

1 We will see you in two weeks. We will be at ease while you
2 depart the confines of the courtroom. If you would
3 accompany the bailiff back to the jury room, we will
4 collect your telephone numbers and you will be issued our
5 number so you can call us after which you will be
6 discharged until the 18th.

7

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

9

10 THE COURT: Anything further from the
11 parties at this time?

12 MR. BELL: Not from the State, your Honor.

13 MR. LaPORTA: Not from the defense.

14 THE COURT: All right, this matter is now in
15 recess.

16

17 (Off the record at 6:20 p.m.)

18

19 * * * * *

20

21 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

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PATSY K. SMITH, C.C.R. #190

PATSY K. SMITH, OFFICIAL COURT REPORTER

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EXH
FRANNY A. FORSMAN
Federal Public Defender
State Bar No. 0014
GARY A. TAYLOR
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Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

WILLIAM P. CASTILLO,

Petitioner,

vs.

E. K. McDANIEL, Warden, and
CATHERINE CORTEZ MASTO,
Attorney General of the State of Nevada,

Respondents.

Case No. C133336
Dept. No. XVIII

**EXHIBITS TO
PETITION FOR WRIT
OF HABEAS CORPUS**

(Death Penalty Habeas Corpus Case)

VOLUME 13 OF 15

FILED

SEP 10 2014

Cliff J. Johnson
CLERK OF COURT

1 EXH
FRANNY A. FORSMAN
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9 Attorneys for Petitioner

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 WILLIAM P. CASTILLO,

13 Petitioner,

14 vs.

15 E. K. McDANIEL, Warden, and
16 CATHERINE CORTEZ MASTO,
17 Attorney General of the State of Nevada,

18 Respondents.

Case No. C133336
Dept. No. XVIII

**EXHIBITS TO
PETITION FOR WRIT
OF HABEAS CORPUS**

(Death Penalty Habeas Corpus Case)

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20 Exhibit No. Description

- 21 1. Judgment of Conviction, State v. Castillo, Clark County, Case No. C133336,
22 November 12, 1996
- 23 2. Indictment, State v. Castillo, Clark County, Case No. C133336, January 19,
24 1996
- 25 3. Order of Appointment of Counsel, State v. Castillo, Clark County, Case No.
C133336, March 14, 1996
- 26 4. Amended Indictment, State v. Castillo, Clark County, Case No. C133336, May
27 29, 1996
- 28 5. Special Verdict, State v. Castillo, Clark County, Case No. C133336,
September 25, 1996

- 1 6. Special Verdict, State v. Castillo, Clark County, Case No. C133336,
2 September 25, 1996
 - 3 7. Verdict, State v. Castillo, Clark County, Case No. C133336, September 25,
4 1996
 - 5 8. Guilty Plea Agreement, State v. Michele C. Platou, Clark County, Case No.
6 C133336, September 26, 1996
 - 7 9. Notice of Appeal, State v. Castillo, Clark County, Case No. C133336,
8 November 4, 1996
 - 9 10. Appellant's Opening Brief, Castillo v. State, Nevada Supreme Court, Case No.
10 29512, March 12, 1997
 - 11 11. Appellant's Reply Brief, Castillo v. State, Nevada Supreme Court, Case No.
12 29512, May 2, 1997
 - 13 12. Petition for Rehearing, Castillo v. State, Nevada Supreme Court, Case No.
14 29512, August 21, 1998
 - 15 13. Order Denying Rehearing, Castillo v. State, Nevada Supreme Court, Case No.
16 29512, November 25, 1998
 - 17 14. Petition for Writ of Habeas Corpus, Castillo v. State, Clark County, Case No.
18 C133336, April 2, 1999
 - 19 15. Opinion, Castillo v. State, Nevada Supreme Court, Case No. 29512, April 2,
20 1998
 - 21 16. Supplemental Brief In Support of Defendant's Petition for Writ of Habeas
22 Corpus (Post-Conviction), Castillo v. State, Clark County, Case No. C133336,
23 October 12, 2001
 - 24 17. Notice of Appeal, Castillo v. State, Clark County, Case No. C133336,
25 February 19, 2003
 - 26 18. Findings of Fact, Conclusions of Law and Order, Castillo v. State, Clark
27 County, Case No. C133336, June 11, 2003
 - 28 19. Appellant's Opening Brief, Castillo v. State, Nevada Supreme Court, Case No.
40982, October 2, 2003
 20. Order of Affirmance, Castillo v. State, Nevada Supreme Court, Case No.
40982, February 5, 2004
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21. Notice of Intent to Seek Indictment, LVMPD Event No. 951217-0254,
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 22. Notice of Intent to Seek Death Penalty, State v. Castillo, Clark County, Case
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- 1 23. Instructions to the Jury, State v. Castillo, Clark County, Case No. C133336,
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- 2 24. Verdict, State v. Castillo, Clark County, Case No. C133336, September 4,
3 1996
- 4 25. Instructions to the Jury, State v. Castillo, Clark County, Case No. C133336,
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- 5 26. Lewis M. Etcoff, Psychological Evaluation, July 14, 1996
- 6 27. Declaration of Herbert Duzant
- 7 28. Declaration of Joe Castillo
- 8 29. Declaration of Barbara Wickham
- 9 30. Declaration of Regina Albert
- 10 31. Declaration of Cecilia Boyles
- 11 32. Declaration of Ramona Gavan-Kennedy
- 12 33. Declaration of Michael Thorpe
- 13 34. Declaration of Yolanda Norris
- 14 35. Declaration of Lora Brawley
- 15 36. Evaluation Report by Rebekah G. Bradley, Ph.D.
- 16 37. Curriculum Vitae of Rebekah G. Bradley, Ph.D.
- 17 38. Confidential Forensic Report by Jonathan H. Mack, Psy.D.
- 18 39. Curriculum Vitae of Jonathan H. Mack, Psy.D.
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- 21 40. Declaration of Kelly Lynn Lea
- 22 41. Declaration of Dale Eric Murrell
- 23 42. Declaration of Lewis M. Etcoff, Ph.D.
- 24 43. Declaration of Mary Kate Knowles
- 25 44. Declaration of Herbert Duzant
- 26 45. David M. Schieck, Esq. Client Billing Worksheet (2/29/96-11/4/96)
- 27 46. Affidavit of Vital Statistics, Barbara Margaret Thorpe v. William Patrick
28 Thorpe, Sr., State of Missouri, County of St. Louis, September 14, 1973

- 1 47. William P. Thorpe, Sr. Missouri Department of Corrections with Fulton State
Hospital records
- 2 48. Catholic Services for Children and Youth, Catholic Charities, Archdiocese of
3 St. Louis, records of Max Allen Becker, Yolanda Becker, and Barbara Becker,
4 children of Allegria Dehry-Becker and Robert Becker
- 5 49. Divorce proceedings, Barbara Castillo v. Joe Castillo, Clark County, Nevada,
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- 6 50. Charles Sarkison, Attorney at Law, records of representation of Barbara M.
Wickham, formerly, Barbara Becker-Thorpe-Castillo-Sullivan:
- 7
- 8 • Custodial proceedings regarding William Patrick Thorpe, Jr. (now
9 William Patrick Castillo), pages 2-25
- 10 • Divorce proceedings regarding William Patrick Thorpe, Sr., pages 26-
48
- 11 • Personal injury lawsuit for accident on 4/10/74, pages 49-69

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- 13 51. Missouri Certification of Death, William P. Thorpe, Sr. (Date of Death: July
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- 14 52. Missouri Criminal Court records Re: William Patrick Thorpe, Sr.
- 15 53. Arturo R. Longoro, M.D. - Medical records of Yolanda Norris, formerly
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- 16 54. Lewis M. Etcoff, Ph.D. records Re: William Patrick Castillo

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- 18 55. Order for Adoption, In the Matter of the Adoptive Petition of Joe L. Castillo
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19 1982
- 20 56. St. Louis Post-Dispatch, news article "Police Keeping Their Eyes Peeled At
New Downtown Massage Parlor," September 19, 1976
- 21 57. St. Louis Globe-Democrat news article, "His home is a prison cell and his life
22 is a waste," November 7, 1973
- 23 58. Children's Hospital of St. Louis medical records on William P. Thorpe, Jr.
- 24 59. Oasis Treatment records, 6/9/81-9/11/81
- 25 60. Coordinator's Contact Record, 9/14/81-12/15/81
- 26 61. Confidential Psychological Evaluation, performed May 24, 1982
- 27 62. Las Vegas Mental Health Center, Psychiatric Evaluation, dated July 7, 1982
- 28

- 1 63. Abandonment proceedings, In the Interest of William P. Thorpe, Jr., Family
2 Court of St. Louis, Case No. 56644
- 3 64. State of Nevada, Department of Human Resources, Division of Child and
4 Family Services, Child Abuse reports
- 5 65. Nevada Youth Training Center Records
- 6 66. Catholic Services for Children and Youth, Catholic Charities, Archdiocese of
7 St. Louis, records of William P. Thorpe, Jr.
- 8 67. Independence High School records of William Patrick Castillo
- 9 68. Missouri Baptist Hospital, medical records of Barbara M. Thorpe, 8/11/76
- 10 69. State of Nevada Children's Behavioral Health Services records of William
11 Patrick Castillo (formerly William Patrick Thorpe, Jr.)
- 12 70. Castillo Family Video Recordings: 12/25/1983, 12/28/83 (William P.
13 Castillo's birthday), 12/24/84, 12/25/84, 12/28/84 (William P. Castillo's
14 birthday) - MANUALLY FILED
- 15 71. Acadia Neuro-Behavioral Center, P.A., Richard Douyon, M.D. records of
16 Yolanda Norris (formerly Yolanda Becker)
- 17 72. News article, "Police hunt Florissant gang members"
- 18 73. William P. Castillo's family tree
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- 20 74. Historical View, Life of William Castillo
- 21 75. State of Nevada Department of Health and Human Services Health Division
22 letter dated May 11, 2008
- 23 76. Las Vegas Metropolitan Police Department Detention Bureau Record of
24 Visitors
25 12/21/95-8/16/96
- 26 77. Ely State Prison Visiting Record 1997-2008
- 27 78. Jeffrey Fagan, Deterrence and the Death Penalty: A Critical Review of New
28 Evidence, January 21, 2005, at <http://www.deathpenaltyinfo.org>
- 29 79. Juvenile Division, In the Matter of William P. Castillo aka William P. Thorpe,
30 Clark County, Nevada, Case No. J26174
- Order, July 30, 1982, pg. 1
 - Parents Treatment Agreement, July 30, 1982, pgs. 2-3
 - Reporter's Transcript of Hearing in Re: Report and Disposition, July
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 - Transcript of Proceedings, Report and Disposition, December 7, 1982,

- pgs. 10-18
• Dispositional Report, January 25, 1983, pgs. 19-21
• Transcript of Proceedings, Report and Disposition, January 25, 1983, pgs. 22-26
80. Family Court of St. Louis County, Missouri, juvenile records, 6/4/85-9/13/85
81. Motion to Exclude Other Bad Acts and Irrelevant Prior Criminal Activity, State v. Castillo, Clark County, Case No. C133336, July 30, 1996
- 82-100 Omitted
101. Bennett v. State, No. 38934 Respondent's Answering Brief (November 26, 2002)
102. State v. Colwell, No. C123476, Findings, Determinations and Imposition of Sentence (August 10, 1995)
103. Doleman v. State, No. 33424 Order Dismissing Appeal (March 17, 2000)
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106. Farmer v. State, No. 29120, Order Dismissing Appeal (November 20, 1997)
107. Feazell v. State, No. 37789, Order Affirming in Part and Vacating in Part (November 14, 2002)
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113. Milligan v. State, No. 21504 Order Dismissing Appeal (June 17, 1991)
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116. Neuschafer v. Warden, No. 18371, Order Dismissing Appeal (August 19, 1987)
117. Nevius v. Sumner (Nevius I), Nos. 17059, 17060, Order Dismissing Appeal and Denying Petition (February 19, 1986)

- 1 118. Nevius v. Warden (Nevius II), Nos. 29027, 29028, Order Dismissing Appeal
and Denying Petition for Writ of Habeas Corpus (October 9, 1996)
- 2 119. Nevius v. Warden (Nevius III), Nos. 29027, 29028, Order Denying Rehearing
3 (July 17, 1998)
- 4 120. Nevius v. McDaniel, D. Nev. No. CV-N-96-785-HDM-(RAM), Response to
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- 5 121. O'Neill v. State, No. 39143, Order of Reversal and Remand (December 18,
6 2002)
- 7 122. Rider v. State, No. 20925, Order (April 30, 1990)
- 8 123. Riley v. State, No. 33750, Order Dismissing Appeal (November 19, 1999)
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- 10 124. Rogers v. Warden, No. 22858, Order Dismissing Appeal (May 28, 1993),
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11 Dismissing Appeal (June 4, 1993)
- 12 125. Rogers v. Warden, No. 36137, Order of Affirmance (May 13, 2002)
- 13 126. Sechrest v. State, No. 29170, Order Dismissing Appeal (November 20, 1997)
- 14 127. Smith v. State, No. 20959, Order of Remand (September 14, 1990)
- 15 128. Stevens v. State, No. 24138, Order of Remand (July 8, 1994)
- 16 129. Wade v. State, No. 37467, Order of Affirmance (October 11, 2001)
- 17 130. Williams v. State, No. 20732, Order Dismissing Appeal (July 18, 1990)
- 18 131. Williams v. Warden, No. 29084, Order Dismissing Appeal (August 29, 1997)
- 19 132. Ybarra v. Director, Nevada State Prison, No. 19705, Order Dismissing Appeal
20 (June 29, 1989)
- 21 133. Ybarra v. Warden, No. 43981, Order Affirming in Part, Reversing in Part, and
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- 22 134. Ybarra v. Warden, No. 43981, Order Denying Rehearing (February 2, 2006)
- 23 135. Rippo v. State; Bejarano v. State, No. 44094, No. 44297, Order Directing Oral
24 Argument (March 16, 2006)
- 25 136. State v. Rippo, Case No. C106784, Supplemental Brief in Support of
26 Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), February
10, 2004
- 27 137. State v. Rippo, Case No. C106784, Findings of Fact, Conclusions of Law and
Order, December 1, 2004
- 28

- 1 138. Rippo v. State, S. C. Case No. 44094, Appellant's Opening Brief, May 19, 2005
- 2 139. Rippo v. State, S. C. Case No. 44094, Respondent's Answering Brief, June 17, 2005
- 3 140. Rippo v. State, S. C. Case No. 44094, Appellant's Reply Brief, September 28, 2005
- 4 141. Rippo v. State, S. C. Case No. 44094, Appellant's Supplemental Brief As Ordered By This Court, December 12, 2005

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- 8 142. Nevada Department of Corrections Confidential Execution Manual, Procedures for Executing the Death Penalty, Nevada State Prison, Revised February 2004
- 9 142-A. Nevada Department of Corrections Confidential Execution Manual, Revised October 2007 with transmittal letter dated June 13, 2008
- 10 143. Brief of Amici Curiae in Support of Petitioner, United States Supreme Court Case No. 03-6821, David Larry Nelson v. Donal Campbell and Grantt Culliver, October Term, 2003
- 11 144. Killer makes final requests, LAS VEGAS SUN, March 18, 2004
- 12 145. Leonidas G. Koniaris, Teresa A. Zimmers, David A. Lubarsky, and Jonathan P. Sheldon, Inadequate Anaesthesia in Lethal Injection for Execution, Vol. 365, April 16, 2005, at <http://www.thelancet.com>
- 13 146. Declaration of Mark J. S. Heath, M.D., May 16, 2006, including attachments A-F

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- 19 147. Reporter's Transcript of Proceedings, Volume I, Castillo v. State, Clark County, Grand Jury, Case No. C133336, January 11, 1996
- 20 148. Reporter's Transcript of Proceedings, Volume II, Castillo v. State, Clark County, Grand Jury, Case No. C133336, January 18, 1996
- 21 149. Transcript (Arraignment), Castillo v. State, Clark County, Case No. C133336, January 24, 1996
- 22 150. Transcript, Castillo v. State, Clark County, Case No. C133336, March 13, 1996
- 23 151. Transcript, Castillo v. State, Clark County, Case No. C133336, April 3, 1996
- 24 152. Recorder's Transcript Re: Defendant Castillo's Petition for Writ of Habeas Corpus, Defendant Platou's Petition for Writ of Habeas Corpus, State's Motion to Amend Indictment, Castillo v. State, Clark County, Case No.

- 1 C133336, May 1, 1996
- 2 153. Reporter's Transcript of Proceedings in Re: Defendant Castillo's Petition for
3 Writ of Habeas Corpus and Defendant Platou's Petition for Writ of Habeas
4 154. Transcript, Castillo v. State, Clark County, Case No. C133336, July 22, 1996
- 5 155. Reporter's Transcript of Proceedings In Re: Motions, Castillo v. State, Clark
6 County, Case No. C133336, August 12, 1996
- 7 156. Transcript, Castillo v. State, Clark County, Case No. C133336, August 21,
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- 9 157. Trial Transcript, Volume I, Castillo v. State, Clark County, Case No. C133336,
10 August 26, 1996
- 11 158. Trial Transcript, Volume II, Castillo v. State, Clark County, Case No.
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- 12 159. Trial Transcript, Volume II, Castillo v. State, Clark County, Case No.
13 C133336, August 27, 1996 4:40 PM
- 14 160. Trial Transcript, Volume III, Morning Session, Castillo v. State, Clark County,
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- 16 161. Reporter's Transcript of Trial, Volume III, Afternoon Session, Castillo v.
17 State, Clark County, Case No. C133336, August 28, 1996
- 18 162. Trial Transcript, Volume IV - Morning Session, Castillo v. State, Clark
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- 19 163. Reporter's Transcript of Jury Trial, Volume IV - Afternoon Session, Castillo
20 v. State, Clark County, Case No. C133336, August 29, 1996 1:15 P.M.

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- 22 164. Trial Transcript, Volume V - Morning Session, Castillo v. State, Clark
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- 23 165. Reporter's Transcript of Trial, Volume V, Afternoon Session, Castillo v. State,
24 Clark County, Case No. C133336, September 3, 1996
- 25 166. Trial Transcript, Volume VI, Castillo v. State, Clark County, Case No.
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171. Reporter's Transcript, Penalty Hearing - Volume III - Morning Session, Castillo v. State, Clark County, Case No. C133336, September 24, 1996
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173. Reporter's Transcript, Penalty Hearing - Volume IV, Castillo v. State, Clark County, Case No. C133336, September 25, 1996
174. Reporter's Transcript, Castillo v. State, Clark County, Case No. C133336, November 4, 1996
175. Reporter's Transcript of Motion to Withdraw, Castillo v. State, Clark County, Case No. C133336, December 16, 1996
176. Transcript, Motion for Appointment of Psychiatrist and Co-Counsel, Castillo v. State, Clark County, Case No. C133336, December 6, 1999
177. Reporter's Transcript, State's Motion to Place on Calendar, Castillo v. State, Clark County, Case No. C133336, October 23, 2000
178. Reporter's Transcript, Confirmation of Counsel, Castillo v. State, Clark County, Case No. C133336, October 26, 2000
179. Recorder's Transcript, Defendant's Motion for Extension of Time to File Defendant's Supplemental Brief in Support of Defendant's Petition for Writ of Habeas Corpus, Castillo v. State, Clark County, Case No. C133336, March 12, 2001
180. Recorder's Transcript Re: Argument, Castillo v. State, Clark County, Case No. C133336, March 4, 2002
181. Recorder's Transcript Re: Request of the Court: Argument, Castillo v. State, Clark County, Case No. C133336, April 10, 2002

- 1 182. Recorder's Transcript Re: request of the Court: Argument, Castillo v. State,
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- 3 183. Recorder's Transcript Re: Evidentiary Hearing, Castillo v. State, Clark
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- 4 184. Recorder's Transcript Re: Evidentiary Hearing, Castillo v. State, Clark
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CERTIFICATE OF MAILING



An employee of the Federal Public Defender

EXHIBIT 167

EXHIBIT 167

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COPY

DISTRICT COURT

CLARK COUNTY, NEVADA

FILED IN OPEN COURT

* * * *

LORETTA BOWMAN, CLERK

BY CAROL A. GAY Deputy

THE STATE OF NEVADA,

Plaintiff,

Vs

WILLIAM PATRICK CASTILLO,

Defendant.

CASE NO. C133336

DEPT. NO. VII

DOCKET P

BEFORE THE HONORABLE:

A. WILLIAM MAUPIN DISTRICT JUDGE

THURSDAY, SEPTEMBER 19, 1996, 10:55 A.M.

PENALTY HEARING

VOLUME I - MORNING SESSION

APPEARANCES:

FOR THE STATE:

STEWART L. BELL
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

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STATE'S WITNESSES

BRUCE KENNEDY

DIRECT EXAMINATION BY MR. BELL

30

STATE'S EXHIBITS

No. 107

48

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 THURSDAY, SEPTEMBER 15, 1996, 10:55 A.M.

2 THE COURT: C133336, State of Nevada versus
3 William Patrick Castillo.

4 This is the continuation of the jury trial
5 in this matter. The jury having found the defendant guilty
6 of first degree murder, on that particular charge in the
7 jury trial, we move onto the penalty phase.

8 Do the parties have anything to bring up
9 before we bring the jury in?

10 MR. BELL: Yes, your Honor. If it please
11 the Court, the District Attorney's Office would like to
12 present three victim impact statements. Jean Marie
13 Hosking, the daughter who testified earlier, as well her
14 two daughters who are, of course, in turn the
15 granddaughters of the victim.

16 We would like, and Mr. Schieck has agreed,
17 that they may remain in for the other testimony because it
18 really doesn't relate to what they are going to testify
19 about. He asked if we would receive some assurance of no
20 emotional outbreaks and I think we can feel fairly assured
21 of that because they were here during the guilt phase and
22 it wasn't a problem.

23 THE COURT: Anything further from the
24 defense before we start this process?

25 MR. BELL: Not from the State, your Honor.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 MR. SCHIECK: No, your Honor.

2 THE COURT: All right, at this time I'd ask
3 the jury be brought in for opening statements.

4 MR. HARMON: Yes.

5
6 (At this time the jury entered the
7 courtroom.)

8
9 THE COURT: Good morning, ladies and
10 gentlemen.

11 THE JURY: (In Unison) Good morning.

12 THE COURT: Continuation of the jury trial
13 in C133336, State of Nevada versus William Patrick
14 Castillo.

15 Parties stipulate to the presence of the
16 jury?

17 MR. BELL: Yes.

18 MR. LaPORTA: Yes, your Honor.

19 THE COURT: All right, at this time we will
20 commence with further proceedings in this trial. The State
21 of Nevada may make its opening statement.

22 MR. HARMON: Thank you, your Honor.

23 May it please the Court, counsel, good
24 morning, ladies and gentlemen. It is, of course, an
25 awesome responsibility to be called upon to fix a

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 punishment; that is to pass judgment upon a fellow human
2 being, but that will be the total focus of the penalty
3 hearing phase of these proceedings.

4 It's been said that mercy cannot rob
5 justice. The possession of the prosecution is that justice
6 occurs when the punishment fits the crime. The issue to be
7 resolved at this phase of the trial will be what punishment
8 fits the first degree murder of 86 year old Isabelle
9 Berndt.

10 In making that decision, as the parties have
11 already alluded to during the jury selection process and
12 which the Court will formalize with legal Instructions at
13 the conclusion of the evidence, the jury will be involved
14 in a process of weighing or balancing aggravating and
15 mitigating circumstances.

16 In this case, the prosecution has alleged
17 that there are certain factors which aggravate the murder
18 of Isabelle Berndt. Likewise, the defense has alleged that
19 there are factors which mitigate the crime. At the
20 conclusion of the evidence and after the Instructions, your
21 task will be to balance the factors and from that,
22 considering whatever additional character evidence may be
23 introduced, then to decide the appropriate punishment for
24 Mr. Castillo.

25 The prosecution has alleged six aggravating

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1 circumstances. They are as follows:

2 Number one, that the murder of Isabelle
3 Berndt was committed by a person, William Castillo, who was
4 previously convicted of a felony involving the use or
5 threat of violence to the person of another. In fact,
6 there are two circumstances within this category because,
7 as you will learn in this hearing, Mr. Castillo has been
8 convicted twice as an adult of felony crimes. He has been
9 convicted of an attempted residential burglary, which
10 occurred on December the 19th, 1990. The victim being
11 Marilyn Mills, M-I-L-L-S. He also has been convicted of a
12 robbery, which he committed on December the 14th, 1992.
13 The victim in that case was a visitor to Las Vegas from New
14 Jersey, Patricia Rizzo, R-I-Z-Z-O.

15 The second category relates to the
16 circumstances of the offense. We are alleging that the
17 murder of Mrs. Berndt was committed while the defendant was
18 engaged in the commission of or an attempt to commit or
19 flight after committing a burglary. The jury has already
20 considered evidence on the issue of whether a burglary
21 occurred during the commission of these offenses.

22 Likewise, category three involves a
23 robbery/murder and it's essentially the same language as
24 that alleged in burglary. The prosecution alleges that
25 this murder was committed while the defendant was engaged

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1 in the commission of or an attempt to commit or flight
2 after committing a robbery.

3 Category number four, it is alleged that the
4 murder of Mrs. Berndt was committed to avoid or prevent a
5 lawful arrest. The Court will tell you later in the
6 proceedings that you may, in determining punishment, not
7 only consider the supplementary evidence offered at this
8 phase of the proceedings, but you may consider the evidence
9 introduced during the guilt phase as well.

10 The evidence has already come out that the
11 defendant gave, as his explanation to Tammy Bryant, his
12 girlfriend, and also in his confession, Exhibit 106-A, to
13 Detective Dwayne Morgan, during the early morning of
14 December 20, 1995, that he didn't want the victim to wake
15 up and see his face. You will be able to understand, from
16 the evidence introduced at this hearing, more clearly now
17 why he felt that way. Because Mr. Castillo had served two
18 separate terms of imprisonment in the Nevada Department of
19 Prisons. So the evidence will clearly demonstrate he
20 killed her because he didn't want her to be around to
21 identify him at a later court proceeding.

22 The next aggravating circumstance and, in
23 fact, the last alleged by the prosecution, is that the
24 murder was committed by the defendant for himself or
25 another to receive money or any other thing of monetary

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1 value. The evidence already before the jury is that
2 property was stolen in connection with the burglary,
3 robbery, murder of Mrs. Berndt; Hitachi VCR, it's in
4 exhibit as Exhibit 73-A, the box of silverware, 77-A. The
5 defendant told Kirk Rasmussen additionally that they had
6 stolen a hundred twenty dollars in cash. There is evidence
7 that Christmas booties, that's Exhibit 78-A, which were
8 used by Mrs. Berndt for the placement of the \$50 savings
9 bonds that were taken. Also, six watches and an angel
10 pendent, which is in evidence as 81-A.

11 Detective Donald Tremel, Crime Scene Analyst
12 Cathy Adkins, the girlfriend, Tammy Bryant, and Mrs.
13 Berndt's daughter, Jean Marie Hosking, testified in
14 connection with the property taken which enhanced the
15 monetary position of the defendant and his accomplice.

16 In addition to the aggravating
17 circumstances, the State will introduce additional
18 evidence, which is offered for the purpose of showing the
19 character of the defendant to the extent that additional
20 criminal history demonstrates that fact. A quotation from
21 Shakespeare is applicable. "Oh what may man within him
22 hide, though, angel on the outward side."

23 The character evidence will demonstrate what
24 Billy Castillo, within him is hiding. He was born on
25 December the 28th, 1972. So he is 23 years of age, as I

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1 speak. His natural father was William P. Thorpe,
2 T-H-O-R-P-E. His mother and Mr. Thorpe, however, were
3 married only between 1970 and 1973. Mr. Castillo was
4 raised by an adoptive father and his natural mother, Joann
5 Barbara Castillo.

6 They moved to Las Vegas when the defendant
7 was about eight years of age. The defendant, as a child,
8 had a long history of pre-delinquent behavior and his
9 mother sought services for him in the states of Louisiana,
10 Florida, Colorado, California, and in Nevada, in the Lake
11 Tahoe area and in Las Vegas.

12 As examples of his pre-delinquent behavior,
13 age five, the defendant drowned his grandmother's dog to
14 get even with her. Age six, defendant killed several birds
15 in anger smashing their skulls with rocks. Age seven, the
16 defendant destroyed a house in Los Angeles. When the
17 family lived in Lake Tahoe, Mr. Castillo was kicked off the
18 school bus on the first day of school for knocking a girl
19 off the bus causing a concussion. In Las Vegas, while at
20 school, the defendant ran a piece of glass down a youth's
21 back requiring three stitches. Prior to the family coming
22 to Las Vegas, the defendant had previously been classified
23 as a juvenile delinquent in Los Angeles County, California
24 and Douglas County, Nevada.

25 In Las Vegas, the defendant was placed in a

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1 group home at Children's Behavioral Services in the summer
2 of 1981. He was withdrawn after two and a half months by
3 his parents. However, the defendant was subsequently
4 placed back into Children's Behavioral Services on or about
5 July the 30th, 1982 and he was also placed into the
6 co-custody of the Nevada State Welfare. His problems were
7 a chronic runaway, arson, fighting, noncompliance, lying,
8 swearing, and misbehavior in school. He was diagnosed and
9 the Court reported by the State Welfare Division as,
10 "Conduct disorder: under-socialized and inegressive."

11 During his youth, William Castillo was a
12 habitual runaway. He first ran away from home at age
13 seven. From 1982 through 1985, the defendant was a
14 frequent runaway from home, from school, and from juvenile
15 and state welfare programs and facilities. During the
16 first 6 months of 1982, he ran away from home seven times.

17 Between September and October 1982, he ran
18 away from CBS, Children's Behavioral Services, about seven
19 more times. In his words, "Seeking fun time on the
20 outside." In fact, a program requiring the defendant to
21 check his shoes in and from his teaching parents at CBS was
22 implemented with limited success.

23 On January the 1st, 1983, the defendant was
24 arrested for runaway and arson. Three times during the
25 1984, 1985 school year, he ran away from CBT Gilbert 6th

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1 Grade Center. On October the 1st, 1985, he was arrested
2 for runaway and vagrancy prowling and while a resident at
3 the youth hospital of CBS, the defendant ran away. He was
4 apprehended by the California Highway Patrol in Baker,
5 California.

6 On December the 3rd, 1985, 12 years of age
7 at that time, the defendant was arrested for runaway and
8 violation of parole. In that situation, young Mr. Castillo
9 jumped a freight train headed to Utah from here in Las
10 Vegas on December the 2nd, 1985. He was trying to go to
11 St. Louis, Missouri to live with his grandmother, Vida
12 Thorpe. That's V-I-D-A. He realized when he got as far as
13 Milford, Utah that the exposure to the elements made him
14 freezing cold. He turned himself in to the police and
15 eventually was brought back to Las Vegas.

16 Placement with the defendant's grandmother
17 in St. Louis had already ended and failed at the time he
18 attempted the runaway to rejoin her. He was placed with
19 her in April 1985. In mid may of that year, he was charged
20 in St. Louis with property damage. Early in June, 1985,
21 charged with burglary, a felony, when he stole a bicycle
22 valued over \$150 and he was taken from his grandmother and
23 placed in the St. Louis Detention Facility.

24 This defendant was involved, as a youth, in
25 setting fires. Early in July, 1982, when nine years of

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1 age, he started a fire near the family home and the house
 2 burned to the ground. He allegedly found a gasoline can in
 3 a shed, took it, placed it by the house, and lit some paper
 4 that was sticking out of the open end of the can. He then
 5 jumped over a wall and ran away neglecting to warn his
 6 mother and his baby sister, who were inside the house.
 7 Later, because his whereabouts were unknown to mom, after
 8 she had got out of the burning building, she went back in
 9 looking for him suffering from smoke inhalation.
 10 Fortunately, there were no serious injuries which
 11 resulted. Correctly or incorrectly, the family
 12 rationalized that the fire was an accident and that the
 13 defendant simply wanted to play with gas.

14 The defendant set a fire in one of the
 15 apartments at Children's Behavioral Services. Also, he
 16 stuffed papers into a heating vent while away on a weekend
 17 with his parents in the State of California.

18 On or about December the 31st, 1982, as a
 19 ten year old, the defendant and another young fellow named
 20 Nicholas Montoya, M-O-N-T-O-Y-A, a nine year old, ran away
 21 from CBS. They hid in bushes next to the pool at the
 22 Circus Circus Hotel, 2880 Las Vegas Boulevard South. There
 23 for a day or so, they sustained themselves by stealing
 24 candy and entertained themselves by stealing lighter fluid,
 25 cigarettes, and cigarette lighters from gift shops at

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1 Circus Circus.

2 On January the 1st, 1983, New Year's Day,
3 about 7:00 in the morning, the defendant and young Mr.
4 Montoya were involved in setting fires on four separate
5 floors inside the Circus Circus Hotel. They fashioned
6 homemade incendiary devices, small fire bombs by filling
7 glass cigarette vials with lighter fluid, placing the
8 cigarettes back into the vials as wicks and timing devices,
9 and then lighting the cigarettes. Fire damage occurred to
10 curtains on the 15th floor of the Circus Circus, to
11 carpeting and papers in front of the elevators on the 10th
12 and 11th and 12th floors and inside an elevator. Once
13 again, fortuitously, there were no injuries. Arson
14 investigators responded and concluded that combustible
15 materials, lighter fluid being used as an accelerant and
16 open flame were used to start the fires.

17 Still another fire was set at the back door
18 of the Ah's Chinese Restaurant on the same day, which was
19 on the second floor of the building in the Circus Circus
20 complex at 800 Circus Circus Drive. Two women just
21 happened to be in the area and they saw the juveniles in
22 the area just before the flames were sighted. They gave a
23 description. The two young men were apprehended a little
24 while later in another part of the Circus Circus Hotel.
25 Investigating officials found two broken glass cigarette

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1 vials at the bottom of the door on the landing. They still
2 had an aroma of lighting fluid. They also recovered a four
3 ounce Ronsonol lighter fluid container in the bushes about
4 15 feet away from the landing. The Ronsonol containers
5 still had a Circus Circus price tag on it.

6 In the bushes where the defendant and
7 Montoya had been hiding, authorities found four Ronsonol
8 lighter fluid cans, three Bick cigarette lighters, and two
9 books of matches. The defendant and Nicholas Montoya
10 admitted they had set the fires. They said they became
11 angry at two women who were employees at the hotel because
12 they had asked for balloons, the women refused them and
13 they became rude, and, therefore, they wanted to burn down
14 the Circus Circus to repay them. The fire damage was about
15 \$1,200, which included fire, smoke, heat damage, and
16 vandalism. Furthermore, the boys said they had intended to
17 start more fires. They were charged in juvenile court with
18 the six counts of arson and attempted murder.

19 September, 1984, during a substantial part
20 of the early afternoon into the evening, the defendant was
21 a runaway until his stepfather apprehended him. During
22 that time interval, he purchased a lighter from a
23 convenience store, stole a flashlight from the same store,
24 and then used the lighter to start a fire at a construction
25 site. It caused minimal damage.

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1 Mr. Castillo had various commitments to the
2 Nevada Youth Training Center. Five times between 1984 and
3 1990. His career at Children's Behavioral Services ended.
4 On February the 1st, 1984, when he committed a battery
5 against a CBS teacher, Pat Mahony, M-A-H-O-N-Y.

6 In 1988, he was arrested for carrying a
7 concealed weapon, a knife, and was recommitted to the
8 Nevada Youth Training Center. His parole was revoked and
9 he was recommitted to NYTC in July, 1989. The reasons, in
10 April, possession of a switch blade knife. In July 1989,
11 the grand larceny of the family residence. He had taken
12 from his stepfather, Joe Castillo, at 6621 Rocking Horse
13 Avenue in Las Vegas, a .9 millimeter handgun, a .22 caliber
14 handgun, and a boot knife having a value in excess of
15 \$100. On July the 7th, 1989, the defendant stole a 1987
16 Ford Tempo from Las Vegas Honda at 1700 East Sahara in Las
17 Vegas and went to Los Angeles. He was arrested. On July
18 the 12th, 1989, for grand larceny, grand larceny auto, and
19 being a runaway. He was again paroled from NYTC in
20 February 1990. However, was arrested in April of that year
21 for grand larceny of a motorcycle and recommitted to the
22 Nevada Youth Training Center on April the 24th, 1990.

23 Had a history of either escaping or trying
24 to escape. At 13 years of age, in early 1986, the
25 defendant plotted to escape from NYTC. He tried to solicit

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1 money from some of his peers and was observed stealing
2 money from a residence room to finance his getaway.

3 On October the 21st, 1990, 17 years of age
4 at that time, at 1:10 in the morning, he ran away
5 successfully from the Nevada Youth Training Center. A
6 National Crime Information Center, NCIC, warrant was issued
7 for Mr. Castillo as an escaped prisoner from the Elko Youth
8 Camp in Elko, Nevada. However, the defendant alluded
9 apprehension until December the 19, 1990, when he was
10 arrested and charged with attempted burglary, possession of
11 an unregistered firearm, and as an escapee from NYTC.

12 I have mentioned already the two prior
13 felony convictions to explain very briefly the
14 circumstances of the attempted burglary. It was on
15 December the 19th, 1990, while the defendant was still at
16 large as an escapee from Elko. He had an accomplice,
17 Kenneth Delzer, also a seventeen year old juvenile.
18 D-E-L-Z-E-R. The two young men were involved in the hot
19 prowl effort to get inside a residence at 3895 West Warm
20 Springs Road. It occurred at 1:25 in the afternoon. The
21 victim, the occupant of the house, Marilyn Mills was
22 inside. She heard persons ring the doorbell, then knock on
23 the door. She peered out through the peep hole on her
24 front door, saw that it was persons she didn't know, and so
25 she made no noise, no effort to open the door, simply

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1 remained inside.

2 The result was Mr. Delzer, after the
3 defendant, by his own admission later on in the
4 investigation, had taken a loaded firearm from his pocket
5 and was holding it in his hand, Mr. Delzer kicked the door
6 open. They were on their way into the residence with the
7 intention of stealing when confronted by Mrs. Mills, who
8 had obtained a can of mace and began to spray at them.
9 They then fled in a Honda vehicle driven by Delzer. The
10 victim had the presence of mind to write down the license
11 plate number.

12 The police, when they responded to her call,
13 then traced the registered owner to the address of 5130
14 Golden Springs where contact was made with both suspects,
15 the defendant and Kenneth Delzer. Both suspects admitted
16 the attempted burglary. The defendant specifically said
17 they did it with the intention of, "Robbing the house."
18 Officer Michael Eylar, E-Y-L-A-R, of the Metropolitan
19 Police Department was involved in the early stages of the
20 investigation. When he patted Mr. Castillo down, he found
21 a fully loaded .7.65 millimeter pistol in the waistband of
22 the defendant.

23 As I have mentioned, Mr. Castillo admitted
24 to Officer Eylar that he had the gun out in his hand,
25 although he asserted he had put the safety on at the time

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1 they tried to force their way into the house. The
 2 defendant was certified to stand trial as an adult
 3 effectively ending his career as a juvenile delinquent on
 4 January the 23rd, 1991. He entered a plea of guilty to
 5 attempted burglary on March the 19th, 1991, was formally
 6 sentenced on April the 16th, 1991 to two years in the
 7 Nevada State Prison with credit for time served, 109 days.

8 Damages to the door of Mrs. Mill were
 9 \$217.34. That amount was divided between the juvenile
 10 co-defendant and Mr. Castillo. The defendant served 14
 11 months, expired his prison term on his initial felony
 12 conviction, and was released from NSP on June the 16th,
 13 1992.

14 On December the 14th, 1992, at 1:15 in the
 15 morning, he was involved in the purse snatch/robbery
 16 involving Patricia Rizzo. Mrs. Rizzo was in Las Vegas on
 17 business. She was walking from the Circus Circus Hotel
 18 down Riviera Boulevard eastbound, had crossed Paradise, and
 19 was in the parking lot area of the hotel where she and her
 20 friend, Nancy Tulner, T-U-L-N-E-R, were staying, the Las
 21 Vegas Hilton. As she walked closest to the street with her
 22 purse over her left shoulder, a vehicle pulled up, it was
 23 being driven by the defendant's co-offender, Frank Martin,
 24 26 years of age, also an ex-felon, with Mr. Castillo in the
 25 passenger seat. Mr. Castillo reached out, grabbed the

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1 victim, Mrs. Rizzo, from the rear by the shoulder, turned
2 her around. She felt the vehicle brush her leg and, in
3 fact, at one point, came face to face within six inches of
4 the defendant. He succeeded eventually in breaking the
5 strap on the purse, took the purse, and the vehicle sped
6 away leaving two thoroughly emotionally, traumatized women
7 in its wake.

8 The vehicle driven by Mr. Martin had no
9 license plates. However, there were police nearby. They
10 saw a vehicle which was driving at a high rate of speed,
11 began to follow the vehicle even before the report that the
12 robbery had occurred. A short distance away, the vehicle
13 crashed into another car. A witness to the accident just
14 happened to be in the position to see, shortly after the
15 crash, that a purse had been thrown onto the ground. This
16 citizen retrieved the purse and turned it over to the
17 police. They discovered in the purse the money, the credit
18 cards, and identification in the name of Patricia Rizzo and
19 also three items she hadn't put there. She responded later
20 to the scene, identified the purse as hers, but said the
21 small amount of marijuana now placed in the purse wasn't
22 hers, the smoking pipe wasn't hers, and most certainly the
23 .25 caliber, fully loaded semi automatic that was now in
24 the purse was not hers.

25 These defendants, Mr. Castillo, and Mr.

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1 Martin, both admitted taking the victim's purse. Mr.
2 Castillo told the investigating officer, who in this case
3 was Paul Ehlers, E-H-L-E-R-S, of the Metropolitan Police
4 Department that, "He had been down on his luck, was an
5 ex-felon, and it was hard to get a job."

6 Additionally, the police found two knives
7 which were still inside the vehicle driven by Frank
8 Martin. The defendant further admitted placing the gun
9 into the purse along with the pipe and the marijuana. He
10 entered a plea of not guilty in this case, went to trial.
11 A trial jury convicted the defendant of robbery on April
12 the 15th, 1993. The Department of Parole & Probation did a
13 presentence investigation. They recommended a four year
14 sentence. On May the 20th, 1993, a formal sentence was
15 imposed of three years in the Nevada State Prison with
16 credit for time served of 157 days.

17 In this case, the defendant also expired his
18 sentence and was released on May the 8th, 1995. He served
19 just under two years. The State will further call a
20 witness, Mark Berg, from the Department of Prisons. He
21 will refer to a number of infractions, the breaking of
22 prison rules which occurred when the defendant served his
23 time in the Nevada State Prison.

24 He will mention that on November the 30th,
25 1993, at the Northern Nevada Correctional Center in Carson

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1 City, the defendant and two other inmates badly beat a
2 fellow inmate. He was taken to an infirmary and treated
3 for his injuries. The beating occurred because allegedly
4 this inmate had informed corrections officers about the
5 location of some tattooing equipment. The evidence will
6 also suggest that the defendant and the other two inmates
7 involved in the beating, as part of the retaliation, poured
8 water into the back of the inmate's television set
9 destroying it. The tattooing equipment had been found
10 inside the defendant's cell.

11 On or about January the 13th, 1994, another
12 rule violation involved stuffing a piece of paper into the
13 lock of his cell door to keep it from locking. This is
14 considered to be a security breach by the prison
15 authorities. It would have permitted the defendant, anyone
16 else who does this, to leave his cell at will and to mingle
17 with others whether for friendly purposes or because he
18 sought retaliation for other grievances involving him and
19 those inmates.

20 On or about August the 5th, 1994, the
21 defendant hit an inmate with a lock causing a cut above the
22 inmate's right eye, which bled profusely. During the
23 process, as authorities interrupted the stand off between
24 the defendant and the other inmate, the defendant was
25 yelling, " He's a snitch and you better PC up him because if

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1 I see you on the yard, I'll cut you, I'll cut you deep."

2 Officer Berg will mention that approximately
3 6 months later at another camp, he saw the inmate and
4 observed that he still carried with him a scar in his
5 forehead from the blow inflicted by the defendant.

6 As I have mentioned, the defendant's release
7 was May the 8th, 1995 from the Northern Nevada Correctional
8 Center, a little over seven months prior to the murder of
9 Isabelle Berndt. After the confrontation with the inmate
10 involving the lock, the defendant spent the remainder of
11 his time in lock down basically and during that time frame,
12 he had conversations with corrections Officer Berg during
13 which he explained to Berg that he and his friends
14 victimized people on the Strip. Said they did that all the
15 time when they were high on crank. He said it was easy and
16 fun and guns were involved and, of course, that is
17 certainly consistent with the crime perpetrated upon
18 Patricia Rizzo.

19 After the defendant's release, within two
20 months, he was involved in a conspiracy to rob the
21 Caldville Bay fuel dock store at Lake Mead. As you'll
22 learn, this is within the National Park Service
23 jurisdiction and a offense occurred on or about June the
24 30th, 1995, as the business was being closed at about 6:35
25 p.m.. A day or two before, the defendant had approached an

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1 acquaintance who worked as a cashier at the store. Her
2 name is Jeannie O'Brien, O-apostrophe-B-R-I-E-N. She had
3 initially been accused by the defendant of informing to the
4 police on another acquaintance resulting in that person's
5 arrest on a drug bust. The defendant then used that as
6 leveraged with her and suggested that it would probably be
7 easy to fake a robbery at her place of employment and if
8 she would go along with the plan, she wouldn't have to keep
9 looking behind her back.

10 Ms. O'Brien reluctantly agreed. She was on
11 duty. There, in fact, was discussion about whether she was
12 the sole employee and she mentioned a day or two before
13 that there would be a security guard in the area. However,
14 he was not armed. It was then mentioned that he would have
15 to be tied up and, of course, disabled to where he couldn't
16 interfere.

17 On the date in question, the defendant and a
18 female companion identified only as Mary entered the store
19 and, with the cooperation of their employee accomplice,
20 removed over \$2,000 from the dock store. The witness
21 called the Parks Service and reported that she had been the
22 victim of an armed robbery, that the robber had displayed a
23 silver weapon with a black handle and she gave a
24 description no where close to the defendant or his female
25 friend. She said that the robber had a small build,

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1 five-six to five-seven, and blond hair with a mushroom-type
2 hair style, and dark blue shorts. In fact, the defendant
3 was stopped initially in the investigation with a female
4 companion he claimed was his wife a short distance from the
5 crime scene, but he was released because he didn't fit the
6 description given by Jeannie O'Brien.

7 A few days later, O'Brien admitted the
8 conspiracy to Michael Blandford, B-L-A-N-D-F-O-R-D, and to
9 Officer R.D. Carnes, C-A-R-N-E-S, of the National Park
10 Service and she admitted that it was just a fake robbery,
11 she had agreed to cooperate, and indicated that she tried
12 for several days after the offense to get her cut, her
13 portion of the proceeds that were stolen in the
14 conspiracy.

15 And, finally, as I conclude, on or about
16 October the 3rd, 1995, the defendant was involved in
17 batteries upon two persons who occupied the apartment
18 complex where he lived on North Rainbow Boulevard. Their
19 names are Jill and Julie Russell, a mother and a daughter.
20 They didn't know the defendant, didn't know the persons who
21 were roommates of his. They only knew him and them to be
22 persons who occupied the same apartment complex.

23 The incident apparently was something which
24 stemmed from a fight the defendant had with his girlfriend,
25 Tammy Bryant, the evening before. They were occupying an

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1 apartment almost directly above the Russell apartment. It
2 was apparent to Jill Russell, the mother, that there was
3 some type of serious melee going on and so she called the
4 police and was visible at the time the police arrived and
5 confronted Mr. Castillo and his girlfriend.

6 While the police were there, the defendant
7 confronted her with the threat, "I'll get you for this,"
8 and pointed his finger at her. It was the following
9 afternoon when the daughter, Julie Russell, and her
10 boyfriend left to get something to eat that words were
11 exchanged involving the defendant's sister and Julie
12 Russell. When she returned, the defendant, Mr. Castillo,
13 indicated that he wanted to talk to her. Julie Russell
14 told him she had no interest in a conversation, walked into
15 her apartment door, and shut the door when, without
16 invitation, the defendant immediately slammed the door
17 opened, knocking her to the floor, came in, and began to
18 confront her. The mother ran out, they were trying to get
19 the defendant out of their residence when the defendant
20 swung and hit with his open hand Jill Russell on the side
21 of her head. They called the police, the police arrived,
22 and a citation was issued for two counts of battery and, in
23 fact, it was that charge that was pending which involved
24 the defendant's necessity of paying \$350 for attorney fees
25 in December 1995.

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1 Ladies and gentlemen, Pascal said, "Evil is
2 easy and it has infinite forms." The life of William
3 Castillo is proof that evil is easy and it does have
4 infinite forms.

5 Thank you.

6 THE COURT: Does the defense wish to make an
7 opening statement at this time?

8 MR. SCHIECK: Yes, your Honor. Thank you.

9 THE COURT: Thank you, Mr. Schieck.

10 MR. SCHIECK: Good afternoon, Mr. Harmon --
11 good morning, Mr. Harmon, Mr. Bell, your Honor.

12 Ladies and gentlemen of the jury, my
13 comments are going to be rather short here this morning.
14 The last time we spoke with you, Mr. LaPorta was also short
15 in his comments to you and there was a reason for that and
16 the reason for that is just as with the statement that was
17 played for you that Billy made, Billy is not contesting his
18 guilt of these charges. The shortness of your
19 deliberations is a fair indication that you understood that
20 from Mr. LaPorta's closing statement to you.

21 There's a reason for that and the State of
22 Nevada, if a defendant pleads guilty, he is not entitled to
23 have a jury decide his punishment of first degree murder.
24 Thus, it was necessary that a trial be held with a jury,
25 even though Billy wasn't contesting that he had committed

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1 this crime, in order that he could have a jury decide his
2 appropriate punishment. That is what has in this case.

3 Perhaps you wondered, when you went back to
4 deliberate, what exactly Mr. LaPorta was doing when he made
5 his statement. He made his statement, his closing
6 argument -- he didn't call it an argument, his closing
7 comments to you with the knowledge that we would be here
8 before you talking to you about what the appropriate
9 punishment should be in this case.

10 Now is when the real contested issues come
11 before you. Now is when we are going to present the
12 position on behalf of Mr. Castillo. Now is the time that
13 you have to make the difficult decision and that decision
14 is whether or not Billy Castillo is going to die as a
15 result of this case.

16 Mr. Harmon has stated that mercy cannot rob
17 justice. I would assert, on the other hand, vengeance
18 should not rob either justice nor mercy. During this
19 penalty hearing, you are going to hear some pretty bad
20 things about Billy. Mr. Harmon has outlined a great many
21 of those things. We are not trying to hide those things
22 from you. We're not going to try to present information
23 showing that Billy was not a runaway, for instance. Those
24 are the facts. Those are the facts that Billy has
25 created. Those are the facts Billy has to live with.

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1 It's been sad that there is good in even the
2 worst of us and some bad in even the best of us. What
3 we're asking is that you see, despite all of the bad things
4 that Billy has done, that there is some goodness within
5 him, some redeeming qualities that mitigate in favor of a
6 verdict that spares his life.

7 We will be putting on evidence during the
8 penalty hearing. Some of the evidence will dovetail with
9 the information the State will present to you that Mr.
10 Harmon has alluded to. It's going to show that Billy came
11 from a extremely troubled and dysfunctional family during
12 his early years. That on his father's side of the family,
13 from the Thorpe side of the family, there is a history of
14 mental illness, violent criminal behavior associated with
15 that illness. That, in fact, Billy's natural father had
16 tried to kill his mother and was extremely physically
17 violent to her during those early years.

18 That during those early years, the family
19 moved numerous times. Mr. Harmon has discussed some of the
20 different states that Billy lived in during the first five
21 or six years of his life. You are going to see a nomadic
22 life-style during those first years of Billy's
23 dysfunctional life. You will find at the end of that
24 nomadic period, that Barbara Thorpe became Barbara
25 Castillo. She married Joseph Castillo and there was at

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1 that point a degree of steadiness to Billy's home life, but
2 the behavior problems had already started. The dye was
3 already cast. Billy was already out of control with his
4 behavior problems and the situation was escalating. A
5 variety of things were tried and the only periods of time
6 where Billy was able to function at any level of success
7 was in very structured settings. We're not going to stand
8 up here and argue to you that he operated and was able to
9 function in an excellent fashion during those periods, but
10 that you could see, in certain structured settings, he was
11 able to function.

12 You are going to see that Billy is really a
13 product of those early family years and of his family
14 heritage from his father's side, that he has lived,
15 basically, his life since age eight or nine as a ward of
16 the State of Nevada, in and out of various facilities
17 throughout those years of his youth until he reached the
18 age of 18 and incurred an adult conviction.

19 At the end of the case, we will stand before
20 you and ask that you consider all of those things and spare
21 his life.

22 Thank you.

23 THE COURT: Ladies and gentlemen, we're
24 going to -- is everybody comfortable? We are going to go
25 to 12:30 and then we will reconvene at 2:00.

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1 State may call its first witness.

2 MR. BELL: Bruce Kennedy, please.

3 THE BAILIFF: I'm sorry?

4 MR. BELL: Bruce Kennedy.

5

6 BRUCE KENNEDY,

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

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

9 follows:

10

11 DIRECT EXAMINATION

12 BY MR. BELL:

13

14 Q Would you state your name, please, and
15 spell your last name for the court reporter?

16 A Bruce Kennedy, K-E-N-N-E-D-Y.

17 Q And where are you employed, Mr.

18 Kennedy?

19 A I'm employed with the State of Nevada
20 at the Nevada Youth Parole Bureau.

21 Q I'm sorry, I didn't catch the last
22 word.

23 A At the Nevada Youth Parole Bureau.

24 Q And how long have you been employed by
25 the State of Nevada in youth corrections or youth parole or

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1 youth services?

2 A I have been employed with the State of
3 Nevada in youth corrections for a little over 23 years.

4 Q And can you give the ladies and
5 gentlemen of the jury briefly a history of your background
6 that qualified you for that position and the various
7 positions you have held in working with delinquent youth in
8 the State of Nevada.

9 A I graduated from the university here in
10 Las Vegas with a degree in sociology in 1972. In 1973, I
11 went to work at the Nevada Youth Training Center as a group
12 supervisor.

13 Q Let me stop you there. Nevada Youth
14 Training Center, what is that?

15 A It's the youth correction facility for
16 males run by the State of Nevada.

17 Q And where is that?

18 A It's in Elko, Nevada.

19 Q And within the State of Nevada, is that
20 the highest form of corrections center for youths? I mean,
21 that's the ultimately end product?

22 A Yes, it is.

23 Q All right.

24 And how long did you stay at the Nevada
25 Youth Training Center?

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1 A Approximately five and a half years.

2 Q And what were your duties when you were
3 there at NYTC?

4 A I was a group supervisor, which
5 basically manages youth in a cottage. There is usually two
6 supervisors on duty, approximately 20, 23 youths in a
7 cottage, and we make sure they follow the rules, we run
8 recreational activities, provide counseling, make sure they
9 go to school, and do those kinds of activities.

10 Q Are those activities regularly
11 available at NYTC for the youth that have been committed
12 there by order of the court?

13 A Yes, they are.

14 Q After you left NYTC, what was your next
15 position with the State of Nevada?

16 A I transferred from NYTC to the Nevada
17 Youth Parole Bureau where I became a youth parole
18 counselor.

19 Q What was the difference now in your
20 duties?

21 A Youth parole provides after care. So I
22 was now providing treatment for helped kids after they left
23 the training center.

24 Q So your job was to counsel and
25 supervise kids who were living at home or on the -- in free

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1 society that were on a parole status after having been in,
2 but been released on parole at NYTC?

3 A That's correct.

4 Q So you are working a lot with the same
5 kids in a different capacity or same type of kids?

6 A Occasionally same kids and, as the
7 years went by, same type of kids.

8 Q And I take it and understand that you
9 have been promoted within that system?

10 A Yes, continuously for about 18 years.

11 Q And your title now is what?

12 A I'm now chief of the Nevada Youth
13 Parole Bureau.

14 Q So you are in charge, basically, of all
15 of the youths that have been paroled within the State of
16 Nevada after going through the system at Elko?

17 A That is correct, state-wide.

18 Q Now, can you give the ladies and
19 gentlemen of the jury just briefly an overview of the youth
20 corrections system, as we would see it in Clark County,
21 Nevada, kind of from the least serious offense and the
22 least involvement of the government on up to the most
23 serious? In other words, kids that come into the system,
24 the first thing that would happen to them, if they went
25 through the whole panoply of remedies up at Elko, what

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1 would be the total availability of services?

2 A Initially, a child enters the juvenile
3 justice system after he commits some kind of delinquent
4 act. It could be any range from curfew to some kind of a
5 serious assault. Initially, the County provides care for
6 juveniles through Probation Services if they are found
7 guilty of committing some offense.

8 Q Is there anything less onerous than
9 probation that could happen to a youth, for example, if he
10 committed a curfew or minor theft and he were brought to
11 the system?

12 A Yeah, there are lower levels of
13 sanctions. There could be fines, there could be informal
14 supervision pending a short period of time making sure they
15 didn't make any other or have any other problems, and those
16 cases are usually dismissed.

17 Q Is it the cases, as sometimes you saw,
18 are counseled and released even without formal charges
19 being brought against them?

20 A That can happen.

21 Q Now formal charges are brought, then
22 there are availability of fines and you said probation?

23 A Fines, probation, community service.
24 There's a whole continuum of services.

25 Q Are there also counseling and other

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1 types of help available for youths that are placed on
2 probation or become a subject ward of the State or the
3 Court?

4 A Yes, through private contractors,
5 through different State agencies, through different County
6 organizations.

7 Q Are you familiar with most of these
8 that are available?

9 A Most of them.

10 Q And if a youth does not respond in a
11 probationary status, typically what would be the next
12 level? Where do you go from there if you can't make it on
13 probation, a male youth?

14 A Depending on the charges and the
15 circumstances within Clark County, a male youth could be
16 committed to the Spring Mountain Youth Camp that is still a
17 County run facility and they do provide parole after care
18 through the County for the youth that are committed there.

19 A good percentages of youth can transfer to
20 Spring Mountain first. If they continue to have a lot of
21 problems with a lot of violations, they could be committed
22 to the State for treatment.

23 Q That would be the Nevada Youth Training
24 Center?

25 A That would be the Nevada Youth Training

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1 Center.

2 Q How about Third Cottage, what does that
3 refer to?

4 A Third Cottage is another intermediate
5 step in the continuum used prior to Spring Mountain in most
6 cases. Sometimes we have been able to access that even for
7 kids that have been to Spring Mountain or been to Elko as
8 something else to try.

9 Q Is that a confinement, an education and
10 counseling regiment that is conducted right down at the
11 youth center at Bonanza and Mojave?

12 A Yes, it is. I'm not sure if it is
13 still functioning in the same manner today as it did then.

14 Q So if I understand this, we would have
15 informal remedies and then potential probation, then
16 potentially Third Cottage, Spring Mountain, and then
17 eventually Elko is sort of the last stop in the system?

18 A Yes. Now we have Caliente Youth
19 Center, which is a co-ed facility. It's on line for
20 males. They usually take usually younger and less
21 sophisticated males in that program.

22 Q That's relatively new, is it not?

23 A Probably since 1987 or something like
24 that.

25 Q Now did there come a time, in your work

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1 with delinquent youths, that you had occasion to become
2 acquainted with a young man by the name of William
3 Castillo?

4 A Yes, I did.

5 Q And about when was that?

6 A If I recall correctly, it was probably
7 around 1984.

8 Q That was the time you first personally
9 became aware of him; is that correct?

10 A That's correct.

11 Q And do you see Mr. Castillo in the
12 courtroom today?

13 A Yes, I do.

14 Q Would you point to him and describe
15 what he is wearing?

16 A He's wearing a white shirt with a tie.

17 MR. BELL: May the record reflect the
18 identification the defendant, your Honor?

19 THE COURT: Yes.

20 Q (BY MR. BELL) Now, in what context or
21 capacity did you first personally come into contact with
22 Mr. Castillo?

23 A He was assigned to my case load when I
24 was a parole counselor.

25 Q He had been to NYTC, was out on parole,

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1 and you picked him up at that time?

2 A No, that's not quite correct. Cases
3 are assigned youth parole counselors when they are
4 committed. At that time, we meet -- the parole counselors
5 meet with the families, start planning for their release,
6 determine where the youngster is going to go when he is
7 released, and do those kinds of like planning prior to
8 release.

9 Q So you met with him when he was on his
10 way or in Elko and were working on an ultimate plan for
11 him, when he would be released on parole from Elko?

12 A That's correct. I can't recall
13 totally, but I probably met him when he was in the Nevada
14 Youth Training Center. I met his parents prior to me
15 meeting him.

16 Q Okay.

17 Now, I take it, when you do meet him and
18 when you do start working on these plans, you have
19 available to you his history within the juvenile services
20 system; is that correct?

21 A That's correct.

22 Q So at the time you first came in
23 contact with him or his parents and you got those
24 documents, that was not the first time that William
25 Castillo had been involved with the youth correction

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1 system --

2 A No.

3 Q -- when you met him?

4 A No.

5 Q And is it the case that, in preparation

6 for coming here, you got a subpoena, you knew you were

7 going to come here, that you had occasion to review copies

8 of documents from his correctional history here in Las

9 Vegas, Clark County, Nevada?

10 A That is correct.

11 Q All right.

12 Now you said that you met his mother and his

13 father. Do you recall their names?

14 A I believe her name was Barbara.

15 Q And the father's name?

16 A I think it was the stepfather. His

17 name was Joe.

18 Q Do you know if Joe actually adopted

19 William so that, as a matter of law, he became his real

20 father?

21 A I believe that's correct.

22 Q And do you know, if you do, at what age

23 that occurred?

24 A I'm not sure. Probably around age

25 seven.

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1 Q And when you came to know them, they
2 were intact as a family, Joe and Barbara?

3 A That's correct.

4 Q And besides Billy, were there any other
5 family members?

6 A There was an infant daughter.

7 Q During the years that you had occasion
8 to know Billy, did you supervise him when he was on the
9 street on parole between stints at Elko?

10 A That's correct.

11 Q In the course and scope thereof, did
12 you have occasion to make what's called home visits?

13 A That's correct.

14 Q What is a home visit?

15 A We go out to the child's home, talk to
16 the child, the parents, check their rooms, determine what
17 kind of problems he may be having that we may need to deal
18 with. Probably make home visits, oh, probably an average
19 of two to three a month.

20 Q So at those various times that Mr.
21 Castillo was on parole and under your supervision, you
22 would actually be in the home of Joe and Barbara and Billy
23 Castillo two, three times a month?

24 A At least, yes.

25 Q Do you at this time have specific

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1 recollections of having visited their home and know where
2 it was and remember some of your interaction?

3 A Some, somewhat vague. It was about 10
4 years ago.

5 Q Okay.

6 Do you recall generally where the home was?

7 A I believe in the Charleston Heights
8 area.

9 Q And do you remember interacting with
10 Barbara Castillo?

11 A Yes, I do.

12 Q Would you be able to describe the
13 relationship between Barbara Castillo and William Castillo
14 as you perceived it?

15 A I think that his mother was somewhat
16 afraid of him because she didn't know what he would do
17 next. She kind of delegated a lot of duties as to
18 parenting to his stepfather. She was very concerned about
19 his behaviors. Unlike a lot of parents, she never really
20 wanted to give up on him. She always wanted to find
21 something to do to help him.

22 Q So, as a mother, despite the difficulty
23 she was having with him, she continued to try to do the
24 best she could with him in your opinion?

25 A I believe so.

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1 Q Did she either at your suggestion or
2 under the order of the court, personally involve herself in
3 counseling to try to improve the situation?

4 A I am aware that when William was in a
5 program at CBS, that the parents were involved in
6 counseling.

7 Q How about Joseph Castillo, the adoptive
8 father, what was his relationship with William, if you
9 recall?

10 A I would say it was somewhat strained,
11 although he tried very hard to get William involved in
12 different kind of activities such as wrestling, tennis,
13 baseball. He would take him to those activities and really
14 tried to be a good father.

15 Q He tried to do the best he could to be
16 a father to William Castillo even though he was an adopted
17 child?

18 A That is correct.

19 Q Are you familiar whether Joe Castillo
20 also participated in counseling during the course of the
21 off again, on again relationship with Billy?

22 A Yes, that's true.

23 Q Did Mr. Castillo himself involve
24 himself in youth athletic programs along with Billy?

25 A I'm not positive about that. I believe

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1 he wanted to coach and do some of those kinds of things
2 with Billy.

3 Q And where did Mr. Castillo work?

4 A I can't recall totally. It was at one
5 of the hotels on the Strip I believe.

6 Q Do you recall his position?

7 A I can't recall his position.

8 Q Okay.

9 Do you know whether or not he had a good
10 job, a decent income paying job?

11 A Yes, it was a good job, decent income
12 paying job. The house was very well furnished, very nice.

13 Q At the house, did they have age
14 appropriate activities available to William when you went
15 to visit him and checkout the circumstances?

16 A Yeah, there were games and different
17 kinds of activities for Billy to do.

18 Q When you went to do these several times
19 a month or two or three times a month house visits, were
20 there circumstances of the home and the parents and so on
21 satisfactory in terms of physical layout, physical plan, a
22 parent interaction on their part?

23 A I believe so.

24 Q Did you ever have to bring to the
25 attention of the Court any problems of theirs that you

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1 thought were contributing to Billy's delinquent behavior?

2 A No.

3 Q Now, in reviewing the records of the
4 juvenile involvement, the delinquent involvement of Billy
5 Castillo and we've picked out a portion of those records to
6 introduce here in evidence, do those records, as well as
7 your recollection, paint a picture of the dynamics of the
8 family of Billy Castillo?

9 A Yes, I believe they do.

10 Q And after reviewing those records, is
11 it your opinion that they fairly and accurately do so in
12 that the records, either before or after during your
13 tenure, are consistent with your observations?

14 A Yes, they are.

15 Q Now, in the course of the preparation
16 of records, preparation of reports, counseling, those kinds
17 of things, is it generally the case that a youth that is
18 involved in the juvenile services as long as Mr. Castillo
19 was, which was over a decade, would come in contact with
20 many different service providers, you know, probation
21 officers and counselors and teachers and those kinds of
22 things?

23 A Yes, they would.

24 Q And in reviewing the records, that was
25 the case, was it not, with Mr. Castillo?

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1 A Yes, it is.

2 Q You have been over two decades now with
3 youth corrections. You were personally familiar, were you
4 not, with virtually all the people who had written reports
5 or done investigations regarding William?

6 A I was familiar with most of them.

7 Q Some of them worked for you, is that
8 correct, at times?

9 A Worked with me at the time.

10 Q Now, during the period that William was
11 in the youth correction system, he was more often than once
12 given psychiatric testing, was he not?

13 A Yes, that's correct.

14 Q And do you recall either personally or
15 from your review of the records, what the professionals
16 determined with regard to his -- whether he had psychiatric
17 abnormalities or any of those kind of problems?

18 A It's in my recollection and from
19 looking at the records, there was no psychosis or mental
20 health issues found.

21 Q Insofar as psychological condition, he
22 was generally consistently determined to be normal; is that
23 not true?

24 A Normal, but delinquent.

25 Q Was he also tested for intelligence?

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1 A Yes, he was.

2 Q And what was the result of that testing
3 that occurred on several occasions?

4 A I don't know the IQ points, but I know
5 that he was tested as being high.

6 Q He was average or above average
7 intellect?

8 A Yeah.

9 Q So there isn't any intellectual
10 dysfunctioning on the part of William as far as
11 intelligence is concerned, at least per the testing that
12 was done in all those years he was in juvenile corrections;
13 is that correct?

14 A That's my understanding.

15 Q I'm going to hand to you selected
16 documents from his corrections history in the youth
17 corrections field here in Las Vegas, Clark County, Nevada.
18 These were just some that we pulled out and you and I had a
19 chance to go through together, did we not?

20 A Yes.

21 Q And I want to tell you and the jury
22 that I'm going to move to admit these so that they will be
23 available and I'm not going through every bit of every
24 document, but I would like to go through them, lay the
25 foundation for their admission, and ask that some portions

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1 be read into the record at this time.

2 Are you with me?

3 A That's fine.

4 Q All right, let's pick up the first
5 document that is numbered as 107. Can you look at that
6 apparent three page document and tell me if you recognize
7 what it is in general?

8 A Yes, this is a printout from the
9 computer at Clark County Juvenile Court.

10 Q And it is a printout in reference to
11 whom?

12 A To William Castillo.

13 Q And does this, basically, reflect the
14 documented interaction of William Castillo with Juvenile
15 Court Services from the first time he went in there until
16 he was out of the system?

17 A This would reflect each time he
18 received a citation or was actually booked at juvenile
19 court.

20 Q And/or if he were convicted or sent off
21 to Elko, it's put in the computer, correct?

22 A Yes. It would indicate what happened
23 with the charges.

24 Q What we would, as adults, commonly call
25 as rap sheets?

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1 A Correct.

2 Q And does this, as far as you are able
3 to determine, accurately reflect the interaction of William
4 Castillo with Juvenile Court Services?

5 A Yes.

6 MR. BELL: Move to admit 107.

7 MR. SCHIECK: We have seen the document,
8 your Honor, and have no objection.

9 THE COURT: Same will be received in
10 evidence.

11 MR. BELL: Thank you.

12 Q Calling your attention to the earliest
13 interaction of William Castillo, starting from the back and
14 working towards the front, would you just go through that
15 kind of date by date and tell us what date it was, how old
16 William was, and what at least is documented that occurred
17 that he was charged with as a runaway or convicted of grand
18 larceny and so on, without highlighting them, and then we
19 will go through each of the specific instances.

20 A Each of them?

21 Q Yeah, it is worth going through the
22 first time he was there.

23 A First document I have is a
24 dispositional report dated July 29th, 1982.

25 Q No, I'm sorry. I want to go through

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1 this, 107.

2 A Okay.

3 Q Starting with February 1981 and working
4 back up until the time he was certified as an adult and
5 read, basically, the document's history of him with
6 Juvenile Court Services, the date he was involved, you can
7 tell how old he is, and what happened, he was arrested for
8 such and such charge or he was convicted of such and such
9 charge.

10 A On February 18th, 1981, he was brought
11 to the Clark County Juvenile Court for emotional
12 instability of a child; probably brought in by the parent.

13 Q He would have been eight at that time
14 if he was born in December '72?

15 A Yes.

16 Q Okay.

17 A And that was referred to another
18 agency.

19 The first time that it shows on the printout
20 that William was brought in for some type of delinquent
21 behavior is January 20th, 1982, when he was brought in for
22 a runaway. Again, that was counseled and closed.

23 Q That's what we talked about, sometimes
24 they are not formally charged, they are just counseled?

25 A The parent and child are brought in and

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1 spoken with a probation officer and they discuss the issue
2 and what needs to be done to rectify it.

3 Again, in April 26th, 1982, he was brought
4 in again for runaway and again that was handled
5 informally.

6 On May 12th, 1982, he was brought back to
7 Juvenile Court for emotional instability of child and that
8 went into a investigation. I do not know the outcome of
9 that investigation.

10 At the same time, he was also booked for
11 runaway.

12 He was again booked for runaway on May 20th,
13 1982. Again for runaway on May 30th, 1982 and again on
14 July 1st of 1982. Again for runaway on October 20th, 1982
15 and another runaway charge shows January 1st, 1983. He was
16 also booked at that time for attempted murder. That charge
17 was denied and one, two, three, four, five, six counts of
18 arson and one count of petty larceny.

19 On March 3rd, 1984, he was charged with a
20 threat to life. That charge was not filed. Destruction of
21 County property. That charge was also not filed and what
22 they call revoked RA, which means if a child is out living
23 someplace else and brought back on previous charges, they
24 would -- could be brought back on those charges.

25 Q So he is put back into custody of

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1 Juvenile Court Services?

2 A Yes.

3 THE COURT: Mr. Bell, how much longer do you
4 have on direct?

5 MR. BELL: I will be a long time on this
6 witness. If we can finish this document, it will be about
7 10 minutes, I suppose, or we can break now.

8 THE COURT: I was thinking why don't we go
9 ahead and break now.

10 MR. BELL: Yes, sir.

11 THE COURT: All right, ladies and gentlemen
12 of the jury, during the noon recess, I would remind you it
13 is your duty not to converse among yourselves or with
14 anyone else on any subject connected with this trial or to
15 read, watch, or listen to any report of or commentary on
16 this trial or any person connected with this trial by any
17 medium of information, including, without limitation,
18 newspapers, television, or radio, and you are not to form
19 or express an opinion on any subject connected with this
20 case until it is finally submitted to you.

21 We will be at ease while you depart the
22 confines of the courtroom. We will reconvene at 1:30 this
23 afternoon.

24 Anything further from the parties at this
25 time?

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1 All right, we are in recess.

2

3 (Off the record at 12:15 p.m.)

4

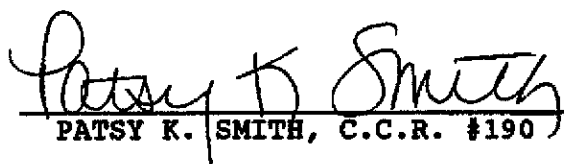
5 * * * * *

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7 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

8

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PATSY K. SMITH, C.C.R. #190

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EXHIBIT 168

EXHIBIT 168

WCASTILL0007-ORAM0006

SEP 20 1729 PM '96
SEP 20 4 28 PM '96

DISTRICT COURT

COUNTY OF CLARK, STATE OF NEVADA

ORIGINAL

THE STATE OF NEVADA,)
)
Plaintiff,) Case No. C133336
-vs-) Dept. No. VII
)
WILLIAM PATRICK CASTILLO,)
)
Defendant.)

REPORTER'S TRANSCRIPT

OF

PENALTY HEARING, VOLUME I, AFTERNOON SESSION

BEFORE THE HONORABLE A. WILLIAM MAUPIN, DISTRICT JUDGE

Thursday, September 19, 1996

2:30 P.M.

APPEARANCES:

For the State: STEWART BELL, ESQ.
District Attorney
&
MELVYN T. HARMON, ESQ.
Deputy District Attorney
&

For the Defendant: PETER LaPORTA, ESQ.
&
DAVID SCHIECK, ESQ.

Reported by: LISA BRENSKE, CCR No. 186

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WITNESS FOR THE STATE:

BRUCE KENNEDY

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LAS VEGAS, CLARK COUNTY; THURSDAY, SEPTEMBER 19, 1996

P R O C E E D I N G S

THE COURT: Good afternoon, ladies and gentlemen.

Counsel stipulate to the presence of the jury?

MR. BELL: Yes, Your Honor.

MR. LaPORTA: Yes, Your Honor.

MR. SCHIECK: Yes, Your Honor.

THE COURT: You may recommence the direct examination of this witness, Mr. Bell.

MR. BELL: Thank you.

DIRECT EXAMINATION (Resumed)

BY MR. BELL:

Q Mr. Kennedy, do you remember about where we were?

A Yes, I do.

Q Would you pick up again on Exhibit 107 and give us the date, the reason for the interaction with juvenile court services and the disposition of whatever you can tell about it just from the computer printout, please.

A I gave you the computer printout before the recess.

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1 Q And I gave it to the clerk like I'm supposed to
2 and she went to Wisconsin.

3 A I left off about October 1st, 1995 with the
4 vagrancy prowling charge.

5 Q Of '95?

6 A Excuse me. '85.

7 Q Please go ahead.

8 A That charge was denied.

9 On May 22nd, 1986 William was charged with
10 violation of parole. That charge was referred to parole
11 which means that the parole officer has a discretion on how
12 they'll deal with that charge.

13 On December 3rd, 1985 there's another violation
14 of parole charge. For that charge William was recommitted
15 to the Nevada Youth Training Center.

16 On June 27th, 1988 William was charged with
17 carrying a concealed weapon and that charge was included in
18 a revocation hearing. He was also charged with possession
19 of a dangerous weapon which is probably the same as the
20 carrying a concealed weapon.

21 On April 12th, 1989 there was a petty larceny
22 charge.

23 On April 27th, 1989 there's a curfew charge, a
24 carrying concealed weapons charge and a violation of parole
25 charge.

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1 On June 3rd, 1989 there's a curfew charge that
2 was denied.

3 On July 12th, 1989 there's a run-away charge.
4 On July 12th there's a grand larceny auto charge and a grand
5 larceny charge. For those charges he was again committed to
6 the Nevada Youth Training Center.

7 On April 7th, 1990 William was charged with
8 grand larceny motorcycle and again the record indicates that
9 he was recommitted for that charge. Along with an auto
10 burglary that happened on April 22nd, 1990.

11 On April 21st, 1990 there's a charge for no
12 driver's license for a moped.

13 August 5th, 1990 petty larceny charge which was
14 referred to parole. On August 5th, 1990 there is an escape
15 charge from the Nevada Youth Training Center.

16 On December 19th, 1990 there's attempted
17 burglary charge along with a possession of an unregistered
18 handgun, carrying concealed weapon and escape from Nevada
19 Youth Training Center. For the attempted burglary charge
20 William was certified to adult status and that's where his
21 juvenile record ends.

22 Q Thank you. Calling your attention to
23 Exhibit No. 108 please, can you tell us what that is
24 generally?

25 A This is a dispositional hearing report which in

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1 adult court would be similar to a sentencing hearing report.

2 Q This is a report that is given to a judge when
3 a judge has to make a decision about what to do with the
4 juvenile who has been found to be delinquent?

5 A That's correct.

6 Q And the copy that you have is that a certified
7 copy from Clark County Juvenile Court Services?

8 A As far as I can tell. There is a stamp on the
9 top, but it's hard to tell exactly where it was from.

10 Q Are these dispositional reports made and kept
11 in the ordinary course of business of Juvenile Court
12 Services?

13 A Yes, they are.

14 MR. BELL: Move to admit 108.

15 MR. SCHIECK: Could we have the date on the
16 document.

17 MR. BELL: July 29, 1982.

18 MR. SCHIECK: Thank you. I have no objection.

19 THE COURT: The same will be admitted.

20 (State's Exhibit No. 108 was
admitted into evidence.)

21 BY MR. BELL:

22 Q Dispositional report, to whom does it refer?

23 A It refers to William Patrick Castillo.

24 Q You know of your own knowledge that's the same
25 person as in court today?

1 A Yes, it is.

2 Q Can you tell at line 14 how old he is at the
3 time of this?

4 A The report indicates that he's a minor, nine
5 years of age.

6 Q Would you read to the ladies and gentlemen of
7 the jury commencing on page one down at the bottom line 31
8 over to page two, line 12, please.

9 A The sentence starts on line 30 should I begin
10 with on?

11 Q Yes.

12 A On July 1st, 1982 Billy set fire to the family
13 home which burnt to the ground. After setting fire to the
14 home Billy ran away from the scene without telling his
15 mother who was inside the house with his infant sister about
16 the fire.

17 How far down did you want me to go?

18 Q Down through line 12.

19 A Fortunately there was no injuries. However,
20 Mrs. Castillo did not know that Billy had left the scene and
21 entered the burning house to look for Billy. She later
22 treated -- she was later treated for smoke inhalation.
23 Billy went to a friend's house and played the rest of the
24 day. Billy was wandering the streets when police picked him
25 up. When the police took Billy home his father stated that

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1 Billy showed no remorse for his action. Also in his
2 possession was a knife that he had stolen from his father.

3 Q Over to page three and read please from line 18
4 through line 29 at that paragraph.

5 A Joe Castillo adopted Barbara's son Billy
6 several months ago. Extensive conversations with Mr.
7 Castillo led this officer to believe that Mr. Castillo has
8 made every effort to give Billy a good home and to be a good
9 father to him. Mr. Castillo has been involved with youth
10 baseball and other activities in order to spend more time
11 with Billy and help him socialize with other boys his age.
12 Billy was referred to Children's Behavioral Services' Oasis
13 program in March of 1981. The child had a long history of
14 pre-delinquent behavior. The parents sought services for
15 the child in Louisiana, Florida, Colorado, California, Lake
16 Tahoe and Las Vegas but with no success -- but had no
17 success.

18 Q Turn over to page four and read lines seven
19 through 13, that paragraph, please.

20 A Mr. and Mrs. Castillo have repeatedly attempted
21 to work with Billy on an out-patient basis without success.
22 At this time they both feel totally incapable of helping
23 their son overcome his behavioral problems.

24 Further, Mr. and Mrs. Castillo strongly feel
25 that they and their infant daughter are not safe in their
[REDACTED] 702

home while Billy is residing there.

Q Thank you. Now, turn to the first exhibit to the report which is a document entitled Clark County Juvenile Detention Services.

A Yes.

Q Behavioral report William Castillo dated June 14, 1982?

A Yes, I have that.

Q What is this and why is it attached to reports like this?

A While in detention if individuals have problems, the staff do memorandums to the supervising parole counselor, probation officer as to behavior that's exhibited in detention.

Q So this is a written report about Billy's behavior while he was in custody as a juvenile down at juvenile services?

A Yes, I would say that.

Q Would you read the three paragraphs to the ladies and gentlemen of the jury.

A During his stay in the boy's unit, William has needed constant supervision. He cannot leave sight of a counselor or an incident will most probably occur. William has had five incident reports placed in his file. Also many problems that were dealt with by verbal warning. Regarding

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1 incidents William will always profess innocence. Lying does
2 not seem wrong to him, even though there are witnesses, even
3 the reporting counselor. William will deny any wrongdoing.
4 William does not seem to believe that his actions have any
5 affect on people around him so he does what he pleases no
6 matter what the consequences.

7 In summary William in this officer's opinion
8 needs a very structured environment. He has to be
9 constantly under safe supervision. If not, problems almost
10 always occur.

11 Q Would you cut through about two-thirds of the
12 way through till we get to a 3-25-'81 in-take summary.

13 MR. BELL: Pete, do you mind if he reads off
14 mine?

15 MR. LaPORTA: No.

16 MR. SCHIECK: Which page?

17 MR. BELL: 3-25-'81 in-take summary.

18 Q Read the part with relevant social history.

19 A Child has been living with his mother and
20 stepfather for the past two years. Child presently attends
21 regular classroom. Child has a long history of
22 predelinquent behavior and the parent has sought services
23 for the child in Louisiana, Florida, Colorado, California,
24 Lake Tahoe and most recently Las Vegas. Child has been
25 classified as a juvenile delinquent in Los Angeles in

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2 1 Douglas County. Child first ran away from home at age
2 seven. He is reported to be very self-centered. The family
3 was living in Lake Tahoe — when the family was living in
4 Lake Tahoe the child was kicked off the school bus the first
5 day of school for knocking a girl off the bus and giving her
6 a concussion. Three days ago the child went out and broke a
7 window on a car and has a long history of destructive
8 behaviors.

3 9 At age five the child drowned his grandmother's
10 dog to get even with her and at age six killed several birds
11 by smashing the skulls with rocks.

12 Q And turn two more pages back June 9, 1981 about
13 a third of the way down the paragraph it says school, would
14 you read that portion.

15 A Billy's reported to fight a lot at school, not
16 to pay attention to work assigned and to do whatever he
17 wants. A school note has been attempted but Billy is
18 reported to be immune to punishment.

19 Q And the highlighted portions on the last page,
20 what does this last page contain?

21 A This would be a report from the Las Vegas
22 Mental Health Center.

23 Q And who did that report that was attached to
24 the presentence report?

25 A Barbara Hatcher, M.D., Medical Director.

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1 Q This would be a psychologist out of Las Vegas
2 Mental Health?

3 A I don't know that as a fact.

4 Q This is a document that is supportive of the
5 presentence report and it was a mental status exam and
6 report, is that it?

7 A Title is a psychiatric evaluation.

8 Q Would you read the highlighted portions,
9 please.

10 A Billy told us about burning the house as if it
11 were an accident and showed no emotional response. He said
12 he tried to call his mother but she was busy with a friend
13 so he left. He also related many situations of behavior not
14 acceptable to society, i.e., stealing knife from home,
15 cutting another child with glass, destroying a house in
16 California and sometimes hurting animals.

17 Q Go ahead.

18 A Under past history gained mostly from the
19 father relates many aggressive behaviors including those of
20 destroying a house in Los Angeles at age seven, abuse to
21 animals. He also related at the time the house was burning
22 there in Las Vegas Billy was out cutting tires of a
23 motorcycle in the neighborhood. Father was impressed with
24 Billy's lack of emotional response to his behavior. He
25 showed no feelings regarding his mother and sister being in

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1 the home. He's schizo. He should be locked up. The father
2 feels Billy is proud of these behaviors.

3 Q Now, the next document marked 109, would you
4 identify it generally, please.

5 A It is another dispositional hearing report.

6 Q Same kind of thing, a summary prepared for a
7 court who has to make a decision as to what to do with
8 William Castillo?

9 A Yes.

10 Q Does that relate to the same William Castillo
11 that's here in court today?

12 A Yes.

13 Q And the date of that report, please?

14 A January 25th, 1983.

15 MR. BELL: Move to admit 109.

16 MR. SCHIECK: I'm sorry. What was the date?

17 THE WITNESS: January 25th, 1983.

18 MR. SCHIECK: Thank you. No objection.

19 BY MR. BELL:

20 Q How old --

21 THE COURT: It will be received in evidence.

22 (State's Exhibit No. 109 was
admitted into evidence.)

23 BY MR. BELL:

24 Q How old was William at the time of this report?

25 A Age ten.

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1 Q Would you read for the ladies and gentlemen of
2 the jury page one line 16 where it says length of detainment
3 down through line 27.

4 A On January 1st, 1983 William was booked into
5 the detention -- in detention at juvenile court services.
6 He has remained there since and it says see Exhibit D. This
7 was after William and another boy ran away from Children's
8 Behavioral Services. Both boys were picked up by
9 authorities and booked after investigation proved they were
10 responsible for setting fires in Circus Circus Hotel and
11 Castillo in a separate fire at the Oz Chinese Restaurant.
12 William's attitude has been one of nonchalant, seeming
13 uncaring about his detainment or the seriousness of the
14 charges. He seems more concerned about impressing his peers
15 and attention with the possible commitment to Elko or Spring
16 Mountain Youth Camp. He feels it would be a lot of fun to
17 be there.

18 Q Would you go over about five pages to the
19 affidavit of arrest and read from number 12 through the
20 bottom, please.

21 A These O.R.'s found lighter fluid container at
22 800 Circus Circus Drive. These juveniles attempted to use
23 the lighter fluid to accelerate a fire at 800 Circus Circus
24 Drive. These O.R.'s learned that the two juveniles became
25 angry with two women at 800 Circus Circus Drive and wanted

3 1 to burn it down to repay them. These O.R.'s learned that
2 these juveniles had run away from CBS two days prior and had
3 been living in the bushes next to the pool at Circus Circus.
4 These O.R.'s went to where these juveniles were staying and
5 found four lighter fluid containers that were to be used to
6 set more fires. O.R.'s found three Bic-type lighters.
7 Design of these fires endangered numerous patrons of Circus
8 Circus Hotel due to the fact of using a flammable
9 accelerant. Extinguishment of these fires in their infancy
10 was fortunate.

11 Q O.R.'s means officers reporting; is that
12 correct?

13 A I believe that's correct.

14 Q So this was a report by a law enforcement
15 officer as to what they found?

16 A I believe it was probably somebody from the
17 fire department.

18 Q Now go to the fourth page from the back. Read
19 the opinion and conclusion in the report from the fire
20 department, please.

21 A It is the opinion of these O.R.'s that the fire
22 at Circus Circus Hotel and the Oz Chinese Restaurant were
23 incendiary in nature set by human hands. It is extremely
24 fortunate that these fires were found in their infancy. All
25 or any one of these fires could have accounted for a great

1 deal of life lost within the hotel or a great deal of fire
2 damage lost at the Oz Chinese Restaurant.

3 It is also learned by these O.R.'s that both
4 William Castillo and Nicholas Montoya have had a problem
5 setting fires in the past. Up until now no one has been
6 able to rectify the situation. It is of the opinion of this
7 O.R. that whatever steps necessary to help these juveniles
8 should be taken no matter at what expense. Both juveniles
9 are using arson as a vehicle for attention and a way to
10 strike back at other people. I believe this problem is
11 extremely dangerous and should be dealt with as quickly as
12 possible.

13 Q And there is just ahead of that a report from a
14 Dr. Kirby Reed. Who is Kirby Reed; do you know?

15 A No, I do not know.

16 Q The report indicates he's a neurologist. Would
17 that make sense to you?

18 A That's correct.

19 Q And he would have been asked to do a
20 neurological workup on William Castillo?

21 A Yes.

22 Q And that would then be a normal part of a
23 presentence report; is that correct?

24 A In a situation as this it would be, yes.

25 Q Would you read the highlighted portions of the
[REDACTED] [REDACTED]

4 1 report from the neurologist.

2 A The patient is presently in the fourth grade.
3 He has always had difficulty in school probably more related
4 to behavior than academics. From an early age he has
5 constantly been in trouble and difficult to discipline. He
6 has always had poor conscious and poor judgment. Over the
7 years in succession he drowned his grandmother's dog, he ran
8 away multiple times overnight, he has set several fires, in
9 fact endangering people's lives.

10 Under assessment it says this ten year old male
11 who demonstrates normal growth and early development
12 presently neurological examination reveals neither hard nor
13 soft findings. I do not feel that there is a neurological
14 basis for the patient's ongoing behaviorial difficulties. I
15 consider him to have a personality disorder. I feel that if
16 he does not — he does need to be in at least a 24 hour
17 residential placement for the safety not only of himself but
18 for the general public.

19 Q Are you familiar in your professional duties of
20 what a neurological deficit or neurological problem is?

21 A In a limited way, yes, for my own need.

22 Q What would your understanding be?

23 MR. SCHIECK: I am going to object. He is not
24 qualified to give an opinion as to that area.

25 THE COURT: Overruled.

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1 MR. BELL: Thank you.

2 THE WITNESS: It would mean that Billy wouldn't

3 be normal.

4 BY MR. BELL:

5 Q Call your attention to the next document 110,

6 what is that?

7 A This is a formal court review of a case plan.

8 Q What does that mean to the ladies and gentlemen

9 of the jury?

10 A It's again a formal hearing where a case worker

11 submits a plan to the judge for approval for treatment or

12 what is needed in that particular case.

13 Q Mr. Castillo is again going before the court

14 and the court needs some background information and

15 recommendation and this is embodied in writing by workers

16 such as yourself; is that correct?

17 A That's correct.

18 Q And what is the date of this?

19 A February 21st, 1984.

20 Q And it relates to the same William Patrick

21 Castillo that's here in court?

22 A Yes, it does.

23 MR. BELL: Move to admit 110.

24 MR. SCHIECK: No objection, Your Honor.

25 THE COURT: Same will be received.

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(State's Exhibit No. 110 was
admitted into evidence.)

BY MR. BELL:

Q How old is William at the time this report is
sent to the court?

A Reporting the case that William was age 11.

Q Would you turn to the second page and read
lines one through 17, please.

A William continues to reside at the youth
hospital since January 25th, 1983. Since his stay there he
has undergone numerous tests including formal psychological
testing, psychoeducational testing and psychiatric
interviews and the like. It says see Exhibit A. While no
evidence of mental disorder or thought disorder was
detected, William scored high in the area of delinquent
behavior and hostility.

William's former therapist Dr. Brian Young
reported to this worker the boy's total lack of cooperation
regarding any meaningful therapy. In short William's
behavior seems unchanged from his admission date of
January 25th, 1983.

Q Go onto the next paragraph down through line
17, please.

A Within the last review period William ran away
from the youth hospital a total of three times. The first
two run-aways were short in duration. He was found in the

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1 neighborhood nearby. On February 12th, 1984 this worker was
2 notified that William and two of his friends had run away
3 from the youth hospital. The person that they had accepted
4 a ride from was stopped by a highway patrol in Baker,
5 California.

6 Q Lines 21 through 25, please.

7 A On February 1st, 1984 William was booked at the
8 Clark County Juvenile Court Services on the charge of
9 battery against a school teacher Mr. Pat Mahoney of CBS.
10 The boy was transported back to the youth hospital by this
11 worker on that date. William reported that he had engaged
12 in these deviant behaviors in an attempt to be placed at
13 Spring Mountain Youth Camp.

14 Q He wanted to get to the youth camp and that's
15 his story for hitting the teacher?

16 A Yes.

17 Q Would you turn to the next page, please, and
18 read the four lines beginning at line eight it says
19 counseling.

20 A William has been exposed to intensive
21 counseling at the youth hospital but has chosen not to
22 participate. Mr. and Mrs. Castillo have been counseled as a
23 family and as a couple with the professionals at that
24 facility.

25 Q The first exhibit to the report entitled [REDACTED]

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1 Department of Human Resources down towards the bottom it
2 says formal psychological testing, would you read that
3 paragraph to the ladies and gentlemen of the jury, please.

4 A Billy was assessed using -- and I am not sure
5 how to say it -- the Quay-Peterson Behavior Checklist, a
6 Multiple Affect Checklist, MAACL, and the California
7 Personality Inventory CPI. No evidence of mental disorder
8 or thought disorder were evident, although on all three
9 tests Billy scored high in the area of delinquent behavior
10 and hostility. On the CPI his score on the delinquency
11 scale was at the maximum possible left.

12 Q And the next paragraph psychoeducational
13 assessment, please.

14 A Billy is above average intelligence with no
15 evidence of learning disabilities and is performing above
16 grade level. There is no evidence of any disturbance in
17 thought processes that would be based for his acting out in
18 the school setting or his refusal to be cooperative in the
19 classroom.

20 Q And the first sentence under number four
21 starting throughout?

22 A Throughout his stay at the youth hospital Billy
23 has exhibited a constant level of noncompliance and
24 unwillingness to accept responsibility for his actions.

25 Q Down at the bottom conclusions, would you read
[REDACTED]

5

1 that paragraph, please.

2 A There is no evidence to suggest that Billy has
3 a thought disorder, mental disturbance or is psychotic. He
4 is of above average intelligence and has no learning
5 disabilities that interfere with his understanding. Billy
6 is fully aware of what he is doing concerned only about what
7 he wants and unconcerned about what he has to do to get his
8 own way. He continues to refuse to talk about his
9 misbehavior and refuses to acknowledge or accept the
10 responsibility for any of his wrongdoing.

11 Q The next Exhibit 111 would you tell us what
12 that is, please.

13 A This is a petition that would be prepared from
14 the D.A.'s office and given to either special master referee
15 or the judge at juvenile court at a plea hearing.

16 Q It's a charging document in juvenile court like
17 an indictment would be in this court?

18 A Yes, I believe so.

19 Q And is this a document you've seen many like
20 it?

21 A Yes.

22 Q And it's certified from the juvenile court
23 authorities?

24 A Yes, it is.

25 MR. BELL: Move to admit 111.

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1 MR. SCHIECK: Can I have the date, please.

2 MR. BELL: The date is March 3rd, 1984.

3 MR. SCHIECK: Thank you. No objection.

4 THE COURT: Same will be received in evidence.

5 (State's Exhibit No. 111 was
admitted into evidence.)

6 BY MR. BELL:

7 Q How old was William at the time of this charge?

8 A Age 11.

9 Q Would you read the substance of the charge
10 starting with that subject minor.

11 A That subject minor on or about March 3rd, 1984
12 at and within the County of Clark, State of Nevada did then
13 and there willfully and unlawfully mingle a poison or other
14 harmless substance in food, drink or medicine intended or
15 prepared for the use of the human being, to wit: By placing
16 industrial detergent in a large vat of mashed potatoes being
17 prepared for use of persons at Clark County Juvenile Court
18 Services.

19 Q He put poison in the mashed potatoes, that's
20 the charge?

21 A That's the charge.

22 Q The next document, No. 112, what is that?

23 A This is a treatment plan that is prepared at
24 the Nevada Youth Training Center and then filed with the
25 court.

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1 Q And the signature of the author? Is that you?

2 A I am the one that filed the document with the
3 court; however, I'm not the writer of the actual document.

4 Q But you're familiar with this particular
5 document, are you not?

6 A Yes, I am.

7 Q Is this done in the ordinary course of
8 admission of youths to Nevada Youth Training Center?

9 A Yes, it is.

10 Q And does it relate to defendant William Patrick
11 Castillo?

12 A Yes, it does.

13 MR. BELL: Move to admit 112.

14 MR. SCHIECK: Can I have the date, please? May
15 I have the court's indulgence, please.

16 MR. BELL: It was actually filed May 22, 1984.
17 That's the one, David.

18 MR. SCHIECK: No objection.

19 THE COURT: Same will be received in evidence.

20 (State's Exhibit No. 112 was
admitted into evidence.)

21 BY MR. BELL:

22 Q How old was William at the time of this?

23 A Age 11.

24 Q And what did this document signify?

25 A This is the treatment plan at the Nevada Youth

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1 Training Center and what their course of action to deal with
2 Billy's behaviors and needs while in the center.

3 Q At age 11 he's now gone to Nevada Youth
4 Training Center?

5 A That's correct.

6 Q This is the highest level we have in terms of
7 punitive situses in the juvenile system; is that correct?

8 A Yes, it is.

9 Q Would you turn to the next page and read sort
10 of in the middle it says Billy has had extensive -- read
11 those two paragraphs.

12 A Billy has had extensive testing done to
13 determine the reason for his delinquent behavior. It was
14 concluded that he has no thought disorder or mental
15 disturbance. Billy is just unwilling to comply with
16 accepted behaviors and is unwilling to accept
17 responsibilities for his actions. His only concern seems to
18 be self-gratification and shifting blame when confronted
19 about his negative behavior. He will not talk about nor
20 acknowledge any of his wrongdoings. He is fully aware of
21 what he is doing and wholeheartedly resists any modification
22 to his behavior by others. Continue?

23 Q Yes, please.

24 A Billy has had numerous attempts at run-away and
25 a few successes. He is accused of attempt to burn down the

6

1 Circus Circus Casino and attempted murder. His stay at the
2 NYTC -- which stands for Nevada Youth Training Center -- is
3 going to be quite a challenge both for Billy and the staff.

4 Q Now, the last paragraph on that page starting
5 with Billy is just four lines, please.

6 A Billy is a pleasant young man with a definite
7 view of his own, distorted though it may be. He appears to
8 have no remorse for his behaviors but seems quite upset over
9 the inconvenience of being locked up and having his freedom
10 curtailed.

11 Q Go over two pages where we're talking about a
12 behaviorial checklist. Number four brags about, would you
13 read that one.

14 A Brags about or delights in describing
15 anti-social unlawful delinquents or criminal exploits.


16 Q And down to nonconformity, those three lines.

17 A Billy has a tendency not to comply with
18 accepted social conveniences, laws or established rules. He
19 is prone to lie, steal or otherwise disregard social or
20 legal standards.

21 Q The next Exhibit 113 what is that?

22 A This is a court document given to the judge at
23 a time of a court review.

24 Q Is it a typical document used in Juvenile Court
25 Services' business?



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6 1 A Yes, it is.

2 Q And the date on it is December 19th, 1985?

3 A That's correct.

4 Q Does it relate to William Patrick Castillo
5 sitting in court here?

6 A Yes.

7 MR. BELL: Move to admit No. 113.

8 MR. SCHIECK: That was December 19th, '85?

9 MR. BELL: Correct.

10 MR. SCHIECK: No objection.

11 THE COURT: So admitted.

12 (State's Exhibit No. 113 was
admitted into evidence.)

13 BY MR. BELL:


14 Q How old is Billy at this time?

15 A Age 12.

16 Q Would you start on the first line on the bottom
17 of page one and read over to the fourth line of page two.

18 A On December 2nd, 1985 William ran away from
19 home after he had left for school. Later that afternoon
20 William jumped a freight train headed towards Utah. After
21 the train arrived in Medford, Utah William realized he was
22 freezing to death. At that time William got off the train
23 and turned himself into authorities.

24 Q And skip down to line 18 and read through 27,
25 please, in the school down through occasions.



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7 1 A In school William is watched very closely.
2 While at school during this period of parole he has been
3 caught twice in questionable situations, the first being he
4 took a bottle of type of acid to school. On another
5 occasion William was caught with matches in the school. The
6 principal at Garside Junior High School has worked closely
7 with William, his father and the counselor.

8 Q Two more sentences, please.

9 A Even with close monitoring William when the
10 whim seems to hit him will take off. During this last
11 period of parole this has happened on two occasions.

12 Q Turn to the next page where it says summary and
13 read from there over onto page four at line 13.

14 A This counselor is of the opinion that William
15 Castillo, although only 12 years of age, is a very
16 sophisticated young man. He has learned that due to his age
17 and his charm that he can make people feel sorry for him.
18 It is this counselor's opinion that although William has had
19 an abusive upbringing for the first few years, his present
20 home situation and continued delinquent behaviors are of his
21 own making. William knows the difference between right and
22 wrong, however tends to live an immoral lifestyle. It seems
23 that William feels that the world revolves around him and
24 his needs must be met before anyone else's.

25 The authorities in St. Louis -- the authorities

[REDACTED]

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7
1 in St. Louis, counselor chief of Nevada Parole Bureau are
2 concerned about his welfare and the welfare of the
3 community. While in St. Louis the authorities tried to find
4 a proper placement for William. Due to William's
5 inconsistent behavior in their programs no placement would
6 accept him.

7 In the State of Nevada the Youth Resources
8 Panel sees the prognosis for William as very poor. Out of
9 state programs have been looked into but due to their
10 expense and due to the poor prognosis the State is unwilling
11 to provide specialized care for William. Due to William's
12 arson-type behavior this closed the doors to many programs.

13 This counselor is of the opinion that the
14 Castillo family offered William a decent home with many
15 opportunities to succeed. William feels that his sister
16 receives far more attention than he does and therefore he
17 feels that living at home is unfair.

18 Mr. Castillo has tried to get William involved
19 in different activities such as wrestling and tennis.
20 However, William feels that his father does not do enough.
21 Mr. Castillo would do more if William's behavior warranted
22 it.

23 Q Turn over a couple pages to a report from St.
24 Louis, Missouri. This is a report from the authorities in
25 St. Louis when they sent him back here? [REDACTED]

7

1 A Yes, it is. It's hard to read the first part
2 of it, the sentence has some kind of a date that says 1985
3 William had his first run-in with the law in St. Louis. He
4 was — and I cannot read it — glass door at a neighbor's
5 home. On June 4th, 1985 William was something with
6 burglary, a felony, in that he stole a bicycle valued over a
7 hundred fifty dollars. At that time William was removed
8 from his grandmother's home and placed in a detention
9 facility.

10 Q Next Exhibit No. 114, would you identify that,
11 please.

12 A This is another treatment plan from the Nevada
13 Youth Training Center.

14 Q Is it a document kept in the regular course of
15 business of the Juvenile Court Services?

16 A Yes.

17 Q The date on it was filed November 29, '86 the
18 date it was filed.

19 A Yes, I believe that's correct.

20 MR. BELL: Move to admit 114.

21 MR. SCHIECK: No objection, Your Honor.

22 THE COURT: It will be received.

(State's Exhibit No. 114 was
admitted into evidence.)

24 BY MR. BELL:

25 Q William was how old by the time you get to this

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1 report?

2 A He is now 13 years old.

3 Q Would you turn over to the next page, the
4 second page, and read the part that says prior services
5 include. Is this a list of all the things that juvenile has
6 tried to deal with Mr. Castillo?

7 A Yes, it is.

8 Q Would you read that list, please.

9 A Parole, formal probation, mental health
10 counseling, Children's Behavioral Services, foster home
11 placement, Spring Mountain Youth Camp, Third Cottage
12 program.


13 Q Top of the next page the three lines beginning
14 with Billy's attitude?

15 A Billy attitude in general to probation slash
16 parole authorities and life are poor. He will not abide by
17 parental authority. He disregards all efforts to assist him
18 in making changes.

19 Q And turn one more page where it says
20 intellectual functioning, would you read the first sentence
21 there, please.

22 A Billy's scores on the wide range intelligence
23 and personality test indicate his current level of
24 intelligent functioning to be in the high average range.

25 Q Next Exhibit 115, what is that?



8

1 A Another treatment plan from the Nevada Youth
2 Treatment Center.

3 Q And again this is a document kept in the
4 ordinary course of business?

5 A Yes, it is.

6 Q It was filed September 27, 1988?

7 A Yes.

8 MR. BELL: Move its admission.

9 MR. SCHIECK: I am sorry. I missed the date.

10 MR. BELL: September 27, 1988.

11 MR. SCHIECK: Thank you. No objection.

12 BY MR. BELL:

13 Q William is hold now?

14 THE COURT: It's admitted.

15 THE WITNESS: Age 15.

(State's Exhibit No. 115 was
admitted into evidence.)

17 BY MR. BELL:

18 Q And how many times has he been committed to
19 parole and revoked through Nevada Youth Treatment Center by
20 this age?

21 A According to this three times.

22 Q Turn over to the third page and read the top
23 paragraph which starts Billy's overall adjustment.

24 A Billy overall adjustment in the community is
25 poor. He is definitely a problem to his community. Billy's

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1 attitude in general to probation and parole authorities and
2 life are poor at best. He will not abide by parental
3 authority and he disregards all efforts to assist him in
4 making changes.

5 Q And down below in the first paragraph of the
6 interview fourth line one sentence that says he states the
7 problems. Would this be accurate he states that the
8 problems began when he was caught in school with a butterfly
9 knife?

10 A Yes.

11 Q And the last sentence of the next paragraph
12 starting with Billy does admit.

13 A The last sentence. Billy does admit to the use
14 of marijuana, speed, crack, cocaine and alcohol.

15 Q This is at age 15?

16 A That's correct.

17 Q Let's have the next Exhibit No. 116, what is
18 this?

19 A This is another treatment plan from the Nevada
20 Youth Training Center.

21 Q And the date it was filed was September 7,
22 1989?

23 A That's correct.

24 Q And it relates to the same William Castillo?

25 A That's correct.

1 MR. BELL: Move its admission.

2 MR. SCHIECK: No objection.

3 (State's Exhibit No. 116 was
4 admitted into evidence.)

5 BY MR. BELL:

6 Q How old is William now?

7 A Age 17.

8 Q Is it correct that when we go down significant
9 dates 2-21-84 committed, 8-13-84 parolled, 5-29-86 revoked,
10 5-26-87 parolled, 6-30-88 revoked, 2-28-89 parolled, 7-21-89
11 revoked, 7-31-89 received again at NYTC?

12 A That's correct.

13 Q Turn to skip two pages, please, it's the page
14 that begins with the word run-away. In the second paragraph
15 halfway through would you read commencing with the word
16 although William through the end of that paragraph.

17 A Although William is very bright he remains a C
18 and D student. His favorite subject is math where he makes
19 A's and B's. There are always numerous remarks regarding
20 his negative attitude in school.

21 Q And the next two sentences, please, or three.

22 A Billy naturally gravitates towards a
23 negative — William naturally gravitates towards negative
24 peers. He is frequently involved in fights. This indicates
25 that his peer relationship is very poor.

Q The next page second paragraph beginning with

1 William did work in the community, read that paragraph.

2 A William did work in the community. He was
3 working at Burger King and was doing well until such time as
4 he started to have problems with his stepfather. He then
5 met up with another parolee from NYTC and two of them stole
6 some money, a couple of guns, an automobile and left the Las
7 Vegas community and went to Los Angeles.

8 Q The next Exhibit No. 117, what is that?

9 A This is another petition which we prepared for
10 the D.A.'s office as a charge.

11 Q And the date of that filing was
12 December 24, 1990?

13 A Yes.

14 Q This is under number 15 at the bottom in the
15 left hand column?

16 A I'm looking at position number 17. I found 15.

17 Q Is that correct?

18 A Yes.

19 Q Is this a document kept in the ordinary course
20 of Juvenile Court Services recordkeeping?

21 A Yes.

22 MR. BELL: Move to admit 15.

23 MR. SCHIECK: You mean 115?

24 MR. BELL: Yes, petition 15.

25 THE WITNESS: I have a question on that my 117

1 is petition number 17.

2 BY MR. BELL:

3 Q You have 117 and 118 both?

4 A Yes.

5 Q These are both petitions?

6 A Yes.

7 Q They both relate to William Castillo; is that
8 correct?

9 A Yes, they do.

10 MR. BELL: Move their admission.

11 MR. SCHIECK: Just so I'm clear, Your Honor,
12 may I ask the witness a question or two?

13 THE COURT: On voir dire?

14 MR. SCHIECK: Yes.

15

16 VOIR DIRE EXAMINATION

17 BY MR. SCHIECK:

18 Q Specifically petition number 15 is for the
19 escape?

20 A Yes.

21 Q And which exhibit number do you show it to be?

22 A 118.

23 Q And petition number 17 which is for attempted
24 burglary?

25 A 117.

730.

1 MR. SCHIECK: Thank you very much. No further
2 questions and no objection.

3 THE COURT: Same will be received in evidence.

4 (State's Exhibit Nos. 117 & 118
5 were admitted into evidence.)

6 DIRECT EXAMINATION (Resumed)

7 BY MR. BELL:

8 Q So at age 17 this is when he's escaped from
9 NYTC; is that correct?

10 A Yes.

11 Q And on December 19, 1990 attempt burglary; is
12 that correct?

13 A That's correct.

14 Q Now, the next Exhibit No. 119, what is that?

15 A This is a certification hearing report.

16 Q And does it relate as you know to Exhibits 117
17 and 118, the escape and the attempt burglary?

18 A Yes, it does.

19 Q What is a certification report for the ladies
20 and gentlemen of the jury?

21 A When a juvenile has committed sufficient number
22 of crimes, felonies in nature, that the court no longer
23 feels that the Juveniles Services can provide proper
24 controls over that individual, they petition the court for a
25 certification hearing to find -- for the judge to find

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1 whether or not the individual should be certified to adult
2 status and stand trial as an adult rather than a juvenile.

3 Q So the judge has the authority even though
4 William was 17 to decide that he has to face the
5 consequences in adult court?

6 A That's correct.

7 Q And this is part of the process, that paperwork
8 in that process?

9 A Yes.

10 Q Again this is an official record of the
11 juvenile court that relates to William Castillo seated over
12 here?

13 A Yes.

14 MR. BELL: Move the admission of 119.

15 MR. SCHIECK: No objection.


16 THE COURT: It will be admitted.

17 (State's Exhibit No. 119 was
admitted into evidence.)

18 BY MR. BELL:

19 Q Page two, line six and read to line 22 where it
20 says the weapon was loaded.

21 A Both offenses for which William has been
22 charged are felonious in nature and constitute a serious
23 criminal behavior which puts the community at risk. On
24 October 21st, 1990 at 1:10 a.m. William ran away from the
25 Nevada Youth Training Center, successfully escaping the




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1 facility. He alluded apprehension until December 19th, 1990
2 when he was arrested and charged with attempted burglary.
3 The burglary occurred at approximately 1:15 in the
4 afternoon. According to the police report William and
5 another suspect knocked at a door at the residence and then
6 kicked the door in when they got no response. An occupant
7 was in the house at the time of the attempted burglary. The
8 resident of the house had heard the doorbell ring and the
9 door being kicked. She picked up a can of Mace and
10 confronted the subjects with the Mace after the door had
11 flown open. According to the police reports both suspects
12 fled the scene at that time driving off in a car.

13 Daytime burglaries are most serious. In this
14 instance the victim was at home and could have been
15 seriously injured. It should be noted that when William was
16 arrested he had a handgun concealed in the wasteband of his
17 pants. The weapon was loaded.

18 Q Turn over to page four right at the top
19 beginning William's parents, will you read down through line
20 eight.

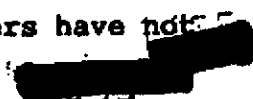
21 A William's parents have tried for years to
22 provide William with a proper home and controls. However,
23 William has rejected any and all efforts by his parents to
24 assist him. This counselor is of the opinion that William
25 expects his parents to give him what he wants without



1 regards to their own feelings or concerns. William wants no
2 help from authority figures where William would have to give
3 something in return. William always wants to wheel and deal
4 and refuses to take any responsibilities for his actions.

5 Q And go down to line 18, community protection,
6 would you read that all the way through line five of the
7 next page, please.

8 A William Castillo continues to escalate in his
9 criminal behavior. The community has a right to be
10 protected. William is presently charged with a daytime
11 attempted burglary. The victim was present in the home at
12 the time William and a companion kicked in the door. It
13 also should be noted that at the time of William's arrest he
14 had in his possession a handgun which was loaded. There is
15 clear and convincing evidence that the public's safety and
16 welfare requires that William Castillo be transferred to the
17 adult justice system. The juvenile system is unable to
18 provide adequate protection to the community from this young
19 man. If William is ever to get adequate control over his
20 life and not be a danger to society, the most severe
21 consequences should be provided him, those being through the
22 adult justice system. After five stays at the Nevada Youth
23 Training Center it is obvious that the Juvenile Services
24 System is ineffective in controlling William Castillo. His
25 behaviors have worsened and his threats to others have not



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1 diminished in any way.

2 Q Are you yourself the author of this report?

3 A Yes, I am.

4 Q And finally the last exhibit, is it 120?

5 A Yes.

6 Q What is that?

7 A This is a certification order. This is the
8 actual order that the judge signs at the time of
9 certification if or not the person is certified. Most of
10 the writing from this comes directly from the certification
11 hearing report.

12 Q This is an order of court that a judge actually
13 enters?

14 A That's correct.

15 Q And this is an official juvenile court record
16 certified copy?

17 A That's correct.

18 Q The judge at that time was District Court Judge
19 Miriam Shearing; is that correct?

20 A I believe, yes, that's her name.

21 Q And it relates to William Castillo; is that
22 correct?

23 A Yes, it does.

24 MR. BELL: Move to admit 120.

25 MR. SCHIECK: No objection.

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THE COURT: It's admitted.

(State's Exhibit No. 120 was
admitted into evidence.)

BY MR. BELL:

Q Turn over to page two and read the first lines
two through six, please.

A Fires at Circus Circus Hotel, while on parole
status William continued to have problems. He was arrested
on April 11th, 1985 for violation of parole in that he
continued to run away, failed to maintain school program and
destroyed private property.


On December 3rd, 1985 William was again found
in violation of his parole by the fact that he was involved
in a burglary when he was placed in St. Louis.

In April of 1989 William was charged with
violation of parole in that he again was not following the
laws and had in his possession a concealed weapon, switch
blade knife. Continue?

Q Yes, please.

A On July 12th, 1989 William was arrested and
admitted to grand larceny and grand larceny auto.

On April 7th, 1990 William was arrested for
grand larceny motorcycle. He was found to have committed
these offenses. To date William has had 27 referrels to the
juvenile court.



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1 Q Did you say 27?

2 A 27.

3 Q Thank you. Read the next paragraph.


4 A William definitely -- William is definitely
5 escalating both in persistence and seriousness of the past
6 adjudicated offenses. He finds himself once again with
7 escape and attempted burglary where the burglary happened
8 during the daytime hours and when arrested was found to have
9 a semiautomatic weapon concealed.

10 Q Skip down to line 21 William's acts and read
11 through 27, please.

12 A William presently is 18 years of age having
13 turned 18 on December 28th, 1990. William's acts and his
14 attitude are those of an adult criminal offender in that
15 William wants no authority over him. William prides himself
16 on the fact that he can live on his own without parental
17 controls. William's parents are unable to control any of
18 his behaviors. William's parents have tried for years to
19 provide William with a proper home and controls; however,
20 William has rejected any and all efforts by his parents to
21 assist him.

22 Q And finally on the next page lines two through
23 four.

24 A William wants no help from authority figures or
25 William would have to give something in return. William



1 always wants to wheel and deal and refuses to take any
2 responsibility for his actions.

3 Q Now, you've been involved in Juvenile Court
4 Services for a long time. Is it fair to say that during the
5 decade or a little more that William Castillo was in
6 Juvenile Court Services that he was the beneficiary of
7 virtually all of the options that the Juvenile Court
8 Services has to offer?

9 A Yes.

10 Q Are you aware from your review of the records
11 that he received a high school education while at NYTC and
12 graduated?

13 A Yes.

14 Q He also got training in a number of other
15 vocational things such as welding and computer technology,
16 did he not?

17 A I don't know about welding, not positive about
18 the computer technology.

19 Q Now, in Juvenile Court Services is it fair to
20 say that there are tens of thousands of referrals annually
21 these days?

22 A Yes.

23 Q And so in your term there have been hundreds of
24 thousands of referrals?

25 A To juvenile court?



1 Q Yes.

2 A Yes.

3 Q Is that correct?

4 A Yes.

5 Q And I know that you're certainly not familiar
6 with all of them, but based upon your experience 27
7 referrals to Juvenile Court Services, how would that stack
8 up amongst the hundreds of thousands of kids that go through
9 that system during your tenure?

10 A That would be on the very high end.

11 Q About 17 petitions.

12 A That would be on the high end.

13 Q Five commitments to NYTC?

14 A That's on the extreme high end.

15 Q Almost unheard of; is that not true?

16 A That's correct.

17 Q How about commitment at age 11 to NYTC in terms
18 of age?

19 A They no longer commit kids that young by Nevada
20 state statute any longer. The youngest boy that can be
21 committed to Elko now is 12.

22 Q When he was committed at age 11 would that have
23 been one of the youngest persons committed to NYTC?

24 A Maybe over the years one or two younger.

25 Q Out of hundreds and hundreds and hundreds?

1 A Yes.

2 Q Now, escape from NYTC, I assume that
3 occasionally happens; is that correct?

4 A Occasionally.

5 Q Is it commonplace or highly unusual for
6 somebody to be sophisticated enough to escape and stay out
7 in the street for over two months?

8 A Most juveniles that run from the facility are
9 caught within a very short period of time. That would be
10 rare -- a few kids, not many.

11 Q But it would be highly unusual, correct?

12 A Unusual, yes.

13 Q How about being able to get from Elko to
14 Las Vegas in the course of an escape, would that likewise be
15 unusual?

16 A That would be highly unusual and take some
17 sophistication.

18 Q Now, you're familiar with the Castillo family
19 from your work with them through the years?

20 A Yes.

21 Q William has a younger sister who was raised in
22 that family, has he not?

23 A Yes.

24 Q She would be a teenager these days?

25 A Yes.

1 Q Has she ever been referred to Juvenile Court
2 Services?

3 A Not to my knowledge.

4 MR. BELL: Nothing further, Judge. Thanks.

5 THE COURT: Cross.

6 MR. SCHIECK: Thank you, Your Honor.

7
8 CROSS-EXAMINATION

9 BY MR. SCHIECK:

10 Q Do you still have all the exhibits in front of
11 you?

12 A Yes.

13 Q Let's just start by talking about NYTC. I am
14 just going to refer to it as Elko; is that okay?

15 A That's fine.

16 Q Is it commonly called Elko in the trade?

17 A Yes.

18 Q What type of facility is Elko?

19 A It's a staff secure juvenile correctional
20 facility.

21 Q Well, are there bars on the windows and doors?

22 A No.

23 Q Are the children that are sent to Elko put in
24 individual cells?

25 A Some cottages have individual rooms and some
[REDACTED]

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1 are open bay dorms.

2 Q Is there a difference as to whether or not
3 you're in a dorm setting as opposed to an individual room?

4 A No. Just depends which cottage you happen to
5 be assigned. They assign cottages due to age, size,
6 maturity level and just depends what dorm you're assigned
7 whether or not you have a dorm that has a room or not.

8 Q Does the nature of your referral have to do
9 with which cottage you're referred to?

10 A Normally not.

11 Q What age group when William started going to
12 Elko was sent to Elko? I mean, you've told us now that the
13 legislature says the children under 12 are not to be sent to
14 Elko. What was it when William was sent to Elko?

15 A I believe the age minimum was eight years of
16 age.


17 Q And the upper?

18 A 18. A person can stay after they're 18th
19 birthday if they happen to be incarcerated or placed there
20 at that time.

21 Q And this is a facility where -- I mean this is
22 the last stop on the juvenile chain of events; is that true?

23 A That's correct.

24 Q So for let's say a 17 year old to get to Elko
25 he would have had to already been through some of the



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1 previous steps or committed an offense bad enough to go
2 directly to Elko?

3 A I believe -- yes.

4 Q You just don't get to Elko as a slap on the
5 hand from the juvenile court?

6 A No.

7 Q Usually the worst of the juvenile offenders?

8 A Yes.

9 Q Except those that are certified as adults?

10 A Yes.

11 Q And at the point in time when William started
12 going to Elko there were children that were eight years old
13 actually being sent to that facility that were housed with
14 individuals up to 18 years of age?

15 A Younger kids are not housed with the older
16 kids.

17 Q William was 11 when he first went?

18 A Yes, I believe so.

19 Q Do you know where he was housed?

20 A I'm not positive. I don't remember that.

21 Q Do you know the age of the other offenders he
22 was housed with?

23 A Just knowing the population probably be 12, 13
24 year olds.

25 Q Older children if he was 11?



743.

12

1 A If he was 11 there might have been one maybe
2 his age but probably very close to his age.

3 Q And then he went to Elko five different times;
4 is that correct?

5 A Yes.

6 Q When he went back the second time was he again
7 placed with a group of individuals that would include older
8 children?

9 A I do not know which cottages he was placed in
10 to answer your question adequately.

11 Q You were initially at Elko and then you came
12 down to Las Vegas to work in parole; is that correct?

13 A That's correct.

14 Q When was it that you were last working in Elko?

15 A In 1979.

16 Q So William's first referral up there was in
17 1984?

18 A I'd have to go back and look. I believe that's
19 correct.

20 Q But it was after you had already left from
21 Elko?

22 A That's correct.

23 Q So you didn't actually supervise William at any
24 time while he was in Elko?

25 A No, I did not.



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1 Q Did you ever know an individual by the name of
2 Jerry Herring spelled, H-e-r-r-i-n-g, that worked at Elko?

3 A Yes, I do.

4 Q What is his position?

5 A He's a classification counselor at the Nevada
6 Youth Training Center.

7 Q At Elko?

8 A At Elko.

9 Q Now, you talked about varying degrees of
10 treatment of juveniles including the county probation, Third
11 Cottage, Spring Mountain Youth Camp and then Caliente Youth
12 Camp and finally Elko. Is there a treatment plan that
13 involves the Oasis Group Home?

14 A The Oasis Group Home is a mental health
15 program. I don't know if a treatment plan would be filed or
16 not on that.

17 Q Do you know whether Billy was ever in the Oasis
18 Group Home?

19 A I believe I read he was. I don't have
20 firsthand knowledge of that.

21 Q And could you expand a little bit about what
22 the Oasis Group Home is.

23 A It's not necessarily my expertise to be able to
24 explain that. The program goes through many changes. I
25 could tell what they do today. How they ran their program

[REDACTED]

12

1 and what they did in the 1980's I really couldn't tell you
2 which kind of kids went there.

3 Q Or what type of program that the child might
4 have been involved in while he was there?

5 A That's correct.

6 Q And is there a youth hospital of the Children's
7 Behaviorial Services?

8 A Yes, there is.

9 Q What type of facility is that?

10 A It's a residential facility located on the
11 grounds at Children's Behaviorial Services. They do a lot
12 of testing, it's a 24 hour program, a lot of testing and
13 things like that of individuals, juveniles that they feel
14 may be in need of mental health services.


15 Q So if an individual is placed in the youth
16 hospital of CBS that may be a child that's in need of some
17 mental services?

18 A It may be a child that people think might need
19 that and therefore is placed there, he or she, it's co-ed
20 placing there for testing to determine if more services are
21 needed.

22 Q Do children actually live there?

23 A It's a 24 hour facility, yes.

24 Q So they could be there for an extended period
25 of time?



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1 A It varies on an individual case.

2 Q Do you know whether Billy was committed to the
3 youth hospital?

4 A Children aren't committed.

5 Q Do you know whether he was living at the youth
6 hospital?

7 A I do not know that. I believe he was there for
8 a period of time but I don't know too much about that.

9 Q In fact was that the facility he ran away from
10 when he was apprehended in Baker, California?

11 A I'm not sure if that was the facility or if it
12 was the Oasis program.

13 Q Do you have Exhibit 112 still in front of you,
14 that's the treatment plan dated or filed May 22nd, 1984?

15 A Yes.

16 Q If you could refer to the second page of
17 Exhibit 112.

18 A Yes.

19 Q In the middle of the page does that indicate
20 whether or not Billy had been in both the Oasis Group Home
21 and the youth hospital?

22 A I'm not sure where you're looking.

23 Q At social summary in the middle of the page,
24 second page.

25 A Social summary?



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13

1 MR. BELL: Judge, we have no objection if he
2 approaches the witness and points it out.

3 THE WITNESS: I went to the third page.

4 BY MR. SCHIECK:

5 Q So does the report indicate whether or not
6 Billy had been to the Oasis Group Home and also to the youth
7 hospital Children's Behavioral Services?

8 A Where it says prior services it says Children's
9 Behavioral Services, Nevada State Welfare Oasis Group Home,
10 it doesn't indicate whether he was in the hospital there or
11 not.


12 Q And then immediately below that under social
13 summary does that indicate Billy was living at the youth
14 hospital?

15 A It says when committed Billy was living at the
16 youth hospital of the Children's Behavioral Services.

17 Q And the next paragraph down under social
18 summary does it indicate that Billy has had extensive
19 testing to try to determine the reasons for his delinquent
20 behavior?

21 A Yes, it does.

22 Q Would it be fair to say that throughout the
23 time that the juvenile services was dealing with Billy the
24 problem was to determine what was the cause of his
25 delinquent behavior?



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1 A A lot of time and effort was spent on that,
2 yes.

3 Q And that is the goal in dealing with children
4 such as these to determine the problem and then address the
5 problem and thereby hopefully the child conforms his
6 behavior?


7 A If a child is found to need treatment, we try
8 to find that and provide that treatment.

9 Q Are you fairly familiar with Billy's entire
10 history with the juvenile system?

11 A I would say yes on somewhat of a limited basis
12 in that I was the initial parole counselor that received the
13 case and then that case was transferred to another parole
14 officer for a period of time and then that parole officer
15 was transferred to another office and when William had run
16 away or escaped from the Nevada Youth Training Center, I was
17 asked to do the certification hearing report because I knew
18 the case probably better than anyone else in the office at
19 that time.

20 Q In your knowledge of Billy's case and his
21 entire file was the cause of his delinquent behavior ever
22 identified to your satisfaction?

23 A As I recall the psychological came out
24 basically stating that Billy was conduct disorder. That is
25 a nonmental health diagnosis meaning there is no mental -



1 health problem.

2 Q There is a diagnosis of conduct disorder. Any
3 treatment plan developed to deal with conduct disorder?

4 A Yes. Most delinquents are conduct disorder.

5 Q And what type of treatment plan is developed
6 for that type of disorder, conduct disorder?

7 A As far as at the institution?

8 Q Yes.

9 A I'd have to go back and really read it to be
10 able to really state it.

11 Q Do you know which report that — is it one of
12 the reports that have been marked?

13 A Yeah, there's a number of treatment plans in
14 here and each one when Billy was committed there would be
15 another treatment plan submitted to try to deal with those
16 problems through counseling, through vocational assignments,
17 through education.

18 Q Would it be fair to say that very early on in
19 Billy's dealing with the juvenile facilities here in Clark
20 County that there was a need for at least some
21 recommendations that he be put under a 24 hour residential
22 placement?

23 A I'm not sure of the question.

24 Q We talked about or you talked about Dr. Reed's
25 neurological examination.

13

1 A Yes.

2 Q Which I believe is Exhibit 109. It's Exhibit G
3 to No. 109.

4 MR. BELL: Your Honor, the State has no
5 objection if you just want to use yours and we know it
6 conforms and save the time.

7 MR. SCHIECK: Thank you, counsel.

8 Q Just so we're clear at that point Billy was ten
9 years old?

10 A Yes, that's what the report indicates.

11 Q And I'm referring to Dr. Reed's assessment.
12 Does Dr. Reed state I consider him to have a personality
13 disorder. I feel that he does need to be in at least 24
14 hour residential placement for the safety of not only
15 himself but the general public?

16 A Yes, it states that.

17 Q And that's when he was only ten years old?

18 A That's when he was ten years old.

19 Q Is it fair to say that as Billy progressed
20 through the system he would be placed into the various
21 facilities, Spring Mountain and Third Cottage and then Elko,
22 that he would go to those and then be released back to the
23 community on parole status?

24 A I'm not sure -- I don't have knowledge of him
25 being at Spring Mountain Youth Camp. Yes, they would go --

14

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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 17 of 21

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1 A Proposed Exhibit 73-A is an Hitachi VCR.

2 Q Where did you observe the Hitachi VCR which will
3 be marked as Proposed 73-A?

4 A I saw it on the living room floor underneath the
5 TV that was in the apartment on North Jones.

6 Q At 1951 North Jones?

7 A Yes, sir.

8 Q Building G, Apartment 106?

9 A Yes, sir.

10 Q Did you photograph the VCR in its original
11 location under the television set inside that apartment?

12 A Yes, sir I did.

13 Q Does the Hitachi VCR appear to be in
14 substantially the same condition now --

15 A Yes, sir, it does.

16 Q -- as it was on the date you recovered it early
17 morning December the 20th, 1995?

18 A Yes, sir, it does.

19 MR. HARMON: Your Honor, the State offers
20 Proposed Exhibit 73 and 73-A.

21 MR. LaPORTA: No objection, your Honor.

22 THE COURT: Same will be received in evidence.

23

24 (State's Exhibit No. 73 & 73-A admitted
25 in evidence.)

1 BY MR. HARMON:

2 Q Will you now examine the evidence envelope which
3 the clerk has marked as Proposed Exhibit 104. Did you
4 place something inside this envelope?

5 A Yes, sir, I did.

6 Q What did you put inside?

7 A I placed a plastic bottle of Ronsonol lighter
8 fluid and a Zippo lighter into this package.

9 Q Is this evidence envelope in a sealed condition?

10 A Yes, sir, it is.

11 Q Will you cut open the envelope leaving the seals
12 intact and then please remove the contents?

13 For the record what have you removed?

14 A I removed a plastic baggy containing a plastic
15 bottle of Ronsonol lighter fluid and a Zippo lighter.

16 MR. HARMON: Your Honor, may we have this bag
17 and its contents marked as Proposed Exhibit 104-A?

18 BY MR. HARMON:

19 Q Where did you locate the Zippo lighter and the
20 Ronsonol lighter fluid?

21 A The lighter fluid was found on the dresser in
22 the bedroom of apartment 1951 North Jones, Apartment G-106,
23 and the Zippo lighter was on the nightstand in that same
24 bedroom.

25 Q Are they substantially in the same condition

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1 this afternoon in court as they were when you recovered
2 them early morning December the 20th, 1995?

3 A Yes, sir. Other than Scott Hardy's initials
4 being placed on these for an examination that he may have
5 done.

6 Q Is Scott Hardy a police chemist?

7 A Yes, he is.

8 MR. HARMON: Your Honor, the State offers
9 Proposed Exhibit 104 and 104-A.

10 MR. LaPORTA: No objection.

11 THE COURT: Same will be received in evidence.

12 MR. HARMON: Thank you.

13

14 (State's Exhibit No. 104 & 104-A
15 admitted in evidence.)
16

17 BY MR. HARMON:

18 Q Analyst Adkins, were you also involved in the
19 search at the crime lab of a 1985 white Mazda?

20 A Yes, sir, I was.

21 Q At the time you searched the vehicle did you
22 have information that it belonged to one of the suspects in
23 the case, Michelle Platou?

24 A Yes, sir, I did.

25 Q What was your purpose in searching the vehicle?

1 A To ascertain if there was any items that may
2 have been taken from our victim's location or her residence
3 at 13 Yale that might be in that vehicle or the weapon that
4 caused the injuries of our victim.

5 Q Did you find the weapon inside the vehicle?

6 A No, sir, I did not.

7 Q Did you look thoroughly through the vehicle for
8 any evidence of a crowbar or tire iron?

9 A Yes, sir, I did.

10 Q Was there any such instrument inside the car?

11 A No, sir.

12 Q Did you find a spare tire?

13 A No, sir.

14 Q Do you remember if you found a jack?

15 A I think there was a bottom portion of a jack.

16 Q But no tire iron?

17 A No, sir.

18 Q On what day did you conduct your search of the
19 Mazda?

20 A That was on the 20th about 1:33 in the morning.
21 I responded to the location where the vehicle was found and
22 then followed it back to the crime lab and processed it at
23 that time.

24 Q When you say you processed it, what do you have
25 reference to?

1 A After photographing to show that the seals were
2 still intact -- I'd like to backtrack a little bit.

3 Prior to the vehicle being towed I sealed
4 the vehicle so that we could show that there was no
5 tampering of the items inside. Then I followed the vehicle
6 back to the crime lab, photographed it to show that the
7 seals were still intact. At that time I fingerprint
8 processed the outside of the vehicle developing some latent
9 fingerprints on the outside of that vehicle. Then I
10 entered the vehicle and photographed the contents of that
11 vehicle and did my search looking for a weapon or any other
12 items that might be pertinent to this case.

13 Q Did you search the glove compartment of the
14 Mazda?

15 A Yes, sir, I did.

16 Q Did you find anything of evidentiary value
17 inside the glove box?

18 A Yes, sir, I did. I found --

19 Q What did you find?

20 A I'm sorry. I found a plastic bag containing six
21 watches and one pendant of an angel.

22 MR. HARMON: May I again approach the witness,
23 Judge?

24 BY MR. HARMON:

25 Q Analyst Adkins, I'm showing you Exhibit 68

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1 through 70 and Proposed Exhibit 71 and 72. Are you able to
2 identify the vehicle depicted in the photographs?

3 A Yes. In State's Exhibit 68 and 69 were
4 photographs that I took of the Mazda taken at the West
5 Charleston address. I believe it was 5620 West Charleston.
6 And State's Exhibit 70 is a photograph that I took of the
7 '85 Mazda at the crime lab showing that the seals were
8 still intact.

9 Q Also on December the 20th?

10 A Yes, sir.

11 Proposed State's Exhibit Number 71 is a
12 close-up view of the interior of the glove compartment of
13 the 1985 Mazda showing a plastic baggy containing watches
14 and some other items in that glove compartment.

15 Q Does that particular photograph, Proposed 71,
16 show the bag and the watches and the pin in exactly the
17 same location and condition as you first saw them?

18 A Yes, sir, it does.

19 And Proposed Exhibit Number 72 is a
20 close-up of the items that I took out of the plastic bag
21 that I found in the glove compartment of the 1985 Mazda
22 which were six watches and the angel pin.

23 MR. HARMON: Your Honor, the State offers
24 Proposed Exhibits 71 and 72.

25 MR. LaPORTA: No objection.

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1 THE COURT: Same will be received in evidence.

2 MR. HARMON: Thank you.

3

4 (State's Exhibit Nos. 71 & 72 admitted
5 in evidence.)

6

7 BY MR. HARMON:

8 Q I am showing you now an evidence bag marked as
9 Proposed Exhibit 80. Will you examine the bag and tell us
10 if you recognize it?

11 A Yes, sir, I do.

12 Q Were you the impounding officer?

13 A Yes, sir, I was.

14 Q Please look at the contents and tell us if you
15 recognize them.

16 A The contents of Proposed Exhibit Number 80
17 contains watches and the pendant, the angel pendant, and it
18 appears to be earrings, I don't know, something gold. I'm
19 not sure what that is.

20 Q You're referring to a zip lock baggy which is
21 marked as Proposed 80-A1; is that correct?

22 A Yes, sir, I am.

23 Q Is it true that the do not recognize whatever
24 the contents are of that bag?

25 A No, sir, I do not.

1 Q They were not originally in the glove
2 compartment of the 1985 Mazda?

3 A Not that I recall.

4 Q Now directing your attention to the other
5 contents of the evidence envelope, Proposed Exhibit 80, do
6 you recognize the contents of Proposed Exhibit 80-A1 and
7 80-A2 -- no, I'm sorry, I've got to correct myself. The
8 contents of Proposed 80-A and 80-A2?

9 A Yes. And Proposed Exhibit 80-A and 80-1 --
10 excuse me, 80-A2 are the watches that I had originally
11 taken out of the plastic baggies in the glove compartment
12 of the '85 Mazda.

13 Q Are those items, Proposed Exhibits 80-A and
14 80-A2, the same items depicted in the photographs the Court
15 just admitted into evidence, Exhibit 71 and 72?

16 A Yes, sir, they are.

17 Q Do the watches and the angel pendant appear to
18 be in substantially the same condition now as they were
19 when you found them inside of the glove compartment of the
20 1985 Mazda of Michelle Platou?

21 A Yes, sir, they do.

22 MR. HARMON: Your Honor, the State offers
23 Proposed Exhibit 80, 80-A and 80-A2.

24 MR. LaPORTA: I have no objection, your Honor.

25 THE COURT: They will be received in evidence.

1 MR. HARMON: And, your Honor, I also offer, even
2 though this witness was not familiar with it, Proposed
3 Exhibit 80-A1. I'm sure the Court remembers that Jean
4 Hasking, the State's first witness, identified these as
5 links from one of the wrist watches contained in the other
6 exhibits.

7 MR. LaPORTA: No objection, your Honor.

8 THE COURT: Same will be received in evidence.

9 MR. HARMON: Thank you.

10

11 (State's Exhibit No. 80, 80-A, 80-A1 &
12 80-A2 admitted in evidence.)

13

14 MR. HARMON: May I have the Court's indulgence,
15 your Honor?

16 That concludes direct, your Honor.

17 THE COURT: Cross.

18 MR. LaPORTA: No cross examination, your Honor.

19 THE COURT: May this witness be excused?

20 MR. HARMON: Yes, your Honor.

21 MR. LaPORTA: Yes, your Honor.

22 THE COURT: Thank you, ma'am. You may step
23 down.

24 Call your next witness.

25 MR. BELL: Detective Dwayne Morgan.

1 For the edification of the Court and the
 2 jury, the State would anticipate that this would be our
 3 last witness subject to checking the evidence and making
 4 sure we have everything admitted the way we need to.

5
 6 DWAYNE MORGAN,
 7 called as a witness by the State, having been first duly
 8 sworn to tell the truth, the whole truth, and nothing but
 9 the truth, testified as follows:

10
 11 DIRECT EXAMINATION

12
 13 BY MR. BELL:

14 Q Would you state your name please and spell your
 15 last name for the court reporter?

16 A It's Dwayne Morgan, D-w-a-y-n-e, Morgan,
 17 M-o-r-g-a-n.

18 Q Where are you employed, Mr. Morgan?

19 A The Las Vegas Metropolitan Police Department.

20 Q And how long have you been employed with the Las
 21 Vegas Metropolitan Police Department?

22 A Eleven years.

23 Q And what is your present employment status?

24 A I'm a homicide detective.

25 Q How long have you been a detective assigned to

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1 the homicide bureau?

2 A Two years.

3 Q Prior to that you were in uniform patrol?

4 A No, I was in other -- detectives. Fraud,
5 burglary, did some narcotics.

6 Q Did you originally start with the police
7 department in uniform patrol?

8 A Yes.

9 Q And then you became a detective and worked
10 narcotics and burglary and other areas and then eventually
11 were promoted to homicide?

12 A That's correct.

13 Q Were you a homicide detective on or about
14 December 17, 1995?

15 A Yes, I was.

16 Q In the homicide bureau of the Las Vegas
17 Metropolitan Police Department do you work in pairs?

18 A Yes, we do.

19 Q And you have a partner?

20 A Yes.

21 Q And your partner's name?

22 A Detective Don Tremel.

23 Q Were you and he partners on December 17, 1995?

24 A Yes, we were.

25 Q Were you assigned by your supervisor to be

1 responsible for the murder of a lady named Isabelle Berndt
2 which occurred on or about December 17, 1995?

3 A Yes, we were.

4 Q And which supervisor assigned yourself and
5 Detective Hefner to that investigation?

6 A That's Sergeant Kenneth Hefner.

7 Q I said Hefner but I meant Tremel. Hefner
8 assigned you and Tremel to that investigation; is that
9 correct?

10 A Yes, he did.

11 Q And did there come a time when you developed a
12 suspect in the homicide of Isabelle Berndt?

13 A Yes, I did.

14 Q And when was that?

15 A I would have to refer to my notes to see the
16 exact date.

17 Q Please do so.

18 A It would be the 20th.

19 Q How did you have occasion to develop a suspect?
20 Were you contacted by another member of the Las Vegas
21 Metropolitan Police Department?

22 A Yes, we was contacted by some officers at our
23 northwest substation.

24 Q What time of the day was that?

25 A That was in the evening hours.

1 Q And did you understand that they had a citizen
2 who had come to the station to report some information
3 about the murder of Isabelle Berndt?

4 A That's correct, they had took some information.

5 Q Did you eventually learn that that citizen was a
6 man by the name of Kirk Rasmussen?

7 A Yes, we did.

8 Q Did you learn that the detective that he had
9 initially talked to was a detective by the name of Lau,
10 L-a-u, with Metro?

11 A Yes, that's correct.

12 Q If they have testified that that occurred on the
13 evening hours of Tuesday the 19th, would that comport with
14 your recollection?

15 A Yes, that would be correct.

16 Q Was it your responsibility or did you assume the
17 responsibility to go to the northwest substation to talk
18 personally with Mr. Rasmussen?

19 A Yes, it was.

20 Q And after you conferred with Mr. Rasmussen, did
21 you determine that it was appropriate to get a warrant to
22 search the premises of the proposed suspect?

23 A Yes, I did.

24 Q Did you undertake what was necessary to get that
25 warrant?

1 A Yes.

2 Q And generally how do you do that?

3 A We will refer to our on duty contact list for
 4 the District Attorney's Office and contact the D.A. who
 5 will assist us in putting together a search warrant. We'll
 6 meet, give him our facts which we have to get a search
 7 warrant and we'll go over the search warrant together, put
 8 it together and take it to a judge to have it signed.

9 Q So in the evening hours of Tuesday the 19th you
 10 contacted a member of the District Attorney's Office, got
 11 some assistance, and eventually got a warrant from Chief
 12 Judge Don Mosley; is that correct?

13 A Yes, that's correct.

14 Q And then were you part of the team that went to
 15 the premises for purposes of conducting the search?

16 A Yes, I was.

17 Q At that point in time did you have a name of a
 18 suspect?

19 A Yes, we did.

20 Q And that suspect's name was?

21 A William Castillo.

22 Q Did there come a time when you came in contact
 23 with a person who you learned was the William Castillo that
 24 was named in the warrant?

25 A Yes, we did.

1 Q Is that person William Castillo in court present
2 today?

3 A Yes, he is.

4 Q Would you point to him and identify something
5 that he is wearing?

6 A He's at the defense table, long hair, side
7 burns, wearing a white shirt and a green tie.

8 MR. BELL: May the record reflect identification
9 of the defendant?

10 THE COURT: Yes.

11 BY MR. BELL:

12 Q In the course of the search did you discover
13 items which you believed had been taken from the victim?

14 A Yes, we did.

15 Q Did this then in your mind corroborate the
16 information that you had received from the citizen who had
17 assisted the police, Mr. Rasmussen?

18 A Yes, it did.

19 Q As a result of that was an arrest made?

20 A Yes, it was.

21 Q Who was arrested?

22 A William Castillo.

23 Q And he was arrested for generally what crime?

24 A Murder, possession of stolen property and
25 burglary.

1 Q Okay. And that related to Isabelle Berndt, the
 2 burglary and the taking of her property and the homicide
 3 that occurred in her residence, 13 Yale, on or about
 4 December 17th?

5 A Yes.

6 Q As a result of that arrest was Mr. Castillo
 7 taken to either the detective bureau or the jail?

8 A He was taken to the detective bureau first.

9 Q And what was the purpose of taking him to the
 10 detective bureau?

11 A I wanted to conduct a taped interview with him.

12 Q And in fact that was part of your
 13 responsibility; is that correct?

14 A Yes, it was.

15 Q Before you talk to a suspect is there
 16 information which you are legally required to give a
 17 suspect commonly known as the Miranda warnings?

18 A Yes. There are circumstances which we have to
 19 do that.

20 Q And in this case did you give Mr. Castillo what
 21 is commonly known as his Miranda warnings before you
 22 discussed with him any involvement he might have in the
 23 cause and circumstances of the death of Isabelle Berndt?

24 A Yes, I gave it to him on a printed card which we
 25 have provided by the Metropolitan Police Department.

1 Q Do you carry that with you?

2 A I have it in the book.

3 Q Okay. And do you also have those warnings
 4 printed out on actual statements where you transcribe a
 5 statement?

6 A Yes, they are.

7 Q And can you either from memory or by looking in
 8 your book recite to the ladies and gentlemen of the jury
 9 the Miranda warnings that you give in each case and in this
 10 case gave to Mr. Castillo before you interviewed him?

11 A Yes.

12 "You have the right to remain silent. If
 13 you give up that right to remain silent, anything you say
 14 can and will be used against you in a court of law. You
 15 have the right to speak to an attorney before answering any
 16 questions and to have an attorney present with you while
 17 you answer any questions. If you cannot afford an
 18 attorney, an attorney will be appointed for you by the
 19 court at no cost to you. You need not answer any questions
 20 until that attorney has been appointed for you. If you
 21 decide to answer questions now you may stop at any time and
 22 ask to speak to an attorney before any questioning
 23 continues. If you decide to stop answering questions once
 24 you have begun all questioning will stop. I have read the
 25 above and fully understand these rights."

1 Q And did you ask Mr. Castillo if he understood
2 those rights?

3 A Yes, I did.

4 Q And did he acknowledge that he understood the
5 rights?

6 A Yes, he acknowledged verbally that he understood
7 the rights.

8 Q And did he indicate to you that he was willing
9 to waive the presence of an attorney or his right to remain
10 silent and talk to you at that time?

11 A Yes, he did.

12 Q Was there anyone else present when this
13 conversation occurred?

14 A No, there wasn't.

15 Q And where did this occur again?

16 A He initially was read his rights and signed at
17 his apartment on Lake Mead.

18 Q He actually signed the card indicating that he
19 understood his rights?

20 A Yes, he did.

21 Q The actual conversation, where did it occur,
22 your interview of him, of the suspect?

23 A At the detective bureau at 400 East Stewart.

24 Q At about what time of day was that?

25 A That was in the early morning hours, probably

1 11:30 in the evening, p.m.

2 Q 11:30 p.m. on the 19th or into the early morning
3 hours of the 20th?

4 A That's correct.

5 Q All right. When you interviewed Mr. Castillo,
6 did you tape record your interview?

7 A Yes, I did.

8 Q And when you tape record an interview do you
9 then preserve the tape for whatever evidentiary value it
10 may have?

11 A Yes, we do.

12 Q Now how many times that evening did you
13 interview Mr. Castillo?

14 A I did two separate taped interviews.

15 Q And was this by design? Is that some type of
16 interview technique that you as a trained detective have
17 learned and use in the course and scope of your duties?

18 A Yes, it is.

19 Q And does it have a name?

20 A Yes, it's called the Reid Interview Technique.

21 Q And generally can you tell the ladies and
22 gentlemen of the jury how you go about the process and what
23 you're trying to do in terms of interviewing a suspect?

24 A Initially we interview the suspect and let him
25 commit to a story. We tell him what we feel may have

1 happened and let them basically go on and commit to what
2 their story is. Then we'll take a break in the first
3 interview, leave the room for awhile and then come back and
4 do more of -- the first conversation is more what we call
5 an interview where we both exchange conversation. After we
6 come back we're more doing an interrogation where we're
7 hitting him with facts and we're a little more harsher.
8 We're trying to say all the evidence we have and make him
9 confess to the crime. So the first one is more of a back
10 and forth interview, the second one is an interrogation.

11 Q When you say make him, you're not implying any
12 type of coercion, this just sometimes occurs in the
13 re-interview technique?

14 A Exactly.

15 Q Now in the initial interview of Mr. Castillo, as
16 a general proposition what was his story in reference to
17 the stolen property that had been seized by way of warrant
18 from his apartment that you knew and he knew belonged to
19 Isabelle Berndt?

20 A He said that a friend who he wouldn't identify
21 by name had given him the property in order to sell.

22 Q Okay. So he acknowledged that he knew the
23 property was stolen, but he denied being part of the theft
24 itself; is that correct?

25 A Yeah, that's correct.

1 Q And did he ever identify the mystery thief?

2 A No, he didn't.

3 Q Did you ask him about with whether or not Kirk
4 Rasmussen or Tammy Jo Bryant or other people were involved?

5 A Yes. I asked him who he associated with and he
6 gave those names as friends and associates. And I asked if
7 those were the only friends and associates then perhaps
8 they must have been the ones involved because you're saying
9 these are the only people you knew. And he said no, they
10 weren't involved at all.

11 Q He specifically indicated that Rasmussen and
12 Bryant were not involved as the mystery thief as it were;
13 is that correct?

14 A That's correct.

15 Q How long did that interview take?

16 A I'll give you the exact times. First interview
17 started at 2355 which would be 11:55 p.m. And it concluded
18 at 0020 hours which would be 12:20 in the a.m.

19 Q So we're talking 25 minutes?

20 A Exactly.

21 Q And then you left the room for a short period of
22 time as is your practice in the re-interview technique?

23 A Yes.

24 Q And then you came back into the room. And the
25 second occasion was it again just you and Mr. Castillo?

1 A Yes, it was.

2 Q And this was again at the detective bureau?

3 A Correct.

4 Q And at this time did you share with Mr. Castillo
5 some of the information which led you to believe that he
6 was the person responsible for the burglary, robbery and
7 murder that occurred at Isabelle Berndt's?

8 A Yes, I did.

9 Q What information did you share with him at that
10 time?

11 A I told him that we had talked with his two
12 friends, Kirk Rasmussen and his girl friend Tammy Bryant,
13 and that they had told us everything that happened step by
14 step as he had told them.

15 Q Okay. And at this point did his, either his
16 demeanor or his story of his involvement in the events
17 change?

18 A He was kind of sullen on the second interview
19 after I told him that and he wanted to know if Tammy had
20 really said that and I told him that she did.

21 Q And, in fact, that was true, was it not, you had
22 interviewed Tammy Bryant and she had given you information
23 indicating that Mr. Castillo had in essence confessed to
24 her?

25 A She had talked to my partner Don Tremel who was

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1 still at the residence with her and he relayed the
2 information to me and I told him it was the truth.

3 Q So you had information from Rasmussen directly
4 and your partner Detective Tremel had information from
5 Bryant. To your understanding did the information received
6 from each of these people independently jive with one
7 another?

8 A Yes. And it was exactly what our investigation
9 had indicated.

10 Q So they were consistent with one another and
11 they were consistent with the investigation up to that
12 point and the physical evidence that you had accumulated
13 and observed?

14 A That's right.

15 Q And you confronted Mr. Castillo with the
16 evidence that both of his friends as it were had cooperated
17 with the police department?

18 A Yes, I did.

19 Q And at this point in time what did he tell you
20 just as a general proposition because we'll get to the
21 tapes themselves?

22 A Like I said he wasn't convinced she had said it
23 and became sullen and we went back and forth. I was trying
24 to tell him that he should go ahead and put a close to this
25 whole thing so the family could have a means to the end of

1 what happened. And he said you know everything about what
 2 had happened, I already knew it, but did I need to hear it
 3 from him, and I told him I did. And then he took kind of a
 4 pause, he wanted a cigarette, and I told him I couldn't
 5 give him one, and subsequently he told me exactly what
 6 happened.

7 Q Now the area where you were, is that a no
 8 smoking facility?

9 A Yes, it is.

10 Q And then he in turn recounted his story,
 11 confession, admission as it were of the events that
 12 occurred on the night of December the 17th?

13 A Yes, he did.

14 Q Was that likewise consistent with the
 15 information you received from Mr. Rasmussen, Miss Bryant
 16 and your investigation, observations and the physical
 17 evidence you've collected?

18 A Yes, it was.

19 Q Did you tape the second interview?

20 A Yes, I did.

21 Q And how long did it take?

22 A It started at 0035 hours which would be 12:35
 23 a.m. and we concluded at 0100 hours which is 1:00 a.m.

24 Q So that was also another 25 minutes?

25 A Yes.

1 Q So we have two 25 minute tapes that you
2 collected and then the originals were preserved for further
3 evidentiary value; is that correct?

4 A Yes.

5 Q Do you in routine course and practice as a
6 detective with the homicide division have tapes transcribed
7 or put into type written form whenever you have admissions
8 taken in this manner?

9 A All our taped interviews are transcribed.

10 Q And transcripts were prepared of these taped
11 interviews; is that correct?

12 A Yes, they were.

13 Q Were the transcripts compared with the tapes to
14 make sure the transcripts were true and accurate?

15 A Yes, they were.

16 Q Now then did there come a time in preparation
17 for this trial where you understood that by stipulation of
18 the State and counsel for the Defendant Castillo and an
19 order of his Honor Judge Maupin that a couple words here
20 and there had to be deleted from the tapes before they
21 could be played for the jury?

22 A Yes.

23 Q The original tapes were not tampered with, were
24 they?

25 A No, they weren't.

1 Q But copies were made and the tapes were
2 conformed to comply with the order of the Court for the
3 playing to the jury in conjunction with and in agreement of
4 both parties that this is a fair and accurate
5 representation of the statements made by Mr. Castillo and
6 contains then only evidence which is admissible; is that
7 correct?

8 A Yes, that's correct.

9 Q Did you then have a chance to listen to those
10 tapes and compare them with the transcripts as those
11 transcripts were ordered to be conformed by the Court?

12 A Yes, I was.

13 Q Did they accurately as far as you understand
14 comport with the order of the Court based upon stipulation
15 of the parties so that they again truly and accurately
16 reflect what Mr. Castillo said and contained within them
17 only admissible evidence?

18 A Yes.

19 Q Do you have with you, are you prepared to play
20 for the jury copies of those tapes now, the conversations
21 you had with William Castillo on or about the late evening
22 hours of the 19th and the early morning hours of the
23 Tuesday the 20th?

24 A Yes, I have.

25 Q Do you also have a copy for each juror of the

1 transcript that matches those tapes, a conformed transcript
2 conformed to the order of the Court so that it will
3 facilitate their ability to follow along and understand
4 what is said on the tapes?

5 A I don't have the copies. The investigator has
6 the copies.

7 Q Miss Conger with the District Attorney's Office
8 has the copies?

9 A Yes.

10 Q Is it your understanding that the copies are
11 conformed to the order of the Court and now match the
12 tapes?

13 A Yes, they are.

14 THE COURT: Counsel, approach the bench.

15

16 (Discussion off the record.)

17

18 THE COURT: Ladies and gentlemen of the jury,
19 this conversation that we're having is about how long it's
20 going to take to play the tapes. My concern is that it's
21 ten minutes until five o'clock and today is the primary
22 election day. I don't know, has everyone voted?

23 THE JURY: No, sir.

24 THE COURT: I want to make sure that you have
25 enough time to get to your place to vote if you wish to do

1 so and I think if we go until almost six o'clock we'll be
2 cutting it close for some of the members of the jury. So
3 the parties in this instance have agreed that we'll play
4 the tape tomorrow starting at eleven o'clock.

5 MR. BELL: I assume you can be back, Detective
6 Morgan. You don't have anything else to do.

7 THE WITNESS: We started another case today. As
8 far as I know.

9 THE COURT: Well, ordinarily I would try to do
10 everything I could to accommodate a witness of this type or
11 any witness but --

12 MR. BELL: It's my understanding --

13 THE COURT: The Court's overriding consideration
14 at this point is the jurors.

15 MR. BELL: It's my understanding that the
16 prospective schedule of the judge is you want counsel to
17 meet with you at 10:00 to settle jury instructions, at
18 11:00 put Detective Morgan back on, we should be done at
19 noon for the break, and we should expect to get this case
20 to the jury sometime tomorrow afternoon.

21 MR. LaPORTA: I think --

22 THE COURT: Assuming there is cross examination
23 I can see this going past six o'clock.

24 MR. BELL: I understand, Judge.

25 THE COURT: I'm afraid that we'll have --

1 THE WITNESS: I was going to ask if I can know
 2 the times so I can rearrange some appointments.

3 THE COURT: Eleven o'clock.

4 MR. BELL: If you could be here at eleven
 5 o'clock sharp, obvious 50 minutes for two tapes, shortly
 6 after 12:00 I would think you would be done.

7 MR. LaPORTA: Judge, I just want to remind the
 8 Court that I have another death penalty matter that we have
 9 set tomorrow morning in another department where we're set
 10 for oral argument tomorrow and there are nineteen separate
 11 motions set before that courtroom. I anticipate --

12 THE COURT: The question is are you going to be
 13 able to get through with them by eleven o'clock.

14 MR. LaPORTA: That's the question. I will
 15 inform the judge that I want to start at 11:00 here.
 16 Knowing the judge as I do he'll probably clear the calendar
 17 and put us on at the end.

18 MR. BELL: We'll start with the jury as soon as
 19 Pete can get here, but it's my understanding that Mr.
 20 Harmon and Mr. Schieck can meet with the judge at 10:00.

21 THE COURT: I don't want to talk about this in
 22 front of the jury. It's simply burdening the record at
 23 this point.

24 We'll attempt to start proceedings
 25 tomorrow morning at eleven o'clock. If for some reason we

1 can't we may not be able to start until the afternoon, but
2 it's my understanding that hopefully we can conclude the
3 actual trial proceeding and get the matter to the jury by
4 tomorrow afternoon.

5 MR. LaPORTA: I see no reason why not, your
6 Honor.

7 MR. BELL: Yes, your Honor.

8 THE COURT: We're going to try to start at
9 eleven o'clock, but if that issue, the other case precludes
10 you from attending then we may have to make other
11 arrangements.

12 MR. LaPORTA: Your Honor, I'll let the Court
13 know as soon as possible. It certainly shouldn't be any
14 later than 11:15, 11:20.

15 THE COURT: In any event we'll get started as
16 soon as you can get here.

17 So ladies and gentlemen, if you'll get
18 here by ten minutes until 11:00 tomorrow ready to be
19 collected downstairs by the bailiff.

20 During the recess it is your duty not to
21 converse among yourselves or with anyone else on any
22 subject connected with the trial; or read, watch or listen
23 to any report of or commentary on the trial or any person
24 connected with the trial by any medium of information,
25 including without limitation newspapers, television and

1 radio; and you are not to form or express any opinion on
2 any subject connected with the trial until the case is
3 submitted to you.

4 We'll be at ease while you depart the
5 confines of the courtroom. Good evening.

6
7 (Jury departs courtroom.)

8
9 THE COURT: Anything further from the parties at
10 this time?

11 MR. LaPORTA: No, your Honor.

12 MR. BELL: No, Judge.

13 THE COURT: All right. We'll go off the record.

14
15 (Discussion off the record.)

16
17 THE COURT: Let's go on the record for just a
18 moment.

19 Juror No. 2, Miss Malmedal, has indicated
20 to the bailiff that she believes she may recognize this
21 witness from an investigation she did at a store she worked
22 at, but she doesn't remember anything else about it. But
23 pursuant to the original admonition she is simply advising
24 the Court and counsel of the fact that she may have
25 interacted with this witness before. I don't see it as a

1 problem.

2 MR. BELL: I don't either.

3 MR. LaPORTA: Defense doesn't at this time.

4 THE COURT: Detective, you don't recall, of
5 course you don't even remember, you're not looking at the
6 jury for individuals, so for name or face recognition --

7 MR. BELL: It may have been years ago when you
8 were in burglary, you took a report at a store or
9 something.

10 THE WITNESS: It happens every time I come to
11 court.

12 THE COURT: I don't see it as a problem. I ask
13 the bailiff to advise the juror that the matter has been
14 discussed on the record and that there is not a problem.

15 MR. BELL: Clearly when the names were read she
16 didn't recognize you by name so it's obviously connected by
17 face.

18 THE COURT: But, Detective, you do not have any
19 personal recollection of any kind of Miss Malmedal?

20 THE WITNESS: Not at all.

21 THE COURT: That settles it.

22 MR. BELL: Thanks.

23

24 (Proceedings concluded.)

25 * * * * *

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Danette L Antonacci

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EXHIBIT 166

EXHIBIT 166

FILED IN OPEN COURT

SEP 05 1996

19

LORETTA BOWMAN, CLERK

BY Tina Hurd

Deputy

Plaintiff,

CASE NO. C133336

Vs

DEPT. NO. VII

WILLIAM PATRICK CASTILLO,

DOCKET P

Defendant.

BEFORE THE HONORABLE:

A. WILLIAM MAUPIN DISTRICT JUDGE

WEDNESDAY, SEPTEMBER 4, 1996, 11:35 A.M.

VOLUME VI

APPEARANCES:

FOR THE STATE:

STEWART L. BELL

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

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1 WEDNESDAY, SEPTEMBER 4, 1996, 11:35 A.M.

2 THE COURT: We're outside the presence of
3 the jury. Attorneys for both sides are present for the
4 purpose of settling Jury Instructions.

5 Does the defense waive the presence of the
6 defendant at this time?

7 MR. SCHIECK: Yes.

8 THE COURT: State, do you waive the presence
9 of the defendant?

10 MR. BELL: The record should also reflect
11 that Mr. LaPorta is in another proceeding and that the
12 defense has stipulated that his presence could be waived
13 for the purpose of these proceedings, your Honor, and, yes,
14 we do.

15 MR. SCHIECK: Rule 250 expressly provides
16 that a defendant does not need to be present during the
17 settling of Instructions.

18 THE COURT: I understand this. I also do
19 that in case a sentence in a United States Supreme Court
20 case again changes the way of doing business.

21 Are the parties familiar with Court's
22 Proposed Jury Instructions 1 through 44?

23 MR. BELL: The State is, your Honor.

24 MR. SCHIECK: Yes, your Honor.

25 THE COURT: Does the State have any

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1 objection to any of the -- the giving of any of these
2 Instructions?

3 MR. BELL: State has no objection to any of
4 the Proposed Instructions, your Honor.

5 THE COURT: Does the State have any other
6 Instructions to offer at this time?

7 MR. BELL: No, your Honor.

8 THE COURT: Does the defenses object to any
9 of the Instructions to be given, 1 through 44?

10 MR. SCHIECK: No, your Honor.

11 THE COURT: Does the defense have any
12 additional Instructions to offer at this time?

13 MR. SCHIECK: No, your Honor.

14 THE COURT: Do either of the parties wish to
15 have the jury instructed before closing argument?

16 MR. BELL: State would propose that. I
17 think it's enlightening and helps closing argument.

18 THE COURT: That will be the order.

19 Are the parties familiar with the Proposed
20 forms of verdict regarding Count I through VII of the
21 Indictment?

22 MR. BELL: Yes, your Honor.

23 MR. SCHIECK: Yes, your Honor.

24 THE COURT: Any objections to the verdicts
25 as prepared?

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1 MR. BELL: State has no objections, your
2 Honor.

3 MR. SCHIECK: None, your Honor.

4 THE COURT: The verdict forms will be made
5 part of the record and will be submitted to the jury along
6 with the Instructions.

7 Anything further from the parties on
8 settling Instructions at this time?

9 MR. BELL: No, your Honor.

10 MR. SCHIECK: No, your Honor.

11

12 (Off the record at 11:40 a.m. and back on
13 the record at 1:25 p.m.)

14

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

17 THE JURY: (In Unison) Good afternoon.

18 THE COURT: The best laid plans of Mice and
19 Men, but we are here.

20 Counsel stipulate to the jury?

21 MR. BELL: State does.

22 MR. LaPORTA: Defense does.

23 MR. BELL: We call Detective Morgan.

24 THE COURT: We may continue with the tape
25 playing. That tape is being played subject to previous

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1 Court rulings?

2 MR. LaPORTA: Yes, your Honor.

3 THE COURT: You are still under oath.

4

5 DWAYNE MORGAN,

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 CONTINUED

11 BY MR. BELL:

12 Q Detective Morgan, you recall where we
13 were yesterday?

14 A Yes.

15 Q Let me show you what has been marked as
16 State's Proposed Exhibit 105, a tape, and 105-A, which
17 purports to be a transcript of that tape. Likewise, 106
18 and, again, 106-A, which purports to be a transcript of 106
19 and ask you to review those and tell me if, to the best of
20 your knowledge, those are the tapes as ordered prepared by
21 the Court and are those true and accurate transcripts of
22 the tapes themselves?

23 A Yes.

24 Q And is it your testimony that the tapes
25 are in compliance with the order of the Court?

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1 A Yes, they are.

2 Q And that in compliance, they,
3 nonetheless, fairly and accurately reflect your
4 conversation with the defendant, William Castillo, about
5 his involvement in the homicide of Isabelle Berndt?

6 A That's correct.

7 MR. BELL: Judge, with that in mind, we
8 would ask the bailiff assist the witness in playing for the
9 jury the first tape and we would like to pass out to the
10 jury, if we can, a duplicate copy of Exhibit 105-A and then
11 with the second tape, a duplicate copy of 106-A. We would
12 pick those up so that the only thing in evidence will be
13 actually one copy of the tape and one copy of the
14 transcript.

15 THE COURT: Unless you want a copy of the
16 transcript in for clarification?

17 MR. BELL: Yeah, we are going to move one
18 copy be admitted and, of course, they can take that copy
19 with them, but we would like to have the duplicate
20 transcript passed out so each can have it in front of them
21 and follow along. I think that will be more expeditious.

22 THE COURT: Right, I understand. All right,
23 that will be the order.

24 MR. BELL: Thank you.

25 THE COURT: These written copies have the

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1 appropriate redactions in them?

2 MR. BELL: Is that correct, Alex?

3 A VOICE: Pardon me?

4 MR. BELL: These copies are all part of the
5 order and stipulation of the parties?

6 A VOICE: Yes, they are.

7 (Off the record discussion not reported.)

8 MR. BELL: Please.

9

10 (At this time, Exhibit 105 was played to the
11 jury.)

12

13 MR. BELL: Your Honor, we move the admission
14 of the tape, 105, and a copy of the transcript, 105-A.

15 MR. LaPORTA: No objection, your Honor.

16 THE COURT: Same will be received in
17 evidence.

18 Q (BY MR. BELL) Detective Morgan, it's
19 my understanding then that, in accordance with the
20 interview techniques that you have learned and used through
21 the years in your capacity as a homicide detective, you
22 waited about 15 minutes and went back and talked to Mr.
23 Castillo again; is that correct?

24 A Yes, that's correct.

25 Q And that's kind of standard operating

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1 procedure, the amount of the wait and the way you do this?

2 A Yes.

3 Q And the second interview was much like
4 the first, that it was done on tape and then eventually
5 transcribed?

6 A That's correct.

7 Q And tape, No. 106, and 106-A, the
8 transcript, again accurately reflects, in conjunction with
9 the Court's order, your conversation with William Castillo,
10 the defendant, sitting over here that you previously
11 identified?

12 A That's correct.

13 MR. BELL: We ask now that you play 106,
14 which is your second interview and maybe we can pass those
15 back this way and then we will pass these this way.

16 (Off the record discussion not reported.)

17 MR. BELL: Stop that. I notice that one of
18 the jurors asked that the volume go up just a little bit.
19 If any of you can't hear it and you need it up a little
20 bit, if you'd give us a high sign with the thumb or low
21 sign with the thumb, Alex can monitor it and we can try to
22 make sure that it's easy for you to listen.

23 Go ahead, please.

24

25 (At this time, Exhibit 106 was played to the

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1 jury.)

2

3 Q (BY MR. BELL) That was the end of the
4 interview?

5 A Yes.

6 Q Again, did it fairly and accurately
7 reflect your conversation with the defendant, William
8 Castillo?

9 A Yes, it did.

10 MR. BELL: Move the admission of 106 and
11 106-A.

12 MR. SCHIECK: No objection.

13 MR. BELL: I have nothing further of
14 Detective Morgan.

15 THE COURT: Same will be received in
16 evidence.

17 Cross examination?

18

19 CROSS EXAMINATION

20 BY MR. LaPORTA:

21 Q Detective, when did you first run into
22 William Castillo that night?

23 A It was at his residence on Lake Mead.

24 Q And you were one of two individuals who
25 knocked on the door?

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1 A Actually it was more. Somewhere
2 probably around five or six.

3 Q But you were one of the individuals who
4 he greeted at the door, were you not?

5 A That is correct.

6 Q About how long a period of time did you
7 spend continuously from the moment you knocked on the door
8 until you first left?

9 A I could tell you more exactly by
10 looking at the times on his rights cards.

11 Q You can approximate.

12 A About 15 minutes, I believe.

13 Q Pardon me?

14 A About 15 minutes probably.

15 Q Before you left the first time?

16 A Before we left his house and went to
17 the police station.

18 Q Okay. And you took him with you at
19 that time?

20 A Correct.

21 Q And how long was he in your custody the
22 balance of the evening?

23 A I'd have to look at the booking sheet.
24 He was in my custody until he was booked in jail.

25 Q During that period of time, from the

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1 moment you knocked on the door until you finally released
2 him to the detention center, I assume, his general nature,
3 would it be fair to characterize it as somewhat
4 cooperative? Cooperative?

5 A Depends what you mean by cooperative.
6 We went from several extremes. Cooperative, to me, just is
7 coming in and giving a statement, moving on. So the amount
8 of time it took to elicit the confession, I wouldn't say it
9 was just straight cooperation.

10 Q But would you characterize it as --

11 A He was cooperative to the extent that I
12 didn't have to wrestle with him to get him to sit in the
13 chair and give a statement.

14 Q Now there were two statements taken?

15 A Yes.

16 Q Is that the usual procedure?

17 A The technique that I used on the first
18 statement, if they don't come out and cooperate and
19 confess, I give them a break, give them time to think about
20 it, and come back in with another interview.

21 Q It's not unusual the first time or
22 first statement to have a individual who you are
23 interviewing somewhat dance around the issues, is it?

24 A That's correct.

25 Q So that's the typical situation. They

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1 don't quite come out and confess, they dance around the
2 facts, factual issues; is that not --

3 A You have to take each situation. Some
4 people come in and tell exactly what happened and go
5 forward. Some don't.

6 Q Usually, though, there --

7 A That's a case by case basis.

8 MR. LaPORTA: I have no further questions.

9 MR. BELL: State has nothing further of
10 Detective Morgan, your Honor.

11 THE COURT: May this witness be discharged?

12 MR. BELL: He may. Thank you.

13 MR. LaPORTA: Yes, your Honor.

14 THE COURT: Thank you, sir.

15 MR. BELL: Did we get the tapes lodged with
16 the clerk?

17 THE COURT: Yes.

18 MR. BELL: State rests.

19 MR. HARMON: Your Honor, before we move on,
20 we need to confer with the clerk.

21 MR. BELL: Upon conferring that all the
22 evidence is admitted or anything that needs to be admitted,
23 I'm prepared to rest.

24 (Off the record discussion not reported.)

25 MR. HARMON: Your Honor, just a couple of

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1 additional offers. State's Proposed Exhibit 66, which is a
2 photograph of the bootie recovered from the Russos by the
3 police, I offer that.

4 THE COURT: Objection?

5 MR. SCHIECK: None.

6 MR. LaPORTA: No, your Honor.

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

9 MR. HARMON: Thank you, your Honor.

10 Mrs. Hosking, early in the trial, identified
11 Proposed 77-A-1. That is the pie server. That is part of
12 the silverware set left in the house. We offer Proposed
13 Exhibit 77-A-1.

14 MR. SCHIECK: No objection, your Honor.

15 THE COURT: That will be received in
16 evidence.

17 MR. HARMON: Thank you.

18 And, finally, 79, which is the evidence bag,
19 and 79-A, that was the package of stickers recovered by
20 Detective Tremel from Mr. Russo, the neighbor. We offer
21 that.

22 MR. SCHIECK: No objection.

23 THE COURT: Same will be received in
24 evidence.

25 MR. HARMON: Thank you, your Honor.

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1 MR. BELL: With that, the State rests.

2 THE COURT: Thank you.

3 At this time, ladies and gentlemen of the
4 jury, we have a matter to take up outside your presence.
5 This will take probably around -- give you 10 minutes while
6 we -- need more than that?

7 MR. BELL: Probably less.

8 MR. LaPORTA: Probably less, your Honor.

9 THE COURT: All right, we will take about 10
10 minutes so that you can take advantage of the facilities
11 here. Please remain on the upper deck of the courthouse.

12 We will, on your return, commence with the
13 remainder of the case, as I understand it?

14 MR. LaPORTA: Yes.

15 THE COURT: All right, so we will be
16 starting with Jury Instructions right after you get back.

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

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1 submitted to you.

2 We will be at ease while you depart the
3 confines of the courtroom.

4
5 (At this time the jury left the courtroom.)

6
7 THE COURT: The record will reflect that we
8 are outside the presence of the jury and that the State of
9 Nevada has rested its case in chief.

10 Mr. Castillo, will you please stand.

11 Mr. Castillo, Nevada Revised Statute Section
12 175.171 provides, in its heading and in its text, as
13 follows: "No special Instructions to be given relating
14 exclusively to defendant's testimony.

15 In the trial of all indictments, complaints,
16 and other proceedings against persons charged with the
17 commission of crimes or offenses, the person so charged
18 shall, at his own request, but not otherwise, be deemed a
19 competent witness. The credit to be given his testimony
20 being left solely to the jury under the Instructions of the
21 Court, but no special instruction shall be given relating
22 exclusively to the testimony of the defendant."

23 Nevada Revised Statute 175.181 provides, in
24 its heading and in its text, as follows: "Instruction not
25 to be given relative to the failure of a defendant to

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1 testify.

2 Subsection 1. No instruction shall be given
3 relative to the failure of the person charged with the
4 commission of a crime or offense to testify except upon the
5 request of the person so charged. The Court shall instruct
6 the jury that, in accordance with the right guaranteed by
7 the constitution, no person can be compelled in a criminal
8 action to be a witness against himself.

9 Subsection 2. Nothing herein contained
10 shall be construed as compelling any such person to
11 testify."

12 Mr. Castillo, you have the right under the
13 Constitution of the United States of America and under the
14 Constitution of the State of Nevada not to be compelled to
15 testify in this case. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You may, if you wish, give up
18 this right and take the witness stand and testify. If you
19 do, you will be subject to cross examination by the
20 district attorney and anything that you may say, be it on
21 direct examination or cross examination, will be the
22 subject of fair comment when the district attorney speaks
23 to the jury in its final argument.

24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: If you choose not to testify,
2 the Court will not permit the district attorney to make any
3 comments to the jury concerning the fact that you have not
4 testified. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: If you elect not to testify, the
7 Court will instruct the jury, only if your attorney
8 specifically requests, as follows: "The law does not
9 compel a defendant in a criminal case to take the stand and
10 testify and no presumption may be raised and no inference
11 of any kind may be drawn from the failure of a defendant to
12 testify."

13 Do you have any questions you would like to
14 ask me about these rights?

15 THE DEFENDANT: No, sir.

16 THE COURT: At this time I would inquire of
17 counsel if whether the defense intends to put on a case in
18 chief?

19 MR. SCHIECK: No, your Honor.

20 THE COURT: The defendant is not going to
21 testify then?

22 MR. SCHIECK: No, he is not, your Honor.

23 THE COURT: Has there been a request to
24 instruct the jury relative to the defendant's failure to
25 testify?

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1 MR. SCHIECK: Yes, your Honor. That's been
2 inserted in the packet that we settled this morning.

3 THE COURT: All right. Can you tell me
4 which instruction it is?

5 MR. SCHIECK: 38, your Honor.

6 THE COURT: All right, at the request of the
7 defense, the Court is going to read to the jury Instruction
8 No. 38, which provides as follows. "You are instructed
9 that the law does not compel the defendant in a criminal
10 case to take the stand and testify and no presumption may
11 be raised and no inference of any kind may be drawn from
12 the failure of a defendant to testify."

13 Mr. Castillo, have you discussed whether you
14 wish to have this instruction read to the jury with your
15 attorneys?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You have.

18 And it's your wish to have that instruction
19 read to the jury?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right, anything further from
22 the parties before we adjourn?

23 MR. BELL: Not of a legal matter.

24 THE COURT: All right.

25 MR. BELL: But I have heard Mr. Harmon's

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1 argument and I want to use the facilities before we start.

2 THE COURT: Well, I understand and we are
3 going to take a break --

4 MR. BELL: Thanks.

5 THE COURT: -- on the account of that
6 eventuality.

7 We are in recess.

8
9 (Off the record at 2:40 p.m. and back on the
10 record at 3:07 p.m.)

11
12 THE COURT: Good afternoon, ladies and
13 gentlemen again.

14 Counsel stipulate to the presence of the
15 jury?

16 MR. BELL: State so stipulates, your Honor.

17 MR. LaPORTA: Defense so stipulates, your
18 Honor.

19 THE COURT: Ladies and gentlemen of the
20 jury, I'm about to instruct you on the law as it applies in
21 this case --

22 MR. BELL: Your Honor, may we approach the
23 bench?

24 THE COURT: Oh, I'm sorry. I got ahead of
25 myself.

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1 (Off the record discussion not reported.)

2 THE COURT: Thank you.

3 I got a step ahead. State has rested.

4 Is the defense going to put on its case?

5 MR. SCHIECK: We will be putting on no
6 witnesses, your Honor.

7 THE COURT: Defense rests at this time?

8 MR. SCHIECK: Yes, your Honor.

9 THE COURT: That having happened, the State
10 has no right to any further evidence by way of rebuttal and
11 at this time I will proceed with the process of the
12 Instructions. I had a meeting in chambers, ladies and
13 gentlemen, and that got me off focus for just a moment.

14 Ladies and gentlemen of the jury, I'm about
15 to instruct you on the law as it applies in this case. I
16 would like to instruct you orally without reading to you.
17 However, to ensure that the Instructions comply with Nevada
18 law, it is necessary for me to read to you these carefully
19 prepared written Instructions.

20 These Instructions are long and quite
21 complicated. If they are not especially clear when I read
22 them to you, please bear in mind, when you go to the jury
23 room, you will be able to take these written Instructions
24 with you so that you can there read and consider them
25 carefully.

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1 "Members of the jury, it is now my duty, as
2 judge, to instruct you in the law that applies to this
3 case. It is your duty, as jurors, to follow these
4 Instructions and to apply the rules of law to the facts as
5 you find them from the evidence.

6 You must not be concerned with the wisdom of
7 any rule of law stated in these Instructions. Regardless
8 of any opinion you may have as to what the law ought to be,
9 it would be a violation of your oath to base a verdict upon
10 any other view of the law than that given in the
11 Instructions of the Court.

12 If, in these Instructions, any rule,
13 direction or idea is repeated or stated in different ways,
14 no emphasis thereon is intended by me and none may be
15 inferred by you. For that reason, you are not to single
16 out any certain sentence or any individual point or
17 Instruction and ignore the others, but you are to consider
18 all the Instructions as a whole and regard each in light of
19 all the others.

20 The order in which the Instructions are
21 given has no significance as to their relative importance.

22 An Amended Indictment is but a formal method
23 of accusing a person of a crime and is not of itself any
24 evidence of his guilt.

25 In this charge, it is charged in an Amended

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1 Indictment, that on or about the 17th day of December,
2 1995, the defendant committed the following offenses:

3 Count I - Conspiracy to commit burglary
4 and/or robbery.

5 Defendants did then and there meet with each
6 other and between themselves and each of them with the
7 other, willfully, unlawfully, and feloniously conspire and
8 agree to commit the crimes of burglary and/or robbery, and
9 in furtherance of said conspiracy, defendants did commit
10 the acts alleged in Counts II and III, which acts are
11 incorporated by this reference as though fully set forth
12 herein.

13 Count II - Burglary.

14 Defendants did then and there willfully,
15 unlawfully and feloniously enter with the intent to commit
16 a felony, to wit: Larceny, that certain building occupied
17 by Isabelle Berndt, located at 13 North Yale, Las Vegas,
18 Clark County, Nevada. Both defendants entering the
19 residence and defendant Michelle C. Platou aiding or
20 abetting defendant William Patrick Castillo by furnishing
21 transportation to said location and defendant William
22 Patrick Castillo aiding or abetting defendant Michelle C.
23 Platou by providing the key to the premises.

24 Count III - Robbery, victim 65 years or
25 older.

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1 Defendant's did then and there willfully,
2 unlawfully, and feloniously take personal property, to wit:
3 A video cassette recorder, a set of silverware, "booties",
4 United States currency, and miscellaneous personal property
5 from the person of Isabelle Berndt or in her presence by
6 means of force or violence or fear of injury to and without
7 the consent and against the will of the said Isabelle
8 Berndt, a person being 65 years of age or older, the
9 defendants using force or fear to obtain or retain
10 possession of the property, and/or to prevent or overcome
11 resistance to the taking of the property, and/or to
12 facilitate escape with the property; the defendants aiding
13 or abetting each other as more specifically set forth in
14 Counts I, II, and IV, incorporated herein by this
15 reference.

16 Count IV - Murder with use of a deadly
17 weapon.

18 Defendants did then and there, without
19 authority of law and with malice aforethought, willfully
20 and feloniously kill Isabelle Berndt, a human being, by
21 beating said Isabelle Berndt about the head and face with
22 his fists and with a deadly weapon, to wit: a blunt object
23 and/or a tire iron, the defendants being responsible under
24 the following theories of criminal liability, to wit: (1)
25 Premeditation: Defendant William Patrick Castillo; (2)

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1 Felony Murder: Defendants William Patrick Castillo and
2 Michelle C. Platou during the perpetration or attempted
3 perpetration of the crimes of burglary and/or robbery, as
4 set forth in Counts II or III, incorporated herein by this
5 reference. (3) as aiders or abettors and as conspirators,
6 William Patrick Castillo and Michelle C. Platou vicariously
7 as participants in a conspiracy to commit the felony
8 offenses of burglary and/or robbery as set forth in Count
9 I, incorporated herein by this reference; the defendants
10 having conspired with each other to commit said burglary
11 and/or robbery and having travelled together to the said
12 Isabelle Berndt's home in the vehicle of Michelle C. Platou
13 and defendant William Patrick Castillo having retrieved a
14 blunt object and/or a tire iron from the defendant Michelle
15 C. Platou's automobile to use against any persons they
16 might encounter after gaining entry to the residence of
17 Isabelle Berndt, the defendants thereafter committing the
18 crimes of burglary and/or robbery, as set forth in Counts
19 II and III, incorporated herein by this reference, the
20 defendant William Patrick Castillo actually inflicting the
21 beating to the said Isabelle Berndt resulting in her
22 death.

23 Count V - Conspiracy to commit burglary and
24 arson.

25 Defendants did then and there meet with each

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1 other and between themselves and each of them with the
2 other willfully, unlawfully, and feloniously conspire and
3 agree to commit the crimes of burglary and arson and in
4 furtherance of said conspiracy, defendants did commit the
5 acts alleged in Counts VI and VII, which acts are
6 incorporated by this reference, as if fully set forth
7 herein.

8 Count VI - Burglary.

9 Defendants did then and there willfully,
10 unlawfully, and feloniously enter with the intent to commit
11 a felony, to wit: Arson, that certain building occupied by
12 Isabelle Berndt, located at 13 North Yale, Las Vegas, Clark
13 County, Nevada. Defendant William Patrick Castillo
14 directly committing said act, defendant Michelle C. Platou
15 aiding or abetting its commission by counsel and/or
16 encouragement and by driving defendant William Patrick
17 Castillo to and from the scene of the crime.

18 Count VII - First degree arson.

19 Defendants did then and there wilfully,
20 unlawfully, maliciously, and feloniously set fire to and
21 thereby cause to be burned, a certain residence, located at
22 13 North Yale, Las Vegas, Clark County, Nevada, said
23 property being then and there the property of Isabelle
24 Berndt, by use of open flame and flammable and/or
25 combustible materials, and/or by manner and means unknown,

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1 defendant William Patrick Castillo directly committing said
2 act. Defendant Michelle C. Platou aiding or abetting its
3 commission by counsel and/or encouragement and by driving
4 defendant William Patrick Castillo to and from the crime of
5 the scene.

6 It is the duty of the jury to apply the
7 rules of law contained in these Instructions to the facts
8 of the case and determine whether or not the defendant is
9 guilty of one or more of the offenses charged.

10 Each charge and the evidence pertaining to
11 it should be considered separately. The fact that you may
12 find a defendant guilty or not guilty as to one of the
13 offenses charged should not control your verdict as to any
14 other offense charged.

15 A conspiracy is an agreement between two or
16 more persons to commit a criminal act. To be guilty of
17 conspiracy, a defendant must intend to commit or aid in the
18 commission of the specific criminal conduct agreed to. The
19 crime is the agreement to do something unlawful. It does
20 not matter whether it was successful or not.

21 It is not necessary in proving a conspiracy
22 to show a meeting of the alleged conspirators or the making
23 of an express or formal agreement. The formation and
24 existence of a conspiracy may be inferred from all
25 circumstances tending to show the common intent and may be

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1 proved in the same way as any other fact may be proved,
2 either by direct testimony of the fact or by circumstantial
3 evidence or by both direct and circumstantial evidence.

4 Any person who by day or night, enters any
5 home or building with intent to commit larceny or any
6 felony is guilty of burglary.

7 Larceny is the theft of money or property
8 belonging to another person.

9 You are instructed that the offense of
10 burglary is complete if you find that entry was made into a
11 home or building with the intent to commit larceny or any
12 felony therein.

13 An entry is deemed to be complete when any
14 portion of an intruder's body, however slight, penetrates
15 the space within the building.

16 Every person who, in the commission of a
17 burglary, commits any other crime, may be prosecuted for
18 each crime separately.

19 You are further instructed that in order to
20 constitute the crime of burglary, it is not necessary to
21 prove that the defendant actually stole any of the
22 articles, goods, or money contained in the home or
23 building. The gist of the crime of burglary is the
24 unlawful entering of a building with the intent to steal
25 something therein.

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1 Robbery is the unlawful taking of personal
2 property from the person of another or in her presence,
3 against her will, by means of force or violence or fear of
4 injury, immediate or future to her person or property or
5 the person or property of a member of her family or of
6 anyone in her company at the time of the robbery. A taking
7 is by means of force or fear if force or fear is used to:

8 (a) Obtain or retain possession of the
9 property;

10 (b) Prevent or overcome resistance to the
11 taking; or

12 (c) Facilitate escape.

13 The degree of force used is immaterial if it
14 is used to compel acquiescence to the taking of or escaping
15 with the property. A taking constitutes robbery whenever
16 it appears that, although the taking was fully completed
17 without knowledge from the person whom taken, such
18 knowledge was prevented by use of force or fear.

19 The value of property or money taken is not
20 an element of the crime of robbery and it is only necessary
21 that the State prove the taking of some property or money.

22 Any individual identified as a victim who is
23 65 years of age or older on the date of the alleged crime
24 satisfies the element of being a victim 65 years of age or
25 older.

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1 Murder is the unlawful killing of a human
2 being with malice aforethought, whether express or
3 implied. The unlawful killing may be effected by any of
4 the various means by which death may be occasioned.

5 Malice aforethought means the intentional
6 doing of a wrongful act without legal cause or excuse or
7 what the law considers adequate provocation. The condition
8 of mind described as malice aforethought may arise not
9 alone from anger, hatred, revenge or from particular ill
10 will, spite or grudge towards the person killed, but may
11 result from any unjustifiable or unlawful motive or purpose
12 to injure another which proceeds from a heart fatally bent
13 on mischief or with reckless disregard of consequences and
14 social duty. Malicious -- strike that. Malicious --
15 malice aforethought does not imply deliberation or the
16 lapse of any considerable time between the malicious intent
17 to injure another and the actual execution of the intent,
18 but denotes rather an unlawful purpose and design in
19 contradistinction to accident and mischance.

20 Express malice is that deliberate intention
21 unlawfully to take away the life of a fellow creature which
22 is manifested by external circumstances capable of proof.

23 Malice may be implied when no considerable
24 provocation appears or when all the circumstances of the
25 killing show an abandoned and malignant heart.

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1 Murder of the first degree is murder which
2 is (a) perpetrated by any kind of willful, deliberate, and
3 premeditated killing and/or (b) committed during the
4 perpetration of burglary and/or robbery.

5 A premeditation is a design, a determination
6 to kill, distinctly formed in the mind at any moment before
7 or at the time of the killing.

8 Premeditation need not be for a day, an
9 hour, or even a minute. It may be as instantaneous as
10 successive thoughts of the mind. For if the jury believes
11 from the evidence that the act constituting the killing has
12 been preceded by and has been the result of premeditation,
13 no matter how rapidly the premeditation is followed by the
14 act constituting the killing, it is willful, deliberate and
15 premeditated murder.

16 The intention to kill may be ascertained or
17 deduced from the facts or circumstances of the killing such
18 as the use of a deadly weapon calculated to produce death
19 in the manner of its use and the intended circumstances
20 characterizing the act.

21 There is a kind of murder which carries with
22 it conclusive evidence of premeditation and malice
23 aforethought. This class of murder is murder committed in
24 the perpetration of a burglary and/or robbery. Therefore,
25 a killing which is committed in the perpetration of

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1 burglary and/or robbery is deemed to be murder in the first
2 degree, whether the killing was intentional, unintentional
3 or accidental. This is called the Felony Murder Rule.

4 The Felony Murder Rule is applicable only
5 when a specific intent to commit burglary and/or robbery is
6 proved.

7 You are instructed that if you find a
8 defendant guilty of murder of the first degree, you must
9 also determine whether or not a deadly weapon was used in
10 the commission of this crime.

11 A deadly weapon is any weapon, device,
12 instrument, material or substance which, under
13 circumstances in which it is used, attempted to be used or
14 threatened to be used, is readily capable of causing
15 substantial bodily harm or death.

16 If you find beyond a reasonable doubt that a
17 defendant committed murder of the first degree with use of
18 a deadly weapon, then you are instructed that the verdict
19 of murder of the first degree with the use of a deadly
20 weapon is the appropriate verdict.

21 If, however, you find that a deadly weapon
22 was not used in the commission of a murder, but you do find
23 that a murder was committed, then you are instructed that
24 the verdict of murder of the first degree without the use
25 of a deadly weapon is the appropriate verdict.

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1 You are instructed that you cannot return a
2 verdict of both murder of the first degree with the use of
3 a deadly weapon and murder of the first degree without the
4 use of a deadly weapon.

5 The offense of first degree murder
6 necessarily includes the lesser offense of second degree
7 murder. If you are convinced beyond a reasonable doubt
8 that the crime of murder has been committed by the
9 defendant, but you have a reasonable doubt as to whether
10 such murder was of the first or second degree, you must
11 give the defendant the benefit of that doubt and return a
12 verdict of murder of the second degree.

13 Murder of the second degree is murder with
14 malice aforethought, but without the admixture of
15 premeditation.

16 All murder which is not murder of the first
17 degree is murder of the second degree.

18 You are instructed that if you find a
19 defendant guilty of murder of the second degree, you must
20 also determine whether or not a deadly weapon was used in
21 the commission of this crime.

22 If you find beyond a reasonable doubt that
23 the defendant committed murder of the second degree with
24 the use of deadly weapon, then you are instructed that the
25 verdict of murder of the second degree with use of a deadly

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1 weapon is the appropriate verdict.

2 If, however, you find that a deadly weapon
3 was not used in the commission of a murder, but you do find
4 that a murder was committed, then you are instructed that
5 the verdict of murder of the second degree without the use
6 of a deadly weapon is the appropriate verdict.

7 You are instructed that you cannot return a
8 verdict of both murder of the second degree with the use of
9 a deadly weapon and murder of the second degree without the
10 use of a deadly weapon.

11 Any person who willfully and maliciously
12 sets fire or burns or causes to be burned or who aids,
13 counsels or procures the burning of any dwelling, house or
14 other structure, whether occupied or vacant, whether the
15 property of himself or of another, is guilty of arson in
16 the first degree.

17 The word willfully means the doing of any
18 act purposefully and intentionally, not accidentally. The
19 word maliciously means wrongfully, intentionally and
20 without just cause or excuse.

21 To constitute the setting fire to or the
22 burning of property, as those terms are used in the law
23 just stated to you, it is not necessary that the dwelling,
24 house or personal property involved be completely
25 destroyed. The burning, which is a necessary element of

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1 the crime, is done if the fire is so applied or created
2 that it destroys any part of the property, however small.
3 A charring, which involves destruction of some of the
4 material, is a burning within the meaning of the law.

5 Every person concerned in the commission of
6 a crime, whether he directly commits the act constituting
7 the offense or aids and abets in the commission, and
8 whether present or absent; and any person who directly or
9 indirectly counsels, encourages, hires, commands, induces
10 or otherwise procures another to commit a crime is a
11 principal and shall be proceeded against and punished as
12 such.

13 Whether several parties join together in a
14 common design to commit any unlawful act, each is
15 criminally responsible for the acts of his confederates
16 committed in furtherance of the common design. In
17 contemplation of law, the act of one is the act of all.

18 You are instructed that presence,
19 companionship, and conduct before, during and after the
20 offense are circumstances from which one's participation in
21 the criminal intent may be inferred.

22 To constitute the crime charged, there must
23 exist a union of joint operation of an act forbidden by law
24 and an intent to do the act.

25 The intent within which an act is done is

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1 shown by the facts and circumstances surrounding the case.

2 Do not confuse intent with motive. Motive
3 is what prompts a person to act. Intent refers only to the
4 state of mind with which the act is done.

5 Motive is not an element of the crime
6 charged and the State is not required to prove a motive on
7 the part of the defendant in order to convict. However,
8 you may consider evidence of motive or lack of motive as a
9 circumstance in the case.

10 The defendant is presumed innocent until the
11 contrary is proved. This presumption places upon the State
12 the burden of proving beyond a reasonable doubt every
13 material element of the crime charged and that the
14 defendant is the person who committed the offense.

15 A reasonable doubt is one based on reason.
16 It is not mere possible doubt, but is such a doubt as would
17 govern or control a person in the more weighty affairs of
18 life. If in the minds of the jurors, after the entire
19 comparison and consideration of all the evidence, are in
20 such a condition that they feel -- that they can say they
21 feel an abiding conviction of the truth of the charge,
22 there is not a reasonable doubt. Doubt to be reasonable
23 must be actual, not mere possibility or speculation.

24 If you have a reasonable doubt as to the
25 guilt of the defendant, he is entitled to a verdict of not

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1 guilty.

2 You are here to determine the guilt or
3 innocence of the defendant from the evidence in the case.
4 You are not called upon to return a verdict as to the guilt
5 or innocence of any other person. So, if the evidence in
6 the case convinces you beyond a reasonable doubt of the
7 guilt of the defendant, you should so find, even though you
8 may believe one or more persons are also guilty.

9 The evidence you are to consider in this
10 case consists of the testimony of the witnesses, the
11 exhibits, and any facts admitted or agreed to by counsel.

12 There are two types of evidence, direct and
13 circumstantial. Direct evidence is the testimony of a
14 person who claims to have personal knowledge of the
15 commission of the crime, which has been charged such as an
16 eye witness. Circumstantial evidence is the proof of a
17 chain of facts and circumstances which tend to show whether
18 the defendant is guilty or not guilty. The law makes no
19 distinction between the weight to be given either direct or
20 circumstantial evidence. Therefore, all of the evidence in
21 the case, including the circumstantial evidence, should be
22 considered by you in arriving at your verdict.

23 Statements, arguments, and opinions of
24 counsel are not evidence in the case. However, if the
25 attorneys stipulate to the existence of a fact, you must

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1 accept the stipulation as evidence and regard that fact as
2 proved.

3 You must not speculate to be true any
4 insinuation suggested by a question asked a witness. A
5 question is not evidence and may be considered only as it
6 supplies meaning to the answer.

7 You must disregard any evidence to which an
8 objection was sustained by the Court and any evidence
9 ordered stricken by the Court.

10 Anything you may have seen or heard outside
11 the courtroom is not evidence and must also be
12 disregarded.

13 The credibility or believability of a
14 witness should be determined by his manner on the stand,
15 his relationship to the parties, his fears, motives,
16 interests or feelings, his opportunity to have observed the
17 matter to which he testified, the reasonableness of his
18 statements, and the strength or weakness of his
19 recollection.

20 If you believe that a witness has lied about
21 any material fact in the case, you may disregard the entire
22 testimony of that witness or any portion of his testimony
23 which is not proved by other evidence.

24 You are instructed that the law does not
25 compel a defendant in a criminal case to take the stand and

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1 testify and no presumption may be raised and no inference
2 of any kind may be drawn from the failure of a defendant to
3 testify.

4 A witness who has special knowledge, skill,
5 experience, training or education in a particular science,
6 profession or occupation is an expert witness. An expert
7 witness may give his opinion as to any matter in which he
8 is skilled.

9 You should consider such expert opinion and
10 weigh the reasons, if any, given for it. You are not
11 bound, however, by such an opinion. Give it the weight to
12 which you deem it entitled, whether that be great or
13 slight, and you may reject it if, in your judgment, the
14 reasons given for it are unsound.

15 Although you are to consider only the
16 evidence in the case in reaching a verdict, you must bring
17 to the consideration of the evidence your everyday common
18 sense and judgment as reasonable men and women. Thus, you
19 are not limited solely to what you see and hear as the
20 witnesses testify. You may draw reasonable inferences from
21 the evidence which you feel are justified in light of
22 common experience, keeping in mind that such evidence
23 should not be based -- strike that. Keeping in mind that
24 such inferences should not be based on speculation or
25 guess.

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1 A verdict may never be influenced by
2 sympathy, prejudice, or public opinion. Your decision
3 should be the product of sincere judgment and sound
4 discretion in accordance with these rules of law.

5 In arriving at a verdict in this case as to
6 whether the defendant is guilty or not guilty, the subject
7 of penalty or punishment is not to be discussed or
8 considered by you and should in no way influence your
9 verdict.

10 The jury's verdict -- strike that. If the
11 jury's verdict is murder of the first degree, you will, at
12 a later hearing, consider the subject of penalty or
13 punishment.

14 When you retire to consider your verdict,
15 you must select one of your number to act as foreperson who
16 will preside over your deliberations and will be your
17 spokesperson here in court.

18 During your deliberation, you will have all
19 the exhibits, which were admitted into evidence, these
20 written Instructions, and forms of verdict which have been
21 prepared for your convenience.

22 Your verdict must be unanimous. As soon as
23 you've agreed upon a verdict, have it signed and dated by
24 your foreperson and then return with it to this room.

25 If, during the deliberation, you should

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1 desire to be further informed on any point of law or hear
2 again portions of the testimony, you must reduce your
3 request to writing signed by the foreperson. The officer
4 will then return you to court where the information sought
5 will be given you in the presence of and after notice to
6 the district attorney and the defendant and his counsel.

7 Readbacks of testimony are time consuming
8 and are not encouraged unless you deem it a necessity.
9 Should you require a readback, you must carefully describe
10 the testimony to be readback so that the court reporter can
11 arrange her notes. Remember, the Court is not at liberty
12 to supplement the evidence.

13 Now you will listen to the arguments of
14 counsel who will endeavor to aid you to reach a proper
15 verdict by refreshing in your minds the evidence and by
16 showing the application thereof to the law, but whatever
17 counsel may say, you will bear in mind that it is your duty
18 to be governed in your deliberation by the evidence, as you
19 understand it and remember it to be, and by the law as
20 given to you in these Instructions with the sole, fixed and
21 steadfast purpose of doing equal and exact justice between
22 the defendant and the State of Nevada."

23 Given this 4th day of September, 1996, in
24 open court, A. William Maupin, District Court Judge, Eighth
25 Judicial District Court of the State of Nevada, Department

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1 VII.

2 Ladies and gentlemen, before we commence
3 with final arguments, I must inquire of you whether, during
4 the last recess, any of you had any conversations with one
5 another about this case?

6 Let the record reflect a uniform negative
7 response.

8 Did anyone read any newspaper reportings or
9 any radio or television media or -- strike that -- did any
10 of you read any newspaper accounts of this trial during the
11 last recess?

12 Let the record reflect a uniform negative
13 response.

14 Did any of you watch or listen to television
15 or radio news accounts of this case?

16 Let the record reflect a uniform negative
17 response.

18 At this time, the State of Nevada may make
19 its opening portion of the final argument.

20 MR. HARMON: Thank you, your Honor. May we
21 have the lectern?

22 THE COURT: Yes.

23 MR. HARMON: Thank you.

24 May it please the Court, Mr. Bell, Mr.
25 LaPorta, Mr. Schieck, good afternoon, ladies and

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1 gentlemen. Up until this point in these proceedings, you
2 have exercised a relative passive role, but, in a short
3 while now, you will assume center stage.

4 I don't stand before you as someone who
5 apologizes for the criminal justice system. It does have,
6 according to its critics, painful shortcomings, but in
7 another sense, I'm proud to be a part of the system and I
8 would tell you that I think, when a juror, when persons who
9 come from various walks of life in our community make up a
10 jury and decide guilt or innocence and other issues
11 involved in a criminal case, that represents the finest
12 hour of our system of justice.

13 I congratulate you on your willingness to
14 serve. We have observed, as I think all the counselors and
15 the Court have, that you have been conscientious, you have
16 been taking notes, you have been attentive. The Court
17 actually, I think, key noted your duty with the last
18 Instruction when he informed you that if you
19 conscientiously and fairly and objectively strive to render
20 equal and exact justice to both sides in this case, then we
21 can ask for no more.

22 There are some memorable lines from an old
23 Scottish prayer which seem, to me, applicable, as I begin
24 my remarks. I don't wish to be glib. I'm not trying to
25 make light of what happened, but the lines are from

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1 Ghoulies and Ghosties and Long Leggedy Beasties, "And
2 things that go bump in the night, good Lord deliver us."

3 Citizens in Clark County, citizens
4 everywhere are entitled to be safe and secure in their
5 homes, particularly at night. Isabelle Berndt was entitled
6 to be safe and secure in her home at 13 North Yale Street,
7 December the 16th and 17th, 1995, particularly at night.
8 Home is a secured word. It carries with it the connotation
9 of happy memories, of peace, of privacy, of refuge and
10 protection from evil. Protection from things that go bump
11 in the night. Isabelle Berndt was not secure, she didn't
12 receive that protection in her home the night this
13 occurred.

14 In fact, what occurred to her, as probably
15 everyone in this courtroom would relate to, is the
16 realization of one's worst nightmare because probably every
17 person, on occasion, when they retire for the evening in
18 what they hope to be the safety of their home, may, if not
19 often, at least a few times think will I be safe as I
20 sleep? Will I be safe in my sanctuary or is it possible
21 that the unthinkable could happen? Is it possible that the
22 worst nightmare of a decent minded person could occur?
23 That of being stalked in the darkness by intruders who go
24 bump in the night.

25 Ladies and gentlemen, the worst nightmare of

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1 Mrs. Berndt became a stark, cold reality early Sunday
2 morning in the darkness December 17, 1995. Eighty six
3 years of age, alone, asleep, unarmed, helpless. Her
4 daughter said just a little woman of perhaps five feet two
5 inches in height, betrayed by a key and two traitorous
6 hearts.

7 Theodore Roosevelt is quoted as saying, "No
8 man is above the law and no man is below it. Nor do we ask
9 any man's permission when we require him to obey it."
10 Obedience to the law is demanded as a right, not asked as a
11 favor and in this city and in this county, December 17,
12 1995, the system demanded obedience to the law and that
13 applied directly to Michelle Platou and to the defendant
14 before you in this courtroom, Mr. Castillo.

15 In every criminal case, there are two
16 primary issues that the trier of fact, the jury, must
17 resolve. The first issue has to do with the allegation of
18 criminal conduct. The State of Nevada represented in this
19 courtroom by the district attorney, Mr. Bell, and myself
20 have alleged that William Castillo committed certain crimes
21 on or about December the 17, 1995 and we have the burden of
22 proving those allegations beyond a reasonable doubt and so
23 the first issue becomes have we satisfied our burden? Have
24 we shown that the crimes alleged were perpetrated?

25 The second issue of equal importance,

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1 assuming that the answer to one or all of the crimes pled
2 concerning the first issue is, yes, the offenses occurred,
3 then the question becomes who committed the crimes and with
4 your indulgence for a few minutes, I would like to discuss
5 the issues in that order.

6 Mr. Castillo is charged with seven
7 offenses. You are going to find, when you retire to
8 deliberate and you consider the Instructions, that you also
9 have a substantial number of verdicts and, as I recall, you
10 have two verdicts, guilty and not guilty, on six of the
11 counts.

12 Regarding Count IV, which is the allegation
13 of murder with use of a deadly weapon, you have five
14 potential verdicts. That is because the pleading is open
15 murder and that includes two degrees of murder, murder of
16 the first and murder of the second degree.

17 It also is because the murder allegation
18 carries with it the allegation that the killing of Isabelle
19 Berndt occurred with use of a deadly weapon. In this case,
20 a tire iron or a crow bar used on her head. So you will
21 find, as to Count IV, that just to use that count as an
22 illustration, there is a verdict which reads guilty of
23 murder of the first degree with use of a deadly weapon.

24 There is another verdict which reads guilty
25 of murder of the first degree without the use of a deadly

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1 weapon, if you should decide that requirement was not
2 satisfied, and there are corresponding verdicts of guilty
3 for murder of the second degree and the fifth verdict is
4 not guilty and on the other six counts, as I suggested,
5 there is a guilty and not guilty verdict.

6 Your role, as jurors, after you have decided
7 on guilt or innocence regarding each count, is to select
8 the appropriate verdict. Therefore, when you return to the
9 courtroom, if you've agreed on all the counts, you should
10 have seven verdicts and the other ones, if they have been
11 eliminated by you as not being applicable to this evidence,
12 are then to be disregarded.

13 In Count I and V of the Amended Indictment,
14 the prosecution has alleged the crimes of conspiracy.
15 That's alleged twice because the perpetrators, by the
16 uncontradicted evidence in this case, went twice to the
17 scene of the crime. A conspiracy is perhaps a high fluting
18 sounding legal word, but it's a very simple notion. As the
19 Court tells you in Instructions 4 and 5, to boil it down to
20 it's most elementary form, a conspiracy is an agreement
21 between two or more persons to commit a criminal act and it
22 can be any criminal act. In this case, in Count I, it is
23 alleged that the criminal act was to commit robbery and/or
24 burglary and in Count V, it's alleged that the criminal act
25 was to commit burglary or arson.

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1 The Court explains, in Instruction No. 5,
2 that to prove a conspiracy, this agreement to do something
3 unlawful, the prosecution doesn't have to present direct
4 evidence to show that the participants sat down and had a
5 meeting. It would be very difficult, as I'm sure you can
6 appreciate for the prosecution in every case, to actually
7 be able to prove there was a meeting where people sat down
8 together and there doesn't have to be any evidence of a
9 formal agreement. The proof of a conspiracy may be
10 established either by direct evidence or by circumstantial
11 evidence and it may be inferred from the totality of the
12 circumstances in the case.

13 In this case, the evidence is two people
14 went twice to 13 North Yale Street and they took a vehicle
15 and they, obviously, had a plan about how they would get
16 inside. They had a key that had been located. They used
17 the key. They went inside. One of them took with him a
18 deadly weapon, a tire iron. They went in and they stole
19 and they committed a violent, brutal offense and that
20 constitutes Count No. I, the agreement, the understanding
21 to commit criminal acts.

22 Count No. V is satisfied when the same two
23 persons return because they are concerned about concealing
24 incriminating evidence. Now there may or may not have been
25 fingerprints deposited at the crime scene by Michelle

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1 Platou. In a sense, that's irrelevant. They were
2 paranoid, they were panic stricken, they were afraid that
3 there were and that law enforcement would use that to link
4 them to the crimes and so they returned. They, one or both
5 of them, entered a second time. Obviously, inferentially,
6 by agreement. Lighter fluid was used in various places in
7 the house and then the house of Isabelle Berndt was set on
8 fire and, ladies and gentlemen, that satisfies the
9 conspiracy alleged in Count V.

10 The prosecution has also alleged two counts
11 of burglary and the same rationale applies to burglary. We
12 charged twice because they went in twice. The Court talks
13 about burglary in Instruction 6, 7, 8, and 9. Like
14 conspiracy, which is simply an agreement in this case
15 between two persons to commit an unlawful act, very simple,
16 very understandable proposition, burglary is also easy to
17 understand. Burglary is a crime of entry and that's the
18 long and short of it. Instruction No. 6, which sets out
19 the offense, very cogently explains, "Any person who, by
20 day or night, enters any home or building with the intent
21 to commit larceny or any felony is guilty of burglary."

22 Burglary is a crime of entry and, as the
23 Court explains in Instruction 7, larceny is just the intent
24 to steal. It is theft and there's no requirement it be a
25 particular dollar amount if the evidence shows that when

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1 the perpetrators entered and for the burglary to be
2 complete, they don't even have to get very far in.

3 The Court tells you in Instruction 8, the
4 burglary, I'm talking about that one crime of burglary is
5 complete, as soon as the intruder or intruders project any
6 part of their bodies into the premises belonging to someone
7 else. So as soon as these people used the key and they
8 went in and stepped across the threshold of 13 North Yale,
9 assuming they entered with the intent to steal or later on,
10 when they came back the second time, with the intention to
11 set the house on fire, as soon as that entry is made with
12 that intent, the burglary is complete. They wouldn't have
13 to do another thing. They could have turned around and
14 gone back out and they have committed the crimes of
15 burglary.

16 In fact, the Court emphasizes that point in
17 Instruction 8 in one of the subsequent paragraphs by
18 explaining if other crimes occur after they have gone in,
19 after the burglary is complete, a person such as Mr.
20 Castillo can be prosecuted for any of the crimes which
21 occur subsequently to his entry into the crime scene.

22 In Instruction 9, the Court informs you,
23 although we have evidence that property was stolen in this
24 case, that is not a requirement of burglary. There doesn't
25 have to be any evidence that goods or property or items,

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1 that anything, whatever was taken and it comes back to the
2 salient reality of burglary, it is a crime of entry;
3 unlawful entry with the intent either to steal in this case
4 or to commit arson.

5 And so the prosecution alleges, based upon
6 the evidence, we clearly, beyond a reasonable doubt, have
7 proven two counts of conspiracy, Count I and V, and two
8 counts of burglary, Counts II and VI.

9 Count No. III is robbery and it's not very
10 complicated either. It's true if you disregard the
11 scribbling I have put in red that there is quite a bit of
12 verbiage here, but burglary is a very -- excuse me --
13 robbery is a very simple notion also.

14 However, unlike burglary, which is a crime
15 against property, a crime of entry, robbery is a crime
16 against the person and robbery and the Court nails it down
17 in the first few lines of Instruction No. 10, "Is the
18 unlawful taking of personal property from the person of
19 another or in her presence against her will by means of
20 force or violence or fear of injury."

21 The victim in this case was asleep. No one
22 knows exactly how or whether she ever was aware of what was
23 happening, but there is a suggestion by an injury which is
24 depicted in one of the autopsy photographs, a bruise to her
25 hand, that she put up an arm in defense. There was a

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1 description by the words of Mr. Castillo to Rasmussen and
2 to the police that when the victim was hit, the person sat
3 up. How cognizant Isabelle Berndt was of the gravity of
4 her situation or of the severity of the injuries she was
5 suffering is unknown to the prosecution.

6 However, assuming, for the sake of argument,
7 that she wasn't aware of anything, that she was stalked in
8 her bedroom in the darkness and she never knew what hit
9 her, Mr. Castillo is still guilty of robbery. The Court,
10 in the last sentence of Instruction 10, explains, "A taking
11 constitutes robbery whenever it appears that although the
12 taking was fully completed without the knowledge of the
13 person from whom taken, such knowledge was prevented by the
14 use of force or fear," prevented by the tire iron. It's
15 still robbery.

16 Now similar to burglary, there is no
17 requirement there being a particular value. There could
18 have been six cents or six million dollars worth of
19 property heisted from 13 North Yale. Why is that? That's
20 because it's not a crime against property. Robbery, the
21 unlawful taking of property from the person or presence of
22 the victim by means of force or fear or violence or injury
23 is a crime against the person and there is no question in
24 this case but what the prosecution has proved the truth of
25 its allegation in Count No. III. Isabelle Berndt was the

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1 victim of a robbery.

2 In fact, we have alleged that she was over
3 65 years of age and by the uncontradicted evidence, she was
4 born on August the 3rd, 1909. Her daughter, Jean Marie
5 Hosking, testified to that and explained that on December
6 the 17th, 1995, her mother was 86 years of age.

7 Mr. Castillo is guilty not only of two
8 counts of burglary and two counts of conspiracy, he is
9 guilty of robbery, the victim being 65 years of age or
10 older and, ladies and gentlemen, he's also guilty of
11 murder.

12 The Court, in Instruction 16, defines murder
13 of the first degree and there are two theories and they are
14 both alleged in the Amended Indictment by which the
15 prosecution can get to murder of the first degree in this
16 case and they both apply with equal force.

17 Murder of the first degree, this is
18 Instruction 16, is murder which is (A), number one,
19 perpetrated by any kind of willful, deliberate, and
20 premeditated killing and/or, they are not linked. They are
21 linked by the evidence and by the circumstances, but either
22 theory will satisfy the allegation of first degree murder.

23 And/or (B), committed during the
24 perpetration of a burglary and/or robbery.

25 The Court, in Instruction 17, has defined

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1 premeditation. Some laypersons who have not had training
2 in the law can come to a criminal courtroom, such as this,
3 and think if it's premeditated murder, that this has to be
4 a substantial interval beforehand wherein the perpetrator
5 formed the intent to kill. There is no required space of
6 time and the Court dispels that notion in Instruction 17.

7 Instruction 17 explains, "Premeditation is a
8 design, a determination to kill. Distinctly formed in the
9 mind at any moment before or at the time of the killing.
10 Premeditation need not be a day, an hour or even a minute.
11 It may be as instantaneous as successive thoughts of the
12 mind."

13 As the Court goes on to explain in No. 17,
14 "As long as the intent to kill, the design, the
15 determination to take a human life was formed, it can be at
16 the very moment of the fatal blows or at any moment before
17 that. As long as that requirement is met, it is a
18 deliberate, premeditated murder and, consequently, murder
19 of the first degree."

20 Now the other theory, we sometimes refer to
21 in the legal vernacular as the Felony Murder Rule. In our
22 state, our legislature, many years ago, made a policy
23 judgment that certain offenses are inherently dangerous and
24 the legislature sought to discourage that type of
25 behavior. One of these offenses which is inherently

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1 dangerous is the hot, prowl burglary or entry into the
2 residence, the home of someone else and another inherently
3 dangerous felony is robbery; the taking of money or
4 property from the person or presence of another by means of
5 force or violence or fear of injury.

6 It goes without saying that someone who does
7 that, who commits burglary or robbery does so at his par,
8 but if someone dies during the commission of those
9 offenses, the killing is deemed conclusively to be murder
10 of the first degree and the Court tells you that in
11 Instruction 19 and that is true, whether the killing was
12 intentional, unintentional, or accidental and it's called
13 the Felony Murder Rule. The only requirement is that the
14 person or persons involved had to have the intent to commit
15 the underlying felony, either burglary or robbery, and that
16 the killing occurred during the perpetration of those
17 crimes.

18 Ladies and gentlemen, you have been
19 instructed on murder of the second degree. It's a lesser
20 offense of murder of the first degree. Your sworn duty,
21 your responsibility as jurors, assuming you believe that
22 crimes have been proved and proven beyond a reasonable
23 doubt, is not to compromise. It is to select those crimes
24 which have been proven by the evidence and murder of the
25 second degree is not applicable in this case. This is a

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1 case of murder of the first degree. Nobody takes a tire
2 iron with it in the middle of the night and goes in to a
3 bedroom and hears a person snoring with all of the other
4 alternatives available, this woman could have been tied up,
5 as Mr. Castillo said in his statement to the police. They
6 could have just spread a sheet up, put it around her bed,
7 and she couldn't have seen in the darkness who they were.

8 Instead, a decision was made to use the tire
9 iron on her face and on her head repeatedly and to use his
10 fists and Cathy Adkins, the crime scene analyst, described
11 the blood spatter pattern which demonstrated the weapon, as
12 it was being wielded on this victim, spraying the blood up
13 onto the wall behind him as he bludgeoned his victim.

14 Then, by his own account, because he still
15 heard a gurgling sound, he took a pillow and it's the same
16 pillow that is in evidence, the blue and white pillow that
17 was found by law enforcement partially covering her head
18 and used that, in his words, to smother the victim out.
19 That kind of conduct is despicable, it's unconscionable,
20 it's almost inconceivable to decent minded persons that one
21 human being could sink that low, but it is proof beyond a
22 reasonable doubt that Isabelle Berndt was the victim of a
23 deliberate, premeditated murder in the first degree and she
24 also died during the perpetration of burglary and robbery.
25 So the Felony Murder Rule also makes it murder of the first

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1 degree.

2 That brings me finally to Count No. VII,
3 which is arson in the first degree, and anyone who is even
4 close to adulthood can appreciate the gravity of fires
5 which are set in residential structures and there's no
6 doubt that this is first degree arson. Instruction 27
7 defines the offense as follows. "Any person who willfully
8 and maliciously sets fire to or burns or causes to be
9 burned or who aids, counsels or procures the burning of any
10 dwelling, house or other structure, whether occupied or
11 vacant, whether the property of himself or of another, is
12 guilty of arson in the first degree.

13 You heard testimony from Ben Hoge, the arson
14 investigator employed by the fire department. He
15 determined that this fire was of incendiary origin. He
16 noted that the fire was set by human hands and in various
17 places and the photographs in evidence are graphic proof
18 that this was an arson.

19 Cliff Mitchell, also of the fire department,
20 explained how his dog is trained and explained how Josie
21 was calibrated outside of the crime scene, then taken
22 inside and she scented out and alerted to various areas,
23 all of which is clear evidence of an incendiary arson
24 fire.

25 In Instruction 29, the Court explains to you

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1 that the structure doesn't have to be destroyed. 13 North
2 Yale Street didn't have to be burned down. The fact that
3 there is minimal damage in Mrs. Berndt's bedroom, it's
4 limited except for the smoke damage and water damage to
5 charring on the curtains, that doesn't mean that a first
6 degree arson didn't occur at her house. Any damage, any
7 charring, however slight, when it involves a residential
8 structure, is arson in the first degree.

9 Ladies and gentlemen, the State has proven
10 all seven allegations in the Amended Indictment. Mr.
11 Castillo is guilty of two counts of conspiracy, he is
12 guilty of two counts of burglary, he is guilty of robbery,
13 the victim being 65 years of age or older, he is guilty of
14 murder of the first degree with the use of a deadly weapon,
15 and he is guilty of arson in the first degree.

16 Now the Court, in Instruction 21, talks
17 about a deadly weapon. We don't have a case before you
18 where a gun was used or a knife was used or a bomb was
19 used. Things which almost, by definition, would be
20 accepted to be a deadly weapon, but we do have an
21 instrument used which was very lethal in its result. The
22 definition the Court gives you very clearly covers a crow
23 bar or a tire iron or some metallic blunt force
24 instrument. The Court explains a deadly weapon is any
25 weapon device, instrument, material or substance, which

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1 under the circumstances in which it is used, attempted to
2 be used or threatened to be used is readily capable of
3 causing substantial bodily harm or death.

4 The proof in this case of the deadly nature
5 of Mr. Castillo's -- excuse me -- Ms. Platou's tire iron
6 used by Mr. Castillo is the damage which occurred to the
7 body of Isabelle Berndt. There are autopsy pictures in
8 evidence. I'm sure you recall the testimony of Dr.
9 Bucklin. There is evident damage to the exterior of her
10 face and head. She suffered intracranial bleeding. Her
11 jaw was broken, teeth were knocked out. She died as a
12 result of being bludgeoned with a deadly weapon.

13 That brings me, ladies and gentlemen, to the
14 second issue which I intend to summarize rather quickly.
15 Thomas Carlyle said once, "Man makes the circumstances and
16 the final issue." At least in my part of the summation to
17 be resolved is to answer the question what man, with some
18 assistance, some aid from a woman, what man made these
19 circumstances because nobody required them to go there.
20 Lots of people are short on cash at Christmas time. Lots
21 of people need to see an attorney and may have a fee far
22 more than 325 or \$350 and they don't commit hot prowl
23 burglaries and robberies. So, as Mr. Castillo
24 acknowledges, that isn't an excuse.

25 I have noted seven connecting points that

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1 not only prove beyond a reasonable doubt, but almost to an
2 absolute certainty that the killer, the burglar, the robber
3 of Isabelle Berndt and her residence, the arsonist, who
4 added insult to injury by trying to burn her house down
5 with her inside of it is here in this courtroom, Mr.
6 William Castillo.

7 Connecting point number one, he had an
8 opportunity to enter. He's the guy that found the key
9 about a month earlier. He was over there on the side job
10 with Harry Kumma, who was in charge, with Jeff Donovan and
11 Kirk Rasmussen and Kumma testified that he was there and
12 Mr. Rasmussen testified that the defendant told him that he
13 found a key and Rasmussen saw the magnetic key box and he
14 told the guy to put it back and he showed them where he got
15 it up above on the barbecue and then Rasmussen remembered
16 that the defendant said, as he presumably was putting it
17 back, "Oh, I shouldn't be thinking that way." A phrase, as
18 it turns out, pregnant with the implication of the occupant
19 of North Yale Street and it was Jeff Donovan who testified
20 that the defendant showed him the key he had found the
21 Saturday after Thanksgiving, November the 25th, 1995, and
22 said, "Why don't we go inside," and according to Donovan,
23 Donovan said, "That's crazy. We're just here to do a job.
24 You put that back," and Donovan testifies that the
25 defendant said, "Well, I'll just have to come back at night

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1 or some time."

2 Connecting point number two, a motive to
3 steal. By his conversations about the key, Mr. Castillo
4 apparently had a motive to enter. The only reason for
5 entering would be to take property. He told his
6 girlfriend, Tammy Jo Bryant, he told Kirk Rasmussen on that
7 fateful Monday, December the 18th, after this happened, and
8 he told the police, "It was Christmas time. I was broke.
9 I couldn't even get family members a tape or other things
10 and I needed \$350 to pay attorney's fees and the seed of
11 the idea was put in my mind by my old lady," by Tammy
12 Bryant, "because we were short of money and she didn't get
13 a check, a little care package from friends like she had
14 hoped to get," and you may remember, Harry Kumma testified
15 that the defendant asked him for a three hundred fifty
16 dollar loan to pay his attorney fees and Kumma didn't have
17 it.

18 There is evidence after he acquired his
19 bounty, the property of Isabelle Berndt, the defendant
20 wrote down in a notebook what he hoped to get for the
21 property. Twenty five dollars for a camera, \$50 for a VCR,
22 and \$500 for the silverware and that is certainly
23 corroborated by Charles McDonald. Ironically, McDonald was
24 over at the defendant's apartment the very evening the
25 defendant ended up being arrested. The defendant wanted to

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1 know if he was interested or knew of anyone who would be
2 interested in buying some silverware and McDonald said he
3 was, but he was broke and the defendant brought out the
4 silverware, which is in evidence. It was identified in
5 court by Mr. McDonald as the box and the silverware he was
6 shown.

7 When he said he didn't have the money, the
8 defendant said, "Well, this is the bargain; it's worth
9 \$1,500. I'll give it to you for 500," the same 500 amount
10 written in the notebook found on the kitchen counter by the
11 police. And when McDonald said he still couldn't even do
12 it, he even offered him a payment plan and the defendant
13 said to Rasmussen that he wanted to know if there was some
14 way he could unload this stuff and get money without being
15 caught. So he intended to resell it. He had a motive to
16 steal.

17 Connecting point number three, admissions to
18 Tammy Bryant. She gave emotional testimony. It's obvious
19 that she still has feelings for this defendant. It was
20 apparent she preferred not to be in the courtroom. That's
21 why the prosecution has the power of subpoena, but she
22 explained to you, the ladies and gentlemen of the jury,
23 that out of the defendant's own lips, he admitted he was
24 there, this victim was snoring, and he killed the person.

25 Connecting point number four, admissions to

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1 Kirk Rasmussen and he told Rasmussen and he told the police
2 why he did it. Because he didn't want the individual to
3 wake up and see his face.

4 Connecting point number five, his possession
5 of stolen property and Detective Tremel was the primary
6 officer, with testimony also coming from Cathy Adkins,
7 about the possession that this defendant, along with his
8 accomplice, Ms. Platou, had the property belonging to the
9 victim, Isabelle Berndt.

10 You may recall the State's very first
11 witness, Mrs. Berndt's daughter, Jean Hosking, identified
12 receipts, a business card, and an owner's manual that
13 established the possession by her mother of an Hitachi
14 VCR. The defendant admits that that came from the victim's
15 house. It was recovered by the police, when they executed
16 the search warrant. The defendant says, in his remarks to
17 Rasmussen, that he took a hundred twenty dollars in cash.
18 He also admitted taking the silverware and the police found
19 the silverware and they found the Christmas booties that
20 Tammy Bryant said she saw Michelle Platou carry into the
21 apartment after they had come back and when the vehicle was
22 searched, the 1985 white Mazda of Michelle Platou in the
23 glove compartment, Cathy Adkins found wristwatches and even
24 an angel pen or pendent identified by Jean Hosking as
25 belonging to her mother. The police also found, when they

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1 went back, the Christmas booties. There are 14 green and
2 white and red and white booties. Also, the hot hair
3 balloon stickers purchased by Isabelle Berndt in
4 Albuquerque, New Mexico, but no savings bonds. The savings
5 bonds were gone and never recovered.

6 Finally, connecting point number six, the
7 defendant, with some coaxing, after agonizing, after
8 attempting to place the blame on some other unnamed
9 individual, ultimately confessed that he was the killer.

10 Connecting point number seven, his
11 concealment of incriminating evidence. The tire iron went
12 into a dumpster according to what he told the police and
13 other people behind the 7-11 store at Jones and Lake Mead.
14 He and Ms. Platou went back and tried to burn the place
15 down. Whether it was to conceal fingerprints or the
16 brutality of his crime, it was still an effort to conceal
17 evidence and is a showing that he consciously knew he was
18 guilty.

19 William Blake has said, "Cruelty has a human
20 heart." Ladies and gentlemen, at any time after these two
21 went inside, they could simply have left. The testimony is
22 there was a car in the driveway, but if they thought no one
23 was there after they got inside, they could have left and
24 after Mr. Castillo heard snoring, he most certainly could
25 have left and after he hit her once, he could have stopped

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1 and he could have gone to the telephone and dialed 911 and
2 then hurried out to get someone there to give her medical
3 assistance to save the life of an 86 year old woman.

4 Mr. Blake is right. Cruelty has a human
5 heart and the cruel heart in this courtroom is the heart of
6 this defendant. In this case, like many others,
7 ultimately, finally, in the end analysis, boils down to one
8 word and that one word is accountability. If the criminal
9 justice system means anything, it means that when persons
10 commit serious, heinous crimes of violence, they must be
11 held personally responsible and if that doesn't happen, the
12 whole system fails.

13 I'm very fond of some lines coined by
14 Shakespeare in his play Julius Caesar. The lines, "The
15 fault, dear Brutus is not in our stars, but in ourselves,"
16 and for the purpose of this case, I submit to you, I argue
17 that the point being made by the great scholar, the poet,
18 the play writer is the same point I make to you today. If
19 you believe from this evidence that Mr. Castillo is guilty
20 beyond a reasonable doubt, he must be held personally
21 responsible and the fault in this case has nothing to do
22 with the stars of Mr. Castillo. The fault is not in
23 Isabelle Berndt. She wasn't doing anything wrong. She was
24 in her house, she was trying to get a night's rest. It's
25 not her fault because she had a key hidden out in her

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1 backyard in a magnetic key box above the barbecue area.
2 The fault is not in the attorney who charged this guy \$350
3 for services rendered. The fault isn't with Michelle
4 Platou. She may have furnished the transportation. He
5 didn't have to ride with her, he didn't have to take her
6 tire iron out of the back of the car. The fault isn't with
7 Tammy Bryant. She didn't want to testify. She didn't
8 commit any murder. She didn't commit any burglary. The
9 fault isn't with Kirk Rasmussen. He may have been a buddy,
10 he may have been a good friend, but when people murder and
11 talk about it, they cross the line. The fault doesn't lie
12 with the tire iron where ever it is now, it's still exactly
13 what it was on December the 17th. Just a piece of metal
14 and an animate object and, ultimately, deadly weapons don't
15 kill people like Mr. Castillo killed. Fault doesn't lie
16 with the police. I submit it was a very good investigation
17 that was carried out in this case, but perhaps not
18 perfect. The fault doesn't lie with the Court. Certainly
19 Judge Maupin has a hefty calendar of cases. He didn't need
20 another case. He didn't need this case. Fault doesn't lie
21 with the office of the District Attorney.

22 The fault lies in the cruel heart of William
23 Castillo. He did something he didn't have to do. In all
24 probability, this 86 year old woman snoring, sleeping
25 through this crime not knowing they were in there would

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1 never have awakened. He didn't have to kill the woman.
 2 They could have gone about and found what they wanted to
 3 take, they could have taken the VCR, they could have taken
 4 the booties, and the silverware and the money and left and
 5 she still would be alive the next morning minus a little
 6 property.

7 And that's what makes the conduct so
 8 unconscionable. The fault doesn't lie with anyone else in
 9 any other place. Mr. Castillo, the fault lies in you.

10 THE COURT: Mr. LaPorta, on behalf of the
 11 defense.

12 MR. LaPORTA: Good day, ladies and
 13 gentlemen. If it please the Court, Mr. Bell, Mr. Harmon,
 14 and my co-counsel, Mr. Schieck, as the Judge informed you,
 15 when he was reading the Instructions, this is the time
 16 known as closing argument. You've heard Mr. Harmon's
 17 closing argument. I think it's better to characterize what
 18 I'm about to say as some closing comments, as to this phase
 19 of these proceedings.

20 I first want to thank you for your
 21 participation in this and the patience that I know you've
 22 had to exercise over these past couple of weeks. As Mr.
 23 Harmon has correctly stated, you've always been on the
 24 stage here. Now you are taking center stage.

25 You have not heard much from the defense

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1 during this phase, as has become quite obvious to you, as
2 the events unfolded in here, but that doesn't lessen your
3 burden or your sworn duty that you took an oath to. All
4 the defense asks you to do is to perform that sworn duty.
5 Your burden is no less because we presented very little and
6 had very little participation. Your duty, as we see it, is
7 to review each and every count, each and every element.
8 Make sure that you believe beyond a reasonable doubt the
9 State has proven beyond a reasonable doubt each and every
10 element within each and every count.

11 Once you have done that, follow your
12 convictions accordingly.

13 Additionally, after you've done that, you've
14 done your duty. You've been fair to all the parties, which
15 is all that any of us can ask of you and for that, the
16 defense both thanks and applauds you in your efforts.

17 I thank you.

18 THE COURT: State's rebuttal.

19 MR. BELL: Your Honor, Mr. Harmon, Mr.
20 LaPorta, Mr. Schieck, ladies and gentlemen, the State in
21 each case, each criminal case gets two opportunities to
22 speak to you. They get the first opportunity and the last
23 opportunity. Mr. Harmon has taken the first opportunity.
24 It falls upon me to take the last opportunity and the
25 reason for that in our system is because we have the burden

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1 of proof. The defendant, in any criminal case, is not
2 obligated to prove anything, to prove his innocence or
3 anything else for that matter. The law requires the State
4 to assume the responsibility of proving to you each and
5 every element of each and every crime that we charge
6 against each defendant that comes through these walls of
7 this courthouse beyond a reasonable doubt and to that end,
8 because we have that responsibility, a responsibility which
9 I assure you the office of the District Attorney, on behalf
10 of the people, is most willing to assume, we get two bites
11 at the apple, as it were, and please bear with me to the
12 extent that I am slightly repetitious of Mr. Harmon, but
13 understand this is a most serious and most important
14 proceeding to this community.

15 When we started this trial, I got the first
16 opportunity to speak to you in what was called an opening
17 statement and I told you that an opening statement was much
18 like the picture on the outside of a puzzle box. It kind
19 of told you what you could expect to see when you put all
20 the puzzle pieces together. The trial itself, of course,
21 consist of puzzle pieces. It consist of various witnesses
22 who answer various questions and made various statements
23 and pieces of evidence and pictures and all of these things
24 that come together and form a picture either of innocence
25 or of guilt. And the opening statement was designed to

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1 kind of give you an idea of what we thought, we, the State,
2 Mr. Harmon and myself on behalf of the people, that all of
3 the pieces would show after they all came before you.

4 And I submit to you that in cases such as
5 this, if the State does its job properly, the pieces of the
6 puzzle rather resemble the picture on the box. The
7 evidence comes in consistent with the opening statement and
8 to that end, the closing statement, to tell you what the
9 pieces show is often much like the opening statement.

10 I also told you that this case, like every
11 other case, every single case that will come through these
12 halls where we have a puzzle that is put together piece by
13 piece will have a piece missing here and a piece missing
14 there. It's just the nature of things. It's the way cases
15 are. It's the way evidence comes together. No time is
16 every single piece in this conglomerate puzzle there and I
17 gave you one example.

18 I told you in the opening statement that we
19 did not have to present to you the murder weapon in this
20 case. We were not going to march in here with a crow bar
21 with the blood of Isabelle Berndt on it and say this is the
22 murder weapon. We're not going to be able to show it to
23 you. We're not going to be able to put on a D.N.A. expert
24 who can say that blood still on that crow bar came from
25 Isabelle Berndt. A missing piece, as it were.

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1 But I submit to you, if you use your common
2 sense and inferential abilities, which you are not only
3 entitled, but obligated to do, that that missing piece or
4 any other missing piece, for that matter, in this case does
5 not in any way obscure your ability to look at all the
6 pieces in the puzzle and still tell what that puzzle
7 represents, which I submit to you is a picture of the guilt
8 of William Castillo.

9 For example, we do not have that crow bar
10 that I would like to stand here and wave in front of you,
11 but does anyone here in this room have any doubt that a
12 crow bar was used to effectuate the murder, the
13 premeditated and unlawful murder of Isabelle Berndt? I
14 submit to you the answer is no. Mr. Castillo told his
15 girlfriend, Tammy Bryant, that he killed Isabelle Berndt
16 with a crow bar and that he threw it in the 7-11 dumpster
17 across the street.

18 Number two, Mr. Castillo told Kirk Rasmussen
19 that he killed Ms. Berndt with a crow bar, that he pommeled
20 her multiple times with a crow bar and his fist.

21 Number three, Mr. Castillo admitted to
22 Detective Morgan that he pommeled Ms. Berndt to death with
23 a crow bar.

24 Number four, you will have with you and you
25 may review the pictures from the autopsy of Isabelle Berndt

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1 and you will have the opportunity to see the damage
2 inflicted and I think you will be able to draw your own
3 reasonable conclusion about the cause of that infliction.

4 Number five, Dr. Bucklin testified as to the
5 multiple lacerations and contusions on the face and head of
6 Isabelle Berndt. She was hit and cut many times. Her jaw
7 was broken, her teeth were knocked out, her ear was cut,
8 her eyes were bruised, and she had cuts and bruises all
9 over her face, and he said that would be consistent with a
10 person being beaten to death by a crow bar.

11 Number six, Dr. Bucklin said that when he
12 did his internal examination, that he found hemorrhaging in
13 her brain, which is exactly what he expected to find after
14 he had seen the horrific external damage and that the
15 internal damage was also consistent with her having been
16 beaten by a crow bar.

17 Number seven, Michelle Platou's car had a
18 crow bar in it right before December 17th. Tammy Bryant
19 told you, at one point, she and Michelle had to change a
20 tire, but three days afterwards, within 72 hours, the
21 police had made arrests in this case. They impounded the
22 car. It was searched by I.D. Tech Adkins and conspicuously
23 absent from that vehicle, which was a crow bar, and then,
24 of course, what did the police do? They immediately went
25 to the 7-11 where all evidence indicated the crow bar had

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1 been discarded only to find that the trash had been
2 dumped. The trash was dumped daily. It was picked up
3 daily and, of course, the crow bar was gone. So we don't
4 have a crow bar with blood dried on the end, but that
5 missing piece cannot, in any way, obscure the fact that the
6 subject of the puzzle in this case, what it shows is murder
7 and the face of the murderer is that face right over there,
8 William Castillo.

9 When we take all this evidence about the
10 crow bar, for example, together, any right thinking person
11 knows that despite no crow bar, William Castillo beat
12 Isabelle Berndt to death with a crow bar that he took from
13 Michelle Platou's car for that very purpose, and that he
14 pitched it into a dumpster, which the next day was taken by
15 Silver State out to the land fill where the crow bar
16 reposes today. There is no other conclusion that can be
17 reached.

18 Now, Mr. LaPorta asked you to be certain in
19 your deliberations that the state has met its burden on
20 each and every count. I'm not going to rehash each and
21 every count that Mr. Harmon has thoroughly, accurately, and
22 articulately gone over with you item by item, but I would
23 like to briefly go over each and every one so that you can
24 be certain that there is no question that the State has met
25 its burden.

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1 Count No. I, conspiracy to commit burglary
2 or robbery. As Mr. Harmon told you, a conspiracy is an
3 agreement. It is an understanding between two or more
4 people that they are going to commit a crime together.
5 Well, when this escapade started, what evidence do we
6 have? Well, we know that Ms. Platou drove Mr. Castillo
7 over to 13 North Yale in her car.

8 We know that Mr. Castillo armed himself with
9 a crow bar before they went in together and he got the key
10 where he left it.

11 We know that they both went inside
12 together. We know Ms. Platou took the VCR off the TV. We
13 know it was Mr. Castillo who beat poor Mrs. Berndt to death
14 with a crow bar and then, when she was gurgling in her
15 blood, in his words, smothered her out.

16 We know they jointly took the silverware,
17 the cash, the booties, along with the VCR.

18 We know when they got back to 1951 North
19 Jones, Castillo was now carrying the VCR and silverware
20 that Platou had taken off the TV, and Platou was carrying
21 the booties.

22 We know that two days later, two and a half
23 days later, when the police got to the apartment, Castillo
24 was in possession of the silverware and the VCR and the
25 watches that were taken from Ms. Berndt were in the glove

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1 compartment of Ms. Platou's car. Did they have an
2 understanding that they were going to commit these crimes
3 together? Of course, they did.

4 Number two, burglary, unlawful entry into
5 the structure to commit a crime, usually a theft. Well,
6 did Ms. Berndt authorize them to come in in the middle of
7 the night into her house where she was unsuspecting to take
8 her property? Of course, she didn't. There is no question
9 that they entered, there is no question that they stole the
10 property that belonged to Ms. Berndt. Did they commit a
11 burglary? Of course, they did.

12 Robbery, victim over 65. Taking property by
13 force. Did they take the property of Ms. Berndt? Of
14 course, they did. Each of them was in possession of a part
15 of Ms. Berndt's property within two days afterwards and in
16 this case, the person that you are charged with the
17 responsibility of judging acknowledged that he knew it was
18 the stolen property of Ms. Berndt and acknowledged to
19 friends and, ultimately, Detective Morgan that he was the
20 person that stole it and did he take it by force? Of
21 course, he did. He took it by the ultimate force. He beat
22 the owner of the property to death so that he could take
23 her property without her resistance and without her seeing
24 his face. And was she over 65? Of course, she was well
25 over 65. She was over 75. She was over 85. She was 86

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1 years old.

2 Number four, murder. Murder in the first
3 degree, the only degree that is worth consideration. As
4 Mr. Harmon told you, there are two theories upon which
5 murder of the first degree can be proven and the State
6 submits that we have proven it not beyond a reasonable
7 doubt, but beyond any doubt under both theories. The first
8 is the simplest theory, the Felony Murder Rule. Any
9 killing in the course of a burglary or robbery is murder in
10 the first degree by the burglar or robber.

11 Let me give you a couple simple examples. A
12 robber goes in with a gun to a 7-11 store, sticks it in the
13 face of the clerk, and says, "Give me your money." He has
14 no intent of killing that clerk or doing that clerk any
15 harm. The clerk pulls a gun himself and goes to shoot the
16 robber and the robber, thinking he is about to be killed,
17 shoots the clerk. There's no element of self-defense. It
18 is murder in the first degree by definition because that
19 person went in that store to commit a robbery and in the
20 course of his robbery, somebody was killed and by
21 definition, the person that was killed is the victim of
22 murder in the first degree and the person that perpetrated
23 the robbery is guilty thereof.

24 Let me give you another example. Person is
25 burglarizing a house. They are climbing through a window

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1 in the middle of the night. They carry in a gun. As they
2 are climbing through the window, they drop the gun. It
3 hits the floor, accidentally discharges, and kills an
4 occupant of the house. Murder in the first degree. There
5 was a burglary, there was a killing in the course of that
6 burglary, and the burglar is responsible. You will see in
7 the Instructions it does not matter if the killing was even
8 an accident. If somebody's life is taken in the course of
9 these most dangerous crimes, it is automatically, by
10 definition, conclusively murder in the first degree.

11 It is also murder even if there is no
12 robbery and burglary, which, of course, there is here in
13 the first degree when the murder is premeditated or
14 planned. Now, as Mr. Harmon has very eloquently indicated
15 to you, premeditation does not have to be for a month or a
16 week or an hour or even a minute in advance, just enough in
17 advance of the fatal blow or the fatal action that the
18 intent reposes with the killer and the intent is carried
19 out.

20 Now what evidence do we have of
21 premeditation in this case? Well, one, Mr. Castillo armed
22 himself with a crow bar, his weapon of choice from Platou's
23 car before he ever went in the house. What possibly for?
24 He wasn't going to use it to break into the house. He had
25 a key. He armed himself so that he was prepared to do

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1 exactly what he did. Premeditation.

2 Number two, there was testimony and evidence
3 that he struck repeated blows to kill Ms. Berndt. He hit
4 her, she sat up, and then he pommelled her repeatedly with
5 the crow bar and his fist. I.D. Tech Adkins said at least
6 three times the crow bar was lifted and the blood spattered
7 back, but I think if you look at the pictures of the victim
8 and recall the testimony of Dr. Bucklin, you will be
9 satisfied that there is no question many more than three
10 blows were struck. Now each striking requires a successive
11 thought of the mind that I'm going to continue striking
12 this person until I have effectuated death.

13 Premeditation.

14 Finally, even after he had pommelled Mrs.
15 Berndt into submission, a status which Dr. Bucklin had
16 clearly told us would have caused her death, but noticed
17 that she was still alive gurgling in her own blood, he took
18 a pillow and he put it over her face and he smothered her
19 out. A conscious act, an act after the beating, an act
20 clearly designed to terminate any possibility that she
21 could survive this ordeal. Premeditation.

22 Count V, conspiracy to commit burglary and
23 arson. Again, we had two people who went back. Why?
24 Well, two possibilities. One, Ms. Platou may have left
25 prints. Number two, to cover up the greater harm that they

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1 did. They went back together, they went in Ms. Platou's
2 car. He grabbed the Ronsonol, he went in with the key, he
3 torched the place, and they left together. Conspiracy is
4 an understanding between two people that they together
5 jointly commit a crime.

6 Number six, burglary. He went in again. He
7 didn't have the permission of Ms. Berndt. He couldn't have
8 the permission of Ms. Berndt because she was dead and he
9 went in with a can of Ronsonol and he walked into her
10 bedroom where she lied dead for some minutes or a portion
11 of an hour, from the time he had killed her, and he poured
12 the Ronsonol on the drapes and he set them on fire and he
13 went into the living room and he doused the drapes and then
14 he threw the Ronsonol over the living room and then he set
15 that on fire and went out the back door and may have set a
16 third origin of fire in the kitchen, although the evidence
17 was not clear. Burglary, entry with intent? Of course, it
18 is. And arson? Of course, it is. You heard the experts,
19 you heard the dog, you saw the pictures. There is no
20 question that he set this fire and why he set this fire.

21 The bottom line is when all is said and
22 done, the State submits that it has proven in this Court
23 every charge in the Indictment not only beyond a reasonable
24 doubt, but beyond any doubt whatsoever and the State at
25 this time asks you to fulfill your responsibility, as

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1 jurors and citizens, by finding that the defendant, William
2 Castillo, must accept his responsibility for his criminal
3 actions and the horrible consequences thereof.

4 The State asks you to deliberate, please be
5 honest, use your best judgment, and when you return, find
6 Mr. Castillo guilty on all 7 counts and in the case of
7 Count IV, guilty of murder in the first degree with use of
8 a deadly weapon.

9 Thank you.

10 THE COURT: Thank you, Mr. Bell.

11 That concludes the presentation of this case
12 to the jury, ladies and gentlemen. The matter will now be
13 submitted to you for your deliberation.

14 Pursuant to the Court's Instructions, the
15 forms of verdicts that we have prepared for you will
16 accompany the Instructions to the jury room with you along
17 with the exhibits admitted in evidence.

18 At this time I would ask the clerk to swear
19 the officers to take charge of this jury.

20

21 (At this time the officers were duly sworn.)

22

23 THE COURT: The alternates, which were drawn
24 by lot before the exercise of peremptory challenges, are as
25 follows: Juror No. 6, Ernest Edward Irish, 7, Sharynn Lee

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1 At this time before we do anything further,
2 I'll ask the ladies and gentlemen of the jury, other than
3 the alternates, does anyone have any particular problem
4 about commencing deliberations at this time?

5 Yes.

6 A VOICE: I need to pick up my child by
7 5:45.

8 THE COURT: By 5?

9 A VOICE: By 5:45.

10 THE COURT: Can arrangements be made?

11 A VOICE: Perhaps, if I can call her.

12 THE COURT: We will give you that
13 opportunity at this time and at this time if you would,
14 ladies and gentlemen of the regularly constituted jury and
15 the alternates, please accompany the officers. The
16 alternates --

17 A VOICE: Your Honor.

18 THE COURT: Yes, ma'am.

19 A VOICE: I'll need to make arrangements for
20 my son also.

21 THE COURT: See if you can do that and if
22 there is a problem, I'll deal with that. You can send your
23 communication out to me through the bailiff.

24 The alternates at this time are free to
25 return -- I guess probably what I ought to do is just leave

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1 them here for the time being. Do the parties agree with
2 that?

3 MR. BELL: Judge, we don't care whether you
4 want to leave them here or send them home, as long as they
5 understand that they cannot discuss this case because --

6 THE COURT: Yes.

7 MR. BELL: -- we may have some further
8 proceedings and we may well need them.

9 THE COURT: I understand that. That's one
10 of the reasons for this point, for the sake of consistency,
11 I think I'm going to keep the alternates along with the
12 rest of the jury so that there will be no confusion along
13 those lines, particularly at this stage of the
14 proceedings.

15 So, ladies and gentlemen, at this time if
16 would you accompany the officers to your place of
17 deliberation.

18 A VOICE: Your Honor, can we have a short
19 break before we --

20 THE COURT: Of course. That will be your
21 first order of business.

22

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

24

25 MR. HARMON: May we approach the bench, your

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1 Honor?

2 THE COURT: Yes. We are still on the
3 record.

4 (Off the record discussion not reported.)

5 THE COURT: Anything further from the
6 parties at this time?

7 MR. BELL: No, your Honor.

8 MR. LaPORTA: No, your Honor.

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

10

11 (Off the record at 4:58 p.m. and back on the
12 record at 6:12 p.m.)

13

14 THE COURT: Counsel stipulate to the
15 presence of the jury?

16 MR. BELL: Yes, your Honor.

17 MR. SCHIECK: Yes, your Honor.

18 THE COURT: Do we want to wait for Mr.
19 LaPorta?

20 MR. SCHIECK: We can go ahead, your Honor.
21 I'm not quite sure where he stepped out.

22 MR. BELL: There he is.

23 THE COURT: Ladies and gentlemen of the
24 jury, I understand you have reached verdicts in this
25 matter?

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1 THE JURY: (In Unison) Yes.

2 THE COURT: Who is the foreperson?

3 JUROR NO. 10: That would be me, John R.

4 Ruhlmann, juror number 10.

5 THE COURT: Mr. Ruhlmann, would you please
6 hand the forms of verdict to the bailiff.

7 At this time I would ask the deputy court
8 clerk to read the verdicts into the record.

9 THE CLERK: "District Court, Clark County,
10 Nevada, the State of Nevada, plaintiff, versus William
11 Patrick Castillo, defendant. Case No. C133336, Department
12 No. VII, Docket P.

13 Verdict: We the jury in the above entitled
14 case find the defendant, William Patrick Castillo, guilty
15 of Count I, conspiracy to commit burglary and/or robbery.
16 Dated this 4th day of September, 1996, John R. Ruhlmann,
17 foreperson.

18 District Court, Clark County, Nevada, the
19 State of Nevada, plaintiff, versus William Patrick
20 Castillo, defendant. Case No. C133336, Department No. VII,
21 Docket P.

22 Verdict: We the jury in the above entitled
23 case find the defendant, William Patrick Castillo, guilty
24 of Count II, burglary. Dated this 4th day of September,
25 1996, John R. Ruhlmann, foreperson.

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1 District Court, Clark County, Nevada, the
2 State of Nevada, plaintiff, versus William Patrick
3 Castillo, defendant. Case No. C133336, Department No. VII,
4 Docket P.

5 Verdict: We the jury in the above entitled
6 case find the defendant, William Patrick Castillo, guilty
7 of Count III, robbery, victim 65 years or older. Dated
8 this 4th day of September, 1996, John R. Ruhlmann,
9 foreperson.

10 District Court, Clark County, Nevada, the
11 State of Nevada, plaintiff, versus William Patrick
12 Castillo, defendant. Case No. C133336, Department No. VII,
13 Docket P.

14 Verdict: We the jury in the above entitled
15 case find the defendant, William Patrick Castillo, guilty
16 of Count IV, murder of the first degree with use of a
17 deadly weapon. Dated this 4th day of September, 1996, John
18 R. Ruhlmann, foreperson.

19 District Court, Clark County, Nevada, the
20 State of Nevada, plaintiff, versus William Patrick
21 Castillo, defendant. Case No. C133336, Department No. VII,
22 Docket P.

23 Verdict: We the jury in the above entitled
24 case find the defendant, William Patrick Castillo, guilty
25 of Count V, conspiracy to commit burglary and arson. Dated

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1 this 4th day of September, 1996, John R. Ruhlmann,
2 foreperson.

3 District Court, Clark County, Nevada, the
4 State of Nevada, plaintiff, versus William Patrick
5 Castillo, defendant. Case No. C133336, Department No. VII,
6 Docket P.

7 Verdict: We the jury in the above entitled
8 case find the defendant, William Patrick Castillo, guilty
9 of Count VI, burglary. Dated this 4th day of September,
10 1996, John R. Ruhlmann, foreperson.

11 District Court, Clark County, Nevada, the
12 State of Nevada, plaintiff, versus William Patrick
13 Castillo, defendant. Case No. C133336, Department No. VII,
14 Docket P.

15 Verdict: We the jury in the above entitled
16 case find the defendant, William Patrick Castillo, guilty
17 of Count VII, first degree arson. Dated this 4th day of
18 September, 1996, John R. Ruhlmann, foreperson."

19 Ladies and gentlemen of the jury, are those
20 your verdicts as read?

21 THE JURY: (In Unison) Yes, they are.

22 THE COURT: Do either side wish to have the
23 jury polled?

24 MR. LaPORTA: Defense makes that request,
25 your Honor.

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1 THE COURT: All right.

2 THE CLERK: Robert I. Law, are those your
3 verdicts as read?

4 A Yes.

5 Q Suzanne Hilary Malmedal, are those your
6 verdicts as read?

7 A Yes.

8 Q Mark R. Kruse, are those your verdicts
9 as read?

10 A Yes.

11 Q Eric M. Korte, are those your verdicts
12 as read?

13 A Yes.

14 Q Richard Alan Sammons, are those your
15 verdicts as read?

16 A Yes.

17 Q Pamela Brennan, are those your verdicts
18 as read?

19 A Yes.

20 Q John R. Ruhlmann, are those your
21 verdicts as read?

22 A Yes.

23 Q Christopher Michael Ramsey, are those
24 your verdicts as read?

25 A Yes.

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1 Q Roy J. Kirk, are those your verdicts as
2 read?

3 A Yes.

4 Q Christopher F. Pagano, are those your
5 verdicts as read?

6 A Yes.

7 Q Kelly Lynn Lea, are those your verdicts
8 as read?

9 A Yes.

10 Q Dale Eric Murrell, are those your
11 verdicts as read?

12 A Yes.

13 THE COURT: All right, ladies and gentlemen
14 of the jury, at this time we will be resetting the penalty
15 hearing. As I indicated to you previously, we will be
16 setting it for the 18th of this month, which is a
17 Wednesday, I understand.

18 THE CLERK: Yes, Judge.

19 THE COURT: Now, there are some indications
20 that because of conflicting schedules of counsel in this
21 case, that the matter may have to commence, in terms of its
22 penalty phase, some days after that; maybe the following
23 week even, depending on how that works. So what we would
24 ask that you do is leave us your telephone numbers and we
25 will try to call you and you can try to call us. The

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1 number will be given to you of the courtroom before you
2 leave the courthouse today so that in the event that there
3 is a delay in the commencement of the penalty phase, you
4 will -- you can be notified so you don't have to come down
5 and I believe that's at the request of both parties; is
6 that correct?

7 MR. BELL: Well, we recognize, your Honor,
8 that there are some other matters and that may happen. I
9 think the 18th is the best guess that we have. I'm
10 guessing if we don't, it will probably be the 19th, but I
11 think that's the most courteous way to handle it.

12 THE COURT: Right. So let's assume we will
13 be starting at 11:00 in the morning on the 18th of
14 September, which I understand that's two weeks from today?

15 THE CLERK: Yes, it is.

16 MR. BELL: It's a Wednesday, which would be
17 a criminal day for you.

18 THE COURT: The Counts I, II, V, VI, and VII
19 are set down for entry of judgment and imposition of
20 sentence on?

21 MR. BELL: Do you want to wait and
22 consolidate that with the sentencing on Count IV, depending
23 upon what we do?

24 THE COURT: No, we are probably going to
25 need 60 days anyway.

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1 MR. BELL: Sixty days would be reasonable.

2 (Off the record discussion not reported.)

3 THE CLERK: November 4 at 9:00 a.m.

4 THE COURT: That's two months.

5 MR. BELL: That's fine because we can
6 coordinate the other.

7 THE COURT: Okay. If there is any problem
8 with that date, either party can put it back on calendar to
9 vacate it.

10 Anything further from the parties at this
11 time before I admonish the jury?

12 MR. SCHIECK: No, your Honor.

13 MR. BELL: No, your Honor.

14 THE COURT: Ladies and gentlemen of the
15 jury, between now and the recommencement of this proceeding
16 of this matter, 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 Thank you very much, ladies and gentlemen.

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