

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 2**

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
Regional Justice Center  
200 Lewis Avenue  
Post Office Box 552212  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
State of Nevada

DAVID E. LOPEZ-NEGRETE  
Nevada Bar #012027  
Deputy Public Defender  
309 South Third Street, Suite 226  
Las Vegas, Nevada 89155  
(702) 455-4685

AARON D. FORD  
Nevada Attorney General  
Nevada Bar # 007704  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1265

Counsel for Appellant

Counsel for Real Party in Interest

## INDEX

<u>Document</u>	<u>Page No.</u>
Defendant's Motion to Continue Trial, filed 08/23/21 .....	AA I 248- II 252
Defendant's Opposition to Admitting Evidence of Other Crimes, filed 08/05/21 .....	AA I 222-246
Defendant's Opposition to State's Motion for Rehearing, filed 11/08/21 .....	AA II 270-276
District Court Minutes of 01/10/20 (Grand Jury Indictment).....	AA I 113
District Court Minutes of 02/04/20 (Initial Arraignment).....	AA I 117
District Court Minutes of 08/20/21 (State's Notice of Motion and Motion to Admit Evidence of Other Crimes) .....	AA I 247
District Court Minutes of 09/08/21 (Defendant's Motion to Continue Trial).....	AA II 253
District Court Minutes of 10/05/21 (Minute Order).....	AA II 254-255
District Court Minutes of 11/12/21 (State's Notice of Motion and Motion to Reconsider State's Motion to Admit Evidence of Other Crimes) .....	AA II 277
Findings of Fact, Conclusions of Law and Order Denying State's Motion to Admit Evidence of Other Crimes, filed 10/22/21 .....	AA II 256-264
Indictment, filed 01/10/20.....	AA I 114-116
Recorder's Transcripts of 12/12/19 (Grand Jury Volume 1), filed 01/11/20 .....	AA I 1-48
Recorder's Transcripts of 12/19/19 (Grand Jury Volume 2), filed 01/11/20 .....	AA I 49-86
Recorder's Transcripts of 01/09/20 (Grand Jury Volume 3), filed 01/11/20 .....	AA I 87-112
Recorder's Transcripts of 11/12/21 (Reconsider Motion to Admit Evidence), filed 12/28/21.....	AA II 278-282
State's Notice of Motion and Motion to Admit Evidence of Other Crimes, filed 07/29/21 .....	AA I 118-221
State's Notice of Motion and Motion to Reconsider State's Motion to Admit Evidence of Other Crimes, filed 10/28/21 .....	AA II 265-269
Order Denying State's Motion to Reconsider State's Motion to Admit Evidence of Other Crimes, filed 11/17/21 .....	AA II 283-285

## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on January 25, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD  
Nevada Attorney General

DAVID E. LOPEZ-NEGRETE  
Deputy Public Defender

TALEEN PANDUKHT  
Chief Deputy District Attorney

I further certify that I served a copy of this document by electronic emailing a true and correct copy thereof to:

JUDGE TIERRA JONES

Email: [DriverT@clarkcountycourts.us](mailto:DriverT@clarkcountycourts.us)

BY /s/ J. Hall  
Employee, District Attorney's Office

TP/Megan Thompson/jh

1 injuries to her body. The coroner examined Lum's genitals but found no trauma there; he also  
2 swabbed her vagina but noted it appeared dry, signaling that Lum did not have sexual relations.  
3 Lum did have hemorrhages in her throat muscles and organs, leading the coroner to find she died  
4 of manual strangulation.

5 Lum's killing remained a cold case until police tested her underwear for DNA evidence  
6 in 2016. Detecting sperm fractions on this piece of evidence led police to ultimately obtain a  
7 match to John Doane. He now faces a charge of Open Murder.

8 Trial is scheduled for September 27, 2021.

### 9 LAW

10 Pursuant to EDCR 7.30(a), any party may, for good cause, move the court for an order  
11 continuing the day set for trial of any cause. The Nevada Supreme Court has repeatedly held that  
12 "good cause" can take on a variety of forms. *See Furbay v. State*, 116 Nev. 481, 998 P.2d 553  
13 (2000) (trial date continued for good cause do to an unavailable witness); *Redman v. State*, 108 Nev.  
14 227, 828 P.2d 395 (1992) (trial date continued for good cause because defense counsel was not  
15 prepared); *Snyder v. State*, 103 Nev. 275, 738 P.2d 1303 (1987) (trial date continued because defense  
16 counsel was in a murder trial).

### 17 CONCLUSION

18 Based on the foregoing, the defense respectfully requests granting the instant motion and  
19 continuing trial in the ordinary course to a date convenient to the parties and the Court.  
20

21 DATED this 20th day of August, 2021.

22 DARIN F. IMLAY  
23 CLARK COUNTY PUBLIC DEFENDER

24  
25 By: /s/David E. Lopez-Negrete  
26 DAVID E. LOPEZ-NEGRETE, #12027  
27 Deputy Public Defender  
28

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

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing MOTION on for hearing before the Court on the 10th day of September, 2021, at 8:30 a.m.

DARIN F. IMLAY  
CLARK COUNTY PUBLIC DEFENDER

# CERTIFICATE OF ELECTRONIC SERVICE

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE  
[Motions@clarkcountyda.com](mailto:Motions@clarkcountyda.com)  
 PAMELA WECKERLY, Chief Deputy District Attorney  
 E-mail: [pamela.weckerly@clarkcountyda.com](mailto:pamela.weckerly@clarkcountyda.com)  
 Attorney for Plaintiff, State of Nevada

5

Felony/Gross Misdemeanor

COURT MINUTES

September 08, 2021

---

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

---

September 08, 2021      08:30 AM      Defendant's Motion To Continue Trial

HEARD BY:      Jones, Tierra      COURTROOM: RJC Courtroom 14B

COURT CLERK: Berkshire, Teri

RECORDER:      Boyd, Victoria

REPORTER:

PARTIES PRESENT:

David E. Lopez-Negrete      Attorney for Defendant

Marc P. Di Giacomo      Attorney for Plaintiff

State of Nevada      Plaintiff

**JOURNAL ENTRIES**

APPEARANCES CONTINUED: Mr. DiGiacomo present on behalf of the state through bluejeans technology.

Deft. not present and in the Nevada Department of Corrections. There being no opposition, COURT ORDERED, motion GRANTED. COURT FURTHER ORDERED, trial date VACATED and RE-SET on the date given.

**CUSTODY**

12/17/21 8:30 A.M.      STATUS CHECK: TRIAL READINESS

04/08/22 8:30 A.M.      PRE TRIAL CONFERENCE

04/15/22 8:30 A.M.      CALENDAR CALL

04/25/22 10:30 A.M.      JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****October 05, 2021**

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

**October 05, 2021      10:00 AM      Minute Order**

**HEARD BY:** Jones, Tierra      **COURTROOM:** Chambers

**COURT CLERK:** Teri Berkshire

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Following review of the papers and pleadings on file herein and hearing arguments of counsel during the hearing, COURT ORDERS, State s Notice of Motion and Motion to Admit Evidence of Other Crimes is DENIED. The COURT FINDS that the evidence of the Parker case from 1979, is inadmissible under NRS 48.045(3) and the Franks v. State analysis as the evidence presented does not establish that a sexual assault occurred in the instant case and there are no charges of sexual assault in the instant case. NRS 48.045(3) specifically deals with propensity evidence in sexual offense cases, and that is not the case here. As such, the evidence is inadmissible under NRS 48.045(3).

In analyzing the admissibility of the other crimes, wrongs or acts evidence under NRS 48.045(2), the COURT FINDS that the Parker evidence does not establish identity or intent in the instant case. The COURT FURTHER FINDS that the Parker evidence does not share enough similarities with evidence in the instant case, to make the probative value outweigh the danger of unfair prejudice. As such, the evidence is inadmissible in the instant case.

The Defense is ordered to prepare an Order consistent with this minute order and submit it to the Court for signature within 10 days of the filing of this minute order.

CLERK'S NOTE: A copy of this minute order is being distributed to all registered parties via Odyssey File and Serve. /tb



ORDR  
DARIN F. IMLAY, PUBLIC DEFENDER  
NEVADA BAR NO. 5674  
DAVID E. LOPEZ-NEGRETE, DEPUTY PUBLIC DEFENDER  
NEVADA BAR NO. 12027  
**PUBLIC DEFENDERS OFFICE**  
309 South Third Street, Suite 226  
Las Vegas, Nevada 89155  
Telephone: (702) 455-4685  
Facsimile: (702) 455-5112  
Lopeznde@clarkcountynv.gov  
*Attorneys for Defendant*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA ,	)	
	)	
Plaintiff,	)	CASE NO. C-20-346036-1
	)	
v.	)	DEPT. NO. X
	)	
JOHN EUGENE DOANE,	)	
	)	
Defendant,	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**  
**DENYING STATE'S MOTION TO ADMIT EVIDENCE OF OTHER CRIMES**

THIS CAUSE having come on for hearing before the Honorable TIERRA JONES, Eighth Judicial District Judge, on the 20th day of August, 2021, Defendant represented by DARIN IMLAY, Clark County Public Defender, by and through DAVID LOPEZ-NEGRETE, Chief Deputy Public Defender, the State represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through PAMELA WECKERLY, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court issues the following findings of fact, conclusions of law and order denying State's Motion to Admit Evidence of Other Crimes:

**FINDINGS OF FACT**

1. Defendant, JOHN EUGENE DOANE, is charged by way of Criminal Indictment with Murder (Category A Felony – NRS 200.010, 200.030). The victim is Carol Lum. The murder allegedly occurred on or about November 26, 1978.

1           2.     The State filed a Motion to Admit Evidence of Other Crimes, seeking to  
2 present Doane's conviction in 79C044644 under NRS 48.045(2) or 48.045(3).

3                               **Instant Case**

4           3.     Starting on Friday, November 24, 1978, fourteen-year-old Carol Lum  
5 visited with her friends in their homes. She saw her closest girlfriend early Friday  
6 afternoon, then later from another location appeared to prank call her saying something  
7 about "in the desert" in a disguised voice and laughing.

8           4.     That night, Lum was in the company of her boyfriend, Albert Biggs, and a  
9 couple other friends at Jim Brown's house. Around 9 p.m. Lum was at Biggs' home with  
10 him and his mother. After falling asleep watching TV, Biggs' mother woke up close to 3  
11 a.m. and saw Lum outside the home where she said she was waiting for a ride. Instead,  
12 Biggs' mother drove her to Jim Brown's house, where Lum said she lived. Although, she  
13 did not end up sleeping there. Brown's mother heard a knock outside and saw Lum duck  
14 out of view. After Brown's mother woke him, he opened the door but Lum was gone.

15          5.     Brown's last contact with Lum came by way of a phone call the next  
16 morning. She wanted to buy him a car stereo by selling acid she had obtained. Lum had  
17 a history of drug use according to her father. He had not seen her in over two months.  
18 Police would later learn that Lum was involved in narcotics, including marijuana,  
19 cocaine, acid, and amphetamines, and used them frequently.

20          6.     Spurred by Lum's failure to come home on Friday evening, Lum's mother  
21 sought help from family friend John Bivens to locate Lum. They worried that Lum had  
22 run away again, as she had in the past and that her friends were helping to hide her.  
23 Bivens and his wife searched for Lum by calling her friends throughout Saturday night  
24 and into early Sunday morning, without success.

25          7.     Late Sunday morning, November 26, 1978, two young men riding their  
26 motorbikes in a desert area came upon Lum's body. Police responded to their call,  
27 documented the crime scene, and performed an autopsy. Lum was laying face-down on  
28 the ground. She was clothed but her underwear and shoes were behind some nearby

1 shrubbery. She had a swollen eye but no visible injuries to her body. The coroner  
2 examined Lum's genitals but found no trauma there; he also swabbed her vagina but  
3 noted it appeared dry, signaling that Lum did not have sexual relations. Lum did have  
4 hemorrhages in her throat muscles and organs, leading the coroner to find she died of  
5 manual strangulation.

6 8. Lum's killing remained a cold case until police tested her underwear for  
7 DNA evidence in 2016. Detecting sperm fractions on this piece of evidence led police to  
8 ultimately obtain a match to John Doane. He now faces a charge of Open Murder.

### 9 **Other Crime**

10 9. On the morning of February 20, 1979, fourteen-year-old Cheryl Parker was  
11 walking to Basic High School when John Doane offered to drive her the rest of the way.  
12 She accepted and directed him to drop her off at the school corner but he continued on.  
13 Doane then threatened Parker with a screwdriver, telling her not to make any trouble. He  
14 had her sit closer to him, put her books in the backseat, and drove on the highway  
15 towards Boulder City.

16 10. Seeing where things were headed, Parker told Doane she might as well  
17 undress and did so before they stopped at the lake. Doane then subjected Parker to sexual  
18 intercourse. Next, he drove them to another spot and sexually assaulted her two more  
19 times. Doane took Parker to a third location nearby. There, he used the screwdriver to  
20 threaten her again, prompting her to plead for her life. They then got out of the car and  
21 Doane made her perform fellatio, ending with climaxing in her mouth.

22 11. Afterwards, Doane choked Parker while she stood next to the car. She fell  
23 to the ground, at which point he forced dirt and rocks into her mouth. She screamed.  
24 Doane then strangled Parker until she lost consciousness. He also struck her in the face  
25 with a large rock.

26 12. Parker awoke and wandered until park rangers located her around 9:30 a.m.  
27 They rushed her to medical care. Her cheekbone and area around her eye was fractured  
28 and crushed. She suffered broken teeth as well. She exhibited several stab wounds and

1 cuts on her face and head, requiring stitches. Multiple bruises and markings pervaded her  
2 neck and upper chest area, indicating strangulation. A sexual assault examination  
3 revealed a significant amount of dirt inside the lips of her vagina, corroborating a struggle  
4 and rape occurring on the ground.

5 13. In all, Parker spent over sixteen days in the hospital and received  
6 reconstructive surgery. At preliminary hearing, her jaw was nearly wired shut. The  
7 focusing mechanism of her eyes suffered permanent injury and her face resulted  
8 permanently disfigured, however.

9 14. Doane resolved the case against him. He expressed remorse and pleaded  
10 guilty to eight serious charges for this attack: Mayhem; Attempt Murder; multiple counts  
11 of Sexual Assault with Substantial Bodily Harm and Use of a Deadly Weapon; First  
12 Degree Kidnapping with Substantial Bodily Harm and Use of a Deadly Weapon; and  
13 Robbery with Use of a Deadly Weapon.

14 15. At twenty-three years old, he received a sentence of life without the  
15 possibility of parole.

## 16 CONCLUSIONS OF LAW

17 1. Evidence of other crimes is presumptively inadmissible. Under NRS  
18 48.045(1), these are inadmissible as a rule and may be presented only if the acts fall  
19 under the specific exceptions of NRS 48.045(2). Our supreme court has stressed that  
20 NRS 48.045(2) “is merely an exception to the general presumption” that other crimes are  
21 inadmissible. Tavares v. State, 117 Nev. 725, 730-31 (2001). In our system of criminal  
22 justice, using prior bad acts to convict a defendant is “heavily disfavored” because they  
23 are often irrelevant and prejudicial. Id. at 730; *accord* Walker v. State, 116 Nev. 442,  
24 445 (2000). The underlying concern is that showcasing these acts will unduly influence  
25 the jury and lead it to convict the accused solely because it thinks he is a “bad person.”  
26 Tavares, 117 Nev. at 730.

27 2. In deciding whether to admit other crime evidence, the trial court must  
28 conduct an on-the-record hearing outside the jury’s presence. *See* Petrocelli v. State, 101

1 Nev. 46, 51–52 (1985) (delineating procedure for admitting other acts); Armstrong v.  
2 State, 110 Nev. 1322, 1323–24 (1994) (requiring findings on the record). At the hearing,  
3 the court must determine whether 1) the incident is relevant to the crime charged and  
4 admissible for other, non-propensity purposes; 2) clear and convincing evidence proves  
5 the act; and 3) the danger of unfair prejudice does not substantially outweigh the  
6 evidence’s probative value. Tinch v. State, 113 Nev. 1170, 1176 (1997) *modified by*  
7 Bigpond v. State, 128 Nev. 108 (2012). Our Supreme Court will review a trial court’s  
8 decision to admit or exclude this evidence for an abuse of discretion. Randolph v. State,  
9 136 Nev. Adv. Op. 78, 477 P.3d 342, 346 (2020).

10 3. Our Supreme Court has made clear that when analyzing offenses that are  
11 typically committed in a similar manner, “it is essential that some distinctive  
12 characteristics be demonstrated” between the charged and other crimes. Mayes v. State,  
13 95 Nev. 140, 143 (1979). The modus operandi exception in NRS 48.045(2) also falls  
14 under identity and reinforces the requisite threshold for admitting other acts. It is  
15 generally appropriate only where a positive identification of the perpetrator is lacking and  
16 the offered evidence presents “a signature crime so clear” that it establishes the identity  
17 of the accused at trial. Mortensen v. State, 115 Nev. 273, 280 (1999); *accord* Rosky v.  
18 State, 121 Nev. 184, 196 (2005). The offered evidence is probative, however, ““only to  
19 the extent that Distinctive “common marks” give logical force to the inference of identity.  
20 If the inference is weak, the probative value is likewise weak, and the court’s discretion  
21 should be exercised in favor of exclusion.”” Mayes, 95 Nev. at 143 (quoting People v.  
22 Haston, 444 P.2d 91, 99-100 (Cal. 1968)). For example, in prosecuting a defendant for a  
23 “trick roll” theft, it was error to admit evidence that she had committed “trick rolls” in the  
24 past when there was nothing distinctive linking the cases. Mayes, 95 Nev. at 143; *accord*  
25 Coty v. State, 97 Nev. 243, 244-45 (1981); *see also* Colley v. Sumner, 784 F.2d 984, 990  
26 (9th Cir. 1986)(finding a unique modus operandi where defendant took both women out  
27 driving, assaulted them in roughly the same place within days of each other, started by  
28 choking them, but voiced regret, distress, and confusion during or after the act).

1           4.     Here, the State has DNA evidence identifying Doane as the perpetrator of  
2 Lum’s murder. A “status of mythic infallibility” cloaks DNA evidence so juries  
3 naturally place “great emphasis” on its probative value. Valentine v. State, 135 Nev.  
4 463, 473 (2019) (quoting People v. Marks, 374 P.3d 518, 525 (Colo. App. 2015)).

5           5.     Therefore, the Court finds that the Parker evidence does not establish  
6 identity or intent under NRS 48.045(2) in the instant case.

7           6.     The Court further finds that the Parker evidence does not share enough  
8 similarities with the evidence in the instant case to make the probative value outweigh the  
9 danger of unfair prejudice. As such, the other crime evidence is inadmissible in the  
10 instant case.

11           7.     In Franks v. State, 135 Nev. 1 (2019), the Nevada Supreme Court was  
12 concerned that in passing NRS 48.045(3), “the Legislature failed to outline any  
13 procedural safeguards to mitigate against the risk that a jury will convict for crimes other  
14 than those charged—or that, uncertain of guilt, it will convict anyway because a bad  
15 person deserves punishment.” Id. at 6 (citing Old Chief v. United States, 519 U.S. 172,  
16 181 (1997)). The Court held that prior to the admission of other bad acts under NRS  
17 48.045(3), the district court must determine that the prior bad act is (1) relevant to the  
18 crime charged, (2) proven by a preponderance of the evidence, and (3) weighed to  
19 determine that its probative value is not substantially outweighed by the danger of unfair  
20 prejudice. Id. at 2. To properly evaluate the third prong of the analysis, the Court  
21 adopted the modified balancing test in United States v. LeMay, 260 F.3d 1018, 1028 (9th  
22 Cir. 2001): (1) the similarity of the prior acts to the acts charged, (2) the closeness in time  
23 of the prior acts to the acts charged, (3) the frequency of the prior acts, (4) the presence or  
24 lack of intervening circumstances, and (5) the necessity of the evidence beyond the  
25 testimonies already offered at trial.

26           8.     As NRS 48.045(3) is a relatively new statute, there are very few Nevada  
27 cases that deal with this issue beyond Franks. However, there are many other states that  
28 allow propensity evidence in sexual assault trials, like Nevada now does. These courts

1 typically exclude evidence of prior sexual offenses that are qualitatively different from  
2 the charged offenses and where the offenses occurred remotely in time. *See, e.g., People*  
3 *v. Abilez*, 41 Cal.4th 472, 498–502 (2007), as modified (Aug. 22, 2007) (in a 1997  
4 prosecution for sodomy and murder of an elderly woman, a 1973 juvenile adjudication  
5 for attempted unlawful intercourse with a minor was not relevant for trial); *State v.*  
6 *Salazar*, 181 Ariz. 87 (1994) (in prosecution for attempted molestation of defendant’s 13-  
7 year-old niece, evidence that defendant raped a 19-year-old woman 18 years previously  
8 was inadmissible to show propensity for sexual aberration); *People v. Jandres*, 226  
9 Cal.App.4th 340, 356 (2014) (in prosecution for kidnapping and forcible rape of 18-year-  
10 old, evidence that defendant had broken into an 11-year-old girl’s home and touched her  
11 was inadmissible propensity evidence); *see also People v. Earle*, 172 Cal.App.4th 372,  
12 396–400 (2009) (prior commission of indecent exposure does not rationally support an  
13 inference that the perpetrator has a propensity to commit felony sexual assault).

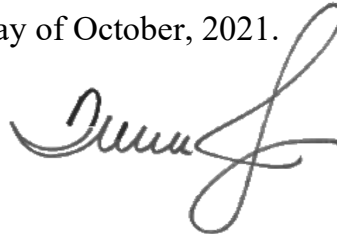
14         9. Here, the Court finds that the evidence of the Parker case from 1979 is  
15 inadmissible under NRS 48.045(3) and *Franks, supra*, because the evidence presented  
16 does not establish that a sexual assault occurred in the instant case and there are no  
17 charges of sexual assault in the instant case. NRS 48.045(3) specifically deals with  
18 propensity evidence in sexual offense cases and that is not the case here. As such, the  
19 evidence is inadmissible under NRS 48.045(3).  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2 **ORDER**

3 Based upon the Findings of Fact and Conclusions of Law contained herein, it is  
4 hereby: **ORDERED, ADJUDGED, and DECREED** that the State's Motion is  
5 DENIED.

6 Dated this 22nd day of October, 2021

7 DATED this \_\_\_\_\_ day of October, 2021.

8 

9  
10 \_\_\_\_\_  
DISTRICT COURT JUDGE

11 **DEA 7AF CFDC 016A**  
**Tierra Jones**  
**District Court Judge**

12 Submitted by:

13 **DARIN F. IMLAY**  
**CLARK COUNTY PUBLIC DEFENDER**

14  
15  
16 By /s/David E. Lopez-Negrete  
17 **DAVID E. LOPEZ-NEGRETE, #12027**  
**Deputy Public Defender**

18  
19  
20  
21  
22  
23  
24  
25  
26 Case Name: John Eugene Doane  
27 Case No.: C-20-346036-1  
28 Dept. No.: X



1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 State of Nevada

CASE NO: C-20-346036-1

7 vs

DEPT. NO. Department 10

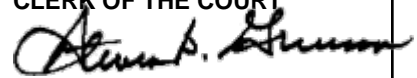
8 John Doane  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 10/22/2021

15 David Lopez-Negrete Deputy Public Defender	LopezNDE@ClarkCountyNV.gov
16 Ryan Bashor Deputy Public Defender	BashorRJ@clarkcountynv.gov
17 Sara Ruano PD-Secretary	Ruanosg@clarkcountynv.gov
18 DC 10 Law Clerk	Dept10LC@clarkcountycourts.us
19 Pam Weckerly Chief Deputy District Atty	Pamela.Weckerly@clarkcountyda.com
20 DA Motions	Motions@clarkcountyda.com
21	
22	
23	
24	
25	
26	
27	
28	



**MOT**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
MARC DIGIACOMO  
Chief Deputy District Attorney  
Nevada Bar #006955  
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 RECONSIDER STATE'S MOTION TO ADMIT EVIDENCE OF  
OTHER CRIMES**

DATE OF HEARING:  
TIME OF HEARING: 8:30 AM  
**HEARING REQUESTED**

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MARC DIGIACOMO, Chief Deputy District Attorney, and files this Notice Of Motion And Motion To Reconsider State's 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.

///

///

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 \_\_\_\_\_, the \_\_\_\_\_ day of November, 2021, at the hour of 8:30 AM, or as  
5 soon thereafter as counsel may be heard.

6 DATED this 28th day of October, 2021.

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

10 BY /s/ Marc DiGiacomo  
11 MARC DIGIACOMO  
12 Chief Deputy District Attorney  
13 Nevada Bar #006955

14 STATEMENT OF FACTS

15 A. Case Before this Court

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

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

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

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

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

28 In late 2016, LVMPD Cold Case detectives requested that Lum's underwear and  
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  
6 was not 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. Doane was convicted of Mayhem, Attempt Murder, Sexual Assault With Substantial  
22 Bodily Harm and Use of a Deadly Weapon, First Degree Kidnaping With Substantial Bodily  
23 Harm and Use of a Deadly Weapon and Robbery With Use of a Deadly Weapon.

24 ARGUMENT

25 A. REHEARING OF THE MOTION IS APPROPRIATE AS THE COURT  
26 CLEARLY AND UNAMBIGUOUSLY MISAPPREHENDED NRS 48.045(3).

27 Rule 8 of the Statewide Rules of Criminal Practice allows for the rehearing of motions:

28 ///

1 (A) No motion once heard and disposed of shall be renewed in the  
2 same cause, nor shall the same matters therein embraced be  
3 reheard, unless by leave of the court granted upon motion therefor,  
4 after notice of such motion to the adverse parties.

(B) A party may seek reconsideration of a ruling of the court upon  
a showing of changed circumstances.

5 In its order, the Court specifically found that the current charge is not a sexual offense. This  
6 is a complete misapprehension of law.

7 The Indictment in the instant case charges Defendant with murder. One of the theories  
8 of liability is that the murder occurred in the perpetration or attempted perpetration of a sexual  
9 assault. In the other case, Defendant was convicted of sexual assault. NRS 48.045(3) states:

10 Nothing in this section shall be construed to prohibit the admission  
11 of evidence in a criminal prosecution for a sexual offense that a  
12 person committed another crime, wrong or act that constitutes a  
separate sexual offense. As used in this subsection, "sexual  
offense" has the meaning ascribed to it in NRS 179D.097.

13 NRS 179D.097 defines a laundry list of expansive crimes that are considered sexual.

14 Notwithstanding, the Court need only review the first two definitions:

- 15 1. "Sexual offense" means any of the following offenses:  
16 (a) Murder of the first degree committed in the perpetration or  
17 attempted perpetration of sexual assault or of sexual abuse or  
18 sexual molestation of a child less than 14 years of age pursuant to  
paragraph (b) of subsection 1 of NRS 200.030.  
(b) Sexual assault pursuant to NRS 200.366.

19 Thus, in the instant case, the charge is a "sexual offense" as defined in by NRS 48.045(3) and  
20 NRS 179D.097(1)(a). In the other case, the offense is a sexual offense as defined by NRS  
21 48.045(3) and NRS 179D.097(1)(b). Therefore, the Court had to be under a misapprehension  
22 of when it found the evidence inadmissible under NRS 48.045(3).<sup>1</sup>

23 ///

24 ///

25 ///

26  
27 <sup>1</sup> Also disturbing is the Court found that the facts associated with the murder do not necessarily establish a sexual assault.  
28 While the State would disagree with the statement, the fact that the Court holds such an opinion would make the other  
bad act that much more probative and admissible.

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 October, 2021.

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

9 BY /s/ Marc DiGiacomo  
10 MARC DIGIACOMO  
11 Chief Deputy District Attorney  
12 Nevada Bar #006955  
13  
14

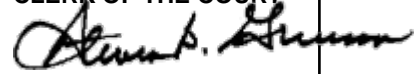
15 CERTIFICATE OF ELECTRONIC SERVICE

16 I hereby certify that service of the above and foregoing, was made this 28<sup>th</sup> day of  
17 October 2021, by email to:

18 David Lopez-Negrete, Deputy Public Defender  
19 [lopeznde@ClarkCountyNV.gov](mailto:lopeznde@ClarkCountyNV.gov)

20  
21 BY: /s/ Stephanie Johnson  
22 Employee of the District Attorney's Office  
23  
24  
25  
26  
27

28 19F19856X/MD/sj/MVU



**OPPM**

DARIN F. IMLAY, PUBLIC DEFENDER

NEVADA BAR NO. 5674

DAVID E. LOPEZ-NEGRETE, DEPUTY PUBLIC DEFENDER

NEVADA BAR NO. 12027

**PUBLIC DEFENDERS OFFICE**

309 South Third Street, Suite 226

Las Vegas, Nevada 89155

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: November 12, 2021

TIME: 8:30 a.m.

**DEFENDANT'S OPPOSITION TO STATE'S MOTION FOR REHEARING**

COMES NOW, the Defendant, JOHN EUGENE DOANE, by and through DAVID E. LOPEZ-NEGRETE, Deputy Public Defender and hereby opposes rehearing the State's Motion to Admit Evidence of Other Crimes, which this court previously denied.

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 5th day of November, 2021.

DARIN F. IMLAY

CLARK COUNTY PUBLIC DEFENDER

By: /s/David E. Lopez-Negrete

DAVID E. LOPEZ-NEGRETE, #12027

Deputy Public Defender

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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 5th day of November, 2021.

---

DAVID E. LOPEZ-NEGRET



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  
28

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,  
28

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 ARGUMENT

### 12 I. THIS COURT MADE A PROPER RULING ON THE STATE’S MOTION WHICH DOES NOT WARRANT 13 REHEARING.

14 This court rendered a fair and well-considered decision to bar admission of other crime  
15 evidence. The State made its case via its initial Motion, the defense filed an Opposition, and the  
16 State declined to file a Reply. The court heard oral argument on August 20, 2021 and took the  
17 matter under advisement, dedicating additional time to making this important ruling.<sup>1</sup> Following  
18 its consideration, the court issued a written Minute Order on October 5, 2021. It subsequently  
19 entered its Findings of Fact, Conclusions of Law and Order.

20 The State mistakenly asserts that this court “specifically found that the current charge is  
21 not a sexual offense.” In fact, the court ruled that “there are no charges of sexual assault in the  
22 instant case,” which is the truth. Though one of the State’s theories of liability is a sexual assault  
23 felony-murder, the charge Doane faces is open murder. The court’s ruling does not rest on whether  
24 the instant matter constitutes a sexual offense under NRS 179D.097. Regardless, NRS  
25 48.045(3) does not mandate admission of other crimes even if they constitute sexual offenses.

---

26  
27 <sup>1</sup> The State felt the need to remind the court about the decision remaining pending at an unrelated court date on  
28 September 8, 2021.

1 NRS 48.045(3) permits it but leaves that final determination to the court. Thus, the State  
2 misapprehended this court's Order.

3 Additionally, the court properly compared and contrasted the facts in the sought-after bad  
4 act and instant prosecution to determine that the latter do not establish a sexual assault. This is  
5 precisely the analysis within the court's purview under Franks v. State, 135 Nev. 1 (2019). It  
6 considered whether the prior bad act is (1) relevant to the crime charged, (2) proven by a  
7 preponderance of the evidence, and (3) weighed to determine that its probative value is not  
8 substantially outweighed by the danger of unfair prejudice. Id. at 2. It further evaluated potential  
9 prejudice through the modified balancing test in United States v. LeMay, 260 F.3d 1018, 1028 (9th  
10 Cir. 2001): (1) the similarity of the prior acts to the acts charged, (2) the closeness in time of the  
11 prior acts to the acts charged, (3) the frequency of the prior acts, (4) the presence or lack of  
12 intervening circumstances, and (5) the necessity of the evidence beyond the testimonies already  
13 offered at trial. Thus, this court properly exercised its discretion to adjudge the relevance and  
14 prejudice of the other crime evidence and deem it inadmissible.

### 15 CONCLUSION

16 This court's ruling denying the State's Motion to Admit Evidence of Other Crimes was  
17 based on the specific facts at issue in each matter and was the result of considered analysis under  
18 applicable law. This court properly exercised its discretion and, therefore, there is no valid basis  
19 for rehearing.

20 DATED this 5th day of November, 2021.

21 DARIN F. IMLAY  
22 CLARK COUNTY PUBLIC DEFENDER

23  
24 By: /s/David E. Lopez-Negrete  
25 DAVID E. LOPEZ-NEGRETE, #12027  
26 Deputy Public Defender  
27  
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 FOR REHEARING was hereby served this 8TH day of  
4       November 2021 via electronic e-filing service to:

5  
6       CLARK COUNTY DISTRICT ATTORNEY'S OFFICE  
7       [Motions@clarkcountyda.com](mailto:Motions@clarkcountyda.com)  
8       PAMELA WECKERLY, Chief Deputy District Attorney  
9       E-mail: [pamela.weckerly@clarkcountyda.com](mailto:pamela.weckerly@clarkcountyda.com)

10       MARC DIGIACOMO, Chief Deputy District Attorney  
11       E-mail: [marc.digiacom@clarkcountyda.com](mailto:marc.digiacom@clarkcountyda.com)  
12       Attorneys for Plaintiff, State of Nevada

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
By: /s/ Sara Ruano  
Secretary for the Clark County Public Defender's Office

Felony/Gross Misdemeanor

COURT MINUTES

November 12, 2021

---

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

---

November 12, 2021      08:30 AM      State's Notice of Motion and Motion to Reconsider State's Motion  
to Admit Evidence of Other Crimes

HEARD BY:      Jones, Tierra

COURTROOM:   RJC Courtroom 14B

COURT CLERK: Schlitz, Kory

RECORDER:      Boyd, Victoria

REPORTER:

PARTIES PRESENT:

David E. Lopez-Negrete

Attorney for Defendant

Marc P. Di Giacomo

Attorney for Plaintiff

State of Nevada

Plaintiff

**JOURNAL ENTRIES**

Defendant not present and in custody in the Nevada Department of Corrections.

COURT ORDERED, Defendant's presence WAIVED as he did not want to be present today. Mr. Di Giacomo stated after reading the response from defense, he was unsure what the Court was saying in their order, cause by definition these are both sex offenses. Mr. Lopez-Negrete requested the Court stand by it's prior ruling, and there is no new evidence to warrant a new hearing. COURT STATED ITS FINDINGS and ORDERED, Motion to Reconsider DENIED and the Court's original order STANDS.

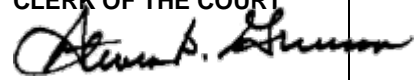
CUSTODY (NDC)

12/17/2021 8:30 A.M. STATUS CHECK: TRIAL READINESS

4/8/2022 8:30 A.M. PRE TRIAL CONFERENCE

4/15/2022 8:30 A.M. CALENDAR CALL

4/25/2022 10:30 A.M. JURY TRIAL



1 RTRAN

2  
3  
4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 JOHN DOANE,

11 Defendant,

CASE NO. C-20-346036-1  
DEPT. 10

12  
13 ***BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE***

14 ***FRIDAY, NOVEMBER 12, 2021***  
15 ***RECORDER'S TRANSCRIPT RE:***  
16 ***RECONSIDER MOTION TO ADMIT EVIDENCE***

17 APPEARANCES:

18 For the State:

19 MARC DIGIACOMO, Esq.  
Chief Deputy District Attorney

20  
21 For the Defendant:

22 DAVID LOPEZ-NEGRETE , Esq.  
Deputy Public Defender

23  
24  
25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1  
2 Las Vegas, Nevada, Friday, November 12, 2021 at 8:51 a.m.  
3  
4

5 MR. LOPEZ-NEGRETE: Good morning, Your Honor. David Lopez-Negrete  
6 on his behalf. He is at the Nevada Department of Corrections.

7 THE COURT: So he - -

8 MR. DIGIACOMO: Marc Digiacomo for the State.

9 THE COURT: Is he here, Mr. Lopez-Negrete because who is here from  
10 NSP? I see that they are logged in but I don't know who that is.

11 MR. LOPEZ-NEGRETE: My client shouldn't be here. He has always  
12 maintained that he's fine with waiving his presence if that is okay with everybody  
13 else.

14 THE COURT: So I don't know who is here from the prison. All right. So I'll  
15 waive his appearance because he has indicated he didn't want to be here for this.  
16 Mr. Lopez-Negrete is here. Mr. Digiacomo is here on behalf of the State. This is on  
17 for the State's motion for the Court to reconsider the motion to admit evidence of  
18 other crimes.

19 Mr. Digiacomo, I have read your motion. I have read the opposition from the  
20 defense. Do you have anything that you would like to add to your motion?

21 MR. DIGIACOMO: Just after reading the response from Mr. Lopez-Negrete I  
22 was unsure what the Court was saying in their order because by definition these are  
23 both sex offenses. And then for the Court to go on and suggest that the first of the  
24 murder case that we're here on the evidence doesn't establish sex, well, that makes  
25 this evidence, the OBA, highly probative. We have two 14 year olds that are walking



1 down the street who are left in the desert for dead after there is evidence of sex  
2 assault on both victims and the DNA tied to this particular defendant has an OBA  
3 from three months later. I don't know all of the factors that are - - and I do mean this  
4 with all due respect how this is not a complete abuse of discretion not to grant the  
5 admissibility of 48045, subsection 3. I was going to try and take it up on a writ but I  
6 thought maybe the Court just misconstrued that the murder charge didn't qualify  
7 under 179D and that's why I put it back on in front of the Court.

8 THE COURT: All right. Mr. Lopez-Negrete.

9 MR. LOPEZ-NEGRETE: Your Honor, I'd ask the Court to obviously stand by  
10 its ruling as I outlined in my opposition the Court took a considerable amount of time  
11 to look at both cases, and I think rendered a fair decision exercising its discretion  
12 properly. Just noting for the facts in the case on the other crime or in the instant  
13 crime the police reports from the instant crime talked about how when the coroners  
14 originally examined the victim's genitalia in this case that they found no trauma  
15 there. They also swabbed the intimate parts but noted that it appeared dry and they  
16 believed that that signaled she did not have sexual relations. And that is straight  
17 from the State's evidence and that was paragraph 7 of the Court's order. So I think  
18 it's perfectly appropriate for the Court to compare and contrast the facts in each  
19 case and to decide which one establishes which kind of crime we're dealing with.  
20 So based on that I don't think there is enough here to warrant a rehearing. I think  
21 the Court has exercised its discretion properly.

22 THE COURT: Mr. Digiacomo, any response to that?

23 MR. DIGIACOMO: No, Judge. I think it's all in our pleading. It's the  
24 perpetration under attempted perpetration of sex assault. The why is there a 14  
25 year old girl out in the Desert with her underwear off with Mr. Doane's DNA in it if

1 there wasn't some sort of effort of sexual assault. So maybe he didn't penetrate her  
2 vagina. What does that have to do with the allegation within the complaint that this  
3 was a sexually motivated offense that resulted in her death when both of the facts of  
4 the case three months apart are exactly the same. He left them for dead. He just  
5 happened to not accidentally not kill his second victim.

6 THE COURT: Here's the situation. I mean I know that that's your theory but  
7 based upon the evidence in this case there was no sexual assault that occurred in  
8 this case like there was that occurred in the 1979 case. So I understand that is your  
9 theory but because of the lack of evidence that actually supports that theory that  
10 makes the probative value of this evidence highly more prejudicial then it is  
11 probative because then it allows you to bootstrap the 1979 case in order to say that  
12 there was a sexual assault in this case. And under the Court's discretion Frank says  
13 it's within the Court's discretion. Frank says I can do it without having a Petrocelli  
14 hearing but Frank's does not mandate that it actually be done. So based upon the  
15 fact that there is no sexual assault charge in this case - - I understand that is the  
16 theory of defense that you have but the evidence does not support that the sexual  
17 assault actually occurred. So based upon that your motion is denied and the Court's  
18 original motion stands.

19 MR. DIGIACOMO: Thank you.

20 MR. LOPEZ-NEGRETE: Thank you, Your Honor.

21 THE COURT: Thank you.

22  
23  
24 (Proceedings concluded at 8:56 a.m.)  
25

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

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

*Victoria W. Boyd*

12-27-21

\_\_\_\_\_  
Victoria W. Boyd  
Court Recorder/Transcriber

\_\_\_\_\_  
Date

ORDR  
DARIN F. IMLAY, PUBLIC DEFENDER  
NEVADA BAR NO. 5674  
DAVID E. LOPEZ-NEGRETE, DEPUTY PUBLIC DEFENDER  
NEVADA BAR NO. 12027  
**PUBLIC DEFENDERS OFFICE**  
309 South Third Street, Suite 226  
Las Vegas, Nevada 89155  
Telephone: (702) 455-4685  
Facsimile: (702) 455-5112  
Lopeznde@clarkcountynv.gov  
*Attorneys for Defendant*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA ,	)	
	)	
Plaintiff,	)	CASE NO. C-20-346036-1
	)	
v.	)	DEPT. NO. X
	)	
JOHN EUGENE DOANE,	)	
	)	
Defendant,	)	

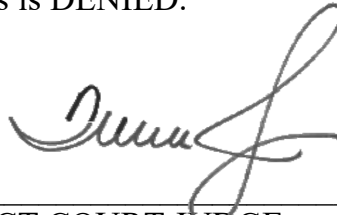
**ORDER DENYING STATE'S MOTION TO RECONSIDER STATE'S MOTION  
TO ADMIT EVIDENCE OF OTHER CRIMES**

THIS CAUSE having come before the Honorable TIERRA JONES, Eighth Judicial District Judge, on the 12th day of November, 2021, Defendant represented by DARIN IMLAY, Clark County Public Defender, by and through DAVID LOPEZ-NEGRETE, Chief Deputy Public Defender, the State represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through MARC DIGIACOMO, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, denies the State's above-captioned Motion based on the following:

As if fully set forth herein, the Court incorporates by reference its Findings of Fact, Conclusions of Law, and Order entered on October 22, 2021. The Court acknowledges the State's theory that a sexual assault occurred in the instant case but has determined that, for purposes of admitting the sought-after Other Crime, the facts do not support such a finding.

1 The Court has analyzed the Other Crime pursuant to NRS 48.045(3) and Franks v.  
2 State, 135 Nev. 1 (2019). After weighing the relevant considerations, it has concluded  
3 that admitting the Other Crime to further the State's theory results in unfair prejudice that  
4 substantially outweighs its probative value. Therefore,

5 IT IS HEREBY ORDERED that the State's Motion to Reconsider State's  
6 Motion to Admit Evidence of Other Crimes is DENIED. <sup>Dated this 17th day of November, 2021</sup>

7  
8 

9  
10 DISTRICT COURT JUDGE

11 B09 5A7 885D 5E2D  
12 Tierra Jones  
District Court Judge

13 Submitted by:

14 DARIN F. IMLAY  
15 CLARK COUNTY PUBLIC DEFENDER

16 By /s/David E. Lopez-Negrete  
17 DAVID E. LOPEZ-NEGRETE, #12027  
18 Deputy Public Defender

19  
20  
21  
22  
23  
24  
25 Case Name: John Eugene Doane

26 Case No.: C-20-346036-1

27 Dept. No.: X  
28

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 State of Nevada

CASE NO: C-20-346036-1

7 vs

DEPT. NO. Department 10

8 John Doane  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 11/17/2021

15 Master Calendar Clerk	clerkmastercalendar@clarkcountycourts.us
16 David Lopez-Negrete Deputy Public Defender	LopezNDE@ClarkCountyNV.gov
17 Ryan Bashor Deputy Public Defender	BashorRJ@clarkcountyNV.gov
18 Sara Ruano PD-Secretary	Ruanosg@clarkcountynv.gov
19 DC 10 Law Clerk	Dept10LC@clarkcountycourts.us
20 Pam Weckerly Chief Deputy District Atty	Pamela.Weckerly@clarkcountyda.com
21 DA Motions	Motions@clarkcountyda.com
22 Marc DiGiacomo Chief Deputy District 23 Attorney	Marc.Digiacomo@clarkcountyda.com

24  
25  
26  
27  
28