

NOA  
DAVID M. SCHIECK, ESQ.  
NEVADA BAR NO. 0824  
302 E. CARSON, STE. 600  
LAS VEGAS, NV 89101  
(702) 382-1844  
Attorney for WITTER

FILED

OCT 23 4 30 PM '00

*Shirley B. Pangione*  
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \*

No. 36907

C117513

THE STATE OF NEVADA,

CASE NO. C 117523

Plaintiff,

DEPT. NO. XV

vs.

NOTICE OF APPEAL

WILLIAM LESTER WITTER,

Defendant.

DATE: N/A

TIME: N/A

FILED

OCT 30 2000

TO: THE STATE OF NEVADA, Plaintiff, herein;

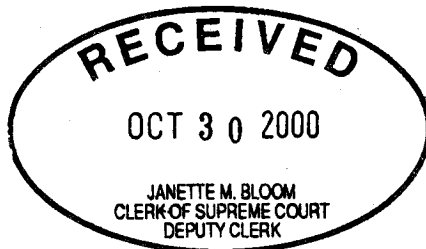
TO: STEWART BELL, District Attorney, and

TO: DEPARTMENT XV OF THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK:

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. M. Adams*  
DEPUTY CLERK

NOTICE IS HEREBY GIVEN that WILLIAM WITTER, by and through  
his attorney DAVID M. SCHIECK, ESQ., hereby appeals to the  
Supreme Court of the State of Nevada from the denial of his  
Petition for Writ of Habeas Corpus (Post Conviction).

Dated this 23 day of October, 2000.



SUBMITTED BY:

*David M. Schieck*  
DAVID M. SCHIECK, ESQ.

CERTIFICATE OF MAILING

The undersigned does hereby certify that on 10-23-00,  
2000, I deposited in the United States Post Office at Las  
Vegas, Nevada, a copy of the Notice of Appeal, postage prepaid,  
addressed to the following:

William Witter, No. 47405  
Ely State Prison  
P.O. Box 1989  
Ely NV 89301

District Attorney's Office  
200 S. Third Street  
Las Vegas NV 89155

Nevada Attorney General  
100 N. Carson  
Carson City, NV 89710

Kathleen Fitzgerald  
An employee of David M. Schieck, Esq.

FILED

OCT 23 4 30 PM '00

*Shirley B. Pangione*  
CLERK

NCA  
DAVID M. SCHIECK, ESQ.  
NEVADA BAR NO. 0824  
302 East Carson, #600  
Las Vegas, NV 89101  
702-382-1844  
Attorney for WITTER

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \*

C117513

THE STATE OF NEVADA,	)	CASE NO. <del>C 117523</del>
	)	DEPT. NO. XV
Plaintiff,	)	
	)	
vs.	)	CASE APPEAL STATEMENT
	)	
WILLIAM LESTER WITTER,	)	
	)	
Defendant.	)	DATE: N/A
	)	TIME: N/A

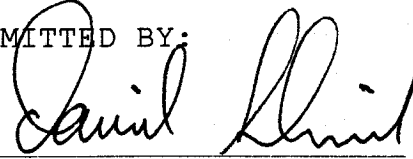
1. Appellant WILLIAM WITTER
2. Judge Sally Loehrer
3. Plaintiff The State of Nevada  
Defendant William Witter
4. Appellant William Witter  
Respondent The State of Nevada
5. Counsel for Appellant: David M. Schieck, Esq.,  
Law Office of David Schieck, 302 E. Carson, #600,  
Las Vegas, NV 89101, 702-382-1844  
  
Counsel for Respondent: Stewart Bell, Esq., District  
Attorney, 200 S. Third St., Las Vegas, NV 89155,  
702-455-4711; and Frankie Sue Del Papa, Esq., Nevada  
Attorney General, 100 N. Carson St., Carson City,  
Carson City, NV 89701, 702-687-4170
6. Trial counsel: Philip Kohn, Esq. (P.D.); Appellate  
counsel: Robert Miller, Esq. (P.D.); Post Conviction  
counsel: David Schieck, Esq. (appointed)
7. Appeal counsel is David M. Schieck, Esq. (Appointed)

1 8. Appellant was appointed counsel for WITTER on 9-18-97

2 9. Date Information was filed: 1-24-94

3  
4 Dated this 23 day of October, 2000.

5 SUBMITTED BY:

6 

7 DAVID M. SCHIECK, ESQ.

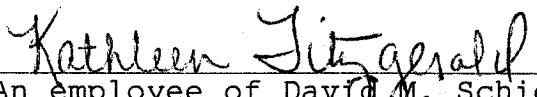
8 CERTIFICATE OF MAILING

9 The undersigned does hereby certify that on 10-23-00,  
10 2000, I deposited in the United States Post Office at Las  
11 Vegas, Nevada, a copy of the Case Appeal Statement, postage  
12 prepaid, addressed to the following:

13 William Witter, No. 47405  
14 Ely State Prison  
15 P.O. Box 1989  
16 Ely NV 89301

17 District Attorney's Office  
18 200 S. Third Street  
19 Las Vegas NV 89155

20 Nevada Attorney General  
21 100 N. Carson  
22 Carson City, NV 89710

23   
24 An employee of David M. Schieck, Esq.

DATE: 10/24/00  
CASE NO. 94-C-117513-C

I N D E X

TIME 8:07 AM  
JUDGE:Loehrer, Sally

STATE OF NEVADA [ ] vs Witter, William L [ ]

001 D1 William L Witter  
000824 Schieck, David M.  
NO. 1 Schieck & Derke  
302 E Carson #918  
Las Vegas, NV 89101

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0001	01/14/94	CBO	/CRIMINAL BINDOVER Fee \$0.00				
0002	01/14/94	NOTC	/NOTICE OF EXHIBIT(S) IN THE VAULT			01/14/94	
0003	01/18/94	ARRN	/INITIAL ARRAIGNMENT	001		01/25/94	
0004	01/20/94	REQT	/MEDIA REQUEST				
0005	01/20/94	ORDR	/ORDER GRANTING PERMISSION OF MEDIA ENTRY				
0006	01/21/94	INFO	/INFORMATION	001		01/21/94	
0007	01/25/94	JURY	/TRIAL BY JURY VJ 2-1-94	001	VC	08/29/94	
0008	01/25/94	CALC	/CALENDAR CALL VJ 2-1-94	001	VC	08/25/94	
0009	01/25/94	NOTC	/NOTICE OF INTENT TO SEEK DEATH PENALTY	001			
0010	01/28/94	HEAR	/ORAL REQUEST OF DISTRICT ATTORNEY	001		02/01/94	
			RESET TRIAL DATE	001			
0011	02/01/94	JURY	/TRIAL BY JURY	001	VC	11/14/94	
0012	02/01/94	CALC	/CALENDAR CALL	001	VC	11/10/94	
0013	02/25/94	TRAN	/REPORTER'S TRANSCRIPT OF PRELIMINARY	001		01/07/94	
			HEARING	001			
0014	07/27/94	OTTE	/ORDER TO TRANSPORT	001		07/27/94	
0015	09/29/94	MOT	/MOTION TO CONTINUE TRIAL DATE	001	GR	10/20/94	
0016	10/07/94	ANS	/ANSWER IN OPPOSITION TO MOTION TO	001			
			CONTINUE TRIAL DATE	001			
0017	10/21/94	CALC	/CALENDAR CALL VH	001	VC	04/27/95	
0018	10/21/94	JURY	/TRIAL BY JURY VH	001	VC	05/01/95	
0019	03/23/95	EXPT	/EX PARTE APPLICATION AND ORDER TO	001			
			TRANSPORT	001			
0020	04/13/95	MOT	/DEFT'S MOTION IN LIMINE TO PROHIBIT	001		06/15/95	
			REFERENCE TO FIRST PHASE AS GUILT PHASE	001			
0021	04/13/95	MOT	/DEFT'S MOTION IN LIMINE LIMITING REMOVAL	001	DN	06/15/95	
			OF JURORS BY PROSECUTOR	001			
0022	04/13/95	MOT	/DEFT'S MOTION TO ALLOW JURY	001	GR	06/15/95	
			QUESTIONNAIRE	001			
0023	04/13/95	MOT	/DEFT'S MOTION TO PARTIALLY STRIKE NOTICE	001	RR	06/15/95	
			OF AGGRAVATING CIRCUMSTANCE	001			
0024	04/13/95	MOT	/DEFT'S MOTION FOR INDIVIDUAL SEQUESTERED	001	DN	06/15/95	
			VOIR DIRE	001			
0025	04/13/95	MOT	/DEFT'S MOTION TO DISMISS FOR FAILURE TO	001	WD	06/15/95	
			COLLECT/PERSERVE EVIDENCE	001			
0026	04/20/95	ORDR	/ORDER FOR PRODUCTION OF INMATE	001			
0027	04/21/95	MOT	/DEFT'S MOTION TO CONTINUE TRIAL DATE	001	VC	04/27/95	
0028	04/21/95	ANS	/ANSWER IN OPPOSITION TO MOTION FOR	001			
			INDIVIDUAL SEQUESTERED VOIR DIRE	001			
0029	04/21/95	ANS	/ANSWER IN MOTION IN LIMINE TO PROHIBIT	001			Y
			ANY REFERENCES TO THE FIRST PHASE	001			
			OF THE TRIAL AS THE GUILT PHASE				
0030	04/21/95	ANS	/ANSWER IN OPPOSITION TO DEFENDANT'S	001			
			MOTION TO CONTINUE TRIAL DATE	001			
0031	04/24/95	HEAR	/AT THE REQUEST OF THE COURT	001		04/25/95	

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0032	04/24/95	ANS /ANSWER TO MOTION TO ALLOW JURY QUESTIONNAIRE	001			
0033	04/24/95	ANS /ANSWER IN OPPOSITION TO MOTION TO PROHIBIT THE USE OF PEREMPTORY	001			Y
CHALLENGES TO EXCLUDE JURORS WHO EXPRESS CONCERNS ABOUT CAPITAL PUNISHMENT						
0034	04/26/95	CALC/CALENDAR CALL	001		06/16/95	
0035	04/26/95	JURY/TRIAL BY JURY	001		06/28/95	
0036	05/03/95	MOT /DEFT'S PRO PER MOTION TO DISMISS COUNSEL AND APPOINTMENT OF NEW COUNSEL	001		05/16/95	
0037	05/09/95	ANS /ANSWER IN OPPOSITION TO DEFENDANT'S PROPER PERSON MOTION TO DISMISS COUNSEL	001			
0038	05/17/95	MOT /STATE'S MOTION TO ENDORSE NAMES ON INFORMATION	001	GR	06/15/95	
0039	05/17/95	INFO/MOTION AND NOTICE OF MOTION TO ENDORSE NAMES OF INFORMATION	001		06/15/95	
0040	05/25/95	MOT /DEFT'S PRO PER MOTION TO DISMISS COUNSEL AND APPOINTMENT OF NEW COUNSEL	001	DN	05/25/95	
0041	05/26/95	OTTE/ORDER TO TRANSPORT	001		05/26/95	
0042	06/14/95	ANS /ANSWER IN OPPOSITION TO DEFENDANT'S MOTION TO STRIKE AGGRAVATING	001			Y
CIRCUMSTANCES						
0043	06/16/95	LIST/WITNESS LIST	001			
0044	06/19/95	MOT /ALL PENDING MOTIONS	001		06/15/95	
0045	01/21/94	CINF/INFORMATION CORRECTED IN OPEN COURT	001		06/16/95	
0046	06/16/95	ORDR/ORDER TO ENDORSE NAMES ON INFORMATION	001			
0047	06/20/95	TRAN/REPORTER'S TRANSCRIPT			06/19/95	
0048	06/19/95	ORDR/ORDER FOR TRANSCRIPT	001			
0049	06/20/95	REQT/MEDIA REQUEST				
0050	06/20/95	ORDR/ORDER GRANTING PERMISSION OF MEDIA ENTRY				
0051	06/23/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS-VOLUME IV	001		06/22/95	
0052	06/23/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS-VOLUME III	001		06/21/95	
0053	06/23/95	JURY/JURY	AL			
0054	06/22/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS-VOLUME II	001		06/20/95	
0055	06/26/95	ORDR/ORDER GRANTING PERMISSION OF MEDIA ENTRY				
0056	06/28/95	OCAL/STATUS CHECK:DISCOVERY FOR PENALTY HRG.	001		07/06/95	
0057	06/26/95	REQT/MEDIA REQUEST				
0058	06/26/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS VOLUME V	001		06/23/95	
0059	06/27/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS VOLUME VI	001		06/26/95	
0060	06/28/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS VOLUME VII	001		06/27/95	
0061	06/29/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS VOLUME VIII	001		06/28/95	
0062	07/11/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS VOLUME IX	001		07/10/95	
0063	07/12/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS PENALTY HEARING VOLUME X	001		07/11/95	
0064	07/13/95	HEAR/PENALTY HEARING	001		07/13/95	

(Continued to page 3)

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0065	07/13/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS VOLUME XI	001		07/12/95	
0066	07/14/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS VOLUME XII	001		07/13/95	
0067	07/19/95	SENT/SENTENCING COUNTS I-IV	001	GR	08/03/95	
0068	07/19/95	NOEV/NOTICE OF EXHIBIT(S) IN THE VAULT			07/19/95	
0069	07/19/95	NOTC/NOTICE OF TRANSCRIPTS IN THE FILE			07/19/95	
0070	07/06/95	LIST/AMENDED WITNESS LIST	001			
0071	07/06/95	REQT/STATES MOTION TO PERMIT TESTIMONY REGARDING DEFENDANTS GANG AFFILIATION DURING PENALTY PHASE	001			Y
0072	07/12/95	NOTC/AMENDED NOTICE OF INTENT TO SEEK DEATH PENALTY	001			
0073	07/10/95	OPPS/DEFENDANTS OPPOSITION TO THE STATES MOTION TO PERMIT TESTIMONY REGARDING DEFENDANTS GANG AFFILIATION DURING PENALTY PHASE	001			Y
0074	07/10/95	REQT/DEFENDANTS MOTION TO EXCLUDE EVIDENCE REGARDING ALLEGATIONS THAT THE DEFENDANT POSSESSED A WEAPON WHILE IN JAIL	001			Y
0075	07/10/95	REQT/DEFENDANTS MOTION TO CONTINUE THE PENALTY PHASE	001			
0076	07/12/95	REQT/MOTION TO ALLOW THE DEFENSE TO ARGUE LAST IN PENALTY PHASE	001			
0077	07/13/95	VER /SPECIAL VERDICT	001		07/13/95	
0078	07/13/95	VER /VERDICT	001		07/13/95	
0079	06/28/95	VER /VERDICT	001		06/28/95	
0080	06/28/95	VER /VERDICT	001		06/28/95	
0081	06/28/95	VER /VERDICT	001		06/28/95	
0082	07/13/95	INST/INSTRUCTIONS TO THE JURY	001			
0083	06/28/95	INST/INSTRUCTIONS TO THE JURY	001			
0084	06/28/95	VER /VERDICT	001		06/28/95	
0085	08/04/95	CASO/CASE CLOSED ON 08-03-95			08/03/95	
0086	08/04/95	JUDG/JUDGMENT OF CONVICTION	001		08/04/95	
0087	08/04/95	WARR/WARRANT OF EXECUTION	001			
0088	08/04/95	ORDR/ORDER OF EXECUTION	001			
0089	08/04/95	EMO /ENTRY OF MINUTE ORDER	001			
0090	08/11/95	JUDG/AMENDED JUDGMENT OF CONVICTION	001		08/11/95	
0091	08/11/95	JMNT/AMENDED JUDGMENT	0001		08/29/95	
0092	08/11/95	JMNT/JUDGMENT OF RESTITUTION	0001		08/29/95	
0093	08/31/95	NOTC/NOTICE OF APPEAL	001	AP		
0094	08/31/95	NOAS/DESIGNATION OF CONTENTS OF RECORD ON APPEAL	001			
0095	09/22/95	ORDR/ORDER FOR STAY OF EXECUTION	001			
0096	09/25/95	CASO/CASE (RE)ACTIVATED ON				
0097	09/26/95	JUDG/SECOND AMENDED JUDGMENT OF CONVICTION	001		09/26/95	
0098	09/26/95	JMNT/AMENDED ADMINISTRATIVE FEE	0001		09/28/95	
0100	09/29/95	TRAN/REPORTER'S TRANSCRIPT OF APRIL 25, 1995			04/25/95	
0101	09/29/95	TRAN/REPORTER'S TRANSCRIPT OF JULY 6, 1995			07/06/95	
0102	09/29/95	TRAN/REPORTER'S TRANSCRIPT OF AUGUST 3, 1995			08/03/95	
0103	08/05/96	ORDR/ORDER RELEASING EVIDENCE	001			
0104	08/05/96	PET /PETITION FOR RELEASE OF EVIDENCE	001			
0105	01/08/97	JUDG/NEVADA SUPREME COURT CLERKS CERTIFICATE/ JUDGMENT - AFFIRMED	001		01/08/97	

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0106	06/28/97	ASSG/Reassign Case From Judge HUFFAKER to Judge BONAVENTURE				
0107	09/05/97	MOT /DEFT'S MOTION FOR APPOINTMENT OF COUNSEL	001	GR	09/18/97	
0108	09/26/97	TRAN/REPORTER'S TRANSCRIPT OF MOTION FOR APPOINTMENT OF COUNSEL	001		09/18/97	
0109	10/13/97	ORDR/ORDER OF APPOINTMENT	001			
0110	10/27/97	PET /DEFT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	001		08/12/98	
0111	10/27/97	CRTF/CERTIFICATE OF SERVICE BY MAIL	001		10/27/97	
0112	02/23/98	MOT /DEFT'S MTN FOR EXTENSION OF TIME TO FILE SUPPLEMENTAL POINTS/MTN CONTINUE ARGUMEN	001		03/09/98	
0113	02/24/98	ROC /RECEIPT OF COPY	001		02/24/98	
0114	03/09/98	ARGU/ARGUMENT	001		08/12/98	
0115	07/17/98	MOT /ALL PENDING MOTIONS 07/15/98	001		07/15/98	
0116	08/11/98	PTAT/SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION	001			Y
0117	08/12/98	HEAR/ARGUMENT: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	001		10/14/98	
0118	09/22/98	OPPS/STATES OPPOSITION TO DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS	001			Y
POST-CONVICTION						
0119	10/14/98	HEAR/EVIDENTIARY HEARING: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	001		02/26/99	
0120	12/04/98	WAIV/WAIVER OF APPEARANCE	001		12/04/98	
0121	12/23/98	OCAL/MINUTE ORDER RE: REASSIGNMENT	001		12/23/98	
0122	12/28/98	ASSG/Reassign Case From Judge Bonaventure To Judge Loehrer				
0123	03/12/99	REQT/EX PARTE MOTION FOR ORDER TO PREPARE TRANSCRIPTS	001			
0124	03/22/99	EXPR/EX PARTE ORDER TO PREPARE TRANSCRIPTS	001			
0125	03/23/99	ROC /RECEIPT OF COPY OF EX PARTE ORDER TO PREPARE TRANSCRIPTS	001		03/23/99	
0126	04/19/99	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS	001		02/26/99	
0127	01/26/00	REQT/EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEYS FEES AND EXPENSES IN POST CONVICTION PROCEEDINGS	001			Y
0128	02/14/00	ORDR/ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEYS FEES AND EXPENSES	001			
0129	09/11/00	OPPS/STATES SUPPLEMENTAL OPPOSITION TO DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION	001			Y
0130	09/12/00	WRIT/DEFENDANTS POST HEARING BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS	001			
0131	09/25/00	JUDG/FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER	001	HG	02/26/99	
0132	09/27/00	NOTC/NOTICE OF ENTRY OF ORDER	001		09/27/00	
0133	10/09/00	MOT /DEFT'S MOTION FOR APPOINTMENT OF APPELLATE COUNSEL	001		10/31/00	
0134	10/10/00	ROC /RECEIPT OF COPY OF MOTION FOR APPOINTMENT OF APPELLATE COUNSEL	001		10/10/00	



**ORIGINAL**

**FILED**

SEP 25 2 16 PM '00

CLERK

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 WILLIAM LESTER WITTER,  
13 #1204227

14 Defendant.

Case No.. C117513  
Dept. No. XV  
Docket L

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

17 DATE OF HEARING: 2-26-99  
18 TIME OF HEARING: 8:30 A.M.

19 THIS CAUSE having come on for hearing before the Honorable Sally Loehrer, District  
20 Judge, on the 26th day of February, 1999, the Petitioner not being present, represented by  
21 DAVID M. SCHIECK, ESQ., the Respondent being represented by STEWART L. BELL,  
22 District Attorney, by and through EDWARD R.J. KANE, Chief Deputy District Attorney, and  
23 the Court having considered the matter, including briefs, transcripts, arguments of counsel, and  
24 documents on file herein, now therefore, the Court makes the following findings of fact and  
25 conclusions of law:

26 **FINDINGS OF FACT**

27 1) On January 21, 1994, William Lester Witter, hereinafter "the defendant," was  
28 charged by way of Information with one count of Murder With Use of a Deadly Weapon (Felony  
- NRS 200.010, 200.030, 193.165) for the brutal slaying of James Harold Cox. The defendant

COUNTY CLERK

SEP 25 2000

RECEIVED

1 was also charged with one count each of Attempt Murder With Use of a Deadly Weapon (Felony  
2 - NRS 193.330, 200.010, 200.030, 193.165), Attempt Sexual Assault With Use of a Deadly  
3 Weapon (Felony - NRS 193.330, 200.364, 200.366, 193.165), and Burglary (Felony - NRS  
4 205.060) for the brutal stabbing and attack of Kathryn Terry Cox.

5 2) The defendant was adjudged by a jury to be guilty on all four counts. The jury  
6 subsequently determined that the defendant should be sentenced to death by lethal injection for  
7 the murder conviction. On August 3, 1995, the district court adjudged the defendant guilty and  
8 sentenced him to death for the Murder conviction to four (4) consecutive twenty year terms of  
9 imprisonment in the Nevada State Prison for the Attempt Murder and Attempt Sexual Assault  
10 convictions, and to a consecutive ten year term of imprisonment for the Burglary conviction.  
11 An Amended Judgment of Conviction was filed on August 11, 1995.

12 3) The defendant filed a timely Notice of Appeal on August 31, 1995. An appeal was  
13 filed, and the State responded. The Supreme Court of Nevada affirmed the convictions and  
14 issued a remittitur dated December 23, 1996. The defendant filed a Petition for Writ of Habeas  
15 Corpus (Post-Conviction) on October 27, 1997, and filed the Supplemental Points and  
16 Authorities in Support of the Petition on August 11, 1998. An evidentiary hearing was granted  
17 and took place on February 26, 1999, during which defendant's trial counsel Philip Kohn and  
18 defendant's appellate counsel Robert Miller testified. *The parties requested time to file*

19 *written argument - defendant filed on Sept 12, 2000 - The State on Sept 11, 2000. SW*  
**CONCLUSIONS OF LAW**

20 4) The defendant failed to prove his claim of ineffective assistance of trial counsel.  
21 In order to assert a claim for ineffective assistance of counsel the defendant must prove that he  
22 was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of  
23 Strickland v. Washington, 466 U.S. 668, 686-687, 104 S.Ct. 2052, 2063-2064 (1984); see, State  
24 v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the defendant must  
25 show first that his counsel's representation fell below an objective standard of reasonableness,  
26 and second, that but for counsel's errors, there is a reasonable probability that the result of the  
27 proceedings would have been different. See, Strickland, 466 U.S. at 687-688 & 694, 104 S.Ct.  
28 at 2065 & 2068.

## TRIAL

5) Counsel was not ineffective for choosing not to present evidence at the trial portion of defendant's case. At the evidentiary hearing, counsel explained that he knew if defendant was convicted, there would be a penalty phase. Because of the overwhelming evidence of defendant's guilt, counsel felt it was prudent to not present a defense during the guilt phase so as not to impair his credibility at the penalty phase. Not every crime is defensible, and an attorney is not required to "do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade." United States v. Cronin, 466 U.S. 648, 656 n.19, 104 S.Ct. 2039, 2046 n.19 (1983). The decision not to dispute defendant's guilt in order to preserve credibility for the penalty phase was a proper trial strategy. People v. Bolin, 956 P.2d 374, 400 (Cal. 1998). Counsel's strategy was a "tactical" decision that is "virtually unchallengeable absent extraordinary circumstances." Howard v State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990).

6) Trial counsel was effective because he did investigate a FAS defense. Counsel flew to San Jose, California where he researched defendant's family background and spent one week interviewing witnesses. Counsel also read The Broken Chord by Michael Doris, which detailed the symptoms and effects of FAS, which was a ground-breaking field in 1994 and 1995. At the time counsel was preparing for trial, little was known about FAS, yet counsel conducted extensive investigation into this possible defense. Counsel's efforts to investigate a FAS were reasonable. A court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S.Ct. at 2066.

7) Trial counsel was effective because he did attempt to retain a FAS expert. Counsel learned that he would need a geneticist to support a claim of FAS. To locate a geneticist, counsel contacted three university medical facilities and eventually located a local geneticist, Dr. Colene Morris. Counsel contacted Dr. Morris on at least ten occasions, but each time she refused to speak with him. Counsel then contacted several defense attorneys in an effort to obtain the name of a FAS expert. Counsel eventually contacted FAS experts who resided in

1           11) Counsel's failure to retain a gang expert was not deficient because an expert was  
2 not necessary to refute many of the claims made by the State's gang experts. As aforementioned,  
3 trial counsel's strategy will be "virtually unchallengeable absent extraordinary circumstances."  
4 Howard, 106 Nev. at 722, 800 P.2d at 180.

5           12) Defendant was not prejudiced by counsel's failure to call a gang expert. The  
6 Nevada Supreme Court, upon considering whether the defendant was prejudiced by the district  
7 court's refusal of a continuance that rendered it impossible for defendant to obtain a gang expert,  
8 concluded that even if the defendant had been able to secure an expert to testify as to the gang  
9 violence in prisons and the need for a shank, "such testimony would have done little to mitigate  
10 his involvement." Witter v. State, 112 Nev. 908, 920, 921 P.2d 886, 894 (1996).

11           13) Counsel was not ineffective for remarking, during opening statements, that the  
12 facts the prosecutor gave were "terrible, horrible, disturbing facts." Defendant claimed that this  
13 statement conceded defendant's guilt. This statement was not a concession of defendant's guilt,  
14 but rather was a concession that the facts of the crime were disturbing. Accordingly, counsel's  
15 opening statement was proper, as "[i]t is the duty of counsel making a statement to state the facts  
16 fairly, and to refrain from stating facts which he cannot, or will not, be permitted to prove."  
17 State v. Olivieri, 49 Nev. 75, 236 P.1100, 1101 (1925).

18           14) Trial counsel was effective for choosing not to object during the State's opening  
19 statement. In its opening argument, the prosecutor commented that the defendant was a man  
20 "bent on doing heinous, heinous evil things." Counsel decided not to object because he was  
21 "trying to curry favor with the jury" with the hope that the jury would be more willing to listen  
22 to him during the penalty phase. The decision not to object was part of trial counsel's strategy  
23 that is "virtually unchallengeable absent extraordinary circumstances." Howard, 106 Nev. at 722,  
24 800 P.2d at 180.

25           15) Defendant was not prejudiced by counsel's failure to object to the State's opening  
26 statement because it was permissible under Nevada law. A prosecutor is allowed to outline his  
27 case and propose facts he intends to prove. Rice v. State, 113 Nev. 1300, 1308, 949 P.2d 262,  
28 270 (1997). Prosecutor's are given great freedom in what they may say during opening

1 statement- even if the prosecutor overstates what he is later able to prove, misconduct is not  
2 present unless he does so in bad faith. Id. See People v. Benson, 802 P.2d 330, 353-54 (Cal.  
3 1990) (holding prosecutor's comment "this crime is perhaps the most brutal, atrocious, heinous  
4 crime," was merely a comment on the nature of the offense and was permissible).

5 16) Defense counsel was not ineffective for choosing not to object to prosecutor's  
6 opening statement, which said that the victim has not only physical scars but also emotional  
7 scars. Defendant claims that such remarks were "improper victim impact evidence." Defense  
8 counsel stated that it was a strategic decision not to object to such remarks. Because victim  
9 impact evidence is not categorically barred by the eighth amendment under Payne v. Tennessee,  
10 501 U.S. 808, 111 S.Ct. 2597 (1991), it was proper trial strategy not to object to the statement.  
11 "Experienced advocates might differ about when, or if, objections are called for since, as a  
12 matter of trial strategy, further objections from counsel may have succeeded in making the  
13 prosecutor's comments seem more significant to the jury." Sasser v. State, 993 S.W.2d 901, 910  
14 (Ark. 1999).

15 17) Defendant was not prejudiced by counsel's failure to object to the State's opening  
16 statement because even if defense counsel would have objected and the remarks of the  
17 prosecutor had been stricken, it would not have made any difference on the outcome of the trial.  
18 There was so much overwhelming evidence of guilt by way of the identification of the defendant  
19 by one of the victims (Kathryn Cox), three security guards, and the bus driver; physical evidence  
20 of the deceased victims blood found all over the defendant; and a confession by the defendant  
21 that he committed the killing, that the inclusion of this statement was merely harmless error. See  
22 NRS 178.598; Chapman v. California, 386 U.S. 18, 24, 87 S. Ct. 824, 828 (1967); and United  
23 States v. Hastings, 461 U.S. 499, 510-11, 103 S.Ct. 1974, 1981 (1983).

24 18) Defense counsel was not deficient for failing to object to the admission of  
25 photographs of the victim. Defendant claimed he was prejudiced by the admission of a  
26 photograph of the victim attending a class reunion in Hawaii. It was not error for counsel not  
27 to object to these photographs, as under Nevada law, a trial court's decision to admit a  
28 photograph will be upheld absent an abuse of this discretion. See Greene v. State, 113 Nev.

1 157, 931 P.2d 54, 60 (1997) (upholding trial court's admission of a photograph of victim when  
2 he was alive). Counsel's failure to object was a tactical one presumably based on a familiarity  
3 with Nevada case law. As such, it is "virtually unchallengeable absent extraordinary  
4 circumstances." Howard, 106 Nev. at 722, 800 P.2d at 180.

5 19) Defense counsel was not ineffective for failing to offer an instruction that  
6 informed the jury that character evidence could not be considered by the jury until after it had  
7 weighed the aggravating circumstances against the mitigating circumstances. The Supreme  
8 Court of Nevada has rejected this premise in Lisle v. State, 113 Nev. 679, 941 P.2d 459, 475  
9 (1997). There is no Nevada authority which supports the defendant's contention that character  
10 evidence cannot be considered until after the jury determines that a defendant is death eligible.  
11 Id. A defendant's character is relevant to the jury's determination of the appropriate sentence  
12 for a capital crime, it is not limited to only after the jury decides the defendant is death eligible.  
13 Id. (Citations omitted) Character evidence is relevant to determine the sentence. Id.

14 20) Defendant cannot meet the second prong of Strickland because even if counsel  
15 were ineffective, which he was not, defendant was not prejudiced by trial counsel's performance.  
16 Strickland is a two prong test: the defendant must show that counsel's representation fell below  
17 an objective standard of reasonableness, and second, that but for counsel's errors, there is a  
18 reasonable probability that the result of the proceedings would have been different. In this case,  
19 even if counsel were deficient in his performance, defendant was not prejudiced because no  
20 matter what counsel did at trial, no reasonable probability existed that Defendant would not be  
21 convicted. There was so much overwhelming evidence of guilt by way of the identification of  
22 the defendant by one of the victims (Kathryn Cox), three security guards, and the bus driver;  
23 physical evidence of the deceased victims blood found all over the defendant; and a confession  
24 by the defendant that he committed the killing, that defendant cannot show he was prejudiced  
25 by counsel's performance.

## 26 APPELLATE

27 The United States Supreme Court has held that there is a constitutional right to effective  
28 assistance of counsel in a direct appeal from a judgment of conviction. Evitts v. Lucey, 469 U.S.

1 395, 397, 105 S.Ct. 830, 836-837 (1985); see also, Burke v. State, 110 Nev. 1366, 1368, 887  
2 P.2d 267, 268 (1994). The federal courts have held that in order to claim ineffective assistance  
3 of appellate counsel the defendant must satisfy the two-prong test of Strickland v. Washington.

4 The defendant has the ultimate authority to make fundamental decisions regarding his  
5 case. Jones v. Barnes, 463 U.S. 745, 751, 103 S.Ct. 3308, 3312 (1983). However, the defendant  
6 does not have a constitutional right to "compel appointed counsel to press nonfrivolous points  
7 requested by the client, if counsel, as a matter of professional judgment, decides not to present  
8 those points." Id. In reaching this conclusion the Supreme Court has recognized the "importance  
9 of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or  
10 at most on a few key issues." Jones, 463 U.S. at 751 -752, 103 S.Ct. at 3313. In particular, a  
11 "brief that raises every colorable issue runs the risk of burying good arguments...in a verbal  
12 mound made up of strong and weak contentions." Jones, 463 U.S. at 753, 103 S.Ct. at 3313. The  
13 Court has therefore held that for "judges to second-guess reasonable professional judgments and  
14 impose on appointed counsel a duty to raise every 'colorable' claim suggested by a client would  
15 disserve the very goal of vigorous and effective advocacy." Jones, 463 U.S. at 754, 103 S.Ct. at  
16 3314.

17 21) Appellate counsel was not deficient for deciding not to raise a Batson issue on  
18 appeal. Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712 (1986), set forth a three-step process  
19 for evaluating race-based objections to peremptory challenges. First, the opponent of the  
20 peremptory challenge must make a prima facie showing of racial discrimination. In order to do  
21 so, "the defendant must first show that he is a member of a cognizable racial group, . . . and that  
22 the prosecutor has exercised peremptory challenges from the venire members of the defendant's  
23 race." Once a prima facie showing has been made, the burden of production shifts to the  
24 proponent of the strike to come forward with a race-neutral explanation. Purkett v. Elem, 514  
25 U.S. 765, 767-68, 115 S.Ct. 1769, 1770-71 (1995). If a race-neutral explanation is tendered, step  
26 three requires the trial court to decide whether the opponent of the strike has proved purposeful  
27 racial discrimination. Id.

28 22) Appellate counsel was not ineffective for not raising a Batson challenge because

1 defendant failed to show that the juror in question was a member of a cognizable racial group.  
2 At the time of the peremptory challenges, the jurors were not present. Neither the prosecutor nor  
3 the court had noted that the juror was African-American because they were not aware that race  
4 was an issue in the case because the defendant appeared to be Caucasian. The names of the  
5 defendant and his family do not suggest any particular race. Due to the uncertainty of the juror's  
6 race, appellate counsel chose not to raise this issue on appeal. Appellate counsel was not  
7 ineffective because he clearly chose to exclude this weak argument. The Supreme Court has  
8 recognized the "importance of winnowing out weaker arguments on appeal and focusing on one  
9 central issue if possible, or at most on a few key issues." Jones, 463 U.S. at 751 -752, 103 S.Ct.  
10 at 3313

11 23) Appellate counsel was effective for not raising a Batson challenge because the  
12 State offered a race-neutral reason for exercising its peremptory challenge. The prosecutor  
13 indicated to the trial court that he had nothing in his notes regarding the juror's race. The only  
14 notation the prosecutor had with regard to the juror was that he did not believe that she was  
15 capable of making a decision. Because a race-neutral explanation was tendered, the defendant  
16 was required to prove purposeful discrimination. Purkett v. Elem, 514 U.S. 765, 767-68, 115  
17 S.Ct. 1769, 1770-71 (1995). Defendant was unable to show that State's reason was not facially  
18 valid, therefore this issue would not have succeeded on appeal, because "the ultimate burden of  
19 persuasion regarding racial motivation rests with, and never shifts from, the opponent of the  
20 strike." Id.

21 24) Appellate counsel was effective in deciding not to petition the Court for a  
22 rehearing. According to NRAP 40(c)(2) rehearing may only be considered by a court in the  
23 following circumstances: i) When it appears that the court has overlooked or misapprehended  
24 a material matter in the record or otherwise, or ii) In such other circumstances as will promote  
25 substantial justice. Whitehead v. Nevada Commission on Judicial Discipline, 110 Nev. 380,  
26 388, 873 P.2d 946, 952 (1994). In Whitehead, the petition was not considered proper because  
27 it did not address any "material matter," it simply asked the court to withdraw or change "faulty  
28 assumptions, misstatements of fact and mischaracterizations of the legal arguments. . . ." Id.



1 The court held that rehearings are not granted to review matter of no material consequence. Id.

2 25) In his Supplement to his Petition, the defendant argued 1) that there were  
3 irreconcilable differences within the court's opinion that the court had indicated it would  
4 maintain irrespective of the contradiction, 2) that there remained three, not four, aggravators  
5 after the court struck one down, and 3) that the court erred in a date. None of these claims are  
6 of any material consequence. With regard to the first claim, the court indicated that it was being  
7 contradictory, so it would not have changed its position on rehearing. With regard to the second  
8 claim, it is of no consequence that the court made a clerical error or miscalculated the remaining  
9 aggravators because the finding of only one aggravator is enough to invoke the death penalty and  
10 three still remained. NRS 200.030(4)(a). With regard to the third claim, defendant was not  
11 prejudiced by counsel's failure to point out that the Court erred in calculating the time from  
12 when the shank was discovered in defendant's cell until defense counsel was notified of the  
13 shank, thereby giving counsel no time to retain a gang expert. The Court indicated that even  
14 if defense had time to secure a gang expert and present testimony to this regard, it would have  
15 done little to mitigate the defendant's involvement. Witter v. State, 112 Nev. at 919, 921 P.2d  
16 at 894.

17 26) The prosecution did not shift the burden to the defendant, so appellate counsel was  
18 not ineffective in choosing not to raise this issue. Defendant argued that when the prosecutor  
19 stated that neither the State nor the defense had called an expert on how alcohol affects a  
20 person's state of mind, that shifted the burden to the defendant. In Lisle v. State, 113 Nev. 679,  
21 941 P.2d 459, 476 (1997), the court held that the burden was not shifted to the defendant when  
22 the prosecutor made only a few general remarks about the lack of expert witnesses, not a specific  
23 witness during the penalty phase. Because the burden was not shifted, appellate counsel was  
24 effective in deciding not to bring this meritless argument.

25 27) Defendant was not prejudiced by appellate counsel's decision not to argue that the  
26 state shifted the burden to the defendant by commenting on fact that neither the State nor the  
27 defense had called an expert on how alcohol effects a person's state of mind. Trial counsel  
28 objected to this statement, and the court responded that the jury "knows that there is no burden.

1 He's just saying what was and was not presented at the time of trial." Defendant was not  
2 prejudiced by appellate counsel's decision not to appeal this statement because any harm caused  
3 by the statement was remedied by the court's statement. Counsel's decision not to appeal the  
4 statement was tactical decision based on his belief that this issue was unpersuasive. Because a  
5 "brief that raises every colorable issue runs the risk of burying good arguments . . . in a verbal  
6 mound made up of strong and weak contention", counsel's decision was effective. Jones v.  
7 Barnes, 463 U.S. 745, 751, 103 S.Ct. 3308, 3313, 77 L.Ed.2d 987 (1983).

8 28) Appellate counsel was correct in not raising the issue of denial of trial counsel's  
9 challenge for cause of juror Miller, who indicated that he would not consider the childhood of  
10 a defendant as a mitigating circumstance. This issue would have lost on appeal unless the  
11 defendant could prove the trial court had abused its discretion. "Few aspects of a jury trial are  
12 more committed to a district court's discretion than the decision whether to excuse a prospective  
13 juror for actual bias. Moreover, trial courts possess a peculiar ability to determine whether a  
14 prospective juror's claimed ability to decide a case impartially is genuine." In United States v.  
15 Claiborne, 765 F.2d 784, 800 (9th Cir. 1985) (holding that defendant's use of peremptory  
16 challenges to strike two jurors who admitted having preconceptions of defendant's guilt or  
17 innocence was "not a denial of justice" but rather was a "proper utilization of the peremptory  
18 tool.")

19 29) Appellate counsel was not ineffective in deciding not to address the reference to  
20 the defendant's acts of juvenile rape as this was reliable evidence that was admissible.  
21 Defendant claimed that this evidence was "tenuous and specious." However, this evidence was  
22 reliable, as it was introduced through a certified copy of a criminal report which stated that in  
23 "1978, [subject] was arrested at the age of 15 for rape while residing in Hawaii. He served in  
24 juvenile hall." It was part of a certified copy of the record of the Department of Corrections that  
25 was read verbatim to the jury by a parole officer. Additionally, it gave the year, place, age of  
26 the defendant, and punishment imposed for the sex offense. Thus, defendant would not have  
27 succeeded in appealing this evidence under D'Agostino v. State, 107 Nev. 1001, 823 P.2d 283  
28 (1991), which found that the admission of testimony by a jail informant who testified that the

1 defendant, while in prison, had told him that he had killed "some old man in New York" was  
2 unreliable because informant did not specify the time, place, or identity of the man. Id. at 1003,  
3 823 P.2d at 284.

4 30) Appellate counsel was not ineffective in deciding not to address the reference to  
5 force and violence in prison which came out in the penalty phase. Defendant claimed it was  
6 ineffective for appellate counsel to fail to argue that it was improper for parole officer Rose to  
7 testify as to the defendant's misconduct by way of force and violence in prison. Defendant did  
8 not make an objection to this information at the time Ms. Rose was testifying and in fact asked  
9 her follow up questions regarding this information on cross-examination. It was not until the  
10 next day that defense counsel put his objection to this information on the record. Second, this  
11 is again not the kind of information that the Court in D'Agostino meant to exclude. Again, the  
12 information came from a certified report, was testified to by a parole officer (not a jail-house  
13 informant), and indicated that the defendant was punished with additional jail time for the  
14 violent behavior. This evidence was in fact reliable, and appellate counsel was not ineffective  
15 in deciding not to make a faulty argument on appeal.

16 31) Appellate counsel did not err in deciding not to appeal the trial court's decision  
17 to admit photographs of the scene, the murder weapon, and the autopsy into evidence. Likewise,  
18 the trial judge did not abuse his discretion in allowing photos of the interior and exterior of the  
19 cab because this aided the jury in understanding the scene in which the crime took place. The  
20 judge did not abuse his discretion in allowing a picture of the knife, the murder weapon. Finally,  
21 the judge was proper in allowing the autopsy photos. The defendant properly states that such  
22 photos are admissible to aid in the ascertainment of the truth if the probative value outweighs  
23 their prejudicial impact. The admission of photographs of victims, crime scenes, and weapons  
24 is within the sound discretion of the trial court, and absent an abuse of this discretion, the  
25 decision will be upheld. Greene v. State, 113 Nev. 157, 931 P.2d 54,60 (1997). Appellate  
26 counsel was effective in deciding to exclude this unpersuasive argument in light of the Nevada  
27 case law.

28 ///

**ORDER**

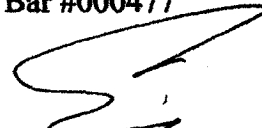
Based on the Findings of Fact and Conclusions of Law herein contained, it is hereby:  
ORDERED, ADJUDGED, AND DECREED that Defendant's Petition for Writ of Habeas  
Corpus (Post-Conviction) shall be, and it is, hereby denied.

DATED this 21 day of September, 2000.

  
DISTRICT JUDGE

SALLY LOEHRER

STEWART L. BELL  
DISTRICT ATTORNEY  
Nevada Bar #000477

BY   
EDWARD R.J. KANE  
Chief Deputy District Attorney  
Nevada Bar #001438

ORIGINAL

FILED 7

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

SEP 27 1 55 PM '00

*Shirley B. Hargrave*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 WILLIAM LESTER WITTER  
12 #1204227

13 Defendant.  
14

Case No. C117523  
Dept. No. XV  
Docket L

15  
16 NOTICE OF ENTRY OF ORDER

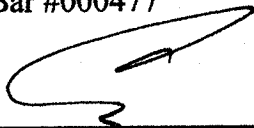
17 TO: WILLIAM LESTER WITTER, Defendant;

18 TO: DAVID M. SCHIECK, ESQ., Counsel of Record;

19 YOU WILL PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law and  
20 Order was entered in the above-entitled action, a copy of which is attached hereto.

21 DATED this \_\_\_\_\_ day of September, 2000.

22 STEWART L. BELL  
23 DISTRICT ATTORNEY  
24 Nevada Bar #000477

25 BY   
26 EDWARD R.J. KANE  
27 Chief Deputy District Attorney  
28 Nevada Bar #001438


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CERTIFICATE OF MAILING

I hereby certify that service of the NOTICE OF ENTRY OF ORDER was made the  
27<sup>th</sup> day of September, 2000, by depositing a copy in the U.S. Mail, postage prepaid,  
addressed to:

DAVID M. SCHIECK, ESQ.  
302 E. Carson Ave., #600  
Las Vegas, Nevada 89101

BY   
Secretary for the District Attorney's Office

## CRIMINAL COURT MINUTES

---

94-C-117513-C      STATE OF NEVADA      vs Witter, William L

---

01/25/94    10:00 AM    00    INITIAL ARRAIGNMENT

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk  
LARRY SNYDER/LS, Relief Clerk  
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	000862 Harmon, Melvyn T.	Y
	001 D1 Witter, William L	Y
	PUBDEF Public Defender	Y

Mr. Philip J. Kohn of the Public Defenders office present representing the Deft. Deft. Witter arraigned and pled NOT GUILTY. Deft. waived 60-day rule. Mr. Harmom lodged a copy of Rule #250 with the Clerk, and gave copies to the Deft. and his Counsel. COURT ORDERED, MATTER SET FOR TRIAL.

CUSTODY

8/29/94 @ 10:30 AM / JURY TRIAL /// 8/25/94 @ 10:00 AM / CALENDAR CALL

---

02/01/94    10:00 AM    00    ORAL REQUEST OF DISTRICT ATTORNEY  
RESET TRIAL DATE

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk  
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	001799 Bell, Jr., Rex A.	Y
	000862 Harmon, Melvyn T.	Y
	001 D1 Witter, William L	Y
	PUBDEF Public Defender	Y

PHILIP J. KOHN, DEPUTY PUBLIC DEFENDER, PRESENT ON BEHALF OF DEFENDANT. THE RECORD WILL SHOW MR. HARMON HAS A PROBLEM WITH A TRIAL DATE IN AUGUST AND HAS ASKED FOR A NEW DATE. THE COURT ORDERED, THE TRIAL DATE IS VACATED AND RESET.

CUSTODY

11-14-94 @ 10:30 AM / JURY TRIAL

11-10-94 @ 10:00 AM / CALENDAR CALL

## CRIMINAL COURT MINUTES

94-C-117513-C

STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 001

10/13/94 10:00 AM 00 MOTION TO CONTINUE TRIAL DATE

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: PENNY WISNER, Relief Clerk

PARTIES: STATE OF NEVADA Y

002415 Moreo, Thomas J. Y

001 D1 Witter, William L Y

Phillip Kohn, DPD, present. Due to Court's absence, matter CONTINUED.

CUSTODY

CONTINUED TO: 10/20/94 10:00 AM 01

10/20/94 10:00 AM 01 MOTION TO CONTINUE TRIAL DATE

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk  
TOM MERCER, Reporter/Recorder

PARTIES: STATE OF NEVADA Y

001799 Bell, Jr., Rex A. Y

003726 Guymon, Gary L. Y

001 D1 Witter, William L Y

PUBDEF Public Defender Y

000556 Kohn, Philip J. Y

Mr. Kohn represented to Court they have learned of records that are critical to their defense. Because of the privacy act in California it will take some time to obtain these records. State argued in opposition to a continuance. COURT ORDERED, this trial date is vacated and RESET.

CUSTODY

4-27-95 10:00 AM CALENDAR CALL

5-1-95 10:30 AM JURY TRIAL

CONTINUED ON PAGE: 003



## CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 002

04/25/95 10:00 AM 00 AT THE REQUEST OF THE COURT

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk  
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
000862	Harmon, Melvyn T.	Y
003726	Guymon, Gary L.	Y
001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y

COURT MET WITH COUNSEL IN CHAMBERS. These representations were put on the record. Mr. Kohn made a motion to continue the trial date and argued in support of the motion. Mr. Guyman argued in opposition to the motion to continue this trial date. He stated the victim in this case vigorously opposes a continuance of this trial date.

The Court addressed Defendant Witter and told him that the Court had told his attorney there will be no more continuances, no more coming up with a new theory a few weeks prior to trial. The Court ORDERED, trial date is set. Mr. Kohn asked that his motions set for 4-27-95 be continued to the date of the calendar call, and BY THE COURT SO ORDERED.

CUSTODY

6-15-95 10:00 AM CALENDAR CALL

6-19-95 10:30 AM JURY TRIAL

CONTINUED ON PAGE: 004

## CRIMINAL COURT MINUTES

94-C-117513-C

STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 003

05/16/95 10:00 AM 00 DEFT'S PRO PER MOTION TO DISMISS COUNSEL  
AND APPOINTMENT OF NEW COUNSEL

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk  
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y

Mr. Kohn represented to Court that since this motion was filed he has met twice with defendant Witter and State has answered the motion. It is not a personality problem. Defendant Witter in not happy that certain defenses are not being pursued. Mr. Kohn asked that this hearing be in camera since he does not want to set forth all of their defenses at this time. THE COURT ORDERED, that request is granted and Court will meet with Counsel on 5-25-95.

CUSTODY

6-15-95 10:00 AM CALENDAR CALL

05/25/95 10:00 AM 00 DEFT'S PRO PER MOTION TO DISMISS COUNSEL  
AND APPOINTMENT OF NEW COUNSEL

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: CAROL GREEN, Relief Clerk  
DAVID ROBINSON, Reporter/Recorder

PARTIES:	STATE OF NEVADA	N
000862	Harmon, Melvyn T.	Y
003726	Guymon, Gary L.	Y
001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y

Statement by Mr. Kohn regarding previous hearing which was held in chambers and was recorded, with request that transcript be sealed. COURT ORDERED, transcript will be sealed. Further, COURT ORDERED, Motion to Dismiss Counsel and Appointment of New Counsel is DENIED; dates previously set will stand.

CONTINUED ON PAGE: 005

## CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 004

CUSTODY

06/15/95 10:00 AM 00 ALL PENDING MOTIONS

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk  
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

DEFENDANT'S MOTION IN LIMINE TO PROHIBIT ANY REFERENCES TO THE FIRST PHASE AS THE "GUILT PHASE"... DEFENDANT'S MOTION IN LIMINE LIMITING REMOVAL OF JURORS BY THE PROSECUTOR...DEFENDANT'S MOTION TO ALLOW JURY QUESTIONNAIRE. ...DEFENDANT'S MOTION TO PARTIALLY STRIKE NOTICE OF AGGRAVATING CIRCUMSTANCES...DEFENDANT'S MOTION FOR INDIVIDUAL SEQUESTERED VOIR DIRE...DEFT'S MOTION TO DISMISS FOR FAILURE TO COLLECT AND/OR PRESERVE EVIDENCE...STATE'S MOTION TO ENDORSE NAMES ON INFORMATION...CALENDAR CALL

COURT ORDERED, Defendant's Motion to Allow Jury Questionnaire will be granted with these questions omitted: 7, 10, 11, 13, 14, 15, 20, 22, 25, 26, 29 (A) (B) (C), 30, 32, 34, 35, 36, 37, 38, 41, 42, 43, 44, 45, 48, 49, 50, 51 and the words close friends, 52, 53, and words close friends, 54, 59, 60, 61, 63, 64, 74, 75,,79, 86 and preamble, 92, 96, 97, 98, 99, 100, 101, 102, and 103.

COURT ORDERED, no ruling will be made on Defendant's Motion in limine to Prohibit any Reference to the First Phase as the "Guilt Phase". Court finds State has as much right as Defendant does for removal of Jurors, and Court indicated ruling will be made on that as we go along.

COURT RESERVED ruling on Defendant's Motion to partially Strike Notice of Aggravating Circumstances. COURT ORDERED, Defendant's Motion for Individual sequestered Voir Dire is DENIED. Defendant's Motion to Dismiss for Failure to Collect and/or Preserve Evidence was WITHDRAWN. State's Motion to Endorse Names is GRANTED.

Mr. Kohn asked that this matter be passed for one day so they can tell the Court for sure they are ready for trial, and by the COURT SO ORDERED. Mr. Kohn represented to Court he would like to WITHDRAW the motion for JURY QUESTIONNAIRE since the questions omitted are the questions he wanted and he does not want to upset the Jurors by having them answer the questions he is

CONTINUED ON PAGE: 006

## CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 005

not as interested in. COURT ORDERED, that Motion will be WITHDRAWN.

CUSTODY

6-16-95 10:00 AM CALENDAR CALL

06/16/95 10:00 AM 01 CALENDAR CALL

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk  
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

Mr. Kohn announced ready for trial on 6-19-95 @ 10:30 A.M. There was some discussion as to when the Penalty Hearing could be held. Estimated time for this trial is two weeks and one week, or three days for the Penalty Hearing. The Court indicated the week of July 10, 1995 is the time set for the penalty hearing, if that becomes necessary. It was decided prospective jurors would be brought into the Courtroom in groups of fourteen (14) to be cleared for death penalty.

Mr. Guymon submitted an Order to Endorse Names for Court's signature and the same was filed in Open Court.

COURT ORDERED, matter continued for JURY TRIAL.

CUSTODY

6-19-95 10:30 AM JURY TRIAL

## CRIMINAL COURT MINUTES

94-C-117513-C

STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 006

06/19/95 10:30 AM 00 TRIAL BY JURY

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk  
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

## (PRE-TRIAL MOTIONS OUTSIDE PRESENCE OF JURY)

On behalf of State Mr. Guyman stated there were no motions pending that have not been ruled on by the Court. Mr. Kohn stated he had no pretrial motions that had not been ruled on and counsel stipulated that all motions have been heard and ruled on. Court and counsel agreed all of the requirements of the Supreme Court rule 250 had been satisfied.

One further matter. The Court stated there was a motion previously filed by Defendant to remove Mr. Kohn as his counsel. After reading the minutes Court determined that this motion had been heard and denied.

## (JURY PRESENT)

The clerk called the roll of prospective jurors with all answering present.

Mr. Owens made a short nature of action statement who introduced himself and Mr. Guymon. He also read the list of witnesses State may call. Mr. Philip Kohn, Counsel for Defense, introduced himself and Mr. Bassett and estimated time of trial will be two weeks.

The Court called groups of fourteen prospective jurors and they examined in groups of fourteen, with remaining prospective jurors out of the courtroom.

Voir Dire examination continued.

COURT ORDERED, voir dire examination will continue June 20, 1995 at the hour of 1:30 P.M. The prospective jurors were dismissed until that time.

## (OUTSIDE PRESENCE OF JURY)

Mr. Guymon made objection to Mr. Kohn's reference to circumstances in Defendant's childhood. Response by Mr. Kohn who agreed to brief the issue. The Court suggested that counsel not use the word "mitigation". Both agreed they would not use that word.

CONTINUED TO: 06/20/95 01:30 PM 01

CONTINUED ON PAGE: 008

## CRIMINAL COURT MINUTES

94-C-117513-C

STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 007

06/20/95 01:30 PM 01 TRIAL BY JURY

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk  
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
000372	Primeaux, A. L.	Y
004352	Owens, Steven S.	Y
001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

(OUTSIDE PRESENCE OF JURY)

Mr. Kohn put on the record his motion to introduce fetal alcohol. Mr. Kohn put on the record his conversation regarding defendant's motion for replacing his counsel. It was because Mr. Kohn had stated he had no defense for the trial phase but in talking with experts in Seattle, Washington he feels there is a great deal that could be done in the penalty phase.

Mr. Kohn stated the Court denied his motion to continue the trial and he had never made a record on that motion. He did so. State opposed the motion and the basis for that opposition was that the case was previously set for trial in 1994, 10-14-94, and Mr. Kohn has had almost a year to get the discovery for his defense. State's recollection of that motion which was heard in chambers was very much as the State indicated. The Court had granted a couple of continuances in the past to give defense time to procure a witness, since the Court thought it was important, in fairness to Defendant's case. But now the Court feels it is not right to give him three weeks to do what he could not do in past year. Court denied the motion for continuance on the eve of trial.

Mr. Kohn asked permission to inquire into the area of aggravating circumstances. Response by State. Court stated it's findings. Court DENIED the request.

(JURY PRESENT)

Jury selection continued.

Prospective jurors were released at 4:00 p.m.

COURT ORDERED, jury selection is continued to 6-21-95 at the hour of 10:30 A.M.

CONTINUED TO: 06/21/95 10:30 AM 02

CONTINUED ON PAGE: 009

## CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 008

06/21/95 10:30 AM 02 TRIAL BY JURY

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk  
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

## (OUTSIDE PRESENCE OF JURY)

Mr. Kohn made a record about his objections to Defendant not receiving a proper razor for shaving before he came to Court. The Court inquired of Court Services Officers if Defendant had been treated in an unusual manner. They indicated he had been given the same razor that they have been giving prisoners for years. Court determined that the Defendant looked fine.

Mr. Kohn brought to Court's attention that in today's Review Journal, editorial page, there is a letter from the deputy Attorney General and it talks about criminals not taking the blame for criminal actions. It basically belittles the idea of mitigation. He expressed concern about the Court's rulings on voir dire in asking the jury about abuse. Further argument by Mr. Kohn. Response by State. The Court ORDERED, mark the article in red and it will be marked as Court's Exhibit but the Court will not respond to anything in the press during this trial.

## (PROSPECTIVE JURORS PRESENT)

Jury selection continued.

COURT ORDERED, this matter is continued to the date of June 22, 1995 at the hour of 11:15 AM.

CONTINUED TO: 06/22/95 11:15 AM 03

## CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 009

06/22/95 11:15 AM 03 TRIAL BY JURY

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk  
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

(JURY PRESENT)

Jury selection continued.

Lunch Break.

(JURY PRESENT)

Jury selection continued.

At the hour of 5-30 P.M. twelve jurors and two alternates were seated and sworn.

The Court admonished and excused the jury and ORDERED, this matter is continued to the date of 6-23-95 at the hour of 9:00 AM.

CONTINUED TO: 06/23/95 09:00 AM 04

06/23/95 09:00 AM 04 TRIAL BY JURY

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk

PARTIES: NO PARTIES PRESENT

(JURY PRESENT)

Opening statement by Mr. Guymon.

Opening statement by Mr. Bassett.

The Clerk read Information to Jury and stated Defendant's plea thereto.

Mr. Kohn invoked the exclusionary rule.

Kathryn Terry Cox sworn and testified.

Thomas D. McKinnon sworn and testified.

Thomas Pummill sworn and testified.

Lunch break.

(OUTSIDE PRESENCE OF JURY)

Mr. Kohn put on the record he had asked to make a motion to exclude witnesses outside presence of Jury and the Court determined it should be

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## CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 010

made in the presence of the jury. Also, Mr. Kohn stated he did not want those who will testify in the Penalty Hearing allowed to be present during the trial, in the interest of a fair trial for the defendant.

Response by Mr. Guymon.

The Court ruled the exclusionary rule applies only to the Evidentiary portion of the trial.

LUNCH BREAK

(OUTSIDE PRESENCE OF JURY)

Mr. Kohn asked to put on the record one other thought concerning the motion to exclude witnesses.

The Court finds this motion is prematurely made, since the motion that affects the trial is the motion to exclude witnesses at the trial. Should we come to the penalty hearing, then the question will be should witnesses be allowed to testify at the penalty phase who have sat through the guilty phase of the trial. Court further finds, it is not an issue in this phase of the trial.

Mr. Kohn stated that in going through the police reports there was some mention of gang affiliation. He advised the Court the State will not mention that and both witnesses have been strongly admonished not to say anything about gang affiliation. That will be in the form of a stipulation.

Mr. Kohn objected to the State showing two (2) pictures of Mr. Cox, showing him under his cab, dead and very bloody. Mr. Kohn also objected to photographs of Mr. Cox taken at the autopsy. The Court did remove one picture of Mr. Cox under his cab but allowed the other four.

(JURY PRESENT)

Timothy Allen Schroeder sworn and testified.

Afternoon break.

(OUTSIDE PRESENCE OF JURY)

Mr. Kohn objected to some pictures State had marked, #18 and #22. Court viewed the photos and ORDERED, they will be admitted.

(JURY PRESENT)

Bryan Candiano sworn and testified.

Donald Redlin, Security officer, bicycle detail, sworn and testified.

Jury was admonished and excused. COURT ORDERED, this matter is continued to the date of Monday, June 26, 1995 at the hour of 10:30 AM.

(OUTSIDE PRESENCE OF JURY)

Mr. Guyman advised Court that if Mr. Kohn is going to call an expert they would like to have the name of the expert and any report he might have. Mr. Kohn indicated that depending on what the State's witness says, he may or may not call an expert. IF he does, he has already told the State who it will be.

There was some discussion about instructions.

CONTINUED TO: 06/26/95 10:30 AM 05

## CRIMINAL COURT MINUTES

94-C-117513-C

STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 011

06/26/95 10:30 AM 05 TRIAL BY JURY

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk  
 MARCIA LEONARD, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

(OUTSIDE PRESENCE OF JURY)

Mr. Guymon has show counsel for defense all of the photos the State intends to admit. Mr. Kohn had objections to five of the pictures.

(JURY PRESENT.)

Daniel Peterson sworn and testified.

Exhibits marked, offered and admitted as per attached worksheet.

(OUTSIDE PRESENCE OF JURY)

Mr. Kohn put on the record his objections to State's Exhibit #41. The Court deemed that although it was the same photo, it might be called duplicitous but it jusdt a smaller photo of the larger one they already have in. So the Court can see no harm in the State using the smaller photo also.

Lunch break.

(JURY PRESENT)

Thomas Dwayne Thowsen sworn and testified. (Detective Thomas)

Alan Galaspy sworn and testified.

Counsel stipulated to admit State's Exhibits No. 70 and No. 71.

Sonya Snodie sworn and testified.

Mr. Guymon put on the record another stipulation of Counsel: Terry Cook, who is a criminalist with the Las Vegas Metropolitan Police Department, and has previously testified as an expert for the Las Vegas Metropolitan Police Department as a criminalist, tested many of the items that have no been admitted into evidence. Specifically, he tested the blood that was found on the four and a half inch blade of the buck knife and concluded that it could be the blood of James Cox, but not the blood of Kathryn Cox or William Witter.

Terry Cook also tested the substances that were found on the bloody t-shirt of the defendant, the black and white sweater, the boxer shorts and the blue and white socks; concluded that that too was a blood substance; that it could be the blood of -- specifically on the t-shirt, sweater and socks --o the blood of James Cox, and not the blood of Kathryn Cox or the Defendant William Witter; That the substance on the blue jeans worn by the defendant was, in fact blood, and that it could

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## CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 012

be the blood of James Cox and not Kathryn's or the defendant's; that the substance on the tennis shoes worn by the defendant was, in fact blood, and that it could be the blood of James Cox and not the blood of Kathryn Cox or William Witter; That the substance found on the hands, left and right, of the Defendant was, in fact, blood, and that it matched the blood of James Cox and not the blood of Kathryn Cox or the defendant, William Witter; That the blood, that the substance found on the brown jacket located over the body of James Cox could be the blood of James Cox, but not the blood of Kathryn Cox or defendant Witter. That the Substance found on the gray sweatshirt that said Caesars Palace, which Kathryn had been wearing, and the blood on the green and black sweater as well as the bra, could be --that was blood and that it could be the blood of Kathryn Cox or the defendant's, as they haave similar blood types, but could not be the blood of James Cox. Further, Counsel will stipulate that Terry Cook tested or analyzed the swabs from the sexual assault kits, that being taken by Marilyn Allred, the nurse at University Medical Center, from Kathryn Cox, and compared it to the sexual assault kit and evidence taken from the defendant and that nothing of serological value was found on the vaginal, anal, or oral swabs taken from Kathryn Cox.

Dr. Robert Jordan was sworn and testified.

The COURT ORDERED, these proceedings are continued to the date of June 27th, 1995 at the hour of 1:30 PM.

(OUTSIDE PRESENCE OF JURY)

The Defedant was advised of his rights.

CONTINUED TO: 06/27/95 01:30 PM 06

06/27/95 01:30 PM 06 TRIAL BY JURY

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk  
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

(OUTSIDE THE PRESENCE OF JURY)

Mr. Kohn represented to the Court that he was prepared to call Dr. Levy as his first and possisbly only witness. Dr. Levy is a medical doctor. He works at Montevista Hospital. He is head of addictions there.

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## CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 013

This doctor was contacted by the State and now he feels the Defendant is a bad guy and should die and that he doesn't think he can do any good for the defense. So, at this point Mr. Kohn stated he was without an expert and the State is partly to blame. Mr. Kohn asked for a continuance. Mr. Guymon argued in opposition to that motion. The Court finds the request for a continuance is not well taken. The COURT ORDERED, the motion for a continuance is DENIED.

(JURY PRESENT)

State rests.

Defense rests.

The Court ORDERED, this matter is continued to June 28, 1995 at the hour of 10:30 AM.

CONTINUED TO: 06/28/95 10:30 AM 07

06/28/95 10:30 AM 07 TRIAL BY JURY

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk

PARTIES: NO PARTIES PRESENT

(OUTSIDE PRESENCE OF JURY)

On behalf of State Mr. Guymon had no objection to the instructions the Court indicated it would give and had two instructions to offer that the Court indicated it would not give. Arguments of counsel.

On behalf of Defense Mr. Kohn made an objection to the fact that all discussion regarding settling instructions was not put on the record. Discussion between Court and Mr. Kohn regarding the felony murder rule. Mr. Kohn had two instructions marked as Defendant's proffered A and Aa, and argued. Mr. Kohn had no instructions to offer that the Court indicated it would not give. Counsel stipulated that instructions were settled in Open Court.

Mr. Kohn put on the record he thought the State had the right to rebut what the defense says in their argument, but not save a lot of charts whistles and bells for their closing argument.

The Court reminded Mr. Kohn Mr. Guymon had just read into the record NRS 175.141, entitled Order of Trial, sub (5), which states the State must open and must conclude the argument.

Further argument and response.

The Court ORDERED, State will get a second argument.

(JURY PRESENT)

The Court instructed the jury as to the law of the case. Instruction #29-A was added to the instructions and read to the jury.

Opening argument by Mr. Owens. Answering argument by Mr. Bassett.

Closing argument by Mr. Guymon.

The officers were sworn to take charge of the jury.

The alternate jurors were thanked and excused.

CONTINUED ON PAGE: 015

## CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 014

The jury retired to deliberate at the hour of 1:35 PM.

(OUTSIDE PRESENCE OF JURY)

The Court made a record with regard to Instruction #29-A.

The jury returned with a verdict at the hour of 5:10 PM.

The clerk called the roll of the jury.

The jury found defendant guilty of Count I, MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, Count II, ATTEMPT MURDER WITH USE OF A DEADLY WEAPON, Count III, ATTEMPT SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON and Count IV, BURGLARY.

The jury was polled at request of Mr. Kohn.

The Court explained to the Jury they would now have to decide the penalty and the Penalty Hearing would begin on July 10, 1995 at the hour of 10:30 AM.

The jurors were thanked and excused until that date and were asked to leave thier names and telephone numbers with the bailiff.

(OUTSIDE PRESENCE OF JURY)

The COURT ORDERED, Defendant is remanded on this case. Court and Counsel discussed in chambers the matter of getting together to exchange witness lists and make reciprocal discovery of everything that is going to be had in the penalty phase. July 6 is the cut of date for the penalty phase. All witnesses have to be disclosed at that time.

07/06/95 10:30 AM 00 STATUS CHECK:DISCOVERY FOR PENALTY HRG.

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk  
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
001 D1	Witter, William L	N
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

State filed in open Court an Amended Witness List and a Motion to Permit Testimony Regarding Defendant's Gang Affiliation During Penalty Phase. Mr. Kohn represented to Court he did not want to disclose at this time his expert witness. The Court indicated that he must do that at this time. This is the cut off date and all discovery is to be turned over at this time if it is to be used in the Penalty Hearing. Counsel indicated they were ready to proceed.

COURT ORDERED, this matter is continued for Penalty Phase and anything else that needs to be put on the record will be done when the Defendant is present.

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## CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 015

CUSTODY

7-10-95 10:30 AM PENALTY HEARING

07/10/95 10:30 AM 00 PENALTY HEARING

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk  
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

(OUTSIDE PRESENCE OF JURY)

Mr. Kohn filed in Open Court Defendant's Motion to Continue the Penalty Phase and Defendant's opposition to the State's Motion to Permit Testimony Regarding Defendant's Gang Affiliation During Penalty Phase and Defendant's Motion to Exclude Evidence Regarding Allegations that the Defendant possessed a Weapon While in Jail in open Court.

The Court, having read briefs from both sides, and hearing oral argument ORDERED, that testimony will be allowed as to evidence of gang affiliation and reasons for that decision were put on the record. FURTHER ORDERED, Defendant's Motion to continue the Penalty Hearing is DENIED. and testimony regarding the weapon found in Defendant's cell will be allowed.

Mr. Guymon stated he would file an Amended Notice of Intent to Seek Death Penalty, striking the first aggravator since Defendant Witter had completed his parole prior to this incident.

There was discussion as to the packet of information brought by State's witness Linda Rose. The Court deemed that could be used at the hearing. Mr. Kohn stated again his concern on the discovery issue. He said they have had Dr. Etcoff used against them before they call him as a witness. Mr. Kohn asked to have a picture marked as Defense Exhibit #A to be published to the Jury through his opening statement, and by the Court SO ORDERED.

(JURY PRESENT)

The Clerk called the roll of the jurors, with all answering present. Opening argument by Mr. Guymon and then Mr. Kohn.  
Lunch Break.

Ronald A. Ezell sworn and testified.

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## CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 016

David Scot Rumsey sworn and testified.

Michael Pomeroy sworn and testified.

Linda Rose sworn and testified.

James Ford sworn and testified.

Shanta Franco sworn and testified.

Timothy Jackson sworn and testified.

Thomas Pipitone sworn and testified.

The Court admonished and excused the jurors and ORDERED, matter continued to July 11, 1995 at the hour of 11:00 am.

CONTINUED TO: 07/11/95 11:00 AM 01

07/11/95 11:00 AM 01 PENALTY HEARING

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk  
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

(JURY PRESENT)

James Randall Cox sworn and testified.

Lunch recess.

Phillip Cox, brother of Jim Cox, sworn and testified.

Kathryn Terry Cox sworn and testified.

State Rests.

(OUTSIDE PRESENCE OF JURY)

Mr. Kohn put on the record his objection about the parole evidence presented by State.

Response by State.

Response by Mr. Kohn.

Mr. Kohn moved for a mistrial based on the statements of Mrs. Cox, asking the jury to show no mercy.

Response by Mr. Guymon.

The COURT ORDERED, motion for Mistrial is DENIED.

Mr. Kohn represented to Court Defendant Witter does not want him family called in testify, but Mr. Kohn feels this is his choice to make and he feels he must present this evidence on behalf of his client. Mr. Witter would like the Court to Order Mr. Kohn not to bring his family into Court, or allowed him to be removed from the Courtroom.

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## CRIMINAL COURT MINUTES

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were in the trial and asked him if he wanted to come back into Court for the final arguments. The Defendant indicated it was his choice to remain out of the courtroom until the verdict is read. The Court allowed that. Mr. Kohn advised Court he was going to file a motion allowing him to argue last in the penalty phase. The Court said he could file it, but the Court will not grant it.

CONTINUED TO: 07/13/95 11:00 AM 03

07/13/95 11:00 AM 03 PENALTY HEARING

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk  
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
001 D1	Witter, William L	N
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

## (OUTSIDE PRESENCE OF JURY)

Instructions settled in open Court.

On behalf of State Mr. Guymon had no instructions to offer that the Court indicated it would not give and had no objections to the instructions the Court indicated it would give.

Mr. Kohn made his objection to Court settling instructions outside presence of Defendant. He also made a record of his objection to the word "appropriate" in Instruction No. 8, line 26 and argued.

Mr. Kohn had one instruction to offer that the Court indicated it would not give and that was marked Defense proffered A.

Counsel stipulated that instructions have been settled in open Court and will be read prior to closing arguments.

## (JURY PRESENT)

The Court instructed the Jury as to the law of the case.

Opening argument by Mr. Owens.

Answering argument by Mr. Bassett and then Mr. Kohn.

Closing argument by Mr. Guymon.

The officers were sworn to take charge of the jury.

The alternate jurors were thanked and excused.

The jury retired to deliberate at the hour of 1:30 PM.

## (OUTSIDE PRESENCE OF JURY)

Mr. Kohn put on the record his argument regarding future dangerousness.

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Response by Mr. Guymon.

Defendant was present when the Jury returned with a verdict at the hour of 6:00 p.m.

The jurors were polled at request o Mr. Kohn, thanked and excused by Court.

(OUTSIDE PRESENCE OF JURY)

Defendant was remanded to custody and COURT ORDERED, matter set for sentencing.

CUSTODY

8-3-95 10:00 AM SENTENCING COUNTS I-IV

08/03/95 10:00 AM 00 SENTENCING COUNTS I-IV

HEARD BY: Stephen Huffaker, Judge; Dept. 9

OFFICERS: BERNIECE STUCKI, Court Clerk  
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y

JENE CAREY, Division of Parole and Probation, present. Defendant Witter adjudged guilty of Count I, MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON (F), Count II, ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), Count III, ATTEMPT SEXUAL ASSAULT WITIH USE OF A DEADLY WEAPON (F) and Count IV, BURGLARY (F) by reason of Jury Verdict. Argument to Court by State. State-ment by Defendant. Mr. Kohn submitted the matter.

The Court ORDERED, Defendant Witter is sentenced, in addition to the \$25 Administrative Assessment as follows:

COUNT I DEATH BY LETHAL INJECTION

COUNT II TWENTY (20) YEARS in the Nevada Department of Prisons and a consecutive TWENTY (20) YEARS for Use of a Deadly Weapon.

COUNT III TWENTY 20) YEARS in the Nevada Department of Prisons and a consecutive TWENTY (20) YEARS for Use of a Deadly Weapon. This sentence to run consecutively to Count II.

COUNT IV TEN (10) YEARS in the Nevada Department of Prisons. This sen- tence to run consecutively to Count III.

Defendant is to pay \$2,790 in restitution, with an additional amount to determined. Also, Defendant is given six hundred twenty-seven (627) days credit for time served.

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## CRIMINAL COURT MINUTES

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The State filed in Open Court the Greetings, Judgment of Conviction, Warrant of Execution and Order of Execution.

NDP

09/18/97 08:30 AM 00 DEFT'S MOTION FOR APPOINTMENT OF COUNSEL

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: LINDA SKINNER, Relief Clerk  
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	004352 Owens, Steven S.	Y
	001 D1 Witter, William L	N
	PUBDEF Public Defender	Y
	001060 Miller, Robert L.	Y

Upon Court's inquiry, Mr. Miller advised that defendant has not filed any motion. Court inquired if this motion was premature. Mr. Miller stated he felt it might be, but that defendant was going to be filing something soon. Mr. Schieck stated that if he were going to be appointed, he would rather be appointed before defendant prepared his writ as it would be less work for him. COURT ORDERD, MOTION GRANTED. Mr. Schieck is APPOINTED to help with the appeal.

NDP

11/12/97 08:30 AM 00 DEFT'S PETITION FOR WRIT OF HABEAS  
CORPUS (POST CONVICTION)

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: LINDA VIGIL, Court Clerk  
BILLIE JO CRAIG, Relief Clerk  
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	001 D1 Witter, William L	N
	000824 Schieck, David M.	Y

Prior to Court commencing, counsel requested a briefing schedule. COURT ORDERED briefing schedule as follows: Mr. Schieck to file supplemental points and authorities by 1/14/98; the State to respond by 3/2/98; Mr. Schieck to reply by 3/17/98; argument 3/19/98.

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## CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

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10/14/98 08:30 AM 02 ARGUMENT: DEFT'S PETITION FOR WRIT OF  
HABEAS CORPUS (POST CONVICTION)

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: NORA PENA, Court Clerk  
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	003726 Guymon, Gary L.	Y
	001 D1 Witter, William L	N
	000824 Schieck, David M.	Y

Argument by Mr. Schieck, in addition he would like to call Phil Kohn as a witness, he was the trial attorney and appeal attorney. No opposition by the State to set an evidentiary hearing because it can be done very quickly. Court noted an evidentiary hearing is appropriate. Mr. Schieck advised he would like to check Mr. Kohn's schedule but would request a date sometime in November and thinks it would not be so quick, further would like to bring the deft. here. COURT ORDERED, matter set on a Monday for an Evidentiary Hearing.

NDP

11-16-98 10:00 AM EVIDENTIARY HEARING: DEFT'S PETITION FOR WRIT OF HABEAS  
CORPUS (POST CONVICTION)

11/16/98 08:30 AM 00 EVIDENTIARY HEARING: DEFT'S PETITION FOR  
WRIT OF HABEAS CORPUS (POST CONVICTION)

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: NORA PENA, Court Clerk  
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	003726 Guymon, Gary L.	Y
	001 D1 Witter, William L	N
	000824 Schieck, David M.	Y

Mr. Schieck requested a continuance, defendant is not present and is not cooperating also has refused to see him, further has written to the deft. and thinks the deft. is needed here. Court asked if he could proceed without the deft. as the deft. doesn't want to come down. Mr. Schieck noted this is the first continuance. No objection by the State for a continuance. COURT ORDERED, matter CONTINUED.

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## CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

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NDP

CONTINUED TO: 12/14/98 10:00 AM 01

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12/14/98 10:00 AM 01 EVIDENTIARY HEARING: DEFT'S PETITION FOR  
WRIT OF HABEAS CORPUS (POST CONVICTION)

HEARD BY: Joseph S. Pavlikowski; Dept. VJ30

OFFICERS: NORA PENA, Court Clerk  
JAMES HELLESO, Reporter/RecorderPARTIES: STATE OF NEVADA  
003726 Guymon, Gary L.Y  
Y

There being no objection, COURT ORDERED, matter CONTINUED.

NDP

CONTINUED TO: 01/13/99 08:30 AM 02

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12/23/98 08:30 AM 00 MINUTE ORDER RE: REASSIGNMENT

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: NORA PENA, Court Clerk

PARTIES: NO PARTIES PRESENT

Upon review of the case, COURT ORDERED, it would like this case reassigned  
to Judge Loehrer as in the normal course pursuant to the change over.

100

I, SHIRLEY B. PARRAGUIRRE, the duly elected, qualifying and acting Clerk of Clark County, in the State of Nevada, and Ex-Officio Clerk of the District Court, do hereby certify that the foregoing is a true, full and correct copy of the original:

THE STATE OF NEVADA,


**VS.**

**Defendant,**

now on file and of record in this office.

SHIRLEY B. PARRAGUIRRE  
CLARK COUNTY CLERK

CLARK COUNTY CLERK

  
Barbara Belt Deputy Clerk