

1                   Now, the statutory mitigating circumstances  
2     that we have asserted could be presented in this case is,  
3     number one, the youth of the defendant at the time of the  
4     crime. He was 22 at the time this crime was committed, not  
5     23. He turned 23 shortly thereafter. He was 22 at the  
6     time of the commission of the crime and he spent, if you  
7     add up the sum total of his life, he has spent the most of  
8     his life, the vast majority of his life incarcerated in one  
9     facility or another.

10                  They say, well, he is 23, he's been through  
11     the system, he is an old 23 or an old 22. How can an  
12     individual, from what we've heard, who never had a  
13     childhood, how could that individual now considered to be a  
14     seasoned adult without having first been through a  
15     childhood? Chronologically, he is now an adult. We heard  
16     from Tammy Bryant today, who said he was totally lacking in  
17     normal social skills an individual should have at that  
18     age. Not even able to make chilly dogs because his entire  
19     life had been told where to go, where to sit, where to be,  
20     what to do because he had to be, but he never had that  
21     normal maturation process that individuals go through to  
22     reach what is a mature individual, someone that doesn't fit  
23     within the category the youth of the defendant at the time  
24     of the crime. And, again, the legislature didn't say,  
25     well, that means 21 or 25. It means the youth of the

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1     defendant at the time of the crime. You, as individual  
2     jurors, can decide whether or not you want to consider his  
3     age as a mitigating circumstance in the case. Some of you  
4     may not, some of you may, but those of you that find this  
5     mitigating circumstance is something that is weighed along  
6     with the other factors in deciding the appropriate  
7     punishment.

8                     Second statutory mitigating circumstance is  
9     the murder was committed while the defendant was under the  
10    influences of extreme mental or emotional disturbance.  
11    This again is statutory language which typically tends to  
12    be vague sometimes. What does that mean? The only reason  
13    we assert that that's a factor that you should take into  
14    account is based on the testimony of Dr. Etcoff. Dr.  
15    Etcoff told us that Billy was suffering from reactive  
16    attachment disorder of infancy, which he described as one  
17    of the most serious disorders that a child could have.

18                    Additionally, he was then diagnosed with  
19    attention deficit hyperactivity disorder, which is a  
20    neurological disorder which is not something we can say,  
21    Billy, it was caused by your childhood, it was caused by  
22    heredity, it was something that was neurologically caused.  
23    The act of impulse control on that and then, finally, the  
24    onset of childhood family disorder. That was his mental  
25    state, his mental condition at the time this crime was

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1 committed according to the un rebutted testimony of Dr.  
2 Etcoff. It's up to you to decide whether or not that fits  
3 within the language of the statute or whether you want to  
4 believe, well, maybe it doesn't fit the exact language of  
5 the statute, but it fits into that any other mitigating  
6 circumstance gather and I find that those disorders was a  
7 mitigating circumstance that I'm going to consider as an  
8 individual juror.

9 Dr. Etcoff did describe this case and Billy  
10 as a laser beam that Billy couldn't get off of and I asked  
11 Dr. Etcoff, "If Billy is on this laser beam headed for  
12 eventually where are we going to be at right now, why  
13 couldn't he just get off?" He said he couldn't get off,  
14 that all of these problems that Billy had prevented him  
15 from really changing the course of his life. The laser  
16 beam that Billy was on wasn't like the freight train he  
17 hopped when he was 12 years old. When he got cold, he  
18 could get off the freight train. Billy couldn't get off of  
19 this laser beam.

20 If you examine the conduct of Billy's early  
21 ages, ages that are shocking, the ability to drowned your  
22 grandmother's dog at age five or to hop a freight train at  
23 age 12 is just unbelievable to most of society. The  
24 question is are we going to take Billy's life because of  
25 the life that he had that led up to the horrible act that

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1 he committed last December? Perhaps, if things had been  
2 different during Billy's early years, perhaps if we would  
3 have been a society where there was a system of justice or  
4 juvenile court care that he could have got the care that  
5 Dr. Kirby Reed, at 10 years old, a neurologist is  
6 recommending that this child be put in a twenty four hour  
7 facility, that he had to be, basically, incarcerated at  
8 that young age. If that type of facility was available,  
9 whether or not that would make a difference.

10 He's accepted the act that he has  
11 committed. He's accepted the blame for it and he will  
12 accept your punishment, but we ask you not to take his  
13 life.

14 THE COURT: Everyone comfortable?

15 (Off the record discussion not reported.)

16 THE COURT: All right, we are going to take  
17 a recess at this time. During the recess, ladies and  
18 gentlemen, I would remind you it is your duty not to  
19 converse among yourselves or with anyone else on any  
20 subject connected with this trial or to read, watch, or  
21 listen to any report of or commentary on this trial or any  
22 person connected with this trial by any medium of  
23 information, including, without limitation, newspapers,  
24 television, or radio, and you are not to form or express an  
25 opinion on any subject connected with this case until it is

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1 finally submitted to you.

2 We will reconvene at 3:20. We will be at  
3 ease while the jury departs the confines of the courtroom.

4  
5 (At this time the jury left the courtroom.)

6  
7 (Off the record at 3:08 p.m. and back on the  
8 record at 3:23 p.m.)

9  
10 THE COURT: Counsel stipulate to the  
11 presence of the jury?

12 MR. BELL: Yes, your Honor.

13 MR. LaPORTA: Yes, Judge.

14 THE COURT: Mr. LaPorta, you may now make  
15 your portion of the defense closing argument.

16 MR. LaPORTA: Thank you, your Honor.

17 Good afternoon. If it please the Court, Mr.  
18 Harmon, Mr. Bell, counsel, the dye was cast for Billy  
19 Castillo at age five, the path that he was to take the rest  
20 of his life.

21 One of the things I'm going to do and I will  
22 not be long this afternoon because co-counsel has pretty  
23 well covered the case, you have heard all the evidence, we  
24 don't need to belabor that fact and all of the elements and  
25 facts within this case, but one thing I would like to do

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1 briefly is to focus you in, focus you in on Billy Castillo,  
2 the whole person because in choosing one of the three forms  
3 of punishment, life without, life with or death, it's that  
4 whole person that you are sentencing. You are not just  
5 sentencing the criminal version of Billy Castillo. You are  
6 sentencing that five year old boy who, as Dr. Etcoff said,  
7 the dye was cast. He was never going to be normal, never  
8 going to be able to have a normal relationship with a  
9 fellow human being.

10 Now, this is always difficult here in this  
11 area because we, in no way, are offering this as an excuse,  
12 as a justification, or even trying to explain away his  
13 actions because, as he has told you, he is responsible for  
14 his actions and he is willing to take whatever punishment  
15 you dole out. Don't mistake that, but what we're  
16 attempting to do here and what I individually am attempting  
17 to do here is attempt to show you who he was, you must take  
18 him in his entirety, not the last five years, not the five  
19 times he spent up in Elko for a variety of offenses, but  
20 all the forces that came to bear on Billy Castillo's life  
21 that created who he is today.

22 He has gotten to the point now where he is  
23 before you, as a jury, and you are being asked to choose  
24 between death or life. Now when I put it in those terms  
25 and to read between the lines of the prosecutor's argument,

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1 it almost sounds like, gee, give him life, you are  
 2 rewarding him. I want you to make no mistake about it,  
 3 life in prison without the possibility of parole means  
 4 exactly that. He will one day leave Ely State Prison or  
 5 any other maximum facility in a pine box. Life without the  
 6 possibility of parole is not a reward, it's not a break  
 7 that you are giving to him. It is a severe and harsh  
 8 punishment.

9 Now, as I said, the dye was cast for Billy  
 10 early on. As Dr. Etcoff said, he had no chance of a normal  
 11 life. He was incapable of bonding with others, creating  
 12 relationships. I'm not going to belabor two areas of  
 13 testimony, that's Dr. Etcoff and that's Mrs. Sullivan. To  
 14 recap, Billy was born into the violent union of two  
 15 children themselves, Mrs. Sullivan and Billy's father. You  
 16 heard the testimony. She was pregnant at 17, she gave  
 17 birth to him when she was 18. They had gone overseas  
 18 because he had signed up. He had beat her severely  
 19 throughout the whole pregnancy. Eight and a half months  
 20 pregnant, he throws her down the stairs. God knows what  
 21 that could have done to the fetus, who was later to become  
 22 Billy Castillo.

23 These were children themselves, the mother  
 24 and father of Billy Castillo, attempting to raise a child.  
 25 These people were seriously dysfunctional at that point in

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1 time. They had debilitating mental health problems. You  
2 heard Mrs. Sullivan. He went to prison, all of his  
3 brothers were in trouble with the law, they were violent,  
4 they went to prison. The father had -- the grandfather had  
5 shot the father with a sawed-off shotgun. He survived it,  
6 God knows how, but this was the violent life-style and the  
7 violent relatives at mom and dad -- or dad's brothers that  
8 Billy was born into.

9 Ms. Sullivan continued to testify, it got to  
10 the point, and this was all while Billy was a very young  
11 man, an infant who had to have recognized what was going on  
12 around him, he stuck a gun in her mouth, he drove her into  
13 insanity. She had to seek institutionalization. That was  
14 this man's mother torn away from him and put into a mental  
15 health facility so she could recover.

16 She testified that Billy's first few years  
17 was shifting back and forth between grandparents. She  
18 testified that she was protective, she had those maternal  
19 instincts, but she also agonizingly accounted for you that  
20 she couldn't give him, at that time in her life because she  
21 was incapable of giving him the most precious gift that a  
22 mother can give a child and that's true love and warmth and  
23 affection. She resented Billy. You can say she loathed  
24 Billy. Why? Because of the father. These are children  
25 we're still talking about. She was still a child at the

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1 time attempting to raise an infant.

2 She admitted on the stand to you with gut  
3 wrenching testimony she was not a good mother. She's  
4 learned how to become a good mother. Thank God for the  
5 other two children. She shoved him off to other  
6 relatives. Shoved him down to her brother down in Texas,  
7 who physically and emotionally abused Billy and when she  
8 found out, she brought him back. She was thrown out of her  
9 in-laws' house. He was approximately five or six years  
10 old. She had no resources. She resorted to prostitution.  
11 A five year old's mother resorts to prostitution. You  
12 don't think he's aware of that? You can only imagine the  
13 utter despair, the loss of hope, the absolute loss of  
14 humanity that has existed at this time in Billy's life.  
15 Make no mistake about it, a five or six year old is aware  
16 of a lot that goes on in his life, more so than he is  
17 capable of expressing. His life was a living hell all  
18 throughout this time.

19 Now it pales in comparison to the living  
20 hell that he created for the family of Isabelle Berndt, but  
21 for this five -- for this five to six year old at this time  
22 in his life, this was a living hell.

23 Billy never had an opportunity to be  
24 normal. His life was lost at five. I mean he was on this  
25 path to where he is today. Once again, this is not an

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1     excuse, this is not a justification. He stands here  
 2     admitting this crime, he stands here ready to take whatever  
 3     punishment you decide is just for Billy. Please take this  
 4     into account because you're sentencing the whole person,  
 5     not just the man who ended -- the boy who ended up in Elko  
 6     and the man who did two prison terms. That whole person  
 7     includes all the influences and events that I have  
 8     recounted for you and that you've heard. You've taken  
 9     notes. Billy is not one that has anything going for him,  
 10    obviously, when he was first brought into this world.

11                   This is a day of sad truths. Isabelle  
 12    Berndt lies dead. It's a sad truth. Two families are  
 13    suffering here. It's a sad truth. It's a sad truth that  
 14    you are being asked to stand in judgment of another human  
 15    being, an awesome responsibility that this is, but in  
 16    exercising that sad truth, I beg you, I implore you to  
 17    consider Billy's life in its entirety, not just what has  
 18    happened in the last 10 years. I ask you to punish him.  
 19    He is deserving of it, punish him severely, but I ask you  
 20    to spare his life.

21                   Thank you.

22                   THE COURT: Mr. Harmon, for the State of  
 23    Nevada in rebuttal.

24                   MR. HARMON: May it please the Court, Mr.  
 25    Bell, Mr. LaPorta, Mr. Schieck, good afternoon, ladies and

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1 gentlemen.

2 I certainly share the sentiments of the last  
3 speaker, Mr. LaPorta. There are sad truths associated with  
4 this case. It's also an awesome responsibility that we  
5 place upon you as a trial jury. Mr. Bell and I wouldn't  
6 want anything that we have said during this trial to  
7 suggest or to imply that we think it's easy or pleasant to  
8 pass judgment upon a fellow human being. We understand  
9 that this is an awesome responsibility and we appreciate  
10 the conscientiousness and the sincerity of the jury and  
11 thank each one of you. We are very confident that you'll  
12 do your best to render equal and exact justice.

13 This case is a tragedy. The criminal  
14 justice system is called upon when tragedies occur and it's  
15 certainly hoped, from the prosecuting point of view, that  
16 when the jury selects a punishment, it will fit the tragic  
17 acts which have been perpetrated. Someone has said, "There  
18 is madness loose in the world." What happened early Sunday  
19 morning at 13 North Yale Street, in a sense, was an act of  
20 madness.

21 Very often, during cases like this, we hear  
22 comments about the conduct of a perpetrator not making  
23 sense. A prominent New York lawyer, Phillip J. Howard,  
24 that has written a book entitled The Death of Common  
25 Sense. His title is symptomatic of our generation and I

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1 would submit to you what happened on December the 17th,  
2 1995 was not only the death of Mrs. Berndt, a dear, sweet  
3 lady, a public servant for 49 years dedicated to helping  
4 other people and her loss, the moral evil perpetrated by  
5 her murderer is incalculable, but what also happened, once  
6 again, is common sense was murdered.

7                   Mr. Bell calls it making sense out of  
8 nonsense, but you can't make sense out of murder. It isn't  
9 logical, it isn't rationale for any person, not just Ms.  
10 Platou or Mr. Castillo, it isn't logical for anyone in the  
11 middle of the night to go in to a neighborhood to get out  
12 of a vehicle to go back into a barbecue to the rear of the  
13 residence, find a key again, and then take that key and  
14 walk into somebody else's home. That's stupid and it was  
15 equally illogical for Mr. Castillo to take with him into  
16 the residence, in addition to the key, a crow bar and this  
17 very idea that persons would enter by stealth in the cover  
18 of darkness into someone else's house is almost  
19 incomprehensible and, yet, it happens with regularity and  
20 we can be grateful that for all of its shortcomings, the  
21 criminal justice system does not encompass a concept known  
22 as felony stupid.

23                   Now, it may be almost impossible to conceive  
24 of or to comprehend the moral incongruity of people killing  
25 people and, yet, the sad truth -- and we aren't sentencing

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1 a five year old. There is probably no one, who went  
2 through their years through 22 and up to the age of 23 that  
3 had a perfect upbringing. Everybody has frustrations.  
4 Everybody has flaws in their personality. The sad truth  
5 that overrides every other truth in this case, as much as  
6 it may make decent minded persons shutter to think about  
7 it, there is a killer in this courtroom, in here in plain  
8 view, who committed an unspeakable act, who took a blunt  
9 force instrument and repeatedly bludgeoned and pommeled a  
10 helpless old woman in her sleep.

11 This is the second phase of these  
12 proceedings. We call it a penalty hearing. It's not  
13 called a rehabilitation hearing. This defendant has had a  
14 long history of criminal conduct. He came up through the  
15 juvenile system. He graduated through each successive step  
16 and he ended up at the Nevada Youth Correction Center.  
17 He's had adult offenses for which he has been convicted and  
18 now he's committed a murder.

19 So when we look to the purpose of a penalty  
20 hearing, I submit this defendant is past notions of  
21 rehabilitation. You are not here sitting in judgment on a  
22 forgery offense or a burglary or defrauding an innkeeper or  
23 a grand larceny auto. Most penologists suggest that there  
24 are two purposes in imposing a penalty for murder of the  
25 first degree. The first reason relates to punishment and

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1 it's entirely appropriate that society set severe  
2 punishments for the taking without provocation, without  
3 justification another person's life. It is an expression  
4 of society's sins of moral outrage and there's probably no  
5 one in this courtroom, with the exception perhaps of the  
6 murderer, who is not outraged by this conduct and it's not  
7 immoral, it's not inappropriate that your punishment  
8 reflect society's sense of outrage at this type of  
9 conduct.

10                   The second reason for punishment has to do  
11 with deterrence. I appreciate that we could engage in  
12 philosophical bantering for a long time about the  
13 deterrence effect of life sentences as opposed to the death  
14 sentence, but I will suggest, in summary fashion, that  
15 deterrence is achieved by severity and certainty of  
16 punishment and that a juror in imposing punishment for this  
17 type of case should not be unmindful of the image of the  
18 criminal justice system. This is a serious case. As  
19 jurors, you are part now of the criminal justice system and  
20 a lot of persons are concerned about whether it works or  
21 doesn't work and if it works, how well does it work and the  
22 decision in this case is going to send out a message. I'm  
23 urging you that the message will be that we deal severely  
24 with those who commit these types of crimes so that it's  
25 very clear to others, who contemplate in the middle of the

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1 night that they will go into the residences of other  
2 citizens of this community, so that they will understand  
3 this happened to Mr. Castillo, he was punished severely and  
4 anyone else who hears or learns of this man understands  
5 that he enters into such an offense at his own perish.

6 Well, there is obviously one underlying  
7 notion of deterrence which is inescapable in its logic. If  
8 Mr. Bell is right, then I submit, based upon the evidence,  
9 that he is and if Mr. Etcoff, the Ph.D. psychologist, is  
10 correct that Mr. Castillo is a very dangerous man and I  
11 submit he is right, then definitely if a death sentence is  
12 imposed and if it is carried out from the point it is  
13 carried out, Mr. Castillo is deterred.

14 Mr. Bell has summarized in his remarks the  
15 aggravating circumstances alleged by the prosecution. I  
16 want to touch very briefly upon them. There are five. The  
17 first two involve prior violent felonies committed by the  
18 defendant. Mr. Schieck argues that, perhaps, the attempted  
19 residential burglary on December the 19th, 1990 was not the  
20 type of offense that falls into the category of the  
21 aggravating circumstance. Well, the standard is that the  
22 defendant must have previously been convicted of a felony  
23 involving the use or threat of violence to the person of  
24 another and I submit to you the operative phrase is use or  
25 threat of violence to the person of another.

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1                   Mr. Schieck suggests that Mrs. Mills, and I  
2       would presume by argument, Patricia Rizzo must have seen  
3       the guns in order for these aggravating circumstances to  
4       apply and, with due respect to Mr. Schieck, I would suggest  
5       that's absurd. Isabelle Berndt is dead now. She was  
6       asleep when she was attacked. She certainly didn't see the  
7       first blow. In some of his descriptions, the defendant  
8       suggests that she sat up. Whether that's true or not, we  
9       have no way of knowing, but even if she sat up in some sort  
10      of reflex action, there is no way of ever knowing that she  
11      ever saw the person or the instrument or the fists that  
12      were bludgeoning and pommelling her into unconsciousness.  
13      Does that mean then that she wasn't the victim of action  
14      which involved the use or threat of violence to her?

15                   The unrebutted evidence in this case,  
16      regarding the residence of Marilyn Mills on West Warm  
17      Springs Road, is that in early afternoon, 1:25 in the  
18      afternoon, brazenly these two young men, the defendant and  
19      another individual named Kenny Delzer, went there seeking  
20      to steal and while Delzer was kicking the door in, the  
21      defendant, by his own admission and the exhibit is in  
22      evidence; it's his statement given to law enforcement at  
23      the time they investigated the crime. It's Exhibit 121.  
24      The defendant acknowledges at that time he had in his hand  
25      the loaded semi automatic.

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1                   Now he says he put it on safety. Well, as  
2 quickly, even assuming that is true, as he put it on  
3 safety, he could have taken it off of safety and I'm  
4 arguing to this after idea it's absurd to suggest that when  
5 some hooligan, who is involved in trying to force his way  
6 in to another citizen's house and the door is being kicked  
7 in, stands there with a fully loaded gun that that doesn't  
8 involve the use or threat of violence to the citizen  
9 inside. That aggravating circumstance assuredly applies to  
10 the defendant, Mr. Castillo.

11                   He was convicted of the robbery involving  
12 Patricia Rizzo. They are separate felony convictions.  
13 He's not entitled to a free ride on either one of these.  
14 We have alleged two aggravating circumstances because he  
15 committed two violent felonies. They drove up behind these  
16 women, they got so close, Patricia Rizzo felt the  
17 automobile against her body. The defendant reached out  
18 from a moving car and grabbed her shoulder and spun her  
19 around and the fellow doing that had somewhere in the  
20 vehicle or on his person a loaded .25 caliber semi  
21 automatic.

22                   Aggravating circumstances three, four, and  
23 five, Mr. Schieck suggests that this is one single event  
24 and it -- they ought to be treated like one aggravating  
25 circumstance. Well, ladies and gentlemen, it's not the

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1 same. Burglary is a crime of entry and our legislature  
2 made a policy judgment. Their purpose, in making the  
3 judgment, was to try to deter perpetrators from unlawfully  
4 entering the houses of other people and when they made  
5 entry, they did something which aggravated murder and it  
6 makes a big difference that she was killed in her home and  
7 not somewhere else.

8 Robbery isn't to be equated with burglary  
9 because burglary is a crime of entry and robbery is a crime  
10 against the person. Even after she was killed, these  
11 defendants showed their intent. They didn't leave in  
12 panic. They didn't abandon their purpose, which was to  
13 take her property. They carried out the Hitachi VCR. They  
14 took with them her sets of silverware. They searched her  
15 property and came up with rings, with jewelry, with money,  
16 and they even took her Christmas booties and these are both  
17 factors that aggravate murder in the first degree.

18 Well, this is a case of sinister  
19 simplicity. Why was she killed? She didn't have to be  
20 killed, but the only sense made out of nonsense is the  
21 reason given by the defendant of not wanting the victim to  
22 wake up and see his face and be subject then to interview  
23 by the police and subject to the subpoena power of the  
24 prosecution. This defendant wanted to avoid, he wanted to  
25 prevent his arrest, his prosecution subsequently for these

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1 crimes of entry and for a robbery and so he killed her.  
 2 The legislature says when you do that, that aggravates  
 3 murder of the first degree.

4 So, ladies and gentlemen, there's no  
 5 question in this case. The prosecution has proven beyond a  
 6 reasonable doubt that there are five factors, five  
 7 circumstances. They clearly fit the statutory standard.  
 8 They are consistent with the Court's legal Instructions and  
 9 they aggravate the murder of Isabelle Berndt.

10 Someone has said, "Our human capacity for  
 11 good and compassion makes the death penalty tragic, but our  
 12 human capacity for evil and depravity makes it necessary."  
 13 Ladies and gentlemen, the prosecution argues that it is  
 14 necessary in this case.

15 The defense, in Instruction 16, the defense  
 16 allegations regarding mitigation are set forth. They talk  
 17 about the youth of the defendant at the time of the crime.  
 18 They point out correctly he was 22, not 23, but 11 days  
 19 short of 23 years of age. He may have been youthful, but  
 20 anyone, a six year old would know that this conduct was  
 21 immoral and illegal. This is surely not the case or the  
 22 circumstances where someone, who is almost 23 years of age,  
 23 should be given the excuse by that factor of having the age  
 24 outweigh the factors which aggravate his murder.

25 Now, it's alleged by the defense that the

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1 murder was committed while the defendant was under the  
2 influence of extreme mental or emotional disturbance.  
3 There's really no evidence of that. A clinical  
4 psychologist interviewed the defendant; I refer to Dr.  
5 Etcoff on July the 2nd, 1996. This is months after these  
6 crimes were perpetrated, long after the defendant was  
7 arrested and charged, when he has every reason to try to  
8 impress this psychia -- this psychologist with potential  
9 personality disorders. It's not by chance that the  
10 interview is occurring. The defendant isn't an  
11 unintelligent person in terms of his IQ. The evidence in  
12 this case is, the really uncontradicted evidence, he made  
13 choices. He made the decisions.

14 Now, there's no evidence that the defendant  
15 was under the influence of alcohol the night he and Ms.  
16 Platou did this. There's no evidence that he was high on  
17 drugs, that either one of them was. They may have been,  
18 but there is no evidence in this record that they were.  
19 There's no evidence that this defendant was so overcome by  
20 concern about coming up with \$350 to pay his attorney that  
21 it somehow overcame his ability to make responsible  
22 decisions.

23 Well, Mr. Schieck said and Mr. LaPorta also  
24 argued, he used this phrase as the key note of his remarks,  
25 "The dye was cast when the defendant was five or six years

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1 old." And Mr. Schieck says the defendant was on a laser  
2 beam and he couldn't get off of it. Well, the unfortunate  
3 truth in this case is that Dr. Etcoff didn't find a laser  
4 beam and the defendant was not on a laser beam December the  
5 17th, 1995. He was inside Platou's Mazda. It is the Mazda  
6 driven by his co-defendant that took him to 13 North Yale  
7 Street. He wasn't on a laser beam and when he got out, he  
8 was on his own two legs. They took him inside. He made  
9 the choices. He made the decisions.

10 Now, we offered, as exhibits, and I believe  
11 -- I could be mistaken; they are right here. Exhibits 122  
12 and 124 and they are the statements that this defendant  
13 made to representatives of the Department of Parole &  
14 Probation each time after he was convicted of adult  
15 felonies and he didn't say to Charmaine Smith and Norma  
16 Price in 1991 and, again, in 1993 that he was on some sort  
17 of laser beam and he wasn't responsible for his acts and he  
18 didn't even have free will.

19 In part, this is what the defendant told  
20 Charmaine Smith April the 1st, 1991, after he had entered a  
21 plea of guilty to attempted residential burglary. "I think  
22 that I should be granted probation because, one, this is my  
23 first offense as an adult and, two, I feel that probation  
24 will provide the incentive I needed to keep me on the  
25 straight line and, three, even though I do have an

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1 extensive juvenile record, I can change." That's what the  
2 defendant says. "I did things because I was young and  
3 stupid." He didn't say that the dye was cast when I was  
4 five years old. He wasn't telling Charmaine Smith I  
5 remember a natural father and was influenced by him when,  
6 in fact, the record shows there was very little conduct --  
7 contact, very little chance for the older Mr. Thorpe to  
8 influence his son except genetically. Well, he didn't  
9 offer those excuses. He concludes, "I just hope that I am  
10 given this chance to redeem myself and to change my life  
11 before it is too late." Signed William P. Castillo, April  
12 the 1st, 1991.

13 Well, he didn't learn his lesson. He didn't  
14 comply with the rules of society because he was being  
15 interviewed by another officer, Norma Price, on April the  
16 24th, 1993, just over two years later, but it was the same  
17 thing. He didn't say the dye was cast years and years ago,  
18 when I was a child. He didn't say I was on a laser beam  
19 and I couldn't get off of it. In Exhibit 124, Mr. Castillo  
20 wrote, "I will be starting a fresh life. Also, I will no  
21 longer be associating with the types of people that I allow  
22 to influence me in a negative manner. Please allow me a  
23 chance. I am not a lost hope. I can and will change my  
24 ways. I just need a chance." Well, it's a tragedy while  
25 still in the juvenile system this defendant was given

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1 vocational training, he had various things that he could  
2 do.

3 As Mr. Bell has commented in addition to the  
4 five aggravating circumstances, there are other factors in  
5 representing to you the nature of this defendant and the  
6 nature of his crime which justify imposition of the most  
7 severe punishment. His significant prior criminal history  
8 reflects the character of this defendant. His juvenile  
9 history was filled with arson, with escape, with theft,  
10 with violence. He didn't learn from the two year  
11 incarceration at Indian Springs. He told Corrections  
12 Officer Mark Berg, when he was being incarcerated on the  
13 robbery and after the assaults he had perpetrated upon  
14 other inmates, that he had used a gun with his friends and  
15 they had committed robberies on the Strip in Las Vegas and  
16 he said it was fun and it was easy and, of course, more  
17 recently, when you heard the testimony of Dr. Etcoff, Mr.  
18 Bell has referred already to the comment that he made a  
19 living by committing robbery. To quote page 11 of Mr.  
20 Etcoff's report, "He called it a power trip. I had a gun,  
21 a God complex."

22 This offense happened inside the home of  
23 Isabelle Berndt. It happened at night. It happened while  
24 she was asleep. Samuel Coleridge is quoted as saying,  
25 "Sleeping, a gentle thing." It's supposed to be gentle.

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1 She was helpless, she was unarmed, she was 86 years of age,  
2 she was only five-two. It happened gratuitously. It was  
3 done with premeditation.

4 The defense has also argued that there are  
5 some additional factors beyond the statutory mitigating  
6 circumstances that mitigate this offense. They argue the  
7 defendant has admitted his guilt to the offense. Well, he  
8 told the police he thought it was a man and a reasonable  
9 inference would seem to be if she sat up, he knew at that  
10 point it was not a man.

11 The defense argues that Mr. Castillo  
12 cooperated with the police after he was identified as a  
13 suspect and that this mitigates his crime. Well,  
14 cooperation is a word which is subject to many  
15 interpretations. He didn't cooperate in his first  
16 statement. That's Exhibit 105-A, the transcript. In fact,  
17 for 25 minutes in the first statement, this defendant  
18 denied his involvement. I'm quoting from pages 20 and 22,  
19 he said to Detective Morgan, "I did not go in nobody's  
20 house and take nobody's shit. I didn't kill nobody, man.  
21 I'm not that kind of a person. I can't kill people."

22 And for the first half of the second  
23 statement, for the first nine or ten minutes, he denied his  
24 involvement.

25 Mr. Schieck has argued that this was not a

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1 preplanned offense, he didn't intend to commit murder.  
2 Well, he certainly preplanned picking up the key and  
3 whether it was a bumper jack or a crow bar or a tire iron,  
4 he took the object with him and he committed a murder that  
5 he didn't have to perpetrate.

6                   You have before you for sentencing a  
7 defendant who has admitted to Dr. Etcoff that, at Indian  
8 Springs, he acted violently toward child molesters, so much  
9 so that he had to be transferred from Indian Springs to the  
10 Northern Nevada Correctional Center. Corrections Officer  
11 Berg has testified to the two assaults occurring at  
12 Northern Nevada. The one which involved Mr. Castillo and  
13 two other inmates because another prisoner had supposedly  
14 informed about tattooing equipment. There's also been  
15 evidence about the inmate who was cut in the forehead when,  
16 as he alleged, Mr. Castillo hit him with a lock.

17                   Dr. Etcoff concluded his report with these  
18 words. In fact, this is the very last sentence of his  
19 report. "Mr. Castillo, even today, is a very dangerous  
20 individual who absolutely must be incarcerated so that  
21 society is protected from this basically uncontrolled and  
22 very angry man, who was incapable of forming warm  
23 attachments to human beings."

24                   The tattoos which apparently cover his body  
25 probably, as accurately as anything else, convey the

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1 personality, the attitude, the anger of this defendant. He  
2 has a tatoo which says pure hate, a tatoo which says white  
3 power, 36 swastikas all over his body, and on his lower  
4 back, he had someone inscribe 100 percent hostile.

5 Ladies and gentlemen, when the prosecution  
6 addressed you during the guilt phase of these proceedings,  
7 it was discussed that accountability was an operative word,  
8 that if the criminal justice system meant anything, it  
9 means that persons who commit serious, violent offenses  
10 must be held personally responsible. That still is an  
11 operative word and it seems to be something that the  
12 defendant understands.

13 In exercising his right of allocution, I  
14 certainly observed that his last comments were directed not  
15 to the family, not to the jury, but to his mother and Mr.  
16 Castillo did not say to her that he was on a laser beam, he  
17 didn't say the dye was cast because of his upbringing, that  
18 there's nothing in this record to suggest that his  
19 stepfather didn't do his very best to train him and bring  
20 him up properly. Mr. Castillo said this morning, "Mom, you  
21 did a good job raising me. I strayed from the path," and  
22 he did stray from the path and he strayed way off the path  
23 on December the 17th, 1995 and, therefore, I would suggest  
24 that the other operative word along with accountability at  
25 this time is the word commitment.

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1                   The issue is do you, as the trial jury, this  
2   afternoon have the resolve and the courage, the  
3   determination, the intestinal fortitude, the sense of  
4   commitment to do your legal and oral duty, for whatever  
5   your decision is today, and I say this based upon the  
6   violent propensities that Mr. Castillo has demonstrated on  
7   the streets, I say it based upon the testimony of Dr.  
8   Etcoff and Corrections Officer Berg about the threat he is  
9   to other inmates, and I say it based upon the analysis of  
10   his inherent future dangerousness, whatever your decision  
11   is today and it's sobering, whatever the decision is, you  
12   will be imposing a judgment of death and it's just a  
13   question of whether it will be an execution sentence for  
14   the killer of Mrs. Berndt or for a future victim of this  
15   defendant.

16                   MR. SCHIECK: I'm going to object, your  
17   Honor, to the argument of future victims.

18                   THE COURT: Sustained.

19                   Jury is admonished to disregard that  
20   argument.

21                   MR. HARMON: Your Honor, I am simply making  
22   the argument proved in Redmon V State, future  
23   dangerousness. Future dangerousness to whom? It has to be  
24   not to dogs, cats, it has to be to individuals. The cases  
25   say that we may argue theories of penology and deterrence,

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1 reasons for punishment. The Pelagrini (phonetic) case, the  
2 Jimenez case, the Snow case --

3 THE COURT: Yes, I understand that, Mr.  
4 Harmon. I'll reverse the ruling. You are correct.

5 MR. HARMON: I want to conclude with this  
6 thought. A fellow named Horace, centuries ago, said, "The  
7 world once in a broad flies irrevocably," and so I would  
8 apply it to this case. A blow, to be hit by a tire iron,  
9 that flies irrevocably as well. To bludgeon someone with a  
10 metal instrument, to use one's fists once they are sent  
11 out, it flies irrevocably and, therefore, with due  
12 consideration of the awesome nature of your responsibility  
13 with the unpleasant task of fixing punishment, I urge you  
14 to impose a punishment in this case which is just as  
15 severe, just as final, just as deadly, just as irrevocable  
16 as the fists and tire iron of William Castillo.

17 Thank you.

18 THE COURT: Ladies and gentlemen of the  
19 jury, that concludes the presentation to you in this case.  
20 This matter is now submitted to you for your deliberation.  
21 At this point, I would ask counsel to approach the bench  
22 and review one last time the verdict forms to make sure we  
23 have the right ones.

24 (Off the record discussion not reported.)

25 THE COURT: Counsel for both sides have seen

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1 the proposed forms of verdict that have been provided for  
2 the jury's convenience and agree that these are the  
3 appropriate forms of verdict?

4 MR. SCHIECK: Yes, your Honor.

5 MR. BELL: Approach the bench.

6 (Off the record discussion not reported.)

7 MR. HARMON: Yes, Judge.

8 THE COURT: They will be submitted to the  
9 jury.

10 At this time, I would ask the clerk to swear  
11 the officers to take charge of the jury and the  
12 alternates.

13

14 (At this time the officer was duly sworn.)

15

16 THE COURT: All right, at this time, I'm  
17 going to, with the permission of the parties, release the  
18 alternates and admonish them too that they remain on call,  
19 but we're not going to require Mr. Ernest Irish, Ms.  
20 Sharynn Lee Sheldon, Mr. Henry Lee Jones or Mr. James  
21 Fracaro to remain in the courthouse while the deliberations  
22 are taking place. We want you to remain on call, provide  
23 us with a telephone number, be someplace where you can be  
24 reached at all times until the matter is concluded.

25 To the alternates, I hereby admonish you it

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1 is your duty not to converse among yourselves or with  
2 anyone else on any subject connected with this trial or to  
3 read, watch, or listen to any report of or commentary on  
4 this trial or any person connected with this trial by any  
5 medium of information, including, without limitation,  
6 newspapers, television, or radio, and you are not to form  
7 or express an opinion on any subject connected with this  
8 case until it is finally submitted to you.

9                   You are, as I have just indicated, still  
10 under your admonition not to discuss this case with  
11 anyone. The four alternates now may and the members of the  
12 jury may follow the bailiff to the places of deliberation.  
13 I would appreciate it if the four jurors then accompany the  
14 officer to my chambers so that you can provide the  
15 information for us to contact you.

16

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

18                   THE COURT: Anything further from the  
19 parties at this time?

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

21                   MR. SCHIECK: Your Honor, I wanted to make  
22 clear the objection I made at the end of Mr. Harmon's  
23 closing rebuttal.

24                   The part I was objecting to was not arguing  
25 future dangerousness, but by telling the jury that if they

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1 did not give the death sentence to Mr. Castillo, they were  
2 returning a sentence of death to some other unnamed  
3 citizen. It was that portion of the argument.

4 THE COURT: That was my first reaction, but  
5 the language of the argument does, on further reflection,  
6 as I indicated, meet the Supreme Court's view of that type  
7 of argument as substance, in my opinion.

8 MR. SCHIECK: I just wanted the record to be  
9 clear on the exact phraseology of Mr. Harmon's argument  
10 that I was objecting to for the record.

11 MR. BELL: Nothing further by the State,  
12 your Honor.

13 THE COURT: Nothing from the defense?

14 MR. LaPORTA: Nothing further from the  
15 defense, your Honor.

16 THE COURT: We are in recess. Please leave  
17 your telephone numbers with the clerk.

18

19 (Off the record at 4:26 p.m.)

20 . . .

21 . . .

22 . . .

23 . . .

24 . . .

25 . . .

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ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

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

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12 WILLIAM P. CASTILLO,

13 Petitioner,

14 vs.

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

18 Respondents.

Case No. C133336  
Dept. No. XVIII

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

(Death Penalty Habeas Corpus Case)

**FILED**

**SEP 18 2009**

*John J. Johnson*  
CLERK OF COURT

19 **VOLUME 15 OF 15**  
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16 CATHERINE CORTEZ MASTO,  
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**EXHIBITS TO  
PETITION FOR WRIT  
OF HABEAS CORPUS**

(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. Etcoff, Psychological Evaluation, July 14, 1996
- 6 27. Declaration of Herbert Duzant
- 7 28. Declaration of Joe Castillo
- 8 29. Declaration of Barbara Wickham
- 9 30. Declaration of Regina Albert
- 10 31. Declaration of Cecilia Boyles
- 11 32. Declaration of Ramona Gavan-Kennedy
- 12 33. Declaration of Michael Thorpe
- 13 34. Declaration of Yolanda Norris
- 14 35. Declaration of Lora Brawley
- 15 36. Evaluation Report by Rebekah G. Bradley, Ph.D.
- 16 37. Curriculum Vitae of Rebekah G. Bradley, Ph.D.
- 17 38. Confidential Forensic Report by Jonathan H. Mack, Psy.D.
- 18 39. Curriculum Vitae of Jonathan H. Mack, Psy.D.
- 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. Etcoff, Ph.D.
- 24 43. Declaration of Mary Kate Knowles
- 25 44. Declaration of Herbert Duzant
- 26 45. David M. Schieck, Esq. Client Billing Worksheet (2/29/96-11/4/96)
- 27 46. Affidavit of Vital Statistics, Barbara Margaret Thorpe v. William Patrick  
28 Thorpe, Sr., State of Missouri, County of St. Louis, September 14, 1973

- 1 47. William P. Thorpe, Sr. Missouri Department of Corrections with Fulton State  
2 Hospital records
- 3 48. Catholic Services for Children and Youth, Catholic Charities, Archdiocese of  
4 St. Louis, records of Max Allen Becker, Yolanda Becker, and Barbara Becker,  
5 children of Alegria Dehry-Becker and Robert Becker
- 6 49. Divorce proceedings, Barbara Castillo v. Joe Castillo, Clark County, Nevada,  
7 Case No. D121396
- 8 50. Charles Sarkison, Attorney at Law, records of representation of Barbara M.  
9 Wickham, formerly, Barbara Becker-Thorpe-Castillo-Sullivan:
- Custodial proceedings regarding William Patrick Thorpe, Jr. (now  
William Patrick Castillo), pages 2-25
  - Divorce proceedings regarding William Patrick Thorpe, Sr., pages 26-  
48
  - Personal injury lawsuit for accident on 4/10/74, pages 49-69

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- 11 51. Missouri Certification of Death, William P. Thorpe, Sr. (Date of Death: July  
12 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

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- 18 55. Order for Adoption, In the Matter of the Adoptive Petition of Joe L. Castillo  
19 and Barbara Castillo, Clark County, Nevada, Case No. D40017, January 15,  
20 1982
- 21 56. St. Louis Post-Dispatch, news article "Police Keeping Their Eyes Peeled At  
22 New Downtown Massage Parlor," September 19, 1976
- 23 57. St. Louis Globe-Democrat news article, "His home is a prison cell and his life  
24 is a waste," November 7, 1973
- 25 58. Children's Hospital of St. Louis medical records on William P. Thorpe, Jr.
- 26 59. Oasis Treatment records, 6/9/81-9/11/81
- 27 60. Coordinator's Contact Record, 9/14/81-12/15/81
- 28 61. Confidential Psychological Evaluation, performed May 24, 1982
62. Las Vegas Mental Health Center, Psychiatric Evaluation, dated July 7, 1982

- 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  
5 Nevius' Supplemental Memo at 3 (October 18, 1999)
- 6 121. O'Neill v. State, No. 39143, Order of Reversal and Remand (December 18,  
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),  
11 Amended Order  
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

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- 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.
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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

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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

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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.

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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.

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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

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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

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

- 1 182. Recorder's Transcript Re: request of the Court: Argument, Castillo v. State,  
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
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OFFICE OF THE DISTRICT ATTORNEY

~~STEVEN OWENS, Deputy District Attorney~~  
200 Lewis Avenue  
Las Vegas, Nevada 89155

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Catherine Cortez Masto, Nevada Attorney General  
Heather D. Procter, Deputy Attorney General  
Attorney General's Office  
100 North Carson Street  
Carson City, Nevada 89701-4717

An employee of the Federal Public Defender

EXHIBIT 173

EXHIBIT 173

DISTRICT COURT

CLARK COUNTY, NEVADA

ORIGINAL

FILED IN OPEN COURT

SEP 26 1996

19

LORETTA BOWMAN, CLERK

BY *[Signature]* Deputy

THE STATE OF NEVADA,

Plaintiff,

Vs

WILLIAM PATRICK CASTILLO,

Defendant.

CASE NO. C133336

DEPT. NO. VII

DOCKET P

BEFORE THE HONORABLE:

A. WILLIAM MAUPIN DISTRICT JUDGE

WEDNESDAY, SEPTEMBER 25, 1996, 11:07 A.M.

PENALTY HEARING - VOLUME IV

APPEARANCES:

FOR THE STATE:

STEWART L. BELL

District Attorney

MELVYN T. HARMON

Chief Deputy District Attorney

FOR THE DEFENDANT:

DAVID M. SCHIECK, ESQ.

Castillo, William  
Rev'd 10/20/04 SJDC-621  
8th JDC recs.

REPORTED BY:

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

PATSY K. SMITH, OFFICIAL COURT REPORTER

2108

CE

1 WEDNESDAY, SEPTEMBER 25, 1996, 11:07 A.M.

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

4 MR. BELL: Yes, your Honor.

5 MR. SCHIECK: Yes, your Honor.

6 THE COURT: All right, first of all, do the  
7 parties waive the presence of the defendant?

8 MR. SCHIECK: Yes, your Honor, for purposes  
9 of the readback.

10 MR. BELL: Yes.

11 THE COURT: Also, the alternates are not  
12 present. The parties have agreed that this readback can be  
13 accomplished without the alternates being summoned to the  
14 courthouse?

15 MR. BELL: That's correct, your Honor, and  
16 the Court indicated that the procedure you intended to  
17 employ was if and in the event any of them needed to  
18 participate, that they would first have an individual  
19 readback and then go participate and that's fine with the  
20 State.

21 MR. SCHIECK: That's correct, your Honor.  
22 It is fine with the defense.

23 THE COURT: Do you so stipulate?

24 MR. SCHIECK: Yes, your Honor.

25 THE COURT: Ladies and gentlemen of the

PATSY K. SMITH, OFFICIAL COURT REPORTER

2109

Castillo, William  
Rev'd 10/20/04 SJDC-022  
5th JDC recs.



1 jury, it's my understanding that you desire a readback of  
2 Dr. Etcoff's testimony?

3 A VOICE: Yes, sir.

4 THE COURT: Is there any particular portion  
5 of the testimony you want read back?

6 A VOICE: The entire testimony.

7 THE COURT: So be it.

8

9 (At this time the record was read.)

10

11 THE COURT: Just a moment.

12 A VOICE: I hate to interrupt. I have to  
13 use the restroom.

14 THE COURT: We will take a break. Anyone  
15 else?

16 A VOICE: I apologize.

17 (Off the record discussion not reported.)

18 THE COURT: Counsel approach the bench.

19 (Off the record discussion not reported.)

20 THE COURT: If you will remain at ease,  
21 ladies and gentlemen. Do not discuss this matter.

22 (Off the record discussion not reported.)

23 THE COURT: Because of a prior commitment --  
24 two, in fact, I'm going to go ahead and see what I can do  
25 about rearranging things so we can continue on with this

PATSY K. SMITH, OFFICIAL COURT REPORTER

2110

Castillo, William  
Rev'd 10/20/04 SJDC-623  
8th JDC recs.

WCastillo - 027-8JDC0623

1 readback.

2

3 (Off the record at 11:35 a.m. and back on  
4 the record at 11:45 a.m.)

5 THE COURT: All right, back in session.  
6 You may continue with the readback.

7

8 (At this time, the record was read.)

9

10 THE COURT: That concludes the readback,  
11 ladies and gentlemen. Does that satisfy the request?

12 A VOICE: Yes.

13 THE COURT: All right, thank you very much,  
14 ladies and gentlemen. We will be at ease while you are  
15 escorted back to your place of deliberation.

16

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

18

19 THE COURT: Anything further from the  
20 parties at this time?

21 MR. BELL: No, your Honor.

22 MR. SCHIECK: No, your Honor.

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

24

25 (Off the record at 12:16 p.m. and back on

PATSY K. SMITH, OFFICIAL COURT REPORTER

2111

Castillo, William  
Rev'd 10/20/04 SJDC-624  
8<sup>th</sup> JDC recs.

027-8JDC0623

AA004673

1 the record at 4:46 p.m.)

2

3 THE COURT: Counsel stipulate to the  
4 presence of the jury and all alternates?

5 MR. BELL: Yes, your Honor.

6 MR. SCHIECK: Yes, your Honor.

7 THE COURT: Ladies and gentlemen of the  
8 jury, I understand you have reached a verdict?

9 THE JURY: (In Unison) Yes, your Honor.

10 THE COURT: Would the foreperson please hand  
11 the forms of verdict to the bailiff.

12 "District Court, Clark County, Nevada, State  
13 of Nevada, plaintiff, versus William Patrick Castillo,  
14 defendant. Case No. C133336, Department No. VII, Docket  
15 P.

16 Special verdict: We the jury in the above  
17 entitled case, having found the defendant, William Patrick  
18 Castillo, guilty of Count IV, murder of the first degree,  
19 designate that the aggravating circumstance or  
20 circumstances, which have been checked below, have been  
21 established beyond a reasonable doubt.

22 The murder was committed by a person who was  
23 previously convicted of a felony involving, the use or  
24 threat of violence to the person of another, to wit:  
25 robbery committed on 12/14/92, victim Patricia Rizzo,

PATSY K. SMITH, OFFICIAL COURT REPORTER

Castillo, William  
Rev'd 10/20/04 8JDC-625  
8" JDC recs.

2112

1 judgment of conviction filed 5/28/93, Case No. C111011,  
2 Clark County, Nevada."

3 That was the first aggravating circumstance  
4 found by the jury.

5 Second aggravating circumstance found by the  
6 jury was, "The murder was committed by William Patrick  
7 Castillo while he was engaged alone or with another in the  
8 commission of or an attempt to commit or flight after  
9 committing or attempting to commit any burglary and the  
10 defendant (A) Killed the person murdered, (B) Knew or had  
11 reason to know that life would be taken or lethal force  
12 used."

13 The third aggravating circumstance found by  
14 the jury is as follows:

15 "The murder was committed by William  
16 Castillo while he was engaged alone or with another in the  
17 commission of or an attempt to commit or flight after  
18 committing or attempting to commit any robbery and the  
19 defendant (A) Killed the person murdered, (B) Knew or had  
20 reason to know that life would be taken or lethal force  
21 used."

22 Final aggravating circumstance found was,  
23 "The murder was committed to avoid or prevent a lawful  
24 arrest.

25 Dated at Las Vegas this 25th day of

PATSY K. SMITH, OFFICIAL COURT REPORTER

2113

Castillo, William  
Rev'd 10/20/04 8JDC-025  
8th JDC recs.

1 September, 1996, John R. Ruhlmann, foreperson.

2 District Court, Clark County, Nevada, State  
3 of Nevada, plaintiff, versus William Patrick Castillo,  
4 defendant. Case No. C133336, Department VII, Docket P.

5 Special verdict: We the jury in the above  
6 entitled case, having found the defendant, William Patrick  
7 Castillo, guilty of Count IV, murder of the first degree,  
8 designate that the mitigating circumstance or circumstances  
9 which have been checked below have been established.

10 The youth of the defendant at the time of  
11 the crime, the murder was committed while the defendant was  
12 under the influence of extreme mental or emotional  
13 disturbance and any other mitigating circumstances."

14 Those three boxes have been checked by the  
15 jury.

16 "Dated Las Vegas, this 25th day of  
17 September, 1996, John R. Ruhlmann, foreperson.

18 District Court, Clark County, Nevada State  
19 of Nevada, plaintiff, versus William Patrick Castillo,  
20 defendant. Case No. C133336, Department VII, Docket P.

21 Verdict: We the jury in the above entitled  
22 case, having found the defendant, William Patrick Castillo,  
23 guilty of Count IV, murder of the first degree, and having  
24 found that the aggravating circumstance or circumstances  
25 outweigh any mitigating circumstance or circumstances,

PATSY K. SMITH, OFFICIAL COURT REPORTER

2114  
Castillo, William  
Rev'd 10/20/04 SJDC-627  
8" JDC recs.

1 impose a sentence of death.

2 Dated Las Vegas, this 25th day of September,

3 1996. John R. Ruhlmann, foreperson."

4 Ladies and gentlemen of the jury, are those

5 your verdicts, so say you one, so say you all?

6 THE JURY: (In Unison) Yes.

7 THE COURT: Either party wish to have the

8 jury polled?

9 MR. SCHIECK: Yes, please, your Honor.

10 THE COURT: Ms. Clerk, poll the jury.

11 THE CLERK: Robert I. Law, are those your

12 verdicts as read?

13 A Yes.

14 Q Suzanne Malmedal, are those your

15 verdicts as read?

16 A Yes.

17 Q Mark R. Kruse, are those your verdicts

18 as read?

19 A Yes.

20 Q Eric M. Korte, are those your verdicts

21 as read?

22 A Yes.

23 Q Richard Sammons, are those your

24 verdicts as read?

25 A Yes.

PATSY K. SMITH, OFFICIAL COURT REPORTER

2115

Castillo, William  
Rcv'd 10/20/04 SJDC-628  
8<sup>th</sup> JDC recs.

WCastillo - 027-8JDC0628

1 Q Pamela Brennan, are those your verdicts  
2 as read?

3 A Yes.

4 Q John R. Ruhlmann, are those your  
5 verdicts as read?

6 A Yes.

7 Q Christopher Michael Ramsey, are those  
8 your verdicts as read?

9 A Yes.

10 Q Roy J. Kirk, are those your verdicts as  
11 read?

12 A Yes, sir.

13 Q Christopher F. Pagano, are those your  
14 verdicts as read?

15 A Yes.

16 Q Kelly Lynn Lea, are those your verdicts  
17 as read?

18 A Yes.

19 Q Dale Eric Murrell, are those your  
20 verdicts as read?

21 A Yes.

22 THE COURT: Ladies and gentlemen of the  
23 jury, with the thanks of this Court, you are discharged  
24 from further jury service in this rotation.

25 Again, as I said at the beginning of these

PATSY K. SMITH, OFFICIAL COURT REPORTER

2116

Castile, William  
Rev'd 10/20/04 8JDC-629  
8th JDC recs.

027-8JDC0628

AA004678

1 proceedings, that the system doesn't work unless persons  
2 from the community commit to come to court and serve as  
3 jurors to help resolve our most important disputes. I  
4 realize this has been a difficult case. The Court  
5 expresses its appreciation for your time and for your  
6 commitment.

7                   You are hereby released from your admonition  
8 to discuss this case with parties outside the jury or the  
9 courtroom. You may discuss this case with anyone or no  
10 one, as you choose. If someone insists upon discussing the  
11 case with you over your objection, please report that fact  
12 to me.

13                   I would, however, encourage you to discuss  
14 the case with the attorneys involved or with members of the  
15 press, if they so choose. You don't have to do that, but  
16 it does help the process some if you do share that  
17 information, particularly with the lawyers who would like  
18 to obtain some incites into this process.

19                   Ladies and gentlemen of the jury, you are  
20 hereby discharged, as I indicated. If you would please  
21 accompany the bailiff to your place of deliberation, I  
22 would like to discuss the case with you for a few moments  
23 simply to obtain some of your own feedback about the  
24 process and how we handled the proceedings.

25                   Thank you, again. We will be at ease while

PATSY K. SMITH, OFFICIAL COURT REPORTER

2117      Castillo, William  
Rev'd 10/20/04 8JDC-630  
s' JDC recs.



1 the jury departs the confines of the courtroom. The  
2 verdicts will be made part of the Court record at this  
3 time.

4

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

6

7 THE COURT: Anything further from the  
8 parties at this time?

9 MR. BELL: No, your Honor, not from the  
10 State.

11 MR. SCHIECK: No, your Honor.

12 THE COURT: The sentencing proceeding will  
13 be had on November the 4th at the hour of 9:00 a.m. as  
14 previously established.

15 MR. HARMON: Thank you, Judge.

16 THE COURT: At this point, the Court is now  
17 in recess. These proceedings are now closed.

18

19 (Off the record at 4:55 p.m.)

20


21 \* \* \* \* \*

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

23

24

25

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

PATSY K. SMITH, OFFICIAL COURT REPORTER

2118

Castillo, William  
Rev'd 10/20/04 8JDC-631  
8th JDC recs.

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EXHIBIT 174

EXHIBIT 174

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DISTRICT COURT  
CLARK COUNTY, NEVADA

ORIGINAL

\* \* \* \* \* FILED IN OPEN COURT

THE STATE OF NEVADA,  
Plaintiff,  
Vs  
WILLIAM PATRICK CASTILLO &  
MICHELLE C. PLATOU  
Defendants.

NOV 05 1996 19  
LORETTA BOWMAN, CLERK  
BY *[Signature]*  
CASE NO. C133336 Deputy  
DEPT. NO. VII  
DOCKET P

BEFORE THE HONORABLE:  
A. WILLIAM MAUPIN DISTRICT JUDGE  
MONDAY, NOVEMBER 4, 1996, 9:00 A.M.

APPEARANCES:

FOR THE STATE: STEWART L. BELL  
District Attorney  
FOR THE DEFENDANT CASTILLO: DAVID M. SCHIECK, ESQ.  
FOR THE DEFENDANT PLATOU: HOWARD S. BROOKS  
Deputy Public Defender  
FOR THE DEPT. OF  
PAROLE & PROBATION: RICHARD NALL  
Castillo, William  
Rev'd 10/20/04 8JDC-649  
5th JDC recd.  
REPORTED BY: PATSY K. SMITH, C.C.R. #190

PATSY K. SMITH, OFFICIAL COURT REPORTER

2125



1 MONDAY, NOVEMBER 4, 1996, 9:00 A.M.

2 THE COURT: C133336, State of Nevada versus  
3 William Patrick Castillo and Michelle C. Platou.

4 Defendants are present in custody  
5 represented by their counsel, State of Nevada is  
6 represented by the District Attorney.

7 Are the parties ready to proceed with the  
8 sentencing this morning?

9 MR. BELL: State is.

10 MR. SCHIECK: Yes, your Honor.

11 MR. BROOKS: Yes, your Honor.

12 THE COURT: That's also with regard to  
13 Michelle Platou?

14 MR. BELL: Yes, sir.

15 MR. BROOKS: Yes, your Honor.

16 THE COURT: We will proceed with the Platou  
17 sentencing first. Parties are ready to proceed, then this  
18 is the time set for entry of judgment and imposition of  
19 sentence.

20 With regard to Michelle Platou, on September  
21 25th, 1996, this Court accepted the defendant's pleas of  
22 guilty to Counts II, III, and IV of the Information --  
23 excuse me -- Indictment charging the defendant in Count II  
24 with burglary, Count III, robbery, and Count IV, murder in  
25 the first degree, all felonies.

Castillo, William  
Rev'd 10/20/04 8JDC-650  
8th JDC recs.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Is there any legal cause or reason why  
2 judgment should not be pronounced against this defendant at  
3 this time?

4 MR. BROOKS: No, your Honor.

5 THE COURT: By virtue of the defendant's  
6 pleas of guilty, the defendant is hereby adjudged guilty of  
7 Count II, burglary, Count III, robbery, and Count IV,  
8 murder in the first degree.

9 Does the Department have anything to add to  
10 its report?

11 MR. NALL: No, your Honor.

12 THE COURT: State of Nevada. I believe the  
13 sentence in this case has been stipulated to.

14 MR. BELL: It has.

15 The stipulation was that she receive the  
16 maximum on each, which is reflected in the Department's  
17 report, and each run concurrent. We believe a twenty to  
18 life sentence, which is in effect what will happen, is a  
19 fair sentence given her participation in this crime,  
20 Judge. So we ask you to follow the report.

21 THE COURT: As I indicated at the time of  
22 the plea, that this arrangement was comprehensively discuss  
23 with the victim's family and they were in agreement.

24 MR. BELL: And the police department.

25 Everybody felt this was a fair resolution for this awful

PATSY K. SMITH, OFFICIAL COURT REPORTER

Castillo, William  
Rev'd 10/20/04 SJDC-651  
8th JDC recs.

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1 crime given this defendant's participation.

2 THE COURT: Ms. Platou, your attorney will  
3 have an opportunity to make a statement on your behalf. Do  
4 you have anything to say in mitigation of punishment before  
5 sentence is pronounced?

6 THE DEFENDANT: Well, I've thought about  
7 this day for a long time. There is a million things I want  
8 to say. This all comes down to this one moment. All I can  
9 say is I'm truly sorry for what happened. If I could take  
10 it back, I would, but I can't. My sympathy goes out to the  
11 family.

12 That's all I want to say.

13 THE COURT: Mr. Brooks.

14 MR. BROOKS: We will submit it.

15 THE COURT: In accordance with the law of  
16 the State of Nevada and per stipulation of the parties, in  
17 addition to a \$25 administrative assessment, this Court  
18 sentences you as follows:

19 Count II, burglary, to a maximum of 120  
20 months in the Nevada Department of Prisons with parole  
21 eligibility to commence when a minimum of 26 months has  
22 been served. Plus restitution in the amount of \$48,033.96  
23 to be paid jointly and severly with the co-offender.

24 Under Count III, you are hereby sentenced to  
25 180 months in the Nevada Department of Prisons with parole

PATSY K. SMITH, OFFICIAL COURT REPORTER

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Castillo, William  
Rev'd 10/20/04 8JDC-652  
8th JDC recs.

1 eligibility to commence when a minimum of 40 months has  
2 been served and under Count IV, murder in the first degree,  
3 the defendant is sentenced to life with the possibility of  
4 parole commencing when a minimum of 20 years has been  
5 served.

6 All these sentences, that is the sentences  
7 under Counts II, III, and IV are to be served  
8 concurrently.

9 MR. BELL: The State would move to dismiss  
10 all the remaining counts, Judge. I think she has credit  
11 for time served.

12 THE COURT: They are dismissed.

13 MR. BROOKS: And credit for time served?

14 MR. NALL: Three hundred twenty days, your  
15 Honor.

16 THE COURT: That will be the order.

17 MR. BROOKS: Thank you very much.

18 THE COURT: We will move on to the Castillo  
19 matter.

20 On September 4th, 1996, the jury convicted  
21 this defendant, under Count I, conspiracy to commit  
22 burglary and/or robbery, a felony, Counts II and VI,  
23 burglary, Count III, robbery, victim 65 years of age or  
24 older, Count V, conspiracy to commit burglary, and arson  
25 and first degree arson under Count VII, and murder of the

PATSY K. SMITH, OFFICIAL COURT REPORTER

Castillo, William  
Rev'd 10/20/04 SJDC-653  
8th JDC recs.

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1 first degree with use of a deadly weapon under Count IV.  
2 These charges were brought by way of Indictment -- Amended  
3 Indictment filed May 29, 1996.

4 Is there any legal cause or reason why  
5 judgment should not be pronounced against in defendant at  
6 this time?

7 MR. SCHIECK: No, your Honor.

8 THE COURT: By virtue of the jury verdicts  
9 in this case, the defendant is hereby adjudged guilty of  
10 conspiracy to commit burglary and/or robbery as alleged in  
11 Count I, burglary as alleged in Count II and VI, robbery,  
12 victim 65 years of age or older as alleged in Count III,  
13 murder of the first degree with use of a deadly weapon as  
14 alleged in Count IV, and conspiracy to commit burglary and  
15 arson as alleged in Count V, and first degree arson as  
16 alleged in Count VII.

17 Does the Department have anything to add to  
18 its report?

19 MR. NALL: No, your Honor.

20 THE COURT: State of Nevada.

21 MR. BELL: Your Honor, the State would ask  
22 you to follow the recommendation, which is, of course, the  
23 death penalty as imposed by the jury, but then also maximum  
24 sentences to run consecutively thereafter on all the other  
25 counts for two reasons.

Castillo, William  
Rev'd 10/20/04 SJDC-654  
8th JDC recs.

PATSY K. SMITH, OFFICIAL COURT REPORTER

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1 One is to send a message, all be it  
2 symbolic, that this is just not going to be tolerated  
3 conduct in this community and, number two, although, quite  
4 frankly, I thought the Court ran a near perfect trial and I  
5 see little possibility of it being reversed; it may be some  
6 day for something I can't see and we owe a duty to this  
7 community to do everything possible to see that this most  
8 dangerous individual has no possibility whatsoever to be on  
9 the streets in free society again.

10 So I ask the Court to simply follow the  
11 recommendation.

12 THE COURT: Mr. Castillo, your attorney will  
13 have an opportunity to speak on your behalf. Do you have  
14 anything to tell the Court in mitigation of punishment  
15 before sentence is pronounced?

16 THE DEFENDANT: No, sir.

17 THE COURT: Mr. Schieck, on behalf of the  
18 defense.

19 MR. SCHIECK: Your Honor, the Court heard  
20 all the testimony. The report reflects Mr. Castillo's  
21 history. We argued to the jury for a life without the  
22 possibility of parole sentence. That really has not  
23 changed.

24 We would ask, however, that the Court  
25 consider running all the other counts concurrent to the

PATSY K. SMITH, OFFICIAL COURT REPORTER

Castillo, William  
Rcv'd 10/20/04 8JDC-855  
8th JDC recs.

2131

[REDACTED]

1 murder count and consecutive to each other. That's all we  
2 have, your Honor.

3 THE COURT: Isabelle Berndt's family is only  
4 left with the memory of her alone in the dark being  
5 bludgeoned and smothered to death by this defendant. Her  
6 life was truly a pearl without price, but to these  
7 defendants, a VCR, money, a box of silverware, and a  
8 plastic bag of booties was a price they placed on this  
9 life, a life that is now lost to all of us.

10 To say that this was a senseless crime is a  
11 gross understatement. To say that this defendant's life  
12 has had no meaning other than destruction and stupidity is  
13 also a gross understatement.

14 The Court is inclined to follow this  
15 recommendation with the exception that the minimum parole  
16 eligibilities should be raised to include the maximum  
17 minimums. There is enough evidence in this record to  
18 suggest that each and every one of these counts should be  
19 run consecutive and I intend to do that because almost  
20 every incident in this person's life that was recounted  
21 before the jury cries out for the maximum penalties in this  
22 case.

23 It is a sad occasion whenever the Court is  
24 called upon to resolve proceedings of this type and the  
25 sadness of this family cannot be measured because this was

PATSY K. SMITH, OFFICIAL COURT REPORTER

Castillo, William  
Rev'd 10/20/04 SJDC-ess  
8" JDC recs.

2132

1 truly a great lady that had a lot to contribute to this  
2 community and did contribute a lot to this community and  
3 this defendant must pay the maximum penalty for that.

4 In accordance with the law of the State of  
5 Nevada, in addition to a \$25 administrative assessment, I  
6 hereby impose upon William Patrick Castillo the following  
7 sentences:

8 Count I, conspiracy to commit burglary, 72  
9 months in the Nevada Department of Prisons with minimum  
10 parole eligibility to commence when 28 months has been  
11 served.

12 Count II, burglary, 120 months in the Nevada  
13 Department of Prisons with minimum parole eligibility to  
14 commence when 48 months has been served.

15 Count III, robbery with the victim being  
16 over the age of 65 years, 180 months in the Nevada  
17 Department of Prisons with parole eligibility to commence  
18 when 72 months has been served, plus an equal and  
19 consecutive term of 180 months with minimum parole  
20 eligibility when 72 months has been served.

21 Count IV, murder of the first degree with  
22 use of a deadly weapon, the jury has imposed the death  
23 penalty. That sentence is hereby ratified by these  
24 proceedings.

25 Count V, conspiracy to commit burglary and

PATSY K. SMITH, OFFICIAL COURT REPORTER

Castillo, William  
Rev'd 10/20/04 SJDC-857  
8<sup>th</sup> JDC recs.

2133

1 arson, 72 months in the Nevada Department of Prisons with  
2 minimum parole eligibility to commence when 28 months has  
3 been served.

4 Count VI, burglary, 120 months in the Nevada  
5 Department of Prisons with minimum parole eligibility when  
6 48 months has been served and Count VII, first degree  
7 arson, 180 months in the Nevada Department of Prisons with  
8 parole eligibility to commence when 72 months has been  
9 served and in order to make this sentence truly symbolic  
10 and truly fair to all the parties concerned, all sentences  
11 under Counts I through VII are to be served consecutively.

12 MR. BELL: Judge, may I approach the bench  
13 with the orders?

14 MR. NALL: Credit for time served, your  
15 Honor, is 320 days.

16 THE COURT: That will be the order.

17 MR. SCHIECK: Your Honor, I understand the  
18 Court has now signed the Warrant of Execution.

19 THE COURT: Yes.

20 MR. SCHIECK: I ask that I be provided with  
21 copies of that so I can prepare the Stay of Execution.

22 THE COURT: Yes.

23 MR. SCHIECK: Mr. Castillo has the right to  
24 appeal in this case. I have discussed this with Mr.  
25 LaPorta of the State Public Defender's Office. He's

PATSY K. SMITH, OFFICIAL COURT REPORTER

Castillo, William  
Rev'd 10/20/04 SJDC-658  
5th JDC recs.

2134

1 indicated to me that his office is having some difficulty  
2 handling the appeals along with the rest of the case load.  
3 Mr. Castillo has no problem if the Court would be so  
4 inclined to appoint me to handle this.

5 MR. BELL: No objection.

6 THE COURT: All right, that will be the  
7 order in this matter.

8 I would like to see counsel in chambers  
9 after the proceedings this morning, if that's possible.

10 MR. SCHIECK: Do we need to stay around,  
11 Judge?

12 THE COURT: Yes.

13

14 \* \* \* \* \*

15

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

17

18

*Patsy K. Smith*  
PATSY K. SMITH, C.C.R. #190

19

20

21

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25

Castillo, William  
Rev'd 10/20/04 8JDC-658  
8th JDC recs.

PATSY K. SMITH, OFFICIAL COURT REPORTER

2135

# EXHIBIT 175

# EXHIBIT 175

12/16/96 C133336

1

ORIGINAL

FILED

JAN 17 8 04 AM '97

*Forster*  
CLERK

CASE NO. C133336

DEPT. NO. VIII

DISTRICT COURT

CLARK COUNTY, NEVADA

-oOo-

THE STATE OF NEVADA,

Plaintiff,

vs.

WILLIAM PATRICK CASTILLO,

Defendant.

REPORTER'S TRANSCRIPT

OF

MOTION TO WITHDRAW

BEFORE THE HON. LEE A. GATES, DISTRICT JUDGE

MONDAY, DECEMBER 16, 1996

9:00 A.M.

APPEARANCES:

For the State: BRIAN S. RUTLEDGE, ESQ.  
Deputy District Attorney

For the Defendant: NANCY L. LEMCKE, ESQ.  
State Deputy Public Defender

Reported by: Mary Beth Cook  
CCR No. 268, RPR

Castillo, William  
Rev'd 10/20/04 8JDC-805  
8th JDC recs.

FOR THE RECORD (702) 898-5704

CE

12/16/96 C133336

2

1 LAS VEGAS, CLARK COUNTY, NV., MONDAY, DEC. 16, 1996

2 9:00 A.M.

3 -oOo-

4 P R O C E E D I N G S

5  
6 THE COURT: State of Nevada versus William  
7 Castillo.

8 MR. RUTLEDGE: Your Honor, Mr. Bell came down on  
9 this case and spoke to me about it. He said that previously  
10 in front of Judge Maupin the judge already allowed  
11 Mr. LaPorta to withdraw and Mr. Schieck be appointed for the  
12 appeal. However, evidently no paperwork was done to confirm  
13 that, and we believe that's what this is, so we have no  
14 objection. We believe Mr. Maupin's already ordered this  
15 once before.

16 THE COURT: The motion is granted. Has  
17 Mr. Schieck confirmed?

18 MR. RUTLEDGE: He hasn't been here today, but like  
19 I said.

20 THE COURT: Let's put it on. The last case here  
21 Mr. Schieck was present and Mr. Schieck confirmed, so I  
22 don't know what it's on for.

23 MR. RUTLEDGE: I think they just had not done a  
24 written order yet, and they probably need to do that for  
25 Mr. Schieck.

Castillo, William  
Rev'd 10/20/04 8JDC-806  
3<sup>rd</sup> JDC recs.

FOR THE RECORD (702) 898-5704

028-8JDC0251

AA004695



1 THE COURT: Let's set it over for Friday then.  
2 Notify Mr. Schieck to be present.

3 THE CLERK: December 20th at 9 a.m.  
4 (Case recalled.)

5 THE COURT: Where were you?

6 MS. LEMCKE: I had to go handle a murder  
7 sentencing in Department XII, and I ran back up. I must  
8 have just missed it. What happened with it? Were we  
9 permitted to withdraw?

10 THE COURT: I thought you had already withdrawn.

11 MS. LEMCKE: It was Mr. LaPorta's case, Judge. I  
12 was told to come over on his motion to withdraw.

13 THE COURT: We didn't have a written motion, but  
14 according to the minute order Judge Maupin allowed  
15 Mr. Schieck to substitute in at the last hearing, but just  
16 to make sure, I continued it over to Friday for Mr. Schieck  
17 to be present.

18 MS. LEMCKE: So it's on calendar for this Friday  
19 then?

20 THE COURT: Yes.

21 MS. LEMCKE: Thank you, Judge.

22 -oOo-

23 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT.

24 *Mary Beth Cook*  
25 Mary Beth Cook, CCR No. 268, RPR

Castillo, William  
Rev'd 10/20/04 8JDC-807  
8th JDC recs.

● ●

# EXHIBIT 176

EXHIBIT 176

COPY

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*Shirley S. Higgins*  
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 WILLIAM PATRICK CASTILLO, )  
 #1153209 )  
 )  
 Defendant. )

Case No. C133336  
Dept. No. VII  
Docket No. P

Before the Honorable Mark Gibbons

Monday, December 6, 1999, 9:00 a.m.

Reporter's Transcript of Proceedings

MOTION FOR APPOINTMENT OF  
PSYCHIATRIST AND CO-COUNSEL

APPEARANCES:

For the Plaintiff:

LYNN ROBINSON, ESQ.  
Deputy District Attorney  
200 South Third Street  
Las Vegas, Nevada 89155

For the Defendant:

JOAN BUCKLEY, ESQ.  
Attorney at Law  
302 E. Carson, #508  
Las Vegas, Nevada 89101

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

1 Las Vegas, Nevada, Monday, December 6, 1999, 9:00 a.m.

2  
3 \* \* \* \* \*

4  
5 THE COURT: Okay. Miss Buckley.

6 Let's go to the top of page one, Case Number  
7 C133336, State of Nevada versus William Patrick Castillo.

8 Let the record reflect the presence of Joan  
9 Buckley, representing Mr. Castillo, who is not present.  
10 He's in state prison, so we'll waive his appearance. We  
11 have Lynn Robinson, deputy District Attorney, representing  
12 the State of Nevada.

13 This is on for the defendant's motion for  
14 appointment of a psychiatrist and for co-counsel.

15 Okay. I've read this. I assume the State  
16 has no opposition to this, Miss Robinson?

17 MS. ROBINSON: Apparently, we don't.

18 THE COURT: Okay. On the the psychiatrist,  
19 Miss Buckley, who would you recommend?

20 MS. BUCKLEY: Who would I recommend?

21 THE COURT: Yeah. I don't know who does  
22 this type of work here, so -- anybody?

23 MS. BUCKLEY: Dr. Masters?

24 THE COURT: He certainly -- why don't I

13 1 appoint Dr. Franklin Masters as the psychiatrist to examine  
2 the defendant.

3 As far as co-counsel, did you have anybody  
4 in mind?

5 MS. BUCKLEY: Liz Hatcher.

6 THE COURT: Liz Hatcher?

7 Okay. We will appoint Liz Hatcher as  
8 co-counsel with Miss Buckley on this case.

9 Okay. Just for the record, the defendant  
10 indicated he wants to be executed, so we will need to have a  
11 psychiatrist examine him and have co-counsel involved in  
12 this case.

13 MS. BUCKLEY: I do have one other matter  
14 that came to my attention after I did the motion.

15 The calendar clerk said she thought that  
16 his -- he had a petition for post-conviction, and I was  
17 appointed to file the supplementals.

18 Then we got into this fact that he didn't  
19 want to proceed; and the clerk said she thought that had  
20 been dismissed on August 26th. That shouldn't have happened  
21 if it did.

22 Is -- is there any -- I -- I came to court  
23 on August 26th. It was not on calendar. I was on my way to  
24 eat and I talked to Mr. Laurent and Mr. Tufteland after this

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date, and it's not my impression that this was dismissed.

I just wondered if the Court's record showed --

THE COURT: We'll find out.

MS. ROBINSON: Our records show that the last time this was on, on 4/23/99, it was taken off calendar and that it hasn't been back since. That's what my records said.

THE COURT: Well, I'll get -- you have one other one, Miss Buckley, and I'll have the clerk -- I'll tell you about it in a minute.

\* \* \* \* \*

ATTEST: Full, true and accurate transcript of proceedings.

RENEE SILVAGGIO, C.C.R. NO. 122  
OFFICIAL COURT REPORTER

(Castillo)

EXHIBIT 177

EXHIBIT 177

FILED  
JUN 14 8 35 AM '01  
*Shirley D. Gibson*

ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	
	)	Case No. C133336
vs.	)	Dept. No. VII
	)	Docket No. P
WILLIAM PATRICK CASTILLO,	)	
#1153209	)	
	)	
Defendant.	)	

Before the Honorable Mark Gibbons

Monday, October 23, 2000, 9:00 a.m.

Reporter's Transcript of Proceedings

STATE'S MOTION TO PLACE ON CALENDAR

APPEARANCES:

For the Plaintiff:

LEON SIMON, ESQ.  
Deputy District Attorney  
200 South Third Street  
Las Vegas, Nevada 89155

For the Defendant:

(No Appearance)  
CHIP SEGAL, ESQ.  
(Appointed)

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

CE41

Castillo, William  
Rev'd 10/20/04 SJDC-951  
5th JDC recs.

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COUNTY CLERK

ACCUSCRIPTS (702) 391-0379

S1

028-8JDC0396

AA004703



1 Las Vegas, Nevada, Monday, October 23, 2000, 9:00 a.m.

2  
3 \* \* \* \* \*

4  
5 THE COURT: Mr. Simon, I know you had a very  
6 quick matter.

7 MR. SIMON: It's on page two, Your Honor.

8 We wanted a briefing schedule. That's been  
9 on calendar for about a year and a half.

10 THE COURT: Let me call this case.

11 This is Case C133336, the State of Nevada  
12 versus William Castillo.

13 Let the record reflect the presence of Leon  
14 Simon, representing the State. Mr. Castillo is in state  
15 prison, so we'll waive his appearance.

16 I had a question who defense counsel was,  
17 Mr. Simon.

18 If you could help me out on that one?

19 MR. SIMON: Joan Buckley was assigned about  
20 a year and a half ago, but I heard a rumor she's closing her  
21 practice. I don't know whether that's true or not.

22 THE COURT: She is.

23 And it has Liz Hatcher on the calendar, but  
24 she's not the attorney.

Castillo, William  
Rev'd 10/20/04 8JDC-952  
8\* JDC recs.

ACCUSCRIPTS (702) 391-0379

028-8JDC0397

AA004704

1 MR. SIMON: Not to my knowledge. Maybe she  
2 was involved in the case at one time.

3 If Miss Buckley is closing her practice,  
4 then perhaps the Court might want to consider appointing  
5 someone else and put it back on calendar for confirmation.

6 THE COURT: Do you have to be death penalty  
7 qualified on this one, this case? I can't remember. What  
8 was the sentence?

9 MR. SIMON: It was the death sentence.

10 THE COURT: Right.

11 MR. SIMON: Probably, they should be.

12 THE COURT: Okay.

13 MR. SIMON: Do you want to put it back on  
14 calendar, so you can check with some attorneys about taking  
15 the appointment, Your Honor?

16 THE COURT: Okay. Let's see.

17 Miss Navarro, Miss Connolly, I don't think  
18 either one of you can take it then. I don't believe.

19 MS. CONNOLLY: It's a death case?

20 THE COURT: Yes.

21 Can you take it, Miss Connolly?

22 This would be an hourly. It wouldn't be a  
23 track case.

24 MS. CONNOLLY: I do have -- I have two right

Castillo, William  
Rcv'd 10/20/04 8JDC-953  
8th JDC recs.

1 now. I don't know if it would be too much for me right now.

2 THE COURT: Do you want to talk to him for  
3 just a moment?

4 MS. CONNOLLY: Sure.

5 THE COURT: Well, why don't I just give you  
6 a moment to talk to Mr. Simon.

7 MR. SIMON: All right.

8 THE COURT: I'll set a liberal briefing  
9 schedule, if Miss Connolly is able to take it, if you give  
10 her a chance to review it.

11 MR. SIMON: We'll step out in the hall, Your  
12 Honor.

13 THE COURT: Okay. Let me recall this one.  
14 We'll call this one back in a moment then  
15 like that.

16 (Recess in proceedings.)

17  
18 THE COURT: Let's go back to page two.

19 This is Case Number C133336, the State of  
20 Nevada versus William Castillo.

21 Let the record reflect the presence of Leon  
22 Simon, deputy District Attorney, representing the State of  
23 Nevada; Mr. Castillo is in state prison, so we'll waive his  
24 appearance; also present at the request of the Court is

Castillo, William  
Rev'd 10/20/04 SJDC-954  
8<sup>th</sup> JDC recs.

ACCUSCRIPTS (702) 391-0379

028-8JDC0399

AA004706

1 Karen Connolly.

2 This is on for State's motion to place on  
3 calendar.

4 Miss Connolly.

5 MS. CONNOLLY: Your Honor, I'm going to  
6 decline the representation.

7 I discussed it with Mr. Simon. There is --  
8 there is just -- it's a defendant, I think, who wants to be  
9 executed at this point, so I'm going to decline taking his  
10 representation.

11 THE COURT: Okay. Well, let's see who we  
12 have here.

13 MS. CONNOLLY: Your Honor, I know that  
14 JoNell Thomas was doing a lot of these. I don't know if  
15 she's still accepting them or not.

16 THE COURT: Yeah. I know she's pretty busy.  
17 Let's appoint -- Chip Segal is on the list.  
18 We'll appoint him.

19 And we'll ask Mr. Segal to be here on --  
20 let's say, Thursday.

21 MR. SIMON: Thursday is fine.

22 THE COURT: Mr. Simon, could you do me a  
23 favor and call him and just give him a brief overview of the  
24 case?

Castillo, William  
Rev'd 10/20/04 8JDC-955  
8th JDC recs.

MR. SIMON: Certainly.

THE COURT: And we'll put it on for Thursday morning for confirmation of counsel and set a briefing schedule.


MR. SIMON: Thank you, Your Honor.

THE CLERK: October 26th at nine a.m.

MR. SIMON: Okay.

\* \* \* \* \*

ATTEST: Full, true and accurate transcript of proceedings.

  
RENEE SILVAGGIO, C.C.R. NO. 122  
OFFICIAL COURT REPORTER

(Castillo)

Castillo, William  
Rev'd 10/20/04 8JDC-986  
8<sup>th</sup> JDC recs.

ACCUSCRIPTS (702) 391-0379

028-8JDC0401

AA004708

WCastillo - 028-8JDC0401

● ●

EXHIBIT 178

EXHIBIT 178

COPY

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*Shirley L. Ruggiana*  
CLERK

## DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

WILLIAM PATRICK CASTILLO, #1153209)

Defendant.

Case No. C133336

Dept. No. VII

Docket No. P

Before the Honorable Mark Gibbons

Thursday, October 26, 2000, 9:00 a.m.

Reporter's Transcript of Proceedings

CONFIRMATION OF COUNSEL

## APPEARANCES:

For the Plaintiff:

LEON SIMON, ESQ.  
Deputy District Attorney  
200 South Third Street  
Las Vegas, Nevada 89155

For the Defendant:

CHRISTOPHER ORAM, ESQ.  
Attorney at Law  
520 South Fourth Street  
Las Vegas, Nevada 89101

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

RENEE SILVAGGIO, CSR 122

1 Las Vegas, Nevada, Thursday, October 26, 2000, 9:00 a.m.

2  
3 \* \* \* \* \*

4  
5 THE COURT: Okay. Mr. Oram.

6 MR. ORAM: Yes, Your Honor.

7 Page one, Castillo.

8 THE COURT: Let's go to page one.

9 This is Case Number C133336, the State of  
10 Nevada versus William Castillo.

11 Let the record reflect the presence of Leon  
12 Simon, deputy District Attorney, representing the State;  
13 Christopher Oram, present at the request of the Court.

14 This is on for confirmation of counsel.

15 Again, Mr. Simon, we've contacted Mr.  
16 Siegel's office. He was unable to accept the case. We did  
17 contact Mr. Oram, and he indicated that he would be willing  
18 to accept the case.

19 So, Mr. Oram, could you confirm on this?

20 MR. ORAM: Yes, I can.

21 Thank you, Your Honor.

22 THE COURT: Okay. We'll confirm Mr. Oram as  
23 attorney for Mr. Castillo.

24 As far as this -- we will need to set, I



1 think, a briefing schedule for the post-conviction issues.

2 Mr. Oram, since you are brand new to the  
3 case and you have nothing here, I'll give you -- how much  
4 time would you request?

5 MR. ORAM: Your Honor, I've done a few of  
6 these capital post-convictions, and, usually, I come in and  
7 say I need 60 days, and then what happens is it takes a  
8 while for the file to come to me and then I come and ask for  
9 an extension.

10 THE COURT: Well, I'll give you more time.

11 MR. ORAM: Could I have four months?

12 MR. SIMON: That's fine with the State, Your  
13 Honor.

14 We'd like 60 days to respond.

15 THE COURT: Okay. 120 days for the  
16 defendant to file his petition; the State can have 60 days  
17 after that.

18 And we'll -- the court clerk will give you  
19 these dates in just a moment.

20 Then, Mr. Oram, how long would you like for  
21 reply?

22 MR. ORAM: Thirty days is fine, Judge.

23 THE COURT: Okay, 30 days for reply.

24 And then we'll put it on for hearing, let's

1 say, two weeks after the reply is due.

2 So, Amber, could you give us those dates,  
3 please.

4 THE CLERK: The petition is due March 1st;  
5 reply is due May 25th -- I'm sorry -- response. The reply  
6 is due June 22nd; and the hearing is set for July 5th, nine  
7 a.m.

8 MR. SIMON: Okay. Thank you, Your Honor.

9 MR. ORAM: Judge, who has the file?

10 THE COURT: I think it was --

11 MR. SIMON: Joan Buckley.

12 THE COURT: Joan Buckley.

13 MR. ORAM: All right.

14 THE COURT: If you have a problem with her,  
15 Mr. Oram, I'll call her myself, but you -- why don't you  
16 make an effort.

17 MR. ORAM: Yes, I will do that, Judge.

18 Thank you very much, Judge. Thank you for  
19 the appointment.

20 THE COURT: Thank you.

21 ATTEST: Full, true and accurate transcript of proceedings.

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RENEE SILVAGGIO, C.C.R. NO. 122  
OFFICIAL COURT REPORTER

24

(Castillo)

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# EXHIBIT 179

EXHIBIT 179

1 TRAN

**COPY FILED**

MAY 9 3 19 PM '01

DISTRICT COURT *Shirley L. Rangel*

CLARK COUNTY, NEVADA <sup>CLERK</sup>

7 THE STATE OF NEVADA,

8 PLAINTIFF,

9 VS.

10 WILLIAM PATRICK CASTILLO,

11 DEFENDANT.

CASE NO. C133336

DEPT. NO. XVIII

13 BEFORE THE HONORABLE NANCY M. SAITTA, DISTRICT JUDGE

14 MONDAY, MARCH 12, 2001; 9:00 A.M.

16 RECORDER'S TRANSCRIPT RE:

17 DEFENDANT'S MOTION FOR EXTENSION OF TIME  
18 TO FILE DEFENDANT'S SUPPLEMENTAL BRIEF IN SUPPORT OF  
19 DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

20 APPEARANCES:

21 FOR THE STATE:

H. LEON SIMON, ESQ.  
Deputy District Attorney

23 FOR THE DEFENDANT:

CHRISTOPHER R. ORAM, ESQ.  
520 S. Fourth St., 2nd Fl.  
Las Vegas, Nevada 89101

25 RECORDED BY: KRISTINE CORNELIUS, COURT RECORDER

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MONDAY, MARCH 12, 2001; 9:00 A.M.

THE COURT: Mr. Oram, who do you have?

MR. ORAM: I have on page 1 Castillo.

Your Honor, this is on for post-conviction relief on a capital case. The file now apparently is ready for pickup. I talked with Mr. Simon. He has no objection to us receiving 90 days to file the supplemental brief.

THE COURT: Why don't we go ahead and set it over for 90 days for supplemental brief.

MR. SIMON: Your Honor, we would ask for 60 days to respond. If counsel wants 30 days for a reply, I would then suggest that the present argument date of July 5 be vacated and that the Court set a new date for argument.

THE COURT: I think we'll need to do that. We will give Mr. Oram 90 days. We will then give the State 60 days to respond. Thereafter, 30 days for reply, Mr. Oram, if you need one.

We will vacate that July date, Mr. Simon, and reset it, however these days all wash out, if you will, past that July date.

MR. ORAM: Yes, your Honor.

(Colloquy between the Court and clerk)

THE CLERK: Mr. Oram, your opening will be due June 11. The State's reply, August 6. September 10 for response?

THE COURT: Reply.

THE CLERK: Reply. I'm going backwards.

1 THE COURT: That's okay.  
2 THE CLERK: I'm sorry. How many days for a hearing?  
3 THE COURT: Can we go two weeks after that?  
4 MR. SIMON: It's okay with me, your Honor.  
5 MR. ORAM: That's fine.  
6 THE COURT: Two weeks.  
7 THE CLERK: September 24, 9:00 a.m., for hearing.  
8 MR. ORAM: Thank you very much, your Honor.  
9 THE COURT: Very well. Thank you.  
10 MR. SIMON: Thank you, your Honor.  
11 THE COURT: You're welcome.  
12 MR. ORAM: Is that going to be in XVIII, your Honor?  
13 THE COURT: It will be -- it stays on the XVIII calendar, but it will --  
14 everything criminal will be heard in this courtroom.

15 MR. ORAM: Yes, your Honor. Thank you very much, your Honor.

16 (Whereupon the proceedings concluded)

17 \* \* \* \* \*

18 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
19 sound recording of the proceedings in the above-entitled case.

20   
21 KRISTINE M. CORNELIUS  
22 Court Recorder  
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# EXHIBIT 180

# EXHIBIT 180

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DISTRICT COURT  
CLARK COUNTY, NEVADA

*Shirley B. Higgins*  
CLERK

THE STATE OF NEVADA,  
Plaintiff,  
VS.  
WILLIAM PATRICK CASTILLO,  
Defendant.

CASE NO. C133336  
DEPT. NO. XVIII

BEFORE THE HONORABLE NANCY M. SAITTA, DISTRICT JUDGE  
MONDAY, MARCH 4, 2002; 9:00 A.M.

RECORDER'S TRANSCRIPT RE:  
ARGUMENT

APPEARANCES:

FOR THE STATE:	BECKY GOETTSCH, ESQ. Deputy District Attorney
FOR THE DEFENDANT:	CHRISTOPHER R. ORAM, ESQ. 520 S. Fourth St., 2nd Flr. Las Vegas, Nevada 89101

RECORDED BY: KRISTINE M. CORNELIUS, COURT RECORDER

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COUNTY CLERK

Castillo, William  
Rev'd 10/20/04 SJDC-1085  
8th JDC recs.

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MONDAY, MARCH 4, 2002; 9:00 A.M.

THE COURT: The State of Nevada versus Castillo, 133336.

MR. ORAM: Your Honor, very quickly. Mr. Simon - this is a post-conviction.

THE COURT: Correct.

MR. ORAM: Mr. Castillo is on death row. Mr. Simon asked for a little bit of an extension from - for this hearing. I believe he has some type of a conflict, and so I also asked for to today to file a reply brief. I believe a stipulation is circulating, so we should probably just take this off calendar.

THE COURT: We'll take it off calendar. Do you want me to reset the dates now, or does the stipulation contain those dates?

MR. ORAM: I think the stipulation calls for that -

THE COURT: Very well.

MR. ORAM: - so for the Court's convenience.

THE COURT: We'll take it off calendar for today.

MR. ORAM: Thank you very much, Your Honor.

THE COURT: Thank you, Mr. Oram.

(Whereupon the proceedings concluded)

\* \* \* \* \*

ATTEST: I do hereby certify that I have truly and correctly transcribed the sound recording of the proceedings in the above-entitled case.

  
KRISTINE M. CORNELIUS  
Court Recorder

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EXHIBIT 181

EXHIBIT 181

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JUN 11 4 22 PM '02

DISTRICT COURT  
CLARK COUNTY, NEVADA

*Shirley E. Pangione*  
CLERK

THE STATE OF NEVADA,  
PLAINTIFF,  
VS.  
WILLIAM PATRICK CASTILLO,  
DEFENDANT.

CASE NO. C133336  
DEPT. NO. XVIII

BEFORE THE HONORABLE NANCY M. SAITTA, DISTRICT JUDGE  
WEDNESDAY, APRIL 10, 2002; 9:00 A.M.

RECORDER'S TRANSCRIPT RE:  
REQUEST OF THE COURT: ARGUMENT

APPEARANCES:

FOR THE STATE:

DAVID T. WALL, ESQ.  
Chief Deputy District Attorney

FOR THE DEFENDANT:

CHRISTOPHER R. ORAM, ESQ.  
520 S. Fourth St., 2nd Fl.  
Las Vegas, Nevada 89101

RECORDED BY: KRISTINE M. CORNELIUS, COURT RECORDER

WEDNESDAY, APRIL 10, 2002; 9:00 A.M.

THE COURT: Let's call the State of Nevada versus Castillo first, 133336. This is apparently, according to my note, a stipulation of counsel. We are going to move this for argument until the 17th.

MR. ORAM: Yes. I believe Ms. Robinson had some type of dilemma. Your Honor, is it possible we could go out three weeks? I just was in a calendar call in Federal Court, and it's possible I will be in trial starting next Tuesday.

MR. WALL: She was also asking for April 30, if that's available.

MR. ORAM: That's a wonderful day.

THE CLERK: That's a Tuesday.

MR. WALL: Then that's not available.

MR. ORAM: That's not available. The week after is?

THE CLERK: The 29th or the 8th?

MR. ORAM: The 8th is fine for me.

THE COURT: Let's go with the 8th.

THE CLERK: May 8 at 9:00.

And, Mr. Oram, will you notify Ms. Robinson, or should I?

MR. ORAM: I --

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MR. WALL: Oh, we do.

THE CLERK: Thanks.

(Whereupon the proceedings concluded)

\* \* \* \* \*

ATTEST: I do hereby certify that I have truly and correctly transcribed the sound recording of the proceedings in the above-entitled case.

Kristine M. Cornelius  
KRISTINE M. CORNELIUS  
Court Recorder

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EXHIBIT 182

EXHIBIT 182

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JUN 11 4 22 PM '02

DISTRICT COURT  
CLARK COUNTY, NEVADA

*Shirley S. Pangione*  
CLERK

THE STATE OF NEVADA,  
PLAINTIFF,  
VS.  
WILLIAM PATRICK CASTILLO,  
DEFENDANT.

CASE NO. C133336  
DEPT. NO. XVIII

BEFORE THE HONORABLE NANCY M. SAITTA, DISTRICT JUDGE  
WEDNESDAY, MAY 8, 2002; 9:00 A.M.

RECORDER'S TRANSCRIPT RE:  
REQUEST OF THE COURT: ARGUMENT

APPEARANCES:

FOR THE STATE:

LYNN M. ROBINSON, ESQ.  
Chief Deputy District Attorney

FOR THE DEFENDANT:

CHRISTOPHER R. ORAM, ESQ.  
520 S. Fourth St., 2nd Flr.  
Las Vegas, Nevada 89101

RECORDED BY: KRISTINE M. CORNELIUS, COURT RECORDER

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Castillo, William  
Rev'd 10/2004 8JDC-1006  
8th JDC recs.

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COUNTY CLERK

WEDNESDAY, MAY 8, 2002; 9:00 A.M.

THE COURT: The State of Nevada versus Castillo, 133336. This is a date and time set -- oh, for argument.

Mr. Castillo?

MR. ORAM: He's on death row.

Your Honor, I think I can -- it's very lengthy argument and I -- that I don't think I need to make today. I think I've put forward enough evidence in our supplemental brief and our reply for a limited evidentiary hearing.

Mr. Schieck was both trial counsel and appellate counsel. We have accused prior counsel of ineffective assistance, and so I think that we should probably have a limited hearing with Mr. Schieck so I can inquire about these matters that I have raised. I know the State opposes that.

THE COURT: Counsel.

MS. ROBINSON: Your Honor, we just don't see where there's any justiciable issues in this case that were raised either by the supplement or the reply. I know that Mr. Oram and I spoke earlier, and Mr. Oram is concerned about the prosecutorial --

THE COURT: -- statements that were made.

MS. ROBINSON: -- statements that were made in closing argument about the duty of the jury. However, the Court, in Vernell Evans, while it does mention that, did not directly speak to that.

And the Court also went on and said that the question is whether the -- in the Evans case, the question is whether the prosecutor's



1 improper remarks prejudiced Evans by depriving him of a fair penalty hearing.  
 2 And, again, considered alone perhaps they did not. So the Evans case didn't  
 3 turn only on that particular statement. It turned on other -- and it goes on to  
 4 say, "But the prosecutor erred further." There were --

5 THE COURT: Yeah. There was significant other comment or  
 6 additional comment --

7 MS. ROBINSON: Yes.

8 THE COURT: -- in that case.

9 I understand, Mr. Oram, your position with respect to wanting  
 10 to put Mr. Schieck on the stand. I will tell you that because of the nature of  
 11 your request -- the nature of the underlying charges and not the nature of  
 12 your request -- I've reviewed this case pretty carefully, as did my law clerk,  
 13 and I'm going to give you about one hour's worth of time with Mr. Schieck,  
 14 and that's it.

15 MR. ORAM: Yes.

16 THE COURT: So we'll set it for an evidentiary hearing.

17 MR. ORAM: Your Honor, is there a time that's convenient to the  
 18 Court?

19 THE COURT: It will be set on a Friday.

20 MR. ORAM: Yes.

21 (Colloquy between the Court and clerk)

22 THE CLERK: May 24?

23 MR. ORAM: Could we go way after that --

24 THE COURT: Yeah.

25 MR. ORAM: -- like maybe 30 days after that?

1 THE COURT: Yeah.

2 THE CLERK: July 12?

3 THE COURT: July 12.

4 MR. ORAM: That's wonderful, your Honor. At -- will that be at

5 9:00?

6 THE CLERK: 10:00?

7 THE COURT: 10:00.

8 MR. ORAM: 10:00.

9 THE COURT: And please be aware that it is going to be a very  
10 limited inquiry.

11 MR. ORAM: It will be very limited. I don't think that I will even take  
12 15 minutes with Mr. Schieck.

13 THE COURT: Because, as you know, we've reviewed this fully.

14 MR. ORAM: Yes, your Honor.

15 (Colloquy between the Court and clerk)

16 MR. ORAM: Your Honor, also I would request that the State not  
17 bring Mr. Castillo down. He -- it's very important to him, for whatever  
18 reason, that he gets to keep his particular cell. He calls it his house. He  
19 believes that if he's brought here, he will lose that and that will cause him  
20 extreme disruption. He has told me on numerous occasions that he does not  
21 want to be present.

22 THE COURT: Any reason I need to be concerned about a request  
23 that he not come down?

24 MS. ROBINSON: I can't see one.

25 THE COURT: Me either. Okay.

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MR. ORAM: Thank you very much, your Honor.

THE COURT: You're welcome.

(Whereupon the proceedings concluded)

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ATTEST: I do hereby certify that I have truly and correctly transcribed the sound recording of the proceedings in the above-entitled case.

  
KRISTINE M. CORNELIUS  
Court Recorder

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EXHIBIT 183

EXHIBIT 183

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*Shirley B. Augustine*  
CLERK

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ORIGINAL

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

PLAINTIFF,

VS.

WILLIAM PATRICK CASTILLO,

DEFENDANT.

CASE NO. C-133336

DEPT. NO. XVIII

BEFORE THE HONORABLE NANCY M. SAITTA, DISTRICT JUDGE

FRIDAY, AUGUST 2, 2002; 9:00 A.M.

RECORDER'S TRANSCRIPT RE:  
EVIDENTIARY HEARING

APPEARANCES:

FOR THE STATE:

LYNN M. ROBINSON, ESQ.  
Chief Deputy District Attorney

FOR THE DEFENSE:

CHRISTOPHER R. ORAM, ESQ.

RECORDED BY: KRISTINE CORNELIUS, COURT RECORDER

Castillo, William  
Rcv'd 10/20/04 8JDC-1013  
8<sup>th</sup> JDC recs.

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COUNTY CLERK

FRIDAY, AUGUST 2, 2002; 9:00 A.M.

THE COURT: Good morning, good morning, please be seated.

MS. ROBINSON: Good morning.

MR. ORAM: Good morning.

THE COURT: We are here in the matter of State versus Castillo, case number if you would, please?

THE CLERK: Oh, I'm sorry.

THE COURT: That's okay, 133336, and this is on this morning as an evidentiary hearing, and it's my understanding that we were going to spend at least an abbreviated period of time allowing Mr. Oram to go through a certain line of questioning that might be necessary for further practice in this case.

MR. ORAM: Your Honor, and I think we can do this quite briefly.

THE COURT: That's fine.

MR. ORAM: I just want to cover just two areas very quickly.

THE COURT: Sure.

MR. ORAM: If the Court is ready, I'd call Mr. Schieck.

THE COURT: Yes, and I know there was some confusion about the time this morning. No one needs to be concerned about that. We --

MS. ROBINSON: I was so focused on 10:00, it wasn't even funny.

THE COURT: Don't worry, please don't worry. Mr. Schieck, if you would raise your right hand?

DAVID SCHIECK

having been first duly sworn, was called as a witness herein and was

1 examined and testified as follows:

2 THE CLERK: Thank you. Will you please just state your name for the  
3 record?

4 THE WITNESS: It's David Schieck, it's S-C-H-I-E-C-K.

5 THE CLERK: Thank you.

6 DIRECT EXAMINATION

7 BY MR. ORAM:

8 Q Mr. Schieck, if I could go through just very briefly a little bit of  
9 background. Are you an attorney in Las Vegas?

10 A Yes.

11 Q How long have you been employed as an attorney, sir?

12 A Since 1982.

13 Q Are you a death qualified attorney under Supreme Court Rule  
14 250?

15 A Yes.

16 Q How long have you been qualified under Rule 250?

17 A Since Rule 250 was put out, I did capital cases prior to Rule 250.

18 Q How many capital trials have you personally served as trial  
19 counsel on?

20 A I don't know, um, I would estimate between fifteen and twenty.

21 Q And, how many other murder cases separate from capital cases  
22 have you served as trial counsel on?

23 A Probably another thirty more.

24 Q So, a total of approximately forty-five murder cases?

1 A Closer to fifty.

2 Q Were you appointed to represent a William Castillo?

3 A Yes.

4 Q When were you appointed to represent Mr. Castillo?

5 A I looked at the -- in my brief that I filed on this case, and it went  
6 to trial in August of '96, so it was sometime prior to that. It was not at the  
7 initial stages of the case.

8 Q Were you lead counsel?

9 A At the time of trial, yes.

10 Q And, your co-counsel was?

11 A Peter LaPorta of the State Public Defender's office.

12 Q Okay, you tried both the trial, obviously, and the penalty phase, is  
13 that correct?

14 A Yes.

15 Q And, were you appellate counsel as well, sir?

16 COURT RECORDER: I'm sorry, I think his mike is turned off.

17 THE WITNESS: Either that or I'm too quiet.

18 COURT RECORDER: No, it's all right now. Thank you, sorry.

19 THE WITNESS: Okay.

20 THE COURT: Okay, that's okay.

21 BY MR. ORAM:

22 Q Were you appellate counsel?

23 A Yes.

24 Q Now, I want to ask you on a couple of areas some questions

25



1 about your appellate arguments. You made an argument regarding a  
2 prosecutorial misconduct during the penalty phase, a certain argument that  
3 was made. Do you recall that?

4 A Yes.

5 Q Okay, and I -- you can't reiterate exactly what that argument was,  
6 can you?

7 A Not verbatim.

8 Q Can you tell me what the context of your appeal on that issue  
9 was?

10 A It was based on the decision in Howard versus State, which was a  
11 case that I would estimate was probably five or six years prior to Castillo's  
12 trial, an argument that was made at Mr. Howard's penalty hearing to the  
13 effect that if you don't give the Defendant the death penalty, then you are  
14 sentencing some innocent person to be killed by Mr. Howard. Therefore,  
15 you're comparing an innocent victim's life to the life of the Defendant, and the  
16 Supreme Court in Howard found that to be an improper argument, and when  
17 Mr. Harmon argued that in Mr. Castillo's case, I objected to that specific  
18 portion of the argument.

19 Q And so, would it be fair to say that when you argued on direct  
20 appeal that the argument you were making was that the -- Mr. Harmon's  
21 argument was improper because it was talking about future dangerousness?

22 A Not -- not necessarily, the Supreme Court has characterized it  
23 under the general term of future dangerousness. My argument, and I believe  
24 that during oral argument I tried to clear that up for the Court, that really it

1 was not future dangerousness, it's the comparing of the value of the life of  
2 the Defendant against the value of the life of an innocent person, a decision  
3 that any normal juror would say, well, I'm going to sentence the Defendant to  
4 death rather than sentence some innocent person to death, and it's that -- and  
5 then I -- I've always tried to make that distinction to them and they've always  
6 sort of come back with this future dangerousness category for it.

7 Q You did not raise the issue on Mr. Harmon's argument as a  
8 violation of the jury's legal and moral duty, is that fair to say?

9 A That's correct, I did not --

10 THE COURT: I'm sorry, ask that question one more time?

11 BY MR. ORAM:

12 Q Yes, the argument that Mr. Harmon made, the exact quote that  
13 you gave in the appeal, did you complain to the Supreme Court that this was  
14 a improper argument because of the jury's legal and moral duty?

15 A No.

16 Q Have you -- do you keep up on cases that the Supreme Court --  
17 our Supreme Court decides?

18 A I try to.

19 Q Have you read a case that came out after the appeal of Mr.  
20 Castillo named State of Nevada versus Vernell Evans?

21 A Yes.

22 Q Have you read it carefully?

23 A Fairly carefully.

24 Q Did you see a portion in Vernell Evans where Mr. Harmon made an

1 almost identical argument to the argument you raised in Mr. Castillo being on  
2 the future dangerousness? Does that question make sense, Mr. Schieck?

3 A It makes sense, but I would need to refer to the opinion in Evans.  
4 I have a copy of it, if I may look at it to tell you which portions were similar.

5 THE COURT: For the record, do we have a cite to Evans, please?

6 MR. ORAM: Yes, Your Honor, Evans case would be cited at --

7 MS. ROBINSON: Twenty-eight P 3rd, 498.

8 MR. ORAM: And 117 Nevada Advanced Opinion number 50.

9 THE COURT: Thank you.

10 THE WITNESS: In Evans, they raised a number of different arguments.  
11 Do you want me just to focus on what they've characterized as the moral  
12 duty portion of it?

13 BY MR. ORAM:

14 Q Yes, I want you to look at page, specifically of the Evans case,  
15 page 14. Do you see that?

16 A I have a copy that was printed off the internet. It's probably  
17 different from your copy. Is it -- does it start out, other prosecutorial remarks  
18 were excessive and unacceptable?

19 Q Above that. Oh, yes, I'm sorry, you're correct, Mr. Schieck.

20 A In Evans, in rebuttal closing argument, the prosecutor said, do you  
21 as a jury have the resolve, the determination, the courage, the intestinal  
22 fortitude, the sense of commitment to do your legal duty. In Mr. Castillo's  
23 case, the same prosecutor Mr. Harmon stated, the issue is do you as the trial  
24 jury this afternoon have the resolve, the intestinal fortitude, the sense of

1 commitment to do your legal and moral duty, and then went on from there.

2 And, it's from that point forward that I really took exception to, which is  
3 where he says, whatever your decision is today, you're either going to  
4 sentence Mr. Castillo to death or you're going to sentence an innocent person  
5 to death. So, I was focusing on the latter portion of that argument.

6 Q So, you did not focus specifically on the statement by Mr. Harmon  
7 about the jury's moral duty?

8 A Correct.

9 Q And, in Vernell Evans, the Supreme Court eventually --

10 A And, can I correct s-- I am not sure that Mr. Harmon tried the  
11 Evans case. I may have mis-spoken. I don't know if he tried that case or not.  
12 I do know that he made that statement in Castillo's case.

13 Q Mr. Schieck, I can inform you, and I don't think the State would  
14 have any objection, that Mr. Harmon did try --

15 A Okay.

16 Q -- Vernell Evans case. And, you did not raise his statement  
17 regarding the jury's moral duty as an argument before the Supreme Court,  
18 correct?

19 A Correct.

20 Q And, after reading Vernell Evans, you realized that the Supreme  
21 Court used that statement and the argument regarding the jury's moral duty  
22 as apportioned to overturn Mr. Evans' sentence of death, are you aware of  
23 that?

24 A Yes.

1 Q And, are you specifically aware that in Evans, the Supreme Court  
2 addresses Castillo and the argument you made regarding future  
3 dangerousness?

4 A Yes.

5 Q And, in fact, isn't it fair to say that the Supreme Court said that  
6 when you raised it in Castillo, you raised it as future dangerousness and you  
7 did not raise it as the jury's moral duty type of argument?

8 A Yes, I mean, I -- the footnote speaks for itself. They basically said  
9 it was raised as future dangerousness, they didn't -- didn't indicate I should  
10 have raised it the other way.

11 Q They did not, did they?

12 A But, that -- that could be implied by their statement.

13 Q I also want to ask you about the psychological part of this case.  
14 You produced a Dr. Etcoff at the penalty phase of Mr. Castillo to attempt to  
15 save his life, is that fair to say?

16 A That's correct.

17 Q And, Dr. Etcoff, as I have written in my briefs, told us that Mr.  
18 Castillo had lived a extremely difficult life, would that be fair?

19 A I don't recall whether Dr. Etcoff got into his background or  
20 whether we presented that through other witnesses. I believe it probably was  
21 Dr. Etcoff that went into his history, but we did present his mother that also  
22 presented testimony that verified the things Dr. Etcoff told the jury.

23 Q You did not present any psychological evidence in the trial -- or in  
24 the guilt portion of the case, did you?

1 A That's correct.

2 Q It would be fair to say that the Supreme Court stated that really  
3 no defense had been placed on at the time of the guilt phase?

4 A They indicated that we presented no case in chief, which was  
5 correct.

6 Q Opening argument was waived?

7 A To my recollection, it was waived.

8 Q And, Mr. LaPorta made the closing argument?

9 A I do not recall that. If he did, if you tell me he did, I wouldn't  
10 argue with you.

11 Q Would it --

12 A And, in fact, I'm sure he did now that you say that.

13 Q Mr. Schieck, would it be fair to say that there was no real defense  
14 put on for the guilt phase because of the difficulty with the evidence?

15 A That's fair to say.

16 Q Did you know that a first degree murder conviction was probably  
17 going to be returned?

18 A Yes.

19 Q You've read the Zollie Dumas case?

20 A Yes.

21 Q Okay, why was Dr. Etcoff not put on in the guilt phase to try to  
22 argue to the jury that there was a diminished capacity and therefore there was  
23 perhaps a right to convict of second degree murder but not first?

24 A I didn't see any diminished capacity defense that the jury would  
25

1 accept. Mr. Castillo was -- his intelligence was not similar to Mr. Dumas'. I  
2 mean, there's a number of distinctions between factually Zollie Dumas'  
3 situation, the defense that could have been put on in that case and Mr.  
4 Castillo's, the facts of his case and his own character.

5 Q So, your testimony is that you did not see it as necessary to put  
6 on a psychological defense because you didn't have one?

7 A I did not believe we had one.

8 Q Did you have anybody analyze Mr. Castillo other than Dr. Etcoff?

9 A I don't recall.

10 Q Why is it that you don't recall?

11 A 'Cause it's been too long. Dr. Etcoff I believe is a psychiatrist.  
12 We may have had a psychologist or someone else look at him. I just don't  
13 recall that.

14 Q Lastly, with regard to any other arguments at the penalty phase,  
15 did you see anything that was improper that you raised or feel you should  
16 have raised that took place at the penalty phase other than the argument Mr.  
17 Harmon made regarding the jury's moral duty?

18 A Well, in light of the decision in Evans, clearly the jury was not  
19 properly instructed on the use of character evidence in the weighing of  
20 aggravating and mitigating circumstances, and the instruction that the  
21 Supreme Court set forth in Evans correctly describes how that process should  
22 take place. If we didn't object to that, we should have.

23 Q And, what exactly do you mean? What are you referring to?

24 A In a capital penalty hearing, under the decision in Evans, if -- and

1 there's some previous cases to Evans, also. Evans just sets out the  
 2 instruction that the Court wants to be given. The jury is allowed to hear a  
 3 great deal of character evidence about a defendant, and certainly in Mr.  
 4 Castillo's case there was a lot of non-aggravating -- bad character evidence  
 5 that the State introduced because -- 'cause Billy had a very extensive criminal  
 6 history, and not just the felony that was used as an aggravator, but a lot of  
 7 juvenile activity, just a long history that the record will show. The jury can't  
 8 use that character evidence in deciding the existence of aggravating  
 9 circumstances and can't use it in weighing the aggravating circumstances  
 10 against the mitigating circumstances. And, at that point in time, we weren't  
 11 instructing juries on that, and at a later point we started arguing that they  
 12 should be so instructed, and finally have convinced the Supreme Court of  
 13 that.

14 Q And, the Supreme Court stated that in Vernell Evans, is that what  
 15 you're saying?

16 A Yes.

17 Q And, you are not sure as you sit here today whether you objected  
 18 to that particular argument in Mr. Castillo?

19 A I am not sure.

20 Q You did, however, object to the fact that you had written out  
 21 some mitigating circumstances and the District Court judge would not present  
 22 them to the jury, is that fair to say?

23 A That's correct.

24 Q And, the Supreme Court denied that issue?



1 A That's correct.

2 Q Just so the record is clear on that, Mr. Schieck, is -- you know  
3 that there are statutory mitigators, correct?

4 A Correct.

5 Q And, usually, in a capital case, the District Court judge advises the  
6 jury on the statutory mitigators and at the very bottom it says, other, and that  
7 they can place whatever -- the jurors can place whatever other circumstances  
8 they think?

9 A In the past, that's been the practice.

10 Q And, in this case, in Castillo, did you do something different than  
11 just asking the Court to give the statutory mitigating circumstances?

12 A We asked the Court not to give any of the statutory mitigating  
13 circumstances that we did not feel were present in the case, and additionally  
14 asked that the jury be given those specific mitigating circumstances that we  
15 believe were present instead of just the catch-all category of any other  
16 mitigating circumstance.

17 Q And, did the District Court judge grant your proposed instruction?

18 A No.

19 Q Did you raise that on direct appeal?

20 A Yes.

21 Q What -- did the Supreme Court deny that?

22 A The Supreme Court denied it and said the any other mitigating  
23 circumstance category is in their opinion at that time sufficient to withstand  
24 constitutional challenge.

25 13

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1 Q Have you since that time seen a case where that has been  
2 reversed?

3 A It hasn't been reversed per se, the Supreme Court has changed  
4 their position and said the Defendant is entitled to have the jury instructed as  
5 to his specific mitigating circumstances and not just the laundry list of  
6 statutory mitigators, and if the Defendant's theory does not include a  
7 statutory mitigator, then that shouldn't be included in the instruction.

8 Q What case was that?

9 A I believe it was Byford, Number Two.

10 Q Is that a case that you tried?

11 A Yes.

12 Q And, you did the appeal on Byford as well?

13 A Yes.

14 MR. ORAM: I have nothing further, Your Honor.

15 THE COURT: Cross?

16 MS. ROBINSON: Thank you.

17 CROSS-EXAMINATION

18 BY MS. ROBINSON:

19 Q Mr. Schieck, do you recall when you did the appeal in Castillo?

20 A The trial was in August of '96 and finished in September of '96.

21 Q And, would it be fair to say, and I don't know if you have a copy  
22 of Castillo in front of you, but it was filed with the Supreme Court April 2nd,  
23 1998, does that sound right?

24 A That's when the decision was issued, yes, so I represented him on  
25

1 appeal from September of '96 until -- well, actually it was a motion for re-  
2 hearing, so until November of 1998.

3 Q And, do you recall, but can you tell from the copy of Vernell Evans  
4 case in front of you when that was decided by the Nevada Supreme Court?

5 A That was decided in 2001, and Mr. Evans went to trial in 1994 --

6 Q Okay.

7 A -- no, excuse me, yeah, it's 1994.

8 Q Okay, now you said you were telling us you made an argument  
9 which you did not yourself categorize as a future dangerousness argument. Is  
10 that correct?

11 A Correct.

12 Q Could your argument that juries should not compare the value of  
13 the Defendant's life against a future victim's life, that's a moral judgment?

14 A Yes.

15 Q Okay, and you made that argument to the Supreme Court,  
16 whether or not they got your point?

17 A I didn't argue to them anything having to do with moral judgment.  
18 I argued to them whether or not it's right to ask a juror to weigh the value of  
19 an innocent person against the value of a person they've convicted of a first  
20 degree murder.

21 Q Okay, now --

22 A And they -- I might say they agreed with me that that's improper  
23 argument, they just found it to be harmless.

24 Q And, in Vernell Evans, it wasn't the moral duty comment alone

25 15

Castillo, William  
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6<sup>th</sup> JDC recs.

1 that caused that case to be reversed, is that correct?

2 A That's correct.

3 Q Now, as far as investigation, you had Dr. Etcoff evaluate the  
4 Defendant?

5 A Yes.

6 Q Now, you and I are both familiar with the Zollie Dumas case, being  
7 as how we both argued it at the Supreme Court, what are the differences in  
8 your opinion between Zollie Dumas and Castillo? Why were they different?

9 A Mr. Dumas' IQ was -- was below the level for mental retardation  
10 as I recall. The crime of Mr. Dumas was clearly a crime of passion in that he  
11 was stabbing the -- a lady that he had a relationship with, and the multiple  
12 stab wounds, the frenzy of the apparent attack on her, the psychological  
13 evidence in that case probably could have affected the jury in deciding  
14 whether or not there was premeditation and deliberation in the acts or  
15 whether it was just a rash impulse. Now, back when Dumas went to trial and  
16 got reversed, we didn't have the instruction we now have on premeditation  
17 and deliberation. But, with that instruction and with psychological test and  
18 the way it could have been presented about Zollie, the jury probably wouldn't  
19 have convicted him of first degree murder.

20 Q So, would it be fair to say that Zollie Dumas had a diagnosis of  
21 mental illness?

22 A Mental retardation, I'm not sure illness or retardation.

23 Q So, did you have any information about Castillo's mental capacity?

24 A I don't have a specific recollection of what his IQ was, but

25 16

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1 certainly it was not that he was mentally retarded in any way, shape or form.

2 Q And, did Dr. Etcoff, didn't he testify that the Defendant didn't  
3 suffer from any -- from mental illness?

4 A I don't recall what his diagnosis exactly was.

5 Q And, so was it your strategic decision -- or was it your legal  
6 opinion that that psychological evidence that Dr. Etcoff could give was only  
7 germane to the penalty phase?

8 A Yes.

9 Q Okay.

10 A And, in fact, a lot of what he would have had to have told the jury  
11 about Billy's background probably would have been damaging at the guilt  
12 phase of the trial.

13 MS. ROBINSON: Court's indulgence?

14 THE COURT: Certainly.

15 MS. ROBINSON: I have nothing further, Your Honor.

16 THE COURT: Redirect?

17 REDIRECT EXAMINATION

18 BY MR. ORAM:

19 Q In the Vernell Evans case, footnote number fifty-two, it states,  
20 although this Court noted a similar argument in Castillo, it addressed only the  
21 prosecutor's argument on future dangerousness, not the reference to the  
22 jury's duty. Have you seen that, Mr. Schieck?

23 A Yes.

24 Q Is that accurate, that statement by the Supreme Court, is that  
25

1 accurate?

2 A Yes, and it's accurate in that it -- that's the way it was argued to  
3 the jury -- to the Supreme Court, duty was not argued.

4 Q Okay, so the duty argument regarding the penalty phase  
5 statement by the prosecutor was not argued in Mr. Castillo, correct?

6 A Correct.

7 Q You also made the additional argument to the Supreme Court  
8 regarding this -- the mitigators you wanted offered?

9 A Correct.

10 Q And, that was denied, correct?

11 A Correct.

12 Q However, they've now said the Supreme Court has changed and  
13 indicated that those, if offered in the future, should be given?

14 A Yes, and the instruction that was given only listed three possible  
15 statutory mitigating circumstances; the youth of the Defendant, under  
16 extreme emotional distress, and any other. So, the jury found all three that  
17 they were instructed on. We had five additional mitigating circumstances that  
18 we wanted to argue to the jury, and it's my belief if we'd been allowed an  
19 instruction that gave them that list of those additional five, they would have  
20 found all five of those because they were all clearly present in the case.

21 Q And, you also stated on direct examination that there was an  
22 argument made in Vernell Evans regarding the penalty phase jury instruction  
23 that you're not sure if you objected to, but you are saying that you either  
24 objected to it or you should have objected to it, is that fair to say?

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

Respondents.

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

**VOLUME 19 of 21**

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1           A.     I didn't speak to him long enough to get into the  
2 deeper psychological meaning of the tattoos. I just wanted to  
3 know basically what those tattoos meant and why he had them on  
4 his body.

5           Q.     Okay. Number two, "He has a tattoo of a dragon  
6 standing for the darker side of human beings," true?

7           A.     Yes.

8           Q.     "He told me that the castle on his arm signifies  
9 the home he always wanted to have. A road leading from the  
10 castle is leading through life's shit. It stopped at the jail  
11 bars. This road is the road of my life," true?

12          A.     True.

13          Q.     "He states that he is a white supremacist, and he  
14 has tattoos stating 'Pure Hate' and 'White Power' on his body  
15 in addition to 36 swastikas all over his body with one  
16 prominent swastika just beneath his throat. He told me that  
17 the swastikas, quote, 'give me something to hate. In the  
18 joint it's a racial issue. It's a slap in their fucking  
19 face,'" true?

20                 MR. SCHIECK: Without the fucking.

21          Q.     BY MR. BELL: Oh, I'm sorry.

22                 "It's a slap if their face." That's the next  
23 line.

24                 True?

25          A.     True.



1 Q. On his lower back he has another tattoo. What  
2 does that say?

3 A. "100% Fuckin' Hostile."

4 MR. BELL: Thank you.

5 THE COURT: Redirect examination.

6 MR. SCHIECK: Thank you, your Honor.

7

8 REDIRECT EXAMINATION

9 BY MR. SCHIECK:

10 Q. Just so we don't miss any of the tattoos, Mr.  
11 Bell seemed to have missed a couple of others.

12 He also has an eagle standing for freedom; is  
13 that correct?

14 A. Yes, he does.

15 Q. He also has a tattoo of "My Lady," is that  
16 correct?

17 A. Yes, he does.

18 Q. So there are a great many tattoos on Mr.  
19 Castillo's body?

20 A. Yes, there are.

21 Q. And you didn't make any determination or find the  
22 meaning of those tattoos. You just wanted to know what those  
23 were?

24 A. Correct.

25 Q. Mr. Bell asked you some questions concerning Mr.

1 Castillo making statements about having committed a number of  
2 robberies at one period of time in his life; is that correct?

3 A. Yes.

4 Q. Isn't it true that that period of time in his  
5 life was prior to him going back to prison on the robbery  
6 charge?

7 A. I don't recall.

8 Q. If you could recall to page 11 of your report  
9 under "Early Adult Years," second paragraph.

10 A. Would you repeat the question, please?

11 Q. The period of time in his life when he was  
12 talking about that he was committing robberies, in his words,  
13 eight hours a day, six days a week, that was prior to him  
14 going back to prison on the robbery charge?

15 A. Yes.

16 Q. He wasn't talking about what he was doing in 1995  
17 when he was out of prison?

18 A. That's correct.

19 Q. Mr. Bell asked you some questions about whether  
20 or not, perhaps, Mr. Castillo had lied to you about certain  
21 things in his background.

22 In all the records you reviewed, did you find  
23 anything concerning Mr. Castillo's explanation of his  
24 background that conflicted with what the other experts and  
25 other juvenile authorities had noted in their records?

1           A.     Mr. Castillo was absolutely consistent in what he  
2     told me about his background with the records that I read.

3           Q.     And those were the juvenile records put together  
4     through their investigations when he was having these problems  
5     as a child?

6           A.     That's correct.

7           Q.     So you found no evidence that he was lying to you  
8     about his background?

9           A.     That's correct.

10          Q.     Of course, anything is possible, as Mr. Bell  
11     would put it?

12          A.     Anything.

13          Q.     Now, you talked about the fact that William told  
14     you that he was able to function at the Nevada State Prison?

15          A.     Yes.

16          Q.     Is it fair to say that from your history and what  
17     you know about William, that's the only place he was able to  
18     function at a semi-good level?

19          A.     I think he functioned for a time at CBS, besides  
20     the incident of trying to burn CBS down, which I wasn't aware  
21     of. There were times when he functioned well at CBS and  
22     possibly also times that he functioned well at the Youth  
23     Training Camp in Elko.

24          Q.     Would it be fair to say that due to all of the  
25     childhood problems and developmental problems that we've

1 talked about for William that a structured environment is the  
2 only place that he can function?

3 A. I would say if he's going to function anywhere,  
4 it has to be quite structured, and that would be necessary.

5 MR. SCHIECK: Thank you.

6 That's all the questions I have, your Honor.

7 MR. BELL: No redirect, Judge.

8 THE COURT: May the witness be discharged?

9 MR. BELL: Yes, he may.

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

11 Is that if for the day?

12 MR. LaPORTA: Judge, we have one more that  
13 wouldn't be available to us on Monday.

14 THE COURT: Is everybody comfortable?

15 Call your next witness.

16 MR. LaPORTA: Jerry Harring.

17  
18 JERRY HARRING,

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

21  
22 THE CLERK: Please state your name, and spell  
23 your last name for the record.

24 THE WITNESS: Jerry Harring; H-A-R-R-I-N-G.  
25

DIRECT EXAMINATION

BY MR. LaPORTA:

Q. Good afternoon.

Mr. Harring, can you state where you are presently employed?

A. I am a classification counselor at the Nevada Youth Training Center.

Q. And can you tell this jury here a little bit -- how long have you been there, first of all?

A. I went to work in November of 1970 -- 1974.

Q. And what are your duties and responsibilities there?

A. Primarily my duties are declassification through instrumentation and developing goals to be reached for the youth adjudicated to us to accomplish prior to their being released on parole.

Q. Do you know an individual by the name of Billy Castillo?

A. Yes, I do.

Q. Do you see him here in the courtroom?

A. Yes, I do.

Q. Can you point him out and describe an article of clothing?

A. That's Bill right there (pointing).

Q. Describe an article of clothing.

YVONNE M. VALENTIN, OFFICIAL COURT REPORTER

1 A. Well, he's wearing a white shirt and blue and --

2 MR. LaPORTA: The record reflect the  
3 identification of the defendant, your Honor?

4 THE COURT: Yes.

5 Q. BY MR. LaPORTA: When did you come to know Billy?

6 A. I think around 1982. I took a two-year hiatus  
7 from NYTC in 1990. And the second time I was back -- whenever  
8 I came back in 1992, Bill came as one of our residents at that  
9 time.

10 Q. Approximately, how old was he?

11 A. Twelve years old at that time.

12 Q. And he had been in and out of NYTC?

13 A. Just once prior to this, if I remember correctly.

14 Q. So you're pretty familiar with his juvenile  
15 history?

16 A. Yes, I am.

17 Q. Very familiar?

18 A. Yes, very familiar.

19 Q. Are you familiar with his adult history?

20 A. Not so much his adult history. I did have some  
21 contact with Bill through his auspices and not necessarily  
22 mine, but I knew that he did have continuing trouble in the  
23 adult system.

24 Q. If you didn't know that, would you trust my word  
25 that he has been convicted of two felonies prior to this?

1 A. Yes, I would trust it.

2 Q. And you're familiar with the basic facts of this  
3 particular case that's brought us all here today?

4 A. Yes.

5 Q. Okay. So is it safe to say that you had  
6 extensive contact with Billy through his childhood and  
7 adolescent years?

8 A. Yes.

9 Q. Did there come a time -- May I approach the  
10 witness, your Honor?

11 THE COURT: Yes.

12 Q. BY MR. LaPORTA: I'm going to show to you what's  
13 been marked for identification purposes Defendant's Proposed  
14 Exhibit D.

15 Do you recognize that?

16 A. Yes, I do.

17 Q. Without getting into the contents right now, what  
18 is that?

19 A. It's a letter that Bill wrote to me or basically  
20 to the kids in adjudicated.

21 I need to explain a little bit about our program.

22 Q. Okay. Before you do that, this is a copy, is it  
23 not?

24 A. It's a copy, yes.

25 Q. And do you have the original?

1 A. Yes, I do.

2 Q. Is this a fair and accurate --

3 A. That's a fair and accurate facsimile. It is,  
4 yes.

5 MR. LaPORTA: Any objection to the introduction?

6 MR. BELL: No.

7 MR. LaPORTA: Move for its introduction or that  
8 it be admitted.

9 THE COURT: All right. Defendant's D will be  
10 admitted.

11 Q. BY MR. LaPORTA: Thank you.

12 Go ahead. You were going to explain to the jury  
13 a little bit about your program.

14 A. Well, initially, whenever the youth arrives, we  
15 have a 21-day period which we call reception and  
16 classification.

17 During this 21-day period, we indoctrinate the  
18 young men as to the rules and expectations of our program at  
19 NYTC. It also gives us a chance to test them for education or  
20 behavioral goals, determine their personal social goals, and  
21 introduce them basically to the program at NYTC.

22 During this 21-day period, we go through a series  
23 of lectures, classes, and everything to help, I guess, orient  
24 them to what we want and expect from them in way of behavior,  
25 in way of changing their attitudes, behaviors, teaching what I



1 call the new three R's; responsibility, reality, and right and  
2 wrong.

3 It's pretty intensive for those three weeks, and  
4 it helps overcome a lot of problems later on, rather than just  
5 throwing them into the program without any indoctrination  
6 whatsoever.

7 It can be pretty traumatic for some young men  
8 coming off the street. The last time Bill was there he went  
9 through the R & C program. And after he was released, I think  
10 he had been out about a year or a little less, then he sent  
11 this letter unsolicited. I still use this letter in the  
12 indoctrination of the kids.

13 Q. So he sent this letter to you unsolicited?

14 A. Yes.

15 Q. It came as a total surprise to you?

16 A. Yes.

17 Q. He had been through this process. What did you  
18 refer to --

19 A. Reception and classification; R & C.

20 Q. And this came to you.

21 Where did he write this?

22 A. From prison.

23 Q. Was he in prison at this point?

24 A. Yes.

25 Q. First time he was incarcerated as an adult?

1 A. Yes.

2 Q. It's a fairly short letter. Would you mind  
3 reading it?

4 A. Certainly.

5 "Right now you guys are sitting in R & C in an  
6 orange suit listening to Mr. Harring talk. In your mind  
7 you're probably saying that he's full of shit. Well, let me  
8 tell you guys something. I thought the same thing five times.  
9 Now everything that he told me has come true.

10 "I came to Elko the first time when I was 10  
11 years old, and I came and went five times. I never listened  
12 to what they had to say. Now I wish I had because I'm sitting  
13 in Indian Springs. I'm 18 years old and doing two years in  
14 the pen. Real fun, huh?

15 "I know most of you guys are listening to this  
16 and saying, well, it won't happen to me. Well, it can, and it  
17 will, if you don't change yourself. I wish I could have done  
18 it, but now I'm trying to help you.

19 "Please listen to me, and take my advice. Maybe  
20 only one of you will listen, but that's good enough. I never  
21 thought I would be in the position I'm in right now, but I am,  
22 so I wanted to try to help one of you.

23 "Somebody listen to me. Don't waste your life.  
24 Let these people help you. I wish I did.

25 "Sincerely, William P. Castillo."

1 Q. Thank you.

2 Do you read this to each one of your R & C  
3 classes?

4 A. Yes. Well, there is a section I teach there  
5 three days a week, and one of the sections is what I call a  
6 social awareness. And it's during this period that I read  
7 this letter from Bill. I have other letters from other former  
8 residents, too, I sometimes read but generally almost always  
9 this one.

10 Q. So it's had a positive impact on them?

11 A. Very positive impact.

12 Q. Obviously, Billy is a very troubled -- was a very  
13 troubled kid, was he not?

14 A. Yes.

15 Q. Is it a fair statement to say -- now, you've  
16 worked for the State of Nevada how long?

17 A. Twenty years.

18 Q. And in your current capacity?

19 A. In my current capacity.

20 Q. Is it a fair statement to say that for the most  
21 troubled of children that come through your facility that the  
22 resources are limited?

23 A. Yes.

24 Q. And that sometimes the help is not available  
25 because of those limited resources?

1           A.     We can provide them education. We can provide  
2           them structure. We can provide them shelter, protection. We  
3           can't nurture them emotionally. We're not designed for it, due  
4           to the nature of the facility itself.

5                     Kids that come from dysfunctional families, we  
6           just cannot provide for them because some of them just --  
7           we're just limited, like you say.

8           Q.     So it's fair to say that?

9           A.     Fair to say we get a lot of troubled kids.

10          Q.     You cannot help them with the heavy-duty  
11         psychological intervention that oftentimes is needed?

12          A.     We have to refer them to some of the other  
13         agencies, and sometimes the other agencies just won't take  
14         them. And we don't have the resources sometimes when they do  
15         agree to take them.

16          Q.     You do the best you can?

17          A.     We do the best we can with what we got.

18          Q.     I applaud you for that.

19                     Mr. Harring, do you personally believe in the  
20         death penalty?

21          A.     Yes.

22          Q.     When you and I first talked, did you not say to  
23         me that you would hate to see the State of Nevada execute  
24         Bill?

25          A.     I sure did.

1 Q. I'd like you to address the jury now and tell the  
2 jury about your thoughts on that.

3 MR. BELL: Objection, your Honor. No witness can  
4 come in and say what specific penalty that they think is  
5 appropriate.

6 THE COURT: That's true. There is case law,  
7 except in a non-jury setting. So that's sustained.

8 You can approach the problem in a different way.

9 MR. LaPORTA: Excuse me, your Honor?

10 THE COURT: I said you can approach the problem  
11 in a different way.

12 Q. BY MR. LaPORTA: Tell us a little bit about  
13 Billy.

14 A. Billy came to us, like I said, when he was very  
15 young, and he came in four times while I was there. He's  
16 always been a likable young man.

17 He's also came from, from what I understand, what  
18 was a very dysfunctional family. He was more or less rejected  
19 from that family from no fault of his own.

20 I understand from talking to him from time to  
21 time that he was abused by his stepfather. He was also held  
22 up as a wedge between his mother and himself. He was used at  
23 one point, I understand, once they were separated that if she  
24 accepted Billy back into the home, he would try for custody of  
25 the two siblings. And it placed her in a position of a

1 lose-lose situation.

2 I understand she had problems of her own,  
3 emotional problems, but just the fact that she was also being  
4 more or less held hostage by his stepfather, it made Billy  
5 feel rejected and probably -- and I'm certain she cared about  
6 him, and I know he cared about his mother, but every attempt  
7 he made to replenish that relationship seemed almost always  
8 doomed to failure.

9 Consequently, he was passed from foster home to  
10 foster home. If he didn't fit in, he ran. And if nothing  
11 else, he would oft times, I feel, commit crimes to get  
12 attention, for one thing, and possibly to get security, for  
13 another.

14 MR. LaPORTA: Court's indulgence.

15 No further questions, your Honor.

16 THE COURT: Cross.

17

18 CROSS-EXAMINATION

19 BY MR. HARMON:

20 Q. Mr. Harring, you indicate that you've worked at  
21 the Nevada Youth Training Center since, I believe you said,  
22 1972?

23 A. 1974. I worked for the State of Nevada since  
24 1970.

25 Q. What is the nature of your formal education?

1           A.     I have three years of college and a number of  
2 classes since then, not all on the college level, but ongoing  
3 training in areas of substance abuse and management and  
4 reality therapy, behavior modification, and things of that  
5 nature.

6           Q.     Are you a psychologist, sir?

7           A.     No, sir, I am not. I feel that the agency felt  
8 competent enough with my abilities to put me in charge of the  
9 treatment department in which we determined the matter of  
10 treatment for the youth committed to us.

11          Q.     You have alluded to the information you have  
12 about the defendant's relationship at home?

13          A.     Yes.

14          Q.     Have you met his mother, Barbara Castillo?

15          A.     No, I have not. But I have had -- like I say,  
16 I've had extensive -- a lot of time talking to Bill over the  
17 years.

18          Q.     Well, a lot of time talking with Bill, but you've  
19 never talked with his mother to find out what --

20          A.     I'm trying to recall, but this is going back some  
21 years. I talked to a lot of parents. I at sometime may have  
22 talked to her because I knew that she was -- I have read  
23 letters from her. I may have even talked to her on the phone,  
24 but I can't honestly say I recall a definite time that I did  
25 talk to her or the subject matter at that point.

1 Q. So you can't recall one time when you have  
2 discussed specifically with her her description --

3 A. No.

4 Q. -- of the relationship at home and the home  
5 environment that involved her or her husband and the  
6 defendant, Mr. Castillo?

7 A. I'm simply recalling from memory from the court  
8 records and probation records and parole records that I've  
9 read and the discussions with Bill. But I've never had --  
10 I've never had a direct discussion with his mother, no.

11 Q. Have you ever had a direct discussion with Joe  
12 Castillo, the stepfather?

13 A. No, I didn't. I have not.

14 Q. Now, you suggested that even the mother was held  
15 hostage by Mr. Castillo, the stepfather?

16 A. Well, it may have been a bad choice of words, but  
17 what I'm referring to -- I know at one point Bill wanted to go  
18 back home, and they would not, supposedly, to my  
19 understanding -- I cannot verify this, but my understanding  
20 was that if Bill moved back in the home, he would try to get  
21 custody of the two siblings, the younger siblings in the home.  
22 And he would use Bill as a wedge or a weapon to get the  
23 children back in his custody.

24 This is an incident -- like I say, I don't  
25 remember the specifics, the details. It was just something



1 that I recall in this particular case.

2 Q. You don't know any of the actual specifics, do  
3 you?

4 A. I don't know any of the actual specifics, other  
5 than what I've read, no.

6 Q. Mr. Harring, do you have any idea what amount of  
7 effort these parents, including the stepfather, had put into  
8 managing and controlling and raising and training the young  
9 man who is the defendant in this case?

10 A. No, sir, I don't. I don't have that information  
11 on any of the children.

12 Q. So you're not really in a position to be making  
13 judgments about whether they were good parents?

14 A. I wouldn't pretend to. I'm just relating what my  
15 knowledge was and what my remembrance is.

16 Q. You have referred -- in fact, you read Exhibit D,  
17 the unsolicited letter that Mr. Castillo sent to you?

18 A. Yes.

19 Q. What is the date of the letter?

20 A. May 1991.

21 Q. May the 4th, 1991?

22 A. Yes, sir.

23 Q. He supposedly wrote the letter while he was  
24 incarcerated at Indian Springs?

25 A. Yes.

1 Q. He had just been convicted, having been certified  
2 to stand trial as an adult for his first felony conviction?

3 A. Yes, sir. To my understanding he was.

4 Q. Do you understand what the conviction was?

5 A. I don't know. I think it was probably grand  
6 theft auto. I'm not certain. Most of his crimes were  
7 property crimes.

8 Q. Well, the record indicates that it was attempted  
9 burglary; that he and an accomplice kicked in a lady's door in  
10 mid afternoon, and by his own statement, Mr. Castillo was  
11 holding a loaded semiautomatic pistol in his hand at the time  
12 the door was kicked in.

13 Did you know that?

14 A. No, sir, I did not.

15 Q. Did you know that he received a two-year  
16 sentence?

17 A. Yes.

18 Q. For the offense?

19 A. Yes. He stated so in the letter.

20 Q. Now, you've told us this afternoon you still use  
21 the letter?

22 A. Yes.

23 Q. This is five years later?

24 A. Yes, sir.

25 Q. What is the point that you strive to make when

1 you use the letter with current --

2 A. The point I'm trying to make when I read the  
3 letter -- it's part of the program on commitment, reality, and  
4 what I call jail awareness; that although these young men are  
5 basically in a non-punitive environment, that had they been  
6 adults when they committed the same crimes, they could very  
7 easily end up in prison for some of the things that they  
8 consider minor.

9 And that they do not necessarily have to take my  
10 word for it, because young men of that age usually don't trust  
11 adults anyhow.

12 So I used the letter as an example for someone  
13 who didn't listen, did suffer the consequences, and did try to  
14 help them.

15 Q. And at least by his tone, he was expressing to  
16 you that he learned his lesson?

17 A. A sense of remorse, yes, not necessarily -- a  
18 sense of remorse. I don't know about learning a lesson, but  
19 the fact that he had wished he had listened rather than just  
20 shining it on, as the expression goes.

21 Q. Well, you have some information about what has  
22 happened to Mr. Castillo since he wrote the letter on May the  
23 4th, 1991?

24 A. No. I have very little information on what's  
25 happened to him since then.

1 Q. Are you aware that he expired his sentence on  
2 June the 16th, 1992?

3 A. No, sir, I was not.

4 Q. Were you aware that he was arrested on a robbery  
5 case about six months later, December the 14th, 1992?

6 A. No, sir; no, sir.

7 Q. Do you know in fact that he has acknowledged to a  
8 number of people, a clinical psychologist, Dr. Etcoff, who has  
9 just testified in these proceedings, a corrections officer at  
10 Northern Nevada Correctional Center in Carson City, Mark Berg,  
11 that during the time frame between his release in June 1992  
12 and his rearrest in December 1992 that he and his friend  
13 committed robberies all the time in Las Vegas?

14 Did you know that?

15 A. No, sir. I am not aware of any of Bill's history  
16 since he left our jurisdiction in Elko in July -- I think it's  
17 January of 1990 or '91.

18 Q. So when you're using this letter to -- as a  
19 teaching tool with those who now occupy the Nevada Youth  
20 Training Center, they aren't made aware that the individual  
21 who made these statements in fact said it was easy and fun to  
22 commit robberies using guns when high on drugs in this  
23 community?

24 A. No, sir. I use the letter as face value as it  
25 stands as someone who said that they wished they had listened

1 and learned a lesson at that point. That's what the letter --  
2 that's what I use the instrument for.

3 Q. You weren't aware that from his own lips the  
4 defendant told Dr. Etcoff that six days a week, eight hours a  
5 day during the time frame I have mentioned in 1982 that he was  
6 committing robberies? That's how he earned his living.

7 A. Sir, I'm not aware of any of Bill's history since  
8 he was released from the jurisdiction of the Nevada Youth  
9 Training Center other than the letter that I received  
10 unsolicited.

11 Q. Do you mention to the present occupants at the  
12 Youth Training Center when you use the letter that this fellow  
13 has committed a murder?

14 A. Sir, I was not -- I have not used the letter  
15 since then. I've only heard of this within the past three or  
16 four weeks when I was called out to testify here. And in the  
17 interim, I have not talked -- I have not taught that class  
18 since.

19 But I would not hesitate to do that the next time  
20 I use the letter and the next time I read it, because like I  
21 stated, I was unaware of Bill's history from that point until  
22 now, so I used the letter simply, like I said, as it stands,  
23 its face value as a teaching tool.

24 I felt it had something to offer the young men  
25 that I deal with, and I use it for that purpose.

1 Q. Mr. Haring, do you feel that persons who commit  
2 serious, heinous, violent crimes should be held personally  
3 responsible?

4 A. I certainly do.

5 Q. Do you feel that an individual who has admitted  
6 that he routinely was involved in committing armed robberies  
7 is a threat to the community?

8 A. Certainly.

9 Q. Do you think that type of conduct should be dealt  
10 with in an aggressive and firm way?

11 A. Certainly.

12 Q. Do you agree that to come into the residence of a  
13 86-year-old woman in the middle of the night with the  
14 intention to steal from her and then to take a tire iron and  
15 to bludgeon her to death in her sleep is a heinous offense?

16 A. Certainly.

17 MR. LaPORTA: I'm going to object, your Honor, as  
18 to the relevance of what he thinks of the events. Besides,  
19 that's beyond the scope.

20 THE COURT: The objection is sustained.

21 MR. HARMON: That's all, your Honor.

22 THE COURT: Redirect?

23 MR. LaPORTA: No, your Honor.

24 THE COURT: May this witness be discharged?

25 MR. HARMON: Yes.

1 THE COURT: Thank you. You may step down.  
2 Is that the conclusion of the presentation for  
3 today?

4 MR. SCHIECK: Yes.

5 MR. HARMON: Yes, your Honor.

6 THE COURT: So we're going to proceed at 10:00  
7 o'clock on Tuesday morning with the continuation of the  
8 defense case in this penalty phase of the trial?

9 MR. SCHIECK: Correct.

10 MR. BELL: I still think it's reasonable,  
11 wouldn't you agree, that we will finish Tuesday, for the  
12 jury's planning purposes and their employment and so on? I  
13 think that's still a fair assessment, your Honor.

14 THE COURT: We'll finish the trial and final  
15 arguments.

16 MR. BELL: We'll submit it to the jury.

17 MR. LaPORTA: We can submit it to the jury on  
18 Tuesday.

19 THE COURT: So we have one more day of  
20 presentation, then you'll have the case for deliberation  
21 thereafter.

22 Ladies and gentlemen of the jury, it is your duty  
23 during the weekend recess not to converse among yourselves or  
24 with anyone else on any subject connected with this trial or  
25 to read, watch, or listen to any report of or commentary on

1 this trial or any person connected with this trial by any  
2 medium of information, including, without limitation,  
3 newspapers, television, or radio.

4 And you are not to form or express any opinion on  
5 any subject connected with this case until it is finally  
6 submitted to you.

7 Have a nice weekend, ladies and gentlemen. We'll  
8 see you Tuesday at 10:00 o'clock.

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

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

12 THE COURT: Anything further from the parties at  
13 this time?

14 MR. BELL: No, your Honor.

15 MR. SCHIECK: No, your Honor.

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

18

19

20

YVONNE M. VALENTIN, CCR 342

21

22

23

24

25



EXHIBIT 171

EXHIBIT 171

#CASTILL0003-GRAM0455

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CLARK COUNTY, NEVADA

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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

TUESDAY, SEPTEMBER 24, 1996, 10:20 A.M.

PENALTY HEARING - VOLUME III - 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.

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1 TUESDAY, SEPTEMBER 24, 1996, 10:20 A.M.

2 THE COURT: We are on the record outside the  
3 presence of the jury.

4 The parties have agreed at this time, in  
5 addition to admonishing the defendant relative to his right  
6 to testify, I can now also admonish him with regard to his  
7 right to make a statement in allocution in lieu of sworn  
8 testimony; is that correct, counsel?

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

10 MR. BELL: Yes, your Honor.

11 THE COURT: Mr. Castillo, if you would  
12 please stand.

13 Under the Nevada Supreme Court decision of  
14 Homick versus State, you have the common law right to make  
15 a statement in allocation without being sworn. This right  
16 is limited to your statements to the jury unsworn  
17 expressing remorse, pleas for leniency, and plans or hopes  
18 for the future.

19 You may not delve into the facts or  
20 circumstances relating to guilt or exculpation other than  
21 admitting to the event in question, as the jury has found  
22 you guilty of that event.

23 Under Homick versus State, the following --  
24 in Homick versus State, 108 Nevada 127, at 133 through 134,  
25 the Nevada Supreme Court makes the following observation.

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1                    "We conclude that capital defendants in the  
2     State of Nevada enjoy the common law right of allocation.  
3     However, if a defendant succeeds in abusing the right and  
4     extends his remarks beyond acceptable expressions of  
5     remorse, pleas for leniency, and plans or hopes for the  
6     future into the realm of facts or circumstances relating to  
7     guilt or exculpation, these types of facts are subject to  
8     rebuttal and form the basis for disputed issues which the  
9     trier of fact must resolve and, therefore, justify  
10    impeachment."

11                   So if you do go beyond expressions of  
12    remorse, pleas for leniency, plans or hopes for the future  
13    into statements of exculpation, the District Attorney will  
14    have the right to put on additional evidence in rebuttal.

15                   Do you understand that?

16                   THE DEFENDANT: Yes, sir.

17                   THE COURT: The Supreme Court, in *Homick*  
18    versus *State*, goes onto endorse a statement of the New  
19    Jersey Supreme Court when it makes the following comment.

20                   "We shall permit the narrowly defined right  
21    of the capital defendant to make a brief unsworn statement  
22    to the jury at the close of the presentation of the  
23    evidence in the penalty phase.

24                   Before a defendant speaks, he shall be  
25    instructed by the Court, outside the presence of the jury,

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1 of the limited scope of the right. That is his statement  
2 is subject to the Court's supervision and should the  
3 statement go beyond the bounds permitted, he will be  
4 subject to corrective action including comment by the Court  
5 or prosecutors or, in some cases, possible reopening of the  
6 case for cross examination."

7 So do you understand, Mr. Castillo, that  
8 your right of allocation, that is your right to make an  
9 unsworn statement to the jury, that is to remorse, pleas  
10 for leniency, and plans or hopes for the future?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you have any questions you  
13 wish to ask me about this right at this time?

14 THE DEFENDANT: No, sir.

15 THE COURT: You have had an opportunity to  
16 consult with your attorneys with regard to making this  
17 statement?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: It's your intention to do so at  
20 the close of the defense's case in this matter?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right.

23 Anything further from the parties with  
24 regard to admonishing the defendant?

25 MR. BELL: No, your Honor.

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1 THE COURT: All right, at this point, we  
2 will bring in the jury.

3 Mr. Harmon, I will return these to you.

4 MR. HARMON: Thank you, Judge.

5

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

8

9 (Off the record discussion not reported.)

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

12 MR. BELL: Yes, your Honor.

13 MR. LaPORTA: Yes, Judge.

14 THE COURT: Good morning, ladies and  
15 gentlemen. We were a little late getting started this  
16 morning because of the law and motion calendar went a  
17 little slower than I thought and, also, we had one matter  
18 to take up outside your presence before you came in.

19 So with that, we will continue with the  
20 presentations in this matter. I take it, the State has  
21 rested and we are in the middle of the defense case?

22 MR. LaPORTA: That's correct, Judge.

23 THE COURT: So you may proceed at this time  
24 with your next witness.

25 MR. LaPORTA: Yes, your Honor. The defense

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1 calls Sonny Carlman.

2

3

SONNY CARLMAN,

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

DIRECT EXAMINATION

9

BY MR. LaPORTA:

10

Q Good morning.

11

Officer Carlman, can you tell us where you

12

live?

13

A I beg your pardon, sir?

14

Q Can you tell us where you live right

15

now?

16

A Where I live?

17

Q Yes.

18

A Clark County, Las Vegas, Nevada.

19

Q Where do you presently work?

20

A Clark County Detention Center, sir.

21

Q What are your duties at the detention

22

center?

23

A I'm a corrections officer there.

24

Q Do you have any in charge duties?

25

A At the present time, I'm in charge of a

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1 module called Lane C-9-David.

2 Q Do you know an individual by the name  
3 of William Castillo?

4 A Yes, I do, sir.

5 Q Do you see him in the courtroom here  
6 today?

7 A Yes, sir. He is sitting at the defense  
8 table with a white shirt.

9 Q Name an article of clothing --

10 MR. LaPORTA: Let the record reflect the  
11 identification of the defendant, your Honor.

12 THE COURT: Yes.

13 Q (BY MR. LaPORTA) How do you know Mr.  
14 Castillo?

15 A The defendant is a -- not only housed  
16 in one of my modules, which is 9-D or 9-David, he is also a  
17 worker in the module.

18 Q You said he is a worker.

19 A They do the household duties and also  
20 help serve the trays to the inmates.

21 Q How do you come to taking a job like  
22 that or a position for an inmate? Do they apply, do they  
23 earn it?

24 A Most of the inmates in our particular  
25 section have to volunteer for the job, usually by writing

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1 an inmate request grievance form. Sometimes they just walk  
2 up to the officer and ask and an officer can pick that  
3 particular person and any officers working along with him.  
4 If another officer finds something wrong with that, then  
5 they let the officers know and we change it.

6 Q How long have you known Mr. Castillo in  
7 your professional capacity?

8 A We started on a schedule I'm at right  
9 now, we started in July, second week in July.

10 Q Second week in July of this year?

11 A Yes, sir.

12 Q And this is the only time that you've  
13 known him, just the last two and a half months?

14 A Of my recollection at the time, yes,  
15 sir.

16 Q During those two and a half, three  
17 months that he's been under your direct supervision, have  
18 there been any incidents, any problems?

19 A The defendant has not given me, per se,  
20 this officer, any problems whatsoever and has followed my  
21 Instructions.

22 Q I mean, have there been any incidents  
23 of violence or anything like that?

24 A There has been a few altercations  
25 within the module. The defendant did not partake in any of

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1 them.

2 Q From your experiences, are acts of  
3 violence and threats of violence a pretty typical thing in  
4 a setting such as the Clark County Jail?

5 A Not in the Clark County Jail at all,  
6 but especially in the module I'm in right now.

7 Q So it's a pretty peaceful situation up  
8 there. Right now everybody is pretty well behaved?

9 A Are you talking about all the inmates,  
10 sir, or are you talking about just --

11 Q I'm talking about -- just let me ask  
12 you this.

13 In your professional capacity in the Clark  
14 County Jail, are acts of violence and threats of violence a  
15 pretty common occurrence in general?

16 A Not a common occurrence. It happens,  
17 not common.

18 Q It does happen?

19 A Yeah.

20 Q It's your testimony today that Mr.  
21 Castillo does not only hold this job and works on the  
22 floor, does he do a good job?

23 A He does what I instruct him to do.  
24 There is a lot of things that has to be done that he didn't  
25 have to be instructed on. It is mundane, just regular work

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1 that all the workers do. Most of the workers kind of share  
2 the work with each other.

3 Q But he does discharge his  
4 responsibilities, as you give them to him?

5 A Most of the time he does, sir.

6 Q One last question. Do you believe in  
7 the death penalty yourself?

8 A Yes, sir.

9 MR. LaPORTA: No further questions.

10 THE COURT: Cross examination.

11 MR. BELL: Thanks.

12

13 CROSS EXAMINATION

14 BY MR. BELL:

15 Q Officer Carlman, how long have you been  
16 employed as a corrections officer with Metro?

17 A I have been with Metro for 18 and a  
18 half years as a corrections officer.

19 Q You have seen a lot of inmates come and  
20 go, I take it?

21 A Yes, sir.

22 Q Are you familiar with the incarceration  
23 history of William Castillo?

24 A Of the defendant personally, no, sir,  
25 I'm not.

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1                   Q     Let me tell you what I believe the  
2     evidence has shown as a predicate to a question. I believe  
3     the evidence would have shown that he was arrested in 1990  
4     and put in the county jail and stayed there for some few  
5     months before he pled guilty to burglary and he was sent to  
6     prison for two years.

7                   He was out for a few months and he was  
8     arrested again for robbery and stayed in the jail a few  
9     months before he was tried and convicted by a jury and sent  
10    to prison for three years.

11                  He was out for a few months before he was  
12    arrested in December last year for robbery, burglary,  
13    murder, arson and he's been in the county jail now for  
14    about eight or nine months.

15                  Based upon your experience of somebody with  
16    this type of criminal history, has he got the drill pretty  
17    well down packed?

18                  A     I would say so, yes.

19                  Q     Would you expect that he would know  
20    that one day, like today, if not today, he's going to have  
21    to come in front of a judge or jury and his conduct be  
22    looked at?

23                  A     In my opinion, yes, sir.

24                  Q     Now, for the last two or three months,  
25    his conduct has been acceptable in your module; is that

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1 correct?

2 A That is correct, sir.

3 Q So if, in fact, at some time during  
4 those two or three months he had an impulse that struck him  
5 to be violent to another inmate, at least as far as you  
6 were able to tell, he could control that impulse and do  
7 what he knew was right or what he had to do, correct?

8 A I would believe so, sir.

9 Q You know Mr. Castillo from some  
10 opportunity and observation and you are generally familiar  
11 with the charges that brings him here today?

12 A I know of the charges, sir.

13 May I interject that I do not ever read  
14 newspapers or watch articles because of that.

15 Q Do you consider Mr. Castillo highly  
16 dangerous even in an institutional setting?

17 A Yes, sir.

18 MR. BELL: Nothing further, Judge.

19 THE COURT: Redirect?

20 MR. LaPORTA: No redirect, your Honor.

21 THE COURT: All right, may this witness be  
22 discharged?

23 MR. LaPORTA: Yes.

24 MR. BELL: Yes, sir.

25 THE COURT: Thank you, sir. You may step

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1 down.

2 Call your next witness.

3 MR. SCHIECK: Tammy Bryant.

4

5 TAMMY BRYANT,

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

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

8 follows:

9

10 DIRECT EXAMINATION

11 BY MR. SCHIECK:

12 Q Good morning, Tammy.

13 A Hi.

14 Q You testified in the trial; is that

15 correct?

16 A Yes, I did. Yes, I did.

17 Q And you know Billy Castillo?

18 A Yes, I do.

19 Q Can you tell the jury when it was that

20 you met Billy?

21 A Last year in August. August 12th.

22 Q And you developed a relationship with

23 him?

24 A Yes, I did.

25 Q Became boyfriend and girlfriend?

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1                   A     Very close.

2                   Q     Did you ever move in together?

3                   A     Yes, we did.

4                   Q     When did you move in together?

5                   A     September '95.

6                   Q     Did you continue to live together until

7     he was arrested?

8                   A     Yes, I did.

9                   Q     Can you tell the jury a little bit

10    about how life was with Billy during those few months you

11    lived together?

12                  A     It was very comfortable. We were very

13    relaxed. We had a good time. Everything we did was fun.

14    Every morning, I'd get up, make his lunch for him, send him

15    off to work, and I would wait for him to get home after he

16    was done working. We just hangout. He had the same

17    routine everyday, came home, go to his little closet, take

18    a shower, go get a couple beers, come home, hangout, watch

19    TV, wait for dinner.

20                  Q     When you said go to a little closet,

21    what are you talking about?

22                  A     His little armoire he had. He put his

23    stuff in it.

24                  Q     He didn't put it in the closet?

25                  A     It was a closet. It had a shelve and

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1 hangers where the clothes hang. It was like a closet.

2 Q Did everything he owned go in there?

3 A Everything he owned that fit in there,  
4 except for a few things he had like a bed, when his mom  
5 gave him when we moved in, microwave, stuff like that.

6 Q How was he with his social skills?

7 A He didn't go anywhere really. Couple  
8 times he went -- one time he went with his friend Brad at a  
9 show at the Convention Center. They took the bus down  
10 there and then one time he went over to another guy's house  
11 and played pool and I don't remember that guy's name. Then  
12 he came home from there and that's pretty much the only  
13 places he went without me and then everything else we did  
14 together. We'd go bowling, go to the movies.

15 Q Was he working on a regular basis?

16 A Uh?

17 Q Was he working?

18 A Yeah, he worked everyday except  
19 Saturday and Sunday 6 to 2.

20 Q Did you know he had been in prison  
21 before?

22 A Yes, I did when I met him.

23 Q Had he discussed with you the number of  
24 times he was in prison?

25 A Yes.

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1 Q Did he ever talk to you about his not  
2 wanting to go back to prison?

3 A He didn't want to go there.

4 Q Did he talk very much about that?

5 A Yes. I told him that there was no way  
6 I would let anybody take him from me.

7 Q How did he feel about prison at that  
8 point in time in his life?

9 A That he had been there, done that,  
10 didn't want to do it again.

11 Q Did he ever talk about wanting to  
12 change his life?

13 A Yes. That's what we were working on.

14 Q What did he tell you about how he  
15 wanted to change his life?

16 A Well, when he met me, I was like the  
17 first person that ever really showed him any attention and  
18 affection and on Christmas Eve, he was going to ask me to  
19 marry him and he wanted to spend the rest of his life with  
20 me and build a family.

21 Q Did you ever notice whether or not he  
22 had any lack of just normal living skills?

23 A Yeah, social skills. He would -- he  
24 wouldn't -- like when he was in the public, he would do  
25 dumb things like make comments or stuff and I'd tell him

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1 you can't do that because people think when you say things,  
2 you know, you shouldn't say them directly to other people,  
3 because they portray -- they stereotype you on the things  
4 you say or how you act and one day, we sat three, four  
5 hours talking about how you can't do that, how you should  
6 act in society itself because since he didn't know how, you  
7 know, I always tried to show him the right way of acting in  
8 society. He didn't really know how. He was just a big kid  
9 out there. To me, he was.

10 Q How about things around the apartment  
11 that people live on their own are normally able to do?

12 A Like cooking or stuff like that?

13 He didn't know how to cook. One day, we got  
14 in an argument over chilly hot dogs because I made fun of  
15 him; he thought I did. I made a comment, well, gee, he  
16 didn't know how to do it. He took offense that I was  
17 picking on him. I explained I wasn't picking on him. He  
18 didn't know how.

19 Q Were you surprised he didn't know how  
20 to do the simplest things?

21 A Yeah, that's why I said that. "You  
22 don't know how? Da." So he just take it offense and I  
23 tried to explain to him I wasn't picking on him and I  
24 showed him how. He was happy.

25 Q Do you still have feelings for him?

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1                   A     Yes, I do, very much so. I don't  
2     think --.

3                   MR. SCHIECK: Thank you. That's all.

4                   THE COURT: Cross examination.

5                   MR. BELL: Thank you, Judge.

6

7                   CROSS EXAMINATION

8     BY MR. BELL:

9                   Q     Ms. Bryant, you stated that, some time  
10    between September and December 1995, that Mr. Castillo  
11    indicated he wanted to change his life; is that true?

12                  A     Yes.

13                  Q     And not live a life of crime. Am I  
14    understanding right what change his life meant?

15                  A     Yes, sir.

16                  Q     Are we in agreement on that?

17                        Now, to your knowledge, did Mr. Castillo  
18    commit any crimes between September, when you moved in  
19    together, and the night that he murdered Ms. Berndt?

20                  A     No.

21                  Q     Well, did he use drugs in your  
22    presence?

23                  A     He smoked pot.

24                  Q     That's a felony in this state, is it  
25    not?

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1 A Yes, it is.

2 Q So although he was professing to change  
3 his life, he was committing felonies in your presence on a  
4 regular basis; is that true?

5 A Yes.

6 Q Now, we've had -- in fact, you  
7 testified that there was a little notebook page that Billy  
8 had written in his own hand that said VCR so much money,  
9 camera so much money, and silverware so much money; is that  
10 true?

11 A Yes.

12 Q Do you remember that?

13 Now, you also testified that he brought in  
14 the silverware and the VCR the night he killed Ms. Berndt,  
15 right?

16 A Yes.

17 Q He didn't bring in the camera from Ms.  
18 Berndt, did he?

19 A I didn't see no camera.

20 Q Well, did he tell you, as he told his  
21 psychologist, that he stole the camera from another lady,  
22 grabbed her purse, robbed her?

23 A No.

24 Q Did you see a camera in the apartment  
25 at any time?

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1 A No.

2 Q So you didn't know whether he was  
3 committing robberies while he was professing to change his  
4 life; is that true?

5 A No.

6 MR. BELL: Nothing further, Judge.

7 MR. SCHIECK: No redirect, your Honor.

8 THE COURT: All right, at this time, will  
9 counsel approach the bench, please.

10 (Off the record discussion not reported.)

11 THE COURT: Ladies and gentlemen of the  
12 jury, we have a matter that we are going to take up outside  
13 your presence just briefly. Because of the logistics of  
14 it, we are going to have you escorted out into the hall for  
15 a moment and then we will be bringing you right back. This  
16 will only take a moment.

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

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1                   If you would please rise and follow Lisa  
2     into the hallway.

3

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

5                   THE COURT: All right, we're outside the  
6     presence of the jury.

7                   The Deputy District Attorney wishes to make  
8     a request of the Court at this time with regard to this  
9     witness.

10                  MR. HARMON: Yes, your Honor.

11                  It's my request on the record in open court  
12     that the Judge direct Tammy Jo Bryant to reappear Thursday  
13     morning at 10:30 a.m. in connection with the Michelle  
14     Platou case.

15                  I would further represent to the Court that  
16     just a few minutes ago in the hallway, Ms. Bryant was  
17     served a second subpoena in connection with the Platou  
18     matter which specifically directs her to appear at 10:30  
19     a.m. in the hallway for testimony on Thursday, September  
20     the 26th and further requests that she appear at 9:30 a.m.  
21     in the office of the District Attorney for a pretrial  
22     conference.

23                  We felt this was necessary because earlier,  
24     in fact, last week, a subpoena was served on Ms. Bryant.  
25     She spoke on Thursday of last week with my secretary, Kathy

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1 Hinkle, and indicated to Ms. Hinkle that she would not  
2 honor the subpoena, that it was too stressful for her, that  
3 we were going to end up sending her to Charter Hospital.

4 I want the Court to know and Ms. Bryant to  
5 know that we are not insensitive to the difficulty involved  
6 with witnesses in appearing to testify, but particularly in  
7 murder cases where in the case of Mr. Castillo, it has been  
8 a boyfriend; in the case of Miss Platou, a former  
9 roommate.

10 THE WITNESS: She is my friend.

11 MR. HARMON: I know this is very difficult  
12 for her, but she must be made to understand that it's not  
13 just an invitation. She has an obligation to be here to  
14 share with the next jury the information she has.

15 THE COURT: Ms. Bryant, do you understand  
16 the significance of the subpoena that has been served upon  
17 you?

18 THE WITNESS: Yes.

19 THE COURT: Do you understand that you are  
20 under obligation to attend court at 10:30 Thursday morning  
21 and to also attend this pretrial conference?

22 THE WITNESS: Yes.

23 THE COURT: And you have indicated, at least  
24 it's been represented that you have indicated that you do  
25 not intend to honor this subpoena. Do you intend to honor

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1 this subpoena?

2 THE WITNESS: If I have to.

3 THE COURT: Excuse me?

4 THE WITNESS: If I have to.

5 THE COURT: You do have to. There is no if  
6 about it.

7 THE WITNESS: Okay.

8 THE COURT: Is there anything further that  
9 the State wishes me to advise the defendant or Ms. Bryant?

10 MR. HARMON: We would specifically like the  
11 Court to direct her to reappear on Thursday at 10:30 a.m.

12 THE COURT: It is so ordered that you are to  
13 appear at 10:30 in the hallway ready to testify in the  
14 State of Nevada versus Platou matter. Do you understand  
15 that?

16 THE WITNESS: Yeah.

17 MR. HARMON: That is September the 26th.

18 THE COURT: This coming Thursday, September  
19 the 26th. Will you be here?

20 THE WITNESS: Yes.

21 THE COURT: Anything further?

22 MR. HARMON: No, your Honor. Thank you.

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

24 You are excused until the Platou matter commences.

25 All right, bring the jury back in.

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(At this time the jury entered the  
courtroom.)

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

MR. BELL: Yes, your Honor.

MR. LaPORTA: Yes, Judge.

THE COURT: Call your next witness.

MR. LaPORTA: Barbara Sullivan.

BARBARA SULLIVAN,  
having been first duly sworn to tell the truth, the whole  
truth and nothing but the truth, testified and said as  
follows:

DIRECT EXAMINATION

BY MR. LaPORTA:

Q Good morning.

A Good morning.

Q Do you want some water?

A No, I'm fine.

Q Ms. Sullivan, can you state your  
address for the record?

A 2801 North Rainbow.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q Are you the natural mother of William  
2 Castillo?

3 A Yes, I am.

4 Q Do you see him here in the courtroom?

5 A Uh-huh.

6 Q Would you point him out to the jury,  
7 please.

8 In the white shirt?

9 THE REPORTER: You have to answer out loud.

10 THE WITNESS: Yes.

11 Q (BY MR. LaPORTA) Ms. Sullivan, I  
12 understand this is very difficult for you. We will need  
13 audible answers of yes or no or what have you. Do you need  
14 a moment?

15 A Please.

16 Q Okay.

17 A Sorry.

18 Q Take your time.

19 A Okay.

20 Q Will you tell us when Billy was born  
21 and where?

22 A He was born in St. Louis, December  
23 28th, 1982.

24 Q So he is --

25 A I mean '72.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 Q So he's 23 years of age right now?

2 A Yes. 29th --

3 .

4 Q How old were you when Billy was born?

5 A Eighteen.

6 Q You were 18 years of age?

7 A Uh-huh.

8 Q So you were how old when Billy was

9 conceived, 17?

10 A Yes, sir.

11 Q And where were you living at the time?

12 A St. Louis.

13 Q With whom were you living?

14 A I floated around between my mother, my

15 X -- my husband's family.

16 Q And your husband is Billy's father?

17 A Yes, sir.

18 Q His name was?

19 A William Cast -- William Thorpe.

20 Q William Thorpe.

21 So what you just testified to, when he was

22 born, you were floating back and forth between Billy's

23 grandparents?

24 A Right.

25 Q Your in-laws and your own parents.

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 And Mr. Thorpe's first name was William?

2 A Yes, sir.

3 Q Do you recall who you were first living  
4 with when he was born, was it your parents or your in-laws?

5 A My mother.

6 Q How long a period of time had you  
7 remained at your mother's after his birth?

8 A Oh, about six months to a year.

9 Q Okay, all right.

10 This might make it a little easier on you.

11 If you could describe to this jury where you lived during  
12 the first four years of his life. My first question is  
13 most of this took place in St. Louis?

14 A Yes.

15 Q During the first four years of his  
16 life?

17 A Yes.

18 Q If you could describe, because I know  
19 it's difficult to recollect this going that far back, could  
20 you describe a little bit about where you were living and  
21 how often you would go back and forth between your in-laws  
22 and your house?

23 A Yes, and I tried to -- we tried to get  
24 an apartment on our own and it didn't --

25 Q When you say we?

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1 A My husband at the time.

2 Q Mr. Thorpe.

3 A And we -- he couldn't hold a job and it  
4 wasn't so good and so I asked my parents -- my mother to  
5 take us in and then she threw us out. So I went to his  
6 family and eventually we got thrown out of there too.

7 Q You got thrown out of there.

8 And just where did you go after you got  
9 thrown out of the Thorpes?

10 A Well, I left Billy there. I mean he  
11 always had a home there, but then I took off.

12 Q Where did you go to?

13 A Lake Tahoe.

14 Q Well, now we are really jumping ahead  
15 because Billy is what age at this point in time, when you  
16 went to Lake Tahoe?

17 A Six.

18 Q Okay, six.

19 I want to take you back to age zero and four  
20 and try to limit your comments to the jury --

21 A Oh.

22 Q -- between the ages of zero and four.

23 Am I hearing right, did you live essentially  
24 with your parents and the Thorpes between age zero and  
25 four?

PATSY K. SMITH, OFFICIAL COURT REPORTER

1                   A     Right.

2                   Q     And they threw you out after age four?

3                   A     Well, yeah, bouncing back and forth

4     between the two families.

5                   Q     And can you estimate about how many

6     times you had bounced back and forth?

7                   A     Four or five times.

8                   Q     And this was all during the ages of

9     zero and four years of age?

10                  A     Uh-huh.

11                  THE REPORTER: Is that yes?

12                  THE WITNESS: Yes.

13                  Q     (BY MR. LaPORTA) Had you ever left St.

14     Louis during those four years?

15                  A     No.

16                  Q     Before we get into a little bit about

17     Billy's father, who you already commented upon, can you

18     tell us a little bit about how you -- how you made a

19     living, how you fed Billy, how you clothed Billy. Can I

20     ask you to be honest here?

21                  A     During those years that I was living

22     with --

23                  Q     During those years, the variety of

24     things you did to earn a living.

25                  A     From zero to four?

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1 Q From zero to four.

2 A I lived with the folks and different

3 waitress jobs and stuff like that.

4 Q Different waitress jobs and things of

5 that nature.

6 Anything else at that point in time?

7 A No.

8 Q Were you in and out of employment?

9 A Later on, when it was just me and

10 Billy.

11 Q Okay. That came after four years of

12 marriage. Let's just leave it to zero to four.

13 All right, let's talk about -- let's talk

14 about his father. Where had you met his father?

15 A School.

16 Q High school?

17 A Uh-huh.

18 Q In St. Louis.

19 A Uh-huh.

20 THE REPORTER: Is that yes?

21 THE WITNESS: Yes, yes.

22 Q (BY MR. LaPORTA) And then you became

23 pregnant with this child?

24 A We got married.

25 Q You got married and then what did you

PATSY K. SMITH, OFFICIAL COURT REPORTER



1 do?

2 A Then I came -- then I became pregnant.

3 Q I understand that, but did you go  
4 somewhere? Was he in the service?

5 A Oh, yes, yes. He was in the service  
6 and I got pregnant overseas.

7 Q It was overseas.

8 So he was in the --

9 A Army.

10 Q Billy's father was in the military?

11 A Army.

12 Q How was your relationship, during the  
13 time that you were pregnant with Billy, with his father?

14 A It was very bad.

15 Q Can you describe to the jury what you  
16 mean by very bad. I mean, was he emotionally abusive, was  
17 he physically abusive, just what was it?

18 A He was a beater.

19 Q So he physically abused you?

20 A Yes.

21 Q Do you remember a particular incident,  
22 when you were about eight, eight and a half months  
23 pregnant?

24 A He threw me down a flight of stairs.

25 Q Was this two or three stairs, was this

PATSY K. SMITH, OFFICIAL COURT REPORTER

1     like stairs you find in an apartment complex?

2                   A     Concrete stairs, about seven.

3                   Q     And what happened as a result of that?

4                   A     I use to go back to the doctor and be  
5     beat up all the time. After he threw me down the last time  
6     after eight and a half months, he sent me back to the  
7     states.

8                   Q     He sent you or the military?

9                   A     The doctor sent me on military orders  
10    and busted his father back to a private and threw him in  
11    the brig.

12                  Q     Now, maybe this is a good time to talk  
13    a little more about Mr. Thorpe, Billy's natural father  
14    here. What kind of person was he? Was he a good father?

15                  A     No, he was a very mean person and the  
16    only reason why I married him because he told me if I  
17    didn't, he would cut me up and nobody else would.

18                  Q     Can you describe his relationship with  
19    Billy, did it exist at all?

20                  A     Not really. He -- he would float in  
21    and out of Billy's life just to see him and brag that he  
22    had a son. There was no love there.

23                  Q     You've already described that he was a  
24    violent person. Did he ever have trouble with the law  
25    because of that?

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1                   A     Yes, he was in and out of problems with  
2     the law back in St. Louis.

3                   Q     Were there even more serious problems  
4     than just these domestic violence matters?

5                   A     Yes. He did his fair share, rob --  
6     robblings and he was beating people up and he was just a  
7     cruel person, a very cruel person.

8                   Q     Did he have much input into Billy's  
9     first, say, four years or so?

10                  A     He -- like I said, he floated in and  
11     out and he was around because he lived at his mother's  
12     house also when he wasn't put away.

13                  Q     Put away where?

14                  A     Like in a boy's camp because he was  
15     under age a lot of the time too and, you know, they go for  
16     awhile and then they come out.

17                  Q     He was an adult when he was in the  
18     military?

19                  A     Oh, yeah, but I mean through when he  
20     was an adult, I mean -- yeah.

21                  Q     Billy was born after you got back from  
22     overseas?

23                  A     Oh, yeah.

24                  Q     What was it like then?

25                  A     Oh then? Sorry.

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1 Q I'm talking about --

2 A I stayed away from him. I was tired of  
3 the beatings. When his brother died, when I left and had  
4 the baby, when his brother died, they sent him back to the  
5 states and that's when I filed for divorce because I  
6 couldn't get it while he was still overseas.

7 Thank you.

8 Q Was -- so his father had very little  
9 input in his life during those first four years or so?

10 A Yeah.

11 Q Was he in and out of trouble with the  
12 law?

13 A Yes.

14 Q You stated that.

15 Did he ever go to prison?

16 A Yes.

17 Q So he was absent forcibly from Billy's  
18 life?

19 A Yes.

20 Q For big chunks of time?

21 A Yes.

22 Q What about the rest of Billy's father  
23 or his father's brothers, how many did he have?

24 A There was five of them.

25 Q Five of them.

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1 And what were they like?

2 A One died in prison. The other one died  
3 at 16 because he had a choice to go to prison or the  
4 service. He died in the service also for sniffing glue,  
5 the youngest one, and the oldest -- and one of them has  
6 been in and out of prison. He calmed down after a train  
7 hit him and another one turned into a Jesus freak.

8 Q Okay.

9 A And then there is William.

10 Q So is it fair comment to say that  
11 Billy's father and uncle were fairly violent people who  
12 engaged in a lot of criminal activity?

13 A Yes.

14 Q What about the paternal grandfather,  
15 Grandfather Thorpe, what type of person was he?

16 A He was -- he was an abusive person  
17 too.

18 Q When you say abusive, emotionally or  
19 physically?

20 A A little of both. A little of both.

21 Q A little of both.

22 Did he ever have any trouble with the law?

23 A I don't know. That I don't know.

24 Q Did there ever come a time that  
25 Grandfather Thorpe and Billy's father had an incident,

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1 violent incident?

2 A Yes.

3 Q Can you describe that to the jury.

4 A His father shot him with a sawed-off

5 shotgun.

6 Q Did Billy's father survive that?

7 A He survived it.

8 Q So it's a fair statement to say that,

9 from the Thorpes' side of the family at least, there was a

10 lot of violence --

11 A Yes.

12 Q -- in that family, that immediate

13 family. They were very violent people.

14 Okay, let's take you back to the age of zero

15 to four. There were a number of moves that went on,

16 between Billy's grandparents, you attempted to keep up by

17 taking waitress jobs and things like that. Around four

18 years of age, you got thrown out of the Thorpes'. What age

19 was Billy then? About four?

20 A About four and a half.

21 Q About four, four and a half.

22 What happened then when you got thrown out

23 of the in-laws' home?

24 A I turned to prostitution.

25 Q This was in St. Louis?

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1                   A     (Witness shook head affirmatively.)  
2                   Q     About how long a period of time did you  
3 do that to earn a living?  
4                   A     About six months.  
5                   Q     Six months.  
6                   Nobody else to help you, right?  
7                   A     No.  
8                   Q     Subsequent to that, then what  
9 happened? You said about six months. Did something occur,  
10 did you go anywhere?  
11                  A     Yes.  
12                  Q     What happened?  
13                  A     I finally couldn't take that any more.  
14                  Q     Couldn't take what, the prostitution?  
15                  A     (Witness shook head affirmatively.)  
16                  So I left for Lake Tahoe.  
17                  Q     You left for Tahoe then?  
18                  A     Uh-huh.  
19                  Q     Okay. Did you take Billy with you,  
20 when you first went to Tahoe?  
21                  A     Yes. When I first went to Tahoe, I  
22 took him.  
23                  Q     And about how long were you in Tahoe  
24 with Billy?  
25                  A     Oh, about four or five months.

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1 Q And did there come a time when you and  
2 Billy parted ways?

3 A Yes, because --

4 Q When was that?

5 A I -- it was getting a little hard and I  
6 was -- took my sister with me and she was supposed to take  
7 care of him while I found work and I couldn't -- she got  
8 flighty on me and she took off on me. So I flew him back  
9 to St. Louis and I left him with his grandmother and I told  
10 him that I would be back for him in six months, to give me  
11 six months to get on my feet.

12 Q You told who to give you six months?

13 A His Grandmother Thorpe.

14 Q So did you go back to St. Louis to talk  
15 to them?

16 A Yes, I flew him and me back.

17 Q And you worked out a deal with them?

18 A Yes I promised I would be back for my  
19 son in six months.

20 Q Did you go back to Lake Tahoe after  
21 that?

22 A Yes, I did.

23 Q How long were you in Lake Tahoe before  
24 the next time that you came in contact?

25 A Within that year.

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1 Q Excuse me?

2 A Within that year.

3 Q Within that year.

4 About how many months was that?

5 A Well, six months.

6 Q About six months.

7 And what happened?

8 A I got a job, I got married, and I got a

9 home.

10 Q Can you describe the situation how you

11 became reunited with Billy, if you did in fact?

12 A Yes, because I told my new husband that

13 I had a son back East that I have to go back and get

14 because my family tried to get me on desertion for my son.

15 Q First of all, let's clear up some

16 things for the jury.

17 Your new husband was?

18 A Joe Castillo.

19 Q Joe Castillo.

20 Just one thing about Mr. Castillo and we

21 will go back.

22 Did Joseph Castillo adopt Billy?

23 A Later on, right.

24 Q So he was Billy's adoptive father?

25 A Right.

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1 Q So you told Mr. Castillo that you had a  
2 son and that the family was trying to get you on desertion?  
3 A Right.  
4 Q When you say family, was this --  
5 A My mother and his grandmother.  
6 Q So both of Billy's grandmothers were  
7 attempting to get custody?  
8 A Right.  
9 Q Court proceedings?  
10 A Yes.  
11 Q What happened?  
12 A They awarded me my son back.  
13 Q The courts in St. Louis?  
14 A Yes.  
15 Q And what happened with Billy at this  
16 point in time? Did you take him with you?  
17 A Back to Lake Tahoe.  
18 Q Were you married to Mr. Castillo at  
19 this time?  
20 A Yes, I was.  
21 Q About how old was Billy at this point?  
22 A Seven.  
23 Q He was seven.  
24 Now, I'm going to bring -- do you have any  
25 other children?

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1 A Yes, sir.

2 Q And their names are?

3 A Joseph and Crystal.

4 Q Joseph and Crystal.

5 And who's their father?

6 A Joe Castillo.

7 Q So Billy's father is not their -- his

8 natural father is not their natural father?

9 A Right.

10 Q And they are what age?

11 A Fourteen and 10.

12 Q Fourteen and 10.

13 And I'm going to take you a little bit

14 through them because I want to contrast Billy with them at

15 this point in time.

16 Fourteen and 10 years of age. Where were

17 they born?

18 A Las Vegas.

19 Q And what was Mr. Castillo doing at the

20 time?

21 A He worked for the DI --

22 Q DI?

23 A -- as a baccarat manager.

24 Q Excuse me?

25 A Baccarat in the casino, baccarat at the

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1 DI as a manager.

2 Q Did he remain continuously employed  
3 there?

4 A Yes.

5 Q And Billy was living with you at this  
6 time?

7 A Yes.

8 Q And can you describe Mr. Castillo, in  
9 terms of discharging his responsibilities as a father, is  
10 he a good father?

11 A Yes, he was.

12 Q Did he provide them with --

13 A Yes, he did.

14 Q About how old was Billy when you first  
15 met Mr. Castillo?

16 A Seven.

17 Q He was six?

18 A Six and a half, seven, right.

19 Q So Joseph and Crystal, it would appear,  
20 had a different life than Billy did?

21 A Yes, definitely.

22 Q Their initial years were pretty  
23 stable?

24 A Yes.

25 Q I want you to think about this in terms

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1 of you provided for Billy, did you not, during his first  
2 four years or so?

3 A I provided?

4 Q You saw that he was fed?

5 A Basically, that's right.

6 Q I know this is difficult for you, but  
7 in reflection, knowing what you know now, having raised two  
8 other children in a different environment, can you tell  
9 this jury a little bit about your emotions, how you felt at  
10 the time that you were -- Billy was first born and his  
11 first few years and I know you protected him and you took  
12 care of him, but I'm talking in terms of affection and love  
13 and I know this is difficult.

14 A I didn't love him like I should have.  
15 Not that way I loved my other two children. Because I  
16 hated his father so much, I saw to all his needs, but I  
17 didn't give him the love he needed. I never abused him or  
18 anything, but I guess you can call it abuse if you don't --  
19 if you deny love. Didn't have it in me to give to him.

20 Q Did you resent Billy in the first few  
21 years?

22 A Pardon me?

23 Q Did you resent Billy in the first few  
24 years?

25 A Very much so. I didn't know why I had

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1 to raise him all on my own and his father just skipped  
2 around like there was no responsibilities.

3 Q Did this create some emotional problems  
4 for you at the time?

5 A Yes, it did.

6 Q Did anything happen as a result of  
7 these emotional problems?

8 A His father tried to kill me three times  
9 and the last time he put a gun in my mouth. I finally  
10 flipped out and ended in an institution.

11 Q Do you need a few moments? Why don't  
12 we take a minute.

13 A Okay.

14 Q Are you okay now?

15 MR. LaPORTA: Court's indulgence.

16 (Off the record discussion not reported.)

17 Q (BY MR. LaPORTA) Just a few areas,  
18 Mrs. Sullivan.

19 Can you -- Uncle Max, who is Uncle Max?

20 A He's my brother.

21 Q And did he ever enter into Billy's life  
22 at that point in time?

23 A Yes, he did.

24 Q Can you tell us about what age and why  
25 he entered Billy's life?

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1                   A     This is before I met his father -- I  
2     mean before I met Castillo. He did make one trip to  
3     Florida because my brother said he could handle him and  
4     because --

5                   Q     He could handle him meaning?

6                   A     Handle him as far as help me raise him.

7                   Q     How old is Billy at this point in time?

8                   A     He was like four and a half going to be  
9     five, somewhere in there.

10                  Q     And --

11                  A     Five.

12                  Q     And so Uncle Max did what?

13                  A     Oh, he -- no. Five and a half, six  
14     because he just started preschool.

15                  Q     And what did Uncle Max do with Billy?

16                  A     I sent him down to Florida and my  
17     sister and my brother lived down there and he said, "Send  
18     him down to me for awhile, for a month or so and, you know,  
19     I'll help him get together. He needs the lord." My  
20     brother was a very Christian man or so I thought, okay, and  
21     I did. I sent him down to stay with him for a month or  
22     so. It ended up to be three months and my brother was very  
23     abusive to my son.

24                  Q     When you say abusive, in what ways?

25                  A     He made him read the bible and if he

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1 didn't do things right, he would strap him big time and I  
2 didn't find this out until my sister called me because  
3 every time I called to check with my son, he said he was  
4 fine, everything was good. And then when my sister called  
5 me and told me, "Barb, you better come back and get Billy  
6 because Max is not playing with a full deck here." So I  
7 flew down there and I got him and I brought him back with  
8 me.

9 Q When did you notice a change in Billy's  
10 behavior, if you noticed any change at all?

11 A Around six; five and a half, six.

12 Q Five and a half or six?

13 A (Witness shook head affirmatively.)

14 Q As a result of that behavior, Billy  
15 began to make contact with the state and county  
16 authorities?

17 A The first professional person he saw  
18 was at five.

19 Q Five years of age.

20 I'm going to try to speed you through this.  
21 During his adolescent years, he had numerous, few contacts?

22 A Numerous?

23 Q With the state authorities, CBS?

24 A By eight.

25 Q There has been testimony about CBS,

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1 Children's Behavioral Services?

2 A Five years of age he started in the  
3 system.

4 Q You recognized about age five and a  
5 half he had a significant change of behavior?

6 A Yes.

7 Q You weren't equipped to deal with that,  
8 were you?

9 A No.

10 Q Often times you would -- were you  
11 financially equipped to seek help?

12 A No, I seeked out a few state agencies  
13 back in St. Louis.

14 Q But were you ever able to get what you  
15 considered to be --

16 A No.

17 Q -- good help for Billy?

18 A No.

19 Q What did the state agencies essentially  
20 do?

21 A I tried to tell them that, you know,  
22 something is not right, he needs -- he needs somebody to  
23 look at him and from a doctor's point of view or a  
24 professional's point of view and they kept looking at me as  
25 a person, as a mother, and said, "He's fine. It's you."

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1 Q All right. Let's -- you've come here  
2 to testify on behalf of your son here and to shed a little  
3 light on Billy's background for this jury, which you have  
4 done, and now I'll turn it over to you.

5 Is there something that you would like to  
6 say to this jury at this point in time in summation?

7 A If I had a heart left and I'm so sorry  
8 for what he has done, the magnitude is just unforgivable.  
9 All I can say to the family also I'm sorry. I'm sorry for  
10 him. If I could take that lady's place, I would because my  
11 son has never hurt anybody. He's got in a bunch of  
12 trouble, but he's never hurt anybody and if he would have  
13 got some help instead of slipping through the cracks so  
14 many times as he did, maybe this would have never  
15 happened.

16 All I know is I asked the Lord to have mercy  
17 on him and I ask you also too.

18 MR. LaPORTA: No more questions, your  
19 Honor.

20 MR. HARMON: No questions.

21 THE COURT: May this witness be discharged?

22 MR. LaPORTA: Yes, your Honor.

23 MR. HARMON: Yes.

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

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1 Call your next witness.

2 MR. SCHIECK: Can we approach, your Honor?

3 THE COURT: Yes.

4 (Off the record discussion not reported.)

5 THE COURT: You may call your next witness.

6 MR. LaPORTA: At this time, we would rest,  
7 your Honor. Mr. Castillo will be making a unsworn  
8 statement.

9 THE COURT: So this would be the last  
10 witness on behalf of the defendant?

11 MR. LaPORTA: That's correct.

12 MR. BELL: Is it my understanding that this  
13 is a unsworn statement. Did I hear correctly?

14 MR. SCHIECK: That's correct.

15 THE COURT: Ladies and gentlemen of the  
16 jury, the defendant has a right to make a unsworn statement  
17 to the jury. It's called a statement in allocation.

18 You may do that at this time.

19 THE DEFENDANT: Do I go up there?

20 THE COURT: Yes.

21 THE DEFENDANT: Do I sit down or stand?

22 THE COURT: Sit.

23 THE DEFENDANT: Ladies and gentlemen, I  
24 would like to say I'm sorry. You know, actually what I  
25 wanted to do is I wanted to read this because this pretty

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1 much says everything that I feel I need to say. It's a  
2 letter that I have written for the family of Ms. Berndt.

3 It says, "I can never know the extent of the  
4 misery that I have put you and your family through, but I  
5 do know the extent of the pain that I feel in my heart. I  
6 have done something very horrible and when I look in the  
7 mirror, I hang my head in disgust and shame.

8 I want to apologize to you and I know that  
9 by saying I'm sorry in no way makes it better nor do I  
10 expect it to. I can't even ask you to accept my apology,  
11 but I will say that for all the rest of my days, however  
12 many there may be, I will faithfully say a prayer asking  
13 Ms. Berndt to forgive me for what I have done because only  
14 God, her, and myself knows," --

15 THE REPORTER: I didn't hear that.

16 THE DEFENDANT: "Only God, her, and myself  
17 knows the turmoil that I know inside.

18 I never in my life would have intentionally  
19 caused any harm to come to Ms. Berndt, but due to my  
20 ignorance, stupidity, and complete loss of self control, I  
21 have done the unspeakable. I have taken someone's life.

22 I have confessed my sins to the Lord and the  
23 fate of my spirit rests in His hands. I have confessed  
24 myself to the authorities and now my future lies in the  
25 hands of the State and I want to confess myself to you so

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1 that you will know that your sorrows and sufferings have  
2 not gone unrecognized and no matter what punishment is  
3 deemed fit for me, I will embrace it humbly because I am  
4 wrong and I know it.

5 I ask that you open your -- that you allow  
6 your soul to open your ears so that you can listen and take  
7 this to heart. Please realize that I speak them with  
8 complete honesty and sincerity because I'm truly sorry."

9 I respectfully read this letter to the  
10 family.

11 I would also like to say to my mother and to  
12 my family that you did a good job raising me. I strayed  
13 from the path.

14 Thank you.

15 THE COURT: Does the defense rest?

16 MR. LaPORTA: Yes, your Honor.

17 MR. SCHIECK: Yes, your Honor.

18 THE COURT: State may make its rebuttal  
19 presentation.

20 MR. BELL: State has no rebuttal testimony,  
21 your Honor.

22 THE COURT: So the evidentiary portion of  
23 this trial is now closed?

24 MR. BELL: It is.

25 THE COURT: Ladies and gentlemen, we will

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1 now retire to consider and settle the Jury Instructions.  
2 That is an elaborate process sometimes and we will commence  
3 thereafter with final argument this afternoon.

4 Will counsel approach the bench.

5 (Off the record discussion not reported.)

6 THE COURT: All right, ladies and gentlemen  
7 of the jury, we are going to take a recess until 1:30 this  
8 afternoon at which time I will commence with the reading of  
9 the Jury Instructions to you, after which you will hear the  
10 final arguments in this phase of the trial.

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

20 We will be at ease while you depart the  
21 confines of the courtroom. See you at 1:30.

22 All right, we are in recess. I will see  
23 counsel in chambers.

24

25 (Off the record at 11:30 a.m. and back on

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1 the record at 11:55 a.m.)

2

3 THE COURT: We are on the record outside the  
4 presence of the jury.

5 Is the presence of the defendant waived?

6 MR. SCHIECK: Yes, your Honor.

7 THE COURT: We are here for the purpose of  
8 settling Jury Instructions. Are the parties familiar with  
9 Court's Proposed Instructions 1 through 26?

10 MR. HARMON: Yes, your Honor.

11 MR. SCHIECK: Yes, sir, your Honor.

12 THE COURT: Does the State object to the  
13 giving of any of these Instructions?

14 MR. HARMON: No, your Honor.

15 THE COURT: Does the State have any  
16 additional Instructions to propose?

17 MR. HARMON: No, Judge.

18 THE COURT: Does the defenses object to any  
19 of these Instructions?

20 MR. SCHIECK: Yes, your Honor. We have  
21 objections to the Instruction -- I didn't number mine.  
22 It's the instruction that talks about the mitigating  
23 circumstances. We had offered one that enumerated specific  
24 areas that fall under the category of any other mitigating  
25 circumstance that we felt applied in this case.

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1 THE COURT: Are you talking about  
2 Instruction No. 16 because we are giving the Jury  
3 Instruction you offered?

4 MR. SCHIECK: We are giving the one that  
5 includes only the statutory mitigating circumstances.

6 THE COURT: And excludes the ones that  
7 aren't applicable. You have drafted that. Instruction No.  
8 16 was drafted by the defense.

9 MR. SCHIECK: Correct. We had also offered,  
10 Judge --

11 THE COURT: I think we will get to that in  
12 answer to the next question.

13 MR. BELL: The question now is do you object  
14 to any of the ones he is giving?

15 MR. SCHIECK: Okay.

16 THE COURT: Do you object to any of the ones  
17 we are giving other than you wish to insert an instruction  
18 in place of 16 which you have prepared?

19 MR. SCHIECK: Correct.

20 THE COURT: So you don't have any other  
21 objections to 1 through 26?

22 MR. SCHIECK: Correct.

23 THE COURT: Do you have any others to add?

24 MR. SCHIECK: Yes. We have an alternative  
25 to Instruction 16 that includes nonstatutory language

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1 concerning circumstances we feel that are mitigating  
2 circumstances. Specifically, that the defendant has  
3 admitted his guilt of the offense, has demonstrated remorse  
4 for the commission of the offense, that he cooperated with  
5 the police after he was identified as a suspect, that he  
6 had not preplanned to commit the murder, that he had a  
7 difficult childhood. These are all areas that we, as the  
8 Instructions are now being given, will be argued under the  
9 general category any other mitigating circumstance because  
10 it went into our theory of the case and our theory of  
11 mitigating circumstances. We wanted them all enumerated  
12 for the jury.

13 THE COURT: The Court believes that the  
14 Instructions general catchall any other mitigating  
15 circumstances will enable you to argue your theory of the  
16 case to the jury. Therefore, this Instruction does not  
17 prohibit you from that, that is arguing your theory to the  
18 case and I believe it would be a comment on the evidence to  
19 instruct on any other nonstatutory aggravators.

20 Is that the position of the State of  
21 Nevada?

22 MR. HARMON: Mitigating.

23 THE COURT: Mitigating circumstances.

24 Is that the position of the State?

25 MR. HARMON: It is, your Honor.

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1 THE COURT: The Instruction, as it is now  
2 crafted with the general catchall, in my opinion, enables  
3 you to argue your theory of the case.

4 Anything further?

5 MR. SCHIECK: Your Honor, I had neglected,  
6 when we were going over the ones we objected to, to put on  
7 the record our objection to the anti sympathy instruction  
8 wherein the jury is told the verdict may never be  
9 influenced by sympathy. It is our position that sympathy  
10 is a proper factor to be considered by a jury in a penalty  
11 hearing.

12 THE COURT: All right, Instruction No. 23 is  
13 the Instruction to which counsel is referring. What is the  
14 State's position with regard to that objection?

15 MR. HARMON: Your Honor, sympathy is never  
16 an appropriate factor. The jury may consider mercy, they  
17 may be compassionate, but that's not to be equated with  
18 sympathy.

19 Our State Supreme Court has repeatedly said  
20 in cases like Biondi V State, Nevius V State, Riley,  
21 R-I-L-E-Y, V State, and Lay, L-A-Y, V State, to cite the  
22 cases that are representative, our Court has consistently  
23 said no.

24 THE COURT: So for the reasons stated,  
25 Instruction No. 23 will be given as it is currently

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1     phrased.

2                     Any other objections?

3                     MR. SCHIECK: Yes, your Honor. We also  
4     objected to the Instruction No. 20 wherein offered by the  
5     State that evidence of the defendant's past conduct from  
6     which a reasonable inference can be drawn, that even  
7     incarceration will deter the defendant from endangering  
8     other's lives is a factor you may consider in determining  
9     the appropriate penalty. We objected to that number one as  
10    a comment on the evidence and, number two, that there was  
11    no, other than the two incidents where there was a fist  
12    fight or fights with other inmates numbering two, that he  
13    was a danger to guards or other individuals at the prison.

14                    THE COURT: The Court is of the opinion that  
15    there is substantial evidence in this record to satisfy  
16    this theory of the case and the Instruction.

17                    Anything further?

18                    MR. SCHIECK: No, your Honor.

19                    THE COURT: From the State?

20                    MR. HARMON: No, your Honor.

21                    THE COURT: Do either parties wish to have  
22    the Instructions read before closing arguments?

23                    MR. HARMON: The State asks that they be  
24    given before closing argument.

25                    THE COURT: All right, that will be the

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1 order.

2 We are in recess.

3

4 (Off the record at noon p.m.)

5

6

\* \* \* \* \*

7

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

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

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EXHIBIT 172

EXHIBIT 172

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DISTRICT COURT

CLARK COUNTY, NEVADA

FILED IN OPEN COURT

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19

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BY TINA HURD

Deputy

THE STATE OF NEVADA,

Plaintiff,

Vs

WILLIAM PATRICK CASTILLO,

Defendant.

CASE NO. C133336

DEPT. NO. VII

DOCKET P

BEFORE THE HONORABLE:

A. WILLIAM MAUPIN DISTRICT JUDGE

TUESDAY, SEPTEMBER 24, 1996, 1:45 P.M.

PENALTY HEARING - VOLUME III - AFTERNOON SESSION

APPEARANCES:

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District Attorney

MELVYN T. HARMON

Chief Deputy District Attorney

FOR THE DEFENDANT:

PETER R. LaPORTA

State Deputy Public Defender

& DAVID M. SCHIECK, ESQ.

REPORTED BY:

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

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1 TUESDAY, SEPTEMBER 24, 1996, 1:45 P.M.

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

4 MR. BELL: Yes, sir, your Honor.

5 MR. LaPORTA: Yes, Judge.

6 THE COURT: The record will reflect that the  
7 parties have settled jury Instructions outside the presence  
8 the jury; is that correct?

9 MR. BELL: Yes, your Honor.

10 MR. SCHIECK: Yes, your Honor.

11 THE COURT: Ladies and gentlemen, I am about  
12 to instruct you upon the law as it applies in this case. I  
13 would like to instruct you orally without reading to you.  
14 However, to ensure that the Instructions apply with Nevada  
15 law, it is necessary for me to read to you these carefully  
16 prepared written Instructions.

17 The Instructions are long and some are quite  
18 complicated. If they are not especially clear when I read  
19 them to you, please bear in mind, when you go to the jury  
20 room, you will be able to take these written Instructions  
21 to you so that you can then read and consider them  
22 carefully.

23

24 (At this time the Court read the  
25 Instructions to the jury.)

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THE COURT: Counsel approach the bench.  
(Off the record discussion not reported.)

(At this time the Court continued reading  
the Instructions to the jury.)

THE COURT: At this time, ladies and  
gentlemen, we'll have closing arguments.

Gentlemen, the State of Nevada may make its  
opening presentation.

MR. BELL: Thank you.

Your Honor, counsel, ladies and gentlemen of  
the jury, I want to again thank you for your patience and  
attention. I know it's been a long ordeal from the start  
of this case to the present, but I ask you to bear with us  
just a little bit longer. As you can obviously tell, we  
are fairly close to the finish line now.

As the Judge has indicated to you, we are at  
that phase of the case where each side tries to persuade  
you, the ladies and gentlemen of the jury, what is the  
appropriate punishment for you to impose upon William  
Castillo for the brutal, senseless, unspeakable killing of  
a innocent, lovely, unselfish lady, Isabelle Berndt, and it  
is no secret to you, I am sure, and it hasn't been from the

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1 day we started, that the State submits that there is only  
2 one fair and appropriate punishment in this case and that,  
3 of course, is the penalty of death.

4 As the Judge has indicated to you in his  
5 Instructions and I would like to briefly go over with you,  
6 there are two questions that you must, as a jury,  
7 collectively ask and answer. First of all, number one, can  
8 the death penalty be imposed? Does the law, as it applies  
9 to the facts of this particular case, allow imposition of  
10 the death penalty? The second question is, if such be the  
11 case, is the death penalty the appropriate punishment to  
12 impose? Let's look at those one at a time.

13 The law says that before you can even  
14 consider imposition of the death penalty in a first degree  
15 murder case, that you must find, beyond a reasonable doubt,  
16 that at least one aggravating circumstance, something that  
17 sets a case apart or makes it more serious than other first  
18 degree murders, is presented.

19 Now aggravating circumstance is a term of  
20 art. It is not what I might think is aggravating or you  
21 might think is aggravating, although those things can be  
22 considered in deciding what should be the punishment, but  
23 in terms of what can be the punishment, the legislature  
24 itself has specifically outlined certain circumstances that  
25 are deemed by the law to be aggravating, at least one of

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1     which you must find before the death penalty can be an  
2     option.

3                     As the Judge has told you, it is never  
4     mandatory, but it is obvious if there are no aggravating  
5     circumstances, that it can't even be considered and in  
6     cases such as this, the law requires the State to tell the  
7     defense we believe these are the aggravating circumstances  
8     that are present that we are going to urge upon the jury  
9     that we believe the jury can find beyond a reasonable  
10    doubt. We list them and then we list them for you.

11                    Aggravating circumstance number one, it is  
12    an aggravating circumstance if a defendant, who has been  
13    convicted of murder, before he committed that murder was  
14    convicted of another crime which involved violence or the  
15    threat of violence. The State has alleged and we believe  
16    proven that when the defendant, William Castillo, and his  
17    accomplice, kicked in the door of Marilyn Mills while he  
18    had in his hand a loaded semi automatic handgun and, by his  
19    own admission, they were there to rob, that the State has  
20    met its burden that we have proven to you that he has been  
21    convicted of a felony in which violence or the threat of  
22    violence was involved. The judgment of conviction has been  
23    introduced. You heard from the officer as to the  
24    circumstances and you heard from the probation officer who  
25    did the investigation for the Court.

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1                   If we prove just one aggravating  
2     circumstance, that is sufficient for you to find from all  
3     of the circumstances in this particular case that death is  
4     the appropriate punishment.

5                   Now, second aggravating circumstance, it  
6     mirrors the first. It is the same concept, but is a  
7     different crime. Again, that the defendant committed a  
8     crime and was convicted of that crime, which was a felony  
9     and involved violence or the threat of violence. Again,  
10    the State has introduced a judgment of conviction, put on  
11    the arresting officer, put on the probation officer to tell  
12    you that this defendant was convicted of robbery. He took  
13    the purse of Mrs. Patricia Rizzo by violence. He jerked it  
14    off her arm, broke the strap, as they were driving by,  
15    pulled her into a moving car, and then, when he was  
16    followed by the police, he stuck his gun in the purse and  
17    pitched it out the window.

18                   In the first case, the defendant pled  
19    guilty. In the second case, he went to trial, but,  
20    nonetheless, a jury of 12 people just like you found beyond  
21    a reasonable doubt that he was guilty of that crime and a  
22    judgment of conviction was filed. Again, it has been put  
23    into evidence. The State submits that there is no question  
24    that it has been proven beyond a reasonable doubt that he  
25    was convicted of the robbery of Marilyn Mills before he

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1 killed Mrs. Berndt and that that crime involved violence or  
2 the threat of violence by definition.

3                   The third aggravating circumstance that we  
4 alleged is, of course, that this defendant committed a  
5 murder while in the course of or the flight after  
6 committing a burglary. Now, you yourselves, as jurors in  
7 the guilt phase, found beyond beyond a reasonable doubt  
8 that Mr. Castillo burglarized the premises at 13 North Yale  
9 and in the course and scope of that burglary, killed  
10 Isabelle Berndt. The State submits that there is no  
11 question that this aggravating circumstance has been  
12 established beyond a reasonable doubt. In fact, beyond any  
13 doubt.

14                   Now, why would the legislature make this an  
15 aggravating circumstance? Well, obviously because of the  
16 great risk of harm that is involved when someone  
17 uninvitedly enters the home of another at night to do  
18 evil.

19                   The fourth aggravating circumstance formally  
20 alleged is that the murder was committed during the course  
21 of the robbery or flight after committing the robbery of  
22 Isabelle Berndt. Again, you, ladies and gentlemen  
23 yourselves, found beyond a reasonable doubt that the  
24 defendant was guilty of the robbery of Isabelle Berndt and  
25 her murder during the course thereof. So again the State

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1 submits that this is an easy call, it has clearly been  
2 established. You yourselves have made that decision.

3 And, lastly, the fifth legal aggravator that  
4 the State has alleged is that the murder was committed to  
5 avoid lawful arrest. Now all of those of us that have been  
6 in this courtroom off and on for the last several weeks  
7 know that William Castillo has been in the justice system  
8 for years and years and years. He understands arrests,  
9 jails, trials, prison and we know that he said to his  
10 acquaintances and in his confession, "I was worried about  
11 the person seeing my face," referring to Isabelle Berndt.  
12 He killed Mrs. Berndt in part because he didn't want her to  
13 see his face and identify him so that he might be lawfully  
14 arrested.

15 Now, that was not only the testimony of his  
16 acquaintances, but also the words, the very words from his  
17 own conversation with Detective Morgan. The State submits  
18 that at least, in part, the reason for killing Ms. Berndt  
19 was to avoid lawful arrest.

20 Now, if you find that any one of these or  
21 more than one, as may be the case and the State submits we  
22 have proven all five, then the law requires you to put that  
23 on one side of the scale of justice and to look for any  
24 mitigating circumstances and if you find any of those, put  
25 them on the other side of the scale of justice and do a

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1 balancing test.

2 Just like aggravating circumstances,  
3 mitigating circumstances is a term of art. The legislature  
4 in the law specifically lists certain things that can be  
5 urged upon you as mitigating circumstances. Now, I will  
6 tell you that that isn't the only thing you can consider,  
7 just like it isn't the only thing you can consider in terms  
8 of aggravation, but there is a specific list. There are  
9 six things on that list in the statute and, quite frankly,  
10 the defense has conceded that four cannot and do not  
11 possibly apply to William Castillo.

12 Let me go through the kind of things the  
13 legislature talks about as being mitigating so you can get  
14 a flavor for the kind of balancing that is expected.

15 Number one, the defendant has no prior  
16 significant criminal history.

17 MR. SCHIECK: Your Honor, I'm going to  
18 object to arguing mitigating circumstances that don't apply  
19 to this case. It's improper argument.

20 THE COURT: Response?

21 MR. BELL: My response is, Judge, that they  
22 are entitled to know what the legislature says is  
23 mitigating and realize that many of these don't apply to  
24 consider the limited area of mitigation that does apply to  
25 this defendant at best.

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1                   MR. SCHIECK: That's not the statutory  
2     scheme, your Honor. You don't weigh the mitigators that  
3     don't apply in deciding to give the weight to the  
4     mitigators that do apply. It is an improper factor into  
5     the weighing process to argue the other mitigators don't  
6     apply, therefore, this is a death penalty case.

7                   THE COURT: Well, I don't think he is  
8     arguing that. So I will overrule the objection.

9                   MR. BELL: The State is not arguing that  
10    somehow this aggravates the circumstances more, it's just  
11    trying to educate you on what the legislature considers as  
12    mitigation.

13                   The defendant has conceded in this case that  
14    Mr. Castillo doesn't have any lack of significant prior  
15    criminal history. In fact, the State would submit that it  
16    is virtually impossible to conceive of a prior criminal  
17    history of a person who has been on the earth the number of  
18    years that Mr. Castillo has that is either more lengthy or  
19    more severe.

20                   The defendant was under extreme mental or  
21    emotional disturbance. Now, it is not clear whether this  
22    concept means simultaneously with the brutal killing of  
23    Isabelle Berndt or as a general proposition. I think what  
24    is clear, however, from the evidence and from the testimony  
25    of the defendant's own psychologist, is the defendant is

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1 not insane, the defendant is not mentally ill, the  
2 defendant is not below average intelligence or, in any way,  
3 mentally defective. He is above average or average  
4 intelligence. He knows right from wrong, he acts lawfully  
5 when he feels like it, and he acts unlawfully when he feels  
6 like it. The bottom line is William Castillo makes his own  
7 rules.

8                   Number three, the victim was a participant  
9 in the defendant's criminal conduct. Obviously not  
10 applicable. Mrs. Berndt had nothing to do with her own  
11 death.

12                   Number four, the defendant was an accomplice  
13 in a murder committed by another. Now this might be an  
14 argument that Ms. Platou might advance to her jury, but it  
15 is clear in this case who is the person that repeatedly and  
16 consistently viciously pommelled a crow bar into the face  
17 of Isabelle Berndt and then smothered her out with a pillow  
18 and that person is sitting right over there, Mr. William  
19 Castillo.

20                   Number five, that the defendant acted under  
21 the duress of another. Again, William Castillo was not a  
22 follower in some criminal enterprise of some other master  
23 mind. In fact, William Castillo was the prime mover in  
24 this incident.

25                   And, finally, number six, the youth of the

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1 defendant at the time of the commission of the crime. Now,  
2 the law doesn't define youth. The State submits to you,  
3 however, that youth is a relative term. This defendant was  
4 23 years in chronological age at the time of this horrible,  
5 horrible crime, but his level of criminal sophistication  
6 was that of persons time and a half or twice his age. He's  
7 been involved in the criminal justice system for the  
8 majority of his life. He has failed seven paroles and  
9 probations. He's been to the Elko reformatory five times.  
10 His last time he escaped. He has two prior felony  
11 convictions and served two full prison sentences without  
12 parole. In no sense of the concept can it be suggested  
13 somehow that this defendant's conduct in murdering Isabelle  
14 Berndt can be attributed to youth or immaturity. The State  
15 submits that this mitigating circumstance likewise doesn't  
16 apply.

17 In any event, what you have to do is add up  
18 the aggravating circumstances that you find, add up the  
19 mitigating circumstances, put them on the scales of justice  
20 and if you find that the mitigating circumstances outweigh  
21 the aggravating circumstances in this case, then you can't  
22 impose the death penalty and you go onto door number two,  
23 but if you find that the aggravating circumstances outweigh  
24 any mitigation in this horrible, horrible scenario, then  
25 you have to go to question number two, which is should you

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1 impose the death penalty on William Castillo? Is it the  
2 fair, appropriate, and just penalty? And for your  
3 consideration in answering that question, I submit to you a  
4 few things to consider.

5                   Number one, who was killed. William  
6 Castillo bludgeoned to death an 86 year old widow whose  
7 absence, I think, can be captured in the following words:  
8 Mother, teacher, unselfish, role model, citizenship,  
9 grandmother, and unconditional love. And to the contrary,  
10 I think defendant Castillo's essence can be captured in  
11 these words: Violent, robber, sociopath, dangerous,  
12 burglar, pure hate, murderer, and 100 percent fuck'n  
13 hostile.

14                   The defendant tried to make the police  
15 believe somehow that a man was on the premises or maybe two  
16 people on the premises and he tried to point to some  
17 snoring and some shoes, as the basis for that conclusion on  
18 his mind, in some how justifying this brutal conduct of his  
19 as less heinous as if he had killed a man or if there were  
20 two people home and I asked his psychologist, Dr. Etcoff,  
21 if this little part of his story, what the doctor described  
22 as, "Justifying his social irresponsibilities with  
23 fantasies and excuses," and Dr. Etcoff said, "I don't  
24 necessarily believe what he told me as an excuse for what  
25 he did." In other words, his own psychologist doesn't even

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1 believe that he knew that he wasn't killing a helpless 86  
2 year old lady. Justifying his social irresponsibilities  
3 with fantasies and excuses. Social irresponsibilities,  
4 kind of a nice polite phrase to cover bludgeoning to death  
5 a helpless widow for the thrill of it.

6                   Number two, where did the killing occur?

7 Well, it occurred inside Mrs. Berndt's house. This wasn't  
8 a couple guys fighting at a pool hall or drive-by shooting  
9 in a neighborhood that expects such. This is a place where  
10 she resided for 38 years, where she resided for over three  
11 decades, by herself, after being a widow herself. A place  
12 where we consider to be sacrosanct, where we should all  
13 feel safe.

14                   We all think that although it is not  
15 sometimes safe to be out on the streets, but we all believe  
16 that once we get into the sanctity of our own home, and  
17 particularly our own bed and we take reasonable precautions  
18 such as locking our doors, that we are then safe. And I  
19 don't think there was any question that when Isabelle  
20 Berndt tucked herself into bed on the night of December  
21 16th, she felt safe in that one place that we should all  
22 feel safe, but William Castillo is living proof that there  
23 is no place that evil can't permeate.

24                   Number three, how the killing occurred. Now  
25 the defendant didn't shoot Mrs. Berndt, which all be it

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1 violent and ruthless is, nonetheless, at least quick and  
2 painless. We know that isn't something that is above the  
3 defendant. He's used guns many times, he's been arrested  
4 with guns, he's been convicted of crimes wherein he  
5 possessed guns. He told his psychiatrist he liked the  
6 power of using a gun on people. It made him feel God  
7 like. He called it a power trip, but in this instance, he  
8 didn't use a gun. He beat this lady savagely with a crow  
9 bar. He hit her in the face while she was asleep and she  
10 sat up, which, of course, made it obvious that this was an  
11 elderly female, and then he continued to pommel her in the  
12 face with the crow bar and his fists. There had to be  
13 pain, there had to be fright, there had to be confusion,  
14 and probably eventually resignation to her fate and after  
15 he had beaten Mrs. Berndt to the point that she could not  
16 have medically survived and, as he described it, she was  
17 gurgling in her own blood, he took a pillow and smothered  
18 her out.

19 He then went back to this residence and set  
20 it on fire. Keep that in mind. This is not an  
21 insignificant point at all. This arson itself risked death  
22 too many other people; fire department personnel,  
23 neighbors, even strangers that never met Isabelle Berndt  
24 trying to go into this burning building and risk their  
25 lives and their well being to save an elderly lady that

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1 they thought was alive and trapped inside. Any one of them  
2 could have been killed in the course of their heroics by  
3 the actions of William Castillo.

4 Mr. LaPorta, in his questioning, seemed to  
5 make something of the fact that Castillo didn't pour  
6 lighter fluid on or around the bed, but make no mistake  
7 about it. Castillo intended to burn this entire house to  
8 the ground, something he had done on more than one previous  
9 occasion. He set fires in more than one spot. He poured a  
10 flammable liquid there and he lit it. You might say that  
11 he tried to kill Mrs. Berndt three times, once with a crow  
12 bar, once by smothering her, and once with gasoline and a  
13 match.

14 Number four, lack of necessity or what I  
15 call the thrill of it all. When Mr. Castillo broke into  
16 the residence at 13 North Yale at 2:00 in the morning and  
17 he heard some snoring and realized that an occupant was  
18 home, what options did he have? Well, number one, he could  
19 simply have left at that point and not burglarized an  
20 occupied residence and Mrs. Berndt would be alive today.

21 Number two, he could have burglarized the  
22 residence quietly and it's highly doubtful that Mrs. Berndt  
23 would have awakened and Mrs. Berndt would be alive today.

24 Number three, he could have burglarized the  
25 residence and undoubtedly if Mrs. Berndt had awakened, she

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1 would have pulled the covers over her head and just prayed  
2 that he and his accomplice left without hurting her.

3                   Number four, even if she awaked and looked  
4 up, there is no way she is going to recognize Mr. Castillo  
5 and she certainly isn't going to confront him and Mrs.  
6 Castillo -- I'm sorry -- Mrs. Berndt would be alive today.

7                   And, number five, he could have tied her up  
8 or put a pillow case over her face just so that she  
9 couldn't see or have done something else to immobilize her  
10 without having to beat her to death and Mrs. Berndt would  
11 be alive today.

12                   Now, Mrs. Berndt's granddaughter, Ronda  
13 LaLicata, testified in her victim impact statement that she  
14 keeps trying to make sense of it all, but she can't. Keeps  
15 trying to make sense of it all, but she can't, but I think  
16 in the course of this trial, we've made sense out of  
17 nonsense. Dr. Etcoff testified, under cross examination,  
18 that William Castillo does not have a conscience, he is a  
19 sociopath, he can hurt people and does hurt people and he  
20 does not feel bad about it. He enjoys hurting other  
21 people, energizes him, excites him, he likes it.

22                   Recall that William Castillo didn't need to  
23 take a crow bar with him into the residence. He had a  
24 key. He took it in there to hurt somebody because he  
25 enjoys hurting people. William Castillo killed Isabelle

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1     Berndt for the thrill of it all.

2                     Number six, the defendant's attitude. The  
3     defendant has feebly tried to convey that he has some  
4     remorse about this most heinous offense. Ladies and  
5     gentlemen, do not be fooled. I repeat, do not be fooled.  
6     Again, keep in mind what the doctor said in his testimony.  
7     William Castillo is a sociopath, he has no conscience, he  
8     hurts other people, he doesn't feel bad about it. In fact,  
9     he likes it.

10                    And keep in mind the horrible, twisted,  
11     perverse, sicken, remorseful statements that he made to  
12     Kirk Rasmussen the day after this occurrence. I quote, "As  
13     sick as it sounds, in a way, she had it coming." His  
14     claim, of course, is that Ms. Berndt somehow deserved to be  
15     bludgeoned to death. It was her fault. Sounds like a  
16     remorseful fellow? "This is the way I look at it. The  
17     weak get eaten." In essence, of course, his statement is  
18     might make it right and in Mr. Castillo's world, it does,  
19     it always has, and it always will. Does that sound like a  
20     remorseful fellow?

21                    Mr. Castillo bragged to Rasmussen what it  
22     smelled like when somebody's skull is slit opened. "It  
23     smelled like dirty clothes." This is a man who relishes in  
24     the pain of others. Does that sound like a remorseful  
25     fellow?

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1                   Number seven, the defendant's criminal  
2 history. When one looks in the dictionary under crimes  
3 against person, they will find William Castillo's picture  
4 there. He's done burglaries, he's done robberies, he's  
5 committed arsons, he's assaulted people with guns. By his  
6 own admission, the instances are too numerous to count. He  
7 bragged to Dr. Etcoff that robbery was his business and he  
8 did robberies all hours a day, six days a week during the  
9 period between prison stays. He has been to Elko five  
10 times, escaped once, prison twice for violent crimes. He  
11 has committed violent crimes literally within days after  
12 each release from custody.

13                   Number eight, future dangerousness. The  
14 Court has told you that the law allows you to consider  
15 future dangerousness even in an incarcerated setting in  
16 determining the appropriate penalty. Now the State would  
17 submit to you that the evidence positively demonstrates  
18 that any penalty other than the death penalty, any penalty  
19 that puts William Castillo anywhere but in a solitary cell  
20 on death row until death is effectuated poses a serious  
21 threat of future dangerousness.

22                   In fact, the State submitted that the public  
23 at large is in future danger from William Castillo even if  
24 he is given a lengthy prison term. Keep in mind, that  
25 Castillo at 17 escaped from NYTC, which, as you heard, was

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1 not in and of itself monumental, but recall the testimony  
2 of Bruce Kennedy who said, "To escape and the defendant got  
3 all the way to Las Vegas was nearly unheard of," and to be  
4 able to escape and remain at large for two months until he  
5 kicked in the front door of Marilyn Mills with that semi  
6 automatic in his hand was likewise nearly unheard of.

7                   Keep in mind also that while there was no  
8 evidence of a completed prison escape, there was evidence  
9 that he jimmied the door of his cell so he could at least  
10 walk freely in and out of his own cell. It is not a huge  
11 inferential leap to the next step, which could put him in  
12 free society and it is submitted there can be no one who  
13 has sat through any portion of this trial that doesn't  
14 realize that there are few people in free society as  
15 dangerous as William Castillo. Beyond that, however, the  
16 law allows you to consider the death penalty when you have  
17 reason to infer from the evidence that the defendant will  
18 be dangerous to other persons, even if he is incarcerated.

19                   Now, the prison guards who guarded Mr.  
20 Castillo in prison told you Mr. Castillo was dangerous even  
21 in custody. Mr. Castillo's jailer that the defense  
22 presented this morning said he was highly dangerous even  
23 while institutionalized, but let me refresh your  
24 recollection by reading to you an exact excerpt of the  
25 testimony of Dr. Etcoff so there is no question of the

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1 danger he poses. Testimony is as follows:

2 "Question: And what kind of facility is  
3 Indian Springs?

4 Answer: It's a correctional -- it's a  
5 prison.

6 Question: Well, is it --

7 Answer: Low security.

8 Question: Low security.

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

13 Answer: I believe he did.

14 Question: So while he was in prison, at  
15 least in that instance, he was a threat to the safety  
16 of other inmates?

17 Answer: That's correct.

18 Question: And the consequence of that, was  
19 it not that he was sent to NNCC, Carson City Northern  
20 Nevada Correctional Center?

21 Answer: I believe that's correct.

22 Question: And what kind of an institution  
23 is that?

24 Answer: High security.

25 Question: High security.

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

5                   Answer: Yes.

6                   Question: So even in the high security  
7           prison, he is and was, by history, a threat to other  
8           inmates, true?

9                   Answer: True."

10                   Make no mistake about it, ladies and  
11          gentlemen. You are in the presence of the most dangerous  
12          man any of you will ever personally encounter in your  
13          lifetime. Thank your lucky stars that you are sitting in  
14          judgment of him and not him in judgment of you.

15                   MR. SCHIECK: Object, your Honor. It's  
16          improper to put the jury in his place.

17                   THE COURT: Sustained.

18                   The jury is admonished to disregard that  
19          last argument.

20                   MR. BELL: Now, Mr. Castillo will have you  
21          believe that he shouldn't be held accountable, that he  
22          shouldn't receive the death penalty. The only punishment  
23          that right thinking people could agree fits this horrible  
24          and brutal offense and his story is I had a bad  
25          upbringing. His family, when he was young, was not good,

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1 he didn't bond, and, therefore, we ought to give him some  
2 consideration.

3 Keep this in mind. While it is the case  
4 that many murderers come from broken homes and when you  
5 look at a murderer, you can off times predict that his  
6 background and upbringing was not the best. The converse  
7 is not true. Many, many people come from disadvantaged  
8 circumstances and some of those succeed, some do average,  
9 some do below average, a few even get into the criminal  
10 justice system, but are not murderers and only a very few  
11 take their upbringing to the Nth degree and become  
12 murderers and then urge it as a reason why they ought not  
13 to be fully accountable.

14 Again let me read a portion of the testimony  
15 of Dr. Etcoff. "Question: Once an individual has had this  
16 type of childhood that we talked about, Billy reaches  
17 maturity, becomes an adult, isn't it possible then for  
18 that adult to realize their problems and deal with  
19 them and function in society?

20 Answer: Yes. Some do.

21 Question: Is that the rule or the  
22 exception?

23 Answer: It depends upon how horrible the  
24 childhood was. In this particular childhood, it would  
25 be an exception for someone to grow out of what he

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1           went through and become a normal functioning human  
2           being and, again, I don't want anyone to  
3           misunderstand. It isn't as if you lived this  
4           childhood, you end up being a murderer. That doesn't  
5           happen frequently. That doesn't happen frequently,  
6           but murderers come from this background more  
7           frequently than they come from neurotic parents or  
8           parents who love and try hard, but don't do the best  
9           they could possibly do."

10                   Let me read that again. Dr. Etcoff said, "I  
11           don't want anyone to misunderstand. It isn't as if you  
12           live this childhood and you end up becoming a murderer.  
13           That doesn't happen frequently."

14                   He went onto tell us that there is sort of a  
15           laser beam, a line is the shortest distance between the two  
16           points sort of thing between this type of childhood and  
17           people that are murderers. Understand that this line runs  
18           in one direction. We can't take thousands of people in  
19           childhood who haven't had the best of upbringings and  
20           predict, with any certainty, that any of them or some, a  
21           few of them will become murderers, but after some of them  
22           are successful, some of them are medium, some of them are  
23           not so successful, a few of them go to prison, and there's  
24           an occasional murderer, we can look back on the murderers  
25           and say most murderers don't grow up in the best of homes.

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1                   Now, we all know that William Castillo has  
2     some ability to control himself in his behavior. According  
3     to the testimony of the jailer, he was relatively well  
4     behaved in the Clark County Jail for two or three months,  
5     but we also know that when William Castillo decides that  
6     he's going to hurt someone for whatever reason, thrilled,  
7     revenge, personal gain, that he has no conscience, no  
8     compunction about it or the misery it brings and, in fact,  
9     he likes it.

10                   When I was a kid, I went to a movie produced  
11    by Walt Disney and it was called Song of the South. It was  
12    kind of a comedy, children's movie, family movie that was a  
13    compilation of a books by an author named Joel Chandler  
14    Harris and he wrote in the early 1800s about southern life  
15    in the pre-civil war days and used his writings as a venue  
16    to tell stories to educate people and the narrator of all  
17    of his stories was a fictional old slave gardener by the  
18    name of Uncle Remus and the characters of his stories were  
19    always Brer Rabbit, Brer Bear, and Brer Fox. And the fox  
20    and the bear were always bigger and stronger than their  
21    nemeses the rabbit, but the rabbit was always more cunning  
22    and there was one story that came to my mind called Brer  
23    Rabbit and the Briar Patch and what happened in that story  
24    was that Brer Fox and Brer Bear had caught the rabbit,  
25    their nemeses, and they decided once and for all they were

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1 going to get the best of him. They were going to boil him  
2 in oil and cook themselves up a fine rabbit dinner and  
3 cunning Brer Rabbit said to them, "Listen, it's okay if you  
4 boil me up for dinner, but please, please don't throw me in  
5 the briar patch." And he kept repeating his fear of the  
6 briar patch. "I don't care what you do to me, but just  
7 please don't throw me in the briar patch." And the briar  
8 patch was a thicket of thorns and neither the fox nor the  
9 bear liked to go in the briar patch because it caused them  
10 considerable pain and, finally, they decided, ah-ha, they  
11 are going to give that rabbit something worse than boiling  
12 him in oil, they are going to throw him in the briar patch  
13 and he'll have to suffer the consequences. So they threw  
14 the rabbit in the briar patch and, lo and behold, the  
15 rabbit, which was much smaller than the fox and bear, he  
16 ran through the thicket and got away and laughed and  
17 laughed at that bear and that fox.

18 And this story came to mind because I wanted  
19 to give you a way to understand that prison is not  
20 punishment for William Castillo. When we were here first  
21 picking a jury, we had several people that said, gee, I  
22 think life in prison without parole would be worse than  
23 death because you get up everyday and you think this is as  
24 good as it's going to get.

25 Well, the State submits to you, ladies and

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1 gentlemen, even if life in prison without the possibility  
2 of parole crosses your mind, keep in mind the story of the  
3 rabbit and the fox and the bear. While to normal, right  
4 thinking people who value their freedom, life in prison  
5 without parole may be a severe punishment. We know that's  
6 not so for Mr. Castillo. It would be tough for the fox and  
7 the bear to be in the briar patch, but it was nothing for  
8 the rabbit to be in the briar patch. As the doctor told us  
9 that Mr. Castillo was not afraid of prison. In fact, the  
10 defendant told Dr. Etcoff he enjoyed his prison time. He  
11 stated that at the Nevada State Prison, he was perfectly  
12 happy. He worked in the kitchen, he worked out, he had a  
13 routine, he would smoke, listen to the radio, and play  
14 pinochle.

15 Do not be misled to think somehow that  
16 throwing Mr. Castillo into the prison briar patch is worse  
17 punishment for him than boiling him in oil. Do not be  
18 misled to believe that he will be miserable everyday when  
19 he wakes up to three square meals knowing that he is going  
20 to lay around, listen to the radio, smoke, workout, and  
21 play pinochle. He is perfectly happy, he enjoys this. Do  
22 not throw William Castillo in the briar patch of prison and  
23 have him laughing at the criminal justice system.

24 Ladies and gentlemen, keep your eye on the  
25 target. We are here at a penalty hearing. We are here to

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1 discusses punishment. There is only one punishment of  
2 which Mr. Castillo is not unafraid. There is only one  
3 punishment that Mr. Castillo is not going to enjoy. There  
4 is only one punishment that is not going to make Mr.  
5 Castillo perfectly happy. There is only one punishment  
6 that can bring justice for the brutal, unspeakable,  
7 heinous, thrill killing of Isabelle Berndt. There is only  
8 one punishment that can give reasonable assurance of the  
9 safety of other persons who are at or about our prison  
10 where Mr. Castillo could be housed, whether they be  
11 employees or independent contractors or inmates. There is  
12 only one punishment that is fair for the brutality hoisted  
13 upon a valuable member of this community, Isabelle Berndt.

14 The State implores you, ladies and  
15 gentlemen, do not compromise. I repeat do not compromise.  
16 Impose the only real punishment, the only fair punishment,  
17 the only punishment that assures the safety of others and  
18 the only punishment that has any meaning whatsoever to  
19 William Castillo.

20 Now, as a member of the criminal justice  
21 system, I will confess to you that the system failed  
22 Isabelle Berndt once. Recall that when Mr. Castillo was  
23 convicted of his second felony, the crime of robbery and he  
24 was sentenced, the Department of Parole & Probation  
25 recommended a four year prison term and the judge in that

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1 case actually imposed a three year term. Mr. Castillo was  
2 released in May 1995. If the judge in the robbery case had  
3 simply followed the recommendation and imposed the four  
4 year term, he would have been in custody on December 17th,  
5 1995.

6 Mr. Castillo conned the system in the  
7 failing of Isabelle Berndt once. Please don't let him con  
8 the system into failing Isabelle Berndt a second time. The  
9 State asks that you do your duty, the duty that you  
10 promised you would do when you were selected as jurors, and  
11 impose the only penalty that fits this crime, the death  
12 penalty.

13 Thank you.

14 THE COURT: For the defense.

15 MR. SCHIECK: Thank you, your Honor.

16 Good afternoon, ladies and gentlemen. Mr.  
17 LaPorta and I have divided up our comments to you today.  
18 We will both be addressing you. The area that I'm going to  
19 touch upon has to do with the aggravating and mitigating  
20 circumstances in this case.

21 Usually, at this stage of my presentation, I  
22 stand before a jury and go through the statutory process  
23 that's involved in deciding whether or not the death  
24 penalty is appropriate in any case. Mr. Bell, however, has  
25 already addressed that quite well so that, obviously, you

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1 have an understanding of the steps you must go through.  
2 There are a couple of things that he neglected to tell you,  
3 however, that are contained in the Jury Instructions.

4 The first is that the aggravating  
5 circumstances have to be proven unanimously and beyond a  
6 reasonable doubt. That means just like for the guilt  
7 phase, you have to decide 12 -- all 12 of you have to on  
8 each aggravating circumstance. That's a unanimous verdict  
9 required beyond a reasonable doubt.

10 When you are considering mitigating  
11 circumstances, neither of those two principles apply. It  
12 does not have to be unanimous and it does not have to be  
13 beyond a reasonable doubt. By that, it means that any  
14 juror can decide what mitigating circumstances they believe  
15 exist. Mitigating circumstances can run a whole gamut of  
16 concepts of factors. So each juror is allowed to decide  
17 which mitigating circumstances they believe exist.

18 You then have to take those two standards  
19 and build it into the third step that Mr. Bell described  
20 and that is when you get to the weighing process, when you  
21 get to the weighing process, if you get to that step in  
22 this case where each of you have whatever mitigators you've  
23 decided exist and you have what all of you have decided  
24 exist for aggravating circumstances, when you reach that  
25 weighing process, before you can go to the next stage and

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1     decide that the aggravators outweigh the mitigators, you  
2     again have to decide that unanimously. It's not a  
3     unanimous verdict that the aggravators outweigh the  
4     mitigators. It's, again, the aggravators are not  
5     outweighed by the mitigators and it has to be beyond a  
6     reasonable doubt, the same standards you are familiar  
7     with. So you have to use those two proofs to build into  
8     your standards both in your discussions about the  
9     aggravators and when you are doing the weighing.

10                 Now, the State has alleged five aggravating  
11     circumstances in this case and, again, as I just told you,  
12     they have to be found unanimously and beyond a reasonable  
13     doubt. I'm going to breakdown those five aggravating  
14     circumstances into certain categories for you which, we  
15     would submit, should be utilized when we get to the  
16     weighing stage.

17                 The first is that the murder was committed  
18     by a person who was previously convicted of a felony  
19     involving the use of threat of violence to the person of  
20     another. Use or threat of violence to the person of  
21     another. The key phrase in that being if there is a  
22     felony, it has to involve violence. So you have to decide  
23     whether or not the term violence, as used by the  
24     legislature, as given to you in this aggravating  
25     circumstance, was present in the situation involving Mrs.

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1 Mills. You will recall that's the situation where the door  
2 was kicked in. You might find that this was a violent act,  
3 but, again, it has to involve the use or threat of violence  
4 on the person of another.

5               So kicking a door, although that is the  
6 vernacular, that is a violent act. It's not directed  
7 toward a person. You have to decide whether or not this  
8 was directed toward a person, the violence of whatever  
9 occurred. As soon as she confronted them, they weren't  
10 even sure she had sprayed the mace, these two young men ran  
11 off. Now you have to decide whether or not that fits the  
12 definition of the aggravating circumstance, whether or not  
13 there was a use or threat of violence.

14              The fact that Billy admitted that he had a  
15 gun, he would have to display that gun or showed that gun  
16 to Mrs. Mills for her to comprehend that there was a threat  
17 of violence to her in the commission of this attempted  
18 burglary. And, again, when you get to the weighing  
19 process, when you are deciding how much weight to give the  
20 aggravating circumstances, you can decide, well, how much  
21 violence was really involved there, if we are going to use  
22 that as an aggravator. Is it less weight because it's  
23 really not that violent, if you do find that it was  
24 violent.

25              The next is, again, use or threat of

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1 violence to the person of another. This is the purse  
2 snatching incident and the testimony we heard is that Billy  
3 had stuck his head or arm out the window from the car and  
4 grabbed a purse and there was a struggle of the purse and  
5 during the course of that struggle, Mrs. Rizzo was pulled  
6 against the car and impacted against the car. You have to  
7 decide if that fits the definition and you have to decide,  
8 if you do find that as an aggravator later, when you get to  
9 the weighing process, how much weight to give that  
10 aggravator and the amount of violence was or wasn't  
11 present, as you may find in considering the aggravating  
12 circumstance.

13                   The next three I'm going to group together,  
14 as I talk to you, and the reason I do that is because  
15 really what you have is now three more aggravating  
16 circumstances that all arise really from the events that  
17 transpired back in December and that is during a burglary  
18 and a robbery and to prevent lawful arrest. Well, we are  
19 really only talking about what Billy did when he went  
20 inside the house. He went inside the house. That's the  
21 burglary. He took some property, that's the robbery and  
22 under the State's theory, he hit Mrs. Berndt to prevent her  
23 from identifying him. Well, that's really all one event,  
24 okay, the burglary, and the robbery and the preventing to  
25 avoid arrest. And so we would assert to you that that

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1     should really be viewed as a single aggravating  
2     circumstance, when it comes to the weighing process.

3                     Certainly it would be ridiculous for me or  
4     Mr. LaPorta to stand here before and you say, well, there  
5     really wasn't a burglary and there really wasn't a  
6     robbery. You've already convicted Billy of that, so there  
7     is going to be aggravating circumstances present in this  
8     case. The question is what weight to give to those  
9     aggravating circumstances.

10                    Now, when you get to the weighing process,  
11     it's not a numerical game and by that, I mean if you find  
12     five aggravating circumstances, three mitigating  
13     circumstances, that isn't the end of your job. Your job is  
14     to weigh the aggravators and mitigators in deciding whether  
15     or not the mitigators outweighed the aggravators or vice  
16     versa. So don't just reduce it to the scales and whichever  
17     one has a higher number, that's the one that prevails. One  
18     aggravator can be much heavier than a lot of mitigators and  
19     vice versa. Again, that's a decision that you make beyond  
20     a reasonable doubt unanimously.

21                    Now, the mitigating circumstances Mr. Bell  
22     touched upon, actually No. 16 sets forth the mitigating  
23     circumstances that the defense asserts are present in this  
24     case. Mr. Bell talked about a lot of others that don't  
25     apply to this case and he said we have conceded they didn't

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1     apply. They obviously didn't apply. These are the  
2     mitigating circumstances that we assert apply in this case  
3     and I will discuss those in a minute.

4                     Before I do, I would like to point out that  
5     there are a great many other aggravating circumstances that  
6     the State concedes didn't apply to this case either and I'm  
7     not going to argue to you why all the other ones didn't  
8     apply. I'm going to talk about the facts of this case and  
9     what the mitigators are in this case as we assert to you  
10    are present.

11                    When Mr. Bell went down that complete list,  
12    it wasn't a complete list because there is an additional  
13    statutory mitigating circumstance that states any other  
14    mitigating circumstance. There's a catchall category that  
15    the statute and the legislature has created and the reason  
16    for that is because every defendant is different, every  
17    person in the universe is different, and so it would be  
18    impossible for the legislature to say these are all the  
19    possible mitigating circumstances because they couldn't.  
20    The list would be endless. And so what they have done is  
21    created the any other mitigating circumstance and in that  
22    category, each juror can decide what they want to find as a  
23    mitigating circumstance.

24                    Now we have presented testimony, some of the  
25    testimony the State has quite eloquently discussed with you

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1 in arguing that the death penalty is the appropriate  
2 penalty in this case, that being Dr. Etcoff's testimony,  
3 but from the mitigating circumstance standpoint, the other  
4 mitigating circumstance category, we would assert that you  
5 should consider the following.

6           The first, the fact that Billy admitted his  
7 guilt and you have to understand why it's a mitigating  
8 circumstance. That's not a defense to the crime and it's  
9 not justification for the crime and it's not an excuse for  
10 the crime. A mitigating circumstance is something that the  
11 jury is asked to take into consideration in deciding what  
12 is the appropriate punishment to impose. So, as I go  
13 through these, don't be thinking, well, that's an excuse,  
14 that's a justification, that was a defense that should have  
15 been raised. They are not. They are just factors,  
16 circumstances that you should take into account. He  
17 admitted his guilt.

18           He demonstrated remorse. Now there is  
19 obviously a difference of opinion between the defense and  
20 the State whether or not Billy Castillo is remorseful for  
21 having committed this crime. You, as jurors, just as you  
22 judged the credibility of the various witnesses during the  
23 guilt phase, judge the credibility of the evidence and  
24 testimony you heard during the penalty hearing. You decide  
25 whether or not he demonstrated remorse.

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1                   He cooperated with the police. He agreed  
2 and allowed them to search his apartment knowing that the  
3 stolen property was there. When they questioned him after  
4 his initial reluctance, he told them what he did. The  
5 State argues that he tried to minimize his involvement at  
6 that stage. Without going back into all the facts of what  
7 was presented during the guilt phase, you'll find that  
8 running throughout the story, the statement that Billy gave  
9 to the police, the truth as to what had transpired.

10                   Fourth one, said he had not preplanned to  
11 commit the murder. Yes, he had planned to commit a  
12 burglary with use of the key to go into the house. There's  
13 a question whether or not the crow bar was taken into the  
14 house. They argue it must have been taken in order to  
15 cause harm to a person. It's not uncommon for burglars to  
16 take burglar tools to open up various things in a house  
17 when they are burglarizing a house. Just as easily could  
18 be argued to you that the evidence supports that he took  
19 the little jackhammer or the jack handle from the car for  
20 the purpose of being able to pry open something that may  
21 have been locked in the house.

22                   In any event, it was not -- there was no  
23 evidence to support that there was a preplanned, "I'm going  
24 into that house with the intent to commit a murder." It's  
25 not a justification, it's not an excuse, and many of you

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1     probably or may find that it's not a mitigating  
2     circumstance, but it's something to take into account, when  
3     you are considering whether or not he should be killed for  
4     this crime, is whether or not he had preplanned to cause  
5     the death of another or something that happened quickly and  
6     before he was able to control what he was doing, it had  
7     occurred.

8                     And, finally, I have got down his  
9     childhood. You've heard testimony from his mother, Barbara  
10    Sullivan, from Dr. Etcoff, and you have -- the State  
11    admitted a number of documents from his years at CBS and  
12    from Elko that detail his history throughout the system and  
13    it's, as Dr. Etcoff told you in his review of the records,  
14    there is nothing in there that's inconsistent with the  
15    information he had gotten from Billy concerning his  
16    background.

17                    In fact, the testimony of Mrs. Sullivan I  
18    would assert to you was consistent with that history given  
19    to Dr. Etcoff. Doesn't justify the commission of the  
20    crime, it doesn't excuse the commission of the crime, but  
21    it's something that, when you are deciding, as this jury is  
22    going to be called upon to do here before very long, to  
23    decide the fate of a twenty three year old young man, it's  
24    something that you should at least consider in deciding  
25    whether or not he has forfeited his right to live.

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