

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, AND
THE HONORABLE TIERRA JONES,
DISTRICT JUDGE

Respondent,

and

JOHN EUGENE DOANE,
Real Party in Interest.

Electronically Filed
Jan 26 2022 09:35 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO:

D.C. NO: C-20-346036-1

PETITIONER'S APPENDIX
Volume 1

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BY /s/ J. Hall
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID

DISTRICT COURT

THE STATE OF NEVADA,

Plaintiff,

VS.

JOHN EUGENE DOANE, aka Robert Eugene Doane,

Defendant.

GJ Case No. 18CGJ189X
DC Case No. C346036

Taken at Las Vegas, Nevada

Thursday, December 12, 2019

11:09 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Volume 1

Reported by: Donna J. McCord, C.C.R. No. 337

1 GRAND JURORS PRESENT ON DECEMBER 12, 2019:

2
3 LAWRENCE HOLMES, Foreperson,

4 ROBERT KINNIBURGH, Deputy Foreperson

5 CLAUDIA HUNT, Secretary

6 LINDA MCARTHUR, Assistant Secretary

7 GARLAND BAILEY

8 ANNAMARIE CONKLIN

9 NATHAN CONRAD

10 REGINA CRUNDEN

11 MARY KISHMARTON

12 JEANETTE LOMANDO

13 DAVID MILLER

14 JOHN ORR

15 MARY PERKINS

16 ANTHONY SHOR

17
18
19
20 Also present at the request of the Grand Jury:

21 Pamela Weckerly
22 Chief Deputy District Attorney
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1 LAS VEGAS, NEVADA, DECEMBER 12, 2019

2 * * * * *

3
4 DONNA J. McCORD,

5 having been first duly sworn to faithfully
6 and accurately transcribe the following
7 proceedings to the best of her ability.
8

9 MS. WECKERLY: Good morning. My name is
10 Pam Weckerly. I work as a Chief Deputy District
11 Attorney. I'm here this morning to present to you the
12 State of Nevada versus John Eugene Doane. I believe you
13 all have a copy of the proposed Indictment which is
14 Grand Jury case number 18CGJ189X and that would be
15 marked as Grand Jury Exhibit 1 if that's okay with you
16 all. As you can see from the proposed Indictment there
17 is a single count of murder charged both under a
18 willful, deliberate and premeditated theory as well as a
19 felony murder theory where the murder occurs during the
20 perpetration or attempted perpetration of a sexual
21 assault. It's my understanding that this Grand Jury has
22 been instructed on the elements of murder as well as
23 you've all been instructed on the felony murder rule and
24 sexual assault. Is there any member of the Grand Jury
25 that would like further instruction on the elements of

1 the offense or any law? Okay. Not seeing any questions
2 I will call the first witness which is Marjorie
3 Davidovic.

4 THE FOREPERSON: Please raise your right
5 hand.

6 You do solemnly swear that the testimony
7 that you're about to give upon the investigation now
8 pending before this Grand Jury shall be the truth, the
9 whole truth, and nothing but the truth, so help you God?

10 THE WITNESS: I do.

11 THE FOREPERSON: Please be seated.

12 THE WITNESS: Thank you.

13 THE FOREPERSON: You're advised you're here
14 today to give testimony in the investigation pertaining
15 to the offense of murder involving John Doane.

16 Do you understand this advisement?

17 THE WITNESS: Yes, I do.

18 THE FOREPERSON: Please state your first
19 and last name and spell both slowly for the record.

20 THE WITNESS: My name is Marjorie
21 Davidovic, M-A-R-J-O-R-I-E D-A-V-I-D-O-V-I-C.

22 MARJORIE DAVIDOVIC,
23 having been first duly sworn by the Foreperson of the
24 Grand Jury to testify to the truth, the whole truth
25 and nothing but the truth, testified as follows:

EXAMINATION

BY MS. WECKERLY:

Q And how are you employed?

A I'm employed with the Las Vegas Metropolitan Police Department in the forensic laboratory as a forensic scientist two in the biology and DNA detail.

Q And as a forensic scientist two in the Metro lab, what does that mean that you do day-to-day?

A As a forensic scientist two, or FS-2 as we call it, we're one of the senior forensic analysts and my job duties entail receiving evidence from different types of crimes such as homicides, sex assaults, robberies or what have you, and evidence can literally be anything for DNA. We examine the evidence as it pertains to the case scenario and to that crime testing it for different biological fluids such as blood, semen, saliva, body tissue, touch DNA, et cetera. And then we process those samples for DNA profiles and make comparisons of those DNA profiles from the evidence to known DNA profiles from reference standards from known individuals.

Q And what is your educational background and training that allows you to work as a forensic scientist in the DNA lab?

1 A I have a bachelor's of science in
2 biochemistry from Stony Brook University and a master's
3 of science in forensic examinations from Touro College
4 which are both in New York.

5 Prior to working here at Metro I spent
6 about eight and a half years at the Suffolk County crime
7 laboratory working as a forensic research technician and
8 then promoted to a forensic scientist one.

9 When I moved here to Vegas I had enough
10 experience to be a forensic scientist two and I've been
11 here for about six and a half years. Prior to being
12 released to individual case work analysis, we undergo an
13 enormous amount of training. Our training, before we're
14 allowed to be released onto independent casework in the
15 lab, is usually about a year to a year and a half, even
16 if I had already had previous experience in New York.
17 It's an extensive amount of literature, of laboratory
18 work, multiple competency and proficiency exams. We
19 have to pass and excel at every single one of these
20 exams before we can proceed to the next level of
21 training. We have multiple moot courts and different
22 types of examinations throughout the entire process, and
23 then finally once we've been deemed competent for
24 independent case work we're signed off and can do
25 independent analysis.

1 Q Now, as sort of an overview of the DNA
2 processing in Metro's lab, my understanding from what
3 you said earlier is that the first step is actually
4 looking at, well, items of evidence that were collected
5 from a crime scene and what a forensic scientist does is
6 examine the evidence and look for ways to potentially
7 obtain DNA off an item of evidence.

8 A Yes, that's correct.

9 Q And then the second step within the DNA lab
10 would be processing that particular item of evidence for
11 DNA to see if you can amplify or actually get a DNA
12 profile off an item of evidence?

13 A Yes, that's also correct.

14 Q And then the third step is comparing it to
15 a known DNA sample from an individual?

16 A That's correct.

17 Q Now, in the case that you're here to
18 testify about this morning, is it a case from 1978?

19 A Yes, it is.

20 Q And from looking at you, I'm guessing you
21 were not working in the Metro lab in 1978.

22 A That's the year I was born.

23 Q So what was your, of those three steps,
24 what was your role with regard to the evidence in this
25 case?

1 A In this case I was responsible with
2 examining all of the evidence submitted and different
3 areas of testing to see if there were biological fluids
4 on it that I described earlier like blood or semen or
5 sperm, and then taking samples or cuttings or swabbings
6 of different items of evidence and placing them into
7 each individual tubes so then they can move forward with
8 all of the chemistry and laboratory processes that we
9 need to develop a DNA profile.

10 Q Okay. So I want to talk to you about two
11 items of evidence, and I want to show you Grand Jury
12 Exhibits 4 and 5. And I realize you might not know the
13 location, but looking at 4 and 5, do you recognize items
14 of evidence that are in these photographs?

15 A Yes, I do.

16 Q And are they a pair of shoes?

17 A Yes, they're a pair of shoes and when I
18 receive these in the laboratory I have my own
19 photographs of these same shoes.

20 Q Okay. I'm just going to step behind you
21 and put Grand Jury Exhibit 5 so we can look at it. That
22 would be one of the shoes?

23 A That's correct.

24 Q And as I think we just said, you weren't at
25 the crime scene but these are the shoes that arrived for

1 you to process at the lab?

2 A That's correct. And it's important also
3 that we obtain as much information as possible regarding
4 the state of the evidence at that crime scene, how it
5 was collected, how it's believed to be related to the
6 case, was it near the crime scene itself, was it near
7 the victim's body, what's the situation of that evidence
8 because not only does it matter for how I'm going to
9 analyze that evidence but it also matters on if these
10 profiles are then eligible to be uploaded into the
11 national database or state database. So we do need some
12 information and I was able to obtain from the detectives
13 the autopsy report, crime scene reports and property and
14 evidence collection reports. So I needed to understand
15 were these shoes even related to this case.

16 Q So I understand you reviewed those reports.
17 I don't want you to talk about the contents because
18 we'll have another witness come in and talk about those.
19 But after you reviewed those reports, you would have
20 received these, well, there's actually two of them, we
21 have a picture of one in each picture, but you would
22 have received these shoes and would they have been in an
23 evidence bag?

24 A Yes, they were submitted in an evidence bag
25 along with a pair of underwear.

1 Q And were they packaged separately or do you
2 recall how they were packaged?

3 A Can I refer to my notes?

4 Q Sure.

5 A No, they were not packaged separately from
6 one another.

7 Q Were all three in one bag?

8 A That's correct.

9 Q Okay. And when you examined or when you
10 pulled the evidence bag, I guess I should back up, was
11 there any indication that the bag had ever been unsealed
12 prior to you having seen the bag?

13 A No. If items of evidence come in where the
14 bags look torn or somehow the evidence inside could be
15 compromised, that would be notated in our reports and in
16 our worksheets rather. So sometimes with a case this
17 old, the bags can be a little bit torn or worn, but if
18 the evidence inside is secured, like sometimes they're
19 inside other bags or other boxes or they're big enough
20 where they can't get in or out or nothing can get in or
21 out of the tiny tears, then that evidence is secured and
22 we can proceed with analysis.

23 Q So this evidence that we're talking about
24 this morning was a pair of underwear as well as this
25 brown pair of shoes?

1 A Correct.

2 Q Now, with regard to, let's talk about the
3 underwear first. Can you just give me like a verbal
4 description of what it looked like?

5 A Yes. It was a pair of old, it was kind of
6 like a crackly old, because it was very old material,
7 underwear with a male and female character on it and a
8 blue car pattern and it said the weekend on it. Again,
9 it looked like very old and worn but again this case is
10 over 40 years old.

11 Q So when you had the underwear, what did you
12 do in terms of taking a sample from it for possible DNA
13 analysis?

14 A So the first thing that I do when examining
15 evidence is I look at the item as it is received as a
16 whole. So I took photographs and made documentation of
17 the underwear as I received it, but in order to examine
18 underwear to see if there's possible semen or sperm
19 inside any of those areas, I cut along the sides of both
20 waistbands to open it up to lay it flat. We then
21 perform different types of serological or body fluid
22 testing to determine if there's any possible body
23 fluids.

24 Q And so the underwear are cut apart so it
25 can lay flat?

1 A That's correct.

2 Q And then you take swabs from various areas
3 of the underwear?

4 A That's one of the things I did.

5 Q Okay. And then you also I think you said
6 look for the presence of bodily fluids?

7 A Correct.

8 Q And is that like with a light or with a
9 chemical reaction or --

10 A Both actually, one of which is called,
11 which the light that the DA mentioned, is we call an ALS
12 or an Alternate Light Source. So what it is is a source
13 of light that allows us to see stains on material that
14 is in a different wavelength of light than we see with
15 our normal eyes in ambient lighting, staining that we
16 would not be able to see in this normal lighting, but
17 these lights have a different wavelength allowing us to
18 see possible stains. All it does is show us -- and
19 these are some stained areas I couldn't normally see.
20 Once I've located these areas, now I can test them,
21 could this possibly be a biological fluid.

22 So the next test that I did when I found
23 some of these fluorescent stains, or stains that glowed,
24 was tested them for possible semen. And that type of
25 test is called an acid phosphatase test. Acid

1 phosphatase is a protein that's found in very high
2 concentrations in seminal material. It's found in other
3 biological fluids too but not at an extremely high
4 content it's found in seminal material.

5 In this case I performed acid phosphatase
6 testing on the entire underwear and it came out
7 negative, but in my experience and also in the
8 literature that we're used to train on, very, very old
9 items of evidence, if it does have semen on it, might
10 not give a positive result for acid phosphatase. So
11 that's when I decided to go forward and take cuttings of
12 different areas of the underwear that fluorest or
13 glowed, put them into a test tube and then proceed with
14 chemical processes to see if there is sperm inside the
15 cuttings or the fibers of the underwear. And I did a
16 microscopic search and did find actual sperm heads that
17 was retained in this underwear.

18 Q And when you say sperm heads, can you
19 relate to us like what part of the underwear where you
20 found that was?

21 A Can I refer to my notes?

22 Q Sure.

23 A So there was a fluorescent staining within
24 the crotch area of the underwear that was about 11
25 centimeters by four and a half centimeters, so that's

1 about four and a half inches by about two inches. That
2 was the fluorescent stain on the inside crotch. So I
3 took various small cuttings from that stained area and
4 combined them and placed them into the test tube and
5 then proceeded to extract sperm from that cutting.

6 Q And so you take that part of the underwear
7 which was from the crotch area and you actually put the
8 fabric itself in a test tube?

9 A That's correct.

10 Q And then the idea is to try to separate out
11 the sperm to see if you can get a DNA profile?

12 A Well, first I wanted to see if there was sperm
13 in this area because if we do find sperm, the type of
14 DNA extraction that is performed is completely different
15 than a type of DNA extraction if there was no sperm.
16 There's different chemical properties that we need to
17 open up the sperm heads to get DNA from the sperm than
18 there are from regular cells or we call them epithelial
19 which means any other surface or body cell. So in order
20 to determine what type of DNA extraction will be done, I
21 need to determine if I have sperm here and performed the
22 microscopic search from the cuttings from the inside
23 crotch and it was positive for sperm.

24 Q And then from that point are you doing
25 anything else with that particular item of evidence or

1 is that moved on then for another part of the process?

2 A Well, I also wanted to see if there was
3 seminal material for a confirmation. We do both types
4 of testing because, especially on very old cases,
5 because seminal material and sperm are not the same.
6 Semen, or seminal material, is the fluid in which sperm
7 is within. So in the ejaculate, seminal material has
8 sperm, and not all seminal material has sperm. So we
9 wanted to test first is there seminal material and if
10 there is does that seminal material have sperm because
11 sometimes it doesn't. The male could be vasectomized or
12 have a medical disorder where he doesn't produce sperm.
13 So again, that determines how am I going to then extract
14 DNA here. So it was positive for semen and positive for
15 sperm. And then from that point on that's the end of my
16 involvement with that cutting of the underwear.

17 Q And just to be clear, that was from the
18 crotch area of the underwear?

19 A That's correct.

20 Q Now, the other areas of the underwear, were
21 there any other parts of the underwear, I guess I should
22 say, that were either semen positive or where you found
23 sperm?

24 A No, there was not.

25 Q So let's move on to the shoes. When you

1 received the shoes, how did you go about processing
2 those?

3 A First I separated them from the underwear
4 and I took photographs of the pair of shoes and
5 documented everything that I observed on the shoes. And
6 then from my understanding of the case scenario I was
7 looking to swab or sample or test different areas of the
8 shoes based upon what was proposed that could have
9 happened. And so I took various swabbings and did some
10 testing on the shoes.

11 Q So when you have the shoe, do you swab like
12 the whole outside and inside in one swab or do you swab
13 like an inside to get maybe a wearer's profile and then
14 the outside, you know, to separate the two maybe?

15 A I did both actually. Since the shoes, as
16 you see in the picture, were located away from the
17 deceased, I wanted to determine is there enough DNA in
18 these shoes to determine who the wearer was. So I did
19 swabbings from the inside of the entire insoles of both
20 of the shoes to collect what's known as touch DNA. And
21 touch DNA is DNA that could be left behind from handling
22 an object or wearing an item of clothing. You can't
23 actually see it, you can't see the cells, you can't test
24 for it like you could for blood or semen, but we're
25 swabbing or cutting out areas that could have been

1 handled or touched by a person. So that's why I
2 prepared a swabbing of the insides of both shoes.

3 Q And can you tell us what your findings were
4 or what, you know, were you able to see if you got
5 anything from your swabs of the shoes?

6 A I put that into a separate tube and that
7 was the end of my involvement with those swabs. But I
8 also took swabbings from the outside of collar and heel
9 area of the shoes and also of the toecaps.

10 Q And I think I understand what the toecaps
11 are and the outside. When you say the collar area,
12 would that be kind of around where the ankle/foot --

13 A Yes.

14 Q Okay. But on the outside?

15 A Correct.

16 Q And then that's put in a test tube as well?

17 A Yes. And so the swabbing was from the heel
18 collar, kind of like that rim area if you look at it.
19 It's like if you were going to take your shoes off
20 that's where you could pull it or pull it off. Or if
21 you were grabbing your shoes from the end of it, the
22 toecaps are the end outside part of the shoe. So
23 instead of taking one separate swab of each area,
24 because I'm looking for who could have handled the shoes
25 from the outside as opposed to my first swabbing of who

1 could be wearing the shoes from the inside, I collected
2 those swabbings, those areas all in one general swabbing
3 because again the case is so old, it was sitting out,
4 you know, in the heat, DNA could have been degraded or
5 inhibited, I'm trying to collect as many touch DNA cells
6 as possible on one swabbing.

7 Q Okay. And then those are put in a test
8 tube and someone else processes them?

9 A That's correct.

10 Q Now, the last thing I'd just like to ask
11 you about is if you processed a vaginal swab that was
12 collected at autopsy?

13 A Yes, I did.

14 Q And what were your findings with regard to
15 that?

16 A Sorry, just give me one moment.

17 Q Sure.

18 A Yes, the swabbings that were collected from
19 the victim's swabs were positive for sperm and also
20 positive for semen.

21 Q And once you made that determination from
22 the vaginal swab, is it passed on to someone else to
23 process it for DNA?

24 A Yes, that's correct.

25 Q Okay. Thank you very much. I have no

1 other questions for this witness.

2 THE FOREPERSON: Any questions by the Grand
3 Jury? Seeing no further questions.

4 By law these proceedings are secret and you
5 are prohibited from disclosing to anyone anything that
6 transpired before us including any evidence presented to
7 the Grand Jury, any event occurring or a statement made
8 in the presence of the Grand Jury or any information
9 obtained by the Grand Jury.

10 Failure to comply with this admonition is a
11 gross misdemeanor punishable up to 364 days in the Clark
12 County Detention Center and a \$2,000 fine. In addition
13 you may be held in contempt of court punishable by an
14 additional \$500 fine and 25 days in the Clark County
15 Detention Center.

16 Do you understand this admonition?

17 THE WITNESS: I do.

18 THE FOREPERSON: Thank you. You're
19 excused.

20 THE WITNESS: Thank you.

21 THE FOREPERSON: Please raise your right
22 hand.

23 You do solemnly swear that the testimony
24 that you're about to give upon the investigation now
25 pending before this Grand Jury shall be the truth, the

1 whole truth, and nothing but the truth, so help you God?

2 THE WITNESS: Yes, I do.

3 THE FOREPERSON: Please be seated.

4 You're advised you're here today to give
5 testimony in the investigation pertaining to the offense
6 of murder involving John Doane.

7 Do you understand this advisement?

8 THE WITNESS: Yes.

9 THE FOREPERSON: Please state your first
10 and last name and spell both slowly for the record.

11 THE WITNESS: Leah Groveman, L-E-A-H
12 G-R-O-V-E-M-A-N.

13 LEAH GROVEMAN,

14 having been first duly sworn by the Foreperson of the
15 Grand Jury to testify to the truth, the whole truth
16 and nothing but the truth, testified as follows:

17

18 EXAMINATION

19 BY MS. WECKERLY:

20 Q How are you employed?

21 A I'm a forensic scientist two for the Las
22 Vegas Metropolitan Police Department in the biology DNA
23 detail at the forensic lab.

24 Q And how long have you worked as a forensic
25 scientist for Metro?

1 A For Metro it will be four years in April so
2 over three and a half years.

3 Q Did you work somewhere else prior to that?

4 A Yes, I was an analyst, a DNA analyst at two
5 other places. The first position was Cellmark, Orchid
6 Cellmark. It is a private DNA forensics lab, probably
7 heard of them, they did the OJ case, things like that
8 back in the day. So I worked for them for two years and
9 then after that I was a DNA analyst for, a contractor
10 for the military. It's a place called AFDIL, Armed
11 Forces DNA Identification Laboratory. So I worked on
12 the remains, military remains from Iraq and Afghanistan
13 to identify the soldiers.

14 Q So can you describe just briefly your
15 educational background that allows you to work as a
16 forensic scientist?

17 A Yes. So I have a bachelor's in
18 biochemistry from a school in Tennessee called Maryville
19 College, and then after that I got my master's in
20 forensic science with a concentration in forensic
21 molecular biology from the George Washington University
22 in Washington D.C.

23 Q Have you testified before as an expert in
24 this area?

25 A Yes, I have.

1 Q So we heard from the previous witness that
2 the way evidence in this case has been processed by
3 Metro is there's an individual who samples the actual
4 evidence to determine, you know, whether there's
5 anything usable in terms of DNA and then the second step
6 is actually doing the DNA processing.

7 A Correct. We have changed things up a
8 little bit and in the future it might just be two people
9 that need to come, so yes, we have team-based work right
10 now. So we had a homicide team that worked on this and
11 I worked on the DNA processing part of it.

12 Q So you're in step two, the DNA processing?

13 A Yes, correct.

14 Q So when you actually receive the evidence
15 is it already in test tubes?

16 A Yes. So Marjorie, who you just heard from,
17 she's deciding what needs to be tested. She's taking
18 swabs. When I come in those swabs are already cut and
19 they're put in little plastic sterile tubes for me to
20 then start the DNA process.

21 Q And can you just describe for the members
22 of the Grand Jury what you do with those test tubes as
23 the DNA processor?

24 A Yes. And again, multiple people worked on
25 this case so I did the majority, I did the portions of

1 the DNA processing. So the first step is extractions so
2 we're using temperature and chemicals to break open
3 these cells to get the DNA out of the cells and then the
4 next step is quantitation. Christine Whittle, who
5 you're going to be speaking with --

6 Q We will hear from her but not this morning.

7 A Yes. So she took care of the quantitation
8 step. After that some of the samples, these were old
9 samples, some of it needed to be -- with
10 quantitation you're seeing how much DNA is present; do
11 you have a lot of DNA that you have to dilute because
12 there's just way too much there or do you need to
13 concentrate the DNA because you have very little and
14 you're trying to get the most out of it as you can. So
15 a lot of these samples needed to be concentrated. So I
16 did that step, concentrated down the DNA. Once I had
17 extracted it the next step is amplification. That just
18 means basically we're making billions of copies of the
19 areas of DNA we are interested in looking at. So you
20 can think of it as a DNA Xerox machine. We're making
21 billions and billions of copies of what we are
22 interested in. And then the final step is putting it on
23 a capillary electrophoresis instrument. It's basically
24 just a big machine that is then, and again a different
25 analyst named Allison Ravino did this step for me. That

1 enables us to get actual data that we can look at. When
2 you see, if you've seen crime shows and they have DNA
3 profiles, sometimes it will look like colored peaks that
4 are on a graph.

5 Q So in this particular case there's a couple
6 items of evidence that we've heard about. We've heard
7 about the cuttings that were taken from the crotch of a
8 pair of underwear.

9 A Yes.

10 Q Were you able to process that item and
11 generate a DNA profile from it?

12 A Yes, so I did work on that item. I also --
13 to go backwards a little bit.

14 Q Sure.

15 A I did do -- with special items where we
16 think there's possibly sperm present and it could be
17 mixed with a female's skin cells, we have special
18 extractions called a differential extraction. So the
19 shoes, you didn't mention the shoes yet but I know we'll
20 talk about the shoes, items like that have a regular
21 extraction and we don't do the differential extraction,
22 but when we have things that could possibly have male
23 sperm present then we do a differential extraction and
24 that's just a few extra steps where we're trying to
25 separate the female skin cells from the male sperm.

1 Q And that was done in this case with the
2 underwear or crotch samples?

3 A Yes. And I actually looked under a
4 microscope and was looking for sperm from the underwear.

5 Q And then is a profile generated from the
6 skin or epithelial cells and one from the sperm cells
7 that have been separated?

8 A Correct. So with a differential
9 extraction, one tube eventually becomes two separate
10 items that we're then carrying on through the DNA
11 process that I mentioned.

12 Q And that's part of what you worked on in
13 this case?

14 A Yes.

15 Q And that concerns the underwear cuttings?

16 A Yes.

17 Q Now, in terms of the shoes, were you the
18 person who generated a DNA profile or processed them I
19 guess I should say, more accurately, for DNA?

20 A Yes, I did.

21 Q And was a profile obtained from either the
22 inner kind of swab of the shoes or the outside of them?

23 A Oh, I do not recall if it was inner or
24 outside. I could look, but again because I stopped
25 at -- and I apologize, there's so many --

1 Q That's okay.

2 A -- people involved. Since I stopped at
3 amplification I technically didn't generate the profiles
4 for that. Does that make sense?

5 Q Would that be Allison? Or Christine I
6 mean?

7 A Christine would be the one who would take
8 the data, the DNA profiles, and generating statistics
9 and seeing if there's male DNA, et cetera.

10 Q Okay. So in terms of the shoes, did you do
11 any DNA processing of them?

12 A So I did the extraction step, yes, and I
13 did the amplification step, making the millions of
14 copies, yes. We do batches so all the differential
15 extractions for this case are done together. I believe
16 there's a vaginal swab as well was done.

17 Q So you would have done that?

18 A Yes. So I did the vaginal swab with the
19 cutting of the underwear and then I did a regular
20 extraction where we don't have to try to separate sperm.
21 We reasonably believe that sperm might not be present,
22 it might be more touch DNA that we're looking for, so I
23 did that as an extraction batch and then carried it
24 through the process.

25 Q And then once you're done with it, it's

1 someone else who actually looks at the data and compares
2 it to a known sample?

3 A Yes, which I'm capable of doing but we kind
4 of rotate and take turns. And in this particular case I
5 did not do anything with looking at the data and
6 analyzing it and getting statistical value for it.

7 Q Okay. So although you can do what I'm sort
8 of referring to as step three, your involvement in this
9 case was step two with the DNA processing?

10 A Correct.

11 Q And then Christine Whittle is the one who
12 did the ultimate comparison and statistical calculation?

13 A Yes. So she grabs all that data and she
14 starts pouring through it, combing through it and
15 looking and seeing who's present, things like that,
16 victim, possible suspect.

17 Q Thank you.

18 I have no other questions of this witness.

19 THE FOREPERSON: Anybody of the Grand Jury
20 have additional questions? Seeing no additional
21 questions.

22 By law these proceedings are secret and you
23 are prohibited from disclosing to anyone anything that
24 transpired before us including any evidence presented to
25 the Grand Jury, any event occurring or a statement made

1 in the presence of the Grand Jury or any information
2 obtained by the Grand Jury.

3 Failure to comply with this admonition is a
4 gross misdemeanor punishable up to 364 days in the Clark
5 County Detention Center and a \$2,000 fine. In addition
6 you may be held in contempt of court punishable by an
7 additional \$500 fine and 25 days in the Clark County
8 Detention Center.

9 Do you understand this admonition?

10 THE WITNESS: Yes, I do.

11 THE FOREPERSON: Thank you. You're
12 excused.

13 THE WITNESS: Thank you.

14 THE FOREPERSON: Please raise your right
15 hand.

16 You do solemnly swear that the testimony
17 that you're about to give upon the investigation now
18 pending before this Grand Jury shall be the truth, the
19 whole truth, and nothing but the truth, so help you God?

20 THE WITNESS: Yes, I do.

21 THE FOREPERSON: Please be seated.

22 You're advised you're here today to give
23 testimony in the investigation pertaining to the offense
24 of murder involving John Doane.

25 Do you understand this advisement?

1 THE WITNESS: Yes, sir.

2 THE FOREPERSON: Please state your first
3 and last name and spell both slowly for the record.

4 THE WITNESS: Dan Long, D-A-N L-O-N-G.

5 DAN LONG,

6 having been first duly sworn by the Foreperson of the
7 Grand Jury to testify to the truth, the whole truth
8 and nothing but the truth, testified as follows:

9
10 EXAMINATION

11 BY MS. WECKERLY:

12 Q Sir, how are you employed?

13 A I am with the Las Vegas Metropolitan Police
14 Department. I retired and then I've come back as a
15 investigator in homicide cold cases.

16 Q When you retired where were you assigned?

17 A Homicide.

18 Q And how long had you worked there?

19 A Seventeen years.

20 Q And --

21 A In homicide 17 years. I was with the
22 department over 27 years.

23 Q When was it that you retired from homicide?

24 A July of '17.

25 Q Okay. And then you've since come back as a

1 cold case detective?

2 A Yes.

3 Q Was one of the cases you worked on a case
4 involving a victim by the name of Carol Lum?

5 A Yes, ma'am.

6 Q And was part of your role in developing the
7 cold case obtaining a buccal swab from an individual?

8 A Yes, ma'am.

9 Q And was that individual named John Eugene
10 Doane?

11 A Yes.

12 Q When you -- well, actually in September of
13 this year, I think it was September of this year, did
14 you obtain a buccal swab from him?

15 A Yes, I did.

16 Q And that would have been out of -- you
17 would have done that personally?

18 A Yes, I did.

19 Q Sir, I'm going to show you two photographs.
20 This is Grand Jury Exhibits 2 and 3.

21 A Yes, ma'am.

22 Q Do you recognize what those are?

23 A Yes.

24 Q I'm going to put Grand Jury Exhibit 2 on
25 the overhead and I'll stand back here. What are we

1 looking at in this?

2 A That's a Las Vegas Metropolitan Police
3 Department buccal swab kit. We use these in order to
4 get the buccal swabs from an individual. They have a
5 cotton swab much like a very large Q-tip which will take
6 the epithelial cells from the inside of the cheek. We
7 then impound those into those packages and then send
8 them to our lab.

9 Q So this is a picture of the envelope of the
10 buccal swab that you took from Mr. Doane?

11 A Yes, that's my handwriting. It's called a
12 DR number back in 1978 which is on there.

13 Q And that's in the upper right here?

14 A Yes.

15 Q And that's 78 for the year of the case?

16 A Yes, ma'am.

17 Q And then I think I said June but the date
18 on that is --

19 A July 16 of 2019.

20 Q And then you would have filled out this,
21 the individual that you got the buccal from?

22 A Yes, ma'am.

23 Q And then this is your name and P number
24 showing you're the one that impounded it?

25 A Yes, ma'am.

1 Q After you impound it do you make sure it's
2 sealed?

3 A Yes.

4 Q And then it is submitted for testing based
5 on like your request or, you or another detective; is
6 that right?

7 A That's correct, yes.

8 Q Thank you.

9 A Sure.

10 MS. WECKERLY: I have no other questions of
11 this witness.

12 BY A JUROR:

13 Q Just out of curiosity, why did you reopen
14 this case after all these years?

15 MS. WECKERLY: So I'm going to instruct the
16 witness that he cannot answer that question. You will
17 be hearing from additional witnesses.

18 THE WITNESS: Thank you.

19 THE FOREPERSON: Any other questions by the
20 Grand Jury? Seeing no further questions.

21 By law these proceedings are secret and you
22 are prohibited from disclosing to anyone anything that
23 transpired before us including any evidence presented to
24 the Grand Jury, any event occurring or a statement made
25 in the presence of the Grand Jury or any information

1 obtained by the Grand Jury.

2 Failure to comply with this admonition is a
3 gross misdemeanor punishable up to 364 days in the Clark
4 County Detention Center and a \$2,000 fine. In addition
5 you may be held in contempt of court punishable by an
6 additional \$500 fine and 25 days in the Clark County
7 Detention Center.

8 Do you understand this admonition?

9 THE WITNESS: Yes, sir.

10 THE FOREPERSON: Thank you. You're
11 excused.

12 THE WITNESS: Thank you.

13 THE FOREPERSON: Please raise your right
14 hand.

15 You do solemnly swear that the testimony
16 that you're about to give upon the investigation now
17 pending before this Grand Jury shall be the truth, the
18 whole truth, and nothing but the truth, so help you God?

19 THE WITNESS: I do.

20 THE FOREPERSON: Please be seated.

21 You're advised that you're here today to
22 give testimony in the investigation pertaining to the
23 offense of murder involving John Doane.

24 Do you understand this advisement?

25 THE WITNESS: I understand.

1 THE FOREPERSON: Please state your first
2 and last name and spell both slowly for the record. And
3 if you could move up close to that microphone, please.

4 THE WITNESS: Amanda Shum, A-M-A-N-D-A
5 S-H-U-M, as in Mary.

6 AMANDA SHUM,
7 having been first duly sworn by the Foreperson of the
8 Grand Jury to testify to the truth, the whole truth
9 and nothing but the truth, testified as follows:

10
11 EXAMINATION

12 BY MS. WECKERLY:

13 Q How are you employed?

14 A I work for the Las Vegas Metropolitan
15 Police Department as a forensic laboratory technologist
16 in the biology DNA detail.

17 Q And how long have you worked for Metro in
18 that job?

19 A About a year and a half now.

20 Q And what does that mean that you do, you
21 know, day-to-day?

22 A My lab duties include receiving evidence
23 while maintaining chain of custody and examining these
24 items of evidence for any possible biological fluids
25 such as blood, semen or saliva and then taking on the

1 samples through the lab processing to try and develop a
2 DNA profile before passing it on to a forensic
3 scientist.

4 Q And what's your educational background or
5 training that allows you to work in that job?

6 A I have a bachelor's of science in
7 molecular, cellular and developmental biology from the
8 University of California at Santa Cruz and a master's of
9 science in criminalistics from the California State
10 University at Los Angeles.

11 Q And when you hired on with Metro were you
12 given any training within the lab itself?

13 A I received about six months of internal
14 training from qualified LVMPD analysts as well as an
15 external training program I did with the National
16 Forensics Science Training Center, or known as NFSTC,
17 and this included learning about the screening process
18 and as well as the lab processing process which included
19 lots of literature and scientific articles and mock
20 casework which was meant to mimic evidence items that I
21 was likely to receive in casework.

22 Q Now, in the case that we're here talking
23 about this morning, were you asked to I guess process
24 what's known as a buccal swab?

25 A Yes.

1 Q And I'm going to put on the overhead Grand
2 Jury Exhibit 2. Do you recognize that?

3 A I do.

4 Q Okay. Is that a picture of an evidence
5 bag?

6 A Yes, of a buccal swab kit.

7 Q Okay. And that is sort of what we know as
8 a known sample of DNA from an individual?

9 A Yes, that's correct.

10 Q Now, to the right is sort of a Post-it note
11 with some words and numbers written on it. Is that your
12 writing?

13 A Yes, that is my writing. They are actually
14 the what we call lab case identifiers and it's the event
15 number that the item came under, the lab number that the
16 item came under into the lab and also the lab item
17 number that we designate. And those are my P number and
18 initials and the date that I took the picture.

19 Q So now we know you're the one who processed
20 it and that it relates to this case and when you did it;
21 is that right?

22 A Yes, that's correct.

23 Q When you received this item of evidence was
24 it in tact?

25 A Do you mean as in like properly sealed?

1 Q Yes.

2 A Yes.

3 Q Okay. And so when you take the buccal swab
4 out what do you do to process it?

5 A I take the item of evidence and cut it and
6 put it into a plastic tube and the swab actually just
7 looks like a giant Q-tip and then I will add the
8 chemicals to try and get the DNA out of the sample and
9 take it through the process to try and develop a DNA
10 profile.

11 Q After you're done with it it's someone else
12 who compares the profile to questioned evidence; is that
13 fair?

14 A Yes. So I will pass on the data to the
15 forensic scientist and in this case it was Forensic
16 Scientist Christine Whittle.

17 Q Okay. Thank you very much.

18 I have no other questions of this witness.

19 A Thank you.

20 THE FOREPERSON: Does anyone in the Grand
21 Jury have any additional questions? Seeing no
22 additional questions.

23 By law these proceedings are secret and you
24 are prohibited from disclosing to anyone anything that
25 transpired before us including any evidence presented to

1 the Grand Jury, any event occurring or a statement made
2 in the presence of the Grand Jury or any information
3 obtained by the Grand Jury.

4 Failure to comply with this admonition is a
5 gross misdemeanor punishable up to 364 days in the Clark
6 County Detention Center and a \$2,000 fine. In addition
7 you may be held in contempt of court punishable by an
8 additional \$500 fine and 25 days in the Clark County
9 Detention Center.

10 Do you understand this admonition?

11 THE WITNESS: I understand.

12 THE FOREPERSON: Thank you. You're
13 excused.

14 MS. WECKERLY: And we'll be back on a
15 different day with additional witnesses regarding this
16 case. Thank you for your attention this morning.

17 (Proceedings continued.)

18 --oo0oo--
19
20
21
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25

STATE OF NEVADA)
 : SS
COUNTY OF CLARK)

I, Donna J. McCord, C.C.R. 337, do hereby certify that I took down in Shorthand (Stenotype) all of the proceedings had in the before-entitled matter at the time and place indicated and thereafter said shorthand notes were transcribed at and under my direction and supervision and that the foregoing transcript constitutes a full, true, and accurate record of the proceedings had.

Dated at Las Vegas, Nevada,
December 18, 2019.

/S/DONNA J. MCCORD
Donna J. McCord, CCR 337

1 AFFIRMATION

2 Pursuant to NRS 239B.030

3
4 The undersigned does hereby affirm that the preceding
5 TRANSCRIPT filed in GRAND JURY CASE NUMBER 18CGJ189X:
67
8 X Does not contain the social security number of any
9 person,

10 -OR-

11 ____ Contains the social security number of a person as
12 required by:13 A. A specific state or federal law, to-wit:
14 NRS 656.250.

-OR-

15 B. For the administration of a public program
16 or for an application for a federal or
17 state grant.18 /S/DONNA J. MCCORD
19 SignatureDecember 18, 2019
Date20 Donna J. McCord
21 Print Name22 Official Court Reporter
23 Title
24
25

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00:00:59 1 GRAND JURORS PRESENT ON DECEMBER 19, 2019:
2
3 LAWRENCE HOLMES, Foreperson,
4 ROBERT KINNIBURGH, Deputy Foreperson
00:00:59 5 CLAUDIA HUNT, Secretary
6 LINDA MCARTHUR, Assistant Secretary
7 TONI ANDERSON
8 GARLAND BAILEY
9 ANNAMARIE CONKLIN
00:00:00 10 NATHAN CONRAD
11 MARY KISHMARTON
12 JEANETTE LOMANDO
13 DAVID MILLER
14 JOHN ORR
00:00:00 15 MARY PERKINS
16 ANTHONY SHOR
17
18
19 Also present at the request of the Grand Jury:
00:00:00 20 Pamela Weckerly
21 Chief Deputy District Attorney
22 Parker Brooks
23 Deputy District Attorney
24
00:00:00 25

00:00:00

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JANET O'ROURKE

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CHRISTINE WHITTLE

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LAS VEGAS, NEVADA, DECEMBER 19, 2019

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* * * * *

3

4

DONNA J. McCORD,

00:00:02

5

having been first duly sworn to faithfully

6

and accurately transcribe the following

7

proceedings to the best of her ability.

8

9

MS. WECKERLY: Good afternoon. My name is

14:36:43

10

Pam Weckerly. With me is Parker Brooks and this

11

afternoon I'll be presenting two additional witnesses

12

for you on the State of Nevada versus John Eugene Doane

13

which is Grand Jury case number 18CGJ189X. I'll get the

14

next witness who is Jan O'Rourke.

14:37:34

15

Come on in and stay standing.

16

THE FOREPERSON: Please raise your right

17

hand.

18

You do solemnly swear that the testimony

19

that you're about to give upon the investigation now

14:37:39

20

pending before this Grand Jury shall be the truth, the

21

whole truth, and nothing but the truth, so help you God?

22

MS. WECKERLY: Do you affirm that you'll

23

give truthful testimony?

24

THE WITNESS: Yes.

14:37:56

25

THE FOREPERSON: And please be seated right

14:37:57 1 in front of that microphone.

2 You're advised that you're here today to
3 give testimony in the investigation pertaining to the
4 offense of murder involving John Doane.

14:38:11 5 Do you understand this advisement?

6 THE WITNESS: Yes, I do.

7 THE FOREPERSON: Please state your first
8 and last name and spell both for the record, please.

9 THE WITNESS: Janet O'Rourke, J-A-N-E-T,
14:38:23 10 last name is O apostrophe R-O-U-R-K-E. At the time my
11 last name was Lesniak, L-E-S-N-I-A-K.

12 JANET O'ROURKE,

13 having been first duly sworn by the Foreperson of the
14 Grand Jury to testify to the truth, the whole truth
14:38:33 15 and nothing but the truth, testified as follows:

16

17 EXAMINATION

18 BY MS. WECKERLY:

19 Q And may I call you Miss O'Rourke?

14:38:35 20 A Sure.

21 Q Okay. Back in 1978 how were you employed?

22 A I was a detective with the Las Vegas
23 Metropolitan Police Department.

24 Q What year did you hire on with Metro as a
14:38:47 25 patrol officer?

14:38:51 1 A 1974 is when I went through the academy. I
2 had worked for the Sheriff's Department for a year prior
3 to that in 1973.

4 Q Okay. And then by 1978 or maybe a little
14:39:02 5 bit earlier you were a detective?

6 A Yes, I was.

7 Q And as a detective were you assigned to a
8 particular detail?

9 A Yes, I was assigned to homicide.

14:39:12 10 Q And as a homicide detective did you only
11 respond to homicide cases or did you respond to
12 different types of cases?

13 A We responded to homicide, attempted
14 homicide, sexual assault, rape cases, any serious
14:39:33 15 physical type cases.

16 Q And back in 1978 was there sort of a
17 rotation or particular days that you were on duty to
18 respond to cases?

19 A Yes.

14:39:46 20 Q How did that work in 1978?

21 A We had two squads, two sergeants and four
22 detectives per sergeant so there were eight of us full
23 time. There were a couple of other detectives that did
24 work with us but not on a daily basis. And when you had
14:40:13 25 a homicide you would be called, either your squad was up

14:40:17 1 or the other squad was up. On weekends we took turns as
2 to who was on call.

3 Q Okay. Now, when you would respond to a
4 homicide back at that time, was there a practice of one
14:40:37 5 of the detectives or detectives writing reports
6 associated with the case?

7 A Yes.

8 Q And how would Metro number or classify the
9 reports in order to know how it would correspond to a
14:40:52 10 particular event?

11 A They used what's called a DR number, daily
12 report. Any crimes that came into the department, not
13 just homicide, but any crimes or any incidents that
14 occurred are given a DR number for that particular date
14:41:09 15 and time.

16 Q And so the DR number consists of maybe the
17 year and then the call that Metro responded to the
18 number of the call?

19 A Yes.

14:41:19 20 Q Okay. And those are unique to each case?

21 A Yes.

22 Q Now, would the DR number for a particular
23 event remain the same for any subsequent work that was
24 done on the case?

14:41:31 25 A Yes. Once an incident is issued a DR

14:41:35 1 number, all subsequent reports from all departments use
2 that particular number.

3 Q Okay. In homicide cases did crime scene
4 analysts or ID specialists respond to scenes as well as
14:41:52 5 detectives?

6 A Yes.

7 Q And did they write reports typically?

8 A Yes.

9 Q Would those reports have the same DR number
14:42:01 10 as the detectives' reports?

11 A Yes.

12 Q So everybody's using that same number?

13 A Everybody uses the same number.

14 Q And if evidence were booked into the
14:42:11 15 evidence vault for a particular event, would it
16 correspond to that same DR number?

17 A Yes.

18 Q Okay. Now, you and I have spoken before
19 about this particular event; is that fair?

14:42:22 20 A Yes.

21 Q And do you recall being one of the
22 detectives that responded to it?

23 A No.

24 Q Okay. From looking at reports from other
14:42:31 25 detectives, do you see your name listed in the report as

14:42:34 1 responding to the scene?

2 A Yes, I do.

3 Q And so you probably wouldn't have any
4 reason to dispute that you were actually at the scene?

14:42:42 5 A No, I don't have any reason to dispute
6 that. I would have a much better memory had I actually
7 worked the case, but because I was just the initial
8 detective that responded on the case and it was handled
9 by another team, I really didn't have, it really wasn't
14:43:02 10 necessary for me to get that involved in it.

11 Q Okay. I'm going to show you what's been
12 marked as Grand Jury Exhibit 7. Do you recognize who's
13 in that photograph?

14 A Yes, that's me.

14:43:15 15 Q Okay.

16 A Forty-one years ago.

17 Q So this is you in 1978 at the scene; is
18 that fair?

19 A Yes.

14:43:21 20 Q Okay. I'm going to put that on the
21 overhead behind you. And this is Grand Jury Exhibit 7
22 for the record. Let me back this up. Okay. So we know
23 because we can see you in that photograph that you were
24 at this particular scene?

14:43:40 25 A Yes, I was.

14:43:41 1 Q And because you don't have any recollection
2 of it, do you remember, you know, where even it took
3 place or would you have to rely on reports?

4 A I would have to rely on my reports.

14:43:56 5 Q If the reports indicated that the scene was
6 near Vegas Valley along Hollywood, do you remember that
7 location?

8 A As pertaining to this incident, no, but I
9 know the general area at that particular time, yeah.

14:44:17 10 Q So that area back in 1978, that was in
11 Clark County?

12 A Yes.

13 Q And how would you describe that area? Was
14 it developed, undeveloped?

14:44:27 15 A No, it was open desert.

16 Q Okay.

17 A It was close to some chemical fields or
18 something from one of the factories out in that general
19 area. But, no, the majority of that area was desert,
14:44:41 20 just open desert.

21 Q Now, at the time in 1978 did a detective
22 typically go to the autopsy of a deceased victim?

23 A Yes.

24 Q And from reviewing these reports do you --
14:44:56 25 well, do you acknowledge that you were the detective

14:44:59 1 that actually went to the autopsy?

2 A Yes.

3 Q Now, at autopsy when you had a deceased
4 female victim where there was a possibility of sexual
14:45:08 5 assault, were there samples taken from the victim at
6 autopsy?

7 A Yes.

8 Q And would those include fingernail
9 scrapings, vaginal swabs and maybe the victim's
14:45:22 10 clothing?

11 A Yes.

12 Q Would all of that have been impounded by an
13 ID tech or a crime scene analyst also at the autopsy?

14 A Yes.

14:45:31 15 Q But the detective is present as well?

16 A Yes.

17 Q And when it's impounded is it also
18 impounded under that same DR number?

19 A Yes.

14:45:40 20 Q Okay. Now, in terms of evidence that's
21 located at a crime scene, that's also impounded by crime
22 scene analysts or ID techs as well; is that right?

23 A Yes.

24 Q Now, I want to show you, this is Grand Jury
14:45:55 25 Exhibit 6, and it looks like a hand sketch; is that

14:46:03 1 fair?

2 A Yes.

3 Q Okay. I'm going to put this on the

4 overhead. Now, can you see where I'm pointing right

14:46:13 5 here?

6 A Uh-huh.

7 Q Is that yes? I'm sorry.

8 A Yeah, I can see it.

9 Q Is that a DR number?

14:46:19 10 A Yes, it is.

11 Q And so that's the number, that 7871010 is

12 the number associated with this event and all reports

13 associated with it?

14 A Yes.

14:46:28 15 Q And so the evidence that might have been

16 collected at the scene would have been impounded under

17 that event number?

18 A Yes.

19 Q Okay. We discussed just a second ago that

14:46:49 20 you also attended the autopsy, and you don't remember

21 that independently but you reviewed a report that

22 indicates you did; is that correct?

23 A Yes.

24 Q Back then did the coroner's office use

14:47:01 25 their own numbering system that's independent of the

14:47:05

1 Metro DR number?

2 A Yes.

3 Q And did each autopsy have a specific case
4 number?

14:47:12

5 A As far as I know, yeah.

6 Q Okay. Thank you very much.

7 I have no other questions of this witness.

8 THE FOREPERSON: Any questions by the Grand
9 Jury? Seeing no questions.

14:47:29

10 By law these proceedings are secret and you
11 are prohibited from disclosing to anyone anything that
12 transpired before us including any evidence presented to
13 the Grand Jury, any event occurring or a statement made
14 in the presence of the Grand Jury or any information
15 obtained by the Grand Jury.

14:47:29

16 Failure to comply with this admonition is a
17 gross misdemeanor punishable up to 364 days in the Clark
18 County Detention Center and a \$2,000 fine. In addition
19 you may be held in contempt of court punishable by an
20 additional \$500 fine and 25 days in the Clark County
21 Detention Center.

14:47:29

22 Do you understand this admonition?

23 THE WITNESS: Yes.

24 THE FOREPERSON: Thank you. You're

14:47:58

25 excused.

14:47:59 1 THE WITNESS: Thank you.

2 THE FOREPERSON: Please raise your right
3 hand.

4 You do solemnly swear that the testimony
14:48:38 5 that you're about to give upon the investigation now
6 pending before this Grand Jury shall be the truth, the
7 whole truth, and nothing but the truth, so help you God?

8 THE WITNESS: I do.

9 THE FOREPERSON: Please be seated.

14:48:45 10 You're advised that you're here today to
11 give testimony in the investigation pertaining to the
12 offense of murder involving John Doane.

13 Do you understand this advisement?

14 THE WITNESS: Yes.

14:48:54 15 THE FOREPERSON: Please state your first
16 and last name and spell both slowly for the record.

17 THE WITNESS: My name is Christine Whittle
18 and it's spelled C-H-R-I-S-T-I-N-E W-H-I-T-T-L-E.

19 CHRISTINE WHITTLE,

14:49:03 20 having been first duly sworn by the Foreperson of the
21 Grand Jury to testify to the truth, the whole truth
22 and nothing but the truth, testified as follows:

23 ///

24 ///

14:49:03 25 ///

14:49:03

1

EXAMINATION

2

BY MS. WECKERLY:

3

Q How are you employed?

4

A I'm employed as a forensic scientist for

14:49:07

5

the Las Vegas Metropolitan Police Department.

6

Q How long have you worked as a forensic

7

scientist for Metro?

8

A For Metro since May of 2015. In general in

9

this job I worked for approximately ten years for the

14:49:21

10

Florida Department of Law Enforcement in the same

11

capacity.

12

Q And that would be in the area of DNA

13

analysis and comparison?

14

A Yes, ma'am.

14:49:30

15

Q Prior to that or can you give us some sense

16

of your educational background that allows you to work

17

as a forensic scientist?

18

A I have a bachelor's degree in microbiology.

19

I also did genetic research while I was in college.

14:49:44

20

From that point I've taken some graduate casework in

21

molecular biology and also in genetics and statistics as

22

it relates to molecular biology. Additionally when I

23

was hired by the Florida Department of Law Enforcement I

24

initially underwent a six-month training program in how

14:50:02

25

to screen evidence for body fluids and find sources of

14:50:05 1 DNA for evidence. And then from that point when I was
2 promoted I went through a 14-month training program
3 where I underwent training and testing in the background
4 of the DNA analysis we do in testifying, in actual
14:50:21 5 interpretation of profiles and underwent that process
6 again when I was hired by Metro in 2015 for a year.

7 Q Now, can you give us just a sense of how
8 evidence now is tested at Metro as opposed to maybe how
9 it was tested or broken up, the testing was broken up
14:50:42 10 maybe now versus two years ago?

11 A So in order to get through more cases to
12 try and increase the public safety and do as much as we
13 can with the staff that we have, we've broken up
14 casework into different portions, the initial portion
14:50:58 15 being screening for biological evidence where we're
16 looking for sources of DNA then subsequently from that
17 the lab work where you're actually extracting DNA,
18 determining how much DNA you could extract and then
19 actually running through the process of the DNA typing
14:51:14 20 and that's -- so one person does the screening, one
21 person does the lab work and one person does the
22 interpretation of the results. In this case I was the
23 interpreting analyst.

24 Q Okay. And just briefly, in a forensic
14:51:28 25 setting when we are looking at DNA evidence, you're

14:51:32 1 typically comparing a profile developed off of a piece
2 of evidence to a known profile of an individual or a
3 victim?

4 A That's correct.

14:51:43 5 Q Okay. And in a forensic setting is the
6 profile different if the sample is from blood or sperm
7 or skin or does someone's DNA profile remain consistent
8 regardless of the biological source?

9 A So your profile is determined at the point
14:52:02 10 of conception and it remains consistent throughout your
11 life and all of your body fluids. So if I were to test
12 hair, semen, saliva, blood from a single individual it
13 should theoretically give me the same type. Most
14 individuals, all individuals have unique profiles with
14:52:19 15 the exception of identical twins. They would have the
16 same DNA profile in the kind of typing that we perform.

17 Q Now, you I think said a couple minutes ago
18 that you were the person who analyzed the DNA data in
19 this particular case?

14:52:34 20 A That's correct.

21 Q In using or in doing the analysis, is part
22 of your analysis done with I guess a program called
23 STRmix?

24 A Yes.

14:52:45 25 Q What is that or explain what that is?

14:52:49 1 A So as the march of technology has gone on
2 we have gained the ability to get more DNA information
3 and so the testing process itself has become more and
4 more sensitive. And what you're detecting a lot of
14:53:06 5 times is a large conversation from multiple people. And
6 you can't necessarily make heads or tails of all of it
7 because there's a lot of factors that go on in the
8 presence of biological materials on something. And so
9 along with that march of increase of sensitivity where
14:53:24 10 you get more and more DNA information, there have
11 luckily been these fantastic both statistical
12 scientists, software engineers and biological scientists
13 who got together and created a software program to take
14 into account all the factors that we know occur in
14:53:43 15 nature, in our laboratory and take into account all the
16 factors of how DNA behaves and analyze them all at once
17 to be able to interpret entire profiles rather than just
18 the loudest voices in a profile.

19 Q And is that something that you utilize when
14:53:59 20 you did your analysis in this case?

21 A Yes, ma'am.

22 Q Okay. So I'd like to kind of move to the
23 actual items of evidence if that's okay.

24 A Yes.

14:54:09 25 Q And the first item of evidence I'd like to

14:54:11 1 discuss with you are swabs that were taken from the
2 waistband of a pair of underwear.

3 A Yes. Which report would you like me to
4 refer to?

14:54:23 5 Q The September 19th, 2019.

6 A I have it.

7 Q Okay. So when we're talking about the
8 swabs from the pair of underwear --

9 A Yes.

14:54:41 10 Q -- and you're conducting your analysis,
11 what is the first thing you determine or what is the
12 first thing that you know about the profile from that
13 item of evidence?

14 A When I'm looking at a DNA profile in
14:54:54 15 general, initially I'm looking at what is the quality of
16 this profile, do I have enough information to even put
17 it in that software program to even start to analyze
18 because sometimes you don't. Sometimes it's just a
19 mishmash of like whispers of multiple people's DNA and
14:55:11 20 that's not suitable for being analyzed in this software.

21 So initially I make a qualitative assessment of the DNA
22 profile to determine is this something I can even use,
23 is this something I can even interpret. From that point
24 if I determine that it is, I look at the profile and

14:55:28 25 determine how many people I think are in the profile and

14:55:32 1 that information is put into the software and the
2 software does the computational analysis.

3 Q Okay. And you did that with all of the
4 items of evidence that we're going to discuss this
14:55:46 5 afternoon?

6 A Yes, ma'am.

7 Q Including the swabbing from the waistband
8 of that underwear?

9 A Yes.

14:55:52 10 Q Now, with regard to that, the swab from the
11 waistband of the underwear, what were your conclusions
12 regarding the number of possible contributors to that
13 DNA swab?

14 A Reading from my report, I reported that
14:56:06 15 there were three contributors with at least one being
16 male.

17 Q Okay. And were you able to include or
18 exclude individuals as being a potential source of that
19 DNA mixture?

14:56:21 20 A Yes.

21 Q And what were your findings?

22 A I was able to individually include Carol
23 Lynn Lum and John Robert Doane.

24 Q Okay. And then in terms of the STRmix
14:56:35 25 program, does that give some sort of statistical

14:56:37 1 framework by which, you know, lay people are able to
2 kind of hear the likelihood of how that DNA might occur
3 in the random population versus if we consider it as
4 being a source from these two individuals?

14:56:56 5 A Yes. So initially when I put a profile
6 into the software it runs by itself without any of these
7 profiles being compared. And I look at the analysis
8 that comes from the software and I decide if that is a
9 good analysis or a bad analysis. If I think it's an
14:57:11 10 accurate reflection of the profile, if I think it's
11 modeling is working correctly, then it's used to compare
12 to people in a case. So before it was ever compared to
13 people in a case, I went through the profile and its
14 analysis to check the validity of what was done then it
14:57:27 15 was compared. And for each single person that's
16 compared you get a statistical significance of their
17 possible inclusion in the DNA evidence.

18 Q Okay. And what was the statistical I guess
19 framework that you -- or how would you put it? What was
14:57:44 20 the statistical conclusion regarding the possibility of
21 these two being the source of that DNA?

22 A So the math that's performed in the
23 software is called a likelihood ratio and all it really
24 is is telling you how much more likely of an explanation
14:58:00 25 it is to see if this, like if a person you're comparing

14:58:05 1 is in the evidence versus if I chose a random person.
2 So it's telling you how good of an explanation this
3 person is for this piece of evidence. So when stated it
4 says this person is X many times more likely to be in
14:58:19 5 this profile considering this than if I chose a random
6 person.

7 Q And then in terms of the swab from the
8 waistband of the underwear, what was the likelihood
9 ratio?

14:58:32 10 A So for each individual individually, for
11 Carol Lynn Lum it was at least 31.2 times ten to the
12 12th. For John Robert Doane it was at least 60,600.
13 And then the combination of them included, I'm going to
14 read from my report, the probability of observing the
14:58:49 15 mixture DNA profile is at least 7.46 sextillion which is
16 ten to the 21st times more likely if it originated from
17 Carol Lynn Lum, John Robert Doane and one unknown random
18 contributor than if it originated from three unknown
19 random contributors.

14:59:08 20 Q And when we say 7.46 times ten to the 21st,
21 that's like 21 zeros after?

22 A Correct.

23 Q And that it's more likely that it
24 originated from these two and a third individual than --

14:59:23 25 A It's basically saying which one is a better

14:59:27 1 explanation, are these people and one unknown person in
2 this mixture a better explanation than me pulling random
3 people from the population and comparing them to this
4 mixture.

14:59:37 5 Q Okay. And is that typically, or I guess
6 now, how mixture DNA results are reported in most labs,
7 most accredited labs?

8 A It's about 50/50. Most laboratories who
9 switched to this software, the only statistic that you
14:59:52 10 do in the software is a likelihood ratio and there are
11 still laboratories that are doing manual statistical
12 calculation which is random, it's called a random match
13 probability and that's different. So it's mixed based
14 on who switched over to kind of using software to model
15:00:09 15 DNA profiles.

16 Q And this is I guess the more modern
17 approach?

18 A It is.

19 Q Okay. All right. Let's move on to
15:00:17 20 cuttings from the crotch of the underwear. Now, with
21 regard to this particular evidence we had testimony that
22 when we're dealing with a swab that is from this area
23 the epithelial or skin cells are, there's an attempt to
24 separate those from the sperm cells; is that correct?

15:00:42 25 A Yes. In general the sperm cells have a

15:00:45 1 little bit more structural re-enforcement than your
2 regular skin cells and we use that property to be able
3 to chemically digest one or the other. So in that
4 extraction process there's initial digestion where we
15:00:59 5 aim to digest the epithelial cells which is the outer
6 skin covering from the outside of your body or the
7 inside of your body. So if you were taking like
8 samples, vaginal swabs or cervical swabs, the kind of
9 cells that would be there would be epithelial cells. So
15:01:15 10 we attempt to separate those kind of cells from sperm
11 cells using their chemical properties, and so from one
12 sample you create two samples and so for this one sample
13 a cutting from inside the crotch of the underwear I have
14 two reported results.

15:01:30 15 Q Okay. So let's start with the epithelial
16 cells. What are your reported results for those, for
17 that part?

18 A For the epithelial cell fraction the number
19 of contributors was two with one male. Individually
15:01:42 20 included in the epithelial cell fraction is Carol Lynn
21 Lum with a statistic of 2.67 times ten to the 15th, and
22 John Robert Doane with a statistic of 45.9 times ten to
23 the 6th. Would you like me to read the combination?

24 Q Yes, please.

15:02:01 25 A So that was for them separately. For them

15:02:03 1 together in that mixture, the probability of observing
2 the mixture DNA profile is at least 451 sextillion which
3 is ten to the 21st times more likely if it originated
4 from Carol Lynn Lum and John Robert Doane than if it
15:02:16 5 originated from two unknown random contributors.

6 Q Okay. Now, let's talk about the second
7 part, the sperm fraction from the crotch of the
8 underwear. What were your reported results with regard
9 to that?

15:02:28 10 A For that fraction, the sperm cell fraction,
11 there was one male contributor. Individually included
12 was John Robert Doane with a statistic of at least 10.6
13 trillion and excluded was Carol Lynn Lum.

14 Q And did you generate sort of the
15:02:47 15 probability of observing that profile if it originated
16 from him versus a random contributor?

17 A Yes. The probability of observing this DNA
18 profile is at least 10.6 trillion times more likely if
19 it originated from John Robert Doane than if it
15:03:04 20 originated from an unknown random contributor.

21 Q Okay. So let's move on to another item of
22 evidence, and we've had previous testimony that there
23 were swabs taken from the insoles and the underside of a
24 tongue in a pair of shoes.

15:03:22 25 A Yes.

15:03:24 1 Q What were your findings with regard to that
2 evidence?

3 A For that sample there were, it was a
4 mixture of two individuals with at least one male.
15:03:31 5 Inconclusive in that comparison was Carol Lynn Lum and
6 excluded from that comparison was John Robert Doane.

7 Q And were there any further results that you
8 had with regard to that sort of wearer profile of the
9 shoes?

15:03:49 10 A No.

11 Q Okay. The next swabbing that I would like
12 to discuss are swabs that were taken from the outside of
13 the shoes, the collar heel area and the toe caps of
14 those shoes. Were you able to generate results or do
15:04:08 15 you have reported results regarding that item of
16 evidence?

17 A Yes. For that item there were three
18 contributors with at least one male. Individually
19 included was Carol Lynn Lum with a statistic of at least
15:04:18 20 19.6 times ten to the 21. John Robert Doane, item six,
21 with a statistic of at least 9.04 times ten to the
22 sixth. And the combination of them both when compared
23 to the mixture, the probability of observing the mixture
24 DNA profile is at least 334 octillion which is ten to
15:04:40 25 the 27th times more likely if it originated from Carol

15:04:44 1 Lynn Lum, John Robert Doane and one unknown random
2 contributor than if it originated from three unknown
3 random contributors.

4 Q Okay. Now, the last item of evidence I
15:04:54 5 would like to discuss are vaginal swabs. And for those
6 swabs was there an attempt to separate any sperm from
7 the epithelial cells?

8 A There was.

9 Q And what were the results with regard to
15:05:10 10 the vaginal swabs?

11 A For the epithelial cell fraction of the
12 vaginal swabs the profile was consistent with Carol Lynn
13 Lum. For the sperm cell fraction, no DNA profile was
14 obtained.

15:05:20 15 Q Okay. And with regard to that sperm
16 fraction from the vaginal swabs, is there any further
17 testing or amplification or anything else that could be
18 done to try to generate a profile or results from that
19 fraction?

15:05:34 20 A So there's nothing you can really do to
21 rehab a non-result because if there's nothing there's
22 nothing so yeah.

23 Q So there's nothing else?

24 A There's nothing I can tell you.

15:05:47 25 Q Okay. Thank you very much.

15:05:48

1 That concludes the questions I have for
2 this witness.

3 BY A JUROR:

15:05:56

4 Q I was just curious, how did they originally
5 identify Mr. Doane as someone to do the testing against
6 or did it just come from a random sample that you ran
7 and his name came up in the database?

8 THE WITNESS: Can I answer that?

15:06:10

9 MS. WECKERLY: Actually this isn't the
10 witness who can answer that question. I will be calling
11 additional witnesses at the beginning of January who can
12 probably answer that for you.

13 A JUROR: Thank you.

14 BY A JUROR:

15:06:19

15 Q Basically your underlying conclusion is
16 that this gentleman had sex with this woman?

15:06:39

17 A That wouldn't be a conclusion I would draw.
18 The conclusion I would draw is there's most likely sperm
19 or semen from this individual on her underwear. So how
20 it got there, we can never say how it got there, when it
21 got there, why it got there, but I can tell you what is
22 there. I did generate a second report. The CODIS
23 report, that's what I didn't know if you wanted me to
24 talk about it.

15:06:56

25 MS. WECKERLY: We probably won't talk about

15:06:58 1 the CODIS report this afternoon but thank you.

2 THE FOREPERSON: Any other questions by the
3 Grand Jury? Seeing no further questions.

4 By law these proceedings are secret and you
15:07:03 5 are prohibited from disclosing to anyone anything that
6 transpired before us including any evidence presented to
7 the Grand Jury, any event occurring or a statement made
8 in the presence of the Grand Jury or any information
9 obtained by the Grand Jury.

15:07:04 10 Failure to comply with this admonition is a
11 gross misdemeanor punishable up to 364 days in the Clark
12 County Detention Center and a \$2,000 fine. In addition
13 you may be held in contempt of court punishable by an
14 additional \$500 fine and 25 days in the Clark County
15:07:04 15 Detention Center.

16 Do you understand this admonition?

17 THE WITNESS: Yes.

18 THE FOREPERSON: Thank you. You're
19 excused.

15:07:33 20 MS. WECKERLY: Sorry, I just would like to
21 ask one question for the record.

22 BY MS. WECKERLY:

23 Q The other reports that you generated, do
24 they change anything about the results that you
15:07:41 25 discussed this afternoon?

15:07:43

1 A So the initial report I generated, it was
2 just a comparison to the victim and it also had an entry
3 into CODIS which is our DNA system that we compare
4 unknowns and knowns against. And then from that point
5 there was the report that I read from you generated
6 where both individuals were compared and giving you the
7 comparison of them both together.

15:08:00

8 Q Thank you.

15:08:11

9 THE FOREPERSON: Do you remember your
10 admonition we just read?

11 THE WITNESS: Yes.

12 THE FOREPERSON: Thank you. You're
13 excused.

15:08:26

14 MS. WECKERLY: There will be additional
15 witnesses that I'll be calling at the beginning of
16 January as I mentioned in response to the one question
17 by a Grand Juror. If you don't need a break I can move
18 on to the next case.

19 (Proceedings continued.)

15:08:43

20 --oo0oo--

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15:08:43

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REPORTER'S CERTIFICATE

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3

STATE OF NEVADA)

: ss

4

COUNTY OF CLARK)

15:08:43

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6

I, Donna J. McCord, C.C.R. 337, do hereby

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certify that I took down in Shorthand (Stenotype) all of

8

the proceedings had in the before-entitled matter at the

9

time and place indicated and thereafter said shorthand

15:08:43

10

notes were transcribed at and under my direction and

11

supervision and that the foregoing transcript

12

constitutes a full, true, and accurate record of the

13

proceedings had.

14

Dated at Las Vegas, Nevada,

15:08:43

15

January 8, 2020.

16

17

/S/DONNA J. MCCORD

18

Donna J. McCord, CCR 337

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15:08:43

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15:08:43

1

AFFIRMATION

2

Pursuant to NRS 239B.030

3

4

The undersigned does hereby affirm that the preceding

15:08:43

5

TRANSCRIPT filed in GRAND JURY CASE NUMBER 18CGJ189X:

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8

 X Does not contain the social security number of any
person,

9

15:08:43

10

-OR-

11

 Contains the social security number of a person as
required by:

13

A. A specific state or federal law, to-wit:
NRS 656.250.

14

-OR-

15:08:43

15

B. For the administration of a public program
or for an application for a federal or
state grant.

16

17

18

/S/DONNA J. MCCORD
Signature

January 8, 2020
Date

19

15:08:43

20

Donna J. McCord
Print Name

21

22

Official Court Reporter
Title

23

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A JUROR: [1] 29/12 BY A JUROR: [2] 29/2 29/13 BY MS. WECKERLY: [3] 6/17 16/1 30/21 MS. WECKERLY: [6] 5/7 5/21 29/8 29/24 30/19 31/13 THE FOREPERSON: [12] 5/15 5/24 6/6 14/7 14/23 15/1 15/8 15/14 30/1 30/17 31/8 31/11 THE WITNESS: [11] 5/23 6/5 6/8 14/22 14/25 15/7 15/13 15/16 29/7 30/16 31/10	4 45.9 [1] 25/22 451 [1] 26/2 5 50 [1] 24/8 50/50 [1] 24/8 6 60,600 [1] 23/12 656.250 [1] 33/13 6th [1] 25/23 7 7.46 [2] 23/15 23/20 7871010 [1] 13/11 9 9.04 [1] 27/21 A ability [2] 5/7 19/2 able [6] 19/17 21/17 21/22 22/1 25/2 27/14 about [10] 5/19 9/19 15/5 20/7 20/12 24/8 26/6 29/24 29/25 30/24 academy [1] 7/1 account [2] 19/14 19/15 accredited [1] 24/7 accurate [2] 22/10 32/12 accurately [1] 5/6 acknowledge [1] 11/25 actual [2] 17/4 19/23 actually [6] 10/4 10/6 12/1 17/17 17/19 29/9 addition [2] 14/18 30/12 additional [5] 5/11 14/20 29/11 30/14 31/14 Additionally [1] 16/22 administration [1] 33/15 admonition [5] 14/16 14/22 30/10 30/16 31/10 advised [2] 6/2 15/10 advisement [2] 6/5 15/13 affirm [2] 5/22 33/4 AFFIRMATION [1] 33/1 AFORESAID [1] 1/4 after [1] 23/21 afternoon [5] 5/9 5/11 21/5 30/1 30/25 again [1] 17/6 against [2] 29/5 31/4 ago [4] 10/16 13/19 17/10 18/17 aim [1] 25/5 aka [1] 1/10 all [14] 9/1 9/1 12/12 13/12 18/11 18/14 19/6 19/14 19/15 19/16 21/3 22/23 24/19 32/7	allows [1] 16/16 along [2] 11/6 19/9 also [8] 2/19 12/13 12/17 12/21 13/20 16/19 16/21 31/2 amplification [1] 28/17 analysis [11] 16/13 17/4 18/21 18/22 19/20 20/10 21/2 22/7 22/9 22/9 22/14 analyst [2] 12/13 17/23 analysts [2] 9/4 12/22 analyze [2] 19/16 20/17 analyzed [2] 18/18 20/20 ANDERSON [1] 2/7 ANNAMARIE [1] 2/9 another [2] 10/9 26/21 answer [3] 29/8 29/10 29/12 ANTHONY [1] 2/16 any [21] 7/14 8/12 8/13 8/13 8/23 10/3 10/5 11/1 14/8 14/12 14/13 14/14 22/6 27/7 28/6 28/16 30/2 30/6 30/7 30/8 33/8 anyone [2] 14/11 30/5 anything [4] 14/11 28/17 30/5 30/24 apostrophe [1] 6/10 application [1] 33/15 approach [1] 24/17 approximately [1] 16/9 are [19] 8/14 8/20 14/10 14/11 16/3 17/25 20/1 20/25 22/1 24/1 24/6 24/10 24/11 24/23 25/16 27/12 28/5 30/4 30/5 area [8] 11/9 11/10 11/13 11/19 11/19 16/12 24/22 27/13 ask [1] 30/21 assault [2] 7/14 12/5 assessment [1] 20/21 assigned [2] 7/7 7/9 Assistant [1] 2/6 associated [3] 8/6 13/12 13/13 attempt [3] 24/23 25/10 28/6 attempted [1] 7/13 attended [1] 13/20 Attorney [2] 2/20 2/21 autopsy [7] 11/22 12/1 12/3 12/6 12/13 13/20 14/3	based [1] 24/13 basically [2] 23/25 29/15 basis [1] 7/24 become [1] 19/3 been [8] 5/5 6/13 10/11 12/12 13/15 13/16 15/20 19/11 before [8] 1/4 5/20 9/18 14/12 15/6 22/12 30/6 32/8 before-entitled [1] 32/8 beginning [2] 29/11 31/15 behaves [1] 19/16 behind [1] 10/21 being [8] 9/21 17/15 20/20 21/15 21/18 22/4 22/7 22/21 best [1] 5/7 better [3] 10/6 23/25 24/2 biological [4] 17/15 18/8 19/8 19/12 biology [2] 16/21 16/22 bit [2] 7/5 25/1 blood [2] 18/6 18/12 body [4] 16/25 18/11 25/6 25/7 booked [1] 9/14 both [6] 6/8 15/16 19/11 27/22 31/6 31/7 break [1] 31/17 briefly [1] 17/24 broken [3] 17/9 17/9 17/13 Brooks [2] 2/21 5/10	17/11 casework [2] 16/20 17/14 CCR [1] 32/18 cell [5] 25/18 25/20 26/10 28/11 28/13 cells [11] 24/23 24/24 24/25 25/2 25/5 25/9 25/9 25/10 25/11 25/16 28/7 Center [4] 14/18 14/21 30/12 30/15 CERTIFICATE [1] 32/1 certify [1] 32/7 cervical [1] 25/8 change [1] 30/24 check [1] 22/14 chemical [2] 11/17 25/11 chemically [1] 25/3 Chief [1] 2/20 chose [2] 23/1 23/5 CHRISTINE [3] 3/4 15/17 15/19 CLARK [7] 1/2 11/11 14/17 14/20 30/11 30/14 32/4 classify [1] 8/8 CLAUDIA [1] 2/5 close [1] 11/17 clothing [1] 12/10 CODIS [3] 29/22 30/1 31/3 collar [1] 27/13 collected [1] 13/16 college [1] 16/19 combination [3] 23/13 25/23 27/22 come [2] 5/15 29/6 comes [1] 22/8 compare [2] 22/11 31/3 compared [6] 22/7 22/12 22/15 22/16 27/22 31/6 comparing [3] 18/1 22/25 24/3 comparison [5] 16/13 27/5 27/6 31/2 31/7 comply [2] 14/16 30/10 computational [1] 21/2 conception [1] 18/10 concludes [1] 29/1 conclusion [4] 22/20 29/15 29/17 29/18 conclusions [1] 21/11 conducting [1] 20/10 CONKLIN [1] 2/9 CONRAD [1] 2/10 consider [1] 22/3 considering [1] 23/5 consistent [3] 18/7 18/10 28/12 consists [1] 8/16 constitutes [1] 32/12 contain [1] 33/8 Contains [1] 33/11 contempt [2] 14/19
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00:00:59 1 GRAND JURORS PRESENT ON JANUARY 9, 2020:
2
3 LAWRENCE HOLMES, Foreperson,
4 ROBERT KINNIBURGH, Deputy Foreperson
00:00:59 5 CLAUDIA HUNT, Secretary
6 LINDA MCARTHUR, Assistant Secretary
7 TONI ANDERSON
8 GARLAND BAILEY
9 ANNAMARIE CONKLIN
00:00:00 10 NATHAN CONRAD
11 REGINA CRUNDEN
12 MELISSA HILL
13 MARY KISHMARTON
14 JEANETTE LOMANDO
00:00:00 15 DAVID MILLER
16 JOHN ORR
17 MARY PERKINS
18 ANTHONY SHOR
19
00:00:00 20
21 Also present at the request of the Grand Jury:
22 Pamela Weckerly
23 Marc DiGiacomo
24 Chief Deputy District Attorneys
00:00:00 25

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LAS VEGAS, NEVADA, JANUARY 9, 2020

2

* * * * *

3

4

DONNA J. McCORD,00:00:02

5

having been first duly sworn to faithfully

6

and accurately transcribe the following

7

proceedings to the best of her ability.

8

9

MS. WECKERLY: Good afternoon. My name is

12:01:59

10

Pam Weckerly. With me is Marc DiGiacomo and we will be

11

presenting two final witnesses in the case of State of

12

Nevada versus John Eugene Doane which is Grand Jury case

13

number 18CGJ189X. So we'll call those two witnesses

14

this afternoon and we'll be asking you to deliberate

12:02:21

15

after that.

16

THE FOREPERSON: Please raise your right

17

hand.

18

You do solemnly swear that the testimony

19

that you're about to give upon the investigation now

12:02:43

20

pending before this Grand Jury shall be the truth, the

21

whole truth, and nothing but the truth, so help you God?

22

THE WITNESS: I do.

23

THE FOREPERSON: Please be seated.

24

You're advised you're here today to give

12:02:52

25

testimony in the investigation pertaining to the offense

12:02:54 1 of murder involving John Doane.

2 Do you understand this advisement?

3 THE WITNESS: I do.

4 THE FOREPERSON: Please state your first
12:03:00 5 and last name and spell both slowly for the record.

6 THE WITNESS: Jennifer Corneal,
7 J-E-N-N-I-F-E-R C-O-R-N-E-A-L.

8 JENNIFER CORNEAL,

9 having been first duly sworn by the Foreperson of the
12:03:09 10 Grand Jury to testify to the truth, the whole truth
11 and nothing but the truth, testified as follows:

12

13 EXAMINATION

14 BY MR. DiGIACOMO:

12:03:12 15 Q Doctor, how are you employed?

16 A I'm a medical examiner at the Clark County
17 Office of the Coroner Medical Examiner.

18 Q And how long have you been with the medical
19 examiner's office?

12:03:20 20 A Since July of 2015.

21 Q And I assume you're licensed to practice
22 medicine in the State of Nevada?

23 A I am.

24 Q And just generally explain what your
12:03:32 25 responsibilities are.

12:03:32 1 A I'm a physician. I perform autopsies and
2 external examinations on deceased individuals in an
3 attempt to determine cause and manner of death.

12:03:45 4 Q Now, at the coroner's office when somebody
5 comes in, a deceased individual is brought in, is there
6 some way of uniquely identifying that particular case to
7 the coroner's office?

8 A Yes.

9 Q What is that?

12:03:56 10 A We have unique case numbers that we assign
11 to each decedent.

12 Q Are there times in your capacity when you
13 are asked to look at cases that involve other medical
14 examiners who have conducted autopsies and made previous
12:04:12 15 conclusions as to cause and manner of death?

16 A Yes.

17 Q In this particular case were you asked to
18 review an autopsy of an individual that originally came
19 in as a Jane Doe but ultimately was identified as a
12:04:25 20 Carol Lynn Lum, L-U-M-M (sic), under case number
21 1239-70?

22 A Yes.

23 Q What is it that you had to review in order
24 to form the opinions that you formed in this case?

12:04:39 25 A I have an autopsy report by Dr. Green, an

12:04:43 1 investigative report from one of our investigators from
2 the time of 1978 and some photographs taken I believe by
3 the police department.

4 Q After reviewing those items were you able
12:04:58 5 to form an opinion as to the cause of death of Miss Lum?

6 A Yes.

7 Q And what is that opinion?

8 A Strangulation.

9 Q And do you have an opinion as to the manner
12:05:09 10 of death?

11 A Yes.

12 Q And what is that?

13 A Homicide.

14 Q Now, in order for you -- I want to just
12:05:16 15 basically go through some of the basics of what you saw
16 that caused you to form that opinion. You indicated
17 that you had reviewed some photographs or photographs
18 from the Las Vegas Metropolitan Police Department?

19 A Yes.

12:05:31 20 Q I'm going to show you what's been marked as
21 Grand Jury Exhibits 9, 10 and 11. Are those some of the
22 photographs that you looked at?

23 A They are.

24 Q And this first one is an identification
12:05:49 25 photo, Miss Lum wearing her clothes. Let me put it up

12:05:56 1 here for a second. It indicates that the autopsy was
2 conducted on November 26th of 1978?

3 A Yes.

4 Q And that is a unique identifying number to
12:06:07 5 the materials associated with Miss Lum's autopsy?

6 A Correct.

7 Q And then in Grand Jury Exhibit Number 10
8 were there, and I know it's hard to see in this
9 washed-out picture on the screen, but were there areas
12:06:23 10 in this photograph that you were able to see that helps
11 you reach your conclusions?

12 A Yes, there are petechial hemorrhages, small
13 pinpoint hemorrhages caused by capillaries bursting in
14 the skin over her eyelids and her cheeks and some of her
15 forehead. There were some other injuries that are in
12:06:40 16 that photograph that aren't related to the strangulation
17 per se, but she's got scratches on her nose and a black
18 eye that you can also see there.

19 Q I'm going to talk about, so in addition to
12:06:56 20 the fact that she, that her cause of death was
21 strangulation, she had evidence of other injuries?

22 A Yes.

23 Q And you indicated there were scratches on
24 the nose, she has a black eye. The black eye, blunt
12:07:10 25 force trauma?

12:07:11 1 A Yes.

2 Q Okay. Now, as it relates to petechia
3 hemorrhaging, why is that relevant to your ultimate
4 conclusion?

12:07:18 5 A Petechia are not pathognomonic or specific
6 for asphyxia but when combined with other findings which
7 she has in her autopsy are consistent with a
8 strangulation or an asphyxial death.

9 Q Now, in addition to the black eye and the
12:07:36 10 scratches on the nose, showing you Grand Jury Exhibit
11 Number 11, what are we looking at in that photograph?

12 A That is Miss Lum's scalp reflected back
13 showing hemorrhage in the scalp consistent again with
14 some blunt force trauma.

12:07:56 15 Q So in addition to being strangled to death
16 it appeared that she had some blunt force trauma
17 associated with or injuries associated with her body?

18 A Yes.

19 Q Okay. Now, you said the petechia
12:08:06 20 hemorrhaging can be combined with other findings that
21 would lead to your opinion. What other findings were
22 there that you were able to recover from your review of
23 the materials?

24 A There were hemorrhages in the muscles in
12:08:22 25 the anterior neck as well as some of the soft tissue of

12:08:25 1 the anterior neck that is much consistent with a
2 strangulation injury. There's also hemorrhages in the
3 pharynx which is the back of the throat and airway area.
4 All of this is consistent with strangulation.

12:08:45 5 Q Now, in your time as a medical examiner,
6 have you had the opportunity to conduct autopsies on
7 women where there has been an allegation at least of
8 some sort of sex assault?

9 A Yes.

12:08:58 10 Q Do those autopsies always have findings
11 associated with penetration?

12 A No.

13 Q In this particular case did you find any
14 reference to any physical findings associated with sex
12:09:13 15 assault?

16 A No.

17 Q Merely because there were no findings, that
18 does not mean there wasn't a sex assault; is that fair?

19 A Yes.

12:09:21 20 Q Thank you, Doctor. That completes my
21 questions.

22 BY A JUROR:

23 Q What was the original conclusion from the
24 original autopsy?

12:09:32 25 MR. DiGIACOMO: I'm sorry, sir, I'm going

12:09:33 1 to have to interject that she cannot testify to what
2 somebody else's opinion was, it's hearsay, and so I
3 cannot allow her to answer that question.

4 THE FOREPERSON: Any further questions?
12:09:52 5 Seeing no further questions.

6 By law these proceedings are secret and you
7 are prohibited from disclosing to anyone anything that
8 transpired before us including any evidence presented to
9 the Grand Jury, any event occurring or a statement made
12:09:53 10 in the presence of the Grand Jury or any information
11 obtained by the Grand Jury.

12 Failure to comply with this admonition is a
13 gross misdemeanor punishable up to 364 days in the Clark
14 County Detention Center and a \$2,000 fine. In addition
12:09:54 15 you may be held in contempt of court punishable by an
16 additional \$500 fine and 25 days in the Clark County
17 Detention Center.

18 Do you understand this admonition?

19 THE WITNESS: I do.

12:10:23 20 THE FOREPERSON: Thank you. You are
21 excused.

22 THE WITNESS: Thank you.

23 THE FOREPERSON: You do solemnly swear that
24 the testimony that you're about to give upon the
12:10:50 25 investigation now pending before this Grand Jury shall

12:10:50 1 be the truth, the whole truth, and nothing but the
2 truth, so help you God?

3 THE WITNESS: Yes, I do.

4 THE FOREPERSON: Please be seated.

12:10:58 5 You're advised that you're here today to
6 give testimony in the investigation pertaining to the
7 offense of murder involving John Doane.

8 Do you understand this advisement?

9 THE WITNESS: Yes, sir.

12:11:06 10 THE FOREPERSON: Please state your first
11 and last name and spell both slowly for the record.

12 THE WITNESS: Dan Long, D-A-N L-O-N-G.

13 DAN LONG,

14 having been first duly sworn by the Foreperson of the
12:11:12 15 Grand Jury to testify to the truth, the whole truth
16 and nothing but the truth, testified as follows:

17

18 EXAMINATION

19 BY MS. WECKERLY:

12:11:15 20 Q Sir, how are you employed?

21 A I'm with the Las Vegas Metropolitan Police
22 Department homicide section. I am now a cold case
23 homicide investigator.

24 Q Before working as a cold case investigator
12:11:26 25 what was your assignment?

12:11:28 1 A I was a detective with the homicide section
2 of Metro.

3 Q How long did you work for homicide or in
4 the homicide section as a detective?

12:11:36 5 A Seventeen years.

6 Q And now you're in cold case?

7 A Yes, ma'am.

8 Q Prior to that did you also work for Metro?

9 A Yes, ma'am.

12:11:43 10 Q How long in total did you work before cold
11 case?

12 A Twenty-seven years. I worked homicide,
13 gangs and I was in patrol.

14 Q Okay. So within the Las Vegas Metropolitan
12:11:55 15 Police Department can you explain to the members of the
16 Grand Jury what an event number is?

17 A Sure. We have to classify each case using,
18 what we use is the date and then a sequential number.
19 So the event number for today would be 2001, today's,
12:12:15 20 what, the 9th, 09, and then the sequential number for
21 that day. So it could go up to about 4,000.

22 Q And with regard to a particular case or
23 incident, is that event number unique?

24 A Yes, each case will have a unique event
12:12:29 25 number.

12:12:30 1 Q And any evidence that would be impounded
2 with regard to that case, would it be impounded under
3 that event number?
4 A Yes, ma'am.

12:12:37 5 Q And any photographs?
6 A Yes, ma'am.

7 Q Now, you, I'm sure in your work, have
8 attended autopsies as well?
9 A Many.

12:12:45 10 Q Now, does the coroner's office also have a
11 unique number for each autopsy?
12 A Yes, ma'am.

13 Q And their number for their autopsy isn't
14 the same as the Metro event number; is that fair?

12:12:56 15 A No, but we take everything from the autopsy
16 and put it into our event number.

17 Q Okay. Now, as a cold case investigator did
18 you participate in the investigation of the murder of
19 Carol Lynn Lum?

12:13:10 20 A Yes, ma'am.

21 Q And that was a case from 1978?
22 A Yes.

23 Q Now, my guess is you don't have the event
24 number memorized?

12:13:17 25 A I do.

12:13:18 1 Q Oh, you do? Okay. What's the event
2 number?

3 A It's 1978, so it's '78, and they used what
4 was called DR numbers back in those days instead of
12:13:26 5 event numbers, but it's 78-71010.

6 Q So when you were working as a cold case
7 investigator, that was the event number assigned to her
8 murder?

9 A Yes, ma'am.

12:13:39 10 Q Did you review the photographs that had
11 been taken and were impounded or memorialized under that
12 event number?

13 A I did.

14 Q And would you recognize all those?

12:13:51 15 A Yes, ma'am.

16 Q Sir, I'm showing you Grand Jury Exhibits 4
17 through 11. If you could just look through those and
18 let me know if you can recognize those as being
19 associated with this event number.

12:14:12 20 A Yes, I recognize them all.

21 Q And all of those would have been what, or
22 at least part of what was available as photographs taken
23 associated with this event?

24 A Part, yes.

12:14:24 25 Q And it looks like on, for instance, Grand

12:14:27 1 Jury Exhibit 11 there's a different number than that 78
2 number that you gave us. Would that --

3 A That would be the coroner's number.

4 Q For their autopsy number?

12:14:38 5 A For their autopsy. The date is at the end
6 and it's a sequential number at the beginning.

7 Q Okay. Thank you. And then our last two
8 exhibits, I think you discussed these the last time you
9 testified, these are Grand Jury Exhibits 2 and 3. Those
12:14:50 10 are more recent photographs of evidence envelopes; is

11 that fair?

12 A That's correct.

13 Q And that's because you took a buccal swab
14 of Mr. Doane?

12:14:59 15 A I did.

16 Q And you were the impounder?

17 A I am.

18 Q Thank you, sir.

19 I have no other questions of this witness.

12:15:10 20 THE FOREPERSON: Any questions by the Grand
21 Jury?

22 BY A JUROR:

23 Q I think the last time that you testified I
24 had a question and you said it might be answered this
12:15:18 25 time. Is this the right time to ask that question?

12:15:23 1 MS. WECKERLY: I think you were asking, if
2 I remember right, your question was about how this
3 person became known to them?

4 A JUROR: Yes, to do the buccal swab.

12:15:31 5 MS. WECKERLY: So I'll ask a general
6 question and hopefully it will answer at least partially
7 your question.

8 BY MS. WECKERLY:

12:15:40 9 Q Did Mr. Doane come to your attention as a
10 potential suspect because of a nationwide database?

11 A Yes.

12 MS. WECKERLY: And I would just instruct
13 the members of the Grand Jury that you can't draw any
14 negative inference from the fact that he was in a
12:15:53 15 nationwide database.

16 BY MS. WECKERLY:

17 Q Thereafter though you got your own DNA
18 sample from him?

12:16:01 19 A Yes, I went and met with him and took a DNA
20 sample from him.

21 A JUROR: Thanks.

22 THE FOREPERSON: Any further questions by
23 the Grand Jury? Seeing no further questions.

12:16:07 24 By law these proceedings are secret and you
25 are prohibited from disclosing to anyone anything that

12:16:07 1 transpired before us including any evidence presented to
2 the Grand Jury, any event occurring or a statement made
3 in the presence of the Grand Jury or any information
4 obtained by the Grand Jury.

12:16:07 5 Failure to comply with this admonition is a
6 gross misdemeanor punishable up to 364 days in the Clark
7 County Detention Center and a \$2,000 fine. In addition
8 you may be held in contempt of court punishable by an
9 additional \$500 fine and 25 days in the Clark County
12:16:07 10 Detention Center.

11 Do you understand this admonition?

12 THE WITNESS: Yes, I do.

13 THE FOREPERSON: Thank you. You're
14 excused.

12:16:35 15 THE WITNESS: Thank you, sir.

16 MS. WECKERLY: With that we'll let you
17 deliberate.

18 (At this time, all persons, except the
19 members of the Grand Jury, exited the room at 12:16 and
12:16:39 20 returned at 12:17.)

21 THE FOREPERSON: All right. Madam District
22 Attorney, by a vote of 12 or more Grand Jurors a true
23 bill has been returned against defendant John Doane
24 charging the crime of murder in Grand Jury case number
12:18:11 25 18CGJ189X.

12:18:14

1 We instruct you to prepare an Indictment in
2 conformance with the proposed Indictment previously
3 submitted to us.

4 MS. WECKERLY: Thank you. We will.

12:18:20

5 (Proceedings concluded.)

6 --oo0oo--

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REPORTER'S CERTIFICATE

2

3

STATE OF NEVADA)

: ss

4

COUNTY OF CLARK)12:18:20

5

6

I, Donna J. McCord, C.C.R. 337, do hereby

7

certify that I took down in Shorthand (Stenotype) all of

8

the proceedings had in the before-entitled matter at the

9

time and place indicated and thereafter said shorthand

12:18:20

10

notes were transcribed at and under my direction and

11

supervision and that the foregoing transcript

12

constitutes a full, true, and accurate record of the

13

proceedings had.

14

Dated at Las Vegas, Nevada,

12:18:20

15

January 11, 2020.

16

17

/S/DONNA J. MCCORD

18

Donna J. McCord, CCR 337

19

12:18:20

20

21

22

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24

12:18:20

25

1 AFFIRMATION

2 Pursuant to NRS 239B.030

3
4 The undersigned does hereby affirm that the preceding
5 TRANSCRIPT filed in GRAND JURY CASE NUMBER 18CGJ189X:
6
78 X Does not contain the social security number of any
9 person,

10 -OR-

11 ____ Contains the social security number of a person as
12 required by:13 A. A specific state or federal law, to-wit:
14 NRS 656.250.

-OR-

15 B. For the administration of a public program
16 or for an application for a federal or
17 state grant.18 /S/DONNA J. MCCORD
19 SignatureJanuary 11, 2020
Date20 Donna J. McCord
21 Print Name22 Official Court Reporter
23 Title
24
25

<p>A JUROR: [2] 18/3 18/20 BY A JUROR: [2] 11/21 17/21 BY MR. DIGIACOMO: [1] 6/13 BY MS. WECKERLY: [3] 13/18 18/7 18/15 MR. DIGIACOMO: [1] 11/24 MS. WECKERLY: [6] 5/7 17/25 18/4 18/11 19/15 20/3 THE FOREPERSON: [12] 5/15 5/22 6/3 12/3 12/19 12/22 13/3 13/9 17/19 18/21 19/12 19/20 THE WITNESS: [10] 5/21 6/2 6/5 12/18 12/21 13/2 13/8 13/11 19/11 19/14</p> <p>\$</p> <p>\$2,000 [2] 12/14 19/7 \$500 [2] 12/16 19/9</p> <p>-</p> <p>--oo0oo [1] 20/6 -OR [2] 22/10 22/14</p> <p>/</p> <p>/S/DONNA [2] 21/17 22/18</p> <p>0</p> <p>09 [1] 14/20</p> <p>1</p> <p>10 [3] 4/12 8/21 9/7 11 [7] 4/13 8/21 10/11 16/17 17/1 21/15 22/18 12 [1] 19/22 1239-70 [1] 7/21 12:02 [1] 1/16 12:16 [1] 19/19 12:17 [1] 19/20 13 [1] 3/4 16 [5] 4/6 4/7 4/8 4/9 4/10 17 [2] 4/4 4/5 18CGJ189X [4] 1/9 5/13 19/25 22/5 1978 [4] 8/2 9/2 15/21 16/3</p> <p>2</p> <p>2001 [1] 14/19 2015 [1] 6/20 2020 [5] 1/15 2/1 5/1 21/15 22/18 239B.030 [1] 22/2 25 [2] 12/16 19/9 26th [1] 9/2</p> <p>3</p> <p>337 [3] 1/25 21/6 21/18</p>	<p>364 [2] 12/13 19/6</p> <p>4</p> <p>4,000 [1] 14/21</p> <p>6</p> <p>656.250 [1] 22/13</p> <p>7</p> <p>70 [1] 7/21 71010 [1] 16/5 78 [2] 16/3 17/1 78-71010 [1] 16/5</p> <p>9</p> <p>9th [1] 14/20</p> <p>A</p> <p>a.m [1] 1/16 ability [1] 5/7 able [3] 8/4 9/10 10/22 about [5] 5/19 9/19 12/24 14/21 18/2 accurate [1] 21/12 accurately [1] 5/6 addition [5] 9/19 10/9 10/15 12/14 19/7 additional [2] 12/16 19/9 administration [1] 22/15 admonition [4] 12/12 12/18 19/5 19/11 advised [2] 5/24 13/5 advisement [2] 6/2 13/8 affirm [1] 22/4 AFFIRMATION [1] 22/1 AFORESAID [1] 1/4 after [2] 5/15 8/4 afternoon [2] 5/9 5/14 again [1] 10/13 against [1] 19/23 airway [1] 11/3 aka [1] 1/10 all [7] 11/4 16/14 16/20 16/21 19/18 19/21 21/7 allegation [1] 11/7 allow [1] 12/3 also [5] 2/21 9/18 11/2 14/8 15/10 always [1] 11/10 am [3] 6/23 13/22 17/17 ANDERSON [1] 2/7 ANNAMARIE [1] 2/9 answer [2] 12/3 18/6 answered [1] 17/24 anterior [2] 10/25 11/1 ANTHONY [1] 2/18 any [15] 11/13 11/14 12/4 12/8 12/9 12/10 15/1 15/5 17/20 18/13 18/22 19/1 19/2 19/3 22/8 anyone [2] 12/7 18/25 anything [2] 12/7 18/25</p>	<p>appeared [1] 10/16 application [1] 22/15 are [19] 6/15 6/25 7/12 7/13 8/21 8/23 9/12 9/15 10/5 10/7 10/11 12/6 12/7 12/20 13/20 17/9 17/10 18/24 18/25 area [1] 11/3 areas [1] 9/9 aren't [1] 9/16 ask [2] 17/25 18/5 asked [2] 7/13 7/17 asking [2] 5/14 18/1 asphyxia [1] 10/6 asphyxial [1] 10/8 assault [3] 11/8 11/15 11/18 assign [1] 7/10 assigned [1] 16/7 assignment [1] 13/25 Assistant [1] 2/6 associated [7] 9/5 10/17 10/17 11/11 11/14 16/19 16/23 assume [1] 6/21 attempt [1] 7/3 attended [1] 15/8 attention [1] 18/9 Attorney [1] 19/22 Attorneys [1] 2/23 autopsies [5] 7/1 7/14 11/6 11/10 15/8 autopsy [11] 7/18 7/25 9/1 9/5 10/7 11/24 15/11 15/13 15/15 17/4 17/5 available [1] 16/22</p> <p>B</p> <p>back [3] 10/12 11/3 16/4 BAILEY [1] 2/8 basically [1] 8/15 basics [1] 8/15 became [1] 18/3 been [9] 5/5 6/9 6/18 8/20 11/7 13/14 16/11 16/21 19/23 before [8] 1/4 5/20 12/8 12/25 13/24 14/10 19/1 21/8 before-entitled [1] 21/8 beginning [1] 17/6 being [2] 10/15 16/18 believe [1] 8/2 best [1] 5/7 bill [1] 19/23 black [4] 9/17 9/24 9/24 10/9 blunt [3] 9/24 10/14 10/16 body [1] 10/17 both [2] 6/5 13/11 brought [1] 7/5 buccal [2] 17/13 18/4 bursting [1] 9/13</p>	<p>C</p> <p>C-O-R-N-E-A-L [1] 6/7 C.C.R [2] 1/25 21/6 C346036 [1] 1/9 call [1] 5/13 called [1] 16/4 came [1] 7/18 can [4] 9/18 10/20 14/15 16/18 can't [1] 18/13 cannot [2] 12/1 12/3 capacity [1] 7/12 capillaries [1] 9/13 Carol [2] 7/20 15/19 case [23] cases [1] 7/13 cause [4] 7/3 7/15 8/5 9/20 caused [2] 8/16 9/13 CCR [1] 21/18 Center [4] 12/14 12/17 19/7 19/10 CERTIFICATE [1] 21/1 certify [1] 21/7 charging [1] 19/24 cheeks [1] 9/14 Chief [1] 2/23 CLARK [7] 1/2 6/16 12/13 12/16 19/6 19/9 21/4 classify [1] 14/17 CLAUDIA [1] 2/5 clothes [1] 8/25 cold [6] 13/22 13/24 14/6 14/10 15/17 16/6 combined [2] 10/6 10/20 come [1] 18/9 comes [1] 7/5 completes [1] 11/20 comply [2] 12/12 19/5 concluded [1] 20/5 conclusion [2] 10/4 11/23 conclusions [2] 7/15 9/11 conduct [1] 11/6 conducted [2] 7/14 9/2 conformance [1] 20/2 CONKLIN [1] 2/9 CONRAD [1] 2/10 consistent [4] 10/7 10/13 11/1 11/4 constitutes [1] 21/12 contain [1] 22/8 Contains [1] 22/11 contempt [2] 12/15 19/8 CORNEAL [3] 3/3 6/6 6/8 Coroner [1] 6/17 coroner's [4] 7/4 7/7 15/10 17/3 correct [2] 9/6 17/12 could [2] 14/21 16/17 COUNTY [7] 1/2 6/16 12/14 12/16 19/7 19/9 21/4</p>	<p>court [5] 1/1 1/5 12/15 19/8 22/22 crime [1] 19/24 CRUNDEN [1] 2/11</p> <p>D</p> <p>D-A-N [1] 13/12 DAN [3] 3/4 13/12 13/13 database [2] 18/10 18/15 date [3] 14/18 17/5 22/18 Dated [1] 21/14 DAVID [1] 2/15 day [1] 14/21 days [5] 12/13 12/16 16/4 19/6 19/9 DC [1] 1/9 death [7] 7/3 7/15 8/5 8/10 9/20 10/8 10/15 deceased [2] 7/2 7/5 decedent [1] 7/11 defendant [2] 1/11 19/23 deliberate [2] 5/14 19/17 department [4] 8/3 8/18 13/22 14/15 Deputy [2] 2/4 2/23 detective [2] 14/1 14/4 Detention [4] 12/14 12/17 19/7 19/10 determine [1] 7/3 did [9] 11/13 14/3 14/8 14/10 15/17 16/10 16/13 17/15 18/9 different [1] 17/1 DiGiacomo [2] 2/22 5/10 direction [1] 21/10 disclosing [2] 12/7 18/25 discussed [1] 17/8 DISTRICT [4] 1/1 1/5 2/23 19/21 DNA [2] 18/17 18/19 do [17] 5/18 5/22 6/2 6/3 8/9 11/10 12/18 12/19 12/23 13/3 13/8 15/25 16/1 18/4 19/11 19/12 21/6 DOANE [8] 1/10 1/10 5/12 6/1 13/7 17/14 18/9 19/23 Doctor [2] 6/15 11/20 Doe [1] 7/19 does [4] 11/18 15/10 22/4 22/8 don't [1] 15/23 Donna [7] 1/25 5/4 21/6 21/17 21/18 22/18 22/20 down [1] 21/7 Dr [2] 7/25 16/4 draw [1] 18/13 duly [3] 5/5 6/9 13/14</p> <p>AA 109</p>
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				AA 112

Felony/Gross Misdemeanor

COURT MINUTES

January 10, 2020

C-20-346036-1 State of Nevada
 vs
 John Doane

January 10, 2020 11:00 AM Grand Jury Indictment

HEARD BY: Bell, Linda Marie COURTROOM: RJC Courtroom 17A

COURT CLERK: Estala, Kimberly

RECORDER: Vincent, Renee

REPORTER:

PARTIES PRESENT:

Pamela C Weckerly

Attorney for Plaintiff

State of Nevada

Plaintiff

JOURNAL ENTRIES

Lawrence Holmes, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 18CGJ189X to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C-20-346036-1, Department III.

State requested a warrant, argued bail, and advised Deft is in custody. COURT ORDERED, NO BAIL; INDICTMENT WARRANT ISSUED, and matter SET for Arraignment.

Upon Court's inquiry, the State advised there are no material witness warrants to quash. COURT FURTHER ORDERED, Exhibits 1-11 to be lodged with the Clerk of the Court; Las Vegas Justice Court case no. 19F19856X DISMISSED per the State's request. In addition, a Pre-Trial Risk Assessment will be prepared if one was not previously done.

I.W. (NIC(COC-NDC))

02/04/20 9:00 A.M. INITIAL ARRAIGNMENT (DEPT III)

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JAN 10 2020

BY

KIM ESTALA, DEPUTY

IND

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
PAMELA WECKERLY
Chief Deputy District Attorney
Nevada Bar #006163
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

C-20-346036-1
IND
Indictment
4F37301



THE STATE OF NEVADA,

Plaintiff,

CASE NO: C-20-346036-1

-vs-

DEPT NO: III

JOHN EUGENE DOANE, aka,
Robert Eugene Doane, #0291337

Defendant.

INDICTMENT

STATE OF NEVADA }
COUNTY OF CLARK } ss.

The Defendant above named, JOHN EUGENE DOANE, aka, Robert Eugene Doane, accused by the Clark County Grand Jury of the crime(s) of MURDER (Category A Felony - NRS 200.010, 200.030 - NOC 50000), committed at and within the County of Clark, State of Nevada, on or about the 26th day of November, 1978, as follows: did willfully, unlawfully,

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1 feloniously and with malice aforethought, kill CAROL LUM, a human being, by strangulation,
2 the said killing having been (1) willful, deliberate and premeditated, and/or (2) committed
3 during the perpetration or attempted perpetration of a sexual assault.

4 DATED this 9th day of January, 2020.

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

8 BY


9 PAMELA WECKERLY
10 Chief Deputy District Attorney
11 Nevada Bar #006163

12
13 ENDORSEMENT: A True Bill

14 
15 _____

16 Foreperson, Clark County Grand Jury
17
18
19
20
21
22
23
24
25
26
27
28

Names of Witnesses and testifying before the Grand Jury:

BORNEAL, JENNIFER – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

DAVIDOVIC, MARJORIE – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

GROVEMAN, LEAH – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

LONG, DANIEL – LVMPD #3969

O'ROURKE, JANET – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

SHUM, AMANDA – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

WHITTLE, CHRISTINE – LVMPD #15283

Additional Witnesses known to the District Attorney at time of filing the Indictment:

CUSTODIAN OF RECORDS - CCDC

CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS - LVMPD RECORDS

HEFNER, KENNETH – LVMPD #2185

JACOBSEN, GARY – LVMPD #1332

18CGJ189X/19F19856X/ed-GJ

LVMPD EV# 780000071010

(TK2)

Felony/Gross Misdemeanor

COURT MINUTES

February 04, 2020

C-20-346036-1 State of Nevada
 vs
 John Doane

February 04, 2020 09:00 AM Initial Arraignment

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Schlitz, Kory

RECORDER: Garcia, Trisha

REPORTER:

PARTIES PRESENT:

John Eugene Doane

Defendant

Joseph K Abood

Attorney for Defendant

Pamela C Weckerly

Attorney for Plaintiff

State of Nevada

Plaintiff

JOURNAL ENTRIES

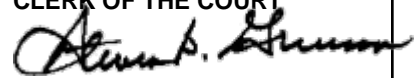
DEFENDANT DOANE ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter SET for status check; trial date SET. Upon Court's inquiry, Ms. Weckerly indicated the matter went before the Death Review Committee, and the State is not seeking death. COURT STATED the transcripts have been filed on January 11, 2020. COURT ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs, if the Transcript has not been filed as of today; Counsel has 21 days from the filing of the Transcript. Pursuant to Administrative Order 17-05 this COURT ORDERS the case REASSIGNED to Department 3.

NIC (COC-NDC)

4/15/2020 9:30 A.M. STATUS CHECK: TRIAL READINESS

9/17/2020 9:00 A.M. CALENDAR CALL

9/28/2020 10:00 A.M. JURY TRIAL



MOT
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
PAMELA WECKERLY
Chief Deputy District Attorney
Nevada Bar #006163
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOHN EUGENE DOANE, aka,
Robert Eugene Doane, #0291337

Defendant.

CASE NO: C-20-346036-1

DEPT NO: X

**STATE'S NOTICE OF MOTION
AND MOTION TO ADMIT EVIDENCE OF OTHER CRIMES**

DATE OF HEARING: 8/20/2021
TIME OF HEARING: 8:30 AM
HEARING REQUESTED

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through PAMELA WECKERLY, Chief Deputy District Attorney, and files this Notice Of Motion And Motion To Admit Evidence Of Other Crimes.

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 by this Honorable Court.

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1 NOTICE OF HEARING

2 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned
3 will bring the foregoing motion on for setting before the above entitled Court, in Department
4 X thereof, on Friday, the 20th day of August, 2021, at the hour of 8:30 AM, or as soon
5 thereafter as counsel may be heard.

6 DATED this 28th day of July, 2021.

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

9
10 BY /s/ Pamela Weckerly
PAMELA WECKERLY
11 Chief Deputy District Attorney
Nevada Bar #006163
12

13 STATEMENT OF FACTS

14 A. Case Before this Court

15 On November 26, 1978, at approximately 10:45 am, the body of 14-year-old Carol Lum
16 was discovered in what was then a desert area near Vegas Valley Drive and Hollywood
17 Boulevard in Clark County, Nevada.

18 The circumstances of the discovery of her body and the crime scene suggested a
19 homicidal death involving a sexual assault.

20 She was face down, wearing pants and a shirt. However, her underwear was not on her
21 body. It was nearby in the desert area. In addition, both shoes were off and similarly in the
22 desert area.

23 On November 26, 1978, Dr. Green performed the autopsy and found the cause of death
24 was strangulation and the manner of death was homicide. Dr. Green noted that he did not
25 observe any injuries consistent with a sexual assault.

26 Lum's underwear and shoes were impounded at the time.

27 In late 2016, LVMPD Cold Case detectives requested that Lum's underwear and
28 clothing be tested for DNA evidence.

1 In April of 2019, the Metro lab reported detecting an unknown male DNA profile from
2 sperm fractions from cuttings of the crotch area of Lum's underwear.

3 This profile was entered into the local and state CODIS databases.

4 In late April 2019, Metro reported a CODIS hit to John Eugene Doane.
5 Doane had been in prison in Nevada since 1979. Nevertheless, Doane's DNA sample was not
6 collected for CODIS entry until late 2018.

7 B. 79C044644

8 On February 20, 1979, Doane was driving a car when he saw 15-year old Cheryl Parker
9 walking to school. Cheryl accepted a ride from Doane. He drove in the direction of the school
10 and then past it. He ended up driving to a desert location near Lake Mead. At that time, he
11 threatened Cheryl with a screwdriver and had her remove her clothing. Once she did, he
12 sexually assaulted her by putting his penis into her vagina against her will as well as other
13 non-consensual sexual acts. After the sexual assault, Doane choked Cheryl into
14 unconsciousness and hit her in the face with a rock and left her in the desert.

15 In that case, Doane signed an affidavit regarding his conduct and acknowledged the
16 conduct in a guilty plea.

17 Lum was last seen alive at 1445 Palm St. in Henderson which is approximately three
18 miles from the area where Doane picked up Cheryl. Cheryl was attacked on February 20,
19 1979, less than three months after Lum's murder.

20 The State moves to introduce evidence of Doane's subsequent conduct in the instant
21 case.

22 ARGUMENT

23 A. The Conduct of the Defendant After Lum's Murder is Admissible Under NRS

24 48.045(2).

25
26 NRS 48.045(2) provides that evidence of other crimes, wrongs or acts are admissible
27 to prove motive, opportunity, intent, identity, knowledge, preparation, plan, and lack of
28 mistake. In Flowers v. State, 136 Nev. 1, 456 P.3d 1037 (2020), the Nevada Supreme Court

1 noted both that NRS 48.045(2)'s list of permissible non-propensity purposes is not exclusive
2 and that there is a presumption of inadmissibility with other bad act evidence. "Before
3 admitting other-bad-act evidence, the district court must determine, outside the presence of
4 the jury, that (1) the other bad act is relevant to the crime charged, (2) the State can prove the
5 other bad act by clear and convincing evidence, and (3) the non-propensity probative value of
6 the other-bad-act evidence 'is not substantially outweighed by the danger of unfair
7 prejudice.'" Id. at 5, 456 P.3d at 1043 (citing Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d
8 1061, 1064-65 (1997), modified by Bigpond, 128 Nev. 108, 270 P.3d 1244; see Petrocelli v.
9 State, 101 Nev. 46, 692 P.2d 503 (1985), superseded in part by statute as stated in Thomas v.
10 State, 120 Nev. 37, 44-45, 83 P.3d 818, 823 (2004)). On appeal, the Nevada Supreme Court
11 reviews a district court's decision to admit or exclude other bad act evidence under an abuse
12 of discretion standard, Newman v. State, 129 Nev. 222, 231, 298 P.3d 1171, 1178 (2013), and
13 will not reverse except on "a showing that the decision is manifestly incorrect." Flowers, 136
14 Nev. at 5, 456 P.3d at 1043 (citing Rhymes v. State, 121 Nev. 17, 21-22, 107 P.3d 1278, 1281
15 (2005)).

16 In Flowers, the defendant was charged with sexually assaulting and murdering S.Q.
17 The State moved to introduce evidence of another case in which Flowers was charged with
18 sexually assaulting and killing another woman, M.C., pursuant to NRS 48.045(2). Before
19 admitting the evidence, the district court held a hearing and made findings as required by Tinch
20 and Petrocelli. On appeal, the Nevada Supreme Court described the analysis conducted by the
21 trial court:

22
23 The district court deemed the [M.C.] crime relevant to identity and intent
24 because it was close in time and distinctively similar to the [S.Q.] crime.
25 Important to the district court: Both [M.C.] and [S.Q.] were sexually assaulted
26 and manually strangled in their Las Vegas apartments, less than two months
27 apart; both women knew Flowers, having met him through women he'd dated;
28 and DNA evidence directly implicated Flowers in both cases. These facts, the
district court held, tended to show that Flowers, not Brass or someone else,
sexually assaulted and killed both women. The district court also found the State
could prove the [M.C.] assault and murder by clear and convincing evidence

1 and that the undeniably prejudicial effect of the [M.C.] evidence did not
2 substantially outweigh its probative value.

3 Id. at 6, 456 P.3d at 1043-44.

4
5 In affirming the admission of the other bad act evidence at the trial, the Nevada
6 Supreme Court explained that the evidence was relevant to the issue of identity. “The jury
7 had to decide who raped and killed [S.Q.]. The identity exception in NRS 48.045(2) applies
8 ‘where a positive identification of the perpetrator has not been made, and the offered evidence
9 establishes a signature crime so clear as to establish the identity of the person on trial.’” Id. at
10 6, 456 P.3d at 1044 (citing Rosky v. State, 121 Nev. 184, 196-97, 111 P.3d 690, 698 (2005)
11 (quoting Mortensen v. State, 115 Nev. 273, 280, 986 P.2d 1105, 1110 (1999))).

12 Significantly, the Nevada Supreme Court also recognized that crimes or acts need not
13 be identical in order for them to be admissible as evidence of identity. The court explained:

14 Both victims were African-American. Both were manually strangled, as their
15 internal neck hemorrhages confirmed. The vaginal lacerations and tears each
16 suffered were similar. Both women knew Flowers; both were killed during the
17 day at home in their Las Vegas apartments with no sign of forced entry into the
18 apartment. Several items of personal property were taken from both victims’
19 apartments, which were otherwise left undisturbed. The perpetrator used hot
20 water at both crime scenes to destroy evidence. Though Flowers argues
21 otherwise, these similarities are distinctive and go beyond commonplace
22 evidence in sexual assault/murder cases. We recognize there were
23 dissimilarities, too: [S.Q.] was 18 years old while [M.C.] was 45; [S.Q.] was
24 vaginally penetrated while [M.C.] sustained both vaginal and anal penetrations;
25 and [S.Q.]’s body was found in the bathtub, drowned, while [M.C.]’s body was
26 found in the living room with burns in her pubic area. Despite these
27 dissimilarities, the similarities do not allow us to say the district court abused its
28 considerable discretion or was manifestly wrong when it deemed the [M.C.]
evidence relevant to identity.

29 Flowers, 136 Nev. at 6, 456 P.3d at 1044.

30 As in Flowers, there is significant similarity between how Doane committed these
31 crimes. The victims are both school aged girls. Each was left in a then-remote desert area

1 after the sexual assault. Each was sexually assaulted. Though Cheryl Parker did not die from
2 strangulation like Lum, she was choked.

3 In addition to being relevant to the issue of identity, the other bad acts conduct in this
4 case is relevant to the issue of intent. In Flowers, the Nevada Supreme Court noted that intent
5 is intertwined with consent. The court explained:

6 The district court also permissibly deemed the [M.C.] assault and murder
7 relevant to intent. Flowers suggested that he had consensual sex with [S.Q.].
8 Because the two crimes were similar, and because the State found only Flowers’
9 DNA at the [M.C.] crime scene, the [M.C.] assault tended to show that the
10 presence of Flowers’ DNA in [S.Q.] meant that he sexually assaulted her too. It
11 seems unlikely that Flowers happened to have consensual sex with two women
12 who each shortly thereafter was sexually assaulted, strangled, and killed by
13 unknown assailant(s).

14 Id.

15 Not only is the subsequent conduct relevant to question of identity, it is relevant to the
16 question of motive or lack of consent regarding a sexual assault. The doctor did not note
17 injuries associated with sexual assault on Lum’s body. Given how she was found, though, the
18 evidence is suggestive of sexual assault. This evidence is all the more relevant because one
19 of the theories of liability is a felony murder theory based on sexual assault.

20 **B. Evidence of Doane’s Other Conduct is Admissible Pursuant to NRS 48.045(3).**

21 In 2015, the legislature amended Nevada’s evidence code: NRS 48.045(3). NRS
22 48.045(3) supersedes NRS 48.045(2)’s restriction on admissibility of other bad act conduct
23 for purpose of showing propensity in sexual offense cases. The amendment applies to “court
24 proceeding[s] that [are] commenced on or after October 1, 2015.” 2015 Nev. Stat., ch. 399, §
25 27(4), at 2246.¹

26 ¹ Interestingly, the Nevada Supreme Court referenced this statute in Flowers. However, because the amendment post-
27 dated the Flowers trial, it did not consider it.
28 NRS 48.045(3) provides: “Nothing in this section shall be construed to prohibit the admission of evidence in a criminal
prosecution for a sexual offense that a person committed another crime, wrong or act that constitutes a separate sexual
offense.” We do not address this provision because it was added to NRS 48.045 in 2015, after the trial in this case, and
so the district court did not consider it. 2015 Nev. Stat., ch. 399, § 21, at 2243; see Franks v. State, 135 Nev. 1, 3-4, 432

1 In Franks v. State, 135 Nev. 1, 432 P.3d 752 (2019), Franks was charged with lewdness
2 with a child under the age of 14. During trial, the State elicited testimony about four other
3 prior incidents of misconduct. On appeal, Franks argued that the district court improperly
4 allowed admission of testimony regarding the prior, uncharged instances of misconduct. Id. at
5 2, 432 P3d at 755.

6 In interpreting the statute, the Nevada Supreme Court unambiguously found that it
7 permitted the admission of “propensity” evidence in sexual offense cases. The court
8 explained:

9 Turning to the language of NRS 48.045(3), the statute plainly provides that
10 “[n]othing in this section shall be construed to prohibit the admission of
11 evidence in a criminal prosecution for a sexual offense that a person committed
12 another crime, wrong or act that constitutes a
13 separate sexual offense.”¹ (Emphasis added.) Therefore, in criminal
14 prosecutions for sexual offenses, NRS 48.045(3) allows for the admission of
15 evidence of a prior bad act constituting a sexual offense “to prove the character
16 of a person in order to show that the person acted in conformity therewith” that
17 would otherwise be barred under NRS 48.045(2). Reading NRS 48.045(3) as
18 restating that prior sexual offenses may be considered for other purposes under
19 NRS 48.045(2) but not for propensity purposes would render NRS 48.045(3)
20 meaningless, as NRS 48.045(3) provides a specific admissibility standard in
21 criminal sexual offense cases, replacing the general criteria set forth in
22 NRS 48.045(2) and superseding subsection 2's restriction on propensity
23 evidence in such cases. Therefore, we conclude that NRS 48.045(3)
24 unambiguously permits the district court to admit prior sexual bad acts for
25 propensity purposes in a criminal prosecution for a sexual offense.

26 Id. at 4, 432 P.3d at 755.

27 The Nevada Supreme Court also explained the evidentiary restrictions associated with
28 admitting evidence pursuant to NRS 48.045(2) do not apply to the admission of evidence under
NRS 48.045(3). The court said:

1 P.3d 752, 755 (2019) (noting “that NRS 48.045(3) unambiguously permits the district court to admit prior sexual bad
2 acts for propensity purposes in a criminal prosecution for a sexual offense” and applying the statute to a criminal case
3 filed before but tried after its October 1, 2015, effective date).

4 Flowers v. State, 136 Nev. 1, 18 n.1, 456 P.3d 1037, 1052 n.1 (2020).

1 Before admitting evidence of a prior bad act pursuant to NRS 48.045(2), this
2 court determined that the district court must hold a Petrocelli hearing outside of
3 the presence of the jury to determine that “(1) the prior bad act is relevant to the
4 crime charged and for a purpose other than proving the defendant's propensity,
5 (2) the act is proven by clear and convincing evidence, and (3) the probative
6 value of the evidence is not substantially outweighed by the danger of unfair
7 prejudice.” Bigpond v. State, 128 Nev. 108, 117, 270 P.3d 1244, 1250 (2012).
8 As discussed, however, NRS 48.045(3) unambiguously removed
9 prior sexual acts from NRS 48.045(2)’s ban on propensity evidence. Therefore,
10 the Petrocelli framework established for admitting evidence of a prior act for
11 purposes other than propensity is not applicable in cases where the State seeks
12 to present evidence of separate acts constituting sexual offenses for purposes of
13 showing propensity in a current sexual offense prosecution.

14 Id. at 4-5, 432 P.3d at 755-56.

15 The court explained the proper framework for assessing admissibility under NRS
16 48.045(3). Unlike NRS 48.045(2), a Petrocelli hearing is not required. Nonetheless, the State
17 must request the district court’s permission to introduce evidence of the prior sexual offense
18 for propensity purposes outside the presence of the jury. “The State must then proffer its
19 explanation of how the prior sexual offense is relevant to the charged offense, i.e., tends to
20 make it more probable that the defendant engaged in the charged conduct.” Id. at 5, 432 P.3d
21 at 756 (citing NRS 48.015).

22 Analogizing to the federal evidence code, the Nevada Supreme Court also noted that
23 trial courts must make a preliminary finding that a jury could reasonably find by a
24 preponderance of the evidence that the other act occurred. Id. (citing United States v.
25 Enjady, 134 F.3d 1427, 1433 (10th Cir. 1998) (internal quotation marks omitted); see
26 also United States v. Oldrock, 867 F.3d 934, 939 (8th Cir. 2017); United States v. Dillon, 532
27 F.3d 379, 387 (5th Cir. 2008)).

28 Next, to assess whether the probative value of the evidence is substantially outweighed
by the danger of unfair prejudice, the Nevada Supreme Court sanctioned a standard set forth
by the Ninth Circuit Court of Appeals in United States v. LeMay, 260 F.3d 1018 (9th Cir.
2001).

1 In order to address the highly probative yet prejudicial nature of this evidence,
2 the Ninth Circuit Court of Appeals set forth a modified balancing analysis,
3 stating that the district court must consider several nonexhaustive factors prior
4 to allowing its admission:

5 (1) the similarity of the prior acts to the acts charged, (2) the closeness in time
6 of the prior acts to the acts charged, (3) the frequency of the prior acts, (4)
7 the presence or lack of intervening circumstances, and (5) the necessity of
8 the evidence beyond the testimonies already offered at trial.

9 Id. at 1028 (internal quotation marks omitted). We conclude that the factors
10 articulated by the Ninth Circuit are useful and account for the legislative intent
11 to permit propensity evidence in sexual offense prosecutions—the purpose of
12 NRS 48.045(3)—while also taking into account the risk of unfair prejudice that
13 accompanies this strong evidence.

14 Id., at 6, 432 P.3d at 756–57.

15 Applying the LeMay factors to the instant case, admissibility is warranted. First, all of
16 the conduct centers around Defendant’s crimes against teen girls. Second, the conduct all
17 occurred within a narrow window of time. Third, the frequency at which Defendant Doane
18 was victimizing young girls weighs in favor of admissibility. Fourth, there are no intervening
19 circumstances which weigh against admissibility. The fifth factor, the necessity of the
20 evidence beyond the testimonies at trial, also weighs in favor of admissibility. Regarding this
21 factor, the court explained in Franks: “Lastly, while evidence regarding the prior bad acts may
22 not have been necessary to establish the State’s case, the ‘evidence need not be *absolutely*
23 *necessary* to the prosecution’s case in order to be introduced; it must simply be helpful
24 or *practically necessary*.’” Id. at 7, 432 P.3d at 757 (citing LeMay, 260 F.3d at 1029).

25 ///

26 ///

27 ///

28 ///

///

///

1 CONCLUSION

2 Based on the foregoing, the State respectfully asks the Court to allow the State to
3 present evidence regarding Doane's subsequent conduct.

4
5 DATED this 28th day of July, 2021.

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

9 BY /s/ Pamela Weckerly
10 PAMELA WECKERLY
11 Chief Deputy District Attorney
12 Nevada Bar #006163
13
14
15

16 CERTIFICATE OF ELECTRONIC SERVICE

17 I hereby certify that service of the above and foregoing, was made this 29th day of July
18 2021, by email to:

19 David Lopez-Negrete, Deputy Public Defender
20 lopeznde@ClarkCountyNV.gov

21
22 BY: /s/ Stephanie Johnson
23 Employee of the District Attorney's Office
24
25
26
27

28 19F19856X/PW/sj/MVU

EXHIBIT

1 CASE NO. C44644
2 DEPARTMENT VIII

- FILED IN OPEN COURT -

AUG 10 1979, 19

LORETTA BOWMAN, CLERK

By *William P. Henry* Deputy

6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF CLARK

8 * * * * *

9 THE STATE OF NEVADA,)
10 Plaintiff,)
11 vs.)
12 JOHN EUGENE DOANE,)
13 Defendant..)
14

STATEMENT OF FACTS IN
SUPPORT OF GUILTY PLEA

15 COMES NOW, JOHN EUGENE DOANE, represented by and through his
16 attorney, WILLIAM P. HENRY, Deputy Public Defender for Clark
17 County, and pursuant to the NON-TRIAL DISPOSITION to be stated in
18 open Court on the date that this instrument is filed informs the
19 Court of the following:

20 On or about the 20th day of February, 1979, at and within
21 the County of Clark, State of Nevada

- 22 1. I was operating my automobile when I saw a
23 young woman later identified to me as CHERYL
24 PARKER walking to school. I stopped and in-
25 vited her into the automobile, and she accept-
26 ed my invitation. I then drove on toward her
27 school and beyond it. Thereafter, I threaten-
28 ed her with a screwdriver and directed her to
29 remove her clothing.
30 2. Upon arriving at a desert location near Lake
31 Mead, I subjected CHERYL PARKER to sexual
32 assault by penetrating her vagina with my

Defendant's signature *William P. Henry*

#C 44644

AA 1

1 penis against her will.

2 3. I then choked CHERYL PARKER unconscious,
3 and struck her in the face with a large
4 rock.

5 4. I then left CHERYL PARKER in the desert,
6 got in my automobile and drove back to the
7 highway. During this return trip, I noticed
8 CHERYL PARKER's belongings which I had made
9 her put in the backseat of my car, I then
10 went through her purse looking for money or
11 other valuables which I wanted. I found
12 nothing I wanted and took nothing.

13
14 DATED this 8 day of August, 1979.

15
16 John Eugene Doane
17 JOHN EUGENE DOANE

18 Prepared by:

19 CLARK COUNTY PUBLIC DEFENDER

20 By William P. Henry
21 WILLIAM P. HENRY, Deputy
22
23
24
25
26
27
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29
30
31
32

3-25
1 CASE NO. 44

FILED

MAR 26 2 49 PM '79

LORETTA BOWMAN

CLERK
[Signature]

2
3
4
5
6 IN THE JUSTICE'S COURT OF LAS VEGAS TOWNSHIP
7 COUNTY OF CLARK, STATE OF NEVADA
8
9

10 THE STATE OF NEVADA,

11 Plaintiff,

12 vs.

13 JOHN EUGENE DORR,

14 Defendant.
15

CASE NO. 669

DOCKET NO. 79F

D. A. NO. 79-F-669

16
17 REPORTER'S TRANSCRIPT

18 OF

19 PRELIMINARY HEARING
20

21 BEFORE THE HONORABLE DANIEL AHLSTROM, JUSTICE OF THE PEACE

22 Monday, March 12, 1979
23

24 APPEARANCES:

25 For the State:

RAYMOND D. JEFFERS, ESQUIRE
Deputy District Attorney
Clark County Courthouse
Las Vegas, Nevada

26
27
28 For the Defendants:

WILLIAM P. HENRY, ESQUIRE
Deputy Public Defender
309 South Third St., #226
Las Vegas, Nevada
29
30
31
32

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1 LAS VEGAS, NEVADA, MONDAY, MARCH 12, 1979, 9:00 A. M.

2
3 THE COURT: 0669-79F, State of Nevada versus
4 John Eugene Doane.

5 This is the time set for preliminary
6 examination. The State of Nevada has indicated they are ready
7 to proceed, defense has indicated they are ready to proceed.

8 MR. JEFFERS: Your Honor, may we go forward at
9 this time?

10 THE COURT: I just called it, we are ready. If
11 you have any preliminary motions or anything else --

12 MR. JEFFERS: I would like to make a couple of
13 statements to the Court. One of the things alleged by the State
14 is a matter of permanent disfigurement as well as substantial
15 bodily injury. I have previously had, which I exhibited to
16 counsel, photographs marked, some of the victim taken prior to
17 incident in question, some a matter of hours later. However,
18 there has been some remedial surgery on the young lady. For the
19 record, her jaws are wired shut. It may be difficult for the
20 court reporter.

21 I have a photographer from the identification
22 bureau of Metro, and I would like leave of the Court and counsel
23 for him to lay some few foundation questions on some evidence
24 that I'm going to offer.

25 He has a camera with him. I would then like
26 to call this victim, and for this record, have a photograph taken
27 of her here in the courtroom for the purposes of marking it the
28 State's Proposed Exhibit next in order so that this record can
29 show the disfigurement of the young lady as the Court sees the
30 victim here in the courtroom today.

31 MR. HENRY: No objection, your Honor.

32 THE COURT: All right.

ROMAINE L. OLSON
CSR NO. 108
LAS VEGAS, NEVADA

1 MR. JEFFERS: Call Officer Been as the first
2 witness.

3 MR. HENRY: Defense would invoke the exclusionary
4 rule.

5 THE COURT: For the record, any of you folks
6 that are going to be witnesses in this case, either for the
7 prosecution or the defense, you are asked to excuse yourselves,
8 remain outside the courtroom. You are admonished not to discuss
9 your testimony among yourselves or with any of the previous
10 witnesses.

11 MR. JEFFERS: I might add, there are no witnesses
12 of the State in here at this time, your Honor. At the time the
13 testimony of the young lady, she's fourteen years old, I would
14 ask the Court, as we discussed with counsel before, to consider
15 closing the courtroom except for the mother of the young lady.

16 THE COURT: All right. At the time we start
17 I will solve that.

18 Whereupon,
19

20 WILLIAM HOWARD BEEN, having been
21 first duly sworn to tell the truth, the whole truth and nothing
22 but the truth, testified as follows:

23 THE CLERK: State your full name and spell your
24 last name, please.

25 THE WITNESS: William Howard Been, B-e-e-n.
26

27 DIRECT EXAMINATION

28 BY MR. JEFFERS:

29 Q. Your occupation?

30 A. I'm a Spec Two identification lab, Metropoli-
31 tan Police Department.

32 Q. What are your duties, sir?

ROMAINE L. OLSON
CSR NO. 108
LAS VEGAS, NEVADA

1 A. Process crime scenes, photograph crime
2 scenes, pick up evidence, process for fingerprints.

3 Q. What training do you have for that, sir?

4 A. In 1958 I completed a course in criminal
5 investigation, 1959 completed the institute of applied science
6 in fingerprinting and photography. I have taken courses in
7 photography. I have been in the crime lab for the past eleven
8 years working in this field.

9 Q. I'm showing you here what's been marked as
10 Exhibit Ten in this matter. Do you recognize that evidence
11 envelope?

12 A. Yes, sir.

13 Q. Did you bring it here to this court today
14 in its present sealed condition?

15 A. Yes, sir.

16 Q. Where did you obtain it from?

17 A. From the crime lab, from the evidence vault
18 in the crime lab.

19 Q. Would you open the seals, remove the contents
20 of the envelope and identify them?

21 MR. JEFFERS: May he open the seals, your Honor?

22 THE COURT: Yes.

23 Q. (By Mr. Jeffers) If you'll break the seal
24 on the top portion of the envelope, remove the contents and
25 identify what you remove, sir.

26 A. The first item is a rubber-handled screwdriver,
27 which I found at the scene of the crime.

28 Q. All right. What is that the screwdriver is
29 contained in, is that a plastic bag?

30 A. Yes, sir, contained in a plastic bag.

31 Q. How do you identify the screwdriver as being
32 the one you recovered?

ROMAINE L. OLSON
CSR NO. 108
LAS VEGAS, NEVADA

1 A. Because I have put it in the bag, sealed it,
2 put my initials, date and case number on it.

3 Q. Is there anything else in the bag, in the
4 evidence bag marked as Proposed Exhibit Ten?

5 A. Yes. These are coins, miscellaneous coins
6 picked up at the entrance to the road leading up to the crime
7 scene, the intersection of the lake highway. And I placed them
8 in this plastic bag, initialed it and dated it and put the DR
9 number on it.

10 MR. HENRY: May I take the officer on voir dire
11 for just a moment?

12 THE COURT: I suppose.

13
14 VOIR DIRE EXAMINATION

15 BY MR. HENRY:

16 Q. Did you recover those coins personally?

17 A. Yes, sir.

18 MR. HENRY: No further questions.

19 THE COURT: Thank you.

20
21 DIRECT EXAMINATION (Cont'd.)

22 BY MR. JEFFERS:

23 Q. Showing you here the photograph marked
24 Proposed Exhibit One in this matter, do you recognize that
25 photograph?

26 A. Yes, I do.

27 Q. What is that photograph of, sir?

28 A. That's a photograph of coins.

29 Q. Are those the coins you just identified?

30 A. Yes.

31 Q. Did you take that photograph?

32 A. Yes, I did.

ROMAINE L. OLSON
CSR NO. 108
LAS VEGAS, NEVADA

1 Q. Where and when did you take it?
2 A. That would be roughly 1:30 in the afternoon
3 on the 20th of February.

4 Q. And is that location here in Clark County,
5 Nevada?

6 A. Yes, sir.

7 Q. Showing you the photograph marked as
8 State's Proposed Exhibit Two, do you recognize that photograph?

9 A. Yes, sir.

10 Q. And where was that photograph taken?

11 A. That is an overall shot of the crime scene
12 at the end of the ravine.

13 Q. Is picture one located in the picture marked
14 as Two?

15 A. No. This one is at the entrance from the
16 main highway. This is approximately -- I don't know. I think
17 it was four-tenths of a mile, I believe.

18 Q. Number Two, did you locate the screwdriver,
19 is it located in that photograph?

20 A. It can't be seen, but it is in that photograph.

21 Q. And is that photograph in Clark County, Nevada?

22 A. Yes, sir.

23 Q. Both of those photographs accurately depict
24 what they purport to portray?

25 A. Yes, sir.

26 Q. What else do you have in the evidence bag
27 marked as Ten?

28 A. At the crime scene I also picked up two gold-
29 colored hair barrettes, I believe they are called, near the
30 screwdriver. And these were put in a plastic bag and initialed
31 by myself and dated.

32 Q. And the pennies are in a separate bag, the

ROMAINE L. OLSON
CRIM. NO. 108
LAS VEGAS, NEVADA

1 barrettes in a separate bag and the screwdriver in a larger
2 plastic bag?

3 A. Yes, sir.

4 Q. Would you place all that back in the
5 Proposed Exhibit Ten.

6 Did you bring any other items into court
7 here with you today?

8 A. I brought some fingerprint exemplars that
9 I took from the victim while she was in the hospital.

10 Q. Showing you here the photographs marked as
11 Exhibit Seven and Eight, do you recognize those two photographs?

12 A. I didn't take these two.

13 Q. Do you recognize the person depicted therein?

14 A. Yes.

15 Q. Is that the person you took the exemplar
16 prints of?

17 A. Yes, sir.

18 Q. Do you have those cards here with you?

19 A. Yes, I do.

20 Q. How many cards do you have?

21 A. There's four. I took two of each hand.

22 Q. All right.

23 MR. JEFFERS: I would like to have these marked
24 as State's Proposed next in order.

25 Q. (By Mr. Jeffers) Showing you what's been
26 marked for identification as State's Proposed Exhibits Eleven,
27 Twelve, Thirteen and Fourteen, it's your testimony that those are
28 cards that you took of the person pictured in State's Exhibit
29 Seven and Eight?

30 A. Yes, sir.

31 Q. Would you relate where and when those were
32 done, sir?

ROMAINE L. OLSON
CER NO. 100
LAS VEGAS, NEVADA

1 A. It was in Southern Nevada Hospital on the
2 22nd of February, and I believe it was in the afternoon.

3 Q. And how do you establish those as being
4 exemplar prints that you took from the person pictured in
5 Seven and Eight?

6 A. Because I have signed my name to them and
7 had her sign her name to it.

8 Q. All right, sir. Thank you.

9 Now, when you took that screwdriver, did
10 you seal it in the envelope marked as Ten and book it into
11 evidence?

12 A. Yes, sir.

13 Q. These photographs you testified to also
14 took place in Clark County, Nevada?

15 A. Yes, sir.

16 MR. JEFFERS: Pass the witness.
17

18 CROSS-EXAMINATION

19 BY MR. HENRY:

20 Q. Officer, other than the items you testified
21 concerning being the screwdriver, the coins, the hair barrettes,
22 Proposed One, a photo of the coins, Proposed Two, a photo of
23 what you've described as the crime scene, Proposed Seven and
24 Eight, photos of who you described as the victim, and the finger-
25 print exemplars of the person you described as the victim, did
26 you discover or have you made any other physical evidence
27 connected with this case?

28 A. I recovered blood or a substance appearing
29 to be blood at the crime scene and placed it in a vial and
30 booked it into evidence.

31 Q. Where did you find this?

32 A. The blood?

ROMAINE L. OLSON
CSR NO. 108
LAS VEGAS, NEVADA

1 Q. Was it on the ground?

2 A. Yes, it was on the ground, soaked into the
3 dirt.

4 Q. Do you know if any test had been performed
5 on that substance?

6 A. I understand that one of our criminalists
7 did run a test on it.

8 Q. Did you recover any other items you
9 considered to be physical evidence?

10 A. No.

11 Q. Did you expose any other photographs?

12 A. No.

13 Q. Did you take any other exemplars?

14 A. No, just the four.

15 Q. Are you aware of any other evidence,
16 physical evidence in this case other than what you've testified
17 concerning this morning?

18 A. Not to my knowledge.

19 Q. Directing your attention to the person
20 sitting to my left, have you had occasion to see him before?

21 A. This is my first time.

22 MR. HENRY: Thank you. I have no further
23 questions, your Honor.

24
25 REDIRECT EXAMINATION

26 BY MR. JEFFERS:

27 Q. I would like to show you here -- You have
28 been asked questions by counsel regarding the blood that you
29 recovered as well as other evidence items. Showing you here
30 Proposed Fifteen, do you recognize that photograph?

31 A. Yes, sir.

32 Q. And what, if any, relationship does it have

ROMAINE L. OLSON
CSR NO. 108
LAS VEGAS, NEVADA

1 to the photograph you previously identified as Two?

2 A. This is a closeup of the ground where the
3 screwdriver was and where the blood was or what appeared to be
4 the blood.

5 Q. And that is the photograph, the photograph
6 here marked as Two is contained -- This is a closeup of that
7 area, Number Fifteen, for the record?

8 A. Yes, sir.

9 Q. Now, the screwdriver that's in the plastic
10 bag that was removed from the evidence bag Ten, is that screw-
11 driver pictured in that picture?

12 A. Yes, sir, it is right by the rock here.

13 Q. Now, you testified regarding blood that you
14 removed from the scene. Is that also in that picture, Fifteen?

15 A. Yes, sir, the blood smear is right here.

16 Q. You brought an evidence bag with you here
17 today with that item in it?

18 A. Yes, sir.

19 MR. JEFFERS: I would like to have this marked
20 as State's Proposed next in order.

21 Q. (By Mr. Jeffers) Showing you here the
22 evidence bag which is sealed, exhibiting it to counsel, for the
23 record --

24 MR. HENRY: Thank you.

25 MR. JEFFERS: I will show the exhibit to the Court
26 for the seals.

27 THE COURT: All right.

28 Q. (By Mr. Jeffers) I would like to ask that
29 you break the seals, remove the contents, identify what you
30 remove.

31 MR. JEFFERS: For the record, the seals at the top
32 flap are being broken in open court.

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1 Q. (By Mr. Jeffers) What have you removed,
2 for the record, from the bag?

3 A. Two vials containing dirt and what appears
4 to be red stains.

5 Q. For the record, these are clear plastic
6 vials with a white top. Can you identify the two in some way?

7 A. Yes, sir. When I sealed these up, I initialed
8 it, put the DR number on it, the date and where it was found.

9 Q. All right. Now, I see here, for the record,
10 there's a small two on one of these plastic vials. What is
11 that?

12 A. That's Diana Orrock, that's one of our
13 criminalists.

14 Q. Would you describe the other ones?

15 A. This is the same, it's a small piece of
16 rock and soil with what appears to be blood stains on it.

17 Q. Does it have some distinguishing number on
18 it?

19 A. Yes, sir, it also has number three, signed
20 by Diana Orrock, our criminalist.

21 Q. All right, sir. Would you place those back
22 in the plastic bag. Do they appear to be in essentially the same
23 condition as they were when you booked them into that evidence
24 bag?

25 A. Yes, sir.

26 Q. These items here were also taken in Clark
27 County, is that correct?

28 A. Yes, sir.

29 MR. JEFFERS: I have no further questions.
30
31
32

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RECROSS-EXAMINATION

BY MR. HENRY:

Q. Officer, you have referred several times to the crimescene. You didn't witness any crimes committed at the location of your investigation, did you?

A. No.

Q. All right. So actually you are just referring to a location that you were directed to by other officers?

A. Yes, sir, that's right.

MR. HENRY: Thank you. Nothing further.

THE COURT: All right. Thank you, Mr. Been, for your testimony.

MR. JEFFERS: Could we ask leave of the Court to have this officer remain, and I'll call as the next witness Miss Cheryl Parker and have her identified and sworn, have him take a picture of her to be made a permanent part of this record and marked as State's -- I would ask that the Court direct that the number, Seventeen, be assigned, and that he take the photograph, return to the lab, process it and have it directed that it be brought to the court clerk, marked and placed into evidence to show what the appearance of the victim was here in the courtroom at the time of testifying in this preliminary hearing.

THE COURT: Mr. Henry, you previously indicated you have no objection to that procedure.

MR. HENRY: I have no objection if, perhaps, she could be photographed, and that is made part of the record, to be accompanied by an affidavit by the officer so we have proper foundation.

MR. JEFFERS: I will ask that a copy be made available to counsel for the defendant, a copy for the State and one to go into the record, marked as State's Exhibit Seventeen.

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1 And I would move for its admission at this time, just for the
2 record, conditioned on --

3 THE COURT: The affidavit of his qualifications,
4 what happened.

5 MR. JEFFERS: They will be marked all as
6 Seventeen.

7 MR. HENRY: If that procedure is followed, I
8 have no objection to the admission of Seventeen.

9 THE COURT: That will be the order.

10 MR. JEFFERS: All right. May I have the Court's
11 indulgence?

12 THE COURT: Attach the affidavit to the photograph.

13 THE WITNESS: All right.

14 Whereupon,
15

16 C H E R Y L P A R K E R, having been first duly
17 sworn to tell the truth, the whole truth and nothing but the
18 truth, testified as follows:
19

20 DIRECT EXAMINATION

21 BY MR. JEFFERS:

22 Q. Tell this lady your name.

23 A. Cheryl Parker.

24 Q. All right.

25 MR. JEFFERS: Your Honor, I would like at this
26 time to ask that the officer take a picture of her in the
27 courtroom.

28 THE COURT: All right, go ahead.

29 For the record, Mr. Been has just photographed
30 the second witness, Cheryl Parker. I assume we are going to be
31 talking about photographs in the plural?

32 MR. JEFFERS: May I make this suggestion to the

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1 Court: May I ask the officer to have them developed, then I'll
2 meet with counsel, then we'll agree at that time as to what
3 photographs we'll offer. And we can do it that way if that's
4 agreeable with Mr. Henry.

5 MR. HENRY: I have no objection to that.

6 THE COURT: Mr. Been, how long do you think it
7 will take you to develop those photographs?

8 MR. BEEN: Maybe tomorrow.

9 MR. HENRY: Pardon me. Perhaps we could avoid
10 a lot of difficulties, procedural difficulties, if the Court
11 reserved decision until after we have the photographs. Then
12 we could move for their admission and do this regularly.

13 MR. JEFFERS: I'm going to have to call a doctor,
14 if I can't get these photographs, I believe, unless the Court
15 wants to take recognition of the disfigurement for the record.

16 THE COURT: Why that long?

17 MR. BEEN: I'm taking a guess. Actually, it goes
18 through a machine up there.

19 THE COURT: Who is in charge of it?

20 MR. BEEN: Buddy Hardy.

21 THE COURT: Would you ask Buddy -- We want those
22 photographs, Judge Ahlstrom would like it if he would get them
23 developed before noon today?

24 MR. BEEN: I will ask him. He may have to do it
25 by hand.

26 THE COURT: I'm sure he can work it out. You tell
27 him we are in a court proceeding, and you can relate what's
28 developed. And I would appreciate having them back here.

29 MR. BEEN: All right, sir.

30 MR. JEFFERS: If contact prints get out faster,
31 that's all right.

32 (Discussion at the bench.)

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1 MR. JEFFERS: Your Honor, the witness is only
2 fourteen years old, and this is very sensitive testimony. I
3 would ask the Court, as I have discussed with counsel at the
4 bench, the Court to consider, in accordance with the statute,
5 declaring this a closed examination insofar as her testimony
6 is concerned.

7 MR. HENRY: I have explained to the defendant,
8 your Honor, the constitutional rights involved in the law in
9 the State of Nevada, and the defense has no objection to
10 counsel's motion.

11 THE COURT: Well, based upon that, those
12 representations and the Court's viewing of Miss Parker, she
13 appears to the Court to be a rather young-appearing fourteen,
14 and on the basis of that, I think I will probably honor the
15 State of Nevada's request.

16 So, folks, the courtroom is going to be
17 closed for her testimony.

18 MR. JEFFERS: Is there any objection if the
19 mother of the witness remains?

20 MR. HENRY: Defense has no objection.

21 MR. JEFFERS: All right.

22 Q. (By Mr. Jeffers) All right. Cheryl, how
23 old are you?

24 A. Fourteen.

25 Q. Fourteen?

26 A. Yes.

27 Q. Okay. Do you live in Clark County, Cheryl?

28 A. Yes.

29 Q. Showing you this photograph here that's
30 been marked --

31 MR. JEFFERS: Now, for the record, this is a
32 photograph that's been furnished the State by the mother of the

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1 witness. It did contain originally three individuals. However,
2 we've discussed this with counsel, and I've cut the portion of
3 the photograph which pertains to a picture of this witness out
4 and had it marked as State's Proposed Nine.

5 Q. (By Mr. Jeffers) Do you recognize that
6 picture?

7 A. Yes.

8 Q. Is that you?

9 A. Yes.

10 Q. And when and where was that taken?

11 A. It was taken in December in a photograph
12 shop in Vegas.

13 Q. In December of 1978?

14 A. Yeah.

15 Q. That's how you looked at that time?

16 A. Yes.

17 MR. JEFFERS: I would offer State's Proposed
18 Nine as State's Exhibit Nine.

19 MR. HENRY: No objection.

20 THE COURT: State's Nine will be received.

21 Q. (By Mr. Jeffers) All right. Cheryl, were
22 you living in Henderson on the 20th?

23 A. Yes.

24 THE COURT: Excuse me, counsel. 20th of?

25 Q. (By Mr. Jeffers) 20th of February of 1979?

26 A. Yes.

27 Q. Okay. What were you doing on the early
28 morning of the 20th, do you remember?

29 A. Walking to school.

30 Q. Tell us what time did you leave the house,
31 Cheryl.

32 A. Around 7:30.

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Q. 7:30 in the morning?

A. Yes.

Q. Where did you go? Where did you live then?

A. 150 Copper Street.

Q. Were you going to school then?

A. Yes.

Q. Where did you go to school?

A. Basic High.

Q. What grade were you in there?

A. Ninth.

Q. And tell us what you did that morning after
you left home.

A. I walked to school and I stopped at
Safeway, then I went to the park and sat down for a few minutes.

Q. What park was that?

A. Morrell, I think, that way.

Q. And what happened then?

A. This guy came up and asked if I seen some
guy.

Q. Who was it that came up?

A. Some guy named John.

Q. Do you see that guy here in the courtroom
today?

A. Yes.

Q. Would you point at him.

A. He's sitting over there, the man in the
brown.

Q. Is he sitting next to the man in the brown,
in the blue suit?

A. Yes.

MR. JEFFERS: Would the record indicate this
witness has identified the defendant?

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1 THE COURT: The record will so reflect.

2 Q. (By Mr. Jeffers) How did you happen to
3 see him, was he in a car?

4 MR. HENRY: May I approach the witness? I'm
5 having trouble understanding her.

6 THE COURT: I'm sure you can stand over there.

7 Q. (By Mr. Jeffers) Okay. Was he driving a
8 car when you saw him?

9 A. Yeah.

10 Q. Would you recognize that car?

11 A. (Witness nods head in an affirmative manner.)

12 Q. Showing you here --

13 THE COURT: Cheryl, my court reporter takes down
14 everything you say, and it's difficult for her to take down
15 when you nod your head. So if you will, just say yes or no
16 instead of nodding your head. It will make her job easier.

17 Q. (By Mr. Jeffers) Showing you here this
18 photograph that's marked as Proposed Exhibit Number Three, do
19 you recognize the vehicle pictured there?

20 A. Yes.

21 Q. How do you recognize it, Cheryl?

22 A. Because the guy was driving it.

23 Q. What?

24 A. He was driving it.

25 Q. Do you recognize the license number?

26 A. Yeah.

27 Q. What is it?

28 A. CYN697.

29 Q. And how many times did you see him that
30 morning on the first part of the morning?

31 A. Twice.

32 Q. Tell us about the first time you saw him.

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1 A. First time I saw him I was sitting in the
2 park. He came up, asked me if I seen, came up in the car, got
3 out of the car, came over to where I was, asked me if I seen
4 some guy named Rick.

5 Q. What did he ask about him?

6 A. He asked if I seen him. Because he wanted
7 to sell him some downers, or that guy wanted to sell him some
8 or something.

9 Q. What did you tell him?

10 A. Told him, no, I hadn't seen anyone.

11 Q. Then what did he do?

12 A. He got back in the car and he left.

13 Q. And did you see him later on?

14 A. Yeah.

15 Q. Where were you then when you saw him the
16 second time?

17 A. Walking up the path to Basic.

18 Q. Walking up the path to Basic?

19 A. Yeah.

20 Q. Was he in his car when you saw him this time,
21 or how did you see him?

22 A. He was in his car.

23 Q. Did you talk to him?

24 A. Yeah. He asked me if I wanted to ride the
25 rest of the way to school.

26 Q. What did you tell him?

27 A. Yes.

28 Q. Did you get in the car?

29 A. Yes.

30 Q. Did you get in the front right?

31 A. Uh-huh.

32 Q. And then what happened? What happened

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1 after that?

2 A. Well, then he took me to school. I told
3 him he could let me off at that one corner, and he didn't even
4 turn the corner. Then he got out a screwdriver, stuck it in
5 my stomach.

6 Q. Then what did he say when he stuck the
7 screwdriver in your stomach?

8 A. He told me to behave, not to make any
9 trouble or anything, or he would kill me. Said he didn't want
10 to hurt me or anything.

11 Q. But he said if you did, he would kill you?

12 A. He said he might have to.

13 Q. All right. Then what did you do then?

14 A. Well, then he told me to scoot over next
15 to him, so I did. He had me put my books and purse and every-
16 thing in the back.

17 Q. Did you do that?

18 A. Yeah.

19 Q. Then what happened?

20 A. Then we went out to the highway and went
21 down towards Boulder City.

22 Q. Then what happened?

23 A. Went over to the lake.

24 Q. Did you have your clothes on?

25 A. Yes.

26 Q. Go ahead and tell us what happened then.

27 A. Then we was driving down there. I told him
28 I might as well take my clothes off then, so I started to.

29 Q. Did you take them off?

30 A. Yeah.

31 Q. Then where did you go?

32 A. Then we went down to this one area, I don't

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1 know where, out by the lake. And he stopped the car.

2 Q. And after he stopped the car, then tell
3 us what happened.

4 A. Well, then --

5 Q. I know it's hard, but you've got to tell
6 us what happened.

7 A. Then he had sex with me.

8 Q. Did he put his penis in your vagina?

9 A. Yes.

10 MR. HENRY: I'm going to have to object to
11 counsel's leading.

12 THE COURT: It's overruled. It's a rather
13 sensitive matter, she's having a little trouble. I'm going
14 to permit it.

15 Q. (By Mr. Jeffers) How long did he have
16 intercourse with you?

17 A. I don't know. Around five minutes or so.

18 Q. Were you afraid?

19 A. Yes.

20 Q. Did you willingly let him have intercourse
21 with you?

22 A. Yes.

23 Q. Because you were afraid?

24 A. Yes.

25 Q. All right. Did he say anything to you
26 after he completed the act?

27 A. Well, he told me he was going to take me
28 back.

29 Q. Did he?

30 A. No.

31 Q. What happened then?

32 A. Well, first he got out -- Before he took me

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1 back, he got out, went to the bathroom. I had to go with him.

2 Q. Why?

3 A. He thought I was going to steal his car.

4 MR. HENRY: I didn't understand what she said
5 after she got out.

6 MR. JEFFERS: He had to go to the bathroom.

7 Q. (By Mr. Jeffers) All right. What did you
8 do at that time when you got out? Did you look at the car?

9 A. Yes.

10 Q. What did you look at?

11 A. The license plate.

12 Q. Did you memorize the license plate?

13 A. Yes.

14 Q. What made you think to do that?

15 A. I figured that would be the first thing
16 anyone would ask.

17 Q. All right. After he went to the bathroom,
18 then what happened?

19 A. Well, then we went back, got back into the
20 car.

21 Q. Then where did you go?

22 A. We went to another place, and he decided
23 to stop again.

24 Q. Then what happened? Did you have your
25 clothes back on at this time?

26 A. Yes.

27 Q. All right. When you stopped at the second
28 place, what happened? Cheryl, can you tell us what happened
29 at the second place?

30 A. I'm thinking. We got out of the car, then
31 he had me get down on my hands and knees, and he had intercourse
32 with me again.

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1 Q. What happened after that?

2 A. Then he had me lay down flat on my back,
3 and he had intercourse with me again after that.

4 Q. Do you know whether any of these two times
5 that you've talked about here whether he reached a climax or
6 not?

7 A. I don't know.

8 Q. All right. After he had intercourse with
9 you on your back, were you afraid, and your knees, as you
10 discussed, were you afraid of him then?

11 A. Yes.

12 Q. After he completed intercourse with you
13 on your back, then what happened?

14 A. Then we got back in the car and he went
15 to look for a place to turn around so he could take me back.
16 Then he stopped at this other place just a little ways out
17 from the second place, and then he stuck the screwdriver right
18 here and said he was going to kill me. And I started crying
19 and asking him not to. And he said if I wouldn't tell on him,
20 he wouldn't.

21 Q. Then what did you do?

22 A. We got out of the car, and I went down on
23 him.

24 Q. Did he make you put his penis in your mouth?

25 A. Yes.

26 Q. What happened after that?

27 A. Then I stood up.

28 Q. Did he reach a climax while he had his penis
29 in your mouth?

30 A. Yes.

31 Q. After that happened, then what did he do?

32 A. Well, then I was facing -- we was at the back

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1 of the car and my hands were down on the car, and he started
2 strangling me.

3 Q. Then he had intercourse with you?

4 MR. HENRY: Object, leading.

5 THE COURT: It's overruled.

6 Q. (By Mr. Jeffers) Now, you said that after
7 he put his penis in your mouth, you got up and put your hands
8 on the back of the car.

9 A. I turned around. I don't remember exactly
10 what happened then. Well, something happened, and I ended up
11 to where my hands were back on the back of the car, flat, like
12 that.

13 Q. What did he do then?

14 A. He put his hands around my neck, started
15 strangling me.

16 Q. He didn't have intercourse with you then
17 again?

18 A. I don't think so.

19 Q. Tell us what happened after you put your
20 hands on the car?

21 A. He started strangling me. Then somehow I
22 ended up down on the ground. He started putting dirt and rocks
23 in my mouth.

24 Q. Were you screaming?

25 A. Yes.

26 Q. He put dirt and rocks in your mouth?

27 A. Yes.

28 Q. Then what did he do?

29 A. He kept on strangling me, and I passed out.

30 Q. You passed out. What's the next thing --
31 You lost consciousness?

32 A. Yes.

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1 Q. What's the next thing you remember?

2 A. Waking up, and he was gone. So I got up,
3 and I was bleeding and stuff. And I saw this camper like this
4 over in the distance, so I was going to go over there for help.
5 And I came to the lake, and I was standing there getting the
6 blood and stuff off my hands, and some rangers came. And they
7 took me down to the car and called an ambulance.

8 Q. All right. Showing you Exhibit Three here,
9 do you recognize that as being the car he was driving?

10 A. Yes.

11 MR. HENRY: Object, leading.

12 THE COURT: It's overruled.

13 Q. (By Mr. Jeffers) Showing you here Exhibit
14 Four, do you recognize that picture?

15 A. Yes.

16 Q. What do you see there?

17 A. My purse, my comb, my coat.

18 Q. All right. Is that your purse in the
19 seat of the car?

20 A. Yes.

21 Q. What is that right there? Is that your
22 coat?

23 A. Yes.

24 Q. What do you have there in your lap today?

25 A. The belt to the coat.

26 Q. Did you just happen to think to bring that
27 with you today?

28 A. Yes.

29 Q. That's the belt to the coat that's in the
30 floor of that car?

31 A. Yes.

32 MR. JEFFERS: I would like to have this marked

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1 and offered as State's Exhibit next in order.

2 Q. (By Mr. Jeffers) All right. How would
3 you describe that? Is that your purse in the front seat of
4 the car there?

5 A. Yes.

6 Q. Now, you said something about a comb. Can
7 you point that out?

8 A. The comb is right there. It goes to a hair
9 dryer.

10 Q. All right. And that's in this car that's
11 pictured in Three here?

12 A. Yes.

13 Q. Showing you this photograph here marked
14 as State's Proposed Exhibit Six, do you recognize that picture?

15 A. Yes. Those are my books.

16 Q. And those are the ones he told you to throw
17 in the back seat?

18 A. Yes.

19 Q. That's inside of the car marked as Three
20 here?

21 A. Yes.

22 Q. That is a picture marked as Three? Now,
23 here you've testified regarding a place that he took you to.
24 Showing you a photograph, Two, do you recognize that picture?

25 A. Yes.

26 Q. Is that where you went?

27 A. Yes.

28 Q. We previously had testimony from an officer
29 here regarding Fifteen, he said that it was in Two, there's a
30 screwdriver pictured there. Do you recognize that?

31 MR. HENRY: Object, leading.

32 THE COURT: It's overruled. Come on, this is

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1 preliminary evidence.

2 Q. (By Mr. Jeffers) Do you recognize that
3 screwdriver pictured there?

4 A. Yes.

5 Q. Showing you here a screwdriver in a plastic
6 bag that I'm removing from the evidence marked Ten, does that
7 look like the screwdriver you described?

8 A. Yes.

9 Q. Showing you here a plastic bag that I'm
10 removing from the evidence bag marked as Ten, with two items
11 in it, do you recognize those?

12 A. Yes.

13 Q. What are they?

14 A. My barrettes.

15 Q. And were they left at that scene?

16 A. Yes.

17 Q. Showing you a plastic bag with some change
18 in it, did you have any change with you?

19 A. Yes.

20 Q. What was it in?

21 A. It was in my pants pocket.

22 Q. You couldn't say, of course, whether that
23 change is the same change. Did you lose the change in your
24 pants pocket?

25 A. Yes, I think so.

26 MR. JEFFERS: I'm going to offer State's Proposed
27 Exhibits One, Two and Three at this time and Ten and its contents,
28 the three plastic bags.

29 MR. HENRY: No objection to Ten. I would ask
30 that the bags be marked as 10-A, B and C for purposes of the
31 record.

32 MR. JEFFERS: Let's mark the screwdriver 10-A for

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1 the record, the plastic, smaller plastic bag containing the two
2 gold barrettes as 10-B, the change as 10-C.

3 We will renew the offer as Ten, 10-A, B and
4 C.

5 MR. HENRY: No objection to One and Two, no
6 objection.

7 THE COURT: One, Two and 10-A, B and C will be
8 received.

9 MR. HENRY: Is counsel offering Three?

10 MR. JEFFERS: Let's see. That's Fifteen.

11 MR. HENRY: No objection to Fifteen.

12 MR. JEFFERS: One, Two and Fifteen.

13 THE COURT: I thought you said One, Two and
14 Three.

15 MR. JEFFERS: Where is Three?

16 THE COURT: Madam Clerk, what is Three?

17 THE CLERK: It's a photograph.

18 MR. HENRY: Three is a photograph of the automo-
19 bile, bearing CYN697.

20 MR. JEFFERS: I haven't had anybody that took
21 that picture lay a foundation for it yet.

22 THE COURT: You said you were offering One, Two,
23 Three and Ten.

24 MR. JEFFERS: Apparently what I meant was One,
25 Two and Fifteen. That's my error. I would ask leave to offer
26 Sixteen, which is the evidence envelope containing the two vials
27 of dirt. I would offer Eighteen.

28 THE COURT: Well, we have no objection to One,
29 Two and Ten?

30 MR. HENRY: That's correct.

31 THE COURT: Now, we have Fifteen and Eighteen,
32 right? You are offering those?

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1 MR. HENRY: No objection to Fifteen, no objection
2 to Eighteen.

3 THE COURT: Alright, they will be received.

4 MR. JEFFERS: And I would offer Sixteen. We
5 have had the foundation for that laid previously by Officer
6 Bean, being a bag containing two vials of dirt and another
7 foreign substance.

8 MR. HENRY: I would object as to the relevance
9 of Sixteen. All we know now about that is it's two vials of
10 dirt.

11 MR. JEFFERS: If he wants to wait until we have
12 Diana Orrock testify what she found. If he wants to know about
13 chemical examination, we will get it.

14 MR. HENRY: I don't believe we have proper
15 foundation to make Sixteen relevant.

16 THE COURT: If you are bringing Orrock down, we
17 will reserve ruling on Sixteen.

18 MR. JEFFERS: All right. We have exemplars.

19 Q. (By Mr. Jeffers) Do you remember, Cheryl,
20 a man coming up and rolling your prints in the hospital?

21 A. Yes.

22 Q. Did you sign those cards? Is that your
23 signature?

24 A. Yes.

25 Q. Is that your signature on each one of those?

26 A. Yes.

27 MR. JEFFERS: At this time I would move to admit
28 Eleven, Twelve, Thirteen and Fourteen.

29 MR. HENRY: No objection.

30 THE COURT: Eleven, Twelve, Thirteen and Fourteen
31 will be admitted.

32 Q. (By Mr. Jeffers) All right. Let me show

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60

1 you here the photograph marked as Five. Do you recognize that?

2 A. Yes. That's my necklace.

3 Q. That's your necklace?

4 A. Yes.

5 Q. And that's taken in this car, Three? You
6 had that on you that day?

7 A. Yes.

8 Q. And that's your purse, your coat, comb,
9 and it's pictured in Four and your books that are pictured in
10 Six?

11 A. Yes.

12 Q. You did not give anyone any permission to
13 take your coat, your books, your purse?

14 MR. HENRY: Objection, leading.

15 THE COURT: Overruled.

16 THE WITNESS: No.

17 Q. (By Mr. Jeffers) Cheryl, the right side of
18 your face here, have you had any pain? Does that hurt?

19 MR. HENRY: Objection, irrelevant.

20 MR. JEFFERS: It's clearly relevant. A Supreme
21 Court case came down last week talked about substantial bodily
22 harm consists of any number of things, one is sustained, prolonged
23 physical pain.

24 MR. HENRY: Your Honor, count one --

25 THE COURT: I'll permit it.

26 MR. HENRY: -- is not pled in that fashion.

27 THE COURT: I think we need something more in the
28 record than just have you had pain.

29 MR. JEFFERS: Count one, we are talking about a
30 permanent disfigurement. Counts three, four, count five and
31 count six and count seven all have the terms substantial bodily
32 harm as defined in Chapter 193.

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1 MR. HENRY: I'll withdraw the objection. It's
2 relevant as to those counts.

3 THE COURT: Go ahead.

4 Q. (By Mr. Jeffers) Have you been in pain,
5 Cheryl?

6 A. Yes.

7 Q. From the injuries to the right side of your
8 head?

9 A. Yes.

10 MR. JEFFERS: I have no further questions of the
11 witness at this time.

12 CROSS-EXAMINATION

13 BY MR. HENRY:

14 Q. Cheryl, did you tell us that you left home
15 about 7:30 in the morning?

16 A. Yes.

17 Q. I'm talking about the 20th of February, 1979.
18 You were on your way to school?

19 A. Yes.

20 Q. What time did your first class start, or
21 what time did you have to be at school?

22 A. Eight.

23 Q. And you went from home to the Safeway Store?

24 A. Yes.

25 Q. Were you walking?

26 A. Yes.

27 Q. How far is it from your home to the Safeway
28 Store?

29 A. Maybe half a mile.

30 Q. And what did you do in the Safeway Store?

31 A. I bought a Coke.

32 Q. Then you went from the Safeway Store to the

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1 park?

2 A. Yes.

3 Q. And how far is it from the Safeway Store
4 to the park?

5 A. It's right behind it. Well --

6 Q. And you sat down in the park?

7 A. Yes.

8 Q. How long did you sit in the park before you
9 left to go to school?

10 A. Around fifteen, twenty minutes.

11 Q. How long had you been walking before you
12 got in the car with the man?

13 A. I walked across the street and just a little
14 ways up the path, not very far.

15 Q. Were you in the park with any friend?

16 A. No.

17 Q. Did you see anybody at the park who knew
18 you?

19 A. No.

20 Q. See anyone in the Safeway Store who knew
21 you?

22 A. No.

23 Q. How close were you to Basic High School
24 when you got in the car?

25 A. I don't know. It wasn't very far, because
26 you could see it.

27 Q. After the park rangers came and got you,
28 did you talk to any policemen about what had happened to you?

29 A. Right after?

30 Q. Yes. Did any policemen come to see you in
31 the hospital?

32 A. Yes.

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1 Q. That day?
2 A. I don't know.
3 Q. Did you tell anybody, the park rangers or
4 perhaps the policemen who came to see you the first day about
5 the license plate number?
6 A. Yes.
7 Q. And did you tell the park rangers, or did
8 you tell the policemen in the hospital?
9 A. I think it was the park rangers.
10 Q. And what license plate number did you tell
11 them?
12 A. CYN697.
13 Q. Did you tell them anything else? Did you
14 describe the car to them?
15 A. I told them it was a Polara.
16 Q. Did you describe the man to them?
17 A. I don't know. I don't think so.
18 Q. Did you remember what the man was wearing?
19 A. Yes.
20 Q. And did you tell the park rangers what the
21 man was wearing?
22 A. No.
23 Q. Who was the first police officer that you
24 told what the man was wearing, or where were you?
25 A. I was in the hospital, and it was Hoffman.
26 Q. Was that the same date, the 20th?
27 A. No, I don't think so.
28 Q. So it wasn't until after the 20th that you
29 told the police officers what the man was wearing? Let me direct
30 your attention to the photograph which is labeled as State's
31 Exhibit Six. I believe you said that's a photograph of your
32 school books?

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A. Yes.

Q. Is there something distinctive about them that lets you identify them as yours, as opposed to any other school books?

A. They look like mine. They are the same books I had.

Q. Did you just have two school books when you got in the car?

A. Yes.

Q. You've talked to police officers and district attorneys about what happened on the 20th before you came to court, haven't you?

A. Yes.

Q. Did any of these people show you photographs of cars or photographs of license plates or anything like that?

A. Yes.

Q. And when was the first time that you were shown the photograph of a car or a license plate? Was it Detective Hoffman who showed it to you?

A. No.

Q. Who was it?

A. It was Jeffers.

Q. Mr. Jeffers, the prosecutor in the courtroom this morning?

A. Yes.

Q. When did he show you the photographs?

A. When I was in the hospital. I think it was the Tuesday before I got out. I think it was last Tuesday. I'm not sure.

Q. Okay. This is Friday, the 12th. Are you referring to Tuesday, three days ago?

A. Tuesday before that, I think. I don't know.

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1 Q. You have identified a bunch of photographs
2 that Mr. Jeffers has shown to you here today, haven't you?

3 A. Yes.

4 Q. Did he show all those photographs to you
5 in the hospital?

6 A. Yes.

7 Q. And did he tell you what was going to happen
8 in the courtroom this morning?

9 A. Yes.

10 Q. Did he tell you how you would have to
11 testify about the photographs?

12 A. Well, he told me to identify them, if they
13 were mine.

14 Q. Did he tell you that those were photographs
15 of your books and your necklace and your purse?

16 A. No. He asked me if I recognized them.

17 Q. Directing your attention to the photograph
18 labeled as State's Exhibit Two, do you recognize the scene that
19 it depicts?

20 A. Do I recognize that area?

21 Q. Yes.

22 A. Yes.

23 Q. First of all, that depicts a scene out in
24 the desert with some men in a truck, doesn't it?

25 A. Yes.

26 Q. I'm directing your attention to the area as
27 opposed to the men or the truck. How is it that you recognize
28 that area as opposed to somewhere else out in the desert?

29 A. It looks like it because of the green right
30 there, and it had the rocks there. While I was there it was
31 exactly like that.

32 Q. Do you recognize it just because there's

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1 some green shrubbery and some rocks, or is there anything else
2 about it?

3 A. That's all I recognize it by.

4 Q. How long were you in the hospital?

5 A. Sixteen and one-half days.

6 Q. And did the doctors give you medicine while
7 you were in the hospital?

8 A. Yes.

9 Q. Did they give you medicine to try to prevent
10 you from feeling pain?

11 A. Yes.

12 Q. And were you given medicine that you had
13 to take after you left the hospital?

14 A. Yes.

15 Q. And are you taking that medicine today?

16 A. Yes.

17 Q. And do you know what that medicine is for?

18 A. It's so I don't get infected.

19 Q. So the medicine is antibiotics?

20 A. Yes.

21 Q. Do you have any pain medicine or any
22 tranquilizers that you take?

23 A. Yes.

24 Q. Is it pain medicine or tranquilizers?

25 A. Pain medicine.

26 Q. Do you take that daily?

27 A. No. Only when I'm in pain.

28 Q. Did you take it yesterday, the pain medicine?

29 A. No.

30 Q. Have you taken it today?

31 A. No.

32 Q. Other than the pain medicine and the

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1 antibiotics, is there any other medicine that you take?

2 A. (Witness shakes head in a negative manner.)

3 Q. Is your answer no?

4 A. No.

5 Q. Okay. What's the name of your doctor?

6 A. Hanson.

7 Q. Doctor Hamilton?

8 A. Hanson.

9 Q. Hanson?

10 A. Yes.

11 Q. Did your doctor tell you that there was
12 anything you should or shouldn't do when you took your antibio-
13 tics? For example, did he tell you you shouldn't ride a
14 bicycle or whatever, because it might make you dizzy or affect
15 you?

16 A. No.

17 MR. HENRY: Court's indulgence just a moment.

18 Q. (By Mr. Henry) Cheryl, I believe you told
19 us when you got in the car with the man, that he held a screw-
20 driver against your body and threatened you?

21 A. Yes.

22 Q. Did he have the screwdriver in his hand all
23 the time that he was with you?

24 A. No.

25 Q. Now, you've told us that more than once the
26 man engaged in an act of intercourse with you, right?

27 A. Yes.

28 Q. Did he have the screwdriver in his hand just
29 before he did that or while he was doing it?

30 A. I don't know. I don't think so.

31 Q. Did you see the man put the screwdriver down
32 after he first threatened you with it?

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1 A. No.

2 Q. Did you ever see the screwdriver in the man's
3 hand after you got out in the desert?

4 A. After the second time he put it up to my
5 stomach?

6 Q. Well, as I remember your testimony, you said
7 you drove out in the desert with the man?

8 A. Yes.

9 Q. And then you engaged in an act of intercourse,
10 is that true?

11 A. Yes.

12 Q. The first time that he engaged in an act of
13 intercourse with you, did he have the screwdriver in his hand?

14 A. I don't know.

15 Q. Did you see it?

16 A. No.

17 Q. How long before then was the last time you
18 had seen it?

19 A. It was after we got to the third place.

20 Q. Well, I guess what I'm trying to do is go
21 through things again sequentially as they happened. So I'm
22 talking about the first part of your testimony when you first
23 got out in the desert, did you see the screwdriver?

24 A. No.

25 Q. All right. Then the man engaged in an act
26 of intercourse with you, is that your testimony?

27 A. Yes.

28 Q. After the first time he engaged in an act
29 of intercourse with you, did he pick up the screwdriver and
30 threaten you again?

31 A. After the first time?

32 Q. Yes.

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1 A. No.

2 Q. So it's your testimony that other than when
3 he first threatened you with the screwdriver when you got in the
4 car, you never saw the screwdriver after that; is that true?

5 A. Yes, I saw it. I saw it after the third time
6 we had intercourse, because he put it up to my stomach.

7 Q. You saw the screwdriver and were threatened
8 with the screwdriver when you got in the car, then you didn't
9 see it after that during the first three acts of intercourse,
10 then you were threatened again; is that your testimony?

11 A. Yes.

12 Q. Okay. Then when you were threatened again,
13 what happened?

14 A. I started crying, asking him not to.

15 Q. Did he put the screwdriver down?

16 A. I don't know what he did with it.

17 Q. I believe it's your testimony that sometime
18 after that the man made you put your mouth on his penis, is that
19 true?

20 A. Well, it was right after he put the screw-
21 driver to my stomach the second time.

22 Q. What period of time passed between him putting
23 the screwdriver to your stomach and him making you do that?

24 A. A couple of minutes.

25 Q. Okay. And then after that, you never saw
26 the screwdriver again; is that true?

27 A. No.

28 Q. You are saying no, you never did see the
29 screwdriver after that?

30 A. Well, here today I have.

31 Q. Okay. When you got in the car you had your
32 purse and you had your school books, is that true?

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1 A. Yes.

2 Q. And you had some change in your pocket?

3 A. Yes.

4 Q. Were you wearing trousers?

5 A. I was wearing Levis.

6 Q. Did the man ever search your purse or say
7 anything to you about your purse or your school books or your
8 money?

9 A. He just told me to put them in the back seat.

10 Q. And was there every anything said after that
11 about the purse or the school books or the money?

12 A. No.

13 MR. HENRY: Thank you, Cheryl. I have no
14 further questions, your Honor.

15 MR. JEFFERS: Couple of questions, your Honor.

16
17 REDIRECT EXAMINATION

18 BY MR. JEFFERS:

19 Q. Cheryl, did the doctor talk to you, tell
20 you anything about your right eye?

21 MR. HENRY: Objection, calls for hearsay.

22 MR. JEFFERS: He opened it up on his question,
23 your Honor, that's why I'm back. He said what did the doctor
24 tell you about riding a bicycle, were you on medicine. I think
25 he opened the door for her to tell us what he told her about her
26 eye.

27 THE COURT: I don't think that's what he was
28 driving at.

29 MR. HENRY: I was inquiring as to whether the
30 medicine might have some effect on her ability to recall and
31 relate, not about her physical condition.

32 THE COURT: Counsel, I don't think --

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1 MR. JEFFERS: I have no further questions.

2 THE COURT: It's hearsay on hearsay.

3 MR. JEFFERS: I think it is, too. But I think he
4 opened the door.

5 MR. HENRY: Nothing further.

6 THE COURT: Do you have anything else?

7 MR. JEFFERS: No, your Honor, I have nothing else
8 of the young lady.

9 THE COURT: Cheryl, you may be excused. Remain
10 outside the courtroom and don't discuss your testimony until
11 after these proceedings are concluded.

12 MR. JEFFERS: May I call the next witness?

13 Your Honor, can we take a couple minutes?
14 I need a fingerprint exemplar that I've got to get to, either
15 have them rolled in court here, or I've got to find my investi-
16 gator, see whether he found my witness or not. If you'll give
17 me about three minutes, I'll be ready to go. I'll need a couple
18 of minutes.

19 THE COURT: We will relax for a couple of minutes,
20 let my court reporter loosen up her fingers.

21 MR. HENRY: Fine.

22 (Recess.)

23 THE COURT: 0669-79F, State of Nevada versus
24 John Eugene Doane. This is the time set for the continuation
25 of the preliminary examination in this matter.

26 MR. JEFFERS: Call Gregory James Langley,
27 l-a-n-g-l-e-y.

28 Whereupon,
29

30 G R E G O R Y J A M E S L A N G L E Y, having
31 been first duly sworn to tell the truth, the whole truth and
32 nothing but the truth, testified as follows:

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DIRECT EXAMINATION

BY MR. JEFFERS:

Q. Your name for the record?

A. Gregory James Langley, L-a-n-g-l-e-y.

Q. Your occupation?

A. Identification specialist with the Las Vegas Metropolitan Police Department.

Q. What training do you have there?

A. Primarily on-the-job training. I've attended the FBI latent fingerprint school, I've completed the institute of applied science course in fingerprints, and I'm also a certified latent fingerprint examiner by the International Association for Identification.

Q. Showing you here a photograph marked as State's Proposed Three, do you recognize that?

A. Yes, sir, I do.

Q. Did you take that photograph, or was it taken in your presence?

A. I took this photograph, yes, sir.

Q. Does that accurately depict what it portrays there?

A. Yes, sir, it does.

Q. When and where did you take the photograph?

A. This was in the Las Vegas Metropolitan Police Department Criminalistics Bureau on February 22nd, 1979.

Q. Showing you Three -- or, rather, Four, Five and Six, do you recognize those photographs?

A. Yes, I do.

Q. And are they the interior of the vehicle marked as Proposed Three?

A. That is correct, sir.

Q. Were they taken essentially the same date,

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1 time and place Three was taken?

2 A. Yes, sir.

3 Q. Do they all accurately depict what they
4 purport to portray there?

5 A. Yes.

6 MR. JEFFERS: Offer Three, Four, Five and Six
7 as State's Three, Four, Five and Six.

8 MR. HENRY: No objection.

9 THE COURT: State's Three, Four, Five and Six
10 will be received.

11 MR. JEFFERS: All right. I have previously
12 offered Eleven, Twelve, and Thirteen, I think.

13 THE COURT: Yes.

14 Q. (By Mr. Jeffers) Did you do any processing
15 for fingerprints of the vehicle pictured as State's Exhibit
16 Three there?

17 A. Yes, sir, I did.

18 Q. All right. Showing you here State's
19 Exhibits Eleven, Twelve, Thirteen and Fourteen, do you recognize
20 those exhibits?

21 A. Yes, sir, I do.

22 Q. And in the processing of the vehicle in
23 Three, did you process the trunk area of it?

24 A. Yes, sir, I did.

25 Q. Did you lift any latent prints, palm prints
26 or otherwise off of the trunk, rear portion of that car?

27 A. Yes, sir, I did.

28 Q. Did you compare those with the exemplars,
29 State's Eleven, Twelve and Thirteen, Fourteen?

30 A. Yes, sir, I did.

31 Q. What, if any, comparison were you able to
32 make?

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1 A. I found the victim's finger and palm prints,
2 as reflected in State's Exhibits Eleven, Twelve, Thirteen and
3 Fourteen on the exterior of the trunk lid on the left rear
4 portion.

5 Q. All this happened here in Clark County,
6 Nevada?

7 A. That's correct, sir.

8 MR. JEFFERS: I have no further questions of the
9 witness.

10
11 CROSS-EXAMINATION

12 BY MR. HENRY:

13 Q. Officer, other than the photographs you've
14 testified to and the prints that you lifted off the trunk, did
15 you participate in securing any other physical evidence connected
16 with the matter presently before the court?

17 A. Yes, sir, I did.

18 Q. And what was that physical evidence?

19 A. To be specific, I would have to refer to
20 my evidence impound report.

21 Q. Just what you remember right now.

22 A. There was a multi-colored leather handbag,
23 a plaid coat --

24 Q. These things are depicted in the photographs
25 you testified to?

26 A. Yes, sir.

27 Q. Other than the matters depicted in those
28 photographs, did you participate in securing or photographing
29 any other physical evidence?

30 A. The only thing that I can specifically recall
31 is there was a broken twig on the left side of the vehicle that
32 Detective Hoffman requested that we impound. And other than what

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1 is depicted in those photographs, I can't specifically recall
2 any other items that I secured personally from the vehicle.

3 Q. You did impound that twig, though?

4 A. That's correct, sir.

5 MR. LEBRY: Thank you. No further questions.

6 THE COURT: Any redirect, Mr. Jeffers?

7 MR. JEFFERS: None, your Honor.

8 THE COURT: Thank you, Mr. Langley.

9 MR. JEFFERS: Court's indulgence for one moment.

10 Whereupon,

11
12 J A N E T L E S N I A K, having been first duly
13 sworn to tell the truth, the whole truth and nothing but the
14 truth, testified as follows:

15
16 DIRECT EXAMINATION

17 BY MR. JEFFERS:

18 Q. Your name for the record, please?

19 A. Janet Lesniak, L-e-s-n-i-a-k.

20 Q. Where do you work?

21 A. Las Vegas Metropolitan Police Department.

22 Q. And what are your responsibilities there?

23 A. I'm assigned to the homicide detail.

24 Q. And you are familiar with this matter
25 presently before the court, are you not?

26 A. Yes, sir.

27 Q. Showing you here photographs marked as
28 Seven and Eight, do you recognize the person pictured there?

29 A. Yes, I do.

30 Q. Did you see her at the time these photographs
31 were taken?

32 A. Yes, I did.

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1 Q. Those pictures accurately depict the manner
2 in which she appeared on that day?

3 A. Yes, sir.

4 Q. Where were they taken?

5 A. Southern Nevada Memorial Hospital.

6 Q. Do you remember the date?

7 A. February the 20th.

8 Q. Do you know who took them? An ID officer?

9 A. ID Officer Sheets.

10 MR. JEFFERS: I would offer those as State's
11 Exhibits Seven and Eight, your Honor.

12 MR. BERRY: No objection.

13 THE COURT: All right. Seven and Eight will be
14 received.

15 Q. (By Mr. Jeffers) What were you doing at
16 Southern Nevada on that date?

17 A. My prime function, I was dispatched to,
18 originally, to Rose de Lima Hospital, where the victim was
19 originally taken, because we were not sure whether it was going
20 to be a homicide or whether the girl was going to live. So
21 that's why I was dispatched. And when they transported her
22 back to Southern Nevada Memorial Hospital, I responded out there.
23 When it was ascertained that we felt that she had been raped and
24 that she was going to live, I took the rape kit from the doctor
25 and impounded that rape kit and her clothing and turned the
26 matter over to the Juvenile Bureau.

27 Q. And showing you here an evidence bag that's
28 been marked as State's Proposed Exhibit Nineteen in this matter,
29 do you recognize this evidence bag?

30 A. Yes, sir.

31 Q. Did you bring that here today?

32 A. Yes, sir.

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Q. Where did you obtain it from?

A. The evidence vault.

Q. It was in a sealed condition at the time you got it?

A. Yes, sir.

Q. And do you know what this bag contains?

A. It contains the clothing that the victim was wearing at the time of the crime.

MR. HENRY: Pardon me. Could I take the officer on voir dire, your Honor?

THE COURT: All right.

VOIR DIRE EXAMINATION

BY MR. HENRY:

Q. Officer, you weren't present at the occurrence of the alleged crime before the court, were you?

A. No, sir.

Q. So you don't know what clothes she was wearing at the time, do you?

A. No. This was the clothing that she was wearing when she was brought into the hospital.

Q. Which hospital?

A. Rose de Lima.

Q. Were you present when she was brought in?

A. No. But the clothing wasn't removed from her then. It was removed from her at Southern Nevada Memorial Hospital, and I was present there.

MR. HENRY: All right. Nothing further. Thank you.

THE COURT: All right.

.....

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DIRECT EXAMINATION (Cont'd.)

BY MR. JEFFERS:

Q. All right. Did you get anything other than her clothes? You talked about a rape kit.

A. The rape kit that was taken by Mr. Simpson I also impounded.

Q. Is it here, or did you bring it?

A. I did not bring it, sir. It's in the evidence vault.

Q. All right. Would you open the bag. And you said that you have panties in that bag, are they in there?

A. Yes, sir.

THE COURT: Detective Lesniak, is this for --

MR. JEFFERS: I have to have something for Miss Orrock to testify from.

THE COURT: What is she going to testify about the clothes?

MR. JEFFERS: Analysis for sperm and acid phosphatase in the underwear of the victim.

THE COURT: Do you want them opened?

MR. HENRY: May I look at the bag?

MR. JEFFERS: Let's approach the bench.

(Discussion at the bench.)

THE COURT: Go ahead and open them.

MR. JEFFERS: For the record, there are a number of plastic bags, one, two, three, four, five plastic bags contained in the evidence exhibit marked as Proposed Nineteen, which at this time I would move to offer as Nineteen, together with its contents.

THE COURT: Do you want to have the individual items of clothing marked?

MR. JEFFERS: I'm just going to have one item

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1 marked, your Honor, as soon as she identifies a blue bag that's
2 been removed by the witness.

3 Q. (By Mr. Jeffers) Would you identify what
4 you removed.

5 A. A pair of pink and white striped underwear,
6 women's underwear, that has my initials and personnel number
7 on it, also Diana Orrock's name.

8 Q. All right. Would you replace those in the
9 bag. They appear to be in essentially the same condition as
10 at the time you impounded them?

11 A. Yes.

12 MR. JEFFERS: I was just going to mark the bag,
13 your Honor.

14 THE COURT: The plastic bag?

15 MR. JEFFERS: I was going to put the pants back
16 in the plastic bag.

17 THE COURT: I'm sorry. I wanted the record clear
18 as to what we were talking about.

19 MR. JEFFERS: I would offer Nineteen, a blue
20 plastic bag containing the panties she's identified, the
21 panties as 19-A, if that will please counsel.

22 THE COURT: All right.

23 Q. (By Mr. Jeffers) They appear to be in
24 essentially the same condition as they were when you took them
25 into custody?

26 A. Yes, sir.

27 Q. Would you replace the other four bags into
28 the evidence bag.

29 MR. JEFFERS: Your Honor, I would offer Nineteen
30 together with the four unmarked bags merely for preservation of
31 the chain of evidence. But I do not intend to have any further
32 testimony other than Diana Orrock's testimony regarding the chain

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1 of 19-A, which has been removed from Nineteen.

2 MR. HENRY: I would object to the introduction
3 of Nineteen on relevance. The state of the record is entirely
4 insufficient to tie that 19-A specifically into this case right
5 now.

6 MR. JEFFERS: She said she removed them from the
7 victim, your Honor.

8 MR. HENRY: That's not her testimony.

9 MR. JEFFERS: Just a minute, and it will be.

10 THE COURT: Do you want me to reserve it until
11 you finish?

12 MR. JEFFERS: I will withdraw it.

13 Q. (By Mr. Jeffers) Showing you Seven and
14 Eight, you said you recognize that person.

15 A. Yes, sir.

16 Q. Did the pants, 19-A, come off that person?

17 A. Yes.

18 Q. You took them into your personal care,
19 custody and control?

20 A. Yes.

21 Q. That's the pants in 19-A?

22 A. Yes, sir.

23 Q. They appear to be in essentially the same
24 condition as they were when you took them into custody?

25 A. Yes, sir.

26 MR. JEFFERS: Renew the offer.

27 MR. HENRY: No objection.

28 THE COURT: Nineteen and 19-A will be received.
29 Have any other questions?

30 MR. JEFFERS: None, your Honor.

31
32

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CROSS-EXAMINATION

BY MR. HENRY:

Q. Officer, you said you were present with Cheryl Parker at Rose de Lima and also at Southern Nevada?

A. When I arrived at Rose de Lima, Cheryl was just leaving via Mercy on the way to Southern Nevada.

Q. This was on the 20th of February, 1979, at about what time?

A. Approximately 11:30.

Q. Did you attempt to question Miss Parker?

A. Yes, I attempted to.

Q. Did other officers in your presence attempt to question her?

A. In my presence? One other officer, very briefly.

Q. Was she able to respond to your questions?

A. She was able to respond slightly verbally with a yes and a no and a nod of the head, yes.

Q. Would it be true, then, to say that your questioning took the form of asking leading questions to which she indicated yes or no?

MR. JEFFERS: I would object. That calls for a conclusion.

THE COURT: Sustained.

Q. (By Mr. Henry) Did you ask her leading questions, questions to which she could answer yes or no?

MR. JEFFERS: Your Honor, I'm going to object unless there's some foundation regarding the field of law so that this witness would or would not know what's a leading question. I think it calls for a conclusion.

THE COURT: What difference does it make if she was asking leading questions? She testified she responded with

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1 a yes-or-no answer. I'm certain she was asking leading
2 questions. What are you driving at? What difference does
3 it make?

4 MR. HENRY: I'm trying to get to the issue of
5 initial identification of the car and the suspect, something
6 like that.

7 THE COURT: Why don't you ask her about it.
8 Ask her how she initially identified the car, if she did.

9 Q. (By Mr. Henry) Did you ask her any
10 questions concerning the identity of the perpetrator?

11 A. I asked her if she could identify him,
12 to which she stated yes.

13 Q. Did she give you a description of his
14 clothing?

15 A. No, sir.

16 Q. Did you ask questions concerning that?

17 A. No, sir.

18 Q. Did you ask questions concerning whether or
19 not an automobile was involved?

20 A. Yes.

21 Q. And did she respond?

22 A. Yes. I believe I asked her if she obtained
23 the license number from the car, and she said she did.

24 Q. And did she give you that number?

25 A. No. I asked her if she gave the license
26 number to one of the officers at the scene or one of the park
27 service officers, which she replied yes.

28 Q. Did you ask her to describe the car, the
29 make of the car or the model?

30 A. I did not go into too many questions. Like
31 I said earlier, she could not speak very well, she was in quite
32 a bit of obvious pain. So she could not answer much more than

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1 yes or no to any of the questions.

2 Q. Are you the prime investigator on this
3 case?

4 A. No, sir.

5 Q. Are you familiar with the investigation
6 of this case?

7 A. As I said earlier, after the initial
8 impounding of these items, it was turned over to the Juvenile
9 Bureau.

10 Q. Are you aware of any statements or
11 confessions that the defendant gave?

12 A. No.

13 MR. HENRY: Thank you. Nothing further.

14 MR. JEFFERS: No redirect.

15 THE COURT: Thank you, Detective Lesniak.

16 MR. JEFFERS: Court's indulgence a moment.

17 MR. HENRY: Your Honor, if counsel can make a
18 short offer of proof as to the expert testimony to be given
19 by this witness, I can probably stipulate to qualifications.

20 MR. JEFFERS: All right. Her testimony will be
21 that she examined these pants and they have sperm and acid
22 phosphatase in substantial quantity.

23 MR. HENRY: I'll stipulate for purposes of
24 this proceeding, Officer Orrock is an expert witness.

25 MR. JEFFERS: Do you want to go into the
26 testimony?

27 MR. HENRY: I'm just stipulating to qualifications.
28 Whereupon,

29
30 D I A N A O R R O C K, having been first duly
31 sworn to tell the truth, the whole truth and nothing but the
32 truth, testified as follows:

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DIRECT EXAMINATION

BY MR. JEFFERS:

Q. Miss Orrock, you are with the Las Vegas Metropolitan Police Department Identification Bureau?

A. Yes, I am.

Q. And you are a criminalist with them?

A. Yes.

Q. All right. Showing you here State's Exhibit 19-A, they have been removed here in court and the seals have been broken on State's Exhibit Nineteen. Do you recognize the evidence bag marked as Nineteen?

A. Yes. My signature is on the front of the bag on the chain of custody, also my two seals on the back bottom of the bag.

Q. All right. These seals were broken at the top, the item which has been marked on the plastic bag as 19-A, removed from Nineteen. Can you identify 19-A?

A. Yes. My signature appears on the blue plastic bag.

Q. Is that how you identify the object?

A. Yes, I do.

Q. Did you examine the contents of that blue plastic bag?

A. Yes, sir.

Q. And what was the purpose of your examination?

A. I examined the pink and white panties within for the presence of any hairs that might be adhering to the garment, and also I examined the garment for the presence of semen residues.

Q. And what was the result of your examination regarding semen residues?

A. The crotch area was found to be very strong

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1 in acid phosphatase activity, also for the presence of intact
2 spermatozoa.

3 MR. JEFFERS: Pass the witness.

4
5 CROSS-EXAMINATION

6 BY MR. HENRY:

7 Q. What test did you perform to detect the
8 presence of intact spermatozoa?

9 A. Initially a small quantity of the material
10 in the crotch area was examined for the presence of acid
11 phosphatase. After I obtained a positive result with this,
12 I took a small portion of the material and extracted it and
13 made a slide, a stained slide of the extract and examined it
14 microscopically.

15 Q. Is it your testimony that you observed
16 live spermatozoa?

17 A. Not live. Intact spermatozoa.

18 Q. Can you describe what you mean?

19 A. An intact spermatozoa would be one that is
20 there in its entirety, the head, the neck, the tail portion all
21 in one place rather than identifying a head portion or a tail
22 portion separately.

23 Q. What is an intact spermatozoa indicative of,
24 if anything?

25 A. Intact spermatozoa indicates to me the
26 presence of a spermatozoa. In other words, if you were to find
27 things which would appear to be the head of a spermatozoa or the
28 tail of a spermatozoa, but didn't find them together, they could
29 be artifacts or things appearing to be spermatozoa. So the
30 examination that I do is one that looks specifically for intact
31 spermatozoa.

32 Q. Are you able to form the opinion that these

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1 spermatozoa adhered to 19-A within a short period of time or
2 any period of time?

3 A. A time element I couldn't say.

4 Q. What's the presence of acid phosphatase
5 indicative of?

6 A. It indicates the presence of a semen residue.

7 Q. Can it indicate anything else?

8 A. Not that I can think of, no.

9 Q. So it's your testimony as an expert witness
10 that acid phosphatase couldn't be found on 19-A unless there
11 was a semen residue?

12 A. That's correct.

13 Q. Did you perform any other tests in
14 connection with the case that's presently before the court?

15 A. I performed other examinations, yes.

16 MR. HENRY: No further questions.

17
18 REDIRECT EXAMINATION

19 BY MR. JEFFERS:

20 Q. What other examinations did you perform on
21 this particular item? Anything?

22 A. Other evidence involved with this particular
23 case. I performed a hair examination, blood typing, examination
24 of various other items.

25 Q. Showing you this screwdriver here marked as
26 10-A, do you recognize that item?

27 A. Yes. My signature appears on the plastic
28 bag, also on the screwdriver.

29 Q. What tests did you perform and what did you
30 find on that?

31 A. Performed an examination for the presence
32 of blood on the screwdriver. The handle of the screwdriver was

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1 found to contain human blood Type A2.

2 Q. Did you have any blood to compare that with?

3 A. Yes.

4 Q. What was that?

5 A. A tube of blood --

6 MR. HENRY: I will object to any testimony as
7 to any comparison until the matter being compared is in evidence.

8 MR. JEFFERS: He asked it. He opened it up.

9 THE COURT: Yeah, but I think we are getting a
10 little far afield.

11 MR. JEFFERS: All right. I have no further
12 questions.

13 RECROSS-EXAMINATION

14 BY MR. HENRY:

15 Q. You said you examined 19-A for the presence
16 of hair. Did you find it?

17 A. I found two hairs adhering to the panties.

18 Q. Did you perform any tests on those?

19 A. Yes, I did.

20 Q. What tests did you perform?

21 A. I performed a microscopic examination of
22 the hairs.

23 Q. What were you attempting to determine?

24 A. Whether or not they were consistent with
25 the victim's pubic hair.

26 Q. All right. And did you have a sample of
27 the victim's pubic hair?

28 A. Yes, I did.

29 Q. Had you gotten that sample yourself?

30 A. No, I did not. I was not involved with the
31 actual collection procedure.

32 Q. Did you form an opinion as to whether the

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1 hairs that you removed from 19-A were consistent with the
2 victim's pubic hair?

3 A. Yes, I did.

4 Q. What was that opinion?

5 A. Both of the pubic hairs were found to be
6 similar to and consistent with the victim's own pubic hair.

7 MR. HENRY: Nothing further.

8 THE COURT: Thank you very much for your
9 testimony.

10 MR. JEFFERS: I don't believe we will offer
11 anything further. The case stands submitted, your Honor.

12 THE COURT: Sixteen and Seventeen, which are the
13 two vials, are going to stand submitted. I'm not going to admit
14 them.

15 MR. JEFFERS: I want them retained for the
16 purposes of the chain. We have no testimony regarding them, and
17 I don't think they are material anyway.

18 THE COURT: They will be retained with the
19 exhibits.

20 MR. JEFFERS: Is everything offered and admitted?

21 THE CLERK: Seventeen is the photographs that
22 were taken. At first they were offered.

23 THE COURT: We are going to try to get those.

24 MR. JEFFERS: I'll find out what the status of
25 the thing is as soon as I can. I will advise the Court.

26 THE COURT: State of Nevada has rested their
27 case against your client, Mr. Henry. Do you have any witnesses
28 to present?

29 MR. HENRY: No. I will state for the record I
30 have advised my client he has a right to testify. I have
31 advised him not to do so. I believe that he won't testify.
32 We have no further witnesses, and defense would rest.

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1 THE COURT: He understands he has a right to
2 make both sworn and unsworn statements?

3 MR. HENRY: Yes, I've advised him.

4 MR. JEFFERS: Just for the record, I would like
5 to state I gave counsel, as far as I know, a complete set of
6 the contact prints, color photographs of all of the photographs
7 that were taken in connection with this matter, save and except
8 the photograph marked as Number Nine, which I exhibited to
9 counsel. That was the only copy I had of it.

10 MR. HENRY: That's correct, your Honor.

11 THE COURT: Do you want to argue about it briefly?

12 MR. JEFFERS: I would like to make some statements,
13 your Honor, regarding the amended criminal complaint that is now
14 on file. It does not, even though on the heading on counts --

15 THE COURT: Counts three, four and five.

16 MR. JEFFERS: Counts three, four, five and six
17 have the use of the term the infliction of substantial bodily
18 harm heading each one of the counts. It does not have it within
19 the body of the count itself. I think, to be procedurally
20 correct, it should have that, as I believe the State has
21 established it. I have a second amended criminal complaint
22 that does have those words in there, which I could file at this
23 time. But I believe a proper pleading, just the caption on the
24 heading of each one of the counts where the term substantial
25 bodily harm enhances the penalty of the count, that it should
26 be pled in the body of the count itself.

27 MR. HENRY: Your Honor, I would object to filing
28 a second amended criminal complaint. This matter was heard today
29 on the one that's before the Court. I would also object to
30 amending this criminal complaint by interlineation.

31 I think it was clear that the matter was
32 presented to the Court in terms of what's in count three, four

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1 five and six in the heading. And I won't dispute that the
2 defendant had notice, that's not what I'm talking about. What
3 I'm talking about is the proof that's before the Court. And
4 perhaps that's another matter.

5 It's been alleged that there was substantial
6 bodily harm. I don't know but that there wasn't, but I'm
7 persuaded that the state of this record is insufficient.
8 Earlier counsel made an offer of proof that he inquired as to
9 whether Miss Parker was in pain in order to prove up the
10 allegations in counts three, four, five and six, and she
11 answered she was in pain at some time. That's not sufficient,
12 though.

13 To prove up substantial bodily harm in terms
14 of pain, there has to be proof that it was prolonged and
15 protracted. And there's nothing in the record to show that to
16 the Court.

17 THE COURT: What about those photographs?

18 MR. JEFFERS: What about counsel's questioning
19 regarding what medication she's given for the pain, even up
20 until today?

21 MR. HENRY: Your Honor, the photographs show
22 someone who has been wounded about the face in a hospital,
23 covered with blood. But I don't believe that's sufficient to
24 prove up protracted and prolonged pain. Also the fact that she
25 was prescribed pain medicine after she got out of the hospital
26 is not sufficient.

27 THE COURT: Let me see Six and Seven.

28 MR. HENRY: It's her testimony she didn't take
29 the medicine yesterday or today because she didn't need it.

30 THE COURT: Well, Mr. Henry, looking at State's
31 Exhibits Seven and Eight, there is no question in the Court's
32 mind that the victim suffered substantial bodily harm.

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1 MR. HENRY: Your Honor, counsel can correct me
2 if I'm wrong, but I believe in order to prove up at any level
3 substantial bodily harm there has to be proof of prolonged
4 or protracted pain, of loss of a bodily function or of permanent
5 disfigurement.

6 THE COURT: All you have to do is look at these
7 pictures and it becomes abundantly clear to you she suffered
8 all of those.

9 MR. JEFFERS: There is a case that came down
10 last week, a Supreme Court case on the very issue of substantial
11 bodily harm and what factors are necessary. And the Court made
12 it very clear that prolonged physical pain or the loss of a
13 member or permanent disfigurement, either one or both, were
14 sufficient to establish substantial bodily harm as set out in
15 193.095, bodily injury which creates substantial risk of death
16 or which causes serious disfigurement or protracted loss or
17 impairment of bodily organ.

18 The Court can look at the lady, look at
19 the photograph, see the right side of her head is literally
20 crashed in. I think the questioning elicited by counsel she
21 has sustained pain over this period of time and was in the
22 hospital, I don't remember the exact number of days she said,
23 but something like two weeks. I think the fact that it is
24 necessary to take pain pills, even to now, is more than abundant
25 evidence to show substantial bodily harm as set out in 193.

26 MR. HENRY: Much has been said about this case
27 in the press and in conversations with the Court in my presence,
28 but I'm talking about what's in the record right now. There's
29 nothing in the record as to injury which creates a substantial
30 risk of death. There's nothing in the record as to injury which
31 would create permanent disfigurement. We had no expert testimony
32 from a physician.

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1 THE COURT: Come on, this is a preliminary
2 hearing. There's no question this record has got testimony
3 in it about permanent disfigurement. The Court's own viewing
4 of the victim indicates there's permanent disfigurement. Anyone
5 that looks at State's Seven and Eight and can stand and argue
6 there's not substantial bodily harm is out of their mind.

7 MR. HENRY: I won't argue as to whether I'm out
8 of my mind or not, your Honor, and I agree it's a preliminary
9 hearing. But the elements are all before the Court, it's just
10 a question of a matter of proof. Since the Court indicated
11 its inclination, I won't belabor this issue.

12 THE COURT: The Court's feeling is there is
13 ample evidence for substantial bodily harm. I am wrestling with
14 what to do with three, four, five and six. I'm of the opinion
15 your client was on notice. I'm going to amend counts three,
16 four, five and six to include the allegation that the defendant,
17 among other charges in counts three, four, five and six, did
18 inflict substantial bodily harm on the victim, Cheryl Parker.

19 MR. HENRY: For the record, your Honor, as to
20 count one, I would move to dismiss basically on the same grounds
21 that the record created by counsel for the State does not substan-
22 tiate the allegation of permanently disfiguring the face. There
23 is nothing one way or the other in the record.

24 THE COURT: I view the record a little different.
25 That motion is noted and overruled.

26 MR. HENRY: As to count two, attempted murder,
27 alleging stabbing at and into the face with a screwdriver, there
28 is no proof in the record as to that. And I would move to dismiss
29 it. Three, four, five and six have been previously discussed.
30 I would move to dismiss out the allegation of substantial bodily
31 harm in count seven for the reasons I've previously argued.

32 And as to count eight, I believe the state of

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1 the record as to count eight is that she got into the car with
2 her purse and her books and that after the matters referred in
3 the previous counts had occurred, the man presumably left, and
4 those items were still in the car. So there was a taking, but
5 I don't believe that there's any proof of a wilfull or inten-
6 tional taking.

7 I believe that whatever else there was proof
8 of here, there's no proof that the defendant's intent was to
9 commit robbery. I believe that the state of the record is such
10 as to create a reasonable inference that the items just got into
11 the car and stayed in the car inadvertently, not as a result of
12 any design to criminally, permanently deprive Miss Parker of them.
13 So I would move to dismiss that count.

14 THE COURT: Wasn't it Miss Parker's testimony
15 when she initially got into the car --

16 MR. JEFFERS: He said throw the books and your
17 purse in the back.

18 MR. HENRY: It was her testimony that a screwdriver
19 was held against her and later on on cross it was her testimony
20 that he said throw the books in the car or in the back. But it
21 was also her testimony he never talked about the books or the
22 purse or anything like that. And I don't believe that the record
23 will substantiate that he held the screwdriver up against her and
24 in the very same time frame told her to put the books into the
25 back seat or the purse.

26 MR. JEFFERS: I would be glad to have her read the
27 record back, but my understanding is she got in the car to go to
28 school. When she got close to school, he stuck the screwdriver
29 in her stomach, said be careful. I may have to kill you. Throw
30 your purse and books into the back. He drove away, leaving her
31 in the dirt bleeding, and took her personal property with him.
32 If that isn't taking personal property of another by threat,

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1 violence or fear thereof, I don't know what is.

2 THE COURT: Well, it's not as strong as the other
3 counts, but I think at this preliminary stage of the proceedings
4 the State of Nevada has met their burden in that matter.

5 Accordingly, John Doane, it appearing to me from the complaint
6 on file herein that crime have been committed, to-wit, mayhem,
7 attempt murder, sexual assault with substantial bodily harm,
8 first degree kidnapping with substantial bodily harm, robbery
9 with use of a deadly weapon in the commission of a crime, and
10 there is sufficient cause to believe the defendant named herein
11 is guilty thereof, I hereby order the said defendant be held
12 to answer to said charge in the Eighth Judicial District Court,
13 State of Nevada, County of Clark, on March 28th, 1979, at the
14 hour of 9:00 a.m., Department Number Eight.

15 MR. HENRY: Thank you, your Honor.

16 THE COURT: Thank you.

17 MR. JEFFERS: Your Honor, we'll look into that
18 photograph.

19 THE COURT: That's another matter we better clear
20 up. As a result of this bindover, I have lost jurisdiction of
21 this case; however, we did agree on a photograph. I don't know
22 if we agreed on photographs. That's what we were going to argue.

23 MR. JEFFERS: I think we will find that one will
24 be sufficient.

25 MR. HENRY: I'm not sure there's a clear under-
26 standing. I'll abide by what my understanding was, which is if
27 counsel for the State wishes the photograph to be admitted as
28 Seventeen and made a part of this record, that's fine with me
29 as long as we have an affidavit accompanying it from the officer
30 who took it, describing the time and place and the circumstances
31 of exposing his film.

32 MR. JEFFERS: That's fine. What we will do, we

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1 will just staple the picture to the affidavit, have it brought
2 to the Clerk of the Court and marked and placed in the record
3 with all the other evidence we have.

4 THE COURT: That's agreeable, counsel?

5 MR. HENRY: Fine.

6 THE COURT: Thank you very much.


7 MR. HENRY: Thank you, your Honor.

8 MR. JEFFERS: Bail remains?

9 THE COURT: Yes.

10
11 * * * * *

12
13 ATTEST: Full, true and accurate transcript of proceedings had.
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18 ROMAIN L. OLSON, CSR #108

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Aug 23 4 49 PM

CLERK
J. J. JOHMAN
J. J. JOHMAN

1 CASE NO. C44644

2 DEPARTMENT EIGHT

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6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF CLARK
8
9

10 THE STATE OF NEVADA,)
11 Plaintiff,)
12 vs.)
13 JOHN EUGENE DOANE,)
14 Defendant.)
15

REPORTER'S TRANSCRIPT

16
17
18 BEFORE THE HONORABLE MICHAEL J. WENDELL, DISTRICT JUDGE

19 Friday, August 10, 1979
20

21 APPEARANCES:

22 For the State: RAY JEFFERS, ESQ.
23 Deputy District Attorney

24 For the Defendant: WILLIAM HENRY, ESQ.
25 Deputy Public Defender
26
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32 Reported by: THOMAS D. MERCER, CSR, No. 33, PTL

1 LAS VEGAS, CLARK COUNTY, NEVADA, FRIDAY, AUGUST 10, 1979

2 * * * * *

3
4 THE COURT: State of Nevada against
5 John Eugene Doane.

6 The defendant is present in custody,
7 represented by Mr. Henry, of the Public Defender's Office. Also
8 present, Mr. Ray Jeffers, of the District Attorney's Office;
9 and Mr. Gerald Waite, also of the District Attorney's Office.

10 It is my understanding, Counsel, that the
11 defendant is before the Court today to change his plea to the
12 various charges set forth in this Information?

13 MR. HENRY: That is correct, your Honor.
14 Respective counsel effected a non-trial disposition of this
15 matter. Pursuant to that proposed disposition, we would ask the
16 Court at this time to withdraw the earlier pleas of not guilty,
17 for the purposes of entering pleas of guilty.

18 We have prepared certain documents in support
19 of this plea of guilty, and we would inform the Court that a
20 statement of facts, in my opinion, will support the plea as to
21 Count I of the Information, Count II, Count III, Count VII and
22 Count VIII. However, as to Count IV and Count V and Count VI,
23 we would ask to proceed under the authority of Alford v.
24 North Carolina. The defendant is prepared to make the
25 appropriate representations to the Court. And for a factual
26 basis, we would ask the Court to examine the evidence in its
27 file, specifically the proceedings before Judge Ahlstrom at the
28 preliminary hearing.

29 If I could approach the bench with the
30 documents that I have had marked as Exhibits A, B and C.

31 THE COURT: Yes.

32 MR. JEFFERS: The State will acknowledge receipt

1 of those documents, your Honor. We have no objection to the
2 Court filing those as the Court sees fit.

3 THE COURT: Before they are filed, let me inquire.

4 Mr. Doane, you are John Eugene Doane?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Doane, have you read each of these
7 documents that have been submitted by your attorney just now?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: That is the document entitled "Statement
10 of facts in support of guilty plea," which you signed, dated
11 August 8th?

12 THE DEFENDANT: Yes.

13 THE COURT: You have read that?

14 THE DEFENDANT: Yes.

15 THE COURT: How far have you gone in school,
16 Mr. Doane?

17 THE DEFENDANT: High school.

18 THE COURT: Do you read and write the English
19 language?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Do you have any difficulty reading and
22 writing?

23 THE DEFENDANT: No.

24 THE COURT: Also there is a second document,
25 entitled "Stipulation in support of non-trial disposition to be
26 entered into on the date this instrument is filed." That is
27 signed by your attorney, by Mr. Jeffers and also by you. Did
28 you sign that document?

29 THE DEFENDANT: Yes, I did.

30 THE COURT: Did you read that before you signed it?

31 THE DEFENDANT: Yes, I did.

32 THE COURT: Do you believe you understand what that

1 means?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: Going back to the first document,
4 Exhibit A, entitled "Statement of facts in support of guilty
5 plea," did you carefully read both pages of that document before
6 you signed it?

7 THE DEFENDANT: Yes, I did.

8 THE COURT: Do you believe you understand what that
9 document contains?

10 THE DEFENDANT: Yes.

11 THE COURT: The third document is marked as
12 Exhibit C. This is entitled "Statement of penalties." It also
13 bears both your signature and the signature of your attorney
14 Mr. Henry. It consists of six pages. Did you read each of
15 those six pages, Mr. Doane?

16 THE DEFENDANT: Yes, I did.

17 THE COURT: Do you believe you understand what is
18 contained in those six pages?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you have any questions about any of
21 these three documents, as to what they are or what they contain?

22 THE DEFENDANT: No, I don't.

23 THE COURT: The Court will permit all three of these
24 documents to be filed at this time.

25 MR. HENRY: Your Honor, one further thing.
26 Respective counsel would ask the Court to proceed in a slightly
27 different fashion. Counsel for the State of Nevada proposes to
28 make certain remarks as to this case at the end of the Court
29 taking the plea, and has been gracious enough to let me see what
30 those remarks would be. And those will be the remarks that the
31 State has to say or has to inform the Court as to its position
32 on sentencing in this matter.

1 MR. JEFFERS: That is correct, your Honor.

2 THE COURT: Did you wish the Court to read that at
3 this time?

4 MR. JEFFERS: Your Honor, I would read it into the
5 record at the completion, after the Court has taken the plea,
6 if that please the Court.

7 THE COURT: Very well, Mr. Jeffers. Anything further
8 at this time, Mr. Henry?

9 MR. HENRY: No, your Honor.

10 THE COURT: Mr. Doane, have you discussed this fully
11 with Mr. Henry? What is taking place here today?

12 THE DEFENDANT: Yes, I have.

13 THE COURT: Could you estimate how much time you
14 have spent with Mr. Henry discussing this matter?

15 THE DEFENDANT: A couple of hours.

16 THE COURT: Did that include the time in reading
17 these three statements that I have received in evidence this
18 morning?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you have any questions at all about
21 what is taking place today?

22 THE DEFENDANT: No, I don't.

23 THE COURT: Is it your desire at this time to
24 withdraw your pleas of not guilty to Count I charging you with
25 mayhem; Count II, charging you with attempt murder; Counts III,
26 IV, V and VI, each of which charge you with sexual assault with
27 the infliction of substantial bodily harm and the use of a
28 deadly weapon; and also to withdraw your plea of not guilty to
29 Count VII, charging you with first degree kidnapping with the
30 infliction of substantial bodily harm and the use of a deadly
31 weapon; and also Count VIII, charging you with robbery and use
32 of a deadly weapon? Do you now wish to withdraw your plea of

1 not guilty to each of those counts?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: You say you have discussed this fully
4 with Mr. Henry?

5 THE DEFENDANT: Yes, I have.

6 THE COURT: Will you waive the further reading of
7 this information at this time and the necessity of reading the
8 names of witnesses that are attached thereto?

9 MR. HENRY: Yes, your Honor.

10 THE COURT: At this time the Court permits the
11 defendant to withdraw each of his pleas of not guilty.

12 Mr. Doane, how do you plead to Count I of this
13 information charging you with a felony, mayhem, alleged to have
14 occurred on or about February 20, 1979, in Clark County, Nevada,
15 the alleged victim being one Cheryl Parker? Are you guilty or
16 not guilty?

17 THE DEFENDANT: I'm guilty.

18 THE COURT: In Count II, the charge being attempt
19 murder of one Cheryl Parker, alleged to have occurred in Clark
20 County, Nevada on or about the same date, that being
21 February 20th, 1979; how do you plead to that charge? Are you
22 guilty, or not guilty?

23 THE DEFENDANT: Guilty.

24 THE COURT: In Count III you are charged with the
25 sexual assault, with the infliction of substantial bodily harm
26 and the use of a deadly weapon. You're charged with sexually
27 assaulting Cheryl Parker, and also this resulted in substantial
28 bodily harm to her. And also you used a weapon during the
29 commission of that crime, that weapon being a screwdriver.

30 Are you guilty of Count III or not guilty?

31 THE DEFENDANT: I'm guilty.

32 THE COURT: As to Count IV, charging you with

1 sexual assault with the infliction of substantial bodily harm
2 and the use of a deadly weapon, the alleged victim being
3 Cheryl Parker; also Count V, charging you with sexual assault
4 with the infliction of substantial bodily harm and the use of a
5 deadly weapon, the alleged victim being Cheryl Parker; and
6 Count VI, charging you with sexual assault with the infliction
7 of substantial bodily harm and the use of a deadly weapon on one
8 Cheryl Parker; how do you plead to each of those charges?

9 THE DEFENDANT: Guilty.

10 THE COURT: Are you entering a plea of guilty to
11 those charges -- was this an Alford plea, did you say?

12 MR. HENRY: Yes, your Honor. As to Counts IV, V
13 and VI the plea would be under the authority of Alford v.
14 North Carolina. I have discussed the matter of those counts
15 with the defendant. Although his statement of facts does not
16 encompass those counts, he is of the opinion, as I am, that if
17 he went to trial, a jury would convict him of those counts.

18 THE COURT: Do you concur with the statement just made
19 by Mr. Henry, Mr. Doane?

20 THE DEFENDANT: Yes.

21 THE COURT: Have you discussed that fully with
22 Mr. Henry?

23 THE DEFENDANT: Yes, I have.

24 THE COURT: As to Count VII, charging you with the
25 first degree kidnapping with the infliction of substantial bodily
26 harm and the use of a deadly weapon on one Cheryl Parker, how do
27 you plead to that charge?

28 THE DEFENDANT: Guilty.

29 THE COURT: As to Count VIII charging you with
30 robbery with the use of a deadly weapon, how do you plead to that
31 charge?

32 THE DEFENDANT: Guilty.

1 THE COURT: Again, the alleged victim in that count
2 is Cheryl Parker. And again, the alleged weapon used was a
3 screwdriver. Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Are each of your pleas of guilty made
6 freely and voluntarily, without any threat or fear to yourself
7 or to anyone closely related to you?

8 THE DEFENDANT: Yes.

9 THE COURT: Essentially, what I am asking you, are
10 you entering these pleas voluntarily?

11 THE DEFENDANT: Yes, I am.

12 THE COURT: By pleading guilty to each of these
13 counts you are giving up your right to a speedy, public jury
14 trial free of prejudicial publicity; the right to an attorney to
15 represent you at that jury trial; the right to confront the
16 witnesses against you and cross-examine those witnesses; the
17 right to have subpoenas issued, that is, compulsory process
18 issue for the attendance of witnesses to testify in your behalf.
19 And at the time of the trial, Mr. Doane, you could refuse to
20 take that witness chair and testify. If you chose not to testify
21 at the jury trial, no one could make any comment to the jury on
22 your refusal to testify.

23 Do you understand you are giving up all of these
24 rights today when you enter these pleas of guilty to each of
25 these counts?

26 THE DEFENDANT: Yes.

27 THE COURT: By pleading guilty to each of these
28 counts you could be sentenced to the Nevada State Prison; do you
29 understand that?

30 THE DEFENDANT: Yes.

31 THE COURT: Do you understand that the Court cannot
32 grant you probation in this case, because some of these offenses

1 are such that the Court does not have the jurisdiction or the
2 power to grant probation. Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Have you been told by Mr. Henry what the
5 possible penalties could be for each of these charges?

6 THE DEFENDANT: Yes.

7 THE COURT: Have you also been told by Mr. Henry
8 what the total penalty could be, and also what the less serious
9 penalty could be for all these counts?

10 THE DEFENDANT: Yes.

11 THE COURT: On the charge of mayhem, do you
12 understand you could be sentenced to the Nevada State Prison for
13 a term of from one to ten years?

14 THE DEFENDANT: Yes.

15 THE COURT: On the charge of attempt murder, you
16 could be sentenced to the Nevada State Prison for a term of from
17 one to twenty years.

18 THE DEFENDANT: Yes.

19 THE COURT: On each of the counts of sexual assault
20 with the infliction of substantial bodily harm and the use of a
21 deadly weapon, you could be sentenced to the Nevada State Prison
22 on the sexual assault with the infliction of substantial bodily
23 harm for a term of life with or without the possibility of
24 parole. Do you understand that?

25 THE DEFENDANT: Yes.

26 THE COURT: Do you also understand that by using a
27 deadly weapon, the sentence would be enhanced or increased and
28 you could be sentenced -- would be sentenced, so there's no
29 mistake, you would be sentenced to a consecutive sentence of
30 whatever sentence the Court would impose on the charge of sexual
31 assault with the infliction of substantial bodily harm.

32 THE DEFENDANT: Yes.

1 THE COURT: Has this been fully explained to you?

2 THE DEFENDANT: Yes.

3 THE COURT: That would apply to Counts III, IV, V
4 and VI, all charging you with sexual assault with the infliction
5 of substantial bodily harm and the use of a weapon; do you
6 understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand if, at any time in the
9 future you were ever to be considered for parole, that you could
10 not be paroled until a commission, consisting of three persons,
11 that being the director of the Department of Mental Hygiene for
12 the Department of Human Resources for the State of Nevada, a
13 qualified psychiatrist and the director of the state prison
14 find that you would not be a menace to the safety of the public.
15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Has that been explained to you?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that on the charge of
20 first degree kidnapping with substantial bodily harm and use of
21 a deadly weapon, you also could be sentenced to life with or
22 without the possibility of parole. And since the use of a
23 deadly weapon was used, for a consecutive, a mandatory
24 consecutive sentence of whatever sentence the Court would impose
25 on the underlying charge of first degree kidnapping with the
26 infliction of substantial bodily harm. Do you understand that?

27 THE DEFENDANT: Yes.

28 THE COURT: Have you been told that if you went to
29 a jury trial rather than plead before the Court as you are
30 today, that if that jury found that you were guilty of sexual
31 assault and found that substantial bodily harm was used, that
32 that jury would then be the body that would impose the sentence,

1 rather than the Court?

2 THE DEFENDANT: Yes.

3 THE COURT: Has that been explained to you?

4 THE DEFENDANT: Yes.

5 THE COURT: On the charge set forth in Count VIII
6 charging you with robbery and use of a deadly weapon, have you
7 been told what that sentence could be?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you remember what Mr. Henry told you?

10 THE DEFENDANT: No.

11 THE COURT: On the charge of robbery you could be
12 sentenced to one to fifteen years in the Nevada State Prison.
13 On the use of a deadly weapon, you would be sentenced to a
14 mandatory consecutive sentence of whatever the sentence would be
15 on the underlying charge of robbery. For example, if the Court
16 gave you the mandatory sentence of fifteen years on the robbery,
17 you would then be sentenced to a mandatory consecutive sentence
18 of fifteen years on the use of a deadly weapon; do you
19 understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: As to each of these sentences, with the
22 exception of those mandatory sentences for the use of a deadly
23 weapon, which must run consecutively, the Court would have
24 discretion to determine whether all of these sentences would run
25 concurrently or consecutively. Do you understand that?

26 THE DEFENDANT: Yes.

27 THE COURT: Do you understand the difference between
28 a concurrent sentence and a consecutive sentence?

29 THE DEFENDANT: Yes.

30 THE COURT: Tell me what your understanding of a
31 concurrent sentence is.

32 THE DEFENDANT: Concurrent sentence is time running

1 together. Consecutively is back to back.

2 THE COURT: Do you understand you would have to be
3 paroled on a charge, if these sentences run consecutively, before
4 the next sentence would commence? Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Has anyone made any promises to you as
7 to what the sentence will be or whether or not you are going to
8 get a lesser sentence, or anything of that nature?

9 THE DEFENDANT: No.

10 THE COURT: Do you understand the matter of
11 sentencing in this case is a matter that is within the sole
12 discretion of the Court? Within my discretion as the presiding
13 judge?

14 THE DEFENDANT: Yes.

15 THE COURT: Has anyone made any promises regarding
16 sentencing?

17 THE DEFENDANT: No.

18 THE COURT: I have before me what has been marked as
19 Exhibit A, entitled "Statement of facts in support of a guilty
20 plea." I am going to read this statement into the record so you
21 will hear it also, Mr. Doane.

22 "On or about the 20th of February, 1979, at
23 and within the County of Clark, State of Nevada:

24 One, I was operating my automobile when I saw
25 a young woman later identified to me as Cheryl Parker walking to
26 school. I stopped and invited her into the automobile and she
27 accepted my invitation. I then drove on toward her school and
28 beyond it. Thereafter I threatened her with a screwdriver and
29 directed her to remove her clothing.

30 Two, upon arriving at a desert location near
31 Lake Mead, I subjected Cheryl Parker to sexual assault by
32 penetrating her vagina with my penis against her will.

1 "Three, I then choked Cheryl Parker unconscious
2 and struck her in the face with a large rock.

3 Four, I then left Cheryl Parker in the desert,
4 got in my automobile and drove back to the highway. During this
5 trip I noticed Cheryl Parker's belongings, which I had made her
6 put in the backseat of my car. I then went through her purse,
7 looking for money or other valuables which I wanted. I found
8 nothing I wanted and took nothing."

9 Is that the statement you signed?

10 THE DEFENDANT: Yes.

11 THE COURT: Did you sign it freely and voluntarily?

12 THE DEFENDANT: Yes.

13 THE COURT: For the record, the Court has read the
14 preliminary hearing transcript in this matter. I have examined
15 it at the time of the petition for a writ of habeas corpus, so
16 I am aware of the factual basis that was testified to by the
17 victim in this case. Also the Court has the statement which I
18 have just read into the record, which was signed by Mr. Doane.

19 I find that that is a sufficient basis to
20 accept the pleas as to Counts I, II, III, VII and VIII.

21 Is there any evidence at this time, other than
22 what is in that record, for the Court to make a finding of
23 substantial bodily harm was inflicted upon the victim?

24 Mr. Jeffers, did you have anything in addition
25 to offer?

26 MR. JEFFERS: There is a stipulation, your Honor,
27 Defense Exhibit B, regarding the substantial bodily harm. The
28 young lady, Cheryl Parker, is in court here. There are
29 photographs that were placed into evidence at the preliminary
30 examination. I think any further comment would be out of order,
31 unless the Court would like to inquire as to something specific.

32 MR. HENRY: That is correct, your Honor. I prepared

1 Defense Exhibit 2, the stipulation in support of this disposition,
2 after appearing at the preliminary hearing and hearing the
3 testimony; after having the benefit of examining all the police
4 reports in this case and after having been made aware of what
5 the proposed testimony of the physicians who would have testified
6 at trial would be. And I am persuaded, as is Mr. Doane, that
7 the statement of injuries set forth in the stipulation do exist
8 and would have been proven beyond a reasonable doubt, if this
9 matter had gone to trial. And that such injuries are sufficient
10 to complete the crime of mayhem and also the penalty enhancement
11 having to do with the allegation of substantial bodily harm in
12 the counts referring to sexual assault and first degree
13 kidnapping.

14 THE COURT: Do you concur with the statement just
15 made by Mr. Henry, Mr. Doane?

16 THE DEFENDANT: Yes.

17 THE COURT: For the record, you are Cneryl Parker?

18 MS. PARKER: Yes.

19 THE COURT: I can see the victim and I can see the
20 condition of the area around her right eye. The Court finds
21 there was substantial bodily harm inflicted upon the victim.

22 As to Counts IV, V and VI, I believe it was
23 indicated, Mr. Henry, that those are being entered in the form
24 of an Alford plea; is that correct?

25 MR. HENRY: Yes, your Honor.

26 THE COURT: Mr. Doane, why are you entering a plea
27 of guilty to Counts IV, V and VI, under what has been referred to
28 as an Alford plea? Has it been explained to you what is meant
29 by an Alford plea?

30 THE DEFENDANT: Yes.

31 THE COURT: Do you remember essentially what was told
32 to you regarding an Alford plea?

1 THE DEFENDANT: Yes.

2 THE COURT: What do you remember?

3 THE DEFENDANT: If this was to go to trial I would
4 get found guilty anyway on the charges.

5 THE COURT: I believe I mentioned previously to you,
6 do you understand that if you went to trial before a jury on
7 each of these and the jury found substantial bodily harm, it
8 would be the jury, rather than the Court, that would be imposing
9 the penalty in these cases? Do you understand that?

10 THE DEFENDANT: Right.

11 THE COURT: Is it your desire to enter a plea to
12 Count IV, V and VI, a plea of guilty, because you choose to have
13 this Court impose the sentence, rather than run the risk of a
14 jury imposing sentence?

15 THE DEFENDANT: Yes.

16 THE COURT: Has that been explained to you by
17 Mr. Henry?

18 THE DEFENDANT: Yes.

19 THE COURT: Was there anything else at this time,
20 before I accept the pleas? Mr. Henry? Mr. Jeffers?

21 MR. JEFFERS: Your Honor, I could make a statement
22 at this time or after the Court accepts the pleas. In any
23 event, the State feels the charging document, together with the
24 presentence report to be submitted by the Department of Parole
25 and Probation and the documents filed here in court certainly
26 apprise the Court of the heinousness of the crimes charged.
27 A fourteen year old victim of the crime has been both mentally
28 and physically injured for life. The Court is aware that five
29 of the crimes charged involving sexual assault and first degree
30 kidnapping with substantial bodily harm and the use of a deadly
31 weapon provide ten life sentences, and the possibility of up to
32 sixty additional years for the crime attempt murder, mayhem,

1 robbery with the use of a deadly weapon. Further, the use of
2 a deadly weapon, the law mandates at least two life sentences
3 must be served consecutively to one another.. Other than that,
4 sentencing lies within the sound discretion of this Court as to
5 whether the other sentences run concurrently or consecutively
6 and whether the sentences be life in the state prison with or
7 without the possibility of parole.

8 Other than that, the matter of sentencing will
9 be submitted to the Court.

10 THE COURT: Anything further?

11 MR. HENRY: No, your Honor.

12 THE COURT: Mr. Doane, do you have any questions
13 at this time before I accept your pleas?

14 THE DEFENDANT: No.

15 THE COURT: At this time the Court is accepting the
16 pleas of guilty to Counts I, II, III, IV, V, VI, VII and VIII.

17 We'll continue this matter until September 7,
18 a Friday, 9:00 o'clock, for entry of judgment and imposition of
19 sentence.

20 MR. HENRY: Thank you, your Honor.

21 * * * * *

22 ATTEST: Full, true and accurate transcript of the
23 proceedings had.

24 
25 THOMAS D. MERCER, CSR, No. 33, PTL

DISTRICT OFFICES

511-513 E. SECOND STREET
RENO, NEVADA 89502

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215 E. BONANZA STREET
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106 E. ADAMS, ROOM 206
CARSON CITY, NEVADA 89710

131 E. MAINE, ROOM 205
FALLON, NEVADA 89406

STATE OF NEVADA

DEPARTMENT OF PAROLE
AND PROBATION

FY 80-170

ROBERT LIST
GOVERNORRECEIVED
SEP 5 1979

A. A. CAMPOS, CHIEF
CAPITOL COMPLEX
308 N. CURRY STREET
CARSON CITY, NEVADA 89710

PRE-SENTENCE REPORT

DEFENDANT: JOHN EUGENE DOANE **SOCIAL SECURITY NO.:** 530 52 8970
CRIMINAL CASE NO.: 44644 **DATE:** September 4, 1979
COURT: EIGHTH JUDICIAL DISTRICT **DEPARTMENT:** VIII
COUNTY: CLARK
JUDGE: THE HONORABLE MICHAEL J. WENDELL

OFFENSE: Count I Mayhem (F), Count II Attempt Murder (F), Count III Sexual Assault with Substantial Bodily Harm and Use of Deadly Weapon (F), Count IV Sexual Assault with Substantial Bodily Harm and Use of Deadly Weapon (F) (See Addendum).
STATUTE: NRS 200.280, 200.010, 200.030, 208.070, 200.364
200.366, 200.310, 200.380, 193.165.
PENALTY: NRS 200.280. 1 to 10 years in prison.
NRS 200.030, 208.070. 1 to 20 years in prison.
NRS 200.366. Life in prison with or without the possibility of parole on each of four counts. (See Addendum).
CONVICTED: August 10, 1979. Counts I, II, III, VII and VIII, by plea.
Counts IV, V and VI by "Alford" plea.
INFORMATION DATE: March 23, 1979.
CO-DEFENDANT: None.
DATE OF OFFENSE: February 20, 1979.
DATE REFERRED: August 10, 1979.
SENTENCING DATE: September 7, 1979.
CUSTODY STATUS: Clark County Jail. In custody 199 days.
DATE OF BIRTH: 9-24-55 **AGE:** 23 years
LEGAL RESIDENCE: 3923 Syracuse, Las Vegas, Nevada 89122 (R).
COUNSEL: William P. Henry, Deputy Public Defender.
DISTRICT ATTORNEY: Raymond D. Jeffers, Deputy District Attorney.

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811-813 E. SECOND STREET
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STATE OF NEVADA

DEPARTMENT OF PAROLE
AND PROBATION

ADDENDUM

ROBERT LIST
GOVERNOR

A. A. CAMPOS, CHIEF
CAPITOL COMPLEX
308 N. CURRY STREET
CARSON CITY, NEVADA 89710

PRE-SENTENCE REPORT

DEFENDANT: JOHN EUGENE DOANE SOCIAL SECURITY NO.:
CRIMINAL CASE NO.: 44644 DATE: September 4, 1979
COURT: DEPARTMENT:
COUNTY:
JUDGE:

OFFENSE:

Count V Sexual Assault with Substantial Bodily Harm and Use of Deadly Weapon (F), Count VI Sexual Assault with Substantial Bodily Harm and Use of Deadly Weapon (F), Count VII First Degree Kidnapping with Substantial Bodily Harm and Use of Deadly Weapon (F) Count VIII Robbery with Use of Deadly Weapon (F).

STATUTE:

PENALTY:

NRS 193.165. Life in prison with or without the possibility of parole, consecutively on each of four counts.

CONVICTED:

NRS 200.320. Life in prison with or without the possibility of parole.

INFORMATION-DATE:

NRS 193.165. Life in prison with or without the possibility of parole consecutive.

CO-DEFENDANT:

NRS 200.380. 1 to 15 years in prison.
NRS 193.165. 1 to 15 years in prison.

DATE OF OFFENSE:

DATE REFERRED:

SENTENCING DATE:

CUSTODY STATUS:

DATE OF BIRTH:

AGE:

LEGAL RESIDENCE:

COUNSEL:

DISTRICT ATTORNEY:

PRE-SENTENCE REPORT
JOHN EUGENE DOANE
CRIMINAL CASE NO. 44644

Page 2

IDENTIFYING INFORMATION

CH NUMBER: A05176073

FBI NUMBER: 332470M4

POLICE JACKET NUMBER: LVMPD 291337

ARREST REPORT DR NUMBER: LVMPD 79-12660

DATE ARRESTED: 2-20-79 and 2-21-79

ORIGINAL CHARGE: Mayhem, Attempt Murder, 4 Counts Sexual Assault with Substantial Bodily Harm and Use of a Deadly weapon, First Degree Kidnapping with Substantial Bodily Harm and Use of a Deadly Weapon and Robbery and Use of a Deadly Weapon. (F)

FINGERPRINT CLASSIFICATION: O 31 W III 16 (SCOPE)
I 28 W III

DOB: 9-24-55 AGE: 23 years

POB: City and State: Lynwood, California

RACE: WMA

HEIGHT: 5'11"

WEIGHT: 140

HAIR: Brown

EYES: Hazel

SCARS, MARKS, TATTOOS: Man smoking cigarette right upper shoulder.

ALIAS: Robert Eugene Doane
John Eugener Doane

PRIOR RECORD See narrative.

Number of prior adult arrests.....

Number of prior convictions: Felony..... Misdemeanor..... Total.....

Number of adult probations..... Completed..... Failure..... Current.....

Number of prior jail sentences.....

Number of prior prison sentences.....

Number of prior paroles..... Completed..... Failure..... Current.....

PRIOR RECORD

Records of the Las Vegas Metropolitan Police Department, the Federal Bureau of Investigation and The California Bureau of Identification reflect the following:

All of Doane's arrests occurred in the Las Vegas area except a 2-9-74 Oakland, California charge of taking vehicle without owner's consent which culminated in no charges being filed.

A 7-22-74 arrest for possession of marijuana and disorderly conduct resulted in a sentence of time served on 7-29-74 and 8-7-74 respectively. A 3-13-75 arrest for contributing to delinquency of minor led to a sentence of time served on 7-16-75. A 5-4-76 arrest on three traffic warrants resulted in three five day sentences served consecutively. Other traffic warrant arrests on 2-7-76, 2-12-76, and 8-26-77 resulted in \$50 fines on each occasion.

The following arrests did not result in prosecution or were dismissed: 8-3-74, traffic warrant and escape; 8-21-74, failure to appear traffic warrant and escape warrant; 8-31-74, burglary and escape warrant; 12-3-74, absent without leave (released to custody of Military Authorities); 2-9-76, speeding citation and speeding warrant; 2-10-76, vehicle registration violation, driver's license violation and speeding warrant; 5-5-76, speeding (two warrants); 8-21-76, taking vehicle without consent of owner.

He volunteered a juvenile arrest at age 14 involving destruction of private property which culminated in release to his parents.

On 2-16-79, a burglary warrant (#26229) with bail set in the amount of \$5,000 was issued by the Kern County Municipal Court in California and has been placed as a detainer at the Clark County Jail.

PLEA NEGOTIATIONS

None.

OFFENSE REPORT

Pertinent records of the Las Vegas Metropolitan Police Department reflect that on 2-20-79 at approximately 7 AM the 14 year old female victim was waiting for her school bus in Henderson, Nevada. The defendant offered her a ride and she accepted; however, he subsequently pressed a screwdriver against her stomach, threatened her and drove to an area near Lake Mead. He sexually assaulted her repeatedly while continuing to threaten her life. He then choked her into unconsciousness and stabbed her numerous times in the face and head with the screwdriver. At approximately 9:30 she was found wandering across the road by a park ranger. Other rangers located the site of the assault and found the blood stained three and one half inch screwdriver and other items of physical evidence while an ambulance was called for the victim and homicide detectives were notified. The defendant was arrested in Henderson at approximately 2 PM. His vehicle contained the victim's school books, money, clothing, purse and other physical

evidence. The victim subsequently selected the defendant's photograph from a group of 13 photographs including 12 other male adults with similar likenesses.

The victim received emergency treatment at Rose De Lima Hospital in Henderson and was then transported to Southern Nevada Memorial Hospital. Any efforts to interview her were hampered by numerous stab wounds and cuts about the face and head area. The investigating officer also noted that the cheek-bone area of the right side of her face was crushed. Additionally, there were numerous bruises and markings about her neck and upper chest area which suggested that strangulation had been attempted. Emergency room physician, Dr. Simpson related that the victim's right cheek-bone and the area around the right eye had been fractured and that she had numerous stab wounds in the face and head area that required stitches.

During the rape examination the victim was observed to "have quite a bit of dirt inside the lips of the vagina, indicating that possibly the rape took place in the dirt, and there was a struggle". On 8-10-79, a stipulation was filed in open court, signed by the defendant and deputies of the public defender's office and the District Attorney's Office, acknowledging that the victim had "suffered the following injuries: broken teeth, permanent injury to the focusing mechanism of her eyes, and crushed facial bones, which injuries will require continuing medical attention".

DEFENDANT'S STATEMENT

"The circumstances was, I was out of my mind on drugs and alcohol when this took place. I have no idea why it happened. I am very very sorry this occurred, I thank god Cheryl Parker is O.K. I remember picking her up, taking her out to the lake, raping her, then throwing a rock at her."

The following has been extracted from a stipulation filed in open court on 8-10-79 and signed by the defendant and counsel:

On or about the 20th day of February, 1979, at and within the County of Clark, State of Nevada

1. "I was operating my automobile when I saw a young woman later identified to me as CHERYL PARKER walking to school. I stopped and invited her into the automobile, and she accepted my invitation. I then drove on toward her school and beyond it. Thereafter, I threatened her with a screwdriver and directed her to remove her clothing.
2. Upon arriving at a desert location near Lake Mead, I subjected CHERYL PARKER to sexual assault by penetrating her vagina with my penis against her will.
3. I then choked CHERYL PARKER unconscious, and struck her in the face with a large rock.
4. I then left CHERYL PARKER in the desert, got in my automobile and drove back to the highway. During this return trip, I noticed

CHERYL PARKER'S belongings which I had made her put in the backseat of my car, I then went through her purse looking for money or other valuables which I wanted. I found nothing I wanted and took nothing."

SOCIAL HISTORY

The defendant is the second of seven children issued to the union of Robert Commadore Doane and Ruth (Hendrick) Doane Boesenecker. The parents were divorced during 1974 in Las Vegas and during November 1975 the defendant's mother, age 44, married Gerald Boesenecker, age 35. The family resides at the legal residence reflected on page one of this report (phone 451-7569). Mrs. Boesenecker enjoys good health and is a housewife. Mr. Boesenecker also enjoys good health and is employed as a supervisor of chemistry at The Titanium Metals Company in Henderson.

Father: The defendant's natural father, age 45, reportedly resides at Box 198, Fort Bridger, Wyoming and is a construction worker. The elder Mr. Doane was not contacted by the writer; however, the defendant's mother and stepfather were interviewed. Although the defendant had earlier indicated to the writer that family relationships had always been harmonious, his mother related that as a child his natural father had frequently "belittled" and whipped him with a belt and on one occasion, at age 18, had struck him in the mouth with his fist.

Military.

The subject served honorably in the United States Army National Guard from December 1972 to August 1978. He elaborated that he had been called to active duty on one occasion for one year and on five other occasions for two weeks each. All active duty was served at Fort Ord, California.

Marital.

His only marriage was to Terry (Schneider) Doane, age 21, on 1-15-76 in Las Vegas. They were divorced during December 1978 in Las Vegas. She currently resides with their child, Jenifer, one and one half years old, at 316 Mountain View, Post Falls, Idaho. He last saw his former wife and child during December 1978 and reported a court ordered obligation to contribute \$140 monthly toward the care, support and maintenance of his child.

Medical.

On 5-4-79, on motion of counsel, the court ordered psychiatric examination of the defendant by Drs. Franklin D. Master and Jack A. Jurasky, both of Las Vegas. On 6-8-79, the court considered the psychiatric reports and found the defendant competent to stand trial. Dr. Master, in closing, commented:

"It might be hypothesized that the use of alcohol and drugs may have somewhat clouded the defendant's reasoning ability so that anger directed against his wife would instead be directed against

his young female victim."

Dr. Jurasky, in closing, commented: I believe this man is likely to remain a menace to the health, safety, morals and property of others despite the fact that his current record has no prior history of rape or an assault such as the one described in the criminal complaint."

Alcohol: He commenced the use of alcohol at age 18 and drank to excess from 1973 until his arrest on the present offense.

Narcotics: Doane indicated that he had commenced the use of marijuana at age 18 and that since that time he had used most forms of drugs and narcotics. He related that he began using morphine on a daily basis during July 1978 until the time of his arrest on the present offense.

Education.

He received average grades and graduated from Basic High School in Henderson during 1973.

Residence.

The defendant resided from birth to 1962 in California and has resided in Nevada since then except as required by National Guard Service and vacations to visit his father in Wyoming.

ECONOMIS STATUS

Assets: None.

Liabilities: Eventually he may become obligated to contribute the court ordered \$140 monthly child support payments mentioned earlier and he indicated a willingness to contribute toward the family budget when he again resides with his parents.

Employment: He advised that he was last employed by GNG Oil Services in Fort Bridger, Wyoming as a laborer earning \$10.50 hourly for three weeks ending 2-15-79. Prior to that he reported employment as a carpenter at the Builders Universal Company (now defunct) in Las Vegas from 8-78 to 10-78 earning \$4.50 hourly. Immediately prior to that position he was on active duty with the Army National Guard at Fort Ord, California. During six months of 1977 he reported earning \$3.50 hourly as a carpenter employed by Builders Universal Company in Las Vegas and during the summer of 1977 he was reportedly employed as a metal worker by NIC Construction Company in North Platte, Nebraska earning \$9.86 hourly. He indicated that he had acquired his skill as a carpenter through the medium of "OJT" since August 1975.

PLACEMENT PROGRAM

He indicated that when eventually released he will live with his parents and work as a carpenter unless he acquires a more lucrative trade or profession while in prison. During his imprisonment he indicated that he would pursue vocational training in the medical field.

JAIL TIME

2-20-79 - 9-7-79 Clark County Jail.

Total days: 199 days.

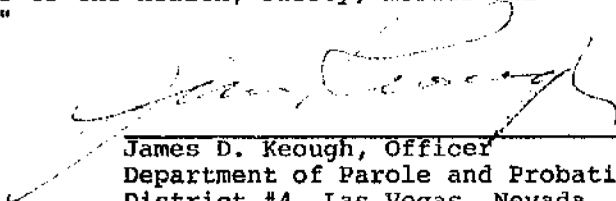
EVALUATION

This 23 year old male defendant is appearing for sentencing as the result of his having pleaded guilty to the following Felony charges: Mayhem, Attempt Murder, Four Counts of Sexual Assault With Substantial Bodily Harm and Use of Deadly Weapon, First Degree Kidnapping With Substantial Bodily Harm and Use of Deadly Weapon and Robbery and Use of Deadly Weapon. It is noted that he entered "Alford" Pleas to three of the four counts of sexual assault with substantial bodily harm and use of deadly weapon.

During the interview with the writer he candidly admitted threatening the 14 year old female victim with a screw driver, forcing her to accompany him in his automobile to an area near Lake Mead, forcibly raping her and striking her on the head with a rock as she lay on the ground.

He attempted to rationalize his misconduct on the basis of being under the influence of morphine. Although he recalled being aware that she was severely injured, he stated that it did not occur to him to seek help for her anonymously or otherwise after leaving her helpless and alone in the desert area near Lake Mead. He could offer no explanation for his apparent ability to negotiate the roads, streets, highways and usual traffic hazards while "out of my mind on drugs and alcohol".

The writer concurs in Dr. Jurasky's opinion contained in his psychiatric evaluation of the defendant: "..... this man is likely to remain a menace to the health, safety, morals and property of others....."


James D. Keough, Officer
Department of Parole and Probation
District #4, Las Vegas, Nevada

RECOMMENDATION

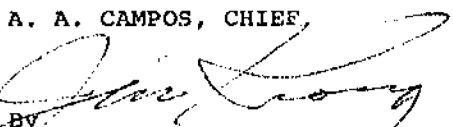
It is the recommendation of the Department of Parole and Probation that the defendant, JOHN EUGENE DOANE, be sentenced as follows:

- Count I, Mayhem ten (10) years in Nevada State Prison.
Count II, Attempt Murder twenty (20) years in Nevada State Prison.
Count III, Sexual Assault With Substantial Bodily Harm life in Nevada State Prison without the possibility of parole. Use of Deadly Weapon life in prison without the possibility of parole.
Count IV, Sexual Assault With Substantial Bodily Harm life in Nevada State Prison without the possibility of parole. Use of Deadly Weapon life in prison without the possibility of parole.
Count V, Sexual Assault With Substantial Bodily Harm life in Nevada State Prison without the possibility of parole. Use of Deadly Weapon life in prison without the possibility of parole.
Count VI, Sexual Assault With Substantial Bodily Harm life in Nevada State Prison without the possibility of parole. Use of Deadly Weapon life in prison without the possibility of parole.
Count VII, First Degree Kidnapping With Substantial Bodily Harm life in prison without the possibility of parole. Use of Deadly Weapon life in prison without the possibility of parole.
Count VIII, Robbery fifteen (15) years in Nevada State Prison. Use of Deadly Weapon fifteen (15) years in Nevada State Prison.

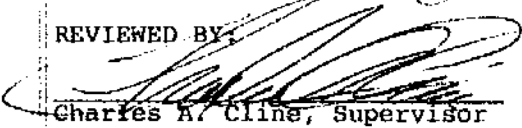
It is further recommended that all of the foregoing sentences be served consecutively.

Respectfully submitted,

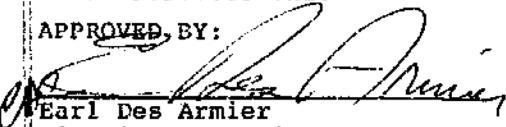
A. A. CAMPOS, CHIEF,


By _____
James D. Keough, Officer
Department of Parole and Probation
District #4, Las Vegas, Nevada

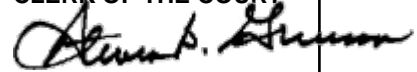
REVIEWED BY:


Charles A. Cline, Supervisor
Court Services Unit

APPROVED BY:


Earl Des Armier
District Supervisor

JDK/df



OPPM

DARIN F. IMLAY, PUBLIC DEFENDER

NEVADA BAR NO. 5674

DAVID E. LOPEZ-NEGRETE, CHIEF DEPUTY PUBLIC DEFENDER

NEVADA BAR NO. 12027

PUBLIC DEFENDERS OFFICE

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Telephone: (702) 455-4685

Facsimile: (702) 455-5112

Lopeznde@clarkcountynv.gov

Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

JOHN EUGENE DOANE,

Defendant,

CASE NO. C-20-346036-1

DEPT. NO. X

DATE: August 20, 2021

TIME: 8:30 a.m.

DEFENDANT'S OPPOSITION TO ADMITTING EVIDENCE OF OTHER CRIMES

COMES NOW Defendant JOHN EUGENE DOANE, by and through Chief Deputy Public Defender DAVID E. LOPEZ-NEGRETE, and opposes the State's Motion to Admit Evidence of Other Crimes. Alternatively, he requests an evidentiary hearing.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 31st day of July, 2021.

DARIN F. IMLAY

CLARK COUNTY PUBLIC DEFENDER

By: /s/David E. Lopez-Negrete

DAVID E. LOPEZ-NEGRETE, #12027

Chief Deputy Public Defender

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1. I am an attorney duly licensed to practice law in the State of Nevada; I represent Eugene Doane in the present matter.

EXECUTED this 31st day of July, 2021.

/s/ David E. Lopez-Negrete
DAVID E. LOPEZ-NEGRETE

1 **POINTS & AUTHORITIES**

2 **FACTS**

3 **Instant Case**

4 Starting on Friday, November 24, 1978, fourteen-year-old Carol Lum visited with her
5 friends in their homes. She saw her closest girlfriend early Friday afternoon, then later from
6 another location appeared to prank call her saying something about "in the desert" in a disguised
7 voice and laughing.

8 That night, Lum was in the company of her boyfriend, Albert Biggs, and a couple other
9 friends at Jim Brown's house. Around 9 p.m. Lum was at Biggs' home with him and his mother.
10 After falling asleep watching TV, Biggs' mother woke up close to 3 a.m. and saw Lum outside the
11 home where she said she was waiting for a ride. Instead, Biggs' mother drove her to Jim Brown's
12 house, where Lum said she lived. Although, she did not end up sleeping there. Brown's mother
13 heard a knock outside and saw Lum duck out of view. After Brown's mother woke him, he opened
14 the door but Lum was gone.

15 Brown's last contact with Lum came by way of a phone call the next morning. She wanted
16 to buy him a car stereo by selling acid she had obtained. Lum had a history of drug use according
17 to her father. He had not seen her in over two months. Police would later learn that Lum was
18 involved in narcotics, including marijuana, cocaine, acid, and amphetamines, and used them
19 frequently.

20 Spurred by Lum's failure to come home on Friday evening, Lum's mother sought help
21 from family friend John Bivens to locate Lum. They worried that Lum had run away again, as
22 she had in the past and that her friends were helping to hide her. Bivens and his wife searched for
23 Lum by calling her friends throughout Saturday night and into early Sunday morning, without
24 success.

25 Late Sunday morning, November 26, 1978, two young men riding their motorbikes in a
26 desert area came upon Lum's body. Police responded to their call, documented the crime scene,
27 and performed an autopsy. Lum was laying face-down on the ground. She was clothed but her
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1 underwear and shoes were behind some nearby shrubbery. She had a swollen eye but no visible
2 injuries to her body. The coroner examined Lum's genitals but found no trauma there; he also
3 swabbed her vagina but noted it appeared dry, signaling that Lum did not have sexual relations.
4 Lum did have hemorrhages in her throat muscles and organs, leading the coroner to find she died
5 of manual strangulation.

6 Lum's killing remained a cold case until police tested her underwear for DNA evidence in
7 2016. Detecting sperm fractions on this piece of evidence led police to ultimately obtain a match
8 to John Doane. He now faces a charge of Open Murder.

9 **Other Crime**

10 On the morning of February 20, 1979, fourteen-year-old Cheryl Parker was walking to
11 Basic High School when John Doane offered to drive her the rest of the way. She accepted and
12 directed him to drop her off at the school corner but he continued on. Doane then threatened Parker
13 with a screwdriver, telling her not to make any trouble. He had her sit closer to him, put her books
14 in the backseat, and drove on the highway towards Boulder City.

15 Seeing where things were headed, Parker told Doane she might as well undress and did so
16 before they stopped at the lake. Doane then subjected Parker to sexual intercourse. Next, he drove
17 them to another spot and sexually assaulted her two more times. Doane took Parker to a third
18 location nearby. There, he used the screwdriver to threaten her again, prompting her to plead for
19 her life. They then got out of the car and Doane made her perform fellatio, ending with climaxing
20 in her mouth.

21 Afterwards, Doane choked Parker while she stood next to the car. She fell to the ground,
22 at which point he forced dirt and rocks into her mouth. She screamed. Doane then strangled Parker
23 until she lost consciousness. He also struck her in the face with a large rock.

24 Parker awoke and wandered until park rangers located her around 9:30 a.m. They rushed
25 her to medical care. Her cheekbone and area around her eye were fractured and crushed. She
26 suffered broken teeth as well. She exhibited several stab wounds and cuts on her face and head,
27 requiring stitches. Multiple bruises and markings pervaded her neck and upper chest area,
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1 indicating strangulation. A sexual assault examination revealed a significant amount of dirt inside
2 the lips of her vagina, corroborating a struggle and rape that occurred on the ground.

3 In all, Parker spent over sixteen days in the hospital and received reconstructive surgery.
4 At preliminary hearing, her jaw was nearly wired shut. The focusing mechanism of her eyes
5 suffered permanent injury and her face resulted permanently disfigured.

6 Doane resolved the case against him. He expressed remorse and pleaded guilty to eight
7 serious charges for this attack: Mayhem; Attempt Murder; multiple counts of Sexual Assault with
8 Substantial Bodily Harm and Use of a Deadly Weapon; First Degree Kidnapping with Substantial
9 Bodily Harm and Use of a Deadly Weapon; and Robbery with Use of a Deadly Weapon.

10 At twenty-three years old, he received a sentence of life without the possibility of parole.

11 **I. THE PARKER CASE CONSTITUTES INADMISSIBLE PROPENSITY EVIDENCE.**

12 Evidence of other crimes is presumptively inadmissible. Under NRS 48.045(1), these are
13 inadmissible as a rule and may be presented only if the acts fall under the specific exceptions of
14 NRS 48.045(2). Our supreme court has stressed that NRS 48.045(2) “is merely an exception to
15 the general presumption” that other crimes are inadmissible. Tavares v. State, 117 Nev. 725, 730-
16 31 (2001). In our system of criminal justice, using prior bad acts to convict a defendant is “heavily
17 disfavored” because they are often irrelevant and prejudicial. Id. at 730; accord Walker v.
18 State, 116 Nev. 442, 445 (2000). The underlying concern is that showcasing these acts will unduly
19 influence the jury and lead it to convict the accused solely because it thinks he is a “bad person.”
20 Tavares, 117 Nev. at 730.

21 In deciding whether to admit other crime evidence, the trial court must conduct an on-the-
22 record hearing outside the jury’s presence. See Petrocelli v. State, 101 Nev. 46, 51–52
23 (1985) (delineating procedure for admitting other acts); Armstrong v. State, 110 Nev. 1322, 1323–
24 24 (1994) (requiring findings on the record). At the hearing, the court must determine whether 1)
25 the incident is relevant to the crime charged and admissible for other, non-propensity purposes; 2)
26 clear and convincing evidence proves the act; and 3) the danger of unfair prejudice does not
27 substantially outweigh the evidence’s probative value. Tinch v. State, 113 Nev. 1170, 1176 (1997)

1 modified by Bigpond v. State, 128 Nev. 108 (2012). Our Supreme Court will review a trial court's
2 decision to admit or exclude this evidence for an abuse of discretion. Randolph v. State, 136 Nev.
3 Adv. Op. 78, 477 P.3d 342, 346 (2020).

4 **A. Identity, Modus Operandi**

5 Our Supreme Court has made clear that when analyzing offenses that are typically
6 committed in a similar manner, “it is essential that some distinctive characteristics be
7 demonstrated” between the charged and other crimes. Mayes v. State, 95 Nev. 140, 143 (1979).
8 The modus operandi exception in NRS 48.045(2) also falls under identity and reinforces the
9 requisite threshold for admitting other acts. It is generally appropriate only where a positive
10 identification of the perpetrator is lacking and the offered evidence presents “a signature crime so
11 clear” that it establishes the identity of the accused at trial. Mortensen v. State, 115 Nev. 273, 280
12 (1999); accord Rosky v. State, 121 Nev. 184, 196 (2005). The offered evidence is probative,
13 however, “only to the extent that Distinctive “common marks” give logical force to the inference
14 of identity. If the inference is weak, the probative value is likewise weak, and the court’s discretion
15 should be exercised in favor of exclusion.” Mayes, 95 Nev. at 143 (quoting People v. Haston,
16 444 P.2d 91, 99-100 (Cal. 1968)). For example, in prosecuting a defendant for a “trick roll” theft,
17 it was error to admit evidence that she had committed “trick rolls” in the past when there was
18 nothing distinctive linking the cases. Mayes, 95 Nev. at 143; accord Coty v. State, 97 Nev. 243,
19 244-45 (1981); see also Colley v. Sumner, 784 F.2d 984, 990 (9th Cir. 1986)(finding a unique
20 modus operandi where defendant took both women out driving, assaulted them in roughly the same
21 place within days of each other, started by choking them, but voiced regret, distress, and confusion
22 during or after the act).

23 Here, admitting the Parker matter is inappropriate because the State has DNA evidence
24 identifying Doane as the perpetrator of Lum’s murder. This basis alone vitiates the rationale that
25 a jury needs to hear about Doane’s conviction to establish identity. A “status of mythic
26 infallibility” cloaks DNA evidence so juries naturally place “great emphasis” on its probative
27 value. Valentine v. State, 135 Nev. 463, 473 (2019) (quoting People v. Marks, 374 P.3d 518, 525
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1 (Colo. App. 2015)). In this scenario, the State already has positive—infallible—identification of
2 Doane. Because identifying Lum’s murderer is not lacking here, the identity exception of NRS
3 48.045(2) does not justify presenting other crimes.

4 Moreover, Lum’s killing does not match the “signature crime” Doane committed against
5 Parker. The two cases share only broad similarities, like the victims’ ages, sexual assault and
6 strangulation, as well as discovery in the similar vicinity of desert. While the Lum case has a
7 fragmented missing person narrative, the Parker case relates survival of a brutally violent attack,
8 robust in its details.

9 The girls’ backgrounds and circumstances of their victimization differ from the outset.
10 While Lum was a repeat runaway, bouncing from house to house, out at late hours of the night and
11 involved in drugs when she cut contact, Parker was simply walking to school, with her books in
12 tow, the morning of her kidnapping.

13 The injuries each suffered tell very different stories as well. Parker suffered threats with a
14 deadly weapon followed by a series of sexual assaults in different positions, with dirt in her vagina,
15 signaling a struggle and corroboration. She also suffered fellatio and ejaculation in her mouth. In
16 contrast, it appears Lum suffered sexual assault based on the presence of semen on her underwear,
17 which was off her body. The medical evidence determined Lum’s vagina was dry, lacked injuries,
18 and there was neither an indication of fellatio. Lum’s injuries, though fatal, were much less
19 extensive than Parker’s. Doane pounded Parker’s face with a large rock, broke her teeth, stuffed
20 dirt and rocks in her mouth, cut her face and head, and strangled her more than once.

21 This level of violence sets the Parker case far apart from the Lum matter. Indeed, it is a
22 distinguishing feature absent from Lum’s victimization. This underscores what the Lum case lacks
23 and how it does not exemplify Doane’s “signature crime.” And the charges in the Parker case
24 speak volumes. The first count is **Mayhem**; all but one of the remaining counts include
25 **Substantial Bodily Harm** and/or use of a **Deadly Weapon**. Though Lum’s case involves murder,
26 it does not approximate anything close to mayhem perpetrated with deadly weapons that inflicted
27 especially violent, mutilating injuries.

1 Had Lum missed school and her face been crushed with a boulder, or mouth packed with
2 rocks and teeth broken, and dirt found in her vagina, or semen in her mouth, then one could argue
3 her case carries Doane's signature. These are the distinctive aspects of Parker's case that, if
4 present, would aid a jury identify him as Lum's assailant. There are, rather, only superficial
5 similarities which do not go beyond characteristics commonplace in sexual assault/murder
6 investigations. Accordingly, the Parker matter does not establish identity in the Lum case.

7 **B. Motive, Intent**

8 The differences between the cases also make it difficult to establish that Doane's intent in
9 both encounters would have been the same. It bears repeating that the medical evidence did not
10 show Lum had sexual relations. Her autopsy included examining her vagina, which suffered no
11 trauma. A vaginal swab revealed it was apparently dry. With her underwear not on her body,
12 though, this suggests rape in connection with her killing. In contrast, Parker was wearing her
13 underwear when rangers rescued her. And Parker had physical evidence substantiating sexual
14 assault.

15 While Doane's intent to sexually assault Parker is clear, the same is not true regarding
16 Lum. As a total stranger, he kidnapped Parker in order to rape her multiple times, strangled her to
17 incapacitate her, and then tried to inflict mortal blow with a large rock. If Lum had suffered a
18 similarly violent attack then the intent to sexually assault her would be apparent. The Parker matter
19 shows these go hand-in-hand for Doane's intent. With a scene only insinuating sexual assault,
20 there are too many unanswered questions to posit that any sexual contact between Lum and Doane
21 would have been forced. There is no evidence regarding how they first met, or the nature of their
22 relationship, the last time they were seen together, or if another person was involved in her murder.

23 Presenting Doane's conviction functions as an unfair substitute for investigation and
24 evidence of his sexual intent regarding Lum. As much as the limited information regarding Lum's
25 death would frustrate police, it severely prejudices Doane's ability to contest her sexual assault.
26 Under NRS 171.085(1), actually charging Doane with sexual assault would violate the four-year
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1 limitations period in effect in 1978.¹ Statute of limitations purport to provide “the primary
2 guarantee against bringing overly stale criminal charges.” United States v. Marion, 92 S. Ct. 455,
3 463 (1971) (quoting United States v. Ewell, 86 S. Ct. 773, 776 (1966). These limitations protect
4 individuals from having to defend accusations “obscured by the passage of time” and to lessen the
5 threat of punishment for “acts in the far distant past.” Toussie v. United States, 90 S. Ct. 858, 860
6 (1970). Additionally, they promote the prompt and timely criminal investigation by law
7 enforcement. Id. Prosecutions based on reasonably fresh evidence further lessen the prospect of
8 erroneous convictions. ALI Model Penal Code Sec. 1.07, Comment at 16 (Tent. Draft No. 5,
9 1956).

10 The U.S. Constitution prohibits federal and state governments from enacting *ex post facto*
11 laws. U.S. Const. Art. 1 Secs. 9 & 10; Amend. 5, 14. This constitutional guarantee protects against
12 legislatures passing criminal laws or laws of evidence that retroactively impact the rights of
13 criminal defendants in a substantial way. See e.g., Calder v. Bull, 3 U.S. 386 (1798); Falter v.
14 United States, 23 F.2d 420 (2d Cir. 1928); Collins v. Youngblood, 110 S. Ct. 2715 (1990);
15 Commonwealth v. Barger, 524 N.E.2d 829 (1988). Justifying admission of the Parker case on
16 the basis of the State’s felony murder theory for a rape that is decades past the statute of limitations
17 violates fundamental fairness and Doane’s due process protections under the U.S. Constitution.
18 See Sanders v. Housewright, 603 F.Supp. 1257 (D. Nev. 1985).

19 More pointedly, admitting Doane’s prior supplies only evidence of propensity that any
20 sexual contact with Lum resulted from rape. This unfairly glosses over the significant differences
21 between the Parker and Lum matters. Ultimately, positing that he had identical, unlawful intent
22 on each occasion despite these differences is another way of telling the jury that Doane is a serial
23 rapist. This is bad character evidence and NRS 48.045(1) squarely prohibits it.

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26 ¹ Established case law dictates that when considering limitation periods “the statutes in effect at the time of the offense
27 control.” Bailey v. State, 120 Nev. 406, 407–08 (2004) quoting State v. Quinn, 117 Nev. 709, 712 (2001); see also
28 Houtz v. State, 111 Nev. 457, 461 (1995); Walstrom v. State, 104 Nev. 51, 53 (1988).

1 **C. Prejudice**

2 Besides simply reciting the oft-quoted language about the danger of unfair prejudice from
3 bad act evidence, it is important to appreciate the impact that this type of evidence has over a jury.
4 It is so powerful that a jury can convict a defendant after hearing about other crimes even if he
5 was, in fact, acquitted of those crimes. This occurred in Walker v. State, 112 Nev. 819, 826 (1996).
6 That case serves to show that the mere allegation of other wrongdoing outside the confines of one
7 set of charges can be decisive.

8 In light of its heinousness, the Parker case will very naturally prejudice a jury against
9 Doane. Needless to say, his actions caused a judge to sentence him to life without parole.²
10 Similarly, the jury will conclude Doane is a bad person and convict him because of it. Parker's
11 victimization was so extreme that it will irrevocably tarnish Doane in their minds. As a result, the
12 evidence surrounding Lum's murder will not form part of the jury's deliberation. Given this level
13 of ensuing prejudice, the Parker matter should not enter into this trial.

14 In many cases, presenting evidence of other acts does not unfairly prejudice the jury against
15 the defendant because strong direct evidence supports his conviction. Ledbetter v. State, 122 Nev.
16 252, 263 (2006); Richmond v. State, 118 Nev. 924, 934 (2002); Rosky v. State, 121 Nev. 184, 197
17 (2005). In this case, however, Lum's killing suffers from a lack of detail and clues. For this
18 reason, it remained a cold case for around forty years. As it stands, Doane has some avenues to
19 defend against this murder charge. But those paths close with admission of the Parker case.
20 Introducing his prior would devastate his defense and deprive Doane of his right to a fair trial.

21 **II. NRS 48.045(3) AND FRANKS V. STATE DO NOT MAKE THE PARKER MATTER ADMISSIBLE.**

22 In Franks v. State, 135 Nev. 1 (2019), the Nevada Supreme Court was concerned that in
23 passing NRS 48.045(3), "the Legislature failed to outline any procedural safeguards to mitigate
24 against the risk that a jury will convict for crimes other than those charged—or that, uncertain of
25 guilt, it will convict anyway because a bad person deserves punishment." Id. at 6 (citing Old Chief

26
27 ² Doane subsequently litigated a breach of his plea agreement which the Supreme Court reviewed in Doane v. State,
28 98 Nev. 75 (1982). He also filed a Petition for Writ of Habeas Corpus in A-19-796692-W. Admission of the Parker
matter arguably gives Doane grounds to incorporate his prior challenges on appeal in the instant case.

1 v. United States, 519 U.S. 172, 181 (1997)). The Court held that prior to the admission of other
2 bad acts under NRS 48.045(3), the district court must determine that the prior bad act is (1) relevant
3 to the crime charged, (2) proven by a preponderance of the evidence, and (3) weighed to determine
4 that its probative value is not substantially outweighed by the danger of unfair prejudice. Id. at 2.
5 To properly evaluate the third prong of the analysis, the Court adopted the modified balancing test
6 in United States v. LeMay, 260 F.3d 1018, 1028 (9th Cir. 2001): (1) the similarity of the prior acts
7 to the acts charged, (2) the closeness in time of the prior acts to the acts charged, (3) the frequency
8 of the prior acts, (4) the presence or lack of intervening circumstances, and (5) the necessity of the
9 evidence beyond the testimonies already offered at trial.

10 As NRS 48.045(3) is a relatively new statute, there are very few Nevada cases that deal
11 with this issue beyond Franks. However, there are many other states that allow propensity
12 evidence in sexual assault trials, like Nevada now does. These courts typically exclude evidence
13 of prior sexual offenses that are qualitatively different from the charged offenses and where the
14 offenses occurred remotely in time. See, e.g., People v. Abilez, 41 Cal.4th 472, 498–502 (2007),
15 as modified (Aug. 22, 2007) (in a 1997 prosecution for sodomy and murder of an elderly woman,
16 a 1973 juvenile adjudication for attempted unlawful intercourse with a minor was not relevant for
17 trial); State v. Salazar, 181 Ariz. 87 (1994) (in prosecution for attempted molestation of
18 defendant’s 13-year-old niece, evidence that defendant raped a 19-year-old woman 18 years
19 previously was inadmissible to show propensity for sexual aberration); People v. Jandres, 226
20 Cal.App.4th 340, 356 (2014) (in prosecution for kidnapping and forcible rape of 18-year-old,
21 evidence that defendant had broken into an 11-year-old girl’s home and touched her was
22 inadmissible propensity evidence); see also People v. Earle, 172 Cal.App.4th 372, 396–400 (2009)
23 (prior commission of indecent exposure does not rationally support an inference that the
24 perpetrator has a propensity to commit felony sexual assault).

25 Here, as discussed above, the significant qualitative differences present in the Parker case
26 demonstrate it is irrelevant for the instant prosecution. It is also worth noting that Franks involved
27 one minor victim who testified about identical uncharged incidents of sexual touching during
28

1 defendant's trial for a single count of Lewdness with a Child under the Age of 14. Franks, 135
2 Nev. at 2. The bad act evidence was necessary because it showed the defendant repeatedly
3 committed the same crime against the same victim, leading up to the charged incident he faced at
4 trial. Id. at 6. Doane's trial deals with an unsolved murder that—at best—has only a suggestion
5 of sexual assault. And Doane's sought-after bad act relates to a horrific attack against a different
6 victim who survived. These facts distinguish Franks and its analytical framework from the instant
7 case.

8 Regardless, under the LeMay factors, the danger of unfair prejudice substantially
9 outweighs the probative value of introducing the Parker case.

- 10 1. **The similarity of the other acts to the acts charged:** As noted previously,
11 only broad parallels connect Parker and Lum. Doane kidnapped, verifiably
12 raped, and maimed Parker while Lum did not exhibit evidence of sexual
13 relations and died of strangulation. Overall, these differences outweigh the
14 similarities between the two.
- 15 2. **The closeness in time of the prior acts to the acts charged:** Each incident
16 occurred months apart. Given this gap, this factor weighs in Doane's favor.
- 17 3. **The frequency of the prior acts:** Each incident occurred only once. Therefore,
18 this factor also weighs in Doane's favor.
- 19 4. **The presence or lack of intervening circumstances:** The months-long time
20 gap allows for a host of intervening circumstances between the two. And the
21 circumstances of Lum's demise are largely unknown. Thus, this weighs in
22 Doane's favor.
- 23 5. **The necessity of the evidence beyond the testimonies already offered at**
24 **trial:** The Parker matter stands in stark contrast to the victim's testimony in
25 Franks about other similar incidents. Telling the jury about Parker's attack is
26 not necessary to establish Lum's murder; instead, it inflames the jury and exacts
27 severe prejudice against Doane.

1 Taken as a whole, the admission of this bad act evidence is substantially more prejudicial
2 than probative and, thus, fails the LeMay test. The concern that a jury will convict because a bad
3 act shows a defendant deserves punishment still underlies Franks and the gruesomeness of the
4 Parker matter all but guarantees this result for Doane. One cannot reasonably expect a jury to give
5 him a fair trial with admission of his other crime.

6 **CONCLUSION**

7 Based on the foregoing, Doane respectfully requests denial of the State's Motion or,
8 alternatively, an evidentiary hearing.

9
10 DATED this 31st day of July, 2021.

11 DARIN F. IMLAY
12 CLARK COUNTY PUBLIC DEFENDER

13
14 By: /s/David E. Lopez-Negrete
15 DAVID E. LOPEZ-NEGRETE, #12027
16 Chief Deputy Public Defender
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28

1 **CERTIFICATE OF ELECTRONIC SERVICE**

2 I hereby certify that service of the above and forgoing DEFENDANT'S
3 OPPOSITION TO STATE'S MOTION TO ADMIT EVIDENCE OF OTHER CRIMES was
4 hereby served this 5TH day of August 2021 via electronic e-filing service to:

5 CLARK COUNTY DISTRICT ATTORNEY'S OFFICE

6 Motions@clarkcountyda.com

7 PAMELA WECKERLY, Chief Deputy District Attorney

8 E-mail: pamela.weckerly@clarkcountyda.com

Attorney for Plaintiff, State of Nevada

9
10 By: /s/ Sara Ruano

Secretary for the Clark County Public Defender's Office

EXHIBIT

DISTR. P.L.

INDEX

STATS

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

OFFICER'S REPORT

D.R. No. 78-71010

HOMICIDE

Subject

Division Reporting..... HOMICIDE Division of Occurrence..... HOMICIDE
Date and Time Occurred..... 11/26/78 Location of Occurrence..... 3.8 miles south of Vegas
Approx. 1045 hours Valley Drive on Hollywood
approx. 100 yards north
of Hollywood

DETAILS:

VICTIM:

LUM, CAROL LYN

WFJ, DOB:

Address:

Las Vegas, Nevada

I. SYNOPSIS

On 11/26/78, at approximately 1045 hours, CAROL LYN LUM, white female juvenile, 14 years, was found dead lying face down in the desert area 3.8 miles south of Vegas Valley Drive on Hollywood Road, approximately 100 yards north of the roadway.

II. PERSONS AT SCENE

A. PATROL OFFICERS

1. SGT. TOM COYNE, Call #549, arrived at 1123 hours
2. LT. D. DEVLIN, Call #314
3. OFFICER RON JOHNSON, P#689, arrived at 1123 hours

B. DETECTIVES AT SCENE

1. SGT. ROBERT HILLIARD, Call #516, arrived at 1245 hours
2. DET. CHUCK LEE, P#486, arrived at 1245 hours
3. DET. JAN LESNIAK, P#883, arrived at 1200 hours

C. I.D. OFFICERS AT SCENE

1. G. JACOBSEN, P#1332, arrived at 1205 hours
2. G. MANUEL, P#1408
3. COMMANDER DEEGAN, P#90, arrived at 1315 hours

Date and Time of This Report..... 11/28/78 Officer..... J. LESNIAK Per. No..... 883
Approved..... [Signature] Officer..... C. LEE Per. No..... 486
SIGNATURE..... [Signature]

ENTERED
N.K.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

DR 78-71010

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D. CORONER AT SCENE

1. ED CARROLL, arrived at 1330 hours

III. PERSONS INTERVIEWED

A. WITNESSES CONTACTED

1. RICHARD ADAMS
22 years
[REDACTED] Las Vegas, Nevada
Phone: [REDACTED]
2. BRUCE MONROE
24 years
[REDACTED] Las Vegas, Nevada
Phone: [REDACTED]

IV. INITIAL CALL

A. DETAILS

On 11/26/78, at 1107 hours, LAS VEGAS METROPOLITAN POLICE DEPARTMENT Communications was notified by phone of a dead body in the desert area off of Hollywood and south of Vegas Valley Drive. Patrol Officers RON JOHNSON and SGT. TOM COYNE were dispatched at 1118 hours and arrived at 1123 hours.

V. CRIME SCENE INVESTIGATION

A. NOTIFICATION OF HOMICIDE SECTION

At 1135 hours, Communications notified Detective JAN LESNIAK of the Homicide Detail that there was a dead body in the desert and that Patrol was requesting Homicide to respond. There were no details given to this Detective. Detective LESNIAK then notified the on-call Supervisor, being SGT. HILLIARD, and advised him of the situation. Detective LESNIAK then responded to the scene arriving at approximately 1200 hours and contacted Officer JOHNSON and SGT. COYNE who pointed out to this Detective where the body was located. This Detective then obtained the names and addresses of the persons who found the body, this being a RICHARD ADAMS and BRUCE MONROE. The persons mentioned earlier all arrived afterwards at the noted times.

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B. DESCRIPTION OF THE SCENE

The body was located approximately 3.8 miles south of Vegas Valley Drive on Hollywood, approximately 100 yards north of Hollywood. The scene was desert area with secondary dirt roads.

C. LOCATION AND DESCRIPTION OF BODY

The body was located laying face down with the head facing in a southeasterly direction. The body was laying on a slight incline approximately 15 degree angle with the head in a downward position. The body was straight with both legs extending straight back from the body towards the northwest. Both arms were laying parallel to the side of the body. The victim's face was directly face down in the dirt. The body was clad in a dark blue ski-type jacket with red, orange and lighter blue design on the back, brown corduroy slacks, dark blue socks with lighter blue horizontal stripes and a white blouse protruding from underneath the jacket. There were no visible injuries to the body. There was slight bleeding from the nose on the facial area, however, this did not appear from any wounds and was probably due to purging of the body. The victim's right eye did appear to be black and swollen. There were no other visible injuries on the body at this time.

D. VISIBLE EVIDENCE AT THE SCENE

Located approximately 18 feet north of the body behind a small bush on a little knoll were a pair of light blue panties and approximately 20 feet north of the blue panties on another knoll was 1 brown shoe. On this shoe were written the name "Thumper" and numerous other writings. Approximately 20 feet southeast of this brown shoe was another brown shoe matching the first one. This shoe also had numerous writing on it. From a position approximately 20 feet from the victim's feet were drag marks going back to a northwesterly direction then over the side of the secondary road in a southwesterly direction stopping on a very hard dirt surface. This dirt surface appeared to be a circular area where vehicles would drive around and possibly park. Located approximately 30 feet southwest from the beginning of these drag marks were some fresh tire tracks. It should be noted that the area sustained a quite heavy rain on Friday, 11/24/78, unknown whether it rained

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

DR 78-71010

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on Saturday, 11/25/78, in the area. These tire tracks were located in a soft portion of the circular area.

VI. INTERVIEW OF WITNESSES

A. NAMES AND INFORMATION OBTAINED

1. BRUCE MONROE
WMA, 24 years
[REDACTED] Las Vegas, Nevada
Phone: [REDACTED]
2. RICHARD ADAMS
WMA, 22 years
[REDACTED] Las Vegas, Nevada
Phone: [REDACTED]
3. ALBERT LENUS BIGGS
WMJ, 15 years
[REDACTED] Henderson, Nevada
Phone: [REDACTED]
4. GAIL KATHRINE WITLICKI
WFA, 39 years
[REDACTED] Henderson, Nevada
Phone: [REDACTED]
5. JAMES JOSEPH BROWN
WMJ, 16 years
[REDACTED] Henderson, Nevada
Phone: [REDACTED]
6. KELLY WHEELER
WFJ, 15 years
[REDACTED] Henderson, Nevada
Phone: [REDACTED]
7. JOHN DELBERT BIVENS
WMA, 18 years
[REDACTED] Las Vegas, Nevada
Phone: [REDACTED]
8. TAMARA JOANN BIVENS
WFJ, 14 years
[REDACTED] Las Vegas, Nevada
Phone: [REDACTED]

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9. CINDY KECK
WFJ, 14 years
[REDACTED] Las Vegas, Nevada
Phone: [REDACTED]

10. DAVID HAMPTON LUM
WMA, 41 years
[REDACTED] Las Vegas, Nevada
Phone: [REDACTED]

(1) BRUCE MONROE

This witness gave a 1-page signed statement. MONROE, while riding his dirt bike with a friend, found the victim's body and subsequently notified the Police.

(2) RICHARD ADAMS

This witness gave a 1-page signed statement. ADAMS was riding his motorcycle with BRUCE MONROE when they found the victim's body and subsequently notified Police.

(3) ALBERT LENUS BIGGS

This witness gave a 10-page signed statement. ALBERT BIGGS stated that he was presently the boyfriend of the victim and had been for approximately the last week. ALBERT stated that the last time that he saw the victim was at approximately 3:00 a.m. on Saturday, 11/25/78, when himself and his mother took the victim from his residence at [REDACTED] Federal to the residence of JAMES BROWN, located at [REDACTED] Palm Street, in Henderson and dropped the victim off. (This information was subsequently confirmed by ALBERT BIGGS' mother, GAIL WITLICKI.)

(4) GAIL WITLICKI

This witness gave a 4-page signed statement. MRS. WITLICKI advised that the victim and her son were at their residence on Federal Street on 11/24/78 from approximately 9:00 p.m. until approximately 3:00 a.m. on 11/25/78. MRS. WITLICKI states that the three of them were watching television and that she fell asleep on the couch at approximately 2:00 in the morning on 11/25/78. The witness states that she woke up at approximately 2:45 - 3:00 a.m. and that her son,

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ALBERT, was getting ready for bed and that the victim was not in the residence. She looked outside her kitchen window and observed a person outside of the window and noticed this to be the victim. She then asked her son what CAROL was doing there and he said she was waiting for a ride home. MRS. WITLICKI then took ALBERT and CAROL to the residence of JAMES BROWN at [REDACTED] Palm and dropped her off. MRS. WITLICKI stated that CAROL told her that this is where she lived and this is the reason for her taking her to that residence.

(5) JAMES JOSEPH BROWN

This witness gave a 9-page signed statement. In substance, this witness related that he went to bed at approximately 3:00 a.m. on the morning of 11/25/78. This was shortly before his mother arrived home from work. Within 15 minutes after his mother had arrived home from work, while he was still asleep, his mother heard a knock on the door and window. She subsequently went to the window and saw the victim who ducked down after seeing that it was JIM'S mother. Subsequently, the mother woke JAMES BROWN, he opened the door, looked outside and saw no one. He states that what he believes to be the next contact was approximately 8:00 in the morning when he received a phone call from the victim. The victim, at this time, indicated to him that she had some acid in her possession and wanted to buy him a stereo for his automobile. This is the last contact BROWN claims to have had with the victim. For full details in reference to what BROWN stated refer to his statement which is on file under DR 78-71010. It should be noted that the information obtained from JAMES BROWN was substantiated in a verbal interview with his mother, JADWJA BROWN. This interview was conducted at the BROWN residence by SGT. HILLIARD and Detective CHUCK LEE late Sunday night, 11/26/78.

(6) KELLY WHEELER

This witness gave a 3-page signed statement. This witness indicated in her statement that the last time that she had physically seen or talked to CAROL LUM was Friday night, 11/24/78, at JIM BROWN'S house. At the time she saw the victim, the victim was in the company of ALBERT BIGGS. She could give no further

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information pursuant to the victim. She did state that her boyfriend, VANCE ROUZAUD, left JIM BROWN'S residence just prior to the arrival of JIM'S mother at 3:00 a.m. and that VANCE had proceeded to his home and before going to bed had placed a phone call to her.

(7) JOHN DELBERT BIVENS

This witness gave a 4 1/2-page signed statement. This witness is the son-in-law of the victim's mother's friend, RHONDA BREMNER. This witness was notified by the victim's mother that the victim had not returned home on Friday evening as she was supposed to. The witness stated that he did contact numerous friends of the victim to ascertain whether any of them were trying to hide her as they felt at that time that she had run away again as she has done on prior occasions. JOHN said that he, along with his wife, DEE, contacted the aforementioned witnesses, ALBERT, JIM, TAMMY and numerous other friends of the victim, however, was unable to obtain any information as to where CAROL was. The witness stated that from approximately 8:00 p.m., on Saturday, until 2:30 in the morning, Sunday morning, he attempted to find the victim with negative results. He also advised that when he could not find her that he advised the victim's mother to contact the Police Department.

(8) TAMARA JOANN BIVENS

This witness gave a 3-page signed statement. In substance, this witness related that she was the victim's closest girlfriend. The last time that she had seen the victim was Friday, 11/24/78, at approximately 12:30 p.m., at her residence. She stated that she has no idea where the victim went after leaving BROWN'S residence. She stated that she has in her possession a diary that belonged to the victim which she will turn over to the Police.

(9) CINDY KECK

This witness gave a 2-page signed statement. The witness stated that she was at the residence of witness TAMARA BIVENS on 11/24/78 and that while there, there

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were numerous phone calls received by TAMMY'S mother, however, when TAMMY'S mother would pick up the phone the persons would hang up. When TAMMY returned home, TAMMY'S mother told her to answer the phone if it rings because she felt it might be CAROL calling and would talk to TAMMY. CINDY said the phone rang approximately 4 more times, TAMMY answered it and she could hear someone in the background but they would hang up on her. CINDY stated that TAMMY left the room, the phone rang again and CINDY answered it and stated it sounded like a girl disguising her voice and made a remark, "In the desert" and laughed and hung up. This was approximately 4:30 in the afternoon and she knows of no other phone calls received.

(10) DAVID HAMPTON LUM

This witness gave a 2-page signed statement. This witness is the victim's father. He has had no contact with his daughter since the middle of September, 1978. He knew that his daughter did have a narcotics problem but did not know to what extent. He further related that he knew that his daughter smoked pot but did not know if his daughter was using acid.

VII. AUTOPSY

Detective LESNIAK was present at the autopsy and has made a complete report concerning the postmortem examination and this report is on file under DR 78-71010.

VIII. CONCLUSION

It is felt by these Detectives at this time after interviewing the above witnesses and checking the victim's prior record that CAROL LUM was involved with narcotics and used them frequently. Types of narcotics being marijuana, cocaine, acid, possibly amphetamines. It is also felt that due to the fact that the victim could not get a ride home from the witness JIM BROWN at 3:00 in the morning that she may possibly have contacted another person or attempted to hitchhike a ride back to Las Vegas. This investigation is still continuing and any further developments will be the subject of additional follow-up reports.

J. LESNIAK, P#883
C. LEE, P#486

JL/CL/pl
11/28/78; 2:45 p.m.

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DISTR. ldh

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

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OFFICER'S REPORT

STATS _____

D.R. No. 78-71010HOMICIDE AUTOPSY

Subject

Division Reporting HOMICIDE Division of Occurrence HOMICIDEDate and Time Occurred 7/26/78 1100 hrs. Location of Occurrence 3.8 miles south of Vegas Valley Drive on Hollywood approx. 100 yards north of the roadway

DETAILS:

VICTIM

: LUM, CAROL LYN
WFJ DOB: [REDACTED]

I. SYNOPSIS:

On 11/26/78 at approximately 1045 hours, the above victim was found dead at the above location by two subjects riding their motorcycles in the area. The victim was found lying face down in a dirt road.

II. PERSONS PRESENT AT AUTOPSY

1. DR. SHELDON GREEN
2. ASSISTANT SCOTT BROWER
3. DETECTIVE J. LESNIAK P-883
4. ID SPECIALIST GREG LANGLEY P-885

III. CLOTHING WORN

The victim was clad in brown corduroy slacks with gold metal buckle, a white blouse with orange and blue flower design on the yoke, dark blue ski jacket with orange, red and lighter blue design on the back and over both front pockets, dark blue socks with light blue horizontal stripes and a beige bra.

Victim also had a yellow metal ring with dark purple stone on the left hand ring finger, a silver turquoise ring on the right hand ring finger. In victim's left ear was a gold wire type pierced earring with a yellow feather attached to it. In the right ear was a gold cross pierced earring. Victim had three gold chains around her neck, one with a cross attached, one with a green jade Italian horn, the third with a heart shaped light purple stone. All of the above items were impounded by ID Specialist LANGLEY.

Date and Time of This Report 11/28/78 8:25 AM Officer J. LESNIAK Per. No. #883Approved [Signature] Officer _____ Per. No. _____SIGNATURE [Signature]

DOANE 19F19856X 11/4/2019 009

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

DR 78-71010

CONTINUATION REPORT

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The victim was photographed and fingerprints were also taken by OFFICER LANGLEY.

IV. PRELIMINARY EXAM

The victim was observed to have a visible swelling and discoloration of the right eye. The victim's left hand had what appeared to be superficial postmortem scratches. Her left thumb nail appeared to have blood underneath. Victim's right hand also had superficial postmortem scratches and her fingernails appeared to have been slightly broken and jagged. Fingernail scrapings were taken by OFFICER LANGLEY. Victim had a superficial postmortem scratch between her breasts. The victim had numerous slight bruises on both legs. There were no other noticeable trauma on the body.

DR. GREEN did a dental chart on the victim due to the fact victim was unidentified at the time of this autopsy.

A vaginal smear was also taken to ascertain if the victim had recently had sexual intercourse or if she had been sexually assaulted. There was no trauma or observable injury to victim's genitalia or vaginal area. DR. GREEN took swabs of the vagina, however, it appeared to be dry, indicating that victim did not appear to have had sexual relations. Pubic hair samples were also taken and impounded.

The body cavity was opened at 1745 hours and all the internal organs were examined. DR. GREEN stated that all organs appeared normal except for the slight presence of petechia in victim's heart muscle, lungs and liver. Victim's head was opened at 1805 hours and directly under the skin were numerous hemorrhages, one directly on top in the middle of the skull, one to the left side of the head with numerous small hemorrhages around it. DR. GREEN stated that these did not appear serious and were not visible through victim's hair, however, appeared that she was struck with some type of object.

The skull was removed and there was visible hemorrhages in the brain cavity. The victim's tongue and neck muscles were removed and examined and there were numerous hemorrhages in victim's larynx, glands and neck muscles.

V. CAUSE OF DEATH

DR. GREEN stated the victim died from manual strangulation. This was substantiated by the hemorrhages in the throat muscles and the petechia in victim's organs.

JL/ldh
11/28/78 12:45 PM
Tape

DOANE 19F19856X 11/4/2019 010

AA 246

C-20-346036-1 State of Nevada
 vs
 John Doane

August 20, 2021 08:30 AM State's Notice of Motion and Motion to Admit Evidence of Other Crimes

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Jacobson, Alice

RECORDER: Boyd, Victoria

REPORTER:

PARTIES PRESENT:

David E. Lopez-Negrete Attorney for Defendant

Pamela C Weckerly Attorney for Plaintiff

State of Nevada Plaintiff

JOURNAL ENTRIES

Defendant not present in NDC.

Argument by the State in support of the motion. Opposition by Defense. COURT ORDERED matter UNDER ADVISEMENT and will issue a written decision from Chambers.

Mr. Lopez Negrete stated he would file a motion to continue the trial. State noted it would have no objection to a continuance.

CUSTODY (NDC)