

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAYVID J. FIGLER,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, COUNTY OF
CLARK, THE HONORABLE VALERIE ADAIR,
DISTRICT COURT JUDGE,

Respondent,

DEANGELO CARROLL,

Real Party in Interest.

Case No. 50576
(Dist. Ct. No. C212667)

*filed via fax on
11-28-07.*

FILED

NOV 30 2007

JAMETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

EMERGENCY MOTION FOR STAY OF PROCEEDINGS

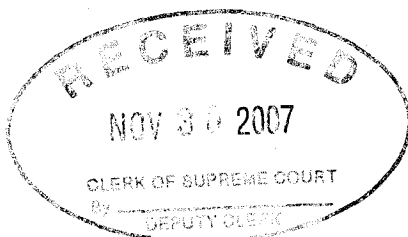
DAYVID J. FIGLER, ESQ.
BUNIN & BUNIN, LTD.
Nevada Bar #4264
626 S. Third Street
Las Vegas, Nevada 89101
(702) 386-0333

Attorney for Appellant

DAVID J.J. ROGER
CLARK COUNTY, NEVADA
DISTRICT ATTORNEY
Nevada Bar # 2781
200 Lewis Street
Las Vegas, Nevada 89155
(702) 671-2500

CATHERINE CORTEZ MASTO
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 486-3420

Counsel for Respondent



1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 _____

3 DAYVID J. FIGLER,)

Case No.
(Dist. Ct. No. C212667)

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vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, COUNTY OF
CLARK, THE HONORABLE VALERIE ADAIR,
DISTRICT COURT JUDGE,

Respondent,

DEANGELO CARROLL,

Real Party in Interest.

EMERGENCY MOTION FOR STAY OF PROCEEDINGS

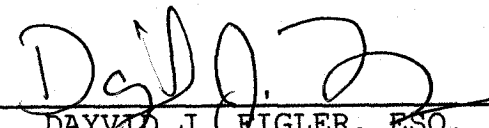
COMES NOW the Petitioner, DAYVID J. FIGLER pursuant to NRAP 8 &
21, respectfully petitions this Honorable Court to stay the District
Court proceedings.

This Motion is based upon the attached affidavit and relevant
portions of the record and any argument should this Honorable Court
order a hearing on this matter.

DATED this 27th day of November, 2007.

BUNIN & BUNIN, LTD.

By


DAYVID J. FIGLER, ESQ.
Nevada Bar #4264
626 South Third Street
Las Vegas, Nevada 89101
(702) 386-0333

1 VERIFICATION

2 STATE OF NEVADA)
) ss:
3 COUNTY OF CLARK)

4 DAYVID J. FIGLER, being first duly sworn, deposes and states
5 as follows:

6 1. That he is an attorney duly licensed to practice law in
7 the State of Nevada and one of the private attorneys assigned to
8 represent Deangelo Carroll in a capital matter.

9 2. That MR. CARROLL, has authorized and directed Mr.
10 Figler, to file the foregoing Writ of Mandamus;

11 3. That MR. FIGLER, has read the foregoing Writ of Mandamus
12 and knows the contents therein and as to those matters they are true
13 and correct and as to those matters based on information and belief
14 he is informed and believes them to be true;

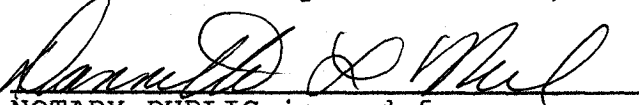
15 4. That MR. CARROLL has no other remedy at law available
16 to him and that the only means to address this problem is through this
17 writ, in that he is about to face capital murder proceedings;

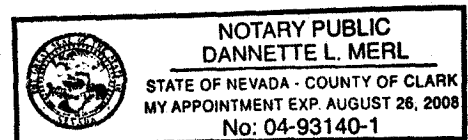
18 5. That MR. FIGLER signs this Verification on behalf of MR.
19 CARROLL, under his direction and authorization and further that MR.
20 CARROLL is currently in custody of the authorities of the Clark County
21 Detention Center.

22 FURTHER YOUR AFFIANT SAITH NAUGHT.

23 
24 DAYVID J. FIGLER, ESQ.

25 SUBSCRIBED AND SWORN to before
26 me this 27th day of November, 2007.

27 
28 NOTARY PUBLIC in and for
said County and State.



1 AFFIDAVIT OF COUNSEL

2 STATE OF NEVADA)
) ss:
3 COUNTY OF CLARK)

4 DAYVID J. FIGLER, being first duly sworn, deposes and states
5 as follows as to best of his information and belief:

6 1. That he is an attorney duly licensed to practice law in
7 the State of Nevada and one of the private attorneys assigned to
8 represent Deangelo Carroll in a capital matter.

9 2. That MR. CARROLL is charged in a capital murder case
10 where he is alleged by the State to be involved in a murder-for-hire
11 against Timothy Hadland that occurred on or about May 19, 2005.

12 3. That the facts in the light most favorable to the State
13 are essentially as follows: that Mr. Hadland was a short-term employee
14 of the Palomino Adult Cabaret working as a doorman; that the
15 owners/managers of the Palomino wanted to have Mr. Hadland killed for
16 bad mouthing the club; that the owners/managers utilized MR. CARROLL
17 and others to employ an individual named Kenneth Counts to kill Mr.
18 Hadland; that Mr. Carroll lured Mr. Hadland out to an area where Mr.
19 Counts was then able to shoot and kill Mr. Hadland.

20 4. In the State's Amended Notice of Evidence in Aggravation
21 (attached as Exhibit "A"), the State listed two qualifying,
22 aggravating circumstances under NRS 200.033 which made this a death
23 penalty case, to wit: (1) That this was a murder was committed by a
24 person, for himself or another, to receive money or any other thing
25 of monetary value and (2) that MR. CARROLL had previously been
26 convicted of a crime involving the use or threat of violence.

27 5. That MR. CARROLL is not alleged to be the shooter of Mr.
28 Hadland, nor is he alleged to have paid any of his own money to have

1 Mr. Hadland killed. Further, that MR. CARROLL's prior conviction was
2 merely for a crime of conspiracy to commit robbery.

3 6. That MR. CARROLL filed a Motion to Strike the
4 Aggravating Circumstances which was heard by the District Court. A
5 hearing was held on the matter on October 9, 2007. That the District
6 Court took the matter under advisement and ultimately made a ruling
7 by way of minute order on October 11, 2007 denying MR. CARROLL's
8 motion. (Minute Order attached as Exhibit "B"). The District Court
9 also ordered that the "State is to prepare findings of fact and
10 conclusions of law and order." That Minute order also denied the Mr.
11 Carroll's request for stay.

12 7. That the State did not prepare an order within ten (10)
13 days as required by Eighth Judicial District Court Rule 7.21. That
14 MR. CARROLL had submitted a written order to the District Court that
15 was a denial without specific findings so that a Writ of Mandamus
16 could be filed, but that Order was rejected by the Court. That MR.
17 CARROLL made it very clear on the record at all proceedings that he
18 desired to make a Motion for Extraordinary Relief to the Nevada
19 Supreme Court in the event the District Court denied relief. That an
20 oral request was made of the State to submit the Order so that relief
21 could be sought without avail in the early November, 2007. That a
22 written request for the State to submit the Order so that relief could
23 be sought was sent and received by the State on November 21, 2007
24 (See attached Letter to District Attorney dated November 21, 2007,
25 Exhibit "C"), but no Order was submitted to the District Court until
26 November 27, 2007, when the Order was signed and filed. (Order Denying
27 Defendant's Motion to Strike Death Penalty Aggravators attached as
28 Exhibit "D"). That Order is essentially identical to the

1 Order submitted but not accepted by the District Court in October,
2 2007 and does not, as previously ordered by the District Court,
3 contain any findings of fact or conclusions of law.

4 8. That MR. CARROLL asserts that facially neither
5 aggravating circumstance can withstand judicial scrutiny as a matter
6 of law. That a capital murder trial by its nature is an extraordinary
7 circumstance whereupon a person faces the most severe penalty known
8 to mankind. That from the onset, a capital murder case is "different"
9 in the hallowed words of Supreme Court Justice Stewart's holding in
10 Furman v. Georgia, 408 U.S. 238, 306-07, 92 S.Ct. 2726, 2760, 33
11 L.Ed.2d 346 (1972).

12 9. That the State has indiscriminately sought the death
13 penalty against every adult charged in the Information. This includes
14 the owner/managers of the Palomino club who were not present, the
15 shooter, Mr. Counts and MR. CARROLL. That it is important to note
16 that MR. CARROLL upon first contact with law enforcement and after
17 giving a statement of over 100 pages in length agreed to cooperate
18 with the police and wore a "wire" and assisted the police through his
19 efforts in forming enough evidence to charge the co-defendants with
20 murder and other charges as well. That during the course of wearing
21 a "wire" the co-defendants became suspicious and made MR. CARROLL
22 strip off his clothing with the implication of violence against him
23 if it was discovered (which it was not) that MR. CARROLL was
24 cooperating with the police.

25 10. That the State has made no secret of the fact that it
26 desires to prosecute the actual owner of the Palomino club, Luis
27 Hildago, Jr., and that he is even listed by name in the aggravating
28 circumstances, but that they do not have sufficient evidence. That

1 it is not a stretch of the imagination after using one co-defendant,
2 MR. CARROLL, who is still exposed to the death penalty, that the State
3 hopes to gain tactical advantage of forcing other co-defendant's to
4 cooperate by keeping the death penalty in place despite the fact that
5 it is supposed to be a very, narrow category of offenders and really
6 "the worst of the worst." This of course would be a wholly
7 inappropriate and potentially unconstitutional use of the death
8 penalty even if one "technically" qualifies for the death penalty
9 under the very widely worded provisions of NRS 200.033.

10 11. That depending on how the statute is interpreted, the
11 "murder-for-hire" aggravating circumstance as a narrow qualifier for
12 death under Furman, et. al. applies only to those who hire or those
13 who kill for money and MR. CARROLL was neither. At worst, MR. CARROLL
14 acted as a go-between which is not covered by the statute. The
15 State's assertion that the shooter received a substantial amount of
16 money, but that MR. CARROLL received a minimal sum of 200 dollars is
17 of no moment, since that money could not be construed as payment for
18 killing since the State concedes MR. CARROLL did not shoot Mr.
19 Hadland.

20 12. That the State could provide no authority for the
21 proposition that a conspiracy to commit a crime qualifies as a crime
22 which uses or has a threat of violence. It is no surprise that no
23 authority could be found since it is the actus reus of the offense
24 that triggers the aggravator and conspiracy does not contain the same
25 actus reus of the use or threat of use of violence.

26 13. That MR. CARROLL has been prejudiced by the State's
27 failure to timely submit an Order with the District Court so that he
28 could make a full appeal to the Nevada Supreme Court regarding these

1 vital issues. That MR. CARROLL will be irreparably prejudiced by
2 having to go through an entire death penalty proceeding, from voir
3 dire to penalty phase, on aggravators that cannot stand proper
4 judicial scrutiny. That MR. CARROLL had the right to be able to
5 appeal this matter by extraordinary writ to the Nevada Supreme Court
6 in a timely fashion but because the State did not comply with the
7 Court's order or the Eight Judicial Supreme Court rules, and the
8 District Court did not actually require findings of fact or
9 conclusions of law, even though they were ordered and rejected the
10 earlier Order submitted by the Defense, but allowed the identical,
11 although untimely submitted Order of the State, he has been prejudiced
12 and should under law and equity be granted a stay so that these issues
13 can be addressed fully and properly.

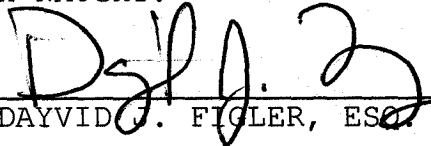
14 14. That this Honorable Court should issue a stay so that
15 the District Court can submit and sign a full findings of fact and
16 conclusions of law whereupon MR. CARROLL can have the opportunity to
17 fully address the matter by way of Extraordinary Writ before this
18 Court, but with trial set to begin on December 3, 2007, it would be
19 impossible to accomplish said proceedings which would protect the due
20 process rights of the Defendant in a capital matter. That this Court
21 has recently stated that in seeking relief it is preferential to have
22 written findings. See State v. Ruscetta, 163 P.3d 451 (2007). In
23 any event, the defense is currently preparing a writ of mandamus.

24 15. That because it is impracticable because of the
25 requirement of time, MR. CARROLL asserts he is allowed under NRAP 8(a)
26 to seek stay and make application to a single justice of the Nevada
27 Supreme Court.

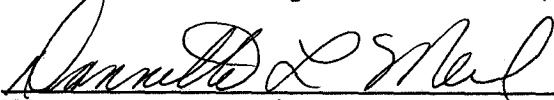
28 16. That it was discussed in open court, but Affiant has

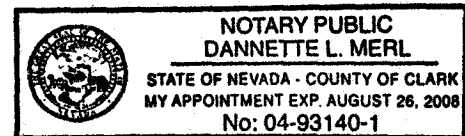
1 been unable to verify that Supreme Court case number. Since then, it
2 has been verified that there is a pending matter in the Nevada Supreme
3 Court at present regarding death penalty aggravators as they relate
4 to co-defendants which would reference the same district court case
5 number. The names of the co-defendants are Luis Hildago, III and
6 Anabel Espindola. It is believed that while similar, there are enough
7 factual differences to warrant separate writ by MR. CARROLL. In any
8 event, it would be a manifest injustice to allow one co-defendant to
9 go forward on a death penalty matter when there is a possibility that
10 others will have the aggravators stricken.

11 FURTHER YOUR AFFIANT SAITH NAUGHT.

12 
13 DAYVID J. FIGLER, ESQ.

14 SUBSCRIBED AND SWORN to before
15 me this 27th day of November, 2007.

16 
17 NOTARY PUBLIC in and for
18 said County and State.



1 **DECLARATION OF FACSIMILE AND MAILING**

2 KIRA MATHESON an employee with Bunin & Bunin, hereby declares that she
3 is, and was when the herein described mailing took place, a citizen
4 of the United States, over 21 years of age, and not a party to, nor
5 interested in, the within action; that on the 28th day of November,
6 2007, declarant deposited in the United States mail at Las Vegas,
7 Nevada, a copy of the Emergency Motion for Stay of Proceedings in the
8 case of Dayvid J. Figler, Petitioner vs. The Eighth Judicial District
9 Court of the State of Nevada, County of Clark, the Honorable Valerie
10 Adair, Respondent, Deangelo Carroll, Real Party in Interest, District
11 Court Case No. C212667, faxed and also enclosed in a sealed envelope
12 upon which first class postage was fully prepaid, addressed to
13 Catherine Cortez Masto, 100 North Carson Street, Carson City, Nevada
14 89701-4717; Judge Valerie Adair, District Court Judge, 200 Lewis
15 Avenue and David J.J. Roger, 200 Lewis Avenue that there is a regular
16 communication by mail between the places of mailing and the places so
17 addressed. I declare under penalty of perjury that the foregoing is
18 true and correct.

19 EXECUTED on the 28th day of November, 2007.

20
21 Kira Matheson
22 KIRA MATHESON

1 RECEIPT OF A COPY of the foregoing **Emergency Motion for Stay**
2 **of Proceedgins** is hereby acknowledged this 28th day of November, 2007.

3 DAVID J.J. ROGER
4 CLARK COUNTY DISTRICT ATTORNEY

5 By Alicia Anth
6
7

8 RECEIPT OF A COPY of the foregoing **Emergency Motion for Stay**
9 **of Proceedgins** is hereby acknowledged this 28th day of November, 2007.

10 VALERIE ADAIR
11 DISTRICT COURT JUDGE, DEPARTMENT XXI

12 BY Denmy Siver
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CLERK OF THE COURT

1 **NISD**
2 **DAVID ROGER**
3 Clark County District Attorney
4 Nevada Bar #002781
5 **MARC DIGIACOMO**
6 Chief Deputy District Attorney
7 Nevada Bar #006955
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2211
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,
13 Plaintiff,

14 -vs-

15 DEANGELO CARROLL,
16 #1678381

17 Defendant.

CASE NO: C212667

DEPT NO: XXI

AMENDED NOTICE OF EVIDENCE IN AGGRAVATION

COMES NOW, the State of Nevada by Clark County District Attorney DAVID ROGER, through MARC DIGIACOMO, Chief Deputy District Attorney, pursuant to Rule 250(4)(f) of the Nevada Supreme Court, hereby gives notice of the existence of the following evidence in aggravation to be presented at the penalty phase of the trial:

1. The murder was committed by a person who, at any time before a penalty hearing is conducted for the murder pursuant to NRS 175.552, is or has been convicted of a felony involving the use or threat of violence to the person of another and the provisions of subsection 4 do not otherwise apply to that felony, to-wit: CONSPIRACY TO COMMIT ROBBERY.

The evidence will consist of certified copies of judgments of conviction showing that Defendant DEANGELO CARROLL was convicted in Clark County, Nevada, on September 9, 2002, of the felony offense of CONSPIRACY TO COMMIT ROBBERY in case number

EXHIBIT "A"

1 C184573. The testimony of the victim Steven Blodgett and/or police officers and/or other
2 witnesses and/or exhibits, will be offered in support of this aggravating circumstance.
3 Furthermore, the underlying facts of the conviction indicate that on or about May 18, 2002,
4 Defendant DEANGELO CARROLL did, then and there, willfully, unlawfully, and
5 feloniously take personal property, to-wit: a wallet, contents and lawful money of the United
6 States, from the person of Steven Blodgett, or in his presence, by means of force or violence,
7 or fear of injury to, and without the consent and against the will of the said Steven Blodgett,
8 to-wit: by Defendant DEANGELO CARROLL beating Steven Blodgett with his fists;
9 thereafter, by his co-conspirator continuing to beat Steven Blodgett while defendant
10 DEANGELO CARROLL removed a wallet from the boot of Steven Blodgett, thereafter,
11 Defendant DEANGELO CARROLL fleeing from the scene with the property. [See NRS
12 200.033(2)(b)].

13 2. The murder was committed by a person, for himself or another, to receive money
14 or any other thing of monetary value, to-wit: by ANABEL ESPINDOLA (a manager of the
15 PALOMINO CLUB) and/or LUIS HILDAGO, III (a manager of the PALOMINO CLUB)
16 and/or LUIS HILDAGO, JR. (the owner of the PALOMINO CLUB) procuring Defendant
17 DEANGELO CARROLL (an employee of the PALOMINO CLUB) to beat and/or kill
18 TIMOTHY JAY HADLAND; and/or LUIS HILDAGO, JR. indicating that he would pay to
19 have a person either beaten or killed; and/or by LUIS HILDAGO, JR. procuring the injury or
20 death of TIMOTHY JAY HADLAND to further the business of the PALOMINO CLUB;
21 and/or LUIS HIDALGO, III telling Defendant DEANGELO CARROLL to come to work
22 with bats and garbage bags; thereafter, Defendant DEANGELO CARROLL procuring
23 KENNETH COUNTS and/or JAYSON TAOIPU to kill TIMOTHY HADLAND; thereafter,
24 by KENNETH COUNTS shooting TIMOTHY JAY HADLAND; thereafter, LUIS
25 HIDALGO, JR. and/or ANABEL ESPINDOLA providing six thousand dollars (\$6,000.00)
26 to Defendant DEANGELO CARROLL to pay KENNETH COUNTS, thereafter, KENNETH
27 COUNTS receiving said money; and/or by ANABEL ESPINDOLA providing two hundred
28 dollars (\$200.00) to Defendant DEANGELO CARROLL and/or by ANABEL ESPINDOLA

1 and/or LUIS HIDALGO, III providing fourteen hundred dollars (\$1400.00) and/or eight
2 hundred dollars (\$800.00) to Defendant DEANGELO CARROLL and/or by ANABEL
3 ESPINDOLA agreeing to continue paying Defendant DEANGELO CARROLL twenty-four
4 (24) hours of work a week from the PALOMINO CLUB even though DEANGELO
5 CARROLL had terminated his position with the club and/or by LUIS HIDALGO, III
6 offering to provide United States Savings Bonds to Defendant DEANGELO CARROLL
7 and/or his family. [See NRS 200.033(6)].

8 The basis for this aggravator is the aggravated nature of the crime itself. The
9 evidence upon which the State will rely is the testimony and exhibits introduced during the
10 guilt or penalty phase of the trial, as well as the verdicts from the guilt phase.

11 Regarding the establishment of aggravating circumstances under **Subsection 6 of**
12 **NRS 200.033**, the State will rely upon the evidence to be adduced at the Guilt Phase of the
13 Jury Trial. The State will file one or more witness lists in conformance with the Nevada
14 Revised Statutes. The State has provided full discovery in this matter regarding said
15 witnesses in this case. Rule 250(4)(f) requires filing of this Notice to summarize the
16 evidence which the State intends to introduce at the "Penalty Phase" of the trial. Therefore,
17 regarding establishment of aggravating circumstances under **Subsection 6 of NRS 200.033**,
18 said Notice need not and does not summarize any evidence in addition to that which has
19 already been identified and disclosed to the defense, and/or to be introduced or disclosed
20 during the Guilt Phase of the Jury Trial.

21 The Defense is hereby invited to re-examine the file of the Clark County District
22 Attorney for any and all discoverable information and evidence.

23 In addition to the evidence to be offered to establish the statutory aggravating
24 circumstances, the State hereby also gives notice of evidence of other relevant circumstances
25 in the Penalty Phase of the Jury Trial. Below, is a list of names of the individuals that will
26 give testimony in support of the aggravating circumstance under NRS 200.033(2)(b) and the
27 other circumstances and specifically what they will testify to:

28 ///

1 1. ALAN HADLAND, the victim's son, may appear and testify pursuant to NRS
2 176.015. Photographs of the victim and his family may be admitted during the testimony of
3 this witness.

4 2. ALEX HADLAND, the victim's son, may appear and testify pursuant to NRS
5 176.015. Photographs of the victim and his family may be admitted during the testimony of
6 this witness.

7 3. ELENA HADLAND, the victim's daughter, may appear and testify pursuant to
8 NRS 176.015. Photographs of the victim and his family may be admitted during the
9 testimony of this witness.

10 4. JENNIFER HADLAND, the victim's daughter, may appear and testify
11 pursuant to NRS 176.015. Photographs of the victim and his family may be admitted during
12 the testimony of this witness.

13 5. DORI LUKKER, the victim's former wife, may appear and testify to
14 circumstances relative to the victim as provided in NRS 175.552. Photographs of the victim
15 and his family/friends may be admitted during the testimony of this witness.

16 6. PAJIT KARSON, the victim's girlfriend at the time of his murder, may appear
17 and testify to circumstances relative to the victim as provided in NRS 175.552. Photographs
18 of the victim and his family/friends may be admitted during the testimony of this witness.

19 7. CUSTODIAN OF RECORDS – CLARK COUNTY DETENTION CENTER
20 - May testify and admit disciplinary records of Defendant while at the Clark County
21 Detention Center pending trial. Specifically, the records reflect a number of rules violations,
22 including the harassment of a fellow prisoner and a statement of intent to assault and/or
23 batter another inmate in December of 2005.

24 8. CORRECTIONS OFFICER DENTON, P#8228 – May testify to his
25 involvement in the investigation of Defendant for rules violation including, but not limited
26 to, his harassment of a fellow inmate and a statement of intent to assault and/or batter
27 another inmate in December of 2005.

28 9. LVMPD OFFICER D. VERSHALL, P#6350 and A. ECKEL, P#6929 – May

1 testify to their investigation of a Conspiracy to Commit Robbery and Robbery under
2 LVMPD event number 020518-0793, to which Defendant was convicted pursuant to a guilty
3 plea of Conspiracy to Commit Robbery in C184573. Said testimony will incorporate and
4 admit all discovery and records regarding said case, including but not limited to all records,
5 physical evidence, photographs, reports, or interviews in the possession of the LVMPD
6 and/or the Clark County District Attorney's Office, including a certified copy of the
7 judgment of conviction in case number C184573 and/or records of the Department of Parole
8 and Probation, including a copy of the pre-sentence investigation report.

9 10. STEPHEN BLODGETT – Victim, may appear and testify regarding the
10 Conspiracy to Commit Robbery and Robbery under LVMPD event number 020518-0793, to
11 which Defendant was convicted pursuant to a guilty plea of Conspiracy to Commit Robbery
12 in C184573. Said testimony will incorporate and admit all discovery and records regarding
13 said case, including but not limited to all records, physical evidence, photographs, reports, or
14 interviews in the possession of the LVMPD and/or the Clark County District Attorney's
15 Office including a certified copy of the judgment of conviction in case number C184573
16 and/or records of the Department of Parole and Probation, including a copy of the pre-
17 sentence investigation report.

18 11. CAVE CHRISTOPHER, RICHARD HARDMAN, JERRY FERGUSON,
19 LELAND HEN and SHARICE LOUKISHA – Witnesses, may appear and testify regarding
20 the Conspiracy to Commit Robbery and Robbery under LVMPD event number 020518-
21 0793, to which Defendant was convicted pursuant to a guilty plea of Conspiracy to Commit
22 Robbery in C184573. Said testimony will incorporate and admit all discovery and records
23 regarding said case, including but not limited to all records, physical evidence, photographs,
24 reports, or interviews in the possession of the LVMPD and/or the Clark County District
25 Attorney's Office, including a certified copy of the judgment of conviction in case number
26 C184573 and/or records of the Department of Parole and Probation including a copy of the
27 pre-sentence investigation report.

28 12. LVMPD N. CHIO, P#5109 and J. PANNULLO, P#5455 – May testify to their

1 investigation of a Possession of Stolen Vehicle under LVMPD event #000316-1323, in
2 which Defendant was in possession of a stolen water truck, CA license CP59107. Said
3 testimony will incorporate and admit all discovery and records regarding said case, including
4 but not limited to all records, physical evidence, photographs, reports, or interviews in the
5 possession of the LVMPD. This case not proceeded upon by the Clark County District
6 Attorney's Office.

7 13. LVMPD OFFICER HICKS, P#6419 – May testify to his investigation of a
8 Possession of an Unregistered Firearm and Discharge of that Firearm under LVMPD event
9 number 00119-2091, in which Defendant was in possession of an unregistered 9mm
10 Parabellum, serial number R41512, which he discharged at 4817 Boulder Highway, Las
11 Vegas, Nevada, which Defendant claimed he purchased off the street. Said testimony will
12 incorporate and admit all discovery and records regarding said case, including but not
13 limited to all records, physical evidence, photographs, reports, or interviews in the
14 possession of the LVMPD as well as records of the Clark County District Attorney's Office
15 or the Las Vegas Justice Court in case number 00M25388X. On June 7, 2001, Defendant
16 pled guilty to the misdemeanor charge of possession of an unregistered firearm in
17 00M25388X.

18 14. CITY OF LAS VEGAS MARSHALL'S OFFICERS D. MAJOR, P#653,
19 PEQUEEN, P#215 and R. ADAMS, P#603 – May testify as to their investigation under
20 event number 20020424-0003, in which Defendant was found to be in possession of
21 marijuana, one bag of which Defendant claimed was his "personal stash," eight bags of
22 individually wrapped marijuana, and a bag of twenty-four (24) pink pills, Defendant claimed
23 were ecstasy. Officers may further testify that he responded to the Downtown
24 Transportation Center in a response to a call from BILL BETTS, claiming that a person was
25 attempting to sell drugs at that location. Said testimony will incorporate and admit all
26 discovery and records regarding said case, including but not limited to all records, physical
27 evidence, photographs, reports, or interviews in the possession of the LVMPD and/or Clark
28 County District Attorney's Office. This case was dismissed pursuant to plea negotiations in

1 C184573. 15.

2 16. LVMPD OFFICER LEDBETTER P#4984 – May testify to his investigation of
3 a Conspiracy to Commit Robbery and Robbery With Use of a Deadly Weapon under event
4 number 970125-0827 where Defendant, and two co-conspirators robbed JASON BRANDT
5 and MICHAEL PARRISH with a small black handgun. Said testimony will incorporate and
6 admit all discovery and records regarding said case, including but not limited to all records,
7 physical evidence, photographs, reports or interviews in the possession of the LVMPD
8 and/or the Clark County District Attorney's Office. On May 20, 1997, Defendant was
9 adjudicated a delinquent for Conspiracy to Commit Robbery With A Deadly Weapon and
10 was committed to the Nevada Youth Training Center in Elko for one year. On May 20,
11 1998, Defendant was released on parole. In November 1998, his parole was revoked. In
12 November of 1999, he was released on parole again, and three months later, his parole was
13 terminated.

14 17. JASON BRANDT and MICHAEL PARRISH – Victims, and may testify to
15 Defendant and two co-conspirators robbing them at gunpoint on January 25, 1997, which
16 was documented under LVMPD event number 970125-0827. Said testimony will
17 incorporate and admit all discovery and records regarding said case, including but not
18 limited to all records, physical evidence, photographs, reports, or interviews in the
19 possession of the LVMPD, the Clark County District Attorney's Office, and/or the Nevada
20 Department of Parole and Probation.

21 18. LVMPD OFFICER CANNON, P#6620 – May testify to his investigation of
22 Defendant for speeding, suspended driver's license and possession of marijuana under
23 LVMPD event number 020516-2841. Said testimony will incorporate and admit all
24 discovery and records regarding said case, including but not limited to all records, physical
25 evidence, photographs, reports, or interviews in the possession of the LVMPD, the Clark
26 County District Attorney's Office and/or the North Las Vegas Justice Court. Defendant pled
27 guilty to speeding in case number 02MN0578X.

28 ///

1 19. CUSTODIAN OF RECORDS – LAS VEGAS METROPOLITAN POLICE
2 DEPARTMENT: During the penalty phase, copies of records of the Las Vegas Metropolitan
3 Police Department may be admitted including any report, statement or physical evidence
4 related to event numbers 970125-0827, 000316-132, 001119-2091, 020516-2841 and
5 020518-0793.

6 20. CUSTODIAN OF RECORDS – NEVADA DEPARTMENT OF PAROLE
7 AND PROBATION and/or NEVADA PAROLE AND PROBATION OFFICER BRENDA
8 LEWIS, P#560: During the penalty phase, it is anticipated that the pre-sentence
9 investigation report from C184573 will be admitted.

10 21. CUSTODIAN OF RECORDS – CITY OF LAS VEGAS MARSHALL'S
11 OFFICE: During the penalty phase, copies of records of the City of Las Vegas Marshall's
12 Office may be admitted including any report, statement or physical evidence related to event
13 number 20020424-0003.

14 22. JAYSON TAOIPU - May appear and testify to not only his knowledge of the
15 crime, but the actions taken by Deangelo Carroll which influenced his decisions to cooperate
16 or not cooperate with authorities during the various different time periods of this case.

17 23. Howard Saxon - May appear and testify to his investigation of the instant matter
18 on behalf of Jayson Taoipu.

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1 As to all of the items referenced in this notice are part of the Clark County District
2 Attorney's file. This notice hereby incorporates by reference all discovery in the case
3 submitted to counsel. Defendant's counsel is invited to come to the Office of the District
4 Attorney and review the file to ensure that they have all items listed in this notice.

5 DATED this 14th day of November, 2007.

6 Respectfully submitted,

7 DAVID ROGER
8 Clark County District Attorney
9 Nevada Bar #002781

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

14 CERTIFICATE OF FACSIMILE TRANSMISSION

15 I hereby certify that service of **AMENDED NOTICE OF EVIDENCE IN**
16 **AGGRAVATION**, was made this 14TH day of November, 2007, by facsimile
17 transmission to:

18
19 DAYVID FIGLER, ESQ.
20 386-0344

21 /s/D. Daniels
22 Secretary for the District Attorney's
23 Office
24
25
26
27
28

CRIMINAL COURT MINUTES

05-C-212667-C STATE OF NEVADA

vs Counts, Kenneth

CONTINUED FROM PAGE: 012

10/11/07 09:00 AM 02 DEFT CARROLL'S MOTION TO STRIKE DEATH
PENALTY AGGRAVATORS/208

HEARD BY: Valerie Adair, Judge; Dept. 21

OFFICERS: Denise Husted, Court Clerk

PARTIES: NO PARTIES PRESENT

COURT ORDERED, Motion to Strike DENIED based on State's opposition. The
State is to prepare findings of fact and conclusions of law and order.
FURTHER, Motion to Stay is DENIED.

CUSTODY

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE DOCUMENT ON FILE

2007 NOV 19 P 12:06


CLERK OF THE COURT

EXHIBIT "B"

BUNIN & BUNIN

Attorneys at Law

626 S. Third Street
Las Vegas, Nevada 89101
Phone (702) 386-0333
Fax (702) 386-0344

RECEIVED
NOV 21 4 19 07

Daniel M. Bunin
Joseph D. Bunin

Dayvid Figler
Of Counsel

November 21, 2007

Marc DiGiacomo, Esq.
Giancarlo Pesci, Esq.
Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

Re: DeAngelo Carroll, Case # C212667

XX)

Dear Gentlemen:

Despite the fact that I never received a response to my letter to you dated August 22, 2007, as we approach the probable eve of trial on December 3, 2007, this letter is about other pressing matters which need to be addressed.

First and foremost, Judge Adair denied our motion to strike the aggravators which make this a death penalty case. Her minute order which was issued on October 11, 2007, specifically states that the State is to prepare findings of fact and conclusions of law and the order. Indeed, the Defense had prepared a simple denial of the motion and that was not accepted by the Court. As such, the State had a duty to prepare such an order in a timely fashion, especially as you were clearly on notice that the Defense intended to appeal the denial of the motion with the Supreme Court and ask for a stay of all proceedings in the District Court. I had even spoken to Mr. Pesci about how the Defense is waiting for the State to prepare an order in the interim.

EDJCR 7.21 provides that counsel must furnish the form within 10 days after notice of the ruling. That was not done. The District Court rules also imply that no party shall delay the filing of orders for any reason. It is counsel's belief that your delay in filing the order has significantly prejudiced the Defense in its ability to seek relief in the higher court. As such, we are preparing documents for filing with the Nevada Supreme Court as well as renewing our request for a continuance.

Secondly, we just received the amended notice of aggravation with regard to our client. Noted are the addition of two new witnesses - Jason Taoipu and Howard Saxon. We have no discovery from either of these individuals as it relates to death penalty aggravation and demand all documents, recordings,

EXHIBIT "C"

November 21, 2007

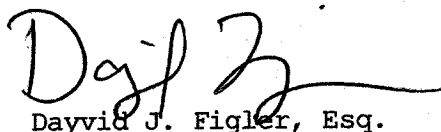
reports, as well as access to them to be interviewed by our investigator. Previously, Mr. Taoipu's attorney indicated that his client still had a 5th Amendment right despite entering his plea to the charge of murder. It is the belief of the defense that the State continues to push off Mr. Taoipu's sentencing until a time after Mr. Carroll's trial so that the claims of a 5th Amendment right can be preserved. Clearly, this is a prosecutorial tactic that directly interferes with the Defense right to conduct its examination, especially in light of the inference (by listing him as a witness) that the State has unimpeded access to Mr. Taoipu and the Defense has none. We are currently preparing a Motion to be heard by the District Court to require that Mr. Taoipu be sentenced immediately or that he be stricken as a witness from the trial. The alternative, of course, is that the State stop interfering with the sentencing date and allow Mr. Taoipu to be sentenced.

Finally, we had previously gone over a jury questionnaire and had come to some level of accord with regard to the language contained therein. Since it has been some time since this exercise took place, I am attaching a copy of the questionnaire to this letter. I am also forwarding the same to the District Court.

In sum, the Defense is obviously concerned that the State is not following its duty to seek justice, but instead is engaging in gamesmanship to get the "best advantage" in a case that is clearly inappropriate as a death penalty matter. My client was not the shooter and he clearly put himself at great risk and thus allowed the State to proceed against other co-defendants. That he changed his mind when the deal promised and implied to him did not materialize reveals the efforts of the State to fall more on the side of vindictiveness than justice.

Both of you are skilled attorneys and in the event of a defense loss this case is destined to go on for an eternity through countless appeals. All we ask of is a fair trial, with the ability to proceed as a regular murder case without impediments to presenting a full and viable defense. Dropping the death penalty at this point would obviously solve much of the problem. I certainly hope you take that into consideration when determining how to proceed.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Figler", with a stylized flourish extending from the end.

Dayvid J. Figler, Esq.

1 **ROC**
2 DAYVID J. FIGLER, ESQ.
3 Nevada State Bar # 4264
4 626 S. 3rd Street
5 Las Vegas, Nevada 89101
6 Attorneys for Defendant
7

8
9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 * * * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

15 vs.

16 DEANGELO CARROLL,

17 Defendant.

CASE NO.: C212667
DEPT. NO.: XXI

18 **RECEIPT OF COPY**

19 RECEIPT OF COPY of the above and foregoing Letter to Marc DiGiacomo and Giancarlo
20 Pesci is hereby acknowledged this 21 day of November, 2007.

21 DISTRICT ATTORNEY'S OFFICE

22 
23 DAVID J. J. ROGER

1 **ORDR**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 MARC DIGIACOMO
6 Chief Deputy District Attorney
7 Nevada Bar #006955
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED

Nov 27 9 43 AM '07

[Signature]
CLERK OF THE COURT

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 **THE STATE OF NEVADA,**

11 **Plaintiff,**

12 **-vs-**

13 **DEANGELO CARROLL,**
14 **#1678381**

15 **Defendant.**

Case No. C212667
Dept No. XXI

17 **ORDER DENYING DEFENDANT'S MOTION TO STRIKE DEATH PENALTY**
18 **AGGRAVATORS**

19 **DATE OF HEARING: 10/11/07**
20 **TIME OF HEARING: 9:00 A.M.**

21 **THIS MATTER** having come on for hearing before the above entitled Court on the
22 11th day of October, 2007, the Defendant being present, REPRESENTED BY DAYVID
23 FIGLER, ESQ., the Plaintiff being represented by DAVID ROGER, District Attorney,
24 through MARC DIGIACOMO, Chief Deputy District Attorney, and the Court having heard
25 the arguments of counsel and good cause appearing therefor,

26 **///**

27 **///**

28 **///**


EXHIBIT "D"

1 IT IS HEREBY ORDERED that the Defendant's Motion To Strike Death Penalty
2 Aggravators, shall be, and it is Denied.

3 DATED this 27 day of November, 2007.

4
5 
6 DISTRICT JUDGE

7
8 DAVID ROGER
9 DISTRICT ATTORNEY
Nevada Bar #002781

10
11 
12 MARC DIGIACOMO
13 Chief Deputy District Attorney
14 Nevada Bar #006955
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