

- 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 08:54 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)

Eighth Judicial District Court, Clark County

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
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

VER

FILED IN OPEN COURT
FEB 17 2006 2:56 p.m.
DISTRICT COURT SHIRLEY D. FARTAGLIONE, CLERK
CLARK COUNTY, NEVADA
ALAN PAUL CASTLE SR DEPUTY

THE STATE OF NEVADA,
Plaintiff,

-vs-

JAMES A. SCHOLL,
Defendant.

Case No. C204775
Dept No. IX

SPECIAL
VERDICT

We, the Jury in the above entitled case, having found the Defendant, JAMES A. SCHOLL, Guilty of COUNT 7 - MURDER OF THE FIRST DEGREE, designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

☒ The murder was committed by Defendant, who before the penalty hearing is conducted, will have been convicted of a felony involving the use or threat of violence to the person of another, to-wit: Count 3 of the Information charging the Defendant with Robbery With Use of a Deadly Weapon.

☒ The murder involved torture of the victim.

DATED at Las Vegas, Nevada, this 17 day of February, 2006.

FOREPERSON

1 VER

2
3
4
5
6 DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN COURT
FEB 17 2006 2:56 p.m.
SHIRLEY D. PARRAGE
BY *Alan Paul Castle*
ALAN PAUL CASTLE SR L...

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 JAMES A. SCHOLL,
12 Defendant.
13

Case No. C204775

Dept No. IX

14 SPECIAL
15 VERDICT

16 We, the Jury in the above entitled case, having found the Defendant, JAMES A.
17 SCHOLL, Guilty of COUNT 7 - MURDER OF THE FIRST DEGREE, designate that the
18 mitigating circumstance or circumstances which have been checked below have been
19 established.

20 (1) X The murder was committed while James Scholl was under the influence
21 of extreme mental or emotional disturbance;

22 (2) X The Defendant suffered as a child and young adult with emotional
23 disabilities;

24 (3) X The Defendant has no significant prior criminal history;

25 (4) X At the time of the commission of the crime, Defendant was under the
26 influence of controlled substances or alcohol;

27 (5) X At a very young age, the Defendant was thrust into a position of
28 adulthood and was ill-equipped to handle those responsibilities;

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

(6) X Any other mitigating circumstances.

DRUG ADDICTION
CONSIDERATION OF HIS CHILDREN

DATED at Las Vegas, Nevada, this 17 day of February, 2006.


FOREPERSON

EXHIBIT B2

EXHIBIT B2

1 VER

FILED IN OPEN COURT

FEB 17 2006 2:56 p.m.

SHERLEY D. PARSONS, CLERK

BY Alan Paul Castle
ALAN PAUL CASTLE SR DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

2
3
4
5
6
7 THE STATE OF NEVADA,
8 Plaintiff,

9 -vs-

10 JAMES A. SCHOLL,
11 Defendant.
12
13

Case No. C204775

Dept No. IX

14 VERDICT

15 We, the Jury in the above entitled case, having found the Defendant, JAMES A.
16 SCHOLL, Guilty of COUNT 7 - MURDER OF THE FIRST DEGREE and having found
17 that the aggravating circumstance or circumstances outweigh any mitigating circumstance or
18 circumstances impose a sentence of,

19
20 _____ A definite term of 100 years imprisonment, with eligibility for parole
21 beginning when a minimum of 40 years has been served,

22 _____ Life in Nevada Department of Corrections With the Possibility of Parole.

23 X Life in Nevada Department of Corrections Without the Possibility of Parole.

24 _____ Death.

25 DATED at Las Vegas, Nevada, this 17 day of February, 2006

26
27 FOREPERSON
28

EXHIBIT B3

EXHIBIT B3

JOC

ORIGINAL

FILED

MAY 19 11 24 AM '06

Shirley S. Amos
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES A. SCHOLL
#1223201

Defendant.

CASE NO. C204775

DEPT. NO. IX

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT(S)
1 and 4 - BURGLARY (Category B Felony), in violation of NRS 205.060, COUNT 2 -
FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON (Category B
Felony) NRS 200.310, 200.320, 193.165, COUNT 3 - ROBBERY WITH USE OF A
DEADLY WEAPON (Category C Felony), NRS 200.380, COUNT 5 - FIRST DEGREE
ARSON (Category B Felony), NRS 205.010, COUNT 6 - ATTEMPT ROBBERY WITH
USE OF A DEADLY WEAPON (Category B Felony), NRS 193.330, 193.165, 200.380,
COUNT 7 - MURDER WITH USE OF A DEADLY WEAPON (Category A Felony), NRS
193.165, 200.010, 200.030; and the matter having been tried before a jury and the

RECEIVED

MAY 19 2006

COUNTY CLERK

1 Defendant having been found guilty of the crimes of COUNT(S) 1 and 4 - BURGLARY
2 (Category B Felony), in violation of NRS 205.060, COUNT 2 - FIRST DEGREE
3 KIDNAPING WITH USE OF A DEADLY WEAPON (Category B Felony), NRS 200.310,
4 200.320, 193.165, COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON
5 (Category B Felony), NRS 200.380, 193.165, COUNT 5 - FIRST DEGREE ARSON
6 (Category B Felony), NRS 205.010, COUNT 6 - ATTEMPT ROBBERY WITH USE OF A
7 DEADLY WEAPON (Category B Felony), NRS 193.330, 193.165, 200.380, COUNT 7 -
8 FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony),
9 NRS 193.165, 200.010, 200.030; thereafter, on the 1st day of May, 2006, the Defendant
10 was present in court for sentencing with his counsel, DAVID M. SCHIECK and ALZORA
11 B. JACKSON, Special Deputy Public Defenders, and good cause appearing,
12

13 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
14 addition to the \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee
15 including testing to determine genetic markers, and \$130.00 Restitution, the Defendant
16 is SENTENCED to the Nevada Department of Corrections (NDC) as follows: AS TO
17 COUNT 1 - TO A MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a
18 MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS; AS TO COUNT 2 - TO A
19 MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole
20 Eligibility of SIXTY (60) MONTHS, plus an EQUAL and CONSECUTIVE term of ONE
21 HUNDRED EIGHTY (180) MONTHS MAXIMUM and of SIXTY (60) MONTHS
22 MINIMUM for the Use of a Deadly Weapon, COUNT 2 to run CONCURRENT WITH
23 COUNT 1; AS TO COUNT 3 - TO A MAXIMUM of ONE HUNDRED FIFTY-SIX (156)
24 MONTHS with a MINIMUM Parole Eligibility of THIRTY-FIVE (35) MONTHS, plus an
25 EQUAL and CONSECUTIVE term of ONE HUNDRED FIFTY-SIX (156) MONTHS
26
27
28

1 MAXIMUM and THIRTY-FIVE (35) MONTHS MINIMUM, for the Use of a Deadly
2 Weapon, COUNT 3 to run CONCURRENT with COUNT 2; AS TO COUNT 4 - TO A
3 MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole
4 Eligibility of FORTY-EIGHT (48) MONTHS, COUNT 4 to run CONSECUTIVE to COUNT
5 3; AS TO COUNT 5 - TO A MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS
6 with a MINIMUM Parole Eligibility of SEVENTY-TWO (72) MONTHS, COUNT 5 to run
7 CONSECUTIVE to COUNT 3; AS TO COUNT 6 - TO A MAXIMUM of ONE HUNDRED
8 TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48)
9 MONTHS, plus an EQUAL and CONSECUTIVE term of ONE HUNDRED TWENTY
10 (120) MONTHS MAXIMUM and FORTY-EIGHT (48) MONTHS MINIMUM, COUNT 6 to
11 run CONSECUTIVE to COUNT 3; COUNT 7 - LIFE WITHOUT POSSIBILITY OF
12 PAROLE, plus an EQUAL and CONSECUTIVE term of LIFE WITHOUT POSSIBILITY
13 OF PAROLE, for the Use of a Deadly Weapon, COUNT 7 to run CONSECUTIVE to
14 COUNT 3; with SIX HUNDRED EIGHTEEN (618) DAYS credit for time served.
15
16
17
18

19 DATED this 18th day of May, 2006.
20
21

22 *Jennifer P. Togliatti*
23 JENNIFER P. TOGLIATTI
24 DISTRICT JUDGE
25
26
27
28

EXHIBIT B4

EXHIBIT B4

1 VER

FILED IN OPEN COURT
FEB 15 2006 3:47 PM

SHIRLEY D. FARMINGTON, CLERK

BY Alan Paul Castle Sr
ALAN PAUL CASTLE SR DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 JAMES A. SCHOLL,

11 Defendant.

CASE NO: C204775

DEPT NO: IX

12
13 VERDICT

14 We, the jury in the above entitled case, find the Defendant JAMES A. SCHOLL, as
15 follows:

16 COUNT 1 - BURGLARY

17 (please check the appropriate box, select only one)

18 ☒ Guilty of BURGLARY

19 ☐ Not Guilty
20

21 We, the jury in the above entitled case, find the Defendant JAMES A. SCHOLL, as
22 follows:

23 COUNT 2 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

24 (please check the appropriate box, select only one)

25 ☒ Guilty of FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY
26 WEAPON

27 ☐ Guilty of FIRST DEGREE KIDNAPPING

28 ☐ Not Guilty

1 We, the jury in the above entitled case, find the Defendant JAMES A. SCHOLL, as
2 follows:

3 **COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON**

4 *(please check the appropriate box, select only one)*

5 ☒ Guilty of ROBBERY WITH USE OF A DEADLY WEAPON

6 ☐ Guilty of ROBBERY

7 ☐ Not Guilty

8
9 We, the jury in the above entitled case, find the Defendant JAMES A. SCHOLL, as
10 follows:

11 **COUNT 4 - BURGLARY**

12 *(please check the appropriate box, select only one)*

13 ☒ Guilty of BURGLARY

14 ☐ Not Guilty

15
16 We, the jury in the above entitled case, find the Defendant JAMES A. SCHOLL, as
17 follows:

18 **COUNT 5 - FIRST DEGREE ARSON**

19 *(please check the appropriate box, select only one)*

20 ☒ Guilty of FIRST DEGREE ARSON

21 ☐ Not Guilty

1 We, the jury in the above entitled case, find the Defendant JAMES A. SCHOLL, as
2 follows:

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

4 *(please check the appropriate box, select only one)*

- 5 ☒ Guilty of ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON
6 ☐ Guilty of ATTEMPT ROBBERY
7 ☐ Not Guilty
8

9 We, the jury in the above entitled case, find the Defendant JAMES A. SCHOLL, as
10 follows:

11 **COUNT 7** - MURDER WITH USE OF A DEADLY WEAPON

12 *(please check the appropriate box, select only one)*

- 13 ☒ Guilty of First Degree Murder With Use of a Deadly Weapon
14 ☐ Guilty of First Degree Murder
15 ☐ Guilty of Second Degree Murder With Use of a Deadly Weapon
16 ☐ Guilty of Second Degree Murder
17 ☐ Not Guilty
18

19 DATED this 15 day of February, 2006

20
21
22 
23 FOREPERSON
24
25
26
27
28

EXHIBIT B5

EXHIBIT B5

1 VER

FILED IN OPEN COURT

DEC 16 2005

SHIRLEY B. PARRAGUIRRE, CLERK

BY Kristen M. Brown

KRISTEN M. BROWN DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 GLENFORD ANTHONY BUDD

12 Defendant.

Case No. C193182

Dept No. XVIII

14 SPECIAL VERDICT

15 (Mitigating Circumstances)

16 We, the Jury in the above entitled case, having found the Defendant, GLENFORD
17 ANTHONY BUDD, Guilty of COUNT 1 - MURDER OF THE FIRST DEGREE (Dajon
18 Jones, victim), COUNT 2 - MURDER OF THE FIRST DEGREE (Derrick Jones, victim),
19 and COUNT 3 - MURDER OF THE FIRST DEGREE (Jason Moore, victim), designate that
20 the mitigating circumstance or circumstances which have been checked or written in below
21 have been established.
22

23 ☒ The Defendant has no significant history of prior criminal activity.

24 ☒ The murder was committed while the Defendant was under the influence of
25 extreme mental or emotional disturbance.
26
27
28

RECEIVED

DEC 16 2005

COUNTY CLERK

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

☒ The youth of the defendant at the time of the crime.

☒ The Defendant's diminished intelligence.

☒ The impact of the defendant's execution on his family members, including his mother, grandmother, brother and sisters Shermaine and Angel.

☒ The impact of the defendant's execution on his other family members, friends and loved ones.

☒ Any other mitigating circumstances.

The apology of the defendant

DATED at Las Vegas, Nevada, this 16th day of December, 2005.

Rachel M. Chen
FOREPERSON

1 VER

2
3 FILED IN OPEN COURT
DEC 16 2005

4 SP. FILEY B. PARRAGUIRRE, CLERK

5 BY Kristen M. Brown

6 KRISTEN M. BROWN, DEPUTY

7 DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 GLENFORD ANTHONY BUDD,

12 Defendant.

Case No.

0193182

693182

Dept No.

XVIII

14 SPECIAL VERDICT

15 (Aggravating Circumstance)

16
17 We, the Jury in the above entitled case, having found the Defendant, GLENFORD
18 ANTHONY BUDD, Guilty of COUNT 1 - MURDER OF THE FIRST DEGREE (Dajon
19 Jones, victim), COUNT 2 - MURDER OF THE FIRST DEGREE (Derrick Jones, victim),
20 and COUNT 3 - MURDER OF THE FIRST DEGREE (Jason Moore, victim) designate that
21 the following aggravating circumstance has been established beyond a reasonable doubt.

22 The murder was committed by a person who has, in the immediate proceeding, been
23 convicted of more than one offense of murder in the first or second degree.

24 DATED at Las Vegas, Nevada, this 15th day of December, 2005.

25
26 Lochell Adams
27 FOREPERSON
28

DEC 16 2005

RECEIVED

COUNTY CLERK

EXHIBIT B6

EXHIBIT B6

1 VER

FILED IN OPEN COURT
DEC 16 2005

SHIRLEY D. PARRAGUIRRE, CLERK

B1 *Kristen M. Brown*

KRISTEN M. BROWN DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 GLENFORD ANTHONY BUDD,

11 Defendant.

Case No. C193182

Dept No. XVIII

13 PENALTY VERDICT - COUNT 1 (Dajon Jones, victim)

14 We, the Jury in the above entitled case, having found the Defendant, GLENFORD
15 ANTHONY BUDD, Guilty of COUNT 1 - MURDER OF THE FIRST DEGREE (Dajon
16 Jones, victim), and having found that the aggravating circumstance or circumstances
17 outweigh any mitigating circumstance or circumstances impose a sentence of,

19 ☐ A definite term of 100 years imprisonment, with eligibility for parole
20 beginning when a minimum of 40 years has been served.

21 ☐ Life imprisonment, with eligibility for parole beginning when
22 a minimum of 40 years has been served.

23 ☒ Life imprisonment without the possibility of parole.

24 ☐ Death.

25 DATED at Las Vegas, Nevada, this 16th day of December, 2005

Rachel Mahan
FOREPERSON

26 RECEIVED

DEC 16 2005

COUNTY CLERK

1 VER

FILED IN OPEN COURT

DEC 16 2005

EMILEY B. PARRAGUIRRE, CLERK

BY Kristen M. Brown

KRISTEN M. BROWN DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 GLENFORD ANTHONY BUDD,

11 Defendant.

Case No. C193182

Dept No. XVIII

13 PENALTY VERDICT - COUNT 2 (Derrick Jones, victim)

14 We, the Jury in the above entitled case, having found the Defendant, GLENFORD
15 ANTHONY BUDD, Guilty of COUNT 2 - MURDER OF THE FIRST DEGREE (Derrick
16 Jones, victim), and having found that the aggravating circumstance or circumstances
17 outweigh any mitigating circumstance or circumstances impose a sentence of,
18

19 ☐ A definite term of 100 years imprisonment, with eligibility for parole
20 beginning when a minimum of 40 years has been served.

21 ☐ Life imprisonment, with eligibility for parole beginning when
22 a minimum of 40 years has been served.

23 ☒ Life imprisonment without the possibility of parole.

24 ☐ Death.

25 DATED at Las Vegas, Nevada, this 16th day of December, 2005

Rachel M. Brown
FOREPERSON

COUNTY CLERK

DEC 16 2005

26 PRECEIVED

1 VER

FILED IN OPEN COURT
DEC 16 2005

SHIRLEY B. PARAGUIRRE, CLERK

D: Kristen M. Brown

KRISTEN M. BROWN, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 GLENFORD ANTHONY BUDD,

11 Defendant.

Case No. C193182

Dept No. XVIII

13 PENALTY VERDICT - COUNT 3 (Jason Moore, victim)

14 We, the Jury in the above entitled case, having found the Defendant, GLENFORD
15 ANTHONY BUDD, Guilty of COUNT 3 - MURDER OF THE FIRST DEGREE (Jason
16 Moore, victim), and having found that the aggravating circumstance or circumstances
17 outweigh any mitigating circumstance or circumstances impose a sentence of,
18

19 ☐ A definite term of 100 years imprisonment, with eligibility for parole
20 beginning when a minimum of 40 years has been served.

21 ☐ Life imprisonment, with eligibility for parole beginning when
22 a minimum of 40 years has been served.

23 ☒ Life imprisonment without the possibility of parole.

24 ☐ Death.

25 DATED at Las Vegas, Nevada, this 16th day of December, 2005

Rachel Adame
FOREPERSON

26 RECEIVED
27
28

DEC 16 2005

COUNTY CLERK

EXHIBIT B7

EXHIBIT B7

1 VER

2

3

4

5

6

DISTRICT COURT
CLARK COUNTY, NEVADA

7

8 THE STATE OF NEVADA,

9

Plaintiff,

10

-vs-

11

RICHARD EDWARD POWELL

12

13

Defendant.

14

15

16

SPECIAL
VERDICT
(COUNT I - SAMANTHA LATRELLE SCOTTI)

17 We, the Jury in the above entitled case, having found the Defendant, RICHARD
18 EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A
19 DEADLY WEAPON, designate that the mitigating circumstance or circumstances which have
20 been checked below have been established.

21

_____ The Defendant has no significant history of prior criminal activity.

22

_____ The victim was a participant in the Defendant's criminal conduct or consented to
23 the act.

23

24

_____ The Defendant was an accomplice in a murder committed by another person and
25 his participation in the murder was relatively minor.

25

26

_____ Any other mitigating circumstances.

27

28

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

DATED at Las Vegas, Nevada, this 15 day of November, 2000.

FOREPERSON

1 VER

11-15-CO 5,30 PM

John B. [unclear]

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 RICHARD EDWARD POWELL

13 Defendant.

Case No. C148936
Dept. No. XI

SPECIAL
VERDICT
(COUNT I - SAMANTHA LATRELLE SCOTT)

17 We, the Jury in the above entitled case, having found the Defendant, RICHARD
18 EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A
19 DEADLY WEAPON, designate that the aggravating circumstance or circumstances which have
20 been checked below have been established beyond a reasonable doubt.

21 ☒

1. The murder was committed while the person was engaged in
the commission of or an attempt to commit any Burglary.

23 ☒

2. The murder was committed by a person who
knowingly created a great risk of death to more than one
person by means of a weapon, device or course of action
which would normally be hazardous to the lives of more
than one person.

28 ///

28

3. The murder was committed to avoid or prevent a lawful arrest.
4. The murder involved torture or the mutilation of the victim.

DATED at Las Vegas, Nevada, this 15 day of November, 2000.

FOREPERSON

1 VER

2
3
4
5
6 DISTRICT COURT
CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 RICHARD EDWARD POWELL

12
13 Defendant.
14

Case No. C148936
Dept. No. XI

15 SPECIAL
16 VERDICT
(COUNT II - LISA RENEE BOYER)

17 We, the Jury in the above entitled case, having found the Defendant, RICHARD
18 EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A
19 DEADLY WEAPON, designate that the mitigating circumstance or circumstances which have
20 been checked below have been established.

- 21 _____ The Defendant has no significant history of prior criminal activity.
22 _____ The victim was a participant in the Defendant's criminal conduct or consented to
23 the act.
24 _____ The Defendant was an accomplice in a murder committed by another person and
25 his participation in the murder was relatively minor.
26 _____ Any other mitigating circumstances.
27
28

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

DATED at Las Vegas, Nevada, this 15 day of November, 2000.

5472.21
FOREPERSON

1 VER

11-15-00 5:30 PM

Judge Brown

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 RICHARD EDWARD POWELL

13 Defendant.

Case No. C148936
Dept. No. XI

SPECIAL
VERDICT
(COUNT II - LISA RENEE BOYER)

17 We, the Jury in the above entitled case, having found the Defendant, RICHARD
18 EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A
19 DEADLY WEAPON, designate that the aggravating circumstance or circumstances which have
20 been checked below have been established beyond a reasonable doubt.

21 ☒

1. The murder was committed while the person was engaged in
the commission of or an attempt to commit any Burglary.

23 ☒

2. The murder was committed by a person who
knowingly created a great risk of death to more than one
person by means of a weapon, device or course of action
which would normally be hazardous to the lives of more
than one person.

28 ///

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

✓ 3. The murder was committed to avoid or prevent a
lawful arrest.

DATED at Las Vegas, Nevada, this 17 day of November, 2000.

St. E. J. L.
FOREPERSON

1 VER

2
3
4
5
6 DISTRICT COURT
CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 RICHARD EDWARD POWELL

12
13 Defendant.

Case No. C148936
Dept. No. XI

14
15 SPECIAL
16 VERDICT
(COUNT III - STEVEN LAWRENCE WALKER)

17 We, the Jury in the above entitled case, having found the Defendant, RICHARD
18 EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A
19 DEADLY WEAPON, designate that the mitigating circumstance or circumstances which have
20 been checked below have been established.

- 21 _____ The Defendant has no significant history of prior criminal activity.
22 _____ The victim was a participant in the Defendant's criminal conduct or consented to
23 the act.
24 _____ The Defendant was an accomplice in a murder committed by another person and
25 his participation in the murder was relatively minor.
26 _____ Any other mitigating circumstances.

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

DATED at Las Vegas, Nevada, this 10 day of November, 2000.

F. L. F. V. I.
FOREPERSON

1 VER

11-15-00

5:50 PM

Joseph Brown

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 RICHARD EDWARD POWELL

12 Defendant.

Case No. C148936
Dept. No. XI

SPECIAL
VERDICT
(COUNT III - STEVEN LAWRENCE WALKER)

17 We, the Jury in the above entitled case, having found the Defendant, RICHARD
18 EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A
19 DEADLY WEAPON, designate that the aggravating circumstance or circumstances which have
20 been checked below have been established beyond a reasonable doubt.

21 ☒ 1. The murder was committed while the person was engaged in
22 the commission of or an attempt to commit any Burglary.

23 ☒ 2. The murder was committed by a person who
24 knowingly created a great risk of death to more than one
25 person by means of a weapon, device or course of action
26 which would normally be hazardous to the lives of more
27 than one person.

28 ///

DATED at Las Vegas, Nevada, this 1 day of November, 2000.

AA005033

1 VER

2

3

4

5

6

DISTRICT COURT
CLARK COUNTY, NEVADA

7

8 THE STATE OF NEVADA,

9

Plaintiff,

10

-vs-

11

RICHARD EDWARD POWELL

12

13

Defendant.

14

15

16

SPECIAL
VERDICT
(COUNT IV - JERMAINE M. WOODS)

17 We, the Jury in the above entitled case, having found the Defendant, RICHARD
18 EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A
19 DEADLY WEAPON, designate that the mitigating circumstance or circumstances which have
20 been checked below have been established.

21

_____ The Defendant has no significant history of prior criminal activity.

22

_____ The victim was a participant in the Defendant's criminal conduct or consented to
23 the act.

24

_____ The Defendant was an accomplice in a murder committed by another person and
25 his participation in the murder was relatively minor.

26

_____ Any other mitigating circumstances.

27

28

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

DATED at Las Vegas, Nevada, this 15 day of November, 2000.

John H. [Signature]
FOREPERSON

1 VER

11-15-00

52301M

John Brown

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICHARD EDWARD POWELL

Defendant.

Case No. C148936
Dept. No. XI

SPECIAL
VERDICT
(COUNT IV - JERMAINE M. WOODS)

We, the Jury in the above entitled case, having found the Defendant, RICHARD EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

1. The murder was committed while the person was engaged in the commission of or an attempt to commit any Burglary.
2. The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.

///

1. 3. The murder was committed to avoid or prevent a lawful arrest.

DATED at Las Vegas, Nevada, this 15 day of November, 2000.

FOREPERSON

EXHIBIT B8

EXHIBIT B8

1 VER

11-15-00 5:30 PM

George Brown

2
3
4
5
6 DISTRICT COURT
CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 RICHARD EDWARD POWELL

12
13 Defendant.
14

Case No. C148936
Dept. No. XI

15 VERDICT
16 (COUNT I - SAMANTHA LATRELLE SCOTTI)

17 We, the Jury in the above entitled case, having found the Defendant, RICHARD
18 EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A
19 DEADLY WEAPON and having found that the aggravating circumstance or circumstances
20 outweigh any mitigating circumstance or circumstances impose a sentence of,

21 ☐ Life in Nevada State Prison With the Possibility of Parole.
22 ☒ Life in Nevada State Prison Without the Possibility of Parole.

23 ☐ Death.

24 DATED at Las Vegas, Nevada, this 15 day of November, 2000

25
26 *George Brown*
27 FOREPERSON
28

1 VER

11-15-00 5:30 PM

John Brown

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 RICHARD EDWARD POWELL

13 Defendant.

Case No. C148936
Dept. No. XI

15 VERDICT
16 (COUNT II - LISA RENEE BOYER)

17 We, the Jury in the above entitled case, having found the Defendant, RICHARD
18 EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A
19 DEADLY WEAPON and having found that the aggravating circumstance or circumstances
20 outweigh any mitigating circumstance or circumstances impose a sentence of,

21 ☐ Life in Nevada State Prison With the Possibility of Parole.

22 ☒ Life in Nevada State Prison Without the Possibility of Parole.

23 ☐ Death.

24 DATED at Las Vegas, Nevada, this 15 day of November, 2000

26 *[Signature]*
27 FOREPERSON
28

1 VER

11-15-00 5:30 PM

Jepe Braun

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 RICHARD EDWARD POWELL

13 Defendant.

Case No. C148936
Dept. No. XI

15 VERDICT
16 (COUNT III - STEVEN LAWRENCE WALKER)

17 We, the Jury in the above entitled case, having found the Defendant, RICHARD
18 EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A
19 DEADLY WEAPON and having found that the aggravating circumstance or circumstances
20 outweigh any mitigating circumstance or circumstances impose a sentence of,

21 ☐ Life in Nevada State Prison With the Possibility of Parole.

22 ☒ Life in Nevada State Prison Without the Possibility of Parole.

23 ☐ Death.

24 DATED at Las Vegas, Nevada, this 15 day of November, 2000

26 *EA. H. [Signature]*
27 FOREPERSON
28

1 VER

11-15-00 5:30 PM

2
3
4
5
6 DISTRICT COURT
CLARK COUNTY, NEVADA

Joey Brann

7
8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 RICHARD EDWARD POWELL

12
13 Defendant.

Case No. C148936
Dept. No. XI

14
15 VERDICT
16 (COUNT IV - JERMAINE M. WOODS)

17 We, the Jury in the above entitled case, having found the Defendant, RICHARD
18 EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A
19 DEADLY WEAPON and having found that the aggravating circumstance or circumstances
20 outweigh any mitigating circumstance or circumstances impose a sentence of,

21 ☐ Life in Nevada State Prison With the Possibility of Parole.
22 ☒ Life in Nevada State Prison Without the Possibility of Parole.
23 ☐ Death.

24 DATED at Las Vegas, Nevada, this 15 day of November, 2000

25
26 *Si/s + 11*
27 FOREPERSON
28

EXHIBIT B9

EXHIBIT B9

RECEIVED

JUL 10 1996

Federal Public Defender
Las Vegas, Nevada

ORIGINAL

FILED IN OPEN COURT

JUN 14 1996 19

LORETTA BOWMAN, CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

Deputy

THE STATE OF NEVADA,

Plaintiff,

-vs-

PATRICK HENRY RANDLE

Defendant.

Case No. C121817
Dept. No. XV
Docket L

VERDICT

We, the Jury in the above entitled case, having found the Defendant, PATRICK HENRY RANDLE, Guilty of COUNT IV - MURDER OF THE FIRST DEGREE and having found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

- ☐ Life in Nevada State Prison With the Possibility of Parole.
☒ Life in Nevada State Prison Without the Possibility of Parole.
☐ Death.

DATED at Las Vegas, Nevada, this 13th day of June, 1996

FOREPERSON

JUL 3 1996

EXHIBIT B10

EXHIBIT B10

1 VER

ORIGINAL

FILED IN OPEN COURT
JUN 14 1996 18

LONETTA J. JAMES, CLERK

BY Concepcion Hurtado

DISTRICT COURT
CLARK COUNTY, NEVADA

Deputy

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 PATRICK HENRY RANDLE

12 Defendant.

Case No. C121817
Dept. No. XV
Docket L

15 SPECIAL
16 VERDICT

17 We, the Jury in the above entitled case, having found the Defendant, PATRICK HENRY
18 RANDLE, Guilty of COUNT IV - MURDER OF THE FIRST DEGREE, designate that the aggravat
19 circumstance or circumstances which have been checked below have been established beyond
20 reasonable doubt.

21 X The murder was committed by a person under sentence of imprisonment, to-wit: Ass:
22 With a Firearm on a Person.

23 X The murder was committed by a person who was previously convicted of a fel
24 involving the use or threat of violence to the person of another, to-wit: Attempt Robb
25 in the California Superior Court in 1978, Case No. A-522872.

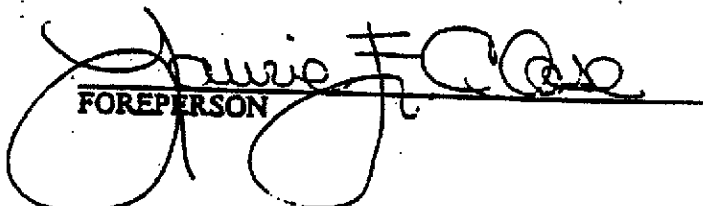
26 X The murder was committed by a person who was previously convicted of a fel
27 involving the use or threat of violence to the person of another, to-wit: Attempt Robb
28 With a Deadly Weapon in the California Superior Court in 1978, Case No. A-6142

CE37

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

- X The murder was committed by a person who was previously convicted of a feic involving the use or threat of violence to the person of another, to-wit: Robbery Wit: Deadly Weapon in the California Superior Court in 1983, Case Nos. A-455882.
- X The murder was committed by a person who was previously convicted of a feic involving the use or threat of violence to the person of another, to-wit: Assault Wit: Firearm on Person in the California Superior Court in 1989, Case Nos. A-650532.
- X The murder was committed while the person was engaged in the commission of or attempt to commit any Robbery.

DATED at Las Vegas, Nevada, this 13th day of June, 1996.


FOREPERSON

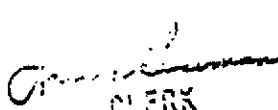
CCB
JUN 5 '96

CLERK

EXHIBIT B11

EXHIBIT B11

ORIGINAL

1 VER

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

FILED IN OPEN COURT

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
JUN 6 1996 10
LORETTA BOWMAN, CLERK
BY Cindy Horton
Deputy

THE STATE OF NEVADA,

Plaintiff,

-vs-

PATRICK HENRY RANDLE,

Defendant.

CASE NO. C121817
DEPT. NO. XV
DOCKET L

VERDICT

We, the jury in the above entitled case, find the Defendant,
PATRICK HENRY RANDLE, as to:

COUNT I:

ROBBERY - Calvin Johnson

With Use of a Deadly Weapon

Without Use of a Deadly Weapon

COUNT II:

ATTEMPT MURDER - Calvin Johnson

With Use of a Deadly Weapon

Without Use of a Deadly Weapon

BATTERY WITH USE OF A DEADLY WEAPON

(Lesser included offense - you may
choose one only)

Guilty Not Guilty

CE31

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

Guilty Not Guilty

COUNT III:

ATTEMPT ROBBERY - Roger Champagne

With Use of a Deadly Weapon

Without Use of a Deadly Weapon

COUNT IV: Roger Champagne

(Choose one of the following)

MURDER OF THE FIRST DEGREE

MURDER OF THE SECOND DEGREE

With Use of a Deadly Weapon

Without Use of a Deadly Weapon

COUNT V:

ROBBERY - Lorette Champagne

With Use of a Deadly Weapon

Without Use of a Deadly Weapon

DATED: This 06 day of June, 1996.

FOREPERSON

RECEIVED
JUL 3 1996
CLERK

JUL 3 '96

CLERK

EXHIBIT B12

EXHIBIT B12

1 VER

THIS IS OPEN COURT
MAY 7 1996

LORETTA GUTIERREZ
BY [Signature] Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 FERNANDO PADRON RODRIGUEZ
12
13 Defendant.

Case No. C130763
Dept. No. VI
Docket B

16 SPECIAL
17 VERDICT

18 We, the Jury in the above entitled case, having found the Defendant, FERNANDO PADRON
19 RODRIGUEZ, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (Brad Palcovic), designate
20 that the mitigating circumstance or circumstances which have been checked below have been established.

21 _____ The murder was committed while the defendant was under the influence of extreme mental
22 or emotional disturbance.

23 _____ The defendant was an accomplice in a murder committed by another person and his
24 participation murder was relatively minor.

25 ///
26 ///
27 ///
28 ///

CE31

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

____ The defendant acted under duress or under the domination of another person.

X Any other mitigating circumstances. (Hercy)

DATED at Las Vegas, Nevada, this 7 day of May, 1996.

Jacques C. Sagel
FOREPERSON

CLERK

JUL 5 '96

CLERK

1 VER

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

THE STATE OF NEVADA,

Plaintiff,

-vs-

FERNANDO PADRON RODRIGUEZ

Defendant.

FILED IN OPEN COURT

MAY 7 1996 10

LORRETTA BOWMAN, CLERK

BY

Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

Case No. C130763
Dept. No. VI
Docket B

SPECIAL
VERDICT

We, the Jury in the above entitled case, having found the Defendant, FERNANDO PADRON RODRIGUEZ, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (Brad Palcovic), designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

☒ The murder was committed by a person who was previously convicted of a felony involving the use or threat of violence to the person of another, to-wit: Robbery (Florida 1989).

☒ The murder was committed by a person who was previously convicted of a felony involving the use or threat of violence to the person of another, to-wit: Robbery (Florida 1989).

///

///

CE31

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

- ☒ The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.
- ☒ The murder was committed to avoid or prevent a lawful arrest or to effect an escape from custody.

DATED at Las Vegas, Nevada, this 7 day of May, 1996.

James C. Dagne
FOREPERSON

Jul 5 '96
Clifford L. Luman
CLERK

1 VER

MAY 19 1996
LORETTA
BY *[Signature]*

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 FERNANDO PADRON RODRIGUEZ
12
13 Defendant.

Case No. C130763
Dept. No. VI
Docket B

17 SPECIAL
18 VERDICT

19 We, the Jury in the above entitled case, having found the Defendant, FERNANDO PADRON
20 RODRIGUEZ, Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Richley Miller), designate
21 that the mitigating circumstance or circumstances which have been checked below have been established.

22 ☐ The murder was committed while the defendant was under the influence of extreme mental
23 or emotional disturbance.

24 ☐ The defendant was an accomplice in a murder committed by another person and his
25 participation murder was relatively minor.

26 ///
27 ///
28 ///

CE31

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

____ The defendant acted under duress or under the domination of another person.

X Any other mitigating circumstances. (Mercy)

DATED at Las Vegas, Nevada, this 7 day of May, 1996.

Jacques C. Same
FOREPERSON

1 VER

MAY 2 1996

LUNETTA BOURNARD
BY *[Signature]* Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 FERNANDO PADRON RODRIGUEZ

12 Defendant.

Case No. C130763
Dept. No. VI
Docket B

15 SPECIAL
16 VERDICT

17 We, the Jury in the above entitled case, having found the Defendant, FERNANDO PADRON
18 RODRIGUEZ, Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Richley Miller), designate
19 that the aggravating circumstance or circumstances which have been checked below have been
20 established beyond a reasonable doubt.

21 ✓ The murder was committed by a person who was previously convicted of a felony
22 involving the use or threat of violence to the person of another, to-wit: Robbery (Florida
23 1989).

24 ✓ The murder was committed by a person who was previously convicted of a felony
25 involving the use or threat of violence to the person of another, to-wit: Robbery (Florida
26 1989).

27 ///

28 ///

0504

1 ☒ The murder was committed by a person who knowingly created a great risk of death to
2 more than one person by means of a weapon, device or course of action which would
3 normally be hazardous to the lives of more than one person.

4 ☒ The murder was committed to avoid or prevent a lawful arrest or to effect an escape from
5 custody.
6

7 DATED at Las Vegas, Nevada, this 7 day of May, 1996.
8

9
10 Jacques C. Sagne
11 FOREPERSON
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT B13

EXHIBIT B13

1 VER

MAY 7 1996

BY *[Signature]*

Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 FERNANDO PADRON RODRIGUEZ

12 Defendant.

Case No. C130763
Dept. No. VI
Docket B

15 VERDICT

16 We, the Jury in the above entitled case, having found the Defendant, FERNANDO PADRON
17 RODRIGUEZ, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (Brad Palcovic) and having
18 found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or
19 circumstances impose a sentence of,

20 ☐ A definite term of 50 years, with eligibility for parole beginning when a minimum of
21 20 years has passed

22 ☐ Life in Nevada State Prison With the Possibility of Parole.

23 ☒ Life in Nevada State Prison Without the Possibility of Parole.

24 ☐ Death.

25 DATED at Las Vegas, Nevada, this 7 day of May, 1996

26
27 *Jacques C. Sagne*
28 FOREPERSON

1 VER

MAY 7 1996
LORETTA JOHNSON
BY [Signature] Deputy

2
3
4
5
6 DISTRICT COURT
CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 FERNANDO PADRON RODRIGUEZ

12
13 Defendant.

Case No. C130763
Dept. No. VI
Docket B

14
15 VERDICT

16 We, the Jury in the above entitled case, having found the Defendant, FERNANDO PADRON
17 RODRIGUEZ, Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Richley Miller) and having
18 found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or
19 circumstances impose a sentence of,

20 _____ A definite term of 50 years, with eligibility for parole beginning when a minimum of
21 20 years has passed

22 _____ Life in Nevada State Prison With the Possibility of Parole.

23 X Life in Nevada State Prison Without the Possibility of Parole.

24 _____ Death.

25 DATED at Las Vegas, Nevada, this 7 day of May, 1996

26
27 [Signature]
28 FOREPERSON

CE31

EXHIBIT B14

EXHIBIT B14

FILED IN OPEN COURT
DISTRICT COURT OCT 26 1995 19
CLARK COUNTY, NEVADA LORETTA BOWMAN, CLERK
BY Cindy Horton Deputy
CASE NO.: C126201
DEPT NO.: XV
DCKT NO.: "L"

THE STATE OF NEVADA,
Plaintiff,
vs.
JONATHAN DANIELS,
Defendant.

VERDICT

We, the jury in the above entitled case, find the Defendant JONATHAN CORNELIUS DANIELS, as follows:

COUNT I

Murder of the First Degree (June Mildred Frye)

GUILTY NOT
GUILTY

Murder of the Second Degree (June Mildred Frye)

In the event that you find the Defendant guilty of Count I, you must now decide whether the crime was committed WITH or WITHOUT the use of a deadly weapon. (circle one).

You may only find the Defendant guilty of one of the above.

COUNT II

Murder of the First Degree (Nicasio Diaz)

Murder of the Second Degree (Nicasio Diaz)

In the event that you find the Defendant guilty of Count II, you must now decide whether the crime was committed WITH or WITHOUT the use of a deadly weapon. (circle one).

You may only find the Defendant guilty of one of the above.

621

CF31

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

COUNT III

GUILTY NOT
 GUILTY

First Degree Kidnapping

Second Degree Kidnapping

In the event that you find the Defendant guilty of Count III, you must now decide whether the crime was committed **WITH** or **WITHOUT** the use of a deadly weapon. (circle one).

You may only find the Defendant guilty of one of the above.

COUNT IV

Burglary

_____ X _____

COUNT V

Robbery (June Mildred Frye)

X _____

In the event that you find the Defendant guilty of Count V, you must now decide whether the crime was committed **WITH** or **WITHOUT** the use of a deadly weapon. (circle one).

COUNT VI

Robbery (Nicasio Diaz)

X _____

In the event that you find the Defendant guilty of Count VI, you must now decide whether the crime was committed **WITH** or **WITHOUT** the use of a deadly weapon. (circle one).

DATED this 27 day of October, 1995.

Michael T. Egan
FOREPERSON

EXHIBIT B15

EXHIBIT B15

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JONATHAN CORNELIUS DANIELS,
#1201050

Defendant.

CASE NO. C1126201

DEPT. NO. XV

DOCKET NO. L

SPECIAL

VERDICT

We, the Jury in the above entitled case, having found the Defendant, JONATHAN CORNELIUS DANIELS, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (June Mildred Frye), designate that the mitigating circumstance or circumstances which have been checked below have been established.

☐ The defendant has no significant history of prior criminal activity.

☒ The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.

☒ The defendant acted under duress or under the domination of another person.

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

_____ The youth of the defendant at the time of the crime.

X Any other mitigating circumstances.

DATED at Las Vegas, Nevada, this 1st day of ^{NOVEMBER} ~~October~~, 1995.

Michael J. Engon
FOREPERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

C176201

THE STATE OF NEVADA,

CASE NO. C1126201

Plaintiff,

DEPT. NO. XV

-vs-

DOCKET NO. L

JONATHAN CORNELIUS DANIELS,
#1201050

FILED IN OPEN COURT

Defendant.

NOV 01 1995 19

LORETTA BOWMAN, CLERK

BY Andy Horton
Deputy

SPECIAL

VERDICT

We, the Jury in the above entitled case, having found the Defendant, JONATHAN CORNELIUS DANIELS, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (June Mildred Frye), designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

X

The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.

X

The murder was committed while the person was engaged in the commission of or an attempt to commit any Robbery.

X

The murder was committed to avoid or prevent a lawful arrest or to effect an escape from custody.

643

0831

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

X

The Defendant has, in the immediate proceeding,
been convicted of more than one offense of murder
in the first or second degree.

DATED at Las Vegas, Nevada, this 1st day of ^{November} ~~October~~, 1995

Michael T. Egan
FOREPERSON

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

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JONATHAN CORNELIUS DANIELS,
#1201050

Defendant.

CASE NO. *C126201* ~~61126201~~

DEPT. NO. XV

DOCKET NO. L

FILED IN OPEN COURT
NOV 01 1995

LORETTA SCHWEN, CLERK

Cindy Horton
Deputy

VERDICT

We, the Jury in the above entitled case, having found the Defendant, JONATHAN CORNELIUS DANIELS, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (June Mildred Frye) and having found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

- ☐ Life in Nevada State Prison With the Possibility of Parole.
- ☒ Life in Nevada State Prison Without the Possibility of Parole.
- ☐ Death.

DATED at Las Vegas, Nevada, this 1st day of ~~October~~ *NOVEMBER*, 1995

Michael T. Eason
FOREPERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JONATHAN CORNELIUS DANIELS,
#1201050

Defendant.

CASE NO. C1126201

DEPT. NO. XV

DOCKET NO. L

SPECIAL

VERDICT

We, the Jury in the above entitled case, having found the Defendant, JONATHAN CORNELIUS DANIELS, Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Nicasio Diaz), designate that the mitigating circumstance or circumstances which have been checked below have been established.

☐ The defendant has no significant history of prior criminal activity.

☒ The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.

☒ The defendant acted under duress or under the domination of another person.

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

_____ The youth of the defendant at the time of the crime.

X Any other mitigating circumstances.

DATED at Las Vegas, Nevada, this 1ST day of ^{NOVEMBER} ~~October~~, 1995.

Michael J. Gannon
FOREPERSON

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

DISTRICT COURT
CLARK COUNTY, NEVADA

C126201

THE STATE OF NEVADA,

Plaintiff,

-vs-

JONATHAN CORNELIUS DANIELS,
#1201050

Defendant.

CASE NO. C1126201
DEPT. NO. XV
DOCKET NO. L

FILED IN CLARK COUNTY
NOV 8 1995
Candy Horton

SPECIAL
VERDICT

We, the Jury in the above entitled case, having found the Defendant, JONATHAN CORNELIUS DANIELS, Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Nicasio Diaz), designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

X The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.

X The murder was committed while the person was engaged in the commission of or an attempt to commit any Robbery.

X The murder was committed to avoid or prevent a lawful arrest or to effect an escape from custody.

348

10731

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

X

The Defendant has, in the immediate proceeding,
been convicted of more than one offense of murder
in the first or second degree.

DATED at Las Vegas, Nevada, this 1ST day of ~~October~~ ^{NOVEMBER}, 1995

Michael F. Eason
FOREPERSON

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

DISTRICT COURT

CLARK COUNTY, NEVADA

C124201

THE STATE OF NEVADA,

Plaintiff,

-vs-

JONATHAN CORNELIUS DANIELS,
#1201050

Defendant.

CASE NO. ~~C1126201~~

DEPT. NO. XV

DOCKET NO. L

FILED IN OPEN COURT

NOV 01 1995 19

LORETTA BOWMAN, CLERK

BY

Cindy Horton
Deputy

V E R D I C T

We, the Jury in the above entitled case, having found the Defendant, JONATHAN CORNELIUS DANIELS, Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Nicasio Diaz) and having found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

- ☐ Life in Nevada State Prison With the Possibility of Parole.
- ☒ Life in Nevada State Prison Without the Possibility of Parole.
- ☐ Death.

DATED at Las Vegas, Nevada, this 1st day of ^{NOVEMBER} ~~October~~, 1995

Michael T. Eason
FOREPERSON

EXHIBIT B16

EXHIBIT B16

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RONALD DUCKSWORTH, JR.,

Defendant.

CASE NO. C108501

DEPT. NO. XV

DOCKET NO. L

FILED IN OPEN COURT

OCT 28 1993

LORETTA DOWMAN, CLERK

BY Cindy Horton Deputy

SPECIAL

VERDICT

We, the Jury in the above entitled case, having found the Defendant, RONALD DUCKSWORTH, JR., Guilty of COUNT I - MURDER OF THE FIRST DEGREE (Joseph Smith III), designate that any aggravating circumstance which has been checked below has been established beyond a reasonable doubt and further find that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found.

X

The murder was committed by a person who was previously convicted of a felony involving the use or threat of violence to the person of another.

X

The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a course of action which would normally be hazardous to the lives of more than one person.

X

The murder was committed while a person was engaged, alone or with another, in the commission

1 of or an attempt to commit any Burglary, and the
2 person charged:

3 (a) Killed the person murdered; or

4 (b) Knew or had reason to know that life would be
5 taken or lethal force used; or

6 (c) Acted with reckless indifference to human life
7 and was a major participant in the Burglary
8 committed.

9 X
10 The murder was committed while a person was
11 engaged, alone or with another, in the commission
12 of or an attempt to commit any First Degree
13 Kidnapping, and the person charged:

14 (a) Killed the person murdered; or

15 (b) Knew or had reason to know that life would be
16 taken or lethal force used; or

17 (c) Acted with reckless indifference to human life
18 and was a major participant in the First Degree
19 Kidnapping committed.

20 L
21 The murder was committed while a person was
22 engaged, alone or with another, in the commission
23 of or an attempt to commit any Robbery, and the
24 person charged:

25 (a) Killed the person murdered; or

26 (b) Knew or had reason to know that life would be
27 taken or lethal force used; or

28 (c) Acted with reckless indifference to human life
and was a major participant in the Robbery
committed.

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RONALD DUCKSWORTH, JR.,

Defendant.

CASE NO. C108501

DEPT. NO. XV

DOCKET NO. L

FILED IN OPEN COURT

MAY 28 1993 19

LORETTA BOWMAN, CLERK

BY Cindy Horton Deputy

SPECIAL

VERDICT

We, the Jury in the above entitled case, having found the Defendant, RONALD DUCKSWORTH, JR., Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Vikki Yvett Smith), designate that any aggravating circumstance which has been checked below has been established beyond a reasonable doubt and further find that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found.

X

The murder was committed by a person who was previously convicted of a felony involving the use or threat of violence to the person of another.

X

The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a course of action which would normally be hazardous to the lives of more than one person.

X

The murder was committed while a person was engaged, alone or with another, in the commission

1 of or an attempt to commit any Burglary, and the
2 person charged:

3 (a) Killed the person murdered; or

4 (b) Knew or had reason to know that life would be
5 taken or lethal force used; or

6 (c) Acted with reckless indifference to human life
7 and was a major participant in the Burglary
8 committed.

9 X
10 The murder was committed while a person was
11 engaged, alone or with another, in the commission
12 of or an attempt to commit any First Degree
13 Kidnapping, and the person charged:

14 (a) Killed the person murdered; or

15 (b) Knew or had reason to know that life would be
16 taken or lethal force used; or

17 (c) Acted with reckless indifference to human life
18 and was a major participant in the First Degree
19 Kidnapping committed.

20 X
21 The murder was committed while a person was
22 engaged, alone or with another, in the commission
23 of or an attempt to commit any Robbery, and the
24 person charged:

25 (a) Killed the person murdered; or

26 (b) Knew or had reason to know that life would be
27 taken or lethal force used; or

28 (c) Acted with reckless indifference to human life
and was a major participant in the Robbery
committed.

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

X

The murder was committed while a person was engaged, alone or with another, in the commission of or an attempt to commit any Sexual Assault, and the person charged:

- (a) Killed the person murdered; or
- (b) Knew or had reason to know that life would be taken or lethal force used; or
- (c) Acted with reckless indifference to human life and was a major participant in the Sexual Assault committed.

Y

The murder involved torture, depravity of mind or the mutilation of the victim.

DATED at Las Vegas, Nevada, this 28th day of October, 1993.

Charles M. [Signature]
FOREPERSON

EXHIBIT B17

EXHIBIT B17

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
-vs-
RONALD JR. DUCKSWORTH, aka
RONALD DUCKSWORTH, JR.,
Defendant.

CASE NO. C108501

DEPT. NO. XV

DOCKET NO. L

FILED IN OPEN COURT

OCT 28 1993 19

LORETTA BOWMAN, CLERK

BY Cindy Horton
Deputy

VERDICT

We, the Jury in the above entitled case, having found the Defendant, RONALD JR. DUCKSWORTH, aka RONALD DUCKSWORTH, JR., Guilty, impose a sentence of:

COUNT I - Murder of the First Degree (Joseph Smith III)

X Life with the Possibility of Parole;

 Life without the Possibility of Parole;

 Death.

COUNT II - Murder of the First Degree (Vikki Smith)

X Life with the Possibility of Parole;

 Life without the Possibility of Parole;

 Death.

DATED at Las Vegas, Nevada, this 28th day of October, 1993.

Charles W. CH
FOREPERSON

EXHIBIT B18

EXHIBIT B18

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CARL LEE MARTIN,

Defendant.

CASE NO. C108501

DEPT. NO. XV

DOCKET NO. L

FILED IN OPEN COURT
OCT 28 1993

LORETTA BOWMAN, CLERK

BY Candy Horton
Deputy

SPECIAL

VERDICT

We, the Jury in the above entitled case, having found the Defendant, CARL LEE MARTIN, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (Joseph Smith III), designate that any aggravating circumstance which has been checked below has been established beyond a reasonable doubt and further find that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found.

X

The murder was committed by a person who was previously convicted of a felony involving the use or threat of violence to the person of another.

X

The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a course of action which would normally be hazardous to the lives of more than one person.

X

The murder was committed while a person was engaged, alone or with another, in the commission

1 of or an attempt to commit any Burglary, and the
2 person charged:

3 (a) Killed the person murdered; or

4 (b) Knew or had reason to know that life would be
5 taken or lethal force used; or

6 (c) Acted with reckless indifference to human life
7 and was a major participant in the Burglary
8 committed.

9 X
10 The murder was committed while a person was
11 engaged, alone or with another, in the commission
12 of or an attempt to commit any First Degree
13 Kidnapping, and the person charged:

14 (a) Killed the person murdered; or

15 (b) Knew or had reason to know that life would be
16 taken or lethal force used; or

17 (c) Acted with reckless indifference to human life
18 and was a major participant in the First Degree
19 Kidnapping committed.

20 X
21 The murder was committed while a person was
22 engaged, alone or with another, in the commission
23 of or an attempt to commit any Robbery, and the
24 person charged:

25 (a) Killed the person murdered; or

26 (b) Knew or had reason to know that life would be
27 taken or lethal force used; or

28 (c) Acted with reckless indifference to human life
and was a major participant in the Robbery
committed.

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

— The murder was committed while a person was engaged, alone or with another, in the commission of or an attempt to commit any Sexual Assault, and the person charged:

(a) Killed the person murdered; or

(b) Knew or had reason to know that life would be taken or lethal force used; or

(c) Acted with reckless indifference to human life and was a major participant in the Sexual Assault committed.

— The murder involved torture, depravity of mind or the mutilation of the victim.

DATED at Las Vegas, Nevada, this 28th day of October, 1993.


FOREPERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CARL LEE MARTIN,

Defendant.

CASE NO. C108501

DEPT. NO. XV

DOCKET NO. L

FILED IN OPEN COURT

OCT 28 1993 19

LORETTA DOWNMAN, CLERK

BY

Candy Horton
Deputy

SPECIAL

VERDICT

We, the Jury in the above entitled case, having found the Defendant, CARL LEE MARTIN, Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Vikki Yvett Smith), designate that any aggravating circumstance which has been checked below has been established beyond a reasonable doubt and further find that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found.

X

The murder was committed by a person who was previously convicted of a felony involving the use or threat of violence to the person of another.

X

The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a course of action which would normally be hazardous to the lives of more than one person.

X

The murder was committed while a person was engaged, alone or with another, in the commission

1 of or an attempt to commit any Burglary, and the
2 person charged:

3 (a) Killed the person murdered; or

4 (b) Knew or had reason to know that life would be
5 taken or lethal force used; or

6 (c) Acted with reckless indifference to human life
7 and was a major participant in the Burglary
8 committed.

9 X
10 The murder was committed while a person was
11 engaged, alone or with another, in the commission
12 of or an attempt to commit any First Degree
13 Kidnapping, and the person charged:

14 (a) Killed the person murdered; or

15 (b) Knew or had reason to know that life would be
16 taken or lethal force used; or

17 (c) Acted with reckless indifference to human life
18 and was a major participant in the First Degree
19 Kidnapping committed.

20 X
21 The murder was committed while a person was
22 engaged, alone or with another, in the commission
23 of or an attempt to commit any Robbery, and the
24 person charged:

25 (a) Killed the person murdered; or

26 (b) Knew or had reason to know that life would be
27 taken or lethal force used; or

28 (c) Acted with reckless indifference to human life
and was a major participant in the Robbery
committed.

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

X

The murder was committed while a person was engaged, alone or with another, in the commission of or an attempt to commit any Sexual Assault, and the person charged:

- (a) Killed the person murdered; or
- (b) Knew or had reason to know that life would be taken or lethal force used; or
- (c) Acted with reckless indifference to human life and was a major participant in the Sexual Assault committed.

X

The murder involved torture, depravity of mind or the mutilation of the victim.

DATED at Las Vegas, Nevada, this 2nd day of October, 1993.

Charles W. O'Neil

FOREPERSON

EXHIBIT B19

EXHIBIT B19

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

CARL LEE MARTIN,

Defendant.

CASE NO. C108501

DEPT. NO. XV

DOCKET NO. I

FILED IN OPEN COURT

OCT 24 1993

LORETTA BOWMAN, CLERK

BY Cindy Horton Deputy

VERDICT

We, the Jury in the above entitled case, having found the Defendant, CARL LEE MARTIN, Guilty, impose a sentence of:

COUNT I - Murder of the First Degree (Joseph Smith III)

X Life with the Possibility of Parole;

 Life without the Possibility of Parole;

 Death.

COUNT II - Murder of the First Degree (Vikki Smith)

 Life with the Possibility of Parole;

X Life without the Possibility of Parole;

 Death.

DATED at Las Vegas, Nevada, this 25th day of October, 1993.

Charles W. Ott

FOREPERSON

CE

ORIGINAL

FILED

MAR 18 3 51 PM '10

CLEER COURT

REPLY
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

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

WILLIAM CASTILLO,
#1153209

Defendant.

CASE NO: C133336
DEPT NO: XVIII

STATE'S REPLY TO DEFENDANT'S OPPOSITION
TO STATE'S MOTION TO DISMISS

DATE OF HEARING: 4/9/10
TIME OF HEARING: 10:00 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 Reply to Defendant's Opposition to State's Motion to Dismiss.

This Reply 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.

The instant post-conviction proceedings were initiated by a petition filed on September 18, 2009. The State filed its Response and Motion to Dismiss on December 2, 2009. On February 22, 2010, Petitioner filed his Opposition to the State's Motion to Dismiss. Argument is currently scheduled for April 9, 2010.

RECEIVED

MAR 18 2010

CLERK OF THE COURT

P:\WPDOCS\REPLY\514\51445601.doc

POINTS AND AUTHORITIES**A. Standard of Review**

The Federal Public Defender has incorrectly cited this Court to the standard for a motion for summary judgment in a civil case or for dismissal under NRCP Rule 12(b)(5). However, none of the statutes governing petitions for post-conviction relief provide for the civil remedy of summary judgment as a method for determining the merits of a post-conviction petition for a writ of habeas corpus. Beets v. State, 110 Nev. 339, 871 P.2d 357 (1994). The Nevada Rules of Civil Procedure apply only to the extent they are not inconsistent with NRS Chapter 34. See NRS 34.780. Because NRS Chapter 34 addresses the applicable standards for resolving post-conviction petitions for a writ of habeas corpus, the rules of civil procedure and the standard for summary judgment enunciated by Defendant simply do not apply.

B. Nevada's Procedural Bars are Firmly Established and Regularly Followed

The Nevada Supreme Court has repeatedly upheld Nevada's procedural bars against attacks that they are unconstitutional or are applied in an arbitrary and capricious manner. See Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001). The latest word in this line of cases came in 2005 when the Court again held that the bars are mandatory and have been consistently applied. State v. Dist. Ct. (Riker), 121 Nev. 225, 112 P.3d 1070 (2005). Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory. Id. Thus, Defendant's assertion in this regard has been soundly and repeatedly rejected by the Nevada Supreme Court.

The United States Supreme Court recently ruled that even regularly applied discretionary state procedural bars are adequate to bar federal review of post-conviction claims. Beard v. Kindler, 130 S.Ct. 612, 618 (2009). In Beard, the Supreme Court explicitly held that state bars that "permit consideration of a federal claim in some cases but not others" are adequate if they are firmly established and regularly followed. Id.

1 **C. Law of the Case**

2 The doctrine of the law of the case provides that the law or ruling of a first appeal
3 must be followed in all subsequent proceedings, both in the lower court and on any later
4 appeal. Clem v. State, 119 Nev. 615, 620, 81 P.3d 521, 525 (2003). The doctrine, however,
5 is not absolute, and the Supreme Court has the discretion to revisit the wisdom of its legal
6 conclusions if warranted. Bejarano v. State, 122 Nev. 1066, 1074, 146 P.3d 265, 271 (2006).
7 Even where the law of the case may be revisited or reconsidered, Castillo still has the burden
8 of demonstrating good cause and prejudice to overcome any procedurally defaulted claims.
9 NRS 34.726; 34.810.

10 **D. Castillo Fails to Demonstrate Good Cause for the Delay**

11 **1. Ineffective Assistance of Post-Conviction Counsel**

12 Any errors of first post-conviction counsel Chris Oram occurred seven to ten years
13 ago between 2000 and 2003 and can not possibly provide good cause for the current second
14 post-conviction petition filed in 2009. Even where a petitioner may file a successive petition
15 in order to allege the ineffectiveness of first post-conviction counsel, he must still raise these
16 matters in a reasonable time to avoid application of procedural default rules. See Pellegrini
17 v. State, 117 Nev. 860, 869-70, 34 P.3d 519, 525-26 (2001) (holding that the time bar in
18 NRS 34.726 applies to successive petitions); see generally Hathaway v. State, 119 Nev. 248,
19 252-53, 71 P.3d 503, 506-07 (2003) (stating that a claim reasonably available to the
20 petitioner during the statutory time period did not constitute good cause to excuse a delay in
21 filing). A claim of ineffective assistance of first post-conviction counsel must itself be
22 timely raised:

23 A claim of ineffective assistance of counsel may also excuse a procedural
24 default if counsel was so ineffective as to violate the Sixth Amendment.
25 However, in order to constitute adequate cause, the ineffective assistance of
26 counsel claim itself must not be procedurally defaulted. In other words, a
27 petitioner must demonstrate cause for raising the ineffective assistance of
28 counsel claim in an untimely fashion.

26 State v. District Court (Riker), 121 Nev. 225, 112 P.3d 1070 (2005). No error of first post-
27 conviction counsel in 2000 can account for the subsequent nine year delay in filing the
28 instant petition.

1 **a. Pursuit of Federal Remedies**

2 After his first state post-conviction proceedings concluded in 2003, Castillo elected to
3 pursue federal relief. Castillo litigated his federal claims for five years from 2004 to 2009 in
4 Case # 2:04-cv-00868-RCJ-GWF. This is the real cause of the delay in filing the instant
5 petition. Notably, pursuit of federal remedies does not constitute good cause to overcome
6 state procedural bars. Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989). In Colley, the
7 defendant argued that he appropriately refrained from filing a state habeas petition during the
8 four years he pursued a federal writ of habeas corpus. The Nevada Supreme Court
9 disagreed:

10 Should we allow Colley's post-conviction relief proceeding to go forward, we
11 would encourage offenders to file groundless petitions for federal habeas
12 corpus relief, secure in the knowledge that a petition for post-conviction relief
13 remained indefinitely available to them. This situation would prejudice both
the accused and the State since the interest of both the petitioner and the
government are best served if post-conviction claims are raised while the
evidence is still fresh.

14 Id. The state procedural rules simply do not afford a petitioner the luxury of federal counsel
15 and an investigation before being required to bring state claims. When Castillo filed his pro
16 per federal habeas petition on June 22, 2004, he could have just as easily filed that petition in
17 State court instead. State post-conviction remedies operate independently of federal
18 remedies. Castillo could have filed a second state post-conviction petition at any time,
19 including during litigation of his federal petition.

20 **b. Relevance of Attorney Performance Guidelines**

21 The problem with Castillo's reliance upon the ABA Guidelines is that indigent
22 defendants are not constitutionally entitled to "high quality legal representation" which is the
23 stated objective of the ABA Guidelines, because Strickland only requires a constitutionally
24 reasonable standard of attorney performance. With respect to such performance standards,
25 the United States Supreme Court has held:

26 No particular set of detailed rules for counsel's conduct can satisfactorily take
27 account of the variety of circumstances faced by defense counsel or the range
28 of legitimate decisions regarding how best to represent a criminal defendant. Restatements of professional standards, we have recognized, can be useful as
"guides" to what reasonableness entails, but only to the extent they describe
the professional norms prevailing when the representation took place.

1 Bobby v. Van Hook, 130 S.Ct. 13, 16-17 (2009) (internal quotations removed); see also
2 Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052 (1984) ("American Bar
3 Association standards and the like" are "only guides" to what reasonableness means, not its
4 definition). While private groups such as the ABA "are free to impose whatever specific
5 rules they see fit to ensure that criminal defendants are well represented, we have held that
6 the Federal Constitution imposes one general requirement: that counsel make objectively
7 reasonable choices." Bobby v. Van Hook, 130 S.Ct. at 16-17 citing Roe v. Flores-Ortega,
8 528 U.S. 470, 479, 120 S.Ct. 1029 (2000). Notably, the Supreme Court has declined to
9 express a view on whether the 2003 ABA Guidelines accurately reflect prevailing norms.
10 Bobby v. Van Hook, *supra*, fn 1.

11 Nevada likewise recognizes that attorney performance standards are "intended to
12 serve as a guide for attorney performance" but that "steps actually taken should be tailored to
13 the requirements of a particular case." Nevada Indigent Defense Standards of Performance,
14 Standard 1(b), (c) (ADKT No. 411). Such standards "are not intended to be used as criteria
15 for the judicial evaluation of alleged misconduct of defense counsel to determine the validity
16 of a conviction." *Id.* at Standard 1(d). Most notably, Nevada's attorney performance
17 standards do not "override, expand or extend" the standard for attorney performance as
18 defined by Strickland and its progeny. *Id.*

19 **G. Intervening Changes in Law**

20 **1. McConnell v. State**

21 McConnell was decided in 2004, and yet Castillo delayed five years before raising the
22 claim in State court. McConnell v. State, 120 Nev. 1043, 102 P.3d 606 (2004).
23 Additionally, even once McConnell was held to be retroactive, Castillo still delayed another
24 three years before raising the claim. Bejarano v. State, 122 Nev. 1066, 146 P.3d 265 (2006).
25 Because a McConnell claim is untimely at this point and Castillo has failed to offer a good
26 cause explanation for the entire length of the delay, his claim is procedurally barred.

27 This Court "may excuse the failure to show cause where the prejudice from a failure
28 to consider the claim amounts to a 'fundamental miscarriage of justice.'" Pellegrini v. State,

1 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). In this context, the fundamental miscarriage of
2 justice standard is met if Castillo "makes a colorable showing he is ... ineligible for the death
3 penalty." Pellegrini, 117 Nev. at 887, 34 P.3d at 537. He must show by clear and
4 convincing evidence that, but for a constitutional error, no reasonable juror would have
5 found him death eligible. Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993),
6 citing Sawyer v. Whitely, 505 U.S. 333, 112 S.Ct. 2514 (1992).

7 Applying McConnell, only the felony-burglary and felony-robbery aggravators would
8 be stricken and two valid aggravators would remain, namely being convicted of a prior crime
9 of violence, and murder committed to avoid or prevent a lawful arrest. Considering the
10 brutality of the murder and relatively weak mitigation evidence, Castillo has failed to show
11 by clear and convincing evidence that the felony-aggravators were so pivotal to the jury's
12 determination that without it he would not have been found death eligible. Therefore, he is
13 not actually innocent of the death penalty and there is no fundamental miscarriage of justice
14 warranting consideration of his McConnell claim. Contary to Castillo's arguments, the
15 reweighing analysis is limited to the trial record. See Rippo v. State, 122 Nev. 1086, 1093-
16 94, 146 P.3d 279, 284 (2006); Archanian v. State, 122 Nev. 1019, 1040-41, 145 P.3d 1008,
17 1023 (2006); see also Bridges v. State, 116 Nev. 752, 766, 6 P.3d 1000, 1010 (2000) (stating
18 that the Court "elected to explicitly reweigh the aggravating and mitigating circumstances
19 based upon our independent review of the trial record"). In Haberstroh v. State, 119 Nev.
20 173, 184 n.23, 69 P.3d 6767, 683 n.23 (2003), the Court emphasized that its reweighing did
21 not involve factual findings "other than those of the jury at the original penalty hearing."
22 Because the reweighing analysis asks whether it is "clear beyond a reasonable doubt that
23 absent the invalid aggravators the jury still would have imposed a sentence of death,"
24 Bejarano, 122 Nev. at 1081, 146 P.3d at 276, the analysis, by its very nature, addresses only
25 the evidence considered by the jury.

26 2. Byford v. State and Polk v. Sandoval

27 Clearly, Castillo disagrees with the Nevada's Supreme Court's recent decision in
28 Nika v. State, 124 Nev. Adv. Op. 103, 198 P.3d 839 (Dec. 31, 2008). However, the fact

1 remains that Nika is the current law and that Byford is not retroactive. The Ninth Circuit's
2 case did not discuss state retroactivity rules and did not apply its reasoning to cases that are
3 already final. Polk v. Sandoval, 503 F.3d 903 (9th Cir. 2007). Castillo's conviction was final
4 upon issuance of Remittitur in 1999 well before the Byford decision. According to Nika,
5 Castillo is not entitled to application of the Byford decision and it therefore does not
6 constitute good cause as an intervening change in law.

7 **3. Baze v. Rees**

8 This issue has been put to rest. A challenge to the constitutionality of Nevada's lethal
9 injection protocol is not cognizable in a post-conviction petition for writ of habeas corpus in
10 a death penalty case. McConnell v. State, 125 NevAdvOp 24, 212 P.3d 307 (July 23, 2009).

11 **H. Laches**

12 Pursuant to NRS 34.800, prejudice is *presumed* after five years. It has now been
13 fourteen (14) years since this case was last tried. Even if Castillo could overcome the
14 presumption of prejudice, the current petition is still procedurally barred under NRS 34.726
15 and 34.810.

16 **I. No Evidentiary Hearing is Warranted**

17 A defendant is entitled to an evidentiary hearing if his petition is supported by
18 specific factual allegations, which, if true, would entitle him to relief, unless the factual
19 allegations are belied by the record. Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603,
20 605 (1994). "The judge or justice, upon review of the return, answer, and all supporting
21 documents which are filed, shall determine whether an evidentiary hearing is required." NRS
22 34.770(1). However, "[a] defendant seeking post-conviction relief is not entitled to an
23 evidentiary hearing on factual allegations belied or repelled by the record." Hargrove v.
24 State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984); citing Grondin v. State, 97 Nev. 454,
25 634 P.2d 456 (1981).

26 Even assuming all of Petitioner's factual allegations are true, he still would not be
27 entitled to relief on this second petition. Petitioner's stated need for an evidentiary hearing
28 in order to demonstrate good cause and prejudice to overcome the procedural bars is contrary

1 to law. Petitioner must first offer a good cause explanation for filing an untimely successive
2 petition and prejudice such that he would have been entitled to a new trial or penalty hearing
3 if the claim had been timely filed. As argued above, none of Petitioner's allegations rise to
4 this level.

5 WHEREFORE, Petitioner's successive and untimely petition must be dismissed.

6 DATED this 18th day of March, 2010.

7 Respectfully submitted,

8 DAVID ROGER
9 Clark County District Attorney
Nevada Bar #002781

10
11
12 BY



13 STEVEN S. OWENS
14 Chief Deputy District Attorney
15 Nevada Bar #004352
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of State's Reply to Defendant's Opposition to State's Motion to Dismiss, was made this 18th day of March, 2010, by facsimile transmission to:

GARY TAYLOR
NISHA BROOK-WHITTINGTON
FAX #(702) 388-5819



Employee, District Attorney's Office

SSO/ed



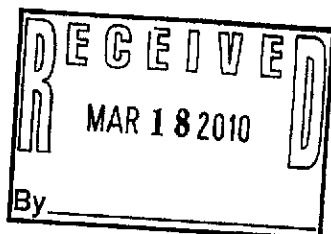
DAVID ROGER
District Attorney

CHRIS OWENS
Assistant District Attorney

TERESA M. LOWRY
Assistant District Attorney

MARY-ANNE MILLER
County Counsel

OFFICE OF THE DISTRICT ATTORNEY
CRIMINAL APPEALS UNIT



STEVEN S. OWENS
Chief Deputy District Attorney

FACSIMILE TRANSMISSION

Fax No. (702) 382-5815

Telephone No. (702) 671-2750

TO: Gary Taylor / Nisha Brooks-Whittington FAX#: (702) 388-5819
FROM: Steven S. Owens
SUBJECT: William Castillo, C133336, Reply
DATE: March 18, 2010

NO. OF PAGES, EXCLUDING COVER PAGE: 9
Please call (702) 671-2750 if there are any problems with transmission

3
FILED

APR 21 9 39 AM '10

Anna L. Lanning
CLERK OF THE COURT

1 TRAN

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

2
3
4 STATE OF NEVADA,) CASE NO. C133336
5)
6 Plaintiff,) DEPT. NO. XVIII
7 vs.)
8 WILLIAM P. CASTILLO,)
9 Defendant.)

10
11 BEFORE THE HONORABLE DAVID B. BARKER, DISTRICT COURT JUDGE

12 RECORDER'S TRANSCRIPT RE:
13 PETITION FOR WRIT OF HABEAS CORPUS;
14 STATE'S MOTION TO DISMISS DEFENDANT'S SECOND PETITION FOR
15 WRIT OF HABEAS CORPUS

16
17
18 FRIDAY, APRIL 9, 2010

19 APPEARANCES:

20 FOR THE STATE:

STEVEN S. OWENS, ESQ.
Chief Deputy District Atty.

21
22 FOR THE DEFENDANT:

NISHA N. BROOKS, ESQ.
GARY A. TAYLOR, ESQ.
Asst. Fed. Public Defenders

23
24
25 RECORDER/TRANSCRIBER:

RECEIVED
APR 21 2010

RICHARD L. KANGAS

CLERK OF THE COURT

1 LAS VEGAS, CLARK COUNTY, NEVADA

2 FRIDAY, APRIL 9, 2010, 10:07 A.M.

3 * * * * *

4 THE COURT: This is C2' - or, excuse me, 133336,
5 State of Nevada versus Castillo, William Castillo.

6 Will the parties state their appearances for the
7 record, please.

8 MR. OWENS: Steve Owens for the State.

9 THE COURT: Thank you, Mr. Owens.

10 MS. BROOKS: Nisha Brooks-Whittington, Your Honor,
11 on behalf of Mr. Castillo -

12 THE COURT: Thank you, Ms. Brooks.

13 MS. BROOKS: - and Gary Taylor with the Federal
14 Public Defender's Office.

15 THE COURT: Thank you, Mr. Taylor.

16 All right, this is an action in post-conviction,
17 petition for writ of habeas corpus.

18 This is your motion, counsel.

19 MS. BROOKS: Your Honor, I'll begin with the
20 procedural default bars in this case do not apply. NRS
21 34.726, 34.800 and .810 are overcome by a showing of good
22 cause and prejudice.

23 Your Honor, we submit that we have demonstrated
24 good cause and prejudice through the ineffective assistance
25 of trial, appellate, and post-conviction counsel. We've

1 also demonstrated good cause and prejudice through the
2 intervening changes of law that occurred in McConnell and
3 Bejarano, also Baze vs. Rees and lastly through the Ninth
4 Circuit decision of Polk versus Sandoval.

5 We further would argue, Your Honor, that even in
6 the absence of good cause that failure to consider the
7 claims that are in the Mr. Castillo's petition would result
8 in a fundamental miscarriage of justice.

9 THE COURT: All right.

10 MS. BROOKS: I begin first with the McConnell
11 claim. Mr. Castillo was charged with first degree murder
12 under dual theories of premeditation and deliberation, and
13 felony murder, robbery and burglary. The jury's verdict
14 form did not allow it to indicate under which theory it
15 found first degree murder. The jury returned a guilty
16 verdict, and then in the penalty hearing the State charged -
17 or alleged two aggravating circumstances, both felony
18 murder-robbery and burglary. The jury found that four
19 aggravating circumstances existed, which included the
20 burglary and robbery, and they also found that there were
21 three mitigating circumstances. In the end, the jury
22 concluded that the aggravating circumstances outweighed the
23 mitigating circumstances.

24 We would argue, Your Honor, that this Court
25 shouldn't consider reweighing the aggravators versus the

1 mitigators. The jury itself is in a unique position to
2 consider those issues. The jury heard the evidence that was
3 presented. The jury was able to listen and see the
4 expressions of the witnesses when they testified. The jury
5 was also able to see the defendant as he sat and determine
6 if he demonstrated any remorse or any sorrow for the crime
7 that was committed. Unfortunately, the Court is unable to
8 do that.

9 And I would also point the Court to footnote 5 in
10 our opposition to the motion to dismiss in which we
11 highlight there are a number of cases in which you can see
12 that the jury is unpredictable as far as what they consider
13 and the weight they place on mitigating and aggravating
14 circumstances.

15 In the event that the Court did decide to reweigh,
16 because we understand that there is authority that exists
17 that gives this Court the ability to do that, if it does, we
18 argue that the evidence demonstrates that the Court would be
19 unable to determine beyond a reasonable doubt that the jury
20 would return a death verdict.

21 The two aggravating circumstances that remain, one
22 is the preventing or avoiding lawful arrest aggravator, and
23 the second aggravator that remained is the prior violent
24 felony aggravator. Mr. Castillo was convicted of a robbery
25 and at that time he was nineteen years old. The

1 circumstances of those aggravating circumstances we believe
2 are weak. The prior violent felony aggravator, as I said,
3 he was nineteen years old when he committed the offense, the
4 witness did not testify at the trial, and there was no
5 evidence of physical injuries or abuse.

6 In regards to the preventing or avoiding lawful
7 arrest, again it is weak. That aggravator relates to the
8 specific - the crime, so no additional evidence was
9 presented to support that aggravating circumstance.

10 When you balance those against the three mitigating
11 circumstances that the jury found, in addition to the
12 mitigating evidence that we presented in this petition that
13 was not disclosed to the jury, we believe that the jury
14 would not have returned a death verdict.

15 Now I move on to our claim that good cause is
16 demonstrated by the ineffective assistance of trial,
17 appellate and post-conviction counsel. Now, the State has
18 argued that ineffective assistance of trial and appellate
19 counsel has already been decided by the Nevada courts and is
20 therefore barred by the law of the case doctrine. Well, we
21 would argue that that isn't so. The evidence that we
22 presented in this petition demonstrating trial counsel's
23 errors were not presented in prior - in the Nevada court
24 system, therefore we overcome the law of the case doctrine
25 because the evidence is substantially different.

1 The next, ineffective assistance of post-conviction
2 counsel, claim was never presented before this Court, and we
3 are now presenting that claim. And we demonstrated here
4 again the allegations made in the petition that he, Mr.
5 Castillo, was evaluated by two mental health professionals.

6 One was a neuro-psychologist; he performed a neuro-
7 psychological examination and testing. He determined that
8 Mr. Castillo suffered from organic brain damage, and Mr.
9 Castillo also suffered from post-traumatic stress disorder.
10 And this particular expert is named Dr. Jonathan Mack. Dr.
11 Mack considered records that were never provided to the
12 expert that was called by trial counsel, which was Dr.
13 Etcoff. So we would submit that Dr. Mack's evaluation was
14 substantially more comprehensive than that completed by Dr.
15 Etcoff.

16 We also submitted information from Dr. Rebekah
17 Bradley, who is a professor and clinical director of
18 veterans who suffer from post-traumatic stress disorder. So
19 she was able to evaluate Mr. Castillo, review the records in
20 this case, and she also determined that Mr. Castillo
21 suffered from post-traumatic stress disorder.

22 There's also a number of declarations submitted
23 within our petition from individuals who trial counsel
24 failed to investigate, failed to sit down and speak with.
25 Those individuals included Mr. Castillo's aunts, uncles,

1 foster care parents. He was in the foster care system for a
2 number of years, and that information was not revealed to
3 the jury.

4 I would next like to discuss the - and we
5 understand that this - that the Nevada Supreme Court has
6 determined that premeditation and deliberation instruction
7 is not to be applied retroactively and that it is not a
8 constitutional violation. However, to preserve the record
9 we continue to argue that the premeditation and deliberation
10 instruction in Mr. Castillo's case denied him due process.
11 The jury was given a definition as to what is premeditation,
12 but it was given no definition as to what deliberation and
13 willfulness is, what those two terms mean. So in effect,
14 the State was allowed to avoid its burden of proving all
15 three elements of first degree murder.

16 And on that I'll sit and ask if I will be able to
17 respond to the State's argument.

18 THE COURT: Very good.

19 MS. BROOKS: Thank you, Your Honor.

20 THE COURT: Counsel's response.

21 MR. OWENS: Your Honor, this is a second State
22 habeas petition filed many years after issuance of a
23 remittitur from direct appeal. In fact, it's ten years
24 after issuance of a remittitur on direct appeal, and so it's
25 in violation of the one-year time bar under NRS 34.726.

1 The first post-conviction proceedings took place
2 from 1999 through 2003 with Christopher Oram. At the
3 conclusion of those proceedings in '03 we've got a delay of
4 six years before returning to State Court to file this
5 second petition. The first post-conviction proceedings were
6 the subject of an appeal to the Nevada Supreme Court, but
7 that was affirmed in 2004. So we've still got a delay of
8 five years once they concluded their state appeal and the
9 state proceedings that all related to the first post-
10 conviction proceedings.

11 During those five years they were in Federal Court.
12 They filed a Federal petition on June 22nd, 2004. My
13 argument is that they could have filed the petition there,
14 which they did on that date; then they could've filed that
15 same petition here in State Court. By electing to go to
16 Federal Court, they waived their right to proceed on any
17 further timely State post-conviction claims that they were
18 aware of, or that had been ripe at that time. The Colley
19 case says that pursuant of Federal remedies doe not
20 constitute good cause.

21 Also, during that five years that they were in
22 Federal Court we have an additional fact here. I attached
23 paperwork to our response and motion to dismiss that shows
24 that Mr. Castillo waived his right even to pursue a Federal
25 appeal post-conviction. An order granting voluntary

1 dismissal of that was in 2007, and he elected to be executed
2 and have his sentence carried out. And so for the better
3 part - almost a year, not quite a year, he wanted to be
4 executed and waived all his rights, and so the delay is
5 further attributed then to his voluntary waiver of seeking
6 any post-conviction or appellate rights. He then changed
7 his mind, reinstituted Federal proceedings. And then they
8 come back down here finally in 2009 with their second State
9 petition.

10 Their good cause for overcoming the three time bars
11 that we have alleged first is ineffective assistance of
12 post-conviction counsel. I agree that as a capital litigant
13 Castillo had a right to effective assistance of counsel
14 during his first post-conviction proceedings, and that would
15 be by Mr. Oram.

16 However, that claim was fully ripe and ready to be
17 adjudicated at the conclusion of the first proceedings in
18 2003, and at the latest in 2004, and they have no good cause
19 explanation for the five-year delay since then in returning
20 to litigate this. And so because their ineffective
21 assistance of counsel claims themselves are not timely
22 raised, and they don't have a good cause explanation for the
23 entire length of the delay and they can't explain those five
24 years, those claims are procedurally barred, and there's no
25 good cause that overcomes them. So this Court cannot look

1 at ineffective assistance of post-conviction counsel as
2 constituting any kind of good cause.

3 As to intervening law, Baze v. Rees, even if it did
4 give them a new cause of action, that argument has been put
5 to rest by the McConnell decision in 2009 where the Nevada
6 Supreme Court said it is a claim that is simply not
7 cognizable in a post-conviction petition.

8 A challenge to the lethal injection protocol,
9 that's within the discretion of the warden over at the
10 prison; it has nothing to do with the judgment of
11 conviction. The Court simply sentences someone to die by
12 lethal injection. The manner in which the injection
13 procedure is carried out has nothing to do with the
14 judgment, and therefore it is not cognizable in a post-
15 conviction petition. So that claim simply can't even be
16 raised in a post-conviction brief.

17 Polk and Byford, it's the Nika case that says that
18 Byford is not retroactive. Polk did not address the
19 retroactivity of the Byford decision, and so Polk does not
20 provide them any relief, even if they had timely raised this
21 after the Polk decision. Castillo's conviction was final
22 upon issuance of a remittitur on April 28th, 1999. The Nika
23 case clearly says - and that's consistent with Garner and a
24 whole slew of cases that came after Byford, that say that
25 change in law or the new instructions that are enunciated in

1 Byford simply are not retroactively applicable to anyone
2 whose remittitur issued prior to 2000. So he is not
3 entitled to relief under those cases, and it provides him no
4 good cause explanation for raising the claim now.

5 As to the McConnell claim, as intervening case
6 authority it is not timely raised. Certainly at the time
7 McConnell came out they may have been able to say that, hey,
8 this was a claim not previously available to us, intervening
9 change of law, that's an impediment external to the defense
10 that prevented us from raising that. But they have now
11 waited five years since issuance of McConnell, and three
12 years since issuance of Bejarano which held McConnell to be
13 retroactive. They have no good cause explanation for that
14 part of the three- to five-year delay for returning to State
15 Court with that claim, and so McConnell as intervening case
16 authority does not constitute good cause.

17 However, they do raise, as to the McConnell claim,
18 an actual innocence or fundamental miscarriage of justice
19 allegation. Actual innocence, fundamental miscarriage of
20 justice overcome all the procedural bars. I would first
21 argue, and the Supreme Court disagrees with me and has
22 applied actual innocence to a McConnell claim, but I would
23 argue that that is not even appropriate.

24 Actual innocence, the case authority talks about
25 that that type of claim to overcome procedural bars is

1 dependent upon a factual claim of innocence, not legal
2 innocence. McConnell is simply talking about legal
3 innocence; it's an aggravator that fails to narrow under the
4 constitution, arguably the burglary and the robbery
5 aggravators. There's no new evidence here showing that he
6 is innocent, that he didn't commit a burglary or that he
7 didn't commit a robbery; no new evidence to come forward to
8 say that he's innocent factually, that somehow the facts
9 have changed. What has changed is the law. I think that's
10 the quintessential type of legal innocence claim that should
11 not be reviewable under actual innocence to overcome
12 procedural bars.

13 Having said that, I acknowledge the Supreme Court
14 has applied McConnell under an actual innocence-type
15 argument, but I intend to continue my argument with the
16 Supreme Court and hopefully get them to reverse themselves
17 on that.

18 Looking at it in terms of actual innocence, I would
19 note that the two aggravators affected are the robbery and
20 the burglary. The two aggravators that we have remaining
21 though are very strong, valid aggravators: prior crime of
22 violence, being a robbery, and to avoid or prevent lawful
23 arrest.

24 The preventing lawful arrest arose from, during the
25 commission of this robbery of an occupied dwelling of an

1 elderly female victim, eighty-six years of age, one of the
2 defendants bumped into a wall, made some noise. There was
3 concern of waking the victim out of sleep, and so that would
4 disrupt their plans to commit the robbery and so they took a
5 tire iron, specifically William Castillo took a tire iron to
6 this sleeping eighty-six-year-old woman and beat her head
7 in, killing her, listening to her gurgle on her own blood.
8 Those are horrific facts. She was killed in order to
9 prevent her from calling the police, alerting neighbors,
10 alerting authorities to get them apprehended for this home
11 burglary that they were doing.

12 Also, they returned to the dwelling to burn it down
13 in order to remove fingerprints, further evidencing their
14 intent to not be apprehended, to get away with this and not
15 be identified. So that is a strong aggravator, the way in
16 which she was murdered.

17 I would note that an aggravation was also brought
18 up that Castillo had an extensive juvenile history and
19 record. He began running away from home when he was just
20 nine years old. Interestingly, as a juvenile he was charged
21 with attempted murder and arson, eerily similar to the facts
22 of the instant case, at least the charges are; I don't know
23 so much about the facts, other than it had to do with the
24 Circus Circus Hotel. But a prior attempt murder and arson,
25 and now we've got him actually murdering somebody and

1 burning their home down. That was as a juvenile; also
2 marijuana, speed, cocaine and alcohol usage as a juvenile.

3 Interestingly, they found no evidence of a
4 neurological disorder, only that he suffered from a
5 personality disorder. That is not such a significant mental
6 illness or mental health impairment that that's gonna carry
7 a whole lot of weight with a jury. I understand that their
8 psychologist that they've retained recently would disagree
9 and find organic brain damage. To the extent we buy into
10 this pseudo-science of psychology and the ever-changing,
11 evolving diagnoses, the evidence that the jury had before it
12 was that there was no evidence of a neurological disorder.

13 I would note that reweighing is the equivalent of
14 harmless error analysis. The Federal PD said the Court
15 should not engage in reweighing, they've acknowledged that
16 the authority is against them. Reweighing is a bit of a
17 misnomer. The Nevada Supreme Court has said it's the
18 equivalent of harmless error, which courts engage in all the
19 time; it is exactly what courts should be doing.

20 However, we should not be taking into consideration
21 any new mitigation evidence such as their new doctors and
22 this organic brain damage. That would be fact-finding that
23 is reserved for a jury.

24 In McConnell, it is simply removing the two
25 aggravators and assessing the evidence that was actually

1 heard in the penalty hearing to determine whether or not the
2 jury still would have voted beyond a reasonable doubt for
3 the death penalty. So you can't introduce any new facts
4 into that equation because it's essentially harmless error.

5 Additionally, as a juvenile, age seventeen,
6 Castillo escaped from a youth training facility. At age
7 nineteen or twenty, I wasn't sure which, he was convicted of
8 a robbery, in 1993, and he had a gun; and that served as the
9 other aggravator, prior crime of violence, in this case.
10 And incidentally, in the current case they were faced with
11 another robbery, this time of a home dwelling. And so he's
12 committed a prior murder - or a prior robbery just like he's
13 been convicted of here in front of this jury, so that's a
14 strong aggravator.

15 He had multiple disciplinary infractions while in
16 prison. He was released from prison on the robbery after
17 just doing two years; he released in May of '95. In June he
18 participated in an armed robbery again, although he was not
19 formally charged with that. In December of '95 he was
20 charged with battery upon one of his neighbors, and then
21 later in that month of December is when he committed this
22 instant crime. She he hardly has been out of prison any
23 time without returning to a crime of violence.

24 In mitigation, they diagnose reactive attachment
25 disorder, attention deficit hyperactivity disorder. We hear

1 a lot about ADHD; it's not a real strong mental health
2 illness that is going to somehow be weighty in the minds of
3 the jurors.

4 I would note that the mitigators that they did find
5 was the defendant's youth, he was twenty-two years old,
6 extreme mental disturbance. And any other mitigating factor
7 we don't know what else the jury may have found under that,
8 but I would suggest that none of it is so significant that
9 it's going to outweigh these two strong aggravators.

10 There was evidence that Castillo was physically and
11 emotionally abused by his biological father, lack of
12 affection from his mother, and there was instability in the
13 family.

14 That is the penalty phase evidence that the jury
15 was confronted with. I don't think in doing the harmless
16 error analysis under McConnell that even if the Court were
17 to apply this actual innocence claim to McConnell that this
18 Court could say beyond a reasonable doubt that the jury
19 would not have found for death; to the contrary, they still
20 would have. These facts would have all remained the same,
21 even without the burglary and the robbery aggravators. And
22 so I think the Court can dispose of that claim as well, and
23 the petition should be dismissed.

24 THE COURT: All right. Anything else?

25 MS. BROOKS: Yes, Your Honor. Excuse me.

1 In response to the first issue, the McConnell
2 issue, I first would like to discuss the nature of the
3 crime, the robbery. Mr. Castillo and another gentleman were
4 in a vehicle near the Strip area driving, and Mr. Castillo
5 reached outside of the car and snatched a purse from a woman
6 walking down the street. Mr. Castillo was not the driver of
7 the vehicle, he was a passenger, and he snatched the woman's
8 purse. We're not in any way minimizing the crime, which on
9 considering those facts and considering that there were no
10 physical injuries, no physical harm done to the individual,
11 we believe that this is not a strong aggravating
12 circumstance.

13 Also, Your Honor, in considering that the two
14 invalid felony murder aggravators are dismissed, they are no
15 longer looked at in this case, you can - and if this Court
16 is going to reweigh, you would consider those two
17 aggravators, the mitigating circumstances the jury already
18 found, in addition to all of the mitigating evidence that we
19 have presented in the petition, under the Nevada Supreme
20 Court case in Haberstroh, the Court there considered all of
21 the evidence, including evidence that was presented in the
22 petition, not just the evidence that the jury was able to
23 view or hear during the trial.

24 I would next like to address the - excuse me - the
25 delay that the State says it took for us to file this

1 petition. Your Honor, when the Federal Public Defender's
2 Office was appointed to this case, in all of our cases we
3 attempt to protect our client's rights, both in the State
4 Court and in the Federal Court. And by doing so we
5 diligently investigate and do our very best to uncover and
6 discover all of the evidence that is available in a case and
7 present it to the Court.

8 We did so in this case. It took some time for us
9 to do that. We spoke with different witnesses, we obtained
10 declarations. We had Mr. Castillo evaluated by two experts;
11 we received their reports.

12 We also sought to return to State Court in a
13 sufficient amount of time to present the petition, and we
14 did so in not a piecemeal fashion. If the State would
15 prefer us to file a petition in Federal Court and then
16 return to State Court with, for instance, one issue with
17 narrow factual support to support the claims that we're
18 making, then we can gladly do that, Your Honor, but I don't
19 think that's what the Nevada Supreme Court, or any of the
20 courts in Nevada, would prefer us to do.

21 I would next like to address the issue of Mr.
22 Castillo's juvenile record. The State says that a number of
23 incidents occurred when Mr. Castillo was a juvenile. We
24 reiterate that those things happened when he was in fact a
25 juvenile, he was underage. And the State mentioned

1 specifically that Mr. Castillo was charged with a crime,
2 attempted murder I believe, and we assert to the Court that
3 that was a charge, not a conviction, and that it shouldn't
4 be considered in the weighing.

5 The - I would next like to suggest to the Court
6 that an evidentiary hearing be held in this case. All of
7 the factual allegations we presented in this petition are
8 not belied by the record.

9 In the Nevada Supreme Court case of Hargrove versus
10 State the Court determined that when factual allegations are
11 belied by the record an evidentiary hearing should not be
12 held, and we're arguing the exact opposite: that the
13 factual allegations are not belied by the record.

14 And there is no prejudice to the State if this
15 Court determines that a new hearing, a new penalty hearing,
16 or a new trial for that matter, should be held. All of the
17 declarations that we've presented, those witnesses are
18 available to be cross-examined. The trial court record is
19 still available and can be used. And the State - there is
20 no prejudice to the State to hold a hearing in this matter.

21 If the Court doesn't have any questions -

22 THE COURT: I don't.

23 Counsel, any response?

24 MS. BROOKS: Thank you, Your Honor.

25 MR. OWENS: On the evidentiary hearing, I agree

1 that is the standard. However, they have to have stated
2 allegations which if true would entitle them to relief.
3 There's no allegations of good cause that would enable you
4 to reach the merits of any of their claims. They've got to
5 come -

6 THE COURT: On the procedural aspects, right.

7 MR. OWENS: Right, on procedural bars. So there's
8 no need to have an evidentiary hearing and dive into the
9 merits of any of their claims if they have not alleged any
10 good cause and prejudice through which the Court could find,
11 or reach the merits of those claims. So I don't think
12 there's an evidentiary hearing warranted.

13 THE COURT: All right. Well argued, well briefed.

14 I believe in going through the chronology of events
15 that have occurred since 1997 involving Judge Saitta - Judge
16 Maupin, Judge Saitta, the actions both at this level and
17 Federal level, that the appropriate decision is to deny the
18 petition for writ of habeas corpus.

19 I direct the State to prepare findings of facts and
20 conclusions of law consistent with their opposition, submit
21 to the Federal Public Defender for review and comment, and
22 to my chambers for signature.

23 Anything else?

24 MR. OWENS: No.

25 MS. BROOKS: No, Your Honor.

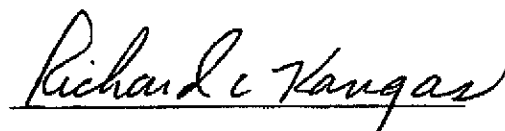
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Thank you very much.

PROCEEDING CONCLUDED AT 10:34 A.M.

* * * * *

ATTEST: I do hereby certify that I have transcribed the audio-
video recording of this proceeding in the above-entitled case to
the best of my ability.



RICHARD L. KANGAS,

Court Recorder/Transcriber

ORIGINAL

Home	Case 96-C-133336-C	Just Ct. Case# 95-GJ-00209	Status REOPENED
Summary	Plaintiff State of Nevada	Attorney Roger, David J.	
Case Activity	Defendant Castillo, William P	Attorney Special Public Defender	
Calendar	Judge Barker, David	Dept. 18	
Continuance			
Minutes			

Parties	Event 11/04/2009 at 08:15 AM	PTN FOR WRIT OF HABEAS CORPUS
Def. Detail	Heard By Barker, David	
Ext Co-Def.	Officers Sharon Chun, Court Clerk	
Charges	Richard Kangas, Reporter/Recorder	
Sentencing	Parties 0000 - S1 State of Nevada	No
ail Bond	004352 Owens, Steven S.	Yes
Judgments	0001 - D1 Castillo, William P	No
	SPD Special Public Defender	Yes
	0002 - D Platou, Michelle C	No

Special Public Defender, Nisha Brooks, present for Deft Castillo. Mr. Sweetin requested thirty days continuance to allow Response to the Petition. COURT ORDERED, briefing schedule set: State to respond by 12/2/09; Defense to Reply by 1/6/10; and matter CONTINUED to 1/22/10 for ARGUMENT/DECISION.

NDC

1/22/09 8:15 AM ARGUMENT/DECISION RE PETITION

Due to time restraints and individual case loads, the above case record may not reflect all information to date.

FILED

MAY 21 2010

Angie Calvillo
CLERK OF COURT

1 NOED

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 WILLIAM CASTILLO,

6 Petitioner,

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

Case No: C133336
Dept No: XVIII

10 NOTICE OF ENTRY OF
DECISION AND ORDER

11 PLEASE TAKE NOTICE that on May 12th, 2010, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on May 21, 2010.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 By: *Angie Calvillo*
18 Angie Calvillo, Deputy Clerk

19 CERTIFICATE OF MAILING

20 I hereby certify that on this 21st day of May 2010, I placed a copy of this Notice of Entry of Decision and
21 Order in:

22 The bin(s) located in the Office of the District Court Clerk of:
23 Clark County District Attorney's Office
Attorney General's Office – Appellate Division

24 ☒ The United States mail addressed as follows:

25 WILLIAM CASTILLO ID#51918
26 ELY STATE PRISON
P.O. BOX 1989
Ely, Nevada 89301

Attorneys: Nisha Brooks & Gary Taylor
Federal Public Defenders
411 E. Bonneville Ave #250
Las Vegas, Nevada 89101

27
28 *Angie Calvillo*
Angie Calvillo, Deputy Clerk

1 **ORDR**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 STEVEN S. OWENS
6 Chief Deputy District Attorney
7 Nevada Bar #004352
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

50
FILED

May 12 8 40 AM '10

Artem S. [Signature]
CLERK COURT

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 WILLIAM CASTILLO,
12 #1153209

13 Defendant.

CASE NO: C133336

DEPT NO: XVIII

14 **FINDINGS OF FACT, CONCLUSIONS OF**
15 **LAW AND ORDER**

16 DATE OF HEARING: 4/9/10
17 TIME OF HEARING: 10:00 A.M.

18 THIS CAUSE having come on for hearing before the Honorable DAVID B.
19 BARKER, District Judge, for argument on the 9th day of April, 2010, WILLIAM
20 CASTILLO being present in custody, represented by attorneys NISHA BROOKS and
21 GARY TAYLOR of the Federal Public Defender's Office, the Respondent being represented
22 by DAVID ROGER, District Attorney, by and through STEVEN S. OWENS, Chief Deputy
23 District Attorney, and the Court having considered the matter, including pleadings,
24 transcripts, arguments of counsel, and documents on file herein, this Court now makes the
25 following findings of fact and conclusions of law.

26 In 1996, Castillo was convicted and sentenced to death for beating an 86-year old
27 woman in the head with a tire iron and then smothering her as she lay sleeping in her bed
28 while Castillo and an accomplice burglarized her home, robbed her of a VCR, money, and

PA\WPDOCS\F0514\51445601.doc

AA005127

CLERK OF THE COURT

MAY 12 2010

RECEIVED

1 silverware, and then set fire to the house in order to destroy evidence. Castillo v. State, 114
2 Nev. 271, 956 P.2d 103 (1998). The convictions and sentence were affirmed on direct
3 appeal and Remittitur issued on April 28, 1999. Id. Castillo timely filed his first state post-
4 conviction petition on April 2, 1999, which was denied by this court after an evidentiary
5 hearing with written findings filed on February 5, 2004. That decision was affirmed on
6 appeal. (SC #40982). Six years after the findings of fact were filed in the first post-
7 conviction proceeding and five years after issuance of Remittitur in the subsequent appeal,
8 Castillo filed another state post-conviction petition on September 18, 2009, which the state
9 has responded to and moved to dismiss.

10 FINDINGS OF FACT

11 The instant post-conviction petition is filed more than ten (10) years after issuance of
12 Remittitur from direct appeal in violation of the one-year time bar of NRS 34.726.
13 Additionally, the current petition is Castillo's second attempt at state post-conviction relief
14 and is barred as a successive petition per NRS 34.810. The state also affirmatively pleads
15 laches and invokes the five-year time bar of NRS 34.800. This Court finds the allegations of
16 good cause and prejudice are insufficient to overcome each of these bars and orders the
17 petition dismissed.

18 Allegations of ineffective assistance of counsel at trial and on appeal were capable of
19 being raised in the first post-conviction proceedings and do not constitute good cause for
20 filing of a second petition. Likewise, any errors of first post-conviction counsel Chris Oram
21 occurred seven to ten years ago between 2000 and 2003 and do not provide good cause for
22 the entire length of delay. This Court finds that no alleged error of first post-conviction
23 counsel between 2000 and 2003 can account for the subsequent six year delay in filing the
24 instant petition in 2009.

25 After his first state post-conviction proceedings concluded in 2003, Castillo elected to
26 pursue federal relief by filing a pro per federal habeas petition on June 22, 2004, which he
27 could have filed in state court instead. Castillo litigated his federal claims for five years
28 from 2004 to 2009 in Case #2:04-cv-00868-RCJ-GWF. During that time, Castillo

1 affirmatively waived his federal rights, dismissed his federal petition, and agreed to be
2 executed. Although Castillo later changed his mind and reinstituted his federal petition, such
3 federal litigation and waiver of rights do not constitute good cause for the delay in returning
4 to state court.

5 This Court finds that as an intervening change in law, the McConnell decision does
6 not afford Castillo good cause for his delay. McConnell was decided in 2004 and yet
7 Castillo delayed five years before raising the claim in state court. Even once McConnell was
8 held to be retroactive in Bejarano in 2006, Castillo still delayed another three years before
9 raising the claim. Because a McConnell claim is untimely at this point and Castillo has
10 failed to offer a good cause explanation for the entire length of the delay, his claim is
11 procedurally barred.

12 Review of the McConnell claim is not warranted even under the fundamental
13 miscarriage of justice doctrine. McConnell-type error is an instructional error and concerns
14 only alleged legal innocence, not factual innocence. Furthermore, in a McConnell claim
15 there is no allegation of new evidence which is necessary to support a genuine claim of
16 actual innocence or fundamental miscarriage of justice.

17 Even applying McConnell, this Court finds that only the felony-burglary and felony-
18 robbery aggravators would be stricken and that two valid aggravators would remain, namely
19 being convicted of a prior crime of violence, and murder committed to avoid or prevent a
20 lawful arrest. This Court finds the evidence in aggravation to be compelling but the
21 evidence in mitigation to be relatively weak. After reweighing the remaining aggravating
22 and mitigating evidence, this Court concludes beyond a reasonable doubt that the jury still
23 would have imposed death absent the erroneous aggravating circumstances. Accordingly,
24 Castillo has failed to show by clear and convincing evidence that, but for a constitutional
25 error, no reasonable juror would have found petitioner eligible for the death penalty under
26 the applicable statute, and he is not actually innocent of the death penalty.

27 This Court finds that as an intervening change in law, Polk does not constitute good
28 cause for Castillo's second petition because it was published in 2007 and not timely raised

1 two years later in a 2009 petition. Furthermore, Polk did not address retroactivity of Byford
2 and Nika remains the current law that Byford is not retroactive. Castillo's conviction was
3 final upon issuance of Remittitur in 1999, well before the Byford decision. Accordingly,
4 Castillo is not entitled to application of the Byford decision and therefore Polk as intervening
5 case law does not constitute good cause for raising the claim in a second and untimely
6 petition.

7 Even if Baze v. Rees were timely raised as an intervening change in law, which it is
8 not, a challenge to the constitutionality of Nevada's lethal injection protocol is not
9 cognizable in a post-conviction petition for writ of habeas corpus in a death penalty case.
10 This claim is therefore dismissed.

11 Assuming all of Castillo's factual allegations are true, he still would not be entitled to
12 relief on this second petition and thus there is no need for an evidentiary hearing. Castillo
13 has failed to offer good cause explanations which account for the entire length of delay in
14 filing the instant successive petition. Therefore, the State's motion to dismiss the petition is
15 granted.

16 CONCLUSIONS OF LAW

17 NRS 34.726(1) states that "unless there is good cause shown for delay, a petition that
18 challenges the validity of a judgment or sentence *must* be filed within one (1) year after entry
19 of the judgment of conviction or, if an appeal has been taken from the judgment, within one
20 (1) year after the Supreme Court issues its remittitur."

21 NRS 34.800 recognizes that a post-conviction petition should be dismissed when
22 delay in presenting issues would prejudice the State in responding to the petition or in
23 conducting a retrial. NRS 34.800(1)(a) and (b). Furthermore, NRS 34.800(2) creates a
24 rebuttable presumption of prejudice to the State if "[a] period of five years [elapses] between
25 the filing of a judgment of conviction, an order imposing sentence of imprisonment or a
26 decision on direct appeal of a judgment of conviction and the filing of a petition challenging
27 the validity of a judgment of conviction." To invoke the presumption, the statute requires
28 that the State plead laches in its motion to dismiss the petition. NRS 34.800(2).

1 NRS 34.810(1)(b) states that the court *shall* dismiss a petition if the court determines
2 that: “The petitioner’s conviction was the result of a trial and the grounds for the petition
3 could have been: (1) Presented to the trial court; (2) Raised in a direct appeal or a prior
4 petition for writ of habeas corpus or postconviction relief; or (3) Raised in any other
5 proceeding that the petitioner has taken to secure relief from his conviction and sentence,
6 unless the court finds both cause for the failure to present the grounds and actual prejudice to
7 the petitioner.”

8 NRS 34.810(2) reads: “A second or successive petition *must* be dismissed if the
9 judge or justice determines that it fails to allege new or different grounds for relief and that
10 the prior determination was on the merits or, if new and different grounds are alleged, the
11 judge or justice finds that the failure of the petitioner to assert those grounds in a prior
12 petition constituted an abuse of the writ.”

13 To establish good cause, a defendant *must* demonstrate that some impediment
14 external to the defense prevented compliance with the mandated statutory default rules.
15 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003); Lozada v. State, 110 Nev. 349,
16 353, 871 P.2d 944, 946 (1994); *see also* Hathaway 119 Nev. at 252, 71 P.3d at 506 (*citing*
17 Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001)); Passanisi v. Dir. of
18 Prisons, 105 Nev. 63, 769 P.2d 72 (1989); Crump v. Warden, 113 Nev. 293, 295, 934 P.2d
19 247, 252 (1997); Phelps, 104 Nev. at 659, 764 P.2d at 1305. Further, “appellants cannot
20 attempt to manufacture good cause[.]” *Id.* at 621, at 526. Valid impediments external to the
21 defense giving rise to “good cause” could be “that the factual or legal basis for a claim was
22 not reasonably available to counsel, or that ‘some interference by officials’ made compliance
23 impracticable.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (*quoting*
24 Murray v. Carrier, 477 U.S. 478, 488 (1986)); *see also* Gonzalez, 118 Nev. at 595, 53 P.3d at
25 904, (*citing* Harris v. Warden, 114 Nev. 956, 959-60, 964 P.2d 785, 787 n.4 (1998)).

26 To find good cause there must be a “substantial reason; one that affords a legal
27 excuse.” Hathaway, 119 Nev. at 252, 71 P.3d at 506 (*quoting* Colley v. State, 105 Nev. 235,
28 236, 773 p.2d 1229, 1230 (1989)). A defendant can show good cause only in those rare

1 situations where a failure to entertain the issue would result in “a fundamental miscarriage of
2 justice.” Hogan v. Warden, 109 Nev. 952, 959, 860 P. 2d 710, 715 (1993), (quoting
3 McClesky v. Zant, 499 U.S. 467 (1991)).

4 The Nevada Supreme Court has held that a claim of ineffective assistance of counsel
5 that is procedurally barred cannot constitute good cause for excusing the procedural bars for
6 itself or any other claim. State v. District Court (Riker), 121 Nev. 225, 112 P.3d 1070
7 (2005). See also Edwards v. Carpenter, 529 U.S. 446, 453 (2000) (procedurally barred
8 ineffective assistance of counsel claim is not good cause).

9 Even where a petitioner may file a successive petition in order to allege the
10 ineffectiveness of first post-conviction counsel, he must still raise these matters in a
11 reasonable time to avoid application of procedural default rules. See Pellegrini v. State, 117
12 Nev. 860, 869-70, 34 P.3d 519, 525-26 (2001) (holding that the time bar in NRS 34.726
13 applies to successive petitions); see generally Hathaway v. State, 119 Nev. 248, 252-53, 71
14 P.3d 503, 506-07 (2003) (stating that a claim reasonably available to the petitioner during the
15 statutory time period did not constitute good cause to excuse a delay in filing). “A claim of
16 ineffective assistance of counsel may also excuse a procedural default if counsel was so
17 ineffective as to violate the Sixth Amendment. However, in order to constitute adequate
18 cause, the ineffective assistance of counsel claim itself must not be procedurally defaulted.
19 In other words, a petitioner must demonstrate cause for raising the ineffective assistance of
20 counsel claim in an untimely fashion.” State v. District Court (Riker), 121 Nev. 225, 112
21 P.3d 1070 (2005).

22 Pursuit of federal remedies does not constitute good cause to overcome state
23 procedural bars. Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989). In Colley, the
24 defendant argued that he appropriately refrained from filing a state habeas petition during the
25 four years he pursued a federal writ of habeas corpus. The Nevada Supreme Court
26 disagreed: “Should we allow Colley's post-conviction relief proceeding to go forward, we
27 would encourage offenders to file groundless petitions for federal habeas corpus relief,
28 secure in the knowledge that a petition for post-conviction relief remained indefinitely

1 available to them. This situation would prejudice both the accused and the State since the
2 interest of both the petitioner and the government are best served if post-conviction claims
3 are raised while the evidence is still fresh.” Id.

4 McConnell was decided in 2004, and yet Castillo delayed five years before raising the
5 claim in state court. McConnell v. State, 120 Nev. 1043, 102 P.3d 606 (2004).
6 Additionally, even once McConnell was held to be retroactive, Castillo still delayed another
7 three years before raising the claim. Bejarano v. State, 122 Nev. 1066, 146 P.3d 265 (2006).

8 This Court “may excuse the failure to show cause where the prejudice from a failure
9 to consider the claim amounts to a ‘fundamental miscarriage of justice.’ ” Pellegrini v. State,
10 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). In this context, the fundamental miscarriage of
11 justice standard is met if Castillo “makes a colorable showing he is ... ineligible for the death
12 penalty.” Pellegrini, 117 Nev. at 887, 34 P.3d at 537. He must show by clear and
13 convincing evidence that, but for a constitutional error, no reasonable juror would have
14 found him death eligible. Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993),
15 citing Sawyer v. Whitely, 505 U.S. 333, 112 S.Ct. 2514 (1992).

16 The reweighing analysis under McConnell is limited to the trial record. See Rippo v.
17 State, 122 Nev. 1086, 1093-94, 146 P.3d 279, 284 (2006); Archanian v. State, 122 Nev.
18 1019, 1040-41, 145 P.3d 1008, 1023 (2006); see also Bridges v. State, 116 Nev. 752, 766, 6
19 P.3d 1000, 1010 (2000) (stating that the court “elected to explicitly reweigh the aggravating
20 and mitigating circumstances based upon our independent review of the trial record”). In
21 Haberstroh v. State, 119 Nev. 173, 184 n.23, 69 P.3d 6767, 683 n.23 (2003), the court
22 emphasized that its reweighing did not involve factual findings “other than those of the jury
23 at the original penalty hearing.” Because the reweighing analysis asks whether it is “clear
24 beyond a reasonable doubt that absent the invalid aggravators the jury still would have
25 imposed a sentence of death,” Bejarano, 122 Nev. at 1081, 146 P.3d at 276, the analysis, by
26 its very nature, addresses only the evidence considered by the jury.

27 The Nevada Supreme Court has held that the change in law announced in Byford is
28 not retroactive to cases that were already final. Nika v. State, 124 Nev. Adv. Op. 103, 198

1 P.3d 839 (Dec. 31, 2008). The Ninth Circuit's case did not discuss state retroactivity rules
2 and did not apply its reasoning to cases that are already final. Polk v. Sandoval, 503 F.3d
3 903 (9th Cir. 2007).

4 A challenge to the constitutionality of Nevada's lethal injection protocol is not
5 cognizable in a post-conviction petition for writ of habeas corpus in a death penalty case.
6 McConnell v. State, 125 Nev.Adv.Op. 24, 212 P.3d 307 (July 23, 2009).

7 A defendant is entitled to an evidentiary hearing if his petition is supported by
8 specific factual allegations, which, if true, would entitle him to relief, unless the factual
9 allegations are belied by the record. Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603,
10 605 (1994). "The judge or justice, upon review of the return, answer, and all supporting
11 documents which are filed, shall determine whether an evidentiary hearing is required." NRS
12 34.770(1). However, "[a] defendant seeking post-conviction relief is not entitled to an
13 evidentiary hearing on factual allegations belied or repelled by the record." Hargrove v.
14 State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984); citing Grondin v. State, 97 Nev. 454,
15 634 P.2d 456 (1981).

16 **ORDER**

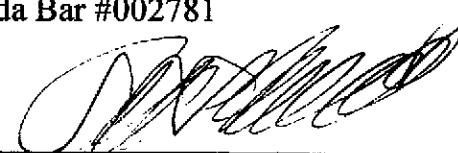
17 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction
18 Relief shall be, and it is, hereby denied.

19 DATED this 11th day of May, 2010.

20
21 
DISTRICT JUDGE

22
23 DAVID ROGER
24 DISTRICT ATTORNEY
Nevada Bar #002781


25
26 BY


27 STEVEN S. OWENS
Chief Deputy District Attorney
28 Nevada Bar #004352

1 **CERTIFICATE OF FACSIMILE TRANSMISSION**

2 I hereby certify that service of the foregoing document, was made this 11th day of
3 May, 2010, by facsimile transmission to:

4
5 GARY TAYLOR
6 NISHA BROOKS
7 FAX #(702) 355-5819

8 
9 _____
10 Employee for the District Attorney's
11 Office

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

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	2268	
CONNECTION TEL		3885819
CONNECTION ID		
ST. TIME	05/11 14:07	
USAGE T	01'41	
PGS. SENT	11	
RESULT	OK	



OFFICE OF THE DISTRICT ATTORNEY
CRIMINAL APPEALS UNIT

DAVID ROGER*District Attorney***CHRIS OWENS***Assistant District Attorney***TERESA M. LOWRY***Assistant District Attorney***MARY-ANNE MILLER***County Counsel***STEVEN S. OWENS***Chief Deputy District Attorney*

FACSIMILE TRANSMISSION

Fax No. (702) 382-5815

Telephone No. (702) 671-2750

TO: Gary Taylor / Nisha Brooks**FAX#:** (702) 388-5819**FROM:** Steven S. Owens**SUBJECT:** William Castillo, C133336, Findings**DATE:** May 11, 2010

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 2252
CONNECTION TEL 3885819
CONNECTION ID
ST. TIME 05/04 15:17
USAGE T 01'28
PGS. SENT 9
RESULT OK



OFFICE OF THE DISTRICT ATTORNEY
CRIMINAL APPEALS UNIT

DAVID ROGER
District Attorney

CHRIS OWENS
Assistant District Attorney

TERESA M. LOWRY
Assistant District Attorney

MARY-ANNE MILLER
County Counsel

STEVEN S. OWENS
Chief Deputy District Attorney

FACSIMILE TRANSMISSION

Fax No. (702) 382-5815

Telephone No. (702) 671-2750

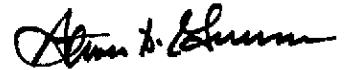
TO: Gary Taylor / Nisha Brooks **FAX#:** (702) 388-5819
FROM: Steven S. Owens
SUBJECT: William Castillo, C133336, Findings
DATE: May 4, 2010

Gary & Nisha:

The following Findings will be submitted to the Judge on May 11, 2010.

Sincerely,

Steven S. Owens



CLERK OF THE COURT

1 **NOTC**
2 FRANNY A. FORSMAN
3 Federal Public Defender
4 Nevada Bar No. 000014
5 GARY A. TAYLOR
6 Nevada Bar No. 11031C
7 NISHA N. BROOKS-WHITTINGTON
8 Nevada Bar No. 11032C
9 411 E. Bonneville Avenue, Suite 250
10 Las Vegas, Nevada 89101
11 (702) 388-6577
12 (Fax) 388-5819
13 Attorneys for Petitioner

CLARK COUNTY

DISTRICT OF NEVADA

9 WILLIAM CASTILLO,
10
11 Petitioner,

Case No. C133336
Dept. No. XVIII

12 vs.

(Death Penalty Habeas Corpus Case)

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

NOTICE OF APPEAL

15 Respondents.

16 NOTICE is hereby given that petitioner, William Castillo appeals to the
17 Nevada Supreme Court from the Findings of Fact and Conclusions of Law and Order
18 denying the Petition for Post-Conviction Relief entered in this action on May 12, 2010.
19 Notice of Entry of Decision and Order of the foregoing order was filed and mailed on May
20 21, 2010.

21 Respectfully submitted this 4th day of June, 2010.

23 FRANNY A. FORSMAN
24 Federal Public Defender

25 /s/ Gary A. Taylor
Gary A. Taylor
Assistant Federal Public Defender

27 /s/ Nisha N. Brooks-Whittington
28 Nisha N. Brooks-Whittington
Assistant Federal Public Defender

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

CERTIFICATE OF MAILING

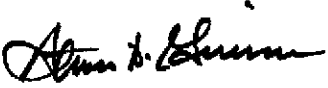
In accordance with Rule 5(b) of the Nevada Rules of Civil Procedure, the undersigned hereby certifies that on this 4th day of June, 2010, she caused to be deposited for mailing in the United States mail, first-class postage prepaid, a true and correct copy of the foregoing **NOTICE OF APPEAL** addressed to the parties as follows:

David Roger
Clark County District Attorney
Steven S. Owens
Chief Deputy District Attorney
Office of the District Attorney
Regional Justice Center, Third Floor
200 Lewis Avenue
Las Vegas, Nevada 89155

Catherine Cortez Masto
Attorney General
Victor Hugo Schulze II
Deputy Attorney General
Attorney General's Office
555 E. Washington Ave., #3900
Las Vegas, Nevada 89101

William Castillo
Id No. 51918
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

/s/ Katrina Manzi
An employee of the Federal Public Defender


CLERK OF THE COURT

1 **ASTA**
2 **FRANNY A. FORSMAN**
3 **Federal Public Defender**
4 **Bar No. 000014**
5 **GARY A. TAYLOR**
6 **Nevada Bar No. 11024C**
7 **NISHA N. BROOKS-WHITTINGTON**
8 **Nevada Bar No. 11032C**
9 **411 E. Bonneville Avenue, Suite 250**
10 **Las Vegas, Nevada 89101**
11 **(702) 388-6577**
12 **(Fax) 388-5819**

13 **Attorneys for Petitioner**

14 **CLARK COUNTY**
15 **DISTRICT OF NEVADA**

16 **WILLIAM CASTILLO,**
17 **Petitioner,**

Case No. C133336
Dept. No. XVIII

18 **vs.**

CASE APPEAL STATEMENT

19 **E.K. McDANIEL, Warden of Ely**
20 **State Prison, and CATHERINE CORTEZ**
21 **MASTO, Attorney General of the State of**
22 **Nevada,**

23 **Respondents.**

24 **CASE APPEAL STATEMENT**

- 25 1. **Name of petitioner filing this case appeal statement:**
26 William Castillo
- 27 2. **Identify the judge issuing the order appealed from:**
28 Honorable David Barker
3. **All parties to the proceedings in the district court:**
Same as in caption; State of Nevada is real party in interest.
4. **All parties involved in this appeal:**
Same as in caption; State of Nevada is real party in interest.

////

////

1 5. **Set forth the name, law firm, address and telephone number of all counsel**
2 **on appeal and party or parties whom they represent:**

3 Franny Forsman
4 Federal Public Defender
5 Gary A. Taylor
6 Assistant Federal Public Defender
7 Nisha N. Brooks-Whittington
8 Assistant Federal Public Defender
9 411 E. Bonneville, Ste. 250
10 Las Vegas, NV 89101
11 (702) 388-6577

12 Counsel for Petitioner, William Castillo

13 David Roger
14 Clark County District Attorney
15 Steven S. Owens
16 Chief Deputy District Attorney
17 Office of the District Attorney
18 Regional Justice Center, Third Floor
19 200 Lewis Avenue
20 Las Vegas, Nevada 89155
21 (702) 671-2750

22 and

23 Catherine Cortez Masto
24 Attorney General of Nevada
25 Victor Hugo Schulze II
26 Deputy Attorney General
27 Criminal Division
28 Attorney General's Office
555 E. Washington Avenue #3900
Las Vegas, Nevada 89101
(702) 486-3110

Counsel for Warden and State of Nevada

20 6. **Whether petitioner/appellant was represented by appointed or retained**
21 **counsel in the district court:**

22 The United States District Court appointed the Federal Public Defender for the
23 District of Nevada on July 7, 2004. See Castillo v. McDaniel, No. 2:04-cv-
24 00868, Docket No. 4. The Federal Public Defender made their first
25 appearance on behalf of Petitioner/Appellant William Castillo in this case on
26 November 9, 2009.

25 7. **Whether petitioner/appellant was granted leave to proceed in forma**
26 **pauperis, and the date of entry of the district court order granting such**
27 **leave:**

28 The United States District Court granted Mr. Castillo leave to proceed in
forma pauperis on July 7, 2004. The Nevada courts previously held Mr.
Castillo was indigent.

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

8. **Date proceedings commenced in the district court (e.g., date complaint, indictment, information or petition was filed):**

Petition for writ of habeas corpus was filed on September 18, 2009.

Respectfully submitted this 4th day of June, 2010.

FRANNY A. FORSMAN
Federal Public Defender

/s/ Gary A. Taylor
GARY A. TAYLOR
Nevada Bar No. 11024C
Assistant Federal Public Defender

/s/ Nisha N. Brooks-Whittington
NISHA N. BROOKS-WHITTINGTON
Assistant Federal Public Defender
Nevada Bar No. 11032C

Attorneys for Petitioner/Appellant

- 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

David Roger
Clark County District Attorney
Steven S. Owens
Chief Deputy District Attorney
Office of the District Attorney
Regional Justice Center, Third Floor
200 Lewis Avenue
Las Vegas, Nevada 89155

Catherine Cortez Masto
Attorney General
Victor Hugo Schulze II
Deputy Attorney General
Criminal Division
Attorney General's Office
555 E. Washington Avenue #3900
Las Vegas, Nevada 89101

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