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1 the State made as many mistakes as they've made in the life
2 of Mike Rippo.

3 You will not be letting anyone
4 down. You are not obligated to come back with any
5 particular verdict. Michael Rippo will never be a
6 productive member on the outside world. By the time he gets
7 out, if he ever gets out, he will be an old man and his
8 opportunity at life will be gone. But he has a chance to
9 contribute something to the prison system.

10 You've been told that he's
11 smart, that he's learned skills, that he's worked well in
12 prison, that he's even been a leader to some of the other
13 persons in prison.

14 You know that he's been in
15 prison for 14 years of his life, and he has no tattoos, so
16 you know he's not jumped in and gotten involved in the bad
17 gangs and some of the hatred that's going on there; that
18 he's someone that other people in the prison could look up
19 to, not someone that should be killed.

20 One thing that we know is is
21 that the system has held Michael Rippo for 14 years without
22 nobody getting hurt. He's never escaped. You know exactly
23 where he's going to be for the rest of his life if you
24 choose life without the possibility of parole.

RENEE SILVAGGIO, CCR 122 391-0379

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1 Last week, Mr. Harmon did a
2 very pointed thing when he said what does the face of a
3 killer look like, and then he paused and he turned and he
4 looked at Mr. Rippo.

5 When this case is all over and
6 you go home, will you look in the mirror and find the killer
7 or will you look in the mirror and find someone that
8 believed, as Mr. Harmon said, that mercy never destroyed
9 justice, because it does not.

10 Life or death is the question.
11 And I submit to you that the only valid sentence is one with
12 life. Death accomplishes nothing but creating another
13 killing, another homicide; but this time, it will be one
14 ordered by this Jury.

15 The Jury -- the panel I have --
16 or the poster I have here points out, shouldn't we be asking
17 what's wrong?

18 We owe it to the innocent
19 children they once were. Let's seek answers instead of
20 vengeance. We do not need vengeance; we do not need to put
21 another person, that started out as a decent child and
22 something went wrong, on death row. You have the power.
23 And I submit to you that the appropriate punishment is to
24 give this man life, life with or life without.

1 Thank you.

2 But you do not need to send

3 Michael Rippo to death row.

4 Thank you.

5 THE COURT: All right. We'll take a short
6 recess.

7 Remember: Do not converse
8 among yourselves or with anyone else on any subject
9 connected with this trial;

10 Read, watch, listen to any
11 report or commentary on the trial by any medium of
12 information; or

13 Form or express any opinion
14 until this matter is finally submitted to you.

15 (Whereupon, a recess was had in
16 the proceedings, at the
17 conclusion of which the
following was had:)

18 THE COURT: Counsel stipulate to the
19 presence of the Jury?

20 MR. SEATON: Yes, Judge.

21 MR. WOLFSON: Yes, sir.

22 MR. DUNLEAVY: Yes, Your Honor.

23 THE COURT: Mr. Wolfson.

24 MR. WOLFSON: Thank you.

13

1 Good afternoon, ladies and
2 gentlemen.

3 Michael Rippe is on trial for
4 his life. We've told you that. We've also told you that
5 you have to make a very difficult decision. It's nothing
6 new. A number of words have been used to describe Michael
7 in this trial, some not so flattering.

8 But other words were used to
9 describe Michael Rippe: Intelligence, above average
10 intelligence, charismatic, smart, above average abilities,
11 cooperative, personable, communicate effectively, and
12 bright.

13 There are many sides to every
14 one of us. I don't know anybody, and I submit that nobody
15 in this room knows anybody, that is all evil; that there is
16 no redeeming -- nothing worth saving.

17 There are a number of evil,
18 bad, despicable people in this world, but I think we must
19 conclude, from what we've heard so far in four weeks, that
20 at some point in Michael's life, he has done good things.

21 I think you must conclude from
22 everything we've heard that he's made impressions on people,
23 good impressions. You don't hear words like personable,
24 charismatic, if he wasn't of some salvageable quality.

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1 Instruction Number 8 tells you
2 that the law does not require you to impose the death
3 penalty. I want to draw a distinction here. The
4 distinction is between the first phase of the trial, the
5 guilt phase, and this penalty phase.

6 Four weeks ago, you all took
7 oaths and the oaths were to follow the law as provided to
8 you by our Court.

9 And I respect your verdicts.
10 You found obviously beyond a reasonable doubt that Michael
11 committed these crimes.

12 The law in the guilt phase said
13 that if you find beyond a reasonable doubt that Michael
14 committed these crimes, then you shall find him guilty.

15 We are at a different phase
16 now. Michael is going to be punished. The phase we're at
17 now says that you don't have to impose what the prosecution
18 is asking, even if you think that, by law, he deserves it.
19 That's the distinction.

20 In this penalty phase, if you
21 find that all six aggravators have been proved beyond a
22 reasonable doubt, and if you find that there is no
23 mitigation, none, the law still allows you to impose less
24 than death.

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1 Unlike the guilt phase, when
2 you had -- by law, and by oath, if you found, beyond a
3 reasonable doubt, guilt, you don't have to impose death in
4 this case, even if the aggravators outweigh the mitigators.

5 What types of people should
6 have the death penalty imposed?

7 I submit to you there are a
8 number of types of people: One is a person that shows no
9 remorse. Now you've heard testimony from probation
10 officers, from years ago, that he showed no remorse for
11 those acts committed years ago.

12 You heard testimony from others
13 that say Michael showed no remorse; a brazen, bragging
14 attitude, a brazen, bragging attitude, but I believe the
15 evidence has shown that he has remorse.

16 Nobody told Michael Rippo to
17 look at the Jacobsons and look at the Lizzis when he
18 addressed you.

19 What is the first thing that
20 Michael Rippo did? He looked at the family and he addressed
21 them. Do you feel he showed remorse?

22 When Laura Martin testified,
23 and the prosecutor took about an hour with her, when she
24 related what happened to her many years ago, I was watching

13 1 you. It's my job to watch you. And I saw all of you
2 greatly affected by Laura Martin, as we all were. But I
3 also hoped that some of you looked at Michael, because he
4 was affected as well.

5 You know, the instructions tell
6 you as jurors that you are allowed to watch what happens in
14 7 the courtroom, and if you saw what Michael showed, what
8 emotion, I submit it was remorse.

9 So I don't believe Michael
10 Rippo fits into the category of what types of people should
11 receive death, because he has remorse.

12 A second type of person who
13 should receive the death penalty is a person who has
14 absolutely nothing to contribute, absolutely nothing to
15 offer a fellow human being, other persons, whether it be
16 other inmates, whether it be people who he can contribute to
17 through his work in prison, whether it can be to his family,
18 his mother, his sister, his niece and nephew.

19 Michael is not without family.
20 He has family; you heard his family; you saw his family.

21 Would these family members be
22 enriched, would their lives be better, if Michael Rippo were
23 allowed to live?

24 Can Michael Rippo contribute to

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1 members of our society? I submit to you that he can. He
2 does not fit into the category of a person who can't
3 contribute to society.

4 Another type of person who
5 should receive the death penalty is a person who acted under
6 complete control of their faculties.

7 Drugs are not an excuse, and
8 I'm sure the prosecutor will tell you that, and I agree.
9 Michael Rippo is not coming to you through his lawyers and
10 saying forgive me, I was a drug user.

11 What I submit, though, is that
12 he was not under total control of what he was doing; he was
13 influenced by these drugs.

14 Another type of person who
15 should receive the death penalty is a person where there is
16 no rational explanation for the crime they committed.

17 I don't know how many of you
18 read today's morning newspaper, but at about five o'clock
19 this morning, and that was after being up two hours, the
20 headline was a man in a foreign country -- and I don't
21 remember which one -- shot and killed 16 children and a
22 teacher. I don't know any rational explanation for that.

23 The prosecutor will argue there
24 is no rational explanation for this crime. There are

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1 underlying circumstances. There are mitigating factors as
2 to why Michael went to that apartment that day, why he did
3 what he did.

4 Can you say, as the finders of
5 fact, that you really believe that Michael intended to kill
6 the girls when he went to that apartment?

7 You've heard some evidence,
8 some words out of Michael's mouth, that it was an accident.
9 The prosecutor will say how do you accidentally kill people
10 in this manner?

11 But is it plausible? I mean,
12 you folks talk about the evidence. Is it plausible that
13 when he went to the apartment that day, he intended to rob,
14 he intended to steal, but he didn't intend to kill, and that
15 when he assaulted these women that he didn't intend to kill?

16 Things got out of hand, there
17 is no doubt. But is it possible that unlike this person who
18 killed 16 children, who carried many handguns to this scene,
19 and there is no doubt what he intended, is it possible that
20 he was influenced and that he didn't really intend to do it?

21 Oh, he did it. You found that
22 he did it. Is it possible that he really didn't intend to
23 do it, but that things got out of hand?

24 What will be accomplished if

14 1 Michael Rippe is put to death? More pain and suffering to
2 others, certainly.

3 Will Mr. and Mrs. Lizzi and
4 young Nick Lizzi receive some satisfaction? Perhaps. And
5 I'm not saying that's unjustified. Will the Jacobson
6 family, alike, receive -- something of value? Perhaps. But
7 there will certainly be more pain and suffering to others.

8 If Michael Rippe can contribute
9 something to society, and if he is put to death, we will be
10 prevented from figuring out whether he could contribute.

11 The law says if you return a
12 death verdict, that you must assume it will be carried out.

13 What if Michael Rippe can
14 contribute? We wouldn't find out.

15 What else will be accomplished
16 if he is put to death? Will it be a deterrence to others?
17 You have no evidence before you, either way, that his death
18 will deter others.

19 But, ladies and gentlemen, if
20 carrying out death sentences deters others, our crime rates
21 would be down, our murder rates would be down, and they're
22 not.

23 So can you assume from your
24 life experiences that by sentencing Michael Rippe to death

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1 that others will be deterred? I submit not.

2 The prosecutor, I'm confident,
3 will tell you that it certainly will deter Michael from
4 killing others, and the prosecutor is right.

5 But we don't have any evidence,
6 as Mr. Dunleavy said, that he is violent in prison. The
7 knife could have been for survival. It's a young, short kid
8 in prison. If he had gotten in fights in prison, if he had
9 tried to kill people -- some of the witnesses talked about
10 threats; nothing was carried out.

11 So can we say that it will
12 deter Michael? What is accomplished by that?

13 Finally, by putting Michael to
14 death, you, as a Jury, are saying that mercy is not
15 warranted in this case.

16 Mercy is something that comes
17 from within us. There is no legal instruction on mercy. No
18 Judge is telling you that mercy is defined as, and that if
19 you find mercy, you shall. No, mercy comes within and from
20 within us as human beings.

21 I submit to you that that is
22 the purpose for Instruction Number 8. Instruction Number 8
23 allows that even if you find -- even if you say that there
24 are aggravating circumstances, and that, by law, you have

15 1 the ability and the right to sentence to death, you don't
2 have to, because mercy says you shouldn't.

3 Mercy means forgiveness. We
4 are all God's children, and as such, mercy can be
5 acceptable, even when at first look it seems ludicrous.

6 What went wrong, as Mr.
7 Dunleavy says? Perhaps an imperfect system.

8 You folks, when you go back
9 into the deliberation room, might **talk about the defense.
10 They talked about the O.J. Simpson case. They criticized
11 the police. They picked on witnesses because they forgot
12 things.

13 But I think as reasonable men
14 and women, bringing your life experiences to the
15 deliberations, that you will acknowledge we have an
16 imperfect system.

17 Could more have been done for
18 Michael? Absolutely. We all know that.

19 Michael is to blame too. I'm
20 not suggesting he isn't. But the system, with its crowds
21 and with its in one door, out the other, shuffled him when
22 he was 15.

23 What went wrong? Perhaps a
24 dysfunctional family. I don't know you folks. I read your

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1 Juror questionnaires and I learned a little bit about this
2 man and a little bit about this lady. I don't remember now.

3 I came from a functional
4 family. But you heard testimony that Michael's natural
5 father left the home at the age of three; that his real
6 father, the man that raised him, was somewhat abusive, if
7 you will, by the way he talked to him about women, the way
8 he treated him; that this man died of cancer and Michael
9 took it hard.

10 What went wrong? Perhaps, in
11 part, a dysfunctional family; perhaps a disturbed child.

12 Was Michael Rippe disturbed?
13 I'm not an expert. Perhaps a disturbed child; perhaps a
14 drug crazed, unintended act is what went wrong.

15 Accountability, commitment,
16 intestinal fortitude. The prosecutor implores you folks to
17 reach deep down, to have the strength to return a death
18 sentence.

19 I say: Do you have mercy in
20 your hearts? Will you ever, in your life, again, have to
21 search for mercy? Will you ever, in your life again, have
22 to search in your soul for what you are being asked to do
23 now?

24 I submit, unless you sit on

15 1 another panel like this, no. Showing mercy does not mean
2 you don't have commitment or intestinal fortitude. It takes
3 strength and commitment to have mercy. It takes the same
4 strength, commitment and soul searching to find mercy.

5 Is life in prison for the rest
6 of your life really a concession? Are you letting the State
7 of Nevada down by not giving them the death penalty?

8 I submit to you that you are
9 the folks that decide what is intestinal fortitude; what is
10 right; what should happen? And I submit to you that mercy
11 does play a role in this case.

12 There are certain traits and
13 qualities of life that we all have. Some of us have many;
14 some of us have limited traits of life or qualities about
15 us; some of us have almost no traits or qualities; and some
16 of us have none.

17 People with no redeemable
18 traits and qualities, people that show no remorse, people
19 that can't contribute should receive death.

20 There is room for mercy in this
21 case, there really is, under the facts of this case. Mercy
22 is the right verdict.

23 Thank you very much.

24 THE COURT: Mr. Seaton?

16

1 MR. SEATON: Mercy. Mr. Wolfson cries out
2 for mercy in this case?

3 Who among you, sitting on this
4 Jury, didn't think to yourselves: What mercy did this man
5 over here show to those two young girls? What mercy went on
6 in that apartment in the Katie Arms on that fateful day?

7 And he comes in here, begging
8 and **groveling for mercy for a man who deserves absolutely
9 none.

10 Mr. Dunleavy, throughout this
11 trial, has said the State wants you to kill the defendant.
12 How many times have you heard that this afternoon alone,
13 notwithstanding other days that we have been in this
14 courtroom?

15 The State wants you to kill
16 Michael Rippo. There are two reasons that those words are
17 said to you: One is to make us out as some sort of blood
18 thirsty ogres who want to go around killing people; and the
19 other is to put a guilt trip on you, to make you feel guilty
20 about what you are doing.

21 Let us revisit, for just a
22 moment, some of the things that Mr. Dunleavy said to you:

23 Are you confident enough in
24 Diana Hunt and the snitches' testimony to feel comfortable

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1 enough with your verdict to execute the defendant?

2 The law is, you don't go back
3 and revisit your verdict. We are supposed to have faith in
4 you, that you took great consideration in coming to your
5 decision, and that it was a correct one.

6 And we shouldn't come before
7 you and say, well, you better go back and look at that again
8 and make sure you were right. Of course, you were right.
9 You listened to the evidence. You had a chance to
10 deliberate. The speed of your verdict, perhaps, told us
11 your confidence in that verdict.

12 But what he said later really
13 should tell you where he was coming from when he was asking
14 you to question your verdict, something about when you
15 looked in the mirror, would you see the face of a killer?

16 What kind of a thing is that to
17 put on people like you, who have come here out of the
18 goodness of your heart, who are performing your social duty,
19 your legal duty, the duty that creates the strength of this
20 country? How can he ask you to start putting this guilt
21 trip on yourselves by questioning what you might do later on
22 down the road?

23 And in terms of Mr. Harmon and
24 I being blood thirsty, ladies and gentlemen, we are nothing

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1 more than the messengers of bad news. We put evidence on
2 before you and we tell you, through those witnesses, what's
3 wrong with the world. We don't stand up here wanting you to
4 kill anyone. We would wish more than anything that our jobs
5 could be abolished.

6 We're here to decide
7 punishment. We're here to ask ourselves -- you're here to
8 ask yourselves questions: Who is Michael Rippo? What has
9 Michael Rippo done? Is Michael Rippo capable of
10 rehabilitation?

11 Those are important questions
12 to ask yourselves and to decide before determining one of
13 his punishments.

14 The who is he question -- maybe
15 a better question is: What causes him to be who he is?
16 What has caused him?

17 That's a problem in this case.
18 Was it, indeed, as they say, the system? Did the system
19 create Michael Rippo?

20 Well, we heard a lot of people
21 saying, on the side of the defendant, that the system did
22 just that: It didn't pay any attention to him; it didn't
23 give him psychological help; it turned him loose after three
24 months, almost four months.

RENEE SILVAGGIO, CCR 122 391-0379

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1 I recall Bob Sergi, from Spring
2 Mountain, sitting up here and going through a litany of
3 things that they try to do for the young men who go up
4 there.

5 And these are young men who are
6 relatively new in the system -- they haven't gone to Elko
7 yet -- and they give them the counseling and the treatment
8 that they want them to have. They try to turn these men
9 out, those who will accept it -- and perhaps that's the
10 key -- they try to turn them out into decent, law abiding
11 citizens.

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12 And we heard that Michael Rippo
13 didn't want to be one of those. He manipulated that system.
14 He got along with the adults at the right time, so that he
15 complied with the rules enough to be sent back to the
16 streets with his own **ethics, not the moral code that they
17 wanted to give to him.

18 Did his parents cause him to be
19 evil? Did losing his allowance to his dad cause him to be
20 evil? Are there, as Mr. Wolfson suggested a moment ago,
21 perhaps deep seated psychological problems that he has?

22 The only thing of a
23 psychological nature we've heard about in this case is the
24 report that was done a number of years ago after the sexual

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1 assault, and it essentially concurred with all of the lay
2 people who have talked about him, saying that he was bright,
3 he was compatible with all things in life, he got along well
4 with people.

5 He was a normal, average --
6 above average some people said -- in intelligence, human
7 being. He had, as Mr. Harmon was pointing out, the ability
8 to make choices.

9 And isn't that what this case
10 and Laura Martin's case are all about, the ability to make
11 choices? Who held a gun to his back and made him take the
12 first drug? Who -- who opened a window and shoved him head
13 first into somebody's house? Who forced him to do these
14 things?

15 The good, above average
16 intelligence that he possesses is what forced him to do
17 these things. They were simple choices, yes or no, I can do
18 them or not.

19 Remember -- just by way of
20 analogy, remember Laura Martin testifying that she thought
21 she heard him on the telephone, and the only words that she
22 could hear him say was: Are you coming?

23 Well, that would infer to us, I
24 think, that someone else had contemplated coming over and

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1 joining in. That person made a choice, evidently, because
2 no one ever showed up. That person realized that what was
3 going on in that apartment was so evil, so degrading and so
4 terrible that they didn't want anything to do with it, no
5 matter how bad they might otherwise be.

6 He didn't feel that way. He
7 carried on with his intended actions.

8 We don't know who Michael Rippo
9 is. Everyone in this courtroom is wondering: What's the
10 causation? And the true, simple fact of the matter is you
11 don't know and nobody else knows. Nobody has been able to
12 come in here and produce a chart which shows what caused him
13 to be what he is.

14 What we know is who he is. We
15 can look at his acts. They are footprints in his life. And
16 they tell us where he's been and where he's going. And what
17 we know about Michael Rippo is that he is evil and he is
18 depraved.

19 Now, as to the questions of
20 what has he done and is he rehabilitatable, I have put
21 together a chart -- let me bring it over for you.

22 Can everyone see?

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(Affirmative response.)

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1 MR. SEATON: We're going to talk now about
2 what has he done and is he rehabilitatable? Those are the
3 questions.

4 I defy any one of you to look
5 at that chart, just the words in the middle, and tell anyone
6 else which crime it refers to.

7 Mr. Rippe was, indeed, in 1982,
8 in a woman's apartment. He was in Laura Martin's, and he
9 was there uninvited.

10 In 1992, he was in Lauri
11 Jacobson's apartment. There, he was invited. But here he
12 is, two cases, in a woman's apartment.

13 In both situations, his intent
14 was to steal. He had to go through the sliding glass door
15 in Laura Martin's apartment in 1982, to go look for things
16 that he wanted, things that she had, things that she worked
17 for, to buy and to utilize in her life.

18 And he wanted them, and so he
19 went in there to get them, just as he went into the
20 apartment of Lauri Jacobson, because he was going to steal
21 from her, be it drugs or whatever was in there, that he
22 wanted to get his hands on.

23 He used the telephone. I've
24 just alluded to that in the Laura Martin case. He called

17 1 someone and wanted to know if they were coming over. We
2 know who he called in this case. He told Diana Hunt it was
3 Alice Starr, his friend Alice Starr, call and ask for Lauri
4 and create a diversion so that can I rob Denise.

5 He stole the victim's car,
6 Laura Martin's 1975 Fiat, found out in the desert with
18 7 everything scattered around about it; and we all know about
8 Denise Lizzi's Nissan 300ZX that he stole.

9 He cut cords with a knife. How
10 unusual. In the 1982 sexual assault case, he finds an
11 electrical cord, or cords, and he cuts them to use them at a
12 later time. He did precisely the same thing ten years later
13 in the 1992 murders. There he got an iron and a hair dryer,
14 cut the cords off of them. He used a knife in both cases, a
15 knife to intimidate.

16 Remember Laura Martin, naked,
17 with a knife pointed at her breasts, encircling her nipples;
18 Mr. Ripppo saying I cut a girl's nipples off once, but she
19 was dead. And then in 1992, he uses a knife, stabs in the
20 neck; both women had stab marks.

21 Ripppo tied the victim with
22 electrical cords. Laura Martin was tied with those
23 electrical cords around her ankles. In the 1992 murder
24 case, virtually the same thing happened.

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1 Rippo tied the victim with
2 clothing in both cases. Rippo gagged the victim. He took
3 the tube top that he had cut off from Laura Martin and he
4 tied it around her head, through her mouth, so that she
5 couldn't make any noise, and he tied it tightly.

6 We know that in the 1992
7 murder, ten years later, he put the purple bandana in Lauri
8 Jacobson's mouth. We know that he stuffed a sock in the
9 mouth of Denise Lizzi and tied it with her bra.

10 Rippo choked the victims with a
11 ligature. Just look at the pictures. 1982, Laura Martin
12 had a line across her throat. It was from a hanger that Joe
13 Matvay had found, a hanger that had been unfastened and
14 twisted. It had been wrapped around her neck and pulled
15 tight, causing her to lose her air. Thank God, she was here
16 to tell us about it.

17 And in 1992, who can forget the
18 marks around Lauri Jacobson -- I'm sorry -- Denise Lizzi's
19 neck, an electrical cord wrapped twice, being pulled on
20 tight.

21 All the while, the defendant is
22 making a choice; no one is standing there with a gun to his
23 head telling him to do it.

24 The system didn't create Mr.

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1 Rippo. He created himself.

2 Could you see this again in a
3 lifetime? Could you see such a remarkable coincidence of
4 actions by one human being? Is it possible that this could
5 even happen and not simply be written in Hollywood by some
6 script writer?

7 What this does is not only tell
8 you what he's done -- we already knew what he was -- what he
9 has done. What it speaks to is: Who he is and can he
10 change?

11 For ten years, this man showed
12 himself to be the same. The only change in Michael Rippo is
13 that he developed the capacity to carry through and to kill,
14 and we now know he can do that.

15 There is no doubt about that.
16 There is no doubt that this tells you better than anything
17 who he is and what he is capable of doing and whether or not
18 he will be an asset in the prison, whether or not he is
19 capable of rehabilitation and should be considered for
20 parole.

21 Now -- I left my glasses some
22 place. I'll probably fall down.

23 Which brings us to the penalty.
24 That's your job now. You have to decide what sort of a

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1 penalty is appropriate for Michael Rippo.

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And the first thing that each of the defense attorneys, particularly Mr. Dunleavy, suggested was life with the possibility of parole. Life with the possibility of parole for this man --

Mr. Bailiff, could you remove this so the jurors can have a better view?

THE BAILIFF: Certainly.

The whole thing, counsel?

MR. SEATON: Yes, please. Just put it -- well, wherever you want.

What an auspicious request to make of a group of 12 sensible people, to ask that this man be given the possibility of walking our streets again.

What would Denise Lizzi and Lauri Jacobson say about the strength of the penalty called life with the possibility of parole? It cost them their lives. He got parole and he killed. And it's as simple as that. This man should never be in our society again.

Life without the possibility of parole?

He will be an asset to the prison, as Mr. Dunleavy suggested, which was borne out of the words of Minister Cooper. Minister Cooper thought that

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1 this man could really be an asset in prison.

2 Here is a man who, on the
3 outside, used drugs -- now, you haven't seen it yet, but
4 there are letters -- the last letters that got introduced
5 are written by Michael; and you read them and you will see,
6 among a bunch of other things that he said, references to
7 being stoned, references to being loaded -- and this was
8 while he was in prison -- reference to a gram being sent in.

9 A gram of what? You leave it
10 to your imagination what he's talking about.

11 This is a man who not only
12 liked drugs on the outside, but he liked them on the inside,
13 and he got them on the inside. And if there is any truth to
14 what these defense attorneys say to you, that drugs might
15 cause you to do things that you otherwise might not, should
16 we fear them and their use in prison by inmates?

17 He is a man who, back in 1982,
18 used nunchuks; way back then, he knew what nunchuks were,
19 the wooden handled things with a chain between them, that he
20 used to beat the heck out of Laura Martin, cause all that
21 damage to her face that you saw, the stitches that she got,
22 and the trauma, that we didn't even begin to feel, to her
23 mind.

24 And he's got them in prison;

19

1 the prison, that they want to send him to for the rest of
2 the life -- his life, is in such a condition that he is able
3 to find nunchuks and put them in his light fixture so that
4 he can use them for whatever benevolent purpose that Mr.
5 Wolfson wants to come up with? Those aren't friendly
6 instruments.

7 This is a man who liked to use
8 knives on the outside. He cut cords with them. He
9 threatened women. He stabbed women with them. And he's got
10 one in his prison cell, a nine inch buck knife.

11 That's the kind of person who
12 is going to be an asset in prison?

13 He's the boss of the yard; goes
14 unchallenged. He buffs up. He's a lot stronger in prison
15 than he is here today. He's a muscular guy who is so
16 impressive in that prison, he gets his own way so much, that
17 he gets to lift weights when he wants to and everybody
18 leaves him alone. Respect, I think, was one term; and
19 another one was not challenged. He would not be challenged
20 on the yard.

21 This is a man who, while in
22 prison, threatens guards. He tells them that he'll blow
23 their f'ing head off to put them out of their misery;
24 happens to be a woman who he says that to.

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19

1 And why did he have a wrench in
2 his cell, a big crescent wrench, which could be used to undo
3 bolts, which could be used to help facilitate an escape?

4 One of the defense attorneys
5 said he's never had an escape. You don't need to worry
6 about that.

7 Well, what about way back in
8 Juvenile? Remember when he kicked out the window and he
9 escaped the day before he was supposed to go to court?

10 He not only has the capacity
11 for it, as he does killing, but he has done it. And perhaps
12 it could be inferred, by a group of reasonable people, that
13 the collection of the nunchucks and the knife and the wrench
14 was the beginning of another escape attempt.

15 If he is granted life without
16 the possibility of parole, should guards feel safe in his
17 presence? Should other inmates who he takes a dislike to
18 feel safe in his presence? Is a life imprisonment without
19 the possibility of parole putting someone else in jeopardy?

20 That's an important question
21 that I think you need to mull around a little bit.

22 Mr. Wolfson said there are
23 certain types of people for whom the death penalty is all
24 right. Number one, those who show no remorse.

19

1 We have heard that the
2 defendant is remorseful. His family said it; the minister
3 said it; and Mr. Rippe said it. But they're all saying it
4 based on the self-serving statements of a man who is facing
5 the death penalty.

20

6 And interesting to note, Mr.
7 Wolfson, when he stood over here and he turned toward these
8 poor families, who have suffered as they had, he had the
9 audacity to talk to them in this setting that we're in here
10 today. He didn't shed a tear; he didn't twitch; he didn't
11 act at all remorseful. He said his piece, and he's been
12 planning that piece for some time.

13 There wasn't an ounce of
14 remorse in this courtroom, except by his family, and -- his
15 family. And, yes, they are victims. Like anyone else
16 that's been affected by this court, our sorrow should go out
17 to them.

18 But theirs is not the major
19 consideration. For example, the point I just made earlier,
20 perhaps a more important consideration is the safety of
21 people who he will be mingling with in prison.

22 Mr. Wolfson mentioned that
23 anyone acting under control when they do the killing should
24 be given the death penalty.

20

1 Assuming that's true, assuming
2 that's a valid criteria, how much more in control could he
3 have been with the stun gun, with the gagging, with the
4 tying, with the ligatures, with the breaking of the bottle,
5 through his accomplice Diana Hunt?

6 How cool and collected could a
7 person be when the sound -- excuse me -- when the sounds
8 occurred outside the apartment that freaked him out, I think
9 someone testified to, and he became under control
10 immediately; made sure that nobody could talk; shushed
11 everybody up, even played the good guy, according to Diana
12 and started to act a little better?

13 He was in full, absolute
14 control of what he did, Mr. Wolfson, and sorrowfully enough,
15 he was in control of the lives of others, and he had a great
16 deal to say about those lives.

17 There are reasons for the death
18 penalty, logical, explainable reasons, that need to be
19 contemplated, as you think about this. Mr. Harmon alluded
20 to some of them: Proper punishment, as an example.

21 Well, he did kill two people,
22 under the most brutal of circumstances. His background is
23 not the prettiest. He did a rape that came as close to
24 being a murder as it could be; only because of the ability

20

1 of this woman to talk her way out of it was it not a murder.

2 That's to send a message to
3 society; There are people out there walking in our society
4 who are murderers or murderers to be, and they need to know
5 that there are representative panels of individuals who are
6 willing to say: Stop; enough.

7 What was the old movie? I'm
8 mad as hell and I won't take it anymore?

9 That is a message that is sent
10 out there that you don't do this sort of thing without
11 facing the most fearful kind of punishments.

12 I mentioned already protecting
13 the inmates and the guards. But what about society, should
14 he use that wrench and the knife and the nunchuks or
15 whatever else he's going to be able to accumulate over the
16 years?

17 Society needs to be concerned.
18 Society needs to be protected. Society needs to know that
19 there are as few Michael Rippas in their midst as is humanly
20 possible.

21 This is another reason that Mr.
22 Wolfson should have -- or a type of a person that Mr.
23 Wolfson should have enumerated in his list: People who have
24 the capacity for future dangerousness. Society must be

20

1 protected from them.

2 And the bottom line to that is:
3 We don't tell you to kill him. That is not our message here
4 today. We wish that it were not so.

5 Our message is don't put other
6 people in jeopardy; keep society safe. Tell society the way
7 that you want it to be.

8 Our human capacity for good and
9 compassion makes the death penalty tragic; but our human
10 capacity for evil and depraved behavior makes it absolutely
11 necessary in this society of ours.

12 And, ladies and gentlemen,
13 unfortunately, for all of us, Mike Rippo has made it
14 necessary.

15 Thank you.

16 THE COURT: Mr. O'Leary will now take charge
17 of the jury.

18 THE BAILIFF: Yes, sir.

19 THE COURT: First, we've got to swear them
20 in, huh?

21 THE COURT: The clerk will now swear in the
22 officers to take charge of the jury.

23 (Officers sworn to take charge
24 of the jury.)

20

1 THE COURT: The clerk will now swear in the
2 officer to take charge of the alternate jurors.

3 (Officer sworn to take charge
4 of the alternate jurors.)

5 THE COURT: Okay. Ladies and gentlemen,
6 this matter is now submitted to you for your deliberation.

7 Go with Mr. O'Leary and he will
8 bring you to the deliberation room, where you can begin your
9 deliberation.

10 The alternates will remain in
11 the courtroom.

12 (The following proceedings were
13 had in open court outside the
14 presence of the main jury
panel:)

1 THE COURT: Again, with permission of
15 counsel, we'll do the same thing we did in the prior phase
16 of the trial, the guilt phase, if it's agreed upon.

17 I'll get the phone numbers of
18 the alternate jurors and have them notify us where they are
19 until the decision is reached or in the event that their
20 services may be needed.

21 MR. SEATON: We would agree with that,
22 Judge.

23 MR. DUNLEAVY: No opposition to that.
24

1 THE COURT: Remember, ladies and gentlemen:

2 Don't discuss this case among
3 yourselves or with anyone else or form or express any
4 opinions on this case;

5 Read, watch, listen to any
6 reports on the case by any medium of information, including,
7 without limitation, newspaper, television or radio; or

8 Form any opinions, because your
9 services may be yet needed.

10 We will notify you in the event
11 a verdict is reached.

12 Please give your phone numbers
13 to my law clerk.

14 Okay. Is there something else?

15 MR. SEATON: Judge, there was something that
16 we had mentioned to you before that we wanted to bring
17 before the Court's attention.

18 In this case, we learned, Mr.
19 Harmon and I, from the defense attorneys, that they had had
20 Mr. Rippo to two psychologists. I believe their names were
21 Reitman and Consora.

22 The testing had been done and
23 it was their hope that they would be able to use those two
24 psychiatrists in the defense of Mr. Rippo.

1 We got back initial reports
2 that seemed to be beneficial to Mr. Rippe and contain things
3 that could be used.

4 However, more information was
5 given to the doctor and supplemental reports were given,
6 which we've all seen and read; and they did not seem to have
7 such favorable information. In fact, the opinions started
8 to change about Mr. Rippe.

9 I bring this to the attention
10 of the Court only for this reason: We know that some day
11 down the road, two or three years, maybe four years from
12 now, there will be PCR and perhaps ineffective assistance of
13 counsel will be raised. I can see this is being a major
14 issue.

15 I understand, as does Mr.
16 Harmon, why the defense chose not to utilize that. I wanted
17 to give the defense an opportunity, at this time, to put on
18 the record their knowledge of the information and why they
19 chose not to use it, so that we can forestall the inevitable
20 failed memory and that sort of thing that happens way down
21 the road.

22 MR. DUNLEAVY: Quite simply, Your Honor,
23 when I received the addendums and reviewed them, I did not
24 think it would be beneficial to my client to use this

1 information before the jury. I think it could cause more
2 harm than damage.

3 THE COURT: Specifically what records?

4 MR. DUNLEAVY: The reports of
5 neuropsychologist Tom Consora and psychiatrist Roitman.

6 THE COURT: Okay. And I take it this was
7 discussed amongst you and Mr. Wolfson?

8 MR. WOLFSON: Mr. Dunleavy and I discussed
9 it. We also discussed it with our client.

10 THE COURT: Anything else?

11 MR. SEATON: No, that's fine, Judge.

12 THE COURT: Okay. Court will be in recess.

13
14 (Proceedings adjourned at 3:50 p.m.,
15 this date, to await the call of the jury.)

16 * * * * *

17 ATTEST: Full, true and accurate transcript of proceedings.
18

19
20 
21 RENE SILVAGGIO, C.D.A., NO. 122
22 OFFICIAL COURT REPORTER
23
24

ORIGINAL

FILED

29

1 0031
2 PHILIP H. DUNLEAVY, ESQ.
3 STATE BAR #000598
4 2810 W. CHARLESTON
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6 LAS VEGAS, NEVADA 89102
7 (702) 877-0910
8 ATTORNEY FOR DEFENDANT

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Laetia J. ...

CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)
8)
9 Plaintiff,)
10 -VS-)
11 MICHAEL DAMON RIPPO,)
12 Defendant.)

CASE NO. C106784
DEPT. NO. "IV"
DOCKET NO. "C"

MOTION FOR NEW TRIAL

13
14 Comes now the Defendant, MICHAEL DAMON RIPPO, by and
15 through his attorney, PHILIP H. DUNLEAVY, ESQ. and moves
16 this court for a new trial based upon the two reasons set-
17 forth in the attached points and authorities.

18 This motion is made and based upon the attached points
19 and authorities, all the papers, transcripts and pleadings
20 on file herein, and upon such other and further evidence as
21 may be adduced at the hearing on this matter.

22 DATED this 30 day of Apr., 1996.

23 Respectfully submitted,

24
25 *Philip H. Dunleavy*
26 PHILIP H. DUNLEAVY, ESQ.
27 STATE BAR #000598
28 ATTORNEY FOR DEFENDANT



ORDER SHORTENING TIME

Good cause appearing therefore,

IT IS HEREBY ORDERED that the time for hearing of the above-entitled matter be, and the same will be heard on the

^{1st} day of May, 1996, at the hour of 9 a.m. in

Department No. IV

Dated this 29th day of April, 1996


DISTRICT COURT JUDGE

Respectfully submitted,


PHILIP H. DUNLEAVY, ESQ.

1
2
3 POINTS AND AUTHORITIES

4 The defendant was convicted and received the death
5 penalty from the jury. He is now awaiting final sentencing.
6 Subsequent to the jury verdict, the defense has discovered
7 new evidence that places the integrity of the entire trial
8 in question.

9 First, during trial the defense made several motions
10 for the judge to recuse himself because he faced possible
11 indictment by a federal grand jury. The defense asserted in
12 chambers and on the record in open court that the judge was
13 in a position that could cause him to act contrary to the
14 ends of justice.

15 The defense has now learned that the judge had a unique
16 relationship with the business partner of one of the victims
17 in this case, specifically Denny Mason. Denny Mason was the
18 victim of the auto theft and credit card charges, as well as
19 the boyfriend of Denise Lizzi. At no time did the Judge
20 advise that he knew this victim nor did the judge advise
21 that he knew the business partner of Denny Mason; however,
22 the defense has learned that reputed Buffalo mob associate
23 Ben Spano is the business partner of Denny Mason in both
24 Security Enterprises, a telemarketing operation now out of
25 business, and in the big-screen television business. If the
26 defense had known about the connection between the judge,
27 Denny Mason, and organized crime, we would have asked for a
28

1 recusal and considered calling the judge as a witness.
 2 Also, if the judge had disclosed this mob connection, we
 3 could have had additional information to question Mr. Mason.
 4 Clearly, this information would have reflected on Mr.
 5 Mason's credibility and perhaps on the murder victim's as
 6 well, who would have been shown to be a drug dealer and an
 7 associate of known mob figures. This kind of information
 8 could have greatly enhanced the defense in both the trial
 9 and the penalty phases. Any review of this case shows that,
 10 as Mr. Seaton said after closing arguments in the trial
 11 phase, this case could go either way. Mr. Seaton even
 12 refused to disclose certain penalty phase information prior
 13 to the jury returning a guilty verdict because he said he
 14 feared for witnesses if they should be disclosed and then
 15 the defendant was acquitted.

16 NRS "176.515 New Trial: Grounds;...The court may grant
 17 a new trial to a defendant if required as a matter of law or
 18 on grounds of newly discovered evidence...A motion for a new
 19 trial based on the grounds of newly discovered evidence may
 20 be made only within 2 years after the verdict or finding of
 21 guilt." This new evidence could change the outcome of both
 22 the trial phase and the penalty phase and was not available
 23 prior to the indictment of the judge after the verdict was
 24 returned by the jury. Therefore, a new trial is mandated.

25 As second grounds for a new trial, the defendant
 26 asserts any review of this case will show it to be a close

1 case, one wholly dependent on snitch testimony, and presided
2 over by a judge whose credibility is clearly suspect since
3 he has been indicted on 13 counts involving his activities
4 as a judge. In this case, the judge's failure to disclose
5 relevant information about his personal relationship with a
6 victim witness and the victim's business partner, an alleged
7 mob associate, place the integrity of the trial in grave
8 doubt. Now a new judge has stepped into this predicament
9 and must try to do justice. The defense maintains that the
10 only possible way to insure justice is to grant a new trial.
11 The authority for a new trial is clear and compelling in
12 this case:

13 NRS 175.101:

14 **Disability of judge after verdict or finding of**
15 **guilt.** If by reason of absence from the judicial
16 district, death, sickness or other disability the
17 judge before whom the defendant has been tried is
18 unable to preform the duties to be preformed by
19 the court after a verdict or finding of guilt, any
20 other judge regularly sitting in or assigned to
the court may perform those duties; but if such
other judge is satisfied that he cannot perform
those duties because he did not preside at the
trial or for any other reason, he may in his
discretion grant a new trial. Impasse added.

21 It is hard to imagine a better candidate for a new
22 trial than one in which the issues were close, the judge is
23 removed by reason of indictment for corruption in office,
24 and the judge had personal information of potential benefit
25 to the defense about a witness victim and failed to disclose
26 it, especially where the information related to the victim

1 witness's association with mob figures.

2 The state wants this court to sentence the defendant to
3 death based upon a flawed trial proceeding. It is clear
4 that the defects raised above render the trial fundamentally
5 unfair, and the fifth and sixth amendments along with the
6 due process clause of the Fourteenth Amendment of the United
7 States Constitution, and article 1 section 8 of the Nevada
8 Constitution require a new trial.


9 WHEREFORE, the defendant respectfully requests:

10 A. That a hearing be held on this Motion, and,

11 B. That this Honorable Court grant the defendant's
12 Motion for New Trial; and,

13 C. That this honorable Court grant such additional
14 relief as the nature of this case may require.

15 Respectfully submitted,

16 
17 PHILIP H. DUNLEAVY, ESQ.
18 STATE BAR #000598
19 2810 W. CHARLESTON
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23 ATTORNEY FOR DEFENDANT
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Stewart L. Bell

CLERK

1 **OPPS**
 2 **STEWART L. BELL**
 3 **DISTRICT ATTORNEY**
 Nevada Bar #000477
 4 200 S. Third Street
 Las Vegas, Nevada 89155
 (702) 455-4711
 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 **THE STATE OF NEVADA,**

9 Plaintiff,

10 -vs-

11 **MICHAEL DAMON RIPPO,**
 #0619119

13 Defendant(s).

Case No. C106784
 Dept. No. IV
 Docket C

16 **ANSWER IN OPPOSITION TO**

17 **MOTION FOR NEW TRIAL**

18 **DATE OF HEARING: 5-1-96**
 19 **TIME OF HEARING: 9:00 A.M.**

20 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
 21 MELVYN T. HARMON, Chief Deputy District Attorney, and opposes Defendant Rippo's Motion for
 22 a New Trial on the grounds that (1) no newly discovered evidence has been shown which requires
 23 ordering a new trial and (2) the defense is in procedural default pursuant to NRS 176.515(4) regarding
 24 any issue raised in its motion in addition to the allegation of newly discovered evidence. A motion for
 25 a new trial based on any grounds other than newly discovered evidence must be made within seven days
 26 after the verdicts of guilt.

27 ///

28 ///

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CEST

This Answer is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court..

DATED this 30th day of April, 1996.

Respectfully submitted,

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

BY Melwyn T. Harmon
MELVYN T. HARMON
Chief Deputy District Attorney
Nevada Bar #000862

POINTS AND AUTHORITIES

I

**THE DEFENSE MOTION DOES NOT DEMONSTRATE THE EXISTENCE
OF ANY NEWLY DISCOVERED EVIDENCE WHICH WOULD PROVIDE
A LEGAL BASIS FOR ORDERING A NEW TRIAL.**

The defense motion makes a number of general allegations which it claims constitute newly discovered evidence. However, the defense does not offer any specific factual finding in support of its naked allegations.

It was known to all parties to this case before the commencement of this trial that Judge Gerard Bongiovanni was the target of a federal grand jury probe. Accordingly, the defense did request that Judge Bongiovanni recuse himself because of the pending investigation. The judge summarily denied the motion for recusal by stating emphatically that the Rippo case and the pending federal investigation against the court were completely unrelated. The court assured the parties that nothing about the pending investigation would in any way impair his ability to preside fairly and impartially over the Rippo

1 trial proceedings.

2 The defense motion for a new trial has not presented one iota of evidence which contradicts the
3 previous declarations of Judge Bongiovanni made on the record in his denial of the motion for recusal.

4 The defense alleges in his motion that it "... has now learned that the Judge had a unique
5 relationship with the business partner of one of the victims in this case, specifically Denny Mason." (Page
6 3 of the defense Motion for a New Trial). The defense does not elaborate upon the precise nature of this
7 "unique relationship" it claims the trial judge had with a business partner of Denny Mason. General -
8 nonspecific allegations do not satisfy the Nevada standard for newly discovered evidence. The defense
9 also contends that "At no time did the judge advise that he knew this victim nor did the judge advise that
10 he knew the business partner of Denny Mason ..." (Page 3 of the defense Motion for a New Trial). Did
11 Judge Bongiovanni know Denise Lizzi or Denny Mason? Does the judge know the business partner of
12 Denny Mason? Naked allegations are not facts. The defense further asserts that it "... has learned that
13 reputed Buffalo mob associate Ben Spano is the business partner of Denny Mason in both Security
14 Enterprises, a telemarketing operation now out of business, and in the big screen television business."
15 (Page 3 of defense Motion for a New Trial). Upon what does the defense base this contention and how
16 does this information relate to the trial proceedings of Michael Rippo? The defense also argues that if
17 it "... had known about the connection between the judge, Denny Mason, and organized crime ..." it
18 would have asked for a recusal and considered calling the judge as a witness. (Pages 3 and 4 of the
19 defense Motion for a New Trial). What is the connection between the judge, Denny Mason, and
20 organized crime about which the defense alludes in its argument? What would have been the line of
21 questioning directed at Judge Bongiovanni if he had been a witness? The defense further argues that had
22 it known of Judge Bongiovanni's "mob connection" it would have had additional information upon which
23 it could base other questions of Denny Mason and this information would have reflected on Mason's
24 credibility and the credibility of Denise Lizzi as well. How would such information have impacted the
25 credibility of Denny Mason and why would the credibility of a homicide victim ever be pertinent at the
26 trial of her assailant?

27 This Motion for a New Trial is specious. The motion has not demonstrated a single fact upon
28 which a reviewing court could determine that the rulings in the Rippo case were somehow related to a

relationship the trial judge had with an associate of Denny Mason. Further, the defense has presented nothing which would suggest that its information would somehow render a different result probable upon retrial.

Nevada case law has established a clear standard which must be met by the defense as a condition to the granting of any motion for a new trial based upon newly discovered evidence. The newly discovered evidence criteria is set forth in Oliver v. State, 85 Nev. 418, 424, 456 P.2d 431 (1969). The court in Oliver declared:

"... In seeking a new trial the newly discovered evidence must be (1) newly discovered, (2) material to movant's defense, (3) such that it could not with reasonable diligence have been discovered and produced for the trial, (4) not cumulative, and (5) such as to render a different result probable upon retrial. To which we add (6) that it does not attempt only to contradict a former witness or to impeach or discredit him, unless witness impeached is so important that a different result must follow ... and (7) that these facts be shown by the best evidence the case admits ..."

See also McLemore v. State, 94 Nev. 237, 577 P.2d 871 (1978) and Lightford v. State, 91 Nev. 482, 538 P.2d 585 (1975).

The defense has really not satisfied any of the criteria for newly discovered evidence. It has certainly not demonstrated that the evidence it alleges is (1) newly discovered or (2) material to its defense or (3) such as to render a different result probable upon retrial or (4) that it does not attempt only to contradict a former witness or to impeach or discredit him. (See also Biondi v. State, 101 Nev. 252, 256-257, 699 P.2d 1062 (1985)).

II

THE DEFENSE IS IN PROCEDURAL DEFAULT PURSUANT TO NRS 176.515(4) REGARDING ANY ISSUE RAISED IN ITS MOTION IN ADDITION TO THE ALLEGATION OF NEWLY DISCOVERED EVIDENCE DUE TO UNTIMELINESS.

Any motion for a new trial based upon grounds other than newly discovered evidence must be made within seven days after the verdicts of guilty. (See NRS 176.515(4)). The trial jury verdicts finding Defendant Rippo guilty of two counts of Murder of the First Degree, Robbery and Unauthorized Signing

1 of Credit Card Transaction Document were returned on March 8, 1996. The defense motion for a new
2 trial was filed on April 29, 1996. The time interval which has elapsed from the return of the guilty
3 verdicts and the filing of the defense motion for a new trial is forty-two days. Hence, any portion of the
4 defense motion which raises issues other than the issue of newly discovered evidence is untimely and
5 causes the defense to be in procedural default on such issues.

6 Even assuming for sake of argument that the defense motion had been filed within the time frame
7 mandated by NRS 176.515, the motion is not meritorious on its face. Nothing about the suspension of
8 Judge Bongiovanni serves as a legal impediment to a completion of criminal proceedings against Michael
9 Rippo. The defense has failed to cite the court to any authority which has application to the case at bar.

10 The trial jury has returned verdicts of guilty with respect to Michael Rippo. The trial jury has
11 already imposed sentences of death regarding Counts I and II. All that remains is for the court to impose
12 sentences as to Count III (charging the offense of Robbery) and Count IV (charging the offense of
13 Unauthorized Signing of Credit Card Transaction Document). If judges can impose sentences pursuant
14 to pleas of guilty than this court is certainly capable of imposing sentences pursuant to jury verdicts.

15 NRS 175.101 reflects the legislative mandate regarding the disability of a judge after verdicts of
16 guilty. It is the governing authority which is relevant to the case at bar. The official suspension of
17 District Court Judge Gerard Bongiovanni by the Nevada Judicial Discipline Commission following the
18 judge's recent federal indictment is a disability which causes him to be unable to perform the duties of
19 formal sentencing in this case. Therefore, as NRS 175.101 provides: "... any other judge regularly
20 sitting in or assigned to the court may perform those duties ..."

21 The prosecution is satisfied that the judge assigned to handle the sentencing duties is in a position
22 to carry out the responsibility. The trial jury has already fixed the punishment for Counts I and II and the
23 ratification of the death sentences is simply a matter of formality. Any warrant of execution issued by
24 this court will be based upon the entire record of these proceedings and it may certainly be issued by a
25 judge who is serving as a successor to the trial court. As to Counts III and IV where a sentence must
26 yet be imposed, the court will have as a basis for his decision the entire record of these proceedings, the

27 ///

28 ///

1 Pre-Sentence Report submitted by the Nevada Department of Parole and Probation, victim impact
2 statements, an allocution statement of the Defendant and arguments of counsel.

3 Accordingly, Defendant's Motion for a New Trial should be denied.

4 DATED this 30th day of April, 1996.

5 Respectfully submitted,

6 STEWART L. BELL
7 DISTRICT ATTORNEY
8 Nevada Bar #000477

9 BY

Melvyn T. Harmon
10 MELVYN T. HARMON
11 Chief Deputy District Attorney
12 Nevada Bar #000862
13

14 RECEIPT OF COPY

15 RECEIPT OF A COPY of the above and foregoing ANSWER IN OPPOSITION TO MOTION
16 FOR NEW TRIAL is hereby acknowledged this ____ day of April, 1996.

17 PHILIP H. DUNLEAVY, ESQ.

18
19 By Philip H. Dunleavy / uo.
20 2810 W. Charleston #G-67
21 Las Vegas, Nevada 89102
22
23
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FILED

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ORIGINAL *R. J. Rippon*
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,)	
	)	Case No. C106784
vs.	)	Dept. No. IV
	)	Docket No. C
MICHAEL DAMON RIPPO,)	
)	
Defendant.)	
)	

Before the Honorable James A. Brennan

Friday, May 17, 1996, 9:00 a.m.

Reporter's Transcript of Proceedings

SENTENCING

APPEARANCES:

(See separate page)

REPORTED BY: Renee Silvaggio, C.C.R. No. 122

CE42

RENEE SILVAGGIO, CCR 122 391-0579

A P P E A R A N C E S

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Las Vegas, Nevada 89155

For the Defendant: PHILIP DUNLEAVY, ESQ.
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and

STEVEN WOLFSON, ESQ.
Attorney at Law
302 E. Carson Ave., #400
Las Vegas, Nevada 89101

For the Department of
Parole and Probation: MAUREEN Pelton

Speakers: LOUISE LIZZI
NICHOLAS LIZZI

Las Vegas, Nevada, Friday, May 17, 1996, 9:00 a.m.

* * * * *

THE COURT: C106784, State versus Michael
Damon Rippe.

Show the presence of counsel.

Defendant's motion for new
trial, anything further on this?

MR. DUNLEAVY: Your Honor, I would just
point out that I feel the State's answer didn't even address
the issues to be raised. They say that we're statutorily
barred because of the seven days. Our motion is based on
newly discovered evidence and that specifically says a two
year statute, not a seven day statute.

We also cite the statute which
gives you the authority sua sponte to order a new trial any
time you feel there may be a question as to the issue. We
submit that we have presented more than sufficient issues to
justify the granting of a new trial.

I would also point out in the
United States Supreme Court opinion last year, Criles versus
Weekman (ph), 131 Lawyers Edition 2nd, 490, the Supreme
Court quoted the language again:

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"Our duty to search for constitutional error with painstaking care is never more exact than in a capital case."

We'd submit that we've submitted more than enough justification to say there is questions about the legitimacy of this conviction and that the new trial should be ordered.

THE COURT: Anything?

MR. HARMON: Your Honor, we submit it.

THE COURT: The motion is denied. I don't see any merit to it.

Mr. Wolfson, your motion to withdraw is after sentencing?

MR. WOLFSON: Yes.

THE COURT: All right.

This is the time set for entry of judgment and imposition of sentence.

Is the defendant ready to proceed?

MR. DUNLEAVY: Yes, Your Honor.

THE COURT: Michael Damon Rippo, by amended Indictment filed in these proceedings on January the 3rd, 1996, you were charged, in Count I and Count II, with murder, two felonies; in Count III with robbery, a felony;

1 Count IV, possession of stolen vehicle --

2 MR. HARMON: Excuse me, Your Honor.

3 THE COURT: -- Count --

4 MR. HARMON: Excuse me, Judge.

5 THE COURT: What?

6 MR. HARMON: There was some misunderstanding
7 in the presentence report about several of the counts.

8 Because of the merger doctrine,
9 just prior to this case going to the jury, we moved to
10 dismiss the count involving possession of the credit card
11 and the possession of the stolen vehicle.

12 So what we had were two counts
13 of murder in the first degree. We had Count III, which is
14 robbery, and what became Count IV was the credit card
15 violation, the fraudulent use of a credit card.

16 MR. DUNLEAVY: Which they refer to as Count
17 VI in the P.S.I. by mistake.

18 THE COURT: So what -- was the Indictment
19 amended to make Count VI Count IV?

20 MR. HARMON: Yes.

21 THE COURT: So we have I, II, III and IV.

22 MR. HARMON: Pursuant to the merger
23 doctrine, the State, just before this was submitted to the
24 jury, during the guilt phase, moved to dismiss the original

1 Counts IV and V. So VI became Count IV.

2 THE COURT: That's nice to know.

3 Start from the top:

4 Michael Damon Rippe, by amended
5 Indictment filed in these proceedings January 3rd, 1996, you
6 were charged, in Counts I and II, with murder, two felonies;
7 Count III, robbery; and Count IV, unauthorized signing of
8 credit card transaction document. Robbery is a felony and
9 so is Count IV.

10 And on March the 8th, 1996, a
11 Jury found you guilty of the offenses set forth in Counts I,
12 II, III and IV; and in Counts I and II ordered death by
13 lethal injection.

14 Do you know of any legal cause
15 or reason why judgment should not be pronounced against you
16 at this time?

17 THE DEFENDANT: No.

18 THE COURT: Do you know of any, counsel?

19 MR. DUNLEAVY: Other than the grounds set
20 forth in our motion for new trial, no.

21 THE COURT: By virtue of the jury's verdicts
22 of guilty in Counts I through IV, you are adjudged guilty of
23 those offenses.

24 Does the Department of Parole

1 and Probation have anything to add to its report?

2 MS. PELTON: No, Your Honor.

3 THE COURT: Does the District Attorney's
4 Office?

5 MR. HARMON: Yes, Your Honor.

6 With the Court's indulgence, we
7 have two speakers who would like to address the Court. They
8 are Louise and Nicholas Lizzi, the parents of murder victim
9 and robbery victim Denise Lizzi.

10 MR. DUNLEAVY: Your Honor, we would object
11 on the simple grounds that they've already testified. We
12 had a penalty phase; they testified at length. This is just
13 cumulative.

14 MR. HARMON: Well, that would be well taken,
15 except that this Court must sentence on Counts III and IV.

16 THE COURT: That's correct.

17 MR. DUNLEAVY: Which is one of the grounds
18 in our motion why we should have a new trial.

19 THE COURT: I understand, but I think the
20 statute holds it.

21 Who is the first speaker?

22 MR. HARMON: Louise Lizzi.

23 THE DEFENDANT: Can I sit down?

24 THE COURT: Sure.

1 THE DEFENDANT: Thank you.

2 THE COURT: Would you state your name for
3 the record, please.

4 MRS. LIZZI: Louise Lizzi; L-i-z-z-i.

5 THE COURT: Would you make your statement.

6 MRS. LIZZI: Today, Michael Rippo will face
7 the consequences for all the wrong decisions he has made
8 during his life.

9 I have waited over four years
10 for this day, four years of grief and heartache.

11 My Denise was a beautiful,
12 loving daughter and the pain of losing her is overwhelming.
13 She is my first thought every morning, and I want her to be
14 Michael Rippo's first thought every day.

15 I want him to remember how he
16 squeezed the last breath of life from her. I want him to
17 remember the devastation he has caused to the many people
18 that knew and loved Denise.

19 I want him to reflect on all
20 these things and realize that he is now paying for all these
21 unconscionable acts. Thank you.

22 THE COURT: Thank you, ma'am.

23 The next speaker.

24 State your name for the record.

1 please.

2 MR. LIZZI: I am Nicholas Lizzi. I'm
3 Denise's father.

4 THE COURT: Yes. Anything you'd like to
5 say?

6 MR. LIZZI: Yeah. Every day, it's mental
7 distress that this man has caused me, this multiple
8 murderer. Every day, I think of how he strangled her while
9 she was tied up; didn't give her a chance at all. And every
10 day, I think that I could have had grandchildren because my
11 daughter was in the beginning of a pregnancy. That's -- all
12 I can say is execute him.

13 THE COURT: Thank you, sir.

14 Counsel, does the State have
15 anything to add?

16 MR. HARMON: Your Honor, only to state that
17 I agree with the language at page seven of the presentence
18 report, which indicates that, in the opinion of the Division
19 of Parole and Probation, this defendant should be punished
20 to the fullest extent of the law and should receive
21 absolutely no judicial leniency whatsoever.

22 Therefore, in addition to the
23 Court raising the death sentence imposed by the Jury as to
24 Counts I and II, I urge the Court to impose the maximum

1 sentence regarding robbery, Count III, which is 15 years;
2 and as to Count IV, the unlawful use of credit card, I urge
3 the Court to impose a ten year sentence; and ask that the
4 punishments imposed regarding Counts III and IV be run
5 consecutively with each other and with Counts I and II.

6 THE COURT: Thank you.

7 Mr. Rippo, have you read this
8 presentence report?

9 THE DEFENDANT: Yes, I have.

10 THE COURT: Is there anything you want to
11 say on your own behalf?

12 THE DEFENDANT: Yeah, I have a little
13 statement that I'd like to read.

14 THE COURT: Go right ahead.

15 THE DEFENDANT: Okay.

16 As I sat through this trial,
17 it was all I could do to maintain my poise and not
18 fall prey to a recurring desire to speak out
19 against the countless lies the State leveled
20 against me.

21 In utter disgust, I remained
22 stoic, and even now I'm loath to offer a glimpse
23 into my mind or my heart, but there are just some
24 things I have to say.

My life has been inexplicably entrenched in the trappings of our legal system since 1981, and because of that, I've become inured to its evils, but if a man can be sentenced to death --

THE COURT: She has to take it -- get it for the record. If you would slow down a little bit.

THE DEFENDANT: -- if a man can be sentenced to death based primarily upon the hearsay testimony of convicted felons, then surely our system is broken.

It's a sad state of affairs what our Judicial system has been reduced to when the State has to purchase its case in chief; and in vouching for the credibility of the flock of flagitious malcontents the State paraded before this Court during the guilt phase, the State succeeded in convinced me that the end times are surely upon us.

I'm a God fearing man and believe that Jesus Christ is my Lord and Saviour and I've confessed my sins to him, so I know if there is no respite from these erroneous convictions, then the crowning achievement of my

1 State sanctioned murder will be a heavenly
2 ascension and I rejoice in that fact.

3 Nothing the State has done or
4 can do to me concerns me in the least because I
5 have faith in God's word and I know how
6 insignificantly brief my life upon this earth is
7 compared to eternity in Heaven.

8 At this point, the only pain I
9 feel is for my family and friends because I know
10 how much all of this has affected them, but, at the
11 same time, I'm content knowing that all the loved
12 ones in my life are good, honest Christians and the
13 loving grace of God shines upon each and every one
14 of them.

15 I pray for the souls of every
16 person this case has touched and I pity the
17 bereaved, because even though I've been convicted,
18 the fact remains that the truth of the
19 circumstances surrounding these murders has yet to
20 surface, and through the nefarious and malignant
21 deeds of the District Attorney's Office, the truth
22 will remain submerged beneath a sea of malfeasant
23 litanies.

24 I know I'm a target of

1 misguided enmity and I'm as insouciant about that
2 as any other aspect of this charade, because none
3 of this really matters. It's actually quite
4 amusing, and at times, I revel in all the hate the
5 State has generated against me because I know I'm
6 right, and everyone else thinking their intense
7 antipathy is justified and right, by God, is sadly
8 mistaken.

9 I accept my fate, for certainly
10 my implication in this matter has been the ultimate
11 faux pas of my life and a direct consequence of
12 deviating from a creed in which strict adherence to
13 would have saved me from having to expiate my
14 deviation through the death penalty.

15 But looking to the character of
16 the evidence in this case, I'm astonished to be in
17 the position I'm in right now.

18 For the record, I stand by the
19 assertion that I am guilty beyond a reasonable
20 doubt of nothing other than the credit card charges
21 in this case, and anyone who believes anything
22 different no doubt believes in the Easter Bunny and
23 the Tooth Fairy as well.

24 I have never admitted to any

1 complicity in these murders to any jailhouse or
2 prison informants, Tom Sims or the authorities; and
3 in that I have a nearly eidetic memory, I remember
4 everyone I've ever spoken to about my case, where
5 it was I spoke to them about it and what it was I
6 spoke about.

7 And for the life of me, I do
8 not know James Ison and did not tell that man the
9 first thing about my case. If ever there was
10 coached testimony, it was his. There exists no
11 confession from me in my statements to the
12 authorities nor in the surreptitious recording of
13 my conversation with Thomas Christos nor even in
14 the many conversations Kim Myers secretly allowed
15 the authorities to record between him and I. And,
16 again, anyone believing that I confessed to anyone
17 who claims that must believe in fairy tales and
18 myths -- it just didn't happen.

19 Looking toward the testimony
20 elicited during the penalty phase, I was affected
21 very much so by that of Mrs. Laura Conrady and my
22 family only because it was only theirs that was
23 sincere in my eyes and it was only theirs that
24 really mattered to me.

1 I found the impact -- the
2 victim impact testimony very interesting, and in
3 recently learning of the happiness my sentence has
4 brought to the victims' families, I feel compelled
5 to comment.

6 It seems to me that if there
7 was so much love for the victims, then surely
8 everything would have been done that was necessary
9 to keep them out of the lifestyle they were living.

10 But, as it turns out, no
11 efforts were made, and as unfortunate as even I
12 know that to be, it's a shame. The loss of human
13 life here is undeniably tragic, but people
14 shouldn't hate me just to hide their feelings of
15 guilt for failing to act upon the love they so
16 mournfully profess now.

17 Mr. Mel Harmon was quite right
18 about the choices we make in life; and the victims
19 here, as well as myself, chose to live outside the
20 so-called law and the choice was made knowingly.
21 It is my earnest belief that when such a choice is
22 made, then the consequences of that choice must be
23 accepted in toto.

24 The victims knew what they were

1 doing when they chose to sell drugs, sell their
2 body for drugs, use drugs intravenously, and
3 engage in the many other unsavory acts so prominent
4 in the drug world.

5 So any complaints now by those
6 who chose not to act are not only self-serving, but
7 entirely superfluous and aimed solely at assuaging
8 what must be enormous guilt.

9 In a sense, I'm very angry to
10 be standing here saying anything at all, but
11 because of the choice I made early on in this case,
12 I'm here now.

13 The choice I made came after I,
14 and the only one who did so, took a polygraph test.
15 The man who gave me the test said I wasn't lying,
16 but I was hiding the identity of Diana Hunt's true
17 accomplice and that I could testify against them in
18 exchange for a deal.

19 I chose not to, of course, and
20 I do not regret that choice, even if I have to pay
21 for it with my life. In fact, I'm glad that Diana
22 Hunt is getting away with this and will soon be
23 free again, because she beat the corrupt system at
24 its own game.

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In closing, there won't be any apologies from me for one cannot be sorry for something one has not done; however, in my infelicitous capacity as an unjustly convicted person, I do supplicate the acceptance of an apology to my friends, family, and, most of all, my beautiful mother -- forgive me for the pain my lack of rectitude and carelessness has caused you and take solace in my salvation and the one set of footprints in the sand.

That's it, Your Honor.

THE COURT: Yes. Counsel have anything that you would like to say?

MR. DUNLEAVY: Very briefly.

I do agree with Mr. Rippo, that this case was replete with bought and paid for testimony. Diana Hunt, who was facing the death penalty, got one count of robbery in exchange for saying Michael did this.

And it was proven on the stand that she lied repeatedly. She lied about how many credit cards she stole. She lied about a lot of things she did in that case, but the Jury found my client guilty and sentenced him to death.

I would point out, Mr. -- or

1 Mr. Harmon relied on the one sentence on page seven, but the
2 recommendation from the Department of Parole and Probation
3 isn't even consistent with that sentence. They recommended
4 concurrent time on these charges.

5 And what is to be accomplished
6 by running them consecutive? You can't kill a man and then
7 say, well, now you've got to do 15 years. It's ridiculous
8 to run things consecutive in a death penalty case. If he's
9 executed, everything else goes away. The Court knows that.
10 It's nothing more than form over substance to do anything
11 other than to run them all concurrent.

12 I would submit it, Your Honor.

13 THE COURT: Anything further?

14 MR. WOLFSON: No.

15 THE COURT: Taking into consideration the
16 report of the Department of Parole and Probation, the
17 remarks of the speakers, counsel for the State, Mr. Harmon,
18 the defendant and his counsel, and in accordance with the
19 laws of this state, this Court does now sentence you,
20 Michael Damon Ripppo, in Counts I and II, as ordered by the
21 Jury, to death by lethal injection.

22 Regarding the warrant of
23 execution on those charges, it is ordered that in connection
24 with the above facts set forth in this warrant of execution,

1 that the Court adopts the aforestated statements and facts,
2 and pursuant to the provisions of Nevada Revised Statutes,
3 176.345 and 176.355, the director of the Department of
4 Prisons, or such person as shall by him be designated, shall
5 carry out said judgment and sentence by executing the said
6 Michael Damon Rippo by an injection of a lethal drug, within
7 the limits of the state prison, located at or near Carson
8 City, State of Nevada, during the week commencing on the 5th
9 day of August, 1996, in the presence of the director of the
10 Department of Prisons and not less than six nor more than
11 nine reputable citizens over the age of 21 years, to be
12 selected by the said director of the Department of Prisons,
13 and a competent physician, but no other persons shall be
14 present at said execution.

15 And regarding the remainder
16 counts, I do notice on page seven that the Department of
17 Parole and Probation says it's their -- in their opinion
18 that the defendant should be punished to the fullest extent
19 of the law and should receive absolutely no judicial
20 leniency whatsoever; and I suppose one reason is, if for
21 some reason the sentence is set aside, they still feel that
22 the other charges should be considered to the maximum
23 extent.

24 And in accordance with the law,

1 on Count III, the Court does now sentence you, Michael Damon
2 Rippo, to 15 years in the Nevada Department of Prisons,
3 consecutive to Counts I and II, as recommended;

4 And Count IV, that being the
5 unauthorized signing of a credit card transaction document,
6 to ten years in the Nevada Department of Prisons,
7 consecutive to Counts I, II and III.

8 And I believe that is the one
9 that carries the order to pay restitution of \$7490; is that
10 right?

11 MR. HARMON: Yes, Your Honor.

12 THE COURT: Plus the administrative
13 assessment.

14 You will be given credit for
15 any time that you served.

16 MR. DUNLEAVY: He's doing life in another
17 case, Your Honor.

18 THE COURT: All right.

19 MR. HARMON: Your Honor, before we conclude,
20 may I approach the bench for the Court's signature on the
21 proposed warrants of execution and the order of execution?

22 THE COURT: Surely.

23 MR. DUNLEAVY: Your Honor, similarly --

24 MR. HARMON: I would then file those in open

1 court.

2 MR. DUNLEAVY: At this time, I would move to
3 withdraw; and I have an order authorizing me to withdraw and
4 appoint appellate counsel that I would ask the Court to
5 sign.

6 THE COURT: I believe you are withdrawing
7 also then, Mr. Wolfson?

8 MR. WOLFSON: Yes. I filed a written motion
9 and I would submit it on that.

10 THE COURT: It's granted.

11 Mr. Dunleavy, yours is granted.

12 MR. DUNLEAVY: Thank you, Your Honor.

13 THE COURT: And you --

14 MR. DUNLEAVY: David Schieck is named in
15 there, Your Honor. He's agreed that he would take the
16 appointment.

17 THE COURT: That's your recommendation,
18 counsel?

19 MR. DUNLEAVY: Yes, Your Honor.

20 THE COURT: That will be the order: The
21 Court will appoint David Schieck and put it on for his
22 confirmation next week.

23 THE CLERK: May 22nd, nine a.m.

24 THE COURT: The clerk will notify

1 Mr. Schieck.

2 MR. DUNLEAVY: Your Honor, one other thing:

3 My client is only going to be
4 here a couple of more days. I would ask if the Court could
5 order that he be allowed to have non-contact, just regular,
6 visits with his family over Friday and Sunday, since they
7 will be transporting him to Ely early next week.

8 THE COURT: I have no problem with that.

9 Do you, counsel?

10 MR. HARMON: No, Your Honor.

11 THE COURT: Granted.

12 MR. HARMON: Thank you, Judge.

13 THE COURT: Thank you.

14 MR. DUNLEAVY: What was the date again?

15 THE CLERK: 22nd.

16 MR. DUNLEAVY: I will notify Mr. Schieck,
17 Your Honor.

18 THE COURT: Thank you.

19
20 (Whereupon, a sotto voce at this time.)
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22 MR. DUNLEAVY: Does the Court require Mr.
23 Rippo's presence on that date?

24 THE COURT: No.

1 THE DEFENDANT: Okay.

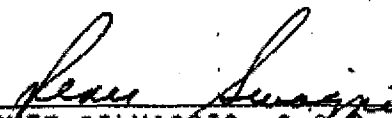
2 THE COURT: Anything else on this case?

3 MR. HARMON: No, Judge.

4 THE COURT: Thank you.

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8 ATTEST: Full, true and accurate transcript of proceedings.
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12 RENEE SILVAGGIO, C.C.R. NO. 122
13 OFFICIAL COURT REPORTER
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RENEE SILVAGGIO, CCR 122 391-0379

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Loretta Brown
CLERK

JOC
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

MICHAEL DAMON RIPPO,
#0619119

Defendant.

Case No. C106784
Dept. No. IV
Docket C

JUDGMENT OF CONVICTION

WHEREAS, on the 6th day of July, 1992, Defendant, MICHAEL DAMON RIPPO, entered a plea of Not Guilty to the crimes of COUNT I - MURDER (Felony - NRS 200.010, 200.030); COUNT II - MURDER (Felony - NRS 200.010, 200.030); COUNT III - ROBBERY (Felony - NRS 200.380); COUNT IV - POSSESSION OF STOLEN VEHICLE (Felony - NRS 205.273); COUNT V - POSSESSION OF CREDIT CARD WITHOUT CARDHOLDER'S CONSENT (Felony - NRS 205.690); and COUNT VI - UNAUTHORIZED SIGNING OF CREDIT CARD TRANSACTION DOCUMENT (Felony - NRS 205.750); and

WHEREAS, on the 5th day of March, 1996, Counts IV and V of the Indictment were dismissed and Count VI became Count IV.

WHEREAS, the Defendant MICHAEL DAMON RIPPO, was tried before a Jury and the Defendant was found guilty of the crimes of COUNT I - MURDER OF THE FIRST DEGREE (Felony); COUNT II - MURDER OF THE FIRST DEGREE (Felony); COUNT III - ROBBERY (Felony) and COUNT IV - UNAUTHORIZED SIGNING OF CREDIT CARD TRANSACTION DOCUMENT

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1 (Felony), in violation of NRS , and the Jury verdict was returned on or about the 6th day of March, 1996.
 2 Thereafter, the same trial jury, deliberating in the penalty phase of said trial, in accordance with the
 3 provisions of NRS 175.552 and 175.554, found that there were six (6) aggravating circumstances in
 4 connection with the commission of said crime, to-wit:

5 1. The murder was committed by a person under sentence of imprisonment, to-wit: Sexual
 6 Assault, 1982, Nevada.

7 2. The murder was committed by a person who was previously convicted of a felony involving
 8 the use or threat of violence to the person of another, to-wit: Sexual Assault, 1982, Nevada.

9 3. The murder was committed while the person was engaged in the commission of or an attempt
 10 to commit any Burglary and the person charged:

- 11 (a) Killed the person murdered; or
- 12 (b) Knew that life would be taken or lethal force used; or
- 13 (c) Acted with reckless indifference for human life.

14 4. The murder was committed while the person was engaged in the commission of or an attempt
 15 to commit any Kidnapping and the person charged:

- 16 (a) Killed the person murdered; or
- 17 (b) Knew that life would be taken or lethal force used; or
- 18 (c) Acted with reckless indifference for human life.

19 5. The murder was committed while the person was engaged in the commission of or an attempt
 20 to commit any Robbery and the person charged:

- 21 (a) Killed the person murdered; or
- 22 (b) Knew that life would be taken or lethal force used; or
- 23 (c) Acted with reckless indifference for human life.

24 6. The murder involved torture.

25 That on or about the 14th day of March, 1996, the Jury unanimously found, beyond a reasonable
 26 doubt, that there were no mitigating circumstances sufficient to outweigh the aggravating circumstance
 27 or circumstances, and determined that the Defendant's punishment should be Death as to COUNT I -
 28 MURDER OF THE FIRST DEGREE (Lauri M. Jacobson) and COUNT II - MURDER OF THE FIRST

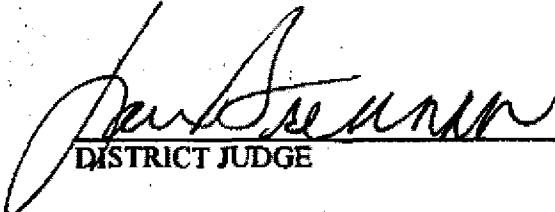

1 DEGREE (Denise M. Lizzi) in the Nevada State Prison located at or near Carson City, State of Nevada.

2 WHEREAS, thereafter, on the 17th day of May, 1996, the Defendant being present in court with
 3 his counsel, PHILIP DUNLEAVY, ESQ. and STEVEN WOLFSON, ESQ., and MELVYN T.
 4 HARMON, Chief Deputy District Attorney, also being present; the above entitled Court did adjudge
 5 Defendant guilty thereof by reason of said trial and verdict and sentenced Defendant to the Nevada
 6 Department of Prisons as follows:

- 7 COUNT I - DEATH for MURDER OF THE FIRST DEGREE (Lauri M. Jacobson);
- 8 COUNT II - DEATH for MURDER OF THE FIRST DEGREE (Denise M. Lizzi);
- 9 COUNT III- FIFTEEN (15) years for ROBBERY to run consecutive to Counts I and II;
- 10 COUNT IV - TEN (10) years for UNAUTHORIZED SIGNING OF CREDIT CARD TRANSACTION
- 11 DOCUMENT to run consecutive to Counts I, II and III; and pay \$7,490.00 Restitution and \$25.00
- 12 Administrative Assessment Fee. No Credit for Time Served.

13 THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this Judgment
 14 of Conviction as part of the record in the above entitled matter.

15 DATED this 31st day of May, 1996, in the City of Las Vegas, County of Clark, State of
 16 Nevada.

17 
 18 DISTRICT JUDGE 

27 DA#92-106784X/kjh
 28 LVMPD DR#9202200523
 1° MURDER W/WPN - F

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0014
MICHAEL DAMON RIPPO, #17097
ELY STATE PRISON
P.O. BOX 1989
ELY, NEVADA 89301
PETITIONER IN PROPER PERSON

DEC 4 11 17 AM '98

For the Court
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

MICHAEL DAMON RIPPO,	)	CASE NO. C 106784
	)	DEPT. NO. XIV
Petitioner,	)	DOCKET NO.
)	
vs.)	
)	
WARDEN OF ELY STATE PRISON,)	
and THE STATE OF NEVADA,)	
)	
Respondent.)	

PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION)
AND APPOINTMENT OF COUNSEL

DATE OF HEARING:
TIME OF HEARING:

12/21/98
9pm

1. Name of institution and county in which you are
presently imprisoned or where and how you are presently
restrained of your liberty: ELY STATE PRISON, WHITE PINE
COUNTY, NEVADA

2. Name and location of court which entered the judgment
of conviction under attack: EIGHTH JUDICIAL DISTRICT COURT,
LAS VEGAS, NEVADA

3. Date of judgement of conviction: MAY 31, 1996

4. Case number: C106785

5. (a) Length of sentence: DEATH

(b) If sentence is death, state any date upon which

David M. Schieck
 Attorney At Law
 302 E. Carson Ave., Ste. 600
 Las Vegas, NV 89101
 (702) 382-1844

1 execution is scheduled: EXECUTION STAYED PENDING APPEAL AND
 2 SAME HAS NOT BEEN RE-SET

3 6. Are you presently serving a sentence for a conviction
 4 other than the conviction under attack in this motion?

5 Yes xx No

6 If "yes", list crime, case number and sentence being served
 7 at this time: SEXUAL ASSAULT: LIFE SENTENCE

8 7. Nature of offense involved in conviction being
 9 challenged: TWO COUNTS OF FIRST-DEGREE MURDER, ONE COUNT OF
 10 ROBBERY, AND ONE COUNT OF UNAUTHORIZED USE OF A CREDIT CARD.

11 8. What was your plea? (Check one)

12 (a) Not guilty xx

13 (b) Guilty

14 (c) Guilty but mentally ill

15 (d) Nolo contendere

16 9. If you entered a plea of guilty or guilty but mentally
 17 ill to one count of an indictment or information, and a plea of
 18 not guilty to another count of an indictment or information, or
 19 if a plea of guilty or guilty but mentally ill was negotiated,
 20 give details:

21 10. If you were found guilty after a plea of not guilty,
 22 was the finding made by: (check one)

23 (a) Jury xx

24 (b) Judge without a jury

25 11. Did you testify at the trial? Yes No xx

26 12. Did you appeal from the judgement of conviction?

27 Yes xx No
 28

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- 1 13. If you did appeal, answer the following:
- 2 (a) Name of court: NEVADA SUPREME COURT
- 3 (b) Case number or citation: 28865
- 4 (c) Result: CONVICTION AND SENTENCE AFFIRMED
- 5 (d) Date of result: OCTOBER 1, 1997 (PETITION FOR
- 6 REHEARING DENIED ON 2-9-98)
- 7 (A COPY OF THE DECISION IS ATTACHED)
- 8 14. If you did not appeal, explain briefly why you did
- 9 not: _____
- 10 15. Other than a direct appeal from the judgement of
- 11 conviction and sentence, have you previously filed any
- 12 petitions, applications or motions with respect to this
- 13 judgement in any court, state or federal? Yes XX No _____
- 14 16. If your answer to No. 15 was "yes," give the following
- 15 information: (a)(1) Name of court: UNITED STATES SUPREME
- 16 COURT
- 17 (2) Nature of proceeding: WRIT OF CERTIORARI
- 18 (3) Grounds raised:
- 19 i. WAS PETITIONER DENIED DUE PROCESS BY THE
- 20 TRIAL COURT'S FAILURE TO RECUSE ITSELF AND DISCLOSE A
- 21 CONFLICT OF INTEREST AND SAME TAINTED THE PROCEEDINGS
- 22 AND A NEW TRIAL SHOULD HAVE BEEN GRANTED
- 23 ii. DID THE OVERLAPPING AND MULTIPLE USE OF THE
- 24 SAME FACTS AS SEPARATE AGGRAVATING CIRCUMSTANCES
- 25 RESULT IN THE ARBITRARY AND CAPRICIOUS INFLICTION OF
- 26 THE DEATH PENALTY AGAINST PETITIONER
- 27 iii. WHETHER PETITIONER'S EIGHTH AMENDMENT RIGHTS
- 28 WERE VIOLATED WHEN THE COURT GAVE AN ANTI-SYMPATHY
- INSTRUCTION TO THE JURY
- (4) Did you receive an evidentiary hearing on your
- petition, application or motion? NO

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- 1 (5) Result: WRIT DENIED
- 2 (6) Date of result: OCTOBER 5, 1998
- 3 (7) If known, citations of any written opinion or date of
- 4 orders entered pursuant to such result: ORDER ENTERED 10-5-98
- 5 (b) as to any second petition, application or motion,
- 6 give the same information:
- 7 (1) Name of court: _____
- 8 (2) Nature of proceeding: _____
- 9 (3) Grounds raised: _____
- 10 (4) Did you receive an evidentiary hearing on your
- 11 petition, application or motion? _____
- 12 (5) Result: _____
- 13 (6) Date of result: _____
- 14 (7) If known, citations of any written opinion or date of
- 15 orders entered pursuant to such result:
- 16 _____
- 17 (c) As to any third or subsequent additional applications
- 18 or motions, give the same information as above, list them on a
- 19 separate sheet and attach.
- 20 (d) Did you appeal to the highest state or federal court
- 21 having jurisdiction, the result or action taken on any
- 22 petition, application or motion?
- 23 (1) First petition, application or motion?
- 24 Yes _____ No XX
- 25 Citation or date of decision: _____
- 26 (2) Second petition, application or motion?
- 27 Yes _____ No _____
- 28

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1 Citation or date of decision: _____

2 (3) Third or subsequent petitions, applications or
 3 motions? Yes _____ No _____

4 Citation or date of decision: _____

5 (e) If you did not appeal from the adverse action on any
 6 petition, application or motion, explain briefly why you did
 7 not. (You must relate specific facts in response to this
 8 question. Your response may be included on paper which is 8 ½
 9 by 11 inches attached to the petition. Your response may not
 10 exceed five handwritten or typewritten pages in length.)
 11

12 17. Has any ground being raised in this petition been
 13 previously presented to this or any other court by way of
 14 petition for habeas corpus, motion, application or any other
 15 post-conviction proceeding? NO

16 18. If any of the grounds listed in Nos. 23(a), (b), (c)
 17 and (d), or listed on any additional pages you have attached,
 18 were not previously presented in any other court, state or
 19 federal, list briefly what grounds were not so presented, and
 20 give your reasons for not presenting them. (You must relate
 21 specific facts in response to this question. Your response may
 22 be included on paper which is 8 ½ by 11 inches attached to the
 23 petition. Your response may not exceed five handwritten or
 24 typewritten pages in length.) INEFFECTIVE ASSISTANCE OF
 25 COUNSEL AT TRIAL AND ON DIRECT APPEAL. THESE MATTERS ARE NOT
 26 PROPERLY RAISED ON DIRECT APPEAL.

27 19. Are you filing this petition more than 1 year
 28

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1 following the filing of the judgement of conviction or the
 2 filing of a decision on direct appeal? If so, state briefly
 3 the reasons for the delay. (You must relate specific facts in
 4 response to this question. Your response may be included on
 5 paper which is 8 1/2 by 11 inches attached to the petition. Your
 6 response may not exceed five handwritten or typewritten pages
 7 in length.) NO

8 20. Do you have any petition or appeal now pending in any
 9 court, either state or federal, as to the judgement under
 10 attack? Yes _____ No XX

11 If yes, state what court and the case number: _____

12 21. Give the name of each attorney who represented you in
 13 the proceeding resulting in your conviction and on direct
 14 appeal: TRIAL ATTORNEY: STEVE WOLFSON, ESQ. and PHIL
 15 DUNLEAVEY, ESQ.; and

16 APPEAL ATTORNEY: DAVID M. SCHIECK, ESQ.

17 22. Do you have any future sentences to serve after you
 18 complete the sentence imposed by the judgement under attack?

19 Yes _____ No XX

20 If yes, specify where and when it is to be served, if you
 21 know: _____

22 23. State concisely every ground on which you claim that
 23 you are being held unlawfully. Summarize briefly the facts
 24 supporting each ground. If necessary you may attach pages
 25 stating additional grounds and facts supporting same.

26 (a) Ground one: DENIED RIGHTS UNDER SIXTH AND FOURTEENTH
 27 AMENDMENTS AS I DID NOT RECEIVE DUE PROCESS OF LAW OR EFFECTIVE
 28

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1 ASSISTANCE OF COUNSEL AT TRIAL

2 Supporting FACTS (Tell your story briefly without citing
3 cases or law.): I AM INDIGENT AND DO NOT UNDERSTAND THE LAW
4 AND NEED COUNSEL APPOINTED TO HELP ME COMPLETE THIS PETITION
5 AND FILE A SUPPLEMENTAL PETITION

6 (b) Ground two: DENIED RIGHTS UNDER SIXTH AND FOURTEENTH
7 AMENDMENTS AS I DID NOT RECEIVE DUE PROCESS OF LAW OR EFFECTIVE
8 ASSISTANCE OF COUNSEL ON APPEAL

9 Supporting FACTS (Tell your story briefly without citing
10 cases or law.): I AM INDIGENT AND DO NOT UNDERSTAND THE LAW
11 AND NEED COUNSEL APPOINTED TO HELP ME COMPLETE THIS PETITION
12 AND FILE A SUPPLEMENTAL PETITION

13 WHEREFORE, Petitioner prays that the court grant
14 Petitioner relief to which he may be entitled in this
15 proceeding; and pursuant to NRS 34.820 appoint counsel to
16 assist Petitioner in these proceedings.

17 EXECUTED at Ely State Prison on 12/3/98

18
19 Michael Rippo
20 MICHAEL RIPPO
21 PETITIONER IN PROPER PERSON
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003234

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VERIFICATION

Under penalty of perjury, the undersigned declares that he is the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

Michael Rippo
 MICHAEL RIPPO
 PETITIONER

003235

FILED IN OPEN COURT

MAY - 3 2002

ORIGINAL

DISTRICT COURT

SHIRLEY B. PARRAGUIRRE, CLERK

BY *Connie Kalski*
CONNIE KALSKI DEPUTY

CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL DAMON RIPPO,

Defendant.

Case No. C106784

Dept. XIV

REPORTER'S TRANSCRIPT
OF
ARGUMENT AND DECISION

BEFORE THE HONORABLE DONALD M. MOSLEY

DISTRICT JUDGE

Taken on Thursday, May 2, 2002

At 9:00 a.m.

APPEARANCES:

For the State:

TALEEN R. PANDUKHT, ESQ.
Deputy District Attorney

For the Defendant:

DAVID M. SCHIECK, ESQ.

Reported by: Maureen Schorn, CCR No. 496, RPR

MAUREEN SCHORN, CCR NO. 496, RPR

S15

1 LAS VEGAS, NEVADA. THURSDAY, MAY 2, 2002, 9:00 A.M.

2 * * * *

3
4 THE COURT: C106784, State versus
5 Michael Damon Rippo, R-i-p-p-o. The record will reflect
6 the presence of Mr. Schieck representing the defendant;
7 Ms. Pandukht for the State.

8 My clerk tells me that we have set eight
9 briefing schedules.

10 MR. SCHIECK: That's correct, Your
11 Honor. It was seven last time. In fact, Your Honor, I
12 had this 95 percent done and I've lost the disk that I had
13 it on. We have searched my office. We have searched the
14 hard drives of both computers that we use, and it is gone.

15 I have had to go back and reinvent the
16 wheel. I could have it done within 30 days, Your Honor,
17 but we're looking at about 40 hours of work to recreate
18 what I already completed.

19 I had scheduled a visit to go up and see
20 Mr. Rippo, which I did several weeks ago, for the sole
21 purpose of having him sign it because it's that close to
22 being done. And that's when I discovered we didn't have
23 it.

24 I wish I could tell Your Honor that I could
25 find where that information was at, but it is gone.

1 THE COURT: Is the physical disk lost,
2 or is the material lost on the disk?

3 MR. SCHIECK: If I could explain to
4 Your Honor. When I do these capital habeas, each
5 defendant gets his own disk that puts it on the computer.

6 I keep all the information on there; all the
7 rough drafts, affidavits, interview information.
8 Everything on that case is on that disk. That way it
9 doesn't get mixed up with other cases, and when I need it,
10 I go to it, plug it in and it's there. That disk is gone.

11 Every other capital disk that I have been
12 working on is still there, except Mr. Rippo's. And I
13 cannot find it to save my life.

14 THE COURT: Are 30 days sufficient?

15 MR. SCHIECK: Yes, Your Honor.

16 THE COURT: Ms. Pandukht, how long
17 would you need to respond?

18 MS. PANDUKHT: Another two weeks after
19 that.

20 MR. SCHIECK: Your Honor, I can
21 represent that this is quite a complicated case. And
22 usually the habeas unit asks for at least 30 to 45 days to
23 respond to these things. We're looking at probably 70
24 pages.

25 THE COURT: All right. Let's set it 30

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days, and set 30 or 40 days for an answer.

Do you wish for time to reply, Mr. Schieck?

MR. SCHIECK: Yes, Your Honor; 15 days.

THE COURT: And argument thereafter.

THE CLERK: File the petition June 3rd.

Answer will be filed July 15th. Reply filed July 29th.

And argument set for August 7th.

THE COURT: Thank you, Mr. Schieck.

MR. SCHIECK: Thank you, Your Honor.

ATTEST: Full, true and accurate transcript of
proceedings.


MAUREEN SCHORN, CCR NO. 496, RPR

MAUREEN SCHORN, CCR NO. 496, RPR

MRIPPO-07016-0456

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702-382-1844
ATTORNEY FOR RIPPO

FILED

AUG 8 2 04 PM '02

Shirley D. Cunningham
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

MICHAEL DAMON RIPPO,	)	CASE NO. C 106784
	)	DEPT. NO. XIV
Petitioner,)	
)	
vs.)	
)	
WARDEN OF ELY STATE PRISON,)	
and THE STATE OF NEVADA,)	
)	
Respondent.	)	DATE: _____
	)	TIME: _____

SUPPLEMENTAL POINTS AND AUTHORITIES
IN SUPPORT OF PETITION FOR WRIT
OF HABEAS CORPUS (POST CONVICTION)

COMES NOW, Petitioner MICHAEL DAMON RIPPO, by and through
his attorney DAVID M. SCHIECK, ESQ., and for his Supplemental
Points and Authorities in support of his Petition for Writ of
Habeas Corpus (Post Conviction) states as follows:

I.

STATEMENT OF THE CASE

MICHAEL DAMON RIPPO (hereinafter referred to as RIPPO)
stands convicted of a number of felonies, including two counts
of First Degree Murder. He was sentenced to death by lethal
injection by the trial jury. RIPPO was represented by Steve

1 Wolfson and Phil Dunleavy at trial.

2 RIPPO was indicted by the Clark County Grand Jury on June
3 5, 1992 on charges of Murder, Robbery, Possession of Stolen
4 Vehicle, Possession of Credit Cards Without the Cardholder's
5 Consent and Unauthorized Signing of Credit Card Transaction
6 Document (1 ROA 1-4). RIPPO was arraigned on July 20, 1992
7 before the Honorable Gerard Bongiovanni and waived his right to
8 a trial within sixty days (5 ROA 18-23). Oral requests for
9 discovery and reciprocal discovery were granted by the Court (5
10 ROA 18-23). RIPPO'S formal Motion for Discovery was granted by
11 the Court on November 4, 1992 (5 ROA 1113-1125).

12 Prior to the District Court arraignment, the State filed a
13 Notice of Intent to Seek the Death Penalty alleging the
14 existence of four aggravating circumstances, to wit: (1) the
15 murders were committed by a person under a sentence of
16 imprisonment; (2) the murders were convicted by a person who
17 had been previously convicted of a felony involving violence,
18 (3) the murders were committed during the perpetration of a
19 robbery, and (4) the murders involved torture or mutilation of
20 the victims (1 ROA 7-8).

21 The trial date was continued several times, the first
22 being at the request of defense counsel on February 5, 1993 due
23 to a scheduling conflict and the case was reset for trial for
24 September 13, 1993. On September 2, 1993 RIPPO filed a Notice
25 of Alibi (2 ROA 284-286). On September 10, 1993, the date set
26 for the hearing of a number of pretrial motions the defense
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1 moved to continue the trial date based on having just received
2 from prosecutor John Lukens, on September 7th, notice of the
3 State's intent to use at least two new expert witnesses and a
4 number of jail house snitches and discovery had not yet been
5 provided on any of the new witnesses (2 ROA 295-306). The
6 Court granted the defense request to continue the trial date
7 and same was reset to February 14, 1994 (2 ROA 304).

8 A status hearing on the trial date was held on January 31,
9 1994 at which time the defense indicated that subpoenas had
10 been served on the two prosecutors on the case, John Lukens and
11 Teresa Lowry, as they had participated in the service of a
12 search warrant and had discovered evidence thereby making
13 themselves witnesses in the case (2 ROA 323-326). A Motion to
14 Disqualify the District Attorney's office was thereupon filed
15 along with a Motion to Continue the Trial (2 ROA 358-375; 351-
16 357). At the hearing of the Motions the Court continued the
17 trial date to March 28, 1994 in order to allow time for an
18 evidentiary hearing on the disqualification request and because
19 the court's calendar would not accommodate the trial date (2
20 ROA 14-15).

21
22 The evidentiary hearing on the Motion to Disqualify the
23 District Attorney's office was heard on March 7, 1994 and two
24 days later the Court granted the motion and removed Lukens and
25 Lowry from the case, but declined to disqualify the entire
26 office and ordered that other district attorneys be assigned to
27 the case (3 ROA 680-684). Prosecutors Mel Harmon and Dan
28

1 Seaton were assigned the case. At a status hearing on March
2 18th defense counsel indicated that they had just been provided
3 with a substantial amount of discovery that had been previously
4 withheld and that the State had filed a motion to Amend the
5 Indictment and that therefore the defense was again put in the
6 position of having to ask the Court to continue the trial date.
7 The Court granted the motion and reset the trial date for
8 October 24, 1994.

9 The October trial date was also vacated and reset based on
10 representations made by the District Attorney at the calendar
11 call on October 21, 1994 (4 ROA 828-829). The date was reset
12 for August and September, 1995, however due to conflicting
13 trial schedules, the date was once again reset for January 29,
14 1996. On January 3, 1996 the State was allowed to file an
15 Amended Indictment over the objection of RIPPO (4 ROA 847-849).

16 Jury selection commenced on January 30, 1996 and the
17 evidentiary portion of the trial began on February 2, 1996. An
18 interruption of the trial occurred between February 7th and
19 February 26th based on the failure of the State to provide
20 discovery concerning a confession and inculpatory statements
21 claimed to have been made by RIPPO to one of the State's
22 witnesses. The trial thereafter proceeded without further
23 interruption and final arguments were made to the jury on March
24 5, 1996.

25 Guilty verdicts were returned on two counts of first
26 degree murder, and one count each of robbery and unauthorized
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1 use of a credit card (5 ROA 1001). The penalty hearing
2 commenced on March 12, 1996 and concluded on March 14, 1996
3 with verdicts of death on both of the murder counts. On the
4 remaining felony counts RIPPO was sentenced to a total of
5 twenty-five (25) years consecutive to the murder counts
6 (Minutes page 40).

7 RIPPO pursued a direct appeal to the Nevada Supreme Court
8 with the conviction and sentence being affirmed on October 1,
9 1997. Rippo v. State, 113 Nev. 1239, 946 P.2d 1017 (1997).
10 RIPPO filed for Rehearing and on February 9, 1998 an Order was
11 entered Denying Rehearing. A Petition for Writ of Certiorari
12 was filed with the United States Supreme Court and Certiorari
13 was denied on October 5, 1998. The Nevada Supreme Court issued
14 it's Remittitur on November 3, 1998. RIPPO timely filed the
15 instant Petition for Writ of Habeas Corpus on December 4, 1998.

16
17 II.

18 STATEMENT OF THE FACTS

19 A. TRIAL TESTIMONY

20 Lauri Jacobson moved into a studio apartment in the Katie
21 Arms, a weekly rental complex, on February 8, 1992 (10 ROA 92-
22 94). Jacobson failed to make the rental payment that was due
23 on the 15th of February and on the 17th or the 18th was
24 observed by apartment manager Wayne Hooper, driving her
25 vehicle, a black Datsun, with a flat tire, followed by a red
26 Camaro (10 ROA 96; 100).

27 On the 20th of February, Hooper became concerned because
28

1 the overdue rent still hadn't been paid and Jacobson's car
2 hadn't been moved for a couple of days and the keys were in the
3 car, so he decided to check the apartment (10 ROA 101; 103;
4 122). Hooper used his master key to get into the apartment
5 which appeared to have been ransacked, with beer bottles on the
6 floor, the phone laying in the middle of the floor with the
7 receiver off the hook and clothes everywhere (10 ROA 104-106).
8 After walking into the apartment Hooper observed two persons
9 laying face down in the walk-in closet (10 ROA 106-107). The
10 police were then called (10 ROA 110).

11 Officer Darryl Johnson responded to the Katie Arms and,
12 after meeting with the security officers and manager, proceeded
13 up to the Jacobson apartment (10 ROA 134-137). After observing
14 two deceased females in the closet the homicide section was
15 notified (10 ROA 140-141). The two females were identified as
16 Jacobson and her friend Denise Lizzi.

17 Crime scene analyst called to the scene made a number of
18 observations. There was no evidence of forced entry into the
19 apartment (16 ROA 85). An iron was recovered from a trash bag
20 in the kitchen and a hair dryer from underneath the east day
21 bed (16 ROA 97). The cords had been cut from both appliances
22 (16 ROA 98). Lizzi had a big piece of cloth tied to her left
23 forearm and wrapped around her head and mouth was a piece of
24 dark cloth (16 ROA 113). No bindings were found on the body
25 of Jacobson (16 ROA 114). Fragments of brown glass were
26 recovered from the floor area of the kitchen and living room
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1 (16 ROA 122-123).

2 Crime scene analyst Cabrales learned that a number of
3 police officers had entered and viewed the crime scene and
4 evidence was developed that showed that the crime scene had
5 been contaminated (16 ROA 137-138). Cabrales prepared a
6 memorandum stating that "Obviously, the crime scene was not
7 protected and the integrity of all evidence recovered from the
8 scene has been compromised." (16 ROA 138)

9 Denny Mason and Lizzi had been on and off boyfriend and
10 girlfriend for four or five years (16 ROA 38). He had given
11 Lizzi a Nissan 300ZX automobile (16 ROA 43), and about a week
12 before she was found dead, let her use his Visa card to go
13 shopping to buy some things for his house (16 ROA 48-49).
14 Mason did not authorize anyone to make purchases from the
15 Sungear Company (16 ROA 59) nor use the card at the Gold Coast
16 from February 19th through the 21st (16 ROA 61). Lizzi also
17 had access to Mason's Dillard's card. To the best of his
18 knowledge Mason had never met or heard of RIPPO (16 ROA 42).

19 Diana Hunt, who was originally arrested and charged as a
20 co-defendant with RIPPO, was called by the State pursuant to
21 her plea negotiations (11 ROA 164-166). According to Hunt, she
22 started dating RIPPO in January, 1992 and they lived together
23 for a period to time in a house on Gowan Road (11 ROA 30; 31).
24 As of February 17th they were living with Deidre D'Amore, a
25 friend of RIPPO (11 ROA 32), and RIPPO told Hunt that he had
26 been over to Jacobson's apartment helping her move (11 ROA 33;
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1 34). The following day, at about 9:00 a.m. RIPPO woke up Hunt
2 and they then drove to the Katie Arms, to help Jacobson move
3 (11 ROA 36-38). After entering the apartment, Hunt sat on the
4 couch and Jacobson and RIPPO were running around the apartment,
5 laughing and doing drugs (11 ROA 40). Hunt observed RIPPO to
6 inject a substance into his arm and Jacobson to do the same
7 into her left wrist (11 ROA 41).

8 Denise Lizzi arrived at the apartment complex and Jacobson
9 went down and talked with her for about twenty minutes (11 ROA
10 46). While Jacobson was downstairs, RIPPO closed the curtains
11 and the window and asked Hunt for the stun gun that was in her
12 purse, then made a telephone call (11 ROA 47-49). Denise and
13 Jacobson came back into the apartment and went into the
14 bathroom at which time RIPPO went into the kitchen and got a
15 bottled beer and brought it to Hunt (11 ROA 51). When he
16 handed her the beer, RIPPO told Hunt that "when Lauri answers
17 the phone, I want you to hit her with the bottle so I can rob
18 Denise." (11 ROA 51). A few minutes later the phone rang and
19 when Lauri bent over to get the phone, Hunt hit her on the back
20 of the head with the bottle (11 ROA 53). Lauri fell to the
21 floor but wasn't knocked out (11 ROA 53-54).

23 Hunt, after hitting Lauri with the bottle, could hear the
24 stun gun going off in the bathroom and RIPPO and Denise arguing
25 (11 ROA 55). RIPPO wrestled Denise out of the bathroom and
26 into a big closet across the hall (11 ROA 55). Hunt ran to the
27 closet and observed RIPPO sitting on top of Denise and still
28

1 stunning her with the stun gun (11 ROA 56). Hunt went back to
2 where Lauri was located and helped her sit up and RIPPO came
3 out of the closet with a knife in his hand and cut the cords
4 off of appliances (11 ROA 58-59). The cords were then used to
5 tie the hands and the feet of Lauri (11 ROA 60). A bandana was
6 then used to gag her mouth (11 ROA 61).

7 Hunt went back and looked in the closet again and observed
8 that Denise's hands and feet were tied and RIPPO was asking her
9 all kinds of questions (11 ROA 62). RIPPO then put something
10 inside of Denise's mouth and she fell over on her side (11 ROA
11 62). At that point in time someone came to the door of the
12 apartment and was yelling for Lauri and after about five
13 minutes left (11 ROA 63-64).

14 Hunt's story continued with RIPPO allegedly putting
15 another cord between the ones on Lauri's hands and feet and
16 picking her up and dragging her across the floor with it (11
17 ROA 68). Lauri was choking (11 ROA 68). Hunt threw up and
18 then went and looked in the closet and saw RIPPO with his knee
19 in the small of Denise's back with something around her neck
20 and pulling real hard and choking her (11 ROA 69). RIPPO
21 started grabbing all kinds of things putting them into a bag
22 and told Hunt to clean up everything and put everything into
23 the bag (11 ROA 71-72). RIPPO wiped down everything in the
24 apartment (11 ROA 73). At one point RIPPO untied Denise's feet
25 and removed her pants stating that he had bled on her pants (11
26 ROA 82).
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1 When they left the apartment RIPPO had two bags with him
2 and told Hunt to just go home and wait and that nobody got hurt
3 (11 ROA 79). Later that evening RIPPO called and told her to
4 meet him at a friend's shop (11 ROA 84). Hunt drove to the
5 shop of Tom Sims and met RIPPO who told her that he had a car
6 for her, which was a maroon Nissan (11 ROA 84-85). Hunt had a
7 friend, Tom Christos, who could get paperwork on the car and
8 RIPPO asked her to do so (11 ROA 86). She therefore drove the
9 car over to Christos' house (11 ROA 88).

10 The following day RIPPO told her that he had purchased an
11 air compressor and some tools at Service Merchandise that
12 morning with a credit card (11 ROA 90-91). At the Meadows
13 Mall, Hunt and RIPPO purchased two pair of sunglasses for
14 \$160.00 using a Gold Visa credit card (11 ROA 92-93; 12 ROA
15 163). The credit card was presented and signed in the name of
16 Denny Mason (12 ROA 173-174). Upon returning to Deidre's
17 residence, Hunt got into RIPPO'S wallet because she wanted to
18 get away from him and took the Visa card (11 ROA 93-96). The
19 credit card was in the name of Denny Mason (11 ROA 96).
20

21 According to Hunt after stealing the credit card, she went
22 to the residence of Christos and he told her to go get the
23 maroon car (11 ROA 97-98). February 19, 1992 was the birthday
24 of Teresa Perillo and she was living with her boyfriend Tom
25 Christos at that time, and she complained to Hunt that Christos
26 had been beating her and that she didn't want to go back to the
27 house (11 ROA 99). The two went to a shopping mall and on the
28

1 way RIPPO beeped Hunt and he wanted the credit card back and
2 arrangements were made to meet at the mall, but RIPPO did not
3 show up (11 ROA 101-102). While they were at the mall, Hunt
4 bought cologne for Teresa (11 ROA 102), and the pair went to
5 several bars (11 ROA 103) and then got a room at the Gold Coast
6 using the Denny Mason credit card (11 ROA 104). During the
7 evening Hunt stopped at a friend's house and got some primer
8 paint and sprayed the car because she knew it was stolen and
9 wanted to change the appearance of the car (11 ROA 105).

10 On February 29th, Hunt called the police and told them
11 that she knew something (11 ROA 112). The next day RIPPO got
12 into Hunt's Dodge Colt with her and as they were driving made
13 statements to her about what would happen to her if she left
14 and that he had gone back to the Jacobson apartment and cut the
15 throats of the girls and jumped up and down on them (11 ROA
16 115-118). The car ran out of gas and Hunt jumped out of the
17 car, leaving her belongings behind and ran down the street and
18 called her friend (11 ROA 120). After her friend picked her
19 up, they went back to her car and her bag was missing from the
20 car and the door was open (11 ROA 121).

22 In the early morning hours of March 1, 1992, Hunt had
23 further contact with RIPPO at a house in North Las Vegas (11
24 ROA 154-155). As RIPPO was getting out of his car he was
25 saying that she had killed the two girls and he had proof (12
1A 92). A confrontation occurred and Hunt yelled back that he
1 killed those girls and she could prove it, and RIPPO ran

1 around the front of the car and started punching her in the
2 face (11 ROA 156). He also stunned her with the stun gun and
3 when he got her down on the ground started choking her and
4 banging her head into the pavement (11 ROA 159). Other
5 individuals pulled RIPPO off of Hunt and the police were
6 called, but RIPPO left before the police arrived (11 ROA 159-
7 161).

8 Hunt was arrested for the killing and robbery of Lizzi and
9 Jacobson on April 21, 1992 in Yerington, Nevada (11 ROA 162).
10 On June 2, 1992 she entered in to a plea agreement whereby she
11 wouldn't be prosecuted for the murders if she cooperated with
12 the police and testified against RIPPO (11 ROA 166). She pled
13 guilty to robbery and was sentenced to fifteen years in prison
14 (11 ROA 168). Also part of the plea agreement was that Hunt
15 would not be prosecuted for any other uncharged conduct,
16 including credit card fraud, selling drugs and stealing cars
17 (12 ROA 9). While in prison Hunt asked the District Attorney's
18 Office to help her get reclassified to a minimum facility and
19 such a letter was written by Deputy District Attorney Dan
20 Seaton (12 ROA 105-106). At the time of her testimony she had
21 already been before the parole board and been denied parole (12
22 ROA 120).

24 Hunt had been in a mental hospital for eleven and a half
25 months when she was 16 years old (12 ROA 14). She had a tattoo
26 on her arm with two lightning bolts and the letters SWP which
27 stood for Supreme White Power (12 ROA 23). Neither she nor
28

1 RIPPPO took a knife or gun to the apartment which is something
2 Hunt thought they would bring along if they were planning to
3 commit robbery or murder (12 ROA 58).

4 Teresa Perillo had lived with Tom Christos for about a
5 year and was acquainted with Hunt through Hunt's cousin Carrie
6 Burns (13 ROA 7-9). On the way to the Mall, Hunt stopped at an
7 apartment complex and removed the car cover from a maroon
8 Nissan and stated that because it was Perillo's birthday she
9 deserved to drive in a better car (13 ROA 10-12). Hunt told
10 her that she had repossessed the car from a bad drug deal (13
11 ROA 12). They then went to Dillards in the mall and Hunt
12 purchased perfume using a credit card (13 ROA 13). It was Hunt
13 that rented the motel room at the Gold Coast (13 ROA 18).
14 Sometime after their arrival at the Gold Coast, Hunt left to go
15 to Perillo's residence to pick up a phone book that had some
16 paperwork for the car in it (13 ROA 19). While Hunt was gone,
17 Perillo checked the billing information on the television and
18 observed that the name on the room was Denny Mason (13 ROA 20).
19 Perillo also observed Hunt to have identification belonging to
20 other persons with her, and remembered seeing the name Denise
21 Lizzi (13 ROA 36). At nine o'clock the following evening they
22 took a gentleman that they had picked up at the Club Rock back
23 to the bar and went to the house of a friend of Hunt's so that
24 Hunt could purchase a gun (13 ROA 21). There was no
25 transaction for a gun, but Hunt did ask for primer paint so
26 that she could change the appearance of the car (13 ROA 22).
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1 Hunt then took Perillo back to her residence and Perillo did
2 not see Hunt again after February 20, 1992 (13 ROA 25-26).

3 RIPPO had called the house of Christos on the 20th in the
4 early evening hours looking for Hunt and left a message with
5 Christos that "the cat is out of the bag" (19 ROA 48-49). Hunt
6 had previously talked with Christos about his experience with
7 stolen vehicles and she had come to him looking for a way to
8 get rid of the stolen car (19 ROA 52). Christos wasn't
9 surprised when she showed up on his doorstep with a stolen car
10 (19 ROA 55).

11 Laurie Jacobson had worked at a bar called Tramps with
12 Wendy Liston (13 ROA 43). They had lived together in 1990 and
13 1991 (13 ROA 45). When Laurie started doing drugs a rift arose
14 between the two of them and Laurie was asked to move out (13
15 ROA 46-47). Liston was trying to get her off of drugs but
16 Lizzi kept coming over and trying to get her to continue to use
17 drugs (14 ROA 15). Liston had met Lizzi on only couple of
18 occasions (13 ROA 49). Laurie would obtain her drugs from
19 Lizzi or through a friend associated with Lizzi known to her as
20 RIPPO (13 ROA 52). After Laurie moved into the Katie Arms
21 apartments, Liston would go by the apartment during her lunch
22 hour take her food or money or anything she needed and at the
23 same time was trying to convince her to move (13 ROA 54).

24 Liston had last seen Jacobson the Monday before she died,
25 February 17, 1992 (13 ROA 58-59). On the evening before
26 Jacobson had asked her to come over, and when she got there
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1 Jacobson and RIPPO were discussing some morphine that she had
2 (13 ROA 61). RIPPO and Jacobson went into the bathroom and
3 intravenously used the morphine (13 ROA 63). Liston also went
4 over to the apartment on her lunch hour on the 17th and RIPPO
5 was also present at said time (13 ROA 64). Jacobson needed the
6 tire fixed on her car and Liston followed her to Discount Tire
7 in her car and then dropped her back off at her apartment (13
8 ROA 64-67).

9 Liston went back to the Jacobson apartment on the 18th and
10 observed that the tire had been fixed on the car, and looked in
11 the back of the car and saw a pair of her boots that she wanted
12 back (13 ROA 73). Liston went upstairs and knocked on the door
13 and tried the door and window but they were locked and there
14 was no answer at the door (13 ROA 74-75). After about ten
15 minutes she yelled through the door and left (13 ROA 76).

16 Thomas Sims had operated a maintenance company since 1989
17 in Las Vegas (14 ROA 27). Sims had known RIPPO since 1985 and
18 on February 18th, RIPPO entered his office early in the
19 afternoon and said that he had a car that he wanted Sims to
20 look at and wanted to know if he wanted to buy it or knew
21 someone that would want to buy the car (14 ROA 28-30). RIPPO
22 brought a suitcase and perhaps a box with him and started going
23 through the items on the couch (14 ROA 31). Sims asked where
24 the car had come from and RIPPO told him that someone had died
25 for the car (14 ROA 32). The car was a Nissan 300ZX and Sims
26 told him that he did not want the car there and to get it away
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1 from his shop (14 ROA 33). RIPPO wanted \$2,000.00 for the car
2 because he wanted to leave town (14 ROA 35). RIPPO gave Sims a
3 number of tapes and the suitcase (14 ROA 36-37). RIPPO left
4 the car behind and was gone for about an hour and a half and
5 came back around closing time with Diana Hunt (14 ROA 442).
6 RIPPO had a stack of one hundred dollar bills and stated that
7 he had just won a royal flush, and Sims emphasized to him that
8 he wanted the car gone by the time he came to work the next
9 morning (14 ROA 42). When Sims came to work the next morning
10 at 7:30 AM the car was gone (14 ROA 45).

11 On the 21st of February, Sims saw a broadcast that two
12 women had been killed and that one of them was named Denise
13 Lizzi and realized that was the same name that was on a number
14 of the tapes that had been given to him by RIPPO (14 ROA 46-
15 47). On February 26th RIPPO called Sims and wanted to come by
16 and pick up a bottle of morphine he had left in a refrigerator
17 at the office (14 ROA 49-50). Sims didn't want RIPPO coming to
18 his shop and agreed to meet him somewhere to deliver it to him
19 (14 ROA 53). Sims eventually met RIPPO at a K-Mart parking lot
20 because RIPPO'S car had broken down and gave him the bottle (14
21 ROA 55-56). According to Sims, he asked RIPPO about the
22 murders and RIPPO said that he had choked those two bitches to
23 death and that he had accidentally killed the one girl so he
24 had to kill the other (14 ROA 56; 62). Sims then drove RIPPO
25 to the Stardust Hotel and on the way RIPPO told him that he was
26 carrying or dragging one of the girls to the back and her face
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1 hit the coffee table, and that Diana Hunt was with him and had
2 participated in the murders (14 ROA 57-58). When asked if he
3 trusted Hunt, RIPPO replied that Hunt had hit the girl over the
4 head with a beer bottle and that he trusted her fully (14 ROA
5 59). Sims also asked why one of the girls had no pants on and
6 RIPPO told him that he had cut his finger during the incident
7 and dropped blood on her pants so he had to take the pants and
8 dispose of them (14 ROA 61). Finally, RIPPO indicated that he
9 could have fucked both of the girls and that he didn't and that
10 meant that he was cured (14 ROA 63).

11 Sims had been interviewed by the police and only answered
12 the specific questions that they asked and did not volunteer
13 any information about the events he claimed occurred on
14 February 26, 1992. (14 ROA 65-66) The first time that Sims
15 had told anybody about the additional statements he claimed
16 RIPPO made was around October, 1993 when he talked with Teresa
17 Lowry and John Lukens in the District Attorney's Office (14 ROA
18 86-87). Sims only provided his story about what RIPPO
19 allegedly told him after Sims had been arrested for drug and
20 ex-felon in possession of firearm charges.
21

22 Diana Hunt had provided Sims with copies of the discovery
23 on the case (16 ROA 13).

24 The autopsies of Lizzi and Jacobson occurred on February
25 21, 1992 and were performed by Dr. Sheldon Green (17 ROA 59).
26 Initial observations of Lizzi revealed that a sock had been
27 pushed into her mouth and secured by a gag that encircled her
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1 head (17 ROA 62). Upon opening the mouth to recover the sock,
2 Green noted that the sock had been pushed in so that the tongue
3 was forced into the back of the throat, completely blocking off
4 the airway (17 ROA 66; 68). Pieces of cloth were tied around
5 each wrist (17 ROA 68). Two ligature marks were completely
6 circling the neck that were consistent with an electrical type
7 of cord (17 ROA 73; 81). There were a few tiny pinpoint
8 hemorrhages in the inside of the eyelids and on the white part
9 of the eye (17 ROA 74). These are commonly found in situations
10 where there is an acute asphyxial death (17 ROA 74). There was
11 scarring in the left arm that was typical of people who have
12 used intravenous drugs (17 ROA 77). There were modest
13 abrasions or scraping injuries of the skin on the forehead and
14 under the chin (17 ROA 77). Located in the neck area were two
15 small stab wounds which went through the skin into the band of
16 muscle that comes from a point behind the ear to the top of the
17 breastbone (17 ROA 83). At the time of the autopsy there were
18 no ligatures around the ankle, however there were marks that
19 would strongly suggest that there had been something tied there
20 following death (17 ROA 86). Internal examination showed a lot
21 of hemorrhage in the deeper tissues and the ligaments that
22 control the voice box and the thyroid gland that were typical
23 of strangulation (17 ROA 89). Green believed that there was a
24 combination of manual and ligature strangulation involved in
25 the death of Lizzi (17 ROA 91). Toxicology revealed
26 methamphetamine in the blood and the urine in the amount of
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1 5,288 nanograms which is unusually high (17 ROA 95; 96).

2 There were no restraints associated with the autopsy of
3 Lauri Jacobson (17 ROA 105; 128). There was some apparent
4 damage around the neck and behind the right ear, and a scratch
5 on the neck which ended in a very superficial little stab wound
6 (17 ROA 107). In the neck there was a great deal of hemorrhage
7 in the soft tissue around the muscle and the thyroid gland and
8 in addition there was an actual fracture of the cartilage which
9 forms the voice box or larynx (17 ROA 112). Death was the
10 result of asphyxiation due to manual strangulation (17 ROA
11 114). It would require something in the area of two, three or
12 four minutes to cause death by such strangulation (17 ROA 124-
13 125). There were no epidural, subdural or subarachnoid
14 hemorrhages present and no discrete hemorrhages were found in
15 the scalp (17 ROA 133). No stun gun marks were found on either
16 victim (17 ROA 130).

17
18 During the autopsy of Lizzi a black scarf was recovered
19 from her left wrist (17 ROA 21-22). A pair of blue sweat pants
20 was removed from the right wrist (17 ROA 24). A black sock was
21 recovered from inside her mouth (17 ROA 26). A pair of black
22 panties was recovered from around the head of Lizzi (17 ROA
23 30).

24 Sexual assault kits were recovered from both victims with
25 negative results (18 ROA 113).

26 The torso of Lauri Jacobson had glass shards from about
27 the waist to the neck (17 ROA 31).
28

1 Sheree Norman had impounded a plastic cylinders, spoons,
2 hypodermic syringes, a Q-tip and smoking devices that were
3 analyzed and found to contain residues of methamphetamine and
4 marijuana (17 ROA 166-167).

5 Fingerprint comparisons revealed that eleven prints were
6 recovered inside the apartment that belonged of police officers
7 (18 ROA 30). One fingerprint was identified as belonging to
8 homicide detective Scholl (18 ROA 30) and one was also
9 identified to Officer Goslar (18 ROA 31). These were the only
10 positive matches found within the apartment (18 ROA 32).

11 Carlos Ciapa, the sales manager at Sears in the Boulevard
12 Mall was working in the hardware department on February 19,
13 1992, and sold a compressor, a spray gun, an air sander,
14 couplings and a warranty to RIPPO (18 ROA 176-183). The items
15 were paid for with a Sears credit card in the name of Denise
16 Lizzi and signed in the name of Denny Morgan (18 ROA 184-185).

17 The handwriting on the Sunglass Company and Sears receipts
18 was examined by document examiner William Leaver who determined
19 that there were similarities between the signatures on the
20 documents and the handwriting of RIPPO (19 ROA 6-14),
21 indicating a possibility that RIPPO was the author of the
22 signatures (19 ROA 14-16).

23 Deidre D'Amore testified that she knew RIPPO and Hunt and
24 that during February, 1992 she allowed them to live in her
25 townhouse with her for a period of two weeks. RIPPO was her
26 friend and if it wasn't for RIPPO she would not have allowed
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1 Hunt to stay at her residence. On occasions she would let
2 RIPPO or Hunt borrow her Isuzu pickup truck. She was only
3 casually acquainted with Lauri Jacobson and Denise Lizzi and
4 had seen Denise driving a red Nissan 300 ZX about a week prior
5 to February 18, 1992. Around the 18th the police had impounded
6 her truck after RIPPO had borrowed it and recovered a pair of
7 Oakley sunglasses inside of the truck. She had never seen the
8 sunglasses before her testimony.

9 Hunt had conversations with D'Amore wherein Hunt indicated
10 that she had a romantic interest in Michael Beaudoin and that
11 Beaudoin hated Denise Lizzi and that Hunt was "psyching out"
12 Denise because Beaudoin had asked her to. Hunt told her that
13 she like to beat up Denise.

14 D'Amore was not fond of Hunt and had told RIPPO that she
15 wanted her out of the house. Hunt had been stealing items out
16 of her house, and D'Amore had caught her and confronted her
17 about it.

18 David Levine was in custody in the Southern Desert
19 Correctional Center with RIPPO in January, 1993 (19 ROA 145).
20 Levine was a porter on the floor and had the opportunity to
21 play cards and talk with RIPPO (19 ROA 146). RIPPO had Levine
22 call his girlfriend and give her messages to handle things for
23 him and to give messages to his attorney (19 ROA 150).
24 According to Levine, RIPPO confessed to him that he had killed
25 the two women and that after killing them he went and played
26 video poker and hit a royal flush (19 ROA 153). RIPPO also
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1 tried to figure out if Levine and he were on the street at the
2 same time in order to use him as an alibi witness and then a
3 character witness (19 ROA 157).

4 **B. PENALTY HEARING TESTIMONY**

5 Laura Martin lived in an apartment in Las Vegas on
6 January, 1982 (22 ROA 37; 39). She had gone to bed at about
7 midnight on the 15th and to the best of her knowledge the doors
8 and windows were locked when she went to bed (22 ROA 40-41).
9 She was awakened at about 7:30 AM with RIPPO sitting on top of
10 her with a knife to her throat (22 ROA 42-43) asking where her
11 money was kept (22 ROA 45-46). RIPPO tied her hands with her
12 bathrobe tie and then tied her feet with electrical cords (22
13 ROA 47-48). Five cut sections of electrical cord were found in
14 the apartment (22 ROA 97). When Martin asked questions he hit
15 her and told her to shut up (22 ROA 48). RIPPO cut her clothes
16 off with the knife, and then allowed her to put a tube top on
17 (22 ROA 50-52). He was just mumbling and moving around the
18 apartment (22 ROA 52). RIPPO just paced around the apartment
19 and pretty much talking or mumbling the whole time that he was
20 there (22 ROA 86). She was asked if she wanted to engage in sex
21 and when she begged him not to do so, he just laughed (22 ROA
22 54). At one point RIPPO got her down on the bed and spread her
23 legs apart and raped her, although he did not ejaculate (22 ROA
24 59). At one point he placed the knife in the area of her
25 breasts and said that he was going to cut her nipples off and
26 that he had done it before, but that girl was dead (22 ROA 62).
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1 Martin begged for her life and RIPPO indicated that if she
2 told anyone he would come back and kill her (22 ROA 66). He
3 tried to choke her with wire clothes hangers (22 ROA 67).
4 RIPPO got her car keys and left and she ran to a neighbor and
5 called the police (22 ROA 67-70). Martin ended up with about
6 15 stitches behind her ear, a concussion, black eyes and a huge
7 bump on her leg that she thought might have been a chipped bone
8 (22 ROA 74). She never went back to her apartment and had been
9 unable to live alone since the incident (22 ROA 75).

10 On April 1, 1981, Metro Officer Jack Hardin became
11 involved in the investigation of a burglary of a Radio Shack in
12 the area of Nellis and the Boulder Highway (22 ROA 109).
13 Sixteen year old RIPPO was identified as a suspect and Hardin
14 therefore went to an apartment on East Tropicana and made
15 contact with the occupant and located a great deal of
16 electronic equipment (22 ROA 110-113). Also recovered were
17 four firearms (22 ROA 115). RIPPO was arrested for the
18 burglary of the Radio Shack and of Holman's of Nevada and taken
19 to the Clark County Juvenile facility (22 ROA 119). He was
20 also booked as a runaway (22 ROA 120). It was his mother's
21 request that he be committed to Spring Mountain Youth Camp (22
22 ROA 136).

24 RIPPO was committed to the Spring Mountain Youth Camp on
25 April 29, 1981 and remained there until August 26, 1981 when he
26 was released to his parents (22 ROA 130). During his stay at
27 SMYC RIPPO was under the supervision of Mr. Carriaga who died
28

1 and the State therefore called Robert Sergi who remembered
2 RIPPO as pleasant to be around, but that he gave the impression
3 of just shining him on (22 ROA 152). Sergi never got the
4 impression that he intended to end his criminal lifestyle (22
5 ROA 161).

6 In December, 1981 two rifles and four handguns were
7 recovered in the attic of a home wherein RIPPO was living (23
8 ROA 10). RIPPO had run away from home and had stolen the guns
9 in residential burglaries according to a friend of RIPPO'S (23
10 ROA 11). On January 20, 1982, RIPPO was taken into custody on
11 other charges and the burglary warrants were served at the same
12 time (23 ROA 12-13). When interviewed RIPPO couldn't remember
13 most of the burglaries because he was high on drugs (23 ROA
14 16). RIPPO had been arrested in front of an apartment waiving
15 a gun and trying to gain entrance (23 ROA 28).

16 Tom Maroney was the juvenile parole officer for RIPPO and
17 prepared the certification report to the juvenile court
18 recommending that RIPPO be certified as an adult on the charges
19 of sexual assault, burglary and others (23 ROA 40). After his
20 arrest RIPPO escaped from the Juvenile Detention Center (23 ROA
21 43). Maroney believed that RIPPO was very bright and knew the
22 difference between right and wrong (23 ROA 48). Psychologist
23 Joanna Triggs evaluated RIPPO while he was in the juvenile
24 system and found that his memory was intact and had no
25 hallucinations and no evidence of paranoia or delusions (23 ROA
26 75). He had average to above average intelligence, was not
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1 depressed, not suicidal, and had good social skills meaning
2 that he related very well and had good charisma (23 ROA 75).

3 On the sexual assault case, RIPPO was sentenced to life in
4 prison with the possibility of parole (23 ROA 101). RIPPO had
5 told his Parole and Probation officer that he was under the
6 influence of phencyclidine which had been added to a marijuana
7 cigarette when he committed the crime (23 ROA 108). RIPPO
8 paroled from the prison sentence on October 24, 1989 (23 ROA
9 120). The parole was revoked on April 30, 1992 (23 ROA 125).
10 He was therefore under a sentence of imprisonment on February
11 18, 1992 (23 ROA 125).

12 Correctional Officer Eric Karst testified that in March,
13 1986 at Southern Nevada Correctional Center in Jean, Nevada he
14 searched the cell of RIPPO and located a nine inch buck knife,
15 a pair of nunchuks, a compass, money and a wrench (23 ROA 147).
16 Also found was a brass smoking pipe (23 ROA 149). RIPPO
17 carried some status with him in prison such that he was known
18 as a stand up convict that carried his own and was very seldom
19 challenged to fight because his reputation was that he would
20 not back down from any fights (23 ROA 151).

22 Victim impact testimony was offered from the father and
23 mother-in-law of Lauri Jacobson (23 ROA 175-183; 184-188).
24 Also offering victim impact testimony were the mother, brother
25 and the father of Denise Lizzi (23 ROA 189-207).

26 James Cooper was employed as a vocational education
27 instructor in laundry and dry cleaning with the Nevada Prison
28

1 system in the early 1980's and later became involved with a
2 prison ministry (24 ROA 6-7). Cooper first met RIPPO at the
3 prison in Jean, Nevada in 1982 (24 ROA 7). RIPPO looked like
4 an eighth grader and shaved his head to try and make himself
5 look tougher (24 ROA 8). RIPPO worked in the laundry and never
6 caused any problems and was one of the inmate workers that
7 Cooper could leave unsupervised (24 ROA 9). Cooper had
8 maintained contact with RIPPO and believed that he was reaching
9 out for the Lord as he grew older (24 ROA 12). Cooper was of
10 the opinion that RIPPO would not be a problem to the prison,
11 but would rather be an asset (24 ROA 13).

12 RIPPO'S stepfather, Robert Duncan, told the jury about his
13 contact with RIPPO after he had already reached the prison
14 system (24 ROA 23). While he was incarcerated Duncan supplied
15 him with a typewriter, computer and computer courses and he did
16 quite well, additionally excelling in drawing and writing (24
17 ROA 31). When RIPPO was released on parole he came to live
18 with Duncan and his mother and lived in their residence for
19 about nine to ten months (24 ROA 25). RIPPO worked a number of
20 jobs during that period of time, only changing when a better
21 job became available (24 ROA 26-29). The parole officer only
22 came to visit once and didn't even come into the house because
23 he said that he had a heavy case load and didn't have the time
24 (24 ROA 30).

25
26 The younger sister of RIPPO, Stacie Rotterdam, told the
27 jury about her relationship with her brother and the early
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1 years of their lives (24 ROA 41). RIPPO was the family clown,
2 whenever anyone was down or something was going on around the
3 house he was there the make them laugh (24 ROA 42). When the
4 parents would fight the would comfort his sisters and tell them
5 that it would be OK (24 ROA 42).

6 A letter from RIPPO'S mother was read to the jury because
7 she could not come to Court to testify based on orders of her
8 doctor as she was suffering from acute anxiety reaction and
9 anxiety depression (24 ROA 63). She described her son and the
10 difficulties he encountered while growing up and how he first
11 got into trouble (24 ROA 61-67).

12 RIPPO exercised his right to allocution and told the jury
13 that the reason that he pled guilty to the sexual assault
14 charge was to spare the victim the anguish of testifying (24
15 ROA 74). He further expressed his sorrow for the families of
16 the two victims (24 ROA 75-76).

17
18 III.

19 ISSUES RAISED ON DIRECT APPEAL

20 NRS 34.810(b) provides that grounds raised in a Petition
21 for Writ of Habeas Corpus should be dismissed if the grounds
22 could have been presented to the trial court, raised on direct
23 appeal, or in any other proceedings taken by the Petitioner.
24 RIPPO hereby reasserts each of the issues raised on direct
25 appeal, both substantively as stated, and as having been denied
26 as a result of ineffective assistance of counsel in violation
27 of his State and Federal Constitutional rights.
28

1 On direct appeal, RIPPO was represented by David Schieck
2 and raised the following issues to the Nevada Supreme Court.
3 The decision of the Court as to each issue is contained in
4 parenthesis following each enumerated issue

5 1. *The Trial Court's Failure to Recuse itself and*
6 *Disclose a Conflict of Interest Tainted the Proceedings and A*
7 *New Trial or at the Very Least an Evidentiary Hearing Based*
8 *Thereon Should Have Been Granted. (...we conclude that Rippo*
9 *has failed to allege or establish legally cognizable grounds*
10 *warranting disqualification.)* RIPPO herein reasserts as part
11 of this Petition that the failure of Judge Bongiovani to
12 disqualify himself and the failure of the District Court to
13 grant the Motion to Disqualify denied RIPPO of a fundamentally
14 fair trial and Due Process of law in violation of the Fifth,
15 Sixth, and Fourteenth Amendments to the United States
16 Constitution.

17 2. *The State's Failure to Provide Brady Material in a*
18 *Timely Fashion Denied RIPPO of a Fundamentally Fair Trial and*
19 *Due Process of Law. (We conclude that no Brady violation*
20 *occurred because (1) the statement is not exculpatory and (2)*
21 *pursuant to the State's open file policy, the defense could*
22 *have inspected the State's files and discovered the statement*
23 *and thus the prosecution did not suppress the evidence.)* RIPPO
24 as part of this Petition reasserts that the discovery violation
25 denied him of Due Process under the Fifth, Sixth, Fourteenth
26 Amendments to the United States Constitution.
27
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1 3. *Prosecutorial misconduct and Failure to Disqualify the*
2 *District Attorney's Office for Such Conduct Denied RIPPO Due*
3 *Process and a Fundamentally Fair Trial. (...We thus conclude*
4 *that the prosecution's failure to disclose timely the*
5 *witnesses' names does not warrant reversal....we conclude that*
6 *prosecutors' conduct did not constitute witness intimidation*
7 *warranting reversal....We conclude that Rippo failed to make a*
8 *showing of extreme circumstances warranting disqualification of*
9 *the entire District Attorney's Office....Thus, we conclude that*
10 *the District Court did not abuse its discretion in failing to*
11 *disqualify the prosecutor's office.) RIPPO herein reasserts in*
12 *this Supplemental Petition the authorities and arguments from*
13 *his Opening Brief to the Nevada Supreme Court.*

14 4. *It Was Error to Allow the State to Amend the*
15 *Indictment Without Resubmission to the Grand Jury. (In our*
16 *April 27, 1995 order, we concluded that the amended indictment*
17 *was proper. Accordingly, we decline to review Rippo's argument*
18 *further.)*

19 5. *Evidence of Threats to Witnesses Was improperly*
20 *Admitted During Trial. (...we conclude that the district*
21 *attorney properly explored the testimony given during cross-*
22 *examination and questioned Levine in an effort to rehabilitate*
23 *his credibility.)*

24 6. *Prior Bad Act Testimony Was Improperly Admitted During*
25 *the Course of the Trial. (With respect to the use of the Sears*
26
27
28

1 Credit Card the Court stated: "Upon review of the arguments in
2 the record, we conclude that the district court did not abuse
3 its discretion in admitting the evidence...."

4 On the issue concerning the prior sexual assault testimony
5 of Tom Sims the Court declined to address this argument due to
6 Rippo's failure to object during trial.

7 Finally the Court concluded that Levine's testimony
8 concerning drug sales within the jail was too limited and vague
9 to imply that Rippo was conducting drug sales while in jail and
10 therefore, the argument lacks merit.)

11 RIPPO as part of this Supplemental Petition reasserts that
12 the addition of the bad act testimony denied him of a
13 fundamentally fair trial and due process of law under the
14 Fifth, Sixth, and Fourteenth Amendments.

15 7. *Improper Closing Argument During the Guilt Phase*
16 Mandates a New Trial Be Granted. (We conclude that the
17 prosecutor made impermissible references to Rippo's failure to
18 call any witnesses on his behalf and, in so doing, may have
19 shifted the burden of proof to the defense. However, we
20 conclude that error was harmless in light of the overwhelming
21 evidence of guilt supporting Rippo's conviction....

22 Further, we do not find that the prosecutor manifestly
23 intended the comments as a reference to Rippo's failure to
24 testify on his behalf...Accordingly, we conclude this argument
25 lacks merit.

26 We conclude that the prosecutor's comments concerning the
27
28

1 stun gun and his subsequent comments to the effect that
2 interviews and "things" happen outside the courtroom were
3 improper references to evidence not presented at
4 trial....However, we conclude that any error caused by these
5 comments was harmless light of the overwhelming evidence
6 against Rippo....

7 Finally, Rippo argues that the prosecutor improperly
8 expressed his personal belief concerning the evidence. We
9 conclude that the statements do not contain prosecutorial
10 vouching. The prosecutor did not characterize the testimony of
11 the witnesses, nor did he express a personal belief concerning
12 the evidence before the jury. Therefore, this argument lacks
13 merit.)

14 RIPPO as part of his Supplemental Petition herein
15 reasserts that the improper arguments of the prosecutor denied
16 him of the fundamentally fair trial and due process of law
17 under the Fifth, Sixth, and Fourteenth Amendments to the United
18 States Constitution.

19
20 8. *The Cumulative Error During the Proceedings Denied*
21 *RIPPO a Fundamentally Fair Trial.* (The Court failed to address
22 this issue on Direct Appeal)

23 9. *Overlapping and Multiple Use of the Same Facts as*
24 *Separate Aggravating Circumstances Resulted in the Arbitrary*
25 *and Capricious infliction of the Death Penalty.* (Upon review,
26 we conclude that Rippo could have been prosecuted separately
27 for each of the underlying felonies, and therefore each crime
28

1 was properly considered as it aggravating circumstance.)

2 RIPPO as part of his Supplemental Petition herein
3 reasserts that the death penalty was returned in violation of
4 the Eighth and Fourteenth Amendment right to a fair sentencing
5 proceeding and one not arbitrary and capricious in its use.

6 10. *Improper Argument During the Opening Statement At the*
7 *Penalty Hearing Was Reversible Error.* (We conclude that the
8 prosecutor's use of the words "horror" and "horrendous" to
9 describe Rippo's acts did not deprive Rippo of a fair
10 trial....Rippo next contends that the prosecutor's reference to
11 Rippo as "evil" was improper. Rippo did not interpose an
12 objection below. Therefore, we conclude that Rippo's failure
13 to object to the statement precludes appellate consideration.)

14 11. *Improper Closing Argument During the Penalty Hearing*
15 *Mandates a New Hearing.* (We conclude that the prosecutor's
16 statements constitute an explanation of the rationales
17 supporting the death penalty. This is a proper area for
18 prosecutorial comment.)

19 12. *The Cumulative and Excessive Victim Impact Testimony*
20 *Should Not Have Been Allowed.* (We conclude that each
21 testimonial was individual in nature, and that the admission of
22 the testimony was neither cumulative nor excessive. Thus, we
23 conclude that the district court did not abuse its discretion
24 in allowing all five witnesses to testify.)

25 RIPPO herein as part of this Supplemental Petition
26 reasserts that the excessive victim impact evidence denied him
27
28

1 of a fundamentally fair sentencing proceeding in violation of
2 the Due Process Clause of the Fourteenth Amendment and in
3 violation of the Eighth Amendment ban on cruel and unusual
4 punishment imposed in an arbitrary and capricious manner.

5 13. *It Was Reversible Error to Give an Anti-sympathy*
6 *Instruction to the Jury.* (Here, the district court instructed
7 the jury to consider mitigating factors in deciding the
8 appropriate penalty. Therefore, this argument lacks merit.)

9 14. *There Was Not Sufficient Evidence for the Jury to Find*
10 *Torture as an Aggravating Circumstance.* (When we review the
11 facts of this case and consider the entire episode as a whole -
12 the strangulation and restraint, accompanied by the frightful,
13 multiple blasts with a painful high voltage stun gun - we
14 conclude that even though the stun gun shocks were not the
15 cause of death, there is still evidence, under our
16 interpretation of murder perpetrated by means of torture, to
17 support a jury finding that there was, as an inseparable
18 ingredient of these murders, a "continuum" or pattern of
19 sadistic violence that justified the jury in concluding that
20 these two murders were "perpetrated by means of...torture.")

21
22 IV.

23 ARGUMENT

24 A.

25 RIPPO IS ENTITLED TO AN
26 EVIDENTIARY HEARING ON HIS PETITION

27 It has long been the holding of the Nevada Supreme Court
28

1 that if a Petition for post conviction relief contains
2 allegations, which, if true, would entitle the Petitioner to
3 relief, an evidentiary hearing is required. Bolden v. State,
4 99 Nev. 181, 659 P.2d 886 (1983); Grandin v. State, 97 Nev.
5 454, 634 P.2d 456 (1981); Doggett v. State, 91 Nev. 768, 542
6 P.2d 1066 (1975).

7 It is anticipated that the State, as it usually does, will
8 ask this Court to deny RIPPO an evidentiary hearing and deny
9 his Petition based on the perceived strength of the State's
10 case at trial without considering the allegations of the
11 Petition. In Drake v. State, 108 Nev. 523, 836 P.2d 52 (1992)
12 the Court remanded the case for an evidentiary hearing over the
13 State's objection where trial counsel had not adequately
14 opposed a Motion in Limine filed by the State. The purpose of
15 the hearing was to determine whether counsel had sufficient
16 cause for the noted failure. Drake, 108 Nev. at 527-528.

17 The Petition filed by RIPPO fits squarely within the
18 parameters of the decision in Hargrove v. State, 100 Nev. 398,
19 686 P.2d 222 (1984), and contrary to the anticipated argument
20 of the State, Hargrove mandates that an evidentiary hearing be
21 granted. In Hargrove, the Nevada Supreme Court stated:

22 "Appellant's motion consisted primarily of 'bare'
23 or 'naked' claims for relief, unsupported by any
24 specific factual allegations that would, if true,
25 have entitled him to withdrawal of his plea.
26 Specifically, appellant's claim that certain
27 witnesses could establish his innocence of the bomb
28 threat charge was not accompanied by the witness'
names or descriptions of their intended testimony.
As such, to the extent that it advanced merely

1 'naked' allegations, the motion did not entitle
2 appellant to an evidentiary hearing. See
3 Vaillancourt v. Warden, 90 Nev. 431, 529 P.2d 204
4 (1974); Fine v. Warden, 90 Nev. 166, 521 P.2d 374
5 (1974); see also Wright v. State, 619 P.2d 155, 158
6 (Kan.Ct.App. 1980) (to entitle defendant to an
7 evidentiary hearing, a post-conviction petition must
8 set forth 'a factual background, names of witnesses
9 or other sources of evidence demonstrating . . .
10 entitlement to relief')."

11 These Supplemental Points and Authorities contain the
12 names of the witnesses and a description of their expected
13 testimony. As such the allegations are not "naked".

14 Additionally RIPPO has set forth specific failures of counsel
15 that are supported by the record and his affidavit. An
16 evidentiary hearing is necessary in order to determine if trial
17 counsel has any strategic reason for the noted failures.

18 It is respectfully urged that this Court grant an
19 evidentiary hearing to RIPPO.

20 B.

21 CLAIMS FOR RELIEF

22 CLAIM ONE

23 RIPPO'S conviction and death sentence are invalid
24 under the State and Federal guarantee of effective
25 assistance of counsel, due process of law, equal
26 protection of the laws, cross-examination and
27 confrontation and a reliable sentence due to the
28 failure of trial counsel to provide reasonably
effective assistance of counsel. United States
Constitution Amendments 5, 6, 8, and 14; Nevada
Constitution Article I, Sections 3, 6 and 8;
Article IV, Section 21.

The Sixth Amendment guarantees that a person accused of a
crime receive effective assistance of counsel for his defense.
The right extends from the time the accused is charged up to

1 and through his direct appeal and includes effective assistance
2 for any arguable legal points. Anders v. California, 386 U.S.
3 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). The United State
4 Supreme Court has consistently recognized that the right to
5 counsel is necessary to protect the fundamental right to a fair
6 trial, guaranteed under the Fourteenth Amendment's Due Process
7 Clause. Powell v. Alabama, 287 U.S. 45, 53 S.Ct.55, 77 L.Ed.
8 158 (1932); Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9
9 L.Ed.2d 799 (1963). Mere presence of counsel does not fulfill
10 the constitutional requirement: The right to counsel is the
11 right to effective counsel, that is, "an attorney who plays the
12 role necessary to ensure that the trial is fair." Strickland,
13 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 657 (1984); McMann v.
14 Richardson, 439 U.S. 759, 771, 90 S.Ct. 1441, 25 L.Ed.2d. 763
15 (1970).

16
17 Pre-trial investigation is a critical area in any criminal
18 case and failure to accomplish same has been held to constitute
19 ineffective assistance of counsel. The Nevada Supreme Court in
20 Jackson v. Warden, 91 Nev. 430, 537 P.2d 473 (1975) stated:

21 "It is still recognized that a primary requirement is
22 that counsel . . . conduct careful factual and legal
23 investigations and inquiries with a view toward
24 developing matters of defense in order that he make
25 informed decisions on his client's behalf both at the
26 pleading stage . . . and at trial."

27 Jackson 91 Nev. at 433, 537 P.2d at 474. The Federal Courts
28 are in accord that pre-trial investigation and preparation for
trial are a key to effective representation of counsel. U.S.

1 v. Tucker, 716 F.2d 576 (1983).

2 In U.S. v. Baynes, 687 F.2d 659 (1982) the Court, in
3 language applicable to this case, stated:

4 "Defense counsel, whether appointed or retained is
5 obligated to inquire thoroughly into all potential
6 exculpatory defenses and evidence, mere possibility
7 that investigation might have produced nothing of
8 consequences for the defense could not serve as
9 justification for trial defense counsel's failure to
10 perform such investigations in the first place. Fact
11 that defense counsel may have performed impressively
12 at trial would not have excused failure to
13 investigate defense that might have led to complete
14 exoneration of the Defendant."

15 In Warner v. State, 102 Nev. 635, 729 P.2d 1359 (1986) the
16 Nevada Supreme Court found that trial counsel was ineffective
17 where counsel failed to conduct adequate pre-trial
18 investigation, failed to properly utilize the Public Defender's
19 full time investigator, neglected to consult with other
20 attorneys although urged to do so, and failed to prepare for
21 the testimony of defense witnesses. See also, Sanborn v.
22 State, 107 Nev. 399, 812 P.2d 1279 (1991).

23 In support of CLAIM ONE, RIPPO alleges the following
24 errors and omissions which denied him effective assistance of
25 trial counsel, among others to be presented at an evidentiary
26 hearing:

27 1. Trial counsel failed to successful move to have a
28 mistrial declared or proceed in a timely fashion to prepare and
proceed during trial which denied RIPPO of a fundamentally fair
trial and due process of law.

Specifically, jury selection commenced on January 30, 1996

1 and the evidentiary portion of the trial began on February 2,
2 1996. An interruption of the trial occurred between February
3 7th and February 26th based on the failure of the State to
4 provide discovery concerning an alleged confession and
5 statements made by RIPPO to Thomas Sims. The trial thereafter
6 proceeded without further interruption and final arguments were
7 made to the jury on March 5, 1996.

8 The damage done by the 19 day delay in the middle of the
9 trial was insurmountable. The jury had only heard testimony
10 from State's witnesses at the time the proceedings were halted.
11 The State's evidence therefore became cemented into the minds
12 of the jury and uncontradicted and the outcome of the case
13 sealed. Trial counsel should have either obtained a mistrial
14 and started the case over with a new jury or been prepared to
15 proceed against the new evidence in a much more timely fashion.
16 RIPPO was hopelessly prejudiced by this failure of trial
17 counsel.
18

19 The Nevada Supreme Court found that the reason for the
20 delay was actually due to the failure of counsel to inspect the
21 prosecution files and/or interview Tom Sims. It was thus the
22 ineffective assistance of counsel that caused the delay and the
23 resulting prejudice to RIPPO.

24 **2. Trial counsel failed to perform adequate pretrial**
25 **investigation and confer with RIPPO concerning the defense of**
26 **the case.**

27 The first investigator on the case, Ed Wimberly did
28

1 nothing to prepare the case for trial, and then just before
2 trial Ralph Dymont was appointed but had insufficient time to
3 investigate and interview witnesses. The following items of
4 investigation should have been fully pursued and presented at
5 the trial:

6 a. Obtain all prison and jail housing records to
7 establish when, where and how long, if at all, that RIPPO was
8 around the jailhouse snitches that were employed by the State.

9 b. Obtain newspaper articles and compare to the snitch
10 testimony to show that the stories came out of the newspapers
11 and establish that none of the stories of the snitches matched
12 each other.

13 c. Locate, interview and call as a witness Cindy Garcia
14 who had conversations with Diana Hunt that implicated Hunt in
15 the murders and could have impeached Hunt's testimony in a
16 significant fashion.

17 d. Locate, interview and call as a witness Brenda
18 Brummett who had information that Diana Hunt had a motive to
19 harm Denise Lizzi.

20 Brenda Brummett was acquainted with both Mike Beaudoin and
21 Diana Hunt. Hunt had told Brummett that someone other than
22 RIPPO had committed the murders. Hunt also had gone after
23 Brummett with a knife and Hunt had told her that she wanted to
24 kick Denise Lizzi's ass and mess up her car.

25 e. Locate and interview and call as a favorable defense
26
27
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RIPPO,
Appellant,
-vs-
E.K. McDANIEL, et al.,
Respondent.

No. 53626

FILED

OCT 19 2009

TRACEY K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

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FILED

MAR 15 12 03 PM '96

ORIGINAL

Letitia L. Loomis
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

The State of Nevada,

Plaintiff,

vs.

Michael Damon Rippe,
#0619119

Defendant.

Case No. C106784
Dept. No. IV
Docket No. "C"

Before the Honorable Gerard J. Bongiovanni

Thursday, March 14, 1996, 9:30 o'clock a.m.

Reporter's Transcript of Proceedings

JURY TRIAL

REPORTED BY: Renee Silvaggio, C.C.R. No. 122

CE23

RENEE SILVAGGIO, CCR 122 391-0379

MR1P0-07030-03336

1 APPEARANCES:

2 For the State: MELVYN T. HARMON, ESQ.
3 DANIEL SEATON, ESQ.
Deputies District Attorney

4 For the Defendant: STEVEN B. WOLFSON, ESQ.
5 PHILIP H. DUNLEAVY, ESQ.
6 Attorneys at Law

7 Law Clerk: Delwin Potter
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RENEE SILVAGGIO, CCR 122 391-0379

HRIPo-07030-03337

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Las Vegas, Nevada, Thursday, March 14, 1996, 9:30 a.m.

* * * * *

(The following proceedings were
had in open court outside the
presence of the Jury:)

THE COURT: State of Nevada versus Michael

Damon Rippo.

Let the record reflect the
presence of the defendant and his attorneys, Philip Dunleavy
and Steven Wolfson; for the State, Dan Seaton and Mel
Harmon.

The record will also reflect
we're outside the presence of the Jury.

I believe the State had
something.

MR. SEATON: Judge, we were going to take it
after the Jury left. We can do it at the Court's pleasure,
just as -- it's a matter having to do with the defense's
case, and it may be better served to do it after they have
completed their case.

THE COURT: Oh, okay.

MR. SEATON: It will --

THE COURT: Then you wish to --

1 MR. SEATON: We're ready for the Jury and go
2 forward.

3 THE COURT: Bring the Jury in.

4 THE BAILIFF: Yes, sir.

5 THE COURT: The bailiff informed me you had
6 something outside the presence.

7 MR. DUNLEAVY: I think we just changed our
8 timing.

9 MR. SEATON: Yeah, when the Jury leaves
10 would be the appropriate time, Judge.

11 (The following proceedings
12 were had in open court in
the presence of the Jury:)

13 THE COURT: Will counsel stipulate to the
14 presence of the Jury?

15 MR. SEATON: Yes, Judge.

16 MR. DUNLEAVY: Yes, Your Honor.

17 THE COURT: Okay.

18 MR. DUNLEAVY: Our first witness would be
19 Mr. Jim Cooper, Your Honor.

20 THE COURT: Okay. Jim Cooper.

21 THE CLERK: Would you raise your right hand.
22
23
24

1 Whereupon,

2 JAMES COOPER

3 having been called as a witness by the Defendant and
4 having been first duly sworn to tell the truth, the
5 whole truth and nothing but the truth, was examined
6 and testified as follows:

7 THE CLERK: Thank you.

8 Please be seated.

9 Would you state your name and
10 spell it for the record, please.

11 THE WITNESS: James Cooper; J-a-m-e-s,
12 C-o-o-p-e-r.

13
14 DIRECT EXAMINATION

15 BY MR. DUNLEAVY:

16 Q Mr. Cooper, back in the early '80s, were you
17 employed by the Nevada State Department of Prisons?

18 A Yes.

19 Q In what capacity were you employed?

20 A I was vocational education instructor in
21 laundry and dry cleaning.

22 Q Did you and your wife have a secondary
23 function there at the prison?

24 A Yes. Later in the year in 1979, we started

RENEE SILVAGGIO, CCR 122 391-0379

1 our prison ministry.

2 Q And you and your wife are both ministers?

3 A Yes.

4 Q And was your -- where were you doing the

5 present ministry?

6 A Beg your pardon?

7 Q Where were you doing the prison ministry?

8 A In the chapel.

9 Q Which prison?

10 A At Jean.

11 Q That's here in Clark County, Nevada?

12 A Uh-huh.

13 Q Did there come a time when you met Mike

14 Rippo, in that capacity?

15 A Yes, when he first came into the system down

16 there.

17 Q And do you remember when that was?

18 A I don't remember re- -- remember the exact

19 date. I believe it was in the early '80s though.

20 Q 1982?

21 A Right.

22 Q I'd like to show you Defense Exhibit L and

23 ask you if that's the Mike Rippo you remembered meeting back

24 in 1982?

1 A Yes, it is.

2 Q Did you remember something unusual about his

3 appearance when he first showed up there?

4 A Well, he looked like about an eighth grader.

5 Q Did he fit in with the present population?

6 A Yes, surprisingly.

7 Q And did he take any measures to try and do

8 that?

9 A Ah, well, early on, he shaved his head.

10 Q Was he trying to make himself look tougher?

11 A Probably.

12 Q Was he even shaving back then?

13 A I don't think so.

14 Q Now, did he also work with you in your job

15 at the prison?

16 A Yes, he did.

17 Q And what was the kind of work that he did?

18 A We train our men all the way around in

19 all -- all aspects of laundry and dry cleaning, pressing and

20 finishing garments.

21 Q Now, prisons are a very controlled society.

22 A Yes.

23 Q Were your prisoners always under

24 supervision?

1

1

A No.

2

Q Were there occasions when you had certain selected prisoners who had no supervision at all?

3

4

A Well, especially after 1982, when our chaplain left, because of budgetary problems in the state, the warden asked me to become the chaplain or take over the chaplain duties in addition to my job. I did that on a voluntary basis.

5

6

7

8

9

10

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12

13

And so we changed the schedule in the laundry, and we worked Monday through Thursday there and we closed Friday. But it necessitated the inmates working unsupervised from the time I left at about two o'clock in the afternoon until eight o'clock at night.

14

15

Q And was Mike Rippo one of the inmates that was left there unsupervised?

16

17

18

A Yes.

Q Did you ever have any reports of him causing any problems?

19

20

21

A Never.

Q Were you aware of him having problems or write-ups in the entire system while you were there?

22

23

24

A Not while I was there.

Q Now, you left in 1985; is that correct?

A Yes.

2

2

1 Q But you stayed in touch with Mike?

2 A He will call me from time to time and -- and
3 I continued on as a voluntary chaplain after I left; and
4 every day I was on the yard, Mike would always come visit
5 me.

6 Q You also got to know Mrs. Duncan, his
7 mother?

8 A Yes.

9 Q Was there a time when you became aware that
10 there was some officers giving Mike a hard time?

11 A Early on in his experience, yes.

12 Q What was that about?

13 A Ah, there are certain officers that believe
14 that it's their duty to punish -- to egg on certain inmates,
15 trying to make them spark.

16 Q And when they spark, they get in
17 disciplinary trouble?

18 A Uh-huh.

19 Q Did Mike ever spark and get in trouble?

20 A No. We had some discussions about it and I
21 just told him to hold his cool, and he did.

22 Q Now, you've been in touch with Mike
23 periodically for over 14 years now?

24 A Yes.

2 1 Q Do you know if he ever got involved in
2 anything like the Aryan Brotherhood?

3 A No.

4 Q That a pretty common thing for young people
5 to get involved in when they get in there, young white boys?

6 A In the prison system, many young inmates
7 gravitate towards the ones that they feel that can protect
8 them.

9 Q How often do you see someone in the prison
10 system for 10, 12 years that hasn't picked up any of the
11 tattoos?

12 A It's been my experience about 80 percent
13 have a tattoo within the first year.

14 Q Do the vast majority have them within a
15 couple of years?

16 A Yes.

17 Q Do you think that indicates anything?

18 A Yes.

19 Q What?

20 A A sense of belonging or wanting to show how
21 tough they are.

22 Q Do you know that Mike never picked up any
23 tattoos?

24 A No.

RENEE SILVAGGIO, CCR 122 391-0379

2 1 Q Did you know that?

2 A I didn't think he did.

3 Q Have you ever talked to him about --

4 obviously, religion? You were a chaplain, right?

5 A Yes.

6 Q Have you talked to Mike recently about it?

7 A Somewhat, yes.

8 Q Has he changed over the years?

9 A Yes.

10 Q Better or worse?

11 A Better.

12 Q In what ways?

13 A I believe he's reaching out more toward the

14 Lord.

15 Q And you've seen these changes in your

16 communications with him?

17 A Yes.

18 Q He's no longer located down south, is he?

19 A No.

20 Q But you stayed in touch?

21 A He's called me a few times from Ely.

22 Q And you stayed in touch with his family?

23 A Yes.

24 Q Now, you've got experience in the prison

RENEE SILVAGGIO, CCR 122 391-0379

2

1 system and you know Michael on an individual basis. You
2 supervised him in his work and you've been his minister.

3 Has he ever been a problem for
4 the system?

5 A No.

6 Q Do you think if he got life with or life
7 without the possibility of parole, he would be a problem for
8 the system?

9 A Not only would he not be a problem. I think
10 he'd be an asset to the institution.

11 Q Has he helped try and stabilize other people
12 and try and keep them out of trouble?

13 A Yes. And he'll get a job. He'll work a job
14 and stay out of trouble, and he wouldn't play those prison
15 games.

16 MR. DUNLEAVY: Thank you.

17 I have no further questions.

18 THE COURT: Cross-examination.

19

20

CROSS-EXAMINATION

21 BY MR. SEATON:

22 Q Good morning.

23 A Good morning.

24 Q You said that you met him in the early '80s

2

1 and that he looked young, but he fit in with the inmates; he
2 did things like shaving his head in order to look tough.

3 Is that fair?

4 A He did -- he did that when he first came out
5 of intake; and as it grew out, it grew out and -- actually,
6 by the time he went to work for me, he had a full head of
7 hair.

8 Q He was trying to adapt to a situation, an
9 environment?

10 A I don't call it adapting to an environment.

11 Q What do you call it?

12 A I call it going on a survival mode. I've
13 interviewed thousands and thousands of inmates. There is
14 something that happens the day that door slams behind them.

15 Q To all of them?

16 A Yes.

17 Q And they need to learn how to deal with
18 the -- with this new environment or, for some of them, the
19 old environment that they're going into; is that right?

20 A That's some of it, yes.

21 Q And they do it by acting tough, shaving
22 their head, doing whatever is necessary --

23 A Change their -- change their appearance to
24 look older or look tougher.

2 1 Q We've had testimony that while Mr. Rippe was
2 at Nevada State Prison, he worked out on the weights an
3 awful lot and became very muscular.

4 Do you remember him that way?

5 A He did some of that while he was in my
6 employ.

7 Q The testimony was even that -- and this is
8 by a prison guard --

9 A Un-huh.

10 Q -- even that he was so well respected on the
11 yard that he had his time on the weight machines or the
12 weights, whatever they are, and no one would bother him.

13 A That's not uncommon.

14 Q And that is something that happens out of
15 respect, perhaps even fear, for particular inmates; is that
16 true?

17 A It comes out of respect for someone carrying
18 a life sentence.

19 Q And fear?

20 A Not fear.

21 Q Not fear?

22 A Not necessarily fear.

23 Q Okay.

24 A It's respect for the life sentence.

3 1 Q Are you aware that while he was in prison,
2 Mike Rippa used drugs?

3 A I wasn't aware of it at the time.

4 Q Are you now?

5 A I am now.

6 Q And he did, didn't he?

7 A I could not swear to it.

8 Q But you've heard that he did.

9 A I've heard it.

10 Q We have letters in evidence here -- do you
11 want me to read you letters that he wrote indicating that he
12 was high on drugs, that he was asking for grams of drugs to
13 be brought into the prison for him?

14 MR. DUNLEAVY: Your Honor, that's not what
15 the letter says. The letter says he was asking for a gram;
16 maybe it was drugs, maybe it wasn't.

17 MR. SEATON: It might have been flour or
18 something like that.

19 BY MR. SEATON:

20 Q Will you accept that he was using drugs?

21 A I'll accept what Michael tells me.

22 Q Well, that may be the key.

23 You are here testifying before
24 this Jury --

3

1 A Yes.

2 Q -- trying to assist them in coming to some
3 sort of a penalty.

4 A Uh-huh.

5 Q That not true?

6 A Absolutely.

7 Q Your preference would be anything other than
8 the death penalty?

9 A Right.

10 Q You want Michael to get a life sentence
11 either with or without the possibility of parole.

12 A Preferably, yes.

13 Q And, preferably, life with the possibility
14 of parole?

15 A Uh-huh.

16 MR. SEATON: That a yes?

17 THE COURT: That a yes?

18 THE WITNESS: I would say yes.

19 BY MR. SEATON:

20 Q Are you aware that he got a life sentence
21 before --

22 A Yes.

23 Q -- with the possibility of parole?

24 A Yes.

3

1 Q And what did he do after they let him out on
2 parole?

3 A Immediately, you mean?

4 Q No, I mean the reason that we're here today.
5 He killed two women, didn't he?

6 A No.

7 Q Well, this jury said that he did.

8 A Well, they can be mistaken.

9 Q Are you disagreeing with their finding?

10 A Yes, I'm disagreeing with them.

11 Q You are here telling this group of 12
12 people, who made a verdict, that they were wrong?

13 A I am.

14 Q Are you aware that in prison, Michael was
15 found to have in his cell -- and he said that they were
16 his -- a nine inch knife, nunchuks -- do you know what
17 nunchuks are?

18 A Yes.

19 Q -- and a large crescent wrench that could be
20 used for escape purposes? Are you aware of that?

21 A Yes, I'm aware of that.

22 Q What do you think of that?

23 A Michael called me and told me --

24 Q After -- after he was caught?

3

1 A After -- Just before he was transferred
2 because of that.

3 Q Mr. Cooper, do you think there is any
4 possibility, just the slightest possibility, that this man
5 might be using you?

6 A No.

7 Q That you are a good and kindly man, you
8 believe in God, you believe in good things about people, and
9 that he knows that if he can impress you, you are going to
10 come into this courtroom and try and impress this jury?

11 A No, I do not believe that.

12 Q You don't think he's capable of that?

13 A No.

14 Q He wouldn't be that manipulative?

15 A He's never made that request. The only
16 request he's ever made is that I pray for him.

17 Q But he has called you since he's been up in
18 Ely; he's kept some contact --

19 A Yes.

20 Q -- telling you what's going on with his case
21 probably and --

22 A Most of it I get from his family, but I've
23 talked to Michael a few times.

24 Q How many times have you talked to Michael

3 1 since he was --

2 A Probably about -- probably about three since
3 he's be up in Ely.

4 Q Three times.

5 And based on those three
6 conversations, you're telling this jury that he has -- he
7 now has a strong belief in God?

8 A No. I did not say he had a strong belief in
9 God. I said he was reaching out.

10 Q He was reaching out?

11 A Yes. There is a difference.

12 Q Is he reaching out for God or is he reaching
13 out for his own protection?

14 A I believe he's truly reaching out for God
15 this time. There has been times in the past when I felt
16 that he would have reached out for protection, but Michael
17 is not that kind of person. He's not one of these inmates
18 or Jail house convertes for the purpose of getting an early
19 parole or anything like that. He never played that game.

20 Q And you don't think he's playing that game
21 now?

22 A No, I don't.

23 Q And you think he'll be an asset to the
24 prison population?

3
4
1 A He's an asset wherever he is.

2 Q A man who uses drugs in prison, a man who
3 shaves his head and tries and act tough, a man who gains
4 respect out in the yard so that he can use his own weights
5 when he wants to, a man who has nunchuks, pipe -- crescent
6 wrenches and knives -- or knife in his cell, that man can be
7 a -- an asset to the prison population; is that what you are
8 telling us?

9 A I believe he'll be an asset to any prison
10 population.

11 MR. SEATON: I don't have any more
12 questions.

13 THE COURT: Redirect?

14 MR. DUNLEAVY: No further questions.

15 THE COURT: Thank you, Mr. Cooper.

16 You are excused.

17 (Whereupon, the witness
18 was excused.)

19 THE COURT: Call your next witness.

20 MR. WOLFSON: Robert Duncan.

21 THE CLERK: Please remain standing and raise
22 your right hand.
23
24

1 Whereupon,

2 ROBERT DUNCAN

3 having been called as a witness by the Defendant and
4 having been first duly sworn to tell the truth, the
5 whole truth and nothing but the truth, was examined
6 and testified as follows:

7 THE CLERK: Thank you.

8 Please be seated.

9 Will you state your name and
10 spell it for the record, please.

11 THE WITNESS: My name is Robert Duncan,
12 D-u-n-c-a-n.

13
14 DIRECT EXAMINATION

15 BY MR. WOLFSON:

16 Q Mr. Duncan, what relationship are you to
17 Michael Rippo?

18 A I married his mother 12 years ago. I'm
19 technically his stepfather.

20 Q And what is his mother's name?

21 A Carol.

22 Q Do you remember the year that you married
23 Michael's mother Carol?

24 A Yes. It was April, 1984.

1 Q And have you lived with Michael's mother
2 continuously since you married her?

3 A Yes, I have.

4 Q Where have you lived since 1984, here in Las
5 Vegas?

6 A In Las Vegas, yes.

7 Q And what do you do for a living, sir?

8 A I've 24 years with the Clark County Road
9 Department as a heavy equipment operator.

10 Q Have you come to know Michael Rippo?

11 A Yes, I have.

12 Q And where is Michael? Do you see him seated
13 right next to me?

14 A Yes, blue sweater.

15 MR. WOLFSON: The record will reflect
16 identification of the defendant?

17 THE COURT: The record will so reflect.

18 BY MR. WOLFSON:

19 Q Mr. Duncan, when did you first meet Michael
20 and under what circumstances?

21 A I first met Michael right after his mother
22 and I were married, at Jean prison. We visited several
23 times out there.

24 Q After you married Carol, you went on visits

1 with Carol to see Michael in Jean?

2 A Yes, I did.

3 Q And where is the Jean prison? Is it in
4 Jean, Nevada?

5 A Jean, Nevada, yes.

6 Q And how far is Jean, Nevada from the Las
7 Vegas valley?

8 A Oh, about 30, 35 miles.

9 Q Do you recall how long Michael was in state
10 prison before his release?

11 A Just shy of eight years.

12 Q And during that eight years, did you have
13 occasion to visit Michael regularly?

14 A When he was in Jean and Indian Springs; but
15 I never did when he was transferred to Carson City.

16 Q And why was that?

17 A We have to work; travel problems.

18 Q How many years, though, of the almost eight
19 that he was in prison was he down in Southern Nevada so you
20 could visit him?

21 A There were quite a few occasions he was here
22 for different hearings.

23 Q But if I were to ask you, of the eight
24 years, how much of that time was he in Southern Nevada --

4

1 A Approximately four and a half to five years.

2 Q Okay. And during that four and a half or
3 five years, how many times did you go and visit Michael in
4 prison?

5 A I really can't remember. I would say five
6 or six times.

7 Q Okay. Did you ever have conversations with
8 him over the telephone during that period of time?

9 A Many times.

10 Q When Michael was released on parole, which I
11 believe was in 1989, where did Michael go live?

12 A Michael lived with his mother and I, in our
13 residence, for approximately nine to ten months.

14 Q Did he actually live in the house with you
15 and Michael's mother?

16 A Yes, he did.

17 Q Who else lived in the house with you during
18 that time period?

19 A Well, one of his sisters might have been
20 there for a short time, but it was primarily Michael, his
21 mother and I.

22 Q Did you get to know Michael even better
23 during that period of time because he was living in your
24 house?

4

1 A Yes, definitely.

2 Q Would it be fair to say you saw him on a
3 daily basis during that nine months or so?

4 A Yes, I did.

5 Q And the best of your recollection, this was
6 in the year 1989-1990 approximately?

7 A 199- -- late 1989 and '90.

8 Q Okay. So '89, '90?

9 A Yes, sir.

10 Q Tell us about Michael during that nine
11 months or so after he got out of prison.

12 What was he doing?

13 A Well, Michael held a lot of different jobs.
14 I have a list of places he worked that I knew of.

15 Q And did you bring this list so that your
16 memory could best serve this jury so you could be accurate?

17 A Yes, I did.

18 MR. WOLFSON: With the Court's permission,
19 could he look at his list so we could be most accurate?

20 THE COURT: Yes.

21 BY MR. WOLFSON:

22 Q Where did Michael work during this period of
23 time?

24 A His first job was at Triple A Aluminum Solar

5

5

1 Screen Company. Every Job Michael took, he -- he advanced
2 his salary or bettered his position.

3 He -- he worked for James Truss
4 and Lumber Company. He worked for Dehart Construction, when
5 they were remodeling and reconstructing Commercial Center.

6 He worked for Tri-K
7 Construction Company as a hod carrier at Cheyenne High
8 School; also remodeling a post office in Boulder City and
9 the North Las Vegas Air Terminal.

10 And after that -- he was
11 making, at that time, very good money, too, but that was
12 hard work in the hot summer. And I don't know if he run out
13 of work or what happened there, but he went to work for Las
14 Vegas Paving for a short amount of time; and then it was
15 Tommy's Maintenance.

16 Q And who owned Tommy's Maintenance?

17 A Tom Sims.

18 Q Was Michael employed full-time at these jobs
19 that he worked at?

20 A Yes, he was.

21 Q And you said that there was a reason why he
22 switched jobs.

23 What was the reason why he
24 switched jobs?

5

1 A Well, up until the very last there, it was
2 to -- to make more money and better his position, except for
3 the last.

4 Q Was Michael around the house quite a bit
5 during that nine months?

6 A Yes, he was.

7 Q Did he sleep home every night pretty much?

8 A Pretty much.

9 Q What was Michael like?

10 A Likable. We had a good relationship. We
11 talked freely, openly. I had certain ground rules for my
12 home about drugs, certain friends; but other than that,
13 Michael pretty much had the run of the house.

14 He overhauled a few car engines
15 in my garage. He -- he was good at everything he did. I
16 know that, you know, knowledgeable.

17 I never had any problems,
18 except small ones, like throwing my tools, oil, things like
19 that. I said just replace them; use them, fine, replace
20 them. That's normal. My own boys have done that.

21 Q Now, Michael's birthday is 1965.

22 So in 1989, he would have been
23 how old?

24 A Twenty-four, I believe, when he was out.

5 1 Q Did Michael have any girlfriends during that
2 period of time?

3 A Yes, he did; he had several. One of them, I
4 know he went with for at least a year and she became quite
5 common around the house.

6 Q What's her name?

7 A Christine.

8 Q And --

9 A And after he moved out of our home, he moved
10 in with her; and we spent time in her house -- or their --
11 their apartment as well, dinners. There were a lot of -- we
12 had -- almost all our holidays and everything were all at
13 our house. So we had the family -- and Christmas,
14 Thanksgiving, we had Christine along too and his other
15 girlfriends that he had.

16 Q Did he, to your knowledge, appear to have
17 good relationships with these girlfriends?

18 A Oh, yes; they thought that too.

19 Q Why did Michael move out of the house?

20 A I guess he wanted to be on his own. There
21 was a -- you know, he's a grown man. We felt like he didn't
22 receive what I thought he should when he got out of prison,
23 was a halfway house or counseling. I couldn't --

24 Q What do you mean by that?

5

1 A Well, I just couldn't believe they would
2 open the door after eight years on a young man and let him
3 out without some halfway house or counseling.

4 Q Are you saying that he went directly from
5 the state prison to your house without any kind of
6 transitional facility?

7 A Yes.

8 Q Okay. Did you ever meet his parole officer
9 right after he got out of prison?

10 A Yes, I did. One time, a parole officer came
11 by the house; wouldn't come in. We invited him in. My wife
12 and I are both Christians. We asked him to come in, check
13 the house, sit down and talk.

14 He said I live in Pahrump. I
15 have a heavy work case. I haven't got time. That was the
16 only time we saw him then in the nine months that Michael
17 lived there.

18 Q As you reflect back, do you think it would
19 have been beneficial to Michael if he had more supervision
20 and guidance from a parole officer at that time?

21 A I do, yes.

22 Q What type of capabilities do you believe
23 Michael has? And I'm talking about -- you've known Michael
24 since 1984; is that right?

5 1 A Yes.

2 Q So you've known Michael about 12 years;
3 isn't that right?

4 A That's right.

5 Q Based upon your knowledge of your stepson,
6 Michael Ripppo, who is seated right next to me, what type of
7 abilities, capabilities, talents, do you believe Michael
8 Ripppo has?

9 A Well, I know while he was incarcerated in
10 prison, we supplied him with a typewriter, computer
11 courses -- computer courses, and he did quite well; he
12 excelled in that.

13 I think Michael excelled in
14 everything he did that I saw, drawings, writings. Just like
15 I say, he -- he had never overhauled an engine before, but
16 he got out of prison, read the books, overhauled an engine.
17 I don't do that.

18 There was many things that he
19 did. Just like the jobs he -- he took on, he had no
20 problems. As a matter of fact, I knew several of the people
21 that employed him and he did quite well.

22 Q Mr. Duncan, this jury seated to your left
23 has got to make some very difficult decisions in the next
24 few hours.

6

1 Do you have anything to say to
2 them regarding their difficult decision about Michael?

3 A Yes.

4 Q Would you, please.

5 A Well, for one thing, I -- I can't even
6 follow my own notes -- but I believe Michael didn't get the
7 help he needed when he was incarcerated. I know it for
8 myself. I'm a 57 year old man, and at 15, I couldn't
9 imagine being certified as an adult. But I know that was a
10 different time, and today is a different time, and things
11 change, people change, and our society has changed a lot.

12 I know for myself, I
13 couldn't -- I couldn't -- I don't think I could have
14 survived in a -- in that environment. I always thought I
15 was pretty worldly at that time.

16 I think Michael has a lot to
17 offer, even in the prison system. He was found guilty by
18 this jury, but he still -- he still has our support and our
19 love. And I know what this -- how this has affected our
20 family, too, and his mother.

21 Michael has shown me remorse
22 for his first offense that he was incarcerated for and
23 even -- even to the victims in this, even though he denies
24 he did it -- but he still shows remorse, feeling bad about

6 1 what happened. I know this hasn't been portrayed, but it
2 has to me and his mother.

3 As far as the Lizzi and
4 Jacobson families, I -- I feel sorrow and compassion.
5 Nobody deserves to die like those girls did.

6 It's a pain that only someone
7 that is suffering it can know. I don't know that pain, but
8 I feel like there is -- we're victims; Michael's family,
9 we're victims also. No one knows our pain and what we've
10 been through. It's been four years.

11 His mother is under heavy
12 medication and doctor's care. We worry about her health
13 continually. It's been a heavy financial burden on us, but
14 yet we have a greater source, and that's our father in
15 Heaven. We've been -- we've also been subjected to
16 ridicule, a lot of remarks, a lot of vulgar gestures, even
17 in this courtroom, over the last four years; and I think
18 that would be hard for anybody.

19 I know that Michael, during
20 this time, confesses recently to knowing the Lord, Jesus
21 Christ. I really can't speak where a man's heart is, only
22 that man and God -- the Book of James says this life on this
23 earth is but a vapor; even if we live to be George Burns'
24 age, it's a vapor. Eternity is everlasting.

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6 1 I support Michael. I believe
2 in him and I love him, even though this Jury has found him
3 guilty.

4 MR. WOLFSON: Thank you very much, Mr.
5 Duncan.

6 THE COURT: Just a minute. The State has
7 the right to ask you some questions.

8 All right.

9
10 CROSS-EXAMINATION

11 BY MR. HARMON:

12 Q Mr. Duncan, we've had evidence that your
13 stepson was paroled on October the 24th, 1989.

14 How long did he live in your
15 house until he went out on his own?

16 A He was in our house, I think it was, July or
17 August of 1990. He was free to come and go. You know,
18 he -- but he was -- I'm sorry.

19 Q I understand that. I just wanted to know
20 how long he actually lived in your family home.

21 A Until --

22 Q So it would have been from October the 24th,
23 '89 until July or August 1990?

24 A Or early August, yes.

7 1 Q You mentioned various places that Mr. Rippe
2 worked after his parole.

3 A Yes.

4 Q I'm just curious to know how long he worked
5 at those different businesses.

6 You mentioned Triple A -- what
7 was it? -- Aluminum?

8 A Triple A Aluminum.

9 Q How long did he work there, sir?

10 A That was a short time. His mother worked
11 for Triple A Aluminum at the time and the owner was a good
12 friend of ours. He had to have a job on parole. They gave
13 him a job. I really don't know how long he had that job. I
14 know it was only for maybe a short span of time, a month or
15 so.

16 Q A month or so.

17 A At that -- at that job, yes.

18 Q You've also mentioned -- did you say James
19 Truss and Lumber?

20 A Yes, I did.

21 Q How long did he work there?

22 A I would say -- I've written this down years
23 ago, but it's hard to say. I know -- I think he worked
24 there a short amount of time too, but it was probably longer

7

1 than Triple A.

2 Q You mentioned a construction company,
3 Dehart -- was it? -- Construction?

4 A Dehart Construction, yes.

5 Q How long there, sir?

6 A My recollection, for the length -- I don't
7 know. I know he worked for Dehart prior to working for --
8 for Tri-K, which was his longer employment. That was
9 probably several months too.

10 Q Where was it he worked as a hod carrier?

11 A For Tri-K Construction.

12 Q Approximately how long would you estimate,
13 Mr. Duncan, your stepson worked at Tri-K?

14 A Well, I know between the Dehart and Tri-K,
15 it was probably way in excess -- the better part of a year,
16 I believe. Maybe --

17 Q Steady employment, sir?

18 A Yes.

19 Q Five days a week, eight hour shifts?

20 A Mostly, that I remember, yes.

21 Q It seems to me you mentioned something about
22 working at the site at Boulder High School --

23 A No.

24 Q -- or did I misunderstand?

7

1 A No, it was the Cheyenne High School.

2 Q Cheyenne High School. Was he working for --
3 what firm was he working with when he was there?

4 A That was Tri-K Construction.

5 Q That was also Tri-K.

6 When he worked at the North Las
7 Vegas Air Terminal, was that still with Tri-K?

8 A I believe that was Tri-K Construction too,
9 yes, sir.

10 Q Now, you said he worked at Las Vegas Paving.

11 A Well, he also worked on a -- for Tri-K in
12 Boulder City. I think it was their post office there.
13 And -- and, yes, he was -- an exposition was in Las Vegas
14 Paving, which I think he only spent a few months there.

15 Q Do you remember where Mr. Rippe was working
16 when he moved out of your family home in July or August
17 1990?

18 A I believe he was -- it was Tri-K
19 Construction at that time.

20 Q Are you familiar with his work pattern after
21 he moved away from the house?

22 A Ah, to some degree. I -- I had no more
23 control over the movements then, but Michael came by the
24 house a lot. He came by his aunt's, sister's a lot. He --

7 1 we had contact.

2 Michael was -- to our
3 knowledge, he had no trouble at that time. He -- he was
4 making very good money, 15 to 17.50 an hour, as a hod
5 carrier, which I don't know if you are familiar with that,
6 but --

7 Q Did you know whether he was involved in
8 using drugs during this time frame before or after he moved
9 out of the house?

10 A Not to my knowledge. That was one of my
11 rules at home was if we ever found any, if there ever was
12 any, that was it. And, to my knowledge, I never suspected
13 him that he did.

14 Q You mentioned that he was making good money.
15 Do you know if he had a
16 gambling problem?

17 A I don't believe he did while he lived at our
18 house, that I know of, 'cause he seemed to be trying to get
19 on his feet, purchase things that he wanted, the cars, the
20 things that he worked on.

21 Q Do you know if he developed a gambling
22 problem after he left the house?

23 A I knew he started to gamble some. I didn't
24 know it had become -- or was a problem at that time.

MR. HARMON: Thank you.

That's all, Your Honor.

THE COURT: Anything else?

MR. WOLFSON: No.

THE COURT: Thank you, Mr. Duncan.

(Whereupon, the witness
was excused.)

THE COURT: Call your next witness.

MR. WOLFSON: Stacie Rotterdam

Whereupon,

STACIE ROTTERDAM

having been called as a witness by the Defendant and
having been first duly sworn to tell the truth, the
whole truth and nothing but the truth, was examined
and testified as follows:

THE CLERK: Thank you.

Please be seated.

Will you state your name and
spell it for the record, please.

THE WITNESS: Stacie Rotterdam; S-t-a-c-i-e,
R-o-t-t-e-r-d-a-m.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. WOLFSON:

Q Good morning, Stacie.

A Hi.

Q Stacie, what relationship is Michael to you?

A He's my brother.

Q And how old are you?

A I'm 26.

Q You're five years younger than Michael?

A That's correct.

Q Stacie, where were you born and where did you spend the first years of your life?

A I was born in Long Island, New York; and we moved out here when I was four.

Q So you lived in New York for the first four years of your life, and then the family moved out to Las Vegas?

A Yes.

Q Are you married, Stacie?

A Currently going through a divorce.

Q Do you have a child?

A I have two.

Q Okay. What are their names and what are their ages?

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1 A My daughter **Bandron is seven, and my son,
2 Nathaniel, is four.

3 Q Do you live here in Las Vegas, Stacie?

4 A Yes, I do.

5 Q Growing up over the years, you lived -- you
6 lived in the household with your mother and Michael and who
7 else?

8 A My sister.

9 Q Okay. And what's your other sister's name?

10 A Carol Anne.

11 Q What is your natural father's name?

12 A His full name?

13 Q Yes.

14 A Domiano Lenardo Campanelli.

15 Q Did you ever know your natural father?

16 A I met up with him in -- I was about 12,
17 right after my dad had died and -- or between 12 and 14.
18 And then I went to live with him for about a year, from 14
19 to 15.

20 Q Now, you just mentioned that you met up with
21 your natural father when you were 12, I think you said,
22 about when your dad died.

23 A Right.

24 Q Are you talking about your stepfather dying?

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1 A Right.

2 Q What was your stepfather's name?

3 A James Anzini.

4 Q And is that the person that you and Michael
5 looked up to and were raised by during your younger years?

6 A Right.

7 Q Could you tell us about growing up around
8 the house with Michael during those first years, up until
9 about the age of 15 or 16, what was Michael like.

10 A My brother was always the family clown.
11 Whenever one of us were down or something was going on in
12 the house, he was always there to make us laugh. He didn't
13 take things really hard. He took them light. He was always
14 encouraging.

15 When my mom and dad would fight
16 or we would wake up to hear them fight, my brother would
17 comfort my sister and myself and he would bring us in his
18 room and tell us it was okay.

19 And encourage me in school; he
20 never wanted me to give up. Encouraged me in math; I had a
21 problem in math and my brother was always encouraging me to
22 do better and just keep going and --

23 Q Was he a good brother to you?

24 A He was a great brother.

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1 Q Tell the jury about the man that -- the
2 father figure in your life, whose name was Jim.

3 How was he around the house?

4 A My dad was a compulsive gambler and there
5 were times when we had -- and there were times when he had
6 nothing. He would take our allowance or he would take my
7 brother's paycheck and, ah, tell him he'd pay him back when
8 he won the money and he wouldn't win the money back.

9 My mom had to work a lot of
10 hours to make sure that we had food and a roof over our head
11 because of my dad's gambling.

12 Q So your father would take Michael's
13 paycheck?

14 A Right.

15 Q And what would he do with it?

16 A He'd gamble it. And he used to take our
17 allowance and gamble our allowance.

18 Q How was your father -- or actually Michael's
19 stepfather Jim -- towards Michael?

20 A Um, my dad was always very hard on my
21 brother. I don't know if it was because of his height, but
22 he was always pushing him and telling him that he's never
23 going to amount to nothing. Me and my -- I mean, my dad
24 loved us, but he was very hard on us.

8 1 He told him that he would never
2 be anything, and when he'd get in his moods, he would
3 degrade women in front of my brother and tell him that women
4 were no good; and just wasn't very encouraging to my
5 brother.

6 Q The man we're talking about, Jim, what is
7 his last name?

8 A Anzini.

9 Q He has since passed away, has he not?

10 A Right.

11 Q Robert Duncan, the man that just testified,
12 then, is Michael's second stepfather; is that right?

13 A Right.

14 Q After Michael went to prison -- and spent
15 approximately eight years in prison -- did you visit Michael
16 in prison?

17 A Yes. We went and saw him every Sunday.

18 Q When you say we, who are you talking about?

19 A My mother and my sister and myself.

20 Q If I were to ask you how many times you
21 visited Michael in prison, physically visited him, how many
22 would you say it was?

23 A Um, we went and saw him, I don't know, over
24 a hundred times.

9 1 Q After Michael got out of prison, in 1989 or
2 so, did you have a relationship with Michael?

3 A Yes, I did.

4 Q Tell us about your relationship with
5 Michael.

6 A My brother and myself would go out -- would
7 either go dancing or we'd go to dinner. When I got married,
8 he gave me away. When he was involved with them -- his
9 girlfriend, they were engaged for a while and --

10 Q Which girlfriend was this?

11 A Christine.

12 -- we used to go over to their
13 house and have dinner with them and we'd play games; and he
14 was always really good with my kids.

15 Q Did Michael spend time around your kids?

16 A A lot, yeah.

17 Q These are his niece and nephew?

18 A Right.

19 When I had my son -- he was at
20 the hospital when I had him.

21 Q He came to visit you, you mean, when you
22 were at the hospital when you had your son?

23 A Right. He came about a half an hour after
24 visiting hours were over and told them he wasn't leaving

9 1 until he got to see his sister and his nephew.

2 Um, when I was living with my
3 daughter, we were living by ourselves and we didn't have a
4 lot of money, and my brother went out and bought us a
5 Christmas tree and made sure that my daughter and I had a
6 good Christmas.

7 Q How is Michael as an uncle to your children?

8 A He's always been encouraging. My daughter
9 has a nervous disorder and my brother was always encouraging
10 to her. No matter what we were going through, my brother
11 could make us laugh; and my kids, going through the divorce
12 that my daughter had to go through, he was just very
13 uplifting. I mean, he would never let me be down when he'd
14 come over to my house.

15 Q Since Michael's incarceration this time
16 around, which has been about four years, have you had
17 contact with Michael?

18 A Yes, I have.

19 Q What kind of contact have you had with him?

20 A When he was in Indian Springs, we went and
21 saw him. We talked to him on the phone when they brought
22 him down here for different court matters and we went and
23 visited him.

24 Q What is your relationship with Michael now?

9

1 A Um --

2 Q How would you describe it?

3 A As far as the conversations and stuff?

4 Q Just, in general, how do you feel about your
5 brother now?

6 A I look up to my brother still. I'm very
7 proud of him. I believe when he was 15, he wasn't treated
8 fair, wasn't given a chance. Because of the circumstances,
9 my mom lost her husband and her son in the same year.

10 Ah -- I believe in him and I
11 support him 100 percent. I used to leave him with my
12 children when he got out the last time, and I'd leave him
13 with my kids now. My kids are my life.

14 Q You would trust him with your kids?

15 A One hundred percent.

16 Q Michael is going to go to prison for a long
17 period of time. This jury has to make a difficult decision,
18 as you heard me say just a few minutes ago.

19 Do you feel that your brother
20 can be a contributing person to this society if this jury
21 allows him to live?

22 A Yes, I do.

23 Q Why?

24 A I know that he received diplomas or degrees

9

1 in prison. Um, we had spoken to someone that said he had a
2 genius IQ. My brother has always been intelligent. I know
3 he's always gotten good grades. I was proud to know when I
4 went to Western that I was his sister because of the
5 reputation that he had.

6 Q What do you mean; what reputation?

7 A As far as his brains and he was just -- he
8 had a great personality. And I'd always wanted to emulate
9 my brother, as far as his personality, to be, you know,
10 cheerful and to help people and --

11 Q Now, Stacie, you know what crime he went to
12 prison for when he was 15, do you not?

13 A Yes, I do.

14 Q And you know what crime this jury has
15 convicted him of, don't you?

16 A Yes, I do.

17 Q In fact, this jury has convicted him of more
18 than one crime; and you are familiar with those crimes,
19 aren't you?

20 A Yes, I am.

21 Q Do you have anything to say to this jury as
22 to why they should spare your brother's life?

23 A Do I have to look at them?

24 I mean, it's hard for me to --

10

10

1 Q Do what you feel is comfortable, Stacie.

2 A Okay. I just don't feel that my brother was
3 given a fair chance when he was 15.

4 I went through my rebellious
5 time when I was a teen-ager, and I -- I know you can't blame
6 anybody for your problems. You have to look at the parents
7 involved, and I don't feel that my dad was very encouraging
8 to him, myself or my sister.

9 For the situation that he went
10 through when he was 15, I don't condone what he did. I
11 don't believe that my brother was given a fair chance at
12 that time and I just feel that he was a victim of
13 circumstances this time.

14 I feel bad for the family of
15 the victims because I'm a mother and I know that my kids are
16 my life, and when you take a baby that I've given birth
17 to -- I try to put myself in both their situations and it
18 would rip my heart out if something was to happen to my
19 kids.

20 But it would rip my heart out
21 if something was to happen to my brother as well, and I just
22 think that he deserves a chance. And I can't make excuses
23 for things that we do. I know a lot of your upbringing
24 directs your life, and I think, given the situation -- had

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1 my dad not been dying, maybe he would have gotten the help
2 he needed, but it was easier for my family just to give him
3 to the court and let them handle it because of my father.

4 I just think that he deserves a
5 chance.

6 MR. WOLFSON: Thank you, Stacie.

7 Your indulgence for just one
8 moment.

9 (Whereupon, as requested by
10 counsel, Defendant's Exhibits
M, N, O, P, Q and R were
marked for identification.)

11 MR. WOLFSON: May I approach the witness,
12 Your Honor?

13 THE COURT: You may.

14 MR. WOLFSON: Stacie, I'm going to show you
15 a group of photos --

16 Miss Clark, are these Defense
17 proposed -- I can't read your writing.

18 THE COURT: What are they marked as?

19 THE CLERK: Okay. I think the letters are
20 what --

21 MR. WOLFSON: The letters are what --

22 THE CLERK: M, N, O, P, Q, R.

23 BY MR. WOLFSON:

24 Q Showing you what's been marked as five

10 1 photographs, M, N, O, P, Q and R, would you take just a
2 minute to look at those photographs and tell me if you
3 collectively recognize what is shown in the photographs?

4 A It's my brother.

5 Q Okay. Please speak up.

6 Would you pick them up
7 individually and look at the back and identify it by letter,
8 please.

9 Is that letter M as in Mary?

10 A Yes.

11 Q What is that a photograph of?

12 A My brother in -- I guess he was about 15 or
13 16.

14 Q Okay. And does that photograph fairly and
15 accurately show Michael at that time?

16 A Yes, it does.

17 Q Okay. The next photograph, that's proposed
18 N, as in Nancy --

19 A Right.

20 Q -- what is that a photograph of?

21 A My brother and -- my brother and myself when
22 he was incarcerated in the Jean prison.

23 Q If I were to ask you about what year that
24 is, what year would you say that is?

10 1 A 1982.

2 Q Does that photograph fairly and accurately
3 show you and your mother and Michael back in 1982?

4 A Yes, it does.

5 Q And the next photograph, please. The letter
6 on the back is O?

7 A O.

8 Q What is that a photograph of?

9 A My mother and my brother at Jean prison.

10 Q Okay. Does that photograph fairly and
11 accurately depict your mother and your brother as they
12 looked back then?

13 A Yes, it does.

14 MR. WOLFSON: The next photograph, please.

15 THE COURT: Excuse me, counsel.

16 For the record, those exhibits
17 have been mismarked. Why don't you give them back to the
18 clerk and let her remark them.

19 MR. WOLFSON: Okay.

20 We changed one photograph, Your
21 Honor.

22 THE COURT: So the ones you've gone over
23 have been correctly stated on the record?

24 THE CLERK: No, M has changed --

10

1 THE COURT: M was changed to R?

2 MR. WOLFSON: Yes.

3 THE COURT: So why don't you go over M
4 again, which is now R.

5 BY MR. WOLFSON:

6 Q The photograph which is now marked proposed
7 R, what is that a photograph of?

8 A My brother when he was about 15.

9 Q Okay. And does that photograph fairly and
10 accurately show Michael at the age of 15?

11 A Yes, it does.

12 Q Okay. I think this is the only one you
13 haven't talked about. This is proposed Q.

14 Who is in that photograph?

15 A My brother and my father.

16 Q And about what year would that be a
17 photograph showing?

18 A Ah, that was right before my dad died, so --
19 I don't know, like, '82.

20 Q Okay. So approximately 1982?

21 A Uh-huh.

22 Q And that is a photograph of Michael with
23 your father, whose name is Jim Anzini?

24 A Right.

11

1 Q And does that photograph fairly and
2 accurately show Michael and Mr. Anzini as they looked, back
3 in 1982?

4 A Yes, it does.

5 Q This is the gentleman who died of cancer, I
6 believe.

7 A Right.

8 Q And this is the stepfather who -- these are
9 my choice of words -- perhaps didn't give as much guidance
10 to Michael as you would have liked.

11 A Right.

12 MR. WOLFSON: Move for their admission.

13 MR. SEATON: No objection.

14 THE COURT: They will be admitted.

15 Did you talk about P; is there
16 a P there?

17 MR. DUNLEAVY: I think it was changed to U.

18 MR. WOLFSON: No, she only changed one.

19 THE COURT: I don't know if you talked about
20 it.

21 MR. WOLFSON: Okay. Very well, I thought I
22 did.

23 BY MR. WOLFSON:

24 Q Showing you what's marked as Exhibit P, who

1 is that a picture of?

2 A My brother when he was about two.

3 Q He was two in that picture; you were
4 negative three?

5 A Right.

6 Q Okay. But over the years, have you learned
7 that that is a picture of your brother; and, to your
8 knowledge, does that picture fairly and accurately show
9 Michael as he would have looked at the age of two?

10 A Yes, it does.

11 MR. WOLFSON: Move for their admission.

12 MR. SEATON: No objection.

13 THE COURT: They will be admitted.

14 (Whereupon, Defendant's
15 Exhibits M, N, O, P, Q
16 and R were admitted into
evidence.)

17 BY MR. WOLFSON:

18 Q Stacie, if this Jury determines the
19 appropriate sentence for your brother as life imprisonment
20 with or without the possibility of parole, would you
21 continue to visit Michael?

22 A Of course. He's my brother.

23 Q Would you bring your children to visit
24 Michael?

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A Without a doubt.

MR. WOLFSON: Thank you.

That concludes my examination.

THE COURT: Cross-examination?

MR. SEATON: No cross, Judge.

THE COURT: Thank you very much, Stacie.

You are excused.

(Whereupon, the witness
was excused.)

THE COURT: Would you hand me those
pictures?

MR. WOLFSON: May we take a five-minute
recess?

THE COURT: All right. Remember: Do not
converse among yourselves or with anyone else on any subject
connected with this trial;

Read, watch or listen to any
report or commentary on the trial by any medium of
information; or

Form or express any opinion on
this case until the matter is finally submitted to you.
Take a short recess.

(Whereupon, a recess was had in
the proceedings, at the
conclusion of which the

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following was had:)

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(The following proceedings were
had in open court outside the
presence of the Jury:)

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5

THE COURT: Let the record reflect we're

6

outside the presence of the Jury.

7

Who asked for the matter

8

outside the presence?

9

MR. DUNLEAVY: We thought this would be the

10

best time to have you admonish the client about his right to

11

testify and allocution and so forth.

12

THE COURT: All right. Mr. Rippe, you

13

understand you have a right to testify under oath, which, at

14

that time, you would be subject to cross-examination by the

15

State.

16

THE DEFENDANT: What would I be subject to

17

cross-examination about?

18

THE COURT: About anything you testify to.

19

THE DEFENDANT: Anything I say in particular

20

they could cross-examine me about?

21

THE COURT: That's right.

22

THE DEFENDANT: If I were to make a comment

23

about anything that happened in the guilt phase and then --

24

THE COURT: And then it opens the door.

1 THE DEFENDANT: If I were to refrain from --

2 MR. WOLFSON: Wait, wait.

3 THE DEFENDANT: Excuse me.

4 MR. WOLFSON: His question is this, Judge --
5 and we had a question about this yesterday, and I think it's
6 appropriate to bring it up -- and, that is: That if Michael
7 testifies under oath, but nothing is mentioned about the
8 guilt phase, we do not ask him any questions concerning the
9 guilt phase, can the prosecution cross-examine him on
10 anything to do with the guilt phase?

11 And to be perfectly frank, I
12 asked both prosecutors, and they each had a different
13 opinion.

14 MR. HARMON: Well, Your Honor, I think the
15 rule is we're always limited to the scope, but Mr. Ripppo
16 could offer some comment about his status of being guilty or
17 not guilty, it might be that he could --

18 THE COURT: That may be opening the door --

19 MR. HARMON: That would obviously open the
20 door, regardless of whether he had directly commented about
21 February the 18th, 1992. So that's our position.

22 THE COURT: Do you understand that?

23 THE DEFENDANT: Yeah.

24 THE COURT: So that's why you have the

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11 1 option of testifying under oath and being subject to
2 cross-examination.

3 Or the other option is
4 allocution, making an unsworn statement --

5 THE DEFENDANT: So if I made no comments --

6 THE COURT: -- where you would not be
7 subject to cross-examination by the State.

8 THE DEFENDANT: If I took the stand and made
9 no comments to the guilt phase or my innocence or guilt
10 or --

11 THE COURT: Well, you may inadvertently do
12 so.

13 THE DEFENDANT: Yeah, I know it.

14 THE COURT: And you know what the problem
15 is, and that would open up the whole door to the State to
16 get into everything in the guilt phase.

17 (Whereupon, a sotto voce at
this time.)

12 18 THE COURT: Have you discussed this with
19 your attorneys?

20 THE DEFENDANT: Yes.

21 THE COURT: And what is your desire at this
22 time?

23 MR. WOLFSON: I think he's going to think
24 about it.

12 1 Do we need him to voice his
2 answer now?

3 MR. SEATON: No. But I'd like to make one
4 other thing a little more clear for the record.

5 THE COURT: Okay.

6 MR. SEATON: It wouldn't just be an allusion
7 to his lack of guilt or his innocence that may give rise to
8 our ability to cross-examine him about things having to do
9 with the guilt phase or the crimes that he has committed.

10 There is a wide variation of
11 things that this defendant might say, and he should be -- he
12 should know here and now very clearly that -- how closely
13 we'll be listening to his every word.

14 There are a lot of ways for
15 that door to come open, and if it comes open in any fashion,
16 we are going to step into it.

17 THE COURT: Do you understand what he said?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Okay.

20 MR. WOLFSON: I think what we'd prefer to
21 do, Your Honor, is proceed with the evidence, and let
22 Michael think about it for just a few more minutes. He's
23 been thinking about it for four years, let alone the last
24 couple of days, and we'll announce our decision --

12

1

THE COURT: So do you have other witnesses

2

to call?

3

MR. WOLFSON: No other witnesses. Pursuant

4

to stipulation, I'm going to be reading something into the

5

record before the Jury.

6

THE COURT: Oh, okay.

7

MR. HARMON: Your Honor, this is probably

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clear to the defense and to Mr. Riapo, in particular, but I

9

think that we need to make sure he understands if he elects

10

to exercise his right of allocution, and to make an unsworn

11

statement, he must understand that that is essentially a

12

plea for mercy.

13

He must understand that he is

14

not at that time to protest that he is not guilty, because

15

if he does that, then that opens this up to where he would

16

be subject to various sanctions, including comment to the

17

Jury in argument and, of course, cross-examination.

18

MR. DUNLEAVY: Both Mr. Wolfson and I have

19

advised him of this.

20

THE COURT: Your allocution would just be

21

confined to --

22

THE DEFENDANT: Can you read it if you want?

23

THE COURT: -- to your plea for --

24

THE DEFENDANT: Mercy.

12 1 THE COURT: Not for mercy or the other two
2 forms of punishment other than the death sentence.

3 I haven't read it, so I don't
4 know what's in there.

5 I believe that your attorneys
6 have read it and are satisfied that it meets those standards
7 so the door will not be open for cross-examination.

8 MR. WOLFSON: Well, to be perfectly frank, I
9 read it quickly. I didn't read every word, but I will
10 before he -- if he intends to read it.

11 THE COURT: I think you should before he
12 reads it.

13 MR. WOLFSON: I will.

14 THE COURT: Okay. Could we bring the jury
15 in?

16 MR. WOLFSON: Yes.

17 (The following proceedings
18 were had in open court in
the presence of the jury:)

19 THE COURT: Counsel stipulate to the
20 presence of the jury?

21 MR. SEATON: Yes.

22 MR. DUNLEAVY: Yes, Your Honor.

23 THE COURT: Mr. Wolfson.

24 MR. WOLFSON: Thank you.

12 1 Judge, pursuant to stipulation
2 between the parties, I would like to read two things to this
3 jury.

4 The first thing I'm going to
5 read is a letter from a doctor concerning the health of
6 Carol Duncan, and I believe the evidence is that Carol
7 Duncan is Michael's mother.

8 The second thing I'm going to
9 read to the jury is a letter from Carol Duncan.

10 To Whom It May Concern: Carol
11 is a patient of mine, who has been treated for
12 acute anxiety reaction. She is a **label
13 hypertensive. She suffers from intermittent
14 depression. It is against medical advice, as it
15 would be harmful to her medically, to testify in
16 any matter concerning the trial that is under way
17 at the present time.

18 I have finally controlled her
19 anxiety depression, which has been an intermittent
20 problem over the last three years, due to this
21 trial.

22 I have strongly advised her
23 against any public appearance or testifying on
24 behalf of this trial.

1 If you have any questions about
2 this matter, don't hesitate to call.

3 Sincerely, initial C, Dean
4 Milne, M-i-l-n-e, D.O.

5 That's a letter from Dr. Milne.
6 These are the words of Carol

7 Duncan:

8 My hope is to acquaint you with
9 Michael Rippo, my son, the person, the person we
10 have not seen yet in this courtroom.

11 Michael's biological father
12 abandoned us when he was five years old. His
13 father had become an alcoholic and never honored
14 his responsibilities from that time on.

15 We had a large Italian family
16 of cousins, aunts, uncles and grandparents. So it
17 helped buffer the break up and provide love and
18 support.

19 Michael was an outgoing,
20 carefree spirit. He was an inquisitive child and
21 was always trying to see how things worked.

22 He treated his sisters in a
23 loving, tender fashion. He loved animals. When
24 our dog had puppies, he would try and get in the

13 1 box with them and kiss and hold them. There was a
2 squirrel that would come up to our back door every
3 day and Michael would feed it peanut butter on a
4 spoon.

5 Michael was in the Scouts and
6 he interacted well with his peers. There came a
7 time when our house had to be sold and Mike, his
8 sisters and I went to live with my parents for a
9 year. During this period, we gained a stepdad and
10 then moved to Las Vegas.

11 Michael very rarely had to be
12 disciplined and he was enjoyable to be around. We
13 were very pleased with Michael and truly liked him.

14 He frequently teased his
15 sisters, as all brothers do, and was very
16 protective of them.

17 Michael was never a selfish
18 give me person, and always would attempt to take
19 the responsibility for his peers' infractions of
20 the rules. He was and still does try and pick you
21 up when you are down.

22 As time went on, we noticed he
23 was becoming increasingly concerned with his
24 height. We tried to convince him that would not

13 1 prevent him from achieving most goals. He always
2 did very well scholastically at any job he had,
3 socially and at home.

4 Our family was far from being
5 like Ozzie and Harriet. We had our share of
6 problems to deal with. For the most part, my
7 husband made his living by gambling and we moved
8 frequently.

9 This is not conducive to a
10 stable environment. Financially, there was feast
11 or famine. Michael had a paper route and
12 eventually got a job with the public library. And
13 his dad would talk him into lending him the money
14 from his paycheck with the promise of an increase
15 on return. I could see Michael was not that
16 thrilled with that, and rightfully so.

17 He was consistently working on
18 things. He had about five bicycles that he would
19 interchange parts as needed and ride from the west
20 side of town to the east to spend time with his
21 friends.

22 He frequently wrote comical
23 notes to us and left them in different locations.
24 I remember one day, he told my husband and myself,

13 1 quote, you know, out of all my friends, you and dad
2 are the only people that are not divorced, unquote.

3 We asked him how he felt about
4 that and he seemed pleased that we were an intact
5 family. In February, 1991, the problems began to
6 surface --

7 MR. SEATON: '81.

8 MR. WOLFSON: In February, 1981, problems
9 began to surface with Michael. He would find fault
10 with his stepfather and become argumentative and we
11 thought it was the normal pattern for a 15 year
12 old.

13 Michael had run away and I
14 eventually located him staying at the apartment of
15 his friend John Stevenson and his single male
16 parent, who was suspected by the police of being
17 the front for the stolen goods that the boys were
18 stealing.

19 I contacted the police and we
20 met at the Stevenson apartment and took Michael to
21 Juvenile hall.

22 We were very upset in this
23 change of behavior in Michael, and I requested that
24 he be sent to Spring Mountain Youth Camp, despite

13 1 the fact that the Juvenile probation officer
2 recommended a suspended sentence and probation. I
3 sincerely believed that this decision would be for
4 Michael's benefit. Any inference to the contrary
5 would be narrow minded.

6 I loved Michael and wanted to
7 protect him, hoping this hormonal upheaval
8 teenagers are infamous for would pass. I believed
9 he was a storehouse of emotions only, not a mental
10 case.

11 We visited him every weekend
12 and felt that the facility was merely a place of
13 detainment, rather than of constructive guidance or
14 counseling, as we were led to believe.

15 He was released after three
16 months and 25 days. It appeared more for the sake
14 of making room for others than they -- that -- that
17 they believed he had been aided or ready to go into
18 a constructive future.
19

20 Looking back, we felt we
21 introduced him to a life he had not been exposed to
22 before, possibly leaving him feeling abandoned by
23 his family.

24 While Michael was at Spring

14 1 Mountain, we learned that his stepdad Jim had
2 terminal cancer and was given ten months to live.
3 This diagnosis explained why Jim's personality had
4 been changing over a period of time and caused him
5 to lose his temper and become irritable over things
6 a well person wouldn't give much thought to,
7 thereby causing a stressful environment in our
8 home.

9 Our dog, lapping his water,
10 would make my husband cringe and get upset, whereas
11 we never noticed that sound before, and every time
12 the dog went for a drink, I would become tense,
13 knowing what was coming.

14 Michael's emotional reaction to
15 this was one of numbness, which I have since
16 learned is a protective mechanism to pain and
17 shock.

18 We had moved to another house
19 while Michael was away, and when we brought him
20 home, he began to show signs of improvement. He
21 got a job at Wendy's and went to Western High
22 School.

23 Looking over old school records
24 and employer statements, there was nothing but

14

1 praise for him on every document.

2 During this time, we went
3 through cancer surgeries, chemotherapy, and
4 radiation treatments. I worked to support the five
5 of us so there was little time for much else.

6 Michael had expressed to me
7 that it was his fault that Jim had cancer. He had
8 a difficult time dealing with the suffering that
9 was going on. The illness was so severe that
10 Michael seemed to be falling into more confusion
11 and depression. He often expressed feelings of
12 very low self esteem.

13 Our self absorption with this
14 illness tangled our communication lines with
15 Michael, which, prior to this, were good.

16 It's like a surgeon stopping
17 the operation after making his incision and all it
18 would leave is continued problems, a lot of pain
19 and a nasty scar. We just weren't there for him at
20 that time.

21 He were upset with Michael for
22 not doing some of his chores after spending the
23 weekend at a friend's. He had asked his sisters to
24 do them for him and they had not completed them.

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14 1 When he came home, we gave him the cold shoulder
2 when he tried to talk to us. He asked us if we
3 were going to send him back to Spring Mountain; and
4 I said we will see.

5 He went to his room and closed
6 the door. I never saw him again until he was
7 arrested. I have been haunted by this for years.

8 We were repulsed, then as well
9 as now, to think that he was guilty of the 1981
10 crime. Michael has expressed the same sentiments
11 to us on numerous occasions. He is ashamed and
12 grieved to the depths of his soul.

13 He realized a crime was
14 committed and his primary concern was to accept
15 responsibility for his infraction of the law, and
16 thereby diffusing any future degradation and/or
17 embarrassment to the victim and to his family.

18 The verdict of guilty came by
19 way of Michael's plea. Michael was just 16 at the
20 time of this crime and had to pay the price, even
21 though restitution for such an act cannot be made,
22 the crime cannot be undone. This is a statement of
23 truth without embellishment or anything to gain.

24 I keep wondering: Does the act

1 of a 16 year old constitute a violent child, with
2 no history of violence since then? Is a person
3 found guilty of stealing 14 years ago, with no
4 history since, still branded a thief today? Is a
5 person found guilty of a lie 14 years ago, with no
6 history since then, still a liar today?

7 It is not my intent to excuse
8 or justify what happened 14 years ago. I, too,
9 have a passion for justice, truth and decency, but
10 I do not believe that our conduct should be
11 governed by our passion.

12 While Michael was incarcerated,
13 he earned his GED, completed a two year electronics
14 course, obtained a PELL grant to gain college
15 credits, taught himself a foreign language, and was
16 employed at numerous jobs in the system.

17 Michael came home from prison
18 and was introduced to his nieces and nephew,
19 pictures became people, and he got to spend time
20 with his grandparents.

21 He had a hard working job in
22 construction, and a nice girlfriend, and then
23 something happened to bring us to this point.

24 Over the past few years,

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1

Michael has come back, not only to his earthly family, but also to his spiritual family, renewing his commitment to Jesus. Our family has seen a profound sadness in Michael's eyes.

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I am not a parent who justifies or closes her eyes to wrongdoing by her children. None of us directly involved in this case can say our children were traveling in the right circles, which caused us all this unspeakable pain and loss.

To the Jacobson and Lizzi families, we pray daily that the Lord will ease your pain.

My son Michael was not a choir boy and he certainly never exhibited a Charles Manson want to be mentality or behavior, as a voracious attempt has been made to portray him as such. We have put everything we had and didn't have into this, because our family believes in Michael and we will always stand by him and love him.

We will continue to remain faithful, pray for justice, and look expectedly for the Judge because Judgment begins in the house of God.

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Thank you.

Your indulgence for a moment.

(Whereupon, a sotto voce at
this time.)

MR. WOLFSON: Counsel approach?

THE COURT: Yes.

(Whereupon, an off-the-record
discussion was had.)

MR. DUNLEAVY: At this time, Michael Rippo
is going to make a statement. It will be an unsworn
statement and he will not be subject to cross-examination,
but he wishes to express his feelings to the jury.

THE COURT: You may do so.

THE DEFENDANT: I have many things to say,
but for legal reasons, I can't go in to all these things.

The one thing I want to get
across to the jury is that the reason I pled guilty to the
crime I did in 1982 was because I didn't want to put Miss
Martin through what she had to go through a couple of days
ago. So I pled guilty, and she never had to go through
that, until they brought her up there and recounted what I
did.

I did do that, and it's one of
the worst things I ever did in my life and I truly feel bad
about that.

15

1 I'm only going to address the
2 three families this case has brought into the courtroom and
3 how I feel about that situation. That's all I can tell the
4 jury.

5 I only knew Denise for about
6 six months and I knew Lauri for a little over a year, but up
7 until the time they were murdered, I came to know them to be
8 everything you testified they were.

9 I have no answers for your
10 questions, but I do believe their deaths were every bit as
11 senseless as we all know they were.

12 Up until a couple of years ago,
13 my demeanor in this case was definitely lacking and devoid
14 of any emotive content; and then one day, I started praying
15 and my prayers immediately included Denise and Lauri and
16 their respective families, as well as my own.

17 Since that day I started
18 praying, your grief has had a most profound effect on me and
19 how I view life, because I've become empathetic and I have a
20 sense of voicing and feeling. I don't like the feelings I
21 sense, and they have, on many occasions, brought me to
22 tears.

23 I know what your feelings are
24 about me because they're no different from the feelings I

15

1 would have if one of my family members were murdered, and I
2 can only hope in the end that my conviction and the ultimate
3 sentence I'll no doubt receive will somehow serve to lessen
4 the burden of your anguish.

5 All three families in this case
6 are hurting. And to Denise's family, I only ask that you
7 direct your anger and hate toward me and not my family,
8 because my family believes in my innocence as much as you
9 believe in my guilt.

10 And if you really want -- well,
11 no, I can't -- I can't -- I have -- I have nothing else to
12 say. Sorry about that.

13 I -- to you, I can only say
14 that you've listened to all the evidence in this case.
15 You've convicted me of murder, two very bad murders.

16 And I'm a very political person
17 and I'm a very religious person.

18 Politically, if I were sitting
19 there, I would sentence me to die. There is no doubt about
20 it. For even the crime committed in 1982, I would see that
21 as a death sentence crime.

22 Religiously, I don't believe in
23 the death penalty and I'm torn between those two views.

24 And that's all I can relate to

16

16

1 you, even this, as a plea for mercy. Thank you.

2 THE COURT: Anything further?

3 MR. DUNLEAVY: Are all of our exhibits in?

4 THE COURT: Anything further by the defense?

5 MR. DUNLEAVY: Are all of our exhibits

6 admitted?

7 THE COURT: Yes.

8 MR. DUNLEAVY: The defense rests, Your

9 Honor.

10 THE COURT: All right.

11 MR. HARMON: No rebuttal.

12 THE COURT: No rebuttal. Okay.

13 Ladies and gentlemen, again,

14 like in the guilt phase, we have closing arguments of
15 counsel. We'll begin those at 1:30.

16 So until 1:30, you are excused.

17 We have to settle instructions.

18 I'm going to instruct you on the law, as it applies, and
19 then we'll have arguments of counsel.

20 So you are excused until 1:30

21 p.m.

22 Remember: Do not converse

23 among yourselves or with anyone else on any subject

24 connected with this trial;

16

1

Read, watch, listen to any

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reports or commentaries by any medium of information,

3

including, without limitation, newspaper, television or

4

radio; or

5

Form or express any opinion on

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this case until it is finally submitted to you.

7

(Whereupon, a recess was had in
the proceedings, at the
conclusion of which the
following was had:)

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RENEE SILVAGGIO, CCR 122 391-0379

1 Las Vegas, Nevada, Thursday, March 14, 1996, 1:25 p.m.

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3 * * * * *

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5 (The following proceedings were
6 had in open court outside the
presence of the jury:)

7 THE COURT: State of Nevada versus Michael
8 Damon Rippo.

9 Let the record reflect the
10 presence of the defendants, and his attorneys Steve Wolfson
11 and Philip Dunleavy; for the State, Mel Harmon and Dan
12 Seaton.

13 Let the record reflect we're
14 outside the presence of the jury.

15 Are the parties familiar with
16 the jury instructions numbered 1 through 26 that the Court
17 has indicated will be given?

18 MR. HARMON: Yes, Your Honor.

19 MR. DUNLEAVY: We are, Your Honor.

20 THE COURT: Does the State oppose the giving
21 of any of these instructions?

22 MR. HARMON: No, Your Honor.

23 THE COURT: Does the defense oppose the
24 giving of any of these instructions?

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1 MR. DUNLEAVY: No, Your Honor.

2 THE COURT: Does the State have any other
3 instructions that they wish to offer that I stated would not
4 be given?

5 MR. HARMON: The State does not.

6 THE COURT: Does the defense have any other
7 instructions that they wish to be given that I have
8 indicated would not be given?

9 MR. DUNLEAVY: No, Your Honor.

10 Your Honor, for the record, we
11 did offer one and it was accepted. It is Jury Instruction
12 Number 8.

13 THE COURT: Okay. Do either parties wish
14 that the instructions on the law be read to the jury prior
15 to final argument?

16 MR. HARMON: The State wants it prior to
17 argument.

18 MR. DUNLEAVY: Yes, we join that.

19 THE COURT: Bailiff will get the jury.

20 THE BAILIFF: Yes, sir.

21 (The following proceedings
22 were had in open court in
the presence of the jury:)

23 THE COURT: Counsel stipulate to the
24 presence of the jury?

1 MR. SEATON: Yes, Judge.

2 MR. DUNLEAVY: Yes, Judge.

3 THE COURT: Okay.

4 Ladies and gentlemen, again,
5 I'm going to instruct you on the law as it applies
6 to this case.

7 Then we'll hear final arguments
8 of counsel, as was done in the guilt phase.

9 Instruction 1: Members of the
10 Jury: It is now my duty as Judge to instruct you
11 in the law that applies to this penalty hearing.

12 It is your duty, as jurors, to
13 follow these instructions and to apply the rules
14 of law to the facts as you find them from the
15 evidence.

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

23 Instruction 2: If, in these
24 instructions, any rule, direction or idea is

1 repeated or stated in different ways, no emphasis
2 thereon is intended by me and none may be inferred
3 by you.

4 For that reason, you are not to
5 single out any certain sentence or any individual
6 point or instruction and ignore the others, but
7 you are to consider all the instructions as a
8 whole and regard each in the light of all the
9 others.

10 Instruction 3: The trial jury
11 shall fix the punishment for every person
12 convicted of murder of the first degree.

13 Instruction 4: The jury shall
14 fix the punishment at:

15 One: Life imprisonment without
16 the possibility of parole;

17 Two: Life imprisonment with
18 the possibility of parole; and,

19 The death penalty, or, three,
20 death.

21 Instruction 5: Life
22 imprisonment with the possibility of parole is a
23 sentence of life imprisonment which provides that
24 a defendant would be eligible for parole after a

1 period of ten years. This does not mean that he
2 would be paroled after ten years, but only that he
3 would be eligible after that period of time.

4 Life imprisonment without the
5 possibility of parole means exactly what it says,
6 that a defendant shall not be eligible for parole.

7 If you sentence a defendant to
8 death, you must assume that the sentence will be
9 carried out; although, under certain circumstances
10 and conditions, the State Board of Pardons
11 Commissioners has the power to modify sentences.
12 You are instructed that you may not speculate as
13 to whether the sentence you impose may be changed
14 at a later date.

15 Instruction 6: In the penalty
16 hearing, evidence may be presented concerning
17 aggravating and mitigating circumstances relative
18 to the offense and any other evidence that bears
19 on the defendant's character.

20 Hearsay is admissible in a
21 penalty hearing.

22 Instruction 7: The State has
23 alleged that aggravating circumstances are present
24 in this case. The defendants have alleged that

1 certain mitigating circumstances are present in
2 this case.

3 It shall be your duty to
4 determine:

5 A: Whether an aggravating
6 circumstance or circumstances are found to exist;
7 and

8 B: Whether a mitigating
9 circumstance or circumstances are found to exist;
10 and

11 C: Based upon these findings,
12 whether a defendant should be sentenced to life
13 imprisonment or death.

14 The jury may impose a sentence
15 of death only if:

16 One: The jurors unanimously --
17 excuse me -- unanimously find at least one
18 aggravating circumstance has been established
19 beyond a reasonable doubt; and,

20 Two: The jurors unanimously
21 find that there are no mitigating circumstances
22 sufficient to outweigh the aggravating
23 circumstance or circumstances found.

24 Otherwise, the punishment

2 1 imposed shall be imprisonment in the state prison
2 for life with or without the possibility of
3 parole.

4 A mitigating circumstance
5 itself need not be agreed to unanimously; that is,
6 any one juror can find a mitigating circumstance
7 without the agreement of any of the other jurors.

8 The entire jury must agree
9 unanimously, however, as to whether the
10 aggravating circumstances outweigh the mitigating
11 circumstances or whether the mitigating
12 circumstances outweigh the aggravating
13 circumstances.

14 Instruction Number 8: The law
15 does not require the jury to impose the death
16 penalty under any circumstances, even when the
17 aggravating circumstances outweigh the mitigating
18 circumstances; nor is the defendant required to
19 establish any mitigating circumstances in order to
20 be sentenced to less than death.

21 Instruction 9: You are
22 instructed that the following factors are
23 circumstances by which murder of the first degree
24 may be aggravated:

2

1 One: The murder was comitted
2 by a person under sentence of imprisonment,
3 to-wit: Defendant was on parole for a Nevada
4 conviction for the crime of sexual assault in
5 1982;

6 Two: The murder was comitted
7 by a person who was previously convicted of a
8 felony involving the use of threat or violence to
9 a person of another. Defendant was convicted of
10 sexual assault, a felony, in the state of Nevada
11 in 1982.

12 Three: The murder was
13 committed while the person was engaged in the
14 commission of and/or an attempt to commit any
15 burglary and the person charged (a) killed the
16 person, murdered; or (b) knew that life would be
17 taken or lethal force used, or acted with reckless
18 indifference for human life.

19 Four: The murder was committed
20 while the person was engaged in the commission of
21 and/or an attempt to commit any kidnapping, and
22 the person charged (a) killed the person murdered;
23 or (b) knew that life would be taken or lethal
24 force used; or (c) acted with reckless

1 indifference for human life.

2 Five: The murder was committed
3 while the person was engaged in the commission of
4 or in an attempt to commit any robbery, and the
5 person charged (a) killed the person murdered; or
6 (b) knew that life would be taken by or lethal
7 force used; or (c) acted with reckless
8 indifference for human life.

9 Six: The murder involved
10 torture.

11 Instruction 10: A person who
12 is on parole at the time he commits murder is
13 under a sentence of imprisonment. The offense of
14 sexual assault is a felony.

15 Instruction 11: Any person
16 who, by day or night, enters any building or
17 apartment with the intent to commit larceny and/or
18 robbery and/or kidnapping is guilty of burglary.

19 Larceny is the stealing of
20 property and/or money.

21 Instruction 12: Each person
22 who willfully seizes, confines, restrains,
23 conceals, kidnaps or carries away any person by
24 any means whatsoever with the intent to hold or

2 1 detain or holds or detains the person, one, for
2 the purpose of committing robbery from the person,
3 or, two, for the purpose of killing the person or
4 inflicting substantial bodily harm upon her, is
5 guilty of kidnapping.

6 Forcible movement of a victim
7 is simply one of the ways kidnapping may be
8 accomplished.

9 The crime of kidnapping is
10 complete whenever it is shown that the defendant
11 willfully and without lawful authority seizes
12 another human being with the intent to detain her
13 against her will for the purpose of committing
14 robbery.

15 When forcible movement of a
16 victim does occur, there is no requirement of a
17 minimum distance of asportation. It is the fact,
18 not the distance, of forcible movement that
19 constitutes kidnapping.

20 Instruction 13: Robbery is the
21 unlawful taking of personal property from a person
22 of another or in her presence against her will by
23 means of force or violence or fear of injury,
24 immediate or future, to her person or property or

3 1 the person or property of a member of her family
2 or of anyone in her company at the time of the
3 robbery.

4 A taking is by means of force
5 or fear, if force or fear is used to:

6 A: Obtain or retain possession
7 of the property;

8 B: Prevent or overcome
9 resistance to the taking; or,

10 C: Facilitate escape.

11 The degree or force used is
12 immaterial, if it is used to compel acquiescence
13 to the taking of or escaping with the property.

14 A taking constitutes robbery
15 whenever it appears that, although the taking was
16 fully completed without the knowledge of the
17 person from whom taken, such knowledge was
18 prevented by the use of force or fear.

19 Instruction 14: The value of
20 the property or money taken is not an element of
21 the crime of robbery; and it is only necessary
22 that the State prove the taking of some property
23 or money.

24 Instruction 15: The essential

3 1 elements of murder by means of torture are:

2 One: The act or acts which
3 cause the death must involve a high degree of
4 probability of death; and

5 Two: The defendant must commit
6 such act or acts with the intent to cause cruel
7 pain and suffering for the purpose of revenge,
8 persuasion or for any other sadistic purpose.

9 The crime of murder by torture
10 does not necessarily -- does not necessarily
11 require any proof that the defendant intended to
12 kill the deceased, nor does it necessarily require
13 any proof that the deceased suffer pain.

14 Instruction 16: Mitigating
15 circumstances are those factors which, while they
16 do not constitute a legal justification or excuse
17 for the commission of the offense in question, may
18 be considered, in the estimation of the jury, in
19 fairness and in mercy as extenuating or reducing
20 the degree of the defendant's moral culpability.

21 You may consider any aspect of
22 the defendant's character or record or any of the
23 circumstances of the offense as a basis for a
24 sentence less than death.

3

1 Instruction Number 17: Murder
2 of the first degree may be mitigated by any of the
3 following circumstances, even though the
4 mitigating circumstances is not sufficient to
5 constitute a defense or reduce the degree of the
6 crime:

7 One: The defendant has no
8 significant history of prior criminal activity;

9 Two: The murder was committed
10 while the defendant was under the influence of
11 extreme mental or emotional disturbance;

12 Three: The victim was a
13 participant in the defendant's criminal conduct or
14 consented to the act;

15 Four: The defendant was an
16 accomplice in a murder committed by another person
17 and his participation in the defendant's criminal
18 conduct or consented to the act;

19 Five: The defendant acted
20 under duress or under the domination of another
21 person;

22 Six: The youth of the
23 defendant at the time of the crime;

24 Seven: Any other mitigating

3 1 circumstances.

2 Instruction 18: The burden
3 rests upon the prosecution to establish any
4 aggravating circumstances beyond a reasonable
5 doubt, and you must be unanimous in your finding
6 as to each aggravating circumstance.

7 Instruction 19: A reasonable
8 doubt is one based on reason. It is not mere
9 possible doubt, but is such doubt as would govern
10 or control a person in the more weighty affairs of
11 life.

12 If the minds of the Jurors,
13 after the entire comparison and consideration of
14 all the evidence, are in such a condition that
15 they can say they feel an abiding conviction of
16 the truth of the charge, there is not a reasonable
17 doubt. Doubt to be reasonable must be actual, not
18 mere possibility or speculation.

19 Instruction 20: The jury is
20 instructed that in determining the appropriate
21 penalty to be imposed in this case, that it may
22 consider all evidence introduced and instructions
23 given at both the penalty hearing phase of these
24 proceedings, and at the trial of this matter.

3 1 Instruction 21: In your
2 deliberation, you may not discuss or consider the
3 subject of guilt or innocence of a defendant, as
4 that issue has already been decided. Your duty is
5 confined to a determination of the punishment to
6 be imposed.

7 Instruction 22: The
8 credibility or believability of a witness should
9 be determined by his manner upon the stand, his
10 relationship to the parties, his fears, motives,
11 interests or feelings, his opportunity to have
12 observed the matter to which he testified, the
13 reasonableness of his statements and the strength
4 or weakness of his recollections.

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

20 Instruction 23: Although you
21 are to consider only the evidence in the case in
22 reaching a verdict, you must bring into
23 consideration of the evidence your every day
24 common sense and judgment as reasonable men and

4
1 Women.

2 Thus, you are not limited
3 solely to what you see and hear as the witnesses
4 testify. You may draw reasonable inferences from
5 the evidence which you feel are justified in the
6 light of common experience, keeping in mind that
7 such inferences should not be based upon
8 speculation or guess.

9 A verdict may never be
10 influenced by sympathy, prejudice or public
11 opinion. Your decision should be the product of
12 sincere judgment and sound discretion in
13 accordance with these rules of law.

14 Instruction 24: During your
15 deliberation, you will have all the exhibits which
16 were admitted into evidence, these written
17 instructions and forms of verdict which have been
18 prepared for your convenience.

19 Your verdict must be unanimous.
20 When you have agreed upon your verdicts, they
21 shall be signed and dated by your foreman.

22 Instruction 25: The Court has
23 submitted two sets of verdicts to you: One set of
24 verdicts reflects the three possible penalties

4 1 which may be imposed; the other verdict is a
2 special verdict.

3 They are to reflect your
4 findings with respect to the presence or absence
5 and weight to be given any aggravating
6 circumstance and any mitigating circumstances.

7 Instruction 26: Now you will
8 listen to the arguments of counsel, who will
9 endeavor to aid you to reach a proper verdict by
10 refreshing in your minds the evidence and by
11 showing the application thereof to the law; but
12 whatever counsel may say, you will bear in mind
13 that it is your duty to be governed in your
14 deliberation by the evidence as you understand it
15 and remember it to be and by the law as given to
16 you in these instructions, and return a verdict
17 which, according to your reason and candid
18 judgment, is just and proper.

19
20 Mr. Harmon, I believe you are
21 going to make the opening argument.

22 MR. HARMON: Yes, Your Honor.

23 THE BAILIFF: What equipment do you desire?

24 MR. HARMON: The lectern, please.

THE COURT: Yes, sir.

MR. HARMON: Thank you, Mr. Bailiff.

May it please the Court,
counsel. Good afternoon, ladies and gentlemen.

At long last, Judgment day for
Michael Damon Rippo.

I don't stand before you as
someone who is insensitive to the tender feelings of family
members. I don't limit this just to families of the
victims, but Mr. Rippo as well. This case is tragic and it
affects a lot of people.

I don't stand before you as one
who is glib about punishment. I would never say that it is
easy or pleasant to be called upon to pass Judgment upon a
fellow human being; however, it is important that the
punishment which is handed down be commensurate with the
legal and moral culpability of the person who has committed
heinous offenses.

William Blake said once:
Cruelty has a human heart. And I'm arguing to you, based
upon evidence you've heard in this case, based upon the
circumstances surrounding the murder of Denise Lizzi and the
murder of Lauri Jacobson, and based upon the very
substantial criminal history of the defendant upon whom you

4
1 sit in Judgment today, although his youthful appearance
2 belies the expression, I say that the cruel heart in this
3 case is the heart of Michael Rippo.

4 The Court, for the last few
5 days, has been conducting a penalty hearing. It's not
6 described as a rehabilitation hearing. I anticipate that
7 the defense will argue that Mr. Rippo has qualities that are
8 salvageable.

9 In a sense, from the
10 prosecutive point of view, while not necessarily irrelevant,
11 that shouldn't be the primary focus, because in the criminal
12 justice system, there are crimes committed, and I would
13 suggest to you that the unprovoked, unjustified murder of
14 two young women falls into that category.

15 When you do that, you have
16 stepped across the line. And as painful as it might be,
17 there can be only one appropriate punishment. It's been
18 said that the purpose of a penalty for murder of the first
19 degree falls in to two categories:

20 And the first one involves
21 punishment in and of itself. It is appropriate that society
22 express its moral outrage at the murder of innocent human
23 beings;

24 And it furthermore is important

5 1 that stiff, severe penalties be imposed because that deters,
2 because what you do today will deter Mr. Rippo, and because
3 what you do today sends out a message to other persons that
4 indicates this society, this county will not --

5 MR. DUNLEAVY: Your Honor, I'm going to
6 object. I think it's improper to tell the jury to send a
7 message to society.

8 HARMON: It is not improper. Your Honor,
9 We're --

10 THE COURT: Overruled.

11 MR. HARMON: This community must know that
12 we will not tolerate double murders perpetrated upon young
13 women, one of whom was in her home, in her residence.

14 In a sense, the defense has
15 tried, during the hearing, to portray Mr. Rippo as a victim.
16 They have suggested that he is the product of the criminal
17 Justice system.

18 And I would suggest he isn't a
19 victim at all. To make that argument turns this case on its
20 ear. It turns it upside down.

21 The operative words in this
22 case, at this time, are choices, and the choices were made
23 by Mr. Rippo; and the other word is what will be the
24 consequence of his choices.

5

1 Lauri and Denise were innocent
2 of any wrongdoing. They didn't ask for their lives to be
3 prematurely terminated. There isn't anything that can be
4 done for them in mortality now, but something can be done
5 about their killer.

6 And I would submit, it's a
7 matter of focus. You're here, we're all here, because these
8 young women were killed. The only victims in this case are
9 Lauri and Denise.

10 We're here because they were
11 senselessly, brazenly strangled to death. And they were not
12 just simply statistics; they're not just names; they're not
13 just faceless victims. They were unique, warm, wonderful
14 human beings in their way; and they had families who loved
15 them and whose lives have been forever changed by murder,
16 whose tender hearts are still heavy with grief, and who, in
17 their tearful loneliness, long to speak with and hold and
18 spend time with their loved ones.

19 Twenty-seven year old Lauri
20 Jacobson, 25 year old Denise Lizzi, where is the promise of
21 their years, ones written on their brows? Where sleeps that
22 promise now?

23 Ladies and gentlemen, today,
24 you cannot help them, but you can guarantee that their

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1 killer pays the full price. It's been said that mercy
2 cannot rob Justice, and I submit Justice occurs when a
3 punishment is imposed which fits the crimes.

4 And advisedly, after much
5 consideration, I tell you, based upon this evidence, the
6 punishment which fits the crimes, which fits the criminal
7 background of this defendant, is the death sentence.

8 The Court has given you a
9 number of instructions, and Instruction Number 9 sets forth
10 circumstances which aggravate this murder. The Court has
11 just told you that you may consider a death sentence only
12 when at least one aggravating circumstance has been proven
13 beyond a reasonable doubt.

14 The State in this case has
15 proven six. If you find all six, that, of course, would
16 make the death sentence one of the sentences that you may
17 consider. If you found only one was proven beyond a
18 reasonable doubt, then an option would be the death
19 sentence.

20 There also is an allegation
21 that there is circumstances which mitigate on behalf of Mr.
22 Rippe, and your task as a Juror will be to balance the
23 aggravating and mitigating circumstances.

24 Ladies and gentlemen, it is the

5

1 contention of the State of Nevada that there are six
2 circumstances which aggravate these murders, and they are
3 set out in Instruction Number 9.

4 Aggravating circumstance number
5 one: The murder was committed by a person under sentence of
6 imprisonment.

7 You've heard substantial
8 evidence in this case that Mr. Ripppo, on April the 27th,
9 1982, was convicted of the crimes of burglary and sexual
10 assault; and for the sexual assault, Judge Guy imposed a
11 punishment of life with the possibility of parole.

12 You've also learned that Mr.
13 Ripppo served a term of years and then he was paroled. He
14 was paroled on October 24th, 1989, according to parole and
15 probation officer Howard Saxon.

16 His parole expiration date was
17 life. When you get a life sentence, you may not stay
18 incarcerated for the rest of your life, as the sexual
19 assault punishment establishes, but when paroled, he was on
20 parole for life; and he was still on parole, he was still
21 under sentence of imprisonment, on Tuesday, February the
22 18th, 1992.

23 Now why is that a circumstance
24 that ought to aggravate murder of the first degree?

5
6

1 Well, that is quite simply
2 because parole is a privilege. It's a grant. When someone
3 is paroled, he signs an agreement to obey the laws, to
4 refrain from using or selling drugs. He signs an agreement
5 promising to associate with suitable human beings; and signs
6 an agreement not to possess or use weapons of any kind.

7 And Mr. Rippo violated that
8 trust. In effect, he told the State of Nevada, at the Katie
9 Arms apartment, on February the 18th, 1992, what he thought
10 of their laws and their parole agreement.

11 Well, ladies and gentlemen, the
12 second aggravating circumstance relates to the offense of
13 sexual assault. The murder was committed by a person who
14 was previously convicted of a felony involving the use or
15 threat of violence to the person of another.

16 You heard the emotional
17 testimony of Laura Martin. You heard her testify to her
18 experience in her apartment back on January 16th, 1982; and
19 you can realize that Miss Conrady described an experience
20 which may be a nightmare that many of us dream of, but to
21 her, it was real that morning between seven and 7:30.

22 And without belaboring the
23 fact, she was awakened by a stranger on top of her, and he
24 had a hand on -- which was one of her mittens -- around her

6

1 mouth and a butcher knife to her head.

2 Mr. Rippo entered the plea of
3 guilty to that offense. There is no doubt that the State
4 has not only proven beyond a reasonable doubt that this
5 cruel heart murdered two human beings, but he also is guilty
6 of another felony crime of violence that involved two hours
7 of terrorizing a 24 year old mother.

8 And he was on parole; he was
9 under sentence of imprisonment at the time he perpetrated
10 these murders. So there can be absolutely no question but
11 what there are two aggravating circumstances, which apply to
12 this case.

13 The third category relates to
14 the circumstances of the case at bar. It alleges that this
15 was a **crime which occurred during the perpetration of a
16 burglary.

17 There are certain crimes that
18 are inherently dangerous, and when these **life threatening
19 felonies occur at the time of the murders, then the **State
20 of Nevada has made a policy statement that the consequence
21 for the choice of a person or persons to enter the residence
22 of another will be very severe.

23 The Court -- and you are
24 already familiar with the instruction on burglary. You had

6

1 the same instruction about the felony murder rule during the
2 guilt phase of these proceedings, reiterated in Number 15.
3 Burglary is a crime of entry.

4 In a sense, it's over, in terms
5 of the burglary, as soon as persons illegally set foot on to
6 the premises of another. In this case, that is, if the
7 entry was made with the intent to steal or to commit
8 robbery, or to kidnap, persons entering are guilty of
9 burglary.

10 It might be asked only
11 rhetorically why does that aggravate murder? And I'm going
12 to submit that can be answered quite simply by describing
13 where this happened.

14 If there was any place in this
15 world, at that particular time, when somebody would expect
16 that Lauri Jacobson could think that she had safety, it
17 would be within the haven of her own apartment. There might
18 be disorder, confusion and crime swirling all around, but
19 any decent person is entitled to expect safety and refuge
20 from the **double and shalls of this world inside her home.

21 And, yet, not only was this
22 young woman violated and cruelly murdered, her residence was
23 violated by persons who entered with the intent to steal and
24 to commit robbery.

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1 Aggravating circumstance number
2 four alleges that a kidnapping occurred during the
3 perpetration of these murders. This is covered by
4 Instruction Number 12. Once again, it's an instruction you
5 were able to consider during the guilt phase of these
6 proceedings.

7 The Court, in paragraph number
8 one, tells you every person who willfully seizes, confines,
9 restrains, conceals, kidnaps or carries away any person by
10 any means whatsoever with the intent to hold or detain or
11 who holds or detains the person for the purpose of
12 committing robbery or for the purpose of killing or
13 inflicting substantial bodily harm is guilty of kidnapping.

14 And I'm going to suggest that
15 some of the significant words involve seizes and confines,
16 conceals and restrains. Both of these young women were
17 restrained, and the ligature marks are on the wrist and
18 ankles and around the neck of Denise Lizzi to prove it, and
19 she had ligatures still on both arms.

20 Movement is not required for
21 kidnapping. If it is shown that the victims were seized and
22 restrained, detained against their will, if there is
23 movement, that may fortify the charge of kidnapping.

24 What the Court has told you, in

7 1 the second paragraph of Instruction 12, is that forcible
2 movement of a victim is simply one of the ways kidnapping
3 may be accomplished.

4 And I would point out the
5 significance of seizure and restraint as it is obviously
6 occurring in this apartment. The bodies were found
7 side-by-side face down in a closet, with all of the
8 paraphernalia, including the gag, still in the mouth of
9 Denise Lizzi and the knotted purple bandana in the living
10 room, a testimony to the gagging of Lauri Jacobson as well.

11 In the final paragraph of
12 Instruction 12, the Court explains when forcible movement of
13 a victim does occur, there is no requirement of a minimum
14 distance of asportation. It is the fact, not the distance,
15 of forcible movement that constitutes kidnapping.

16 In other words, it could be six
17 feet or six miles, if the evidence shows forcible movement.
18 And it shows, in this case, that Denise was forcibly moved
19 from the bathroom to the closet, and Lauri Jacobson, from
20 the living room to the closet; carried while she was bound,
21 dragged like she was a suitcase.

22 The fifth aggravating
23 circumstance involves robbery and murder; and you've already
24 entered a finding that the defendant, Mr. Rippe, is guilty

1 of robbery beyond a reasonable doubt. And that is another
2 circumstance which aggravates murder of the first degree.

3 So, ladies and gentlemen, I
4 contend to you that all five of these aggravating
5 circumstances have been proven beyond a reasonable doubt,
6 any one of which would make a viable option for punishment
7 in this case the death sentence.

8 The sixth and final aggravating
9 circumstance alleged, as contained in Instruction 9, and
10 which is defined in Instruction 15, is simply torture.

11 The prosecution alleges that
12 these murders involved torture. You heard the evidence. I
13 suppose no one knows precisely what type of experience these
14 young women suffered during their final moments, but the
15 physical evidence establishes that both had stab marks on
16 their faces or neck areas. The physical evidence suggests
17 that both were bound.

18 The testimony of the eyewitness
19 Diana Hunt suggests that a stun gun was used simply to
20 intimidate and terrorize, or whether it was actually placed
21 against their bodies, that is an element of torture; and the
22 evidence, as testified to by Dr. Green, establishes that
23 these deaths occurred as a result of manual and ligature
24 strangulation.

7

1 You consider a pair of hands.
2 Hands of human beings have the capacity to play concertos on
3 the piano, to take a baseball bat and hit hundreds of home
4 runs, to cradle little children to the bosoms of parents,
5 but hands can be instruments of destruction.

6 It is inconceivable that
7 without legal justification, without any type of
8 provocation, a human being, the human being in this
9 courtroom, the defendant, could put his hands around the
10 necks of two young women and strangle them until they were
11 dead. It is a murder by torture.

12 Ladies and gentlemen, as I
13 concluded my remarks during the guilt phase, I argued that
14 the operative word was accountability. And it's still
15 important to remember the need to hold a person responsible
16 for his choices, to make him pay the full price.

17 But I want to suggest that
18 there is another word which has equal force at this time,
19 because you face a tough decision and because you have to be
20 determined to do your legal duty, and that word is
21 commitment.

22 And I would pose the question
23 now: Do you have the resolve, the courage, the intestinal
24 fortitude, the sense of commitment to do your legal duty?

1 Hundreds of years ago, the
2 poet-philosopher John Dunn, in a funeral sermon said, in the
3 memorable words, borrowed, by Hemingway in one of his books:

4 Therefore, never ask for whom
5 the bell tolls; it tolls for thee.

6 Ladies and gentlemen, on
7 Tuesday, February the 18th, 1992, the bell tolled for Lauri
8 Jacobson and for Denise Lizzi. Thursday, March the 14th,
9 1996, finally, at long last, over four years after his
10 grisly double murder of two young Las Vegas women, let the
11 bell toll for Michael Rippo.

12 THE COURT: Mr. Dunleavy.

13 THE BAILIFF: Do you need anything else,
14 counsel?

15 MR. DUNLEAVY: The easel.

16 THE BAILIFF: Yes, sir.

17 MR. DUNLEAVY: Life or death, that is the
18 question. That's how I started this penalty phase and
19 that's how we're ending it.

20 But it should be the
21 question -- or should the question be: What went wrong?

22 We've heard about Michael
23 Rippo's life. Why are we here today? What happened in this
24 case?

8

1 The State wants you to kill
2 Michael Rippe. But look at the reasons: The State wants to
3 kill its mistake.

4 Remember, you are here because
5 back in January, you told us that you would fully and fairly
6 consider all -- the full range of punishments, life with,
7 life without and death, not just death.

8 And, in fact, you never, ever
9 have to kill in our system, no matter what the aggravating
10 circumstances are. The jury instruction is clear on that:
11 You never have to kill.

12 This is a very funny
13 proceedings because I'm in a position now, as the defense,
14 telling you that killing is wrong. The State is asking you
15 to kill. That's a strange position to be in.

16 Why? If killing is wrong, why
17 do we kill people to say killing is wrong?

18 Most people would accept the
19 philosophical position that killing is wrong, but then a
20 committee gets involved and says, well, it's wrong, but for
21 this occasion or but for that occasion, and pretty soon,
22 you've got a lot of loopholes to killing is wrong.

23 The State wants you to find one
24 of those loopholes. Mr. Rippe is a human being. He's not a

8

1 perfect human being; he's far from being a perfect human
2 being; but he's a human being, and he's entitled to be
3 treated with dignity and respect as all human beings should
4 be.

5 You don't lower yourself to the
6 level of the lowest. You should try and raise yourself.

7 Think of the arrogance of a
8 system that says that I can stand up here as a prosecutor
9 and tell you I know so much that I can tell you you should
10 kill this man.

11 No one should have the right to
12 point to another human being and say kill them. It's just
13 not right. What this is similar to is in the Roman days
14 when they had gladiators fighting in the pits and one
15 gladiator would conquer another one, he would look up at the
16 crowd and if the crowd pointed their thumb up, the man
17 lived. If the crowd pointed their thumb down, the man died.

18 You are the crowd in this case
19 and the State wants you to point your thumb down and kill
20 this man. They want you to condemn Michael Rippo to death.

21 Think about what got us to this
22 point though. Don't lose sight of they're asking for the
23 this killing based on the testimony of Diana Hunt and the
24 three snitches. You've watched those people.

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1 I'm not going to repeat my
2 closing argument from the last hearing. You heard it. I
3 submit to you that you all know there is questions. Can you
4 be so sure of yourself that you can say --

5 MR. HARMON: Object to this argument. It's
6 not proper, Your Honor, during the penalty hearing.

7 MR. DUNLEAVY: I'm not asking them to find
8 him not guilty.

9 MR. HARMON: He is asking the jury to
10 revisit the issue of guilt or innocence. That isn't proper.

11 MR. DUNLEAVY: I'm not asking them to
12 revisit guilt or innocence, Your Honor.

13 THE COURT: Go ahead. I'll allow it. Go
14 ahead.

15 MR. DUNLEAVY: What I'm asking you to do is
16 look at that same testimony and say are you confident enough
17 in it to kill? And there is a difference.

18 Diana Hunt told you -- or you
19 were explained to that Diana Hunt, under the case law, was
20 responsible for the same offenses Michael was; the same
21 charges were filed against her.

22 And what happened? She's
23 already been to the parole board once. She will be out of
24 prison soon because the same people that are asking you to

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1 kill Michael Rippo decided to give her a deal that she could
2 face parole.

3 This is the same State that
4 tells you that it's okay to kill Michael Rippo for the same
5 facts.

6 This case is about loss, there
7 is no question about it, tragic, stupid losses. You had
8 heard about the loss to the Jacobson family; you had heard
9 about the loss to the Lizzi family yesterday; and those are
10 legitimate, true losses.

11 You have the power to create
12 the some kind of loss in the Rippo family, and that's what
13 the State is asking you to do, to create the death of
14 another young human being.

15 What will that accomplish?
16 Will it bring back the lives of Lauri and Denise?

17 You know that's not possible.
18 If it was, I'd be the first one to stand up here and tell
19 you, kill him. But it wouldn't bring anyone back; it
20 wouldn't balance the scales. The scales can never be
21 balanced in something like this. That's not what we're here
22 for.

23 The United States Supreme Court
24 has repeatedly said that the death penalty should be

9

1 reserved to only the worst of the worst. And this is not a
2 nice crime, but you also have to look at the facts of the
3 crime.

4 And I hate to speak bad of the
5 dead, but there are some things you have to remember. They
6 were not saints; they were not innocent bystanders caught up
7 in the crime. They were drug dealers; they are intervenous
8 drug users; and that's what put them in this situation. The
9 daughters voluntarily got involved in the drug world. If
10 they hadn't -- this was a drug case. It's all about drugs.
11 It's not like they were an innocent person going to the
12 store who got shot.

13 Yesterday, the families told
14 you a little bit about their loss, but not one of them said
15 anything about the fact that their daughters were involved
16 in drug use or drug sales. They didn't say we knew she had
17 a drug problem and we tried to help her with that. They
18 didn't tell you those things. You know that those are the
19 facts.

20 It doesn't lessen their loss at
21 all. It doesn't make their loss illegitimate. It's just
22 another side to the same story, and it's something that you
23 have to look at when you are deciding what is appropriate.
24 It's not an easy thing to think about, but it's a fact; it's

9 1 a fact that you have to consider.

2 I'm not for an instant saying
3 that Denise and Lauri got what they deserved. Nobody in the
4 world deserved what happened to them. It was an inhuman
5 act. It was wrong. Michael admits it's wrong. Everyone
6 admits it's wrong.

7 In a perfect world, everyone
8 would die of old age. We wouldn't need death penalties. We
9 wouldn't need any of this. But we don't live in a perfect
10 world.

11 In a perfect world, we would
12 not have drug dealers. We would not have murders for drugs.

13 Nobody is condoning this crime.
14 It's wrong. It's not a close call. Everybody knows that
15 killing is wrong. This crime was a stupid tragedy. You
16 heard all of the evidence and there is no doubt about it.

17 But you also heard the
18 evidence, and I don't believe you can believe that Mike
19 Rippo did it all by himself. Diana Hunt was there. She was
20 a participant.

21 And it's up to you. You've
22 decided there is enough to convict, and there is no question
23 about that, but you also have to decide how clean were Diana
24 Hunt's hands really? Why was her story so inconsistent if

9

1 she was telling you the truth, or was she involved in these
2 killings as well? You have to consider that because it's
3 one of the facts in this case that has to be reviewed.

4 You have several options open
5 to you to do justice. The first one is life with the
6 possibility of parole.

7 What does this mean? It means
8 that Michael Rippo would be about my age when he makes his
9 first parole board, if he ever makes it.

10 Mike Rippo would have to first
11 make parole on his sexual assault case that he's back in on.
12 Is that likely to occur very soon? He doesn't do day one on
13 the murder cases until after he's finished his time on the
14 sexual assault case.

15 Your next option is life
16 without the possibility of parole, and the Judge has
17 explained to you that means exactly what it says, life
18 without the possibility of parole. Put Mike Rippo in prison
19 and tell them to keep him there forever. That's an option
20 that's open to you. It's an option less than death.

21 The State always tries to
22 convince you that prison isn't that bad; that don't
23 mollycoddle these people; kill them.

24 Well, I submit to you that if

10

1 the State says we're going to put you up at the finest suite
2 in Caesars Palace with room service for the rest of your
3 life, you wouldn't be there long before you realized it
4 wasn't much of a deal. You'd want out of that room pretty
5 quick. And, believe me, they're not going to send Michael
6 Rippo to Caesars Palace.

7 Mike Rippo came into this
8 system when he was 16 years old, with no legal counsel and a
9 mother who, in essence, threw him away, saying I can't deal
10 with him right now; there is problems in my life; you take
11 care of him.

12 Unfortunately, she believed
13 them when they said there was counseling available, that
14 there was help available.

15 You saw the statements given
16 where she asked for help when he went up on the first
17 burglary charge to Spring Mountain. She said he needs
18 counseling. He needs some help. He needs some guidance.

19 What did he get? He got a
20 counselor with no credentials and three months and 25 days
21 later, he got sent back. Nobody had done any serious
22 counseling with this man. They sent him right back where he
23 came from.

24 What went wrong? We know Mr.

10

1 Rippo never got any psychiatric counseling; there was no
2 psychiatrist working up there.

3 The counselor, Mr. Sergi, who
4 didn't have any credentials whatsoever, thought Michael was
5 shining him on and not taking the program seriously. He
6 admitted they had options: They could go to Elko; they
7 could refer him to psychiatric treatment; or they could just
8 throw him out.

9 What did they do?

10 Mr. Rippo, who had adjustment
11 problems was performing acts that just cried out for
12 attention; didn't get them. They shuttled him back to the
13 community.

14 Look at the photo of Michael
15 Rippo at age 16. (Indicating) He was a small child. He
16 was not an adult. But what do they do with him? That was
17 his yearbook picture. He looks like a child because he was
18 a child. He was a scared child. Someone, who when he went
19 to prison, shaved his head to try and make himself look
20 tougher. He wasn't even old enough to shave. He needed
21 help.

22 Mrs. Rippo had trusted the
23 system to get him help. What happened and what went wrong?
24 He didn't get the help, we know that. When Mike Rippo got

10

1 in trouble for not cleaning the house and the garage, he
2 didn't get counseling. He got the silent treatment. He
3 panicked and he ran away. This led to the numerous
4 burglaries and the horrible sexual assault we all heard
5 about.

6 Remember, the story you heard,
7 the **<PA> <SAR> bindings, the story of violence, of cutting
8 her hair, but the actual sexual act was never fully
9 accomplished. This was of someone screaming for help.

10 He got caught on that. And if
11 Mr. Rippe had money, would he have gotten the psychiatric
12 help and treatment? What happened?

13 Look at the report from the
14 Juvenile Justice system. It's in evidence. And their
15 summary is obviously -- in need of long-term treatment to
16 rehabilitate him.

17 Then skip down: Due to the
18 seriousness of the charges and insofar as the State of
19 Nevada has no longer the treatment facility for
20 **identifying violent Juvenile behaviors, it is respectfully
21 recommended to certify him as an adult. Because Nevada
22 didn't have a place to put him, they certified him as an
23 adult and sent him to prison.

24 What went wrong with the

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10

1 system?

2

Mike Rippo is not a saint, but

3

the system played a big part in making him what he is.

4

They ignore the repeated

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requests by the mother. They ignored the repeated

6

questions -- the reports when he was sent to Spring Mountain

7

said an emotionally disturbed child. The reports, when they

8

certified him as an adult, said he needed long term

9

treatment.

10

Did anybody ever get him any

11

treatment? No. They sent him up to a place where his

12

guidance was going to be fellow inmates in an adult prison

13

system.

14

What went wrong?

15

The State talked about what

16

went wrong. The State talked about the fact and the

17

evidence that Michael had a knife and some nunchuks at one

18

time, eleven years ago in prison.

19

But what you didn't see is any

20

witness saying anything about Michael having ever used a

11

21

knife or nunchuks or any other weapon against anybody in

22

that prison system.

23

He's never had a real problem

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in that prison system. He cussed out a guard. He made some

11

1 threats to guards. Was he ever in a position to blow her
2 f'ing head off? With what? His imagination? That's all he
3 has.

4 He's never had anything like
5 that. He's never gotten out. He's been convicted of two
6 very serious murders, murders that could have been avoided,
7 if Mr. Rippo had been treated by the system or just kept by
8 the system. They didn't have to let him out. They're the
9 ones who screened him and said, we're letting him out.

10 All they had to do to protect
11 society and protect the Lizzis and protect the Jacobsons was
12 to keep him. They made another mistake.

13 What went wrong? You can
14 insure this mistake never happens again. It's real easy.
15 And common sense tells that you there is still two options
16 available to you to do that: Life with the possibility of
17 parole means Mike Rippo will do a minimum of 20 years on the
18 two murders, after he finishes his sexual assault case, and
19 not counting what the judge may or may not give him on the
20 other charges.

21 He's going to be an old man by
22 the time he makes his parole board. And everybody knows
23 that the older you get, the less likely you are to involve
24 yourself in crime, the less likely you are, especially, to

11

1 involve yourself in any kind of violence.

2 But if you don't feel that's
3 enough, you still have the option of life without the
4 possibility of parole, which means just that, the rest of
5 your life in prison, no options, no window, no door ever
6 going to open.

7 There is a story about a little
8 boy in a Sunday school class where they had just been
9 studying thou shalt not kill. That week, he found out the
10 State had just executed somebody and he went back to his
11 Sunday school class and said who is going to kill the
12 executioners? Because if you believe in an eye for an eye,
13 where does it end?

14 Killing Mr. Rippe will not make
15 any step towards curing the ills of the world. Mr. Rippe
16 does not have much of a life; he doesn't have a life that
17 any of us would want to live; but that's all he's got, is
18 his life in prison. You don't have to take that life away
19 from him.

20 Killing someone to say killing
21 is wrong makes no sense. Our society wonders why we are so
22 violent. We should examine ourselves and make better
23 examples and instill better behavior. Killing to prevent
24 violence is insanity. It doesn't prevent violence; it

11 1 condones violence.

2 There is nothing in the record
3 of Michael Rippo that says he's a danger to anyone in
4 prison; not one word about him hurting someone.

5 Look at the example of Mahatma
6 Ghandi, won sovereignty for his nation without raising a
7 weapon, because he said that peace and love were the only
8 alternative. Maghandi -- or Ghandi was asked one time about
9 the concept of an eye for an eye. And he had a simple
10 answer: If you believe in an eye for an eye, you will
11 eventually make the entire world blind.

12 The State wants you to repunish
13 Mike Rippo for the 1982 murder. He's doing -- or sexual
14 assault. He's doing life on that already. You can't
15 sentence him on that case. You can't change the outcome of
16 that case. The sexual assault is not one of the aggravating
17 circumstances that you are looking at.

18 Mr. Rippo is facing the death
19 penalty for this case. The State has talked to you about
20 the aggravating circumstances, the robbery, the kidnapping.
21 These are self-fulfilling aggravating circumstances, if you
22 look at them. When someone is charged with felony murder
23 and is convicted, they are then -- they're almost automatic,
24 because you can't find the felony murder without finding the

11 1 aggravating circumstances existed.

2 But look how the State stacks
3 them up. Remember that stacking them up doesn't equal
4 anything. If you have 20 aggravating circumstances and no
5 mitigating circumstances, you don't have to kill.

6 Instruction Number 8 points out
7 the law does not require the jury to impose a death penalty
8 under any circumstances, even when the aggravating
9 circumstances outweigh the mitigating circumstances; nor is
12 10 the defendant required to establish any mitigating
11 circumstances in order to be sentenced to less than death.

12 It's not an if you find
13 aggravating circumstances, you must kill. It's the exact
14 opposite: If you find them, you do not have to kill.
15 Killing is never required.

16 This is going to be my last
17 chance to speak to you in this case. I know you've been
18 through a lot; you've waited an awful lot of time; and I'm
19 sorry for that.

20 Some of those delays have been
21 caused by me; some of them have been caused by others; some
22 of them have just been situations we couldn't control. But
23 don't hold those against Michael Rippo. He wasn't in charge
24 of anything in this courtroom.

12

1

If you have a problem with

2

something I've done or something I've said, if you don't

3

like my ties, you don't like my hair, if I've irritated you

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in any way, take it out on me, not Mr. Ripppo. His life is

5

at stake here. He doesn't have a choice. The Court

6

appoints me to represent a man and I do the best I can, but

7

I'm not in a position to put my client at stake.

8

If you want to talk about

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something that's a humbling experience, stand before a jury

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and ask them to save a man's life. Nobody is up to that

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task. It's a terrifying concept. But Mr. Ripppo should not

12

be punished for any mistakes I have made.

13

Dr. Green told you, the

14

coroner, that the definition of homicide was the killing of

15

one person by another person. That is exactly what the

16

State is now asking you to authorize, the killing of Mike

17

Ripppo.

18

Killing is not the answer to

19

what's gone wrong in this case. We must look at the whole

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system, because this case is about the whole system.

21

Mike Ripppo has tremendous

22

responsibilities in this case -- there is no question about

23

that -- and he's been convicted and he's facing life in

24

prison because of it. But you don't have to kill him when