

1 MR. HARMON: Your Honor, may the record show
2 that the witness has identified the defendant, Mr.
3 Castillo?

4 THE COURT: Yes.

5 Q (BY MR. HARMON) The evening of October
6 the 2nd, 1995, did something happen which caused you to
7 notify the police at that time also?

8 A Yes.

9 Q What happened?

10 A There were a lot of noise in the
11 apartment up above me. I lived on the ground floor. It
12 was midnight, 1:00. I heard a lot, lot of screaming, a lot
13 of noise. I called the police. I thought the girl
14 upstairs was getting beaten. I didn't know. The police
15 came out, I waited for them to come up, and they took
16 people out of the apartment. One was William and they were
17 intoxicated. I don't believe the officers took them away.
18 William just pointed at me and said he would get me.

19 Q When you refer to William, are you
20 speaking of the defendant, Mr. Castillo?

21 A Yes.

22 Q Were you a friend of William
23 Castillo --

24 A No, never met him before.

25 Q -- at that time?

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1 A Just seen him at the apartment.

2 Q You associated him with the apartment

3 complex?

4 A Uh-huh.

5 Q That's yes?

6 A Yes.

7 Q Now, you mentioned that after you

8 called, as a result of what sounded like a fight to you in

9 the apartment upstairs, that the police brought two people

10 out of the apartment?

11 A That's correct.

12 Q One was the defendant, Mr. Castillo?

13 A That's correct.

14 Q And the other was whom?

15 A I believe Tammy was her name.

16 Q Do you know her last name?

17 A No, I don't.

18 Q But it was a female?

19 A Correct.

20 Q Did you have any idea what the

21 relationship was of Mr. Castillo and Tammy?

22 A I assumed that they were boyfriend and

23 girlfriend.

24 Q Now, you mentioned that after the

25 arrival of the police, the defendant said something to

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1 you?

2 A Yes, he did.

3 Q He said --

4 A Pointed directly at me examine looked

5 me right in the eyes and told me he would get me.

6 Q When you say he pointed directly at

7 you, pointed with what?

8 A His finger.

9 Q Did you take the threat seriously?

10 A No, I thought he was intoxicated.

11 Q Did he seem to be intoxicated --

12 A Yes.

13 Q -- at that time?

14 The following day, did Mr. Castillo force

15 his way into your apartment?

16 A Yes, he did.

17 Q Approximately what time was that?

18 A Just before 5 p.m.

19 Q What apartment were you residing in?

20 A Apartment number 149.

21 Q Tell us, though, what happened leading

22 up to the incident?

23 A My daughter, her boyfriend, and her son

24 had gone to get something for dinner.

25 Q What is your daughter's name?

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1 A Julie Russell.

2 They had stopped in front of the apartment
3 so she could get out of the car and her boyfriend went to
4 park the car. William Castillo came up to my daughter and
5 wanted to talk to her and I had already informed my
6 daughter not to speak to anybody, just stay away from it.

7 She proceeded into the apartment. She shut
8 the door and the door came flying open. It pushed her
9 against the wall. I happened to be in my bedroom and
10 that's when I came out of the bedroom and wanted to know
11 what was going on. I tried to push him out of the
12 apartment.

13 Q Him being the defendant?

14 A Correct.

15 The door came flying open and that's when I
16 got hit on the left side of my face and then I was able to
17 push again and I was able to get him outside the door and
18 dead bolt it.

19 Q Who hit you on the left side of your
20 face?

21 A The defendant.

22 Q With what?

23 A His hand. Not a fist, just a hand.

24 Q An opened hand?

25 A Uh-huh, more like a slap.

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1 Q So you say eventually, after a
2 struggle, you got him out of the door?

3 A Yes.

4 Q And you dead bolted it?

5 A Yes.

6 Q Were you upset by the incident?

7 A Yes.

8 Q Had Mr. Castillo been invited in to the
9 apartment by either yourself or your daughter Julie?

10 A No, he had not.

11 Q Was he a friend of yours?

12 A No, he was not.

13 Q Had he ever been inside your apartment,
14 apartment 149, before?

15 A No, he had not.

16 Q Is it your testimony that, according to
17 your daughter Julie, he forced his way in?

18 A Yes, he did.

19 Q After the front door was dead bolted,
20 did you contact the police?

21 A Yes, I did.

22 Q Did the police arrive?

23 A Yes, they did.

24 Q Did they investigate the incident?

25 A Yes, they took my statement, my

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1 daughter's, her boyfriend's.

2 Q As a result of their investigation, did
3 they issue a citation for Mr. Castillo?

4 A Yes, they did.

5 Q Did it charge him with two counts of
6 battery?

7 A Yes, they did.

8 Q Did you ever go to court in connection
9 with that matter?

10 A No, I did not.

11 Q As far as you know, was the matter
12 still pending on December the 17th, 1995?

13 A As far as I know.

14 MR. HARMON: Thank you. That's all we have,
15 your Honor.

16 THE COURT: Cross examination.

17 MR. SCHIECK: Thank you, your Honor.

18

19 CROSS EXAMINATION

20 BY MR. SCHIECK:

21 Q Mrs. Russell, was there a verbal
22 altercation between your daughter Jill -- excuse me -- your
23 daughter Julie and Mr. Castillo?

24 A Yes, there was.

25 Q And there was numerous obscenities

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1 shouted both ways between the two of them?

2 A That's correct.

3 Q And you were able to hear that?

4 A No, I wasn't. No, I was in the house.
5 I was in my bedroom. That happened outside the apartment
6 as she was trying to come in.

7 Q So you weren't looking out your window
8 or anything?

9 A No.

10 Q So you didn't see what was going on
11 outside?

12 A No, I didn't.

13 Q You didn't hear what was going on
14 outside?

15 A No.

16 Q The first thing you heard, was that a
17 noise at your front door?

18 A My daughter falling against the wall
19 being pushed, yes.

20 Q Well, did you write a report for the
21 police where you said you heard a loud noise at my front
22 door?

23 A Uh-huh.

24 Q And as you came out of the bedroom, you
25 said, "What the fuck is going on?"

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1 A Yeah.

2 Q Are your words?

3 A Uh-huh.

4 Q And it's your testimony that Mr.

5 Castillo --

6 THE COURT: Excuse me, excuse me. These
7 people here are going to be removed from the courtroom
8 right now. These three.

9 (Off the record discussion not reported.)

10 THE COURT: You may proceed.

11 Q (BY MR. SCHIECK) It's your testimony
12 that Mr. Castillo was inside of your apartment when you
13 came out of your bedroom?

14 A Yes, he was.

15 Q Did you, at any point, go outside and
16 see if anyone was outside?

17 A All the neighborhood kids were there.

18 Q Did you see the police interviewing
19 those neighborhood kids and taking statements from them?

20 A Yes, I did.

21 MR. SCHIECK: That's all the questions I
22 have, your Honor.

23 MR. HARMON: No redirect, your Honor.

24 THE COURT: May this witness be discharged?

25 MR. HARMON: Yes, your Honor.

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1 THE WITNESS: Thank you.

2 THE COURT: Thank you.

3 Any further witnesses this morning?

4 MR. BELL: It probably would be appropriate
5 to break. We have our witnesses available and it would
6 probably be natural to take our noon recess.

7 THE COURT: Do you have one that would take
8 20 minutes?

9 MR. BELL: We have one. They are all the
10 family members. We would like to do it all this
11 afternoon.

12 THE COURT: Ladies and gentlemen of the
13 jury, we will be taking our noon recess. Because of a
14 commitment for the Court this afternoon, we will not be
15 starting until 2 this afternoon.

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

25 We will be at ease while the jury departs

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1 the confines of the courtroom. Please be ready to proceed
2 at around 2:00.

3 Anything further from the parties at this
4 time?

5 MR. BELL: No, your Honor.

6 MR. LaPORTA: No, your Honor.

7 THE COURT: I will see counsel in the
8 hallway.

9
10 (Off the record at 11:55 a.m.)

11
12 * * * * *

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

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

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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)

19 VOLUME 14 OF 15
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**EXHIBITS TO
PETITION FOR WRIT
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(Death Penalty Habeas Corpus Case)

19 **VOLUME 1 OF 15**

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
- VOLUME 2 OF 15**
21. Notice of Intent to Seek Indictment, LVMPD Event No. 951217-0254,
December 26, 1996
 22. Notice of Intent to Seek Death Penalty, State v. Castillo, Clark County, Case
No. C133336, January 23, 1996

- 1 23. Instructions to the Jury, State v. Castillo, Clark County, Case No. C133336,
September 4, 1996
- 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,
September 25, 1996
- 5 26. Lewis M. Etkoff, 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.
- 19
- 20 **VOLUME 3 OF 15**
- 21 40. Declaration of Kelly Lynn Lea
- 22 41. Declaration of Dale Eric Murrell
- 23 42. Declaration of Lewis M. Etkoff, 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,
children of Allegria Dehry-Becker and Robert Becker
- 4 49. Divorce proceedings, Barbara Castillo v. Joe Castillo, Clark County, Nevada,
5 Case No. D121396
- 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
William Patrick Castillo), pages 2-25
- 9 • Divorce proceedings regarding William Patrick Thorpe, Sr., pages 26-
48
- 10 • Personal injury lawsuit for accident on 4/10/74, pages 49-69

11 **VOLUME 4 OF 15**

- 12 51. Missouri Certification of Death, William P. Thorpe, Sr. (Date of Death: July
17, 1984)
- 13 52. Missouri Criminal Court records Re: William Patrick Thorpe, Sr.
- 14 53. Arturo R. Longoro, M.D. - Medical records of Yolanda Norris, formerly
15 Yolanda Becker
- 16 54. Lewis M. Etcoff, Ph.D. records Re: William Patrick Castillo

17 **VOLUME 5 OF 15**

- 18 55. Order for Adoption, In the Matter of the Adoptive Petition of Joe L. Castillo
and Barbara Castillo, Clark County, Nevada, Case No. D40017, January 15,
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
- 19 **VOLUME 6 OF 15**
- 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
29, 1982, pgs. 4-9
 - Transcript of Proceedings, Report and Disposition, December 7, 1982,

- 1 pgs. 10-18
2 • Dispositional Report, January 25, 1983, pgs. 19-21
3 • Transcript of Proceedings, Report and Disposition, January 25, 1983,
4 pgs. 22-26
- 5 80. Family Court of St. Louis County, Missouri, juvenile records, 6/4/85-9/13/85
- 6 81. Motion to Exclude Other Bad Acts and Irrelevant Prior Criminal Activity,
7 State v. Castillo, Clark County, Case No. C133336, July 30, 1996
- 8 82-100 Omitted
- 9 101. Bennett v. State, No. 38934 Respondent's Answering Brief (November 26,
10 2002)
- 11 102. State v. Colwell, No. C123476, Findings, Determinations and Imposition of
12 Sentence (August 10, 1995)
- 13 103. Doleman v. State, No. 33424 Order Dismissing Appeal (March 17, 2000)
- 14 104. Farmer v. Director, Nevada Dept. of Prisons, No. 18052 Order Dismissing
15 Appeal (March 31, 1988)
- 16 105. Farmer v. State, No. 22562, Order Dismissing Appeal (February 20, 1992)
- 17 106. Farmer v. State, No. 29120, Order Dismissing Appeal (November 20, 1997)
- 18 107. Feazell v. State, No. 37789, Order Affirming in Part and Vacating in Part
19 (November 14,
20 2002)
- 21 108. Hankins v. State, No. 20780, Order of Remand (April 24, 1990)
- 22 109. Hardison v. State, No. 24195, Order of Remand (May 24, 1994)
- 23 110. Hill v. State, No. 18253, Order Dismissing Appeal (June 29, 1987)
- 24 111. Jones v. State, No. 24497 Order Dismissing Appeal (August 28, 1996)
- 25 112. Jones v. McDaniel, et al., No. 39091, Order of Affirmance (December 19,
26 2002)
- 27 113. Milligan v. State, No. 21504 Order Dismissing Appeal (June 17, 1991)
- 28 114. Milligan v. Warden, No. 37845, Order of Affirmance (July 24, 2002)
115. Moran v. State, No. 28188, Order Dismissing Appeal (March 21, 1996)
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
Nevius' Supplemental Memo at 3 (October 18, 1999)
- 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)
- 9 **VOLUME 7 OF 15**
- 10 124. Rogers v. Warden, No. 22858, Order Dismissing Appeal (May 28, 1993),
Amended Order
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
Remanding (November 28, 2005)
- 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,
3 2005
- 4 140. Rippo v. State, S. C. Case No. 44094, Appellant's Reply Brief, September 28,
5 2005
- 6 141. Rippo v. State, S. C. Case No. 44094, Appellant's Supplemental Brief As
Ordered By This Court, December 12, 2005

7 **VOLUME 8 OF 15**

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

18 **VOLUME 9 OF 15**

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

C133336, May 1, 1996

153. Reporter's Transcript of Proceedings in Re: Defendant Castillo's Petition for Writ of Habeas Corpus and Defendant Platou's Petition for Writ of Habeas Corpus, Castillo v. State, Clark County, Case No. C133336, May 29, 1996
154. Transcript, Castillo v. State, Clark County, Case No. C133336, July 22, 1996
155. Reporter's Transcript of Proceedings In Re: Motions, Castillo v. State, Clark County, Case No. C133336, August 12, 1996
156. Transcript, Castillo v. State, Clark County, Case No. C133336, August 21, 1996

VOLUME 10 OF 15

157. Trial Transcript, Volume I, Castillo v. State, Clark County, Case No. C133336, August 26, 1996
158. Trial Transcript, Volume II, Castillo v. State, Clark County, Case No. C133336, August 27, 1996 2:10 PM
159. Trial Transcript, Volume II, Castillo v. State, Clark County, Case No. C133336, August 27, 1996 4:40 PM
160. Trial Transcript, Volume III, Morning Session, Castillo v. State, Clark County, Case No. C133336, August 28, 1996

VOLUME 11 OF 15

161. Reporter's Transcript of Trial, Volume III, Afternoon Session, Castillo v. State, Clark County, Case No. C133336, August 28, 1996
162. Trial Transcript, Volume IV - Morning Session, Castillo v. State, Clark County, Case No. C133336, August 29, 1996 9:30 A.M.
163. Reporter's Transcript of Jury Trial, Volume IV - Afternoon Session, Castillo v. State, Clark County, Case No. C133336, August 29, 1996 1:15 P.M.

VOLUME 12 OF 15

164. Trial Transcript, Volume V - Morning Session, Castillo v. State, Clark County, Case No. C133336, September 3, 1996 9:35 A.M.
165. Reporter's Transcript of Trial, Volume V, Afternoon Session, Castillo v. State, Clark County, Case No. C133336, September 3, 1996
166. Trial Transcript, Volume VI, Castillo v. State, Clark County, Case No. C133336, September 4, 1996 11:35 A.M.

VOLUME 13 OF 15

167. Penalty Hearing Transcript, Castillo v. State, Clark County, Case No. C133336, September 19, 1996
168. Reporter's Transcript, Penalty Hearing, Volume I-Afternoon Session, Castillo v. State, Clark County, Case No. C133336, September 19, 1996
169. Reporter's Transcript, Penalty Hearing, Volume II - Morning Session, Castillo v. State, Clark County, Case No. C133336, September 20, 1996

VOLUME 14 OF 15

170. Reporter's Transcript, Penalty Hearing, Volume II - Afternoon Session, Castillo v. State, Clark County, Case No. C133336, September 20, 1996
171. Reporter's Transcript, Penalty Hearing - Volume III - Morning Session, Castillo v. State, Clark County, Case No. C133336, September 24, 1996
172. Reporter's Transcript, Penalty Hearing - Volume III - Afternoon Session, Castillo v. State, Clark County, Case No. C133336, September 24, 1996

VOLUME 15 OF 15

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,
Clark County, Case No. C133336, May 8, 2002
- 2
3 183. Recorder's Transcript Re: Evidentiary Hearing, Castillo v. State, Clark
County, Case No. C133336, August 2, 2002
- 4 184. Recorder's Transcript Re: Evidentiary Hearing, Castillo v. State, Clark
County, Case No. C133336, January 22, 2003
- 5
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EXHIBIT 170

EXHIBIT 170

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COPY

DISTRICT COURT FILED

CLARK COUNTY, NEVADA

SEP 23 11 52 AM '96

STATE OF NEVADA,

Plaintiff,

vs.

WILLIAM PATRICK CASTILLO,

Defendant.

For: J. J. J. J.
CLERK

CASE NO. C133336
DEPT. NO. VII
DOCKET NO. P

REPORTER'S TRANSCRIPT
OF
PENALTY HEARING

VOLUME II - AFTERNOON SESSION

BEFORE THE HONORABLE A. WILLIAM MAUPIN, DISTRICT COURT JUDGE
Taken on Friday, September 20, 1996
At 2:00 o'clock p.m.

APPEARANCES:

For the State: STEWART L. BELL, ESQ.
MELVYN T. HARMON, ESQ.
District Attorneys

For the Defendant: PETER R. LaPORTA, ESQ.
Deputy Public Defender
DAVID M. SCHIECK, ESQ.

REPORTED BY: YVONNE M. VALENTIN, CCR 342

YVONNE M. VALENTIN, OFFICIAL COURT REPORTER

INDEX

STATE'S WITNESSES:

EXAMINATION:

KEIMACH, Lisa	
Direct Examination by Mr. Bell	4
LaLICATA, Ronda	
Direct Examination by Mr. Bell	16
HOSKING, Jean	
Direct Examination by Mr. Harmon	35

DEFENSE WITNESSES:

EXAMINATION:

ETCOFF, Ph.D., Lewis M.	
Direct Examination by Mr. Shcieck	53
Cross-Examination by Mr. Bell	80
Redirect Examination by Mr. Schieck	104
HARRING, Jerry	
Direct Examination by Mr. LaPorta	108
Cross-Examination by Mr. Harmon	117

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ADMITTED</u>
129	Letter Written by Katie LaLicata.	32
130	Newspaper Article.	41
D	Two-page Letter Written by William Castillo.	111

LAS VEGAS, NEVADA, FRIDAY, SEPTEMBER 20, 1996, 2:00 P.M.

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

MR. BELL: Yes, your Honor.

MR. SCHEICK: Yes, your Honor.

Your Honor, Mr. LaPorta had to go get a document, and we can proceed in his absence.

THE COURT: I apologize for the late start, ladies and gentlemen, but the dentist was rather insistent about my continued presence.

Call your next witness.

MR. BELL: Lisa Keimach, please.

LISA KEIMACH,
called as a witness herein, having been first duly sworn, was examined and testified as follows:

THE CLERK: State your name, and spell your last name for the record.

THE WITNESS: My name is Lisa Keimach. It's K-E-I-M-A-C-H.

DIRECT EXAMINATION

BY MR. BELL:

Q. Where do you live, Lisa?

A. In Irvine, California.

Q. Married?

A. Yes.

Q. Children?

A. Three.

Q. And their ages, please.

A. I have three sons ages seven, five, and three.

Q. And do you have a business or profession?

A. I do, but I'm not currently working. By profession I'm a physical therapist, but my real job is just that of mom.

Q. Is it my understanding you worked actively as a physical therapist until your first son was born, and then you've become a housewife since then?

A. That's right.

Q. I take it you know and have some relationship to Isabelle Berndt?

A. My grandma.

Q. A Jean Marie Hosking?

A. My mom.

Q. Tell the ladies and gentlemen of the jury a little bit about your grandma.

YVONNE M. VALENTIN, OFFICIAL COURT REPORTER

1 A. Mostly I want you all to know that she was just a
2 really important person to me, and I loved her very, very
3 much. And I miss her very, very much.

4 So many things go through my mind that I'd like
5 to tell you about her, but mostly something I want you to know
6 about her is that she wasn't old at all. She might have been
7 86 years of age, but she was about the youngest 86 year old
8 that you would have ever met.

9 We did so many things together, and I'm very
10 fortunate to have had a wonderful visit with her just early in
11 December right before she was killed. And we spent about a
12 week with her, and she took us all over town.

13 We went to the Lied's Children's Museum; spent a
14 lot of hours there. She enjoyed so much seeing my children
15 interact with all of the things there and was just right there
16 interacting with them.

17 She was a really dynamic person, just full of
18 life, full of energy, and really important to me and my kids.

19 Q. During the time that you lived in California,
20 your grandmother, I take it, resided all those years over at
21 13 Yale Street?

22 A. Yes.

23 Q. How often did you have occasion to physically see
24 your grandmother?

25 A. Well, we saw her several times a year. We always

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We had an annual visit to her house, and she had an annual visit to our house, that we always did, and we'd see her on other holidays or other events, too. So we saw each other many times a year.

Q. So it would be regular. There wouldn't be several months go by that you wouldn't have regular contact?

A. No.

Q. Did you also have regular telephonic contact?

A. Yes.

Q. Had she lived all her life in Las Vegas?

A. No, not her life. She lived there all my life.

Q. Okay. Did she consider herself a Las Vegan?

A. She was really proud of her community. It meant a lot more to her than just the strip. And every time you visited, she liked to take us out to Mount Charleston and to the different museums. And I think that she was proud of her community. And she was a really important and vital part of the community.

Q. She do any of these things, to your knowledge, by herself when you or your sister or your mother were not here visiting?

A. She always had a busy social calendar.

Q. Even up till the time she was murdered?

1 A. Oh, absolutely.

2 Q. What are some of the kinds of things she would do
3 on a regular basis, even at 86?

4 A. Well, she was involved at her church, and I know
5 that she was what they call a mall walker. She lived not far
6 from Meadows Mall over there and regularly, several times a
7 week, there was a group that would go walk the mall. So she
8 walked on a regular basis.

9 And I mean all of my friends who know me know
10 what an inspiration she was to me. I don't think I ever
11 talked about my grandma without talking about what an
12 inspiration she was to me and how good she took care of
13 herself and how healthy she was and how she was a model to me
14 and that I hoped I could live my life as successfully as she
15 always did.

16 Q. Do you have any specific recollections of your
17 grandma from your childhood as you were growing up, your
18 interaction or specific instances that will convey to the
19 ladies and gentlemen of the jury the essence of Isabelle
20 Berndt as you knew her when you were a young lady?

21 A. Just with grandma you knew you were loved. It
22 was through her that in my life I experienced the most
23 unconditional love of my life.

24 I know that there was no one that loved me the
25 way that she loved me. Her love for me was so unconditional,

1 and to feel that in your heart is a really special thing.

2 I have a lot of memories of her sticking up for
3 me if I got in trouble for something, and I always knew I was
4 important to her, and I always knew that I mattered to her.
5 And I always knew that I was very loved by her.

6 Q. Your children, how would you describe their
7 relationship with their grandma up to the time that she was
8 murdered?

9 A. That's one of the hardest things for me, because
10 they're all really sad, too, that Grammy B's gone. They
11 called her Grammy B because they were lucky to have a lot of
12 grandmas. And they knew Grammy B very well; I mean, even my
13 three year old.

14 We're lucky to have such a good relationship with
15 her and that we're all very close to her, too. And the effect
16 that this is having on them is the part of all of this that
17 makes me especially sad.

18 Q. Before you go into the effect, will you kind of
19 describe the relationship that they had when she was alive or
20 some of the things that they used to do together that they
21 can't do now.

22 A. On our last visit in December, I described a
23 little bit of what we did on that visit. We spent a lot of
24 time at the museum, which was just fascinating. My kids love
25 that place.

1 And she also took us out to the Opportunity
2 Village Fantasy Land that's set up around Christmas time, and
3 we spent a lot of time are there. I think we had gone out to
4 maybe one of the hotels and seen some of the interesting
5 things for kids. We do a lot of kinds of things for them.

6 There were so many fun things that we did. And
7 after I learned of my grandmother's death, it made me sad that
8 my children were still so young that they might not remember
9 her real well.

10 And I remember saying to my seven year old that I
11 hoped he would never forget Grammy B. And he told me that --
12 he said, "I'll never forget Grammy B, Mom."

13 And I asked him what his best memory was of our
14 trips to visit her, and it was Christmas. And she always had
15 made peanut brittle at Christmas and always peeled all the
16 shells off the peanuts. And her and my son sat at her kitchen
17 table peeling all the peanuts. And without a second
18 hesitation, he said peeling peanuts.

19 I mean it wasn't the museum that he remembered.
20 It wasn't the Fantasy Land that came to mind. Immediately as
21 his best memory of our visit there was sitting at the table
22 talking with her. And I just thought that that was -- I'm
23 glad that he'll have that memory, and I think that he'll be
24 able to hold on to that memory.

25 Q. Your grandmother was a teacher all her life?

1 A. And a teacher of second graders. And my son just
2 entered second grade. And I know during that visit the
3 thought occurred to me about, oh, what a special year this
4 would be, and it was something that I was really looking
5 forward to.

6 Second grade -- she taught second grade for many,
7 many, many years, and that was the grade level that she
8 related best with. And I thought that this was going to be a
9 really special year to be able to share all of her knowledge
10 with second graders and having a second grader myself.

11 And it was something I was really looking forward
12 to, as well as looking forward to my two younger children,
13 they're second grades, too. That's something I'll miss. I'll
14 miss that part of my life.

15 Q. Your oldest son was in second grade in December?

16 A. No. He just entered second grade.

17 Q. He just entered second grade now. So none of
18 your children entered the second grade before she was killed?

19 A. No, no.

20 Q. Do you recall the circumstances where you were
21 and how you had occasion to learn that your grandmother had
22 been murdered?

23 A. Well, I was -- my whole family was sleeping, and
24 we got a phone call in the very early morning hours, a phone
25 call that woke us up. And you're always a little startled to

1 be woken up by a phone call, which seemed like the middle of
2 the night.

3 Q. Who was on the phone?

4 A. It was my father.

5 Q. And what did your father tell you?

6 A. I think that at that time the information that
7 they had was that there was a fire at grandma's house and that
8 they were going to be leaving immediately to go. And it
9 wasn't until later in the morning -- I don't know what the
10 circumstances were.

11 Q. Now, had circumstances been different than they
12 actually were -- your relationship with your grandma was
13 such -- would you have come to Las Vegas immediately?

14 A. Yes.

15 Q. But there was an occasion that you were unable to
16 do so right then; is that true?

17 A. Yes.

18 I had had a miscarriage the day before, and
19 actually I was probably the last one to talk to my grandmother
20 on the telephone, because I talked to her Saturday night and
21 had a long conversation with her about that event. And I --
22 you know, I was supposed to be on bed rest for quite sometime.

23 We came -- I think it was Monday or -- yeah,
24 Monday.

25 Q. That was when the doctor eventually let you?

1 A. I think we just -- we came.

2 Q. Now, since your grandma's murder, how has your
3 life changed, you, Lisa's?

4 A. The effect that something like this has on your
5 life -- it changes your life completely. And I don't think
6 that the effects that it has on your life -- I don't think
7 that they can be quantified or qualified.

8 I mean, they're just so far reaching, and they
9 aren't gonna end. This is what's happened so far, but it's
10 now a part of who I am, and it changes -- it changes who you
11 are completely.

12 Q. Can you give the ladies and gentlemen of the jury
13 maybe a simple example that they could relate to as to how
14 this might change you or who you are or what you do or how you
15 perceive things?

16 A. It gives you a different perspective on
17 everything in life. Prior to this event, I was a person that
18 had things about me, and then after this event, now I'm a
19 person who had a grandmother that was murdered. And it makes
20 me a different person in that aspect from the person I was
21 before.

22 And you go through different stages, and
23 different things happen as time goes on. But I -- everything
24 is looked at differently. It gives you a different
25 perspective than what you had before.

YVONNE M. VALENTIN, OFFICIAL COURT REPORTER

1 Q. When you were relating this to me in preparation,
2 you indicated to me as an example the first time you and your
3 husband went to the movies after her death. Would you tell
4 the ladies and gentlemen of the jury about that, just by way
5 of example?

6 A. I think that is a -- it's a point in time when it
7 became very clear to me that I was gonna look at everything in
8 life very differently.

9 And my husband and I try to go on a date about
10 once a month, and I believe that sometime in January we had
11 gone out to see a movie, and the movie was called, "Two, If By
12 Sea."

13 It was supposed to be a light comedy. I wasn't
14 in the mood for anything heavy. And we didn't know that the
15 premise of the story was two petty criminals. It was a story
16 about them and their life, but it was supposed to be a funny
17 story about them and what they did.

18 But I couldn't enjoy the movie at all. I
19 thought, crime's not funny. And it's just not being able to
20 enjoy that movie and having such a different perspective on a
21 story.

22 My perspective before this event would have been
23 one thing, but my perspective on the story was so different
24 afterwards that I was completely unable to enjoy that movie
25 then. And it just made me very aware of how everything was

YVONNE M. VALENTIN, OFFICIAL COURT REPORTER

1 different now.

2 Q. Have you found that that perspective has changed
3 or diminished much in the last year, as time has passed?

4 A. No. I'll always be a different person now.

5 Q. Do you have any specific times or instances when
6 you focus or dwell upon the events that occurred December
7 17th, 1995?

8 A. You have to go on with life. I have my children,
9 and I need to take care of them, but there are -- it's hard to
10 not think about it. And of course, you know, not a day goes
11 by where I don't.

12 Q. How about your children? How has this affected
13 them?

14 A. Well, it's had a lot of impact on them. That's
15 the hardest thing for me. Michael, my seven year old, he's
16 afraid to be by himself. We live in a two-story house, and he
17 won't go upstairs alone, and he won't go downstairs alone,
18 either.

19 He's really, really afraid to be alone or by
20 himself in the house. And it's hard to imagine how little
21 minds think, but I don't know why my little three year old is
22 just so afraid. There is just a sense of fear in him that I'm
23 trying to comprehend. And I don't -- I -- they know basically
24 the story of what has happened to grandma, and it's instilled
25 in them a sense of fear that makes me really sad.

YVONNE M. VALENTIN, OFFICIAL COURT REPORTER

1 Q. I know that when you knew that you were going to
2 have the opportunity to relate to the jury how your
3 grandmother's death had affected you, you made a few notes.

4 Is there anything that we haven't covered that
5 you feel like you need to convey?

6 A. I just want you to all know how much I loved her
7 and how much she's missed. She was a really, really important
8 lady, and she still had a lot of living left to do.

9 MR. BELL: Nothing further.

10 Thank you, Judge.

11 THE COURT: Cross-examination.

12 MR. SCHIECK: No questions, your Honor.

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

14 MR. BELL: Ronda LaLicata, please.

15

16 RONDA LaLICATA,
17 called as a witness herein, having been first duly sworn, was
18 examined and testified as follows:

19

20 THE CLERK: State your name, and spell your last
21 name for the record.

22 THE WITNESS: My name is Ronda LaLicata;

23 R-O-N-D-A, L-A capital L-I-C-A-T-A.

24

25

DIRECT EXAMINATION

BY MR. BELL:

Q. And Ronda, your relationship to Isabelle Berndt?

A. She's my grandma.

Q. And Jean Marie Hosking would be your mother?

A. Yes.

Q. And Lisa would be your sister then?

A. She is.

Q. Tell the ladies and gentlemen a little bit about yourself, where you live, where you come from.

A. I live in San Diego. I live with my two children. I've been divorced for seven years. My son just started junior high school, and my daughter just started fifth grade.

I'm a school teacher. I work with the special education population. I recently, within the last two years, finished up my Master's degree and have my learning handicapped specialist, all the papers you need to do that kind of thing.

And a colleague of mine and myself just started a school this year for this special population. It's been something we've wanted to do for many years.

I'm not sure if I'm supposed to wait for Stew to ask me this question, but I'm going to go into it.

But part of me -- the reason that I'm a teacher

1 is because of my grandmother. As a little girl, she always
2 had the finger paints at her house or the activities that we
3 could do when we went to visit her.

4 And I can remember very clearly going out on the
5 patio table and finger painting. And she had this little
6 tracing box that you put a picture on and your paper over, and
7 there was a light bulb underneath, and you could trace
8 pictures, which I have in my possession now.

9 And as I grew up, there was -- there was never
10 any question as to -- I wanted to be a teacher. I'd gather
11 the neighborhood teacher would be a teacher, and it was
12 because of her influence.

13 As I got older, on our vacations I would go to
14 school with her, and she'd let me do little things in her
15 classroom and introduce me to her students.

16 So she's really been my mentor and my
17 inspiration. I think one of the reasons I went into special
18 ed, when she was a young woman, she taught -- they called it
19 the reform school in South Dakota. And she worked with this
20 population, also.

21 We had so many conversations about education and
22 our philosophies, our shared philosophies on how education is
23 cyclic and things come around. They're called different
24 things 30 years ago, but it's the same things that they do
25 today.

1 My first year teaching, she and her team teacher
2 would send me a package every month of activities for that
3 month that I could share with my children.

4 She always was very proud that I followed in her
5 footsteps. You know, she started at 18 with her little
6 one-year certificate from the normal teaching school in South
7 Dakota and had her one-room schoolhouse that she would go
8 every morning and start the fire and sweep the floor.

9 And she had grades K through eight. And
10 sometimes when I got my varied ages -- I teach three through
11 six this year -- I remembered that she had K through eight.
12 If she could do it, I could do it. I could meet all their
13 needs.

14 She ended up teaching for 49 years; for a long,
15 long time. She didn't even retire at 65 when she could have
16 because the principal of the school wanted her there and liked
17 her so much that grandma ended up teaching until she was 74
18 years old.

19 And I can't tell you -- I don't know of anywhere
20 where there is a 74-year-old teacher still in the classroom.
21 And she must have loved it, or she wouldn't have stayed there
22 that long. She really cared about those children.

23 I have a picture of my grandmother on my
24 refrigerator with about ten of her students. They're in their
25 60's, and here's my 85-year-old grandmother, and she looks

1 better than all of them. It's a neat picture, and I,
2 therefore, keep in contact with my students.

3 The first students I taught are now in college,
4 and that model, she was always there, that model she was for
5 me, the inspiration, my mentor. She would -- if I had a
6 problem -- we spoke on the phone often. You'd think we talked
7 for ten minutes, and it'd be 45.

8 Q. What was her physical condition and health?

9 A. She could outdo me any day of the week. She'd
10 come to San Diego to visit, and we'd go to the zoo and walk.
11 I remember when I was pregnant with my first child. She was
12 so sure I was going to have that baby right at the zoo. Are
13 you okay, Honey? Are you okay?

14 She'd play leapfrog with my children. She was in
15 her 70's, and there she is playing leapfrog with the children,
16 and I have trouble getting off the floor at this age.

17 I have all of her little diplomas and things. I
18 put them on the wall in my office. She got her Master's
19 degree in Arizona when she was in her 50's, and I have all
20 those things in my office.

21 Q. Besides her diplomas and picture, do you have any
22 other mementos of your grandmother's property or her classroom
23 that you have in your custody now?

24 A. Oh, I have many things that she's given me over
25 the years. Every time I would go to visit, she'd say, Honey,

1 come go through the files. See if there is anything that you
2 need.

3 When we were at her home after she was murdered,
4 we found a flag, a rolled up, big cloth flag, and so I took
5 that to my new school, and that's what we use for our pledge
6 of allegiance every morning.

7 Q. Do you have a specific recollection of your
8 relationship or any relationship with your grandmother during
9 your formative years when you were growing up, you and Lisa?

10 A. I guess the first memory that comes to my mind is
11 Thanksgiving. We would always leave in the evening on
12 Wednesday night and drive to Las Vegas.

13 I grew up in Los Angeles. And we'd get there
14 late, and grandma would have made the colachies (phonetic).
15 They're a little like a sweetbread with stewed prunes in the
16 middle, and they were very tasty; and cinnamon rolls.

17 And she had been up waiting for us. And we'd
18 arrive about midnight, and those would be waiting for us. And
19 she had a chest in the living room. There would be a pair of
20 pajamas for all of us. We'd always get a new pair of pajamas
21 at Thanksgiving, but I think Thanksgiving was just as far as a
22 family memory and something growing up.

23 And the other thing, she had traveled to Venice
24 and bought a beautiful blue Venetian decanter with the little
25 glasses, and she'd always keep quarters there. She lived

1 catty-corner from the Dairy Queen, and she'd always leave
2 quarters so we could run over to the Dairy Queen and get an
3 ice cream.

4 As an adult she'd put those quarters there for me
5 because that would be my memory. I guess my sisters and
6 brothers had their own memories, but she'd keep those. And
7 she told me the last time I visited her, it was in October
8 before this happened, and she said, Honey, I want you to take
9 this home with you, because you are the one that really has
10 the memory of this. So I had that at home.

11 Q. You mentioned Thanksgiving. Any other holiday
12 memories as a youth?

13 A. Well, we always had Christmas at my mom's, and
14 she would come and drive in her car. And, you know, we'd go
15 and open the trunk, and it would be filled with presents. My
16 sister and my brother and I are her only grandchildren. My
17 mother is an only child, and so she doted on us.

18 My sister said the unconditional love, and I,
19 too, feel that way. I think that's what I miss the most,
20 someone that just likes you no matter what and supports you
21 and is proud of you. And that's something I miss very much,
22 very, very much, our conversations. There's a hole there.

23 Q. Did you continue to endeavor to get together on
24 holidays, even after you were an adult?

25 A. Oh, certainly. Every Thanksgiving until she was

1 about 75, right in there somewhere -- I'm guessing about 75 --
2 we were there. And she just said she didn't feel she could
3 keep doing this because it was so much work. And she would
4 rather us come as individual families to her home so she could
5 enjoy us that way, because the big group seemed to be so much.
6 And she wanted to enjoy us individually.

7 So my sister shared that she had two times a year
8 when she went. I usually went in the summer because that's
9 when I had vacation. My children and I would drive in August,
10 and grandma would take us to the sights.

11 And she usually came to my home in June. My
12 birthday is in June, and it's the end of the school year. And
13 she would come to my classroom with me, 80, 81, 82, and she'd
14 help me with my children. And she'd take a little reading
15 group and clean off my desk for me.

16 And we'd celebrate my birthday together. And
17 sometimes we'd go to a Padre game. My grandmother is an avid
18 baseball fan. And if there was a Padre game, we'd certainly
19 go catch that. And she had a little score book.

20 Often when we were here, she'd sit right behind
21 third base back up in the back row, but she would lean up on
22 the cement wall, and she and her friend would have their
23 little score book and earphones on. And don't talk to her
24 because she was busy keeping score. She was a great baseball
25 fan.

YVONNE M. VALENTIN, OFFICIAL COURT REPORTER

1 Q. Would she go to the games when you weren't
2 visiting?

3 A. Oh, certainly. She would go a lot. She had many
4 friends that she would do things with. In fact, I know the
5 day after they had tickets for the Rockets. She and a friend,
6 Dorothy, were going to go see the Rockets.

7 Q. You mentioned that she traveled some?

8 A. Extensively. My grandfather passed away when I
9 think she was only 56. I was nine. I was a little girl. And
10 from that time on, she traveled every summer. She's been
11 everywhere in the world, I think, except for Russia.

12 We used to plot her trips on the map. She'd be
13 the teachr, so she'd give us the map, and we'd follow. She'd
14 either go usually with a church group, a tour-type thing.

15 She just went to Israel two years ago. And I
16 remember her friend saying to me, "Aren't you worried that
17 something's going to happen over there with all the scary
18 things?"

19 And my grandmother's attitude was, you know, I'm
20 84 years old, and I'm gonna die sometime. And, you know, I'm
21 going to go to Israel and enjoy my trip. And she traveled
22 many, many places.

23 Q. Share with us, please, your recollections of your
24 adult-to-adult relationship with your grandmother, after you
25 had grown up, after you had become a mother yourself.

1 A. She was my friend. I'm sure you all have
2 friends. How do you describe that relationship; someone
3 that's there for you.

4 Q. Did you talk to her on a regular basis?

5 A. Yes. We talked on the phone frequently. We
6 shared -- well, I told you about the teaching. I mean, we
7 talked about that. That was her life. It's my life, along
8 with my family, and we had many a conversation, absolutely.

9 Q. Did she go out of her way to share in your
10 personal successes?

11 A. Uh-huh.

12 Q. We have an exhibit here, Exhibit 1, as a matter
13 of fact, which is appears to be a picture of you in a
14 graduation --

15 A. She was very proud of all of us. Like I said, we
16 were her only grandchildren. And she was very supportive.
17 And I told you I recently received my Master's degree, and she
18 came, of course, to the ceremony.

19 And do you have the pictures? It's a picture of
20 my grandmother and my mother and I in my cap and gown. And
21 that was one of the best days of my life. And she was there
22 to share it with me.

23 And she had her Master's in education. That
24 connection was something that can never be replaced.

25 Q. Would you describe the relationship of your

1 children with their grandmother?

2 A. Certainly.

3 Q. Or actually their great grandmother?

4 A. Yes. It was their great grandmother.

5 I know when I was first pregnant, my grandmother
6 didn't say too much to me. And finally I asked her, "Well,
7 aren't you excited, Grandma?"

8 "Oh, Honey, it's just hard to think of my
9 granddaughter having a baby."

10 God she just -- she just loved them. I feel that
11 my son was a fat, fat baby. I mean, he's a tall, skinny thing
12 now, but he was just a big lump. And he'd just sleep on her
13 shoulder. And she thought that was the coolest thing, and she
14 related that story even as he was 10 and 11 and 12 that this
15 little baby would just sleep on her shoulder.

16 I feel they got to know her well. They spoke to
17 her on the phone every time I did. We met at least four times
18 a year, sometimes more; never less than that. They wrote her
19 letters, and they loved her very much. They learned from her,
20 too, would sit on her lap and read stories.

21 Q. Would you describe her family as the first love
22 of her life?

23 A. Yes. I think what my grandma loved most was her
24 family and her baseball and travelling and, of course,
25 children. I mean, she never missed an opportunity to teach a

1 child, if she had that.

2 Q. Where were you, and under what conditions or
3 circumstances did you have occasion to learn that the
4 defendant had murdered your grandmother?

5 A. I was at home. I turned my phone off at night
6 because someone had their fax machine hooked up to my phone.
7 And at 3:00 o'clock in the morning, I would get these weird
8 calls. So I had had a very agitated evening that night, and
9 now I know why. I'm sure there was something in the air that
10 was agitating me.

11 So I finally got out of bed about 6:30 Sunday
12 morning, which is rare for me, because I like to sleep in. I
13 get up at 5:00 every morning, and I like to sleep in till 8:00
14 on Sundays.

15 But I just got up because I hadn't slept well
16 that night. And I heard a car outside, and it was my fiance's
17 car. And I thought, well, why was he here? He always calls
18 before he comes over, and he knows I like to sleep in, and it
19 was about 10 to 8:00.

20 And I opened the door, and he looked like
21 something was wrong. And I wasn't sure what, of course, and
22 he said, "Come sit down."

23 And I went in my bedroom, and he said, "Your
24 grandmother has died."

25 Well, you want to take those words and pull them

1 out of your ears because once it's in, it doesn't go out. But
2 it was in, and I could laugh because it's such a shock. No; I
3 just talked to her yesterday. I talked to her Saturday
4 morning. We had a nice talk.

5 And the second thought was, well, she had said
6 something about her white blood cells were a few counts off.
7 And so my second thought was, well, maybe they were more off
8 than the doctors told her, and she died in her sleep.

9 And then from there I believe I went into shock.
10 I think I just -- what do you do? I don't know. I had never
11 had to deal with this before.

12 And so I made some phone calls and started --
13 because when that happens to me, I have a need to find out.
14 So that gives me some kind of direction, I suppose.

15 So that's where I was, in my home. And I made
16 arrangements as soon as I could to catch a flight that
17 evening, because I knew my parents were on their way. And my
18 friends just rallied. And this one took Phillip, and this one
19 took Katie, and I was gone.

20 Q. So you flew up here to be with your mother and to
21 immediately --

22 A. Absolutely.

23 Q. How has the death of your grandmother affected
24 you? How is your life different today than it was a year and
25 a half ago?

1 A. Excuse me. I might have to read my notes here.
2 It's hard to talk sometimes. I suppose unless something like
3 this has happened, it's difficult for you to imagine the
4 impact. I like to think I have some control over my life and
5 that there is a direction and there is a rhyme and there is a
6 reason, but this kind of violence, you don't prepare for that.

7 You never think it's gonna happen to you. It
8 happens to somebody else in the newspapers. And it kind of
9 has put that notion that I have any kind of control in my life
10 out. What control do I have? I can't even -- can I sleep in
11 my own bed and be safe?

12 And it's been very difficult for me to pull all
13 of this together to know that there is a rhyme and there is a
14 reason. And you just keep putting one foot in front of the
15 other.

16 I consider myself a rational woman, and I've
17 taken care of my life. And I go on, and I take care of my
18 children; and that there is no rational answer for this. I
19 can scream why at the top of my lungs, and there is no answer,
20 and that bothers me a lot; a lot. That's the hardest.

21 I had a very difficult time sleeping. For about
22 two months I could not sleep. I would lay in my bed at night,
23 and it wasn't a raging like I just explained. You just lay
24 there and in tears. You weep because it's a very sad thing.
25 And that's human emotion, I suppose.

1 And I did not view my grandmother, because I
2 wanted to have in my mind what she looked like, but the ugly
3 visions that come to my mind when I think of someone standing
4 over her, they're wicked, terrible things, and they cause you
5 not to sleep. And those visions still come.

6 Time helps. I have to tell you that. Time
7 helps, but it will never go away. I barricade my doors at
8 night. Who cares? If someone wants to come in my house,
9 they're gonna come in, but I barricade my doors at night, and
10 I do it after my children are in bed. And I take it away in
11 the morning, because I don't want them to grow up with that
12 fear.

13 I'm scared. I am more scared now. I realize
14 that these things do happen.

15 I did seek some counseling because I was
16 depressed. I was very -- I missed her. I miss her very much.
17 And I just went to the YMCA. And they have some counselors
18 there and kind of helped me talk some things through.

19 I talked to my children. They've seen me cry,
20 and there is just this sense of sadness. It kind of just
21 pervades your inner core. It's an emptiness of someone you
22 care about very much.

23 Q. How often on a monthly, weekly, daily, whatever
24 it is, however you characterize it, basis does the thought of
25 this emptiness, the thought of --

1 A. I'm sorry, the what?

2 Q. The thought of it and the emptiness that you've
3 expressed permeate your existence.

4 A. Every day. You know, like I said, I teach. Her
5 things are all in my classrooms, in my home, and it'll be --
6 it'll hit you in the car. I'll be standing in front of the
7 classroom, and something will click in your memory; and
8 always; every day; several times a day.

9 Every night when I lay down in my bed, I turn off
10 that light and, you know, there is that moment or instant when
11 it's complete darkness, before your eyes adjust. She's always
12 there; always.

13 And then --

14 Q. How about your children? How has the death of
15 their great grandmother affected them?

16 A. They were very sad. I think they were
17 frightened. My son has not expressed very much except for
18 that he cried a little bit, but I don't know if it's the
19 nature of him just to be a more quiet child.

20 My daughter, on the other hand, is a very verbal
21 child. And she will tell you exactly how she feels and what's
22 going on with her. And she still cries to this day.

23 Maybe it's once a month, maybe every other week.
24 I'll be tucking her in, and she'll start crying and tell me
25 how much she misses her grandmother, her Grammy B, and I just

1 hold her. What can I say? I miss her, too.

2 Shortly after --

3 Q. Go ahead. What were you going to tell us?

4 A. I was just going to say, after this happened, my
5 daughter spent some time in her room one evening. It was
6 still during the holiday break. And every now and then she'd
7 holler out a word she needed me to help her spell. And then
8 about two hours went by, and she was awfully quiet, which is
9 rare for my daughter, and she called me in. And she had taken
10 her bulletin board and taken off all her pictures and made a
11 little bulletin board for my grandmother. And she put up
12 several things that grandma had given her and a crochet needle
13 and a book she had asked me to get.

14 There was a book she liked reading with my
15 grandmother, and she put that on there. And she handed me
16 those two pages that -- you have them. And she had written
17 what -- just written this about her grandmother. And I would
18 like to share it with you. This is from a nine year old's
19 perspective, but I think it gives you where she is in her
20 feelings about my grandmother.

21 Q. You have the original of that letter with you; is
22 that right?

23 A. Actually, it's on the seat over there.

24 Q. But it's here in Las Vegas with you?

25 A. Uh-huh.

1 Q. And you had a copy made so that it can be put
2 into evidence and you can still retain the original; is that
3 correct?

4 A. Yes.

5 Q. Is exhibit 129 a copy of that letter your
6 daughter wrote you?

7 A. Uh-huh.

8 MR. BELL: Move to admit 129.

9 MR. LaPORTA: Let me see it.

10 THE COURT: Same will be received in evidence.

11 THE WITNESS: She did take that to school, too.
12 I had talked to a teacher that Katie wanted to share this. I
13 think it was a very good grieving process for her. I think it
14 helped her a lot to do that; totally unsolicited.

15 Q. BY MR. BELL: Go ahead and read it, 129.

16 A. Well, there is a date on here. She put January
17 16th that she wrote this.

18 It says, "My grandma" -- well, it's her great
19 grandmother -- "My grandma was a great person. She was a kind
20 person. She loved to teach my brother and I how to each
21 crochet, like this example. And she had her example there.

22 "My grandma was a teacher. She taught for 47
23 years. She taught grades one through eight in a one-room
24 schoolhouse. Her name was Isabelle Marie Berndt.

25 "My grandma had eight great grandchildren. She

1 knew my brother and I the best because we were the oldest
2 grandchildren.

3 "When my grandma was a kid, she played
4 basketball."

5 Grandma had these pictures of her in the bloomers
6 playing basketball. She was on the basketball team.

7 "My grandma loved to go to the Las Vegas Stars'
8 games and keep score with her friends. She loved to read.
9 One of my memories were reading the president books with her.

10 "My grandma loved taking her grandchildren to
11 hotels to play games and to go to theme parks. She also liked
12 to take us out to dinner a lot.

13 "My grandma had a wonderful life and was proud of
14 all she had. She had a little white house on the corner of
15 Yale Street by the Dairey Queen. The thing I liked most about
16 my grandma's house was that she had this ugly avocado green
17 carpet, but it looked cute.

18 "She had her fan and her duck collection right
19 when you walked in. In the extra room on the dresser she had
20 a blue sign that said I love you on it in a heart. She was
21 born August 3rd, 1899 and was killed at the age 86 on December
22 17, 1995, was burried a week later on December 22nd, 1995.
23 She was burried by her husband, Ray.

24 "This is my grandma."

25 So I think those little things -- she had some

1 kind of a sense of her grandmother.

2 Q. Is there anything else that you feel is important
3 to share with the ladies and gentlemen of the jury?

4 A. If you don't mind, I'll check my notes for a
5 moment and let you know.

6 Q. Please do.

7 A. Just that I miss her warmth and her kindness and
8 her friendship very much. She had a way of kind of pinching
9 just to show you that she loved you. And even though that
10 hurt, I miss that little pinch.

11 And I remember when she stayed at my house. I
12 miss tucking her into bed and just having those nighttime
13 chats. She was a pretty neat gal, my grandma.

14 MR. BELL: Nothing further, Judge.

15 THE COURT: Cross-examination.

16 MR. LaPORTA: No questions, your Honor.

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

18 THE WITNESS: Thank you.

19 THE COURT: You may call your next witness.

20 MR. HARMON: Jean Hosking.

21

22 JEAN MARIE HOSKING,
23 called as a witness herein, having been first duly sworn, was
24 examined and testified as follows:
25

1 THE CLERK: Please state your name, and spell
2 your last name for the record.

3 THE WITNESS: Jean Marie Hosking; H-O-S-K-I-N-G.

4
5 DIRECT EXAMINATION

6 BY MR. HARMON:

7 Q. Mrs. Hosking, you, of course, testified
8 previously in the case?

9 A. Yes.

10 Q. Will you begin now by telling us a little bit
11 about yourself?

12 A. Well, I was Isabelle Berndt's only daughter. I'm
13 a nurse. I became a nurse in 1955. Right after I graduated
14 from high school, I went into nursing. And I practiced
15 actively, until this August 1st, I retired.

16 And mom was always quite proud of me. I could do
17 no wrong in her eyes. Sometimes that was unfortunate; but
18 she, as the girls both said, just loved us all so
19 unconditionally.

20 And when I retired, they gave a few parties for
21 me at the hospital that I worked at, and we really missed her.
22 She would have been there with bells on because she came to
23 all our important activities as a family.

24 Q. How long in all were you a practicing nurse?

25 A. Well, I graduated 1955, and I only took a couple

1 years off when my children were small, so 40 years.

2 Q. You have how many children?

3 A. Three.

4 Q. We've heard from your two daughters. You have
5 another child?

6 A. I have a son. He was our youngest child. He
7 resides in Georgia.

8 Q. What is his name?

9 A. Mark.

10 Q. You're married, of course?

11 A. Yes.

12 Q. To whom are you married?

13 A. Douglas Hosking.

14 Q. He is here in the courtroom?

15 A. Yes, he is.

16 Q. How long had you and your husband been married?

17 A. Forty-one years.

18 Q. Where were you born and raised?

19 A. South Dakota. I was born in Tyndall, South
20 Dakota in my grandmother's home, and we lived there until
21 after I was married. I lived in Sioux City, Iowa for one
22 year, and then we came to California.

23 And my husband and I didn't particularly like the
24 cold winters of the midwest, and so I told my mom and dad that
25 we were going to move west. And we didn't know if we were

1 going to the Los Angeles area or the Tempe, Arizona area.

2 And mom said, well, she didn't like that too
3 well. So she looked at the map, and she saw here was Tempe,
4 Arizona, and here was Los Angeles, and right in the middle was
5 Las Vegas, Nevada. So she wrote to the school district in Las
6 Vegas and asked them if they could use a teacher, because she
7 wanted to be close enough to my children and me so she could
8 watch the children grow up, but she didn't want to be next
9 door to us and interfere. That was her philosophy. She liked
10 to be on the outskirts.

11 And so it worked out beautifully. We ended up
12 moving to Los Angeles. Mom and dad moved here to Las Vegas,
13 and she watched my children grow up.

14 Q. Do you have any specific memories of growing up
15 with your parents, specifically with your mother, that you can
16 share with us?

17 A. Well, she was always there for me. Mom had
18 taught for seven years before I was born, and at the time I
19 was born, she took a seven-year hiatus so that she could be
20 with me before I started school. And then when I was in
21 second grade, she went back to teaching because she felt that
22 by teaching while I was in school, her hours were my hours,
23 and she was just always there for me.

24 Q. Where did she teach prior to your birth?

25 A. Before I was born, she taught in a one-room

1 schoolhouse in the rural area of South Dakota. She had eight
2 grades in that one room. She would stoke the fire and sweep
3 the floor, and she just was an all-around janitor and teacher.

4 Q. You're telling us that her class consisted of
5 children of a range from grades one through eight?

6 A. Yes, in a little country school.

7 Q. We've heard testimony already this afternoon that
8 for a period of time your mother taught in South Dakota at a
9 reform school?

10 A. Yes.

11 Q. When was that?

12 A. That was from the time I was in the fifth grade
13 until I was a senior in high school. And she taught in the
14 state reformatory, which you could compare to the Nevada Youth
15 Training Center here in Nevada. It was a school run by the
16 state of South Dakota where delinquent children were sent.
17 And they had them there from whenever they got in trouble
18 until the age of 18.

19 And they had a full-scale school there. Mother
20 taught what was called the ungraded room. And she would
21 get -- that was children under the educational level of junior
22 high. And she'd get them ready for junior high and senior
23 high. And they did have a graduating class at this reform
24 school.

25 Q. Did your mother have a love of the teaching

1 profession?

2 A. Oh, yes.

3 Q. We, of course, have heard testimony that she
4 lived for many years at 13 North Yale Street in Las Vegas.

5 A. Yes. They bought that home in 1959 and moved
6 into it.

7 Q. Your father, unfortunately, passed away, as I
8 recall, in 1965?

9 A. Yes, that's true.

10 Q. After that time, did your mother reside alone at
11 13 North Yale Street?

12 A. Yes, she did.

13 Q. Did she ever have roommates?

14 A. No.

15 Q. Did she have boyfriends with whom she formed any
16 type of close relationships?

17 A. Not to my knowledge.

18 Q. To your knowledge, would there have been any
19 reason for men's shoes or other dressing attire to have been
20 inside the house?

21 A. No.

22 Q. As I recall, we've heard that she taught, in all,
23 49 years?

24 A. I'm sorry?

25 Q. She taught for 49 years?

1 A. Yes.

2 Q. When she retired, was there some publicity in
3 newspapers about her retirement?

4 A. There was a newspaper article that was done
5 actually two years before she retired. She was 72 when the
6 article was put in the paper. At the time of her retirement,
7 there was the news -- the television people went out to her
8 room and interviewed her and some of the children. I don't
9 have it with me, but I do have a video copy of that.

10 But the article in the paper was done a couple
11 years before she retired.

12 Q. Was that a local newspaper article?

13 A. Yes.

14 Q. Do you have a copy of that article with you?

15 A. I do; I do, yes.

16 MR. HARMON: Your Honor, may we have this marked
17 as the State's next in line?

18 Thank you.

19 Q. BY MR. HARMON: I'm showing you, Mrs. Hosking,
20 what the clerk has now marked as State's Proposed Exhibit No.
21 130. Is that a copy of the newspaper article you have
22 referred to?

23 A. Yes, it is.

24 Q. Is there a picture in the article of your mother,
25 Isabelle Berndt?

- 1 A. There is two pictures of her on the page.
- 2 Q. Where are the pictures taken?
- 3 A. Where were they taken?
- 4 Q. Yes.
- 5 A. In her classroom.
- 6 Q. And you've indicated that -- well, let me ask
- 7 you, what was the occasion for the writeup about her?
- 8 A. Well, it was under the title of "Experience," and
- 9 it just says, "This 72-year-old teacher really isn't
- 10 ordinary."
- 11 Would you like me to read you just a couple of
- 12 excerpts?
- 13 Q. No.
- 14 Does it basically give a summary of her teaching
- 15 experience?
- 16 A. Yes, it does.
- 17 MR. HARMON: Your Honor, the State offers
- 18 Proposed Exhibit 130.
- 19 MR. LaPORTA: No objection.
- 20 THE COURT: Same will be received in evidence.
- 21 Q. BY MR. HARMON: Thank you.
- 22 We've had testimony that your mother loved to
- 23 travel?
- 24 A. Yes.
- 25 Q. In fact, two years ago she traveled to Israel?

- 1 A. Two or three years ago, yes.
- 2 Q. About how old was she when she made that trip?
- 3 A. Well, she was over 80. She was probably 83. I
- 4 don't recall.
- 5 Q. Did she travel with a group?
- 6 A. She usually went with a group, yes.
- 7 Q. Did anyone else in the family accompany her on
- 8 her trip abroad?
- 9 A. No. She would usually have her friend as a
- 10 roommate.
- 11 Q. Did you discuss with her why she had an interest
- 12 in going to Israel?
- 13 A. Well, not a specific -- she just hadn't been to
- 14 Israel before. She had been to many other places, and that
- 15 was on her agenda to visit, and she did. And she enjoyed the
- 16 holy land very much.
- 17 Q. Was she a person of strong religious convictions?
- 18 A. Yes.
- 19 Q. Did you have regular contact with your mother?
- 20 A. Oh, very regular.
- 21 Q. You speak with her regularly on the telephone?
- 22 A. Not ever more than a week went by.
- 23 Q. Did you see her each year on special occasions?
- 24 A. Yes. All holidays any special events that
- 25 occurred in the family, she was there. She usually would just

YVONNE M. VALENTIN, OFFICIAL COURT REPORTER

1 fly over, and we'd pick her up at the airport. And she would
2 stay -- she always had this funny little thing she'd say.
3 We'd say, well, why don't you stay longer? You're not working
4 anymore.

5 Well, she'd say, I really would rather go with
6 you wanting me to stay than me to stay and you wanting me to
7 go.

8 Q. We've had testimony in this case about a month
9 before her death that she had a roof repaired. Were there
10 other occasions when she had workers come to her home and do
11 repair work?

12 A. Yes. Well, a lot of times she would have people
13 in to do different things. This one particular time she was
14 still teaching. She hadn't retired yet, and some workers came
15 and had done whatever they were doing. I don't recall exactly
16 what it was in the house.

17 And so when she came home that night, she opened
18 up her door and went in, had her dinner, watched a little
19 t.v., and went to bed. And she always had a book beside her
20 bed. She was always reading and I assumed had finished
21 reading her story and took her glasses off, turned her light
22 off, and went to sleep.

23 And when she called and relayed this to me, it
24 just scared me half to death. She felt this bump on her
25 chest, and she came to, and it was a cat in her house that

1 apparently had hidden in the closet or in a corner someplace
2 until after she was asleep. And so she was awoken with quite
3 a start.

4 And I said at the time, if she had had a weak
5 heart, I don't know if she would have made it through that
6 scare. It was quite scary.

7 Q. As you reflect back upon your mother, if you were
8 to describe the essence of her life and what she meant to you
9 and what type of person she was, what would you tell us?

10 A. She was a very, very strong individual. She was
11 just -- she was always a leader. I imagine that's why she
12 taught school, because she was a leader and an educator.

13 She always went at least once a year on a trip
14 with my husband and I. We travel in a motor home. And this
15 past year in October, we had gone to the Albuquerque Balloon
16 Festival. And of course she was in on all of the activities
17 that went on there.

18 And on the way home we stopped at Canyon de
19 Chelly in Arizona. Now, this canyon has got like a north rim
20 and a south rim. And about every few miles, there is a
21 lookout. I think there were 18 in all. And each lookout you
22 walk anywhere from a block to a half a mile to see down into
23 the canyon.

24 And it wasn't nice trails. There were slippery
25 rocks and up and down and rather rugged. Mother walked every

1 one of those with me just this past October. And she always
2 would go to see different events or sights with me.

3 My husband is an amputee, and so he doesn't --
4 can't always go on things like that. So she was always a
5 great one to go with me. And we could discuss it, and she was
6 a lot of company.

7 Q. In addition to her energy, was she a gentle,
8 loving person?

9 A. Oh, yes; loved us all unconditionally. She often
10 told us, "You're my life."

11 You just --

12 Q. What has the effect been upon you?

13 A. Well, not a day goes by that I don't think about
14 mom and hope she's up there looking down on me.

15 Q. Do you have anything else, either in your heart
16 that you want to share with us or that you have written down?

17 A. Well, she just loved sharing everything with us,
18 the sad times, the good and the happy times. Whenever an
19 event occurred, like I said, she was there. She came to all
20 my children's high school graduations.

21 My middle daughter, Lisa, happened to graduate 25
22 years after I did. Well, I had graduated 25 years after my
23 mom did, so we had kind of a little special deal about that.

24 What I'd like to do, if I may, is quote a few
25 things that people wrote to me in the sympathy cards that I

1 received after my mom was killed.

2 MR. HARMON: May she do that, your Honor?

3 THE COURT: Yes.

4 THE WITNESS: I got so many beautiful cards, at
5 least a hundred or a hundred and fifty cards, from all walks
6 of our lives.

7 From one of mom's cousins: I sometimes wonder
8 what Isabelle would have said had it been one of her dear
9 friends or neighbors. She never said bad things about anybody
10 and was so proud of her homes, the gifts of health, mental and
11 physical, that allowed her independence.

12 From some of her teacher friends: Bell, as she
13 was called by her friends, was my mentor, my teacher, my
14 friend and later a dear friend to my whole family.

15 And from another one: She was a wonderful role
16 model.

17 From one of mom's neighbors: The best neighbor
18 and good friend I could have had for the past 35 years.

19 One of mom's students that was in one of her
20 first classes, and she was 18 years old, and he was in eighth
21 grade and bigger than she, he passed away a year or so ago.

22 And his wife wrote to me, and she said: Isabelle
23 was a very special lady, and her guidance and teaching to a
24 mischievous little boy in Avon, South Dakota stayed with John
25 through his lifetime.

YVONNE M. VALENTIN, OFFICIAL COURT REPORTER

1 And this student, like I said, was mom's 50 years
2 ago. And every year on her birthday and at Christmas, John
3 would call her and wish her glad tidings.

4 Those are just a very few.

5 MR. HARMON: Does that conclude your testimony?

6 Thank you.

7 THE COURT: Cross-examination.

8 MR. LaPORTA: No questions, your Honor.

9 THE COURT: Thank you, ma'am. You may step down.
10 Call your next witness.

11 MR. BELL: State's concluding its presentation.

12 The State rests.

13 THE COURT: Ladies and gentlemen of the jury, the
14 State of Nevada has rested its case in chief. At this time
15 we'll take a brief recess while we take some matters up
16 outside your presence.

17 During this recess, ladies and gentlemen, it is
18 your duty not to converse among yourselves or with anyone else
19 on any subject connected with this trial or to read, watch, or
20 listen to any report of or commentary on this trial or any
21 person connected with this trial by any medium of information,
22 including, without limitation, newspapers, television or
23 radio.

24 You are not to form or express any opinion on any
25 subject connected with this case until it is finally submitted

1 to you.

2 This will probably take at least ten minutes, so
3 let's try to be back ready to go by 15 minutes until 4:00,
4 possibly 10 to 4:00.

5 We'll be at ease at this time while the jury
6 departs the confines of the courtroom.

7 (Whereupon, the jury panel exited the courtroom.)

8 (Whereupon, the following proceedings were held
9 in open court outside the presence of the jury.)

10 THE COURT: Counsel, approach the bench.

11 (Whereupon, a bench conference ensued.)

12 THE COURT: We're outside the presence of the
13 jury.

14 The defendant does have a right to make a
15 statement of allocution. In explaining that right to the
16 defendant, I usually use the language from the Nevada Supreme
17 Court case. It's my understanding the defense will waive his
18 right to be admonished in that regard until Tuesday --

19 MR. LaPORTA: Yes, sir, we will.

20 THE COURT: -- so that we can have the formal
21 statement read to him before he testifies.

22 He is not going to testify today or make a
23 statement of allocution today?

24 MR. LaPORTA: That's correct.

25 THE COURT: In that case, at this time I will

1 admonish him with regard to his right to testify.

2 Mr. Castillo, the State has rested its case in
3 chief. At this time I would advise you that N.R.S. 175.171,
4 that is, Nevada Revised Statute, Section 175.171, states in
5 its text and in its heading as follows:

6 No special instruction is to be given relating
7 exclusively to defendant's testimony:

8 In the trial of all indictments, complaints, and
9 other proceedings against persons charged with the commission
10 of crimes or offenses, the person so charged shall, at his own
11 request but not otherwise, be deemed a competent witness, the
12 credit to be given his testimony being left solely to the jury
13 under the instruction of the Court, but no special instruction
14 shall be given relating exclusively to the testimony of the
15 defendant.

16 Nevada Revised Statute, Section 175.181, provides
17 in its heading and in its text as follows:

18 Instruction not to be given relative to failure
19 of defendant to testify:

20 (1) No instruction shall be given relative to
21 the failure of the person charged with the commission of crime
22 or offense to testify except upon the request of the person so
23 charged. The Court shall instruct the jury that in accordance
24 with a right guaranteed by the Constitution, no person can be
25 compelled in a criminal action to be a witness against

1 himself.

2 (2) Nothing herein contained shall be construed
3 as compelling any such person to testify.

4 Mr. Castillo, you have the right under the
5 Constitution of the United States of America and under the
6 Constitution of the State of Nevada not to be compelled to
7 testify in this case.

8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You may, if you wish, give up this
11 right and take the witness stand and testify. If you do, you
12 will be subject to cross-examination by the district attorney,
13 and anything that you may say, be it on direct or
14 cross-examination, will be the subject of fair comment when
15 the district attorney speaks to the jury in his final
16 argument.

17 Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: If you choose not to testify, the
20 Court will not permit the district attorney to make any
21 comments to the jury concerning the fact that you have not
22 testified.

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: If you elect not to testify, the

1 Court will instruct the jury, only if your attorneys
2 specifically requests, as follows:

3 Quote, "The law does not compel a defendant in a
4 criminal case to take the stand and testify, and no
5 presumption may be raised, and no inference of any kind may be
6 drawn from the failure of a defendant to testify."

7 Do you have any questions you would like to ask
8 me about these rights?

9 THE DEFENDANT: Yes. I would like to ask one
10 question.

11 If I don't speak today, will I have the
12 opportunity to speak later on, like Tuesday?

13 THE COURT: Yes. It's my understanding that
14 they've decided not to put you on the stand today; is that
15 correct, counsel?

16 MR. LaPORTA: That's correct, your Honor.

17 THE COURT: Is the defendant -- you're not
18 waiving your right to testify by not testifying today. The
19 case is closed when your attorneys announce that the defense
20 has rested.

21 At this time, does the -- again, the defense
22 counsel waive the right to have him admonished to make a
23 statement of allocution before he testifies?

24 MR. LaPORTA: Yes, your Honor, at this point in
25 time.

1 THE COURT: I will make that admonition to him on
2 Tuesday before we start proceedings. And I would appreciate
3 it if counsel provide a copy of the district court opinion
4 that deals with that right. I have forgotten the actual
5 citation at this point.

6 MR. HARMON: We'll take care of it.

7 THE COURT: Thank you.

8 At this time then is there anything further
9 before we bring the jury back in?

10 MR. SCHIECK: Your Honor, we actually were in the
11 courtroom at 2:00 o'clock with the jury waiting, so we haven't
12 had a break.

13 THE COURT: No, we're going to take a break now.
14 So is there anything further at this time?

15 MR. SCHIECK: No, your Honor.

16 MR. LaPORTA: No, your Honor.

17 THE COURT: All right.

18 (Whereupon, a brief recess ensued.)

19 THE COURT: Counsel stipulate to the presence of
20 the jury?

21 MR. BELL: Yes, your Honor.

22 MR. SCHIECK: Yes, your Honor.

23 THE COURT: State of Nevada having rested, the
24 defense may put on its case in chief.

25 MR. SCHIECK: Thank you, your Honor. We'd call

1 Dr. Lewis Etcoff.

2

3 LEWIS M. ETCOFF, Ph.D.,

4 called as a witness herein, having been first duly sworn, was
5 examined and testified as follows:

6

7 THE CLERK: Please state your name, and spell
8 your last name for the record.

9 THE WITNESS: Lewis Marvin Etcoff; E-T-C-O-F-F.

10

11 DIRECT EXAMINATION

12 BY MR. SCHIECK:

13 Q. Dr. Etcoff, how are you currently employed?

14 A. I'm in private practice as a psychologist in the
15 state of Nevada in Las Vegas.

16 Q. And how long have you been so employed?

17 A. Since 1985.

18 Q. Can you give us some of your educational
19 background, please?

20 A. Yes.

21 I received a Bachelor of Arts degree from
22 Brandeis University and a Master of Arts degree from Brandeis
23 in 1973 and 1975 and a Ph.D in clinical psychology from the
24 University of Toledo in 1983.

25 I did my clinical internship in the United States

YVONNE M. VALENTIN, OFFICIAL COURT REPORTER

1 Air Force where I served as a captain, having trained at
2 Wright Patterson Air Force Base Medical Center and serving
3 here at Nellis Air Force Base between the years 1983 and 1985
4 when I was honorably discharged from the air force and came
5 into private practice.

6 Q. Do you belong to any professional boards?

7 A. Yes, I do.

8 Q. And what are those?

9 A. I am presently the president of the Nevada State
10 Psychological Association, a member of the American
11 Psychological Association for two divisions, those being
12 clinical neuropsychology, clinical psychology, forensic
13 psychology, and state psychology.

14 I am board certified in neuropsychology from the
15 American Board of Professional Neuropsychology and board
16 certified as a senior disability analyst for the American
17 Board of Disability Analysts.

18 Q. What does that involve, becoming board certified?

19 A. Well, the former board in neuropsychology
20 involves submitting a three-part application in which the
21 first part entails answering a very detailed questionnaire
22 that involves giving your education, your experience in
23 neuropsychology, answering questions about clinical questions
24 that they pose in the questionnaire, having references
25 checked.

1 And if you pass that first part, you're asked to
2 submit two real cases to a board of diplomats, including all
3 of the raw test data that you used in deriving your opinions.

4 And those two cases, including the writeup, the
5 evaluation itself, are studied by a committee of four
6 diplomats in neuropsychology. And if they pass you, then the
7 third part is you're examined over about a four-hour period of
8 time, person to person, with three different diplomats asking
9 you about different aspects of your specialty area.

10 Q. What exactly is neuropsychology?

11 A. Neuropsychology is a subspecialty of clinical
12 psychology, which is the study of the brain and behavior --
13 brain behavior relationships, the study of how the brain
14 influences behavior.

15 Q. And have you testified as an expert witness in
16 previous proceedings?

17 A. In previous proceedings?

18 Q. Yes.

19 A. Yes, sir, I have.

20 Q. Here in the Eighth Judicial District Court?

21 A. Yes, I have.

22 Q. On how many occasions?

23 A. Probably about two dozen.

24 Q. Did you become involved at some point in time in
25 the case involving Mr. William Castillo?

1 A. Yes, sir, I did.

2 Q. And when did you first become involved?

3 A. I was asked some -- probably a month before I
4 actually evaluated Mr. Castillo. That would have been
5 approximately in June of 1996. I was asked by Deputy Public
6 Defender Pete LaPorta, the gentleman sitting over there, to
7 review case records and crime records involving Mr. Castillo,
8 become familiar with the crime and his life, and then evaluate
9 him personally, which I did on July 2nd, 1996.

10 Q. With respect to the records review, can you give
11 us a summary of the records that you reviewed in conjunction
12 with your evaluation of Mr. Castillo?

13 A. Without going through all of them, there were
14 records from Children's Behavioral Services where Mr. Castillo
15 had been treated over a period of time in the early 1980's,
16 the records of Dr. Kirby Reed, the neurologist, Las Vegas
17 Mental Health Center, a psychiatric evaluation, Juvenile
18 Probation Department, court materials, police record
19 materials, another court review, another psychiatric
20 evaluation, a psychological evaluation, disposition report in
21 the Eighth Judicial District Court, 1982, and various other
22 such reports, parole violation reports, a lot of different
23 court-related medical and psychological and Social Service
24 reports.

25 Q. Did you personally meet with Mr. Castillo?

1 A. Yes, I did.

2 Q. And could you explain how long you saw him and
3 what steps you went through with Mr. Castillo?

4 A. I saw him for approximately two and a half hours
5 in my office where he was brought by the police. I began my
6 examination with what we call informed consent where I told
7 him who I was, what I did, what my degree is, who hired me for
8 what reasons, that there would be limits on confidentiality,
9 and anything that he told me might be used in court, either
10 for or against him.

11 I had him read such an agreement and sign such an
12 agreement and asked his permission to examine him, which he
13 allowed me to do, and then I proceeded to basically run
14 through his entire life from his first memories as a little
15 child up until and including the murder itself. And I asked
16 him questions about that.

17 And I also administered to him two very solid,
18 well-known, used-in-courts personality tests so that I could
19 get a better understanding of underlying personality
20 characteristics.

21 Q. During this two-and-a-half-hour interview, did
22 you discuss his family history, his early life with him?

23 A. Yes, I did.

24 Q. And in conjunction with both the interview with
25 Mr. Castillo and the records review, did you learn certain

1 things about Mr. Castillo's early years of life?

2 A. Yes, sir, I did.

3 Q. Did -- was such information important to you from
4 a clinical standpoint as a neuropsychologist?

5 A. Yes, it was.

6 Q. What information did you find of importance
7 regarding those early years?

8 A. There was a lot of important information. People
9 who end up in such a setting, having killed someone or
10 murdered someone, typically don't do it out of the blue. And
11 when one examines people who have killed or murdered, one
12 tends to find what I did find in Mr. Castillo's life, a lot of
13 different serious problems, which I would be happy to talk
14 about.

15 Q. Let's concentrate on the first years of his life,
16 let's say, the first three to four years. What information
17 did you find of importance there in that period of time?

18 A. I relied upon documents from doctors and
19 Children's Behavioral Services and the State to try to put
20 together some idea of what Mr. Castillo's early or first three
21 or four or five years of his life was like.

22 I believe that records indicate that between
23 birth and about age five, Mr. Castillo's mother moved with him
24 approximately 20 times through various states, not within one
25 state but through various states.

1 There was an enormous amount of family
2 dysfunction in his parents. His father left his mother after
3 apparently he had pulled a knife and threatened his wife's
4 life by placing a knife to her throat.

5 Mr. Castillo's father was eventually incarcerated
6 for serious crimes and was called in the records criminally
7 insane, if you will; in other words, violent and also mentally
8 ill.

9 Mr. Castillo's mother I know very little about
10 other than that she was mentally ill, seriously enough that
11 CBS records that I reviewed, and in conjunction and consistent
12 with what Mr. Castillo told me, she seemed -- I guess she was
13 a very young mother at about 18 when she had Mr. Castillo and
14 was suffering a severe depressive disorder for which she was
15 eventually hospitalized and had to undergo electroconvulsive
16 therapy.

17 She was probably somewhat of an inadequate human
18 being because she had a lot of problems in her life, not only
19 her mental illnesses or illness that caused her to be
20 hospitalized, but also her very physically abusive and
21 frightening husband who, shortly thereafter, left her.

22 I don't know what Mrs. Castillo did in the first
23 five years of her life, but it appears from the records that
24 she was essentially unable to take care of Mr. Castillo,
25 although possibly tried as hard as she could.

YVONNE M. VALENTIN, OFFICIAL COURT REPORTER

1 Q. And what you just related is information
2 concerning those first four or five years of William's life?

3 A. Yes.

4 Q. Did you find any history of predelinquent
5 behavior problems in Bill?

6 A. In Mr. Castillo?

7 Q. Yes.

8 A. Mr. Castillo was seriously disturbed emotionally,
9 mentally, and behaviorally from the get-go, apparently. And
10 one of my diagnoses included his having been neglected
11 sufficiently and physically abused sufficiently that he
12 suffered a very serious psychiatric disorder, a reactive
13 attachment disorder, which means in layman's terms that as a
14 result of all of these very many moves that he had to take,
15 the abuse he suffered, the neglect he suffered, the incapacity
16 of his mother to take care of him in a normal fashion, that he
17 was unable to form normal human bonds and attachments by the
18 age of five when he began, to answer your question directly,
19 doing some very significant misbehaviors and violent
20 misbehaviors that are, in the literature, precursors to why he
21 is here today, precursors to adult violent behaviors such as
22 murder.

23 Q. Now, we've heard testimony such that certain
24 behavior incidents when he was five, six, seven years of age,
25 the first concerning the killing of the dog that belonged to

1 his grandmother -- did you find information concerning that
2 incident?

3 A. I did, and I spoke to Mr. Castillo about that.
4 And as I was reviewing the case this morning, I thought that
5 his comment to me was very important and very poignant at the
6 same time.

7 Mr. Castillo felt that his grandmother was the
8 only person who ever gave him any affection. And he recalled
9 to me that he would sit on his grandmother's lap, and she
10 would stroke his hair and that he really needed that and
11 enjoyed it.

12 And then -- oh, I asked him, "Why did you kill
13 your grandmother's dog?"

14 I think he drowned his grandmother's dog. And he
15 said something to the effect that he was -- I'm looking for --
16 I'm going to try to find the quote, and if I can't I'll
17 paraphrase.

18 Q. Perhaps I can help. Page 10, second paragraph.

19 A. He said, "I killed her dog, and that was that.
20 The dog had taken my spot. I got jealous, and I drowned it."

21 Q. Go ahead.

22 A. And when I heard that, it was poignant in the
23 sense that how many five year olds -- how many people at age
24 five are so bereft of affection and love that they would
25 perceive a dog getting affection from a person that they love

1 as such horrible and intense competition that the dog's life
2 must end?

3 So he actually felt at five -- he couldn't think
4 very rationally, obviously, at five, but he felt at five such
5 competition from his grandmother's dog that he literally
6 killed the dog so that his grandmother would only have him to
7 show affection to.

8 Q. Is that incident a manifestation of the reactive
9 attachment disorder that we've talked about?

10 A. Yes.

11 Q. Is that a serious childhood disorder?

12 A. Very serious childhood disorder.

13 Q. Is it the type of disorder that can be overcome
14 with treatment?

15 A. Rarely. If you are not raised with some normal
16 social and human contact between birth and ages three and four
17 or thereabouts, if you don't have one stable adult in your
18 life -- it needn't be your mother or father but someone to
19 take care of you and feed you and clothe you and listen to you
20 and show affection -- if none of that exists, and there is
21 just disarray in your life, the chances of you ever forming a
22 normal emotional bond are very slight and very slim.

23 And children who go through -- who I see even
24 today who have gone through foster care, foster home after
25 foster home, and have never really had a chance to bond with

1 anybody have this kind of inability to relate to any human
2 being.

3 They don't feel emotional closeness. And the
4 literature suggests that it's extremely rare that they can
5 ever overcome that if that type of existence in their lives
6 existed from zero to four or five years of age.

7 Q. Are you saying that as of age five, if you have
8 developed the reactive attachment disorder of infancy that you
9 can't overcome that as you progress through the rest of your
10 adolescence?

11 A. It would be rare for someone to be able to
12 overcome a reactive attachment disorder. And I don't want you
13 to misunderstand me. It's not that children who have been
14 raised poorly or have had such terrible luck to be raised in
15 an abusive or neglectful situation can never work in society
16 or never marry, but the chances of them successfully being
17 employed or successfully marrying or successfully being a
18 parent or successfully being in a normal social situation are
19 much reduced if they've suffered this type of early childhood
20 deprivation.

21 And this is the type of -- this is the Petri dish
22 that out of which criminality grows and is cultured. And so
23 many people who turn into criminals later in life have
24 suffered this type of early childhood situation and
25 disturbance.

1 Q. Is there delinquent behavior that then continues
2 to occur when a child has this disorder?

3 A. It tends to occur -- well, there are several.
4 You can become -- if you go through something like this, you
5 can become enormously depressed. And you're not a behavior
6 problem; you just don't function. And you're very lethargic
7 and depressed and not doing well in that sense.

8 You can become extremely oppositional and defiant
9 and act out by setting fires, hurting pets, getting in trouble
10 with your parents, getting in trouble with society. That's a
11 whole other way of reacting to that abuse and neglect and
12 inability to bond.

13 So there are several. Or you can become
14 extremely anxious and nervous and untrusting and expecting
15 that everywhere you go something bad is going to happen.

16 So any of those three things can occur or can
17 occur in the same individual in some form at the same time
18 sometimes. They can be both anxious and depressed, anxious
19 and oppositional. Any of those can happen.

20 Q. In Mr. Castillo's history, did you find other
21 instances of the reacting or acting out that validate the
22 disorder that you diagnosed?

23 A. Many examples.

24 At Children's Behavioral Services, he was
25 described as being very depressed. And in fact one of the CBS

1 workers stated that it was his or her impression that Mr.
2 Castillo's mother didn't want him to return home and that he
3 picked up on that feeling and knew that he wasn't wanted at
4 home.

5 And again, to be very fair, I am not saying this
6 to condemn Mr. Castillo's mother. Mr. Castillo's mother --
7 God only knows -- she was very mentally ill. She had married
8 the wrong person who had almost killed her, and she was a very
9 young and inadequate person at the time that she had Mr.
10 Castillo.

11 So she probably tried the best she could to do
12 the best she could but just didn't know how to be a mother or
13 didn't have the emotional or mature -- the factors that would
14 go into somebody being mature enough to be an adequate parent.

15 And so she probably at some level wanted Mr.
16 Castillo in the hands of the State so that he could get at
17 least some modicum of care.

18 And additionally, which I haven't spoken about,
19 he was subsequently diagnosed when he was about nine or ten as
20 having an attention deficit hyperactivity disorder, which you
21 would know as a hyperactive kid.

22 And a hyperactive child who is untreated tends to
23 be very impulsive and very oppositional and impulse ridden.

24 So if something is going on and the person, the
25 impulsive hyperactive child, wants to do it, they do it no

1 matter how many times they've been punished before. No matter
2 what punishment they've received, they're biologically ready
3 to be impulsive and do whatever the best thing is to do at
4 that moment.

5 So even if he hadn't suffered physical abuse or
6 emotional neglect at home, the fact that he was hyperactive
7 would have placed an enormous strain on his mother and
8 stepfather and would have made him difficult to take care of
9 for anybody in this courtroom.

10 Q. And you've referred to the attention deficit
11 hyperactivity disorder; is that correct?

12 A. Yes.

13 Q. Does that have a neurological basis?

14 A. Yes.

15 Q. Can you explain that for the jury?

16 A. We believe, to the best of our knowledge, that
17 ADHD, attention deficit hyperactivity disorder, is a
18 neurological disturbance. There is a heritable and genetic
19 component, meaning that it runs in families much more
20 frequently than it would by chance and that it is essentially
21 a lack of one of the neurotransmitters in the brain, dopamine,
22 reaching the frontal lobes, which is the seat of executive in
23 the brain.

24 And if kids or adults don't have enough dopamine
25 transversing from deep inside the brain to the frontal lobes,

1 they are inattentive, distracted, disorganized, unable to
2 learn from experience, impatient, impulsive, intrusive, and
3 they have problems getting along at home, in school, in the
4 grocery store, or wherever they are.

5 Q. Is ADHD treatable?

6 A. Yes.

7 Q. Did you see any evidence in Mr. Castillo's
8 records to indicate that an attempt to treat the ADHD had been
9 made?

10 A. Well, Mr. Castillo was evaluated twice by child
11 psychiatrist Dr. Hechter in 1982 who made the original
12 diagnosis of ADHD.

13 And I didn't see records to suggest that he was
14 treated with a psychostimulant -- usually Ritalin is the
15 medicine of choice -- until the second child psychiatrist, a
16 Dr. Saranga, had evaluated him in January 1983 and had
17 concluded that he would place Mr. Castillo on Ritalin, quote,
18 "to attempt to reduce his hyperactivity and ADD," which is
19 attention deficit disorder, the way it was called back then,
20 "and the anxiety that would go with it so he would be amenable
21 to cognitive therapy and psychotherapy," end quote.

22 But he was given a trial of Ritalin, but he
23 couldn't tell me how it worked, nor were there records that
24 told me whether anything, the trial of medication, was
25 successful, how long it was used. Obviously, it wasn't very

1 successful, and it wasn't used very long.

2 Q. Did you find independent correlation in the
3 records that in fact William had ADHD?

4 A. Well, the fact that two child psychiatrists gave
5 that diagnosis, and that was consistent with Mr. Castillo's
6 own history that he gave me, the two of them together suggest
7 that that probably is an apartment diagnosis.

8 Q. So we have a young child that has reactive
9 attachment disorder, which is a result of the way he was
10 treated in the first years of his life, and then ADHD, which
11 is a neurologically-based disorder.

12 What does the combination of those two disorders
13 tell you?

14 A. It tells you that this child will probably be in
15 trouble with authority figures throughout his childhood. And
16 if the ADHD isn't treated -- the ADHD is almost of minimal
17 importance in comparison to the reactive attachment disorder.

18 The only way you can actually successfully treat
19 someone who has had a very miserable, chaotic first four or
20 five years of their lives when parents aren't available who
21 can take care of them is to have in the community what used to
22 be in the late 1800's an orphanage, a long-term residential
23 treatment center, not with 200 kids in it but perhaps 15 or 20
24 kids, where a child who is not able to be taken care of by
25 parents can remain until they're 18 in a very solid,

1 behaviorally-based household in which the house parents or
2 foster parents are well trained, know how to use the latest
3 behavior-management techniques, and where ancillary services
4 such as medical, psychiatric, psychological, and educational
5 services are available.

6 And even if -- it's not even available today in
7 Las Vegas, so back then it wasn't either.

8 If a child who had this bad a childhood is given
9 that one opportunity, there is about a 50/50 percent chance
10 that that child will have a possible life that is semi-normal,
11 meaning that they'll be able to hold a job, get married, maybe
12 not do such a hot job in the marriage, maybe not be such a
13 great parent but have children but still be probably
14 emotionally abnormal for the rest of their lives but be at
15 least functioning in society without being a threat to
16 society.

17 Q. In your history taken from Mr. Castillo, and in
18 your review of the records, did you learn of the involvement
19 of a stepfather figure during the adolescent years of William?

20 A. I think even before adolescence, if I'm not
21 mistaken. It was his stepfather, Mr. Castillo, yes.

22 Q. And I'm probably using the wrong term. What does
23 adolescence mean to you?

24 A. Eighteen -- 13 to 19.

25 Q. So even preadolescence there is information that

1 there was a stepfather involved?

2 A. Yes.

3 Q. What did you learn about William's relationship
4 with his stepfather?

5 A. Again, I didn't have the opportunity to talk to
6 Mr. Castillo, the stepfather, but William told me that his
7 stepfather -- he was afraid of his stepfather.

8 His stepfather -- he had a mixed, ambivalent
9 relationship with his stepfather. There was good and bad. He
10 remembers fondly recollections when they lived in the Reno
11 area of his stepfather playing ball with him and doing nice
12 things with him, normal father-son things.

13 And he also remembered that his stepfather
14 eventually, even when he was a youngster like 8, 9, 10, lost
15 control of his own abilities to parent successfully and became
16 what we would today call physically abusive in a variety of
17 different ways.

18 Q. In what ways did you learn of him being
19 physically abusive?

20 A. Mr. Castillo, William, told me that his
21 stepfather, if he was misbehaving, might lock him in his
22 bedroom, place a frying pan in the corner and tell him to pee
23 in the frying pan if he wanted to relieve himself, and keep
24 him in there for a good, long time.

25 He remembers that his stepfather would force him

1 to eat red hot chili peppers until he vomited. That would be
2 considerable abusive behavior.

3 When Mr. Castillo was caught breaking objects or
4 stealing, which is normal behavior for any ADHD kid, his
5 stepfather, in his words, "Made me put my hands out in front
6 of me and hit me with an inch-thick leather belt six or seven
7 times," which was routine.

8 And it made him cry. And in his words he said,
9 quote, "Beat my ass with a big leather belt, and it made me
10 cry. I got the shit beat out of me," closed quotes.

11 And he basically said that he was so frightened
12 of his stepfather that he would run away from home all the
13 time.

14 And then when I read the CBS records, in the CBS
15 records it said that at one point, or in conversations with
16 Dr. Hechter, Mr. Castillo actually told her that if she could
17 only put him in foster care, he'd behave himself, but please
18 don't return him home because he was too afraid to go home.

19 And for a then eight- or nine-year-old kid to say
20 don't return me to my mother and stepfather, you know that he
21 was afraid.

22 So it seems to be a legitimate piece of his past
23 that he actually was so frightened of going back to his
24 mother's and stepfather's home that he actually said place me
25 somewhere else in foster care. Please; I can't stand being at

1 home.

2 Q. Quite frankly, he wasn't behaving himself at
3 home. Is that a fair assessment?

4 A. No. I'm not again saying that Mr. Castillo
5 didn't get to these abusive discipline techniques until he had
6 had it with Mr. Castillo as a child. I wouldn't doubt that
7 Mr. Castillo was completely out of control behaviorally and
8 Mr. Castillo tried and tried.

9 And as most parents do when your child is really
10 driving you crazy, you're capable of being a little out of
11 control yourself, yelling too much, maybe even hitting your
12 child. Going to this red hot chili pepper idea is a little
13 beyond the pail.

14 Certainly during those years, parents strapped
15 their kids with belts, and commonly that was not considered
16 terribly abusive in the '70's or '80's, but some of the things
17 I guess Mr. Castillo was led to do, he probably did out of
18 great frustration.

19 Q. Did you learn of a period of time when Mr.
20 Castillo lived with his Uncle Max?

21 A. He told me about an Uncle Max who I believe lived
22 in Florida who he was sent to live with. It was his mother's
23 brother, a maternal aunt -- uncle. And he described Uncle Max
24 as, quote, "an alcoholic and heavily into the bible. I was
25 sent to live with him." He didn't recall the age.

1 "He was in recovery. His mind was toast. He
2 drove the church bus. He was strict. He made me wear the
3 same pair of underwear two times, and then he'd take a long
4 willow stick and smack me with it.

5 "My clothes were numbered for seven days of the
6 week. I had socks, underwear, and t-shirts. He made me read
7 the bible. He'd blow up over something small. He beat me up
8 so bad that I had to stay home three or four days at a time.
9 And once he almost killed me, and I was home for a week with
10 my face all beat up."

11 Q. Were you aware at what age William lived with his
12 Uncle Max?

13 A. It's probably after 8 and before 12. I'm
14 guessing from the records, but I'm not certain, and he wasn't
15 either.

16 Q. Mr. Castillo also developed another disorder,
17 childhood onset conduct disorder?

18 A. Yes.

19 A conduct disorder is simply real bad behavior
20 gone too far, including -- now you're actually doing
21 physically aggressive things, such as lighting fires, which
22 everybody, I imagine, already knows that he lit terrible
23 fires, hurting animals. He killed birds. He killed his
24 grandmother's dog.

25 It's oppositional behavior that goes well beyond

1 having a chip on your shoulder and being defiant and a snooty
2 kid to very serious pre-sociopathic behavior that has to be
3 dealt with at that point or else it only worsens.

4 Q. With the disorders you've talked about for
5 William, any indication that he knew what he was doing was
6 wrong?

7 A. He's bright enough I. Q.-wise that he probably
8 did know after he did something that it was wrong. We can
9 start at least at eight or nine when children begin to think
10 somewhat abstractly. Prior to that time, he just probably
11 reacted impulsively and set fires and killed animals, which is
12 typical of children who have had this type of early
13 experience.

14 But after awhile, he certainly knew right from
15 wrong but had a hard time doing right. And that has, of
16 course, lasted throughout his life.

17 Q. Is that having to do with the lack of impulse
18 control?

19 A. Partly to do with a lack of impulse control,
20 partly to do with a no real conscience, as a result of his
21 early childhood and the amount of enormous anger he must have
22 felt for having been reportedly abused by his stepfather, by
23 his uncle, and for just moving around so often that he had a
24 very abnormal and terrible childhood. So he must have been
25 angry for all of those reasons.

1 Q. With the background that you know now from
2 reading the reports, and from the interviews with Mr.
3 Castillo, is it any surprise that we are here where we're at
4 now?

5 A. None. And in fact, in the three dozen or so
6 murderers who I've evaluated, I've -- I almost -- I have this
7 saying that when I look into some people's -- when I look at
8 Mr. Castillo's life, I characterize them as if they were on a
9 laser beam from birth, and they were just -- that laser beam
10 was going in that direction, and that direction was going to
11 be nothing good.

12 And there really was little chance to interfere
13 with that laser beam or the outcome of that person's life.

14 Most people who suffer this type of horrible
15 early childhood either turn out to be criminals or very
16 mentally ill or in some other ways so dysfunctional that their
17 lives are quite wasted in comparison to the way their lives
18 might have turned out if they had had half a chance to
19 establish any type of normal relationship during early
20 childhood.

21 Q. You say that Will Castillo's life was like a
22 laser beam that he was riding. If he knew right from wrong,
23 why couldn't he just jump off of the laser beam?

24 A. Human beings don't work that way. Human beings
25 do things unconsciously. They do them compulsively over and

YVONNE M. VALENTIN, OFFICIAL COURT REPORTER

1 over again. If they're ADHD, they are neurologically bound to
2 be impulsive, and they're looking for excitement. They're
3 looking for what their brains don't give them. And it's very
4 hard for them not to behave or misbehave and to behave well.

5 It's hard for them to behave well, and it's easy
6 for them to misbehave because they're impulse ridden. And in
7 the event you're being beaten or tortured by having to vomit
8 from eating chili peppers or any of the other things that he
9 went through, it's very difficult to restrain the anger and
10 hatred that builds up inside.

11 Q. Once an individual who has had the type of
12 childhood that we've talked about for Billy reaches maturity,
13 becomes an adult, isn't it possible then for that adult to
14 recognize their problems and deal with them and function in
15 society?

16 A. Yes. Some do.

17 Q. Is that the rule or the exception?

18 A. It depends upon how horrible their childhood was.
19 In this particular childhood, it would be an exception for
20 someone to grow out of what he went through and become a
21 normal functioning human being.

22 And again, I don't want anyone to misunderstand.
23 It isn't as if you live this childhood and you end up being a
24 murderer. That doesn't happen frequently, but it happens
25 more -- murderers come from this background more frequently

1 than they come from regular neurotic parents or parents who
2 love you and try hard, but they don't do the best they
3 possibly can do.

4 Murderers tend not to come out of that population
5 or that type of family. They come from this type of a family
6 and this type of a situation.

7 So yes, some people can come out of this and
8 overcome horrible childhoods, but some don't.

9 Q. An individual with the problems and disorders
10 that you've described for William, are they able to function
11 in a structured, controlled environment?

12 A. Well, there is evidence that he did function --
13 the answer is yes, usually better in a structured, controlled
14 environment most of the time.

15 And there is evidence that in William's case at
16 CBS, in the Oasis program, which is like a short-term,
17 residential treatment program that still exists today, he did
18 well.

19 He came from his parents where he was completely
20 aggressive, out of control, setting the house on fire, and
21 within several months of being at the Oasis program, there
22 were clinical notes from the house parents and the staff at
23 CBS that he had stopped his violent, out-of-control behavior
24 and had improved considerably from the way he had been when he
25 was living at his mother and stepfather's home.

1 And I believe when he was in Elko in one of his
2 many stays with the State at a reform school, essentially, I
3 think that his behavior -- his misbehaviors decreased enough
4 that he was in much better shape behaviorally than he ever was
5 when he was living with his mother and stepfather, who just
6 couldn't take care of him.

7 And again, if he was living in my house, I'm not
8 certain I would have done much of a better job.

9 Q. Is his history with the juvenile service sort of
10 an endless loop? He would go in, behave himself, get out of
11 the structured environment and misbehave?

12 A. Very common. That's exactly what happened.

13 Q. So it actually is not in his best interest that
14 he behaved when he was there, because then he would get out
15 and return to his impulsive behavior once the controls were
16 lifted?

17 A. It would have been a lot better had they kept him
18 in some sort of locked facility for quite a length of time
19 with sufficient psychological or counseling and psychiatric
20 care. But I'll tell you, it just wasn't available back then.
21 It's hardly available today in Nevada, and he had no real
22 chance, unless they had done something like that with him.

23 Q. In some of the reports that we've had from other
24 witnesses and have been introduced into evidence, we have
25 discussions that William would not acknowledge his wrongdoings

1 or talk about what he had done as being wrong; sort of a
2 denial stage.

3 Is an acceptance of responsibility for his
4 acts -- does that show an improvement in the disorders that he
5 suffered from?

6 A. It would certainly suggest a mature -- a more
7 mature belief system. In other words, if he in fact does
8 accept responsibility for things that he has done in his life,
9 that's a step in the right direction.

10 Q. Some of the reports describe William as a
11 seriously-disturbed child who is beyond the scope of the
12 services, and this is from Missouri Department of Social
13 Services.

14 Is that an accurate description for William and
15 the juvenile system?

16 A. Yes.

17 Q. If an individual has the background, or even if
18 we take William, that individual decides that he really wants
19 to function in society and is going to give it his best
20 effort, given the problems that you've seen in his history,
21 would he be able to do that?

22 A. At this point?

23 Q. Yes, not having received treatment, just being
24 released to the street, as he was before his latest
25 incarceration.

1 A. Mr. Castillo released to the streets? I wouldn't
2 do that.

3 Q. Even despite any wishes he may have to live a
4 proper life, you're saying that he would not be able to do so
5 because of his background?

6 A. He is too dangerous.

7 Q. It's your recommendation, from what you know of
8 Mr. Castillo, that he be incarcerated?

9 A. Oh, yes.

10 Q. And not released?

11 A. Absolutely.

12 MR. SCHIECK: If I can have the Court's
13 indulgence for a minute?

14 No further questions.

15 THE COURT: Cross-examination.

16

17 CROSS-EXAMINATION

18 BY MR. BELL:

19 Q. Mr. Schieck asked you if Mr. Castillo's accepting
20 responsibility, if that's sort of a step in the right
21 direction and part of the maturation process. And you seemed
22 to answer the question, well, yes, if he had, it would, but
23 you didn't seem to indicate whether he had.

24 I note from your report that even in your
25 interview with him, you indicated, quote, "He justifies his

1 social irresponsibilities with fantasies and excuses," is that
2 correct?

3 A. Yes, I believe that is correct.

4 Q. Would that be your perception of Mr. Castillo as
5 of the time you interviewed him?

6 A. Yes, sir.

7 Q. So if we give a nebulous person, a person that's
8 had some of his background problems, the benefit of the doubt,
9 that if they had accepted responsibility it would be a step in
10 the right direction, nonetheless, that characterization
11 wouldn't properly apply to Mr. Castillo, would it?

12 A. Correct.

13 Q. By the way, do you personally believe in the
14 death penalty as a punishment?

15 A. Well, my young daughter asked me that today, and
16 I hesitated. And my answer to her, which I think is probably
17 the way I feel, is: I think there are a certain few
18 individuals who do deserve to die, who I wouldn't blink if
19 they were put to death. And I think that there are a lot of
20 people who may not deserve to die but who do deserve to be
21 incarcerated in a high-security prison and not be allowed ever
22 again to set foot in public.

23 Q. So you could find this socially palatable in a
24 highly-limited situation. Is that fair to say?

25 A. That's fair to say.

YVONNE M. VALENTIN, OFFICIAL COURT REPORTER

1 Q. Maybe the fellow that blew up the Oklahoma
2 courthouse and killed a couple hundred people?

3 A. That certainly would be one case where I would
4 lean towards the death penalty, but to be again very frank
5 with you, I would actually have to study that person's life to
6 see why he got to the point that he actually did something as
7 horrible as that.

8 Q. Would it be fair to say that in your own social
9 conscience then, you lean strongly away from it? You would
10 have to be convinced in a given case that it was necessary?

11 A. I believe I would have to be convinced that it is
12 necessary, yes. That would be correct.

13 Q. Thank you.

14 Now, you had a lot of records available to you?

15 A. Yes, sir.

16 Q. You got some self-reporting from Mr. Castillo?

17 A. Yes, I did.

18 Q. Did you get reporting from any other individual,
19 other than the records you had available?

20 A. Everyone who -- I had the records of Mr.
21 Castillo. I did not have the opportunity to speak,
22 unfortunately, with Mr. Castillo's mother or anyone else who
23 may have known him. I had the records of Mr. Castillo and my
24 tests.

25 Q. So the answer then is no, the only person I

1 talked to other than what I could glean from the records was
2 that fellow over there?

3 A. That's correct.

4 Q. So you didn't talk to Barbara Castillo?

5 A. No, sir.

6 Q. Didn't talk to Joe Castillo?

7 A. No, sir.

8 Q. In your experience in dealing with inmates,
9 convicts, criminals, do they ever inaccurately or falsely
10 self-report, or do you feel a level of comfort that what they
11 tell you is always true?

12 A. I'm not that naive. They do -- they do lie, in
13 English, yes.

14 Q. And Mr. Castillo, himself, justifies his social
15 responsibilities with fantasies and excuses?

16 A. Yes.

17 Q. Can we agree then that it may have been the case
18 that Mr. Castillo might have been less than candid
19 occasionally with you about what happened?

20 A. It is certainly possible.

21 Q. And that Mr. Castillo in his self-reporting about
22 these interrelationships that may not have been in the records
23 may have been justifying his conduct in this case with
24 fantasies or excuses?

25 A. That's very possible.

1 Q. So, for example, one of the conclusions you seem
2 to draw in answering the questions of defense counsel was he
3 ran away from home because he was frightened of Mr. Castillo,
4 and part of the basis for that was what he told you about Mr.
5 Castillo?

6 A. That's correct.

7 Q. Now, if his reporting is true, or if he is today
8 telling you something where he is looking for an excuse or
9 fantasizing about this, then that may not have been the
10 predicate for his running away. Is that not true?

11 A. That's true.

12 Q. Now, do you know, from your review of the
13 records, as all the people in the jury and in this courtroom
14 know, that Mr. Castillo ran away from the authorities? He ran
15 away from CBS and Oasis on several occasions?

16 A. Yes.

17 Q. You don't have any reason to believe, do you,
18 that he was beaten or punished or physically abused by the
19 authorities of those facilities, do you?

20 A. It's possible, but he never mentioned that. But
21 I don't rule that out. It's possible.

22 Q. Do you have any reason to believe --

23 A. Oh, I have no reason.

24 Q. Oh. You've had some experience with these
25 agencies and juvenile services and welfare and so on and so

1 forth; is that true?

2 A. Yes, sir.

3 Q. As a general proposition, is it not the case that
4 they try to do the best they can with what they have?

5 A. That's correct.

6 Q. So without any specifics here, there wouldn't be
7 any reason to believe that he was beat out there, would there?

8 A. I would need evidence to suspect something.

9 Q. And you have none?

10 A. And I have none.

11 Q. And you didn't get any from him, did you?

12 A. I didn't.

13 Q. But nonetheless, he ran away?

14 A. Yes, sir, he did.

15 Q. So maybe he runs away sometimes even if he's not
16 being abused?

17 A. Absolutely.

18 Q. Now, in the course of this penalty hearing, the
19 jury has been bombarded and, I am sure, bored with a litany of
20 crime after crime committed by Mr. Castillo, but I note that
21 from your interview we didn't scratch the surface.

22 For example, we had introduced in the guilt phase
23 of this trial a little piece of paper that he wrote that said
24 VCR, X dollars; camera, X dollars; and silverware, I think it
25 was, five hundred dollars.

1 And we knew that he had taken the silverware and
2 the VCR from Mrs. Berndt. I guess law enforcement sort of
3 erroneously assumed that the camera was likewise, and we
4 couldn't identify it. But it is true, is it not, that Mr.
5 Castillo acknowledged to you that this was a separate robbery,
6 that he had snatched the purse of a lady and gotten the
7 camera; is that true?

8 A. I don't recall, but if it's in my report and you
9 can show me where it is, I will look it over.

10 Q. Okay. I will, please.

11 Let me read you this portion, and you tell me
12 whether or not Mr. Castillo said this to you.

13 "Mr. Castillo was very honest in telling me he
14 met another individual, and the two of them would shoot up
15 methamphetamines on a daily basis and would live by robbing
16 people and stealing purses.

17 "He told me that this life involved shooting up
18 speed, committing robberies eight hours a day, six days a
19 week, and that he enjoyed doing this."

20 A. Yes, I recall he said that to me.

21 Q. So he told you, I committed robberies every day?

22 A. That's what he said.

23 Q. So if we happened to be able, from the time he
24 got out of prison in somewhere around May of 1995 until
25 December 17th, when he killed Mrs. Berndt -- in that four- or

1 five- or six- or seven-month period, we know of two -- we're
2 just scratching the surface here; right?

3 A. In the sense of --

4 Q. The amount of robberies that we were able to
5 accurately attribute to William Castillo.

6 A. That's correct.

7 Q. And did he tell you he called it a power trip?
8 He had a gun, and it gave him a God-like complex when he had a
9 gun?

10 A. Those were his words.

11 Q. Did you have any reason to believe that he didn't
12 feel that way?

13 A. Well, I know he's intelligent via his I. Q., and
14 therefore he wouldn't say something like that to me, which
15 would be obviously detrimental to him in a court of law,
16 unless he meant it.

17 Q. So we can say from your professional expertise
18 that on those instances where he had said things that were
19 detrimental, we can feel some assurance of the validity
20 thereof?

21 A. I do.

22 Q. Conversely, in those instances where he made
23 excuses or passed the buck or the blame, he may or may not
24 have been telling the truth?

25 A. That's correct.

1 Q. So if he bragged to you about being a robber and
2 he gloated that he liked that, and he had a lot of power when
3 he had a gun and somebody else didn't, probably true, huh?

4 A. Probably true.

5 Q. Okay. Let's talk about the instant offense.

6 He talked to you about what occurred as far as he
7 understood it when he went into the residence up on Yale on
8 December 17th; true?

9 A. True.

10 Q. Did you have police reports about that event?

11 A. I believe I did.

12 Q. As far as you were able to tell, was what he told
13 you consistent with the reports that you had?

14 A. I don't now recall the comparison.

15 Q. Well, he acknowledged to you, did he not, that he
16 beat Mrs. Berndt to death with a crowbar?

17 A. Yes, sir.

18 Q. Now, to the extent that somebody says that, I
19 guess that might be somehow left handedly determined that that
20 was an acceptance of responsibility. At least he mouthed that
21 he did the crime; true?

22 A. True.

23 Q. But he also said, did he not, when he was talking
24 about that, gee, I didn't realize it was an 86-year-old lady.
25 In fact, I thought there might have been a couple of people in

1 there, maybe even a man.

2 A. Yes, he said that.

3 Q. And one of the hypotheses for that conclusion was
4 he saw a couple of pairs of shoes; is that true?

5 A. That's true.

6 Q. Now, if I tell you that we have had testimony
7 that this 86-year-old lady lived in that house by herself
8 without any man anywhere for 30 years, and the only apparel in
9 there were women's shoes, then would the statement or
10 justification or whatever he wants the jury to believe that I
11 thought it might have been a man -- would that be in the
12 category of "justifies his social irresponsibility with
13 fantasies and excuses"?

14 A. To be as straightforward as possible, I don't
15 necessarily believe what he told me as the excuse for what he
16 did.

17 Q. So you don't think that he thought it was a man?

18 A. Well, I don't know what he thought, and I don't
19 think any psychologist can get that far inside someone's mind
20 to know what someone thought yesterday, today, or the day
21 before.

22 Whether he saw two pair of shoes, I would want to
23 know in the police report were there two pair of shoes outside
24 this woman's bedroom door, and if not, then he lied to me.

25 If there were two pair of shoes, then it's

1 possible that in his mind he thought one of them was a man's.
2 I do remember he said something about hearing her snore and
3 thinking it was a man snoring, and therefore he got
4 frightened.

5 I don't necessarily believe him when he says that
6 to me, but that's what he said to me.

7 Q. So if he's coming in and telling you or telling
8 the police or telling this jury that he thought it might have
9 been a guy, thought there might have been two people there, I
10 was afraid, we don't necessarily have to believe that, and
11 there is no reason we should believe it; isn't that true?

12 A. There is no reason to know what was really going
13 through his mind, but I can say I wasn't convinced when he
14 told me that. I didn't necessarily believe that that was the
15 truth.

16 Q. Okay. Fair enough.

17 He is above average intelligence; correct?

18 A. Or high average. I forget exactly what his I. Q.
19 is.

20 Q. Let's agree to average or above.

21 A. Yes.

22 Q. He doesn't have a disorder in the sense of being
23 retarded or unable to learn or unable to develop skills to
24 work or anything like that?

25 A. No. All of his testing over time was consistent

1 that he's a bright young man with good academic skills also.

2 Q. He is not insane, is he?

3 A. No.

4 Q. How would you define mental illness?

5 A. Well --

6 Q. I assume there is a readily-acceptable standard
7 definition of mental illness that you, as a psychologist,
8 probably accept, buy into, it's in the great book of
9 psychology or something, is there not?

10 A. The reason I'm hesitating is that there is -- I'm
11 thinking of the forensic -- what you consider and the law
12 considers mentally ill versus what psychiatry or psychology
13 thinks of as mentally ill. I can give you a generic
14 definition.

15 Q. Please do.

16 A. It's a mental, meaning an aberration, an
17 abnormality of sufficient magnitude in feelings, thoughts,
18 behaviors that is pervasive enough that it affects a person's
19 life socially, at work, in all relationships. And there are
20 various types of mental illnesses.

21 There are acute mental illnesses, such as an
22 acute depressive disorder, an acute anxiety disorder of
23 several types; schizophrenia, which may be of several types.

24 There are long-term mental illnesses. If you
25 have schizophrenia, you basically are schizophrenic the rest

1 of your life. It just doesn't go away.

2 There are adjustment disorders where you have
3 some stressful events occur. You have anxiety, some
4 aberration in behavior. It lasts for less than six months,
5 it's gone.

6 There is a variety of mental illnesses, and
7 depending upon -- I mean, some of them -- it's hard to answer
8 the question, because there is such a variety.

9 Q. I take it you've discussed this sort of
10 philosophical concept with colleagues, your brethren of the
11 psychological and psychiatric groups, as it were?

12 A. Correct.

13 Q. Would it be fair to say that they have differing
14 views on that definition?

15 A. Yes.

16 Q. Would you agree with me that there would
17 certainly be some professionals such as yourself who would say
18 William does not suffer from mental illness?

19 A. Yes.

20 Q. Now, we are here today in what's called a penalty
21 phase of a trial. And you're familiar with trial procedure,
22 because you have testified in trials on a number of occasions;
23 true?

24 A. Yes.

25 Q. So you know what the penalty phase is all about?

1 A. Yes.

2 Q. Penalty, punishment, what punishment are we gonna
3 give him; correct?

4 A. That's correct.

5 Q. Now, I note in your report that you said that
6 William is fearless of punishment.

7 A. That's the results from his personality test;
8 probably accurate.

9 Q. Well, then would it be fair to say that he is not
10 afraid of going to prison?

11 A. Probably fair to say.

12 Q. You also said in your report that punishment
13 reinforces rebellious and hostile feelings in that man right
14 there.

15 A. Correct.

16 Q. So if ultimately the decision on the punishment
17 is we're going to put him in prison, number one, he's not
18 afraid, and, number two, he is going to be more rebellious and
19 hostile than he is now; is that true?

20 A. He probably won't be afraid, and I can't for sure
21 say whether he'll become more hostile, but there is a good
22 chance he will.

23 Q. Okay. Now, you also stated in your report at
24 page 14, "He," referring to William Castillo, "stated he
25 enjoyed his prison time."

1 A. Yes.

2 Q. Do you think he was telling you the truth when he
3 was telling you that?

4 A. Probably.

5 Q. He stated that in the Nevada State Prison he was
6 perfectly happy. "I worked in the kitchen. I worked out. I
7 had a routine. I'd smoke, listen to the radio, and play
8 pinochle."

9 A. Yes.

10 Q. Did you believe him when he said that?

11 A. Yes.

12 Q. So he enjoys it in prison, and he is perfectly
13 happy. He is not afraid of it, and if we put him there, he is
14 going to be more rebellious and hostile than he is now?

15 A. Except for being unable to predict whether he
16 will become more hostile and rebellious. I think he would
17 adapt to prison life readily.

18 Q. Well, you don't dispute that he likes it, and he
19 has a good time, and he's perfectly happy there?

20 A. He gets along, makes his way, and fits in, from
21 what he told me.

22 Q. Okay. You did some tests on William?

23 A. Yes, I did.

24 Q. And at page 13 you said, "Mr. Castillo had very
25 high and significant elevations on," and there is a whole

1 litany.

2 Anti-social?

3 A. Yes.

4 Q. What's that? Just common sense words to the
5 ladies and gentlemen of the jury. He is very anti-social.
6 What does that mean?

7 A. He doesn't have a conscience. He will act out
8 against the norms of society.

9 Q. He can hurt people, other people, and he doesn't
10 feel bad about it, does he?

11 A. That's correct.

12 Q. He is aggressive/sadistic. What does that mean?

13 A. That scale measures on the personality test a
14 propensity to want retribution, to enjoy hurting other people.

15 Q. So not only is he willing to hurt other people
16 and not feel bad about it, he enjoys it?

17 A. That's very possible.

18 Q. Passive/aggressive.

19 A. That's less important. It just means that he
20 would at times have the -- he would be rather conflicted about
21 a lot of things, and instead of lashing out in direct anger,
22 he would make his anger known to the person he's angered at in
23 a very indirect fashion.

24 Q. Now, you said he did better at CBS and NYTC than
25 he did at home.

1 A. From the records that I reviewed, it appeared
2 that he did.

3 Q. Let's just take CBS just for one limited example.
4 The records that have been placed before this jury and the
5 testimony say that when he was in the 9/10 area, when he was
6 in CBS, he set the place on fire, and he also ran away from
7 it, escaped.

8 And we have records that say when he was nine
9 years old, he set his mother's house on fire, and he also ran
10 away from there.

11 If we compare those two sort of on the scales of
12 justice, would you say he was better at CBS in those
13 behaviors, worse at CBS, or about the same in his fire
14 setting, escaping, running away sort of behavior?

15 A. I hadn't seen the instance of him setting CBS on
16 fire, but if that's accurate, then about the same would be the
17 answer.

18 Q. So if our conclusion was, look, he did better in
19 custody than he did on the street, and we now give you this
20 information that was not made available to you somehow, maybe
21 he didn't do much better?

22 A. Possibly, yes.

23 Q. Okay. Now, when he was in prison, did you get
24 some of those records?

25 A. I believe -- you know, I don't remember if I have

1 his prison records at this point.

2 Q. Okay. Well, you talked to William about being in
3 prison, did you not?

4 A. Yes.

5 Q. And at one point in William's prison career he
6 was in Indian Springs was he not?

7 A. Yes, I believe he was.

8 Q. And what kind of a facility is Indian Springs?

9 A. It's a correctional -- it's a prison.

10 Q. Well, is it --

11 A. Low security.

12 Q. Low security.

13 All right. And William's self-reporting
14 acknowledged to you that while he was in this low-security
15 facility, he beat more than one inmate, in some instances
16 severely. Did he not report that?

17 A. I believe he did.

18 Q. So while he was in prison, at least in that
19 instance, he was a threat to the safety of other inmates?

20 A. That's correct.

21 Q. And the consequence of that, was it not that he
22 was sent to NNCC, Carson City, North Nevada Correctional
23 Center?

24 A. I believe that's correct.

25 Q. And what kind of an institution is that?

1 A. High security.

2 Q. High security.

3 And while he was in the high-security prison,
4 having been transferred from the low-security prison, he
5 reported to you that he split someone's head open, true,
6 another inmate?

7 A. Yes.

8 Q. So even in the high-security prison, he is and
9 was, by history, a threat to other inmates; true?

10 A. True.

11 Q. The last sentence in your report says as follows:
12 Mr. Castillo, even today, is a very dangerous individual who
13 absolutely must be incarcerated so that society is protected
14 from this basically uncontrolled and very angry man who is
15 incapable of forming warm attachments to human beings.

16 Is that true?

17 A. Yes.

18 Q. Now, you said earlier in direct examination that
19 these problems that he accumulated, which a number of people
20 accumulate and few of them become murderers, and some of them
21 are marginally functional, and some of them come out of it,
22 those problems, problems nonetheless -- that it would be
23 highly unlikely in the future he would rectify those, be
24 cured, be solved; true?

25 A. True.

1 Q. Ten years, 20 years, 30 years, it ain't gonna
2 happen, right, or it's highly unlikely? You wouldn't want to
3 bet your house that it was gonna happen, would you?

4 A. I wouldn't want to bet my house, but I also would
5 say that we do know that as people approach 50, 55, they tend
6 to be much less violent than they tend to be at 20, 25, 30.

7 So just by getting older, he would be likely to
8 be a less -- less of a threatening human being.

9 Q. You know, I'm about 50, and I'm a couple pounds
10 overweight. And I'll bet I'm a little less threatening than I
11 would have been at 20, wouldn't you say?

12 A. Absolutely.

13 Q. Now, we've talked about whether he functioned
14 better in custody than on the street, and after we've kind of
15 shed some light on this, it appears, would you not agree with
16 me, he doesn't function too well in custody?

17 A. True.

18 Q. Would you agree with me on this proposition, that
19 all people are entitled, as a matter of human right, to be
20 safe from attack and assault by other people?

21 A. I would agree.

22 Q. All the people in this room and free society are
23 entitled to be free from attack and assault and aggression of
24 other people?

25 MR. SCHIECK: I'm going to object, your Honor.

1 That's an improper question.

2 MR. BELL: This is highly relevant.

3 THE COURT: Overruled.

4 MR. BELL: Thanks.

5 THE WITNESS: I would agree.

6 Q. BY MR. BELL: If Mr. Castillo is on the street at
7 any time in his life, it is fair to say that you would predict
8 he would be dangerous to other people; true?

9 A. True.

10 Q. Now, since we have agreed that all people are
11 entitled to that as a basic inalienable right, I guess you
12 would agree that prison guards, prison maintenance people, and
13 even inmates themselves are entitled to be free from that kind
14 of behavior?

15 A. That's correct.

16 Q. And we know, do we not, from self-reporting and
17 the records you have, that when Mr. Castillo is in custody,
18 those people are not free from that type of behavior; true?

19 A. That's correct.

20 Q. Now, if Mr. Castillo receives the death penalty
21 and it is carried out, I guess certainly after that point
22 those other people who were entitled as a matter of human
23 rights not to be put upon by the William Castillos of the
24 world will not have to worry about that as far as he's
25 concerned; true?

1 A. True.

2 Q. So help me with this part. We are here to decide
3 punishment, what punishment is fair for this crime. And you
4 would agree that Mr. Castillo should be punished for this
5 horrible conduct, would you not?

6 A. Yes.

7 Q. And one of the alternatives is to put him in
8 prison where he likes it, where he finds it pretty comfy, but
9 where he is a threat to other inmates, or the other
10 possibility is to give him a punishment that he doesn't like
11 but assures the safety of other inmates.

12 Would that be a fair comparison of the two
13 alternatives?

14 A. Almost.

15 Q. Correct me.

16 A. Because he said in the past that he adapted to
17 prison and, quote, "liked it," or got into a routine doesn't
18 mean that most prisoners who are held in prison for the rest
19 of their lives are enjoying themselves, knowing that they're
20 going to be in prison the rest of their lives.

21 Q. Well, I don't suppose that would be a highly
22 palatable prospect to you or I, but I quote your report where
23 you state he stated that in the Nevada State Prison he was
24 perfectly happy. That was his words; right?

25 A. Yes.

1 Q. So maybe a fellow like Castillo doesn't have the
2 same view of prison that you or I would; true?

3 A. That's possible.

4 Q. Court's indulgence.

5 Just one last little thing here.

6 Page 12. You have a two paragraph -- about half
7 a page, a section called "Mr. Castillo's tattoos."

8 A. Yes.

9 Q. Mr. Castillo has a vast amount of tattoos on his
10 body, does he not?

11 A. Yes, he does.

12 Q. And those have some significance to him; is that
13 true?

14 A. Yes, it's true.

15 Q. And I assume that when you asked him and he
16 explained that they had some significance to you in reaching
17 your overall conclusion; true?

18 A. Yes.

19 Q. Well, let's go through these briefly then.

20 "On his wrists are tattoos of chains signifying
21 imprisonment"?

22 A. Yes.

23 Q. That's all it says about that, but did that seem
24 to have any meaning? Does he perceive himself as always
25 having been imprisoned? What was that?

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Tracie K. Lindeman

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Respondents.

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

Eighth Judicial District Court, Clark County

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1 when they complete the treatment plan and make their goals
2 that they're supposed to achieve while at the training
3 centers or in the programs they're in, they can be released
4 back to their home, yes.

5 Q And if they don't achieve their plan or their
6 goals, they're not parolled?

7 A They all eventually get parolled. Some just
8 spend longer than others.

9 Q Some actually stay until they become an adult
10 and then are released?

11 A I would say that's very rare. It depends on
12 the age that they get committed for one thing. If you have
13 a 17 year old when committed, he's going to be released at
14 18 as an adult.

15 Q Were the five releases that Billy obtained at
16 Elko onto parole as a result of him being able to achieve
17 his goals or at least his treatment plan while he was there
18 in Elko?

19 A I can't answer that question because I don't
20 sit on that board or panel that makes that determination.

21 Q There is actually a board or panel that the
22 juvenile would go before to determine if he should be
23 released back to community supervision?

24 A They have a process called treatment team which
25 consists of classification counselor, school teacher,

752

14 1 homeroom school teacher and dorm staff, cottage staff and
2 then if the person is recommended, that name goes to the
3 superintendent and the superintendent determines whether or
4 not that person has met the requirements to be released.

5 Q So there's just a discretionary decision
6 involved in the release back onto parole?

7 A Yes, I'd say so.

8 Q And was it your count that Billy was parolled
9 five times from Elko and violated and went back?

10 A If I'm correct here he would have been
11 committed on the first and parole revoked four times.

12 Q Now, you had talked about Billy at one point
13 being placed with his maternal grandmother in St. Louis or
14 the St. Louis area?

15 A Yes.

16 Q And a report was received from the Missouri
17 Department of Social Services concerning their experiences
18 with Billy?

19 A I believe that's correct.

20 Q Did their report reflect that their experience
21 with William in the past reflected a seriously disturbed
22 child who was beyond the scope of their services and
23 reported the Thorpes to be a dysfunctional family?

24 A I'd have to re-read that to say that, but my
25 recollection is that the Thorpes, Billy's natural father,

[REDACTED]

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1 was a dysfunctional family.

2 Q If I can just approach the witness with
3 Exhibit 110 and ask if you can confirm that that was the
4 report from the St. Louis services.

5 A I could assume so if it's in the report. This
6 is not one that I wrote so I can't really confirm that.

7 Q But can you confirm that this would be
8 Exhibit 110?

9 A Yes.

10 Q Do you recall that in that report which is
11 filed with the court in February of 1984 that Mr. Joseph
12 Castillo had contacted the case worker to express his wish
13 to relinquish parental rights of William?

14 A Could you refer which page that's on?

15 Q That's on page three of Exhibit 110.

16 A Yes, the report indicates that.

17 Q And that's when William was 11 years old that
18 his adopted father slash stepfather indicated a desire to
19 relinquish his parental rights and he wanted the court to be
20 apprised with his decision?

21 A Yes, that's what the report states.

22 Q Now, the next to the last page of Exhibit 110,
23 which appears to be a report from the Department of Human
24 Resources under paragraph six, do you have that page there?

25 A I believe so where it says interviews with the

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1 family?

2 Q Right. Is it true that at that point in
3 time -- and this again is still while we are talking about
4 while Billy is 11 -- the report states that at the time of
5 Billy's entry to the hospital his parents stated they did
6 not wish to have him home ever again although Mr. Castillo
7 was unwilling to terminate his parental rights. Parents
8 have changed their minds, they now want Billy home if he
9 puts his act together?

15

10 A Yes, that's what it states.

11 Q In your dealings with the Castillo parents did
12 they ever express a change as reflected in this report where
13 at one point they say we don't want him home and then they
14 say yes, we do want him home?

15 A We would discuss his progress at the Nevada
16 Youth Training Center and they wanted hopefully some
17 improvements in his behavior before they accepted him home;
18 however, I would say that the Castillos never refused to
19 take Billy home.

20 Q Did they ever indicate to you that they did not
21 want to take him home?

22 A Not in that term.

23 Q Did they ever express any reluctance to take
24 him home?

25 A I would say reluctance at times, yes.

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1 Q Do you know whether that was ever expressed to
2 Billy by his parents?

3 A I don't know that.

4 Q Now, if you have Exhibit 113 still in front of
5 you I believe there's a report from December of 1985, a
6 review court date.

7 A Yes.

8 Q If you could turn to page three referring to
9 lines 18 to 20 and you're the author of this report; is that
10 correct?

11 A That's correct.

12 Q And so it says it is this counselor's opinion
13 that although William had an abusive upbringing for the
14 first few years, his present home situation and continued
15 delinquent behaviors are his own making.

16 A Yes, I wrote that.

17 Q What were you referring to when you expressed
18 your opinion that William had an abusive upbringing for the
19 first few years?

20 A If I recall -- and I'm thinking back many years
21 ago -- Billy's mother indicated that his natural father may
22 have abused him. I don't have any real knowledge of that;
23 however, that situation back when Billy was very young was a
24 very volatile situation with the mother and natural father.

25 Q Natural father being Mr. Thorpe?



756

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1 A That's correct.

2 Q Did you ever do any investigation or background
3 into Mr. Thorpe to determine to what extent there may have
4 been an abusive situation and how that might have affected
5 Billy?

6 A No, I did not.

7 Q Do you recall when it was that you first were
8 informed by Billy's mother that he had an abusive upbringing
9 for his first few years?

10 A I don't recall when. It was probably during
11 one of our conversations. It may have been the first time I
12 met her or may have been another time when I met her further
13 down the line.

14 Q But at least as of this document when Billy was
15 age 12 you were aware of that situation?

16 A Yes. Or I should say alleged situation. I
17 mean, it was a statement from the mother to me.

18 Q Now, still with Exhibit 113 if you could turn
19 to page four.

20 THE COURT: Mr. Schieck, how much longer do you
21 have with this witness?

22 MR. SCHIECK: Perhaps ten minutes, Your Honor,
23 maybe 15.

24 THE COURT: I think this is a good time to take
25 a five minute break and we'll be adjourning about 4:15.

757

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1 MR. LaPORTA: No later. I have documents to
2 review before the court hearing.

3 THE COURT: And then we'll complete this
4 witness.

5 MR. BELL: The next one is a short witness and
6 he's outside so maybe we'll get them both, hopefully.

7 THE COURT During this recess it is your duty
8 not to converses amongst yourselves or with anyone else on
9 any subject connected with the trial, or to read, watch or
10 listen in any report of or commentary on the trial by any
11 person connected with trial by any medium of information
12 including, without limitation, newspaper, television and
13 radio, and you are not to form or express an opinion on any
14 subject connected with this case until it is finally
15 submitted to you.

16 Ten minutes until four o'clock.

17 (Recess.)

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

20 MR. BELL: Yes, Your Honor.

21 MR. SCHIECK: Yes, Your Honor.

22 THE COURT: Mr. Schieck, you may continue with
23 your cross-examination of this witness.

24 BY MR. SCHIECK:

25 Q I think we're on Exhibit 113 on page four and I

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1 have a question over --

2 MR. BELL: I have no objection to using your
3 copy to reference him by number.


4 BY MR. SCHIECK:

5 Q This is the report that's December 19th, 1985
6 while Billy is 12 which I believe you had authored and the
7 question I wanted to ask is about the sentence that reads
8 out of state programs have been looked into but due to their
9 expense and due to the poor prognosis the State has been
10 unwilling to provide specialized care for William. The
11 question I have is what type of specialized care had been
12 considered for William?

13 A We were looking into if I recall a more
14 secure-type facility. One that runs to mind was one in
15 Colorado that was more of a locked facility.

16 Q And so I mean the concept of specialized care
17 was a more secure facility?

18 A It was probably more to play in there than just
19 that. I was probably looking into trying to figure out in
20 some way to deal with Billy's possible problems without a
21 mental diagnosis or mental problem, mental health issues
22 were out. So I was trying to find something someplace that
23 may be more appropriate because we already tried the Nevada
24 Youth Training Center and it didn't necessarily work so
25 maybe another option.



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1 Q And because the prognosis wasn't good and due
2 to the expense the State was unwilling to do those —

3 A And I never really found an appropriate place.

4 Q Now, Exhibit 114 is the Nevada Youth Training
5 Center treatment plan from 1986 when Billy is 13 and on the
6 third page there is a paragraph that reads Billy's
7 anti-social behavior and run-away has completely stymied all
8 efforts to assist him in making positive changes. He seems
9 to be moderately successful at NYTC; however, when he is
10 returned home he lasts for a very short time until he's back
11 in an institution. What did you talk about him being
12 moderately successful at NYTC?

13 A I did not author this. My name is on the copy
14 as the officer who filed it with the court.

15 Q Did you have any understanding of what him
16 being moderately successful at NYTC encompassed?

17 A He was going to school. He was working towards
18 graduation. That would be a success as an example.

19 Q But when he would return into his home he would
20 return to the old behaviors that got him in there to begin
21 with; is that a fair statement?

22 A That would be a fair statement.

23 Q In the certification order that the court
24 signed certifying William as an adult there's language
25 that — and I'll just read it to you and if you want to

[REDACTED]

740

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1 refer to it I'll bring it up, but it says William always
2 wants to wheel and deal and refuses to take any
3 responsibility for his actions. During the time that you
4 were dealing with Billy was that a pretty consistent
5 pattern, that he wouldn't take responsibility for the
6 actions he had done?

7 A I never knew Billy to take responsibility for
8 his actions.

9 Q In dealing with delinquent youths is it
10 important that the child as he matures or becomes cured is
11 able to take responsibility for his actions and understand
12 the need to take responsibility for his actions?

13 A Yes, I believe so. You know, you cannot treat
14 someone unless they want to be treated in my opinion.

15 Q Is it commonly accepted that the first step to
16 treatment is the ability to accept responsibility, unless
17 you're able to acknowledge that you're doing wrong you can't
18 be taught to do right?

19 A Is that the first -- I am not sure that's the
20 first step or the third step. I don't know.

21 Q Is it a step?

22 A It would be a step, yes.

23 Q And in your dealing Billy had never reached
24 that step?

25 A I think Billy knew what he was doing. He knew

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1 that things were wrong.

2 Q Focusing on taking responsibility for the
3 wrongs that he was doing.

4 A As far as I know he refuses to take -- or would
5 refuse to take responsibility for his actions.

6 Q Now, at the initial stages when Billy became
7 involved in the system his parents brought him in and I
8 think it's Exhibit 107 which is the computer printout of his
9 contacts?

10 A Yes, I believe it was his parents that brought
11 him in.

12 Q February 18th of 1981 was the first entry?

13 A That's correct.

14 Q Indicates the referring agency was parents?

15 A Yes.

16 Q And the offense for that entry of
17 February 18th, 1981 is an emotionally unstable child, is
18 that what the entry is?

19 A I'm not sure of the exact abbreviations from
20 juvenile court but I believe that's correct.

21 Q It reads EMOT which I'm assuming is emotional?

22 A I think it's emotional instability but I'm not
23 sure which way it goes.

24 Q And then INSTA and third word is CHA child.

25 What does that mean in your dealing with the juvenile court

762

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1 system? Does that have a specific meaning to you?

2 A What?

3 Q The abbreviation emotionally unstable child?

4 A When a child is exhibiting behaviors that you
5 don't know what to do about, that's often the designation
6 that they put on that.

7 Q And again that's the same designation for the
8 next entry of April 15th, 1981?

9 A Yes.

10 Q And again that was the parents that brought
11 Billy in?

12 A Yes.

13 Q And that indicates refer to other agency. Do
14 you know what other agency that was referred to?

15 A No, I don't.

16 Q The first entry for the disposition shows
17 situation RECT which I assume is rectified. Do you know
18 what that means?

19 A Probably means that a counselor sat down with
20 the parents and the child and discussed the behavior and
21 came to some kind of conclusion that the child would go home
22 and the parents had a better understanding on how to deal
23 with it.

24 Q And then there was no further contact with
25 Billy from April 15th, 1981 until January 20th, 1982 when

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1 the police brought him in as run-away?

2 A That's what the record shows.

3 Q You didn't have any contact with Billy during
4 that period?

5 A No, I did not.

6 Q You don't have any information what transpired
7 between the entry where he was an emotionally unstable child
8 and eight months later when he ran away?

9 A I have no personal knowledge of that.

10 Q You had talked on direct examination about the
11 fact that Mr. Castillo has a younger sister who has had no
12 contact with the juvenile system?

13 A I do not know -- I have not had any information
14 stating to me that she has.

15 Q Do you know whether or not her father is Joseph
16 Castillo or her father was Mr. Thorpe?

17 A I believe the father is Joseph Castillo.


18 Q She was born after Mr. Thorpe was no longer
19 involved in the family unit?

20 A I believe so, yes.

21 Q And do you know her name to be Crystal or do
22 you know?

23 A I don't recall her name.

24 MR. SCHIECK: If I could have the court's
25 indulgence for a second.



764

1 No further questions on cross, Your Honor.

2 THE COURT: Mr. Bell.

3 MR. BELL: Just a couple questions.

4
5 REDIRECT EXAMINATION

6 BY MR. BELL:

7 Q Call your attention to Exhibit 108 the July 22,
8 1982 report when he was age nine, what's William Castillo's
9 date of birth?

10 A December 28th, 1972.

11 Q And on the third page would you read this first
12 sentence for us, please.

13 A Mrs. Castillo previously married -- was
14 previously married to William P. Thorpe, Sr., natural father
15 of Billy from 1970 to 1973.

16 Q So that would be two years before his birth
17 until sometime during the year after his birth; is that
18 correct?

19 A Yes.

20 Q Now, you said emotionally unstable refers to a
21 behaviorial situation where they simply don't know what to
22 do about it; is that correct?

23 A That's my belief.

24 MR. BELL: Nothing further, Judge.

25 MR. SCHIECK: Nothing further, Your Honor.

745

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1 THE COURT: May this witness be discharged?

2 MR. SCHIECK: Yes, Your Honor.

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

4 My question is how long is this next witness?

5 MR. BELL: Since he has to be in another court

6 I think we'd better break unfortunately, but it is what it
7 is.

8 THE COURT: Under the circumstances of being
9 what they are we'll declare the evening recess at this time.
10 I have made arrangements tomorrow morning, ladies and
11 gentlemen, to clear my calendar so we can start right at
12 nine o'clock so there will be no preliminary matters before
13 this and so we'll start right fresh then.

14 During the evening recess it is your duty not
15 to converses amongst yourselves or with anyone else on any
16 subject connected with the trial, or to read, watch or
17 listen in any report of or commentary on the trial by any
18 person connected with trial by any medium of information
19 including, without limitation, newspaper, television and
20 radio, and you are not to form or express an opinion on any
21 subject connected with this case until it is finally
22 submitted to you.

23 We'll be at ease while you leave the confines
24 of the courtroom. Please be at the courthouse at 8:45.

25 (Jury left.)

766

EXHIBIT 169

EXHIBIT 169

WEASTILL00003-08A40210

FILED

DISTRICT COURT

CLARK COUNTY, NEVADA SEP 23 11 53 AM '96

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Lat. J. J. J.
CLERK

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

FRIDAY, SEPTEMBER 20, 1996, 9:05 A.M.

PENALTY HEARING - VOLUME II - 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

1	<u>INDEX</u>	
2		<u>PAGE</u>
3		
4	<u>STATE'S WITNESSES</u>	
5		
6		
7	<u>CHARMAINE MARIE SMITH</u>	
8	DIRECT EXAMINATION BY MR. HARMON	5
9	CROSS EXAMINATION BY MR. SCHIECK	34
10	<u>MIKE EYLAR</u>	
11	DIRECT EXAMINATION BY MR. BELL	40
12	CROSS EXAMINATION BY MR. SCHIECK	46
13	<u>PAUL EHLERS</u>	
14	DIRECT EXAMINATION BY MR. HARMON	49
15	CROSS EXAMINATION BY MR. SCHIECK	59
16	<u>MARK BERG</u>	
17	DIRECT EXAMINATION BY MR. HARMON	64
18	CROSS EXAMINATION BY MR. SCHIECK	78
19	REDIRECT EXAMINATION BY MR. HARMON	88
20	RECROSS EXAMINATION BY MR. SCHIECK	90
21	<u>MICHAEL E. BLANDFORD</u>	
22	DIRECT EXAMINATION BY MR. BELL	91
23	CROSS EXAMINATION BY MR. SCHIECK	101
24	REDIRECT EXAMINATION BY MR. BELL	104
25	<u>JILL RUSSELL</u>	
26	DIRECT EXAMINATION BY MR. HARMON	106
27	CROSS EXAMINATION BY MR. SCHIECK	113

PATSY K. SMITH, OFFICIAL COURT REPORTER

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1	<u>STATE'S EXHIBITS</u>	
2		<u>PAGE</u>
3		
4		
5	No. 121	13
6	No. 122	20
7	No. 125	21
8	Nos. 124 & 126	31
9	No. 123	57
10	No. 127	67
11	No. 128	100
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 FRIDAY, SEPTEMBER 20, 1996, 9:05 A.M.

2 THE COURT: Good morning, ladies and
3 gentlemen.

4 THE JURY: (In Unison) Good morning.

5 THE COURT: Counsel stipulate to the
6 presence of the jury?

7 MR. BELL: Yes, your Honor.

8 MR. SCHIECK: Yes, your Honor.

9 THE COURT: The State may continue with the
10 presentation of its case in chief.

11 MR. HARMON: Thank you, Judge.
12 Charmaine Smith.

13
14 CHARMAINE MARIE SMITH,
15 having been first duly sworn to tell the truth, the whole
16 truth and nothing but the truth, testified and said as
17 follows:

18
19 THE CLERK: Please state your name.

20 THE WITNESS: My name is Charmaine Marie
21 Smith.

22 THE CLERK: Please your spell name.

23 THE WITNESS: C-H-A-R-M-A-I-N-E. Common
24 spelling of Smith.

25 . . .

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DIRECT EXAMINATION

BY MR. HARMON:

Q Is it Ms. or Mrs. Smith?

A Ms.

Q Ms. Smith, what is your business or occupation?

A I'm a parole and probation officer with the State of Nevada.

Q How long have you worked as a parole and probation officer with the State of Nevada?

A It was seven years on July 10th of this year.

Q What are the nature of your duties?

A I supervise parolees and probationers and I have completed presentence reports and mainly, about six years, I had spent in supervision.

Q What is a presentence report?

A It's a report that compiles criminal history, social history, employment history, instant offenses, and it's given to the Court prior to sentencing.

Q At the request of the District Attorney's Office, have you had occasion to research records maintained by the Department of Parole & Probation and bring to the Court certain documents which pertain to William Castillo?

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1 A Yes, I have.

2 Q Are these records prepared in the

3 ordinary course of business of the Nevada Department of

4 Parole & Probation?

5 A Yes, they are.

6 Q Did you, at one time, have personal

7 contact with Mr. Castillo?

8 A Yes, I did.

9 Q How did that occur?

10 A I interviewed him for a presentence

11 report on I believe it was April 1st, 1991.

12 Q Was that in connection with the

13 conviction that he had incurred in the State of Nevada?

14 A Yes.

15 Q What was the offense he had been

16 convicted of?

17 A Attempt burglary.

18 Q Do you recall where you were when you

19 conducted any type of interview which occurred between you

20 and Mr. Castillo?

21 A Yes, sir, it was at the Clark County

22 Detention Center.

23 Q Do you see Mr. Castillo here in court

24 this morning?

25 A Yes, I do.

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1 Q Will you point to him and describe some
2 article of clothing he is wearing?

3 A White shirt and tie and beard.

4 MR. HARMON: Your Honor, may the record show
5 that the witness has identified the defendant, Mr.
6 Castillo?

7 THE COURT: Yes.

8 Q (BY MR. HARMON) Do you, in fact, have
9 a copy with you in court this morning of the presentence
10 report that you prepared in connection with Mr. Castillo's
11 conviction in 1991 for attempted burglary?

12 A Yes, I do.

13 Q Will it assist you in refreshing your
14 memory and testifying accurately to refer, from time to
15 time, to the report?

16 A Yes.

17 Q Who was the victim in the attempted
18 burglary case?

19 A The victim was a woman named -- should
20 I say her name?

21 Q Yes.

22 A Marilyn Mills.

23 Q On what date did the offense occur?

24 A December 19th, 1990.

25 Q Are you able to tell, from your

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1 records, how old Mr. Castillo was at the time you
2 interviewed him?

3 A When I interviewed him, I believe he
4 was 17.

5 Q We've had testimony that Mr. Castillo
6 was born on December the 28th, 1972.

7 A That's what our records show also.

8 Q That's consistent with your records?

9 A Yes.

10 Q So is it accurate that he would have
11 been 17 at the time of the offense?

12 A Yes.

13 Q But 18 years of age --

14 A When I interviewed him.

15 Q -- when you interviewed him?

16 A Yes.

17 Q Did he have an extensive juvenile
18 record?

19 A Yes, he did.

20 Q How did it happen that he was in the
21 adult court?

22 A He was certified as an adult because of
23 this attempt burglary.

24 Q Did there come a time, according to the
25 record, when Mr. Castillo entered a plea of guilty to

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1 attempted burglary?

2 A Yes, he did.

3 Q On what date was that?

4 A March 19th, 1991.

5 Q Now you've already mentioned that you
6 were involved in preparing a presentence report in early
7 April 1991?

8 A Yes.

9 Q When did the formal sentencing occur?

10 A April 16th, 1991.

11 Q As part of the presentence
12 investigation and the report that you compiled, do you make
13 a recommendation to the Court regarding the sentence to be
14 imposed?

15 A The Division has a format that, yes, we
16 do.

17 Q What was the recommendation in this
18 case?

19 A It was for two years prison.

20 Q Is it correct to say that this was the
21 first felony offense as an adult for Mr. Castillo?

22 A Yes, it was.

23 Q How did it happen that you recommended
24 a prison term?

25 A We complete a success probability form,

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1 which includes -- it's a point system. It includes based
2 on his prior juvenile history, family information. A lot
3 of it has to do with the offense, the instant offense or
4 this case and its numbers are compiled and it categorizes
5 them to qualify for probation or not and he didn't
6 qualify. That was why the Division recommended the two
7 years prison.

8 Q Does your report contain a description
9 of the type of offense this attempted burglary was?

10 A Yes.

11 Q In substance, what happened?

12 A Mr. Castillo and his co-defendant,
13 which was a juvenile and he wasn't actually named in this
14 report --

15 Q A seventeen year old co-defendant?

16 A I don't remember his age. He was a
17 juvenile. I know that.

18 They broke -- well, they knocked at the
19 victim's door and the victim didn't answer the door, so
20 they broke into the door -- through the door into the
21 residence and the victim sprayed both of the people -- the
22 defendants with mace and they left the residence. Took off
23 in their auto.

24 Q Does the record reflect whether the
25 defendant was armed with any type of weapon at the time of

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1 the attempted burglary?

2 A My offense report in this does not
3 include -- let me see.

4 Officers, when they did apprehend him, did
5 find a loaded semi automatic pistol, which was
6 unregistered.

7 Q And is that reflected at the top part
8 of page five of your report?

9 A Yes, it does.

10 Q Your presentence report?

11 A Uh-huh, yeah.

12 Q So is it your testimony that, according
13 to officers' reports, when Mr. Castillo was apprehended
14 shortly after the attempted burglary, he did have on his
15 person a loaded semi automatic pistol?

16 A Yes, he did.

17 Q Now, have you also become familiar with
18 a statement that Mr. Castillo gave to investigating
19 officers in connection with the attempted burglary?

20 A Yes.

21 MR. HARMON: May we have the Court's
22 indulgence.

23 (Off the record discussion not reported.)

24 MR. HARMON: May I approach the witness,
25 your Honor?

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1 Q Ms. Smith, I'm showing you what the
2 clerk has marked as Proposed Exhibit 121. It's a
3 handwritten two page statement signed by William Castillo.

4 A Uh-huh.

5 Q Are you familiar with this as a
6 statement given by Mr. Castillo to investigating officers
7 after the attempted burglary?

8 A Yes, I am.

9 Q Does it appear to be a true and
10 accurate copy of the original statement?

11 A Yes.

12 Q Have you had a chance to read over
13 this?

14 A Briefly.

15 Q Is reference made in the statement by
16 Mr. Castillo to his possession of a gun at the time of the
17 attempted burglary?

18 A Yes.

19 Q What does the statement say?

20 A It says, "I had the gun in my hand,
21 putting it on safety when Kenny Delzer ran up and kicked
22 the door. "

23 Q And is this referring to the attempted
24 burglary where Marilyn Mills was the victim?

25 A Yes.

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1 Q The same offense for which the
2 defendant was convicted?

3 A Yes.

4 MR. HARMON: Your Honor, the State offers
5 Proposed Exhibit 121.

6 MR. SCHIECK: No objection, your Honor.

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

9 MR. HARMON: Thank you.

10 Q Did your presentence investigation also
11 include personal matters about the family history of the
12 defendant, Mr. Castillo?

13 A Yes, it did.

14 Q I want to direct your attention to the
15 bottom of page five. Is there a category called social
16 history?

17 A Yes.

18 Q Were you personally involved in
19 researching the social history of the defendant?

20 A Yes, I was. Any time it says all
21 verified, that means I had contact with a family member.

22 Q What did you learn about the
23 defendant's social history?

24 A That he had a stepfather and they had
25 problems. He got along well with his mother, but he had

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1 several, as a juvenile, not convictions, but he had a lot
2 of contact with the juvenile system because he was a
3 runaway.

4 Q Now, you've mentioned that Mr. Castillo
5 had a stepfather. Who was his natural father?

6 A Thorpe I believe his name was.

7 Q Will you look again --

8 A Yes.

9 Q -- at the bottom of page five of your
10 report?

11 A William Thorpe.

12 Q William Thorpe?

13 A Yes.

14 Q Have you indicated in your report the
15 defendant was born from the relationship between Bill
16 Thorpe and Barbara Castillo?

17 A Yes.

18 Q Do you go onto mention how long the
19 couple were together after the defendant was born?

20 A Yes.

21 Q What do you indicate in the report?

22 A The couple separated shortly after the
23 defendant was born.

24 Q Do you further indicate how often after
25 that the defendant had contact with his father?

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1 A He had contact with his father on only
2 two occasions when he was very young.

3 Q And do you have in parenthesis after
4 that verified?

5 A Yes.

6 Q How would you have verified that
7 information?

8 A Spoke to a relative. Probably his
9 mother.

10 Q By his mother, you are referring to
11 Barbara Castillo?

12 A Yes.

13 Q At the top of page six, do you mention
14 what happened to the natural father William Thorpe?

15 A Yes.

16 Q What happened to him?

17 A William Thorpe died in 1974 of cancer.

18 Q Do you also have information in the
19 report regarding the marital status of Barbara Castillo and
20 the stepfather Joseph Castillo?

21 A Yes. Would you like me to read that?

22 Q What is the information?

23 A Mother Barbara Ann Castillo, age 36,
24 married Joseph Castillo, age 42, in 1979. The couple
25 divorced in 1990. Mrs. Castillo remained or remarried

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1 Joseph Castillo in 1990. The couple divorced in 1991. Ms.
2 Castillo resides at the address that's listed in Las
3 Vegas.

4 Q Now, you've mentioned that this
5 defendant had an extensive juvenile record. Is there a
6 part of your presentence report that is entitled
7 evaluation?

8 A Yes.

9 Q Do you see a paragraph toward the
10 bottom of page seven, when you begin with, "This is the
11 defendant's first felony conviction?" It's the third
12 paragraph --

13 A Yes.

14 Q -- from the bottom?

15 A Yes.

16 Q What do you indicate at that point in
17 terms of the evaluation of the defendant?

18 A That this instant case was his first
19 felony conviction. However, he has extensive juvenile
20 history for theft related and destructive offenses. He has
21 failed one probationary term and four parole terms as a
22 juvenile.

23 Additionally, at the time the defendant
24 committed the instant offense, he was an escapee from
25 Nevada Youth Training Center. He was certified as an adult

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1 January 23rd, 1991, as a result of this offense.

2 Q Now, if you'll look at the last
3 paragraph on page seven, what do you conclude about the
4 defendant?

5 A Would you like me to read the
6 paragraph?

7 Q Yes.

8 A " It appears as though the defendant has
9 been unable to change his consistent involvement in the
10 criminal justice system. He has been unable to complete
11 several juvenile parole terms each resulting in
12 recommitment to the Nevada Youth Training Center. His
13 juvenile history consists of several charges of violence
14 and weapons and he had a weapon on him during the instant
15 offense. The Department of Parole & Probation considers
16 him to be a danger to himself as well as the community.

17 Therefore, the following recommendation is
18 submitted for the Court's consideration."

19 Q And as you've mentioned, the
20 recommendation was a two year prison term?

21 A Yes.

22 Q What was the sentence actually
23 imposed?

24 A Two years Nevada Department of Prisons
25 with the restitution of \$108.67.

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1 Q Did the \$108 and some cents represent
2 the entire damage which occurred at the time of the
3 attempted burglary?

4 A No. I believe half of it was to be
5 paid by the juvenile. Actually, Mr. Castillo's father paid
6 the restitution and I put in there that he should actually
7 repay his father, but I think his dad paid for his portion
8 of the restitution.

9 Q But you are saying, initially, the
10 stepfather of Mr. Castillo paid the full amount?

11 A Yes.

12 Q Would that have been \$217.34?

13 A The total was 217.34 and his stepfather
14 paid 108.67.

15 Q Did that represent damage which had
16 occurred to the door when it was kicked in?

17 A Yes.

18 Q How long did Mr. Castillo serve in the
19 prison system as a result of the attempted burglary
20 conviction?

21 A With his 109 days credit for time
22 served he did in the jail, he did 14 months.

23 Q Did he, after 14 months, expire his
24 prison term?

25 A Yes.

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1 Q In addition to the restitution and the
2 two year sentence, did he have credit for time served of
3 109 days?

4 A Yes.

5 Q When was he released from the Nevada
6 State Prison on the attempted burglary?

7 A On 6/16/92.

8 Q Now, in connection with your
9 presentence report, did you invite the defendant to submit
10 his own handwritten statement to you?

11 A Yes.

12 Q Did he do that?

13 A Yes, he did.

14 Q Was that attached to the presentence
15 report you submitted to the Court?

16 A Yes.

17 MR. HARMON: Your Honor, may we again have
18 the Court's indulgence.

19 May I approach the witness, your Honor?

20 Q Ms. Smith, I'm showing you Proposed
21 Exhibit 122. It's a single page handwritten statement. Is
22 that the statement the defendant, Mr. Castillo, gave you as
23 part of your presentence investigation?

24 A Yes, it is.

25 Q Is it a true and accurate copy?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Yes.

2 MR. HARMON: Your Honor, the State offers

3 Proposed Exhibit 122.

4 MR. SCHIECK: No objection, your Honor.

5 THE COURT: Same will be received in

6 evidence.

7 MR. HARMON: Thank you.

8 Q I'm also showing you Proposed Exhibit

9 125. It purports to be a certified copy of a judgment of

10 conviction. Do you recognize what offense that is?

11 A Yes.

12 Q Which offense?

13 A Attempt burglary.

14 Q Is this the offense that you

15 investigated in which you have been describing thus far in

16 your testimony?

17 A Yes, it is.

18 Q Does the judgment of conviction contain

19 the case number for the attempted burglary?

20 A Yes.

21 Q What was the case number?

22 A 99212.

23 Q C99212?

24 A Right, yes.

25 Q Is attempted burglary a felony offense

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1 in the State of Nevada?

2 A Yes, it is.

3 MR. HARMON: Your Honor, the State offers
4 Proposed Exhibit 125.

5 MR. SCHIECK: We have no objection to the
6 certified copy, your Honor.

7 THE COURT: It will be received in
8 evidence.

9 MR. HARMON: Thank you.

10 Q Ms. Smith, I'd like you to refer to the
11 defendant's handwritten statement and if you would read
12 into the record part of the statement. I want you to go
13 down to about the middle of the statement and begin with
14 the words, "I think that I should be granted probation."

15 A Okay.

16 Q Do you see that?

17 A Yes, I do.

18 Q Would you read from there the remainder
19 of the statement?

20 A Sure.

21 "I think that I should be granted
22 probation, one," -- or, "because, one, this is my first
23 offense as an adult. Two, I feel that probation will
24 provide the incentive I needed to keep me on the straight
25 line and, three, even though I do have an extensive

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1 juvenile record, I can change. I did things because I was
2 young and stupid. I figured I couldn't get in trouble for
3 them, but now I am 18. I have spent three months in here
4 and know that being in here or prison is not what I want to
5 do with my life. I just hope that I am given this chance
6 to redeem myself and to change my life before it's too
7 late."

8 Dated April 1st, 1991 and he signed it.

9 Q William Castillo?

10 A Yes.

11 Q Ms. Smith, do you also have records
12 regarding a second conviction --

13 A Yes, I do.

14 Q -- that Mr. Castillo incurred as an
15 adult here in the State of Nevada?

16 A Yes, I do.

17 Q What was the offense he was convicted
18 of?

19 A Robbery.

20 Q Do your records disclose when the
21 robbery occurred?

22 A Yes. December 14th, 1992.

23 Q Are you able to tell us the approximate
24 location of the offense?

25 A In the vicinity of Riviera Boulevard

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- 1 and Paradise Road in Las Vegas, Nevada.
- 2 Q Close to the Las Vegas Hilton Hotel?
- 3 A Yes.
- 4 Q Was a presentence report prepared by
- 5 the Department of Parole & Probation in this case?
- 6 A Yes.
- 7 Q Is this a report that was prepared
- 8 personally by you or by one of your associates at the
- 9 Department of Parole & Probation?
- 10 A It was prepared by Officer Norma
- 11 Price.
- 12 Q Will you spell her names for the
- 13 record, please.
- 14 A Yes. It's Norma, N-O-R-M-A. Middle
- 15 initial J. Last name Price, P-R-I-C-E.
- 16 Q Like other records of the Department of
- 17 Parole & Probation, was this done in the ordinary course of
- 18 business of the department?
- 19 A Yes.
- 20 Q Does the presentence report, regarding
- 21 the robbery, contain an offense description?
- 22 A Yes, it does.
- 23 Q What does it tell us about the nature
- 24 of the offense?
- 25 A Would you like me to read it or do you

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1 want me to just --

2 Q Just summarize, please.

3 A That Mr. Castillo and his co-defendant,
4 Frank Theodore Martin, drove up behind the victim in this
5 offense and his co-defendant was driving the vehicle and
6 Mr. Castillo grabbed the purse from the victim's shoulder
7 and pulled it until the strap broke and he got the purse
8 and they left.

9 Q Was the purse subsequently recovered?

10 A Yes, it was.

11 Q Did the investigation establish that
12 Mr. Castillo, in this instance, was also armed with a
13 weapon?

14 A Yes.

15 Q Do you recall what type of weapon?

16 A A handgun. A .25 caliber handgun
17 Raven.

18 Q Raven is the brand of the .25 caliber
19 handgun?

20 A Yes.

21 Q Was the weapon loaded according to the
22 record?

23 A Yes.

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

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 May I again approach the witness, Judge?

2 THE COURT: Yes.

3 Q (BY MR. HARMON) Ms. Smith, I'm showing
4 you a two page document that appears to be signed by an
5 individual identified as Patricia Rizzo. Was Patricia
6 Rizzo the victim in the robbery case that you have been
7 referring to?

8 A I think that was her name, yeah. We
9 don't list the victims' names in the report, but I think I
10 remember, when I looked at the police report.

11 Q Is it a policy of the Nevada Department
12 of Parole & Probation not to list the names of victims in
13 presentence reports?

14 A Yes, just like we don't list juvenile
15 names.

16 Q Nevertheless, are you comfortable that
17 the victim of the robbery case was a Patricia Rizzo?

18 A Yes.

19 Q Does the document I have showed you,
20 which the clerk has previously marked as Proposed Exhibit
21 123, appear to be a statement given by Patricia Rizzo to
22 police officers that you have seen before?

23 A Yes.

24 Q Thank you.

25 You mentioned that the robbery offense

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1 occurred on December the 14th, 1992. Do you have
2 information regarding the approximately time of the
3 offense?

4 A Time of the day?

5 Q Yes.

6 A 12:15 a.m.

7 Q What happened after charges were
8 filed? Was it a plea of guilty or did Mr. Castillo go to
9 trial?

10 A Trial.

11 Q Was he convicted?

12 A Yes, he was.

13 Q Was it by a trial jury?

14 A Yes.

15 Q On what date was the conviction?

16 A April 15th, 1993.

17 Q And you've been referring to a
18 presentence report that was prepared by Norma Price?

19 A Yes.

20 Q In the robbery presentence report, is
21 there also an evaluation section?

22 A Yes, there is.

23 Q I want to direct your attention to the
24 bottom of page eight. Is there reference in this part of
25 the evaluation section to a relationship Mr. Castillo had

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1 with a young woman?

2 A Yes.

3 Q What is the information you gathered
4 about that?

5 A Would you like me to read the
6 paragraph?

7 Q Yes, please.

8 A Okay. "The defendant," -- the whole
9 thing, the whole paragraph?

10 Q Yes.

11 A Okay.

12 "The defendant, 20 years of age, was born
13 in St. Louis, Missouri. He reports that his natural mother
14 and father were not married and that he was raised by his
15 stepfather, who neglected him emotionally. His mother
16 lives locally and is employed. The defendant's natural
17 father, when the defendant," -- I believe that there's a
18 typo here.

19 "The defendant's natural father," it's
20 missing died, "when he was an infant," but the word die is
21 missing. "He has accomplished his education to the high
22 school level while institutionalized at the Nevada Youth
23 Training Center. He has never been in the military
24 service. He has enjoyed a five year relationship with a
25 young woman who lives in Idaho and who has made a home for

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1 them there and she plans her financial and emotional
2 support. They have no children. The defendant has
3 fathered one child from a previous relationship, which is
4 no longer existent. He has lost contact with his child.

5 Overall, the defendant has a fair motivation
6 to seek and maintain employment. He denies constant
7 substance abuse, but admits that he has experimented with
8 marijuana, amphetamines and barbiturates. He reports that
9 he does not drink alcohol to excess and does not like its
10 affects.

11 The defendant has the ability to mature and
12 to be introspective as to his negative behavior. He has
13 decided that he is finished with his old life and he wants
14 to separate from his negative associates. He asserts that
15 if given a chance for probation as an adult, an opportunity
16 he has never been afforded, he will show society that he
17 can be a positive contributor."

18 Q If you will turn to the top page of the
19 top of page nine, will you read the sentence --

20 A Yes.

21 Q -- at that point.

22 A "The defendant, in his young life, has
23 exhausted all the resources of the criminal justice
24 system. His criminal history is continuing and escalating
25 in severity. Therefore, the following recommendation is

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1 respectfully submitted for the Court's consideration."

2 Q What was the recommendation?

3 A Four years Nevada Department of

4 Prisons.

5 Q When did formal sentencing occur on the

6 robbery case?

7 A 5/20/93.

8 Q What was the sentence imposed?

9 A Three years Nevada Department of

10 Prisons.

11 Q So the Department recommended four

12 years, but the Court imposed a three year sentence?

13 A Yes.

14 Q Was there credit for time served?

15 A A hundred fifty seven days.

16 Q In connection with this particular

17 presentence report, did the defendant also submit a

18 handwritten statement?

19 A Yes, he did.

20 Q I'm showing you a one page document

21 which has been identified as Proposed Exhibit 124. Is that

22 a copy of the defendant's handwritten statement?

23 A Yes.

24 Q Does it have a date?

25 A Yes, it does.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q What was the date of the statement?

2 A 4/24/93.

3 Q April the 24th, 1993?

4 A Yes.

5 Q I'm also showing you Proposed Exhibit

6 126, a three page document containing a photograph, which

7 purports to be a certified judgment of conviction for

8 robbery. Is that the judgment of conviction for the

9 robbery offense you have been describing most recently in

10 your testimony?

11 A Yes.

12 Q Does it contain the case number?

13 A Yes, it does.

14 Q What was the case number for the

15 robbery offense?

16 A 111011.

17 Q Is robbery a felony in the State of

18 Nevada?

19 A Yes, it is.

20 Q In every judgment of conviction at the

21 top, is there a date stamped on the judgment when the

22 judgment of conviction is filed?

23 A Yes.

24 MR. HARMON: Your Honor, the State offers

25 proposed Exhibits 124 and 126.

PATSY K. SMITH, OFFICIAL COURT REPORTER

WELLS TILL 0003 - ORAM0240

1 MR. SCHIECK: No objection, your Honor.

2 THE COURT: They will be received in
3 evidence.

4 MR. HARMON: Thank you, Ms. Smith.

5 Q Regarding Exhibit 124, if you still
6 have that before you, I would like you to read a portion of
7 that handwritten statement of the defendant written by him
8 on April the 24th, 1993 into the record. Do you see the
9 sentence which begins, "I will be starting a fresh life?"

10 A Yes.

11 Q Will you read from there to the bottom,
12 please.

13 A Yes.

14 "I will be starting a fresh life if given
15 the chance. Also, I will no longer be associating with the
16 types of people that I allow to influence me in a negative
17 manner. Please allow me a chance. I am not a lost hope.
18 I can and will change my ways. I just need a chance.
19 Thank you. Sincerely," and the defendant signs it. It's
20 dated 4/24/93.

21 Q Thank you.

22 You mentioned that Mr. Castillo received a
23 three year sentence. How long did he serve on that
24 offense?

25 A Just under two years.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q Did he expire his sentence just under
2 two years?

3 A Yes, he did.

4 Q What was his release date?

5 A 5/8/95.

6 Q May the 8th, 1995?

7 A Yes.

8 MR. HARMON: May we have the Court's
9 indulgence, your Honor?

10 (Off the record discussion not reported.)

11 Q (BY MR. HARMON) In connection with the
12 robbery conviction incurred by Mr. Castillo where Patricia
13 Rizzo was the victim, did that case go to trial?

14 A Yes.

15 Q So it involved the empaneling of a jury
16 and a complete jury trial according to the record?

17 A Yes, it did.

18 Q Whereas, the first case where you
19 investigated the attempted burglary conviction, that was a
20 plea of guilty by the defendant?

21 A Yes.

22 Q I want to refer, very briefly in
23 conclusion, to the presentence report you prepared once
24 again.

25 A Okay.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q If you will turn to page four of your
2 report, do you see a category entitled juvenile parole
3 probation adjustment?

4 A Yes.

5 Q Is there reference in that paragraph to
6 why the defendant was unable to complete his terms of
7 parole or probation in the juvenile system?

8 A When I contacted juvenile officials, is
9 that the statement that you are --

10 Q Yes.

11 A -- referring to?

12 Q In fact, do you see the sentence, "In
13 progress from the point he was unable to complete?"

14 A Yes. Would you like me to read that?

15 Q Would you read there down through the
16 end of a part which is in quotes ending with the word
17 trouble.

18 A Okay.

19 "As he was unable to complete one of his
20 seven terms of parole or probation, that officer further
21 stated that the defendant "did not try." He went through
22 three or four parole officers because we liked him, but
23 that didn't work because he did not want to do right. He
24 always did what he wanted, get in trouble."

25 Q Now do you also, at page six of your

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1 presentence report, describe any educational
2 opportunities --

3 A Yes.

4 Q -- that Mr. Castillo had when he was at
5 the Nevada Youth Training Center in Elko?

6 A Yes.

7 Q What training opportunities did he
8 have?

9 A Completed his high school diploma while
10 he was committed to the Nevada Youth Training Center.
11 Additionally, he completed a certificate in welding and
12 attended classes in carpentry, auto body, small engine,
13 data processing, and computer entry.

14 MR. HARMON: Thank you. That completes
15 direct.

16 THE COURT: Mr. Schieck.

17 MR. SCHIECK: Thank you, your Honor.

18

19 CROSS EXAMINATION

20 BY MR. SCHIECK:

21 Q Ms. Smith, you had talked about the
22 first presentence report that you prepared when you
23 obtained a statement from Billy; is that correct?

24 A Yes.

25 Q Is that a process you go through?

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- 1 A Yes.
- 2 Q You go in, interview a defendant, and
- 3 ask about his background?
- 4 A Yes.
- 5 Q And then you attempt to follow-up by
- 6 interviewing family members?
- 7 A They fill out a questionnaire, then we
- 8 interview them, and we ask them if we can contact family
- 9 members and we usually do if we can.
- 10 Q With respect to the first presentence
- 11 report, do you recall specifically contacting Mr.
- 12 Castillo's mother?
- 13 A I believe it was his mother I spoke
- 14 with.
- 15 Q Is that the only efforts you made to
- 16 verify any of the information contained in the report?
- 17 A I really don't remember.
- 18 Q In a typical --
- 19 A I take that back. I'm sure I obtained
- 20 juvenile history because it was still available and some of
- 21 that information could have been in there.
- 22 Q So you had contacted the juvenile court
- 23 system and they would provide you with the information?
- 24 A Yes.
- 25 Q Written information or just verbal?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Written.

2 Q Would you compare that information to

3 the information that Mr. Castillo had given to you?

4 A Yes.

5 Q Did you do that in this case?

6 A I don't recall. If I have the

7 information, I usually do.

8 Q Occasionally mistakes occur in

9 reports?

10 A Probably.

11 Q In fact, there was a word left out in

12 one of the reports --

13 A Yes.

14 Q -- as you were reading it here today?

15 A Right, yeah.

16 Q You indicated that the report shows

17 that Billy's natural father died in 1974. Is it possible

18 that it was 1984?

19 A Are you talking about Norma Price's PSI

20 or mine?

21 Q I believe it was yours that referenced

22 when Mr. Thorpe was deceased.

23 A My records -- the Division's records

24 show that he died in 1974.

25 Q My question is what is the source of

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1 the information that's 1974 as opposed to 1984?

2 A Probably his mother.

3 Q And it's within the realm of
4 possibility that you said '84 and it was typed 74 and it is
5 a mistake?

6 A It's possible.

7 Q In your report, you indicated that
8 Billy was a danger to himself and the community.

9 A Yes.

10 Q What did you mean when you said he was
11 a danger to himself?

12 A Well, just his involvement with the
13 offenses and that he had -- the offenses involved weapons.
14 That would be a danger to himself and others.

15 Q You've done a great many PSIs, I
16 assume?

17 A Yes.

18 Q And do you have any idea about how
19 many?

20 A Probably about 200 approximately.

21 Q And then you are in a supervisory
22 position now?

23 A I supervise probationers and parolees.

24 Q Do you find, in your experience, that
25 individuals that are being interviewed tend to sometimes

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1 exaggerate --

2 A Yes.

3 Q -- their history to you?

4 Sometimes they try to hide things from you?

5 A Yes.

6 Q When you come in, you identify yourself

7 as being an employee of the Department of Parole &

8 Probation; is that right?

9 A Yes.

10 Q And you tell them the reason you are

11 there?

12 A Yes.

13 Q And that you are going to make a

14 recommendation to the Court?

15 A The Division will make a

16 recommendation.

17 Q But you are preparing the report that

18 will contain that information?

19 A That's correct.

20 Q Defendants typically realize that the

21 better they paint themselves, the more likely it is, at

22 least in their minds, that they are going to get a

23 favorable recommendation?

24 A Well, most of them won't really lie

25 about their criminal history because we have access to

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1 that. So they are usually pretty truthful about that.

2 Q About their criminal history because
3 there is variable criminal records. I'm talking about the
4 other information?

5 A Of course, yes.

6 Q They typically tend to down play their
7 own personal culpability in the commission of the crime?

8 A Yes.

9 (Off the record discussion not reported.)

10 Q (BY MR. SCHIECK) Sometimes they do try
11 to hide things from you?

12 A Sometimes they tell the truth.
13 Sometimes they try and hide it.

14 MR. SCHIECK: Thank you.

15 That's all I have, your Honor.

16 THE COURT: Redirect?

17 MR. HARMON: No redirect, your Honor.

18 THE COURT: May this witness be discharged?

19 MR. HARMON: Yes, your Honor.

20 MR. SCHIECK: Yes, your Honor.

21 THE WITNESS: Thank you.

22 THE COURT: Call your next witness.

23 MR. BELL: Mike Eylar. Very brief, Judge.

24 THE BAILIFF: Mike Landford?

25 MR. BELL: No, Eylar.

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1 THE BAILIFF: Eylar.

2

3 MICHAEL EYLAR,

4 having been first duly sworn to tell the truth, the whole
5 truth and nothing but the truth, testified and said as
6 follows:

7

8 THE CLERK: State your name.

9 THE WITNESS: Detective Michael Eylar,

10 E-Y-L-A-R.

11

12 DIRECT EXAMINATION

13 BY MR. BELL:

14 Q Detective Eylar, where are you
15 employed?

16 A Las Vegas metro Police.

17 Q In what capacity?

18 A I'm a detective now assigned to the
19 Detective Bureau.

20 Q How long have you been with the
21 Metropolitan Police Department?

22 A Sixteen years.

23 Q And have you always been a detective?

24 A No, I worked uniform patrol prior to
25 this.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q On or about December 19, 1990, what
2 division were you working in?

3 A Uniform field services.

4 Q And did you get dispatched to
5 investigate and follow-up on what was known as a prowl
6 burglary during that date?

7 A Yes, I was.

8 Q And how did that occasion happen? How
9 did you get dispatched?

10 A We understood the call came from a
11 female who had two white males attempting to kick in her
12 front door. When we responded and got to the scene, we
13 found that the female was waiting for us outside. She
14 showed us that the door had been kicked in. She said that
15 initially the two white males had come up to the front
16 door, had knocked on the door. She looked out the peep
17 hole. She would not respond because she just doesn't do
18 that. She won't go to open the door to anybody she doesn't
19 know. The individuals continued to pound on the door. She
20 backed off a little bit because she was not sure exactly
21 what they were going to do.

22 The individual that had been knocking on the
23 door, which was later learned to be Mr. Castillo, backed
24 off and the second individual came up and attempted to kick
25 the door in. The first time he attempted to kick the door

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 in, he was unsuccessful. At this point, the victim told me
2 that she had gotten a can of mace and was waiting at the
3 door in case the door did get kicked in and the second time
4 that the co-defendant kicked in the door, she greeted them
5 with a can of mace. They took off running. She followed
6 after them and they got into a vehicle. She was able to
7 get a license plate number and from that point, we
8 responded to the registered owner's address.

9 Q She gave you a license plate number.
10 You, through your computer, were able to tell who the
11 registered owner and the address was of that registered
12 owner?

13 A That's correct.

14 Q Did the registered owner turn out to be
15 a co-defendant of Mr. Castillo?

16 A Yes, it was.

17 Q When you went to that house, what
18 occurred?

19 A Sergeant Dalkowski, another of the
20 officers that was there at the scene, spoke with the
21 defendant's mother and she said that --

22 Q When you say defendant, you don't mean
23 Mr. Castillo, you mean Mr. Delzer?

24 A Correct, the registered owner. Spoke
25 with the registered owner's mother and she indicated that

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1 she had just gotten off the phone with her son, that she
2 knew there might be a problem because her son indicated
3 that they had gone over to beat someone up and they had
4 mistakenly kicked in the wrong door and she said that it
5 was under her understanding that they were both on their
6 way back to the residence as we spoke.

7 Sure enough, shortly after, and I mean
8 within about five minutes, both defendants pulled up in the
9 same suspect vehicle and were immediately taken into
10 custody, read their Miranda rights, at which point Mr.
11 Castillo admitted that they had intentionally gone over to
12 that residence in order to rob the house and his words were
13 rob the house as opposed to burglarize the house.

14 Q So although Mr. Delzer told his mom
15 that they were going to beat somebody up and got the wrong
16 house, Mr. Castillo's story was they kicked in the door to
17 rob the house?

18 A That's correct.

19 Q Did you place Mr. Castillo under
20 arrest?

21 A Yes, we did.

22 Q Now it's been six years. You may or
23 may not be able to recollect Mr. Castillo. Yes or no?

24 A Like you say, it's been six years. I'm
25 assuming that this would be Mr. Castillo, but, no, I can't

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1 recognize him.

2 Q Did you, in your report, indicate the
3 date of birth of the person that you booked as Mr. William
4 Castillo?

5 A I believe date of birth and social
6 security number.

7 Q If you refer to your report, could you
8 give us that date, please.

9 A Date of birth would be 12/28/72.

10 Q Did you, when you arrested Mr.
11 Castillo, did you search him in the ordinary course of
12 performing your police duties?

13 A Yes, sir, we did.

14 Q Did you find anything unusual?

15 A Yes, I did. I found a fully loaded
16 .7.65 caliber semi automatic pistol in the front waistband
17 of his pants.

18 Q Was this readily visible or concealed
19 upon his person?

20 A It was concealed on him.

21 Q Did you do further investigation to see
22 if it belonged to Mr. Castillo?

23 A It turned up that it was not
24 registered.

25 Q Did you take the gun into custody?

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1 A The gun was impounded and he was also
2 placed under arrest for attempt burglary and also for
3 carrying an unregistered firearm.

4 Q Did there come a time when you did a
5 background check on Mr. Castillo and found out that he had
6 outstanding warrants?

7 A Yes, we did. We found out he had
8 outstanding warrants on him for being an escapee from
9 Elko.

10 Q Did you also book him on that?

11 A I believe we did, yes.

12 Q Did he acknowledge to you that, at the
13 time of the hot prowler burglary, he had the gun out?

14 A He did not to me. That was later
15 learned by the investigator Detective Morgan.

16 Q Is that in official police records
17 somewhere?

18 A Yes, it is.

19 MR. BELL: Nothing further, Judge.

20 THE COURT: Cross.

21 . . .

22 . . .

23 . . .

24 . . .

25 . . .

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 CROSS EXAMINATION

2 BY MR. SCHIECK:

3 Q Detective Eylar, you had contact

4 directly with Mrs. Mills?

5 A Yes, I did.

6 Q Was she physically hurt in any way?

7 A No, she was not.

8 Q And did the two individuals actually

9 make it inside of her house or did, when the door came

10 opened, she sprayed the mace and they ran out?

11 A She never did spray the mace. She was

12 standing there holding it, it's my understanding what she

13 told me. I have to agree with that because I never smelled

14 the mace lingering in the house. I do not know if they set

15 foot within her residence or she was right there and they

16 took off from the front porch.

17 Q So the door comes open, they see her,

18 and they take off running?

19 A That's correct.

20 Q Thank you.

21 MR. SCHIECK: That's all I have.

22 MR. BELL: Nothing further, Judge.

23 THE COURT: May this witness be discharged?

24 MR. BELL: He may.

25 THE COURT: Thank you, sir. You may step

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1 down.

2 Call your next witness.

3 MR. HARMON: Paul Ehlers.

4 (Off the record discussion not reported.)

5 MR. HARMON: Your Honor, could we be at ease
6 for just a few minutes.

7 THE COURT: Sure.

8 MR. HARMON: Apparently the witness stepped
9 away from the hallway.

10 THE COURT: Ladies and gentlemen of the
11 jury, if you wish, you can stand up and stretch if you'd
12 like.

13 (Off the record discussion not reported.)

14 MR. SCHIECK: Your Honor, could we
15 approach?

16 THE COURT: Yes.

17 (Off the record discussion not reported.)

18

19 PAUL EHLERS,

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

23

24 THE CLERK: State your name.

25 THE WITNESS: First name is Paul. Last name

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Ehlers, E-H-L-E-R-S.

2 THE COURT: All right, before we commence
3 with the testimony from this witness, ladies and gentlemen
4 of the jury, we have all agreed that I should inquire now
5 as to whether any of you will be celebrating the religious
6 holiday on Monday?

7 Yes, ma'am. That's Ms. Malmedal?

8 JUROR NO. 2: Correct.

9 THE COURT: All right, counsel approach the
10 bench.

11 (Off the record discussion not reported.)

12 THE COURT: Ms. Malmedal, may I inquire as
13 to whether you wish to forego your jury service on Monday
14 because of your celebration on the holiday?

15 JUROR NO. 2: Will the Court be meeting on
16 Monday?

17 THE COURT: Well, the Court would ordinarily
18 be meeting on Monday, but in deference to you, we're not
19 going to go if your feelings are such that you feel you
20 can't proceed on Monday.

21 JUROR NO. 2: I would like to go to temple
22 on Monday, but I hate to hold up the Court.

23 THE COURT: No, no. This is not that kind
24 of priority.

25 JUROR NO. 2: Okay.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 THE COURT: What time are you going to be
2 going to temple on Monday?

3 JUROR NO. 2: It's usually all day on
4 Monday.

5 THE COURT: In this case, counsel, we will
6 complete the trial on Tuesday.

7 JUROR NO. 2: Thank you.

8 THE COURT: All right. So we will not be
9 holding proceedings on Monday and we will be starting up
10 probably at 10:00 on Tuesday and we should be concluded --
11 we should conclude the proceedings on Tuesday.

12 All right.

13 MR. HARMON: Thank you, Judge.

14

15 DIRECT EXAMINATION

16 BY MR. HARMON:

17 Q Is Officer Paul Ehlers?

18 A Yes, sir.

19 Q Officer Ehlers, where are you employed?

20 A I work for the Las Vegas Metropolitan
21 Police Department.

22 Q How long have you worked with that
23 department?

24 A I have been with this department a
25 little over five years now.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q What are your duties?

2 A I'm assigned right now to the patrol
3 division, which I have worked throughout the five years.

4 Q As a patrol officer, on December the
5 14th, 1992, did you have occasion to become involved in
6 investigating a robbery which occurred where Patricia Rizzo
7 was the victim?

8 A Yes, I did.

9 Q Will you explain how you became
10 involved in the investigation and approximately what time
11 it was.

12 A I was on regular patrol on that night
13 at approximately 1:15 in the morning and I had observed a
14 vehicle being driven at a high rate of speed and attempting
15 to effect a traffic stop on that vehicle.

16 Q Describe the vehicle.

17 A That vehicle was a light and blue
18 colored Ford Escort Wagon with no license plates on it.

19 Q Where did you first site the Ford
20 Escort Wagon?

21 A I observed that vehicle pulling out of
22 the rear -- it would be the east parking lot of the Hilton
23 Hotel onto Joe W. Brown Street.

24 Q The Las Vegas Hilton Hotel?

25 A Yes, sir.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q At the time you first observed the
2 vehicle, did you know anything about a robbery which had
3 occurred to Patricia Rizzo?

4 A No, I did not.

5 Q What did you do when you saw the
6 vehicle?

7 A The vehicle was driving at a very
8 erratic manner at a high rate of speed, swerving across
9 several lanes, squealing around the coroners. It's kind of
10 a windy, bendy road. I wasn't sure if the driver may have
11 been intoxicated or what it was, but due to the reckless
12 driving of the vehicle, I attempted to stop it by using the
13 red lights on my police vehicle.

14 Q Did the vehicle stop?

15 A No, it does not.

16 Q Explain what happened.

17 A The vehicle failed to stop for me. I
18 continued to use the radio and asked for additional units.
19 They turned westbound on Sierra Vista off Swenson, which
20 comes up to Joe W. Brown. The vehicle continued up to the
21 intersection up at Paradise and Sierra Vista where it
22 failed to stop for a stop sign, striking a separate car,
23 causing an accident at that point.

24 Q Did the vehicle you were chasing stop
25 at the time of the accident?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A No, it does not.

2 Q Explain what occurred.

3 A The vehicle struck a blue Buick two

4 door. It was travelling northbound on Paradise. That

5 vehicle spun out at that point and the light blue Ford

6 Escort continued to travel northbound on Paradise. I

7 immediately radioed for additional units that a accident

8 had occurred, requested units immediately to respond to

9 that location, as I continue to pursue the Ford Escort.

10 Q Did you have your lights on?

11 A Yes.

12 Q Alerting the vehicle that you wanted it

13 to stop?

14 A Yes, lights and siren.

15 Q You were in a marked vehicle?

16 A Yes, marked black and white patrol

17 vehicle.

18 Q Did there come a time when the Ford

19 Escort did pull over?

20 A Yes. I continued to pursue that

21 vehicle with additional patrol units that were coming to

22 assist. Additional units had come southbound on Paradise

23 in front of the convention center and the light blue Ford

24 Escort did then pull over after approximately five to six

25 police cars were right at the vicinity almost boxing him in

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 about the 3200 block right in front of the convention
2 center on Paradise Road.

3 Q How many occupants were there inside
4 the Ford Escort?

5 A The vehicle was occupied by two people,
6 a driver and another subject passenger in the front seat.

7 Q Did you identify the two individuals?

8 A Yes. Both individuals were identified
9 verbally, as well as by driver's license and identification
10 that they had.

11 Q Who was the driver?

12 A The driver of that vehicle was a Mr.
13 Frank Martin.

14 Q Who was the passenger?

15 A Passenger in the vehicle was a William
16 Castillo.

17 Q At some point, did you commence an
18 interview of the occupants of the car?

19 A Yes, I did. Both of those occupants
20 were taken out of the vehicle, placed in handcuffs, and
21 further placed into a patrol vehicle at that time where
22 they were identified.

23 Q Did you, Officer, during this time
24 frame, receive radio dispatch information regarding a
25 robbery which involved Patricia Rizzo occurring in the

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 parking lot area of the Las Vegas Hilton Hotel?

2 A Yes, I did. At about the same time
3 that the Ford Escort was actually being stopped in front of
4 the convention center, they had pulled over and the pursuit
5 had basically stopped at that point. I did receive radio
6 traffic over the radio and also through my computer system,
7 which had stated that a robbery had just occurred at the
8 Las Vegas Hilton listing a victim and a brief description
9 of the suspects and the vehicle.

10 Q Did you learn a purse had been taken?

11 A Yes, I did.

12 Q Did it also come to your attention
13 shortly after that, that a purse had been recovered by a
14 citizen who had witnessed the accident?

15 A Yes, I did.

16 Q Additional units had responded to the
17 accident at the corner of Paradise and Sierra Vista.
18 Patrol officers had arrived at about the same time that we
19 had effected the stop on the vehicle, maybe two, three
20 blocks up the road on Paradise. A witness at that scene
21 had stated that he had seen a purse thrown out of the
22 vehicle that I had been chasing, that being the light blue
23 Ford Escort, and upon him looking in it, he did see a gun
24 and immediately notified the traffic and responding police
25 officers that were there that he observed this purse come

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 from the vehicle that we had been chasing.

2 Q Did there come a time when you had a
3 chance to examine personally the purse?

4 A Yes, I did.

5 Q The purse was immediately brought to
6 the scene where I was at by one of the patrol officers
7 there, as well as the witness, a Mr. Fowler, that had seen
8 the purse come out of the vehicle.

9 Q What did you observe inside of the
10 purse?

11 A Inside of the purse contained several
12 cosmetic and toiletry items, identification. There was
13 also a small stainless steel silver .25 automatic Raven
14 handgun that was loaded inside of the purse, as well as a
15 narcotics marijuana pipe and a small Secrets tin that
16 contained about three and a half, four grams of marijuana.

17 Q Subsequently, did the victim, Patricia
18 Rizzo, respond to the scene of the stop of the suspects
19 Frank Martin and William Castillo?

20 A Yes, she did. A patrol unit was
21 immediately dispatched up to the location up at the Hilton
22 where they contacted Mrs. Rizzo. She relayed the events
23 that had happened, a crime report was completed, and she
24 was immediately brought over to the location where we had
25 the subjects stopped at.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q What was the information you received
2 about how the crime had occurred?

3 A Mrs. Rizzo had related that she and a
4 friend of hers, Mrs. Tulner, were in town visiting Las
5 Vegas and that they were walking on Riviera Drive from up
6 on the boulevard eastbound where they were staying at the
7 Hilton and that while they were walking on the sidewalk
8 that leads into the Hilton area, that she had her purse
9 draped over her left shoulder and that she was holding onto
10 her purse and she was walking along the sidewalk and that
11 she heard a vehicle coming up slowly behind her, a small
12 compact, light blue vehicle.

13 As she started to turn around and look, a
14 subject pulled his hand out of the passenger side window
15 grabbing onto her shoulder and the purse and attempting to
16 yank the purse from her. She stated, as well as Mrs.
17 Tulner who was walking with her and witnessed this, that
18 Ms. Rizzo was pulled and yanked against the vehicle as it
19 slowly drove and kept driving and almost dragged her
20 along. The subject she had clearly seen continued to pull
21 until the actual strap on the purse was broken and then the
22 vehicle had fled through the parking lot eastbound through
23 the Hilton.

24 MR. HARMON: May I approach the witness,
25 your Honor?

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1 Q Officer Ehlers, I'm showing you a two
2 page statement. It's marked as Proposed Exhibit 123,
3 appears to be signed by Patricia Rizzo. Are you able to
4 identify that as a handwritten statement received from Mrs.
5 Rizzo giving her account of how the crime occurred?

6 A Yes, it is. I was present, along with
7 the officer who witnessed this, when she completed this.

8 Q Is it a true and accurate copy of the
9 original statement?

10 A Yes, it is.

11 MR. HARMON: Your Honor, State offers
12 Proposed Exhibit 123.

13 MR. SCHIECK: No objection, your Honor.

14 THE COURT: Same will be received in
15 evidence.

16 MR. HARMON: Thank you.

17 Q Was Patricia Rizzo shown the purse
18 which had been located by the citizen witness, Michael
19 Fowler?

20 A Yes. We asked her if she could
21 identify it. Additionally in the purse we had found
22 identification in her name. The purse had approximately
23 \$500 in it additionally with identification on her. She
24 did identify the purse as hers and we also looked at the
25 identification in it.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q Did Mrs. Rizzo identify the Raven .25
2 caliber loaded semi automatic firearm, the small amount of
3 marijuana or the smoking pipe?

4 A No, she did not. We had actually,
5 without her seeing the purse first, had asked her what the
6 contents in the purse were. She basically stated
7 everything that was in there except for the narcotics, the
8 pipe, and the weapon and again after that, we asked her if
9 she had owned a weapon at any time this had belonged to
10 her, which again she stated no.

11 Q Did you have a conversation with the
12 defendant, Mr. Castillo, at the scene of the arrest?

13 A Yes, I did. Both Mr. Castillo and Mr.
14 Martin were advised of their legal rights after being
15 placed under arrest. They both stated they understood
16 their rights and were willing to discuss the incident with
17 me briefly.

18 Q Did Mr. Castillo admit that he was
19 involved in the robbery offense?

20 A Yes, he did. Mr. Castillo did say that
21 he had been down on his luck for awhile, it was hard to
22 find work, and he apologized for what he had done. Said he
23 was wrong for taking the purse, but he had done it because
24 he wanted money.

25 Q Did Mr. Castillo tell you that he was

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1 an ex-felon?

2 A Yes, he did.

3 Q Did he mention who it was personally
4 that had taken the purse from Patricia Rizzo?

5 A Yes. He had stated he was in the
6 passenger seat and he was the subject that yanked the purse
7 and forcibly pulled it off her shoulder.

8 Q Did you confront Mr. Castillo with the
9 items which were inside the victim's purse?

10 A Yes, I did. I had asked him if the
11 weapon had belonged to him or if he had placed it in there
12 and thrown the purse out. Mr. Castillo did state that he
13 placed the pipe, the marijuana, and the weapon inside of
14 the purse after he had taken it during the pursuit and then
15 he had thrown it out of the car after they collided causing
16 the accident at Paradise and Sierra Vista.

17 MR. HARMON: Thank you. That concludes
18 direct, your Honor.

19 THE COURT: Cross examination.

20 MR. SCHIECK: Thank you, your Honor.

21

22 CROSS EXAMINATION

23 BY MR. SCHIECK:

24 Q You had contact directly with Mrs.
25 Rizzo?

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1 A Yes, I did.

2 Q Was she physically injured when you
3 talked with her?

4 A We didn't see any serious marks,
5 abrasions or contusions. She did state -- she seemed to be
6 very shaken up about the incident at that time. We asked
7 her if she needed any medical attention immediately in
8 which she stated she didn't at that time, but from any
9 injuries, she did state that she was sore in the left side
10 area where she had been pulled up against the car and from
11 the purse being ripped off her.

12 Q That's over the struggle over the purse
13 and her going up against the car?

14 A Yes, sir.

15 Q Did she ever state to you that she had
16 been hit with a fist or any weapon?

17 A No. She did state she had been
18 grabbed, but not physically punched or anything, no.

19 Q And when you interviewed Mr. Castillo,
20 was he in your police car?

21 A Yes, he was.

22 Q And he cooperated with you and
23 basically told you what had happened?

24 A Reluctantly a little bit with the
25 evidence, after Mrs. Rizzo had positively identified him as

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1 the suspect, as well as the vehicle being involved, yes, he
2 did admit to it.

3 Q Admitted everything that he had put in
4 the purse?

5 A He admitted that he had placed those
6 objects in the purse and had thrown them out. I had asked
7 who the gun did belong to. Mr. Castillo stated that the
8 weapon did not belong to him. The weapon had a filed off
9 serial number on it and we were unable to run it or
10 ascertain whether the weapon was registered or not. It is
11 common for us police to encounter weapons that way. They
12 are usually are stolen.

13 Q Did the other individual, Mr. Martin
14 was the one driving the car?

15 A Yes, he was.

16 Q He was the one that led you on the
17 chase?

18 A Yes, he was the driver of the vehicle.

19 Q And caused the accident at Paradise and
20 Sierra Vista?

21 A He was the driver of the vehicle, yes,
22 sir.

23 Q And Mr. Castillo indicated to you that
24 he was sorry for having done this?

25 A He stated that he knew it was wrong.

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1 Q What about Mr. Martin, did Mr. Martin
2 talk with you also?

3 A Yes, Mr. Martin briefly spoke with me.

4 Q Did he tell you the same thing that Mr.
5 Castillo did?

6 A Mr. Martin had stated that it wasn't
7 his idea and that initially he had just been driving when
8 Mr. Castillo had decided to commit this act and lean out
9 and grab the purse. He also denied any involvement with
10 the weapon stating it did not belong to him. The vehicle
11 was registered to him, though.

12 Q They were interviewed separately or
13 both together?

14 A Separately at first and then both were
15 in the vehicle together at one point.

16 MR. SCHIECK: Thank you. That's all I
17 have.

18 MR. HARMON: No redirect, your Honor.

19 THE COURT: May this witness be discharged?

20 MR. HARMON: Yes, your Honor.

21 THE COURT: Thank you. You may step one.

22 THE WITNESS: Thank you.

23 THE COURT: We will take a recess at this
24 time, ladies and gentlemen of the jury. During this
25 recess, I would remind you it is your duty not to converse

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1 among yourselves or with anyone else on any subject
 2 connected with this trial or to read, watch, or listen to
 3 any report of or commentary on this trial or any person
 4 connected with this trial by any medium of information,
 5 including, without limitation, newspapers, television, or
 6 radio, and you are not to form or express an opinion on any
 7 subject connected with this case until it is finally
 8 submitted to you.

9 We will be reconvening at 20 minutes until
 10 11:00. We will be at ease while you depart the confines of
 11 the courtroom.

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

13 THE COURT: Can I see counsel in the hallway
 14 for a moment.

15
 16 (Off the record at 10:25 a.m. and back on
 17 the record at 10:43 a.m.)

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

20 MR. BELL: Yes, your Honor.

21 MR. LaPORTA: Yes, your Honor.

22 THE COURT: You may call your next witness.

23 MR. HARMON: Mark Berg.

24

25 MARK BERG,

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1 having been first duly sworn to tell the truth, the whole
2 truth and nothing but the truth, testified and said as
3 follows:

4
5 THE CLERK: State your name.

6 THE WITNESS: Mark Berg.

7
8 DIRECT EXAMINATION

9 BY MR. HARMON:

10 Q Will you spell your last name, please.

11 A B-E-R-G.

12 Q Mr. Berg, what is your business or
13 occupation?

14 A I'm a senior correctional officer for
15 the Department of Prisons in Nevada.

16 Q What is a senior correctional officer?

17 A What I am currently doing is training
18 new officers and I run a lock down unit in our facility.

19 Q You've indicated that you work for the
20 Nevada Department of Prisons?

21 A Yes, sir.

22 Q How long have you worked with that
23 Department?

24 A Almost six years.

25 Q During the course of your employment,

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1 have you had contact with the defendant in this case,
2 William Castillo?

3 A Yes, I have.

4 Q Do you see Mr. Castillo in court this
5 morning?

6 A Yes, I do.

7 Q Will you point to him and describe some
8 article of clothing he is wearing today in court.

9 A He's wearing a green tie. A white
10 shirt and green tie in the front row.

11 MR. HARMON: Your Honor, may the record
12 reflect that the witness has identified the defendant, Mr.
13 Castillo?

14 THE COURT: Yes.

15 MR. HARMON: Thank you.

16 Q Mr. Berg, does the Nevada Department of
17 Prisons and its various facilities have certain prison
18 rules?

19 A That's correct.

20 Q Are records maintained of any
21 infractions of prison rules which may occur by inmates?

22 A Yes, they are.

23 Q Where are you assigned now, to which
24 facility, sir?

25 A Northern Nevada Correctional Center in

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1 Carson City.

2 Q When you had contact with Mr. Castillo,
3 was it at the same facility?

4 A Yes, it was.

5 Q The Northern Nevada Correctional
6 Center?

7 A Yes, sir.

8 MR. HARMON: May we have the Court's
9 indulgence, your Honor.

10 (Off the record discussion not reported.)

11 MR. HARMON: May I approach the witness,
12 Judge?

13 Q Mr. Berg, I'm showing you a document,
14 which has been marked as Proposed Exhibit 127. Do you
15 recognize what this is?

16 A Yes, I do.

17 Q What are the various pages which make
18 up Proposed 127?

19 A There's a document of notice of
20 charges, which the officer or the staff member first writes
21 on the rule violation. There's several pages of the
22 disciplinary committee forms, disciplinary 1 and 2 forms
23 that are used when they go into the disciplinary committee
24 to go over the case of the infraction that the individual
25 has committed.

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1 Q Mr. Berg, as you look through the rest
2 of Proposed Exhibit 127, are all of these records which
3 relate to various infractions and also disciplinary forms
4 of the Nevada State Prison system?

5 A Yes, they are.

6 Q Do they relate to the Northern Nevada
7 Correctional Center at Carson City?

8 A Yes, they do.

9 Q To which inmate?

10 A William Castillo.

11 Q The defendant who is here in the
12 courtroom?

13 A Yes, sir.

14 Q Are all of these records prepared,
15 kept, and maintained as part of the ordinary course of
16 business of the Northern Nevada Correctional Center at
17 Carson City?

18 A Yes, they are.

19 Q Are the records certified to be true
20 and correct?

21 A Yes, they are.

22 MR. HARMON: Your Honor, the State offers
23 proposed Exhibit 127.

24 MR. SCHIECK: No objection, your Honor.

25 THE COURT: Same will be received.

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1 MR. HARMON: Thank you.

2 Q Officer Berg, I want to direct your
3 attention to on or about November the 30th, 1993 and to the
4 extent that you need to, feel free to refer to the records
5 now in evidence as Exhibit 127.

6 On or about November the 30th, 1993, is
7 there a report or reports that relate to an assault at the
8 Nevada Correctional Center involving Mr. Castillo, the
9 defendant, certain other inmates, and an inmate victim?

10 A Yes, sir.

11 Q Tell us what happened on November the
12 30th, 1993.

13 A The report was written by Officer
14 Pacatte, which was our investigation officer.

15 Q Spell Pacatte for the record.

16 A P-A-C-A-T-T-E.

17 Q Thank you.

18 So Officer Pacatte actually investigated the
19 situation?

20 A Yes, sir.

21 Q What does the record reflect?

22 A It reflects that an inmate had been
23 assaulted because of being labeled as a snitch or an
24 informant to the corrections officer of the whereabouts of
25 tattooing equipment.

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1 Q Do you recall the name of the inmate
2 who had been assaulted?

3 A No, I do not.

4 Q But he was also a prisoner at the
5 Northern Nevada Correctional Center?

6 A Yes, he was.

7 Q Does the record indicate how badly he
8 was beaten?

9 A It states that he was beaten so
10 severely, that he had to be admitted into our prison
11 hospital.

12 Q Beaten by whom?

13 A Inmate Castillo and several other
14 inmates.

15 Q Are the other inmates identified?

16 A No.

17 Q Now, you've mentioned that the beating
18 stemmed, according to the report, from this victim inmate
19 being labeled a snitch or an informant?

20 A Correct.

21 Q It related to the location of some
22 tattooing equipment?

23 A Yes.

24 Q Where was the tattooing equipment
25 located?

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1 A I'm not sure of the location.

2 Q Could you examine some of the other
3 reports very quickly, which make up Exhibit 127, and then
4 tell us if, in fact, the tattooing equipment was found by
5 correction officers inside Mr. Castillo's cell?

6 A There was a disciplinary report from an
7 Officer Hansen that he found tattooing equipment in William
8 Castillo's housing location.

9 Q That would be the cell where he was
10 housed?

11 A That's correct.

12 Q Was some type of discipline
13 administered to the offending inmates, including Mr.
14 Castillo, for the assault upon the inmate in this
15 situation?

16 A Yes.

17 Q I want to direct your attention now to
18 several months later, January the 13th, 1994. Was there
19 another infraction on that date which involved a security
20 breach?

21 A Yes, there was.

22 Q Tell us what happened.

23 A On 13 January, '94, I was running a lock
24 down unit, a closed custody unit at the Northern Nevada
25 Correctional Center. At about 8:25, I was completing a

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1 security check of the B wing.

2 Q A.m. or p.m.?

3 A P.m.

4 At this time, I had cells 19 through 30 open
5 and the inmates were showering and using the phone. I was
6 walking down the wing and I noticed that cell 8 was
7 opened. William Castillo was assigned to cell 8. I
8 inspected the door and I found that there was a piece of
9 paper stuck or jammed into the door lock and that kept it
10 from securing and that allowed Castillo from -- or allowed
11 him to open the door at will.

12 Q Was that a violation of facility
13 rules?

14 A Yes, it was.

15 Q Is it considered to be a breach of
16 security when a lock to a cell is jammed in that fashion?

17 A Yes, it is.

18 Q Why is that a concern to prison
19 officials?

20 A Not being able to secure the locks or
21 the doors allows the inmates to, basically, come and go as
22 they please, allows no security for the institution, and a
23 majority of times, that's when a lot of assaults or illegal
24 activities happen when there are secure -- when our
25 security breaks down.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q Do you know if Mr. Castillo had been
2 warned on previous occasions --

3 A Yes, he had.

4 Q -- as a result of the same type of
5 behavior?

6 A Yes, he had.

7 Q Was he disciplined for this rule
8 violation also?

9 A Yes, he was.

10 Q I want to direct your attention now to
11 August the 5th, 1994. On or about that date, Officer Berg,
12 was Mr. Castillo involved in another assault upon a fellow
13 inmate?

14 A Yes, he was.

15 Q Tell us what happened, sir.

16 A On August 5th, 1994, at approximately
17 6:35 p.m., an inmate approached Officer Marlowe. He was a
18 unit 3 officer, which is the same housing location of
19 William Castillo at that time.

20 Q Is Marlowe spelled M-A-R-L-O-W?

21 A E.

22 Q L-O-W-E and Marlowe is another
23 corrections officer?

24 A Yes, sir.

25 Q Will you proceed, please.

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1 A An inmate approached him and said he
2 had been hit with a lock. They contacted myself, which was
3 a search and escort officer, responding officer and
4 contacted medical.

5 Q Did you respond and observe the inmate
6 who reported he had been hit with a lock?

7 A Yes, I did.

8 Q Did you see his condition?

9 A Yes, I did.

10 Q Was there evidence of injury?

11 A Yes.

12 Q What did you observe?

13 A I observed one inmate standing in the
14 rotunda area with a large abrasion, a gash to his forehead
15 approximately one inch by three quarters inch at a right
16 angle and he was bleeding from his forehead.

17 Q At a right angle. You indicated the
18 left eye. Is it the right or left eye?

19 A All I can remember is on his forehead.

20 Q Did you observe also his alleged
21 assailant in close proximity at that time?

22 A What had happened, when Officer Marlowe
23 and myself and other unit officers were securing the unit,
24 the inmate pointed to us that his assailant was walking in
25 the rotunda. At that time, I pat searched William Castillo

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1 and placed restraints on inmate Castillo.

2 Q Why did you place restraints upon him?

3 A The other inmate pointed to him and
4 said that's the -- pointed to inmate Castillo. He's the
5 one right there.

6 Q Did Mr. Castillo make any comments at
7 that point about whether he had been involved in the
8 assault?

9 A Yes, he did.

10 Q What did he say?

11 A He started yelling to the other inmate,
12 "You better watch it," or yelling, "That's why I hit you
13 cause you are a punk. You better PC because if you are on
14 the yard, I'm going to cut you, cut you deep."

15 Q Did you take that to be a threat by
16 Castillo directed toward the inmate he admitted hitting?

17 A Absolutely.

18 Q What does PC mean? You said the
19 defendant yelled, "You PC up?"

20 A PC is a term we use as protective
21 custody. This is a classification for inmates who are in
22 danger from other inmates and we have to place them into
23 this classification for their safety.

24 Q You said that Mr. Castillo was
25 restrained. Are you referring to the defendant William

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1 Castillo who is here in the courtroom?

2 A Yes, I am.

3 Q Did he suffer any type of disciplinary
4 action because of this second assault?

5 A Yes, he had.

6 Q What type of action was taken?

7 A Disciplinary actions he received from
8 this assault, he received 15 days disciplinary detention
9 and 60 days disciplinary segregation. That's what he
10 received for that assault.

11 Q What does the disciplinary segregation
12 refer to?

13 A What the disciplinary segregation is,
14 it's a classification. It's a sanction from the
15 disciplinary committee for severe rule violations. These
16 inmates have to be segregated for disciplinary purposes
17 away from the general population for their rule
18 infraction.

19 Q Are assaults by an inmate upon a fellow
20 inmate considered severe rule violations at the Northern
21 Nevada Correctional Center?

22 A Yes, they are.

23 Q Was Mr. Castillo basically held in
24 isolation for lock down for a period of time?

25 A Yes, he was.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q Did you have occasion to see this
2 inmate who was hit with a lock some months later to see
3 whether he still carried any mark of the assault?

4 A I witnessed the inmate approximately
5 six months later at a minimum conservation camp and he did
6 have a large scar on his forehead.

7 Q After the assault occurring on August
8 the 5th, 1994, while Mr. Castillo, the defendant, was held
9 in lock down, did you have various conversations with him
10 about conduct he had engaged in with his friends or
11 associates in Las Vegas?

12 A Yes, I did.

13 Q What did he tell you?

14 A He would tell me about some of his
15 activities. He would get high on drugs and his friends
16 would get into a car and go down Downtown Las Vegas or on
17 the Strip and they would point loaded guns at people and he
18 referred to these things as funny and he also said he would
19 rob people.

20 Q He described these incidents as being,
21 did you say funny?

22 A Yes.

23 Q Did he say whether it was hard or easy
24 to commit these types of crimes?

25 A He said it was easy.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q You mentioned he said he would do this
2 when he was high on drugs?

3 A Yes.

4 Q Did he identify any particular drug?

5 A Methamphetamine.

6 Q Did he tell you how frequently he and
7 his associates would engage in this type of conduct with
8 guns?

9 A Said they would do it all the time.

10 MR. HARMON: May we have the Court's
11 indulgence, your Honor?

12 (Off the record discussion not reported.)

13 Q (BY MR. HARMON) Officer Berg, do you
14 know why the defendant, Mr. Castillo, was sharing with you,
15 a corrections officer, his conduct in Las Vegas?

16 MR. SCHIECK: I'm going to object. It calls
17 for speculation as to why Mr. Castillo was doing anything.

18 THE COURT: I don't think that's the way the
19 question is couched. Overruled.

20 THE WITNESS: When he would tell me, he
21 would say it in a bragging manner.

22 MR. HARMON: That's all, your Honor.

23 THE COURT: Cross examination.

24 MR. SCHIECK: Thank you.

25 . . .

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 . . .

2 CROSS EXAMINATION

3 BY MR. SCHIECK:

4 Q Officer Berg, you have been a
5 correctional officer for how long?

6 A Almost six years.

7 Q Other inmates have bragged to you?

8 A Yes.

9 Q Is it fair to say that inmates in the
10 prison system tend to like to talk?

11 A Yes.

12 Q Talk big?

13 A Yes.

14 Q Make themselves look more important?

15 A Yes.

16 Q Isn't that a form of -- I don't want to
17 say protection, but a form of puffing yourself to make
18 yourself better than you really are so that, perhaps, you
19 won't be picked on?

20 A Sometimes.

21 Q Inmates do that?

22 A Sometimes.

23 Q You talked about two assault
24 incidents. Do you still have Exhibit 127 there in front of
25 you?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 A Yes, I do.

2 Q Can I see it for just a second. Thank
3 you.

4 Now, the incident that occurred in October
5 of 1993 -- let me withdraw that and ask another question.

6 If an inmate is going to be disciplined, he
7 as a right to go to a disciplinary hearing and contest the
8 charges; is that true?

9 A It depends on the charges.

10 Q With respect to the incidents that
11 occurred in October of 1993, was there a disciplinary
12 hearing held on that incident?

13 Excuse me, on November 30th, 1993?

14 A Yes, there was.

15 Q And at a disciplinary hearing,
16 witnesses basically testify before the disciplinary board?

17 A Yes, they do.

18 Q And with respect to this specific
19 disciplinary hearing, did it occur on December 15th, 1993?

20 A Yes, it did.

21 Q Yes, it did?

22 A (Witness shook head affirmatively.)

23 Q And at that disciplinary hearing,
24 witnesses were called to testify; is that correct?

25 A Yes.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q And there is witness information on the
2 forms that you have there?

3 A Yes.

4 Q Now, the names of some of the witnesses
5 have been blacked out; is that correct?

6 A Yes.

7 Q Is that normal policy with the prison
8 for privacy reasons?

9 A I'm not sure.

10 Q Under the witness information, it shows
11 that at least one correctional officer testified; is that
12 correct?

13 A As far as I can tell through the
14 blacked out mark.

15 Q It indicates someone by the name of
16 Anderson had said some things under the comments section?

17 A Uh-huh.

18 Q Is that yes?

19 A Yes.

20 Q Who is Anderson?

21 A It doesn't say.

22 Q Does it indicate that Anderson was an
23 inmate?

24 A No.

25 Q Does it indicate that Anderson

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 indicated that he saw no marks or abrasions on inmate
2 Castillo's body during the skin search?

3 A That's correct.

4 Q What is a skin search?

5 A It is an unclothed body search.

6 Q Where you are looking at the person's
7 body for marks or abrasions?

8 A That is correct.

9 Q And do you know -- have any idea who
10 this Anderson person is who did a skin search on Mr.
11 Castillo?

12 A If it's Officer Anderson, yes.

13 Q Is there an Officer Anderson?

14 A Yes, there is.

15 Q Now under the inmate statement, would
16 that be an inmate that had testified at the proceeding?

17 A Yes.

18 Q And the name of the inmate that
19 testified on behalf of Mr. Castillo, that name is blacked
20 out also; is that correct?

21 A Yes.

22 Q Could that be the victim's name that is
23 blacked out under the inmate's statement?

24 A It could be both.

25 Q Well, let me read what the inmate

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1 statement says. "Blank indicated that blank came up behind
2 him and hit him blind side. So he commenced beating him
3 up. Said that Castillo just told Harper to clean up the
4 blood, but had nothing to do with the beating. Castillo
5 stated he had no marks on him, yet blank had abrasions and
6 cut up hands."

7 Is that correct?

8 A Yes.

9 Q So that's the summary of the testimony
10 that was received at this disciplinary hearing?

11 A Yes.

12 Q Was the other inmate that was involved
13 in this incident by the name of Speer, S-P-E-E-R?

14 A I'm not sure. I don't have that
15 documentation.

16 Q Now, before an inmate goes to a
17 disciplinary hearing, he is entitled to notice of the
18 charges; is that correct?

19 A Yes.

20 Q Are the notice of charges contained in
21 your --

22 A Yes, they are.

23 Q And that's something that's prepared by
24 the charging employee, which in this case was Mr. Pacatte?

25 A Pacatte, yes.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q And, again, names have been blacked out
2 in this information; is that true?

3 A Yes.

4 Q Except for the name of Mr. Castillo
5 because this is his file and, therefore, his name isn't
6 deleted?

7 A Correct.

8 Q Was a report or violation typed up and
9 included on this notice of charges by Officer Pacatte?

10 A The rule violations?

11 Q Yeah, the report of violation.

12 A Yes.

13 Q And is this what Officer Pacatte typed
14 up in his report of the violation on November 30th, 1993,
15 "At approximately 5:10 p.m., I was informed by Lieutenant
16 Ken Webb that inmate blank had been badly beaten."

17 Now that blank would be the victim; is that
18 correct?

19 A Yes.

20 Q "And was being admitted to the
21 infirmary due to the serious nature of his injuries. At
22 approximately 5:15, I interviewed blank in the infirmary."

23 That again is the victim being interviewed;
24 is that correct?

25 A Yes.

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1 Q "During the interview, blank, the
2 victim, related the following." That blank again would
3 relate to the victim, correct?

4 A Yes.

5 Q Okay.

6 "That inmate blank had accused him of
7 informing correctional officers as to the whereabouts of
8 some tattooing equipment. The equipment was discovered and
9 Speer had received a notice of charges for possession of
10 those items. Blank, the victim again, states that blank
11 destroyed his television by pouring water into the back of
12 it."

13 Is that correct?

14 A Yes.

15 Q That name has been omitted indicating
16 that's not Mr. Castillo, correct?

17 A Right.

18 Q "This was done to pay him back for
19 informing on him. Blank," which again is not Mr. Castillo,
20 "confronted blank, the victim, about the destruction of
21 his television, at which time blank, along with inmates
22 blank," and that's a long blank and it indicates inmates.
23 Is that more than one inmate?

24 A It could be.

25 Q "And Castillo began to beat him."

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1 Is that correct?

2 A Yes.

3 Q So there were at least a number of
4 other inmates involved in this incident; is that correct?

5 A Yes.

6 Q And that it was not Mr. Castillo that
7 poured water into the television; is that correct?

8 A No or that is correct.

9 Q And that it was not Mr. Castillo that
10 was accused of having the tattooing equipment by this
11 victim?

12 A Correct.

13 Q Now, with respect to the incident that
14 occurred in August 5th, 1994, do you have those reports
15 there in front of you?

16 A Yes.

17 Q Now, was the inmate that was bleeding
18 that identified Mr. Castillo has having hit him; is that
19 correct?

20 A Yes.

21 Q And wasn't there, in fact, conversation
22 from that inmate directed toward Mr. Castillo?

23 A Yes.

24 Q And didn't, in fact, that person tell
25 Mr. Castillo, "You better watch it on the yard, your time

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 is coming?"

2 A Yes.

3 Q And that's before Mr. Castillo made any
4 statements back to this inmate according to the report?

5 A Yes.

6 Q And that's when Mr. Castillo started
7 yelling, "That's why I hit you, because you are a punk."

8 So there were threats going back and forth;
9 is that correct?

10 A That's correct.

11 Q It was the inmate that had been hit
12 that made the first threat; is that correct?

13 A Yes.

14 Q That's not unusual for inmates in
15 prison to threaten back and forth to each other?

16 A No.

17 Q Now, there was also a disciplinary
18 hearing held regarding that incident, wasn't there?

19 A Yes.

20 Q And witnesses were called and testified
21 at that disciplinary hearing?

22 A Yes.

23 Q And was it, in fact, this testimony by
24 Mr. Castillo that he didn't hit him with anything, that he
25 hit him with his fist?

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1 A Yes.
2 Q And that the other inmate swung on him
3 first?

4 A Yes.

5 Q And then further, there's this
6 statement written, "Blank testified blank swung first,
7 Castillo hit him with his fist."

8 So there was a third person that testified
9 to that sequence of events; is that correct?

10 A Yes.

11 (Off the record discussion not reported.)

12 Q (BY MR. SCHIECK) Now you investigated
13 this incident?

14 A I was one of the officers that compiled
15 information.

16 Q Was there a search of Mr. Castillo,
17 when he was pointed out as the one that had caused this
18 wound?

19 A I completed a pat search on him, yes.

20 Q Did you find anything?

21 A No.

22 MR. SCHIECK: Thank you. That's all I
23 have.

24 THE COURT: Redirect?

25 MR. HARMON: Thank you, your Honor.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 . . .

2 REDIRECT EXAMINATION

3 BY MR. HARMON:

4 Q The initial report, regarding the
5 August 5th, 1994 incident, was that a lock had been used by
6 Mr. Castillo?

7 A Yes.

8 Q You're telling us that by the time you
9 got involved, you didn't recover a lock?

10 A That is correct.

11 Q Would it be unusual, if something like
12 that was used, for the inmate to discard it upon the
13 arrival or prior to the arrival of corrections officers?

14 A Yes.

15 Q That would be unusual?

16 A Oh, not unusual, no.

17 Q You would expect that to happen; is
18 that correct?

19 A It's common, yes.

20 Q Counsel has asked you about a number of
21 places in the various infractions reports and disciplinary
22 records, which make up 127, where names have been blacked
23 out.

24 A Yes.

25 Q You didn't do that personally, did

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1 you?

2 A No, I did not.

3 Q So you wouldn't know for sure what
4 names were blacked out?

5 A No, I would not.

6 Q Regarding the initial incident which
7 you have discussed that of November the 30th 1993, the
8 assault purportedly occurring because of information given
9 about tattooing equipment?

10 A Yes.

11 Q Where was the tattooing equipment
12 located?

13 A In that incident?

14 Q Yes.

15 A In another inmate's possession.

16 Q An inmate who wasn't the victim or Mr.
17 Castillo?

18 A Correct.

19 Q Was tattooing equipment also found
20 inside defendant Castillo's cell?

21 A According to the report of Pacatte, no,
22 it wasn't.

23 (Off the record discussion not reported.)

24 Q (BY MR. HARMON) In the event that you
25 are misunderstanding my question, is there a report

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1 prepared by corrections Officer Hansen which mentions the
2 recovery of tattooing equipment?

3 A There was a recovery of tatoo
4 equipment.

5 Q And in whose cell was that located?

6 A It was found in the bed location and
7 locker of inmate Castillo.

8 Q However, that was prior to the November
9 30th, 1993 incident; is that correct?

10 A Yes.

11 Q In fact, it was on or about October the
12 20th, 1993?

13 A Yes.

14 MR. HARMON: Thank you. That's all we have,
15 your Honor.

16 THE COURT: Anything further?

17 MR. SCHIECK: Just one to clarify.

18

19 RE CROSS EXAMINATION

20 BY MR. SCHIECK:

21 Q That was 40 days prior to the November
22 30th incident, is that correct, October 20th?

23 A Yes.

24 MR. SCHIECK: Thank you. No further
25 questions.

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1 THE COURT: May this witness be discharged?
 2 MR. HARMON: Nothing further. Yes, he may,
 3 your Honor.

4 THE COURT: Thank you very much.

5 THE CLERK: May I have Exhibit 127.

6 MR. BELL: Mike Blandford.

7

8 MICHAEL E. BLANDFORD,
 9 having been first duly sworn to tell the truth, the whole
 10 truth and nothing but the truth, testified and said as
 11 follows:

12

13 THE CLERK: State your name.

14 THE WITNESS: My name is Michael E.
 15 Blandford.

16 THE CLERK: Thank you.

17

18 DIRECT EXAMINATION

19 BY MR. BELL:

20 Q Would you spell your last name for the
 21 court reporter, please.

22 A Last name B-L-A-N-D-F-O-R-D.

23 Q And, Mr. Blandford, what is the nature
 24 of your employment?

25 A I'm employed by the National Park

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Service. I'm a park ranger criminal investigator.

2 Q And that's a law enforcement position?

3 A Yes, sir, it is.

4 Q How long have you been in law
5 enforcement?

6 A Twenty three years.

7 Q Were you working as a criminal
8 investigator for the Park Service on or about June 30th,
9 1995?

10 A Yes, sir, I was.

11 Q And in the course and scope of your
12 employment, were you dispatched to an area out at the
13 lake?

14 A Yes, sir, I was.

15 Q And can you tell the ladies and
16 gentlemen of the jury what caused you to be so dispatched?

17 A Okay, at approximately 6:35 p.m., there
18 is a report of an armed robbery of the Caldville Bay fuel
19 dock cashier. Both park rangers and Caldville Bay
20 concession employees were investigating the armed robbery
21 and I was requested to respond to the scene or location by
22 Park Ranger Robert Carnes.

23 Q And did you, in fact, respond?

24 A Yes, sir.

25 Q And did you, in fact, have occasion to

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1 make contact with the ostensible victim of that robbery?

2 A Yes, I did.

3 Q Do you recall her name?

4 A Yes, sir.

5 Q And her name was?

6 A Jeannie O'Brien.

7 Q And what did she tell you at that time
8 occurred?

9 A She gave a description, which we would
10 call a suspect description of a white male, five-six to
11 five-seven, described as a extremely clean cut, slender
12 build, wearing blue baggy shorts, no other clothing. His
13 hair was described as blond in a mushroom cut and he was
14 armed with a chrome plated handgun.

15 Q All right. She said she was robbed by
16 a man with a chrome plated handgun that was a blond man
17 about five-six, clean cut?

18 A Yes, sir.

19 Q All right.

20 And did she tell you how much was taken from
21 her? She was the cashier there?

22 A Yes, sir, she was.

23 Q Did you she tell you how much was taken
24 from her?

25 A She said it was over a thousand

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1 dollars.

2 Q Do you remember the specific amount?

3 A Yes, sir, I do. Caldville Bay

4 concession did an audit and it was \$2,169.

5 Q All right.

6 And, as a result of that, did you and other
7 members of law enforcement endeavor to catch anybody in the
8 area that matched this description?

9 A Yes, sir, we did.

10 Q Now, did there come a time when you or
11 one of the people working with you stopped an individual by
12 the name of William Castillo?

13 A Yes, sir, they did.

14 Q And about how long was that after the
15 robbery was reported?

16 A It was close in time within a -- within
17 the first five minutes of the reported armed robber.

18 Q And who actually stopped Mr. Castillo?

19 A Initially, it was the Caldville Bay
20 security guard. It was reported to the Caldville Bay
21 security guard that Mr. Castillo and another young lady
22 that was with him by the name of Mary were seen walking
23 hurriedly or running off the docks right after the armed
24 robbery was reported.

25 Q And did anybody from Park Service

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1 respond and talk to Mr. Castillo?

2 A Yes, sir, they did. Park Ranger Robert
3 Carnes responded, met with Mr. Castillo, identified him
4 with his Nevada driver's license. Because he didn't match
5 the description given by Jeannie O'Brien, he was released.

6 Q Okay. And, in fact, from that driver's
7 license, were you able to discern -- was it put into the
8 reports the date of birth of Mr. Castillo, the Mr. Castillo
9 that was stopped?

10 A Yes, sir.

11 Q Do you have reports from which you can
12 either read or have you reviewed or know the date of birth?

13 A Yes, sir, I ^ know ^ no the date of the
14 birth.

15 Q What is it?

16 A 12/28/72.

17 Q But he was let go because he wasn't a
18 blond man, five foot six, clean cut?

19 A That's correct.

20 Q Now, did there come a time on or about
21 the 3rd of July, some four days later, when you
22 re-interviewed Jeannie O'Brien?

23 A Yes, sir, I did.

24 Q And why did you re-interview her? What
25 caused you to do that?

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1 A There were many discrepancies about her
2 initial statement that she made to us and I wanted to have
3 her confirm or deny my suspicions about her report.

4 Q You thought there was something amiss
5 in her reporting and it alerted you, as a result of your
6 many years of law enforcement, that something may be wrong;
7 is that correct?

8 A Yes, sir, there were many
9 discrepancies.

10 Q Okay.

11 And where did you interview her on July the
12 3rd?

13 A I interviewed her at the Caldville Bay
14 administrative offices.

15 Q And at that time did she give you a
16 somewhat different version of what happened?

17 A Yes, sir, she did.

18 Q And what did she tell you at that
19 time?

20 A After pointing out the discrepancies in
21 her statement to her, she admitted to me that she had lied
22 about her initial statement about the armed robbery. She
23 stated that the night before, she had met William Castillo
24 who she knows by Bill or Billy.

25 Q When you talk about the night before,

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1 are you talking about the night before the June 30th
2 robbery or ostensible robbery?

3 A Yes, sir.

4 Q This would be June the 29th?

5 A That's correct.

6 Q All right, go ahead.

7 A She had met Mr. Castillo over at a
8 friend's house by the name of Danielle and the conversation
9 had led to how everyone needed money and Mr. Castillo
10 offered a plan of how to rob the Caldville Bay fuel dock
11 and that he would give her money what she described off the
12 top of it.

13 Q According to her, the idea was
14 generated from William Castillo?

15 A That is correct.

16 Q And what was the plan?

17 A The plan was is that he would rob her
18 of the money in the cash drawer and that she would wait
19 five minutes and she would give a description of a short
20 white male with blond hair on the radio as the suspect, and
21 that if he asked her questions about was there a security
22 guard present, what time she closed the cash drawer, if the
23 security guard was present at the time, then he was going
24 to knock the security guard out and tie him up with duct
25 tape.

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1 Q That was what Castillo told her he was
2 going to do if, in fact, when he did the robbery, the
3 security guard was present?

4 A That is correct. Her cashier drawer
5 was closed at 7:00 and normally the security guard should
6 be present when the cashier closes out.

7 Q Okay.

8 Did she have an understanding of whether or
9 not he was going to, in fact, be armed when he came in the
10 store?

11 A Yes. He had advised her that if there
12 were any problems, that he would be armed with a handgun.

13 Q Now, you indicated that this plan was
14 hatched on or about June the 29th, the day before it was
15 effectuated?

16 A That is correct.

17 Q Did you understand or know whether or
18 not Jeannie O'Brien knew William Castillo before the 29th?

19 A Yes. I asked her that question and she
20 said she believed she had met him about five times prior to
21 that.

22 Q Did you ask her why she would go along
23 with Mr. Castillo's plan?

24 A Yes, sir, I did.

25 Q And what did she tell you?

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1 A She stated that Mr. Castillo had
2 indicated to her that if she didn't participate in the
3 robbery, that she would have to watch her back and that she
4 would be shot and killed.

5 Q He threatened to kill her with a gun?

6 A Yes.

7 Q Did you have occasion to observe her
8 demeanor when you were interviewing her and she was talking
9 about the threats Castillo had made to her?

10 A Yes, sir.

11 Q Were you able to form any kind of
12 conclusion as to whether she appeared to be genuinely
13 impressed by those threats?

14 A Oh, she was definitely afraid of Mr.
15 Castillo.

16 Q Did there come a time, when you showed
17 her a picture of a person you understood to be the William
18 Castillo born in December, 1972?

19 A Yes, sir, I did.

20 Q Show you what's been marked as Exhibit
21 128 and ask her -- ask you if that was -- turn it over --
22 the picture that you eventually showed her?

23 A Yes, sir, it is.

24 Q Did she identify this person as William
25 Castillo?

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1 A Yes, sir, she did.

2 MR. BELL: Move the admission of 128.

3 MR. SCHIECK: No objection.

4 THE COURT: It will be received in
5 evidence.

6 Q (BY MR. BELL) Now, was she eventually
7 charged with criminal conduct as a result of her
8 participation in this theft?

9 A Yes, sir, she was.

10 Q And was that in the federal
11 jurisdiction, not our state jurisdiction here?

12 A That is correct, sir.

13 Q Do you know if Mr. Castillo was
14 charged?

15 A No, he has not as of this date.

16 Q And are you aware of why he hasn't been
17 charged as of this date?

18 A I'm not sure of the reasons the U.S.
19 Attorney hasn't charged him.

20 MR. BELL: Nothing further, Judge.

21 THE COURT: Cross.

22 MR. SCHIECK: Thank you, your Honor.

23 . . .

24 . . .

25 . . .

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 . . .

2 CROSS EXAMINATION

3 BY MR. SCHIECK:

4 Q Mr. Blandford, is it Ranger Blandford?

5 A Ranger is fine, sir.

6 Q Ranger Blandford, when you first went
7 out and talked to Jeannie O'Brien, she gave you a story?

8 A She gave a statement and upon
9 investigation, I would say it was a story, sure.

10 Q So she lied to you?

11 A Yes, sir, she did.

12 Q And she was able to convince you, at
13 least at that point that she was telling the truth?

14 A Based upon what I knew at the time.

15 Q It was only upon further investigation
16 that you discovered she had lied to you?

17 A Yes, sir, that's correct.

18 Q When you stopped Mr. Castillo, did you
19 search his car?

20 A I was not the ranger that stopped Mr.
21 Castillo. It was Park Ranger Robert Carnes.

22 Q Do you know if Robert Carnes searched
23 his car?

24 A From his report and from what I can
25 recall, yes, he did search a bag, I believe, that was

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1 present in Mr. Castillo's car.

2 Q What was found?

3 A My recollection is that he did not open
4 the bag, but he just frisked the bag and nothing was
5 found.

6 Q It wasn't a gun and it wasn't money?

7 A No, sir.

8 Q Does his report indicate where the bag
9 was at?

10 A I believe, when he observed the bag, if
11 I can recall, I believe it was in the trunk.

12 Q So the trunk was opened for Mr. Carnes
13 to look into and he felt this bag and determined it wasn't
14 related to this robbery?

15 A Yes, sir.

16 Q Did he look inside the passenger
17 compartment of the car?

18 A I have no knowledge of that, sir.

19 Q But at least we know he was allowed
20 into the trunk to search the trunk?

21 A Yes, sir.

22 Q And Mr. Castillo was stopped within
23 five minutes of you getting this call?

24 A Within five minutes.

25 Q Did you guys go search Jeannie

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1 O'Brien's car?

2 A I did not search Jeannie O'Brien's
3 car.

4 Q Did anybody go search Jeannie O'Brien's
5 car to see what was in her car?

6 A No, sir.

7 Q Now, you said you came back out a few
8 days later because you had noted some discrepancies in the
9 stories she had given you?

10 A Yes, sir.

11 Q What were those discrepancies?

12 A There were numerous. One of the most
13 glaring weaknesses of her story was that next to the cash
14 register at the Caldville Bay fuel dock, she has access to
15 both a telephone and a radio and in her description of the
16 armed robbery, neither one of these items were disabled,
17 she was not removed from these items. I felt that was a
18 glaring discrepancy.

19 Also, at the time of this reported armed
20 robbery, there were numerous other Caldville concession
21 employees on the docks, including two mechanics, and, also,
22 unbeknownst to her, Channel 3 Television News was out there
23 taking some file footage, I believe, for the upcoming
24 Independent Day, July 4th weekend and that created even
25 more employees there and from their vantage point, they

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1 were looking right over the marina at the time and from her
2 description of the individual or the suspect, excuse me,
3 that had reportedly done this armed robbery, there was not
4 a single person who saw an individual either on the docks
5 prior or before that and that's what also led to the two
6 people hurriedly or running off the docks.

7 Q So you went back out and confronted her
8 with all these holes in her story?

9 A Yes, sir.

10 Q She came up with another one? She told
11 you something different --

12 A Yes, sir, she did.

13 Q -- after being confronted with the fact
14 that you had some pretty conclusive information that she
15 was probably involved?

16 A Yes, sir.

17 MR. SCHIECK: Thank you. No further
18 questions.

19

20 REDIRECT EXAMINATION

21 BY MR. BELL:

22 Q Her second version of the events in
23 July was, in fact, on her part a confession to
24 participating with Castillo in a crime, correct?

25 A Yes, sir.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q Now, when she told you that, I assume,
2 before you talked to her, you didn't tell her, by the way,
3 the one guy we stopped running away from the docks was a
4 fellow named William Castillo, did you?

5 A No, I did not.

6 Q So when she had told you that a guy had
7 threatened her with a gun to participate was William
8 Castillo, she didn't know that was the very same person
9 that had been seen running from the docks, true?

10 A True.

11 MR. BELL: Nothing further.

12 MR. SCHIECK: No further questions, your
13 Honor.

14 THE COURT: May this witness be discharged?

15 MR. BELL: He may.

16 THE COURT: Thank you.

17 Counsel approach the bench.

18 (Off the record discussion not reported.)

19 THE COURT: State may call its next
20 witness.

21 MR. BELL: Jill Russell.

22

23 JILL RUSSELL,
24 having been first duly sworn to tell the truth, the whole
25 truth and nothing but the truth, testified and said as

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 follows:

2

3

THE CLERK: State your name.

4

THE WITNESS: Jill Russell.

5

THE CLERK: How do you spell your name for

6

the record?

7

THE WITNESS: J-I-L-L R-U-S-S-E-L-L.

8

THE CLERK: Thank you.

9

10

DIRECT EXAMINATION

11

BY MR. HARMON:

12

Q Is it Miss or Mrs. Russell?

13

A Mrs.

14

Q Mrs. Russell, do you live in the Las

15

Vegas area?

16

A Yes, I do.

17

Q How long have you lived in this

18

community?

19

A Since 1982.

20

Q Are you familiar with a residence at

21

2801 North Paradise Boulevard?

22

A Paradise?

23

Q I'm sorry, Rainbow. Let me start

24

over.

25

A Okay.

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1 Q 2801 North Rainbow Boulevard?

2 A Yes, I am.

3 Q Did you reside for a period of time in
4 an apartment complex on North Rainbow Boulevard?

5 A Yes, I did.

6 Q What apartment number?

7 A 149.

8 Q Were you living at that location on
9 October the 2nd and 3rd, 1995?

10 A Yes, I did.

11 Q Did an event occur in the late
12 afternoon of October the 3rd, 1995 which caused you to
13 summon the police to your residence?

14 A Yes.

15 Q Was a citation issued by
16 representatives of the Las Vegas Metropolitan Police
17 Department as a result of the incident for William
18 Castillo?

19 A Yes.

20 Q Do you see William Castillo in the
21 courtroom this morning?

22 A Yes.

23 Q Will you point to him and describe an
24 article of clothing he's wearing.

25 A Right in the white shirt and tie.

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