

1 EXH
FRANNY A. FORSMAN
2 Federal Public Defender
Nevada Bar No. 00014
3 GARY TAYLOR
Assistant Federal Public Defender
4 Nevada Bar No. 11031-C
NISHA BROOKS-WHITTINGTON
5 Nevada Bar No. 11032-C
411 East Bonneville Ave., Suite 250
6 Las Vegas, Nevada 89101
Telephone: (702) 388-6577
7 Facsimile: (702) 388-5819
Attorneys for Petitioner

8
9 IN THE EIGHTH JUDICIAL DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 WILLIAM P. CASTILLO,
12
Petitioner,

13 vs.

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

CASE NO: C133336
DEPT. NO: XVIII

**EXHIBITS TO OPPOSITION TO
MOTION TO DISMISS**

Hearing Date: March 12, 2010
Hearing Time: 10:00 a.m.
(Death Penalty Case)

17 **EXHIBIT 1**

18 **A. Non-jury sentences**

- 19 A1. State v. Richard Armstrong, No. C180047, Judgment of Conviction (Plea of Guilty)
20 (October 23, 2003)
21 A2. State v. Richard Armstrong, No. C180047, Guilty Plea Agreement (August 29, 2003)
22 A3. State v. William Rundle, No. C189563, Judgment of Conviction (September 16,
23 2003)
24 A4. State v. William Rundle, No. C189563, Guilty Plea Agreement (May 21, 2003)
25 A5. State v. Jose Vigoa, No. C168652, Guilty Plea Agreement (June 24, 2002)
26 A6. State v. Matthew Frenn, No. C178954, Guilty Plea Agreement (November 6, 2002)
27 A7. State v. Jeremy Strohmeier, No. C144577, Judgment of Conviction (Plea)
(November 5, 1998)
28 A8. State v. Jeremy Strohmeier, No. C144577, Guilty Plea Agreement (September 8,
1998)

- 1 A9. State v. Vernell Evans, No. C116071, Judgment of Conviction (Jury Trial) (March
23, 2004)
- 2 A10. State v. Vernell Evans, No. C116071, Sentencing Agreement (February 4, 2004)
- 3 A11. State v. Moore, No. CR06-2974, Guilty Plea Memorandum (January 19, 2007)
- 4 B. **Jury sentences**
- 5 B1. State v. James Scholl, No. C204775, Special Verdict (Mitigating & Aggravating)
6 (February 17, 2006)
- 7 B2. State v. James Scholl, No. C204775, Verdict (February 17, 2006)
- 8 B3. State v. James Scholl, No. C204775, Judgment of Conviction (May 19, 2006)
- 9 B4. State v. James Scholl, No. C204775, Verdict (February 15, 2006)
- 10 B5. State v. Glenford Budd, No. C193182, Special Verdict (Mitigating & Aggravating)
11 (December 16, 2005)
- 12 B6. State v. Glenford Budd, No. C193182, Verdict (December 16, 2005)
13 (Count I-Dajon Jones)
14 (Count II-Derrick Jones)
15 (Count III-Jason Moore)
- 16 B7. State v. Richard Powell, No. C148936, Special Verdict (Mitigating & Aggravating)
17 (November 15, 2000)
18 (Count I-Samantha Scotti)
19 (Count II-Lisa Boyer)
20 (Count III-Steven Walker)
21 (Count IV-Jermaine Woods)
- 22 B8. State v. Richard Powell, No. C148936, Verdict (November 15, 2000)
23 (Count I-Samantha Scotti)
24 (Count II-Lisa Boyer)
25 (Count III-Steven Walker)
26 (Count IV-Jermaine Woods)
- 27 B9. State v. Patrick Randle, No. C121817, Verdict (June 14, 1996)
- 28 B10. State v. Patrick Randle, No. C121817, Special Verdict (June 14, 1996)
- B11. State v. Patrick Randle, No. C121817, Verdict (June 6, 1996)
- B12. State v. Fernando Rodriguez, No. C130763, Special Verdict (Mitigating &
Aggravating) (May 7, 1996)
- B13. State v. Fernando Rodriguez, No. C130763, Verdict (May 4, 1996)
(Count I-Brad Palcovic)
(Count II-Richley Miller)
- B14. State v. Jonathan Daniels, No. C126201, Verdict (October 26, 1995)

1 (Count I-June Frye)
2 (Count II-Nicasio Diaz)
3 B15. State v. Jonathan Daniels, No. C126201, Special Verdict (Mitigating & Aggravating)
4 (November 1, 1995)
5 (Count I-June Frye)
6 (Count II-Nicasio Diaz)
7 B16. State v. Ronald Ducksworth, No. C108501, Special Verdict (October 28, 1993)
8 (Count I-Joseph Smith III)
9 (Count II-Vikki Smith)
10 B17. State v. Ronald Ducksworth, No. C108501, Verdict (October 28, 1993)
11 (Count I-Joseph Smith III)
12 (Count II-Vikki Smith)
13 B18. State v. Carl Martin, No. C108501, Special Verdict (October 28, 1993)
14 (Count I-Joseph Smith III)
15 (Count II-Vikki Smith)
16 B19. State v. Carl Martin, No. C108501, Verdict (October 28, 1993)
17 (Count I-Joseph Smith III)
18 (Count II-Vikki Smith)
19
20
21
22
23
24
25
26
27
28

[illegible][illegible]

7
8
9
0
1
2
3

4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

6
7
8
9
20
21
22
23
24
25
26
27
28

EXHIBIT 1

EXHIBIT A1

EXHIBIT A1

ORIGINAL

9

1 JOCP
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 200 South Third Street
6 Las Vegas, Nevada 89155-2211
7 (702) 455-4711
8 Attorney for Plaintiff

FILED

OCT 23 2 18 PM '03

Shirley E. Thompson
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 RICHARD DEWAYNE ARMSTRONG,
12 #0658736

13 Defendant.

Case No: C180047

Dept No: V

14 JUDGMENT OF CONVICTION
15 (PLEA OF GUILTY)

16 The Defendant previously appeared before the Court with counsel and entered a plea
17 of guilty to the crime(s) of COUNT 1 - BURGLARY (Felony); COUNTS 2 & 3 -
18 ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Felony); COUNTS 4 &
19 6 - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Felony); and
20 COUNT 5 - BATTERY WITH USE OF A DEADLY WEAPON (Felony), in violation of
21 NRS 205.060, 193.330, 200.010, 200.030, 193.165, 200.010, 200.030, 193.165, 200.481;
22 thereafter, on the 16th day of October, 2003, the Defendant was present in court for
23 sentencing with his counsel, CURTIS BROWN and KEDRIC BASSETT, Deputy Public
24 Defenders, and good cause appearing,

25 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
26 addition to the \$25.00 Administrative Assessment Fee, Submit to DNA testing under the
27 direction of the Division and pay a \$150.00 Analysis fee to the Clark County Clerk, the
28 Defendant is sentenced as follows:

RECEIVED

OCT 23 2003

COUNTY CLERK

P:\WPDOCS\JUDG11\BJ1827601.doc

OK

1 COUNT I - a MAXIMUM term of (180) ONE HUNDRED EIGHT MONTHS with a
2 MINIMUM term of (72) SEVENTY-TWO MONTHS;

3 COUNT II - a MAXIMUM term of (240) TWO HUNDRED FORTY MONTHS with a
4 MINIMUM term of (96) NINETY-SIX MONTHS plus an equal and CONSECUTIVE
5 MAXIMUM of (240) MONTHS and a MINIMUM of (96) MONTHS for use of a deadly
6 weapon, running consecutive to Count I;

7 COUNT III - a MAXIMUM term of (240) TWO HUNDRED FORTY MONTHS with a
8 MINIMUM term of (96) NINETY-IX MONTHS plus an equal and CONSECUTIVE
9 MAXIMUM of (240) MONTHS and a MINIMUM of (96) MONTHS for use of a deadly
10 weapon, running consecutive to Count II;

11 COUNT IV - a term of LIFE WITHOUT THE POSSIBILITY OF PAROLE plus an equal
12 and CONSECUTIVE term of LIFE WITHOUT THE POSSIBILITY OF PAROLE for use of
13 a deadly weapon; \$6500 restitution, running consecutive to Count III;

14 COUNT V - a MAXIMUM term of (120) ONE HUNDRED TWENTY MONTHS with a
15 MINIMUM term of (48) FORTY-EIGHT MONTHS, running consecutive to Count IV;

16 COUNT VI - a term of LIFE WITHOUT THE POSSIBILITY OF PAROLE plus an equal
17 and CONSECUTIVE term of LIFE WITHOUT THE POSSIBILITY OF PAROLE
18 MONTHS; \$10,326 restitution; running consecutive to Count V;
19 with (725) days credit for time served.

20 DATED this 21st day of October, 2003.

21
22 
23 DISTRICT JUDGE
24
25
26
27
28

kjk

EXHIBIT A2

EXHIBIT A2

ORIGINAL

1 **GMEM**
2 **DAVID ROGER**
3 **DISTRICT ATTORNEY**
4 **Nevada Bar #002781**
5 **200 South Third Street**
6 **Las Vegas, NV 89155-2211**
7 **(702) 455-4711**
8 **Attorney for Plaintiff**

FILED IN OPEN COURT
AUG 29 2003

SHIRLEY E. PARRAGUIRE, CLERK
BY *[Signature]*
BILLIE JO CRAIG DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

7 **THE STATE OF NEVADA,**

8 **Plaintiff,**

9 **-vs-**

10 **RICHARD DEWAYNE ARMSTRONG,**
11 **#0658736**

12 **Defendant.**

CASE NO: C180047
DEPT NO: V

13
14 **GUILTY PLEA AGREEMENT**

15 I hereby agree to plead guilty to: **COUNT 1 - BURGLARY (Felony - NRS**
16 **205.060); COUNTS 2 & 3 - ATTEMPT MURDER WITH USE OF A DEADLY**
17 **WEAPON (Felony - NRS 193.330, 200.010, 200.030, 193.165); COUNTS 4 & 6 - FIRST**
18 **DEGREE MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010,**
19 **200.030, 193.165); and COUNT 5 - BATTERY WITH USE OF A DEADLY WEAPON**
20 **(Felony - NRS 200.481), as more fully alleged in the charging document attached hereto as**
21 **Exhibit "1".**

22 My decision to plead guilty is based upon the plea agreement in this case which is as
23 follows:

24 The parties stipulate that Defendant will receive the maximum sentence on each
25 count. All counts will run consecutive with each other. This plea is conditioned upon the
26 court sentencing the Defendant consistent with the plea agreement. If the court declines to
27 accept the stipulation, Defendant's plea will be withdrawn at the discretion of the District
28 Attorney.

COUNTY CLERK

AUG 29 2003

RECEIVED

P:\WP\DOCS\UNP\1811827601.doc

AA004857

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

2
3

4
5

6
7
8
9

10
11
12
13
14
15

16
17
18
19
20
21

22
23
24
25
26
27
28

1 years (480 months);

2 COUNT 5 (Battery With Use of a Deadly Weapon) - - for a minimum term of not less than
3 TWENTY-FOUR (24) months and a maximum term of not more than ONE HUNDRED
4 TWENTY (120) months. The minimum term of imprisonment may not exceed forty percent
5 (40%) of the maximum term of imprisonment. I understand that I may also be fined up to
6 \$10,000;

7 COUNT 6 (First Degree Murder With Use of a Deadly Weapon) - life without the possibility
8 of parole OR life with the possibility of parole with eligibility for parole beginning at twenty
9 (20) years (480 months); OR a definite term of FIFTY (50) years (600 months) with
10 eligibility for parole beginning at twenty (20) years (480 months) plus an equal and
11 consecutive term of life without the possibility of parole OR life with the possibility of
12 parole with eligibility for parole beginning at twenty (20) years (480 months); OR a definite
13 term of FIFTY (50) years (600 months) with eligibility for parole beginning at twenty (20)
14 years (480 months);

15 I understand that the law requires me to pay an Administrative Assessment Fee.

16 I understand that, if appropriate, I will be ordered to make restitution to the victim of
17 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
18 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
19 reimburse the State of Nevada for any expenses related to my extradition, if any.

20 I understand that I am not eligible for probation for the offenses to which I am
21 pleading guilty.

22 I understand that more than one sentence of imprisonment will be imposed and that I
23 am not eligible to serve the sentences concurrently. The sentencing judge does not have the
24 discretion to order the sentences served concurrently.

25 I also understand that information regarding charges not filed, dismissed charges, or
26 charges to be dismissed pursuant to this agreement may be considered by the judge at
27 sentencing.

28 I have not been promised or guaranteed any particular sentence by anyone. I know

1 that my sentence is to be determined by the Court within the limits prescribed by statute.

2 I understand that if my attorney or the State of Nevada or both recommend any
3 specific punishment to the Court, the Court is obligated to accept the recommendation.

4 I understand that if the State of Nevada has agreed to recommend or stipulate a
5 particular sentence or has agreed not to present argument regarding the sentence, or agreed
6 not to oppose a particular sentence, such agreement is contingent upon my appearance in
7 court on the initial sentencing date (and any subsequent dates if the sentencing is continued).

8 I understand that if I fail to appear for the scheduled sentencing date or I commit a new
9 criminal offense prior to sentencing the State of Nevada would regain the full right to argue
10 for any lawful sentence.

11 I understand if the offense(s) to which I am pleading guilty to was committed while I
12 was incarcerated on another charge or while I was on probation or parole that I am not
13 eligible for credit for time served toward the instant offense(s).

14 I understand that as a consequence of my plea of guilty, if I am not a citizen of the
15 United States, I may, in addition to other consequences provided for by federal law, be
16 removed, deported, excluded from entry into the United States or denied naturalization.

17 I understand that the Division of Parole and Probation will prepare a report for the
18 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
19 sentencing, including my criminal history. This report may contain hearsay information
20 regarding my background and criminal history. My attorney and I will each have the
21 opportunity to comment on the information contained in the report at the time of sentencing.
22 Unless the District Attorney has specifically agreed otherwise, then the District Attorney
23 may also comment on this report.

24 WAIVER OF RIGHTS

25 By entering my plea of guilty, I understand that I am waiving and forever giving up
26 the following rights and privileges:

27 1. The constitutional privilege against self-incrimination, including the right to refuse
28 to testify at trial, in which event the prosecution would not be allowed to comment to the

1 jury about my refusal to testify.

2 2. The constitutional right to a speedy and public trial by an impartial jury, free of
3 excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the
4 assistance of an attorney, either appointed or retained. At trial the State would bear the
5 burden of proving beyond a reasonable doubt each element of the offense charged.

6 3. The constitutional right to confront and cross-examine any witnesses who would
7 testify against me.

8 4. The constitutional right to subpoena witnesses to testify on my behalf.

9 5. The constitutional right to testify in my own defense.

10 6. The right to appeal the conviction, with the assistance of an attorney, either
11 appointed or retained, unless the appeal is based upon reasonable constitutional jurisdictional
12 or other grounds that challenge the legality of the proceedings and except as otherwise
13 provided in subsection 3 of NRS 174.035.

14 VOLUNTARINESS OF PLEA

15 I have discussed the elements of all of the original charge(s) against me with my
16 attorney and I understand the nature of the charge(s) against me.

17 I understand that the State would have to prove each element of the charge(s) against
18 me at trial.

19 I have discussed with my attorney any possible defenses, defense strategies and
20 circumstances which might be in my favor.

21 All of the foregoing elements, consequences, rights, and waiver of rights have been
22 thoroughly explained to me by my attorney.

23 I believe that pleading guilty and accepting this plea bargain is in my best interest,
24 and that a trial would be contrary to my best interest.


25 I am signing this agreement voluntarily, after consultation with my attorney, and I am
26 not acting under duress or coercion or by virtue of any promises of leniency, except for those
27 set forth in this agreement.

28 ///

1 I am not now under the influence of any intoxicating liquor, a controlled substance or
2 other drug which would in any manner impair my ability to comprehend or understand this
3 agreement or the proceedings surrounding my entry of this plea.

4 My attorney has answered all my questions regarding this guilty plea agreement and
5 its consequences to my satisfaction and I am satisfied with the services provided by my
6 attorney.

7 DATED this 28 day of August, 2003.

8 
9 RICHARD DEWAYNE ARMSTRONG
Defendant

10 AGREED TO BY:
11

12 
13 DAVID ROGER
14 District Attorney
Nevada Bar #002781
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF COUNSEL:**

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of
3 the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations contained in the charge(s)
5 to which guilty pleas are being entered.

6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.

8 3. All pleas of guilty offered by the Defendant pursuant to this agreement are
9 consistent with the facts known to me and are made with my advice to the Defendant.

10 4. To the best of my knowledge and belief, the Defendant:

11 a. Is competent and understands the charges and the consequences of pleading
12 guilty as provided in this agreement.

13 b. Executed this agreement and will enter all guilty pleas pursuant hereto
14 voluntarily.

15 c. Was not under the influence of intoxicating liquor, a controlled substance or
16 other drug at the time I consulted with the defendant as certified in paragraphs
17 1 and 2 above.

18 Dated: This 28 day of August, 2003.

19 
20 ATTORNEY FOR DEFENDANT

21
22
23
24
25
26
27
28 kjk

1 AINF
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 200 South Third Street
6 Las Vegas, Nevada 89155-2211
7 (702) 435-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 RICHARD DEWAYNE ARMSTRONG,
13 #0658736

14 Defendant.

Case No. C180047
Dept No. V

AMENDED
INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss:

17 DAVID ROGER, District Attorney within and for the County of Clark, State of
18 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That RICHARD DEWAYNE ARMSTRONG, the Defendant(s) above named, having
20 committed the crimes of BURGLARY (Felony - NRS 205.060); ATTEMPT MURDER
21 WITH USE OF A DEADLY WEAPON (Felony - NRS 193.330, 200.010, 200.030,
22 193.165); FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Felony
23 - NRS 200.010, 200.030, 193.165); and BATTERY WITH USE OF A DEADLY
24 WEAPON (Felony - NRS 200.481), on or about the 25th day of October, 2001, within the
25 County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such
26 cases made and provided, and against the peace and dignity of the State of Nevada,

27 ///

28 ///

EXHIBIT " 1 "

F:\WPDOC\BPN\1811\181122MR1.DOC

1 **COUNT 1 - BURGLARY**

2 did then and there wilfully, unlawfully, and feloniously enter, with intent to commit a
3 felony, to-wit: assault and/or battery and/or murder and/or a felony, that certain building
4 occupied by BONITA ARMSTRONG, located at 5150 East Sahara Avenue, Building 16,
5 Apartment 262, Las Vegas, Clark County, Nevada.

6 **COUNT 2 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON**

7 did then and there, without authority of law, and with the intent to kill, malice
8 aforethought and express malice, wilfully and feloniously attempt to kill ARIEL
9 ARMSTRONG, a human being, with a deadly weapon, to-wit: a firearm, by the Defendant
10 shooting at and into the body of the said ARIEL ARMSTRONG with said firearm.

11 **COUNT 3 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON**

12 did then and there, without authority of law, and with the intent to kill, malice
13 aforethought and express malice, wilfully and feloniously attempt to kill SIR LAWRENCE
14 ARMSTRONG, a human being, with a deadly weapon, to-wit: a firearm, by the Defendant
15 shooting at and into the body of the said SIR LAWRENCE ARMSTRONG with said
16 firearm.

17 **COUNT 4 - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON**

18 did then and there wilfully, feloniously, without authority of law, and with
19 premeditation and deliberation, and with malice aforethought, and/or during the perpetration
20 or attempt perpetration of burglary, kill BONITA ARMSTRONG, a human being, with a
21 deadly weapon, to-wit: a firearm, by the Defendant shooting at and into the body of the said
22 BONITA ARMSTRONG with said firearm.

23 **COUNT 5 - BATTERY WITH USE OF A DEADLY WEAPON**

24 did then and there wilfully, unlawfully, and feloniously use force and violence upon
25 the person of another, to-wit: MALCOLM ARMSTRONG, with use of a deadly weapon, to-
26 wit: a firearm, by Defendant striking the said MALCOLM ARMSTRONG in the back of the
27 head with the said firearm.

28 ///

1 COUNT 6 - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON

2 did then and there wilfully, feloniously, without authority of law, and with
3 premeditation and deliberation, and with malice aforethought, and/or during the perpetration
4 or attempt perpetration of burglary, kill ANDRE MARCUS, a human being, with a deadly
5 weapon, to-wit: a firearm, by the Defendant shooting at and into the body of the said
6 ANDRE MARCUS with said firearm.

7 DAVID ROGER
8 DISTRICT ATTORNEY
9 Nevada Bar #002781

10
11 BY David Roger
12 DAVID ROGER
13 District Attorney
14 Nevada Bar #002781
15
16
17
18
19
20
21
22
23
24
25

26 DA#01F18276X/kjk
27 LVMPD EV#0110252447
28 BURG; ATT MWDW;
I MWDW; BWDW - F
(TK4)

EXHIBIT A3

EXHIBIT A3

ORIGINAL

9

JOCP
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
200 South Third Street
Las Vegas, Nevada 89155-2211
(702) 455-4711
Attorney for Plaintiff

FILED
SEP 16 8 55 AM '03

Shirley M. Hays
Clerk

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

WILLIAM JAMES RUNDLE,
#147555

Defendant.

Case No: C189563

Dept No: XVII

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime(s) of COUNTS 1 & 4 - FIRST DEGREE MURDER (Felony), in violation of NRS 200.010, 200.030; thereafter, on the 11th day of September, 2003, the Defendant was present in court for sentencing with his counsel, NANCY LEMCKE, Deputy Public Defender, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee payable to the Clark County Clerk, the Defendant is sentenced as follows: Deft. SENTENCED as to COUNT I to LIFE in the Nevada Department of Corrections without the possibility of parole and as to Count II to LIFE in the Nevada Department of Corrections without the possibility of parole, COUNT II CONCURRENT with COUNT I. FURTHER

//

//

RECEIVED

SEP 16 2003

CLERK

RECEIVED

SEP 12 2003

CLERK

PAWPUCCSUUD021721746101.doc

AA00486

1 ORDERED, Restitution in the amount of \$10,667.00 to be placed in a trust fund for the
2 granddaughter, Gretchen Bellen, to be administered by the Public Administrator.

3 DATED this 15 day of September, 2003.

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

mb

EXHIBIT A4

EXHIBIT A4

ORIGINAL

FILED IN OPEN COURT
MAY 21 2003

SHIRLEY B. PARRAGUIRRE, CLERK
BY April Watkins
APRIL WATKINS DEPUTY

1 GMEM
2 DAVID ROGER
3 DISTRICT ATTORNEY
4 Nevada Bar #002781
5 CHRISTOPHER OWENS
6 Chief Deputy District Attorney
7 Nevada Bar #001190
8 200 South Third Street
9 Las Vegas, NV 89155-2211
10 (702) 455-4711
11 Attorneys for Plaintiff

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,

15 Plaintiff,

16 -vs-

17 WILLIAM JAMES RUNDLE,
18 #0147555

19 Defendant.

CASE NO:
DEPT NO:

189563
C188242
#* XV11

20 GUILTY PLEA AGREEMENT

21 I hereby agree to plead guilty to: COUNT 4 - FIRST DEGREE MURDER (Felony -
22 NRS 200.030) and COUNT 1 - FIRST DEGREE MURDER (Felony - NRS 200.030)
23 pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), as more fully alleged in the
24 charging document attached hereto as Exhibit "1" and Indictment which is reinstated in total
25 by agreement of the parties remaining charges will be dismissed after sentencing..

26 My decision to plead guilty is based upon the plea agreement in this case which is as
27 follows:

28 Both parties agree that I will receive a sentence of Life Without The Possibility Of
Parole for each Count and that the Counts will run concurrent.

CONSEQUENCES OF THE PLEA

I understand that by pleading guilty to Count 4, I admit the facts which support the
elements of the offense(s) to which I now plead as set forth in Exhibit "1". With regard to
my plea of guilty to Count 1, the State will make factual representations of proof which I

RECEIVED

MAY 21 2003

CLERK

P:\WPDOCS\NFP21721746102.doc

AA00487

1 will adopt as the state of the evidence.

2 I understand that as a consequence of my plea of guilty the Court must sentence me to
3 life without the possibility of parole. I understand that there will be no eligibility for parole
4 on either penalty. I understand that the law requires me to pay an Administrative Assessment
5 Fee.

6 I understand that, if appropriate, I will be ordered to make restitution to the victim of
7 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
8 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
9 reimburse the State of Nevada for any expenses related to my extradition, if any.

10 I understand that I am not eligible for probation or parole for the offenses to which I
11 am pleading guilty.

12 I also understand that information regarding charges not filed, dismissed charges, or
13 charges to be dismissed pursuant to this agreement may be considered by the judge at
14 sentencing.

15 I know that my sentence is to be determined by the Court within the limits prescribed
16 by statute and this agreement.

17 I understand that if my attorneys and the State of Nevada are both recommending a
18 specific punishment to the Court.

19 I understand that if the State of Nevada has agreed to recommend or stipulate a
20 particular sentence or has agreed not to present argument regarding the sentence, or agreed
21 not to oppose a particular sentence, such agreement is contingent upon my appearance in
22 court on the initial sentencing date (and any subsequent dates if the sentencing is continued).
23 I understand that if I fail to appear for the scheduled sentencing date or I commit a new
24 criminal offense prior to sentencing the State of Nevada would regain the full right to argue
25 for any lawful sentence.

26 I understand if the offense(s) to which I am pleading guilty to was committed while I
27 was incarcerated on another charge or while I was on probation or parole that I am not
28 eligible for credit for time served toward the instant offense(s).

1 I understand that as a consequence of my plea of guilty, if I am not a citizen of the
2 United States, I may, in addition to other consequences provided for by federal law, be
3 removed, deported, excluded from entry into the United States or denied naturalization.

4 I understand that the Division of Parole and Probation will prepare a report for the
5 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
6 sentencing, including my criminal history. This report may contain hearsay information
7 regarding my background and criminal history. My attorneys and I will each have the
8 opportunity to comment on the information contained in the report at the time of sentencing.
9 Unless the District Attorney has specifically agreed otherwise, then the District Attorney
10 may also comment on this report.

11 WAIVER OF RIGHTS

12 By entering my plea of guilty, I understand that I am waiving and forever giving up
13 the following rights and privileges:

14 1. The constitutional privilege against self-incrimination, including the right to refuse
15 to testify at trial, in which event the prosecution would not be allowed to comment to the
16 jury about my refusal to testify.

17 2. The constitutional right to a speedy and public trial by an impartial jury, free of
18 excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the
19 assistance of an attorney, either appointed or retained. At trial the State would bear the
20 burden of proving beyond a reasonable doubt each element of the offense charged.

21 3. The constitutional right to confront and cross-examine any witnesses who would
22 testify against me.

23 4. The constitutional right to subpoena witnesses to testify on my behalf.

24 5. The constitutional right to testify in my own defense.

25 6. The right to appeal the conviction, with the assistance of an attorney, either
26 appointed or retained, unless the appeal is based upon reasonable constitutional jurisdictional
27 or other grounds that challenge the legality of the proceedings and except as otherwise
28 provided in subsection 3 of NRS 174.035.

1 VOLUNTARINESS OF PLEA

2 I have discussed the elements of all of the original charge(s) against me with my
3 attorneys and I understand the nature of the charge(s) against me.

4 I understand that the State would have to prove each element of the charge(s) against
5 me at trial.

6 I have discussed with my attorneys any possible defenses, defense strategies and
7 circumstances which might be in my favor.

8 All of the foregoing elements, consequences, rights, and waiver of rights have been
9 thoroughly explained to me by my attorneys.

10 I believe that pleading guilty and accepting this plea bargain is in my best interest,
11 and that continuation of the current trial would be contrary to my best interest.

12 I am signing this agreement voluntarily, after consultation with my attorneys, and I
13 am not acting under duress or coercion or by virtue of any promises of leniency, except for
14 those set forth in this agreement.


15 I am not now under the influence of any intoxicating liquor, a controlled substance or
16 other drug which would in any manner impair my ability to comprehend or understand this
17 agreement or the proceedings surrounding my entry of this plea.

18 My attorneys have answered all my questions regarding this guilty plea agreement
19 and its consequences to my satisfaction and I am satisfied with the services provided by my
20 attorneys.

21 DATED this 21 day of May, 2003.

22 
23 WILLIAM JAMES RUNDLE
24 Defendant

25 AGREED TO BY:

26 
27 CHRISTOPHER OWENS
28 Chief Deputy District Attorney
Nevada Bar #001190

1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorneys for the Defendant named herein and as an officer
3 of the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations contained in the charge(s)
5 to which guilty pleas are being entered.

6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.

8 3. All pleas of guilty offered by the Defendant pursuant to this agreement are
9 consistent with the facts known to me and are made with my advice to the Defendant.

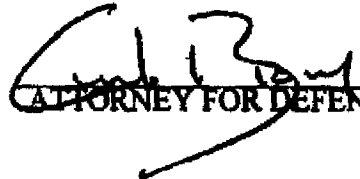
10 4. To the best of my knowledge and belief, the Defendant:

11 a. Is competent and understands the charges and the consequences of pleading
12 guilty as provided in this agreement.

13 b. Executed this agreement and will enter all guilty pleas pursuant hereto
14 voluntarily.

15 c. Was not under the influence of intoxicating liquor, a controlled substance or
16 other drug at the time I consulted with the defendant as certified in paragraphs
17 1 and 2 above.

18 Dated: This 21 day of May, 2003.

19 
20 ATTORNEY FOR DEFENDANT
21
22
23
24
25
26
27
28

dm

1 IND
2 STEWART L. BELL
3 Clark County District Attorney
4 Nevada Bar #000477
5 CHRIS J. OWENS
6 Chief Deputy District Attorney
7 Nevada Bar #001190
8 200 South Third Street
9 Las Vegas, Nevada 89155-2211
10 (702) 455-4711
11 Attorney for Plaintiff

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,
15 Plaintiff,
16 -vs-
17 WILLIAM JAMES RUNDLE,
18 #0147555
19 Defendant(s).

Case No. C189563
Dept. No. IV

INDICTMENT

19 STATE OF NEVADA }
20 COUNTY OF CLARK } ss.

21 The Defendant(s) above named, WILLIAM JAMES RUNDLE, accused by the Clark
22 County Grand Jury of the crime(s) of MURDER WITH USE OF DEADLY WEAPON
23 (Open Murder) (Felony - NRS 200.010, 200.030, 193.165); ROBBERY WITH USE OF
24 DEADLY WEAPON (Felony - NRS 200.380, 193.165), and THEFT (Felony - NRS
25 205.0832, 205.0835); committed at and within the County of Clark, State of Nevada, on or
26 between May, 1997 and October, 2002, as follows:

27 //

28 //

EXHIBIT "1"

1 COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

2 did, about or between April and July of 1997, then and there wilfully, feloniously,
3 without authority of law, and with premeditation and deliberation, and with malice
4 aforethought, kill WILLA RUNDLE, a human being, with use of a deadly weapon, to wit:
5 medications or drugs, by administering an overdose of prescription drugs to the said WILLA
6 RUNDLE, and/or by manner and means otherwise unknown, the defendant directly
7 committing said act or aiding and abetting persons unknown in the commission of said act
8 by providing counsel, encouragement, planning and access to said person or persons, and/or
9 each person acting pursuant to a conspiracy to commit murder.

10 COUNT 2 - THEFT

11 did, on or between May, 1997 and August , 2002 then and there knowingly,
12 feloniously, and without lawful authority, commit theft by converting, making an
13 unauthorized transfer of an interest in, or without authorization controlling property having a
14 value of \$2,500.00, or more, lawful money of the United States, belonging to WILLA
15 RUNDLE, Clark County, Nevada, in the following manner, to-wit: by defendant obtaining
16 in excess of \$2,500.00 in personal assets and monies of the said WILLA RUNDLE
17 following her untimely death by homicide, thereby converting, making an unauthorized
18 transfer of an interest in, or controlling without authorization, the money of WILLA
19 RUNDLE.

20 COUNT 3 - THEFT

21 did, on or between May, 1997 and August, 2002, then and there knowingly,
22 feloniously, and without lawful authority, commit theft by converting, making an
23 unauthorized transfer of an interest in, or without authorization controlling property having a
24 value of \$2,500.00, or more, lawful money of the United States, belonging to Willa Rundle,
25 the United States Government, the United States Treasury Department and/or the Social
26 Security Administration, or by obtaining said money by a material misrepresentation with
27 intent to deprive that person or entity of the property, or by coming into control of mislaid or
28 misdelivered property of Willa Rundle from United States Government, the United States

1 Treasury Department and/or the Social Security Administration on under circumstances
2 providing means of inquiry as to the true owner in the following manner, to-wit: by
3 defendant arranging for and/or obtaining in excess of \$2,500.00 in Social Security benefits
4 of the said WILLA RUNDLE, who was deceased and no longer entitled to said benefits,
5 materially misrepresenting by these actions that he was a person lawfully entitled to said
6 payments, thereby converting, making an unauthorized transfer of an interest in, or
7 controlling without authorization, the money of WILLA RUNDLE, the United States
8 Government, the United States Treasury Department and/or the Social Security
9 Administration with intent to deprive them of the property and/or by appropriating said
10 mislaid or misdelivered property to his own use or that of another person without reasonable
11 efforts to notify the true owner.

12 COUNT 4 - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

13 did, on or between August 16, 2002 and August 20th, 2002, then and there wilfully,
14 feloniously, without authority of law, and with premeditation and deliberation, and with
15 malice aforethought, kill SHIRLEY RUNDLE, a human being, by repeatedly striking the
16 head and body of the said SHIRLEY RUNDLE with a deadly weapon, to-wit: a baseball bat
17 and/or other blunt object, said murder being directly premeditated and/or said Murder being
18 committed during the commission of a robbery.

19 COUNT 5 - ROBBERY WITH USE OF A DEADLY WEAPON

20 did, on or between August 16, 2002 and August 20, 2002, then and there wilfully,
21 unlawfully, and feloniously take money and/or personal property, including a ring, watches
22 and other jewelry, from the person of SHIRLEY RUNDLE, or in her presence, by means of

23 //

24 //

25 //

26 //

27 //


28 //

1 force or violence, or fear of injury to, and without the consent and against the will of the said
2 SHIRLEY RUNDLE, said Defendant using a deadly weapon, to-wit: a baseball bat and/or
3 other blunt object during the commission of said crime.

4 DATED this ____ day of May, 2003.

5
6 STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

7
8
9 BY


10 CHRIS J. OWENS
11 Chief Deputy District Attorney
12 Nevada Bar #001190
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Names of witnesses appearing before the Grand Jury:

1 DR. ELLEN CLARK, WASHOE COUNTY CORONER
2
3 MAGDA BELEN, 10244 SINGING WIND, LV, NV
4
5 DET. THOMAS MARIN, LVMPD #2894
6
7 DET. DONALD TREMEL, LVMPD #2038
8
9 CSA YOLANDA McCLARY, FORENSIC LAB, LVMPD #2923
10
11 CSA DANIEL HOLSTEIN, FORENSIC LAB, LVMPD #3861
12
13 DET. SHEILA HUGGINS, LVMPD #3603
14
15 THEROM HAINES, SOCIAL SECURITY
16
17 NATHAN R. EATON, C/O WELLS FARGO BANK
18
19 THOMAS H. ROACH, C/O DISTRICT ATTORNEY'S OFFICE
20
21 ROBERT WILLIAM RUNDLE, C/O DISTRICT ATTORNEY'S OFFICE
22
23 BETH BORGAL, C/O DISTRICT ATTORNEY'S OFFICE
24
25 SGT. JOHN C. MIENAU, LASSIN COUNTY SHERRIF'S OFFICE, CA
26
27 SGT. THOMAS KELLER, LVMPD CYBER CRIMES UNIT
28
STEVEN SCARBOROUGH, LVMPD FORENISC LAB, #2160
PATRICA DORAN, COR, BANK OF AMERICA
JOEL MOSKOWITZ, CFE, DISTRICT ATTORNEY'S OFFICE, 200 S. THIRD, LV, NV
DR. J. COREY BROWN, C/O AMY CHELINI, ESQ.
DR. JAMES BOURLAND, QUEST DIAGNOSTICS, LV, NV

Additional witnesses known to the District Attorney at the filing of the Indictment:

JAN KELLY, FORENSIC LAB, LVMPD #5666
TOM WALL, LVMPD FORENSIC LAB
DAVID WELCH, LVMPD FORENSIC LAB
TERRY COOK, LVMPD FORENSIC LAB
DR. LARRY SIMMS, CCME
JAMES ABRAHAM, DDS, C/O DISTRICT ATTORNEY'S OFFICE

1 C. GREEN, LVMPD FORENSIC LAB
2 K. GRAMMAS, LVMPD FORENSIC LAB
3 RODEL BELEN, 10244 SINGING WIND, LV, NV
4 OFFICER K. LeRUD, LVMPD
5 OFFICER W. WEBB, LVMPD
6 JANET BERTRAND, 7914 SELTZER ISLAND WAY, LV, NV
7 SGT. ROCKY ALBY, LVMPD HOMICIDE
8 PAUL LOONEY, OFFICE OF THE UNITED STATES POSTAL INSPECTOR
9 DOUGLAS WOODBURY, C/O WILD WEST CASINO, LV, NV
10 JOHN WINSTROM, NV SPORTS SCHEDULE, 3110 S. POLARIS, #24, LV, NV
11 CURTIS VIXIE, DDS, SUSANVILLE, CA
12 DONALD SIMPSON, DDS, SUSANVILLE, CA
13 ROBERT COOMBS, C/O DISTRICT ATTORNEYS OFFICE
14 JUDY RUNDLE, C/O DISTRICT ATTORNEY'S OFFICE
15 COLLEEN HAMILTON, 17116 BILTAR ST., VAN NUYS, CA
16 DEBRA RUNDLE, C/O DISTRICT ATTORNEY'S OFFICE
17 DEPUTY WALLACE, LASSEN COUNTY SHERRIF, CA
18 SGT. D. MARTIN, LASSEN COUNTY SHERRIF, CA
19 DET. BOLLINGER, LASSEN COUNTY SHERRIF, CA
20 DANA SPPONER, LASSEN COUNTY SHERRIF, CA
21 RON WILSON, CALIFORNIA HIGHWAY PATROL
22 SGT. CEAGLIO, LASSEN COUNTY SHERRIF
23 COR, LAWRENCE WELK VILLAGE, CA
24 COR, KEY BANK, 434 QUEEN ANNE AVE. NORTH, SEATTLE, WA
25 COR, EXPRESS RENT A CAR, SEATTLE, WA
26 COR, SEATTLE SEAHAWKS, SEATTLE, WA
27 DET. HANF, SEATTLE PD, WA
28 ANJANJI MALA, KEY BANK, SEATTLE, WA

1 BURNIE CAMPBELL, SELF STORAGE, 12TH & MADISON, SEATTLE, WA
2 COR/KATHY, HOLIDAY INN, 211 DEXTER, SEATTLE, WA
3 COR, THE MAILBOX, 300 QUEEN ANNE AVE., SEATTLE, WA
4 GLENN STEADMAN, MEDITERRANEAN INN, 425 QUEEN ANNE, SEATTLE, WA
5 DOUG HILLSTROM, T.S. McHUGHS, 21 MERCER, SEATTLE, WA
6 GERALD OLSON, GOLDMARK, INC., 10325 AURORA NORTH, SEATTLE, WA
7 COR, DAYS INN MTEL, 5827 CARAVAN CT., ORLANDO, FL
8 ALLA VELBAUM, 5827 CARAVAN CT., ORLANDO, FL
9 SPECIAL AGENT S. SAVAGE, FBI, FL
10 TASK FORCE OFFICER HOCHULI, FBI, FL
11 OFFICER MARK CANTY, ORLANDO FLORIDA PD
12 OFFICER JERRY JERASINE, ORLANDO FLORIDA PD
13 EMMETT BROWNING, ORLANDO FLORIDA PD
14 DOUG THOMAS, CRIME SCENE UNIT, ORLANDO FLORIDA PD
15
16
17
18
19
20
21
22
23
24
25

26 02AG071X/02F17461X:lg
27 LVMPD EV# 0208212083
28 MURD WDW; THEFT; RWDW - F

EXHIBIT A5

EXHIBIT A5

ORIGINAL

1 GMEM
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

FILED IN OPEN COURT

JUN 21 2002

SHIRLEY B. PARRAGUIRRE, CLERK

DISTRICT COURT BY Denise Husted
CLARK COUNTY, NEVADA
DENISE HUSTED DEPUTY

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JOSE MANUEL VIGOA,
12 aka Jose Manuel Vigoa-Perez,
13 #0697364

14 Defendant.

C168652 -
Case No. [REDACTED]
Dept. No. IV

15 GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty to: COUNT 1 - CONSPIRACY TO COMMIT ROBBERY
17 AND/OR MURDER (Felony - NRS 198.480, 200.010, 200.030, 200.380), COUNTS 2, 14 and
18 29 - BURGLARY WHILE IN POSSESSION OF A FIREARM (Felony - NRS 206.030,
19 193.165); COUNTS 3, 11, 12, 15, 23, 24 and 42 - POSSESSION OF FIREARM BY EX-
20 FELON (Felony - NRS 202.360); COUNTS 4, 5, 16, 17, 21, 22, 31, 32, 33, 34 and 35 -
21 ROBBERY WITH USE OF A DEADLY WEAPON (Felony - 200.380, 193.165); COUNTS
22 6, 7, 36 and 37 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS
23 193.330, 193.165, 200.080, 200.030), COUNTS 8, 9 and 10 - ATTEMPT ROBBERY WITH
24 USE OF A DEADLY WEAPON (Felony - NRS 193.330, 200.380, 193.165), COUNTS 13, 18,
25 25, 26, 27, 40 and 41 - POSSESSION OF STOLEN VEHICLE (Felony - NRS 205.273),
26 COUNTS 19 and 20 - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON
27 (Felony - NRS 200.080, 200.030, 193.165), COUNT 28 - CONSPIRACY TO COMMIT
28 BURGLARY (Gross Misdemeanor - NRS 205.060, 199.480); COUNT 30 - CONSPIRACY TO

COUNTY CLERK

JUN 24 2002

RECEIVED

1 COMMIT ROBBERY (Felony - NRS 200.380, 199.480); COUNT 38 - DISCHARGING
2 FIREARM OUT OF A MOTOR VEHICLE (Felony - NRS 202.287); COUNT 39 -
3 DISCHARGING FIREARM AT OR INTO VEHICLE (Felony - NRS 202.285); COUNT 43 -
4 STOP REQUIRED ON SIGNAL OF POLICE OFFICER (Felony - NRS 484.348); COUNT 44 -
5 CHILD ENDANGERMENT (Gross Misdemeanor - 200.508); COUNT 45 - CONSPIRACY TO
6 ESCAPE (Gross Misdemeanor - NRS 199.480, 212.090) and COUNT 46 - ATTEMPT ESCAPE
7 (Felony - NRS 193.330, 212.090), as more fully alleged in the charging document attached
8 hereto as Exhibit "1".

9 My decision to plead guilty is based upon the plea agreement in this case which is as
10 follows:

11 The Defendant agrees to enter a plea of guilty, under oath, to all counts. The parties
12 stipulate that the Defendant will receive the maximum sentence on all counts. The parties
13 stipulate that the Defendant will be sentenced to Life Without the Possibility of Parole on Counts
14 15 and 16, Murder With Use of a Deadly Weapon. Also, the parties stipulate that each count
15 will be served consecutive to each other count. This stipulation is intended to be binding on the
16 sentencing judge. If the sentencing judge decides not to accept this stipulation, either party may
17 withdraw from this stipulation and the parties will proceed to trial on all charges.

18 The State will urge the U.S. Attorney's Office to not file charges arising out of this case
19 against Defendant and his wife, Luisa Vigoa. The State will not file perjury charges against
20 Luisa Vigoa and her children. The State will not file further charges arising out of the instant
21 conspiracy unless other murders are uncovered by law enforcement. The State agrees that it will
22 not call Jose Vigoa as a witness in any proceedings concerning his accomplices.

23 Defendant does not intend to testify for any party concerning the events set forth in his
24 affidavit. The parties acknowledge that Defendant's affidavit is hearsay and inadmissible
25 evidence in any court proceeding in which Defendant is not a Defendant or a witness. The State
26 agrees that Defendant's affidavit will not be used against Pedro Duarte or Luis Suarez in any
27 proceeding in which Defendant is not a witness.

28 ///

1 **CONSEQUENCES OF THE PLEA**

2 I understand that by pleading guilty I admit the facts which support all the elements of
3 the offense(s) to which I now plead as set forth in Exhibit "1".

4 I understand that as a consequence of my plea of guilty the Court must sentence me to
5 imprisonment in the Nevada State Prison as follows:

6 **COUNT 1 - CONSPIRACY TO COMMIT ROBBERY AND/OR MURDER:** for a
7 minimum term of not less than TWENTY-FOUR (24) months and a maximum term of not more
8 than ONE HUNDRED TWENTY (120) months. The minimum term of imprisonment may not
9 exceed forty percent (40%) of the maximum term of imprisonment. I understand that I may also
10 be fined up to \$5,000.

11 **COUNT 2 - BURGLARY WHILE IN POSSESSION OF A FIREARM:** for a minimum term
12 of not less than TWENTY-FOUR (24) months and a maximum term of not more than ONE
13 HUNDRED EIGHTY (180) months. The minimum term of imprisonment may not exceed forty
14 percent (40%) of the maximum term of imprisonment. I understand that I may also be fined up
15 to \$10,000.

16 **COUNT 3 - POSSESSION OF FIREARM BY EX-FELON:** for a minimum term of not less
17 than TWELVE (12) months and a maximum term of not more than SEVENTY-TWO (72)
18 months. The minimum term of imprisonment may not exceed forty percent (40%) of the
19 maximum term of imprisonment. I understand that I may also be fined up to \$5,000.

20 **COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON:** for a minimum term of not
21 less than TWENTY-FOUR (24) months and a maximum term of not more than ONE
22 HUNDRED EIGHTY (180) months plus an equal and consecutive minimum term of not less
23 than TWENTY-FOUR (24) months and a maximum term of not more than ONE HUNDRED
24 EIGHTY (180) months. The minimum term of imprisonment may not exceed forty percent
25 (40%) of the maximum term of imprisonment.

26 **COUNT 5 - ROBBERY WITH USE OF A DEADLY WEAPON:** for a minimum term of not
27 less than TWENTY-FOUR (24) months and a maximum term of not more than ONE
28 HUNDRED EIGHTY (180) months plus an equal and consecutive minimum term of not less

1 than TWENTY-FOUR (24) months and a maximum term of not more than ONE HUNDRED
2 EIGHTY (180) months. The minimum term of imprisonment may not exceed forty percent
3 (40%) of the maximum term of imprisonment.

4 **COUNT 6 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON:** for a minimum
5 term of not less than TWENTY-FOUR (24) months and a maximum term of not more than TWO
6 HUNDRED FORTY (240) months plus an equal and consecutive minimum term of not less than
7 TWENTY-FOUR (24) months and a maximum term of not more than TWO HUNDRED
8 FORTY (240) months. The minimum term of imprisonment may not exceed forty percent (40%)
9 of the maximum term of imprisonment.

10 **COUNT 7 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON:** for a minimum
11 term of not less than TWENTY-FOUR (24) months and a maximum term of not more than TWO
12 HUNDRED FORTY (240) months plus an equal and consecutive minimum term of not less than
13 TWENTY-FOUR (24) months and a maximum term of not more than TWO HUNDRED
14 FORTY (240) months. The minimum term of imprisonment may not exceed forty percent (40%)
15 of the maximum term of imprisonment.

16 **COUNT 8 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON:** for a
17 minimum term of not less than TWELVE (12) months and a maximum term of not more than
18 ONE HUNDRED TWENTY (120) months plus an equal and consecutive minimum term of not
19 less than TWELVE (12) months and a maximum term of not more than ONE HUNDRED
20 TWENTY (120) months. The minimum term of imprisonment may not exceed forty percent
21 (40%) of the maximum term of imprisonment.

22 **COUNT 9 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON:** for a
23 minimum term of not less than TWELVE (12) months and a maximum term of not more than
24 ONE HUNDRED TWENTY (120) months plus an equal and consecutive minimum term of not
25 less than TWELVE (12) months and a maximum term of not more than ONE HUNDRED
26 TWENTY (120) months. The minimum term of imprisonment may not exceed forty percent
27 (40%) of the maximum term of imprisonment.

28 ///

1 **COUNT 10 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON:** for a
2 minimum term of not less than TWELVE (12) months and a maximum term of not more than
3 ONE HUNDRED TWENTY (120) months plus an equal and consecutive minimum term of not
4 less than TWELVE (12) months and a maximum term of not more than ONE HUNDRED
5 TWENTY (120) months. The minimum term of imprisonment may not exceed forty percent
6 (40%) of the maximum term of imprisonment.

7 **COUNT 11 - POSSESSION OF FIREARM BY EX-FELON:** for a minimum term of not less
8 than TWELVE (12) months and a maximum term of not more than SEVENTY-TWO (72)
9 months. The minimum term of imprisonment may not exceed forty percent (40%) of the
10 maximum term of imprisonment. I understand that I may also be fined up to \$5,000.

11 **COUNT 12 - POSSESSION OF FIREARM BY EX-FELON:** for a minimum term of not less
12 than TWELVE (12) months and a maximum term of not more than SEVENTY-TWO (72)
13 months. The minimum term of imprisonment may not exceed forty percent (40%) of the
14 maximum term of imprisonment. I understand that I may also be fined up to \$5,000.

15 **COUNT 13 - POSSESSION OF STOLEN VEHICLE:** for a minimum term of not less than
16 TWELVE (12) months and a maximum term of not more than ONE HUNDRED TWENTY
17 (120) months. The minimum term of imprisonment may not exceed forty percent (40%) of the
18 maximum term of imprisonment. I understand that I may also be fined up to \$10,000.

19 **COUNT 14 - BURGLARY WHILE IN POSSESSION OF A FIREARM:** for a minimum
20 term of not less than TWENTY-FOUR (24) months and a maximum term of not more than ONE
21 HUNDRED EIGHTY (180) months. The minimum term of imprisonment may not exceed forty
22 percent (40%) of the maximum term of imprisonment. I understand that I may also be fined up
23 to \$10,000.

24 **COUNT 15 - POSSESSION OF FIREARM BY EX-FELON:** for a minimum term of not less
25 than TWELVE (12) months and a maximum term of not more than SEVENTY-TWO (72)
26 months. The minimum term of imprisonment may not exceed forty percent (40%) of the
27 maximum term of imprisonment. I understand that I may also be fined up to \$5,000.

28 ///

1 **COUNT 16 - ROBBERY WITH USE OF A DEADLY WEAPON:** for a minimum term of
2 not less than TWENTY-FOUR (24) months and a maximum term of not more than ONE
3 HUNDRED EIGHTY (180) months plus an equal and consecutive minimum term of not less
4 than TWENTY-FOUR (24) months and a maximum term of not more than ONE HUNDRED
5 EIGHTY (180) months. The minimum term of imprisonment may not exceed forty percent
6 (40%) of the maximum term of imprisonment.

7 **COUNT 17 - ROBBERY WITH USE OF A DEADLY WEAPON:** for a minimum term of
8 not less than TWENTY-FOUR (24) months and a maximum term of not more than ONE
9 HUNDRED EIGHTY (180) months plus an equal and consecutive minimum term of not less
10 than TWENTY-FOUR (24) months and a maximum term of not more than ONE HUNDRED
11 EIGHTY (180) months. The minimum term of imprisonment may not exceed forty percent
12 (40%) of the maximum term of imprisonment.

13 **COUNT 18 - POSSESSION OF STOLEN VEHICLE:** for a minimum term of not less than
14 TWELVE (12) months and a maximum term of not more than ONE HUNDRED TWENTY
15 (120) months. The minimum term of imprisonment may not exceed forty percent (40%) of the
16 maximum term of imprisonment. I understand that I may also be fined up to \$10,000.

17 **COUNT 19 - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON:** for life
18 without the possibility of parole OR life with the possibility of parole with eligibility for parole
19 beginning at 20 yrs (240 months); OR a definite term of 50 yrs (600 months) with eligibility for
20 parole beginning at 20 yrs (240 months) plus an equal and consecutive term of life without the
21 possibility of parole OR life with the possibility of parole with eligibility for parole beginning
22 at 20 yrs (240 months); OR a definite term of 50 yrs (600 months) with eligibility for parole
23 beginning at 20 yrs (240 months).

24 **COUNT 20 - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON:** for life
25 without the possibility of parole OR life with the possibility of parole with eligibility for parole
26 beginning at 20 yrs (240 months); OR a definite term of 50 yrs (600 months) with eligibility for
27 parole beginning at 20 yrs (240 months) plus an equal and consecutive term of life without the
28 possibility of parole OR life with the possibility of parole with eligibility for parole beginning

1 at 20 yrs (240 months); OR a definite term of 50 yrs (600 months) with eligibility for parole
2 beginning at 20 yrs (240 months).

3 **COUNT 21 - ROBBERY WITH USE OF A DEADLY WEAPON:** for a minimum term of
4 not less than TWENTY-FOUR (24) months and a maximum term of not more than ONE
5 HUNDRED EIGHTY (180) months plus an equal and consecutive minimum term of not less
6 than TWENTY-FOUR (24) months and a maximum term of not more than ONE HUNDRED
7 EIGHTY (180) months. The minimum term of imprisonment may not exceed forty percent
8 (40%) of the maximum term of imprisonment.

9 **COUNT 22 - ROBBERY WITH USE OF A DEADLY WEAPON:** for a minimum term of
10 not less than TWENTY-FOUR (24) months and a maximum term of not more than ONE
11 HUNDRED EIGHTY (180) months plus an equal and consecutive minimum term of not less
12 than TWENTY-FOUR (24) months and a maximum term of not more than ONE HUNDRED
13 EIGHTY (180) months. The minimum term of imprisonment may not exceed forty percent
14 (40%) of the maximum term of imprisonment.

15 **COUNT 23 - POSSESSION OF FIREARM BY EX-FELON:** for a minimum term of not less
16 than TWELVE (12) months and a maximum term of not more than SEVENTY-TWO (72)
17 months. The minimum term of imprisonment may not exceed forty percent (40%) of the
18 maximum term of imprisonment. I understand that I may also be fined up to \$5,000.

19 **COUNT 24 - POSSESSION OF FIREARM BY EX-FELON:** for a minimum term of not less
20 than TWELVE (12) months and a maximum term of not more than SEVENTY-TWO (72)
21 months. The minimum term of imprisonment may not exceed forty percent (40%) of the
22 maximum term of imprisonment. I understand that I may also be fined up to \$5,000.

23 **COUNT 25 - POSSESSION OF STOLEN VEHICLE:** for a minimum term of not less than
24 TWELVE (12) months and a maximum term of not more than ONE HUNDRED TWENTY
25 (120) months. The minimum term of imprisonment may not exceed forty percent (40%) of the
26 maximum term of imprisonment. I understand that I may also be fined up to \$10,000.

27 **COUNT 26 - POSSESSION OF STOLEN VEHICLE:** for a minimum term of not less than
28 TWELVE (12) months and a maximum term of not more than ONE HUNDRED TWENTY

1 (120) months. The minimum term of imprisonment may not exceed forty percent (40%) of the
2 maximum term of imprisonment. I understand that I may also be fined up to \$10,000.
3 **COUNT 27 - POSSESSION OF STOLEN VEHICLE:** for a minimum term of not less than
4 TWELVE (12) months and a maximum term of not more than ONE HUNDRED TWENTY
5 (120) months. The minimum term of imprisonment may not exceed forty percent (40%) of the
6 maximum term of imprisonment. I understand that I may also be fined up to \$10,000.
7 **COUNT 28 - CONSPIRACY TO COMMIT BURGLARY:** to the Clark County Detention
8 Center for a period of not more than one (1) year and/or a fine up to \$2,000.00.
9 **COUNT 29 - BURGLARY WHILE IN POSSESSION OF A FIREARM:** for a minimum
10 term of not less than TWENTY-FOUR (24) months and a maximum term of not more than ONE
11 HUNDRED EIGHTY (180) months. The minimum term of imprisonment may not exceed forty
12 percent (40%) of the maximum term of imprisonment. I understand that I may also be fined up
13 to \$10,000.
14 **COUNT 30- CONSPIRACY TO COMMIT ROBBERY:** for a minimum term of not less than
15 TWELVE (12) months and a maximum term of not more than SEVENTY-TWO (72) months.
16 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum term
17 of imprisonment.
18 **COUNT 31 - ROBBERY WITH USE OF A DEADLY WEAPON:** for a minimum term of
19 not less than TWENTY-FOUR (24) months and a maximum term of not more than ONE
20 HUNDRED EIGHTY (180) months plus an equal and consecutive minimum term of not less
21 than TWENTY-FOUR (24) months and a maximum term of not more than ONE HUNDRED
22 EIGHTY (180) months. The minimum term of imprisonment may not exceed forty percent
23 (40%) of the maximum term of imprisonment.
24 **COUNT 32 - ROBBERY WITH USE OF A DEADLY WEAPON:** for a minimum term of
25 not less than TWENTY-FOUR (24) months and a maximum term of not more than ONE
26 HUNDRED EIGHTY (180) months plus an equal and consecutive minimum term of not less
27 than TWENTY-FOUR (24) months and a maximum term of not more than ONE HUNDRED
28 EIGHTY (180) months. The minimum term of imprisonment may not exceed forty percent

1 (40%) of the maximum term of imprisonment.

2 **COUNT 33 - ROBBERY WITH USE OF A DEADLY WEAPON:** for a minimum term of
3 not less than TWENTY-FOUR (24) months and a maximum term of not more than ONE
4 HUNDRED EIGHTY (180) months plus an equal and consecutive minimum term of not less
5 than TWENTY-FOUR (24) months and a maximum term of not more than ONE HUNDRED
6 EIGHTY (180) months. The minimum term of imprisonment may not exceed forty percent
7 (40%) of the maximum term of imprisonment.

8 **COUNT 34 - ROBBERY WITH USE OF A DEADLY WEAPON:** for a minimum term of
9 not less than TWENTY-FOUR (24) months and a maximum term of not more than ONE
10 HUNDRED EIGHTY (180) months plus an equal and consecutive minimum term of not less
11 than TWENTY-FOUR (24) months and a maximum term of not more than ONE HUNDRED
12 EIGHTY (180) months. The minimum term of imprisonment may not exceed forty percent
13 (40%) of the maximum term of imprisonment.

14 **COUNT 35 - ROBBERY WITH USE OF A DEADLY WEAPON:** for a minimum term of
15 not less than TWENTY-FOUR (24) months and a maximum term of not more than ONE
16 HUNDRED EIGHTY (180) months plus an equal and consecutive minimum term of not less
17 than TWENTY-FOUR (24) months and a maximum term of not more than ONE HUNDRED
18 EIGHTY (180) months. The minimum term of imprisonment may not exceed forty percent
19 (40%) of the maximum term of imprisonment.

20 **COUNT 36 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON:** for a
21 minimum term of not less than TWENTY-FOUR (24) months and a maximum term of not more
22 than TWO HUNDRED FORTY (240) months plus an equal and consecutive minimum term of
23 not less than TWENTY-FOUR (24) months and a maximum term of not more than TWO
24 HUNDRED FORTY (240) months. The minimum term of imprisonment may not exceed forty
25 percent (40%) of the maximum term of imprisonment.

26 **COUNT 37 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON:** for a
27 minimum term of not less than TWENTY-FOUR (24) months and a maximum term of not more
28 than TWO HUNDRED FORTY (240) months plus an equal and consecutive minimum term of

1 not less than TWENTY-FOUR (24) months and a maximum term of not more than TWO
2 HUNDRED FORTY (240) months. The minimum term of imprisonment may not exceed forty
3 percent (40%) of the maximum term of imprisonment.

4 **COUNT 38 - DISCHARGING FIREARM OUT OF MOTOR VEHICLE:** for a minimum
5 term of not less than TWENTY-FOUR (24) months and a maximum term of not more than ONE
6 HUNDRED EIGHTY (180) months. The minimum term of imprisonment may not exceed forty
7 percent (40%) of the maximum term of imprisonment. I understand that I may also be fined up
8 to \$5,000.

9 **COUNT 39 - DISCHARGING FIREARM AT OR INTO VEHICLE:** for a minimum term
10 of not less than TWELVE (12) months and a maximum term of not more than SEVENTY-TWO
11 (72) months. The minimum term of imprisonment may not exceed forty percent (40%) of the
12 maximum term of imprisonment. I understand that I may also be fined up to \$5,000.

13 **COUNT 40 - POSSESSION OF STOLEN VEHICLE:** for a minimum term of not less than
14 TWELVE (12) months and a maximum term of not more than ONE HUNDRED TWENTY
15 (120) months. The minimum term of imprisonment may not exceed forty percent (40%) of the
16 maximum term of imprisonment. I understand that I may also be fined up to \$10,000.

17 **COUNT 41 - POSSESSION OF STOLEN VEHICLE:** for a minimum term of not less than
18 TWELVE (12) months and a maximum term of not more than ONE HUNDRED TWENTY
19 (120) months. The minimum term of imprisonment may not exceed forty percent (40%) of the
20 maximum term of imprisonment. I understand that I may also be fined up to \$10,000.

21 **COUNT 42 - POSSESSION OF FIREARM BY EX-FELON:** for a minimum term of not less
22 than TWELVE (12) months and a maximum term of not more than SEVENTY-TWO (72)
23 months. The minimum term of imprisonment may not exceed forty percent (40%) of the
24 maximum term of imprisonment. I understand that I may also be fined up to \$5,000.

25 **COUNT 43 - STOP REQUIRED ON SIGNAL OF POLICE OFFICER:** for a minimum
26 term of not less than TWELVE (12) months and a maximum term of not more than SEVENTY-
27 TWO (72) months. The minimum term of imprisonment may not exceed forty percent (40%)
28 of the maximum term of imprisonment. I understand that I may also be fined up to \$5,000.

1 **COUNT 44- CHILD ENDANGERMENT:** to the Clark County Detention Center for a period
2 of not more than one (1) year and/or a fine up to \$2,000.00.

3 **COUNT 45 - CONSPIRACY TO ESCAPE:** to the Clark County Detention Center for a
4 period of not more than one (1) year and/or a fine up to \$2,000.00.

5 **COUNT 46 - ATTEMPT ESCAPE:** for a minimum term of not less than TWELVE (12)
6 months and a maximum term of not more than ONE HUNDRED TWENTY (120) months. The
7 minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of
8 imprisonment. I understand that I may also be fined up to \$10,000.

9 I understand that the law requires me to pay an Administrative Assessment Fee.

10 I understand that, if appropriate, I will be ordered to make restitution to the victim of the
11 offense(s) to which I am pleading guilty and to the victim of any related offense which is being
12 dismissed or not prosecuted pursuant to this agreement. I will also be ordered to reimburse the
13 State of Nevada for any expenses related to my extradition, if any.

14 I understand that I am not eligible for probation for the offenses to which I am pleading
15 guilty.

16 I understand that if more than one sentence of imprisonment is imposed and I am eligible
17 to serve the sentences concurrently, the sentencing judge does not have the discretion to order
18 the sentences served concurrently or consecutively.

19 I also understand that information regarding charges not filed, dismissed charges, or
20 charges to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

21 I have not been promised or guaranteed any particular sentence by anyone. I know that
22 my sentence is to be determined by the Court within the limits prescribed by statute. I
23 understand that if my attorney or the State of Nevada or both recommend any specific
24 punishment to the Court, the Court is not obligated to accept the recommendation.

25 I understand that the Division of Parole and Probation will prepare a report for the
26 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
27 sentencing, including my criminal history. This report may contain hearsay information
28 regarding my background and criminal history. My attorney and I will each have the opportunity

1 to comment on the information contained in the report at the time of sentencing. Unless the
2 District Attorney has specifically agreed otherwise, then the District Attorney may also comment
3 on this report.

4 **WAIVER OF RIGHTS**

5 By entering my plea of guilty, I understand that I am waiving and forever giving up the
6 following rights and privileges:

7 1. The constitutional privilege against self-incrimination, including the right to refuse to
8 testify at trial, in which event the prosecution would not be allowed to comment to the jury about
9 my refusal to testify.

10 2. The constitutional right to a speedy and public trial by an impartial jury, free of
11 excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the
12 assistance of an attorney, either appointed or retained. At trial the State would bear the burden
13 of proving beyond a reasonable doubt each element of the offense charged.

14 3. The constitutional right to confront and cross-examine any witnesses who would
15 testify against me.

16 4. The constitutional right to subpoena witnesses to testify on my behalf.

17 5. The constitutional right to testify in my own defense.

18 6. The right to appeal the conviction, with the assistance of an attorney, either appointed
19 or retained, unless the appeal is based upon reasonable constitutional jurisdictional or other
20 grounds that challenge the legality of the proceedings and except as otherwise provided in
21 subsection 3 of NRS 174.035.

22 **VOLUNTARINESS OF PLEA**

23 I have discussed the elements of all of the original charge(s) against me with my attorney
24 and I understand the nature of the charge(s) against me.

25 I understand that the State would have to prove each element of the charge(s) against me
26 at trial.

27 I have discussed with my attorney any possible defenses, defense strategies and
28 circumstances which might be in my favor.

1 All of the foregoing elements, consequences, rights, and waiver of rights have been
2 thoroughly explained to me by my attorney.

3 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
4 that a trial would be contrary to my best interest.

5 I am signing this agreement voluntarily, after consultation with my attorney, and I am not
6 acting under duress or coercion or by virtue of any promises of leniency, except for those set
7 forth in this agreement.

8 I am not now under the influence of any intoxicating liquor, a controlled substance or
9 other drug which would in any manner impair my ability to comprehend or understand this
10 agreement or the proceedings surrounding my entry of this plea.

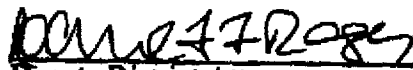
11 My attorney has answered all my questions regarding this guilty plea agreement and its
12 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

13 DATED this 20 day of June, 2002

14 

15 JOSE MANUEL VIGOA
16 aka Jose Manuel Vigoa-Perez
17 Defendant

18 AGREED TO BY:

19
20 

21 Deputy District Attorney
22
23
24
25
26
27
28

1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of
3 the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations contained in the charge(s) to
5 which guilty pleas are being entered.

6 2. I have advised the Defendant of the penalties for each charge and the restitution that
7 the Defendant may be ordered to pay.

8 3. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent
9 with the facts known to me and are made with my advice to the Defendant.

10 4. To the best of my knowledge and belief, the Defendant:

11 a. Is competent and understands the charges and the consequences of pleading
12 guilty as provided in this agreement.

13 b. Executed this agreement and will enter all guilty pleas pursuant hereto
14 voluntarily.

15 c. Was not under the influence of intoxicating liquor, a controlled substance or
16 other drug at the time I consulted with the defendant as certified in paragraphs 1
17 and 2 above.

18 Dated: This 20 day of June, 2002.

19 
20 
21 ATTORNEY FOR DEFENDANT

1 INFO
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 JOSE MANUEL VIGOA,
13 aka Jose Manuel Vigoa-Perez,
14 #0697364

Defendant.

Case No. C180124
Dept. No. IV

AMENDED
INFORMATION

15
16 STATE OF NEVADA }
17 COUNTY OF CLARK } ss:

18 STEWART L. BELL, District Attorney within and for the County of Clark, State of
19 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

20 That JOSE MANUEL VIGOA, aka Jose Manuel Vigoa-Perez, the Defendant above
21 named, having committed the crimes of CONSPIRACY TO COMMIT ROBBERY AND/OR
22 MURDER (Felony - NRS 198.480, 200.010, 200.030, 200.380), BURGLARY WHILE IN
23 POSSESSION OF A FIREARM (Felony - NRS 206.030, 193.165); POSSESSION OF
24 FIREARM BY EX-FELON (Felony - NRS 202.360); ROBBERY WITH USE OF A
25 DEADLY WEAPON (Felony - 200.380, 193.165); ATTEMPT MURDER WITH USE OF
26 A DEADLY WEAPON (Felony - NRS 193.330, 193.165, 200.080, 200.030), ATTEMPT
27 ROBBERY WITH USE OF A DEADLY WEAPON (Felony -NRS 193.330, 200.380,
28 193.165), POSSESSION OF STOLEN VEHICLE (Felony - NRS 205.273), FIRST

1 DEGREE MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.080,
2 200.030, 193.165), CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor - NRS
3 205.060, 199.480); CONSPIRACY TO COMMIT ROBBERY (Felony - NRS 200.380,
4 199.480); DISCHARGING FIREARM OUT OF A MOTOR VEHICLE (Felony - NRS
5 202.287); DISCHARGING FIREARM AT OR INTO VEHICLE (Felony - NRS 202.285);
6 STOP REQUIRED ON SIGNAL OF POLICE OFFICER (Felony - NRS 484.348); CHILD
7 ENDANGERMENT (Gross Misdemeanor - 200.508); and POSSESSION OF A FIREARM
8 BY EX-FELON (Felony - NRS 202.360); CONSPIRACY TO ESCAPE (Gross
9 Misdemeanor - NRS 199.480, 212.090) and ATTEMPT ESCAPE (Felony - NRS 193.330,
10 212.090) on or between September 19, 1998, and June 3, 2002, within the County of Clark, State
11 of Nevada, contrary to the form, force and effect of statutes in such cases made and provided,
12 and against the peace and dignity of the State of Nevada,

13 COUNT 1 - CONSPIRACY TO COMMIT ROBBERY AND/OR MURDER

14 did, on or between September 19, 1998, and June 10, 2000, then and there meet with
15 PEDRO RAFAEL DUARTE, OSCAR SANCHEZ CISNEROS, LUIS SUAREZ, and
16 UNIDENTIFIED INDIVIDUALS, and between themselves and each of them with the other,
17 wilfully, unlawfully and feloniously conspire and agree to commit the crime of Robbery and/or
18 Murder, and in furtherance of said conspiracy, Defendant JOSE MANUEL VIGOA did commit
19 the acts as set forth in Counts 2 through 21, said acts being incorporated by this reference as
20 though fully set forth herein.

21 COUNT 2 - BURGLARY WHILE IN POSSESSION OF A FIREARM

22 did, on or about the 20th day of September, 1998, then and there wilfully, unlawfully,
23 and feloniously enter, with intent to commit robbery and/or murder, while in possession of a
24 firearm, that certain building occupied by MGM GRAND HOTEL, located at 3799 Las Vegas
25 Boulevard South, Las Vegas, Clark County, Nevada.

26 COUNT 3 - POSSESSION OF FIREARM BY EX-FELON

27 Defendant JOSE MANUEL VIGOA, aka Jose Manuel Vigoa-Perez, did, on or about the
28 20th day of September, 1998, then and there wilfully, unlawfully, and feloniously own or have

1 in his possession, or under his control, a weapon, to-wit: firearms, the said JOSE MANUEL
2 VIGOA, aka Jose Manuel Vigoa-Perez being an ex-felon, having in February, 1991, been
3 convicted of Conspiracy to Possess With Intent to Distribute Cocaine, Distribution of Cocaine,
4 Possession of Cocaine With Intent to Distribute, and Assault Upon Federal Officers, in the
5 United States District Court for the District of Nevada, in Case No. CR-S-90-164-P.P. (LCL),
6 a felony under the laws of the State of Nevada.

7 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

8 did, on or about 20th day of September, 1998 then and there wilfully, unlawfully, and
9 feloniously take personal property, to-wit: U.S. Currency and a Smith & Wesson .38 revolver,
10 bearing Serial No. #BDB3765, from the person of WERNER BOEHNKE, or in his presence,
11 by means of force or violence, or fear of injury to, and without the consent and against the will
12 of the said WERNER BOEHNKE, said Defendant using a deadly weapon, to-wit: a firearm,
13 during the commission of said crime; Defendant and OSCAR SANCHEZ CISNEROS aiding
14 or abetting each other in the commission of said acts by acting in concert with each other, and/or
15 being present before during and after said crime; and/or Defendant and OSCAR SANCHEZ
16 CISNEROS directly or indirectly counseling, encouraging, assisting, commanding, inducing or
17 supervising the actions of the other; and/or Defendant and OSCAR SANCHEZ CISNEROS
18 acting pursuant to a Conspiracy to Commit Robbery and/or Murder.

19 COUNT 5 - ROBBERY WITH USE OF A DEADLY WEAPON

20 did, on or about 20th day of September, 1998, then and there wilfully, unlawfully, and
21 feloniously take personal property, to-wit: U.S. Currency and a Smith & Wesson .38 revolver,
22 bearing Serial No. #BDE5765, from the person of BRIAN LANE, or in his presence, by means
23 of force or violence, or fear of injury to, and without the consent and against the will of the said
24 BRIAN LANE, said Defendant using a deadly weapon, to-wit: a firearm, during the commission
25 of said crime; Defendant and OSCAR SANCHEZ CISNEROS aiding or abetting each other in
26 the commission of said acts by acting in concert with each other; and/or being present before
27 during and after said crime; and/or Defendant and OSCAR SANCHEZ CISNEROS, directly or
28 indirectly counseling, encouraging, assisting, commanding, inducing or supervising the actions

1 of the other; and/or Defendant and OSCAR SANCHEZ CISNEROS acting pursuant to a
2 Conspiracy to Commit Robbery and/or Murder.

3 **COUNT 6 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON**

4 did, on or about the 28th day of June, 1999, then and there, without authority of law and
5 malice aforethought, wilfully and feloniously attempt to kill DONALD BOWMAN, a human
6 being, by shooting at and into the body of said DONALD BOWMAN, with a deadly weapon,
7 to-wit: firearms: Glock Model 21 semi-automatic firearm, bearing Serial No. CMZ184US
8 and/or Norinco Mak 90 assault rifle, bearing Serial No. 616488; Defendant JOSE MANUEL
9 VIGOA, aka Jose Manuel Vigoa-Perez, and OSCAR SANCHEZ CISNEROS directly
10 committing said acts; and/or Defendant, PEDRO RAFAEL DUARTE and OSCAR SANCHEZ
11 CISNEROS, aiding or abetting each other in the commission of said acts by acting in concert
12 with each other; and/or Defendant, PEDRO RAFAEL DUARTE and OSCAR SANCHEZ
13 CISNEROS, being present before during and after said crime; and/or Defendant, PEDRO
14 RAFAEL DUARTE and OSCAR SANCHEZ CISNEROS, directly or indirectly counseling,
15 encouraging, assisting, commanding, inducing or supervising the actions of the other; and/or
16 PEDRO RAFAEL DUARTE driving the getaway vehicle; and/or Defendant, PEDRO RAFAEL
17 DUARTE and OSCAR SANCHEZ CISNEROS acting pursuant to a Conspiracy to Commit
18 Robbery and/or Murder.

19 **COUNT 7 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON**

20 did, on or about the 28th day of June, 1999, then and there, without authority of law and
21 malice aforethought, wilfully and feloniously attempt to kill CHARLEY FICHTER, a human
22 being, by shooting at and into the body of said CHARLEY FICHTER, with a deadly weapon,
23 to-wit: firearms: Glock Model 21 semi-automatic firearm, bearing Serial No. CMZ184US
24 and/or Norinco Mak 90 assault rifle, bearing Serial No. 616488; Defendant JOSE MANUEL
25 VIGOA, aka Jose Manuel Vigoa-Perez, and OSCAR SANCHEZ CISNEROS directly
26 committing said acts; and/or Defendant, PEDRO RAFAEL DUARTE and OSCAR SANCHEZ
27 CISNEROS, aiding or abetting each other in the commission of said acts by acting in concert
28 with each other; and/or Defendant, PEDRO RAFAEL DUARTE and OSCAR SANCHEZ

1 CISNEROS, being present before during and after said crime; and/or Defendant, PEDRO
2 RAFAEL DUARTE and OSCAR SANCHEZ CISNEROS, directly or indirectly counseling,
3 encouraging, assisting, commanding, inducing or supervising the actions of the other; and/or
4 PEDRO RAFAEL DUARTE driving the getaway vehicle; and/or Defendant, PEDRO RAFAEL
5 DUARTE and OSCAR SANCHEZ CISNEROS acting pursuant to a Conspiracy to Commit
6 Robbery and/or Murder.

7 COUNT 8 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

8 did, on or about the 28th day of June, 1999, did then and there wilfully, unlawfully and
9 feloniously attempt to take personal property, to-wit: U.S. Currency, from the person of
10 DONALD BOWMAN, or in his presence, by means of force or violence, or fear of injury to, and
11 without the consent and against the will of the said DONALD BOWMAN, Defendant using a
12 deadly weapon, to-wit: firearms: Glock Model 21 semi-automatic firearm bearing Serial No.
13 CMZ184US and/or Norinco Mak 90 assault rifle, bearing Serial No. 616488, during the
14 commission of said crime; by Defendant, PEDRO RAFAEL DUARTE and OSCAR SANCHEZ
15 CISNEROS shooting at the said victim for the purpose of obtaining U.S. Currency from the
16 armored truck; and/or Defendant, PEDRO RAFAEL DUARTE and OSCAR SANCHEZ
17 CISNEROS, aiding or abetting each other in the commission of said acts by acting in concert
18 with each other; and/or Defendant, PEDRO RAFAEL DUARTE and OSCAR SANCHEZ
19 CISNEROS, being present before during and after said crime; and/or Defendant, PEDRO
20 RAFAEL DUARTE and OSCAR SANCHEZ CISNEROS, directly or indirectly counseling,
21 encouraging, assisting, commanding, inducing or supervising the actions of the other; and/or
22 PEDRO RAFAEL DUARTE driving the getaway vehicle; and/or Defendant, PEDRO RAFAEL
23 DUARTE and OSCAR SANCHEZ CISNEROS acting pursuant to a Conspiracy to Commit
24 Robbery and/or Murder.

25 COUNT 9 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

26 did, on or about the 28th day of June, 1999, did then and there wilfully, unlawfully and
27 feloniously attempt to take personal property, to-wit: U.S. Currency, from the person of
28 CHARLEY FICHTER, or in his presence, by means of force or violence, or fear of injury to, and

1 without the consent and against the will of the said CHARLEY FICHTER, Defendant using a
2 deadly weapon, to-wit: firearms: Glock Model 21 semi-automatic firearm with Serial No.
3 CMZ184US and/or Norinco Mak 90 assault rifle, Bearing Serial No. 616488, during the
4 commission of said crime; by Defendant, PEDRO RAFAEL DUARTE and OSCAR SANCHEZ
5 CISNEROS shooting at the said victim for the purpose of obtaining U.S. Currency from the
6 armored truck; and/or Defendant, PEDRO RAFAEL DUARTE and OSCAR SANCHEZ
7 CISNEROS, aiding or abetting each other in the commission of said acts by acting in concert
8 with each other; and/or Defendant, PEDRO RAFAEL DUARTE and OSCAR SANCHEZ
9 CISNEROS, being present before during and after said crime; and/or Defendant, PEDRO
10 RAFAEL DUARTE and OSCAR SANCHEZ CISNEROS, directly or indirectly counseling,
11 encouraging, assisting, commanding, inducing or supervising the actions of the other, and/or
12 PEDRO RAFAEL DUARTE driving the getaway vehicle; and/or Defendant, PEDRO RAFAEL
13 DUARTE and OSCAR SANCHEZ CISNEROS acting pursuant to a Conspiracy to Commit
14 Robbery and/or Murder.

15 **COUNT 10 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON**

16 did, on or about the 28th day of June, 1999, did then and there wilfully, unlawfully and
17 feloniously attempt to take personal property, to-wit: U.S. Currency, from the person of
18 RANDY EASTON, or in his presence, by means of force or violence, or fear of injury to, and
19 without the consent and against the will of the said RANDY EASTON, Defendant using a
20 deadly weapon, to-wit: firearms: Glock Model 21 semi-automatic firearm with Serial No.
21 CMZ184US and/or Norinco Mak 90 assault rifle, Bearing Serial No. 616488, during the
22 commission of said crime; by Defendant, PEDRO RAFAEL DUARTE and OSCAR SANCHEZ
23 CISNEROS shooting at the said victim for the purpose of obtaining U.S. Currency from the
24 armored truck; and/or Defendant, PEDRO RAFAEL DUARTE and OSCAR SANCHEZ
25 CISNEROS, aiding or abetting each other in the commission of said acts by acting in concert
26 with each other; and/or Defendant, PEDRO RAFAEL DUARTE and OSCAR SANCHEZ
27 CISNEROS, being present before during and after said crime; and/or Defendant, PEDRO
28 RAFAEL DUARTE and OSCAR SANCHEZ CISNEROS, directly or indirectly counseling,

1 encouraging, assisting, commanding, inducing or supervising the actions of the other; and/or
2 PEDRO RAFAEL DUARTE driving the getaway vehicle; and/or Defendant, PEDRO RAFAEL
3 DUARTE and OSCAR SANCHEZ CISNEROS acting pursuant to a Conspiracy to Commit
4 Robbery and/or Murder.

5 COUNT 11 - POSSESSION OF FIREARM BY EX-FELON

6 Defendant JOSE MANUEL VIGOA, aka Jose Manuel Vigoa-Perez, did, on or about the
7 28th day of June, 1999, then and there wilfully, unlawfully, and feloniously own or have in his
8 possession, or under his control, a weapon, to-wit: Norinco Mak 90 assault rifle, bearing Serial
9 No. 616488, the said JOSE MANUEL VIGOA, aka Jose Manuel Vigoa-Perez being an ex-felon,
10 having in February, 1991, been convicted of Conspiracy to Possess With Intent to Distribute
11 Cocaine, Distribution of Cocaine, Possession of Cocaine With Intent to Distribute, and Assault
12 Upon Federal Officers, in the United States District Court for the District of Nevada, in Case No.
13 CR-S-90-164-PMP (LRL), a felony under the laws of the State of Nevada.

14 COUNT 12 - POSSESSION OF FIREARM BY EX-FELON

15 Defendant JOSE MANUEL VIGOA, aka Jose Manuel Vigoa-Perez, did, on or about the
16 28th day of June, 1999, then and there wilfully, unlawfully, and feloniously own or have in his
17 possession, or under his control, a weapon, to-wit: Glock Model 21 semi-automatic firearm,
18 bearing Serial No. CMZ184US, the said JOSE MANUEL VIGOA, aka Jose Manuel Vigoa-
19 Perez being an ex-felon, having in February, 1991, been convicted of Conspiracy to Possess
20 With Intent to Distribute Cocaine, Distribution of Cocaine, Possession of Cocaine With Intent
21 to Distribute, and Assault Upon Federal Officers, in the United States District Court for the
22 District of Nevada, in Case No. CR-S-90-164-PMP (LRL), a felony under the laws of the State
23 of Nevada.

24 COUNT 13 - POSSESSION OF STOLEN VEHICLE

25 did, on or about the 28th day of June, 1999, then and there wilfully, unlawfully, and
26 feloniously possess a stolen motor vehicle wrongfully taken from CURTIS YVONNE LEWIS,
27 while in the possession of KENNETH PANIELLO, to-wit: a 1995 Isuzu Rodeo, bearing
28 VIN#4S2CG58V5S4302390, and stolen Nevada License Plate No. 294-HNS, which Defendant

1 knew, or had reason to believe, had been stolen.

2 **COUNT 14 - BURGLARY WHILE IN POSSESSION OF A FIREARM**

3 did, on or about the 11th day of October, 1999, then and there wilfully, unlawfully, and
4 feloniously enter, with intent to commit robbery and/or murder, while in possession of a firearm,
5 that certain building occupied by MANDALAY BAY HOTEL, located at 3950 Las Vegas
6 Boulevard South, Las Vegas, Clark County, Nevada.

7 **COUNT 15 - POSSESSION OF FIREARM BY EX-FELON**

8 Defendant JOSE MANUEL VIGOA, aka Jose Manuel Vigoa-Perez, did, on or about the
9 11th day of October, 1999, then and there wilfully, unlawfully, and feloniously own or have in
10 his possession, or under his control, a weapon, to-wit: firearms, the said JOSE MANUEL
11 VIGOA, aka Jose Manuel Vigoa-Perez being an ex-felon, having in February, 1991, been
12 convicted of Conspiracy to Possess With Intent to Distribute Cocaine, Distribution of Cocaine,
13 Possession of Cocaine With Intent to Distribute, and Assault Upon Federal Officers, in the
14 United States District Court for the District of Nevada, in Case No. CR-S-90-164-PMP (LRL),
15 a felony under the laws of the State of Nevada.

16 **COUNT 16 - ROBBERY WITH USE OF A DEADLY WEAPON**

17 did, on or about the 11th day of October, 1999, then and there wilfully, unlawfully, and
18 feloniously take personal property, to-wit: U.S. Currency and Smith & Wesson .38 caliber
19 revolver, bearing Serial No. CCT5873, from the person of KYLE CARNEY, or in his presence,
20 by means of force or violence, or fear of injury to, and without the consent and against the will
21 of the said KYLE CARNEY, said Defendant using a deadly weapon, to-wit: a firearm, during
22 the commission of said crime; Defendant and OSCAR SANCHEZ CISNEROS aiding or
23 abetting each other in the commission of said acts by acting in concert with each other; and/or
24 being present before during and after said crime; and/or Defendant and OSCAR SANCHEZ
25 CISNEROS, directly or indirectly counseling, encouraging, assisting, commanding, inducing or
26 supervising the actions of the other; and/or Defendant and OSCAR SANCHEZ CISNEROS
27 acting pursuant to a Conspiracy to Commit Robbery and/or Murder.

28 ///

1 COUNT 17 - ROBBERY WITH USE OF A DEADLY WEAPON

2 did, on or about the 11th day of October, 1999, then and there wilfully, unlawfully, and
3 feloniously take personal property, to-wit: U.S. Currency and Smith & Wesson .40 caliber
4 revolver firearm, bearing Serial No. EKZ8317, from the person of KENNETH HUDERSKI, or
5 in his presence, by means of force or violence, or fear of injury to, and without the consent and
6 against the will of the said KENNETH HUDERSKI, said Defendant using a deadly weapon, to-
7 wit: a firearm, during the commission of said crime; Defendant and OSCAR SANCHEZ
8 CISNEROS aiding or abetting each other in the commission of said acts by acting in concert
9 with each other, and/or being present before during and after said crime; and/or Defendant and
10 OSCAR SANCHEZ CISNEROS, directly or indirectly counseling, encouraging, assisting,
11 commanding, inducing or supervising the actions of the other, and/or Defendant and OSCAR
12 SANCHEZ CISNEROS acting pursuant to a Conspiracy to Commit Robbery and/or Murder.

13 COUNT 18 - POSSESSION OF STOLEN VEHICLE

14 did, on or about the 11th day of October, 1999, then and there wilfully, unlawfully, and
15 feloniously possess a stolen motor vehicle wrongfully taken from THRIFTY CAR RENTAL,
16 376 Warm Springs Road, Las Vegas, Clark County, Nevada, to-wit: a 1999 Jeep Grand
17 Cherokee, bearing VIN#1J4GW58S1XC619922, and stolen California License Plate #4FNR022,
18 which Defendant knew, or had reason to believe, had been stolen.

19 COUNT 19 - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (OPEN
20 MURDER)

21 did, on or about March 3, 2000, then and there, without authority of law, with malice
22 aforethought and premeditation and deliberation and/or by means of lying in wait and/or during
23 the perpetration or attempted perpetration of Robbery, wilfully and feloniously kill RICHARD
24 SAMAYOA SOSA, a human being, by shooting at and into the body of RICHARD SAMAYOA
25 SOSA, said Defendant using a deadly weapon, to-wit: a Norinco Mak 90 assault rifle bearing
26 serial #616488 and/or Smith and Wesson .38 caliber firearm bearing serial # CCT5873, during
27 the commission of said crime, defendant JOSE MANUEL VIGO, aka Jose Manuel Vigoa-
28 Perez, directly committing said acts and/or Defendant, OSCAR SANCHEZ CISNEROS and

1 LUIS SUAREZ aiding or abetting each other in the commission of said acts by acting in concert
2 with each other; and/or Defendant, OSCAR SANCHEZ CISNEROS AND LUIS SUAREZ
3 being present before, during and after said crime; and/or Defendant, OSCAR SANCHEZ
4 CISNEROS AND LUIS SUAREZ directly or indirectly counseling, encouraging, assisting,
5 commanding, inducing or supervising the actions of the other; and/or Defendant, OSCAR
6 SANCHEZ CISNEROS AND LUIS SUAREZ acting pursuant to a Conspiracy to Commit
7 Robbery and/or Murder.

8 COUNT 20 - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (OPEN
9 MURDER)

10 did, on or about March 3, 2000, then and there, without authority of law, with malice
11 aforethought and premeditation and/or by means of lying in wait and/or during the perpetration
12 or attempted perpetration of Robbery, wilfully and feloniously kill GARY DEAN PRESTIDGE,
13 a human being, by shooting at and into the body of GARY DEAN PRESTIDGE, said Defendant
14 using a deadly weapon, to-wit: a Norinco Mak 90 assault rifle bearing serial #616488 and/or
15 Smith and Wesson .38 caliber firearm bearing serial # CCT5873, during the commission of said
16 crime, defendant JOSE MANUEL VIGOA, aka Jose Manuel Vigoa-Perez, directly committing
17 said acts and/or Defendant, OSCAR SANCHEZ CISNEROS and LUIS SUAREZ aiding or
18 abetting each other in the commission of said acts by acting in concert with each other; and/or
19 Defendant, OSCAR SANCHEZ CISNEROS AND LUIS SUAREZ being present before, during
20 and after said crime; and/or Defendant, OSCAR SANCHEZ CISNEROS AND LUIS SUAREZ
21 directly or indirectly counseling, encouraging, assisting, commanding, inducing or supervising
22 the actions of the other; and/or Defendant, OSCAR SANCHEZ CISNEROS AND LUIS
23 SUAREZ acting pursuant to a Conspiracy to Commit Robbery and/or Murder.

24 COUNT 21 - ROBBERY WITH USE OF A DEADLY WEAPON

25 did, on or about the 3rd day of March, 2000, then and there wilfully, unlawfully, and
26 feloniously take personal property, to-wit: U.S. Currency, from the person of RICHARD
27 SAMAYOA SOSA, or in his presence, by means of force or violence, or fear of injury to, and
28 without the consent and against the will of the said RICHARD SAMAYOA SOSA, said

1 Defendant using a deadly weapon, to-wit: a Norinco Mak 90 assault rifle, bearing Serial No.
2 616488 and/or Smith & Wesson .38 caliber revolver bearing Serial No. CCT5873, during the
3 commission of said crime; Defendant JOSE MANUEL VIGOA, aka Jose Manuel Vigoa-Perez
4 directly committing said acts and/or Defendant, OSCAR SANCHEZ CISNEROS and LUIS
5 SUAREZ aiding or abetting each other in the commission of said acts by acting in concert with
6 each other; and/or Defendant, OSCAR SANCHEZ CISNEROS AND LUIS SUAREZ being
7 present before, during and after said crime; and/or Defendant, OSCAR SANCHEZ CISNEROS
8 AND LUIS SUAREZ directly or indirectly counseling, encouraging, assisting, commanding,
9 inducing or supervising the actions of the other; and/or Defendant, OSCAR SANCHEZ
10 CISNEROS AND LUIS SUAREZ acting pursuant to a Conspiracy to Commit Robbery and/or
11 Murder.

12 **COUNT 22 - ROBBERY WITH USE OF A DEADLY WEAPON**

13 did, on or about the 3rd day of March, 2000, then and there wilfully, unlawfully, and
14 feloniously take personal property, to-wit: U.S. Currency, from the person of GARY DEAN
15 PRESTIDGE, or in his presence, by means of force or violence, or fear of injury to, and without
16 the consent and against the will of the said GARY DEAN PRESTIDGE, said Defendant using
17 a deadly weapon, to-wit: a Norinco Mak 90 assault rifle, bearing Serial No. 616488 and/or Smith
18 & Wesson .38 caliber revolver bearing Serial No. CCT5873, during the commission of said
19 crime; Defendant JOSE MANUEL VIGOA, aka Jose Manuel Vigoa-Perez directly committing
20 said acts and/or Defendant, OSCAR SANCHEZ CISNEROS and LUIS SUAREZ aiding or
21 abetting each other in the commission of said acts by acting in concert with each other; and/or
22 Defendant, OSCAR SANCHEZ CISNEROS AND LUIS SUAREZ being present before, during
23 and after said crime; and/or Defendant, OSCAR SANCHEZ CISNEROS AND LUIS SUAREZ
24 directly or indirectly counseling, encouraging, assisting, commanding, inducing or supervising
25 the actions of the other; and/or Defendant, OSCAR SANCHEZ CISNEROS AND LUIS
26 SUAREZ acting pursuant to a Conspiracy to Commit Robbery and/or Murder.

27 ///

28 ///

1 COUNT 23 - POSSESSION OF FIREARM BY EX-FELON

2 Defendant JOSE MANUEL VIGOA, aka Jose Manuel Vigoa-Perez, did, on or about the
3 3rd day of March, 2000, then and there wilfully, unlawfully, and feloniously own or have in his
4 possession, or under his control, a weapon, to-wit: a Norinco Mak 90 assault rifle, bearing Serial
5 No. 616488, the said JOSE MANUEL VIGOA, aka Jose Manuel Vigoa-Perez being an ex-felon,
6 having in February, 1991, been convicted of Conspiracy to Possess With Intent to Distribute
7 Cocaine, Distribution of Cocaine, Possession of Cocaine With Intent to Distribute, and Assault
8 Upon Federal Officers, in the United States District Court for the District of Nevada, in Case No.
9 CR-S-90-164-PMP (LRL), a felony under the laws of the State of Nevada.

10 COUNT 24 - POSSESSION OF FIREARM BY EX-FELON

11 Defendant JOSE MANUEL VIGOA, aka Jose Manuel Vigoa-Perez, did, on or about the
12 3rd day of March, 2000, then and there wilfully, unlawfully, and feloniously own or have in his
13 possession, or under his control, a weapon, to-wit: a Smith & Wesson .38 Caliber revolver,
14 bearing Serial No. CCT5873, the said JOSE MANUEL VIGOA, aka Jose Manuel Vigoa-Perez
15 being an ex-felon, having in February, 1991, been convicted of Conspiracy to Possess With
16 Intent to Distribute Cocaine, Distribution of Cocaine, Possession of Cocaine With Intent to
17 Distribute, and Assault Upon Federal Officers, in the United States District Court for the District
18 of Nevada, in Case No. CR-S-90-164-PMP (LRL), a felony under the laws of the State of
19 Nevada.

20 COUNT 25 - POSSESSION OF STOLEN VEHICLE

21 did, on or about the 3rd day of March, 2000, then and there wilfully, unlawfully, and
22 feloniously possess a stolen motor vehicle wrongfully taken from THRIFTY CAR RENTAL,
23 376 Warm Springs Road, Las Vegas, Clark County, Nevada, to-wit: a 2000 Plymouth Voyager,
24 bearing VIN#1P4GP45G8YB529568, and stolen Arizona License Plate No. 184-DZS., which
25 Defendant knew, or had reason to believe, had been stolen.

26 COUNT 26 - POSSESSION OF STOLEN VEHICLE

27 did, on or about the 3rd day of March, 2000, then and there wilfully, unlawfully, and
28 feloniously possess a stolen motor vehicle wrongfully taken from THRIFTY CAR RENTAL,

1 376 Warm Springs Road, Las Vegas, Clark County, Nevada, to-wit: a 2000 Plymouth Voyager,
2 bearing VIN#1P4GP45G1YB527029, and stolen Utah License Plate No. 690-KRG, which
3 Defendant knew, or had reason to believe, had been stolen.

4 **COUNT 27 - POSSESSION OF STOLEN VEHICLE**

5 did, on or about the 3rd day of March, 2000, then and there wilfully, unlawfully, and
6 feloniously possess a stolen motor vehicle wrongfully taken from THRIFTY CAR RENTAL,
7 376 Warm Springs Road, Las Vegas, Clark County, Nevada, to-wit: a 2000 Dodge Intrepid,
8 bearing VIN#2B3HD46R6YH128532, and stolen Utah License Plate No. 992-KNY, which
9 Defendant knew, or had reason to believe, had been stolen.

10 **COUNT 28 - CONSPIRACY TO COMMIT BURGLARY**

11 did, on or about June 3, 2000, then and there meet with each other and an unknown
12 individual and between themselves, and each of them with the other, wilfully and unlawfully,
13 conspire and agree to commit a crime, to-wit: burglary, and in furtherance of said conspiracy,
14 Defendant and OSCAR SANCHEZ CISNEROS did, together with the unknown individual,
15 commit the acts as set forth in Count 23, said acts being incorporated by this reference as though
16 fully set forth herein.

17 **COUNT 29 - BURGLARY WHILE IN POSSESSION OF A FIREARM**

18 did, on or about June 3, 2000, together with an unknown individual, then and there
19 wilfully, unlawfully, and feloniously enter, while in possession of a firearm, with intent to
20 commit larceny, that certain building occupied by BELLAGIO HOTEL & CASINO, located at
21 3600 Las Vegas Boulevard South, Las Vegas, Clark County, Nevada.

22 **COUNT 30 - CONSPIRACY TO COMMIT ROBBERY**

23 did, on or about June 3, 2000, then and there meet with each other and an unknown
24 individual and between themselves, and each of them with the other, wilfully, unlawfully, and
25 feloniously, conspire and agree to commit a crime, to-wit: robbery, and in furtherance of said
26 conspiracy, Defendant and OSCAR SANCHEZ CISNEROS did, together with the unknown
27 individual, commit the acts as set forth in Counts 25 through 29, said acts being incorporated by
28 this reference as though fully set forth herein.

1 **COUNT 31 - ROBBERY WITH USE OF A DEADLY WEAPON**

2 did, on or about June 3, 2000, then and there wilfully, unlawfully, and feloniously take
3 personal property, to-wit: lawful money of the United States, from the person of TERI M.
4 POTTER, or in her presence, by means of force or violence, or fear of injury to, and without the
5 consent and against the will of the said TERI M. POTTER, said Defendant using a deadly
6 weapon, to-wit: firearms, during the commission of said crime; the said Defendant, and the
7 unknown individual aiding or abetting each other through counsel and encourage and/or
8 conspiring among each other whereby the Defendant and OSCAR SANCHEZ CISNEROS are
9 vicariously liable for the actions of the others, and by entering into a course of conduct whereby
10 the Defendant, OSCAR SANCHEZ CISNEROS and the unknown individual arrived together
11 at the BELLAGIO HOTEL & CASINO where Defendant JOSE MANUEL VIGOA acted as a
12 lookout outside the casino cage while OSCAR CISNEROS SANCHEZ, aka Oscar Sanchez
13 Cisneros and the unknown individual entered the said cage to take money; thereafter the said
14 Defendant, OSCAR SANCHEZ CISNEROS and the unknown individual left together; the said
15 Defendant, OSCAR SANCHEZ CISNEROS and the unknown individual acting in concert
16 throughout the commission of the said crime.

17 **COUNT 32 - ROBBERY WITH USE OF A DEADLY WEAPON**

18 did, on or about June 3, 2000, then and there wilfully, unlawfully, and feloniously take
19 personal property, to-wit: lawful money of the United States, from the person of DAVID JOHN
20 BURTON, or in his presence, by means of force or violence, or fear of injury to, and without the
21 consent and against the will of the said DAVID JOHN BURTON, said Defendant and OSCAR
22 SANCHEZ CISNEROS using a deadly weapon, to-wit: firearms, during the commission of said
23 crime; the said Defendant and OSCAR SANCHEZ CISNEROS and the unknown individual
24 aiding or abetting each other through counsel and encourage and/or conspiring among each other
25 whereby the Defendant and OSCAR SANCHEZ CISNEROS are vicariously liable for the
26 actions of the others, and by entering into a course of conduct whereby the Defendant, OSCAR
27 SANCHEZ CISNEROS and the unknown individual arrived together at the BELLAGIO
28 HOTEL & CASINO where Defendant JOSE MANUEL VIGOA acted as a lookout outside the

1 casino cage while OSCAR CISNEROS SANCHEZ, aka Oscar Sanchez Cisneros and the
2 unknown individual entered the said cage to take money; thereafter the said Defendant, OSCAR
3 SANCHEZ CISNEROS and the unknown individual left together; the said Defendant, OSCAR
4 SANCHEZ CISNEROS and the unknown individual acting in concert throughout the
5 commission of the said crime.

6 **COUNT 33 - ROBBERY WITH USE OF A DEADLY WEAPON**

7 did, on or about June 3, 2000, then and there wilfully, unlawfully, and feloniously take
8 personal property, to-wit: lawful money of the United States, from the person of HUEY ROTH,
9 or in his presence, by means of force or violence, or fear of injury to, and without the consent
10 and against the will of the said HUEY ROTH, said Defendant using a deadly weapon, to-wit:
11 firearms, during the commission of said crime; the said Defendant, OSCAR SANCHEZ
12 CISNEROS and the unknown individual aiding or abetting each other through counsel and
13 encourage and/or conspiring among each other whereby the Defendant and OSCAR SANCHEZ
14 CISNEROS are vicariously liable for the actions of the others, and by entering into a course of
15 conduct whereby the Defendant, OSCAR SANCHEZ CISNEROS and the unknown individual
16 arrived together at the BELLAGIO HOTEL & CASINO where Defendant JOSE MANUEL
17 VIGOA acted as a lookout outside the casino cage while OSCAR CISNEROS SANCHEZ, aka
18 Oscar Sanchez Cisneros and the unknown individual entered the said cage to take money;
19 thereafter the said Defendant, OSCAR SANCHEZ CISNEROS and the unknown individual left
20 together; the said Defendant, OSCAR SANCHEZ CISNEROS and the unknown individual
21 acting in concert throughout the commission of the said crime.

22 **COUNT 34 - ROBBERY WITH USE OF A DEADLY WEAPON**

23 did, on or about June 3, 2000, then and there wilfully, unlawfully, and feloniously take
24 personal property, to-wit: lawful money of the United States, from the person of KYLE
25 RUEGG, or in her presence, by means of force or violence, or fear of injury to, and without the
26 consent and against the will of the said KYLE RUEGG, said Defendant using a deadly weapon,
27 to-wit: firearms, during the commission of said crime; the said Defendant, OSCAR SANCHEZ
28 CISNEROS and the unknown individual aiding or abetting each other through counsel and

1 encourage and/or conspiring among each other whereby the Defendant and OSCAR SANCHEZ
2 CISNEROS are vicariously liable for the actions of the others, and by entering into a course of
3 conduct whereby the Defendant, OSCAR SANCHEZ CISNEROS and the unknown individual
4 arrived together at the BELLAGIO HOTEL & CASINO where Defendant JOSE MANUEL
5 VIGOA acted as a lookout outside the casino cage while OSCAR CISNEROS SANCHEZ, aka
6 Oscar Sanchez Cisneros and the unknown individual entered the said cage to take money;
7 thereafter the said Defendant, , OSCAR SANCHEZ CISNEROS and the unknown individual
8 left together; the said Defendant, OSCAR SANCHEZ CISNEROS and the unknown individual
9 acting in concert throughout the commission of the said crime.

10 COUNT 35 - ROBBERY WITH USE OF A DEADLY WEAPON

11 did, on or about June 3, 2000, then and there wilfully, unlawfully, and feloniously take
12 personal property, to-wit: lawful money of the United States, from the person of LAWANDA
13 TAYLOR, or in her presence, by means of force or violence, or fear of injury to, and without the
14 consent and against the will of the said LAWANDA TAYLOR, said Defendant using a deadly
15 weapon, to-wit: firearms, during the commission of said crime; the said Defendant, OSCAR
16 SANCHEZ CISNEROS and the unknown individual aiding or abetting each other through
17 counsel and encourage and/or conspiring among each other whereby the Defendant and OSCAR
18 SANCHEZ CISNEROS are vicariously liable for the actions of the others, and by entering into
19 a course of conduct whereby the Defendant, OSCAR SANCHEZ CISNEROS and the unknown
20 individual arrived together at the BELLAGIO HOTEL & CASINO where Defendant JOSE
21 MANUEL VIGOA acted as a lookout outside the cage booth while OSCAR CISNEROS
22 SANCHEZ, aka Oscar Sanchez Cisneros and the unknown individual entered the said cage to
23 take money; thereafter the said Defendant, OSCAR SANCHEZ CISNEROS and the unknown
24 individual left together; the said Defendant, OSCAR SANCHEZ CISNEROS and the unknown
25 individual acting in concert throughout the commission of the said crime.

26 COUNT 36 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

27 did, on or about June 3, 2000, together with another unknown individual, then and there,
28 without authority of law, and with premeditation and deliberation, and with malice aforethought,

1 wilfully and feloniously attempt to kill HARRY CZERNIAK and/or AL HADGIS and/or
2 KEVIN CAMPBELL, human beings, by shooting at the said HARRY CZERNIAK and/or AL
3 HADGIS and/or KEVIN CAMPBELL, with a deadly weapon, to-wit: a firearm; in the
4 following manner, to-wit: by the said Defendant, OSCAR SANCHEZ CISNEROS and the
5 unknown individual aiding or abetting each other and/or conspiring among each other, whereby
6 the Defendant and OSCAR SANCHEZ CISNEROS are vicariously liable for the actions of the
7 others in the commission of the said crime by attempting to kill HARRY CZERNIAK and/or AL
8 HADGIS and/or KEVIN CAMPBELL in order to facilitate their escape.

9 COUNT 37 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

10 did, on or about June 3, 2000, together with another unknown individual, then and there,
11 without authority of law, and with premeditation and deliberation, and with malice aforethought,
12 wilfully and feloniously attempt to kill HARRY CZERNIAK and/or AL HADGIS and/or
13 KEVIN CAMPBELL, human beings, by shooting at the said HARRY CZERNIAK and/or AL
14 HADGIS and/or KEVIN CAMPBELL, with a deadly weapon, to-wit: a firearm; in the
15 following manner, to-wit: by the said Defendant, OSCAR SANCHEZ CISNEROS and the
16 unknown individual aiding or abetting each other and/or conspiring among each other, whereby
17 the Defendant and OSCAR SANCHEZ CISNEROS are vicariously liable for the actions of the
18 others in the commission of the said crime by attempting to kill HARRY CZERNIAK and/or AL
19 HADGIS and/or KEVIN CAMPBELL in order to facilitate their escape.

20 COUNT 38 - DISCHARGING FIREARM OUT OF MOTOR VEHICLE

21 did, on or about June 3, 2000, together with and unknown individual, aiding or abetting
22 and/or conspiring together whereby the Defendant and OSCAR SANCHEZ CISNEROS are
23 vicariously liable, then and there wilfully, unlawfully, and feloniously, while in a motor vehicle
24 within an area designated by City or County Ordinance as a populated area for the purpose of
25 prohibiting the discharge of weapons, maliciously or wantonly discharge, or cause a firearm to
26 be discharged out of the motor vehicle; either of the said defendants and/or the unknown
27 individual actually firing the firearm from a 1999 Dodge Caravan, bearing VIN
28 2B4GP45B1XR233387.

1 COUNT 43 - STOP REQUIRED ON SIGNAL OF POLICE OFFICER

2 did, on or about June 7, 2000, while driving a motor vehicle, to-wit: a 1999 Nissan
3 Pathfinder, bearing Nevada License No. 171JLZ, from Pecos and Patrick at or near 4375 Sunset,
4 Clark County, Nevada, wilfully, unlawfully, and feloniously fail or refuse to bring said vehicle
5 to a stop, or otherwise flee or attempt to elude a peace officer in a readily identifiable vehicle of
6 any police department or regulatory agency, to-wit: DET. R. ROGERS and/or DET. G.
7 SHERWOOD and/or other representatives of the Las Vegas Metropolitan Police Department,
8 after being given a signal to bring the vehicle to a stop, operate said motor vehicle in a manner
9 which endangered, or was likely to endanger any person other than himself, or the property of
10 any person other than himself.

11 COUNT 44 - CHILD ENDANGERMENT

12 did, on or about June 7, 2000, wilfully, unlawfully, and knowingly neglect, cause, or
13 permit a child under the age of 18 years, to-wit: DUNA VIGO, being approximately 12 years
14 of age, to suffer unjustifiable physical pain, or mental suffering, or by permitting the said DUNA
15 VIGO to be placed in a situation where she might have suffered unjustifiable physical pain or
16 mental suffering, by the said Defendant failing to yield to police vehicles, racing in his 1999
17 Nissan Pathfinder in speeds exceeding 100 miles per hour and eventually wrecking the vehicle
18 while his daughter was a passenger in the said vehicle.

19 COUNT 45 - CONSPIRACY TO ESCAPE

20 did, on or between January 1, 2002, and June 3, 2002, then and there meet with
21 unidentified individuals, and each of them with the other, wilfully and unlawfully conspire and
22 agree to commit the crime of Escape, and in furtherance of said Conspiracy, defendant did
23 commit the acts as set forth in Counts II, said acts being incorporated by this reference as though
24 fully set forth herein.

25 COUNT 46 - ATTEMPT ESCAPE

26 did, on or between January 1, 2002, and June 3, 2002, then and there, without authority
27 of law, wilfully, unlawfully, and feloniously commit a felony in the following manner, to-wit:
28 escape, or attempt to escape, from the lawful custody of the Clark County Detention Center,

1 while he, the said defendant, was being held by the Clark County Detention Center on Felony
2 charges, to-wit: Conspiracy to Commit Robbery And/or Murder, Burglary While in Possession
3 of a Firearm, Robbery with Use of a Deadly Weapon, Attempt Murder with Use of a Deadly
4 Weapon, Attempt Robbery with Use of a Deadly Weapon, Possession of Stolen Vehicle and
5 Murder with Use of a Deadly Weapon, in the following manner, to-wit: by preparing or
6 possessing a written escape plan setting forth a blueprint of the jail and the method of escape
7 and/or fashioning a tool made from a metal mirror frame, breaking a metal plate covering the
8 cell window and using said tool to chisel a hole in the window.

9 STEWART L. BELL
10 DISTRICT ATTORNEY
Nevada Bar #000477

11
12 BY 
13 DAVID J.J. ROGER
14 Chief Deputy District Attorney
Nevada Bar #002781

15
16
17
18
19
20
21
22 DA#01F09354A/kjk
23 LVMPD EV#9809200888;9906280741;
24 9910110682;0003030900; 0006072010;
25 0006030517; 0006090878; 0006030517;
26 0206032216; HPD EV#00-4373
27 CONSP ROBB/MURDER; BURG W/FA;
28 POSS F/A BY EX-FEL; ROBB W/WPN;
PSV; ATT MURDER W/WPN; ATT
ROBB W/WPN; MURDER W/WPN;
CONSP BURG; DISCH F/A OUT/ MV;
PSV; EVAD; ENDANGERMENT; PFEF;
CONSP ESCAPE; ATT ESCAPE - F/GM
(TK4)

EXHIBIT A6

EXHIBIT A6

ORIGINAL

FILED IN OPEN COURT

NOV 06 2002

SHIRLEY B. PARRAGUIRRE, CLERK

BY Dorothy Kelly

DOROTHY KELLY DEPUTY

1 GMEM

2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 South Third Street
6 Las Vegas, NV 89155-2211
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 MATTHEW SCOTT FRENN,
11 #1692905

12 Defendant.

CASE NO: C178954
DEPT NO: IV

13 **GUILTY PLEA AGREEMENT**

14 I hereby agree to plead guilty to: COUNTS 1 & 2 - FIRST DEGREE MURDER
15 WITH USE OF A DEADLY WEAPON (Felony - 200.010, 200.030, 193.165), as more
16 fully alleged in the charging document attached hereto as Exhibit "1".

17 My decision to plead guilty is based upon the plea agreement in this case which is as
18 follows:

19 The State and Defendant stipulate to four (4) consecutive sentences of Life Without
the Possibility of Parole.

CONSEQUENCES OF THE PLEA

I understand that by pleading guilty I admit the facts which support all the elements of
the offense(s) to which I now plead as set forth in Exhibit "1".

I understand that as a consequence of my plea of guilty the Court must sentence me to
imprisonment in the Nevada State Prison as to each Count for Life Without Possibility of
Parole; or Life With Possibility of Parole with eligibility for parole beginning at 20 yrs (240
months); or a definite term of 50 yrs (600 months) with eligibility for parole beginning at 20
yrs (240 months). I understand that the law requires me to pay an Administrative

RECEIVED

NOV 06 2002

COUNTY CLERK

1 **Assessment Fee.**

2 I understand that, if appropriate, I will be ordered to make restitution to the victim of
3 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
4 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
5 reimburse the State of Nevada for any expenses related to my extradition, if any.

6 I understand that I am ^{not} eligible for probation for the offense to which I am pleading
7 guilty. I understand that, except as otherwise provided by statute, the question of whether I
8 receive probation is in the discretion of the sentencing judge.

9 I understand that if more than one sentence of imprisonment is imposed and I am
10 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
11 the sentences served concurrently or consecutively.

12 I also understand that information regarding charges not filed, dismissed charges, or
13 charges to be dismissed pursuant to this agreement may be considered by the judge at
14 sentencing.

15 I have not been promised or guaranteed any particular sentence by anyone. I know
16 that my sentence is to be determined by the Court within the limits prescribed by statute.

17 I understand that if my attorney or the State of Nevada or both recommend any
18 specific punishment to the Court, the Court is not obligated to accept the recommendation.

19 I understand that if the State of Nevada has agreed to recommend or stipulate a
20 particular sentence or has agreed not to present argument regarding the sentence, or agreed
21 not to oppose a particular sentence, such agreement is contingent upon my appearance in
22 court on the initial sentencing date (and any subsequent dates if the sentencing is continued).
23 I understand that if I fail to appear for the scheduled sentencing date or I commit a new
24 criminal offense prior to sentencing the State of Nevada would regain the full right to argue
25 for any lawful sentence.

26 I understand if the offense(s) to which I am pleading guilty to was committed while I
27 was incarcerated on another charge or while I was on probation or parole that I am not
28 eligible for credit for time served toward the instant offense(s).

1 I understand that as a consequence of my plea of guilty, if I am not a citizen of the
2 United States, I may, in addition to other consequences provided for by federal law, be
3 removed, deported, excluded from entry into the United States or denied naturalization.

4 I understand that the Division of Parole and Probation will prepare a report for the
5 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
6 sentencing, including my criminal history. This report may contain hearsay information
7 regarding my background and criminal history. My attorney and I will each have the
8 opportunity to comment on the information contained in the report at the time of sentencing.
9 Unless the District Attorney has specifically agreed otherwise, then the District Attorney
10 may also comment on this report.

11 WAIVER OF RIGHTS

12 By entering my plea of guilty, I understand that I am waiving and forever giving up
13 the following rights and privileges:

14 1. The constitutional privilege against self-incrimination, including the right to refuse
15 to testify at trial, in which event the prosecution would not be allowed to comment to the
16 jury about my refusal to testify.

17 2. The constitutional right to a speedy and public trial by an impartial jury, free of
18 excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the
19 assistance of an attorney, either appointed or retained. At trial the State would bear the
20 burden of proving beyond a reasonable doubt each element of the offense charged.

21 3. The constitutional right to confront and cross-examine any witnesses who would
22 testify against me.

23 4. The constitutional right to subpoena witnesses to testify on my behalf.

24 5. The constitutional right to testify in my own defense.

25 6. The right to appeal the conviction, with the assistance of an attorney, either
26 appointed or retained, unless the appeal is based upon reasonable constitutional jurisdictional
27 or other grounds that challenge the legality of the proceedings and except as otherwise
28 provided in subsection 3 of NRS 174.035.

1 VOLUNTARINESS OF PLEA

2 I have discussed the elements of all of the original charge(s) against me with my
3 attorney and I understand the nature of the charge(s) against me.

4 I understand that the State would have to prove each element of the charge(s) against
5 me at trial.

6 I have discussed with my attorney any possible defenses, defense strategies and
7 circumstances which might be in my favor.

8 All of the foregoing elements, consequences, rights, and waiver of rights have been
9 thoroughly explained to me by my attorney.

10 I believe that pleading guilty and accepting this plea bargain is in my best interest,
11 and that a trial would be contrary to my best interest.

12 I am signing this agreement voluntarily, after consultation with my attorney, and I am
13 not acting under duress or coercion or by virtue of any promises of leniency, except for those
14 set forth in this agreement.

15 I am not now under the influence of any intoxicating liquor, a controlled substance or
16 other drug which would in any manner impair my ability to comprehend or understand this
17 agreement or the proceedings surrounding my entry of this plea.

18 My attorney has answered all my questions regarding this guilty plea agreement and
19 its consequences to my satisfaction and I am satisfied with the services provided by my
20 attorney.

21 DATED this 1st day of NOVEMBER, 2002.

22 
23 MATTHEW SCOTT FRENN
24 Defendant

25 AGREED TO BY:

26 
27 DAVID P. SCHWARTZ
28 Chief Deputy District Attorney
Nevada Bar #000398

1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of
3 the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations contained in the charge(s)
5 to which guilty pleas are being entered.

6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.

8 3. All pleas of guilty offered by the Defendant pursuant to this agreement are
9 consistent with the facts known to me and are made with my advice to the Defendant.

10 4. To the best of my knowledge and belief, the Defendant:

11 a. Is competent and understands the charges and the consequences of pleading
12 guilty as provided in this agreement.

13 b. Executed this agreement and will enter all guilty pleas pursuant hereto
14 voluntarily.

15 c. Was not under the influence of intoxicating liquor, a controlled substance or
16 other drug at the time I consulted with the defendant as certified in paragraphs
17 1 and 2 above.

18 Dated: This 1 day of ^{November}~~October~~, 2002

19 
20 ATTORNEY FOR DEFENDANT
21
22
23
24
25
26
27
28

kjk

FILED

OCT 17 12 52 PM '01

Shirley L. Longoria
CLERK

ORIGINAL

1 IND
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff
9

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 MATHEW SCOTT FRENN,
14 #1692905

15 Defendant(s).
16

Case No. C178954
Dept. No. IV

INDICTMENT

17 STATE OF NEVADA }
18 } ss.
19 COUNTY OF CLARK }

20 The Defendant(s) above named, MATHEW SCOTT FRENN, accused by the Clark
21 County Grand Jury of the crime of MURDER WITH USE OF A DEADLY WEAPON
22 (Felony - NRS 200.010, 200.030, 193.165), committed at and within the County of Clark, State
23 of Nevada, on or between June 1, 2001 and July 15, 2001, as follows:

24 COUNT I

25 did then and there wilfully, unlawfully, feloniously, and without authority of law, and
26 with malice aforethought, kill DOROTHY JACKSON, a human being, in the following manner,
27 to wit; by striking the said DOROTHY JACKSON about the head and/or body with a bludgeon
28 device consisting of a hammer and/or a wooden stick and/or an unknown object and/or did stab

EXHIBIT " 1 "

1 at and into the body of DOROTHY JACKSON with a knife, the said actions of the Defendant
2 resulting in the death of the said DOROTHY JACKSON; the Defendant being responsible
3 under one or more of the following principles of criminal liability, to-wit: (1) by having
4 premeditation and deliberation in its commission; and/or (2) the killing occurring during the
5 perpetration or attempted perpetration of robbery; and/or (3) by the said Defendant engaging
6 in a course of conduct whereby the killing occurred during the commission of an unlawful act,
7 which, in its consequences, naturally tended to destroy the life of a human being, or was
8 committed in the prosecution of felonious intent, by the said Defendant committing a battery
9 and/or battery with a deadly weapon upon the body of the said DOROTHY JACKSON causing
10 the death of the said DOROTHY JACKSON.

11 COUNT II - MURDER WITH USE OF A DEADLY WEAPON

12 did then and there wilfully, unlawfully, feloniously, and without authority of law, and
13 with malice aforethought, kill LEE JACKSON, a human being, in the following manner, to wit;
14 by striking the said LEE JACKSON about the head and/or body with a bludgeon device
15 consisting of a hammer and/or a wooden stick and/or an unknown object and/or did stab at and
16 into the body of LEE JACKSON with a knife, the said actions of the Defendant resulting in the
17 death of the said LEE JACKSON; the Defendant being responsible under one or more of the
18 following principles of criminal liability, to-wit: (1) by having premeditation and deliberation
19 in its commission; and/or (2) the killing occurring during the perpetration or attempted
20 perpetration of robbery; and/or (3) by the said Defendant engaging in a course of conduct
21 whereby the killing occurred during the commission of an unlawful act, which, in its

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 consequences, naturally tended to destroy the life of a human being, or was committed in the
2 prosecution of felonious intent, by the said Defendant committing a battery and/or battery with
3 a deadly weapon upon the body of the said LEE JACKSON causing the death of the said LEE
4 JACKSON.

5 DATED this 16th day of October, 2001.

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

9 BY David J. J. Roger
10 DAVID J.J. ROGER
11 Chief Deputy District Attorney
12 Nevada Bar #002781

13 ENDORSEMENT: A True Bill

14 Lang J. Cannon
15 Foreperson, Clark County Grand Jury
16
17
18 //
19 //
20 //
21 //
22 //
23 //
24 //
25 //
26 //
27 //
28 //

Names of witnesses testifying before the Grand Jury:

REXENE WORRELL, 1704 PINTO LANE, LV, NV
ALICE MACEO, HENDERSON POLICE DEPT/CRIME SCENE ANALYST
KELLY JACKSON, C/O DISTRICT ATTORNEY'S OFFICE
TYRONE JACKSON, C/O DISTRICT ATTORNEY'S OFFICE
DET. LOUIS MARTINEZ, SAN ANTONIO POLICE DEPT., SAN ANTONIO, TX

Additional witnesses known to the District Attorney at the filing of the Indictment:

TENILLE SCHNEPP, 13 BOOK WAGON ST., HENDERSON, NV
BRIAN SCHNEPP, 13 BOOK WAGON ST., HENDERSON, NV
JUDE TOMALON, 9 BOOK WAGON ST., HENDERSON, NV
ARCENIA TOMALON, 9 BOOK WAGON ST., HENDERSON, NV
DONNA LUCERO, 16 BOOK WAGON ST., HENDERSON, NV
KEVIN RUTH, 16 BOOK WAGON ST., HENDERSON, NV
INGRID CHAPUT, 12 BOOK WAGON ST., HENDERSON, NV
MAIDA KAHAI, 10 BOOK WAGON ST., HENDERSON, NV
JOE KAHAI, 10 BOOK WAGON ST., HENDERSON, NV
DONNA MARTIN, 1101 SUNSET RD., HENDERSON, NV
OFFICER D. CICCONE, HPD #1005
OFFICER E. BUCK, HPD #1015
R. WORKMAN, HPD #1014
M. MATTA, HPD #1046
D. JONES, HPD #265
G. SMITH, HPD #27
L. GIBSON, HPD #323
G. COLLINS, HPD #324
H. MANCILLAS, HPD #361

1 T. WELLMAN, HPD #381
2 J. BROOKS, HPD #607
3 B. FLATT, HPD #680
4 K. SIMPSON, HPD #689
5 F. BENJAMINS, HPD #720
6 G. EDWARDS, HPD #748
7 D. HAMPTON, HPD #793
8 S. DAVIS, LVMPD #4923
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 00BGJ112X/01FH1293X
HENDERSON PD EV# 0118034
28 MURDER WDW - F

EXHIBIT A7

EXHIBIT A7

16
ORIGINAL

1 **JOCP**

2 **STEWART L. BELL**
3 **DISTRICT ATTORNEY**
4 **Nevada Bar #000477**
5 **200 S. Third Street**
6 **Las Vegas, Nevada 89155**
7 **(702) 455-4711**
8 **Attorney for Plaintiff**

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 **THE STATE OF NEVADA,**

13 **Plaintiff,**

14 **-vs-**

15 **JEREMY STROHMEYER,**
16 **#1507326**

17 **Defendant.**

18 **Case No. C144577**
19 **Dept. No. XII**
20 **Docket R**

21 **JUDGMENT OF CONVICTION (PLEA)**

22 **WHEREAS, on the 8th day of September, 1998, the Defendant JEREMY**
23 **STROHMEYER, appeared before the Court herein with his counsel and entered a plea of guilty**
24 **to the crime(s) of COUNT I - FIRST DEGREE MURDER (Felony); COUNT II - FIRST**
25 **DEGREE KIDNAPPING (Felony); COUNT III - SEXUAL ASSAULT WITH A MINOR**
26 **UNDER SIXTEEN YEARS OF AGE WITH SUBSTANTIAL BODILY HARM (Felony);**
27 **COUNT IV - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE**
28 **(Felony), committed on the 25th day of May, 1997, in violation of NRS 200.010, 200.030,**
200.310, 200.320, 200.364, 200.366, 0.060 and

WHEREAS, thereafter on the 14th day of October, 1998, the Defendant being present
in court with his counsel RICHARD WRIGHT, ESQ. and LESLIE ABRAMSON, ESQ., and
STEWART BELL, District Attorney, and WILLIAM T. KOOT, Chief Deputy District Attorney,
also being present; the above entitled Court did adjudge the Defendant guilty thereof by reason
of his plea of guilty and, in addition to the \$25.00 Administrative Assessment Fee, sentenced

CE-05

NOV 06 1998

AA004930

1 Defendant to the Nevada Department of Prisons as follows:

2 COUNT I - FIRST DEGREE MURDER: LIFE WITHOUT THE POSSIBILITY OF
3 PAROLE and pay restitution in the amount of \$9,422.00 and extradition costs in the amount of
4 \$629.12;

5 COUNT II - FIRST DEGREE KIDNAPPING: LIFE WITHOUT THE POSSIBILITY OF
6 PAROLE, to be served consecutive to the sentence imposed in Count I;

7 COUNT III - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF
8 AGE WITH SUBSTANTIAL BODILY HARM: LIFE WITHOUT THE POSSIBILITY OF
9 PAROLE, to be served consecutive to the sentences imposed in Counts I and II;

10 COUNT IV - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF
11 AGE: LIFE WITH THE POSSIBILITY OF PAROLE, with parole eligibility after TWENTY
12 (20) years has been served, said sentence to be served consecutive to the sentences imposed in
13 Counts I, II and III

14 The Defendant will submit to a test for the purpose of determining genetic markers and
15 pay a \$250.00 Analysis Fee to the Clark County Clerk. Credit for time served 504 days.

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

18 DATED this 29th day of October, 1998, in the City of Las Vegas, County of Clark,
19 State of Nevada.

20
21 
22 DISTRICT JUDGE
23
24
25

26 DA#97-144577X/kjh
27 LVMPD EV#9705250452
28 1° MURDER; 1° KIDNAP;
SEX ASSLT W/MINOR W/SBH;
SEX ASSLT W/MINOR - F
(TK7)

EXHIBIT A8

EXHIBIT A8

ORIGINAL

1 GMEM

2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

FILED IN OPEN COURT

September 6 19 98
LORETTA BOWMAN, CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA BY Sue Deaton
SUE DEATON Deputy

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JEREMY STROHMEYER,
12 #1507326

13 Defendant.
14

Case No. C144577X
Dept. No. XII
Docket R

15 GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty to: FIRST DEGREE MURDER, FIRST DEGREE
17 KIDNAPING, SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE
18 WITH SUBSTANTIAL BODILY HARM and SEXUAL ASSAULT WITH A MINOR UNDER
19 SIXTEEN YEARS OF AGE, COUNTS I, II, III and IV, as more fully alleged in the charging
20 document attached hereto as Exhibit "1".

21 Other than the potential death penalty as to Count I, the Defendant agrees to stipulate to
22 the maximum sentences otherwise provided by law and that all four (4) sentences shall run
23 consecutive to each other.

24 In that regard, the sentence for Count I, First Degree Murder, pursuant to NRS 200.030
25 4(g)(1), shall be Life Without the Possibility of Parole.

26 The sentence for Count II, First Degree Kidnaping, pursuant to NRS 200.320(1)(a), shall
27 be Life Without the Possibility of Parole, to run consecutive to the sentence imposed for Count

28 I.

1 The sentence for Count III, Sexual Assault With a Minor Under Sixteen Years of Age
2 With Substantial Bodily Harm, pursuant to NRS 200.366(2)(a)(1), shall be Life Without the
3 Possibility of Parole, to run consecutive to the sentences imposed for Counts I and II.

4 The sentence for Count IV, Sexual Assault With a Minor Under Sixteen Years of Age,
5 pursuant to NRS 200.366(3)(g)(1), shall be Life With the Possibility of Parole after a minimum
6 of Twenty (20) years served, to run consecutive to the sentences imposed for Counts I, II and
7 III.

8 Notwithstanding the theoretical parole eligibility as to Count IV, I understand that due
9 to the sentences to be imposed for Counts I, II and III, I shall never be eligible for parole.

10 The State agrees to withdraw the Notice of Intent to Seek Death.

11 The Defendant understands and agrees that by his plea of guilty, he now and forever
12 waives any and all opportunity in the future to litigate or relitigate, any and all legal and factual
13 issues raised prior to his plea of guilty.

14 CONSEQUENCES OF THE PLEA

15 I understand that by pleading guilty the State can prove beyond a reasonable doubt the
16 facts which support all the elements of the offense(s) to which I now plead as set forth in Exhibit
17 "1".

18 I understand that as a consequence of my pleas of guilty the Court shall sentence me to
19 imprisonment in the Nevada State Prison for Life Without the Possibility of Parole as to Count
20 I, First Degree Murder; imprisonment in the Nevada State Prison for Life Without the Possibility
21 of Parole as to Count II, First Degree Kidnaping; imprisonment in the Nevada State Prison for
22 Life Without the Possibility of Parole as to Count III, Sexual Assault With a Minor Under
23 Sixteen Years of Age with Substantial Bodily Harm, and imprisonment in the Nevada State
24 Prison for Life With the Possibility of Parole with parole eligibility beginning at TWENTY (20)
25 years as to Count IV, Sexual Assault With a Minor Under Sixteen Years of Age, all counts to
26 run consecutively. I understand that the law requires me to pay an Administrative Assessment
27 Fee.

28 I understand that, if appropriate, I will be ordered to make restitution to the victim of the

1 offense(s) to which I am pleading guilty.

2 I understand that I am not eligible for probation for the offenses to which I am pleading
3 guilty.

4 I understand that the sentencing judge will order the sentences imposed as to each of the
5 four (4) counts in the Indictment to be served consecutively.

6 I understand that the Court has agreed to impose the sentences set forth in this agreement.

7 I also understand if, at any time, this plea agreement is set aside or its resultant
8 convictions are set aside, for any reason, the State reserves the right to reinstate the notice to
9 seek the death penalty in any subsequent proceedings.

10 I understand that the Division of Parole and Probation will prepare a report for the
11 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
12 sentencing, including my criminal history. This report may contain hearsay information
13 regarding my background and criminal history. My attorney and I will each have the
14 opportunity to comment on the information contained in the report at the time of sentencing.
15 The District Attorney may also comment on this report.

16 WAIVER OF RIGHTS

17 By entering my plea of guilty, I understand that I am waiving and forever giving up the
18 following rights and privileges:

19 1. The constitutional privilege against self-incrimination, including the right to refuse to
20 testify at trial, in which event the prosecution would not be allowed to comment to the jury
21 about my refusal to testify.

22 2. The constitutional right to a speedy and public trial by an impartial jury, free of
23 excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the
24 assistance of an attorney, either appointed or retained. At trial the State would bear the burden
25 of proving beyond a reasonable doubt each element of the offense charged.

26 3. The constitutional right to confront and cross-examine any witnesses who would
27 testify against me.

28 4. The constitutional right to subpoena witnesses to testify on my behalf.

1 5. The constitutional right to testify in my own defense.

2 6. The right to appeal the conviction, with the assistance of an attorney, either appointed
3 or retained, unless the appeal is based upon reasonable constitutional jurisdictional or other
4 grounds that challenge the legality of the proceedings.

5 VOLUNTARINESS OF PLEA

6 I have discussed the elements of all of the original charge(s) against me with my attorneys
7 and I understand the nature of the charge(s) against me.

8 I understand that the State would have to prove each element of the charge(s) against me
9 at trial.

10 I have discussed with my attorneys any possible defenses, defense strategies and
11 circumstances which might be in my favor.

12 All of the foregoing elements, consequences, rights, and waiver of rights have been
13 thoroughly explained to me by my attorneys.

14 I believe that pleading guilty pursuant hereto is in my best interest, and that a trial would
15 be contrary to my best interest.

16 I am signing this agreement voluntarily, after consultation with my attorneys, and I am
17 not acting under duress or coercion or by virtue of any promises of leniency, except for those
18 set forth in this agreement.

19 I am not now under the influence of any intoxicating liquor, a controlled substance or
20 other drug which would in any manner impair my ability to comprehend or understand this
21 agreement or the proceedings surrounding my entry of this plea.

22 My attorneys have answered all my questions regarding this guilty plea agreement and
23 its consequences to my satisfaction and I am satisfied with the services provided by my
24 attorneys.

25 ///

26 ///

27 ///

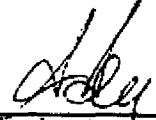
28 ///

1 I hereby acknowledge that the transcript of the confession attached hereto is a true and
2 accurate transcription of my confession to Detective Phil Ramos given May 29, 1997, beginning
3 at approximately 2:20 a.m. in the offices of the Long Beach Police Department.

4 DATED this 8th day of September, 1998.

5
6 
7 JEREMY STROHMEYER
Defendant

8 AGREED TO BY:

9
10 
11 District Attorney
STEWART L. BELL

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of
3 the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations contained in the charge(s) to
5 which guilty pleas are being entered.

6 2. I have advised the Defendant of the penalties for each charge and the restitution that
7 the Defendant may be ordered to pay.

8 3. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent
9 with the facts known to me and are made with my advice to the Defendant.

10 4. To the best of my knowledge and belief, the Defendant:

11 a. Is competent and understands the charges and the consequences of pleading
12 guilty as provided in this agreement.

13 b. Executed this agreement and will enter all guilty pleas pursuant hereto
14 voluntarily.

15 c. Was not under the influence of intoxicating liquor, a controlled substance or
16 other drug at the time I consulted with the defendant as certified in paragraphs 1
17 and 2 above.

18 Dated: This 8th day of September, 1998.

19 
20 ATTORNEY FOR DEFENDANT

21 
22 ATTORNEY FOR DEFENDANT

23
24
25
26
27
28 i:\mvu\strohney\gpa\rmf

FILED

ORIGINAL

AUG 1 12 28 PM '97

John L. ...
CLERK

1 IND
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

Plaintiff,

-vs-

11 JEREMY STROHMEYER,
12 #F507326

Defendant(s).

Case No. C144577
Dept. No. XIII
Docket G

INDICTMENT

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.

17 The Defendant(s) above named, JEREMY STROHMEYER, accused by the Clark County
18 Grand Jury of the crimes of MURDER (OPEN MURDER) (Felony - NRS 200.010, 200.030);
19 FIRST DEGREE KIDNAPING (Felony - NRS 200.310, 200.320); and SEXUAL ASSAULT
20 WITH A MINOR UNDER SIXTEEN YEARS OF AGE WITH SUBSTANTIAL BODILY
21 HARM (Felony - NRS 200.364, 200.366, 0.060), committed at and within the County of Clark,
22 State of Nevada, on or about the 25th day of May, 1997, as follows:

23 COUNT I- MURDER (OPEN MURDER)

24 did then and there wilfully, feloniously, without authority of law, and with premeditation
25 and deliberation, and with malice aforethought, kill SHERRICE IVERSON, a human being, by
26 manual strangulation or suffocation; said killing being deliberate and premeditated and/or
27 perpetrated by means of child abuse and/or being committed during the perpetration or attempted
28 perpetration of kidnaping, sexual assault and/or sexual abuse of a child.

SPEAKER:

Hi, this is Phil Ramos. I'm going to be doing a voluntary statement under event number 970525-0452. Subject is going to be murder. Division reporting is ISD. Division of occurrence is PD. Date and time of occurrence is going to be 5/25/97, approximately 0500 hours.

Uh, please use the rights form on this statement. Person giving this statement last name is Strohmeyer - STROHMEYER. First name is Jeremy - JEREMY. Middle name is Joseph. He is a white male adult, DOB 10/11/78, 5'8, 160, and his social is 602-26-5849.

His home address is 311 Silvera - SILVERA Avenue in Long Beach, California. Date and time of the interview is going to be 5/29/97, 0220 hours. Interview is taking place in the offices of the Long Beach, California Police Department. Conducting the

interview is Det. P. Ramos. Also present is Sergeant Walt Turley - TURLEY of the Long Beach Police Department and Detective Bill Collette - COLLETTE of the Long Beach Police Department.

Q: Jeremy, I wanna start this interview off by asking you if you know it's being recorded.

A: Yes I do.

Q: Okay. And is this, is this being recorded with your permission?

A: Yes it is.

Q: Alright. Before we get started any further, I need to advise you of your rights. And I know that you've been advised of your rights earlier. Is that right?

A: That's correct.

Q: Okay. So I'm gonna read you your rights one more time, okay?

A: Okay, you have the right to remain silent. If you give up the right to remain silent, anything you say can and will be used against you in a court of law. You have the right to an attorney and to have an attorney present during any questioning. If you so desire an attorney and cannot

afford one, an attorney will be appointed to you by the courts, at no cost to you, prior to any questioning. If you decide to stop during any of the questioning, you can do so without any problems or any continuation. If you wanna stop, we'll just stop, okay?

A: Alright.

Q: Do you understand those rights?

A: I understand those rights.

Q: Alright. And with those rights in mind, do you wanna continue talking to me?

A: Yes I do.

Q: Okay. Uhm, as you know, the reason we're here, I'm from the Las Vegas Metropolitan Police Department and we're investigating an incident that occurred at the Primadonna Hotel a couple days ago. And we understand that you might be involved in that and that you have some information for us. Is that right?

A: That's correct.

Q: Okay. Well you wanna just tell me what happened?

A: Ah, where should I start?

Q: Well, let's just start at the beginning. How did you get to, uh, Stateline?

A: I drove out with my friend, uh, David Cash and his father, David Cash, Sr.

Q: Mmhuh.

A: Ah, driving to Las Vegas, we stopped at Stateline and, uhm... stopped at that casino, uhm, 'cause, uh, David's dad wanted to play poker and we were gonna go, on the, uh, roller coaster at Wild Bill's. So, uh, we got out and parked the car in front of, uh, that one casino.

Q: Whiskey Pete's?

A: No.

Q: Primadonna?

A: Primadonna.

Q: Okay.

A: And, uh, we went inside, uh, with Dave's father, 'cause he wanted to get change so he could give us some money. And he gave us some money, we left and we walked across the street to Wild Bill's and we were looking for the entrance to the, uh... roller coaster. And ____--

Q: Let me stop you for just second, okay? What time and what day was that?

A: We arrived a little bit before 12, on, on Saturday.

Q: Okay.

A: Night, going on to Sunday morning.

Q: Okay, so that was midnight?

A: Yes.

Q: Okay. Alright, go ahead.

A: And so we were, we walked across Wild Bill's, uh, looking for the entrance to the roller coaster, couldn't find it, so we walked back to, uh, the Primadonna and then, uh, in the Primadonna we were looking for, uh, the arcade and at first we couldn't find it because, ah, last time Dave had been there, it had been in a certain place and I guess they were remodeling or something -

Q: Mmhuh.

A: So we couldn't find it, so we went up _____ the, uh, floor and, uh, we were goin' around, doin' the slot machines and got some beers and drinkin' some beers and did some walkin' around and, uh, I think one of the guys stopped us and asked David for I.D., didn't ask me for I.D. though.

Q: Okay. How old are you?

A: Eighteen.

Q: Alright. And tell me how you were able to buy beer?

A: I walked up and ordered it.

Q: Okay. Nobody asked you for your I.D. or anything?

A: I think out of, ah, say five purchases, one time one guy asked me for I.D.

Q: Okay. And did you show him your I.D.?

A: Yes.

Q: And ____-

A: I, I have an I.D. from another country that I used to live in, it's a fake I.D.

Q: Okay.

A: It's for like 22 years old, makes me 22.

Q: Okay. Alright, go ahead.

A: So, uh... uh, we were just goin' around doin' some slot machines and, uh, drinkin' some beer and, uh, we also, we went on the, uh, the tram, or whatever that is, to Whiskey Pete's.

Q: Mmhuh.

A: -- from the Primadonna. And when we got to Whiskey Pete's, there wasn't really anything there that interested us and we didn't see anything in the arcade or anything, so we came back to the Primadonna and, uh, we went down and checked out the arcade and played some video games and then met, uh, two different girls. The first one was an Asian girl we met--

Q: Mmhuh.

A: And we were talking to her, but her mom came down and, uh, left and she left with her mom. And then we met another girl, a, uh, a Mexican gal and, uh, we were talkin' to her some and that's, uh, when, uh, the one girl, uh, the deceased girl was, uh, running around, uh, with a, uh, Mexican boy about the same age. And they were like, like throwin', uhm...like big wads at each other, you know, paper

towels bunched up with water and stuff, and throwin' stuff around. And, uh, like I got hit by one, so I, I threw it back and I started messin' around with 'em and, uh, I was chasin' the girl around and she, uh, ran in the, uh, the girl's bathroom and I, uh, I followed her in and, uh, when we got inside, she, uh, picked up, uhm, a sign, you know, when you put it on the floor --

Q: Mmhuh.

A: -- for a wet floor?

Q: Mmhuh.

A:

She picked that up and, uh, uh, swung it at me and I blocked it with my forearm and, uh, and then I, I, like when she did that, I reacted and I grabbed her and like I'd put my hand over her mouth and, uh, like I, I grabbed

her, uhm, underneath the left arm and put my left hand over her mouth and then, uh, like grabbed through her leg, under her crotch with the right hand and, uh... and then I, uh, I took her into the, uh, the stall, the, uh, the biggest stall, the handicapped stall and, uh,

took off her, uh, her, boots and her, uh, pants and her underwear and, uh... keep her quiet, I, uh, choked her, started choking her... then, uh, during that time, I, uh, touched, uh, touched her vagina with my

finger, inserted my, uh, index finger inside, all the way to the knuckle and moved it in and out quite a few times. And, uh, also touched the, uh, head of my penis to her vagina, inside her lips, it wasn't really any, uh,

penetration with it. And, uh... I was choking her to keep her quiet and I had her, she was laying on the toilet seat, with her head to the side of where you flush the toilet. And, uh, I was choking her, I proceeded to choke her and the, uh,

two Mexican girls, uh, walked in the bathroom and, uh— ... so I sat on top of the girl and, uh, made it seem like there was a person in there using the restroom. And, uh, in that process, uhm, the, the two

Mexican girls were in the bathroom, uh, the one girl that I'd been choking, that was in the stall with me, uh, started to make a, a wheezing noise, uh, like air and like breathing very weakly, so I, uh, like uh, I used, uh, one

of my hands and I, I put it over her throat, stopped the, uh, wheezing until the, uh, Mexican girls left the bathroom. And... uh... after that, I... I decided that I had to leave. Actually, before that, I was sitting on the girl and I was, uh, uh, stroking my

penis, uh... I was trying to get it hard and the, uh, Mexican girls came in and, and then I stopped and, and after they left, I wanted, I just wanted to leave. And, uh, I noticed that the girl was still breathing, barely and I didn't wanna leave her that

way, so I, uh, I tried to break her neck ... so that, uh, she would die quickly, 'cause I knew that based on the amount that I had choked her, that she had a lotta loss of oxygen to the brain, probably lotta brain dead.

COLLETTE:

I think you told us, when we were talking to you, you thought you choked her probably as long as 20 minutes all together, right?

A:

I said fifteen.

COLLETTE: Fifteen minutes?

A: Yeah, 15, 20 minutes.

Q: Tell me, uhm, why you thought that these two girls that came in while this was going on were Mexican girls.

A: 'Cause I could tell by the accent.

Q: Okay. Were they speaking English?

A: Yes.

Q: Okay. And with what, uh, like a Hispanic accent?

A: Yes.

Q: Okay, let's go back a little bit, ah, to when you guys first got there. You said you had bought some beers. Uhm..., before this, before you'd gone into the bathroom, how many beers had you had?

A: I don't, probably 2 or 3.

Q: Two or three?

A: Before I went into the bathroom with the girl?

Q: Mmhuh.

A: I had a whiskey and coke, probably four or five beers.

Q: Okay. Tell me if you think that you were under the influence of alcohol then.

A: Ah... that's a reasonable assumption, yeah, I would say I was under the influence of alcohol.

Q: Alright, so would you let's say on a scale of one to ten, ten being stupid, falling down drunk, what would you say you were?

A: I'd say I was about a 6 or a 7.

Q: Okay. So you had a pretty good --

A: I'd-- yeah, I had a good buzz. I was feelin' pretty good.

Q: Okay. Had you eaten anything? Something to eat while you got there, after you got there?

A: Uh...during the day I, probably I had a ... some eggs in the morning, that morning, Saturday morning.

Q: Mmhuh.

A: And, uh, and Saturday night I had a hamburger and some fries in a small town, uh, on the way Stateline. And --

Q: ____ -- I'm sorry, go ahead.

A: That's it, go ahead.

Q: Okay. So did you eat anything after you guys got to Stateline?

A: No, I don't think so, no.

Q: Alright. Uhm, you told me you went there with a friend of yours?

A: Yes.

Q: And his father.

A: Yes.

Q: What was your friend's name?

A: David Cash.

Q: David Cash?

A: Yes.

Q: And his father, David Cash, Sr.

A: Correct.

Q: Okay. Was David with you when all this was goin' on?

A: No, he, uh... when I first went in the bathroom, he, he like followed in, not like all the way, he went to the door and he was at the doorway and, uh, when I grabbed the girl, he, he was like, "What are you doin'?" and then just, he left, freaked out. He was afraid I was gonna do somethin' stupid.

Q: Okay, when he first, when David first saw you in the bathroom, what part of the bathroom were you in?

A: I was in the main area, by the sinks.

Q: Okay. And there was nobody else in the bathroom, just the two of you?

A: No, no one else in the bathroom, just us.

Q: Okay.

TURLEY: That would be three of you, right, not two?

A: At the point in time when David was-

Q: When, when David came in.

A: -in the doorway. Yeah.

Q: So there was a total of you, David and the little girl:

A: Right. But then he, he, after I grabbed her, he said, "What are you doing?" and left.

Q: Okay, Uhm...

TURLEY: Phil, you know, if I may, if I may just 'cause from what, uh... Jeremy had told us a little bit earlier. You had talked to a Hispanic girl who was her, who you believed to be her younger brother was playing with the victim.

A: Right. And-

TURLEY: But hear my question first. The reason why I'm asking is because you, you describe her really good, you gave, you told her you were from Long Beach, if you remember what you, is that what you said?

A: Yeah, I told her I was from Long Beach, I showed her my nipple rings. Yes.

TURLEY: Yeah. And you showed her your things. I think that's really important that you, you give Phil that information, 'cause it, it, you know, it tells more _____.

Q: Tell, tell me about the Hispanic girl that you were talking to after the Asian girl.

A: Uhm, an Hispanic girl, she's probably about 5'6 and, uh, and a little, little obese, not, not fat but she's a little bit big.

Q: Okay. What color hair did she have?

A: Black hair.

Q: Do you remember her name?

A: No I don't.

Q: Okay.

A: I think I recall the, uh, Asian's girl's name as being Erica, but I don't recall the, uh, the Mexican girl's name.

Q: Okay, so you told the Mexican girl that you were from Long Beach?

A: Yeah, I just went up and start talking to her, you know, struck up a conversation and it came up where we were from. Told her we were from, uh, Southern California.

Q: Where was this at, when you first struck up the conversation with her?

A: In the arcade.

Q: Down in the arcade?

A: Right.

Q: Alright. And you mentioned just a few seconds ago that you had showed her your rings?

A: Right. And so we were talking and, uh, she, uh, I think she said something about my tongue ring, so I, uh, proceeded to show her my nipple rings also.

Q: Okay. So you have your nipples pierced?

A: That's correct.

Q: Okay. And you showed those to her? To this Mexican girl?

A: Yes.

Q: Alright. And how long did you talk to her?

A: That's tough. I'd say 5 to 10 minutes. It wasn't a long conversation.

Q: Okay. And did you, did you end the conversation or did she end the conversation?

A: You know, I'm not really sure. I think it was kind'a like a, you know, both of us were just standing there, not saying anything, so we both just like walked away.

Q: Okay. Tell me about how much time you spent over at Whiskey Pete's, before you took the tram over to Primadonna.

A: Shoot I, I don't remember.

Q: Okay. Did you play any games in that arcade?

A: I don't think so. I think we went in and it was like we were unimpressed, so we just went back.

Q: Okay. Uhm, there was an incident that you told me about, where your friend, David, had gotten, uh, carded by a security guy and had his beer taken away?

A: Yes.

Q: Where was that at?

A: That was in the, uh, the, uh, Madonna one.

Q:

The Primadonna?

A: The Primadonna, yeah.

Q: Okay. And would that have been just a little while after you took the tram over?

A: No, that was when we first, no, it's like, you know, our first couple of beers, I believe.

Q: Okay.

A: So- think that was before. Because what we did is we got some beers and some- alright. He got his taken away. The guy didn't say anything to me.

Q: Okay.

A: And so I finished mine. Then I went back and got two more for us and we drank em' on the way to the tram. You know, we finished 'em waiting for the tram to show up.

Q: Okay. So that particular incident, when David had the beers taken away -

A: Right.

Q: How much longer after that did you guys get to the, uh, Primadonna Arcade downstairs?

A: I don't know.

Q: Okay.

A: Uhm, I don't remember the time.

Q: Okay. Do you remember goin' to Buffalo Bill's with him?

A: Yeah, I-I said that. And when we first got there to the Primadonna, we got-uh, David's father gave us some money and we walked across the street to Wild Bill's and, uh, we walked around like halfway around the whole complex looking for the uh, the entrance to get on the, uh, roller coaster.

Q: Right.

A: And when we couldn't find it, we just like went inside, walked around inside, then walked out the front.

Q: Okay. Tell me when was the very first time that you noticed the little girl-the little black girl.

A: Uhm, that's tough to say. Uhm -

Q: Had you seen her when you were over at Buffalo Bill's?

A: No. First time I saw her was in, uh, in the Arcade at, uh, Primadonna.

Q: Okay.

A: That was the only time I saw her.

Q: So estimate for me, uhm, the period of time when you first saw her until you chased her into the bathroom, or followed her into the bathroom.

A: I'd say a good half hour.

Q: Okay. So you didn't interact with her for a very long time, just maybe about half an hour?

A: Yeah, it wasn't-

Q: Okay.

A: - wasn't a long time.

Q: Okay. So, uh, when you first saw her, she was throwin' the spitballs with the- with the little Mexican boy that she was playin' with?

A: Right.

Q: Okay. And that little Mexican boy turned out to be the little brother of the Mexican girl you were talkin' to?

A: Yeah, that was- I assumed that. That was my assumption because, uh, the girl's older brother was with the Mexican girl also. I believed that it was her younger brother.

Q: Okay. The little black girl?

A: Yeah. This is confusing.

Q: Yeah. I'm kind confused so -

A: The little black girl had an older brother.

Q: Right.

A: And the older brother was with the, uh, Mexican girl.

Q: Okay.

A: That I had talked to and I had showed my nipple rings to.

Q: Uhm-hmm.

A: And I saw them pretty much together, uh, everywhere in the Arcade. And then I believe that the, uh, little Mexican boy was the Mexican girl's younger brother.

Q: Okay. Alright, I gotcha now. So did you ever get a chance to talk to the little black girl's older brother?

A: I believe he was standing like right next to the Mexican girl while we were talking to her.

Q: Uhm-hmm.

A: So-I didn't talk directly to him.

Q: But he was there and could hear your conversation?

A: Yes.

Q: Okay. But you never had a direct conversation with him?

A: No.

Q: Okay. Uhm, when you were down there in the Arcade, did you notice any other kids that would have been your age down there?

A: When we were first there, earlier on in the evening -

Q: Uhm-hmm.

A: -when we first check it out, there was like there's some older people down there. Not-not a lot, like maybe one older guy, two older guys or-you know, with their girlfriend or somethin'. That's about it.

Q: Okay. Do you know where David Cash, Sr. was when you guys were downstairs in the Arcade?

A: Yeah. He was up at the, uh, poker tables.

Q: At the Primadonna?

A: At the Primadonna. There's- I guess there's a little enclosed room.

Q: Uhm-hmm.

A: He was there.

Q: Okay. And...so your friend, David, Jr., was with you downstairs in the Arcade?

A: Yes.

Q: Okay. Was he talking, uh, with the little black girl also?

A: I don't really, we didn't really engage in conversation with her. I mean not like standing there talking to her. It was pretty much like, ah, playing kids games, running around chasing each other, uh, throwing stuff at each other. Just doing child-ish things. And David didn't really involve himself, it was mostly me.

Q: Okay.

A: It was pretty much all me.

Q: Well, let me ask you about that. Uhm, tell me why you started playing with her.

A: 'Cause I got hit by, uh, one of the things they were throwing.

Q: Okay.

A: So I threw it back and started playing around with them.

Q: Is that somethin' that you would normally do? Play around with younger kids?

A: Ah, not really, no.

Q: Okay. Why do you think you did it that night?

A: Ah...maybe it was 'cause I was bored, maybe it was because of the alcohol, I, I can't really say, I don't know.

Q: Okay. Uhm, when you hit, when you were playin' around, you know, with the spit wads and, and, you know, just carrying on with her, were you also carrying on with, ah, the little Mexican boy that she was playin' with?

A: Uh, yeah. We were like, uh, ___ like, he'd like, he'd like, "Hurry, "let's go get her", you know, like, like I was on his side or whatever, and then like, and, like he disappeared-

Q: Mmhuh.

A: Like after, ah... after the girl ran towards the bathroom. I like turned around and he we, was gone.

Q: Okay. Do you know where he went?

A: No.

Q: Okay. Uhm... after you came out of the bathroom and you had left the little black girl in there, tell me what you did then.

A: Uh... I came out of the bathroom, I walked out of the door and then I walked to the, uh, far end of the room, that the door opens up and then there's video games in the middle-

Q: Mmhuh.

A: I walked to the far end to walk around on that side and I walked on that side, ah, right there was, uh, the, uh, black boy, ah, the girl's older brother and the, uh, Mexican girl. I walked right by 'em, just walked out of the Arcade.

Q: Okay.

COLLETTE: I think when we were talking before, Jeremy, you described what the little girl was wearing and what you did with her clothes.

A: Oh the, uh, the little girl's clothes. She, the boots were- I, I remember those being like, uhm, like a,

like almost a calico pattern, like brown/black-

Q: Mmhuh.

A: -and a dark orange-ish red, kind'a mixed together. And then she had like a, uh, almost like stretch pants on, that had like over it, like attached to the top of the pants like, uh, material that just hung over freely.

Q: Mmhuh.

A: -like a colored line on the end, you know, they're not really a... I remember, uh, what color the, uh, underwear was, I don't remember that. But, uh, I had took her, uh, boots and her clothes and, uh, put 'em in the toilet. And, uh, when I left the body, I, uh, put the feet inside the toilet and, uh, so she was like sitting on the back edge of the toilet seat-

Q: Mmhuh.

A: -with her feet in the toilet and her hands on top of her legs.

Q: Tell me why you did that.

A: So that, uh...I was thinking that, you know, if somebody comes in the bathroom, they won't see like, you know, her legs hanging out from the bottom.

Q: Is that why you put her clothes into the toilet?

A: You know, I don't-- I don't really remember why I did the, put the clothes in the toilet. I, I think it was probably the same reason. I don't really remember.

Q: Mmhuh.

TURLEY: Jeremy, I think it, Phil should know, about the napkin too, when you were sittin' on her, when the girls came in.

A: Oh, uhm, also, uh... uh, from choking her, she had, uh, spit out a, a kind of a, a foam and with blood, mucus mixed with blood, you know, it was all bubbly and, uh, accidentally I had, uh, I guess, uhm, brushed my hand against it and like I'd gotten it all over my hand and so

I took some, uh, toilet paper and cleaned it off and I can't remember whether I put the toilet paper wad in the toilet or threw it on the ground.

Q: Okay. Do you remember, uhm, if you had wiped any portion of your body with that, except for wiping

her with that toilet paper that you just told me about?

A. — I, I got the mucus on my hand—

Q. Okay.

A. —mucus and blood on my hand, I used the toilet paper to clean my hand off.

Q. I see.

A. I didn't wipe it on her or myself, I just used it to clean my hand off.

Q. Okay, you told me earlier that, uhm, while this was going on, that you had, uhm, touched her with your penis. Is that, is that accurate?

A. That's accurate, yes.

Q. Okay. Do you remember if you got any blood on your penis?

A. Mm, no I don't ... there— there wasn't penetration

Q. Okay. Do you remember seeing her bleed at all, from her vaginal area?

A. Yes I do, I remember there was blood down there.

Q. Alright. Do you know—

A. —some on my finger.

Q. Okay, okay, that's what I was gonna ask you, did any transfer to your, to your body and you just said your finger?

A. Yes.

Q. Okay. Did you wipe that off?

A. I would think that I probably wiped it off at the same time that I wiped the mucus off of my hand.

Q. Okay. Uhm, I think you also told me that, uhm, there was a point in time there where you were sitting on top of her.

A. Correct.

Q. Okay. And you told me that you were stroking yourself.

A. Yes.

Q. Alright. And, uhm, was that in an effort to get an erection?

A. Yes sir.

Q. Okay. Were you able to achieve that?

A. I was halfway achieving it and the Mexican girls came into the bathroom.

Q. And that startled you?

A. That stopped it.

Q. Okay. Uhm, I need to ask you one thing. Uh... while this was occurring, do you recall if you had ejaculated at all?

A. No I did not.

Q. Okay. You are certain that you did not?

A. I'm certain.

Q. Okay. So then, when you left the stall and went upstairs, tell me what you did then--

A. I believe I exited the casino and went and waited, ah, by the car.

Q: Were you

A: --for David. 'Cause I, I think that was where we were supposed to meet.

Q. At the car?

A. Yeah, like four o'clock or something.

Q. Do you remember seeing David, uhm, at the top of the stairs, when you came out?

A. No I don't.

Q. Okay. Do you remember if when you came out of the Arcade and you went up the stairs, did you go right to the parking lot, or did you take your time going through the casino?

A. I don't really recall.

Q. Okay. Tell me what you guys did after, uh, you got to the car and you met up with David and his dad.

A: Well actually I, I met with David and his dad was still inside. So I waited at the car while he went and got his dad.

Q. Okay.

A. And then his, his dad and him came out and, uh, we left and we drove to Las Vegas.

Q. What'd you do when you got to Vegas.

A. Uhm, uh, we parked the car in a parking lot structure and, uh, and David and I were sleeping in the car, 'cause we were pretty tired and his dad went to play some poker at a casino. And, uh... then we, uh, woke up and we went and walked around and then met with his dad like 12 o'clock and we got a hotel room at, uh, the Holiday Inn.

Q. Okay, this beeping means we're runnin' outta tape on this side, so I'm gonna turn it off for a second and flip it over to the other side.

A: Alright.

Q: Okay, we're continuing on Side B. Alright so about 12 o'clock you met with David's father and went and got a room?

A. Right, and got a room, ah... on, uh, not the main strip, but the, uh, enclosed street? You know what I'm talkin' about?

COLLETTE: You told us the Holiday Inn.

A. Yeah, it was the Holiday Inn, but it's on a, it's by a strip of a bunch a casinos--

Q. Mmhuh.

A. Fremont, that's it.

Q. Oh, okay, on Fremont Street?

A. Right. We went and got a hotel, Holiday Inn, at Fremont and it's like a special named Holiday Inn, like it was taken over by another company.

Q. Okay.

A. But, uh, we got a room there and, uh, like slept a couple hours during the day, then got up, went out and, uh, checked out all the different casinos and went gambling in some of 'em. And, uh, stayed, stayed in Las Vegas til Monday. Uh, we drove down to the main strip at about 12 o'clock on Monday and the traffic was pretty bad, so we decided to stay on the strip 'til like 6 o'clock--

Q. Mmhuh.

A. So, uh, David and I went off and we, uh, checked out like the Luxor and, uh, uh, MGM and New York-New York, all the different hotels there and the casinos and, uh, and then we left at six and we were driving and then we got, we got to Stateline pretty fast, like I'd say about 40 minutes and then about ten miles past that and just

hit like deadlock traffic. So we got off at Barstow and took in a movie at like ten o'clock and left again at like 12:30 from Barstow and went about 7 miles, no traffic and then, uh, came over a ridge, there's traffic again. And, uh, finally got home to Long Beach at, uh, 3 am, Monday morning. That's when they dropped me off at home.

Q. Monday morning or Monday night/Tuesday morning?

A. Tuesday morning, sorry.

Q. Okay. That's all right. Uhm, tell me when you told David about what happened.

A. Uhm... I didn't really, uhm, discuss it with him. Uh... like on the, think it was Tuesday or Wednesday, like, I'd called him and I was talkin' to him just about like school and stuff, whatever, and, uh, he said he was gonna call back and then I called back a little later, 'cause he wasn't callin' back, and his

mom said he left and he came over my house and said, "Oh my God, you're on TV", like this girl was killed and all this stuff. So then, he, he figured it out pretty fast.

COLLETTE: Then he told you he was gonna have to go to the police.

A. Yeah.

COLLETTE: His dad insisted.

A: He said his dad was insisting that he would have to go to tell the police what he knew and he, he himself was gonna go and tell the police and then, you know, I said, "Well, that's uh, if that's what you have to do, that's what you have to do, that's fine." You know, I'm not gonna be upset with my friend for that.

Q: Mmhuh.

A: So, uh... he went to his, think his mom and dad talked to the police.

Q: And that was few hours ago. Is that right?

A: A little more than few hours ago—

Q: Yeah, a while ago.

A: —7, 8 hours ago.

Q: Okay. So—

? ____ (Both speaking at once)

Q: —ah, are you tellin' me that David didn't know anything about what happened that night?

A: Like, like I said, when he, uh, was at the bathroom door, he saw me grab the girl.

Q: Right.

A: And that's when he said like, "What are you doing?" and just left.

Q: Okay. But afterwards, after, ah, you had come out of the stall and you ran into him in the parking lot, you didn't tell him what happened?

A: I don't know, I might've, I don't know.

Q: Okay.

A: I don't think so, because I remember, or when he came over my house, he was like totally like surprised.

Q: When was the first time you saw any kind of media coverage about what happened?

A: When David came over. I think that was Tuesday night.

Q: You don't read the papers?

A: I read the papers, but, ah, not on a daily basis.

Q: Well, do you watch the news on TV?

A: Ah, yes, sometimes. I really, I really don't watch TV that much at all. I don't watch TV that much, I do read the paper sometimes. But, uh, after Dave came over and showed me that, I, I was watchin' the news to see, ah, what, uh, what would develop, uh, you know, what leads they were getting and everything. And I also had picked up the paper today, as a

matter of fact, read an article in there. Los Angeles Times.

Q: Did you see, ah, the video, the surveillance on the TV?

A: Yes I did, multiple times.

Q: Did you recognize yourself on there?

A: Yes I did.

Q: Okay. Did any other of your friends call you and tell that they'd seen you on TV?

A: Ah...not then, one of my friends called me and said he saw me. And, uh, then some other people, some friends at school were like, "What were you doin' on TV last night or this morning?" So yeah, people noticed, they recognized me.

Q: Did you tell anybody about what happened?

A: Ah, yeah, I told a old girlfriend of mine.

Q: Do you wanna tell me her name?

A: Not really, no.

Q: Okay.

A: I think you already know it though, so —

COLLETTE: Well I think you already know that I talked to her and I know her name.

A: You talked, yeah.

COLLETTE: So you might as well tell him.

A: Agnes.

Q: Agnes?

A: You want the full name?

Q: Sure.

A: Agnes Lee.

Q: Okay. Tell me what Agne's reaction was when you told her.

A: She didn't believe me.

Q: Okay.

A: She didn't wanna believe me.

Q: Why did you tell her?

A: 'Cause I wanted to confide in somebody and I wanted to, I don't know. I was considering leaving, ah, trying to get out of the country and if I did that, I would'a wanted her to go with me.

Q: Mmhuh.

A: And, uh... I, she had, you know, we had been going out for a while and she had told me stories before, about how she used to know people in like, uh, certain like, uh, you know, gang extensions, gang affiliations and, uh, so I expected her to like have, I don't know, dealt with somethin' like that before, like, a, a murder or something and, uh,

she might, you know, help me out and, uh, you know, give me some advice on what I should do. And, uh, turned out that all the stuff she had told me was just bullshit, so it kind'a like rattled her pretty good.

Q: Mmhuh. Uhm... you have a computer at home?

A: Yes I do.

Q: Are you familiar with America on Line and the Internet and all that?

A: Yes.

Q: Okay. Did you talk to anybody on line about what happened?

A: No. I hadn't been, ah, hadn't been on line since before I left for Las Vegas from up here. My parents, uh, took my modem away, so I had not been on line.

Q: Okay.

A: But there are, uh, uh, people, I'd say a maximum of seven people I've met on line who know that I have my tongue and my nipples pierced.

Q: Okay.

A: So I mean some people could, you know, draw conclusions just based on that.

Q: Would you like to tell me what your on line address is?

A: Uh, sure, Fly Boy 1030.

Q: Fly Boy 1030?

A: That's correct.

Q: And is it just the way it sounds? The way it's spelled?

A: Yeah. Fly, uh, capital F, Boy, capital B, no spaces in between. And then, uh, 1030, no spaces.

Q: Okay. Uhm...did you see the coverage of the little girl's father on TV?

A: Uhm...no, I didn't see any of the coverage on TV. I saw the brother speaking on TV--

Q: Mmhuh

A: About how, uh, they didn't want the, he didn't want the media, ah, harassing his dad and putting him down. And, uh, I read an article today, well yesterday, in, uh, the Los Angeles Times about, uh, uh, like the father and they said they had a source in Las Vegas, that, uh, had heard like, had gotten the father saying that,

uh, to keep, uh... for there not to be any trouble, that the hotel would, uh, have to give him a six pack of beer, a hundred dollars and, uh, round trip tickets to Las Vegas and pay for his daughter's funeral.

Q: What'd you think about that?

A: I thought it was pretty sad.

Q: Why?

A: It's his daughter. It's, it's his daughter and she was murdered and he's thinking about a six pack of beer and some hundred dollars in playing chips.

TURLEY: David, you said if, uh, it was some good that came out of this, can you tell Phil?

A: Uh, yeah. Uh...uhm, I just, I, I was sayin' that I notice also in the article how a majority of it was talking about how, ah, parents need to keep more careful watch over their children, they can't just, uh, leave 'em in, ah, in Arcades, while they're up in the casino--

Q: Mmhuh.

A: --like upstairs. And I think that this, based on how wide the media coverage has been, is gonna be a big eye opener for a lotta parents and they're not gonna be leaving their kids alone anymore.

Q: Tell me what you thought about all those little kids down there at 3:30, 4 o'clock in the morning.

A: I thought it was pretty ridiculous that kids would be up at that time. I mean I didn't, when I was a kid, I'd wanna, you know, stay up late or whatever, you know--

Q: Mmhuh.

A: --at the, I'm sure when I was a little kid, it'd be cool to be up at 3:30 in the morning, in the Arcade. But I mean just runnin' around rampant, there's like no supervision whatsoever. I mean it's like, it's, it's an area that's completely unsupervised and there's no adults around, it's just a bunch a little kids hangin' out.

Q: Uhm, you know a lotta times in our investigations we come across situations and we give them names, like, uh, crimes of circumstance, crimes of passion, ah... spontaneous crimes, pre-planned incidents and stuff like that. Tell me what you would, ah, classify this particular incident as.

A: I'd have to say it'd be spontaneous.

Q: Spontaneous?

A: Yeah.

Q: Okay. You didn't plan on doin' this at all, when you got there?

A: Definitely not, no.

Q: Okay. And you hadn't planned on doing this when you first started playin' around with the little girl?

A: No. Not even.

Q: Do you have any idea what actually compelled you to do this?

A: I don't know. I was sayin' earlier it's like it's, it's like, it just like something like went haywire or something, I don't know. It's like, like when she swung that thing at me, like I don't know, like I suddenly like reacted. And like it was just, it was just a completely strange experience. I mean it's, it's hard for me to

explain, I can't say. It, it wasn't like fun, it wasn't, uh, like a rush, it was just...it's strange, hard to explain. I don't know what triggered it. Like I think her sw, like swinging that thing at me, I guess that's what triggered it, when I grabbed her and was just like from there it went on.

Q: Tell me if you think that there would've been anything that could've stopped you from doin' this.

A: Yeah, lots of things.

Q: Give me an example.

A: Ah, for one, a parent bein' around their child when they're there. You know, not let, leaving your children alone. Uh, having signs posted saying you are under surveillance. That's, that's a pretty big deterrent.

COLLETTE: I think you told us you hadn't seen the cameras ____

A: Yeah, I didn't, I didn't see the camera. Ah, I had, I had seen two cameras in big white boxes and that's it. I didn't see any camera up by the bathrooms.

Q: Okay. But now you know that, that you were caught on surveillance tape.

A: Yes, I know that.

Q: And you saw that from the TV coverage and people tellin' you?

A: That's correct

Q: Okay.

COLLETTE:

Whyn't you tell him about your blue Bruins baseball cap and your clothing, and what you did with all that stuff.

A: Uhm, today I, I panicked today, because, uh, I didn't know what to do. I'm, I'm looking at spending a good amount of time, a good period of time of my life in jail now, so I was thinking about taking off and gettin' rid of any evidence I might have, or whatnot. So I, uh, I burned, uh, the cap that I was wearin' that night and, uh, the shorts that I was wearin' that night.

Q: What kind'a cap was that?

A: It was a, uh, a U.C.L.A. Bruins like baseball cap.

Q: What color was it?

A: It's a blue cap with the yellow B.

Q: Okay. Uhm, so on the front of the cap there's the B?

A: Correct.

Q: And then on the surveillance tape, I saw some writing on the side of the cap.

A: I believe it says, uhm, like go, go Bruins, or something, above the, uh, hole on the back of the cap.

Q: Okay. And tell me about the shirt you were wearing that night.

A: A blue shirt and it's like uh, just like tee shirt, it's, uhm, kind'a dark navy blue and it had like uh, I think some circle designs on it. It's just pretty much a tee shirt with some designs on it, on the front.

Q: And what'd you do with that shirt?

A: It's at home.

Q: It's at home?

A: Yeah, I don't, I don't remember whether I packed it or, ah, if it's in my room or if it's in the laundry room.

COLLETTE: Could be in the laundry room, a green backpack he has, or a big black bag that he has.

A: The, uh, the shoes are in the backpack.

? The gray Vans tennis shoes.

A: Right. And the boxers are in the, uh, the black bag.

Q: Is that the kind'a shoes you were wearing, were gray Vans?

A: Yeah, those were the shoes I was wearing.

Q: Okay.

COLLETTE: But he says the maid was there today and they may have washed all those items.

A: All, I, I believe all the clothes had been washed.

Q: Okay. Uhm, well I gotta tell you, I can't think of any other questions I'd like to ask you. What I, what I'd wanna do now is ask, uh, Sergeant Turley or Detective Collette if they have any questions for you, if you don't mind.

A: No, I don't mind. That's fine.

TURLEY: Uh, Jeremy, the only thing that I have that, that I wanna, I think is important that Phil knows, because it's, I want our, ours to be pretty much the same. Do you belong to any gangs or anything right now?

A: No.

TURLEY: You're not a white supreme-ist?

A: No, definitely not.

TURLEY: You indicated to me that you didn't attack this girl because she was black.

A: That's correct. I did not attack her because she was black.

TURLEY: Okay. Also, you told, you told me that, uhm, you hadn't followed her around or anything else to see her locations and that, that you had been in the Arcade for a while, in fact, you even urinated in the Arcade itself, by the Helicop. Is that —

A: That's correct.

TURLEY: Tell me about that.

A: Urinated twice.

COLLETTE: The time if 0300, I just turned to Side B.

TURLEY: In the Arcade.

A: Twice in the Arcade, uhm, there was this spot, ah, there's a row of video games against the wall, going towards, uh, the, uh, ladies' bathroom and, uh, on the wall there's a, a like a socket, plug socket. Ah, urinated all over that. And, uh, and then there's a helicopter game like, uh, like right across from that, urinated inside that.

TURLEY: Okay. You also, uhm, told me earlier and I think it's important here to tell Phil too, that, uhm...after you had, uhm, choked her from, from the front and, uhm, you had sat on her and you heard her kind of, ah, still maybe possibly breathe, there was some life in her, uhm, that you had, uhm, you

wanted to basically, you didn't want her to be a vegetable for the rest of your life, so you, you looked there and you thought about how to do it and you, you remember recalling about some movies or something?

A: Yeah.

? Could you tell Phil about that?

A: Uhm, before I left, uh, and she was still breathing, not, not, not strong breathing, but, you know, a wheezy breathing, uh, very labored, and, uh, I, I, I thought about it and I, and I thought to myself that I couldn't leave her there like that, because I couldn't leave then and I figured that she would be a vegetable,

because of, uh, lack of oxygen to the brain, so, uh... I tried to, uh, break her neck. Uh, and doing it how I'd seen in movies before, uh, putting one hand on the back of the head and one hand under the chin and, uh, twisting, uh, the head to twist the neck, that uh, breaks it. And when I did that, uh, I heard a, a, a loud snap, but,

ah, she was still breathing so, uh, I did it one more time, as hard as I could and, and she stopped breathing.

TURLEY: Okay, Jeremy, at that time, you know, after you choked her, you know, and you didn't want her to be a vegetable, when you decided to break her neck, was it, was it then you say, hey, I'm gonna put her out of her misery and you were gonna kill her?

A: Yeah.

TURLEY: I mean, did you actually say that to yourself, or did you have that idea, or--?

A: Well, my thought was that that would be like the quickest, easiest thing. Uhm, least painful way.

? Mmhuh.

A: Just, you know, end it. So that's what I did.

Q: Okay. Uhm, can I ask you one question?

A: Sure.

Q: Did you, when she was, uh, having this labored breathing, did you consider trying to give her a little bit of CPR yourself, and then take off?

A: No, the thought never cross my mind.

Q: Okay.

TURLEY: Uhm, one other thing too. You, you, you told, uhm, us earlier, or at least clarify, when you had your penis out and you were, she was seated up against the toilet, that, uhm, she wasn't conscious at this time. What, I mean is that, is that the case? Is that, was she, was she screaming? Were you holding her into it, or, or what? Was she not--

A: She was not conscious.

? Okay.

A: She was breathing, but she was not conscious.

? Okay. Well how do you know she was breathing? Could you see ____

A: I could hear her breathing and I could see her chest moving up and down.

? Oh, you could?

A: Yes.

?

Okay. And, uhm...were her eyes open or closed at that time?

A:

I don't, I don't think I really looked at her eyes.

?

Okay.

A:

You know, I don't recall really looking at her face at all.

TURLEY:

Do you remember anyone, when you were in the stall, in the handicapped stall, when this was all going on, do you remember anyone saying anything to you, or coming over the top of the stall, or under the stall, or opening the door of the stall itself, not just the bathroom?

A:

No, I would've noticed that I think.

TURLEY:

Well Phil, I don't have anything more.

Q:

Okay.

COLLETTE:

Thank you. Would you tell us what your grade point average was in school?

A:

Uh, 3.5.

COLLETTE:

3.5? And do you recall I handed you, a uh, consent to search form, to search areas of, uh, the home you live in, from which you have control?

A:

That's correct.

COLLETTE:

And you read the whole thing out loud to us.

A:

That's correct.

COLLETTE:

and, uh, you signed it and agreed to let officers from our Department and Las Vegas, or our Department check for your clothing?

A:

That's correct.

?

Okay.

TURLEY:

Jeremy, one, one quick thing. If, if I could relay something to the father from you, what would it be?

A: Ah... I don't know if I even have the right to approach him, at least not for a while. Ah, but based on, ah, what he said supposedly, what the newspaper said he said, uh, it doesn't seem like he really had much respect for his daughter at all, but I would send not only him, but his family a letter of apology. I know it's

not really, it's, it's practically nothing, it does nothing to bring her back, but I, uh, tell him that I will be serving my time and I will pay for what I've done.

Q: Uhm, Jeremy, just a couple of real quick things. Uhm, before we started this interview and before we turned on the tape, uhm, had we, had we threatened you at all in any way?

A: No you did not.

Q: Okay. And did we make you any promises or considerations for giving us a statement?

A: No you did not.

Q: Okay. Uhm, does anybody else have any questions?

TURLEY: Phil or Bill, I don't.

Q: Okay.

COLLETTE: Do you have any questions of us, Jeremy? Now's your time to ask us anything, any problems, anything you need to discuss, let us know.

A: No questions.

Q: Okay. That'll be the end of this statement, the same people are present, it's now 0310 hours. Thanks very much.

EXHIBIT A9

EXHIBIT A9

ORIGINAL

1 JOC

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 200 South Third Street
6 Las Vegas, Nevada 89155-2211
7 (702) 455-4711
8 Attorney for Plaintiff

FILED

MAR 23 9 34 AM '04

Shirley E. Rungius
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

VERNELL RAY EVANS,
#924477

Defendant.

Case No: C116071

Dept No: VIII

JUDGMENT OF CONVICTION (JURY TRIAL)

The Defendant previously entered plea(s) of not guilty to the crime(s) of COUNTS 2 THROUGH 5 - MURDER WITH USE OF A DEADLY WEAPON (Felony), in violation of NRS 200.010, 200.030, 193.165, and the matter having been tried before a jury, and the Defendant being represented by counsel and having been found guilty of the crime(s) of COUNTS 2 THROUGH 5 - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Felony); and thereafter on the 17th day of March, 2004, the Defendant was present in Court for sentencing with his counsel, PETE CHRISTIANSEN, Esquire, and good cause appearing therefor,

THE DEFENDANT HEREBY ADJUDGED guilty of the crime(s) as set forth in the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee, the Defendant is sentenced as follows: Defendant is SENTENCED on COUNT II to a MAXIMUM term of LIFE WITHOUT THE POSSIBILITY OF PAROLE with an EQUAL AND CONSECUTIVE term of LIFE WITHOUT THE POSSIBILITY OF PAROLE for use of a deadly weapon, CONSECUTIVE to COUNT I (on which Defendant

RECEIVED

MAR 23 2004

COUNTY CLERK

P:\WPDOCS\JUDG\J04\J0428902.doc

CK

1 has previously been sentenced to TEN YEARS, which term has expired); on COUNT III to a
2 MAXIMUM term of LIFE WITHOUT THE POSSIBILITY OF PAROLE with an EQUAL
3 AND CONSECUTIVE term of LIFE WITHOUT THE POSSIBILITY OF PAROLE for use
4 of a deadly weapon, CONSECUTIVE to COUNT II; on COUNT IV to a MAXIMUM term
5 of LIFE WITHOUT THE POSSIBILITY OF PAROLE with an EQUAL AND
6 CONSECUTIVE term of LIFE WITHOUT THE POSSIBILITY OF PAROLE for use of a
7 deadly weapon, CONSECUTIVE to count III; on COUNT V to a MAXIMUM term of LIFE
8 WITHOUT THE POSSIBILITY OF PAROLE with an EQUAL AND CONSECUTIVE term
9 of LIFE WITHOUT THE POSSIBILITY OF PAROLE for use of a deadly weapon,
10 CONSECUTIVE to COUNT IV. Defendant to receive 3,392 days credit for time served.

11 DATED this 22 day of March, 2004.

12 *Lee A. Gates*
13 DISTRICT JUDGE *sc*

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28 mb

EXHIBIT A10

EXHIBIT A10

1 SMEM
2 DAVID ROGER
3 DISTRICT ATTORNEY
4 Nevada Bar #002781
5 VICKI J. MONROE
6 Chief Deputy District Attorney
7 Nevada Bar #003776
8 200 South Third Street
9 Las Vegas, NV 89155-2211
10 (702) 455-4711
11 Attorney for Plaintiff

FEB 04 2004

SHARON COFFMAN

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,

15 Plaintiff,

16 -vs-

17 VERNELL RAY EVANS,
18 #924477

19 Defendant.

CASE NO: C116071
DEPT NO: VIII

20 SENTENCING AGREEMENT

21 I, VERNELL RAY EVANS, having been found guilty by a jury of: COUNTS 2
22 THROUGH 5 - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON
23 (Felony - NRS 200.010, 200.030, 193.165)), hereby agree to enter into the following
24 sentencing agreement:

25 Both parties stipulate that the Defendant will be sentenced to a term of life in the
26 Nevada Department of Corrections without the possibility of parole, plus an equal and
27 consecutive term of life in the Nevada Department of Corrections without the possibility of
28 parole for the deadly weapon enhancement, per count. Further, both parties stipulate that all
counts will run consecutive to one another and will run consecutive to Count 1, which the
Defendant is currently serving time for. Additionally, both parties agree that if the Court is
not inclined to sentence the Defendant as stipulated, either party may withdraw from these
negotiations and proceed to a penalty hearing.

RECEIVED

FEB 04 2003

COUNTY CLERK

P:\WPDOCS\IN\304\30423904.doc

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

2
3
4
5
6

7

8
9
10

11
12

13
14

15
16

17
18
19
20

21
22
23

24
25
26

27
28

1 sentencing, including my criminal history. This report may contain hearsay information
2 regarding my background and criminal history. My attorney and I will each have the
3 opportunity to comment on the information contained in the report at the time of sentencing.
4 Unless the District Attorney has specifically agreed otherwise, then the District Attorney
5 may also comment on this report.

6 WAIVER OF RIGHTS

7 I understand that the Nevada Supreme Court has ordered a new penalty hearing for
8 me in this case. I agree, after speaking with attorneys, that it is in my best interests to accept
9 the conditions set forth in the sentencing agreement. I further agree that I waive my right to
10 appeal my decision to waive my penalty hearing at this time.

11 VOLUNTARINESS OF PLEA

12 I have discussed with my attorney any possible appellate issues and circumstances
13 which might be in my favor.

14 All of the foregoing elements, consequences, rights, and waiver of rights have been
15 thoroughly explained to me by my attorney.

16 I believe that entering into this sentencing agreement is in my best interest, and that a
17 penalty hearing would be contrary to my best interest.

18 I am signing this agreement voluntarily, after consultation with my attorney, and I am
19 not acting under duress or coercion or by virtue of any promises of leniency, except for those
20 set forth in this agreement.

21 I am not now under the influence of any intoxicating liquor, a controlled substance or
22 other drug which would in any manner impair my ability to comprehend or understand this
23 agreement or the proceedings surrounding my entry into this agreement.

24 My attorney has answered all my questions regarding this sentencing agreement and

25 //

26 //

27 //

28 //

1 its consequences to my satisfaction and I am satisfied with the services provided by my
2 attorney.

3 DATED this 4 day of ^{February}~~January~~, 2004.

4
5 Vernell Ray Evans
6 VERNELL RAY EVANS
7 Defendant

8 AGREED TO BY:

9 Vicki J. Monroe
10 VICKI J. MONROE
11 Chief Deputy District Attorney
12 Nevada Bar #003776
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of
3 the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations contained in the charge(s)
5 and sentencing options for which the Defendant was convicted.

6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.

8 3. All waivers offered by the Defendant pursuant to this agreement are consistent
9 with the facts known to me and are made with my advice to the Defendant.


10 4. To the best of my knowledge and belief, the Defendant:

11 a. Is competent and understands the charges and the consequences of the
12 agreement and waivers as provided in this agreement.

13 b. Executed this agreement voluntarily.

14 c. Was not under the influence of intoxicating liquor, a controlled substance or
15 other drug at the time I consulted with the defendant as certified in paragraphs
16 1 and 2 above.

17 Dated: This 4 day of January, 2004.

18 
19 ATTORNEY FOR DEFENDANT

20 

21 mb

EXHIBIT A11

EXHIBIT A11

1 CODE 1785
2 Richard A. Gammick
3 #001510
4 P.O. 30083
5 Reno, NV. 89520 3083
6 (775)328-3200
7 Attorney for Plaintiff

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE.

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No. CR06-2974

15 v.

Dept. No. 6

16 VALERIE JEAN MOORE,
17 also known as
18 VALARIE MOORE,

19 Defendant.

20
21
22 GUILTY PLEA MEMORANDUM

23 1. I, VALERIE JEAN MOORE, also known as VALARIE MOORE,
24 understand that I am charged with the offense(s) of: COUNT I FIRST
25 DEGREE ARSON, a violation of NRS 205.010, a felony, and COUNTS II
26 through XIII MURDER IN THE FIRST DEGREE, a violation of NRS 200.010
and NRS 200.030(1)(b), a felony.

2. I desire to enter a plea of guilty to the offense(s) of
COUNT I FIRST DEGREE ARSON, a violation of NRS 205.010, a felony,
and COUNTS II through XIII MURDER IN THE FIRST DEGREE, a violation
of NRS 200.010 and NRS 200.030(1)(b), a felony, as more fully alleged
///

1 in the charge(s) filed against me. I am competent to proceed and to
2 enter into this plea agreement with the State of Nevada.

3 3. By entering my plea of guilty I know and understand
4 that I am waiving the following constitutional rights:

5 A. I waive my privilege against self-incrimination.

6 B. I waive my right to trial by jury, at which trial the
7 State would have to prove my guilt of all elements of the offenses
8 beyond a reasonable doubt.

9 C. I waive my right to confront my accusers, that is, the
10 right to confront and cross examine all witnesses who would testify
11 at trial.

12 D. I waive my right to subpoena witnesses for trial on my
13 behalf.

14 4. I understand the charge(s) against me and that the
15 elements of the offense(s) which the State would have to prove beyond
16 a reasonable doubt at trial are that on the 31st day of October,
17 2006, or thereabout, in the County of Washoe, State of Nevada, I did,
18 as to Count I FIRST DEGREE ARSON, willfully, unlawfully, and
19 maliciously set fire to a residential structure and/or items
20 contained therein, located at 214 Lake Street, known as the Mizpah
21 Hotel, Reno, Washoe County, Nevada.

22 I understand the charge(s) against me and that the elements
23 of the offense(s) which the State would have to prove beyond a
24 reasonable doubt at trial are that on the 31st day of October, 2006,
25 or thereabout, in the County of Washoe, State of Nevada, I did, as to
26 Count II MURDER IN THE FIRST DEGREE, willfully, unlawfully, and with

1 malice aforethought, kill or cause the death of GREGORY JACK WILTSE,
2 a human being, during the commission of the crime of Arson, said
3 death occurring on October 31, 2006.

4 I understand the charge(s) against me and that the elements
5 of the offense(s) which the State would have to prove beyond a
6 reasonable doubt at trial are that on the 31st day of October, 2006,
7 or thereabout, in the County of Washoe, State of Nevada, I did, as to
8 Count III MURDER IN THE FIRST DEGREE, willfully, unlawfully, and
9 with malice aforethought, kill or cause the death of ERNEST JAMES
10 DUARTE, a human being, during the commission of the crime of Arson,
11 said death occurring on October 31, 2006.

12 I understand the charge(s) against me and that the elements
13 of the offense(s) which the State would have to prove beyond a
14 reasonable doubt at trial are that on the 31st day of October, 2006,
15 or thereabout, in the County of Washoe, State of Nevada, I did, as to
16 Count IV MURDER IN THE FIRST DEGREE, willfully, unlawfully, and with
17 malice aforethought, kill or cause the death of PAUL DRUM SMITH, a
18 human being, during the commission of the crime of Arson, said death
19 occurring on October 31, 2006.

20 I understand the charge(s) against me and that the elements
21 of the offense(s) which the State would have to prove beyond a
22 reasonable doubt at trial are that on the 31st day of October, 2006,
23 or thereabout, in the County of Washoe, State of Nevada, I did, as to
24 Count V MURDER IN THE FIRST DEGREE, willfully, unlawfully, and with
25 malice aforethought, kill or cause the death of CHRISTOPHER JAMES
26 ///

1 COVERT, a human being, during the commission of the crime of Arson,
2 said death occurring on October 31, 2006

3 I understand the charge(s) against me and that the elements
4 of the offense(s) which the State would have to prove beyond a
5 reasonable doubt at trial are that on the 31st day of October, 2006,
6 or thereabout, in the County of Washoe, State of Nevada, I did, as to
7 Count VI MURDER IN THE FIRST DEGREE, willfully, unlawfully, and with
8 malice aforethought, kill or cause the death of NADINE INGE
9 NICODEMUS, a human being, during the commission of the crime of
10 Arson, said death occurring on October 31, 2006.

11 I understand the charge(s) against me and that the elements
12 of the offense(s) which the State would have to prove beyond a
13 reasonable doubt at trial are that on the 31st day of October, 2006,
14 or thereabout, in the County of Washoe, State of Nevada, I did, as to
15 Count VII MURDER IN THE FIRST DEGREE, willfully, unlawfully, and
16 with malice aforethought, kill or cause the death of PHILLIP JAMES
17 BRIDGES, a human being, during the commission of the crime of Arson,
18 said death occurring on October 31, 2006.

19 I understand the charge(s) against me and that the elements
20 of the offense(s) which the State would have to prove beyond a
21 reasonable doubt at trial are that on the 31st day of October, 2006,
22 or thereabout, in the County of Washoe, State of Nevada, I did, as to
23 Count VIII MURDER IN THE FIRST DEGREE, willfully, unlawfully, and
24 with malice aforethought, kill or cause the death of ALFORD EDWARD
25 YATES, a human being, during the commission of the crime of Arson,
26 said death occurring on October 31, 2006.

1 I understand the charge(s) against me and that the elements
2 of the offense(s) which the State would have to prove beyond a
3 reasonable doubt at trial are that on the 31st day of October, 2006,
4 or thereabout, in the County of Washoe, State of Nevada, I did, as to
5 Count IX MURDER IN THE FIRST DEGREE, willfully, unlawfully, and with
6 malice aforethought, kill or cause the death of KEVIN M. SUTHERIN, a
7 human being, during the commission of the crime of Arson, said death
8 occurring on October 31, 2006.

9 I understand the charge(s) against me and that the elements
10 of the offense(s) which the State would have to prove beyond a
11 reasonable doubt at trial are that on the 31st day of October, 2006,
12 or thereabout, in the County of Washoe, State of Nevada, I did, as to
13 Count X MURDER IN THE FIRST DEGREE, willfully, unlawfully, and with
14 malice aforethought, kill or cause the death of WILLIAM JOHN SERRAO,
15 a human being, during the commission of the crime of Arson, said
16 death occurring on October 31, 2006.

17 I understand the charge(s) against me and that the elements
18 of the offense(s) which the State would have to prove beyond a
19 reasonable doubt at trial are that on the 31st day of October, 2006,
20 or thereabout, in the County of Washoe, State of Nevada, I did, as to
21 Count XI MURDER IN THE FIRST DEGREE, willfully, unlawfully, and with
22 malice aforethought, kill or cause the death of SANTIAGO MCDONALD, a
23 human being, during the commission of the crime of Arson, said death
24 occurring on October 31, 2006.

25 I understand the charge(s) against me and that the elements
26 of the offense(s) which the State would have to prove beyond a

1 reasonable doubt at trial are that on the 31st day of October, 2006,
2 or thereabout, in the County of Washoe, State of Nevada, I did, as to
3 Count XII MURDER IN THE FIRST DEGREE, willfully, unlawfully, and
4 with malice aforethought, kill or cause the death of JEREMY LEE WREN,
5 a human being, during the commission of the crime of Arson, said
6 death occurring on October 31, 2006.

7 I understand the charge(s) against me and that the elements
8 of the offense(s) which the State would have to prove beyond a
9 reasonable doubt at trial are that on the 31st day of October, 2006,
10 or thereabout, in the County of Washoe, State of Nevada, I did, as to
11 Count XIII MURDER IN THE FIRST DEGREE, willfully, unlawfully, and
12 with malice aforethought, kill or cause the death of DIANA BARBARA
13 POCHINI, a human being, during the commission of the crime of Arson,
14 said death occurring on October 31, 2006.

15 5. I admit the facts which support all the elements of the
16 offenses by pleading guilty. I admit that the State possesses
17 sufficient evidence which would result in my conviction. I have
18 considered and discussed all possible defenses and defense strategies
19 with my counsel, including but not limited to, insanity, diminished
20 mental capacity, intoxication, lack of specific or other criminal
21 intent, alibi, that another person or persons committed the offenses
22 and that the fire was accidentally caused, or otherwise not
23 intentionally set by myself or any other person. I understand that
24 any substantive or procedural pretrial issue or issues which could
25 have been raised at trial are waived by my plea.

26 ///

1 6. I understand that the consequences of my plea of
2 guilty, as to Count I FIRST DEGREE ARSON, are that I may be
3 imprisoned for a minimum period of two and a maximum period of
4 fifteen years in the Nevada State Department of Corrections and that
5 I am eligible for probation. I may also be fined up to \$15,000.00.

6 I understand that the consequences of my plea of guilty, as
7 to Count II MURDER IN THE FIRST DEGREE, are that I may be imprisoned
8 for a period of life with or without the possibility of parole or for
9 a definite term of fifty years in the Nevada State Department of
10 Corrections and that I am not eligible for probation. I understand
11 that if the penalty is fixed at life imprisonment with the
12 possibility of parole, or for a definite term of fifty years,
13 eligibility for parole begins when a minimum of twenty years has been
14 served.

15 I understand that the consequences of my plea of guilty, as
16 to Count III MURDER IN THE FIRST DEGREE, are that I may be
17 imprisoned for a period of life with or without the possibility of
18 parole or for a definite term of fifty years in the Nevada State
19 Department of Corrections and that I am not eligible for probation.
20 I understand that if the penalty is fixed at life imprisonment with
21 the possibility of parole, or for a definite term of fifty years,
22 eligibility for parole begins when a minimum of twenty years has been
23 served.

24 I understand that the consequences of my plea of guilty, as
25 to Count IV MURDER IN THE FIRST DEGREE, are that I may be imprisoned
26 for a period of life with or without the possibility of parole or for

1 a definite term of fifty years in the Nevada State Department of
2 Corrections and that I am not eligible for probation. I understand
3 that if the penalty is fixed at life imprisonment with the
4 possibility of parole, or for a definite term of fifty years,
5 eligibility for parole begins when a minimum of twenty years has been
6 served.

7 I understand that the consequences of my plea of guilty, as
8 to Count V MURDER IN THE FIRST DEGREE, are that I may be imprisoned
9 for a period of life with or without the possibility of parole or for
10 a definite term of fifty years in the Nevada State Department of
11 Corrections and that I am not eligible for probation. I understand
12 that if the penalty is fixed at life imprisonment with the
13 possibility of parole, or for a definite term of fifty years,
14 eligibility for parole begins when a minimum of twenty years has been
15 served.

16 I understand that the consequences of my plea of guilty, as
17 to Count VI MURDER IN THE FIRST DEGREE, are that I may be imprisoned
18 for a period of life with or without the possibility of parole or for
19 a definite term of fifty years in the Nevada State Department of
20 Corrections and that I am not eligible for probation. I understand
21 that if the penalty is fixed at life imprisonment with the
22 possibility of parole, or for a definite term of fifty years,
23 eligibility for parole begins when a minimum of twenty years has been
24 served.

25 I understand that the consequences of my plea of guilty, as
26 to Count VII MURDER IN THE FIRST DEGREE, are that I may be

1 imprisoned for a period of life with or without the possibility of
2 parole or for a definite term of fifty years in the Nevada State
3 Department of Corrections and that I am not eligible for probation.
4 I understand that if the penalty is fixed at life imprisonment with
5 the possibility of parole, or for a definite term of fifty years,
6 eligibility for parole begins when a minimum of twenty years has been
7 served.

8 I understand that the consequences of my plea of guilty, as
9 to Count VIII MURDER IN THE FIRST DEGREE, are that I may be
10 imprisoned for a period of life with or without the possibility of
11 parole or for a definite term of fifty years in the Nevada State
12 Department of Corrections and that I am not eligible for probation.
13 I understand that if the penalty is fixed at life imprisonment with
14 the possibility of parole, or for a definite term of fifty years,
15 eligibility for parole begins when a minimum of twenty years has been
16 served.

17 I understand that the consequences of my plea of guilty, as
18 to Count IX MURDER IN THE FIRST DEGREE, are that I may be imprisoned
19 for a period of life with or without the possibility of parole or for
20 a definite term of fifty years in the Nevada State Department of
21 Corrections and that I am not eligible for probation. I understand
22 that if the penalty is fixed at life imprisonment with the
23 possibility of parole, or for a definite term of fifty years,
24 eligibility for parole begins when a minimum of twenty years has been
25 served.

26 ///

1 I understand that the consequences of my plea of guilty, as
2 to Count X MURDER IN THE FIRST DEGREE, are that I may be imprisoned
3 for a period of life with or without the possibility of parole or for
4 a definite term of fifty years in the Nevada State Department of
5 Corrections and that I am not eligible for probation. I understand
6 that if the penalty is fixed at life imprisonment with the
7 possibility of parole, or for a definite term of fifty years,
8 eligibility for parole begins when a minimum of twenty years has been
9 served.

10 I understand that the consequences of my plea of guilty, as
11 to Count XI MURDER IN THE FIRST DEGREE, are that I may be imprisoned
12 for a period of life with or without the possibility of parole or for
13 a definite term of fifty years in the Nevada State Department of
14 Corrections and that I am not eligible for probation. I understand
15 that if the penalty is fixed at life imprisonment with the
16 possibility of parole, or for a definite term of fifty years,
17 eligibility for parole begins when a minimum of twenty years has been
18 served.

19 I understand that the consequences of my plea of guilty, as
20 to Count XII MURDER IN THE FIRST DEGREE, are that I may be
21 imprisoned for a period of life with or without the possibility of
22 parole or for a definite term of fifty years in the Nevada State
23 Department of Corrections and that I am not eligible for probation.
24 I understand that if the penalty is fixed at life imprisonment with
25 the possibility of parole, or for a definite term of fifty years,
26 ///

1 eligibility for parole begins when a minimum of twenty years has been
2 served.

3 I understand that the consequences of my plea of guilty, as
4 to Count XIII MURDER IN THE FIRST DEGREE, are that I may be
5 imprisoned for a period of life with or without the possibility of
6 parole or for a definite term of fifty years in the Nevada State
7 Department of Corrections and that I am not eligible for probation.
8 I understand that if the penalty is fixed at life imprisonment with
9 the possibility of parole, or for a definite term of fifty years,
10 eligibility for parole begins when a minimum of twenty years has been
11 served. The sentence on each count may be concurrent or consecutive
12 to each other.

13 7. In exchange for my plea of guilty, and pursuant to this
14 plea agreement, the State will not file or pursue the death penalty.
15 I understand and agree that if I do not plead guilty to First Degree
16 Arson and twelve counts of Murder in the First Degree, or if I at any
17 time challenge my conviction or sentence and am successful, the State
18 reserves the right to file and pursue the death penalty. For this
19 purpose, I hereby waive any right I may have under Supreme Court Rule
20 250(4) to require the State to file notice of intent to seek the
21 death penalty within thirty days of the filing of a criminal
22 Information.

23 I agree to be sentenced by a single Judge pursuant to NRS
24 175.552(1)(c). I waive any right to have a jury decide the penalty
25 for any of these offenses.

26 ///

1 In exchange for my plea of guilty, the State, my counsel,
2 and I have agreed to recommend the following: Both parties shall
3 recommend a minimum sentence of 6 years and a maximum sentence of 15
4 years on Count I FIRST DEGREE ARSON. On Counts II through XIII
5 MURDER IN THE FIRST DEGREE, the parties shall recommend a sentence of
6 life without the possibility of parole on each count. The sentences
7 imposed upon all thirteen counts are to run consecutively with each
8 and every other count. For this reason, neither my counsel nor I
9 will present any evidence or argument in mitigation of these crimes
10 at sentencing. I further understand and agree that the sentence on
11 each and every count must run consecutively to my prior Washoe County
12 conviction for MURDER IN THE SECOND DEGREE WITH THE USE OF A DEADLY
13 WEAPON (C87-452), for which crime I was on parole during the
14 commission of the instant offenses. The State will not file any
15 additional criminal charges against me stemming from this arrest.

16 8. I understand that, even though the State and I have
17 reached this plea agreement, the State is reserving the right to
18 present arguments, facts, and/or witnesses at sentencing in support
19 of the plea agreement.

20 9. I also agree that I will make full restitution in this
21 matter, as determined by the Court.

22 10. I understand that the State, in its discretion, is
23 entitled to either withdraw from this agreement and proceed with the
24 prosecution of the original charges or be free to argue for an
25 appropriate sentence at the time of sentencing if I fail to appear at
26 any scheduled proceeding in this matter OR if prior to the date of my

1 sentencing I am arrested in any jurisdiction for a violation of law
2 OR if I have misrepresented my prior criminal history. I represent
3 that I have multiple felony and misdemeanor convictions all known to
4 the State, including a 1987 conviction for MURDER IN THE SECOND
5 DEGREE WITH THE USE OF A DEADLY WEAPON in Washoe County, Nevada. I
6 understand and agree that the occurrence of any of these acts
7 constitutes a material breach of my plea agreement with the State. I
8 further understand and agree that by the execution of this agreement,
9 I am waiving any right I may have to remand this matter to Justice
10 Court should I later be permitted to withdraw my plea.

11 11. I understand and agree that pursuant to the terms of
12 the plea agreement stated herein, any counts which are to be
13 dismissed and any other cases charged or uncharged which are either
14 to be dismissed or not pursued by the State, may be considered by the
15 court at the time of my sentencing.

16 12. I understand that the Court is not bound by the
17 agreement of the parties and that the matter of sentencing is to be
18 determined solely by the Court. I have discussed the charge(s), the
19 facts and the possible defenses with my attorney. All of the
20 foregoing rights, waiver of rights, elements, possible penalties, and
21 consequences, have been carefully explained to me by my attorney. I
22 am satisfied with my counsel's advice and representation leading to
23 this resolution of my case. I am aware that if I am not satisfied
24 with my counsel I should advise the Court at this time. I believe
25 that entering my plea is in my best interest and that going to trial
26 is not in my best interest.

1 13. I understand that this plea and resulting conviction
2 may have adverse effects upon my residency in this country if I am
3 not a U. S. Citizen.

4 14. I offer my plea freely, voluntarily, knowingly and
5 with full understanding of all matters set forth in the Information
6 and in this Plea Memorandum. I understand everything contained
7 within this Memorandum.

8 15. My plea of guilty is voluntary and is not the result
9 of any threats, coercion or promises of leniency.

10 16. I am signing this Plea Memorandum voluntarily with
11 advice of counsel, under no duress, coercion, or promises of
12 leniency.

13 DATED this 19th day of January, 2007.

14
15 _____
16 DEFENDANT

17 _____
18 Attorney Witnessing
19 Defendant's Signature

18 David W. Clifton
19 Prosecuting Attorney
20

21 ///
22 ///
23 ///
24 ///
25 ///
26 ///

AFFIRMATION PURSUANT TO NRS 239B.030

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

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 19th day of January, 2007

David V. Clifton
Prosecuting Attorney

12193347

EXHIBIT B1

EXHIBIT B1

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

No. 56176

Electronically Filed
Feb 01 2011 08:51 a.m.
Tracie K. Lindeman

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

Respondents.

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

VOLUME 20 of 21

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

1 A Correct, and offered -- offered one that correctly described the
2 function of the jury.

3 Q How so? Could you say, could you tell the Court?

4 A Well, in addition to objecting to the standard one that the State
5 wanted to give, we should have offered one that correctly described, such as
6 the one that's in Evans.

7 Q And, what is that? How would it correctly describe?

8 A That you can't use the character evidence until such time as
9 you've already determined the Defendant is death eligible, which is --

10 Q And --

11 A -- finding the aggravators beyond a reasonable doubt, and then
12 weighing them against the mitigating circumstances.

13 Q And, did you raise that on direct appeal?

14 A No.

15 Q Should you have raised that on direct appeal?

16 A In light of the decision in Evans and in other cases that we did
17 raise it, I should have raised it in Castillo.

18 MR. ORAM: Thank you, I have nothing further.

19 THE COURT: Anything further?

20 RECROSS EXAMINATION

21 BY MS. ROBINSON:

22 Q In light of the case in Evans which was decided three years after
23 the decision in Castillo, you think you should have now have raised it then?

24 A Correct, and I would -- we started raising that issue a long time
25

1 before Evans was decided, that that was raised in Witter, in a whole series of
 2 additional cases going back to, I know it was raised in Kevin Lyle's (phonetic)
 3 case, it was raised prior to Lyle in, I want to say Domingues, and so at what
 4 point we started raising that objection, it might have been even prior to Mr.
 5 Castillo's trial. It's just that it wasn't until 2001 that the Supreme Court
 6 finally decided that we were right in what we'd been telling them for a
 7 number of years.

8 MS. ROBINSON: Thank you, I have nothing further.

9 THE COURT: Mr. Oram?

10 MR. ORAM: No, nothing further, Your Honor.

11 THE COURT: You may step down, Mr. Schieck, thank you.

12 THE WITNESS: Thank you.

13 THE COURT: Mr. Oram?

14 MR. ORAM: Your Honor, I don't know if the Court wants to hear
 15 argument now or if the Court would rather -- I would actually like an
 16 opportunity to take a very brief supplement on what Mr. Schieck said to
 17 compare it to the Vernell Evans case, to show why this Court should overturn
 18 the penalty phase part of this. I wondered if I would be permitted to do that?

19 THE COURT: I think that it's appropriate under the circumstances, and
 20 quite frankly, I, too, now feel a need not just to review the Evans and Dumas
 21 case, obviously which I've done in preparation for today, but now I think there
 22 needs to be a very close comparison between language that was set forth in
 23 those cases as well as a comparison therefore to that which Mr. Schieck has
 24 testified here to today, and I suspect that that's the direction that you're

25

20

Castillo, William
 Rev'd 10/20/04 8JDC-1032
 8th JDC recs.

1 going as well?

2 MR. ORAM: Yes, Your Honor. Could I --

3 THE COURT: How much time do you think you're going to need?

4 MR. ORAM: Could I have thirty days? Is that possible?

5 THE COURT: Any reason the State is concerned about a thirty day
6 continuance?

7 MS. ROBINSON: No.

8 THE COURT: Very well. Let's go thirty days.

9 MS. ROBINSON: I'll be in Bermuda for a couple weeks of that so --

10 THE COURT: You'll be --

11 MS. ROBINSON: I'll be in Bermuda, so --

12 THE COURT: So, she really doesn't care.

13 MS. ROBINSON: -- it doesn't really bother me at all.

14 THE COURT: Thirty days.

15 THE CLERK: (Inaudible)

16 THE COURT: Yes -- or no, we'll --

17 MS. ROBINSON: Are we just talking for a supplement?

18 MR. ORAM: Yeah, just a --

19 MS. ROBINSON: No?

20 MR. ORAM: -- supplement.

21 THE COURT: Just a --

22 THE CLERK: Oh, just to have your supplement due?

23 MS. ROBINSON: Yeah.

24 THE COURT: Yeah.

25

1 THE CLERK: Okay, thirty days from today is September 6th.

2 MS. ROBINSON: And, could we have maybe a like time for our
3 response?

4 THE COURT: Two weeks?

5 MS. ROBINSON: Yeah, that's fine. Well --

6 THE COURT: Thirty days?

7 MS. ROBINSON: Thirty days is good.

8 THE CLERK: That's October 4th.

9 MS. ROBINSON: Cool.

10 MR. ORAM: And, I don't think --

11 THE COURT: Is anyone going to be in the tropics on October?

12 THE CLERK: Will you be in the tropics in October?

13 MS. ROBINSON: No, no, no, no. I'm waiting until November to go to
14 Puerto Vallarta. This is my year of the vacation, you know. I just got back
15 from Spain, you know.

16 MR. ORAM: Oh, boy.

17 MS. ROBINSON: Two-thousand-and-two.

18 MR. ORAM: It's rough.

19 MS. ROBINSON: And then, an argument a couple weeks later?

20 MR. ORAM: That's fine.

21 THE COURT: Yeah. Two weeks?

22 THE CLERK: We're going to put it right before your vacation.

23 MS. ROBINSON: Thank you.

24 THE COURT: And, let's put this on -- we're going to be adopting a new
25

1 schedule in -- at least in Department Eighteen sort of as a pilot plan for some
2 of the other departments, so we're going to be setting anything that is a
3 argument or a protracted proceeding of any sort is not going to be set on a
4 regular criminal day, so we're going to be setting it on a Friday, and I think,
5 Ms. Clerk, did we decide 1:00, we're going to --

6 THE CLERK: Um-hum.

7 THE COURT: -- 1:00 on Fridays.

8 THE CLERK: One-thirty probably.

9 THE COURT: One-thirty, we're still --

10 MS. ROBINSON: It's a work in progress, right?

11 THE COURT: Oh, boy, is it ever, yeah,

12 THE CLERK: Is one week enough time?

13 MS. ROBINSON: But --

14 THE CLERK: The Judge is not available the next week and from --

15 MR. ORAM: Whenever's good for the Court.

16 MS. ROBINSON: Yeah, that's fine, yeah.

17 THE CLERK: One week?

18 MR. ORAM: Yes.

19 THE CLERK: Okay, October 11th.

20 MR. ORAM: At 1:30?

21 THE CLERK: At 1:30.

22 MS. ROBINSON: One-thirty, good.

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

24 MS. ROBINSON: Thank you, Your Honor.

25

23

Castillo, William
Rev'd 10/20/04 8JDC-1036
8th JDC recs.

1 THE COURT: Thank you. Ms. Clerk, I'm sorry, I didn't get that last
2 one?

3 THE CLERK: I'm sorry, October 11th, 1:30.

4 THE COURT: Thank you.

5 MR. ORAM: Okay, now don't get eaten by a shark.

6 MS. ROBINSON: I won't get eaten.

7 THE COURT: Mr. Schieck, thank you for your time.

8 MR. SCHIECK: Thank you.

9 MS. ROBINSON: I won't get eaten by a shark.

10 MR. ORAM: Thank you very much.

11 THE COURT: Thank you.

12 MS. ROBINSON: Or in the Bermuda Triangle or anything.

13 (Proceedings concluded)

14 * * * * *

15
16
17
18
19
20
21 ATTEST:

I do hereby certify that I have truly and correctly transcribed
the sound recording in the above-entitled matter.

22 *Carrie A. Hansen*
23 CARRIE A. HANSEN
24 Court Transcriber
25



EXHIBIT 184

EXHIBIT 184

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

TRAN

ORIGINAL

FILED

APR 10 3 49 PM '03

DISTRICT COURT
CLARK COUNTY, NEVADA

Shirley C. Rungius
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, JANUARY 22, 2003; 9:00 A.M.

RECORDER'S TRANSCRIPT RE:
EVIDENTIARY HEARING

APPEARANCES:

FOR THE STATE:

CLARK PETERSON, 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

RECEIVED

APR 10 2003

COUNTY CLERK

1 WEDNESDAY, JANUARY 22, 2003; 9:00 A.M.

2
3 THE COURT: The State of Nevada versus Castillo, 133336.

4 This is set – actually it shows as an evidentiary hearing. I'm
5 wondering if this really isn't just the hearing on the briefing, isn't it?

6 MR. ORAM: It is. We had the hearing. Mr. Schieck testified.

7 THE COURT: Mr. Schieck testified.

8 MR. ORAM: Correct.

9 THE COURT: Very good. Mr. Castillo, of course, is in custody.

10 The essence of this, from what I can tell, if you will allow me
11 to sort of pare down the issues that were set forth in the briefs, is is that
12 Mr. Castillo should be given another shot, at the very least at his penalty
13 phase, based primarily upon certain representations that were made in the
14 Evans case.

15 Is that an accurate statement, Mr. Oram?

16 MR. ORAM: That is correct.

17 THE COURT: And, of course, the Evans case came to us sometime
18 after Mr. Castillo's case already went up to the Supreme Court, and, indeed,
19 the Evans court has made a very, very, I believe, specific mandate for judges
20 to use in all cases that come since or after Evans.

21 Mr. Oram, I know that the argument that you made on Mr.
22 Castillo's behalf has to do with Evans and sort of an extrapolation that
23 because Mr. Schieck had made the same argument for eight years prior to
24 the Court evidently, ultimately believing or hearing or at least recognizing the
25 position that he had to take and in some other cases or a like position that I

1 should now consider that with respect to Mr. Castillo and essentially apply
2 the Evans criteria –

3 MR. ORAM: – retroactive.

4 THE COURT: Backwards, yeah.

5 MR. ORAM: Yes, Your Honor.

6 THE COURT: How do I get around what appears to be clear, clear
7 legal direction in the Evans case that it speaks to all cases that come after,
8 after?

9 MR. ORAM: Your Honor, the way I would argue that is that it was
10 ineffective assistance of counsel for appellate counsel to fail to address
11 those – the issue, the second one in particular, the one where the Evans
12 court gave an instruction, a specific instruction. That should have been
13 raised on direct appeal. Trial counsel indicated that at the time of his
14 testimony that if he didn't raise it he should have raised it.

15 So my argument is it was ineffective assistance of counsel for
16 appellate counsel and trial counsel not to object and then not to raise it on
17 appeal. And that is how I think that we get around the retroactive
18 application of Evans, that this should have all been addressed, it would have
19 come up before Evans. And what we're asking for basically is just a new
20 penalty phase.

21 THE COURT: The State?

22 MR. PETERSON: Judge, I think the Court addresses the exact
23 concern that we had in our response. The analysis in ineffective assistance
24 of counsel includes "Every effort must be made to eliminate the distorting
25 effects of hindsight and to look at the conduct at the time." The Court

1 certainly seized on the language in Evans that says, "From this case further,"
2 and I don't think it's appropriate to have – to attribute to Mr. Schieck the
3 desire to have a crystal ball essentially and predict the future and predict the
4 Evans decision. So relying on the Court having that understanding, I'm
5 going to submit it.

6 I think essentially the Court has previously held that the other
7 claims, the sort of other raised claims, have been waived or procedurally
8 barred for various reasons. We were addressing just the ineffective
9 assistance of counsel matters today, as the Court outlined.

10 I think the evidence at the evidentiary hearing regarding the
11 psychiatric defense was clear. Mr. Schieck drew a distinction between the
12 Zolie Dumas case and the Castillo case. As to why he didn't raise it here, I
13 think that's clear. I also think the issue regarding objecting to a particular
14 comment during penalty phase by the prosecutor is law of the case, as
15 we've set out. And I'll just submit it to the Court.

16 THE COURT: Mr. Oram, a brief reply.

17 MR. ORAM: Briefly, Your Honor.

18 Mr. Schieck did raise on direct appeal that the prosecutor had
19 made the identical statement that was made in Mr. Evans'. Unfortunately he
20 raised it on a future dangerousness type argument. And the Supreme Court
21 specifically addressed Castillo's case in –

22 THE COURT: – in Evans.

23 MR. ORAM: – Evans and said he didn't raise it on a jury duty. And I
24 think that's ineffective assistance, and I think that entitles him to a new
25 penalty phase. I'd submit it.

1 THE COURT: Let me tell you that I have given this some very careful
2 thought, because I think it's a very important issue. Moreover, I wish to
3 commend counsel, both counsel, but certainly Mr. Oram, in the advocacy
4 that you have shown in putting this matter together.

5 And I agonized because, first of all, I sat, you know,
6 obviously, right next to Mr. Schieck when he gave his testimony in the
7 evidentiary hearing, and it was clear to me that he was troubled by what had
8 been in his opinion, and I suspect in most of the legal community's opinion –
9 his reputation is very well known. And I got the sense that when he sat
10 here giving us testimony about what he did or failed to do on behalf of Mr.
11 Castillo that he was genuinely concerned about what he may have failed to
12 do in this one instance that might have otherwise resulted in a different
13 sentence for Mr. Castillo.

14 Having said that, I am also particularly sensitive to what I
15 believe we are seeing from our Supreme Court, and that is, if you follow
16 these cases with respect to certain prosecutorial statements, certainly none
17 of which are to be attributed to this prosecutor – in fact, many of them have
18 to do with a prosecutor who is of course no longer a part of our office – but
19 we might all almost actually follow a progression of the Supreme Court
20 where they take certain of these statements that have been used repeatedly,
21 and there is a shift, if you will, I believe, in the Supreme Court's attitude
22 about what is and is not acceptable. And, in fact, they have now become
23 quite specific with respect to what I should and should not allow or what
24 isn't objectable and what remarks will constitute such significant error, if
25 you will, that the defendants who are subjected to those type of comments

1 will once again be given an opportunity to have their cases reconsidered.

2 But, having said that, I believe that the high court was very
3 careful when they made their statement in Evans to be succinct by using the
4 word "after" or "in the future" or "subsequent to." Meaning that although
5 their decision in Evans, I believe, is a good solid decision and, as I said,
6 shows the progression of the Court in a different direction, in favor of
7 defendants' rights, I think that they too were concerned about what I would
8 be concerned about, and that is that if we begin to apply this analysis in
9 retrospect to the number of cases where this type of conduct and comment
10 at the time was not considered error but is now to be considered as error
11 that we would be opening a significant floodgate of cases to reconsideration
12 that I think the Court was carefully attempting to avoid.

13 I want you to know that I gave great consideration to it and,
14 with all respect, made every effort to be particularly mindful of what Mr.
15 Castillo – what is on the line for Mr. Castillo here today. I cannot, however,
16 in good conscience, based upon what I believe the law to be at this time,
17 grant the request, and I must deny your petition in this instance, Mr. Oram.

18 MR. ORAM: Your Honor, since the man has been sentenced to
19 death, I think an appeal has to be done. I would wonder –

20 THE COURT: I agree.

21 MR. ORAM: I do know the case very well. The issues are going to
22 be similar issues.

23 THE COURT: Obviously.

24 MR. ORAM: May I be appointed?

25 THE COURT: Absolutely.

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

2 THE COURT: Yes.

3 MR. PETERSON: Judge, would the Court prefer that we prepare the
4 order?

5 And just as a side note, I'm certain both counsel and myself
6 appreciate the consideration the Court has given the case.

7 THE COURT: Absolutely, yes. Thank you. Would you prepare that
8 order and run it by Mr. Oram?

9 MR. PETERSON: I will, Judge, absolutely.

10 MR. ORAM: Thank you very much, Judge.

11 THE COURT: Very well.

12 MR. PETERSON: Thank you for your consideration, Judge.

13 THE COURT: Certainly.

14 (Whereupon the proceedings concluded)

15 * * * * *

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

18 
19 KRISTINE M. CORNELIUS
20 Court Recorder

21

22

23

24

25

FILED

MAY 28 12 00 PM '10

1 TRAN

COPY

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 STATE OF NEVADA,

) CASE NO. C133336

5 Plaintiff,

) DEPT. NO. XVIII

6 vs.

7 WILLIAM P. CASTILLO,

8 Defendant.
9

10
11 BEFORE THE HONORABLE DAVID B. BARKER, DISTRICT COURT JUDGE

12 RECORDER'S TRANSCRIPT RE:
13 PETITION FOR WRIT OF HABEAS CORPUS

14 WEDNESDAY, NOVEMBER 4, 2009

15
16
17
18
19 APPEARANCES:

20
21 FOR THE STATE:

STEVEN S. OWENS, ESQ.
Chief Deputy District Atty.

22
23 FOR THE DEFENDANT:

NISHA N. BROOKS, ESQ.
Asst. Fed. Public Defender

24
25 RECORDER/TRANSCRIBER:

RICHARD L. KANGAS

1 LAS VEGAS, CLARK COUNTY, NEVADA

2 WEDNESDAY, NOVEMBER 4, 2009, 9:39 A.M.

3 * * * * *

4 THE COURT: Top of page 2 is C133336, State of
5 Nevada versus William Castillo. The record should reflect
6 the presence of?

7 MR. OWENS: Steve Owens for the State.

8 THE COURT: Thank you, Mr. Owens.

9 And?

10 MS. BROOKS: Nisha Brooks, Your Honor, with the
11 Federal Public Defender's Office.

12 THE COURT: I'm sorry?

13 MS. BROOKS: Nisha Brooks.

14 THE COURT: Nisha Brooks?

15 MS. BROOKS: Yes.

16 THE COURT: From the Federal Public Defender's
17 office. Current counsel of record is the State Public
18 Defender's office, the Special Public Defender Mr. Schieck,
19 but the Federal Public Defender has filed a petition for
20 writ of habeas corpus. My notes reflect that the State is
21 going to be requesting additional time to respond to that.

22 MR. OWENS: We need about thirty days, Judge.

23 THE COURT: Thirty days to respond. All right.

24 The record should further reflect that Mr. Castillo
25 is in Nevada Department of Corrections, not present here in

1 court.

2 MS. BROOKS: Correct, Your Honor.

3 THE COURT: Is that going to be a hearing date, Mr.
4 Owens, or?

5 MR. OWENS: Thirty days to file our response and
6 motion to dismiss. I'm sure they'll want to oppose that.
7 And then we'll need a hearing date, argument only, to decide
8 the procedural bar issues.

9 THE COURT: So why don't we do thirty, thirty, and
10 two weeks.

11 MS. BROOKS: Okay.

12 THE COURT: Make sense?

13 MR. OWENS: Yes.

14 MS. BROOKS: Yes.

15 THE COURT: All right.

16 THE CLERK: I'm sorry. All right, the response
17 then is due the 2nd December; and then thirty days after
18 that is the 6th of January; and then the hearing on January
19 the 20th at - 8:15, Your Honor?

20 THE COURT: 8:15. Could you do that on a Friday?
21 Put that on Friday.

22 THE CLERK: Should we check with Diane?

23 THE COURT: Just put it on the 8:15 calendar, but -

24 THE CLERK: Okay, on the 22nd of January.

25 THE COURT: Fridays are lighter, and this is a -

1 this is a PCR. We note the initial petition is 180-plus
2 pages.
3 MS. BROOKS: Correct, Your Honor.
4 THE COURT: So maybe a Friday, a little bit of time
5 to chew on it.
6 MR. OWENS: My motion to dismiss will be
7 substantially shorter.
8 THE COURT: All right.
9 MR. OWENS: Thank you, Judge.
10 MS. BROOKS: Okay. Thank you, Your Honor.
11 THE COURT: Thank you very much.

12 PROCEEDING CONCLUDED AT 9:41 A.M.

13 * * * * *

14
15
16 ATTEST: I do hereby certify that I have transcribed the audio-
17 video recording of this proceeding in the above-entitled case to
18 the best of my ability.

19 

20 RICHARD L. KANGAS,
21 Court Recorder/Transcriber

22 **COPY**
23
24
25

1 CERT
FRANNY A. FORSMAN
2 Federal Public Defender
State Bar No. 0014
3 GARY A. TAYLOR
Assistant Federal Public Defender
4 Nevada Bar No. 11031C
NISHA N. BROOKS
5 Assistant Federal Public Defender
Nevada Bar No. 11032C
6 411 East Bonneville Avenue, Suite 250
Las Vegas, NV 89101
7 Phone: (702) 388-6577
Fax: (702) 388-5819

8 Attorneys for Petitioner

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 WILLIAM P. CASTILLO,

13 Petitioner,

14 vs.

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

18 Respondents.

Case No. C133336
Dept. No. XVIII

CERTIFICATE OF MAILING

Date of Hearing: 11/4/09
Time of Hearing: 8:15 a.m.

(Death Penalty Habeas Corpus Case)

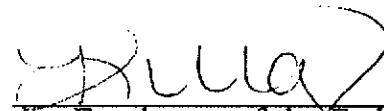
19 In accordance with Rule 5(b)(2)(B) of the Nevada Rules of Civil Procedure, the
20 undersigned hereby certifies that on the 18th day of September, 2009, a true and correct file
21 stamped copy of the **PETITION FOR WRIT OF HABEAS CORPUS (Post-Conviction)**,
22 was served by first class mail, postage fully prepaid thereon, addressed to:

23
24 STEVEN S. OWENS
Deputy District Attorney
25 200 Lewis Avenue
26 Las Vegas, NV 89155
27
28

FILED
SEP 23 2009
CLERK OF COURT

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

A true and correct copy of the Petition for Writ of Habeas Corpus, including all exhibits, was delivered to Mr. Owens on the 18th day of September, 2009.



An Employee of the Federal Public Defender

ORIGINAL

RSPN
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

FILED
DEC - 2 2009
Clerk of Court

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
-vs-
WILLIAM P. CASTILLO,
#1153209
Defendant.

CASE NO: C133336
DEPT NO: XVIII

STATE'S RESPONSE AND MOTION TO DISMISS DEFENDANT'S SECOND
PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

DATE OF HEARING: 1/22/10
TIME OF HEARING: 8:15 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
STEVEN S. OWENS, Chief Deputy District Attorney, and hereby submits the attached
Points and Authorities in Opposition to Defendant's Second Petition for Writ of Habeas
Corpus (Post-Conviction).

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

///

///

///

CLERK OF THE COURT

DEC 02 2009

RECEIVED

P:\WPDOCS\RSPN\514\51445601.doc

AA004770

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 **I. Pre-Trial**

4 On January 19, 1996, William Castillo (Defendant) was charged by way of
5 Indictment with Count 1 – Conspiracy to Commit Burglary and/or Robbery, Count 2 –
6 Burglary, Count 3 – Robbery, Victim Sixty-five Years or Older, Count 4 – Murder With a
7 Deadly Weapon, Count 5 – Conspiracy to Commit Burglary and Arson, Count 6 – Burglary,
8 and Count 7 – First Degree Arson. An Amended Indictment charging the Defendant with
9 the same charges was filed on May 26, 1996.

10 On January 23, 1996, the State of Nevada filed a Notice of Intent to Seek Death
11 Penalty, listing five aggravators: (1) The murder was committed by a person who was
12 previously convicted of a felony involving the use or threat of violence to the person of
13 another; (2) The murder was committed by Defendant while the person was engaged, alone
14 or with others, in the commission of or an attempt to commit or flight after commit any
15 Robbery; (3) The murder was committed by Defendant while the person was engaged, alone
16 or with others, in the commission of or an attempt to commit or flight after committing or
17 attempting to commit any Burglary; (4) The murder was committed to avoid or prevent a
18 lawful arrest; and (5) The murder was committed by Defendant, for himself or another, to
19 receive money or any other thing of monetary value.

20 **II. Trial**

21 **1. Guilt Phase**

22 Defendant's trial began on August 26, 1996. The following facts were established at
23 the guilt phase of trial and reflect those as given in the Nevada Supreme Court's resolution
24 of Defendant's direct appeal in Castillo v. State, 114 Nev. 271, 956 P.2d 103 (1998):

25 In late November of 1995, Defendant was working as a roofer when he was recruited
26 for a side job re-roofing the residence of the victim, Isabelle Berndt. During the job, the
27 Defendant discovered a key to the victim's house. At the time, Defendant told one of his
28 coworkers he wanted to enter the home but was told he should not. Defendant responded

1 that he could just come back later. Also during the roofing job, Defendant unsuccessfully
2 tried to borrow money from another coworker.

3 On the evening of December 16, 1995, Defendant and his roommate, Michelle Platou
4 (Platou) left the apartment and returned in the early morning hours with a VCR, silverware
5 and a bag containing knit booties. The two left again and returned about twenty minutes
6 later. The next morning Defendant and Platou told Defendant's girlfriend that they had
7 committed a robbery and stolen several items and that Defendant had hit a sleeping person
8 with a tire iron he brought into the house. They also told her that, while in the house, Platou
9 had bumped into a wall and may have left fingerprints because she did not wear gloves, so
10 the pair returned to the house to burn it down.

11 In the morning hours of December 17, 1995, police responded to Isabelle Berndt's
12 burning house and found her body inside. Arson investigators later determined that the blaze
13 had been set in two places by human hands. The autopsy revealed that Berndt had died from
14 blunt force trauma to the head and face caused by multiple contemporaneous crushing-type
15 injuries with lacerations to the head, crushing injuries to the jaws, as well as injuries to the
16 face and ears which were consistent with a tire iron. Berndt's only child, a daughter,
17 informed police that her mother's silverware, VCR, Christmas booties she was knitting for
18 her grandchildren, and eight \$50 U.S. savings bonds were missing.

19 On December 19, 1995, one of Defendant's coworkers contacted police and informed
20 them that Defendant had told him that he had murdered an 86-year-old lady in her sleep over
21 the weekend. The coworker also told police that Defendant said that he had entered the
22 home with the intent to steal valuables, hit Berndt numerous times with a tire iron, heard her
23 gurgling in her own blood before he put a pillow over her head to smother her, and then stole
24 a VCR, money, and silverware. Another friend of Defendant told police that Defendant tried
25 to sell him silverware, which he later identified as the silverware taken from the victim.

26 Based upon this information, police obtained and executed a search warrant on
27 Defendant's apartment. Defendant and his girlfriend gave police consent to search the
28 apartment and police recovered the silverware, the VCR, the booties, a bottle of lighter fluid,

1 and a notebook with a notation "\$50, VCR, \$75, camera, silverware." After the search,
2 police conducted two separate interviews with Defendant. In the first one, he denied any
3 involvement in the crime and told police he got the items from a friend. However, after
4 hearing that his coworker and girlfriend had both told police that he had confessed to them,
5 Defendant confessed to the killing, robbery, and arson. Defendant told police that he had
6 entered the house intending to steal valuables because he needed money. He then heard deep
7 snoring and thought there was a man in the house, so he followed the noise into the
8 bedroom. He described hitting the person with the tire iron and then realizing it was not a
9 man but an older woman. Defendant told police it was too late by then so he continued to hit
10 her in the head. Defendant also described hearing her gurgling on her own blood and
11 struggling to breathe, so he picked up a pillow and put it over her face to smother her.
12 Defendant also confessed to police that he went back to the house to burn it down to destroy
13 any evidence of the crime.

14 After the prosecution presented the above facts in its case in chief, the defense did not
15 present a case in chief. On September 4, 1996, the jury returned a verdict of guilty on all the
16 counts as charged in the Indictment.

17 **2. Penalty Phase**

18 On September 19, 1996, the penalty phase of Defendant's trial began. The State
19 presented witness to describe for the jury the extent of Defendant's background, including
20 that: 1-Defendant began running away from home regularly when he was nine years old; 2-
21 by 1984, Defendant had already been charged with Attempted Murder, Petty Larceny, and
22 six counts of Arson – including trying to burn down the Circus Circus Hotel in Las Vegas; 3-
23 much of Defendant's criminal behavior remained uncharged; 4-by the age of fifteen,
24 Defendant had already used marijuana, speed, cocaine, and alcohol; and 5-because of his
25 misbehavior, Defendant had participated in numerous Nevada state juvenile programs and
26 lived with family members in different areas of the country for short periods.

27 In addition, during his adolescence, Defendant was evaluated and doctors determined
28 that he knew right from wrong, did not suffer from a neurological disorder, but did suffer

1 from a personality disorder. Defendant, at age seventeen, had escaped from a Nevada youth
2 training facility, was arrested for Attempted Burglary and subsequently certified to adult
3 status because of these crimes. In April 1993, Defendant was convicted of Robbery, in
4 which he used a gun. During the two years he served for this crime, he committed multiple
5 disciplinary infractions. At the time of the trial, Defendant also had Battery charges pending
6 against him for an attack on his neighbor.

7 The State also introduced victim impact evidence through the testimony of Berndt's
8 granddaughter and daughter. They testified about their personal interaction with her, the
9 quality of her life, and the effect her death has had on their lives.

10 The defense presented evidence that Defendant had been emotionally, mentally,
11 physically and behaviorally abused; suffered from reactive attachment disorder and attention
12 deficit hyperactivity disorder; and came from a dysfunctional family. Two counselors also
13 testified as to several positive episodes involving Defendant. Defendant's girlfriend also
14 testified that he was trying to improve his behavior. Defendant's mother also testified about
15 his difficult upbringing, including physical and emotional abuse, her lack of affection for
16 him, and the family instability. Defendant also read a statement to the jury expressing his
17 regret and remorse.

18 On September 25, 1996, the jury returned a verdict of death. The jury found four
19 aggravating circumstances: 1-the murder was committed by a person previously convicted of
20 a felony involving the use or threat of violence, specifically, a robbery committed on
21 December 14, 1992; 2-the murder was committed while Defendant was committing a
22 burglary; 3-the murder was committed while Defendant was committing a robbery; and 4-the
23 murder was committed to avoid or prevent a lawful arrest. The jury found three mitigating
24 circumstances: 1-the youth of the defendant at the time of the crime; 2-the murder was
25 committed while the defendant was under the influence of extreme emotional distress or
26 disturbance; and 3-any other mitigating circumstances.

27 **III. Direct Appeal – Case No. 29512**

28 On November 4, 1996, Defendant filed a Notice of Appeal. His direct appeal raised

1 eight issues:

- 2 1. Whether it was error to allow references to the booties knitted by the victim.
- 3 2. Whether it was error to admit a photograph of the victim with her daughter and
- 4 granddaughter.
- 5 3. Whether it was error to not grant a mistrial after a witness informed the jury that
- 6 Defendant had another case.
- 7 4. Whether a penalty hearing argument was improper as to warrant a new hearing.
- 8 5. Whether it was error to admit autopsy photographs.
- 9 6. Whether the victim impact evidence was proper.
- 10 7. Whether it was error to give an "anti-sympathy" instruction.
- 11 8. Whether it was error not to instruct the jury on other mitigating circumstances.

12 On April 2, 1998, the Nevada Supreme Court issued Castillo v. State, 114 Nev. 271,
13 956 P.2d 103 (1998), upholding Defendant's conviction and death sentence. The Court ruled
14 that the testimony concerning the booties connected Defendant to the crime and the
15 references were sufficiently brief and not prejudicial. The Court also ruled that the family
16 photograph was relevant to the issue of the victim's identity and the trial court did not abuse
17 its discretion by admitting the autopsy photographs, as they provide a comparison to the
18 family photograph and reflect the extent of the victim's injuries. The Court also ruled that
19 the references to Defendant's other pending case were brief, vague, and non-prejudicial. In
20 addressing the prosecutor's argument during the penalty hearing, the Court ruled that, while
21 a portion of the argument was improper, it did not prejudice Defendant given the weight of
22 the evidence against him. The Court rejected Defendant's argument that the victim impact
23 evidence presented was improper because it contradicts relevant case law and requires a
24 reinterpretation of the Nevada Constitution. The Court also rejected Defendant's claim that
25 the "anti-sympathy" instruction was given in error because the law supports giving that
26 instruction when it is accompanied with instructions on mitigating circumstances. The Court
27 also upheld the trial court's ruling that the jury would not be instructed on Defendant's non-
28 statutory mitigating circumstances as it would be an improper comment on the evidence and
Defendant was free to argue them under the catchall mitigation instruction.

On April 2, 1998, Defendant filed a petition for rehearing of his direct appeal. On
November 25, 1998, the Court issued an Order denying rehearing. Issuance of Remittitur

1 was stayed pending Defendant's petition to the United States Supreme Court for a writ of
2 certiorari, which was filed on January 22, 1999. On March 22, 1999, the United States
3 Supreme Court denied Defendant's Petition for Writ of Certiorari. On April 28, 1999, the
4 Nevada Supreme Court issued Remittitur for Defendant's direct appeal.

5 **IV. Post-Conviction**

6 **1. First State Petition for Writ of Habeas Corpus (Post-conviction)**

7 On April 2, 1999, Defendant filed a pro per petition for post-conviction relief,
8 generally claiming ineffective assistance of counsel and requesting appointed counsel. On
9 October 12, 2001, appointed counsel filed a supplemental brief in support of the petition,
10 raising eleven issues:

- 11 1. Whether Defendant received effective assistance of counsel.
- 12 2. Whether appellate counsel was effective in challenging the prosecutor's penalty
13 argument on appeal.
- 14 3. Whether the crow bar was properly considered a deadly weapon and whether NRS
15 193.165(5) is unconstitutionally vague.
- 16 4. Whether trial counsel properly investigated Defendant's case.
- 17 5. Whether the trial court erred by not holding an evidentiary hearing.
- 18 6. Whether trial counsel was ineffective for not presenting a psychological defense
19 during the guilty phase of trial.
- 20 7. Whether there was cumulative error.
- 21 8. Whether the death penalty is cruel and unusual punishment.
- 22 9. Whether execution by lethal injection is cruel and unusual punishment.
- 23 10. Whether Defendant's death sentence violates the international covenant.
- 24 11. Whether Nevada's capital punishment system is arbitrary and capricious.

19 On May 8, 2002, the district court heard argument on the petition and ordered a
20 limited evidentiary hearing to address only Defendant's claims of ineffective assistance of
21 counsel. That hearing was held on August 2, 2002, wherein Defendant's counsel for both
22 phases of the trial and direct appeal testified. On January 22, 2003, after additional briefing,
23 the district court again heard argument and denied the petition.

24 The district court denied Defendant's ineffective assistance of counsel claim
25 regarding the challenge to the prosecutor's penalty hearing argument because it was
26 unreasonable to expect counsel to predict how the law would change. The court also found
27 that there was no basis for a psychological defense during the guilt phase because Defendant
28 had been evaluated by doctors many times and determined to be of above average

1 intelligence with no mental deficiencies and there was no diminished capacity defense to
2 present. The court also denied all of Defendant's other claims as they were waived when not
3 brought on direct appeal and therefore procedurally barred.

4 **2. Appeal from Denial of Defendant's First State Petition for Writ of**
5 **Habeas Corpus (Post-conviction) – Case No. 40982**

6 On February 19, 2003, Defendant filed a Notice of Appeal the order denying his
7 appealed the denial of his first State Petition. He raised ten issues on appeal:

- 8 1. Whether the district court erred in denying Defendant's claim that he did not
9 receive effective assistance of counsel.
- 10 2. Whether the district court erred in denying Defendant's claim that the prosecutor's
11 argument that the jury should vote in favor of future victims violated due process.
- 12 3. Whether the district court erred in denying Defendant's claim that the crow bar is
13 not a deadly weapon.
- 14 4. Whether the district court erred in denying Defendant's claim that counsel was
15 ineffective for failing to object to bad character evidence.
- 16 5. Whether the district court erred in denying Defendant's claim that counsel was
17 ineffective for not properly investigating Defendant's case and not presenting a
18 psychological defense during the guilty phase of trial.
- 19 6. Whether the district court erred in denying Defendant's claim that there was
20 cumulative error.
- 21 7. Whether the district court erred in denying Defendant's claim that the death penalty
22 is cruel and unusual punishment.
- 23 8. Whether the district court erred in denying Defendant's claim that execution by
24 lethal injection is cruel and unusual punishment.
- 25 9. Whether the district court erred in denying Defendant's claim that his death
26 sentence violates the international covenant.
- 27 10. Whether the district court erred in denying Defendant's claim that Nevada's
28 capital punishment system is arbitrary and capricious.

29 On February 5, 2004, the Nevada Supreme Court issued an Order of Affirmance,
30 upholding the district court's denial of Defendant's Petition for Writ of Habeas Corpus. The
31 Court denied the claim of ineffective assistance of counsel in challenging the prosecutor's
32 argument during the penalty phase, because, while counsel acted unreasonably no prejudice
33 resulted because Defendant still had a fair penalty hearing and the force of the evidence
34 against him would have ensured the same result, even if counsel had challenged the
35 argument on both grounds. The Court next denied the ineffective assistance of counsel

1 claim regarding the failure to challenge the use of character evidence in the penalty hearing
2 because Defendant had failed to show that his attorneys acted deficiently or that he was
3 prejudiced. The Court also concluded that defense counsel acted reasonably in investigating
4 Defendant's mental condition and deciding not to offer psychological evidence in the guilt
5 phase. The Court then ruled all of the other claims are procedurally barred, including: the
6 tire iron or crowbar used in the murder was not a deadly weapon; NRS 193.165(5) – the
7 deadly weapon definition – is unconstitutionally vague and ambiguous; the death penalty is
8 cruel and unusual punishment and violates international law; execution by lethal injection is
9 cruel and unusual punishment and violates international law; Defendant's conviction and
10 sentence are invalid under the International Covenant; and Nevada's capital punishment
11 system is unconstitutional because it operates in an arbitrary and capricious manner. The
12 Court also rejected Defendant's claim of cumulative error, noting that it does not accept
13 conclusory, catchall attempts to assert ineffective assistance of counsel.

14 Issuance of the Remittitur was stayed, and then recalled when first issued to allow
15 Defendant time to pursue a petition to the United States Supreme Court for a writ of
16 certiorari. Defendant filed the petition on May 5, 2004 and the United States Supreme Court
17 denied Defendant's Petition for Writ of Certiorari on October 4, 2004. On October 27, 2004,
18 the Nevada Supreme Court issued Remittitur on the order affirming the denial of
19 Defendant's first State Petition.

20 **3. Federal Petition for Writ of Habeas Corpus**

21 On June 22, 2004, Defendant filed a Petition for Writ of Habeas Corpus pro per in
22 Federal Court. On July 7, 2004, the Federal Public Defender was appointed to represent
23 Defendant. On December 6, 2005, Defendant filed a Motion to Conduct Discovery and his
24 Amended Petition was due on November 5, 2007. However, on July 31, 2007, Defendant
25 filed a pro per motion to waive his Federal Habeas Corpus and requested prompt execution
26 of the State death penalty judgment. On August 13, 2007, the United States District Court
27 held a hearing in which the Court thoroughly canvassed Defendant regarding his decision to
28 waive his Federal claims. The court ruled Defendant was competent; his waiver was

1 knowing and voluntary; and his decision was not motivated by the conditions on Nevada's
2 death row. See Exhibit 1, Order. As such, the Federal District Court issued an Order on
3 September 4, 2007, dismissing Defendant's Federal Habeas Corpus action.

4 On May 7, 2008, Defendant filed a motion to vacate the previous judgment and
5 reopen his Federal Habeas action. On May 15, 2008, the Federal District Court issued an
6 Order granting Defendant's motion reopening his case. On December 15, 2008, Defendant
7 filed his Amended Federal Petition for Writ of Habeas Corpus.

8 **4. Second State Petition for Writ of Habeas Corpus (Post-conviction)**

9 On September 18, 2009, over thirteen years after Defendant's conviction, the Federal
10 Public Defender's Office filed Defendant's Second State Petition for Writ of Habeas Corpus
11 consisting of 183 pages. The State's Response to Defendant's Second State Petition for Writ
12 of Habeas Corpus follows.

13 **ARGUMENT**

14 **I. PROCEDURAL BARS PREVENT REVIEW OF DEFENDANT'S CLAIMS**

15 Defendant's Second State Petition for Writ of Habeas Corpus (Post-conviction)
16 violates numerous procedural bars and should be summarily dismissed. In clear violation of
17 the one-year time bar under NRS 34.726, the petition is filed more than thirteen (13) years
18 after his conviction and more than ten (10) years since the Nevada Supreme Court issued
19 remittitur on direct appeal. The State also affirmatively pleads laches and invokes the five-
20 year time bar of NRS 34.800. Additionally, any claim raised in the instant petition that
21 Defendant could have or should have raised in a prior post-conviction petition is barred as a
22 successive petition per NRS 34.810. Absent a showing of *both* good cause *and* prejudice to
23 overcome each of these bars, Defendant's Second Petition *must* be dismissed pursuant to
24 NRS 34.810. However, Defendant only makes insufficient blanket suggestions for "good
25 cause" to overcome these bars. In addition, to the extent some of the issues, based upon
26 substantially the same facts, were already raised in the Nevada Supreme Court and addressed
27
28

1 on their merits; they are barred by the law of the case doctrine.¹ Accordingly, the State will
2 discuss each of these bars, address Defendant's lack of good cause and prejudice to
3 overcome any of the procedural bars, and then address Defendant's claims. In responding to
4 Defendant's Second State Petition, the State will focus primarily on the procedural bars.
5 However, in the event the court finds that any claims are not procedurally barred, the State
6 requests additional time to supplement its response and address the merits of the case.

7 **A. Defendant's Petition violates NRS 34.726(1).**

8 NRS 34.726(1) states that "unless there is good cause shown for delay, a petition that
9 challenges the validity of a judgment or sentence *must* be filed within one (1) year after entry
10 of the judgment of conviction or, if an appeal has been taken from the judgment, within one
11 (1) year after the Supreme Court issues its remittitur." (Emphasis added).

12 The Nevada Supreme Court has interpreted the meaning of the "within one year"
13 provision of NRS 34.726(1). It said "NRS 34.726(1) provides that where an appeal has been
14 taken from a judgment of conviction, a post-conviction petition for a writ of habeas corpus
15 that challenges the judgment of conviction must be filed with the district court 'within 1 year
16 after the Supreme Court issues its remittitur.'" Bejarano v. State, 122 Nev. 1066, 146 P.3d
17 265, 269 (2006). This language is clear and unambiguous and the one year time limit is
18 strictly construed. Gonzales v. State, 118 Nev. 590, 53 P.3d 901 (2002). In fact, the Nevada
19 Supreme Court rejected a habeas petition that was filed two days late, pursuant to the clear
20 and unambiguous mandatory provisions of NRS 34.726(1). Id. Further, "NRS 34.726(1) . . .
21 evinces intolerance toward perpetual filing of petitions for relief, which clogs the court
22 system and undermines the finality of convictions." Pellegrini v. State, 117 Nev. 860, 875,
23 34 P.3d 519, 529 (2001). As such, the one year time bar in NRS 34.726 applies to successive
24 petitions. Id. at 869-870, 526.

25 Here, Defendant's Second State Petition is well outside of the mandatory statutory
26 limit. On April 2, 1998, the Nevada Supreme Court affirmed Defendant's judgment of
27

28 ¹ Where an issue has already been decided on the merits by the Nevada Supreme Court, the Court's ruling is law of the case, and the issue will not be revisited. Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001).

1 conviction and sentence of death in Castillo v. State, 114 Nev. 271, 956 P.2d 103 (1998).
2 Further, after petitions for rehearing and for a writ of certiorari to the United States Supreme
3 Court were denied, the Nevada Supreme Court issued Remittitur on April 28, 1999.
4 Defendant filed the instant Second State Petition for Writ of Habeas Corpus on September
5 18, 2009, more than ten (10) years beyond the one-year statutory limitation delineated in
6 NRS 34.726(1). As such, every single one of Defendant's claims is procedurally barred and
7 the Petition is subject to summary dismissal, pursuant to Gonzales. Further, Defendant
8 cannot make a showing sufficient to overcome the procedural bar, as discussed below, and
9 this Court must dismiss Defendant's Second State Petition.

10 **B. The State affirmatively pleads laches under NRS 34.800.**

11 NRS 34.800 recognizes that a post-conviction petition should be dismissed when
12 delay in presenting issues would prejudice the State in responding to the petition or in
13 conducting a retrial. NRS 34.800(1)(a) and (b). Furthermore, NRS 34.800(2) creates a
14 rebuttable presumption of prejudice to the State if "[a] period of five years [elapses] between
15 the filing of a judgment of conviction, an order imposing sentence of imprisonment or a
16 decision on direct appeal of a judgment of conviction and the filing of a petition challenging
17 the validity of a judgment of conviction." To invoke the presumption, the statute requires
18 that the State plead laches in its motion to dismiss the petition. NRS 34.800(2).

19 Additionally, the Nevada Supreme Court observed that "petitions that are filed many
20 years after conviction are an unreasonable burden on the criminal justice system. The
21 necessity for a workable system dictates that there must exist a time when a criminal
22 conviction is final." Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984).

23 Here, Defendant's Judgment of Conviction was filed on November 12, 1996. After
24 affirming the conviction and death sentence on direct appeal, the Nevada Supreme Court
25 issued Remittitur on April 28, 1999. As more than twelve (12) years have elapsed since the
26 entry of the Judgment of Conviction and more than ten (10) years have elapsed since the
27 Nevada Supreme Court issued Remittitur from Defendant's direct appeal, the State
28 affirmatively pleads laches in the instant case. Because the passage of time is more than two

1 times longer than the five years required for a presumption of prejudice to arise, the State is
2 significantly prejudiced in its ability to respond to the merits of any claim raised in
3 Defendant's current petition and the State would be further prejudiced to retry this case in
4 the unlikely event that relief be granted. Further, Defendant does not even attempt to rebut
5 the presumption of prejudice, and therefore fails to do so. Accordingly, Defendant's Second
6 Petition for Writ of Habeas Corpus is procedurally barred under NRS 34.800.

7 **C. Defendant's Petition violates NRS 34.810.**

8 **1. Defendant has waived claims pursuant to NRS 34.810(1)(b).**

9 NRS 34.810(1)(b) provides:

10 The court *shall* dismiss a petition if the court determines that:

11 The petitioner's conviction was the result of a trial and the grounds
12 for the petition could have been: (1) Presented to the trial court; (2)
13 Raised in a direct appeal or a prior petition for writ of habeas corpus
14 or postconviction relief; or (3) Raised in any other proceeding that
15 the petitioner has taken to secure relief from his conviction and
sentence, unless the court finds both cause for the failure to present
the grounds and actual prejudice to the petitioner. (Emphasis
added).

16 "A court must dismiss a habeas petition if it presents claims that *either were or could*
17 *have been* presented in an earlier proceeding, unless the court finds both cause for failing to
18 present the claims earlier or for raising them again and actual prejudice to the petitioner."
19 Evans v. State, 117 Nev. 609, 646-647, 29 P.3d 498, 523 (2001) (emphasis added).

20 Here, Defendant makes claims in his Second State Petition that have been waived
21 because they could have been raised at trial, on direct appeal, or in Defendant's prior
22 petition. Defendant's blanket claim of ineffective assistance of counsel being cause to avoid
23 this bar is insufficient, as discussed below. As Defendant cannot make a showing of good
24 cause and prejudice, his Second State Petition should be dismissed.

25 **2. NRS 34.810(2) – Second or Successive Petitions and Abuse
of the Writ**

26 NRS 34.810(2) reads:

27 "A second or successive petition *must* be dismissed if the judge or
28 justice determines that it fails to allege new or different grounds for

1 relief and that the prior determination was on the merits or, if new
2 and different grounds are alleged, the judge or justice finds that the
failure of the petitioner to assert those grounds in a prior petition
constituted an abuse of the writ." (Emphasis added).

3 Second or successive petitions will only be decided on the merits if the petitioner can show
4 good cause and prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d
5 944, 950 (1994). In Lozada, the Nevada Supreme Court stated: "Without such limitations on
6 the availability of post-conviction remedies, prisoners could petition for relief in perpetuity
7 and thus abuse post-conviction remedies. In addition, meritless, successive and untimely
8 petitions clog the court system and undermine the finality of convictions." Id. The Nevada
9 Supreme Court recognizes that "[u]nlike initial petitions which certainly require a careful
10 review of the record, successive petitions may be dismissed based solely on the face of the
11 petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). If the claim or
12 allegation was previously available with reasonable diligence, it is an abuse of the writ to
13 wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991).

14 Here, Defendant's Petition is a second, or successive, petition, so he must show good
15 cause and prejudice for his claims to be reviewed on the merits. However, he fails to make
16 any such showing. Accordingly, the claims Defendant raises in the instant petition which
17 have previously been raised must be dismissed as successive. Furthermore, it is an abuse of
18 the writ for Defendant to raise claims that he could have previously raised, so those claims
19 must be dismissed as well.

20 **D. Law of the Case Doctrine**

21 When an issue has already been decided on the merits by the Nevada Supreme Court,
22 the Court's ruling is law of the case, and the issue will not be revisited. Hogan II, 109 Nev.
23 at 959, 860 P.2d at 715; see also Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99
24 (1975); Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001); McNelson v. State, 115 Nev.
25 396, 990 P.2d 1263, 1276 (1999); Valerio v. State, 112 Nev. 383, 386, 915 P.2d 874, 876
26 (1996). The law of a first appeal is the law of the case in all later appeals in which the facts
27 are substantially the same; this doctrine "cannot be avoided by more detailed and precisely
28 focused argument subsequently made after reflection upon the previous proceedings."

1 Hogan II, 109 Nev. at 952, 860 P.2d at 710 (citing Hall, 91 Nev. 314, 535 P.2d 797); see
2 also McNelson, 115 Nev. 396, 990 P.2d 1263. Here, the claims Defendant raises in his
3 Second State Petition which have been decided on their merits by the Nevada Supreme
4 Court are barred by the law of the case doctrine and must be dismissed.

5 **E. Consistent Application of the Procedural Bars**

6 The Federal Public Defender's Office has once again burdened this Court with its
7 oft-repeated argument that Nevada's procedural default rules are inconsistently applied.
8 This is despite the United States District Court for the District of Nevada flatly rejecting this
9 exact argument, in which the Federal Public Defender's Office cited most, if not all, of the
10 same cases it cites here. See Howard v. McDaniel, Slip Copy, 2008 WL 115380 (D. Nev.).²

11 Not only does the Federal Court's analysis completely negate any argument by
12 Defendant that the Supreme Court exercises unfettered discretion in its application of the
13 procedural default rules to reach arbitrary and inconsistent results, but the Supreme Court
14 itself repeatedly refuted such claims. See State v. Eighth Judicial District Court (Riker), 121
15 Nev. 225, 112 P.3d 1070 (2005); See also Pellegrini v. State, 117 Nev. 860, 34 P.3d 519
16 (2001). Similar to the defendant in Riker, Defendant argues that procedural default rules
17 cannot be applied to his case because the Court has disregarded the bars or has applied them
18 inconsistently in other cases. In Riker, the Court stated:

19 *We accept neither Riker's premise that we regularly disregard the*
20 *bars nor his conclusion that disregard or inconsistency on our*
21 *part would excuse his own procedural default.* First, any prior
22 inconsistent application of statutory default rules would not provide
23 a basis for this court to ignore the rules, which are mandatory, as we
24 explained in Pellegrini v. State. Second, *we flatly reject the claim*
25 *that this court at its discretion ignores procedural default rules.*
26 Riker offers a number of flawed, misleading, and irrelevant
27 arguments to back his position that this court 'has exercised
28 complete discretion to address constitutional claims, when an
adequate record is presented to resolve them, at any stage of the

2 In Howard, the court first rejected the basis for the claim, holding: "the Nevada Supreme Court in Rippo did not arbitrarily overlook statutory default rules, as [defendant] claims. Instead, the court merely solicited oral argument on an aspect of a broader habeas claim that had been raised in a manner consistent with Nevada law." Howard at 4. Then, the court analyzed over 200 Nevada Supreme Court opinions presented by the parties and concluded "the Nevada Supreme Court has continued to consistently apply NRS 34.726 to untimely petitions." Id. at 7.

proceedings, despite the default rules contained in [NRS] 34.726, 34.800, and 34.810. (Emphasis added) *Id.* at 236, at 1077.

The Court's stern and unequivocal rejection of claims that Nevada courts inconsistently apply procedural default rules completely defeats Defendant's claim in the present case, as Defendant is simply regurgitating the same argument. Accordingly, Defendant's erroneous and unfounded accusations that Nevada's procedural default rules are not consistently applied are only an attempt to mislead this Court and do not constitute good cause for excusing Defendant's ten (10) year delay in filing the instant petition.

II. DEFENDANT FAILS TO OVERCOME THE PROCEDURAL BARS PREVENTING REVIEW OF HIS PETITION

Once the State raises procedural grounds for dismissal, the burden then falls on defendant "to show that good cause exists for his failure to raise any grounds in an earlier petition and that he will suffer actual prejudice if the grounds are not considered." Phelps v. Dir. of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). To establish good cause, a defendant *must* demonstrate that some impediment external to the defense prevented compliance with the mandated statutory default rules. Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994); *see also* Hathaway 119 Nev. at 252, 71 P.3d at 506 (citing Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001)); Passanisi v. Dir. of Prisons, 105 Nev. 63, 769 P.2d 72 (1989); Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); Phelps, 104 Nev. at 659, 764 P.2d at 1305. Further, "appellants cannot attempt to manufacture good cause[.]" *Id.* at 621, at 526. Valid impediments external to the defense giving rise to "good cause" could be "that the factual or legal basis for a claim was not reasonably available to counsel, or that 'some interference by officials' made compliance impracticable." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Murray v. Carrier, 477 U.S. 478, 488 (1986)); *see also* Gonzalez, 118 Nev. at 595, 53 P.3d at 904, (citing Harris v. Warden, 114 Nev. 956, 959-60, 964 P.2d 785, 787 n.4 (1998)). To find good cause there must be a "substantial reason; one that affords a legal excuse." Hathaway, 119 Nev. at 252, 71 P.3d at 506 (quoting Colley v. State, 105 Nev. 235, 236, 773 p.2d 1229, 1230 (1989)). A defendant

1 can show good cause only in those rare situations where a failure to entertain the issue would
2 result in "a fundamental miscarriage of justice." Hogan v. Warden, 109 Nev. 952, 959, 860
3 P. 2d 710, 715 (1993), (quoting McClesky v. Zant, 499 U.S. 467 (1991)).

4 It is not sufficient to show a mere possibility of prejudice, a defendant must show that
5 actual prejudice, which only occurs when "the errors worked to the defendant's 'actual and
6 substantial disadvantage, infecting his entire trial with error of constitutional dimensions.'" Bejarano v. State, 122 Nev. 1066, 146 P.3d 265, 270 (2006) (citing U.S. v. Frady, 456 U.S.
7 152, 170, 102 S. Ct. 1584 (1986); see also Kimmel v. Warden, 101 Nev. 6, 692 P.2d 1282
8 (1985); Bolden v. State, 99 Nev. 181, 659 P.2d 886 (1983).

9
10 The Nevada Supreme Court has long held that pursuing post conviction claims in
11 federal court does not constitute good cause to avoid procedural bars and will not prevent an
12 untimely petition from being summarily dismissed. Colley v. State, 105 Nev. 235, 236, 773
13 P.2d 1229, 1230 (1989). As such, Defendant cannot claim that his federal litigation
14 constitutes good cause for filing his Second State Petition more than ten (10) years after the
15 Nevada Supreme Court issued Remittitur on his direct appeal.

16 Further, it is well established that Defendant's specific claim of ineffective assistance
17 of counsel, which is outside of the statutory time limits, being good cause to overcome
18 procedural time bars is without merit. The Nevada Supreme Court has held that a claim of
19 ineffective assistance of counsel that is procedurally barred cannot constitute good cause for
20 excusing the procedural bars for itself or any other claim. State v. District Court (Riker), 121
21 Nev. 225, 112 P.3d 1070 (2005). See also Edwards v. Carpenter, 529 U.S. 446, 453 (2000)
22 (procedurally barred ineffective assistance of counsel claim is not good cause). See
23 generally Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506-07 (2003) (stating that
24 a claim reasonably available to the petitioner during the statutory time period, such as
25 ineffective assistance of counsel, did not constitute good cause to excuse a delay in filing).
26 The Court found that: "a petitioner must demonstrate cause for raising the ineffective
27 assistance of counsel claim in an untimely fashion." Id.

28 Here, Defendant barely attempts to show good cause by making a blanket suggestion

1 that "good cause" exists as a result of ineffective assistance of trial, appellate, and post-
2 conviction counsels. However, Defendant's claims of ineffective assistance of counsel are
3 not only over nine (9) years beyond the statutory limit, but they are also almost five (5) years
4 after the Nevada Supreme Court issued its final Remittitur on its Affirmance of the district
5 court's Order denying his First State Petition for Writ of Habeas Corpus. As such, these
6 claims are in and of themselves barred and therefore cannot constitute good cause to
7 overcome the procedural bars, pursuant to State v. District Court, Edwards v. Carpenter, and
8 Hathaway v. State. In addition to being legally insufficient as good cause to excuse
9 Defendant's excessive delay in filing his Second State Petition, Defendant's claims of
10 ineffective assistance of trial and appellate counsel are largely barred under the law of the
11 case doctrine. Notably, both the district court and the Nevada Supreme Court have denied
12 Defendant's claims of ineffective assistance of trial and appellate counsel.

13 Clearly, Defendant cannot rely on his untimely claim of ineffective assistance of
14 counsel to establish good cause to avoid the procedural bars. As such, he bears the burden of
15 demonstrating why he allowed the statutory time limits to run out before bringing his claims.
16 Specifically, Defendant must show that his delay was due to an external impediment to the
17 defense which prevented him from complying with the procedural default rules. Crump v.
18 Warden, Nevada State Prison, 113 Nev. 293, 302, 934 P.2d 247, 252 (1997), (citing
19 Passanisi v. Director Dep't Prisons, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989)). However,
20 Defendant has presented no evidence of an external impediment to his defense.
21 Accordingly, every claim in Defendant's untimely Second State Petition in which he relies
22 on a blanket assertion of ineffective assistance of counsel must be dismissed.

23 Beyond a lack of good cause to avoid the procedural bars, Defendant also fails to
24 make a showing of prejudice, as Nevada law has continually required. Instead, Defendant
25 repeatedly makes conclusory claims of prejudice. However, conclusory claims for relief are
26 inappropriate for post-conviction proceedings and do not entitle a defendant to relief.
27 Colwell v. State, 118 Nev. 807, 812, 59 P.3d 463, 467 (2002). Therefore, Defendant has
28 utterly failed to meet his burden and his untimely claims for relief in his Second State

1 Petition, filed more than ten (10) years after the Nevada Supreme Court issued Remittitur on
2 his direct appeal, should be summarily dismissed.

3 **III. DEFENDANT'S SECOND PETITION FOR WRIT OF HABEAS**
4 **CORPUS MUST BE DISMISSED**

5 **Claim One: Ineffective Assistance of Counsel**

6 As explained above, Defendant's claims of ineffective assistance of counsel are
7 procedurally barred pursuant to NRS 34.726, 34.800, and 34.810. Further, Defendant's
8 claims of ineffective assistance of trial and appellate counsel have already been raised and
9 decided on their merit, making them barred under the law of the case doctrine. In fact,
10 Defendant's chief claim of ineffective assistance of counsel in the untimely instant Second
11 State Petition, regarding the investigation and presentation of mitigating circumstances
12 surrounding Defendant's background, has been litigated not just in front of the Nevada
13 Supreme Court but also in extensive briefing in Defendant's First State Petition. As such,
14 the claims also constitute an abuse of the writ pursuant to NRS 34.810(2).

15 As the Nevada Supreme Court has clearly stated, an untimely, and thus procedurally
16 barred, claim of ineffective assistance of counsel cannot constitute good cause to excuse its
17 own delay. State v. District Court (Riker), 121 Nev. 225, 112 P.3d 1070 (2005). As
18 Defendant makes no other attempt at showing good cause for his ten (10) year delay, this
19 claim must be dismissed.

20 **Claim Two: The presentation of facts common to a theory of first degree**
21 **murder and at least one aggravating circumstance**

22 Defendant cites to McConnell v. State, 120 Nev. 1043, 102 P.3d 606 (2004), to
23 support his claim that his death sentence is unconstitutional because one of the theories of
24 first-degree murder required the same facts as one of the aggravators. However, as with all
25 of Defendant's claims, this claim is procedurally barred. In addition, Defendant has waited
26 five years since this case was published to bring this claim. Defendant offers no reason for
27 the delay, aside from the insufficient, blanket claim that previous counsel was ineffective.

28 Defendant's delay in bringing this claim is worsened by the Nevada Supreme Court's
decision in Bejarano v. State, 122 Nev. 1066, 146 P.3d 265 (2006). In Bejarano, the Court

1 considered the McConnell rule and concluded that it must be applied retroactively. Id. at
2 1078, 274. Yet, Defendant still waited three years after this decision to bring this claim
3 without any explanation of good cause for the delay.

4 Further, even if Defendant could show good cause to overcome the procedural bars,
5 which he has not, he still would not be entitled to have this claim reviewed. As the Nevada
6 Supreme Court ruled in Bejarano, Defendant must show prejudice before his claim can
7 overcome the procedural bars. In particular, absent a showing of good cause, a defendant
8 must show that applying the procedural bars would result in a fundamental miscarriage of
9 justice to have his claim reviewed. Bejarano at 1972, 270. Such a miscarriage is only shown
10 where there is a reasonable probability that absent the challenged aggravator, the jury would
11 not have imposed death. Id.

12 Here, even without the felony aggravators, the jury found very strong aggravators
13 which outweigh the mitigating circumstances. Namely: 1-the murder was committed by a
14 person previously convicted of a felony involving the use or threat of violence, specifically,
15 a robbery committed on December 14, 1992; and 4-the murder was committed to avoid or
16 prevent a lawful arrest. Indeed, the evidence that Defendant has been violent for most of his
17 life, represented in the first aggravator, and the evidence of Defendant's complete disregard
18 for his victim's life and the law, represented in the fourth aggravator, were powerful
19 indicators that the death penalty was the appropriate punishment for Defendant. In addition,
20 the evidence of mitigating circumstances was all countered by strong evidence of
21 Defendant's propensity for violence. In fact, Defendant's continuing propensity for violence
22 was evident by the fact that he had charges for battery against one his neighbors pending at
23 the time of trial.

24 Further, the jury heard Defendant's own chilling account of his senseless violence
25 towards Isabelle Berndt in his own words when they watched the videotaped confession he
26 gave police. They heard Defendant explain that he originally attacked the sleeping body,
27 slamming the head with a crow bar, because he thought it was a man and did not want to
28 have to deal with him. They heard Defendant say in his own words, that by the time he

1 realized his victim was an older woman, it was too late. The jury heard Defendant describe
2 his choice to continue bashing the woman's head with a crowbar. The jury also heard
3 Defendant admit that he did not have to kill her to commit the underlying felony; he
4 admitted that it was dark and she did not see him and he could have tied her up and let her
5 live. Instead, he heard her gurgling on her own blood and struggling to breathe, so he put a
6 pillow over her face to smother the life out of her.

7 Given Defendant's continuing violent nature and deliberate murder of a sleeping
8 elderly woman, there is no reasonable probability that the jury's verdict would have been
9 any different. Notably, Defendant's Second State Petition is completely devoid of any
10 analysis even suggesting that such prejudice occurred. Accordingly, Defendant has failed to
11 show prejudice sufficient to overcome the procedural bars and this claim must be dismissed.

12 **Claim Three: The jury instructions**

13 Defendant alleges that the jury was not properly instructed regarding the difference
14 between First and Second Degree Murder, reasonable doubt, and malice, as well as not given
15 a presumption of life instruction. However, he provides legal authority that may give rise to
16 any claim only in the allegation concerning the difference between First and Second Degree
17 Murder. As such, the allegations of error concerning the instructions regarding reasonable
18 doubt, malice, and presumption of life are all procedurally barred under NRS 34.726, subject
19 to laches under NRS 34.800, and waived under NRS 34.810. Accordingly, those claims
20 must be dismissed due to a lack of good cause for the delay in bringing them.

21 Defendant alleges that the first-degree murder instruction (the "Kazalyn" instructions)
22 failed to properly instruct the jury concerning the "premeditation and deliberation" elements
23 of the capital offense. Defendant claims that his due process rights were violated because
24 the instruction fails to define willfulness, premeditation, and deliberation as separate
25 elements of first-degree murder. However, this claim is also barred for various reasons.

26 First, Defendant failed to immediately challenge the instructions following the
27 Nevada's Supreme Court's decision to replace the Kazalyn instructions in Byford v. State,
28 116 Nev. 215, 994 P.2d 700 (2000) and Garner v. State, 116 Nev. 770, 6 P.3d 1013

1 (2000)(ruling the new rule announced in Byford was not retroactive). Instead, Defendant
2 waited nine years to raise this issue for the very first time in his Second State Petition.
3 Consequently, this claim is procedurally barred under NRS 34.726 and subject to laches
4 under NRS 34.800. It is also waived under NRS 34.810.

5 Second, to the extent Defendant relied on Polk v. Sandoval, 503 F.3d 903 (9th Cir.
6 2007), the claim is untimely on its face, as that case was decided two years ago. Further,
7 Defendant's reliance is misplaced. As the Nevada Supreme Court explained in Nika v. State,
8 Nika v. State, 124 Nev. Adv. Op. 103, 198 P.3d 839 (2008), the Ninth Circuit Court of
9 Appeals misstated the change Nevada state law in Byford and therefore incorrectly suggested
10 the ruling should be applied retroactively. As such, the change in the law regarding jury
11 instructions for first degree murder announced in Byford only has prospective force with no
12 retroactive application, despite the Polk decision. Id.

13 Defendant's conviction was final on April 28, 1999, when the Nevada Supreme Court
14 issued remittitur on Defendant's direct appeal after certiorari to the United States Supreme
15 Court was denied. Because Defendant's case became final before Byford was published, the
16 decision does not apply to Defendant and therefore cannot serve as good cause to overcome
17 the numerous procedural bars this claim violates.

18 As all of Defendant's allegations in this claim are procedurally barred pursuant to
19 NRS 34.726, and 34.810 and subject to laches under 34.800 and he has not shown any good
20 cause to excuse the delay, this claim must be dismissed.

21 **Claim Four: The presentation of Defendant's criminal conduct as a juvenile**

22 Defendant claims that the presentation of his juvenile criminal conduct somehow
23 violates Roper v. Simmons, 543 U.S. 551 (2005) and Thompson v. Oklahoma, 487 U.S. 815
24 (1987). However, this claim is incurably flawed. First, as with all of Defendant's Second
25 State Petition, it is procedurally barred. Second, Roper does not provide grounds for relief
26 for Defendant, and even if it did, Defendant waived it by waiting four years to bring a claim.

27 Roper cannot constitute good cause to overcome the procedural bars preventing
28 review of this claim for several reasons. First, in Roper, the Supreme Court ruled that it is

1 cruel and unusual punishment to execute a defendant for crimes they committed before
2 turning eighteen. Roper at 569. However, Defendant was sentenced to death for a crime he
3 committed when he was twenty-two (22). Second, beyond this clear impediment to
4 Defendant's argument, the case still does not support Defendant as none of the aggravating
5 circumstances were based on Defendant's juvenile criminal conduct. The only aggravator
6 that was not based on the circumstances of the crime was based on Defendant's felony
7 conviction for a robbery he committed on December 14, 1992, when he was nineteen (19).
8 As such, even if this Court was inclined to add to the U.S. Supreme Court's analysis in
9 Roper by applying it to aggravators as well as crimes, it still does not apply to Defendant.
10 Simply put, Defendant's reliance on Roper does not constitute good cause to overcome the
11 procedural bars, but instead is an improper stretch of the law.

12 Accordingly, Defendant has failed to provide good cause to overcome the procedural
13 bars which prevent review of this claim. Therefore, it must be dismissed.

14 **Claims Five, Six, Seven, Eight, Nine, Ten, Eleven, Twelve, Eighteen, and
Nineteen: The record based claims without citation to intervening law**

15 Defendant alleges errors which occurred at trial entitle him to relief. However, all of
16 these are record-based claims which have been known to Defendant since his conviction
17 thirteen (13) years ago. Consequently, these claims are all time barred as explained above.

18 In addition, because the Nevada Supreme Court has already decided them on their
19 merits, the following claims are also barred by the law of the case doctrine: Claim Five – the
20 failure to object to bad character evidence, well as Claim Six to the extent trial counsel did
21 not object to the admission of Defendant's white supremacist beliefs as bad character
22 evidence; Claim Seven – improper prosecutorial argument, which has been challenged and
23 decided in two separate ways; Claim Eight – the amount of victim impact evidence
24 presented; Claim Nine – the prior bad act evidence in so much as the jury heard about
25 Defendant's other case; Claim Eleven – the challenge to the definition of a deadly weapon;
26 Claim Eighteen – the mitigating circumstances jury instructions; and Claim Nineteen –
27 Cumulative Error.

28 The remaining claims: Claim Six, to the extent it is focused specifically on

1 Defendant's white supremacist beliefs; Claim Ten – the bare and unsupported allegation that
2 some proceedings were not recorded; and Claim Twelve – that the deadly weapon
3 enhancement was not supported (although Defendant's sentence was enhanced because his
4 victim was over the age of sixty-five, not because of the deadly weapon) are all waived
5 pursuant to NRS 34.810(1)(b), as they could have been raised in Defendant's direct appeal
6 twelve years ago and/or in Defendant's First State Petition eight years ago. In addition, as
7 all of these claims are being raised over nine years after the mandatory time limit expired,
8 the State affirmatively pleads laches pursuant to NRS 34.800.

9 As previously explained, the blanket claim of ineffective assistance of counsel being
10 good cause for the delay is contrary to well established Nevada law. Therefore, because
11 Defendant offers no good cause for the extensive delay, these claims must all be dismissed.

12 **Claim Thirteen: The lethal injection protocol**

13 Defendant claims that his sentence is unconstitutional because the lethal injection
14 protocol violates the Eighth Amendment and cites to Baze v. Rees, 128 S.Ct. 1520 (2008)
15 for support. However, this claim, as with the others, is procedurally barred and this
16 intervening law does not provide good cause to overcome those bars. As the Nevada
17 Supreme Court ruled in McConnell v. State, 125 Nev. Adv. Op. 24, 212 P.3d 307 (2009), the
18 Baze ruling does not provide grounds for relief in Nevada. The Court reasoned that, because
19 a challenge to the lethal injection protocol would not prevent execution by way of a different
20 protocol, it does not challenge whether the death sentence itself is valid; therefore, it is
21 outside the scope of a post-conviction habeas petition. Id. at 7, 311. Consequently, because
22 the Baze decision does give rise to a claim, there is no good cause to excuse the extensive
23 delay in bringing this claim.

24 In addition, without the Baze decision, this claim has already been litigated in
25 Defendant's First State Petition, as well as on appeal from that decision. As such, it is barred
26 by the law of the case doctrine and constitutes an abuse of the writ for Defendant to bring it
27 now. Either way, this claim must be dismissed.

1 **Claim Fourteen: Restrictive Conditions on Death Row**

2 Defendant complains that the condition of his confinement constitutes cruel and
3 unusual punishment. However, besides being procedurally barred with no good cause to
4 overcome it, this claim, which is grounded in social policy rather than constitutional law, is
5 not properly before this court. NRS 34.720 provides that the provisions of NRS 34.720
6 through NRS 34.830 inclusive, apply only to petitions for writ of habeas corpus challenging
7 a judgment of conviction or sentence in a criminal case.

8 Further, even if there was statutory language or legislative history permitting this
9 claim, it would fail because it is belied by the record in this case. Defendant himself stated,
10 while under oath, that the conditions on Nevada's death row were not constrictive. See
11 attached Order. Accordingly, this claim must be dismissed because it is an invalid issue.

12 **Claim Fifteen: Elected judges**

13 Defendant alleges his conviction is somehow unconstitutional because the judges that
14 presided over his cases are elected by popular vote, despite the fact Defendant was convicted
15 and sentenced to death by a jury of his peers. As with all the other claims in Defendant's
16 untimely Second State Petition, this claim is procedurally barred with no good cause to
17 overcome those bars. Further, similar to Claim Fourteen, this claim is not properly before
18 this court. Whether judges in Nevada are elected is a question for the legislature to resolve,
19 not the district court by way of a post-conviction habeas petition. This claim therefore must
20 also be dismissed as an invalid issue.

21 **Claim Sixteen: The death penalty as cruel and unusual punishment**

22 Defendant claims the arbitrary application of the death penalty in Nevada constitutes
23 cruel and unusual punishment. This claim, as with the others, is procedurally time barred
24 under NRS 34.726 and subject to laches under 34.800. In addition, it is barred by the law of
25 the case doctrine and constitutes an abuse of the writ under NRS 34.810(2), as it was raised
26 in Defendant's First State Petition as well as on appeal of the denial of that writ. As such,
27 even if Defendant could muster good cause for the delay in bringing this claim, which he has
28 failed to do in his Second State Petition, the claim must be dismissed.

1 **Claim Seventeen: The death penalty and Defendant's possible mental illness**

2 Defendant claims that his death sentence constitutes cruel and unusual punishment;
3 however, the claim is flawed for several reasons. First, as with the other claims in
4 Defendant's Second State Petition, it is procedurally barred. Second, Defendant's reliance
5 on Atkins v. Virginia, 536 U.S. 304 (2002), for good cause to overcome those procedural
6 bars is gravely misplaced for several reasons. The primary reason is that the ruling in Atkins
7 does not apply to Defendant's case. In Atkins, the U.S. Supreme Court ruled that it is cruel
8 and unusual to execute mentally retarded defendants, not defendants with a mental illness.
9 Id. Therefore, even if Defendant had a mental illness, which evidence presented during his
10 trial proved he did not; Atkins does not give rise to a claim for Defendant. Even by
11 Defendant's own analysis, he does not fit under Atkins, as he spends the majority of his
12 argument trying to show first that he has a mental illness and second that this Court should
13 extend the ruling in Atkins to include the mentally ill, a class of people who were simply not
14 considered by the U.S. Supreme Court in Atkins. Further, Defendant waited seven years
15 after Atkins was published to ask this Court to expand the U.S. Supreme Court's
16 jurisprudence. As such, even if Atkins provided grounds for a claim, which it does not,
17 Defendant has waived it by waiting so long to bring it. Accordingly, this case cannot provide
18 good cause to excuse the delay in bringing this claim and it must be dismissed as it remains
19 procedurally barred.

20 ////

21 ////

22 ////

23 ////

24 ////

25 ////

26 ////

27 ////

28 ////

[illegible]

DATED this 15 day of December, 2009.

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781


[Handwritten signature]

STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352

1 **CERTIFICATE OF MAILING**

2 I hereby certify that service of the above and foregoing, was made this 2ND day
3 of December, 2009, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:
4

5 GARY A. TAYLOR
6 NISHA N. BROOKS
7 Assistant Federal Public Defenders
8 411 E. Bonneville Avenue, Ste. 250
9 Las Vegas, Nevada 89101

10 
11 _____
12 Employee for the District Attorney's
13 Office
14
15
16
17
18
19
20
21
22
23
24
25

26 SSO/Felicia Quinlan/ed
27
28

EXHIBIT 1

EXHIBIT 1

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA
8

9 WILLIAM P. CASTILLO,

10 Petitioner,

11 vs.

12 E.K. McDANIEL, *et al.*,

13 Respondents.
14

2:04-cv-0868-RCJ-GWF

ORDER

15
16 Introduction and Background

17 William P. Castillo, the petitioner, requests that this capital habeas corpus action be
18 dismissed, so that his death sentence may be carried out. The Court held a hearing regarding this matter
19 on August 13, 2007, and at that hearing canvassed Castillo and heard from his counsel and counsel for
20 the respondents. The Court finds that Castillo is competent, and that his decision to dismiss this action
21 is made knowingly and voluntarily. The Court will therefore dismiss this action, without prejudice,
22 pursuant to Castillo's request.

23 On the night of December 16, 1995, Castillo and an accomplice burglarized the Las
24 Vegas home of an 86-year-old woman. In the course of the burglary, Castillo killed the woman, in her
25 bed, by beating her with a tire iron. Castillo and his accomplice left the home with several of the
26 woman's possessions -- a VCR, a box of silverware, and a bag containing hand-knitted children's

1 booties. Later that night, worried that they had left fingerprints, Castillo and his accomplice returned
2 and lit the house on fire.

3 Two days later, after a co-worker implicated Castillo in the crimes, a search warrant was
4 executed at Castillo's residence, and Castillo was arrested. Castillo waived his rights under *Miranda*
5 *v. Arizona*, 384 U.S. 436 (1966), and spoke to the police. He initially denied his involvement, but after
6 he was informed of the information provided by his co-worker, and also by his girlfriend, Castillo
7 confessed.

8 The record before this Court, and the statements of Castillo and his counsel at the August
9 13 hearing, indicate that, since his confession to the police, Castillo has not denied his participation in
10 the murder. See Transcript of Hearing of August 13, 2007 (hereafter "August 13 Transcript"), pp. 19,
11 22.

12 On November 25, 1996, following a jury trial, Castillo was convicted, in Nevada's Eighth
13 Judicial District Court, of first-degree murder with the use of a deadly weapon, as well as conspiracy to
14 commit burglary, burglary, robbery of a victim sixty-five years or older, conspiracy to commit burglary
15 and arson, and first-degree arson, and he was sentenced to death. (A detailed description of Castillo's
16 crimes, the investigation, and the trial, is found in the Nevada Supreme Court's opinion affirming
17 Castillo's conviction and sentence, published as *Castillo v. State*, 114 Nev. 271, 956 P.2d 103 (1998).)

18 Castillo appealed to the Nevada Supreme Court, and that court affirmed his conviction
19 and sentence on April 2, 1998. See *Castillo v. State*, 114 Nev. 271, 956 P.2d 103 (1998).

20 On April 2, 1999, Castillo petitioned for habeas corpus relief in the state district court.
21 Following an evidentiary hearing, that petition was denied, and the Nevada Supreme Court subsequently
22 affirmed the denial of the petition on February 5, 2004. See Order of Affirmance, attached to Petition
23 for a Writ of Habeas Corpus (docket #1).

24 Castillo then initiated this federal habeas corpus action on June 22, 2004 (docket #1).
25 Counsel was appointed for him (see docket #4 and #7). On December 6, 2005, Castillo filed a motion
26 for leave to conduct discovery (docket #35). That motion was granted in part and denied in

1 part (docket #38; *see also* docket #40 and #48). Castillo's counsel have apparently completed the
2 authorized discovery, and the schedule now in place in this action calls for counsel to file an amended
3 petition on petitioner's behalf by November 5, 2007 (docket #54).

4 Petitioner's July 31, 2007 Filing

5 On July 31, 2007, Castillo filed a *pro se* document entitled "Petitioner's Waiver of
6 Federal Habeas Corpus and Request for Prompt Execution of State Court Death Penalty Judgment"
7 (docket #51) (hereafter "Waiver"). In his Waiver, Castillo states that "he has chosen to waive the
8 Federal Habeas Corpus Appeal process, and thus, forego his pursuit of habeas relief pursuant to
9 subsection 2254, and further requests that this Court and the Attorney General take whatever means
10 necessitated to promptly implement and carry out the execution of the Nevada State Court Judgment."
11 Waiver, p. 1 (spelling as in original).

12 Attached to Castillo's Waiver is an affidavit, signed by Castillo under penalty of perjury.
13 Waiver, pp. 2-3. In the affidavit, Castillo states:

14 That upon extensive reflection and great consideration of my life, the lack of any
15 possibility for a normal life in the future, and the lack of any actual or substantial
16 constitutional claims to be presented to this Court for review, I have therefore
17 chosen to waive any and all rights to my pursuit of federal habeas corpus review
18 pursuant to 2254. I have no desire to suffer the continual confinement of death
19 row for an indeterminate period of time, at the expense of precious judicial
20 resources, while attorneys attempt to continue this appeal process in order to
21 delay my inevitable fate.

22 *Id.* at 2, ¶4 (spelling as in original). With respect to his appointed counsel, Castillo states in the
23 affidavit:

24 That on July 23 and 24, 2007, I wrote appointed counsel in this matter and
25 apprised them of my wishes, requesting that they not file anything additional on
26 my behalf, or otherwise take any steps to hinder my desire to have the state court
judgment carried out. As such, any future appeals or documents attempted to be
filed with this Court by appointed counsel on my behalf should be deemed
without my expressed consent and authorization, and wholly against my wishes.

1 *Id.* at 2, ¶5 (emphasis in original). Castillo concludes in the affidavit:

2 That I, William P. Castillo, hereby voluntarily and knowingly waive my right to
3 federal habeas corpus appeal/review and any such future appeal(s), and
4 respectfully ask this Court to honor my request, and in doing so, take the
necessary steps to schedule the Nevada State Court's Judgment of death be
carried out in a prompt and timely fashion.

5 *Id.* at 3, ¶6.

6 The Court treats Castillo's Waiver as a request for voluntary dismissal pursuant to
7 Federal Rule of Civil Procedure 41(a). *See* Rule 11 of the Rules Governing Section 2254 Cases in the
8 United States District Courts ("The Federal Rules of Civil Procedure, to the extent that they are not
9 inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these
10 rules.").

11 The August 13, 2007 Hearing

12 Following the filing of Castillo's Waiver, the Court set a hearing for August 13, 2007
13 (*see* docket #52, #55). At that hearing, the Court thoroughly canvassed Castillo regarding his
14 competence, and his decision to dismiss this action, and the Court heard from counsel for Castillo and
15 counsel for the respondents with respect to those matters.

16 At the hearing, Castillo reiterated in plain terms his request that this action be dismissed.
17 August 13 Transcript, pp. 8, 24.

18 Castillo explained that the Waiver he filed on July 31 was produced in his own
19 handwriting. August 13 Transcript, p. 6. Castillo explained that he received help from another inmate
20 with respect to the form of the Waiver, but that "all of the ideas and the information" in the Waiver were
21 his own. *Id.* at 6-7. In fact, Castillo stated that the inmate who helped him draft the Waiver "was in
22 agreement with [his] attorneys," and urged him not to request dismissal of this case. *Id.* at 6.

23 Competence

24 In order for the Court to accept Castillo's voluntary dismissal of this action, and his
25 submission to the death penalty, Castillo must be competent. *See Rees v. Peyton*, 384 U.S. 312, 314
26

1 (1966); *Comer v. Schriro*, 480 F.3d 960, 962 (9th Cir. 2007) (*en banc*). The test for competence in this
2 context was prescribed in *Rees*:

3 whether [the petitioner] has capacity to appreciate his position and make a
4 rational choice with respect to continuing or abandoning further litigation or on
5 the other hand whether he is suffering from a mental disease, disorder, or defect
6 which may substantially affect his capacity in the premises.

7 *Rees*, 384 U.S. at 314; see also *Dennis ex rel. Butko v. Budge*, 378 F.3d 880, 888 (9th Cir. 2004)
(applying *Rees* standard in case originating in Nevada).

8 The Court has reviewed the record before it, and sees nothing to indicate that Castillo
9 suffers from any mental disease, disorder, or defect. Every indication in the record is that Castillo has
10 the capacity to appreciate his position and make a rational choice with respect to continuing or
11 abandoning further litigation.

12 At the hearing on August 13, both Castillo's counsel and counsel for the respondents
13 stated that they know of nothing to suggest that Castillo is incompetent. August 13 Transcript, pp.
14 5-6, 22.

15 Castillo informed the Court that he graduated, with honors, from high school at the
16 Nevada Youth Training Center. August 13 Transcript, pp. 3-4. Castillo stated, and it was obvious to
17 the Court, that he is fluent in the English language. *Id.* at 20. Castillo stated that he had not used alcohol
18 or drugs within the last 24 hours. *Id.* at 5.

19 At the hearing, Castillo told the Court that he had never been diagnosed as suffering from
20 any mental illness, and that he does not believe that he suffers from mental incompetence. August 13
21 Transcript, pp. 4-5.

22 Castillo stated at the hearing that he believes himself to be "in full control of [his]
23 faculties." August 13 Transcript, p. 21. This assertion was consistent with the Court's observations.
24 Castillo appeared to the Court to be well-oriented, and aware of the status of his litigation, the purpose
25 of the hearing, and the options available to him. See, e.g., August 13 Transcript, pp. 7-8,
26 13-18.

1 When asked why he does not wish to proceed with this case, Castillo answered as
2 follows:

3 PETITIONER CASTILLO: Speak plainly, your Honor?

4 THE COURT: Please.

5 PETITIONER CASTILLO: As I said, I'm 34 years old, and I'll be 35 at
6 the end of this year.

7 THE COURT: That's right. You're fairly young, sir.

8 PETITIONER CASTILLO: But in my "fairly young" years, I have spent
9 a large portion of my time incarcerated in one shape, form, or another. I have
10 been in prison twice before. I have recently completed a better part of a decade
11 on this sentence. And, you know, to be perfectly honest, I don't want this for
12 myself anymore. I know that all I have ahead of me is a life sentence in prison,
13 or life sentences, and that the rest of my natural life I will spend behind bars,
14 which is a burden on myself, my soul, my spirit, as well as my family's, as well
15 as the victim's family's. Yeah, I do take that into consideration in thinking of
16 this. I'm just — I'm young, I'm strong, I'm healthy, and I have many, many
17 years ahead of me that are guaranteed to be behind bars, and I just can't do that
18 no more.

19 August 13 Transcript, pp. 12-13.

20 The Court concludes, based on the record in this case, the statements of Castillo at the
21 August 13 hearing, and the statements of counsel for both Castillo and the respondents, that Castillo
22 has the capacity to appreciate his position and make a rational choice with respect to continuing or
23 abandoning further litigation.

24 Knowing and Voluntary

25 The Court finds also that Castillo's decision to dismiss this action is knowing.
26 At the August 13 hearing, the Court extensively canvassed Castillo, reviewing with him the nature of
federal habeas corpus, and his right to federal habeas corpus review of his conviction and sentence.
August 13 Transcript, pp. 8-17, 24.

Castillo understands that he has the right to pursue this action, and that he has appointed
attorneys to represent him in it. August 13 Transcript, pp. 9-10. He understands that his attorneys are
preparing to file an amended petition, to add further claims for relief to those in the habeas petition now

1 on file. *Id.* at pp. 16-17. He understands that if any of his claims is found to have merit, his conviction
2 or sentence could be set aside. *Id.* at 13-14, 16-17. He understands that it is possible that the end result
3 of this action could possibly be his acquittal, or the imposition of a less onerous sentence -- for example,
4 a life term with the possibility of parole. *Id.* at 13-14, 24. He also understands that there is a possibility
5 of a commutation of his sentence. *Id.* at 14. Castillo understands that, if he proceeds with this action,
6 there are possible outcomes that could prevent his death sentence from being carried out. *Id.* at 14.

7 Castillo understands that as long as this action is pending, it is unlikely that a warrant of
8 execution will issue, and, if a warrant of execution does issue, that this Court has the power to stay the
9 execution so that the Court may consider and resolve his habeas petition. August 13 Transcript, p. 10.

10 Castillo stated at the hearing that he has discussed with his attorneys his right to continue
11 with this action, as well as his decision to terminate this action. August 13 Transcript,
12 pp. 11-12.

13 Castillo understands what will happen if this action is dismissed: his death sentence will
14 be carried out, and he will be put to death. August 13 Transcript, pp. 8-9, 14-15. It is clear to the Court
15 that Castillo is free of delusion in that important respect.

16 It was plain at the hearing that Castillo has the capacity to understand all these matters,
17 and that he acts with complete understanding of them. Castillo's decision is made knowingly.

18 Castillo's decision is also made voluntarily. Castillo stated at the August 13 hearing that
19 he is acting on his own free will, and that his decision to dismiss this action is made voluntarily
20 and not because of any coercion or duress imposed by any other person. August 13 Transcript,
21 pp. 12, 21.

22 Moreover, Castillo's decision to dismiss this action, and proceed to his execution, is not
23 made as a reaction to conditions on Nevada's death row. The Court questioned Castillo specifically on
24 this point, and Castillo responded as follows:

25 PETITIONER CASTILLO: Again, and I'll be perfectly honest with you,
26 your Honor, death row is basically a walk in the park, to me. I have been in many
prisons and many different situations. That is very easy time. It's not a matter
of the environment that I do time in; it's the fact that it's continuous time,

1 whether it be on death row or any other yard in the state of Nevada or any other
2 yard across the country. Prison time is going to maintain and always be prison
time for me, regardless of the place it may occur.

3 * * *

4 But death row in itself actually is quite more enjoyable than the
5 average yard in this state at this time.

6 August 13 Transcript, p. 16.

7 The Court finds that Castillo is acting voluntarily.

8 Evidentiary Hearing

9 Because there is no evidence -- much less "meaningful evidence" -- that Castillo is
10 incompetent, or that his decision is not knowing and voluntary, the Court determines that an
11 evidentiary hearing with respect to these matters is not warranted. *See Demosthenes v. Baal*, 495
12 U.S. 731, 736 (1990) (no evidentiary hearing warranted without a showing of "meaningful evidence"
13 of incompetency).

14 Conclusion

15 Castillo is competent to make his own decisions with respect to his habeas corpus
16 litigation in this Court, and he knowingly and voluntarily chooses to terminate this action.
17 Therefore, this action will be dismissed.

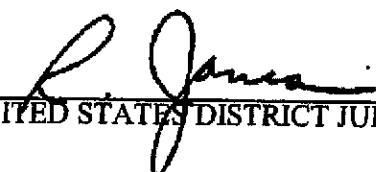
18 The dismissal will be without prejudice, and Castillo's appointed counsel will not be
19 discharged.

20 At any time, petitioner, either acting *pro se* or through counsel, may request that this
21 case be reopened and a stay of execution imposed.

22
23 **IT IS THEREFORE ORDERED** that "Petitioner's Waiver of Federal Habeas
24 Corpus and Request for Prompt Execution of State Court Death Penalty Judgment"
25 (docket #51) is treated as a request for voluntary dismissal pursuant to Federal Rule of Civil
26 Procedure 41(a) and is **GRANTED**. This action is **DISMISSED WITHOUT PREJUDICE**.

1 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT**
2 **ACCORDINGLY.**

3
4 Dated this 4th day of September, 2007.

5
6
7 
8 UNITED STATES DISTRICT JUDGE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DP HABEAS, NEW, P5, P6

**United States District Court
District of Nevada (Las Vegas)
CIVIL DOCKET FOR CASE #: 2:04-cv-00868-RCJ-GWF**

William P. Castillo VS E.K. McDaniel, et al., (DEATH
PENALTY)
Assigned to: Judge Robert C. Jones
Referred to: Magistrate Judge George Foley, Jr
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 06/22/2004
Jury Demand: None
Nature of Suit: 535 Death Penalty -
Habeas Corpus
Jurisdiction: Federal Question

Petitioner**William P. Castillo**

represented by **Franny A Forsman**
Federal Public Defender
411 E Bonneville
Suite 250
Las Vegas , NV 89101-
Email: bonnie_box@fd.org
TERMINATED: 05/23/2006
LEAD ATTORNEY

Gary Taylor
Federal Public Defender
411 E Bonneville
Suite 250
Las Vegas , NV 89101-
Email: ECF_Vegas@fd.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael Pescetta
Federal Public Defender
411 E Bonneville
Suite 250
Las Vegas , NV 89101-
Email: ECF_Vegas@fd.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy Gabrielsen
Federal Public Defender
411 E Bonneville
Suite 250
Las Vegas , NV 89101-
Email: ECF_Vegas@fd.org

ATTORNEY TO BE NOTICED

V.

Respondent

E.K. McDaniel

represented by **Heather D. Procter**
Nevada Attorney General's Office
100 North Carson Street
Carson City , NV 89701-4717
(775) 684-1272
Fax: (775) 684-1108
Email: hprocter@ag.nv.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brian E Sandoval
Nevada Attorney General's Office
100 North Carson Street
Carson City , NV 89701-4717
775-684-1100
Fax: 775-684-1108
TERMINATED: 10/31/2005

Frank Phelan
Office of the Attorney General
100 N. Carson Street
Carson City , NV 89701-4717
775-684-1272
Fax: 775-684-1108
Email: fphelan@ag.nv.gov
TERMINATED: 04/21/2009

Gary Taylor
(See above for address)
ATTORNEY TO BE NOTICED

Rene L. Hulse
Nevada Attorney General's Office
555 E. Washington Ave
Suite 3900
Las Vegas , NV 89101-
702-486-3420
Email: rhulse@ag.nv.gov
TERMINATED: 11/10/2008

Respondent

Brian Sandoval

represented by **Frank Phelan**
(See above for address)
TERMINATED: 04/21/2009

Heather D. Procter
(See above for address)
ATTORNEY TO BE NOTICED

Rene L. Hulse
(See above for address)
TERMINATED: 11/10/2008

Date Filed	#	Docket Text
06/22/2004	<u>1</u>	PETITION FOR WRIT OF HABEAS CORPUS Death penalty petn obo ptrn (FLD SEP) (Entered: 06/22/2004)
06/23/2004	<u>2</u>	MOTION FOR MISCELLANEOUS RELIEF for appt of cnsl obo Ptrn. (m) (DISPO:GRANTED #4; (Entered: 06/25/2004)
06/23/2004	<u>3</u>	MOTION/APPLICATION FOR LEAVE TO PROCEED IN FORMA PAUPERIS obo Ptrn. (DISPO:DENIED/GRANTED #5; (Entered: 06/30/2004)
07/07/2004	<u>4</u>	ORDER ORD mtn for appt of cnsl (#2) is GRANTED, FPD for Dist of Nev. has 30 dys to undertake representation of petn, (see doc). cpys dist w/cpy to Michael Pescetta. (Entered: 07/08/2004)
07/07/2004	<u>5</u>	ORDER ORD mtn to lv to proceed in forma pauperis to waive filing fee (#3) is DENIED, but for subsequent fees and cost is GRANTED. cpys dist cert mail. (Entered: 07/08/2004)
07/20/2004	<u>6</u>	NOTICE (OTHER) of representation (m) obo Respdnts (Entered: 07/21/2004)
08/03/2004	<u>7</u>	NOTICE (OTHER) of acceptance as cnsl for ptrn, obo Ptrn (m) (Entered: 08/04/2004)
05/12/2005	<u>8</u>	NOTICE (OTHER) of intent to dismiss purs LR 41-I. cpys dist. (Entered: 05/12/2005)
05/20/2005	<u>9</u>	MOTION FOR MISCELLANEOUS RELIEF for issuance of sked order obo Ptrn (m) (DISPO:GRANTED #12; (Entered: 05/26/2005)
05/31/2005	<u>10</u>	SCHEDULING ORDER ORD 1st status conf is sked for 6/13/05 @11:30am, (see doc). cpys dist. (Entered: 05/31/2005)
06/07/2005	<u>11</u>	SCHEDULING ORDER ORD 1st status conf is sked for 6/13/05 @11:30am bfr RCJ; (see doc). cpys dist. (Entered: 06/09/2005)
06/17/2005	<u>12</u>	MISCELLANEOUS HEARING dtd 6/13/05 Crt Recorder Lila Abarca De Carter re: status hrng ORD: Ds propose amended the order; Crt directs cnsl to propose the language and snd to opposing cnsl, snd to Crt, Crt will adjust the language. (see doc). cpys dist. (Entered: 06/17/2005)
06/27/2005	<u>13</u>	ORDER that cnsl has until 7/6/05 to sub proposed order. (cps dist) (Entered: 06/27/2005)
07/14/2005	<u>14</u>	MISCELLANEOUS DOCUMENT Submission of suggested language for

		inclusion in 2nd sched ord obo Rspdnts. (m) (Entered: 07/18/2005)
07/25/2005	<u>15</u>	OBJECTION TO REPORT AND RECOMMENDATIONS by Ptnr to suggested language (#14). (s) (Entered: 07/28/2005)
08/15/2005	<u>16</u>	STATUS REPORT by Pet. (s) (Entered: 08/17/2005)
08/23/2005	<u>17</u>	NOTICE OF CHANGE OF ADDRESS by Pet. (s) (Entered: 08/29/2005)
08/23/2005	<u>18</u>	ORDER That this action is hereby reassigned to Hon. George F. Foley, Jr., U.S. Mag Judge for all further magistrate proceedings. (cps dist) (Entered: 08/30/2005)
09/13/2005	<u>19</u>	MOTION FOR EXTENSION OF TIME by Pet for ext to file mtn for lv to conduct disc. (s) DISPO: GRANTED #20; (Entered: 09/14/2005)
09/14/2005	<u>20</u>	SCHEDULING ORDER ORD DISC due 12/12/05; Ameded Petn due 2/13/06; resp to Petn due 60dys; Traverse due 45dys; (see doc). cpys dist. (Entered: 09/22/2005)
10/24/2005	<u>21</u>	STATUS REPORT obo Ptnr (m) (cpy RCJ/GWF) (Entered: 10/24/2005)
11/15/2005	<u>22</u>	MOTION for Leave to File Excess Pages by Petitioner William P. Castillo. (Attachments: # <u>1</u> # <u>2</u> # <u>3</u> # <u>4</u> # <u>5</u>)(MJZ) (Entered: 12/02/2005)
11/18/2005	<u>23</u>	EXHIBITS (VOLUME 2 OF 8) to <u>22</u> MOTION for Leave to File Excess Pages; filed by Petitioner William P. Castillo. (Attachments: # <u>1</u> # <u>2</u> # <u>3</u> # <u>4</u>)(MJZ) (Entered: 12/02/2005)
11/18/2005	<u>24</u>	EXHIBITS (VOLUME 3 OF 8) to <u>22</u> MOTION for Leave to File Excess Pages; filed by Petitioner William P. Castillo. (Attachments: # <u>1</u> # <u>2</u> # <u>3</u> # <u>4</u> # <u>5</u>)(MJZ) (Entered: 12/02/2005)
11/18/2005	<u>25</u>	EXHIBITS (VOLUME 4 OF 8) to <u>22</u> MOTION for Leave to File Excess Pages; filed by Petitioner William P. Castillo. (Attachments: # <u>1</u> # <u>2</u> # <u>3</u> # <u>4</u> # <u>5</u> # <u>6</u> # <u>7</u>)(MJZ) (Entered: 12/02/2005)
11/18/2005	<u>26</u>	EXHIBITS (VOLUME 5 OF 8) to <u>22</u> MOTION for Leave to File Excess Pages; filed by Petitioner William P. Castillo. (Attachments: # <u>1</u> # <u>2</u> # <u>3</u> # <u>4</u> # <u>5</u> # <u>6</u>)(MJZ) (Entered: 12/02/2005)
11/18/2005	<u>29</u>	EXHIBIT(s) Volume 6 of 8 to <u>22</u> MOTION for Leave to File Excess Pages; filed by Petitioner William P. Castillo. (Attachments: # <u>1</u> # <u>2</u> # <u>3</u> # <u>4</u> # <u>5</u> # <u>6</u> # <u>7</u> # <u>8</u> # <u>9</u> # <u>10</u> # <u>11</u> # <u>12</u> # <u>13</u> # <u>14</u> # <u>15</u>)(MAJ,) (Entered: 12/07/2005)
11/18/2005	<u>30</u>	EXHIBIT(s) Volume 7 of 8 to <u>22</u> MOTION for Leave to File Excess Pages; filed by Petitioner William P. Castillo. (Attachments: # <u>1</u> # <u>2</u> # <u>3</u> # <u>4</u> # <u>5</u>)(MAJ,) (Entered: 12/07/2005)
11/18/2005	<u>31</u>	EXHIBIT(s) Volume 8 of 8 to <u>22</u> MOTION for Leave to File Excess Pages; filed by Petitioner William P. Castillo. (Attachments: # <u>1</u> # <u>2</u> # <u>3</u> # <u>4</u> # <u>5</u> # <u>6</u>)(MAJ,) (Entered: 12/07/2005)
11/23/2005	<u>32</u>	MOTION for Extension of Time to review record and complete discovery by Petitioner William P. Castillo. (MAJ,) (Entered: 12/07/2005)

12/02/2005	<u>27</u>	MINUTE ORDER IN CHAMBERS of the Honorable Robert C. Jones, U.S. District Judge, on 12/2/2005. By Deputy Clerk: <i>DF</i> . Amended Petition due by 7/14/2006. Discovery due by 3/31/2006. 12/13/05 status conference vacated. (DF) (Entered: 12/02/2005)
12/06/2005	<u>28</u>	ORDER granting <u>22</u> Motion for Leave to File Excess Pages. Clerk to file and docket discovery motion. Respondents to respond to discovery motion by 1/20/06. 20 days for reply. Discovery cutoff and deadline for amendment extended, to be reset. Signed by Judge George W. Foley, Jr., on 12/6/05. (DF) (Entered: 12/06/2005)
12/06/2005		Deadlines/Hearings terminated. Deadlines for completion of discovery and amendment of complaint to be reset when discovery motion resolved, pursuant to docket #28 (DF) (Entered: 12/06/2005)
12/06/2005	<u>35</u>	MOTION for leave to conduct Discovery by Petitioner William P. Castillo. Responses due by 1/20/2006. (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit # <u>4</u> Exhibit # <u>5</u> Exhibit)(BLG) (Entered: 01/23/2006)
12/08/2005	<u>33</u>	MINUTE ORDER IN CHAMBERS of the Honorable Robert C. Jones, U.S. District Judge, on 12/8/2005. By Deputy Clerk: <i>DF</i> . RE: <u>32</u> MOTION for Extension of Time filed by petitioner William P. Castillo. Motion for extension of time denied as moot. (DF) (Entered: 12/08/2005)
01/20/2006	<u>34</u>	First MOTION for Extension of Time by Respondents E.K. McDaniel, Brian Sandoval. (Hulse, Rene) (Entered: 01/20/2006)
01/25/2006	<u>36</u>	MINUTE ORDER IN CHAMBERS of the Honorable Robert C. Jones, U.S. District Judge, on 1/25/2006. By Deputy Clerk: <i>DF</i> . RE: <u>34</u> First MOTION for Extension of Time filed by respondents. Motion for extension of time granted. Response to discovery motion due by 2/21/2006. (DF) (Entered: 01/25/2006)
01/25/2006		Deadlines/Hearings terminated. Deadlines for completion of discovery and for amendment of petition to be reset when discovery motion resolved. (DF) (Entered: 01/25/2006)
02/21/2006	<u>37</u>	NON-OPPOSITION to <u>35</u> MOTION to Bifurcate Discovery; filed by Respondent Brian Sandoval. (Hulse, Rene) (Entered: 02/21/2006)
06/15/2006	<u>38</u>	ORDER granting in part and denying in part <u>35</u> Motion to Bifurcate Discovery. Discovery due 10/13/06. Amended habeas corpus petition due 1/12/07. Signed by Judge Robert C. Jones on 6/14/06. (AXM) (Entered: 06/15/2006)
10/13/2006	<u>39</u>	Second MOTION to Extend Time regarding discovery/non dispositive matter <i>For Parties to Review the Record and Complete Discovery</i> by Petitioner William P. Castillo. (Taylor, Gary) (Entered: 10/13/2006)
10/13/2006	<u>40</u>	MOTION for District Judge to Reconsider Order <i>Denial of Discovery</i> by Petitioner William P. Castillo. Responses due by 10/31/2006. (Taylor, Gary) (Entered: 10/13/2006)
10/25/2006	<u>41</u>	MINUTE ORDER IN CHAMBERS of the Honorable Robert C. Jones, U.S.

		District Judge, on 10/25/2006. By Deputy Clerk: DF. Petitioner's Second Motion to Extend Time for completion of discovery <u>39</u> GRANTED. Authorized discovery to be completed by 12/14/2006. (DF) (Entered: 10/25/2006)
10/30/2006	<u>42</u>	First MOTION to Extend Time regarding dispositive matter re <u>40</u> MOTION for District Judge to Reconsider Order <i>Denial of Discovery</i> by Respondent E.K. McDaniel. (Hulse, Rene) (Entered: 10/30/2006)
11/02/2006	<u>43</u>	MINUTE ORDER IN CHAMBERS of the Honorable Robert C. Jones, U.S. District Judge, on 11/2/2006. By Deputy Clerk: DF. Motion for Enlargement of Time filed by respondents <u>42</u> GRANTED. Response to Motion to Reconsider <u>40</u> due 11/30/2006. Deadlines for completion of discovery and amendment of petition extended, to be reset when Motion to Reconsider resolved. (DF) (Entered: 11/02/2006)
12/04/2006	<u>44</u>	MOTION for Leave to File <i>Late Pleading</i> by Respondent E.K. McDaniel. (Hulse, Rene) (Entered: 12/04/2006)
12/04/2006	<u>45</u>	RESPONSE to <u>40</u> MOTION for District Judge to Reconsider Order <i>Denial of Discovery</i> ; filed by Respondent E.K. McDaniel. Replies due by 12/18/2006. (Hulse, Rene) (Entered: 12/04/2006)
12/05/2006	<u>46</u>	MINUTE ORDER IN CHAMBERS of the Honorable Robert C. Jones, U.S. District Judge, on 12/5/2006. By Deputy Clerk: DF. MOTION for Leave to File Late Pleading <u>44</u> , filed by respondents, GRANTED. The filing of the opposition to the motion to reconsider <u>45</u> is accepted. Petitioner's reply in support of the motion to reconsider is due 15 days from the entry of this order. (DF) (Entered: 12/05/2006)
12/19/2006	<u>47</u>	REPLY to Response to <u>40</u> MOTION for District Judge to Reconsider Order <i>Denial of Discovery</i> ; filed by Petitioner William P. Castillo. (Taylor, Gary) (Entered: 12/19/2006)
01/03/2007	<u>48</u>	ORDER DENYING <u>40</u> MOTION for District Judge to Reconsider Order <i>Denial of Discovery</i> filed by William P. Castillo and ADOPTING <u>20</u> Scheduling Order. Discovery due by 3/2/2007 per <u>38</u> Order. Amended Petition due by 6/8/2007. Signed by Judge Robert C. Jones on 1/3/07. (AAB) (Entered: 01/03/2007)
04/23/2007	<u>49</u>	MOTION to Extend Time regarding dispositive matter <i>Amended Petition</i> re <u>48</u> Order,, Terminate Motions,, Set/Reset Deadlines, by Petitioner William P. Castillo. (Taylor, Gary) (Entered: 04/23/2007)
04/25/2007	<u>50</u>	MINUTE ORDER IN CHAMBERS of the Honorable Robert C. Jones, U.S. District Judge, on 4/25/2007. By Deputy Clerk: DF. Motion for Extension of Time to File Amended Petition <u>49</u> GRANTED. Amended Petition due 09/06/2007. (DF) (Entered: 04/25/2007)
07/30/2007	<u>51</u>	LETTER/Notice from William Castillo to waive appeal process. (AXM) (Entered: 07/31/2007)
08/02/2007	<u>52</u>	MINUTE ORDER IN CHAMBERS of the Honorable Robert C. Jones, U.S. District Judge, on 8/2/2007. Hearing concerning docket #51 set for 08/13/07 at

		2:30 p.m. Respondents to arrange for petitioner's presence at the hearing. (Copies have been distributed pursuant to the NEF - DF) (Entered: 08/02/2007)
08/03/2007	<u>53</u>	MOTION to Extend Time regarding discovery/non dispositive matter to <i>File Amended Petition for Writ of Habeas Corpus</i> by Petitioner William P. Castillo. (Taylor, Gary) (Entered: 08/03/2007)
08/07/2007	<u>54</u>	MINUTE ORDER IN CHAMBERS of the Honorable Robert C. Jones, U.S. District Judge, on 8/7/2007. Motion for Extension of Time <u>53</u> GRANTED. Amended Petition due 11/5/2007. (Copies have been distributed pursuant to the NEF - DF) (Entered: 08/07/2007)
08/13/2007	<u>55</u>	MINUTES OF PROCEEDINGS - Hearing re Petitioner's Waiver of Federal Habeas Corpus and Request for Prompt Execution of State Court Death Penalty Judgment (#51) held on 8/13/2007 before Judge Robert C. Jones. Crtrm Administrator: <i>B. J. Price</i> ; Pla Counsel: <i>Gary Taylor & Michael Pescetta for Petitioner</i> ; Def Counsel: <i>Rene L. Hulse and Victor Schulze, Deputy Attorney Generals, for Respondents</i> ; Court Reporter/FTR #: <i>Araceli Catu</i> ; Time of Hearing: <i>2:46 p.m.</i> : Mr. William P. Castillo, Petitioner, is present and in custody. Mr. Castillo represents to the Court he would like to withdraw his petition and requests the case be dismissed. The Court canvasses the Petitioner. Mr. Castillo has no objection to the continued appointment of counsel through the time of execution. The Court questions the Petitioner's counsel and the Deputy Attorney Generals. The Court informs the Petitioner a judgment will be entered to dismiss the case in about two weeks. Further, if the Petitioner changes his mind, he may request a stay. Mr. Castillo requests he be allowed to visit his family at the High Desert facility. The Court informs Mr. Castillo he will make that recommendation but the Court does not have the authority to designate the facility or require the visitation. (no image attached) (Copies have been distributed pursuant to the NEF - BJP) (Entered: 08/13/2007)
08/20/2007	<u>56</u>	TRANSCRIPT of Proceedings: <u>55</u> Miscellaneous Hearing held on 8/13/07 before Judge ROBERT C. JONES. Court Recorder: Araceli Catu. Transcript prepared by Exceptional Reporting Services, Inc. (no image attached) (ABC) (Entered: 08/20/2007)
09/04/2007	<u>57</u>	Petitioner's Waiver of Federal Habeas Corpus and Request for Prompt Execution of State Court Death Penalty Judgment is <u>51</u> treated as a Dismissal. ORDER DISMISSING CASE. Action is Dismissed without prejudice. Clerk to enter Judgment. Signed by Judge Robert C. Jones on 9/4/07. (Copies have been distributed pursuant to the NEF - AXM) (Entered: 09/06/2007)
09/06/2007	<u>58</u>	VACATED Pursuant to Order <u>62</u> , JUDGMENT in favor of Respondents, and against William P. Castillo. Signed by Lance S. Wilson on 9/6/07. (Copies have been distributed pursuant to the NEF - AXM) . (Entered: 09/06/2007)
05/07/2008	<u>59</u>	MOTION To Reinstate Petition for Writ of Habeas Corpus and From Judgment Or In The Alternative To Strike Dismissal Order re <u>58</u> Judgment, <u>57</u> Order Dismissing Case, <i>Motion for Relief from Judgment</i> by Petitioner William P. Castillo. Responses due by 5/25/2008. (Attachments: # <u>1</u> Exhibit 1,

		# 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5)(Taylor, Gary) (Entered: 05/07/2008)
05/08/2008	<u>60</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Robert C. Jones, on 5/8/2008. Hearing set for May 12, 2008, at 2:00 p.m. (Copies have been distributed pursuant to the NEF - DF) (Entered: 05/08/2008)
05/12/2008	<u>61</u>	<p>MINUTES OF PROCEEDINGS - Motion Hearing/Scheduling Conference held on 5/12/2008 before Judge Robert C. Jones. Crtrm Administrator: K. Goetsch; Pla Counsel: Gary Taylor; Def Counsel: Rene Hulse; Court Reporter/FTR #: Araceli Catu; Time of Hearing: 2:00pm; Courtroom: 7D; Also present by telephone is Dennis Farias, Staff Attorney to the U. S. District Court.</p> <p>The Court makes inquiry of counsel. Ms. Hulse offers no opposition on behalf of Respondent to the motion. Based on Petitioner's prior <u>51</u> Waiver, the Court advises that it will require a signed declaration by Petitioner in support of the Motion to Reinstate Petition for Writ of Habeas Corpus and directs the filing of same.</p> <p>IT IS ORDERED the <u>59</u> MOTION To Reinstate Petition for Writ of Habeas Corpus and From Judgment Or In The Alternative To Strike Dismissal Order re <u>58</u> Judgment, <u>57</u> Order Dismissing Case is GRANTED. <i>Scheduling Order will follow.</i> (Copies have been distributed pursuant to the NEF - KXG) (Entered: 05/14/2008)</p>
05/15/2008	<u>62</u>	ORDER that the petitioner's Motion to Reinstate Petition for Writ of Habeas Corpus <u>59</u> is GRANTED. The Judgment of 9/6/07 is VACATED and this action is reopened. The execution of petitioner shall be STAYED during the pendency of this federal habeas corpus action. The petitioner shall have until 9/12/08 to file and serve an amended petition for writ of habeas corpus. In all other aspects the schedule for further proceedings set forth in the order entered 9/14/08 <u>20</u> shall remain in effect. Signed by Judge Robert C. Jones on 5/14/08. (Copies have been distributed pursuant to the NEF - ES) (Entered: 05/16/2008)
05/20/2008	<u>63</u>	DECLARATION of William Patrick Castillo re 61 Order on Motion,,,,, Motion Hearing,,,, ; by Petitioner William P. Castillo. (Taylor, Gary) (Entered: 05/20/2008)
06/23/2008	<u>64</u>	TRANSCRIPT of Proceedings, 61 Order on Motion,,,,, Motion Hearing,,,,, held on Monday, May 12, 2008, before Judge Robert C. Jones. Court Reporter/Transcriber: Exceptional Reporting Services, Inc., 361-949-2988. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber using the court's "Transcript Order" form available on our website www.nvd.uscourts.gov before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/14/2008. Redacted Transcript Deadline set for 7/24/2008. Release of Transcript Restriction set for 9/21/2008. (VHM) (Entered: 06/23/2008)
09/02/2008	<u>65</u>	First MOTION to Extend Time regarding dispositive matter <i>to file Amended</i>

		<i>Petition for Writ of Habeas Corpus re 62 Order,,, Reopen Case,,, Set/Reset Deadlines,, by Petitioner William P. Castillo. Motion ripe 9/2/2008. (Taylor, Gary) (Entered: 09/02/2008)</i>
09/05/2008	<u>66</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Robert C. Jones, on 9/5/2008. Granting <u>65</u> Motion to Extend Time. Amended Petition due 10/14/2008. (Copies have been distributed pursuant to the NEF - DF) (Entered: 09/05/2008)
10/01/2008	<u>67</u>	Second MOTION to Extend Time regarding dispositive matter <i>Motion for Extension of Time to File Amended Petition for Writ of Habeas Corpus re 62 Order,,, Reopen Case,,, Set/Reset Deadlines,, 66 Order on Motion to Extend Time regarding Dispositive matter, Minute Order by Petitioner William P. Castillo. Motion ripe 10/1/2008. (Taylor, Gary) (Entered: 10/01/2008)</i>
10/06/2008	<u>68</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Robert C. Jones, on 10/6/2008. Granting <u>67</u> Motion to Extend Time. Amended Petition due 12/15/2008. (Copies have been distributed pursuant to the NEF - DF) (Entered: 10/06/2008)
11/10/2008	<u>69</u>	NOTICE of Change of Attorney on behalf of Respondents E.K. McDaniel, Brian Sandoval. <i>REMOVING RENE HULSE</i> (Procter, Heather) (Entered: 11/10/2008)
12/15/2008	<u>70</u>	AMENDED PETITION for Writ of Habeas Corpus, filed by William P. Castillo. No changes to parties. (Taylor, Gary) (Entered: 12/15/2008)
12/15/2008	<u>71</u>	EXHIBIT(s) <i>List to 70 Amended Petition for Writ of Habeas Corpus ; filed by Petitioner William P. Castillo. (Attachments: # 1 Exhibit 1-10, # 2 Exhibit 11-15, # 3 Exhibit 16-18, # 4 Exhibit 19-20, # 5 Exhibit 21-25, # 6 Exhibit 26-35, # 7 Exhibit 36, # 8 Exhibit 37, # 9 Exhibit 38, # 10 Exhibit 39, # 11 Exhibit 40-46, # 12 Exhibit 47, # 13 Exhibit 48, # 14 Exhibit 48 Part 2, # 15 Exhibit 48 Part 3)(Taylor, Gary) (Entered: 12/15/2008)</i>
12/15/2008	<u>72</u>	EXHIBIT(s) <i>49 to 70 Amended Petition for Writ of Habeas Corpus ; filed by Petitioner William P. Castillo. (Attachments: # 1 Exhibit 50, # 2 Exhibit 51, # 3 Exhibit 52, # 4 Exhibit 52 Part 2, # 5 Exhibit 53, # 6 Exhibit 54, # 7 Exhibit 54 Part 2, # 8 Exhibit 55, # 9 Exhibit 56, # 10 Exhibit 57, # 11 Exhibit 58, # 12 Exhibit 59, # 13 Exhibit 60, # 14 Exhibit 61, # 15 Exhibit 62, # 16 Exhibit 63, # 17 Exhibit 64, # 18 Exhibit 65)(Taylor, Gary) (Entered: 12/15/2008)</i>
12/15/2008	<u>73</u>	EXHIBIT(s) <i>66 to 70 Amended Petition for Writ of Habeas Corpus ; filed by Petitioner William P. Castillo. (Attachments: # 1 Exhibit 66 Part 2, # 2 Exhibit 67, # 3 Exhibit 68, # 4 Exhibit 69, # 5 Exhibit 69 Part 2, # 6 Exhibit 69 Part 3, # 7 Exhibit 69 Part 4, # 8 Exhibit 69 Part 5, # 9 Exhibit 69 Part 6, # 10 Exhibit 69 Part 7, # 11 Exhibit 69 Part 8)(Taylor, Gary) (Entered: 12/15/2008)</i>
12/15/2008	<u>74</u>	EXHIBIT(s) <i>71 to 70 Amended Petition for Writ of Habeas Corpus ; filed by Petitioner William P. Castillo. (Attachments: # 1 Exhibit 72, # 2 Exhibit 73-75, # 3 Exhibit 76, # 4 Exhibit 77, # 5 Exhibit 78, # 6 Exhibit 79, # 7 Exhibit 80, # 8 Exhibit 81, # 9 Exhibit 101-112, # 10 Exhibit 113-122, # 11 Exhibit 123-136)(Taylor, Gary) (Entered: 12/15/2008)</i>

12/15/2008	<u>75</u>	EXHIBIT(s) 137-138 to <u>70</u> Amended Petition for Writ of Habeas Corpus ; filed by Respondent E.K. McDaniel. (Attachments: # <u>1</u> Exhibit 139-140, # <u>2</u> Exhibit 141-142, # <u>3</u> Exhibit 142-A, # <u>4</u> Exhibit 143-145, # <u>5</u> Exhibit 146, # <u>6</u> Exhibit 146 Part 2)(Taylor, Gary) (Entered: 12/15/2008)
12/16/2008	<u>76</u>	NOTICE of Manual Filing by Petitioner William P. Castillo re <u>70</u> Amended Petition for Writ of Habeas Corpus. DVD 1 Castillo Family Video Recordings filed with the Clerk's Office. (Taylor, Gary) Modified on 12/16/2008 (JAG). (Note: this Notice of Manual filing is being sent to the death penalty clerk in Reno 12/17/08) (Entered: 12/16/2008)
02/04/2009	<u>77</u>	First MOTION to Extend Time regarding dispositive matter re <u>70</u> Amended Petition for Writ of Habeas Corpus by Respondents E.K. McDaniel, Brian Sandoval. Motion ripe 2/4/2009. (Procter, Heather) (Entered: 02/04/2009)
02/05/2009	<u>78</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Robert C. Jones, on 2/5/2009. Granting <u>77</u> Motion to Extend Time. Response to amended petition due 4/15/2009. (Copies have been distributed pursuant to the NEF - DF) (Entered: 02/05/2009)
04/06/2009	<u>79</u>	CLIENT VERIFICATION to Amended Petition for Writ of Habeas Corpus by attorney Gary Taylor on behalf of Petitioner William P. Castillo. (Taylor, Gary) (Entered: 04/06/2009)
04/15/2009	<u>80</u>	STRICKEN per <u>84</u> Order. (SRK). Second MOTION to Extend Time regarding dispositive matter re <u>70</u> Amended Petition for Writ of Habeas Corpus by Respondents E.K. McDaniel, Brian Sandoval. Motion ripe 4/15/2009. (Phelan, Frank). (Entered: 04/15/2009)
04/15/2009	<u>81</u>	Second MOTION to Extend Time regarding dispositive matter re <u>70</u> Amended Petition for Writ of Habeas Corpus by Respondents E.K. McDaniel, Brian Sandoval. Motion ripe 4/15/2009. (Procter, Heather) (Entered: 04/15/2009)
04/15/2009	<u>82</u>	MOTION to Strike <u>80</u> Second MOTION to Extend Time regarding dispositive matter re <u>70</u> Amended Petition for Writ of Habeas Corpus by Respondents E.K. McDaniel, Brian Sandoval. Responses due by 5/3/2009. (Phelan, Frank) (Entered: 04/15/2009)
04/15/2009	<u>83</u>	MOTION to Withdraw as Attorney by FRANK PHELAN. by Respondents E.K. McDaniel, Brian Sandoval. Motion ripe 4/15/2009. (Phelan, Frank) (Entered: 04/15/2009)
04/21/2009	<u>84</u>	ORDER: The <u>81</u> Motion for Enlargement of Time is Granted in part and Denied in part. Respondents shall have until and including 06/05/09, to respond to the Amended Habeas Petition. The <u>82</u> Motion to Strike the <u>80</u> Motion is Granted. The <u>83</u> Motion to Withdraw as Counsel of Record is Granted. Attorney Frank Phelan Terminated. E.K. McDaniel and Brian Sandoval answer due 6/5/2009. Signed by Judge Robert C. Jones on 04/20/09. (Copies have been distributed pursuant to the NEF - SRK) (Entered: 04/24/2009)
06/05/2009	<u>85</u>	MOTION to Dismiss <i>Petition for a Writ of Habeas Corpus</i> by Respondents E.K. McDaniel, Brian Sandoval. Responses due by 6/23/2009. (Procter,

		Heather) (Entered: 06/05/2009)
06/05/2009	<u>86</u>	MOTION for Leave to File Excess Pages <i>Re: Motion to Dismiss Petition for a Writ of Habeas Corpus</i> by Respondents E.K. McDaniel, Brian Sandoval. Motion ripe 6/5/2009. (Procter, Heather) (Entered: 06/05/2009)
06/08/2009	<u>87</u>	EXHIBIT(s) 1-29 to <u>85</u> MOTION to Dismiss <i>Petition for a Writ of Habeas Corpus</i> ; filed by Respondents E.K. McDaniel, Brian Sandoval. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2A, # <u>3</u> Exhibit 2B, # <u>4</u> Exhibit 2C, # <u>5</u> Exhibit 2D, # <u>6</u> Exhibit 3, # <u>7</u> Exhibit 4, # <u>8</u> Exhibit 5, # <u>9</u> Exhibit 6, # <u>10</u> Exhibit 7, # <u>11</u> Exhibit 8, # <u>12</u> Exhibit 9, # <u>13</u> Exhibit 10, # <u>14</u> Exhibit 11, # <u>15</u> Exhibit 12, # <u>16</u> Exhibit 13, # <u>17</u> Exhibit 14, # <u>18</u> Exhibit 15, # <u>19</u> Exhibit 16, # <u>20</u> Exhibit 17, # <u>21</u> Exhibit 18, # <u>22</u> Exhibit 19, # <u>23</u> Exhibit 20, # <u>24</u> Exhibit 21, # <u>25</u> Exhibit 22, # <u>26</u> Exhibit 23, # <u>27</u> Exhibit 24, # <u>28</u> Exhibit 25, # <u>29</u> Exhibit 26, # <u>30</u> Exhibit 27, # <u>31</u> Exhibit 28, # <u>32</u> Exhibit 29)(Procter, Heather) (Entered: 06/08/2009)
06/08/2009	<u>88</u>	EXHIBIT(s) 30-54 to <u>85</u> MOTION to Dismiss <i>Petition for a Writ of Habeas Corpus</i> ; filed by Respondents E.K. McDaniel, Brian Sandoval. (Attachments: # <u>1</u> Exhibit 31, # <u>2</u> Exhibit 32, # <u>3</u> Exhibit 33, # <u>4</u> Exhibit 34, # <u>5</u> Exhibit 35, # <u>6</u> Exhibit 36, # <u>7</u> Exhibit 37, # <u>8</u> Exhibit 38, # <u>9</u> Exhibit 39, # <u>10</u> Exhibit 40, # <u>11</u> Exhibit 41, # <u>12</u> Exhibit 42, # <u>13</u> Exhibit 43, # <u>14</u> Exhibit 44, # <u>15</u> Exhibit 45, # <u>16</u> Exhibit 46, # <u>17</u> Exhibit 47, # <u>18</u> Exhibit 48, # <u>19</u> Exhibit 49, # <u>20</u> Exhibit 50, # <u>21</u> Exhibit 51, # <u>22</u> Exhibit 52, # <u>23</u> Exhibit 53, # <u>24</u> Exhibit 54) (Procter, Heather) (Entered: 06/08/2009)
06/08/2009	<u>89</u>	EXHIBIT(s) 55-74 to <u>85</u> MOTION to Dismiss <i>Petition for a Writ of Habeas Corpus</i> ; filed by Respondents E.K. McDaniel, Brian Sandoval. (Attachments: # <u>1</u> Exhibit 56A, # <u>2</u> Exhibit 56B, # <u>3</u> Exhibit 57A, # <u>4</u> Exhibit 57B, # <u>5</u> Exhibit 58A, # <u>6</u> Exhibit 58B, # <u>7</u> Exhibit 58C, # <u>8</u> Exhibit 59A, # <u>9</u> Exhibit 59B, # <u>10</u> Exhibit 59C, # <u>11</u> Exhibit 60, # <u>12</u> Exhibit 61A, # <u>13</u> Exhibit 61B, # <u>14</u> Exhibit 62A, # <u>15</u> Exhibit 62B, # <u>16</u> Exhibit 63, # <u>17</u> Exhibit 64, # <u>18</u> Exhibit 65A, # <u>19</u> Exhibit 65B, # <u>20</u> Exhibit 65C, # <u>21</u> Exhibit 66A, # <u>22</u> Exhibit 66B, # <u>23</u> Exhibit 67A, # <u>24</u> Exhibit 67B, # <u>25</u> Exhibit 68, # <u>26</u> Exhibit 69, # <u>27</u> Exhibit 70, # <u>28</u> Exhibit 71, # <u>29</u> Exhibit 72, # <u>30</u> Exhibit 73, # <u>31</u> Exhibit 74)(Procter, Heather) (Entered: 06/08/2009)
06/08/2009	<u>90</u>	EXHIBIT(s) 75-99 to <u>85</u> MOTION to Dismiss <i>Petition for a Writ of Habeas Corpus</i> ; filed by Respondents E.K. McDaniel, Brian Sandoval. (Attachments: # <u>1</u> Exhibit 75B, # <u>2</u> Exhibit 76, # <u>3</u> Exhibit 77, # <u>4</u> Exhibit 78A, # <u>5</u> Exhibit 78B, # <u>6</u> Exhibit 79, # <u>7</u> Exhibit 80A, # <u>8</u> Exhibit 80B, # <u>9</u> Exhibit 80C, # <u>10</u> Exhibit 81A, # <u>11</u> Exhibit 81B, # <u>12</u> Exhibit 81C, # <u>13</u> Exhibit 82A, # <u>14</u> Exhibit 82B, # <u>15</u> Exhibit 83A, # <u>16</u> Exhibit 83B, # <u>17</u> Exhibit 84, # <u>18</u> Exhibit 85, # <u>19</u> Exhibit 86, # <u>20</u> Exhibit 87, # <u>21</u> Exhibit 88, # <u>22</u> Exhibit 89, # <u>23</u> Exhibit 90, # <u>24</u> Exhibit 91, # <u>25</u> Exhibit 92, # <u>26</u> Exhibit 93, # <u>27</u> Exhibit 94, # <u>28</u> Exhibit 95, # <u>29</u> Exhibit 96, # <u>30</u> Exhibit 97, # <u>31</u> Exhibit 98, # <u>32</u> Exhibit 99)(Procter, Heather) (Entered: 06/08/2009)
06/08/2009	<u>91</u>	EXHIBIT(s) 100-129 to <u>85</u> MOTION to Dismiss <i>Petition for a Writ of Habeas Corpus</i> ; filed by Respondents E.K. McDaniel, Brian Sandoval. (Attachments: # <u>1</u> Exhibit 101, # <u>2</u> Exhibit 102, # <u>3</u> Exhibit 103, # <u>4</u> Exhibit 104, # <u>5</u> Exhibit 105, # <u>6</u> Exhibit 106, # <u>7</u> Exhibit 107, # <u>8</u> Exhibit 108A, # <u>9</u>

		Exhibit 108B, # <u>10</u> Exhibit 109, # <u>11</u> Exhibit 110, # <u>12</u> Exhibit 111, # <u>13</u> Exhibit 112, # <u>14</u> Exhibit 113, # <u>15</u> Exhibit 114, # <u>16</u> Exhibit 115, # <u>17</u> Exhibit 116, # <u>18</u> Exhibit 117, # <u>19</u> Exhibit 118, # <u>20</u> Exhibit 119, # <u>21</u> Exhibit 120, # <u>22</u> Exhibit 121, # <u>23</u> Exhibit 122, # <u>24</u> Exhibit 123, # <u>25</u> Exhibit 124, # <u>26</u> Exhibit 125, # <u>27</u> Exhibit 126, # <u>28</u> Exhibit 127, # <u>29</u> Exhibit 128, # <u>30</u> Exhibit 129)(Procter, Heather) (Entered: 06/08/2009)
06/08/2009	<u>92</u>	EXHIBIT(s) <u>130-159</u> to <u>85</u> MOTION to Dismiss <i>Petition for a Writ of Habeas Corpus</i> ; filed by Respondents E.K. McDaniel, Brian Sandoval. (Attachments: # <u>1</u> Exhibit 131, # <u>2</u> Exhibit 132, # <u>3</u> Exhibit 133, # <u>4</u> Exhibit 134, # <u>5</u> Exhibit 135, # <u>6</u> Exhibit 136, # <u>7</u> Exhibit 137, # <u>8</u> Exhibit 138, # <u>9</u> Exhibit 139, # <u>10</u> Exhibit 140, # <u>11</u> Exhibit 141, # <u>12</u> Exhibit 142, # <u>13</u> Exhibit 143, # <u>14</u> Exhibit 144, # <u>15</u> Exhibit 145, # <u>16</u> Exhibit 146, # <u>17</u> Exhibit 147, # <u>18</u> Exhibit 148, # <u>19</u> Exhibit 149, # <u>20</u> Exhibit 150, # <u>21</u> Exhibit 151, # <u>22</u> Exhibit 152, # <u>23</u> Exhibit 153, # <u>24</u> Exhibit 154, # <u>25</u> Exhibit 155A, # <u>26</u> Exhibit 155B, # <u>27</u> Exhibit 155C, # <u>28</u> Exhibit 156, # <u>29</u> Exhibit 157, # <u>30</u> Exhibit 158, # <u>31</u> Exhibit 159)(Procter, Heather) (Entered: 06/08/2009)
06/08/2009	<u>93</u>	EXHIBIT(s) <u>160-184</u> to <u>85</u> MOTION to Dismiss <i>Petition for a Writ of Habeas Corpus</i> ; filed by Respondents E.K. McDaniel, Brian Sandoval. (Attachments: # <u>1</u> Exhibit 161, # <u>2</u> Exhibit 162, # <u>3</u> Exhibit 163, # <u>4</u> Exhibit 164, # <u>5</u> Exhibit 165, # <u>6</u> Exhibit 166, # <u>7</u> Exhibit 167, # <u>8</u> Exhibit 168, # <u>9</u> Exhibit 169, # <u>10</u> Exhibit 170, # <u>11</u> Exhibit 171, # <u>12</u> Exhibit 172, # <u>13</u> Exhibit 173, # <u>14</u> Exhibit 174, # <u>15</u> Exhibit 175, # <u>16</u> Exhibit 176, # <u>17</u> Exhibit 177, # <u>18</u> Exhibit 178, # <u>19</u> Exhibit 179, # <u>20</u> Exhibit 180, # <u>21</u> Exhibit 181, # <u>22</u> Exhibit 182, # <u>23</u> Errata 183, # <u>24</u> Exhibit 184)(Procter, Heather) (Entered: 06/08/2009)
06/08/2009	<u>94</u>	EXHIBIT(s) <u>185-217</u> to <u>85</u> MOTION to Dismiss <i>Petition for a Writ of Habeas Corpus</i> ; filed by Respondents E.K. McDaniel, Brian Sandoval. (Attachments: # <u>1</u> Exhibit 186, # <u>2</u> Exhibit 187, # <u>3</u> Exhibit 188, # <u>4</u> Exhibit 189, # <u>5</u> Exhibit 190, # <u>6</u> Exhibit 191A, # <u>7</u> Exhibit 191B, # <u>8</u> Exhibit 192, # <u>9</u> Exhibit 193, # <u>10</u> Exhibit 194, # <u>11</u> Exhibit 195, # <u>12</u> Exhibit 196, # <u>13</u> Errata 197, # <u>14</u> Exhibit 198, # <u>15</u> Exhibit 199, # <u>16</u> Exhibit 200, # <u>17</u> Exhibit 201, # <u>18</u> Exhibit 202, # <u>19</u> Exhibit 203, # <u>20</u> Exhibit 204, # <u>21</u> Exhibit 205, # <u>22</u> Exhibit 206, # <u>23</u> Exhibit 207, # <u>24</u> Exhibit 208, # <u>25</u> Exhibit 209, # <u>26</u> Errata 210, # <u>27</u> Exhibit 211, # <u>28</u> Exhibit 212, # <u>29</u> Exhibit 213, # <u>30</u> Exhibit 214, # <u>31</u> Exhibit 215, # <u>32</u> Exhibit 216, # <u>33</u> Exhibit 217)(Procter, Heather) (Entered: 06/08/2009)
06/09/2009	<u>95</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Robert C. Jones on 6/9/2009. Granting <u>86</u> Motion for Leave to File Excess Pages, and setting briefing schedule for motion to dismiss. Response to motion to dismiss due 8/7/2009; 30 days for reply. (Copies have been distributed pursuant to the NEF - DF) (Entered: 06/09/2009)
07/30/2009	<u>96</u>	MOTION to Extend Time regarding dispositive matter by Petitioner William P. Castillo. Motion ripe 7/30/2009. (Taylor, Gary) (Entered: 07/30/2009)
07/31/2009	<u>97</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Robert C. Jones, on 7/31/2009. Granting <u>96</u> Motion to Extend. Response to Motion to Dismiss

		due 10/6/2009. (Copies have been distributed pursuant to the NEF - DF) (Entered: 07/31/2009)
09/22/2009	<u>98</u>	MOTION to Stay <i>and Abey</i> by Petitioner William P. Castillo. Motion ripe 9/22/2009. (Taylor, Gary) (Entered: 09/22/2009)
10/05/2009	<u>99</u>	Second MOTION to Extend Time regarding discovery/non dispositive matter by Petitioner William P. Castillo. Motion ripe 10/5/2009. (Taylor, Gary) (Entered: 10/05/2009)
10/12/2009	<u>100</u>	First MOTION to Extend Time regarding discovery/non dispositive matter re <u>98</u> MOTION to Stay <i>and Abey</i> by Respondents E.K. McDaniel, Brian Sandoval. Motion ripe 10/12/2009. (Procter, Heather) (Entered: 10/12/2009)
10/23/2009	<u>101</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Robert C. Jones, on 10/23/2009. Granting <u>99</u> Motion to Extend Time, and granting <u>100</u> Motion to Extend Time. Deadline for response to motion to dismiss will be reset, if necessary, after motion for stay resolved. Response to motion for stay due 11/6/2009. (Copies have been distributed pursuant to the NEF - DF) (Entered: 10/23/2009)
11/06/2009	<u>102</u>	RESPONSE to <u>98</u> MOTION to Stay <i>and Abey</i> , filed by Respondents E.K. McDaniel, Brian Sandoval. Replies due by 11/20/2009. (Attachments: # <u>1</u> Exhibit A, PART 1, # <u>2</u> Exhibit A, PART 2, # <u>3</u> Exhibit A, PART 3, # <u>4</u> Exhibit A, PART 4, # <u>5</u> Exhibit A, PART 5, # <u>6</u> Exhibit A, PART 6, # <u>7</u> Exhibit A, PART 7, # <u>8</u> Exhibit A, PART 8)(Procter, Heather) (Entered: 11/06/2009)
11/18/2009	<u>103</u>	MOTION to Extend Time regarding discovery/non dispositive matter by Petitioner William P. Castillo. Motion ripe 11/18/2009. (Taylor, Gary) (Entered: 11/18/2009)
11/20/2009	<u>104</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Robert C. Jones, on 11/20/2009. Granting <u>103</u> Motion to Extend Time. Reply in support of motion for stay due 12/7/2009. (Copies have been distributed pursuant to the NEF - DF) (Entered: 11/20/2009)



CLERK OF THE COURT

OPPS
FRANNY A. FORSMAN
Federal Public Defender
Nevada Bar No. 00014
GARY TAYLOR
Assistant Federal Public Defender
Nevada Bar No. 11031-C
NISHA BROOKS-WHITTINGTON
Nevada Bar No. 11032-C
411 East Bonneville Ave., Suite 250
Las Vegas, Nevada 89101
Telephone: (702) 388-6577
Facsimile: (702) 388-5819
Attorneys for Petitioner

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

WILLIAM P. CASTILLO,
Petitioner,

vs.

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

CASE NO: C133336
DEPT. NO: XVIII

**OPPOSITION TO MOTION TO
DISMISS**

Hearing Date: March 12, 2010
Hearing Time: 10:00 a.m.

(Death Penalty Case)

Petitioner William Castillo submits the following Opposition to Respondents' Response and Motion to Dismiss his current petition for writ of habeas corpus. This Opposition is made and based upon the following points and authorities, and upon the entire file herein.

Dated this the 22nd day of February, 2010.

Respectfully Submitted,

FRANNY A. FORSMAN
Federal Public Defender

/s/ Gary Taylor
Gary Taylor
Assistant Federal Public Defender

/s/ Nisha Brooks-Whittington
Nisha Brooks-Whittington
Assistant Federal Public Defender

1 OPPS
FRANNY A. FORSMAN
2 Federal Public Defender
Nevada Bar No. 00014
3 GARY TAYLOR
Assistant Federal Public Defender
4 Nevada Bar No. 11031-C
NISHA BROOKS-WHITTINGTON
5 Nevada Bar No. 11032-C
411 East Bonneville Ave., Suite 250
6 Las Vegas, Nevada 89101
Telephone: (702) 388-6577
7 Facsimile: (702) 388-5819
Attorneys for Petitioner

8
9 IN THE EIGHTH JUDICIAL DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 WILLIAM P. CASTILLO,

12 Petitioner,

13 vs.

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

16 Respondents.

CASE NO: C133336
DEPT. NO: XVIII

**OPPOSITION TO MOTION TO
DISMISS**

Hearing Date: March 12, 2010
Hearing Time: 10:00 a.m.

(Death Penalty Case)

17
18 Petitioner William Castillo submits the following Opposition to Respondents'
19 Response and Motion to Dismiss his current petition for writ of habeas corpus. This
20 Opposition is made and based upon the following points and authorities, and upon the entire
21 file herein.

22 Dated this the 22nd day of February, 2010.

23 Respectfully Submitted,

24 FRANNY A. FORSMAN
Federal Public Defender

25 */s/ Gary Taylor*

26 Gary Taylor
Assistant Federal Public Defender

27 */s/ Nisha Brooks-Whittington*

28 Nisha Brooks-Whittington
Assistant Federal Public Defender

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Mr. Castillo filed his petition for writ of habeas corpus ("petition") in this Court on
4 September 18, 2009. Respondents filed their Response and Motion to Dismiss Defendant's
5 Second Petition for Writ of Habeas Corpus (Post Conviction) on December 2, 2009. Mr.
6 Castillo submits the following opposition.

7 **II. ARGUMENT**

8 **A. STANDARD OF REVIEW**

9 Respondents failed to acknowledge the standard of review applicable to their motion
10 to dismiss. The Court must liberally construe Mr. Castillo's petition and accept all factual
11 allegations as true. See Vacation Vill. Inc. v. Hitachi Am. Ltd., 110 Nev. 481, 484, 874 P.2d
12 744, 746 (1994); see also Doleman v. Meiji Mut. Life Ins. Co., 727 F.2d 1480, 1482 (9th Cir.
13 1984) ("[f]or purposes of the motion, the allegations of the non-moving party must be
14 accepted as true while the allegations of the moving party which have been denied are
15 assumed to be false."). The Court may dismiss Mr. Castillo's petition for writ of habeas
16 corpus only if "it appears beyond a doubt that [he] could prove no set of facts which, if
17 accepted by the trier of fact, would entitle him to relief." Vacation Vill. Inc., 110 Nev. at
18 484, 872 P.2d at 746 (citations omitted). The Court must grant an evidentiary hearing "when
19 the petitioner asserts claims supported by specific factual allegations not belied by the record
20 that, if true, would entitle him to relief."¹ Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228,
21 1230 (2002). A claim is "belied by the record" only if it is affirmatively contradicted by the
22 record as opposed to a claim subject to a factual dispute. See Mann, 118 Nev. at 354-355,
23 46 P.3d at 1230. When resolution of a question of procedural default requires a factual
24 inquiry, Mr. Castillo is entitled to an adequate hearing under state law and due process. See

25 _____
26 ¹ Only "something more than a naked allegation" is required to merit an evidentiary
27 hearing. Mann, 118 Nev. at 354, 46 P.3d at 1230; see Hargrove v. State, 100 Nev. 498, 502, 686
P.2d 222, 226 (1984).

1 Crump v. Warden, 113 Nev. 293, 305, 934 P.2d 247, 254 (1997).

2 Mr. Castillo's petition demonstrated that he was entitled to relief and that the
3 procedural default rules asserted by respondents are inapplicable, excused by cause and
4 prejudice, or cannot constitutionally be applied.

5 **B. THE COURT CANNOT APPLY THE ALLEGED PROCEDURAL BARS WITHOUT**
6 **VIOLATING MR. CASTILLO'S RIGHT TO DUE PROCESS AND EQUAL**
7 **PROTECTION**

8 Respondents seek to bar consideration of Mr. Castillo's claims by invoking the
9 procedural default rules in NRS 34.726, 34.810 and 34.800. (Resp't Mot. to Dismiss 10-14.)
10 However, these procedural default rules are not consistently applied and a habeas petitioner
11 has no adequate notice when such rules will be applied or excused. In his petition, Mr.
12 Castillo demonstrated that the Nevada Supreme Court exercised complete discretion in the
13 application of the procedural bars, graciously waiving the procedural bars when it chose to
14 do so. (Pet. 10-20.) Indeed, in Valerio v. Crawford, 306 F.3d 742, 776 (9th Cir. 2002), the
15 federal Court of Appeals held:

16 From our review of the Nevada cases, it is plain that at the time of Valerio's
17 default the Nevada Supreme Court in capital cases had what we frankly regard
18 as a commendable policy of exercising discretionary sua sponte power to
19 overlook failures to present constitutional claims in earlier proceedings. The
20 court exercised this power both on direct appeal and on post-conviction
21 review. It exercised this power when there was a failure to make the objection
22 at trial; a failure to include the claim on direct appeal from the conviction and
23 sentence; and a failure to include the claim in an earlier post-conviction
24 petition. And it exercised this power in both published opinions and
25 unpublished orders.

26 See Sechrest v. Ignacio, 549 F.3d 789, 803 (9th Cir. 2008); Petrocelli v. Angelone, 248 F.3d
27 877, 887-88 (9th Cir. 2001); McKenna v. McDaniel, 80 F.3d 1483, 1487-88 (9th Cir. 1995).

28 It is this commendable policy which respondents seek to avoid in Mr. Castillo's case.

The discretionary application of the Nevada procedural bars was exhaustively
addressed in Mr. Castillo's petition. (Pet. 10-20.) The refusal to review Mr. Castillo's
claims on the basis of any procedural bar violates his due process right to adequate notice and
his equal protection right to consistent treatment of similarly situated litigants. See, e.g.,

1 Bush v. Gore, 531 U.S. 98, 106-109 (2000); Vill. of Willowbrook v. Olech, 528 U.S. 562-65
2 (2000) (per curiam); Myers v. Ylst, 897 F.2d 417, 421 (9th Cir. 1990) (equal protection
3 requires consistent application of state law to similarly-situated litigants).

4 **C. THE LAW OF THE CASE DOCTRINE DOES NOT BAR REVIEW OF MR.**
5 **CASTILLO'S PETITION**

6 Respondents argued that Mr. Castillo's current claims are barred under the law of the
7 case doctrine, (Resp't Mot. to Dismiss 14-15, 19, 23), even though the claims were supported
8 by evidence which was never before the Nevada Supreme Court. Under the law of the case
9 doctrine, a previous legal decision is respected in a later appeal unless: the evidence is
10 substantially different; the controlling authority has since made a contrary decision of the law
11 applicable; or, the decision is clearly erroneous and a manifest injustice. Kimball v.
12 Callahan, 590 F.2d 768, 771 (9th Cir. 1979); Leslie Salt Co. v. U.S., 55 F.3d 1388, 1393 (9th
13 Cir. 1995); League of Women Voters of California v. F.C.C., 798 F.2d 1255, 1256 (9th Cir.
14 1986); United States v. Houser, 804 F.2d 565, 568 (9th Cir. 1986); Handi Inv. Co. v. Mobil
15 Oil Corp., 653 F.2d 391, 392 (9th Cir. 1981). Mr. Castillo's current claims include
16 substantially different evidence than that presented in his previous claims. (Pet. 23-182; see
17 also below D.1.iii.). Moreover, the Nevada Supreme Court may always reconsider its
18 previous decisions so long as the issue was preserved. See Bejarano v. State, 122 Nev. 1066,
19 146 P.3d 265, 271 (2006) (the doctrine of "'law of the case' is not absolute, and [the court
20 has] the discretion to revisit the wisdom of [its] legal conclusions if [it] determine[s] such
21 action is warranted.").

22 **D. MR. CASTILLO ESTABLISHED GOOD CAUSE AND PREJUDICE TO OVERCOME**
23 **ANY PROCEDURAL RULE**

24 **1. INEFFECTIVE ASSISTANCE OF COUNSEL**

25 Mr. Castillo was guaranteed the right to effective assistance of trial and appellate
26 counsel. See U.S. Const. amend. VI; Cuyler v. Sullivan, 446 U.S. 335, 344 (1980); Evitts
27 v. Lucey, 469 U.S. 387, 397 (1985); Burke v. State, 110 Nev. 1366, 1368, 887 P.2d 267, 268
28

1 (1994). Mr. Castillo was further entitled to the appointment and effective representation of
2 post-conviction counsel. See NRS 34.820(1)(a); McKague v. Warden, 112 Nev. 159, 912
3 P.2d 255 (1996). In McKague, the Nevada Supreme Court held:

4 As a matter of statutory interpretation, we note that where state law entitles
5 one to the appointment of counsel to assist with an initial collateral attack after
6 judgment and sentence, it is axiomatic that the right to counsel includes the
concomitant right to effective assistance of counsel. Thus, a petitioner may
make an ineffective assistance of counsel claim if that post-conviction counsel
was appointed pursuant to NRS 34.820(1)(a).

7 112 Nev. 159, 165 n.5, 912 P.2d 255, 258 n.5 (emphasis in original) (citations and quotations
8 omitted). To the extent that a capital defendant's rights to the effective assistance of counsel
9 were violated during the initial state post-conviction proceedings, that violation is "cause"
10 to excuse any procedural bar. Crump v. Warden, 113 Nev. 293, 303-04, 934 P.2d 247, 253-
11 54 (1997).

12 Mr. Castillo was denied his state and federal constitutional rights to the effective
13 assistance of trial, appellate, and post-conviction counsel. (Pet. 23 - 87.) Respondents
14 argued that, because Mr. Castillo raised claims of ineffective assistance of trial and appellate
15 counsel in prior proceedings, those claims are now barred by the law of the case doctrine.
16 (Resp't Mot. to Dismiss 19.) This argument fails in light of the substantial evidence Mr.
17 Castillo presented in his current petition that was never considered by the Nevada Supreme
18 Court. (See below II.C.) Moreover, Mr. Castillo's claim of ineffective assistance of post-
19 conviction counsel establishes good cause to overcome the procedural rules. See Crump, 113
20 Nev. at 303-04, 934 P.2d at 253-54.

21 Mr. Castillo's appointed counsel failed to investigate and present substantial
22 mitigating evidence to the jury. (Pet. 28-79.) Counsel's failure in this regard fell below the
23 objective standard of reasonableness expected of counsel in a death penalty case. See
24 Strickland v. Washington, 466 U.S. 668, 688 (1984). At least seven years before Mr.
25 Castillo's trial, the American Bar Association adopted guidelines specifically focused on the
26 obligations of defense counsel in death penalty cases. ABA Guidelines for the Appointment
27

1 and Performance of Counsel in Death Penalty Cases (1989). These guidelines were
2 superseded in 2003, when new Guidelines were adopted. ABA Guidelines for the
3 Appointment and Performance of Defense Counsel in Death Penalty Cases (rev. ed. 2003),
4 reprinted in 31 Hofstra L. Rev. 913 (2003). In 2008, the American Bar Association adopted
5 Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty
6 Teams. Supplementary Guidelines for the Mitigation Function of Defense Teams in Death
7 Penalty Cases, 36 Hofstra L. Rev. 677 (2008).

8 The duties owed to Mr. Castillo by state post-conviction counsel were reflected in the
9 ABA Guidelines. Williams v. Taylor, 529 U.S. 362, 368, 395-98 (2000) (finding ineffective
10 assistance from counsel's failure to investigate and present evidence of Williams' mental
11 impairments, family history, child abuse, future dangerousness, moral culpability, etc.);
12 Wiggins v. Smith, 539 U.S. 510, 534 (2003) (counsel's knowledge of records concerning
13 Wiggins' alcoholic mother and his problems in foster care triggered an obligation to
14 investigate further); Rompilla v. Beard, 545 U.S. 374, 383-84 (2005) (finding ineffective
15 assistance from counsel's failure to review prior conviction files which alerted counsel to
16 further mitigating evidence and records). Although these guidelines do not directly control
17 defense counsel's representation, they reflect the contemporary standards for representation
18 of a defendant in a death penalty case. Wiggins, 539 U.S. at 524; Rompilla, 545 U.S. at 387;
19 Bobby v. Van Hook, 130 S.Ct. 13, 16-17 (2009); see also ABA Guideline 1.1(A) (2003)
20 ("The objective of these Guidelines is to set forth a national standard of practice for the
21 defense of capital cases in order to ensure high quality legal representation for all persons
22 facing the possible imposition or execution of a death sentence by any jurisdiction.").

23 The Guidelines contemplated that Mr. Castillo be provided necessary investigative,
24 expert and other resources at trial and during his initial state post-conviction habeas petition.
25 ABA Guideline 8.1 (1989). Trial counsel were obligated to conduct an independent
26 investigation into both phases of Mr. Castillo's trial. ABA Guideline 11.4.1(1989).

1 Counsel's obligation included preparation for the sentencing phase of the trial, ABA
2 Guideline 11.8.3 (1989), including the presentation of "all reasonably available evidence in
3 mitigation," including medical history, educational history, employment history, family and
4 social history, prior offenses and expert testimony. ABA Guideline 11.8.6 (1989). State
5 post-conviction counsel was obligated to review previous counsel's files, review the record,
6 and conduct "a full investigation of the case, relating to both the guilt/innocence and
7 sentencing phases." ABA Guideline 11.9.3 (1989); see Williams, 529 U.S. at 396 ("Whether
8 or not those omissions were sufficiently prejudicial to have affected the outcome of
9 sentencing, they clearly demonstrate that trial counsel did not fulfill their obligation to
10 conduct a thorough investigation of the defendant's background."); Wiggins, 529 U.S. at 534
11 ("Counsel's investigation into Wiggins' background did not reflect reasonable professional
12 judgment. Their decision to end their investigation when they did was neither consistent with
13 the professional standards that prevailed in 1989, nor reasonable in light of the evidence
14 counsel uncovered in the social services records—evidence that would lead a reasonably
15 competent attorney to investigate further."); ABA Guideline 10.7(A) (2003) ("Counsel at
16 every stage have an obligation to conduct thorough and independent investigations relating
17 to the issues of both guilt and penalty."); ABA Guideline 10.15.1 (2003), Commentary
18 ("[C]ollateral counsel cannot rely on the previously compiled record but must conduct a
19 thorough, independent investigation. . . .").

20 It is insufficient for post-conviction counsel to simply demonstrate that previous
21 counsel erred in his or her representation. Strickland, 466 U.S. at 687; McMann v.
22 Richardson, 397 U.S. 759, 771 (1970); Williams, 529 U.S. at 412-13; Daniels v. Woodford,
23 428 F.3d 1181, 1196 (9th Cir. 2005). Mr. Castillo must demonstrate that the errors
24 committed by previous counsel prejudiced him. In other words, Mr. Castillo must
25 demonstrate that these errors questioned the ultimate fairness of the proceedings in which he
26 was convicted and sentenced. Strickland, 466 U.S. at 694 ("The result of a proceeding can
27 be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel

1 cannot be shown by a preponderance of the evidence to have determined the outcome.”); see
2 also Moore v. Czerniak, 574 F.3d 1092, 1101, 1118 (9th Cir. 2009); Duncan v. Ornoski, 528
3 F.3d 1222, 1239 (9th Cir. 2008). The only manner in which Mr. Castillo’s initial state post-
4 conviction counsel could demonstrate the ineffective assistance of trial or appellate counsel
5 was to conduct the same thorough and independent investigation which previous counsel
6 were obligated to conduct. See Wiggins, 539 U.S. at 521-22; ABA Guideline 10.15.1 (2003).

7 To comply with their duties to Mr. Castillo, as well as to demonstrate the nature of the
8 representation which Mr. Castillo received in his initial state post-conviction habeas
9 proceedings, undersigned counsel conducted a thorough and independent investigation and
10 provided the court this evidence. The mitigating evidence presented at trial was drastically
11 different than the evidence presented in Mr. Castillo’s current petition.

12 i. Mitigating Evidence Presented at Trial

13 Trial counsel presented little mitigating evidence. Indeed, trial counsel presented five
14 witnesses whose testimony barely scratched the surface of the dysfunctional and troubling
15 environment into which Mr. Castillo was born and raised.

16 Barbara Wickham² was the only relative who testified. (TT, 9/24/96 (morning
17 session), at 25-49.) Barbara Wickham stated that she gave birth to Mr. Castillo when she was
18 eighteen years old. (Id. at 27.) She informed the jury that she was physically abused by Mr.
19 Castillo’s natural father, (id. at 32), and that, on one occasion, Mr. Castillo’s father threw her
20 down seven concrete stairs when she was eight and a half months pregnant with Mr. Castillo.
21 (Id. at 32-33). During the first four years of Mr. Castillo’s life, Barbara Wickham and Mr.
22 Castillo “floated” between the homes of her mother and her husband’s family. (Id. at 27.)
23 Barbara Wickham further testified that she was a prostitute for six months. (Id. at 37-38.)

24 Barbara Wickham relocated to another state and left Mr. Castillo with his
25 grandparents for a short period of time. (Id. at 39.) When she returned for Mr. Castillo,

26
27 ² Mr. Castillo’s mother is referred to as “Barbara Sullivan” in the trial transcripts.

1 Barbara Wickham was remarried, obtained a job, and a home. Id. at 40. Her husband, Joe
2 Castillo adopted Mr. Castillo. (Id. at 40.) Barbara Wickham testified that Joe Castillo was
3 a good father. (Id. at 43.) Barbara Wickham testified:

4 I didn't love [Mr. Castillo] like I should have. Not that [sic] way I loved my
5 other two children. Because I hated his father so much, I saw to all his needs,
6 but I didn't give him the love he needed. I never abused him or anything, but
I guess you can call it abuse if you don't -- if you deny love. Didn't have it in
me to give to him.

7 (Id. at 44.)

8 Dr. Lewis Etkoff conducted a two and a half hour interview of Mr. Castillo, reviewed
9 miscellaneous records concerning Mr. Castillo's juvenile behavior and mental health, and
10 administered an objective personality test. (TT, 9/20/96 (afternoon session), at 53-107.)
11 Based on this information, Dr. Etkoff concluded that Mr. Castillo suffered from reactive
12 attachment disorder, attention deficit hyperactivity disorder, conduct disorder, and
13 personality disorders.

14 Mr. Castillo's girlfriend, Tammy Jo Bryant, testified. (TT, 9/24/96 (morning session),
15 at 14-21.) She described her short relationship with Mr. Castillo and his employment.
16 Bryant explained that Mr. Castillo lacked social skills, but tried to improve his life.

17 Sonny Carlman, a correctional officer with the Clark County Detention Center, knew
18 Mr. Castillo for less than three months. Carlman described his supervision of Mr. Castillo's
19 work and stated that Mr. Castillo caused no problems in the Detention Center. (TT, 9/24/96
20 (morning session), at 7-14.)

21 Jerry Haring, a classification counselor for the Nevada Youth Training Center, was
22 familiar with Mr. Castillo as a juvenile. (TT, 9/20/96 (afternoon session) at 107-126.)
23 Haring described an unsolicited letter from Mr. Castillo in which Mr. Castillo disclosed his
24 criminal problems and advised incoming juvenile offenders to listen to the counselors'
25 advice.

26 From the witnesses at trial, the jury learned that Mr. Castillo spent his first few years
27 of life in a somewhat unstable environment, but as he grew older he lived in a household in

1 which his mother and adoptive father cared for him. The jury learned that Mr. Castillo
2 suffered from various mental health disorders. The jury further learned that Mr. Castillo
3 engaged in juvenile misconduct, and as an adult generally tried to improve his life. The
4 picture which trial counsel presented of Mr. Castillo's life was incomplete and misleading.
5 That trial counsel presented "some information with respect to [Mr. Castillo's] background"
6 was not persuasive. See Wiggins, 539 U.S. at 527 (emphasis in original). The evidence
7 presented in Mr. Castillo's trial failed to accurately represent Mr. Castillo's social history.

8 ii. Trial Counsel Failed to Further Investigate Available Mitigating
9 Evidence

10 Trial counsel's failure to conduct an adequate and reasonable investigation was further
11 demonstrated through counsel's failure to follow up on the evidence obtained prior to trial.
12 Counsel learned through Dr. Etcoff that Mr. Castillo was physically abused by his adoptive
13 father, that Mr. Castillo's family had a history of mental health problems, that Mr. Castillo
14 requested placement in a foster care home rather than his own home, and that Mr. Castillo
15 recalled living in orphanages before the age of six. This evidence should have prompted
16 counsel to further investigate Mr. Castillo's social history. Instead, counsel presented the
17 testimony of Barbara Wickham, who failed to discuss her family's mental health problems,
18 the physical abuse she and her husband inflicted upon Mr. Castillo, and her abandonment of
19 Mr. Castillo to foster homes. Counsel further failed to investigate and interview family
20 members to corroborate the information reported by Dr. Etcoff.

21 iii. Trial Counsel Failed to Present Substantial Mitigating Evidence

22 Had trial counsel conducted an adequate investigation, the jury would have learned
23 that Barbara Wickham physically abused Mr. Castillo before he reached his first birthday.
24 (Pet. 58, Ex. 66.) Barbara Wickham frequently sought to abandon Mr. Castillo to the foster
25 care system. (Pet. 50-58.) Indeed, Mr. Castillo spent approximately one year with an
26 adoptive family – the Knowles, while his mother traveled and worked as a prostitute. (Pet.
27 54-57.)
28

1 The jury never heard evidence that Mr. Castillo's natural father physically abused him.
2 (Pet. 57-58.) That, on one occasion, Mr. Castillo's natural father threw him against the wall.
3 (Id.) The jury never learned that, as a young child, Mr. Castillo observed his father
4 physically abuse his mother. (Pet. 62-63.) Although Barbara Wickham testified that Mr.
5 Castillo's adoptive father, Joe Castillo, was a "good father," the jury never learned that he
6 too abused Mr. Castillo – allegations of physical abuse which were investigated and
7 substantiated.³ (Pet. 58-61.) The jury never learned that Mr. Castillo was physically abused
8 in the juvenile detention facilities in which he spent a substantial part of his life. (Pet. 63-67.)
9 The jury never learned that Mr. Castillo suffered from post traumatic stress disorder and
10 other untreated mental health illnesses which could have explained his actions in the instant
11 offense. (Pet. 68-79.)

12 In addition to counsel's failure to document the overwhelming evidence of the chaotic
13 and abusive environment in which Mr. Castillo was born and raised, the history of mental
14 health problems, physical and emotional abuse, sexual abuse, alcohol and drug abuse,
15 violence, and juvenile misconduct that ran rampant throughout Mr. Castillo's family were
16 never investigated or presented to the jury. (Pet. 33-62.) Had counsel conducted a
17 reasonable and adequate investigation regarding Mr. Castillo's social history, the jury would
18 truly have understood the circumstances in which Mr. Castillo was born and raised.

19 Mr. Castillo was prejudiced by counsel's failure to investigate. In Rompilla, the

20 ³ Joe Castillo stated that Mr. Castillo's trial counsel "made no effort to contact me
21 before or during his trial." Had counsel contacted Joe Castillo, he would have testified that:

22 I was a strict disciplinarian. I beat and yelled at [Mr. Castillo] whenever he did
23 something wrong. I actually believed that I could beat [Mr. Castillo's] bad
24 behavior out of him. The more he misbehaved, the more severe my beatings
25 became. I recall a few occasions when I would beat [Mr. Castillo] so badly that
26 Barbara [Wickham] intervened out of fear that I might injury [sic] [Mr. Castillo].
27 The beatings involved belts and other objects, slapping [Mr. Castillo's] face or
28 other parts of his body, and shaking [Mr. Castillo].

26 (Pet. 58, Ex. 28.) Joe Castillo further described: "... many occasions where my abuse of [Mr.
27 Castillo] was mental. Besides the food deprivations . . . I used other measures to punish [Mr.
28 Castillo]. Id.

1 Supreme Court provided the summary of the evidence which that jury was denied:

2 Rompilla's parents were both alcoholics who drank constantly. His mother
3 drank during her pregnancy with Rompilla, and he and his brothers eventually
4 developed serious drinking problems. His father, who had a vicious temper,
5 frequently beat Rompilla's mother, leaving her bruised and black-eyed, and
6 bragged about his cheating on her. His parents fought violently, and on at least
7 one occasion his mother stabbed his father. He was abused by his father who
8 beat him when he was young with his hands, fists, leather straps, belts and
sticks. All of the children lived in terror. There were no expressions of
parental love, affection or approval. Instead, he was subjected to yelling and
verbal abuse. His father locked Rompilla and his brother Richard in a small
wire mesh dog pen that was filthy and excrement filled. ... They had no indoor
plumbing in the house, he slept in the attic with no heat, and the children were
not given clothes and attended school in rags.

9 Rompilla, 545 U.S. at 391-92 (quoting Rompilla v. Horn, 355 F.3d 233, 279 (3rd Cir. 2004)
10 (Sloviter, J., dissenting)). The circumstances demonstrated by Mr. Castillo's petition are
11 similar—only worse. Like Rompilla, “this evidence adds up to a mitigation case that bears
12 no relation to the few naked pleas for mercy actually put before the jury.” Id. at 393.

13 The evidence that trial counsel should have offered at the penalty phase would have
14 significantly altered the picture presented to the jury. At trial, the jury was allowed to believe
15 that Mr. Castillo experienced difficult circumstances in the first years of his life but should
16 have overcome those circumstances given the “positive” changes his mother made in her life.
17 In spite of these changes, Mr. Castillo continually engaged in juvenile misconduct. That was
18 untrue. The current petition provides an accurate, compelling picture of Mr. Castillo's life
19 and the circumstances he endured. A reasonable and adequate investigation would have
20 allowed the jury to understand that Mr. Castillo did not experience a “few” bad years, but
21 instead his entire childhood and teenage years were surrounded by physical and emotional
22 abuse, violence, drug abuse, and mental health issues. This evidence provided an explanation
23 for Mr. Castillo's misconduct. Trial counsel's failure to present such mitigating evidence
24 deprived Mr. Castillo of a fair trial. Had the jury learned of Mr. Castillo's dysfunctional
25 family history and the mental problems he suffered at the time of the offense, and considered
26 this evidence against the remaining valid aggravating circumstances in his case (see below
27 D.2.i.), the jury would have concluded that the balancing of aggravating and mitigating

1 circumstances did not warrant a death sentence.

2 Mr. Castillo's petition provided a comprehensive review of his trial, conviction,
3 sentence and life. It included evidence which was never discovered by trial counsel or state
4 post-conviction counsel, and never heard by his jury. This comprehensive pleading reflected
5 not only undersigned counsel's attempts to comply with their obligations to Mr. Castillo, but
6 also the evidence and claims which were available to Mr. Castillo's previous counsel.
7 Finally, this comprehensive pleading demonstrated that Mr. Castillo suffered prejudice—that
8 the fairness of the proceedings in which he was convicted and sentenced is questionable.
9 Strickland, 466 U.S. at 694.

10 Mr. Castillo demonstrated both cause and prejudice for his failure to previously raise
11 these claims. Crump, 113 Nev. at 304, 934 P.2d at 253. The Court should waive the
12 application of any procedural bar which were occasioned by counsel's failure to investigate,
13 Claims 1, 7, 17 and 19, or to comprehensively review the record of the proceedings and
14 present all meritorious issues: Claims 3, 4, 5, 6, 7, 9, 10, 14, 15, 16, 17 and 18.

15 2. INTERVENING AUTHORITY

16 Mr. Castillo's current petition for writ of habeas corpus included claims which were
17 previously unavailable to him.

18 i. McConnell v. State, 120 Nev. 1043, 102 P.3d 606 (2004).
(Pet., Claim 2)

19 In McConnell v. State, the Nevada Supreme Court held that it was "impermissible
20 under the United States and Nevada Constitutions to base an aggravating circumstance in a
21 capital prosecution on the felony upon which a felony murder is predicated." 120 Nev. 1043,
22 1069, 102 P.3d 606, 624. In Bejarano v. State, the Nevada Supreme Court held that
23 McConnell "announced a substantive rule of law that must be applied retroactively." 122
24 Nev. 1066, 1077, 146 P.3d 265, 274 (2006).

25 Mr. Castillo was convicted of first-degree murder and the trial judge's instructions
26 failed to require the jury to articulate whether Mr. Castillo's conviction was premised upon
27

1 a theory of premeditation or felony murder.⁴ (Pet. 88-89, Exs. 23, 166 at 31-33.) The jury
2 found four aggravating circumstances including that “the murder was committed by William
3 Patrick Castillo while he was engaged, alone or with another, in the commission of or an
4 attempt to commit or flight after committing or attempting to commit any Robbery,” and “the
5 murder was committed by William Patrick Castillo while he was engaged, alone or with
6 another, in the commission of or an attempt to commit or flight after committing or
7 attempting to commit any Burglary.” (Pet. 88-89, Ex. 22.) These aggravating circumstances
8 were “the felon[ies] upon which [Mr. Castillo’s conviction for] felony murder [was]
9 predicated,” and respondents do not demonstrate any evidence to the contrary. McConnell,
10 120 Nev. at 1069, 102 P.3d at 624. (See Resp’t Mot. to Dismiss 19-21.)

11 Respondents argued that Mr. Castillo could have raised this claim earlier and that,
12 given the nature of the crime, “there is no reasonable probability that the jury’s verdict would
13 have been any different.” (Resp’t Mot. to Dismiss 19-21.) Mr. Castillo did not delay in
14 seeking relief pursuant to McConnell and Bejarano. Indeed, Mr. Castillo was litigating his
15 initial post-conviction petition when McConnell was decided, and was engaged in federal
16 court proceedings when Bejarano was published.

17 Respondents’ argument that the jury’s verdict would not be any different without the
18 invalid aggravating circumstances is without merit. (See Resp’t Mot. to Dismiss 20.) In
19 Leslie v. Warden, 118 Nev. 773, 783, 59 P.3d 440, 447 (2002), the defendant was sentenced
20 to death upon a finding of four aggravating circumstances and one mitigating circumstance.
21 The Nevada Supreme Court held that its refusal to consider the invalidity of the aggravating
22 circumstance would result in a fundamental miscarriage of justice because the meritorious
23 claim may demonstrate the defendant was “actually innocent” of the aggravating

24
25 ⁴ Prosecutors argued Mr. Castillo was guilty of felony murder because the murder
26 was committed during the commission of a burglary and robbery. (TT 9/19/96, at 6-7; TT
27 9/24/96, at 7.) Mr. Castillo was convicted of murder with use of a deadly weapon, burglary,
robbery of a victim sixty-five years of age or older, conspiracy to commit arson and burglary,
first-degree arson, and conspiracy to commit burglary and/or robbery. (Pet. 89, Ex. 24.)

1 circumstance. Id. at 780, 59 P.3d at 445. Any waiver under NRS 34.810(1)(b) was excused.
2 Id.

3 The rationale in Leslie is controlling. Mr. Castillo is “actually innocent” of two
4 aggravating circumstances which were used to secure his conviction. McConnell, 120 Nev.
5 at 1069, 102 P.3d at 624. The Nevada Supreme Court applied McConnell retroactively.
6 Bejarano, 122 Nev. at 1077, 146 P.3d at 274. The refusal to consider Mr. Castillo’s claim
7 will constitute a fundamental miscarriage of justice. Leslie, 118 Nev. at 780, 59 P.3d at 445.

8 What remains is a determination of whether Mr. Castillo is entitled to a new
9 sentencing proceeding. The Nevada Supreme Court has held the “re-weighing” of
10 aggravating and mitigating circumstances does not constitute “impermissible fact-finding”
11 or violate a defendant’s right to be sentenced by a jury.⁵ Leslie, 118 Nev. at 446-47, 59 P.3d
12 at 782. The Court considers whether it is “clear that absent the erroneous aggravator(s) the
13 jury would have imposed death?” Id. at 447, 59 P.3d at 783; see Browning v. State, 120 Nev.
14 347, 364, 91 P.3d 39, 51 (2004); State v. Bennett, 119 Nev. 589, 604, 81 P.3d 1, 11 (2003).

15
16 ⁵ It is realistically impossible for this Court to “re-weigh” the evidence in such a
17 manner as to predict accurately the verdict of a Nevada jury. Many defendants, even those
18 convicted of multiple murders, received sentences less than death by juries, when the mitigating
19 evidence was no more compelling than that in this case. See State v. Rodriguez, Case No.
20 C130763, Ex. 1(B) (12,13) (two murder victims; mitigating factor “mercy”); State v. Budd, No.
21 C193182, Ex. 1(B)(5, 6) (three murder victims; mitigating factors included effect of execution on
22 defendant’s family and defendant’s apology); State v. Powell, No. C148936, Ex. 1(B) (7, 8) (four
23 murder victims; aggravating factors of burglary, great risk of death to more than one person and
24 avoiding arrest; no mitigating factors cited); State v. Randle, No. C121817 Ex. 1(B) (9-11) (two
25 murder victims; six aggravating factors, including three prior robbery or attempted robbery
26 convictions); State v. Daniels, No. C126201, Ex. 1(B) (14, 15) (two murder victims; four
27 aggravating factors as to each murder); see Daniels v. State, 114 Nev. 261, 956 P.2d 111 (1998);
28 State v. Ducksworth, No. C108501, Ex. 1(B) (16, 17) (two murders victims; total of ten
aggravating factors); see Ducksworth v. State, 114 Nev. 951, 966 P.2d 165 (1998); Ducksworth
v. State, 113 Nev. 780, 942 P.2d 157 (1997); State v. Martin, No. C108501, Ex. 1(B) (18, 19)
(two murder victims; total of twelve aggravating factors); see also State v. Scholl, No. C204775,
Ex. 1 (B) (1-4); State v. Moore, No. CR06-2974, Ex. 1(A) (11) (twelve murders); State v.
Strohmeier, No. C144577, Ex. 1(A) (7,8); State v. Armstrong, No. C180047, Ex. 1(A) (1, 2)
(two murder victims and one attempted murder); State v. Rundle, No. C189563, Ex. 1(A) (3, 4)
(two murder victims, one killed by beating with baseball bat); State v. Frenn, No. C178954, Ex.
1(A) (6) (two murder victims, killed by stabbing and beating). In one case in which the state
obtained a death sentence for four murders which was reversed on appeal, the state later agreed
to life sentences on remand. State v. Evans, No. C116071, Ex. 1 (A) (9,10); see Evans v. State,
117 Nev. 609, 28 P.3d 498 (2001); Evans v. State, 112 Nev. 1172, 926 P.2d 265 (1996).

1 The strength of the mitigating evidence, considered with the remaining aggravating
2 circumstances, demonstrate there is no such clarity here.

3 Two aggravating circumstances remain: the murder was committed to avoid or
4 prevent a lawful arrest; and, the murder was committed by a person who was previously
5 convicted of a felony involving the use or threat of violence to the person of another. (Pet.
6 88-89, Ex. 22.) Mr. Castillo was previously convicted of robbery. Id. Mr. Castillo
7 committed the robbery offense at the age of nineteen. The jury found three mitigating
8 circumstances: Mr. Castillo's youth at the time of the offense; Mr. Castillo committed the
9 murder while he was under the influence of extreme mental or emotional disturbance; and
10 any other mitigating circumstances. (TT 9/25/96, at 7; Pet. 4, Ex. 6.) The jury's conclusion
11 that Mr. Castillo's age at the time of the offense was a mitigating circumstance undercuts any
12 weight supporting Mr. Castillo's previous conviction— he was even younger at the time of
13 that offense. Moreover, since the jury was never asked to explain its finding of "any other
14 mitigating circumstances," the Court is left to guess at its weight. In light of the remaining
15 aggravating and mitigating circumstances, it is not "clear" the jury would have sentenced Mr.
16 Castillo to death and the Court should grant a new penalty hearing.⁶ Leslie, 118 Nev. at 447,
17 59 P.3d at 783.

18 Although the jury heard only a portion of Mr. Castillo's social history from his mother
19 at trial, his current petition provided a comprehensive and compelling picture of the physical
20 and mental abuse, violent and sexual conduct, frequent abandonment, mental illness, and
21 drug abuse which plagued Mr. Castillo and those in his life. (Pet. 28-80.) Moreover, Mr.
22 Castillo offered mitigating evidence that he suffered from post traumatic stress disorder,
23 reactive attachment disorder, and other mental impairments which resulted from the abuse
24 and abandonment in his childhood. (Pet. 71-80.) It is appropriate and necessary for the

25 ⁶ In Williams v. State, 123 Nev. 85, 210 P.3d 779 (2007) (unpublished), this Court
26 considered a case, involving two murders, with two aggravating circumstances and three
27 mitigating circumstances. The court could not conclude, beyond a reasonable doubt, the
28 defendant would have received the death penalty absent an invalid aggravating circumstance.

1 Court to consider this additional mitigating evidence which will be offered in any new
2 sentencing trial.⁷

3 In State v. Haberstroh, the defendant was convicted of first degree murder and
4 sentenced to death on the basis of five aggravating circumstances and no mitigating
5 circumstances. 119 Nev. 173, 178, 69 P.3d 676, 679-80 (2003). The Nevada Supreme Court
6 held that one of the aggravating circumstances was unconstitutional. Id. at 182, 69 P.3d at
7 682. Even though the jury found no mitigating circumstances, the habeas petition “presented
8 evidence that [defendant] suffers from partial fetal alcohol syndrome, mild
9 neuropsychological impairment, a low average IQ, and personality disorders and that he grew
10 up with alcoholic parents and suffered physical and emotional abuse.” Id. at 184 n.22, 69
11 P.3d at 683 n.22. In light of this mitigating evidence, the Court granted a new penalty
12 hearing. Id. at 184, 69 P.3d at 683-84. The evidence presented within Mr. Castillo’s petition
13 is as, or even more, compelling than that in Haberstroh. Mr. Castillo is entitled to a new
14 penalty hearing.

15 ii. Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000) and Polk v.
16 Sandoval, 503 F.3d 903 (9th Cir. 2007). (Pet., Claim 3)

17 In his current petition, Mr. Castillo contended the jury instruction defining
18 premeditation in his trial, known as the “Kazalyn” instruction, failed to meaningfully define
19 the statutory elements of first-degree murder. (Pet. 92.) Mr. Castillo contended the
20 instruction was unconstitutionally vague and failed to distinguish between first and second-
21 degree murder. (Pet. 96.) Although the Nevada Supreme Court previously held such an
22 instruction properly conveyed the distinction between first and second-degree murder,
23 Kazalyn v. State, 108 Nev. 67, 825 P.2d 578 (1992) and Powell v. State, 108 Nev. 700, 708,

24 ⁷ In an unpublished opinion, Witter v. State, No. 50447, 2009 WL 3571288 (Nev.
25 Sup. Ct. Oct. 20, 2009), the Nevada Supreme Court refused to consider evidence raised in a
26 subsequent post-conviction habeas petition in its re-weighting analysis. However, Mr. Castillo
27 contends that, in light of Haberstroh, any refusal of this Court to consider all of the mitigating
evidence will violate his state and federal constitutional rights to due process and equal
protection. U.S. Const. amend. XIV; Nev. Const. art I §§ 1, 8; art. IV § 21.

1 838 P.2d 921, 927 (1992), it abandoned this authority in Byford v. State, 116 Nev. 215, 993
2 P.2d 700 (2000). The Court held that “[b]y defining only premeditation and failing to
3 provide deliberation with any independent definition, the Kazalyn instruction blurs the
4 distinction between first and second-degree murder.” Byford, 116 Nev. at 235, 993 P.2d at
5 713. The Court directed trial judges to “cease instructing juries that a killing resulting from
6 premeditation is ‘willful, deliberate, and premeditated murder.’” Id. at 235-36, 993 P.2d at
7 714.

8 There is no question, and respondents did not argue, that the instruction in Mr.
9 Castillo’s trial met the requirements of Byford. Instead, respondents argued that Mr. Castillo
10 is not entitled to the benefit of Byford because he failed to immediately challenge the
11 instruction following the decisions in Byford and Polk. (Resp’t Mot. to Dismiss 21-22.)
12 Respondents further argued that Mr. Castillo’s reliance on Polk is misplaced. (Id.)
13 Respondents’ arguments fail. Mr. Castillo did not delay in seeking relief pursuant to Byford
14 or Polk. Indeed, Mr. Castillo diligently sought relief in his petition.

15 In Garner v. State, 116 Nev. 770, 6 P.3d 1013 (2000), the Nevada Supreme Court held
16 that its opinion in Byford, did “not hold that giving the Kazalyn instruction constituted error,
17 nor [did] it articulate any constitutional grounds for its decision.” Id. at 787, 6 P.3d at 1024.
18 The Court described its jurisprudence as “divided” and refused to find “plain or
19 constitutional error” in the Kazalyn instruction. Id. at 788, 6 P.3d at 1025. Moreover, Byford
20 was not retroactive. Rippo v. State, 122 Nev. 1086, 1096-97, 146 P.3d 279, 286 (2006).

21 The constitutionality of the Kazalyn instruction was considered in Polk v. Sandoval,
22 503 F.3d 903 (9th Cir. 2007). The court of appeals concluded that a defendant’s “federal
23 constitutional right to due process was violated by the use of the Kazalyn instruction because
24 it relieved the State of its burden of proving every element of first-degree murder beyond a
25 reasonable doubt.” Id. at 909. Although the jury was instructed that a first-degree murder
26 is a willful, deliberate and premeditated killing, the jury was also instructed that it could
27 convict if it found premeditation. Prosecutors were relieved of their burden to prove

1 deliberation, an element of the statute. Id. at 910. The Court of Appeals concluded that the
2 Nevada Supreme Court erred in its conception of the Kazalyn instruction “as purely a matter
3 of state law,” and held the jury’s unconstitutional application of any instruction presented a
4 federal constitutional question. Id. at 911.

5 In Nika v. State, 124 Nev. Adv. Rep. 103, 198 P.3d 839 (2008), the Nevada Supreme
6 Court again considered Byford. The Court held that Byford “announced a change in state
7 law.”⁸ Nika, 198 P.3d at 849. The Court held that the analysis in Polk was flawed because
8 only it (the Nevada Supreme Court) could determine whether its interpretation of a state
9 statute was a change in state law, or merely clarified state law.⁹ Finally, the Court reaffirmed
10 its holding that held Byford announced a “new rule,” without constitutional concerns, and
11 would not be applied retroactively. Id. at 850.

12 In Nika, the Nevada Supreme Court ignored its language in Byford that described a
13 “trend toward confusion of premeditation and deliberation,” its “tendency to muddle the line
14 between first and second-degree murder,” and the lack of consistency in its own
15 jurisprudence, Byford, 116 Nev. at 234-35, 994 P.2d at 713, in order to avoid due process.
16 These statements suggest a situation similar to that in Fiore v. White, 531 U.S. 225 (2001),
17 when the Pennsylvania Supreme Court “clarified” the plain language of a Pennsylvania
18 criminal statute. “Pennsylvania’s answer revealed the simple, inevitable conclusion that
19 Fiore’s conviction violated due process.” Bunkley v. Florida, 538 U.S. 835, 840 (2003).
20 “[T]he Due Process Clause of the Fourteenth Amendment forbids a State to convict a person
21 of a crime without proving the elements of that crime beyond a reasonable doubt.” Fiore,
22 531 U.S. at 228-29.

23 ⁸ This distinction holds constitutional implications. If the Nevada Supreme Court’s
24 opinion in Byford announced a “clarification” of state law, a defendant convicted with the
25 Kazalyn instruction may argue he suffered the violation of his due process rights. Bunkley, 538
U.S. at 839-40; Fiore, 531 U.S. at 226.

26 ⁹ In spite of this disagreement, the Nevada Supreme Court conceded that, even
27 under its pronouncement in Nika, Polk was entitled to relief because his conviction was on
appeal, and not final, at the time Byford was decided. Nika, 198 P.3d at 292.

1 The Nevada Supreme Court's opinion in Nika leaves little doubt that, in Mr. Castillo's
2 trial, there was no "distinction between first and second-degree murder." Byford, 116 Nev.
3 at 235, 994 P.2d at 713. Criminal statutes must give "fair notice" of what is forbidden, e.g.,
4 Gallegos v. State, 123 Nev. Adv. Rep. 31, 163 P.3d 456, 458-59 (2007); Lanzetta v. New
5 Jersey, 306 U.S. 451, 453 (1939); and "the more important aspect of the vagueness doctrine
6 'is . . . the requirement that a legislature establish minimal guidelines to govern law
7 enforcement.'" Kolender v. Lawson, 461 U.S. 352, 358 (1983), (quoting Smith v. Goguen,
8 415 U.S. 566, 574-75 (1974)). "[A]bsent adequate guidelines, a criminal law may permit a
9 standardless sweep, which would allow the police, prosecutors, and juries to 'pursue their
10 personal predilections.'" Silvar v. Dist. Ct., 122 Nev. 289, 293, 129 P.3d 682, 685 (2006)
11 (emphasis added) (quoting Kolender, 461 U.S. at 358); Gallegos, 163 P.3d at 461. The
12 "complete erasure" of the distinction between first and second-degree murder left Mr.
13 Castillo's jury with no "adequate guidelines" to determine whether he was guilty of first
14 rather than second-degree murder. His first degree murder conviction was subject to the
15 "personal predilections" of his jury.¹⁰

16 Nika also encourages the disparate treatment of similarly situated defendants, whose
17 offenses may be indistinguishable but whose criminal conviction, of first or second-degree
18 murder, is now subject to the unguided discretion of the jury. Yet Nika ignored the
19 constitutional equal protection guarantee that "all persons similarly situated should be treated

20 ¹⁰ In Nevada, a conviction for first-degree murder carries a possible death penalty.
21 NRS 200.030(4)(a). A jury's unguided discretion in the selection of those who will face the
22 ultimate punishment renders the Nevada capital sentencing scheme arbitrary, and
23 unconstitutional. Furman v. Georgia, 408 U.S. 238 (1972); Id. at 242 (Douglas, J., concurring)
24 ("It would seem to be incontestable that the death penalty inflicted on one defendant is 'unusual'
25 if it discriminates against him by reason of his race, religion, wealth, social position, or class, or
26 if it is imposed under a procedure that gives room for the play of such prejudices."); Id. at 274
27 (Brennan, J., concurring) ("[T]he State does not respect human dignity when, without reason, it
inflicts upon some people a severe punishment that it does not inflict upon others."); Id. at 310
(Stewart, J., concurring) ("[T]he Eighth and Fourteenth Amendments cannot tolerate the
infliction of a sentence of death under legal systems that permit this unique penalty to be so
wantonly and so freakishly imposed."); Id. at 314 (White, J., concurring) (capital sentencing
scheme unconstitutional when "there is no meaningful basis for distinguishing the few cases in
which it is imposed from the many cases in which it is not.").

1 alike,” Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985), unless there is a “rational
2 basis for the difference in treatment.” Vill. of Willowbrook, 528 U.S. at 564 (citations
3 omitted).

4 As the Nevada Supreme Court recognized in Byford, Mr. Castillo’s jury received
5 instructions which provided no meaningful distinction between first and second-degree
6 murder. Byford, 116 Nev. at 235, 993 P.2d at 713. The jury was allowed to assume proof
7 of “deliberation” if it found the murder “premeditated.” But Nevada, since the days of the
8 frontier, defined murder as a willful, premeditated and deliberate killing. Nika, 198 P.3d at
9 845 (citing 1861 Laws of the Territory of Nevada, ch. 28, § 17, at 58). Because the
10 prosecution was relieved of its burden to prove this offense was deliberate, Mr. Castillo’s
11 state and federal constitutional rights to due process were violated. Polk, 503 F.3d at 909.

12 iii. Baze v. Rees, 553 U.S. 35, 128 S.Ct. 1520 (2008) (Pet., Claim
13 13).

14 Respondents argued that Mr. Castillo’s challenge to Nevada’s lethal injection protocol
15 is procedurally barred and the Supreme Court’s opinion in Baze v. Rees, 553 U.S. 35, 128
16 S.Ct. 1520 (2008), does not provide good cause to overcome those bars.¹¹ (See Resp’t Mot.
17 to Dismiss 24.) Despite respondents’ argument, the constitutionality of Nevada’s execution
18 protocol is governed by Baze, wherein a plurality held Kentucky’s execution protocol did not
19 constitute cruel and unusual punishment and that an execution protocol was unconstitutional
20 only when it presented a “substantial” or “objectively intolerable” risk of serious harm.
21 Nevada’s execution protocol is not “substantially similar” to the Kentucky execution
22 protocol. Baze, 128 S.Ct. at 1537.

23 The Supreme Court noted that Kentucky provided a written execution protocol which
24 included the injection of sodium thiopental, pancuronium bromide, and potassium chloride.

25 ¹¹ Mr. Castillo is aware that the Nevada Supreme Court recently held that challenges
26 to the Nevada Execution protocol are not cognizable in a post-conviction habeas petition.
27 McConnell v. State, 125 Nev. Adv. Rep. 24, 212 P.3d 307, 311 (2009). However, in an effort to
28 preserve this issue, Mr. Castillo continues his objections to the unconstitutional Nevada
Execution Protocol.

1 Id. at 1528. Qualified personnel, with at least one year of professional experience, are
2 responsible for inserting IV catheters. Id. A certified phlebotomist and an emergency
3 medical technician perform the venipunctures. Id.

4 The warden and deputy warden remain in the execution chamber with the inmate. Id.
5 After the sodium thiopental is administered, the warden and deputy warden must determine,
6 through visual inspection, that the inmate is unconscious within 60 seconds. If not, a second
7 dose is administered. Id. In addition to assuring the first dose of sodium thiopental is
8 successfully administered, the warden and deputy warden must also watch for problems with
9 IV catheters and tubing. Id. The execution protocol required that, in the event of a last
10 minute stay, a physician be present to resuscitate the inmate. Id.

11 The Supreme Court noted “the several important safeguards” which Kentucky
12 implemented to ensure an adequate dose of sodium thiopental. These safeguards included
13 the requirement that members of the IV team must have at least one year of training; IV team
14 members along with the rest of the execution team participate in at least 10 practice sessions
15 per year, which includes a complete walk-through of the execution; IV team members
16 establish both primary and back-up lines and prepare two sets of lethal injection chemicals;
17 and, the presence of the warden and deputy warden to determine consciousness and signs of
18 IV problems. Id. at 1533-34.

19 Nevada’s execution protocol fails to include the same safeguards as the Kentucky
20 protocol. NRS 176.355(1) provides that a sentence of death in Nevada “must be inflicted by
21 an injection of a lethal drug.” Pursuant to NRS 176.355(2)(b), the Director of the
22 Department of Corrections “[s]elect[s] the drug or combination of drugs to be used for the
23 execution after consulting with the State Health Officer.” Unlike Kentucky’s execution
24 protocol, Nevada’s execution protocol does not require a physician’s participation; does not
25 specify what, if any, training the execution team must have; does not require regular practice
26 sessions of the execution protocol; and, does not require monitoring of the inmate’s level of
27 consciousness and IV lines. (Pet., Exs. 142, 142A.)

E. LACHES

Respondents affirmatively argued that Mr. Castillo’s claims are barred by laches under NRS 34.800. (Resp’t Mot. to Dismiss 12-13.) However, respondents will suffer no prejudice in responding to Mr. Castillo’s petition. Many of Mr. Castillo’s claims resulted from his previous counsel’s failure to closely review the record. Any delay in the presentment of these claims have no effect on respondents’ ability to respond. See NRS 34.800(1)(a).

Respondents will further suffer no actual prejudice in their ability to conduct a retrial. See Besnilian v. Wilkinson, 117 Nev. 519, 522, 25 P.3d 187, 189-90 (2001) (unless delay causes “actual prejudice, it cannot amount to laches.”). Those witnesses whose testimony supports Mr. Castillo’s post-conviction habeas petition were located and their statements appeared in the exhibits attached to the petition. Mr. Castillo’s remaining claims are based upon intervening authority and pose no prejudice to respondents in their ability to respond.

Finally, Mr. Castillo will show that the imposition of a procedural bar will result in a fundamental miscarriage of justice. See Leslie, 118 Nev. at 780, 59 P.3d at 445 (invalidity of aggravating circumstance creates a miscarriage of justice); Bennett, 119 Nev. at 597-98, 81 P.3d at 7 (Brady violations and improper aggravating circumstance combined to become a fundamental miscarriage of justice). Mr. Castillo is sentenced to death. Mr. Castillo's current petition demonstrated that he was denied the effective assistance of counsel. (Pet., Claim 1.) Indeed, an adequate investigation revealed that Mr. Castillo's social history was even more tragic than the jury suspected. Mr. Castillo suffered physical abuse, mental abuse and abandonment. There was a history of drug abuse, physical and emotional abuse, mental illness, and violence throughout his family. Mr. Castillo suffered from post-traumatic stress syndrome and mental illness (Pet., Claim 1.)

Mr. Castillo's current petition further demonstrated that the prosecutors improperly argued and introduced evidence of Mr. Castillo's non-statutory juvenile convictions and misconduct in their quest for a death sentence. (Pet., Claim 4.) Prosecutors admitted irrelevant evidence of Mr. Castillo's personal beliefs to persuade the jury to impose death.

1 (Pet., Claim 6.) Post-conviction counsel failed to review the record, investigate potential
2 claims, and present all of Mr. Castillo's claims. (Pet., Claims 1, 2, 3, 4, 5, 6, 7, 9, 10, 13, 14,
3 15, 16, 17, 18 and 19.) Finally, intervening case law demonstrates that the prosecutors were
4 relieved of their burden to prove each element of first-degree murder (Pet., Claim 3), and that
5 Mr. Castillo is "actually innocent" of two of the aggravating circumstances before the jury.
6 (Pet., Claim 2).

7 **III. EVIDENTIARY HEARING**

8 An evidentiary hearing is required to fairly and adequately address the claims in Mr.
9 Castillo's petition. This petition included extensive evidence which was never disclosed or
10 presented by Mr. Castillo's trial, appellate, or post-conviction counsel. This evidence is not
11 contradicted by respondents' pleadings. Mann, 118 at 354, 46 P.3d at 1230. Any fair and
12 just resolution of Mr. Castillo's claims requires a comprehensive evidentiary hearing to
13 resolve all factual disputes.

14 **IV. CONCLUSION**

15 For these reasons, and those stated in the current petition for writ of habeas corpus
16 (post-conviction), Mr. Castillo is entitled to a new trial.

17 DATED this 22nd day of February, 2010.

18 Respectfully submitted,
19 FRANK A. FORSMAN
Federal Public Defender

20 */s/ Gary Taylor*
21 Gary Taylor
Assistant Federal Public Defender

22 */s/ Nisha Brooks-Whittington*
23 Nisha Brooks-Whittington
Assistant Federal Public Defender

24 Law Offices of the Federal Public Defender
25 411 East Bonneville Ave. Suite 250
26 Las Vegas, Nevada 89129
27 (702) 388-6577
28 Attorneys for Petitioner

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

Office of the District Attorney
Regional Justice Center, Third Floor
Attn: Steven Owens, Deputy District Attorney
200 Lewis Avenue
PO Box 552212
Las Vegas, Nevada 89155

Heather D. Proctor
Deputy Attorney General
Criminal Justice Division
Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

/s/ Katrina Manzi
An employee of the Federal Public Defender


CLERK OF THE COURT

1 EXH
FRANNY A. FORSMAN
2 Federal Public Defender
Nevada Bar No. 00014
3 GARY TAYLOR
Assistant Federal Public Defender
4 Nevada Bar No. 11031-C
NISHA BROOKS-WHITTINGTON
5 Nevada Bar No. 11032-C
411 East Bonneville Ave., Suite 250
6 Las Vegas, Nevada 89101
Telephone: (702) 388-6577
7 Facsimile: (702) 388-5819
Attorneys for Petitioner

8
9 IN THE EIGHTH JUDICIAL DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 WILLIAM P. CASTILLO,

12 Petitioner,

13 vs.

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

16 Respondents.

CASE NO: C133336
DEPT. NO: XVIII

**EXHIBITS TO OPPOSITION TO
MOTION TO DISMISS**

Hearing Date: March 12, 2010
Hearing Time: 10:00 a.m.

(Death Penalty Case)

17 **EXHIBIT 1**

18 **A. Non-jury sentences**

19 A1. State v. Richard Armstrong, No. C180047, Judgment of Conviction (Plea of Guilty)
20 (October 23, 2003)

21 A2. State v. Richard Armstrong, No. C180047, Guilty Plea Agreement (August 29, 2003)

22 A3. State v. William Rundle, No. C189563, Judgment of Conviction (September 16,
23 2003)

24 A4. State v. William Rundle, No. C189563, Guilty Plea Agreement (May 21, 2003)

25 A5. State v. Jose Vigoa, No. C168652, Guilty Plea Agreement (June 24, 2002)

26 A6. State v. Matthew Frenn, No. C178954, Guilty Plea Agreement (November 6, 2002)

27 A7. State v. Jeremy Strohmeyer, No. C144577, Judgment of Conviction (Plea)
(November 5, 1998)

28 A8. State v. Jeremy Strohmeyer, No. C144577, Guilty Plea Agreement (September 8,
1998)