IN THE SUPREME COURT OF THE STATE OF NEVADA

DALE EDWARD FLANAGAN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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 9

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***Flanagan v. State*, Nevada Supreme Court Case No. 63703**
Index to Appellant's Appendix

IN THE SUPREME COURT OF THE STATE OF NEVADA

DILLARD R. MORTON, APPELLANT, *v.* THE STATE OF NEVADA, RESPONDENT.

No. 5091

[Filed June 2, 1966]

Appeal from order denying petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; Peter Breen, Judge.

Affirmed.

John P. Foley, of Las Vegas, for Appellant.

Harvey Dickerson, Attorney General, *William P. Beko,* District Attorney, and *Chadwick E. Lemon,* Deputy District Attorney, Nye County, for Respondent.

OPINION

By the Court, ZENOFF, D. J.:

After a preliminary hearing, Dillard R. Morton, together with Robert G. Peoples, was held to answer to the charge of murder. Morton thereafter petitioned the District Court for a writ of habeas corpus contending that there was insufficient evidence to establish that probable cause existed that he committed the offense. Morton appeals from the denial of the writ by the lower court.

We affirm. From an examination of the transcript of the preliminary hearing this court finds that there was sufficient cause to believe the defendant was guilty of the offense charged[1] or that he aided in its commission.[2]

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[1]NRS 171.455 (relating to commitment following preliminary examination):

"If, however, it appears from the examination that a public offense has been committed, and there is cause to believe the defendant guilty thereof, the magistrate must make or endorse on the depositions and statement an order signed by him to the following effect: * * *"

[2]NRS 195.020. "*Who are principals.* Every person concerned in the commission of a felony, gross misdemeanor or misdemeanor,

Appellant, the victim Sharon Wilson, and her two small children, drove to Beatty in appellant's automobile. The victim rented a room at the El Portal Motel, registering under the name of Sharon Peoples. Defendant Peoples arrived in Beatty, via bus, on the afternoon of the day the alleged offense was committed. Peoples was met at the bus by appellant and the two children. Appellant drove Peoples to the Oasis Bar where the victim was employed. Appellant and Peoples spoke with the victim and after an altercation between Sharon and Peoples, at which time he threatened to kill her and shot at her, they all left for the motel with the appellant driving the automobile.

Morton was alone with Peoples and the victim in the motel room when she was shot and killed. An inference was created by the fact that the victim sustained a broken neck along with the gunshot wound which might suggest that there was physical assistance given to the killer by holding the deceased. Further, the angle of the entrance of the bullet could lead to the same inference that the victim was held when she was shot.

Morton helped remove the body from the motel room to the back seat of the automobile, directed the children to get into the car, and drove the vehicle to the Oasis Bar with Peoples and the deceased's children and the victim.

Appellant's acts were voluntary and he was under no apparent duress from Peoples, who, the evidence established, possessed the gun.

The record does not show that Morton was a reluctant participant at any time.

These facts were sufficient to establish probable cause within Beasley v. Lamb, 79 Nev. 78, 378 P.2d 524 (1963), and a host of other Nevada authorities.

Affirmed.

THOMPSON and COLLINS, JJ., concur.

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whether he directly commits the act constituting the offense, or aids or abets in its commission, and whether present or absent; and every person who, directly or indirectly, counsels, encourages, hires, commands, induces or otherwise procures another to commit a felony, gross misdemeanor or misdemeanor is a principal, and shall be proceeded against and punished as such. The fact that the person aided, abetted, counseled, encouraged, hired, commanded, induced or procured, could not or did not entertain a criminal intent shall not be a defense to any person aiding, abetting, counseling, encouraging, hiring, commanding, indncing or procuring him."

NOTE—These priuted advance opinions are mailed out immediately as a service to members of the bench and bar. They are subject to modification or withdrawal possibly resulting from petitions for rehearing. Any such action taken by the court will be noted on subsequent advance sheets.

C. R. DAVENPORT, *Clerk*.

SPO, CARSON CITY, NEVADA, 1966

U.S. District Court
District of Nevada
FILED

AUG 8-1968

Bernard Supera, Clerk
By Madora Reynold, Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

---o0o---

ROBERT G. PEOPLES,

Petitioner,

vs.

CARL HOCKER, Warden of the Nevada State Prison of the State of Nevada,

Respondent.

Civil No. 2025-R

ORDER

Petitioner, Robert G. Peoples, having been found guilty of murder in the first degree and sentenced to imprisonment for life without possibility of parole, seeks a discharge from custody.

The Court has carefully reviewed the entire record and finds no basis for concluding that Petitioner's federal constitutional rights were in any respect violated. While the police work in the case was not the best, there is no basis in the record for a finding of deliberate suppression of evidence by the District Attorney or the law enforcement officers so as to bring the case with the Brady v. Maryland, 373 U.S. 83, principle. This Court cannot substitute its judgment of the weight and effect of evidence for that of the trial jury. Only

Exhibit "11"

if the record is devoid of evidence to sustain a conviction may the conviction be voided for denial of due process of law. Thompson v. Louisville, 362 U.S. 199.

Even so, this Court is far from satisfied from the evidence before it that an injustice has not been done in this case. The theory of the state that Petitioner deliverately shot and murdered the victim strains credulity. It is almost unbelievable that a person, having fired a shot in a public bar, would accompany the victim to a motel room, shoot her, and bring the body back to the public bar. It is as easily inferred from the evidence that the shot in the public bar was accidental as that it was intentional. The gun had a hair trigger and was discharged through Petitioner's pocket. The record is barren of evidence of any motive for a deliberate homicide. Proof of the victim's suicidal tendencies is uncontradicted. While it may be difficult to square the course of the bullet through the victim's body and the wall back of the bed with an attempted suicide, it is far from impossible that in a struggle for a hair-triggered gun, she could have been shot in that manner. The defense was hampered by negligent police work in not conducting paraffin tests of the victim's hands, in not safeguarding the gun for fingerprints, and in losing the X-Rays which presumably disclosed a fracture of the victim's neck. Also, the serious prior felony records of Petitioner and his co-defendant cast doubt upon the credibility of their testimony, but, more importantly, would influence a jury to draw all possible inferences from the eivdence in support of a finding of guilt.

The Court is informed that after Petitioner's conviction, the co-defendant , Dillard R. Morton, pleaded guilty

in view of the State's theory, that he held the victim while Petitioner shot her. See: Morton v. State 82 Nev. 223.

Judicial machinery cannot cope with a case of this kind. The remedy of executive clemency has been provided and it is much more suitable because investigation may disclose further information - perhaps in form inadmissible in court proceedings - which will support or refute the basis for this conviction.

Accordingly, the Court respectfully refers this case to The Honorable Paul Laxalt, Governor of the State of Nevada, and the State Board of Pardons for appropriate consideration.

IT IS ORDERED that the petition for a writ of habeas corpus is hereby denied.

Dated: August 8, 1968.

BRUCE R. THOMPSON
UNITED STATES DISTRICT COURT

Pardon Board Withholds Action on Robert Peoples

A 37-year-old state prison inmate told the Nevada Pardons Board Tuesday he was unjustly convicted of the murder of a cocktail waitress in Beatty in 1965.

Robert Peoples, serving a life term without possibility of parole, offered to take a lie detector or truth serum test to prove his innocence.

Peoples appeared before the state pardons commission to ask his conviction be wiped out.

Peoples told the board the victim, Sharon Beach, shot herself.

He accused the Nye County Sheriff's office of surpressing fingerprints and the paraffin tests to show the woman handled the gun.

"No one with common sense would commit murder in that motel," he said. "I think I was denied justice by the Nevada Supreme Court."

Board Chairman Gov. Paul Laxalt and some of the other board members agreed there were holes in the case record but the commission agreed to wait until Peoples exhausted his appeals through the federal courts.

Laxalt said he "had a bad feeling" about the case. He suggested an independent investigation be made to ensure there had not been a "gross miscarriage of justice."

Laxalt questioned why there were no paraffin tests made on the victim. The governor also said there was a serious question whether Peoples was adequately represented at the trial by legal counsel.

But Supreme Court Justice Jon Collins balked at the suggestion. He said Peoples had failed to show any unusual circumstances why he was unjustly convicted.

Collins asked how far the pardons board should go when a man had his trial and review of the case by the Nevada Supreme court and the federal court in Reno. The case is now going to the ninth circuit court of appeal in San Francisco.

Appendix 55

BID DENIED

ROBERT PEOPLES STAYS IN PRISON

Application of Robert Peoples, 33, serving a life term in the Nevada state prison without possibility of parole, for freedom on grounds that he is innocent was denied by the state board of pardons meeting in Carson City Monday.

Also denied was the application of Frank L. Hall, 30, serving a 10-30 year term for second degree murder. Hall was convicted from Las Vegas while Peoples is serving from Nye county.

Peoples was found guilty of first degree murder in the fatal shooting of Sharon Wilson in a motel in Beatty in 1965. He contended he was innocent and sought a full pardon instead of having his sentence reduced.

Justice David Zenoff of the

(Continued on Page Five)

BID DENIED

(Continued from Page One)

Nevada supreme court had conducted a personal investigation into the case of Peoples and concluded he should have been found guilty of voluntary manslaughter instead of first degree murder.

Judge Zenoff, however, voted for denial on grounds it was for a full pardon instead of a reduction in the degree of the crime.

District attorney William F. Beko of Nye county told the pardons board Peoples received a "fair trial" and he added, "I don't have any trouble living with the degree of the crime." He said he had asked for the death penalty and there was ample evidence to justify it.

Hubert Sommers, a Los Angeles attorney representing Peoples, called the circumstances surrounding the shooting "at best wierd and bizarre." Sommers said the evidence only disclosed an argument between the two and not what happened in the motel room.

Exhibit R-21

Criminal Case No. 654

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff

vs.

ROBERT G. PEOPLES and DILLARD R. MORTON,

Defendants

FILED

NOV 25 1968

Vera Bailey County Clerk

By A. Mothershead Deputy

ORDER RELEASING EVIDENCE

Upon the request of Justice David Zenoff, of the Supreme Court of Nevada, and good cause appearing therefor,

IT IS ORDERED that the pistol and clip, admitted in evidence as plaintiff's exhibit "DD" in the above-entitled matter, be released to Justice Zenoff, to be returned to the Clerk of this Court at the convenience of Justice Zenoff.

Dated this 25th day of November, 1968.

Kenneth L. Mann

DISTRICT JUDGE

Pardon Form No. 17

FILED

Authority to:
Prison Officials
and
Commissioners-Pardons
Board Files

NEVADA BOARD OF PARDONS

Carson City, Nevada

ORDER COMMUTING SENTENCE AND/OR REMITTING FINE

Pursuant to the authority, of Nevada Revised Statutes Section 213.010 to Section 213.090, vested in the Nevada Board of Pardons, the following ORDER is issued:

Applicant ROBERT PEOPLES on MAY 12 19 66

was sentenced by the Honorable PETER BREEN, District Judge of the FIFTH Judicial District Court, in and for the County of NYE, State of Nevada, to imprisonment in the Nevada State Prison, for the crime of 1ST DEGREE MURDER for a term of LIFE W/O PAR and having applied to this Board for COMMUTATION TO LIFE WITH POSSIBILITY OF PAROLE

IT IS HEREBY ORDERED, that effective this date applicant's sentence be commuted from LIFE WITHOUT PAROLE to LIFE WITH PAROLE years of imprisonment in the Nevada State Prison, Carson City, Nevada, less statutory credits; that upon completion of said term he be discharged from said Prison without further penal obligation to this State. ~~That the previously adjudged fine of be remitted to the following amount~~

Dated APRIL 23, 1974

NEVADA BOARD OF PARDONS

By

Secretary George J. Reed for the Chairman

CARL G. HOCKER, EXECUTIVE SECRETARY

CERTIFICATE OF DISCHARGE

On this date, was released from the Nevada State Prison pursuant to the above order and owes no further penal obligations to the State of Nevada.

Dated

NEVADA BOARD OF PARDONS

CARL G. HOCKER, EXECUTIVE SECRETARY

Hanley defense attacks agent use

The role of double agent Robert Peoples in the building of a case against the two men accused of the Al Bramlet murder was laid out in District Court pre-trial testimony Wednesday, as defense lawyers went to work on their motion for a dismissal of the charges.

The testimony came in the courtroom of Judge Michael Wendell where Tom Hanley, 61, is slated for trial Monday for the Bramlet murder. His son, Gramby, 38, is scheduled to go on trial for the murder in the courtroom of Judge Carl Christensen Feb. 6.

Tom's attorneys, Louis Wiener, Herb Waldman and Charles Garner, called homicide Detective Beecher Avants to the stand first, as they attempted to show the judge the state was in the wrong for using a double agent.

Peoples figures to be a key prosecution witness unless Wendell dismisses the charges or at least supresses any evidence that might have come in against the Hanleys through him.

Peoples was a friend of Gramby— they served time in the Nevada State Prison together. Peoples served some seven years for second degree murder before being paroled and given a job working as an investigator in the office of Public Defender Morgan Harris.

Peoples was scheduled to be called to the witness stand Thursday when the pre-trial hearing continued.

But Wednesday belonged to Avance and the other homicide detectives involved in the case.

Avance, responding to questions from Waldman, laid out the Peoples role as follows:

Peoples had met, on separate occasions, with Tom and Gramby at the Horseshoe Club in early April. The two Hanleys were arrested in Phoenix April 28.

When Tom was arrested, he waived extradition and came back to Las Vegas voluntarily. Not so with Gramby. He stayed in Phoenix and fought extradition.

Peoples visited with Tom in the Clark County Jail, where he is still being held in lieu of $250,000 bail.

Garner accompanied Peoples on a visit in which Tom held up a note to Peoples, telling him to go with his— Tom's— wife, 21-year-old Wendy, to dig up Bramlet's jewelry, which was buried near the Hanley trailer compound.

The note instructed Peoples to move the damning evidence out of the county, according to Avance.

When the note went up, Garner made it clear he wanted no part of evidence tampering, said Avance.

At this point, Peoples went to Avance and told him what was happening. This was when he became a double agent.

Peoples led the Hanleys to believe he was working for them when, in fact, he was now working for homicide detectives.

Avants said he conducted an aerial surveillence of Peoples and Wendy as they went to the Hanley trailer compound to dig up the evidence. The surveillence was operated from an airplane, not a helicopter.

Peoples was never paid a fee for his services, said Avants, but was given $100 out of traffic fine money to cover his telephone expenses and his gas bill.

As Avance testified, Tom sat in the jury box, wearing the blue jumpsuit uniform of the county jail and handcuffs. The handcuffs made it a bit awkward for him, but he still managed to take notes while his attorneys, seated at the nearby defense table, did the same.

If the case is not dismissed on the defense motion and if the trial starts as scheduled Monday, Tom will be dressed in civilian garb, will not be handcuffed and will be seated at the table with his lawyers.

Laghes eyed Vegas as home

HOUSTON (AP) — A document introduced as evidence in the Howard Hughes estate trial states the late millionaire was determined to make Nevada his permanent home.

The document signed by Hughes said he had "no intention of residing anywhere except in the state of Nevada."

The 1973 document was presented Wednesday as attorneys for William Lummis and his mother, Annette Gano Lummis, began their case to prove Hughes never considered Texas as his legal domicile.

Lummis is a co-administrtator of the vast Hughes estate and also a cousin of Hughes.

Frank Davis, an attorney for Lummis and his mother, argued that Hughes lived in California from 1926 until 1966 except for a couple of years when he lived in Nevada. Davis said Hughes returned to Nevada in 1966 and lived there until 1970 when he left and lived in various places around the world.

A tape of a Hughes news interview in 1972 was played in which Hughes said heplanned to someday return to Las Vagas, Nev.

Lummis, a Houston attorney, told the three-man, three-woman jury in Probate Judge Pat Gregory's court that he was convinced Hughes died without leaving a valid will.

Hughes said an extensive search was made for a will in Texas, Nevada and California and none was discovered.

Lummis spent most of the day on the witness stand in the trial where the Texas attorney general's office is attempting to prove that Hughes was a Texan.

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Last week he brought home a piece

UPIfoto

s died in 1944 at the start of the Allied retake

By Carter

ade a suprise visit to the Jeu de Paume, the
is Paris museum that houses a priceless collection
ench impressionist sculpture and paintings.
rough a quirk of modern electronics, the voices
ter's Secret Service agents have been resounding
ir nights through the sound system of the Casino
ris, where topless dancers perform the famous

easier because of the ring.

Hanleys' Informant Testifies

F.1.B

By JERRY RALYA
SUN Staff Writer

"I was playing the Huphrey Bogart role," police informant Robert Peoples testified Thursday as he admitted "conning" Tom Hanley's alleged young wife with lies before bedding down with her in a "bugged" motel room.

Peoples, a convicted murderer who worked as an investigator for the public defender's office and then on the Hanley "defense team" before switching sides and becoming an informer, was on the District Court witness stand all day.

He was called by Hanley's defense lawyers, who have moved for dismissal of the kidnapping and murder charges and for suppression of some of the evidence.

Jury selection for the trial before District Court Judge Michael Wendell is scheduled to begin Monday, depending on his ruling if the motion hearing concludes Friday.

Hanley, 61, is accused of abducting Al Bramlet, Culinary Union leader, and executing him in the desert Feb. 24, aided by his son, Andy Gramby Hanley, 39.

The younger Hanley is slated for trial on the same charges Feb. 6. Wendy Colleen Watson Hanley, 22, who claims to be Tom's wife and the mother of his baby, is to be tried March 13 as an accessory to the murder.

(Please See I PLAYED, Page 4)

Rebels Win

UNLV's basketball team upped its season record to 14-0 Thursday night by beating Cal State Northridge, 83-72, in

Las Vegas Sun 1/6/1978

superior knowhow.

Milton Friedberg, of Antenna Inc., was optimistic, predicting sales would hold even in 1978, with a 12 to 15 percent annual growth in the industry thereafter.

Dave Bradley, a marketing and research expert with the Electronics Industries Association (EIA), cited profits will drive out fast-buck opportunists.

The Japanese yen recently increased 20 percent in value.

With 30 million CB radios already in American cars and a total of 50 million possible within two more years, panelists agreed many dealers will be able to survive merely by servicing them and selling antennas.

Capt. James McCoy, 30, of Lake City, S.C., was reported in stable condition at Nellis AFB Hospital.

He was rescued by members of the UH-1N Helicopter Detachment, stationed at the Indian Springs Air Force auxiliary station.

A board of officers will be appointed to probe the cause of the crash, an Air Force spokesman said.

I Played Bogart: Hanley Informer

(Continued From Page 1)

Peoples, who will resume the witness stand Friday, was directed by Judge Wendell to mark a copy of the transcript of his motel conversations to indicate what statements by him in it are false.

The 56-page transcript was typed from tapes Metro Police made of the rendezvous at a room in the Ferguson Motel. Both the room and Peoples were wired with "listening devices," officers admitted in earlier testimony, and police were in the adjoining room monitoring all that was heard.

The encounter with the unsuspecting Wendy, which lasted all day May 31 and into the early morning hours June 1, resulted after they awoke in Wendy directing Peoples out the Blue Diamond Road where the pair dug up clothes and jewelry belonging to the dead Bramlet.

Police observed their trip from an airplane. Soon after the items were found Wendy was arrested.

Deputy District Attorney Larry Leavitt questioned Peoples. The jewelry and clothing — socks, cowboy boots and Jockey shorts — were "dug up in Pahrump, two feet behind Mr. Hanley's trailer," the informer said.

"Who showed you where to dig?" Leavitt asked.

"Wendy."

"At the motel, were you attempting to gain her confidence?

"Would you rephrase that," Peoples requested.

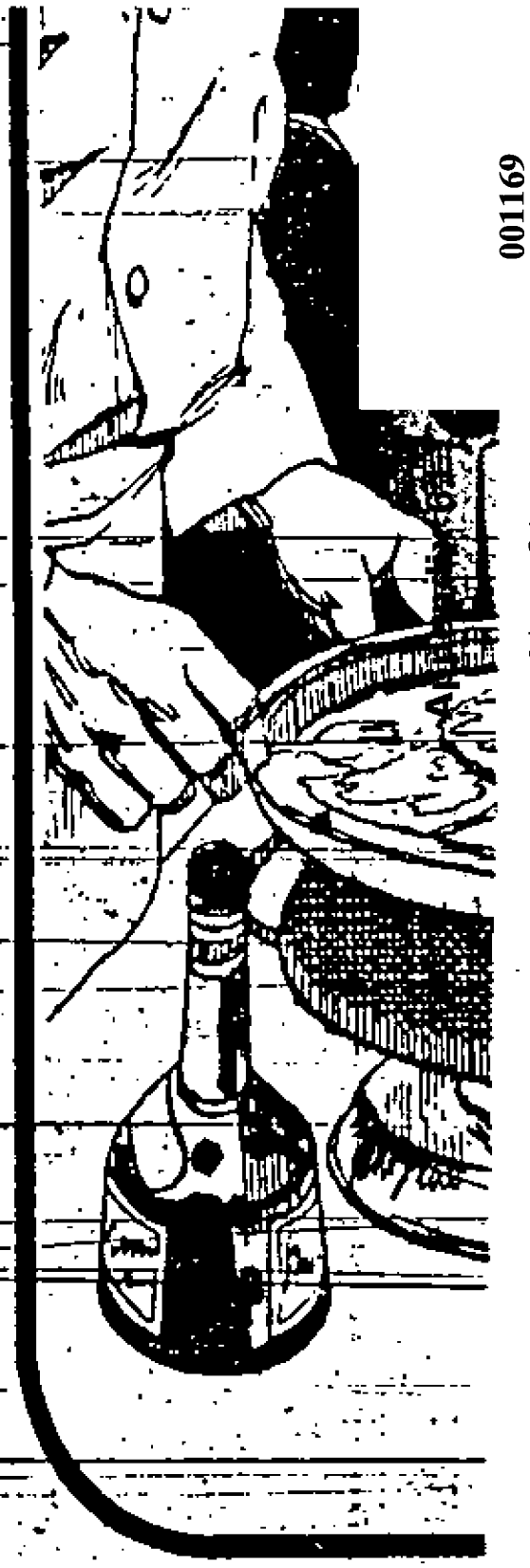
"Did you kind of con her a little bit?" Leavitt asked.

"Yes — by playing the Humphrey Bogart role. I was only playing a role — everything I told her wasn't true. A whole lot of it absolutely was not true."

Under questioning by defense lawyer Louis Wiener, Peoples had trouble recalling dates when events took place. He recalled things and dates "to the best of my regulection."

Crucial to the case is when Peoples switched sides. Any evidence obtained from or through him resulting from information he learned from the defense lawyers or while working for them could result in dismissal, or at least the prosecution not being able to use that evidence.

Peoples said he visited Hanley in jail, once with defense lawyer Charles Garner and once when he found his wife in the visiting room talking to Hanley.



LUMMIS OUSTER SOUGHT

By WALLY TURNER
New York Times

SAN FRANCISCO — The expected fight between William R. Lummis and Chester C. Davis over control of the Howard Hughes estate has broken out in chancery court in Wilmington, Del.

gal papers filed last week, includ- an affidavit by Davis, a long time Hughes executive, charged that Lummis, a Hughes cousin, was misusing his position as the court appointed sole stockholder of the Summa Corp., the Hughes holding company chartered in Delaware.

Davis asked that Lummis be removed from that post or at least be restricted in the use of his authority.

On May 26 Lummis used that authority to dismiss Davis and two other long time Hughes employes from the Summa board and to replace them with persons of his own choice. Davis was allowed to remain as chief counsel of Summa.

The court papers contended that Lummis' interest conflicted in his two roles, as Summa's sole stockholder and as the leader of about 20 Hughes cousins who expect to inherit the estate.

"Mr. Lummis abandoned any posture of neutrality and embarked on a

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Las Vegas SUN

SUNrise Final

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VOL. 27 NO. 346 · LAS VEGAS, NEVADA, TUESDAY, JUNE 14, 1977 · FIFTEEN CENTS · 48 PAGES

Late Sports

Ray May Go Back To Feds

PETROS, Tenn. (UPI) — Blo hounds ran down James Earl Ray a dark mountainside Monday. Gov. Ray Blanton promptly as the federal government to t custody of the man who killed Martin Luther King Jr.

"If he's going to be a fede case," said Blanton, "he ought to a federal prisoner."

Ray, the 49-year-old self-p claimed escape artist who plea guilty to killing King nine years fell exhausted on a mountain s before dawn. Six guards found feebly trying to burrow under a of rotting leaves.

Fifteen hours after Ray's re ture, Blanton called a news

Beaten To Death At Camp

three counselors discovered the bodies.

She said the counselors managed to keep the deaths secret from the other children in the camp, who were sent home in buses about noon. She said camp officials had decided to allow the parents to tell their children about the killings.

Mayes County Sheriff Pete Weaver said the three girls were found zipped in their sleeping bags but had been carried out of their large frame tent and placed near a crossroads inside the camp grounds.

Weaver said he had examined one of the bodies and "there was evidence she had been sexually molested." He said there also was evidence the girl had been strangled with a cloth as well as beaten.

He said the killer struck without arousing anyone else in the party of 100 scouts and 40 staff members. Weaver said he thought there was only one killer, but would not say whether he had a suspect in mind.

"I just don't think we have that many nuts in this area," the sheriff said. "It makes me pretty bitter, very bitter. I feel like the investigation will bring results."

"I don't think he was being selective of the girls," he said. "I think he was being selective of their tent. It was an end tent and the closest one was 50 to 75 feet away."

Four girls normally are assigned to each tent, only three were assigned to this particular tent.

Rain had fallen on the campgrounds until about 10 p.m., but there were no tracks to indicate a vehicle had driven into the compound, he said. He said the girls were slain between 2 a.m. and 4 a.m. and carried away from the tent.

All of the girls were accounted for in a bed check at 11 p.m., Weaver said. Mrs. Day said three counselors found the bodies at about 6 a.m.

Buses Monday returned the other campers to their homes. Parents were taken into the camp in buses from Tulsa.

"The camp will be closed at least the rest of the week until we can investigate the circumstances," said Ginny Young, public relations director for the Magic Empire Council of the Girl Scouts.

The camp is 1.7 miles south of Locust Grove at the junction of Spring Creek and Snake Creek, tributaries of the Grand River which forms a string of lakes through the thickly timbered hills. The Markham Ferry Dam spans Lake Hudson, a popular boating and fishing reservoir, about five miles to the north.

Ray May Go Back To Feds

(Continued From Page 1)

from the White House. Blanton said he had talked to Atty. Gen. Griffin Bell, who refused to make any commitment on Ray's custody.

The wiry Ray was little the worse for his 54-hour taste of freedom. He ate a light breakfast and a hearty lunch centered around barbecue pork and mustard greens.

"He was exhausted," said Warden Stonney Lane when guards brought him back to Brushy Mountain prison Monday. "They ran him hard."

Lane said Ray was placed in "administrative segregation" — the situation from which the federal court ordered him removed in 1973. Lane said Ray will be confined to a one-man cell in Block D except for one daily 30-minute exercise period, to be carried out in a cellblock walkway. He must take his meals in the cell and he loses his $22-a-week job in the laundry.

Later this week he will go before a hearing to determine whether to prosecute him for escape. If convicted, he could be kept in administrative segregation and his chances of being considered for parole from his 99-year sentence would be delayed until early in the 21st century.

"I feel that the great national concern with James Earl Ray, including the investigation by the House Assassinations Committee, should cause you to give this request earnest and serious consideration," Blanton wrote Carter.

Judge To Rule Monday In Bramlet Murder Case

(Continued From Page 1)

rants were being struck by the Culinary Union, although at that time Bramlet denied his union was responsible for planting the bombs.

Peoples, however, quoted Hanley as saying that Bramlet was "shakey over the bombing situations" and that he may go to police and "give some evidence to the state" regarding the bombs.

The witness said sometime after Bramlet disappeared and before Hanley became a suspect in the case, Hanley met with Peoples in a boiler room at Binion's Horseshoe Club. Hanley, Peoples said, indicated that the problem of Bramlet's refusal to support an organized dealer's union "had been taken care of."

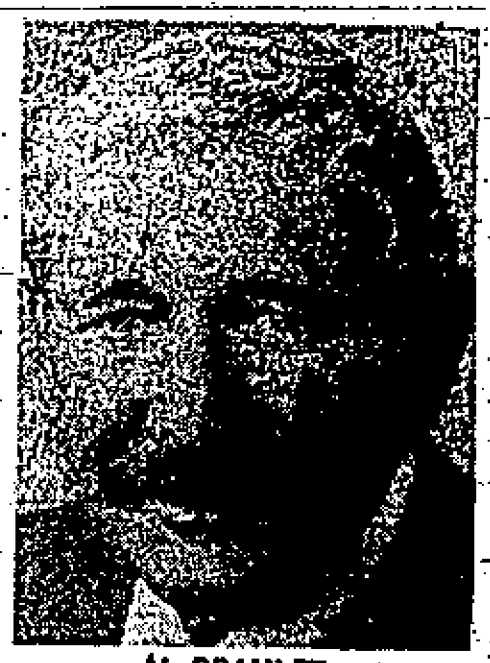
"He indicated he took care of the problem and would pursue the (dealers) union situation as soon as the heat was off," Peoples quoted Hanley as saying.

During the boiler room meeting Peoples asked Hanley if he was responsible for Bramlet's disappearance. He said Hanley smiled at him and said, "You've got a lot to learn kid."

The witness also shed additional light on how police located Bramlet's jewelry in the possession of Hanley's 21-year-old wife Wendy.

According to Peoples, he and Wendy emerged from a motel room June 1 and drove to the Hanley home where Peoples was told to pick up some digging tools.

Peoples by this time had ceased working as a private investigator for Hanley and had become a police informant. When he learned that he and Wendy were going to dig up Bramlet's missing jewelry, he alerted authorities and he was constantly watched by police.



AL BRAMLET
...Slain Labor Leader

He testified Wendy directed him to drive her toward Pahrump and at one point during the trip she told him to stop the car, pointed to a spot on the desert floor and instructed him to dig. Peoples said he dug up a pair of boots, a cream colored sock and a pair of shorts, all of which were identified last week by Bramlet's widow as the clothes her husband was wearing when he disappeared.

Peoples and Wendy returned to the car, he said, and drove to the Hanley's trailer in Pahrump Valley. He testified he was again instructed to dig in a spot near the trailer and he unearthed another sock, this one containing jewelry, also identified as Bramlet's.

Police, who had observed the entire trip, stopped Peoples and Wendy Hanley as they prepared to return to Las Vegas. Peoples then turned the incriminating jewelry over to police, and Wendy was arrested on murder and kidnaping charges.

Peoples is on parole from the Nevada State Prison after serving seven years for murder. Up until a month ago he was employed by the Clark County Public Defender's office as an investigator and law clerk.

Defense attorneys were obviously angered over Peoples being permitted to testify against Hanley, claiming he had breached an attorney-client privilege.

Peoples was evasive about when he first joined the defense team and also when he ceased working for the defense and began to work as a police agent.

ogram Fairness

"wrong" and "should be stopped."

Carter's announcement that he will appoint a special presidential com-

they curved toward his knees like the runner's on a rocking horse.

SPCA investigator Peter Saunders. "People are vehement about this type of cruelty."

Hanley 'agent' testifies

F-1-B

By Gary Ebbels
RJ Staff Writer

While defense lawyers objected on grounds his testimony had nothing to do with their client, Robert Peoples told of acting as a double agent for police investigating the Al Bramlet murder Wednesday.

The testimony came in the courtroom of Justice of the Peace Robert Legakes, where a preliminary hearing is being held for Gramby Hanley, 38, one of two men charged with murder for the Feb. 24 desert execution of Bramlet.

Also charged with the slaying is Gramby's father, Tom, 60, who has been ordered to trial in District Court Oct. 11.

Tom's 21-year-old wife, Wendy, has been charged as an accessory.

Defense lawyers Louis Wiener and Herb Waldman Jr. objected to Peoples' testimony because it involved only Tom and Wendy.

"What has this got to do with Gramby?" Wiener demanded.

Deputy Dist. Atty. Larry Leavitt, who is prosecuting with Deputy Dist. Atty. Bill Koot, said the testimony would show Gramby conspired with his father and sister-in-law in the killing.

According to Peoples, he and Gramby became friends while doing time together in Nevada State Prison. Peoples served seven years for second degree murder.

Upon his release, he became an investigator for the public defender's office. He is now on his own as a private investigator.

He said Tom told him in January he wanted Bramlet out of the way so he could unionize the dealers of Las Vegas.

ROBERT PEOPLES
...police informant

After the murder, Peoples was hired by attorney Charles Garner, who represented Tom at the time, to do some investigative work for the defense.

In the course of his defense work, however, Peoples joined the police team.

He went with Wendy to recover Bramlet's boots, underwear and socks that were buried near the death scene off Blue Diamond Road. Then, said Peoples, Wendy took him to the Hanley trailer complex in Pahrump and they dug up Bramlet's jewelry which was wrapped in a sock.

Peoples was the only witness to testify Wednesday.

And his testimony came slowly, being continually interrupted for legal arguments on its relevance to Gramby's case.

Testimony was expected to conclude Thursday. Peoples still has not been cross-examined and he will be on the witness stand when the hearing resumes.

Tom and Gramby are being held in lieu of $250,000 bail while Wendy is free on $30,000 bail.

Appendix 64

001172

F-1-B

Las Vegas Sun

7/27/1978

Peoples Divorced (Finally)

Police informant Robert Peoples was granted a divorce Wednesday in District Court — three days after he married Wendy Colleen Watson, the former common-law wife of convicted murderer Tom Hanley.

"I thought the divorce had come down," Peoples told the SUN. "I thought it was final Thursday. Jo Anne told me it went through."

Peoples and Watson were issued a marriage license Sunday night at the county courthouse and were married by a deputy marriage commissioner one hour and 39 minutes later.

Peoples filed the divorce action Tuesday against the woman he married in 1975, on the grounds of incompatibility, and requested that her maiden name of Jo Anne Blankenship be restored.

The divorce was granted by District Court Judge Joe Pavlikowski. Peoples was represented by attorney Tom Pitaro. A friend, Meryle Brown, appeared as his residence witness.

Peoples told the SUN he and Watson expect to go through a church ceremony this coming weekend.

Both Peoples, 37, and Watson, 22, were instrumental in the conviction of Hanley, 61, and his son, Andy Gramby Hanley, 39, for the murder Feb. 24, 1977, of Culinary Union leader Al Bramlet.

Ironically, Tom Hanley was in a separate courtroom in the same building Wednesday, unsuccessfully seeking to withdraw his guilty plea and have his conviction set aside, as Peoples was obtaining his divorce to legally marry the woman who bore Hanley a child.

Dunes Groundbreaking

The Dunes Hotel and Country Club began a maj
Wednesday with groundbreaking ceremonies at
hotel president Major Riddle; board chairman Mor
president in charge of corporate expansion; film ac
Charles Rich. For added flourish, $2 million in out
up into gravel-sized hunks and strewn over the

Awaits Psychiatric Exam

Ex-R-J Editor P

The District Court arraignment of the ex-news editor of the Review-Journal was postponed Wednesday for one week so his lawyer can furnish the court with a report from the psychiatrist who has been treating him.

the charges, and per
charges will not be file
him.

The former newsp
tor was arrested De
work on charges of

Appendix 65

David Paul Verbon, 33, of 6885 Stone Drive, had been

During the first six months of 1977, the number of conventions totaled 178

Divorce granted to Peoples

The man who acted as a police double agent in the cracking of the Al Bramlet murder case and who got married to the woman who was reported to be the wife of one of the executioners, took a step backward Wednesday and divorced a previous wife.

District Judge Joseph Pavlikowski granted the uncontested divorce to Robert Gino Peoples, 37, who married Wendy Watson, 22, Sunday night.

Wendy, who reportedly was the wife of Tom Hanley, 62, listed her marriage to Peoples as number one.

Peoples, a convicted murderer, listed Wendy on the marriage license as wife number three.

Wife number two was Jo Ann Peoples whom Robert divorced Wednesday. The couple was married Dec. 26, 1975.

Peoples took a job in the library of Public Defender Morgan Harris when he was paroled after serving seven years for murder. While in prison he met Tom Hanley's son, Gramby.

After Tom was arrested for the Bramlet murder, he hired Peoples as an investigator. Peoples quit the defense and joined the law and order side after Tom told him to go with Wendy on an evidence-destroying mission.

Acting as a double agent, Peoples then led Wendy into a police trap.

Wendy apparently never held a grudge.

It was believed the couple would have to recite their vows now that Peoples is divorced. Peoples was still married Sunday night when they were married.

Clark County

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LAS VEGAS, NEVADA 89106
(702) 382-8783

G. SHELDON GREEN, M.D.
CHIEF MEDICAL EXAMINER

CORRIE L. MAY, M.D.
DEPUTY MEDICAL EXAMINER

OTTO H. RAVENHOLT, M.D.
CORONER

AUTOPSY REPORT

November 7, 1984

Case No. 1596-84

PATHOLOGICAL DIAGNOSES ON THE BODY

OF

COLLEEN GORDON

DIAGNOSES

1. Gunshot wounds (2) of head.
2. Gunshot wound of left ear and shoulder (superficial).
3. Chronic mitral valvulitis, with mitral stenosis.
4. Left ventricular dilatation.
5. Coronary artery sclerosis, severe.
6. Surgical absence of gallbladder.
7. Benign nephrosclerosis.
8. Obesity.

OPINION

It is my opinion that the decedent, Colleen Gordon, came to her death as the result of two gunshot wounds of the head. Homicide.

G. Sheldon Green, M.D. - Chief Medical Examiner

/pjm

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OTTO H. RAVENHOLT, M.D.
CORONER

Case No. 1596-84

POSTMORTEM EXAMINATION ON THE BODY OF

COLLEEN GORDON

HISTORY: The body of this 57-year old white female was found sprawled across the bed in her bedroom of her residence at approximately 1605 hours, 6 November, 1984. She had apparently been shot in the head. Her husband's body was found nearby, lying in the doorway to the bedroom. He also had been shot.

AUTOPSY: Autopsy performed by G. Sheldon Green, M.D. - Chief Medical Examiner, at 1345 hours, 7 November, 1984, at the Clark County Morgue. Officers present: Officer Groover, Criminalistics Bureau, LVMPD, Detective Geary, Homicide Detail, LVMPD also present.

ESTIMATE OF POSTMORTEM INTERVAL: I examined the undisturbed body of this middle-aged white female on the scene at approximately 1930 hours, 6 November, 1984. At that time the body surfaces were cool, approximating ambient temperature. There was fixed rigor mortis in the jaw and arms, and apparently fixed rigor in the legs, with only minimal flexion possible in the knees. Later, when the body was moved, a faint but definite odor of early decomposition was detectable. Repeat examination at approximately 1030 hours, 7 November, 1984 shows that rigor is beginning to pass off in all areas, and rigor of the upper and lower extremities is broken quite easily. This suggests the time of death as being in the afternoon or evening of 5 November, 1984.

EXTERNAL DESCRIPTION: The body is that of a normally developed, obese, middle-aged white female, 68½ inches long and weighing 203 pounds. There is moderate residual rigor mortis remaining in the jaw at this time. The head is symmetrical. The scalp is covered by light gray hair up to 6 inches long. The eyes are blue. The pupils are round and equal. The sclerae are clear. The nasal and facial bones are intact. The lips are intact. The mouth is edentulous. The neck is symmetrical and appears to be intact. The configuration of the chest is normal. The breasts are large, pendulous and atrophic. The nipples are everted. There are no unusual palpable masses. The abdomen is moderately obese and protuberant. There is an old, well-healed, 6½ inch midline epigastric scar. The genitalia are those of a normal adult female. The hair pattern is female and normal. The lower extremities are symmetrical and intact. There is a name tag attached to the left great toe; it bears the name Colleen Gordon. There is a trace to 1+ pitting edema of the pretibial tissues bilaterally. The upper extremities are symmetrical and intact. No

scars are identified. There is a small area of early skin slippage on the left forearm. The back is symmetrical. There is prominent dependent livor mortis.

EVIDENCE OF RECENT INJURY: There is a small caliber gunshot wound of entry high in the right parietal area, at a point 5 inches above the level of the suprasternal notch and 1½ inches posterior to that point. The wound is approximately 3/16 inch in diameter, and has inverted, abraded and slightly blackened margins.

There is a small caliber gunshot wound of entry in the right temporal area, at a point 2 inches above the right external ear canal and 2½ inches anterior to that point. This wound is approximately 3/16 inch in diameter, again with inverted, abraded and blackened margins. It is surrounded by a zone of ecchymosis approximately 3/4 inch in diameter, and there is some swelling in the area.

There is a through and through gunshot wound of the left ear. It enters the lower portion of the ear slightly on the inside, approximately at the level of the antihelix and exits posteriorly just above the ear lobe. The wound of entry is round, approximately 3/16 inch in diameter, with inverted, abraded and blackened margins. The wound of exit is a linear tear, approximately 3/8 inch long. There is a secondary gunshot wound of entry in the superior aspect of the left shoulder, approximately 1 inch to the left of the base of the neck. A subcutaneous wound tract continues posteriorly, and there is a final exit in the posterior aspect of the left shoulder area, approximately 2½ inches to the left of the midline of the base of the neck.

There is a fresh appearing contusion with very slight swelling on the inner aspect of the right side of the upper lip. This is associated with a very tiny laceration of the mucosa. The entire lesion is approximately 3/8 inch in maximum dimension.

X-RAYS: An antero-posterior view of the head shows two small caliber projectiles in the left side of the calvarium. A single fragment is projected over the right orbit.

In the left temporal area, 1½ inches anterior to the left ear, there is a sharply defined, superficial, rectangular abrasion, 3/8 x 1/8 inch. This is associated with a very minimal degree of surrounding ecchymosis.

INTERNAL DESCRIPTION: The body is opened with a conventional Y-shaped incision. The abdominal panniculus and subcutaneous tissues are approximately 2 inches thick at the level of the umbilicus. The pectoral muscles and ribcage are intact and normal. The viscera are in normal anatomic distribution. The pleural and peritoneal surfaces are smooth and glistening. There is no unusual fluid in any body cavity. The diaphragm and pericardium are intact. There are multiple adhesions in the upper abdomen involving the transverse colon, liver and adjacent connective tissues. The gallbladder is surgically absent.

HEART: The heart is slightly enlarged, weighing 430 grams. The epi-

cardium is intact, smooth and glistening. The tricuspid, pulmonic and aortic valves are intact and normal. The mitral valve is stenotic. Its edges are rolled, thickened and markedly fibrotic. It has a circumference of only 6 cm. There are several small, granular, tan apparent vegetations on the occlusal surface. The chorda tendineae are markedly shortened, although not dramatically thickened. The aorta is tough and elastic. Its intimal surface shows a large number of small, bright yellow, arteriosclerotic plaques and streaks. The coronary ostia are widely patent. The coronary arteries are in normal anatomic distribution. The right artery shows diffuse, concentric, arteriosclerotic thickening. At one point there is an estimated 80% occlusion. The left anterior descending artery, at its origin, also shows an estimated 80% occlusion. More distally this vessel shows patchy sclerosis alternating with areas of normal vessel. There are focal zones of occlusion up to 70% and 80%. The left circumflex artery shows only a few focal plaques, with no more than 50% occlusion. The myocardium is soft, flabby, brown, speckled with red due to early autolytic change. The left ventricle shows evidence of moderately severe chronic dilatation. The endocardium is intact, smooth and glistening.

LUNGS: The lungs are of similar size and configuration, together weighing 840 grams. The pleural surfaces are intact. There is minimal anthracosis of the subpleural lymphatics. The tracheobronchial tree is intact. It contains a small amount of bloody fluid. The mucous membrane appears very slightly autolyzed. Cut surfaces of both lungs show a very minimally congested, but otherwise normal, light red parenchyma. There are no mass lesions. There is no evidence of inflammatory disease.

LIVER: The liver is of normal size and configuration, weighing 1450 grams. The gallbladder is surgically absent. The liver capsule is intact. Cut surfaces show a normal appearing, homogeneous brown parenchyma.

SPLEEN: The spleen is of normal size and configuration, weighing 90 grams. The capsule is intact. Cut surfaces show a very soft, mushy, semi-liquid, diffluent, dark red parenchyma.

KIDNEYS: The kidneys are of similar size and configuration, together weighing 230 grams. The capsules strip easily. The cortical surfaces are finely and diffusely granular, and also show numerous small sharply indented, V-shaped scars. Cut surfaces show moderate narrowing of the cortices but the internal renal architecture otherwise appears normal. The collecting systems, ureters and bladder are intact. The bladder contains approximately 40 cc. of urine. The uterus, fallopian tubes and ovaries are present in normal anatomic distribution. The fallopian tubes are thin and pliable. There are no adhesions. The ovaries are small and atrophic. The uterus is symmetrical, measuring 8 x 4 x 2 cm. The myometrium appears normal. The endometrium is thin and shiny.

GASTRO-INTESTINAL TRACT: The esophagus is intact and lined by a

slightly autolyzed, but otherwise normal appearing, gray mucosa. The stomach is intact. It contains 3 to 4 ounces of partially digested food material consisting mostly of pasta, but with a few bits of vegetable material also present. The gastric mucosa is slightly autolyzed but otherwise intact and normal. There are no ulcers. The small and large intestine are intact and appear normal. The appendix is present and normal.

PANCREAS: The pancreas is of normal size and configuration. Cut surfaces show markedly autolyzed pancreatic tissue, with only a few remnants of normal appearing architecture still visible.

HEAD: The scalp is reflected in the usual coronal fashion. There is a moderate amount of hemorrhage in the scalp around the gunshot wound of the right parietal area. The skull at this point shows a small caliber wound of entry, approximately a ¼ inch in maximum dimension. The edges are bevelled sharply inward to create a defect of the inner table, approximately 5/8 inch in diameter. The wound of the right temporal area enters the calvarium through the anterior wall of the right middle fossa, having apparently passed through the posterior portion of the right orbit. There is no significant epidural hemorrhage. There is a modest subdural hemorrhage amounting to no more than 1½ ounces of blood. The general configuration of the brain is normal. There is a gunshot wound entering the right posterior parietal region, passing from right to left and slightly downward to exit the left parieto-occipital junction laterally. A badly distorted .22 caliber rimfire-type projectile is recovered at this point. The wound entering through the right middle fossa passes across the base of the brain creating a gouged grooved defect of the right frontal lobe. It crosses the midline at the optic chiasm, and it continues through the left temporal lobe. There is considerable subarachnoid hemorrhage over the inferior surface of the right frontal lobe and also some over the inferior aspect of the left. There is quite prominent subarachnoid hemorrhage over the brain stem and inferior surface of the cerebellum. A secondary wound tract extends slightly anteriorly and medially from the point of exit in the left temporal lobe. A considerably distorted .22 caliber projectile is recovered just anterior to the wound of exit. Serial cut surfaces of the cerebrum in the coronal plane show a gouged grooved tunnelling defect through the right parietal and left parietal lobes to the left parieto-occipital junction. This is up to a ½ inch in diameter. The margins are extremely ragged, granular and hemorrhagic. A similar defect is present through the left temporal lobe from the gouged defect of the right frontal lobe. There is extensive damage to the brain throughout both areas. Numerous bone fragments are driven inward into the brain from the sites of entry as secondary missiles. The internal cerebral architecture in all areas away from the gunshot injuries is normal. The brain tissue is soft and shows early postmortem autolytic change. External and cut surfaces of the brain stem and cerebellum are intact and normal, except for the subarachnoid hemorrhage and early autolytic change.

PATHS OF THE MISSILES: The bullet which struck the right parietal area of the head at a point 5 inches above the right external ear

canal, and 1½ inches posterior to that point. It passed from right toward left and downward in head toward toe direction at an estimated angle of approximately 10 degrees with no significant front to back or back to front component. A distorted .22 caliber rimfire-type lead projectile was recovered from the left parietal occipital area.

The bullet which struck the right temporal area at a point 2 inches above the right external ear canal and 2½ inches anterior to that point, passed from right toward left and front toward back, at an estimated angle of approximately 3D degrees. This passed through the posterior aspect of the right orbit, across the floor of the brain and was recovered in the posterior aspect of the right frontal lobe. This was a markedly distorted .22 caliber rimfire-type projectile.

The bullet which struck the left ear passed downward in head toward toe direction and probably slightly from front toward back, passing through the lower portion of the ear, then striking the superior aspect of the left shoulder approximately 1 inch to the left of the base of the neck, and exiting the back 2 inches more distally and slightly more medially.

The two recovered projectiles were cleaned and delivered to the hand of Officer Groover at the time of recovery.

84-85217 No ID #

Case No. 1596-84

REPORT OF INVESTIGATION

OFFICE OF THE CORONER MEDICAL EXAMINER, COUNTY OF CLARK, STATE OF NEVADA

1704 Pinto Lane, Las Vegas, Nevada 89106

DECEDENT COLLEEN K. GORDON M S W D, DOB 4-4-27

Age 57 Sex Female Race White Tel. No.

Residence address 5851 Washburn Road, Las Vegas, Nevada

Height 68½" Weight 203 Hair Grey Eyes Brown Scars

Tattoos

Other Identifying features

Rigor Mortis Livor Mortis

Clothing Pink nightgown.

Trauma Gunshot wound-head.

MICROFILMED

Drugs & Medications

Occupation Employed by S.S. # 179-20-19

Reported by LVMPD Address & Tel.

Date & Time reported 11-6-84 5:45 P.M. Location of body 5851 Washburn Rd., Las Vega

TYPE OF DEATH: Apparent Natural Violent XX At work Not at work XX

CIRCUMSTANCES	DATE	TIME	NAME & ADDRESS
Death Occurred-Pres. of			
Found Dead by	11-6	4:05PM	Lisa Licate, 2851 South Decatur
Last Seen by			
Pronounced Dead by	11-6	6:00PM	Ron Flud, Coroner's Office
Body Viewed by	11-6	6:00PM	Ron Flud
Identified by			

Witness #1 Dr. Sheldon Green, Coroner's Office

Witness #2

Law Enforcement Agency LVMPD Officers Conner, Levos, Jergovic, Geary.

Property Receipt # 18862 In Custody of

CUSTODY OF BODY: Removed by Mortuary Vehicle To CCCME

Driver Powell Assisted by Thomas

Requested by Rotation - Spalding Mortuary

DEATH NOTIFICATION: Next of Kin Colleen Flanagan

Address 5600 South Gateway, Las Vegas, Nevada Tel. No. 454-0916

Person notified if other than N.O.K. Collie Flanagan

Address 5600 South Gateway, Las Vegas, Nevada Tel. No. 454-0916

Means of Notification Verbal

Notification made by Ron Flud Date 11-6-84 Time

VEHICULAR DEATHS: Driver Passenger Seat location

Pedestrian Vehicle Lic. No. State

Accident Miles from residence (or hotel or motel)

SAFETY EQUIPMENT USED: Seat Belt 2 point 3 point Air bag Other

Appendix 73

NARRATIVE SUMMARY: Include medical history, names and addresses and telephone numbers of all doctors known to have attended decedent. All pertinent details found at the location of the body.

COLLEEN K. GORDON Case No. 1596-84 11-6-84 Age: 57

This deputy arrived on scene of double homicide at 5851 Washburn Road. Chief Deputy Ron Flud and Dr. Sheldon Green on the scene.

Body viewed lying on back on bed of downstairs bedroom of residence. Clad in pink nightgown.

There are gunshot wounds to the head; it appears that one is an entry and the other an exit. Dr. Green to establish or determine which is the entry and exit at the time of his laboratory examination. The wounds are to the temporal areas on each side of the head.

Decedent was apparently shot by unknown assailant(s) who forced their way into residence via breaking window in living room during the dark hours of November 5 and 6.

Decedent's husband, Carl Gordon, is also deceased apparently shot by same assailant(s). See our Case 1597-84.

Body removed to Clark County Coroner/Medical Examiner's facility by Spalding Mortuary vehicle.

No processing at CCCME per Dr. Green.

ACTION TAKEN:

EXAMINING PHYSICIAN Dr. Green AUTOPSY XX VIEW _____ CASE NOT ACCEPTED _____

TOXICOLOGY TAKEN _____ TEST(S) REQUESTED _____

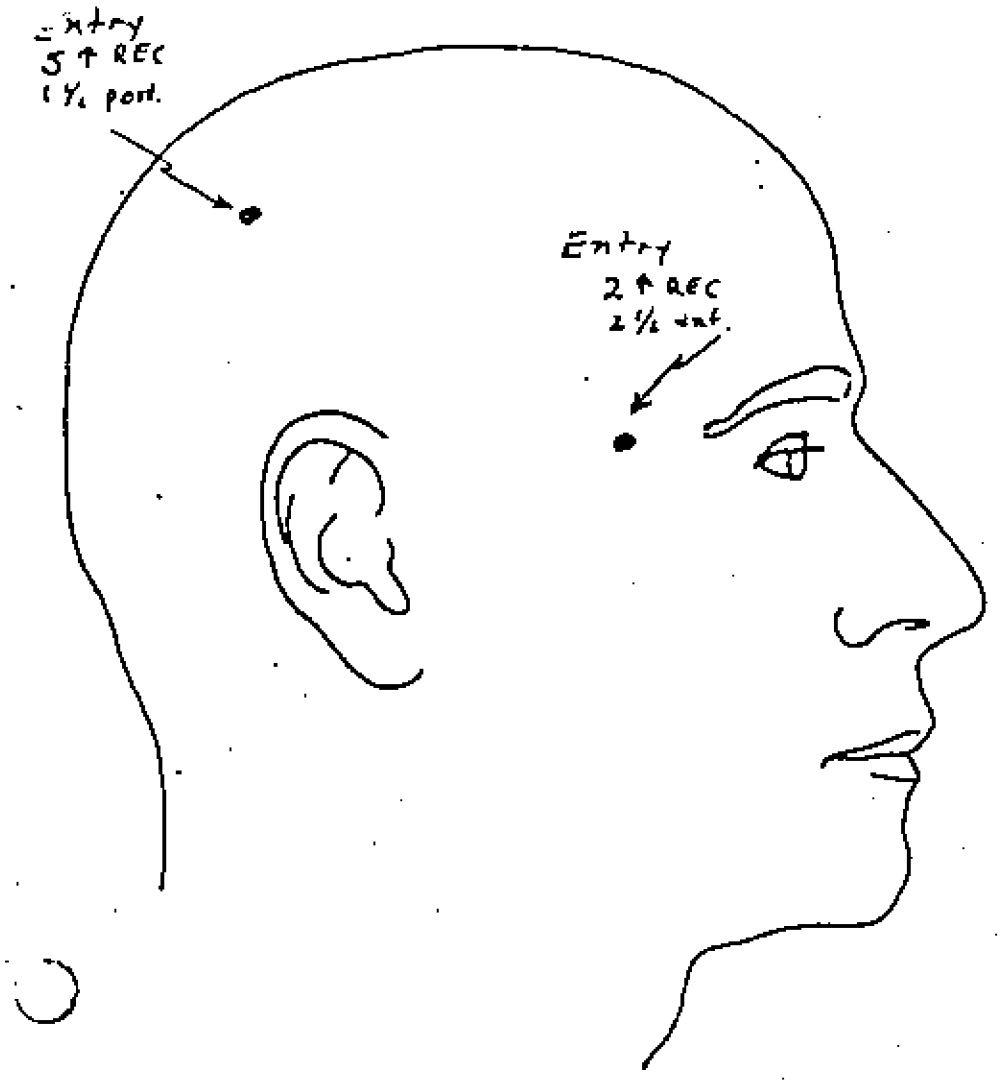
Appendix 74

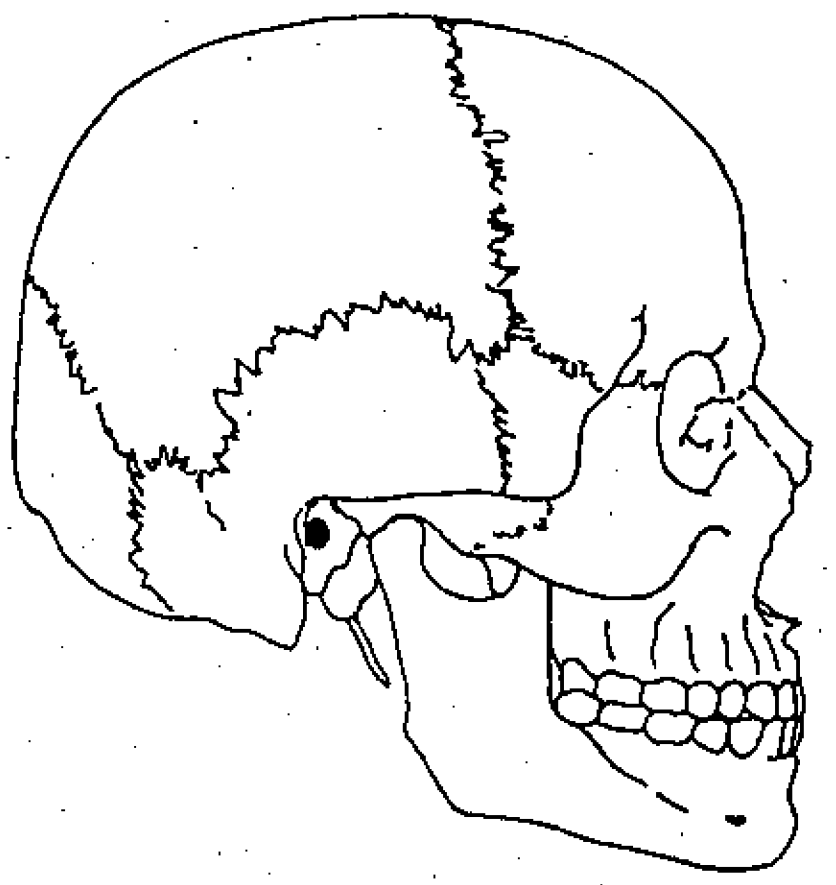
Loren Ogle

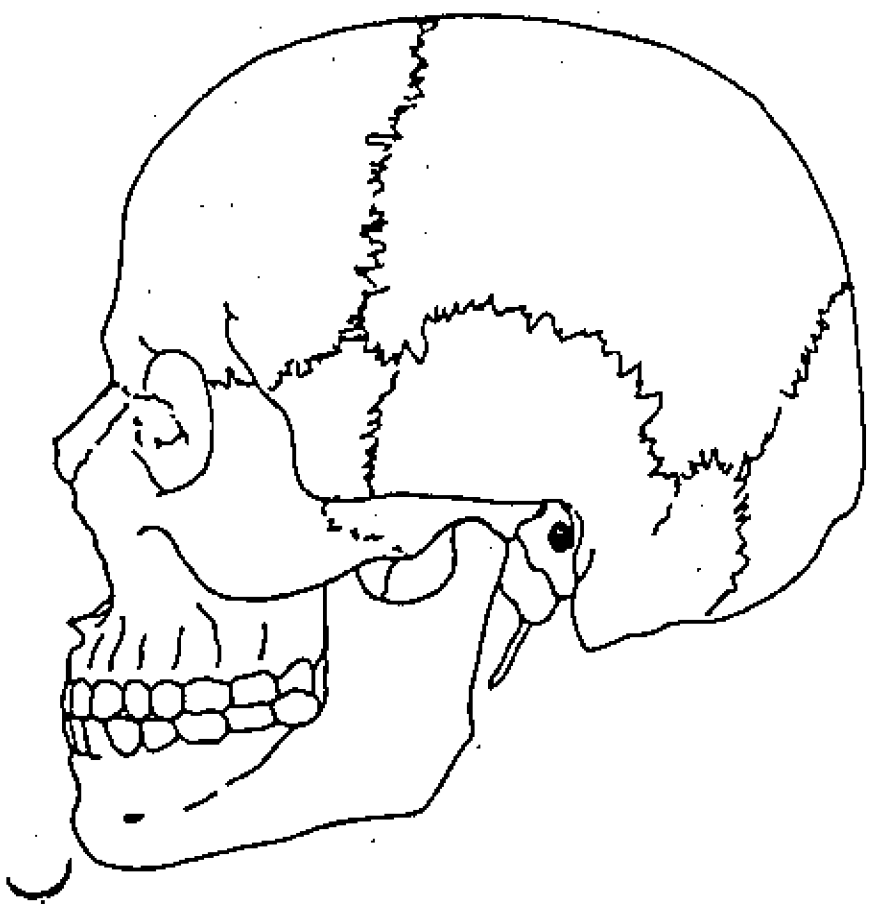
Head, surface and skeletal anatomy, lateral view.

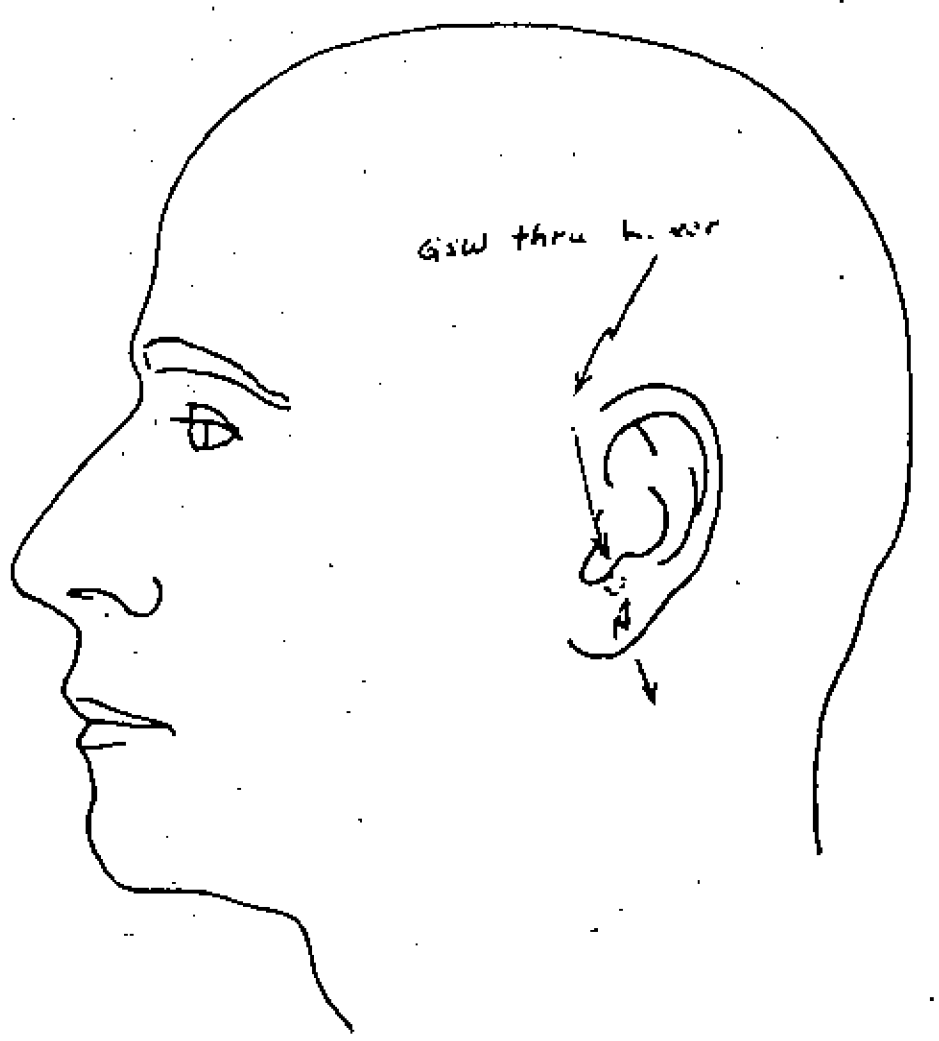
Name Colleen . Gordon Autopsy No. 1596-84

Age 57 Race W Sex F Date 11 / 7 / 84









Cat. No. 44-1-015-00

Clark County

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CHIEF MEDICAL EXAMINER

CORRIE L. MAY, M.D.
DEPUTY MEDICAL EXAMINER

OTTO H. RAVENHOLT, M.D.
CORONER

AUTOPSY REPORT

November 7, 1984 Case No. 1597-84

PATHOLOGICAL DIAGNOSES ON THE BODY

OF

CARL RICHARD GORDON

DIAGNOSES

1. Gunshot wound of chest (fatal).
2. Gunshot wound of left lower chest (non-fatal).
3. Gunshot wound of abdomen (non-fatal).
4. Two gunshot wounds of right upper arm.
5. Two tangential superficial wounds of back, one with fragments striking scalp.
6. Status post operative double coronary bypass, remote.
7. Coronary artery sclerosis, severe.
8. Massive healed myocardial infarct, with left ventricular aneurysm.

OPINION

It is my opinion that the decedent, Carl Richard Gordon, came to his death as the result of a gunshot wound of the chest. Homicide.

G. Sheldon Green, M.D. - Chief Medical Examiner

/pjm

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CORONER

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DEPUTY MEDICAL EXAMINER

Case No. 1597-84

POSTMORTEM EXAMINATION ON THE BODY OF

CARL RICHARD GORDON

HISTORY: This 58-year old white male was found dead in his residence, lying in the doorway at the foot of the stairs, at approximately 1605 hours, 6 November, 1984. He had sustained multiple gunshot wounds. His wife's body was found in the downstairs bedroom of the residence a few feet from his own. The pattern of blood spattering on the walls indicated that he had been on the stairway when he received one or more of his wounds.

AUTOPSY: Autopsy performed by G. Sheldon Green, M.D. - Chief Medical Examiner, at 1545 hours, 7 November, 1984, at the Clark County Morgue. Officers present: Detective Geary, Homicide Detail; Officer Groover, Criminalistics Bureau, LVMPD.

ESTIMATE OF TIME OF DEATH: I first observed the body of this 58-year old white male, undisturbed, on the scene, at approximately 1930 hours, 6 November, 1984. At that time he was in full and rigid rigor mortis. He was lying face down with his arms under his chest. Examination again at approximately 1030 hours, 7 November, 1984, shows that he retains essentially full rigidity. The lividity at the time of initial examination was fixed. The time of death is estimated to be the afternoon or evening of 5 November, 1984.

EXTERNAL DESCRIPTION: The body is that of a normally developed, well nourished, middle-aged appearing white male, 73 inches long and weighing 193 pounds. There is considerable rigor mortis remaining in the jaw at this time. Rigor in the legs now can be broken, but with some difficulty. The head is symmetrical. The hairline is receding. The scalp is covered by gray hair approximately 2 inches long. The eyes are hazel. The pupils are round and equal. The sclerae show postmortem lividity. There is marked lividity of the right side of the face. The left side has an area of pale sparing due to pressure against the floor. The nasal and facial bones are intact. The lips are intact and cyanotic. The teeth are natural. They appear to be in fairly good condition. The neck is symmetrical, with prominent anterior dependent lividity. The configuration of the chest is normal. There is an old, well-healed, 9 inch median sternotomy scar. The abdomen is flat. There are two very small drain scars in the epigastrium. No other scars are identified. The genitalia are those of an apparently circumcised adult male. Both testicles are present in the scrotum. The hair pattern is male and normal. The lower extremities are sym-

metrical and intact. There is a name tag attached to the left great toe. It bears the name Carl R. Gordon. There is an old well-healed 15½ inch surgical scar over the course of the saphenous vein on the medial aspect of the right lower leg. The upper extremities are symmetrical. No scars or tattoos are identified. The right humerus is fractured, incident to a gunshot wound to be described later. The back is symmetrical. There is virtually no secondary dependent lividity.

EVIDENCE OF RECENT INJURY: There are multiple gunshot wounds in various portions of the body. These will be numbered arbitrarily.

#1. There is a gunshot wound of entry in the midline of the upper chest, a ½ inch below the level of the suprasternal notch. This wound is approximately 3/16 inch in diameter, with inverted, abraded and blackened margins. No powder burns are visible around it.

#2. There is a gunshot wound of entry just above the left lower costal margin, at a point 11 inches below the level of the suprasternal notch and 4½ inches to the left of the midline. The wound also is approximately 3/16 inch in diameter, and has inverted, abraded and heavily blackened margins.

#3. There is a gunshot wound of entry in the left mid-abdomen, at the level of the umbilicus, or 17 inches below the level of the suprasternal notch and 2 inches to the left of the midline. This wound likewise is approximately 3/16 inch in diameter, with inverted, abraded and only minimally blackened margins.

#4. There is a gunshot wound of entry in the antero-lateral aspect of the right upper arm, 3½ inches below the point of the right shoulder. This wound is approximately 3/16 inch in diameter, with inverted, abraded and moderately blackened margins. The underlying humerus is shattered.

#5. There is a gunshot wound of entry in the lateral aspect of the right upper arm, 8 inches below the point of the right shoulder. This wound also is approximately 3/16 inch in diameter, with inverted, abraded and slightly blackened margins.

#6. There is a grazing gouging tangential gunshot wound of the right scapular area of the back, centered 4½ inches below the level of the base of the skull and 4½ inches to the left of the midline. It is nearly vertical, but inclines slightly medially as it passes upward. The zone of grazing and gouging is 2¼ inches long and gapes up to a ½ inch wide. It terminates in a subcutaneous gunshot wound tract which is 1 inch long and then has a small irregular stellate exit wound, approximately a ½ inch in diameter.

The above described wound #6 aligns readily with an area of multiple abrasion of the left side of the scalp behind the left ear. In this area there are eight zones of abrasion, and there are two small penetrating wounds. These are consistent only with a fragmenting bullet. The plane of abrasion, as indicated by the small elevated epithelial

tags, is from below upward.

#7. There is a grazing gunshot wound of the mid back, 9 inches below the level of the base of the skull. This wound involves the skin only. It is 1½ inches long. It passes from right toward left and very slightly downward, but is essentially horizontal. The pattern of the epithelial lacerations at its wound margins confirm the right to left direction.

X-RAYS: An antero-posterior film of the head shows two bullet fragments in the scalp in the left side of the head. These correspond to the level of the small abraded and penetrating wounds of the scalp. An antero-posterior film of the chest shows a linear series of bullet fragments to the right of the spinal column. Five such fragments can be visualized in a line which passes downward and laterally to the right.

Also on the antero-posterior film of the chest, at the extreme left margin of the film and approximately at the level of the seventh through tenth ribs, there is a linear series of bullet fragments. There are four on this film and there are four additional fragments from the same projectile on the film of the abdomen.

The antero-posterior view of the abdomen shows a small projectile over the left lateral margin of the third lumbar vertebra. A small fragment also is visualized in the left mid-abdomen.

Films of the right arm show a badly comminuted fracture of the proximal humerus. There is an extremely distorted mass of metal apparently within the fracture site. An apparently intact projectile is visualized below the elbow, approximately 1½ inches below the head of the radius.

INTERNAL DESCRIPTION: The body is opened with a conventional Y-shaped incision. The abdominal panniculus and subcutaneous tissues are approximately 1 inch thick at the level of the umbilicus. The pectoral muscles in general appear normal. There is a gunshot wound of the manubrium just to the left of the midline. There is extensive shattering of the bone, and the wound is approximately a ½ inch in maximum diameter. The sternotomy has been closed by stainless steel wires and small clips, and is well-healed. There is a gunshot wound involving the left common costal cartilage. This is shattered between the seventh and eighth rib ends. A small fragment of a projectile is recovered near the point of entry. The viscera are in generally normal anatomic distribution. The pleural and peritoneal surfaces are smooth and glistening. Each of the hemithoraces contains approximately a quart of fluid blood. There is massive mediastinal hemorrhage. Exploration of the mediastinum shows extensive destruction of the ascending aorta. The heart has been subjected to at least a double coronary bypass. The pericardial space is obliterated by fibrous adhesions which are relatively easily broken. There are only a few cc's of blood in the abdominal cavity. There is, however, a gunshot wound through the greater omentum and through the jejunum. It continues into the peritoneum just to the left of the lumbar spine.

HEART: The heart is moderately enlarged, weighing 540 grams. The ascending aorta is almost totally destroyed by the gunshot wound. There are two coronary bypasses from the ascending aorta. Both ostia are identifiable. Both bypasses are widely patent. Examination of the ascending aorta indicates that the projectile passed through it in a front toward back direction, leaving only a few shreds of aortic wall intact. The epicardial surface of the heart is intact. It is granular and fibrotic due to the numerous adhesions. The aortic root shows only modest sclerosis. The coronary ostia are patent. The coronary arteries are in normal anatomic distribution. The right shows severe concentric arteriosclerotic change, with no visible lumen at one point. The right artery has been bypassed distal to the origin of the marginal branch. The right artery distal to the anastomosis appears widely patent. The left main coronary artery has an eccentric plaque with approximately 50% occlusion. The left anterior descending artery shows irregular, patchy, arteriosclerotic plaque formation, with approximately 90% occlusion 4 cm. from the ostium. This vessel has been bypassed. Distal to the site of anastomosis it is quite small, but widely patent. The left circumflex artery shows up to 50% occlusion, however its largest descending muscular branch appears almost totally occluded by a massive eccentric plaque. The left ventricle displays an enormous healed posterior lateral and posterior septal infarct, which extends from base to apex over a height of at least 9.7 cm. The zone of infarction in the left ventricular wall is 7 cm. wide. It extends into the posterior septum by an additional 3.5 cm. The wall of the left ventricle in the mid-portion of this scar is extremely thin, and has formed a ventricular aneurysm. In the center of the aneurysm the wall is approximately 2 mm. thick, and composed primarily of scar tissue. Cut surfaces of the myocardium in all areas away from the old infarct are firm, red-brown and beefy. They show no evidence of recent injury.

LUNGS: The lungs are of similar size and configuration, together weighing 1070 grams. The pleural surfaces are intact, except for two small fragment wounds at the base of the right lower lobe. There is marked contusion and intrapulmonary hemorrhage in the superior aspect of the right lower lobe, apparently incident to bullet fragment damage. The tracheobronchial tree is intact so far as it can be dissected. It does contain a large amount of blood. Cut surfaces of the lung show considerable intrapulmonary hemorrhage in the right lobe. This is focal and in cross section one bullet fragment wound can be seen. The remainder of the pulmonary tissue shows a modest degree of edema, but otherwise appears normal. There are no mass lesions. There is no evidence of inflammatory disease.

LIVER: The liver is of normal size and configuration, weighing 1770 grams. The gallbladder is intact but empty. The mucous membrane is normal. There are no stones. The liver capsule is intact. Cut surfaces show a normal appearing, homogeneous brown parenchyma.

SPLEEN: The spleen is of normal size and configuration, weighing 290 grams. The capsule is intact. Cut surfaces show a soft, mushy, dark red parenchyma.

KIDNEYS: The kidneys are of similar size and configuration, together weighing 320 grams. The capsules strip easily. The cortical surfaces are smooth. The cut surfaces show normal internal renal architecture, although they are very pale. The collecting systems, ureters and bladder are intact. The bladder is empty. The testicles are grossly normal.

ADRENALS: The adrenals are of normal size and configuration. Cut surfaces show normal yellow cortices and gray medullae.

GASTRO-INTESTINAL TRACT: The esophagus is intact and lined by a normal gray mucosa. The stomach is intact. It contains approximately a pint of partially digested food material. This consists in large part of some form of pasta. There also is some zuccini, bits of what appears to be peaches, beans and numerous bits of onion. The gastric mucosa shows mild autolysis, but otherwise is normal. There are no ulcers. The small and large intestine are intact and normal. The appendix is present and normal.

PANCREAS: The pancreas is of normal size and configuration. Cut surfaces show some remnants of normal lobular architecture, but with moderately advanced postmortem autolytic change.

HEAD: The scalp is reflected in the usual coronal fashion. There is moderate hemorrhage in the scalp in the left side, behind the left ear, in the area of the abrasions and small penetrating wounds. Two small lead bullet fragments are recovered from the subcutaneous tissues at this point. The calvarium is intact. There is no epidural, subdural or subarachnoid hemorrhage. The configuration of the brain is normal. It weighs 1420 grams. Serial cut surfaces of the cerebrum in the coronal plane show normal internal cerebral architecture. The brain tissue is slightly soft and shows some postmortem autolysis. The external and cut surfaces of the brain stem and cerebellum are intact and normal, except for mild autolysis. The neck is intact.

PATHS OF THE MISSILES:

#1. The bullet which struck the upper mid-chest a ½ inch below the level of the suprasternal notch and in the midline of the chest, passed from front toward back, downward in head toward toe direction at an estimated angle of approximately 45 degrees, and very slightly from left toward right. This bullet struck the mediastinum, completely disrupted the ascending aorta and fragments of it continued into the left lung. This bullet shattered badly, as shown on x-ray. None of these fragments could be found.

#2. The bullet which struck the left lower costal margin, at a point 11 inches below the level of the suprasternal notch and 4½ inches to the left of the midline, passed from front toward back, slightly from right toward left and upward in head toward toe direction. This bullet shattered the common costal cartilage, approximately at the level of the eighth rib. The bullet then shattered with numerous fragments continuing upward and posteriorly in the musculature of

the chest wall1. The largest fragment visible on x-ray was recovered.

#3. This bullet struck the left mid-abdomen at the level of the umbilicus, at a point 17 inches below the level of the suprasternal notch and 2 inches to the left of the midline. It passed directly from front toward back, without right to left or left to right component, and neither upward nor downward. This bullet passed through the abdominal wall, the greater omentum, the mid-jejunum, penetrated the posterior mediastinum just missing the aorta. Two major fragments were recovered adjacent to the left lateral aspect of the third lumbar vertebra.

#4. The bullet which struck the lateral aspect of the right upper arm 3½ inches below the point of the shoulder, passed from right toward left, struck the humerus, creating a massive comminuted fracture. This bullet shattered into numerous fragments which could not be recovered.

#5. The bullet which struck the lateral aspect of the right upper arm 8 inches below the point of the shoulder ranged downward through the upper arm, the soft tissues of the elbow, and was recovered approximately 1½ inches below the head of the radius. This projectile had struck bone without fracturing it. It had flattened considerably. This was a markedly distorted, .22 caliber rimfire-type projectile with yellow gilding metal present.

#6. This bullet struck the left scapular area, creating a gouged grazing tangential gunshot wound of the skin and subcutaneous tissue, passing upward in toe toward head direction and very slightly from left toward right. This bullet apparently fragmented badly, with many of the fragments striking the scalp behind the left ear. Two of these fragments penetrated the scalp and were recovered at that point.

#7. This bullet created a grazing wound of the back. It is centered 9 inches below the level of the base of the skull and approximately in the midline of the back. This bullet passed from left toward right and very slightly downward, without front to back or back to front component. No portion of this bullet remained in the body.

All of the recovered projectiles and fragments were cleaned and delivered to the hand of Officer Groover at the time of recovery.

84-85217

Case No. 1597-84

REPORT OF INVESTIGATION

OFFICE OF THE CORONER MEDICAL EXAMINER, COUNTY OF CLARK, STATE OF NEVADA
1704 Pinto Lane, Las Vegas, Nevada 89106

DECEDENT CARL RICHARD GORDON M S W D, DOB 2-16-26

Age 58 Sex Male Race White Tel. No.

Residence address 5851 Washburn Road, Las Vegas, Nevada

Height 73" Weight 193 Hair Gr/Brn Eyes Brown Scars

Tattoos

Other identifying features

Rigor Mortis Livor Mortis

Clothing Green pajama top, yellow pajama bottoms.

Trauma

Drugs & Medications

Occupation Traffic controller Employed by McCarran Int. Airport S.S.# 205-18-7

Reported by LVMPD Address & Tel.

Date & Time reported 11-6-84 5:45 P.M. Location of body 5851 Washburn Rd., Las Veg

TYPE OF DEATH: Apparent Natural Violent XX At work Not at work XX

CIRCUMSTANCES	DATE	TIME	NAME & ADDRESS
Death Occurred-Pres. of			
Found Dead by	11-6	4:05PM	Lisa Licata, 2851 So. Decatur
Last Seen by			
Pronounced Dead by	11-6	6:00PM	Ron Flud, Coroner's Office
Body Viewed by	11-6	6:00PM	Ron Flud
Identified by			

Witness #1 Dr. Sheldon Green, Coroner's Office

Witness #2

Law Enforcement Agency LVMPD Officers Conner, Jergovic, Geary, Levos.

Property Receipt # 18863 In Custody of Coroner

CUSTODY OF BODY: Removed by Mortuary Vehicle To CCCME

Driver Powell Assisted by Thomas

Requested by Rotation - Spalding Mortuary

DEATH NOTIFICATION: Next of Kin Colleen Flanagan

Address 5600 Gateway, Las Vegas, Nevada Tel. No. 454-0916

Person notified if other than N.O.K. Collie Flanagan

Address 5600 Gateway, Las Vegas, Nevada Tel. No. 454-0916

Means of Notification Verbal.

Notification made by Ron Flud Date 11-6-84 Time

VEHICULAR DEATHS: Driver Passenger Seat location

Pedestrian Vehicle Lic. No. State

Accident Miles from residence (or hotel or motel)

NARRATIVE SUMMARY: Include medical history, names and addresses and telephone numbers of all doctors known to have attended decedent. All pertinent details found at the location of the body.

CARL GORDON Case No. 1597-84 11-6-84 Age: 58

This deputy arrived on scene of double homicide at 5851 Washburn Road. Chief Deputy Ron Flud and Dr. Sheldon Green on scene.

Body viewed lying face down on floor in doorway of downstairs bedroom. Livor is dark purple on dependent areas.

There is a gunshot wound to the sternum, a gunshot wound to the abdomen approximately 3 inches to the left of the naval, a gunshot wound to the left rib cage and an apparent gunshot grazing wound to the left shoulder and possibly to the back of the head. Dr. Green consulted and will further check the last two mentioned wounds at the time of his lab examination.

Decedent was apparently shot by unknown intruder(s) during the dark hours of November 5 and November 6.

Decedent's wife, Colleen Gordon, our Case 1596-84, is also deceased apparently shot by the same assailant(s).

Body removed to Clark County Coroner Medical Examiner's facility by Spalding Mortuary vehicle.

No processing done on arrival at central facility per Dr. Green.

ACTION TAKEN:

EXAMINING PHYSICIAN Dr. Green AUTOPSY XX VIEW _____ CASE NOT ACCEPTED _____

TOXICOLOGY TAKEN _____ TEST(S) REQUESTED _____

Case No. 1071-07

REPORT OF INVESTIGATION

OFFICE OF THE CORONER MEDICAL EXAMINER, COUNTY OF CLARK, STATE OF NEVADA
1704 Pinto Lane, Las Vegas, Nevada 89106

DECEDENT Carl Gordon (nm Richard) (M) S W D, DOB 2-16-26
Age 58 Sex M Race Cau Tel. No.
Residence address 5851 Washburn Rd
Height 73" Weight 193 Hair G/Brn Eyes Brn Scars
Tattoos
Other identifying features
Rigor Mortis Livor Mortis
Clothing green pajama top - yellow pajama bottoms
Trauma
Drugs & Medications
Occupation ~~Mfg~~ Traffic Controller Employed by McCarran Int. S.S. # 205-18-7073
Reported by LVMPD Address & Tel.
Date & Time reported 11-6 5:45P Location of body 5851 Washburn
TYPE OF DEATH: Apparent Natural ____ Violent ✓ At work ____ Not at work ✓

CIRCUMSTANCES	DATE	TIME	NAME & ADDRESS
Death Occurred-Pres. of			
Found Dead by	11-6	4:05P	Lisa Licata 2851 S. Decatur
Last Seen by			
Pronounced Dead by	11-6	6:00P	Ron Flud - CCCME
Body Viewed by	"	"	" "
Identified by			

Witness #1 Mr Sheldon Gunn CCCME
Witness #2
Law Enforcement Agency LVMPD Officers Cowers/Jergovich/Harry/Lewis
Property Receipt # 18863 In Custody of Coroner
CUSTODY OF BODY: Removed by Spalding To CCCME
Driver Powell Assisted by Thomas
Requested by Rotation
DEATH NOTIFICATION: Next of Kin Collien Flanagan
Address 5600 Gateway Tel. No. 454-0916
Person notified if other than N.O.K. Collie Flanagan
Address Same Tel. No.
Means of Notification Verbal
Notification made by Ron Flud Date 11-6-84 Time
VEHICULAR DEATHS: Driver ____ Passenger ____ Seat location
Pedestrian ____ Vehicle ____ Lic. No. ____ State
Accident ____ Miles from residence (or hotel or motel)
SAFETY EQUIPMENT USED: Seat Belt, 2 point ____ 3 point ____ Air bag ____ Other

NARRATIVE SUMMARY: Include medical history, names and addresses and telephone numbers of all doctors known to have attended decedent 'l pertinent details found at the locati(of the body.

This deputy arrived on scene of double homicide at 5851 Weakburn Rd. Chief deputy Ron Flud and Dr Sheldon Green on scene.

Body found lying face down on floor in doorway of downstairs bedroom. Floor is dark purple on dep. areas.

There is a gunshot wound to the sternum, a gunshot wound to the abdomen approx 3 inches to the left of the navel, a gunshot wound to the left rib cage and and apparent ~~a~~ gunshot grazing wound to the left shoulder and possibly to the back of the head. Dr Green consulted and will further check the last two mentioned wounds at the time of his lab examination.

Decedent was apparently shot by unknown intruder(s) during the dark hours of Nov 5 & Nov 6.

Decedents wife Colleen Gordon, our case 1596-84 is also deceased apparently shot by the same assailant

Body removed to CCCME by Spalding vehicle

No processing done on arrival at central facility per Dr Green.

ACTION TAKEN:

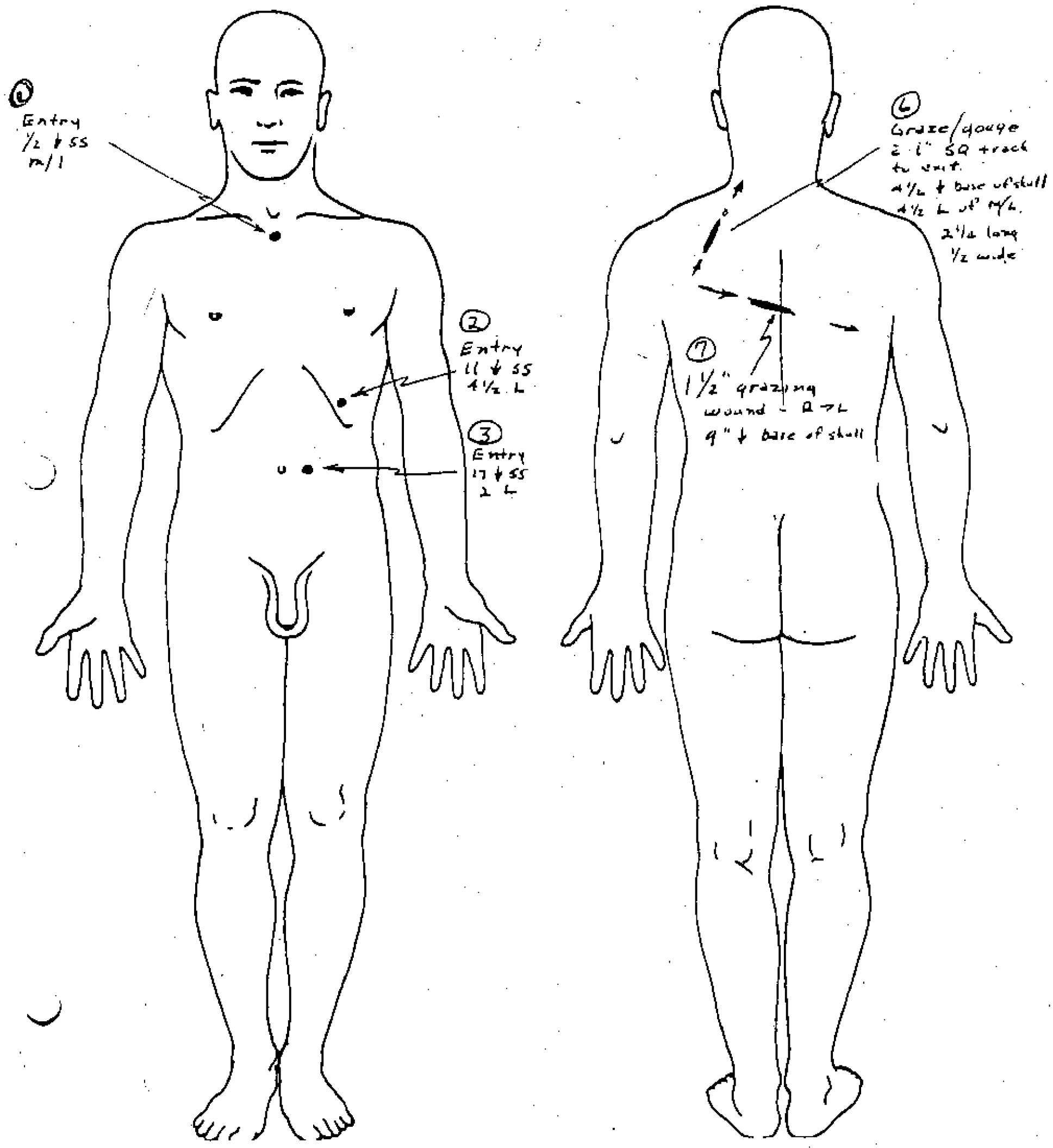
EXAMINING PHYSICIAN Dr. Green AUTOPSY ✓ VIEW _____ CASE NOT ACCEPTED _____

TOXICOLOGY TAKEN _____ TEST(S) REQUESTED _____

CLARK COUNTY CORONER-MEDICAL EXAMINER

Name Carl R. Gordon Autopsy No. 1597-84

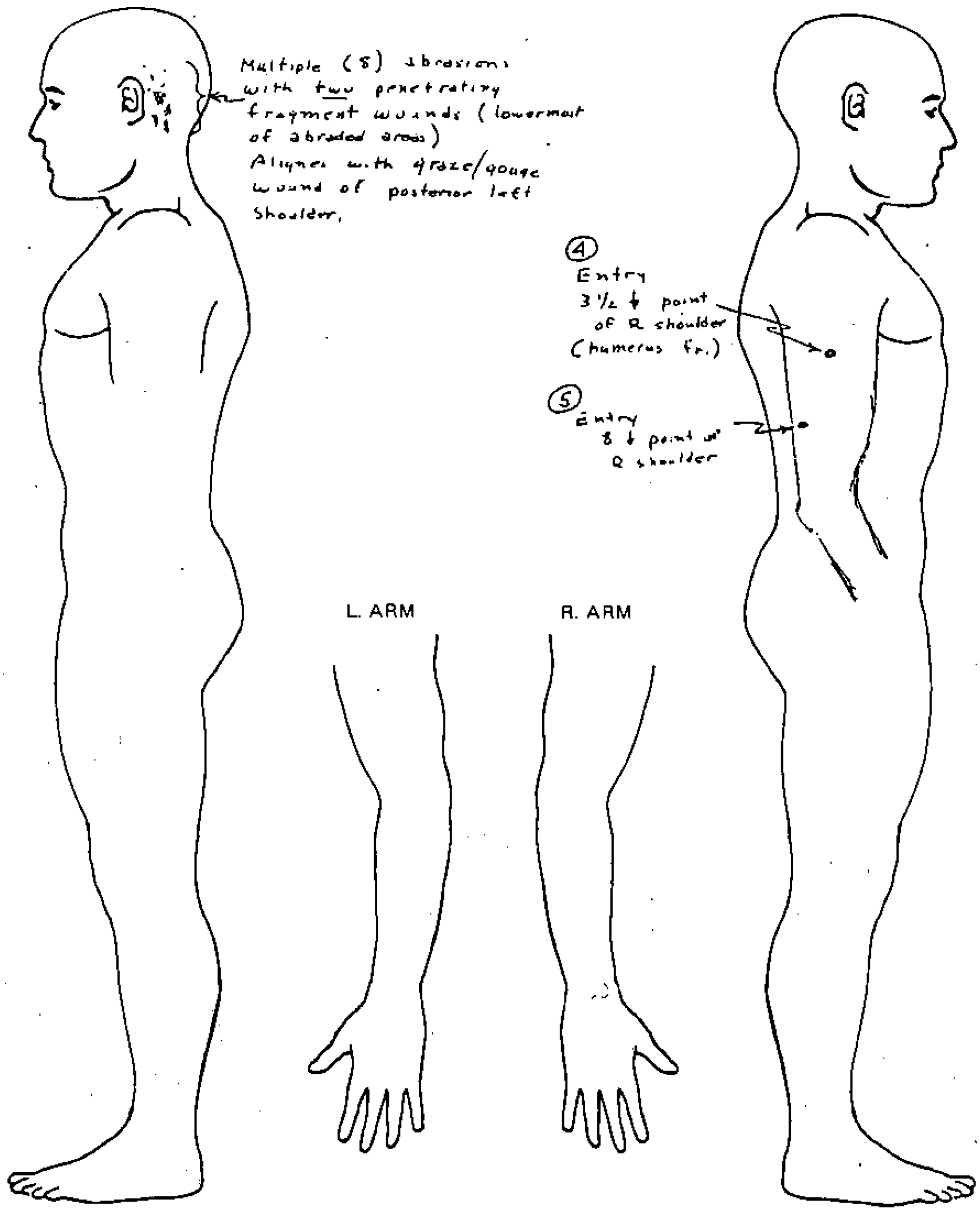
Race W Age M Sex 58 Date 11-7-84



Full body, male, lateral view.

Name Carl R. Gordon Autopsy No. 1597-84

Age 58 Race W Sex M Date 11/7/84



Cat. No. 44-1-005-00

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STATS

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

OFFICER'S REPORT

D.R. No. 84-85217

DOUBLE HOMICIDE
Subject

MICROFILMED

Division Reporting: I.S.D. Division of Occurrence: U.F.S.D.

Date and Time Occurred: BET. 11/5/84, 1900 Hrs. AND 11/6/84, 0700 Hrs. Location of Occurrence: 5851 WASHBURN RD., LV., NV.

DETAILS:

VICTIM #1: GORDON, CARL RICHARD
WMA, DOB: 2/16/26
S.S.#: 205-18-7073
Residence address:
5851 Washburn Rd.
Las Vegas, Nv.

VICTIM #2: GORDON, COLLEEN KATHRINE
WFA, DOB: 4/4/27
S.S.#: 179-20-1981
Residence address:
5851 Washburn Rd.
Las Vegas, Nv.

I. SYNOPSIS:

On 11/6/84 at approximately 1600 hrs. CARL RICHARD GORDON, WMA, 58 years, DOB: 2/16/26 and his wife, COLLEEN KATHRINE GORDON, WFA, DOB: 4/4/27, who reside at 5851 Washburn Rd., Las Vegas, Nv. were found deceased at their residence. Both decedents had apparent gunshot wounds to their person and were pronounced deceased by Chief Coroner Investigator RON FLUD at 1800 hrs. The victims were later transported to Clark County Morgue by Spalding Brother Mortuary attendants POWELL and THOMAS pending autopsy pursuant to a homicide investigation.

II. PERSONS AT SCENE:

A. Patrol Officers

1. S. Winne, P#1908 - arrival 1622 hrs.
2. R. Cox, P#645 - arrival 1626 hrs.
3. SGT. G. Gillins, P#61 - arrival 1657 hrs.

ENTERED
T.T.

Date and Time of This Report: 11/8/84 Officer: DET. M. GEARY Per. No. 312

Approved: Officer: Per. No.

SIGNATURE: Michael R. Geary

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LVMPD 82 (2-75)

INCIDENT		DR-
DOUBLE HOMICIDE		84-85217
VICTIM'S NAME: (LAST, FIRST, MIDDLE) FIRM NAME IF BUSINESS RES.		OFFICER(S) P.NO.
GORDON, CARL & COLLEEN	PHONE: BUS.	DET. M. GEARY 312
LOCATION OF OCCURRENCE	DATE AND TIME OF OCCURRENCE	
5851 WASHBURN RD., LV., NV.	REFER BELOW	

SECTOR/BEAT

B. Detectives at Scene

1. A. KNUDSEN, P#329 - arrival 1642 hrs.
2. R. CHILDERS, P#414 - arrival 1643 hrs.

C. Homicide Detectives at Scene

1. SGT. F. JERGOVIC, P#10 - arrival 1700 hrs.
2. BURT LEVOS, P#144 - arrival 1700 hrs.
3. MIKE GEARY, P#312 - arrival 1707 hrs.

D. Criminalistics Officers

1. R. Roderick, P#211 - arrival 1717 hrs.
2. D. Connell, P#298 - arrival 1705 hrs.
3. D. Horn, P#1928 - arrival 0037 hrs.
4. R. Corse, P#1880 - arrival 0037 hrs.
5. Lt. Eugene Smith, Supervisor - arrival 1700 hrs.

E. Coroner at Scene

1. Chief Investigator Ron Flud - arrival 1800 hrs.
2. Coroner Investigator Loren Ogle - arrival 1800 hrs.

F. Pathologist at Scene

1. Dr. Sheldon Green - arrival 1830 hrs.

G. Other agency

1. Deputy D.A. Dan Seton - arrival 1800 hrs.

H. Mortuary at Scene - Spalding Brothers

1. Agent Powell - arrival 2030 Hrs.
2. Agent Thomas - arrival 2030 Hrs.

III. PERSONS INTERVIEWED AT SCENE:

A. Lisa Licata, WFJ, DOB: 2/9/68 - 2851 S. Decatur, #208, Lv., Nv.
Phone: 367-6207 (person finding victim)

IV. DETAILS:

That on 11/6/84 at approximately 1610 hrs. LVMPD Dispatch received a phone call from a young female juvenile who related that she was at the residence of 5851 Washburn Rd. and upon entering the residence, discovered the bodies

INCIDENT		DR-
DOUBLE HOMICIDE		84-85217
VICTIM'S NAME: (LAST, FIRST, MIDDLE) FIRM NAME IF BUSINESS RES. PHONE: BUS.		OFFICER(S) P.NO.
GORDON, CARL & COLLEEN		DET. M. GEARY 312
LOCATION OF OCCURRENCE	DATE AND TIME OF OCCURRENCE	
5851 WASHBURN RD., LV., NV.	REFER BELOW	

SECTOR/BEAT

CONTINUATION/FOLLOW-UP REPORT

victims and some abandoned vehicles, immobilized.

To the east sector of the residence is another area used for parking of the victims' motorhome and some trees and there is a fencing with a gate to enter this general area. There is a chain link gate on the north side of the driveway which enters directly into the front of the residence in a north/south direction. As you enter to this driveway you come to the garage which is in the center portion of the residence. There is a walkway to the left and to the east of the garage which is covered and enters into the front door of the residence.

There was also a side garage door located on the east side of the garage which was opened and it was also noticed that the front door was also opened.

To the rear of the residence is a corral area which is also fenced and partitioned off from the residence. There is a gate which enters into the back patio which enters into the kitchen area of the residence. Note: this door was locked and the screen door was also locked.

Upon entering into the residence, travelling in a southerly direction, you enter into the dining room area. There is a wrought iron railing which separated the dining room from the living room which was located on the west side of the residence. The inside of the residence is that of what is called a cathedral type room with a very high ceiling and a staircase which travels in an upward direction from west to east which leads to a sitting room located on the top southeast section of the residence.

It should be noted at this time that there was a lamp which was on the "on" position and this was the only light lit in the residence as related by Officers.

Adjacent to the sitting room in the upstairs southwest section is the master bedroom. The kitchen area is located in the southeast lower section of the residence and is visible from the front entrance. Travelling through the kitchen in a southerly direction is located the back door to the residence which was in a locked position and that the screen door was also in a locked position.

There is a bathroom adjacent to the back door and in a westerly direction which also enters into another bedroom located on the southwest lower section of the residence. That in travelling through the bedroom in a northerly direction you come to another door which leads into the living room area and the staircase which travels to the upstairs rooms as stated earlier.

This is the overall picture of the description of the inside of the residence as to where the rooms were located. Items visible to the naked eye in entering the residence was that there was a dining room table directly to the south of the main entry which contained papers described as check ledgers, checks and letters that were ready to be mailed. There was a closet on the south wall of the living

INCIDENT		DR-
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GORDON, CARL & COLLEEN		DET. M. GEARY 312
LOCATION OF OCCURRENCE	DATE AND TIME OF OCCURRENCE	
5851 WASHBURN RD., LV., NV.	REFER BELOW	

SECTOR/BEAT

room which was ajar and that there were garments, clothing which were pulled from the closet area and discarded on the floor in front of the door. Other items visible in the living room area was a black ladies purse which was lying on the floor in front of the couch and coffee table. Also visible was a blue key case containing keys lying on the south west corner of the couch. There was a fireplace in the center portion of the west wall which had a window on either side of the fireplace.

It was noticed that there were two easy chairs on either side of the fireplace and an ottoman in front of these sofa chairs. The sofa chair on the south side of the fireplace was observed to have the curtains from the window laying over top of the back portion of the chair. It was also noted that the lower portion of the window was broken and that glass was laying on the floor at the base of the window as well as on the windowsill and on the outside area.

On the south wall, as you travel in a easterly direction on the staircase was noticed a considerable amount of red bloodlike splatters on the wall and in the area where the bloodlike splatters begin, there was a small hole. The splatters appear to be falling in a downward and northerly direction to the doorway which enters into the lower bedroom of the residence. It was also noted that the door was in an open condition and that there was red, bloodlike splatters on the door and door jam and continued on the north wall of the living room.

Criminalistics Officers R. RODERICK and D. CONNELL photographed the condition of the residence depicting the condition and location of physical evidence. In this immediate area, being the lower bedroom located on the southwest section of the residence was where victims were located, victim #1 being CARL RICHARD GORDON who was found lying face-down in the doorway and bedroom entryway. The feet were pointing in a northerly direction and the head was pointing in a southwesterly direction. The victim was clad in yellow bottom pajamas which were pulled down over the buttocks and in a green pajama top with yellow cuffs and yellow center lapels. The victim was observed to have both hands underneath his torso and appeared to be clutching his chest area. There was a very noticeable red bloodlike substance spewing from the victim's mouth and head area and also beneath the victim.

Victim #2, later identified as COLLEEN KATHRINE GORDON was found lying on her back across the side of the bed. The feet were dangling off the bed and her right arm was covering her face. The victim had a red bloodlike substance on her forehead which spewed down both sides of the forehead to the side of her head. The victim was clad in a beige nightgown with a pink lace design on the shoulder area. The victim appeared to have what appeared to be gunshot wounds to the right side of the face and also the scalp area and another wound to the left ear lobe and there was also noticed to be a black smudging on the left side of the victim's nightgown below her left ear.

It was noticed that there was a white substance on the bedding and also on the victim's arm, facial area which apparently had dropped from the ceiling above the victim where it was noticed that there was also another hole which was

CONTINUATION/FOLLOW-UP REPORT

INCIDENT		DR-
DOUBLE HOMICIDE		84-85217
VICTIM'S NAME: (LAST, FIRST, MIDDLE) FIRM NAME IF BUSINESS RES. PHONE: BUS.		OFFICER(S) P.NO.
GORDON, CARL & COLLEEN		DET. M. GEARY 312
LOCATION OF OCCURRENCE	DATE AND TIME OF OCCURRENCE	
5851 WASHBURN RD., LV., NV.	REFER BELOW	

directly above the victim's head. There was also a considerable amount of a red bloodlike substance beneath the victim's head area and on the blankets and bedding beneath the victim.

Chief Coroner Investigator RON FLUD arrived at approximately 1800 hrs. and pronounced both victims deceased, along with Deputy Coroner Investigator LOREN OGLE. That in closer observation of the victims, it was noticed that there were numerous what appeared to be gunshot wounds on both victims. However, it was necessary to remove the victims from the crime scene to the Clark County Morgue for further observation and to avoid any contamination of evidence.

Spalding Mortuary attendants THOMAS and POWELL were requested to respond and remove the victims at approximately 2030 hrs. to the Clark County Morgue. There were numerous photographs taken of the victims in their present condition and location along with evidence visible to the naked eye prior to the removal of the victims.

The crime scene was processed for latent prints by Criminalistics Officers CONNELL and RODERICK who also requested assistance from Criminalistics Officers DAVE HORN and BOB CORSE. A diagram of the crime scene was made depicting the location of the victims and the location of evidence found by Investigators.

Investigation revealed also that the window located to the south of the chimney on the north wall, the lower portion was broken and that the screen had been cut with a cutting device and that entry was made into the residence from this location. That in checking the outside area of the broken window it was discovered a double edged knife with approximately 4" blade and a reddish brown handle. This item was laying on the ground just to the south of the window near the wall. It was also noticeable in the grass area, an expended .22 shell casing and that the screen had been visibly cut and rolled down to the lower portion of the window, apparently cut with the knife left behind on the ground. These two items were retrieved by Criminalistics Officer RODERICK and impounded as evidence.

The window frame itself did not appear to have any pry marks; however, there was damage to the lower base portion of the window as if it had been kicked. There was glass breakage observed on the screen and also ground area outside the window and also located on the floor inside and below the window. These items were processed for prints and recovered by Officer RODERICK, along with footwear which was also visible on broken glass and in the soil area below the window. The screen was also removed from the screen frame and impounded as evidence.

There was also four other .22 caliber expended casings found in the area of the window and carpet area. Number one was found between the window and screen space. Number two was located on the window sill; numbers three and four were located on the carpet area inside and to the south of the broken window. There was also located a projectile which was recovered between the leg of victim CARL GORDON and

INCIDENT		DR.
DOUBLE HOMICIDE		84-85217
VICTIM'S NAME: (LAST, FIRST, MIDDLE) FIRM NAME IF BUSINESS RES. PHONE: BUS.		OFFICER(S) P.NO.
GORDON, CARL & COLLEEN		DET. M. GEARY 312
LOCATION OF OCCURRENCE	DATE AND TIME OF OCCURRENCE	
5851 WASHBURN RD., LV., NV.	REFER BELOW	

SECTOR/BEAT

CONTINUATION/FOLLOW-UP REPORT

depicted in the centermost portion floor of the door jam entering into the lower southwest bedroom. The small hole located on the stairwell south wall was also photographed and a line was attached to the hole to indicate the trajectory which was in an angle from the direction of the broken window to its contact with the wall, exiting in the southwest bedroom, also entering a carpet which was hung on the wall on the north side of the bedroom and then striking the ceiling above where victim #2 was lying, causing a puncture in the ceiling. This trajectory was photographed by Criminalistics in various positions from the outside of the residence and also the inside of the residence.

The red bloodlike spatters on the south wall of the living room were also photographed to indicate the trajectory of the spatters. For further refer to photographs, schematics and reports of Criminalistics Officers. Blood samples were taken from various locations for further processing. The bedding was removed which consisted of a blue cotton electric blanket, a light blue flowered bottom sheet and another dark blue top sheet which contained red bloodlike substances and white powdery substance which was packaged by Criminalistics Officers for further examination at the LVMPD crime lab. For further information regarding the collection of evidence, refer to Criminalistics Officers' reports, schematics and photographs depicting the location of where the evidence was collected.

That DET. LEVOS was assigned to contact witnesses and to interview other individuals who may have knowledge and/or information to assist in the investigation. DET. LEVOS contacted LISA LICATA who discovered the victims in the residence and who, in fact, notified LVMPD as to her findings. For further refer to the typewritten statement obtained from LISA LICATA by DET. LEVOS.

The second individual contacted by DET. LEVOS was DALE FLANNIGAN who is the grandson of the victims' CARL & COLLEEN GORDON and who, in fact, resided in the trailer located on the grounds on the west side of the residence. Prior to obtaining a statement from DALE FLANNIGAN, he was asked if he would consent to a search of the trailer described as an Aristocrat classic, serial #A184693, negative license plates. That he, in fact, agreed to a consent to search of his trailer which he was residing in and signed a consent to search which was witnessed by DET. BERT LEVOS.

That Detectives MIKE GEARY and Criminalistics Officer RODERICK proceeded to the trailer with the consent to search and upon entering, discovered leaning against a wall next to the refrigerator was a .22 caliber Marlin firearms Glenfield Model 25 rifle, semi-automatic, serial #24642285. The rifle contained a Weaver Marksman scope. The rifle contained no clip; however, did, in fact, contain one live round of .22 caliber with a headstamp of "C".

Next item found was a knife box with the name of KIRSCHALL CUTLERY COMPANY, Blackhorse Model 1060. The box was empty; however, contained a brochure of different models of knives made by KIRSCHALL CUTLERY COMPANY. This item was

INCIDENT		DR.
DOUBLE HOMICIDE		84-85217
VICTIM'S NAME: (LAST, FIRST, MIDDLE) FIRM NAME IF BUSINESS RES.	PHONE: BUS.	OFFICER(S) F.NO.
GORDON, CARL & COLLEEN		DET. M. GEARY 312
LOCATION OF OCCURRENCE	DATE AND TIME OF OCCURRENCE	
5851 WASHBURN RD., LV., NV.	REFER BELOW	

SECTOR/BEAT

located in a closet directly to the west as you enter the doorway to the trailer. These two items were impounded by Criminalistics Officer RODERICK as evidence. No other items were removed from the trailer and after a statement was obtained from DALE FLANNIGAN the trailer was released back to him to reside in.

That due to the late hour and lighting conditions, it was virtually impossible to further process the crime scene by the Criminalistics Officers. That it was necessary for Criminalistics Officers to return the following morning for further processing for latent prints and also collection of further evidence. It was also necessary to place a guard of a police officer at the residence until the return of Criminalistics Officers the following morning. The residence was secured to the best of ability of these officers; however, due to the fact of the broken window and damage to the window frame itself, this was the reason that a patrol officer be manned at the crime scene of 5851 Washburn for the duration of the evening and morning hours until the return of Criminalistics.

On 11/7/84, approximately 9:30 AM, Criminalistics Officer DAN CONNELL and KATHY ADKINS returned to 5851 Washburn for further processing of the crime scene and collection of evidence. For further refer to their written reports, photographs and collection of evidence.

That on 11/7/84, approximately 0900 hrs. DET. LEVOS and DET. GEARY had an occasion to talk to COLLEEANN FLANNIGAN, WFA, 37 years, DOB: 11/15/46, address of 5600 S. Gateway, Las Vegas, Nv., phone: 454-0916. MISS FLANNIGAN indicated that she is the daughter of COLLEEN GORDON, deceased, and stepdaughter of CARL GORDON. She indicated that she had spoken to her mother, she believed Saturday or Sunday prior to the death of her parents. She indicated further that they had no enemies other than feuds with some of the neighbors in the general area. That they normally kept to themselves and were not outgoing people. That her stepfather, CARL GORDON, was employed as an air traffic controller at Mc Carran International Airport. That he worked different shifts and that caused a problem with his wife and their sleeping habits.

That her father normally slept in the upstairs bedroom and her mother slept in the lower bedroom on the southwest sector of the residence. She further indicated that she had not been to the residence for quite some time; did not have a key to the residence, and that her son, DALE FLANNIGAN also did not have a key to the residence. She further indicated that her brother, KARL had been staying at the folks' residence and left either Friday night or Saturday morning, approximately 3:00 AM; that he is a truck driver for an independent trucking company whom she does not know the name and is believed to be on the road. That she has no way of contacting him or where to contact him. For further information regarding this statement, refer to the typewritten content of COLLEEANN FLANNIGAN's statement dated 11/7/84.

CONTINUATION/FOLLOW-UP REPORT

INCIDENT		DR-
DOUBLE HOMICIDE		84-85217
VICTIM'S NAME: (LAST, FIRST, MIDDLE) FIRM NAME IF BUSINESS RES. PHONE: BUS.		OFFICER(S) P.NO.
GORDON, CARL & COLLEEN		DET. M. GEARY 312
LOCATION OF OCCURRENCE	DATE AND TIME OF OCCURRENCE	
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SECTOR/BEAT

VII. AUTOPSY:

That on 11/7/84 an autopsy was performed on the victims COLLEEN KATHRINE GORDON and CARL R. GORDON. COLLEEN's autopsy number was 159684 which began at 1345 hrs. Persons present: DR. GREEN, Patholigist; CY IRWIN, Assistant; DET. M. GEARY, Homicide; KIM GROOVER, Criminalistics Officer.

Prior to the autopsy photos were taken depicting the location and trauma to the victim. Trace evidence was obtained from nail scrapings of the victim, with negative results. Fingerprints and palm prints were obtained for identification purposes. Blood with and without preservatives was obtained from DR. GREEN for further processing. The victim was clad in a beige nightgown with a pink lace trim on the shoulder area. The nightgown contained red bloodlike stains and also contained a black smudge which appeared to be powder burns on the left shoulder area. Trauma to victim: the victim sustained three gunshot wounds as related by DR. GREEN, to the right side of the face and to rear of the right eye. Number two was located to the right side of the head above the right ear and #3 was located to the left ear lobe which was a through and through shot which was superficial and struck the lower portion of the neck and exiting out the back.

That during the course of the autopsy DR. GREEN recovered two each lead projectiles from the brain of the victim which were given to KIM GROOVER, Criminalistics Officer, as evidence. DR. GREEN indicated at the conclusion of the autopsy that the cause of death was two gunshot wounds to the head, striking the brain/homicide.

At the conclusion of the autopsy of COLLEEN GORDON, an autopsy was performed on CARL RIGHARD GORDON, autopsy #1597. Persons present: DR. SHELDON GREEN, Pathologist; JOHN MC KINNON, Assistant; DET. M. GEARY, P#312, Homicide; and KIM GROOVER, P#904, Criminalistics. Prior to the autopsy of CARL GORDON, photographs were taken prior and during the autopsy to depict the location of trauma sustained to the victim. That during the course of the autopsy DR. GREEN indicated that the victim sustained (5) entry wounds from gunshots, located to the center chest area just below the neck. Number two to the left ribcage area; #3 to the stomach area just to the left of the naval; #4 to the upper right shoulder area; #5 to the right upper arm area.

He further indicated that there was to the left side of the head and to the rear of the left ear, multiple abrasions of fragment wounds and to the left back shoulder area was a graze gouge and also another grazing wound located in the area of the mid back which passed to a left to right direction. During the course of the autopsy, DR. GREEN recovered two projectiles; one from the wound #3 in the abdomen area and #2 in the right upper arm area. He also removed fragments from the left chest area and also from the area of the rear of the left ear area. These projectiles were given to KIM GROOVER to retain as evidence along with blood samples with and without preservatives obtained by DR. GREEN.

INCIDENT		DR.
DOUBLE HOMICIDE		84-85217
VICTIM'S NAME: (LAST, FIRST, MIDDLE) FIRM NAME IF BUSINESS RES. PHONE: BUS.		OFFICER(S) P.NO.
GORDON, CARL & COLLEEN		DET. M. GEARY 312
LOCATION OF OCCURRENCE	DATE AND TIME OF OCCURRENCE	
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SECTOR/BEAT

Criminalistics Officer KIM GROOVER obtained prints and palms of the victim for identification purposes and also traced evidence of the fingernail scrapings which appeared to be negative and also retained the clothing from the victim for further processing.

At the conclusion of the autopsy, DR. GREEN indicated that the cause of death was gunshot wounds to the heart and other vital organs, causing the death: homicide. This concluded the autopsies of both individuals. All items of evidence collected by Criminalistics Officer KIM GROOVER were impounded under DR# 84-85217.

That on 11/7/84 at approximately 1732 hrs. DET. M. GEARY proceeded to the Criminalistics I.D. Lab and met with Criminalistics Officers DAN CONNELL and R. RODERICK who were completing further processing of evidence obtained from the crime scene of 5851 Washburn. The items of evidence were the bedding, conssiting of the blue electric cotton blanket; the two bed sheets; one fitted bottom sheet, blue with flower design; and a dark blue top sheet, all containing red bloodlike substance as a result of the stains located underneath victim COLLEEN GORDON while she was lying on the bed in the residence.

That DET. GEARY was present when Criminalistics Officers RODERICK and CONNELL checked the electric blanket and observed a lead projectile found in the area of the red bloodlike substance. This was found at 1732 hrs. and recovered and placed into evidence. DET. GEARY was also present at 1729 hrs. when a lead projectile was recovered from the bottom sheet described as blue with flower design. That this projectile had a white substance on the surface and had fallen to the ground in a controlled area in order to collect evidence. This item was also packaged and placed into evidence. This concluded investigation up to date.

For further information regarding any further persons contacted, refer to DET. BURT LEVOS' report of his investigation. Also refer to any and all reports filed under DR# 84-85217 concerning the double murder/homicide of victims COLLEEN KATHRINE GORDON and CARL RICHARD GORDON of 5851 Washburn Rd., Las Vegas, Nv.

Investigation continuing.

MG/gc
Trans: 11/8/84, 11:15 AM

CONTINUATION/FOLLOW-UP REPORT

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

PROPERTY REPORT

Evidence ☒ Found Property ☐ Lost Property ☐ Safe Keeping ☐ DR No. 84-85217

Incident DOUBLE HOMICIDE	Location 5851 Washburn		Date 11-6-84
Victim Coleen & Carl Gordon	Address		Phone
Suspect No. 1	Arrested	Charge	ID No.
Suspect No. 2	Arrested	Charge	ID No.
Recovered by R. Rodreick #211	Address LVMPD ID Lab		Phone 386-3471
Hold for Prosecution Yes	Proof of ownership	Registration check	
Safe Custody	Release to Owner		
Owner notified	By	Date	Via
List connecting Reports			

Details or circumstances - itemize, describe & give value of each item.

The following items were recovered as evidence:

MICROFILMED

PACKAGE #1	LOCATION RECOVERED
Item #1 - One Marlin Firearms Glenfield Mod. 25 Cal. 22 S-L-LR Rifle Serial #24642285 with a weaver marksman scope.	From the Aristocrat Classis trailer West of the above location. Item leaning against kitchen counter near refrigerator.
PACKAGE #2	
Item #2 - One .22 cal. cartridge head stamp "C".	From Item #1.
PACKAGE #3	
Item #3 - One Kershaw Cutlery Co. Black Horse model 1060 box.	From same trailer as Item #1 on the top shelf of the cupboard inside and West of the front door.
PACKAGE #4	
Item #4 - One cartridge case head stamp "C".	From living room floor near the male victims right foot.
Item #5 - One cartridge case head stamp "C".	From living room floor near the broken window.

ENTERED CLH

SENT

(CONT.)

NOV 07 1984

Crime Lab
Criminalistics Bureau

DATE AND TIME TYPED - DIVISION - CLERK

Approved By _____ Officer(s) R. Rodreick Div. TSD Date 11-6-84

R. RODREICK #211

LVMPD 67 (REV. 2-75)

Item #6 - One cartridge case head stamp "C".	From the living room window sill inside broken window.
Item #7 - One bullet.	From living room - bedroom doorway floor between male victims legs.
Item #8 - One cartridge case head stamp "C".	From the ground outside the West side of the residence near the broken window.

PACKAGE #5

Item #9 - One "Western U.S.A. W77" double edge knife.	From the ground outside the West side of the residence near the broken window.

PACKAGE #6

Item #10 - One cut and torn solar screen.	From the window screen frame outside the broken living room window.

PACKAGE #7

Item #11 - One cartridge case head stamp "C".	From the area between the broken window frame and frame of the screen.

PACKAGE #8

Item #12 - One light switch plate with blood-like stains.	From South wall bottom area of stairs.
Item #13 - Dry blood-like substance.	From the West down stairs bedroom wall near the door jamb.
Item #14 - Dry blood-like substance.	From the West door jamb between the living room and down stairs bedroom.
Item #15 - Dry blood-like substance.	From the West living room wall West of the stairs.
Item #16 - One chip with blood-like stains.	From the down stairs bedroom floor behind the Notth door.

PACKAGE #9

Item #17 - One black purse.	From the living room floor in the area of the closet.

(CONT.)

Item #18 - Contents of Purse: 6 $2.00 bills - 1 $1.00 bill 2 silver dollars - 3 half dollars 7 nickles - 4 sticks of Freedent gum in a package - 2 film receipts - 1 cloth measuring tape. — From Item #17.

Item #19 - 1 6' steel tape - 1 mirror - 1 pill box - 1 nail file - 1 piece of gum w/foil wrapper - 1 Freedent empty wrapper - 1 piece of cloth. — From the living room floor near Item #17.

PACKAGE #10

Item #20 - One Lady Lee 1 gallon plastic jug with holes in the container. — From the living room floor near Items #17 - 18 & 19.

PACKAGE #11

Item #21 - One dark blue blanket with blood-like stains. — From the down stairs bedroom bed.

Item #22 - One dark blue blanket with blood-like stains. — From the down stairs bedroom bed.

PACKAGE #12

Item #23 - One blue and white blanket with blood-like stains. — From the down stairs bedroom bed.

PACKAGE #13

Item #24 - One door with a hole near the bottom and with blood-like stains on both sides and the back edge. — From the doorway between the down stairs bedroom and the living room.

PACKAGE #14

Item #25 - One piece of glass with a portion of a footwear impression on one side. — From the ground outside (West) of the broken living room window.

PACKAGE #15

Item #26 - One bullet. — Recovered while removing Item #23 the blue and white sheet from the evidence bag to hang up for the blood-like substance to dry.

(CONT.)

DR 84-85217

ID

PACKAGE #16

Item #27 - One bullet.

Recovered while removing Items #21 & 22 the dark blue blanket and sheet from the evidence bag to hang up for the blood-like substance to dry.

NOTE: Item numbers #26 & 27 were recovered 11-7-84 at the LVMPD Crime Lab.

R. Rodreick #211

R. RODREICK #211

RR/mk

VOLUNTARY STATEMENT

ID/DR 84-85217

DATE 11/6/84 TIME 2000 HRS. PLACE LVMPD DETECTIVE BUREAU

I, DALE EDWARD FLANAGAN AM 19 YEARS OF AGE,

AND MY ADDRESS IS 5851 WASHBURN ROAD, LAS VEGAS, NEVADA PHONE: 645-2267

WARNING: BEFORE YOU ARE ASKED ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.
I am DET. B. LEVOS of the Las Vegas Metropolitan Police Department and inform you that:

(1) YOU HAVE THE RIGHT TO REMAIN SILENT.
(2) IF YOU GIVE UP THAT RIGHT TO REMAIN SILENT ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
(3) YOU HAVE THE RIGHT TO SPEAK TO AN ATTORNEY BEFORE ANSWERING ANY QUESTIONS, AND TO HAVE AN ATTORNEY PRESENT WITH YOU WHILE YOU ANSWER ANY QUESTIONS.
(4) IF YOU CANNOT AFFORD AN ATTORNEY, AN ATTORNEY WILL BE APPOINTED FOR YOU BY THE COURT AT NO COST TO YOU, AND YOU NEED NOT ANSWER ANY QUESTIONS UNTIL THAT ATTORNEY HAS BEEN APPOINTED FOR YOU.
(5) IF YOU DECIDE TO ANSWER QUESTIONS NOW, YOU MAY STOP AT ANY TIME AND ASK TO TALK TO AN ATTORNEY BEFORE ANY QUESTIONING CONTINUES.
(6) IF YOU DECIDE TO STOP ANSWERING QUESTIONS ONCE YOU HAVE BEGUN, ALL QUESTIONING WILL STOP.

WAIVER: I HAVE READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO MAKE A STATEMENT AND WAIVE THESE RIGHTS. I DO NOT WANT A LAWYER PRESENT WITH ME DURING THE MAKING OF THIS STATEMENT. I KNOW THAT I MAY REVOKE THIS WAIVER AT ANY TIME DURING THE QUESTIONING AND ASK THAT AN ATTORNEY BE PRESENT. NO PROMISES OR THREATS HAVE BEEN MADE TO ME, AND NO PRESSURE OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME.

1. Q: DALE, were you advised of your Constitutional Rights under the Miranda decision
2. previous to this statement?
3. A: Yes.
4. Q: After reading the rights card, did you advise DETECTIVE LEVOS that you understood
5. your rights?
6. A: Yes I did.
7. Q: Did you sign and date the card?
8. A: Yes.
9. Q: Do you understand you do not have to give this statement without an Attorney present
10. unless you request that an Attorney be present?
11. A: Yes I do.
12. Q: Who lives at that address on Washburn besides you, DALE?
13. A: My grandparents.
14. Q: What are their names?

I HAVE READ THIS STATEMENT CONSISTING OF FOUR PAGE(S) AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED THEREIN.

THIS STATEMENT WAS COMPLETED AT 8:k7 PM M. ON THE 6TH DAY OF NOVEMBER, 19 84

WITNESS:

SIGNATURE OF PERSON GIVING VOLUNTARY STATEMENT.

WITNESS:

LVMPD 93 (REV.1-78)

DR # 84-85217
VOLUNTARY STATEMENT OF:
DALE EDWARD FLANAGAN

A: COLLIE K. GORDON and CARL R. GORDON.

Q: Do you live in the trailer next to the Washburn address?

A: Yes.

Q: How long have you lived in that trailer?

A: About four months now.

Q: Previous to living in the trailer, did you live with your grandparents for several years?

A: Not with them but on the other half of the property with my mother and father.

Q: Does that trailer belong to your grandparents?

A: Yes it does.

Q: When is the last time you saw your grandparents?

A: Saturday, 11/3/84.

Q: Would you go into detail of what occurred when you went over there on Saturday, 11/3/84?

A: Nothing unusual. I took the electricity check over to them and gave them the check and they made mention of something about that thought they were going to go out of town Thursday and then I went back over to the trailer, changed my clothes, and left.

Q: This date, 11/6/84, did you call your grandparents at any time?

A: No Sir.

Q: Who are you living with at the present time?

A: Alone - myself in the trailer.

Q: Was there a white female living with you for a week or so?

A: Yes there was. Her name is LISA. I don't know her last name.

Q: Why was she living with you?

A: She had some problems with her mother and needed a place to stay and now I believe she's back with her mother because my grandparents threw her out.

WITNESS: _____ SIGNED: _____

WITNESS: _____

LVMPD INV SD 31 (1-80)

DR # 84-85217
VOLUNTARY STATEMENT OF:
DALE EDWARD FLANAGAN

Q: When did you find out about the death of your grandparents?

A: I don't know what time we showed up but when I showed up there this evening - I think it was somewhere near 7.

Q: Where do you work?

A: McDonald's in the Meadows Mall.

Q: When is the last day you worked at McDonald's?

A: Friday, 11/2/84.

Q: What days off do you have?

A: Normally Saturday and Sunday.

Q: Did you work yesterday, 11/5/84?

A: No.

Q: What is the reason you didn't work?

A: I had court.

Q: Is that the reason you didn't go to work?

A: That's the reason I didn't go back to work. I had to talk to the District Attorney and I didn't even go in.

Q: Normally, when you leave your trailer, do you lock the trailer?

A: Not normally. There's nothing in there of value.

Q: When you signed a Consent to Search for DETECTIVE LEVOS on this date and we went into the trailer to get a pack of cigarettes for you, DETECIVE LEVOS observed a .22 rifle. Is that your rifle?

A: Yes, my father gave it to me on a birthday.

Q: Do you own any type of a buck knife?

A: I was given a buck knife.

Q: Can you describe it to me?

WITNESS: _____ SIGNED: Dale Flanagan

WITNESS: B. Lewis

LVMPD INV SD 31 (1-80)

DR # 84-85217
VOLUNTARY STATEMENT OF:
DALE EDWARD FLANAGAN

A: It's got goldish bronze ends and it's a folding lock blade and it's quite scratched like somebody tried to sharpen it wrong with a rock or something. It should be in the trailer on my bed or the cabinet.

Q: To your knowledge, DALE, is your grandma and grandpa quite wealthy?

A: They don't complain about money. They have money to do with what they want.

Q: If anything happened to your grandma and grandpa, would you come into any type of inheritance?

A: I'm sure I would.

Q: Did they tell you you would come into an inheritance?

A: They told me I would come into some portion of the house.

Q: Have you had any type of an argument with your grandparents in the last several weeks?

A: None.

Q: Did you have anything to do with the death of your grandma and grandpa?

A: No.

Q: Do you know if anybody would do any bodily harm to your grandma and grandpa?

A; No I don't.

Q: After this statement is in a typewritten form and you have proofread the statement, would you be willing to take a polygraph examination as to the truthfulness of your statement?

A: Sure.

Q: Do you know a male subject by the name of GLEN SALAZAR?

A: No, I've never heard of him.

Q: Is there anything else you would like to add to this statement?

A: Nothing I can think of.

STATEMENT CONCLUDED AT 2017 HOURS, 11/6/84----------

WITNESS: _____ SIGNED: _____

WITNESS: _____

LVMPD INV SD 31 (1-80)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

DR NO. 84-85217

TYPE CRIME DOUBLE HOMICIDE

MICROFILMED

DATE OCCURRED 11/6/84 LOCATION OF 5851 WASHBURN ROAD

TIME OCCURRED 1622 HOURS OCCURRENCE LAS VEGAS, NEVADA

I, LISA LICATA, am 16 years of age, home phone 367-6209

and my address is 2851 SOUTH DECATUR, APT. 228, LAS VEGAS, NEVADA bus. phone

This is a statement in reference to a homicide located at 5851 Washburn Road, Las Vegas, Nevada; unknown true names of the possible two victims of the homicide. Today's date is 11/6/84. The time is 1622 hours. This statement is from LISA LICATA, WFJ 16 years of age, 2851 South Decatur, Apt. 228, Las Vegas, Nevada, Phone: 367-6209.

Q: LISA, did you have an occasion to go to 5851 Washburn on 11/6/84, today's date?

A: Yes, I lived there.

Q: LISA, why did you go to the address of 5851 Washburn?

A: To pick up some of my clothes and my belongings.

Q: Were you living at that address?

A: For three days.

Q: Were you living in the house?

A: No, the trailer.

Q: When you say the trailer, is that the trailer that's parked on the west side of the house on Washburn?

A: Yes.

I have read this statement consisting of EIGHT page (s) and I affirm to the truth and accuracy of the facts contained herein.

This statement was completed at (location)

on the 6TH day of DECEMBER at 5:55 PM (AM/PM), 19 84.

WITNESS

WITNESS

Lisa Licata
Signature of person giving voluntary statement

LVMPD 85 (12-76)

DR # 84-85217
VOLUNTARY STATEMENT OF:
LISA LICATA

Q: Who also lived in that trailer?

A: DALE FLANAGAN.

Q: And were you living with DALE FLANAGAN in that trailer?

A; Yes.

Q: When did you move in with DALE FLANAGAN?

A: The 23rd I'd say of October.

Q: 23rd of October?

A: Yes.

Q: And when did you move out?

A: The 28th.

Q: 28th? While you were living there with him, did he have a job?

A: Yes.

Q: Where did he work at?

A: McDonald's in the Mall - Meadows Mall.

Q: What did he do there at McDonald's?

A: He's a Manager. I'm not sure what he does.

Q: The General Manager or just a Manager?

A: A Manager.

Q: LISA, when did you first meet DALE FLANAGAN?

A: About three weeks ago.

Q: Were you ever into the house at 5851 Washburn?

A: Yes, to talk to his grandparents.

Q: And do you know his grandparents by their first names?

A: No.

Q: LISA, how did you meet DALE FLANAGAN?

WITNESS: _____ SIGNED: Lisa Licata

WITNESS: B. L. [illegible]

LVMPD INV SD 31 (1-80)

DR # 84-85217
VOLUNTARY STATEMENT OF:
LISA LICATA

A: Through my friends, DEBBIE and MICHELLE.

Q: DEBBIE and MICHELLE - what is their last names?

A: DEBBIE SAMPLES and MICHELLE GRAY. They're sisters.

Q: DEBBIE SAMPLES and MICHELLE GRAY?

A: Yes.

Q: Where do they live at?

A: In the same apartments I do. Mission Hills Apartments.

Q: Mission Hills Apartments on Decatur?

A: 86.

Q: Apartment number 86? Did they know DALE FLANAGAN?

A: Yes, they did and they are now moving. They're moving now.

Q: Tonight they're moving?

A: They are in the process of moving. They're still there but they're moving.

Q: Who do they live with, their parents?

A: No, with BLAKE. He works at McDonald's too.

Q: With a MR. BLAKE that works at McDonald's with DALE FLANAGAN?

A: Um hmm. (yes)

Q: Why are they moving?

A: I don't know.

Q: LISA, while you were living in the trailer with DALE, did he ever mention anything about his grandparents?

A: Yes.

Q: What did he say?

A: He mentioned that he had some plan about getting rid of them so he could inherit their money.

Q: Are they quite wealthy?

WITNESS: _____ SIGNED: Lisa Licata

WITNESS: B. Lee

LVMPD INV SD 31 (1-80)

A: I'm not sure but they got money put away.

Q: Did he indicate to you that possibly if they were both deceased that he would inherit their money?

A: Yes he did.

Q: Is he the only grandchild to your knowledge?

A: Yes.

Q: How long has he lived out here in the trailer with his grandparents?

A; Um - I think about a year and then he had a visitor before and moved out. So, off and on.

Q: To your knowledge, has DALE been in any type of trouble?

A: Yes he has.

Q: What type of trouble?

A: Just recently he had to go to court for Contributing to the Delinquency.

Q: Of a minor?

A: Um hmm. (yes)

Q: Was it a minor female?

A: Um hmm (yes), and a younger guy.

Q: Were they living in the trailer out here with him?

A: No.

Q: LISA, while you were in the trailer and living with DALE, did DALE have any type of weapons in that trailer?

A: Yes, he had a gun and some chucks and that's about it.

Q: What kind of gun?

A: A rifle, I think. I'm not sure.

Q: A rifle?

A: Yes.

WITNESS: _____ **SIGNED:** Lisa Licata

WITNESS: _____

LVMPD INV SD 31 (1-80)

DR # 84-85217
VOLUNTARY STATEMENT OF:
LISA LICATA

Q: LISA, when you came today to 5851 Washburn, what did you observe when you came to the front of the house?

A: Well the front gate was open and I knew something was wrong right then.

Q: Why did you know something was wrong?

A: Because they always keep it shut for the dogs to stay in.

Q: When you say dogs, how many dogs did they have?

A: They had two big dogs and three little dogs that stay in the house.

Q: When you - did you go into the front door?

A: Yes.

Q: When you came to the front door, was the front door shut?

A: No, it was opened.

Q: The screen door or the main door was open?

A: The whole door was just wide open - wide open.

Q: What did you observe when you went in the front door?

A: Well, I observed - I thought it was paint but it was blood on the wall, splattered all over the wall; the glass was broke; the window was broken, and I seen a body laying in the doorway.

Q: Is that in the living room area?

A: Yes.

Q: Who else went into the house with you?

A: Um - this young guy JOHN and -

Q: When you say JOHN. is that JOHN DELEON?

A: Uh huh. (yes)

Q: Did he go in the front door with you?

A: Yes.

WITNESS: _____ SIGNED: Lisa Licata

WITNESS: B. Lee

LVMPD INV SD 31 (1-80)

DR # 84-85217
VOLUNTARY STATEMENT OF:
LISA LICATA

Q: What did you touch in the house?

A: We both touched the black iron gate.

Q: Going into the front door?

A: Um hmm. (yes)

Q: Did you touch the door as you went in?

A: No, not the doorknob.

Q: Did you touch anything inside the house?

A: No.

Q: Why was JOHN at the house with you?

A: We had seen - well, when we went back to Sunland to call the police and we seen him at 7-Eleven and he came back with us - to see if everything was OK.

Q: When you say we, who else came out here with you?

A: My friend THERESA brought me out here with some of her friends.

Q: Is that THERESA HUDSON?

A: Yes.

Q: Did they just come out here so you could pick up your clothes?

A: Yes.

Q: Is the trailer locked or could you go into the trailer and get your clothes?

A: Locked.

Q: Do you have a key?

A: No. That's why I was going up to the grandparents.

Q: And to see -

A: To get the key.

Q: To get the key to the trailer so you could remove your clothing?

A: Um hmm. (yes)

Q: How well do you know the grandparents?

WITNESS: _____ **SIGNED:** Lisa Licata

WITNESS: _____

LVMPD INV SD 31 (1-80)

DR # 84-85217
VOLUNTARY STATEMENT OF:
LISA LICATA

A: Not very well at all. I just met them.

Q: When you were living here with DALE in the trailer, did the grandparens seem to get along with DALE?

A; Yes.

Q: Did they object to you living in the trailer with DALE?

A: No.

Q: LISA, you stated previously in this statement that - LISA - that DALE had mentioned to you that if the grandparents would die, that he would inherit quite a bit of money?

A: Yes.

Q: Did he ever mention to you that he possibly would try and cause their death?

A: Well, he men - he kinda hinted at it but he didn't say anything for sure.

Q: When you say hinted at it, what did he say to you?

A: He just - he just said "I'm gonna have something done about it", that's all he said.

Q: And when he said that, did you have reason to believe that he thought maybe he'd have somebody murder them?

A: Yes.

Q: LISA, when you left DALE FLANAGAN's trailer on the 28th, where did you move to?

A: Back home with my mother.

Q: And you've come out here today with the intention of just getting your clothing?

A: Right.

Q: Do you have any knowledge where DALE FLANAGAN is now?

A; No.

Q: When is tha last time you seen DALE FLANAGAN?

A: About a week ago.

Q: Where at?

A: Um - last time I seen him was at the trailer.

WITNESS: _____ SIGNED: Lisa Licata

WITNESS: B. Lewis

LVMPD INV SD 31 (1-80)

DR # 84-85217
VOLUNTARY STATEMENT OF:
LISA LICATA

Q: Before you moved out?

A: Um hmm. (yes)

Q: Is there anything else you can add to this statement?

A: No.

STATEMENT CONCLUDED 1755 HOURS, 11/6/84----------

WITNESS: _____ SIGNED: Lisa Licata

WITNESS: _____

LVMPD INV SD 31 (1-80)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

PROPERTY REPORT

Evidence XXX Found Property ☐ Lost Property ☐ Safe Keeping ☐ DR No. 84-85217

Incident DOUBLE HOMICIDE//AUTOPSY'S	Location CLARK COUNTY MORGUE		Date 11-7-84
Victim COLLEEN AND CARL GORDON	Address		Phone
Suspect No. 1	Arrested	Charge	ID No.
Suspect No. 2	Arrested	Charge	ID No.
Recovered by K. GROOVER #904	Address LVMPD ID LAB		Phone 386-3471
Hold for Prosecution XXXXX	Proof of ownership	Registration check	
Safe Custody	Release to Owner		
Owner notified	By	Date	Via
List connecting Reports AUTOPSY EVIDENCE FORM			

Details or circumstances - itemize, describe & give value of each item.

ON NOVEMBER 7,1984 AT APPROXIMATELY 1100 HOURS THE FOLLOWING ITEMS WERE RECOVERED DURING THE ATTENDANCE OF AN AUTOPSY AND WERE SUBSEQUENTLY PLACED INTO EVIDENCE IMPOUND.

PACKAGE #1	LOCATION RECOVERED
ITEM # 1. Vial containing blood with preservative	Taken from the body of Colleen Gordon/given to me by Dr. Green
ITEM # 2. Vial containing blood without preservative	Taken from the body of Colleen Gordon/given to me by Dr. Green
PACKAGE #2	
ITEM # 3. Vial containing blood with preservative	Taken from the body of Carl Gordon, given to me by Dr. Green
Item # 4. Vial containing blood without preservative	Taken from the body of Carl Gordon, given to me by Dr. Green
PACKAGE #3	
ITEM # 5. Expended bullet	Taken from the head of Colleen Gordon/given to me by Dr. Green
ITEM # 6. Expended bullet	Taken from the head of Colleen Gordon/given to me by Dr. Green

SENT
NOV 08 1984
Crime Lab
Criminalistics Bureau

ENTERED
T.T.

DATE AND TIME TYPED - DIVISION - CLERK

Approved By H. Truscott 1424 Officer(s) K. Groover K. GROOVER #904 Div. TSD Date 11-7-84

LVMPD 67 (REV. 2-75)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

DR 84-85217

CONTINUATION REPORT

ID

Page -2-

PROPERTY REPORT CONTINUED

MICROFILMED

	LOCATION RECOVERED
PACKAGE #4	
ITEM # 7. Expended bullet	Taken from the abdomen of Carl Gordon/given to me by Dr. Green
ITEM # 8. Expended bullet	Taken from the right forearm of Ca Gordon/given to me by Dr. Green
ITEM # 9. Expended bullet fragments	Taken from the head of Carl Gordon, given to me by Dr. Green
ITEM #10. Expended bullet fragments	Taken from the left chest of Carl Gordon/given to me by Dr. Green
PACKAGE #5	
ITEM #11. Green and gold men's pajama top containing red bloodlike substance and apparent bullet holes	Taken off body of Carl Gordon
PACKAGE #6	
ITEM #12. Gold men's pajama bottoms containing red bloodlike substance	Taken off body of Carl Gordon
PACKAGE #7	
ITEM #13. Beige with pink lace trim women's nightgown containing red bloodlike substance with apparent black powder burn on left shoulder	Taken off body of Colleen Gordon

K. Groover

K. GROOVER #904

SENT

NOV 08 1984

Crime Lab
Criminalistics Bureau

LVMPD TSD 15 (7-83)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
Criminalistics Laboratory
Request for Laboratory Examination

Authorization | Date 11-13-84
Requesting Officer M. Geary | Bureau/Detail ISD/Homicide
Incident MURDER (DOUBLE | DR# 84-85217
Victim CARL & COLLEEN GORDON
Suspect(s) DALE FLANAGAN / TOM AKERS

PLEASE DO NOT WRITE ON BACK OF FORM

MICROFILMED

Examination Requested

- [x] PHYSICAL EXAMINATION
  - [x] Firearm Comparison
  - [ ] Toolmark Comparison
  - [ ] Other (Describe below)
- [ ] DOCUMENT EXAMINATION
  - [ ] Handwriting Comparison
  - [ ] Other (Describe below)
- [ ] TOXICOLOGY
  - [ ] Blood Alcohol
  - [ ] Drug Screen (Drug suspected _____)
  - [ ] Other (Describe below)
- [ ] NARCOTIC ANALYSIS (Quantitation required [ ])
- [ ] BLOOD EXAMINATION/TYPING
- [ ] EXAM FOR SEMEN/SEMEN RESIDUES
- [ ] HAIR EXAMINATION/COMPARISON
- [ ] FLAMMABLE FLUIDS
- [ ] OTHER (Describe below)

RIFLES & COLT AUTO RECIEVED FROM (AKERS)

Description of Evidence/Special Instructions

TEST FIRE WEAPONS / COMPARE PROJECTILES AGAINST THOSE RECOVERED FROM VICTIMS.

Examining Officer Good | Date 11-14-84

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
Criminalistics Laboratory
Request for Laboratory Examination

NOV 19 1984
Crime Lab
Criminalistics Bureau

Appendix 116 00T224

Authorization SGT JERGOVIC | Date 11-15-84
Requesting Officer M. GEARY | Bureau/Detail ISD/Homicide
Incident Homicide (DOUBLE) | DR# 84-85217
Victim CARL & COLLEEN GORDON
Suspect(s) N/A

MICROFILMED

PLEASE DO NOT WRITE ON BACK OF FORM

Examination Requested

- [x] PHYSICAL EXAMINATION
  - [x] Firearm Comparison
  - [ ] Toolmark Comparison
  - [ ] Other (Describe below)
- [ ] DOCUMENT EXAMINATION
  - [ ] Handwriting Comparison
  - [ ] Other (Describe below)
- [ ] TOXICOLOGY
  - [ ] Blood Alcohol
  - [ ] Drug Screen (Drug suspected _____)
  - [ ] Other (Describe below)
- [ ] NARCOTIC ANALYSIS (Quantitation required [ ])
- [ ] BLOOD EXAMINATION/TYPING
- [ ] EXAM FOR SEMEN/SEMEN RESIDUES
- [ ] HAIR EXAMINATION/COMPARISON
- [ ] FLAMMABLE FLUIDS
- [ ] OTHER (Describe below)

SENT
JAN 07 1985
Crime Lab
Criminalistics Bureau

Description of Evidence/Special Instructions

TEST FIRE WEAPON (22 CAL. ARMINIUS) S/N. 239288 INFOUNDED UNDER DR# 84-85997 / COMPARE PROJECTILES AGAINST THOSE RECOVERED FROM VICTIMS

Examining Officer | Date

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

RECEIVED
NOV 19 1984
Crime Lab
Criminalistics Bureau

Criminalistics Laboratory

Request for Fingerprint Comparison ☒ Processing ☐

Authorization L. F. Lergovic Date 11/15/84

Requesting Officer B. LEVOS Bureau/Detail HOMICIDE

PLEASE CHECK THE FINGERPRINTS OF THE FOLLOWING SUBJECTS

Do not use this space

	Name	ID Number
1.	SMITH, RANDOLPH	636661
2.	FLANAGAN, DALE	737065
3.	GORDON, KARL ROBIN	PRINTS FROM KERN CO. CALIF. BAKERSFIELD
4.		
5.		
6.		

MICROFILMED

AGAINST THE LATENTS RECOVERED FROM THE FOLLOWING INCIDENTS

DR Number	Date	Incident
84-85217	11/6/84	MURDER

USE ADDITIONAL REQUESTS FOR ADDITIONAL SUSPECTS/INCIDENTS

Special Instructions or items to be processed:

SENT
DEC 03 1984
Crime Lab
Criminalistics Bureau

RESULTS OF LABORATORY EXAMINATION

____ A POSITIVE latent fingerprint comparison was affected between subjects(s) ____
and the latent fingerprints under DR No(s) ____
See Report of Laboratory Examination for details.

X Latent fingerprint comparison NEGATIVE subject(s) FLANAGAN - GORDON - SMITH

____ No latent fingerprints in file DR No(s)

X No palm prints available for comparison for subjects(s) FLANAGAN/GORDON

XXXXX SOME [redacted] LATENT PRINTS HAVE BEEN ELIMINATED TO THE VICTIM - CARL GORDON. - LIFTS BY #192
BOTH VICTIMS ELIMINATED, ALSO LISA LICATA.

Reviewer Carla Nezfiadoso Identification Specialist M. E. Moserizzy Date 11-27-84

LVMPD 107 (3-80)

Appendix 117

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CRIMINALISTICS BUREAU
REPORT OF LABORATORY EXAMINATION

DR. NO. 84-85217
DATE 11-15-84

SUBJECTS:
Carl Gordon (Victim)
Calleen Gordon (Victim)

SUBMITTING AGENCY: LVMPD
OTHER AGENCY DR.: N.A.
SUBMITTING OFFICER(S): R. Rodreick - K. Groover
REQUESTING OFFICER(S): B. Levos - M. Geary

MICROFILMED
ENTERED
CLH

INCIDENT: Homicide (2 Cts.)

EXAMINATION REQUESTED: See Below

Submitted-

1. One rifle by Rodreick.
2. One sealed evidence envelope by Rodreick containing one plastic bag containing one "CCI" (Omark Industries) "Stinger" .22 Long Rifle copper plated, hyper-velocity, hollow point cartridge.
3. One sealed evidence envelope by Rodreick containing one plastic bag containing one expended cartridge case of the same type and manufacture as (2) above.
4. One sealed evidence envelope by Rodreick containing one plastic bag containing one spent bullet and four plastic bags each containing one expended cartridge case of the same type and manufacture as (2) above.
5. One sealed evidence envelope by Rodreick containing two plastic bags, each containing one spent bullet.
6. One sealed evidence envelope by Groover containing four plastic vials, each vial containing bullets/bullet fragments.
7. One sealed evidence envelope by Groover containing two plastic vials, each vial containing one spent bullet.

Requested-

1. Latent fingerprint processing of rifle.
2. Comparison of submitted bullets with test fired bullets from rifle.
3. Examination of bullets/bullet fragments.
4. Examination of cartridge cases.

Results-

1. Latent processing of rifle - negative. No identifiable latent prints were recovered from the firearm. The rifle was a "Marlin" Model 25, .22 caliber bolt action rifle.
2. Bullet comparison - Negative. No identification was established between any of the submitted bullets and test fired bullets from the "Marlin" rifle.
3. Bullet examinations - Rodreick Item #7 - one deformed, .22 caliber copper-plated bullet weighing 20.4 grains. Three fibers were removed from the body of the bullet and were mounted on a slide by the E/O. Rifling was consistent with six lands and grooves. Rodreick Item #26-one extremely deformed copper plated bullet weighing 29.9 grains and covered with a white, plaster-like substance. The bullet was of no value for identification.

NOV 19 1984
Crime Lab
Criminalistics Bureau

ROUTE TO...
Dets. Levos & Geary...
Homicide Detail

EXAMINING OFFICER: R. G. Good Sr. R. G. Good Sr.
COMM. NO. 806
SUPERVISING OFFICER: Carla Nizzia 2830
RANK: Lt.

LVMPD INV SD 42 (12-74)

Rodreick Item #27 - One round nose copper-plated .22 Short bullet bearing eight lands and grooves with a right hand twist. A blood-like substance was noted on the bullet's nose. Several dark colored fibers were gathered from the nose of the bullet and were mounted on a slide by the E/O. Groover Item #7- Two copper-plated bullet fragments weighing 21.6 grains, consistent with Rodreick Item #7. Groover Item #8- one extremely flattened copper-plated round nose bullet weighing 29.4 grains, consistent with eight lands and grooves with a right hand twist. Groover Item #9 - two very small copper-plated bullet fragments weighing 3.0 grains and being of no value for identification purposes. Groover Item #10 - one copper-plated bullet fragment weighing 8.2 grains of no value for identification purposes. Groover Item #5 - one extremely deformed copper-plated bullet weighing 25.3 grains consistent with Groover Item #8. Groover Item #6 - one extremely deformed copper-plated bullet weighing 23.8 grains consistent with Groover Item #8.

4. Cartridge case examinations - All five of the submitted .22 Long Rifle cartridge cases by Rodreick were "CCI" "Stinger" hyper-velocity, copper-plated, hollow point cartridges and all were identified with each other, i.e. all were fired from the same firearm.

Conclusions-

1. Two types of ammunition were noted: "CCI" "Stinger" .22 Long Rifle and .22 Short copper-plated ammunition, consistent with "Winchester-Western" manufacture.
2. Two separate firearms were involved in the incident. Among the possible firearms used to discharge the .22 Long Rifle ammunition are the "Liberty" and "Unique" semi-automatic pistols, and the "Savage" models 6 and 29; the "Winchester" models 87, 87K and 288; and the "Stevens" model 87H rifles. Among the firearms used to discharge the .22 Short ammunition are revolvers mainly manufactured in West Germany known as "Rohm", "Burgo", "Emge", "Rosco", "Valor", "EIG", "Omega", "Liberty", "Bison" and "Arminius" and the American "RG Industries".

Disposition-

1. All items to be returned to the Evidence Vault.
2. Slides bearing the fibers obtained from the bullets were booked into evidence by the E/O.

R. G. Good Sr.

11-15-84 R. G. Good Sr. 806

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT DR NO. 84-85217

TYPE CRIME DOUBLE HOMICIDE

MICROFILMED

DATE OCCURRED 11-6-84 LOCATION OF

TIME OCCURRED OCCURRENCE

I, RONALD ANTHONY DAVIS, am 18 years of age, (DOB 4-5-66)

home phone 453-1039

and my address is 2342 North Pecos, Las Vegas, Nevada

bus. phone

The following is a voluntary statement being taken at the LAS VEGAS METROPOLITAN POLICE DEPARTMENT Detective Bureau on 11-24-84 at 0010 hours. Statement is in reference above DR number, reference Homicide victims CARL R. GORDON and COLEEN GORDON, occurring on 11-6-84. Persons present during this statement are RONALD ANTHONY DAVIS, DETECTIVE NORMAN ZIOLA, OFFICER R. CONBOY, and STENOGRAPHER IRENE HOTHAM.

Q. On today's date I had occasion to talk to your mother GWENDOLYN HINTON and stepdad. You may have some information regarding the GORDON Homicides?

A. Yes.

Q. She stated that you have been receiving phone calls from your stepbrother MICHAEL BRIAN WALSH, is that correct?

A. Yes.

Q. Can you tell me about these phone calls?

A. Yes.

I have read this statement consisting of _____ page (s) and I affirm to the truth and accuracy of the facts contained herein.

This statement was completed at (location) LAS VEGAS METROPOLITAN POLICE DEPARTMENT DETECTIVE BUREAU

on the 24th day of NOVEMBER at 0050 HRS. (AM/PM), 19 84.

WITNESS N. Ziola #563

WITNESS

Ronald A Davis
Signature of person giving voluntary statement

LVMPD 85 (12-76)

Q. When was the first phone call?

A. Like I said it was the same night that the GORDONS were killed. He had called me wanting to know my uncle's birthday and then he hung up.

Q. Did you give him your uncle's birthdate?

A. Yes.

Q. Did he say why he wanted it?

A. He said that they were having a party and if the police came he wanted to give them that.

Q. What he was doing, he wanted to use someone else's name and date of birth?

A. Yes.

Q. Did he say where he was calling from?

A. Uh, they were where they were living, at RANDY's.

Q. And RANDY's address is 337 North 13th, is that correct?

A. Yes.

Q. Do you know RANDY's last name?

A. MOORE.

Q. Did you subsequently receive any other phone calls?

A. Yes I did.

Q. When was the next one?

A. It was the following Friday.

Q. What was the basis of this phone call?

A. He started to tell me about the murders and that the police were after them. That they had a APB on them.

Q. Did he say why the police were after them?

WITNESS: Bjola #568 SIGNED: Ronald A Davis

WITNESS:

LVMPD INV SD 31 (1-80)

A. Yes, because he said they were trying to pin the murders on them, as he put it.

Q. Did he say who he was referring to as "them"?

A. Him, RANDY MOORE, DALE FLANIGAN, and DALE's friend, TOM.

Q. What was his state of mind when he called you that night?

A. He was scared.

Q. How did you tell he was scared?

A. Well, he started crying over the phone.

Q. Other than saying that the police wanted to talk to him and had a APB on him, did he make any other statements?

A. Just that the police were watching DALE at his trailer right beside the house.

Q. Did he say why the police were looking at them?

A. Yes, because of the murders.

Q. Did he say why the police suspected them?

A. No he didn't. He said because it was DALE's grandparents.

Q. Was there anything else in this phone conversation on that night?

A. No, that was about it.

Q. Was there any other phone calls after that?

A. There were two or three more phone calls. The next time he called just basically the same, you know, saying that they were not, you know, that they didn't do it. Each time he called me that was the first thing he said, was that they weren't in on it. The next time he called me was basically the same stuff, that the cops wanted to involve him on it.

Q. How many phone calls...

A. Did I receive?

WITNESS: Yola #568 SIGNED: Ronald A Davis

WITNESS:

Q. Yes.

A. I received between 3 and 5 phone calls.

Q. And in any of these phone calls did he admit that he had part in these murders?

A. No he didn't.

Q. Did he indicate who may have been involved?

A. No, just each time he called me he was just saying that they didn't do it.

Q. Other than the phone calls from your stepbrother, you discussed these murders with anyone else?

A. Just my parents and my girlfriend.

Q. And your girlfriend is DEWANA MANNING, White Female, DOB 2-11-68, residing at 4864 Tamalpais, Phone 456-2982 - that's correct?

A. Yes.

Q. Did you or DEWANA ever report any of these incidences to the police?

A. Yes, we called Secret Witness.

Q. Do you know when that was?

A. It was Wednesday night. I don't know the date.

Q. And basically what information did she give Secret Witness?

A. She got ahold of the lady and she started telling his name. She started to give the information. She got to the part about how he was making threats and she said alright and that's all she wanted to know. She said she would give it to Homicide.

Q. What threats was she referring to?

A. The threats he made against my stepdad.

WITNESS: Njola #568 SIGNED: Ronald A Davis

WITNESS:

LVMPD INV SD 31 (1-80)

Q. Can you tell us about those threats?

A. He called Monday or Tuesday night and he asked me if my stepdad was spreading rumors around. I said no he's not. He said tell him if he is it had better stop. And he said if it doesn't somebody's gonna get seriously hurt.

Q. Did you tell your stepdad about this threat?

A. I just told him tonight. Because if I would have told him then he would have gotten angry. I didn't want him going down there. Because I know for a fact they are capable of murder.

Q. You feel that your brother and friends are capable of murder?

A. Yes I do.

Q. Why?

A. Well for one thing the way my brother acts. He's cold blooded. The way he talks. You know, he said he would kill somebody and not think twice. And there's another one, JOHNNY LUCAS, and he's shot a couple people.

Q. Do you know for a fact he's shot somebody?

A. Yes.

Q. Do you know who he shot?

A. Yes.

Q. Who is that?

A. This one guy named TONY ALVARADO.

Q. Have the police ever been involved in that investigation?

A. No, they weren't, nothing ever happened on that.

Q. When did this occur?

A. This happened last summer. And just the way he talks; he's always talking

WITNESS: Yjola #568 SIGNED: Ronald A Davis

WITNESS:

about killing a spic - a Mexican.

Q. Earlier you told me of an occasion that you and DEWANA were at CIRCUS CIRCUS and you ran into someone. Can you tell me about that again?

A. We went up there on a Saturday night about two weeks ago. We went upstairs and I seen one of the guys I used to hang around with. His name is BOB - I don't know his last name, and we started talking. And he mentioned one of my friends grandparents got killed and he started saying that whoever did it had planned it and they planned it because the grandparents were worth a lot of money. That's why whoever did it. And he started saying something and he mentioned ROY McDOWELL's name. And then he stopped and he goes "no, not that ROY, another ROY". And he was telling me they were shot several times in the head and chest and that was about it.

Q. When BOB said one of your friends grandparents were killed, did he mention who the grandson was?

A. No he didn't.

Q. Do you know who it is?

A. Yes I do.

Q. Who is it?

A. DALE FLANIGAN, it was his grandparents.

Q. Do you know DALE FLANIGAN?

A. I've talked to him a few times.

Q. Do you feel that DALE FLANIGAN may have been involved in the deaths of his grandparents?

A. If it was for as much money as they said it was, yes.

WITNESS: N. Jiola #568 **SIGNED:** Ronald A Davis

WITNESS: _____

Q. Your stepdad may mention of ROY trying to sell him a gun?

A. No, that was JOHNNY LUCAS.

Q. JOHNNY LUCAS attempted to sell a gun to your stepdad, it was not anything about this?

A. He called me Wednesday night wanted to talk to my stepdad. I said he's not here, he's at work. He goes "alright, when he gets home ask him does he want to buy my .22". I said alright and that was that. He hasn't called back or anything.

Q. Do you think this weapon they tried to sell your stepdad may have been involved in the Homicide?

A. I think it might be. I know all the guns they had.

Q. What kind of guns does JOHNNY LUCAS have?

A. He's got that sawed off .22 and he was carrying a small .22 caliber pistol and that was it.

Q. The .22 caliber pistol, is that also JOHNNY LUCAS'?

A. No it was not.

Q. Who does that belong to?

A. ROY McDOWELL.

Q. Do you know if ROY McDOWELL still has the .22?

A. No I don't. The night that I went over to ROY's to talk to him, his mom and stepdad told me he had been arrested. And his stepdad started mentioning about how he was picking up bits and pieces about the killing and stuff. He mentioned somebody had come over. One of his friends. And ROY had mentioned something about getting rid of the gun.

Q. Who did ROY tell to get rid of the gun?

A. I think it was JOHNNY LUCAS.

WITNESS: N. Bjola #563 **SIGNED:** Ronald A Davis

WITNESS: _____

LVMPD INV SD 31 (1-80)

DR # 84-85217
VOLUNTARY STATEMENT OF:
RONALD ANTHONY DAVIS

Q. You don't know in fact if the gun has been disposed of or not?

A. No.

Q. What you're saying is that ROY McDOWELL has the .22 revoler and JOHNNY LUCAS has the sawed off .22 rifle?

A. Yes.

Q. And what you believe is that the revolver may have been disposed of and do you know where the .22 sawed off is?

A. I think it might be either at [redacted]'s house or at his mom and dad's house.

Q. Do you know where [redacted]'s mother and father reside?

A. No I don't.

Q. What kind of car does RANDY drive?

A. He doesn't.

Q. What kind of car does JOHNNY LUCAS drive?

A. He doesn't.

Q. Do any of the members of this group drive vehicles?

A. Yes they do.

Q. Who?

A. TOM drives a yellow El Camino. One of his other friends, JOHNNY RAY, drives an orange colored Ford Courier. And that's about it.

Q. Nobody else has any kind of cars? And the girls they hang around with?

A. One is a Chevy Blazer, a yellow Vega.

Q. Anybody have a Volkswagon?

A. Yes, they do, it's a white Baha Bug.

Q. Whose is that?

A. Some girl named DEBBIE.

WITNESS: [signature] #568 SIGNED: Ronald A Davis

WITNESS:

LVMPD INV SD 31 (1-80)

Q. Who drives that?

A. She does.

Q. Do all the members of this group have access to those vehicles?

A. If they don't drive them somebody does drive them around.

Q. You also made mention to me about some jewelry that your brother mentioned. Do you want to tell me about that now?

A. He had called me and he had mentioned that ROY had been arrested and he got the $200.00 he had been arrested with. And I asked him where he got it and at first he said he had sold his stereo and then he said "I traded some jewelry he got for the stereo" and ROY had sold the jewelry.

Q. Did your brother say where he got the jewelry at?

A. No.

Q. Did he describe the jewelry?

A. He said that one of them was kind of expensive and I think he said it was a diamond ring.

Q. Did he go into detail to describe the ring, to say what it was worth?

A. No, he just said it was an expensive ring.

Q. So he traded the jewelry he got some way to ROY for his stereo?

A. Yes.

Q. And then ROY sold the jewelry?

A. ROY had a friend sell the jewelry.

Q. Who is this friend?

A. ROBIN MORRISON.

Q. Do you know who ROBIN MORRISON sold the jewelry to?

A. No I don't.

WITNESS: Njola #568 SIGNED: Ronald A Davis

WITNESS:

LVMPD INV SD 31 (1-80)

Q. When ROY was arrested you said he had about $200.00 on him?

A. Yes.

Q. And did they say anything, if the $200.00 was in bills or coinage or anything?

A. Bills.

Q. Any denominations on the bills that you know of?

A. No.

Q. Have you had the occasion to talk to JOHNNY LUCAS?

A. Just that night he called me wanting to sell the .22 rifle.

Q. Did he say why he wanted to sell the .22 rifle?

A. No he didn't.

Q. Have you had further conversation with JOHNNY LUCAS?

A. No I haven't.

Q. Have you had any conversation with ROY McDOWELL?

A. Yes, he called me today.

Q. What did he say?

A. He called me twice and the first time he called me he just wanted to know what I had been up to. He told me he had to get off the phone and he would call me back later. About 15 to 20 minutes later he calls me back and he had mentioned that one of his friends had called him and the person who called him told ROY that my stepdad had told the police or somebody that ROY was the one that killed them both and he did it because he got $25,000.00. And he mentioned that he didn't like that - people talking like that.

Q. Have you had any other conversation with anybody else reference this?

A. No.

WITNESS: Nyola #563 **SIGNED:** Ronald A Davis

WITNESS: _____

LVMPD INV SD 31 (1-80)

Q. So all the information that your mother, stepdad, and DEWANA has came from you?

A. Yes, except for the night we were at CIRCUS.

Q. RON, is there anything else that you can recall during this time period that may be beneficial to us in this investigation?

A. MIKE called me a couple night ago and he was telling me about the police looking for RANDY because they thought he did it and they wanted him to come down and take a lie detector test. That was about it. Each time that he called me just about the first thing he said was they didn't do it. See, cause I hadn't talked to any of them for about a month and suddenly they started calling me. MIKE started calling me telling me about that. ANd then him and RANDY, they started saying why don't you come over and start visiting us. Before that they didn't want to have anything to do with me.

Q. You mentioned that your brother is cold blooded, do you feel that he is unstable?

A. Yes.

Q. What makes you think that?

A. Just the way he acts. He acts like killing somebody doesn't even phase him.

Q. I've received information that in their apartment on 13th Street, where your brother has been staying, that there might be some indication reference the devil, is there anything like that?

A. Yes, they are devil worshipers.

Q. Have they ever referred to you or made statements to you about this

WITNESS: Njola #568 SIGNED: Ronald A Davis

WITNESS:

Q. In your mind RON, who do you think would be the main people involved in this with your brother?

A. JOHNNY LUCAS, RANDY MOORE, and probably DALE FLANIGAN, and TOM. That's another thing, when my brother called me one time he told me ROY was saying I was talking to the police and I said no I wasn't. He started naming off names I was telling. He said that I told the police that MIKE was in on it, RANDY was in on it, DALE and TOM. At the time I didn't know whose grandparents it was and I hadn't talked to ROY. And the only ones I had talked to was my mom and stepdad. I didn't mention DALE and TOM's name and I got MIKE's name, JOHN LUCKET's name.

Q. But to the best of your knowledge noone you have talked to has made any admissions to you or anyone that they were involved in this?

A. No.

Q. Is there nothing else that can help us in this?

A. Nothing.

Q. All the answers you have given are true and correct to the best of your knowledge?

A. Yes.

Q. If you were asked these same questions in a court of law, would your answers be the same?

A. Yes.

Q. This statements will be transcribed and after that you will have occasion to review and make any correctsions, would you be willing then to sign it?

A. Yes.

Statement concluded on this same date, 0050 hours, same persons present.

WITNESS: W. Gola #568 SIGNED: Ronald A Davis

WITNESS:

LVMPD INV SD 31 (1-80)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

DR NO. 84-85217

TYPE CRIME DOUBLE MURDER

DATE OCCURRED 11/6/84 LOCATION OF

TIME OCCURRED _____ OCCURRENCE 5851 Washburn Road

I, WAYNE ERIC ALAN WITTIG, am 18 years of age,

home phone No Phone

and my address is 5324 Redberry #3

bus. phone _____

PERSONS PRESENT DURING THIS STATEMENT: WAYNE ERIC ALAN WITTIG

DETECTIVE B. LEVOS

LYNN DUNLOP, STENOGRAPHER

This is DETECTIVE B. LEVOS. This is a statement taken from WAYNE ERIC ALAN WITTIG, white male, 18 years of age, 4325 Redberry #3. This is in reference to the homicide under DR 84-85217, the homicide of MR. & MRS. CARL GORDON of 5851 Washburn Road, which occurred on 11/6/84.

Q: Wayne, do you understand that this statement that is being taken is also being recorded with a tape recorder in front of us?

A: Yes I do.

Q: Wayne, are you familiar with a white male adult by the name of DALE FLANAGAN?

A: Yes I am.

Q: How long have you known Dale Flanagan?

A: Between 2½ and 3 years.

I have read this statement consisting of _____ page (s) and I affirm to the truth and accuracy of the facts contained herein.

This statement was completed at (location) L.V.M.P.D. DETECTIVE BUREAU

on the 7th day of December at 11:00 (AM/PM), 19 84.

WITNESS _____

WITNESS _____

Signature of person giving voluntary statement

LVMPD 85 (12-76)

DR # 84-85217
VOLUNTARY STATEMENT OF:
WAYNE ERIC ALAN WITTIG

Q: What is the address that Dale Flanagan lived at?

A: I know he lives on Washburn. I know the house.

Q: Is that the residence of Mr. and Mrs. Carl Gordon?

A: Yes.

Q: Does Dale live in a trailer on that premises?

A: Yes he does.

Q: Wayne, what was your relationship with Dale Flanagan in the last two and a half years?

A: We were very close friends. He knew some good friends of mine and we got together and started putting up sheds together. Our friendship has been one of trust and kind of like brothers.

Q: Have you been out to the residence at 5851 Washburn Road, which is the residence of Mr. and Mrs. Carl Gordon?

A: Yes I have.

Q: Have you been inside of the residence?

A: Yes. Downstairs only.

Q: Have you also been inside Dale Flanagan's trailer?

A: Yes I have.

Q: At one time were you in a covend with Dale Flanagan?

A: Yes I have been.

Q: Would you relate what that is?

A: A covend is a gathering of a few people, five or six, who are linked in a manner using black and white magic. Dale was black magic and Randy was white magic and they were the leaders of the covend. The rest of us chose our magic accordingly.

Q: When you say Randy, are you referring to Randy Moore?

A: Randy Moore or Randy Smith. I know him by four or five names. The last one was Moore.

Q: Do you have any knowledge where Randy Smith lives at?

A: Randy lives out off of I-15 off of Decatur. The last house off Decatur. They moved to 13th Street.

WITNESS: _____ SIGNED: Wayne E A Wittig

WITNESS: B Lewis

LVMPD INV. SD 31 (1-80)

DR # 84-85217
VOLUNTARY STATEMENT OF:
WAYNE ERIC ALAN WITTIG

Q: When is the last time you seen or talked to Dale Flanagan?

A: I talked to Dale Flanagan the night before last or day before last. He called me. We were thinking of getting our shed business back together again and we were going over some prices.

Q: After the homicide of Mr. and Mrs. Carl Gordon, did you and Dale Flanagan get together?

A: I had called Mr. Dale in reference to what had happened. Mr. Dale was in a way looking for somebody to talk to. We had talked on different occasions about different things. He came over after I talked to him on the phone and we sat down in my room and we talked for probably an hour and a half.

Q: Is this the day after the Gordon's were found?

A: Yes it is. I had tried to contact him that night and there was no answer on his phone. He got hold of me the next day. He had somebody bring him over and we talked about it a little bit.

Q: When you say we talked about it a little bit, what did you discuss in reference to the homicide of the Gordon's?

A: He was very troubled about it. I had to beat it out of him you might say, but not physically. There had been some talk about him having problems with the grandparents and how he would get rid of them so to speak. He admitted to me that he was part of the homicide.

Q: Would you go into details of exactly what he said occurred the night before the homicide.

A: He had told me that there was a party over at Randy's house and that it moved over to Dale's trailer and Randy had brought up kind of in a way, "lets see what we could do about his grandparents". Apparently they had come up with the weapons sometime during the party and it was essentially Randy's idea to go over and have the grandparents removed. He said they had gone through the window and there was at least five or six of them. He came through the window next to the fire place. Mr. Gordon heard noise. He said the guns came through the window first. Mr. Gordon was exiting the bedroom toward the window that was broken and was shot. He said everything happened so fast. Somebody was trigger happy and that was why Mr. Gordon got shot so fast. Originally it was an idea to scare them. Somebody was trigger happy and got Mr. Gordon thinking he was going to get them. They finished coming through the window. The door, from what I understand, was open. They came through the window and turned to the right to go through the door.

Q: Are you referring to the downstairs bedroom door?

A: Yes. Dale used to live in that bedroom. Mrs. Gordon had chest problems and could not make it up the stairs so they moved into the lower bedroom. Mr. Gordon was lying on the floor and Mrs. Gordon was on the bed. From what I have been told,

WITNESS: _____ SIGNED: Wayne EA Wittig

WITNESS: B. Lewis

LVMPD INV. SD 31 (1-80)

she never had a chance to move. She was got on the bed. Awhile ago Dale brought me into the house where it happened and showed me the different bullet holes where it happened. There was a bullet in the corner behind the door. I was trying to figure out where that came from. There was another shot in the wall above the bed. I was trying to put together what he was telling me.

Q: Did Dale tell you who actually entered the house?

A: The only person he said who actually entered the house was him and Randy, but he said there was more. Dale does not have it in him to do something like that himself.

Q: Did he say who shot his grandmother?

A: No. He did not give specifics as to who pulled the trigger, but he did say that he didn't himself. I don't find that hard to believe.

Q: Did Dale Flanagan state that Tom Akers was at the residence?

A: No, but I have been told that they think he was there and Tom is the kind of person that hangs out with Dale and Randy and would go just to be with them.

Q: Does the name Mike Welsh mean anything to you?

A: I was questioned about that earlier and I am still trying to remember. I have heard it somewhere, but I have never seen him.

Q: Do you know a black juvenile by the name of Johnny Ray?

A: No.

Q: When you refer to Dale Flanagan as Mr. Dale, why do you call him Mr. Dale?

A: Mr. Dale and I were friends when we were working in the shed company. He had called me Mr. Wayne one day and it kind of stuck. Both of us know people in this town and it was a way to keep other people away from us because they thought we had muscle behind us.

Q: Did Dale ever tell you where they got the guns from reference the homicide?

A: No. The only thing he mentioned about the guns was that they were personal property of someone else and would never be found.

Q: Did he way what caliber they were?

A: One of them was a .22 rifle and the other was supposedly a .44.

Q: Did he say what occurred in the house after his grandmother and grandfather were murdered?

WITNESS: _____ SIGNED: Wayne EA Wittig

WITNESS: B. Lewis

LVMPD INV. SD 31 (1-80)

A: To make it look like a robbery they had went into the closet and had disturbed some things in the corner of the closet. They heard some noise outside, got scared and exited the premises, not giving them enough time to make it look like an actual robbery.

Q: Did Dale state to you what they removed from the house?

A: He did not state that they removed anything. He said there was a box that they moved in the corner. I don't know if they took anything out of it.

Q: Did he mention about taking his grandmother's ID from her purse?

A: No.

Q: Did he mention anything about his grandmother's $2 bill collection?

A: No.

Q: Did he mention anything about his grandfather's attache case?

A: I knew there was some important papers in it, but I did not know he took anything out of it.

Q: You say his grandfather had some important papers in the attache case?

A: The attache case I know of. I have never seen it, but there was some talk between Mr. and Mrs. Gordon in the months previous that there were some mortgage papers on the house and some deeds and some papers on assets that he had kept.

Q: Did Dale ever mention to you if his grandfather had a will?

A: No. They were wondering where it was after the murder, but he did not mention specifically that he or they were looking for it.

Q: What did Dale tell you in reference to his inheritance if his grandmother and grandfather were dead?

A: His inheritance meant nothing to him. The only thing he would get was a place to stay. He thought he might get some of the house, but he said it did not make a difference to him anyway.

Q: Wayne, you are telling me that Dale stated to you that there was five or six that went into the house?

A: Yes.

Q: But the only one that he specifically mentioned was Randy Smith or AKA: Randy Moore?

A: Yes.

Q: How well do you know Randy Moore?

WITNESS: _____ SIGNED: Wayne E A Witt

WITNESS: B. Lewis

A: Two years ago he was living in an apartment a few apartment buildings down from where I was living. His wife, who was having problems with the way Randy was sleeping with everybody, and I got to be pretty good friends and one night he pulled a double 12 gauge on me thinking I was sleeping with his wife. On a number of occasions he has gone after me to bodily harm me. One night he was driving his truck and I was chased for a good 20 miles and if it was not for the fact that I knew how to drive, I probably would have been shot because he had a rifle.

Q: Do you know if Mr. and Mrs. Gordon told Dale to stay away from Randy Moore?

A: They had expressed the opinion that Randy was not allowed on the premises. One evening I pulled up in a truck that looked like Randy's and Mr. Gordon came out and thought I was Randy and was going to remove my body from the premises.

Q: Did Dale ever tell you if the guns were returned to the original owners after the homicide?

A: I assume that they were. He said that they were not to be found, that they were personal items of somebody.

Q: Wayne, I am showing you a knife that we had located on the outside of the residence at 5851 Washburn on 11/6/84. Do you recognize that knife?

A: Yes I do. The knife was bought before I left for Phoenix because the previous knife he owned similar to that had been stolen. The knife looks like Mr. Dale's. Something that also leads me to believe it is his is it has been burned, which would be from a covend.

Q: When you are referring to it being burned, are you referring to the discoloration on the tip of the knife?

A: Yes.

Q: And an excessive amount of heat given to the tip of the knife?

A: Definitely.

Q: Did Dale ever tell you who cut the screen on the outside of the window?

A: I was not lead to believe there was a screen.

Q: Did Dale tell you how the window got busted?

A: The window got busted by the .22 rifle that went into the window first. It made the initial impact.

Q: Did Dale indicate to you that his grandfather was coming down the stairs to see what was going on when the window was busted?

A: Mr. and Mrs. Gordon were in the bedroom and Mr. Gordon was coming alongside the bed toward the door.

WITNESS: _____ SIGNED: Wayne E A Wittig

WITNESS: _____

LVMPD INV. SD 31 (1-80)

DR # 84-85217
VOLUNTARY STATEMENT OF:
WAYNE ERIC ALAN WITTIG

Q: When Dale was showing you the house after the homicide, did you observe any blood or anything on the walls?

A: No. The holes had recently been patched. The Spackle on the walls showed discoloration where they had just been patched. There was a large blood stain on the rug next to the bed.

Q: Did Dale say where he and Randy Moore went to after the homicide?

A: No. He said nothing.

Q: Is there anything else you want to add to this statement?

A: Mr. Dale, in my opinion, does not have the conscious capabilities of taking someone's life. Randy Moore, on the other hand, would not think twice about it. He almost did me in a couple of times.

Statement concluded at 1100 hours. Same persons present.

WITNESS: _____ SIGNED: Wayne E A Wittig

WITNESS: _____

LVMPD INV. SD 31 (1-80)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT DR NO. 84-85217

TYPE CRIME DOUBLE HOMICIDE

MICROFILMED

DATE OCCURRED 11/6/84 LOCATION OF 5851 WASHBURN ROAD

TIME OCCURRED APP. 1645 HRS. OCCURRENCE LAS VEGAS, NEVADA

I, ANGELA MARIE SALDANA (DOB: 12/4/64), am 20 years of age, home phone 877-9891

and my address is 4308 SNEAD, LAS VEGAS, NEVADA bus. phone

This is a statement under DR# 84-85217. Subject is Homicide; Date and time occurred: 11/6/84 at approximately 1645 hours; Place of occurrence: 5851 Washburn Road. (1) Victim: CARL RICHARD GORDON, (2) Victim: COLLEEN KATHRINE GORDON. This is a statement from ANGELA MARIE SALDANA, WFA, 20 years, 4308 Snead Avenue, Las Vegas, Nevada, Phone: 877-9891. Present also at this interview is OFFICER RAYMOND BERNI, P#1488, and STENOGRAPHER PEGGY McGINNIS, P#610, and DETECTIVE B. LEVOS, P#144, Metro Homicide. Today's date is 12/6/84. Time is 2320 hours.

Q: ANGIE, are you familiar with a white male adult by the name of DALE FLANAGAN?

A: Yes.

Q: How did you come to know DALE FLANAGAN?

A: I met him in a night club with a girlfriend.

Q: When did this occur?

A: Approximately a month ago.

Q: Which night club did you meet him at?

A: Bogies.

I have read this statement consisting of 10 page (s) and I affirm to the truth and accuracy of the facts contained herein.

This statement was completed at (location) LVMPD DETECTIVE BUREAU

on the 7TH day of DECEMBER at 12:20 A.M. (AM/PM), 19 84.

WITNESS

WITNESS B. Levos P-144

Angela M. Saldana
Signature of person giving voluntary statement

LVMPD 85 (12-76)

DR # 84-85217
VOLUNTARY STATEMENT OF:
ANGELA MARIE SALDANA

Q: Where is Bogies located at?

A: At the end of the Strip.

Q: Are you familiar with MR. and MRS. CARL GORDON, DALE's grandma and grandpa?

A: Yes but I never met them.

Q: Are you aware that MR. and MRS. CARL GORDON are victims of a homicide?

A: Yes I am.

Q: Are you also aware that DALE FLANAGAN is the grandson of MR. and MRS. CARL GORDON?

A: Yes I am.

Q: Since the homicide of MR. and MRS. CARL GORDON, which occurred on 11/6/84, have you had any information in reference as to how they were killed?

A: Yes I do.

Q: What information do you have in reference and how they met their death?

A: Well, DALE FLANAGAN had informed me that he had done it himself alwong with his brothers, RANDY and JOHNNY RAY.

Q: DALE FLANAGAN told you that he had killed his grandma and grandpa?

A: Yes.

Q: When did he tell you this?

A: Last night.

Q: That would be 12/5/84?

A: Yes.

Q: Where did he tell you this at?

A: In his trailer on the grandparents property.

Q: Is that at 5851 Washburn Road?

A: Yes.

Q: ANGIE, are you at this time living with DALE FLANAGAN?

A: Yes I am.

WITNESS: _____ SIGNED: Angela Saldana

WITNESS: Cee Leaumont P189

LVMPD INV SD 31 (1-80)

DR # 84-85217
VOLUNTARY STATEMENT OF:
ANGELA MARIE SALDANA

Q: How long have you been living with DALE FLANAGAN in his trailer?

A: Since the day after the murder, for approximately a mongh.

Q: ANGIE, are you familiar with a subject by the name of RANDY MOORE?

A: Yes.

Q: How did you get to know RANDY MOORE?

A: DALE introduced me to him as his brother.

Q: Have you ever been over to RANDY MOORE's residence on North 13th Street?

A: Yes I have.

Q: Are you also familiar with a white male adult by the name of MIKE WELCH?

A: Yes I am.

Q: Where did you meet MIKE WELCH at?

A: At the same address as RANDY.

Q: On North 13th Street?

A: Yes.

Q: Are you also familiar with a white male adult by the name of TOM AKERS?

A: Yes I am.

Q: Is TOM AKERS a friend of DALE FLANAGAN?

A: Yes he is.

Q: Do you know what kind of car TOM AKERS has?

A: A yellow El Camino

Q: Are you also familiar with a black male adult by the name of JOHNNY RAY?

A: Yes I am.

Q: Where did you meet JOHNNY RAY?

A: Approximately three years ago in a trailer court.

Q: Does JOHNNY RAY associate with RANDY MOORE, TOM AKERS and DALE FLANAGAN?

A: Yes he does.

WITNESS: _____ SIGNED: Angela Saldana

WITNESS: Cal Lewis P-189

DR # 84-85217
VOLUNTARY STATEMENT OF:
ANGELA MARIE SALDANA

Q: Does he also live or associate with those subjects at North 13th Street?

A: Yes he does.

Q: Did DALE FLANAGAN ever discuss the homicide of MR. and MRS. GORDON to you in the last several weeks?

A: Not very much.

Q: ANGIE, when you say not very much, did he discuss the homicide of his grandparents to you in any way?

A: Yes he did.

Q: What did he say to you?

A: After he got done speaking with the Officers, he sqid that they had found something of his that shouldn't have been there, and I asked what was it, and he said "my knife".

Q: Did he tell you where the police had said they found the knife?

A: By the window.

Q: Did he tell you that, that was his knife?

A: Yes he did.

Q: After he had told you about finding the knife, did he have conversation with you in the trailer in reference to another knife?

A: Yes he did approximately a week after.

Q: What was the conversation? What happened?

A: Well, he pulled out the knife, a second knife. He said "Look, I found my knife", and it looked identical to the other knife, the first one. I said "That doesn't look like the other knife. That one looks new". He said "Yeah, but nobody else would know that. Now the cops don't have anything on me".

Q: ANGIE, I'm showing you a knife. This is the knife we found at the residence outside a cut screen. Does this look like the knife DALE ahs now?

A: Yes it does.

WITNESS: _____ SIGNED: Angela Saldana

WITNESS: G. L. Lamm #P-189

Q: ANGIE, after DALE FLANAGAN had shown you this knife in the trailer, did you make contact with a Las Vegas Metropolitan Police Officer?

A: Yes I did.

Q: And which Police Officer did you make contact with?

A: OFFICER RAY BERNI.

Q: Did you know him previously?

A: Yes I did.

Q: ANGIE, did you, in fact, meet with OFFICER BERNI in reference to some information on the homicide of MR. and MRS. CARL GORDON?

A: Yes I did.

Q: Would you go into detail of how you met OFFICER BERNI and what you had with you at the time you met OFFICER BERNI?

A: I had called RAY BERNI the previous night. We set up an appointment to meet at a certain place and certain time. I had to show him a knife that DALE had bought and told him what DALE had told me, that he had bought it, that he was giving everyone the impression that he had found his old knife and that the cops didn't have anything on him now.

Q: Previous to 12/5/84, did DALE FLANAGAN ever mention to you of anybody that he believed had killed his grandma and grandpa?

A: He had only said one time to a girlfriend of mine that he knew who did it, how it was done and the cops can't touch him.

Q: Who is the girlfriend that you're referring to?

A: KIM GRIGGS.

Q: On 12/5/84, did DALE FLANAGAN talk to you about the homicide of his grandma and grandpa?

A: We had gotten into an argument approximately 10:30 last night, December 5th, over an

WITNESS: _____ SIGNED: Angela Saldana

WITNESS: C.L. Lamont P-189

old boyfriend and he told me he did not care what I did any more. He didn't care about anything. He was tired of running. He just didn't care. Then he stopped and he said, "I know what happened, who did it, how it was done, and why it was messed up". He said, "How do you like this? I did it. I killed my grandparents". Then he went into a description of how it was done.

Q: How did he say it was done?

A: He said that he planned it as it would look like a robbery and that himself, TOM, JOHNNY RAY, RANDY and MIKE were all there.

Q: When you say TOM, JOHNNY RAY, MIKE and RANDY, are you referring to TOM AKERS, RANDY MOORE, JOHNNY RAY and MIKE WELCH?

A: Yes.

Q: Did he go into detail what occurred?

A: Yes he did.

Q: Would you go into detail of what he told you?

A: He said that he gave RANDY the knife to cut open the screen and that it wasn't working good and RANDY threw it down on the ground. Then DALE broke the window, got in the house, wrestled his grandmother to the bed, put his hand over her mouth. Then he shot her. As that was happening, he didn't say if RANDY or MIKE or JOHNNY RAY had gotten into the house but I imagine that they did. As he was doing that, his grandfather was coming down the stairs and JOHNNY RAY and RANDY were throwing shots at him.

Q: Did DALE say how many times he shot his grandmother?

A: He said once in the head.

Q: Did DALE tell you what type of gun he used to shoot his grandmother?

A: No he didn't.

Q: Did DALE say who shot his grandpa? Was it JOHNNY RAY or RANDY?

A: It was both.

WITNESS: _____ SIGNED: Angela Saldana

WITNESS: Cel Lecant P-189

DR # 84-85217
VOLUNTARY STATEMENT OF:
ANGELA MARIE SALDANA

Q: Did he say what type of gun they had?

A: No he didn't.

Q: Did DALE ever mention what happened to the guns that they used in the homicide?

A: No he didn't.

Q: You stated that DALE had told you that while he was killing his grandma, that RANDY and JOHNNY RAY were throwing shots at his grandpa while he was coming down the stairs. Is that correct?

A: Yes.

Q: Did DALE say if MIKE WELCH come into the hous?

A: No, but he did say that he was with RANDY and JOHNNY RAY.

Q: What did DALE tell you what he did in the house after he had killed his grandma?

A: He said that he went into the living room closet and took her purse so that it would look like a robbery.

Q: What did he say he did with the purse?

A: He didn't say he did anything with the purse.

Q: Did he indicate to you if he removed any of his grandma's identification out of the purse?

A: No he didn't.

Q: Did he ever say anything about a $2 bill collection that his grandma had?

A: No he didn't.

Q: Did he ever say that he got any large amount of money out of the house?

A: No he didn't.

Q: Did he indicate to you if he had gone in any other part of the house or attempt to ransack or take anything out of the house?

A: No he didn't.

Q: ANGIE, did DALE tell you why he killed his grandma and grandpa?

WITNESS: _____ SIGNED: Angela Saldana

WITNESS: A. Lewis P-185

A: It was rumored to him that half of the property would go to him and half would go to his uncle or all of it would go to DALE.

Q: ANGIE, when you say half the property, did DALE indicate to you there was any large amount of insurance money or money in the bank or money he would receive upon their death?

A: He did say something about an insurance policy th t was for all the grandkids.

Q: Did he have any knowledge how big this insurance police was?

A; I think he said it was $200,000.00.

Q: Did he ever indicate to you that he had possibly removed his grandpa's attache case out of his grandpa's trunk?

A: No.

Q: Did he go into detail of what he and his accomplices did after they ahd murdered MR. and MRS. GORDON?

A: He only said that they went back to RANDY's house on 13th Street and that DALE was supposed to come back and find his grandparents but he didn't get a ride in time enough and someone else had found them before he did.

Q: When you say someone else, was he referring to LISA, his old girlfriend?

A: Yes he was.

Q: ANGIE, did DALE indicate to you how many shots RANDY and JOHNNY RAY had fired at his grandpa?

A: He said that they thought they had hit him seven or eight times.

Q: ANGIE, you stated before that you had seen the gun that MIKE WELCH carried. What type of gun is that?

A: It is an automatic chrome gun.

Q: Is it a small gun?

A: Yes it is.

WITNESS: _____ SIGNED: Angela Saldana

WITNESS: A. LaCourt P-189

DR # 84-85217
VOLUNTARY STATEMENT OF:
ANGELA MARIE SALDANA

Q: Is it a .22 caliber?

A: I think it is.

Q: How large a gun is it?

A: It's about palm length.

Q: ANGIE, have you seen MIKE with his gun after the homicide of MR. and MRS. GORDON?

A; Yes I have.

Q: Where did you see it?

A: In MICHAEL's room.

Q: And where is that at?

A: It's at RANDY MOORE's apartment on North 13th.

Q: When is the last time you seen this gun?

A: About two weeks ago.

Q: ANGIE, is there anything else you can add to this statement?

A: There's nothing else to my knowledge.

STATEMENT CONCLUDED ON 12/7/84 AT 0020 HOURS, SAME PERSONS PRESENT----------

(This is a continuation of the above statement taken on 12/7/84 at 0040 hours from ANGELA MARIE SALDANA and DETECTIVE B. LEVOS by STENOGRAPHER P. McGINNIS.)

Q: Did you have occasion to talk to TOM AKERS about the homicide?

A: Yes.

Q: When did you talk to TOM AKERS?

A: Approximately 2½ weeks ago.

Q: What did he relate to you in reference to the homicide of the GORDONS?

A: Well, I asked him if DALE had in any way, shape or form, have anything to do with the murder and he said he couldn't talk about it but he could tell me this much; that it was dangerous for me to stay there with DALE and I asked him if he was a victim of circumstance or if he knew what was going on and he said victim of circumstance.

WITNESS: _____ SIGNED: Angela Saldana

WITNESS: A. Levos P183

Q: On 12/5/84 when DALE FLANAGAN was relating to you how he was involved in the murder of his grandma and grandpa, what did he say how TOM AKERS was involved in it?

A: He just said that he was the driver. He didn't come near the house. He was just parked on the road. TOM had said to me when he said he was the victim of circumstance that he thought they were just going to rip off the GORDON's house as a burglary.

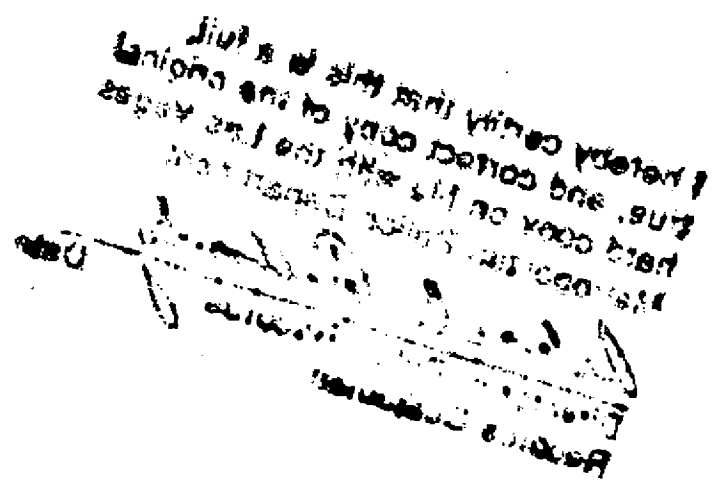
Q: Did you have conversation with TOM later in reference to the homicide? Did he say to you that he heard the shots while he was at the residence?

A: Yeah, he told me he heard the shots and he knew everything was wrong.

Q: Is there anything else you can add?

A: That was the only thing.

STATEMENT CONCLUDED AT 0045 HOURS, 12/7/84, PERSONS PRESENT BEING ANGELA MARIE SALDANA, DETECTIVE B. LEVOS AND STENOGRAPHER PEGGY McGINNIS----------



WITNESS: _____ SIGNED: Angela Saldana

WITNESS: Al Lacuitt P-189

LVMPD INV SD 31 (1-80)

VOLUNTARY STATEMENT

ID/DR 84-85217

DATE 12/7/84 TIME 1410 hrs. PLACE L.V.M.P.D. DETECTIVE BUREAU

I, THOMAS LEWIS AKERS, AM 17 YEARS OF AGE,

AND MY ADDRESS IS 6613 Pearblossom
Phone: 645-4034

MICROFILMED

WARNING: BEFORE YOU ARE ASKED ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS

I am DET. B. LEVOS of the Las Vegas Metropolitan Police Department, and inform you that:

(1) YOU HAVE THE RIGHT TO REMAIN SILENT.
(2) IF YOU GIVE UP THAT RIGHT TO REMAIN SILENT ANYTHING YOU SAY CAN AND MAY BE USED AGAINST YOU IN A COURT OF LAW.
(3) YOU HAVE THE RIGHT TO SPEAK TO AN ATTORNEY BEFORE ANSWERING ANY QUESTIONS, AND TO HAVE AN ATTORNEY PRESENT WITH YOU WHILE YOU ANSWER ANY QUESTIONS.
(4) IF YOU CANNOT AFFORD AN ATTORNEY, AN ATTORNEY WILL BE APPOINTED FOR YOU BY THE COURT AT NO COST TO YOU, AND YOU NEED NOT ANSWER ANY QUESTIONS UNTIL THAT ATTORNEY HAS BEEN APPOINTED FOR YOU.
(5) IF YOU DECIDE TO ANSWER QUESTIONS NOW, YOU MAY STOP AT ANY TIME AND ASK TO TALK TO AN ATTORNEY BEFORE ANY QUESTIONING CONTINUES.
(6) IF YOU DECIDE TO STOP ANSWERING QUESTIONS ONCE YOU HAVE BEGUN, ALL QUESTIONING WILL STOP.

WAIVER: I HAVE READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO MAKE A STATEMENT AND WAIVE THESE RIGHTS. I DO NOT WANT A LAWYER PRESENT WITH ME DURING THE MAKING OF THIS STATEMENT. I KNOW THAT I MAY REVOKE THIS WAIVER AT ANY TIME DURING THE QUESTIONING AND ASK THAT AN ATTORNEY BE PRESENT. NO PROMISES OR THREATS HAVE BEEN MADE TO ME, AND NO PRESSURE OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME.

1 This statement is being taken in reference to the homicide of CARL R. GORDON
2 and COLLEEN K. GORDON which occurred on 11/6/84. Persons present in the interview
3 are MR. AKERS, DETECTIVE B. LEVOS and stenographer LYNN DUNLOP.
4 Q: Thomas Akers, were you advised of your rights per the Miranda Decision by
5 Detective Levos?
6 A: Yes.
7 Q: Did Detective Levos hand you a rights of person arrested card and you read it
8 out loud in the presence of Detective Jordan and Detective B. Levos?
9 A: Yes, but Detective Jordan left about half way through.
10 Q: Did Detective Jordan advise you of your rights previous to Detective Levos?
11 A: Yes.

I HAVE READ THIS STATEMENT CONSISTING OF 9 PAGE(S) AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED THEREIN.

THIS STATEMENT WAS COMPLETED AT 2:50 P.M. ON THE 7th DAY OF December, 19 84

WITNESS:

WITNESS: Michael R. Leary

Tom L Akers
SIGNATURE OF PERSON GIVING VOLUNTARY STATEMENT.

LVMPD 93 (REV. 8-76)

DR # 84-85217
VOLUNTARY STATEMENT OF:
THOMAS LEWIS AKERS

Q: After reading the card, did you sign the card?

A: Yes. I signed it and put the time down.

Q: Tom, have you talked to Detective Levos previous to today in reference to the homicide of Mr. and Mrs. Gordon?

A: Yes, once and I talked to Officer Knudsen once.

Q: At the time you talked to Detective Levos, did you advise Detective Levos that you had contacted attorney Bucky Buchanan?

A: I asked him a couple questions.

Q: Have you obtained Mr. Buchanan as your attorney in reference to this case?

A: No.

Q: Are you willing to give us a statement as to the knowledge you have of the homicide of Mr. and Mrs. Gordon without the presence of an attorney?

A: Yes.

Q: Tom, are you acquainted with a white male adult by the name of Dale Flanagan?

A: Yes.

Q: Where does Dale Flanagan live?

A: In a trailer next to the house in question.

Q: Is that 5851 Washburn Road?

A: There is a different address for the trailer.

Q: But that is next to the Gordon residence?

A: Yes.

Q: Are you also familiar with a subject by the name of Randy Smith?

A: Yes, alias Moore and one other name I don't know.

Q: Are you also familiar with a subject by the name of Johnny Ray?

A: Yes, I don't know his last name.

Q: Is he a black male?

A: Yes. He is a minor, age 17.

WITNESS: _____ SIGNED: Tom L Akers

WITNESS: Michael R. Gray

LVMPD INV. SD 31 (1-80)

DR # 84-85217
VOLUNTARY STATEMENT OF:
THOMAS LEWIS AKERS

Q: Where does he live at?

A: On 13th Street with Randy.

Q: Are you familiar with a subject by the name of Mike Welch?

A: Yes. He is a runaway TLA and is 17 years old and he lived at the house on 13th Street.

Q: I am showing you a Metropolitan Police Dept. color mug photo #637160. Who is that photograph of?

A: That is Mike Welch.

Q: Are you also familiar with a subject by the name of Roy McDowell?

A: Yes.

Q: I am showing you a Metropolitan Police Dept. color mug photo #634731. Who is that photograph of?

A: That is Roy.

Q: How long have you known Dale Flanagan?

A: About five or six months.

Q: Since you have known Dale Flanagan, have you been over to the Washburn residence numerous times?

A: About three times. I have been in the house one time prior to the homicide.

Q: At the time you were in the house, did you meet Mr. and Mrs. Carl Gordon?

A: Yes. I met them before ~~that~~, I HAD ~~but had never~~ TLA gone into the house.

Q: To your knowledge, has Dale Flanagan ever mentioned that if his grandmother and grandfather were to die that he would inherit a lot of money?

A: He said he was in the will and they do have quite a bit of money.

Q: To your knowledge, did he ever attempt to contact anybody to kill his grandmother and grandfather?

A: The people in question and the two others that know about it.

Q: Did Dale Flanagan offer these people money to kill his grandmother and grandfather?

A: No. NOT THAT I KNEW TLA

WITNESS: _____ SIGNED: Tom L Akers

WITNESS: Michael R. Gleason

LVMPD INV. SD 31 (1-80)

Q: Going back to 11/5/84, were you at the residence of Randy Smith, AKA: Randy Moore on North 13th Street?

A: That was the night that it happened.

Q: Monday night is 11/5/84. The Gordon's were found on 11/6/84 at approximately 1700 hours.

Q: Yes. I was there. We were at the residence at approximately 1:00 AM.

Q: On 11/6/84?

A: Right.

Q: Tom, would you go into details of what occurred on 11/5/84 in the late evening hours when you were in the company of Dale Flanagan, Randy Smith and other subjects that you will mention?

A: I picked Dale up at I don't know exactly what time. We went to Wendy People's house to visit Dale's girlfriend, Angie. Then from there we left and went down to the house on 13th Street rented by Randy Moore, AKA: Smith. We sat around there for awhile. They showed me some guns. I still didn't think it actually would happen. I didn't think anybody in their right mind would kill their grandparents. Then we went to Circle K or 7-Eleven off 13th. You go down and get on the freeway. Then we put some gas in my tank. From there....

Q: You said when you left Randy Smith's apartment on North 13th, that there was some guns put in ~~your trunk~~? The Back of my Truck TLA

A: Three. A pistol, what make I don't know. I think it was a Smith & Wesson. It was old and ragged, six shot.

Q: Who had that one?

A: Dale Flanagan. All three were in the back when we left. There was a sawed off rifle, single shot, bolt action.

Q: Do you know the name of it?

A: No. There was a semi-automatic rifle. I think it was a regular shot .22. And Randy Moore was supposed to be using that. Johnny Ray was supposed to be using the sawed off.

Q: When you were at the residence on North 13th Street, did Randy Moore, Dale Flanagan and Roy McDowell, Johnny Ray and Mike Welch talk about killing the Gordon's?

A: Yes.

Q: What was actually said?

WITNESS: _____ SIGNED: Tom L Akers

WITNESS: Michael R Geary

LVMPD INV SD 31 (1-90)

A: They said that we go down there. I thought they were joking. I could go get the tapes from the trailer house and they would go in and do what needed to be done. From there I would come back out to the car and take them home. I thought they were pulling a little joke on me. When I went to the trailer, they were still at the car.

Q: Tom, when you left the residence of Randy Smith on North 13th Street, did you have knowledge that the subjects you mentioned were going to the Gordon residence to commit a burglary?

A: That is what they told me. Dale told me before they were making it look like a burglary.

Q: To you knowledge, did you know they were going to kill the Gordon's?

A: That is what they were implying. I thought it was a joke.

Q: You stated you stopped at a gas station and put gas in your truck. Where did you proceed to then?

A: Up that road and got on the freeway and we went to Craig Road. From there we went down Jones and all the way out Jones to a mile past where it is paved. Randy shot the semi-automatic rifle.

Q: Did anybody else shoot any guns out there?

A: No.

Q: At this time did Dale Flanagan have the .22 revolver that you described?

A: Not in the front. It was still in the back of the car.

Q: Who had the sawed off .22 rifle?

A: That was in the back too.

Q: After Randy Smith had shot the gun out there in the desert, where did you proceed to?

A: To the address of 5851 Washburn.

Q: What occurred there when you got in front of the residence?

A: They stayed at the car talking. I went directly to the trailer house inside and started putting the tapes in order arranging them. I heard a dull thud twice and then heard a window break. From there I started to wonder what was going on and was a little naive. I just wanted the hell out of there. I started walking ~~out~~ to the door. I heard some shots and heard a man yell. I stood at the door. I did not here anything else so I walked out the door to the car and dropped the tape case twice. I tried to start my car and it would not start. I lifted the hood and by that time, everybody was at the car and

WITNESS: _____ SIGNED: Tom L Akers

WITNESS: Michael R Gray

in their seats. I banged on the battery post and there was a wire that was messed up. I got in the car and it started. Then I went down Washburn and made a right and went down two streets, turned on my lights on the second street. Went up that street some more and then I went straight up Lone Mountain half between the freeway and the mountain. They ran out in the desert and I sat there. Two cars passed. They threw the bullets out. They were going to hide the guns and decided it was not a good move and they kept them. I said I didn't want the guns near me and they said just take us to Randy's house. From there I proceeded to the address on 13th Street, Randy Moore's house. They had about a case of beer. We played quarters. The beer was gone and Randy borrowed my car to take Johnny home. From there, I sat down ~~on the car~~ and Dale Flanagan passsed out in Randy's bedroom. Everyone was asleep and I sat on the chair. I kept waking up. Randy came home and we talked a little bit and then I got in my car and went home.

Q: What time did you get to the Gordon residence?

A: Between 12:30 and 1:30 AM on 11/6.

Q: Do you know who actually entered the house at the Gordon residence?

A: To my knowledge, everyone entered. DUE ME TLA

Q: Do you know or did anyone tell you who did the shooting?

A: I was told that the revolver was Dale Flanagan's. The automatic was for Randy Moore to use and the sawed off was for Johnny Ray to use.

Q: Is that the way they were used in the murder?

A: I can not say for certain, but in my mind that is how IT HAPPENED TLA

Q: Did Dale Flanagan say he killed his grandmother?

A: Dale Flanagan said he emptied the gun.

Q: Into his grandmother?

A: He just said he emptied the gun. I think it was both.

Q: Did Randy Smith at any time say to you who he shot?

A: No. He said he saw someone coming down the steps or he was standing there and Johnny Ray shot at the same time that Randy shot.

Q: Did Johnny Ray ever make a statement to you that he did some shooting?

A: No, not directly to me. I heard him talking to Randy when we got back to the house. He shot the sawed off. He did not think he hit him. He reloaded and by that time everything was over.

WITNESS: _____ **SIGNED:** Thomas L Akers

WITNESS: Michael R Gray

Q: He made that statement to Randy?

A: He made that statement to the people that were there.

Q: Did Dale Flanagan have anything in his possession when he came out of his grandfather's residence?

A: No. When we got back to Randy's house, they had the grandmother's billfold or pocket book out of the purse with the credit cards and everything.

Q: Do you have any knowledge what happened to the wallet and credit cards of Mrs. Gordon?

A: I was told they were burned.

Q: To your knowledge, did anybody use any of the credit cards?

A: No. Dale said no one was to use the credit cards because that was the worst thing they could do at that time.

Q: Did Dale mention to you that he had gone into that closet or disturbed anything in the house?

A: I think they mentioned the lower closet was opened and the grandmother's purse was dumped. I think the couch was moved.

Q: Why did they do this?

A: I think they were looking for something, some money or something. I guess they were trying to make it look like a robbery.

Q: Did Dale Flanagan ever mention to you about his grandmother's $2 bill collection?

A: He mentioned to me because we went to 7-Eleven once and they ~~have~~ handed him a $2 bill. Dale had provided every $2 bill in that collection. About a week later when the house was released, he and his mom looked for that collection and it was gone. They didn't know what happened to it.

Q: Did Dale Flanagan ever mention his grandfather's attache case?

A: No.

Q: Tom, did Mike Welch ever admit to you his part in the homicide?

A: He broke the window.

Q: Did he ever admit to you that he did any of the shooting?

A: He said to me before we left when I thought it was a joke that he would not shoot and kill anybody.

WITNESS: _____ **SIGNED:** Tom L. Akers

WITNESS: Michael R. Gray

Q: Did Roy McDowell admit to you at any time his participation in the homicide?

A: No.

Q: But he, in fact, was there?

A: Yes.

Q: Did he admit going into the house?

A: He said he was in there when everything went down.

Q: Tom, at the crime scene as previously told to you, we located a knife outside on the ground of the residence by the broken window. I previously showed you this knife. Is that Dale Flanagan's knife?

A: Yes it is and he, in fact, did admit that it was his knife to me and he, in fact, did buy a new knife in my presence. He went to McDonald's and I bought a knife that was the exact same. Cost $32.00, double edge. It was bought at Cutlery World in the Meadows Mall on a Friday when he got paid.

Q: Tom, why are you telling us this as of this time, and in fact, you would not give any information to Detective Levos previous to this interview?

A: I, in fact, thought that someone would hurt my mother and I would rather go to jail or I would rather be shot than have anyone hurt my mom. The reason I am telling now is I am sick of the whole mess and I just want to get it out in the open.

Q: Tom, has Dale Flanagan ever stated anything to you that if he is arrested what would happen?

A: Randy Moore would shoot and kill him if he went to jail.

Q: Are you saying that if Dale Flanagan was arrested for the murder of his grandmother and grandfather, Randy Moore would attempt to kill him?

A: Yes and that goes visa versa for Randy if Randy went to jail, Dale would shoot him.

Q: Tom, you stated that there was another subject at the house that did not go to the Gordon residence with you. Is that subject Johnny Lucas?

A: Yes.

Q: Upon returning to Randy Smith's residence on North 13th, was Johnny Lucas still at the residence?

A: Yes, he was asleep. He answered the door.

WITNESS: _____ **SIGNED:** Tom L Akers

WITNESS: Michael R Levy

DR # 84-85217
VOLUNTARY STATEMENT OF:
THOMAS LEWIS AKERS

Q: After returning from the Gordon residence to the residence on North 13th Street, did all of you describe the homicide in the presence of Johnny Lucas?

A: Yes.

Q: And he has some knowledge of what occurred at the Gordon residence?

A: Yes.

Q: When you got back to the North 13th Street residence of Randy Smith, what happened to the guns?

A: As far as I know, the sawed off was kept because you can not get ballistics off of it. The revolver I have no idea what happened to that. Roy brought that revolver that Dale Flanagan used to the North 13th address.

Q: Was that revolver turned over to Roy McDowell again?

A: Yes and he was supposed to have disposed of it.

Q: Do you know what happened to the .22 semi automatic rifle that Randy Smith had?

A: I have no idea.

Q: You stated that when you heard the window break at the Gordon residence and heard shots, you heard a man screaming or crying for help?

A: He was more or less yelling like if someone gets punched or shot.

Q: Was it a scream?

A: It was a real deep yell.

Q: Previous to this interview did Detective Levos make any promises to you in reference to this statement?

A: No, but I think this is the best thing for the whole situation and the best way to help myself out.

Q: Is there anything else you want to add to this statement?

A: Not that I know of.

Statement concluded at 1450 hours. Same persons present.

WITNESS: _____ SIGNED: Tom L Akers

WITNESS: Michael R Gray

LVMPD INV. SD 31 (1-80)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT DR NO. 84-85217

TYPE CRIME DOUBLE MURDER

MICROFILMED

DATE OCCURRED 11-5-84 1900 hrs. to LOCATION OF

TIME OCCURRED 11-6-84 1620 hrs. OCCURRENCE 5851 WASHBURN ROAD, LAS VEGAS, NV.

I, JOHN MICHAEL LUCAS III, am 18 years of age, home phone 643-6388

DOB: 9-2-66

and my address is 3204 Bassler, North Las Vegas, Nevada bus. phone

This is the transcription of a taped interview by DETECTIVE MIKE GEARY. The following voices are heard:

This is a Voluntary Statement under D.R. Number 84-85217, type of crime is Double Murder, date occurred between 10-5-84, at 1900 hours to 10-6-84, 1620 hours, time of discovery. Location of occurrence, 5851 Washburn Road, Las Vegas, Nevada. This statement is being obtained from JOHN MICHAEL LUCAS, described above.

Q. OK, JOHN, this statement is in regard to an on-going investigation in reference to a Double Homicide, which occurred on 11-6-84, the victims in this matter were CARL and COLLEEN GORDON, who resided at 5851 Washburn Road. Are you aware of this on-going Homicide investigation?

A. Yes, I am.

Q. I, myself, being DETECTIVE MIKE GEARY had previously spoken to you on November 29, 1984, is that correct?

A. Yes sir.

Q. And at that time, I obtained a statement from you regarding possible knowledge of this

I have read this statement consisting of 9 page (s) and I affirm to the truth and accuracy of the facts contained herein.

This statement was completed at (location) Las Vegas Metropolitan Police Department Detective Bureau

on the 10th day of December at 1630 (AM/PM), 1984.

WITNESS B. Lucas

WITNESS Michael R. Geary

John M Lucas III
Signature of person giving voluntary statement

LVMPD 85 (12-76)

DR # 84-85217
VOLUNTARY STATEMENT OF:
JOHN MICHAEL LUCAS III

Homicide?

A. Yes.

Q. And you, at that time, gave me this statement, and did not tell the whole truth in that statement is that correct?

A. Yes sir.

Q. Having that in mind, are you willing to give myself and DETECTIVE LEVOS a statement regarding your knowledge of the events which occurred on that date?

A. Yes sir.

Q. Do you have any knowledge whatsoever regarding the Homicide of CARL and COLLEEN GORDON?

A. Yes I do.

Q. Where were you on 11-5-84?

A. At RANDY's house.

Q. That is RANDY who?

A. RANDY MOORE.

Q. And the address? Is that 337 North 13th Street? Las Vegas, Nevada?

A. Yes it is.

Q. When did you arrive at that address?

A. About 5:00 o'clock.

Q. In the evening?

A. That evening.

Q. And what occurred?

A. Just waited around, just sat around and drunk a little bit. Then DALE and TOM showed up, and everybody was already there. And, drugs, that....

Q. OK, was there a party going on?

A. Yes, there wasn't very many of us, but .....

Q. OK, you indicated that DALE.....is that DALE FLANAGAN?

WITNESS: B. Levos SIGNED: John M Lucas III

WITNESS: Michael R. Gray

DR # 84-85217
VOLUNTARY STATEMENT OF:
JOHN MICHAEL LUCAS III

A. Yes it is.

Q. And TOM AKERS?

A. Yes it is.

Q. And who else was at this party?

A. ROY McDOWELL, JOHN LUCKETT.... I guess that is his last name.....

Q. JOHN RAY LUCKETT?

A. Yes. MIKE WALSH.....

Q. Is that WELSH?

A. Yes, and RANDY MOORE, and me, and TOM. We just sat around, drunk a little while, and they were talking about it.

Q. What were they talking about?

A. Talking about his grandmother and grandfather.

Q. Who was talking?

A. DALE, and RANDY.

Q. What was the conversation that came about?

A. They were just talking about, he must have had some problems with his grandmother and grandfather, I guess, and then he brought up the money situation, and then he was talking about killing them.

Q. Did he actually say that he was going to kill them, or wanted to kill them?

A. Yes.

Q. Approximately what time did this occurr? What time range are we talking about?

A. Must have been around 9:30 or so.

Q. Who else was present when this conversation was going on?

A. ROY McDOWELL, JOHN RAY LUCKETT, MIKE WALSH, and TOM, I don't know his last time.

Q. Would that be TOM AKERS?

A. Yes, and DALE and RANDY.

WITNESS: B. Lucas SIGNED: John M Lucas III

WITNESS: Michael R. Gary

LVMPD INV SD 31 (1-80)

Q. Can you recall, to the best of your knowledge, at this time, what was actually said?

A. Not really. I was really drunk, buzzed so, I can't remember the exact words. All I know, he was talking about his grandmother and grandfather, telling RANDY about what they had, you know, had in their house, things like that, because before all the ..... he started talking about murdering his grandparents, he talked about robbing their house, to RANDY, about robbing their house, and they started talking about that and then he got into what they had in the house. That they had problems, you know, with his grandmother and his grandfather and he had an argument or something, and they started talking about it. That is about all I can remember.

Q. Did they have any weapons when they were talking about this?

A. Yes, they did.

Q. What type of weapons did they have?

A. A 22 handgun.....

Q. Was this a Revolver or an automatic?

A. Revolver. They had a sawed-off 22, and they had a 22 Rifle.

Q. Did they leave the premises then?

A. No, not right there at that time.

Q. Did you see them leave?

A. No, I didn't.

Q. Did you overhear them stating that they were going over to 5851 Washburn Road? That evening?

A. Yes, I did.

Q. And that consisted of.....who was going over there?

A. Well, I didn't know exactly who was going to go over there. They said....he said he had to go over there to talk to his grandmother about something, and I passed out, and they come back and then they told me about it. And everybody else went instead of me.

WITNESS: B. Leon SIGNED: John M Lucas III

WITNESS: Michael R. Geary

Q. Now, what time did they come back?

A. I don't know, around 12:00 o'clock or so, I guess. It was pretty late.

Q. Tell me who came back to the residence?

A. RANDY, TOM, DALE, ROY, JOHN RAY, and MIKE.

Q. What conversation did they have regarding the murder of DALE's grandparents?

A. They just started talking about it, and they told me about it, and they sat down....

Q. Who was actually talking?

A. DALE and RANDY.

Q. Did they tell you what happened?

A. They told me everything that happened.

Q. Would you tell me at this time, what they told you?

A. Yes, they said they pulled up, and they got out of the car. TOM did not even go in the house.

Q. Who's car did they go over in?

A. TOM's El Camino, the yellow El Camino. And MIKE broke the window, broke the side window. He had.... he broke it with a white, just a white closet pole, and he couldn't break it, so DALE just put his fist through it, and went through it. He said he went in where his grandmother was at, covered her mouth up, and shot her in the head, and then his grandfather was coming down the stairs, RANDY shot at him with a 22 Rifle, and I can't remember how many times he said, he hit him, and they wasn't sure he was dead or not, so RANDY went up and shot him in the head, once. And that is what they told me about that.

Q. Did they take anything out of the house?

A. They took his grandmother's wallet.

Q. Did they take anything else?

A. No they didn't.

WITNESS: B. Lucas SIGNED: John M Lucas III

WITNESS: Michael R Gary

Q. Did they make any other statement regarding the residence itself?

A. They said the dogs, they talked about the dogs, and stuff like that. Not really, just little things.

Q. Did they indicate that they ransacked the residence, in any way?

A. Yes. They said they went through the closet, throwing the closet out, because that is where DALE said that his grandmother kept her purse, and they went to the closet and were throwing things all out.

Q. JOHN, when you were at the house there, did they show you the wallet?

A. Yes, they did.

Q. Was there any money in the wallet?

A. Yes, there was.

Q. How much money?

A. Around $8.00 or $10.00. There wasn't very much.

Q. Was there credit cards in there, too?

A. Yes, there was.

Q. Did they say anything about the credit cards?

A. Not really, they didn't say much of anything about them. They asked what they were going to do with them, and RANDY said, "Let's burn them." So, they burned them.

Q. Did they burn them in your presence?

A. Yes, they did.

Q. Did they ever mention anything about a $2.00 bill collection?

A. Yes, not the collection, but they did have a $2.00 bill.

Q. In the purse?

A. It was in the purse.

Q. Just one $2.00 bill?

A. Yes, that was it.

WITNESS: B. L. [illegible] SIGNED: John M. Lucas III

WITNESS: Michael R. Gray

Q. Did DALE ever mention about the $2.00 bill collection that his grandmother had?

A. No, he didn't.

Q. You said that RANDY shot CARL GORDON?

A. Yes, he did.

Q. Who else shot at CARL GORDON?

A. I think MIKE WALSH shot the other guy.

Q. Did MIKE WELSH have the sawed-off 22?

A. Yes he did.

Q. Did MIKE WELCH tell you, in fact, that he did some of the shooting?

A. He shot at him, but he missed.

Q. Is that what MIKE told you?

A. Yes, that is exactly what he told me.

Q. So, what you are telling us, is RANDY said that he, in fact, killed CARL GORDON?

A. Yes, he did.

Q. MIKE WELCH shot at MR. GORDON, but missed him, and DALE FLANAGAN killed his grandmother?

A. Yes.

Q. Do you know where these weapons are at this time?

A. Yes, I do.

Q. Would you relate it at this time?

A. What was that?

Q. Where are the guns?

A. They are out at The Cliffs, about 30 feet out.....

Q. From Lake Mead?

A. Yes.

Q. And could you point out this spot to us, where the guns are?

A. Yes, I can.

WITNESS: B. Lewis SIGNED: John M Lucas III

WITNESS: Michael R. Geary

DR # 84-85217
VOLUNTARY STATEMENT OF:
JOHN MICHAEL LUCAS III

Q. How many guns are off The Cliffs?

A. Two. A sawed-off 22, and the 22 Rifle.

Q. And what about the other? The handgun?

A. My friend sold it to another one of my friends, and he ditched it at a Roadside Park I believe, on the way to New Mexico.

Q. JOHN, do you think that we could locate this weapon?

A. I would have to talk to one of my friends, and he could probably get.....I would have to see if he would do it for me.

Q. OK, you mentioned that ROY McDOWELL went out to 5851 Washburn, and also returned with these individuals, we are talking about, is that correct?

A. Yes.

Q. Did he do any talking when he returned as far as his participation?

A. He told me he did not go into the house.

Q. Where was he when the shooting went down?

A. He told me he was outside. Standing outside. That's all I know.

Q. Did JOHNNY RAY LUCKETT have any part in the shootings?

A. Not that I know of. He did not tell me anything about it. And, neither did anybody else.

Q. So, our main shooters in this thing, that you overheard, are first, DALE FLANAGAN, shooting his grandmother....

A. Yes, sir.

Q. RANDY MOORE shooting the old man, coming down the stairs....

A. Yes, sir.

Q. And the third shooter was this MIKE WELCH....who shot and stated that he missed?

A. Yes.

Q. And that statements were made to you in your presence, at the house when they returned from the murder scene?

WITNESS: B. L. [illegible] SIGNED: John M Lucas III

WITNESS: Michael R. Gleason

LVMPD INV SD 31 (1-80)

A. Yes.

Q. The weapons that were thrown into Lake Mead, at The Cliffs, were you present when they threw them in?

A. Yes, I was.

Q. And again, you can point out the location of where these weapons are?

A. Yes.

Q. In the water?

A. (No response heard)

Q. Are you willing to do that?

A. Yes.

Q. Do you wish to add anything further to this statement?

A. No.

Q. JOHNNY, why is it that you changed your statement from the first time that I talked to you?

A. Because I worried about my kid, and my girlfriend and my sister, and her kid, and my family.

Q. Have they made threats to your family and/or yourself?

A. No, they haven't, but I know the type of people they are.

Q. And who are you referring to, in this matter?

A. Mostly, RANDY, DALE, and TOM. Because I haven't known them very long, and I have seen how they act around me, and they have acted like they will do most anything.

Q. Do you wish to add anything further?

A. No sir.

Statement concluded 12-10-84, at 1630 hours. Same persons present.

RMJ

WITNESS: B. Luce SIGNED: John M Lucas III

WITNESS: Michael R. Geary

DR # 84-85217
VOLUNTARY STATEMENT OF:
JOHN MICHAEL LUCAS III

(CONTINUATION OF STATEMENT) 12-11-84 1145 hours

Q: John, you indicated that the guns were thrown into Lake Mead off the Cliffs. Approximately what date were the guns thrown into the lake?

A: About a week and a half ago. I can not remember the exact date. It was shortly after Randy Moore was arrested on a warrant at his residence.

Q: Did you go out to the lake with them when they threw the guns into the water?

A: Yes.

Q: Will you tell me who went to the lake?

A: Me, Randy, Connie and John Ray.

Q: Who threw the weapons into the lake?

A: Randy.

Q: Who is Connie?

A: One of Randy's girlfriends.

Q: Would you relate again as to what weapons were thrown into the lake?

A: A .22 sawed off rifle and a .22 rifle.

Q: Was that bolt action?

A: The sawed off was bolt action.

WITNESS: B. Lucas SIGNED: John M Lucas III

WITNESS: Michael R. Shay

LVMPD INV. SD 31 (1-80)

DISTR. (gc)
INDEX
STATS

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

OFFICER'S REPORT

D.R. No. 84-85217

RECOVERED EVIDENCE
Subject

Division Reporting: I.S.D. | Division of Occurrence: U.F.S.D.

Date and Time Occurred: 1/2/85 | Location of Occurrence: CLARK COUNTY D.A.'S OFFICE

DETAILS:

KS

MICROFILMED

On 1/2/85 at approximately 1500 hrs. DET. M. GEARY was contacted by Deputy District Attorney DAN SEATON in regards to evidence in the CARL & COLEEN GORDON murder investigation.

He advised that he had an individual in his office by the name of ANGELA MARIE SALDANA, a witness in the murder investigation of CARL & COLEEN GORDON. He further related that ANGELA SALDANA had brought to his office a 2' X 1½" wooden pole which was wrapped in electrical tape which she indicated was possibly the weapon used in order to break the window at 5851 Washburn Road, the crime scene of CARL & COLEEN GORDON's homicide.

That DET. GEARY proceeded to the Clark County District Attorney's Office and contacted Deputy District Attorney DAN SEATON. He at that time surrendered the wooden pole which was impounded under DR# 84-85217 for further processing of possible glass particles contained in the item.

Deputy District Attorney DAN SEATON further related that SALDANA indicated to him that she received a telephone call on or about 12/25/84 from THOMAS AKERS, a suspect in the murder of CARL & COLEEN GORDON who was presently incarcerated in the Clark County Jail. She related that he told her that the wooden pole was in DALE FLANAGAN's trailer at 5851 Washburn Road. He advised her to retrieve the item and hide it. She at that time went to the trailer to pick up her clothing and removed the wooden pole from the trailer. She knew that she had to contact Deputy District Attorney DAN SEATON on 1/2/85 for a pre-trial conference, at which time she brought the item to the District Attorney's Office and surrendered it.

Further investigation continuing.

MG/gc
Trans: 1/3/85, 8:50 AM

Date and Time of This Report: 1/3/85 | Officer: DET. M. GEARY | Per. No: 312

Approved: Lt. T. D. Sergovic | Officer: | Per. No:

SIGNATURE: Michael R. Geary

LVMPD 82 (2-75)

PAGE 1 OF 2 ☐ FIELD ☐ TELEPHONIC ☒ STATION SECTOR/BEAT

INCIDENT: Double Murder

DR: 84-85217

VICTIM'S NAME: (LAST, FIRST, MIDDLE) FIRM NAME IF BUSINESS: Gordon Carl & Colleen

RES. PHONE: BUS. N/A

☐ LOST ☐ FOUND ☒ RECOVERED ☒ EVIDENCE ☐ SAFEKEEPING ☐ OTHER

VICTIM'S ADDRESS (NO., STREET, CITY, STATE, ZIP CODE): 5851 Washburn Rd Las Vegas

S.S. NO.: N/A

I.D. NO.	D.O.B.	DESC.	SEX	HT.	WT.	HAIR	EYES	PLACE OF BIRTH
		N/A						

OCCURRED ON OR BTWN.	MO.	DAY	YR.	DAY	TIME	REPORTED	MO.	DAY	YR.	TIME
	11	05	84	MON	19:00		11	06	84	16:20
AND	11	06	84	TUES	16:20					

LOCATION OF OCCURRENCE: 5851 Washburn Rd Las Vegas

PREMISES DESCRIPTION:

Suspect No. 1	Arrested	Charge	ID No.
Flanagan Dale	Yes	2 CTS. Murder w/U.D.W. One Murder Burg Burglary / Const. Tool	
Suspect No. 2	Arrested	Charge	ID No.
Suspect No. 3	Arrested	Charge	ID No.

Recovered by	Address	Phone
M. Gerry	L.V.M.P.D.	386-3521

Hold for Prosecution	Proof of ownership	Registration check
Yes		

Safe Custody	Release to Owner
Yes	

Owner notified	By	Date	Via

NO ISSUED
DIST. LN
INIT.
STATS

PROPERTY

Pkg No.	Item No.	DESCRIPTION Including Serial No., Model No., and Value if Known
1	1	One Pole 2FT X 1½ IN. wrapped with Electrical Tape.

MICROFILMED

ENTERED
T.T.

WAS IDENTIFIABLE PROPERTY CHECKED THROUGH: ☐ PAWN SHOP SECTION ☐ NCIC ☐ SCOPE (CRIME VICTIM)

SUPERVISOR APPROVING	P. NO.	PERSON REPORTING (SIGNATURE)
Sgt. L. Sergovic	10	Michael R. Gerry

REPORTING OFFICER(S)	UNIT	P. NO.	CONNECTING REPORTS - TYPE & DR NO.
M. Gerry	150	312	

FOUND PROPERTY: Property that is not obviously identifiable, not connected with a previously reported incident and whose owner cannot be identified, may be released to the finder after 90 days, if a written demand has been made not more than 90 days from the date of this receipt. If no claim is made within 90 days from receipt of the property, the property will be disposed of. All correspondence regarding found bicycles should be directed to Juvenile Bureau, Las Vegas Metropolitan Police Department, 400 E. Stewart Avenue, Las Vegas, NV. 89101. All other correspondence should be addressed to: Evidence Custodian, Las Vegas Metropolitan Police Department, 2300 E. St. Louis, Las Vegas, NV, 89104.

WEAPONS IMPOUNDED FOR SAFEKEEPING: Weapons impounded for safekeeping will not be released until at least 72 hours have elapsed from the time of this report. For instructions on gaining release of the weapon, please call the Detective Bureau, Robbery Detail, 386-3591 on weekdays between the hours of 8 a.m. and 4 p.m., after at least 72 hours have elapsed.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
PROPERTY REPORT

LVMPD 67 (REV. 7-82)

DETAILS: ON 1-2-85 AT APPROX 15:00 HRS DET M. GAREY RECEIVED THE ABOVE ITEM FROM DEPTY DA DAN SEATON IN THE CLARK CO. D.A.'S OFFICE.

SEATON ADVISED THAT HE WAS GIVEN THE POLE BY ANGELA MARIE SALDANA (WITNESS) WHO RELATED THAT THOMAS AKERS CALLED HER AROUND 12-25-84 AND ADVISED HER TO TAKE THE ITEM FROM DALE FLANAGAN'S TRAILER, THAT IT WAS THE INSTRUMENT THAT WAS USED TO BREAK THE WINDOW AT CRIME SCENE OF THE GORDONS MURDER 5851 WASHBURN RD. LAS VEGAS, NEV. ON 11-6-84.

ITEM BOOKED INTO EVIDENCE FOR PROCESSING

SUPPLEMENTAL

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CRIMINALISTICS BUREAU
REPORT OF LABORATORY EXAMINATION

DR. NO. 84-85217

DATE 1-7-85

SUBJECTS:

GORDON, Carl
GORDON, Colleen

SUBMITTING AGENCY: LVMPD

OTHER AGENCY DR.:

SUBMITTING OFFICER(S): Geary

INCIDENT: HOMICIDE

REQUESTING OFFICER(S): Geary

EXAMINATION REQUESTED: Glass Exam

One wooden stick wrapped in black tape was submitted by Geary. The stick was examined for the presence of glass shards; none were noted.

MICROFILMED

I hereby certify that this is a full, true, and correct copy of the original police copy on file with the Las Vegas Metropolitan Police Department.

Clerk of Court
Official of Police Records
Clark County, Nevada
Date

ENTERED
PS

JAN 10 1985
Crime Lab
Criminalistics Bureau

Appendix 171

ROUTE TO . . .	EXAMINING OFFICER	COMM. NO.
	L. T. ERRICHETTO L. T. Errichetto	1471
	SUPERVISING OFFICER	RANK
	C. Nizzia 2830	

DECLARATION OF AMY HANLEY-PEOPLES

I, Amy Hanley-Peoples, declare as follows:

1. I was born in November 1976. My mother is Wendy C. Mazaros (formerly Peoples). My biological father was Tom Hanley. I was raised primarily by my step-father, Robert Peoples.

2 In 1984, I lived with my mother and Robert Peoples at 4308 Snead Drive in Las Vegas. That year my mother's niece, Angie Saldana, came to live with us, along with her baby boy Myles. Angie did not care for that baby and sold him for $5,000.00 to Robert Peoples' brother Ronnie.

3. Angie was a stripper. My mother went to strip clubs with me in the car to try to talk Angie into coming back to the house and stop stripping.

4. In 1984, Angie spent time with Dale Flanagan at his trailer but never lived there with him. After his grandparents were killed and before Dale Flanagan's first trial, I went with Robert Peoples and Angie to Dale Flanagan's trailer when Dale was not there. Robert Peoples pointed to a picture and said to Angie that it was a picture of the devil and told Angie that she had to testify against Dale Flanagan and say that Dale Flanagan was a devil worshiper. Robert Peoples instructed Angie how to testify and rehearsed her testimony.

5. Before Dale Flanagan's second trial in 1989, I was living with my aunt. Robert Peoples was staying in a one bedroom apartment near the Maryland Parkway and Swenson area. He was not paying rent. The rent was just being "taken care of."

6. Robert Peoples often picked me up at my aunt's house and took me to the apartment. There were boxes of paperwork in his room with the name "Flanagan" on papers in the boxes. Robert Peoples caught me looking through these files, became very angry, and yelled

"get the f*** out of the room."

7. During my visits to the apartment, I heard Robert Peoples talking to Angie on the telephone for hours at a time. Robert Peoples constantly talked to Angie about what was contained in the reports from the Flanagan boxes. He also told Angie over and over how she had testified at the first trial and that she had to do so again. Robert Peoples threatened her over and over. He said "You have to do this. You got paid, if you don't do it you're going to fry. They will put you in the electric chair." Robert Peoples said "that dirty little wh***is not doing what she is supposed to be doing."

8. Robert Peoples had Angie hidden during this time at the Blue Angel Hotel on Fremont and Charleston. He had an investigator constantly watching Angie there.

9. During that same time period, Beecher Avants and Robert Peoples frequently met and discussed the Flanagan case. I went to the Gold Coast Casino with Robert Peoples and we got free dinners and Robert Peoples got free rooms. We met there many times with Beecher Avants and police officer Bob Hilliard and had dinner. Avants, Hilliard, and Robert Peoples talked about the case against Dale Flanagan. During one of the dinners, Avants told Robert "you better get that little b**** under control" referring to Angie.

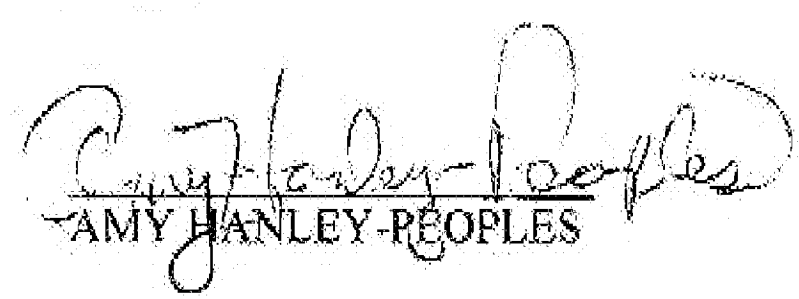
10. Several years after Dale Flanagan's third trial, Angie telephoned me and asked for $500.00. I told her I did not have that kind of money available. Six months later she showed up at my house and asked where Robert Peoples was. Angie said that he owed her a lot of money for the work that she did on the Flanagan case. I made her leave.

11. Robert Peoples told me many things about his criminal activities and connections. He said he worked for the Drug Enforcement Administration in Las Vegas. He said that Judge Zenoff was a good friend of his and loved him, as did Paul Laxalt. He said if he ever needed help

from them all he had to do was call them because they "had his back." He said that he had many attorneys and never had to pay any of them. It was just taken care of. He was always breaking the law. I remember he took vehicles out of state to hide assets. He used at least two different social security numbers. His parole officer told me that Robert Peoples "had organized crime in his jacket."

12. Robert Peoples also testified against defendants in court. He was addicted to drugs and alcohol. Once I saw him drink a fifth of whiskey in the courthouse parking lot before he went in to testify. He could not walk into a courthouse without being loaded. His testifying against people and being a snitch sometimes got him into trouble. For example, when he would go to prison for parole violations or new offenses, he had problems with other inmates for being a rat and a snitch and had to be put in a safety zone. When he went to prison for stabbing Larry Wilch around 1987, he only served six months but he had to be put in isolation because he was a known snitch.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February ___, 2011.



AMY HANLEY-PEOPLES

DECLARATION OF WENDY C. MAZAROS

I, Wendy C. Mazaros, declare as follows:

1. I was born in 1955 in Las Vegas, Nevada. My maiden name is Watson. In the mid-1970's, I was involved with Tom Hanley with whom I had a daughter, Amy.

2. In 1977, Tom became a suspect in the murder of Al Bramlet. It was during the investigation of this murder that I first met Beecher Avants. He was the head of homicide at Las Vegas Metro Police. He came to my house harassing me about the Bramlet murder and looking for Tom Hanley, but I would not let him in.

3. It was also in connection with the Bramlet murder that I met Robert Peoples. I believed that he was working as an investigator for my husband. It was not until later that I learned that Robert was working undercover for the police. Tom instructed me to take Robert out to Pahrump, Nevada and show him a tree where stuff connected to the Bramlet killing was buried. Together, we went to a motel in Pahrump, Nevada, where Robert seduced me. I later realized that Robert started a relationship with me in an attempt to get additional information from me that would further implicate Tom. Tom eventually pled guilty to the Bramlet murder and was sentenced to life without possibility of parole.

4. Before we met, Robert had also been sentenced to life without parole. Robert had killed a girlfriend during a fight in Beatty, Nevada. According to Robert, the girlfriend had been angry with Robert because he'd taken her baby boy and given the baby to his sister, Mary. Robert told me that at the time of the murder he had been working for the mob running money for them and traveling between California, Nevada, and New York. He was in Beatty with mob money from New York to start a casino there

to launder money.

5. While Robert was in prison, he became friends with Gramby Hanley, Tom Hanley's son. Gramby was also convicted of the murder of Al Bramlet. It was through Gramby that Robert met Tom Hanley.

6. Although Robert was sentenced to life without parole for killing his girlfriend, he managed to get paroled in 1975. He explained to me that he was able to get out because he started working undercover in the prison on gambling and drug operations for the Governor's Office. He bragged that he had made a leather briefcase for former Governor Paul Laxalt that the Governor carried around.

7. Robert and I got married in 1978. We were married twice because the first time we married he was still married to Jo Ann Blakenship. The main reason I married him was that he had me convinced that I could somehow get in trouble for things Tom Hanley had done unless I married him.. I felt under his control, and he told me that he was the only one who could save me.

8. After we were married, Robert constantly was trying to get on the good side of law enforcement, and he worked with the cops as a snitch. Before Robert was released from prison for murder, his sister Marlena had dated Beecher Avants. After I began my relationship with Robert, Beecher Avants and his then-wife Gisela became friends of ours, and we socialized with them frequently. When Beecher ran for sheriff in 1982, Robert and I worked on his campaign.

9. In 1984, Robert and I were living at 4308 Snead Drive in Las Vegas, along with Amy, who turned eight years old in November 1984.

10. I have a half-sister named Caren, who had several children, including a

daughter, Angela Saldana. She went by Angie. Angie's father was involved with the Gents motorcycle gang in Las Vegas. Angie was a very troubled, mixed up girl. She had at least once run away from home, and she spent time in juvenile facilities. I felt sorry for Angie and so I let her come live with us when she was about 20 years old.

11. When Angie was living with us, she had a baby boy named Myles. His name was later changed to Mike. She did not take care of him. I was very fond of Angie's baby boy and bonded with him. Because of Robert and my past histories I did not think social services would allow me to adopt the baby. I was surprised when they said that I could and I met with an attorney about the adoption. Before I could proceed with the adoption, and without saying anything to me, Robert took the baby and gave him to his brother. When I learned what he had done, we had a terrible fight that landed us both in jail for an eight hour cooling off period. I never saw the baby again. Angie received $5,000 for giving up the baby.

12. Angie was a very manipulative person and would do almost anything to get her way. Because she was very attractive she would use her looks to get boys and men to do what she wanted. She was not a very good person. She also worked as a prostitute. When she got into trouble she would get help from Las Vegas Metro police officers. She had sex with several of them.

13. Angie was also stripping with some of her friends at a club in North Vegas. I went there sometimes to try to get her to stop, but she kept going back. I remember Blake Watson and some of his girls that Angie hung out with. He was no good. He basically ran a prostitution ring that included Angie and girls named Debbie, Lisa and Michelle.

14. Angie had been seeing Dale Flanagan several weeks before his grandparents were murdered. I had met Dale and saw him on various occasions when he came to the house to visit Angie. Dale seemed very young and innocent, like a kid. He was clean-cut. Angie sometimes stayed with Dale at his trailer. I went over there a couple of times to pick her up. Angie, Dale, and his friends fooled around with Satanic type stuff but not seriously.

15. Either the morning before or the morning after the Gordons were murdered, Dale came to my house looking for Angie. He wore a black jacket and was smoking a cigarette. He seemed scared when he came to the gate. He appeared upset and was shaking and crying. He said he needed to talk to Angie. I felt sorry for him when he showed up at the house but I did not let him in because Angie was not there.

16. The day after the Gordons were killed, Robert, Amy and I drove up to Mt. Charleston Lodge. Shortly after we arrived Angie called me and asked us to come home because Dale's grandparents had been killed. We returned right away. Angie was very upset. She was scared and crying.

17. Very soon after this, Robert let Beecher Avants know that Angie was Dale's girlfriend. Beecher had left Las Vegas Metro police and was Chief Investigator for the Las Vegas District Attorney's office. Within a day, Beecher came over to our house. Beecher had already made up his mind that Dale was involved in the killings. He told us that statistics showed that 90% of the time these homicides are done by a family member. Robert realized that this case posed an opportunity to keep in good standing with the authorities and hatched a plan with Beecher to have Angie "solve" the case. Robert always took every opportunity to cooperate with law enforcement because it paid

off for him. He set about manipulating and controlling Angie just as he did me when he was secretly working with the police in the Bramlet case. Robert told Angie that if she did not cooperate with him and Beecher, Angie could be charged with conspiracy and be executed.

18. After the murders Angie continued to spend time with Dale at his trailer, sometimes staying overnight. She never lived there. She continued to live at my house.

19. Beecher came to the house 2-3 times to talk about the investigation with Robert. Sometimes the two of them would sit in the house at the red counter top island bar to talk, sometimes they would go outside to talk and other times they would meet elsewhere or talk by telephone. Beecher told Robert that we needed to find the gun and to get a confession.

20. Robert was provided with all of the police reports about the case and reviewed them carefully. During the investigation, Robert had long conversations with Angie. He told Angie exactly what to say to the police and at trial. Robert coerced Angie to say anything Beecher wanted her to say. Robert would say to Angie, "You're going to do this Angie," and then tell her exactly what to say. Robert did what Beecher told him to do. This is how Beecher operated and used Robert. Beecher was very arrogant. Once he decided someone was guilty, Beecher was the judge, jury, and executioner. In those days you did not mess with cops because if you did you got arrested for something.

21. One time when it was known that Dale would not be at the trailer, Robert took Angie there to get everything straight with her. Amy was also with them. Robert was looking for stuff in the trailer that Angie could use to support a "confession." He

was looking for weapons and signs of devil worship.

22. I got fed up with what Robert was doing and told him he could not coerce Angie into what to say. He did not listen and I left him shortly after that and moved to Pahrump on a 5-acre ranch. After that I moved to Reno. Robert and I were officially divorced in 1989.

23. Before Dale's third trial Angie showed up in Reno. She said that she was expecting $10,000 for testifying. She told me that she did not get the $10,000, and I had to pay to send Angie back to Las Vegas.

24. For the past decade or so, I have intentionally made myself difficult, if not impossible, to locate. I had no interest in involving myself with Angie's or Robert's messes. I was extremely surprised when an investigator for Dale found me in July of last year. Given the passage of time, I decided to finally reveal what I knew about what Angie, Robert and Beecher Avants did to ensure Dale's conviction and death sentence.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February ___, 2011.

WENDY C. MAZAROS

DECLARATION OF JON FRAPPIER

I, Jon Frappier, declare as follows:

1. I am a private investigator licensed by the State of California (CA PI15379).

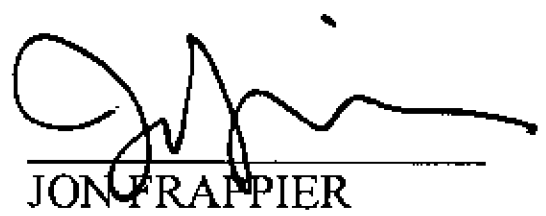
2. In 1999 and early 2000, I was retained by Dale Flanagan's counsel, Robert D. Newell, to investigate factual matters relating to the Petition for Writ of Habeas Corpus in the Eighth Judicial District Court, Clark County Nevada, Case No. C692690.

3. During that investigation, I was assigned to locate Wendy Peoples who had been married to Robert Peoples.

4. I searched numerous records in public and proprietary databases in attempting to locate Wendy Peoples. I also was assisted by Las Vegas investigators and their sources. During the course of my investigations, I located various addresses for Ms. Peoples, but discovered that none of these addresses were current. Despite exhaustive efforts, I was unable to locate her.

5. Following his appointment to the case, current counsel for Mr. Flanagan, Mark Olive, retained me to conduct further investigation, In July 2010, I happened to locate Wendy Peoples, now Wendy Mazaros, through a recent court filing. During my interview of Ms. Mazaros, I discovered she had a daughter, Amy Hanley Peoples.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed 10th day of February, 2011.



JON FRAPPIER

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- DALE EDWARD FLANAGAN, #737065 Defendant.	CASE NO: 85C069269-1 DEPT NO: XII

STATE'S RESPONSE AND MOTION TO DISMISS PETITION

DATE OF HEARING: 3/5/13
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through STEVEN S. OWENS, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction).

This response and motion to dismiss is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

STATEMENT OF THE CASE

In 1985, Dale Flanagan was convicted of murdering his grandparents and was sentenced to death. On appeal, by a three-two split, the murder convictions were affirmed, but the death sentences were vacated and the case was remanded for a new penalty hearing

due to prosecutorial misconduct. Flanagan v. State, 104 Nev. 105, 754 P.2d 836 (1988) (Flanagan I). Remittitur issued on June 7, 1988.

A second penalty hearing in 1989 also resulted in death verdicts for Flanagan but was again reversed on appeal, this time due to unconstitutional admission of satanic worship evidence. Flanagan v. State, 107 Nev. 243, 810 P.2d 759 (1991) (Flanagan II); Flanagan v. State, 109 Nev. 50, 846 P.2d 1053 (1993) (Flanagan III). A third and final penalty hearing in 1995 again resulted in death verdicts for Flanagan and this time the death sentences were affirmed on appeal. Flanagan v. State, 112 Nev. 1409, 930 P.2d 691 (1996) (Flanagan IV). Remittitur issued on June 3, 1998.

Thereafter, Flanagan filed his first post-conviction petition on May 28, 1998, which was then supplemented by appointed counsel Robert Newell in association with local counsel Cal Potter.[1] After an evidentiary hearing at which third penalty phase counsel Rebecca Blaskey and Dave Wall both testified, the petition was denied on August 8, 2002. This denial was affirmed on appeal in an unpublished order dated February 22, 2008. (SC# 40232). Remittitur issued on March 18, 2008.

Flanagan then proceeded to federal court where he filed a habeas petition on January 13, 2009, in proper person. See Exhibit 1. Appointed counsel then filed an amended habeas petition in federal court on February 11, 2011, the first claim of which is identical to the claim now raised in state court. See Exhibit 2.[2] Finally, federal stay and abeyance was ordered on August 23, 2012, to allow exhaustion in state court. See Exhibit 3. The instant successive state habeas petition was then filed a month later on September 28, 2012, to which the State now responds.

STATEMENT OF FACTS

The only trial facts relevant to disposition of the current post-conviction petition are

[1] This is apparently the same team of attorneys who have returned to state court and have now filed the instant successive habeas petition fourteen years later on September 28, 2012.

[2] The federal petition is 308 pages in length, so in the interests of brevity only the first 48 pages of which have been reproduced in order to demonstrate the prior availability of this claim to Flanagan.

those relating to the claim that Angela Saldana gave false testimony due to financial inducements and pressure from her uncle and from the District Attorney's Office to act as an agent in obtaining evidence against Flanagan. This claim is not new. Flanagan has long maintained that Saldana's testimony was false, but he is no closer to establishing that falsity than he was 27 years ago.

At a pre-trial evidentiary hearing in 1985, Angela Saldana acknowledged that her aunt and uncle encouraged her to get information about the murder for the police. Transcript 9/24/85, p. 92. She also admitted that she contacted police officer Ray Berni about a week or two after the murder, and then Beecher Avants from the District Attorney's Office and then the prosecutor on the case, Dan Seaton. Id. at 108-12. She had sex with Flanagan and promised to marry him as well as co-defendant Tom Akers all in an attempt to get more information which she could pass along to law enforcement. Id. Saldana told Officer Berni, her former boyfriend, that she was going to "play along" and find out what more she could learn, although she was not asked to do so by Officer Berni. Id. at 111, 120.

At the conclusion of the evidentiary hearing 27 years ago, Flanagan's attorney, Randy Pike, made the very same "police agent" argument that is being advanced in the current petition:

> One thing, your Honor. By this time she [Angela Saldana] would be a police agent and I think what she was doing was pumping him trying to get information for Officer Berni that she could turn over to him or the district attorney's office. I think anything beyond the point that she first contacted Officer Berni and was turned over at which point she became a police agent and it was acting as an arm of the state should be excluded in consideration against Mr. Flanagan.

Transcript 9/26/85, p. 58-9. The district court judge who had heard Saldana's testimony disagreed:

> Concerning the theory of agency, I find the testimony does not substantiate that. Miss Saldana indicated she was acting on her own volition. The officer told her to put the knife back and stay out of harm's way, in essence. The officer didn't direct her and she, for whatever reason, decided to follow the matter up.

Id. at p. 63. At trial, Angela Saldana admitted she expected to be paid $2,000.00 from the Secret Witness Program for her work and assistance on the case. Trial Transcript, 10/2/85,

at pp. 877-78, 938. She again testified that she contacted Beecher Avants of the District Attorney's Office at the suggestion of her aunt and uncle because Beecher was a friend of the family. Trial Transcript, 10/2/85, at p. 887-88. When asked by Flanagan's attorney whether it was Officer Berni or Beecher Avants who had instructed her to "play along" to get additional information, she responded it was neither. Id. at 912. Rather, she testified it was her uncle who had asked her to do that and she confirmed that her uncle was affiliated with law enforcement as an attorney. Id. at 912, 925. She also confirmed that if she learned any more information, she would go right to tell Metro or Officer Berni or Beecher Avants or even Dan Seaton in the District Attorney's Office. Id. at 916. Later, when asked whether Officer Berni had suggested in any way that she become an agent of law enforcement and go elicit information from Flanagan, she responded no, that it was her idea alone. Id. at 932-33, 936, 945-6, 948-49. Her motive in voluntarily reporting to the police was her desire for experience to become a criminal investigator. Id.

In closing argument, defense counsel vehemently attacked Saldana's character and credibility both as a stripper and as a police informant for money. She was called a "performer" and a "phony" and that "she is as willing to dance for money in this courtroom as she is on the stage at Bogie's". Trial Transcript, 10/10/85, p. 1554. Flanagan's counsel extensively argued that Saldana could not be trusted and that her memory suspiciously improved over time. Id. at 1585-87. He characterized her as a "user" of people who enjoyed the limelight and who would be paid for her "performance." Id. at 1588-89. The value and credibility of Saldana's testimony was summed up for the jury as follows:

> I think she has been characterized appropriately, stripper, loose woman, sex with Tom Akers while she was living with Dale, wanted to be a private investigator and so she thought this would be a marvelous opportunity to become an agent on her own. Of course, the fact that she had spoken to her boyfriend who was a police officer, spoke to Beecher Avants and spoke to Detective Levos, how much credence can we probably give to the testimony of that kind of person?

Id. at 1603 (argument by counsel for Moore).

By the time of the third penalty hearing, Saldana's testimony against Flanagan was further impeached with an intervening criminal charge. Transcript 6/20/95, pp. 25-6.

Saldana acknowledged on cross-examination by Flanagan's attorney that she had been arrested on a drug trafficking charge in 1989 for which she was in custody at the time of the second penalty hearing. Id. After her testimony at the second penalty hearing the drug trafficking charge was reduced to a misdemeanor trespass and she received just a $200 fine. Id. This line of questioning by Flanagan's attorney suggested that the prosecutor had rewarded Saldana with the charge reduction in exchange for her testimony. But Saldana clarified that the plea negotiation was separate and not in exchange for her testimony on this case. Id. at 31.

The issue arose again in the first post-conviction petition proceedings initiated in 1998 by Flanagan's current counsel, Robert D. Newell. In a supplemental petition, counsel alleged that Saldana was a known prostitute who, at the behest of law enforcement, engaged in sexual relations with police officers and with Flanagan in an effort to elicit incriminating statements and thereby became a police agent. Supplemental Petition filed 11/30/99, at p. 2, 8-9. In exchange for her testimony and cooperation, Saldana escaped prosecution for several offenses and was paid cash, which inducements were not disclosed to the defense. Id. Counsel further argued that the prosecution coached and influenced Saldana to shape her testimony consistent with that of other witness accounts. Id. In this way, Flanagan alleged that the State manufactured and elicited false testimony against him. Id. These claims were deemed procedurally barred without a showing of good cause and prejudice. Findings of Fact, filed on August 9, 2002. On post-conviction appeal, the Nevada Supreme Court found that this claim was appropriate for direct appeal but that Flanagan showed neither good cause for failing to raise the issues earlier nor actual prejudice. Order of Affirmance filed 2/22/08, p. 19. Therefore the district court did not err in summarily dismissing them. Id.

POINTS AND AUTHORITIES

SUMMARY OF ARGUMENT

The current petition is a regurgitation of long-known facts and conspiracy theories previously raised and rejected more than once in this case over the past 27 years. In the current petition, Flanagan has alleged five claims for relief, only the first one of which is

argued to be a new claim not previously raised. Flanagan concedes that the remaining claims were all presented in the first state habeas proceedings, but presents them again due to supposedly new factual allegations.

However, Claim 1 alleges the State knowingly presented false testimony by procuring witness Angela Saldana as a police agent using promises and inducements which were not disclosed to the defense. This is no different than previously raised Claims 2 and 3 which allege government misconduct in failing to disclose material impeachment evidence and witness inducements of several witnesses including Angela Saldana. In reality, there are no new claims in the current petition. Instead, what Flanagan presents is simply allegations of new or additional facts in support of previously rejected claims.

To the extent Flanagan's current petition may contain a few more specific facts than previously alleged, such facts have been available to the defense and are not timely raised now in a successive petition. Nor do they constitute good cause because any new facts were not withheld by the State and are not material as they would not have affected the outcome of the case. Accordingly, there is no good cause for re-raising Flanagan's previously rejected claims of government misconduct in manufacturing Angela Saldana's allegedly false testimony against him, and it must again be dismissed as procedurally barred.

Application of State Procedural Bars

The instant petition filed on September 28, 2012, is in violation of the one-year time limitation of NRS 34.726 which requires post-conviction petitions to be filed within one year of issuance of Remittitur after direct appeal. The Nevada Supreme Court rejected a habeas petition that was filed just two days late, pursuant to the clear and unambiguous mandatory provisions of NRS 34.726. Gonzales v. State, 118 Nev. 590, 53 P.3d 901 (2002). The one year time bar in NRS 34.726 also applies to successive petitions. Pellegrini v. State, 117 Nev. 860, 875, 34 P.3d 519, 529 (2001). In this case, the instant post-conviction proceedings were initiated more than ***24 years*** after issuance of Remittitur following direct appeal on June 7, 1988, and are barred absent a showing of good cause for the delay, ie, that the delay is not the fault of the petitioner, and that dismissal of the petition as untimely will unduly

prejudice the petitioner. NRS 34.726(1). Although the initial death sentences were reversed, it has been more than ***14 years*** since new death sentences were affirmed on appeal and Remittitur issued on June 3, 1998.

The State also affirmatively pleads laches under NRS 34.800 because the State is prejudiced in responding to the petition and in its ability to conduct a retrial of petitioner due to the long passage of time since the guilt phase of the jury trial in 1985 and the re-do of the penalty phase in 1995. The instant petition has been filed approximately 27 years and 13 years respectively from the guilt and penalty phase trials and approximately 24 years and 14 years respectively from the decisions on appeal affirming guilt and penalty. Because these time periods well-exceed five years, the State is entitled to a rebuttable presumption of prejudice. NRS 34.800(2). This can only be overcome by a showing that the petition is based upon grounds of which petitioner could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the State occurred or by a demonstration that a fundamental miscarriage of justice has occurred. NRS 34.800(1).

Additionally, the instant petition is subject to dismissal under NRS 34.810(1) if the grounds for the petition could have been presented to the trial court or raised in a prior proceeding. The instant petition is Flanagan's second attempt at post-conviction.[3] Dismissal of a successive petition is required if it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the failure to assert those grounds in a prior petition constitutes an abuse of the writ. NRS 34.810(2). Flanagan has the burden of pleading and proving specific facts that demonstrate good cause for the failure to present the claim or for presenting the claim again, and actual prejudice. NRS 34.810(3); see also Evans v. State, 117 Nev. 609, 646-647, 29 P.3d 498, 523 (2001) ("A court must dismiss a habeas petition if it presents claims that either were or could

[3] Although an earlier post-conviction petition filed in 1995 raised guilt phase issues, it was deemed to be premature and not a bar to the 1998 petition which was considered as a "first" petition. See SC# 40232.

have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner.").

Additionally, the Nevada Supreme Court has observed that "petitions that are filed many years after conviction are an unreasonable burden on the criminal justice system. The necessity for a workable system dictates that there must exist a time when a criminal conviction is final." Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984). In Lozada, the Nevada Supreme Court stated: "Without such limitations on the availability of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-conviction remedies. In addition, meritless, successive and untimely petitions clog the court system and undermine the finality of convictions." Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994). The Nevada Supreme Court also recognizes that "[u]nlike initial petitions which certainly require a careful review of the record, successive petitions may be dismissed based solely on the face of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). If the claim or allegation was previously available with reasonable diligence, it is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991). "Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory." State v. District Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005).

In his petition, Flanagan repeatedly argues that the federal district court found he acted diligently in investigating and presenting his claims as if this somehow settles the state law question of demonstrating good cause and prejudice. What the federal court decided, however, was whether there was good cause for Flanagan's failure to exhaust all his claims. Good cause for failure to exhaust is not the same thing as good cause to overcome state procedural bars. Exhibit 3 at p. 3. Application of state procedural bars operates independently of any federal order for stay and abeyance. State v. District Court (Riker), 121 Nev. 225, 112 P.2d 1070 (2005) (federal stay for exhaustion does not obviate need to show good cause); see also Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001); Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997); Valerio v. State, 112 Nev. 383, 915 P.2d 874

(1996).

Claims of Good Cause Are Not Timely Raised

Flanagan attempts to make several allegations of good cause for his delay but primarily attributes the fault to the prosecution for concealing information needed to support his claim. However, Flanagan must show good cause for the ***entire*** delay in raising his claims. An allegation that the government may have been responsible for part of the initial delay in bringing a claim does not explain or excuse Flanagan's continued delay once the basis for the claim became known to him. See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003); see also State v. Huebler, 128 Nev. ___, 275 P.3d 91, 96 at fn 3 (2012) ("We note that a Brady claim still must be raised within a reasonable time after the withheld evidence was disclosed to or discovered by the defense."). Even legitimate Brady claims are procedurally barred when the basis for the claim was known and it was either not brought in an earlier proceeding or within an applicable time bar. Hutchison v. Bell, 303 F.3d 720, 742-43 (6th Cir. 2002) (Brady claim barred where no good cause for delay of 11 months between discovery of claim and assertion of claim in state court). Because Flanagan has failed to provide any explanation that accounts for the entire length of his delay, there is no good cause and the petition must be dismissed.

Flanagan's "new" factual allegations primarily arise from declarations from two witnesses – Amy Hanley-Peoples and Wendy C. Mazaros (formerly Peoples). See Petitioner's Appendix (hereinafter "App") at pp. 172, 175. Wendy is Angela's aunt and Amy is Wendy's daughter. However, by Flanagan's own admission, he has known about these witnesses at least since July of 2010 when his Investigator located and interviewed them. App. 181; see also Petition filed 11/15/12 at p. 3. Thus, the factual basis for the claim has been available to him since that time. Additionally, newspaper articles and court records regarding Angela Saldana's uncle and his history have always been publicly available or common knowledge. Flanagan fails to allege when he first discovered this history. It is this delay of more than two years, at least from July of 2010 to September of 2012, for which Flanagan has failed to offer any good cause explanation. There was no impediment external

to the defense during that time which prevented Flanagan from raising these factual allegations in state court in July of 2010.

During that two year time period, Flanagan continued to litigate and pursue federal habeas remedies to the exclusion of his state court remedies. See Exhibit 1. Unfortunately, pursuit of federal remedies does not constitute good cause to overcome state procedural bars. Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989). In Colley, the defendant argued that he appropriately refrained from filing a state habeas petition during the four years he pursued a federal writ of habeas corpus. The Nevada Supreme Court disagreed:

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

Id. The state procedural rules simply do not afford a petitioner the luxury of federal counsel and an investigation before being required to bring state claims. Accordingly, no matter how diligent and expansive the federal investigation may have been, it does not constitute good cause as a matter of law.

Once discovered, it still took Flanagan seven months to raise and allege the new factual allegations in a federal court pleading on February 11, 2011. See Exhibit 2. But instead of filing the new factual allegations in federal court, he could have filed them in state court at that time. Significantly, Claim 1 of the instant state habeas petition is identical to Claim 1 of the federal petition filed a year and a half earlier. See Exhibit 2. Such an election of forums and failure to return timely to state court to allege the new factual allegations once they became available to him are purely the fault of the petitioner and cannot be attributed to any impediment external to the defense.

Failure to Show Good Cause

Even if this current petition had been timely filed once the new facts were discovered or became available, they still fail to demonstrate good cause for re-raising claims of government misconduct in procuring allegedly false testimony from Angela Saldana. Her

testimony was already impeached and discredited at trial and anything new the defense has discovered fails to materially alter the state of evidence in the case. Nor do the new facts conflict with Saldana's testimony or demonstrate it was false.

A petitioner has the burden of pleading and proving facts to demonstrate good cause to excuse the delay. State v. Haberstroh, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003). "In order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003), citing Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994). "An impediment external to the defense may be demonstrated by a showing 'that the factual or legal basis for a claim was not reasonably available to counsel, or that some interference by officials, made compliance impracticable.' " Id., quoting Murray v. Carrier, 477 U.S. 478, 488 (1986).

It is established that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. Riley v. State, 93 Nev. 461, 462, 567 P.2d 475, 475 (1977), citing Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763 (1972) and Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173 (1959). Under Napue, a prosecutor's failure to correct testimony which he knows to be false is a denial of due process, even if the false testimony goes only to the credibility of a witness. However, such a claim requires proof that certain testimony is false, that its falsity was known to the prosecutor and not corrected, and that the false testimony may have affected the outcome of the trial. Id. Similarly, Brady and its progeny require a prosecutor to disclose evidence favorable to the defense when that evidence is material either to guilt or to punishment. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963). To prove a Brady violation, a petitioner must show; 1) The evidence is favorable to the accused, either because it is exculpatory or impeaching, 2) The State withheld the evidence, either intentionally or inadvertently, and 3) That the evidence was material. Id.

When a Brady claim is raised in an untimely post-conviction petition for a writ of

habeas corpus, the petitioner has the burden of pleading and proving specific facts that demonstrate both components of the good-cause showing required by NRS 34.726(1), namely "[t]hat the delay is not the fault of the petitioner" and that the petitioner will be "unduly prejudice[d]" if the petition is dismissed as untimely. State v. Huebler, 128 Nev. ___, 275 P.3d 91 (2012). Those components parallel the second and third prongs of a Brady violation: establishing that the State withheld the evidence demonstrates that the delay was caused by an impediment external to the defense, and establishing that the evidence was material generally demonstrates that the petitioner would be unduly prejudiced if the petition is dismissed as untimely. Id., citing State v. Bennett, 119 Nev. 589, 81 P.3d 1 (2003). However, "a Brady violation does not result if the defendant, exercising reasonable diligence, could have obtained the information." Rippo v. State, 113 Nev. 1239, 1257, 946 P.2d 1017, 1028 (1997).

Throughout the current petition, Flanagan's counsel fails to allege exactly which facts are "new" and previously unavailable to the defense and which facts were known and previously presented. That burden of sorting through the facts is left to the court and the prosecution. Because Flanagan has the burden, not the State, his petition could be denied on that basis alone. Nonetheless, from the Statement of Facts above, the vast majority of Flanagan's factual theory regarding Saldana's testimony has long been known and was in fact presented to the jury and raised in prior post-conviction claims.

None of Flanagan's allegations constitute material exculpatory evidence withheld from the defense. Angela Saldana's "uncle," Robert Peoples, was apparently a high-profile character in Las Vegas at the time whose history was documented in old newspaper articles Flanagan has included in his appendix. App. 55-66. According to the newspaper, Peoples was a convicted murderer who subsequently worked as an Investigator in the Public Defender's Office and then as an informant in the Bramlet murder case in cooperation with then homicide detective, Beecher Avants. Id. Robert Peoples ended up marrying Wendy Hanley (now Mazaros), the 21-year old wife of Tom Hanley, the man he betrayed and helped convict of the Bramlet murder. Both Wendy Mazaros and Amy Hanley-Peoples have

strong motive against Robert Peoples and Beecher Avants as the men who betrayed and helped convict their husband and father, Tom Hanley, of murder. Regardless of whether such facts are "new" to current out-of-state counsel Robert D. Newell, Flanagan has failed to show that local counsel at the time was not aware of this public and high-profile background in what amounted to a relatively small legal community in the 1980's.

The involvement of Angela Saldana's aunt and uncle in the Bramlet murder in 1977 has little to no connection with the current case. It was Angela Saldana, not Robert Peoples, who was a witness and testified in Flanagan's murder trial. Accordingly, it is her motivation and relationship with law enforcement that is at issue, not that of Robert Peoples. Whether Angela's uncle had other motives in getting Angela to assist law enforcement is simply not relevant nor exculpatory. The declarations from Wendy and Amy simply indicate that Robert Peoples pressured Angela Saldana to testify and told her what to say based on apparent police reports he had. App. 172-80. Even if true, this does not mean that Angela felt coerced or that she testified falsely. Notably, had Angela refused to testify, the prosecutor certainly could have obtained a material witness warrant and compelled her testimony. Pressuring someone to testify is not the same thing as pressuring them to testify falsely, and Flanagan has no evidence of the latter. It was well-known at Flanagan's trial that Angela's uncle and aunt both encouraged her to get information on Flanagan to help law enforcement. It was well-known that she got paid $2,000 for her work as an informant. It was well-known that she and her family had close ties not just to law enforcement, but directly with the District Attorney's Office through family friend and district attorney Investigator Beecher Avants.

Nor is it unusual or improper for a witness to "rehearse" testimony prior to taking the stand by reviewing their former statements. This is often done directly with the State's prosecutor or Investigator to help refresh their memory. Angela testified at least four times against Flanagan over many years and had amassed a number of statements and prior testimony which she undoubtedly reviewed before taking the stand each time. That Angela may also have reviewed such materials with Robert Peoples is no surprise considering his

background as a criminal Investigator. Neither Wendy Mazaros nor Amy Hanley-Peoples were percipient witnesses to know whether Angela Saldana's testimony was true or not. Their declarations fall far short of establishing the falsity of any of Angela Saldana's testimony in this case.

Any minor new facts Flanagan has alleged in the current petition were available 27 years ago as common knowledge in the legal community, publicly available in newspapers, or available through known witnesses. Notably, Flanagan received the benefit of $275,000 in investigative services during the last post-conviction proceedings with current counsel in order to investigate these claims. Order of Affirmance filed 2/22/08, pp. 14-15. That Flanagan subsequently was able to "discover" these allegedly new facts on his own from public sources and belated witness interviews belies any claim that they were withheld by the State, even assuming that Wendy Mazaros made herself difficult to locate. Flanagan fails to allege what impediment external to the defense prevented him from interviewing witnesses and acquiring these details sooner.

Testimony from Angela Saldana helped establish Flanagan's admission that he murdered his grandparents as part of a conspiracy and plan to inherit or obtain insurance proceeds. She also testified that Flanagan purchased a new knife so he could disavow that one found at the crime scene as his. But Angela Saldana was not the only one to testify to these facts and her testimony was corroborated through several other witnesses including Rusty Havens, Lisa Licata, Michelle Gray, Tom Akers, and John Lucas. Because of the unique procedural history of this case, Angela Saldana has testified at least four times against Flanagan at trial and penalty hearings over more than a decade's time. Her testimony has been consistent throughout as to what she saw and heard and she has always maintained there were no inducements or benefits for her testimony. Wendy and Amy's suspicions to the contrary are belied by the record.

Considering the lack of credibility and extensive impeachment of Saldana's testimony at trial as detailed in the statement of facts above, the newly alleged facts are merely cumulative and not material enough to have affected the outcome of the case. Any further

impeachment of Saldana's motives and connection to law enforcement would not have altered what the Nevada Supreme Court has repeatedly found to be "overwhelming" evidence of Flanagan's culpability. Flanagan v. State, 104 Nev. 105, 754 P.2d 836 (1988) (Flanagan I) ("The record contains ***overwhelming*** evidence that nineteen year old Flanagan and his co-defendants planned to kill the Gordons in an effort to obtain insurance proceeds and an inheritance"); Flanagan v. State, 107 Nev. 243, 810 P.2d 759 (1991) (Flanagan II) ("The evidence of aggravating circumstances was ***overwhelming*** and clearly outweighed the mitigating circumstances found by the jury"); Flanagan v. State, 112 Nev. 1409, 930 P.2d 691 (1996) (Flanagan IV) ("We characterized the evidence against Flanagan and Moore as '***overwhelming***' in our first opinion in this case. There is no reason to change that characterization now"); Order of Affirmance filed 2/22/08 ("The evidence adduced at trial ***overwhelmingly*** established that Flanagan and his cohorts methodically planned the murders for pecuniary gain").

Accordingly, Flanagan's claim that the State has withheld evidence of Angela Saldana's false testimony and inducements under Brady, Giglio, and Napue fails to establish good cause to overcome the procedural bars in this case. Any newly discovered factual allegations were not withheld by the State and fail to establish any inducement or false testimony at trial. Furthermore, any additional facts are not material in effecting the outcome of the case considering the cumulative effect of the impeachment of Angela Saldana's testimony at trial and the duplicative nature of her testimony as overwhelmingly established by many other witnesses.

WHEREFORE, the State respectfully requests that this untimely and successive post-conviction petition be denied.

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DATED this 16th day of January, 2013.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Steven S. Owens*
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing, was made this 16th day of January, 2013, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

CAL J. POTTER, III, ESQ.
Potter Law Offices
1125 Shadow Lane
Las Vegas, Nevada 89102

ROBERT D. NEWELL, ESQ.
Davis Wright Tremaine LLP
1300 S.W. Fifth Avenue, Suite 2300
Portland, Oregon 97201

/s/ Eileen Davis
Employee for the District Attorney's Office

SSO/ed

EXHIBIT 1

EXHIBIT 1

STAYED, DP HABEAS, HABEAS, P5, P6

United States District Court
District of Nevada (Las Vegas)
CIVIL DOCKET FOR CASE #: 2:09-cv-00085-KJD -GWF

Flanagan v. Baker
Assigned to: Judge Kent J. Dawson
Referred to: Magistrate Judge George Foley, Jr
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 02/19/2009
Jury Demand: None
Nature of Suit: 535 Death Penalty - Habeas Corpus
Jurisdiction: Federal Question

Petitioner

Dale Edward Flanagan represented by **Mark Evan Olive**

320 W. Jefferson Street
Tallahassee, FL 32301
850-224-0004
Email: meolive@aol.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael Pescetta
Federal Public Defender
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TERMINATED: 02/19/2009

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TERMINATED: 02/19/2009

Robert D. Newell
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Suite 2300
Portland, OR 97201
503-241-2300
Fax: 503-778-5299
TERMINATED: 02/19/2009

V.

Respondent

E.K. McDaniel
Warden, Ely State Prison
TERMINATED: 09/14/2011

represented by **Dennis C. Wilson**
Nevada Attorney General's Office
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Las Vegas, NV 89101-
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Fax: 702-486-2377
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Respondent

Catherine Cortez Masto
Attorney General of the State of Nevada

represented by **Dennis C. Wilson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Respondent

Renee Baker

represented by **Dennis C. Wilson**
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/13/2009		Case assigned to Judge Kent J. Dawson and Magistrate Judge George W Foley, Jr. (JAG) (Entered: 01/13/2009)
01/13/2009	1	MOTION for Appointment of Counsel by Petitioner Dale Edward Flanagan. Motion ripe 1/13/2009. (ES) (Entered: 01/14/2009)
01/13/2009	2	RECEIPT of Payment: $ 5.00, receipt number 111913. (ES) (Entered: 01/14/2009)
01/13/2009	3	MOTION/APPLICATION for Leave to Proceed in forma pauperis by Petitioner Dale Edward Flanagan. Motion ripe 1/13/2009. (ES) (Entered: 01/14/2009)
01/13/2009	5	PETITION for Writ of Habeas Corpus - Death Penalty (Filing fee $ 5 paid), filed by Dale Edward Flanagan. (Attachments: # 1 Part 2)(ES) (Entered: 01/14/2009)
01/14/2009	4	**ERROR: Document filed in error by Clerk. (RFJ)** ~~NOTICE PURSUANT TO LOCAL RULE IB 2-2: In accordance with 28 USC § 636(c) and FRCP 73, the parties in this action are provided with a link to the "AO 85 Notice of Availability, Consent, and Order of Reference - Exercise of Jurisdiction by a U.S. Magistrate Judge" form on the Court's website - link. **Consent forms should NOT be electronically filed.** Upon consent of all parties, counsel are~~

		~~advised to manually file the form with the Clerk's Office. **(no image attached)** (ES)~~ Modified on 1/15/2009. (Entered: 01/14/2009)
01/14/2009	6	**ERROR: Document filed in error by Clerk. (RFJ)** ~~NOTICE TO COUNSEL PURSUANT TO LOCAL RULE IA 10-2. Counsel Robert D. Newell to comply with completion and electronic filing of the Designation of Local Counsel and Verified Petition. For your convenience, click on the following link to obtain the form from the Court's website - link. Counsel is also required to register for the Court's Case Management and Electronic Case Filing (CM/ECF) system and the electronic service of pleadings. Please visit the Court's website **www.nvd.uscourts.gov** to register Attorney(s). Verified Petition due by 3/1/2009.**(no image attached)** (ES)~~ Modified on 1/15/2009. (Entered: 01/14/2009)
01/15/2009		NOTICE of Docket Correction to 4 Notice re AO 85 Consent to Proceed Before a Magistrate: ERROR: Document filed in error by Clerk; CORRECTION: Document terminated by Court. **(no image attached)**(RFJ) (Entered: 01/15/2009)
01/15/2009		NOTICE of Docket Correction to 6 Notice for Desig of Local Counsel & VP: ERROR: Document filed in error by Clerk; CORRECTION: Document terminated by Court. Deadline terminated. **(no image attached)**(RFJ) (Entered: 01/15/2009)
01/15/2009	7	ORDER granting in part and denying in part 3 Motion/Application for Leave to Proceed in forma pauperis. The application is denied with respect to waiver of payment of filing fee but granted with respect to subsequent fees and costs. Petitioner must file a financial affidavit within 30 days of this Order. It is further ORDERED that petitioner's Motion for Appointment of Counsel 1 is GRANTED. The Federal Public Defender is appointed to represent petitioner and shall have 30 days to undertake representation or indicate to the court their inability to represent the petitioner. The Clerk shall serve a copy of this order upon Michael Pescetta. The Clerk shall serve the respondents by certified mail with a copy of this order and a copy of the habeas petition. Respondents' counsel shall file a Notice of Appearance within 30 days from the date of this Order, but shall not answer the habeas corpus petition until the court orders otherwise. Signed by Judge Kent J. Dawson on 1/15/09. (Copies have been distributed pursuant to the NEF - ES, cc: Michael Pescetta and Atty Generals Office) (Entered: 01/16/2009)
01/16/2009	8	NOTE: Certified Mail sent to Office of the Attorney General pursuant to 7 Order. (SRK) (Entered: 01/16/2009)
01/28/2009	9	NOTICE of Appearance by attorney Dennis C. Wilson on behalf of Respondents E.K. McDaniel, Catherine Cortez Masto. (Wilson, Dennis) (Entered: 01/28/2009)
02/17/2009	10	NOTICE by Petitioner Dale Edward Flanagan *Notice of Inability to Represent Petitioner, and Suggestion of Counsel for Appointment 18 U.S.C. Sec. 3599* (Pescetta, Michael) (Entered: 02/17/2009)
02/17/2009	11	MOTION/APPLICATION for Leave to Proceed in forma pauperis by Petitioner Dale Edward Flanagan. Motion ripe 2/17/2009. (ES) (Entered:

		02/18/2009)
02/19/2009	12	ORDER granting 11 Motion/Application for Leave to Proceed in forma pauperis and Appointing Attorney Mark Evan Olive for Dale Edward Flanagan. Copy of this Order and Pro Hac Vice Application mailed to Mark Evan Olive. (Pro Hac Vice due by 3/11/2009.) **PRO HAC VICE APPLICATION FEE WAIVED IN THIS CASE.** Signed by Judge Kent J. Dawson on 2/19/09. (Copies have been distributed pursuant to the NEF - ASB) (Entered: 02/19/2009)
03/13/2009	13	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Mark E. Olive by Petitioner Dale Edward Flanagan. Motion ripe 3/13/2009. (ES) (Entered: 03/16/2009)
03/16/2009	14	(1st Notice) PURSUANT TO SPECIAL ORDER 109: that **Mark Evan Olive** is in violation of Special Order 109. **Participation in the electronic filing system became mandatory for all attorneys effective January 1, 2006.** You are required to register for the Courts Case Management and Electronic Case Filing (CM/ECF) program and the electronic service of pleadings. All documents filed in connection with a case that has been assigned to the CM/ECF system will be filed electronically, re: #13 Verified Petition. Please visit the Courts website **www.nvd.uscourts.gov,** then select CM/ECF Info, to register the Attorney(s) and review Special Order 109 for compliance when electronically filing documents. **(no image attached)** (RFJ) (Entered: 03/16/2009)
03/17/2009	15	ORDER GRANTING 13 Verified Petition for Permission for Attorney Mark Olive to Practice Pro Hac Vice. Counsel to confer with petitioner within 45 days. Counsel has until 6/15/09 to gather the record, confer with petitioner, and confer with counsel for respondents. Telephonic Status Conference set for 6/30/2009 at 09:00 AM with Judge Kent J. Dawson. Signed by Judge Kent J. Dawson on 3/17/09. (Copies have been distributed pursuant to the NEF - ES) (Entered: 03/17/2009)
06/25/2009	21	MOTION to Continue District Judge Hearing by Petitioner Dale Edward Flanagan. Motion ripe 6/25/2009. (Olive, Mark) (Entered: 06/25/2009)
06/25/2009	22	MINUTE ORDER granting Motion to Continue Telephonic Status Conference. Status Conference set for 9/8/2009 09:00 AM before Judge Kent J. Dawson. (Copies have been distributed pursuant to the NEF - JRB) (Entered: 06/25/2009)
09/08/2009	27	MINUTES OF PROCEEDINGS - Telephonic Status Conference held on 9/8/2009 before Judge Kent J. Dawson. Crtrm Administrator: *Peggie Vannozzi*; Pla Counsel: *Mark Olive*; Def Counsel: *Dennis Wilson*; Court Reporter/FTR #: *Araceli Bareng*; Time of Hearing: *9:02 AM - 9:05 AM*; Courtroom: *6D*; Also present by telephone: Staff Attorney Jim Barkley. The Court asks Mr. Olive how much time he will need to file an amended petition. Mr. Olive asks the Court to allow him to complete his Phase I tasks before a due date for the filing of the amended petition is set. A Telephonic Status

		Conference is set for 11/10/2009 09:00 AM in LV Courtroom 6D before Judge Kent J. Dawson. **(no image attached)** (Copies have been distributed pursuant to the NEF - PAV) (Entered: 09/08/2009)
11/03/2009	29	MOTION to Continue District Judge Hearing by Petitioner Dale Edward Flanagan. Motion ripe 11/3/2009. (Olive, Mark) (Entered: 11/03/2009)
11/09/2009	31	MINUTE ORDER granting Motion to Continue District Judge Hearing 29 . (Scheduling Conference set for 1/5/2010 09:00 AM before Judge Kent J. Dawson.) (Copies have been distributed pursuant to the NEF - JRB) (Entered: 11/09/2009)
12/29/2009	32	MINUTE ORDER IN CHAMBERS of the Honorable Judge Kent J. Dawson, on 12/29/2009. By Deputy Clerk: Peggie Vannozzi. Telephonic Scheduling Conference set for 1/5/2010 at 9:00 AM is reset to 1/12/2010 09:00 AM in LV Courtroom 6D before Judge Kent J. Dawson.**(no image attached)** (Copies have been distributed pursuant to the NEF - PAV) (Entered: 12/29/2009)
01/12/2010	33	MINUTE ORDER IN CHAMBERS of the Honorable Judge Kent J. Dawson, on 1/12/2010. By Deputy Clerk: Peggie Vannozzi. This matter was set for a scheduling conference. Mr. Olive, Mr. Wilson and staff attorney Jim Barkley discussed the matter on the phone before court was scheduled to begin. An agreement was reached, which will be memorialized in a stipulation and order to be submitted to the Court. **(no image attached)** (Copies have been distributed pursuant to the NEF - PAV) (Entered: 01/12/2010)
01/12/2010	34	ORDER that the Amended Petition is due 4/12/10. Respondents to respond in 60 days. Petitioner may reply in 45 days. Signed by Judge Kent J. Dawson on 1/12/10. (Copies have been distributed pursuant to the NEF - AXM) (Entered: 01/12/2010)
04/06/2010	38	MOTION to Extend Time regarding discovery/non dispositive matter by Petitioner Dale Edward Flanagan. Motion ripe 4/6/2010. (Olive, Mark) (Entered: 04/06/2010)
04/07/2010	39	MINUTE ORDER granting Petitioner's Motion to Extend Time 38 . Amended Petition due by 7/12/2010. (Copies have been distributed pursuant to the NEF - JRB) (Entered: 04/07/2010)
07/09/2010	40	UNOPPOSED MOTION Extension of time by Petitioner Dale Edward Flanagan. Motion ripe 7/9/2010. (Olive, Mark) (Entered: 07/09/2010)
07/09/2010	41	MINUTE ORDER granting petitioner's unopposed motion to extend time 40 . Petitioner shall have until October 12, 2010, to file his amended petition for writ of habeas corpus. (Copies have been distributed pursuant to the NEF - JRB) (Entered: 07/09/2010)
10/07/2010	42	Unopposed MOTION to Extend Time regarding discovery/nondispositive matter by Petitioner Dale Edward Flanagan. Motion ripe 10/7/2010. (Olive, Mark) (Entered: 10/07/2010)
10/12/2010	43	MINUTE ORDER granting Petitioner's Motion to Extend Time 42 . Amended Petition due by 1/12/2011. (Copies have been distributed pursuant

		to the NEF - JRB) (Entered: 10/12/2010)
12/29/2010	44	MOTION to Extend Time regarding discovery/nondispositive matter by Petitioner Dale Edward Flanagan. Motion ripe 12/29/2010. (Olive, Mark) (Entered: 12/29/2010)
01/03/2011	45	MINUTE ORDER granting Motion to Extend Time 44 and denying ex parte request for subpoenas. Amended Petition due by 2/11/2011. (Copies have been distributed pursuant to the NEF - JRB) (Entered: 01/03/2011)
02/11/2011	46	AMENDED PETITION for Writ of Habeas Corpus, filed by Dale Edward Flanagan.(Olive, Mark) (Entered: 02/11/2011)
02/14/2011	47	EXHIBIT(s) *Appendix 1-7* to 46 Amended Petition for Writ of Habeas Corpus ; filed by Petitioner Dale Edward Flanagan. (Attachments: # 1 Appendix 2, # 2 Appendix 3, # 3 Appendix 4, # 4 Appendix 5, # 5 Appendix 6, # 6 Appendix 7)(Olive, Mark) (Entered: 02/14/2011)
04/12/2011	48	First MOTION to Extend Time regarding discovery/nondispositive matter (First Request) *Motion for Enlargement of Time to File Response to Amended Petition for Writ of Habeas Corpus* by Respondents Catherine Cortez Masto, E.K. McDaniel. Motion ripe 4/12/2011. (Wilson, Dennis) (Entered: 04/12/2011)
04/19/2011	49	MINUTE ORDER granting Motion to Extend Time 48 . Respondents response to amended petition 46 due 7/11/2011. (Copies have been distributed pursuant to the NEF - JRB) (Entered: 04/19/2011)
07/11/2011	50	Unopposed MOTION to Extend Time regarding discovery/nondispositive matter (Second Request) *Motion for Enlargement of Time to File Response to Amended Petition for Writ of Habeas Corpus* by Respondents Catherine Cortez Masto, E.K. McDaniel. Motion ripe 7/11/2011. (Wilson, Dennis) (Entered: 07/11/2011)
07/12/2011	51	MINUTE ORDER granting Respondents' Motion to Extend Time 50 . Response to petition due 8/25/2011. (Copies have been distributed pursuant to the NEF - JRB) (Entered: 07/12/2011)
08/25/2011	52	Unopposed MOTION to Extend Time regarding discovery/nondispositive matter (Third Request) *Motion for Enlargement of Time to File Response to Amended Petition for Writ of Habeas Corpus* by Respondents Catherine Cortez Masto, E.K. McDaniel. Motion ripe 8/25/2011. (Wilson, Dennis) (Entered: 08/25/2011)
08/26/2011	53	ORDER Granting 52 Motion to Extend Time to respond to Petition for Writ of Habeas Corpus. E.K. McDaniel answer due 9/2/2011. Signed by Judge Kent J. Dawson on 8/26/11. (Copies have been distributed pursuant to the NEF - EDS) (Entered: 08/26/2011)
09/02/2011	54	MOTION to Substitute Party *Motion for Substitution of Respondent* by Respondents Catherine Cortez Masto, E.K. McDaniel. Responses due by 9/19/2011. (Wilson, Dennis) (Entered: 09/02/2011)
09/02/2011	55	MOTION to Dismiss *First Amended Petition for Writ of Habeas Corpus* by

		Respondents Catherine Cortez Masto, E.K. McDaniel. Responses due by 9/19/2011. (Wilson, Dennis) (Entered: 09/02/2011)
09/02/2011	56	MOTION for More Definite Statement by Respondents Catherine Cortez Masto, E.K. McDaniel. Responses due by 9/19/2011. (Wilson, Dennis) (Entered: 09/02/2011)
09/07/2011	57	EXHIBIT(s) *Index of Exhibits, Vol. 1 of 21 w/attached Exhibits 1-25* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2 Part 1, # 3 Exhibit 2 Part 2, # 4 Exhibit 3 - Exhibit 7, # 5 Exhibit 8 - Exhibit 22, # 6 Exhibiit 23 - Exhibit 25)(Wilson, Dennis) (Entered: 09/07/2011)
09/07/2011	58	EXHIBIT(s) *Index of Exhibits, Vol. 2 of 21 w/attached Exhibits 26-50* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 26 - Exhibit 43, # 2 Exhibit 44, # 3 Exhibit 45 - Exhibit 49, # 4 Exhibit 50 Part 1, # 5 Exhibit 50 Part 2)(Wilson, Dennis) (Entered: 09/07/2011)
09/07/2011	59	EXHIBIT(s) *Index of Exhibits, Vol. 3 of 21 w/attached Exhibits 51-57* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 51, # 2 Exhibit 52 - Exhibit 53, # 3 Exhibit 54 - Exhibit 55, # 4 Exhibit 56, # 5 Exhibit 57)(Wilson, Dennis) (Entered: 09/07/2011)
09/07/2011	60	EXHIBIT(s) *Index of Exhibits, Vol. 4 of 21 w/attached Exhibits 58-63* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 58, # 2 Exhibit 59 - Exhibit 60, # 3 Exhibit 61 - Exhibit 63)(Wilson, Dennis) (Entered: 09/07/2011)
09/07/2011	61	EXHIBIT(s) *Index of Exhibits, Vol. 5 of 21 w/attached Exhibits 64-70* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 64, # 2 Exhibit 65 - Exhibit 66, # 3 Exhibit 67, # 4 Exhibit 68 Part 1, # 5 Exhibit 68 Part 2, # 6 Exhibit 69 - Exhibit 70)(Wilson, Dennis) (Entered: 09/07/2011)
09/07/2011	62	EXHIBIT(s) *Index of Exhibits, Vol. 6 of 21 w/attached Exhibits 71-111* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 71 - Exhibit 78, # 2 Exhibit 79, # 3 Exhibit 80 - Exhibit 95, # 4 Exhibit 96 - Exhibit 111)(Wilson, Dennis) (Entered: 09/07/2011)
09/07/2011	63	EXHIBIT(s) *Index of Exhibits, Vol. 7 of 21 w/attached Exhibits 112-140* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 112 - Exhibit 120, # 2 Exhibit 121 Part 1, # 3 Exhibit 121 Part 2, # 4 Exhibit 122 - Exhibit 124, # 5 Exhibit 125, # 6 Exhibit 126 - Exhibit 128, # 7 Exhibit 129 - Exhibit 138, # 8 Exhibit 139 Part 1, # 9 Exhibit 139 Part 2, # 10 Exhibit 140)(Wilson, Dennis) (Entered: 09/07/2011)
09/07/2011	64	EXHIBIT(s) *Index of Exhibits, Vol. 8 of 21 w/attached Exhibits 141-150* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 141 Part 1, # 2 Exhibit 141 Part 2, # 3 Exhibit 142 - Exhibit 144, # 4 Exhibit 145 Part 1, # 5 Exhibit 145 Part 2, # 6 Exhibit 146 - Exhibit 150) (Wilson, Dennis) (Entered: 09/07/2011)

09/07/2011	65	EXHIBIT(s) *Index of Exhibits, Vol. 9 of 21 w/attached Exhibits 151-178* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 151, # 2 Exhibit 152 - Exhibit 161, # 3 Exhibit 162 - Exhibit 169, # 4 Exhibit 170 - Exhibit 178)(Wilson, Dennis) (Entered: 09/07/2011)
09/07/2011	66	EXHIBIT(s) *Index of Exhibits, Vol. 10 of 21 w/attached Exhibits 179-237* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 179 - Exhibit 197, # 2 Exhibit 198 - Exhibit 204, # 3 Exhibit 205 - Exhibit 224, # 4 Exhibit 225 - Exhibit 237)(Wilson, Dennis) (Entered: 09/07/2011)
09/07/2011	67	EXHIBIT(s) *Index of Exhibits, Vol. 11 of 21 w/attached Exhibits 238-268* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 238 - Exhibit 250, # 2 Exhibit 251 - Exhibit 259, # 3 Exhibit 260 Part 1, # 4 Exhibit 260 Part 2, # 5 Exhibit 261 - Exhibit 268)(Wilson, Dennis) (Entered: 09/07/2011)
09/07/2011	68	EXHIBIT(s) *Index of Exhibits, Vol. 12 of 21 w/attached Exhibits 269-272* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 269, # 2 Exhibit 270 Part 1, # 3 Exhibit 270 Part 2, # 4 Exhibit 271 Part 1, # 5 Exhibit 271 Part 2, # 6 Exhibit 272)(Wilson, Dennis) (Entered: 09/07/2011)
09/07/2011	69	EXHIBIT(s) *Index of Exhibits, Vol. 13 of 21 w/attached Exhibits 273-275* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 273, # 2 Exhibit 274 Part 1, # 3 Exhibit 274 Part 2, # 4 Exhibit 275 Part 1, # 5 Exhibit 275 Part 2)(Wilson, Dennis) (Entered: 09/07/2011)
09/07/2011	70	EXHIBIT(s) *Index of Exhibits, Vol. 14 of 21 w/attached Exhibits 276-305* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 276 Part 1, # 2 Exhibit 276 Part 2, # 3 Exhibit 277 - Exhibit 278, # 4 Exhibit 279 - Exhibit 305)(Wilson, Dennis) (Entered: 09/07/2011)
09/07/2011	71	EXHIBIT(s) *Index of Exhibits, Vol. 15 of 21 w/attached Exhibits 306-347* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 306 Part 1, # 2 Exhibit 306 Part 2, # 3 Exhibit 307 - Exhibit 310, # 4 Exhibit 311 - Exhibit 319, # 5 Exhibit 320 - Exhibit 347)(Wilson, Dennis) (Entered: 09/07/2011)
09/07/2011	72	EXHIBIT(s) *Index of Exhibits, Vol. 16 of 21 w/attached Exhibits 348-382* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 348 - Exhibit 369, # 2 Exhibit 370, # 3 Exhibit 371 - Exhibit 379, # 4 Exhibit 380 - Exhibit 381, # 5 Exhibit 382)(Wilson, Dennis) (Entered: 09/07/2011)
09/07/2011	73	EXHIBIT(s) *Index of Exhibits, Vol. 17 of 21 w/attached Exhibits 383-388* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 383, # 2 Exhibit 384, # 3 Exhibit 385, # 4 Exhibit 386 - Exhibit 388)(Wilson, Dennis) (Entered: 09/07/2011)
09/07/2011	74	EXHIBIT(s) *Index of Exhibits, Vol. 18 of 21 w/attached Exhibits 389-433* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 389 - Exhibit 409, # 2 Exhibit 410 - Exhibit 424, # 3 Exhibit 425 -

		Exhibit 433)(Wilson, Dennis) (Entered: 09/07/2011)
09/07/2011	75	EXHIBIT(s) *Index of Exhibits, Vol. 19 of 21 w/attached Exhibits 434-459* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 434 - Exhibit 436, # 2 Exhibit 437 Part 1, # 3 Exhibit 437 Part 2, # 4 Exhibit 438 - Exhibit 458, # 5 Exhibit 459 Part 1, # 6 Exhibit 459 Part 2) (Wilson, Dennis) (Entered: 09/07/2011)
09/07/2011	76	EXHIBIT(s) *Index of Exhibits, Vol. 20 of 21 w/attached Exhibits 460-495* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 460 - Exhibit 474, # 2 Exhibit 475 - Exhibit 495)(Wilson, Dennis) (Entered: 09/07/2011)
09/07/2011	77	EXHIBIT(s) *Index of Exhibits, Vol. 21 of 21 w/attached Exhibits 496-524* filed by Respondents Catherine Cortez Masto, E.K. McDaniel. (Attachments: # 1 Exhibit 496 - Exhibit 500, # 2 Exhibit 501 - Exhibit 505, # 3 Exhibit 506 - Exhibit 524)(Wilson, Dennis) (Entered: 09/07/2011)
09/14/2011	78	MINUTE ORDER IN CHAMBERS of the Honorable Judge Kent J. Dawson, on 9/14/2011. By Deputy Clerk: Dennis Farias. Granting 54 Motion to Substitute Party. Renee Baker substituted for E.K. McDaniel as respondent. (Copies have been distributed pursuant to the NEF - EDS) (Entered: 09/14/2011)
09/30/2011	79	First MOTION to Extend Time regarding discovery/nondispositive matter (First Request) by Petitioner Dale Edward Flanagan. Motion ripe 9/30/2011. (Olive, Mark) (Entered: 09/30/2011)
10/04/2011	80	MINUTE ORDER granting Petitioner's Motion to Extend Time 79 to respond to Respondents' MOTION to Dismiss *First Amended Petition for Writ of Habeas Corpus* 55 and MOTION for More Definite Statement 56 . Responses due by 12/1/2011. (Copies have been distributed pursuant to the NEF - JRB) (Entered: 10/04/2011)
11/30/2011	81	Unopposed MOTION to Extend Time regarding discovery/nondispositive matter (Second Request) by Petitioner Dale Edward Flanagan. Motion ripe 11/30/2011. (Olive, Mark) (Entered: 11/30/2011)
12/02/2011	82	MINUTE ORDER granting Petitioner's Motion to Extend Time 81 to respond to Respondents' MOTION to Dismiss *First Amended Petition for Writ of Habeas Corpus* 55 and MOTION for More Definite Statement 56 . Responses due by 1/30/2012.(Copies have been distributed pursuant to the NEF - JRB) (Entered: 12/02/2011)
01/30/2012	83	RESPONSE to filed by Petitioner Dale Edward Flanagan. Replies due by 2/9/2012. (Olive, Mark) (Entered: 01/30/2012)
01/30/2012	84	MOTION Hold in Abeyance by Petitioner Dale Edward Flanagan. Responses due by 2/16/2012. (Olive, Mark) (Entered: 01/30/2012)
02/16/2012	85	Unopposed MOTION to Extend Time regarding discovery/nondispositive matter (First Request) *Motion for Fourteen-Day Enlargement of Time to File Response to Moiton to Hold Proceedings in Abeyance* by Respondents Renee Baker, Catherine Cortez Masto. Motion ripe 2/16/2012. (Wilson, Dennis)

		(Entered: 02/16/2012)
02/17/2012	86	MINUTE ORDER granting Respondents' Motion to Extend Time 85 to file a response to MOTION to Hold in Abeyance 84 . Responses due by 3/1/2012. (Copies have been distributed pursuant to the NEF - JRB) (Entered: 02/17/2012)
02/29/2012	87	MOTION to Extend Time regarding discovery/nondispositive matter (Second Request) *Motion for Thirty-Day Enlargement of Time to File Response to Motion to Hold Proceedings in Abeyance* by Respondents Renee Baker, Catherine Cortez Masto. Motion ripe 2/29/2012. (Wilson, Dennis) (Entered: 02/29/2012)
02/29/2012	88	MOTION to Extend Time regarding discovery/nondispositive matter (First Request) *Motion for Enlargement of Time to File Reply To Opposition to Motion to Dismiss Petition* by Respondents Renee Baker, Catherine Cortez Masto. Motion ripe 2/29/2012. (Wilson, Dennis) (Entered: 02/29/2012)
03/05/2012	89	MINUTE ORDER granting Motions to Extend Time 87 , 88 within which to file their response to petitioner's motion for stay and abeyance 84 and their reply in support of their motion to dismiss 55 , 56 . Response and Reply due by 3/30/2012. (Copies have been distributed pursuant to the NEF - JRB) Modified on 3/5/2012 (JRB). (Entered: 03/05/2012)
03/30/2012	90	RESPONSE to 84 MOTION Hold in Abeyance, filed by Respondents Renee Baker, Catherine Cortez Masto. *Respondents' Opposition to Petitioner's Motion to Hold Proceedings in Abeyance* Replies due by 4/9/2012. (Wilson, Dennis) (Entered: 03/30/2012)
03/30/2012	91	Second MOTION to Extend Time regarding discovery/nondispositive matter (Second Request) *Motion for Enlargement of Time to File Reply to Opposition to Motion to Dismiss Petition* by Respondents Renee Baker, Catherine Cortez Masto. Motion ripe 3/30/2012. (Wilson, Dennis) (Entered: 03/30/2012)
04/02/2012	92	MINUTE ORDER granting Respondents' Motion to Extend Time 91 to file a reply in support of their MOTION to Dismiss *First Amended Petition for Writ of Habeas Corpus* 55 . Reply due by 4/6/2012. (Copies have been distributed pursuant to the NEF - JRB) (Entered: 04/02/2012)
04/06/2012	93	REPLY to Response to 55 MOTION to Dismiss *First Amended Petition for Writ of Habeas Corpus* ; filed by Respondents Renee Baker, Catherine Cortez Masto. *Respondents' Reply to Petitioner's Opposition to Motion to Dismiss* (Wilson, Dennis) (Entered: 04/06/2012)
04/06/2012	94	MOTION to Dismiss Conflict of Interest Claim filed by Respondents Renee Baker, Catherine Cortez Masto. Responses due by 4/23/2012. (Wilson, Dennis) (Entered: 04/06/2012)
04/09/2012	95	Unopposed MOTION to Extend Time regarding discovery/nondispositive matter (First Request) re 94 MOTION to Dismiss *Respondents Motion to Dismiss Conflict of Interest Claim*, 90 Response to Motion, 93 Reply to Response to Motion, by Petitioner Dale Edward Flanagan. Motion ripe

		4/9/2012. (Olive, Mark) (Entered: 04/09/2012)
04/10/2012	96	MINUTE ORDER granting Petitioner's Motion to Extend Time 95 to file a reply in support of MOTION Hold in Abeyance 84 and a response to *Respondents' Motion to Dismiss Conflict of Interest Claim* 94 . Both documents due by 5/21/2012. (Copies have been distributed pursuant to the NEF - JRB) (Entered: 04/10/2012)
05/21/2012	97	REPLY to Response to 84 MOTION Hold in Abeyance ; filed by Petitioner Dale Edward Flanagan. (Olive, Mark) (Entered: 05/21/2012)
05/21/2012	98	RESPONSE to 94 MOTION to Dismiss Conflict of Interest Claim filed by Petitioner Dale Edward Flanagan. Replies due by 5/31/2012. (Olive, Mark) (Entered: 05/21/2012)
05/31/2012	99	REPLY to Response to 94 MOTION to Dismiss Conflict of Interest Claim ; filed by Respondents Renee Baker, Catherine Cortez Masto. *Respondents' Reply to Petitioner's Opposition to Motion to Dismiss Conflict of Interest Claim* (Wilson, Dennis) (Entered: 05/31/2012)
08/23/2012	100	ORDER Granting 84 Motion for Stay and Abeyance. Denying as moot 55 Motion to Dismiss First Amended Petition. Denying as moot 94 Motion to Dismiss Conflict of Interest Claim. Denying without prejudice 56 Motion for More Definite Statement. status check due by 12/15/2012. Signed by Judge Kent J. Dawson on 8/23/2012. (Copies have been distributed pursuant to the NEF - SLR) (Entered: 08/23/2012)
09/18/2012	101	Unopposed MOTION to Extend Time regarding discovery/nondispositive matter (First Request) *by Six (6) Days to file State Exhaustion Petition* by Petitioner Dale Edward Flanagan. Motion ripe 9/18/2012. (Olive, Mark) (Entered: 09/18/2012)
09/20/2012	102	MINUTE ORDER granting petitioner's unopposed motion to extend time 101 to comply with court's order 100 . State proceeding shall be initiated by 9/28/2012. (Copies have been distributed pursuant to the NEF - JRB) (Entered: 09/20/2012)
10/01/2012	103	NOTICE *of Compliance with Court's Orders Re: Filing of State Exhaustion Petition* by Dale Edward Flanagan. (Olive, Mark) (Entered: 10/01/2012)

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Description:	Docket Report	**Search Criteria:**	2:09-cv-00085-KJD - GWF
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EXHIBIT 2

EXHIBIT 2

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Appointed Counsel for Petitioner

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DALE EDWARD FLANAGAN,	)	
	)	
Petitioner,	)	Case No. 2:09-cv-85
	)	
v.	)	
	)	
E.K. McDANIEL, Warden,	)	
Ely State Prison, and	)	
CATHERINE CORTEZ MASTO,	)	
Attorney General of the State of Nevada,	)	**DEATH PENALTY CASE**
	)	**(NO EXECUTION DATE**
Respondents.	)	**SCHEDULED)**
	)	

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, DALE EDWARD FLANAGAN, by and through counsel, hereby files this petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. Petitioner alleges that he is being held in custody in violation of the First, Fifth, Sixth, Eighth, and Fourteenth Amendments of the Constitution of the United

States of America, and the rights afforded him under international law enforced under the Supremacy Clause of the United States Constitution.

I. PROCEDURAL ALLEGATIONS

1. Petitioner is in the custody of the State of Nevada at Ely State Prison in Ely, Nevada, pursuant to a state court judgment of convictions and sentences of death entered by the Eighth Judicial District Court, Clark County, in Case No. C69269. Respondent E.K. McDaniel is the Warden of Ely State Prison, and Catherine Cortez Masto is the Attorney General of the State of Nevada. The Respondents are sued in their official capacities.

2. On November 5, 1984, Colleen and Carl Gordon, Petitioner's grandparents, were killed in their Las Vegas home. Petitioner and five other teenage boys were charged with their murders.

3. Petitioner was charged by Information with conspiracy to commit burglary, conspiracy to commit robbery, conspiracy to commit murder, burglary, robbery with the use of a deadly weapon and First Degree murder with the use of a deadly weapon. Petitioner entered a plea of not guilty.

4. The Clark County Public Defender's Office was appointed to represent Petitioner and did so until immediately prior to a hearing on in-limine motions in August 1985. At that time, attorney Randall Pike was appointed to represent

Petitioner, which he did during the hearing, trial, and sentencing.

5. Trial began in September 1985, and on October 11, 1985, the jury convicted Petitioner on all charges. On October 17, 1985, the jury sentenced Petitioner to death. The jury found the existence of the following aggravating circumstances: knowing creation of a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person; the murders were committed while Defendant was engaged in the commission of or an attempt to commit or flight after committing or attempting to commit any burglary; the murders were committed while Defendant was engaged in the commission of or attempt to commit or flight after committing or attempting to commit any robbery; and the murders were committed by Defendant for the purpose of receiving money or any other thing of monetary value. The jury found no mitigating circumstances and returned death verdicts for the First-Degree murder convictions.

6. The convictions and sentences were entered on December 10, 1985, in the Eighth Judicial District Court of and for Clark County, Nevada, by the Honorable Donald Mosley in Case No. C69269. Petitioner was sentenced to one year for conspiracy to commit burglary (Count I); six years for conspiracy to commit robbery (Count II); six years for conspiracy to commit murder (Count III);

10 years for burglary (Count IV); 15 years for robbery and a consecutive term of 15 years for use of a deadly weapon (Count V); death by lethal injection for first degree murder and a consecutive term of death by lethal injection for use of a deadly weapon (Count VI); death by lethal injection for first degree murder and a consecutive term of death by lethal injection for use of a deadly weapon (Count VII).

7. On December 19, 1985, Petitioner filed a timely notice of appeal from the judgment. Attorney Robert L. Miller of the Clark County Public Defender's Office represented Petitioner during his direct appeal to the Nevada Supreme Court.

8. On May 18, 1988, the Nevada Supreme Court issued an opinion affirming Petitioner's convictions, but reversing his death sentences. *Flanagan v. State*, 104 Nev. 105, 754 P.2d 836 (1988).

9. In July 1989, Petitioner was retried for sentencing before a jury, the Honorable Donald Mosley again presiding. He was represented in that proceeding by Stephen J. Dahl of the Clark County Public Defender's Office. On July 14, 1989, the jury returned death verdicts. This jury found the same four aggravating circumstances as the first jury. In addition, they found two mitigating circumstances: no significant history of prior criminal activity and any other

mitigating circumstance. The judgment and warrant of execution were entered on July 31, 1989.

10. At his sentencing hearing on July 31, 1989, Petitioner, against the advice of counsel, attempted to waive all appeals and proceed to execution. The trial court allowed Attorney Dahl to withdraw. Because the Nevada Supreme Court was required by statute to review the death sentence even in the absence of appeal, that court stayed the execution and ordered the trial court to appoint independent counsel to brief the issue of whether Petitioner validly waived his appeal rights. Lee Elizabeth McMahon was appointed to perform this task on October 9, 1989, and she continued to represent Petitioner in his direct appeal to the Nevada Supreme Court.

11. On April 30, 1991, Petitioner's death judgment was affirmed by the Nevada Supreme Court. *Flanagan v. State*, 107 Nev. 243, 810 P.2d 759 (1991).

12. On July 29, 1991, Petitioner filed a timely petition for writ of certiorari to the United States Supreme Court. He was represented on that petition by attorney Michael Laurence. On March 23, 1992, the United States Supreme Court granted the petition for writ of certiorari, vacated the Nevada Supreme Court's judgment, and remanded the matter to the Nevada Supreme Court for further consideration. *Flanagan v. Nevada*, 503 U.S. 931 (1992).

13. On February 10, 1993, the Nevada Supreme Court vacated Petitioner's death sentences and remanded the case to the District Court for a third penalty trial. *Flanagan v. State*, 109 Nev. 50, 846 P.2d 1053 (1993).

14. In June 1995, Petitioner appeared before a third jury for retrial of his sentence, the Honorable Addeliar D. Guy III, presiding. He was represented in that hearing by Rebecca Blaskey (nee Mounts) and Steven Wall of the Clark County Public Defender's Office. On June 23, 1995, the jury returned death verdicts. In addition to the same aggravating and mitigating circumstances described in Paragraph 9, *supra*, this jury found an additional mitigating circumstance of youth of the defendant at the time of the crime. The judgment was entered on July 11, 1995.

15. Petitioner timely appealed the judgment to the Nevada Supreme Court. He was represented during that appeal to the Nevada Supreme Court by attorney Michael Miller of the Clark County Public Defender's Office.

16. On December 20, 1996, Petitioner's judgment was affirmed by the Nevada Supreme Court. *Flanagan v. State*, 112 Nev. 1409, 930 P.2d 691 (1996).

17. On February 17, 1998, Petitioner filed a timely petition for writ of certiorari to the United States Supreme Court. He was represented on that petition by attorney Michael Miller of the Clark County Public Defender's Office. On

April 20, 1998, the United States Supreme Court denied Petitioner's petition for writ of certiorari. 523 U.S. 1082 (1998).

18. On May 6, 1998, Petitioner served a pro per petition for post-conviction relief and request for appointment of counsel on the Warden of Ely State Prison, the Nevada Attorney General, and the Clark County District Attorney by delivering the pro per petition in accordance with the Ely State Prison mail procedures. The pro per petition for post-conviction relief and request for appointment of counsel was filed in the District Court for the Eighth Judicial District on May 28, 1998. On June 5, 1998, the District Court appointed Cal J. Potter, III, and Robert D. Newell of Davis Wright Tremaine LLP, to represent Petitioner in the state post-conviction proceedings and to supplement his petition. On November 30, 1999, counsel for Petitioner filed a Supplemental Petition for Writ of Habeas Corpus.

19. The Supplemental Petition for Writ of Habeas Corpus contained thirty-six comprehensive claims for relief supported by detailed factual allegations and 487 pages of exhibits. A thirty-seventh claim was later added to warrant relief. Petitioner also sought leave to conduct discovery and for funds necessary to conduct an adequate investigation and hire experts to develop all potentially meritorious claims for relief. In addition, Petitioner requested an evidentiary

hearing on his claims.

20. On August 16, 2000, the District Court denied Petitioner's motion for discovery. With only minor exceptions, the District Court also denied the motions for funds necessary to develop and present potential meritorious claims. On February 14, 2002, the District Court held a limited evidentiary hearing on a minor aspect of only one claim.

21. On August 8, 2002, the District Court entered Findings of Fact, Conclusions of Law and ordered the Petition denied. On August 16, 2002, the District Court mailed Notice of Entry of Decision and Order. Petitioner timely filed his Notice of Appeal to the Nevada Supreme Court on September 12, 2002. Cal J. Potter, III, and Robert D. Newell of Davis Wright Tremaine LLP, represented Petitioner in his appeal to the Nevada Supreme Court. On February 22, 2008, the Nevada Supreme Court issued an order denying relief. *Flanagan v. State*, No. 40232.

22. On January 13, 2009, petitioner timely filed a Petition for Writ of Habeas Corpus in this Court.

23. **Statement with Respect to Exhaustion**. With the exception of Claim 1, each claim in this amended petition was presented to the Nevada Supreme Court in the appeals from the three trials and the denial of post-conviction relief.

24. **Statement with Respect to the Application of any Procedural Default Provisions**. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 2241 and 2254. Any procedural bars invoked by the Nevada Supreme Court do not and cannot preclude review by and relief from this Court for the following reasons: Such procedural bars were unfairly and retroactively applied without notice to Petitioner's trial or state habeas counsel of their applicability; the application of such procedural bars was waived by respondent; the application of such procedural bars was neither adequate (they were not clear, firmly established, and regularly followed), nor independent (the bars were not applied independent of the assessment of the merits of the claims); there was good cause for Petitioner to raise his claims at the time and manner in which they were raised, and he would be prejudiced by the application of procedural bars in this case; and/or the application of procedural bars in this case would constitute a fundamental miscarriage of justice.

A. The failure to raise any of the claims asserted in this petition which were susceptible to decision on direct appeal was the result of ineffective assistance of counsel on appeal.

B. The failure to raise any of the claims asserted in this petition that were susceptible of being raised in the state post-conviction proceeding and appeal was

the result of ineffective assistance of counsel, in a proceeding in which Petitioner had a right to effective assistance of counsel under state law and under federal law; was the result of representation by counsel that violated federal constitutional due process standards; and was induced by the state trial court's refusal to permit appointed counsel adequate time or resources to identify and present all of the available constitutional claims in violation of the right to an adequate opportunity to be heard guaranteed by the Due Process Clause of the Fourteenth Amendment.[1]

C. Petitioner and previous counsel were prevented from discovering and alleging all of the claims raised in this petition by the state's action in failing to disclose all material evidence in possession of its agents; and by the representation of the Clark County District Attorney's office that it maintained an "open file" policy, upon which Petitioner and counsel relied as a representation that all material information had been disclosed.

D. Petitioner and previous counsel were prevented from discovering and alleging all of the claims raised in this petition by the state courts' actions in failing to grant Petitioner's requests for discovery, including all material evidence in possession of Clark County District Attorney's office, its agents, and by law

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[1]Pursuant to *Crump v. Warden*, 113 Nev. 293, 934 P.2d 247 (1997), Mr. Flanagan was entitled to effective assistance of counsel in the habeas corpus proceedings as a matter of state law.

enforcement officials.

E. Petitioner and previous counsel were prevented from discovering and alleging all of the claims raised in this petition by the state courts' actions in failing to grant Petitioner's requests for funding for investigative and expert assistance to develop and present fully all potentially meritorious claims for relief.

F. The Nevada Supreme Court has deemed counsel's failure to raise claims in prior proceedings or in a timely manner as sufficient cause to allow new claims to be considered and has disregarded such failures and addressed constitutional claims in the cases of similarly-situated litigants. Barring consideration of the merits of Petitioner's claims would violate the Equal Protection and Due Process clauses of the Fourteenth Amendment to the United States Constitution, by which this Court is bound under the Supremacy Clause.

(1) The Nevada Supreme Court has exercised complete discretion to address constitutional claims, when an adequate record is presented to resolve them, at any stage of the proceedings, despite the default rules contained in Nev. Rev. Stats. §§ 34.726, 34.800, and 34.810. A purely discretionary procedural bar is not adequate to preclude review of the merits of constitutional claims.

(2) The Nevada Supreme Court has complete discretion to address

constitutional claims, when an adequate record is presented to resolve them, at any stage of the proceedings, despite the default rules contained in Nev. Rev. Stat. §§ 34.726; 34.800; 34.810. The Nevada Supreme Court has disregarded default rules and addressed constitutional claims in the exercise of its complete discretion to do so.

(3) The Nevada Supreme Court has failed to apply the one-year rule of Nev. Rev. Stat. § 34.726 to bar its review of constitutional claims contained in successive capital habeas petitions.

(4) The Nevada Supreme Court also routinely disregards the procedural bar arising from failure to raise claims in earlier proceedings.

(5) The Nevada Supreme Court has failed to apply the rebuttable presumption of Nev. Rev. Stat. § 34.800(2) to capital habeas petitioners.

(6) The Nevada Supreme Court has entertained the merits of claims raised in briefs that were returned unfiled by the court pursuant to its own order.

(7) The Nevada Supreme Court has issued inconsistent rulings on whether technical defects in a petition may be cured by amendment.

(8) The Nevada Supreme Court has entertained the merits of constitutional claims that were improperly incorporated from the briefing in the trial court in violation of Nev. R. App. P. 28(e).

(9) The State has admitted that the Nevada Supreme Court disregards procedural default rules on grounds that cannot be reconciled with a theory of consistent application of procedural default rules.

(10) The Nevada Supreme Court has found certain constitutional claims procedurally defaulted before those claims could even be raised.

(11) The Nevada Supreme Court has also applied inconsistent rules when deciding whether a petitioner can demonstrate "cause" to excuse a procedural default.

(12) The Nevada Supreme Court inconsistently applies the "cause" standard to excuse the filing of untimely petitions under Nev. Rev. Stat. § 34.726(1)(a). The fact that the definition of "cause" under Nev. Rev. Stat. § 34.726 is treated differently in published versus unpublished dispositions further shows that this statutory provision is not a "rule" that is clearly and consistently followed.

(13) The Nevada Supreme Court has reached diametrically opposite conclusions on whether an erroneous court ruling establishes "cause" to review the merits of a constitutional claim on post-conviction.

(14) The Nevada Supreme Court has reached inconsistent results on the issue of whether a procedural rule that does not exist at the time of a

purported default may preclude the review of the merits of meritorious constitutional claims.

G. Default bars that can be "graciously waived," or disregarded out of "frustration," are not "rules" that bind the actions of courts at all, but are the result of mere exercises of unfettered discretion; and such impediments cannot constitutionally bar review of meritorious claims. The Nevada Supreme Court's practices make review of the merits of constitutional claims a matter of "grace and favor," and they cannot constitutionally be applied to bar consideration of Petitioner's claims.

H. The Nevada Supreme Court could not apply any supposed default rules to bar consideration of Petitioner's claims when it has failed to apply those rules to similarly-situated petitioners, and thus has failed to provide notice of what default rules will be enforced, without violating the Equal Protection and Due Process clauses of the Fourteenth Amendment. This Court cannot apply the supposed default rules to Petitioner's case without violating the same constitutional provisions, which it cannot do under the Supremacy Clause.

I. The Nevada Supreme Court could not apply any supposed default rules to bar consideration of Petitioner's claims because the trial court improperly refused to allow trial counsel to present objections in open court, conduct proceedings on

the record, and ensure that Petitioner was present at and aware of the non-reported proceedings.

25. Petitioner is filing this amended petition in accordance with federal law.

26. Petitioner exercised due diligence in presenting the factual and legal bases for each of his claims to the state courts. Petitioner's efforts to do so, however, were thwarted by the interference of state officials' refusal to honor their constitutional obligations to disclose exculpatory information and provide discovery, funding, and fact-finding in the post-conviction proceedings.

27. To the extent that the Nevada courts reviewed the merits of the claims, those state decisions were "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" or were decisions "based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding." 28 U.S.C. § 2254(d). In addition, the decisions of the Nevada Courts in denying relief were erroneous and objectively unreasonable. Petitioner did not fail to develop the claims set forth in this petition. 28 U.S.C. § 2254(e).

II. INTRODUCTION[2]

1. On November 5, 1984, Colleen and Carl Gordon, Petitioner's grandparents, were killed in their Las Vegas, Nevada home. The police focused on 19-year-old Petitioner, who lived in a trailer on the property, as the prime suspect in the killings. Petitioner's girlfriend at the time was a young woman named Angela Saldana. Petitioner had recently met her at a bar where she was a stripper. She also worked as a prostitute. She was living with her aunt and uncle, Wendy and Robert Peoples. Robert Peoples was a felon and a longtime snitch who needed to maintain a positive relationship with authorities. He immediately recognized an opportunity to get in good with the police by using Saldana to "solve" the crime.

2. Beecher Avants, then Chief Investigator for the District Attorney's Office, was a friend of the Peoples and he provided Robert with police reports and information about the case that could be used by Peoples to construct a "confession" from Petitioner to Saldana. Threatened by Peoples, Saldana fulfilled

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[2]Pursuant to Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts, the respondent is required to provide the transcript of the proceedings in state court. Where appropriate, Petitioner has included citations to the Appellant's Appendix ("AA") in the Nevada Supreme Court proceedings in *Flanagan v. State*, No. 40232 or to the Record on Appeal ("ROA") in *Flanagan v. State*, No. 27320. An Appendix submitted herewith is designated "Appendix ___".

her part by continuing to be involved with Petitioner and eventually reporting to authorities his alleged admission to having killed his grandmother. Her statement implicated not just Petitioner, but also four other teenage friends of Petitioner mentioned in police reports - Randy Moore, Johnny Ray Luckett, Mike Walsh, and Tom Akers. Saldana later testified at trial and at two resentencing proceedings, but, unbeknownst to the defense, she only testified to what she was forced to testify to under threat of herself getting the death penalty.

3. When Saldana provided the information to the police, she was sleeping with both Petitioner and Akers. At trial she said she was doing so in an attempt to solve the case. Saldana's account of what Petitioner told her minimized Akers' role in the offense. Soon thereafter, Akers provided a statement to police that largely corresponded to Saldana's statement while also implicating two other teenagers in the events of November 5th – John Lucas and Roy McDowell. Lucas in turn provided a statement to police after the police informed him of a reward available from Secret Witness, told him about Saldana's statement and threatened him with charges. Lucas denied being present at the Gordon residence but claimed to have overheard conversations planning the killings and various post-crime admissions by the other parties.

4. Following the arrests of Petitioner, Akers, Moore, Luckett, McDowell

and Walsh, Akers was released from jail and given a job by Saldana's uncle, Robert Peoples. Shortly before trial, he pleaded guilty to voluntary manslaughter and received a sentence of five years in prison. He was placed on probation, however, and served none of the sentence. Also before trial, Walsh pleaded guilty to two counts of murder with a deadly weapon. The deal allowed for parole and no testimony at the upcoming trial of Petitioner, Moore, Luckett and McDowell. Lucas was never charged with anything even though in one statement to police he admitted being present when two of the weapons used in the offense were disposed of. Saldana, Akers, and Lucas each testified against the four remaining defendants. And each received significant compensation for their testimony -- $2000 apiece, as well as other benefits. Their testimony provided the foundation for the prosecution's theory at trial that the killings were motivated by Petitioner's expectation of some inheritance and that Petitioner shot and killed Mrs. Gordon after which Moore shot and killed Mr. Gordon.

5. The trial was replete with manifest constitutional error, including repeated outrageous prosecutorial misconduct by Dan Seaton and Mel Harmon, who have engaged in such behavior in Clark County for over twenty years without serious repercussions. The juries that convicted and sentenced Petitioner to death heard nothing about the extent to which the prosecution coerced and cajoled

witnesses to tailor their testimony to the prosecution's theory. Instead, these juries' passions were inflamed by repeated allegations that Petitioner and the other defendants had engaged in adolescent witchcraft and were in fact "devil worshipers." Judge Donald Mosley, who was ultimately removed from the case for obvious prejudice against the defendants, denied defense counsel the right to object in open court, insisting that any objections be made outside his and the jury's presence.

6. The quality of the representation on the other side of the table was no better. Petitioner was first represented by the Clark County Public Defender's Office from his arrest in December 1984 through August 1985, during which time no work was performed on Petitioner's behalf. Then, on the eve of trial, the Public Defender's office developed a "conflict of interest" that has never been explained and which left Petitioner with new and inexperienced counsel who had no time or resources to mount even a minimally competent defense. The representation at the penalty retrials was equally deficient, and as a result, the jury never heard any of the readily available and compelling mitigation about the circumstances of the crime or Petitioner's character and background.

7. This Amended Petition seeks to redress the State's intentional use of false evidence, the suppression of material exculpatory evidence at trial, the

State's failure to accord Petitioner with reasonably competent counsel, and the State's refusal to properly instruct the jury. As detailed in this Amended Petition, had the juries learned how evidence against Petitioner may have been outright fabricated, and certainly was completely unreliable, and learned the truth of Petitioner's difficult life history, there is a reasonable probability that the result of the proceedings would have been dramatically different.

III. GROUNDS FOR RELIEF

A. CLAIM 1: THE STATE KNOWINGLY PRESENTED IMPEACHABLE AND FALSE EVIDENCE AGAINST PETITIONER THAT WAS PROCURED/CREATED BY A POLICE AGENT USING COERCION, THREATS, PROMISES, AND MONEY, IN VIOLATION OF THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS

Petitioner's Fifth, Sixth, Eighth, and Fourteenth Amendment rights to due process, a fair trial, effective assistance of counsel, present a defense, confrontation, compulsory process, a reliable and accurate guilt and penalty assessment based on accurate rather than false testimony and evidence, a fair, reliable, non-arbitrary sentencing determination, and be free of the imposition of a cruel and unusual punishment were violated by the State knowingly presenting impeachable and false testimony in each of his trials and failing to disclose exculpatory information about the creation of that testimony.

In support of this claim, Petitioner alleges the following facts, among others to be presented after full discovery, investigation, adequate funding, access to this Court's subpoena power, and an evidentiary hearing:

1. Those facts and allegations set forth in each paragraph of this petition and the state court pleadings and exhibits are incorporated by reference as if fully set forth herein to avoid unnecessary duplication of relevant facts.

2. Robert Peoples, a lifetime criminal--from bad checks to murder--and constant police agent and informant, created damning and false evidence against Petitioner which resulted in his conviction and sentences. Peoples committed multiple offenses as a juvenile, then as an adult in California, then murder in Nevada. When he was paroled from prison after serving ten years of a "life without parole" sentence for premeditated murder, he was hired by the Public Defender in Las Vegas as an investigator. He became a double agent for the Chief Homicide Detective for the Las Vegas police department, Beecher Avants, and became Avants' chief witness in a mob-hit murder case. This left him in need of protection.

3. Thereafter, Peoples married Wendy Hanley, whom he had essentially earlier entrapped (she had been married to one of the defendants in the mob-hit). Wendy Hanley's niece, Angela Saldana, was Petitioner's girlfriend in early

November 1984. She was staying with Wendy and Robert Peoples. When the murders in this case occurred, Robert Peoples colluded with Beecher Avants, who was then Chief Investigator for the Clark County District Attorney's Office, to obtain/create false and/or highly suspect and impeachable testimony from Saldana and others against Petitioner. Avants provided police reports to Peoples who studied them and instructed Saldana what to do and to say.

4. This material exculpatory evidence was kept from counsel for Petitioner throughout the state trials, sentencings, and appellate proceedings. Because Saldana was the lynchpin for the state's case, this new evidence undermines confidence in the proceedings against Petitioner. When the state suppresses material exculpatory evidence, and/or relies upon perjured testimony, due process is violated. There is a reasonable likelihood the jurors relied upon perjured testimony at each of Petitioner's trials/resentencings, and a reasonable probability that but for the suppression of material exculpatory evidence the results would have been different. The state action also violated Petitioner's Eighth Amendment right to a reliable sentencing proceeding and to be free from cruel and unusual punishment.[3]

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[3]Petitioner could not have raised this claim before now. The witnesses to the facts were either unknown or avoided being located. (Appendix 180-181.)

A. Robert Peoples' Career--Sociopath and Lifelong Criminal

1. According to a 1961 probation report in Los Angeles, California, Peoples walked into a liquor and pizza store in Glendale, California, on August 3, 1960, with a .45 caliber automatic pistol and held it up for $263.00. He was later stopped by police while driving a car he had purchased using a false name. Found in the car was the .45 caliber pistol. Following his conviction for robbery, the probation officer prepared a report that revealed the following about Robert Peoples. (Appendix 1-8.)

2. Robert Peoples was born November 26, 1931, and lived in the Seattle area until he was about sixteen years old when he moved to Los Angeles. In 1943 when he was twelve years old, he was arrested for robbing a store but there was no disposition. In 1951, at twenty, he was convicted on federal marijuana charges and was given three years probation. In 1952 he was arrested for a firearm violation with no disposition, and in 1954 he was arrested for larceny by conversion with the District Attorney recommending dismissal. In 1954 he was arrested for DUI and convicted. Also in 1954 he was convicted of attempted extortion and received a five year probationary sentence, to serve the first year in the custody of San Diego County. (Appendix 1-4.)

3. While serving this sentence, Peoples escaped. He was arrested in 1955

and convicted under the Dyer Act for transporting stolen vehicles across state lines. He received a three year federal sentence which he served in federal prison--at La Tuna Texas, Terminal Island, and McNeil Island. When he was released, he served a year for the escape from the San Diego jail and was then released with five years of probation on his attempted extortion conviction. Probation was to expire in December, 1964. (Appendix 2-4.)

4. He then worked with his brother in construction in Palm Springs, a job that required him to be bonded. To secure the bond, he gave an alias. When he later got into a fight in 1958 and his name appeared in the newspaper, along with his record, however, he lost that job. He served 90 days in the county jail. Upon release he went to the Los Angeles area. Around 1960 he went to work with his brother-in-law in Phoenix. He left there having embezzled $3,500.00 and with checks and credit cards from the company. "After going through $6,000.00 he became involved in the present offense [the liquor store robbery] and has been in custody since 8-9-60." (Appendix 2-5.)[4]

6. On August 9, 1960, he was arrested for the liquor store robbery. At the

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[4]He was married three times by age thirty. His first marriage was in 1953 and ended in 1955 when he was arrested under the Dyer Act. He was married twice more (as of 1961) once while still married. The second and third wives were professional dancers. (Appendix 1-2.)

time of the probation report, he had two felony holds, one from San Diego for theft and one from Arizona for grand theft. As the preparer of the probation report for the liquor store robbery noted, "[i]t would appear that defendant is in violation of his probation." (Appendix 4.)

7. Peoples told the probation officer that "I've been around and [am] considered to be a 'con man.'" (Appendix 6.) According to the probation officer:

> It is not felt that defendant is a suitable candidate for probation at this time. In the first place, the present offense is a very serious offense, and there seem to be no mitigating circumstances. Secondly, presently defendant is in violation of probation from San Diego County. Still further, there are two holds on defendant, one from San Diego for checks and another in Arizona for Grand Theft.

(Appendix 7.) On December 12, 1960, following Peoples' testimony, the judge read into the record a portion of a mental health expert's report:

> This defendant tends to exaggerate and distort, and, occasionally, to minimize if the responses are detrimental to him. In other words his narrative is unreliable.
>
> He has grandiose ideas which he attempts to fulfill by illegal means; is ***probably a pathological liar and is almost certainly a sociopathic personality.*** Despite the evidence of the victim's identification of him, of the license number and automobile associated with him at his apprehension, the presence of the 45 caliber gun in his bigamist wife's purse, he claims he cannot remember.

(Appendix 22-23 (emphasis added); *see also* Appendix 32-33 (expert's report).)

8. Before he went to prison for a 1965 murder, Peoples was the leader of a

fraud scheme orchestrated in California. One set of indictments (Case No. 319201) involves $200,000.00 in fraud occurring in Los Angeles between March 6 and June 17, 1963. A probation report for a co-defendant, Sacks, describes the offenses as follows:

> [D]efendant passing, or causing to be passed, a number of nonsufficient funds checks between 3-31 and 5-4-65. To accomplish this purpose, this defendant induced innocent persons (two registered nurses, Dallas Cook and Valeri Willats) to either use existing bank accounts or open bank accounts (seven in all) and transfer nonsuffiicient funds checks between accounts; and to cause checks to be circulated between codefendants and pass to various persons, merchants and banks. The total amount involved in the Information is $9,730.40.

(Appendix 36.) Sacks explained why he did this:

> I was involved in this crime because of the person now dead told me that Mr. **Peoples, alias Mr. Robert Wilson, who is in Nev. for murder, was going to kidnap my little boy and kill him if I did not participate in the conspiracy**.

(Appendix 38 (emphasis added); *see also* Appendix 43.)

B. Peoples' Life Without Parole Murder and Parole in Ten Years

1. Peoples murdered his girlfriend and was sentenced to life without the possibility of parole. He ultimately served only ten years of this sentence. The facts of this crime were recounted by the Ninth Circuit Court of Appeals:

> On June 10, 1965 Peoples arrived in Beatty, Nevada and was met by one Dillard R. Morton and the two children of Sharon Wilson,

> the decedent. Peoples was driven to the El Portal Motel where he left his luggage in the room occupied by Sharon Wilson. Peoples, Morton and the children then drove to the Oasis Bar where Sharon was employed. While Peoples was talking with her in the bar a pistol which he was carrying was discharged through his pocket and the bullet struck the floor near Sharon. Peoples then ushered the girl and her two children into Morton's car and they returned to the motel. In the bar, Peoples was overheard threatening Sharon by saying that he was going to kill her.[5] At the motel, Peoples, Morton and Sharon were alone in a room. A shot was fired which passed through Sharon's shoulder, crossed her chest cavity piercing her heart, and came out on the right side of her body. Peoples and Morton carried her out to Morton's car where she was wedged between the front and back seats of the car. Her two children were put in the front seat and the car was driven back to the Oasis Bar. As it arrived behind the Oasis the occupants were approached by a deputy sheriff who was investigating the shot that had been fired inside the bar. When the deputy had questioned Peoples and Morton about the earlier shot, he looked inside the car and saw the woman in the back and an automatic pistol on the front floor. The children were still seated in the front seat.

Peoples v. Hocker, 423 F.2d 960, 962 (9th Cir. 1970). The prosecutor sought the death penalty.[6] Peoples was convicted of premeditated murder and sentenced to life without the possibility of parole.

2. The Nevada Supreme Court affirmed. *Peoples v. State*, 423 P.2d 883

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[5]*See* Nevada State Journal, 1/31/69, Appendix 47: "Convict May Leave Prison Thanks to Judge's Interest" ("Miss Wilson's 7-year-old daughter, Debbie, testified at the trial that Peoples threatened to kill the woman and an eyewitness in the bar said he heard a similar remark.")

[6]Nevada State Journal, May 12, 1966, "Murder Trial Begins." Appendix 49.

(Nev. 1967), with Justice Zenoff's concurrence.[7]

3. Peoples then sought federal habeas corpus relief. *Peoples v. Hocker, supra.* On August 8, 1968, a federal district court judge denied habeas corpus relief and "respectfully refer[red] this case to the Honorable Paul Laxalt, Governor of the State of Nevada, and the State Board of Pardons for appropriate consideration." (Appendix 54.) Thereafter the State Board of Pardons held a hearing at which Peoples protested his innocence:

> Board Chairman Gov. Paul Laxalt and some of the other board members agreed there were holes in the case record but the commission agreed to wait until Peoples exhausted his appeals through the federal courts.
>
> Laxalt said he "had a bad feeling" about the case. He suggested an independent investigation be made to ensure there had not been a "gross miscarriage of justice."

(Appendix 55 ("Pardon Board Withholds Action on Robert Peoples"); *see also* Appendix 47, Nevada State Journal, 1/31/69: "Convict May Leave Prison Thanks to Judge's Interest" ("Gov. Paul Lexalt ... expressed concern last year that Peoples may have received a raw deal. Peoples had appeared before the pardons board and

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[7]Justice Zenoff had earlier written an opinion affirming the denial of habeas corpus relief for co-defendant Morton who argued that there was no probable cause that he committed the offense. *Morton v. Nevada*, No. 5091 (June 2, 1966)("the victim sustained a broken neck along with the gunshot wound which might suggest that there was physical assistance given to the killer by holding the deceased."). Appendix 51.

told it, in an emotional voice, he was innocent. He said he did not want a reduction in his sentence but that the criminal conviction should be wiped off the books. Some members were impressed with the presentation.").)

4. Supposedly based upon these concerns, Justice Zenoff conducted "an extensive investigation" and wrote a memo to "the state pardons board of which he is a member to meet to consider reducing the penalty." *(Id.)* A hearing was thereafter held:

> Justice David Zenoff of the Nevada Supreme Court had conducted a personal investigation into the case of Peoples and concluded he should have been found guilty of involuntary manslaughter instead of first degree murder.
>
> Judge Zenoff, however, voted for denial on grounds it was for a full pardon instead of a reduction in the degree of the crime.
>
> District Attorney William P. Beko of Nye County told the pardons board Peoples received a "fair trial" and he added, "I don't have any trouble living with the degree of the crime." He said he had asked for the death penalty and there was ample evidence to justify it.

(Appendix 56, "Bid Denied Robert Peoples Stays in Prison.")

5. Peoples then filed a petition for post-conviction relief in the state trial court, the denial of which was affirmed. Justice Zenoff, dissenting, wrote that the penalty of life imprisonment without possibility of parole is not justified: "Peoples is serving a sentence for a premeditation that is not at all established in the

record." *Peoples v. Warden*, 491 P.2d 719, 720 (Nev. 1971). He contended that "[p]erhaps, this is more properly a case for the Board of Pardons. That body has refused to act until the legal avenues have been exhausted, but, nevertheless, I now, as previously, desire that my views be known. Under our powers provided by NRS 177.265, I would modify the judgment to life with possibility of parole." *Id.* at 721.

6. On April 23, 1974, the Board commuted Peoples' sentence to life with possibility of parole. (Appendix 58.) In September 1976, Peoples was paroled to California. Ten years after facing the death penalty, he was back on the streets.

C. Peoples the Police Double Agent–"I played Bogart"

1. After returning to Nevada, Peoples worked as an investigator at the Office of Public Defender Morgan Harris. However, he ultimately was fired and became a private investigator.

2. On March 17, 1977, Al Bramlet's body was found in the desert. Tom Hanley (age 61) and his son Andy Gramby Hanley were charged with the execution-style slaying of Bramlet who was a Culinary Union leader. Wendy Hanley (age 21), Tom's wife, was charged as an accessory to the murder.

3. Robert Peoples met Gramby Hanley while Peoples was serving time for murder; Gramby was also serving time. Detective Beecher Avants testified about

how Peoples became involved in the case against the Hanleys. Avants was then a homicide detective with the Las Vegas Metropolitan Police Department. He testified that Peoples had socialized with Tom and Gramby at the Horseshoe Club in early April, 1977. When Tom Hanley was arrested, Peoples went with Hanley's defense attorney to visit him. During this jail visit, Hanley held up a piece of paper on which he had written instructions for Peoples to go with Hanley's wife Wendy to dig up Bramlet's jewelry that had been buried near the Hanley trailer compound. According to Avants, Hanley's attorney made it clear that he wanted no part of evidence tampering, and then Peoples "became a double agent." (Article, "Hanley defense attacks agent use," Appendix 59.) "Peoples led the Hanleys to believe he was working for them when, in fact, he was now working for homicide detectives." (*Id.*)

4. At Gramby Hanley's preliminary hearing, Peoples testified that in January of 1977, Tom Hanley told him that he wanted Bramlet out of the way because he wanted to unionize the dealers of Las Vegas. Article, "Hanley 'agent' testifies," Appendix 64. After the murder, Peoples led Tom Hanley and his attorneys to believe he was working for Hanley. But he became a double agent and went with Wendy Hanley to dig up Bramlet's clothing at one location and his jewelry at another. Avants watched this episode from an aircraft. Peoples was

paid for his help. Article, "Hanley defense attacks agent use," Appendix 59.

5. According to Peoples, he seduced Wendy Hanley in a motel room that was wired with listening devices by the police. This rendevous "lasted all day May 31 and into the early morning hours of June 1" and resulted in "Wendy directing Peoples out the Blue Diamond Road where the pair dug up clothes and jewelry belonging to the dead Bramlet." Article, "I Played Bogart: Hanley Informer," Appendix 61. He had trouble remembering dates and testified "to the best of my regulection." *Id.* (sic)

6. Once Tom Hanley was convicted, Peoples married Wendy. Avants left the police department and became chief investigator at the prosecutor's office. When the crimes occurred in this, Petitioner's, case, Peoples informed Avants the connection between Peoples, Saldana, and Petitioner. Peoples, as a police agent, and with Avants' active assistance, then set about contriving Saldana's evidence and forcing her to testify.

D. How Angela Saldana Supposedly Learned and Testified about the Crime

1. Saldana "breaks" the case

a. On December 7, 1984, Angela Saldana gave a statement to the police implicating Petitioner and others in the crime in this case. She said that it was committed for inheritance purposes, that a knife was used to cut a window screen,

and provided other details. All of this was supposedly told to her by Petitioner. However, as is discussed *infra*, Robert Peoples actually told Saldana what to say, relying on police reports. With the police reports that Avants provided to him, Robert Peoples was in the perfect position to fabricate a confession by Petitioner to Saldana. The initial reports concerning the crime scene and autopsies allowed Peoples to learn details about the killings that were not necessarily available through media reports.[8] Interviews conducted shortly after the killings included references to Petitioner's belief that he would inherit something should anything happen to his grandparents. This permitted creation of a motive for the murders that Saldana could use. The initial police reports described how the screen was cut and the window then broken. In the "confession" Saldana reported, these details were included.

b. By November 15, 1984, the police knew that at least two separate firearms had been used in the killings. But they lacked any evidence indicating who the perpetrators were, although the police reports indicated that Petitioner, Tom Akers, and Randy Moore were considered suspects. On November 24, 1984, not long before Saldana reported Petitioner's alleged confession to her, Michael Walsh's step-brother, Ron Davis, informed police about rumors on the street about

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[8]Relevant police reports are at Appendix 89-131.

the killings and phone calls he had received from Walsh. In some of the conversations, Walsh claimed that the police were trying to pin the murders on him, Moore, Petitioner, and Akers. Walsh denied involvement, leaving the police with only more suspicions, but no solid evidence. Davis also recounted running into an old acquaintance, Bob, at Circus Circus casino. Bob repeated some of the rumors that were going around about the killings. Bob initially mentioned Roy McDowell in connection with the Gordon murders, but then stated that it was actually a different Roy. In naming who he believed were involved in the actual killings, Davis did not include McDowell. (Appendix 120-131.) Notably, McDowell's name was also omitted from Saldana's December 7th report of Petitioner's alleged confession about the events of November 5th.

c. As will be shown, Saldana, through Peoples, was privy to all of the above information at the time she reported Petitioner's "confession" to the police. By providing the police with the "confession" Saldana was given a large share of the credit for solving the case, in addition to $2000.[9]

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[9]After Saldana said Petitioner confessed, Akers, who Saldana also was sleeping with and who Peoples eventually hired, gave a statement. In his statement, Akers implicated a number of people, including Petitioner, but painted himself as a victim of circumstance. (Appendix 149-157.) Petitioner was arrested based on the statements of Saldana and Akers. Then John Lucas was told about Saldana's statement before he was reinterviewed and he implicated others. All three testified at the guilt phase of the co-defendants' trial.

d. Following Saldana's statement, the police interviewed Petitioner's close friend, Wayne Wittig. (Appendix 132-138.) Wittig informed the police that Petitioner admitted being present the night of the killings, but Petitioner stated that Moore was the instigator of what occurred. Further, Petitioner denied having shot his grandmother. As for the motive provided by Saldana, the suspected inheritance, Wittig explained that Petitioner had indeed believed he might receive part of the house. This was consistent with what Petitioner himself had told the police the day the Gordons' bodies were discovered. (Appendix 105.) But Wittig told the police that any such inheritance meant nothing to Petitioner. Wittig was not called by the prosecution during the guilt-innocence phase of the trial.

e. The police then turned to Akers who provided them with a new statement. At this time, Saldana was sleeping with both Akers and Petitioner. While she claimed in her testimony that her motivation in doing so was solving the crime, her allegiance to Akers is evidenced by Peoples hiring Akers following his release from custody. Akers' self-serving statement established himself as the victim of circumstances he had allegedly claimed to be in conversations with Saldana. (Appendix 149-157.)

f. Armed with the Saldana and Akers statements, the police arrested Petitioner. To bolster the case against him and the other suspects, the police then

turned to Lucas, whose prior statement had been unhelpful. Before getting a second statement from him, the police informed Lucas of the $2000 available from Secret Witness, told him about Saldana's statement, and threatened him with charges.[10]

2. Saldana the witness

a. Saldana testified at the guilt-innocence proceeding that she had been Petitioner's girlfriend and that she moved into his trailer shortly after the offense. She said she was present when an officer came to the trailer and spoke with

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[10]One of the things that Saldana had been pressured to do was to find out what had happened to the murder weapons. Lucas led the authorities to the rifles that had been used but no one was able to locate the pistol that was associated with the death of Mrs. Gordon. Perhaps in an effort to ratchet up her perceived assistance in the case, in early January 1985, Saldana brought the trial prosecutor a wooden pole wrapped in electrical tape. She told prosecutor Seaton that Akers had called her from jail and asked her to hide the pole, which was in Petitioner's trailer, because it was the instrument used to break the window and gain entry to the Gordon residence. (Appendix 168-170.)

Although this pole became an exhibit at trial, it appears to be yet another piece of fabricated evidence. When the pole was examined, it was devoid of glass shards or fingerprints. (Appendix 171.) It was also inconsistent with Lucas' description of a white closet pole that had been in Moore's apartment that Walsh allegedly unsuccessfully used to break the window. Indeed, when Walsh pleaded guilty, he stated he had brought a little white pole to the Gordon residence that he tried to use to break the window.

Petitioner.[11] After their discussion, which Saldana said she did not hear, Petitioner "was a little upset" because the officer said he had found Petitioner's knife "by the broken window" at the crime scene. Trial Testimony (TT.) 1750-51. She said she had seen and, in court, said she recognized, Petitioner's knife. She also said that two weeks after the discussion between Petitioner and the officer, Petitioner told her he had found his knife and showed it to her. She testified that she responded "No, that's not your knife. That one looks new," *id.* at 1753, and Petitioner said "Yes, but no one else will know that. And now, the cops don't have anything on me." *Id.*

b. She also testified that later, when Petitioner was upset about her and an old boyfriend, he stated "How do you like this, I did it. I killed my grandparents." *Id.* at 1754. He said that "they had planned to make it look like a robbery" and committed the crime "for the will and the insurance money." *Id.* at 1756. She said that Petitioner named all of the other people involved, that they planned the crime, that Petitioner "had a handgun," *id.* at 1773, that he broke the window to the house "with a stick," *id.* at 1774, and that "he went into the bedroom of his grandmother's, and she woke up screaming. And he wrestled her to the bed, put

[11]In the voluminous police reports provided to the defense in this case, there is no report documenting any such contact with Petitioner by the detectives investigating the murders.

his hand over her mouth, and shot her." *Id.* at 1775. She said that Petitioner said that "Johnny Ray and Randy Moore had shot" his grandfather. *Id.* She said that Petitioner said he then took his grandmother's purse and they all left. *Id.* at 1777. She said that she and Petitioner and Petitioner's sister, mother, and aunt looked for a will "every day for about a week," but did not find one. *Id.* at 1779.

c. The prosecutors referred to Saldana's testimony repeatedly, in opening statement (TT. 1720, 1724) and closing argument (TT. 2512, 2522, 2546, 2678, 2693, 3763). According to the state, she was especially important because she was not a conspirator and other testimony was from individuals involved in the offense:

> There was one other person who wasn't present [at the crime] who took the stand and told you.
>
> That was Angela Saldana. And she told you what happened in the last conspiratorial meeting through what she had heard from Dale Flanagan in the trailer that day. Dale had told her the whole deal and she wasn't there.
>
> She just heard this secondhand, what is typically hearsay but allowed in because it is a co-conspirator statement. It is the act of one that binds all or the statement of one which binds all.
>
> So we have four people who were there and heard the words spoken. Actually, a fifth, Dale Flanagan, as told through the sixth, Angela Saldana.

TT. 2511-12.

d. Saldana testified consistent with this testimony at subsequent trials.

E. How Saldana Actually Came to Say What She Said

1. Robert Peoples made Saldana say what she said. Amy Hanley Peoples explains how.[12] Amy's mother is Wendy C. Mazaros (formerly Peoples). Her father was Tom Hanley, but she was raised primarily by her step-father, Robert Peoples. In 1984, she lived with her mother and Robert Peoples in Las Vegas. That year her mother's niece, Angie Saldana, came to live with them, along with her baby boy Myles. According to Amy Peoples, Angie did not care for that baby and sold him for $5,000.00 to Robert Peoples' brother Ronnie.

2. Angie was a stripper. According to Amy, her mother went to strip clubs with Amy in the car to try to talk Angie into coming back to the house and stop stripping.

3. Amy reports that Angie spent time with Petitioner at his trailer but never lived there with him, contrary to Saldana's testimony. After his grandparents were killed and before Petitioner's first trial, Amy went with Robert Peoples and Angie to Petitioner's trailer when Petitioner was not there. Robert Peoples pointed to a picture and said to Angie that it was a picture of the devil and told Angie that she

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[12]The following information is taken from Amy Hanley-Peoples' declaration which is at Appendix 172-174.

had to testify against Petitioner and say that Petitioner was a devil worshiper. Robert Peoples instructed Angie how to testify and rehearsed her testimony.

4. Before Petitioner's second trial in 1989, Amy was living with her aunt. Robert Peoples was staying in a one bedroom apartment near the Maryland Parkway and Swenson area. He was not paying rent. The rent was just being "taken care of."

5. Robert Peoples often picked Amy up at her aunt's house and took her to the apartment. There were boxes of paperwork in his room with the name "Flanagan" on papers in the boxes. Robert Peoples caught Amy looking through these files, became very angry, and yelled "get the f*** out of the room."

6. During Amy's visits to the apartment, she heard Robert Peoples talking to Angie on the telephone for hours at a time. Robert Peoples constantly talked to Angie about what was contained in the reports from the Flanagan boxes. He also told Angie over and over how she had testified at the first trial and that she had to do so again. Robert Peoples threatened her over and over. He said "You have to do this. You got paid, if you don't do it you're going to fry. They will put you in the electric chair." Robert Peoples said "that dirty little wh*** is not doing what she is supposed to be doing."

7. During that same time period, Beecher Avants and Robert Peoples

frequently met and discussed the Flanagan case. Amy went to the Gold Coast Casino with Robert Peoples, where she got free dinners and Robert Peoples got free rooms. They met there many times with Beecher Avants and police officer Bob Hilliard and had dinner. Avants, Hilliard, and Robert Peoples talked about the case against Petitioner. During one of the dinners, Avants told Robert "you better get that little b**** under control" referring to Angie.

8. Several years after Petitioner's third trial, Angie telephoned Amy and asked for $500.00. Amy told her she did not have that kind of money available. Six months later Angie showed up at Amy's house and asked where Robert Peoples was. Angie said that he owed her a lot of money for the work that she did on the Flanagan case. Amy made her leave.

9. Amy reports that Robert Peoples told her many things about his criminal activities and connections. He said he worked for the Drug Enforcement Administration in Las Vegas. He said that Judge Zenoff was a good friend of his and loved him, as did Paul Laxalt. He said if he ever needed help from them all he had to do was call them because they "had his back." He said that he had many attorneys and never had to pay any of them. It was just taken care of. He was always breaking the law. She remembers he took vehicles out of state to hide assets. He used at least two different social security numbers. His parole officer

told her that Robert Peoples "had organized crime in his jacket."

10. Amy states Robert Peoples was addicted to drugs and alcohol and was under the influence when he testified against defendants. Once she saw him drink a fifth of whiskey in the courthouse parking lot before he went in to testify. He could not walk into a courthouse without being loaded. His testifying against people and being a snitch sometimes got him into trouble. For example, when he would go to prison for parole violations or new offenses, he had problems with other inmates for being a rat and a snitch and had to be put in a safety zone. When he went to prison for stabbing Larry Wilch around 1987, he only served six months but he had to be put in isolation because he was a known snitch.

11. Peoples' former wife, Wendy, also reports what Peoples did.[13] In the mid-1970s she was involved with Tom Hanley with whom she had Amy. In 1977, Tom became a suspect in the murder of Al Bramlet. It was during the investigation of this murder that Wendy first met Beecher Avants, who was the head of homicide at Las Vegas Metro Police. He came to her house and harassed her about the Bramlet murder, looking for Tom Hanley.

12. It was also in connection with the Bramlet murder that she met Robert

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[13]The following information is taken from Wendy C. Mazaros' declaration which is at Appendix 175-180.

Peoples who was working as an investigator for her husband. She later learned that Robert was working undercover for the police. Tom instructed her to take Robert out to Pahrump, Nevada, and show him a tree where evidence connected to the Bramlet killing was buried. Together, they went to a motel in Pahrump, Nevada and had sex. She later realized that Robert started a relationship with her in an attempt to get additional information that would further implicate Tom. Tom eventually pled guilty to the Bramlet murder and was sentenced to life without possibility of parole.

13. Wendy states that before they met, Robert had been sentenced to life without parole for killing a girlfriend during a fight in Beatty, Nevada. According to Robert, the girlfriend had been angry with Robert because he had taken her baby boy and given the baby to his sister, Mary. Robert told Wendy that at the time of the murder he had been working for the mob running money for them and traveling between California, Nevada, and New York. He was in Beatty with mob money from New York to start a casino there to launder money.

14. While Robert was in prison, he became friends with Gramby Hanley, Tom Hanley's son. Gramby was also convicted of the murder of Al Bramlet. It was through Gramby that Robert met Tom Hanley.

15. Although Robert was sentenced to life without parole for killing his

girlfriend, he managed to get paroled in 1975. He explained to Wendy that he was able to get out because he started working undercover in the prison on gambling and drug operations for the Governor's Office. He bragged that he had made a leather briefcase for former Governor Paul Laxalt that the Governor carried around.

16. Robert and Wendy got married in 1978. They were married twice because the first time they married he was still married to Jo Ann Blakenship. The main reason Wendy married him was he had convinced her that she could somehow get in trouble for things Tom Hanley had done unless she married him. She felt under his control, and he told her that he was the only one who could save her.

17. According to Wendy, after they were married, Robert constantly was trying to get on the good side of law enforcement, and he worked with the cops as a snitch. Before Robert was released from prison for murder, his sister Marlena had dated Beecher Avants. After Wendy began her relationship with Robert, Beecher Avants and his then-wife Gisela became friends of theirs and they socialized with them frequently. When Beecher ran for sheriff in 1982, Robert and Wendy worked on his campaign.

18. In 1984, Robert and Wendy lived in Las Vegas, along with Amy.

Wendy has a half-sister named Caren, who had several children, including a daughter, Angela Saldana. She went by Angie. Angie's father was involved with the Gents motorcycle gang in Las Vegas. Angie was a very troubled, mixed up girl. She had at least once run away from home, and she spent time in juvenile facilities. Wendy felt sorry for Angie and let her come live with them when she was about 20 years old.

19. When Angie was living there she had a baby boy named Myles. His name was later changed to Mike. Angie did not take care of him. Wendy was very fond of Angie's baby boy and bonded with him. Wendy states that because of Robert and her histories she did not think social services would allow her to adopt the baby. She was surprised when they said that she could and she met with an attorney about the adoption. Before she could proceed with the adoption, Robert took the baby and gave him to his brother. When Wendy learned what he had done, they had a terrible fight. She never saw the baby again. Angie received $5,000 for giving up the baby.

20. Angie had been seeing Petitioner several weeks before his grandparents were murdered. Wendy had met Petitioner and saw him on various occasions when he came to the house to visit Angie.

21. The day after the Gordons were killed, Robert, Amy and Wendy drove

up to Mt. Charleston Lodge. Shortly after they arrived Angie called and asked them to come home because Petitioner's grandparents had been killed.

22. Very soon after this, Robert told Beecher Avants that Angie was Petitioner's girlfriend. Beecher had left the Las Vegas Metro police department and was Chief Investigator for the Las Vegas District Attorney's office. Within a day, Beecher came over to the Peoples' house. Beecher had already made up his mind that Petitioner was involved in the killings. Robert realized that this case posed an opportunity to keep in good standing with the authorities and planned with Beecher to have Angie "solve" the case. Robert always took every opportunity to cooperate with law enforcement because it paid off for him. He set about manipulating and controlling Angie just as he had done with Wendy when he was secretly working with the police in the Bramlet case. Robert told Angie that if she did not cooperate with him and Beecher, Angie could be charged with conspiracy and be executed.

23. According to Wendy, after the crime Angie continued to spend time with Petitioner at his trailer. She never lived there. Beecher came to the Peoples house several times to talk about the investigation with Robert. Sometimes the two of them would sit in the house at the red counter top island bar to talk, sometimes they would go outside to talk and other times they would meet

elsewhere or talk by telephone. Beecher told Robert that they needed to find the gun and to get a confession.

24. Robert was provided with all of the police reports about the case and reviewed them carefully. During the investigation, Robert had long conversations with Angie. He told Angie exactly what to say to the police and at trial. Robert coerced Angie to say anything Beecher wanted her to say. Wendy heard Robert tell Angie, "You're going to do this Angie," and then tell her exactly what to say. Robert did what Beecher told him to do. This is how Beecher operated and used Robert.

25. One time when it was known that Petitioner would not be at the trailer, Robert took Angie there to get everything straight with her. Amy was also with them. Robert was looking for things in the trailer that Angie could use to support a "confession." He was looking for weapons and signs of devil worship.

26. Wendy got fed up with what Robert was doing and told him he could not coerce Angie into what to say. He did not listen, and Wendy left him shortly after that and moved to Pahrump on a 5-acre ranch. After that she moved to Reno. Robert and Wendy were officially divorced in 1989.

27. Before Petitioner's third trial Angie showed up in Reno. She said that she was expecting $10,000 for testifying. She told Wendy that she did not get the

$10,000.00, and wanted Wendy to pay to send Angie back to Las Vegas.

28 For the past decade or so, Wendy intentionally made herself difficult, if not impossible, to locate. She had no interest in involving herself with Angie's or Robert's messes. She was extremely surprised when an investigator for Petitioner found her. Given the passage of time, she decided to finally reveal what she knew about what Angie, Robert and Beecher Avants did to ensure Petitioner's conviction and death sentence.

F. Conclusion

The jurors at trial and in subsequent re-sentencings did not know that the prosecution in this case was contrived. Petitioner's Fifth, Sixth, Eighth and Fourteenth Amendment rights were violated by the state creating false evidence, forcing a witness to testify to it repeatedly, and not disclosing its unconstitutional antics to the defense. It is reasonably likely the jurors considered the state's manufactured evidence and there is a reasonable probability the result in this case would have been different, at guilt/innocence and/or sentencing absent the wrongly obtained and presented testimony. To the extent that the information contained in this claim is found to have been available at the time of Petitioner's trials, Petitioner's trial counsel were constitutionally and prejudicially ineffective in failing to develop and present the information.

EXHIBIT 3

EXHIBIT 3

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DALE EDWARD FLANAGAN, Petitioner, vs. RENEE BAKER, *et al.*, Respondents.	)	2:09-cv-00085-KJD-GWF **ORDER**

This is an action for habeas relief under 28 U.S.C. § 2254 brought by Dale Edward Flanagan, a Nevada prisoner sentenced to death. On September 2, 2011, the respondents filed, in relation to Flanagan's first amended petition, a motion to dismiss or, in the alternative, for a more definite statement. ECF Nos. 55/56. In response, Flanagan filed, on January 30, 2012, an opposition to the motion (ECF No. 83) and a motion for stay and abeyance (ECF No. 84). On March 30, 2012, respondents' filed an opposition to the motion for stay and abeyance. ECF No. 90. They also filed, on April 6, 2012, a motion to dismiss the conflict of interest claim contained within Claim Five of Flanagan's petition. ECF No. 94. For reasons that follow, the court will grant the motion for stay, and stay this action pending the conclusion of Flanagan's state-court habeas corpus proceedings. The court will deny the motions to dismiss as moot.

A federal court may not grant habeas corpus relief on a claim not exhausted in state court. 28 U.S.C. § 2254(b). The exhaustion doctrine is based on the policy of federal-state comity, and is

intended to allow state courts the initial opportunity to correct constitutional deprivations. *See Picard v. Conner*, 404 U.S. 270, 275 (1971). To exhaust a claim, a petitioner must fairly present the claim to the highest state court, and must give that court the opportunity to address and resolve it. *See Duncan v. Henry*, 513 U.S. 364, 365 (1995) (*per curiam*); *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 10 (1992).

Flanagan concedes that Claim One of his first amended petition is unexhausted. Thus, his petition is a mixed petition – i.e., it contains both exhausted and unexhausted claims. In *Rose v. Lundy*, 455 U.S. 509 (1982), the Supreme Court held that federal district courts may not adjudicate mixed petitions for habeas corpus. 455 U.S. at 518-19. The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) preserved *Lundy*'s total exhaustion requirement (see 28 U.S.C. § 2254(b)(1)(A)), but it also imposed a 1-year statute of limitations on the filing of federal petitions (see § 2244(d)).

Because of the interplay between AEDPA's 1-year statute of limitations and *Lundy*'s dismissal requirement, petitioners who come to federal court with "mixed" petitions run the risk of forever losing their opportunity for any federal review of their unexhausted claims. *See Rhines v. Weber*, 544 U.S. 269, 275 (2005) ("If a petitioner files a timely but mixed petition in federal district court, and the district court dismisses it under *Lundy* after the limitations period has expired, this will likely mean the termination of any federal review."). To solve the problem, the Court in *Rhines* condoned the "stay-and-abeyance" procedure, whereby the district court, rather than dismiss the mixed petition under *Lundy*, stays the petition and holds it in abeyance while the petitioner returns to state court to exhaust his previously unexhausted claims. *Id.* at 276.

The Court cautioned, however, that stay and abeyance, if too frequently used, would undermine AEDPA's goals of prompt resolution of claims and deference to state court rulings. *Id.* Thus, the Court held that, in order to obtain "stay and abeyance," a petitioner must show: 1) good cause for the failure to exhaust claims in state court; 2) that unexhausted claims are potentially meritorious; and 3) the absence of abusive tactics or intentional delay. *Id.*; *Jackson v. Roe*, 425 F.3d

654, 662 (9th Cir. 2005).

Relying on *Rhines*, Flanagan requests that this action be stayed while he completes the exhaustion of Claim One. Claim One is based on allegations that the State committed numerous acts of misconduct in obtaining and presenting the testimony of one of its witnesses, Angela Saldana. Flanagan argues that there is good cause for his failure to exhaust Claim One because evidence of the misconduct was withheld by the State and only unearthed recently when Flanagan located and interviewed Saldana's aunt, Wendy Peoples, and Peoples' daughter, Amy Hanley-Peoples.[1]

Rhines does not go into detail as to what constitutes good cause for failure to exhaust; and, the Ninth Circuit has provided no clear guidance beyond holding that the test is less stringent than an "extraordinary circumstances" standard. *See Jackson*, 425 F.3d at 661-62 (citing *NLRB v. Zeno Table Co.*, 610 F.2d 567, 569 (9th Cir. 1979)). Many district courts have concluded that the standard is more generous than the showing needed for "cause" to excuse a procedural default. *See, e.g., Rhines v. Weber*, 408 F.Supp.2d 844, 849 (D. S.D. 2005) (applying the Supreme Court's mandate on remand). This view finds support in *Pace*, where the Supreme Court acknowledged that a petitioner's "reasonable confusion" about the timeliness of his federal petition would generally constitute good cause for his failure to exhaust state remedies before filing his federal petition. 544 U.S. at 416-17. On other hand, interpreting "good cause" too broadly militates against the Supreme Court's admonition that stay and abeyance should only be available in "limited circumstances." *See Wooten v. Kirkland* 540 F.3d 1019, 1024 (9th Cir. 2008) (quoting *Rhines*, 544 U.S. at 277).

Here, the respondents dispute that the State withheld evidence from Flanagan and question the credibility of the declarations of Wendy Peoples and her daughter, including Peoples' claim that she has made herself difficult to find for the last decade. Even so, Flanagan has demonstrated that he made a good faith effort to develop this specific claim in state court by directing his investigator to locate Peoples and by seeking leave to conduct discovery related to Angela Saldana. See ECF No.

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[1] The declarations of these two witnesses and the investigator for Flanagan who located them are at ECF No. 47-7, p. 27-36.

47-7, p. 36; ECF No. 74-1, p. 74-75. This is sufficient to meet the "good cause" standard under *Rhines*.

With respect to the "potentially meritorious" inquiry, the standard should approximate the standard that applies when the court decides whether to deny an unexhausted claim under 28 U.S.C. § 2254(b)(2). *See Rhines*, 544 U.S. at 277. In both instances, the objective is to preserve the principle of comity while preventing the waste of state and federal resources that occurs when a petitioner is sent back to state court to litigate a clearly hopeless claim. *Cf. Cassett v. Stewart*, 406 F.3d 614, 624 (9th Cir. 2005). Thus, Flanagan should not be prevented from returning to state court unless "it is perfectly clear that [he] does not raise even a colorable federal claim." *Id.*

The allegations supporting Claim One, if taken as true, arguably present a meritorious challenge to his conviction or sentence. As noted, Flanagan contends, among other things, that the State failed to disclose material evidence that would have undermined the credibility of a witness that testified against him and that the State knowingly offered false or misleading testimony and evidence. Claim One contains factual allegations sufficient to raise colorable grounds for relief under *Giglio v. United States*, 405 U.S. 150 (1972) and *Napue v. Illinois*, 360 U.S. 264 (1959). Because the claim provides Flanagan with at least some chance of habeas relief, Claim One satisfies the "potentially meritorious" standard in *Rhines*.

Lastly, in opposing the motion for stay and abeyance, the respondents make no argument that Flanagan has intentionally engaged in dilatory litigation tactics. And, the court sees no indication of such tactics in the record herein

Having met the requirements under *Rhines*, Flanagan has shown that a stay is warranted to allow him to complete state court proceedings before moving forward with this federal habeas action. The court will stay this case. This will be the last time that the court imposes a stay to facilitate Flanagan's exhaustion of claims in state court. Flanagan must exhaust all of his unexhausted claims in state court during the stay of this action imposed pursuant to this order.

Respondents' motions to dismiss (ECF Nos. 55/94) are grounded, in part, on Flanagan's

alleged failure to exhaust in state court all the claims in his first amended habeas petition. As the court is staying this action to allow exhaustion of Flanagan's claims in state court, and as Flanagan will be allowed, following the stay, to file a second amended petition, the stay of this action renders those motions to dismiss moot, and they will be denied on that basis.

IT IS THEREFORE ORDERED that petitioner's Motion for Stay and Abeyance (ECF No. 84) is GRANTED. This action is STAYED to allow petitioner to exhaust, in state court, all his unexhausted claims for habeas corpus relief.

IT IS FURTHER ORDERED that, on or before December 15, 2012, petitioner shall file and serve a status report, describing the status of his state-court proceedings. Thereafter, during the stay of this action, petitioner shall file such a status report every 6 months (on or before June 15, 2013; December 15, 2013; June 15, 2014; etc.). Respondents may, if necessary, file and serve a response to any such status report within 15 days after its service. If necessary, petitioner may reply within 15 days of service of the response.

IT IS FURTHER ORDERED that petitioner shall have **30 days** from the date this order is entered to initiate the appropriate state court proceeding, if he has not yet done so. Following the conclusion of state court proceedings, petitioner shall, within **30 days**, make a motion to lift the stay.

IT IS FURTHER ORDERED that this action shall be subject to dismissal upon a motion by respondents if petitioner does not comply with the time limits in this order, or if he otherwise fails to proceed with diligence during the stay imposed pursuant to this order.

IT IS FURTHER ORDERED that respondents' motion to dismiss the first amended petition (ECF No. 55) and motion to dismiss conflict of interest claim (ECF No. 94) are DENIED as moot. Respondents' motion for a more definite statement (ECF No. 56) is DENIED without prejudice

DATED: 8/23/12

UNITED STATES DISTRICT JUDGE

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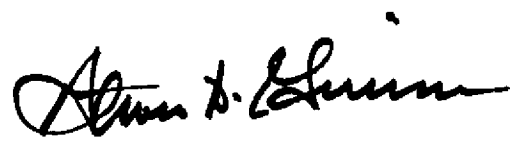

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DISTRICT COURT

CLARK COUNTY, NEVADA

DALE EDWARD FLANAGAN, Petitioner, v. THE STATE OF NEVADA and JACK PALMER, Warden, Northern Nevada Correctional Center, Respondents.	Case No. C69269 Dept. No. XI Docket "S" **OPPOSITION TO MOTION TO DISMISS PETITION** Hearing Date: May 9, 2013 Hearing Time: 10:30 a.m. **DEATH PENALTY CASE**

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DALE EDWARD FLANAGAN, Petitioner, v. THE STATE OF NEVADA and JACK PALMER, Warden, Northern Nevada Correctional Center, Respondents.	Case No. C69269 Dept. No. XI Docket "S" **OPPOSITION TO MOTION TO DISMISS PETITION** Hearing Date: May 9, 2013 Hearing Time: 10:30 a.m. **DEATH PENALTY CASE**

On September 28, 2012, Mr. Flanagan filed a Petition for Writ of Habeas Corpus ("Petition") in this Court. On January 18, 2013, the Clark County District Attorney representing the named Respondents ("Respondents") filed the State's Response and Motion to Dismiss Petition ("Motion"). In accordance with this Court's order of February 26, 2013, Mr. Flanagan, by and through counsel, timely files this Opposition to the Motion. Based on all of the documents in this case, this Opposition, oral argument, and the facts to be presented at an evidentiary hearing, Respondent's motion should be denied.

I. INTRODUCTION

The Petition for Writ of Habeas Corpus details the gross misconduct by which law enforcement authorities manufactured their case against Mr. Flanagan through the testimony of Angela Saldana, who provided critical evidence at the guilt trial and subsequent penalty trials. The prosecution presented Mr. Flanagan's "girlfriend," Ms. Saldana, as the cornerstone of its case, providing the critical evidence that Mr. Flanagan allegedly had confessed to planning the crimes in an effort to obtain his grandparents' inheritance, to his and others' actions inside the house, to his replacing the knife that he lost on the night of the crime, and, most importantly, to killing his grandmother. Reporter's Transcript of 1985 Jury Trial 835-949 (8 AA 1745-9 AA 1859) (Angela Saldana's testimony).[1] Ms. Saldana's testimony was critical to the prosecution's case because, unlike the other "witnesses" to the crime, she was not involved in the conspiracy or "diabolical plot" to commit the crimes. Reporter's Transcript of 1985 Jury Trial 1466 (17 AA 2492) (prosecutor's closing argument). As a result, during closing arguments, the prosecutors repeatedly relied upon Ms. Saldana's testimony and her trustworthiness as unimpeachable evidence of Mr. Flanagan's guilt. *See, e.g.*, Reporter's Transcript of 1985 Jury Trial 1480-81 (12 AA 2506-07), 1486 (12 AA 2512), 1495 (12 AA 2521), 1496 (12 AA 2522), 1498 (12 AA 2524), 1513 (12 AA 2539), 1520-21 (12 AA 2546-47), 1652-53 (12 AA 2678-79), 1667-68 (12 AA 2693-94), 1676 (12 AA 2702).

What defense counsel at trial, the jurors, the trial judges, and this Court during Mr. Flanagan's first habeas corpus proceedings did not know was that Ms. Saldana's testimony was false, manufactured by her uncle Robert Peoples in concert with state officials. Almost from the discovery of the crimes, Robert Peoples, acting on behalf of law enforcement, orchestrated the development of the case against Mr. Flanagan using his niece Angela Saldana. Ms. Saldana's

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[1] This Opposition cites to the previous pleadings and proceedings in this case by the original page numbers of the record and to the corresponding pages contained in the Appellant's Appendix ("AA") in the Nevada Supreme Court proceedings in *Flanagan v. State*, No, 40232, from this Court's denial of the first state habeas corpus petition.

aunt Wendy Peoples (nee Mazaros) explains the method by which the state manufactured her testimony:

> Very soon after this [the death of Mr. Flanagan's grandparents], Robert [Peoples] let [Las Vegas District Attorney Chief Investigator] Beecher Avants know that Angie [Saldana] was Dale's girlfriend. Beecher had left Las Vegas Metro police and was Chief Investigator for the Las Vegas District Attorney's office. Within a day, Beecher came over to our house. Beecher had already made up his mind that Dale was involved in the killings. . . . Robert realized that this case posed an opportunity to keep in good standing with the authorities and hatched a plan with Beecher [Avants] to have Angie [Saldana] "solve" the case. Robert always took every opportunity to cooperate with law enforcement because it paid off for him. He set about manipulating and controlling Angie just as he did me when he was secretly working with the police in the [Al] Bramlet case. Robert told Angie that if she did not cooperate with him and Beecher, Angie could be charged with conspiracy and be executed.

Declaration of Wendy C. Mazaros, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 178-79. After meeting with Las Vegas District Attorney Chief Investigator Beecher Avants and discussing the case against Mr. Flanagan, Robert Peoples "told Angie [Saldana] exactly what to say to the police and at trial. Robert coerced Angie to say anything Beecher [Avants] wanted her to say." *Id.* at 179. Ms. Saldana's cousin, Amy Henley-Peoples, corroborates Ms. Mazaros's account, stating that, prior to the guilt trial, "Robert People instructed Angie how to testify and rehearsed her testimony," a process that he repeated prior to the penalty retrial:

> Robert Peoples constantly talked to Angie [Saldana] about what was contained in the [police] reports from the Flanagan boxes. He also told Angie over and over how she had testified at the first trial and that she had to do so again. Robert Peoples threatened over and over. He said "you have to do this. You got paid, if you don't do it you're going to fry."

Declaration of Amy Henley-Peoples, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 172, 173. Thus, only by fabricating her testimony and by undisclosed threats and inducements did Ms. Saldana provide the key evidence—most importantly Mr. Flanagan's alleged confession—necessary to secure his conviction and death sentences.

The factual support for these claims was developed only after Mr. Flanagan completed proceedings in state court and had instituted federal proceedings. After retaining the services of

a private investigator, he finally was able to obtain the sworn statements of the two disinterested and previously unavailable witnesses—Ms. Saldana's aunt Wendy C. Mazaros and Ms. Mazaros's daughter Amy Hanley-Peoples. Throughout the proceedings in this Court, Mr. Flanagan diligently attempted to prove the misconduct that resulted in his convictions. In his first state habeas corpus petition filed in this Court, Mr. Flanagan raised constitutional challenges to Ms. Saldana's false testimony. Supplemental Petition for Writ of Habeas Corpus ("Supplemental Petition"), filed Nov. 30, 1995 (Claims One and Two). In support of these claims, Mr. Flanagan submitted declarations from Ms. Saldana and Mr. Peoples, but neither revealed the extent to which the government participated in the manufacturing of her testimony or the threats used to compel her to testify falsely. Declaration of Angela Saldana Ficklin, filed May 17, 2000, 1-2 (30 AA 7194-95); Declaration of Robert Peoples, filed May 17, 2000, 1-2 (30 AA 7155-56). In response to Mr. Flanagan's claims, Respondent expressly denied that Ms. Saldana's testimony "was somehow scripted," further concealing the official misconduct. State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), filed Mar. 29, 2000, 8-9 (27 AA 6495-96).

Counsel for Mr. Flanagan nonetheless filed a Motion for Discovery and a Motion for an Evidentiary Hearing—seeking authority to use this Court's subpoena power to prove that Ms. Saldana testimony was false and the product of government overreaching—but this Court denied both motions. Petitioner's Motion for Discovery, filed May 17, 2000 (27 AA 6537-77); Motion for Evidentiary Hearing, filed May 17, 2000 (27 AA 6578-97); Reporter's Transcript of Habeas Corpus Proceedings, Motions Hearing, Aug. 16, 2000, 34 (30 AA 7282). Counsel for Mr. Flanagan further attempted to locate Ms. Mazaros by employing the services of private investigators and exhaustively searching public records and proprietary databases. Declaration of Jon Frappier, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 181. Despite these diligent efforts, Mr. Flanagan was unable to locate Ms. Mazaros and subsequently her daughter Amy Hanley-Peoples until July 2010. *Id.* Prior to that time, Ms. Mazaros

"intentionally made [herself] difficult, if not impossible, to locate." Declaration of Wendy C. Mazaros, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 180. Upon interviewing Ms. Mazaros and her daughter and obtaining their declarations in February 2011, Mr. Flanagan for the first time obtained conclusive evidence that Robert Peoples, in concert with law enforcement officials, orchestrated and compelled Angela Saldana's fabricated testimony. With these triggering facts and information from Ms. Mazaros and Ms. Hanley-Peoples, Mr. Flanagan began the investigation into Mr. Peoples's background, criminal history, and extensive relationship with law enforcement officials and actions as a police agent and promptly filed the evidence in support of his claims in the federal court.

In response to the federal habeas corpus petition, the state asserted that the misconduct claim, as supplemented by the new evidence, had not been fairly presented to the Nevada courts in violation of the exhaustion doctrine. Motion To Dismiss First Amended Petition for Writ of Habeas Corpus by a Person in State Custody Pursuant to 28 U.S.C. § 2254 or in the Alternative, Motion for a More Definite Statement, Sept. 2, 2011, ECF No. 55, at 15.[2] Thereafter, the federal district court issued an order staying the federal proceedings and ordering Mr. Flanagan to present the new allegations to this Court. Order, *Flanagan v. Baker*, No. 2:09-cv-00085 (D. Nev. Aug. 23, 2012), ECF No. 100. In so ruling, the court held that:

> The allegations supporting Claim One, if taken as true, arguably present a meritorious challenge to his conviction or sentence. As noted, Flanagan contends, among other things, that the State failed to disclose material evidence that would have undermined the credibility of a witness that testified against him and that the State knowingly offered false or misleading testimony and evidence. Claim One contains factual allegations sufficient to raise colorable grounds for relief under *Giglio v. United States*, 405 U.S. 150 (1972) and *Napue v. Illinois*, 360 U.S. 264 (1959).

Id. at 4. The court further concluded that there was "no indication" that Mr. Flanagan engaged in any dilatory litigation tactics, *id.*; indeed; the court found that "Flanagan has demonstrated that he made a good faith effort to develop this specific claim in state court by directing his

[2] The federal documents in Federal Judiciary's Electronic Case Filing ("ECF") system are available at www.pacer.gov.

1 investigator to locate [Wendy] Peoples and by seeking leave to conduct discovery related to
2 Angela Saldana," *id.* at 3.[3] In accordance with the federal district court's Order, Mr. Flanagan
3 presented the factual allegations supporting Claim 1 in the Petition.

4 In response to the detailed allegations contained in the Petition and accompanying
5 exhibits, Respondent filed the instant Motion, mischaracterizing the previous claims presented to
6 this Court and failing to respond to the factual allegations of government misconduct. Instead,
7 the prosecution seeks to avoid any inquiry into its wrongdoing by asserting that Mr. Flanagan's
8 claims are barred for his failure to comply with procedural rules. Notably, however, Respondent
9 does not contest the critical factual allegations concerning Mr. Flanagan's diligence in
10 investigating the claims and merits of the claims themselves. These uncontested allegations are
11 fully supported by the exhibits before this Court and must be accepted as true in determining
12 whether to grant Respondent's Motion and short-circuit these proceedings without full factual
13 development and an evidentiary hearing. Given the evidence before this Court, Respondent's
14

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[3] Respondent seeks to avoid this factual finding by asserting that "[w]hat the federal court
15 decided . . . was whether there was good cause for Flanagan's failure to exhaust all of his claims"
and arguing that a petitioner must establish good cause despite a federal court's decision to hold
16 proceedings in abeyance. Motion at 8. Respondent's assertion, however, is both legally and
factually incorrect. Although a state petitioner must establish cause—which Mr. Flanagan does
17 below—the federal district court's *factual findings* are relevant to this Court's inquiry into
whether to excuse any procedural defaults. The legal framework that the federal district court
18 applied was whether Mr. Flanagan met the stringent requirements for holding the federal
proceedings in abeyance. As the United States Supreme Court has held, that standard required
19 Mr. Flanagan to establish "good cause for his failure to exhaust, his unexhausted claims are
potentially meritorious, and there is no indication that [he] engaged in intentionally dilatory
20 litigation tactics." *Rhines v. Weber*, 544 U.S. 269, 278 (2005). In determining whether Mr.
Flanagan satisfied this standard, the district court necessarily reviewed the facts surrounding his
21 inability to locate the two witnesses while his proceedings were pending in state court and found
that Mr. Flanagan was diligent.
22
Moreover, none of the cases Respondent lists without specific page citations—*State v. District*
23 *Court (Riker)*, 121 Nev. 225, 112 P.2d 1070 (2005), *Pellegrini v. State*, 117 Nev. 860, 34 P.3d
519 (2001), *Crump v. Warden*, 113 Nev. 293, 934 P.2d 247 (1997), and *Valerio v. State*, 112
24 Nev. 383, 915 P.2d 874 (1996)—mention anything about the effect of a federal court's factual
determination that a petitioner has exercised due diligence and finding of "good cause" to permit
25 the extraordinary relief of holding the federal proceedings in abeyance. Indeed, where the State
invites the federal court to inquire into a habeas corpus petitioner's diligence and a determination
26 that the unexhausted constitutional claims have potential merit, the principles that underlie the
interests of res judicata and comity should foreclose the State's attempts to relitigate those issues.

Motion should be denied.

II. MR. FLANAGAN IS ENTITLED MERITS REVIEW OF THE CLAIMS BECAUSE HE HAS ESTABLISHED GOOD CAUSE AND PREJUDICE TO EXCUSE ANY PROCEDURAL BARS.

Respondent asserts that three procedural bars apply to the Petition. First, Respondent contends that Mr. Flanagan failed to comply with the statute of limitations provision set forth in Nevada Revised Statutes section 34.726 because the Petition was filed after 1989, one year following the Nevada Supreme Court's affirmance of the convictions but reversal of the sentences.[4] Motion at 6. Second, Respondent asserts that the laches doctrine codified in Nevada Revised Statute section 34.800 bars consideration of the claims because five years have elapsed between the issuance of the remittitur in 1988 and the filing of the instant Petition. Motion at 7. Third, Respondent asserts that the Petition is barred by Nevada Revised Statutes section 34.810, allegedly because the Petition contains claims that were or could have been presented in the first state habeas corpus proceedings. Motion at 7-8.

As an initial matter, Respondent's contention that the Petition contains identical claims that were previously presented to this Court, Motion at 6, conflicts with its position before the federal district court. In requesting that the federal district court dismiss the federal petition, Respondent asserted that federal Claim One (which is identical to Claim 1 in the Petition before this Court) "because the claims therein are unexhausted in that they have not been fully and fairly presented to any state court." Motion To Dismiss First Amended Petition for Writ of Habeas Corpus by a Person in State Custody Pursuant to 28 U.S.C. § 2254 or in the Alternative, Motion for a More Definite Statement, Sept. 2, 2011, ECF No. 55, at 15.

The doctrine of judicial estoppel precludes Respondent from taking inconsistent positions

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[4] Apparently understanding the inappropriateness of using the date that the Nevada Supreme Court issued the remittitur from its 1988 decision remanding the case for a new penalty trial, Respondent alternatively argues that the one-year limitations period began on June 3, 1998, the Nevada Supreme Court issued its remittitur following the affirmance of the imposition of the death sentence. Motion at 7.

in litigation. *See, e.g.*, *Sterling Builders, Inc. v. Fuhrman*, 80 Nev. 543, 549, 396 P.2d 850, 854 (1964) ("'Under the doctrine of judicial estoppel a party may be estopped merely by the fact of having alleged or admitted in his pleadings in a former proceeding the contrary of the assertion sought to be made.'") (quoting 31 C.J.S. Estoppel § 121 at 649); *see also United States v. McCaskey*, 9 F.3d 368, 378 (5th Cir. 1993) (judicial estoppel prevents parties from "'playing fast and loose' with the courts, and prohibit[s them] from deliberately changing positions according to the exigencies of the moment."); *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir. 1990) (state barred from asserting procedural default defenses when state informed petitioner adequate state remedies available). "The primary purpose of judicial estoppel is to protect the judiciary's integrity, and a court may invoke the doctrine at its discretion." *NOLM, LLC v. County of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004). Thus, Respondent's original position in federal court—that the claims had not been exhausted and implicitly that there was an available state forum for their consideration—must be construed as a concession estopping it from now arguing that Mr. Flanagan's claims are procedurally barred. *See Russell v. Rolfs*, 893 F.2d at 1037.

In any event, each of the purported procedural defaults are excused because Mr. Flanagan has established his diligence in developing the claims and cause for his inability to present the claims in accordance with state procedural rules and that he would be prejudiced by the invocation of any bars. *See, e.g.*, Nev. Rev. Stat. § 34.726 (bar is inapplicable where petitioner establishes "good cause" for failing to file the Petition within one year of the issuance of the remittitur); Nev. Rev. Stat. § 34.800(1)(a) (laches bar is inapplicable if "petitioner could not have had knowledge" of the grounds alleged herein "by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred"); Nev. Rev. Stat. § 34.810(3) (bar is inapplicable when petitioner establishes "good cause" and "actual prejudice"). As detailed in the Petition, Mr. Flanagan has more than satisfied this standard.

Despite Mr. Flanagan's diligent attempts to document the full circumstances surrounding Ms. Saldana's fabricated testimony, through no fault of his own, he was unable to present

completely the facts in support of the Claim 1 because the state withheld the evidence from him. When Mr. Flanagan alleged in the prior habeas corpus proceedings in this Court the information he did possess, the state falsely asserted that his allegations of misconduct were "unsupported," that his claim that the witnesses were "scripted is simply refuted by the record," and that "the jury heard all this impeaching evidence regarding inducements for testimony." State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), filed Mar. 29, 2000, 8, 9, 10 (27 AA 6496, 6497, 6498). In addition to being misled by the state's concealment of the facts supporting Claim 1, Mr. Flanagan was unable to allege or document the full extent of the government misconduct detailed in the Petition prior to locating, interviewing, and obtaining the sworn statements of Wendy Peoples and her daughter Amy Hanley-Peoples.

Under the circumstances, Mr. Flanagan has established good cause and prejudice for his inability to comply with any procedural requirements. Moreover, Mr. Flanagan will suffer actual prejudice should this Court apply any procedural bars because the allegations and exhibits entitled him to relief.

A. Good Cause Exists to Excuse Any Failure to Comply with Any Purported Procedural Bars.

Since his arrest, Mr. Flanagan has maintained, and his attorneys have attempted to prove, that Ms. Saldana operated as a police agent during her multiple attempts to interrogate Mr. Flanagan and obtain allegedly incriminating evidence, Ms. Saldana's testimony was false, and the prosecution withheld critical impeachment from Mr. Flanagan that would have discredited her testimony. Prior to the guilt trial, Mr. Flanagan's counsel sought to exclude her testimony because she was acting as a police agent. Reporter's Transcript of 1985 Jury Trial 58-59 (4 AA 814-15) (trial counsel arguing that Ms. Saldana's testimony should be excluded because she was a "police agent" "trying to get information for Officer Berni that she could turn over to him or the district attorney's office"); 62-63 (4 AA 818-19) (co-defendants joining in motion to exclude her testimony). This Court, however, stated that it found no evidence to "substantiate that

[theory of agency]. Miss Saldana indicated she was acting on her own volition." Reporter's Transcript of 1985 Jury Trial 63 (4 AA 819).[5] Thus, Ms. Saldana was permitted to testify without contradiction that, as Mr. Flanagan's "girlfriend," Mr. Flanagan voluntarily confessed his guilt to her. Reporter's Transcript of 1985 Jury Trial 838 (8 AA 1748); *see also* Reporter's Transcript of 1985 Jury Trial 932 (9 AA 1842) (the prosecutor elicits testimony from Ms. Saldana that she was not a police agent and that the decision to obtain incriminating evidence from Mr. Flanagan was solely her decision); *see generally* Reporter's Transcript of 1985 Jury Trial 836-48, 861-901, 902-49 (8 AA 1746-58, 1771-811; 9 AA 1812-59).

In the Supplemental Petition for Writ of Habeas Corpus ("Supplemental Petition"), filed November 30, 1995, Mr. Flanagan raised two claims regarding Ms. Saldana's testimony. In Claim One, Mr. Flanagan alleged numerous instances of prosecutorial misconduct that infected the capital proceedings, including the following regarding Mr. Saldana:

> Law enforcement improperly elicited incriminating statements and physical evidence from Petitioner by employing Angela Saldana as a police agent, who had sexual relations with officers of the Las Vegas Metropolitan Police Department. In order to obtain information for law enforcement, Ms. Saldana engaged in sexual relations and began living with Petitioner. In exchange for her assistance as a police agent, Ms. Saldana was not prosecuted for prostitution and other crimes. Such benefits were not disclosed to the defense.

Supplemental Petition at 8-9. The Claim further alleged that law enforcement agents coached Ms. Saldana to testify in the false manner:

> The State improperly and unconstitutionally coached and influenced the testimony of numerous prosecution witnesses, encouraged witnesses to hear the testimony and accounts of other prosecution witnesses and to shape their testimony in accordance with other's accounts, and instructed witnesses not to reveal exculpatory or impeachment evidence to the defense or the court.
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[5] Defense counsel at the subsequent penalty retrials similarly lacked proof that Ms. Saldana's testimony was false or that she operated as a police agent. *See, e.g.*, Reporter's Transcript of 1989 Jury Trial 688-92 (16 AA 3881-85) (cross-examination of Ms. Saldana); Reporter's Transcript of 1995 Jury Trial VI-21-28, VI-32-33 (23 AA 5516-23, 5527-28) (cross-examination of Ms. Saldana).

> The State improperly and unconstitutionally presented false testimony regarding the "planning" of the crime, including false evidence that Petitioner discussed killing his grandparents in order to obtain an inheritance.

Supplemental Petition at 9. In Claim Two, Mr. Flanagan alleged that the prosecution paid witnesses to testify, including Ms. Saldana's receipt of $2000, violated *Sheriff, Humbolt County v. Acuna*, 107 Nev. 664, 819 P.2d 197 (1991), Nevada Supreme Court Rule 1881(1), and Mr. Flanagan's constitutional rights.

In support of these claims, Mr. Flanagan submitted, *inter alia*, the declarations of Angela Saldana Ficklin and Ms. Saldana's uncle, Robert Peoples. Ms. Saldana's declaration described her desire to "solve the crime because [she] wanted to be a police officer," the general assistance that Robert Peoples provided, and her contacts with law enforcement during the time that she was allegedly obtaining incriminating information from Mr. Flanagan." Declaration of Angela Saldana Ficklin, filed May 17, 2000, 1-2 (30 AA 7194-95). Mr. People's declaration described his role as a "police agent" during the investigation of the murder of Al Bramlet in 1977, his realization that his niece Ms. Saldana knew the suspects in this case, and his encouragement of her to assist law enforcement by obtaining "incriminating evidence against Dale Flanagan." Declaration of Robert Peoples, filed May 17, 2000, 1-2 (30 AA 7155-56).

Despite these indications that Ms. Saldana testified falsely, throughout the habeas corpus proceedings, Respondent misled Mr. Flanagan and this Court about the extent to which the prosecution was involved in manufacturing Ms. Saldana's testimony.[6] In the State's Response to

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[6] In so doing, the State violated its obligation to disclose material exculpatory and impeachment evidence, which extends into post-conviction proceedings. *See, e.g.*, *Banks v. Dretke*, 540 U.S. 668, 675-76 (2004) (noting the state's suppression of evidence during collateral proceedings and ruling that "it is ordinarily incumbent on the State to set the record straight"); *Thomas v. Goldsmith*, 979 F.2d 746, 749-50 (9th Cir. 1992) ("We do not refer to the state's past duty to turn over exculpatory evidence at trial, but to its present duty to turn over exculpatory evidence relevant to the instant habeas corpus proceeding."). In addition, the State violated its obligation to correct Ms. Saldana's false testimony. *See, e.g.*, *Banks*, 540 U.S. at 694 (petitioner's showing of "cause" bolstered by fact that "the prosecution allowed [witness'] [false] testimony to stand uncorrected"). Accordingly, the state's current knowledge that Ms. Saldana acted as a police agent contrary to its assertion and testified falsely at trial imposes an obligation upon it in the instant habeas corpus proceeding to correct that false testimony. *See Hall v. Director of Corr.*, 343 F.3d 976, 981 (9th Cir. 2003) ("[Petitioner] does argue that to allow his

Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), Respondent asserted that Claim One was merely re-raised claims "decided on appeal" and failed "to include any type of substantiation for" the claims. State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), filed Mar. 29, 2000, 6-7 (27 AA 6492-93). With respect to Claim Two, Respondent contended that the witnesses who received payments in exchange for their testimony—including Ms, Saldana—fully disclosed those benefits at trial and expressly denied "that the testimony of these three (3) was somehow scripted." *Id.* 8-9 (27 AA 6495-96).

Nonetheless, based on the allegations contained in the Supplemental Petition and the declarations,[7] Mr. Flanagan sought leave to conduct discovery and an evidentiary hearing to further establish the constitutional violations resulting from Ms. Saldana's testimony. *See* Petitioner's Motion for Discovery, filed May 17, 2000 (27 AA 6537-77);[8] Motion for Evidentiary

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conviction to stand, based on the present knowledge that the evidence was falsified, is a violation of his right to due process under the Fourteenth Amendment.") (citation omitted); *see also Napue v. Illinois*, 360 U.S. 264, 269 (1959) ("The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.") (citation omitted).

[7] Mr. Flanagan also proffered declarations from Debora L. Samples Smith, who operated a prostitution business with Ms. Saldana, and Michelle Grey Thayer, who also knew Ms. Saldana. Ms. Smith's declaration stated that Ms. Saldana told her that "the police told her they wanted her help and needed details about the crimes." Declaration of Michelle Grey Thayer, filed May 17, 2000, 1 (30 AA 7169). Ms. Thayer's declaration stated that Ms. Saldana stated that she was working with law enforcement on the case and that she dated Las Vegas Metropolitan Police Officer Berni, who afforded her lenient treatment when she was arrested. Declaration of Michelle Grey Thayer, filed May 17, 2000, 2 (30 AA 7192).

[8] The discovery motion specifically sought access to all information relating to the prosecution's witnesses, including Ms. Saldana, "produced or maintained by various law enforcement agencies or by the Clark County District Attorney's Office." Petitioner's Motion for Discovery, filed May 17, 2000, 11-12 (27 AA 6548-49). Mr. Flanagan urged this Court to grant the motion in light of the "clear *Brady* violations" with respect to the testimony of Ms. Saldana and other witnesses, and evidence that Ms. Saldana "was acting as a police agent throughout this investigation." Reporter's Transcript of Habeas Corpus Proceedings, Motions Hearing, Aug. 16, 2000, 14, 29 (30 AA 7262, 7277). Counsel for Mr. Flanagan argued that "until we get discovery on it, we don't know the extent to which there were *Brady* violations committed." *Id.* at 15 (30 AA 7263). The state responded by characterizing Mr. Flanagan's discovery request as "a blatent [sic] fishing expedition." *Id.* at 27 (30 AA 7275).

Hearing, filed May 17, 2000 (27 AA 6578-97).[9] This Court denied the discovery motion and the evidentiary hearing motion with respect to Claims One and Two. Reporter's Transcript of Habeas Corpus Proceedings, Motions Hearing, Aug. 16, 2000, 10-12, 34 (30 AA 7257-60, 7282).[10]

Finally, deprived of any ability to obtain the corroborating evidence from the state, Mr. Flanagan attempted to locate Ms. Saldana's aunt, Wendy Peoples (nee Mazaros), by employing the services of a private investigator, Jon Frappier. Declaration of Jon Frappier, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 181.[11] Mr. Frappier "searched numerous records in public and proprietary databases," sought the services of "Las Vegas investigators and their sources," and visited previous addresses for her. *Id.* Even with "exhaustive efforts," he was unable to locate her. *Id.* Thereafter, this Court denied relief on Claim One because it previously had been addressed by the Nevada Supreme Court on appeal and denied Claim Two because Mr. Flanagan's "naked allegations [were] unsubstantiated by facts." Findings of Fact, Conclusions of Law & Order, Aug. 9, 2002, 3-4 (31 AA 7532-33).[12]

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[9] The evidentiary hearing motion sought a hearing, inter alia, on Claims One and Two. Motion for Evidentiary Hearing, filed May 17, 2000, 6 (27 AA 6583).

[10] In arguing against Mr. Flanagan's motions for discovery and an evidentiary on Claims One and Two, the prosecution perpetuated its concealment and the importance of it misconduct by expressly relying upon Ms. Saldana's testimony that Mr. Flanagan "confessed" to the crimes and asserted that no further inquiry was required because Ms. Saldana had not retracted her testimony at trial. Reporter's Transcript of Habeas Corpus Proceedings, Motions Hearing, Aug. 16, 2000, 23 (30 AA 7271); *see also id.* ("None of them say they committed perjury; none of them say they gave false evidence").

[11] Complicating Mr. Flanagan's efforts to investigate this claim was this Court's denial, in large measure, of his requests for investigative fees; as a result, counsel for Mr. Flanagan funded virtually all of the investigation conducted during the pendency of the first habeas corpus proceedings. *See, e.g.*, Order of Affirmance, *Flanagan v. State*, Case No. 40232, at 14 (Feb. 22, 2008); Petition at 22-23.

[12] Although Mr. Flanagan appealed the denial of Claims One and Two to the Nevada Supreme Court, that Court did not expressly address them. *See* Order of Affirmance, *Flanagan v. State*, Case No. 40232 (Feb. 22, 2008).

After instituting federal habeas corpus proceedings, Mr. Flanagan was unable to locate Wendy Mazaros, and subsequently her daughter Amy Hanley-Peoples, until July 2010. Mr. Flanagan sought to prove his constitutional claims by again retaining the service of private investigator Mr. Frappier, who—after over a decade of trying to locate Wendy Mazaros—was finally able to do so. Declaration of Jon Frappier, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 181. Prior to that time, Ms. Mazaros "intentionally made [herself] difficult, if not impossible, to locate." Declaration of Wendy C. Mazaros, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 178-79. Upon interviewing Ms. Mazaros and her daughter, and Mr. Flanagan learned for the first time that Robert Peoples, in concert with law enforcement officials, orchestrated and compelled Angela Saldana's fabricated testimony. With these triggering facts and information from Ms. Mazaros and Ms. Hanley-Peoples, Mr. Flanagan began the investigation of Robert Peoples and located the information contained in Claim 1 of the Petition. Only after obtaining the sworn declarations from Ms. Mazaros and Ms. Hanley-Peoples in February 2011 was Mr. Flanagan able to present his claims to the federal court, requesting plenary review of the claim without the need to comply with the exhaustion doctrine.

Unquestionably, as the federal district court found, Mr. Flanagan has been diligently investigating the factual basis for his claims and established good cause to excuse any purported procedural defaults:[13]

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[13] Mr. Flanagan's attempts to prove the merits of his claim satisfy even the more stringent standard of "due diligence" required by the federal court. *See, e.g.*, *Starns v. Andrews*, 524 F.3d 612 (5th Cir. 2008) (finding that petitioner acted with due diligence for not discovering exculpatory witness earlier when state "severely downplayed the importance" of the witness); *Wilson v. Beard*, 426 F.3d 653, 662 (3rd Cir. 2005) (finding no failure to exercise due diligence despite the fact that petitioner could have learned the existence of evidence from watching local news broadcasts: "The essential question is not whether the relevant information was known by a large number of people, but whether the petitioner should be expected to take actions which would lead him to the information"); *Aron v. United States*, 291 F.3d 708, 712 (11th Cir. 2002) ("[d]ue diligence . . . does not require a prisoner to undertake repeated exercises in futility or to exhaust every imaginable option, but rather to make reasonable efforts").

> To show good cause for delay under NRS 34.726(1), a petitioner must demonstrate two things: "[t]hat the delay is not the fault of the petitioner" and that the petitioner will be "unduly prejudice[d]" if the petition is dismissed as untimely. Under the first requirement, "a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules." *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (citing *Lozada v. State*, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994)). "An impediment external to the defense may be demonstrated by a showing 'that the factual or legal basis for a claim was not reasonably available to counsel, or that some interference by officials, made compliance impracticable.'" *Id.* (quoting *Murray v. Carrier*, 477 U.S. 478, 488, 106 S. Ct. 2639, 91 L. Ed.2d 397 (1986) (citations and quotations omitted)). Under the second requirement, a petitioner must show that errors in the proceedings underlying the judgment worked to the petitioner's actual and substantial disadvantage. *Hogan v. Warden*, 109 Nev. 952, 959–60, 860 P.2d 710, 716 (1993).

State v. Huebler, ___ Nev. ___, 275 P.3d 91, 95 n.3 (2012). In *Huebler*, the Nevada Supreme Court recently explained the application of *Brady v. Maryland*, 373 U.S. 83 (1963), in the context of supplying "cause" and "prejudice" to excuse procedural defaults:

> When a *Brady* claim is raised in an untimely post-conviction petition for a writ of habeas corpus, the petitioner has the burden of pleading and proving specific facts that demonstrate both components of the good-cause showing required by NRS 34.726(1). *Id.* Those components parallel the second and third prongs of a *Brady* violation: establishing that the State withheld the evidence demonstrates that the delay was caused by an impediment external to the defense, and establishing that the evidence was material generally demonstrates that the petitioner would be unduly prejudiced if the petition is dismissed as untimely. *Id.*

Huebler, 275 P.3d at 96. Until February 2011, despite his diligent efforts, Mr. Flanagan did not possess the sworn statements of the two disinterested witnesses. Within days, he filed his federal petition, seeking an adjudication on the merits without the need to return to this Court. After the State invoked the exhaustion doctrine, requiring Mr. Flanagan to file the instant Petition, he did so immediately. Where, as here, a habeas petitioner raises a *Brady* claim "within a reasonable time after the withheld evidence was disclosed to or discovered by the defense," good cause exists to excuse any procedural defaults. *Id.* at 95 n.3.[14]

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[14] To the extent that there is any question about Mr. Flanagan's exercise of due diligence, an evidentiary hearing is necessary before dismissal of the claim. *See, e.g.*, *Hasan v. Galaza*, 254 F.3d 1150, 1154-55 (9th Cir. 2001) (remanding for further factfinding on when petitioner discovered the factual basis for the claim and concluding that if petitioner "did not have, or with the exercise of due diligence could not have had, knowledge of the factual predicate of both elements of his claim until on or after May 24, 1996, his June 1, 1998 filing was timely").

Respondent's sole argument to Mr. Flanagan's diligent and persistent attempts to prove the bona fides of his claims is to assert that Mr. Flanagan should have presented the claim immediately upon locating the two witnesses in July 2010. Motion at 9-10. In support, Respondent cites to the Nevada Supreme Court decision in *Colley v. State*, 105 Nev. 235, 773 P.2d 1229 (1989), in the which the Court held that the one-year statute of limitations requirement applied to a petitioner who intentionally by-passed the state post-conviction process to litigate in the first instance in federal court and returned to file his first state petition five years after the state judgment became final. The decision in *Colley* is wholly inapplicable to the circumstances presented in this case. Because of "an impediment external to the defense," Mr. Flanagan could not have complied with any of the procedural default rules cited by Respondent. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). The statute of limitations period contained in Nevada Revised Statutes section 34.726 expired in 1999, while the state continued to conceal its misconduct and Ms. Mazaros and Ms. Haney-Peoples were unavailable. Similarly, the five-year period of presumed prejudice contained in the laches provisions in Nevada Revised Statutes section 34.800 began in 2003, again while the state was concealing its misconduct and the witnesses were unavailable.[15] Finally, Nevada Revised Statutes section 34.810 is inapplicable because, at the time of the first state habeas proceedings, the State was concealing its misconduct and the witnesses were unavailable.[16] In short, Ms. Flanagan fully complied with all procedural

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[15] This provision similarly is inapplicable because the State of Nevada will not be prejudiced in its ability to conduct a retrial, as all of the witnesses or their previous sworn testimony are readily available, and the grounds upon which Mr. Flanagan seeks relief constitute a "fundamental miscarriage of justice." Nev. Rev. Stat. § 34.800(1)(b).

[16] Respondent's reliance on *Hutchinson v. Bell*, 303 F.3d 720 (6th Cir. 2002), is similarly misplaced. In *Hutchinson*, the court relied upon the Tennessee appellate court's finding that the habeas petitioner failed to present a *Brady* claim despite possessing the *Brady* material "prior to the hearing on the first [state] petition for postconviction relief. There is no evidence in the record to suggest that Petitioner was not provided an opportunity for the presentation of claims at a meaningful time and in a meaningful manner as required by [state law]." *Id.* at 741 (citations omitted). In dicta, the court further noted that, even by the petitioner's accounts, he could have complied with the state statute of limitations period by filing the *Brady* claim within seven months of the disclosure of the materials. *Id.* at 742-43. Unlike *Hutchinson*, Mr. Flanagan could

rules because he filed his *Brady* claim "within a reasonable time after the withheld evidence was disclosed to or discovered by the defense." *Huebler*, 275 P.3d at 95 n.3.[17]

B. Applying Nevada Revised Statutes Sections 34.726, 34.800, or 34.810 Would Prejudice Mr. Flanagan.

In addition to providing "cause" for Mr. Flanagan's inability to comply with procedural requirements, the State's suppression of material exculpatory and impeachment information and its role in manufacturing and presenting false testimony supplies prejudice to require merits review of his constitutional claims. *See, e.g.*, *Mazzan v. Warden*, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000) ("If Mazzan proves that the state withheld evidence, that will constitute cause for not presenting his claim earlier. If he proves that the withheld evidence was material under *Brady*, that will establish actual prejudice.") (citing *Strickler v. Greene*, 527 U.S. 263, 282 (1999)); *Banks*, 540 U.S. at 691-95; *Johnson v. Dretke*, 394 F.3d 332, 336-37 (5th Cir. 2004).

As the federal district court found, the state's misconduct constitutes serious constitutional violations that, if proved, require the granting of a new trial. Order, *Flanagan v. Baker*, No. 2:09-cv-00085 (D. Nev. Aug. 23, 2012), ECF No. 100 at 4 ("Claim One contains factual allegations sufficient to raise colorable grounds for relief under *Giglio v. United States*, 405 U.S. 150 (1972), and *Napue v. Illinois*, 360 U.S. 264 (1959)).[18] For the purposes of this Opposition, Mr. Flanagan focuses on the state's unlawful suppression of favorable evidence.

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not have complied with the one-year statute of limitations period—which expired in 1999—even had he been able to obtain the declarations in June 2010.

[17] Similarly, good cause exists for the representation of Claims 2, 3, 4, and 5. Although these claims previously were presented to this Court, the new allegations in Claim 1 require this Court's reconsideration of their merits. As alleged below, state misconduct permeated this case at trial, which is further supported by the previously unavailable facts alleged in Claim One. In addition, the merits of Claim One must be considered within the totality of the record, including the previously alleged state misconduct and the failure of trial and appellate counsel to protect Mr. Flanagan's constitutional rights. Thus, the failure of this Court to reconsider the previously presented claims would result in actual prejudice to Mr. Flanagan. Nev. Rev. Stat. § 34.810(3).

[18] Indeed, the allegations and supporting exhibits establish a prime facie case of at least the following constitutional violations: (1) failure to provide the defense with exculpatory information concerning the veracity of Ms. Saldana and the benefits that she received in

The evidence presented in the Petition unquestionably establishes the violation of Mr. Flanagan's due process rights guaranteed by *Brady*. "'*Brady* and its progeny require a prosecutor to disclose evidence favorable to the defense when that evidence is material either to guilt or to punishment.'" *State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003) (quoting *Mazzan*, 116 Nev. at 66, 993 P.2d at 36); *see also Huebler*, 275 P.3d at 95. Such violations occur when the state has suppressed information affecting a witness's credibility, including promises and threats made by government agents. *See, e.g.*, *United States v. Bagley*, 473 U.S. 667, 676 (1985) (ruling that favorable evidence under *Brady* includes impeachment evidence); *Giglio v. United States*, 405 U.S. 150, 153-54 (1972). The "suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87.

A *Brady* violation is established when a habeas petitioner demonstrates that (1) the evidence is favorable to the accused, either because it is exculpatory or impeaching; (2) the state withheld the evidence, either intentionally or inadvertently; and (3) "'prejudice ensued, i.e., the evidence was material.'" *Bennett*, 119 Nev. at 599 (quoting *Mazzan*, 116 Nev. at 67, 993 P.2d at 37). Suppressed evidence is "material" when there is a reasonable probability that it affected the jury's determination. *See, e.g.*, *Bagley*, 473 U.S. at 682 (a "reasonable probability" is "a

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exchange for her testimony, *see, e.g.*, *Strickler v. Greene*, 527 U.S. 263, 282 (1999) (failure to disclose impeachment evidence violates the Due Process Clause); *Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (prosecution "has a duty to learn of any favorable evidence known to the others acting on the government's behalf . . . including the police"); *Brady*, 373 U.S. at 87 (suppression of favorable evidence material to either guilt or punishment violates due process); (2) Ms. Saldana's testimony was influenced by unconstitutional coercive techniques, *Pyle v. Kansas*, 317 U.S. 213 (1942) (allegations that the state coerced and threatened witnesses to testify falsely, if proved, entitle the granting of habeas corpus relief); and (3) the state's knowing use of perjured testimony, *see, e.g.*, *Bagley*, 473 U.S. at 678 ("[A] conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.") (quotation omitted); *United States v. Agurs*, 427 U.S. 97, 103 (1976) (conviction must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury).

probability sufficient to undermine confidence in the outcome"). Materiality does not depend on whether there would have been adequate evidence to convict if the favorable evidence had been disclosed, but whether "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Kyles*, 514 U.S. at 435.

Mr. Flanagan has established each of these elements. First, the suppressed evidence would have been favorable to the defense both to support the motion to exclude Ms. Saldana's testimony entirely and as impeachment. The allegations and exhibits before this Court establish a wealth of favorable information was suppressed:

- Contrary to Ms. Saldana's sworn testimony and Respondent's representation throughout the proceedings in this case, Ms. Saldana acted as a police agent. Her uncle Robert Peoples, a longtime snitch who needed to maintain a positive relationship with authorities, immediately recognized an opportunity to further ingratiate himself with the police by using Ms. Saldana to "solve" the crime. Beecher Avants, then Chief Investigator for the District Attorney's Office, provided Mr. Peoples with police reports and information about the case and conspired with Mr. Peoples to use Ms. Saldana to obtain incriminating evidence, including a confession from Mr. Flanagan. Declaration of Wendy C. Mazaros, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 178-79.
- Robert Peoples "set about manipulating and controlling" Ms. Saldana as he had done with Wendy Peoples "when he was secretly working with the police" in the Al Bramlet case. Declaration of Wendy C. Mazaros, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 179. Mr. Peoples "carefully" reviewed the police reports about the case and coerced Ms. Saldana to provide Mr. Avants with the information Mr. Avants sought. *Id.* "During the investigation," Mr. Peoples "had long conversations with Ms. Saldana." *Id.*

"He told Angie [Saldana] exactly what to say to the police and at trial." *Id.* Wendy heard Mr. Peoples tell Ms. Saldana, "You're going to do this Angie," and then he told "her exactly what to say." *Id.* This manipulation and fabrication of evidence was done with Mr. Avants's knowledge and authorization. Indeed, Mr. Avants orchestrated it; as Ms. Mazaros states, "Peoples did what Beecher told him to do. This is how Beecher operated and used Peoples." *Id.*; *see also id.* ("Beecher told Robert that we needed to find the gun and to get a confession.").

- Robert Peoples told Ms. Saldana that if she did not cooperate with him and Beecher Avants, she could be charged with conspiracy and be executed. Declaration of Wendy C. Mazaros, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 179.

- Prior to Mr. Flanagan's first trial, Amy Henley-Peoples went with Mr. Peoples and Ms. Saldana to Mr. Flanagan's trailer when he was not there. Declaration of Amy Henley-Peoples, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 172. Mr. Peoples took Saldana "there to get everything straight with her" and to look for things in the trailer that Ms. Saldana "could use to support a 'confession.'" Declaration of Wendy C. Mazaros, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 179. In particular, he was looking for weapons and signs of devil worship." *Id.* at 179-80. "Robert Peoples pointed to a picture and said to Angie [Saldana] that it was a picture of the devil and told Angie that she had to testify against Dale Flanagan and say that Dale Flanagan was a devil worshiper. Declaration of Amy Henley-Peoples, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 172; *see also* Declaration of Wendy C. Mazaros, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 179-80. While in the trailer, Ms.

Henley-Peoples witnessed Robert Peoples instruct Ms. Saldana "how to testify and rehearsed her testimony." Declaration of Amy Henley-Peoples, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 172.

- Mr. Peoples's manipulation and coercion of Ms. Saldana continued after the Nevada Supreme Court ordered a new penalty trial. During Ms. Henley-Peoples's visits to Mr. Peoples's apartment, she saw "boxes of paperwork in his room with the name 'Flanagan' on papers in the boxes." Declaration of Amy Henley-Peoples, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 172. She also heard "Robert Peoples talking to [Ms. Saldana] on the telephone for hours at a time. Robert Peoples constantly talked to [Ms.] Saldana about what was contained in the reports from the Flanagan boxes." *Id.* at 173. Ms. Henley-Peoples also heard Mr. Peoples tell Ms. Saldana "over and over how she had testified at the first trial and that she had to do so again. Robert Peoples threatened her over and over. He said, "'You have to do this. You got paid, if you don't do it you're going to fry. They will put you in the electric chair.'" Robert Peoples said "that dirty little wh***is not doing what she is supposed to be doing.'" *Id.*

- "During that same time period, Beecher Avants and Robert Peoples frequently met and discussed" Mr. Flanagan's case. Declaration of Amy Henley-Peoples, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 173. Ms. Hanley-Peoples was present at the Gold Coast Casino, where Robert Peoples met "many times with Beecher Avants and police officer Bob Hilliard and had dinner. Avants, Hilliard, and Robert Peoples talked about the case against Dale Flanagan. During one of the dinners, Avants told Peoples "'you better get that little b**** under control" referring to Angie [Saldana].'" *Id.*

- Finally, prior to the final penalty trial, Ms. Saldana expected to receive $10,000 in exchange for her testimony. Declaration of Wendy C. Mazaros, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 180.

Unquestionably, information concerning the role of Ms. Saldana as a police agent, the manufacturing of evidence against Mr. Flanagan, Ms. Saldana's false testimony, the threats, promises, and coercion made against Ms. Saldana, and impeaching her credibility constitutes favorable information to the defense. *See, e.g.*, *Strickler*, 527 U.S. at 282 (evidence is favorable if it is "exculpatory" or "impeaching"); *Giglio*, 405 U.S. at 154 (information that affects the credibility of a witness must be disclosed).[19]

Second, the state withheld all of this information from Mr. Flanagan. At no time did the state reveal that Mr. Avants and Mr. Peoples conspired to use Ms. Saldana as a police agent and manufacture her testimony, Mr. Peoples's fabrication of Ms. Saldana's testimony, Mr. Peoples's threats to and coercion of Ms. Saldana, and Ms. Saldana's expectation that she would receive $10,000 in exchange for her testimony. Indeed, throughout these proceedings, the state has denied that this pattern of misconduct existed. *See, e.g.*, State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), filed Mar. 29, 2000, 8-9 (27 AA 6495-96) (expressly denying that Ms. Saldana's testimony "was somehow scripted"). Respondent's instant Motion continues to conceal the extent and seriousness of this misconduct. For example, Respondent asserts that Mr. Peoples's motivation "in getting Angela to assist law enforcement is simply not relevant nor exculpatory," Motion at 13, without even mentioning that two witnesses

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[19] Without a shred of evidence, Respondent insinuates that the sworn declarations of Ms. Mazaros and Ms. Hanley-Peoples are false because they "have strong motive against Robert Peoples and Beecher Avants, as the men who betrayed and helped convict their husband and father, Tom Hanley, of murder." Motion 12-13. Notably, absent from Respondent's submission to this Court is any sworn statement denying their accounts. Instead, Respondent is content to besmirch their reputations without any semblance of proof. To the extent that there is any dispute about these disinterested witnesses' credibility, the appropriate vehicle for making such an assessment is after permitting Mr. Flanagan to conduct discovery and prove his claims at an evidentiary hearing, a process that Respondent seeks to avoid by presenting this Motion.

have provided sworn statements that Mr. Peoples's coercion of Ms. Saldana was at the direction and behest of Beecher Avants, then the Chief Investigator for the District Attorney's Office. Respondent similarly ignores Ms. Mazaros's sworn statement that Ms. Saldana expected $10,000 for her testimony prior to the 1995 penalty retrial, and instead asserts merely that [i]t was well-known that she got paid $2,000 for her work as an informant." Motion at 13. Likewise, when presented with sworn statements that Ms. Saldana was threatened with a death sentence if she "did not cooperate" with Mr. Peoples and Mr. Avants,[20] and testify in the same manner that she had previously testified,[21] Respondent asserts that such pressure was merely designed to have her testify truthfully. Motion at 13. Most egregiously, Respondent characterizes Mr. Peoples's "review" of the police reports with Ms. Saldana as simply a method "to help refresh" her memory and should be "no surprise," Motion at 13, despite the sworn declarations from witnesses who observed Mr. Peoples tell Ms. Saldana "exactly what to say to the police and at trial"[22] and "instructed" her "how to testify and rehearsed her testimony."[23] In short, prior to obtaining the sworn declarations of Ms. Mazaros and Ms. Henley-Peoples, Mr. Flanagan lacked any proof of the exculpatory information detailed above because the state concealed it from him and this Court.

Mr. Flanagan similarly has established the third *Brady* element, that the withheld material is material. Had trial counsel possessed the withheld information, he would have prevailed on his motion to exclude Ms. Saldana's testimony in its entirety because she was acting as a police agent, it was the product of outrageous government misconduct, and was false and unreliable.

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[20] Declaration of Wendy C. Mazaros, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 179.

[21] Declaration of Amy Henley-Peoples, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 172.

[22] Declaration of Wendy C. Mazaros, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 179.

[23] Declaration of Amy Henley-Peoples, Exhibits to Petition for Writ of Habeas Corpus, filed Sept. 12, 2012, at 172.

To the extent she was permitted to testify, her credibility would have been thoroughly undermined. *See, e.g.*, *Kyles*, 514 U.S. at 435 (defining materiality as whether "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict"); *Benn v. Lambert*, 283 F.3d 1040, 1062 (9th Cir. 2002) ("state suppressed material exculpatory and impeachment evidence that would have destroyed the credibility of its principal witness"); *United States v. Bernal-Obeso*, 989 F.2d 331, 336 (9th Cir. 1993) (had the prosecution disclosed the impeachment material, the witness's testimony would have been "flatly rejected"); *Bagley v. Lumpkin*, 798 F.2d 1297, 1301 (9th Cir. 1986) ("When the evidence shows that the government's only witnesses lied under oath, it is contrary to reason that confidence in the outcome of the case would not objectively be undermined.").

Cloaked with impeachable status as Mr. Flanagan's "girlfriend" and her altruistic motivation to perform her civic duty, Ms. Saldana provided the critical evidence in the case about the knife found at the crime scene belonging to Mr. Flanagan. She alone testified that Mr. Flanagan "was a little upset" because a police officer said he had found his knife "by the broken window" at the crime scene. Reporter's Transcript of 1985 Jury Trial 841 (8 AA 1751). She further testified that two weeks after the discussion between Mr. Flanagan and the officer, Mr. Flanagan told her he had found his knife and showed it to her. She testified that she responded "No, that's not your knife. That one looks new," and Mr. Flanagan said "Yes, but no one else will know that. And now the cops don't have anything on me." Reporter's Transcript of 1985 Jury Trial 843 (8 AA 1753).

Most importantly, Ms. Saldana alone provided the jury with Mr. Flanagan's incriminating detailed confession. Ms. Saldana testified that, while upset with her, Mr. Flanagan stated "How do you like this, I did it. I killed my grandparents." Reporter's Transcript of 1985 Jury Trial 844 (8 AA 1754). He said that "they planned to make it look like a robbery" and committed the crime "for the will and the insurance money." Reporter's Transcript of 1985 Jury Trial 846 (8 AA 1756). She said that Mr. Flanagan named all of the other people involved, that they planned

the crime, that Mr. Flanagan "had a handgun," that he broke the window to the house "with a stick," and that "he went into the bedroom of his grandmother, and she woke up screaming. And he wrestled her to the bed, put his hand over her mouth, and shot her." Reporter's Transcript of 1985 Jury Trial 863-65 (8 AA 1773-75). She said that Mr. Flanagan said that "Johnny Ray and Randy Moore had shot" his grandfather. Reporter's Transcript of 1985 Jury Trial 865 (8 AA 1775). She testified that Mr. Flanagan said he then took his grandmother's purse and they all left. Reporter's Transcript of 1985 Jury Trial 867 (8 AA 1777). She said that she and Mr. Flanagan and his sister, mother, and aunt looked for a will "every day for about a week," but did not find one. Reporter's Transcript of 1985 Jury Trial 869 (8 AA 1779).

Not surprisingly, given Ms. Saldana's girlfriend relationship with Mr. Flanagan and her altruistic reasons for coming forward, the prosecutors referred to her testimony repeatedly, in opening statement, Reporter's Transcript of 1985 Jury Trial 13 (5 AA 1187), 17 (5 AA 1191), and closing argument, Reporter's Transcript of 1985 Jury Trial 1480-81 (12 AA 2506-07), 1486 (12 AA 2512), 1495 (12 AA 2521), 1496 (12 AA 2522), 1498 (12 AA 2524), 1513 (12 AA 2539), 1520-21 (12 AA 2546-47), 1652-53 (12 AA 2678-79), 1667-68 (12 AA 2693-94), 1676 (12 AA 2702). The most critical reason why the withheld exculpatory information is material comes from the special status that the prosecution bestowed upon her as the cornerstone of its case. *See, e.g.*, *Banks*, 540 U.S. at 673 (examining the prosecution's argument). In urging the jury to convict Mr. Flanagan of capital murder, the prosecutor emphasized that Ms. Saldana was especially important and uniquely credible because she was not a conspirator, unlike the testimony provided by the individuals involved in the offense:

> There was one other person who wasn't present [at the crime] who took the stand and told you.
>
> That was Angela Saldana. And she told you what happened in that last conspiratorial meeting through what she had heard from Dale Flanagan in the trailer that day. Dale had told her the whole deal and she wasn't there.
>
> She just heard this secondhand, what is typically hearsay but allowed in because it is a co-conspirator statement. It is the act of one that binds all or the statement of one which binds all.

> So we have four people who were there and heard the words spoken. Actually, a fifth, Dale Flanagan, as told through the sixth, Angela Saldana.

Reporter's Transcript of 1985 Jury Trial 1485-86 (12 AA 2511-12).

Respondent attempts to minimize Ms. Saldana's role in the case by asserting that others testified against Mr. Flanagan. Motion at 14. "The stress placed by the prosecution" on Ms. Saldana's testimony refutes Respondent's attempt to argue that her testimony was merely cumulative. *Banks*, 540 U.S. at 673. Moreover, Respondent ignores that none of the witnesses provided the jury with Mr. Flanagan's extensive confession, and two of them—Tom Akers and John Lucas—received substantial benefits for their testimony. Mr. Lucas was never charged with any crimes even though in one statement to police he admitted being present during the disposal of two of the weapons used in the offense. Both Mr. Akers and Mr. Lucas received significant compensation for their testimony—$2000 apiece—as well as other benefits.

Critically, Ms. Saldana's account of Mr. Flanagan's statements to her shaped, and resulted in, Mr. Akers's and Mr. Lucas's testimony. At the time that she was acting as a police agent, Ms. Saldana was sleeping with both Mr. Flanagan and Mr. Akers, and Ms. Saldana's account of what Mr. Flanagan told her minimized Mr. Akers's role in the offense. Soon thereafter, Akers provided a statement to police that largely corresponded to Ms. Saldana's statement.[24] Mr. Lucas, in turn, provided a statement to police after the police informed him of a reward available from Secret Witness, told him about Mr. Saldana's statement and threatened him with charges.

Respondent further attempts to minimize the importance of Ms. Saldana's testimony and the withheld exculpatory information by relying on the Nevada Supreme Court's conclusion that the evidence was "overwhelming." Motion at 15. Respondent's assertion, however, ignores that

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[24] Following the arrest of Mr. Flanagan, Mr. Akers was released from jail and given a job by Mr. Saldana's uncle, Robert Peoples. Shortly before trial, he pleaded guilty to voluntary manslaughter and received a sentence of five years in prison. He was placed on probation, however, and served none of the sentence.

the Court's assessment was necessarily derived from Ms. Saldana's manufactured and false testimony.

Had Ms. Saldana's testimony been excluded or had the jury learned of the nature of Ms. Saldana's relationship with law enforcement, the manufacturing of her testimony, and the multiple reasons why she testified falsely, the jury likely would have believed that the state's remaining evidence—from persons receiving benefits for their testimony—was insufficient to convict Mr. Flanagan beyond a reasonable doubt or sentence him to death. *See, e.g.*, *Napue v*, 360 U.S. at 269 ("The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence[.]"); *Agurs*, 427 U.S. at 113 ("[I]f the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt."); *Jackson v. Brown*, 513 F.3d 1057, 1070, 1075-79 (9th Cir. 2008) (granting penalty phase relief where undisclosed *Brady* evidence was material to capital special circumstances that required a specific intent showing).

III. ALTERNATIVELY, THE PROCEDURAL DEFAULTS MAY NOT BE APPLIED BECAUSE MR. FLANAGAN WAS DEPRIVED OF HIS RIGHT TO COUNSEL IN THE PREVIOUS PROCEEDINGS.

To the extent that this Court concludes that the claims in the Petition should have been raised in the first state post-conviction proceeding, Mr. Flanagan is entitled to a hearing on whether that failure was the result of ineffective assistance of counsel, in a proceeding in which he had a right to effective assistance of counsel under state law and under federal law. *See, e.g.*, *Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997) (holding that habeas petitioners are entitled to "effective assistance of counsel"). In *Martinez v. Ryan*, __ U.S. __, 132 S. Ct. 1309 (2012), the United States Court supported this position by holding that a state may not bar federal review of Sixth Amendment right-to-counsel claims when it failed to provide effective assistance of counsel in an initial post-conviction proceeding where such claims could and

should have been raised. *Id.* at 1318. The Court's reasoning applies with equal force to claims of government misconduct. *Id.* at 1321 (Scalia, J., dissenting) (noting no "difference in principle between those cases and many other cases in which initial state habeas will be the first opportunity for a particular claim to be raised: claims of "newly discovered" prosecutorial misconduct, for example, *see Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L.Ed.2d 215 (1963), claims based on "newly discovered" exculpatory evidence or "newly discovered" impeachment of prosecutorial witnesses, and claims asserting ineffective assistance of appellate counsel.").

To the extent that this Court accepts Respondent's theories that the claims should have been presented in the first state habeas corpus petition, Mr. Flanagan is entitled to conflict-free counsel to litigate such a question. Therefore, undersigned counsel will locate such counsel to conduct such an inquiry and make a presentation on Mr. Flanagan's behalf.

IV. CONCLUSION

For the reasons detailed in this Opposition and based on all of the documents in this case, oral argument on the Motion, and the facts to be presented at an evidentiary hearing, Respondent's motion should be denied.

DATED this 26th day of March, 2013.

POTTER LAW OFFICES

By /s/ Cal J. Potter, III, Esq.

CAL J. POTTER, III, ESQ.
Nevada Bar No. 1988
1125 Shadow Lane
Las Vegas, Nevada 89102
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that pursuant to the Amended EDCR 7.26 and to NRCP5(b) on the 27th day of March, 2013, I did serve at Las Vegas, Nevada a true and correct copy of **OPPOSITION TO MOTION TO DISMISS PETITION** on all parties to this action by:

☐ Facsimile

X U.S. Mail

☐ Hand Delivery

☐ Email (steven.owens@clarkcountyda.com)

Addressed as follows:

Steven B. Wolfson
District Attorney
Steven S. Owens,
Deputy District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89101

/s/ Jenna Enrico .
An Employee of Potter Law Offices

ROPP
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- DALE EDAWRD FLANAGAN, #737065 Defendant.	CASE NO: 85C069269-1 DEPT NO: XII

STATE'S REPLY TO OPPOSITION

DATE OF HEARING: 5/9/13
TIME OF HEARING: 10:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through STEVEN S. OWENS , Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Reply to Defendant's Opposition To Motion To Dismiss Petition.

This Reply is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

POINTS AND AUTHORITIES

In his Opposition, Flanagan continues to overstate that he has obtained "conclusive evidence" that Robert Peoples, in concert with law enforcement officials, orchestrated and compelled Angela Saldana's "fabricated" testimony. Opposition, p. 5. But as previously

demonstrated in the State's motion to dismiss, this is hyperbole. The declarations from Amy Hanley-Peoples and Wendy Mazaros along with the newspaper articles and court records regarding Angela Saldana's uncle and his history, do not support Flanagan's inflated claims of perjury and government conspiracy.

More importantly, even if all of Flanagan's allegations were true, he has still failed in his Opposition to offer any kind of good cause explanation for his delay once the new facts allegedly became known to him. Even if Saldana's testimony was completely false and was orchestrated and concealed by government misconduct (which facts the State does not concede), the claim is still procedurally barred because it is not timely raised once the new facts were supposedly discovered and there is no good cause for the delay. It is this delay of more than two years, at least from July of 2010 to September of 2012, during which there was no impediment external to the defense which prevented Flanagan from raising these new factual allegations in state court. Arguments regarding due diligence in investigating the claims are non-responsive to the State's position that Flanagan unreasonably delayed in federal court once the new information was available to him before returning to State court. Arguing that the State was responsible for some of the delay is inadequate because a petitioner must demonstrate good cause for the entire length of the delay.

Even when the State advised Flanagan that his new facts had not been raised in state court, Flanagan opposed the motion and continued in federal court for more than one year. Flanagan's bald assertion on p. 15 of his Opposition that he "immediately" filed the instant State Petition once the State invoked the exhaustion doctrine, is yet another misrepresentation. A petitioner's choice of forums is entirely his own decision and not dependent upon any obligation of the State to point out the obvious failure to assert his new facts in state court; nor is it dependent upon any federal stay and abeyance procedure. State habeas operates independently of federal habeas. The State raised exhaustion in its motion to dismiss in federal court filed on September 2, 2011, (See Ex. 1 to State's Response) and yet it was more than one year later on September 28, 2012, before Flanagan filed the instant State petition. Delaying more than one year is not the same as filing "immediately."

Unfortunately for Flanagan, pursuit of federal remedies does not constitute good cause to overcome state procedural bars. Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989).

Flanagan next argues that the doctrine of judicial estoppel precludes the State from taking inconsistent positions in litigation. Specifically, Flanagan states that "Respondent's contention that the Petition contains identical claims that were previously presented to this Court, Motion at 6, conflicts with its position before the federal district court." Opposition, p. 7. However, Flanagan has misstated the State's position. In its motion to dismiss, the State never argued that Claim 1 was "identical" to any claim previously raised in this Court. To the contrary, the State agreed that the current Petition raises new factual allegations:

> In reality, there are no new claims in the current petition. Instead, what Flanagan presents is simply allegations of new or additional facts in support of previously rejected claims. To the extent Flanagan's current petition may contain a few more specific facts than previously alleged, such facts have been available to the defense and are not timely raised now in a successive petition.

Motion to Dismiss, p. 6. Even if a petitioner raises precisely the same legal claims in state and federal proceedings, reliance in the two proceedings upon different factual grounds that fundamentally alter the legal claim will foreclose a conclusion that the claim is exhausted. Vasquez v. Hillery, 474 U.S. 254, 260 (1986). The State still maintains that Flanagan's new factual allegations rendered his claim unexhausted - - this position has not changed.

While maintaining that some of the factual allegations are new and not previously raised in state court, the State is also now arguing that such claims are procedurally barred without an adequate showing of good cause and prejudice. These two positions are not in conflict. At no time in federal court did the State represent that Flanagan had an available and adequate remedy in state court or suggest that he could overcome State procedural bars. Ortiz v. Stewart, 149 F.3d 923, 932 (9th Cir. 1998) (distinguishing Russell v. Rolfs and its application of collateral estoppel to the present situation). To the contrary, in federal court the State adamantly opposed Flanagan's motion for stay and abeyance, specifically because Flanagan "has failed to demonstrate that he has good cause for his failure to first take his unexhausted claims to state court and further failed to show that said unexhausted claims are potentially meritorious." In both state and federal court, the State has consistently asserted

that his new factual allegations are unexhausted ***and*** procedurally barred. Thus, the State is not arguing inconsistent positions and Flanagan is simply misrepresenting the record.

Finally, Martinez v. Ryan has no application outside of federal court and did nothing to change state law. Flanagan is welcome to rely upon such authority in federal court, but he is now in state court and has failed to demonstrate the applicability of such authority. See e.g., Gore v. State, ___ So.3d ___, 2012 WL 1149320 (Fla. 2012) ("It appears that Martinez is directed toward federal habeas proceedings and is designed and intended to address issues that arise in that context."), cert. denied, 132 S. Ct. 1904 (2012); Sherman v. Baker, 2012 WL 993419 at 11 (D. Nev. 2012). Furthermore, the State has not argued that his current claims ***should*** have been raised in the first state post-conviction proceeding. Rather, the State has argued that the claims ***were*** in fact raised in that proceeding and any new factual allegations in support thereof were not timely raised once discovered. For purposes of the motion to dismiss, the State is accepting as true Flanagan's representations that the new factual allegations were not reasonably available to him at the time of the first post-conviction proceedings. Rather, the two-year delay that has not been explained (from July of 2010 to September of 2012) occurred ***after*** the conclusion of first post-conviction proceedings and ***after*** the alleged discovery of the new facts. Therefore, there is no conflict and current counsel's derelictions for the past two years do not constitute good cause. The State's motion to dismiss must be granted.

DATED this 18th day of April, 2013.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

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

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing, was made this 18th day of April, 2013, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

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Employee of the District Attorney's Office

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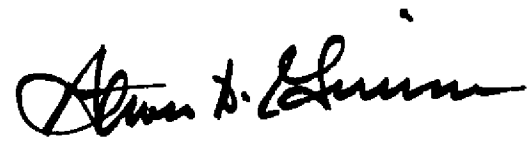

CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

DALE EDWARD FLANAGAN, Petitioner, vs. STATE OF NEVADA and JACK PALMER, Warden, Northern Nevada Correctional Center, Respondents.	SC NO. 63703 CASE NO. 85-C069269 - 1 DEPT. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

THURSDAY, JUNE 6, 2013
RECORDER'S TRANSCRIPT RE:
ALL PENDING MOTIONS

APPEARANCES:

For the State: STEVEN S. OWENS, ESQ.
Deputy District Attorney

For the Defendant: MICHAEL LAURENCE, ESQ.
PRO HAC VICE

RECORDED BY: THERESA SANCHEZ, COURT RECORDER

Las Vegas, Nevada, Thursday, June 6, 2013 at 10:50 a.m.

THE COURT: Dale Flanagan, case C069269. He's not present. He's in the Nevada Department of Corrections.

[Colloquy - The Court]

THE COURT: Okay, go ahead you can make your appearances.

MR. LAURENCE: Michael Laurence for Dale Flanagan.

MR. OWENS: Steven Owens for the State.

THE COURT: Okay, well I guess we can start. There's a petition pending, but we can start out with the State's motion to dismiss based on procedural default.

MR. OWENS: Your Honor, I did move to dismiss. It's a relatively short motion because I think the issues at the heart are fairly narrow. I've done my best to narrow them down. This is a successive petition and more importantly it's untimely. There can be good cause to file a successive petition sometimes but only if they do so timely.

Here they have failed to make any kind of allegation in their petition at all which would explain this critical time frame. I mean, there's many other issues we could get into, but if they can't cover this time frame from July 2010 until the return here to State Court and file the instant petition on September 28, 2012; if they can't explain that and come up with a good cause explanation, which they haven't been able to do in their briefs, there's no reason we would even need to talk about any of the merits of any of their claims, the timing of the discovery of any of their claims. We know at a minimum that they knew about all these claims in July 2010. I picked that date because it's an affidavit from their own investigator who said; if he went out and found Wendy Hanley [phonetics] and Amy Hanley [phonetics] on that

1 date, we can argue ad nauseum whether they were available to the Defense earlier
2 than that. But at a minimum, they were available by then, and they were in Federal
3 Court, and they litigated issues over there. They substantially delayed in returning
4 to State Court. They chose their federal forum. It has been far more than what
5 would be reasonable for them to come back to State Court. So absent that, I don't
6 think it merits even talking about any of their claims, any of their new allegations,
7 which I do go into in my brief, pointing out that mostly this is a regurgitation, and
8 there's a few new facts that they've added in that are not substantial, not material
9 would not have changed the outcome even if they had timely raised them now.
10 These were all issues that we've been dealing with for 20 -- 27 years, 1985 is when
11 they held the first hearing on the issues that the Defense is still back here on.
12 When people complain about the length of delays in capital cases and
13 the expense, this case is the poster child for it. We've wasted a lot of time and
14 money on these issues and investigating things, and 25 years later, we're no closer
15 to finding any kind of reversible error here, than they were in '85, so they may have
16 some rebuttal but that's a -- that's the gist of my argument today, Judge.
17 THE COURT: Okay. I mean, 'cause I'm assuming you're not going to argue,
18 it's untimely because it's clearly past the year right?
19 MR. LAURENCE: Yes, Your Honor.
20 THE COURT: And so again, what's the -- what's the good cause?
21 MR. LAURENCE: Twenty-seven years ago, in this court, Mr. Pike actually
22 argued that on Angela Saldana was a police agent.
23 THE COURT: Mr. Pike, who just happens to be here. What are the chances
24 of that?
25 MR. LAURENCE: Certainly. But, Your Honor, the question that was before

1 this court at that time was whether or not her testimony was orchestrated by the
2 State whether or not she acted as a state agent, and the State stood up and denied
3 that she was.
4 Now, 27 years later, we have affidavits from two individuals that proves
5 that was misleading of the Court.
6 THE COURT: I'm sorry but -- I mean again, and I've gone through these
7 affidavits, why -- and I've read them several times trying to figure out where that --
8 where it says that. So maybe you can direct me to the affidavit -- to the line number,
9 the paragraph, to where it says that this person -- that the witness was an agent of
10 the State, that her testimony was I guess orchestrated faults -- it appears to me as
11 though the claim is your continuous State's suborn perjury to get a conviction.
12 MR. LAURENCE: Yes, Your Honor we are.
13 THE COURT: Yeah. That's what it sounds like.
14 MR. LAURENCE: And if the declaration -- the declaration is from -- there are
15 two declarations.
16 THE COURT: Right.
17 MR. LAURENCE: One from Wendy Peoples --
18 THE COURT: Who?
19 MR. LAURENCE: -- who states that her husband went -- Robert Peoples sat
20 down with her niece and went through her testimony line by line, orchestrating
21 exactly what she was supposed to testify to, and that was done in conjunction with
22 the -- the Las Vegas Police Department's knowledge and cooperation. Beecher
23 Avants actually stood in her court --
24 THE COURT: Again, I'd like to -- you to show me, because I have her
25 affidavit in front of me. Direct me to the paragraph number.

1 MR. LAURENCE: its appendix 178, paragraph 17 --

2 THE COURT: I pulled the affidavits out --

3 MR. LAURENCE: Oh. It's page 4 of her declaration, paragraph 17. Very
4 soon after this, Robert met Beecher Avants, who was at the District Attorney's Office
5 at the time; know that Angie was Dale's girlfriend. Beecher then goes and
6 discusses what Beecher -- his history with Beecher was. Robert realized this case
7 posed an opportunity to keep in good standing with the authorities and hatched a
8 plan --

9 THE COURT: Well, you're not reading it -- okay, if you're on paragraph 17 --

10 MR. LAURENCE: Yes, Your Honor.

11 THE COURT: -- very soon after this, Robert let Beecher Avants know that
12 Angie was Dale's girlfriend. Beecher left Las Vegas Metro Police and was the Chief
13 Investigator for the Las Vegas District Attorney's Office. Within a
14 day, Beecher came over to our house. Beecher had already made up his mind that
15 Dale was involved in the killings, which clearly she can testify to that. He told us that
16 statistics show that 90% of the time, these homicides are done by a family member.
17 Okay. Robert realized that this case posed an opportunity to keep in good standing
18 with the authorities and hatched a plan with Beecher to have Angie "solve" the case.

19 Doesn't say what the plan was that was hatched. Just said, hatched a
20 plan. Robert always took every opportunity to cooperate with law enforcement
21 because it paid off for him. He set about manipulating and controlling Angie just as
22 he did me when he was secretly working with the police in the Bramlet case. Robert
23 told Angie that if she did not cooperate with him and Beecher, Angie could be
24 charged with conspiracy and be executed.

25 Which -- you know, I don't know what her involvement was, you know, I

1 don't know if anyone was alleging she was a co-conspirator or an accessory. I don't
2 know. But nowhere in that paragraph does it say her testimony was orchestrated,
3 that she was -- that her testimony was gone through line by line, that it was scripted,
4 that the District Attorney's Office knew about it, and that they did -- that they put this
5 witness up in suborn perjury.
6 MR. LAURENCE: Certainly, Beecher Avants' involvement in this case is
7 clearly a State agent. He was working for the Los Angeles -- the Las Vegas District
8 Attorney's Office assigned to investigate this case.
9 THE COURT: And you're allowed to talk to witnesses. Okay.
10 MR. LAURENCE: Certainly. And paragraphs 19 and 20, Your Honor,
11 continue with Beecher Avants' involvement in this case. Paragraph 19 --
12 THE COURT: So he came to the house a couple times to talk about the
13 investigation --
14 MR. LAURENCE: With Robert Peoples.
15 THE COURT: -- and then, I mean let's not forget who this affidavit is being
16 authored by, and apparently, she doesn't have anything good to say about her ex-
17 husband.
18 MR. LAURENCE: Well, Your Honor, we certainly can talk about the credibility
19 of witnesses --
20 THE COURT: Right.
21 MR. LAURENCE: -- but I would reserve that for an evidentiary hearing. The
22 question is --
23 THE COURT: Yeah I -- I -- I'm just mentioning that.
24 MR. LAURENCE: -- when was this information developed?
25 THE COURT: Okay.

1 MR. LAURENCE: -- seems to be the crux of this issue. And it was developed
2 -- first of all, it was supposed to be developed in 1985 when the Defense, at the
3 original trial, sought to exclude her testimony, and the Court said; no, there's no
4 evidence --
5 THE COURT: Right.
6 MR. LAURENCE: -- that she was operating as a police agent.
7 THE COURT: Uhuh.
8 MR. LAURENCE: First petition is filed in this Court, timely filed in this Court,
9 containing two claims about Ms. Saldana's participation in this case. First claim
10 specifically says; the prosecution orchestrated and coached her to testify the way
11 she did --
12 THE COURT: Okay.
13 MR. LAURENCE: -- and induced it with unlawful coercion and benefits, not
14 disclosed to the Defense. Second claim was talking more specifically about those
15 financial benefits that were given to her including $2,000 and other benefits that had
16 induced her testimony. That is the same claim that is before this Court in Claim
17 One. That is exactly the same claim. In fact, they say that in their papers. This is
18 exactly the same claim.
19 THE COURT: So you're contending Claim One, that you brought back to
20 exhaust, in State Court, was already brought and ruled upon by which, at that time,
21 it would've been now Federal Judge, James Mayhan?
22 MR. LAURENCE: No, I believe it was Judge Guyer [phonetics], Your Honor,
23 was the first post-conviction Judge.
24 THE COURT: In 2000?
25 MR. LAURENCE: No, no. This was brought initially in 1999.

1 THE COURT: Okay.

2 MR. LAURENCE: That petition resulted in a dismissal because Claims One
3 and Two were unsubstantiated, according to the Court.

4 THE COURT: But again, you're contending that Claim One that you are now
5 bringing again is the exact same claim that you brought in the very first petition?

6 MR. LAURENCE: The same -- certainly the same legal claim. Now there are
7 additional facts that were not presented in the first instance. That is certainly true.

8 THE COURT: Okay. So same claim?

9 MR. LAURENCE: Same claim. Her testimony is false --

10 THE COURT: And it's been ruled upon?

11 MR. LAURENCE: *Brady* material that was not disclosed, it was false
12 testimony. That claim was presented to this Court. Did not have a declarations
13 from these two witnesses.

14 When Federal counsel finally got around to being able to get access to
15 these witnesses and then it's detailed well in our reply as to why those witnesses
16 were unavailable, he discovered that those two witnesses had information about
17 Angela Saldana and her participation as a police agent. Federal Counsel, believing
18 it was the same claim because they are identical to Claims One and Two presented
19 in the 1999 petition, asked the Federal Court, can we proceed without having to go
20 back and exhaust these claims? The State says; no, they are unexhausted claims.
21 This Claim One is unexhausted. Federal Counsel would've persist -- would've
22 insisted actually on proceeding in Federal Court, had it not been for the State's
23 submission that these -- that this claim with these two witnesses is different than the
24 two claims that were presented in the first petition.

25 So, we waited for Federal Counsel's motions and the State's Counsel's

1 to be resolved on August 23, 2012. That is the first time any court has determined
2 that these two witnesses changed the nature of the claims that were presented in
3 the first petition. That's the first time. Anybody could have said; you should've
4 presented these claims in State Court. One month later, we look back in this Court.
5 In accordance with the Federal Court's order which also found that Mr.
6 Flanagan's counsel, both State and Federal, had acted with due diligence in trying
7 to locate these witnesses.
8 So we are talking about a one-month period, not two-year period,
9 because there's such confusion about whether or not the character of the claim was
10 changed by these two witnesses' declarations.
11 And that's -- to me, Your Honor, makes this difference -- makes a
12 difference quite remarkable, because the Nevada Supreme Court in *State versus*
13 *Huebler*, which is cited in our briefs made it very clear that you excuse procedural
14 defaults if you can show the second and third prongs of the *Brady* standard. That is,
15 the material was withheld by the prosecution and that it was material.
16 Once you've established those two prongs, you've established cause
17 for each of the procedural defaults, that they wish to argue apply in this case. And
18 what the Nevada Supreme Court said was the standard for brining this kind of claim
19 is far different. In footnote 4 of that decision, which is at 275 p.2d at 96, and I'm
20 going to put on my glasses because I want to make sure I'm reading it correctly.
21 THE COURT: Uhuh.
22 MR. LAURENCE: Once the standard for cause and prejudice is established
23 by -- establishing the two prongs of *Brady*. A petition need only demonstrate that
24 the claim is "raised within a reasonable time, after the withheld evidence was
25 disclosed to or discovered by the Defense." Reasonable time is the standard.

In 30 days after that was discovered, and it was determined to be a different claim, Mr. Flanagan was back in this Court certainly within the time frames that were provided to him by the Federal Court in it's order. That is clearly a reasonable time, and certainly reasonable efforts were made to get this evidence before this Court as quickly as possible.

THE COURT: Okay. So again, I guess the contention is the State withheld *Brady* material, and you think you've met the two-prong standard? Although, I'm not quite sure what *Brady* material you think they withheld.

MR. LAURENCE: Well, there's actually -- it's put out -- put forth in our papers, and it was not actually briefed very extensively by either side, but certainly we have established at least -- and this is what also the District Court found, the Federal District Court found was; one aspect about this case is Ms. Saldana's contacts with law enforcement, which were not disclosed.

There was no disclosure of Beecher Avants meeting with Robert Peoples, Beecher Avants meeting with Angela Saldana about her testimony, and certainly no information about Robert Peoples sitting down as Amy Peoples talks about, going through her testimony line by line. None of that information was disclosed to the Defense, and clearly wouldn't be impeaching had the Defense had it available to them. They certainly raised the question of her contacts with law enforcement.

THE COURT: Okay, again, and I just want to -- Amy Peoples who was 9 or 10 --

MR. LAURENCE: At the first trial, yes.

THE COURT: -- at the time that you contend that she -- this 9 or 10-year-old, okay, is the one you're contending is disclosing that this material -- this *Brady*

1 material was withheld?

2 MR. LAURENCE: Ummm ---

3 THE COURT: She's 30 -- it appears -- it appears to me she's 37 years old

4 now, so she would've been 9 or 10 years old at the time you're -- in her affidavit, that

5 you're contending she knew all this.

6 MR. LAURENCE: At the first trial. The second trial was in 1995, which is -- is

7 -- that's the third trial. The second trial, when she talks about meeting with Robert

8 Peoples and Beecher Avants at the I believe its The Gold Club. I'm not very familiar

9 with restaurants in Las Vegas.

10 I believe it's on page 4 of her declaration. Oh no I'm sorry, it's not.

11 That's Wendy's. Let me go back and find the exact citation.

12 THE COURT: I just want to make sure --

13 MR. LAURENCE: Gold Coast Casino.

14 THE COURT: -- I just want to make sure that we were talking about a 9 or 10-

15 year-old child.

16 MR. LAURENCE: During the first trial which took place in 1985. The second

17 trial took place in1989. She's four years older.

18 THE COURT: Okay. So now she's 13 or 14?

19 MR. LAURENCE: I believe she was actually 14 at that time. And, during the

20 third trial -- I mean all of these events happened again after the two re-trials. That

21 takes place in 1995. Now again, these are questions that are properly posed to the

22 witness, and the Nevada Supreme Courts made very clear. We are not supposed to

23 have some re-adjudication of these claims. We are only talking about the motion to

24 dismiss, and in the motion to dismiss, the allegations that are put forth in the petition

25 have to be assumed to be true, and those allegations are fairly clear about the

1 involvement of Mr. Avants and Mr. Peoples in orchestrating this testimony. We can
2 ask questions about credibility and counter evidence but that must take place at an
3 evidentiary hearing, not at this stage.
4 THE COURT: Okay. But you still again -- you have to get over the good
5 cause and prejudice problem.
6 MR. LAURENCE: Certainly, and the allegation is she sought, she heard it,
7 and she can testify to it. That is at this stage what this Court must accept. Now, if
8 we want to create a different rule about whether or not we would accept factual
9 allegations in a petition as true, when they are supported by two affidavits, then
10 certainly we can talk about that. That's not briefed, obviously.
11 THE COURT: Well again, and let me tell you, I'm not sure -- these affidavits
12 don't support what you contend they do. They do not support what you started out
13 with that the State -- well -- that the State suborn perjury. I mean I asked you if
14 that's what you're alleging, and you said; yes, I'm alleging the State suborn perjury.
15 So the unlawful benefits, the orchestration of her testimony, these affidavits do not
16 bear that out.
17 MR. LAURENCE: I respectfully disagree, Your Honor. I believe they talked --
18 THE COURT: You can.
19 MR. LAURENCE: -- very specifically about Beecher Avants creating this
20 situation through Robert Peoples; that he sat down with Robert Peoples several
21 times and discussed what he needed for the prosecution. And he also tells Robert
22 Peoples; you better get her in line, swearing using a curse word, but I don't want to
23 use it in court, because she was not cooperating sufficiently. To me, that certainly
24 supports the allegation that the law enforcement officials knew what Robert Peoples
25 was doing.

1 THE COURT: Okay. And what is it that Robert Peoples was doing?

2 MR. LAURENCE: As set forth in these declarations, he sat down with Angela
3 Saldana, went through her testimony, what she was going to tell law enforcement,
4 and then later testify at trial; threatening her along the way if she did not speak
5 exactly as he told her to speak. And then she testified accordingly. The prosecution
6 knew it, through Beecher Avants and that kind of testimony clearly. That kind of
7 information clearly is *Brady* material.

8 Regardless of whether or not you and I believe whether or not these
9 events occurred, as long somebody would've been able to testify about them, a jury
10 is supposed to determine the credibility of witnesses, not us. Not us as judges and
11 lawyers in the case.

12 THE COURT: And it's my understanding that she -- her credibility was clearly
13 worn out at the time of trial.

14 MR. LAURENCE: That's why the prosecution relied on her 12 times in
15 closing arguments, saying she's unimpeachable because she's not a co-conspirator,
16 because she wasn't there that night. They relied on her testimony to get around the
17 co-conspirator problems and to get around the fact that everybody who testified
18 against Mr. Flanagan was involved in this crime and received benefit for it. One of
19 them walked free entirely.

20 The only person that the prosecution relies on as the cornerstone of
21 their case is Angela Saldana. So, you're right, Your Honor, they testified certainly
22 about her receiving $2,000 but nobody knew that this kind of testimony was
23 orchestrated by her uncle, Robert Peoples. None of that information was received
24 by the jury. The jury heard nothing about her being threatened with execution if she
25 didn't testify according to what Robert Peoples and Mr. Avants said she had to

1 testify to.

2 THE COURT: Okay. Mr. Owens?

3 MR. OWENS: Again, we're talking about the merits of his claim or the

4 prejudice of the new facts that he has found, and we can continue to debate whether

5 or not it would have had any weight with the jury, but I'm going back to the good

6 cause.

7 Today, for the first time, we've heard an explanation for that two-year

8 gap from July of 2010 until September of 2012. And if I understand correctly,

9 Counsel was saying that he could not return to State Court here, that he first had to

10 have a ruling from the Federal Judge, to tell them that their claim was unexhausted

11 and that's why they came back.

12 Unfortunately, for the Defense in Nevada, we have the *Colley* case that

13 says pursuit of your federal habeas remedies is not good cause for not -- for failing

14 to come back to State Court.

15 They knew in July of 2010, they had these two witnesses. They had

16 the affidavits. What did they do? Did they come back here to State Court? No, they

17 filed the very same claim that we now have in September, 2012, they filed in State

18 Court on February 11, 2011. Took them several months to get the claim together,

19 and I understand that may be a reasonable time to file a claim, but they filed it.

20 They had all the facts, and they had the time to draft it into a pleading, and where

21 did they file it? They filed it in Federal Court.

22 State procedures operate independent of the federal procedures. We

23 don't need a Federal Judge to say it's unexhausted. We don't need a Federal

24 Judge to even give permission for them to come back to exhaust. We allow

25 petitioners to file claims here irrespective of what's going on in Federal Court. They

1 made an election of forms. They said; we've got new facts in support of our claim.
2 We're going to tack them on to claims that we've already exhausted in State Courts,
3 and we're going to take our chance with the Federal Judge, and we're going to spin
4 our wheels here and we'll hope that the Judge will say it's the same claim and let us
5 go forward on it, but they ran the risk that the Judge might disagree and send them
6 back here, and that the delay that it took to do all that, which is pursue the federal
7 habeas remedies is not going to give them the good cause. That's the easy way to
8 resolve this case, is on that time window, two years that it took them. That's not a
9 reasonable time to get their information that they had in front of the state court
10 judge.
11 I don't think I have anything further to say, other than what's in my
12 briefs on the prejudice and the impact, the materiality of their supposedly new
13 impeachment evidence against Angelina *[sic]* Saldana and whether or not she was
14 truly the cornerstone or there were six other witnesses I believe I referenced in my
15 briefs. All of them testified to the same sort of incriminating facts that Angelina *[sic]*
16 did.
17 THE COURT: Okay. Anything else?
18 MR. LAURENCE: With respect to the *Colley*. First of all, the petition was filed
19 in February, 2011. The declarations were obtained in February of 2011, not July.
20 There was certainly several months --
21 THE COURT: But on your own affidavit --
22 MR. LAURENCE: -- so that we first located, that's correct.
23 THE COURT: -- from your investigator said you found her in July, 2010.
24 MR. LAURENCE: That's correct.
25 THE COURT: You found them, and so these affidavits aren't -- they're only a

1 few pages long. It's not like it's going to take you years to get these affidavits.
2 MR. LAURENCE: Well, the February --
3 THE COURT: You found her, and it looked like she was more than happy to
4 pour out her soul about her ex-husband.
5 MR. LAURENCE: The Federal Court made findings that are binding on this
6 court about due diligence by Federal Counsel.
7 THE COURT: Oh.
8 MR. LAURENCE: It's a factual finding, Your Honor, that was actually
9 instigated by the State saying that they did not act with due diligence and the
10 Federal Court said no.
11 THE COURT: Are you telling me the Federal -- the Federal Court is telling me
12 that you've shown good cause?
13 MR. LAURENCE: No, what I'm saying was that actions by federal counsel in
14 investigating and bringing forth Claim One in the federal proceeding, are governed
15 by factual determinations made by the Federal Court.
16 THE COURT: Okay.
17 MR. LAURENCE: Those same factual determinations are by res judicata and
18 collateral estoppel binding on the parties here. They were instigated at the part -- at
19 the best of the State by arguing no due diligence. The Federal District Court made
20 factual findings about Federal Counsel's due diligence and what they did to be able
21 to get this claim before the Federal Court. Not the finding itself, but the factual
22 findings are, I think binding by collateral estoppel.
23 The question about whether or not Federal Counsel's actions were
24 reasonable, is really governed by what the State says about this claim, and in their
25 motion itself. They say specifically on page 6, line 4; however, Claim One alleges

the State knowingly presented false testimony by procuring Angelina *[sic]* Saldana as a police agent, using promises in inducements which were not disclosed to the Defense. This is no different than previously raised Claims Two and Three, which allege government misconduct in failing to disclose material impeachment evidence and witness inducements of several witnesses including Angela Saldana. That's the State's statement about what Claim One was. It's exactly the same as Two and Three.

So Federal Counsel in the same position as the State, when they obtained two declarations say to themselves and to the Court we don't -- we did not have these declarations at the time of the first petition which was timely filed. We believe that we should be able to go forward on Claim One because Claims Two and Three were exhausted in the state court system. Why should we have to go back to the State Court? And it wasn't until August 23, 2012 that the Federal Court said you have to go back because they change the nature of the claim. That's the reasonableness of Federal Counsel's actions, and we are talking about a month. We're not talking about two years that this court is looking at to determine whether or not under Nevada Law that's a reasonable time to bring this *Brady* claim, and I submit Your Honor that it is.

THE COURT: Okay. Anything else?

MR. OWENS: He's confusing good cause. Good cause to do what? The Federal Court decided good cause to exhaust. That's a Federal law that's a Federal standard. Has nothing to do with good cause to overcome state procedural bars, so none of those findings of due diligence, which is a test for good cause to exhaust, none of those are binding on the State Court. There was no evidentiary hearing in Federal Court anyway, so I don't know that there's any deference that would be

1 entitled to those findings of facts supposedly entered anyway, notwithstanding the
2 fact that we are our own entity here. We interpret Nevada's -- the exclusive
3 authority on what our own procedural bars are and are not.
4 MR. LAURENCE: I didn't address *Colley*, Your Honor, in my last go round.
5 So let me just briefly say that.
6 THE COURT: Sure you did.
7 MR. LAURENCE: In *Colley*, the Nevada Supreme Court was presented with
8 a habeas petitioner, who completely bypassed State process. Went from direct
9 appeal into Federal Court --
10 THE COURT: Okay.
11 MR. LAURENCE: -- then five years later, says; oh, I want to go back now and
12 do a state habeas petition in the state court system. That clearly violated the statute
13 of limitations of limitations of probation because it didn't have any cause to explain
14 why you did not first present in State Court. Far different situation here. This claim
15 was presented timely in this Court in 1999. There was no bypass of State rights.
16 The only question under *Colley* is whether or not a reasonable dispute
17 about whether or not new facts supporting the same claim need to be exhausted in
18 a State Court proceeding. And that to me, Your Honor is common sense. Why
19 should we burden the State system with multiple state petitions time and time again
20 when a Federal Counsel gets a declaration from another witness. That doesn't
21 serve the interest of comity. It certainly doesn't serve the interest of conserving
22 judicial resources to insist every time Federal Counsel gets a new declaration, you
23 file a new petition in this court. That will lead to un -- years of delay, let alone
24 unnecessary litigation, when in fact, there may have been no reason whatsoever to
25 come back to state court.

THE COURT: Okay --

MR. LAURENCE: Thank you.

THE COURT: -- I'm assuming -- does everyone want to submit it at this point?

MR. LAURENCE: Thank you.

THE COURT: Okay. At this time, the Court is going to grant the State's motion to dismiss based on procedural default rules. Make a ruling that the petitioner has failed to show good cause by failing to timely file the claim in state court. The State can prepare the order.

MR. OWENS: Will do Judge.

MR. LAURENCE: Your Honor, may I have some opportunity to review the order and file any objections if necessary?

THE COURT: The rules of law say that that's exactly what you're entitled to have.

MR. LAURENCE: Thank you, Your Honor.

MR. OWENS: I'll send him a copy Judge.

THE COURT: Thank you. Will you make sure you sign it or at least give me some indication --

MR. LAURENCE: Yes, Your Honor.

THE COURT: -- you reviewed it? So I know you reviewed it?

MR. LAURENCE: Thank you.

THE COURT: Thank you.

[Proceedings concluded at 11:20 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Yvette G. Sison
Court Recorder/Transcriber

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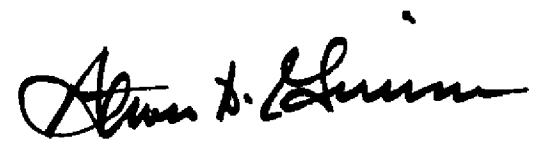

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DALE EDWARD FLANAGAN,
##737065

Defendant.

CASE NO: 85C069269-1
DEPT NO: XII

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: 6/6/13
TIME OF HEARING: 8:30 A.M.

THIS CAUSE having come on for hearing before the Honorable MICHELLE LEAVITT, District Judge, on the 6th day of June, 2013, the Petitioner not being present, being represented by MICHAEL D. LAURENCE, Pro Hac Vice, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through STEVEN S. OWENS, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

In 1985, Dale Flanagan was convicted of murdering his grandparents and was sentenced to death. On appeal, the murder convictions were affirmed but by a three-two split the death sentences were vacated and the case was remanded for a new penalty hearing due to prosecutorial misconduct. Flanagan v. State, 104 Nev. 105, 754 P.2d 836 (1988)

(Flanagan I). Remittitur issued on June 7, 1988.

A second penalty hearing in 1989 also resulted in death verdicts for Flanagan but was again reversed on appeal, this time due to unconstitutional admission of satanic worship evidence. Flanagan v. State, 107 Nev. 243, 810 P.2d 759 (1991) (Flanagan II); Flanagan v. State, 109 Nev. 50, 846 P.2d 1053 (1993) (Flanagan III). A third and final penalty hearing in 1995 again resulted in death verdicts for Flanagan and this time the death sentences were affirmed on appeal. Flanagan v. State, 112 Nev. 1409, 930 P.2d 691 (1996) (Flanagan IV). Remittitur issued on June 3, 1998.

Thereafter, Flanagan filed his first post-conviction petition on May 28, 1998, which was then supplemented by appointed counsel Robert Newell in association with local counsel Cal Potter. After an evidentiary hearing at which third penalty phase counsel Rebecca Blaskey and Dave Wall both testified, the petition was denied on August 8, 2002. This denial was affirmed on appeal in an unpublished order dated February 22, 2008. (SC# 40232). Remittitur issued on March 18, 2008.

Flanagan then proceeded to federal court where he filed a habeas petition on January 13, 2009, in proper person. Appointed counsel then filed an amended habeas petition in federal court on February 11, 2011, the first claim of which is identical to the claim now raised in state court. Federal stay and abeyance was ordered on August 23, 2012, to allow exhaustion in state court. The instant successive state habeas petition was then filed a month later on September 28, 2012, which the State has moved to dismiss as procedurally barred.

FINDINGS OF FACT

Flanagan alleges the State knowingly presented false testimony by procuring witness Angela Saldana as a police agent using promises and inducements which were not disclosed to the defense. This claim was in fact raised and denied in the first post-conviction proceedings and is barred by law of the case. To the extent Flanagan's current petition may contain a few more specific facts than previously alleged, such facts have been available to the defense and are not timely raised now in a successive petition. Nor do they constitute good cause because any new facts were not withheld by the State and are not material as

they would not have affected the outcome of the case. Accordingly, there is no good cause for re-raising Flanagan's previously rejected claims of government misconduct in manufacturing Angela Saldana's allegedly false testimony against him.

The instant post-conviction petition was filed in violation of the one-year time limitation of NRS 34.726 which requires post-conviction petitions to be filed within one year of issuance of Remittitur after direct appeal. In this case, the instant post-conviction proceedings were initiated on September 28, 2012, more than 24 years after issuance of Remittitur following direct appeal on June 7, 1988, and more than 14 years since new death sentences were affirmed on appeal and Remittitur issued on June 3, 1998, and are barred absent a showing of good cause and prejudice.

The State also affirmatively pleads laches under NRS 34.800. The instant petition has been filed approximately 27 years and 13 years respectively from the guilt and penalty phase trials and approximately 24 years and 14 years respectively from the decisions on appeal affirming guilt and penalty. Therefore, the State is entitled to a rebuttable presumption of prejudice which has not been overcome.

The instant petition is also successive under NRS 34.810 because it is the second attempt at post-conviction relief. Many of the grounds for the petition could have been raised previously in a direct appeal or the first post-conviction petition or were in fact raised previously and were denied on the merits. Flanagan has failed to plead and prove specific facts that demonstrate good cause for the failure to present the claims or for presenting the claims again, and actual prejudice.

As good cause for the delay, Flanagan primarily attributes the fault to the prosecution for concealing information needed to support his claim. Flanagan's "new" factual allegations primarily arise from declarations from two witnesses – Amy Hanley-Peoples and Wendy C. Mazaros (formerly Peoples). By Flanagan's own admission, he has known about these witnesses at least since July of 2010 when his Investigator located and interviewed them. At a minimum, the factual basis for the claim has been available to him since that time. Additionally, newspaper articles and court records regarding Angela Saldana's uncle

and his history have always been publicly available or common knowledge. Flanagan fails to allege when he first discovered this history. Once the new facts were known, Flanagan continued to litigate and pursue federal habeas remedies for two years to the exclusion of his state court remedies. This Court finds that Flanagan has failed to establish that he has raised these new factual allegations within a reasonable time in state court once they became available to him.

Even if this current petition had been timely filed once the new facts were discovered or became available, they still fail to demonstrate good cause for re-raising claims of government misconduct in procuring allegedly false testimony from Angela Saldana. Her testimony was already impeached and discredited at trial and anything new the defense has discovered fails to materially alter the state of evidence in the case. Nor do the new facts conflict with Saldana's testimony or demonstrate it was false. None of Flanagan's allegations constitute material exculpatory evidence withheld from the defense. The declarations from Wendy and Amy simply indicate that Robert Peoples pressured Angela Saldana to testify and told her what to say based on apparent police reports he had. Even if true, this does not mean that Angela felt coerced or that she testified falsely. Pressuring someone to testify is not the same thing as pressuring them to testify falsely, and Flanagan has no evidence of the latter. Neither Wendy Mazaros nor Amy Hanley-Peoples were percipient witnesses to know whether Angela Saldana's testimony was true or not. Their declarations fall far short of establishing the falsity of any of Angela Saldana's testimony in this case.

Any minor new facts Flanagan has alleged in the current petition were available 27 years ago as common knowledge in the legal community, publicly available in newspapers, or available through known witnesses. Notably, Flanagan received the benefit of $275,000 in investigative services during the last post-conviction proceedings with current counsel in order to investigate these claims. That Flanagan subsequently was able to "discover" these allegedly new facts on his own from public sources and belated witness interviews belies any claim that they were withheld by the State, even assuming that Wendy Mazaros made herself

difficult to locate. Flanagan fails to allege what impediment external to the defense prevented him from interviewing witnesses and acquiring these details sooner.

Considering the lack of credibility and extensive impeachment of Saldana's testimony at trial, the newly alleged facts are merely cumulative and not material enough to have affected the outcome of the case. Any further impeachment of Saldana's motives and connection to law enforcement would not have altered what the Nevada Supreme Court has repeatedly found to be "overwhelming" evidence of Flanagan's culpability.

Accordingly, Flanagan's claim that the State has withheld evidence of Angela Saldana's false testimony and inducements under Brady, Giglio, and Napue fails to establish good cause to overcome the procedural bars in this case. The new factual allegations have not been timely raised once discovered and fail to account for the entire length of the delay. Any newly discovered factual allegations were not withheld by the State and fail to establish any inducement or false testimony at trial. Furthermore, any additional facts are not material in effecting the outcome of the case considering the cumulative effect of the impeachment of Angela Saldana's testimony at trial and the duplicative nature of her testimony as overwhelmingly established by many other witnesses.

CONCLUSIONS OF LAW

Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year after entry of the Judgment of Conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its Remittitur. NRS 34.726(1). Good cause for delay exists if the petitioner demonstrates to the satisfaction of the court that the delay is not the fault of the petitioner and that dismissal of the petition as untimely will unduly prejudice the petitioner. NRS 34.726(2).

A petition may be dismissed if delay in the filing of the petition prejudices the Respondent or the State of Nevada in responding to the petition or in its ability to conduct a retrial, unless the petitioner shows that the petition is based upon grounds of which the petitioner could not have had knowledge by the exercise of reasonable diligence before the

circumstances prejudicial to the State occurred. NRS 34.800(1). A period exceeding 5 years between the filing of a Judgment of Conviction, an order imposing a sentence of imprisonment or a decision on direct appeal of a Judgment of Conviction and the filing of a petition challenging the validity of a Judgment of Conviction creates a rebuttable presumption of prejudice to the State. NRS 34.800(2).

A successive petition is subject to dismissal under NRS 34.810(1) if the grounds for the petition could have been presented to the trial court or raised in a prior proceeding. Dismissal of a successive petition is also required if it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the failure to assert those grounds in a prior petition constitutes an abuse of the writ. NRS 34.810(2). The petitioner has the burden of pleading and proving specific facts that demonstrate good cause for the failure to present the claim or for presenting the claim again, and actual prejudice. NRS 34.810(3); see also Evans v. State, 117 Nev. 609, 646-647, 29 P.3d 498, 523 (2001) ("A court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner.")

Additionally, the Nevada Supreme Court has observed that "petitions that are filed many years after conviction are an unreasonable burden on the criminal justice system. The necessity for a workable system dictates that there must exist a time when a criminal conviction is final." Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984). In Lozada, the Nevada Supreme Court stated: "Without such limitations on the availability of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-conviction remedies. In addition, meritless, successive and untimely petitions clog the court system and undermine the finality of convictions." Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994). The Nevada Supreme Court also recognizes that "[u]nlike initial petitions which certainly require a careful review of the record, successive petitions may be dismissed based solely on the face of the petition." Ford v. Warden, 111 Nev. 872,

882, 901 P.2d 123, 129 (1995). If the claim or allegation was previously available with reasonable diligence, it is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991). "Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory." State v. District Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005).

Application of state procedural bars operates independently of any federal order for stay and abeyance. State v. District Court (Riker), 121 Nev. 225, 112 P.2d 1070 (2005) (federal stay for exhaustion does not obviate need to show good cause); see also Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001); Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997); Valerio v. State, 112 Nev. 383, 915 P.2d 874 (1996).

An allegation that the government may have been responsible for part of the initial delay in bringing a claim does not explain or excuse Flanagan's continued delay once the basis for the claim became known to him. See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003); see also State v. Huebler, 128 Nev. ___, 275 P.3d 91, ~~96~~ 95 at fn 3 (2012) ("We note that a Brady claim still must be raised within a reasonable time after the withheld evidence was disclosed to or discovered by the defense."). Even legitimate Brady claims are procedurally barred when the basis for the claim was known and it was either not brought in an earlier proceeding or within an applicable time bar. Hutchison v. Bell, 303 F.3d 720, 742-43 (6th Cir. 2002) (Brady claim barred where no good cause for delay of 11 months between discovery of claim and assertion of claim in state court).

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

interest of both the petitioner and the government are best served if post-conviction claims are raised while the evidence is still fresh." Id. Id. at 236.

A petitioner has the burden of pleading and proving facts to demonstrate good cause to excuse the delay. State v. Haberstroh, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003). "In order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003), citing Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994). "An impediment external to the defense may be demonstrated by a showing 'that the factual or legal basis for a claim was not reasonably available to counsel, or that some interference by officials, made compliance impracticable.' " Id., quoting Murray v. Carrier, 477 U.S. 478, 488 (1986).

It is established that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. Riley v. State, 93 Nev. 461, 462, 567 P.2d 475, 475 (1977), citing Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763 (1972) and Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173 (1959). Under Napue, a prosecutor's failure to correct testimony which he knows to be false is a denial of due process, even if the false testimony goes only to the credibility of a witness. However, such a claim requires proof that certain testimony is false, that its falsity was known to the prosecutor and not corrected, and that the false testimony may have affected the outcome of the trial. Id. Similarly, Brady and its progeny require a prosecutor to disclose evidence favorable to the defense when that evidence is material either to guilt or to punishment. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963). To prove a Brady violation, a petitioner must show 1) the evidence is favorable to the accused, either because it is exculpatory or impeaching, 2) the State withheld the evidence, either intentionally or inadvertently, and 3) that the evidence was material. Id.

When a Brady claim is raised in an untimely post-conviction petition for a writ of habeas corpus, the petitioner has the burden of pleading and proving specific facts that

demonstrate both components of the good-cause showing required by NRS 34.726(1), namely "[t]hat the delay is not the fault of the petitioner" and that the petitioner will be "unduly prejudice[d]" if the petition is dismissed as untimely. State v. Huebler, 128 Nev. ___, 275 P.3d 91 (2012). Those components parallel the second and third prongs of a Brady violation: establishing that the State withheld the evidence demonstrates that the delay was caused by an impediment external to the defense, and establishing that the evidence was material generally demonstrates that the petitioner would be unduly prejudiced if the petition is dismissed as untimely. Id., citing State v. Bennett, 119 Nev. 589, 81 P.3d 1 (2003). However, "a Brady violation does not result if the defendant, exercising reasonable diligence, could have obtained the information." Rippo v. State, 113 Nev. 1239, 1257, 946 P.2d 1017, 1028 (1997).

Finally, Martinez v. Ryan has no application outside of federal court and did nothing to change state law. Flanagan is welcome to rely upon such authority in federal court, but he is now in state court and has failed to demonstrate the applicability of such authority. See e.g., Gore v. State, ___ So.3d ___, 2012 WL 1149320 (Fla. 2012) ("It appears that Martinez is directed toward federal habeas proceedings and is designed and intended to address issues that arise in that context."), cert. denied, 132 S. Ct. 1904 (2012); Sherman v. Baker, 2012 WL 993419 at 11 (D. Nev. 2012).

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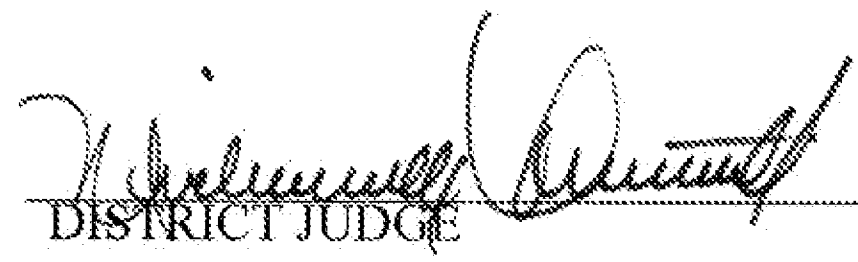
ORDER

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

DATED this 27 day of June, 2013.



DISTRICT JUDGE

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY 
STEVEN S. OWENS
Chief Deputy District Attorney
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of Document Name, was made this 27th day of June, 2013, by Electronic Filing to:

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SSO//ed