

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

BRIAN KERRY O'KEEFE,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: 04C202793

Docket No: 86804

RECORD ON APPEAL VOLUME 1

ATTORNEY FOR APPELLANT
BRIAN O'KEEFE # 90244,
PROPER PERSON
1200 PRISON RD.
LOVELOCK, NV 89419

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
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200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

I N D E X

<u>VOLUME:</u>	<u>PAGE NUMBER:</u>
1	1 - 237
2	238 - 474
3	475 - 711
4	712 - 948
5	949 - 1185
6	1186 - 1422
7	1423 - 1533

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
5	12/6/2013	(Ex Parte) Motion to Appoint Counsel	1051 - 1053
6	4/4/2022	(Omnibus - Notice of Appeal)	1238 - 1241
3	3/15/2006	Affidavit of Delivery	497 - 499
3	7/13/2006	Affidavit of Mailing	514 - 515
1	12/6/2004	Case Appeal Statement	195 - 196
1	2/2/2005	Case Appeal Statement	209 - 210
3	12/27/2006	Case Appeal Statement	608 - 609
4	4/20/2007	Case Appeal Statement	741 - 742
5	2/13/2014	Case Appeal Statement	1158 - 1159
6	10/27/2014	Case Appeal Statement	1212 - 1213
6	4/5/2022	Case Appeal Statement	1242 - 1243
6	7/28/2022	Case Appeal Statement	1291 - 1292
6	6/22/2023	Case Appeal Statement	1361 - 1362
1	10/18/2004	Certificate of Facsimile Transmission	124 - 124
7	7/27/2023	Certification of Copy and Transmittal of Record	
1	7/6/2004	Criminal Bindover (Confidential)	1 - 23
1	10/20/2004	Defendant's Notice of Witnesses	125 - 132
1	8/31/2004	Defendant's Notice of Witnesses, pursuant to NRS 174.234	121 - 122
1	10/26/2004	Defendant's Supplemental Notice of Witnesses	135 - 149
7	7/27/2023	District Court Minutes	1488 - 1533
6	7/27/2023	Documentary Exhibits (Unfiled)	1369 - 1380
6	7/27/2023	Documentary Exhibits (Unfiled) Confidential (Continued)	1381 - 1422

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
7	7/27/2023	Documentary Exhibits (Unfiled) Confidential (Continuation)	1423 - 1487
4	5/17/2007	Findings of Fact, Conclusions of Law and Order	743 - 749
1	7/6/2004	Information	24 - 27
1	1/3/2005	Judgment of Conviction (Jury Trial)	203 - 204
1	10/25/2004	Jury List	134 - 134
3	10/19/2006	Motion for a New Trial Based on New Evidence	557 - 577
5	9/22/2014	Motion for Appointment of Counsel	1171 - 1173
5	1/10/2014	Motion for Default Judgment for State's Failure to Exercise Simple Reasonable Due Diligence to "Serve" Petitioner Copy of Opposition in "Conjunction" with "Filing" with Emphasis on A.G.O. No 2002-15 (March 21, 2002)	1110 - 1119
5	12/13/2013	Motion for Erratum, to Petition for a Writ of Mandamus or, in the Alternative, Writ of Coram Nobis (Mailed November 24, 2013)	1058 - 1058
3	12/21/2005	Motion for Sentence Clarification	490 - 490
3	7/20/2006	Motion for Transcripts at State Expense	535 - 539
4	3/1/2007	Motion to Clarify Petitioner's Address [as Above] Official Change of Address Notification	725 - 727
3	2/27/2006	Motion to Discharge Counsel	496 - 496
3	12/12/2005	Motion to Discharge Counsel of Appointment	487 - 489
3	12/12/2006	Motion to Notify Change of Address	592 - 593
1	2/11/2005	Motion to Proceed in Forma Pauperis (Confidential)	215 - 217

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
5	12/19/2013	Motion To Supplement Petition For A Writ Of Mandamus Or, In The Alternative, Writ of Coram Nobis With A Certified Copy of J.O.C To C202793	1066 - 1078
6	6/10/2022	Motion to Vacate Judgment (NRS 176.555)	1245 - 1265
3	2/22/2006	Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed	491 - 495
5	4/21/2008	Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed	980 - 996
5	4/21/2008	Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed	997 - 1013
6	12/11/2014	Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed	1217 - 1223
6	2/8/2023	Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed	1293 - 1296
1	2/7/2005	Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed	211 - 214
6	1/6/2015	Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed	1224 - 1228
6	6/21/2022	Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed; Rehearing Denied	1266 - 1269
1	12/3/2004	Notice of Appeal	192 - 194
1	2/1/2005	Notice of Appeal	205 - 208
3	12/26/2006	Notice of Appeal	607 - 607
4	4/19/2007	Notice of Appeal	740 - 740
5	2/12/2014	Notice of Appeal	1154 - 1157
6	10/24/2014	Notice of Appeal	1208 - 1211
6	7/27/2022	Notice of Appeal	1288 - 1290
6	6/21/2023	Notice of Appeal	1358 - 1360

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
3	11/25/2006	Notice of Change of Address	587 - 589
6	11/19/2019	Notice of Change of Address	1232 - 1234
6	9/24/2019	Notice of Change of Address - (For Three Cases Above)	1229 - 1231
5	6/6/2014	Notice of Change of Address (For all (3) Cases)	1168 - 1169
5	12/6/2013	Notice of Change of Hearing	1057 - 1057
4	5/21/2007	Notice of Entry of Decision and Order	750 - 757
1	3/2/2005	Notice of Entry of Order (Confidential)	220 - 222
1	7/19/2004	Notice of Expert Witnesses [NRS 174.234 (2)]	75 - 90
1	8/10/2004	Notice of Expert Witnesses [NRS 174.234 (2)]	93 - 108
5	12/6/2013	Notice of Motion	1050 - 1050
5	12/27/2013	Notice of Motion	1105 - 1107
5	1/10/2014	Notice of Motion	1109 - 1109
5	1/28/2014	Notice of Motion	1120 - 1120
6	6/10/2022	Notice of Motion	1244 - 1244
5	9/22/2014	Notice of Motion (Petition)	1174 - 1174
1	7/19/2004	Notice of Motion and Motion to Admit Evidence of Other Crimes	64 - 74
5	12/6/2013	Notice of Motion Motion to Waive Filing Fees for Petition for Writ of Mandamus	1054 - 1056
5	9/30/2014	Notice of Petition and Petition for Writ of Coram Nobis Based on Acquittal of all Felonies Which Underpinned Count 6 Burglary Thereby Court in Want of Jurisdiction with New Sentencing Judge Lacking This Knowledge and Fact! (Continued)	1175 - 1185

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
6	9/30/2014	Notice of Petition and Petition for Writ of Coram Nobis Based on Acquittal of all Felonies Which Underpinned Count 6 Burglary Thereby Court in Want of Jurisdiction with New Sentencing Judge Lacking This Knowledge and Fact! (Continuation)	1186 - 1195
1	7/19/2004	Notice of Witnesses [NRS 174.234(1)(b)]	91 - 92
3	7/19/2006	Notice of Writ of Mandamus	521 - 534
5	1/7/2014	Notice Resetting Date and Time of Hearing	1108 - 1108
3	11/14/2006	Opposition to Defenant's Motion for New Trial	578 - 584
1	8/31/2004	Opposition to Motion to Admit Evidence of Other Crimes	109 - 120
3	1/5/2007	Order	610 - 611
1	2/28/2005	Order (Confidential)	219 - 219
6	10/29/2014	Order Denying Defendant's Motion for Appointment of Counsel	1214 - 1216
6	7/13/2022	Order Denying Defendant's Motion to Vacate Judgment	1285 - 1287
6	7/14/2023	Order Denying Defendant's Petition for a Writ of Coram Nobis	1363 - 1368
5	2/14/2014	Order Denying Defendant's Pro Per Motion for Default Judgment for State's Failure to Exercise Simple Reasonable Due Diligence to "Serve" Petitioner Copy of Opposition in "Conjunction" with "Filing" with Emphasis on A.G.O. No 2005-15 (March 21, 2002	1163 - 1165
3	8/17/2006	Order Denying Defendant's Pro Per Motion for Transcripts at State's Expense and Petition for Writ of Mandamus	555 - 556

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
5	2/14/2014	Order Denying Deft's Pro Per (Ex Parte) Motion to Appoint Counsel and Deft's Pro Per Petition for a Writ of Mandamus or, in the Alternative, Writ of Coram Nobis and Deft's Pro Per Motion to Waive Filing Fees for Petition for Writ of Mandamus and Deft's Pro Per Motion to Supplement Petition for a Writ of Mandamus or, in the Alternative, Writ of Coram Nobis with a Certified Copy of J.O.C. to C202793 and Deft's Pro Per Supplement of Evidence of Suicides and Self Mutilations and Mental Health along with Ninth COA on Namely, a Double Jeopardy Violation, Case No - 12-15271	1160 - 1162
5	10/17/2012	Order for Disposal of Exhibits	1015 - 1016
1	10/25/2004	Order for Medical Records	133 - 133
3	2/6/2007	Order for Petition for Writ of Habeas Corpus	685 - 685
3	11/17/2006	Order for Production of Inmate Brian Kerry O'Keefe, BAC # 90244	585 - 586
3	12/6/2006	Order for Production of Inmate Brian Kerry O'Keefe, BAC # 90244	590 - 591
5	9/10/2008	Petition	1014 - 1014
5	4/15/2014	Petition and Order to Destroy or Dispose of Exhibits	1166 - 1167
6	3/28/2023	Petition for a Writ of Coram Nobis Pursuant Nevada Constitution Article 6, Section 6 and NRS 1.030 Challenging an Error of Fact Within Scope of Writ as Occupancy Rights Providing Immunity from Suit where Conviction has Continuing Collateral Consequences	1297 - 1340

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
5	12/6/2013	Petition for a Writ of Mandamus or, in the Alternative, Writ of Coram Nobis	1018 - 1049
3	2/5/2007	Petition for Writ of Habeas Corpus (Post Conviction) N.R.S. 34.720	612 - 684
6	5/17/2023	Petitioner's Reply and Countermotion to Strike and Dismiss, State's Opposition based on Improper Recharacterization without Notice as Insufficiency of Process and the Libel as Defamatory Statement of Facts Despite Acquittal in Fact	1351 - 1357
1	12/9/2004	Presentence Investigation Report (Unfiled) Confidential	197 - 202
3	7/20/2005	Probation Agreement and Rules; Order Admitting Defendant to Probation and Fixing the Terms Thereof	486 - 486
3	7/19/2006	Proper - Person Petition for Writ of Mandamus	516 - 520
3	7/24/2006	Proper - Person Petition for Writ of Mandamus	540 - 548
3	6/28/2006	Proper Person Demand for Prior Discovery	508 - 512
3	6/12/2006	Proper Person Motion to Compel	500 - 503
3	6/27/2006	Proper Person Motion to Produce	504 - 507
1	10/28/2004	Proposed Jury Instructions Not Used at Trial	184 - 191
1	10/28/2004	Receipt of Copy	150 - 150
1	10/28/2004	Receipt of Copy	151 - 180
1	2/11/2005	Receipt of Copy	218 - 218
5	1/28/2014	Reply to State's Response to Defendant's Petition for a Writ of Mandamus or, in the Alternative, Writ of (Error) Coram Nobis	1121 - 1149

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
		with Affidavit Attached Manifesting Exhibits A,B,C,D to Affidavit.	
1	3/3/2005	Request for Rough Draft Transcript	223 - 224
3	6/15/2005	Request for Rough Draft Transcript	483 - 485
3	7/3/2006	Request for Rough Draft Transcript	513 - 513
6	3/4/2020	Request for Submission of Motion	1235 - 1237
6	10/10/2014	State's Opposition to Defendant's Motion for Appointment of Counsel	1196 - 1200
5	1/30/2014	State's Opposition to Defendant's Motion for Default Judgment	1150 - 1153
6	5/2/2023	State's Opposition to Defendant's Petition for a Writ of Coram Nobis	1341 - 1350
4	4/6/2007	State's Opposition to Defendant's Petition for Writ of Habeas Corpus	728 - 739
3	8/7/2006	State's Opposition to Defendant's Pro Per Motion for Transcripts at State's Expense and Petition for Writ of Mandamus	549 - 554
6	6/30/2022	State's Opposition to Motion to Vacate Judgment	1270 - 1284
5	12/18/2013	State's Response to Defendant's Petition for a Writ of Mandamus or in the Alternative Writ of Coram Nobis and Response to Motion to Appoint Counsel	1059 - 1065
6	10/20/2014	State's Response to Defendants Petition for Writ of Coram Nobis Based on Acquittal of All Felonies Which Underpinned Count 6 Burglary Thereby Court in Want of Jurisdiction with New Sentencing Judge Lacking this Knowledge and Fact	1201 - 1207
1	10/4/2004	Substitution of Attorneys	123 - 123

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
3	12/13/2006	Supplement [to Motion for a New Trial Based on New Evidence]	594 - 606
5	12/27/2013	Supplement of Evidence of Suicides and Self Mutilations and Mental Health Along with Ninth COA on, Namely, A Double Jeopardy Violation, Case No. 12-15271	1079 - 1104
3	2/15/2007	Supplement to Petitioner's Petition for Writ of Habeas Corpus (Post Conviction) N.R.S. 34.720 (Continued)	686 - 711
4	2/15/2007	Supplement to Petitioner's Petition for Writ of Habeas Corpus (Post Conviction) N.R.S. 34.720 (Continuation)	712 - 724
1	4/5/2005	Transcript of Hearing Held on December 27, 2004	225 - 230
3	6/13/2005	Transcript of Hearing Held on December 27, 2004	477 - 482
1	7/12/2004	Transcript of Hearing Held on July 1, 2004	28 - 63
4	11/2/2007	Transcript of Hearing Held on July 13, 2004	758 - 760
2	4/22/2005	Transcript of Hearing Held on October 25, 2004 (Continued)	459 - 474
3	4/22/2005	Transcript of Hearing Held on October 25, 2004 (Continuation)	475 - 476
4	2/19/2008	Transcript of Hearing Held on October 25, 2004 (Continued)	774 - 948
5	2/19/2008	Transcript of Hearing Held on October 25, 2004 (Continuation)	949 - 979
2	4/11/2005	Transcript of Hearing Held on October 26, 2004	320 - 382
2	4/22/2005	Transcript of Hearing Held on October 26, 2004	383 - 458

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	4/11/2005	Transcript of Hearing Held on October 27, 2004 (Continued)	235 - 237
2	4/11/2005	Transcript of Hearing Held on October 27, 2004 (Continuation)	238 - 319
1	4/11/2005	Transcript of Hearing Held on October 28, 2004	231 - 234
4	11/2/2007	Transcript of Hearing Held on October 8, 2004	761 - 773
5	12/3/2013	Unsigned Document(s) - Order	1017 - 1017
5	9/18/2014	Unsigned Document(s) - Order Appointing Counsel	1170 - 1170
1	10/28/2004	Verdict	181 - 183

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
1 - 23
WILL FOLLOW VIA
U.S. MAIL**


CLERK

INFO
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
SUSAN R. KRISKO
Deputy District Attorney
Nevada Bar #006024
200 South Third Street
Las Vegas, Nevada 89155-2212
(702) 455-4711
Attorney for Plaintiff

I.A. 7/13/04
9:00 A.M.
PD

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRIAN KERRY OKEEFE,
#1447732

Defendant.

Case No: C202793
Dept No: V

I N F O R M A T I O N

STATE OF NEVADA)
COUNTY OF CLARK) ss.

DAVID ROGER, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That BRIAN KERRY OKEEFE, the Defendant(s) above named, having committed the crimes of BATTERY WITH INTENT TO COMMIT A CRIME (Felony - NRS 200.400); SEXUAL ASSAULT (Felony - NRS 200.364, 200.366); ATTEMPT SEXUAL ASSAULT (Felony - NRS 193.330, 200.364, 200.366) and BURGLARY (Felony - NRS 205.060), on or about the 29th day of May, 2004, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

///

///

1 COUNT 1 - BATTERY WITH INTENT TO COMMIT A CRIME

2 did then and there wilfully, unlawfully, and feloniously use force or violence upon
3 the person of another, to-wit: VICTORIA WHITMARSH, with intent to commit sexual
4 assault, by striking the said VICTORIA WHITMARSH about the head and/or body with his
5 hands.

6 COUNT 2 - SEXUAL ASSAULT

7 did then and there wilfully, unlawfully, and feloniously sexually assault and subject
8 VICTORIA WHITMARSH, a female person, to sexual penetration, to-wit: fellatio; by
9 placing his penis on or in the mouth of the said VICTORIA WHITMARSH, against her will.

10 COUNT 3 - SEXUAL ASSAULT

11 did then and there wilfully, unlawfully, and feloniously sexually assault and subject
12 VICTORIA WHITMARSH, a female person, to sexual penetration, to-wit: sexual
13 intercourse; by placing his penis into the genital opening of the said VICTORIA
14 WHITMARSH, against her will.

15 COUNT 4 - SEXUAL ASSAULT

16 did then and there wilfully, unlawfully, and feloniously sexually assault and subject
17 VICTORIA WHITMARSH, a female person, to sexual penetration, to-wit: anal intercourse
18 by placing his penis into the anal opening of the said VICTORIA WHITMARSH , against
19 her will.

20 COUNT 5 - ATTEMPT SEXUAL ASSAULT

21 did then and there wilfully, unlawfully, and feloniously attempt to sexually assault
22 and subject VICTORIA WHITMARSH, a female person, to sexual penetration, to-wit: anal
23 intercourse; by attempting to place his penis into the anal opening of the said VICTORIA
24 WHITMARSH, against her will.

25 ///

26 ///

27 ///

28 ///

COUNT 6 – BURGLARY

did then and there wilfully, unlawfully, and feloniously enter, with intent to commit battery and/or sexual assault and/or a felony, to-wit: battery and/or sexual assault, that certain building occupied by VICTORIA WHITMARSH, located at 2219 North Rancho, No. 2083, Las Vegas, Clark County, Nevada.

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY /s/ S. Krisko

SUSAN R. KRISKO
Deputy District Attorney
Nevada Bar #006024

Names of witnesses known to the District Attorney's Office at the time of filing this Information are as follows:

<u>NAME</u>	<u>ADDRESS</u>
HORN, David R.	LVMPD P#1928
STEIBER, Raymond C.	LVMPD P#3542
MONIOT, Timothy Sanford	LVMPD P#4664
MORGENSTERN, Kevin John	LVMPD P#4665
RAMIREZ, Vicente R.	LVMPD P#4916
KELLY, Shanan D.	LVMPD P#6836
MAJORS, William J.	LVMPD P#7089
BARRERA, Roger	LVMPD P#8050
WHITMARSH, Victoria	2992 Orchard Mesa Dr., Henderson, NV 89052
EBBERT, Linda	UMC/SANE, 1800 W. Charleston, LVN 89102
TURON, Besse Tobias	2219 N. Rancho Dr., LVN 89107
CUSTODIAN OF RECORDS	LVMPD – Records
CUSTODIAN OF RECORDS	LVMPD – Dispatch

	<u>NAME</u>	<u>ADDRESS</u>
1		
2	CUSTODIAN OF RECORDS	UMC, 1800 W. Charleston, LVN 89102
3	PENO, Tammy	2219 N. Rancho, LVN
4	LNU, Tracy	Budget Suites
5	LNU, Missy	Budget Suites
6		
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26	DA#04F09774X/rad	
27	LVMPD EV#0405292232	
28	BAT W/INT; S/A; ATT S/A; BURG - F (TK4)	

TRAN

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Shirley B. Rasmussen
CLERK

JUSTICE COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA)
)
Plaintiff)
)
vs.)
)
BRIAN O'KEEFE)
)
Defendant.)

JC Case No. 04F09774X

DC Case No. ~~C202969~~

Dept. No. 5

C202793

PRELIMINARY HEARING

Before the Honorable Jim Gubler
Thursday, July 1, 2004, 9:00 a.m.
Reporter's Transcript of Proceedings

APPEARANCES:

For the State:

Susan Krisko, Esq.
200 South Third Street
7th Floor
Las Vegas, Nevada 89101

For the Defendant:

Bitu Khamsi, Esq.
Office of the Public Defender
309 South Third Street
Room 226
Las Vegas, Nevada 89155-1234

REPORTED BY: JACKIE NELSON, RPR, CCR No. 809

NELSON & NELSON, CERTIFIED COURT REPORTERS 702.360.4677

1 Las Vegas, Nevada, Thursday, July 1, 2004, 9:00 a.m.

2
3 * * * * *

4 THE COURT: Brian O'Keefe.

5 Mr. O'Keefe is present in custody. This is
6 the time set for preliminary hearing in the State of
7 Nevada v. Brian O'Keefe.

8 Ms. Krisko.

9 MS. KRISKO: Your Honor, I just want to put
10 everybody on notice that if the evidence comes out
11 the way I anticipate it is, I'm going to be asking to
12 add a count of burglary and, in addition, probably
13 Count VII will be amended to an attempt sexual
14 assault not a full sexual assault, but I need to wait
15 and see how the evidence presents.

16 THE COURT: Okay. Ms. Krisko, your first
17 witness.

18 MS. KRISKO: Victoria Whitmarsh.

19 Actually, before you bring her in, your
20 Honor, it's my understanding that the Defendant's
21 father is in court right now.

22 I don't have a problem with that, he's not
23 a witness, but it is my understanding that he's been
24 calling and suggesting to the victim that she not
25 show up. So I would ask that the Court admonish the

1 father that that is actually a crime and he can be
2 arrested for that.

3 THE COURT: Is there another Mr. O'Keefe in
4 here? Come forward, sir.

5 Would you state your name?

6 MR. O'KEEFE: Thomas O'Keefe.

7 THE COURT: Mr. O'Keefe, apparently you're
8 the father of the Defendant.

9 Did you just hear the representations by
10 the District Attorney?

11 MR. O'KEEFE: No.

12 THE COURT: What she represented was that
13 the alleged victim has told the State that you have
14 made calls to that individual, encouraging her not to
15 show up at this hearing.

16 What the District Attorney says and what
17 the law is is, if, in fact, that is true, that that's
18 a crime in itself. So the long and short of it is
19 you're on notice of that, and it's the order of this
20 Court for you to absolutely have no contact with
21 Victoria Whitmarsh.

22 And apparently you're not a witness here
23 today. I don't need to hear any response from you
24 here today, Mr. O'Keefe. You can stay in the
25 courtroom, you can listen to the evidence, and that's

1 the order of the court.

2 MR. O'KEEFE: Your Honor, she had her mail
3 come to my house, and I called her and told her the
4 mail was there, and I asked her if she was going to
5 show up in court, and she said yes. That's all. I
6 didn't ask her not to.

7 THE COURT: Okay. So as to the mail, just
8 forward the mail, and don't contact the alleged
9 victim any more.

10 MR. O'KEEFE: I didn't have the address. I
11 had to call her to get the address.

12 THE COURT: Okay. So you now have the
13 address. There's no reason for you to contact her
14 any more.

15 So just have a seat and you're on notice of
16 that.

17 MR. O'KEEFE: Your Honor, should I make a
18 testament to Brian's character?

19 MS. KHAMSI: Not right now.

20 THE COURT: No. Just have a seat back
21 there, Mr. O'Keefe.

22 The State's first witness is Victoria
23 Whitmarsh.

24 Ms. Whitmarsh, come on up here to this
25 witness stand. Stay standing, raise your right hand

1 and, if you'd face the clerk here, you're going to be
2 sworn in.

3 (Thereupon, the witness was sworn in.)

4 THE CLERK: State your full name and spell
5 your last name.

6 THE WITNESS: First name is Victoria, last
7 Whitmarsh, W-H-I-T-M-A-R-S-H.

8 THE COURT: Ms. Krisko.

9 MS. KRISKO: Thank you, your Honor.

10 DIRECT EXAMINATION OF VICTORIA WHITMARSH

11 BY MS. KRISKO:

12 Q. Ms. Whitmarsh, do you know anybody by the
13 name of Brian O'Keefe?

14 A. Yes.

15 Q. How is it that you know him?

16 A. He was my boyfriend for two and a half
17 years.

18 Q. Is he here in court today?

19 A. Yes.

20 Q. Could you just point to him and describe
21 something he's wearing?

22 A. He's wearing a blue jumpsuit.

23 Q. Thank you.

24 MS. KRISKO: Your Honor, may the record
25 reflect that the witness has identified the

1 Defendant.

2 THE COURT: It so reflects.

3 BY MS. KRISKO:

4 Q. I'd like to direct your attention to May
5 29th of 2004.

6 Were you living at 2219 N. Rancho?

7 A. Yes.

8 Q. Is that commonly known as the Budget
9 Suites?

10 A. Yes.

11 Q. Do you remember what unit number or
12 apartment number you were living in?

13 A. 2028, I think it's 2028.

14 Q. Could it have been 2083?

15 A. I don't remember. It's been a while.

16 Q. Okay. But you were actually living in one
17 of the units there, correct?

18 A. Yes.

19 Q. Okay. And that's here in Clark County,
20 Nevada?

21 A. Correct.

22 Q. On that day about day at about 5:00 p.m.,
23 did Brian O'Keefe come to your room?

24 A. Yes. He knocked on the door.

25 Q. Had he previously been asked to leave that

1 residence?

2 A. Right. Prior to that day, Friday night.

3 Q. So on the 29th at about 5:00 p.m. when he
4 knocked on the door, tell us what happened.

5 A. He said he wanted -- I told him he can't
6 come in. I told him he's not allowed in the
7 property. He said he just wanted to get his
8 belongings.

9 Q. Okay. Then what happened?

10 A. He said he just wants to get his property
11 and he'll leave. Then I let him in.

12 As soon as he walked in, he grabbed me and
13 pushed me on the couch.

14 Q. All right. When he grabbed you, can you
15 describe for the record what you mean by grabbing
16 you?

17 Where on your body did he grab you?

18 A. Right here. He pushed me down and pinned
19 me down on the couch.

20 MS. KHAMSI: Okay. Your Honor, will the
21 record reflect that she pointed to her upper chest
22 area?

23 THE COURT: The record will so reflect.

24 MS. KRISKO: And that she made a pushing
25 motion?

1 THE COURT: And that she made a pushing
2 motion.

3 BY MS. KRISKO:

4 Q. Did he do anything else physical to you at
5 that time?

6 A. Grabbed me by my hair and told me why was I
7 laughing at him and why did I let him get kicked out
8 of the property.

9 Q. So when he walked in the door, did he
10 immediately physically attack you?

11 A. Yes.

12 Q. What happened after he pushed you on the
13 couch and pulled your hair?

14 A. He said, Have you been seeing other men?
15 You have other men in this place? And I said, No.
16 What are you talking about? There's no other men.
17 I'm just lying down here on the couch. I'm trying to
18 sleep.

19 And he just said, Well, who you been
20 fucking? I said, I don't know what you're talking
21 about, Brian, you're losing your mind.

22 And he kept on, you know, accusing me that
23 I had somebody there, even the cops that took him out
24 of the property that night had sex with me.

25 Q. Okay. We're going to keep it specifically

1 what's happening in chronological order as much as we
2 can. Okay?

3 A. Okay.

4 Q. When he was on you the couch and saying
5 those things to you, is he doing anything physically
6 to you?

7 A. Well, he basically was pulling my hair and
8 he had me against the couch, and he was -- he grabbed
9 me by my hair, and he kept on pounding my head on the
10 back of the couch and he said he wants his money
11 back.

12 Q. And what happened next?

13 A. I gave him his money.

14 Q. And then what happened?

15 A. He took the money, and then he said he
16 wanted to have sex.

17 Q. Did he say specifically what type of sex he
18 wanted to have?

19 A. He wants me to give him a blow job.

20 Q. All right. And what happened then?

21 A. I was scared, so I did it.

22 Q. Okay. And did you think that you could say
23 no?

24 A. If I say no, I'm afraid of my life. I'm
25 afraid that he might start accusing me and he

1 actually keeps on saying if I don't do it, I probably
2 would be doing it with somebody else.

3 Q. And did you actually perform fellatio on
4 him?

5 A. Yes.

6 Q. Okay. And after that happened, what
7 happened next?

8 A. Then he said he wanted to have -- he wants
9 to fuck me --

10 Q. Okay.

11 A. -- and to lie down on the couch on my back.

12 Q. What happened? What did you do?

13 A. I obliged because I was scared. I was just
14 frightened.

15 Q. Did you think that you could say no?

16 MS. KHAMSI: Objection, leading.

17 A. I could say no, but I didn't want to say no
18 because I was scared.

19 Q. Did you think that if you did say no --

20 MS. KHAMSI: Objection, leading.

21 Q. What did you think would happen if you had
22 said no?

23 A. He would hit me. He had already been
24 pulling my hair. He had already pinned me down on
25 the couch, so I had no choice but to give in.

1 Q. After he told you about having -- fucking
2 you, what happened next?

3 Did he actually have intercourse with you?

4 A. Yes, a little bit. And then he said, Turn
5 around, I want you doggie style.

6 Q. Before we get to that, I'm going to ask
7 you, did he actually penetrate you with his penis?

8 A. Yes.

9 Q. And by penetrate you, I mean your vagina?

10 A. Yes.

11 Q. Then what happened?

12 A. Then he said he wanted to fuck me in the
13 ass.

14 Q. Then what happened?

15 A. I said no. I said, I don't want to do
16 that. He said, Yeah, I want to take you before I
17 leave.

18 Q. And then what happened?

19 A. Then he pushed himself to me, and I said,
20 No, stop, I don't want that, no. But he had me my
21 neck, and he was pushing me down against the arm of
22 the couch, and he said, Put your head down. And he
23 just kept on holding me down, and I had no choice. I
24 was -- like I said, I was scared for my life. I keep
25 on telling him, Stop, no, stop, and he pushed himself

1 to me.

2 Q. When you say he pushed himself, you mean
3 did he put his penis anywhere in you?

4 A. Yes.

5 Q. Where?

6 A. My anus.

7 Q. What happened next?

8 A. And I said, Stop, it hurts, it hurts, stop,
9 I can't, don't, don't, please, Brian, stop it. He
10 said no.

11 And then he just penetrated and he said,
12 This is too easy. If anybody else can fuck you this
13 way, why couldn't I?

14 Q. After that what happened next?

15 A. Then he reached orgasm, and I said, It
16 hurts, please stop. And then after he said, after he
17 had an orgasm, he said, There we go, we're married
18 now.

19 Q. What happened next?

20 A. I was -- I went to the bathroom, wiped
21 myself with a tissue and it was bleeding. And I put
22 on my dress, my black and white dress because I was
23 naked and I sat on the couch.

24 I was stunned. I couldn't believe how he
25 could do this to me.

1 Q. Let me ask you, after you put on the black
2 and white dress, did there come a time when you
3 changed again?

4 A. Yes. I had to change because something
5 came out.

6 Q. When you say something came out -- I know
7 it's embarrassing -- do you mean there was some stool
8 that came out?

9 A. Yes, and some liquid.

10 Q. You changed your clothes again?

11 A. Put on a pair of shorts and a top, an
12 orange top and blue shorts.

13 Q. What happened next?

14 A. I don't recall what happened between, you
15 know, the first time, and then about maybe 30 minutes
16 later he said he wanted to do it again.

17 Q. Okay. At this time when he said he wanted
18 to do it again, you said it was about 30 minutes
19 after the first time?

20 A. Around that time, 30 minutes.

21 Q. Did he become physically violent with you
22 at this time?

23 MS. KHAMSI: Objection, leading.

24 THE COURT: And the objection is sustained.
25 If you'd rephrase the question.

1 BY MS. KRISKO:

2 Q. Did he do anything else to you -- or what
3 happened next?

4 A. Well, basically, he was just grabbing my
5 hair and slapping me on the face and gave me a bloody
6 lip.

7 Q. And this is 30 minutes after the first
8 time?

9 A. This is during the time that I dressed and
10 I was waiting. I just didn't know what to do at that
11 point. The whole place was just spinning as far as
12 I'm concerned.

13 Q. So tell us --

14 A. I was just thinking of how I'm going to get
15 out of there.

16 Q. Tell us what happened next.

17 A. He said he wants to do it again.

18 Q. And by do it, what do you mean?

19 A. He wants to fuck again he said.

20 Q. What specifically happened or what did he
21 say at this time?

22 A. He said he wants to fuck me in my vagina,
23 my pussy. And I said, No, it's dirty because you
24 just put it in my anus. He said, Well, then give me
25 a blow job. I said, I'm not putting that in my

1 mouth. And he said, I'm going to take you up the ass
2 again.

3 Q. And then what did he do?

4 A. He tried to put it in my ass, but at that
5 point -- I don't remember. All I remember is he
6 tried to put it in there, and all I can recall is
7 that I went to the bathroom and he fell asleep, and
8 when I had the chance when he fell asleep, I put on
9 my clothes and got out of the door and called te
10 security at the Budget Suite and I told them he's
11 back.

12 Q. I'm just going to ask you just a couple
13 more follow-up questions. You said that he tried to
14 put it in there again.

15 Are you talking about your anus?

16 A. Yes.

17 Q. When he did that, was he actually able to
18 penetrate you, do you know?

19 A. I don't remember.

20 Q. What physically did he do to try and
21 attempt to do that?

22 A. Just to hold me, he was holding me.

23 Q. When he mentioned the sexual penetration,
24 did he do anything physically to try and accomplish
25 that?

1 MS. KHAMSI: Objection, asked and answered.

2 MS. KRISKO: I don't think it's been asked
3 and answered.

4 THE COURT: What was the question?

5 MS. KHAMSI: He asked her what he did
6 specifically, and she said he was just holding me.
7 Then she re-asked her if he did anything to attempt
8 to -- I don't know. I can't remember.

9 THE COURT: Restrain her or something?

10 MS. KRISKO: Well, we're talking about a
11 series of events that intermingle in there, so I'm
12 trying to trying to clarify what exactly he did for
13 each and every count.

14 THE COURT: And as to this particular
15 count, I think the evidence thus far shows that he
16 was holding her down and ask your next question.

17 MS. KRISKO: Okay.

18 BY MS. KRISKO:

19 Q. You mentioned earlier that he talked about
20 having intercourse with you vaginally a second time,
21 and my question for you now is: What physically did
22 he do to try and attempt that?

23 MS. KHAMSI: Objection, your Honor. I
24 think that's misleading. I think what she had said
25 first was that he tried to have sex intercourse with

1 her anally and that he tried, but she doesn't
2 remember, and I don't think there was a mention of a
3 second time vaginal intercourse.

4 THE COURT: And the objection is denied,
5 and she can answer the question.

6 BY MS. KRISKO:

7 Q. Go ahead and answer.

8 A. He did ask me, he did say he wants to fuck
9 me in my vagina, and I said, No, it's dirty, I don't
10 want you to. And he said, Give me a blow job, and I
11 said, No, I'm not going to do that. Then he said,
12 Okay, I'll fuck you up your ass again.

13 Q. Just so the record is clear, I used a word
14 called fellatio earlier when we were talking about
15 the first incident.

16 What does that mean to you?

17 A. Fellatio is putting -- it's a blow job.

18 Q. Okay.

19 A. It's putting his penis in my mouth.

20 Q. Okay. And he actually did that the first
21 time?

22 A. Yes.

23 MS. KRISKO: Nothing further.

24 THE COURT: Thank you, Ms. Krisko.

25 Ms. Khamsi.

1 CROSS-EXAMINATION OF VICTORIA WHITMARSH

2 BY MS. KHAMSI:

3 Q. Ms. Whitmarsh, you said that you've been
4 boyfriend/girlfriend with Mr. O'Keefe for three and a
5 half years?

6 A. Around there.

7 Q. Have you lived together?

8 A. Yes.

9 Q. When did you live together?

10 A. We lived together for off and on two and a
11 half years.

12 Q. And at this time in May, were you also
13 living together?

14 A. I'm sorry?

15 Q. At this time in May, were you living
16 together?

17 A. Yes.

18 Q. So when you say that you were at that
19 Budget Suites, he also was there with you, is that
20 correct?

21 A. Yes.

22 Q. And you said that he came to the apartment
23 and you let him in?

24 A. Because he said he wanted to get his
25 belongings.

1 Q. Okay. And what time of day was that?

2 A. I don't remember. It was in the afternoon

3 noon. I don't have a specific time.

4 Q. Well, was it early afternoon, late

5 afternoon?

6 A. It was mid afternoon.

7 Q. Which to you means what?

8 A. Between 3:00 and 5:00. I'm not -- I don't

9 look at my clock. I didn't look at my watch.

10 Q. What had you been doing prior to that time?

11 A. Prior to that time, I was lying down on the

12 couch trying to sleep.

13 Q. Okay. And how long had you been trying to

14 sleep?

15 A. The whole day because I didn't sleep the

16 night before.

17 Q. Okay. So that entire day on of May 29th

18 you had been sleeping or trying to sleeping?

19 A. I wasn't sleeping. I was trying to go to

20 sleep.

21 Q. Okay. Because you hadn't slept the day

22 before?

23 A. The night before, yes, because of the

24 incident that I had him kicked out of the place.

25 Q. Okay. And about what time did you have him

1 kicked out?

2 A. It was in the evening, 12:00 in the evening
3 Friday night.

4 Q. You're talking about midnight?

5 A. I didn't look at my watch. It's around
6 that time.

7 Q. Around that time. You said 12:00. So you
8 mean 12:00 in the evening?

9 A. At 12:00 in the evening and 12:00 in the
10 morning.

11 Q. You don't remember between a period of 12
12 hours when you asked security to kick him out?

13 A. It was around 12:00 or 12:00 on Friday.

14 Q. Was it 12:00 noon or 12 midnight?

15 A. It was 12:00 midnight.

16 Q. And why is it that you had him kicked out?

17 MS. KRISKO: Objection, relevance.

18 MS. KHAMSI: I think it goes to bias, your
19 Honor.

20 THE COURT: I'm going to deny the
21 objection.

22 Go ahead. You can answer.

23 BY MS. KHAMSI:

24 Q. Why did you kick him out?

25 A. Because he was very intoxicated and he was

1 acting violent and I told him I'm not going to put up
2 with this thing any more. He took my cell phone and
3 he put it in the bushes and I walked away. I said,
4 I'm not going to up with this any more, so I'm going
5 to have to do something about it.

6 Q. So you told him he needed to find another
7 place to live basically?

8 A. Not at that point.

9 Q. He was living there with you, correct?

10 A. Yes. And I --

11 Q. Hold on. Let me ask the question. Then
12 you had him kicked out, meaning that security would
13 not allow him back on the property, is that correct?

14 A. Yeah, he's not allowed on the property.

15 Q. Okay. And then so the afternoon of May
16 29th, he knocked on the door. He said that he needed
17 to get some stuff and you let him in.

18 Correct?

19 A. Yeah. He pleaded. He wanted to get his
20 belongings, and he said he'd leave as soon as he get
21 his belongings, but that was not the case.

22 Q. And you said he pushed you onto the couch?

23 A. Yes.

24 Q. Now, just imagine that apartment in your
25 mind for me a minute. If you're looking at the front

1 door, is the front door located more towards the
2 right of the right of the apartment or the left?

3 A. Left.

4 Q. As you walk in, what room do you walk into?

5 A. The living room.

6 Q. Is there also a separate bedroom?

7 A. Sort of, yeah, there is a partition, yes.

8 Q. Okay. Is there a door to that bedroom?

9 A. Yes.

10 Q. And where is the couch located in the
11 living room?

12 A. Right as soon as you walk into the door,
13 it's on the right -- I'm sorry. The door, if you're
14 facing the door, it's on the right-hand side. The
15 door is also on the right-hand side. So as soon as
16 you walk in, the couch is right there, just a small
17 place.

18 Q. So if I were to open the door, I would be
19 looking straight at the couch?

20 A. Right.

21 Q. That's the side of the couch, correct?

22 A. Right. The door is on the side of the
23 couch.

24 Q. And the back of the couch is against the
25 wall?

1 A. Correct.

2 Q. And is it a padded couch?

3 A. Yes.

4 Q. And you said that he pushed you down?

5 A. He pinned me down, correct.

6 Q. Pinned you down on the couch?

7 A. Um-hmm.

8 Q. Then he started accusing you of sleeping

9 with other men?

10 A. Yes.

11 Q. And he told you that he wanted a blow job?

12 A. Not right there and then. He just said who

13 do I have in that place, who have I've been

14 fucking --

15 Q. Okay. And how long --

16 A. -- and I said that --

17 Q. How long did he continue to ask you about

18 that?

19 A. The whole afternoon, the whole time. Just

20 keeps on repeating himself.

21 Q. Well, from the time that he walked in until

22 the time you first gave him the blow job, how much

23 time was that?

24 A. I didn't time it. I'm sorry. I don't

25 know.

1 Q. Well, are we talking minutes, hours?
2 A. Minutes.
3 Q. So how -- five minutes, 15 minutes, half an
4 hour?
5 A. Like I said, I don't know.
6 MS. KRISKO: She said she doesn't know.
7 THE COURT: Yes, she's answered.
8 BY MS. KHAMSI:
9 Q. So at some point if time he asked you to
10 give him a blow job?
11 A. Yes.
12 Q. And you don't tell him, no, I don't want
13 to?
14 A. I didn't tell him I don't want to, no.
15 Q. So then you gave him the blow job, is that
16 correct?
17 A. Yeah, just maybe lasted 30 seconds because
18 he said he wanted to fuck me instead.
19 Q. Okay. So you just put your mouth on his
20 penis, and then after about 30 seconds he said he
21 wanted vaginal intercourse?
22 A. Correct. He said, Lie down on your back.
23 Q. And that happened on the couch?
24 A. Correct.
25 Q. And at that time you didn't say no as well?

1 A. No. Because I was trying to be submissive
2 because I could see the wildness in his eyes.

3 Q. Okay.

4 A. And he was already accusing me of things,
5 you know, I don't know what he's talking about.

6 Q. What were you wearing when you had been
7 trying to sleep?

8 A. I was wearing blue shorts and orange top.

9 Q. And how did -- now, are those those same
10 blue shorts that you put on later?

11 A. Yes.

12 Q. And how did your clothes manage to come
13 off?

14 A. I took them off.

15 Q. You took them off?

16 A. He took them off.

17 Q. Oh, he took them off? Okay. Did you
18 resist trying to take your clothes off?

19 A. No, I didn't resist because I was scared
20 for my life. If I resist, he's going to think that
21 I -- he's already accusing me of so many things that
22 I have no choice but to oblige with him, to be
23 submissive to him to calm him down.

24 Q. Okay. So then you had vaginal intercourse,
25 correct?

1 A. Yes.

2 Q. And then after that you had anal
3 intercourse?

4 A. No -- well, he forced me to have anal
5 intercourse with him.

6 Q. Right. I asked you if you had anal
7 intercourse with him.

8 A. Yes.

9 Q. Okay. And then you said after that you put
10 on a dress?

11 A. I didn't want to have anal intercourse with
12 him. I told him no.

13 Q. Okay. That was not my question. My
14 question was --

15 A. Yes, I put on a dress.

16 Q. Did you put on underwear?

17 A. No. Because I wiped myself.

18 Q. I'm sorry. You --

19 A. I don't have any underwear because I put on
20 my clothes and I had to wipe myself with a tissue.
21 And then I was going to put the underwear back, but
22 by the time I was going to put the underwear
23 something came out of my dress and I had to change.

24 Q. You mean something came out of you onto
25 your dress?

1 A. Yes.

2 Q. So that's when you changed into the shorts
3 and the orange top, is that correct?

4 A. Yes.

5 Q. Were you wearing underwear then or no?

6 A. No.

7 Q. Now, you said that after that time there
8 was, it was about 30 minutes later before you started
9 or that you proceeded to have intercourse again.

10 What were you doing during those 30
11 minutes?

12 A. Him tormenting me, asking me questions who
13 did I fuck this whole 30 minutes, just being
14 tormented by him and being intimidated.

15 I don't really recall, you know, the
16 details. It's just all I can remember within those
17 30 minutes is all he did was torment me and
18 intimidate me.

19 Q. Okay. And then did you leave your
20 apartment?

21 A. I couldn't leave the apartment.

22 Q. Why was that?

23 A. Because he was right there.

24 Q. Okay. Did you make any phone calls?

25 A. No. I couldn't because he's right there.

1 Q. Okay.

2 A. I couldn't make a phone call. He was right
3 on my back.

4 Q. And what do you mean he was right on your
5 back?

6 A. He was right there next to me all the time,
7 so how am I going to make a phone call? If I ever
8 did that -- I was waiting for him to fall asleep so I
9 can get out.

10 Q. Hold on. So you were arguing for 30
11 minutes.

12 A. I wasn't arguing with him. He was accusing
13 me and I was just being submissive. I'm trying to
14 calm him down. I didn't answer back or anything.

15 Q. Was he pretty loud?

16 A. Yes. He was drunk.

17 Q. Okay. He was drunk and very loud?

18 A. He was loud and he was, you know, basically
19 in those 30 minutes he would pull my hair, slap me
20 around. I don't have the specific -- everything was
21 so vague at that point because I was scared for my
22 life.

23 Q. So you said he was pulling your hair, he
24 was slapping you around.

25 Did he punch you?

1 A. No. But he would hit me with his palm on
2 my face.

3 Q. So he was slapping you?

4 A. Um-hmm.

5 Q. And how many times do you think he slapped
6 you?

7 A. About seven times.

8 Q. And then you said after that he asked you
9 again to have you give him a blow job, is that
10 correct?

11 A. Yeah. I said no.

12 Q. And he also asked you to have vaginal
13 intercourse and you said no, is that correct?

14 A. Yes.

15 Q. Did your clothes ever come off that second
16 time?

17 A. Yes.

18 Q. Okay. And did you take your clothes off?

19 A. I don't remember.

20 Q. You don't remember? And afterwards you
21 went to security, is that correct?

22 A. I waited for him to fall asleep.

23 Q. Okay.

24 A. And then that's when I -- that's the chance
25 that I had that he won't stop me because he fell

1 asleep, and then I got out of the door and called the
2 security, yes, and I told them he was back.

3 Q. So did you call security?

4 A. No. I went out of the door and went to the
5 office and got the security. I --

6 Q. How long had he been asleep?

7 A. Not that long. I would say about five
8 minutes.

9 MS. KHAMSI: I have no further questions,
10 your Honor.

11 THE COURT: Ms. Krisko.

12 MS. KRISKO: No other questions, your
13 Honor.

14 THE COURT: Thank you, Ms. Whitmarsh. You
15 may step down.

16 Ms. Krisko, your next witness.

17 MS. KRISKO: The State rests.

18 THE COURT: The State rests.

19 Ms. Khamisi.

20 MS. KHAMSI: We're not going to call any
21 witnesses, your Honor.

22 THE COURT: Mr. O'Keefe, as you know, this
23 is the time set for your preliminary hearing. We're
24 now to the defense case. Your attorney has indicated
25 that no witnesses are going to be called, and that

1 indicates to the Court that you're not testifying.

2 You understand that you have a right to
3 testify at this preliminary hearing?

4 THE DEFENDANT: Yes, your Honor, I do.

5 THE COURT: And you're not going to testify
6 at this preliminary hearing?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: Okay. The defense rests.

9 Ms. Krisko.

10 MS. KRISKO: Your Honor, I'm going to
11 submit on the fact and reserve on rebuttal.

12 I just remind the Court I'm asking to add a
13 count of burglary. I think the evidence certainly
14 shows that with him walking in and immediately
15 becoming violent with her.

16 And Count VII should actually be attempt
17 sexual assault. I don't think I have enough
18 information or evidence to prove Count VII as a
19 sexual assault.

20 THE COURT: Ms. Khamsi.

21 MS. KHAMSI: Your Honor, I move to dismiss
22 Count V and VI, the attempt sexual assault. The
23 evidence has shown that he asked her, she said no,
24 and that he did not proceed forth with attempting to
25 make her perform fellatio on him or have vaginal

1 intercourse on her. So I don't believe that the
2 evidence shows there has been any sort of after
3 attempt.

4 Certainly, the fact that she said no and he
5 didn't do anything would show that there was no
6 attempt made, that there was nothing beyond asking.

7 MS. KRISKO: That's fine.

8 THE COURT: And did you say that's fine,
9 Ms. Krisko? What did you say?

10 MS. KRISKO: Yes. I said that's fine on
11 Count V and VI, just the fellatio and the attempt --
12 the attempt fellatio and the attempt sexual
13 intercourse vaginal, but not Count VII.

14 THE COURT: You have no objection to Counts
15 V and VI being dismissed?

16 MS. KRISKO: That's correct.

17 THE COURT: Okay. Count V and Count VI,
18 the attempted sexual counts are dismissed.

19 As to Count VII, to conform to the
20 evidence, it is going to be amended to, on line 17 to
21 read in the caption attempt sexual assault, and in
22 the body of that, it will read on line 18 after
23 feloniously inserted will be attempt to. And I guess
24 additionally on line 19 after to wit colon, it should
25 be added --

1 MS. KRISKO: I think that's fine. I think
2 it's on line 20, it should be by attempting.

3 THE COURT: Okay. On line 20 after word by
4 inserting, the word attempting.

5 Additionally, the state has moved to add a
6 count of burglary.

7 Do you have any --

8 MS. KHAMSI: Yes, your Honor. There was
9 evidence that he actually lived there, and I ask the
10 Court to take that into consideration. I don't
11 believe they have enough for burglary.

12 THE COURT: The State's position is at the
13 time he entered he had the intent to commit these
14 crimes and so there's going to be --

15 MS. KRISKO: And, additionally, we did have
16 the evidence come out that he had been trespassing
17 the night before, so he absolutely should not have
18 been there.

19 THE COURT: So there should be an
20 additional count added of burglary, which in the
21 caption will be burglary, and it will read --

22 MS. KRISKO: We'd ask battery and/or sexual
23 assault.

24 THE COURT: Okay. And as to the generic
25 burglary language, the State will add that to the

1 unlawfully and feloniously entered with intent to
2 commit those crimes.

3 So, Mr. O'Keefe, you can stand up. After
4 hearing the evidence presented at this preliminary
5 hearing, namely the testimony of Victoria Whitmarsh,
6 I find probable cause that the crimes enumerated in
7 the criminal complaint were committed with those
8 changes that have been made, namely deleting Counts V
9 and VI and adding a count of burglary, and I also
10 found that you committed those crimes.

11 You are hereby held to answer in the Eighth
12 Judicial District Court on:

13 THE CLERK: July 13th at 9:00 in District
14 Court 5.

15 MS. KRISKO: Thank you.

16 THE COURT: And as to the burglary, I guess
17 we don't have a bail setting on that particular
18 charge.

19 MS. KRISKO: While you're looking at that,
20 here's my pitch for that: I'd ask that since those
21 counts are going to be dismissed, that you take
22 whatever combined amount of bail is on those two
23 counts and put it on the burglary.

24 THE COURT: It was a total of \$6,000 cash
25 or surety.

1 MS. KRISKO: I know that's a little more
2 than standard bail for that, but the reason being
3 this defendant -- and I certainly have a picture I
4 can show you from the last domestic violence case he
5 had against the victim in which her face was black
6 and blue -- has committed numerous domestic violences
7 against this particular person.

8 Certainly that should be considered when
9 you have the evidence that you have and the strength
10 of the evidence in this particular case in giving
11 bail, her safety, and looking at his prior arrests,
12 most of them are for violence, and he has prior
13 failures to appear.

14 So I just ask that that \$6,000 be put on
15 the burglary so that the bail stays the same.

16 THE COURT: Ms. Khamsi.

17 MS. KHAMSI: Your Honor, I think the
18 standard bail in this case is appropriate. Those
19 other two case were dismissed. The evidence didn't
20 show, I think there's nothing to warrant that the
21 burglary count be higher than standard. He certainly
22 has quite a number of other counts that are holding
23 him on that bail as well.

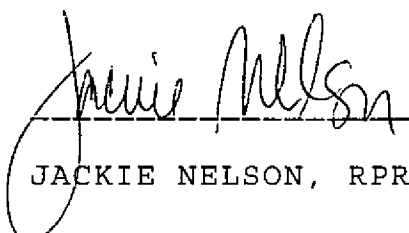
24 THE COURT: Thank you, Ms. Khamsi.

25 I think what we are talking about is the

1 difference between a total of \$116,000 in bail or
2 \$113,000 in bail. So as to the burglary, the bail is
3 going to be set at \$3,000 cash or surety for a total
4 bail of \$113,000 cash or surety.

5
6 * * * * *

7
8 ATTEST: This is a full, true and accurate transcript
9 of the proceedings.

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12 
13 _____
14 JACKIE NELSON, RPR, CCR No. 809
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CLERK

0332
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
SUSAN R. KRISKO
Deputy District Attorney
Nevada Bar #006024
200 South Third Street
Las Vegas, Nevada 89155-2211
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

BRIAN OKEEFE,
#1447732

Defendant.

Case No. C202793

Dept No. V

NOTICE OF MOTION AND MOTION TO ADMIT
EVIDENCE OF OTHER CRIMES

DATE OF HEARING: August 31, 2004
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
SUSAN R. KRISKO, 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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DATED this 19th day of July, 2004.

BY /s/ S. Krisko

 SUSAN R. KRISKO
 Deputy District Attorney
 Nevada Bar #006024

STATEMENT OF FACTS

2

ACCESS\C202793\040719 072153 0332 NOTICEOFMOTIONANDMOTIONTOADMITEVIDENCEOFOTHERBADAC\000140977401.DO

1 The defendant has an extensive history of violence against this victim. On January 7,
2 2003, the defendant was arrested for slapping the victim, causing her to have a bloody nose.
3 This injury was witnessed by the Las Vegas Metropolitan Police Officers. The case resulted
4 in a district attorney case # 03M00410X. The defendant pled guilty to resisting a police
5 officer. On August 6, 2003, police were called and the victim stated she and the defendant
6 had argued. The defendant grabbed her ponytail but no further violence occurred. No action
7 by the Las Vegas Metropolitan Police Department was taken. On November 25, 2003, police
8 were called after the defendant went to the victim's residence and struck her with his fist,
9 choked her and smothered her with a pillow. A neighbor heard the altercation and went to
10 the victim's house and physically took Victoria Whitmarsh over to her own residence. The
11 defendant then broke into the neighbor Michelle Mott's home to try to get to the victim.
12 Metro officers arrived and took the defendant into custody. A district attorney case number
13 03M25901X was filed and the defendant plead guilty. On November 26, 2003, the next
14 day, police responded to Victoria Whitmarsh's home and came in contact with both the
15 victim and the defendant. Victim denied any physical abuse on this day. Charges were filed
16 anyway and dismissed as part of a negotiation. On April 3, 2004, the victim called the police
17 because the defendant had accused her of being unfaithful and slapped her. The victim ran
18 to the apartment manager's office and the defendant chased her there. Police were called
19 and the defendant was taken into custody. On April 5, 2004, just two days later, the
20 defendant again slapped the victim around. No disposition can be found for the April
21 incidences.

22 The State now requests that the prior history of abuse, specifically, the occasions
23 wherein the police were called and the defendant arrested, be allowed in our case in chief.

24 STATEMENT OF THE LAW

25 **NRS 48.045(2)** provides:

26 Evidence of other crimes, wrongs or acts is not admissible to
27 prove the character of a person in order to show that he acted in
conformity therewith. It may, however, be admissible for other

1 purposes, such as proof of motive, opportunity, intent,
2 preparation, plan, knowledge, identity, or absence of mistake or
3 accident.

4 The State will seek to introduce, in its case in chief, evidence of domestic violence
5 from January 7, 2003, November 25, 2003, April 3, 2004, and April 5, 2004. The State
6 seeks this evidence to show intent, knowledge, and absence of mistake. The defendant is
7 charged with Battery with the Intent to Commit Sexual Assault, Sexual Assault, Burglary
8 and Attempt Sexual Assault. The State must prove beyond a reasonable doubt that the
9 defendant entered the victim's residence with the intent to commit a sexual assault and that
10 he battered the victim with the intent to commit a sexual assault and that he attempted to
11 commit sexual assault. The State's burden is to show the prior conduct meets **NRS**
12 **48.045(2)**. Once the requirements of **NRS 48.045(2)** are met, this Court must hold a
13 Petrocelli hearing and a three prong test must be met. *Walker v. State*, 116 Nev. 442, 446,
14 997 P.d. 803, 806 (2000). [(1) the incident is relevant to the crime charged; (2) the act is
15 proven by clear and convincing evidence; and (3) the probative value of the evidence is not
16 substantially outweighed by the danger of unfair prejudice. *Id. citing Tench v. State*, 113
17 Nev. 1170, 1176, 946 P.2d. 1061, 1064-65 (1997).

18 *Intent*

19 "A plea of not guilty puts in issue every material allegation of the information. NRS
20 174.350." *Overton v. State*, 78 Nev. 198, 205, 370 P.2d 677, 680 (1962). In the case at bar,
21 the defendant has necessarily put every material allegation of the Information in issue.
22 Furthermore, the defendant's statements dispute the victim's version of events.

23 **NRS 48.045(2)** is identical to Federal Rules of Evidence, **Rule 404(3)(b)**, and there
24 is a wealth of Federal cases interpreting this statute, which provide assistance in determining
25 the admissibility of evidence under 48.045(2). In *United States v. Kirk*, 528 F.2d 1057 (5th
26 Cir. 1976), defendant was charged with threatening the life of the President of the United
27 States of America. At trial, the prosecution presented evidence showing that three years
28 earlier the defendant had committed the same offense. The court ruled this evidence to be

properly admissible to show the defendant's intent, holding in 528 F.2d at 1061:

Whether the prior conviction tended to show that defendant made this threat intentionally or as the result of "alcohol taking," was a matter for the jury's determination. The fact that the former offense occurred three years prior to the offense charged does not make it so remote as to be excluded.

In *United States v. Beechum*, 582 F.2d 898 (5th Cir. 1978):

A jury convicted Orange Jell Beechum, a substitute letter carrier for the United States Postal Service, of unlawfully possessing a 1890 silver dollar that he knew to be stolen from the mails, in violation of 18 U.S.C. Section 1708 (1976). To establish that Beechum intentionally and unlawfully possessed the silver dollar, the Government introduced into evidence of two Sears, Roebuck & Co. credit cards found in Beechum's wallet when he was arrested. Neither card was issued to Beechum, and neither was signed. The Government also introduced evidence indicating that the cards had been mailed some ten months prior to Beechum's arrest to two different addresses on routes he had serviced.

582 F.2d at 903.

The Court held in 582 F.2d at 911 that:

Where the issue addressed is defendant's intent to commit the offense charged, the relevancy of the extrinsic offense derives from the defendant's indulging himself in the same state of mind in the perpetration of both the extrinsic and charged offenses. The reasoning is that because the defendant had unlawful intent in the extrinsic offense, it is less likely that he had lawful intent in the present offense.

In *United States v. DeLoach*, 654 F.2d 763 (D.C.C. 1980), the defendant was convicted for submitting false applications for labor certification of an alien. The Court allowed admission of testimony of three government witnesses, all aliens, that the defendant was a swindler who took their money for false promise to find them jobs and labor certifications and that the conduct occurred over a period encompassing a year and one-half prior to the offense charged. The Court held that the testimony was properly admissible. The prosecution argued that the evidence of the other swindles related to the ultimate issue of intent and the intermediate issues of knowledge, motive, common plan and absence of mistake and accident. The defendant argued that the prior bad acts were so dissimilar that the only logical inference to be drawn from the admission of them was that he was a bad

person who swindles aliens, and therefore, he was likely to try to deceive the government.

The Court held in 654 F.2d at 769:

These prior acts were instead introduced to show intent. In this case, where intent was the only real issue, and where appellant predictably raised the defense of mistake, the admissible bad acts evidence need not show incidents identical to the events charged, so long as they are closely related to the offense and tend to rebut the defense of mistake.

The Court cited three additional factors, which reinforced the admissibility of the extrinsic evidence. The prior acts were introduced to show intent, which was the only real issue. The government had great need for evidence on the issue of intent; and the trial court gave the limiting instruction which properly restricted the jury's use of the evidence.

In the case at bar, the State's need for said evidence is indeed great. The defendant's claim will obviously be that he didn't have any intent when he entered the victim's residence to sexually assault her or batter her with the intent to commit a sexual assault. The defendant has already claimed the sex acts were all consensual. The defendant's prior actions are needed to show the jury the full picture of this case and provide evidence of the defendant's intent.

Knowledge and Absence of Mistake

In *Overton v. State*, 78 Nev. 198, 205, 370 P.2d 677, 680 (1962), the defendant was charged with the possession of heroin and the court allowed evidence of a prior sale or sales of heroin by Overton to “establish his guilty knowledge that the substance in the capsules was narcotic in nature.” *Id.* Here, the defendant claims that the victim and he had consensual sex and that she “likes it rough”. However, the victim often called the police after being beaten by the defendant and this evidence would show the jury his knowledge that not only didn’t the victim “like it rough” but that his beating had been deemed criminal in the past.

However, most importantly, this evidence is necessary to show a lack of absence of mistake. The defendant's defense is that the victim consented to "rough sex". The victim

1 will testify that she took her clothes off and had sex with the defendant both orally and
2 vaginally without verbally saying no. The defendant should not be able to leave the jury
3 with the idea that somehow based on those facts he mistakenly thought she was consenting
4 to sex. The evidence of the repeated beatings of this victim is necessary to show how
5 ridiculous this claim is. It would be an injustice to leave the jury with the impression that
6 this behavior was acceptable to the victim or that he somehow could believe she was
7 consenting. The fact is that she didn't want to be killed by this defendant and she had every
8 reasonable expectation that he could do that to her based upon the prior violence he visited
9 upon her. The defendant has a right to a defense but not a defense based upon lies. His
10 attempt to fight to keep out this information would constitute a fraud on the defendant's part.

11 *Probative vs. Prejudicial*

12 In *United States v. Parker*, 549 F.2d 1217 (9th Cir., 1977) defendants were convicted
13 of armed bank robbery and one defendant was convicted of bank larceny. During the course
14 of the trial evidence was adduced that the defendant had been addicted to heroin for
15 approximately ten years and had been involved in drug counseling during most of that
16 period. The court held that the evidence of defendant's narcotics dealing was admissible to
17 show his motive to commit a robbery. Defendant argued that the prejudicial affect of the
18 extrinsic offense substantially outweighed its probative value. The court stated, cited *United*
19 *States v. Mahler*, 452 F.2d 547 (9th Cir., 1971), in 549 F.2d at 1222:

20 . . . Evidence relevant to defendant's motive is not rendered
21 inadmissible because of its highly prejudicial nature . . . The best
evidence often is!

22 In *United States v. Harrison*, 679 F.2d 942 (D.C.C.A. 1982), defendant was convicted
23 of possession of controlled substance with intent to distribute. The prosecution presented
24 evidence that defendant had been engaged in past drug dealings over a period of time to
25 show proof of motive, intent, preparation, plan, knowledge, identity and absence of mistake.
26 The court held evidence of the extrinsic offenses was admissible for those purposes stated in

1 679 F.2d at 948:

2 . . . There is nothing "unfair" in admitting direct evidence of the
3 defendant's past acts by an eyewitness thereto that constituted
4 substantive proof of the relevant intent alleged in the indictment.
5 The intent with which a person commits an act on a given
6 occasion can may times be best proven by testimony or evidence
7 of his acts over a period of time prior thereto . . .

8 In *Darnell v. State*, 92 Nev. 680, 558 P.2d 624 (1976). The Court held that evidence
9 that the defendant had previously purchased stolen property was properly admitted to prove
10 he intended to possess stolen property in a subsequent prosecution. After a court finds that
11 evidence of other crimes does not violate NRS 48.045(2), the court must then review the
12 evidence in regard to NRS 48.035. This statute requires a weighing of probative value
13 against prejudicial effect. *Tucker v. State*, 82 Nev. 127 (1966). The court in *Tucker* then
14 went on to state how the balancing of "probative vs. prejudicial" is to occur in 8 Nev. at 130:

15 The reception of such evidence is justified by necessity and, if
16 other evidence has substantially established the element of the
17 crime involved (motive, intent, identity, absence of mistake,
18 etc.), the probative value of showing another offense is
19 diminished, and the trial court should rule it inadmissible even
20 though relevant and within an exception to the rule of exclusion.

21 The State believes the evidence of the defendant's numerous other domestic violence
22 arrests is more probative than prejudicial. To allow the defendant to put forth the claim that
23 the sex was consensual or that he mistaken believed that the victim consented or that he had
24 no intent to commit the other specific intent crimes would create a great injustice.

25 The State must also show by clear and convincing evidence that the defendant
26 committed the other crime, *Petrocelli v. State*, supra. Here, the State is prepared to provide
27 evidence from the police, the victim and a couple of witnesses to the violence. A Petrocelli
28 hearing would be required and could be accomplished before the start of the defendant's
trial.

26 RES GESTAE

1 Assuming arguedo this Court does not find that the prior domestic violence is
2 admissible as an other bad act, this evidence should be admissible under the “complete
3 story” theory or *res gestae*. The idea behind *res gestae* was set forth by the Nevada Supreme
4 Court in *Sutton v. State*, 114 Nev. 1327, 972 P.2d 334 (1998).

5 According to the *res gestae* doctrine,

6 when several crimes are intermixed or blended with one another, or connected such
7 that they form an indivisible criminal transaction, and when full proof by testimony,
8 whether direct or circumstantial, or any one of them cannot be given without showing
9 the others, evidence of any or all of them is admissible against a defendant on trial for
any offense which is itself a detail of the whole criminal scheme. *Allan v. State*, 92
Nev. 318, 321, 549 P.2d 1402, 1404 (1976) (citing *People v. Thomas*, 3 Cal.App.3d
859, 83 Cal.Rptr. 879 (1970)).

10 In *State v. Shade*, 111 Nev. 887, 894, 900 P.2d 327, 331 (1995), we revisited the
11 applicability of the *res gestae* doctrine and explained that:

12
13 In reading **NRS 48.035** as a whole, it is clear that where the *res gestae* doctrine is
14 applicable ... the controlling question is whether witnesses can describe the crime
15 charged without referring to related uncharged acts. If the court determines that
testimony relevant to the charged crime cannot be introduced without reference to
uncharged acts, it must not exclude the evidence of the uncharged acts.

16 In *Shade*, we held that the district court erred in excluding evidence of Shade's
17 uncharged heroin purchase because this purchase occurred contemporaneously with the
18 offenses for which Shade was charged, arose out of the same transaction, involved the same
19 participants, and "was inextricably intertwined with the charged crimes and completed the
20 story leading up to Shade's ultimate arrest." *Id.* at 895, 900 P.2d at 331.

21 **NRS 48.035(3)** provides:

22 Evidence of another act or crime which is so closely related to an act in controversy
23 or a crime charged that an ordinary witness cannot describe the act in controversy or
24 the crime charged without referring to the other act or crime shall not be excluded, but
at the request of an interested party, a cautionary instruction shall be given explaining
the reason for its admission.

25 Apparent from the Nevada Supreme Court's holdings is the preference for permitting
26 the State to present a full and accurate picture of the offense charged. The victim has no way

1 of explaining to the jury why she would have taken off her clothes or not verbally said no to
2 the defendant's sexual assault without first explaining that he often beat her severely when
3 she argued or disagreed with him. Victoria Whitmarsh repeatedly testified at preliminary
4 hearing that she felt she would be killed if she fought the defendant's initial sexual demands.
5 The victim's testimony can not be taken out of context. Without the evidence of the prior
6 beatings, the jury will only be left with the impression that the defendant and victim had a
7 long term relationship and on this one day she, all of a sudden, is afraid that the defendant
8 will kill her if she denies him sex. That could not be further from reality. The other
9 domestic violence incidents are so inextricably intertwined that the victim would not be able
10 to testify fully about this crime without making reference to the other crimes.

11 CONCLUSION

12 Based upon the foregoing, the State requests the Court grant the State's Motion to
13 Admit Evidence of Other Crimes.

14 //

15 //

16 DATED this _19th_ day of July, 2004.

17
18 DAVID ROGER
19 DISTRICT ATTORNEY
Nevada Bar #002781

20
21 BY /s/ S. Krisko
22 SUSAN R. KRISKO
23 Deputy District Attorney
Nevada Bar #006024

24 CERTIFICATE OF FACSIMILE TRANSMISSION

25 I hereby certify that service of the State's Notice and Motion to Admit Other Bad Acts, was
26 made this _19th_ day of July, 2004, by facsimile transmission to:

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BITA KHAMSI, ESQ.
FAX # 455-5112

R. Dawicki
Secretary for the District Attorney's Office

SK

ORIGINAL

FILED

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Shirley B. Ruggione
CLERK

NOTC

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
SUSAN R. KRISKO
Deputy District Attorney
Nevada Bar #006024
200 South Third Street
Las Vegas, Nevada 89155-2212
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

BRIAN KERRY OKEEFE,
#1447732
Defendant.

CASE NO: C202793

DEPT NO: V

NOTICE OF EXPERT WITNESSES
[NRS 174.234 (2)]

TO: BRIAN KERRY OKEEFE, Defendant; and

TO: BITA KHAMSI, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF NEVADA intends to call expert witnesses in its case in chief as follows:

1. LINDA EBBERT. NURSE LINDA EBBERT will testify as an expert in the medical field. She is anticipated to testify that she conducted the rape exam on the victim Victoria Whitmarsh. She will testify as to her findings as a result of the exam.

2. DAVID HORN. DAVID HORN is a Crime Scene Analyst is Las Vegas Metropolitan Police Department. The analyst is an expert in the collection and preservation of evidence. The specialist is expected to testify regarding the collection and preservation of evidence in this case.

3. LINDA ERRICHETTO OR DESIGNEE. Linda Errichetto or her designee will testify as an expert in the collection, preservation and analysis of DNA. The State

1 anticipates this expert will testify is regards to any DNA collected in this case. The expert
2 will give scientific testimony related thereto.

3 The substance of each expert witness' testimony and a copy of all reports made by or
4 at the direction of the expert witness has been provided in discovery. YOU, AND EACH OF

5
6 DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

7
8 BY 

9 SUSAN R. KRISKO
Deputy District Attorney
Nevada Bar #006024
10

11
12 CERTIFICATE OF FACSIMILE TRANSMISSION

13 I hereby certify that service of the State's Additional Witness Notice, was made this
14 19th day of JULY, 2004, by facsimile transmission to:

15
16 BITA KHAMSI, ESQ.
FAX # 455-5112

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18 Secretary for the District Attorney's Office
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28 SK

Curriculum Vitae
LINDA L. EBBERT R.N. S.A.N.E.
3655 S. Decatur Blvd., #14-149
Las Vegas, Nevada 89103

EXPERIENCE

Sexual Assault Nurse Examiner
Rose Heart Inc.
3655 S. Decatur Blvd. #14-149
Las Vegas, NV 89103

Years Employed 1995-present

Co-owner and President of Rose Heart, Inc. Responsible for administration and daily business tasks. Function actively as a sexual assault nurse examiner. Over 550 sexual assault examinations completed in the past four years. Appear in court as expert witness and present testimony regarding forensic evidence collected and interpretation of results of examinations.

Registered Nurse
University Medical Center
Emergency Dept.
1800 W. Charleston Blvd.
Las Vegas, NV 89102

Years Employed 1990-present

Work full time as R.N. caring for patients in the Fast Track area of the E.R.

Northeastern Ohio General Hospital
Ob/Gyn as Labor and Delivery Nurse
Supervision As Shift Supervisor and as Coordinator E.R.

Years Employed 1993-1988

Lake Hospital System
Emergency Room Staff Nurse
Coordinator Emergency Room...Lake Medical Center Madison

Madison Clinic Ambulance Service
5 years
Experience in Transporting Critical Patients

EDUCATION

Meadville Area Senior High School
Meadville, PA 16335
High School Diploma

1957-1960

LINDA L. EBBERT, R.N.
CURRICULUM VITAE

- 1 -

Meadville City Hospital School of Nursing
Graduate Diploma School of Nursing
Registered Nurse Program – 3 Year Program

1960-1963

Urseline College
Pepper Pike, Ohio
Majoring in Humanities for B.A. in Health Care Administration

1987-1989

CREDENTIALS / CERTIFICATION

R.N.	Registered Nurse
A.C.L.S.	Advanced Life Care Support, Successful Completion of all Course Requirements
T.N.C.C.	Trauma Nurse Course, Successful Completion of all Course Requirements
S.A.N.E.	Sexual Assault Nurse Examiner, Successful Completion of all Course Requirements

LINDA L. EBBERT, R.N.
CURRICULUM VITAE

- 2 -

Curriculum Vitae

Las Vegas Criminalistics Bureau Statement of Qualifications

Name: David R. Horn

P# 1928

Date: 10-5-03

CURRENT CLASSIFICATION		
	Classification	Minimum Qualifications
	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
X	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.
FORMAL EDUCATION		
Institution	Major	Degree/Date
National University	Business Administration	MBA 10-88
U of CA-Riverside	Political Science	BA 12-71
Antelope Valley College	Liberal Arts	AA 6-70
TESTIMONY		
Yes	No	
EMPLOYMENT HISTORY		
Employer	Title	Date
LVMPD	Sr. Crime Scene Analyst	9-12-79

HORN, DAVID

P# 1928

CRIMINALISTICS BUREAU

SENIOR CSA

SS#: 562-84-5461

FIELD

DOH: 09-12-79

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
6-70	Liberal Arts	Antelope Valley College	AA
12-71	Political Science	U of Ca-Riverside	BA
11-26 to 11-30-79	Fingerprint Classification	LVMPD/F.B.I.	40
03-31 to 04-04-80	Advanced Latent Fingerprint Techniques	LVMPD/F.B.I.	40
08 -07-80	Use of Deadly Force Course	LVMPD	8
06-28 to 07-02-82	Advanced Officer Training	LVMPD	40
11-29 to 12-03-82	Advance Crime Scene Investigation	LVMPD	40
03 -06-84	Photography & Casting of Tire and Footwear Impressions, Techniques of Processing Bodies for Fingerprints, Measurement of Tire Tracks to Determine Wheel Base, and Blood Evidence Collection	LVMPD	8
08 -06-84	Advanced Crime Scene Investigation	LVMPD	3
10-22 to 10-26-84	Advanced Criminal Investigations - Homicide Seminar	LVMPD	20
01-6 to 01-17-86	Homicide Investigation	Southern Police Institute, Louisville, KY	80
01 -28-86	Fingerprint Fuming Seminar	Dura Print	8
03-19 to 03-20-87	Homicide Investigation Seminar	N.L.E.I.	16
03-23 to 03-27-87	Latent Print Testimony	FBI	40
10-88	Business Administration	U of CA-Riverside	MBA
09 -30-88	Driver Training	LVMPD	8
12 -24-90	Drug Testing Film	LVMPD	30 Minutes
09 -28-90	Stress Management	LVMPD	4
10 -16-90	Child Abuse/Neglect	LVMPD	4
10 -29-90	Communication Skills	LVMPD	7
02 -28-91	NCIC Level III - Video	LVMPD	1
04-17 to 04-18-91	Polilight	Napa Valley, CA, Police Dept.	16
07 -03-91	Gun Shot Wounds - Video	LVMPD	1

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
09-10-91	Asian Gangs	LVMPD	3
09-12-91	Auto Theft	LVMPD	2
09-30-91	Duty Weapon Qualification	LVMPD	1
10-10-91	Victims and Law Enforcement	LVMPD	2
11-20-91	Media Relations	LVMPD	3
12-31-91	Duty Weapon Qualification	LVMPD	1
01-03 to 01-10-92	Drug Recognition, Detection & Evaluation	LVMPD	8
01-16-92	Gangs in Clark County	LVMPD	3
03-31-92	Duty Weapon Qualification	LVMPD	1
05-05-92	NCIC Phase I - Miscellaneous Updates - Video	LVMPD	10 Min.
05-11-92	DOC Footwear Evidence - F/A Evidence	LVMPD	7
06-30-92	Duty Weapon Qualification	LVMPD	1
07-23-92	Driver's Training Level 02	LVMPD	8
07-92	New Pursuit Policy (Video)	LVMPD	1
08-24-92	Bloodborne Pathogens/Communicable Diseases	LVMPD	2
09-30-92	Duty Weapon Qualification	LVMPD	1
10-26 to 10-30-92	International Homicide Investigation Seminar		40
11-17-92	Team Building		6
12-11-92	Powerful Business Writing Skills		6
12-21-92	Vicarious Liability	LVMPD	2
12-23-92	Combat Shooting Simulator/FATS	LVMPD	1
12-31-92	Duty Weapon Qualification	LVMPD	1
02-08-93	Polilight Laser Photography and Chemical Techniques	LVMPD	8
03-11-93	Cultural Awareness & Police Community Relations	LVMPD	8
03-09-93	NCIC Phase I Videotape	LVMPD	20 Min.
03-31-93	Duty Weapon Qualification	LVMPD	1
06-16 to 06-17-93	Advanced Firearms School	LVMPD	14
06-30-93	Duty Weapon Qualification	LVMPD	1
09-17-93	6th Annual Training Seminar (Clandestine Drug Labs)	Clandestine Laboratory Investigators Association	32
09-27-93	Death & Grief Issues	LVMPD	4

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
09 -30-93	Duty Weapon Qualification	LVMPD	1
12 -31-93	Duty Weapon Qualification	LVMPD	1
01 -22-94	Comtemporary Issues - Use of Force	LVMPD	8
02 -02-94	Combat Shooting Simulator/FATS	LVMPD	1
03 -31-94	Duty Weapon Qualification	LVMPD	1
06 -30-94	Duty Weapon Qualification	LVMPD	1
09 -30-94	Duty Weapon Qualification	LVMPD	1
09-84	Bloodborne Pathogens (Video)	LVMPD	30 Minutes
12 -03-94	Grievances & Contract Interpretation	LVMPD (PPACE)	6
12 -07-94	Retirement Seminar	LVMPD	8
02 -17-95	Cultural Awareness - LVMPD	LVMPD	6
06 -30-95	Duty Weapon Qualification	LVMPD	1
09-11 to 09-13-95	The Detection and Examination of Footwear & Tire Impression Evidence	Maricopa County Sheriff's Office - Phoenix, AZ	24
09 -30-95	Duty Weapon Qualification	LVMPD	1
03 -31-96	Duty Weapon Qualification	LVMPD	1
05 -16-96	Critical Procedures Test	LVMPD	
06 -11-96	CAPSTUN Training	LVMPD	1.5
06 -30-96	Duty Weapon Qualification	LVMPD	2
07 -11-96	Driver Training - Level 2	LVMPD	8
07 -12-96	Verbal Judo	LVMPD	7
09-16 to 09-20-96	Bloodstain Evidence Workshop I	Northwestern University, Traffic Institute	40
09 -30-96	Duty Weapon Qualification	LVMPD	2
11 -02-96	Ultraviolet (UV) Light Orientation and Safety Presentation	LVMPD	1
01 -16-97	Interest Based Bargaining	LVMPD	20
02-11-97 to 02-13-97	Top Gun Training	LVMPD	21
02 -27-97	Moot Court - Video	LVMPD	2
03/30/97	Duty Weapon Qualification	LVMPD	2
06 -12-97	Critical Procedures Test	LVMPD	
06 -13-97	NCIC - Phase I Video	LVMPD	20 Minutes
07 -02-97	Duty Weapon Qualification	LVMPD	2

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
08-27, 28, & 08-29-97	Train the Trainer - F.T.E.P.	LVMPD	21
09 -30-97	Duty Weapon Qualification	LVMPD	2
10 -06-97	Combat Shooting Simulator/FATS	LVMPD	1
12-03, 04, & 12-10-97	Civilian Use of Force	LVMPD	21
12 -31-97	WordPerfect 6.1 Beginning	ExecuTrain	8
02 -11-98	Trauma Shooting - Video	LVMPD	30 Min.
02 -23-98	Domestic Violence (Video)	LVMPD	1
03 -01-98	Clandestine Lab Dangers - Video	LVMPD	30 Min.
03 -05-98	Secondary Devices - Video	LVMPD	30 Min.
03 -31-98	Duty Weapon Qualification	LVMPD	2
04 -02-98	Critical Procedures Test	LVMPD	2
04 -21-98	Duty Weapon Qualification	LVMPD	2
07-13 to 07-17-98	Advanced On-Scene Accident Investigation	LVMPD	35
08 -04-98	Optional Weapon	LVMPD	
09-14 to 09-18-98	Crime Scene Technology II	Northwestern University, Traffic Institute	40
10 -02-98	Combat Shooting Simulator/FATS	LVMPD	1
10 -10-98	Duty Weapon Qualification	LVMPD	2
01 -12-99	Training - Motor Home Driving	LVMPD	4
03 -30-99	Duty Weapon Qualification	LVMPD	2
04 -13-99	Critical Procedures Test	LVMPD	2
04 -20-99	Duty Weapon Qualification	LVMPD	2
04 -26-99	Latent Fingerprint Workshop of Cyanoacrylate Techniques	Detecto Print	6
04-28 to 04-30-99	First Annual Educational Conference - Opening ceremonies (2), Banquet (3)	NSDIAI	
"	DNA Evidence	NSDIAI	2
"	JFK-MLK Evidence	NSDIAI	2
"	Laboratory Photography	NSDIAI	2
"	Blood Enhancement	NSDIAI	4
"	Unabomber	NSDIAI	2
"	Bombing Scenes	NSDIAI	2

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
"	Child Abuse	NSDIAI	2
"	Latent Prints on Skin	NSDIAI	2
"	Footwear/Tire Tracks	NSDIAI	2
06 -30-99	Optional Weapon	LVMPD	
08-23 to 08-27-99	Bloodstain Evidence Workshop 2	Northwestern University, Traffic Institute	40
09 -15-99	Combat Shooting Simulator/FATS	LVMPD	1
09 -21-99	Duty Weapon Qualification	LVMPD	2
11 -16-99	Terrorism/Bomb Threats Class	Clark County District Attorney's Office	4
11 -30-00	Driver Training	LVMPD	8
11 -23-99	Certification - Senior Crime Scene Analyst	IAI	
01 -20-00	Latent Fingerprint Development Workshop	Secret Service	8
05-03 to 05-05-00	Second Annual Educational Conference Polly Klass (Also see items below)	NSDIAI	3
"	Photo FP Tech	NSDIAI	2
"	Child Abuse II	NSDIAI	2
"	Drug Fire/IBIS	NSDIAI	2
"	Gadgets and Gizmos	NSDIAI	2
"	Handwriting	NSDIAI	2
"	Shoebox Labeling	NSDIAI	1
"	WIN-AFIS	NSDIAI	2
06 -22-00	ASM 5 - Administrative Duties	LVMPD	7
08 -15-00	Firearms Training Simulator	LVMPD	1
09-06 to 09-08-00	Shooting Incident Reconstruction	LVMPD	24
01-22 to 01-26-01	Advanced Ridgeology Comparison Techniques	Forensic Identification Training Seminars, LLC	40
02-12 to 02-14-01	Clandestine Laboratory Safety Certification Course - Occasional Site Worker	LVMPD	24
04 -13-01	NSDIAI - 3 rd Annual Educational Conference Child Exploitation - CERTIFICATE	NSDIAI	2
"	Bloodstain Pattern Report Writing - TO BE ISSUED	NSDIAI	2
	Proficiency Exercise Presumptive Semen (Acid	LVMPD - Criminalistics	

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
05-14-01	Phosphatase Test)	Bureau	1.5
07-22 to 07-28-01	86 th International Educational Conference (International Association for Identification)	IAI	(See below)
"	An Update on Daubert Hearings for Fingerprints: Challenges from the Legal and Scientific Arenas	"	1.5
"	Fingerprints and Art	"	1
"	Spectrochemical Analysis of Children's Fingerprints	"	30 Min.
"	Killer on the Railcar	"	1.5
"	Human Identification at a Distance	"	1
"	Photographic Identification of Clothing from Wear-and-Tear, and Manufactured Characteristics	"	1
"	Conducting Research on Latent Prints	"	1
"	Fingerprint Research at the U.S. Secret Service	"	1
"	Courtroom Testimony	"	4
"	John Gacy: Serial Murderer	"	30 Min.
09 -20-01	Bloodstain Pattern Analysis - Angle of Impact Proficiency Exercise - Certificate # 03	LVMPD - Criminalistics Bureau	3
12 -07-01	Crime Zone 5.0 - Learning Center Tutorial	"	4
01 -01-02	Collection of Samples from Biological Fluids/Stains	"	1
03 -05-02	Crime Scene Diagraming	"	8
04 -01-02	Objective Approach to the Crime Scene	LVMPD - Criminalistics Bureau	1
04 -01-02	Chemical Enhancements of Bloodstains, Preliminary Steps	LVMPD - Criminalistics Bureau	1
04 -03-02	Documentation of Footwear & Tire Impressions	LVMPD - Criminalistics Bureau	1
04 -10-02	Clandestine Laboratory Safety - Fingerprint Processing	LVMPD - Criminalistics Bureau	1
04 -15-02	Major Case Prints	LVMPD - Criminalistics Bureau	3
02-06 to 02-08-03	Advanced Shooting Incident Reconstruction - Forensic Identification Training Seminars	LVMPD	24

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
 FORENSIC LABORATORY
 STATEMENT OF QUALIFICATIONS**

Date: 4-16-03

Name: Linda T. Errichetto P#: 1471 Classification: Director of Laboratory Services

Current Discipline of Assignment: Management/Administrative

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances	X	Blood Alcohol	X
Toolmarks		Breath Alcohol	
Trace Evidence - hairs	X	Arson Analysis	
Toxicology	X	Firearms	
Latent Prints		Crime Scene Investigations	
Serology	X	Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	
Quality Assurance		Technical Support /	

EDUCATION			
Institution	Dates Attended	Major	Degree Completed
Thiel College, Greenville, PA	9/72 → 5/76	Chemistry	BA
University of Pittsburgh	9/76 → 6/77	Forensic Chemistry	MS

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
Northeast Association of Forensic Scientists	New York	10/76
Beckman Infrared Seminar	Las Vegas	8/75

Statement
Name:
Page: 2

of
Linda

Qualifications
T. Errichetto

ADDITIONAL TRAINING / SEMINARS

<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
American Academy of Forensic Sciences	San Diego	2/77
American Academy of Forensic Sciences	Las Vegas	2/85, 2/89
American Academy of Forensic Sciences	Anaheim	2/91
American Academy of Forensic Sciences	Seattle	2/95
American Academy of Forensic Sciences	Reno, NV	2/00
California Association of Criminalists	Irvine	10/87
Toxicology Workshop	Orange County Sheriff's Office	5/80
Semen Identification Course	Serological Research Institute Emeryville, CA	10/85
Rofin Polilight Training	Las Vegas	4/91
Isoelectric Focusing	Analytical Genetic Testing Center, Inc. Denver, CO	3/92
American Society of Crime Lab Directors	FBI FSRTC, Quantico, VA	9/93, 9/95, 9/96
CA Association Crime Lab Directors	Las Vegas	4/96
CA Association of Crime Lab Directors	San Diego, CA	4/97
American Society of Crime Lab Directors	San Antonio, TX	9/97
American Society of Crime Lab Directors	Memphis, TN	9/98
American Society of Crime Lab Directors	Buffalo, NY	9/00
American Society of Crime Lab Directors	Phoenix, AZ	12/01
American Society of Crime Lab Directors	Tampa, FL	10/02
The National Forensic Science Technology Center Laboratory Auditing Course	Las Vegas, NV	6/99
American Academy of Forensic Science	Seattle, WA	2/01
Convicted Offender Statute Meeting	Reno, NV	5/02
Daubert Seminar sponsored by the American Board of Forensic Document Examiners	Las Vegas, NV	6/02
US Dept. of Justice / FBI / 30 th Annual Symposium		

Statement
Name:
Page: 2

of
Linda T. Errichetto
Qualifications

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
on Crime Laboratory Development	St. Louis, MO	9/02
Why Things Go Right, Why Things Go Wrong; Ethical Decision Making	Las Vegas, NV	10/02
Employee Performance Support System	Las Vegas, NV	11/02
Executive Development - LVMPD	Las Vegas / Mesquite, NV	01/03
Forensic Approaches to Mass Disasters / CAC/NWAFS Meeting	Reno, NV	04/03

COURTROOM EXPERIENCE		
<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>
Clark County District Court	All above disciplines	*
Justice Court of Las Vegas Township, Clark County, Nevada	All above disciplines	*
Municipal Court of Las Vegas	Blood Alcohol, Controlled Substances	*
Municipal Court of Henderson	Blood Alcohol	*
Municipal Court of Boulder City	Blood Alcohol	*
Justice Court of Beatty, Nye County, Nevada	Blood Alcohol, Controlled Substances and Serology	*
Nye County District Court	Controlled Substances	*
United States Federal Court	Blood Alcohol , Controlled Substances and Serology	*
Nellis A.F.B. Adjutant General's Office	Serology, Controlled Substances	*
		*Qualified as an Expert Witness over 300 times.

EMPLOYMENT HISTORY

<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
Las Vegas Metropolitan Police Department	Criminalist	8/77 → 8/93
Las Vegas Metropolitan Police Department	Director of Lab Services	8/93 → present
University of Nevada at Las Vegas	guest lecturer/instructor	88 → 95
PROFESSIONAL AFFILIATIONS		
<i>Organization</i>	<i>Date(s)</i>	
American Society of Crime Lab Directors	94 → present	
California Association of Crime Lab Directors	95 → present	
American Academy of Forensic Sciences	86 → present	
California Association of Criminalists	87 → present	
Northwest Association of Forensic Scientists	96 → present	
PUBLICATIONS / PRESENTATIONS:		
"Detection of Drugs in Bloodstains, II: Morphine" <i>Journal of Forensic Science</i> , Vol 25, No. 2, April 1980.		
"Victims, Suspects, and Aids" California Association of Crime Lab Directors 1/1990		
"DNA: Meaningful - Not Magical" Western States Sexual Assault Seminar, May, 1991.		
OTHER QUALIFICATIONS:		
Governor's Committee on Testing for Intoxication, member, 1984, 1993 → present		
Technical Working Group on Education and Training in Forensic Sciences, member, July 01 - August 02		
American Society of Crime Lab Directors, Management Survey, Committee Member (97) - Nominating Committee Member (99) - Membership Committee (99)		
American Society of Crime Lab Directors, Board of Directors, September 2000 - present		

 *** TX REPORT ***

TRANSMISSION OK

TX/RX NO	4708	
CONNECTION TEL		4555112
CONNECTION ID	CLARK CO. PUBLIC	
ST. TIME	07/19 07:18	
USAGE T	03'59	
PGS. SENT	15	
RESULT	OK	

ORIGINAL

1 NOTC
 2 DAVID ROGER
 3 Clark County District Attorney
 4 Nevada Bar #002781
 5 SUSAN R. KRISKO
 6 Deputy District Attorney
 7 Nevada Bar #006024
 8 200 South Third Street
 9 Las Vegas, Nevada 89155-2212
 10 (702) 455-4711
 11 Attorney for Plaintiff

DISTRICT COURT
 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 BRIAN KERRY OKEEFE,
13 #1447732

14 Defendant.

CASE NO: C202793

DEPT NO: V

NOTICE OF EXPERT WITNESSES
 [NRS 174.234 (2)]

16 TO: BRIAN KERRY OKEEFE, Defendant; and

17 TO: BITA KHAMSI, Counsel of Record:

18 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
 19 NEVADA intends to call expert witnesses in its case in chief as follows:

20 1. LINDA EBBERT. NURSE LINDA EBBERT will testify as an expert in the
 21 medical field. She is anticipated to testify that she conducted the rape exam on the victim

22 Victoria Whitmarsh. She will testify as to her findings as a result of the exam.


CLERK

NOTC
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
SUSAN R. KRISKO
Deputy District Attorney
Nevada Bar #006024
200 South Third Street
Las Vegas, Nevada 89155-2212
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,	)	CASE NO: C202793
)	
-vs-	)	DEPT NO: V
)	
BRIAN KERRY OKEEFE,)	
#1447732)	
)	
Defendant.)	

NOTICE OF WITNESSES
[NRS 174.234 (1)(b)]

TO: BRIAN KERRY OKEEFE, Defendant; and
TO: BITA KHAMSI, Counsel of Record:
YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call the following witnesses in its case in chief:

<u>NAME</u>	<u>ADDRESS</u>
DUNCAN, J. P# 7157	Las Vegas Metropolitan Police Department
EGGLESTON, LYNDIA	3864 ALGONQUINN #2, LV NV
MOTT, MICHELLE	1500 STARDUST, #A-2016, LV NV
POINON, C. P# 7160	Las Vegas Metropolitan Police Department
PRICE, R. P# 5626	Las Vegas Metropolitan Police Department
RUMERY, S. P# 6734	Las Vegas Metropolitan Police Department
WONG, T. P# 6812	Las Vegas Metropolitan Police Department

1 These witnesses are in addition to those witnesses endorsed on the Information and
2 any other witness for which a separate Notice has been filed.

3
4 DAVID ROGER
5 DISTRICT ATTORNEY
6 Nevada Bar #002781

7 BY /s/ S. Krisko
8 _____
9 SUSAN R. KRISKO
10 Deputy District Attorney
11 Nevada Bar #006024

12 CERTIFICATE OF FACSIMILE TRANSMISSION

13 I hereby certify that service of the State's Additional Witness Notice, was made this
14 __19th____ day of JULY, 2004, by facsimile transmission to:

15 BITA KHAMSI, ESQ.
16 FAX # 455-5112

17 R. Dawicki
18 Secretary for the District Attorney's Office

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ORIGINAL

FILED

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NOTC
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
SUSAN R. KRISKO
Deputy District Attorney
Nevada Bar #006024
200 South Third Street
Las Vegas, Nevada 89155-2212
(702) 455-4711
Attorney for Plaintiff

AUG 10 11 05 AM '04

Shirley B. Rungius
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRIAN KERRY OKEEFE,
#1447732

Defendant.

CASE NO: C202793

DEPT NO: V

NOTICE OF EXPERT WITNESSES
[NRS 174.234 (2)]

TO: BRIAN KERRY OKEEFE, Defendant; and

TO: BITA KHAMSI, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF NEVADA intends to call expert witnesses in its case in chief as follows:

1. DR. MORTILLARO OR DESIGNEE. Dr. Mortillaro or his designee will testify as an expert in the area of psychiatric medicine. He or his designee is anticipated to testify about the psychological effect of battered women's syndrome and how it impacts the victim. Furthermore, he or his designee will testify about the reactions these women have to threats and the effect that has on consent.

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CLERK
AUG 10 2004
COUNTY CLERK

1 The substance of each expert witness' testimony and a copy of all reports made by or
2 at the direction of the expert witness has been provided in discovery.

3
4 DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

5
6 BY 

7 SUSAN R. KRISKO
Deputy District Attorney
Nevada Bar #006024
8
9

10 CERTIFICATE OF FACSIMILE TRANSMISSION

11 I hereby certify that service of the State's Additional Witness Notice, was made this

12 10th

day of August, 2004, by facsimile transmission to:

13
14 BITA KHAMSI, ESQ.
FAX # 455-5112

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16 Secretary for the District Attorney's Office
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Curriculum Vitae
LOUIS F. MORTILLARO, PH.D.

501 South Rancho Drive, Suite F-37
Las Vegas, NV 89106
(702)388-9403 Fax (702) 388-9643
LFMORT@aol.com

LICENSURE

- Psychologist, State of Nevada, 1987, license number PY0169
- Marriage and Family Therapist, State of Nevada, 1985, license number 310

AREAS OF SPECIALIZATION

- Clinical – Counseling Psychology
- Clinical Neuropsychology
- Clinical Health and Rehabilitation
- Family Psychology

BOARD CERTIFICATIONS

- National board for Certified Counselors, National Certified Counselor, 1984, certificate number 447
- Diplomate, American Academy of Pain Management, 1988, certificate number 144
- Diplomate, American Board of Forensic Examiners, 1996, certificate number 2118
- Diplomate, American Board of Forensic Medicine, 1996, certificate number 1393
- Fellow and Diplomate, American Board of Medical Psychotherapists, 1996, certificate number 2096-1996
- Disability Analyst and Fellow, American Board of Disability Analysts, 1996, certificate number 3556
- Diplomate of the American Board of Psychological Specialties
 - Forensic Neuropsychology, 1997, certificate number 6112
 - Family/Marital/Domestic Relations Psychology, 1997, certificate number 6112

PROFESSIONAL CREDENTIALS

- California Life Credential in Pupil Personnel Services with Specializations in Psychometry, Counseling, Social Work and Attendance, 1971, certificate number 104682
- California Life Credential in Adult Education Subjects (Basic Education, Biology, French and Social Sciences), 1969, certificate number 293258

LOUIS F. MORTILLARO
Curriculum Vitae
Page 1

EDUCATIONAL HISTORY

Post Doctoral Study

Certificate of Specialization in Clinical Neuropsychology

The Fielding Institute, Santa Barbara, California

Dates Attended: February, 1996 – January, 1998

Major: Clinical Neuropsychology

Date certificate conferred: January 24, 1998

Course Work: 40 semester units

2000 hour practicum

200 hours clinical case supervision

Ph.D., United States International University, San Diego, California

Major: Professional Psychology

Minor: Clinical Psychodiagnostics

Dates Attended: 1976 – 1978

Date Degree Conferred: June 11, 1978

M.P.A., University of Southern California, Los Angeles, California

Major: Public Administration

Minor: Criminal Justice Administration

Dates Attended: 1974 – 1975

Date Degree Conferred: January 29, 1975

M.S.Ed., University of Southern California, Los Angeles, California

Major: Counseling Psychology

Minor: School Psychology

Dates Attended: 1967 – 1971

Date Degree Conferred: August 30, 1968

B.S., Loyola University of Los Angeles, California

Major: Biology

Minor: Chemistry/Philosophy

Dates Attended: 1962 – 1966

Date Degree Conferred: June 3, 1966

INTERNSHIP

Predoctoral Internship (2500 hours)

1976 – 1978

- Clark County Juvenile Court
Las Vegas, Nevada

Supervisors: Patrick Maloney, Ph.D.
Verdun Trione, Ed.D.

Supervise forty hour per week practice of conducting psychological evaluations and performing psychotherapy for juvenile delinquents, status offenders and abandoned, neglected, and abused children and their family members in a juvenile court setting. Also, provided case consultation/conferencing and training for a staff of institutional your counselors and probation and parole officers, as well as provided expert court testimony as requested.

- CareUnit Program
Lake Mean Hospital
North Las Vegas, Nevada

Supervised six hour per week practice of conducting psychological evaluations, as well as performing individual, group and family psychotherapy and consultation/conferencing services in an inpatient hospital setting for substance abusers.

Postdoctoral Internship (2500 hours)

1978 – 1980

- Jean Hanna Clark Rehabilitation Center
Las Vegas, Nevada

Supervisor: Verdun Trione, Ed.D.

Supervised forty hour per week practice of conducting psychological, neuropsychological, presurgical and vocational evaluations; provided biofeedback therapy and individual/group psychotherapy to help clients cope with pain and psychosocial issues related to physical disability; performed case consultation/conferencing within a multidisciplinary evaluation and treatment team setting in a rehabilitation center for industrially injured workers.

School Psychology Internship (700 hours)

1971

- Pasadena Unified School District
Pasadena, California

Supervisor: Allen Webb, Ph.D.
O'Neal Varner, M.A. (350 supervised hours)

Conducted psychoeducational evaluations for school-aged students to identify levels of learning disability, emotional disturbance, and attention

deficits. Communicated test results and developed remedial recommendations through use of a written report and verbal presentation during participation in case conferences with teachers, parents, and school administrators.

1972

- Clark County Juvenile Court
Las Vegas, Nevada

Supervisor: Allen Webb, Ph.D. (350 supervised hours)

Conducted psychoeducational evaluations for school-aged students involved with the Clark County Juvenile Court as an adjudicated delinquent, child in need of supervision, or a child abandoned, neglected, or abused by their parents. Written test results were submitted to the Juvenile Court judge, hearing master, probation and parole officers, parents, and the Clark County School District for use in developing prescriptive remedial educational and behavioral changing treatment programs.

PROFESSIONAL EXPERIENCE

1989 – Present

Private Psychology Practice

As part of a diversified outpatient and hospital practice, the following psychological services are provided not only for self-referred clients, but also upon referral from physicians, chiropractors, insurance claims adjusters, nurse case managers, psychological colleagues, attorneys, the courts and private industry:

- Assessment – neuropsychological, psychological, presurgical, vocational, child custody, competency, and fitness for duty.
- Treatment – individual, group, family, and marital psychotherapy; biofeedback therapy; psychoeducational lectures
- Consultation – conferencing/consultation with physicians, psychological colleagues, lawyers, judges, appeals, and hearing officers, claims adjusters, nurse case managers, physical and occupational therapists, clients, client family members, vocational rehabilitation counselors, and private party representatives.

Psychological services provided are for clients referred from the following practice areas and present with a number of medical and psychosocial problems:

- Hospital practice
 - Health South Rehabilitation Hospitals
 - Head trauma
 - Post surgical rehabilitation

- Spinal cord injuries
 - Cerebrovascular accidents
- Medical/Surgical Hospitals (UMC, Valley, Humana, Mountain View, Desert Springs, and Summerlin)
 - Post-surgical recovery
 - Trauma recovery
- Fountain Ridge Alcoholism Center
 - Substance abuse/dependence detoxification process
 - Full range of psychological disorders
- Montevista Psychiatric Hospital
- Forensic Practice
- Clark County Public Defender
 - Competency to stand trial and assist counsel
 - Sexual dangerousness
- Clark county Special Public Defender
 - Death penalty mitigation
- Clark county District Attorney
 - Sexual abuse
 - Domestic violence
 - Capital murder
- Defense and Plaintiff's Attorney's
 - Traumatic brain injuries
 - Motor vehicle accidents
 - Slip and falls
 - Toxic exposure
 - Competency to manage one's own affairs
- Clark County Family Court
 - Child custody
 - Parental fitness
 - Parent-child reunification
- Private Industry
 - Fitness for duty
 - Work place violence Potential

1995 – 2003

Psychology Director

NovaCare Pain and Rehabilitation Center

Provided clinical health and rehabilitation psychological services for NovaCare's CARF accredited Pain and Rehabilitation Center's Chronic Pain Management Program including conducting psychological and neuropsychological evaluations; provided individual and group pain and stress management counseling biofeedback therapy and psychoeducational lectures; and performed psychological consultation/conferencing with physicians, claims examiners, nurse

case managers, rehabilitation counselors attorneys, hearing officers and appeals officers. Clinical was closed in January 2003.

1995 – 1998

Psychological Evaluator

Las Vegas Metropolitan Police Department

Provided pre-employment conditional job offer screening and evaluation services for public safety personnel (police officers, corrections officers and police officer cadets), meeting the standards of the Americans With Disabilities Act of 1990 and Civil Rights Act of 1991.

The Nevada Pain and Rehabilitation Center was Southern Nevada's first privately owned multidisciplinary CARF accredited rehabilitation center providing evaluation and treatment programs for chronic pain management, injury management, pain counseling, work hardening/work simulation, and singular service medical, psychological, physical and occupational therapy treatments primarily for industrial injured workers.

Clinical services provided included, for industrially injured workers, conducting psychological, presurgical and neuropsychological evaluations; providing individual and group pain and stress management counseling biofeedback therapy and patient education lectures; performing psychological consultation/conferencing with physicians, claims examiners, nurse case managers, rehabilitation counselors, judges, attorneys, hearing officers and appeals officers.

Administrative duties included, in association with partner, Chief Executive Officer and Chief Financial Officer, assisted in planning, organizing and directing the medical, paramedical and support staff of fifty employees; preparing and administering the corporate budget; approval of purchase or capital items and supplies; recruiting, hiring and training of staff, specifically psychologists, test examiner, and biofeedback therapist; setting work standards and evaluating employee performance; establishing policies and procedures; participating the senior management team and executive committee meetings; maintaining public contact with referring sources; and coordinating the public relations and marketing efforts.

1985 – 1994

Owner/Consultant

Children's Oasis Schools, Inc.
Las Vegas, Nevada

Co-owner with spouse of two preschool and day care centers located in Spring Valley and The Lakes, Las Vegas, The Spring Valley School had a continuous enrollment of 100 children and The Lakes School served an average of 220

children. As owner, facilitated the recruitment and supervision of directors for the two schools, prepared and administered the corporate budget, and helped organize and implant the school curriculum. The Spring Valley School was sold in December, 1990 and The Lakes School was sold in April, 1994.

1978 – 1989

Chief Psychologist

Jean Hanna Clark Rehabilitation Center
Las Vegas, Nevada

Performed the duties of Chief Psychologist in a multidisciplinary rehabilitation center owned and operated by the State Industrial Insurance System (SIIS).

Clinical duties included providing injured workers psychological, presurgical and neuropsychological evaluations; individual and group pain and stress management counseling, biofeedback therapy and psychoeducational lectures; and performing psychological consultation with physicians, claims examiners, nurse case managers, rehabilitation counselors, judges, attorneys, hearing officers and appeals officers.

Administrative duties include: planning, organizing and directing services; recruiting, hiring and training a staff of four psychologists, one test examiner, one biofeedback therapist, and four secretaries; setting work standards and evaluating employee performance; establishing policies and procedures; serving on the senior management team and executive committee; maintaining public contact with referring sources; and contributing to public relations and marketing efforts.

1971 – 1978

Chief Psychologist

Clark County Juvenile Court
Las Vegas, Nevada

Performed the duties of Chief Psychologist for Clark County Nevada's Juvenile Court with juvenile delinquents, children in need of supervision, and abandoned, neglected, and abused children.

Clinical services included conducting psychological evaluations used in court placement disposition; provided individual group and family counseling; performed psychological consultation/conferencing with the probation, parole, institutional and judicial departments, collected and analyzed data for research and evaluation designs of federally funded court programs; and provided continuing education seminars for staff and educational instruction for youthful offenders and their parents.

Administrative duties included planning, organizing and directing services; preparing and administering the department budget; ordering supplies and equipment; facilitating the planning and writing of Federal Grant proposals; coordinating work activities and maintaining extensive contact with other court services and community agencies; recruiting, hiring and training of psychological services staff; setting work standards and evaluating employee performance; implanting employee counseling, disciplinary or termination procedures where appropriate; collected, analyzed and utilized data in administrative and department accountability studies; serving on the Director's Senior Management Team.

1969 – 1971

Adult Education Instructor

Work Incentive Program (partnership program between the Department of Employment and the Department of Family Services)
Los Angeles City Schools, Los Angeles, California

Teacher of basic education subjects, such as math, reading, english grammar and spelling to welfare recipients in a federally funded program located in South Central Los Angeles (Watts area). Upon successful completion of this educational remediation program, recipients were refereed for vocational rehabilitation training leading to re-entering the job market.

1968 – 1969

Employment Counselor

Department of Employment
East Los Angeles, California

Provided employment counseling and vocational testing with adults and teenagers for job development and placement services in the predominantly Hispanic community in east Los Angeles, California. Administered and interpreted the General Aptitude Test Battery (GATB).

1967 – 1968

High School Teacher/Coach

Black-Foxe School, Los Angeles, California

Teacher of biology and general science subjects for students in grades 9-12. also served as varsity track coach and counselor/faculty advisor to junior and senior classes.

SUPPLEMENTARY EMPLOYEMENT HISTORY

LOUIS F. MORTILLARO
Curriculum Vitae
Page 8

Associate Producer – Ask Rita Television Show
Martin Bergman and Rita Rudner, Producers

Part-Time College Teaching

1976 – 1984

Park College School for Community Education
Parkville, Missouri

- Adjunct professor of psychology in the off campus program located at Nellis Air Force Base, Nevada
- Taught at least one undergraduate psychology class per semester from the following curriculum offerings; Theories of Personality, Counseling Theory, Tests and Measurements, Special Topics in Social Psychology and Independent Study.
- Served as the Resident Academic Director providing curriculum accountability, teacher evaluations and teacher recruitment services in association with the resident program administrator.

1978 – 1989

Nova University
Las Vegas, Nevada

- Instructor in the off-campus graduate education curriculum taught in Las Vegas, Nevada.
- Taught classes in Stress Management, Human Sexuality, Parental Counseling, Exceptional Children, Educational Theory Into Practice and Administration and Supervision.
- Performed mentor and advisor services for students completing their master's project.

1973 – 1976

Clark County Community College
Las Vegas, Nevada

- Part-time Instructor of undergraduate courses.
- Taught courses in criminal justice administration, general psychology, and the psychology of adjustment.

1978 – 1979

New College/Stoner Chiropractic Foundation

Las Vegas, Nevada

- Instructor
- Taught courses in behavioral science applications for chiropractic doctors enrolled in a continuing education program co-sponsored by the Stoner Chiropractic Foundation and New College.

1977

College of Great Falls, Montana Great Falls, Montana

- Instructor
- Taught a winter quarter class (intense format) titled "Using Community Resources (Including Diversion)" for the State of Montana probation officers, youth institution supervisors, and aftercare workers.

1972 – 1986

University of Nevada, Las Vegas Las Vegas, Nevada

- Part-time Instructor
- Taught undergraduate course in Stress Management and graduate courses in Family Dynamics, Counseling in Agencies, and Special Problems in Family Dysfunction.

1986 – 1990

Golden Gate University San Francisco, California

- Part-time Instructor
- Taught graduate level courses in research design and statistics in the MBA/MPA program located off campus at Fort Irwin, California; Edwards Air Force Base, California; Nellis Air Force Base, Nevada; and George Air Force Base, Victorville, California.

Training and Consultation Services

Provided educational seminars and organizational consulting for the following clients:

- Illinois Probation Council, 1976 – 1978
- National Council of Juvenile and Family Court Judges, 1976 – 1978
- Tropicana Hotel, 1986 – 1988
- EG&G, 1981 – 1986

- Sands Hotel, 1988
- Mardi Gras Best Western Hotel, 1981 – 1989
- Clark County School District, 1974 – 1978
- Home of the Good Shepherd, 1976
- Furnace Creek Inn (Death Valley), 1989 – 1996
- Nevada Industrial Commission, 1979 – 1987

PROFESSIONAL MEMBERSHIPS/ACTIVITIES

- Member – American Psychological Association
Division memberships:
 - Rehabilitation Psychology
 - Health Psychology
 - Clinical Neuropsychology
 - American Psychology – Law Society
 - Psychologists in Independent Practice
 - Family Psychology
- Nevada State Psychology Association
 - Treasurer and Executive Committee Member, 1991 – 1992
 - President elect and Executive Committee member, 2001 – 2002
 - President and Executive Committee member, 2002 – 2003
- The American Pain Society
- International Association for the Study of Pain
- Association for Counseling and Development
- Society for Behavioral Medicine
- International Neuropsychology Society
- National Academy of Neuropsychology
- Coalition of Clinical Practitioners in Neuropsychology (Charter Member)
- Reitan Society (Charter Member)
- Association for Applied Physiology and Biofeedback
- The American Association for Marriage and Family Therapy (Clinical Member)
- Phi Delta Kappa – University of Southern California Chapter
- Phi Kappa Phi – University of Southern California Chapter
- The American Academy of Pain Management
- Program Committee Member (term: 1997 – 2000) – Division of Counseling Psychological Association

PUBLICATIONS

Mortillaro, Louis F. Mastering Math: Manual For Testing and Reinforcement Exercises. Santa Ana, California: Methods Research Associates, Inc. 1971.

Trione, Verdun and "Measuring Professional Performance of Counselors

- Mortillaro, Louis F. by Objectives" in Trione, Field Events and Theory for Counselors, Xerox College Publishing, Lexington, 1975, pp. 278-285.
- Mortillaro, Louis F. "Service Accountability Model for the Juvenile Justice System," Juvenile Justice, May 1975, Vol. 26, No. 2, pp. 35-39.
- Mortillaro, Louis F. "The Behavioral Accountability Program," Juvenile Justice, August, 1975, Vol. 26, No. 3, pp. 24-30.
- Mortillaro, Louis F. Behavioral Negotiation Process," The Group Leader's Workshop, No. XXIII, November 1977, pp. 5-6.
- Mortillaro, Louis F. "The Use of Psychological Services in a Juvenile Court Setting," Juvenile Justice, May 1978, Vol. 29, No. 2, pp. 7-12.
- Mortillaro, Louis F. "An Analysis of California Psychological Inventory Factors in Predicting and Differentiating between Juvenile Delinquents and Status Offenders," Unpublished Doctoral Dissertation, San Diego, California, June 1978.
- Mortillaro, Louis F. "Personal Evaluation of Doctors of Chiropractic Enrolled in a Continuing Education Program," The Digest of Chiropractic Economics, November/December, 1978, Volume 21, Number 3, pp. 24-25
- Fisher, Ronald, Mortillaro, Louis F. and Johnson, Donald "A Discussion on the Behavioral Medicine Approach to the Treatment of Chronic Back Pain," Nevada Personnel and Guidance Journal, November 1979, Vol. 1, pp. 15-23.
- Mortillaro, Louis F. "A Coordination Personnel System for Hiring Chiropractic Assistants and Chiropractic Technicians," The ACA Journal of Chiropractic, June 1980, Vol. 17, No. 6, pp. 30-32.

MEMBERSHIP ON COMMUNITY BOARDS (past and present)

Youth Charities of Southern Nevada
Big Brothers/Big Sisters of Southern Nevada (past President)

LOUIS F. MORTILLARO
Curriculum Vitae
Page 12

Boys & Girls Club of Southern Nevada (Advisory Board)
HELP, Inc.
Nevada Association for the Handicapped
Mispah House
Nevada Network Against Domestic Violence
Fraternal Order of the Desert Big Horn Sheep

STATE BOARDS

Appointed Member, Nevada State Board of Psychological Examiners
First Term: December 14, 1992 to June 30, 1995
Second Term: July 1, 1995 to June 30, 2000
President of Board: July 1, 1998 to June 30, 2000

MEDIA

Television interviews for local newscasts
Radio interviews on topics of a psychological nature

HONORS

Marquis' Who's Who in Medicine and Healthcare, since 1999/2000
Marquis' Who's Who in America, since 2000
Marquis' Who's Who in the West, since 1977
Who's Who in the Behavioral Sciences, since 1983
Who's Who Among Human Services Professionals, since 1985
"Outstanding Professional in Human Services" from the American Academy for Human Services (1974)
"Outstanding Service" – Board of Directors, Boys & Girls Club of Southern Nevada: 1992
"Outstanding Service" – Board of Directors, Boys & Girls Club of Southern Nevada: 1997
"Outstanding Service" – Board of Directors, Big Brothers/Big Sisters of Southern Nevada, 1978
"Outstanding Service" – Board of Directors, Big Brothers/Big Sisters of Southern Nevada, 1983

"Track Coach of the Year" – Prep League in Los Angeles, California (1968)

"Outstanding Student Legislator" – Loyola University of Los Angeles, California
(1965)

Autobiographical sketch included in the book Distinguished Men In Southern
Nevada, 1995, 1998, 2001 publications

AUG 31 2004

SHIRLEY B. PATRACHAK, CLERK
BY 
GEORGETTE BYRD DEPUTY

1 PHILIP J. KOHN, PUBLIC DEFENDER
2 NEVADA BAR NO. 0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
5 (702) 455-4685
6 Attorney for Defendant

7 DISTRICT COURT, LAS VEGAS
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 v.)

12 BRIAN KERRY O'KEEFE,)

13 Defendant.)

CASE NO. C202793

DEPT. NO. V

DATE: August 31, 2004

TIME: 9:00 a.m.

14 **OPPOSITION TO MOTION TO ADMIT EVIDENCE OF OTHER CRIMES**

15 COMES NOW, the Defendant, BRIAN KERRY O'KEEFE, by and through BITA
16 KHAMSI, Deputy Public Defender and hereby files this Opposition to Admit Evidence of Other
17 Crimes.

18 This Motion is made and based upon all the papers and pleadings on file herein, the
19 attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

20 DATED this 30 day of August, 2004.

21 PHILIP J. KOHN
22 CLARK COUNTY PUBLIC DEFENDER

23 By 

24 BITA KHAMSI, #5686
25 Deputy Public Defender

26 **RECEIVED**

27 AUG 31 2004

28 **COUNTY CLERK**

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

Brian and Victoria Whitmarsh have been boyfriend and girlfriend for around three and a half years, and lived together off and on for two and a half years (PHT p. 8). On May 29, 2004, between three and five in the afternoon, Ms. Whitmarsh let Brian into their apartment so he could gather his belongings (PHT p. 18-19). The night before, they had argued, and Ms. Whitmarsh had him trespass off the property.

Victoria said that when Brian walked in, he grabbed her and pushed her in the upper chest area onto the couch. (PHT p. 7). She says he then grabbed her by the hair and hit her head against the back of the couch (PHT p. 9). Brian then asked her to "give him a blow job", and she did not tell him no. She proceeded to fellate him for about 30 seconds (PHT . 24). After she briefly fellated him, Brian asked her for vaginal intercourse. Ms. Whitmarsh again did not refuse, and she also did not resist trying to take her clothes off (PHT p. 25).

After having vaginal intercourse with Ms. Whitmarsh, Brian asked her to have anal intercourse with him. Ms. Whitmarsh testified that she told him no, but that he forced her to have anal intercourse with him (PHT P. 26). Ms. Whitmarsh told him to stop, and that it hurt. (PHT p. 12). This incident is the only time in their history together that Ms. Whitmarsh has alleged that Brian forced her to have sex with him.

The other incidents that the State seek to introduce concern allegations of battery domestic violence. Some of the incidents involved visible injuries, while others did not. In most of the calls, either Ms. Whitmarsh had been drinking alcohol, or both Ms. Whitmarsh and Brian had been drinking. On January 7, 2003, Brian was arrested for slapping Ms. Whitmarsh. When the police arrived, both parties had been drinking. Brian pled guilty to resisting a police officer. On the August 6, 2003 call to the police, there were no visible injuries. Ms. Whitmarsh alleged that Brian

1 grabbed a hold of her ponytail, but never pulled it. When the police arrived, they noted that Ms.
2 Whitmarsh had been drinking.

3 The November 25, 2003 incident that the State seeks to introduce actually occurred not on
4 the 25th, but on November 14, 2003. Brian pled guilty to the charge of battery domestic violence
5 from that incident. On November 26, 2003, the police were called because neighbors heard
6 arguing. Both Ms. Whitmarsh and Brian told the police that no one had been touched. The police
7 noted that both parties had been drinking. At that time, the police officers took pictures of Ms.
8 Whitmarsh's injuries from the previous incident on November 14th. On April 3, Ms. Whitmarsh
9 accused Brian of slapping her. When the police arrived, they noted that she had no visible injuries,
10 and that she had been drinking. The police were called again on April 5, 2003, when Ms.
11 Whitmarsh accused Brian of slapping her. Ms. Whitmarsh had a scratch on her face. The police
12 noted that both parties had been drinking.

13
14 The state now seeks to introduce these alleged incidents of battery in their case in chief
15 wherein Brian O'Keefe is accused of sexually assaulting Ms. Whitmarsh.
16

17 LAW AND ARGUMENT

18 The general rule with regard to character evidence is that evidence of other crimes or bad
19 acts is inadmissible to prove the character of a person in order to show he acted in conformity with
20 such character. NRS 48.045. "The justification for this rule is that '[e]vidence of uncharged
21 misconduct may unduly influence the jury, and result in a conviction of the accused because the
22 jury believes he is a bad person'" Crawford v. State, 107 Nev. 345, 348(1991), (citing Berner v.
23 State, 104 Nev. 695,697, 765 P.2d 1144, 1145 (1988). Motive, intent, plan, and identity are some
24 of the objectives for which such evidence may be admitted. NRS 48.045(2) emphasis added.

25 Evidence of alleged misconduct may be acceptable if three conditions are met at a
26 hearing held outside the presence of the jury: (1) the incident is relevant to the crime charged; (2)
27 the incident is proven by clear and convincing evidence; and (3) the evidence is more probative
28 than prejudicial. See, Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985); Walker v. State, 116

1 Nev. 442, 997 P.2d 803 (2000) (citing Tinch v. State, 113, 1170, 1176, 946 P.2d 1061 (1994).)
2 The Court has emphasized that NRS 48.045(2) is merely an exception to the general presumption
3 that uncharged bad acts are inadmissible. Tavares v. State, 117 Nev. Adv. Op. 61, 30 P.3d 1128
4 (Sept. 17, 2001).

5 In evaluating the relevance of prior bad acts to the crime charged, the Courts have
6 consistently noted events remote in time from the charged incident have less relevance in proving
7 later intent. Walker v. State, 116 442, 997 P.2d 803 (2000). Also, when the connection between
8 two acts is not clearly perceived, evidence of the uncharged act should be excluded. Berner v.
9 State, 104 Nev. 695, 765 P.2d 1144 (1988) (citing, McMichael v. State, 94 Nev. 184, 577 P.2d 398
10 (1978).

11 The evidence presented must be clear and convincing. Unsubstantiated charges of
12 misconduct hinder the defense and present a grave danger to the fairness of the trial. Berner, 104
13 Nev. at 698. The prosecution should not be allowed to make its case on the basis of unreliable
14 testimony about a remote event. Id. The use of specific conduct to show a propensity to commit
15 the crime is clearly prohibited and is commonly regarded as sufficient grounds for reversal. NRS
16 44.045(1); Berner, Supra.

17 This evidence must nevertheless be limited according to prejudicial effect. NRS
18 48.035. Although the admission of evidence of separate and independent criminal acts rests within
19 the sound discretion of the trial court, it is, nevertheless, the duty of that court to strike a proper
20 balance between the probative value of the evidence and its prejudicial dangers. Mayes v. State,
21 95 Nev. 140, 591 P.2d 250 (1979). Care must be taken to require that such evidence be probative
22 of something beyond mere bad character, such as intent, motive or plan. Berner, 104 Nev. at 697.

23 The Court has also established that in evaluating whether the probative value of the
24 evidence is substantially outweighed by the danger of prejudice, the evidence of prior bad acts may
25 unduly influence the jury and result in a conviction based on the accused's propensity to commit a
26 crime rather than on the State's ability to prove all the elements of the crime. Walker, 166 Nev. at
27 447.

1 The use of uncharged bad act evidence to convict a defendant is heavily disfavored
2 in our criminal justice system because bad acts are often irrelevant and prejudicial and force the
3 accused to defend against vague and unsubstantiated charges. Taveres v. State, 117 Nev. Adv.
4 Rep 61, 30 P.3d 1128 1131 (2001); Walker v. State, 116 Nev. 442, 997 P.2d 803 (2000) (citing
5 Berner v. State, 104 Nev. 695, 696-97, 765 P.2d 1144, 1145-46 (1988). The principal concern
6 with admitting such acts is that the jury will be unduly influenced by the evidence, and thus
7 convict the accused because it believes the accused is a bad person. Id.

8 The High Court established a three prong test that must be met for the evidence of
9 alleged misconduct to even be considered acceptable:

- 10 (1) the incident is relevant to the crime
11 charged;
- 12 (2) the incident is proven by clear and
13 convincing evidence; and
- 14 (3) the evidence is more probative than prejudicial.

15 See, Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).

16 In the instant case, the prior alleged batteries are not relevant to the crime charged.
17 The prior incidents the State intends to introduce is not significantly related to the present charge.
18 In our case, Ms. Whitmarsh contends that Brian pulled her hair, pinned her down, and sexually
19 assaulted her.

20 The other cases that the State is seeking to admit go back to seventeen months before the
21 instant incident. In most of the other cases, Ms. Whitmarsh accused Brian of slapping or hitting
22 her. Of the six times that the police were called, Ms. Whitmarsh had been drinking alcohol. At
23 no point did she ever accuse Brian of sexually assaulting her or even attempting to. Brian pled
24 guilty to battery domestic violence in the incident stemming from the November 14, 2003 battery.
25 All of the other alleged incidents were either not pursued or no disposition has been noted. The
26 fact that Ms. Whitmarsh has accused Brian of slapping or hitting her in previous incidents is not
27 significantly relevant to be admissible in the State's initial case where he is charged with sexually
28 assaulting her.

1 The evidence the State seeks to admit is clearly more prejudicial than probative.
2 One of the purposes of NRS 48.045(2) is to shield the defendant from undue prejudice and to
3 prevent convictions based on bad character rather than the evidence. The Nevada Supreme Court
4 has previously ruled that this purpose is absolutely improper. Berner v. State, 104 Nev. 695, 765
5 P.2d 1144 (1988).

6 Certainly, the fact that a case has domestic overtones does not preclude the State from
7 seeking to admit prior bad acts that comport with NRS 48.045(2). However, simply because the
8 two separate acts involve the same people does not make it admissible under any of the exceptions
9 in NRS 48.045(2).

10 The Federal cases the State cites to concerning intent are distinguishable from the instant
11 case in that the prior bad acts the prosecution sought to introduce was evidence of almost identical
12 conduct previously. In United States v. Kirk, 528 F. 2d 1057 (5th Cir. 1976), defendant Kirk told
13 officers that he was going to Washington to kill the President. The Court allowed evidence of a
14 prior conviction in which he had made a similar threat against the President's life.

15 In United States v. Beechum, 582 F. 2d 898 (5th Cir. 1978), defendant Beechum had been
16 suspected of tampering with the mail by opening it and taking money and other valuables from the
17 letters he was carrying as a substitute letter carrier. The government "planted" a letter containing
18 paper currency and a silver dollar, which was later found to be tampered with. Upon a search of
19 Beechum, they found the silver dollar in question, along with credit cards not in his name that had
20 been taken from previous letters some time before. The evidence of his taking the credit cards was
21 introduced at trial to show that his intent in possessing the silver dollar was, not to return it, as he
22 laimed, but to keep it, as he had kept the previous credit cards.

23 In United States v. Deloach, 654 F.2d 763 (D.C.C. 1980), the Defendant was charged with
24 making false statements in making an application for labor certification. The Court allowed
25 testimony of three other aliens who testified that the Defendant had taken their money for false
26 promises to find them jobs and labor certifications. Court held that testimony from three prior
27 incidents was admissible under common scheme or plan and intent, because it tended to show that
28 the Defendant did not have the true intent to make an honest application for labor certification on

1 behalf of the client who paid him, but that he simply took money from others without having a
2 genuine intention of procuring the documents legally.

3 In the instant case, the prior bad acts sought to be introduced are dissimilar acts than what
4 is alleged in the case at hand. The intent and motive are dissimilar. There is no question that Ms.
5 Whitmarsh is alleging that Brian sexually assaulted her against her will. The other incidents
6 involve alleged batteries, which are quite different from the instant case. Ms. Whitmarsh contends
7 that Brian pulled her hair, pinned her down, and at certain times, she told him no. The fact that
8 Brian has been arrested previously for prior batteries does not negate a defense of consent.
9 Admitting evidence of the prior acts would be so prejudicial as to outweigh any probative effect.
10 The evidence of the batteries would only tend to serve a theory that Brian is a violent or bad
11 person, so he must have committed this violent or bad act. This is exactly what the law cautions
12 against.

13 In People v. Balcom 7 Cal 4th 414, 422-423 (1994), defendant was convicted of forcible
14 rape. At trial, the court admitted evidence of a subsequent rape that defendant committed six
15 weeks later for which he was convicted in Michigan. The victim testified that he raped her while
16 putting a gun to her head, while the defendant contended that the sexual act was consensual. The
17 Court noted that the disparate accounts

18 . . . create no middle ground from which the jury could conclude that
19 defendant committed the proscribed act of engaging in sexual intercourse with the
20 victim against her will by holding a gun to her head, but lacked criminal intent
21 because, for example, he honestly and reasonably, but mistakenly, believed she
voluntarily had consented. Balcom at 422.

22 The Court discussed the admission of the bad acts to prove intent:

23
24 "Evidence of intent is admissible to prove that, if the defendant committed the act
25 alleged, he or she did so with the intent that comprises an element of the charged
26 offense. "In proving intent, the act is conceded or assumed; what is sought is the
27 state of mind that accompanied it."[Citation](People v. Ewoldt, 7 Cal 4th 380
28 (1994). In the present case, however, if the jury found that defendant committed
the act alleged, there could be no reasonable dispute that he harbored the requisite
criminal intent. Id at 422-423.

1 Interestingly enough, The Court, right after stating that the not guilty plea put the elements,
2 including intent at issue, then determined that the limited probative value of the evidence of the
3 uncharged offense to prove intent was outweighed by the substantial prejudicial effect of the
4 evidence. It did, however, find the evidence admissible under common scheme or plan. *Id* at 423.

5 Similarly, if the jury in this case found that Brian committed the act alleged, there could be
6 no reasonable dispute that he harbored the requisite criminal intent. There is no "common scheme
7 or plan" between the two acts. Admission of such evidence would be more prejudicial than
8 probative.

9 Proclaiming one's innocence does not open the floodgates of character evidence to rush
10 forth in trial. Certainly, this bare statement goes directly in opposition to the controlling Nevada
11 Supreme Court's opinion that

12 " . . . even for rebuttal at trial, evidence of character traits would not be admissible
13 under the Evidence Code except in specifically defined circumstances. **Neither the**
14 **fact that a defendant has claimed innocence** . . . appear among those
15 enumerated exceptions." See *NRS 48.045. Sheriff v. Hawkins*, 104 Nev. 70, 752
16 P.2d 769 (1988)(emphasis added).

17 The *Overton v. State* 78 Nev. 198, 370 P.2d 677 (1962) case that the State cites to involves
18 a Defendant who was charged with the unlawful possession and control of heroin. Evidence of a
19 previous occasion when Overton spoke about capping and selling heroin was introduced to show
20 that Overton had knowledge of and was familiar with heroin.

21 Knowledge of the narcotic nature of heroin is quite different than knowledge that a person
22 does not like to be beaten. Even if the defendant did present a defense of consent to rough sex,
23 Ms. Whitmarsh can clearly testify that she did not consent to it. She herself can tell the jury that
24 this behavior was unacceptable. The state's desire to present "evidence of the repeated beatings"
25 again directly serves the purpose of asserting that Brian is a violent person, therefore, he must have
26 committed this crime. This reasoning is exactly why the Supreme Court asks for caution to be
27 exercised regarding bad acts. The jury would find Brian guilty because he battered before. The
28 defendant is under no obligation to present any evidence. The mere fact that he is exercising his

1 constitutional right to trial does not open the flood gate for the State to introduce claimed bad acts.

2 The evidence sought to be introduce is highly prejudicial, and is substantially outweighed
3 by it's probative value. The State's citation from United States. v. Mahler, 452 F.2d 547 (9th Cir.,
4 1971) , 549 F.2d at 1222 needs to be put in its full context so as to not mislead the court into
5 believing that the appellate court in any way condoned the admission of highly prejudicial
6 evidence. The appellant appealed the admissibility of certain relevant evidence because of its
7 prejudicial nature. The Court did not reverse the finding because they could not find that the trial
8 judge had exercised a clear abuse of discretion. The quote, in its entirety, reads:

9 Appellant's complaint is that the relevance is so slight and the potential for
10 prejudicial effect is so great that the evidence should have been excluded. **We**
11 **likewise agree with appellant that the evidence was prejudicial.** The best
12 evidence often is. Mahler at 548, emphasis added.

13 Finally, the State cites Sutton v. State, 114 Nev. 1327, 972 P.2d 334 (1998) in an attempt to
14 admit the prior bad act under a catch-all contention that they need to tell the "complete story" of
15 the crime. In Sutton, a drug case, the State was allowed to present evidence of prescription pills
16 that were found in close proximity to methamphetamine and marijuana found during a search of
17 Sutton's home. Although the State did not charge Sutton with possession of the prescription pills,
18 the evidence was admitted at trial under the State's theory of *res gestae*, claiming that the police
19 officers could not provide an account of their search without referring to the uncharged pills.

20 Interestingly enough, the Court found that the drug evidence was improperly admitted
21 under the "complete story of the crime" doctrine, and reversed and remanded the case. The Court
22 noted that

23 The State's primary purpose in proffering evidence of the uncharged pills
24 was to inflame the jury against Sutton in an attempt to obtain a conviction. Because
25 the State could have introduced evidence of the crimes for which Sutton was
26 charged without making reference to the uncharged container of pills, we reject the
27 State's arguments and conclude that the uncharged container of pills did not
28 constitute admissible *res gestae* evidence. Due to its highly prejudicial nature, we
conclude that the district court's admission of the uncharged container of pills was
manifestly wrong. Sutton at 336-337.

The Court also distinguished the Sutton case from State v. Shade, 111 Nev. 887, 900 P.2d
327 (1995). In Shade, an informant arranged to buy drugs from Shade and his stepson Kenneson.

1 The informant gave Kenneson \$1600 in case, and asked him to get heroin. Shade gave Kenneson
2 \$400 and told him to purchase some methamphetamine and cocaine for his personal use.
3 Kenneson then purchased heroin, methamphetamine, and cocaine from the dealer, and returned to
4 the car. Shade dropped Kenneson off, and when Kenneson passed the heroin off to the informant,
5 he was arrested. Shade was immediately pulled over, and arrested for possession of the
6 methamphetamine and cocaine.

7
8 In Shade, the Court ruled that the evidence of Shade's uncharged heroin purchase should
9 not have been excluded, since it would be impossible to explain where the methamphetamine and
10 cocaine came from since all the drugs were purchased in the same transaction. Kenneson was first
11 arranging to purchase the heroin, and when Shade knew of this, he asked Kenneson to additionally
12 purchase methamphetamine and cocaine for himself. Because these actions are inextricably
13 intertwined with the charged crimes, since they occurred contemporaneously, the Court deemed
14 them admissible under res gestae.

15
16 In contrast, the instant sexual assault case is not so intertwined with the previous incidents
17 that Ms. Whitmarsh could not describe the alleged sexual assault without talking about the
18 previous incidents. She can certainly explain her fear of Brian without prejudicing the jury with the
19 previous events. Allowing such evidence would so unduly influence the jury that they would
20 certainly convict Brian simply because they believed he was a bad person.

21
22 A prosecutor seeking admission of this volatile evidence must do so in the pursuit of justice
23 and as a servant of law. "The twofold aim of which is that guilt should not escape or innocence
24 suffer." Berger v. United States, 295 U.S. 78, 88, (1935). Thus, "It is as much [a prosecutors]
25 duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use
26 every legitimate means to bring about a just one". Id.

1 One would have to ask if the prosecution is seeking justice in this case, or merely a conviction
2 based on prior conduct.


3 **CONCLUSION**

4 Based on the foregoing, the Defendant respectfully requests that this Honorable
5 Court deny the prosecution's Motion to Admit Evidence of Other Crimes..

6 DATED THIS 30th day of August, 2004.

7 Respectfully Submitted:

8 PHILIP J. KOHN
9 CLARK COUNTY PUBLIC DEFENDER

10
11 By: 
12 Bitu Khamisi, #5686
13 Deputy Public Defender
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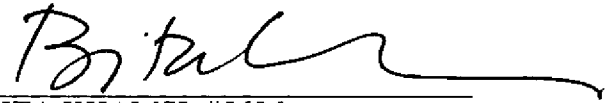
NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

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 31st day of August, 2004, at 9:00 a.m.

DATED this 30 day of August, 2004.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By 
BITA KHAMSI, #5686
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the foregoing Defendant's Opposition to State's Motion to Admit Evidence of Other Crimes is hereby acknowledged this 30 day of August, 2004.

CLARK COUNTY DISTRICT ATTORNEY

By: 

ORIGINAL

CLERK OF DISTRICT COURT
AUG 31 2004

SHIRLEY L. ALMAGUER, CLERK
BY GEORGETTE BYRD
DEPUTY

NOTC
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

BRIAN KERRY O'KEEFE,

Defendant.

CASE NO. C202793X

DEPT. NO. V

DEFENDANT'S NOTICE OF WITNESSES, PURSUANT TO NRS 174.234

TO: CLARK COUNTY DISTRICT ATTORNEY:

You, and each of you, will please take notice that the Defendant, BRIAN KERRY O'KEEFE, intends to call the following witnesses in his case in chief:

- | | | |
|----|---------------------|--|
| 1. | Duncan, J., P# 7157 | Las Vegas Metropolitan Police Department |
| 2. | Eggleston, Lynda | 3864 Algonquinn, #2, Las Vegas, NV |
| 3. | Mott, Michelle | 1500 Stardust, #A-2016, Las Vegas, NV |
| 4. | Poinon, C., P# 7160 | Las Vegas Metropolitan Police Department |
| 5. | Price, R., P# 5626 | Las Vegas Metropolitan Police Department |
| 6. | Rumery, S., P# 6734 | Las Vegas Metropolitan Police Department |
| 7. | Wong, T., P# 6812 | Las Vegas Metropolitan Police Department |
| 8. | Welch, Stanley | Clark County Public Defender's Office |

DATED this 31st day of August, 2004.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By 
BITA KHAMSI, #5686
Deputy Public Defender

RECEIVED

AUG 31 2004

COUNTY CLERK

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Notice is hereby acknowledged this
day of August, 2004.

CLARK COUNTY DISTRICT ATTORNEY

By

Case Name: Brian Kerry O'Keefe

Case No.: c202793x

Dept. No.: V

ORIGINAL

FILED

OCT 4 10 12 AM '04

Shirley B. Langston
CLERK

SUBTS

JAMES L. BUCHANAN II, ESQ.
Nevada Bar No. 000754
300 South Maryland Parkway
Las Vegas, Nevada 89101
(702) 382-9103
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

STATE OF NEVADA,

Plaintiff,

vs.

BRIAN K. O'KEEFE,

Defendant.

CASE NO. : C202793

DEPT. NO.: 5

SUBSTITUTION OF ATTORNEYS

Date:

Time:

I hereby consent to the substitution of JAMES L. BUCHANAN II, ESQ. in the place and stead of PUBLIC DEFENDER as my attorney of record in the above-entitled matter.

DATED this 1ST day of October, 2004

Brian K. O'Keefe
BRIAN K. O'KEEFE

We hereby consent to the foregoing substitution.

[Signature]
JAMES L. BUCHANAN II, ESQ.
Nevada Bar No. 000754
300 S. Maryland Parkway
Las Vegas, NV 89101

[Signature]
PUBLIC DEFENDER
309 S. THIRD ST., #226
LAS VEGAS, NV 89101

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CLERK


CLERK

CERT
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
SUSAN R. KRISKO
Deputy District Attorney
Nevada Bar #006024
200 South Third Street
Las Vegas, Nevada 89155-2212
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRIAN KERRY O'KEEFE,
#1447732

Defendant.

Case No: C202793
Dept No: V

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of LVMPD FORENSIC LABATORY REPORT OF
EXAMINATION AND DNA SUMMARY CHART, EV#040529-2232, was made this 18th
day of October, 2004, by facsimile transmission to:

JAMES BUCHANAN, ESQ.
387-6368

BY L. GUDEMAN

Employee of the District Attorney's Office

ORIGINAL

FILED

26

NOTC
JAMES L. BUCHANAN II, ESQ.
Nevada Bar No. 000754
300 South Maryland Parkway
Las Vegas, Nevada 89101
(702) 382-9103
Attorney for Defendant

2004 OCT 20 P 4:25

Shirley B. Paragimmes
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,	)	CASE NO. :	C202793
	)	DEPT. NO. :	5
Plaintiff,)		
)		
vs.)		
)		
BRIAN K. O'KEEFE,)		
)		
Defendant.)		

DEFENDANT'S NOTICE OF WITNESSES

TO: State of Nevada, Plaintiff; and

TO: District Attorney's Office, Plaintiff's attorney:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that
Defendant, BRIAN O'KEEFE, by and through his attorney, JAMES L.
BUCHANAN II, ESQ., intends to call the following witnesses in the
above referenced matter:

<u>NAME</u>	<u>ADDRESS</u>
BRIAN K. O'KEEFE	Defendant c/o 300 S. Maryland Pkwy. Las Vegas, NV 89101
TROY RAY	Witness 4922 Iowa 610-4949
THOMAS O'KEEFE	Defendant's father 416 Blue River Drive Las Vegas, NV 89107

RECEIVED
OCT 20 2004
COUNTY CLERK

1 ALI BATAINA

Witness
Sunset Springs
6930 Parrot Road
Las Vegas, NV

3 CUSTODIAN OF RECORDS
4 STATE OF NEVADA
5 DEPARTMENT OF EMPLOYMENT
6 500 S. Third Street
Carson City, NV 89710


7 Officer R. Price, #5626
8 Las Vegas Metropolitan Police Department
400 E. Stewart Avenue
Las Vegas, NV 89101

9
10 DATED this 19th day of October, 2004.

11
12
13
14
15 JAMES L. BUCHANAN II, ESQ.
16 Nevada Bar #754
17 300 S. Maryland Parkway
18 Las Vegas, NV 89101
19 Attorney for Defendant
20
21
22
23
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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of October, 2004, I sent by facsimile to Susan Krisko, Esq., at 455-6447 and to the Honorable Jackie Glass, at 455-0056 a copy of DEFENDANT'S NOTICE OF WITNESSES and there is regular communication between the parties.


AN EMPLOYEE OF JAMES L. BUCHANAN II, ESQ.

JAMES L. BUCHANAN, II
ATTORNEY AT LAW
A PROFESSIONAL CORPORATION
300 South Maryland Parkway
Las Vegas, Nevada 89101

(702) 382-9103 Phone

(702) 387-6368 Fax

Bar#754

FACSIMILE COVER SHEET

DATE: 10-19-09

PLEASE FORWARD THIS FACSIMILE TO THE FOLLOWING PARTY IMMEDIATELY:

NAME: Susan Krisko

COMPANY: DA's office

FAX NO: 455-6447

RE: O'Keefe

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 4

FROM: If you do not receive all pages, or if there is a problem with this transmission, please call Debbie at the above-listed phone number.

☐ In accordance with your request.

☒ For your information.

☐ Please handle.

☐ Please review and call.

☒ Hard copy to follow.

CONFIDENTIALITY NOTICE

This facsimile transmittal may consist of Attorney-Client or Attorney work product privileged and confidential information intended only for the person(s) to whom it is addressed. Any disclosure thereof is prohibited. If you receive this facsimile transmittal in error, please notify the sender immediately by telephone at the number listed above and return the original transmittal to us by mail without making a copy.

TRANSMISSION VERIFICATION REPORT

TIME : 10/19/2004 16:57

DATE, TIME	10/19 16:56
FAX NO./NAME	4556447
DURATION	00:01:27
PAGE(S)	04
RESULT	OK
MODE	STANDARD
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JAMES L. BUCHANAN, II
ATTORNEY AT LAW
A PROFESSIONAL CORPORATION
300 South Maryland Parkway
Las Vegas, Nevada 89101

(702) 382-9103 Phone

(702) 387-6368 Fax

Bar#754

FACSIMILE COVER SHEET

DATE: 10.19.04

PLEASE FORWARD THIS FACSIMILE TO THE FOLLOWING PARTY IMMEDIATELY:

NAME: Hon. Jackie Glass

COMPANY: District Ct. 5

FAX NO: 455-0056

RE: O'Keefe

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 4

FROM: If you do not receive all pages, or if there is a problem with this transmission, please call Debbie at the above-listed phone number.

☐ In accordance with your request.

☒ For your information.

☐ Please handle.

☐ Please review and call.

☒ Hard copy to follow.

CONFIDENTIALITY NOTICE

This facsimile transmittal may consist of Attorney-Client or Attorney work product privileged and confidential information intended only for the person(s) to whom it is addressed. Any disclosure thereof is prohibited. If you receive this facsimile transmittal in error, please notify the sender immediately by telephone at the number listed above and return the original transmittal to us by mail without making a copy.

TRANSMISSION VERIFICATION REPORT

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MODE	STANDARD
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DISTRICT ATTORNEY'S OFFICE

200 South Third Street
Las Vegas, Nevada 89155

ORIGINAL

FILED IN OPEN COURT

OCT 25 2004 20

SHIRLEY B. PARRAGUIRRE, CLERK
BY Theresa Lee
THERESA LEE DEPUTY

1 ORDR
2 JAMES L. BUCHANAN II, ESQ.
3 Nevada Bar #754
4 300 S. Maryland Parkway
5 Las Vegas, NV 89101
6 Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)
8 Plaintiff,)
9 vs.)
10 BRIAN O'KEEFE,)
11 Defendant.)

Case No. C202793
Dept. No. XV

ORDER FOR MEDICAL RECORDS

12 This matter having come on and the Court being fully advised
13 in the premises, and good cause appearing therefor:

14 IT IS HEREBY ORDERED that the Custodian of Records of
15 Montevista Hospital shall provide all medical records for Victoria
16 T. Whitmarsh, Patient No. 6003320, Social Security No. 069-48-
17 7107, Date of Birth: 3/2/54 regarding the above referenced case on
18 Wednesday, October 27, 2004, at the hour of 10:00 A.M.

19 DATED this 25 day of October, 2004.

21 Darcy Cochran
22 DISTRICT COURT JUDGE

23 SUBMITTED BY:

24 JAMES L. BUCHANAN II, ESQ., #754
25 Nevada Bar #754
300 S. Maryland Parkway
Las Vegas, NV 89101
Attorney for Defendant

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OCT 25 2004

COUNTY CLERK

1 JURL

2 ORIGINAL
3 DISTRICT COURT

FILED

4 CLARK COUNTY, NEVADA

OCT 25 6 23 PM '04

Shirley E. Thompson

CLERK

5 STATE OF NEVADA,

6 Plaintiff,

7 vs

8 Brian Kerry O'Keefe,

Case No. C202793

Dept. No. XV

9
10
11 Defendant(s).

12
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14 JURY

- 15
16 1. Hiruben Anaya
17 2. Dennis Waite
18 3. Lynn Tiernan
19 4. Nancy Beckett
20 5. Angelo Reyes
21 6. Leilani King

7. Ceatta Bogataj
8. Joyce Moore
9. Richard Griffis
10. Kolene Copas
11. Michael Cuthie
12. Brad Waples

- 22
23 13. Terry Listello
24 14. Rigoberto Gonzalez
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Shirley B. Managie
CLERK

1 NOTC
 2 JAMES L. BUCHANAN II, ESQ.
 3 Nevada Bar No. 000754
 4 300 South Maryland Parkway
 5 Las Vegas, Nevada 89101
 6 (702) 382-9103
 7 Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

10 STATE OF NEVADA,	)	CASE NO. : C202793
	)	DEPT. NO. : 15
11 Plaintiff,)	
)	
12 vs.)	
)	
13 BRIAN K. O'KEEFE,)	
)	
14 Defendant.)	
)	

DEFENDANT'S SUPPLEMENTAL NOTICE OF WITNESSES

TO: State of Nevada, Plaintiff; and

TO: District Attorney's Office, Plaintiff's attorney:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that
 20 Defendant, BRIAN O'KEEFE, by and through his attorney, JAMES L.
 21 BUCHANAN II, ESQ., intends to call the following witnesses in the
 22 above referenced matter:

23 <u>NAME</u>	<u>ADDRESS</u>
24 TOBIAS BESSE	1254 N. Torrey Pines Dr.
25	Bldg. 20, Apt. 1154
26	Las Vegas, NV 89108
	419-3178

RECEIVED


OCT 26 2004

CLARK COUNTY

1 CUSTODIAN OF RECORDS
2 MONTE VISTA HOSPITAL
3 5900 W. ROCHELLE AVENUE
4 LAS VEGAS, NV

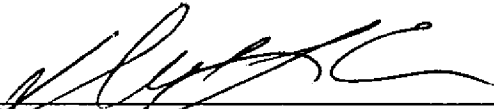
5 DR. NORTON ROITMAN
6 2340 PASEO DEL PRADO, D307
7 LAS VEGAS, NV 89102

8
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11 DATED this 25th day of October, 2004.

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JAMES L. BUCHANAN II, ESQ.
Nevada Bar #754
300 S. Maryland Parkway
Las Vegas, NV 89101
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of October, 2004, I sent by facsimile to Susan Krisko, Esq., at 455-6447 and to the Honorable Sally Loehrer, at 455-0095 a copy of DEFENDANT'S SUPPLEMENTAL NOTICE OF WITNESSES and there is regular communication between the parties.


AN EMPLOYEE OF JAMES L. BUCHANAN II, ESQ.

Norton A. Roitman, MD

SPECIALIST IN
 • CHILD AND ADOLESCENT
 • ADULT PSYCHIATRY
 FORENSIC & INDEPENDENT
 MEDICAL EVALUATIONS

EXAMINER FOR AND CERTIFIED BY THE AMERICAN BOARD OF
 PSYCHIATRY AND NEUROLOGY

2340 FASEO DEL PRADO, D3C7
 LAS VEGAS, NEVADA 89102
 (702) 222-1812
 FAX (702) 222-1786
 EMAIL ZXCK@AOL.COM

Curriculum Vitae

revised January 2004

Professional Activities

- 2003 to present Steering Committee and Psychiatric Consultant to Safe Schools/Healthy Students Initiative (federal grant)
 Clark County School District
 Psychiatric advisor to the Division of Child and Family Services, State of Nevada
 Contract Services to Southern Nevada Adult Mental Health, State of Nevada
- 2002 to present Nevada Team Leader, (federal grant program) of Child Treatment/Trauma Network administrated through
 Primary Children's Hospital and the University of Utah, Salt Lake City, Utah
- 1997 to present Clinical Faculty, (Behavioral Pediatrics) Department of Pediatrics, U. of Nevada School of Medicine
 Psychiatric Examiner for the Clark County Juvenile Courts
- 1995 to present Sunrise Hospital Medical Staff Affiliate
- 1992 to present Founder and Director, Psychiatric Clinic for Helen J. Stewart and Variety Schools, *a free clinic for mentally
 disabled and physically challenged elementary students with emotional/ and behavioral disorders*
 Faculty, Department of Family Practice, University of Nevada School of Medicine
- 1991 to present Psychiatric program consultant and counseling supervisor, Girls and Boys Town of Nevada
- 1990 to present Assistant Clinical Professor, University of Nevada, School of Medicine, Department of Pediatrics
 Director, Medical Consultant Clinic, Clark County School District
- 1988 to present Private practice (clinical and forensic) in infant, child, adolescent, adult, geriatric and family psychiatry
 Las Vegas, Nevada
 Clinical Professor, University of Nevada, School of Medicine, Department of Psychiatry

Certifications, Honors and Licenses

- 2004 Las Vegas Life Magazine's "Best Doctors in Las Vegas"
- 2000 Nomination for Nurses Choice Award, March of Dimes
- 1997 Board Eligibility in Forensic Psychiatry, American Board of Psychiatry and Neurology
- 1994 Exemplary Psychiatrist Award, National Alliance for the Mentally Ill
- 1991 Commendation, Las Vegas Chapter, National Association of School Psychologists
- 1987 Certification in Child and Adolescent Psychiatry, American Board of Psychiatry and Neurology
- 1985 Nevada Board of Medical Examiners, Nevada License Number 5342, DEA Number BRO300018
 Nevada State Board of Pharmacy Number NR4084
- 1982 Board Certification in General Psychiatry by the American Board of Psychiatry and Neurology
- 1980 Clinical Research Fellowship Grant, National Institute of Mental Health
- 1979 Parvin Fellow, Reiss-Davis Child Study Center, Albert Parvin Foundation
- 1977 Physician and Surgeons Certificate, California License Number G35003

Education

1981 to 1983 Fellowship, Administrative Psychiatry, Reiss-Davis Child Study Center, Los Angeles
 1979 to 1984 Psychoanalysis (training type)
 1979 to 1981 Fellowship, Child Psychiatry, Intensive treatment of disturbed children (Psychoanalytic and other therapies).
 Reiss-Davis Child Study Center, Los Angeles, California
 1976 to 1979 Residency, General Psychiatry, University of California, San Diego
 1977 to 1978 Fellowship, Clinical Psychopharmacology Research under Drs. David Janowski, Lewis Judd
 and Arnold Mandel, U of California, San Diego
 1976 to 1977 Internship/Residency, General Psychiatry, University of California, San Diego
 1972 to 1976 Medical Degree, University of Illinois, School of Medicine, Chicago
 1968 to 1972 Bachelors of Science Psychology, University of Wisconsin, Madison
 1968 to 1970 Kemper K. Knapp Scholarship, University of Wisconsin

Professional Experience

2003 ADHD Consultants Meeting, Shire Company, Sundance, Utah, June 6-8, 2003
 1998 to 2003 Board of Directors and Psychiatric Advisor to Programs, Boys Hope/Girls Hope of Nevada
 Professional Advisory Panel, New Horizons Academy, a private non-profit school for learning disabled students
 1999 Clark County Classroom Teachers Association, Panel Consultant to Integrated Medical Behavioral Care
 Clinical Site Preceptor and Leader, Ambulatory Psychiatric Grand Rounds, Department of Internal Medicine
 Panel Utilization Reviewer, Physicians' Review Network
 1998 Field Experience Preceptor, Department of Psychology, UNLV
 Consultant, Clark County Classroom Teachers Association
 Clark County Medical Society Board of Directors, Chairman, Bylaws Committee
 Member, Legislation Study Committee, Americans for Mental Health, Nevada
 Public Testimony to the Nevada Athletic Commission on behalf of Michael Tyson (fitness to fight)
 Member, Board of Directors, MEDPAC
 Elected to Fellow, American Psychiatric Association
 Member, Medical Staff, Summerlin Hospital Medical Center
 1997 to 1999 Chief of Psychiatry, Sunrise Hospital and Medical Center
 Member, Internal Medicine Committee, Sunrise Hospital and Medical Center
 1996 to 2000 Trustee, Clark County Medical Society
 1996 to 1997 Member, Allied Health Providers Committee, Sunrise Hospital and Medical Center
 Surveillance Task Force, Munchausen's Syndrome by Proxy, Sunrise Hospital
 1994 to 2000 Editorial Board, "The Journal of Psychosocial Nursing & Mental Health Services"
 1993 to 1996 Participant, PAYBAC Clark County School District partnership program
 1990 to 1996 Founder and CEO, Harmony Healthcare Systems, Inc., a comprehensive outpatient mental health clinic and
 employee-assistance program serving 40,000 Nevadans contracted with Boyd Gaming, Aladdin, Showboat
 and MGM Grand, Inc.

Professional Experience (continued)

1995 ABPN Team member for Part II General Psychiatry Examination, Denver, October 13-15
Nevada Campaign Assistant (President & Vice President elect, American Psychiatric Association)
Co-Founder and Medical Director, Las Vegas Center for Children, *Day Treatment program for children*

1993 to 2000 Balint Group Leader, Family-Practice Residency, University of Nevada School of Medicine

1993 to 1995 Member, United Business and Provider Network, *an coalition of businesses and providers, placing emphasis on responsible managed care for employees and their families.*
Medical Director, Southern Nevada Child and Adolescent Services, State of Nevada

1993 Participant, Physicians Aid Committee North-South Conference; Reno, Nevada

1992 to 1994 Medical Director to Boyd Group's Lifestyles Employee Assistance Program
Associate Editor of "The Psychiatric Resident" (Journal)

1992 to 1998 Member, Medical Staff, HeathSouth (formerly Rehabilitation Hospital of Las Vegas)
Consultant, Nevada Appellate and Post-Conviction Project

1992 Expert Panelist, Department of Veterans Affairs Study to Determine the Reliability and Validity of the InterQual ISD-A (Intensity, Severity, Discharge Appropriateness) used in VA Medical Centers.
Faculty, National Judicial College
Member, Medical Executive Panel, Hemophilia Foundation of Nevada

1991 to 1998 Examiner, American Board of Psychiatry and Neurology
Member, Subcommittee on Peer Review, Clark County Medical Society

1991 to 1999 Psychiatric Consultant to Children's Resource Bureau, State of Nevada.

1991 to 1995 Psychiatric Consultant to Desertview, a nonprofit organization serving mentally retarded adults.
Member, State Health Planning Commission Task Force on Health Status and Prevention, Plan Development Committee, State of Nevada
Psychiatric Consultant, Children's Behavioral Services, State of Nevada

1991 - 1992 Consultant, Sunrise Children's Hospital

1990 - 1992 Co-chairperson, Founding Board and Professional Advisory Committee; and Chairperson, Steering Committee, Las Vegas Center for Children (private, non-profit day treatment center for child).
Medical Review Board, State of Nevada

1989 to 2001 Member of medical staffs, University Medical Center, Valley Hospital Medical Center

1989 to 1991 Member, Board of Directors, Bridge Counseling Associates (private, non-profit family behavioral health center)

1989 Representative for the American Psychiatric Association to the American Medical Student Association

1989 to 1998 Charter Hospital Medical Staff membership
Consultant, Nevada State Board of Medical Examiners

1989 to 1995 Member, Physicians Aid Committee, Clark County Medical Society. (Consulting member as of Dec. 1995)

Professional Experience (continued)

1988 to 1998 Consultant, Physician Review Panel, HEALTH INSIGHTS, Inc., (formerly Nevada Peer Review)

1988 to 1991 Member, Committee of Early Career Psychiatrists, American Psychiatric Association
Examiner in Psychiatry, Nevada State Board of Medical Examiners

1988 to 1993 Medical Staff, CareUnit Hospital

1986 to 1989 Clinical Director (Adolescent Unit), Medical Staff Quality Assurance Medical Executive,
Utilization Review, Bylaws, P & T Committees, Montevista Hospital, Las Vegas

1988 to 1997 Medical Staff, Montevista Hospital

1987 to 1993 Representative, Assembly of the American Psychiatric Association, Nevada District Branch
(Deputy Representative from 1992 to 1993)

1987 to 1988 Member, LCME Self Study Sub-Committee on Objectives, Governance, and Administration,
University of Nevada, School of Medicine
Private practice, Northern Nevada
Consultant, Washoe County School Psychologists
Vice-President, Nevada Association of Psychiatric Physicians, Northern Chapter
Member, University of Nevada, School of Medicine, Department of Psychiatry; Committee on
Residency Feasibility; Committee on Faculty Service Standards

1986 Recipient, Official Commendation from the Commission on Mental Health/Mental Retardation,
State of Nevada, Reno
Member, Western Interstate Commission for Higher Education Program Planning Committee

1983 to 1988 Chief Faculty Supervisor, medical student clerkship, Nevada Mental Health Institute, University of Nevada,
School of Medicine, Department of Psychiatry
Assistant Clinical Professor (Compensated), University of Nevada-Reno School of Medicine, Department of
Psychiatry. *Duties included Medical Director and Chief Administrator, Nevada Mental Health Institute
98-bed acute adult and geriatric psychiatric state hospital and extensive outpatient, residential,
case management and day treatment program.*

1983 Psychiatrist, Adolescent Program, Medical Quality Assurance Committee, Napa State Hospital, California.
Secretary and Treasurer, North Bay Chapter of the Northern California Psychiatric Society, Napa, California

1983 to 1984 Consultant and founder, Quality Assurance Program, San Diego Center for Children

1981 to 1985 Assistant Medical Director, Roiss-Davis Child Study Center (JCAHO accredited out-patient clinic), Los
Angeles. *Responsibilities included the formulation and administration of all aspects of accreditation,
crisis and medication management of patients referred from the outpatient program, and supervision and
training of child fellows, post-doctorate psychologists and social workers.*
Private practice, Los Angeles, California.
Psychiatric Consultant, Vista Del Mar Day Treatment and Residential Treatment Programs (children and
adolescents), Los Angeles. *Duties included intake, supervision of psychotherapy, ongoing assessments,
medication management, crisis intervention, liaison with hospital services, and multi-disciplinary team
direction for treatment planning. Los Angeles, California.*

1981 to 1982 Psychiatric Consultant, Pasadena Child Guidance Clinic, California

1977 to 1983 Clinical Consultant, San Diego Center for Children, residential treatment

Notable Continuing Education

Autism Spectrum Disorders, Peter Tanguay, MD, January 2004
 American College of Forensic Psychiatry 18th Annual Symposium in Forensic Psychiatry, April, 2003
 The Americans With Disabilities Act in Nevada, August 2002
 The American College of Legal Medicine Annual Meeting, April 2002
 Homicide: Behaviors, Motives and Psychology, Specialized Training Seminars, March 2002
 The Legal and Medical Ethical Considerations of Eutile Care, March 21, 2002
 Introduction to Bioterrorism Preparedness for Physicians, November 1, 2001
 Pain Management and Nevada Law, November 17, 2001
 Guilt and Regret, Exposing the Blame and Remorse Cycle, November 2001
 Workman's Compensation in Nevada, February 8, 2001
 American College of Forensic Psychiatry 18th Annual Symposium in Forensic Psychiatry March - April, 2000
 The Criminal Trial from Start to Finish in Nevada April 25, 2001
 Family Law in Nevada, April 8, 1999
 Update HIV/AIDS, February 1999
 Regulatory Issues Surrounding the Legitimate Prescribing of Opioids for Chronic Pain, February 1999
 Jury Selection, December 1998
 Psychiatric Malpractice Risk Management, Volume 5, December 1998
 Domestic Law in Nevada Las Vegas, Nevada February 1998
 Managing Difficult Pain Patients February - March 1997
 Child Custody and Visitation in Nevada, Las Vegas, Nevada, November 1996
 Evolution of Psychotherapy Conference, Las Vegas, Nevada, December 1995
 Organization of State Physician Impairment Committees, Annual Meeting, Salishan Lodge, February 1995
 Nevada Chapter of the Autism Society of America, "A New Dawn of Awakening" 1994
 Tavistock Group Relations Conference, "Authority, Diversity and Change" sponsored by A.K. Rice Institute and UCLA Center for the Study of Organizational and Group Dynamics, 1994
 Safety Workshop for State-Agency Supervisors, State of Nevada, Division of Prevention Safety, 1994
 Work-Performance Standards - Employee Appraisal, State of Nevada, Department of Personnel, 1994
 Physicians in Management II, American College of Physician Executives, 1988
 Physicians in Management I, American College of Physician Executives, January, 1986
 Post Graduate Course in Administrative Psychiatry, Wright State University, Dayton, Ohio, 1984
 JCAH Accreditation Course, San Diego, California, 1982
 A list of annual Continuing Medical Education upon request

Publications and Papers

Roitman, N., Hopkins, R. Beyond Behavior, Getting to Know your Child (work in progress)
 Roitman, N.: Proposal for pediatric residency clinical site activities, Harmony Counseling Center, 1994
 Roitman, N.: Monthly articles for Kids magazine and employee newsletters for the Aladdin and Showboat
 Roitman, N.: What ADD is...NOT! Selected for publication, compendium on Attention Deficit Disorder, a Practical Parenting Publication, William Wagoner, Ph D UNLV Department of Education, May, 1995
 Roitman, N.: Carving in Behavioral Health, June, 1995 (unpublished)
 Roitman, N.: Psychiatry in Primary Care, June, 1992 (unpublished)
 Roitman, N.: Report to the Interim Study Committee of the Nevada State Legislature - Mental Health/Mental Retardation, January 22, 1988, (unpublished)
 Roitman, N.: Survey is Opportunity, Not a Burden, Physician Executive Journal of Management, March-April, 1988, p.9-11
 Huey, L., Janowski, D., Judd, L., Roitman, N., and Clifton, P.: The effects of naloxone on methylphenidate-induced mood and behavior--a negative study. *Psychopharmacology*, 1979
 Janowski, D., Judd, L., Huey, L., Roitman, N., Parker, D., and Segal, D.: Naloxone effects on serum growth hormone and prolactin in man. *Psychopharmacology*, 65:95-97, 1979
 Janowski, D., Judd, L., Huey, L., Roitman, N., Parker, D., and Segal, D.: Naloxone effects on manic symptoms and growth hormone levels. Letter to the Editor, *Lancet*, August 5, 1978 p. 120
 Janowski, D., Judd, L., Huey, L., Roitman, N., Parker, D., and Segal, D.: Negative naloxone effects on serum prolactin. Letter to the Editor, *Lancet*, ii, p. 637, 1978

Presentations

- 2003 "Psychiatric Factors and Psychiatric Confusion in Women and Families" Temple Beth Shalom, November
 "Disorders of Behavior, Emotion and Attention. The Need for a Multidisciplinary Approach" Keynote speaker, A VISION FOR THE FUTURE Annual Conference for special education professionals, Clark County School District, March
 "Aspects of Psychiatric Conditions in Foster Care" Olive Crest Foster Care Agency, September
 "An Update of Psychiatric Disorders and Treatment in Children" Special Clinical Services Division of DCFS, September
- 2002 "Psychiatric Diagnosis and Treatment Planning" William S. Boyd School of Law, Child Welfare Clinic, June
 Medical Consultant Panel on Stress and Terrorism, Channel 8 broadcast
- 2000 "Conflict Resolution" Clark County School Nurses, April
- 1999 "Overview of Psychiatric Diagnosis" Clark County School Psychologists, February
 "Differential Diagnosis: Attention Deficit Disorder" Special Childrens Clinic, State of Nevada multidisciplinary team
- 1998 Interviewed on Privacy Matters, All News Network, Chunnel One and 39, Las Vegas, Nevada
 "ADHD: What It Is, and What It Is Not" Laughlin Nevada, Family Resource Bureau
 "An Overview of Psychiatric Disorders in Children" Childrens Resource Bureau
 "An Overview of Psychiatric Disorders in Children" Special Clinical Services Division of DCFS
 Appearance on Leeza Gibbons Show, (CBS) on False Psychiatric Diagnosis and Hospitalizations
 "Complementary & Alternative Medicine in Health Care Settings" HealthInsight, Health Quality Forum, Panel
 "Pediatric psychopharmacology and ADHD Differential Diagnosis" Presentation to pediatric residents, University of Nevada School of Medicine
 "Mental Health Issues in the School Setting" Clark County School District, School Nurse Staff Development Program
- 1997 "Ask the Experts Attention Deficit Disorder" call-in show on Channel 10, Public Television.
 "A Case of Missed Diagnosis: The Criminal Trail Of Joshua Jenkins" Staff and administration, Boys Town Of Nevada
 "Attention Deficit Disorder" Parent/Teacher Association, Riverside Hotel, Laughlin, Nevada
 "Attention Deficit Disorder Amongst Juvenile Offenders" Clark County Court Treatment Services
 "Mental Health Economics and Future Clinical Opportunities" UNLV, Department of Psychology, Graduate Practicum
- 1996 Keynote speaker to Clark County School District, Summer Institute '96, "A Vision for the Future"
 Channel 13, AM LAS VEGAS, Update on Las Vegas Center for Children, November
 "What ADD is NOT" Las Vegas Day School Faculty, October
 Foundations of psychiatric care with children and adolescents, Boys Town of Nevada, September
 UNLV, department of Social Work, "The Myth of Attention Deficit Disorder"
 "DSM IV, and introduction to methods of differential Diagnosis and the Medical Model"
 "The Psychoses — Definition and Etiological factors"
- 1994 "Medication Management" Clark County School District, Special Student Services Division, In-service Training
 "Psychiatric Standards for Inpatient Management" Nevada Peer Review staff, Las Vegas
 "Behavioral Problems in School-age Kids" Las Vegas Day School Faculty, March
 "God, Gays and Society" Panel Participant, National Conference of Christians and Jews, April
 "Attention Deficit and other Disorders of Childhood" Lummis Elementary School P.T.A. April
- 1995 "Ask the Experts" call in show on Depression, Channel 10, Public Television.

Presentations (continued)

- 1994 "Breaking the Cycle of Child Abuse" Panelist, KNPR, Public Radio, April 29
 "Complicated Grief Issues and their Effects on Children" Nathan Adelson Hospice Nursing Staff, May 9
 "Attention Deficit and Other Disorders of Childhood" Southern Nevada Youth Education Centers (SNYEC)
 "Psychiatric Disorders in Children, Autism and Other Disabling Conditions." Staff of Special Children's Clinic
 State of Nevada, Department of Human Resources, June
 "Psychiatric Illness in Children" Professional Staff of Community Health Center, nonprofit health-care clinic
 Psychiatry Clerkship Seminars, University of Nevada School of Medicine, Department of Psychiatry
 "Learning more about Mental Illness" Keynote Speaker, Southern Nevada Alliance for the Mentally Ill, October
- 1993 "Using Experts" Death Penalty Defense Seminar, Nevada Appellate Post-Conviction Project, March
 "Incompetence, Incapacity and Eccentricity; understanding the difference" Nevada Area Health Education
 Conference on Crises in Health Care, Las Vegas, Nevada, April
 "Panic, The Medical Masquerader." Cebu Institute of Medicine, Las Vegas, Nevada, June
 "Ethical/Legal Consequences of Aging" Nevada Area Health Education Center conference Crises in Health Care
 Psychiatry Clerkship Seminars, University of Nevada School of Medicine, Department of Psychiatry
- 1992 Moderator, "A Systematic Approach to the Depressed Patient in Primary Care" Las Vegas, Nevada
 "Hyperactivity in the Classroom" M. J. Christensen Elementary School
 "Psychiatry in Primary Care" Presented to the Las Vegas Society of Osteopathic Physicians
 Presentation to primary care physicians, Las Vegas, Nevada, June
 "Depression in Primary Care" Nevada Society of Addiction Medicine, Las Vegas, Nevada.
 "Responsible Use of Psychiatric Medication in Children" Presentation to school psychologists, nurses and
 special education teachers at Sunrise Variety School. Funded by state grant, May 1
 "Child Psychiatry" Psychiatry Clerkship Seminars, Southern Nevada Adult Mental Health Services,
 University of Nevada, School of Medicine, August
 "Attention Deficit Hyperactivity Disorder" Clark County School District Conference, September
 "ADHD and Medical Interventions" Behavioral Management, Clark County School District Conference, November
 "Psychiatric Specialization" Career-planning Workshop, University of Nevada School of Medicine, November
 "Anxiety Disorders" Resident Conference, Family Practice Residency Program, University of Nevada School of Medicine
 "How To Help Your Child Be Successful In School" Hebrew Academy, March
 "Conduct Disorders and Effective Interventions" In-service Presentation, Southwest Area Professional Development
 Center Advisory Board February
 "Addictive Behavior" The National Judicial College Traffic Court Proceedings, April
- 1991 "Traditional and Novel Agents for the Treatment of Depression in Family and General Practice" Las Vegas
 "Psychosis in School-Aged Children" Clark County School Psychologist, Las Vegas
 Discussant: Sexual Trauma Workshop, Cottonwood Center presentation, Las Vegas, Nevada
 Moderator: "Managing Anxiety Disorders" video Teleconference Program through Pacific Presbyterian
 Medical Center, University Medical Center, Las Vegas, Nevada
 "Psychiatric Problems and Medications for Alzheimer Patients" Public workshop for care-givers and
 professionals, North Las Vegas Care Center, Las Vegas, Nevada
- 1990 "Responsible Use of Medication in Children" Clark County School Psychologists, Council for Exceptional
 Children, S.U.C.E.S.S. Seminar, Las Vegas, Nevada
 "Childhood Depression" NASW, Nevada Chapter annual meeting, Las Vegas, Nevada
 "Depression and Sulci in the Pediatric Patient" Department of Pediatrics Grand Rounds, Sunrise Children's Hospital
 "Children in Disaster" Valley Hospital Emergency Preparedness Public Seminar, Las Vegas

Presentations (continued)

- 1990 "What is Mental Illness?" Nevada Alliance for the Mentally Ill, Bridging the Gap public seminar, Las Vegas
 "Trends and Issues in School Nursing: Identification and Management", Union Plaza Hotel
 "Long-Term Effects of Post Traumatic Stress Disorder" Valley Hospital Nursing in service
 "Making the Grade" Invited Participant, United Way Community Project
- 1989 PANEL, "Childhood Psychopathology" Meadows School, Las Vegas, Nevada
 "Placing Kids of the Eighties in Perspective" Teachers Brintley Junior High School
 "Medications and Other Elements of Recovery" Children's Behavioral Services staff
 "Panic Disorder - The Inner Child" Human Resource Group, Laughlin, Nevada
 "The Process of Recovery" Key note address, Nevada Alliance for the Mentally Ill
 Bridging the Gap Annual Conference, Las Vegas, Nevada
 "Childhood Depression" Valley Hospital, Department of Nursing continuing education
 "Introduction to Child Psychiatric Illness" Clark County Schools, Department of Nursing
- 1988 "Children in Crisis" HCA Montevista Center, Las Vegas, Nevada
- 1987 "Integrated Child Development" Delivered to the Freshman Class, University of Nevada, School of Medicine
 and the Nevada Mental Health Institute
 Life Span, Montevista Hospital Continuing Education Meeting, Las Vegas, Nevada
 "Future Directions of the Nevada Mental Health Institute" Nevada Psychiatric Association, Annual Meeting
- 1986 "Experience of a Newly Surveyed Hospital" Western Interstate Conference for Higher Education, Mental Health
 and Human Services Program, Seattle, Washington

NAR: Tmac 010204

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Bar#754

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PLEASE FORWARD THIS FACSIMILE TO THE FOLLOWING PARTY IMMEDIATELY:

NAME: Susan Krisko, Esq.

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NAME: Hon. Sally Laehr

COMPANY: District Ct. 15

FAX NO: 455-0095

RE: O'Keefe C202793

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 2 DAVID ROGER
 3 Clark County District Attorney
 Nevada Bar #002781
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 Nevada Bar #006024
 5 200 South Third Street
 Las Vegas, Nevada 89155-2212
 (702) 455-4711
 6 Attorney for Plaintiff

FILED

OCT 28 11 20 AM '04

Shirley B. Pangione
CLERK

7
 8 DISTRICT COURT
 9 CLARK COUNTY, NEVADA

10
 11 THE STATE OF NEVADA,
 12 Plaintiff,

13 -vs-

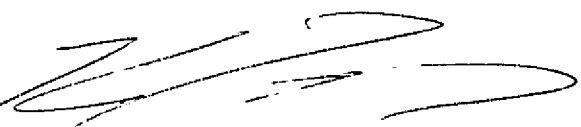
14 BRIAN KERRY O'KEEFE,
 #1447732
 15 Defendant.

Case No: C202793
 Dept No: XV

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17
 18 RECEIPT OF COPY of the above and foregoing VHS tape is hereby acknowledged
 19 this 27th day of October, 2004.

20
 21 JAMES BUCHANAN, II
 ATTORNEY FOR DEFENDANT

22
 23 BY 
 24 300 S. Maryland Parkway
 25 Las Vegas, Nevada 89101

26
 27 04F09774X/GCU:lg
 28

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1 INST

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SHIRLEY B. PARRAGUIRRE, CLERK
BY Theresa Lee

THERESA LEE DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,)

9 Plaintiff,)

CASE NO: C202793

10 -vs-)

DEPT NO: XV

11 BRIAN KERRY O'KEEFE,)

12 Defendant.)

13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

14 MEMBERS OF THE JURY:

15 It is now my duty as judge to instruct you in the law that applies to this case. It is
16 your duty as jurors to follow these instructions and to apply the rules of law to the facts as
17 you find them from the evidence.

18 You must not be concerned with the wisdom of any rule of law stated in these
19 instructions. Regardless of any opinion you may have as to what the law ought to be, it
20 would be a violation of your oath to base a verdict upon any other view of the law than that
21 given in the instructions of the Court.

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

An Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Information that on or about the 29th day of May, 2004, the Defendant committed the offense(s) of BATTERY WITH INTENT TO COMMIT A CRIME; SEXUAL ASSAULT; ATTEMPT SEXUAL ASSAULT and BURGLARY.

It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the Defendant is guilty of one or more of the offenses charged.

Each charge and the evidence pertaining to it should be considered separately. The fact that you may find a defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

COUNT 1 - BATTERY WITH INTENT TO COMMIT A CRIME

did then and there willfully, unlawfully, and feloniously use force or violence upon the person of another, to-wit: VICTORIA WHITMARSH, with intent to commit sexual assault, by striking the said VICTORIA WHITMARSH about the head and/or body with his hands.

COUNT 2 - SEXUAL ASSAULT

did then and there willfully, unlawfully, and feloniously sexually assault and subject VICTORIA WHITMARSH, a female person, to sexual penetration, to-wit: fellatio; by placing his penis on or in the mouth of the said VICTORIA WHITMARSH, against her will.

COUNT 3 - SEXUAL ASSAULT

did then and there willfully, unlawfully, and feloniously sexually assault and subject VICTORIA WHITMARSH, a female person, to sexual penetration, to-wit: sexual intercourse; by placing his penis into the genital opening of the said VICTORIA WHITMARSH, against her will.

//

//

1 COUNT 4 - SEXUAL ASSAULT

2 did then and there willfully, unlawfully, and feloniously sexually assault and subject
3 VICTORIA WHITMARSH, a female person, to sexual penetration, to-wit: anal intercourse
4 by placing his penis into the anal opening of the said VICTORIA WHITMARSH , against
5 her will.

6 COUNT 5 - ATTEMPT SEXUAL ASSAULT

7 did then and there willfully, unlawfully, and feloniously attempt to sexually assault
8 and subject VICTORIA WHITMARSH, a female person, to sexual penetration, to-wit: anal
9 intercourse; by attempting to place his penis into the anal opening of the said VICTORIA
10 WHITMARSH, against her will.

11 COUNT 6 - BURGLARY

12 did then and there willfully, unlawfully, and feloniously enter, with intent to commit
13 battery and/or sexual assault and/or a felony, to-wit: battery and/or sexual assault, that
14 certain building occupied by VICTORIA WHITMARSH, located at 2219 North Rancho, No.
15 2083, Las Vegas, Clark County, Nevada.

INSTRUCTION NO. 4

Battery means any willful and unlawful use of force or violence upon the person of another.

Any person who commits a battery upon another with the specific intent to commit a Sexual Assault is guilty of the offense of Battery With Intent to Commit Sexual Assault.

A person who subjects another person to sexual penetration against the victim's will or under conditions in which the perpetrator knows, or should know, that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual assault.

As used in these instructions, "sexual penetration" means fellatio, or any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another, including sexual intercourse.

Sexual intercourse is the placing of the penis of the perpetrator into the vagina of the victim.

Anal intercourse is the intrusion of the penis into the anal opening of another person.

Fellatio means the male penis entering the mouth of another person. Any penetration of the penis into the mouth is sufficient to complete the crime of sexual assault if done against the victim's will.

Evidence of emission is not necessary.

The law does not explicitly require the use of overt force as an element of sexual assault. That means that physical force is not a necessary element in the commission of the crime of sexual assault. The law only requires that the commission of the act of sexual penetration be against the will of the victim.

A victim is not required to do more than her age, strength and the surrounding facts and attending circumstances would reasonably dictate as a manifestation of her opposition. In other words, whether the victim manifested opposition or did in fact consent, depends on the facts of the particular case.

Submission is not the equivalent of consent. While consent inevitably involves submission, submission does not inevitably involve consent. Lack of protest by a victim is simply one among the totality of the circumstances to be considered by the jury.

INSTRUCTION NO. 7

There is no requirement that the testimony of a victim of sexual assault be corroborated, and her testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty.

INSTRUCTION NO. 8

When multiple sexual acts occur as part of a single criminal encounter, each separate and distinct act is a separate offense.

INSTRUCTION NO. 9

The elements of an attempt to commit a crime are:

- 1) the intent to commit the crime;
- 2) performance of some act towards its commission;
- 3) failure to consummate its commission.

INSTRUCTION NO. 10

While it is true the overt act ought to be a direct unequivocal act done toward the commission of the offense, whenever the design of a person to commit a crime is clearly shown, slight acts done in furtherance thereof will constitute an attempt.

INSTRUCTION NO. 11

When a person has once done things which constitute an attempt to commit a crime, he cannot avoid responsibility by failing to proceed further to commit that crime, either by reason of voluntarily abandoning his purpose or because he was prevented or interfered with in completing the crime.

INSTRUCTION NO. 12

Every person who, by day or night, enters any apartment with the intent to commit battery and/or sexual assault and/or a felony therein is guilty of burglary.

INSTRUCTION NO. 13

It is not necessary that the State prove the defendant actually committed a battery and/or sexual assault and/or a felony after he entered in order for you to find him guilty of burglary. The gist of the crime of burglary is the unlawful entry with criminal intent. Therefore, a burglary was committed if the defendant entered the apartment with the intent to commit a battery and/or sexual assault and/or a felony, regardless of whether or not that crime occurred.

INSTRUCTION NO. 14

The intention with which entry was made is a question of fact which may be inferred from the defendant's conduct and all other circumstances disclosed by the evidence.

INSTRUCTION NO. 15

Consent to enter is not a defense to the crime of burglary so long as it is shown that the entry was made with the specific intent to commit a battery and/or sexual assault and/or a felony therein.

INSTRUCTION NO. 16

Every person who, in the commission of a burglary, commits any other crime, may be prosecuted for each crime separately.

INSTRUCTION NO. 17

Sexual assault is a general intent crime. Therefore, any claim or evidence of drinking alcohol or voluntary intoxication by the defendant is no excuse for the criminal conduct and is no defense to a charge of sexual assault.

INSTRUCTION NO. 18

Evidence that the defendant committed offenses other than that for which he is on trial, if believed, was not received and may not be considered by you to prove that he is a person of bad character or to prove that he has a disposition to commit crimes. Such evidence was received and may be considered by you only for the limited purpose of proving the defendant's intent to commit the crimes alleged, knowledge or the absence of mistake or accident. You must weigh this evidence in the same manner as you do all other evidence in the case.

INSTRUCTION NO 19

Evidence that the Defendant used cocaine, if believed, may not be considered by you to prove that he is a person of bad character or to prove that he has a disposition to commit crimes. Such evidence was received because it was not possible to admit other relevant evidence, and at the same time, exclude this evidence.

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

1
2 The evidence which you are to consider in this case consists of the testimony of the
3 witnesses, the exhibits, and any facts admitted or agreed to by counsel.

4 There are two types of evidence; direct and circumstantial. Direct evidence is the
5 testimony of a person who claims to have personal knowledge of the commission of the
6 crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof
7 of a chain of facts and circumstances which tend to show whether the Defendant is guilty or
8 not guilty. The law makes no distinction between the weight to be given either direct or
9 circumstantial evidence. Therefore, all of the evidence in the case, including the
10 circumstantial evidence, should be considered by you in arriving at your verdict.

11 Statements, arguments and opinions of counsel are not evidence in the case. However, if the
12 attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and
13 regard that fact as proved.

14 You must not speculate to be true any insinuations suggested by a question asked a
15 witness. A question is not evidence and may be considered only as it supplies meaning to
16 the answer.

17 You must disregard any evidence to which an objection was sustained by the court
18 and any evidence ordered stricken by the court.

19 Anything you may have seen or heard outside the courtroom is not evidence and must also
20 be disregarded.

1
2 The Defendant is presumed innocent until the contrary is proved. This presumption
3 places upon the State the burden of proving beyond a reasonable doubt every material
4 element of the crime charged and that the Defendant is the person who committed the
5 offense.

6 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a
7 doubt as would govern or control a person in the more weighty affairs of life. If the minds of
8 the jurors, after the entire comparison and consideration of all the evidence, are in such a
9 condition that they can say they feel an abiding conviction of the truth of the charge, there is
10 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or
11 speculation.

12 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a
13 verdict of not guilty.
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The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

1
2 A witness who has special knowledge, skill, experience, training or education in a
3 particular science, profession or occupation is an expert witness. An expert witness may
4 give his opinion as to any matter in which he is skilled.

5 You should consider such expert opinion and weigh the reasons, if any, given for it.
6 You are not bound, however, by such an opinion. Give it the weight to which you deem it
7 entitled, whether that be great or slight, and you may reject it, if, in your judgment, the
8 reasons given for it are unsound.

1
2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind that such inferences should
7 not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.
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In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of the guilt or innocence of the Defendant.

When you retire to consider your verdict, you must select one of your number to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN: 10/27/04 Barry Cohen
DISTRICT JUDGE

PLEASE CLARIFY
THE DIFFERENCE BETWEEN
"BATTERY WITH INTENT
TO COMMIT A CRIME"
AND BATTERY. DOES
THE "INTENT TO
COMMIT A CRIME"
HAVE TO INCLUDE
SEXUAL ASSAULT?

D. Lochrer

Please refer to and re-read Instructions number 3 and 4

Sandy Lochrer

Judge Lochrer

10/28/04 11:20 am

1 VER

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OCT 28 2004 11:58 AM

SHIRLEY B. PARRAGUIRE, CLERK
BY Theresa Lee

DISTRICT COURT THERESA LEE DEPUTY

CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 BRIAN KERRY O'KEEFE,

11 Defendant.

CASE NO: C202793

DEPT NO: XV

12
13 VERDICT

14 We, the jury in the above entitled case, find the Defendant BRIAN KERRY
15 O'KEEFE, as follows:

16 **COUNT 1** – BATTERY WITH INTENT TO COMMIT A CRIME

17 *(please check the appropriate box, select only one)*

18 ☐ Guilty of BATTERY WITH INTENT TO COMMIT A CRIME

19 ☒ Guilty of BATTERY

20 ☐ Not Guilty

21
22 We, the jury in the above entitled case, find the Defendant BRIAN KERRY
23 O'KEEFE, as follows:

24 **COUNT 2** – SEXUAL ASSAULT

25 *(please check the appropriate box, select only one)*

26 ☐ Guilty of SEXUAL ASSAULT

27 ☒ Not Guilty

1 We, the jury in the above entitled case, find the Defendant BRIAN KERRY
2 O'KEEFE, as follows:

3 **COUNT 3** – SEXUAL ASSAULT

4 *(please check the appropriate box, select only one)*

5 ☐ Guilty of SEXUAL ASSAULT

6 ☒ Not Guilty

7
8 We, the jury in the above entitled case, find the Defendant BRIAN KERRY
9 O'KEEFE, as follows:

10 **COUNT 4** – SEXUAL ASSAULT

11 *(please check the appropriate box, select only one)*

12 ☐ Guilty of SEXUAL ASSAULT

13 ☒ Not Guilty

14
15 We, the jury in the above entitled case, find the Defendant BRIAN KERRY
16 O'KEEFE, as follows:

17 **COUNT 5** – ATTEMPT SEXUAL ASSAULT

18 *(please check the appropriate box, select only one)*

19 ☐ Guilty of ATTEMPT SEXUAL ASSAULT

20 ☒ Not Guilty

21 //

22 //

23 //

24 //

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28 //

1 We, the jury in the above entitled case, find the Defendant BRIAN KERRY
2 O'KEEFE, as follows:

3 **COUNT 6 – BURGLARY**

4 *(please check the appropriate box, select only one)*

5 ☒ Guilty of BURGLARY

6 ☐ Not Guilty

7 DATED this 28 day of October, 2004

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10 FOREPERSON

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PINU

FILED IN OPEN COURT
OCT 28 2004

DISTRICT COURT
CLARK COUNTY, NEVADA
SHIRLEY B. PARRAGUIRRE, CLERK
BY Theresa Lee
DEPUTY

The State of Nevada,
Plaintiff,

vs

Brian Kerry O'Keefe,
Defendant.

Case No. C202793
Dept No. XV

PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL

Attached hereto are the proposed jury instructions which were offered to the Court, but not submitted to the jury in the above-entitled action.

DATED: This 28th day of October , 2004.

SHIRLEY B. PARRAGUIRRE, Clerk of the Court

By: Theresa Lee
Theresa Lee, Deputy Clerk

PINU/3-00/jh

State Requested
Not Given

INSTRUCTION NO. #1

1
2 Physical force is not a necessary ingredient in the commission of sexual assault. The
3 crucial question is not whether the victim was physically forced to engage in a sexual
4 assault but whether the act was committed without her consent.

5 When a woman yields to an act of sexual assault by a male aggressor, if her yielding
6 has been induced by fear that it is necessary to save her from violence or other physical harm
7 or that it offers hope of so doing, her conduct in such circumstances does not constitute
8 consent.
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1 Voluntary intoxication is no excuse to a crime committed under its influence, and this
2 is so even when the intoxication is so extreme as to make the person unconscious of what he
3 is doing or to create temporary insanity.
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Withdrawn

*Withdrawn
by State
#2*

*Status affirmed, obj.
by defense - not
given*

INSTRUCTION NO. 3

Evidence of other crimes cannot be considered by you for any purpose unless you first find the acts alleged have been proven by plain, clear and convincing evidence.

States not given
#4

INSTRUCTION NO. 6

The law does not explicitly require the use of overt force as an element of sexual assault. That means that physical force is not a necessary element in the commission of the crime of ~~rape~~^{Sexual assault}. The law only requires that the commission of the act of sexual penetration be against the will of the victim.

A ~~rape~~ victim is not required to do more than her age, strength and the surrounding facts and attending circumstances would reasonably dictate as a manifestation of her opposition. In other words, whether the victim manifested opposition or did in fact consent, depends on the facts of the particular case.

Submission is not the equivalent of consent. While consent inevitably involves submission, submission does not inevitably involve consent. Lack of protest by a victim is simply one among the totality of the circumstances to be considered by the jury.

04F09774X/GCU:lg

States NOT Given
#5

INSTRUCTION NO. 19

1
2 ~~Any~~^{used concern} evidence that the defendant committed offenses other than that for which he is on
3 trial, if believed, may not be considered by you to prove that he is a person of bad character
4 or to prove that he has a disposition to commit crimes. Such evidence was received because
5 it was not possible to admit other relevant evidence, and at the same time, exclude ^{this} evidence
6 of other crimes.

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28 04F09774X/GCU:lg

• Status not given
#6

INSTRUCTION NO. _____

1
2 The crime of sexual assault is rarely perpetrated in the presence of witnesses other
3 than the defendant and the victim. Thus, the presence or absence of other evidence which
4 would support or refute the testimony of the involved parties has the potential for great
5 significance.

6 Therefore, there is no requirement that the testimony of a victim of sexual assault be
7 corroborated, and her testimony standing alone, if believed beyond a reasonable doubt, is
8 sufficient to sustain a verdict of guilty.
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16 proposed by state

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18 89 JV 277

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20 with drawn by state & substituted

21 w/ a shorter version
22
23 for

Defts Not Given

INSTRUCTION NO. A

Acts which constitute domestic violence

1. Domestic violence occurs when a person commits one of the following acts against or upon his spouse, former spouse, any other person to whom he is related by blood or marriage, a person with whom he is or was actually residing, a person with whom he has had or is having a dating relationship, a person with whom he has a child in common, the minor child of any of those persons or his minor child:

(a). A battery

(b). An assault

(c). Compelling the other by force or threat of force to perform an act from which he has the right to refrain or to refrain from an act which he has the right to perform.

(d). A sexual assault.

(e) A knowing, purposeful reckless course of conduct intended to harass the other. Such conduct may include, but is not limited to:

(1) Stalking

(2) Arson

(3) Trespassing

(4) Larceny

(5) Destruction of private property

(6) Carrying a concealed weapon without a permit

(f) A false imprisonment

(g) Unlawful entry of the other's residence, or forcible entry against the other's will if there is a reasonable foreseeable risk of harm to the other from the entry.

1 BRIAN K. O'KEEFE

2 # 1447732

3 330 SOUTH CASINO CENTER

4 LAS VEGAS, NEVADA 89101

FILED

DEC 3 3 01 PM '04

Shirley S. Pangione
CLERK

7 STATE OF NEVADA

8 PLAINTIFF

9 -VS-

10 BRIAN K. O'KEEFE

11 DEFENDANT

CASE No: 04-C-202793

DEPT No: 15

13 IN THE EIGHTH JUDICIAL DISTRICT COURT
14 OF THE STATE OF NEVADA
15 IN AND FOR THE COUNTY OF CLARK

16 NOTICE OF APPEAL

17
18 PURSUANT TO N.R.S. 7.40 (b) (2) (ii), I AM REQUESTING
19 THAT THE FOLLOWING NOTICE OF APPEAL BE FILED.

20
21 COMES NOW; THE DEFENDANT BRIAN K. O'KEEFE IN PRO-PER,
22 AND THAT NOTICE IS HEREBY GIVEN THAT THE DEFENDANT
23 ABOVE NAMED, HEREBY APPEALS TO THE SUPREME COURT OF NEVADA;
24 FROM THE FINAL JUDGMENT OF BEING FOUND GUILTY BY A JURY ON
25 OCTOBER 28, 2004; COUNT (1) BATTERY MISDEMEANOR AND COUNT
26 (6) BURGLARY FELONY, IN DEPARTMENT 15 OF THE EIGHTH JUDICIAL
27 DISTRICT COURT; BEFORE JUDGE SALLY L. LOEHRER.

28 RECEIVED

DEC 03 2004

COUNTY CLERK

INCARCERATED PERSONS NOTARY

PURSUANT OF N. R. S. 208.165 AND THE UNITED STATES
CODE OF ANNOTATIONS 1621

UNDER PENALTY OF PERJURY I; BRIAN K. O'KEEFE,
DO HEREBY SWEAR AND AFFIRM THAT THE PROCEEDING IS TRUE
AND CORRECT TO THE BEST OF MY KNOWLEDGE.



BRIAN K. O'KEEFE
1447732



D. BARR, D. P# 8127
VERIFICATION BY OFFICER OF
C.C.D.C.

PROOF OF SERVICE

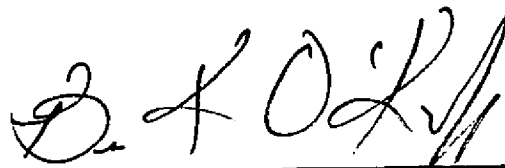
DATED THIS 16 DAY OF NOVEMBER 2004; I, BRIAN K. O'KEEFE,
DO SOLEMNLY SWEAR, UNDER THE PENALTY OF PERJURY, THAT THE
ABOVE NOTICE OF APPEAL IS ACCURATE, CORRECT, AND TRUE
TO THE BEST OF MY KNOWLEDGE. N. R. S. 171.102 AND N. R. S. 208.165
AND THAT ON THE 16 DAY OF NOVEMBER 2004; I DID PLACE ONE
COPY OF NOTICE OF APPEAL IN THE UNITED STATES MAIL
ADDRESSED TO THE EIGHTH JUDICIAL DISTRICT COURT; CLERK
AT 200 SOUTH 3RD STREET, P.O. BOX 551601, LAS VEGAS, NEVADA
89155.



BRIAN K. O'KEEFE

1 AND THAT THE DEFENDANT WILL BE FORMALEY SENTENCED ON
2 DECEMBER 27, 2004 AT 08:30 A.M. IN DEPARTMENT 15 BY JUDGE
3 SALLY H. HOEHRER.
4
5

6 DATED THIS 16 DAY OF NOVEMBER, 2004.
7
8

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10 BRIAN K. O'KEEFE; PRO-PER.
11 DEFENDANT
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2004 DEC -6 AM 10: 24

DISTRICT COURT
CLARK COUNTY, NEVADA

Shirley B. Hunsinger
CLERK

STATE OF NEVADA,

Plaintiff(s),

vs.

BRIAN K. O'KEEFE,

Defendant(s),

Case No: C202793

Dept No: XV

CASE APPEAL STATEMENT

1. Appellant(s): BRIAN K. O'KEEFE

2. Judge: SALLY LOEHRER

3. All Parties, District Court:

Plaintiff, THE STATE OF NEVADA

Defendant(s), BRIAN K. O'KEEFE

4. All Parties, Appeal:

Appellant(s), BRIAN O'KEEFE

Respondent, THE STATE OF NEVADA

5. Appellate Counsel:

Appellant/Proper Person
Brian K. O'Keefe #1447732
330 S. Casino Center
Las Vegas, NV 89101

Respondent
David Roger, District Attorney
200 S. 3rd St.
Las Vegas NV 89101
(702) 455-4711

1 6. District Court Attorney, Appointed

2 7. On Appeal, N/A

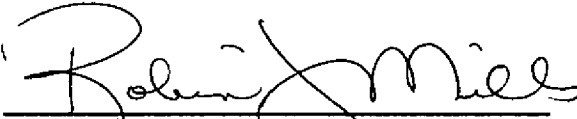
3 8. Forma Pauperis, N/A

4 9. Date Commenced in District Court: 07/06/04

5 Dated This 6 day of December 2004.

6 Shirley B. Parraguirre, Clark County Clerk

7
8 By:



9 Robin J. Mills, Deputy Clerk

10 200 South Third Street

11 PO Box 551601

12 Las Vegas, Nevada 89155-1601

13 (702) 455-4409
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**THIS SEALED
DOCUMENT,
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197 - 202
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U.S. MAIL**

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JOCP

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
200 South Third Street
Las Vegas, Nevada 89155-2212
(702) 455-4711
Attorney for Plaintiff

FILED

2005 JAN -3 P 2:51

Shirley L. Harrison
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRIAN KERRY OKEEFE,
#1447732

Defendant.

Case No: C202793

Dept No: XV

JUDGMENT OF CONVICTION (JURY TRIAL)

The Defendant previously entered plea(s) of not guilty to the crime(s) of COUNT 1 - BATTERY WITH INTENT TO COMMIT A CRIME (Felony); COUNT 2 - SEXUAL ASSAULT (Felony); COUNT 3 - SEXUAL ASSAULT (Felony); COUNT 4 - SEXUAL ASSAULT (Felony); COUNT 5 - ATTEMPT SEXUAL ASSAULT (Felony); and COUNT 6 - BURGLARY (Felony), in violation of NRS 200.400; 200.364, 200.366; 193.330, 200.364, 200.366; 205.060, and the matter having been tried before a jury, and the Defendant being represented by counsel and having been found guilty of the crime(s) of COUNT 1 - BATTERY (Misdemeanor); and COUNT VI - BURGLARY (Category B Felony), in violation of NRS 200.481; 205.060; and thereafter on the 27th day of December, 2004, the Defendant was present in Court for sentencing with his counsel, JAMES L. BUCHANAN, II, ESQ., and good cause appearing therefor,

THE DEFENDANT HEREBY ADJUDGED guilty of the crime(s) as set forth in the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee, a \$150.00 DNA

CLARK COUNTY

DEC 29 2004

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1 Analysis Fee and submit to testing to determine genetic markers, the Defendant is sentenced
2 as follows: on COUNT 6 - to a minimum of twenty-four (24) months and a maximum of one
3 hundred twenty (120) months in the Nevada Department of Corrections; SUSPENDED;
4 placed on probation for an indeterminate period not to exceed five (5) years, and on COUNT
5 1 - Defendant sentenced to CREDIT FOR TIME SERVED. CONDITIONS: 1) No contact
6 with the victim initiated by Defendant. Court advised Defendant any contact that the victim
7 initiates will not be a problem for him; 2) Search clause/burglary tools; 3) Complete
8 Domestic Violence counseling; 4) Secure and maintain full time employment; 5) Mental
9 Health counseling as deemed necessary by Parole and Probation; 6) Resolve the warrant
10 from the State of Ohio within the next one hundred twenty (120) days; 7) Four (4) hours of
11 community service work each week. Case closed.

12 DATED this 30 day of December, 2004.

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15 DISTRICT JUDGE
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FILED

FEB 1 5 10 PM '05

Shirley B. Langston
CLERK

BRIAN K. O'KEEFE
W 1447732
330 SOUTH CASINO CENTER
LAS VEGAS, NEVADA 89101

STATE OF NEVADA
PLAINTIFF

-VS-

BRIAN K. O'KEEFE
DEFENDANT

CASE No: 04-C-202793

DEPT No: 15

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

NOTICE OF APPEAL

PURSUANT TO N.R.S. 7.40 (b) (2) (ii), I AM REQUESTING
THAT THE FOLLOWING NOTICE OF APPEAL BE FILED.

COMES NOW; THE DEFENDANT BRIAN K. O'KEEFE IN PRO-PER,
AND THAT NOTICE IS HEREBY GIVEN THAT THE DEFENDANT
ABOVE NAMED, HEREBY APPEALS TO THE SUPREME COURT OF NEVADA;
FROM THE FINAL JUDGMENT OF BEING FOUND GUILTY BY A JURY ON
OCTOBER 28, 2004; COUNT (1) BATTERY MISDEMEANOR AND COUNT
(6) BURGLARY FELONY, IN DEPARTMENT 15 OF THE EIGHTH JUDICIAL
DISTRICT COURT; BEFORE JUDGE SALLY L. LOENNER.

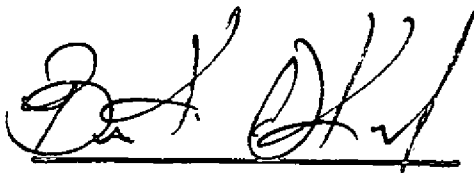
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INCARCERATED PERSONS NOTARY

PURSUANT OF N.R.S. 208.165 AND THE UNITED STATES
CODE OF ANNOTATIONS 1621


UNDER PENALTY OF PERJURY I; BRIAN K. O'KEEFE,
DO HEREBY SWEAR AND AFFIRM THAT THE PROCEEDING IS TRUE
AND CORRECT TO THE BEST OF MY KNOWLEDGE.


BRIAN K. O'KEEFE
1447732


D'ARR, D. P# 8127
VERIFICATION BY OFFICER OF
C.C.D.C.

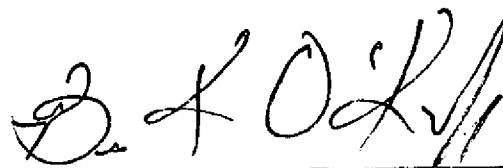
PROOF OF SERVICE

DATED THIS 16 DAY OF NOVEMBER 2004; I, BRIAN K. O'KEEFE,
DO SOLEMNLY SWEAR, UNDER THE PENALTY OF PERJURY, THAT THE
ABOVE NOTICE OF APPEAL IS ACCURATE, CORRECT, AND TRUE
TO THE BEST OF MY KNOWLEDGE. N.R.S. 171.102 AND N.R.S. 208.165
AND THAT ON THE 31ST DAY OF JAN, 2005; I DID PLACE ONE
COPY OF NOTICE OF APPEAL IN THE UNITED STATES MAIL
ADDRESSED TO THE EIGHTH JUDICIAL DISTRICT COURT; CLERK
AT 200 SOUTH 3RD STREET, P.O. BOX 551401, LAS VEGAS, NEVADA
89155.


BRIAN K. O'KEEFE

1 ADD THAT THE DEFENDANT WILL BE FORMALEY SENTENCED ON
2 DECEMBER 27, 2004 AT 08:30 A.M. IN DEPARTMENT 7 BY JUDGE
3 ANTHONY BELL.
4
5

6 DATED THIS 16 DAY OF NOVEMBER, 2004.
7
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11 BRIAN K. O'KEEFE; PRO-PER.
12 DEFENDANT
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Date Accepted 01 31 05 Mo. Day Year	Scheduled Date of Delivery Month 02 Day 01	Return Receipt Fee \$ 1.75
Time Accepted 3:27 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Scheduled Time of Delivery <input type="checkbox"/> Noon <input checked="" type="checkbox"/> 3 PM	COD Fee \$
Flat Rate <input type="checkbox"/> or Weight lbs. 2 ozs.	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Insurance Fee \$
	Int'l Alpha Country Code	Total Postage & Fees \$ 15.40
	Acceptance Emp. Initials CS	

DELIVERY (POSTAL USE ONLY)

Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		
Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		
Delivery Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		

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Express Mail Corporate Acct. No. ☐ **WAIVER OF SIGNATURE (Domestic Mail Only)**
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I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

NO DELIVERY☐ Weekend ☐ Holiday ☐ Mailer Signature**FROM: (PLEASE PRINT)**

PHONE ()

BRIAN KERRY O'KEEFE
881 SCHADEL DRIVE
LANCASTER, OHIO 43130
1447732

TO: (PLEASE PRINT)PHONE (702) **455 4011**

OFFICE OF THE COUNTY CLERK
EIGHT JUDICIAL DISTRICT COURT
200 SOUTH THIRD STREET
P.O. BOX 551601
LAS VEGAS NV 89155-1601

ZIP + 4 (U.S. ADDRESSES ONLY; DO NOT USE FOR FOREIGN POSTAL CODES.)

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Shelley B. Rungius
CLERK

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff(s),

vs.

BRIAN K. O'KEEFE,

Defendant(s),

) Case No: C202793

) Dept No: XV

CASE APPEAL STATEMENT

1. Appellant(s): BRIAN K. O'KEEFE

2. Judge: SALLY LOEHRER

3. All Parties, District Court:

Plaintiff, THE STATE OF NEVADA

Defendant(s), BRIAN K. O'KEEFE

4. All Parties, Appeal:

Appellant(s), BRIAN K. O'KEEFE

Respondent, THE STATE OF NEVADA

5. Appellate Counsel:

Appellant/Proper Person
Brian K. O'Keefe #1447732
330 Casino Center
Las Vegas, NV 89101

Respondent
David Roger, District Attorney
200 S. 3rd St.
Las Vegas NV 89101
(702) 455-4711

1 6. District Court Attorney, Appointed

2 7. On Appeal, N/A

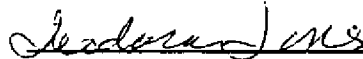
3 8. Forma Pauperis, N/A

4 9. Date Commenced in District Court: 07/06/04

5 Dated This 2 day of February 2005.

6 Shirley B. Parraguirre, Clark County Clerk

7
8 By:



9 Teodora Jones, Deputy Clerk

10 200 South Third Street

11 PO Box 551601

12 Las Vegas, Nevada 89155-1601

13 (702) 455-4409
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IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

BRIAN K. O'KEEFE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. **FEB 7 11 09 AM '05**

District Court Case No.

Heidi B. Prange
C202793
CLERK

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER this appeal DISMISSED."

Judgment, as quoted above, entered this 7th day of January, 2005.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 1st day of February, 2005.

Janette M. Bloom, Supreme Court Clerk

By:

J. Richards
Chief Deputy Clerk

RECEIVED

FEB 04 2005

COUNTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN K. O'KEEFE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44372

FILED

JAN 07 2005

ORDER DISMISSING APPEAL

JANEITE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

This is an appeal from a guilty verdict, pursuant to a jury trial. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge. Our preliminary review of the documents before us reveals that the appeal is premature.

Specifically, on October 28, 2004, a jury found appellant guilty of one count of battery and one count of burglary. Based on our review of the documents submitted in this appeal, it appears that at the time of the filing of the notice of appeal, the district court had not yet sentenced appellant, nor has the district court entered a final, written judgment of conviction.

Although NRS 177.015(3) provides that a defendant may appeal from a "final judgment or verdict in a criminal case" (emphasis added), this court's rules of appellate procedure do not contemplate the filing of an appeal from a verdict prior to sentencing and entry of a written judgment of conviction. For example, NRAP 4(b)(1) provides:

In a criminal case, the notice of appeal by a defendant shall be filed in the district court within thirty (30) days after the entry of the judgment or order appealed from. A notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment or order shall be treated as filed after such entry and on the day

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FEB 04 2005

COUNTY CLERK

SUPREME COURT
OF
NEVADA


(O) 1947A


thereof. . . . A judgment or order is entered within the meaning of this rule when it is signed by the judge and filed with the clerk.


(Emphasis added.) Moreover, NRS 176.105(1) requires that the judgment of conviction set forth the plea, the verdict, the adjudication and sentence, and the amount of credit granted for time spent in confinement before conviction, if any. Therefore, appellant must be sentenced and a written judgment of conviction must be entered by the district court before this court will entertain an appeal.

Accordingly, we

ORDER this appeal DISMISSED.¹


Maupin


Douglas


Parraguirre

cc: Hon. Sally L. Loehrer, District Judge
James L. Buchanan II
Brian K. O'Keefe
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹This dismissal is without prejudice to appellant's right to file and perfect a timely appeal following the district court's pronouncement of the sentence.

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN K. O'KEEFE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 44372

District Court Case No. C202793

REMITTITUR

TO: Shirley Parraguirre, Clark County Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: February 1, 2005

Janette M. Bloom, Clerk of Court

By: J. Richards
Chief Deputy Clerk

cc: Hon. Sally L. Loehrer, District Judge
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Brian K. O'Keefe
James L. Buchanan II

RECEIPT FOR REMITTITUR

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the

REMITTITUR issued in the above-entitled cause, on 2-4-05
NORRETA CALDWELL

DEPUTY

County Clerk

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
215 - 217
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U.S. MAIL**

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FILED

1 ROC

JAMES L. BUCHANAN II, ESQ.

2 Nevada Bar #754

300 S. Maryland Parkway

3 Las Vegas, NV 89101

4 Attorney for Defendant

2005 FEB 11 PM 4: 29

Arlene B. Hargrave
CLERK

5
6 DISTRICT COURT

7 CLARK COUNTY, NEVADA

8
9 STATE OF NEVADA,)

CASE NO. C202793

10 Plaintiff,)

DEPT. NO. 15

11 vs.)

Date: _____

12 BRIAN O'KEEFE,)

Time: _____

13 Defendant.)
14

15
16 RECEIPT OF COPY

17 RECEIPT OF A COPY of the foregoing MOTION TO PROCEED IN

18 FORMA PAUPERIS is hereby acknowledged this 11 day of February,

19 2005.
20

21 DISTRICT ATTORNEY'S OFFICE
22
23

24
Karen Miller
200 S. THIRD STREET, 5th floor
LAS VEGAS, NV 89155

RECEIVED

FEB 11 2005

CLERK

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ORIGINAL

Shirley B. Panagium

19

1 REQ
2 JAMES L. BUCHANAN II, ESQ.
3 Nevada Bar No. #754
4 300 South Maryland Parkway
5 Las Vegas, Nevada 89101
6 (702) 382-9103
7 Attorney for Defendant

MAR 3 9 14 AM '05

FILED

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

8 THE STATE OF NEVADA,) CASE NO. : C202793
9 Plaintiff,) DEPT. NO. 15
10 vs.)
11 BRIAN O'KEEFE,)
12 Defendant.)

REQUEST FOR ROUGH DRAFT TRANSCRIPT

14 TO: M. Cook and L. Makowski, Court Reporters in Dept. 15:

15 BRIAN O'KEEFE, Defendant named above, requests preparation
16 of a rough draft transcript of the following proceedings before
17 the District Court as follows:

18 1. The trial transcript, including opening statements and
19 closing arguments with the following dates: 10/25/04 and 10/26/04
20 (opening statements); 10/27/04 (trial); and 10/28/04 (closing
21 arguments).

22 2. A copy of the sentencing transcript of 12/27/04.

23 This notice requests the above District Court proceedings
24 which counsel reasonably and in good faith believes are necessary
25 to determine whether appellate issues are present.

26 ///

RECEIVED
MAR 03 2005
CLERK

1 I recognize that I must personally serve a copy of this form
2 on the above named court reporter and opposing counsel, and that
3 the above named court reporter shall have ten (10) days from the
4 receipt of this notice to prepare and submit to the District
5 Court the rough draft transcript requested herein. The Fast
6 Track Statement is due to the Supreme Court on March 11, 2005.

7 DATED this 2 day of March, 2005.

8
9
10
11 JAMES P. KELLY, ESQ.
12 Nevada Bar No. #8140
13 300 South Maryland Parkway
14 Las Vegas, Nevada 89101
15 702-382-9103

16 RECEIPT OF COPY

17 RECEIPT OF A COPY of the attached REQUEST FOR ROUGH DRAFT
18 TRANSCRIPT is hereby acknowledged this 3rd day of March, 2005.

19 DISTRICT ATTORNEY'S OFFICE

20
21 Dianna DeHaven
22 DEPUTY DISTRICT ATTORNEY
23 200 S. THIRD STREET
24 LAS VEGAS, NV 89155

25 Mary Beth Cook
26 M. COOK, L. MAKOWSKI
27 COURT REPORTERS, DEPT. 15
28 200 S. THIRD STREET
LAS VEGAS, NV 89155

CASE NO. C202793

DEPT. NO. XV

FILED ORIGINAL

DISTRICT COURT
2005 APR -5 11:52
CLARK COUNTY, NEVADA

[Signature]
CLERK

-oOo-

STATE OF NEVADA,)	
)	
Plaintiff,	)	REPORTER'S
)	
vs.	)	TRANSCRIPT
)	
BRIAN KERRY O'KEEFE,	)	OF
)	
Defendant.	)	SENTENCING

BEFORE THE HON. STEWART L. BELL, DISTRICT JUDGE

MONDAY, DECEMBER 27, 2004
0945

APPEARANCES:

For the State: SUSAN KRISKO, ESQ.
Deputy District Attorney

For the Defendant: JAMES L. BUCHANAN II, ESQ.

Reported by: CHERYL GARDNER, RMR-RPR
CCR No. 230

CHERYL GARDNER, CCR 230, RPR, RMR

RECEIVED
APR - 5 2005
COUNTY CLERK

1 LAS VEGAS, CLARK COUNTY, NV, MON, DECEMBER 27, 2004

2 0945

3 -oOo-

4 P R O C E E D I N G S

5 THE COURT: State of Nevada versus
6 Brian O'Keefe, case C202793.

7 MS. KRISKO: Judge, are you going to
8 be sentencing him?

9 THE COURT: Yeah. That's why we're
10 here today. Who is your lawyer, Mr. O'Keefe?

11 THE DEFENDANT: It was Mr. Buchanan.

12 (Whereupon different matters
13 were heard.)

14 THE COURT: State of Nevada versus
15 Brian O'Keefe, Case No. C202793. Let the record
16 reflect the presence of the defendant in custody,
17 Mr. Buchanan, Ms. Krisko for the State of Nevada.

18 Any reason judgment should be not
19 imposed at this time?

20 MR. BUCHANAN: Not on behalf of the
21 defendant.

22 THE COURT: In accordance -- is this a
23 jury verdict or a plea?

24 MR. BUCHANAN: Jury verdict.

25 THE COURT: According to the jury

CHERYL GARDNER, CCR 230, RPR, RMR

1 verdict, the defendant is hereby adjudged guilty.

2 Would the State like to say anything?

3 MS. KRISKO: I'd just like to point
4 out yet again Mr. O'Keefe is back to blaming
5 everybody else and claiming the D.A.'s office is
6 the one that basically committed this crime.

7 THE COURT: That's not true?

8 MS. KRISKO: No.

9 THE COURT: Did the victim show up?

10 MS. KRISKO: I talked to her on Friday
11 and what -- she's afraid he's just going to get a
12 slap on the wrist and she doesn't want to watch
13 that.

14 THE COURT: He's looking at 24 to 120
15 suspended. Mr. Buchanan, anything you want to
16 add?

17 MR. BUCHANAN: This is just one count
18 of burglary.

19 THE COURT: 24 to 120 suspended placed
20 on probation. Anything more than you want to add?

21 MR. BUCHANAN: That's more than they
22 recommended.

23 THE COURT: If he does his probation
24 successfully, it doesn't matter if he gets life,
25 does it? It's a fairly serious offense. I want

1 him to understand if he screws up his probation --

2 MR. BUCHANAN: He was found not
3 guilty, though. That's the whole thing. You know,
4 you're just like the police. You say just because
5 he was charged he was guilty. He was found not
6 guilty by a jury. He was only found guilty of
7 burglary and so that's one to ten and I think they
8 recommended 18 to 72.

9 THE COURT: Okay. Anything you want
10 to add, Mr. O'Keefe?

11 THE DEFENDANT: No, sir, Your Honor.

12 THE COURT: \$25 administrative
13 assessment, \$150 DNA fee and testing; underlying
14 sentence 24 to 120, placed on probation not to
15 exceed five years following conditions; one, no
16 contact with the victim.

17 MR. BUCHANAN: May I be heard on
18 that?

19 THE COURT: Yeah.

20 MR. BUCHANAN: She's calling him
21 whenever we have the jury verdict and he was and
22 Judge Loehrer gave an O.R. He's not in on that
23 case.

24 THE COURT: It's not going to be a
25 violation on his part if she calls him.

1 MR. BUCHANAN: She called him that
2 night to go and pick him up at the jail when he got
3 out. This is a love/hate relationship and with
4 that condition in there if he stays in this town,
5 she could be right on him. She'll be on him
6 like --

7 THE COURT: If she initiates the
8 contact, it won't be a problem for him. I want him
9 to stay away from her because if they have contact
10 in this love/hate relationship, he's going to end
11 up in trouble. Search for burglary tools.
12 Counseling. No. 4, maintain full-time employment.
13 No. 5 mental health counseling as deemed necessary
14 by the Department. No. 6, resolve the warrant in
15 Ohio within 120 days.

16 MR. BUCHANAN: That's what he's being
17 held on.

18 THE COURT: If he gets it resolved so
19 he can be released, then that condition is met. If
20 they don't extradite him and he's then released to
21 probation. He needs to call a lawyer back there
22 and get that straightened out. No. 7, four hours
23 of community service a week.

24 MS. KRISKO: Your Honor, is it going
25 to be a six month or a year long DV? He's already

1 done the six months and it didn't help.

2 THE COURT: I'll let P and P decide
3 that. Okay. Anything else? You should be
4 released as soon as Ohio decides not to extradite
5 you or if they extradite you, you'll go back once.

6 MR. BUCHANAN: I don't think they're
7 going to.

8 THE COURT: That's why I did this,
9 Mr. Buchanan. A lot of times they don't. They put
10 the hold on there. When it comes to the
11 nitty-gritty, they're not paying to send an officer
12 out. He's going to have to call a lawyer back
13 there. You know the drill.

14 MR. BUCHANAN: We tried to do that
15 before, but he has no one back there.

16 THE COURT: You know how the drill
17 goes. Maybe you can refer him to a lawyer. Okay.
18 Done.

19 -oOo-

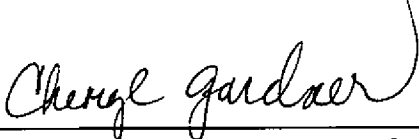
20 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF
21 PROCEEDINGS.

22

23

24

25


CHERYL GARDNER, RPR, RMR
CCR No. 230

CHERYL GARDNER, CCR 230, RPR, RMR

FILED

2005 APR 11 A 10:56

[Signature]
CLERK

1 TRAN
2 CASE NO. C202793
3 DEPT. NO. XV
4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 * * *

9 THE STATE OF NEVADA,)
10)
11 Plaintiff,)
12 vs.)
13 BRIAN KERRY OKEEFE,)
14 Defendant.)
15 -----)

ORIGINAL

REPORTER'S TRANSCRIPT
OF
VERDICT

16 BEFORE THE HONORABLE
17 SALLY LOEHRER, DISTRICT COURT JUDGE
18 THURSDAY, OCTOBER 28, 2004
19 10:30 a.m.

20 APPEARANCES:

21 For the Plaintiff: SUSAN KRISKO, ESQ.
22 ROSS MILLER, ESQ.
23 Deputy District Attorney
24 For the Defendant: JAMES BUCHANAN III, ESQ.
25 Defender Deputy Special Public
Reported by: LISA MAKOWSKI, CCR No. 345

RECEIVED

APR 11 2005

CLERK

1 LAS VEGAS, CLARK COUNTY, NEVADA
2 THURSDAY, OCTOBER 28, 2004
3 10:30 a.m.

4 * * *

5 P R O C E E D I N G S

6 THE COURT: Good morning, ladies and
7 gentlemen. Welcome back to State of Nevada versus
8 Brian O'Keefe. The record will reflect the
9 presence of parties and counsel, all officers of
10 court and full 12 deliberating jurors. The first
11 question I need to ask you is did you chose a
12 foreperson and if so who is that person.

13 THE FOREPERSON: It is me, your Honor.

14 THE COURT: And you are, Mr. Anaya.

15 THE FOREPERSON: Waite.

16 THE COURT: Mr. Waite, has the jury
17 reached a unanimous decision on all of the counts
18 submitted to it?

19 THE FOREPERSON: Yes we have, your
20 Honor.

21 THE COURT: Would you please hand the
22 verdict form not bailiff?

23 The clerk will now read the verdict.

24 THE CLERK: District Court, Clark County
25 Nevada, the State of Nevada plaintiff versus Brian

1 carry O'Keefe defendant, Case No. C202793
2 department No. 15 verdict: We the jury in the
3 above entitled case find the defendant Brian carry
4 O'keefe ceef as follows: Count I, guilty of
5 battery. Count II not guilty. Count three not
6 guilty; Count IV, not guilty; Count V, not guilty.
7 Count six; guilty of burglary.

8 Dated this 28th day of October 2004.
9 Dennis Waite foreman.

10 Ladies and gentlemen of the jury, is
11 that your verdict as read so say you one so say
12 you all?

13 THE JURY: Yes.

14 THE COURT: Before the verdict is
15 recorded in the minutes of the court, does either
16 party wish to have the jury individually polled?

17 MR. BUCHANAN: Not on behalf of the
18 defendant, your Honor.

19 MS. KRISKO: Not on behalf of the State,
20 your Honor.

21 (The judge thanked and excused the
22 jury.)
23
24
25

1 The foregoing transcript is an uncertified
2 rough draft transcription of my stenotype notes of
3 said proceedings. This transcript has not been
4 edited, proofread, indexed or certified.

5 Dated this 11 day of April 2005.

6 *Lisa Makowski*

7 LISA MAKOWSKI
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FILED

2005 APR 11 A 10:55

[Signature]
CLERK

1 TRAN
2 CASE NO. C202793
3 DEPT. NO. XV
4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 * * *

9 THE STATE OF NEVADA,)
10)
11 Plaintiff,)
12 vs.)
13 BRIAN KERRY O'KEEFE,)
14 Defendant.)
15 -----)

ORIGINAL

REPORTER'S TRANSCRIPT
OF
JURY TRIAL

16 BEFORE THE HONORABLE
17 SALLY LOEHRER, DISTRICT COURT JUDGE
18 WEDNESDAY, OCTOBER 27, 2004
19 10:30 a.m.

20 APPEARANCES:

21 For the Plaintiff: SUSAN KRISKO, ESQ.
22 ROSS MILLER, ESQ.
Deputy District Attorney
23 For the Defendant: JAMES BUCHANAN III, ESQ.
24 Attorney at Law

25 Reported by: LISA MAKOWSKI, CCR No. 345

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APR 11 2005
COUNTY CLERK

1 TRAN
2 CASE NO. C202793
3 DEPT. NO. XV

4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 * * *

8
9 THE STATE OF NEVADA,)
10)
11 Plaintiff,) REPORTER'S TRANSCRIPT
12 vs.) OF
13 BRIAN KERRY O'KEEFE,) JURY TRIAL
14 Defendant.)

15
16
17 BEFORE THE HONORABLE
18 SALLY LOEHRER, DISTRICT COURT JUDGE
19 WEDNESDAY, OCTOBER 27, 2004
20 10:30 a.m.

21 APPEARANCES:

22 For the Plaintiff: SUSAN KRISKO, ESQ.
23 ROSS MILLER, ESQ.
24 Deputy District Attorney
25 For the Defendant: JAMES BUCHANAN III, ESQ.
Attorney at Law

Reported by: LISA MAKOWSKI, CCR No. 345

1 LAS VEGAS, CLARK COUNTY, NEVADA
2 WEDNESDAY, OCTOBER 27, 2004
3 10:30 a.m.

4 * * *
5 P R O C E E D I N G S

6 THE COURT: Good morning, ladies and
7 gentlemen. This is the time set for trial in
8 State of Nevada versus Brian O'Keefe. The record
9 reflect the presence of the parties and counsel
10 all officers of the court and absence of the
11 jurors before we conclude, the State's witnesses
12 this morning. Are there any matters we need to
13 take care of outside the presence of the jury?

14 MR. BUCHANAN: Well, I have three
15 potential instructions I would like to give the
16 court.

17 THE COURT: Please do so anding it
18 Ms. Krisko you have citation I asked for yesterday
19 on once I was concerned about.

20 MS. KRISKO: I do. If I can give you
21 and Mr. Buchanan one I'm withdrawing the top
22 portion of the paragraph and then the other I have
23 a citation for, but I also have a substitution
24 incase we need it, so, but I have the citation for
25 the other.

1 MR. BUCHANAN: I will have to think
2 about this last one that they have a cite on that.

3 THE COURT: I asked for the cites on it.

4 MS. KRISKO: You did.

5 THE COURT: Physical force is not a
6 necessary ingredient in the commission and then
7 the second paragraph when a woman yields to the
8 act of sexual assault. Do you have a citation on
9 that or you have a substitute instruction?

10 MS. KRISKO: I have a citation and also
11 that is a substitute in case.

12 THE COURT: I thought you were going to
13 give me or the instruction that had the citation
14 on it.

15 MS. KRISKO: It is 112 Nevada 1208
16 Hardaway versus State, and I will tell you what we
17 did is changed some of the wording to make it more
18 user friendly like woman, man, yield, things like
19 that. And then the citation on the substitute one
20 that talks about, the longer one is McNair versus
21 State 108 Nevada 53. Did you want the citations
22 on all rest of them also?

23 THE COURT: 108 Nevada 52?

24 MS. KRISKO: 53. And it is McNair.

25 THE COURT: Now, yes, the next one that

1 I wanted the citation on was it is rarely
2 perpetrated in the presence of other witnesses
3 thus the presence or absence of other evidence
4 which would support or refute has the potential
5 for great significance. Where did that one come
6 from?

7 MS. KRISKO: That one that I handed you
8 the substitution, we are withdrawing that. That
9 was in our stocks to sexual assault but I couldn't
10 find anything that talked about that wording so it
11 was May versus state 89 Nevada 277, but when I
12 looked at it it didn't track that wording so I
13 gave you the proposed which is the four line?

14 THE COURT: All right. Thank you. So
15 this one is being withdrawn and this one going in
16 in its place?

17 MS. KRISKO: Yes.

18 MR. BUCHANAN: You have got me lost.

19 THE COURT: Don't worry about it.

20 MR. BUCHANAN: Okay. I won't. We are
21 going to settle these in chambers.

22 THE COURT: Not right now, that's for
23 sure. But I wanted to have information so I can
24 have Jake and Kelly look some of this stuff up,
25 okay, and print the cases for me and highlight

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

1 from the cases where they came from so this one is
2 out and this one is in at the end of so what I
3 need you to do is get those to Jake, tell him to
4 look on the one that has yellow marks on them,
5 don't get them out of order and print out citation
6 for me and highlight the language that's on the
7 instruction. There were a couple more you had a
8 question about overt acts, all right. Hold on for
9 a second.

10 MS. KRISKO: That's Larson versus State
11 89 Nevada 451, and I have copy of these cases if
12 you want me to give them to you.

13 THE COURT: That would be fine then they
14 wouldn't have to print them, and --

15 MS. KRISKO: And then voluntary
16 intoxication is no excuse for a crime and this is
17 so even when intoxication is so extreme that we
18 make a person unconscious of what he was doing or
19 to create temporary insanity.

20 MS. KRISKO: That comes from Arellano
21 but on reading it again and the citation 68 Nevada
22 134, there's is another jury instruction that they
23 say has to be given at the same time, so we will
24 withdraw that.

25 THE COURT: Withdrawn by State.

1 MS. KRISKO: May I approach.

2 THE COURT: You may. So just is have
3 Jake go through these with this and portion that
4 jury instruction all right and Bucky your proposed
5 instructions are.

6 MR. BUCHANAN: They are actually just
7 statutes so there's no -- I don't have the cite on
8 them. I didn't have much time. I just put down
9 the statute and definition.

10 THE COURT: So you got the definition of
11 domestic violence, definition of battery and
12 definition of assault.

13 MR. BUCHANAN: I think they might have
14 definition of battery already in there. If they
15 do, that's fine, I know they don't have, and I
16 will need a different verdict for battery of found
17 guilty of battery with domestic violence.

18 MS. KRISKO: Well, I ask we wait on
19 that. We certainly arguing against it.

20 THE COURT: We are not doing them right
21 now, just collecting them.

22 MR. BUCHANAN: One other thing we talked
23 about the tape last night.

24 THE COURT: Did you watch it?

25 MR. BUCHANAN: I thought I would have it

1 about 5:30 and I could have watched it. I don't
2 know there was probably technical problem in any
3 event they called me, said it has to be in real
4 time so I mean at that point it couldn't be done
5 until 10 or 11 and hopefully I gave them cell
6 number, but they -- I never heard back from them.
7 That doesn't mean they didn't call, but I didn't
8 get to look at it.

9 THE COURT: What time did it get
10 finished.

11 MS. KRISKO: When I told him it would be
12 ready at ten he said I wanted to be called so at
13 ten it was done, actually at 9:54 it was done. I
14 called and I paged and I never got a response.

15 THE COURT: So do you have your copy
16 yet?

17 MR. BUCHANAN: Yes, we just got it this
18 morning.

19 THE COURT: You got anybody watching it?

20 MR. BUCHANAN: No, that's all right. I
21 mean we thought -- we feel we have been ambushed
22 because we didn't have the tape, and it wasn't in
23 the discovery anywhere, any place, any time, and
24 he said he picked it up yesterday, so it wasn't
25 available until yesterday under any circumstances,

1 so anyway we object to the testimony on that and
2 the tape because we never had notice, never had
3 knowledge and, of course, never had a chance to
4 look at it, but I probably will take that the
5 officer looked at it. He is not lying.

6 MS. KRISKO: Well, and only --

7 THE COURT: Your client hasn't testified
8 either, Mr. Buchanan, only you have made an
9 opening statement.

10 MR. BUCHANAN: I know. I understand
11 that, judge. If I was a prosecutor, I would have
12 done it differently.

13 MS. KRISKO: If I can just make a quick
14 record on the that because I know it will be an
15 appeal issue it is in his statement that the
16 officer said I looked at your tape as early as his
17 statement in the discovery. It is there.

18 Now it didn't actually happen at that
19 time, but certainly they would be on notice if
20 that happened and quite frankly we had no
21 intention of ever getting that tape and using
22 because it shows a negative, but because in
23 opening they made that their defense we had to
24 deal with it, so that's when the tape it had
25 previously been asked to be held on to it, could

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

**PLEADING
CONTINUES
IN NEXT
VOLUME**