE COURT: Go ahead.

1 BY MR. STEGE:

2 Q. So if it says here in the transcript you said,
3 just always hateful, you believe me that's what you said?

4 A. Yes.

5 Q. And did you also say in this interview or this
6 conversation with the officer that she had said that going on
7 a dozen times?

8 A. What?

9 Q. Wanting to kill him?

10 A. I don't recall saying that she wanted to kill him
11 a dozen times. I recall her saying that -- more or less
12 griping about him a dozen times.

13 Q. Okay. But you agree with me it says hateful, and
14 if it says hateful, that's what you said?

15 A. Right.

16 Q. It says kill him, right?

17 A. Right.

18 Q. And so would you also agree, then, that is what
19 you said?

20 A. Yes.

21 Q. When was the last time -- you said that this gun
22 incident was a couple of weeks before she was on TV. When
23 was the last time she made statements like this about either
24 kill him or want him out of the picture?

1 MR. PICKER: Objection, again, misstates the
2 testimony. He specifically said --

3 THE COURT: I don't want a speaking objection.
4 Misstates the testimony. Do you want to respond?

5 MR STEGE: It's a rather open-ended question
6 giving options.

7 THE COURT: It is. I'm going to give you some
8 latitude both if as you follow-up if you decide to and with
9 the question. Overruled. Go ahead.

10 BY MR. STEGE:

11 Q. Go ahead. When do you think the last time was
12 that she made a statement like that in your presence?

13 A. I believe it was the last time she had gotten out
14 of court with the guy.

15 Q. Okay. And when was that in relation to this gun
16 thing?

17 A. Months.

18 MR STEGE: Court's indulgence.

19 THE COURT: Take a moment.

20 MR STEGE: I'll pass the witness.

21 THE COURT: Do you want to take a break and try to
22 get the other gentleman on the phone?

23 MR STEGE: Let's try it.

24 THE COURT: Let's see if we can connect with him.

1 If we can, I'll interrupt your examination, Mr. Picker. If
2 we can't, I'll of course let you undertake cross examination.

3 (Discussion off the record.)

4 Please go ahead with cross examination,
5 Mr. Picker.

6 MR. PICKER: Thank you, your Honor.

7 CROSS EXAMINATION

8 BY MR. PICKER:

9 Q. Good afternoon, Mr. Hensle.

10 A. Good afternoon.

11 Q. When you first were talking to the prosecutor a
12 couple of minutes ago and he showed you the transcript of
13 what he has claimed to be your interview, you said you had
14 never seen it, is that correct?

15 A. I have never received a copy of that transcript.

16 Q. I believe you said something about your name. If
17 you would have seen it, you would have done something?

18 A. Oh, yeah, I would have definitely remembered
19 because the name is spelled all wrong.

20 Q. In fact, your name is spelled incorrectly
21 throughout the transcript?

22 A. Correct.

23 Q. If you were asked to spell your name at some point
24 by a police officer, you would have spelled it correctly,

1 let's assume that, is that correct?

2 A. Yes.

3 Q. You've never seen this transcript so you have no
4 idea whether any part of it is accurate?

5 A. I have yet to see it until just now.

6 Q. So you weren't given a chance at any point to
7 review it?

8 A. Correct.

9 Q. Now, I'm going to jump around a little bit, so
10 please stay with me. I believe the prosecutor just asked you
11 again, or asked you when the last time Ms. Fletcher made any
12 kind of statement to you or any kind of comment to you about
13 Rob Trask. And did I hear you right, you said it was months
14 prior to her being arrested?

15 A. If I recall, it was, yeah.

16 Q. So it was an extended period of time?

17 A. Correct.

18 Q. There had been an extended period of time where
19 your interactions with Ms. Fletcher didn't involve
20 conversation?

21 A. Correct.

22 Q. For an extended period of time?

23 A. Correct.

24 Q. Six months?

1 A. I'm not much of a talker. I don't -- correct.

2 Q. So for at least six months or maybe longer, is
3 that right?

4 A. I don't know if it would be longer than six
5 months.

6 Q. But probably right around six months?

7 A. Yeah.

8 Q. Now, you were asked repeatedly about your comments
9 that was on page 12 of the transcript where you asked: What
10 does that mean? And then the next statement attributed to
11 you is: Kill him. And I want to make sure it's clear.
12 Ms. Fletcher never used the word kill, did she?

13 A. No. No. Absolutely not.

14 Q. In fact, she never at any time in the whole time
15 you knew her ever said she would commit any kind of violent
16 act against Rob, did she?

17 A. No, she didn't.

18 Q. And her concern overwhelmingly throughout the
19 whole time you had any interaction with her was for the
20 safety of her children?

21 A. Correct.

22 Q. Okay. And her belief that Rob Trask was harming
23 at least one of them, that being Max?

24 MR STEGE: Objection as to the relevance of these

1 questions.

2 THE COURT: Objection is relevance. Go ahead.

3 MR. PICKER: The State opened the door. They
4 asked the same question.

5 THE COURT: I overrule the objection. That means
6 you can answer the question. I think you did.

7 MR. PICKER: But let's make sure we have a clear
8 record on it.

9 BY MR. PICKER:

10 Q. So your understanding was that her complaints
11 about Rob Trask were because he was abusing at least one of
12 her children, specifically Max?

13 A. Correct.

14 Q. That was your understanding the whole time you
15 knew Ms. Fletcher?

16 A. Correct.

17 Q. And when you use the word, kill him, and I know we
18 just did this about a couple of times, just do it one more
19 time, that's your words?

20 A. Correct.

21 Q. And I think you said it's because as a guy that's
22 how you would react?

23 A. We're just a violent society, you know.

24 Q. Sure. Now, the firearm that Ms. Fletcher showed

1 you about two weeks prior to you seeing her on TV, were you
2 able to unjam it?

3 A. I didn't touch it.

4 Q. To your knowledge, was it ever in a working
5 condition?

6 A. No.

7 Q. And you said it was a pistol, not a revolver,
8 correct?

9 A. Correct.

10 Q. And forgive me, you said you thought it was a 380
11 or a nine-millimeter, is that correct?

12 A. It was a smaller caliber. It had to be a 380 or a
13 nine-millimeter or it could have been a 40-caliber, but
14 that's --

15 Q. Could it have been a 22?

16 A. It could have been a 22.

17 Q. So anywhere from 22 to possibly a 40 is what --
18 40-caliber is what it could have been?

19 A. I didn't look directly at the barrel. I didn't
20 look --

21 Q. You didn't want to touch it. You didn't want
22 anything to do with it?

23 A. I didn't want anything to do with it. The less I
24 knew about it, the better.

1 Q. Okay. When Ms. Fletcher would come back from
2 court or anything else and she would make statements about
3 Rob Trask, not wanting him to be in her child's life, did she
4 ever give you specific plans on how she planned to have that
5 happen?

6 A. No.

7 Q. But it was your understanding she continued to go
8 through the court system?

9 A. Yes.

10 Q. And to fight him in the court system?

11 A. Correct.

12 Q. And that seemed to be her intention all the way
13 along?

14 A. What intention?

15 Q. To keep going to court?

16 A. Oh, yeah.

17 Q. And keep fighting for her children?

18 A. Yes.

19 Q. She never told you, I'm tired of this, I'm just
20 going to take things in my own hands?

21 A. No. She never said that.

22 Q. And I don't mean to embarrass you, but you were in
23 court this morning, right?

24 A. Yes.

1 Q. And you were requesting or your attorney was
2 requesting to get you out on an OR?

3 A. I don't know. You guys use a lot of big words
4 around here. I don't know what she was requesting.

5 Q. You were trying to get out of custody?

6 A. Absolutely. I got a job. I got stuff to do.

7 Q. And one of the charges or actually two of the
8 charges that you're charged with currently have to do with
9 making a false statement to a police officer?

10 A. I disagree.

11 Q. I mean, you're charged with that. It may not be
12 true.

13 A. Oh, okay. Yeah.

14 Q. You're charged with that, is that correct?

15 A. Correct.

16 Q. And at your court hearing this morning, this man
17 appeared, didn't he?

18 A. Yes.

19 Q. And he argued to keep you in custody?

20 A. Yes.

21 Q. And he said it was because the -- your failures to
22 appear or your failure to appear and those kinds of things,
23 that reflected on your character, didn't it?

24 A. Absolutely.

1 Q. And that's what he said, wasn't it?

2 A. Absolutely.

3 Q. You don't agree with him, do you?

4 A. No.

5 MR. PICKER: That's all I have. I'm sorry. Thank
6 you, your Honor.

7 THE COURT: Redirect examination, Mr. Stege?

8 REDIRECT EXAMINATION

9 BY MR STEGE:

10 Q. Mr. Picker asked you to your knowledge was that
11 firearm ever working or in a nonworking condition, right?

12 A. Yeah.

13 Q. Did you know anything about that gun that you saw?

14 A. Other than the color and the size.

15 Q. Had you ever seen it before?

16 A. No.

17 Q. Was it your gun?

18 A. No.

19 Q. Did Ms. Fletcher say where she got the gun?

20 A. No.

21 Q. Did you know Ms. Fletcher to have any other guns?

22 A. Maybe a couple of BB guns.

23 Q. And what was the context of BB guns? Who did you
24 know about those?

1 A. I think when that particular firearm that we're
2 discussing showed up, there was a BB gun or two in her trunk
3 as well.

4 Q. Okay. This issue of this morning, you were quite
5 upset that you did not get out of custody this morning,
6 weren't you?

7 A. I'm upset that I ever was in custody, because it's
8 a minor traffic infraction.

9 Q. It is true that you in fact had a traffic
10 infraction from 2014 with multiple failures to appear?

11 A. A traffic infraction from 2014?

12 Q. Yes.

13 A. With NHP? That's the warrant.

14 Q. That's the one warrant?

15 A. Well, that warrant, they're still trying to do
16 that warrant on me and I was picked up last time for that
17 warrant.

18 Q. But it is true you do have failures to appear?

19 A. Because I work out of town.

20 Q. And failures to check in with pretrial services?

21 A. Because I work in the desert.

22 Q. And a new arrest on the top of the DUI that was
23 pending when you were arrested?

24 A. Yeah, just recently got arrested.

1 Q. And so this question of whether you will appear in
2 court, might you agree that might be related to your history
3 of failing to appear?

4 A. Can you rephrase the question?

5 THE COURT: Where are we going with this,
6 Mr. Stege? What's the relevance of this?

7 MR STEGE: It may relate to this man's custody
8 pending trial.

9 THE COURT: Well, that's not to be decided today.
10 In other words, I'm not going to make a decision today
11 whether or not he would be jailed as a material witness. You
12 would have to apply and there's a different process.

13 MR STEGE: Okay. Then I have no further
14 questions.

15 THE COURT: Any more recross?

16 MR. PICKER: Just a minute, your Honor.

17 THE COURT: Sure.

18 MR. PICKER: No, thank you, your Honor.

19 THE COURT: You may step down. Thank you,
20 Mr. Hensle. Just follow the directions of the bailiff.

21 For purposes of this, the other act evidence
22 and/or other statement evidence, are there any other
23 witnesses or evidence you want to adduce, Mr. Stege?

24 MR STEGE: As to these two acts, no.

1 THE COURT: So as to the balance of the motion, I
2 believe what you want to discuss, so we're clear here, were
3 four topics: The admission of some portion of the 432B case
4 or the child welfare case.

5 MR. STEGE: Yes.

6 THE COURT: This jammed gun issue, the target
7 shooting issue and the ammunition issue. That's my
8 understanding of the range of issues. I invite you to
9 present whatever evidence you want in support of the
10 admissibility of any of those.

11 MR STEGE: If I can move to my other acts motion?

12 MR. PICKER: I'm sorry, your Honor. Are we going
13 to argue motion by motion?

14 THE COURT: These all sort of fit in a very large
15 bucket in my view and I think they're interrelated. We can
16 argue them in a different order if you want.

17 MR. PICKER: The only reason I say that is Mr.
18 Hart and I have split up the motions, unless you want us to
19 slap hands as we decide who goes next.

20 THE COURT: I only want one on any motion. I
21 appreciate that.

22 MR. PICKER: Then I would ask that the motion
23 regarding the defendant's prior statements that we get to
24 argue it right now.

1 THE COURT: I want to make sure there aren't any
2 other statements you want to adduce, Mr. Stege.

3 MR STEGE: I have submitted the letter of
4 Ms. Serafin. I'll submit that on the letter for prior bad
5 acts case in chief purposes.

6 THE COURT: So do you want to let them go first
7 and then I'll give you the last word? How would you like to
8 proceed?

9 MR STEGE: I think it's easier that way.

10 THE COURT: I agree. Go ahead, Mr. Picker.

11 MR. PICKER: Thank you. I'll make it brief, your
12 Honor. The State has accurately quoted the law and one of
13 the most important parts of the statute are that the
14 statements are statements of then existing mental condition.

15 We have our sole witness under oath telling us at
16 least six months prior that these statements were made. So
17 they're not relevant to be soon in time.

18 Second of all, you've got the statement that the,
19 kill him, comment only came from this witness, never came out
20 of the mouth of Ms. Fletcher, according to him. That any
21 threats of violence only came from the mind of Mr. Hensle,
22 not came from the mouth of Ms. Fletcher, because she was
23 working within the court system, she continued to work within
24 the court system, never threatened any harm to anyone in

1 front of this witness.

2 So the statements being sought by the State don't
3 meet any even partial prong of the statute that would allow
4 those statements to come in. They are not credible. They
5 are not -- because they have no sworn testimony supporting
6 them. And, in fact, they are quite different than the State
7 has characterized them.

8 THE COURT: To the extent they have any relevance,
9 I grant you, Mr. Hensle to call him a reluctant witness would
10 be an understatement. He was not happy to be here, clearly.

11 But here's my concern, and I want you both to
12 consider this, inasmuch as the defense in case, as I
13 understand it, is a not guilty by reason of insanity defense,
14 implicit in that is an admission that she was the shooter.
15 Is it not?

16 MR. PICKER: If that is the defense that we go
17 with it at trial, that would be correct.

18 THE COURT: And the reason I ask is it makes the
19 relevance of this evidence nonexistent. In other words, if
20 it isn't an issue of who shot Mr. Trask, but instead the
21 mental state of the shooter, this is not relevant or
22 necessary, Mr. Stege.

23 And so as I'm going to say with several of the
24 motions, I always say trials are living, breathing things,

1 until -- I guess until there is an affirmative acknowledgment
2 implicitly or explicitly of the admission that she was the
3 shooter, this is some relevance. To my eye, it's relevant if
4 it's relevant at all, in rebuttal, not in case in chief.

5 This is probative of almost nothing. It was poor
6 quality testimony from Mr. Hensle. That doesn't include his
7 testimony about the gun, which is also connected to the issue
8 of whether or not an affirmative defense of not guilty by
9 reason of insanity is pursued. Because to my eye, if there
10 is evidence of her possession of a gun, that may be connected
11 to her mental state in some relevant way.

12 So all of that boils down to, gentlemen, I will
13 not allow you adduce this evidence in your case in chief,
14 Mr. Stege. And we'll have a hearing before any evidence is
15 proffered to the jury or any comment is made about it in any
16 statements used. Does that make sense?

17 MR STEGE: As to the statements portion?

18 THE COURT: Correct. As to the gun --

19 MR STEGE: If I might push the Court back a little
20 bit on that, I'm completely fine with that, but outside --
21 well, in an insanity or even outside of it, it really, I
22 think, goes to the question of premeditation and
23 deliberation. Even I concede not good testimony, but there
24 is some -- there's a direct relevance to that issue of

1 premeditation and deliberation either in or outside of
2 insanity. So --

3 THE COURT: Well, again, all I will say is right
4 now my order is you cannot adduce that evidence in your case
5 in chief.

6 MR STEGE: Okay. Very good.

7 THE COURT: If you intended to adduce that
8 evidence, I want notice of it in advance so we can have a
9 hearing outside the presence of the jury.

10 MR. PICKER: Thank you, your Honor. As to the
11 second part of this singular motion, that being the letter of
12 Ms. Serafin, if the State is now withdrawing that as it
13 relates to this motion, then I won't address it. If they're
14 planning to talk about it within the --

15 THE COURT: How does the letter of Mr. Serafin
16 come in, Mr. Stege?

17 MS. STEGE: Through Ms. Serafin.

18 THE COURT: She's not here today, I assume?

19 MR STEGE: She's not here and it's a matter of
20 expense, your Honor. I came into this expecting, if I don't
21 abandon that at trial, she's an out-of-state witness, it
22 makes little sense to me, given all the big issues to have
23 her come twice.

24 THE COURT: Thank you. If I understand correctly,

1 she indicates that a statement was made in 2010?

2 MR STEGE: Right.

3 THE COURT: So at least six years prior to any of
4 the tragic events of the cases involving Ms. Fletcher and her
5 children, is that accurate?

6 MR STEGE: Yes.

7 THE COURT: That is far removed and I will tell
8 you of little probative value in my opinion. And for all the
9 reasons I gave in the other motion, I would not allow you to
10 adduce that evidence, probably not in rebuttal. Again, I
11 don't know, for example, and you don't know if Ms. Fletcher
12 is going to testify or what of her statements will come into
13 evidence. You can always revisit the issue with me. If you
14 do, I ask that you do it outside the presence of the jury.

15 MR STEGE: Especially in an insanity context, but,
16 yes. Thank you.

17 THE COURT: You're welcome.

18 MR. PICKER: You just summarized my arguments,
19 your Honor.

20 THE COURT: So I'll ask you to craft an order
21 consistent with what I ruled, then, inasmuch as you
22 prevailed, please, Mr. Picker.

23 MR. PICKER: Thank you, your Honor.

24 THE COURT: Mr. Hart.

1 MR. HART: It looks like we're doing both motions
2 at the same time and my motion was the motion to admit other
3 act evidence. If we're jumping into that, then I'll start.

4 THE COURT: We are jumping into that. By that I
5 mean the jammed gun, target shooting and the ammunition.

6 MR. HART: In the CPS case?

7 THE COURT: Yes.

8 MR. HART: As we pointed out in our opposition,
9 there's no witnesses that are going to be called was my
10 understanding from the State. The State wants to keep the
11 Social Services really specific to there might have been some
12 abuse. That's really limiting our expert testimony at all as
13 we're working on delusions of specific sexual abuse that Ms.
14 Fletcher was under that Max was suffering from Robert Trask
15 and that was the reason for the entire NGRI plea and the
16 entire reason for the expert witnesses.

17 And something like this when we're going through
18 Social Services, I don't think we can piecemeal what happened
19 in the Social Services case. The history that Ms. Fletcher
20 has with the Social Services, the good and bad history
21 Ms. Fletcher has with Social Services needs to come in.

22 THE COURT: How does it come in notwithstanding
23 the statute that mandates that file is confidential?

24 MR. HART: Through testimony, your Honor.

1 THE COURT: Well, we regularly hear testimony in
2 termination of parental rights cases about the file and
3 contents of the file, I'll grant you. But how are we going
4 to give context to this jury of folks unconnected with the
5 child welfare system and the criminal justice system, for
6 that matter, about the process without having a trial within
7 a trial?

8 MR. HART: I don't think explaining to the jury
9 the process of a CPS case would take much more than a few
10 questions of even one of the social workers. I know
11 Ms. Boren is both of the witness lists. She's actually here
12 today. Her explanation of how a CPS case works would take
13 minimal time. We would not be retrying anything. It would
14 be simply informative to the trier of fact in this specific
15 case, though.

16 THE COURT: Are you going to acknowledge that her
17 delusion was a delusion and wrong?

18 MR. HART: We're going to acknowledge the fact
19 that Social Services never found any supporting evidence of
20 that.

21 THE COURT: All right. What other argument would
22 you like me to consider?

23 MR. HART: For the jammed gun, I think the
24 evidence we had today from Jesse Hensle was the -- the

1 original motion states that it was described as a
2 nine-millimeter. He give us anywhere from a 22 to a
3 40-caliber on a jammed gun that really is more prejudicial
4 than probative at this point in time.

5 Given where the Court is going with the NGRI as
6 well, it sounds like maybe that's something, again, that
7 could be put in that box as a rebuttal. But right now, I
8 don't think that actually adds anything and should not be
9 allowed in the State's case in chief.

10 THE COURT: How did you, if at all -- I don't know
11 how to ask this question without asking you the question that
12 you don't have to and shouldn't answer. So let me interrupt
13 our conversation and turn to Mr. Stege.

14 Mr. Stege, do you intend to adduce evidence of her
15 convictions for thieving the guns from Mr. Hensle?

16 MS. STEGE: No.

17 THE COURT: And so the facts that this jury will
18 know, then, is that she's alleged to have committed a murder
19 with a firearm. And a connection to a firearm is more
20 probative in that context, i.e., they won't know of her
21 convictions for thieving Mr. Hensle's guns. So I agree it's
22 in a less probative box. I'm not sure that I'm willing to
23 tell Mr. Stege he can't adduce it in his case in chief, but
24 I've got to see how the evidence plays.

1 I will direct that you not mention it in your
2 opening statement, Mr. Stege. Because then I'll have the
3 benefit of hearing the defense's opening statement and
4 knowing where they're going.

5 MR STEGE: But how is the NGRI portion of this
6 tied to my own obligation to prove that she committed this
7 murder when this goes directly to opportunity, plan, et
8 cetera. It's convenient to say, well, let's decide it later,
9 which I'm ascribing that argument to Mr. Hart, but I don't
10 see a connection, really, to the question of whether three
11 weeks beforehand she had in her possession a gun, right. I
12 think that directly goes to probativeness, her desire to want
13 to use it.

14 And I'll tell you where the hook is in my case in
15 chief, which is the statements of Jeannie Jorgenson,
16 Ms. Fletcher's mom, related to having a gun, she had a gun, I
17 told her to put it in the car. As well as to Ms. Jorgenson
18 later recorded telling Ms. Fletcher, hey, I told them about
19 the gun you had and this issue of you said the gun was
20 broken.

21 THE COURT: Well, taken in a vacuum, the challenge
22 is this: I like the jury am sort of in a vacuum in that I
23 don't know all the evidence either side has. And taken in a
24 vacuum, the gun is almost meaningless to me, I must tell you.

1 I don't want to say it is meaningless, because, of course,
2 having possession of a firearm might be some evidence from
3 which the jury can conclude a person knows about firearms,
4 has an opportunity to use firearms, et cetera.

5 But Mr. Hensle's testimony was so poor and his
6 recollection is so poor for whatever reason his recollection
7 is poor that the quality of that evidence is very low.

8 I have yet, I'm not saying it's irrelevant,
9 because this NGRI defense is going to have to happen out of
10 the gate or not at all. And once I hear their opening
11 statements and their representations to the jury about where
12 they're going or not going, I can then better weigh the
13 probative value of this evidence.

14 And so that's the rationale for saying, I don't
15 want you to refer to it in opening statement. You may seek
16 to revisit it with me. I expect you to give me a heads up
17 before you do and we'll talk about it outside the presence of
18 the jury.

19 MR STEGE: Yes.

20 MR. HART: I think that really follows all the
21 line of the rest of the prior acts, the ammunition and the
22 target shooting.

23 THE COURT: I agree.

24 MR. HART: I don't think there's much more

1 argument.

2 THE COURT: I think the same logic applies to all
3 of that evidence. I'll give you an opportunity to make a
4 record if you'd like, Mr. Stege.

5 MR STEGE: That the ammunition and the target
6 shooting, the Court I hear you saying is only inclined to
7 bring that in if she pleads insanity.

8 THE COURT: Or if she doesn't, I think it's more
9 probative if she doesn't. If she asserts an affirmative
10 defense of insanity, implicit in that is an acknowledgement,
11 I shot it, I just didn't do it as a crime.

12 MR STEGE: That's music to my ears, your Honor. I
13 was misunderstanding what the Court was saying.

14 THE COURT: All right.

15 MR. STEGE: This Social Services thing, I think we
16 need to tackle that head-on.

17 THE COURT: Yes, we do. I have the statute that I
18 want to arm you all with. So 432B.280 indicates the
19 confidentiality of information maintained by an agency, which
20 provides child welfare services, exceptions, penalty, except
21 as otherwise provided, and I won't list the statutes, or
22 authorized, and I won't list the statute, information
23 maintained by an agency which provides child welfare
24 services, including, without limitation, reports and

1 investigations made pursuant to this chapter is confidential.
2 Any person, law enforcement agency or public agency,
3 institution or facility who willfully releases or
4 disseminates such information, except pursuant to a criminal
5 prosecution relating to the abuse or neglect of a child, as
6 otherwise authorized in 432B or 439 is a gross misdemeanor.

7 And that information is available as to the child
8 abuse case, if there had been a child abuse case, involving
9 the child in that case. But it's not available in a criminal
10 case, generally. Now, both sides want it, correct?

11 MR. HART: Yes.

12 THE COURT: And the question then becomes the
13 scope of what they want. Do I understand correctly, counsel,
14 that what you want is testimony from social workers as
15 opposed to documents in the case file? Mr. Stege.

16 MR STEGE: Yes.

17 THE COURT: Mr. Hart.

18 MR. HART: Yes.

19 THE COURT: And both of you have noticed Ryan
20 Boren, who was a social worker in this case. Was she the
21 intake worker, was she the ongoing worker, do you know or
22 recall, Mr. Hart?

23 MR. HART: She was the ongoing worker for a long
24 time. I think she was also part supervisor for the other

1 workers working with Ms. Fletcher.

2 THE COURT: Mr. Stege.

3 MR STEGE: Yes, as well as having a percipient eye
4 on the corollary family court case related to legal custody
5 of the child.

6 THE COURT: All I was going to say is this: To my
7 eye, Mr. Stege, if the State opens the door to this evidence,
8 I will allow it, notwithstanding the statute I just read,
9 through testimony. We're not talking about documents from
10 the case file.

11 But once open, that door remains open to our
12 defense colleagues. You know, I refer to the documentary
13 doctrine of completeness. You put part of the statement in,
14 you can put the rest of the statement in if it's relevant.

15 MR STEGE: If it's relevant or if it --

16 THE COURT: Adds context.

17 MR STEGE: If the original one denies the
18 statement of context.

19 THE COURT: I'm not going to require my defense
20 colleagues to tell me their defense, but I can sort of see
21 where their defense is going. And if we open this Pandora's
22 Box in a 432B case, they logically would need it all.

23 MR STEGE: Just because something is in the file
24 doesn't make everything -- doesn't make it admissible

1 in this.

2 THE COURT: Remember how I asked the question? Is
3 it testimony you want to put in or the file? Both of you
4 said testimony.

5 MR. STEGE: But you're saying if there's
6 testimony, then, the whole file.

7 THE COURT: I just meant as to the whole case. I
8 apologize.

9 MR STEGE: Right.

10 THE COURT: And the whole case is beginning to
11 end.

12 MR STEGE: Right. But that doesn't mean
13 everything that's within this case is relevant and especially
14 on the character issues of it are quite extraordinary. And I
15 may be able to sense defense strategy as well, which is this
16 guy is a very bad guy, he deserved to die. She killed him.
17 He's not a great loss. Which is the risk of the entirety of
18 these corollary cases or these sort of parallel cases coming
19 in at this trial.

20 THE COURT: That's why I began the conversation
21 the way I did. If you open the door, I understand why you
22 would, if you opened the door, I guess what I'm telling you
23 is I'm going to let the scope be that entire case, not that
24 the case file comes in. But I understood your objection to

1 be: Well, it should only be portions. And I'm not going to
2 box them in their defense.

3 Let me take an aside, the only evidence I'm aware
4 of, and somebody please correct me if I'm wrong, of any bad
5 doing by Mr. Trask comes from the defendant. There is no
6 other evidence from independent witnesses. Now, her family
7 and friends say they saw her bruised and broken and she's had
8 some orbital fractures. I don't know if you corroborative
9 evidence of that, Mr. Hart, or intend to adduce it.

10 MR. HART: We do.

11 THE COURT: So that, then, reenforces my thought
12 that once this Pandora's Box is opened, sort of the whole
13 thing is fair game.

14 MR STEGE: But it's only really fair game if they
15 plead insanity, and even if they stick with insanity, I think
16 that leads to the inference that none of this stuff is -- it
17 ought to be excluded, because by saying so they're admitting
18 that it's a false belief. And there is no, frankly, evidence
19 of this bad character.

20 THE COURT: I agree with you and I'll say again
21 for all concerned: Trials are living, breathing things.
22 What we think will be relevant and what is relevant are two
23 different things. I am simply ruling on this motion saying
24 that if the State opens the door to the 432B case, I am not

1 going to foreclose the defense from asking questions about
2 facts in that case. That's all I'm ruling.

3 You're still open to object. If you think a
4 particular the fact they want to adduce from Witness Boren is
5 irrelevant, to make a relevancy objection.

6 MR STEGE: Will the Court extend that same ruling
7 to that ought to be heard outside the jury's presence?

8 THE COURT: Yes.

9 MR. STEGE: In the first instance.

10 THE COURT: Notice, again, I reenforced, the way
11 this evidence will be introduced in my view will be through
12 you if it's introduced first. I could be wrong.

13 MR STEGE: Which brings us to the insanity case.
14 Is the insanity case about relitigating or bringing the
15 character evidence out of that case to present to the jury?
16 And the answer is no.

17 THE COURT: We won't know that. We won't know
18 that. We may not know that in the opening argument. We
19 won't know that until the case.

20 MR STEGE: But we will pick that particular issue
21 up as it relates to the insanity case before we start hearing
22 it?

23 THE COURT: Yes.

24 MR. STEGE: Thank you.

1 MR. PICKER: I'm sorry. Can we have a little more
2 specificity about exactly what you're talking about?

3 THE COURT: So I believe that if the 432 case
4 becomes relevant, it will be first relevant in the State's
5 case.

6 MR. PICKER: I'm sorry, your Honor. I'm sorry to
7 interrupt. That part I understood. It's the last part that
8 the prosecution was asking for.

9 THE COURT: A hearing outside the presence of the
10 jury.

11 MR. PICKER: Before they bring it up?

12 THE COURT: Yes.

13 MR STEGE: Before they bring it up in their
14 insanity case, because --

15 MR. HART: That's our opening.

16 THE COURT: Hang on. Mr. Stege, I understand what
17 you're saying. I will not box the defense into telling you
18 or me anything about what their defense is going to be until
19 they make an opening statement.

20 MR STEGE: Right.

21 THE COURT: Because then they'll be stuck with
22 what they promised the jury or not, right?

23 MR STEGE: I agree.

24 THE COURT: So in my view, this issue of the 432B

1 case won't be ripe until we know that.

2 MR STEGE: But may the defense -- you can't do an
3 opening statement on inadmissible evidence and then come back
4 and say, see, I argued it was character evidence, all this
5 character evidence should come in, therefore, you should let
6 me do it.

7 My concern is, as it is in every case, which is
8 many defense cases seek to go to character of the victim.
9 And I don't want -- I'm asking this Court to intervene on the
10 issue of whether the insanity portion of this case is a
11 relitigation of the 432B case and whether it matters.

12 THE COURT: I don't think I can say that. I
13 understand the question. I believe I've ruled on the issue.
14 These trials are living, breathing things as we all know in
15 this room. I will know more once I hear their opening
16 statement about the path they've chosen. I will better be
17 able to address your concerns or not if it's even appropriate
18 for me to address them then. Mr. Stege, perhaps as we go
19 through the motions, you'll be reassured.

20 MR STEGE: Okay. Thank you.

21 THE COURT: All right. So I believe we've
22 resolved prior statements and other act evidence. Is there
23 anything else, any other record anyone wants to make?
24 Hearing none, let's move to the motion to exclude victim

1 character evidence.

2 MR. PICKER: So this motion, looking at the
3 caselaw, it talks about and it does accurately reflect the
4 cases, which is that while presenting a defense of
5 self-defense, an accused is permitted to present evidence
6 suggesting the victim exhibited violent behavior.

7 Even in an NGRI defense, if there is a delusional
8 belief of that behavior, then that becomes that much more
9 relevant and that is what we're talking about. What we're
10 saying is there is evidence and there will be adduced
11 evidence from both the State's witnesses and the defense
12 witnesses that the victim was violent and was observed to be
13 violent, such that Ms. Fletcher would either have been the
14 victim or known about it, which is what is required. If
15 there's violent tendencies, not only does it have to be a
16 level of proof, but it also has to be that this person knew
17 of that information.

18 So we have that violence. We have at least one
19 witness who will testify that there was admissions by Max
20 Trask that he was abused by his father, that those were
21 credible admissions.

22 We believe that information in that way, the
23 character evidence goes hand in glove with the NGRI defense
24 should that be the way we go. Additionally, there is the

1 firm belief, which is recounted to numerous social workers,
2 which you just addressed, by Ms. Fletcher that she was the
3 victim of various kinds of abuse, that she was a direct
4 victim of that kind of abuse by Mr. Trask.

5 Now, again, if it comes under NGRI, whether those
6 are real or delusional becomes a question for the jury and
7 whether they are credible also becomes a question for the
8 jury. But that evidence, that character evidence within the
9 perimeters that the State Supreme Court has laid down is
10 appropriate in this case and is both relevant and probative
11 of the situation at hand.

12 THE COURT: Before you comment, let me set the
13 table for our conversations for Mr. Stege in this way: In my
14 view, gentlemen, and I'm referring to my defense colleagues,
15 Mr. Hart and Mr. Picker, not guilty by reason of insanity
16 defense is an exceedingly hard affirmative defense, both
17 because the defendant has the burden of proof, unlike any
18 other thing in the criminal system, and because they so
19 rarely succeed.

20 In my view, character evidence of self-defense and
21 NGRI are incompatible. Here's why: In Nevada to succeed in
22 an NGRI defense, you must show that Ms. Fletcher suffered
23 from a disease or defect of the mind, that there was a
24 presence of some delusion, and that due to that delusion or

1 disease, the defendant had the capacity to know and
2 understand the nature and capacity of her act or didn't, or
3 have no capacity to understand the wrongfulness of her
4 conduct. You can't both say it was true she was defending
5 herself and that she had a delusion.

6 MR. PICKER: Actually, your Honor, I'll disagree
7 with you. Under the caselaw, if there is in part those -- if
8 it's NGRI, those delusions can also be based on real events
9 that then escalate in that person's mind. So if they are
10 truly a victim of a domestic type battery and they then
11 extrapolate those, if -- to use the hypothesis in this
12 case -- if Max Trask is truly the victim of abuse and that
13 belief is further extrapolated and further expanded upon by
14 Ms. Fletcher, that would meet the definition. There's no --

15 THE COURT: I'm so sorry for the interruption,
16 because I think we may have talked past each other and I want
17 to communicate effectively. I thought you were saying the
18 character evidence you wanted was of Mr. Trask's
19 victimization of your client, not his victimize of her son or
20 their son.

21 MR. PICKER: Let me be more clear: The NGRI can
22 use as a tent pole self-defense in defense of others and then
23 expand beyond that. So the delusion can then build upon
24 actual events.

1 THE COURT: I understand that.

2 MR. PICKER: That's what we're talking about is
3 with this character evidence is being able to show that there
4 were actual events that may have triggered, and that is for a
5 jury to decide should NGRI be put before them, that may have
6 triggered this delusional behavior or delusional beliefs that
7 lead to the act.

8 THE COURT: This is what I meant by avoiding a
9 trial within a trial. I do not believe there is any credible
10 evidence of any sexual abuse of this child by his father.

11 MR. PICKER: I understand that is your belief,
12 your Honor. We have both documentation and a medical doctor
13 that disagree with you.

14 THE COURT: So what you want to do is retry the
15 child welfare case?

16 MR. PICKER: Absolutely not.

17 THE COURT: In which there were findings that this
18 child should be given to his father.

19 MR. PICKER: That may very well be, but we will
20 not be raising that part of it saying that the family court
21 made an error. What we will be saying is there is credible
22 evidence upon which Ms. Fletcher could have relied at some
23 point in her actions.

24 THE COURT: Let's say that's true. You can't kill

1 a child molester. It's not a defense. And so how is it
2 relevant?

3 MR. PICKER: It becomes relevant if, A, the abuse
4 is ongoing, or the threats of the abuse are ongoing, and/or
5 the threat of bodily harm to that other is imminent. That is
6 defense of others.

7 THE COURT: I can only tell you, again, I don't
8 know the facts of this case. I'm arguing in a vacuum. You
9 all have the discovery and I don't.

10 I will tell you that my understanding of the
11 factual circumstances of the killing, there's no question
12 that there was a killing, there's no question that
13 Ms. Fletcher was there and that the parties' son was there.
14 And there is no evidence that I'm aware of any provocation or
15 any circumstance, as I understand it, through the State's
16 report of its expert, they actually traveled from swimming at
17 one location to Oxbow Park. Those circumstances do not
18 support what -- I don't mean this in a denigrating way -- a
19 flight of fancy into a trial within a trial over the child
20 welfare case.

21 I must tell you, that's why I said nobody will
22 talk about it unless Mr. Stege raised it or opens the door
23 until we have a hearing about it. And that likely sounds
24 like it's going to have to happen in the context of this

1 trial. Because this is getting into the defendant claiming
2 that the system got it wrong and I could legitimately and
3 accurately believe something was done to my child and that
4 was the provocation together with the abuse that happened to
5 me, which led to the delusions, which caused me to kill
6 Mr. Trask.

7 MR. PICKER: All of is correct except your initial
8 premise. We are not arguing that the Court got it wrong.
9 That will not be any part of our argument.

10 THE COURT: Well, then, I still don't understand
11 the relevance. Candidly, I could just be missing it. And I
12 haven't foreclosed you from discussing it. All I'm saying is
13 we're going to have a hearing outside the presence of the
14 jury.

15 MR. PICKER: We'll agree to that.

16 THE COURT: Thank you for that aside and I
17 appreciate the conversation about it. I don't know,
18 Mr. Stege --

19 MR. STEGE: I like the result that the Court is
20 getting to, but I wanted to inject a little bit into the
21 Court's analysis of it. The Court is right that you cannot
22 kill a child molester. Mr. Picker used the wrong word,
23 imminent, it's immediate. We get that from Finger. And
24 speaking frankly in terms of insanity defenses, the only

1 practical way you get this is a delusion about the use -- the
2 use of self-defense.

3 THE COURT: Well, in the words of Finger,
4 delusional beliefs can only be the grounds for legal insanity
5 when the facts of the delusion, if true, would justify the
6 commission of a criminal act. That's why I made the point of
7 saying, you can't kill a child molester. That's not a
8 defense of others or self-defense or justifiable homicide.

9 MR STEGE: And merely pleading insanity, you don't
10 want to give the incentive to plead insanity because then you
11 can bring in even on a failed insanity defense all the
12 character evidence.

13 But getting directly to the point, I don't believe
14 that we -- it's important in the psycho sciences the idea of
15 sort of an initiation or sort of inception to a delusion.
16 And it's really dangerous and I think we all share the same
17 or at least the Court and I share the fear of this turning
18 into a character trial against the --

19 And the question of whether -- will you bring in
20 that the Court was wrong? If they're allowed to do that, I'm
21 going to come in and say, the Court was right. The Court was
22 right, these cops were right, everyone who investigated it
23 was right.

24 THE COURT: This case is not going to turn in my

1 view for this jury on whether or not they believe the child
2 welfare case. And to some degree, it is a distracter, which
3 is what I'm guided by. In other words, we don't have trials
4 within trials, because they confuse jurors.

5 I will simply say, again, before anybody discusses
6 this, unless you open the door to it, we're going to have a
7 hearing outside the presence of the jury and I'll decide in
8 the context of the trial the representations that the defense
9 has made in their opening statement whether it's relevant and
10 to what degree it's relevant and how it's relevant.

11 I think this way madness lies, candidly, but I am
12 not going to box the defense in. I want Ms. Fletcher to have
13 a vigorous defense. I'm not going to make them tell me what
14 their theory is until they announce it to the jury.

15 I don't think there's anything else I need to say
16 on that. I have in essence denied the motion subject to
17 reconsideration at trial, because I'm not saying yet they
18 can't discuss the victim's character, Mr. Trask's character.
19 I'm just saying before anybody discusses it, we need to have
20 a hearing.

21 MR STEGE: I also threw in the toxicology issue.
22 Is the Court prepared to rule on that?

23 THE COURT: Go ahead.

24 MR STEGE: It's not relevant and you should grant

1 it.

2 THE COURT: I grant that. Thank you for that.
3 Let's move, then, to the child testimony by alternative
4 method. Let me set the stage for our conversation in this
5 way: It would appear that your witness is unavailable by
6 phone, unfortunately. Is that true?

7 MR STEGE: I'm getting body language indicating
8 so.

9 THE COURT: All right. Let's talk about this as
10 professionals who are also human beings and parents. You
11 could find thousands of transcripts in the family division in
12 which I said to parents, involving their children in the
13 middle of a custody dispute is a guarantee to harm their
14 children. This is a custody dispute gone wrong in every
15 possible way. This child is a victim in every sense of that
16 word. He lost both his parents by a killing. What criminal
17 responsibility for that killing exists, I know not until the
18 jury decides. But he is a victim.

19 I never in my career as a prosecutor, Mr. Stege,
20 had a child testify by alternative means and the process to
21 do that just began when I began as a prosecutor. I am very
22 reluctant to grant this motion in a homicide case. In my
23 opinion, it will do harm to this child if any of you ask him
24 to testify.

1 That harm may be outweighed by the constitutional
2 rights of his mother. So be it. It's not for me to say.
3 But I am very reluctant to grant this motion. And,
4 Mr. Stege, Exhibit 1 says in the last paragraph, regarding
5 Max's expectation of testifying in court, it is recommended
6 that if possible Max not testify in front of his mother as it
7 may exacerbate the mental health symptoms he's already
8 experiencing and negatively affect his ability to give needed
9 testimony. That is not clear and convincing evidence of harm
10 to this child. It's just not. Anything you want to argue or
11 add?

12 MR STEGE: I recognize the Court's experience.
13 Neither have I called a child in a case, and, frankly, in a
14 homicide case by alternative or direct means. But I am in
15 the -- that sort of moral or emotional question must from the
16 State's perspective be put to the side as the State's not
17 the -- the State can make this case or cause this case and so
18 I would ask the Court and really why do we have -- why have
19 rules about it? Why have reported cases allowing it when
20 it -- the intrusion, I would submit, may be slight in regards
21 to -- because we're not asking that they not confront this
22 child, but to do it by other means. And I would ask the
23 Court to grant it.

24 THE COURT: I think the answer to your question

1 is, if this were a burglary case, I'd probably grant your
2 motion. This is not a burglary case. This child is
3 unfortunately for him a percipient witness to what happened
4 between his parents.

5 That did harm to him. We will do harm to him if
6 we call him as a witness. We will measure ourselves as
7 professionals and moral people by how we treat this child if
8 he's called as a witness.

9 But you notice I began, again, by asking if our
10 defense colleagues intend to compel his testimony, which I
11 believe they must, I don't think Mr. Picker or Mr. Hart are
12 in an enviable position either, I don't know how they could
13 propound a defense of their client without calling a
14 percipient witness.

15 So it's not of their creation, either, in my
16 opinion. If it is their intention to subpoena him, I will
17 aid them in that. It's not my ability. You go to the
18 foreign jurisdiction, produce the subpoena from Nevada and
19 ask the foreign jurisdiction to honor the subpoena. If they
20 do that, he's going to come.

21 We can demonstrate our fidelity to him and to our
22 professionalism by talking when we'll call him and how we'll
23 call him and what time of day. I don't know if you gentlemen
24 have broached that subject yet, but I invite you that. We

1 should be sensitive to his travel and his needs and when we
2 might time it.

3 Trust me when I say the scope of examination will
4 be wide open as long as it's relevant. In other words, we're
5 going to put this kid on the stand once if we can. Those are
6 my thoughts about it.

7 MR. HART: Ours as well, your Honor.

8 THE COURT: All right. So I deny your motion.
9 There is not clear and convincing evidence of unequivocal
10 harm to this child. Notwithstanding, I believe it will be
11 harmful to him, I'm not a trained psychologist or
12 psychiatrist, and so I can't make that finding.

13 All right. There was an interesting, because I
14 smiled, you all are better professionals and not as
15 hardheaded as I was when I was in the well. This fugitive
16 document thing is moot. I ruled on it, yes? All right.

17 The motion for discovery related to the insanity
18 defense is where I'd like to go next. Mr. Stege.

19 MR STEGE: I'd seek to call Lindsay Belle to the
20 stand.

21 THE COURT: Good afternoon, ma'am. Once you're
22 comfortably seated, go ahead and pull the microphone in front
23 of your face. Please give your attention to Mr. Stege.

24 LINDSAY BELLE

1 months.

2 Q. And at the time of that, did they -- defense tell
3 you why it was you were being subpoenaed?

4 A. My memory --

5 Q. Actually, I should take that back. Did they tell
6 you you were going to be subpoenaed?

7 A. For the trial, yes.

8 Q. Okay. And what did they say about that?

9 A. That they wanted me there.

10 Q. On what subject?

11 A. To talk about Ms. Fletcher's mental well-being.

12 Q. Were you ever asked to author a report for them?

13 A. I believe so. No. I wasn't asked to author a
14 report. Over a year ago, they had asked me for my notes, my
15 documentation, and I told them I preferred to write them a
16 synopsis of treatment. But, no, they never asked me to
17 author a report.

18 THE COURT: Let me interrupt for a moment. I
19 apologize. Did you provide notes to anyone in this case?

20 THE WITNESS: No.

21 THE COURT: Did you provide a synopsis?

22 THE WITNESS: No.

23 THE COURT: Go ahead.

24 BY MR. STEGE:

1 Q. Do you have a file on Ms. Fletcher?

2 A. Yes.

3 Q. Did you bring that file with you to court?

4 A. Yes.

5 Q. Who asked you to bring that file to court?

6 A. You did.

7 Q. By power of subpoena?

8 A. Yes, sir.

9 Q. Did you ever speak with either Mr. Hart or
10 Mr. Picker if you know who those gentlemen are?

11 A. No.

12 Q. Who was it you spoke to?

13 A. Mike, the -- yes.

14 Q. I see you nodding. Is Mike in the court?

15 THE COURT: I don't know your name, sir.

16 MR. PICKER: Your Honor, this is Mr. Rosevear who
17 is an investigator in our office.

18 THE COURT: Pleasure to meet you, sir. By your
19 body language, please don't respond to a witness on the
20 stand.

21 You can't look to someone else to refresh your
22 recollection, ma'am. Please give your attention to Mr.
23 Stege.

24 BY MR. STEGE:

1 Q. The gentleman who stood up, is that the man you
2 spoke to?

3 A. Yes.

4 Q. How recently was the last time you spoke with him?
5 Was it the CV time?

6 A. We spoke last week over the phone when I called
7 him.

8 Q. Before that, when was the last time?

9 A. When he asked me --

10 MR. HART: Objection, relevance.

11 THE COURT: Where are you going, Mr. Stege?

12 MR STEGE: I'm going to the fact of no report --

13 THE COURT: I'll give you some latitude. I
14 overrule the objection.

15 THE WITNESS: When he asked for my CV and I -- and
16 then prior to that was when he subpoenaed me for a trial.

17 BY MR. STEGE:

18 Q. When he subpoenaed you for trial, did he ask you
19 for your file that you have on her?

20 A. Yes.

21 Q. Did you give it to him?

22 A. No.

23 Q. Why not? Because you had this synopsis issue?

24 A. Because I've been protecting her notes.

1 Q. Were you ever asked to form an opinion as to
2 Ms. Fletcher as it relates to trial by the gentleman who
3 stood up earlier?

4 A. No.

5 Q. What does an MFT do as opposed to a psychologist
6 or psychiatrist in terms of diagnosis?

7 A. Sure. A psychiatrist is a medical doctor that can
8 prescribe medication, diagnose and treat all disorders. A
9 psychologist is not a medical doctor. They're SID,
10 typically, or Ph.D., and they cannot prescribe medication and
11 they can diagnose and treat all disorders. An MFT is a
12 masters level therapist. The other two are doctorate or med.
13 And we currently can diagnose all disorders and treat them,
14 but it's therapeutically, not medication.

15 Q. And was that the case, the ability to diagnose,
16 was that the state of things when you were dealing with
17 Ms. Fletcher?

18 A. No.

19 Q. Did you have any contact with anyone but Mike
20 Rosevear about the content of the expert witness notice?

21 A. No, not directly. Someone called me regarding my
22 CV, a three-minute phone conversation that I didn't get their
23 name.

24 Q. Was that before or after the conversation with

1 Mr. Rosevear?

2 A. After.

3 Q. Did you bring the copy of the file of
4 Ms. Fletcher?

5 A. Yes.

6 Q. May I have it?

7 A. If it's ordered.

8 THE COURT: Do you intend to call her,
9 notwithstanding I have to rule on it, but do you intend to
10 call her?

11 MR. HART: So the problem I have right now, your
12 Honor --

13 THE COURT: Please just answer my question.

14 MR. HART: Yes.

15 THE COURT: You must produce the file.

16 THE WITNESS: Okay.

17 THE COURT: Go ahead.

18 BY MR. STEGE:

19 Q. So what does it mean to be -- were you in this
20 intern phase or full licensure when you were dealing with
21 Ms. Fletcher?

22 A. I was a licensed marriage family therapy intern.

23 Q. Was it between the intern portion and being the
24 non-intern or fully licensed?

1 A. So when you are an MFT intern, you are licensed by
2 the State of Nevada or whatever state you're in and you're
3 licensed under a clinical supervisor and so your license is
4 attached to theirs, you're underneath them. And then you are
5 required to work for 3,000 direct hours before you can become
6 fully licensed and you have to work for a year and a half or
7 1,500 hours before you can sit for your exam. And then you
8 have to submit everything and get approved for licensure and
9 also you must have a certain amount of supervision hours. So
10 you sit with your supervisor, you have a primary and
11 secondary supervisor you meet with.

12 Q. Besides being under a license, you're being
13 supervised by a licensed MFT?

14 A. Yes.

15 Q. And back then, you were not diagnosing?

16 A. I was diagnosing.

17 Q. Okay. I thought you said that you could not
18 diagnose under the rules at that time?

19 A. Let me clarify. At the time, marriage and family
20 therapist by our licensing board and the NRS were not allowed
21 to diagnose or treat psychotic disorders.

22 Q. Okay.

23 A. But we were able to even as an intern diagnose the
24 other disorders, but not psychotic disorders.

1 Q. What are the psychotic disorders?

2 A. There are many different.

3 Q. Is schizoaffective disorder a psychotic disorder?

4 A. I can't speak to that.

5 Q. You don't know?

6 A. I'm not trained in psychotic disorders.

7 Q. Is schizophrenia a psychotic disorder?

8 A. Yes.

9 Q. And you agree that psychotic disorders are -- a
10 feature of them is delusional thinking, or you don't know
11 because you don't do it?

12 A. I can now, but I don't. It depends on the
13 psychotic disorders, they can have delusions and paranoia,
14 but I'm not an expert in this area.

15 Q. Okay. Do you feel you're a qualified expert to
16 give testimony in this case on the subject of insanity?

17 A. I don't believe I'm qualified for several reasons.

18 Q. Did you write them down? Do you happen to be
19 looking down?

20 A. Just that tissue in my hand. The first reason is
21 that I was not able to treat or diagnose psychotic disorders
22 at the time and the second is I can't be an expert witness,
23 because I was her clinician and that is a conflict of
24 interest. I was also informed I cannot do that by my

1 supervisor.

2 Q. Like a conflict of interest under the rules
3 governing --

4 THE COURT: It's a violation of their ethics.

5 THE WITNESS: It is. I can't do it.

6 BY MR. STEGE:

7 Q. And so that's two reasons. Was there another
8 reason?

9 A. And under the NRS, we're not allowed to.

10 MR STEGE: I think that's all the questions I
11 have, your Honor.

12 CROSS EXAMINATION

13 BY MR. HART:

14 Q. Do you work with CPS? Child services?

15 A. Do I work with them?

16 Q. Uh-huh.

17 A. I don't. I guess we collaborate at times.

18 Q. Are you contracted through them?

19 A. No.

20 Q. Are you contracted through the District Attorney's
21 Office in Washoe County?

22 A. Yes.

23 Q. And what do you do for them?

24 A. Through Washoe County District Attorney's Office,

1 I work at the Child Advocacy Center and I'm a therapist for
2 children that come in that have been sexually abused.

3 Q. And have you ever made notes as to that therapy
4 that you do for the child advocacy?

5 A. Yes.

6 Q. Have you ever testified on behalf of any of those?

7 A. Yes.

8 Q. And have you testified about your therapy with
9 those children?

10 A. Yes.

11 Q. So you indicated you were an intern for about
12 three years, a licensed intern?

13 A. Uh-huh.

14 Q. And what does that mean? Is someone over you,
15 someone watching you?

16 A. I'll repeat this: It means that I am licensed by
17 the State of Nevada. My license is underneath a clinical
18 supervisor's license and they supervise me along with their
19 primary supervisor. And then I had to work 300 direct hours
20 with clients before I can become fully licensed and 1,500 of
21 those I have to be met before I can sit for the exam and then
22 I can submit for full licensure.

23 Q. And before you were a licensed intern, what were
24 you doing?

1 A. Various things.

2 Q. Such as?

3 A. Professionally?

4 Q. Yes.

5 A. I worked in a group home with juvenile sex
6 offenders. I worked in a group home for vets. I worked for
7 a company with SMI adults. I provided psychosocial
8 rehabilitation. I oversaw the group homes. I was a waitress
9 for ten plus years.

10 Q. So you do remember being asked for your notes and
11 the file by Mr. Rosevear more than once, correct?

12 A. Yes.

13 Q. And you refused to turn those over until today?

14 A. Yes.

15 Q. How many times have you testified in general, do
16 you know?

17 A. One -- well, two if today counts.

18 MR. HART: That's all, your Honor.

19 THE COURT: May this witness be excused?

20 MR STEGE: Yes.

21 THE COURT: Thank you. You may step down. So
22 before you turn your file over, you need to let me rule. I'm
23 going to ask you to step outside and I'll ask you to await my
24 ruling.

1 Mr. Hart, you can't intend to call her as a
2 witness.

3 MR. HART: I agree.

4 THE COURT: Thank you. I'm not going to require
5 that she turn over her file, then. Deputy, would you please
6 let her know she doesn't need to give her file to Mr. Stege.
7 Her testimony is not relevant.

8 The next issue I'd like to move to is -- I'm
9 sorry, Mr. Stege.

10 MR STEGE: I'm sorry to interrupt the Court.

11 THE COURT: That's okay.

12 MR STEGE: The remainder of my motion regarding
13 insanity related to discovery, I would seek a -- I'm
14 especially concerned about this class of evidence that or
15 materials that Dr. Piasecki states she reviewed including
16 documents produced by Ms. Fletcher.

17 This might, the Court's initial reaction, I would
18 expect, but the Court will put on its hat acknowledging this
19 is an insanity case with a burden on the defense and the --
20 if this is a truth finding exercise, which I believe it is,
21 the imbalance created by unequal information.

22 THE COURT: I believe the statute relevant to this
23 area of inquiry is this: 50.305, an expert, it says, the
24 expert, an expert may testify in terms of opinion or

1 inference and give his or her reasons therefor without prior
2 disclosure of the underlying facts or data, unless the judge
3 requires otherwise. The expert may in any event be required
4 to disclose the underlying facts and data on cross
5 examination.

6 You all would not know this, but my favorite area
7 of cross examination was experts. The experts I especially
8 liked to cross examine were psychologists and psychiatrists,
9 and my first area of inquiry with them was what they had
10 looked at to form their opinion, and in every case, I was
11 entitled to see it.

12 And so Dr. Piasecki has looked at something for
13 the purpose of forming her opinion, I expect it to be
14 disclosed to do Mr. Stege and the same is true in reverse,
15 Mr. Stege. Because I would be unhappy with all of you if any
16 expert gets up here, makes reference to something they
17 examined that the other side didn't know about. That won't
18 happen without cost. I don't know if that answers your
19 concern or not, Mr. Stege.

20 MR STEGE: Yes.

21 THE COURT: Mr. Hart, I'll look to you to produce
22 a copy of whatever it was that Dr. Piasecki examined.
23 Mr. Stege's motion highlighted some particular things, so
24 I'll ask you to make a copy of that for Mr. Stege's benefit.

1 Mr. Stege, you'll do the same for the defense. Does that
2 answer the balance of your motions?

3 MR. STEGE: Yes, thank you, your Honor.

4 THE COURT: All right. There's a concern about
5 hearsay statements of the defendant. Let me just offer this:
6 I will not let any person get on that witness stand and opine
7 as to the specific state of mind of any other person. There
8 is no science behind it and no precedent for it.

9 I will let experts, forensic experts on behalf of
10 the defense, if they choose to, get up and testify as to a
11 psychiatric or psychological condition they believe that
12 Ms. Fletcher has as to how that psychological condition, if
13 it existed on the date of this offense, may have affected her
14 ability to form or express a specific intent. But no witness
15 will get on the stand and say, I believe Ms. Fletcher
16 believed whatever they think she believed at the date of this
17 incident. There is no science behind it and no relevance to
18 it. It is in fact pure speculation.

19 However, I'm not foreclosing your examination of
20 the witnesses in any way. I'll just have to hear it. You
21 wouldn't know this, Mr. Picker and I, unfortunately for him,
22 have litigated cases together and I know his style and I know
23 his experience. I know he knows the rules of evidence very,
24 very well. So I'm not particularly worried about it,

1 honestly.

2 In his motion, he acknowledged that the hearsay
3 rules apply on both sides. I don't know that I need to make
4 any other ruling at this juncture. Do I? I may have missed
5 something. I'm not going to view it as argumentative.

6 MR STEGE: I reflect on many judges telling me to
7 be quiet when you just won the motion. But only this issue
8 to the extent if it gets opened with Dr. Piasecki, the idea
9 of impeachment through like statements of --

10 THE COURT: I don't know what the defense will do
11 in this case and I'm not entitled to know and I literally
12 don't want to know. But I don't believe an insanity defense
13 can succeed ever, more particularly, I don't believe it can
14 succeed in this case without Ms. Fletcher's testimony.

15 Again, this is another area, a bridge we're going
16 to have to cross if and when it's time to cross it. That's
17 the best I can offer about it.

18 The next motion, then, in the order of motions is
19 the motion to strike expert witnesses and request for a
20 hearing. I'm sorry. We just did that. Motion to prohibit
21 ultimate issue testimony.

22 MR. PICKER: I think you just ruled on that, your
23 Honor.

24 THE COURT: I believe I did. Thank you. The

1 request for appearance by telephone I granted, but,
2 unfortunately, he was unavailable, so it is mooted.

3 The motion to strike the second -- the State's
4 second supplemental expert. I smile to myself. Mr. Hart, is
5 it possible that Mr. Stege talked to Mr. Picker and made an
6 agreement you didn't know about?

7 MR. HART: No, your Honor.

8 THE COURT: Because Mr. Stege says there was an
9 agreement to file it when he filed it, was there?

10 MR. HART: No.

11 MR. STEGE: There was.

12 MR. HART: I pointed out both in the reply what
13 that conversation was, and I'm not misleading the Court and I
14 would never mislead Mr. Stege, but when we see something that
15 is filed late as for the record, a motion to strike is
16 proper.

17 THE COURT: It is. I don't want to -- this is an
18 extremely important case. This woman's life hangs in the
19 balance. Someone lost their life and a child will be a
20 witness in this case. I am not going to let the quality of
21 the evidence turn on a disclosure that was over a weekend.
22 In other words, do I understand correctly, it was due Friday
23 and you disclosed it Saturday?

24 MR STEGE: It was oddly due Thursday.

1 THE COURT: Which day did you disclose it?

2 MR STEGE: The notice portion, Friday, the next
3 day, and the report portion, Monday, which we both did. And
4 I know the Court --

5 THE COURT: If I may? I decline to have a trial
6 within a trial within a hearing over whose understanding is
7 right. I'm simply not going to sanction the State by
8 striking the notice. If you need additional time, Mr. Hart,
9 I'll be sensitive to that. I think there is time in advance
10 to digest the expert disclosures. I simply don't want to
11 waste our efforts on figuring out who is right and who is
12 wrong. It is not of moment in my opinion.

13 From where I sit, those are the pretrial motions.
14 Have I missed any, first, Mr. Stege?

15 MR STEGE: I think that's everything I had, your
16 Honor.

17 THE COURT: Mr. Hart or Mr. Picker, have I missed
18 anything?

19 MR. HART: I will defer to Mr. Picker. He's
20 looking at his notes.

21 MR. PICKER: Your Honor, I think you hit
22 everything, because I think you tied the ultimate decision --
23 the Winniers motion in with the hearsay statements. So I
24 think when you made that decision, those are the motions

1 outstanding.

2 THE COURT: I'm going to ask you to craft the
3 order for that, because you, as it were, prevailed if there
4 was a prevailing party.

5 I want to make sure that there are no other issues
6 and I don't know, I'll just open this door, especially I look
7 to my defense colleagues: Is there anything you need from me
8 to arm you with as you prepare for this? And you don't have
9 to answer this, if you don't want to. I just want to make
10 sure, we've already made sure she's close so you can consult
11 with her. Is there anything else like that I need to
12 consider?

13 MR. PICKER: Your Honor, not at this point. We'll
14 be revisiting in the next day or so everything you've decided
15 and everything we know is going on. We have been providing
16 for clothes and others items for Ms. Fletcher. If something
17 becomes a difficulty, we'll notify the Court through your
18 clerk.

19 THE COURT: Please. I'll try to be as responsive
20 to all counsel as necessary. I already indicated this is a
21 very serious case. We have issues that come up, as they do,
22 I want to be responsive to that. Reach out to my
23 administrative assistant and we'll set hearings as we need
24 them.

1 MR STEGE: I wonder if the Court might entertain a
2 question or a motion as to the timing of jury instructions,
3 given the unusual defense in this case, the severity of it,
4 the State wishes not to be in a position where we are in the
5 middle of trial seeing very important instructions for the
6 first time.

7 So my request would be if this trial starts on a
8 Monday, the Monday previous that instructions be exchanged as
9 to both sides and as to the defense, this issue of insanity
10 instructions is important to the State.

11 MR. PICKER: Your Honor, we'll decline to agree to
12 that.

13 THE COURT: There's a local rule.

14 MR. PICKER: There's a local rule on when they're
15 supposed to be provided and then the Court can determine what
16 it is. As your Honor knows, I was just in a three-week trial
17 and we were required to have the jury instructions the Friday
18 of the second week. Because, as you said, trials are living,
19 breathing things and to do a number of instructions that no
20 one knows whether they'll apply or not is a lot of make work
21 and is a lot of make work for the Court to review those and
22 then have to turn around and ask for a whole other set of
23 instructions. We would ask that you order the jury
24 instructions on Friday of the first week.

1 THE COURT: Let me respond in a positive way and
2 in a way meant to compliment you all. I haven't had a
3 privilege of conducting a trial with you, Mr. Stege, and I'm
4 looking forward to it. You appear to me to be a professional
5 and I mean that in every sense of the word. I know Mr. Hart
6 to be a professional and I know Mr. Picker to be a
7 professional.

8 I've had the privilege of litigating with both of
9 them and they may not pick the fights I like, but they don't
10 pick stupid fights and they don't in my experience make the
11 judge angry. Anyone who doesn't get jury instructions in
12 time will be in my cross hairs. Anyone who causes delays in
13 the proceedings unnecessarily will be in my cross hairs. I
14 ask you to follow the local rule.

15 I appreciate the suggestion. If they had agreed,
16 I would have done it, but I can understand. We are not going
17 to know what the jury instructions are in this case until the
18 second week of trial. We're just not. As much as I would
19 like to, we're just not.

20 MR STEGE: I will say no more. Thank you.

21 THE COURT: It's been a pleasure, gentlemen.
22 Thank you all for your time.

23 THE CLERK: Your Honor, I want you to know that I
24 have exhibit marking for October 31st at 2:00 and that's the

1 last thing between now and then.

2 THE COURT: Again, reach out if you need it,
3 gentlemen. Thank you for your time.

4 MR. PICKER: We'll just be asking for the copy of
5 the transcripts.

6 THE COURT: Sure.

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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 17, 2019, at the hour of 1:30
8 p.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 95, 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 28th day of October 2019.

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
)	
14 KATHERINE DEE FLETCHER,)	Department 7
)	
15 Defendant.)	
_____)	

16
17
18 TRANSCRIPT OF PROCEEDINGS

19 HEARING

20 October 22, 2019

21 2:00 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: MARC PICKER, ESQ.
11 By: BILL HART, ESQ.
12 350 S. Center
13 Reno, Nevada
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1 RENO, NEVADA, October 22, 2019, 2:00 p.m.

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3 --oOo--

4 THE COURT: Welcome all. Let's have Ms. Fletcher
5 step down with her attorneys, please. So, folks, I apologize
6 for the short notice for the set of this hearing. But since
7 our meeting last week, information has come into my
8 possession, which I think I need to make a record about and
9 then make some decisions in terms of how to act or not on it.

10 Let me be more particular. Last week, both sides
11 of this case indicated to me that they intended to, they were
12 more finesse with the language than I'm going to be, wade
13 into the child dependency case involving Max Trask in this
14 case. Both sides indicated that they believed there was
15 evidence from that case relevant to the defense in this case
16 and/or use by the State.

17 And I offered some cautionary comments about that
18 evidence and emphasize we would need to have a hearing
19 outside the presence of the jury before we waded in about the
20 scope, relevance, necessity of that evidence, et cetera.

21 As a consequence of that, however, I went to
22 reexamine JV10-00351. That is the case that is for Max
23 Trask. That case in fact began many years ago. Max has been
24 removed from his mother's care three times. The third time

1 was because of the incidents that form the basis of the
2 criminal charges in this case.

3 As I was reviewing the case, I discovered that Mr.
4 Hart represented Robert Trask in that case. I have some
5 documents I would like to distribute to you folks, because I
6 think they're relevant to this conversation. The first is
7 the Rules of Professional Conduct. The second is --
8 Ms. Clerk, we'll make this an exhibit or these following two
9 things exhibits for purposes of the hearing, but we'll make
10 it confidential, because they come from a confidential case
11 file.

12 But nonetheless, the second thing I want to give
13 you is the order, the master's recommendation and order for
14 protective custody that came out of that hearing, the third
15 document is the minutes from that hearing and then I have
16 copies of two relevant cases. One is a Nevada Supreme Court
17 case and one is a United States Supreme Court case talking
18 about whether or not the confidences of an attorney and their
19 client survive the death of their client.

20 Because here's procedurally what happened: There
21 was a protective custody hearing that was conducted on June
22 10th, 2014. That was when Max has been removed from his
23 mother and his father's care, but principally his mother's
24 care broadly on allegations that his mother was overexposing

1 Max to invasive medical examinations is how I'll describe it.

2 And at the hearing on that date, Mr. Trask
3 appeared, Ms. Fletcher was present, and Mr. Trask was
4 represented by the Alternate Public Defender's Office,
5 specifically Mr. Hart. At that hearing, Mr. Hart made
6 representations about Mr. Trask's position.

7 I'm reading from the minutes of the hearing, but
8 Mr. Hart it summarized and, unfortunately, gentlemen, I would
9 have had the JAVs recording, but I didn't have time to
10 excerpt it and cue it up, so right now I'm working from the
11 minutes. But the minutes are fairly summarized in the
12 context of Mr. Hart making the following representation: I
13 don't see there's a finding against Mr. Trask at this time.
14 In other words, the alignment of things was that Mr. Trask
15 was a quote, unquote, non-offending parent at the time of
16 that hearing. But there is past DV, that's DV by Mr. Trask
17 against Ms. Fletcher. That he, Mr. Trask, admitted to in the
18 context of that case, which would require clear and
19 convincing evidence that would rebut the presumption.

20 What that refers to is a child couldn't be placed
21 in Mr. Trask's home if Mr. Trask had suffered a conviction
22 for domestic violence without a finding by the judicial
23 officer of clear and convincing evidence that the presumption
24 that it's not in that child's best interest to be in that

1 home have been overcome.

2 Next was the assertion made: Believes they have
3 enough evidence to present today to do this. Are fine with
4 protective custody if they take Max away from Ms. Fletcher
5 and place them with Mr. Trask. Mr. Trask would enter into a
6 voluntary case plan and keep contact with Washoe County
7 Department of Social Services as much as possible. Will not
8 stipulate to anything else. Mr. Trask was then called as a
9 witness by Mr. Hart.

10 That representation was substantial, significant
11 and clearly involved the communication by Mr. Trask of
12 information and no doubt confidential information to Mr. Hart
13 about his meaning Mr. Trask's position, his interactions and
14 domestic violence context with Mr. Fletcher, et cetera.

15 That resulted in the order, the master's
16 recommendations and order for protective custody. That
17 doesn't detail a whole lot of the factual circumstances, but
18 that order was signed by Judge Schumacher on June 16th, 2014.

19 What jumped out at me about that was, I'm sure I
20 still don't completely understand the defense's position
21 about how self-defense by Ms. Fletcher in light of the prior
22 domestic violence perpetrated on her by Mr. Trask is
23 relevant, especially as it relates to an NGRI defense, but it
24 caused me to look at the opposition filed by the defense in

1 opposition to Mr. Stege's motion to prohibit evidence of the
2 victim's character in which Mr. Hart argued, it's co-signed
3 by Mr. Hart and Mr. Picker, that the character of the victim,
4 that's Robert Trask, can and will come into play should it be
5 seen as relevant to the testimony given and in order to prove
6 a particular defense strategy.

7 Later, it says: This particular case revolves
8 around a contentious relationship between Robert Trask and
9 Ms. Fletcher. This past includes many instances when Trask
10 was violent with not only Ms. Fletcher, but with her
11 children, including allegations of sexual abuse by him
12 against her son.

13 The rule of professional conduct which I believe
14 applies is the one I have provided all of you. It indicates
15 in summary form that basically the confidences of your client
16 remain the confidences of your client until your client
17 waives them. And the two cases I provided, one a Nevada
18 Supreme Court case, and one a United States Supreme Court
19 case, say that privilege survives the death of the client.

20 And so the dilemma for me is this: I'm sure Mr.
21 Hart didn't even remember it, doesn't have a recollection of
22 it. You know, the Public Defender's Office and the Alternate
23 Public Defender's Office rotate through hearings across all
24 case types, constantly because of the volume of work they

1 have. But, gentlemen, I think this is a fatal fact to the
2 representation of Ms. Fletcher by the Alternate Public
3 Defender's Office.

4 I ascribe no blame for it, I'm not here to
5 complain about it, but it is problematic on the surface.
6 It's problematic, especially if there were any conviction of
7 any kind in this case in a post conviction context as well.

8 And I realize I've caught you by surprise by this.
9 We can take a break, if you like, Mr. Picker, for you and Mr.
10 Hart to confer and think about this, but I just think it is a
11 fatal conflict to continued representation by your office. I
12 want and need, however, your thoughts in response. So let me
13 give you a while to digest, perhaps. Would you like a few
14 minutes?

15 MR. PICKER: Your Honor, quite frankly, this is
16 all news to me. So, yes, I have no idea how we're going to
17 respond and so I would need some time.

18 THE COURT: I'm happy to give you, say, 15 or
19 20 minutes. I don't -- I don't mean to catch anybody
20 flat-footed or off-guard about it. I think it's candidly
21 patent on its face, but I'm open to any contrary input you
22 all would like to give. So why don't we go into recess.
23 We'll be in recess until, say, 2:20. I have a 3:00 that we
24 can push if we need to, but I want to be sensitive to that

1 time.

2 (A short break was taken.)

3 THE COURT: We're again on the record in the case
4 of Katherine Fletcher. That's CR17-0690A. Mr. Picker.

5 MR. PICKER: Thank you, your Honor. I want to set
6 the stage a little bit before I tell you what our decision
7 is. As your Honor knows, but I want to make sure it's on the
8 record, neither the Public Defender nor the Alternate Public
9 Defender are actually appointed at PC hearings.

10 As of May of 2014, both the Public Defender and
11 the Alternate Public Defender starting May of that year began
12 appearing at PC hearings at the request of the family court.
13 Because it was considered that, because up until that time,
14 parents had been unrepresented at PC hearings. There was,
15 first of all, some legal consequences from that. But second
16 of all, the proceedings could be more streamlined with legal
17 representation so that these people would get representation
18 and they would get advice on how to proceed.

19 Mr. Hart had only just started, I think, less than
20 six months prior in our office, just a few months prior in
21 our office. He was the sole family court attorney in our
22 office at this time and he started doing the PC hearings in
23 May.

24 In the way the family court situation works,

1 attorneys are appointed to represent parents following PC
2 hearings if there are findings from the PC hearing. If it's
3 a non-offending parent and a decision was made in their favor
4 at the PC hearing, then no appointment ever happens. So our
5 office was never officially appointed to represent Mr. Trask.
6 That is why when we did our conflict check when we were
7 appointed to represent Ms. Fletcher, Mr. Trask's name never
8 came up as a former client.

9 But looking at both the minutes and the master's
10 recommendation, it is clear that Mr. Hart not only provided
11 representation, but provided very effective representation on
12 behalf of Mr. Trask, because he was found to be a
13 non-offending parent and Max was placed into his care as
14 subsequently in that result.

15 The concern that I have on behalf of our office is
16 that in the course of trial, depending on things that may
17 happen or be heard, we would not be sure that things that
18 came from questioning by us of witnesses had not come from
19 Mr. Hart's memory of that hearing and that representation as
20 opposed to our investigation and other work on behalf of
21 Ms. Fletcher.

22 THE COURT: It would be even worse if a conviction
23 entered of any kind and there were a post conviction
24 proceeding.

1 MR. PICKER: That would be my next comment is we
2 are under an ethical obligation not to set up a post
3 conviction ineffective assistance of counsel argument or a
4 conflict of interest argument. I think very clearly the
5 caselaw and the ethical rules lend to that conclusion.

6 So with that in mind, your Honor, I think that I
7 would say in an abundance of caution, but I don't even think
8 we have to go that far, in the black and white of this, we
9 believe that our office must be relieved as counsel, because
10 while it might be an argument by some that Mr. Hart could be
11 walled off from this case, considering that he and I have
12 worked hand in hand for two years on this case, that would be
13 impossible to know that there had not been any kind of
14 cross-pollination there.

15 So with that in mind, it is our motion today based
16 on this information that our office be relieved immediately
17 and that we would then turn this matter over to the conflict
18 group. We'll, of course, provide all of our documentation,
19 all of our investigation to whoever is appointed from that
20 group to at least give them a running start.

21 THE COURT: Thank you, Mr. Picker. I don't think
22 you have standing, I don't know if you want to add anything
23 for purposes of the record, Mr. Stege.

24 MR STEGE: I think this Court has been concerned

1 with the age of the case. That has no -- I admit that has no
2 bearing on what happened today, but that is a concern of the
3 State. But I have no cause or reason to traverse anything
4 stated today.

5 THE COURT: This is a tragedy in short term that
6 the Public Defender's Office had to -- or Alternate Public
7 Defender's Office had to invest this much energy and that
8 Ms. Fletcher had to invest this much energy and trust in her
9 very good attorneys.

10 It is completely understandable, I had forgotten
11 what you pointed out, Mr. Picker, about the non-formalization
12 of the appointment. That is exactly right. I was in fact a
13 party to those conversations. At the time it happened, Judge
14 Schumacher was the presiding judge, but I was sort of
15 transitioning into responsibility for the child welfare
16 docket. And, in fact, this issue was discussed by the
17 defenders who were present, which is: Are we in or are we
18 out as counsel for the parents?

19 You gave me the piece I couldn't figure out last
20 night, which was how your conflict check not have picked it
21 up and that makes perfect sense. And so it is just a
22 tragedy, honestly. It is first to the interests of justice,
23 it's a tragedy, to the fact that Ms. Fletcher is incarcerated
24 and it may delay a trial. I say may. I'm not deciding that

1 today. But better now than five years from now.

2 MR. PICKER: Agreed, your Honor. And with that in
3 mind, as part of that, you had ordered us, our office to
4 formalize your orders from last Thursday. I'd ask that you
5 hold that in abeyance for new counsel as well.

6 THE COURT: I will not require you to undertake
7 any other tasks in this case. I remove the Alternate Public
8 Defender's Office from representation of Ms. Fletcher with
9 the thanks of the Court. I ask that you expeditiously refer
10 this to the conflict counsel group for appointment.

11 MR. PICKER: I'll call Ms. Meier this afternoon
12 and advise her of what's happened.

13 THE COURT: Thank you. Ms. Fletcher, do you have
14 any questions? I don't want you to talk much, only because I
15 don't want you to say anything that might hurt you. But do
16 you have any questions about what I've decided here this
17 afternoon?

18 THE DEFENDANT: Are we going to proceed with
19 trial?

20 THE COURT: I don't know. What I'm going to do is
21 get new attorneys in to represent you and they're going need
22 time to work with you and to develop a relationship with you.
23 I will tell you it seems unlikely to me that somebody could
24 prepare for a trial of this magnitude, but I'll leave that to

1 them to decide. I won't continue the trial until they say
2 it.

3 On the other hand, I will have some conversation
4 with them, you can assure yourself, about their ability to
5 undertake a trial of this magnitude on short notice. This
6 is, to cap that off, this is a trial within a trial within a
7 trial. If I lead down the path that led me to the discovery
8 of this information, i.e., the full, as it were, child
9 dependency case, that is a huge amount of work for any
10 attorney to prepare for this case by itself, let alone the
11 allegations of the murder.

12 And so that's a long way around me saying I doubt
13 if we'll go to trial, Ms. Fletcher, but I'm not going to make
14 that decision right now. Mr. Stege.

15 MR STEGE: One thing I ask that they not be
16 relieved from is the discovery order reference Dr. Piasecki.

17 THE COURT: I can't put them to that task, I don't
18 believe, Mr. Stege. Once I have identified the conflict that
19 Mr. Hart and Mr. Picker have, I can't ethically ask them to
20 do anything that would violate their obligations to Mr. Trask
21 and their obligations to Ms. Fletcher. I can't do that.

22 MR STEGE: Okay.

23 THE COURT: I realize the challenge for you that
24 creates.

1 MR STEGE: Right.

2 THE COURT: Trust me, I had a sleepless night last
3 night when I realized the implications of this. Do you have
4 any other questions, Ms. Fletcher?

5 THE DEFENDANT: No, thank you.

6 THE COURT: Thank you for your time.

7 MR STEGE: When are we coming back?

8 THE COURT: I don't know. Let's go ahead and go
9 back on the record. Mr. Stege's understandable question was:
10 When are we coming back? Mr. Stege, I trust Mr. Picker to
11 his word, he'll contact the conflict counsel coordinator.
12 I'm sure she'll be reaching out. I intend to ask Ms. Oates
13 to reach out to her tomorrow or the next day to suggest we
14 set an expedited hearing to talk about the status of things.

15 MR. STEGE: Very good. Thank you.

16 THE COURT: Thank you for that.

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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 22, 2019, at the hour of 2:00
8 p.m., and took verbatim stenotype notes of the proceedings
9 had upon the hearing in the matter of THE STATE OF NEVADA,
10 Plaintiff, vs. KATHERINE DEE FLETCHER, Defendant, Case
11 No. CR17-0690A, and thereafter, by means of computer-aided
12 transcription, transcribed them into typewriting as herein
13 appears;

14 That the foregoing transcript, consisting of pages 1
15 through 16, 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 28th day of October 2019.

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
)	
14 KATHERINE DEE FLETCHER,)	Department 7
)	
15 Defendant.)	
_____)	

17
18
19 TRANSCRIPT OF PROCEEDINGS
20 MOTION FOR APPOINTMENT OF COUNSEL

21 October 29, 2019

22 2:00 p.m.

23 Reno, Nevada

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 SCOTT EDWARDS, ESQ.
9 Attorney at Law
10 Reno, Nevada
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1 RENO, NEVADA, October 29, 2019, 2:00 p.m.

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4 THE CLERK: Case number CR17-0690A, State versus
5 Katherine Dee Fletcher. Matter set for a hearing in regards
6 to appointment of counsel. Counsel, please state your
7 appearances.

8 MR. STEGE: I'm Amos Stege for the State.

9 MR. EDWARDS: I'm Scott Edwards, your Honor.

10 THE COURT: Mr. Edwards, please, if you would,
11 lodge a notice of appearance just so we have it in the file.
12 Trial is set to commence next week or thereabouts. What are
13 your thoughts about that, Mr. Edwards.

14 MR. EDWARDS: Your Honor, unfortunately, I
15 wouldn't be able to effectively represent Ms. Fletcher in
16 short a period of time. So I'd ask to vacate that trial date
17 and set another one, hopefully not too far out into the
18 future. I understand this case is getting on in terms of how
19 long it's been pending.

20 THE COURT: This will, I think, be the fifth trial
21 setting if I continue this and it is dragging to be sure.
22 None of that is, of course, on your shoulders. I suspected
23 that you would indicate that you would not be able to be
24 prepared for trial. Mr. Stege, your response.

1 MR. STEGE: I suspected the same. I suspect the
2 Court will also strike a balance between sort of the urgency
3 that comes with a case of this age and Mr. Edwards' ability
4 to prepare for a trial of this nature.

5 THE COURT: Do you know, Mr. Stege, any of the
6 availability of any of your key witnesses in the beginning of
7 the year next year?

8 MR. STEGE: I know of one. Dr. Zuchowski has no
9 conflicts. So any date we set might be a little bit
10 tentative, you know, plus or minus a couple of weeks is what
11 I'd ask for.

12 THE COURT: What are the no set periods of time,
13 as it were, Mr. Edwards, in January or February or March?

14 MR. EDWARDS: Your Honor, I have a federal trial
15 setting in February, February 25th. Other than that, I'm
16 open January, March.

17 THE COURT: So while I'm waiting for my calendar
18 to come up, Ms. Oates, let's start talking some dates. In
19 direct response to your overture and really I view it as an
20 overture, Mr. Stege, yes, I will strike a balance, I'd rather
21 set it sooner than later. I'll bump what I need to bump,
22 because at this juncture procedurally this case is in
23 emergency status in my view.

24 Ms. Fletcher has been in custody a very long

1 period of time, this has repeatedly been continued and we
2 need to get to it. So I'm going to make a priority out of
3 it.

4 THE CLERK: Your Honor, I'm going to start talking
5 about the weeks that we have available that we could do it.
6 The work of January 13th, we have two criminal trials already
7 set. But I'm assuming the week of January 20th, Martin
8 Luther King, so that with leave us with nine days. I'm
9 looking at January 27th, we have a civil trial that I am --
10 there's a very good chance it will go away. January 27th and
11 then that would put us in the week of February 3rd. I think
12 that looks really good. We start a trial that absolutely
13 cannot be moved, a criminal trial, the week of February 10th.

14 So I would suggest, your Honor, the 27th,
15 January 27th, because that gives everybody two solid weeks
16 and that's my understanding that everyone needs.

17 THE COURT: Mr. Stege.

18 MR. STEGE: I have, unfortunately, a trial in
19 Department Eight that I think it's on its third trial setting
20 of January 13th. It's a short trial.

21 THE COURT: We're talking about January 27th.

22 MR. STEGE: I wanted to check how many weeks
23 after.

24 THE COURT: Two, I believe.

1 MR. STEGE: That's fine.

2 THE CLERK: January 27th, your Honor.

3 Mr. Edwards, will that work for you?

4 MR. EDWARDS: That looks very good, your Honor.

5 THE CLERK: Your Honor, I'll set that January 27th
6 for two weeks starting at 9:30. Let's set the motion to
7 confirm for January 15th at 9:00 a.m..

8 THE COURT: I'm giving you a moment to confer with
9 your client, Mr. Edwards. Take whatever time you need and I
10 want to talk about the process issues.

11 MR. EDWARDS: Your Honor, I was just inquiring
12 about her custody status. I know she's under a sentence of
13 imprisonment and is incarcerated in Las Vegas. I was just
14 wondering about communication.

15 THE COURT: I had ordered that she be housed in
16 the Washoe County Jail through trial. I vacate trial
17 currently set for November. I'm willing to consider an order
18 that would have her transported earlier next year, meaning
19 sometime in January, but I would not have her housed in the
20 Washoe County Jail between now and then.

21 MR. EDWARDS: That settles it, your Honor. We'll
22 pick a date as early as we can in January if that's possible.

23 THE COURT: Well, likely I would give at least a
24 couple of weeks. So I would consider signing an order that

1 would have her transported, say, for January 13th, which
2 would be two full weeks in advance of the trial.

3 MR. EDWARDS: That would be great, your Honor.
4 That's all I really wanted to know about that.

5 THE COURT: All right. You know, then, or will
6 have learned if you've had some conversations with Mr. Picker
7 that we had resolved all the pretrial motions in advance of
8 trial. I don't know if you can say as yet whether you
9 anticipate any other pretrial motions or not.

10 MR. EDWARDS: I can't, your Honor. And I
11 understand there to be a defense pled at this point that
12 requires expert testimony. So my reluctance with setting a
13 date without knowing that was a feasible --

14 THE COURT: I was going to place a burden on you
15 and Mr. Stege. Now that we have a trial date, I expect the
16 two of you have let me know in no more than five business
17 dates if there's any absolute conflicts with any witnesses
18 you may have. If there are, I'll expedite a hearing
19 involving at least the three of us to discuss those conflicts
20 and what that means for any potential trial date.

21 I'll warn you both in advance, I'm going to want
22 to know why a witness, I'm going to pick on Mr. Stege's side
23 of the table, but I think it applies to both sides of the
24 table, why John Smith can't be replaced by Suzy Q who may

1 have seen, heard or listened to the same things. So just
2 keep that in mind. I hope I'm always reasonable, but I'll be
3 reasonable about this trial date, but, look, we've got to get
4 this thing to trial.

5 MR. EDWARDS: I understand, your Honor. I'm just
6 answering some of your questions.

7 THE COURT: I appreciate it. No worries.

8 MR. EDWARDS: I should know a lot more by
9 tomorrow, hopefully.

10 THE COURT: Again, no later than five working
11 days. If you have a conflict with any critical witness that
12 can't be covered with another witness, if an item of evidence
13 can't be testified to by another witness, whatever the case
14 may be, let me know through Ms. Oates, and if we can't agree
15 upon the result of that conflict, we'll need to have hearing
16 and pick a new trial date.

17 MR. EDWARDS: Great.

18 THE COURT: Mr. Stege.

19 MR. STEGE: Out of the motion hearing, the Court
20 had assigned the parties to do orders. Typically, I would
21 run that past opposing counsel. May I have some guidance
22 from the Court on that subject.

23 THE COURT: Certainly. I'll ask you to run the
24 proposed orders by Mr. Edwards as the new opposing counsel.

1 Mr. Edwards, you'll have some, I don't think it's too
2 onerous, you'll have some burdens to produce some orders on
3 some so-called defense prevailing pretrial motions. You'll
4 need to review those transcripts anyway to prepare, so I
5 don't view that as overly onerous on you.

6 MR. EDWARDS: All right, your Honor.

7 THE COURT: I'll ask you to propound those orders
8 and share them with Mr. Stege. Any other procedural issues,
9 Mr. Stege, you think we need to discuss, sir?

10 MR. STEGE: No, thank you.

11 MR. EDWARDS: Your Honor, do you wish me to do the
12 order to transport on the 13th as well?

13 THE COURT: Yes. When I spoke with Mr. Picker, he
14 was disappointed and I think it was just an unfortunate
15 circumstance when his office had to be replaced, but he
16 indicated to me that he was going to be calling you
17 expeditiously. Has his file transferred to you, have all the
18 context that you need to occur occurred? Is there anything
19 that I need to get in the middle of?

20 MR. EDWARDS: Not yet, your Honor. I was just
21 waiting for today, and as of tomorrow, all that should take
22 place is my understanding. And I haven't spoken in great
23 detail about the case with Mr. Picker, but now that I'm
24 counsel, I will.

1 THE COURT: Well, he indicated an affinity to
2 doing that. In his words, he wanted to give you a running
3 start, as it were, since we were really essentially on the
4 eve of trial and the defense strategies had been perfected.
5 The NGRI plea in this case is going to complicate matters for
6 your preparation as you know better than I. Make sure you
7 make entreaties to him sooner rather than later. And if you
8 have any difficulty, I guess is the point of my conversation,
9 and it is appropriate for me to wade in to expedite a
10 transfer of the file or otherwise, please reach out.

11 MR. EDWARDS: I will, your Honor.

12 THE COURT: I see you have an investigator here.
13 Mr. Peele is well-known to me. Mr. Peele, are you ever going
14 get to retire, sir?

15 MR. PEELE: As soon as I get rid of my grocery
16 cart, your Honor.

17 THE COURT: Because Mr. Peele has been working
18 longer than I have been working. He's been around this town
19 forever. I would offer to give you an order to Mrs. Peele,
20 Mr. Peele, but I don't know that she would follow it.

21 MR. PEELE: Please don't do that.

22 THE COURT: So if you need relief in that regard,
23 I make that overture to you as well. I'm trying to make the
24 hill look downhill for you, Mr. Edwards, in terms of

1 preparation, as opposed to uphill.

2 MR. EDWARDS: I understand, your Honor. I
3 understand the case to have been quite well-prepared at this
4 point in time. It's just a matter of me catching up. And in
5 the next week, that should take place. And, again, I'll
6 revisit this issue about expert testimony and whether that's
7 something --

8 THE COURT: I look forward, then, to hearing from
9 you, gentlemen, if it becomes necessary. Ms. Fletcher, of
10 course, before you say anything, I invite you to confer with
11 your attorney, but do you have any questions about what is
12 occurring?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: All right. Thank you all very much
15 for your time, then. I look forward to this case moving
16 expeditiously in January.

17 MR. EDWARDS: Thank you, your Honor.

18 --oOo--

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20

21

22

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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 October 29, 2019, at the hour of 2:00
8 p.m., and took verbatim stenotype notes of the proceedings
9 had upon the motion for appointment of counsel in the matter
10 of THE STATE OF NEVADA, Plaintiff, vs. KATHERINE DEE
11 FLETCHER, Defendant, Case No. CR17-0690A, and thereafter, by
12 means of computer-aided transcription, transcribed them into
13 typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 12, 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
)	
14 KATHERINE DEE FLETCHER,)	Department 7
)	
15 Defendant.)	
_____)	

16
17
18 TRANSCRIPT OF PROCEEDINGS

19 HEARING ON TRANSPORT

20 December 17, 2019

21 3:00 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 SCOTT EDWARDS, ESQ.
9 Attorney at Law
10 Reno, Nevada
11
12
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1 RENO, NEVADA, December 17, 2019, 3:00 p.m.

2
3 --oOo--

4 THE CLERK: Case number CR17-0690A, State versus
5 Katherine Dee Fletcher. Matter set for a hearing with
6 regards to early transport of the defendant for change of
7 plea from NGRI. Counsel, please state your appearances.

8 MR. STEGE: I'm Amos Stege for the State of
9 Nevada.

10 MR. EDWARDS: Scott Edwards, your Honor, for
11 Ms. Fletcher who is not present.

12 THE COURT: Gentlemen, what are we about?

13 MR. STEGE: Your Honor, in discussions with
14 Mr. Edwards, the issue of transporting the defendant came up
15 at the last hearing. I think the Court, maybe it was two
16 weeks before trial, don't quote me on that, but this question
17 of whether the defendant will withdraw her NGRI plea came up.
18 If that's going to happen, I think we want that on the
19 record. And if it's going to happen, we want it to happen
20 earlier, because it does affect a number of the outstanding
21 motions.

22 THE COURT: Mr. Edwards.

23 MR. EDWARDS: Your Honor, that's all correct.
24 From the moment I met Ms. Fletcher, she was very adamant

1 about wanting to withdraw this plea, the NGRI aspect of the
2 plea, and I wanted some time to get a handle on the case, go
3 through the transcripts and prior proceedings before I
4 committed to it. As I understand it, there's no procedural
5 requirement to do this and we could wait.

6 THE COURT: To do what?

7 MR. EDWARDS: To withdraw the NGRI aspect of the
8 plea.

9 THE COURT: Well, let me observe a couple of
10 things. Maybe it will be useful, maybe it won't. You
11 gentlemen may be aware, you may not, I've had the privilege
12 of knowing Ms. Fletcher now for several years in several
13 different contexts and the issue of her competence to enter a
14 plea and/or her personal desires about a plea has been raised
15 by her sua sponte, meaning on her own, in different contexts
16 in front of me and she has waffled.

17 What I mean by that, she is, I don't mean this to
18 be a direct quote of attribution to her, but the description,
19 she has said to me at times, judge, I don't know why certain
20 of my attorneys didn't raise a not guilty or an insanity
21 defense, I think was the words she used, in my criminal case.
22 This was in the context of her child welfare case. And then
23 at other times has said, I don't know why my crazy attorneys
24 raised such a defense. And I had the dialogue with her,

1 Ms. Fletcher, what are you communicating, because I'm hearing
2 both things from you. So I offer that only as an
3 observation. She is, of course, entitled to change her mind.

4 As to the process, I would offer this, it was a
5 first in my career when the defense in this case said they
6 wanted to add NGRI as an additional plea. In fact, the
7 statute contemplates that in fairness to them. And the only
8 purpose for which I can divine to do that is to have the
9 option in front of the jury, as it were, of this hand or that
10 hand, because in point of fact, it has no procedural
11 difference on how I conduct the trial. It also perhaps has
12 some sentencing implications to be sure, but I don't want to
13 put the cart before the horse.

14 So from my perspective, I think that given the
15 very unusual prodrome of this case, the multiple evaluations
16 of Ms. Fletcher, the periods of time she's spent at MHI, et
17 cetera, it would be unfair to the State to not, as it were,
18 put her to the choice, which are you going to do?

19 And if it's true that you've had communications --
20 first, I'm very thankful you're in this case. Thank you,
21 Mr. Edwards, and I forgot to begin there. I've put you
22 behind the gun, I know, in a first degree murder case with a
23 shortened time of preparation over the holidays. So I
24 apologize to you and your family for that.

1 MR. EDWARDS: Thank you.

2 THE COURT: But it just makes sense to me given
3 the process of this case to distill whatever issues we can
4 distill before we get to trial. Do you want to respond to
5 those thoughts of mine?

6 MR. EDWARDS: Your Honor, I think we're on the
7 same page here. I noticed the same equivocation or at least
8 change of positions throughout the proceedings. I'm aware of
9 the prior family court proceedings as well, which was a part
10 of the record that I've received.

11 Where this came to mind with me in making this
12 commitment, first of all, I'm not a fan of alternative
13 theories of defense and I think you brought this up in the
14 motions hearing that if she's not guilty by reason of
15 insanity, she's basically admitting that she committed the
16 murder.

17 THE COURT: Right. I think she's got to to
18 succeed in that. I don't mean to foreclose anything, but I
19 think it's a practical reality.

20 MR. EDWARDS: I agree with you, your Honor, and
21 that's why I'm not a fan of those alternative defenses. You
22 wind up with less than a real vigorous defense, I think, when
23 you're riding too many horses.

24 But where it also impacts this case, I want a

1 commitment from her, either on the record or in writing about
2 this, but she's insistent up until this very moment, but
3 there's lot of inconsistencies in her communication with me
4 so I'd like to have it in writing for down the road purposes
5 for sure.

6 We're under an obligation to have those orders on
7 the pretrial motions presented to you, and I think by
8 withdrawing the not guilty by reason of insanity aspect, it
9 clarifies a lot of those pretrial rulings that you made,
10 which a lot of them were, well, let's wait and see what
11 Mr. Picker and Mr. Hart commit to in their opening statement.

12 THE COURT: When would you like her here for your
13 purposes? Set aside the issue of process handling the NGRI,
14 when would you like her here for your purposes to prepare for
15 trial?

16 MR. EDWARDS: December 30th would be adequate for
17 me, your Honor.

18 THE COURT: I assume you would have no objection
19 to that, Mr. Stege.

20 MR. STEGE: No.

21 THE COURT: I order that she be returned for
22 custody purposes to the Washoe County Jail no later than
23 December 30, 2019. And I would suggest, then, perhaps in the
24 first full week of January we put her at the end of the law

1 and motion or arraignment calendar and I want to personally
2 canvass her. I agree completely, you should get it in
3 writing, but I want to personally canvass her under oath
4 about this choice if she makes this choice.

5 MR. EDWARDS: Your Honor, that would be, I
6 believe, adequate time for me to do what I -- I know there
7 are some very difficult conversations ahead of me with
8 Ms. Fletcher. And we also have some ongoing negotiations. I
9 don't know where those will go. But I want to do it sooner
10 rather than later.

11 THE COURT: I couldn't agree more. I'm thankful
12 for you gentlemen bringing this issue up ahead of time. I
13 appreciate it. If my order meets your needs, let me know,
14 and I hope it does, I believe it does, but if it doesn't, is
15 there anything else you think we need to discuss, Mr. Stege?

16 MR. STEGE: Only that date later that week.

17 THE CLERK: That will be January 8th, your Honor.

18 THE COURT: January 8th. That's a Wednesday.
19 That's my normal law and motion day.

20 THE CLERK: We have a trial starting the 6th.

21 MR. STEGE: What if we do it the 2nd or 3rd?

22 THE CLERK: That's not a possibility.

23 MR. STEGE: I'm sorry.

24 THE COURT: No. It's okay.

1 MR. EDWARDS: Well, my intent is to get it in
2 writing on the 30th or 31st. Well, I can't really do it on
3 the 31st. I'm not sure.

4 MR. STEGE: Let's keep that date and be flexible.

5 MR. EDWARDS: I'll work Mr. Stege on that.

6 THE COURT: Thank you for that. So we'll
7 tentatively set it for that Wednesday, let's say 11:00 so you
8 guys don't have to sit through the whole law and motion
9 calendar and I won't burn more of your time than necessary.
10 We'll label it something innocuous so that everybody's phones
11 don't blowup one way or another. Call it a status hearing.

12 MR. EDWARDS: Okay.

13 THE COURT: Anything else we need to discuss?

14 MR. STEGE: No, thank you.

15 MR. EDWARDS: There might be more to come, your
16 Honor.

17 THE COURT: Again, I'm appreciative you stepped
18 into this. This case has had a long and tortured history to
19 say the least. She needs good representation. I'm glad
20 you're here. It's a big thing to digest. Let me know if I
21 can arm you with all the resources you need so we can have
22 the most appropriate outcome, whatever that may be.

23 MR. EDWARDS: I will, your Honor.

24 MR. STEGE: Thank you, your Honor.

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 December 17, 2019, at the hour of
8 3:00 p.m., and took verbatim stenotype notes of the
9 proceedings had upon the hearing on transport in the matter
10 of THE STATE OF NEVADA, Plaintiff, vs. KATHERINE DEE
11 FLETCHER, Defendant, Case No. CR17-0690A, and thereafter, by
12 means of computer-aided transcription, transcribed them into
13 typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 10, 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
)	
14 KATHERINE DEE FLETCHER,)	Department 7
)	
15 Defendant.)	
_____)	

16
17
18 TRANSCRIPT OF PROCEEDINGS

19 ARRAIGNMENT

20 January 8, 2020

21 11:00 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 SCOTT EDWARDS, ESQ.
9 Attorney at Law
10 Reno, Nevada
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1 RENO, NEVADA, January 8, 2020, 11:00 a.m.

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3 --oOo--

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

7 MR. EDWARDS: Good morning, your Honor. Scott
8 Edwards on behalf of Ms. Fletcher who is present in custody.

9 THE COURT: Good morning. Good morning, Mr.
10 Stege.

11 MR. STEGE: Good morning.

12 THE COURT: Ms. Fletcher, good morning. This is
13 the time and date requested to enter a change of plea.
14 Mr. Edwards, what's your client's intention?

15 MR. EDWARDS: Your Honor, she had previously as
16 required by statute entered a not guilty by reason of
17 insanity plea and she would like to withdraw that plea and
18 enter a not guilty plea.

19 THE COURT: Ms. Fletcher, would you please raise
20 your right hand and take the oath of a witness?

21 (Ms. Fletcher sworn at this time.)

22 THE COURT: Ms. Fletcher, the information in this
23 case accuses you of Count One of the crime of murder with the
24 use of a deadly weapon, which is a category A felony. How do

1 you wish to plead to that allegation?

2 THE DEFENDANT: Not guilty.

3 THE COURT: Count Two accuses you of the crime of
4 burglary and possession of a firearm, a category B felony.

5 MR. STEGE: If I can interrupt, your Honor?
6 That's resolved.

7 THE COURT: I apologize. It is just on the
8 murder. I forgot. Please accept my apology, folks. You had
9 previously added an additional plea, Ms. Fletcher, of not
10 guilty by reason of insanity to the murder charge. Is it
11 your desire now not to add that plea at this time?

12 THE DEFENDANT: Yes.

13 THE COURT: So I accept your not guilty plea. We
14 have a trial that is currently set. Trial will commence. Is
15 there anything else we need to place in the record?

16 MR. STEGE: Not on this matter, your Honor.

17 MR. EDWARDS: Not at this time, your Honor.

18 THE COURT: Mr. Stege, you left open the
19 possibility that perhaps there is something we need to
20 discuss.

21 MR. STEGE: Only I think it now sort of changes
22 the motion issues outstanding.

23 THE COURT: It does.

24 MS. STEGE: I don't know if today's the day we

1 want to deal with it or if we want to go out off into the
2 future.

3 THE COURT: I would welcome any stipulations if
4 you can make them today, counsel, which might save you and me
5 some work related specifically to the expert witnesses, et
6 cetera. Are you prepared to offer those stipulations?

7 MR. STEGE: No, but I'll take that as
8 encouragement from the Court to seek those.

9 THE COURT: Indeed.

10 MR. EDWARDS: I would like to do that as well,
11 your Honor.

12 THE COURT: I'll welcome those to be recorded in
13 an order. As a reflection of my courtesy in return to the
14 two of you, tell me if you need time from me for an
15 additional hearing, I'll make it happen.

16 MR. STEGE: Very good.

17 THE COURT: Do you have any questions,
18 Ms. Fletcher?

19 THE DEFENDANT: No, your Honor.

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

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 January 8, 2020, at the hour of 9:00
8 a.m., and took verbatim stenotype notes of the proceedings
9 had upon the arraignment 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 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 4th day of January 2021.

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 REGARDING DEFENDANT'S STATEMENTS TO DR. PIASECKI

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 Regarding Defendant's Statements to
Dr. Piasecki. This Motion is made and based on the memorandum of
Points and Authorities submitted herewith.

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1 The Court has previously granted the State's motion regarding
2 discovery of the underlying data supporting Dr. Piasecki's opinion.
3 Those materials have not yet been provided.¹ As part of the hearing
4 on this matter, the Court should enforce the order.

5 Argument

6 No legal principle operates to exclude these statements. The
7 Court should allow their admission in the case-in-chief of the state.
8 Dr. Piasecki's would be called as fact or percipient witness and not
9 in any expert capacity.

10 The statements are admissible as statements of a party opponent.
11 NRS 51.035(3)(a). They are relevant as they tend to prove the
12 defendant's guilt, i.e., that she in fact shot Robert Trask. NRS
13 48.015.

14 The statements do not fall under the doctor-patient privilege
15 because the defendant was never in the position of a patient. NRS
16 49.215 (a patient is "a person who consults or is examined or
17 interviewed by a doctor for purposes of diagnosis or treatment"), see
18 Rogers v. State, 127 Nev. 323, 327, 255 P.3d 1264, 1266 (2011)
19 (citing Hetter v. District Court, 110 Nev. 513, 516, 874 P.2d 762,
20 763 (1994))("[D]octor-patient privilege is intended to inspire
21 confidence in the patient and encourage candor in making a full
22 disclosure so the best possible *medical care* can be given) internal
23 citations omitted, emphasis added. NGRI is not a diagnosis and Dr.
24 Piasecki was never going to provide medical care. Even if the
25 statements might have been confidential, once the defendant disclosed
26

¹ Likely due to the strategy change involved with the withdrawal of the NGRI plea and appointment of new counsel.

1 the report, any the confidentiality was destroyed. NRS 49.215(1) ("A
2 communication is "confidential" if it is not intended to be disclosed
3 to third persons ..."). The statements were made with knowledge that
4 they were not confidential because they would have to be disclosed
5 and the evaluation occurred after the defendant had entered her NGRI
6 plea.²

7 The question of whether the statements are protected by the
8 attorney-client privilege needs slight attention here. See e.g.
9 United States v. Kovel, 296 F.2d 918, 922 (2d Cir. 1961)(if the
10 advice sought is the accountant's rather than the lawyer's, no
11 privilege exists). That is because once the report was revealed, the
12 privilege was waived. NRS 49.3859(1)("A person upon whom these rules
13 confer a privilege against disclosure of a confidential matter waives
14 the privilege if the person voluntarily discloses or consents to
15 disclosure of any significant part of the matter").

16 Because testimonial privileges come at the price of the truth,
17 the Nevada Supreme Court has "consistently held that statutory
18 privileges should be construed narrowly, according to the "plain
19 meaning of [their] words." Rogers v. State, 127 Nev. 323, 328, 255
20 P.3d 1264, 1267 (2011)(Noting that the "derogation of the search for
21 truth", "contraven[e] ... the fundamental principle that 'the public
22 ... has the right to every man's evidence', and often their "benefits
23 are, at best, 'indirect and speculative.')(internal citations
24 ///

25 _____
26 ² NGRI plea was entered in February 2019, the report indicates that she met with the
defendant on March 4, 2019 in addition to the previous competency related meetings.
Such a report would typically include a summary of the 'limits of confidentiality',
i.e. that Dr. Piasecki is not the defendant's doctor.

1 omitted), see also Whitehead v. Nevada Comm'n on Judicial Discipline,
2 110 Nev. 380, 414, 873 P.2d 946, 968 (1994)("[B]oth the work product
3 and the attorney-client privileges... must be strictly confined within
4 the *narrowest possible limits* consistent with the logic of [their]
5 principles")(emphasis added)(internal quotations omitted).

6 Waiver of any privilege or partial privilege operates to waive
7 the privilege as to the remainder of the communications. Lisle v.
8 State, 113 Nev. 679, 701, 941 P.2d 459, 473 (1997)("If a client
9 voluntarily reveals portions of the communications with the attorney,
10 'those revelations amount to a waiver of the attorney-client
11 privilege as to the remainder of the conversation or communication
12 about the same subject matter'")(overruled on other grounds by
13 Middleton v. State, 114 Nev. 1089, 968 P.2d 296, 315 (1998). Thus,
14 Dr. Piasecki's general retelling of the defendant's story waives any
15 remnant privilege and requires their disclosure.

16 The work product doctrine, which "shelters the mental processes
17 of the attorney", no longer protects the defendant's statements. See,
18 United States v. Nobles, 422 U.S. 225, 238, 95 S. Ct. 2160, 2170, 45
19 L. Ed. 2d 141 (1975). Like testimonial privileges, the work-product
20 doctrine is not absolute and may, like others, be waived. Id. Even
21 if, despite the timing of the plea and report, it was produced as
22 contemplated work product, any work product privilege was waived upon
23 disclosure to the State.

24 Work product does not protect underlying facts. Put another
25 way, it protects mental impressions, opinions, trial tactics, legal
26 ///

1 opinions, and the like. See, Means v. State, 120 Nev. 1001, 1009,
2 103 P.3d 25, 30 (2004)(distinguishing "whether the information is
3 factual or constitutes the attorney's opinions, mental impressions,
4 trial tactics and conclusions"). It protects a lawyer's mental
5 impressions and strategies, but it does not reach each fact that
6 comes to a lawyer's attention or which is mentioned in a strategic
7 document, nor the fact of litigation activity such as filing motions,
8 questioning witnesses, meeting with witnesses, and retaining experts,
9 even if such activity hints at the party's strategy; thus, while a
10 lawyer's private memoranda may refer to facts learned through
11 investigation, the facts themselves - as opposed to the memoranda
12 containing strategies or mental impressions about the facts or
13 referencing the facts - are not protected by the work product
14 doctrine.³ In short, there is a difference between a lawyer's mental
15

16 ³ See *Hickman*, 329 U.S. at 504, 67 S. Ct. at 390 (recognizing that one party may
17 discover facts known or available to the opponent, even though such facts are
18 contained in a document which is non-discoverable work product; "A party clearly
19 cannot refuse to answer interrogatories on the ground that the information sought
20 is solely within the knowledge of his attorney. But that is not this case. Here
21 production was sought of documents prepared by a party's attorney after the claim
22 has arisen"); *In re Six Grand Jury Witnesses*, 979 F.2d 939, 945 (2d Cir. 1992),
23 cert. denied, 509 U.S. 905, 113 S. Ct. 2997 (1993) ("underlying factual
24 information" not protected under attorney work product doctrine); *Resolution Trust
25 Corp. v. Dabney*, 73 F.3d 262, 266 (10th Cir.1995) ("Because the work product
26 doctrine is intended only to guard against divulging the attorney's strategies and
legal impressions, it does not protect facts concerning the creation of work
product or facts contained within work product"); *Boghossian v. Gulf Oil Corp.*, 738
F.2d 587, 595 (3d Cir. 1984) ("where the same document contains both facts and
legal theories of the attorney, the adversary party is entitled to discovery of the
facts"); *In re Dayco Corp. Derivative Securities Litigation*, 99 F.R.D. 616, 624
(S.D. Ohio 1983) (work product doctrine does not reach facts on which parties base
their allegations); *In re Convergent Technologies Second Half 1984 Securities
Litigation*, 122 F.R.D. 555, 558 (N.D. Cal. 1988) (parties cannot "use the work
product doctrine to hide the facts themselves"); *State Farm Mutual Automobile
Insurance Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 214 (E.D. Pa. 2008)
(distinguishing a lawyer's protected opinion from the underlying facts upon which
the opinion is based; "[T]he courts have consistently held that the work product
concept furnishes no shield against discovery, by interrogatories or by deposition,
of the facts that the adverse party's lawyer has learned, or the person from whom

1 impressions and assessments themselves, the underlying facts upon
2 which the lawyer's assessments are based, and litigation conduct
3 (such as interviewing witnesses, filing motions, and subpoenaing
4 witnesses and documents) undertaken in service of the lawyer's
5 assessments: the work product doctrine protects the impressions and
6 assessments themselves, but does not encompass all the underlying
7 facts or actions taken by the lawyer.⁴ This is among the reasons why
8 underlying facts and data supporting opinions, including the
9 defendant's statements, are subject to disclosure under NRS 50.305.

10 There is Fifth Amendment protection for the defendant's
11 statements. The Fifth Amendment gives protections for defendants in
12 insanity evaluation but only in compulsory examinations. See e.g.
13 Estelle v. Smith, 451 U.S. 454, 468, 101 S. Ct. 1866, 1876, 68 L. Ed.
14 2d 359 (1981) ("Because respondent did not voluntarily consent to the
15 pretrial psychiatric examination after being informed of his right to
16 remain silent and the possible use of his statements, the State could
17 not rely on what he said to Dr. Grigson to establish his future

18 _____
19 he has learned such facts, or the existence or nonexistence of documents, even
20 though the documents themselves may not be subject to discovery")(internal
21 quotation omitted); *Gould Inc. v. Mitsui Mining & Smelting Co.*, 825 F.2d 676, 679-
22 80 (2d Cir.1987) (transferring preexisting documents from client to lawyer does not
23 confer work product protection); *In re Grand Jury Proceedings*, 616 F.3d 1172, 1185
24 (10th Cir. 2010) (work product doctrine inapplicable; "The majority of questions
focus on the government's attempt to elicit whether Appellant's attorneys passed on
certain information to Appellant. The questions do not seek any legal advice, nor
do the questions delve into the attorneys' impressions about the facts that might
have been conveyed to Appellant. The questions do not seek legal conclusions,
opinion or legal theories created in anticipation of litigation. The questions seek
only factual confirmation concerning events the attorney personally witnessed
(either as the receiver or giver of information)").

25 ⁴ NRS 174.245 evinces this distinction, requiring disclosure of many different types
26 of evidence, including witness statements, results of mental examinations or
scientific tests, and documents, but excluding from disclosure "[a]n internal
report, document, or memorandum" prepared by the defendant or his lawyer "in
connection with the investigation or defense of the case."

1 dangerousness"); Powell v. Texas, 492 U.S. 680, 684, 109 S. Ct. 3146,
2 3149, 106 L. Ed. 2d 551 (1989) ("If a defendant requests a
3 psychiatric examination in order to prove a mental-status defense, he
4 waives the right to raise a Fifth Amendment challenge to the
5 prosecution's use of evidence obtained through that examination to
6 rebut the defense"); Estes v. State, 122 Nev. 1123, 1133, 146 P.3d
7 1114, 1121 (2006) ("In short, when the defendant places his sanity or
8 mental capacity at issue, a defendant's right to protection under the
9 Fifth and Fourteenth Amendments from the disclosure of confidential
10 communications made during a court-ordered psychiatric evaluation
11 relates only to the incriminating communications themselves").

12 Due process does not protect admission of the statements. In
13 McKenna, the Nevada Supreme Court embraced a fundamental fairness
14 rationale for prohibiting the admission of admissions made to a court
15 appointed psychiatrist who performed an NGRI evaluation. McKenna v.
16 State, 98 Nev. 38, 38-39, 639 P.2d 557, 558 (1982)⁵. (The State
17 elicited statements that McKenna had admitted he had "exploded and
18 killed J. J. Nobles"), see also McKenna at 39, (discussing ban on
19 using statements made to a court ordered psychiatrist to impeach the
20 ///

21
22
23 ⁵ The Nevada Supreme Court's adoption of a federal district court decision (Collins
24 v. Auger) is worth a second look as its due process approach is not based on any
25 precedent, its limited procedural stance, and it has not been widely adopted.
26 Collins v. Auger, 428 F.Supp. 1079. 1082-83 (S.D.Iowa 1977). See, e.g. State v.
Devine, 372 N.W.2d 132, 135 (S.D. 1985) ("From our reading of Collins, the admission
of incriminating statements made by the defendant to a psychiatrist during a
psychiatric examination constitutes prejudicial error when other evidence of guilt
presented at the trial is not so strong as to negate any actual prejudice
resulting from the statements").

1 defendant), see also Estes v. State, 122 Nev. 1123, 1133, 146 P.3d
2 1114, 1121 (2006)(clarifying that Fifth and Fourteenth Amendment
3 protections from court-ordered psychiatric evaluation relate "only to
4 the incriminating communications themselves", leaving the State free
5 to use the remainder of the evaluation). Across all Nevada cases
6 protections only flow to the defendant when an evaluation is court
7 ordered.

8 The Court should mirror the following approach from a nearly
9 analogous case:

10 We conclude that, regardless of whether the defense
11 intends to call a defense-retained psychiatrist as an
12 expert witness, neither this state's criminal discovery
13 rules nor the work product doctrine preclude the State's
14 discovery of that psychiatrist's written reports, or his
15 testimony relating thereto, which are based on the
16 psychiatrist's examination of a defendant who intends to
17 rely upon an insanity defense. We further hold that the
18 State may call that psychiatrist as a witness.

16 State v. Pawlyk, 115 Wash. 2d 457, 460, 800 P.2d 338, 340
17 (1990).

18 The Court should admit the statements made to Dr. Piasecki.

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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 17th of January, 2020.

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

9 By/s/ Amos Stege
10 AMOS STEGE
11 9200
12 DEPUTY DISTRICT ATTORNEY
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CODE: 2010
Scott W. Edwards
Bar Number 3400
561 Keystone, #322, Reno, NV 89503
(775) 530-1876
Attorney for Defendant

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

THE STATE OF NEVADA,

Plaintiff,

VS.

KATHERINE DEE FLETCHER,

Defendant.

Case No. CR17-0690A

Dept. No. 7

**OPPOSITION TO MOTION REGARDING DEFENDANT'S STATEMENTS TO DR.
PIASECKI**

COMES NOW, Defendant Katherine Fletcher, by and through court-appointed counsel, Scott Edwards and submits this opposition to the State's motion to admit statements of the Defendant made to Dr. Piasecki in the course of her sanity evaluation. This opposition is based upon the following points and authorities.

POINTS AND AUTHORITIES

The Defendant does not now assert the defense of not guilty by reason of insanity. If the Defendant had maintained such a defense into the trial of this matter, disclosure of statements of Ms. Fletcher to Dr. Piasecki in the course of the evaluation in support of an insanity defense would be discoverable by the State, as this Court has previously ruled. Moreover, the statements of Ms. Fletcher to Dr. Zuchowski in the compelled State requested evaluation would also be presumptively admissible if the insanity defense was at issue.

1 Now that the insanity defense has been withdrawn and will not be pursued, Dr.Zuchowski's
2 evaluation and basis for his opinion (including statements to him from Ms. Fletcher) are no longer
3 relevant or properly admissible (at least in the State's case in chief.) The same should hold true with
4 respect to Ms. Fletcher's statements to Dr. Piasecki in her insanity evaluation. Those statements should
5 be treated no differently than a defendant's statement to defense counsel or a defense investigator. The
6 question of Ms. Fletcher's sanity is not at issue in the upcoming trial. Yet by requesting disclosure of
7 her delusional statements to Dr. Piasecki the State is raising the question of her sanity when the defense
8 is not proffered.

9 The disclosure of Dr. Piasecki's 2 page insanity opinion was made in furtherance of giving
10 proper notice of the NGRI plea. Now that said plea has been withdrawn, statements of Ms. Ms. Fletcher
11 used to support that opinion are no longer relevant. Dr. Piasecki's expert analysis on the issue of sanity
12 is not being presented to the fact-finder. Nor should the underlying statements of Ms. Fletcher. Just
13 because the State has become aware of the existence of delusional statements to Dr. Piasecki does not
14 make them discoverable at this juncture.

15 WHEREFORE, the Defendant respectfully requests that the State's motion be DENIED.

16 **Affirmation Pursuant to NRS 239B.030**

17 The undersigned does hereby affirm that this document does not contain the Social
18 Security Number of any person.

19 Dated this __22nd__ day of __January_____, 2020.

21 /s/ Scott Edwards

22 SCOTT W. EDWARDS
23 Attorney for Defendant
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26
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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 REPLY IN SUPPORT OF MOTION RE: DEFENDANT'S STATEMENTS TO DR. PIASECKI

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 Reply in Support of its Motion Re:
Statements to Dr. Piasecki. This Reply is made and based on the
memorandum of Points and Authorities submitted herewith.

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1 POINTS AND AUTHORITIES

2 Litigation is a series of difficult tactical decisions. The
3 defendant made a series of such decisions which led to obtaining,
4 then disclosing, the contents of Dr. Piaseki's evaluation. She did
5 that with knowledge of the consequences; that the evaluation would
6 not be privileged, that any remnant privilege would be waived upon
7 disclosure, and that the Court would likely order disclosure of the
8 data underling Dr. Piasecki's opinion. She made those decisions with
9 eyes wide open.

10 Until recently, the defendant was willing to ride this two-horse
11 approach into trial. But her decisions, like all tactical decisions,
12 have effects. No legal principle allows her to undo these decisions¹
13 or their effects now that the defendant might see them as less
14 advantageous.

15 A trial is the search for the truth. As the United States
16 Supreme Court has stated, "it is not a poker game in which players
17 enjoy an absolute right always to conceal their cards until played."

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19 _____
20 ¹ Compare for example the United States Supreme Court's reasoning in Chaffin v.
21 Stynchcombe, regarding choice between plea bargain and trial, "Although every such
22 circumstance has a discouraging effect on the defendant's assertion of his trial
23 rights, the imposition of these difficult choices was upheld as an inevitable
24 attribute of any legitimate system which tolerates and encourages the negotiation of
25 pleas." Chaffin v. Stynchcombe, 412 U.S. 17, 30-31, 93 S. Ct. 1977, 1984-85, 36 L.
26 Ed. 2d 714 (1973) See also, Dzul v. State observing that "[t]he Fifth Amendment does
not insulate a defendant from all 'difficult choices' that are presented during the
course of criminal proceedings, or even from all choices that burden the exercise or
encourage waiver of the Fifth Amendment's right against self-incrimination." Dzul v.
State, 118 Nev. 681, 693, 56 P.3d 875, 883 (2002); United States v. Frazier, 971 F.2d
1076, 1080 (4th Cir. 1992)(cited with approval in Dzul)("The Constitution does not
"forbid[] every government-imposed choice in the criminal process that has the effect
of discouraging the exercise of constitutional rights") and remarking that federal
case law "clearly establish[es] that not every burden on the exercise of a
constitutional right, and not every pressure or encouragement to waive such a right,
is invalid")(internal citations omitted).

1 Williams v. Florida., 399 U.S. 78, 82, 90 S. Ct. 1893, 1896, 26 L.
2 Ed. 2d 446 (1970)(as to notice of alibi rule, "We find ample room ...
3 as far as 'due process' is concerned, for the instant Florida rule,
4 which is designed to enhance the search for truth in the criminal
5 trial by insuring both the defendant and the State ample opportunity
6 to investigate certain facts crucial to the determination of guilt or
7 innocence").

8 Mental health evidence is a basket of cobras. See, Gerlaugh v.
9 Stewart, 129 F.3d 1027, 1035 (9th Cir. 1997)(because mental health
10 evidence can both benefit and harm a defendant's case, the "obvious
11 countervailing tactical dangers" make such evidence at best "a basket
12 of cobras"). The defendant did not have to open the basket, but she
13 did. Once loosed, even if the defendant decides against trying to
14 charm one, they are free and the State can use one against the
15 defendant.

16 Dr. Piasecki possesses relevant, admissible, non-privileged²,
17 unprotected, and properly disclosed evidence that aids in the search
18 for the truth.

19 ///

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23 ///

25 ² "Testimonial privileges...are not lightly created nor expansively construed, for
26 they are in derogation of the search for truth. Jaffee v. Redmond, 518 U.S. 1, 19,
116 S. Ct. 1923, 1933, 135 L. Ed. 2d 337 (1996).

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 23rd day of January, 2020.

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

9 By /s/ Amos Stege
10 AMOS STEGE
11 9200
12 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 Scott Edwards, Esq.

7
8 Dated this 23rd day of January, 2020.

9
10
11 /s/ Destinee Allen
12 DESTINEE ALLEN
13
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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,) Department 7
15 Defendant.)
16 _____)

17
18 TRANSCRIPT OF PROCEEDINGS

19 PRETRIAL MOTIONS

20 January 24, 2020

21 2:00 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 SCOTT EDWARDS, ESQ.
9 Attorney at Law
10 Reno, Nevada
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1 RENO, NEVADA, January 24, 2020, 2:00 p.m.

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3 --oOo--

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

7 MR STEGE: Amos Stege for the State.

8 MR. EDWARDS: Scott Edwards on behalf of
9 Ms. Fletcher, who is present in custody.

10 THE COURT: Good afternoon, Ms. Fletcher.

11 THE DEFENDANT: Good afternoon.

12 THE COURT: This is the time and date set for a
13 pretrial meeting. There are a number of issues that have
14 been shared with Ms. Oates that need some resolution. Thank
15 you, counsel, for being responsive to the overture about
16 process in this case.

17 If it's okay, I think we'll start with the motion
18 that implicates Dr. Piasecki's testimony. I see Dr. Piasecki
19 here. Good afternoon, doctor.

20 DR. PIASECKI: Good afternoon.

21 THE COURT: Do either of you anticipate adducing
22 testimony from her this afternoon?

23 MR STEGE: She's here for that reason if the Court
24 is interested. I've asked her to bring the file to court and

1 I would ask the Court to enforce the previously granted
2 motion regarding her file.

3 THE COURT: As to her file, do you want to
4 respond, Mr. Edwards?

5 MR. EDWARDS: Yes, your Honor. I filed an
6 opposition to this motion.

7 THE COURT: I've read it.

8 MR. EDWARDS: I think I've said most of what I had
9 to say in there. But the statements he's referring to were
10 made in the course of an evaluation done by Dr. Piasecki with
11 an eye towards the insanity defense. And when we changed the
12 plea and withdrew the not guilty by reason of insanity
13 defense, the relevance and the importance of disclosing that
14 information is moot now.

15 THE COURT: Well, a couple of observations I would
16 make. The decision to add an additional plea of not guilty
17 by reason of insanity was an unusual one, and that is not a
18 criticism, it just was an unusual one. That it was added, as
19 the statute contemplates, as an addition to a not guilty plea
20 caused me to comment at one juncture in this proceeding what
21 is perhaps borne out in the statements made to Dr. Piasecki,
22 which is, the only successful NGRI I've seen in the State of
23 Nevada involve an explicit, if not an implicit admission by
24 the person claiming insanity that they actually committed the

1 acts they're accused of committing. In fact, we had a
2 dialogue about that in one context in this case. And I said
3 what I said in part for fear of where we're at now.

4 What I understand to have occurred, and please
5 correct me if my understanding is wrong is this: While
6 Ms. Fletcher then still maintained an additional plea of not
7 guilty by reason of insanity, her attorneys requested that
8 Dr. Piasecki evaluate her, correct?

9 MR. EDWARDS: That's correct.

10 THE COURT: Consistent with their obligations
11 under the statutes, discovered that evaluation, not the file,
12 but Dr. Piasecki's short written report, correct?

13 MR STEGE: Right.

14 THE COURT: So that cat is out of the bag, is it
15 not?

16 MR. EDWARDS: Your Honor, I would say it was made
17 in furtherance of that insanity plea, those statements.

18 THE COURT: Well, to be sure --

19 MR. EDWARDS: I beg your pardon.

20 THE COURT: Please go ahead.

21 MR. EDWARDS: If that was still what was going to
22 occur at trial, that defense would have been maintained and
23 there would be no question about that. I think the two-page
24 disclosure that Mr. Stege is referring to was made in

1 furtherance of that plea, entering that plea.

2 THE COURT: Well, to be sure, I think you're
3 accurate about that, but our commentary sort of misses the
4 point I'm trying to make, which is this: A defendant can and
5 must and should make tactical decisions through their counsel
6 about how to proceed in a case. Tactical decisions are
7 different than factual statements, however, or statements of
8 any kind for that matter.

9 In other words, a defendant must and in this case
10 unequivocally does know, I say that because of my own
11 interactions with Ms. Fletcher across cases, comments she's
12 made in this or other cases and comments she's chosen not to
13 make, candidly, a defendant must and in this case clearly did
14 know that anything she said could and might be used against
15 her.

16 And the fact that she said what she said to
17 Dr. Piasecki knowing it would be disclosed of necessity,
18 knowing at least through her attorney's knowledge, I don't
19 impute legal knowledge to Ms. Fletcher, to my eye, as a
20 factual and legal matter opens the door to conversation about
21 it. It is a risk implicit in explicitly having your client
22 evaluated knowing you'll have to reveal what she says.

23 MR. EDWARDS: Your Honor, that was a decision made
24 before I undertook representation.

1 THE COURT: I'm so thankful you stepped in. I
2 know clearly it wasn't your decision.

3 MR. EDWARDS: What that raises to me, your Honor,
4 is now, and it seems like the Court is inclined, I don't want
5 to anticipate your ruling, but may be inclined to allow
6 disclosure of those materials in Dr. Piasecki's file relative
7 to Ms. Fletcher's statements. How much latitude am I going
8 to be given to direct Dr. Piasecki to the statements that
9 weren't elicited for Mr. Stege.

10 THE COURT: Well, we enter the challenge that's
11 always the case for a judge in pretrial motions. Trials are
12 living, breathing things. I don't know what anybody is going
13 to say until they say it, right. I don't know what relevant
14 examination you will have to follow up.

15 I would simply say this: As a general rule,
16 there's an overriding concept of completeness in the law as
17 to written statements or other statements. And so as a
18 general observation, I would say I would think it likely that
19 if Mr. Stege examines Dr. Piasecki about statements that
20 Ms. Fletcher made, you will have, as it were, full scope into
21 her examination of your client if it's relevant.

22 I say if it's relevant, because this is -- the
23 challenge of this case has always been distractors, potential
24 distractors for the jury related to your client's mental

1 health status. No kidding, she's been more evaluated, and
2 this is not a blame placement on her in any way, she's been
3 more evaluated than any other person I've ever dealt with in
4 the criminal system by psychologists and psychiatrists.

5 And I think everybody involved in this case has
6 always known we're going to have a careful path to wind with
7 the jury about what's relevant about her mental health or
8 not. That's a long way around saying I suspect the field is
9 going to be fairly open to you're running on it.

10 MR. EDWARDS: It's sounding like that, your Honor.

11 THE COURT: I reserve ruling until I --

12 MR. EDWARDS: I think everybody, both of you are
13 at a disadvantage here, because you don't know what I know is
14 in there at this point.

15 THE COURT: Right.

16 MR STEGE: I would love to see what's in there.

17 THE COURT: Of course you would. There was no,
18 and this isn't a criticism, it's an observation, there was no
19 legal authority offered in opposition to the position. I
20 don't think there is any, so I'm not surprised. But have you
21 become aware of any legal authority?

22 MR. EDWARDS: No, your Honor. The cases cited by
23 Mr. Stege, if this had been a compelled, court ordered --

24 THE COURT: Different conversation.

1 MR. EDWARDS: A different animal. But this one
2 requested by the defense and even the case that he cites at
3 the very end of his pleading --

4 THE COURT: The Washington state.

5 MR. EDWARDS: The Washington case, it has in there
6 if the defense of insanity is going to be presented, so that,
7 again, is not directly on point. I haven't found anything
8 where this door has been opened and then with a change in
9 strategy or tactics can't be closed, I guess.

10 THE COURT: I know Mr. Hart and Mr. Picker to be
11 very skilled and very -- and in Mr. Picker's case, in
12 particular, very experienced. And I know they had reason for
13 what they did. So my comments are in no way critical of what
14 they did. But a door was opened intentionally. There's no
15 putting the genie back in the bottle to my eye. There's no
16 legal authority that I'm aware of that says admissions of a
17 party opponent become inadmissible because they have changed
18 their tactics, as it were.

19 Whether the evidence is relevant in terms of
20 Mr. Stege's case in chief or on cross examination will be an
21 issue I'll have to decide at the time it comes up. I'm not
22 going to make Mr. Stege disclose. I candidly don't know that
23 Mr. Stege could know when he might bring this up in his case
24 until it develops a little bit.

1 But as it stands right now, I grant the motion to
2 have available, if relevant, the statements Ms. Fletcher made
3 to Dr. Piasecki. Further, it would seem to me Dr. Piasecki's
4 file related to that examination and that examination alone
5 are also discoverable and must be made available to
6 Mr. Stege. Would you craft an order to that affect, please,
7 Mr. Stege?

8 MR. STEGE: Yes. Although I say this with all due
9 respect, I'm not fan of parties drafting orders in criminal
10 cases, but I'm happy to comply.

11 THE COURT: I never was either. No surprises
12 there. So I think we can -- Dr. Piasecki is one of the
13 smarter people I know. I think she understands clearly what
14 I've said. I know she knows what that means. I think we can
15 excuse her.

16 MR STEGE: If she can give me the file, that would
17 be great.

18 DR. PIASECKI: Can I ask a couple of clarifying
19 questions?

20 THE COURT: Yes, please.

21 DR. PIASECKI: This is a very voluminous file with
22 lots of discovery. Am I to provide only the interview notes?

23 THE COURT: Yes.

24 DR. PIASECKI: Handwritten interview notes?

1 THE COURT: Yes.

2 DR. PIASECKI: Shall I assume that everyone
3 already has -- there were two reports I generated, one
4 regarding competency and one regarding the NGRI findings.

5 THE COURT: The only report relevant is the NGRI
6 findings and the notes relevant to the NGRI findings.

7 DR. PIASECKI: All of the interview notes would
8 potentially be relevant to the NGRI findings, because it
9 would be the entirety of contacts that would inform that.

10 MR STEGE: If I can interject here, your Honor,
11 the competency evaluation was not ordered by the Court.
12 Dr. Piasecki's role in that was not a compelled eval. So we
13 might -- I think the scope of the order might be broader than
14 we just thought.

15 THE COURT: Well, what I want to understand is
16 this: I suspected Dr. Piasecki had undertaken some
17 competency work. She's one of the foremost experts in the
18 area. It would have been a surprise had she not also done
19 that. I just want to understand your understanding,
20 Dr. Piasecki, about the bounds of the confidentiality, if
21 any, you had related to that portion of your evaluation,
22 meaning the competency evaluation.

23 DR. PIASECKI: So the bounds of confidentiality
24 for competency evaluations are that the person being

1 evaluated is assured that the information will be shared with
2 the referring attorney and the referring attorney would then
3 be in a position to decide whether or not to further
4 disseminate the information. It's a defense retention.

5 THE COURT: So what's problematic for both
6 Dr. Piasecki and then my legal analysis is this: I believe,
7 and I'm not asking you to yet disclose, Dr. Piasecki, that
8 the reference for the competency evaluation was from
9 Ms. Fletcher's defense team. If my belief is accurate, the
10 expectation of Ms. Fletcher and her team would be that would
11 be confidential if and until disclosed. It has not been
12 disclosed, correct?

13 MR STEGE: That's incorrect.

14 THE COURT: That's what I needed to know.

15 MR STEGE: I believe that in the course of the
16 competency determinations, Dr. Piasecki did testify.

17 THE COURT: She did.

18 MR STEGE: And the eval was disclosed and filled
19 by I think Ms. Nordvig.

20 THE COURT: Do you remember, Dr. Piasecki, I'm so
21 sorry, there have been so many evaluations in this case, I
22 honestly don't have them straight in my mind and I apologize.

23 DR. PIASECKI: So I evaluated Ms. Fletcher. I
24 prepared a report. I testified with a different judge and my

1 report was disseminated to all of the parties. My interview
2 assessment notes were not, but the report was.

3 THE COURT: Well, inasmuch, then, as the report
4 was disseminated, and of course your notes, your total of
5 contacts I would suspect with Ms. Fletcher must have informed
6 your opinions as to her assertion that she is not guilty --
7 her then assertion that she is not guilty by reason of
8 insanity.

9 So not as to the contents of your file, but then
10 as to the contents of notes, whatever form they may be,
11 including notes related to your competency evaluation, must
12 be disclosed.

13 DR. PIASECKI: So all of those materials have been
14 scanned and I have prepared a thumb drive with those scanned
15 documents. I can also provide them as email attachments. I
16 just need to know who to send them to.

17 THE COURT: Would you please send them to both
18 counsel in this case? I'll ask them to provide you with an
19 email. That would probably be the easiest way for you.

20 MR STEGE: An embarrassingly dirty card.

21 DR. PIASECKI: No worries. Thank you.

22 THE COURT: As long as it has the right email on
23 it, I'm sure Dr. Piasecki won't mind.

24 DR. PIASECKI: I believe I have clarity, my direct

1 notes, scanned, files to both attorneys, no additional
2 discovery. All of the other materials in my, again, somewhat
3 voluminous digital file do not need be shared. I assume
4 there's other ways that gets sorted out.

5 THE COURT: Yes.

6 MR STEGE: And testimony, trial testimony.

7 THE COURT: Of course, she will be available
8 through the process of subpoena or other cooperation you may
9 secure from her.

10 MR STEGE: Which brings us to, I believe, item
11 number three.

12 THE COURT: Yes, sir.

13 MR STEGE: I believe Dr. Piasecki has some
14 scheduling conflicts next week. I believe the State can get
15 around that. It just may be oddly -- it might be kind of out
16 of the natural order of things, it sounds like, as long as
17 it's before Thursday.

18 DR. PIASECKI: I would like to work with your team
19 to look at the schedule a little more closely.

20 THE COURT: I know Mr. Edwards, and I suspect you
21 broached this subject with him already, and I can reassure
22 you, this will be our first trial together, Mr. Stege, but
23 I'm already very impressed by your skills and talents. This
24 trial is going to go well. I know you'll use your time well.

1 And I'll make sure that if a witness has to be taken out of
2 order on either side to accommodate a professional schedule
3 that it occurs. Thank you for your time, Dr. Piasecki.

4 DR. PIASECKI: Thank you, your Honor.

5 THE COURT: So as to the exhibit use and the thumb
6 drive, it's not novel in this district, it's novel to me in
7 this request, I kind of like it, but I want to know what your
8 thought about it is, Mr. Edwards.

9 MR. EDWARDS: I thought it was great, your Honor.

10 THE COURT: I agree. So I want to make sure I
11 understand what you contemplate. There is, of course, a set
12 of exhibits that you've already marked. Thank you for that
13 work, gentlemen.

14 Those, of course, are the physical, if you will,
15 official exhibits. But of course a copy of an original
16 document is also a duplicate original, and if what you
17 contemplate is making duplicate originals, putting them on a
18 thumb drive for the ease of your use and/or Mr. Edwards' use,
19 it will save time, it will be efficient and you have my
20 blessing.

21 MR STEGE: Thank you.

22 THE COURT: As to the second issue, the request to
23 exempt the DA investigator from the rule of exclusion, who is
24 your investigator?

1 MR STEGE: Mr. Gurriere seated in the back, your
2 Honor.

3 THE COURT: Your thoughts about this request,
4 please, Mr. Edwards.

5 MR. EDWARDS: Your Honor, I'm used to case agents
6 being involved in the presentation of the evidence. I just
7 ask that Mr. Peele be allowed the same courtesy. He's my
8 investigator.

9 MR STEGE: Of course.

10 THE COURT: So both Mr. Peele and the spelling of
11 his name again?

12 MR STEGE: G-u-r-r-i-e-r-e.

13 THE COURT: Both those persons will be exempted
14 from the rule of exclusion in this case, which I think was
15 the request.

16 We talked about Dr. Piasecki's scheduling
17 conflict. The current understanding as to presentation of
18 motive evidence. Please, Mr. Stege.

19 MR STEGE: The Court did touch on this rather
20 thorny issue. We believe between the parties we have an
21 understanding of -- well, I still want and believe the motive
22 to be, I'll say it in these terms, that custody slipped away
23 from Ms. Fletcher towards Mr. Trask resulting in an order
24 that she have visitation, supervised visitation once a week

1 at the Family Peace Center.

2 The additional piece that would come in as to that
3 would be this: It will be framed as an appeal, losing an
4 appeal, that being the internal substantiation appeal at CPS
5 or I don't remember the new name of that agency.

6 THE COURT: Human Services.

7 MR STEGE: Yes, human Services, which happened on
8 July 1 of '16, roughly three weeks before this case.

9 THE COURT: How do you contemplate entering that
10 information?

11 MR STEGE: Ms. Boran Williamson testifying as a
12 social worker unattached -- not any mention of her agency,
13 simply as a social worker monitoring the case and aware, sort
14 of aware of the case. And I believe Ms. Fletcher's mother
15 would also sort of corroborate that, maybe some other
16 witnesses with, you know, only just corroborate that loose
17 narrative.

18 THE COURT: Mr. Edwards, your response, sir.

19 MR. EDWARDS: Your Honor, we worked this out a bit
20 ago. The testimony as I anticipate it from Ms. Boran or now
21 Ms. Williamson is her married name, I think, is that she's
22 going to talk in very general terms about the procedure that
23 took place and the end result.

24 THE COURT: And you have no objection?

1 MR. EDWARDS: There's no specific instances --

2 THE COURT: You have no objection to that?

3 MR. EDWARDS: No. It's almost like a record
4 recitation.

5 MR STEGE: It does preserve that ability. The
6 Court was initially back then sort of the open door issue.
7 I'm trying to keep it shut with a vanilla recitation of it.

8 THE COURT: I commend to you the work you're doing
9 to fashion agreements related to the bounds of evidence. You
10 both know, you know the case so much better than I, because I
11 haven't seen the discovery, haven't read the evidence, don't
12 know what the people will say.

13 I will reflect my trust in both of your
14 professionalism by saying I've heard nothing that causes me
15 pause for concern, particularly because Mr. Edwards has no
16 objection. I always say trials are living, breathing things.
17 Doors once opened can't be easily shut, so I always advise
18 caution. That's the best I can offer.

19 MR. EDWARDS: Mr. Picker was offered that same
20 caution, your Honor. Here we are.

21 THE COURT: Here we are.

22 MR. EDWARDS: So I don't think -- there's no
23 intent by the State nor I to retry the 432B information
24 within this trial.

1 THE COURT: Good. I will make a judgment call and
2 I promise before I offer a limiting instruction to the jury
3 we'll have an opportunity to talk about it, but I'll make a
4 judgment call as to whether or not a limiting instruction to
5 the jury related to that case is necessary.

6 And it would, you know, be of course along the
7 lines of, ladies and gentlemen, we're not here to try those
8 issues or that case. That is only relevant as it may
9 demonstrate, according to the State, motive, intent,
10 opportunity, the classic, as it were, statutory factors.

11 MR. EDWARDS: That would be welcomed.

12 THE COURT: If you want it and I don't give it,
13 help remind me of it. The next issue, then, is clarification
14 of the ruling regarding the target shooting, gun possession
15 given the vanilla not guilty plea, the expectation that the
16 testimony will include the defendant's parents each
17 testifying that Ms. Fletcher bought a gun at a gun show
18 before the murder. Help me understand, I think this is the
19 first time I've heard of that.

20 MR STEGE: That's why it's there, your Honor, and
21 I've shared this with Mr. Edwards. During the course of
22 pretrial conference work with Mr. and Mrs. Fletcher, the
23 senior, each had at different times mentioned this new fact.
24 It's new from their police interviews. Mr. Jorgenson being

1 more certain about the time frame and it being within this
2 month before the killing, the defendant had purchased a gun
3 at a gun show.

4 THE COURT: Do we know the kind of gun, the make
5 or model of gun?

6 MR STEGE: I don't believe we do.

7 THE COURT: And the location of the show?

8 MR STEGE: No. Only that she was working at the
9 gun show. She was working at the gun show and bought a gun.

10 THE COURT: How do you believe it is relevantly
11 connected, then, to a fact at issue in this case?

12 MR STEGE: Well, I'm particularly fond of the
13 timing of it given the ruling in the appeal. I think it
14 directly goes to the -- if we talk about premeditation,
15 deliberation, sort of planning, murder plan, I think it's
16 directly in line with that, as is the target shooting.

17 THE COURT: Can you represent as an officer of the
18 Court what Ms. Fletcher's parents will say about what
19 Ms. Fletcher said, if anything, related to the gun purchase
20 and the reasons for the purchase.

21 MR. STEGE: Frankly, I have to say I don't know
22 what they will say about that. I'm more interested in the
23 timing of it and that it's a gun that explains sort of the
24 gun. This is a case with a missing gun. A number of the

1 guns at the -- at Mr. Jorgenson's house are tested to not be
2 the murder weapon. This sort of explains where the gun came
3 from, puts it in her hands.

4 THE COURT: Mr. Edwards.

5 MR. EDWARDS: I don't know how relevant, your
6 Honor, that is. It seems a little tenuous to me. We don't
7 have any records of the gun purchase. We just have a
8 statement from her parents that she bought a gun. I think
9 her mother is not as clear as what Mr. Stege has represented
10 here.

11 MR. STEGE: I agree.

12 MR. EDWARDS: That it was a BB gun she was talking
13 about with the target shooting and all that. Again, I don't
14 see much force to this evidence, frankly. I know Mr. Stege
15 wants to put a gun in her hand. There's no question that she
16 had access to firearms. The facts in this case, they
17 searched the -- her parents' residence where she lived and
18 weapons were found there, but not the gun that matches the
19 shell casing.

20 THE COURT: So the objection is relevance, if I
21 understand it.

22 MR. EDWARDS: Yes and not well-established as
23 well.

24 THE COURT: Mr. Stege.

1 MR STEGE: Adding, I was corrected that
2 Mr. Jorgenson indicated it was a nine-millimeter, which
3 matches the caliber of the murder weapon.

4 THE COURT: That is a critical piece of evidence
5 in a case where the murder weapon, as I understand it, or the
6 weapon used in the killing, I'm going to describe it as, has
7 not been located. And there is evidence of at least an
8 inference directly from the defendant that she worked at a
9 gun show, purchased a nine-millimeter at the gun show from
10 her father. That would be probative, relevant evidence. The
11 prejudicial nature of which those are lawful acts and lawful
12 activities would not be so overwhelming to my eye as to
13 outweigh the probative value.

14 And so you may inquire about that, Mr. Stege. I
15 would suggest we revisit this with a cautionary hearing
16 before you inquire about it, because then we'll know the
17 context in your case in which you offer it and I can make a
18 better evaluation of the probative evidence if that makes
19 sense.

20 MR. STEGE: Yes.

21 MR. EDWARDS: That's fair, your Honor.

22 THE COURT: Thank you for that, Mr. Edwards. So
23 we'll look to you, Mr. Stege, just to tee that up when you
24 think it's appropriate.

1 MR STEGE: So outstanding still is the target
2 shooting --

3 THE COURT: That's correct.

4 MR. STEGE: -- issue and the previous motion work
5 on that subject related to Hensle and Mrs. Jorgenson, the
6 senior.

7 THE COURT: That's correct. To my eye, this is
8 not a prediction nor a limitation in any way -- let me say it
9 differently. Ms. Fletcher, this is to prepare you, at some
10 point in the trial, you and I are going to have a direct
11 conversation about your right to remain silent and your
12 choice whether or not to testify. I don't want you to make
13 that choice today, I'm not going to ask you to make that
14 choice today, but at some point I'm going to ask you about
15 that choice.

16 To my eye, Mr. Stege, the likelihood that
17 Ms. Fletcher will testify has decreased recently and I have
18 suggested that much of the evidence you're talking about,
19 this target shooting, the ammunition issue, et cetera,
20 becomes much more powerfully relevant in my view only after
21 Ms. Fletcher testifies. I could be wrong. I don't know the
22 evidence. Again, you do.

23 So as to that evidence, again, I'll ask you before
24 you inquire about it of any witness to give us an opportunity

1 outside the presence of the jury to evaluate its relevance
2 and weigh it and evaluate it, again, outside the presence of
3 the jury. Thank you for heeding that admonishment. Does
4 that answer your question?

5 MR STEGE: Yes. I anticipate some argument from
6 me on that subject, maybe pushing back on the idea of sort
7 of, do you really need it argument, but I'm happy with the
8 course we're on now. We'll both get an opportunity to argue
9 it.

10 THE COURT: Well, you'll notice, I hope, with both
11 of you, I've decided now on the eve of trial to step back
12 much more from the, do you need it argument, sort of judicial
13 activism. Because you gentlemen know your cases. I know
14 you're working your cases hard. I don't know the facts.

15 So it's much less appropriate for me now, I think,
16 to weigh in in any way like that. I just need you to give me
17 an opportunity to evaluate the relevance of the evidence
18 outside the presence of the jury so I'm not in a position of
19 trying to unring a bell.

20 MR STEGE: As the context becomes more clear, as
21 it were.

22 THE COURT: Indeed. Precisely.

23 MR. EDWARDS: Again, I think that's very fair,
24 your Honor.

1 THE COURT: Thank you, Mr. Edwards. So number six
2 in the list you shared, Mr. Stege, was clarification
3 regarding victim character, abuse allegations, present
4 evidence of a phone call between Ms. Fletcher and her mother
5 suggests exclusion of history. Explain to me what you want
6 here.

7 MR STEGE: You heard Mr. Edwards and I sort of
8 both agree we don't want to litigate the 432 case nor the
9 false allegations of either sexual abuse against the boy or
10 physical abuse upon Ms. Fletcher. I'm good with that.

11 And in that spirit in meeting with Ms. Jorgenson,
12 indicated here are a number of areas that we are going to
13 stay away from in this trial, details about the CPS case,
14 allegations of sexual abuse, drugs, allegations of physical
15 abuse. Mrs. Jorgenson was not happy with that, but I
16 indicated, hey, ma'am, I think the judge is in my corner on
17 this and I think your daughter's counsel is in agreement as
18 to this.

19 That conversation, apparently, was shared between
20 the defendant and Ms. Jorgenson. There is a phone call dated
21 January 22nd sort of rehashing the unfairness of this,
22 leading to the defendant suggesting that, well, she can say
23 it anyway. Sort of in a nonresponsive way, right, when asked
24 a different question, you can talk about.

1 And it sounds focused primarily on there's a
2 photograph given by the defense of the defendant. It looks
3 like she got beat up. And I think the allegation being that
4 was the victim in the case did that to her. Sort of your
5 urging Mrs. Jorgenson to sort of throw a wrench in the works
6 of this trial.

7 In retrospect, what I wrote in the email might
8 have been a little, you know, asking for sanctions. I don't
9 know if we're to that point. I suggest that perhaps when
10 Mrs. Jorgenson before she testifies sort of an admonishment
11 or a summary of where we're are or where we're not going to
12 go from the Court might be appropriate. Leaving aside for
13 now this issue of, is that statement a consciousness, a
14 statement of consciousness of guilt? Again, I won't bring
15 that before the jury without talking to your Honor.

16 THE COURT: Please don't. Thank you. Do you want
17 to respond, Mr. Edwards?

18 MR. EDWARDS: Your Honor, I haven't listened to
19 the call yet. Mr. Stege provided me a copy today, but I
20 haven't had the opportunity to. But, obviously, this issue
21 about prior unsubstantiated allegations of abuse by the
22 victim of either Ms. Fletcher or her child has been at the
23 center of her case in her mind, I would say.

24 As Dr. Piasecki's two-page report said, those

1 unsubstantiated allegations were delusions that in her
2 opinion was used to support the insanity opinion. But the
3 truth of the matter is, there were investigations, but
4 nothing came of it. So there's nothing there there is what
5 I'm saying, other than the delusional belief, at least, of
6 Ms. Fletcher that those acts occurred.

7 So I don't want to make it a part of this case and
8 it wasn't at my suggestion. And I don't think Mr. Stege was
9 implying that.

10 THE COURT: So let's be clear about what I believe
11 to be good happening. I said yesterday to the attorneys in a
12 criminal trial that concluded yesterday evening what I'm
13 offering to the two of you by way of a compliment. I read
14 every Nevada Supreme Court case that has been published since
15 I was barred. I do not remember them all, let me be clear.
16 And I have some knowledge, therefore, of the Supreme Court's
17 opinion about other act related evidence, I'm going to call
18 it, be it bad acts, delusional acts, acts not related to the
19 shooting that occurred in this case.

20 As I understand the facts of the case, there will
21 be no question that a gentleman died, that it was a homicide,
22 meaning he died at the hands of another by gunshot, and the
23 question will be whether or not Ms. Fletcher was the agent of
24 that gunfire and whether she had the requisite intent at the

1 time of that gunfire, if she was the agent of that gunfire,
2 to qualify her for criminal responsibility of some stripe.

3 That's a pretty narrow set of facts and I commend
4 the two of you for narrowing those, because as I said to
5 counsel yesterday, the issue for this jury is not whether
6 Ms. Fletcher had delusional beliefs or not, what those
7 beliefs were, what the history of her relationship with the
8 decedent was, what the history of her relationship with her
9 son was, it was what happened on the day this man died, what
10 was her agency. The more we skew to those facts, in my view,
11 the better we all are.

12 As Mr. Stege's concern about witnesses, I offer
13 the two of you my words to give to any of your witnesses, and
14 they are these, and I want you to hear this, Ms. Fletcher,
15 because you wouldn't know it, because you'll have some
16 decisions to make.

17 So there was a defendant yesterday, I think it was
18 yesterday or day before, who took the witness stand right
19 next to me here, and for the record, I'm pointing to the
20 witness stand, and under examination by the prosecutor, he
21 was a witness, he was under oath required to tell the truth,
22 being questioned by the prosecutor and he was not being
23 responsive to the question.

24 The question wasn't this, I'm using this as an

1 example, the prosecutor asked, what color is the sky outside,
2 and the witness said, well, as I bent down to pick up the
3 cigarette off the floor and talked to my mom about what was
4 happening next door, he did nothing to answer the question.
5 That's being nonresponsive.

6 And so I interrupted him and I said, sir, and he
7 kept talking, and I said, sir, stop, more loudly, and he kept
8 talking. And I had to be very forceful with him in his own
9 case in front of the jury about how he was being
10 nonresponsive to questions.

11 So an example has been issued that Ms. Fletcher's
12 mom might be being coached to volunteer facts that aren't
13 relevant. The worst thing that could happen for a criminal
14 defendant, I'm not saying you did anything wrong, because I
15 don't know, Ms. Fletcher, but the worst thing that could
16 happen for a criminal defendant is for this judge to chew on
17 her mom in front of a jury, as an example. That goes true
18 for any witness.

19 So invite both of you to use my examples as you
20 talk to your witnesses. You know the alliances of the
21 witnesses. I don't. You know the risky areas of volunteered
22 evidence, everybody wants to be nonresponsive to a question
23 and volunteer evidence.

24 I like your suggestion, Mr. Stege, I don't want to

1 chop our trial up too much, but I like your suggestion of
2 contemplating yet another hearing outside the presence of the
3 jury where I might tenderly talk to the mother of a person
4 accused of homicide, imagine that position for that human
5 being, and just remind her of the bounds of testimony and the
6 bounds of relevance. That seems to make sense. It might
7 avoid unnecessary discomfort for her and unnecessary
8 prejudice to Ms. Fletcher apart from whatever the statements
9 may have been, et cetera. So I like that idea. That's about
10 as far as I'm willing to go right now.

11 MR. STEGE: This will be sort of a marker place,
12 so if we do that and she were to do that, you know, that may
13 open the door. And I want the Court to understand, I'm not
14 trying to open that door, but if the witness persists in
15 opening a door, I may feel compelled to drive a truck through
16 it.

17 THE COURT: Well, it's your job, as it is
18 Mr. Edwards' job to drive trucks through open doors when it's
19 relevant and I appreciate that. I will just say, again, that
20 choices have been made in this case that have come to back to
21 haunt various parties.

22 It will be a mistake for any person, a person
23 sitting in Ms. Fletcher's position or any other person, to
24 think that it's a good idea to come into court and volunteer

1 their version of the events when the judge hasn't said it's
2 relevant and I will react accordingly as a judge if they do
3 that. If doors are opened, it is not on me, it is simply on
4 me, then, to respond according to the law.

5 So thank you for the heads up. I understand the
6 concern. Are there any other issues we need to discuss
7 pretrial?

8 MR STEGE: We have to spend some time with Ms.
9 Oates and the exhibits. It sounds like I may not get that.

10 THE CLERK: You can have that.

11 THE COURT: All right. Thank you.

12 MR. EDWARDS: I think we've covered it, your
13 Honor, at least for today.

14 THE COURT: Let me reiterate my understanding of
15 the schedule next week so you all understand. I don't mean
16 to share unnecessary personal knowledge to you. Usually I'm
17 here in chambers by 7:30 every morning. Monday morning, so
18 you know, I'm going to see an orthopedic surgeon because I've
19 worn out my knee so I need to have the first consult at 8:00.
20 So I may not come blowing into the courthouse until 9:00 or
21 9:15 when the jury is due to be here at 9:30. So I just want
22 you to know that if a last minute issue comes up, we've got
23 to do whatever we can to work around that schedule.

24 But Monday morning trial begins at 9:30. That's

1 when the jurors are summoned. We'll go all day Monday.
2 Tuesday morning, we'll begin at 9:30 again. So you know, I
3 have a couple of hearings up at Jan Evans that I'll take that
4 are scheduled at 8:30 and zoom back down here. We'll again
5 go all day Tuesday.

6 Wednesday I'm going to cover my criminal docket.
7 I think I can accomplish that by 10:30, so what would be
8 normally about the morning break we'll start at Wednesday
9 morning and go the balance of the day.

10 Thursday it will be all day. Friday it will be
11 all day if we need it all day. Court administration gets
12 very upset with me when I make us work Friday afternoon, but
13 in a homicide case that has had this much difficulty getting
14 to trial, we need to get to trial. So Friday you should be
15 prepared all day.

16 The schedule will be generally similar the
17 following week. There will be a few variations to that. But
18 I wanted you to be aware of that. I expect the two of you,
19 as you have already, to cooperate with one another about the
20 ordering of witnesses.

21 You'll find with me, Mr. Edwards knows this
22 because we've been in trial, you'll be fine with me, Mr.
23 Stege, if as you demonstrated already, you're working your
24 case, you're working hard and you run out of witnesses, I'm

1 not going to chew on you in front of the jury as long as
2 we're proceeding at a reasonable pace. So stack them as you
3 can and we'll try to fill the time as best we can.

4 If you have witness issues, please let me know,
5 and we'll try to work the schedule around them as we can.
6 You should have the jury panel, yes, on both sides?

7 MR. EDWARDS: We do, your Honor.

8 THE COURT: My examination of the panel is it's
9 adequate to the task. I don't think there's anything else we
10 need to discuss. One last chance, anything from the State's
11 perspective?

12 MR STEGE: No, thank you.

13 THE COURT: Or the defense perspective?

14 MR. EDWARDS: No, your Honor.

15 THE COURT: Thank you for your time. I'll see you
16 all Monday morning.

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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 January 24, 2020, at the hour of 2:00
8 p.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 34, 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 9th day of January 2021.

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

1 CODE 2842
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 ORDER

24 The State of Nevada (hereinafter "the State"), by and through
25 Christopher J. Hicks, District attorney, and Amos Stege, Deputy
26 District attorney, filed Motion Regarding Defendant's Statements to Dr.
Piasecki on January 17, 2020. On January 22, 2020 Defendant Katherine
Fletcher (hereinafter "Fletcher"), by and through counsel, Scott
Edwards, Esq., filed an opposition. The matter was submitted to the
Court for consideration on January 23, 2020. Oral argument was heard
on January 24, 2020.

1 Fletcher is charged with Murder with Use of a Deadly Weapon. On
2 May 10, 2017, after refusing to enter a plea, a not guilty plea was
3 entered on her behalf. Fletcher entered a plea of Not Guilty by Reason
4 of Insanity (hereinafter "NGRI") by filing a Notice of Defense on
5 February 1, 2019 and formally entering the NGRI plea in open court on
6 February 13, 2019. Forensic psychiatrist Dr. Melissa Piasecki
7 evaluated the defendant. Dr. Piasecki's report and a corresponding
8 expert notice were filed with the Court in September 2019.

9 On October 17, 2019 the Court heard argument on the State's Motion
10 for Discovery Related to Insanity Defense, seeking underlying facts and
11 data supporting Dr. Piasecki's opinion. The State noted that Dr.
12 Piasecki's report indicates a foundation of four meetings with the
13 defendant and review of "documents produced by Ms. Fletcher". State's
14 October 9, 2019 reply page 2. The Court ordered production of all
15 documentation reviewed by Dr. Piasecki.

16 On October 22, 2019 Fletcher's counsel withdrew and the Court
17 refereed the matter for appointment of counsel. Mr. Edwards was
18 appointed and entered his appearance on October 30, 2019. Fletcher
19 withdrew the NRGI plea in open court on January 8, 2020, electing to
20 proceed only with a "not guilty" plea.

21 First the State argues for enforcement of the order for the
22 Piasecki materials. Fletcher does not argue against this request. Dr.
23 Piasecki was present and addressed the Court seeking clarification of
24 the scope of materials to be provided. The parties agreed that
25 materials that are discovery provided by counsel are unnecessary but
26 that Dr. Piasecki's notes, to include those of her competency

1 evaluation should be produced. The materials in question are subject
2 to disclosure under NRS 50.3015.

3 Based on the foregoing and good cause appearing, IT IS HEREBY
4 ORDERED that "the underlying facts and data" supporting Dr. Piasecki's
5 opinion, to include documentation of any statements made by the
6 defendant and "documents produced by Ms. Fletcher" shall be produced to
7 the State forthwith.

8 Second, the State argues for admission of statements made to Dr.
9 Piasecki in the case-in-chief of the State. The State argues that
10 since Dr. Piasecki was endorsed as an expert and her report was
11 provided to the State, they are admissible and not protected by 1)
12 either the doctor-patient or attorney-client privilege, 2) the work
13 product doctrine, 3) any statute, or 4) constitutional protections such
14 as the due process clause or the privilege against self-incrimination.
15 The State further argues that the defendant's change in litigation
16 tactics does shield them from use by the State. Fletcher argues that
17 because Dr. Piasecki is no longer offering her opinion on sanity,
18 Fletcher's statements are no longer relevant or admissible. Fletcher's
19 opposition cites no legal authority.

20 The Court finds that Fletcher's statements to Dr. Piasecki are not
21 protected by doctor-patient privilege because Fletcher was not
22 Piasecki's patient and the communication was made with the intention
23 and understanding they would be disclosed to third persons. NRS
24 49.215. Any protection afforded by the attorney-client privilege is
25 waived when Fletcher endorsed Dr. Piasecki as an expert and providing a
26 report containing a summary of the defendant's version of the offense.

1 NRS 49.3859(1). Rogers v. State, 127 Nev. 323, 328, 255 P.3d 1264, 1267
2 (2011) (statutory privileges should be construed narrowly, according to
3 the plain meaning of their words); Lisle v. State, 113 Nev. 679, 701,
4 941 P.2d 459, 473 (1997) ("If a client voluntarily reveals portions of
5 the communications with the attorney, 'those revelations amount to a
6 waiver of the attorney-client privilege as to the remainder of the
7 conversation or communication about the same subject matter") (overruled
8 on other grounds by Middleton v. State, 114 Nev. 1089, 968 P.2d 296,
9 315 (1998).

10 The Court finds that Fletcher's statements are not protected by
11 the attorney work product doctrine, which shelters the attorney's
12 "opinions, mental impressions, trial tactics and conclusions" but does
13 not protect these underlying facts or data. Means v. State, 120 Nev.
14 1001, 1009, 103 P.3d 25, 30 (2004) (distinguishing "whether the
15 information is factual or constitutes the attorney's opinions, mental
16 impressions, trial tactics and conclusions"). In any event, any
17 protection was waived by production of Dr. Piasecki's report to the
18 State.

19 The Court finds that the Fifth Amendment does not protect the
20 statements because they were made voluntarily and for the purpose of
21 supporting her NGRI plea. The Fifth Amendment only protects such
22 statements when they are the product of a court ordered evaluation.
23 Estelle v. Smith, 451 U.S. 454, 468, 101 S. Ct. 1866, 1876, 68 L. Ed.
24 2d 359 (1981); Powell v. Texas, 492 U.S. 680, 684, 109 S. Ct. 3146,
25 3149, 106 L. Ed. 2d 551 (1989); Estes v. State, 122 Nev. 1123, 1133,
26 146 P.3d 1114, 1121 (2006). For the same reason, there is no due

1 process protection for the statements. McKenna v. State, 98 Nev. 38,
2 38-39, 639 P.2d 557, 558 (1982); Estes v. State, 122 Nev. 1123, 1133,
3 146 P.3d 1114, 1121 (2006).

4 The statements are non-hearsay, admissible as a statement of a
5 party opponent. NRS 51.035(3)(a).

6 No principal of law operates to protect or undo Fletcher's change
7 in trial tactics. Williams v. Florida, 399 U.S. 78, 82, 90 S. Ct.
8 1893, 1896, 26 L. Ed. 2d 446 (1970) (defendant has no absolute right to
9 conceal trial strategy).

10 Based on the foregoing and good cause appearing, IT IS HEREBY
11 ORDERED that the State may admit Fletcher's statements to Dr. Piasecki
12 subject to the general rules of admissibility.

13 SO ORDERED.

14
15 DATED this 27 of January, ²⁰²⁰~~2017~~.

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DISTRICT JUDGE