

1 mother had a VCR?

2 A Yes, sir.

3 Q What types of documents?

4 A I found the booklet that comes with the

5 piece of equipment.

6 Q The owner's manual?

7 A Yes, and one or two repair bills.

8 Q What brand name was the VCR, if you

9 recall?

10 A I think it was a Hitachi.

11 Q Now you've mentioned back in October

12 1995, when you had visited here in Las Vegas with your

13 mother, she had showed you some of the Santa Claus or

14 Christmas booties she was preparing?

15 A Yes, yes, sir.

16 Q Did you find any of her Christmas

17 booties in the house?

18 A Just one that she had made for these

19 neighbor's granddaughter.

20 Q Did you find that at 13 North Yale or

21 was that given to you by one of the Russos?

22 A I found it in mom's bedroom and then I

23 gave it to the Russos.

24 Q Describe the bootie that you found in

25 your mother's bedroom.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Well, when she showed them to me in
2 October, she made red or green -- red and green ones and I
3 don't recall the color of the one that I found that
4 belonged to the Russos.

5 Q Where in the bedroom did you find it,
6 if you remember?

7 A In the far corner, as you entered the
8 room, was a cedar chest and on that cedar chest was three
9 or four bags of gifts that were labeled for other friends
10 of mother's and along with that was the bootie.

11 Q Did your mother have any type of
12 jewelry box in which she kept her watches or pins or other
13 jewelry items?

14 A She had three or four on her dresser I
15 think.

16 Q On the dresser, which room?

17 A Her room.

18 Q Were you familiar with items of jewelry
19 of which she owned?

20 A Yes, sir.

21 Q Did you find any jewelry items missing
22 when you had the chance to go through the house?

23 A Not specifically, no, I didn't.

24 Q Nothing specific came to your attention
25 at that time?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A No.

2 Q Previously in these proceedings, have
3 you had a chance to testify before the grand jury?

4 A Yes, sir.

5 Q Was that back in January 1996?

6 A Yes, sir.

7 Q At that time did you see various
8 photographs?

9 A Yes.

10 Q Did you also look at pieces of physical
11 evidence which you recognized?

12 A Yes.

13 Q In fact, prior to the Court commencing
14 this morning, did you bring to the clerk of the Court and
15 deposit with the clerk some of the items that you found at
16 the house in January 1996?

17 A Yes.

18 Q What items did you leave with the Court
19 clerk?

20 A The papers for the VCR, the pie server,
21 and some little links from watch chains that had been
22 removed. At the grand jury, they showed me a bag of
23 watches that I identified as knowing they were mom's.

24 MR. HARMON: Your Honor, may we have the
25 Court's indulgence?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 THE COURT: Yes.

2 While we are taking this break, ladies and
3 gentlemen of the jury, you are free, during this trial, to
4 avail yourself of the water that is over there. You can
5 bring coffee or Coca Cola, orange juice drinks with you at
6 any time during the trial proceedings, if that will make
7 you more comfortable and you can bring them in here
8 obviously.

9 MR. HARMON: May I approach the witness,
10 your Honor?

11 THE COURT: Yes, you may.

12 Q (BY MR. HARMON) Mrs. Hosking, I'm
13 showing you a series of photographs that have been marked
14 for the purpose of identification as Proposed Exhibits 52,
15 53, and 54. What I'd like you to do is to simply focus on
16 the VCR which is depicted in each of those photographs.

17 I'm referring to the item shown in Proposed
18 52 on the floor.

19 A Uh-huh.

20 Q Will you look at each of the
21 photographs and then tell us if the VCR, which is portrayed
22 in these photographs, look similar to the Hitachi VCR that
23 your mother kept on the console television set at 13 North
24 Yale Street?

25 A It looks like it could be that one.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q You have to keep your voice up.
2 Did you say it looks like it could be that
3 one?
4 A Yes.
5 Q Thank you.
6 When you testified before the Clark County
7 Grand Jury, did you produce a photograph --
8 A Yes.
9 Q -- which showed your mother with other
10 family members while she was still alive?
11 A Yes.
12 Q I'm showing you now what the clerk in
13 this Court has marked as Proposed Exhibit 1. Do you
14 recognize the photograph and the persons depicted in it?
15 A Yes.
16 Q Do you know about when the photograph
17 was taken?
18 A It was taken at my daughter's
19 graduation from college in June of 1995.
20 Q Which daughter?
21 A My older daughter Ronda. That's
22 without an H.
23 Q Ronda?
24 A Ronda without an H.
25 Q Who are the other persons besides the

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 graduate depicted in the photograph?

2 A My mother and myself.

3 Q Does the photograph truly and
4 accurately portray the appearance of your mother, Isabelle
5 Berndt, as she looked in June 1995?

6 A Yes.

7 Q Thank you.

8 .

9 MR. HARMON: Your Honor, the State offers
10 Proposed Exhibit 1.

11 THE COURT: Any objection?

12 MR. SCHIECK: No objection except as
13 otherwise noted, your Honor.

14 THE COURT: Exhibit 1 will be received in
15 evidence.

16 MR. HARMON: Thank you, your Honor.

17 Q Mrs. Hosking, I'm showing you now a
18 series of exhibits, Proposed Exhibit 74, Proposed Exhibit
19 75.

20 Now, Ms. Clerk, did the business card get a
21 separate number?

22 THE CLERK: No. It was attached to the
23 other. It was attached to the white sheet.

24 MR. HARMON: Yes. Perhaps we could make
25 that 75-A. Would that be all right?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 MR. SCHIECK: We have no objection to
2 actually stapling the card to the paper if that's the
3 original.

4 MR. HARMON: That would be fine.
5 Thank you.

6 Q Proposed 74, Proposed Exhibit 75 with
7 the business card stapled at the top, and Proposed Exhibit
8 76. Mrs. Hosking, are you able to tell us what these are?

9 A These are the three papers pertaining
10 to the VCR that I brought you this morning.

11 Q Are these papers which you located at
12 your mother's house in January 1996?

13 A Yes.

14 Q Are they the true and accurate
15 representations of what you recovered in January 1996?

16 A Yes.

17 Q Do they have a serial number, model
18 numbers, and a description of your mother's Hitachi VCR?

19 A Yes.

20 MR. HARMON: Your Honor, the State offers
21 Proposed Exhibit 74, 75, and 76.

22 MR. SCHIECK: No objection.

23 THE COURT: The same will be received in
24 evidence.

25 MR. HARMON: Thank you.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q I have placed in front of you an item
2 of silverware which the clerk has marked as Proposed
3 Exhibit 77-A-1. Are you able to recognize it?

4 A Yes.

5 Q What is Proposed Exhibit 77-A-1?

6 A That's the pie server I found in mom's
7 silverware drawer with the initial B engraved on the
8 handle.

9 Q Is it in substantially the same
10 condition now as it was in January 1996, when you found it
11 in her silverware drawer?

12 A Yes, sir.

13 Q Is this, in fact, part of the set of
14 silverware that was missing?

15 A Yes.

16 Q Now, I'm showing you a rather large bag
17 in which an item has been placed. If you'd just look at
18 it, the outside, does it appear, Mrs. Hosking, to be in a
19 sealed condition at this time?

20 A Yes.

21 Q I'm going to ask you if you will take
22 the scissors, I'll slide this a little bit back for you.
23 If you would cut the outside container open at the end and
24 then we will slide the contents out.

25 A (Witness complying.)

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q Thank you.

2 For the record, we have removed a rather
3 large box, dark brown in color and with the permission of
4 the Court, in a few moments we will ask the clerk to mark
5 this as Proposed Exhibit 77-A.

6 Mrs. Hosking, will you open up Proposed
7 Exhibit 77-A and the contents, also pay some attention to
8 the box itself and will you tell us if you recognize the
9 exhibit, the box and the silverware?

10 A Yes, I do. There's two sets of
11 silverware in here. It doesn't all have the B on it, but I
12 recognize this as being mother's also.

13 Q Your mother had at least two sets of
14 silverware?

15 A Uh-huh.

16 THE REPORTER: Is that yes?

17 THE WITNESS: Yes. Sorry.

18 Q (BY MR. HARMON) Do you recognize the
19 box?

20 A Yes.

21 Q Which set of silverware did your mother
22 keep inside the box?

23 A Both sets.

24 Q Do you see any item inside the box
25 Proposed 77-A which did not belong to your mother, Isabelle

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Berndt?

2 A I do not.

3 Q Are you certain that the box and the

4 silverware belonged to her?

5 A Yes.

6 Q Are you equally certain that she stored

7 the sets of silverware inside the box on a shelve in her

8 bedroom at 13 North Yale Street?

9 A Yes.

10 Q Do you know personally the defendant in

11 this case, William Castillo?

12 A No.

13 Q Prior to the death of your mother, had

14 you ever heard of or seen William Castillo?

15 A No.

16 Q Had you ever seen or heard of Michelle

17 Platou?

18 A No.

19 Q Had you ever seen or heard of Tammy Jo

20 Bryant?

21 A No.

22 Q Now, regarding State's Proposed Exhibit

23 77-A-1, is it your testimony that that item is part of one

24 of the sets of silverware now found inside proposed 77-A?

25 A Yes, sir.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q Mrs. Hosking, I'm showing you an
2 evidence bag which has been marked as Proposed Exhibit 78.
3 Does this bag appear to be in a sealed condition?

4 A Yes, sir.

5 Q I'm going to ask you, using once more
6 the scissors the clerk has furnished to us, to cut this bag
7 from the side, leaving the seals intact.

8 A (Witness complying.)

9 Q Having cut open the side of the bag,
10 Proposed Exhibit 78, will you now remove the contents,
11 please.

12 A (Witness complying.)

13 Q Please describe for the record what you
14 have just removed from Proposed Exhibit 78?

15 A Some green and red booties with white
16 tops on them with the little plastic insert.

17 Do you want me to count them?

18 Q I will momentarily.

19 Will you describe the other item, please?

20 A This?

21 Q This.

22 A This is a red bootie with the same
23 plastic insert and it's got a little tag on it that says to
24 Gianna from Mrs. Berndt.

25 Q How is Gianna spelled?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A G-I-A-N-N-A.

2 Q Who is Gianna?

3 A Gianna is the Russos' granddaughter.
4 Mother's neighbor.

5 Q The Russos are the next door neighbor
6 and friends of your mother Isabelle Berndt?

7 A Yes.

8 MR. HARMON: Your Honor, may we have the
9 larger bag with the green and red booties marked as State's
10 Proposed Exhibit 78-A and the ziplock baggie and single
11 baggie marked as 78-A-1?

12 THE COURT: Yes.

13 MR. HARMON: Thank you.

14 Q I'm showing you again the plastic bag
15 that contains a number of green and red booties. How many
16 are there in the bag that's now been marked as Proposed
17 78-A?

18 A Fifteen.

19 Q Do you recognize these as the types of
20 Christmas booties that your mother showed you in October
21 1995?

22 A Yes, sir.

23 Q How sure are you that these are the
24 types of Christmas presents she was going to give to her
25 grandchildren and other children significant in her life

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 for Christmas 1995?

2 A Well, several years ago, after I
3 started having grandchildren, mother decided rather than
4 give them gifts because they got quite a few toys, she
5 would buy them each a US savings bond and after that time,
6 every year she would make some sort of a little item to put
7 that bond in.

8 Q Is it your testimony that you learned
9 in October 1995, it was going to be the little Santa Claus
10 booties for Christmas 1995?

11 A Yes.

12 Q Do these items in Proposed Exhibit 78-A
13 look exactly like the Christmas booties that your mother
14 was making?

15 A Yes.

16 Q Would she crochet them herself?

17 A Yes.

18 Q You've mentioned that in January 1996,
19 you found a single Christmas bootie at the house?

20 A Yes.

21 Q I'm showing you Proposed 78-A-1. Is
22 that the single bootie you found?

23 A Yes.

24 Q Where was it?

25 A In mother's bedroom.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q Does Proposed Exhibit 78-A-1 appear to
2 be in substantially the same condition now as it was on the
3 date that you found it?

4 A No.

5 Q Well, what is missing?

6 A Oh, the date I found it?

7 Q Yes, on the date you found it.

8 A Yes, it does.

9 Q In terms of comparing the bootie which
10 bore the name Gianna for Gianna Russo with the booties
11 inside the plastic bag, Proposed Exhibit 78-A, is there any
12 difference?

13 A Yes.

14 Q Does it appear to be the same types of
15 bootie?

16 A Yes.

17 Q In what way is Proposed 78-A-1
18 different?

19 A Gianna's is smudged and dirty.

20 Q Does it also have a little Christmas
21 seal on it?

22 A And it has a tag on it with Gianna's
23 name.

24 Q Mrs. Hosking, do any of these booties
25 have a savings bond in them?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A No.

2 Q Did you find any savings bonds when you
3 and other members of the family went through your mother's
4 house in January 1996?

5 A I found -- yes.

6 Q What did you find?

7 A We found -- mother had told me that --

8 MR. SCHIECK: I'm going to object, your
9 Honor, nonresponsive --

10 THE COURT: Overruled.

11 MR. SCHIECK: -- to what she found as to
12 what she was told.

13 THE COURT: Yes, still overruled.

14 Q (BY MR. HARMON) What did your mother
15 tell you?

16 A She told me, one of the last times I
17 spoke to her on the phone, she had been to the bank and
18 obtained all 16 bonds for the grandchildren. She bought
19 each one for the birthdays in 1996 and one for each one for
20 Christmas. I did in January find the receipt that the bank
21 gives you when you buy a bond; all 16 of them, but I only
22 found the eight birthday bonds.

23 Q In what amount were the savings bonds?

24 A The bonds were \$50 bonds.

25 Q Fifty dollar bonds?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Uh-huh.

2 Q Are these United States savings bonds?

3 A Yes, sir.

4 Q To this date, are you able to account

5 for the eight missing United States savings bonds?

6 A I have not.

7 Q Now I want to show you also an evidence

8 bag marked as Proposed Exhibit 79. Like the other

9 containers you have looked at, is it also in a sealed

10 condition at this time?

11 A Yes.

12 Q I didn't have you examine this very

13 carefully, I suppose.

14 A No, there is a slit.

15 Q It does appear that it had been opened

16 at the bottom?

17 A Yes.

18 Q Will you remove the contents, please.

19 A (Witness complying.)

20 It's some stickers.

21 Q Are these consistent with the types of

22 stickers that your mother would use for her Christmas

23 presents?

24 A Well, I happened to be with mom when

25 she bought these and she bought almost all of them in the

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 store for the grandchildren.

2 Q When was it --

3 A That was --

4 Q -- that your mother purchased them?

5 A At the balloon festival in October in
6 Albuquerque, New Mexico.

7 Q We will ask the Court to mark the
8 contents as Proposed 79-A, you know, in fact, that those
9 stickers are consistent with the ones you saw your mother
10 purchase in Albuquerque, New Mexico?

11 A Yes.

12 Q What was that time frame?

13 A It was in October, during the balloon
14 festival in October of '95.

15 Q Now, you mentioned at the grand jury
16 hearing that you, in fact, were shown some wristwatches?

17 A Yes.

18 Q And some of those you recognized?

19 A Yes.

20 Q I'm showing you an evidence envelope
21 which has been marked as Proposed Exhibit 80. Does it bear
22 a seal and is it also stapled across the top?

23 A Yes.

24 Q If you can do so without difficulty,
25 will you simply pull it open at the top and examine the

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 contents.

2 A (Witness complying.)

3 Q Please remove the contents.

4 A (Witness complying.)

5 Q Describe for the record, Mrs. Hosking,
6 what you have removed?

7 A There's about a half dozen, maybe eight
8 old wristwatches and a little pin.

9 MR. HARMON: Your Honor, with the Court's
10 permission, we will ask the clerk in a few moments to mark
11 the ziplock baggie and its contents as Proposed Exhibit
12 80-A.

13 Q Are you able, particularly if we open
14 up the baggie, to spread the contents out and then tell us
15 if you personally recognize any of these wristwatches or
16 the pin as belonging to your mother, Isabelle Berndt.

17 A (Witness complying.)

18 Q For the record, first of all, how many
19 wristwatches were inside what will be Proposed 80-A?

20 A Six.

21 Q Do you recognize any of those as
22 wristwatches of your mother's?

23 A Yes, I do.

24 Q How many of them?

25 A Probably four of them.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q Will you separate the four that you
2 recognize.

3 A I believe these are the four.

4 Q Are those the four wristwatches closest
5 to you?

6 A Yes.

7 MR. HARMON: Your Honor, I wonder, just for
8 the purpose of clarity for the record, if we could locate
9 some other container and perhaps we could make the two she
10 is not identifying Proposed Exhibit 80-A-2? Would that be
11 reasonable, your Honor?

12 THE COURT: Sure.

13 Q (BY MR. HARMON) What about the pin,
14 Mrs. Berndt?

15 A The pin is a little angel pin that on
16 our way to Albuquerque we had stopped in Sodona and she
17 purchased this for a friend of hers.

18 Q So you are able to identify the pin, as
19 well as being your mother's property after the purchase was
20 made?

21 A Yes.

22 Q What is the basis of your
23 identification of the four wristwatches which are spread
24 out in front of you at the witness stand?

25 A Mom always wore a watch and when one

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 would break, apparently, she just kept them and I just
2 remember, at different times, these watches on her wrist.

3 Q You remember at different times seeing
4 each of these wristwatches being worn by your mother?

5 A Uh-huh.

6 Q That's yes?

7 A Yes.

8 Q Is there any doubt in your mind that
9 these four wristwatches belonged to your mother Isabelle
10 Berndt?

11 A No.

12 Q If she wasn't wearing them, would they
13 have been stored at 13 North Yale Street?

14 A Yes.

15 Q Inside some type of jewelry box?

16 A Or just in her drawer. I'm not sure.

17 Q Did you find any wristwatches at the
18 house in January 1996?

19 A Yes.

20 Q Did you find any of the four --

21 A No.

22 Q -- which are part of Exhibit 80-A?

23 A No.

24 Q Now you appear to be prepared to point
25 to something you are wearing?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Yes, this watch I found in her house
2 afterwards.

3 Q The wristwatch you are wearing on your
4 left wrist?

5 A Yes.

6 Q Do the wristwatches and the angel pin
7 appear to be in substantially the same condition now as
8 when you last remember seeing them?

9 A Yes.

10 Q I also want to show you Proposed
11 Exhibit 80-A-1. Are you able to recognize the contents of
12 that ziplock baggie?

13 A I believe these are links from a chain
14 on a watch that she had shortened.

15 Q Now are those links to any of the
16 wristwatches which are inside Proposed Exhibit 80-A?

17 A Yes.

18 Q Are you able -- I'm sorry, I
19 prematurely put these back inside the bag.

20 Are you able to point out the exact
21 wristwatch?

22 A I believe it's this one.

23 Q Will you display that so that all the
24 jurors can see it.

25 You are saying that the links, which are

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 inside Proposed Exhibit 80-A-1, are some of the links that
2 can be used with that wristwatch?

3 A Yes.

4 Q Thank you.

5 Your Honor, may we have the Court's
6 indulgence?

7 THE COURT: Yes.

8 (Off the record discussion not reported.)

9 MR. SCHIECK: Can we approach for a second,
10 your Honor?

11 THE COURT: Yes.

12 (Off the record discussion not reported.)

13 THE COURT: All right, we are going to take
14 about a ten minute recess during this time, ladies and
15 gentlemen.

16 I would remind you it is your duty not to
17 converse among yourselves or with anyone else on any
18 subject connected with this trial or to read, watch, or
19 listen to any report of or commentary on this trial or any
20 person connected with this trial by any medium of
21 information, including, without limitation, newspapers,
22 television, or radio, and you are not to form or express an
23 opinion on any subject connected with this case until it is
24 finally submitted to you.

25 Please do not leave the area of the upper

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 deck. We will try to get started as close to 10 after as
2 we can, but maybe a couple minutes after that to give
3 everybody enough time to use the facilities.

4 We will be at ease while you depart the
5 confines of the courtroom, ladies and gentlemen.

6
7 (At this time the jury left the courtroom.)

8 THE COURT: All right, we are in recess.

9
10 (Off the record at 11:02 a.m. and back on
11 the record at 11:23 a.m.)

12 THE COURT: Counsel stipulate to the
13 presence of the jury?

14 MR. BELL: Yes, your Honor.

15 MR. LaPORTA: So stipulated, your Honor.

16 THE COURT: I apologize for that delay, but
17 a phalanx of civil attorneys were waiting for me when I
18 returned to the office. So, unfortunately, that does
19 happen from time to time during the day.

20 You may continue with your direct
21 examination of this witness.

22 MR. HARMON: Thank you, Judge.

23 May I again approach the witness, your
24 Honor?

25 THE COURT: Certainly.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 DIRECT EXAMINATION CONTINUED

2 BY MR. HARMON:

3 Q You have mentioned earlier in your
4 testimony, Mrs. Hosking, that your mother, Isabelle Berndt,
5 had an automobile?

6 A Yes.

7 Q I'm showing you what we've marked as
8 Proposed Exhibits 86, 87, and 88. Do you recognize the
9 automobile shown in the pictures?

10 A Yes.

11 Q Whose car is it?

12 A It was my mom's.

13 Q Are you able to tell where the car is
14 when these pictures were taken?

15 A In front of our house in Granada Hills,
16 California.

17 Q So these were taken what, at
18 Thanksgiving time 1995?

19 A No. These were after -- these were
20 taken in January. I have a camera that states the date
21 that a picture was taken.

22 Q And I'm just noticing that date appears
23 in the lower right-hand corner of the photographs?

24 A Yes.

25 Q Were the pictures taken by you?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Yes.

2 Q This was after your mother's death?

3 A Yes.

4 Q Are they definitely pictures of your

5 mother's car?

6 A Yes. I --

7 Q What was --

8 A -- I took them.

9 Q Was there an effort also in January

10 1996 to portray the trunk area of the vehicle?

11 A Yes.

12 Q Was there a lug wrench or tire iron in

13 the trunk of your mother's car?

14 A Yes.

15 Q Is that depicted in Proposed Exhibit

16 88?

17 A Yes.

18 Q Do each of these photographs truly and

19 accurately show the appearance and condition of your

20 mother's automobile at the time these photographs were

21 taken in California in January 1996?

22 A Yes.

23 MR. HARMON: Your Honor, the State offers

24 Proposed Exhibit 86 through 88.

25 MR. SCHIECK: No objection, your Honor.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 THE COURT: The same will be received in
2 evidence.

3 MR. HARMON: Thank you.

4 Q To your knowledge, would your mother
5 ever have kept a lug wrench or tire iron or crow bar inside
6 her house at 13 North Yale Street?

7 A Not to my knowledge.

8 Q I want to show you again what is now in
9 evidence as Exhibit 76. Is this some type of repair
10 receipt for your mother's Hitachi VCR?

11 A Yes.

12 Q Does it, in fact, bear your mother's
13 signature in the lower right-hand corner?

14 A Yes, it does.

15 Q Do you recognize the signature as that
16 of your mother Isabelle Berndt?

17 A Yes.

18 Q I'm showing you now photographs in a
19 series marked Proposed Exhibits 4, 5, and 6. Do you
20 recognize what those photographs are pictures of?

21 A Yes.

22 Q What do they depict?

23 A They depict the front of my mom's house
24 at 13 North Yale after the fire. This is what I saw when
25 we drove up.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q Now did she have, just to the left of
2 the front door, the number of her house on Yale Street and
3 also -- I'm not sure how to describe it. Will you describe
4 what appeared on the outside wall just below the number
5 13?

6 A It's like an old fashion buggy with --
7 pulled by a team of horses with four people in it and it
8 has her name IM Berndt on it.

9 Q Do these photographs in this series
10 accurately show the appearance of the front of your
11 mother's house after the fire had occurred?

12 A Yes, sir.

13 Q Thank you.

14 MR. HARMON: Your Honor, that concludes
15 direct.

16 THE COURT: Cross examination?

17 MR. SCHIECK: No questions, your Honor.

18 THE COURT: Thank you.

19 May this witness be discharged?

20 MR. BELL: Yes.

21 THE COURT: Per prior stipulation, she may
22 remain in the courtroom?

23 MR. SCHIECK: That's correct, your Honor.

24 THE COURT: Thank you, ma'am. You may step
25 down.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 MR. BELL: Harry Kumma.

2 (Off the record discussion not reported.)

3 MR. BELL: Harry Kumma.

4

5 HARRY KUMMA, JR.,

6 having been first duly sworn to tell the truth, the whole

7 truth and nothing but the truth, testified and said as

8 follows:

9

10 DIRECT EXAMINATION

11 BY MR. BELL:

12 Q Would you state your name, please?

13 A My name is Harry Kumma.

14 Q Would you spell your last name,

15 please.

16 A K-U-M-M-A and that's Jr.

17 Q How old are you, Mr. Kumma?

18 A I'm 50 years old.

19 Q And where do you reside?

20 A 3828 Marshall, M-A-R-S-H-A-L-L, Circle,

21 Las Vegas, Nevada.

22 Q How long have you lived in Las Vegas,

23 Nevada?

24 A Twenty years.

25 Q What is your trade or profession, sir?

PATSY K. SMITH, OFFICIAL COURT REPORTER

- 1 A I'm a roofer by trade.
- 2 Q How long have you been a roofer by
- 3 trade?
- 4 A For about 25 years, sir.
- 5 Q And did there come a time when you were
- 6 employed by Dean Roofing Company?
- 7 A Yes, sir.
- 8 Q And about when did you first become
- 9 employed by Dean Roofing Company?
- 10 A I believe it was in 1987.
- 11 Q Did there come a time when you severed
- 12 your relationship with Dean Roofing Company?
- 13 A Yes, sir, just about one month ago to
- 14 the date.
- 15 Q Are you now self-employed in your own
- 16 business as a roofer?
- 17 A Yes, sir.
- 18 Q From 1987 to 1996, during that period,
- 19 you continuously worked for Dean Roofing; is that right?
- 20 A With the exception of a couple of
- 21 summers when I left town and worked up north, yes, sir.
- 22 Q Do you know a gentleman by the name of
- 23 Buddy Charles?
- 24 A Yes, sir, I do.
- 25 Q How do you know Mr. Charles?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Mr. Charles is a small contractor that
2 I've had occasion to do work for in the past.

3 Q How long has it been, over what period
4 of years, that you have occasionally done work for Mr.
5 Charles?

6 A Proximately four years period of time,
7 sir.

8 Q So back in the early '90s up to the
9 present?

10 A Correct.

11 Q This would have been at a time when you
12 were employed by Dean Roofing; is that correct?

13 A Yes, sir.

14 Q Would the work for Mr. Charles be
15 what's known in your trade as a side job?

16 A Yes, sir.

17 Q And was this authorized by your primary
18 employer, Dean Roofing, on small jobs that they wouldn't
19 otherwise bid?

20 A Yes, sir. They were well aware of any
21 side work that I did.

22 Q In 1995, did you have occasion to do
23 any side jobs, roofing jobs for Buddy Charles?

24 A Yes, sir.

25 Q How many?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Either two or three.

2 Q Did you do one on or about the weekend
3 adjacent to Thanksgiving 1995?

4 A Yes, I did.

5 Q Do you recall how you had occasion to
6 get that job?

7 A Yes, sir.

8 Q Would you please explain that to the
9 jury.

10 A Buddy Charles called me about three or
11 four days before the job was to start and asked me if I
12 could do it. He explained the job to me and I went and met
13 him at the job site.

14 Q And where was that?

15 A It was on Yale Street, but I can't
16 remember the address, sir.

17 Q Okay.

18 A I took a look at the job and determined
19 that I would need some help to remove the existing roof
20 that was on the residence and contacted some friends that
21 worked for me.

22 Q Was it going to be a complete new roof
23 put on this residence?

24 A Yes, sir.

25 Q And the old roof was what type of

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 composition?

2 A It was an asphalt roof with rock on
3 top.

4 Q Would it be the case that the new roof
5 could not be put on that old roof, it had to be removed
6 before it went in?

7 A Yes, I wouldn't do that.

8 Q Did you have help removing the old roof
9 and installing the new roof or just one of those phases?

10 A Just one of those phases.

11 Q Which was that?

12 A The removal of the old roof.

13 Q Let me show you what's been marked as
14 exhibits 4, 5, and 6, which have been identified as
15 depicting a residence at the address 13 North Yale and ask
16 you if that looks like the house upon which this side job
17 was performed?

18 A Yes, sir.

19 Q Having seen these pictures, would that
20 refresh your recollection that the specific address on Yale
21 was 13?

22 A Yes, sir.

23 Q The side job was performed on or about
24 the Saturday adjacent to Thanksgiving; is that correct?

25 A Correct.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q If Thanksgiving, a Thursday, was the
2 23rd and the following Saturday was the 25th, would that be
3 your best guess as to the date?

4 A Yes, sir.

5 Q And what was your responsibility
6 reference the job?

7 A My responsibility, as a roofer, was to
8 make sure that everything was done according to code.

9 Q Did you have occasion to secure some
10 people to assist you in what's called the tear off work?

11 A Yes, sir.

12 Q And whom did you get to assist you?

13 A Three individuals, Kirk Rasmussen, Jeff
14 Donovan, and Mr. Castillo.

15 Q And how did you have occasion to know
16 Mr. Rasmussen, Mr. Donovan, and Mr. Castillo?

17 A We all worked together occasionally for
18 Dean Roofing.

19 Q Okay.

20 A We were all employed by Dean Roofing.

21 Q What was Mr. Rasmussen's job or title
22 at Dean Roofing, if you know?

23 A He was in charge of the tear off crews
24 at Dean.

25 Q So the demolition of the removal of the

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 old roofs that Dean did, he was sort of the construction
2 foreman?

3 A Yes, sir.

4 Q And Mr. Donovan and Mr. Castillo, what
5 were their positions?

6 A At that time, they were on the tear off
7 crews.

8 Q They were laborers that worked under
9 the direct supervision of Rasmussen?

10 A Mr. Donovan, I'm not sure what's the
11 position he had at Dean. He may have been working with
12 another roofer. He's had several different jobs there.

13 Q Have you worked with Mr. Rasmussen on
14 side jobs before?

15 A Yes, sir.

16 Q Have you worked with Mr. Donovan on
17 side jobs before?

18 A Once before he had worked with me.

19 Q Have you worked with Mr. Castillo on
20 side jobs?

21 A I'm not certain that this may have been
22 the first time that I personally had him on a side job. I
23 can't recall, sir.

24 Q Did you work with Mr. Castillo on
25 regular jobs contracted for by your joint employer Dean

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Roofing from the summer of '95, when he came to be employed
2 with the company, until November 1995, when you did this
3 side job?

4 A Yes, sir.

5 Q Do you see the person you've named as
6 William Castillo in the courtroom?

7 A Yes, sir, I do.

8 Q Will you point to him and describe what
9 he is wearing?

10 A He is wearing a white striped shirt,
11 white with blue stripes and a tie.

12 MR. BELL: May the record reflect the
13 identification of the defendant?

14 MR. LaPORTA: No objection.

15 THE COURT: Yes.

16 Q (BY MR. BELL) What time did the four
17 of you get to 13 North Yale on or about the 25th of
18 November to perform your functions?

19 A I believe I told everyone to meet there
20 at 6 a.m.

21 Q Did everyone get there at roughly the
22 time they were suppose to?

23 A Yes, sir.

24 Q Did you know at that time whether or
25 not the occupant or occupants of the residence were home?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A I was informed -- I'm not sure if I
2 knew before -- I believe I knew before we even started the
3 job that the woman was out of town and I believe she was in
4 California.

5 Q And did you then undertake to do the
6 job?

7 A Yes, sir.

8 Q And just briefly, what is the tear off
9 consist of? What do you do?

10 A We remove the existing roof. A tar
11 roof comes off fairly easily with a shovel, shovels and the
12 only problem we had with the tear off is when the dumpster
13 was delivered, the drop box, they left it in the street as
14 opposed to up against the roof. So we had to handle the
15 material twice.

16 Q So you shovel the material off the roof
17 and you somehow get it into a dumpster?

18 A Yes, sir.

19 Q When was the tear off portion of the
20 side job at 13 North Yale completed? About what time?

21 A I would say approximately 12:30 that
22 same day.

23 Q Did there come a time towards the end
24 of the tear off portion when any of the four of you left
25 the roof?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Yes, sir.

2 Q And who was that?

3 A I believe Mr. Castillo and Mr. Donovan
4 were -- I sent them down to clean the grounds up around the
5 house. Some trash will fall off during the tear off and
6 they were cleaning up the ground area. At one time or
7 another, all four of us were up and down the ladder.

8 Q Through Saturday afternoon through
9 Sunday, did any of the other workers work with you or did
10 you work alone in putting on the new roof?

11 A I worked alone.

12 Q So the last time that day, Saturday on
13 or about the 25th that you saw Castillo, Rasmussen, and
14 Donovan would have been somewhere midday on the 25th; is
15 that correct?

16 A Yes, sir.

17 Q Did you ever see Mr. Castillo in
18 possession of a key that had some nexus to the residence at
19 13 North Yale, you personally?

20 A No, sir.

21 Q So at or about the 25th or the 26th,
22 you had no knowledge of whether or not he had come into
23 possession of a key, you yourself?

24 A No, I didn't.

25 Q Were you aware, in the latter part of

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 November or December, of anything about Mr. Castillo's
2 financial circumstances?

3 MR. LaPORTA: Objection, your Honor,
4 relevance.

5 MR. BELL: Let me --

6 THE COURT: Overruled.

7 MR. BELL: Thank you.

8 Q Let me be more blunt.

9 Did he ever ask you to borrow money?

10 A Yes, sir, on one occasion.

11 Q And without saying specifically what
12 for, how much did he ask you for?

13 A I believe he needed to borrow \$350, I
14 believe, and --

15 Q Did he get the money from you?

16 A No, sir.

17 Q What did you tell Mr. Castillo?

18 A I really wasn't in a financial position
19 to be lending any money to anybody.

20 Q And that's what you told him?

21 A Yes, sir.

22 (Off the record discussion not reported.)

23 Q (BY MR. BELL) Did you understand that
24 the money was to pay a lawyer?

25 MR. LaPORTA: Objection, your Honor,

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 relevance.

2 THE COURT: Overruled.

3 THE WITNESS: I can't remember the exact
4 conversation, but I was under the impression it was for
5 another case that he had ongoing.

6 MR. BELL: Thank you. Nothing further,
7 Judge.

8 THE COURT: Cross examination?

9 MR. LaPORTA: Court's indulgence.

10 (Off the record discussion not reported.)

11

12 CROSS EXAMINATION

13 BY MR. LaPORTA:

14 Q Mr. Kumma, you indicated that Mr.
15 Castillo worked for Dean Roofing; is that not correct?

16 A Yes, sir.

17 Q Do you know, if you know, how long had
18 he worked for Dean Roofing?

19 A I really don't know, sir. How long Mr.
20 Castillo had worked for Dean, uh-huh. I really don't
21 know. I believe three or four months, but I'm not sure of
22 that.

23 Q So you were not familiar of his work
24 habits?

25 A On the occasion that I worked with him

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 at Dean, of course, I was aware of his work habits and he
2 was a good worker, but I couldn't tell you how long he had
3 been employed there because I'm not sure if he was on the
4 tear off crew the whole time he was with them or not.

5 Q In fact, he was a good worker is why
6 you had suggested him?

7 A Yes, sir.

8 Q Or asked him to come on the job; is
9 that not correct?

10 A Yes.

11 MR. LaPORTA: No further questions.

12 MR. BELL: Nothing further.

13 THE COURT: All right, may this witness be
14 discharged?

15 MR. BELL: Yes, he may.

16 Jeff Donovan, please.

17 THE COURT: Thank you. You may step down.

18

19 JEFF DONOVAN,

20 having been first duly sworn to tell the truth, the whole
21 truth and nothing but the truth, testified and said as
22 follows:

23 . . .

24 . . .

25 . . .

PATSY K. SMITH, OFFICIAL COURT REPORTER

DIRECT EXAMINATION

BY MR. BELL:

Q Would you state your name, please?

A Jeff Donovan.

Q How old are you, Mr. Donovan?

A Thirty four.

Q Where do you live?

A Shelter Cove Apartments on Sahara and

Decatur.

Q Is that in Las Vegas, Clark County,

Nevada?

A Yes, sir, it is.

Q What is your business or profession?

A I'm a roofer.

Q How long have you been a roofer by

trade?

A Approximately eight years.

Q During that eight years, was there ever

a time when you were employed with Dean Roofing?

A Yes, there was.

Q And when did you first commence to be

employed by Dean Roofing?

A Approximately two and a half years

ago.

Q Are you still there with Dean Roofing?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A No, sir, I'm not.

2 Q Were you employed with Dean Roofing in
3 the fall and winter of last year, November, December 1995?

4 A Yes, sir, I was.

5 Q During the course of your employment
6 with Dean Roofing, did you ever have the opportunity to do
7 what's known in your trade or profession as side jobs?

8 A Yes, sir.

9 Q And those were not discouraged by your
10 employer, as long as they were jobs that Dean wouldn't
11 bid?

12 A That's correct.

13 Q Did you ever have occasion to
14 participate in side jobs with a man by the name of Harry
15 Kumma?

16 A Yes, sir, I have.

17 Q Is Harry Kumma the fellow that just
18 left court as you came in?

19 A Yes, he is.

20 Q Did you work with Mr. Kumma on a side
21 job on or about the Saturday adjacent to Thanksgiving last
22 year?

23 A Yes, I did.

24 Q And do you recall where that side job
25 occurred?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A It is across from the high school on
2 Decatur and 95.

3 Q I show you what's been marked as
4 Exhibits 4, 5, and 6 and ask you if you recognize that?
5 Either you do or you don't as the residence on which that
6 job was performed?

7 A Yes, I do.

8 Q If I represent to you that this has
9 been identified as a residence at North Yale, would you
10 have any reason to quibble with that address?

11 A No, sir, I wouldn't.

12 Q All right.

13 And who else worked on that side job with
14 Mr. Kumma and yourself?

15 A Kirk Rasmussen and Billy Castillo.

16 Q Kirk Rasmussen also an employee of Dean
17 Roofing at the time?

18 A That's correct.

19 Q How about Mr. Castillo?

20 A Yes, he was.

21 Q When did you first come to know Mr.
22 Castillo?

23 A Approximately about four or five months
24 prior to that side job.

25 Q And you came to know him because he

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 came to be employed at Dean Roofing where you were already
2 working; is that correct?

3 A That's right.

4 Q Do you see Mr. Castillo in the
5 courtroom today?

6 A Yes, I do.

7 Q Would you point to him and describe
8 something that he is wearing?

9 A He's the gentleman in the center with
10 the tie and the white shirt.

11 MR. BELL: May the record reflect the
12 identification of the defendant, your Honor?

13 THE COURT: Yes.

14 MR. LaPORTA: No objection.

15 Q (BY MR. BELL) When you performed the
16 side job, what was the function of Rasmussen, Castillo, and
17 yourself?

18 A We were to tear off the roof and after
19 we tear off the roof, we pick up all the trash that's on
20 the ground.

21 Q And were you going to work on putting
22 on the new roof or was that Mr. Kumma's responsibility?

23 A That was Mr. Kumma's job.

24 Q Was Mr. Kumma present along with the
25 other three of you when the tear off occurred?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Yes, he was.

2 Q So all four of you worked on tearing

3 off the roof; is that correct?

4 A That's right.

5 Q When the tear off was done, the three

6 of you, other than Mr. Kumma, went your separate ways?

7 A That's right.

8 Q About what time of day did you start

9 the tear off?

10 A Between 5:30, 6:00 in the morning.

11 Q About how long did it take, the tear

12 off portion?

13 A I think about four and a half hours.

14 Q So you would have been done 10:30, 11?

15 A 11:00.

16 Q Did there come to time during the tear

17 off that any of you departed from the roof to the ground to

18 commence cleanup?

19 A Yeah. I would say Billy got off the

20 roof first; Billy and Kirk got off the roof first, started

21 cleaning up the grounds probably a good half hour before I

22 came down.

23 Q When you same Billy, you mean William

24 Castillo, the defendant?

25 A Right.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q And Kirk means Kirk Rasmussen?

2 A Correct.

3 Q Did there come a time also when you got

4 on the ground to work on cleanup?

5 A Yes, there was.

6 Q At or about that time, did anything

7 unusual occur between Mr. Castillo and yourself?

8 A Yeah. I walked around the back of the

9 building and Billy is holding up a key. Said he found a

10 key to the house.

11 Q I show you what's been marked as

12 Exhibits 36, 37, 38, 39, 40 and ask you if, when you say

13 walked around to the back of the building, that seems to

14 accurately depict what you are talking about?

15 A Yeah, this is exactly right. This is

16 the back of the house.

17 Q And did Mr. Castillo indicate to you

18 where he found that key?

19 A No, he didn't.

20 Q Did he show you the key -- either the

21 key itself or a container in which the key was kept?

22 A No. He just held a key up in his hand

23 when I walked around the corner.

24 Q You couldn't then specifically identify

25 the key itself?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A No, sir.

2 Q Did Mr. Castillo say anything about
3 what he intended to do with that key?

4 A He stated he wanted to go in the house
5 and I said, "No, you are not."

6 Q He stated to you that he wanted to use
7 that key to enter the premises at 13 North Yale?

8 A That's right.

9 Q And you told him that wasn't going to
10 happen or that wasn't acceptable?

11 A That's right. I told him to put the
12 key back.

13 Q Did you actually see whether or not he
14 put the key back?

15 A I did not.

16 Q Through your conversations with Mr.
17 Castillo, did you come to understand approximately where he
18 found the key in the backyard area?

19 A I assumed it was above the barbecue or
20 something. I wasn't sure. I don't remember seeing a key
21 box that you showed me a picture of.

22 Q Is that assumption based upon anything
23 other than that was the proximity where you were standing
24 or was it based upon a conversation with Mr. Castillo or
25 you are not really sure?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A That was just based upon the proximity
2 of where we were standing.

3 Q Now after you told Mr. Castillo that he
4 could not go in the house or don't go in the house, what
5 was his response?

6 A "I'll just come back later at
7 nighttime," or something to that effect.

8 Q He specifically, he, Mr. Castillo, said
9 that to you?

10 A Yes, he did.

11 Q That he would come back later to this
12 residence some other time at night and use that key?

13 A Yes, he did.

14 (Off the record discussion not reported.)

15 Q (BY MR. BELL) Did you know --

16 THE COURT: I can't hear you. The witness
17 has an inquiry. That water is from somebody else. I will
18 get you some more.

19 Here, I've got it.

20 Q (BY MR. BELL) Were you aware, when you
21 were working on the residence at 13 North Yale, as to how
22 many people or the gender of the people that resided
23 there?

24 A I was aware that there was an older
25 lady living in that residence. As far as I know, she was

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 the only one.

2 Q Did you know whether or not she was
3 supposed to be home during the time that you were working
4 on the residence?

5 A No, she was away on vacation in L.A. or
6 somewhere in California, I believe, Harry told me.

7 Q So you knew that there was an older
8 lady that was the occupant, you knew that she wasn't
9 present in the house on or about November 25th, correct?

10 A That's right.

11 Q Did you see anybody other than the
12 workers come and go in or out of that house on or about the
13 25th?

14 A No.

15 MR. BELL: That's all. Thank you.

16 THE COURT: Cross?

17 MR. LaPORTA: Thank you, your Honor.

18

19 CROSS EXAMINATION

20 BY MR. LaPORTA:

21 Q Mr. Donovan, you just testified that
22 you knew that there was an elderly lady that lives in the
23 house that you were working on. Did you ever have that
24 specific conversation with Mr. Castillo?

25 A I don't -- no, I didn't have that

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 conversation with Billy that I don't remember.

2 Q Just so the record is clear, do you
3 remember the exact date that you did the house?

4 A I believe it was about a week after
5 Thanksgiving. It was the weekend after Thanksgiving or
6 that very next weekend.

7 Q The last few days of November?

8 A Right, first few days of December.

9 Q First few days of December.

10 MR. LaPORTA: No further questions, your
11 Honor.

12

13 REDIRECT EXAMINATION

14 BY MR. BELL:

15 Q The job you did as tear off was on a
16 Saturday; is that correct?

17 A That's right.

18 MR. BELL: Nothing further from this
19 witness, your Honor.

20 THE COURT: May this witness be discharged?

21 MR. BELL: He may.

22 MR. LaPORTA: Yes, your Honor.

23 THE COURT: Thank you, sir. You may step
24 down.

25 Do you have a short witness?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 MR. HARMON: No, your Honor. We did have
2 another witness. We did not anticipate the last two would
3 go quite as quickly as they did, so we excused that
4 witness.

5 THE COURT: So you want to start this
6 afternoon?

7 MR. BELL: We figured it was close to 12.

8 THE COURT: Let's come back at 1:15. We
9 will go to 4 as close as we can. I will make some
10 inquiries about Tuesday. We may be able to start at 9:30
11 on Tuesday. We have got a couple summary judgments. It's
12 our civil calendar. I think we will be starting before
13 10.

14 Ladies and gentlemen, I would remind you it
15 is your duty not to converse among yourselves or with
16 anyone else on any subject connected with this trial or to
17 read, watch, or listen to any report of or commentary on
18 this trial or any person connected with this trial by any
19 medium of information, including, without limitation,
20 newspapers, television, or radio, and you are not to form
21 or express an opinion on any subject connected with this
22 case until it is finally submitted to you.

23 We will be reconvening at 1:15. If you
24 would be back downstairs ready to be collected at 1:10. We
25 will be at ease while you depart the confines of the

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 courtroom.

2

3 (At this time the jury left the courtroom.)

4 THE COURT: It appears that we're going to
5 have two days next week where we will have a free run
6 starting after our civil cases.

7 MR. BELL: All right.

8 THE COURT: But Wednesday is going to be
9 very heavy. So you can anticipate not starting to 11:00 on
10 Wednesday.

11 MR. SCHIECK: Your Honor, can we stay on the
12 record, please?

13 THE COURT: Uh-huh.

14 MR. SCHIECK: Couple things, your Honor,
15 that we need to put on the record before we depart this
16 morning.

17 Number one, as the Court will recall, we did
18 file several pretrial motions in this matter. Specifically
19 we filed a motion in limine to exclude the photograph of
20 Mrs. Berndt with her daughter and granddaughter on the
21 basis that it was prejudicial. The Court, in fact,
22 overruled that --

23 THE COURT: Yep.

24 MR. SCHIECK: -- motion. We didn't object
25 other than to note that we had previously noted an

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 objection.

2 THE COURT: Right.

3 MR. SCHIECK: We did not feel that a
4 contemporaneous objection was necessary.

5 THE COURT: I don't feel it's necessary. I
6 think you've made your record.

7 MR. BELL: We agree.

8 MR. SCHIECK: The same goes with respect to
9 the booties. The booties were the subject of that same
10 motion --

11 THE COURT: Yes.

12 MR. SCHIECK: -- motion in limine.

13 MR. BELL: Stipulate the record is
14 preserved.

15 MR. SCHIECK: Finally, your Honor, we had
16 filed a motion, with respect to the need of Mr. Castillo to
17 have money in December, that the jury not be informed that
18 he had pending criminal cases and needed his money to pay
19 his attorney to handle such matters.

20 THE COURT: Yes.

21 MR. SCHIECK: The Court granted that motion
22 in part, indicated it would be fine if the jury knew he had
23 needed money to pay his attorney.

24 THE COURT: That was all.

25 MR. SCHIECK: However, they would not know

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 as a result of a criminal case.

2 MR. BELL: Agreed.

3 THE COURT: Right.

4 MR. SCHIECK: Mr. Kumma testified and, in my
5 opinion, blurted out, but did say Mr. Castillo needed the
6 money for either another case or his other case and I'm not
7 sure what the record says.

8 MR. BELL: Positive it was another case.

9 THE COURT: He said something along the line
10 of another case.

11 MR. BELL: Yes.

12 MR. SCHIECK: Which it's our position that
13 reference to another case is another criminal case other
14 than this criminal case and, therefore, the motion in
15 limine that was granted in part was violated by the
16 testimony of Mr. Kumma and, for the record, we would move
17 for a mistrial to preserve that issue.

18 THE COURT: All right. The State of Nevada
19 will, I'm sure, indicate that, first of all, his
20 spontaneous offering was --

21 MR. BELL: First of all, we explained to him
22 that he could not mention the nature of the case, that it
23 was a battery, that it was a criminal case, although he is
24 aware, in compliance with the Court's ruling, I think he
25 did the best he could to indicate without doing that.

PATSY K. SMITH, OFFICIAL COURT REPORTER

AA003678

● ●

EXHIBIT 163

EXHIBIT 163

WECASTILL0002-ORAM0214

1

DISTRICT COURT

FILED

CLARK COUNTY, NEVADA

AUG 30 12 41 PM '96

COPY *Loretta L. Loomis*
CLERK

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. C133336

WILLIAM PATRICK CASTILLO,

Defendant.

REPORTER'S TRANSCRIPT
OF
JURY TRIAL
VOLUME IV-AFTERNOON SESSION

BEFORE THE HONORABLE A. WILLIAM MAUPIN
DISTRICT COURT JUDGE

THURSDAY, AUGUST 29, 1996
1:15 A.M.

APPEARANCES:

For the Plaintiff:

STEWART BELL
District Attorney
MELVYN HARMON
Chief District Attorney

For the Defendant:

PETER LAPORTA
State Public Defender
DAVID SCHIECK, ESQ.

REPORTED BY: Marcia Leonard, RPR, CCR No. 204

MARCIA J. LEONARD, CCR NO. 204, RPR

AA003680

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

State's Witnesses:	Page
DUANE WRIGHT	
Direct examination by Mr. Harmon:	10
Cross examination by Mr. Schieck:	21
BEN HOGE	
Direct examination by Mr. Bell:	27
Cross examination by Mr. Laporta:	66
CLIFF MITCHELL	
Direct examination by Mr. Bell:	77

E X H I B I T S

	STATE'S	ADMITTED
1		
2	4	33
	5	33
3	6	33
	7	33
4	8	33
	9	33
5	10	33
	11	33
6	12	33
	13	33
7	14	33
	15	33
8	16	33
	17	33
9	18	33
	19	33
10	20	33
	21	33
11	22	33
	24	33
12	25	33
	29	33
13	30	33
	36	33
14	47	6
	48	6
15	49	6
	85	31
16	89	46
	90	46
17	91	46
	92	46
18	93	50
	94	50
19	95	64
	96	55
20	97	55
21	DEFENSE	MARKED ADMITTED
	A	72 73
22	B	72 73
	C	72 73
23		
24		
25		

MARCIA J. LEONARD, CCR NO. 204, RPR

CLARK COUNTY, NEVADA

THURSDAY, AUGUST 27, 1996, 1:15 A.M.

* * * * *

(The following proceedings were had
outside the presence of the jury.)

THE COURT: State of Nevada versus
William Patrick Castillo.

We're back on the record again
outside the presence of the jury. The purpose of this
out of the presence hearing is to resolve at this
point the admissibility of photographs taken
postmortem.

Mr. Schieck, at this point I'll
make this record that I take it the State is offering
Proposed 49, Proposed 47 and Proposed 48 as a group;
and Proposed 45, 44, 46 and 41 as a group.

MR. BELL: It will be offered, Judge, and
they will be put into evidence through Dr. Bucklin,
the medical examiner, who will describe the injuries
and those particular injuries that relate to the death
of the decedent Isabelle Berndt.

THE COURT: All right. I'll hear your

1 objections to the exhibits.

2 MR. SCHIECK: The record should
3 additionally indicate, your Honor, that Exhibits 42
4 and 43 are included in the autopsy photographs. We're
5 not objecting to those which are pictures of
6 individual injuries to the scalp area showing the hair
7 shaved away. This is not depicted in any of the other
8 photographs before you.

9 With respect to Exhibits 47, 48,
10 and 49, which are the left side injuries to the face
11 of the victim, it's our argument that Number 49, which
12 is a further back photograph, not a close up, depicts
13 the same injuries that are shown close up in
14 photographs 47 and 48.

15 Specifically, 47 and 48 show an
16 injury to the left lower chin area and to the nose and
17 mouth area, and Exhibit 49 shows both of those
18 injuries in sufficient detail that the coroner can
19 testify as to those injuries.

20 THE COURT: So you're saying that you
21 believe that Exhibit 49 should be admitted, but 47 and
22 48 should not?

23 MR. SCHIECK: That's correct, your Honor.

24 THE COURT: All right. The court finds
25 that all three photographs have probative value with

1 regard to causation issues, extent of injury issues,
2 and therefore admits 47, 48, and 49.

3 I'll hear your arguments on the others.

4

5 (State's Exhibits 47, 48, 49
6 admitted into evidence.)

7

8

9 MR. SCHIECK: And the other ones are the
10 same argument. I wish that you would address that in
11 your ruling.

12

13 The specific objection that they
14 are duplicitous; that we have photographs showing the
15 same injury in just a closer up greater detail when
16 the single photograph shows the same injuries.

17

18 The second group is the right side
19 of the face injuries. It's our position that
20 photograph 41, which I believe has the name plate in
21 it, is a further photograph.

22

23 THE COURT: That's the photograph that
24 you think should be admitted and the others should
25 not?

26

27 MR. SCHIECK: That's correct, your Honor.
28 44, 45, and 46 are right side close-ups of an injury
29 to the right lower chin, to the right ear area and to
30 the right eye area, and all of those injuries are

1 shown in sufficient detail in photograph 41.

2 THE COURT: All right. The court
3 believes that 41 will be admitted. It's my view that
4 Exhibits 44 and 45 both have probative value in the
5 issue of causation and extent of injuries that
6 significantly outweigh any prejudicial effect that the
7 photographs can have.

8 Photograph Number 46 is -- the
9 primary purpose of photograph 46 is to show the nature
10 of the left chin laceration, is that correct, David?

11

12 (At the bench discussion,
13 off the record.)

14 THE COURT: Exhibit 41, which is from the
15 other collection. And Exhibit 44 show the -- show
16 some coagulation of the wound, whereas 46 does not.
17 Otherwise, it doesn't have any additional probative
18 value.

19 MR. BELL: If you want to exclude 46, we
20 don't object. We would like it left as 46, offered,
21 rejected on his motion and have the clerk set it
22 aside.

23 THE COURT: The question is the choice.

24 MR. BELL: We need these more so because
25 of the eye and ear.

1 THE COURT: The court will exclude 46
2 because it does appear to be adequately --

3 MR. BELL: Okay, Judge --

4 THE COURT: I have to finish making the
5 record.

6 46 seems to be -- what is depicted in 46
7 seems to be adequately depicted in 44 with the
8 exception that the large chin gash is less coagulated
9 than in 46 than in 44. But I will, for the sake of
10 the analysis of the probative versus prejudicial
11 effect, I will exclude Proposed 46.

12 The rest of these will be admitted.

13 THE CLERK: Including 42 and 43, Judge.

14 THE COURT: Yes, including 42 and 43 upon
15 laying foundation.

16 MR. SCHIECK: Additionally --

17 THE COURT: Are you going to rule on the
18 necessity of these? The question is do you want them
19 admitted now, or do you want until --

20 MR. BELL: Dr. Bucklin will be this
21 afternoon.

22 MR. SCHIECK: I'm sure that they are
23 going to ask the questions to lay the foundation
24 either way. Additionally, photograph 50 and 51 are
25 photographs from the autopsy of the hand, and we're

1 not objecting to those photographs.

2 THE COURT: Those will be admitted in
3 evidence upon laying of proper foundation by the
4 coroner.

5 Anything further outside the
6 presence of the jury at this time?

7 MR. BELL: No, your honor.

8 THE COURT: All right. Bring in the
9 jury, please.

10

11 (The following proceedings were had
12 in the presence of the jury.)

12

13

14 THE COURT: Good afternoon, ladies and
15 gentlemen.

16 Counsel stipulate to the presence
17 of the jury?

18 MR. BELL: State so stipulates.

19 MR. LAPORTA: Defense so stipulates.

20 THE COURT: State call your next witness.

21 MR. HARMON: Duane Wright.

22 THE COURT: Ladies and gentlemen, we were
23 late coming in this afternoon. However, there were a
24 serious of evidentiary rulings that we were ruling on
25 outside your presence for the last 10 or 15 minutes,

1 and that's why we're late getting started.

2 THE CLERK: You do solemnly swear the
3 testimony which you are about to give shall be the
4 truth, the whole truth and nothing but the truth, so
5 help you God?

6 THE WITNESS: I do.

7
8 DUANE WRIGHT,
9 having been first duly sworn, testified as follows:

10

11 DIRECT EXAMINATION

12

13 BY MR. HARMON:

14 Q Will you state your name for the record?

15 A Duane Wright.

16 Q Please spell your name?

17 A D-U-A-N-E, W-R-I-G-H-T.

18 Q Mr. Wright, how old are you?

19 A I'm 23.

20 Q Do you live in the Las Vegas area?

21 A Yes, I do.

22 Q How long have you lived in this
23 community?

24 A For 18 years.

25 Q I want to direct your attention to early

1 on a Sunday morning, December the 17th, 1995, on that
2 date, did you have occasion to be traveling westbound
3 on the Expressway, Highway 95?

4 A Yes, sir.

5 Q Were you by yourself or with someone
6 else?

7 A I was my best friend Joe.

8 Q Who is Joe's last name?

9 A Giles, G-I-L-E-S.

10 Q How did it happen that the two of you
11 were out on the streets in the early morning hours of
12 December 17th, 1995?

13 A We were celebrating about a week after
14 his 21st birthday coming home from a bar. We saw some
15 flames, or some smoke to begin with. We pulled over
16 to check it out, and there was a guy kicking at the
17 door to get into the house.

18 Q Mr. Wright, where were you when you first
19 observed smoke?

20 A Getting off at the exit at Decatur
21 Boulevard on 95.

22 Q Exiting the expressway?

23 A Yes, sir.

24 Q At Decatur, sir?

25 A Yes, sir.

1 Q It will make it easier for the reporter
2 if you allow me to complete my question and then you
3 answer.

4 A Sorry.

5 Q Were you intending to exit Highway 95 at
6 Decatur anyway?

7 A Yes.

8 Q What happened after you exited onto
9 Decatur?

10 A We turned left onto the street that the
11 house was on fire. Yale, I believe the street is.
12 And I jumped out of the car before he stopped moving
13 it to rush to the door.

14 Q You said originally it was only smoke you
15 could see. Once you turned off of the freeway and you
16 came up and you could see up Yale Street, did you see
17 anything besides smoke?

18 A There was a guy at the front door trying
19 to also get in. He wasn't strong enough to kick in
20 the front door.

21 Q Did you see flames also?

22 A I saw the flames in the front left room
23 through the window.

24 Q When you saw flames coming out of the
25 residence, did you have an interest in trying to help

1 out?

2 A Yes, I did. I saw a car in the driveway.
3 A neighbor came out and was screaming that there was
4 an old lady inside. My first instinct was to save her
5 life.

6 MR. HARMON: May I approach the witness,
7 your Honor.

8 THE COURT: Yes.

9 BY MR. HARMON:

10 Q Mr. Wright, I'm showing you two
11 photographs. They have been marked as Proposed
12 Exhibits 4 and 5.

13 Do you recognize the house which is
14 shown in the pictures?

15 A Yes, I do.

16 Q Is this the house where you observed the
17 fire during the early morning hours of December 17th,
18 1995?

19 A Yes, it is.

20 Q As you look at the house number, does it
21 appear to be 13?

22 A Yes, it is, sir.

23 Q Would it be correct then that the house
24 that you responded to was number 13 Yale Street?

25 A Yes, sir.

1 Q Do you remember about what time it was
2 when you first became aware that, in fact, there was a
3 fire at 13 North Yale Street?

4 A I would say 2:30, 3:00 in the morning.

5 Q You mentioned that there was someone else
6 already at the scene when you and Mr. Giles pulled up
7 who was trying to get in?

8 A Yes, sir.

9 Q Did you know that person?

10 A No, sir.

11 Q Describe the individual?

12 A He was about six foot tall, white, very
13 potched face, wearing holey blue jeans, black leather
14 jacket.

15 Q Did he appear to you to have the same
16 interest that you and Mr. Giles had?

17 A Yes, sir.

18 Q What were you trying to accomplish when
19 you stopped at the house?

20 A To get in to save a lady's house. I saw
21 a house on fire. First instinct was I jumped out of
22 the car, threw my jacket off, jumped over the gate,
23 started kicking at the door to get inside.

24 Q Tell us what happened after that?

25 A When I first got to the door, he was

1 kicking at the door. He could not get the door open,
2 so I --

3 Q He, meaning the man that you had just
4 described?

5 A Yes. I told him to move to the side. I
6 started kicking at the door. By that time, Joe came
7 over. The guy busted out the front window to the left
8 of the door and started squirting the fire with the
9 hose. I crawled inside. I proceeded to start
10 crawling inside to get to the back bedroom.

11 I couldn't get inside. There was
12 too many flames and smoke so I crawled back out. At
13 that point Joe and I ran to the back of the house to
14 get in from the back.

15 When Joe went to go kick open the
16 back door, for some reason I just touched the door and
17 said, "Joe, look out for back drafts." He kicked the
18 door in, and I yanked him out of the way and flames
19 came out.

20 We said screw that, and we ran
21 around to the front and started fighting the flames
22 with the hose. I kept on trying to get into the
23 master bedroom, what I assumed was the master bedroom,
24 on the right corner to the right of the door. I kept
25 trying to kick in the window and bust the window but

1 there was a cabinet or something in the way that
2 wouldn't let me get in.

3 Q Were you ever able to get inside the
4 house?

5 A I got about 30 feet crawling on my hands
6 and knees into the house to where it turns to the
7 right into a hallway, and I couldn't go any further
8 from there.

9 Q Did you ever reach the master bedroom
10 where you presumed the elderly woman was at?

11 A No, sir.

12 Q How long did you remain at the scene?

13 A Until all reports were taken and
14 everything was done.

15 Q Did representatives of the fire
16 department arrive?

17 A Yes, sir.

18 Q Did you leave the fire fighting to them
19 once they arrived?

20 A Once they arrived on the scene, yes.

21 Q Once fire department units arrived at the
22 scene?

23 A We had the fire pretty much contained in
24 the front room by the time that the units had arrived.
25 Once they arrived, we moved out of the way and let

1 them do the work.

2 Q On your way from the Expressway to 13
3 North Yale Street did you see any suspicious vehicles
4 fleeing that area?

5 A No, sir.

6 Q Did you see any suspicious person or
7 persons on foot who were fleeing?

8 A No, sir. The only person that I saw on
9 the scene was a guy kicking at the front door.

10 Q And he seemed to be trying to get inside
11 to help the occupant?

12 A When Joe and I ran to the back, he manned
13 the hose on the fire on the front room.

14 Q Now, you have mentioned that several
15 doors, I think you said, were kicked in and windows
16 broken?

17 A Yes, sir.

18 Q Please identify which doors?

19 A The front door and the rear door were
20 kicked in by Joe Giles because I wasn't strong enough
21 to kick them in.

22 The front window to the left of the
23 door was broken by the guy on the scene at first. And
24 I tried to break into what I assumed was the master
25 bedroom by busting in the window, but there was like a

1 cabinet in the way.

2 And there is a window right on the
3 north end wall as it turns the corner going to the
4 backyard. There is a window on the side of the house
5 that someone else broke out.

6 There was about 20 people showed up
7 about ten minutes after Joe and I were there, and then
8 they all disappeared once the fire units arrived.

9 MR. HARMON: Your Honor, we've had
10 prepared a diagram which is State's Exhibit Number 1,
11 and we have conferred with counsel, and I don't think
12 that they have an objection, even though we will later
13 lay a foundation for it, of displaying that to this
14 witness.

15 I think that it would facilitate
16 him explaining where the doors were and approximately
17 where the windows were which were broken out in his
18 effort.

19 MR. SCHIECK: We have no objection to
20 that procedure, your Honor.

21 THE COURT: All right.

22 MR. HARMON: Thank you. May we have the
23 board brought over. We would like to mount that so
24 the jury may see it.

25 THE COURT: Certainly.

1 BY MR. HARMON:

2 Q Are you able to see the diagram --

3 A Yes.

4 Q -- for point of reference assuming that
5 this is the front?

6 A Uh-huh.

7 Q With the court's permission, will you
8 step to the board from the witness stand.

9 A Certainly.

10 Q Why don't we start with the doors. I
11 simply want you to explain which doors were kicked in.

12 A This is the front door here that was
13 kicked in, and here is the rear door back here through
14 the kitchen area that was also kicked in. The window
15 that was right here, about where the chair is, was
16 broken in by the guy on the scene at first.

17 Q For the record, you're talking about a
18 front window?

19 A Uh-huh. It's a front window on the front
20 of the house. Here is where I assume the master
21 bedroom was, and there is a window right here on the
22 corner, and a window here on a corner. I was kicking
23 at this window here. But as you could see, there is a
24 chest there. I couldn't get out of the way of the
25 window, and there is another window here. Someone

1 else, I have no idea, broke.

2 Q But you're aware that that window was
3 broke?

4 A Yes, sir.

5 Q Thank you.

6 I'm assuming, Mr. Wright, that you
7 were not acquainted with the occupant or occupants of
8 13 North Yale Street?

9 A That's correct, sir.

10 Q You got involved in this simply
11 inadvertently, you were there and you were aware that
12 there was a residential fire?

13 A Yes, sir.

14 Q Did you fully cooperate with the
15 authorities?

16 A Yes, sir.

17 Q As you have indicated, you apparently
18 didn't see any suspicious vehicle or persons fleeing
19 the area of the fire?

20 A That's correct, sir.

21 Q But you, I would gather, have no specific
22 information about the cause and origin of the fire?

23 A No, sir. I just, when I came in, where
24 it says love seat, where that love seat is and the
25 table, I saw that when I crawled into the house.

1 Because I crawled as far as where that TV is, where it
2 says TV, and I crawled right to the edge of that.
3 That's where I crawled back out.

4 When I looked up, the wall where
5 the love seat is, I just saw flames up and down the
6 ceiling and the wall and all over the couch.

7 MR. HARMON: That concludes direct, your
8 Honor.

9 THE COURT: Cross.

10 MR. SCHIECK: Thank you.

11

12 CROSS EXAMINATION

13

14 BY MR. SCHIECK:

15 Q Mr. Wright, you indicated that you had
16 been out to drink that night?

17 A Yes, sir.

18 Q And you said that it was yourself and Mr.
19 Giles?

20 A Yes.

21 Q How much had you had to drink?

22 A We both had two Coronas.

23 Q How long were you at the bar?

24 A We were at the bar roughly about two and
25 a half hours. We played a roll of quarters.

1 THE COURT: You have to let him finish
2 his question before you respond.

3 THE WITNESS: I'm sorry.

4 BY MR. SCHIECK:

5 Q Two and a half hours, two Coronas and a
6 roll of quarters?

7 And you also have to say yes or no?

8 A Yes, sir.

9 Q And you were headed home at the time; is
10 that correct?

11 A Yes, sir.

12 Q And when you first pulled up in front of
13 the house at 13 North Yale, did you park right in
14 front of the house?

15 A To be honest, I don't know. As soon as
16 he came around the corner and I saw flames, I jumped
17 out of the car. He did not even stop moving it. I
18 threw my jacket off, and he parked not in front of the
19 house but on the side across the street.

20 Q So he was across the street from where
21 the house was on fire?

22 A Yeah, where the apartments are and there
23 is like a parking lot. He parked over there. By that
24 point, I couldn't kick the door in so he came up and
25 kicked the door in.

1 Q You indicated that you observed only one
2 person there when you first arrived?

3 A Yes, sir.

4 Q And that person you said was six foot
5 tall, white, and had a pocked face?

6 A Yes, potched face like pimply.

7 Q Do you mean that he had like acne?

8 A Uh-huh.

9 Q It wasn't like having pockmarks from
10 chicken box?

11 A No. It was from acne.

12 Q Any estimate of how old this individual
13 was?

14 A A few years older than me. I'm 24, and I
15 would say about 27 or 28.

16 Q And he was trying to kick in the front
17 door?

18 A Yes, sir.

19 Q And you moved him out of the way and you
20 tried to kick in the door?

21 A Yes.

22 Q Do you try the door and see if --

23 A Yes.

24 Q -- it was locked?

25 A Yes, it was.

1 Q At what point was it when this person
2 with blue jeans and black jacket broke the window in
3 the front of the house?

4 A A few seconds after Joe kicked in the
5 front door. When Joe kicked in the front door, he
6 handed me a garden hose.

7 Q When you say he handed you --

8 A The gentleman that was there on the scene
9 first. He handed me the garden hose, and I started
10 squirting the hose inside the house. And then I heard
11 the window break and he was standing there. And he
12 took the hose from me, and that's when I crawled
13 inside. I couldn't get inside so I went around to the
14 back to try to get in.

15 Q So you crawled in the front door at that
16 point?

17 A Yes.

18 Q And Joe waited outside?

19 A Joe was standing outside helping the guy
20 with the hose because there was so much smoke
21 billowing in our faces.

22 Q Then after you crawled back out of the
23 front room is when you went around to the back of the
24 house?

25 A Yes, sir.

1 Q That was just you and Joe, not the other
2 guy?

3 A Correct, and he stayed at the front with
4 the hose.

5 Q Then did you try to see if the back door
6 was locked or unlocked?

7 A No, I did not try it. I just
8 instinctively just touched the door.

9 On the back wall there is red brick
10 on the left and red brick on the right, and I was
11 standing off to the left. Joe was about to kick in
12 the door. And I touched the door and I said "Joe,
13 look out for back drafts." And I grabbed him by his
14 shirt and pulled him to the side when he kicked the
15 door and flames came out. We were scared and we came
16 back out front and waited for the fire department.

17 Q You didn't wait for the fire department?

18 A Just as he kicked it, flames came out and
19 we were like, huh-huh, and we ran.

20 Q When you ran back around to the front of
21 the house, was the guy with the pockmark or acne still
22 there with the holes?

23 A Yes.

24 Q Did he stay there the whole time?

25 A He did until all the units showed up. He

1 said, well, I guess my job is done and he walked away.

2 Q Did you ever get a name from him?

3 A No, I did not.

4 Q Did you ever see him again?

5 A No, I have not.

6 Q Did you ever see him talking to police or
7 fire department?

8 A No, I didn't.

9 MR. SCHIECK: Thank you. That's all the
10 questions that I have on cross, your Honor.

11 MR. HARMON: No redirect, your Honor.

12 THE COURT: May this witness be
13 discharged?

14 MR. HARMON: Yes, your Honor.

15 MR. SCHIECK: Yes, your Honor.

16 THE COURT: You're excused.

17 MR. BELL: Ben Hoge.

18 THE COURT: Do you want this diagram to
19 remain?

20 MR. BELL: It may be helpful. He's a
21 fire investigator.

22 MR. SCHIECK: Could we, however, move it
23 up until he uses it because I can't see the witness
24 with the diagram up.

25 THE COURT: Okay.

1 THE CLERK: You do solemnly swear the
2 testimony which you are about to give shall be the
3 truth, the whole truth and nothing but the truth, so
4 help you God?

5 THE WITNESS: I do.

6
7 BEN HOGE,
8 having been first duly sworn, testified as follows:

9
10 DIRECT EXAMINATION

11
12 BY MR. BELL:

13 Q Would you state your name please, sir.

14 A My name is Ben Hoge, H-O-G-E.

15 Q And where are you employed, sir?

16 A I'm employed by the Las Vegas Fire
17 Department.

18 Q How long have you been employed by the
19 Las Vegas Fire Department?

20 A It will be ten years in October.

21 Q And in what capacities or what positions
22 have you held with that department during that ten
23 year period?

24 A From 1986 to 1989 I was a firefighter.
25 From 1989 to 1993 I was a firefighter-paramedic. From

1 November 21st, 1993 to this date my current duties are
2 that of a fire investigator and bomb technician with
3 the arson bomb squad.

4 Q Do you also hold peace officer status?

5 A Yes, I do.

6 Q Have you taken any training which places
7 you in a position of being an arson investigator?

8 A Yes, I have.

9 Q Would you briefly run through your
10 training that you took to occupy that position for the
11 ladies and gentlemen of the jury?

12 A Well, in 1984 when I was hired by the Las
13 Vegas Fire Department, I graduated from the basic fire
14 academy.

15 In 1993, I graduated from a
16 Category One Police Academy.

17 In 1995, I attended the FBI
18 Hazardous Device Bomb School.

19 In earlier 1995, I also attended
20 the National Fire Academy. This is a course that's
21 put on by the federal government and instructs fire
22 investigators in the basics of fire and arson
23 investigation.

24 Q Are these academies or training programs
25 typically those that are attended by persons to be in

1 the position of arson investigator?

2 A Yes, they are.

3 Q And when you become an arson
4 investigator, do you have to serve an apprenticeship
5 period, a probation period, working with somebody who
6 is also an experienced person?

7 A Yes, approximately one year.

8 Q And did you do that?

9 A Yes, I did.

10 Q As a result of that, did you obtain the
11 status of a recognized arson investigator?

12 A Yes.

13 Q And since you have become expert in that
14 particular field, how many fire scenes have you
15 responded to for the purpose of ascertaining whether
16 or not arson was the cause?

17 A I keep a journal. If you'll allow me to
18 look, I can tell you exactly.

19 Q Please.

20 A As of August 28th of this year, I've
21 personally investigated 322 fires.

22 Q And of those 300 -- and did you say 23?

23 A 322.

24 Q 322. How many of them were determined to
25 be arson?

1 A 154.

2 Q So roughly half?

3 A Roughly 50 percent.

4 Q And have you had occasion to testify as
5 an expert on arson incidents in either Las Vegas
6 Justice Court or the district court or before the
7 Clark County Grand Jury?

8 A Yes, I have.

9 Q And have you been qualified as an expert
10 either by the foreman of the grand jury or a judge in
11 our jurisdiction to testify in this field?

12 A Yes, six times.

13 Q On six occasions you've been qualified as
14 an expert?

15 A Yes, sir.

16 Q Have you ever been refused by any judge
17 expert status?

18 A No, sir, I have not.

19 Q Is all of your collective education and
20 experience in relation to arson investigation
21 culminated in your CV that you provided to me?

22 A Yes, it is.

23 Q Let me show you what's been marked as
24 Proposed Exhibit 85 and ask if that outlines your
25 background qualifications reference the testimony that

1 you are about to give.

2 A Yes, it does.

3 MR. BELL: Move for its admission.

4 MR. LAPORTA: I have no objection, your
5 Honor.

6 THE COURT: Same will be received in
7 evidence.

8
9 (State's Exhibit 85
10 admitted into evidence.)

11 BY MR. BELL:

12 Q In the course and scope of your duties
13 were you called to respond to a scene at or about 13
14 North Yale, Las Vegas, Clark County, Nevada, on or
15 about December 17th, 1995?

16 A Yes, I was.

17 Q How is it that you had occasion to be
18 summonsed? Why did they call you?

19 A Well, I was working the night graveyard
20 shift on the 17th. I was notified by my
21 communications dispatch center that the fire captain
22 on Engine Six was requesting a fire investigator, and
23 that it was in regards to a fight of fire that they
24 had responded to.

25 Q So the actual person in the supervisory

1 position, the captain of the unit that responded,
2 noticed something that he thought you needed to
3 investigate and that's how you were out there?

4 A Yes. He noted that in the course of
5 extinguishing the fires at 17 -- or 13 North Yale
6 Street, that there was an elderly person that was
7 deceased in there as well.

8 Q Did you have -- what time did you have
9 occasion to reach that scene?

10 A I believe my arrival time was 0326 hours.

11 Q 3:26 in the morning?

12 A Yes, sir.

13 Q Did you have occasion to take certain
14 photographs of that scene?

15 A Yes, sir, I did.

16 Q Let me show you a bunch marked 4, 5, 6,
17 36, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 through
18 22, 24, 25, 29 and 30. And if you would just look at
19 those quickly, please.

20 Do those appear to be the portion
21 of the photographs that you took at the scene at that
22 time?

23 A Yes, sir, they are.

24 Q Now, you originally developed these into
25 a three by five or thereabouts?

1 A Yes, sir.

2 Q And did you bring with you your set of
3 three by fives?

4 A Yes, sir, I did.

5 Q Okay. So if, in fact, the ones that
6 we've blown up if we -- you have one or two that we
7 didn't blow up -- that better depict the things that
8 we're talking about, please feel free to bring it to
9 my attention and we'll make it an exhibit.

10 A Yes, sir.

11 Q Do all the exhibits that I just
12 enumerated fairly and accurately depict the condition
13 inside and outside 13 North Yale at the time that you
14 got there?

15 A Yes, sir, they do.

16 MR. BELL: Move for the admission of the
17 exhibits just discussed.

18 MR. LAPORTA: No objection, your Honor.
19 We reviewed them.

20 THE COURT: Same will be received in
21 evidence.

22

23 (State's Exhibit 4, 5, 6, 7,
24 8, 9, 10, 11, 12, 13, 14, 15, 16,
25 17 through 22, 24, 25, 29, 30, 36
admitted into evidence.)

1 MR. BELL: Could I ask the court's
2 indulgence to pass these around to the jury before Mr.
3 Hoge testifies.

4 THE COURT: Yes.

5 MR. BELL: Just pass these around.

6 THE COURT: Would you give us those
7 numbers again, Mr. Bell.

8 MR. BELL: With the exception of one or
9 two that I took out, it was 4 through 30, plus 36.

10 BY MR. BELL:

11 Q Mr. Hoge, as a general proposition as an
12 arson investigator, not talking about 13 Yale, just
13 generally when you come to a scene where there has
14 been a fire of suspicious origin and you have been
15 called out, the fire detail has extinguished the blaze
16 itself, what do you do as a general proposition?

17 How do you go through the process
18 of determining the cause and origin of a fire?

19 A As a fire investigator, whether it's an
20 accidental fire or one that I'm going to inevitably
21 determine to be arson, I perform what's called an
22 origin and cause investigation and the origin is, of
23 course, where the fire started.

24 The cause is what -- is the
25 circumstances that allows the fire to occur. When I

1 investigate a fire, and it's a structure, the method
2 that I use is called least to worst.

3 And what I do normally is I look at
4 a structure from the exterior and then to the
5 interior.

6 And then once I get inside into the
7 interior I look for the areas of least damage which
8 tells me where the fire wasn't, and I trace the damage
9 back to the heaviest portion inside the dwelling
10 because that tells me where the fire burned the
11 longest and hottest.

12 Q And what does that point of origin
13 indicate to you?

14 A Where the fire started at.

15 Q How does that relate to how the fire
16 started?

17 A Well, that tells me where the fire
18 started. And then it's up to me to determine what
19 fuel source and what heat source came together that
20 allowed the fire to originate.

21 Q Okay. Now, let's specifically get to 13
22 Yale.

23 Is that what you did when you
24 responded to 13 Yale on the early morning hours of
25 December 17th, 1995?

1 A Yes, sir, it is.

2 Q And over here is a diagram marked as
3 Proposed Exhibit 1. That is supposed to reflect the
4 interior of 13 Yale.

5 Does that comport with your
6 recollection?

7 A Yes, sir, it does.

8 Q Okay. Can you tell either by use of the
9 diagram, if you want to come down and point, or by use
10 of pictures, whichever you think would best illustrate
11 it for the jury, generally where you went in, what you
12 did, where the origin of least heat was and how you
13 traced it back. You can either stand down here or
14 I'll --

15 A Probably if I can do both. If I can use
16 the --

17 Q Okay. Please do.

18 THE COURT: Move it a little bit closer
19 to the jury.

20 BY MR. BELL:

21 Q I'll give you the whole package of
22 exhibits that we just admitted into evidence. Please
23 feel free to use any of them to show the jury.
24 They've seen them up close.

25 A Okay.

1 Q When you do, identify them by number
2 that's on the back.

3 A Okay.

4 Q Go ahead and kind of walk us through what
5 you did in those early --

6 THE COURT: Mr. Bell, I think that this
7 chart needs to be moved closer to the jury so that
8 every juror can see it. As a matter of fact, why
9 don't you move it up even with counsel table, and then
10 we can move into position that we can watch.

11 MR. LAPORTA: Judge, for purposes of
12 accommodating for this, may I step over here?

13 THE COURT: Yes.

14 THE WITNESS: Would it be better if I
15 stepped over here?

16 After I viewed the exterior of the
17 home, I determined by viewing the interior of the home
18 that I had this would be the front of the dwelling
19 here. This would face east. This was the south side.
20 This is where the driveway was, and a vehicle was
21 parked in the driveway.

22 I noted by looking from the
23 exterior of the dwelling that most of the smoke
24 patterns -- the heaviest smoke patterns that I
25 observed were coming out of the living room front

1 window here.

2 I also noted smoke patterns coming
3 out of the south living room window here, and also one
4 of the dining room windows here. I did a walk around
5 and viewed the dwelling from the back and also from
6 the north side, and I realized that most of the damage
7 from the smoke patterns from the outside anyway
8 occurred here and here.

9 And you can see the east side of
10 the front living room window as depicted in State's
11 Exhibit Number 4.

12 Q And where would that be specifically --
13 can you orient that picture to the diagram?

14 A If you are looking at this picture, the
15 the window that you're looking at with the heat and
16 smoke patterns looming outwards towards the eaves
17 would be approximately right here.

18 Q Thank you.

19 A After I conferred with the fire captain,
20 I made a preliminary investigation and this was just
21 to step in and give myself an idea of how involved my
22 origin and cause investigation was going to be and the
23 help that I was going to need.

24 I went into the dwelling. I did a
25 cursory examination just briefly noting what was

1 inside each of the rooms. Just briefly I went inside
2 to the decedent's room. I noticed a fire origin
3 against the north bedroom window.

4 I then exited this room, and I
5 noticed that the majority of the fire damage to the
6 rest of the dwelling was also against the east living
7 room area also encompassing the south living room
8 window here. I then exited the dwelling, and I
9 conferred with the police detectives that were on
10 scene. I advised them what I had.

11 They told me that their homicide
12 detectives were on the way out and that they would
13 takeover when they arrived. When they arrived, we
14 briefed each other what we were going to do. Then we
15 waited to the morning time when there was daylight to
16 go back in.

17 Once I went back in again, I
18 photographed the inside of the dwelling from least to
19 worst. The dwelling itself in the northwest bedroom,
20 the bathroom, had moderate smoke and heat damage.

21 Again, the only fire damage that I
22 noticed in the victim's bedroom was against this north
23 bedroom window, and it was to the east side of the
24 curtains in her bedroom.

25 Q Do you have a picture that would

1 illustrate to the jury that --

2 A This is inside the victim's bedroom
3 looking north, and this is her north bedroom window.

4 Q And where is that on the diagram?

5 A This is approximately right here, in this
6 area.

7 Q And what does the picture show?

8 A What the picture shows is that there is
9 no accidental causes for this fire. This fire
10 originated right in the curve where this curtain once
11 hung on the right over here. This curtain was ignited
12 by open flame, and it burned itself out and fell down
13 to the ground.

14 The only electrical appliance
15 that's next to the area is a 110 volt outlet down by
16 the bottom here by the exterior wall. Investigation
17 revealed that it had a transformer. The transformer
18 takes a 110 volt that goes to this outlet.

19 And it reduces down to 6.5 to five
20 volts to run some sort of equipment. There is no
21 physical damage to the transformer or outlet. There
22 is no reason for this outlet to be a cause for the
23 fire and it's not.

24 Had it been a cause for the fire,
25 we would have seen heat and fire damage to the

1 transformer or the outlet; therefore, the only way
2 that this fire would have been started is from human
3 hands with an open flame.

4 Q Would there be anything that you could
5 show about the pattern of the burn that would be
6 inconsistent with your conclusion that it was not
7 because of the electrical outlet, but that, in fact,
8 the drapes had been ignited on fire by a person?

9 A Yes, I can. When fire burns, because of
10 the gases and the heat that is exited from the flame,
11 it rises upward because the vapors then become lighter
12 than air.

13 As the fire progresses, it leaves a
14 pattern on the side of walls. That is commonly termed
15 a V pattern. It will take the form of a V. And had
16 this outlet been a cause for the fire, we would have
17 seen a characteristic V pattern going up the west side
18 of the curtains this way as well.

19 But as you can see, the only damage
20 is on the east side of the curtains.

21 Q After determining the origin and cause of
22 the curtains in the victim's bedroom, I then came back
23 and examined the living room. And I determined, again
24 going from least to worst, that the greatest damage in
25 the living room was against the north, or excuse me,

1 the east living room wall, and also portions of the
2 south living room wall.

3 Did I mention the State's Exhibit
4 on this? I don't recall if I did or not.

5 The victim's bedroom State's
6 Exhibit Number 24. I'm also going to show you State's
7 Exhibit Numbers 10, 9, 8 and 7.

8 Q As you show each of those pictures, would
9 you orient them to the diagram so they can see kind of
10 what it was where it was burned out and where it was
11 located.

12 A Yes, sir.

13 A In State's Exhibit 10, which is a picture
14 of the dwelling's living room looking at the south
15 living room wall, which places me here photographing
16 the living room, placing me here photographing the
17 living room coming in this direction.

18 And what you're looking -- the
19 window that you're looking at is actually the south
20 living room window which is positioned right here.
21 The couch that you see in the foreground is this couch
22 right here, and the sofa that you see underneath the
23 window is the love seat right here.

24 And you also see in the corner a
25 chair which depicts a chair right here. What this

1 photograph tells me, and what I'm going to show you,
2 is that the greatest amount of damage from the fire is
3 closer to the -- what would be the southeast corner
4 of the living room.

5 You can see that the very southwest
6 part of the living room, the articles of furniture,
7 and the articles of, you know, the lamp, and the
8 picture frame, and etcetera, even though they are
9 damaged, by the fire they are intact.

10 But the closer you get to the
11 southeast portion of the living room the more damage
12 that you see to those articles. That tells me that
13 the fire occurred more closer over to here than it did
14 over on this side.

15 In State's Exhibit 9, I am all the
16 way over here against the east living room wall, and I
17 am looking down this way towards the southeast corner.
18 And this is where the majority of all our fire damage
19 is in the living room. You can see that it's in front
20 of this east living room window.

21 And when you look at the direction,
22 when you look at this chair, this wooden chair, which
23 is depicted on the photograph as this chair right
24 here, when you look at the chair, you can see that the
25 damage is not from the front but rather from the back.

1 You can see that the chair -- that
2 the heat came from behind the chair, not in front of
3 the chair. So that tells me that the fire originated
4 behind this chair.

5 This is another photo of me
6 standing in front of the chair looking this direction
7 towards the east living room window. And then you can
8 see that the front of the chair is intact, and the
9 back of the chair is more damaged.

10 If you look behind the chair, you
11 can see a pattern arising behind it, coming up in the
12 form of a V. That's the V pattern that I talked about
13 earlier.

14 And in State's Exhibit Number 7,
15 this is a side view looking at this chair right here.
16 And when you examine this chair, you can see that the
17 damage -- the direction of the heat, again, came from
18 behind the chair indicating that the heat came from
19 over here towards the center of that living room
20 window.

21 You can see the heat didn't come in
22 front of the chair because the front of the chair
23 isn't damaged.

24 Q On State's Exhibit 8, I notice on this
25 wall, the wall is sort of a beige, and then it's a

1 dark gray, and then a white and then dark gray, and so
2 on. Does that have any significance?

3 A What this is indicative of is -- again,
4 I told you about the V pattern here. And you can
5 almost see a pattern on this side too coming up
6 roughly in a V.

7 And what happened here is the
8 curtains against the east living room wall dropped.
9 And then they burned up, and that's why we have two
10 V patterns. The reason this V pattern here is white
11 as opposed to soot right here is because the window
12 above it broke early and allowed the fire to burn very
13 hot here.

14 The fire in this position right
15 here, where this white V pattern is, burned hotter and
16 it burned longer for a more significant period of time
17 than it did this side of the window.

18 When we look at the back of the
19 chair and see where that damage came from and we look
20 at this chair over here, we see that the fire
21 originated and burned longer in this area right here.
22 And so the reason that this is white is because the
23 fire burned extremely hot and it burned the soot right
24 off of the wall.

25 Q In the living room area, did you look at

1 or about the general area where the fire started to
2 see if there would be some potential accidental cause
3 other than accelerant and open flame?

4 A Yeah, we examined it because we knew that
5 the east living room wall was the area of origin.

6 We did know that -- we did note
7 that there was a hundred and ten volt outlet
8 approximately right here right in the middle.
9 Attached to that outlet was a multiple outlet, if you
10 will. It had six prongs.

11 Two of those were being utilized.
12 One was a free-standing lamp that was positioned
13 approximately right here, and the other one was a
14 hanging lamp that was positioned over this chair that
15 also went to this outlet.

16 I don't know if I have photographs
17 enlarged. I do have some -- I have some regular
18 prints that depict what I would like to say.

19 Q I'm handing you what's been marked as
20 Exhibits 88, 89, 90, 91, 92, are these the totality of
21 the photographs that you took at 13 North Yale?

22 A Yes.

23 Q They are some of the bigger bunch many of
24 which were blown up and you identified earlier?

25 A Yes.

1 Q Do these fairly and accurately depict the
2 scene as you saw it at that time?

3 A Yes, they do.

4 THE COURT: Any objection to 89 through
5 92?

6 MR. LAPORTA: No objection.

7 THE COURT: Same will be received in
8 evidence?
9

10 (State's Exhibit 89-92
11 admitted into evidence.)

12 BY MR. BELL:

13 Q Please show the jury those photographs as
14 best that you can and try to explain to them what
15 significance they have in terms of your determination
16 as to the cause and source of the fire at 13 Yale.

17 A State's Exhibits 90, 91, and 92 all
18 depict the east living room wall and the 110 volt
19 outlet right here.

20 In State's Exhibit Number 90, what
21 this depicts is the outlet itself after we removed all
22 the furniture from that area, and you can also clearly
23 see the V patterns earlier that I was talking about.

24 All of the fire damage to this
25 outlet is exterior only. In other words, it didn't

1 originate from inside the outlet and then burn out.

2 The electrical cords that went to
3 the free-standing lamp and the other electrical cord
4 that goes to the hanging lamp in the corner all
5 exhibit damage from external flame impingement. There
6 was no evidence of arcing to the cords. There was no
7 evidence of overheating from resistance.

8 Had there been overheating from
9 resistance, we would have seen all the insulation on
10 the wires completely melted off because if there is
11 resistance to the entire circuit then the entire
12 conductors are going to be all the way from the switch
13 all the way back to the outlet. We didn't see any of
14 that.

15 Had there been arcing to the cords,
16 they would have arced. They would have separated. We
17 didn't find any separation.

18 After examining the electrical
19 cords to the lamp that was positioned here and the
20 hanging lamp that was positioned here, I then examined
21 the outlet itself.

22 As you can see, the outlet in
23 State's Exhibit 91 has exterior flame and smoke
24 damage. You can pass that around.

25 When you look at State's Exhibit

1 92, you see that the back side is free from damage,
2 which is indicative that the fire didn't come out of
3 this outlet. It's only damage from the outside where
4 the fire was.

5 When you look at the conductors,
6 the hot wire and the neutral wire which supply these
7 circuits, their insulations are completely intact.
8 There was no resistance or heating to this circuit.
9 Had there been, the insulation would have melted off.

10 Had there been any type of arcing
11 in this circuit, we would have seen it at the outlet.
12 And as you can see, there is none. The outlet in the
13 east living room wall is not a cause for the fire in
14 this location.

15 Q If you take into consideration your
16 examination, the burn pattern, all the other things
17 that you have talked about, are you able to or were
18 you able to rule out accidental causes of the fire
19 origin in the living room?

20 A Yes, I was. There are no accidental
21 causes for the fire in the living room.

22 Q How about accidental causes for the fire
23 in the bedroom?

24 A There are no accidental causes for the
25 fire in the bedroom.

1 Q Is there any significance to the fact
2 that there are two separate origins of fire in this
3 residence?

4 A Well, the significance is that there is
5 no accidental causes for them. So my only conclusion
6 can be that they are incendiary, that they were
7 started by human hands with an open flame.

8 The other thing that I would like
9 to point out -- I would like to have these admitted
10 into evidence as well.

11 Q Handing you what's been marked for
12 identification as 93 and 94. Are these again part of
13 the photos that you took at 13 Yale?

14 A Yes, sir, they are.

15 Q Do they fairly and accurately depict a
16 portion of the scene to which you are about to
17 testify?

18 A Yes, sir, they do.

19 MR. BELL: Move to admit 93 and 94.

20 MR. LAPORTA: No objection, your Honor.

21 THE COURT: They will be received.

22

23 (State's Exhibits 93, 94
24 admitted into evidence.)

25 THE WITNESS: What I would like to talk

1 about in 93, 94 and also State's Exhibit Number 10,
2 and what we're looking at here in all three of these
3 photos, one has been blown up, is the southeast corner
4 of the living room as well as the south wall of the
5 living room.

6 And what I'm going to be talking
7 about is the carpet that is in the area right here.
8 You'll note on each of these photographs, and I will
9 start with the enlargement, you'll see how the carpet
10 is burned, see how all this is black. All of this is
11 black. All of this underwent some form of burning.
12 Some form of charring.

13 When you look at State's Exhibit 93
14 and 94, it also gives you an idea of how far this
15 carpet burned and how it proceeded to come out towards
16 the -- what would be the west wall of the living room.

17 What's so important about that is
18 when you look at the articles of furniture that's in
19 the living room here none of these are capable of
20 producing the radiant heat, and the fire in this
21 living room didn't get hot enough to bank down from
22 the ceiling to cause the carpet to burn this far out.

23 My conclusion after investigating
24 the origin and cause of this fire is that what was
25 burning on the carpet were flammable vapors. And, of

1 course, flammable combustible vapors are heavier than
2 air so they fell to the ground, and that's why the
3 carpet burned.

4 When you look at the couch, when
5 you look at the love seat, right here, look at the
6 amount of damage to the bottom which is less than the
7 carpet.

8 If the heat was radiating down and
9 the heat was radiating forward from the east living
10 room wall, why do we have so much damage to the carpet
11 and not above it, three to four inches above it? It's
12 because of those vapors on the carpet.

13 Q Okay. If we just limit ourselves to the
14 bedroom and the living room, taking everything that
15 you've told us taken together, what is it as your
16 expert opinion that happened?

17 A My opinion on what happened is that these
18 two fires were set independently of each other by
19 human hands.

20 Q With some type of accelerant?

21 A With some type of accelerant, yes.

22 Q And the order in which they were set
23 was --

24 A My opinion is that probably the victim's
25 bedroom was set first, and the reason that I'm saying

1 that is because the only exits to the dwelling would
2 have been the front door or the rear door.

3 And so I don't believe that the
4 east living room wall was set and then a person would
5 walk back to the victim's bedroom and set this knowing
6 that they were going to have to come back out and
7 encounter fire.

8 So my opinion is that they set the
9 victim's bedroom, the north bedroom window curtains on
10 fire first. They then came out and set the living
11 room east wall curtains on fire.

12 Actually, what they set on fire --
13 the first material to burn wasn't the carpet itself.
14 It was the vapors from the ignitable liquid that were
15 on the draperies in the area that was on the furniture
16 in this area which subsequently fell to the ground and
17 burned on the carpet in this area.

18 Q Are you telling us that whoever set this
19 fire poured a flammable liquid on the drapes and set
20 it on fire?

21 A That's my opinion, yes.

22 Q Did you see anything else that would lead
23 you to believe that they poured or sprayed the liquid
24 anywhere other than the drapes in the living room?

25 A Well, yeah. Other than the drapes, it's

1 my opinion that -- let's see if I can -- when I look
2 at State's Exhibit 7, we're looking now at this chair
3 right here. You can see the ottoman, and you can see
4 that originally the ottoman resided in this part where
5 the green carpet is, and you can see that the ottoman
6 is burned on top yet nothing on the side.

7 You can see that in front of the
8 carpet here you can see that this carpet started to
9 burn towards the front door, and it's my opinion that
10 the radiant heat from this chair here didn't cause the
11 damage on top of this nor the damage to the carpet but
12 rather flammable and combustible vapors that were on
13 top and on the carpet here.

14 Q Were there other spots in the living
15 room, without having to go through all the pictures,
16 that would be similarly illustrative?

17 A Yes.

18 Q Is it your opinion then that the
19 accelerant wasn't only poured on the drapes?

20 A It's my opinion that the accelerant was
21 used in a manner something similar to this. That was
22 sprayed over the entire contents of that living room.

23 THE COURT: Mr. Bell, could you describe
24 for the record, or have the witness describe for the
25 record, the nature of the gesture.

1 BY MR. BELL:

2 Q Yes.

3 A The gesture being in an up and down
4 fashion.

5 Q Did there come a time when you found a
6 potential third point of origin?

7 A Yes, there did.

8 Q And you have a picture that illustrates
9 that, and can you likewise tie that into the diagram
10 that is Exhibit 1?

11 A Yes, sir, I can. Here is one more.

12 Q Handing you back photos marked 96 and 97,
13 State's Exhibits, are these again part of the original
14 exhibits that you took?

15 A Yes, they are.

16 Q Do they fairly and accurately depict the
17 scene at 13 North Yale on December 17th?

18 A Yes.

19 Q Will they help you illustrate to the jury
20 your testimony?

21 A Yes, they will.

22 MR. BELL: Move for the admission of 96,
23 97.

24 MR. LAPORTA: No objection.

25 THE COURT: Same will be received in

1 evidence.

2

3

(State's Exhibits 96, 97
admitted into evidence.)

4

5 BY MR. BELL:

6

7

8

Q Will you show the jury what you're
talking about when you're talking about a possible
third point of origin?

9

10

11

12

A When I entered the kitchen in my origin
and cause investigation, what I found was potentially
a third start right behind the kitchen seat in this
area right here.

13

14

15

16

17

What we found, as I'll show you in
these photographs, is a burn pattern. This white seat
that you see here is the kitchen seat. What you see
on the back is a small burn pattern. It's kind of
like a Horseshoe shape.

18

19

20

21

22

23

When you look below the burn
pattern, you see a TV -- a common TV tray laying down
on its side. On the TV tray was a pattern, a burn
pattern, that was consistent with the burn pattern up
on the kitchen seat. And, of course, this is where we
found the Ronsonol lighter fluid.

24

25

Q Let's go back to that. You found a
bottle of -- what originally or what originally

1 contained Ronsonol lighter fluid, you found the
2 container?

3 A We found the container, yes, sir.

4 Q Is that an accelerant, without being able
5 to say that is what was used, would it be consistent
6 with the type of accelerant that you're talking about
7 to start these fires?

8 A Yes, it would be.

9 Q And we talked about possible third point
10 of origin. When we're talking about possible, is
11 there more than one alternative here as to why that
12 fire pattern is on that area?

13 A The only other possible reason that the
14 vapors from the Ronsonol lighter fluid ignited on top
15 of this seat, which subsequently ignited the TV tray
16 and fell down, the TV tray then fell down, is that the
17 radiant heat coming from the living room here may have
18 been enough to ignite the vapors when it reached its
19 flammable range.

20 What I mean by flammable range is
21 that it's the vapors, the concentration of vapors in
22 air. And every liquid has a certain flammable range
23 whether we're talking about gasoline or diesel fuel or
24 kerosene.

25 In order for those liquids to

1 ignite, they first have to vaporize and then those
2 vapors have to reach a certain concentration in air.
3 And if these vapors reached that concentration, it's
4 possible that the heat from this living room ignited
5 those vapors.

6 However, it's also possible and
7 it's more likely that it was ignited with an open
8 flame as the last origin before the perpetrator left
9 out the back door.

10 Q So, in your opinion, the perpetrator
11 poured some accelerant in the bedroom on the drapes,
12 lit it on fire, went to the living room, poured some
13 on the drapes, sprayed it around, lit that on fire,
14 went out the back door and on his way out left the
15 Ronsonol there, and either lit it or it spontaneously
16 lit at some time later and as to those two you can't
17 tell which?

18 A That I can't determine.

19 Q Thank you. You can have a seat.

20 One more thing, is there any
21 significance to burn patterns vis-a-vis smoke patterns
22 as to the origin of the fire and/or the length that
23 this fire burned before the fire department was able
24 to respond?

25 A Yes, there is. Let me find the

1 photograph that will depict it.

2 In State's Exhibit 18, during the
3 course of any type of fire investigation when I look
4 at fire patterns to determine where the fire
5 originated and what caused it, I'm looking for
6 patterns that reflect the fire's movement and
7 intensity.

8 Remember, I told you about those
9 V patterns which reflect where the fire originated and
10 how it grew, and then when I traced that pattern back
11 to the lowest point that usually will tell me where
12 the fire started.

13 One of the other patterns that I
14 look for are called lines of demarcation, and I am
15 talking about lines -- levels of smoke and levels of
16 heat.

17 As you can see in State's Exhibit
18 18, the level of smoke in the hallway, and where we're
19 at is I was positioned here photographing the hallway
20 looking north, you can see that the level of smoke is
21 approximately down to three or four feet from the
22 floor level. And we're looking at the black soot in
23 this area.

24 You can see that the level of heat
25 is down to about five to six feet above ground level.

1 You can see where the cracking is here. You can see
2 where the melting is here. The picture -- in the
3 pictures that's the level of heat that's banking down
4 from the fire. The level of smoke is, of course, much
5 lower.

6 Q And from that, what can you conclude as
7 an arson investigator?

8 A What I can conclude by looking at this
9 photograph and what I can conclude by looking at the
10 fire scene, is that this fire did not burn for a long
11 time.

12 What is commonly associated with
13 perhaps a smoldering cigarette, when a cigarette is
14 ignited perhaps in a piece of furniture, such as a
15 chair or couch or sofa, it takes a very long time to
16 finally get an open flame. Sometimes it has to
17 smolder for up to eight to ten hours.

18 With that type of smoldering it
19 produces very, very heavy, black soot and a lot of
20 smoke because it has to be confined and the heat has
21 to be trapped before it can finally build up enough
22 heat that we have an open flame, and then we
23 eventually have a fire.

24 So with that type of smoke
25 accumulation, I would expect to see heavy, thick,

1 black smoke almost all the way down to the bottom of
2 the walls and towards the carpet. As you can see in
3 this photograph, there are none.

4 Q The particular combination of smoke and
5 heat in this photograph, is that consistent with an
6 open flame fire started with an accelerant?

7 A It's an indicator. I can't conclusively
8 rule that an accelerant was used. But based on the
9 lack of that thick, black smoke and based on the fact
10 that the smoke is light and that there is not a great
11 accumulation of it, it's an indicator that this fire
12 was rapid.

13 Q And it's certainly not inconsistent
14 with --

15 A It's not inconsistent with that theory.

16 Q Taking all of the evidence and all of
17 your examination together, again, this fire was
18 started with an accelerant and open flame
19 intentionally by human hand?

20 A Willfully and maliciously, yes.

21 Q You can have your seat again.

22 Now, do you know a person by the
23 name of Cliff Mitchell and a Josie?

24 A Yes, sir, I do.

25 Q Who is Cliff Mitchell and who is Josie?

1 A Cliff is an arson investigator with the
2 Clark County Fire Department, and Josie is the
3 accelerant detecting canine.

4 Q And what it is that -- just briefly,
5 we'll bring Cliff in -- what is it briefly that Cliff
6 and Josie are supposed to do?

7 A What Josie does is she's been trained by
8 -- I forget who -- she's been trained by it's either
9 the Bureau of ATF or the Connecticut State Police.
10 She's trained to find hydrocarbon residues.

11 Hydrocarbons are found in any kind
12 of petroleum fuel which is used an accelerant. So
13 she's trained to recognize those organic materials and
14 Cliff is her handler.

15 Q On or about December 17th, 1995, were
16 Josie and Cliff called out to confirm your findings?

17 A Yes, sir, they were.

18 Q And were you present when Josie was run
19 through the debris in the living room of the home?

20 A No, sir I was not. I had left at that
21 point.

22 Q Have you come into information that let's
23 you know one way or another whether Josie was able to
24 confirm that an accelerant was present?

25 A Yes, sir, I have.

1 Q And that information is --

2 A It's a crime lab report from the
3 criminalistics lab of the Metropolitan Police
4 Department.

5 Q I show you what's been marked as Proposed
6 Exhibit 95, and ask you if that's the report that you
7 are referring to?

8 A Yes, sir, it is.

9 MR. BELL: Your Honor, I would like the
10 record to reflect that this is an examination by Scott
11 Hardy wherein some of the debris that was taken from
12 the fire was given to him as a chemist with the Las
13 Vegas Metropolitan Police Department to determine the
14 presence of an accelerant, and he was able to do so.

15 He is available. We can call him.
16 The defense has agreed to just stipulate to admit the
17 report based on those, and we'll have Mr. Hoge and Mr.
18 Mitchell testify just to save time.

19 MR. LAPORTA: That's fine, your Honor.

20 MR. BELL: Move to admit 95.

21 MR. LAPORTA: No objection.

22 THE COURT: The same will be received in
23 evidence.

24

25

(State's Exhibit 95
admitted into evidence.)

BY MR. BELL:

Q Was the findings of Mr. Hardy, a chemist and criminalist with the Las Vegas Metropolitan Police Department, that there was an accelerant present in at least part of the debris that was sent to him for review?

A Yes, he did find that.

Q How is debris collected and sent to a person like Mr. Hardy for examination?

A Well, if we're using the canine, Josie, and she alerts to a portion of material. We'll take that portion of the material and impound it in a metal can that is sealed and protects the vapors, if there are any.

Q If we assume that Josie and Mr. Mitchell would come in and tell us that she hit on four or five or half a dozen different places, would that material have been packaged in this way and sent out to Mr. Hardy?

A Yes, sir, it would have.

Q Now, it appears from Mr. Hardy's report that he did not specifically determine in each one of those cans that there was an accelerant present

1 notwithstanding the fact that Josie sort of hit for a
2 positive on each of the cans sent out there.

3 Is there an explanation or
4 reconciliation of that that you can give to the jury?

5 A There is two explanations, and while I'm
6 not an expert with the dog, and I will let
7 Investigator Mitchell testify to that, we do know that
8 the dogs nose is more sensitive than the chemist's
9 apparatus.

10 Q Really.

11 A So a lot of times the dog will hit in
12 areas and alert to hydrocarbons and we'll collect that
13 and send it to the lab, but the lab won't detect it.

14 The second reason is that the
15 material that Josie did hit on on that day, was
16 removed from the east living room of the dwelling and
17 it was removed to the outside. So it had a greater
18 chance to evaporating in the air.

19 Q So is it the case that if we took three
20 or four or five different sets of debris out in the
21 air and packaged it that Josie had hit on and the lab
22 confirmed on one of those, that that particular debris
23 had a higher concentration of accelerant present so
24 that it wouldn't evaporate?

25 A That's my opinion, yes.

1 Q Okay. So that is your best guess as to
2 the reconciliation of why Josie hit on more than the
3 lab confirmed?

4 A Yes.

5 Q After you were presented with Josie's
6 findings and the lab findings, were they consistent
7 with your professional conclusion that this fire was
8 of human origin intentionally set with an accelerant?

9 A What the lab confirmed was that the
10 curtains against the east living room wall in the
11 victim's living room were saturated with a hydrocarbon
12 based fuel.

13 Q Without being able to specifically say
14 that that was the contents of the Ronsonol can, would
15 that be consistent with contents that you know to be
16 in the Ronsonol can?

17 A Yes, it would be.

18 MR. BELL: Nothing further, Judge.

19 THE COURT: Cross-examination.

20 MR. LAPORTA: Thank you, Judge.

21

22 CROSS EXAMINATION

23

24 BY MR. LAPORTA:

25 Q Investigator Hoge?

1 A Yes.

2 Q Investigator, let me see if I have this
3 straight here -- can everybody see this if I step
4 behind? Can everybody see this?

5 A JUROR: Not really.

6 THE COURT: Bring it forward.

7 BY MR. LAPORTA:

8 Q Let me see if I have this straight here
9 now. The heaviest damage that occurred to the
10 structure was here at the north window in this
11 particular bedroom; is that correct?

12 A In that particular bedroom.

13 Q Yes.

14 A The worst damage occurred to the east
15 side of the north bedroom window.

16 Q Okay. So it would be this side?

17 A No, no.

18 Q It would be the north window, but east
19 side of the window versus west side? The worst damage
20 happened generally in this area?

21 A Yes, sir.

22 Q And the worst damage in this bedroom, or
23 in this living room, happened along the -- what would
24 this be, the west wall?

25 A East living room wall.

1 Q Okay. And there was some bad damage
2 along the south wall right here?

3 A There was some flame, smoke and heat
4 damage, but it wasn't as great as the east living room
5 wall.

6 Q And this area had moderate damage?

7 A It had moderate smoke damage and some
8 heat damage, yes.

9 Q And you have testified that the origins
10 were the curtains?

11 A Yes, sir.

12 Q All right. And it was an accelerant set
13 by open flame by human hand?

14 A I don't know if there was an accelerant
15 used in the bedroom. We didn't collect that as a
16 sample.

17 Q Accelerant used in this area?

18 A Yes, sir.

19 Q Okay. In the living room. How about to
20 the south wall in the living room area accelerant used
21 there?

22 A It's possible, but that I can't conclude.
23 Based on my fire examination, I believe that there
24 were vapors on the carpet in front of the love seat
25 that was against the south wall.

1 Q You arrived at approximately what time,
2 3:00 --

3 A 3:26 a.m.

4 Q And that was about how long after the
5 fire department had arrived?

6 A Fire department received a call at 3:03.
7 So 22 minutes. I would have to look at my alarm sheet
8 to tell you when they arrived.

9 Q So you arrived fairly soon after it was
10 reported?

11 A Fairly soon, yes.

12 Q Is it safe to assume that the victim was
13 still lying in her bed in her bedroom?

14 A She was.

15 Q So you viewed the body of Mrs. Berndt?

16 A I did see her in the bed, yes.

17 Q Okay. Let me ask you this: Was there
18 any burning in the area immediately surrounding the
19 bed?

20 A No, only smoke damage.

21 Q Was there any burning to the bed area?

22 A No, I did not see any.

23 Q Was there any burning to the body of Mrs.
24 Berndt?

25 A No, there was not.

1 Q Was there any burning to a pillow that
2 was placed over her head?

3 A Not from my observation. Of course, I
4 didn't move anything to look.

5 Q Let me ask you this: You've qualified in
6 here as an expert in origins and causes of fires. If
7 an accelerant had been placed in the area immediately
8 surrounding the bed, would the heat and intensity from
9 the fire that had been set in this area, and this
10 area, have ignited those flammable vapors?

11 A It's possible. It might have.

12 Q If an accelerant had been placed on the
13 bed or the bedding material, would the heat and
14 intensity from the fire in that room have set those
15 flammable vapors on fire, ignited those flammable
16 vapors?

17 A It would have set the vapors on the floor
18 first before it set the vapors on the bed.

19 Q My question is: Would it have set the
20 bed or the bedding material on fire?

21 A It's possible.

22 Q How about to the body of the victim?

23 A That too is possible.

24 Q All right. And also to the pillow that
25 was placed over her head --

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

No. 56176

Electronically Filed
Feb 01 2011 08:48 a.m.
Tracie K. Lindeman

E.K. McDANIEL, Warden, Ely State
Prison, CATHERINE CORTEZ MASTO,
Attorney General for Nevada,

Respondents.

Appeal from Order Denying Petition for Writ of Habeas Corpus (Post-Conviction)

VOLUME 15 of 21

FRANNY A. FORSMAN
Federal Public Defender
GARY A. TAYLOR
Assistant Federal Public Defender
Nevada Bar No. 11031C
411 East Bonneville Ave, Ste. 250
Las Vegas, Nevada 89101
(702) 388-6577
Counsel for Appellant

WCASTILL0002-GRAM0036

1 Q They don't do any criminal work at all?

2 A Not to my knowledge. Not the attorneys that I
3 work for.

4 THE COURT: They're a defendant insurance
5 company.

6 MR. SCHIECK: Some people believe insurance
7 companies are criminals.

8 JUROR #329: That was the joke.

9 THE COURT: It's pretty bad when the lawyer has
10 to explain the judge's joke.

11 MR. SCHIECK: It's all in the delivery.

12 BY MR. SCHIECK:

13 Q You put in your questionnaire that you're
14 leaving for a family reunion Thursday night. That might
15 cause us inconvenience.

16 A The reason I didn't vocalize that after
17 listening to more important reasons that people didn't
18 serve, if I were chosen I would do whatever I needed to do.

19 THE COURT: It won't be a problem. The Court
20 will adjourn probably four o'clock.

21 BY MR. SCHIECK:

22 Q You'll be back in town --

23 A Tuesday morning.

24 Q It won't be a problem.

25 Thank you. We'll pass for cause.

DANETTE L. ANTONACCI, CCR #222

THE COURT: Thank you.

EXAMINATION

BY THE COURT:

Q Miss Clausse, how are you this afternoon?

A Just fine.

Q Any reason you can think of why you can't be fair to both sides in this case?

A No, I don't think so.

Q Can you wait until all the evidence is in before coming to any conclusion about any issue in this case?

A Yes, sir.

Q Have you or any member of your family or any close friends ever been arrested?

A Yes, sir.

Q Tell us a little bit about that.

A It was for defacing property.

Q How long ago was this?

A Two years ago.

Q Who was this?

A My husband.

Q Anything about how that case was handled by the authorities that would affect your thinking in this case?

A Not at all.

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0038

- 7 1 Q Anyone in your family, you or any friends of
2 yours, ever been the victim of a crime?
- 3 A No.
- 4 Q Have you ever been on a jury before?
- 5 A Never.
- 6 Q Have you any concerns about any adverse
7 publicity that might come out of this trial?
- 8 A No, sir.
- 9 Q If you serve as a juror and you read about it in
10 the paper later or your neighbors do, that's not going to
11 bother you?
- 12 A Not at all.
- 13 Q Have you ever been involved in any kind of court
14 proceedings as a party or a witness?
- 15 A No.
- 16 Q Do you have any religious, conscientious, moral
17 or philosophical objections to the imposition of the death
18 penalty?
- 19 A No, sir.
- 20 Q And if you were called to deliberate on the
21 question of penalty after a finding of guilt, if and only
22 if that occurred, would you be able to give fair
23 consideration to all three statutory punishments for first
24 degree murder?
- 25 A Yes, sir.

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0039

Q And do you have any problem philosophically with the notion that a defendant does not have to prove his innocence but the State has the entire burden of the case to prove guilt beyond a reasonable doubt?

A Yes.

Q If you were involved in this case yourself in any way would you feel comfortable with twelve people like you with your sense of fairness and justice?

A Yes, sir.

THE COURT: State of Nevada may inquire.

MR. HARMON: Thank you, your Honor.

EXAMINATION

BY MR. HARMON:

Q You are employed as a security officer?

A That's correct, sir.

Q How long have you worked in that capacity?

A Two and a half years.

Q Where do you work?

A Luxor.

Q Prior to your work in security at the Luxor where else have you been?

A I worked in Illinois in credit investigations for mortgages.

DANETTE L. ANTONACCI, CCR #222

WCASTILLE0002-ORAM0040

8

1 Q You describe yourself in the questionnaire as a
2 liberal. What does that mean to you?

3 A Well, I have a more or less free way of
4 thinking. I guess I don't follow usually to the drum, the
5 music to most people's drums.

6 Q You're willing to think independently?

7 A Very.

8 Q Are you open-minded about this case?

9 A Yes, sir.

10 Q Do you understand that the jury has an
11 obligation to follow the Court's instructions?

12 A Yes, sir.

13 Q You're not to be a free thinker about that and
14 try to second guess the judge and what law applies to the
15 case.

16 A No. When I'm instructed to do something I never
17 second guess.

18 Q You indicated that you were excited about being
19 chosen as a juror.

20 A That's correct. It would be my first
21 experience.

22 Q Is that why you responded in that manner?

23 A Yes, sir.

24 Q Even given the serious nature of these charges
25 are you still looking forward to the opportunity of

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0041

1 serving?

2 A Very much, sir. I think it's something that
3 every person should do in their life.

4 Q Do you believe that the punishment should always
5 fit the crime?

6 A I would say it depends on the mitigating
7 circumstances.

8 Q After having considered mitigation and what
9 might aggravate the offense, would you then seek to, if the
10 jury is called upon to impose punishment, to fix a
11 punishment that would fit the circumstances of the case?

12 A Definitely.

13 Q Suppose you thought that was the death sentence.
14 Would you have the strength of your conviction to come into
15 the courtroom and in the presence of those who were here
16 vote that way?

17 A Yes, sir.

18 MR. HARMON: Thank you. Pass for cause.

19 THE COURT: Mr. Schieck.

20

21 EXAMINATION

22

23 BY MR. SCHIECK:

24 Q Mrs. Clausse, you indicate that you think that
25 the criminal justice system in Nevada is not strong enough.

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0042

1 If you were making up the rules how would you make it
2 stronger?

3 A I think due to our major growth, I don't think
4 we have enough coverage and in that respect I just think
5 that it needs to be stronger.

6 Q What type of coverage?

7 A Police coverage, court coverage. It just seems
8 like due to the growth we are just so overwhelmed that we,
9 you know, cannot keep up with what's going on in the state
10 now.

11 Q So we need more policemen to catch the criminals
12 and more courts to decide if they're guilty or not?

13 A We need more things to put people on the right
14 track. I don't know how to explain that. There is not
15 enough there to divert from the wrongdoing to what is
16 right.

17 Q Would you want to see something then in the
18 system that might take someone that has a criminal past and
19 perhaps rehabilitate them rather than just store them in a
20 prison?

21 A Definitely.

22 Q You think that most people have the ability to
23 be rehabilitated if they're given the proper help?

24 A I think that would depend on the person itself.
25 I don't think you can kind of generalize on that.

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-DRAM0043

1 Q Case by case decision?

2 A Exactly.

3 Q Now you indicated in your questionnaire that you
4 would give more weight to the testimony of a police officer
5 simply because he or she was a police officer.

6 A Well, in my mind I would like to think that our
7 policemen are good, upstanding people. That's how I was
8 brought up through my young life and that's how I feel.

9 Q If a police officer took the stand and testified
10 that something was white and a non-police officer came in
11 and testified that it was black, those are all the facts
12 you had, would you believe the police officer over the
13 other witness just because that --

14 A No, sir.

15 Q Okay. You would want to hear all the facts?

16 A Right.

17 Q How do you feel about the death penalty?

18 A I really kind of have mixed feelings on it.
19 Sometimes I think it's a very fitting penalty. Most of the
20 time I think it's a little lax.

21 Q So there have been cases that perhaps you've
22 seen on television or in the newspapers where you thought,
23 wow, that really was a little harsh to give them the death
24 penalty?

25 A For what I read and what was told to me through

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0044

1 media newspapers, yes.

2 MR. SCHIECK: Thank you. We'd pass for cause.

3 THE COURT: We're going to take about a five
4 minute recess at this point, ladies and gentlemen. During
5 this recess it is your the duty not to converse among
6 yourselves or with anyone else on any subject connected
7 with the trial; or read, watch or listen to any report or
8 commentary on the trial or any person connected with the
9 trial by any medium of information, including without
10 limitation newspapers, television and radio; and you are
11 not to form or express any opinion on any subject connected
12 with this case until it is finally submitted to you.

13 Please remain on the upper deck of the
14 courthouse within the immediate area outside the courtroom.
15 This is just a stretch break. Get a drink of water or use
16 the facilities. We'll be back in five minutes, ten minutes
17 after four o'clock.

18

19

(Recess.)

20

21 THE COURT: C133336, State of Nevada versus
22 William Patrick Castillo. It is now evident that we have
23 enough jurors to complete our panel for cause so at this
24 time I'm going to release the following persons that we've
25 placed at the bottom of the list because of extenuating

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0045

1 circumstances that were brought up during the general voir
2 dire.

3 Juror number 349, John Markam Moran. You
4 are excused from jury service at this time.

5 JUROR #349: Thank you.

6 THE COURT: Leonda Adella Mann, you are excused
7 from jury service at this time. Thank you very much.

8 MR. HARMON: What was that number, Judge.

9 THE COURT: I'm sorry. That is 124.

10 Again as I release you I want to thank
11 all of you for attending. It was necessary to hold you as
12 part of the jury panel until we determined there was not
13 going to be any problem with filling our necessary
14 complement of prospective jurors.

15 Number 123, Karl Michael Lantz.

16 Mr. Lantz, thank you very much. Good
17 luck.

18 Juror number 304, Kathryn Smith
19 Schwendemann. Am I pronouncing that correctly?

20 JUROR #304: Yes. Very good.

21 THE COURT: Thank you very much.

22 Juror 307 Wendy Jane Parish.

23 JUROR #307: Thank you.

24 THE COURT: Thank you.

25 Juror 361, Dwain A. Meyer.

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0046

1 JUROR #361: Thank you.

2 THE COURT: Thank you.

3 315, Shirley Irene Wilbur.

4 JUROR #315: Thank you.

5 THE COURT: Thank you, ma'am.

6 Juror 319, Paul Grant McClanahan.

7 Thank you very much.

8 Badge number 328, David Eugene Wilms.

9 Mr. Wilms, thank you very much for attending.

10 With that I would ask the deputy court

11 clerk to call the next five names from the collection of

12 prospective jurors.

13 THE CLERK: Badge number 332, Cheri Lynn Shaine,

14 S-h-a-i-n-e. Badge number 334, Mary Ann Coffman,

15 C-o-f-f-m-a-n. Badge number 339, Nicholas Isadore

16 Sandoval, S-a-n-d-o-v-a-l. Badge number 341, Margaret G.

17 Rex, R-e-x. Badge number 342, Jeffrey Roger Caldwell,

18 C-a-l-d-w-e-l-l.

19 THE COURT: Let's make sure we have everyone in

20 their proper places.

21 Miss Shaine?

22 JUROR #332: Correct.

23 THE COURT: Miss Coffman?

24 JUROR #334: Yes.

25 THE COURT: Mr. Sandoval?

DANETTE L. ANTONACCI, CCR #222

Miss Rex?

JUROR #341: Yes.

THE COURT: Mr. Caldwell.

Good afternoon everyone.

EXAMINATION

BY THE COURT:

Q Miss Shaine, any reason you can think of why you couldn't be fair to both sides in this case?

A Yes, sir. I did not hear the charge murder. And do I understand that that's one of the charges? There is the possibility of the death penalty?

Q Yes, that was the one of the purposes for your filling out the jury questionnaire.

I'm not trying to be funny.

A You wouldn't have put it on there, is what you're saying?

Q Right. Maybe it was not made obvious to you but the only offense under the law of the State of Nevada for which the death penalty is available is first degree murder.

A Right. You know when I think of it on a personal basis I would have to go probably with the death penalty. If I personalize it, I believe that I would have

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0048

1 a problem on an objective basis because I feel that
2 basically that no one has the right to take a life
3 including the state, federal government, so forth. So
4 objectively I would say that I could not be objective.

5 Q Just to clarify it so I can make sure of what
6 you are saying to me, you indicated that on a personal
7 basis you would have no problem with the death penalty?

8 A I would not. I'm saying that if I personalize
9 it, if it happened to me, something happened to me, I would
10 be very adamant that the death penalty was included as a
11 sentence. When I'm objective as I believe I would be as a
12 juror I would have preconceived notions that the death
13 penalty is generally wrong, that there is, the federal
14 government and the state government didn't create a life
15 and therefore I certainly feel they do not have a right to
16 take a life.

17 THE COURT: I'll excuse this juror from service.
18 Thank you very much for your candor.

19 JUROR #332: I'm sorry I wasted your time.

20 THE COURT: No, not at all.

21 THE CLERK: Badge number 343, Theodore Mervin
22 Moore, M-o-o-r-e.

23

24 ///

25 ///

DANETTE L. ANTONACCI, CCR #222

EXAMINATION

BY THE COURT:

Q Good afternoon, Mr. Moore.

A Afternoon, sir.

Q How are you?

A Fine.

Q Any reason that you can think of why you couldn't be fair to both sides in this case?

A None.

Q Can you wait until all the evidence is in before coming to any conclusion about any issue in this case?

A I can.

Q Have you or any member of your family or any close friends of yours ever been arrested?

A Not to my knowledge.

Q Have you or any member of your family or close friends of yours ever been the victim of a crime?

A No.

Q Ever been on a jury before?

A Yes, I have.

Q How many times?

A Well, one time in a civil court, but in the military I was a member of special courts, general courts, trial counsel, defense counsel. Under the military justice

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0050

1 system.

2 Q So in the military justice system you played a
3 number of different roles both for the prosecution and the
4 defense of court-martial offenses?

5 A Yes.

6 Q And is there anything about those experiences
7 that would affect your thinking here?

8 A No.

9 Q Is there anything about those experiences that
10 have given you any preconceived notions about how an
11 individual should be judged in a court of law?

12 A No.

13 Q So in other words you still believe in the
14 presumption of innocence and the fact that the defense
15 doesn't have to prove the innocence of the defendant?

16 A Yes.

17 Q And that's an important part of your system, you
18 believe in that?

19 A Yes, sir.

20 Q So you have played a role in court proceedings
21 from time to time?

22 A Yes. And I sat on a jury before.

23 Q What kind of a jury did you sit on?

24 A It was a criminal case, a shooting case.

25 Q Was your jury able to reach a verdict without

DANETTE L. ANTONACCI, CCR #222

1 telling us what it was?

2 A Yes, we did.

3 Q Anything about that experience that has brought
4 you to any preconceived notions about the guilt or
5 innocence of this defendant?

6 A No.

7 Q And you feel that there is nothing about that
8 experience that would prohibit you from giving the State of
9 Nevada and the defendant a fair trial in this matter?

10 A Absolutely not.

11 Q Any concern about adverse public opinion that
12 might result from any verdict in this case?

13 A No.

14 Q Have you any philosophical, moral, religious
15 objections to the imposition of the death penalty?

16 A None.

17 Q If you are called to serve as a juror and if the
18 jury finds the defendant guilty of first degree murder and
19 it moves on to the issue of penalty, will you be able to
20 give fair consideration to all three statutory forms of
21 punishment?

22 A Yes.

23 Q And if you were involved in this case as a
24 member of either the defendant's family or the victim's
25 family, would you feel comfortable with twelve people

DANETTE L. ANTONACCI, CCR #222

1 sitting on the jury that have your sense of fairness and
2 justice?

3 A Yes, I would.

4 THE COURT: State of Nevada may inquire.

5 MR. HARMON: Thank you, your Honor.

6
7 EXAMINATION

8
9 BY MR. HARMON:

10 Q Good afternoon, sir.

11 A Afternoon.

12 Q What branch of the service were you in?

13 A I was in the Marine Corps.

14 Q And you achieved the rank of major according to
15 the questionnaire?

16 A Yes, I did.

17 Q How long were you in the Marine Corps, sir?

18 A Twenty-one years.

19 Q You indicate that you either have been or
20 presently are a federal employee?

21 A Yes. I'm retired now but my last job a year ago
22 I worked in Camp Pendelton, California.

23 Q What type of work at Camp Pendelton?

24 A I was in the traffic management field. I was
25 responsible for the movement of freight on and off the

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0053

1 base.

2 Q Mr. Moore, had you heard anything about this
3 case before you came to court?

4 A No.

5 Q You indicate in the material that we have that
6 you've been in Clark County for about a year?

7 A We moved here 23rd of December.

8 Q How is it that you moved to the Las Vegas area?
9 Why?

10 A Well, it was for health reasons for my wife and
11 I was retiring and I considered the tax issue. Nevada
12 versus California.

13 Q How do you feel about the opportunity now that
14 you are here and settled of being a juror in Clark County?

15 A I'm retired, I don't have a lot to do, so it's
16 just another experience.

17 Q Is it a responsibility you're going to accept?

18 A Sure.

19 Q If this jury is called upon to fix a punishment
20 are you going to be able to objectionably and fairly select
21 the proper punishment from the three provided for murder of
22 the first degree?

23 A Yes, I can do that.

24 Q Would you describe yourself as being for or
25 against the death penalty?

DANETTE L. ANTONACCI, CCR #222

1 A For.
2 Q You can think of cases where you believe it is
3 proper?
4 A Absolutely.
5 MR. HARMON: Thank you. Pass for cause.
6 THE COURT: For the defense.
7 MR. SCHIECK: Thank you.

8
9 EXAMINATION

10
11 BY MR. SCHIECK:

12 Q Mr. Moore, can you think of cases where someone
13 can be guilty of first degree murder but yet the death
14 penalty is not appropriate?

15 A I would have to really listen to the mitigating
16 circumstances and come up with a conclusion, but usually if
17 it's a first degree murder case the death penalty should
18 apply.

19 Q So the starting point is death penalty and you
20 might work your way down from there?

21 A That's correct.

22 Q Would you say that you're going to be able to
23 consider those three penalties equally or you're on the
24 death penalty now and the other two are sort of relegated
25 to secondary position?

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0055

1 A To be truthful with you, yes.

2 Q So you're really not considering them equally,
3 you're considering the death penalty as appropriate and
4 maybe something is going to happen to move you off of it?

5 A Well, if the facts so dictate I think I can move
6 off of that position, but I would really have to listen to
7 the facts.

8 Q If you take the fact that the individual has
9 been convicted of first degree murder, that fact alone is
10 what gets you to the death penalty, and then moving from
11 there is the other facts you have to hear?

12 A Based on circumstances and what led up to it and
13 I would have to consider all of that.

14 Q Would you consider elements of a defendant's
15 background in making the decision?

16 A I'd give it some weight.

17 Q When asked in the questionnaire about the crime
18 problem you indicated that the cause was a lack of family
19 guidance. Can you elaborate on that a little bit?

20 A Yes. I've been a father and a grandfather. I
21 think that there's not enough direct supervision of our
22 young children and I tend to feel that if we got more
23 involved as mothers and fathers and grandparents we could
24 alleviate a lot of the crime problem. We've got too much
25 turning our children loose and not having close supervision

DANETTE L. ANTONACCI, CCR #222

1 of what our children are doing and where they are at any
2 given moment. And that's what I meant by that.

3 MR. SCHIECK: Thank you. We'd pass for cause,
4 your Honor.

5 THE COURT: All right. Thank you.

6
7 EXAMINATION

8
9 BY THE COURT:

10 Q Miss Coffman, thank you for coming today.

11 Any reason you can think of why you
12 couldn't be fair to both sides in this case?

13 A Earlier when the defense attorney was talking
14 about graphic photos, I couldn't stand it. I'm sorry, I
15 just couldn't stand to look at them.

16 MR. BELL: No objection.

17 THE COURT: We'll excuse you from jury service.
18 Thank you very much.

19 THE CLERK: Badge number 344, Cory Trent
20 Pribble, P-r-i-b-b-l-e.

21
22 EXAMINATION

23
24 BY THE COURT:

25 Q Good afternoon, Mr. Pribble.

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0057

1 A Hello.

2 Q By any chance are you related to Dennis Pribble?

3 A Yes, I am.

4 Q What connection?

5 A Brother.

6 Q I thought so. We went to high school together

7 at the Harvard of Las Vegas, Western High School.

8 Any reason you can think of why you could

9 not be fair to both sides in this case?

10 A I contacted my ^{uncle} - I'm a custom home designer,

11 self-employed, sole proprietorship type. I contacted my

12 three clients I have right now and I don't believe -- I

13 would lose at least two of them by taking this time out of

14 my life. I know it's my duty to do this but I would really

15 hate to lose those two clients.

16 Q Would you like us to place you at the bottom of

17 the list and call somebody else?

18 A Sure, if you could, I would greatly appreciate

19 it.

20 Q We'll do that.

21 A If necessary I would do my service.

22 Q We'll put you at the bottom of the list and see

23 if we need you back. I doubt if we will but we'll give it

24 a try.

25 A Thank you.

DANETTE L. ANTONACCI, CCR #222

1 THE CLERK: Badge number 345, Gary Geschke, Jr.,
2 G-e-s-c-h-k-e.

3
4 EXAMINATION

5
6 BY THE COURT:

7 Q Mr. Geschke, good afternoon.

8 A Good afternoon.

9 Q Any reason you can think of why you couldn't be
10 fair to both sides in this case?

11 A No.

12 Q Can you wait until all the evidence is in before
13 coming to any conclusion about any issue in the case?

14 A Yes, sir.

15 Q You or any member of your family or any friends
16 of yours ever been the victim of a crime?

17 A No.

18 Q You or any member of your family or friends of
19 yours ever been arrested?

20 A No.

21 Q Have you ever been on the jury before?

22 A No, I haven't.

23 Q Any concern about adverse public opinion that
24 might result from a verdict in this case?

25 A No.

DANETTE L. ANTONACCI, CCR #222

WCASSTILL0002-CRAM0059

1 Q Have you ever been involved in any kind of legal
2 proceeding or court proceeding as a party or a witness?

3 A No, I haven't.

4 Q No, you have not?

5 A No, I have not.

6 Q Any conscientious, philosophical, religious or
7 moral objection to the imposition of the death penalty?

8 A No.

9 Q If you're called upon to deliberate on the
10 question of penalty will you be able to give fair
11 consideration to all three forms of penalty?

12 A Yes, I could.

13 Q And you have no problem with the notion that a
14 defendant is not required to prove anything in a case in
15 terms of trying to prove his innocence, it's simply up to
16 the State of Nevada to, it's not simply, but it is up to
17 the State of Nevada to prove each and every element of the
18 charges in the case, the defendant has no burden; do you
19 understand that?

20 A Uh-huh.

21 Q You agree with that notion?

22 A Yes, sir.

23 Q If you were involved in this case would you feel
24 comfortable with twelve jurors like yourself sitting on
25 this matter?

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0060
12

1 A Yes, sir.

2 THE COURT: State of Nevada may inquire.

3 MR. HARMON: Thank you, your Honor.

4

5

EXAMINATION

6

7 BY MR. HARMON:

8 Q Good afternoon, sir.

9 A Good afternoon.

10 Q How do you feel about the opportunity you have
11 serving on the jury?

12 A I believe it's a privilege, learning lesson.

13 Q Is it something you would like to do if you're
14 selected?

15 A Yes, I would.

16 Q What is there about your personality or your
17 particular character traits you have that you believe would
18 well suit you to be a juror?

19 A I don't know if I'm able to answer that. It's
20 up to you.

21 Q You're simply indicating a willingness to serve
22 if selected?

23 A Yes.

24 Q In the questionnaire as I recall when asked
25 about attorneys and police you didn't have any comment

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0061

12 1 about defense attorneys.

2 A I haven't had no experience or no criminal
3 record or any record at all. I never even been inside the
4 court.

5 Q You haven't had occasion to be represented by a
6 defense attorney?

7 A No.

8 Q You described prosecutors as pushy and straight
9 forth.

10 MR. BELL: He must mean you, Mel?

11 JUROR #345: From movies because I've never seen
12 the inside of a courtroom so ...

13 BY MR. HARMON:

14 Q Not based of course upon any personal
15 experience?

16 A No, of course not.

17 Q Or that of any friends or family member?

18 A No.

19 Q And the same would be said of your description
20 of police officers as stern and cocky?

21 A I do believe some but not the majority.

22 Q As has been mentioned various times during these
23 proceedings potentially there are two phases to the trial
24 and this jury may be called upon to fix punishment if Mr.
25 Castillo is convicted of murder of the first degree. Are

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0062

1 you going to be able to consider the full range of the
2 punishments?

3 A Yes, I could.

4 Q If it was left solely up to you would we have
5 capital punishment in this state?

6 A Yes, probably.

7 Q You say "yes, probably."

8 A Well, yes.

9 Q Well, why do you believe we should have it on
10 the statute books?

11 A Uh, it's hard to answer. I don't have a really
12 right or wrong answer on that one.

13 THE COURT: There isn't one.

14 JUROR #345: The right meaning of capital
15 punishment. I don't understand the right meaning.

16 BY MR. HARMON:

17 Q I don't think anyone here would suggest that
18 it's easy or pleasant to be called upon to pass judgment on
19 a fellow human being. But nevertheless that may be the
20 responsibility of this jury. Do you feel you're able to --
21 see Mr. Castillo over here. He's a young man like you.
22 You're in the same age bracket. If after you had heard
23 everything, if he had been convicted of murder of the first
24 degree, would you be able to come back into this courtroom
25 if you thought that a death sentence was appropriate, look

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0063

1 at Mr. Castillo and vote for such a sentence?

2 A Based on the evidence, yes, I could.

3 MR. HARMON: Thank you. Pass for cause.

4 THE COURT: All right. Mr. Schieck.

5 MR. SCHIECK: Thank you.

6

7

EXAMINATION

8

9 BY MR. SCHIECK:

10 Q You're a night stocker at a grocery store?

11 A Just got recently promoted to assistant grocery
12 manager.

13 Q Are you still working the night shift?

14 A Yes.

15 Q During the trial would you be trying to work at
16 night and be here during the day?

17 A Yes.

18 Q What would your work hours be at night?

19 A 2:00 or 3:00 in the morning until 10:00 or 11:00
20 in the morning.

21 Q What if we start before ten o'clock?

22 A I guess I'd either have to work earlier or -- I
23 haven't really given that much thought.

24 Q Do you think that's going to affect your ability
25 to sit and listen to what may be boring testimony at times?

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0064
13

- 1 A No, sir.
- 2 Q That's a schedule that you usually keep?
- 3 A Yes, I do.
- 4 Q So you go home after court, sleep, get up, go to
5 work and then come to court?
- 6 A Pretty much.
- 7 Q And there is no doubt in your mind that you'd be
8 able to concentrate during the course of the proceedings?
- 9 A Yes.
- 10 Q In your questionnaire you indicate that "all
11 criminals now get away with a slap on the hand and are sent
12 on their way. Criminals do not learn that way." Are you
13 basing that on any particular set of facts?
- 14 A Just juveniles. I have my fiancée's cousin.
15 Just in general prospective. He's a juvenile. Juvenile
16 court people have file cabinets and files. This little kid
17 has a file cabinet full of. He's sent in, sent out, call
18 the parents, parents take him home.
- 19 Q How old is this individual?
- 20 A Just recently turned 18.
- 21 Q What do you think the breakdown in the system
22 was with respect to that individual?
- 23 A Probably schools a lot of influence.
- 24 Q Do you blame his parents?
- 25 A Partial.

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-GRAM0065

1 Q Do you blame the juvenile system for not keeping
2 him?

3 A I was around a lot when a lot of the stuff was
4 going through the courts and they complained and
5 complained. They called them up and tried to have
6 something done. He spent some time in Spring Mountain and
7 all the other stuff. So, you know, they, from what I
8 heard, you know --

9 Q Did you have any personal dealings with this
10 juvenile?

11 A No.

12 Q That's the only situation that you were thinking
13 of when you were talking about a slap on the hand?

14 A Yes.

15 Q You don't think a sentence of life in prison
16 without parole would be a slap on the hand, do you?

17 A No.

18 Q You indicate that sometimes death is too easy of
19 a way out for some people when asked about what was the
20 harshest punishment. Did you have any particular fact
21 situation in mind when you answered that particular
22 question?

23 A No. There are some people are just made, not
24 made but, you know, in their mind just kill or, excuse me,
25 murder, and think if that's the worst I can get is death

DANETTE L. ANTONACCI, CCR #222

13 WCASTILL0002-ORAM0066
1 penalty then ...

2 Q Did you go to high school here in Clark County?

3 A Yes, I did.

4 Q What high school did you go to?

5 A Basic.

6 MR. SCHIECK: Thank you. We'd pass for cause.

7

8 EXAMINATION

9

10 BY THE COURT:

11 Q Mr. Sandoval?

12 A Yes, sir.

13 Q Any reason you can think of why you couldn't be
14 fair to both sides in this case?

15 A No, sir.

16 Q Any reason you couldn't wait until all the
17 evidence comes in before reaching any conclusion on any
18 issues in this case?

19 A Yes, sir.

20 Q Have you or any member of your family or any
21 friends of yours ever been arrested?

22 A Yes and yes. I was arrested for arguing in
23 public with a girl friend. They took us both to jail.
24 Policemen's hands were kind of tied with the O.J. thing
25 going on. They explained to me if they left us both there

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAN0067

13
1 and one of us was to do something to the other they would
2 be held responsible so they were taking us both in.

3 Q Anything about that experience that would affect
4 your judgment in this case?

5 A No, not at all.

6 Q You or any member of your family or any close
7 friends of yours ever been the victim of a crime?

8 A Burglars.

9 Q One of the allegations in this case involves a
10 burglary. Is there anything about that that would affect,
11 about your prior experiences that would affect your
12 judgment in this case which may involve, which involves
13 evidence of burglary or will allegedly involve --

14 A No, sir.

15 Q You've been on a jury before?

16 A No, sir.

17 Q Any concern about adverse public opinion by any
18 verdict generated in this case?

19 A No.

20 Q Ever been involved in a court proceeding as a
21 witness or a party other than what you just mentioned?

22 A I have been asked to be a witness.

23 Q In what?

24 A Cases dealing with my work.

25 Q What would be the subject matter of your

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0068

14
1 testimony?

2 A One was a beating death of an infant by the
3 father and they just wanted to get what we had seen on the
4 scene.

5 Q Any moral, conscientious, philosophical or
6 religious objections to the death penalty?

7 A None.

8 Q Will you be able to give fair consideration to
9 all three forms of punishment if you're called upon to do
10 so?

11 A Yes.

12 Q And do you have any problem with the notion that
13 a defendant has no obligation to prove his innocence in a
14 case like this except for the State to prove the elements
15 of the charges beyond a reasonable doubt?

16 A Yes, I understand.

17 Q You agree with that proposition?

18 A Uh-huh.

19 Q You'll be able to follow the Court's
20 instructions in that regard?

21 A To the letter.

22 Q All right. If you were involved in this case in
23 any way would you feel comfortable with twelve jurors just
24 like you?

25 A Yes.

DANETTE L. ANTONACCI, CCR #222

AA003532

1 THE COURT: You may inquire.

2 MR. HARMON: No questions. Pass for cause.

3 THE COURT: Defense.

4
5 EXAMINATION

6
7 BY MR. SCHIECK:

8 Q Mr. Sandoval, you indicated that you work at the
9 fire station that is in the area where this incident
10 occurred.

11 A Yes, sir.

12 Q And this occurred in December of 1995. Were you
13 working at the station at that time?

14 A At that time I was housed in that station but
15 probably not on that day or I would remember.

16 Q What station is that?

17 A Station 6. It's located on Upland.

18 Q The individuals from station 6 that responded to
19 the scene at 13 North Yale would be individuals that you've
20 worked with?

21 A Yes, sir.

22 Q Individuals that you spend 24 hours a day with?

23 A No, sir.

24 Q You don't work 24 on 24 off?

25 A Yes, but we're on different platoons.

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-DRAM0070

- 14
- 1 Q But you're all in the same station?
- 2 A We're all in the same station but on different
- 3 days.
- 4 Q Do you know any of the individuals that
- 5 responded to this fire scene?
- 6 A I'm sure I probably know some of them but don't
- 7 know which ones were actually there. I mean every --
- 8 Q Once they come into court you'll recognize them?
- 9 A Yes.
- 10 THE COURT: Did you recognize any of the names
- 11 of any of the witnesses that were listed on the
- 12 information?
- 13 JUROR #339: Yes, sir.
- 14 THE COURT: Which names?
- 15 JUROR #339: The arson investigators for the
- 16 fire department.
- 17 BY MR. SCHIECK:
- 18 Q Now the arson investigators don't work out of
- 19 unit 6?
- 20 A No, they don't.
- 21 Q Out of station 6.
- 22 A They work out of downtown station 1.
- 23 Q We're just focusing on the firefighters that
- 24 responded to the scene. Did you recognize any of their
- 25 names?

DANETTE L. ANTONACCI, CCR #222

AA003534

WCASTILL0002-ORAM0071

14
1 A No.

2 Q Have you had any training in investigation of
3 arson?

4 A I've taken classes out at the college to get the
5 position I'm in now. It's their basic courses.

6 Q Were any of the investigators involved in this
7 case the instructors in those courses?

8 A No.

9 Q Now one of the charges in this case is arson.
10 You're aware of that?

11 A Yes, sir.

12 Q And you're a firefighter; is that correct?

13 A Yes, sir.

14 Q Isn't there something about the fact that your
15 job is to put out fires and stop fires from occurring and
16 that you're going to be deciding the facts of an arson case
17 that's going to in your mind tend to sort of bias you
18 toward the defendant in this case?

19 A I don't feel it will.

20 Q You have a feeling it will or will not?

21 A Will not.

22 MR. SCHIECK: Thank you. We'd pass for cause,
23 your Honor.

24 THE COURT: Thank you.

25

DANETTE L. ANTONACCI, CCR #222

EXAMINATION.

BY THE COURT:

Q Miss Rex, good afternoon.

A Hi.

Q Any reason that you can think of why you couldn't be fair to both sides in this case?

A Yes. Because where there was an act against an elderly person and I work in a nursing home where I take care of several elderly people and I can't imagine anything happening to them.

Q That's a natural reaction to the nature of the alleged offenses in this case. And of course we have those kind of feelings just about with anyone who is a victim of a homicide. The question here is whether you can be a fair juror on the question of guilt or innocence, and then if you can give consideration to all three forms of punishment if the defendant is found guilty of first degree murder. That's our question. How do you feel about that?

A It would be a hard decision because I don't think I could be very fair because where I do work with the elderly people.

THE COURT: I'll excuse you from jury service. Thank you very much.

THE CLERK: Badge number 346, Dale Eric Murrell,

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0073

14

1 M-u-r-r-e-l-l.

2

3

EXAMINATION

4

5 BY THE COURT:

6 Q How do you like your name pronounced?

7 A Murrell.

15

8 Q Mr. Murrell, is there any reason you can think
9 of that you couldn't be fair to both sides in this case?

10 A No.

11 Q Can you wait until all the evidence is in before
12 coming to any conclusion about any issue in this case?

13 A Sure can.

14 Q Have you or any member of your family or any
15 friends of yours ever been arrested?16 A Yes. I have a cousin, don't know what it was
17 for. We were, I guess after we grew up and became adults
18 we didn't stay that close. I couldn't tell you. I know
19 he's confined now but I don't know what for.20 Q Anything about that experience that would
21 affect your --

22 A Not at all.

23 Q You or any member of your family or friends ever
24 been the victim of a crime?

25 A My uncle about a year and a half ago was

DANETTE L. ANTONACCI, CCR #222

1 assaulted, assault and battery, but he didn't report it and
2 I didn't find out until like a couple weeks later.

3 Q Anything about that incident in his life that
4 would affect your thinking in this case?

5 A None at all.

6 Q Was your uncle elderly?

7 A Well --

8 Q Or is he?

9 A Yeah, he's up there, but he felt he didn't want
10 to report it.

11 Q This case involves allegations of murder against
12 a senior citizen.

13 A He's a senior, but that wouldn't affect my
14 opinion.

15 Q So you can fairly judge the facts of this case
16 even though your uncle has been assaulted?

17 A Sure, not a problem.

18 Q Ever been on a jury before?

19 A No, I haven't.

20 Q Any concern about adverse public opinion?

21 A None at all.

22 Q Have you ever been involved in any court
23 proceeding as a witness or a party?

24 A Yes, I have. In the military also. I've served
25 on summary courts. I was a witness, a character witness

DANETTE L. ANTONACCI, CCR #222

AA003538

WCASTILL0002-ORAM0075

15 1 for a rape and kidnapping military court-martial.

2 Q Anything about that experience and your role in
3 the criminal justice system in the military that would
4 affect your thinking in this case?

5 A No.

6 Q You'll be able to follow the Court's
7 instructions on the burden of proof and accord the
8 defendant the presumption of innocence?

9 A Sure can.

10 Q You don't have a problem with the notion that
11 the defendant is under no obligation to prove anything in
12 this case?

13 A I know that.

14 Q Defendant does not have to prove his innocence
15 but the State has to prove the essential elements of each
16 of these charges?

17 A Right.

18 Q You can hold the State to that burden?

19 A Sure can.

20 Q Any conscientious, philosophical, religious or
21 moral objections to the imposition of the death penalty?

22 A None at all.

23 Q Any concern about being able to fairly consider
24 any of the three statutory forms of punishment in the event
25 that the defendant is convicted of first degree murder?

DANETTE L. ANTONACCI, CCR #222

1 A No, I can consider them all.

2 Q And finally if you were involved in this case,
3 whether you were a member of Mr. Castillo's family for
4 example or a member of the victim's family, would you feel
5 comfortable with twelve jurors like you on the case?

6 A Very comfortable.

7 THE COURT: The State of Nevada may inquire.

8 MR. BELL: Thank you, Judge.
9

10 EXAMINATION
11

12 BY MR. BELL:

13 Q You describe yourself as conservative between
14 conservative and liberal. What does that mean to you, sir?

15 A Basically low key type of lifestyle. I consider
16 myself mainstream, not outlandish. Easy going, fit in the
17 mainstream.

18 Q You said you can consider all three punishments
19 including the death penalty?

20 A Sure can.

21 Q If you were part of the jury and you deliberated
22 and you decided the State had met its burden and Mr.
23 Castillo was guilty of murder in the first degree, and then
24 after you heard all the facts you decided looking at the
25 big picture that you thought that was the appropriate

DANETTE L. ANTONACCI, CCR #222

1 penalty, can you come back in here and look him in the eye
2 and say that's what you think?

3 A Sure could.

4 MR. BELL: Pass for cause, Judge.

5 THE COURT: Thank you. For the defense.

6 MR. LaPORTA: Thank you, Judge.

7

8 EXAMINATION

9

10 BY MR. LaPORTA:

11 Q Good afternoon, Mr. Murrell.

12 A Good afternoon.

13 Q How are you?

14 A Fine.

15 Q Mr. Murrell, in reviewing your questionnaire,
16 although I support the citizens' right to bear arms, you
17 appear to have quite a few.

18 A Yes, I do.

19 Q You have a small arsenal here.

20 A Just a little bit.

21 Q Without going through them is there any
22 particular reason why?

23 A Well, you know, military experience. It's just
24 sport. Hunting. I do a lot of outdoor things. I just
25 wanted, you know, a hobby. People have stamp collecting.

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0078

15 1 I guess I like firing different type weapons.

2 Q So it's a hobby for you?

3 A It's a hobby for me.

4 Q Gun collector?

5 A Right.

6 Q What do you do for a living?

16 7 A I just recently got promoted from one city job
8 to another. I just started this past Monday in parking
9 enforcement. Before then I worked for the city as a court
10 clerk.

11 Q The fact that you're in law enforcement of some
12 sort, do you think that would cloud your viewpoint?

13 A None at all.

14 Q You believe you would be unbiased in this?

15 A Sure can.

16 Q What role do you think the death penalty plays
17 in the criminal justice system? How do you see it working?

18 A Well, in my opinion I think they're using it as
19 the ultimate punishment, you know, to decide if your crime
20 fits that and it's worthy of that punishment. This is
21 going to be, we're going to take you out of circulation.
22 That again is my opinion. I don't see it as a deterrent
23 because it's not really set as a deterrent because if you
24 don't catch an individual or some other circumstances it
25 might not be the final verdict for the individual. But I

DANETTE L. ANTONACCI, CCR #222

1 just believe this is a final, that we believe there is
2 nothing that can be done with this individual and his crime
3 and everything going with that indicates that such
4 punishment is just.

5 Q Do you believe that a person who has been
6 convicted of first degree murder deserves some
7 consideration in terms of life with the possibility of
8 parole?

9 A Yes. You have to consider everything. You have
10 to consider a person's background, their beliefs. A lot of
11 things can happen to an individual that can lead someone to
12 do something. So you have to consider everything before
13 you make a final decision either way, whether it's life
14 with or without parole or it's a death sentence.

15 MR. LaPORTA: Pass for cause, your Honor.

16 THE COURT: Thank you.

17
18 EXAMINATION

19
20 BY THE COURT:

21 Q Mr. Caldwell?

22 A Yes.

23 Q Any reason you can think of why you couldn't be
24 fair in this case?

25 A There is a question you asked yesterday, whether

DANETTE L. ANTONACCI, CCR #222

1 or not we know any of the attorneys or family members.
2 Well, my wife has been represented by Mr. Bell and her
3 parents have also helped campaign for him.

4 MR. BELL: What's their name?

5 JUROR #342: Phil and Dottie Franks.

6 MR. BELL: Oh, sure, yes. I did represent Mr.
7 Franks in a couple of matters when I was in private
8 practice and I do know them quite well.

9 THE COURT: Based on the election returns --

10 MR. BELL: Yeah, they did a good job. They
11 carried Indian Springs single-handedly.

12 BY THE COURT:

13 Q Do you feel like you might be put in an awkward
14 position sitting on a case with Mr. Bell?

15 A Yes, I would.

16 Q I'll go ahead and excuse you.

17 A Thanks.

18 THE CLERK: Badge thumb 348, Arthur Dennis,
19 Nelson, N-e-l-s-o-n.

20

21 EXAMINATION

22

23 BY THE COURT:

24 Q Mr. Nelson, good afternoon.

25 A Good afternoon.

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0081

1 Q Almost made a clean get away.

2 Is there any reason that you can think of
3 why you couldn't be fair in this case?

4 A None.

5 Q Can you wait until all the evidence is in before
6 coming to any conclusion about any issue in this case?

7 A Yes.

8 Q Have you or any member of your family or any
9 friends of yours ever been arrested?

10 A I have.

11 Q Tell me a little bit about that.

12 A DUI.

13 Q Anything about how that was handled that would
14 affect your thinking in this case?

15 A No.

16 Q Have you or any member of your family or any
17 friends of yours ever been the victim of a crime?

18 A Not that I know of.

19 Q Ever been on a jury before?

20 A No.

21 Q Any concern about adverse public opinion that
22 may result from any verdict in this case?

23 A No.

24 Q Have you ever been involved in any kind of court
25 proceedings as a party or a witness?

DANETTE L. ANTONACCI, CCR #222

- 1 A Just a DUI.
- 2 Q Just that one case.
- 3 Q Any religious, philosophical, conscientious
- 4 opposition to the imposition of the death penalty?
- 5 A No.
- 6 Q Can you give fair consideration to all three
- 7 forms of punishment if selected as a juror?
- 8 A I think so.
- 9 Q Any problem with the notion that the defense
- 10 does not have to prove the defendant's innocence in the
- 11 case?
- 12 A I didn't hear.
- 13 Q Any problem with the notion that the defense
- 14 does not have to prove the defendant's innocence in the
- 15 case?
- 16 A No.
- 17 Q The burden of the case is on the State to prove
- 18 the essential elements of these charges beyond a reasonable
- 19 doubt. Do you agree with that?
- 20 A Yes.
- 21 Q And you can wait until that's done and be
- 22 satisfied that that has been accomplished before you can
- 23 vote for a verdict of guilty?
- 24 A Yes.
- 25 Q And again you could fairly consider the death

DANETTE L. ANTONACCI, CCR #222

16 WCASTILL0002-ORAM0083
16 1 penalty, life without the possibility of parole or life
2 with the possibility of parole all as potential penalties
3 if the defendant is convicted of first degree murder?

4 A Yes.

5 THE COURT: Stay may inquire.

6 MR. BELL: No questions, Judge. Pass for cause.

7 THE COURT: Thank you. For the defense.

8 MR. LaPORTA: Thank you, Judge.

9
10 EXAMINATION

11
12 BY MR. LaPORTA:

13 Q Mr. Nelson, how do you feel about the death
14 penalty?

15 A I really don't feel anything about it.

16 Q Do you feel an eye for an eye, would that be
17 your philosophy?

18 A I don't think so.

19 Q No?

20 Do you believe that there is a full range
21 of all types of murders that occur out there and that there
22 is an appropriate punishment for each one?

23 A I don't think so.

24 Q Let me ask you this: We have a full range of
25 first degree murders and there are three possible

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-DRAM0084
17
1 punishments for first degree murder in this state. Death
2 is one of them and then either life with or without the
3 possibility of parole. Do you feel that, do you agree with
4 that, that there are different types of murder that require
5 different types of punishment?

6 A I don't understand why there would be more than
7 one first degree murder.

8 THE COURT: You misunderstand, sir.

9 BY MR. LaPORTA:

10 Q Okay, let me ask you this: If you are chosen to
11 sit on a jury and if Mr. Castillo is convicted by that jury
12 of first degree murder, you will then be asked to come back
13 and choose which punishment to impose, and those three
14 punishments under our statutory scheme are death, life
15 without the possibility of parole and life with the
16 possibility of parole. You understand that?

17 A Yes.

18 Q Okay. Do you believe that people who have been
19 convicted of first degree murders, do you believe that
20 there are different sets of circumstances surrounding the
21 crime, the facts, and different types of people who have
22 been convicted, and each one is worthy of all your
23 consideration in choosing to impose death or life with or
24 without parole?

25 A Yes.

DANETTE L. ANTONACCI, CCR #222

1 Q Okay. So you would be willing to sit there and
2 hear all of the facts in this case and listen to the
3 background and life of Mr. Castillo before you render a
4 decision as to whether to impose one of these three
5 punishments?

6 A Yes.

7 MR. LaPORTA: Pass for cause, your Honor.

8 THE COURT: We have now qualified 36 prospective
9 jurors for cause. At this time I'm going to ask that the
10 jurors that have been approved for cause or that have --
11 excuse me. I think we better do this the easy way. How
12 many members of the prospective jury panel have not been
13 interviewed as of yet? All right. Would you all please
14 stand. Now I'm going to ask the members, ask you to move
15 to the rear of the room, sit in the back row, and those of
16 you who have interviewed move to the front of the
17 courtroom.

18 All right. At this time I would ask the
19 bailiff to bring into the courtroom the jurors that have
20 been previously interviewed and approved for cause.

21 MR. BELL: Can we approach, Judge?

22 THE COURT: Yes.

23

24 (Discussion off the record.)

25

DANETTE L. ANTONACCI, CCR #222

1 THE COURT: Let me call the roll of the jurors
2 who have been approved for cause.
3 Robert I. Law.
4 JUROR #91: Here.
5 THE COURT: Suzanne Hilary Malmedal.
6 JUROR #111: Here.
7 THE COURT: Edward Richard Sheptow.
8 JUROR #93: Here..
9 THE COURT: Thomas Donald Powers.
10 JUROR #98: Here.
11 THE COURT: Clarence K. Robbins
12 JUROR #100: Here.
13 THE COURT: Mark R. Kruse.
14 JUROR #104: Here.
15 THE COURT: Sharna Susler Blumenfeld..
16 JUROR #106: Here.
17 THE COURT: Howard Dale Cheney.
18 JUROR #108: Here.
19 THE COURT: Lloyd Lebaron Black.
20 JUROR #116: Here.
21 THE COURT: Leonard Cruz Rosales.
22 JUROR #118: Here.
23 THE COURT: Clarence D. Zink..
24 JUROR #119: Yo.
25 THE COURT: Gwendolyn Anne Thorson.

DANETTE L. ANTONACCI, CCR #222

1 JUROR #121: Here.
2 THE COURT: John S. Murphy.
3 JUROR #126: Here.
4 THE COURT: Eric M. Korte.
5 JUROR #127: Here.
6 THE COURT: Richard Alan Sammons.
7 JUROR #128: Here.
8 THE COURT: Ernest Edward Irish.
9 JUROR #130: Here.
10 THE COURT: Dawn Ellen Brown,
11 JUROR #134: Here.
12 THE COURT: Sharynn Lee Sheldon.
13 JUROR #138: Here.
14 THE COURT: Pamela Brennan.
15 JUROR #140: Here.
16 THE COURT: Arthur Gustabutch Kavall.
17 JUROR #141: Here.
18 THE COURT: Henry Lee Jones, Jr.
19 JUROR #144: Here.
20 THE COURT: Kimberly Elaine Latty.
21 JUROR #145: Here.
22 THE COURT: John R. Ruhlmann.
23 JUROR #149: Here.
24 THE COURT: Edward Mitchell Hester.
25 JUROR #324: Here.

DANETTE L. ANTONACCI, CCR #222

DANETTE L. ANTONACCI, CCR #222

1 JUROR #348: Here.

2 THE COURT: That means we have all 36 jurors
3 qualified for cause.

4 Now I'll call the roll of the, the
5 following persons are now excused from jury service in this
6 rotation with the thanks of the Court. Before I do that I
7 want to thank all of you for participating and I will thank
8 those of you here in advance who will ultimately be removed
9 from the panel by the challenge process. But it is
10 important for you to understand and to recognize as we do
11 that jury service in this country is one of the most
12 important obligations of our citizenship. Those of you who
13 are not chosen to be in the final 36 provided us with the
14 security of knowing we would get a full jury panel.

15 You are now excused from jury service
16 with the thanks of the Court and the parties. Those
17 persons are Barbara Ann Shafer, James R. Felton, Ilene
18 Joyce Peterson, John Charles Kupitz, Robert Wayne Brooks,
19 Michael S. Gubler, Raymond J. Mroz, Thomas W. Bigley, and
20 Mr. Cory Tent Pribble. Mr. Pribble, also say hello to your
21 brother for me.

22 All right. At this point ladies and
23 gentlemen of the jury -- is there anyone by the way whose
24 name was not called that has not been interviewed in the
25 jury selection process?

DANETTE L. ANTONACCI, CCR #222

1 Let the record reflect there is a
2 negative response.

3 At this time before we proceed with the
4 process of peremptory challenges we're going to give the
5 lawyers a few minutes to make some of their own individual
6 determinations about the challenge process and then we'll
7 commence the completion of jury selection and the swearing
8 of the jury and the initial instructions of the jury. At
9 this time we're going to go into a brief recess outside
10 your presence. I will ask that you not leave the general
11 area of the courtroom except in the hallway immediately
12 outside the courtroom in the upper deck here.

13 Ladies and gentlemen of the prospective
14 jury panel, while we are outside your presence it is your
15 duty not to converse among yourselves or with anyone else
16 on any subject connected with this trial; or to read, watch
17 or listen to any report or commentary on the trial or any
18 person connected with this trial by any medium of
19 information including without limitation newspapers,
20 television or radio; and you are not to form or express an
21 opinion on any subject connected with this case until it is
22 finally submitted to you.

23 At this time I would ask that the
24 attorneys, what we'll do now is I guess we'll let the jury
25 depart the confines of the courtroom. Please remain in the

DANETTE L. ANTONACCI, CCR #222

5 (Jury exits the courtroom.)

15 MR. BELL: That's fine.

19 MR. BELL: As far as I'm concerned the clerk can
20 just pick them.

23 MR. BELL: Yes, your Honor, I'll pick them. You
24 say it we'll do it.

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0092

1 MR. BELL: Now when you read them is it our
2 understanding unless excused the first one will be the
3 number one alternate and the --

4 THE COURT: Yes. They'll be in their numerical
5 order because they were already prebatched by the jury
6 commissioner.

7 MR. BELL: They're going to be in the order that
8 you read them now or the order whoever was --

9 THE COURT: No, it will be numerical.

10 MR. BELL: So you're going to order them
11 numerically and give them to us numerically?

12 THE COURT: Correct. Of course I could say them
13 at random but it wouldn't be the same effect.

14 MR. BELL: We don't want to do anything that
15 confuses you, Judge.

16 THE COURT: All right. 9, 16, 18, 20, 21, 24,
17 26, 34.

18 MR. SCHIECK: Sandoval is an alternate.

19 THE COURT: So the alternate positions again for
20 your reckoning is 9, 16, 18, 20, 21, 24, 26, and 34. And
21 basically it will simply be done numerically. So if 9, 16,
22 18 and 20 are stricken, 21, 24, 26 and 34 will be the
23 alternates. And in the event of a disability of one of the
24 jurors that would be called to fill their positions in
25 numerical order, lowest number to the highest number.

DANETTE L. ANTONACCI, CCR #222

1 Everyone agree with that procedure?

2 MR. SCHIECK: That's fine with us.

3 MR. BELL: Yeah, we've got it. We understand.

4 THE COURT: If that's the case we're in recess
5 and I'll be back in about ten or fifteen minutes.

6

7

(Recess.)

8

9

THE COURT: We're back on the record.

10

11 At this time we'll begin with the process
12 of peremptory challenges. As I explained at the beginning
13 of jury selection this is the time when the attorneys can
14 make challenges to members of the jury without giving a
15 reason for the challenge. That's why they're called
16 peremptory challenges.

16

17 At this time I would ask that a
18 representative of the State of Nevada come forward and take
19 the sheet so that we can begin the process of passing the
20 challenge back and forth in the courtroom.

20

21 MR. BELL: What is your pleasure in terms of
22 proceeding? Do you want us to strike it or --

22

23 THE COURT: Strike it and note who did the
24 striking and also put the number of the challenge.

24

25 MR. SCHIECK: Your Honor, that concludes our
eight challenges each. So that the remaining are on the

DANETTE L. ANTONACCI, CCR #222

1 alternates; is that correct?

2 THE COURT: Yes.

3 MR. BELL: We'll just go ahead and do those.

4 THE COURT: Each side has two.

5 MR. SCHIECK: Should we mark those as alternate
6 number 1 and alternate number 2 when we exercise our --

7 THE COURT: Yes, that's how you'll identify your
8 peremptory challenges.

9 Please bring it forward.

10 So it appears that both sides have
11 exercised all of their peremptory challenges.

12 MR. BELL: It's necessary under the Arizona
13 system or there would be jurors left. Yes, we have.

14 THE COURT: Counsel, approach the bench.

15

16 (Discussion off the record.)

17

18 THE COURT: At this time I would ask the bailiff
19 to assist the jurors to their set in the jury box.

20 Ladies and gentlemen of the prospective
21 jury panel, the following jurors have been selected to
22 serve in this case.

23 Juror No. 1 will be Robert I. Law.

24 Juror No. 2 will be Suzanne Hilary
25 Malmedal.

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0095

19
1 Juror No. 3 will be Mark R. Kruse.
2 Juror No. 4 will be Eric M. Korte.
3 Juror No. 5 will be Richard Alan Sammons.
4 Juror No. 6 will be Ernest Edward Irish.
5 Juror No. 7 will be Sharynn Lee Sheldon.
6 Juror No. 8 is Pamela Brennan.
7 Juror No. 9 is Henry Lee Jones, Jr.
8 Now we start down at the other end.
9 Juror No. 10 is John R. Ruhlmann.
10 Juror No. 11 is Christopher Michael
11 Ramsey.
12 Juror No. 12 is James J. Fracaro.
13 Juror No. 13 is Roy J. Kirk.
14 Juror No. 14 is Christopher F. Pagano.
15 Juror No. 15 is Kelly Lynn Lea.
16 And Juror No. 16 is Dale Eric Murrell.
17 All right. At this time I would ask the
18 sixteen members of the jury panel to please stand and be
19 sworn as jurors.
20
21 (Jury panel sworn.)
22
23 THE COURT: Miss Blumenfeld, I hope your
24 transaction went well this morning.
25 JUROR #106: Thank you.

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0096

1 THE COURT: Ladies and gentlemen of the
2 prospective jury panel that were not called out of the
3 audience to sit in the box, you are hereby excluded from
4 jury service in this rotation with the thanks of the Court.
5 Again as I said to the other jurors that departed before
6 you this is a very important process. The jury system is
7 the highest form of dispute resolution in this country and
8 if you don't come and make a candid commitment to us the
9 system doesn't work. The system reaffirms itself in my
10 opinion every time we do this process. Your presence here
11 made it possible for us to have a jury sworn in this case.
12 So you are excused with the thanks of the citizens of Clark
13 County and this Court. We'll be at ease while you depart
14 the confines of this courtroom.

15
16 (Prospective jury panel
17 members exit courtroom.)
18

19 THE COURT: Ladies and gentlemen, at this time,
20 I realize the hour is growing late, but in order to
21 conserve precious time that we lost on the first day I'm
22 going to at this time give you your pretrial jury
23 instructions. Again I would like to extemporize rather
24 than read to you, but the points I have to make have to be
25 quite specifically made, therefore the jury instructions

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0097

1 have been prepared in a form that mandates that I read them
2 to you.

3 Ladies and gentlemen, you are admonished
4 that no juror may declare to a fellow juror any fact
5 relating to this case of his or her own knowledge and if
6 any juror discovers during the trial or after the jury has
7 retired that he/she or any other juror has personal
8 knowledge of any fact in controversy in this case, he or
9 she shall disclose such situation to me in the absence of
10 the other jurors.

11 This means that if you learn during the
12 course of this trial that you are acquainted with the facts
13 of this case or the witnesses and you have not previously
14 told me of this relationship, you must then declare that
15 fact to me. You communicate in this regard to the Court
16 through one of the bailiffs.

17 Now it is not unusual from time to time
18 that a juror will recognize a face even though the juror
19 didn't recognize the name during jury selection. Usually
20 if you didn't recognize the name the acquaintanceship is
21 not significant enough to cause a problem. But if you do
22 recognize a witness that takes the stand on the stand
23 please bring that fact to the attention of the bailiff.
24 The bailiff will tell me about it, I'll discuss it with the
25 parties. Nine times out of ten it's never a problem. But

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0098
20
1 again it isn't unusual that you might not have, "when you
2 didn't recognize the name you would recognize the face.
3 Again if that happens just tell us about it.

4 During the course of this trial the
5 attorneys for both sides and court personnel, other than
6 the bailiff, are not permitted to converse with members of
7 the jury. These individuals are not being antisocial.
8 They are bound by ethics and the law not to talk to you.
9 To do so might contaminate your verdict.

10 You are admonished additionally that you
11 are not to visit the scene of any of the acts or
12 occurrences made mention of during the trial unless
13 specifically directed to do so by the Court. As I
14 indicated to you previously, in the event that anyone does
15 visit the scene and makes any critical analysis, that would
16 unwind this jury verdict or these proceedings and be a
17 tremendous waste of public resources. This has been done
18 in the past, that's why I'm stressing it to you at this
19 time. If we need to take you to the scene it will be done
20 in controlled circumstances in the presence of the Court
21 and the parties.

22 Ladies and gentlemen, what I now say will
23 intend to serve as an introduction to the trial of this
24 case. It is not a substitute for the detailed instructions
25 on the law which I will give you at the close of the case

DANETTE L. ANTONACCI, CCR #222

1 and before you retire to consider your verdict.

2 This is a criminal case commenced by the
3 State of Nevada, which I may sometimes refer to as the
4 State, against William Patrick Castillo. The case is based
5 upon an Information which is the charging document in this
6 case. Actually in this case it is an Indictment as I
7 understand it. Is that correct?

8 MR. LaPORTA: Yes, your Honor.

9 THE COURT: This case is based on an Indictment,
10 not an Information, which is a term of art. Again the
11 Indictment itself is again the charging document and I'll
12 discuss it more in a few moments. I am now going to read
13 the amended Indictment in this case filed May 29, 1996 to
14 the jury.

15 Stewart L. Bell, District Attorney.
16 Nevada Bar Number 000477. 200 South Third Street, Las
17 Vegas, Nevada, 89155. 702-455-4711. Attorney for the
18 plaintiff. State of Nevada.

19 District Court, Clark County, Nevada.
20 State of Nevada, Plaintiff, versus William Patrick
21 Castillo. Case number C133336, Department 7, Docket P.
22 Amended Indictment. State of Nevada, County of Clark.

23 The Defendants above named -- strike
24 that? Should I read only this defendant's name?

25 MR. BELL: Well, Judge, I don't think it will

DANETTE L. ANTONACCI, CCR #222

1 be, I mean there isn't going to be a secret that there is
2 another related proceeding, but it has nothing to do with
3 this.

4 MR. LaPORTA: No, your Honor, that's fine.

5 MR. BELL: There are two people charged but one
6 is the subject of these proceedings.

7 THE COURT: The Defendant above named, William
8 Patrick Castillo, accused by the Clark County Grand Jury of
9 the crimes of Conspiracy to Commit Burglary and/or Robbery,
10 Felony - NRS 199.480, 205.060 and 200.380; Burglary,
11 Felony - NRS 205.060; Robbery, Victim 65 Years of Age or
12 Older, Felony - NRS 200.380, 193.167; Murder with Use of a
13 Deadly Weapon, Felony - NRS 200.010, 200.030 and 193.165;
14 Conspiracy to Commit Burglary and Arson, Felony - NRS
15 199.480, 205.060, and 205.010; and First Degree Arson,
16 Felony - NRS 205.010, committed at and within the County of
17 Clark, State of Nevada, on or about the 17th day of
18 December 1995, as follows:

19 Count I: Conspiracy to Commit Burglary
20 and/or Robbery. Defendant did then and there meet -- these
21 things are irreconcilably charged in the plural.

22 MR. SCHIECK: We have no objection to reading
23 both names.

24 MR. BELL: It's okay.

25 THE COURT: Defendants did then and there meet

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0101

1 with each other and between themselves and each of them
2 with the other, willfully, unlawfully and feloniously
3 conspire and agree to commit the crimes of Burglary and/or
4 Robbery, and in furtherance of said Conspiracy, Defendants
5 did commit the acts alleged in Counts II and III, which
6 acts are incorporated by this reference as though fully set
7 herein.

8 Count II: Burglary. Defendants did then
9 and there willfully, unlawfully and feloniously enter, with
10 intent to commit a felony, to-wit: Larceny, that certain
11 building occupied by Isabelle Berndt, located at 13 North
12 Yale, Las Vegas, Clark County, Nevada; both Defendants
13 entering the residence and Defendant -- I'm going to go
14 ahead and read her name.

15 MR. SCHIECK: Yes.

16 MR. BELL: No objection.

17 THE COURT: -- Michelle C. Platou aiding or
18 abetting Defendant William Patrick Castillo by furnishing
19 transportation to said location and Defendant William
20 Patrick Castillo aiding or abetting Defendant Michelle C.
21 Platou by providing the key to the premises.

22 Count III: Robbery, Victim 65 Years or
23 Older. Defendants did then and there willfully, unlawfully
24 and feloniously take personal property, to-wit: a
25 videocassette recorder, a set of silverware, booties,

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0102

1 United States currency, and miscellaneous personal property
2 from the person of Isabelle Berndt, or in her presence, by
3 means of force or violence, or fear of injury to, and
4 without the consent of and against the will of the said
5 Isabelle Berndt, a person being 65 years of age or older,
6 the Defendants using force or fear to obtain or retain
7 possession of the property, and/or to prevent or overcome
8 resistance to the taking of the property, and/or to
9 facilitate escape with the property; the Defendants aiding
10 and abetting each other as more specifically set forth in
11 Counts I, II and IV, incorporated herein by this reference.

12 Count IV: Murder with Use of a Deadly
13 Weapon. Defendants did then and there, without authority
14 of law and with malice aforethought, willfully and
15 feloniously kill Isabelle Berndt, a human being, by beating
16 the said Isabelle Berndt about the head and face with his
17 fists and with a deadly weapon, to-wit: a blunt object
18 and/or a tire iron, the Defendants being responsible under
19 the following theories of criminal liability, to-wit: (1)
20 Premeditation: Defendant William Patrick Castillo; (2)
21 Felony Murder: Defendants William Patrick Castillo and
22 Michelle C. Platou during the perpetration or attempted
23 perpetration of the crimes of Burglary and/or Robbery as
24 set forth in Counts II and III, incorporated herein by this
25 reference; (3) as aiders or abettors and as conspirators,

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0103

1 William Patrick Castillo and Michelle C. Plato vicariously
2 as participation in a conspiracy to commit the felony
3 offenses of Burglary and/or Robbery, as set forth in Count
4 I, incorporated herein by this reference; the Defendants
5 having conspired with each other to commit said Burglary
6 and/or Robbery and having traveled to the said Isabelle
7 Berndt's home in the vehicle of Michelle C. Platou, and the
8 Defendant William Patrick Castillo having retrieved a blunt
9 object and/or a tire iron from Defendant Michelle C.
10 Platou's automobile to use against any persons they might
11 encounter after gaining entry to the home of Isabelle
12 Berndt, the Defendants thereafter committing the crimes of
13 Burglary and/or Robbery as set forth in Counts I^{Bu} and III,
14 incorporated herein by this reference. The Defendant
15 William Patrick Castillo actually inflicting the beating to
16 the said Isabelle Berndt resulting in her death.

17 Count V: Conspiracy to Commit Burglary
18 and Arson. Defendants did then and there meet with each
19 other and between themselves and each of them with the
20 other willfully, unlawfully and feloniously conspire and
21 agree to commit the crimes of Burglary and Arson, and in
22 furtherance of said conspiracy Defendants did commit the
23 acts alleged in Counts VI and VII, which acts are
24 incorporated by this reference as if fully set forth
25 herein.

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0104

1 Count VI: Burglary. Defendants did then
2 and there willfully, unlawfully and feloniously enter with
3 the intent to commit a felony, to-wit: Arson, that certain
4 building occupied by Isabelle Berndt, located at 13 North
5 Yale, Las Vegas, Clark County, Nevada, Defendant William
6 Patrick Castillo directly committing said act, Defendant
7 Michelle C. Platou aiding or abetting its commission by
8 counsel and encouragement and by driving Defendant William
9 Patrick Castillo to and from the scene of the crime.

10 Count VII: First Degree Arson.
11 Defendants did then and there willfully, unlawfully,
12 maliciously and feloniously set fire to, and thereby caused
13 to be burned a certain residence located at 13 North Yale,
14 Las Vegas, Clark County, Nevada, said property being then
15 and there the property of Isabelle Berndt, by use of open
16 flame and flammable and/or combustible materials, and/or
17 by manner and means unknown, Defendant William Patrick
18 Castillo directly committing said act, Defendant Michelle
19 C. Platou aiding and abetting its commission by counsel and
20 encouragement and by driving Defendant William Patrick
21 Castillo to and from the scene of the crime.

22 Dated this 29th day of March, 1996.
23 Stewart L. Bell, District Attorney. Bar number 000477. By
24 William T. Koot, Chief Deputy District Attorney. Nevada
25 Bar 000281.

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0105

2

1 Names of witnesses testifying before the
2 Grand Jury were as follows: Ben Hoge, Las Vegas Fire
3 Department; Kirk Rasmussen; Thomas Lau, Las Vegas
4 Metropolitan Police Department; Donald Tremel, Las Vegas
5 Metropolitan Police Department; Duane Morgan, Las Vegas
6 Metropolitan Police Department; John Russo; Jean Hasking;
7 Tammy Jo Bryant; Robert Bucklin; CCME; Kathy Adkins, Las
8 Vegas Metropolitan Police Department.

9 Anything further from the Indictment that
10 needs to be read to the jury?

11 MR. HARMON: No, your Honor.

12 MR. LaPORTA: No, your Honor.

13 THE COURT: Thank you.

14 The case is based upon the Indictment
15 which has been read to you by me. The defendant has
16 entered pleas of not guilty to all of the charges in this
17 Indictment. You should distinctly understand that the
18 Indictment is simply just a charge and it is not in any
19 sense evidence of the allegations it contains. The
20 defendant has pled not guilty to the Indictment. The State
21 therefore has the burden of proving each of the essential
22 elements of the Indictment beyond a reasonable doubt. The
23 purpose of this trial is to determine whether the State
24 will meet that burden. It is your primary responsibility
25 as jurors to find and determine the facts under our system

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0106

1 of criminal procedure. You are the sole judge of the
2 facts. You are to determine the facts from the testimony
3 you hear and the other evidence, including exhibits
4 introduced in court. It is up to you to determine the
5 inferences which you may feel may be properly drawn from
6 the evidence.

7 The parties may sometimes present
8 objections to some of the testimony or other evidence. At
9 times I may sustain such objections or, direct that you
10 disregard certain testimony or exhibits. You must not
11 consider any evidence to which an objection has been
12 sustained or which I have instructed you to disregard.

13 It is the duty of an attorney to object
14 to evidence which he or she believes may not properly be
15 offered and you should not be prejudiced in any way against
16 the lawyer who makes objections on behalf of the party he
17 or she represents. I may also find it necessary to
18 admonish the attorneys and, if I do, it should not show
19 prejudice toward a lawyer or his client because I have
20 found it necessary to enter an admonishment.

21 If you cannot hear a witness, please
22 raise your hand as an indication.

23 If you wish you may take notes to help
24 you remember what the witnesses said. If you do take notes
25 please keep them to yourself until you and your fellow

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0107

1 jurors go to the jury room to decide the case. Do not let
2 note-taking distract you so you do not hear other answers
3 by witnesses. You should rely on your own memory of what
4 was said and not be overly influenced by the other jurors.

5 This case will proceed in the following
6 order:

7 First the State may make an opening
8 statement outlining its case. The defendant may also make
9 an opening statement. This is usually done immediately
10 after the State's statement, although with permission of
11 the Court the defendant can reserve opening statement until
12 the conclusion of the State's case. Neither party is
13 required to make an opening statement. Opening statements
14 are like a road map. They serve as an introduction to the
15 evidence that the party intends to prove.

16 Then the State will introduce its
17 evidence. This initial presentation is called the State's
18 case in chief. At the conclusion of the State's evidence
19 the defendant has the right to introduce evidence.
20 However, the defendant is not obligated to present any
21 evidence or prove his innocence. The law never imposes
22 upon the defendant in a criminal case the burden of calling
23 any witness or introducing any evidence. If the defendant
24 does put on a case this is called the defense case in
25 chief. At the close of the defendant's case the State may

DANETTE L. ANTONACCI, CCR #222

1 introduce rebuttal evidence.

2 At the conclusion of all the evidence I
3 will instruct you on the law. You must not be concerned
4 with the wisdom of any rule of law stated in these
5 instructions or any instructions which I will read to you
6 after the evidence regardless of any opinion you may have
7 as to what the law ought to be. It would be a violation of
8 your oath to base a verdict upon any other view of the law
9 than that given you by the Court.

10 After the instructions on the law are
11 read to you, each party has the opportunity to argue orally
12 in support of his case. This is called closing arguments.
13 What is said in closing argument is not evidence. The
14 arguments are designed to summarize and interpret the
15 evidence for you. Since the State has the burden of
16 proving the defendant guilty beyond a reasonable doubt, the
17 State has the right to open and close the arguments.

18 After the attorneys have presented their
19 arguments you will retire to select a foreperson,
20 deliberate and arrive at your verdict. Faithful
21 performance by you of your duties is vital to the
22 administration of justice. It is your duty to determine
23 the facts and to determine them from the evidence and the
24 reasonable inferences arising from such evidence and, in so
25 doing, you must not indulge in guesswork or speculation.

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0109

1 The evidence which you are to consider
2 consists of the testimony of the witnesses and the exhibits
3 admitted in evidence. The term witness means anyone who
4 testifies in person or by deposition including the parties.
5 The admission of evidence in court is governed by rules of
6 law. From time to time, it may be the duty of the
7 attorneys to make objections and my duty as judge to rule
8 on those objections and whether you can consider certain
9 evidence. You must not concern yourself with the
10 objections or the Court's reasons for these rulings. You
11 must not consider testimony or exhibits to which an
12 objection was sustained or which has been ordered stricken.
13 Further you must not consider anything you may have seen or
14 heard when the court is not in session. Even if what you
15 see or here is done or said by one of the parties or by one
16 of the witnesses.

17 There are two kinds of evidence: Direct
18 and circumstantial. Direct evidence is testimony by a
19 witness about what that witness personally saw or heard or
20 did. Circumstantial evidence is testimony or exhibits
21 which are proof of a particular fact from which, if proven,
22 you can infer the existence of a second fact.

23 You may consider both direct and
24 circumstantial evidence in deciding this case. The law
25 permits you to give equal weight to both, but it is for you

DANETTE L. ANTONACCI, CCR #222

1 to decide how much weight to give any evidence.

2 Now at some point during the trial,
3 ladies and gentlemen, you may hear the attorneys or myself
4 refer to a witness as competent or incompetent to testify
5 in such a way, or whether the person is competent or
6 incompetent to testify at all, or whether a piece of
7 evidence, physical evidence, documentary evidence is
8 competent evidence. Competence is a term of art. It is
9 not a comment upon the mental state of a witness. It does
10 not mean when we refer to a witness as incompetent that the
11 witness is under any mental infirmity or is a lunatic or
12 anything of the sort. Competence is a notion in our law of
13 evidence that forms the bedrock of all of our other laws of
14 evidence. Competence means if a witness is able to take
15 the stand.

16 For a witness to be eligible or competent
17 to take the stand the witness must satisfy four
18 prerequisites; oath, perception, memory and communication.
19 A witness must understand the nature of the oath. In times
20 past the oath had a religious significance. Under our law
21 in this country it no longer does. It is simply an
22 affirmation by the witness that the witness understands the
23 importance of telling the truth while on the stand.
24 Perception. The witness must have perceived something
25 relevant to the case. Memory. The witness must remember

DANETTE L. ANTONACCI, CCR #222

3 WCASTILL0002-ORAM0111
1 that perception. And finally the witness must be able to
2 communicate the memory of that perception while under oath.
3 Oath, perception, memory, communication. Again it is not a
4 negative comment about the witness. It is a technical
5 issue that each witness must satisfy before the witness can
6 take the stand and offer evidence here in open court.

7 Opening statements and closing statements
8 of the attorneys are intended to help you in understanding
9 the evidence and applying the law, but they are not
10 evidence.

11 You are not to concern yourself in any
12 way with the sentence which the defendant might receive
13 should you find the defendant guilty of any of the charges
14 but first degree murder. The issue of sentencing with
15 regard to the other charges would be up to the Court. Your
16 only sentencing obligation will come in the event that the
17 defendant is found guilty of first degree murder as I first
18 mentioned. Then and only then will we move to the issue of
19 punishment.

20 You will be instructed as to the
21 significance of all of these issues at the close of the
22 case.

23 You must not be influenced in any degree
24 by any personal feeling of sympathy or prejudice against
25 any party to this case, for each party is entitled to the

DANETTE L. ANTONACCI, CCR #222

1 same fair and impartial consideration.

2 No statement, ruling, remark or facial
3 expression which I make is intended to indicate my opinion
4 as to what the facts are. You are to determine the facts.
5 In this determination, you alone must decide upon the
6 believability of the evidence and its weight and its value.
7 In considering the weight and value of the testimony of any
8 witness you may take into consideration the appearance,
9 attitude and behavior of the witness, the interest of the
10 witness in the outcome of the case, the relation of the
11 witness to any parties in the case, the inclination of the
12 witness to speak truthfully or not, the probability or
13 improbability of the witness' statements, and all other
14 facts and circumstances and evidence. Thus, you may give
15 the testimony of any witness just such weight and value as
16 you believe the testimony of such witness is entitled to
17 receive.

18 The Court may during the trial take notes
19 of the witness' testimony. You are not to make any
20 inference from that action. The Court is required to
21 prepare for legal arguments of counsel during the trial and
22 for that reason I may take extensive notes.

23 Again let me remind you until this case
24 is submitted to you, do not talk to each other about it or
25 about anyone who has anything to do with it until the end

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0113

1 of the case when you go to the jury room to decide on your
2 verdict.

3 Do not talk with anyone else about this
4 case or about anyone who has anything to do with it until
5 the trial has ended and you have been discharged as jurors.
6 Anyone else includes members of your family and your
7 friends. You may tell them that you are a juror in a
8 criminal case, but do not tell them anything else about it
9 until after you have been discharged by me.

10 Do not let anyone talk to you about the
11 case or about anyone who has anything to do with it. If
12 someone should try to talk to you, please report it to me
13 immediately by contacting the bailiff.

14 Do not read any news stories or articles
15 or listen to any radio or television reports about the case
16 or about anyone who has anything to do with it.

17 Do not do any research or make any
18 investigation about the case on your own.

19 Do not make up your mind about the
20 verdicts, about what the verdict should be until after you
21 have gone to the jury room to decide the case and you and
22 your fellow jurors have discussed the evidence.

23 It is important that you keep an open
24 mind. At the end of the trial you will have to make your
25 decision based upon what your recall of the evidence. You

DANETTE L. ANTONACCI, CCR #222

AA003577

WCASTILL0002-ORAM0114

1 will not have a written transcript to consult, and it is
2 difficult and time consuming for the reporter to read back
3 lengthy testimony. I urge you to pay close attention to
4 the testimony as it is given.

5 At this time do either of the parties
6 wish to invoke the exclusionary rule?

7 MR. SCHIECK: Subject to previous discussions
8 we've had, your Honor, yes.

9 THE COURT: All right, that will be the order.
10 I ask that the attorneys look out for any potential
11 witnesses in the case.

12 Ladies and gentlemen, at this time I'm
13 going to declare the evening recess. We look forward to
14 working with you again. As I indicated previously what you
15 are about to embark upon is truly one of the most important
16 obligations of our citizenship. I tried to keep some of
17 the proceedings light as we were going on, but this is
18 deadly serious business and we want to you pay the same
19 kind of attention and respect that you would like in your
20 case if you were involved in a situation like this.

21 Ladies and gentlemen, during the evening
22 recess it is your duty not to converse among yourselves
23 or with anyone else connected with this trial; or to read,
24 watch or listen to any report or commentary on this trial
25 or any person connected with this trial by any medium of

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0115

1 information, including without limitation newspapers,
2 television and radio; and you are not to form or express
3 any opinion on any subject connected with this case until
4 this matter is finally submitted to you.

5 Anything further?

6 MR. BELL: After they're dismissed if we could
7 have about one minute to put something on the record we'd
8 appreciate it.

9 THE COURT: At this time, ladies and gentlemen,
10 you are excused. I would like to have you in the
11 courthouse at nine o'clock tomorrow morning. We'll start
12 as soon thereafter as we can. I have a short calendar
13 tomorrow morning. Hopefully manage it by 9:15 and start in
14 the process of bringing you up. Try to be in the
15 courthouse by nine o'clock. We'll start as soon as we can.
16 We'll be at ease while you depart the confines of the
17 courtroom.

18 Good evening, ladies and gentlemen.

19
20 (Jury exits courtroom.)

21
22 THE COURT: We're outside the presence of the
23 jury. The Court used a euphemism by saying deadly serious.
24 Does anyone see a problem with that?

25 MR. LaPORTA: No.

DANETTE L. ANTONACCI, CCR #222

1 MR. BELL: No, Judge.

2 We just want to make sure the record is
3 clear that we had discussed in the hall our first witness
4 will be Jean Mary Hosking, who is the daughter of Miss
5 Berndt. After she testifies she and her two daughters
6 would like to stay in and watch the proceedings. They will
7 all undoubtedly testify in the penalty hearing, although
8 it's going to be victim impact. What they hear here really
9 wouldn't affect that. We had received an agreement from
10 the defense that that was okay, but I just wanted to make
11 sure it's on the record so somebody later picks it up and
12 says, hey, wait a minute, yeah, she testified, but she came
13 back at penalty.

14 THE COURT: The Court will also indicate in
15 addition to the stipulation the Court is of the view that
16 the purpose of the exclusionary rule is not to be
17 frustrated by their presence in the courtroom during the
18 trial, in the guilt portion of the trial.

19 MR. LaPORTA: Judge, the reason we agreed, it's
20 our understanding that the testimony of -- Miss Hoskins is
21 it?

22 MR. BELL: Hosking.

23 MR. LaPORTA: Hosking would be an identification
24 one.

25 MR. BELL: In the guilt phase she's going to

DANETTE L. ANTONACCI, CCR #222

WCASTILL0002-ORAM0117

1 identify the decedent, she's going to identify certain
2 property, the home, some of those other things. It will be
3 fairly necessary but relatively perfunctory. Obviously in
4 the penalty hearing they're going to talk about the impact
5 on their life as they're entitled to do. But what they
6 otherwise hear in the guilt phase really wouldn't have
7 anything to do with it. We need to have a straight yes or
8 no.

9 MR. LaPORTA: Judge, under those circumstances
10 and that testimony, we have no objection to her being in
11 the courtroom.

12 THE COURT: The Court appreciates that
13 accommodation.

14 Anything further from the parties at this
15 time?

16 MR. BELL: No, your Honor.

17 MR. LaPORTA: No, your Honor.

18 THE COURT: See you tomorrow morning at around
19 9:00, 9:15.

20 (Proceedings adjourned.)

21 * * * * *

22

23

24

25

DANETTE L. ANTONACCI, CCR #222

ATTEST: Full, true and accurate transcript of
proceedings.

Danette L. Antonacci

Danette L. Antonacci, CCR #222

DANETTE L. ANTONACCI, CCR #222

EXHIBIT 162

EXHIBIT 162

DISTRICT COURT

CLARK COUNTY, NEVADA

COPY

* * * * *

FILED IN OPEN COURT

AUG 30 1996 19

LORETTA BOWMAN, CLERK

BY Tina Hurd

CASE NO. C133336

Deputy

DEPT. NO. VII

DOCKET F

THE STATE OF NEVADA,

Plaintiff,

Vs

WILLIAM PATRICK CASTILLO,

Defendant.

BEFORE THE HONORABLE:

A. WILLIAM MAUPIN DISTRICT JUDGE

THURSDAY, AUGUST 29, 1996, 9:30 A.M.

VOLUME IV - MORNING SESSION

APPEARANCES:

FOR THE STATE:

STEWART L. BELL

Deputy District Attorney

& MELVYN T. HARMON

Chief Deputy District Attorney

FOR THE DEFENDANT:

PETER R. LaPORTA

State Deputy Public Defender

& DAVID M. SCHIECK, ESQ.

REPORTED BY:

PATSY K. SMITH, C.C.R. #190

PATSY K. SMITH, OFFICIAL COURT REPORTER

1	<u>INDEX</u>	
2		<u>PAGE</u>
3		
4	<u>STATE'S WITNESSES</u>	
5		
6		
7	<u>JEAN MARIE HOSKING</u>	
8	DIRECT EXAMINATION BY MR. HARMON	23
9	DIRECT EXAMINATION CONT'D BY MR. HARMON	64
10	<u>HARRY KUMMA, JR.</u>	
11	DIRECT EXAMINATION BY MR. BELL	68
12	CROSS EXAMINATION BY MR. LaPORTA	79
13	<u>JEFF DONOVAN</u>	
14	DIRECT EXAMINATION BY MR. BELL	81
15	CROSS EXAMINATION BY MR. LaPORTA	89
16	REDIRECT EXAMINATION BY MR. BELL	90
17		
18		
19		
20		
21		
22		
23		
24		
25		

PATSY K. SMITH, OFFICIAL COURT REPORTER

#EASTILL0002-ORAM0121

1	<u>STATE'S EXHIBITS</u>	
2		<u>PAGE</u>
3		
4		
5	Exhibit No. 1	46
6	Exhibit Nos. 74, 75, & 76	47
7	Exhibit Nos. 86, 87 & 88	66
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 THURSDAY, AUGUST 29, 1996, 9:30 A.M.

2 THE COURT: Good morning, ladies and
3 gentlemen.

4 THE JURY: (In Unison) Good morning.

5 THE COURT: This is C133336, State of Nevada
6 versus William Patrick Castillo.

7 Counsel stipulate to the presence of the
8 jury?

9 MR. BELL: Yes, your Honor.

10 MR. LaPORTA: Yes, your Honor.

11 THE COURT: The record will reflect all
12 parties and their counsel.

13 At this time, ladies and gentlemen of the
14 jury, we will commence with the opening statements of
15 counsel. The State of Nevada may now make its opening
16 statement.

17 MR. BELL: Thank you.

18 Your Honor, counsel, good morning, ladies
19 and gentlemen.

20 As the Court has indicated to you, this is
21 the time in the trial for the State to make what is called
22 its opening statement. The Judge in his instructions to
23 you last night referred to it as rather a road map. It is
24 not evidence, but it is sort of a guide as to what you
25 should expect and, of course, the purpose is so that you

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 are able to interpret what you hear in some rational form.

2 A road map is a fairly common way to
3 describe opening statements. I rather like to refer to
4 them as the picture on the puzzle box. You have all these
5 pieces and when you put them together, by looking at that
6 picture on the box, you know what it is supposed to look
7 like when you are done and the reason I like that better is
8 a trial doesn't always proceed from point A to point B, as
9 we do in our travels on a road map. We get a piece here
10 and a piece there and a piece here and when it's all over
11 and done, it should come together; come together much like
12 the puzzles downstairs that the Judge referenced where they
13 don't quite have all the pieces and there might be one
14 missing here and one missing over there, but when it's all
15 said and done and you look at it and you look at the
16 picture, you can tell that it is rather the same thing.

17 Let me start by setting the time and the
18 parties. Summer 1995, a year ago where we are today, that
19 man right there, Mr. William Castillo, became employed as a
20 roofer with Dean Roofing Company here, a local roofing
21 company. He was a laborer and he was assigned to what they
22 call the tear off crew, the demolition crew as it were.
23 Their job would be to go out on roofing jobs where they had
24 an old roof, take the roof off so another crew could come
25 along and put on a new roof.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Shortly thereafter, August 1995, defendant
2 Castillo meets a young lady by the name of Tammy Jo
3 Bryant. They become involved as girlfriend/boyfriend, as
4 it were, and in September 1995, they move into an apartment
5 together. That apartment is located at 1951 North Jones.
6 It happens to be number 106.

7 Shortly thereafter, October, November 1995,
8 a girlfriend of Tammy Jo Bryant, by the name of Michelle
9 Platou, P-L-A-T-O-U, was a name you heard yesterday in the
10 Indictment, moves into the apartment and shares space with
11 Ms. Bryant and Mr. Castillo at 1951 North Jones, number
12 106.

13 Now, as the Judge indicated, Ms. Platou was
14 indicted for the same charges as Mr. Castillo. Understand
15 she's not on trial here and her issues are another day,
16 another jury. She is really not of your concern, but her
17 name is going to come up in the course of your making the
18 decisions that you need to make reference the
19 accountability of William Castillo.

20 The relationship of these three parties was
21 a symbiotic one in that Ms. Bryant and Mr. Castillo had a
22 place to live and Ms. Platou did not. Ms. Platou owned a
23 vehicle, a white Mazda. Mr. Castillo and Ms. Bryant didn't
24 have any transportation. So as the three of them hooked up
25 together, they had a vehicle and a place to live.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Same time frame, November 1995, Isabelle
 2 Berndt, the victim in this case, lived here in Las Vegas.
 3 She was a widow, had been widowed for many years. She was
 4 a retired school teacher. She lived in her home at 13
 5 North Yale. It's rather right across Decatur Boulevard
 6 from Western High School and she lived in that same house
 7 for 38 years; decades alone at the end. And in November
 8 she decided that her home needed a new roof and having so
 9 decided, she called a fellow by the name of Buddy Charles.
 10 Buddy Charles was a small local contractor who did a lot of
 11 remodeling work and Ms. Berndt had dealt with Mr. Charles
 12 before when she had repairs done to her home and Mr.
 13 Charles had been the person that had done the repairs and
 14 she had confidence in the quality of the work that he did
 15 and he charged fair prices.

16 So Mr. Charles came out and he gave her a
 17 bid and she found that bid acceptable and the work was
 18 going to be they were going to need to tear off this old
 19 tar and rock roof that had been there for all these years,
 20 the old time Las Vegas roofs, and then they were going to
 21 re-shingle it with a asphalt shingle and after Mr. Charles
 22 bid the job, his modus operandi was that he would buy the
 23 materials, which he did, and then he would hire persons to
 24 do the labor to complete the job and he had a number of
 25 people with whom he worked, depending on the kind of

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 remodel job that he did.

2 His roofer was a fellow by the name of Harry
3 Kumma, K-U-M-M-A. Harry Kumma's primary employment was
4 with Dean Roofing. He was a roofer at Dean Roofing and a
5 supervisor. Dean Roofing allowed their employees to do
6 what they call side jobs. That means if it was a job that
7 was so small that Dean wouldn't bid it anyway and they did
8 it on the weekends or evenings, when they were not
9 otherwise at work, that they would allow them to do that to
10 pick up an extra buck or two. So Mr. Charles contracted
11 Mr. Kumma to do the roof and, of course, the first part of
12 the job was what they call tear off or demolition. They
13 had to take the old roof off, throw it in a dumpster, haul
14 the material off before he could put on the new asphalt
15 shingle roof.

16 In order to do that, Mr. Kumma got three
17 persons with whom he worked at Dean Roofing to help him.
18 He got a Mr. Kirk Rasmussen, who will come in and testify,
19 who was the tear off foreman or demolition foreman at Dean
20 Roofing and two laborers, who worked under Mr. Rasmussen.
21 A fellow by the name of Jeff Donovan and William Castillo
22 and the plan was that all four of them would get together
23 and tear off the roof and after the tear off job was done,
24 then Mr. Kumma could go ahead and do the shingling himself
25 and he would have to, in turn, pay each of these three men

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 for their assistance in tearing off the old roof.

2 Now, I have a little sort of a blowup of the
3 calendar for you here and it isn't important and certainly
4 the writing isn't nothing. I just want you to get a little
5 bit of an idea just of the position of what happened, when,
6 and in relation to dates.

7 The tear off job and the re-roofing was
8 contracted in November and it was decided that it would be
9 done the Saturday adjacent to Thanksgiving. Thanksgiving
10 was November 23rd last year. The job was done on or about
11 November 25th. The four gentlemen that would do the
12 roofing, Kumma, Rasmussen, Donovan, and Castillo, assembled
13 at 13 North Yale about 6 in the morning.

14 Mrs. Berndt was not in town. The residence
15 was vacant. A dumpster was delivered, it went out in the
16 driveway, and their job was to tear off the old roof, throw
17 it in the dumpster, tear it off, throw it in the dumpster
18 so that they could prepare it for Mr. Kumma to do the
19 roofing. He would later do the roofing Saturday afternoon
20 and finish the job on Sunday.

21 Now, as the job proceeded, roughly around 11
22 a.m. on the morning of November 25th, two of the workers,
23 Mr. Castillo and Mr. Donovan, left the roof, went down on
24 the ground to do cleanup. As Mr. Rasmussen and Mr. Kumma
25 were finishing the tear off, they had to go down off the

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 ground, get anything that didn't go into the dumpster into
2 the dumpster, sweep up, get the premises in good condition
3 and it was at this time that Mr. Castillo found a key to
4 the residence at 13 North Yale. The key was inside one of
5 the little magnetic hide-a-key things that people a lot of
6 times put on the inside of their car bumper or their car
7 fender and it was attached to a metal hood above a barbecue
8 on the back patio of Mrs. Berndt's home.

9 Mr. Castillo showed the key to Jeff Donovan
10 and told Jeff Donovan that he was going to go in the house
11 and Mr. Donovan told him, "No, you can't do that; just put
12 the key back," and Mr. Castillo said, "Well, I'll just come
13 back some night and go in then." And that sort of ended
14 things at that point. The three tear off people left. Mr.
15 Kumma finished his work and no one was the wiser.

16 In late November and early December, in this
17 period of time, Mr. Castillo needed money. He needed money
18 to pay some legal fees for a matter that is not related and
19 not at issue. He tried to borrow the money. At least
20 Harry Kumma will come in and say that he tried to borrow it
21 from me for legal fees and I was unwilling or unable to
22 lend him the money. So by December 16th, Mr. Castillo had
23 generated a plan to burglarize the home of Ms. Berndt at 13
24 Yale to come back some night and go in, as it were, to get
25 the money that he needed for another purpose.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 This is a Saturday right here. 6:00 that
2 evening, Mr. Castillo and Ms. Platou, the live-in roommate,
3 left in Ms. Platou's car and went out on the town. Tammy
4 Jo Bryant, his girlfriend, stayed at home. Some time after
5 midnight, so now we're down here on the 17th, the early
6 morning hours of the 17th, a Sunday, about 2:00, give or
7 take a little bit of time, Mr. Castillo and Ms. Platou
8 drove to 13 North Yale in the Mazda that belonged to Ms.
9 Platou. They got out. When they exited the car, Mr.
10 Castillo armed himself with a crow bar, the tire iron that
11 came with the Mazda, and they got the key from its
12 designated place and they entered the residence. When they
13 got in the residence, at the urging of Mr. Castillo, Ms.
14 Platou unhooked the VCR and took it from its place on top
15 of the television.

16 As she was doing this, Mr. Castillo walked
17 down the hallway. There's a small hallway in this house
18 and you will see a diagram of the house and some of the
19 pictures with that crow bar in his hand and he heard the
20 sounds of Ms. Berndt sleeping. She was in her bed and
21 while she slept, Mr. Castillo hit her in the face with the
22 crow bar and when he hit her in the face with the crow bar,
23 this was a somewhat startling experience, as you might
24 imagine, and she sat up in the bed and this 23 year old man
25 that pommeled her with the crow bar in one hand and his

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 fists in the other, he hit her repeatedly in the face,
2 about everywhere you can be beat, the eyes, nose, mouth,
3 back of the head, and he knocked her back into a supine
4 position. Knocked her back on her back, of course.

5 And later the police would come to find out,
6 and you will come to find out, through the autopsy that
7 that beating itself was so severe, that it was fatal.
8 However, at least at that time she was not deceased. She
9 showed some signs of life. Mr. Castillo later described it
10 to his friends as she was gurgling in her own blood and Mr.
11 Castillo took a pillow and he put it over her face until
12 there were no signs of life left.

13 After that occurred, Mr. Castillo and Ms.
14 Platou rummaged through the house and stole some items.
15 They took a hundred twenty dollars in cash. They took a
16 box of silverware, a wooden box with knives and forks, and
17 so on. They all had a B on them for Berndt. Silverware
18 Ms. Berndt had had for many, many years. They took some of
19 her jewelry. They took a bag of booties. It was Ms.
20 Berndt's custom and habit every year to knit something for
21 the young children, for her grandchildren, for the
22 neighborhood children and then she would usually fill
23 whatever she knitted with something. She always put a
24 little savings bond in it for them and then some little toy
25 or something and that was the Christmas gifts that she

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 bought for those children in her life and on this year, she
2 had knitted a kind of baby booties, symbolic booties, and
3 she had bought at the store packs of stickers that kids
4 tear off and put on their notebook or door to their room,
5 and some savings bonds and each child got a set of booties
6 with stickers and a bond in it. And, in fact, by the 17th,
7 the time she was killed, before that, she had given one set
8 of this -- one set of the booties to the girl that lived
9 next door, a young lady by the name of Russo who lived at 9
10 jail. Her father will come in. She will not come in, but
11 her father will come in and talk about the booties and
12 identify them as having been knitted by Ms. Berndt.

13 Mr. Castillo and Ms. Platou, after they had
14 their bounty, drove away. They drove back to where they
15 lived at 1951 Jones. This is on or about the corner of
16 Jones and Lake Mead. It's two miles, two and an eighth
17 miles, give or take, from the Yale residence; three, four
18 minute drive and on the way, they pitched the crow bar into
19 a dumpster.

20 Now, just by way of example, this is one of
21 those little missing pieces in the puzzle that don't effect
22 the picture, but it's a good example. By the time the
23 police were able to piece this altogether and go back to
24 pick up the crow bar, the dumpster had been dumped by
25 Silver State and it wasn't there. We do have, however, the

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 coroner who will tell you that a crow bar was consistent
2 with the injuries suffered by Ms. Berndt and several
3 admissions by the defendant and, of course, a couple days
4 afterwards, the police recovered Michelle Platou's car and,
5 lo and behold, it is missing the crow bar. So we don't
6 actually have the crow bar. I don't think it will, in any
7 way, inhibit your ability to see the big picture on the box
8 of the puzzle.

9 They took their stolen goods back to where
10 they lived and, of course, Tammy Jo Bryant was there and
11 saw them unload their bounty and, at some point, either on
12 the way back or after they got there, they realized -- they
13 decided that Mr. Castillo apparently had the sophistication
14 not to leave his fingerprints around, but Ms. Platou did
15 not. They became concerned that there would be
16 fingerprints of Ms. Platou inside Ms. Berndt's residence.
17 So they developed a plan to go back and eliminate that
18 evidence.

19 They got back in Michelle's car, they drove
20 the two miles or so back to North Yale, they retrieved the
21 key. Mr. Castillo went back in and he went there to burn
22 it. They were going to burn the house down, burn the body,
23 and burn the fingerprints. Mr. Castillo took with him from
24 1951 North Jones a yellow can of Ronsonol lighter fluid
25 that he normally used for his cigarette lighter and he went

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 inside the residence. Ms. Platou waited in the car right
2 outside. He went into the bedroom where Mrs. Berndt was
3 dead in her bed and he sprayed the Ronsonol on the drapes
4 and lit them afire. He went out to the living room and he
5 sprayed the Ronsonol on the drapes and then he scattered it
6 about in various places in the living room and you will
7 have pictures, as well as experts in arson, to show you
8 exactly how that occurred and then he lit those drapes on
9 fire and then he exited the back door thinking that his
10 deed had been accomplished.

11 On the way out, he left the can of Ronsonol
12 on a T.V. tray right in the kitchen area by the back door.
13 The house became immediately engulfed in flames and smoke
14 and it was seen. Driving by either on the freeway or on
15 Decatur could see it, friends, neighbors responded within
16 just a minute or two. People were doing their best to get
17 in there. They didn't realize Mrs. Berndt had been
18 murdered. They thought she was in her home and her home
19 had been engulfed in flames. The smoke was so severe,
20 however, that no one was able to get into the house to at
21 least attempt a rescue. Fire department had been called
22 immediately. They responded immediately. They were able
23 to put out the fire without the house totally being
24 destroyed. In fact, Ms. Berndt's body was not burned at
25 all.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 The fire department people were
2 sophisticated enough to realize that a homicide occurred.
3 They immediately called Metro homicide detectives, the
4 coroner, and an arson investigator. Even the non-arson
5 specialist could tell, from their experience in the burn
6 patterns, that this was not a fire of accidental origin.

7 Mrs. Berndt's body was taken by the coroner
8 down to the coroner's office and that same day, later on
9 the 17th, Sunday, an autopsy was performed and sure enough,
10 the cause of death was a severe beating by a heavy, hard,
11 blunt instrument about the head that caused subdural
12 hematoma, internal bleeding in the brain. She was just
13 beaten to death.

14 The arson investigators on the scene did
15 their investigation, determined that it was arson by a
16 number of means, the burn patterns, the two origins, the
17 fact that they checked out other alternatives, such as
18 electrical fires, and none of them were available. They
19 brought an arson sniffing dog on the scene, who confirmed
20 their original findings, and they finally sent some of the
21 burnt material to the lab and the lab confirmed that, at
22 least in some of the cases, an accelerant had been used on
23 the material prior to the flame.

24 Now we're down to about 6 a.m. on Sunday.
25 9:00, 10:00 Sunday morning, Ms. Bryant, Mr. Castillo's

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 girlfriend, wanted to know what is going on and at this
2 time both Mr. Castillo and Ms. Platou confess to her
3 exactly what had occurred, that they had broken into the
4 house, that they had murdered Ms. Berndt, that they had
5 stolen her items, and that they had gone back and set the
6 place afire and that happened that day.

7 Next day, Monday the 18th, recall Mr.
8 Castillo does not have a vehicle of his own. He lives with
9 a lady that has a vehicle, but he doesn't have
10 transportation to and from work. He consistently rides to
11 work everyday with his boss, who is a relatively low level
12 construction supervisor, Mr. Rasmussen. He is the tear off
13 foreman in the field. Mr. Rasmussen lives close to Mr.
14 Castillo. He picks him up from work everyday and most days
15 takes him home and they work together, of course.

16 Mr. Rasmussen picks up Mr. Castillo before
17 6:00 in the morning on Monday. Mr. Castillo gets in the
18 car and says to Mr. Rasmussen, " there's something I want
19 to tell you, but I'm not sure that I should," and although
20 this conversation is a little more elaborate, we'll play it
21 out in total here. In essence, Mr. Rasmussen says," You
22 can tell me if you want to and you don't have to if you
23 don't want to," and Mr. Castillo says, "This weekend I
24 murdered an 86 year old woman in her sleep, I beat her with
25 a tire iron. It was over on Yale where we did the side job

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 and I used a key that we found when we were doing the side
2 job. Michelle and I did it together. I hit the victim
3 while she was sleeping and she sat up and then I hit her
4 with the tire iron and my fist and the tire iron and my
5 fist and I just kept hitting until she fell down and
6 started gurgling in her blood and then I put a pillow over
7 her face until she stopped. I stole some silverware, VCR,
8 hundred twenty bucks and then I set the house on fire with
9 some lighter fluid."

10 Now Mr. Rasmussen hadn't seen the news, he
11 didn't know anything about this and at that point in time,
12 he didn't believe Mr. Castillo. He thought he was telling
13 him a story when they went to work and didn't give it much
14 thought.

15 Next day, Tuesday, right here, early
16 morning, instant replay. Mr. Rasmussen picks up Mr.
17 Castillo and Mr. Castillo starts talking about this again.
18 He is bragging and puffing that the police have said that
19 the fire was strategically set and that there was a
20 thousand dollar reward for the perpetrator. Now Mr.
21 Rasmussen is thinking maybe there is something to this,
22 although he isn't sure, and he makes arrangements with
23 Harry Kumma to have Harry Kumma take Mr. Castillo home that
24 day and Mr. Rasmussen, who is now alone, early afternoon
25 Tuesday, two days after the murder, drives by the residence

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 at 13 North Yale and, lo and behold, of course it is
2 burned, the windows are out, it's pretty obvious it has
3 been torched and Mr. Rasmussen immediately knows that what
4 Mr. Castillo told him is true.

5 Mr. Rasmussen goes home. He lives with his
6 mother and he tells her mother what happened. Tells his
7 mother that he has to go to the police. Tells his mother,
8 "If by chance Mr. Castillo comes by, don't tell him that I
9 have gone to the police, just make up some story that I'm
10 not here and let's let the police handle it," and he goes
11 over to the police station over on Jones and the freeway.
12 All these locations are in juxtaposition, closely to one
13 another, the apartment of Mr. Castillo, 13 North Yale, Mr.
14 Rasmussen's residence, and the police substation. He talks
15 to a detective named Lau and Detective Lau becomes aware
16 that he knows some things that the general public would not
17 know and immediately calls homicide. Detectives Tremel and
18 Morgan come out and meet Kirk Rasmussen and after they talk
19 to Mr. Rasmussen, they become convinced that he has
20 truthful and accurate information. This is in the early
21 evening on the 19th.

22 The police called the District Attorney's
23 Office. Our office has at a given time, 24 hours a day,
24 three or four on call lawyers who assist the police with
25 anything they need, off time search warrants and the on

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 call lawyer met the police, put together the information
 2 for a search warrant for the residence at 1951 North Jones,
 3 went to the home of Chief Judge Don Mosley. Judge Mosley
 4 reviewed the information, believed there was appropriate
 5 information for a search, signed the warranted and Mr.
 6 Rasmussen then took the police out to the residence at 1951
 7 North Jones and they got there just shortly before midnight
 8 on the 19th.

9 When they got there, Ms. Bryant and Mr.
 10 Castillo were home. Ms. Platou was at work. The police
 11 knocked, announced their purpose, told Mr. Castillo and Ms.
 12 Bryant they had a warrant to search the premises. Ms.
 13 Bryant and Mr. Castillo were cooperative. In fact, they
 14 pointed out and turned over the items including the
 15 silverware with the B on it and the jewelry and the VCR and
 16 so on. The police took these items into their possession
 17 and then impounded them into evidence. They will be
 18 presented as evidence at this trial. You will be able to
 19 see them. Mr. Castillo was arrested for murder right
 20 around midnight on the 19th, approximately two days after
 21 this occurred.

22 His story at that time was that he was just
 23 -- had this stolen property to sell, to fence. A friend
 24 had given it to him. He was just going to help get rid of
 25 it. He had nothing to do with the theft or the

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 circumstances of the theft.

2 After he was taken to jail, the police
3 interrogated his girlfriend Tammy Bryant and Tammy Bryant
4 told them the truth. Tammy Bryant, who had not been
5 involved, told them what happened on the 17th and told them
6 that about 9, 10:00 that morning, Mr. Castillo and Ms.
7 Platou had admitted to her their involvement in the
8 burglary, the robbery, the murder, the arson and her story
9 was detailed, consistent, and it matched the information
10 they received from Kirk Rasmussen.

11 The police went to the work site of Michelle
12 Platou and arrested her and impounded her car. Again,
13 we're right about here. Her car, of course, did not have a
14 tire iron in it. The police detectives Morgan and Tremel
15 went to the Clark County Detention Center where Mr.
16 Castillo had been booked. They asked him if he would talk
17 to them. He said he would. They gave him his Miranda
18 warnings that we are all familiar with. Before a suspect
19 could be compelled to talk to the police, they have to
20 advise him that he didn't have to, he can have a lawyer.
21 He acknowledged those warnings, he signed a waiver, and he
22 commenced to talk to them and, initially, he maintained
23 that he had just come into possession of the stolen
24 property.

25 However, after a short period of time, when

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 they confronted him with the fact that his boss, Mr.
2 Rasmussen, and his girlfriend, Ms. Bryant, had both told
3 the police the complete truth, he confessed to the police.
4 He told the police, in essence, the story that I've just
5 told you. These statements by defendants are taken on
6 tape. The statement has been preserved. The tape will be
7 played for you so you can hear Mr. Castillo, in his own
8 words, acknowledge all of the things that I have told you.

9 This day, the 20th. Police are still
10 concluding their investigation. They are talking to the
11 neighbors. They talked to the Russos at 19 Yale, next
12 door, and they are apprised of the booties and they
13 remember having seen a bag of booties at 1951 North Jones
14 where Tammy Bryant and Michelle Platou and William Castillo
15 resided during their first search, but it didn't click with
16 them that it had anything to do with this particular case.

17 After talking to Ms. Russo and her father
18 and finding out these were a gift from the decedent, Ms.
19 Berndt, and that they appeared the same, they went back to
20 1951 North Jones. Tammy Bryant was there. Tammy Bryant
21 cooperated with the police. Tammy Bryant gave them the
22 whole sack of other booties that she had knitted for other
23 children in her life and they impounded that and it was
24 based upon this investigation and this evidence that
25 charges were initiated and we are all here today.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 The State asserts that after you see,
2 through all the evidence, the picture on the box of the
3 puzzle, that you will be able to conclude that the
4 defendant is guilty of the crimes alleged.

5 Thank you.

6 THE COURT: Thank you, Mr. Bell.

7 Does the defense wish to make an opening
8 statement at this time?

9 MR. SCHIECK: With the Court's permission,
10 we will be reserving it, your Honor.

11 THE COURT: All right, the defense will be
12 allowed to reserve its opening statement.

13 At this time we will commence with the
14 State's case in chief. You may call your first witness.

15 MR. HARMON: That would be Jean Hosking.

16

17 JEAN MARIE HOSKING,
18 having been first duly sworn to tell the truth, the whole
19 truth and nothing but the truth, testified and said as
20 follows:

21

22 DIRECT EXAMINATION

23 BY MR. HARMON:

24 Q Will you state your name, please?

25 A Jean Marie Hosking.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q I'm going to ask you to slide forward
2 just a little bit and speak directly into the microphone.
3 You said Jean Marie Hosking?
4 A Correct.
5 Q Will you spell your names for the
6 record.
7 A Jean, J-E-A-N, Marie, M-A-R-I-E,
8 Hosking, H-O-S-K-I-N-G.
9 Q Is it Mrs. Hosking?
10 A Yes, sir.
11 Q Do you reside outside of the State of
12 Nevada?
13 A Yes.
14 Q In what state?
15 A We're in the process of moving. We
16 will be having a Texas address. We just came from
17 California.
18 THE COURT: Here's some water for you.
19 THE WITNESS: Thank you.
20 Q (BY MR. HARMON) Did you know Isabelle
21 Berndt?
22 A Yes.
23 Q What is your relationship to her?
24 A She was my mother, I was her daughter.
25 Q Do you have brothers and sisters?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A No.

2 Q You were an only child?

3 A Yes.

4 Q Will you tell us where your mother

5 Isabelle Berndt lived?

6 A At 13 North Yale here in Las Vegas.

7 Q Did she live by herself or with other

8 persons?

9 A By herself.

10 Q Do you know, Mrs. Hosking, about how

11 long your mother had lived at 13 North Yale?

12 A They bought that home in 1959.

13 Q You have indicated they. Was your

14 father with --

15 A He lived with her.

16 Q -- with your mother at that time?

17 A He lived with her until he passed away

18 in 1965.

19 Q From 1965 until mid December 1995, did

20 your mother, Isabelle Berndt, reside by herself at 13 North

21 Yale?

22 A Yes.

23 Q Will you tell us her date of birth?

24 A August 3rd, 1909.

25 Q As of mid December 1995, how old was

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 she?

2 A Eighty six.

3 Q As far as you know, was she in

4 reasonably good health for an 86 year old woman?

5 A Yes, sir.

6 Q Was she a smoker?

7 A No. She did years ago, but she hadn't

8 smoked for many years.

9 Q You are sure of that?

10 A Yes.

11 Q Explain to us what type of dwelling 13

12 North Yale is?

13 A It was a two bedroom, one bath, small

14 dining room, large living room home.

15 Q In December 1995, to your knowledge,

16 did your mother have any pets --

17 A No.

18 Q -- at the residence?

19 A No.

20 Q Did you visit her from time to time at

21 her house on North Yale?

22 A Yes.

23 Q How would you describe her as a

24 housekeeper?

25 A Very neat.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q Would it be typical for her to leave a
2 book of matches on the floor?

3 A No.

4 Q Would you expect, knowing what you do
5 about her habits as a homemaker and housekeeper, that she
6 would leave lying out in the living room a bottle of
7 Ronsonol lighter fluid?

8 A I don't think so.

9 Q To your knowledge, would she have had
10 any occasion to have Ronsonol lighter fluid in her house?

11 A No.

12 Q You have mentioned that your mother had
13 lived for many years at 13 North Yale. To your knowledge,
14 had she, toward the latter part of November 1995, had a
15 roofing job done?

16 A Yes.

17 Q What happened?

18 A She spent Thanksgiving with us and I
19 believe that during that weekend was when the roof was
20 being put on.

21 Q You are saying your mother spent
22 Thanksgiving 1995 with you and your family in California?

23 A Yes, sir.

24 Q Did she have a car?

25 A No, she had flown over. She left her

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 car at home.

2 Q So she flew to California for the

3 holiday visit?

4 A Yes.

5 Q However, did she have a vehicle in Las

6 Vegas?

7 A Yes.

8 Q But from what you've explained, she

9 evidently left that in this state?

10 A Yes.

11 Q Do you know if she had any type of

12 house sitter in her absence?

13 A No, she didn't. She usually asked the

14 neighbors to watch over her residence.

15 Q We need to have you continue to keep

16 your voice up.

17 A Okay.

18 Q To your knowledge, when did Isabelle

19 Berndt return home to Las Vegas after the Thanksgiving

20 holiday?

21 A On that Sunday. I don't know the

22 date.

23 Q But it would have been the Sunday

24 immediately after Thanksgiving?

25 A Yes.

PATSY K. SMITH, OFFICIAL COURT REPORTER

- 1 Q She flew back to Las Vegas?
- 2 A Yes.
- 3 Q When you visited with her that
- 4 Thanksgiving holiday and into the weekend, did she seem to
- 5 be her normal self?
- 6 A Yes.
- 7 Q Did she seem to be in reasonably good
- 8 health at that time?
- 9 A Yes.
- 10 Q Did you see your mother any more alive
- 11 after the Sunday following Thanksgiving, 1995?
- 12 A No, I did not.
- 13 Q Did you, however, have other
- 14 communication with her?
- 15 A Yes.
- 16 Q When was that?
- 17 A We spoke every week on the phone; at
- 18 least once a week usually on Saturday.
- 19 Q Mrs. Hosking, do you have a
- 20 recollection of when you last spoke with your mother?
- 21 A Yes.
- 22 Q When was that?
- 23 A The 16th of December, Saturday
- 24 morning.
- 25 Q Did you call her, did she place a call

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 to you?

2 A She called me.

3 Q Do you remember about how long the
4 conversation lasted?

5 A Probably 10 or 15 minutes.

6 Q Did she seem to be in good spirits?

7 A Yes, she did. She was very happy. She
8 told me that she had just been to her doctor that week and
9 had been given a clean bill of health.

10 Q December the 16th, of course, is
11 approaching the Christmas season.

12 A Yes.

13 Q Did your mother have any habits
14 regarding Christmas gifts that she gave to her
15 grandchildren or, perhaps, to other children who were
16 significant in her life?

17 A Yes.

18 Q What was her habit?

19 A Well, I have eight grandchildren and
20 every holiday season she would make some sort of a little
21 container to put a bond in for each one of them and one
22 year she made little mailboxes out of plastic canvass.

23 This particular year, when we were here in
24 October, she had showed me what she was making for them
25 this year.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q What was she making?

2 A They were little like Santa Claus
3 booties made out of like that white tubing that they use
4 for pipe and then a little -- I think it was felt material
5 around it or crocheted, I don't recall which, and then she
6 was putting the bonds in that tube of the stocking.

7 Q Did she use any type of sticker to
8 identify to whom the booties would be given?

9 A I think she labeled them.

10 Q Did there come a time, after your last
11 conversation with your mother, that you learned of her
12 death?

13 A I don't understand your question.

14 Q Did there come a time, after you had
15 last spoken with your mother, that you learned that
16 something had happened to her?

17 A Yes.

18 Q Tell us when that happened and how it
19 came to your attention.

20 A I was at work and I got -- it was early
21 in the morning and at that particular time in the morning,
22 I usually got a lot of outside calls regarding staffing and
23 so I just picked up the phone, identified myself, and
24 thought it would be something like that. It was my mom's
25 neighbor's wife, Mrs. Russo, and she identified me as Jean

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Marie and that name is usually used only by family or
2 friends of my mom's and I -- I shook my head to clear it
3 because I was expecting one of the registries to be on the
4 other end and I said, "This is Jean. May I help you," and
5 she said, "Jean Marie," and I said, "Who is this," and she
6 said, "It's Lee and something terrible has happened," and
7 that's about all she would tell me.

8 And then some of the nurses helped me to my
9 office and we called relief for myself and I went home and
10 my husband and I came to Vegas.

11 Q You said that it was in the morning
12 that your mother's neighbor, Mrs. Russo, called?

13 A It was probably around 4 or 4:30 a.m.

14 Q On what date was that?

15 A That would have been Sunday morning,
16 the 17th.

17 Q December the 17th, 1995?

18 A Yes.

19 Q Was your mother a large woman?

20 A No. She is very much --

21 Q Are you able to estimate her
22 approximate height?

23 A She was very much the same build as I
24 am, sir.

25 Q How tall are you?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Five-two.

2 Q You mentioned that you and your husband
3 came to Las Vegas after receiving the message?

4 A Yes.

5 Q Did you subsequently learn that, in
6 fact, your mother Isabelle Berndt had been killed?

7 A Let me go back just a little bit.

8 Q Of course.

9 A When I got home from work that morning,
10 my husband and I called the Russos to see if they could
11 give us any more information because I knew the house was
12 on fire and I knew that an ambulance was there. So I
13 called to see if maybe they had gotten her out and at that
14 time Lee didn't really want to talk to me and she said that
15 the police were there. So I asked if maybe one of the
16 sergeants would talk to me and that's what happened and he
17 told me on the phone.

18 Q That she was deceased?

19 A Yes.

20 Q Did you, at some point in time, have
21 occasion at a funeral home to see the remains of your
22 mother Isabelle Berndt?

23 A Yes.

24 MR. SCHIECK: Object on relevance grounds,
25 your Honor.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 THE COURT: Overruled.

2 Q (BY MR. HARMON) Do you want me to
3 repeat the question?

4 A Yes, please.

5 Q Oh, did you say yes?

6 A Yes, please.

7 Q Did you, at some point in time, have
8 occasion to see the remains of your mother at a funeral
9 home?

10 A Yes.

11 Q Where was that?

12 A Palm Mortuary.

13 Q Here in Las Vegas?

14 A Yes.

15 Q Are you able to tell us the approximate
16 date?

17 A Thursday, which I think was the 22nd.

18 Q The Thursday following the time frame
19 when you were explaining to us that you learned something
20 terrible had happened?

21 A Yes.

22 Q Did you at that time actually see your
23 mother?

24 A In the funeral home, yes.

25 Q Did you confirm personally that the

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 decedent was, in fact, your mom Isabelle Berndt?

2 A Yes.

3 Q Did you, at every stage of the police
4 investigation, cooperate with the representatives of the
5 Las Vegas Metropolitan Police Department?

6 A Yes, sir.

7 Q Were you permitted immediately to go
8 into the residence at 13 North Yale?

9 A Yes.

10 Q When were you first permitted access to
11 the house?

12 A When we drove up, we left Los Angeles,
13 I suppose it was around 6 or 6:30. It's about a five or
14 six hour drive.

15 Q Will you estimate your time of arrival
16 at 13 North Yale Street?

17 A Probably around noon.

18 Q Was it just you and your husband?

19 A Yes.

20 Q What is your husband's first name?

21 A Douglas.

22 Q Douglas?

23 A Uh-huh.

24 THE REPORTER: Is your answer yes?

25 THE WITNESS: Yes.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q (BY MR. HARMON) Is that yes?

2 When you arrived at about noon on Sunday,
3 December the 17th, 1995, were there any police or law
4 enforcement persons in the area?

5 A The public administrator was there.

6 Q At that time were you able to go into
7 the house?

8 A He had me sign a paper and gave me some
9 of her property at that time and then I walked in the
10 house, yes.

11 Q When you walked into the house, were
12 you able to confirm that, in fact, there had been a fire at
13 your mother's house?

14 A Yes.

15 Q Just generally describe the condition
16 of the house as you saw it.

17 A Well, when we drove up, a lot of her
18 furniture was in the front yard and it was all burned and
19 she had a big front window and there was like burn marks on
20 the outside of the house there and then I really don't
21 think I went any further than just stepping in the front
22 door at that point in time and the whole living room was
23 destroyed.

24 Q Was there a time when you had a chance
25 to look through any personal property of your mother's that

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 may have still been in the house?

2 A Yes.

3 Q When did that occur?

4 A Well, we were there during that week
5 before the funeral in and out. We didn't spend a lot of
6 time, but then in January, my daughters and I came back and
7 with a brother-in-law of mine and we went through the house
8 and took anything that was salvageable at that time.

9 Q So you are saying in January 1996, you
10 and other members of the family went completely through the
11 house?

12 A Yes.

13 Q Did your mother have any silverware in
14 the house?

15 A Yes, she did.

16 Q Did she have a particular set that bore
17 a certain letter?

18 A Yes.

19 Q Describe that silverware.

20 A It had like little flowers around the
21 handles and there was a B engraved on each piece.

22 Q On each piece of the set?

23 A Yes.

24 Q Had you actually seen the set?

25 A She would use it when we would have

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 holidays at her home.

2 Q So in eating meals at your mother's
3 house on special occasions, you would actually use the
4 silverware; is that correct?

5 A Yes, yes.

6 Q Do you know how long she had this set
7 of silverware which bore her initial B?

8 A At least all of my life.

9 Q At least what?

10 A All of my life.

11 Q How old are you?

12 A Sixty two.

13 Q Do you know where she kept her
14 silverware?

15 A Usually on a shelf in her bedroom.

16 Q How many bedrooms were there at 13
17 North Yale?

18 A Two.

19 Q You have referred to a shelf in her
20 bedroom. Which bedroom was the one your mother occupied?

21 A As you went down the hall from the
22 living room, it was the room on the right.

23 Q When you and other family members went
24 into the house in January 1996, did you find the entire set
25 of silverware which had the initial B on the different

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 items?

2 A No.

3 Q Was it on the shelve in your mother's

4 bedroom where she generally kept it?

5 A No.

6 Q Was there some type of container that

7 the silverware was inside?

8 A A wooden box.

9 Q Did you find any piece or pieces of

10 silverware in January 1996?

11 A Yes, I did.

12 Q What did you find?

13 A A pie server.

14 Q You said a pie server?

15 A Uh-huh, yes.

16 Q Did you recognize it as being part of

17 the set?

18 A Yes, I did.

19 Q Did it have the initial B on it?

20 A Yes.

21 Q Where did you find the pie server?

22 A In her silverware drawer in her

23 kitchen.

24 Q Except for the pie server, did you find

25 any other piece of the silverware set?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A No, I didn't.

2 Q Did your mother also have a television

3 set or, perhaps, various television sets in her house?

4 A She had one big console in her living

5 room and then two portables; one in each of the bedrooms.

6 Q Did she have any VCRs?

7 A Yes, sir.

8 Q How many VCRs?

9 A Just one that I know of.

10 Q In January 1996, when you looked

11 through the house with other family members, did you find

12 her VCR?

13 A No.

14 Q Did you -- had you actually seen the

15 VCR?

16 A When I had been to her home before,

17 yes.

18 Q Did you know where she kept the VCR?

19 A On top of the console in the living

20 room.

21 Q Was it in that location in January

22 1996?

23 A No.

24 Q Did you, as you looked through the

25 house, find any documents that also confirmed that your

PATSY K. SMITH, OFFICIAL COURT REPORTER