

Defendant was sentenced to death for the murder of Gail Johnson. In all cases in which a judgment of death is entered, there is an automatic appeal directly to the California Supreme Court, and in that appeal the court considers all issues presented. By contrast, all non-capital cases — civil and criminal — are reviewed first in the Court of Appeal, and the Supreme Court chooses which non-capital cases to review.

The evidence presented at trial reflects that the victim was last seen alive in the secretary's office of a church in Apple Valley, and that she was found stabbed to death in the minister's office of the church. Her purse was found on the floor near her body, her wallet was missing, and other contents of the purse were strewn on the floor. Blood from the victim and from another individual was found at the crime scene. An analysis of five locations of DNA from blood of the unidentified individual and of DNA from defendant's blood reflected that the blood samples matched, and that the particular match would appear in approximately one in every 24 million individuals.

In addition, the victim's wallet was found in a mine shaft in which defendant previously had disposed of items, and a pair of jeans found in the mine shaft was the same brand and size as jeans defendant was wearing on the day he was arrested, and was stained with blood containing genetic markers that matched the victim's blood. Finally, defendant visited the church two days before the crimes, and evidence was admitted of two prior crimes defendant had committed against women whom he had found alone in an office setting and had returned to rob and assault. In each of the prior instances, he attacked the woman in an area of the office that was more remote than where he first encountered her, he demanded her money, and in one instance, he caused the contents of her purse to be dumped onto the floor.

One issue that may be discussed at oral argument is whether evidence of defendant's two prior crimes should have been admitted. Evidence concerning a defendant's character, including evidence of conduct that is not the subject of the current prosecution, may not be admitted to prove that the defendant has a *disposition* to commit the charged crimes. (Evid. Code, § 1101.) But if the uncharged conduct is sufficiently similar to the charged conduct, evidence of the uncharged misconduct may be admitted to establish (1) the defendant's *identity* as the perpetrator of the charged conduct, (2) the defendant's "*design or plan*" in connection with the charged misconduct, and (3) the defendant's *intent* in committing the charged misconduct.

To be admitted to prove defendant's identity as the perpetrator, " '[t]he pattern and characteristics of the [charged and uncharged] crimes must be so unusual and distinctive as to be like a signature.' " (*People v. Ewoldt* (1994) 7 Cal.4th 380, 403.) To be admitted to establish the same design or plan, "the common features [of the charged and uncharged conduct] must indicate the existence of a plan rather than a series of similar spontaneous acts, but the plan thus revealed need not be distinctive or unusual." (*Ibid.*) Finally, to be admitted to establish the defendant's intent in committing the charged misconduct, "the uncharged conduct must be sufficiently similar to support the inference that the defendant ' probably harbor[ed] the same

intent in each instance.” [Citations.]’ [Citation.]” (*Id.* at p. 402.) It is to be expected that oral argument will focus on application of these principles to the facts of this case.