

CA NO. 04-99003

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

* * *

TERRY JESS DENNIS, by and
through KARLA BUTKO, as Next
Friend,

Petitioner-Appellant,

vs.

MICHAEL BUDGE, Warden, and
BRIAN SANDOVAL, Attorney
General of the State of Nevada,

Respondents-Appellees.

D.C. No. CV-S-04-0798-PMP-RJJ
(Nevada, Las Vegas)

Appeal from the United States District Court
for the District of Nevada

APPELLANT'S EXCERPTS OF RECORD

Volume VI of XI

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AM...
BY: *[Signature]*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

HONORABLE JANET J. BERRY,

HONORABLE MICHAEL CHERRY AND HONORABLE MICHAEL MEMEO

-oOo-

THE STATE OF NEVADA,

Case No. CR99-0611

Plaintiff,

Dept. No. I

vs.

TERRY JESS DENNIS,
Defendant.

TRANSCRIPT OF PROCEEDINGS

PENALTY HEARING

VOLUME II, Pgs 91 - 202

July 19, 1999

Reno, Nevada

883-7950 SUNSHINE REPORTING SERVICES 323-3411

REPORTED BY: CORRIE L. WOLDEN, CSR #194, RPR, CP

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A P P E A R A N C E S

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1 RENO, NEVADA, MONDAY, JULY 19, 1999, 1:36 P.M.

2 -o0o-

3
4 JUDGE BERRY: Please be seated. You may proceed.

5 MR. GRECO: Your Honor, before starting up the tape
6 again, the parties have reached a stipulation regarding the
7 State's Exhibit 8 which has been marked for identification and
8 it is a belt, and that stipulation is that this, that the item
9 is admissible in evidence and that this belt is in fact the
10 belt that was referred to in the testimony of Detective Bennett
11 and shown in the photograph to the Court, and then subsequently
12 collected by forensic investigator Tony Leal, L-E-A-L.

13 MS. PUSICH: That is correct, Your Honor.

14 JUDGE BERRY: So stipulated.

15
16 (Exhibit Number 8 was admitted into evidence.)

17
18 MS. PUSICH: Your Honor, there is one other matter.
19 The Court may realize that my client's clothing has changed
20 slightly. He had earlier waived the right to come in civilian
21 clothing; however, he was uncomfortably cold so we just brought
22 this jacket for him this morning.

23 JUDGE BERRY: That's fine. Mr. Dennis, did you wish to
24 change your attire at this juncture?

25 THE DEFENDANT: No thank you, this is fine.

1 JUDGE BERRY: That is fine. Okay. Then you may
2 proceed.

3 * * * * *

4
5 (The following portion of this transcript is the
6 audible portion of the videotaped interview, marked and
7 admitted as State's Exhibit 17, played and reported in open
8 court:)

9
10 THE DEFENDANT: What now?

11 DETECTIVE RAFAQUAT: Wasn't she with you out in public
12 at a karaoke bar the first night you met her?

13 THE DEFENDANT: Well, yeah, I'm thinking it was
14 Thursday night.

15 DETECTIVE RAFAQUAT: Well, maybe Friday but at one
16 point --

17 THE DEFENDANT: I'm not sure what night it was.

18 DETECTIVE RAFAQUAT: Okay. But at one point --

19 THE DEFENDANT: I think it was probably Thursday
20 though.

21 DETECTIVE RAFAQUAT: Or on one of the nights?

22 THE DEFENDANT: Yeah, she was, yeah, she was with me.

23 DETECTIVE RAFAQUAT: Prior to, okay.

24 THE DEFENDANT: She was out on the street cold, and it
25 was cold out. I gave her my coat, we went in there and we, and

1 we drank all God damn night and I, and I sang, and yeah.

2 DETECTIVE RAFAQUAT: What we're trying to get at is
3 after that night after the act is committed do you recall
4 running into anybody that you might have seen in the bar when
5 she was with you that would have asked you hey, Terry, what
6 happened to that girl?

7 THE DEFENDANT: No, no. Fuck, no. She was obviously,
8 you know, just on the streets, and, like I say, easy prey.

9 DETECTIVE RAFAQUAT: Okay. Let me ask you a question,
10 Terry. Is she saying anything to you at the time you were, you
11 were killing her?

12 DETECTIVE BURKE: Telling you no, what are you doing?

13 DETECTIVE RAFAQUAT: I mean what's she doing, I mean
14 how was she reacting?

15 THE DEFENDANT: Well, she was just making a lot of
16 gagging noises. You know, actually I have got no scratches on
17 me. I've got no marks. I've got nothing. She wasn't fighting
18 too hard, but I'm pretty good.

19 DETECTIVE BURKE: Was she, she had been drinking a lot
20 though?

21 THE DEFENDANT: We both had, but it wasn't, it wasn't
22 just that. It wasn't just that.

23 DETECTIVE RAFAQUAT: Does your --

24 THE DEFENDANT: I don't, I don't think she really
25 wanted to be alive, to tell you the truth. I, I just had that

1 feeling that she really wanted to die and so I think I did her
2 a favor.

3 DETECTIVE RAFAQUAT: Did she ever ask you, hey, put me
4 out of my misery --

5 THE DEFENDANT: No, no.

6 DETECTIVE RAFAQUAT: Okay.

7 THE DEFENDANT: No, she just seemed like a pathetic
8 fucking soul, man.

9 DETECTIVE RAFAQUAT: Did she offer you some resistance
10 at being choked?

11 THE DEFENDANT: A little bit, a little bit.

12 DETECTIVE RAFAQUAT: Okay.

13 THE DEFENDANT: A little bit, but like I say I'm, I'm
14 real good.

15 DETECTIVE RAFAQUAT: If you were to, if you could
16 rewind that tape back in your head again if you could remember
17 the last words she might have said to you what would, what
18 might have those been?

19 THE DEFENDANT: The only thing I can come up with is,
20 oh, bullshit. I said okay.

21 MR. BURKE: And that was after --

22 THE DEFENDANT: She called bullshit on me and, hey,
23 you know, I said okay.

24 MR. BURKE: That was after her challenge and you
25 responding?

1 THE DEFENDANT: Yeah, and then I responded.

2 DETECTIVE RAFAQUAT: What were, can you recall the
3 expressions on her face as she's I guess --

4 THE DEFENDANT: Yeah. (Inaudible.)

5 DETECTIVE RAFAQUAT: Did you do anything to the body
6 after she was dead?

7 THE DEFENDANT: I may have.

8 DETECTIVE RAFAQUAT: What might have you done?

9 THE DEFENDANT: I might have finished up what I
10 started.

11 DETECTIVE RAFAQUAT: Having sex with her?

12 THE DEFENDANT: Yeah.

13 DETECTIVE RAFAQUAT: When she was dead?

14 THE DEFENDANT: I think so, I'm not sure.

15 DETECTIVE RAFAQUAT: Okay. Terry, let me ask you this
16 question. From the time she says bullshit, (inaudible), we
17 will see, to the time she is dead about how long of a time,
18 how long do you think it took you to kill her?

19 THE DEFENDANT: Five, ten minutes maybe, tops, tops.

20 DETECTIVE RAFAQUAT: And if I was to understand you
21 correctly on what you told me earlier through that five to ten
22 minutes you have no emotions, you're at peace?

23 THE DEFENDANT: Yeah.

24 DETECTIVE RAFAQUAT: Or --

25 THE DEFENDANT: I felt like I was doing her a fucking

1 favor.

2 MR. BURKE: You never thought maybe I better stop or
3 I'm going too far?

4 THE DEFENDANT: Huh-uh, no, not a bit, not a bit, no,
5 no.

6 DETECTIVE RAFAQUAT: Did you know that your act was
7 murder?

8 THE DEFENDANT: That is an interesting question.
9 That's an interesting question. I'm sure I did, and I do, but,
10 you know, it's like so what.

11 DETECTIVE RAFAQUAT: Okay. So, do you know murder is
12 wrong obviously?

13 THE DEFENDANT: Of course.

14 DETECTIVE RAFAQUAT: Okay. So you knew murder was
15 wrong, it didn't make any difference to you?

16 THE DEFENDANT: No. If it did I wouldn't have fucking
17 done it.

18 DETECTIVE RAFAQUAT: So at the time it is fair to say
19 that you knew the difference between right and wrong?

20 THE DEFENDANT: Of course.

21 DETECTIVE RAFAQUAT: And that whatever you were doing
22 was wrong?

23 THE DEFENDANT: I didn't thing it was wrong though.

24 DETECTIVE RAFAQUAT: Okay. What did you think?

25 THE DEFENDANT: I thought I was doing her a favor, and

1 at the same time it made me feel good. See, if you ain't a
2 shrink it's probably --

3 DETECTIVE RAFAQUAT: Yeah, I'm on --

4 THE DEFENDANT: But I thought, I felt, I felt like I
5 was taking her out of her misery and at the same time I was
6 coping some peace behind it, because it is, well, one of the
7 first times since acts of war I've taken a life and felt good
8 about it. Not joyous good, but just peacefully, okay, yeah.
9 The bitch (inaudible) so I kill her, you know, da. Some people
10 just need to be put out of their misery, you know.

11 DETECTIVE RAFAQUAT: She was one of those pathetic
12 souls that needed to have that done to?

13 THE DEFENDANT: Yeah. Do you find humor in this?

14 DETECTIVE BURKE: No, not at all.

15 THE DEFENDANT: Good. Yeah, that is kind of the way I
16 felt. Actually, I'm probably one, too, but I guess I ain't
17 found anybody bad enough to fucking do it yet.

18 DETECTIVE RAFAQUAT: (Inaudible) takes you to kill
19 her?

20 THE DEFENDANT: I would say probably five or ten
21 minutes. I don't know.

22 DETECTIVE RAFAQUAT: After you --

23 THE DEFENDANT: Christ almighty, I had to make sure.

24 DETECTIVE RAFAQUAT: Well, how long --

25 THE DEFENDANT: So, you know, I took my time.

1 DETECTIVE RAFAQUAT: How was it that you made sure? I
2 mean, did you check to make sure she was breathing, a pulse?

3 THE DEFENDANT: I closed her nose up. I had my hand
4 over her mouth. After I strangled her with the fucking belt,
5 then I checked her pulse, nothing, done deal.

6 DETECTIVE RAFAQUAT: Legs kick, arms kick, knock
7 anything down while she was struggling --

8 THE DEFENDANT: No.

9 DETECTIVE RAFAQUAT: -- offering resistance?

10 THE DEFENDANT: Didn't --

11 DETECTIVE RAFAQUAT: Scream anything?

12 THE DEFENDANT: Didn't have a fucking chance.

13 DETECTIVE RAFAQUAT: Okay.

14 THE DEFENDANT: She didn't have a fucking chance to,
15 man. I know what I'm doing when I do this shit.

16 DETECTIVE RAFAQUAT: And you are pretty certain you
17 finished off sex after she was dead, you think?

18 THE DEFENDANT: Yeah, I am pretty sure. I'm pretty
19 sure.

20 DETECTIVE RAFAQUAT: Okay. Did you feel, again, I'm
21 not a shrink, don't get me wrong, but did you feel aroused
22 after her, after she was dead then?

23 THE DEFENDANT: Kind of sort of, yeah, kind of sorta.

24 DETECTIVE RAFAQUAT: Ever fantasize about maybe doing
25 somebody dead?

1 THE DEFENDANT: Yeah, I did.

2 DETECTIVE RAFAQUAT: Had you done anybody dead before?

3 THE DEFENDANT: No, first time.

4 DETECTIVE RAFAQUAT: Did you do her where she was
5 resisting you to do it?

6 THE DEFENDANT: Uh-huh.

7 DETECTIVE RAFAQUAT: You do her in the back?

8 THE DEFENDANT: Uh-huh.

9 DETECTIVE RAFAQUAT: When she was dead?

10 THE DEFENDANT: Uh-huh.

11 DETECTIVE RAFAQUAT: Did you come inside or out?

12 THE DEFENDANT: (Inaudible.)

13 DETECTIVE RAFAQUAT: You think you came?

14 THE DEFENDANT: Uh-huh, I'm pretty sure.

15 DETECTIVE RAFAQUAT: Then --

16 THE DEFENDANT: There would be evidence. Come on,
17 guys, you have got a phone.

18 DETECTIVE BURKE: Is that the only time you had sex
19 with her after she was dead, was after the act?

20 THE DEFENDANT: Yeah. After that I couldn't stand to
21 look at her. I just covered her up, fuck it.

22 DETECTIVE RAFAQUAT: Did she move her, did you move
23 her from that position from where she expired to any other
24 place in the room?

25 THE DEFENDANT: No.

1 DETECTIVE RAFAQUAT: You just left her there?

2 THE DEFENDANT: Yeah.

3 DETECTIVE RAFAQUAT: Covered her up?

4 THE DEFENDANT: Yeah.

5 DETECTIVE BURKE: Where did you sleep after that?

6 THE DEFENDANT: On the other bed.

7 DETECTIVE RAFAQUAT: What decided, what made you
8 decide to call the police and tell us about it?

9 THE DEFENDANT: Interesting. Because I feel like if I
10 didn't get stopped this would not be the last time that I would
11 do something like this, because I found it exciting. I
12 actually enjoyed it.

13 DETECTIVE BURKE: Okay. Prior to her had you gone out
14 walking around looking for a victim?

15 THE DEFENDANT: Not in this town, no. Well, I
16 actually, yeah, in this town, yes, I have, but I picked up a
17 gal before, and, like I said, about a month or so ago, I
18 checked myself into the VA Hospital because I picked up this
19 gal and I had every intention of doing the same fucking thing
20 to her except in the act of bondage she got scared, she got
21 spooked and split, so I didn't get to finish.

22 And I tried to tell them, hey, look, this is really, I
23 don't know what is going on, and they didn't give a fuck, I
24 guess, so, anyway, cut me loose in the community. So but,
25 yeah, I've done it before in other places, but this is the only

1 to take it, as long as I get my say about it.

2 DETECTIVE BURKE: When you say your say are you
3 talking about in court to the judge or to the jury or today
4 talking to us?

5 THE DEFENDANT: Well, I have already given up my
6 rights, and when I go before the judge I'm going to plea, you
7 know, so I'm not asking for a long drawn out thing here. I
8 just want to be heard.

9 DETECTIVE BURKE: Do you feel the people that should
10 have listened to you didn't listen to you?

11 THE DEFENDANT: Uh-huh. Uh-huh. Yeah, I sent up a
12 red flag a long time ago and I think it should have been
13 heeded. Like I said, the reason I called in the first place
14 was because I know damn good and well if I hadn't had this
15 would not be the last one, you know what I'm saying? It was
16 too easy and it felt too good. I don't know what else to say.

17 DETECTIVE RAFAQUAT: The red flag you spoke about,
18 when was that sent out by you?

19 THE DEFENDANT: Well, I told you, I was inpatient at
20 the VA Hospital about a month ago. I told them exactly what
21 was going on in my brain and I don't think they took it
22 seriously. Actually --

23 DETECTIVE BURKE: Is it because you felt that they
24 didn't have time for you or that you just --

25 THE DEFENDANT: I don't know.

1 DETECTIVE BURKE: Or maybe they just didn't understand
2 what you were saying?

3 THE DEFENDANT: I don't know. I have no, I kind of
4 had the idea they thought I was just bull shitting, you know.
5 And it is hard to know, it's hard to know, because they don't
6 have a lot of time to give ya. But I sent the flag up, man,
7 and I wanted somebody to listen to what I was saying and I
8 think I got shined on and then --

9 DETECTIVE RAFAQUAT: Let me ask a question, Terry.

10 THE DEFENDANT: Go ahead.

11 DETECTIVE RAFAQUAT: While you are thinking about
12 answering.

13 THE DEFENDANT: Whatever, yeah.

14 DETECTIVE RAFAQUAT: What kind of intervention had you
15 hoped for? What had you hoped for these people to do for you?

16 THE DEFENDANT: Oh, I don't know, maybe like a long
17 term treatment program or something, some kind of heavy duty
18 psychotherapy, something to get this shit either out or in or
19 something.

20 Because as the years go by, or have gone by, my, as
21 intelligent as I am, my thought processes have, getting like,
22 have gotten, oh, I don't know, weird. I get these thoughts and
23 voices telling me to do things and sometimes I listen,
24 sometimes I don't.

25 DETECTIVE RAFAQUAT: You know, I haven't heard you say

1 this, so I have to assume what I'm about to say is correct.
2 You didn't have a like blackout period when this was happening,
3 did you?

4 THE DEFENDANT: Fuck no, I knew exactly what I was
5 doing.

6 DETECTIVE RAFAQUAT: You remember what happened, I
7 mean, you have given me some pretty good details.

8 THE DEFENDANT: Yeah. I knew exactly what happened.

9 DETECTIVE RAFAQUAT: There's no, there's not a
10 blackout issue here?

11 THE DEFENDANT: No, there is no -- Oh, I hear what, I
12 get where you are going. You want to know if there is like a
13 diminished capacity plea going on here or something. I knew
14 exactly what I was doing.

15 DETECTIVE BURKE: And based on that, since the
16 committing of the act have you showered, or when was the last
17 time that you ate prior to eating here?

18 THE DEFENDANT: This morning.

19 DETECTIVE BURKE: You ate this morning?

20 THE DEFENDANT: Yeah.

21 DETECTIVE BURKE: Where did you eat this morning at?

22 THE DEFENDANT: Top Deck restaurant, Cal-Neva.

23 DETECTIVE BURKE: Did you take a shower in between the
24 death and right now, you cleaned yourself?

25 THE DEFENDANT: Yeah.

1 DETECTIVE BURKE: That was inside the motel room?

2 THE DEFENDANT: Yeah.

3 DETECTIVE BURKE: Okay.

4 THE DEFENDANT: A day or two though. Oh, I see where
5 that's going, too.

6 DETECTIVE BURKE: Where was I going, Terry?

7 THE DEFENDANT: Let's see, where would that be, if
8 anything from her is still on me, probably not.

9 DETECTIVE RAFAQUAT: You don't really care, would that
10 matter if there was something on you?

11 THE DEFENDANT: Not really, not really. I already
12 told you I did it. And not really, I showered, geez, I don't
13 know, a day or two ago.

14 DETECTIVE RAFAQUAT: Do you think alcohol was a factor
15 at the time?

16 THE DEFENDANT: Uhm, possibly, but I wouldn't blame it
17 on that, no.

18 DETECTIVE RAFAQUAT: I didn't, I didn't see you then,
19 I'm seeing you now.

20 THE DEFENDANT: Yeah.

21 DETECTIVE RAFAQUAT: And I had you earlier compare
22 your intoxication level on that night to how you are today.
23 You said about the same?

24 THE DEFENDANT: Yeah, yeah. I handle my alcohol
25 pretty well. However, I go into rages, that is part of the

1 different issues here that could have triggered what you did.

2 One is you had been thinking about doing it. Two is
3 she was a miserable old hag that needed to be put out of her
4 misery, your own, I mean basically your own words, right?
5 Third is she challenged you whether you could kill somebody or
6 not. And fourth is maybe sexual, she may not have approved of
7 you doing her in the ass.

8 THE DEFENDANT: Uh-huh.

9 DETECTIVE RAFAQUAT: Okay. Help me out, will you?
10 I'm not a shrink. Okay. I'm a plain ol' Joe. Help me out, of
11 these four things what is the one, which one of these four is
12 the one that did it for ya and put her where she is now?

13 THE DEFENDANT: I'd have to say probably the
14 challenge.

15 DETECTIVE BURKE: The challenge of actually being able
16 to kill somebody and get away with it or the challenge of her?

17 THE DEFENDANT: Oh, I wasn't planning on getting away
18 with it. I mean, at the time I wasn't even thinking about
19 that. It was just I don't like being challenged by anybody.

20 DETECTIVE BURKE: So you are saying the challenge of
21 her when she says that?

22 THE DEFENDANT: I think that is probably what set me
23 off.

24 DETECTIVE BURKE: When she questioned whether you
25 killed anybody before?

1 THE DEFENDANT: Well, yeah, you know, we're talking
2 and, you know, it got into like some private shit, you know,
3 and here we are naked and everything else, but, I mean, it got
4 kind of private as far as I was concerned and I felt it was
5 like none of her God damn business, and she asked me, she
6 started asking me about stuff and --

7 DETECTIVE BURKE: I don't mean to interrupt you, but
8 what type of stuff?

9 THE DEFENDANT: Experiences and things, okay, and she
10 asked if I ever killed anybody and blah, blah, blah, and I said
11 yes, and she said how? And I said with my hands and she called
12 bullshit on me. I said so you don't think I can? You don't
13 think I will? She goes no, you are not capable, you know.
14 Wrong, wrong thing to say. Wrong fucking thing to say.

15 DETECTIVE RAFAQUAT: And that brings me right to where
16 I need to be. You probably said this about three times to us
17 already. Okay?

18 THE DEFENDANT: Probably. You keep on asking me the
19 same God damn questions.

20 DETECTIVE RAFAQUAT: I know, I know, and I'm one of
21 those people that --

22 THE DEFENDANT: I bet you are smarter than that.

23 DETECTIVE RAFAQUAT: I have just got to have things
24 clear in my head.

25 THE DEFENDANT: Okay.

1 DETECTIVE RAFAQUAT: Okay. She is naked you say for
2 three days for the most part, right?

3 THE DEFENDANT: Yeah.

4 DETECTIVE RAFAQUAT: Prior to her death you guys are
5 having sex?

6 THE DEFENDANT: Uh-huh.

7 DETECTIVE RAFAQUAT: Are you guys actually having sex
8 or are you guys just in bed naked talking?

9 THE DEFENDANT: Oh, we're fooling around, fiddling
10 around.

11 DETECTIVE RAFAQUAT: Okay.

12 THE DEFENDANT: See, I was drinking a lot and when I
13 do that I'm like this and ain't no real sex going to happen, so
14 like we were just kind of playing around with each other a lot
15 and talking and shit, and I think that was kind of frustrating
16 for me, too. And then here comes the challenge.

17 DETECTIVE RAFAQUAT: And --

18 THE DEFENDANT: And the challenge somehow woke
19 something up inside of me.

20 DETECTIVE RAFAQUAT: Did that, did not being able to
21 arouse make you feel inadequate? Did she challenge that as
22 well?

23 THE DEFENDANT: Yeah.

24 DETECTIVE RAFAQUAT: Did that play a part?

25 THE DEFENDANT: Yeah, I think so. I think so, because

1 three fucking days, two days, whatever the hell.

2 DETECTIVE BURKE: And it was of her own free will that
3 she did that?

4 THE DEFENDANT: You bet. You bet.

5 DETECTIVE BURKE: So she could have gotten up and
6 walked out of there?

7 THE DEFENDANT: She could have gone, she could have
8 whatever.

9 DETECTIVE BURKE: Let me ask you this, when you first
10 met her and you were spending the first night with her, did you
11 start thinking, hey, I'm going to do this, I'm going to kill
12 this girl?

13 THE DEFENDANT: That is hard to say, but, yeah, I
14 think you are right. Like I say, it was like way too easy.

15 DETECTIVE BURKE: Is there anything in particular that
16 caused you to think that this is the girl that I'm going to do
17 it to?

18 THE DEFENDANT: Poor pathetic little kid that needs to
19 be relieved of her fucking misery. She's a, yeah, I think that
20 was probably on my mind right away as soon as she started
21 talking to me about, you know, the problems she was having and
22 all.

23 DETECTIVE RAFAQUAT: Hey, Terry, please help me.
24 Maybe it's clear with his mind, it really is not in mine. We
25 have talked about, as I look back in my notes, about three

1 PTSD, but I suppose alcohol might enhance that. But, no, I
2 knew exactly what I was doing while it was going on and I
3 actually had -- well, I left the room for about, oh, God, I
4 don't know, three or four hours earlier.

5 And then I came back, and, well, she was ragging me
6 about I should have come right back with another bottle, and I
7 told her, hey, it ain't going to happen. I'm going to take my
8 sweet time. I'm going to go drink a couple of beers, play a
9 couple of games of Keno, you know, socialize, do whatever the
10 fuck, just chill for awhile. I'll be back.

11 And then when I came back she started ragging my ass.
12 Well, I brought a bottle back and everything, but she started
13 ragging my ass about, you know, where have you been. She
14 sounded like a fucking wife, and I didn't really feel she had a
15 right to do that.

16 DETECTIVE BURKE: Terry, when you're talking when
17 she's basically nagging at you.

18 THE DEFENDANT: Uh-huh.

19 DETECTIVE BURKE: In the room was she free to move
20 around? Did you have her --

21 THE DEFENDANT: Oh, yeah, fuck, yeah.

22 DETECTIVE BURKE: You didn't tie her up?

23 THE DEFENDANT: Nope, nope.

24 DETECTIVE RAFAQUAT: Keep her locked up?

25 THE DEFENDANT: She had her fucking clothes off for

1 time I've ever killed anybody in this manner, in this method
2 about this.

3 And the other stuff I have already done time about and
4 everything else. Most of them were like attempted shit and
5 like second degree assaults and stuff. And other ones somebody
6 else has already taken the fall for, so I don't God damn
7 matter. I'm not talking about anything else.

8 DETECTIVE RAFAQUAT: Just to expand on his question
9 that he asked you if you had actively gone out looking for a
10 similar type of victim, when you were looking for this victim,
11 and I think you may have answered it and I might have missed it
12 because I was taking notes, when you were looking for this
13 victim were you looking to have these sexual acts with this
14 person and then, then kill this person?

15 THE DEFENDANT: Uh-huh.

16 DETECTIVE RAFAQUAT: Why are you looking for these
17 people?

18 THE DEFENDANT: Yeah.

19 DETECTIVE RAFAQUAT: Okay. And what are the sexual
20 acts that you fantasize about?

21 THE DEFENDANT: Oh, just totally taking advantage and
22 control, you know, just finding somebody so God damn gullible
23 and easy that you can do any God damn thing you want.

24 DETECTIVE RAFAQUAT: You like, you like doing women in
25 the ass, is that one of the things you fantasize about?

1 THE DEFENDANT: Now, that's kind of an odd ass
2 question. It's usually tighter than the other one. Well, some
3 of them like it, some don't.

4 DETECTIVE RAFAQUAT: I'm just asking your preference.

5 THE DEFENDANT: Well --

6 DETECTIVE RAFAQUAT: Do you like it?

7 THE DEFENDANT: Ah, if it's tighter than her pussy,
8 yeah. In most cases it is, but, you know, it just depends, you
9 know, some girls, some girls don't want to give head, some of
10 them do.

11 It's usually, well, see it's the thing that, it's the
12 thing that most of them find most, oh, I don't know, nasty or
13 despicable or just don't want to do. So, of course, that is
14 going to make it a challenge. It is not my preference, no, but
15 it is just the most challenging. Some girls like it, some
16 girls don't.

17 DETECTIVE BURKE: Are you looking for a certain type
18 of girl, anybody in particular, a street person or anybody that
19 you can find?

20 THE DEFENDANT: Well, pretty much anybody gullible to
21 fall for my bullshit, you know, desperate street girl, or
22 whatever, you know, I don't know.

23 DETECTIVE BURKE: What type of time frame are we
24 talking about where this girl gets away in bondage to this act
25 actually being committed?

1 THE DEFENDANT: I don't get the question.

2 DETECTIVE BURKE: The first time where you say that
3 the girl got away, how long of a time frame before you find
4 this other girl and you take her home?

5 THE DEFENDANT: About a month.

6 DETECTIVE RAFAQUAT: Both in Reno, though?

7 THE DEFENDANT: Yeah.

8 DETECTIVE RAFAQUAT: And she got away, because she
9 didn't want to participate in your, in your act?

10 THE DEFENDANT: I don't know. I don't know. She got
11 spooked' and I let her go.

12 DETECTIVE RAFAQUAT: Had you actually gone out and
13 paid to have your sexual needs satisfied, hookers?

14 THE DEFENDANT: Oh, before, yeah, years ago, yeah.

15 DETECTIVE RAFAQUAT: Not recently?

16 THE DEFENDANT: I paid money for that shit, yeah.

17 Where is this going? You are taking a lot of time on
18 your tape here, guys.

19 DETECTIVE RAFAQUAT: We have got plenty of tapes.

20 DETECTIVE BURKE: Plenty of tapes, plenty of time.

21 THE DEFENDANT: Yeah, all right. I'm getting bored.

22 DETECTIVE RAFAQUAT: Anything you want to talk about?

23 THE DEFENDANT: Fuck no.

24 DETECTIVE BURKE: Something else to drink? We're
25 going to go take a break here.

1 THE DEFENDANT: No, I'm all done.

2 DETECTIVE RAFAQUAT: Okay. We are going to take a
3 break. We're going to give you a break, okay? We're going to
4 call and see if there is anything --

5 THE DEFENDANT: I'm out of cigarettes. I don't need
6 no more breaks.

7 DETECTIVE BURKE: (Inaudible.) Let me get you
8 straight here. I don't smoke, so don't get any ideas on this
9 brand. Okay. There you go. There you go.

10 THE DEFENDANT: Yeah, well, what, why would I get
11 ideas about the brand? What are you trying to say, man?

12 DETECTIVE BURKE: Off tape. The time is 1826.

13 Do you want another one? All right. Got another one.

14 DETECTIVE RAFAQUAT: Do you want something different
15 than coke?

16 THE DEFENDANT: No, that's fine.

17 DETECTIVE RAFAQUAT: You want --

18 THE DEFENDANT: That's my favorite actually.

19 DETECTIVE RAFAQUAT: It is? Okay. Give me about five
20 to ten minutes.

21 THE DEFENDANT: Cool.

22 DETECTIVE RAFAQUAT: All right?

23 THE DEFENDANT: You got it. I ain't going nowhere I
24 don't think.

25 DETECTIVE BURKE: Not right now.

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(Whereupon the detectives left the interview room.)

THE DEFENDANT: Yeah. Fucking cold. (Inaudible).

(Whereupon the detectives returned to the interview room.)

DETECTIVE RAFAQUAT: You know what?

THE DEFENDANT: What?

DETECTIVE RAFAQUAT: No coke now, Pepsi is going to have to' do.

THE DEFENDANT: That will work.

DETECTIVE RAFAQUAT: Choice of the next generation.

THE DEFENDANT: That's true, same shit anyway.

DETECTIVE RAFAQUAT: A few more follow-up questions.

THE DEFENDANT: How much more do you have?

DETECTIVE RAFAQUAT: What are you, what did you say over there to us?

THE DEFENDANT: What?

DETECTIVE RAFAQUAT: Cross all of the T's, dot all of the I's.

THE DEFENDANT: Yeah, yeah, yeah.

DETECTIVE RAFAQUAT: Yeah, okay.

THE DEFENDANT: Shit, thanks.

DETECTIVE BURKE: No problem.

1 Okay. Transcriber, we will be back on tape again.
2 The time is 1840. Still present is Terry Dennis and myself,
3 Detective Burke, and Detective Rafaquat.

4 DETECTIVE RAFAQUAT: So Terry --

5 THE DEFENDANT: Yeah.

6 DETECTIVE RAFAQUAT: -- after she is dead, how soon
7 after you have that sexual act with her, is it immediately, do
8 you wait a few minutes, a few hours or what?

9 THE DEFENDANT: It was like during, you know, it was
10 like during --

11 DETECTIVE BURKE: So you're strangling her and having
12 sex with her at the same time?

13 THE DEFENDANT: Yeah.

14 DETECTIVE BURKE: I didn't hear you, yes?

15 THE DEFENDANT: As near as I can recall, yes.

16 DETECTIVE BURKE: What did you --

17 THE DEFENDANT: I'm not real clear about this.

18 DETECTIVE RAFAQUAT: Okay. The best you can
19 remember --

20 THE DEFENDANT: Yeah.

21 DETECTIVE RAFAQUAT: -- how was she positioned?

22 Actually, let me tell you, let me stop you before you answer
23 that question, because in a few minutes I'm going to have you
24 go through for me positioning the --

25 THE DEFENDANT: Well, you already asked me once.

1 DETECTIVE RAFAQUAT: How things started and how things
2 ended. I'm just not clear in my head, that's all.

3 THE DEFENDANT: Well, I know you have got it written
4 down, I watched ya.

5 DETECTIVE RAFAQUAT: Okay. Since her death how many
6 times total do you think you left your room?

7 THE DEFENDANT: Oh, Christ, three or four.

8 DETECTIVE RAFAQUAT: And where did you go?

9 THE DEFENDANT: Oh, I went to the Cal-Neva a couple of
10 times. I went to the store for more liquor and beer and stuff.

11 DETECTIVE RAFAQUAT: (Inaudible.)

12 THE DEFENDANT: Whatnot.

13 DETECTIVE BURKE: Was this during the day or the night
14 or both?

15 THE DEFENDANT: During the day. I slept during the
16 night pretty much, I mean, when I woke up.

17 DETECTIVE RAFAQUAT: To the best of your recollection
18 do you think you killed her on Saturday night, am I right, on
19 the 6th?

20 THE DEFENDANT: I think so. I think so.

21 DETECTIVE RAFAQUAT: About what time might that have
22 been.

23 THE DEFENDANT: I couldn't tell you. I couldn't tell
24 you.

25 DETECTIVE RAFAQUAT: Early night, late night,

1 midnight?

2 THE DEFENDANT: I don't know. I don't know.

3 DETECTIVE RAFAQUAT: At night?

4 THE DEFENDANT: It was dark.

5 DETECTIVE RAFAQUAT: Okay.

6 THE DEFENDANT: So, yeah, I don't know, probably
7 midnight, maybe close to midnight. I don't know.

8 DETECTIVE RAFAQUAT: Did you, after you killed her,
9 did you put -- let me go back. Let me ask, did you have room
10 service normally everyday?

11 THE DEFENDANT: Fuck no.

12 DETECTIVE BURKE: Did you put out a sign that you
13 didn't want to be bothered?

14 THE DEFENDANT: No, no. I rented the room for a
15 fucking week. They had no business being in there, so I wasn't
16 worried about it.

17 DETECTIVE BURKE: Did the maid come to the door at
18 all?

19 THE DEFENDANT: No, no.

20 DETECTIVE RAFAQUAT: Did anybody --

21 THE DEFENDANT: No.

22 DETECTIVE RAFAQUAT: -- come to the door at all?

23 THE DEFENDANT: No. When you rent a room for a week
24 they have no reason to come in the room.

25 DETECTIVE RAFAQUAT: I understand. I understand.

1 THE DEFENDANT: All right.

2 DETECTIVE RAFAQUAT: Do you have any acquaintances
3 that knew you were staying in the room and may have come to
4 visit you in the room, that is what I'm getting at?

5 THE DEFENDANT: Huh-uh.

6 DETECTIVE RAFAQUAT: Okay. Who else knew that you
7 were staying in this motel room other than you obviously?

8 THE DEFENDANT: The manager.

9 DETECTIVE RAFAQUAT: Okay. Any of your acquaintances,
10 friends?

11 THE DEFENDANT: No, no, why do you ask?

12 DETECTIVE RAFAQUAT: To see if anybody might have come
13 and you may have not opened the door or you might have been
14 there or any of that stuff.

15 THE DEFENDANT: No, nobody came in the room, nobody
16 knocked on the door. After the, the day after I picked her up
17 when I was in that other room.

18 DETECTIVE BURKE: 210.

19 THE DEFENDANT: Yeah.

20 DETECTIVE BURKE: Okay.

21 THE DEFENDANT: They came and knocked on the door and
22 asked me to vacate that room and go upstairs to this other room
23 because somebody else had requested that room because it was a
24 nonsmoking room supposedly.

25 So, you know, there she was in the bed and everything

1 with me. I believe it was the room service, other than the
2 janitor guy or whatever the fuck, they usually have women to do
3 that but this is a dude. I think it was him, but it might have
4 been somebody else.

5 Anyway, saw her in there and I'm sure saw us leave and
6 go upstairs. So if you needed someone to verify, yeah, okay,
7 there was somebody there, I'm not sure who, one of the people
8 in the motel staff there. That's as close as I can come to
9 answering your question. Okay?

10 DETECTIVE RAFAQUAT: Were you at any time worried
11 about discovery of the body while you were out on two or three
12 occasions?

13 THE DEFENDANT: No, no way. Why would I?

14 DETECTIVE RAFAQUAT: Because there's a dead person in
15 the room.

16 THE DEFENDANT: Yeah.

17 DETECTIVE RAFAQUAT: You weren't concerned about that?

18 THE DEFENDANT: No, why would I? Like I said, I did
19 her a fucking favor. Why would I be concerned about that?

20 DETECTIVE BURKE: Well, in most motels sometimes the
21 maid accidentally comes into the room or the manager
22 accidentally comes in.

23 THE DEFENDANT: Oh, I see where you are coming from,
24 yeah.

25 DETECTIVE BURKE: Well, did you hide the body at all?

1 THE DEFENDANT: No.

2 DETECTIVE BURKE: You just left her in the bed?

3 THE DEFENDANT: Left her on the bed and covered her
4 up.

5 DETECTIVE RAFAQUAT: Hey, Terry, you killed somebody.

6 THE DEFENDANT: Yeah.

7 DETECTIVE RAFAQUAT: That's the legal definition of
8 taking somebody's life is killing somebody.

9 THE DEFENDANT: Yeah.

10 DETECTIVE RAFAQUAT: What do you think should happen
11 to you or somebody who does a similar act?

12 THE DEFENDANT: Well, better question, I have got one
13 for you, who gives a fuck?

14 DETECTIVE RAFAQUAT: I'm just asking your state of
15 mind.

16 THE DEFENDANT: I did her a God damn favor.

17 DETECTIVE RAFAQUAT: You did.

18 THE DEFENDANT: Okay. I took her out of her fucking
19 misery. How should I feel?

20 DETECTIVE RAFAQUAT: How should you be treated then,
21 what should happen to you?

22 THE DEFENDANT: How should I feel? I mean, I feel
23 okay about it. I'm not, like I'm not worried. Okay.

24 DETECTIVE BURKE: So if you got the death penalty that
25 would be okay with you?

1 THE DEFENDANT: Sure, sure.

2 DETECTIVE BURKE: Or 40 years in prison or life in
3 prison?

4 THE DEFENDANT: I would rather have a God damn death
5 penalty than 40 years in prison. I mean, I've spent time in
6 prison before and it's a drag, but one way or the other I don't
7 really give a fuck.

8 DETECTIVE RAFAQUAT: So should there be a (inaudible)
9 or maybe a sanction or a penalty?

10 THE DEFENDANT: About what?

11 DETECTIVE RAFAQUAT: For doing what you did?

12 THE DEFENDANT: Well, I think it would depend on the
13 mindset of whoever decided that.

14 DETECTIVE RAFAQUAT: Your mindset is what I'm asking.

15 THE DEFENDANT: In my mindset?

16 DETECTIVE RAFAQUAT: Yeah.

17 THE DEFENDANT: I did the bitch a favor.

18 DETECTIVE RAFAQUAT: So your --

19 THE DEFENDANT: Why should I be penalized for that?

20 DETECTIVE RAFAQUAT: So you feel nothing should happen
21 to you?

22 THE DEFENDANT: I wouldn't say that, because I do know
23 the difference between right and wrong; however, I don't think
24 actually that I did anything wrong. I think I just helped
25 someone out of their misery.

1 DETECTIVE RAFAQUAT: So, again, you think that nothing
2 should happen to you?

3 THE DEFENDANT: I didn't say that. Like I said, I do
4 know the difference between right and wrong; however, in this
5 instance I don't think I did anything wrong. So, in the
6 society's eye I'm sure there is a penalty. In my own eyes, not
7 that there should be a reward, but there should be some kind of
8 justice, some kind of leniency. Like I said, I did the bitch a
9 favor.

10 DETECTIVE RAFAQUAT: What kind of leniency?

11 THE DEFENDANT: Oh, I don't know, eye for an eye.

12 DETECTIVE RAFAQUAT: That is not leniency, that's --

13 THE DEFENDANT: Justice.

14 DETECTIVE RAFAQUAT: -- justice?

15 THE DEFENDANT: Yeah.

16 DETECTIVE RAFAQUAT: So you said that there should be
17 some sort of leniency for something that --

18 THE DEFENDANT: I changed my mind.

19 DETECTIVE RAFAQUAT: Oh, okay.

20 THE DEFENDANT: Okay. I believe that would be a just
21 thing, yeah, an eye for an eye, a life for a life.

22 DETECTIVE RAFAQUAT: Do you think you should be
23 punished then for what you did?

24 THE DEFENDANT: I don't think I should be rewarded.
25 If society sees that that's the right thing to do, I'm willing

1 I don't remember the exact words, but, yeah, there was a
2 challenge there, too.

3 DETECTIVE RAFAQUAT: So you're in bed, you've been
4 drinking. You usually have a difficulty getting a hard on
5 or --

6 THE DEFENDANT: Well, drinking that much, I mean --

7 DETECTIVE RAFAQUAT: When you are drinking so much.

8 THE DEFENDANT: For days and days.

9 DETECTIVE RAFAQUAT: And you guys are in the bed
10 fooling around?

11 THE DEFENDANT: Yeah.

12 DETECTIVE RAFAQUAT: Maybe she teases you about you
13 not being able to get it up, that pisses you off. Okay? And
14 then you, and then the conversation about being Vietnam and
15 being able to kill anybody, okay, and you, and has the sexual
16 act even the actual intercourse started? Are you guys laying
17 side by side, she on top of you, you on top of her?

18 THE DEFENDANT: I was on top of her and, well, I was
19 straddling her, I think. I took my belt and wrapped it around
20 her neck and just started cranking on it.

21 DETECTIVE RAFAQUAT: Okay. Can you do me a favor real
22 quick? I'm going to ask you to stand up for me for a second.
23 Pretend for a second this black part here is the bed. Okay?

24 THE DEFENDANT: The what?

25 DETECTIVE RAFAQUAT: The bed that you guys are on.

1 THE DEFENDANT: The black part?

2 DETECTIVE RAFAQUAT: Yeah. You guys are on this bed
3 here. If you could stand up for me and demonstrate for me how
4 it is that you used that belt to choke her with the belt.

5 THE DEFENDANT: Well, which way is the bed going?

6 DETECTIVE RAFAQUAT: It is here, it's laying --

7 THE DEFENDANT: What, just like this?

8 DETECTIVE RAFAQUAT: This is the head portion and this
9 is the leg portion of the bed.

10 THE DEFENDANT: Okay. Well, I had my other pair of
11 pants on the floor. I reached down. We was fooling around.

12 DETECTIVE RAFAQUAT: Okay. You are on top of her,
13 right?

14 THE DEFENDANT: Yeah, and I reached down.

15 DETECTIVE RAFAQUAT: And she's just --

16 THE DEFENDANT: And grabbed my belt, pulled it out of
17 my fucking belt loops, took it out, slid it under her neck. I
18 was on top of her. I just went like this and held on.

19 DETECTIVE RAFAQUAT: You slid the belt from above the
20 head, then and brought it like this?

21 THE DEFENDANT: No. I just snuck it under her neck
22 underneath the pillow, pulled it up, cranked on it and sat on
23 top of her so she would quit wiggling and shit, and then I held
24 her fucking nose, put my hand on her mouth to make sure she
25 wasn't breathing. Okay?

1 DETECTIVE RAFAQUAT: You said you choked her, in
2 addition to suffocating her you choked her?

3 THE DEFENDANT: Yeah, I did that, too. I had my
4 knuckles in her fucking windpipe.

5 DETECTIVE RAFAQUAT: Okay. And this takes about you
6 said five or ten minutes?

7 THE DEFENDANT: Yeah, five or ten minutes, yeah,
8 something like that. And while she was still struggling, I
9 rolled her over on her fucking stomach. I was aroused then and
10 fucked her in the ass.

11 DETECTIVE RAFAQUAT: How were you doing, could you
12 give me your hand positioning for me if you don't mind? Where
13 was your hands at the time?

14 THE DEFENDANT: I don't know, Jesus Christ.

15 DETECTIVE RAFAQUAT: If you could.

16 THE DEFENDANT: I don't know.

17 DETECTIVE RAFAQUAT: You said you rolled her over and
18 she was maybe still alive, where is your hands?

19 THE DEFENDANT: Well, I had one hand on her nose and I
20 had the other one on her mouth and stuck my leg up under her
21 and flipped her over and was on top of her and held onto her.

22 DETECTIVE RAFAQUAT: Was she flat? Did you turn her
23 into a doggy? What did you do?

24 THE DEFENDANT: Pretty much, yeah. I spread her legs
25 out with my knee, while making sure while I was choking her out

1 and keeping her from breathing.

2 DETECTIVE RAFAQUAT: Do you think she died, do you
3 think she was dead beforehand or do you think she died during
4 your doing her in the back or she died afterwards?

5 THE DEFENDANT: I don't know. I don't know. I can't
6 say for sure. I don't know. I don't know.

7 DETECTIVE RAFAQUAT: How long did it take you to
8 finish to cum?

9 THE DEFENDANT: I don't know. I don't know.

10 DETECTIVE BURKE: If she had survived your attack and
11 after you performed the sexual act if she would have survived
12 would you have still killed her?

13 THE DEFENDANT: Yeah. Well, that was a done deal
14 anyway from the get.

15 DETECTIVE BURKE: When you first see --

16 THE DEFENDANT: Pretty much when I first met her.

17 DETECTIVE BURKE: You thought that --

18 THE DEFENDANT: Idea that if, you know, I can talk her
19 into --

20 DETECTIVE BURKE: Coming back to.

21 THE DEFENDANT: Coming back to my crib, then done
22 deal, done deal.

23 DETECTIVE BURKE: But you had left her alone a few
24 times --

25 THE DEFENDANT: Yeah, yeah.

1 DETECTIVE RAFAQUAT: -- where she had the opportunity
2 to leave if she wanted to?

3 THE DEFENDANT: She had the opportunity to leave if
4 she needed to and wanted to, yeah.

5 DETECTIVE RAFAQUAT: And you wanted to fulfill --

6 DETECTIVE BURKE: What had changed your mind to allow
7 you to leave and if she had left it would have been okay?
8 Since you were, when you first met her, you were thinking once
9 I get her back she is done. I'm going to do her.

10 THE DEFENDANT: Well, I wanted to see if I could charm
11 her into staying, you know, and I did. She could have left
12 while, when I left to go to the club or whatever she could have
13 left, done whatever. She could have made a phone call. She
14 could have done whatever, but didn't. So then I knew, you
15 know, I had her. Then I knew.

16 If she had someone to call or anything else she would
17 have done it. If she had somewhere to go, she would have done
18 it. But I had, I was treating her real nice, giving her plenty
19 to drink.

20 DETECTIVE RAFAQUAT: Is that part of the plan because
21 you didn't want her to go, is that why, was that why you were
22 doing the nice things to her?

23 THE DEFENDANT: Uh-huh.

24 DETECTIVE RAFAQUAT: That you didn't want her to go?

25 THE DEFENDANT: Of course not.

1 DETECTIVE RAFAQUAT: Is that because you learned
2 something from the month earlier incident? Did you learn
3 something from that that you did new on this one?

4 THE DEFENDANT: You could probably say that, yeah.

5 DETECTIVE RAFAQUAT: What did you learn in the first
6 one where it was a failed attempt to this one?

7 THE DEFENDANT: Take it a little slower, take it a
8 little slower and charm, man. See, I scared the other one and
9 I was in kind of a rush. And when I started tying her up and
10 shit, she got all freaked.

11 DETECTIVE RAFAQUAT: Did you like the tying?

12 THE DEFENDANT: I just thought I would try it.

13 DETECTIVE RAFAQUAT: Did you like being in control,
14 domineering?

15 THE DEFENDANT: Oh, fuck, yeah. What man doesn't?

16 DETECTIVE RAFAQUAT: Is it a challenge to you then
17 when they start struggling with you and then resist whatever it
18 is that you want to do?

19 THE DEFENDANT: Not really. I don't consider myself a
20 rapist or anything. I actually never believed in that. Too
21 many women willing to give it up, you don't have to steal it
22 from them. But I don't know, I guess something took control of
23 me this time. It was like, yeah, I got her. She's a fly in my
24 fucking web, man.

25 DETECTIVE BURKE: Is this thinking, is this like

1 because you have read books or you have seen people in like
2 Bundy and you have said, hey, if this guy can do it I can do
3 it?

4 THE DEFENDANT: No, this ain't no copycat shit, man.
5 It is just stuff that is going on in your fucking head here.
6 And it has been for awhile. Because of the society I have
7 tried to fight it and not, you know, act on it and things like
8 that.

9 But, like I say, as time goes by, I just came to the
10 point where I really don't give a shit. I don't care what
11 people think. This is me. I'm doing what I want and fuck what
12 everybody else thinks. I don't care.

13 DETECTIVE RAFAQUAT: Terry, fantasy is one thing,
14 being told in your head to do something is another. In your
15 case would you say what you did was a fantasy or people from
16 Mars in your head telling you what to do?

17 THE DEFENDANT: Oh, no, it was acting on fantasy.
18 Nobody, nobody else told me to do it, especially people from
19 Mars for Christ's sake.

20 DETECTIVE RAFAQUAT: No little green guys running
21 around in your head telling you to do shit?

22 THE DEFENDANT: Of course not. Of course not. Hell,
23 for all I know we are all from Mars. Fuck, I don't know.

24 DETECTIVE RAFAQUAT: Um.

25 THE DEFENDANT: Yeah, just something I had in my mind

1 for awhile and I found a victim and I acted on my impulses.

2 DETECTIVE BURKE: But Terry, let's for second, when
3 you leave the motel room and you go get the, more liquor, what
4 happens to those receipts? Do you keep those receipts or --

5 THE DEFENDANT: (Inaudible.) No receipts from those
6 stores.

7 DETECTIVE BURKE: So there is no paper or --

8 THE DEFENDANT: No. There's empty bottles in the room
9 except for the ones I threw away.

10 DETECTIVE RAFAQUAT: Hey, Terry, the reason he is
11 asking --

12 THE DEFENDANT: They don't give you receipts.

13 DETECTIVE RAFAQUAT: Terry, the reason he's asking you
14 is very important for us to establish a time.

15 THE DEFENDANT: They don't give you receipts.

16 DETECTIVE RAFAQUAT: Let's do this, let's work
17 backwards from then, if we can. Okay?

18 THE DEFENDANT: Okay.

19 DETECTIVE RAFAQUAT: You call us. Prior to calling us
20 what had you done during the day?

21 THE DEFENDANT: I ran out of liquor, went to my bank.

22 DETECTIVE RAFAQUAT: What time did you go to the bank?

23 THE DEFENDANT: Oh, Jesus, just shortly after 9:00.

24 DETECTIVE RAFAQUAT: And which bank is that?

25 THE DEFENDANT: Wells Fargo.

1 DETECTIVE RAFAQUAT: Which one?

2 THE DEFENDANT: Well, the one down on, what is it,
3 Center, Virginia? Between the two there, 200 whatever, South
4 Virginia. Anyway --

5 DETECTIVE RAFAQUAT: Okay.

6 THE DEFENDANT: I had like \$9.91, and then I drew out
7 my \$9 and then I went to MG's and got a pack of cigarettes.
8 It's right there on Center Street.

9 DETECTIVE RAFAQUAT: Is that where Ben's liquors used
10 to be?

11 THE DEFENDANT: Uh-huh. And then I went to Cal-Neva
12 and had, oh, geez, I don't know, three or four beers, and then
13 I went up to Top Deck to have something to eat and went back to
14 the motel.

15 DETECTIVE BURKE: Do you remember what you had to eat
16 this morning?

17 THE DEFENDANT: Yeah, the same thing I always eat up
18 there. They have breakfast specials, sausage, scrambled and
19 sourdough, and then I went back to the motel. No, no, I went
20 to, where the fuck did I go? Oh, I went to the Fireside and
21 got a quart of beer, went back to the motel and drank it and
22 then dialed 911.

23 DETECTIVE RAFAQUAT: Let's take a break. Are you
24 doing all right?

25 THE DEFENDANT: Yeah, I'm doing all right. I'm doing

1 all right, probably have to take a piss before we go anywhere
2 actually, not just yet.

3 DETECTIVE RAFAQUAT: All right. You let us know. Do
4 you want anything else to eat?

5 THE DEFENDANT: No, man. I'm fine, thanks.

6 DETECTIVE RAFAQUAT: Okay.

7 THE DEFENDANT: I'm fine all the way around.

8 DETECTIVE RAFAQUAT: All right.

9 DETECTIVE BURKE: Do you have enough smokes?

10 THE DEFENDANT: Yeah, thank you very much for that.

11

12 (Whereupon the detectives left the interview room.)

13

14 THE DEFENDANT: (Inaudible).

15

16 (Whereupon the detectives returned to the interview room.)

17

18 DETECTIVE RAFAQUAT: Are you okay?

19 THE DEFENDANT: Yeah. The booze is starting to wear
20 off.

21 DETECTIVE BURKE: Do you want to get up and walk
22 around for a couple minutes?

23 THE DEFENDANT: No, I'd rather stay right where I'm
24 at.

25 DETECTIVE RAFAQUAT: Okay. Do You need to go to the

1 restroom or anything like that?

2 THE DEFENDANT: In a little while.

3 DETECTIVE RAFAQUAT: All right, you let us know.

4 DETECTIVE BURKE: Terry, are you on medication right
5 now, did you need any?

6 THE DEFENDANT: No, I haven't. It has been about a
7 week since I have taken anything.

8 DETECTIVE BURKE: Okay. You told me that, I just
9 wanted to make sure.

10 THE DEFENDANT: No, I'm just --

11 DETECTIVE RAFAQUAT: Do you need anything right now
12 that's in your room, that you, anything that you can't be
13 without?

14 THE DEFENDANT: No.

15 DETECTIVE BURKE: Do you want some medical attention?

16 THE DEFENDANT: No. I'm just starting to do
17 withdrawals from the booze, man, that's all.

18 DETECTIVE RAFAQUAT: All right. Okay.

19 THE DEFENDANT: So I'm just getting real shaky and
20 this way, you know.

21 DETECTIVE RAFAQUAT: I'm going to have some coffee.

22 THE DEFENDANT: Knock yourself out, man.

23 DETECTIVE RAFAQUAT: You want some coffee?

24 THE DEFENDANT: No, fuck no.

25 DETECTIVE RAFAQUAT: Knock it all over everywhere.

1 Okay, 25 after.

2 DETECTIVE BURKE: Transcriber, this will be in
3 reference to the same interview with Detective Rafaquat, and
4 myself, Burke, and Terry Dennis. The case number is 64128-99,
5 and we went off tape because the last one ran out at 1911 hours
6 and we will start this part of the interview at 1925 hours.
7 Okay. Basically, we have almost everything covered here.

8 THE DEFENDANT: You should have by now.

9 DETECTIVE BURKE: Well, you know, like we said
10 throughout the night, dotting the T's and crossing -- dotting
11 the I's' and crossing the T's.

12 THE DEFENDANT: Whatever.

13 DETECTIVE RAFAQUAT: Terry, how do you feel about the
14 street people in general?

15 THE DEFENDANT: Well, that is a rough one, because I
16 lived on the streets here for awhile. In general, I think most
17 of them could do better, do something to help themselves, but I
18 mean most of them are pretty happy just being bums.

19 DETECTIVE RAFAQUAT: Street hookers, what do you think
20 of them?

21 THE DEFENDANT: What?

22 DETECTIVE RAFAQUAT: Street hookers, hookers.

23 THE DEFENDANT: What do I think about them?

24 DETECTIVE RAFAQUAT: Yeah.

25 THE DEFENDANT: Nothing one way or the other really.

1 DETECTIVE RAFAQUAT: Any feeling that you think they
2 are worthless and --

3 THE DEFENDANT: No, just trying to make a living, what
4 comes natural and shit.

5 DETECTIVE RAFAQUAT: I would like to narrow it down to
6 black street hookers. Are you okay with them?

7 THE DEFENDANT: I don't see no difference between
8 black and white hookers. Black, white, Indian, Chinese, it
9 don't matter, a hooker is a hooker, fuck.

10 DETECTIVE RAFAQUAT: One of the reasons we took a
11 break, I wanted to give you a break, for us to gather our
12 thoughts, because when you start talking and --

13 THE DEFENDANT: Yeah, I know what you are doing. You
14 don't have nothing on me.

15 DETECTIVE RAFAQUAT: I went back and I looked at my
16 notes and I noticed not necessarily an inconsistency, or maybe
17 I may have wrote it down wrong. When we initially started
18 talking to you, we were talking about sexual acts between you
19 and her prior to killing her.

20 THE DEFENDANT: Uhm.

21 DETECTIVE RAFAQUAT: You mentioned something that you
22 wanted to do her in the ass and she resisted.

23 THE DEFENDANT: Uh-huh.

24 DETECTIVE RAFAQUAT: So you turn her over and started
25 doing her the other way and then the killing came in.

1 THE DEFENDANT: Uh-huh.

2 DETECTIVE RAFAQUAT: And then you went back and
3 finished what you had started referring to doing her in the
4 back.

5 THE DEFENDANT: Uh-huh.

6 DETECTIVE RAFAQUAT: The most recent statement you
7 gave us is your manhood is challenged.

8 THE DEFENDANT: Uh-huh.

9 DETECTIVE RAFAQUAT: Because you can't, you have
10 difficulty getting aroused when you're drunk.

11 THE DEFENDANT: Uh-huh.

12 DETECTIVE RAFAQUAT: You're pissed off with that, you
13 guys were playing around, you were straddling her. She
14 challenges your capability to kill someone.

15 THE DEFENDANT: Uh-huh.

16 DETECTIVE RAFAQUAT: You take the belt out, you choke
17 her with the belt.

18 THE DEFENDANT: Uh-huh.

19 DETECTIVE RAFAQUAT: You muffle her with your, with
20 your hands and turn her over and do her in the back. Which one
21 is right? I mean, which one is more accurate?

22 THE DEFENDANT: I'm not sure. I'm not sure. The
23 killing is jumbled up, you know, kind of. It's all kind of
24 mixed up. In my mind it's just, it was all like one thing.
25 I'm not sure which, what's the real deal. I'm not sure.

1 DETECTIVE RAFAQUAT: Did you try to have sex with her
2 in the back and she resisted --

3 THE DEFENDANT: Yeah.

4 DETECTIVE RAFAQUAT: -- on that date and time or were
5 you maybe thinking of some other time while she was with you?

6 THE DEFENDANT: Well, as far as I can figure it was
7 the same time.

8 DETECTIVE RAFAQUAT: Was that the only time you
9 attempted that with her?

10 THE DEFENDANT: Yeah.

11 DETECTIVE RAFAQUAT: And she resisted?

12 THE DEFENDANT: Yeah.

13 DETECTIVE RAFAQUAT: Were you aroused at the time?
14 Because there is another thing that you mentioned that, that
15 when you are choking her and killing her --

16 THE DEFENDANT: Yeah.

17 DETECTIVE RAFAQUAT: -- that you do get aroused?

18 THE DEFENDANT: Uh-huh.

19 DETECTIVE RAFAQUAT: So help me, help me clear my
20 thought, if you can.

21 THE DEFENDANT: Well, the reason why I'm hesitating
22 here is because I'm not exactly sure of the order. Okay?

23 DETECTIVE RAFAQUAT: Understandable.

24 THE DEFENDANT: And, and, and there is, there is
25 another reason, because with the connotation of doing that to a

1 dead person is kind of repugnant. So, I hope not, but I'm not
2 sure.

3 DETECTIVE RAFAQUAT: Hey, Terry, everybody has their
4 own fantasies. Okay?

5 THE DEFENDANT: But I'm not sure, you know. I'm
6 straight up with you, man. I don't know. I don't know. I'm
7 not sure. You know, a fucking coroner will tell you that. I,
8 I don't know. I don't know.

9 DETECTIVE RAFAQUAT: Uh.

10 THE DEFENDANT: As near as I can remember, I was
11 strangling her, and I rolled her over and boned her in the ass.
12 Now, whether she was dead or alive at the time, I couldn't tell
13 ya, but the sequence I kind of got lost.

14 DETECTIVE BURKE: Did you have a hard on beforehand?
15 Did you get a hard on?

16 THE DEFENDANT: (Inaudible.)

17 DETECTIVE RAFAQUAT: While she was alive or while you
18 were killing her?

19 THE DEFENDANT: During, during.

20 DETECTIVE RAFAQUAT: During?

21 THE DEFENDANT: While she was struggling, yeah.

22 DETECTIVE RAFAQUAT: You were getting aroused by that,
23 getting a hard on?

24 THE DEFENDANT: Yeah, yeah, yeah.

25 DETECTIVE RAFAQUAT: Have you come across this type of

1 situation in the past where you are with a woman, are having
2 difficulty getting a hard on, not necessarily ridiculed but
3 somebody calls you up on it? Has that happened to you in the
4 past and what has your reaction been with that person?

5 THE DEFENDANT: Well, I will tell you what happened
6 was we had this big ass argument and I ended up doing -- once
7 out of a six month stretch for beating the fuck out of her. I
8 didn't do it. She got into some drug people and owed them too
9 much money.

10 They found out where she was. They are the ones that
11 beat her up after I had left and was gone. I mean, her best
12 friend saw me like shortly after that and I didn't have a mark
13 on me. This was a girl big enough to take care of herself.

14 I, I did the time, man. I did the time for it because
15 I didn't have a leg to stand on. I had, I had a cop, I had a
16 real cop. I went after that to get my clothes and my duffel
17 bag. Okay. The manager of the motel at the Carriage Inn, he
18 didn't let me up in the room because she had complained about
19 this argument we had.

20 And so I, I told, hey, get one of Reno's finest up
21 here and me and you and him we'll go up to that room just to
22 see if everything is on the up and up.

23 I went up there to get my duffel bag. There she was
24 on the floor beat to a fucking pulp, I mean just, and there was
25 blood everywhere. I mean, that place was a mess.

1 The toilet seat was torn off the toilet. I mean it,
2 the whole place was just a mess and the cop took my ID, looked
3 at my hands, looked at me, there was not a scratch on me,
4 nothing, you know, kicked me loose, stuck her in the fucking
5 hospital and, you know, but I still ended up having to do time
6 for it.

7 DETECTIVE BURKE: Hey, Terry, I had, I had asked you
8 about your sex inadequacies.

9 THE DEFENDANT: I have rage involving that particular
10 incident, but unfortunately the bitch killed herself. I never
11 could get any retribution. Anyway, what, what do you want to
12 know?

13 DETECTIVE RAFAQUAT: Here in Reno? I was just asking
14 if you had to experience that in the past and how you dealt
15 with it.

16 THE DEFENDANT: I don't know. Not well, not well.

17 DETECTIVE BURKE: Is that a problem you have only when
18 you're drunk or do you suffer from that as perhaps a
19 dysfunction?

20 THE DEFENDANT: I don't know. It's, well, it's
21 supposed to be a side effect of some of the medication I have
22 been taking over the years, um. It's, well, fuck, I'm 52 years
23 old. It could be part of that. And alcohol, this was, well,
24 anybody who knows anything about it will tell you that that is
25 a side effect. I don't know, what else can I say?

1 DETECTIVE RAFAQUAT: Earlier you referred to yourself
2 as a predator. Am I correct?

3 THE DEFENDANT: Yeah, I suppose.

4 DETECTIVE RAFAQUAT: As a predator --

5 THE DEFENDANT: Uh-huh.

6 DETECTIVE RAFAQUAT: -- what kind of victim do you look
7 for, and I'm not talking about somebody who is pathetic and
8 miserable. I'm talk, let's just talk, let's strictly talk
9 about physical attraction as a predator for a sexual physical
10 satisfaction. What kind of person do you, what kind of, I'm
11 assuming a female, not a male, right?

12 THE DEFENDANT: Female, definitely female.

13 DETECTIVE RAFAQUAT: You don't go on the other side,
14 right?

15 THE DEFENDANT: No.

16 DETECTIVE RAFAQUAT: Okay.

17 THE DEFENDANT: No.

18 DETECTIVE RAFAQUAT: What kind of female do you look
19 for?

20 THE DEFENDANT: Oh, I don't know, it just, certain
21 women just kind of give off this, this, I don't know. I don't
22 want to say vibration, but a sense of being a victim.

23 DETECTIVE RAFAQUAT: I'm not talking about that. I'm,
24 I'm just physical, I'm just going strictly by what your
25 physical preference is.

1 DETECTIVE BURKE: Do you have like a preference for
2 race, height, weight, color?

3 THE DEFENDANT: No.

4 DETECTIVE BURKE: No physical preference?

5 THE DEFENDANT: No.

6 DETECTIVE BURKE: Age?

7 THE DEFENDANT: No.

8 DETECTIVE BURKE: You don't care?

9 THE DEFENDANT: No, it doesn't matter.

10 DETECTIVE BURKE: So like if a glamorous model or a
11 street person were standing next to each other you wouldn't
12 care which one it was as long as it was one of them?

13 THE DEFENDANT: No, no. That's pretty accurate, yeah.

14 DETECTIVE BURKE: Whether it be black, white, Oriental
15 or anything?

16 Is that the lady in your motel room?

17 THE DEFENDANT: Yeah, yeah, that's her.

18 DETECTIVE RAFAQUAT: Any reactions looking at the
19 photo?

20 THE DEFENDANT: Not really. She looks happier there
21 than the last time I saw her. (Inaudible).

22 DETECTIVE BURKE: Terry, I know you, you have said
23 that nothing really occurred here in Reno, but I'm going to ask
24 you again --

25 (Whereupon the videotape was stopped.)

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MR. GRECO: It is 1938 on the tape and I have shut that off. I'm getting a time-out signal from my detective. Did Your Honor want to take a break?

JUDGE BERRY: That is fine. We will stand in recess for 20 minutes.

(Whereupon a recess was taken.)

JUDGE BERRY: Please be seated. Before we proceed, my Clerk during the break brought to my attention that we had marked Exhibit 18, which would be the transcript to this videotape, but she was concerned that it had not been admitted. And there is a stipulation for admission; is that correct?

MS. PUSICH: Your Honor, we are requesting that it be admitted.

MR. GRECO: I have no objection, Your Honor.

JUDGE BERRY: Then it will be admitted. You may proceed.

(Exhibit Number 18 was admitted into evidence.)

MR. GRECO: Your Honor, Dr. Raven, the pathologist, is here. She has been here for a period of time. The lawyers would be willing to stipulate we could call her now out of order because of her scheduling concerns if that is all right with the Court.

1 JUDGE BERRY: I have no problem with it.

2 JUDGE MEMEO: Go ahead.

3 MR. GRECO: Dr. Raven.

4 JUDGE BERRY: All the way over here.

5

6

KATHERINE P. RAVEN,

7

called as a witness, having been duly sworn,

8

testified as follows:

9

10

DIRECT EXAMINATION

11

BY MR. GRECO:

12

Q Would you please state your name and spell both your

13

first and last names?

14

A Yes. My name is Katherine with a K, A-T-H-E-R-I-N-E,

15

P., Raven, R-A-V-E-N.

16

Q Ma'am, what do you do for a living?

17

A I'm a forensic pathologist.

18

Q What group?

19

A Sierra Pathology Associates.

20

MR. GRECO: Your Honor, the parties have stipulated

21

for the purposes of this proceeding that Dr. Raven possesses

22

the training and experience necessary to have performed the

23

autopsy in question in a professional and expert manner and

24

also to render an expert opinion in this case regarding cause

25

of death as well as to testify about the details of the autopsy

1 and her observations thereof.

2 MS. PUSICH: That's correct, Your Honor. Also, we
3 have marked her entire paperwork as Exhibit 9. I will ask that
4 that be admitted at the conclusion of her testimony.

5 JUDGE BERRY: Thank you.

6 BY MR. GRECO:

7 Q Dr. Raven, returning, referring your attention to the
8 morning of March 9th, 1999, did you conduct an autopsy that
9 morning?

10 A I believe it was March 10th.

11 Q I'm sorry, March 10th?

12 A Yes.

13 Q Can you recall about what time the autopsy commenced?

14 A 9:30 in the morning.

15 Q And what was the name of the decedent?

16 A I'm not sure how to say it, Ilona Straumanis.

17 Q Ilona Straumanis?

18 A Yes. At the time of the autopsy I don't believe we
19 knew her exact name, but it was confirmed later.

20 Q We will get to the photos in a little bit, but I would
21 like to start off first of all with the external examination.
22 When you examined Ms. Straumanis externally did you notice any
23 abrasions, bruises or trauma in the area of the neck of her
24 body?

25 A There was an area on her neck, it was a somewhat

1 rectangular shape on the right side of her neck that went
2 across the neck. Due to the decomposition it was very hard to
3 characterize as an abrasion or contusion, but it was a pattern
4 that went across in a very sharply demarcated rectangular area.

5 Q What were the dimensions or size of that?

6 A One and a half, one and a half inches by one and a
7 half inches.

8 Q Did you examine the eyes of the decedent for the
9 presence of any petechia?

10 A Yes. I attempted to, but, again, because of the
11 decomposition of the body it was very difficult. The body was
12 face down and all of the lividity or the blood pooling was also
13 in the eyes. There were two very, very faint petechial
14 hemorrhages on one eye.

15 Q Did you notice any abrasions or bruises or other marks
16 that were noteworthy to the head of the decedent?

17 A There was a small abrasion to the forehead.

18 Q Oh, and before moving on to the internal exam did you
19 examine the anus of the decedent?

20 A Yes, I did.

21 Q Was the anus of Ms. Straumanis' body dilated?

22 A Yes, it was.

23 Q Oh, and were there any external contusions or marks or
24 bruises on the buttocks or upper thigh areas of the decedent?

25 A There was a bruise on the back of the left thigh near

1 the buttock.

2 Q Can you recall any dimensions of that bruise?

3 A I will have to look. It roughly went what I call in a
4 band-like fashion kind of linear across five inches by two
5 inches.

6 Q Now, moving on to the internal exam, let's start first
7 with that bruise that you noticed on the buttocks or upper
8 thigh area. Did you incise that particular bruise?

9 A Yes. Usually with bruises when the body is decomposed
10 you can cut into it and see that there is actually a bruise
11 underneath, there is a bruise in the tissue underneath and
12 there was hemorrhage in this area.

13 Q By hemorrhage, you mean bleeding?

14 A Yes.

15 Q What does it signify that there is bleeding in that
16 wound or area of damage underneath the skin?

17 A That the injury occurred before death.

18 Q Did you incise the neck of the decedent?

19 A Yes, I did.

20 Q And did you notice any soft tissue hemorrhaging in any
21 areas of the neck underneath the skin?

22 A Yes. There were several areas of hemorrhaging tissue
23 of the neck, both in the fat underlying the skin of the neck
24 and also in the musculature of the neck.

25 Q When you say the musculature, what specific muscle did

1 you see evidence of hemorrhaging in?

2 A I don't know the specific muscle right off, but they
3 are called strap muscles, several strap muscles, very thin
4 linear muscles. They layer on top of the neck and there was
5 hemorrhage in the strap muscles.

6 Q And you were pointing to the front area of your neck a
7 moment ago. Are the strap muscles, that group of muscles in
8 fact located in the front area of the neck?

9 A They are actually on all sides of the neck, but there
10 are also some in the front, yes.

11 Q Now, was the hemorrhaging of the strap muscles limited
12 to one particular strand of the strap muscles or did it extend
13 further than that?

14 A No. There is several areas of hemorrhage in the neck
15 in the muscle and also a little bit deeper on the soft tissue
16 on the hyoid bone which is in the neck. It is very deep above
17 the thyroid cartilage which is the big prominence in your neck.
18 There is also a little hemorrhage on that bone.

19 Q And when you say the hyoid bone is very deep on the
20 neck, approximately how far in terms of depth are we talking
21 about?

22 A How deep is the hyoid bone?

23 Q Yes, in the average neck.

24 A I have to think about that, because it really depends
25 on the person and the amount of adipose tissue on the neck, but

1 it is probably half an inch to an inch depending on the person
2 from the skin in.

3 Q Did you examine, when you examined the body internally
4 did you examine the sternum?

5 A Yes, I did.

6 Q Did you see any fractures or damage to the sternum?

7 A Yes. There was a fracture to the sternum, which is
8 the bone in the mid chest.

9 Q Did you notice any bleeding or discoloration in that
10 area?

11 A Yeah, there appeared to be some bleeding right around
12 the fracture site.

13 MR. GRECO: Your Honor, the parties have stipulated
14 that Exhibits 16.1 through 16.8, which are the autopsy photos,
15 are admissible in evidence.

16 MS. PUSICH: That's correct, Your Honor.

17 JUDGE BERRY: Those will be marked and admitted.

18

19 (Exhibit Numbers 16.1 - 16.8 were admitted into evidence.)

20

21 MR. GRECO: May I approach, Your Honor?

22 JUDGE BERRY: You may.

23 BY MR. GRECO:

24 Q Dr. Raven, what I would like you to do, if you
25 wouldn't mind standing up, and I'm going to ask you to go

1 through those photos one at a time and point out for the Court
2 what they depict.

3 And before you do that, Dr. Raven, when we met for our
4 pretrial conference last week did I ask you to select certain
5 photos?

6 A Yes, you did.

7 Q Photos you thought that might be helpful to explain or
8 elaborate upon your testimony?

9 A Yes.

10 Q And are those the photos that you selected?

11 A Yes, they are.

12 Q Do you believe all of those photos would be helpful to
13 obtain a better understanding of your testimony?

14 A Yes, I do.

15 Q All right. Let's go through them one at a time.

16 Please, first of all, read the exhibit number on the back of
17 the first photo.

18 A Exhibit 16.1.

19 Q And what does that photograph depict?

20 A This is a picture of the deceased, the head and just
21 the upper shoulder area. You can see the decomposition that
22 occurred mostly on the front of the body. This area here was a
23 little more preserved, was actually the part that was face
24 down.

25 Q And was that the only photograph in the packet that

1 showed a frontal shot of the decedent's face, if you can
2 recall?

3 A I think it was. I think it was the best shot there
4 was, yes.

5 Q Is that why you selected it, if you can recall?

6 A Yes.

7 Q Okay. What is the next photo number?

8 A Do you want me to go in the order you gave them?

9 Q Please go in the order that I gave them to you.

10 A 16.2.

11 Q Please tell the Court what that depicts.

12 A This is a front shot of the body into the lower chin
13 here just showing decompositional changes which is what all of
14 the discoloration is. You can see the blistering and barely
15 start seeing this little rectangular area on the right side of
16 the neck. That was a little bit more demarcated than the rest
17 of the postmortem changes.

18 Q And what is the next photograph?

19 A 16.3 is an example now of the right side of the neck.
20 You can see the lower chin of the upper picture here just
21 showing that area where it is very sharp, very rectangular mark
22 on the right side of the neck.

23 Q Is that the mark or injury that you referred to
24 earlier in your testimony?

25 A Yes, it is.

1 Q All right. And the next photograph?

2 A 16.4 is now, as we start an internal exam an incision
3 was made from the lower chin down the body and you can see a
4 hemorrhage. This would be in the fat right over the front neck
5 area in the soft tissue.

6 Q Is that the dark area in the incised portion of the
7 photograph?

8 A Yes, it is.

9 Q That is the hemorrhage you are referring to?

10 A Yes, it is.

11 Q And the next photograph?

12 A The 16.5, this is the chest plate, the sternum and
13 ribs that have been taken off of the body and you can see the
14 fracture of the sternum was right here in the area where the
15 darker area, the darker discoloration is and that is hemorrhage
16 around that fracture.

17 JUDGE BERRY: Is that right here?

18 THE WITNESS: Yeah, mid sternum, right here, exactly.

19 BY MR. GRECO:

20 Q Next photograph, Dr. Raven?

21 A Exhibit 16.6 is actually the hyoid bone, the bone that
22 is in the neck that sits above the thyroid, and you can see the
23 little darker area there which is hemorrhage on the right side
24 of the hyoid bone.

25 Q And the next photograph, what is that number?

1 A 16.7 is, it is another picture of the internal
2 examination of the neck dissection, a little bit more difficult
3 to orient, but you can see this is the chin right here where
4 I'm pointing and then the incision came this way. These are
5 those strap muscles, the layers of muscles. They have been
6 taken back and pulled up towards the face and just to show that
7 there was deep hemorrhage underneath those muscles.

8 Q And the final photograph?

9 A Is 16.8, just showing the bruise on the back of the
10 left leg near the buttock and showing how it is incised and
11 shows hemorrhage in the tissue compared to the side where there
12 is no hemorrhage. That is just a normal postmortem incision,
13 but you can see the tissue underneath it.

14 Q Thank you, Dr. Raven. You can retake your seat.

15 Now, Dr. Raven, this is not a guilt proceeding, so I
16 don't want to go over everything you did in the autopsy, but
17 let me ask you this. As a result of all of your observations
18 during the autopsy did you reach any opinion or conclusion
19 regarding the cause of death of Ms. Straumanis?

20 A Yes, I did.

21 Q And what was that opinion or conclusion?

22 A That she died from asphyxia due to neck compression,
23 most likely by strangulation.

24 MR. GRECO: That is all I had, Your Honor.

25 JUDGE BERRY: Cross exam.

1 MS. PUSICH: Thank you, Your Honor.

2

3

CROSS EXAMINATION

4 BY MS. PUSICH:

5 Q Good afternoon.

6 A Good afternoon.

7 Q Doctor, we were speaking in the hallway for a few
8 moments before you came in this afternoon. To your knowledge
9 is this the first or one of the first adult females that you
10 have performed an autopsy on that was believed to have died
11 from homicide?

12 A In Reno.

13 Q Okay.

14 A But I have done several before in Seattle, but not
15 here.

16 Q And do you know or can you recall how many of the ones
17 that you had done previously in Seattle there was alleged to
18 have been any sort of sexual attack at or around the time of
19 death?

20 A I couldn't tell you right off. The majority of cases,
21 I mean, the thing that makes it suspicious, you always suspect
22 sexual assault anyways, so probably every case I had suspects
23 sexual assault but I can't give you a number.

24 Q But this would have been the first year?

25 A Yes, in Reno.

1 Q You described several injuries. When you described
2 something having hemorrhaged, that tells you that it happened
3 while the body was still alive, the person was still alive,
4 correct?

5 A Yes.

6 Q Beyond that can you give us a date of these injuries?

7 A No.

8 Q And is the same true for the fracture?

9 A Can I take that back? No, you can to a certain point.
10 You can do special studies and staining on bruises and actually
11 dated, roughly I can say several days, 24 hours, 48 hours and
12 so on, but that usually takes microscopic examination.

13 Q Were any of those examinations done in this case?

14 A No.

15 Q So your conclusion is merely that the injuries were
16 suffered before the victim died?

17 A Correct.

18 Q Regarding the fracture to the sternum, is that also
19 the case?

20 A The case?

21 Q That you can only say that it occurred before she
22 died?

23 A Yes.

24 Q But not precisely when?

25 A Exactly.

1 Q So it could have been a few hours, a few minutes or
2 even a few days?

3 A I doubt it would have been a few days, because you
4 would have seen some healing with the bone and it was not there
5 yet, so probably within a few days.

6 Q Is that the same with the hemorrhages?

7 A The hemorrhages?

8 Q There were several that you described. Is there a
9 time frame you can put them in, that they occurred within three
10 days, within three hours?

11 A To the neck?

12 Q There was to the neck and there was to a buttock.

13 A Most of the hemorrhages appeared as what I call acute,
14 which would be in the first 24 hours. There was no evidence
15 that they were organizing, you would see different
16 discoloration of the blood itself.

17 MS. PUSICH: May I approach, Your Honor?

18 JUDGE BERRY: You may.

19 BY MS. PUSICH:

20 Q Ma'am, I'm handing you what has been marked as
21 Exhibit 9, if you could look through those pages for me,
22 please.

23 A Okay.

24 Q Are those documents with which you are familiar?

25 A Yes.

1 Q Okay. And in fact is that the Certificate of Death,
2 Record of Death, Record of Death Narrative and your Autopsy
3 Protocol relating to this case of Ms. Straumanis?

4 A Yes, it is.

5 Q Are those records that you maintain as a normal course
6 of your business?

7 A The first two, the Record of Death and the front sheet
8 are the Washoe County Coroner's paper. The Autopsy Protocol is
9 mine.

10 Q Okay. And regarding the Autopsy Protocol, as part of
11 your examination did you do a screen to determine the presence
12 of blood or alcohol relating to this victim?

13 A Yes.

14 Q And do you recall whether or not she was found to have
15 any alcohol or drugs in her system?

16 A Yes... Her blood alcohol was .37.

17 Q During your external examination, at the bottom
18 discussion on page two of the autopsy report you indicated that
19 you found the anus had been dilated, correct, or was at the
20 time of your examination?

21 A That's correct.

22 Q And you also concluded that there was no evidence of
23 injury to the perianal skin or distal rectum?

24 A That's correct.

25 Q When you performed your autopsy had you been given any

1 information regarding the circumstances of the victim's death?

2 A Yes, I believe so.

3 Q Were you aware that there was an investigation that
4 led to the conclusion that she may have been strangled?

5 A At the time of the autopsy? Yes, I believe I did at
6 the time of the autopsy from memory. I don't have that
7 document anymore.

8 Q And do you have any recollection whether or not you
9 knew there was a suspicion that she may have been sexually
10 assaulted independent of your concern at the time of a victim?

11 A Not sexually assaulted per se, but at least had sexual
12 intercourse, not necessarily assaulted.

13 Q Were there any decompositional changes that made a
14 determination regarding a sexual assault or sexual contact more
15 difficult?

16 A Yes...

17 MS. PUSICH: Thank you. I have nothing further.

18 JUDGE BERRY: Redirect.

19 MS. PUSICH: I apologize, Your Honor, I do. I would
20 move her documents into evidence at this time.

21 JUDGE BERRY: Any objection?

22 MR. GRECO: No, Your Honor.

23 JUDGE BERRY: Those will be marked and admitted.

24 MS. PUSICH: Thank you.

25

ER 0973

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(Exhibit Number 9 was admitted into evidence.)

MR. GRECO: I have no questions, Your Honor.

JUDGE MEMEO: Is there semen in the vagina?

THE WITNESS: Not that I saw. Again, because the body was so decomposed it was very difficult to see. I did take samples and submit them to the crime lab. I'm not sure what the results were.

JUDGE MEMEO: Did you do a drug screen?

THE WITNESS: Yes, drug screen was also done.

JUDGE MEMEO: Was that negative?

THE WITNESS: It was negative for drug abuse. It had some decongestants. No evidence of drug abuse.

JUDGE MEMEO: Were you able to determine date or time of death?

THE WITNESS: No, no. It was consistent with several days.

JUDGE MEMEO: When you say several, does that mean five?

THE WITNESS: Five, anywhere from three to seven probably. It depends on how hot the room was, the temperature, the atmosphere outside, if there was a heater on, if there were blankets on the body, it could vary.

JUDGE MEMEO: Were you able to determine at all the causes of the fracture to the sternum or the hemorrhages?

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THE WITNESS: No.

JUDGE MEMEO: Nothing else. Thank you.

JUDGE BERRY: I had one question. There has been some testimony or some evidence that she may have been, sustained some injuries or bruising before she met the Defendant, and you indicated that you did some incisions and you indicated these were relatively fresh, like three days old. Is there, can you state that to a certainty or could they have been five days or seven days old?

THE WITNESS: Actually, I think they were more like 24 hours old based on the color of them, but I cannot say within 100 percent and you look for stains in iron and I did not do that.

JUDGE BERRY: Any follow-up questions from the defense or the State based upon the Court's questions?

MS. PUSICH: I have one, Your Honor.

FURTHER CROSS EXAMINATION

BY MS. PUSICH:

Q Did you observe any bruising around the victim's eyes?

A Nothing that was obvious, but as you saw the pictures the decomposition shows all of the red coloration. There was nothing obvious. I did cut into it to look for bleeding underneath. There was nothing obvious. Decomposition makes it difficult.

1 MS. PUSICH: Thank you.

2

3

REDIRECT EXAMINATION

4

BY MR. GRECO:

5

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8

Q Dr. Raven, what is it about the colors of the hemorrhaging depicted on the photographs and that you saw with your own eyes that led you to the conclusion that the injuries were relatively recent?

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A The hemorrhages especially to the neck there is several things that make you think it is recent. Blood if it is old starts changing colors, it is not red anymore, starts getting a little more brown and starts changing colors. And, again, it was still very red even with the decompositional changes.

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It also was liquid like in some of the neck areas it hadn't started to what we call organizing where it starts forming a clot and starts clotting is what it does and it does that. You have to be alive for it to clot. And if death occurs within so many hours of the injury you will not see clotting and there was no clotting obvious.

21

MR. GRECO: That is all I have.

22

MS. PUSICH: Nothing further. Thank you, Your Honor.

23

JUDGE BERRY: May we thank and excuse this witness?

24

MR. GRECO: Yes, Your Honor.

25

MS. PUSICH: Yes, Your Honor.

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1 THE WITNESS: What should I do with the exhibit?

2 JUDGE BERRY: Provide it back to the Clerk.

3 MR. GRECO: Your Honor, at this point I'm going to
4 continue on with the tape.

5 JUDGE BERRY: Okay.

6

7 (Whereupon the videotape was played.)

8

9 THE DEFENDANT: You can't. This is it, this is the
10 only one.

11 DETECTIVE BURKE: That's what I, that's (inaudible),
12 have you heard about the other homicides that I'm talking
13 about?

14 THE DEFENDANT: I don't know. I watch the news once
15 in awhile.

16 DETECTIVE BURKE: Like do you, the, the prostitute
17 that was killed off of Arlington last year around Easter time,
18 did you hear of that? Do you recall hearing about that?

19 THE DEFENDANT: Not right offhand, no.

20 DETECTIVE BURKE: And then the black lady that was
21 murdered inside Wingfield Park by the bathroom?

22 THE DEFENDANT: Oh, I remember hearing about that,
23 yeah, that's just after I came to town. That was what, '95?

24 DETECTIVE RAFAQUAT: It was in '97. It was right
25 after the floods, right after the floods.

ER 0977

1 THE DEFENDANT: Was that in '97? Okay. Yeah, no, I
2 heard about that one, yeah.

3 DETECTIVE RAFAQUAT: Like he said, not, not pointing
4 finger at you do you have any knowledge of who may have been
5 responsible?

6 THE DEFENDANT: No, no, no, no.

7 DETECTIVE RAFAQUAT: No?

8 THE DEFENDANT: No.

9 DETECTIVE RAFAQUAT: Anything else that you want to
10 get off your chest, get off your conscience? We are here,
11 let's do it now. I certainly, I can tell you this much, Terry,
12 and it may not mean anything to you, this certainly has not
13 been --

14 THE DEFENDANT: (Inaudible.)

15 DETECTIVE RAFAQUAT: So, you know, while we are
16 talking is there anything else you want to, you know --

17 THE DEFENDANT: You know where I'm going to be and if
18 you want to talk to me some more.

19 DETECTIVE RAFAQUAT: Yeah, you have got to --

20 THE DEFENDANT: That's where I will be.

21 DETECTIVE RAFAQUAT: You have got to realize one
22 thing, once you are booked into the County Jail we cannot
23 initiate contact with you.

24 THE DEFENDANT: Well -- if something that came up that
25 you know you think, if you get some kind of an idea that I've

1 got something else to do with something else, then you can I'm
2 sure.

3 DETECTIVE BURKE: Well, no, here's your, even though
4 you waived your Miranda Rights, once you obtain an attorney,
5 which you're going to get an attorney.

6 THE DEFENDANT: I will, sure, I know that.

7 DETECTIVE BURKE: Probably he is going to tell you
8 don't say anything else.

9 THE DEFENDANT: Yeah.

10 DETECTIVE RAFAQUAT: At that point we can't come up
11 and talk to you, you have to call.

12 THE DEFENDANT: You have enough right there to hang my
13 ass.

14 DETECTIVE BURKE: Well, here is what I'm saying. I'm
15 going to give you my card when this, when we are done here
16 tonight and you have to contact me, and that is why we want to
17 ask you, you know, is there anything that we might, I know we
18 talked about things several times over and over.

19 THE DEFENDANT: Yeah.

20 DETECTIVE RAFAQUAT: But is there anything that you
21 feel that you need to bring out about what happened the night
22 that you committed this murder? Is there any details that we
23 missed or that you've missed?

24 THE DEFENDANT: It's kind of fuzzy, obviously. I'm
25 not sure exactly the sequence of the whole thing. I know what

1 I feel how it happened and all of that. Other than that I
2 can't, I can't give you anymore details. I'm just not sure.

3 DETECTIVE RAFAQUAT: When you met her the first time
4 on Thursday night, did she have a purse?

5 THE DEFENDANT: Yeah.

6 DETECTIVE RAFAQUAT: Or any, did she have other than a
7 purse any other belongings with her?

8 THE DEFENDANT: Just clothes on her and this funny ass
9 hat.

10 DETECTIVE RAFAQUAT: Do you know what was in that
11 purse? Did you go through it?

12 THE DEFENDANT: Well, she dumped it, she dumped it out
13 when we were there at the fucking, when we were there at the
14 fucking bar. She went to pick it up and spilled it all over
15 the floor and I picked the stuff up. I helped her pick the
16 stuff up. There was just odds and ends of paper, you know, and
17 make-up and just bullshit people have in their purses.

18 DETECTIVE RAFAQUAT: Did you take anything, anything
19 of hers and convert it for your own use, anything from her
20 purse?

21 DETECTIVE BURKE: Credit cards, checks?

22 DETECTIVE RAFAQUAT: Anything?

23 THE DEFENDANT: No.

24 DETECTIVE RAFAQUAT: Okay.

25 DETECTIVE BURKE: Don't take it like we are accusing

1 you of anything. Did you keep anything of hers?

2 THE DEFENDANT: No, no.

3 DETECTIVE BURKE: As a memento?

4 THE DEFENDANT: No, no, no, no, shit no.

5 DETECTIVE BURKE: At any point did you ever see her ID
6 card or did you know that she ever, did she tell you she had an
7 ID card?

8 THE DEFENDANT: Huh-uh.

9 DETECTIVE BURKE: Or any identification at all?

10 THE DEFENDANT: No, never came up.

11 DETECTIVE BURKE: She never mentioned to you this
12 isn't really my name, I go by this?

13 THE DEFENDANT: She said, well, I told you what I
14 thought it was, Iona or whatever.

15 DETECTIVE BURKE: She didn't tell you her street name
16 or --

17 THE DEFENDANT: No.

18 DETECTIVE RAFAQUAT: Is there any possibility that the
19 injuries that you say you saw on her when you first met her
20 were caused by you?

21 THE DEFENDANT: No, no. I did strangle her, but other
22 than that --

23 DETECTIVE RAFAQUAT: While she was with you did you
24 physically abuse her in any way?

25 THE DEFENDANT: No. Actually, I was real nice to her

1 up to a point, that is why she stayed.

2 DETECTIVE RAFAQUAT: If I were to ask you one thing
3 about her that you still picture and it kind of, I'm not going
4 to ask you if it haunts you, but it kind of flashes in front of
5 you all the time, what would that be?

6 THE DEFENDANT: Puppy dog pathetic, pathetic.

7 DETECTIVE RAFAQUAT: And if I were to ask you one
8 thing that you vividly remember that occurred during the act of
9 killing her what would that be?

10 THE DEFENDANT: She didn't seem to fight too hard.

11 DETECTIVE BURKE: Which brings me to another point, I
12 know you said this but I want to verify this, did you, she
13 scratch you, she slap at you?

14 THE DEFENDANT: Do you see any?

15 DETECTIVE BURKE: But you were also naked. I mean, we
16 haven't checked underneath --

17 THE DEFENDANT: No.

18 DETECTIVE BURKE: -- your shirt, and which we will,
19 but --

20 THE DEFENDANT: Go for it. Go for it. No, no, she
21 didn't actually even struggle that hard. It was kind of
22 strange I thought, but, like I say, that's why I just, I kind
23 of have the idea that she wanted to be put out of her fucking
24 misery anyway and I think I just did her a big ass favor, I
25 really do.

1 DETECTIVE RAFAQUAT: Terry, a couple of other
2 administrative things and I believe we are done after that.
3 Okay?

4 THE DEFENDANT: Okay.

5 DETECTIVE RAFAQUAT: Just so you know what is going to
6 happen and I hate keeping you in the dark.

7 THE DEFENDANT: Uhm.

8 DETECTIVE RAFAQUAT: We are going to be collecting
9 your clothing.

10 THE DEFENDANT: Yeah.

11 DETECTIVE RAFAQUAT: We're going to be giving you
12 either a white suit, that actually that, as a matter of fact
13 that's exactly what we're going to be giving you.

14 DETECTIVE BURKE: Yes.

15 DETECTIVE RAFAQUAT: Okay.

16 THE DEFENDANT: A what?

17 DETECTIVE BURKE: A white paper.

18 DETECTIVE RAFAQUAT: It's a white paper.

19 THE DEFENDANT: Oh, one of them, yeah.

20 DETECTIVE RAFAQUAT: The second thing we need to do is
21 it's called a sexual assault protocol.

22 THE DEFENDANT: Uh-huh.

23 DETECTIVE RAFAQUAT: We are going to be going to
24 Washoe Medical Center, okay, where they have a protocol in
25 place. We are going to need to get a sample of your, we are

1 going to get a sample of your urine. We are going to get your
2 blood samples.

3 THE DEFENDANT: Uh-huh.

4 DETECTIVE RAFAQUAT: Okay, and maybe a, I don't know
5 what's all involved.

6 DETECTIVE BURKE: They do a --

7 DETECTIVE RAFAQUAT: Actually, it is going to be a
8 series of draws. Okay. Are you going to have, it's one of
9 those things we are going to have to do. It's just one of
10 those things we are going to have to do. Okay?

11 THE DEFENDANT: Why does none of this surprise me,
12 yeah, okay.

13 DETECTIVE RAFAQUAT: Okay. So you are okay with all
14 of that stuff?

15 THE DEFENDANT: What, I have got a choice?

16 DETECTIVE RAFAQUAT: No.

17 THE DEFENDANT: I didn't think so.

18 DETECTIVE RAFAQUAT: There is two ways of doing it.
19 One is where you're doing it voluntarily, we don't have to go
20 through court to get a seizure order.

21 THE DEFENDANT: I'm not --

22 DETECTIVE RAFAQUAT: Okay. I'm just saying, okay, I
23 don't want to have to go to the hospital and say, well, you
24 know --

25 THE DEFENDANT: Hey, I told you guys.

1 DETECTIVE RAFAQUAT: Terry, Terry, here's the deal,
2 here's the deal. It's no, don't be upset with me. I don't
3 want to go to the hospital and --

4 THE DEFENDANT: Ain't happening, ain't happening.

5 DETECTIVE RAFAQUAT: And then we have to go wake up a
6 judge. I don't want to have to do that. I just want to make
7 sure that we are set to go and when we get there everything
8 goes.

9 THE DEFENDANT: Everything is cool.

10 DETECTIVE RAFAQUAT: All right.

11 DETECTIVE BURKE: The only other thing they would
12 probably do too, Terry, is and it will probably be, it will be
13 another guy, not us. It will be an FIS investigator from the
14 County Jail. He will probably want to take full body shots
15 just to see if there is any defensive wounds on you.

16 THE DEFENDANT: Cool.

17 DETECTIVE BURKE: Okay?

18 THE DEFENDANT: I'm okay with that.

19 DETECTIVE BURKE: And we will do that here though.

20 DETECTIVE RAFAQUAT: Do you have any questions of us?

21 THE DEFENDANT: No.

22 DETECTIVE BURKE: We will be back, but we're going to
23 go out and get the ball rolling on going to the hospital and
24 all of that stuff.

25 THE DEFENDANT: Okay. So can I go to the bathroom

1 now?

2 DETECTIVE RAFAQUAT: Yeah.

3 DETECTIVE BURKE: Transcriber, we are going to go off
4 tape at 1943.

5 THE DEFENDANT: Oh, geez, and I've got to take a dump
6 too, but when I get to the hospital --

7 DETECTIVE RAFAQUAT: Yeah, save some of that for us
8 all right?

9 THE DEFENDANT: No problem with all of that Coke I've
10 been drinking and all of this other shit, no problem, man.

11
12 (Whereupon the videotape was stopped.)

13
14 MR. GRECO: It is 19:39:30 seconds and I'm going to
15 fast forward to the point where the people return and talking
16 resumes, which is about three minutes.

17 JUDGE BERRY: Is that stipulated by the defense?

18 MS. PUSICH: It is, Your Honor. This is a portion of
19 the tape that although there is no one there to listen to,
20 there is no point in watching it.

21 MR. GRECO: The tape is now resuming at 19:42:42.

22
23 (Whereupon the videotape was played.)

24
25 THE DEFENDANT: Well, so what is happening now?

1 the motel room, male stuff, is, that's still in there?

2 THE DEFENDANT: I didn't have any.

3 DETECTIVE BURKE: You didn't have any?

4 THE DEFENDANT: No.

5 DETECTIVE BURKE: Toothbrush, shaver? Okay.

6 THE DEFENDANT: None.

7 DETECTIVE BURKE: Okay.

8 THE DEFENDANT: Any stuff like that was hers.

9 DETECTIVE BURKE: Okay.

10 THE DEFENDANT: I didn't have anything else,
11 everything I had is on me.

12 DETECTIVE BURKE: Okay.

13

14 (Whereupon the detectives left the interview room.)

15 (Whereupon the videotape was stopped.)

16

17 MR. GRECO: Your Honor, it is 19:54:17. The parties
18 stipulated that we can fast forward at this point. There is no
19 talking by the suspect in the next minute or two.

20 MS. PUSICH: That's correct, Your Honor.

21 JUDGE BERRY: So stipulated.

22

23 (Whereupon the videotape was played.)

24

25 DETECTIVE BURKE: Back in January you reported a

1 deceased person on, over on 421 Moran, that was my mistake.

2 THE DEFENDANT: 423.

3 DETECTIVE BURKE: 423?

4 THE DEFENDANT: Uh-huh.

5 DETECTIVE BURKE: When did you move out of there?

6 THE DEFENDANT: Just a couple of days after that.

7 DETECTIVE BURKE: You have a roommate there or was
8 that a --

9 THE DEFENDANT: I did have, yeah.

10 DETECTIVE BURKE: Okay. Did you have any clothing
11 articles there?

12 THE DEFENDANT: I did have, I went to the hospital. I
13 told you I checked myself in.

14 DETECTIVE BURKE: Right.

15 THE DEFENDANT: For this other deal and when I was in
16 the hospital -- threw my clothes away.

17 DETECTIVE BURKE: Okay. Who was your roommate at
18 there?

19 THE DEFENDANT: John Fie.

20 DETECTIVE BURKE: John Five?

21 THE DEFENDANT: Or Joan, whichever, trans,
22 transsexual, F-I-E. And the guy that died everybody called him
23 Reno. His name was Dalton Hirsh, I believe his last name was.

24 DETECTIVE BURKE: Okay.

25 THE DEFENDANT: Yeah, I didn't --

1 DETECTIVE BURKE: Oh, no, I wasn't implying that at
2 all.

3 THE DEFENDANT: Okay.

4 DETECTIVE BURKE: No.

5 DETECTIVE RAFAQUAT: It just, we are just (inaudible).

6 THE DEFENDANT: (Inaudible.)

7 DETECTIVE RAFAQUAT: Yeah.

8 THE DEFENDANT: So it, is this going to be more, long,
9 I mean before we get going here?

10 DETECTIVE BURKE: No, we are setting everything up
11 now.

12 THE DEFENDANT: Okay.

13 DETECTIVE BURKE: Do you need anything?

14 THE DEFENDANT: No, man, I'm just, I'm having serious
15 withdrawals here. I'm just kind of getting real antsy.

16 DETECTIVE BURKE: All right.

17
18 (Whereupon the detectives leave the interview room.)
19

20 THE DEFENDANT: Jesus, whew. Fuck. Oh, fuck, man.
21 Oh, shit, whew (inaudible). Damn it. What the fuck is going
22 on?

23
24 (Whereupon an unknown person enters the interview room.)
25

1 UNKNOWN PERSON: You again, huh?

2 THE DEFENDANT: Yeah.

3 UNKNOWN PERSON: Why don't you get your jacket, put
4 your hand up?

5 THE DEFENDANT: Fucking hot in here.

6 UNKNOWN PERSON: Well, where we are going it's colder
7 right now. It's cold outside.

8 THE DEFENDANT: I'm sure, I'm sure, I'm just doing
9 some withdrawal, you know.

10 UNKNOWN PERSON: No problem.

11 THE DEFENDANT: Sweating.

12 UNKNOWN PERSON: I have got to put handcuffs on ya,
13 again. I'm into handcuffs, you can tell.

14 THE DEFENDANT: Yeah.

15 UNKNOWN PERSON: Maybe we can talk you into a, before
16 we get there.

17 THE DEFENDANT: I doubt it, not since --

18 UNKNOWN PERSON: What's that?

19 THE DEFENDANT: Not since --

20 UNKNOWN PERSON: Oh since, yeah.

21 THE DEFENDANT: Yeah, he might of been able to do it,
22 all right.

23 UNKNOWN PERSON: (Inaudible).

24 THE DEFENDANT: Actually, I'm from Seattle, a Mariner
25 fan, but I got the jacket for free, so fuck it.

1 UNKNOWN PERSON: Make sure that you have nothing on
2 you that you shouldn't.

3 THE DEFENDANT: Just my lighter and my cigarettes in
4 my pocket there.

5 UNKNOWN PERSON: Okay.

6 THE DEFENDANT: And the detective assured me that I
7 could have one before we went into the hospital or whatever,
8 so.

9 UNKNOWN PERSON: You just, you get your cigarettes and
10 everything like that, okay?

11 THE DEFENDANT: (Inaudible).

12
13 (Whereupon the videotape was stopped.)

14
15 MR. GRECO: I stopped the tape at 20:11:38.

16 MS. PUSICH: Your Honor, at this point I will ask the
17 Court to disregard the remainder of the transcript. You have
18 an inadvertent double transcription that starts here. You will
19 see at the beginning of page 111, line 18 you start a
20 transcription of side two, tape four and now at page 117, line
21 18, the same thing starts all over. We really won't need that.

22 JUDGE BERRY: Okay.

23 Call your next witness, Mr. Greco.

24 MR. GRECO: I'm still, let me finish up with a few
25 more questions of the Detective.

1 JUDGE BERRY: Oh, I'm sorry.

2
3 DETECTIVE JIM BURKE,
4 called as a witness, having been duly sworn,
5 testified as follows:
6

7 DIRECT EXAMINATION

8 BY MR. GRECO:

9 Q Detective Burke, do you recall prior to commencing the
10 substantive portion of the interview going over the written
11 Miranda' Rights Waiver Form with the Defendant?

12 A Yes, I do.

13 MR. GRECO: May I approach, Your Honor?

14 JUDGE BERRY: You may.

15 MR. GRECO: Your Honor, the parties have stipulated
16 that State's Exhibit 3 is admissible into evidence.

17 MS. PUSICH: That's correct, Your Honor.

18 JUDGE BERRY: It will be marked and admitted.
19

20 (Exhibit Number 3 was admitted into evidence.)
21

22 BY MR. GRECO:

23 Q Detective Burke, is that a copy of the Miranda Waiver
24 Form that you provided to the Defendant and that he executed?

25 A Actually, this is the waiver form provided to the

1 Defendant in the second interview.

2 MR. GRECO: Oh, I'm sorry. Court's indulgence for a
3 moment.

4 BY MR. GRECO:

5 Q In any event, did you actually take from him the
6 written Miranda Waiver Form once he had executed it?

7 A Yes, I did.

8 Q And did he in fact execute that waiver form?

9 A Yes, he did.

10 Q In your presence?

11 A Yes, he did.

12 MR. GRECO: That is all I had, Your Honor.

13 JUDGE BERRY: Cross exam.

14 MS. PUSICH: Thank you, Your Honor.

15

16

CROSS EXAMINATION

17 BY MS. PUSICH:

18 Q Detective Burke, as part of your duties in this case
19 did you prepare written reports of the aspects of the
20 investigation in which you were involved?

21 A Yes, I did.

22 Q Did you first come into contact then with Mr. Dennis
23 at the Horseshoe Motel?

24 A Yes, I did.

25 Q And in your report did you note that he smelled

1 strongly of alcohol?

2 A Yes, I did.

3 Q Did you question him regarding whether or not he had
4 been drinking while you were still at the scene?

5 A Without reviewing the report I don't believe I did,
6 no.

7 MS. PUSICH: May I approach, Your Honor?

8 JUDGE BERRY: You may.

9 BY MS. PUSICH:

10 Q If you could direct your attention, please, to page
11 three, second paragraph.

12 A Okay.

13 Q Does that document in fact appear to be your written
14 report or a copy of it?

15 A Yes, it is a copy.

16 Q And having looked at that page and paragraph does that
17 refresh your recollection?

18 A It would be the second paragraph?

19 Q That's correct.

20 A Yes.

21 Q Did you in fact have conversation with the Defendant
22 at the Horseshoe Motel regarding whether or not he had been
23 drinking?

24 A Yes, I did.

25 Q And do you recall what he said?

1 A In my report it states he had been drinking a lot.

2 Q Was that consistent with your view of him on the
3 scene?

4 A He in my view of him at the scene was that he had been
5 drinking, but he was very coherent and knew what he was doing
6 and didn't appear to me to have any problems understanding what
7 was going on.

8 Q But he smelled strongly of alcohol, you noted that?

9 A Yes.

10 Q Are you familiar with whether or not any containers,
11 empty containers of alcohol were located in the room?

12 A I don't believe there were.

13 Q Okay. If the detective who issued the, or filled out
14 the return on the search warrant listed that there were some
15 would his report be more accurate than your recollection?

16 A Yes, without reviewing it, yes.

17 MS. PUSICH: If I could retrieve that please,
18 Your Honor?

19 JUDGE BERRY: Yes.

20 MS. PUSICH: Court's indulgence.

21 BY MS. PUSICH:

22 Q Did you have any conversations with the Defendant that
23 were not recorded in some way, audio or video or both?

24 A The conversation with him at the Horseshoe Motel
25 wasn't videotaped. It was just audio taped.

1 Q Other than that there were none?

2 A None, no, ma'am.

3 Q You indicated earlier that you were the case agent in
4 this case?

5 A Yes.

6 Q Did you have an opportunity to speak with any other
7 potential witnesses regarding what Mr. Dennis reported to you
8 in the interview that we just saw?

9 A During the breaks we received information from
10 Detective Bennett through Sergeant Partyka, but I didn't talk
11 directly with him myself.

12 Q Sometime later in your investigation did you
13 coordinate with other detectives that were working on the case?

14 A Yes, we did.

15 Q And did you find that the majority of information that
16 Mr. Dennis provided you in his interview was in fact accurate?

17 A Yes, it was.

18 MS. PUSICH: Thank you. I have nothing further.
19

20 REDIRECT EXAMINATION

21 BY MR. GRECO:

22 Q Detective Burke, when you first contacted the
23 Defendant at the scene did the Defendant have trouble
24 maintaining his balance?

25 A No, he did not.

1 Q Was his speech slurred?

2 A No, it was not.

3 Q Did you notice any slurred speech during your
4 interview at any time with him?

5 A No, none.

6 Q Was he able to answer all of your questions during the
7 entire time of your contact with him including the time at the
8 scene?

9 A Yes.

10 Q Oh, Detective Burke, could you search your files
11 overnight to see if you have a copy of the Miranda Waiver Form
12 from the first interview on March 9th?

13 A Yes.

14 Q If you locate that can you bring that to us early
15 tomorrow morning to my office?

16 A Yes, I will.

17 MR. GRECO: That is all I had, Your Honor.

18 MS. PUSICH: Just two questions, Your Honor.

19

20

RE CROSS EXAMINATION

21 BY MS. PUSICH:

22 Q Sir, did you first come into contact with the
23 Defendant at the scene shortly after 4:00 p.m.?

24 A Approximately 16:15, which is 4:15 p.m.

25 Q And he was transported by Officer Kuzemchak to the

1 Washoe County Jail shortly after 8:00 p.m.?

2 A I believe, yes.

3 Q So there is a period of at least four hours when he is
4 not drinking and not being tested to determine how much alcohol
5 is in his system?

6 A Yes.

7 MS. PUSICH: Thank you. Nothing further.

8 MR. GRECO: Nothing further, Your Honor.

9 JUDGE BERRY: One moment.

10 JUDGE CHERRY: Detective, did you determine from the
11 records when the Defendant actually checked into the Horseshoe?

12 THE WITNESS: We did, yes.

13 JUDGE CHERRY: What was that date?

14 THE WITNESS: I would have to review the report,
15 Your Honor, but I believe it was, I need to review.

16 JUDGE CHERRY: Could he look at the report, please?

17 MR. GRECO: Certainly.

18 THE WITNESS: I believe that would probably be in the
19 canvass forms or Detective Rafaquat's report.

20 MR. GRECO: Did the, he sounds like he is just
21 speculating. I can show him that other report if you want me
22 to, Your Honor, but --

23 JUDGE CHERRY: If we could just have the dates for the
24 record.

25 MS. PUSICH: I have no objection. It has been fairly

1 established through the records we have been provided.

2 MR. GRECO: Why don't you hand me back that report and
3 take a look at -- Your Honor, I don't know off the top of my
4 head if that information is in fact in Rafaquat's report. If
5 it turns out it is not, I can find out for you overnight.

6 JUDGE CHERRY: What we are looking for is, Judge Berry
7 and I, we were just talking when he checked into the motel and
8 then when he changed rooms.

9 MR. GRECO: Yes. It is somewhere in the file.

10 JUDGE CHERRY: Those dates and the days, also.

11 MR. GRECO: Yes.

12 JUDGE CHERRY: The other question I have for him, just
13 briefly, is were you able to determine why there was no maid
14 service in his room?

15 THE WITNESS: His room he rented out for a week. When
16 they rent out weeklies they don't go in to clean out the rooms.

17 JUDGE CHERRY: That is all I have.

18 JUDGE MEMEO: No questions.

19 JUDGE BERRY: Anything else from counsel based upon
20 the Court's questions?

21 MR. GRECO: No, Your Honor.

22 MS. PUSICH: No, Your Honor. Thank you.

23 MR. GRECO: May this witness be excused, Your Honor?

24 JUDGE BERRY: You indicated you wanted some additional
25 documents from him. Did you want him to come back and

1 establish that on the record?

2 MR. GRECO: Yes, Your Honor. Since he is going to be
3 looking for the March 9th Miranda Waiver Form anyway, I would
4 ask Detective Burke also to look over all of the reports to see
5 if he can find the answer to the Court's question.

6 Detective Burke, again those questions were, one, when
7 did he initially check in and then, two, when did he move to a
8 different room because of the smoking/nonsmoking issue, if you
9 could look for those items and research that overnight.

10 Your Honor, what time will we be reconvening tomorrow?

11 THE COURT: 9:00 a.m.

12 MS. PUSICH: Your Honor, for the Court's assistance
13 and also for the officer, Officer Johnson's report, page one of
14 four in the fourth paragraph, indicates the Defendant
15 registered on March 3rd, 1999. He contacted the officers, 911,
16 on March 9th.

17 JUDGE CHERRY: What day was the 3rd?

18 MS. PUSICH: I think it was Wednesday, Your Honor. I
19 will have to look.

20 MR. GRECO: I have a calendar here. The 9th was a
21 Monday, and so the 3rd would have been the preceding Tuesday.
22 That still doesn't answer the question, though, exactly when he
23 changed rooms. Did Your Honor still want that?

24 JUDGE CHERRY: Yes, I would like to have that.

25 MR. GRECO: If you could research that overnight,

1 Detective Burke, and please show up at my office about 8:30 so
2 we can go over that.

3 JUDGE BERRY: The record should reflect March 3rd
4 according to our Clerk's calendar for 1999 was a Wednesday. Is
5 that correct, Miss Clerk?

6 THE CLERK: Yes, Your Honor.

7 JUDGE BERRY: That was Wednesday, and March 9th, the
8 date of the arrest is a Tuesday.

9 MR. GRECO: Your Honor, can we confer with the Clerk
10 for a moment?

11 JUDGE BERRY: You may.

12 MR. GRECO: I will defer to the Clerk whenever there
13 is disputes, so I would stipulate to that date.

14 JUDGE BERRY: All right. Certainly counsel can review
15 their calendars, and the record should reflect that defense
16 counsel and prosecution approached the Clerk, looked at a
17 calendar sheet to confirm the dates based upon the questions of
18 Judge Cherry, and certainly you can review those calendars if
19 there is any dispute.

20 Our notes now reflect the date that the Defendant
21 checked into the motel would be March 3rd, 1999, which is a
22 Wednesday, and the date of arrest was March 9th, 1999, a
23 Tuesday. We do not have a date that he changed rooms, and we
24 have had testimony based on the tape and the doctors that the
25 date of death I think is still in question.

1 MS. PUSICH: Your Honor, also for the Court's
2 information to save the detective some research time, he will
3 find the date of the change on the room in Sergeant Partyka's
4 report on page three in the second paragraph and that was March
5 5th.

6 JUDGE BERRY: Thank you very much.

7 MR. GRECO: And we would stipulate to that,
8 Your Honor.

9 JUDGE CHERRY: That is a Friday?

10 MS. PUSICH: Yes, Your Honor.

11 JUDGE BERRY: And did the defense wish to stipulate to
12 these dates?

13 MS. PUSICH: Yes, Your Honor. We have no reason to
14 question them. Detective, Sergeant Partyka actually conferred
15 with the person at the front desk to get the information.

16 JUDGE BERRY: Based upon the parties' stipulation
17 those dates will come into evidence.

18 Any other questions for the witness?
19

20 FURTHER REDIRECT EXAMINATION

21 BY MR. GRECO:

22 Q Detective Burke, did I see you signaling that you had
23 located something while we were all talking?

24 A Yes. This is the Miranda sheet that I had the
25 Defendant sign on the 9th, a copy of it.

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THE CLERK: Exhibit 19.

(Exhibit Number 19 was marked for identification.)

BY MR. GRECO:

Q You already indicated that what has now been marked as 19 is a copy of the Miranda Waiver Form from the 9th; is that correct?

A Yes, it is.

Q Is that a true and accurate copy of the Miranda Waiver Form you obtained from the Defendant on that date?

A Yes, it is.

MR. GRECO: I move for admission of 19, Your Honor.

MS. PUSICH: We have no objection, Your Honor. We also still have no objection to 3, although it went to a later interview.

MR. GRECO: Your Honor, I will move to withdraw 3 since you are not going to be hearing evidence at least from the State to the later hearing, so I would like to withdraw that.

JUDGE BERRY: Ms. Pusich, any objection?

MS. PUSICH: No, Your Honor

(Whereupon Exhibit 3 was withdrawn.)

JUDGE BERRY: Since there is no objection to 19, that

1 will be marked and admitted and that is the Miranda document
2 signed by the Defendant on the night of this, before this
3 interview commenced.

4
5 (Exhibit Number 19 was admitted into evidence.)
6

7 MR. GRECO: And with that I have no further questions,
8 Your Honor.

9 MS. PUSICH: I have nothing additional. Thank you.

10 JUDGE BERRY: I will thank and excuse this witness.

11 MS. PUSICH: Yes, Your Honor.

12 JUDGE BERRY: You may stand down, sir. Thank you.
13 Call your next witness.

14 MR. GRECO: Barbara Johnson is next, Your Honor.
15

16 BARBARA JOHNSON,
17 called as a witness; having been duly sworn,
18 testified as follows:
19

20 DIRECT EXAMINATION

21 BY MR. GRECO:

22 Q Would you please state your name and spell your last
23 name?

24 A Barbara Jean Johnson, J-O-H-N-S-O-N.

25 Q And, Ms. Johnson, in what state do you currently

1 reside?

2 A Arizona.

3 Q And in what state did you reside back in 1978?

4 A Washington.

5 Q Now, on December of 1978 did you have a boyfriend?

6 A Yes.

7 Q And what was his name?

8 A Terry Dennis.

9 Q And do you see Mr. Dennis here in the courtroom?

10 A Yes.

11 Q Would you please point him out?

12 A He is right over there at that table.

13 Q And what color -- well, would the record reflect that
14 she identified the Defendant?

15 JUDGE BERRY: So noted.

16 BY MR. GRECO:..

17 Q Now, ma'am, are you familiar with the Defendant's,
18 Mr. Dennis' arrest in December of 1978 for felony assault?

19 A Yes.

20 Q Who was the victim in that case?

21 A Myself.

22 Q All right. And would you please just take your time
23 and tell the Court what happened?

24 A He attacked me in my kitchen, in my home and
25 threatened to kill me.

1 Q All right. Let's back up a little bit. What was
2 going on right before he attacked you in the kitchen? Did some
3 type of argument erupt?

4 A Yes. We were arguing about, he didn't have a job and
5 I had found a good job and he wanted me to help him get a job
6 there.

7 Q At the same company that you worked at?

8 A Yes.

9 Q And did you, what did you tell him in response to his
10 saying that?

11 A I just told him I would get him an application, but,
12 you know, he was on his own after that.

13 Q Did he, was he satisfied with that response by you?

14 A I don't remember, you know. I don't remember what
15 happened after.

16 Q Did he become angry?

17 A Yes, uh-huh.

18 Q And did he assault you at some point?

19 A Yes, yes, he did.

20 Q Tell the Court what the Defendant did to you.

21 A He had me up against the kitchen door and my hair was
22 quite long then and he had a hold of my hair and he had a knife
23 and came up, well, came up to my neck and I grabbed it, and
24 when I grabbed for his arm and the knife he ripped the blade
25 through my hand.

1 I have a scar from here to here where he cut my palm,
2 and I somehow got away from him. I really don't know, except
3 I'm flabby now, but back then I was in pretty physical, pretty
4 good physical condition, and I got away from him.

5 Q Now, ma'am, you mentioned a moment ago that initially
6 before the cut occurred the knife was near your hair?

7 A Yes.

8 Q And your hair was longer back then?

9 A Yes.

10 Q Did the Defendant do anything in terms of the knife in
11 terms of your hair or the proximity of your hair?

12 A I had a, it all happened so fast, I just remember that
13 the knife had brushed against my hair and I believe that is
14 when I grabbed, I grabbed it because I was going to get killed,
15 and he told me he was going to kill me.

16 Q When you were cut by the knife in the moments after
17 you were cut did he say any words that you can remember?

18 A Yes. After he pulled the knife through my hand he
19 said hurts, don't it?

20 Q And you mentioned a moment ago that he threatened to
21 kill you?

22 A Yes.

23 Q Can you recall during what point of the altercation
24 that threat occurred? Was it before or after the stabbing?

25 A I'm sorry, I don't remember that. I won't say it is

1 before. When he first attacked me he said he was going to kill
2 me.

3 Q Before the point where he waved the knife around and
4 then you were cut did you ask him if you could do anything?

5 A Yes. December 5th, the day it happened is also my
6 son's birthday, and I begged and pleaded with him to allow me
7 to call my son, and I don't remember if he responded to me at
8 all.

9 It was in that time frame that I got away from him and
10 I ran and I couldn't get my front door open. My house at the
11 time was kind of in a circular, so I ran again to the back door
12 and I was able to get the back door open and I ran to a
13 neighbor and pounded on the door for help.

14 Q Now, did that wound bleed heavily?

15 A Yes, it did. The people that I pounded on their door,
16 they gave me a towel to put on my hand.

17 Q Were you frightened by this event?

18 A Oh, yeah. I never figured I would see my children
19 again.

20 Q And you mentioned at the beginning you had a scar. Is
21 that scar still visible on the palm of your hand?

22 A Yes, it is.

23 Q Would you please stand up and if it is all right with
24 the Court lean over the rail and show the judges exactly where
25 that scar is and how long it runs on your hand. Is that all

1 right with the Court?

2 JUDGE BERRY: That is fine.

3 THE WITNESS: It starts here and comes down and over
4 down here all the way across.

5 JUDGE MEMEO: I see it.

6 JUDGE BERRY: Thank you. The record should reflect
7 the witness leaned over and showed her hand to the Court and we
8 were able to examine the wound.

9 BY MR. GRECO:

10 Q Just one last question. Ms. Johnson, when the
11 Defendant threatened to kill you did he threaten you in a
12 serious tone of voice or did he sound like he was joking?

13 A No, he was serious.

14 MR. GRECO: That is all I had, Your Honor.

15 JUDGE BERRY: Cross exam.

16 MS. PUSICH: Thank you, Your Honor.

17

18

CROSS EXAMINATION

19 BY MS. PUSICH:

20 Q Ma'am, you referred several times to your residence,
21 your door, your kitchen. Isn't it true at the time of this
22 offense the Defendant was residing with you?

23 A Yes.

24 Q And had been for several months?

25 A Yes.

1 Q When you were leaning over the bench you made a
2 comment that I think I heard you say something, of course it
3 has been 20 years, correct?

4 A Yes.

5 Q Have you had any contact with Mr. Dennis in the
6 interim?

7 A No.

8 Q Were you called on to testify or make any statement
9 regarding his prosecution in Washington State back in 1978 or
10 '79?

11 A No. They never contacted, nobody ever contacted me on
12 this.

13 Q But you did fill out a report for the Police
14 Department immediately after this happened, after you got your
15 stitches?

16 A Yes...

17 Q Do you recall telling the police that when they were
18 looking for Mr. Dennis they could probably find him in the
19 London Bar?

20 A Well, I can remember that when they wanted me to say
21 who it was I was terrified to tell them who it was for fear
22 that he would get out of jail and come back and kill me, and so
23 I didn't want to say who it was and then I did, and he hung out
24 at the London Cafe at that time, bar and cafe.

25 Q During this incident did you have any suspicion that

1 he had had anything alcoholic to drink?

2 A Yes. I could tell he was drunk.

3 MS. PUSICH: Thank you. I have nothing further.

4 MR. GRECO: Your Honor, the parties have a stipulation
5 regarding State's Exhibit 6, which is the certified copy of the
6 conviction packet from Washington for the arrest date of
7 December 5, 1978 which Ms. Johnson has been referring to, and
8 that stipulation is that the document is admissible into
9 evidence.

10 MS. PUSICH: That's correct, Your Honor.

11 JUDGE BERRY: That will be marked and admitted.

12

13 (Exhibit Number 6 was admitted into evidence.)

14

15 MR. GRECO: I have no additional questions for the
16 witness, Your Honor.

17 MS. PUSICH: Nor do I, Your Honor.

18 JUDGE CHERRY: I have none.

19 JUDGE MEMEO: None.

20 JUDGE BERRY: Thank you for appearing. You may stand
21 down.

22 Any other brief witnesses for the State?

23 MR. GRECO: Your Honor, I would like to take the
24 recess now, if that is all right with the Court. I anticipate
25 in the morning we will have no more than 30 or 45 minutes worth

1 of evidence and the State will rest.

2 JUDGE BERRY: All right. Any administrative matters
3 we need to put on the record before we recess for the evening
4 from either the State or the defense?

5 MR. GRECO: Not at this point, Your Honor.

6 JUDGE BERRY: All right. This Court will stand in
7 recess until 9:00 a.m.

8
9 (Whereupon the proceedings concluded at 4:53 p.m.)

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STATE OF NEVADA)
) ss.
WASHOE COUNTY)

I, CORRIE L. WOLDEN, an Official Reporter of the Second
Judicial District Court of the State of Nevada, in and for
Washoe County, DO HEREBY CERTIFY;

That I was present in Department No. I of the
above-entitled Court on July 19, 1999, and took verbatim
stenotype notes of the proceedings had upon the matter
captioned within, and thereafter transcribed them into
typewriting as herein appears;

That the foregoing transcript, consisting of pages 91
through 201, is a full, true and correct transcription of my
stenotype notes of said proceedings.

DATED: At Reno, Nevada, this 20th day of July, 1999.

Corrie L. Wolden
CORRIE L. WOLDEN, CSR #194, RPR, CP.

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FILED

99 JUL 21 10:53

AMY [Signature]
BY [Signature]

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
HONORABLE JANET J. BERRY, MICHAEL CHERRY, MICHAEL MEMEO,
DISTRICT JUDGES

-o0o-

THE STATE OF NEVADA,
PLAINTIFF,
vs.
TERRY JESS DENNIS,
DEFENDANT.

Case No. CR 99-0611
Dept. No. 1
TRANSCRIPT OF PROCEEDINGS
PENALTY HEARING
July 20, 1999
Reno, Nevada
VOLUME I, PAGES 1-64

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ORIGINAL 354

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I N D E X

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E X H I B I T S

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5	Redacted Videotape	33	33
6	Certified Conviction	--	--
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10	Nevada Mental Health, 1995 & Prior	34	34
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1 RENO, NEVADA, TUESDAY, JULY 20, 1999, AT 9:27 AM

2 -o0o-

3 JUDGE BERRY: Mr. Greco, are you ready with your next
4 witness?

5 MR. GRECO: Yes, Your Honor.

6 Before calling her, though, we have a stipulation
7 regarding Exhibit 20, which was just marked

8 (Exhibit 20 marked for identification)

9 MR. GRECO: And this is a photograph of the victim
10 taken in 1998, and the stipulation is that it is just that:
11 It's a photograph of the victim taken in 1998, and that it be
12 admissible into evidence.

13 MS. PUSICH: That's correct, Your Honor.

14 JUDGE BERRY: And that will be marked and admitted.

15 (Exhibit 20 admitted into evidence)

16 MR. GRECO: May I present that to the Court?

17 JUDGE BERRY: Please.

18 MS. PUSICH: Your Honor, I also have one
19 administrative matter for the Court.

20 Yesterday when you asked us to put our Rule 250
21 qualifications on the record, I had not brought a copy of mine
22 with me, and there were some things I missed.

23 To make the record complete, I've prepared an
24 affidavit for the Court and provided a copy to counsel and the
25 defendant.

1 JUDGE BERRY: Thank you very much. And we'll go ahead
2 and mark and admit that affidavit, make it part of the record.
3 It articulates all of Miss Pusich's qualifications.

4 THE CLERK: That will be Exhibit 21.

5 (Exhibit 21 marked and admitted into evidence)

6 JUDGE BERRY: You may proceed.

7 MR. GRECO: Lana Miller is next.

8 L A N A M I L L E R,

9 called as a witness, having been duly sworn,

10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. GRECO:

13 Q Would you please state your name and spell both your
14 first and last names?

15 A Lana, L-a-n-a, Miller, M-i-l-l-e-r.

16 Q Miss Miller, in what state do you currently live?

17 A Washington state.

18 Q And back in 1983, in what city and state did you live?

19 A Mountlake Terrace.

20 Q In what state is that?

21 A Washington.

22 Q Now during December of 1983, were you present in a
23 home that was lit on fire?

24 A Yes, I was.

25 Q Whose home was that?

1 A It was a friend of ours, Fred Rasmussen's.

2 Q All right. And was that in the same city that you
3 lived in?

4 A Yes.

5 Q And what were you doing over there before the fire
6 started?

7 A We were sitting down eating dinner, watching TV.

8 Q And who is your mother?

9 A Bonnie Dennis.

10 Q And at that time, was Bonnie Dennis married back in
11 1983?

12 A No.

13 Q Do you know Terry Dennis?

14 A Yes, I do.

15 Q And at some point in your life was he related to you
16 somehow?

17 A Yeah. He was my stepfather.

18 Q And who was married to him?

19 A My mother, Bonnie Dennis.

20 Q The same woman you referred to?

21 Is Miss Dennis in fact in the courtroom here this
22 morning?

23 A She is right there.

24 Q Now before this fire started, what were you and Fred
25 doing at that home?

1 A We were just watching the news and eating, both of us
2 eating dinner.

3 Q You said he was a friend of yours.
4 Was there any type of romantic relation between the
5 two of you?

6 A No.

7 Q Just a friend of the family?

8 A Yeah.

9 Q Now at some point was your dinner interrupted?

10 A Yeah. By a loud noise.

11 Q Where was the loud noise coming from?

12 A Appeared to be coming from the back bedroom.

13 Q And what did the noise sound like?

14 A Just a 'really loud boom.

15 Q Explosion?

16 A Yeah.

17 Q And did you get up to investigate what was the source
18 of that noise?

19 A Uh-huh (affirmative). We both did.

20 We both went to the back bedroom and saw that the
21 window was broken, and that it was charred, blackened.

22 Q Did you see any fire?

23 A Yes.

24 Q What was on fire?

25 A The pane, the window pane.

1 Q Anything else besides the window pane on fire?

2 A No.

3 Q Did you take the opportunity to look outside?

4 A Yeah. We both then proceeded to go out the front door
5 and look on the front of the house, and it was burnt down the
6 side of the house, and up by the window.

7 Q Okay. The side of the house was burnt.

8 Did you notice any fire on the grass or any of the
9 shrubbery?

10 A Yeah. It was just bits, scattered out throughout
11 the -- in front of the window on the grass.

12 Q And did you see any device or implement in the area
13 where the fire had started?

14 Do you know what I mean by that? Did you see anything
15 that you thought started the fire?

16 A Yeah, there was a gas can with a rag, and it was lit,
17 and it was laying in front of the window.

18 Q The rag was on fire?

19 A Uh-huh (affirmative).

20 Q Did you see any persons in the area when you went
21 outside?

22 A Yes. Terry.

23 Q And would you point out Terry for the Court, please?

24 A (Witness complied with the request).

25 Q Your stepfather?

1 A Uh-huh (affirmative).

2 Q When you saw Terry Dennis -- Your Honor, could the
3 record reflect that she identified the defendant?

4 JUDGE BERRY: So noted.

5 BY MR. GRECO:

6 Q When you saw Terry Dennis standing there, what was he
7 doing?

8 A He just was standing there with a very blunt look on
9 his face.

10 Q Was he looking at you?

11 A Uh-huh (affirmative).

12 Q When you first saw him, did he attempt to leave the
13 area?

14 A Not when I first saw him, no. He was just standing
15 there.

16 Q Looking at you?

17 A Uh-huh (affirmative).

18 Q At some point did he leave the area?

19 A I just kind of panicked, and I ran in and called 911.

20 Q Did some police arrive?

21 A Uh-huh (affirmative).

22 Q And was that yes?

23 A Yes.

24 Q You can't say uh-huh, because the lady here is trying
25 to type down your answers and get them accurately.

1 And did you point out and tell the police what you had
2 seen?

3 A Well, I had ran back outside, and he had ran across
4 the street, and I pointed down the side road.

5 Q And when you say he, you mean Terry Dennis?

6 A Yes.

7 Q So you pointed out to the police the direction he had
8 gone?

9 A Uh-huh (affirmative).

10 Q Was that a yes?

11 A Yes, that was.

12 Q Okay. Now let's talk about the day or two before all
13 this happened.

14 Did you, and Terry Dennis have some type of dispute or
15 argument?

16 A Yes, we did.

17 Q Okay. Tell us about that.

18 A My mother had phoned the kids, myself, and had told us
19 to lock the door because Terry was on a rampage, and so I locked
20 the door, and took my younger brothers and myself and went into
21 one of the bedrooms, and he did show up there.

22 Q Did he stay outside?

23 A No. He was banging on the door, saying open up the
24 door, and he proceeded to kick in the door.

25 Q And then what happened?

1 A He came upstairs, and I was sitting on the couch with
2 my brothers, and he told me that you don't lock the door. Why
3 didn't you let me in, and we proceeded to have an argument, and
4 he pushed me down on the couch, and I got back up, and he hit me
5 in the mouth.

6 Q And do you know -- do you know why he was so angry?

7 A Yes, because we wouldn't let him in.

8 MS. PUSICH: Your Honor, I have an objection to
9 interpose at this point.

10 We were given notification on Sunday afternoon that
11 the State had neglected to provide in discovery the second page
12 of this witness's statement.

13 The information she has just provided comes from that
14 second page. I don't believe we were given sufficient notice
15 pursuant to due process.

16 Additionally, we were advised by the District Attorney
17 yesterday he would not be using this information for that
18 reason.

19 MR. GRECO: Your Honor, the second page was
20 received -- I disagree with Miss Pusich. That's not an accurate
21 summary.

22 The second page was received by me over the weekend
23 when the witnesses arrived, and I did meet and provide that
24 first thing Monday morning.

25 But what she is talking about, and I agreed I was not

1 going to use information learned from Bonnie Dennis, which had
2 not been previously disclosed.

3 I did not say anything about limiting myself in terms
4 of this witness.

5 Your Honor, as you are aware, Supreme Court Rule 250
6 requires that we provide notice of evidence of the aggravating
7 factors we're going to present, and I did do that in the notice.

8 And you'll probably notice from that notice, that I
9 said, as a courtesy, I gave some additional information on some
10 of the nonaggravating evidence that we would be presenting, and
11 I did that, although it's not legally required.

12 Your Honor, this is just directly related to the
13 event. It provides clear -- this information provides clear
14 motive of why he did what he did a night later, and so I think
15 it's directly relevant to that, but I did not tell Miss Pusich I
16 was not going to use Miss Green. I told her I was not going to
17 use Miss Dennis.

18 MS. PUSICH: Your Honor, notwithstanding any
19 miscommunication between Mr. Greco and I yesterday this was
20 provided to us the morning this hearing commenced.

21 I also disagree whether or not Rule 250 requires him
22 to provide us with advance notice. The rule is very clear that
23 discovery is to be complete some weeks prior to our walking into
24 the courtroom.

25 And for that reason, my objection stands.

1 JUDGE BERRY: Counsel, can we see the copy?

2 You don't dispute that you have the front page of the
3 witness's statement. You dispute the back portion?

4 MS. PUSICH: That's correct. May I approach?

5 JUDGE BERRY: May we please see that?

6 MS. PUSICH: This is the front and the back, Your
7 Honor.

8 JUDGE BERRY: Miss Pusich, this portion you had well
9 in advance.

10 MS. PUSICH: We had received.

11 JUDGE BERRY: This portion?

12 MS. PUSICH: We got yesterday morning, right before
13 court.

14 JUDGE BERRY: Okay. Thank you.

15 JUDGE CHERRY: Let me ask a question.

16 Is this the evidence that is the basis for the
17 conviction of use of, use or threat of violence of a person of
18 another?

19 MR. GRECO: Yes, Your Honor.

20 JUDGE CHERRY: In Washington?

21 MR. GRECO: Yes, Your Honor.

22 And after this witness, and the other witness, Stephen
23 Foster, testifies, I'm going to move to introduce that certified
24 document, but it's the arson.

25 The fire event is that same event.

1 JUDGE CHERRY: But is Lana Miller the victim of the
2 felony?

3 MR. GRECO: She is the -- well, she is the closest
4 thing to the victim of the arson.

5 JUDGE CHERRY: No. I meant of the assault. Was
6 there --

7 MR. GRECO: No. That's the next witness, Your Honor,
8 who will be here in a few moments.

9 JUDGE BERRY: Mr. Greco, based upon the fact that the
10 this second, back page, if you will, of this document was not
11 provided to the defense until this morning, and Rule 250 has
12 vigorous requirements relating to notice and discovery, the
13 Court is going to sustain the objection of the defense.

14 The Court will strike the testimony from the witness
15 related to the information on the back of the page, most
16 particularly the assault, and for the record, the three-judge
17 panel will not consider that information in its deliberations,
18 and will only consider the information on the front page of the
19 document.

20 MR. GRECO: Yes, Your Honor.

21 JUDGE BERRY: And further, I would like a copy of this
22 document marked into evidence, front and back, for any future
23 reviews so any appellate court can understand the basis of the
24 Court's ruling.

25 MR. GRECO: Yes, Your Honor.

1 Just so you are clear, you said this morning. It was
2 yesterday morning, and again I received it over the weekend, on
3 Sunday, and so I did provide it as soon as I had it, and I sent
4 Miss Pusich an e-mail the moment I received it, but I understand
5 the ruling, and I'll comply with that.

6 So you are saying, Your Honor, the arson is fair game,
7 but the assault the night before is off-limits; is that -- do I
8 understand your ruling correctly?

9 JUDGE BERRY: What is fair game is what is contained
10 on the front page of this document, what the defense had actual
11 notice of, and there was some reference -- in fact, for the
12 record, I think it would be safe to read this.

13 JUDGE CHERRY: Sure.

14 JUDGE BERRY: I'm going to read in the front page of
15 the document so that will define the parameters of what counsel
16 can pursue with this witness.

17 The document is -- looks like it says Mountlake
18 Terrace; is that correct?

19 THE WITNESS: Yes, it is.

20 MR. GRECO: Yes, Your Honor.

21 JUDGE BERRY: Mountlake Terrace, Washington, date
22 11/9/83, document control number 833796, and it is the statement
23 of, and there's an initial LG, and it says, Lana Marie Green,
24 age 16, 5919 203 Southwest Lyn, L-y-n.

25 "Terry and I have never -- have never have got along

1 from the moment I've meet him. He is a alcoholic. He has been
2 ever sence [sic] I've meet him around Valentine's Day.

3 "When he get's to drunk or has been drinking he
4 starts, in a bring me into it.

5 "The reason he doesn't like me is because I've never
6 have let him push me or my mother around.

7 "He has hit my mother a few times. He has never hit
8 her in front of me. She has told me about it.

9 "When he get's drunk, he is usually violent and calls
10 names.

11 "Tuesday night, around", there's an initial LG, "9:00,
12 my mother had a friend come over to the house to tell us to lock
13 the door and don't let Terry in the house.

14 "So we lock the door, windows. He show up about 9:30.
15 He tried the door. It didn't open, so he kick it in.

16 "He came up the stairs and said, you don't lock the
17 door. He went into the bedroom.

18 "I and my two brother didn't say anything for a while
19 and he started in, over," and that's the portion that
20 terminates, and that is what the defense had notice of.

21 So there is no reference on the front page to the
22 arson.

23 MR. GRECO: Yes, Your Honor. I guess I see, I
24 understand what you are saying, Your Honor.

25 Now in the notice of -- regardless of the statement,

1 forget about the statement for a moment -- in the notice of
2 evidence of aggravation, we gave them clear notice that this
3 individual witness would be testifying to the facts pertaining
4 to the arson that's at page 2 of the notice, and she can do that
5 of her independent memory without us having to refer to the
6 statement whatsoever.

7 So I'm not seeking -- I did not seek to introduce the
8 statement, but is Your Honor saying that she cannot even testify
9 from her independent memory about the arson itself that we have
10 given them notice of that that is what she was going to be
11 testifying about?

12 JUDGE BERRY: No. I believe on page 2 of the
13 aggravation you did give notice of that, and she can testify as
14 to her independent recollection of that particular matter.

15 But the assault, and the -- those type, those
16 allegations that follow on the back page will not be considered
17 by the Court in deliberation.

18 Mr. Greco, you are correct. On page 2, you did give
19 sufficient notice of the arson charge, so you may pursue that.

20 I just want to be very clear that the back page
21 information, most particularly as to the assault, the allegation
22 that he hit her in the mouth, will not be considered by the
23 Court, and this will be marked and admitted into the record, and
24 the court reporter can likewise look at it for the spelling and
25 the context of the document.

1 Does that clarify, Counsel?

2 MR. GRECO: Yes, Your Honor, I understand.

3 JUDGE BERRY: Any clarification?

4 JUDGE CHERRY: Just so I'm certainly clear,
5 Miss Dennis is the actual victim of the other felony conviction
6 that's going to be presented; is that correct?

7 MR. GRECO: No, Your Honor.

8 As you will see in the certified documents, the two
9 victims of the assault are the police officers, and we have --
10 we're going to get to that in a few moments.

11 JUDGE CHERRY: I was confused as to that. Thank you.

12 MR. GRECO: Actually, Your Honor, I had finished my
13 questioning regarding the arson, so I'm all done.

14 JUDGE BERRY: Thank you.

15 Cross exam?

16 CROSS-EXAMINATION

17 BY MS. PUSICH:

18 Q Thank you.

19 Ma'am, how old were you when this happened?

20 A 16.

21 Q How old was Mr. Rasmussen?

22 A 40, in his 40s.

23 Q So significantly older than you were?

24 A Yeah.

25 Q This happened in December of 1983?

1 A Yes, it did.

2 Q What was your mom's name then?

3 A Bonnie Scipper.

4 Q To your knowledge, was Mr. Dennis convicted for the
5 arson charge that's been discussed this morning?

6 A Yes, he has.

7 Q And subsequent to that time, did your mother marry
8 him?

9 A Yes.

10 MS. PUSICH: Thank you.

11 Nothing further.

12 JUDGE BERRY: Redirect?

13 MR. GRECO: No, Your Honor.

14 JUDGE BERRY: Any questions from the Court?

15 May we thank and excuse this witness?

16 MR. GRECO: Yes, Your Honor.

17 MS. PUSICH: Yes, Your Honor.

18 JUDGE BERRY: You may stand down. Thank you.

19 MR. GRECO: Stephen Foster is next.

20 THE CLERK: Your Honor, for the record, this exhibit
21 will be Exhibit 22.

22 JUDGE BERRY: Thank you.

23 (Exhibit 22 marked for identification)

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S T E P H E N F O S T E R,
called as a witness, having been duly sworn,
testified as follows:

THE WITNESS: Good morning.

DIRECT EXAMINATION

BY MR. GRECO:

Q Will you please state your name and spell your first and last names?

A Stephen Foster, S-t-e-p-h-e-n, Foster, F-o-s-t-e-r.

Q Mr. Foster, what do you do for a living?

A I'm a police officer employed by the city of Mountlake Terrace, Washington.

Q What is your current rank?

A Commander.

Q And in your particular agency, what -- commander, how far up the chain of command is that?

A Commander is like a combination captain and deputy chief.

Q And back in 1983, what rank were you then?

A I was a patrol officer.

Q And when were you first hired by that particular police department?

A March 21st, 1977.

Q On December 9th, 1983, were you on duty during the early morning hours?

1 A Yes, I was.

2 Q At about 12:05 a.m. that morning, were you dispatched
3 somewhere?

4 A Yes. Actually a couple minutes previous to that, I
5 had been dispatched to assist the fire department at the scene
6 of a structure fire.

7 Q And where did you go initially?

8 A I went to the area of the structure fire, and was
9 immediately met by a lady who was standing in the middle of the
10 street.

11 Q Describe what happened.

12 A She was pointing down the street, and I looked down
13 the side street that she was pointing down, expecting to see the
14 fire, and I didn't see anything.

15 Q So what did you do?

16 A She came running up to my car and pointed again, and
17 said, "Down there on the sidewalk", and I didn't see anything,
18 so I asked her, "What's on the sidewalk?"

19 And she said, "The man who just set fire to my house
20 is down there on the sidewalk between the houses".

21 Q And did you go over to that area that was pointed out
22 to you?

23 A I drove down the side street, didn't see anything in
24 the area that she had pointed out to me, so I called a
25 neighboring agency, requesting a canine unit, and then drove a

1 couple blocks away to set up containment.

2 Q At some point did you come in contact with the
3 suspect?

4 A Shortly after the canine officer arrived, he radioed
5 that he had what he thought was a suspect standing next to a
6 truck.

7 Q And did you go to that, the area where the canine
8 officer was?

9 A Yes. That was right -- the truck was parked next to
10 the sidewalk where the female had originally pointed and said
11 that the suspect was standing there.

12 Q And when you first arrived at the location, describe
13 where the suspect was standing?

14 A He was standing on the passenger side of the truck, or
15 excuse me, he was standing on the driver's side of the truck,
16 the truck was parked passenger side to the curb.

17 He was standing next to the cab, facing forward,
18 standing kind of sideways to the truck.

19 Q And did you notice anything in the suspect's hand?

20 A I noticed what I thought was a closed five-inch knife
21 being palmed in his right hand.

22 Q You have used the word "he".

23 Was it a male suspect?

24 A Yes, it was.

25 Q Did you subsequently identify him by name?

1 A Yes, we did.

2 Q What was his name?

3 A His name was Terry Jess Dennis.

4 Q All right. So once you arrived and saw that, what
5 happened to the knife in the hand? What happened next?

6 A When I saw the knife, I thought it was closed, and I
7 assumed -- it looked as if he was going to try and drop the
8 knife and kick it under the truck.

9 I approached him, asked him to turn towards the truck,
10 and with my left hand, placed it on his left shoulder and turned
11 him so that he was facing the truck.

12 Q And when you did that, what did he do, if anything?

13 A I felt him tense up, and at about the same time as the
14 canine officer yelled at me, I noticed that the knife, which I
15 had previously thought was closed, was open.

16 Q Did he attempt to move the knife in any fashion?

17 A I stepped back as soon as I saw the knife was open,
18 and he turned and swung the knife at me.

19 Q Directly at you?

20 A Yes.

21 Q Did it make contact with your body at that point?

22 A Did not.

23 Q So what happened then?

24 A Stepped back several paces, drew out my service
25 revolver and ordered him to drop the knife.

1 Q Did he comply with your order?

2 A He did not. He stated that he had set the house on
3 fire, and was not going to drop the knife to prove a point.

4 Q Did the suspect seem extremely agitated during your
5 contact with him?

6 A He was very calm.

7 Q All right. After he refused to drop the knife, did
8 you make further attempts to get him to drop that knife?

9 A About this time, three more officers arrived to join
10 myself and the canine officer, so there was about five of us, or
11 there were five of us that were around him in somewhat of a
12 semicircle, asking him to, telling him to drop the knife, trying
13 to convince him that it was best for him to drop the knife.

14 Q And what did he say to those requests?

15 A He said that he was trying to prove a point.

16 He would take the knife and move it from hand to hand,
17 kind of making a slow swinging gesture, so that he was swinging
18 it, pointing at each of the officers.

19 Q Did he ever threaten to throw or use the knife on
20 anyone present?

21 A He at one point alternated between holding the knife
22 by the handle and holding it by the blade, telling us that he
23 knew how to throw the knife, and that that knife represented his
24 one bullet.

25 Q Now you mentioned a canine officer. I assume he had a

1 canine dog with him?

2 A Yes, he did. He had a German shepherd.

3 Q Did Mr. Terry Jess Dennis make any statements in
4 regard to the German shepherd?

5 A After he had pointed the knife at each officer and
6 asked each officer, are you going to be the one that shoots me,
7 are you going to be the one that's going to shoot me, he then
8 threatened that anybody who tried to take the knife from him
9 would get stabbed.

10 And he challenged the canine officer to turn the dog
11 loose on him so that he could stab what he termed the pup.

12 Q At some point did any of the officers attempt to move
13 towards him or the truck?

14 A One of the officers, after we had been somewhat
15 stalemated for a period of time, took a long nightstick and
16 tried to get close to him in the back of the truck to either
17 distract him or to hit the knife with the stick.

18 Q And what occurred when that officer tried to move
19 towards the truck?

20 A At that point, he moved from the truck, started moving
21 forward and away from the truck, with the semicircle of officers
22 kind of moving with him.

23 Q In addition to the movement of the knife towards
24 yourself you described earlier, at any point did the suspect
25 flash or move that knife towards anyone else?

1 A When we had gotten about 15 feet away from the truck,
2 just the movement of the semicircle with him, the circle had
3 somewhat drawn closer around him, and at one point about 15 feet
4 from the truck, he took a quick step towards one of the
5 officers, swung the knife at them, and then lunged and thrust
6 the knife at the canine officer who had holstered his weapon so
7 he could hold on to the dog.

8 Q Did those movements concern you?

9 A When he thrust at the canine officer, I shot him.

10 Q And why did you do that?

11 A Fearful for the life of the canine officer or the
12 officer that was standing next to him.

13 Q And was he eventually taken into custody?

14 A When he was struck by the bullet, he spun, and the
15 knife flew out of his hand.

16 The canine officer released the dog, who immediately
17 jumped on him, knocked him down, and then we all jumped on him,
18 and helped him up and took him into custody.

19 Q What charges was he placed into custody for?

20 A He was charged with first degree arson, first degree
21 assault.

22 MR. GRECO: Your Honor, Exhibit 7 which is the
23 certified prior conviction documents evidencing the conviction
24 for second degree assault and second degree arson, I have in my
25 hand, and the parties are stipulating that this, these documents

1 are admissible into evidence.

2 MS. PUSICH: That's correct, Your Honor.

3 JUDGE BERRY: Be marked and admitted

4 (Exhibit 7 marked and admitted into evidence)

5 MR. GRECO: That's all the questions I have, Your
6 Honor.

7 JUDGE BERRY: Cross exam?

8 MS. PUSICH: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. PUSICH:

11 Q , Officer, I'd like to take something you just said a
12 tiny bit further.

13 Suspect is shot, drops his knife, and the dog let
14 loose and bites him, correct?

15 A The dog jumped up on him and may have bit him on an
16 arm.

17 Q Would you be surprised if medical reports show that he
18 was repeatedly bitten in the back and buttocks?

19 A I would be surprised.

20 Q Is it safe to say the only person injured in the
21 assault that Mr. Dennis was convicted of was Mr. Dennis?

22 A Correct.

23 Q And you said he was charged with first degree arson,
24 first degree assault.

25 Isn't it true he was convicted of second degree arson

1 and second degree assault?

2 A As my understanding that he was, did plead to second
3 degree assault.

4 Q You prepared a handwritten report at the time that
5 this occurred; is that correct?

6 A Immediately after, yes.

7 Q And at that time, based on your observations of
8 Mr. Dennis, you reached certain conclusions regarding him,
9 correct?

10 A Yes.

11 Q Upon what training and experience did you conclude
12 that he was not crazy?

13 A My six years of, at that time, experience; police
14 experience. His very calm, rational -- or not rational, but his
15 very calm and deliberate behavior led me to believe that he was
16 in control of himself.

17 Q He was facing four to five officers armed with
18 firearms, correct?

19 A I never determined that he was bright or intelligent
20 or was doing the right thing.

21 Q That wasn't the question. Thank you.

22 Was he facing four to five police officers with
23 firearms?

24 A Yes, he was.

25 Q With, by your estimation, a five-inch knife?

1 A Yes.

2 Q After he was shot, were any additional weapons found
3 on his person?

4 A Not to my knowledge, no.

5 Q Were you present after he was shot?

6 A Very shortly after he was shot, I was taken from the
7 scene and sent back to the station.

8 Q To make a report for an officer-involved shooting?

9 A Correct.

10 Q You also indicated in your report that you didn't
11 think he was intoxicated, correct?

12 A He did not act as if he was intoxicated, no.

13 Q Do you know if any testing was done in the course of
14 the investigation to determine if he had in fact been drinking?

15 A I do not know.

16 Q And would it surprise you if civilian witnesses had
17 reported that they thought he had been?

18 A Would not surprise me.

19 Q You described that you spent six years working in
20 patrol. Had you had any special training regarding psychology?

21 A At that time, my only psychology was at the time
22 community-college level.

23 Q For a semester, two semesters, two years?

24 A Oh, probably a couple semesters.

25 Q And how long before this incident occurred had that

1 occurred?

2 A Five years before.

3 MS. PUSICH: Thank you. Nothing further.

4 JUDGE BERRY: Redirect?

5 REDIRECT EXAMINATION

6 BY MR. GRECO:

7 Q Commander Foster, why did you shoot him?

8 A Because he was posing a serious, immediate threat to
9 the life of and safety of the officers present.

10 Q By lunging with the -- at the officer with the knife?

11 A Both by swinging the knife at one officer, and by
12 lunging at the other officer.

13 Q And did you say you had been working for six years
14 before this happened?

15 A Correct.

16 Q In those previous six years, how many times had you
17 shot a person on duty?

18 A This is the only time that I've ever shot anyone.

19 Q Never shot one before?

20 A No.

21 Q Never shot one since?

22 A Correct.

23 Q The dog, did the dog bite anyone besides Mr. Dennis?

24 A The dog bit me twice.

25 Q Did the dog seem pretty agitated?

1 A The dog was very excited. He was trained -- at that
2 time, he was a tracking dog, and tracking dogs are, go after the
3 fear scent.

4 And he bit me on the hand once, and then when
5 Mr. Dennis was on the ground, he bit me on the foot because I
6 probably had as much fear scent as anybody there.

7 Q Were you frightened?

8 A Yes, I was.

9 MR. GRECO: That's all I have, Your Honor.

10 JUDGE BERRY: Anything else, Miss Pusich?

11 MS. PUSICH: No, Your Honor. Thank you.

12 JUDGE BERRY: May we thank and excuse this witness?

13 MS. PUSICH: Yes, Your Honor.

14 JUDGE BERRY: You may stand down, sir. Thank you.

15 MR. GRECO: Your Honor, before resting, yesterday I
16 had initially indicated that I was going to offer State's
17 Exhibit 5, which was the redacted tape, possibly an hour and 30
18 minutes long, which is all that I wanted to play.

19 Miss Pusich indicated her intent, I think after
20 question from the Court, she was going to play all the portions
21 I didn't play, anyway, and then the Court asked to play the
22 whole thing at one time.

23 And so we then marked the unredacted videotape, which
24 is 17.

25 But I do want to -- 5 was withdrawn. I do want to

1 re-offer it, Your Honor, not to -- just want to place it in
2 evidence, not ask that it be admitted, just so a reviewing
3 court -- it's clear as to what segments of the interview I
4 initially wanted to play, just so that's clear.

5 JUDGE BERRY: Any objection from the defense?

6 MS. PUSICH: No, Your Honor.

7 JUDGE BERRY: All right. That will be -- you were
8 seeking that to be admitted into the record?

9 MR. GRECO: Actually just marked and left as part of
10 the record, but not admitted, since it was not played.

11 JUDGE BERRY: All right. So it will be marked --
12 Mr. Petty, from an appellate perspective, if it's merely marked,
13 but not admitted, if the Supreme Court calls up the evidence,
14 would that, at that point, in fact be shipped up?

15 MR. PETTY: I think what would have to happen is, by
16 way of stipulation, appellate counsel for the state,
17 Mr. Hatlestad, or Miss McCarthy, and I would have to prepare a
18 stip and have the Court consider it solely for the limited
19 purpose offered today by Mr. Greco, and I don't think you would
20 have problems with that, but I think, frankly, just to answer
21 your question, if the Court calls up the exhibit, if it's not
22 admitted, it's not going.

23 JUDGE BERRY: And that is my recollection from the
24 Supreme Court practices. Initially all exhibits stay with the
25 District Court, and it is only upon a request to the justice, or

1 a court employee, that if they wish further review of an
2 exhibit, then they are -- only the admitted exhibits would be
3 shipped to the Supreme Court.

4 So I wanted that clarified.

5 JUDGE CHERRY: Would counsel prefer it just be
6 admitted so it's part of the record, just in case some reviewing
7 court some day somewhere wants to see it?

8 MR. GRECO: That's fine, Your Honor, as long as the
9 record is clear that's not the tape that was ultimately
10 viewed.

11 JUDGE CHERRY: Just makes it easier.

12 I know when I was in public practice, to get something
13 into evidence that wasn't in evidence, wasn't presented into
14 evidence, but was just offered, is a nightmare.

15 So just to make it easier for everybody, just in case.

16 MR. PETTY: We accept the offer. We would allow it to
17 be admitted for the purpose of appellate review, and the record
18 clearly notes why it was introduced today solely to show a
19 reviewing court what was redacted from the original tape.

20 The original tape is in the record, so that's fine.

21 JUDGE BERRY: Okay. Hearing no objection, based upon
22 the stipulation that the redacted tape, which was not viewed by
23 this Court, will be marked and admitted into the record for any
24 future consideration that any appellate court may wish to give
25 it.

1 You may call your next witness.

2 (Exhibit 5 marked and admitted into evidence)

3 MR. GRECO: With that, Your Honor, the State rests.

4 JUDGE BERRY: Miss Pusich?

5 MS. PUSICH: Your Honor, we would like to take a short
6 break to consult with our client before we proceed.

7 However, I do have a question.

8 Has Exhibit 7 been admitted?

9 THE CLERK: Yes, Your Honor.

10 MS. PUSICH: Thank you. Then I have nothing further.

11 JUDGE BERRY: Okay. All right. Then we will take a
12 brief recess.

13 And Mr. Dennis has had an opportunity to read the
14 presentence investigation in its entirety; is that correct?

15 MS. PUSICH: Yes, Your Honor. We went over it Friday.

16 JUDGE BERRY: Okay. And then I would request that
17 those certified, the copies of certified convictions,
18 Miss Clerk, be provided to the judges so that we can peruse
19 those during the break.

20 We'll stand in recess for approximately 20 minutes.

21 MS. PUSICH: 10 would be plenty, Your Honor.

22 JUDGE BERRY: Thank you. We'll actually take 15
23 minutes.

24 MR. PETTY: One last thing.

25 As before, when we conferred with our client,

1 obviously a deputy has to be present, but we would ask that
2 nobody else be present because of the condition of
3 confidentiality requirements of attorney/client.

4 JUDGE BERRY: Deputy, if you would take them into the
5 jury room, and he can organize that with you.

6 MR. PETTY: Okay. Thank you.

7 MS. PUSICH: Thank you, Your Honor.

8 (A recess was taken)

9 JUDGE BERRY: Record should reflect that we have stood
10 in recess to allow the defense counsel an opportunity to confer
11 with Mr. Dennis, and the State has rested.

12 Is the defense prepared to present their presentation?

13 MS. PUSICH: We are, Your Honor.

14 First we would advise the Court that we have reached a
15 stipulation with the State regarding the admission of certain
16 written exhibits.

17 Those are Exhibits 10, 11, 12, 13, 14, 15.1 through
18 15.5.

19 The State will not object to those being admitted
20 before the Court today.

21 MR. GRECO: That's correct, Your Honor.

22 JUDGE BERRY: Pursuant to stipulation, the Exhibits
23 10, 11, 12, 13, 14, 15.1 through 15.5 will be admitted

24 (Exhibits 10-14 & 15.1-15.5 marked and admitted into evidence)

25 MS. PUSICH: Your Honor, I would advise the Court at

1 this time that we have in fact instructed Mr. Dennis he has the
2 right to testify here today or to make a statement in
3 allocution. We have explained to him the parameters of that.

4 He is electing to do neither, and is prepared to be
5 canvassed regarding his choices.

6 JUDGE BERRY: Okay. Mr. Dennis, if you would please
7 stand.

8 I have asked Judge Cherry, who has previously stood in
9 the shoes of defense counsel for many years and is highly
10 regarded within the judiciary, to discuss with you your rights
11 and to make sure that you understand those rights, so I would
12 defer to Judge Cherry at this time.

13 Miss Clerk, will you please swear Mr. Dennis?

14 T E R R Y J E S S D E N N I S,
15 called as a witness, having been duly sworn,
16 testified as follows:

17 CANVASS

18 BY JUDGE CHERRY:

19 Q Mr. Dennis, I'm Michael Cherry. I'm from Clark
20 County, and I was asked by the Supreme Court to be on this
21 three-judge panel.

22 Why don't I have you sit down, make it a little
23 easier, because I've got quite a few questions.

24 Just basically let me just make a record. First of
25 all, you are 52 years of age, or are you 53 now?

1 A I'll be 53 in October, sir.

2 Q Okay. And how far did you go in school?

3 A High school and one year of college.

4 Q What college did you go to?

5 A Edmonds Community College. It was an offshoot. I was
6 in the penitentiary at the time.

7 Q When was that?

8 A 1985.

9 Q And you had a year of electronics and mathematics
10 training?

11 A That's correct.

12 Q Where did you get that training?

13 A That was that year.

14 Q That was that year.

15 You have an opportunity here to influence us as to
16 what your sentence may be. You understand the possibilities,
17 there's a number of possibilities as to what your sentence would
18 be in this case?

19 A I understand.

20 Q You do understand that, and I know you have certainly
21 competent counsel, we have a competent District Attorney here
22 prosecuting the matter.

23 And just as one who does not take the death penalty
24 lightly, I just want to make sure you understand the position
25 that you are putting us in by not offering anything except these

1 written documents, at least at this point.

2 What type of discussions have you had with counsel
3 about that, if I may ask? Have you had a thorough discussion
4 with your counsel?

5 A Beyond thorough, Your Honor.

6 Q I guess she pushed you a little bit to maybe cooperate
7 a little more so that she could use her skills as an excellent
8 defense attorney?

9 A That pretty much sums it up.

10 Q You are resistant at this time to do that; is that
11 correct?

12 A That's correct.

13 Q And you understand the consequences completely?

14 A Yes, sir, I believe I do.

15 Q There's information in here that you have been on some
16 medication.

17 What medication are you on today -- yesterday and
18 today, what medications did you take, if any?

19 A I quit taking them, Your Honor.

20 Q So you have not. When was the last time you had any
21 type of medication?

22 A April.

23 Q What were you taking at that time?

24 A That was in the jail. It was Depakote.

25 Q What did it do for you?

1 A It's a mood stabilizer.

2 Q Do you notice a difference between when you took the
3 Depakote and today?

4 A Yes and no.

5 Q Are you mellow today? Do you feel real mellow today?
6 Do you feel depressed?

7 A No, sir, I absolutely do not.

8 Q Do you feel depressed today?

9 A No. I'm pretty angry actually.

10 Q You are angry?

11 A Yes.

12 Q What are you angry at?

13 A Circumstances beyond my control.

14 Q Could you be a little more specific?

15 A Yeah. When I got back to my house yesterday, I got
16 ripped off, all of my commissary. I know who did it, and I
17 can't do a damn thing about it.

18 Q So it's a jail problem. You've suffered a loss
19 because somebody stole your property?

20 A Yeah.

21 Q There's testimony, I'm -- what I'm doing, Mr. Dennis,
22 so you understand that, I wasn't here when Judge Berry took your
23 plea, initial plea, but the transcript revealed some things, I
24 just wanted to ask you some questions about, if you don't mind.

25 Said you were in the military?

1 A That's correct.

2 Q How many years were you in the military?

3 A Four-year hitch. I got early out, couple months early
4 out, rotating back to the States.

5 Q Did you do over 40 months in the military? Supposed
6 to be 48, did you get out eight months earlier, six months
7 early?

8 A No, about three.

9 Q And where did you go? What branch of the service were
10 you in?

11 A The Air Force.

12 Q Where did you serve?

13 A Well, did basic training at Lackland, Texas, and I
14 went to Keesler, Mississippi, and Dover Air Force base in
15 Delaware, and then I got permanent partied to Thailand and was
16 six months in Vietnam.

17 Q What was your service in Vietnam like?

18 A I worked in Saigon.

19 Q Were you in combat at all?

20 A No. Got shot at, but I didn't have anything to shoot
21 back with.

22 Q There's a statement in your plea that you suffer from
23 some type of delayed stress syndrome.

24 Where did you get that information?

25 A I was diagnosed.

1 Q Did it have to do with your service in Vietnam at all?

2 A No.

3 Q What did it have to do with?

4 A Screwed up childhood.

5 Q It also says in your plea, it says, well, I've been
6 diagnosed with bipolar II disorder. Basically the medication
7 was so that I could get along with people or a mood stabilizer,
8 when Judge Berry was asking you about your medication.

9 What is bipolar II disorder?

10 A The condition itself used to be called manic
11 depressive, okay. You go in extreme manic stages, and then you
12 have extreme depressive stages.

13 I didn't have the manic. I would vary from the --
14 bipolar II is another diagnosis for that. I go from what would
15 be more or less normal to severe depression.

16 Q In your plea, it says for the past three and a half
17 years or so I've been treated for severe chronic depression,
18 bipolar posttraumatic stress disorder.

19 Tell me a little bit about those disorders and about
20 the treatment.

21 A Treatment basically has just been medication.

22 Q Did it give you some relief when you took the
23 medication?

24 A Well, it's supposed to, but you're not supposed to be
25 drinking behind that stuff, either, and I did, so the relative

1 degree of effectiveness is questionable as far as I'm concerned.

2 Q It said that you were diagnosed in 1995. It said
3 August of '95. That was your answer as to when you were
4 diagnosed.

5 How did it happen that you were diagnosed? What were
6 the circumstances?

7 A I had a suicide attempt, and I was put in Nevada
8 Mental Health Institute in Sparks.

9 Q How did you try to do away with yourself?

10 A Pills and alcohol.

11 Q The evidence that's been presented here seems to
12 indicate, at least -- especially your statement, an overwhelming
13 amount of use of alcohol.

14 Q How long have you been an alcoholic?

15 A I probably started drinking alcoholically when I was
16 13, 14.

17 Q Did you ever go into a period of recovery since age 13
18 or 14?

19 A Oh, yeah, many times.

20 Q Did you ever go to AA?

21 A Yeah.

22 Q Did you ever stop for a year, two years, three years?

23 A Never that long.

24 Q What was the longest you ever stopped?

25 A As a guess, I'd probably say with Antabuse, probably

1 six months maybe, maybe.

2 Q Looks like you were in two inpatient treatment
3 programs for alcohol. Inpatient, that's what you said during
4 your plea?

5 A That's correct.

6 Q Tell us, tell me a little bit about that.

7 A Well, they were both 30-day inpatient programs, one
8 from the Veteran's Administration, one from Kitsap County in
9 Washington.

10 Q And they were not successful as far as helping you to
11 stop drinking?

12 A If you don't want -- if you don't have any intention
13 of quitting drinking, you can go to all the programs in the
14 world. Ain't going to help.

15 Q Do you consider yourself mentally ill today?
16 You did when you entered your plea, you said?

17 A I have got problems, yeah.

18 Q Judge Berry said, and are you suffering from any
19 mental illness today, and you said, I imagine so, but I mean
20 they just don't go away. I decline treatment.

21 Q So you are suffering from mental illness today?

22 A I don't think I'm totally sane. I mean, yeah, I think
23 I probably have some problems that could be --

24 Q How did you get along with Dr. Lynn, the one who
25 examined you?

1 A I got along fine with him.

2 Q And is it your desire that counsel not pursue some of
3 the things that I've just brought up about your alcoholism,
4 about your mental illness, about your posttraumatic syndrome?

5 Sounds like you were abused when you were a child,
6 according to the presentence report. Is that correct?

7 A According to today's standards, yeah.

8 Q Somebody forced oral sex on you?

9 A No.

10 Q Was that --

11 A Well, I don't know. I mean, that part is still
12 blocked out.

13 Q How many times have you tried to commit suicide?

14 A I lost count. I don't know.

15 Q Over 10 times?

16 A I don't know. Probably not. I don't know. Maybe.
17 Maybe that many. I don't know.

18 Q You are adopted. You were adopted when you were a
19 child, and you lived with your birth mother?

20 A That's correct.

21 Q Do you know anything about the adoption, as far as who
22 your birth mother was or who your birth father was?

23 A I know very little about my birth father. My birth
24 mother had tuberculosis and died when I was about a year old.
25 She was an alcoholic.

1 Q How did you know that? How did you know about the
2 alcoholism in your family?

3 A My grandmother, my maternal grandmother, told me.

4 Q You said during your plea that uncles and relatives,
5 your mother, your biological mother, was an alcoholic?

6 A Yeah. That's correct.

7 Q You don't want to live; is that the understanding that
8 you are trying to give us, in other words?

9 I know you like to cut to the chase, and I know you
10 said, when you pled, well, Your Honor, the way I see it, I have
11 been in prison twice before. Spending the rest of my life in
12 prison, to me, is not living at all. It's existing.

13 Is that the message you are trying to send us, or at
14 least me?

15 A Pretty much sums it up.

16 Q When you made your confession and everything, did you
17 really remember what happened?

18 A It was pretty fuzzy. It was -- parts of watching that
19 videotape yesterday I didn't remember.

20 Q Do you know whether or not you had sex with her after
21 she was dead? Do you have any -- do you really know?

22 A I would hope not, but I don't know for sure, no.

23 Q Do you remember even strangling her with the belt?
24 You said you did it, but do you really remember?

25 A Yeah.

1 Q Do you remember what day you did it?

2 A It was, I believe it was a Saturday, Saturday night,
3 could have been Sunday morning.

4 Q How often would you go on binges like the one you went
5 on when you murdered that woman?

6 A Binge, referring to what?

7 Q The drinking?

8 A As often as I could. If I had a pocket full of money,
9 that's what I did.

10 Q Why did you wait to age 52 to do this fantasy of
11 taking somebody off the street and killing them?

12 A Good question. I haven't got an answer for you.

13 THE REPORTER: Excuse me?

14 BY JUDGE CHERRY:

15 Q Good question. I haven't got an answer for you.

16 Am I correct, Dennis? That's what your answer was?

17 A Yes.

18 Q Did you have those thoughts before? You said that to
19 Judge Berry, and you said it in your statement to the officer?

20 A That's correct.

21 Q Do you know anything about blood alcohol?

22 A A blood alcohol?

23 Q The blood alcohol, like with the victim in this case
24 had a .37. You heard that?

25 A Yeah, I heard that.

1 Q Did that have meaning to you as to how drunk she was,
2 too?

3 A Not really. I don't -- I don't know enough about how
4 that is figured out, whether that, you know, point whatever
5 means what, you know.

6 Q During this period of time you were at the Horseshoe,
7 were you intoxicated the entire time? Was there ever a time
8 when you were somewhat sober?

9 A No.

10 Q Do you really remember killing that woman?

11 A Yes, I do.

12 Q You remember it?

13 A Uh-huh (affirmative).

14 Q And it was all over the fact that she was talking to
15 you about being in Vietnam, and she maybe insulted your manhood?

16 A Your Honor, I don't know what point I went off. I
17 don't know. It's just somewhere along the line something
18 happened, and that ended up.

19 Q You understand why I want to know in particular? Do
20 you know why I want to know?

21 A No.

22 Q Because I have represented people in your position who
23 would do anything to live. Would do anything to have judges
24 say, life imprisonment.

25 And for whatever reason, the District Attorney would

1 not want to let them live, and a jury would decide not to let
2 them live.

3 So I want to make sure, if I'm the one that says you
4 are going to die, that I'm sure that in your own mind, you are
5 not holding back, and that you would maybe give your counsel,
6 skilled, skilled counsel -- I'm very impressed with the quality
7 of the prosecution and the defense in this matter -- and give
8 them a chance to litigate this case.

9 I know it's your life, but there are 84 people right
10 now on death row in Nevada that would like the opportunity to
11 have this type of Public Defender come forth and to have some of
12 the mitigation that has come forth through the DA even, the
13 mitigation in this case, and allow them to at least try to
14 convince three judges, one from this jurisdiction, one from this
15 judicial district, and the other two of us from outside this
16 judicial district, so that we can really know we did a service
17 to the public that elected us to office and a service to you,
18 sir.

19 Are you sure you won't reconsider and let her put
20 forth whatever case she feels she should be able to put forth?

21 A No.

22 Q And could you just tell me why, and then I'll leave
23 you alone.

24 A Pretty much for the reasons you've already stated, my
25 earlier statement to Judge Berry.

1 That prison existence is just existence. It's not
2 living. I mean, you are just there taking up space, collecting
3 dust. It's a warehouse.

4 Q Over a million people in prison in this country, a
5 million people, and not that it's the best place in the world,
6 but it beats being in the ground, at least to me it is.

7 At least to the clients I've represented over the
8 years who have taken someone else's life. Without any
9 justification, they have taken somebody's life.

10 You supposedly did that. That's what you have told
11 us. That's what you told Judge Berry, but that doesn't
12 necessarily mean that a person wants to die.

13 But it sounds like you want to die. I think that's
14 what you are telling me.

15 Is that what you are telling me?

16 A I don't see a whole lot to look forward to.

17 Q Then would you reconsider and let your counsel put
18 forth the mitigation, which is no guarantee. We still may vote
19 3-0 that you should die.

20 Would you consider that?

21 A I have considered it, and I'm not going to do it.

22 Q Okay. I thank you for allowing me to have this
23 colloquy with you, sir, but I had to have it for my own
24 conscience, so that you understand.

25 MR. PETTY: Court's indulgence for a minute.

1 MS. PUSICH: Your Honor, we would like to supplement
2 the record briefly regarding the question why the defendant was
3 angry.

4 We just wanted the Court to know that his things were
5 stolen while he was in court yesterday. He has made a report.
6 He doesn't expect anything to happen.

7 It in no way involved any sort of disciplinary
8 sanction against him. In fact, he has suffered none while he
9 has been in custody in Washoe County.

10 BY JUDGE CHERRY:

11 Q There was one other thing I wanted to ask, just
12 curiosity.

13 How did you do in prison? There was a period -- how
14 long were you actually in prison, five years? Is that the
15 amount of time you served, or was it actually longer?

16 A Oh, it was -- first time it was two years. Last time
17 was about two and a half.

18 Q So you have been in about five, almost five years,
19 like I said. How did you do in prison?

20 A Did all right.

21 Q You went to school a little bit in prison you said?

22 A Right. I knew I was only going to be there for a
23 short time, so --

24 Q But you were actually sentenced to, like, 10 and 10,
25 10 years and 10 years, weren't you, according to the reports we

1 have seen?

2 A The 10-year conviction was run concurrently to the
3 arson and the assault, and so I was paroled, I guess, right
4 away, and I came out.

5 Q As a jurist, we would like to know how you functioned
6 in prison, and most death penalty cases, either you have done
7 very well in prison, or you have done very poorly in prison.

8 If you have done well, usually your counsel would
9 present it.

10 If you've done poorly, the District Attorney would be
11 marching the warden in.

12 Understand why I'm asking the question?

13 A I think the reason why I did all right is I had a
14 pretty good support system on the outside, I thought, and I
15 figured by keeping my nose clean and all that, I'd be getting
16 out sooner than 10 years, and so that's what I did.

17 JUDGE CHERRY: Pass to my colleagues.

18 JUDGE BERRY: Miss Pusich?

19 MS. PUSICH: Were there any other questions for
20 Mr. Dennis?

21 JUDGE BERRY: Yes, I had a couple of matters.

22 First of all, I want the record to reflect that the
23 stipulated exhibits are as follows, and the Court, when it
24 adjourns, will read and review these documents before
25 deliberation is commenced.

1 Exhibit Number 10 is Nevada Mental Health records of
2 1995 and prior; Exhibit Number 11 is Nevada Mental Health
3 exhibits of 1996 and later.

4 Exhibit Number 12 is the Veteran's Administration
5 psychiatric records; Exhibit Number 13 are the West Hills
6 Hospital records.

7 Exhibit Number 14 are police reports, and Exhibit
8 Numbers 15.1 through 15.5 are witness statements.

9 Those, since they are coming in pursuant to
10 stipulation, I want the record to reflect that the judges will
11 read and review those, as those documents, I feel confident, had
12 Mr. Dennis allowed defense counsel, would have been introduced
13 with witnesses, and they would have been fleshed out more
14 appropriately, had that been allowed by the defendant.

15 Next in order, the Court wanted to make a record on
16 Exhibit Number 6 and Number 7.

17 The Court had an opportunity to review both exhibits,
18 and for purposes of the record, these are the certified copies
19 of prior felony convictions.

20 The Court has reviewed these documents and find them
21 to be constitutionally valid proof of prior felony convictions
22 for purposes of the Court's consideration and this hearing.

23 Additionally, I just wanted to follow up, Mr. Dennis,
24 and I know we visited before at your plea.

25 During the recess, do you feel you had sufficient time

404

1 to speak with your attorneys and make the final decision about
2 any mitigating evidence that you would like them to present here
3 today?

4 THE DEFENDANT: Yeah, Your Honor, I think I had plenty
5 of time for that.

6 JUDGE BERRY: And, Mr. Dennis, you know, when you and
7 I spoke before, that this Court, and the judges who have been
8 appointed by the Supreme Court, stand prepared to recess this
9 hearing to allow you any additional time, if you would like to
10 reconsider and bring forward any testimony or any evidence.

11 Would you like that opportunity, Mr. Dennis?

12 THE DEFENDANT: No, ma'am.

13 JUDGE BERRY: Finally, Miss Pusich, there are a number
14 of people in the audience.

15 Are there any persons present who wished to make a
16 statement on behalf of Mr. Dennis, or any victim present who has
17 not been afforded an opportunity by way of the State's
18 presentation to make any statement to the Court?

19 MS. PUSICH: Your Honor, the only person who will be
20 making statements on behalf of Mr. Dennis is me.

21 I'm not aware of the State wanting to present any
22 additional victims, although I know there is one present in the
23 courtroom.

24 I would advise the Court that Mr. Dennis has in fact
25 allowed me the concession of preparing a written argument to

1 supplement what I will say orally.

2 The document that I'll ask to file in a moment is
3 encaptioned Defendant's Memorandum Regarding Sentencing. In it
4 I have detailed what I believe are the 15 proven mitigators, and
5 I have referenced the documents that we have provided to the
6 Court for ease of reference.

7 JUDGE BERRY: Thank you.

8 JUDGE CHERRY: You are not allowed to summarize for
9 us? We've got to go back and read this?

10 MS. PUSICH: Your Honor, I'm allowed to summarize it.
11 It's something I feel is so important, I feel more comfortable
12 committing it to writing and reading it, as well.

13 JUDGE CHERRY: Great. Thank you.

14 JUDGE MEMEO: While we're taking a little break
15 here --

16 MR. GRECO: I'm sorry, Your Honor.

17 Before, Your Honor, I was wondering if the Court might
18 consider supplementing the canvass on just two limited areas
19 pursuant to case law?

20 And that is, although Judge Cherry's questions
21 elicited answers that I think indirectly went to the first of
22 the two of them, could you specifically ask him, Your Honor, if,
23 first of all, he understands what mitigating evidence is, and
24 then, two, if he understands the use of mitigating evidence in
25 the context of the proceeding?

1 Specifically, that that mitigating evidence can be
2 offered by him to offset the aggravating circumstances that the
3 State has.

4 And finally, although it's clear, I would like the
5 Court to just specifically ask him, Mr. Dennis, are you waiving
6 your right to present any further mitigating evidence, just so
7 the record is crystal clear.

8 JUDGE BERRY: Thank you, Mr. Greco.

9 Judge Cherry, would you like to follow up with that?

10 JUDGE CHERRY: Go ahead, then. Thank you.

11 BY JUDGE BERRY:

12 Q Let's wait until Miss Pusich gets back, and Judge
13 Memeo is also going to supplement the record as to a matter.

14 Mr. Dennis, do you understand what the rules require
15 as it relates to mitigating evidence? Do you understand what
16 mitigating evidence is?

17 A Yes, I do.

18 Q Could you give an example of your understanding of
19 that?

20 A Well, in the case of mitigating rather than
21 aggravating, mitigating would be on a plus side rather than an
22 aggravator on the minus side of evidence, for and against.

23 Q And do you -- you further understand that by
24 presenting mitigating evidence, if the Court, if the Court finds
25 even one mitigator, then that can outweigh all the aggravators?

1 A I wasn't aware that the balance system worked exactly
2 that way, but I understand that you have the discretion to view
3 it that way.

4 Q And do you understand that if you were to allow
5 Miss Pusich to present mitigating evidence, and present it as
6 through witnesses, which clearly she has entered these documents
7 in mitigation, but through witnesses, through live testimony, by
8 calling you as a witness, and allowing you to explain in detail
9 the issues of childhood abuse, the issues of alcoholism,
10 substance abuse, mental health issues, what efforts you have
11 made to combat those, the issues of seeking mental health
12 treatment, that all of those she could present more powerfully
13 through live testimony and through your cooperation in doing
14 that, and that those could be considered as mitigators by the
15 Court; do you understand that?

16 A Yeah. I do.

17 Q And do you feel that by given any more time with your
18 counsel, that you might reconsider your position and allow her
19 to present those mitigators?

20 A No, ma'am.

21 Q Do you understand how defense counsel could bring that
22 information, the mitigators, to the Court?

23 A Yes, I believe I do.

24 Q And based upon your discussions with counsel, and
25 based upon your own personal view of this case, you do not

1 choose to put on any mitigating factors.

2 Do you wish to waive your right to present this
3 information, other than what, other than what you have agreed to
4 through your attorney?

5 A Yes, I do.

6 JUDGE BERRY: Mr. Greco, does that satisfy the State's
7 concern?

8 MR. GRECO: Yes, it does, Your Honor, and I would just
9 ask that at the appropriate time, whenever the Court feels that
10 is, that the Court make findings of fact regarding this waiver
11 being knowing and voluntary, and I'll -- whenever the Court
12 wishes to do that.

13 JUDGE BERRY: I did want to call upon Judge Memeo to
14 supplement that record before the Court makes those findings as
15 to the demeanor in the courtroom.

16 JUDGE MEMEO: All right. The Court would note for the
17 record its observations about the defendant's demeanor:

18 The Court would note and find its observations to be
19 true that the defendant was alert, oriented as to time and
20 place; the defendant was interacting appropriately throughout
21 this proceeding with his attorneys, the Court and court
22 personnel.

23 The Court would further note that throughout this
24 proceeding, that the defendant's mood was stable and
25 appropriate.

1 That's all I have.

2 JUDGE BERRY: Thank you.

3 MS. PUSICH: Your Honor, I have one last matter before
4 we complete our presentation brief. It's in the presentence
5 report on page 2, under convictions. It lists five felonies.

6 Then at page 3, in the middle of the page relating to
7 the Mitchell Washington Correction Center, it lists three counts
8 of conviction in 1984.

9 Those are both in error, Your Honor.

10 There are four felonies, and in 1984, the defendant
11 was convicted, according to the certified documents you have
12 received in evidence, of Count I, assault in the second degree,
13 Count II, assault in the second degree, and he was given the
14 earlier suspended sentence in 1978, but that was not a third
15 count or an additional conviction.

16 JUDGE BERRY: Okay. I saw that.

17 MR. GRECO: Thank you, Your Honor.

18 So I would just ask that the Court consider making the
19 following corrections to the presentence report:

20 At page 2, where it says total convictions, 10, that
21 should read nine.

22 Where it reads felony, five convictions, that should
23 read four, and I believe the following correction should be made
24 to page 3, although subject to Miss Pusich's thoughts.

25 Your Honor, 12/5/78, assault, it says misdemeanor

1 arrest.

2 My records indicate that was a felony arrest, and the
3 date of the conviction was 4/25/79, and that is confirmed by the
4 certified documents that you have in front of you.

5 And then, Your Honor, going on to the next entry, the
6 arrest date is incorrect. The arrest date was 12/9 of '83.

7 And Miss Pusich is correct. Count I should be
8 assault, a felony. Count II, there was no such second count of
9 assault. Count II was arson.

10 And so I would delete the words Count II, assault,
11 Roman numeral two, felony.

12 And then finally, on the right-hand side, Your Honor,
13 the date of conviction, according to those documents, is April
14 11th, 1984, and as Miss Pusich has alluded to, he was convicted
15 of felony assault in the second degree, and felony second degree
16 arson.

17 So the middle section there, Count II is assault with
18 a Roman two F should be deleted.

19 MS. PUSICH: That's all correct, Your Honor.

20 JUDGE BERRY: The Court has made an interlineation
21 amendment to the presentence investigation report based upon the
22 representations of the State, stipulation of defense.

23 Anything else from the defense?

24 MS. PUSICH: Your Honor, we have no further evidence
25 documentary to present.

1 Simply argument after the State.

2 BY JUDGE BERRY:

3 Q Couple of other matters.

4 Mr. Dennis, you've had an opportunity to read this
5 presentence investigation; is that correct?

6 A Correct.

7 Q Do you have any additional corrections, deletions, any
8 information at all in this report that you want to direct this
9 Court's attention to?

10 A No.

11 Q And further, sir, you understand that you have a
12 statutory, a legal right to be heard by this Court?

13 That you can take the stand, and you can make a
14 statement. That you have, that it would be important to the
15 Court to hear from you before we enter judgment and penalty in
16 this case, and do you choose to give up that right?

17 A Yeah. I do.

18 Q And again, have you had a full and fair opportunity to
19 speak with your defense attorney about your right to speak and
20 your right to be heard?

21 A I have.

22 Q And you want to give that up?

23 A Right.

24 JUDGE BERRY: All right. Any other questions as to
25 the defendant's right to be heard and to present mitigating

1 evidence before the Court makes any finding?

2 JUDGE CHERRY: None from me.

3 JUDGE MEMEO: I'm satisfied.

4 JUDGE BERRY: Any supplement to the record as to this
5 issue from counsel?

6 MR. GRECO: Nothing from the State, Your Honor.

7 MS. PUSICH: No. Thank you, Your Honor.

8 Your Honor, during the last break, Mr. Greco and
9 Mr. Petty and I covered briefly about timing how things were
10 going.

11 I have actually submitted for the Court's review
12 several hundred pages of medical records.

13 If the Court is agreeable, perhaps we could take a
14 longer-than-normal break before arguments, and then we're
15 prepared to argue at any time convenient to the Court.

16 JUDGE BERRY: That's a point well taken.

17 And actually, Miss Pusich, I really appreciate that
18 thought, because before the Court makes a finding as to the
19 defendant's knowingly waiving his right to be heard by the Court
20 and to present mitigation, I first will confer with my
21 colleagues as to this, but it may be more appropriate before we
22 hear argument, to take a lengthy recess, and allow the Court to
23 review those documents, so that we can put your arguments in
24 perspective.

25 And if any further issues arise out of the result of

1 those documents, then we would be in a better position to
2 question you, to make a final conclusion as to Mr. Dennis' state
3 of mind and appropriateness of waiving the presentation of all
4 the mitigating evidence you would like to.

5 Judge Cherry?

6 JUDGE CHERRY: I agree with you, Judge Berry.

7 JUDGE BERRY: Judge Memeo?

8 JUDGE MEMEO: That would be fine.

9 JUDGE BERRY: All right.

10 And then while we stand in recess, I would request
11 from the defense, and again, I don't know if Rule 250 or your
12 ethical guidelines will allow you to do this, but I would like
13 to make a record of what you would have done, who you would have
14 called, if you -- if your client would have permitted you to
15 present witnesses.

16 And I would defer to the defense on that, but that
17 might likewise help the proceeding.

18 MS. PUSICH: Your Honor, I can give the names that
19 correspond, but I would have called the witnesses that prepared
20 the documents, that conducted the interviews, that are
21 referenced in the paperwork that I have provided.

22 Those would have been live witnesses, rather than
23 presenting it on paper.

24 JUDGE BERRY: And finally, the document that you have
25 presented, the defendant's memorandum re sentencing, I know you

1 provided copies to the Court.

2 I do not have a specific recollection that you sought
3 to admit this document into the record.

4 MS. PUSICH: Your Honor, I am asking that it be filed
5 as I would file a pleading.

6 JUDGE BERRY: And there is no objection or any sought
7 response from the State, other than oral argument; is that
8 correct?

9 MR. GRECO: Right, Your Honor. I had no objection to
10 the filing of this document.

11 Of course, I just was scanning it. It's extremely
12 lengthy. So that's another good reason to take an extended
13 break, so I can read this and prepare.

14 JUDGE BERRY: Okay.

15 JUDGE CHERRY: Could I ask counsel what you think
16 would be an appropriate break, just for curiosity, so as to
17 leave enough time that you would have the argument in the day.

18 MS. PUSICH: Your Honor, certainly there may be parts
19 of the reports that have interest to the Court that I found were
20 less important.

21 The parts of the documents that are specifically
22 related to the arguments that I have proposed are tabbed in
23 orange. It will be relatively easy to find those sections and
24 refer to them, so I would think possibly an hour.

25 JUDGE BERRY: Why don't we -- yes?

1 MR. GRECO: I was hoping, Your Honor, again, I have
2 this lengthy document to read. I would hope to have at least
3 until 1:30, so we can all grab a bite to eat, as well.

4 JUDGE BERRY: Why don't we reconvene at 1:45 to give
5 sufficient time, and, Counsel, if the Court needs additional
6 time to review these documents, we will certainly let you know
7 at that time.

8 But I'm hopeful that in your estimation -- again, they
9 are your documents, and you have a sense of what's in them.

10 Do you think that would give the Court sufficient
11 time?

12 MS. PUSICH: I do, Your Honor.

13 We included everything, every page, so there would be
14 no question that things were excised, things that the State
15 might have needed, but you will find that some of the records
16 refer to my client's physical health several years ago.

17 While it's unfortunate that he had an upper
18 respiratory problems and things like that, it's not particularly
19 relevant here today.

20 JUDGE BERRY: Okay. This Court will stand in recess
21 until 1:45 p.m. to review the filings of the defense.

22 (Proceedings concluded at 11:00 a.m.)
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24
25

1 STATE OF NEVADA)
2 CARSON CITY) ss.
3)
4)
5)

6 I, DEBORAH MIDDLETON GRECO, an Official Reporter of
7 the Second Judicial District Court of the State of Nevada, in
8 and for the County of Washoe, DO HEREBY CERTIFY;

9 That I was present in Department No. I of the
10 above-entitled Court on July 20, 1999, and took verbatim
11 stenotype notes of the proceedings had upon the matter captioned
12 within, and thereafter transcribed them into typewriting as
13 herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 64, is a full, true and correct transcription of my
16 stenotype notes of said proceedings.

17 DATED: At Carson City, Nevada, this 20th day of July,
18 1999.

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20
21
22 *Deborah Middleton Greco*

23 DEBORAH MIDDLETON GRECO
24 CCR #113, RDR, CRR
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