

IN THE SUPREME COURT OF THE STATE OF NEVADA

DALE EDWARD FLANAGAN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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Docket No. 63703

Appeal from the Denial of a Post-Conviction Petition
District Court, Clark County
The Honorable Michelle Leavitt, District Judge
District Court No. 85-C069269-1

APPELLANT'S APPENDIX
Volume 3

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Case No. C69269
Department Fourteen

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DISTRICT COURT
CLARK COUNTY, NEVADA

LORETTA BOWMAN CLERK
BY *[Signature]* DEPUTY

THE STATE OF NEVADA,

Plaintiff,

REPORTER'S TRANSCRIPT

vs.

OF

DALE EDWARD FLANAGAN
and RANDOLPH MOORE,

JURY TRIAL

Defendants.

BEFORE THE HONORABLE DONALD M. MOSLEY, DISTRICT JUDGE

Wednesday, July 12, 1989

APPEARANCES:

For the State:

Daniel M. Seaton, Esquire
Deputy District Attorney

For Defendant Flanagan:

Stephen J. Dahl, Esquire
Deputy Public Defender

For Defendant Moore:

David M. Schieck, Esquire

Reported by: Sharon J. Thielman, CSR No. 72

1 A No, I didn't.

2 Q Could it be that you are trying to help Mr. Flanagan
3 and Mr. Moore now at this juncture?

4 A No, everybody was drunk.

5 Q Or to help yourself so that you wouldn't have so
6 much of a snitch jacket put on?

7 A No, sir.

8 MR. SEATON: Thank you. I have nother further.

9 THE COURT: Anything further?

10 MR. DAHL: Just one, Your Honor.

11

12 RECROSS-EXAMINATION

13 BY MR. DAHL:

14 Q Mr. Lucas, you have a parole hearing coming up in
15 January, don't you?

16 A Yes, I do.

17 MR. DAHL: Thank you. No further questions.

18 MR. SCHIECK: No, Your Honor.

19 THE COURT: Very good then. Mr. Lucas, you are
20 excused. Thank you. Next witness.

21 MR. SEATON: Angela Saldana.

22

23 ANGELA SALDANA,

24 was called as a witness on behalf of the State and, having
25 been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SEATON:

Q Please state your name and spell your last name for the court reporter?

A Angela Saldana, S-a-l-d-a-n-a.

Q Miss Saldana, how old are you?

A 24.

Q And in November of 1984, how old would you have been?

A I think 19 or 20. I think it was 20.

Q Okay. Where do you currently reside?

A I live in an apartment complex.

Q I mean today where do you reside?

A Oh, Clark County jailhouse.

Q Back in November of 1984, did you know the defendants Dale Flanagan and Randy Moore?

A Yes, I did.

Q Are they the people who are sitting at the table before you now?

A Yes, sir.

Q Did you know Dale Flanagan's grandparents?

A No, I didn't.

Q Did you become familiar with the fact of their deaths on November the 5th, 1984?

A Yes.

1 Q Where did you live on November the 5th, 1984?

2 A I lived with my aunt and uncle.

3 Q On November the 6th, 1984 where did you live?

4 A I was asked to move on the property of Dale
5 Flanagan's grandparents' property.

6 Q Who asked you to do that?

7 A Dale Flanagan.

8 Q And what was your relationship with Dale Flanagan at
9 that time?

10 A Boyfriend girlfriend.

11 Q Were you aware at that time that he had killed his
12 grandparents?

13 A At that time, no, I was not aware that he did.

14 Q How long had you known Dale Flanagan at that time?

15 A At the moment that when I moved in?

16 Q Yes.

17 A I had just met him prior, two weeks before.

18 Q And had he asked you to move into the trailer prior
19 to that time?

20 A No.

21 Q Prior to the November 5th or the 6th?

22 A No.

23 Q When was the first time that he asked you to move
24 into the trailer?

25 A The night of the 5th, if I remember.

1 Q Okay. Let me take you to November the 13th. Do you
2 remember a Detective Levos coming to the trailer?

3 A Yes.

4 Q Were you still at the trailer at that time?

5 A Was I still living there?

6 Q Yes.

7 A Yes.

8 Q And you were living there with Dale; is that
9 correct?

10 A Yes.

11 Q No one else?

12 A No.

13 Q Did Detective Levos come there to talk to Dale?

14 A Yes.

15 Q And did they have a conversation?

16 A Yes.

17 Q Was it out of your earshot?

18 A Yes.

19 Q Had you been sent someplace?

20 A I was sent to the trailer.

21 Q By?

22 A By Dale.

23 Q By Dale. After they finished their conversation,
24 did Dale come and talk to you about the content of that
25 conversation that he had had with Detective Levos?

1 A Yes.

2 Q Was Dale upset?

3 A He was a little distraught.

4 Q What did he say to you?

5 A He said that they had found something that wasn't
6 supposed to be there.

7 Q At the scene of the killing?

8 A Yes.

9 Q What did he say that thing was?

10 A I asked him what it was and he said his knife.

11 Q Had you seen him with a knife before, prior to
12 November the 5th?

13 A Yes.

14 Q Did he carry it on him?

15 A Yes.

16 Q At a later time did he show you another knife?

17 A Yes.

18 Q Did it look similar to the knife that you had seen
19 before?

20 A Yes, identical.

21 Q Do you recognize the knife in 91-A?

22 A Yes.

23 Q And does that appear to look like those two knives?

24 A Yes.

25 Q And were they exactly identical one to the other?

1 A Almost exactly.

2 Q As far as you remember?

3 A Yes.

4 Q When -- how long after Detective Levos had his
5 conversation with Randy and Randy was upset and told you that
6 they found the knife --

7 MR. SCHIECK: I believe that is Dale.

8 MR. SEATON: Pardon.

9 MR. SCHIECK: You said Randy.

10 BY MR. SEATON:

11 Q Detective Levos, I think I said. Did I say Randy
12 told you? How soon after Detective Levos talked to Dale and
13 Dale told you that he was upset, how long after that did he
14 show you this other knife?

15 A I'm not sure.

16 Q In terms of days or weeks or what?

17 A Around a week after.

18 Q Okay. Did he make any comments to you when he
19 showed you this second knife?

20 A Yes.

21 Q What did he say?

22 A He said, "Look, I found my knife."

23 Q What did you say?

24 A I said, "That doesn't look like your knife. That
25 one looks new."

1 Q Did it look like his knife, just that it wasn't old?

2 A Yes.

3 Q Okay. And what did he say when you commented on
4 that it was a new knife?

5 A He said, "Well, as long as no one else knows that.
6 Now the cops don't have anything on me."

7 Q The cops don't have anything on me. On December the
8 5th, did you have an occasion to have a conversation with
9 Dale regarding his grandparents?

10 A Yes.

11 Q And where did that take place?

12 A In his trailer.

13 Q Was anyone else present?

14 A No.

15 Q What were you talking about in general before the
16 grandparents came up?

17 A We were discussing an old boyfriend that I had seen
18 recently at the time.

19 Q He was complaining about that?

20 A Yes.

21 Q Okay. Tell us to the best of your recollection the
22 words that Dale said as he started telling you about his
23 grandparents?

24 A You mean how the conversation got started?

25 Q Yeah.

1 A We were talking about an ex-boyfriend that I had met
2 with and he had gotten upset. He said he didn't care what I
3 did, where I went. He was just tired of running from the
4 problem or tired of everything.

5 Q What else did he say?

6 A He and Randy gotten into. I don't know what exactly
7 in between that point and this statement but he said, "How do
8 you like this? I did it. I killed my grandparents."

9 Q He said, "How do you like this? I did it. I killed
10 my grandparents"?

11 A Yes.

12 Q Those were his words?

13 A Those were his words.

14 Q Did that surprise you?

15 A Yes and no. It surprised me that he brang up the
16 subject. It didn't surprise me that he stated it.

17 Q Were you aware at that time of whether or not Dale
18 believed that he was mentioned in his grandparents' will?

19 A Would you ask that again.

20 Q Did you know that -- had Dale ever told you that he
21 was mentioned or he thought he believed he was in his
22 grandparents' will?

23 A Yes.

24 Q What did he say to you about that?

25 A He just stated that he had heard -- it was rumored

1 to him that he was in the will. He wasn't sure if all of it
2 was his or half of it was his.

3 Q And did he say what various things he would get out
4 of the will?

5 A No, he didn't.

6 Q Did he ever comment on whether or not the house
7 would be his?

8 A I don't remember.

9 Q Was there anything else said about an insurance
10 policy?

11 A Yes.

12 Q What about the insurance policy?

13 A He had stated there was a \$200,000 insurance policy
14 for the grandchildren.

15 Q And he was one of the beneficiaries?

16 A Yes.

17 Q Were there other grandchildren?

18 A Yes.

19 Q How many?

20 A As far as I know, just his sister. I don't know.
21 It's been a long time.

22 Q So to the best of your recollection, the \$200,000
23 policy would have been split between Dale and his sister?

24 A Yes.

25 Q After he told you that he had killed his

1 grandparents, did he go on to describe to you what had
2 happened on the night that he killed his grandparents?

3 A Yes.

4 Q What did he say to you in that regard? Let me see
5 if I can help you out. Did he say who had accompanied him?

6 A Yes.

7 Q Give me the names, please?

8 A John Ray Lockett, Randy Moore, Thomas Akers and Mike
9 Walsh.

10 Q Did he mention Roy McDowell?

11 A I can't remember. I don't think he did.

12 Q But those other four people plus himself?

13 A Yes.

14 Q Did he say where those people had been before they
15 went to do the killing?

16 A Yes.

17 Q Where?

18 A Randy Moore's apartment.

19 Q And did he say whether or not they planned it over
20 there at the apartment?

21 A Yes.

22 Q Did he tell you how they got to the grandparents'
23 house?

24 A Yes.

25 Q How did they do that?

1 A Thomas Akers' El Camino.

2 Q Did they say what they were going to make this whole
3 killing look like?

4 A In his words he stated he would make it look like a
5 robbery.

6 Q That other people had done?

7 A He didn't say that. He just said that they would
8 make it look like a robbery.

9 Q Did he say how they made entry into the house?

10 A Yes.

11 Q How?

12 A Through the right-hand side window of the house.

13 Q Did he tell you what kind of weapons had been taken?

14 A He only stated about the knife and the rifles.

15 Q And how many rifles were there?

16 A Two.

17 Q Did he say who had the rifles?

18 A He said John Ray Lockett and Randy Moore.

19 Q He didn't mention a .22 pistol to you?

20 A Oh, yeah. He did, yeah.

21 Q Okay. What did he say about that?

22 A He just said he had a gun. He didn't say what kind
23 it was. He just said he had a handgun.

24 Q Dale Flanagan told you he had a handgun on that
25 night?

1 A Yes.

2 Q Did he say whether or not he entered the house?

3 A Yes.

4 Q What did he tell you about that?

5 A He said that he gotten in through the window and
6 went to his grandmother's room immediately.

7 Q What did he do when he got into his grandmother's
8 room? Where was she?

9 A He said that she was sleeping in her bed.

10 Q What did he do with her?

11 A He said that he turned on the light and wrestled her
12 to the bed and put his hand over her jaw and then shot her in
13 the head once.

14 Q Did he say how many times?

15 A Once.

16 Q Did he say what happened regarding the grandfather,
17 Mr. Gordon?

18 A Yes.

19 Q What happened there?

20 A He stated that the grandfather was coming down the
21 stairs yelling and that Randy Moore and John Ray were
22 shooting at him as he was coming downstairs.

23 Q Did he say how many shots were fired by Mr. Randy
24 Moore and Johnny Ray Lockett?

25 A Yes.

1 Q How many?

2 A He said seven or eight.

3 Q And did he say anything to you about difficulty with
4 Tom Akers' car afterwards?

5 A I don't remember.

6 Q Okay. Did he tell you if they went back to the
7 apartment?

8 A Yes.

9 Q And did all of the gentlemen go back to Randy
10 Moore's apartment?

11 A Yes.

12 Q After you had moved into the trailer, prior to this
13 case breaking, did you and Dale ever go into the house?

14 A Yes.

15 Q What was your purpose in going into the house?

16 A Mostly to look for the will.

17 Q And did you look throughout the house for the will?

18 A Yes.

19 Q Did you ever find it?

20 A No.

21 Q Did you ever find an insurance policy?

22 A No.

23 Q Did you ever find anything like that which would
24 have benefited Dale Flanagan?

25 A No.

1 MR. SEATON: Thank you. I have nothing further.

2 THE COURT: Cross-examination.

3 MR. DAHL: Your Honor, could we approach the bench,
4 please?

5 THE COURT: Yes, you may.

6 (Discussion at the bench which was
7 not reported.)

8

9 CROSS-EXAMINATION

10 BY MR. DAHL:

11 Q Miss Saldana, we met a few days ago in the Clark
12 County jail, didn't we?

13 A Yes.

14 Q Do you recall the conversation that we had at that
15 time?

16 A Yes.

17 Q Do you recall telling me that during the month --
18 that you were with Dale approximately a month; is that right?

19 A Yes.

20 Q And do you recall telling me during that month you
21 were with him that he went downhill in certain areas?

22 A Yes.

23 Q He over the period of time he quit showering and
24 shaving; is that right?

25 A Yes.

1 Q Quit eating regularly?

2 A Yes.

3 Q He wasn't doing laundry or dishes or anything like
4 that?

5 A Yes.

6 Q He quit his job that he had?

7 A Yes.

8 Q This all occurred over the month before he made that
9 statement to you; is that right?

10 A Yes.

11 Q Now, when he made the statement to you and told you
12 about the involvement of these things, did you get the
13 impression he was telling you to tell somebody to get it off
14 his chest, to get it out in the open?

15 A I wasn't sure really. I had -- I guess that he was
16 either telling me to get it off his chest or telling me to
17 hold his confidence.

18 Q Did he ask you not to tell anyone?

19 A No.

20 Q He didn't say, "Don't tell anyone but I did it" or
21 after it was done he didn't tell you not to tell anyone?

22 A No.

23 Q He didn't ask you to help him out at all?

24 A No.

25 Q Now, is one of the reasons that you weren't

1 surprised when Dale told you about this, that you weren't
2 surprised about what he was telling you, you already heard
3 essentially the same thing from Tom Akers?

4 A Could you rephrase that, please.

5 Q You said when you testified that when Dale told you
6 you were surprised that he brought it up but you weren't
7 surprised what he was telling you --

8 A It --

9 Q Is one of the reasons you weren't surprised was
10 because you already heard a lot of what Dale was telling you
11 from Tom Akers?

12 A No. Tom Akers didn't tell me anything other than it
13 was not a good idea for me to stay.

14 Q Tom Akers didn't tell you about what happened?

15 A He told me after they had all been arrested.

16 Q He didn't tell you two weeks after the murder in the --
17 murders inside Dale's trailer?

18 A He didn't tell me that Dale did anything. I asked
19 if Dale had anything to do with it in any way, shape or form
20 and he says, "I can't say anything but I can tell you that it
21 is not safe for you to stay."

22 Q You don't recall telling me in the jail that you
23 went out to cultivate a friendship with Tom Akers and even
24 slept with him on a couple occasions so he would tell you
25 what happened?

1 A Yes, I do recall telling you that.

2 Q After he told you about it, you went to stay with
3 Dale to try to get Dale to tell you what happened?

4 A No, I didn't tell you that.

5 Q You weren't with Dale to find out what happened?

6 A Yes, I was with Dale to find out what happened but
7 not the way that you made it sound.

8 Q I am sorry. You went to stay with Dale, though, to
9 try and get him to tell you what happened; isn't that right?

10 A I had already been with Dale. This was -- the
11 conversation with Tom Akers happened during the times I was
12 staying with Dale.

13 Q But the reason you were with Dale was to find out if
14 you could what had happened in connection with this incident;
15 isn't that right?

16 A Yes.

17 Q You were living with him in the trailer?

18 A Yes.

19 Q Did you receive any kind of payment from Secret
20 Witness for your testimony?

21 A Yes.

22 Q How much did you receive?

23 A Two thousand.

24 Q That was for testifying at the trial; is that right,
25 the original trial?

1 A Yes.

2 Q And why are you currently residing in the Clark
3 County detention center?

4 A I was arrested for trafficking.

5 Q Trafficking as in drugs or tickets?

6 A Drugs.

7 MR. DAHL: Court's indulgence, please.

8 Q You mentioned the incident of going in and looking
9 for the will or insurance policies or anything like that
10 inside the Gordon's house, do you recall that?

11 A Excuse me.

12 Q You testified about going into the Gordon's house
13 and helping to look for the will and the insurance policies
14 and things like that?

15 A Yes.

16 Q Dale's mother was present while that was happening,
17 wasn't she?

18 A Yes.

19 Q She come over and asked you two to go through the
20 house and look for things?

21 A Yes.

22 MR. DAHL: Thank you. I have no further questions.

23 THE COURT: Mr. Schieck.

24 MR. SCHIECK: No questions, Your Honor.

25 MR. SEATON: Just briefly, Judge.

REDIRECT EXAMINATION

BY MR. SEATON:

Q The going downhill that you saw Dale experience, that occurred after the killings?

A Yes.

MR. SEATON: Thank you. Nothing further.

THE COURT: Anything further? All right. You may step down, ma'am. Thank you very much. Next witness.

MR. SEATON: Wayne Wittig.

WAYNE WITTIG,

was called as a witness on behalf of the State and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SEATON:

Q Please state your name and spell your last for the court reporter?

A Name's Wayne Wittig, last name W-i-t-t-i-g.

Q How old are you, Mr. Wittig?

A 22.

Q How old were you on November the 4th, 5th, 1984?

A 18.

Q Did you at that time know Dale Flanagan and Randy Moore?

FILED

MAY 26 3 28 PM '95

1 MORGAN D. HARRIS
2 PUBLIC DEFENDER
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4 309 S. Third Street
5 Las Vegas, NV 89155
6 (702) 455-4685
7 Attorney for Defendant

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,
12 vs.
13 DALE EDWARD FLANAGAN,
14 RANDOLPH MOORE,
15 Defendant.

CASE NO. C69269
DEPT. NO. XI

DATE OF HEARING: 6/6/95
TIME OF HEARING: 9:00 A.M.

16 MOTION FOR DISCLOSURE TO
17 INFORMATION REGARDING STATE WITNESS'
18 EXPECTATIONS OF BENEFITS OF TESTIMONY

19 COMES NOW the Defendant, DALE EDWARD FLANAGAN, by and
20 through his attorneys, DAVID T. WALL and REBECCA A. MOUNTS,
21 Deputy Public Defenders, and hereby moves this Court for an Order
22 directing the prosecutor to exercise due diligence in searching
23 for and disclosing to the defense the following:

24 1. Any materials and/or information indicating that
25 any State witness has either received, directly or indirectly, or
26 that a person of concern to him received at his request or
27 direction, any money or other material consideration, any
28 leniency or promises thereof, any promises with respect to future
consideration, leniency, intercession, recommendations or
benefits, or anything else that could be of value or use to the
witness or a person of concern to the witness, including, but not

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1 limited to, formal or informal, direct or indirect immunity,
2 favorable treatment or recommendation or assistance with respect
3 to any pending or potential criminal, parole, probation, pardon,
4 clemency, civil, tax court, court of claims, administrative, or
5 other dispute with the government of the United States, or any
6 state or other authority (or with any other person's, criminal,
7 civil, or tax immunity grant), relief from forfeiture, payments
8 of money, reward or fees, witness fees, or the providing of food,
9 clothing, shelter, transportation, legal services or other
10 benefits, placement in a witness security program, or anything
11 else which arguably could reveal an interest, motive, or buys of
12 the witness in favor of the State or against the Defendant, or
13 act as an inducement to testify.

14 2. Any materials and/or information relating to any
15 statements, admissions, or confessions as to crimes not charged
16 which were made by any State witness to a state agent and which
17 relate to conduct which has not as yet been disposed of in the
18 criminal justice system by way of a sentence and which might
19 reasonably be construed to have been made in contemplation of
20 receiving some assistance from the prosecution relating to the
21 disposition thereof.

22 This Motion shall be deemed to include information
23 regarding any witness to be called by the State at the penalty
24 phase commencing on June 12, 1995, and shall be deemed to relate
25 to any benefit or promise of such benefit which was delivered or
26 promised to be delivered at any time from the original trial in
27 this matter in 1985 up to and including the date of the penalty
28 phase to be held before this Court in June of 1995.

1 This Motion is based upon the pleadings and papers on
2 file herein, the Points and Authorities set forth below, and any
3 argument of counsel at the time of hearing.

4 DATED this 26th day of May, 1995.

5 Respectfully submitted,

6 CLARK COUNTY PUBLIC DEFENDER

7
8 By David T. Wall
9 David T. Wall
10 Deputy Public Defender
11 Nevada Bar #2805
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1 witness to recommend a reduction of sentence if the witness'
2 cooperation led to further indictments violated the requirements
3 of due process, and since testimony given pursuant to this
4 agreement was critical to support the defendant's conviction, the
5 defendant was entitled to have his sentence vacated and seek a
6 new trial.

7 Giglio really mandates that the government disclose
8 anything which may indicate that the witness expects to benefit
9 from his relationship with the prosecution. This is particularly
10 true where the witness believes that there is a relationship
11 between the amount of benefit which will inure to the witness and
12 how well he performs for the government. See United States v.
13 Daily, 589 F.Supp. 561 (D.Mass. 1984). The Nevada Supreme Court
14 has also recognized the inherent danger of such a situation.
15 Franklin v. State, 94 Nev. 220, 225 (1978).

16 Promises of leniency go directly to the weight of that
17 witness' testimony, Farmer v. State, 95 Nev. 849, 859 (1979), and
18 the defendant has a right to cross-examine a witness regarding
19 such possible bias. Yates v. State, 95 Nev. 446, 449 (1979);
20 Givens v. State, 99 Nev. 50 (1983).

21 CONCLUSION

22 It is respectfully submitted that in light of the
23 foregoing authority, this Motion should be granted in all
24 respects so as to afford the Defendant herein an opportunity to
25 receive a fair penalty hearing and to secure his rights under the
26 Fourth, Fifth, and Sixth Amendments to the Constitution of the
27 United States of America as applied to the states of the

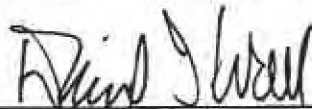
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1 Fourteenth Amendment and the Constitution of the State of Nevada,
2 Art. 1 §§ 1, 8 and 20.

3 DATED this 26th day of May, 1995.

4 Respectfully submitted,

5 CLARK COUNTY PUBLIC DEFENDER

6
7 By 

8 David T. Wall
9 Deputy Public Defender
10 Nevada Bar #2805
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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY

YOU WILL PLEASE TAKE NOTICE that the Clark County Public Defender has set the foregoing MOTION FOR DISCLOSURE FOR INFORMATION REGARDING STATE WITNESS' EXPECTATIONS OF BENEFITS OF TESTIMONY for hearing on Tuesday, June 6, 1995, at 9 a.m., in Department XI of District Court.

DATED this 26th day of May, 1995.

CLARK COUNTY PUBLIC DEFENDER

By David T. Wall
David T. Wall
Deputy Public Defender
Nevada Bar #2805

Receipt of copy of the foregoing MOTION FOR DISCLOSURE FOR INFORMATION REGARDING STATE WITNESS' EXPECTATIONS OF BENEFITS OF TESTIMONY is acknowledged this 26th day of May, 1995.

CLARK COUNTY DISTRICT ATTORNEY


By Pat Hoer

Flanagan:dlb

CERTIFICATE OF MAILING

I hereby certify that on the 26th day of May, 1995, I placed a true and correct copy of the foregoing MOTION FOR DISCLOSURE FOR INFORMATION REGARDING STATE WITNESS' EXPECTATIONS OF BENEFITS OF TESTIMONY in the United States mails, first class postage prepaid thereon by the Clark County Mail Room to:

David Schieck, Esq.
302 E. Carson Ave., #918
Las Vegas, NV 89101


An employee of the Clark County
Public Defender's Office

143
1 STEWART L. BELL
DISTRICT ATTORNEY
2 Nevada Bar #000477
200 S. Third Street
3 Las Vegas, Nevada 89155
(702) 455-4711
4 Attorney for Plaintiff
THE STATE OF NEVADA

FILED

JUN 5 1 04 PM '95

Luetta Loomis
CLERK

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,	)	CASE NO.	C69269
)		
10 Plaintiff,	)	DEPT. NO.	XI
)		
11 -vs-	)	DOCKET NO.	S
)		
12 DALE EDWARD FLANAGAN,)		
#0737065)		
13 RANDOLPH MOORE,)		
#0636661)		
)		
14)		
)		
15 Defendants.)		
)		
16)		

17
18 ANSWER IN OPPOSITION TO
19 DEFENDANT DALE EDWARD FLANAGAN'S MOTION TO DISCLOSE
20 INFORMATION REGARDING STATE WITNESS' EXPECTATION
21 OF BENEFITS OF TESTIMONY

22 Hearing Date: 6-6-95
23 Hearing Time: 9:00 a.m.

24 COMES NOW the State of Nevada through STEWART L. BELL, Clark
25 County District Attorney, by and through Chief Deputy District
26 Attorney, MELVYN T. HARMON, and opposes Defendant Dale Edward
27 Flanagan's Motion to Disclose Information Regarding State Witness'
28 Expectation of Benefits of Testimony.

1 This answer is based upon the entire record of these
2 proceedings, the points and authorities attached hereto, and
3 argument of counsel.

4 DATED this _____ day of June, 1995.

5 Respectfully submitted,

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

9 BY 
10 DAN M. SEATON
11 Chief Deputy District Attorney
12 Nevada Bar #002473
13
14
15

16 POINTS AND AUTHORITIES

17 Dale Edward Flanagan, hereinafter "FLANAGAN", is scheduled to
18 be resentenced. FLANAGAN makes the subject motion to disclose
19 inducements, promises and payments to prospective State witnesses
20 at such hearing. In response, the State represents that, to its
21 knowledge, there have been no inducements, promises or payments
22 made, or to be made, to any such prospective witnesses since the
23 original trial in this matter in 1985.

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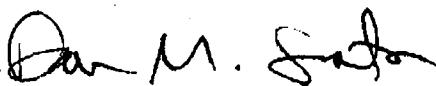
CONCLUSION

Based on the foregoing, the State respectfully submits that it has no knowledge of any inducements, promises or payments made to any prospective witnesses scheduled for FLANAGAN's resentencing hearing since the original trial in this matter in 1985.

DATED this _____ day of June, 1995.

Respectfully submitted,

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

BY 

DAN M. SEATON
Chief Deputy District Attorney
Nevada Bar #002473

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ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA
FILED IN OPEN COURT
JUN 19 1995
LORETTA BOWMAN, CLERK
Deputy

THE STATE OF NEVADA,
Plaintiff,
vs.

DALE EDWARD FLANAGAN &
RANDOLPH MOORE,
Defendants.

By *
* Case No. C069269
*
*
* Dept. No. XI
*
*
* Docket "S"
*
*

* * * * *

BEFORE THE HONORABLE ADDELIAR D. GUY, III, DISTRICT JUDGE
JURY TRIAL -- PENALTY PHASE
(DAY 4, VOLUME IV)
FRIDAY; JUNE 16, 1995

APPEARANCES:

For the Plaintiffs:	DANIEL M. SEATON, ESQ. Deputies District Attorney 200 S. Third St. Las Vegas, NV 89155
For Defendant Flanagan:	DAVID T. WALL, ESQ. REBECCA A. MOUNTS, ESQ. Deputy Public Defenders 309 S. Third St., #226 Las Vegas, NV 89101
For Defendant Moore:	DAVID M. SCHIECK, ESQ. WILLIAM "LEW" WOLFBRANDT, ESQ. 302 E. Carson, #918 Las Vegas, NV 89101
Recorded by:	ANITA SPRINGS-WALKER Reporter/Transcriber Clark County Courthouse 200 E. Third St., Dept. 11 Las Vegas, NV 89101

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(702) 386-0830

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1 Also appearing:
2 (for Rusty Havens,
3 witness)

BELL, DAVIDSON & MYERS
BY: MICHAEL D. DAVIDSON, ESQ.
601 E. Bridger Ave.
Las Vegas, NV 89101

4 Transcription by:

SOUTHWEST TRANSCRIPTS, INC.
309 Arnold St.
Las Vegas, NV 89106
(702) 386-0830

6 Proceedings recorded by electronic sound recording;
7 transcript by electronic sound transcriber.

8 * * * * *

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1 MR. WOLFBRANDT: Yes, your Honor.

2 MR. SEATON: Yes, your Honor.

3 THE COURT: Mr. Seaton.

4 MR. SEATON: Thank you, Judge.

5 PLAINTIFF'S OPENING STATEMENT

6 Well, good morning. I know you're all thinking it's about
7 time we got started. And it is. We are going to get started.
8 And as we have been suggesting to you throughout the jury
9 selection, we're here on a very important mission--something that
10 should be taken in all seriousness.

11 Two people have been murdered. There are others, but two
12 people in this courtroom have been convicted as murders of those
13 first two people.

14 What I'm going to tell you now is what happened at the jury
15 trial, the testimony that came out of the jury trial--the
16 testimony that you're going to hear today and probably some of
17 next week (I would guess Monday) as far as the State's case is
18 concerned.

19 And I'm going to try and explain to you what that last jury
20 heard and what it was that caused them to be able to return the
21 verdicts of guilty that you are now aware of exist against Mr.
22 Flanagan and Mr. Moore. In doing that probably the first thing I
23 should do for you is try to let you know who the you know who the
24 parties are.

25 In my opening remarks, how many days ago, I mentioned

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1 various names of the individuals who were involved with this and
2 what their sentences were. I'm going to go back through that
3 again a little more slowly this time and with a little more
4 detail, because that's some of the evidence that you'll be
5 hearing.

6 Again, so no one forgets, gentleman in the red tie--Dale
7 Flanagan; the gentleman sitting immediately to his left in the
8 brown coat--Randy Moore. They are the Defendants. They are the
9 convicted murderers.

10 They had four friends which are among the most important
11 names that I could tell you at this time. There was Johnny Ray
12 Luckett. There was Michael Walsh, Roy McDowell, and Tom Akers.
13 Of that group you're going to meet Tom Akers. He'll be taking
14 the stand probably on Monday--definitely on Monday--and he'll be
15 testifying.

16 He will tell you of his and others' roles were in this
17 scenario. And I'm going to be telling you now what he has
18 testified to in the past and what I expect him to testify to
19 before you all.

20 Those six young men, and they were all 18/19 years old at
21 the time. The time, by the way, is November the 5th, 1984.
22 Actually it started a couple of months before that. You're going
23 to learn that these individuals, these defendants, were typical
24 young men. They liked baseball; they like going to the lake;
25 they had moms and dads; they'd gone to school--done a lot of the

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1 things that all normal kids do.

2 You're also going to learn that there was a dark and deviant
3 side to these young men--a side which the evidence is going to
4 show is unimaginable to most of us. Many of the jurors, as they
5 were being selected, expressed the wonderment of what happened in
6 this case.

7 What happened in this case is that somewhere in September or
8 October of 1984, these people got together, and they started
9 discussing how to get rid of Dale Flanagan's grandparents. You
10 see, he was mentioned in the will (or at least so he thought).

11 He thought that there was going to be a \$200,000 insurance
12 policy. He thought that the house--and it was a nice house,
13 you'll see photographs of it--would ultimately come to him. He
14 thought the R.V. trailer, which they were nice enough to let him
15 live in, would be his someday, and all of their personal
16 belongings. As the grandson he thought he would ultimately gain
17 from their demise.

18 Which perhaps brings us to Carl and Colleen, his
19 grandparents, 57 and 58 years old. He was an air traffic
20 controller ready for retirement, ready for the good life. They
21 lived at 5851 Washburn Road, way out in the Northwest part of
22 town. In those days it was really out in the toolies. It was
23 somewhere north of Tonopah and East of Jones is its general
24 location so that you might know.

25 And they were just living normal, everyday lives that people

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1 like them live. These people started talking about how to do this
2 dastardly dead. And you're going to hear about a couple of
3 meetings that were had where the planning was gone into. It was
4 being decided who would do what.

5 And there was a very--if not stupid--sophisticated plan. It
6 was one with detail to it. Everyone had their role to play out.
7 And you'll learn that most of the roles were played out quite
8 similarly to the way they were planned.

9 One of the problems from Dale Flanagan's point of view was
10 that he couldn't do this by himself. He needed help. He needed
11 someone to, of course, give him support. He needed wheels to get
12 out there (his car was inoperable), and he needed guns.

13 And so he called upon this amazing circle of friends to help
14 him. And amazingly they agreed. These young men agreed to go
15 kill someone else's grandparents.

16 They got together and decided that Tom Akers was going to
17 drive his car. He had an El Camino that you'll hear about. And
18 they would use that car to transport them out to the house one
19 evening.

20 Michael Walsh was going to take a stick that they had that
21 had tape on the end of it, and he was going to use it to break in
22 a side window of the house so that they could gain entrance.

23 Ray McDowell was going to bring, you'll hear it referred to
24 as a toy, a .22 caliber pistol. And he was going to go into the
25 house after the shootings and after the window was broken and

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1 make it look like a burglary by ransacking portions of the house.

2 Johnny Ray Luckett was going to take a rifle that they had.

3 It was a sawed-off .22 caliber single-shot rifle. And he was
4 going to back up Randy Moore in the killing of Dale Flanagan's
5 grandfather, Carl Gordon. Randy Moore, to do the act that he was
6 contemplating doing, had a semi-automatic long-barreled .22
7 rifle. His job, as I said, was to kill the grandfather.

8 Dale Flanagan, after the window was broken was going to
9 enter into it and go to wherever his grandmother was and kill
10 her. That's what they discussed.

11 And on November the 5th, 1984, unbelievable as it seems,
12 they got into Tom Akers' car. Now, I need to tell you where they
13 were. They were over on North 13th at Randy Moore's apartment.

14 And there was another person at that location at that time.
15 His name is John Lucas. And you're going to hear from John
16 Lucas. He will tell you what went on before and after all of
17 this occurred. John got left out. He stayed at the house,
18 locked the door behind everybody, went to sleep; and when they
19 came back they woke him up, and he let them in.

20 When they got into Akers' car, they started driving out
21 toward Washburn Road. It was 11:00 or 12:00 at night. The
22 Gordon's were peacefully sleeping in their own beds, oblivious to
23 what fate awaited them.

24 On the way out to the Washburn address they wanted -- I
25 think it was Randy Moore wanted to make sure that the guns

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1 worked, or at least the gun that he was handling, the .22 long-
2 barreled semi-automatic rifle. They stopped and he went out into
3 the desert and fired it, and it worked. Boy, did it work!

4 They got back into the car. They went to the Washburn
5 address. They parked the car.

6 You're going to be able to see some pictures and some
7 diagrams that fairly clearly establish where all of these things
8 occurred--where the car was parked, what it was in relationship
9 to the house, where the trailer was in relationship to
10 the house. Because Tom Akers' job, once he drove everybody
11 there, was to go to the trailer while the other five went to the
12 house.

13 His job was to go into the trailer and to get to some audio
14 tapes--music, rock and roll. These young killers had the
15 presence of mind to know that they wanted to listen to some music
16 after they did whatever they were going to go do. And so he did
17 that. He went to the house -- I'm sorry, to the trailer.

18 While he was at the trailer and everyone else had left and
19 headed over toward the house, he heard some things. He heard
20 window breaking. He heard a woman scream. He heard a couple of
21 three shots. He heard a man yelling. And he heard six or seven
22 other shots. He got scared to death. He ran back to the car.
23 He tried to start it. You'll learn that he was out of there.
24 One way or the other, whether they were with him or not, he was
25 gone.

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1 While he was trying to start his car, it wouldn't start of
2 all things. It wouldn't turn over. Johnny Ray Lockett came on
3 the scene carrying the very short-barreled .22 rifle that he had
4 been assigned to back up Randy Moore with. And he too seemed a
5 little bit nervous. And together they tried to start the car.
6 And they did.

7 And about the time they started the car, up came the other
8 four gentlemen. They came from the front of the house, 5851
9 Washburn. And they were all excited and agitated, and they got
10 in the car, and off they went.

11 On the way home, back to the North 13th apartment of Randy
12 Moore, they stopped and decided to bury the cartridges that they
13 had and the rifles out in the desert and the pistol. Well, some
14 of the bullets and cartridges they did bury. For whatever reason
15 they decided not to bury the rifles. And they decided that what
16 they would do instead is get rid of them at some other location.

17 They got back into Tom Akers' El Camino, and they went home.
18 They went back to Randy Moore's apartment; and John Lucas, as I
19 said before, let them in. And he's going to tell you that they
20 were really agitated. They were excited; they were talking; they
21 were doing a lot of things. And they had things with them.

22 And they went to the kitchen table, and they all got around
23 the kitchen table, and one of them had a women's wallet. And
24 they went through that wallet, and it had identification and
25 cards and things like wallets normally do. They burned that

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1 stuff. And if I remember right, it had \$8 in it--\$8. They took
2 that \$8 and went to the store and bought some beer so they could
3 drink some beer while they were listening to their rock and roll
4 after they just brutally murdered two people.

5 John Lucas will tell you that they described what they had
6 done. They talked about their various roles, and it was pretty
7 much like they had planned. They went up to the window, and
8 Randy Moore had Dale Flanagan's knife, and he tried to cut out --
9 or he did cut out the screen that was over the window. Remember
10 the knife, because we're going to come back to it; it's an
11 interesting part of this case.

12 He cut the screen out, and they took the stick that they had
13 with them, and it took several thumps, but they finally broke the
14 window in.

15 Now, before we get into the house understand this--that the
16 way the Gordon's lived, it was a two-story house. If you go into
17 that window that we're talking about and you make an immediate
18 turn to your right, you're walking right into the bedroom of Mrs.
19 Flanagan. And just immediately before you walk into that
20 bedroom, to your left are stairs that go up stairs where Mr.
21 Flanagan was sleeping. They were both asleep when this was going
22 on.

23 So the window was broken was broken, and Dale indicated that
24 he went into the window. He turned right. He walked past the
25 stairway. He walked into his grandmother's bedroom, and she was

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1 just awakening. She'd been sound asleep, getting up probably
2 from the noise and the commotion just some ten or fifteen feet
3 away from her.

4 And he told these guys is what he did was he jumped on the
5 bed and he put his hand over her mouth, and he shot her. He shot
6 his grandmother three times in the head. And he killed her.

7 Randy Moore in the meantime stayed outside, and he was
8 looking through the window and watching what was happening. The
9 lights come on. And he said the grandfather started to come down
10 the stairs, obviously. There's a lot of noise now.

11 And as he came down the stairs Randy Moore squeezed off
12 seven rounds or more, because he hit the grandfather seven times.
13 A bullet was fired from Johnny Ray Lockett's gun, as well. The
14 grandfather, as you're going to see from the pictures, fell at
15 the bottom of the stairs. His wife was already laying on the
16 bed, deceased.

17 The testimony that you're going to hear, somebody's going to
18 read Dr. Green's testimony to you from the last hearing. You're
19 going to hear that Mr. Gordon would have had the capacity to
20 crawl the short distance from the bottom of the stairs to where
21 his body was ultimately found in the doorway of his wife, going
22 toward his wife's room, into his wife's room

23 Randy Moore--this fellow right here in court, Randy Moore--
24 said to one of these people (or to all of them probably), and I
25 want to you to listen to these words, because they are the words

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000500

1 that we are going to prove character with, not just the killing,
2 but the state of mind that a person has after that.

3 He said words to this effect. The grandfather was squirming
4 on the floor, and so I went up to him and put another one in his
5 head. Now, there wasn't a bullet in the grandfather's head, but
6 that was his state of mind. That's what he said; that's what he
7 believed happened. And we can only take his words at face value.

8 Roy McDowell in the meantime had gone into the living room
9 area where Dale Flanagan instructed him there would be a purse
10 found in the upper reaches of the closet. And he went in there,
11 and he found the purse. He took the wallet that I've told you
12 about from the purse. He pushed furniture around and moved
13 things around (maybe other people helped him; I'm not sure about
14 that), and then he made it look like a burglary.

15 And Johnny Ray Luckett had fired the other shot in backing
16 up Randy Moore in the killing of the grandfather. That's what
17 these individuals did. That's who they are.

18 The knife--now I told you I'd get back to the knife. The
19 knife was dropped by the side window, left there by these foolish
20 young people. And the police, when they came to investigate the
21 scene, they found that knife. This knife was a knife that was
22 fairly distinctive. It was bought a Cutlery World at the Meadows
23 Mall. Dale Flanagan, by the way, worked at McDonald's in the
24 Meadows Mall, very close to where Cutlery World is.

25 During the course of the investigation, there was a

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1 detective by the name of Burt Levos. Okay. Burt had occasion to
2 go to the trailer where Dale Flanagan still lived after the
3 killings. And he had a conversation with Dale, and he told him
4 that they'd found a knife out there. And I don't recall the rest
5 of the conversation, but the important part of it is that Dale
6 became aware that they had this knife that he knew belonged to
7 him and could be traced to him.

8 And so he got ahold of Tommy Akers. Tommy Akers, if you'll
9 remember, is the guy with the El Camino who did the driving and
10 got the tapes. He took Tommy Akers over to the Meadows Mall to
11 Cutlery World and gave Tommy Akers \$35, and he had him go into
12 the mall, into the Cutlery World, and purchase another identical
13 knife. And he went back and kept that at his trailer.

14 Enter a woman--a girl at that time--by the name of Angela
15 Saldana. Angela will testify before you. She had just become
16 the girlfriend of Dale Flanagan. And they had a nice
17 relationship going on. She didn't know -- she knew about the
18 killings, but she didn't know who had committed the killings.
19 But Dale was talking to her and telling her different things, and
20 one day he showed her this new knife that Tom Akers had bought
21 for him over at the mall, and he said something to the effect of,
22 "Look at this. The cops think they have my knife, but here it
23 is."

24 And she said, "But that looks brand new." And he said,
25 "Well, I know that, but they don't know it, and they'll never

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1 know." I think this was a week after the killing, thereabouts;
2 and he was still putting on some sort of a cover-up.

3 The guns were finally disposed of. My memory's going to
4 fail me now. I think it was John Lucas and Randy Moore took the
5 guns, and they went out to an area of Lake Mead called the
6 Cliffs, very popular place with a lot of the kids. And they took
7 the guns, and they threw them off the cliffs out into the water.
8 And later John Lucas (if I'm right as to that's who it was, and
9 I'm pretty sure it was), he, in being interviewed by the police,
10 told them that the guns would be located out there. And they got
11 Park Service Ranger divers to go out. And, lo and behold, they
12 found the two .22 caliber rifles that had been used in this
13 killing.

14 We know that independent of what anybody said, because the
15 first witness you're going to meet is an individual by the name
16 of Dan Connell. And Dan is a criminalist, an I.D. specialist
17 with the Las Vegas Metropolitan Police Department. He went to
18 the scene out at the Gordon's house right as soon as they knew
19 about the killing, and he collected evidence.

20 He created a scene diagram that you'll be seeing. He
21 collected bullets and bullet casings, samples of blood, all sorts
22 of things, the knife, anything he could find that was valuable to
23 the solution of this case. And he took the bullets and the
24 bullet casings and turned them over to an individual, who you
25 will not meet, but you will hear about his testimony--a man by

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1 the name of Richard Good; he also works in the Criminalist
2 Bureau. And he is a firearms examiner. And he has the capacity
3 to take bullets which have been fired and found either on the
4 floor or in somebody's body and match those up, or attempt to
5 match those up, to particular guns. And he also has the ability
6 to take the casing, which is the little part of the bullet that
7 had the gunpowder in it that's left over after the gun is fired,
8 and match those to particular guns. And he did that in this
9 particular case.

10 And his testimony was that insofar as the bullets he
11 recovered are concerned, they were consistent with the semi-
12 automatic rifle that Randy Moore had been carrying and shooting.
13 He couldn't say for sure, because the bullet were too badly
14 deformed, and so he couldn't make a positive identification. He
15 was able to take the casings, however, and match the casings
16 directly to that gun. And his testimony was that there was no
17 doubt that that gun had fired the casings.

18 (Pause)

19 I better see where I am. I'm going to forget something
20 here.

21 (Pause)

22 Back to Angela Saldana. Angela, Dale's girlfriend at the
23 time, was having a discussion with Dale on December the 5th, one
24 month after the killings. And Dale at that time was upset with
25 her, and they were discussing her prior relationships with other

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1 men. And he was upset. And he was obviously upset anyway
2 because of what he had done a month earlier.

3 And somewhere along the line he just blurted out words to
4 the effect again, "Well, how do you like this? I did it. I
5 killed my grandparents." And she later, of course, came in and
6 testified to that in front of the last trial and will come here
7 before you and testify to somewhat the same thing.

8 The arrests--for whatever note you might take of this--Dale
9 Flanagan was arrested on December the 9th, 1984. Lockett and
10 McDowell were arrested on December the 20th, 1984. Tommy Akers
11 on that same date, December the 20th; Walsh on the 22nd of
12 January, 1985; and Moore on the 23rd, the next day. And
13 interesting, about Randy Moore, he was arrested while in Mexico
14 on the run; he was headed south and trying to get away, but he
15 was arrested and brought back to this jurisdiction.

16 The trial was had, as you've all heard, in 1985. These two
17 defendants -- let me back up.

18 Tommy Akers, you're going to learn--the driver of the El
19 Camino--pled guilty to voluntary manslaughter. And he testified
20 for the State. He was put on probation. He served five years
21 probation, and he has now been taken off of probation. And
22 you'll see that he's pretty well straightened his life out.

23 Michael Walsh pled guilty to murder of the first degree, and
24 he received concurrent life sentences with the possibility of
25 parole, I think. We're going to have the judgements of

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1 conviction, and you'll be able to see for yourselves exactly what
2 that was, but it was something in that ballpark.

3 These two gentlemen and Johnny Ray Luckett and Roy McDowell
4 were taken to that trial in November of 1985 -- and it wasn't in
5 November, sometime in 1985. They were all found guilty, and they
6 were all found guilty of exactly the same thing.

7 They were all found guilty of three conspiracies: a
8 conspiracy to burglarize the house, a conspiracy to rob with the
9 use of a deadly weapon on the property of the Gordons, and a
10 conspiracy to murder the Gordons. They were also convicted of
11 the burglary, of the robbery with use of a deadly weapon. And
12 they were convicted, each of them, of the murder of Carl Gordon
13 and the murder of Colleen Gordon.

14 Roy McDowell received -- and I'm going to get this wrong
15 again; I think he received lives without the possibility of
16 parole, as did Johnny Ray Luckett, but Johnny Ray's were a little
17 stiffer than Roy's. I think Johnny Ray got consecutive, and Roy
18 got concurrent, but again we'll look at that when we get down to
19 it.

20 And what we have left are these two individuals who now need
21 to be sentenced in 1995.

22 You've been hearing a lot about aggravating circumstances,
23 and we've been withholding from what the particular aggravating
24 circumstances are in this case, and we must do that out of
25 necessity in the jury selection period. Now I'm going to tell

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1 you what the aggravating circumstances are which in the State's
2 view, and if you so decide, aggravate this first-degree murder
3 case to the extent that you will be able to view it as a death
4 penalty case, and you will be able to deliberate as to that
5 particular issue.

6 There are four. The first one was -- and I'm not going to
7 read them as they are stated in the paperwork. You're going to
8 get a formal reading of them in your instructions, but they are
9 worded something like this.

10 The first one is that these two men, by murdering each of
11 the grandparents, created a risk of great harm to someone else.
12 Well, they killed Colleen Gordon and created a great risk of harm
13 to Carl. And they killed Carl and created a great risk of harm
14 to his wife.

15 Another aggravating circumstance that we have is that they
16 committed the murders while during the course of a burglary. And
17 they've already been convicted of the burglary.

18 The other, the third one, is that they committed the murders
19 during the course of a robbery. And they've already been
20 convicted of the robberies.

21 And the last is for the purpose of monetary gain. And as
22 you're going to hear, Dale truly believed that he was going
23 to gain monetarily from having done this--and not only
24 monetarily, but with some other goods. And Randy believed
25 that Dale was going to share this--not only with Randy, but

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1 with the other four codefendants.

2 That's the evidence. That's what this case is all about.
3 You're now going to hear evidence a little bit today, some on
4 Monday probably, maybe a little bit even on Tuesday, and then
5 we'll argue to you.

6 Please, listen to it carefully. Listen to both sides.
7 Listen to whatever the Defense has to say about their case.
8 You're ultimately going to weigh it against the things that I
9 have said. And I'm sure once you've done all of this, you'll
10 come to the one and only appropriate decision that really, truly
11 fits not so much this case, but those two individuals right
12 there.

13 Thank you, very much.

14 DEFENDANT FLANAGAN'S OPENING STATEMENT

15 MS. MOUNTS: Ladies and Gentlemen, a Clark County jury
16 did in fact convict these two men in the murders of Carl and
17 Colleen Gordon, occurring on or about November 5th, or 6th of
18 1984. That was nearly eleven years ago, when these boys were
19 teenagers. They are now men.

20 Quite frankly in that regard it is a little difficult to
21 know exactly what to say at this point. The reason that I say
22 that is that there is not a cold, emotionless, mental calculation
23 that you can make and come up with an appropriate decision in
24 this case. This is an emotional type of proceeding.

25 The jury's verdict of guilt as you've heard so many times is

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1 ORIGINAL

FILED IN OPEN COURT
DISTRICT COURT
JUN 21 1995 19
CLARK COUNTY, NEVADA
DETTA BOWMAN, CLERK

3 THE STATE OF NEVADA,
4 Plaintiff,
5 vs.

6 DALE EDWARD FLANAGAN &
7 RANDOLPH MOORE,
8 Defendants.

By Lisa Ford Deputy
* Case No. C069269
*
*
* Dept. No. XI
*
*
* Docket "S"
*

9 * * * * *

10 BEFORE THE HONORABLE ADELIAR D. GUY, III, DISTRICT JUDGE
11 JURY TRIAL -- PENALTY PHASE
12 (DAY 6, VOLUME VI)
13 TUESDAY; JUNE 20, 1995

14 APPEARANCES:

15 For the Plaintiffs:	DANIEL M. SEATON, ESQ. Deputies District Attorney 200 S. Third St. Las Vegas, NV 89155
17 For Defendant Flanagan:	DAVID T. WALL, ESQ. REBECCA A. MOUNTS, ESQ. Deputy Public Defenders 309 S. Third St., #226 Las Vegas, NV 89101
20 For Defendant Moore:	DAVID M. SCHIECK, ESQ. WILLIAM "LEW" WOLFBRANDT, ESQ. 302 E. Carson, #918 Las Vegas, NV 89101
23 Recorded by:	ANITA SPRINGS-WALKER Reporter/Transcriber Clark County Courthouse 200 E. Third St., Dept. 11 Las Vegas, NV 89101

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3 Las Vegas, NV 89106
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5 Proceedings recorded by electronic sound recording;
6 transcript by electronic sound transcriber.

7 * * * * *

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1 TUESDAY, JUNE 20, 1995, 10:20 A.M.

2
3 (Jury present)

4 THE BAILIFF: Department XI is again in session.

5 THE COURT: Please be seated. Continuation of case No.
6 C69269, The State of Nevada vs. Dale Flanagan & Randolph Moore.
7 Let the record reflect the presence of Defendants with Counsel,
8 District Attorney, other officers of the court.

9 Will the Clerk please call roll call of the jury?

10 (Clerk calls roll of jury; all present)

11 THE COURT: Will counsel stipulate as to the presence
12 of the jury?

13 MR. SEATON: Yes, Judge.

14 MR. WALL: Yes, your Honor.

15 MR. SCHIECK: Yes, your Honor.

16 THE COURT: Good morning, jury.

17 THE JURY: Good morning, Judge.

18 MR. SEATON: John Lucas could be called now if you
19 want.

20 THE COURT: Bring in Mr. Lucas, please.

21 THE BAILIFF: John Lucas.

22 THE CLERK: Please remain standing, and raise your
23 right hand.

24 JOHN LUCAS, PLAINTIFF'S WITNESS, SWORN

25 THE CLERK: Thank you. You may be seated.

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VOIR DIRE EXAMINATION

BY THE COURT:

Q Mr. Lucas, yesterday you testified that you had been placed in PC. Was there any other reason for your being placed in the PC other than this case?

A No, sir.

THE COURT: Counsel?

MR. SEATON: Judge, I believe Mr. Schieck or Mr. Wolfbrandt was questioning Mr. Lucas at that time. I don't know if they're finished.

MR. WOLFBRANDT: Judge, that was the only area we wanted to go into.

THE COURT: All right.

MR. SEATON: And I have no redirect.

MS. MOUNTS: Nothing further, your Honor.

THE COURT: Thank you, sir. You're excused.

THE WITNESS: Thank you.

THE COURT: Next witness, sir?

MR. SEATON: The State would call Angela Saldana.

THE CLERK: Please remain standing, and raise your right hand.

ANGELA MARIE SALDANA, PLAINTIFF'S WITNESS, SWORN

THE CLERK: Thank you, you may be seated.

.....

.....

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1 DIRECT EXAMINATION

2 BY MR. SEATON:

3 Q Would you please state your name and spell your last
4 name for the court recorder?

5 A Angela Marie Saldana-Ficklin, Saldana S-A-L-D-A-N-A.

6 Q And what state do you currently live in, Ms. Saldana?

7 A Utah.

8 Q And your age today?

9 A Thirty.

10 Q And your age then in 1984 in November?

11 A 19 or 20. I'm pretty sure it was 19.

12 Q Do you know the Defendants in this case?

13 A Yes.

14 Q Dale Flanagan and Randy Moore?

15 A Yes.

16 Q Would you please point to them and identify each of
17 them by name?

18 A The fellow in the center table is Dale Flanagan, and
19 the fellow on the end in the middle next to him is Randy Moore.

20 Q And Randy Moore is to Dale Flanagan's left?

21 A Yeah.

22 MR. SEATON: May the record reflect the identification
23 of the Defendants, Judge?

24 THE COURT: Yes, it may.

25

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1 BY MR. SEATON:

2 Q Did you, in September of 1984 -- I'm sorry, in November
3 of 1984 know the grandparents of Dale Flanagan?

4 A No, I did not.

5 Q Did you become aware of their death?

6 A Yes.

7 Q Their deaths? Okay. Did you know that they died on
8 November the 5th, 1984?

9 A Yes.

10 Q Was there a time around then when you moved into the
11 trailer on their property?

12 A Shortly after.

13 Q How shortly after?

14 A I think it was on the 6th.

15 Q So it would be the day after their deaths?

16 A I think so. Or he asked me to move in on the 6th
17 actually.

18 Q You say that "he" asked you. Who asked you to move in?

19 A Dale Flanagan.

20 Q Had you began a relationship with Dale Flanagan?

21 A Yes.

22 Q Describe that very briefly for us if you would?

23 A It was simply boyfriend/girlfriend.

24 Q How long had you known him prior to moving in on the
25 6th?

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1 A I had only dated him twice two weeks prior.
2 Q So had you only known him, in terms of acquaintance...
3 A Yes.
4 Q ...for two weeks?
5 A Yes.
6 Q The two dates, he asked you to move in to the trailer
7 on the Gordons' property, and you did?
8 A Yes.
9 Q Where did you live prior to that?
10 A At my aunt and uncle's in Las Vegas.
11 Q Let me ask you to be sure and keep your voice level up,
12 so that everybody can hear you. You have a tendency to...
13 A I'm losing my voice actually.
14 Q Co you need a glass of water?
15 A Yes, please.
16 Q Let me do that for you. And, no, I can't do it for
17 everybody else. Sorry.
18 A Thank you.
19 Q Thanks. Are you better now?
20 A Getting there.
21 Q Okay. Tell us a little bit about the relationship with
22 Dale. Was it a close one? Was it the beginnings of a close
23 relationship?
24 A Not really. It was -- I mean, it was intimate and not
25 really. It was just kind of -- it's kind of hard -- I was just

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1 there really.

2 Q All right. Do you remember sometime around November
3 the 13th, about a week later, a Detective Levos from the Las
4 Vegas Metropolitan Police Department Homicide Division coming to
5 the trailer and speaking with Dale?

6 A Yes.

7 Q Were you present at that conversation?

8 A No.

9 Q Were you there at the trailer?

10 A Yes.

11 Q Where did Dale Flanagan and Detective Levos speak?

12 A Outside of the trailer.

13 Q And you were inside the trailer?

14 A Yes. I was asked to go in.

15 Q Who asked you?

16 A Dale Flanagan.

17 Q And you went in and didn't hear any of the
18 conversation?

19 A No.

20 Q How long did the conversa...

21 THE COURT: Counsel?

22 MR. SEATON: I'm sorry.

23 THE COURT: Could you rephrase your question? I have a
24 negative question and a negative answer. I know what you're
25 saying, know what your question -- I know what you're talking to.

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1 MR. SEATON: I'm not sure if I remember which question
2 the Court's referring to. Just let me just back up a little bit,
3 and we'll see if we can cover it.
4 BY MR. SEATON:
5 Q You were in the trailer not listen -- were you
6 listening to the conversation?
7 A No.
8 Q All right.
9 A I could not hear.
10 Q How long did the conversation last?
11 A Approximately 15 minutes.
12 Q And did there come a time after 15 minutes when
13 Detective Levos left?
14 A Yes.
15 Q Did Dale Flanagan come back into the trailer?
16 A Yes.
17 Q Did he seem to be upset?
18 A Very.
19 Q Describe just his emotional state in terms of how you
20 saw that he was upset?
21 A Very tense, very breathy, kind of puffy.
22 Q Did he say things to you?
23 A Yes.
24 Q Did he tell you the nature of the conversation that he
25 had had with Detective Levos?

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1 A Well, I had asked him what was wrong, and then he
2 seemed like he didn't want to talk about it. - And then he said,
3 well, they had found -- he said, excuse me. Dale said that the
4 Detective said that they had found something on the property.

5 Q "They"?

6 A Excuse me.

7 Q "They" meaning the Homicide detectives?

8 A Yes.

9 Q All right.

10 A That they had found something that he, that Dale
11 Flanagan, thought should not have been there.

12 Q Did he tell you what that thing was?

13 A Yes.

14 Q What was it?

15 A It was his knife.

16 Q His knife?

17 A Yeah.

18 Q Were you familiar with that particular knife?

19 A Yes.

20 Q Did he say anything more about that particular
21 conversation or just feelings about it?

22 A Not really. Later on he did, I mean, in a different
23 situation. But other than that he pretty much just stopped
24 talking about it for that moment.

25 Q All right. You say you had seen the knife before. I'm

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1 showing you 91A. Does that look familiar to you at all?

2 A Yes.

3 Q And does that appear to be the same knife that you had
4 earlier seen Dale Flanagan with?

5 A Yes.

6 Q And is this the knife then to which he was referring?

7 A Yes.

8 Q One other thing, State's Exhibit 69 (and I don't think
9 I've shown this to Counsel), does this photograph depict the
10 trailer that you stayed with Dale Flanagan in and its proximity
11 to the Gordons' house?

12 A Yes.

13 Q The trailer is the object on the left of the picture as
14 we look at it?

15 A Yes.

16 Q Thank you.

17 MR. SEATON: May I publish this for the jury, Judge?

18 THE COURT: Yes, you may.

19 MR. SEATON: Thank you.

20 BY MR. SEATON:

21 Q You mentioned something about Dale Flanagan at a later
22 time talking about the knife. Tell us, first of all, when that
23 conversation took place?

24 A It was about a week later, I think.

25 Q Where were you?

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1 A I was at the trailer.
2 Q Was it just you and Dale?
3 A Yes.
4 Q And what did he do or say?
5 A Well, he came in and showed me his knife and he goes,
6 "Look, I found my knife."
7 Q Wait a minute. You say he showed you his knife? Did
8 he show you this knife?
9 A I don't think it was that knife.
10 Q Okay. Go ahead and explain.
11 A He showed me his knife and he said, "Look, I found my
12 knife." And I said, "That doesn't look like your knife; that one
13 looks new." And he said, "Well, as long as nobody else knows
14 that, they won't have anything on me."
15 Q "They won't have anything on me"?
16 A Yes.
17 Q As long as nobody else knows that this is a different
18 knife?
19 A Yes.
20 Q Sometime later at the beginning of December, around
21 December the 5th, did you have a conversation with Dale that
22 ultimately led into a conversation about his grandparents?
23 A Yes.
24 Q How did that conversation start out?
25 A We were arguing about...

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1 MR. WALL: Your Honor, may I ask for a foundation as to
2 time and place to the best of the witness' recollection?
3 THE COURT: Yes, you may.
4 MR. SEATON: Let's do that, and I apologize.
5 BY MR. SEATON:
6 Q Where did this take place?
7 A In the trailer, mid-afternoon.
8 Q Can you remember was it end of November, first of
9 December?
10 A It was the day after my birthday.
11 Q And your birthday is?
12 A December 4th.
13 Q So it was December 5th. Okay. Was there anyone else
14 present besides yourself and Dale?
15 A No.
16 Q And you said you were arguing about something. What
17 was that?
18 A Well, I had run into an old boyfriend, and he
19 apparently either got jealous or angry about me speaking to him.
20 Q Did you tell Dale that you had seen this old boyfriend,
21 or did he see you with him? How did he find out?
22 A I just ran into him while we were together.
23 Q You and Dale were together?
24 A While Dale and I were together, I ran into him and...
25 Q Did that trigger Dale's jealous sensations?

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1 A Yeah.
2 Q He didn't...
3 A Yeah.
4 Q He didn't...
5 A Yes.
6 Q Okay. I'm sorry. He didn't like your references to or
7 talking to an old boyfriend?
8 A No.
9 Q All right. Where did the conversation go?
10 First of all, before you get there, was he really angry?
11 Was he really jealous? Was this extreme or just a casual
12 conversation?
13 A It seemed like it came out of the blue actually, and it
14 wasn't real extreme, but it was intense. I mean, you could tell
15 that he was perturbed by it.
16 Q All right. Did it go on for any length of time?
17 A Not really. It just led in -- it just kind of led into
18 another conversation, you know, just...
19 Q Tell us about that other conversation that it led into?
20 A Well, I had stated that ever since his grandparents
21 died, you know, he's been, you know, not showering, he's been a
22 grouch, you know, he's -- I mean, I think by then he had quit his
23 job. He was very indifferent to everything, but he was still
24 very edgy. And I had mentioned that to him; and, you know, I
25 thought maybe I should leave or something and he just said, "I

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1 don't care what you do. I don't care where you go."

2 Q Did he say anything about his grandparents?

3 A Yes.

4 Q What did he say?

5 A Actually he said he was tired of running from his
6 problems or any of the problems that he went around and gotten
7 into. Please keep in mind this is like ten years ago. I'm
8 trying to remember everything.

9 Q I understand.

10 A But because I said, "Ever since your grandparents died
11 you've been, you know, grouchy or whatever," at that time he was
12 -- he seemed extremely frustrated, and he snapped at me, and he
13 said, "Well, how do you like this: I did it. I killed my
14 grandparents."

15 Q He said that to you?

16 A Yes.

17 Q Do you know whether or not Dale believed that he was in
18 the grandparents' will?

19 A Yes.

20 Q Tell us what you know about that?

21 A He just mentioned that it was rumored to him and he
22 strongly believed that he was in the will and that half would go
23 to him and half would go to his sister.

24 Q Did he tell you what specifically was in the will that
25 he might be the beneficiary of?

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1 A I think it was a \$200,000 insurance policy as well as
2 whatever money they had saved, I think.

3 Q Did Dale ever describe to you the night of the murder?

4 A Yes.

5 Q What did he tell you happened on that night? And first
6 of all, when did this conversation take place?

7 A The same day.

8 Q This was the 5th of December, day after your birthday
9 conversation?

10 A Yes.

11 Q Was it -- did it follow up? I mean, was it all part of
12 the same conversation?

13 A Yes.

14 Q All right. Please tell us what he said to you about
15 what happened on the night of the murders?

16 A Well, I asked him why did he -- because he stated that
17 he did it, I asked him why did he let that happen, and he went on
18 to explain what happened. And he said that they were at Randy
19 Moore's apartment trying to figure out how to do it.

20 Q Did he tell you who the "they" were? Name the people
21 who were involved in the killing?

22 A Yes. John Ray Lockett, Randy Moore, himself Dale
23 Flanagan, Mike Walsh, I think, and Tom Akers.

24 Q Okay. And you say he told you that they were at
25 Randy's apartment?

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1 A Yes.
2 Q And were they planning it?
3 A Yes.
4 Q The killings at that place?
5 A Yes.
6 Q And what else did he tell you?
7 A That they wanted to make it look like a robbery.
8 Q Did he tell you who was going to drive out?
9 A Tom Akers.
10 Q Did he tell you anything about how they were going to
11 get inside the house?
12 A Yes.
13 Q Or how they did get inside the house?
14 A Yes, this was after the fact, yeah.
15 Q What did he say about that?
16 A He just said that he had a stick and broke the window.
17 Q Did he tell you which window?
18 A The right-hand side window to the house.
19 Q Did he show you that window over at the house at
20 anytime?
21 A Yes.
22 Q So you knew the exact window he was talking about?
23 A I did, but he was just showing me the window as in
24 "This is what the robbers broke."
25 Q Okay.

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1 A I mean, he didn't, you know, at the time he showed it
2 to me...
3 Q What the robbers broke or what he broke?
4 A Well, at the time that he showed me the window, he
5 didn't tell me this yet. He just said, "Oh, look, they broke the
6 window."
7 Q This was before he confessed to you that he did the
8 killings?
9 A Yes.
10 Q He was trying to rub it off on somebody else, some
11 unidentified robbers?
12 A Yeah.
13 Q Oh, okay. So going back to telling you now how he
14 actually committed the crime, did he tell you what weapons were
15 involved?
16 A He just said that he had two shotguns, his knife, and a
17 pistol.
18 Q Did he say who had the pistol?
19 A Himself.
20 Q Okay. Did he tell you who killed the grandmother?
21 A Yes.
22 Q Who did?
23 A Himself, Dale Flanagan.
24 Q Did he say how he did that?
25 A Yes.

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1 Q Tell us?
2 A He said that he broke the window, and he crawled in.
3 She was sleeping to the right of that window (there was a bedroom
4 off to the right), he went into the room, turned on the light
5 and...
6 Q He turned the light on?
7 A Yes.
8 Q All right.
9 A Turned the light on, wrestled his grandmother to the
10 bed, put his hand over her jaw and shot her once in the head.
11 Q The words that you're telling us, are those Dale
12 Flanagan's words?
13 A These are Dale's words.
14 Q He used the word "wrestle" his grandmother to the bed?"
15 A Yes.
16 Q And "grabbed the jaw"?
17 A Yes.
18 Q And "shot her in the head"?
19 A Yes.
20 Q He had been jealous before, and I think you
21 characterized it as somewhat emotional, but not overly so as you
22 were discussing that part of the conversation. What were his
23 emotions like when he was describing this act of turning on the
24 light, and wrestling his grandmother to the bed, and holding his
25 hand on her jaw, and shooting her in the head?

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1 A Basically in the same manner that I'm speaking to you
2 now.
3 Q Don't take this as offensive, but would you agree that
4 that could be characterized as rather flat and cold?
5 A I could hear a little bit of frustration in his voice,
6 but that's it.
7 Q Did he say who carried the other rifles?
8 A To the best of my memory John Ray Lockett and Randy
9 Moore.
10 Q Did he say who killed the grandfather?
11 A He said that John Ray Lockett and Randy Moore were both
12 shooting at the grandfather.
13 Q There was a semi-automatic and a single shot .22 rifle
14 that was out there. Did he say who carried which one?
15 A I can't remember.
16 Q Do you know which one Randy had?
17 A I really can't remember. I don't even know if he told
18 me specifics like that.
19 Q Okay. Did he say how many times Randy and Lockett shot
20 the grandfather?
21 A He said that he heard about seven or eight shots.
22 Q Did they say whether or not -- did he say whether or
23 not they attempted to make it look like a burglary?
24 A Yes.
25 Q Did he say who did that act?

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1 A He said that all three of them ran through the house.
2 They ran through the house and looking for, I think, the purse,
3 the grandmother's purse.

4 Q Did you ever go into that house...

5 A Yes.

6 Q ...after the 6th of November?

7 A Yes.

8 Q Who did you go in with?

9 A Dale Flanagan.

10 Q Was anybody else there?

11 A Occasionally there were, but for the most part no.

12 Q You went in more than once?

13 A Many times.

14 Q Was there a purpose in going into that house?

15 A Yes, to look for the will.

16 Q To look for the will?

17 A Yes.

18 Q Did you ever find the will?

19 A Nope.

20 Q Was anything ever taken out of the house?

21 A While he was with me, really no, nothing other than
22 food.

23 Q Were you aware through Dale Flanagan telling you that
24 anything had been taken out of the house?

25 A At that time? No.

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1 Q At anytime?

2 A I...

3 Q At sometime after the deaths of the grandparents?

4 A I mean, I wasn't -- okay. He had told me that the

5 house had been robbed. At that particular moment he was, as you

6 know -- while we were walking through the first time, he had told

7 me that the house was robbed. That's all I knew at that time.

8 Q I should have been more specific with my question.

9 A Yeah.

10 Q I was referring to whether or not Dale told you that he

11 Dale had ever taken anything out of the house after the

12 grandparents passed, death?

13 A Just the purse, I think, really.

14 Q He did tell you about the purse being taken back to

15 Randy Moore's apartment?

16 A Yeah.

17 Q Was it a sort of an eerie feeling walking through that

18 house with the killer?

19 A Actually, the air of the house, as far as that goes,

20 was more eerie at that time. Being alone with Dale in the

21 trailer sometimes was very eerie...

22 Q That concludes...

23 A ..because I knew I was by myself.

24 Q Oh, I'm sorry.

25 MR. SEATON: That concludes direct examination, Judge.

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1 CROSS-EXAMINATION

2 BY MR. WALL:

3 Q Ms. Saldana, you were 19 years old at the time you
4 moved in with Dale?

5 A Yes.

6 Q And you said that he asked you to move in on November
7 5th, 1984?

8 A Yes.

9 Q And that you actually moved in on November 6th?

10 A Yes.

11 Q Do you recall that the house and the property was roped
12 off by the police after they discovered the crime on the morning
13 of November 6th?

14 A The discovery was made on the 6th?

15 Q Yes.

16 A Well, then this is ten years old, and you'll have to
17 forgive me.

18 Q Well, ten years...

19 A If I'm wrong, then I'm wrong.

20 Q Ten years ago you also testified that you moved in on
21 November 5th -- or November 6th. Could you be mistaken?

22 A I could be mistaken maybe by a few days or something.

23 Q Did you move in by yourself, or did a friend of yours
24 name Kim move in with you into the trailer?

25 A I don't remember a Kim.

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1 Q Do you recall any friends of yours moving into the
2 trailer, into Dale's trailer, at some point while you were also
3 living there?

4 A Not while I was living there. There was someone living
5 there before I got there.

6 Q No friend of yours? Is that your testimony?

7 A I'm saying that to my knowledge someone I knew lived
8 there before I moved there.

9 Q Did you have a chance to review transcripts of prior
10 testimony before coming in today?

11 A Yes.

12 Q You've testified in...

13 A I don't have all of my testimony, but I had most of it.

14 Q I understand. You've testified a number of times at
15 various hearings and the trial in 1985. Is that right?

16 A Yes.

17 Q Mr. Seaton characterized for you your recitation of
18 what Dale told you as flat and cold. You also testified that
19 there was a definite change in him after November 6th, something
20 about him not showering?

21 A Yes.

22 Q Can you explain what change you saw in him?

23 A He just walked around kind of indifferent, but still
24 very edgy. Not shaving, not showering for a couple of days at a
25 time, not cleaning, not being mobile really at all other than

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1 going to the house.

2 Q And you described him, I think, as, did you say "edgy"
3 as well?

4 A Yes.

5 Q As though something had affected him around November
6 6th that changed his outlook. Would that be a fair
7 characterization?

8 A I would have to say so. It was a buildup it seemed
9 like.

10 Q You testified that Dale was with you when you went into
11 the Gordons' house to look for the will. Now, there were a
12 number of other people with you at that time. Is that right?

13 A The first time?

14 Q Yes.

15 A The first time, yes.

16 Q Dale's mother was there, other friends of hers, other
17 relatives were going through the house that day. Is that right?

18 A Yes.

19 Q The change in Dale essentially culminated in the
20 conversation that you had with him in December where he told you
21 what happened. And is that the same time he said to you, "I
22 don't care what you do"?

23 A Yes.

24 Q That was in response to your having met with your old
25 boyfriend and that which made him jealous?

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1 A I think that's just what triggered the conversation to
2 go up.
3 Q You made it sound like he was sort of unreasonable for
4 being jealous?
5 A It was not like him at all.
6 Q Have you received any benefit for testifying in this
7 case?
8 A Yes.
9 Q Back in 1985 you received \$2,000 for your testimony?
10 A Yes.
11 Q And you didn't receive it until after you got done
12 testifying. Is that right?
13 A Yes.
14 Q And do you remember testifying in 1989?
15 A Yes.
16 Q You were in...
17 A I think it was...
18 Q ...custody of the Clark County Jail at that time. Is
19 that right?
20 A Yes.
21 Q Do you remember what the charge was?
22 A Drug Trafficking.
23 Q Did you have an attorney?
24 A Yes.
25 Q Did your attorney explain to you what the possible

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1 penalties were for drug trafficking at that time?

2 A Yes.

3 Q Did he tell you that it was mandatory prison time if
4 you were convicted of trafficking, that there is no probation?

5 A Yes, but I was not promised to be relieved of that...

6 Q Just follow my questions.

7 A ...because of this trial.

8 Q Just follow my questions. He told you that you could
9 do, what, from three to 20 years in the Nevada State Prison?

10 A Yes.

11 Q And be subject to a fine of up to 25 or \$50,000?

12 A Yes.

13 Q And it was while you were in custody on that charge
14 that you testified in 1989. Is that correct?

15 A Not by choice. Yes.

16 Q Are you answering my question yes?

17 A Yes.

18 Q And within six months after your testimony, that charge
19 of trafficking in drugs was reduced to Trespassing.

20 A Yes.

21 Q Is that right?

22 A Yes.

23 Q And you got a \$200 fine?

24 A Yes.

25 Q And you didn't go to prison?

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1 A No.

2 Q And you weren't taken to trial in that case?

3 A No.

4 Q Have you had a chance to talk to Thomas Akers?

5 A Yes.

6 Q When did you?

7 A Many times. I've seen...

8 Q Let me qualify that. In the last three days?

9 A Yes.

10 Q Was he out in the hall at the same time you were

11 yesterday?

12 A Yes.

13 Q Other than this week, have you talked to him within the

14 last several years?

15 A Shortly after the trial -- shortly after the arrest.

16 Q Okay.

17 A That was it.

18 Q Now, you don't remember me from any of these other

19 proceedings. Is that right?

20 A No, I don't think so.

21 Q I wasn't there, so -- okay.

22 I've had a chance to review your testimony from the other

23 times, and I want to make sure I get this straight. You moved in

24 with Dale Flanagan somewhere in the beginning of November of

25 1984, right?

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1 A Yes.

2 Q And you were living there with him involved in a
3 relationship?

4 A Yes.

5 Q And within two weeks after you moved in -- let me ask
6 you this. When you moved in with Dale, did you know Thomas
7 Akers?

8 A No.

9 Q Within two weeks after you moved in with Dale, you
10 started having sexual relations with Thomas Akers. Is that
11 right?

12 A Yes.

13 Q And you knew he was a friend of Dale's?

14 A Yes.

15 Q Within a few weeks of that, you had conversations with
16 Thomas Akers about getting married to Thomas Akers. Do you
17 recall that?

18 A In the trailer, yes.

19 Q Okay. And you were still living with Dale when you
20 were talking to Thomas Akers about marrying him.

21 A Yes.

22 Q Is that right? Is that right?

23 A Yes.

24 Q When you testified a few months after that, Dale
25 Flanagan had been arrested, right?

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1 A Yes.

2 Q And you testified to Dale Flanagan's involvement and
3 specifically said that Thomas Akers seemed to be a victim of
4 circumstance?

5 A Yes.

6 Q And after Thomas Akers got probation, after he made a
7 deal, he took a job with your uncle.

8 A Yes.

9 Q Is that right? Did you talk to Dale at all during
10 November or December about the fact that you were sleeping with
11 Tom Akers?

12 A No.

13 Q Did you talk to Dale at all about the fact that you and
14 Thomas Akers were discussing marriage in late 1984?

15 A No.

16 Q But did he have a reason to be jealous when you saw
17 your old boyfriend?

18 A No.

19 Q Because you weren't having any relations with your old
20 boyfriend?

21 A No.

22 Q You were having them with Thomas Akers?

23 A Yes.

24 MR. WALL: Thank you. Pass the witness, your Honor.

25 MR. SCHIECK: No questions, your Honor.

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1 MR. SEATON: Very briefly.

2 REDIRECT EXAMINATION

3 BY MR. SEATON:

4 Q You were asked by Mr. Wall about benefits that you may
5 have received as a result of testifying. Let's see if we can
6 straighten this out.

7 A Uh-huh.

8 Q You got \$2,000 back in 19' -- well, I don't know when
9 you got it, but it was around 1985.

10 A Uh-huh.

11 Q Was it not?

12 A Yes.

13 Q That was as a result of testifying, what, at both the
14 preliminary hearing and the trial?

15 A Yes.

16 Q That money came from Secret Witness, didn't it?

17 A Yes.

18 Q Whose job it is to pay people for information that they
19 obtain about criminal cases?

20 A Yes.

21 Q And that's what you had done?

22 A Yes, but I didn't know about it until after I had made
23 the statement.

24 Q Now, how did you learn about the Secret Witness money?

25 A A police officer.

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1 Q Was it one of the detectives?
2 A It was -- actually, yeah.
3 Q Levos or...
4 A I think it was Levos.
5 Q Okay. So that's where that \$2,000 came from?
6 A Yes.
7 Q And the jury convicted Dale Flanagan, Randy Moore, Roy
8 McDowell and Johnny Ray Lockett of the murders of Dale's
9 grandparents in 1985 after your testimony. Is that correct?
10 A Yes.
11 Q Then we move forward to 1989, and you testified at
12 another hearing.
13 A Yes.
14 Q And that's when you were in jail on the trafficking
15 charges?
16 A Yes.
17 Q Now, you've known me since 1984. Have you not?
18 A Yes.
19 Q At the beginning of the case?
20 A Yes.
21 Q I've always been on this case?
22 A Yes.
23 Q I've always been the lead Prosecutor, the decision
24 maker on the case. Is that correct?
25 A Yes.

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1 Q In 1989 when it came time for you to testify in a case
2 where there were already convictions, did I cut any sort of a
3 deal with you regarding your trafficking charge?

4 A No, not even a little bit. One wasn't asked of you.

5 Q Was nothing done on your behalf by law enforcement,
6 including Metro or the DA's Office to give you some sort of
7 benefit for the testimony you were giving?

8 A No.

9 Q Did you give exactly the same testimony that you had
10 given in 1985?

11 A Yes.

12 Q At both the preliminary hearing and the trial?

13 A Yes.

14 Q And when the charges were finally ultimately deposed
15 of, did I have anything to do with the disposition of those
16 charges?

17 A No.

18 Q Did...

19 MR. WALL: Judge, I'm going to object as to the
20 question asking her personal knowledge of whether Mr. Seaton had
21 anything to do with it.

22 MR. SEATON: Well...

23 MR. WALL: It's all within the same office. She may
24 not have any information.

25 THE COURT: I'll sustain the objection. Can you

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1 rephrase your question, Counsel, please?

2 MR. SEATON: I'll rephrase the question.

3 BY MR. SEATON:

4 Q Do you know whether or not anyone in our office, in the
5 District Attorney's Office, plea bargained your case, the
6 trafficking case, as a result of whatever you had done on behalf
7 of this case against Dale Flanagan and Randy Moore?

8 A To the best of my knowledge I don't think anyone had
9 any hand in getting me out. I didn't -- I simply was not in the
10 premises or on the premises. I don't do drugs, so it was proven
11 that I did not do it. They just couldn't like let it go, that's
12 all.

13 MR. SEATON: That concludes redirect.

14 RECROSS-EXAMINATION

15 BY MR. WALL:

16 Q Ms. Saldana, that case that you had it was a
17 trafficking case, that came into court by way of what we call a
18 grand jury. Is that right?

19 A Yes.

20 Q Now, do you know what a grand jury is?

21 A I don't think I've ever really appeared in front of
22 one.

23 Q Okay.

24 A But if I have, I wouldn't know.

25 Q The grand jury heard your case, and it ended up in

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1 District Court, and that's where you first appeared.
2 A Yes.
3 Q Okay.
4 MR. WALL: Thank you.
5 MR. SCHIECK: Nothing, your Honor.
6 MR. SEATON: Nothing, Judge.
7 THE COURT: Thank you, ma'am, you are excused.
8 THE WITNESS: Thank you.
9 THE COURT: Call your next witness, sir?
10 MR. SEATON: I call Wayne Wittig.
11 THE CLERK: Please remain standing, and raise your
12 right hand.
13 WAYNE WITTIG, PLAINTIFF'S WITNESS, SWORN
14 THE CLERK: Thank you, you may be seated.
15 DIRECT EXAMINATION
16 BY MR. SEATON:
17 Q Please state your name and spell your last for the
18 court recorder?
19 A Wayne Wittig, W-I-T-T-I-G.
20 Q Do you know the Defendants in this action, Dale
21 Flanagan and Randy Moore?
22 A Yes, I do.
23 Q When did you first get to know them?
24 A When I was in high school.
25 Q Can you give us a year approximately?

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ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

FILED IN OPEN COURT

JUN 23 1995 19

LORETTA BOWMAN, CLERK

Case No. 2868269

Deputy

THE STATE OF NEVADA,

Plaintiff,

vs.

DALE EDWARD FLANAGAN &
RANDOLPH MOORE,

Defendants.

Dept. No. XI

Docket "S"

BEFORE THE HONORABLE ADELIAR D. GUY, III, DISTRICT JUDGE

JURY TRIAL -- PENALTY PHASE
(DAY 8, VOLUME VIII)

THURSDAY; JUNE 22, 1995

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5 Proceedings recorded by electronic sound recording;
6 transcript by electronic sound transcriber.

7 * * * * *

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1 back to the jury room, and you'll select a foreperson, and then
2 we'll feed you.

3 Mr. Seaton?

4 CLOSING ARGUMENT BY MR. SEATON

5 MR. SEATON: On November the 5th, 1984, Carl and
6 Colleen Gordon were in their house. They had a right to expect
7 privacy. And it wasn't their house, this was their castle, their
8 sanctuary, their home. These two men invaded that precious
9 space.

10 That night the Gordons' sleep was shattered and their bodies
11 were riddled by the bullets of night-stalking terrorists, and we
12 are here today to decide what to do about that.

13 There are two questions that jurors must ask of themselves
14 at this particular juncture, and it's with regard to the death
15 penalty. The first is am I legally allowed to impose the death
16 penalty? And the second is do I want to if I feel its an
17 appropriate penalty in this particular situation?

18 In deciding as to whether or not you are legally entitled,
19 we have to go through the instructions, a few of them that the
20 Judge just read. And I'm going to go through with you in this
21 particular area Instructions 6, 7 and 8.

22 Let me read a little and paraphrase a little, and
23 essentially this won't take long. It's sort of the same thing
24 that we've talked about as we went through the jury selection
25 process. And it starts of with your duty. "It shall be your

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1 duty," this is Instruction 6.

2 "It shall be your duty to determine whether an
3 aggravating circumstance or circumstances exist, and
4 whether," number two, "a mitigating circumstance or
5 circumstances exist,"

6 and based upon these findings whether a defendant should be
7 sentenced to life imprisonment or death. And as we mentioned,
8 you weigh the mitigation against the aggravation. And only if
9 the aggravation outweighs the mitigation, then are you allowed to
10 return a verdict of death if you so choose.

11 Nowhere in these instructions, nowhere will any of the
12 parties tell you that you must return a verdict of death. Under
13 any circumstances, if you desire not to, you have that capacity.
14 But in the event you find that the mitigation outweighs the
15 aggravation -- I'm sorry, the other way around. If you find that
16 the aggravation outweighs the mitigation, then you are entitled
17 to consider it and you are entitled to return to this courtroom
18 with that verdict.

19 Instruction 7 tells you what the aggravating circumstances
20 are. Let me go through them.

21 "1. The murders of Carl and Colleen Gordon were
22 committed by the Defendants, who knowingly created a
23 great risk of death to more than one person by means of
24 a weapon, device or course of action which would
25 normally be hazardous to the lives of more than one person."

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1 They have been convicted of both of those murders, and
2 clearly for one to take place, the other one had to take place.
3 And if that doesn't define a great risk of harm to another
4 person, then I don't know what does. And I really can't say too
5 much more about that, other than this instruction contemplates
6 does the killing of one person put somebody else at risk? And
7 obviously it did.

8 "2. The murders of Carl and Colleen Gordon were
9 committed while the Defendants were engaged in the
10 commission of or an attempt to commit, or flight after
11 committing, or attempting to commit a robbery."

12 Plain and simple that a robbery occurred while this crime
13 was going on. Not only do the facts that you've heard tell you
14 that--they went in, they got the purse, they took it, it had
15 money in it, it had identification in it--that is a robbery, but
16 the Defendants were convicted of that robbery. One of the
17 exhibits that we just admitted in this morning, very clearly says
18 that both Dale Flanagan and Randy Moore were convicted of the
19 crime of robbery.

20 "3. The murders of Carl and Colleen Gordon were
21 committed while the Defendants were engaged in the
22 commission of or an attempt to commit or flight after
23 committing, or attempting to commit a burglary."

24 Was there a burglary committed during the course of the
25 robbery? Again, they were convicted of it. And when you break a

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1 window out of a place that you're not -- of anyplace, whether
2 you're supposed to be in it or not, and you go through that
3 window with the intent to commit a felony, you've committed a
4 burglary. And forget that legal analysis, they were convicted of
5 burglary, and so that one is equally clear.

6 "4. The murders of Carl and Colleen Gordon were
7 committed by the Defendants, for themselves or others,
8 to receive money or any other thing of monetary value."

9 This is different from the robbery. It has nothing to do
10 with the \$2 bill and any other money that they might have
11 obtained through the robbery. This has to do with Dale
12 Flanagan's--and the others, including Randy Moore--expectation of
13 being in the will, of getting a part of the \$200,000 life
14 insurance policy. If it existed.

15 It doesn't even matter if it existed. What is important is
16 what was in their minds. Did they think they were doing this in
17 order, under No. 4 here, to get monetary value. And clearly it
18 wasn't only the insurance policy, but if he was in the will he
19 was expecting the house, the trailer and all the personal
20 property, and anything that would come through the estate
21 would go to Dale, and I think it was stated perhaps maybe his
22 sister too.

23 Ladies and gentlemen, there is a standard of beyond a
24 reasonable doubt that the State must meet for you to accept as
25 true these particular aggravating circumstances. That reasonable

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1 doubt, you've heard the definition read of it. In this case, in
2 these four cases, there is absolutely no doubt that these are
3 true and factual.

4 Those are to be weighed now. On one hand, we're going to
5 put them over on this side of the scale, against whatever the
6 mitigating circumstances are. And Instruction No. 8 speaks to
7 the mitigating circumstances in this particular case.

8 "Murder of the first degree may be mitigated by any of
9 the following circumstances, even though the mitigating
10 circumstance is not sufficient to constitute a defense
11 or reduce the degree of the crime: (1) the defendant
12 has no significant history of prior criminal activity."

13 Well, the Defendants -- you haven't had a big long rap sheet
14 brought out in front of you, there's no sign that they've spent a
15 great deal of their young lives in juvenile detention center or
16 jail or anyplace like that. And I'm not going to suggest to you
17 they did, because there is no evidence to that fact.

18 But they did use alcohol, they did use drugs. Dale
19 Flanagan's own doctor indicated that he used -- he admitted to
20 using LSD and marijuana. Some of the witnesses indicated that
21 that sort of thing went on. They had no compunction at all about
22 carrying weapons--pistols, rifles, knives. That didn't seem to
23 bother them too much.

24 I remember the testimony of Wayne Wittig. Randy Moore
25 seemed to have no difficulty pointing a shotgun at him or firing

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1 shots from a following car. These individuals seemed to have no
2 difficulty threatening other people and their families with the
3 loss of their lives should they tell anybody about what had gone
4 on. Are those significant history of prior criminal activity? I
5 leave that to your judgement.

6 "2. The murder was committed while the defendant was
7 under the experience of extreme mental or emotional
8 disturbance."

9 Well, I'm not sure -- we may have to come back and revisit
10 this area because I have yet to hear the Defense argue their
11 position on this case. But let me guess from the testimony that
12 I heard. Family members suggested that Dale had a bad family
13 life, that there were beatings, that sister was sexually
14 assaulted, although we don't know. No one ever said Dale knew
15 that that was going on at the time. Things were bad enough that
16 he had to run away. But all those things happened some four
17 years earlier. I doubt that that means the murder was committed
18 while the Defendant was under the influence of extreme mental
19 disturbance.

20 The only other thing that I can think about is the doctor's
21 testimony, Dr. Etcoff. But in his testimony, it really had to do
22 with he was angry. That was the problem that Dale Flanagan
23 seemed to have. There were no psychoses; there were no this,
24 that and the other thing. He seemed to be fine in virtually all
25 respects. He was just an angry young man.

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1 There has been no one to come into this courtroom and say
2 the murder was committed while the Defendant was under the
3 influence of extreme mental or emotional disturbance. Remember,
4 he chose to go out there. It was his doing. They'd thought
5 about it for a long and considerable period of time. There
6 wasn't a devil perched up on his shoulder saying, "Don't do it,
7 get out of here, and be under the influence of something else."
8 It was just Dale Flanagan, and it was just Randy Moore, and they
9 were leading these other kids into doing these dastardly acts.

10 "3. The youth of the defendant at the time of the crime."

11 Is 19 young? From my perspective, you bet. Is it young
12 from the perspective of this instruction? Does this instruction
13 say to you or suggest to you, "Well, just think about a numerical
14 age and let's decide if that's youth"? Or do we maybe want to go
15 behind the instruction and see what it really would intend, which
16 is this I think?

17 MR. SCHIECK: I'm going to object, your Honor, to Mr.
18 Seaton using the term "I" continually in his argument.

19 THE COURT: Sustain the objection. The jury is
20 admonished to disregard the singular use of the word "I."

21 MR. SEATON: The instruction suggests to you that the
22 proper way to view it is this: A person is young who is 16, 17,
23 18 years old, living at home, still under the influence of their
24 parents, going to school, not being independent, having to do
25 what other people say, not having the ability to determine their

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1 own lives to the extent that we all like to.

2 When you move out, when you get an apartment of your own and
3 you're able to choose your friends and come and go as you please,
4 and you have a job and you could quit and select another job if
5 you wanted, you have the ability to go buy knives and collect
6 guns, and you have the ability without any parental control to
7 get drugs and to get alcohol and do what you will with them, is
8 that youth? Is that the youth that this mitigating circumstance
9 takes into consideration?

10 And then any other mitigating circumstances. Who knows what
11 the other mitigating circumstances may be. They'll stand up and
12 tell you. It may be, for example, all of the certificates, and
13 there's a lot of them, that were put in for things that one or
14 more of the Defendants did years and years ago. Let's say that
15 that's a mitigating circumstance.

16 If you're looking for certificates with meaning, with
17 weight, are you going to chose student librarian? This certifies
18 that Randy Moore served credibly as a member of the library of
19 the school. Is that what carries a great deal of weight or any
20 of these other certificates? Or how about verdict? How about
21 that certificate? We, the jury, in the above-entitled case find
22 the Defendants, Dale Flanagan and Randy Moore, guilty of killing
23 their grandparents, and burglarizing and robbing and conspiring.

24 And so once -- and I already got into it, once you find
25 whatever mitigating circumstances you wish to, and there may be

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1 some, you weigh those, as I just suggested in that limited
2 situation. And you weigh whatever you find in terms of
3 mitigation on behalf of these two young men, against this crime
4 and its aggravation, against the fact that a young man would have
5 the audacity to think that he's mentioned in a will, and he wants
6 it, and he's going to get it no matter how.

7 How does that mitigate against youth, for example? How
8 does that mitigate against some mental disturbance? In fact,
9 doesn't it even tell you there isn't a -- or maybe I'm wrong.
10 Maybe it does tell you there is a mental disturbance. Who among
11 us in this society could think correctly and do what these two
12 people did?

13 I'm going to suggest to you that there are four aggravating
14 circumstances. And if there is any, it is relatively few in
15 number, the mitigating circumstances. And you don't consider
16 number, remember, you consider weight. And the weight of the
17 mitigation, whatever it is that's found, is innocuous, is
18 meaningless, should carry no weight whatsoever in this courtroom
19 of justice.

20 If you agree with that -- let me backup. If you don't agree
21 with that, if you say "Mr. Seaton, you're wrong, there is more
22 mitigation than aggravation here," then what I'm going to say
23 from here on out doesn't even count because you will not be
24 allowed to consider the death penalty. But assuming that you do
25 agree that the aggravation is there and that it outweighs the

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1 mitigation, your next question is: Do you want to issue a death
2 penalty in this particular case?

3 And you consider a few things. You consider the reasons for
4 the death penalty, the character of the Defendants, the nature of
5 their crimes, and fairness and equity. And I'm going to get to
6 each one of these areas and discuss them with you in just a
7 little bit. And the first one was the reasons for the death
8 penalty.

9 And one fair reason -- or, remember, we talked a little bit
10 about this as we were doing the jury selection process, and many
11 different people have many different reasons for saying that the
12 death penalty is okay. And that's all right. That's something
13 you don't all have to agree upon. You just in your own mind have
14 to be comfortable with the concept of the death penalty. One
15 reason is to punish. The death penalty could be viewed as
16 society's expression of outrage. Society is angry at someone for
17 having misbehaved in a horribly atrocious manner.

18 Let's back away for just a moment. As parents, we
19 discipline our children. We punish our children for doing
20 something bad. And the worse it is, the worse the punishment.
21 Our teachers discipline our children, and the same theory
22 applies. And our juries discipline the defendants. That's the
23 way of the system. And it gets harsher as we go up the line.

24 It's okay to punish. It's okay to say to someone that you
25 have done something wrong. You have created an act and now you

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1 are going to have to pay its consequences. No one needs to feel
2 guilty about that.

3 The other side of that coin is if you don't punish
4 appropriately, you essentially sew the seeds of anarchy. And
5 anarchy is a society without laws. It's people taking their own
6 law into their own hands. It's something we don't want. Our
7 society as a whole and individually should have a conscience.
8 These men are moral amputees; they have no conscience. Think of
9 what they did.

10 Another reason to impose death penalties is one of
11 deterrence by -- I've heard several people on the jury,
12 I don't know if they still remain or not, but I can remember
13 people saying they didn't think it was much in the way of
14 deterrence. Well, let's see if that thought can be challenged
15 just a little bit.

16 Clearly there are no empirical studies that show us that
17 when the death penalty is in vogue that fewer murders occur, or
18 when it's out of vogue more murders occur. Nobody knows.
19 Society is probably in no better position to determine whether or
20 not the death penalty actually deters other murders than was Dr.
21 Etcoff able to predict with any sense of assuredness that these
22 two individuals would not be dangerous in prison at some later
23 date. It just can't be done. And so you have to use your common
24 horse sense to decide what the probabilities are, what the
25 possibilities are.

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1 And I would suggest to you that there are people at
2 McDonald's Restaurant, at horse ranches, in our high schools who
3 will see this in other cases. They will see what happens. And
4 there may be one among them who decides not to carry a gun along
5 with him on the burglary, who decides not to shoot his wife or
6 her husband because they are angry at what happened, because they
7 recognize that juries have spoken and said what the consequences
8 of those acts may be. Could it be that one person could be saved
9 by the death penalty? No one knows the answer to that.

10 Another thing that I said that you would take into
11 consideration in deciding this case is the character of the
12 Defendants. Who were they? Who are they? What sort of people
13 is it who you are giving some sort of a sentence to? And I went
14 through that to some degree before about the willingness to carry
15 knives and guns, and the drugs and alcohol, and Wayne Wittig.
16 But there are some other things that should come in that would
17 cause you to have pause about what sort of characters these
18 people have.

19 For example, they were 19 years of age. The testimony
20 suggests that they were the leaders of what was going on. These
21 were the primary motivators. They were the ones always who led
22 the discussion. And they brought four other kids into this with
23 them. I don't justify for a moment, nobody can justify, the
24 verdicts don't justify for a moment what those other young people
25 did. But would they have done it but for these two individuals?

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1 Tom Akers as an example. Tom Akers came in here and sat on
2 that stand and looked you all in the eye, and he admitted that he
3 had gone out and been a part of this pack of people who killed
4 two human beings. He wasn't proud of it, but he did it. He was
5 a member of that group just as sure as we're sitting here. He
6 seems to have done all right. He got five years probation. He
7 successfully completed that probation. He got honorable
8 discharge for it. He's been trying to go to college, and he's
9 been trying, and apparently, I've heard nothing to the contrary,
10 succeeding in turning his life around. And yet he was drug into
11 this thing by these other people.

12 How about their ability to premeditate? It's a different
13 kind of premeditation in this case. It isn't a decision to do
14 something, think about it and do it that quickly; it's a plan.
15 You'll see by the verdicts that they were convicted of
16 conspiracy, and it is truly there. It was a dark, deviant
17 conspiracy that these people entered into.

18 One of them said, "I know how to get some money. All we
19 have to do is kill my grandmother and my grandfather. I'm in the
20 will. I can share that money with you." Think about that
21 thought for a moment. Think about the capacity of a human being
22 just to think that thought. It's remarkable.

23 And this conspiracy went on for, we know, a month and a half
24 to two months, where different groups of people were talking
25 about doing the same thing. But two members of that group were

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1 always constant--Dale Flanagan and Randolph Moore. And I say to
2 you that their character is told to us in clear and crystal terms
3 when you think that they had the capacity to think those things.
4 And worse yet, they had the capacity to carry them out.

5 We've all said things. We've all said "I wish you were
6 dead," "I'd like to kill him," I'd like to do this that and the
7 other thing that are bad. But they're off-the-top-of-the-head
8 angry remarks--never acted upon by all of decent humanity. These
9 two, these two, had it within themselves the special
10 characteristic to be able to implement this plan of theirs. That
11 again tells you reams about their character.

12 And the last thing in terms of their character is what I had
13 mentioned once before, that they were willing to threaten the
14 other members of the gang and their group, I mean and their
15 families if they should talk to anybody. "If you say anything to
16 anyone about this, I'll kill you and your family." And Randy and
17 Dale are brothers and they will do anything, excuse me, to
18 protect one another. Those items that we've talked about are the
19 character of Dale Flanagan and Randy Moore, the character that
20 you should take into consideration when you decide what the
21 penalty in this case should be.

22 Another thing that I mentioned to you earlier that you
23 should think about is the nature of the crime. How did it
24 happen? What was it all about? How serious was it? Let's take
25 them one at a time. Randy Moore. And I'm not going to go into

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1 all of the things that happened before and after, just the
2 shootings.

3 Carl Gordon is upstairs sleeping, expecting to wake up in
4 the morning and do whatever his plans held for that particular
5 day. And he evidently heard some sort of a noise, probably one
6 of which was his wife screaming and the bullets firing. And so
7 he came down the stairs to see what was going on.

8 Little did he know, that kneeling outside of the broken
9 window was a man who you've been in court with for two weeks who
10 was carrying that long rifle that we've looked at, semiautomatic
11 .22, pointed in that direction in an ambush, just waiting for
12 that moment, knowing that the grandfather, Carl Gordon, was going
13 to come down the stairs. And think about that. That's what was
14 going through his mind at that moment.

15 Bad enough, but he points that gun in the direction of the
16 grandfather and he fires off numerous rounds--seven, eight, nine--
17 -I can't remember now how many it was, a lot of rounds, and many
18 of them hitting Mr. Gordon. That's the character of Randy Moore
19 in terms of the nature of this crime.

20 But even worse yet, how about the testimony that we've heard
21 from, it was at least Johnny Ray Luckett, through the court
22 official's testimony that we heard read? What did he say Randy
23 Moore said to him when he asked him, "What was that last final
24 shot that I heard?" There were all these shots, long silence,
25 one last shot. Randy Moore's words, and folks, if anything

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1 should execute Randy Moore, it is these words, "Well, the
2 grandfather was squirming on the ground, and so I shot him once
3 again in the head." How cold. What an imperfect human being it
4 would take to say something like that and then have done it. And
5 could it be the graze wound that we saw that went on the back and
6 up by the head of Mr. Gordon was that very shot?

7 How about Dale Flanagan? What was the nature of the crime
8 as far as he was concerned? Relationships have to be considered
9 first. Randy Moore -- Dale Flanagan's mother was the daughter
10 of Colleen Gordon. Colleen Gordon's blood ran through his mom
11 and thus through Dale. She was his blood grandmother. She and
12 Carl Gordon provided a place for Dale Flanagan to live--the
13 trailer that you've seen in the photographs, out by the house.
14 "Here Dale, here's a place to live. Let us help you. While
15 you're working at McDonald's, low wages, we'll give you a place
16 to live."

17 He then took Roy McDowell's .22 pistol and carried it along
18 with him as they drove out there, knowing what he was going to do
19 cause he couldn't get anybody else to do it. He wanted somebody
20 else to do this deed. That may be the one redeeming quality that
21 has been shown of Dale Flanagan in this trial. He didn't want to
22 kill his own grandmother, he wanted somebody else to.

23 And I forgot one thing. He thought in his mind that his
24 grandparents loved him enough that they would put him in their
25 will. That's what had to be in his mind because he truly

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1 believed that he was in the will. And so he took Roy McDowell's
2 .22 pistol. As soon as that window was broken, he went in,
3 turned to his right, went into her room, and one of the witnesses
4 said he turned on the light just as she was coming up off of the
5 bed. And think of this: his own grandmother was coming up off
6 of the bed, and he took his hand and put it on her jaw, and he
7 shoved her back down in the bed and he held her there while he
8 took that .22 pistol, and he shot her three times in the head.

9 With all of this in mind, I want you to know who these
10 people are. This is the -- these are the pictures of the
11 grandparents, where they lay after being shot and brutally
12 murdered by these two men who you sit in judgement of today.
13 There's only one reason that I have to stand here and show you
14 these ungodly pictures, and it's because of those people right
15 over there.

16 I apologize for showing you these pictures, but they make a
17 very cogent point. This is the shots to the head of the
18 grandmother. The reason I'm showing them to you is it ties in
19 with the story that we've heard about Dale Flanagan. He had his
20 hand over that jaw, pressing her down on the bed, when these
21 shots were fired into her head. And she was looking at him as he
22 put three bullets in her head and sealed a scream on her lips and
23 hurdled her through eternity. That was the last thing that the
24 grandmother saw, and it was Dale Flanagan, her own blood
25 grandson, who she did so much for, doing this to her.

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1 Another reason that you may want to consider in whether or
2 not to impose the death penalty is -- it's equity, it's
3 fairness, balance, do the right thing. There were four other
4 codefendants in this case, and they've all been sentenced
5 differently. And I want to suggest to you how that went and how
6 it applied to each one.

7 After all, when we sentence people in the criminal justice
8 system, we do want to be fair, and we want a balance, and we want
9 the punishment to fit the crime. And it's not always just the
10 crime, but in this kind of a case it's the degree of involvement
11 in the crime. And that is equally important.

12 And so we start off with Tom Akers. And Tom Akers had the
13 sole responsibility of driving the car out with everybody in it
14 and getting the tapes. And he did that. He never went to the
15 house, he never handled the guns, he never had any intent to do
16 any of that stuff, at least from what we've heard here. And,
17 yes, the State made a deal with Tom Akers, and we lightened up on
18 his punishment so that he would come in and there would be
19 someone to testify to a jury as to what these young men did.

20 And it looks like it turned out. He seems to be all right
21 now. But he got voluntary manslaughter, five years in the Nevada
22 State Prison, suspended with five years probation. He's now
23 completed that probation, and that's Tom Akers.

24 Michael Walsh, he went up to the house and he broke the
25 window and helped get everybody in. He pled guilty and he got

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1 two consecutive lives in prison with the possibility of parole.
2 And that meant that he got 20 years parole all told, 20 years
3 before he was eligible.

4 Roy McDowell, he's the one who brought the .22, the very gun
5 that Dale Flanagan used to kill his grandmother, and he's also
6 the one who went in and made it look like a burglary and a
7 robbery, and he took the purse. He was a part of the original
8 trial, as you heard a little bit earlier. He was sentenced to
9 four consecutive life with the possibility of paroles. So
10 remember, Walsh got two consecutive life with the possibility of
11 parole, and McDowell got four lives with the possibility of
12 parole.

13 Johnny Ray Luckett had the sawed-off .22 rifle, and it was
14 testified to, as you heard in that last trial, that he was the
15 one who fired one shot at the grandfather. And no one knows if
16 he hit him or not. The jury with Johnny Ray Luckett gave him
17 four consecutive lives in prison without the possibility of
18 parole. They escalated up a little higher, because he had a gun
19 and he was willing to shoot it at another human being. And so he
20 deserved far more.

21 That leaves us with the leader of the pack, the leaders of
22 the pack. You have heard me suggest that the evidence shows
23 there are many reasons to impose the death penalty in this case.
24 One of them, just one of them, is balance and fairness and
25 equity. If these other Defendants were sentenced in a stairstep

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1 fashion according to their involvement in the crime. The last
2 one, Johnny Ray Lockett, who fired the shot at the grandfather,
3 got lives without the possibility of parole, four consecutive.
4 Just in terms of fairness these two deserve the death penalty.
5 They did far more than what any of these other four did. The
6 other four's roles pale in comparison to what these two gentlemen
7 created on that particular night.

8 Ladies and gentlemen, you have it within your conscience and
9 your power to punish appropriately in this case. You can send a
10 message out to other people, "Don't do this sort of thing. Don't
11 be that bad because what awaits you is the death penalty. Please
12 stop." You have the ability to do that. Thank you very much.

13 THE COURT: Before starting on the next argument, let's
14 kind of stand in place and stretch out a little bit.

15 Who's going to go next? Okay. Ms. Mounts?

16 MS. MOUNTS: Your Honor, it'll be Mr. Schieck.

17 THE COURT: Oh, Mr. Schieck. All right. Mr. Schieck?

18 CLOSING ARGUMENT BY MR. SCHIECK

19 MR. SCHIECK: Good afternoon, ladies and gentlemen.
20 This is the only opportunity that I will have to speak with you
21 this afternoon, because the State has the burden of proof during
22 this penalty hearing, and the State gets two arguments, which
23 means after I've finished and Mr. Wall has finished, the State
24 gets the last word in the case. Before I start, I do want to
25 thank you for your attention throughout these proceedings and for

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1 (Pause)

2 REBUTTAL CLOSING ARGUMENT BY MR. SEATON

3 MR. SEATON: They say they have found Jesus. There's
4 something about life in jail that brings out spiritual impulses
5 in people like Flanagan and Moore. And whether they have really
6 adopted the virtues of Christianity really doesn't matter. The
7 fact is they're timing is lousy. They should have adopted those
8 virtues before they decided to go out and kill for fun and
9 profit.

10 Now, maybe they have really found God. And if they did,
11 let's be glad for them, and I mean that in all seriousness, for
12 they will meet their Maker when they die for they may go to
13 heaven. But that's between them and God. They still have
14 society to deal with.

15 I didn't hear once "I'm sorry." I didn't hear once an ounce
16 of remorse for the Gordons. Oh, I heard the family has suffered
17 a lot, friends have suffered a lot--that sort of thing. No
18 remorse from these good Christians, no cheers from these good
19 Christians.

20 There are consequences yet to be repaid.

21 I wish I could have memorized this. I couldn't. I have
22 read this, and I want to share it with you, because it really
23 applies: "The modern society that does not use the death penalty
24 does not send a message of reverence for life but a message of
25 moral confusion."

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1 When we don't use the death penalty, we tell the murderers
2 that no matter what, they may do to innocent people--women,
3 children and old people--their most treasured possession, their
4 lives, are secure. We guarantee it in advance, just as a nation
5 that declares it will not go to war finds itself at the mercy of
6 its warlike regimes.

7 So a society that will not put the worst of its animals --
8 I'm sorry -- most of its criminals to death, will find itself at
9 the mercy of criminals who have no qualms about putting
10 innocent...

11 THE COURT: Mr. Seaton, excuse me, sir. The jury will
12 disregard the terminology of "animals." I know the District
13 Attorney apologized for saying it; the jury will completely
14 disregard that.

15 MR. SEATON: Thank you, Judge.

16 I'm going to leave you with one last thought. Our human
17 capacity for good and compassion make the death penalty a
18 terribly tragic thing. But, ladies and gentlemen, our human
19 capacity for evil and depraved behavior make it absolutely
20 necessary.

21 THE COURT: Will the Clerk swear in the officer to take
22 charge of the jury?

23 (Clerk swears Bailiff)

24 THE COURT: Will counsel stipulate as to the retention
25 of the alternates?

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JUL 11 1995
CLERK OF DISTRICT COURT
BY *Lisa Hurd* CLERK

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,	)	CASE NO.	C69269
)		
10 Plaintiff,	)	DEPT. NO.	XI
)		
11 -vs-	)	DOCKET NO.	S
)		
12 DALE EDWARD FLANAGAN,)		
)		
13 Defendant.)		

14
15 JUDGMENT OF CONVICTION

16 WHEREAS, on the 25th day of February, 1985, Defendant, DALE
17 EDWARD FLANAGAN, entered a plea of Not Guilty to the crimes of
18 COUNT VI - MURDER WITH USE OF A DEADLY WEAPON, NRS §200.010,
19 §200.030, §193.165; and COUNT VII - MURDER WITH USE OF A DEADLY
20 WEAPON, NRS §200.010, §200.030, §193.165; and

21 WHEREAS, the Defendant DALE EDWARD FLANAGAN, was tried before
22 a Jury and the Defendant was found guilty of the crimes of
23 COUNT VI - MURDER WITH USE OF A DEADLY WEAPON, NRS §200.010,
24 §200.030, §193.165; and COUNT VII - MURDER WITH USE OF A DEADLY
25 WEAPON, NRS §200.010, §200.030, §193.165, in violation of NRS
26 §200.010, §200.030, §193.165, and the Jury verdict was returned on
27 or about the 11th day of October, 1985. Thereafter, the same trial
28 jury, deliberating in the penalty phase of said trial, in

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1 accordance with the provisions of NRS §175.552 and §175.554, found
2 that there were four (4) aggravating circumstances in connection
3 with the commission of said crime.

4 That on or about the 17th day of October, 1985, the Jury
5 unanimously found, beyond a reasonable doubt, that the aggravating
6 circumstances found outweighed any mitigating circumstances, and
7 determined that the Defendant's punishment should be death in the
8 Nevada State Prison located at or near Carson City, State of
9 Nevada.

10 WHEREAS, thereafter, on the 19th day of December, 1985, DALE
11 EDWARD FLANAGAN filed an appeal with the Supreme Court of the State
12 of Nevada; and

13 WHEREAS, on the 18th day of May, 1988, the Supreme Court of
14 the State of Nevada affirmed DALE EDWARD FLANAGAN'S conviction for
15 First Degree Murder, but reversed the Jury's imposition of the
16 Death Penalty; and

17 WHEREAS, the Defendant, DALE EDWARD FLANAGAN, was tried before
18 a Jury in the penalty phase of the trial on the 10th day of July,
19 1989, and in accordance with the provisions of NRS §175.552 and
20 §175.554, found that there were four aggravating circumstances in
21 connection with the commission of said crimes, to-wit:

22 1. The murders of Colleen and Carl Gordon were committed by
23 Defendants who knowingly created a great risk of death to
24 more than one person by means of a weapon, device, or
25 course of action which would normally be hazardous to the
26 lives of more than one person.

27 2. The murders of Colleen and Carl Gordon were committed
28 while the Defendants were engaged in the commission of or

an attempt to commit or flight after committing or attempting to commit any Burglary.

3. The murders of Colleen and Carl Gordon were committed while the Defendants were engaged in the commission of or an attempt to commit or flight after committing or attempting to commit any Robbery.

4. The murders of Colleen and Carl Gordon were committed by the Defendants for the purpose of receiving money or any other thing of monetary value.

That on or about the 14th day of July, 1989, the Jury unanimously found, beyond a reasonable doubt, that the aggravating circumstances found outweighed any mitigating circumstances, and determined that the Defendant's punishment should be death in the Nevada State Prison located at or near Carson City, State of Nevada.

WHEREAS, on the 10th day of February, 1993, the Supreme Court of the State of Nevada reversed and remanded the Jury's imposition of the Death Penalty against DALE EDWARD FLANAGAN; and

WHEREAS, the Defendant, DALE EDWARD FLANAGAN, was tried before a Jury in the penalty phase of the trial on the 12th day of June, 1995, and in accordance with the provisions of NRS §175.552 and §175.554, found that there were four aggravating circumstances in connection with the commission of said crimes, to-wit:

1. The murders of Colleen and Carl Gordon were committed by Defendants 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.

