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OPPS
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
DAVID P. SCHWARTZ
Chief Deputy District Attorney
Nevada Bar #000398
200 South Third Street
Las Vegas, Nevada 89155-2212
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GLENFORD ANTHONY BUDD,
#1900089

Defendant.

CASE NO: C193182

DEPT NO: XVIII

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO BAR THE ADMISSION OF
CUMULATIVE VICTIM IMPACT EVIDENCE IN VIOLATION OF THE DUE
PROCESS CLAUSE

DATE OF HEARING: 10/18/04
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
DAVID P. SCHWARTZ, Chief Deputy District Attorney, and hereby submits the attached
Points and Authorities in Opposition to Defendant's Motion To Bar The Admission Of
Cumulative Victim Impact Evidence In Violation Of The Due Process Clause.

This opposition 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.

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2 POINTS AND AUTHORITIES

3 In Payne v. Tennessee, 501 U.S. 808, 111 S. Ct. 2597 (1991) the United States
4 Supreme Court overruled Booth v. Maryland, 482 U.S. 496 (1989) and South Carolina v.
5 Gathers, 490 U.S. 805 (1989). Booth and Gathers both proscribed "victim impact evidence
6 during the penalty phase of a capital trial on the grounds that such evidence was per se
7 barred by the Eighth Amendment.

8 In overruling both Booth and Gathers, the United States Supreme Court in Payne
9 stated:

10 We thus hold that if the State chooses to permit the admission of victim impact
11 evidence and prosecutorial argument on that subject, the Eighth Amendment
12 erects no per se bar. A State may legitimately conclude the evidence about the
13 victim and about the impact of the murder on the victim's family is relevant to
14 the jury's decision as to whether or not the death penalty should be imposed.
15 There is no reason to treat such evidence differently than other relevant
16 evidence is treated.

17 Nevada has greeted the Payne decision with enthusiasm in several recent decisions.
18 In Homick v. State, 108 Nev. 127, 825 P.2d 600 (1992), the Nevada Supreme Court stated
19 the following:

20 The key to criminal sentencing in capital cases is the ability of the sentencer to
21 focus upon and consider both the individual characteristics of the defendant
22 and the nature and impact of the crime he committed. Only then can the
23 sentencer truly weigh the evidence before it and determine a defendant's just
24 deserts.

25 In Wesley v. State, 112 Nev. 503, 916 P.2d 793 (1996), the Nevada Supreme Court
26 stated:

27 According to the United States Supreme Court's holding in Payne v.
28 Tennessee, 501 U.S. 808, 823 (1991), the admission of victim impact evidence
during a capital penalty hearing does not violate the Eighth Amendment and is
relevant to show each victim's "uniqueness as an individual human being".

The above case law clearly outlines what constitutes permissible victim impact
evidence.

The Defense has provided this Court with no authority whatsoever which would
permit the Court to conduct a pre-trial judicial review of all of the victim impact evidence.

The Defendant seeks a ruling from the Court that the State not be allowed to

1 introduce unending cumulative evidence regarding the character of the victims.

2 It should be noted that the Defendant in this case is accused of killing not one, but
3 three young men.

4 Clearly, each victim will be represented by family members who will speak regarding
5 their son, grandson, brother or sister. They will certainly discuss the character of their loved
6 one along with the impact the death has had on their family.

7 Should Defendant feel that some of this testimony is cumulative in nature, that's just
8 too bad. Defendant chose to engage in actions that have altered forever the lives of these
9 families. Therefore, the State should certainly be allowed to have members of each of the
10 families testify at the penalty hearing regarding victim impact evidence.

11 The State will make certain that this evidence is not "unending".

12 DATED this 12th day of October, 2004.

13 Respectfully submitted,

14 DAVID ROGER
15 Clark County District Attorney
16 Nevada Bar #002781

17
18 BY /s/ DAVID P. SCHWARTZ
19 DAVID P. SCHWARTZ
20 Chief Deputy District Attorney
Nevada Bar #000398

CERTIFICATE OF FACSIMILE TRANSMISSION

21 I hereby certify that service of State's Opposition To Defendant's Motion To Bar The
22 Admission of Cumulative Victim Impact Evidence In Violation Of The due Process Clause,
23 was made this 12th day of October, 2004, by facsimile transmission to:

24
25 PUBLIC DEFENDER
FAX #455-5112

26
27 /s/ M. Beaird
28 Secretary for the District Attorney's
Office

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1 **OPPS**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 DAVID P. SCHWARTZ
6 Chief Deputy District Attorney
7 Nevada Bar #000398
8 200 South Third Street
9 Las Vegas, Nevada 89155-2211
10 (702) 455-4711
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,)
13)
14 Plaintiff,)
15)
16 -vs-)
17)
18 GLENFORD ANTHONY BUDD,)
19 #1900089)
20 Defendant.)

CASE NO: C193182

DEPT NO: XVII

21 STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS THE STATE'S
22 NOTICE OF INTENT BECAUSE NEVADA'S DEATH PENALTY SCHEME VIOLATES
23 DUE PROCESS GUARANTEES BY FAILING TO REQUIRE A PRE-TRIAL FINDING
24 OF PROBABLE CAUSE FOR ALLEGED AGGRAVATORS

25 DATE OF HEARING: 10/18/04
26 TIME OF HEARING: 9:15 A.M.

27 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
28 DAVID P. SCHWARTZ, Chief Deputy District Attorney, and hereby submits the attached
Points and Authorities in Opposition to Defendant's Motion To Dismiss the State's Notice of
Intent Because Nevada's Death Penalty Scheme Violates Due Process Guarantees By Failing
to Require a Pre-Trial Finding of Probable Cause for Alleged Aggravators.

This opposition 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

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1 hearing, if deemed necessary by this Honorable Court.

2 **ARGUMENT**

3 **A. DEATH AGGRAVATORS ARE NOT CONSTITUTIONALLY REQUIRED TO**
4 **BE INCLUDED IN THE INDICTMENT OR INFORMANTION**

5 The statutory aggravators of NRS 200.033 for the imposition of the death penalty are
6 not constitutionally required to be included in the grand jury indictment. See, Floyd v. State,
7 118 Nev. 156, 42 P.3d 249 (2002). In Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct.
8 2348 (2000), the United States Supreme Court held that the Sixth Amendment does not
9 permit a defendant to be exposed to a penalty "exceeding the maximum he would receive if
10 punished according to the facts reflected in the jury verdict alone." Id. at 483, 120 S.Ct. at
11 2359. Consequently, a sentencing judge constitutionally has discretion to find and weigh
12 various factors and issue a sentence between the minimum and maximum allowed by statute
13 for the crime the jury has found the defendant guilty of. See, Harris v. United States, 536
14 U.S. 545, 122 S.Ct. 2406 (2002). If, however, a State makes an increase in a defendant's
15 authorized punishment beyond the maximum contingent punishment upon the finding of
16 fact, that fact must be found by a jury beyond a reasonable doubt. Apprendi, 530 U.S. at
17 477, 120 S.Ct. at 2356; United States v. Gaudin, 515 U.S. 506, 115 S.Ct. 2310, 2313 (1995).

18 Initially, the Court did not apply this rule to death penalty aggravators. See, Apprendi
19 530 U.S. 466, 120 S.Ct. 2348, and Walton v. Arizona, 497 U.S. 639, 110 S.Ct. 3047 (1990).
20 In Ring v. Arizona, 536 U.S. 584, 112 S.Ct. 2428 (2002), however, looking at Arizona's
21 death sentence scheme, the Court found that death aggravators are similar to sentence
22 enhancements in some respects. Based solely upon the jury's verdict finding a defendant
23 guilty of the first degree felony murder, the maximum punishment he could have received
24 was life imprisonment. Id. at 597, 112 S.Ct. at 2437. This was so because in Arizona, a
25 "death sentence may not legally be imposed unless at least one aggravating factor is found to
26 exist beyond a reasonable doubt." Id. NRS 175. 522 is similar to Arizona's state in this
27 respect. Nevada, however, unlike Arizona, requires that the aggravators be found by a jury
28 and not the sentencing judge, and remains valid after Ring. See, NRS 175.552.

1 Defendant's argument is that since enumerated aggravating factors operate as a
2 "functional equivalent of an element," they must be charged in the indictment. The United
3 State Supreme Court has not addressed this issue, and the Court expressly noted in Ring that
4 the defendant was not contending that his indictment was constitutionally defective. Ring,
5 530 U.S. at 597 n.4, 112 S.Ct. at 2437 n. 4.

6 **1. ARTICLE I, SECTION 8 OF THE NEVADA CONSTITUTION**
7 **SHOULD NOT BE INTERPRETED TO REQUIRE AGGRAVATORS**
8 **BE INCLUDED IN THE INDICTMENT OR INFORMATION**

9 Article I, Section 8 of the Nevada Constitution states in pertinent part: "No person
10 shall be tried for a capital or other infamous crime...except on presentment or indictment of
11 the grand jury or upon information..."

12 While the United States Supreme Court has labeled enumerated death aggravators as
13 the "functional equivalent of an element of a greater offense" for Sixth Amendment
14 purposes, it has not held that they are elements, or even the functional equivalent, for other
15 purposes. The Court's concern in Apprendi and Ring was to make sure that legislatures do
16 not subvert the right to a jury trial and inappropriately place certain factual determinations in
17 the hands of judges.

18 Death aggravators are distinctly different, however, from the usual "sentence
19 enhancers." Nevada, like most states, was compelled to require the finding of death
20 aggravators in light of Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726 (1972), interpreting
21 the Eighth Amendment as requiring a narrowing of cases eligible for the death sentence. See
22 also, Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909 (1976); Ring, 530 U.S. at 610-11, 122
23 S.Ct. at 2443-44 (Scalia, concurring). The normal sentence enhancer expands the sentence
24 for the underlying crime upon the finding of an additional fact or facts. In capital cases,
25 however, the death aggravators are a restriction on which cases are eligible for the death
26 sentence. In reality, the aggravators are simply a way of limiting the sentence of death, in
27 light of the Eighth Amendment, to those cases of first degree murder that are particularly
28 repugnant.

Before the Furman line of cases, the grand jury indictment for first degree murder

1 alone allowed the State to pursue the death penalty. As a result, Nevada's revision of its
2 statutes did not create a new greater included offense. The Nevada Constitution should
3 reflect that a Grand Jury indictment reflects its determination that probable cause exists to
4 believe the defendant has committed first degree murder. The indictment then permits the
5 State to seek at trial the penalty it deems appropriate considering the facts of the case and the
6 Eighth Amendment restrictions. Under Nevada's death sentence scheme, a defendant is
7 provided constitutionally sufficient notice of the State's intent to seek the death penalty and
8 the statutory aggravating circumstances that it will rely upon in seeking that sentence.

9 The interests served by the indictment or information clause of the Nevada
10 Constitution are already protected in Nevada as they relate to death aggravators. A primary
11 purpose of an indictment or information is to afford the defendant adequate notice to prepare
12 his defense. Evans v. State, 117 Nev. Adv. Rep. 50, 28 P.3d 498, 519 (2001); Barren v.
13 State, 99 Nev. 661, 668, 669 P.2d 725, 729 (1983). Nevada Supreme Court Rule 250 was
14 created for, and adequately serves, this purpose. Under Rule 250(4)(c), the State must file a
15 notice of intent to seek the death penalty no later than 30 days after the filing of an
16 information or indictment. As well, under Rule 250 (4)(f), the State must file a notice of
17 evidence in aggravation no later than 15 days before the trial is to commence.

18 Few courts have addressed the issue of whether Ring requires an indictment or
19 information to include the death aggravators. This Court already held in Floyd, 118 Nev.
20 156, 42 P.3d at 256, that under Article I, Section 8 of the Nevada Constitution, a probable
21 cause finding is not necessary for the State to allege aggravating circumstances and seek a
22 death sentence. Also, the Georgia Supreme Court dealt with this issue as it applies to the
23 states in Terrell v. State, 276 S.E.2d 595 (2002). The Georgia court reiterated that the
24 federal constitution's grand jury presentment clause does not apply to the states and held:

25 Apprendi and Ring did not analyzes [sic] whether the federal
26 constitution requires a state grand jury to consider the statutory aggravating
27 factors that support a sentence of death. By indicting [defendant] for malice
28 murder, the grand jury authorized the State to seek any penalties that are
authorized by statute for that crime, including the maximum penalty of death.
This Court has repeatedly rejected challenges to the legislature's determination
that district attorneys should have the discretion to decide whether a murder
defendant meets the statutory criteria for the death penalty and whether to

1 pursue the death penalty when a defendant is eligible. Nothing in Apprendi or
2 Ring renders unconstitutional Georgia's system for bringing death penalty
3 prosecutions to trial.

4 Id. at 603. Under Article I, Section 8 of the Nevada Constitution, death aggravators do not
5 have to be included in the indictment or information. See, Floyd, supra.

6 **2. THE COURT HEARD EVIDENCE INCLUDING THE
7 UNDERLYING FACTS OF THE AGGRAVATOR AND FOUND
8 PROBABLE CAUSE FOR FIRST DEGREE MURDER**

9 Defendant also argues that a probable cause determination has not been made with
10 regard to the death aggravator. For the reasons stated above, a probable cause determination
11 is not required. Even so, the underlying facts of the death aggravators in the instant case was
12 presented to the Court.

13 The State presented evidence during the preliminary hearing which showed that on
14 May 26, 2003, the Defendant shot and killed Jason Moore, DaJon Jones and Derrick Jones.

15 In binding the Defendant over for trial, the Court found that probable cause was
16 shown regarding each of the 3 counts of premeditated and deliberate murder.

17 In essence, the State proved the aggravating factor under NRS 200.033(12).

18 **B. NEVADA'S DEATH SENTENCE SCHEME DOES NOT VIOLATE
19 DEFENDANT'S RIGHT TO EQUAL PROTECTION**

20 Defendant's right to Equal Protection under the Fourteenth Amendment of the United
21 State Constitution and the Nevada Constitution is not violated by Nevada's death sentence
22 scheme. The State is permitted "a wide scope of discretion in enacting laws which affect
23 some groups of citizens differently than others." State v. Eighth Dist. Ct., 101 Nev. 658,
24 662, 708 P.2d 1022, 1024-1025 (1986); McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1101
25 (1961). The Constitutionality of a statute will be upheld against an Equal Protection
26 challenge if the law is reasonable, not arbitrary, and bears a rational relationship to a
27 legitimate government interest. State v. Eight Dist. Ct., 101 Nev. at 662, 708 P.2d at 1024-
28 25; New Orleans v. Dukes, 427 U.S. 297, 96 S.Ct. 2513 (1975); Belle Terre v. Boraas, 416
U.S. 1, 94 S.Ct. 1536 (1974).

The State has a legitimate governmental interest in seeking the death penalty for first
degree murderers. As stated above, death aggravators are distinctively different from

1 sentence enhancers. Death aggravators are simply a narrowing of which cases are eligible
2 for the death sentence in light of the Eighth Amendment restrictions. Nevada's statutory
3 scheme of seeking the death penalty is rationally related to the State's interest in seeking the
4 death penalty while not violating the Eighth Amendment.

5 Defendant's claim that Nevada's death sentence violates defendant's right to Equal
6 Protection is based in part on Defendant's claim that he is not allowed to use pre-trial habeas
7 corpus procedure to challenge the existence of aggravating circumstances.

8 However, defendant has already been successful in eliminating one of the aggravating
9 circumstances (avoid lawful arrest) as a result of his pre-trial Motion to Strike Certain
10 Aggravating Circumstances.

11 Based upon the above-cited authority the State respectfully asks that Defendant's
12 Motion to Dismiss the State's Notice of Intent Because Nevada's Death Penalty Scheme
13 Violates Due Process Guarantees By Failing to Require a Pre-Trial Finding of Probable
14 Cause for Alleged Aggravators be denied.

15 DATED this 13th day of October, 2004.

16 Respectfully submitted,

17 DAVID ROGER
18 Clark County District Attorney
19 Nevada Bar #002781

20 BY /s/ DAVID P. SCHWARTZ
21 DAVID P. SCHWARTZ
22 Chief Deputy District Attorney
23 Nevada Bar #000398
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of State's Opposition to Defendant's Motion To Dismiss
the State's Notice of Intent Because Nevada's Death Penalty Scheme Violates Due Process
Guarantees By Failing to Require a Pre-Trial Finding of Probable Cause for Alleged
Aggravators, was made this 14th day of October, 2004, by facsimile transmission to:

PUBLIC DEFENDER
FAX #455-5112

BY /s/ M. Beaird
Employee of the District Attorney's Office

mb

09/21/2005 09:38 7027922977

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FILED AFTER HOURS

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CLERK'S BOX

1 RAO

District Court
Clark County, Nevada

2005 SEP 28 P 3:14

*Shirley B. Panagiotou*4 State of Nevada) Case No.: 03-C-193182

5 Plaintiff,

) Dept No.: 18

6 vs.

7 Glenford A Budd) MEDIA REQUEST AND ORDER FOR CAMERA
ACCESS TO COURT PROCEEDINGS

8 Defendant

9
10 Brett Buell of KLAS-TV, requests permission to
11 broadcast, record, photograph or televise proceedings in the above-entitled
12 case in the courtroom of Dept. 18, the Honorable Judge Saitta,
commencing on the 05 day of October, 2005.

13 I certify that I am familiar with the contents of Nevada Supreme Court
14 Rule 230, et seq., and understand this form MUST be submitted to the Court at
15 least SEVENTY-TWO (72) hours before the proceedings commence, unless good
cause can be shown.

16 DATED this 24 day of September, 2005.*Brett Buell*
Brett Buell

Media Representative

18 The Court determines camera access to proceedings, in compliance with the
19 court's policy, ☐ WOULD ☒ WOULD NOT distract participants, impair the dignity
of the court or otherwise materially interfere with the achievement of a fair
trial or hearing herein;

20 Therefore, the Court hereby ☐ DENIES ☒ GRANTS permission for camera
21 access to Brett Buell of KLAS-TV as requested for each
22 and every hearing on the above-entitled case, at the discretion of the judge,
and unless otherwise notified. This Order is in accordance with Nevada
23 Supreme Court Rule 230, et seq., and is subject to reconsideration upon motion
of any party to the action.

24 IT IS FURTHER ORDERED that this entry shall be made a part of the record
25 of the proceedings in this case.

26 DATED this 26 day of Sept, 2005.*Thomas Saitta*
District Court Judge

Fax Form 12 hours prior to the hearing to (702) 468-5587

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CLERK

1 **NISD**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 EDWARD R.J. KANE
6 Chief Deputy District Attorney
7 Nevada Bar #001438
8 200 South Third Street
9 Las Vegas, Nevada 89155-2212
10 (702) 455-4711
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-)

13 GLENFORD ANTHONY BUDD,
14 #1900089)

15 Defendant.)

Case No. C193182

Dept No. XVIII

16 **AMENDED NOTICE OF EVIDENCE IN AGGRAVATION**

17 COMES NOW, the State of Nevada, through DAVID ROGER, Clark County District
18 Attorney, by and through EDWARD R.J. KANE, Chief Deputy District Attorney, pursuant
19 to Supreme Court Rule 250, NRS 175.552 and NRS 200.033, and declares its intention to
20 present the following evidence at a penalty hearing (This notice supplements, rather than
21 replaces, the NOTICE OF EVIDENCE IN SUPPORT OF AGGRAVATING
22 CIRCUMSTANCES previously filed in this case on or about October 8, 2004.):

23 The State will be relying on a single statutory aggravator in this case, to wit:

24 **1. NRS 200.033(12)** - The murder was committed by a person who has, in the
25 immediate proceeding, been convicted of more than one offense of murder in the first or
26 second degree.

27 The evidence of this aggravating circumstance will consist of the defendant's
28 anticipated conviction of more than one count of murder in this case. Thus, the evidence and

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1 testimony upon which the State will rely in support of this aggravator is entirely evidence
2 which will already have been introduced in the first phase (what we used to call the "guilt
3 phase") of the trial. The State has provided full discovery, in connection with all of the
4 witnesses listed on the information and/or in the Witness List(s) already on file, and in
5 connection with this entire case, which discovery is specifically incorporated herein by this
6 reference. Thus, the only aggravator which the State will pursue in this case is an aggravator
7 related to the charged offenses and their circumstances, and not related to extrinsic matters
8 (e.g., prior convictions). Accordingly, the evidence on which the state will rely to prove
9 these aggravators will be evidence already disclosed by way of discovery, and evidence
10 which will be offered, or which would be admissible if offered, in the State's case in chief at
11 trial. In other words, this NOTICE OF EVIDENCE IN AGGRAVATION, while required by
12 SCR 250, does not identify any evidence in addition to that which has already been
13 identified and disclosed to the defense. Further, the State has filed one or more Witness
14 Lists in this matter, as well as endorsing the names of witnesses on the information, which
15 Lists are specifically incorporated herein by this reference.

16 In accord with Supreme Court Rule 250's requirement that the State "must summarize
17 the evidence which the state intends to introduce at the penalty phase of trial, if a first-degree
18 murder conviction is returned, and identify the witnesses, documents, or other means by
19 which the evidence will be introduced", the State of Nevada discloses the following
20 summary of the evidence it intends to offer at the penalty phase (or to incorporate from the
21 first/guilt phase):

22 Testimony and physical evidence arising out of the aggravated nature of the offense
23 itself presented during the trial phase of this case, including testimony of Homicide
24 detectives James Vaccaro and Martin Wildemann, who will testify that they were assigned,
25 on May 27, 2003, to the investigation into the shooting deaths of Jason Moore, DaJon Jones
26 and Derrick Jones (hereinafter collectively referred to as "the victims"). They will testify as
27 to their observations at the scene, along with their interviews of various witnesses, and their
28 interview of the defendant following his arrest. Gang Unit Detectives Michael Wallace and

1 Patricia Spencer will also testify about their observations at the crime scene, including the
2 conditions of the three victims. Dr. Rexene Worrell, CCME – Pathologist, will testify that
3 the decedents died of multiple gunshot wounds. Crime Scene Analysts (CSA's) Louise
4 Renhard, Marc Washington, David Horn, Ebony McGhee and Thomas Kern will testify
5 concerning their examination, processing and photography of the crime scene, and will
6 identify any evidence impounded in the course of their investigation. CSA Jocelyn
7 Maldonado will testify concerning evidence which she received at the autopsies of the
8 victims. David Welch, a DNA analyst, will testify concerning his examination of blood
9 samples recovered from the scene, including his identification of Derrick Jones as the source
10 of several of the samples. James Krylo, a firearms expert, will testify about his examination
11 and evaluation of firearms-related evidence recovered in the course of the investigation.

12 Lazon Jones will testify concerning his observations during the commission of the
13 murders (he was a present, percipient witness to these activities). Caranaldo "Krissy" Smith
14 will testify concerning her observations during the commission of the murders (she was a
15 present, percipient witness to these activities). Tracey Lovonne Edwards, Nakia
16 Washington, McKinley Terry Key, and Winston Andrew Budd will testify concerning their
17 observations of, and conversations with, the defendant after the killings. Celeste Pau will
18 testify concerning her observations of part of the acts constituting the killings, said
19 observations having been made from the balcony of a neighboring apartment. She will
20 identify the defendant. Greg Lewis will testify concerning his conversations and
21 correspondence with the defendant, in which the defendant admitted his involvement in the
22 murders.

23 The State reserves the right to offer transcripts and reports or other evidence in lieu of
24 the live testimony of these witnesses.

25 The State will also present evidence of the impact of the deaths of the victims upon
26 family, friends and members of the community, including but not limited to Sheryl Lynn

27 //

28 //

1 Jones. This evidence will include facts concerning the personality, character, abilities and
2 talents of the victims.

3 DATED this 18th day of November, 2005.

4 Respectfully submitted,

5 DAVID ROGER
6 Clark County District Attorney
Nevada Bar #002781

7
8 BY /s/ EDWARD R.J. KANE
9 EDWARD R.J. KANE
10 Chief Deputy District Attorney
11 Nevada Bar #001438
12

13 CERTIFICATE OF ELECTRONIC FILING

14 I hereby certify that service of the above and foregoing, was made this 13th day of
15 November, 2005, by Electronic Filing to:
16

17 Public Defender's office:
18 E-mail Address: PDclerk@co.clark.nv.us
19

20 /s/ M. Beaird
21 Secretary for the District Attorney's Office
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NOTC
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

FILED

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Shirley S. Rungius
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

GLENFORD ANTHONY BUDD,

Defendant.

CASE NO. C193182X
DEPT. NO. XVIII

DEFENDANT'S NOTICE OF EXPERT WITNESSES, PURSUANT TO NRS 174.234(2)
TO: CLARK COUNTY DISTRICT ATTORNEY:

You, and each of you, will please take notice that the Defendant, GLENFORD ANTHONY BUDD, intends to call the following expert witness in his case in chief:

John Paglini, Ph.D., 9163 W. Flamingo, #120, Las Vegas, NV 89147

Dr. Paglini will testify during penalty phase, if necessary, regarding his forensic psychological evaluation of Mr. Budd.

CV Attached

DATED this 21 of November, 2005.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By *[Signature]*
TIMOTHY P. O'BRIEN, #6762
Deputy Public Defender

RECEIVED

NOV 21 2005

CLARK COUNTY PUBLIC DEFENDER

000416

John Paglini, Psy.D.
7381 West Charleston Blvd, Suite 14
Las Vegas, NV 89117

CURRICULUM VITA

Fourteen years of extensive clinical work that includes inpatient and outpatient experiences, and is highlighted by critical crisis management during Operation Desert Storm. Employed nine years in private practice, and three years in the United States Air Force practicing psychology.

PROFILE OF CLINICAL EXPERIENCE

A. FORENSICS:

- Death Penalty evaluations.
- Pretrial criminal competency evaluations, criminal responsibility evaluations.
- Consult with legal teams on Capital cases with cross examination and sentencing regarding mental health professionals (District Attorney's office).
- Forensic Psychological Civil evaluations.
- Sexual offender assessments, for Department of Parole and Probations, Public Defender's Office and private attorneys.
- Adult risk assessments.
- Child custody and parental reunification evaluations.
- Expert witness for criminal trials, civilian, family and military courts.
- Civil competency evaluations for the State of Nevada.
- Security evaluations for Federal government project from January 1992 through January 1993.
- Evaluations for U.S. Post Office regarding threat assessments, January 1997 to 2002.

B. PRIVATE PRACTICE:

In the last thirteen years I have worked in private practice on an inpatient basis (until 1998) and outpatient basis extensively. My focus has been primarily with children, adolescents and adults (therapy and psychological testing).

Approximately 1,600 psychological evaluations of adult and adolescent populations have been performed within the last thirteen years.

I have extensive experience in individual, group, family and marital therapy. Issues include depression, anxiety disorders, personality disorders, marital/family, anger management and sexual abuse.

Forensic sub-specialty has been highlighted above.

C. USAF MILITARY HISTORY:

August 1989 - August 1991, 554th Medical Group, Nellis Air Force Base, Las Vegas, NV. Duty Title: Clinical Psychologist/Captain, U.S. Air Force. Performed psychological testing and psychotherapy. Consultant to medical and legal staff. Provided expert testimony on gambling cases. Conducted psychological and alcohol assessments. Nellis Air Force Base anti-smoking project officer. Implemented and reviewed quality assurance policy. Began first-ever gambling program at Nellis Air Force Base. Deployed to Operation Desert Storm from January 18, 1991 to April 7, 1991. Provided psychological service to 37th Tactical Unit (stealth fighters). Performed crisis intervention, educated wing on combat stress and preventive measures, and provided ongoing consultation of stress management. Major duties included crisis evaluation and treatment of military personnel for continued military duty. Evaluated and treated military personnel for top secret positions. August 1988 to August 1989, Andrews Air Force Base - Clinical Internship.

D. ADDITIONAL EXPERIENCE:

- Exam commissioner for the Nevada Board of Psychological examiners. Job duty: To evaluate potential licensees for competency to practice in the State of Nevada, 2001 to current.
- Certified pre-trial competency evaluator.

PRESENTATIONS:

- May 2002 - Gambling with your family: Between love and obsession, Family Law Division, American Bar Association.
- April 2000 - Forensic Psychology, Las Vegas District Attorney's Office
- March 2000 - Forensic Psychology, Las Vegas Public Defender's Office.

EDUCATIONAL EXPERIENCE:

- Doctorate in Clinical Psychology (Psy.D.), Illinois School of Professional Psychology, APA approved - April, 1990
- Dissertation: The Prevalence of Pathological Gambling Among Adolescents.
- Internship at Malcolm Grow Medical Center, Andrews AFB, APA approved - August, 1989.
- Bachelor of Arts (psychology) from Catholic University of America, Washington, D.C. - October, 1983.

PROFESSIONAL MEMBERSHIP:

- Licensed in the State of Nevada (Clinical Psychologist) PY 239
- American Psychological Association. Full Member: #6977-1436
- American Psychology - Law Society (Division of 41 of APA)
- Nevada Psychological Association

CONTINUING EDUCATION: RECENT

- Criminal pretrial competency	April 2004
- Forensic Psychology	April 2003
- Sex offenders	February 2003
- Sexual offender risk assessment	February 2002
- Death Penalty Litigation	February 2002
- Homicide Profiling	August 2001
- Scientifically Crafted Child Custody Evaluations	August
2001	
- MMPI-2 and criminal courts	August 2001
- Sex crimes/sex offenders	February 2001
- Sex offender Re-offense Risk Assessment	February 2001
(Video Tape CEUs)	
- Psychological Testimony in Court	June 2000
- Assessing Psychopathy	April 2000
- Advanced Forensic workshop:	February 2000.
death penalty, competency, sex offenders assessment,	
ethics, criminal forensics and malingering.	
- Sexual Offenders: Evaluation and Treatment	January 2000
- Independent Psychological evaluations	November 1999
- Forensic Legal excuses/Mitigation	November 1999
- Assessing Violent Juvenile Defenders	January 1999
- Death Penalty Mitigation	January 1999
- Comprehensive Child Custody Evaluations	October 1998
- Assessing Parenting Capacity	October 1998
- Assessing and Managing Violence	August 1998
- Couples Therapy Assessment	August 1998
- Psychology and the Law	May 1998
- Custody Evaluations	November 1997
- Effective and Ethical Testimony	November 1997

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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Notice is hereby acknowledged this

21 day of November, 2005.

CLARK COUNTY DISTRICT ATTORNEY

By

Judy Olney

Case Name: Glenford Anthony Budd

Case No.: C193182X

Dept. No.: XVIII

000420

ORIGINAL*Shirley B. Panaguan*

Nov 28 3 04 PM '05

FILED

1 **OPI**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **EDWARD R.J. KANE**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #001438**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 **THE STATE OF NEVADA,**

15 **Plaintiff,**

16 **-vs-**

17 **GLENFORD ANTHONY BUDD,**
18 **#1900089**

19 **Defendant.**

CASE NO: C193182

DEPT NO: XVIII

20 **ORDER FOR PRODUCTION OF INMATE**
21 **GREG LEWIS, BAC #82483**

22 **DATE OF HEARING: 12/5/05**
23 **TIME OF HEARING: 10:00 A.M.**

24 **TO: JAMES GREG COX, Warden of the Southern Desert Correctional Center;**

25 **TO: BILL YOUNG, Sheriff of Clark County, Nevada**

26 **Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by DAVID**
27 **ROGER, District Attorney, through EDWARD R.J. KANE, Chief Deputy District Attorney,**
28 **and good cause appearing therefor,**

IT IS HEREBY ORDERED that JAMES GREG COX, Warden of the Southern
Desert Correctional Center shall be, and is, hereby directed to produce GREG LEWIS, in
Case No. C193182, on a charge of MURDER WITH USE OF A DEADLY WEAPON
wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as the said witness is
currently incarcerated in the Southern Desert Correctional Center located in Indian Springs,

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1 Nevada and his presence will be required in Las Vegas, Nevada commencing on 12/5/05, at
2 the hour of 10:00 o'clock A.M. and continuing until completion of the prosecution's case
3 against the said Defendant.

4 IT IS FURTHER ORDERED that BILL YOUNG, Sheriff of Clark County, Nevada,
5 shall accept and retain custody of the said in the Clark County Detention Center, Las Vegas,
6 Nevada, pending completion of said matter in Clark County, or until the further Order of this
7 Court; or in the alternative shall make all arrangements for the transportation of the said
8 witness to and from the Nevada State Prison facility which are necessary to insure the
9 witness's appearance in Clark County pending completion of said matter, or until further
10 Order of this Court.

11 DATED this 18 day of November, 2005.

12 
13 DISTRICT JUDGE *oto*

14 DAVID ROGER
15 DISTRICT ATTORNEY
16 Nevada Bar #002781

17 BY 

18 EDWARD R.J. KANE
19 Chief Deputy District Attorney
20 Nevada Bar #001438

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1 NOTC
2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR NO. 0556
309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

18
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Shirley S. Rungius
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)
8 Plaintiff,)
9 v.)
10 GLENFORD ANTHONY BUDD,)
11 Defendant.)

CASE NO. C193182X

DEPT. NO. XVIII

13 DEFENDANT'S AMENDED NOTICE OF EXPERT WITNESSES,
14 PURSUANT TO NRS 174.234(2)

15 TO: CLARK COUNTY DISTRICT ATTORNEY:

16 You, and each of you, will please take notice that the Defendant, GLENFORD
17 ANTHONY BUDD, intends to call the following expert witnesses in his case in chief:

18 John Paglini, Ph.D., 9163 W. Flamingo, #120, Las Vegas, NV 89147

19 Dr. Paglini will testify during penalty phase, if necessary, regarding his forensic
20 psychological evaluation of Mr. Budd. (CV submitted with initial notice).

21 James M. Esten, 8698 Elk Grove Blvd., Elk Grove, CA 95624

22 Mr. Esten is a correctional consultant and will testify during penalty phase, if necessary, as to
23 the limitations of life at a maximum security prison. (CV attached).

24 DATED this 1 of November, 2005.

25 PHILIP J. KOHN
26 CLARK COUNTY PUBLIC DEFENDER

27 By *Timothy P. O'Brien*
28 TIMOTHY P. O'BRIEN, #6762
Deputy Public Defender

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CLARK COUNTY CLERK

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Curriculum Vitae

James M. Esten

PMB One-Hundred-One

8698 Elk Grove Blvd., Suite Three

Elk Grove, CA 95624-3300

Phone: 916.354.9749 E-Mail: CorrectCon@aol.com FAX: 916.354.0823

Area of Expertise: I am able to provide expert testimony on all facets of Corrections issues. I have extensive hands on classification experience and can provide testimony in the penalty phase of Capital cases. This is best accomplished by comparing and contrasting the security constraints placed on inmates serving Death, Life Without Possibility of Parole and Life Term sentences. I have interviewed inmates in twenty-eight of California's thirty-two prisons, and in twenty County jails. I have testified in Nevada and Arizona.

California Department of Corrections Experience 1973 to 1992:

1987 to 1992 - *Inmate Appeals Examiner*

Investigated inmate complaints in all Institutions throughout the state on behalf of the Director of Corrections

1985 to 1987 - *Administrator, Correctional Training Center - Galt*

Supervised the training of all new CDC Correctional Officers

1983 to 1985 Soledad - *Program Administrator*

Supervised a 600 man General Population housing unit

1980 to 1983 Soledad - *Supervising Correctional Counselor*

Reception Unit Classification Committee Counselor

Inmate Appeals Coordinator

General Population Housing Unit Supervising Counselor

Administrative Segregation Unit Supervising Counselor, and

Institution Public Information Officer

1973 to 1980 Soledad - *Vocational Instructor, Offset Printing*

Extensive In-Facility Inmate Contact Experience in Maximum Security Institutions:

San Quentin - Death Row: Adjustment Center, East Block, and North Segregation Inmates.

Folsom - New and Old Facilities: Administrative Segregation, SHU and General Population Inmates.

Corcoran: Administrative Segregation, SHU and General Population Life and L-WOP Inmates.

Tehachapi: Administrative Segregation, SHU and General Population Life and L-WOP Inmates.

Pelican Bay: SHU, Violence Control, and General Population Inmates serving Life and L-WOP terms.

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Experience in all facets of Correctional work: Due to my varied work assignments within Corrections I provide a unique perspective to incarceration. I have trained inmates who were previously sentenced to death and have seen them parole. I have interviewed approximately 15 percent of the inmates housed on death row as well as inmates in the lowest custody levels within the state. I have classified over 12,000 inmates in either initial, unit, full or main classification committee settings. I know the classification process and the special slant applied to it at each institution. I have researched and can speak comprehensively about the custody, visiting and job assignment variations found in the institutions and how these are applied to inmates serving minimum to maximum terms.

Education and Background:

1973 BA Degree, English - San Francisco State University
 1977 MA Degree, Educational Administration - San Jose State University
 1992 Desktop Publishing training program
 Married, one child

Publications:

June 1976 *From Picas to Parole, Graphic Arts Monthly*
 August 1980 *Printing In California's Prisons, In-Plant Printer*

Military Experience:

United States Marine Corps from 1966 to 1969 with a tour in Vietnam during 1968 and 1969. Honorably Discharged in May 1969.

Professional Associations:

American Correctional Association
 California Correctional Peace Officers Association
 McGeorge School of Law - Trial Advocacy Program
 U.S. Department of Justice - Jury Selection Exercise
 California State Bureau of Automotive Repair - Operative
 Guest Instructor - CACJ Seminar, 1997, *Prison Gangs*
 Guest Speaker - CALI Spring Conference, 1997
 Expert - Bryan Shechmeister Death Penalty College, 1998
 Guest Instructor - CACJ Seminar, 1999, *Future Dangerousness*
 Guest Instructor - CACJ Seminar, 2000, *Future Dangerousness*
 Guest Instructor - CACJ Seminar, 2004, *Obtaining & Understanding Clients' & Snitches' Institutional Histories*

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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Notice is hereby acknowledged this

1st day of December, 2005.

CLARK COUNTY DISTRICT ATTORNEY

By



Case Name: Glenford Anthony Budd

Case No.: C193182X

Dept. No.: XVIII

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Shirley E. Ramirez
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 GLENFORD ANTHONY BUDD,

12 Defendant.

) CASE NO. C193182

) DEPT. XVIII

14 BEFORE THE HONORABLE NANCY M. SAITTA, DISTRICT COURT JUDGE

15 WEDNESDAY, NOVEMBER 23, 2005; 12:06 P.M.

16 RECORDER'S TRANSCRIPT RE:
17 DEFENDANT'S PRETRIAL MOTIONS

18 APPEARANCES:

19 For the State: EDWARD KANE, ESQ. Deputy District Attorney

20
21 For the Defendant: HOWARD BROOKS, ESQ., Deputy Public Defender
22 TIMOTHY O'BRIEN, ESQ., Deputy Public Defender

24
25 RECORDED BY: JO ANNE B. PIERPONT, COURT RECORDER

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CLARK COUNTY CLERK

1 WEDNESDAY, NOVEMBER 23, 2005; 12:06 P. M.

2
3 THE COURT: Okay. We'll now go on the record of the matter of State
4 versus Budd, 193182. This is three counts of murder with use of a deadly
5 weapon.

6 We have several pretrial matters that are on this morning; a couple
7 of them we've actually taken care of in chambers.

8 Let me begin with the defendant's motion for exchange of jury
9 instructions on the first day of trial. Has that been agreed upon?

10 MR. KANE: It has, Your Honor, with the understanding that it's a mutual
11 obligation. I'll have mine here, and I'll expect to get the defense's from them.

12 THE COURT: Based upon the fact that it's a defendant's motion, I think
13 that we're pretty safe on that.

14 MR. BROOKS: And just so the record is clear, at this time I don't actually
15 have any instructions to propose for the guilt phase, but as soon as I look at his
16 instructions, I will certainly work on that immediately and try to turn that
17 around and see if I have alternatives.

18 THE COURT: So let's set for exchange of jury instructions on the first
19 day of trial or as soon thereafter. Very well.

20 MR. KANE: Understood, Judge.

21 MR. BROOKS: Thank you.

22 THE COURT: The other one that I believe that we have agreed upon has
23 to do with the request for the jury questionnaire. It is your No. 9, Mr. Brooks.

24 MR. BROOKS: Correct, Your Honor, and we have agreed in chambers on
25 a format, and I will submit it this afternoon to the jury commissioner.

1 THE COURT: And I've already been advised that they will be expecting
2 it.

3 MR. BROOKS: Thank you.

4 THE COURT: The next one, Defendant's Motion No. 3 for recording all
5 proceedings pursuant to Supreme Court Rule 250. I believe that my court
6 recorder has already made those arrangements. Is that correct?

7 THE COURT RECORDER: Yes, for a court reporter.

8 THE COURT: We've already arranged for someone that I think you're all
9 familiar with, Gayle - I don't know her last name, Gayle.

10 THE COURT RECORDER: Pichierri.

11 THE COURT: Yeah, she's a court reporter. She'll be here every single
12 day, and then you'll get your transcripts turned around.

13 MR. BROOKS: Judge, and also, there was some disagreement in the
14 motions regarding what precisely we were requesting. We are requesting that
15 bench conferences be recorded. We're not requesting that every single
16 possible conversation be recorded, but I do think that if we're going to discuss
17 evidentiary issues we'd prefer to have those recorded outside chambers rather
18 than then trying to reconstruct it later at some other time.

19 THE COURT: I do what I have been doing, although we can record
20 everything here, the problem is, as I understand it, that when we record here
21 we still have the microphones on. Is that correct? Okay.

22 So what I do is I bring you here. You tell me what it is that
23 you want to say. If it's something that needs to be recorded, it's not just one
24 of those conversations, you know, like I have to go to the bathroom, then what
25 I do is I dismiss the jury and we record it. So, does that meet with what --

1 MR. KANE: Judge, that's what Rule 250 says to do.

2 THE COURT: Yeah.

3 MR. KANE: Rule 250 says if an objection is made or an issue's resolved
4 in an unreported proceeding, the Court shall insure that the objection and
5 resolution are made part of the record at the next reported proceedings. So
6 they anticipated that --

7 THE COURT: Okay, and I do it --

8 MR. KANE: -- at-the-bench stuff would happen that's not reported.

9 THE COURT: I do it immediately. If it's something that's so important
10 that it needs to be made a part of the record, I dismiss the jury right away and
11 we just do it. So that meets, I believe, with your request.

12 MR. BROOKS: Thank you, Judge.

13 THE COURT: Okay. The next one is Defendant's Motion No. 4 to
14 disqualify all potential jurors who knew or were acquainted with the victims or
15 their families.

16 What , if any, position does the State have on that?

17 MR. KANE: Judge, our position is that's premature. One of the things
18 that we ask all of the jurors is do you know any of the parties to the case, the
19 victim or any members of their families. If a juror answers yes, we can resolve
20 that at this time. To issue a blanket ruling that because somebody recognizes
21 a name or might have known somebody that they're automatically disqualified
22 is improper. That should wait until voir dire.

23 MR. BROOKS: We'll submit that, Judge.

24 THE COURT: I believe that's appropriate. At the time that we determine
25 if we have any members in the venire who have that knowledge, we'll deal

1 with it at that time.

2 The next motion is becoming a standard motion. It has to do with
3 the motion to disqualify all potential jurors who would automatically vote for
4 the death penalty in the event of a first-degree murder conviction.

5 Mr. Brooks, anything to add to your pleadings?

6 MR. BROOKS: We'll submit that, Your Honor.

7 THE COURT: And on behalf of the State, your objection?

8 MR. KANE: My objection, again, is that it's premature, Judge. If at the
9 time of jury selection a juror says they would automatically vote for the death
10 penalty, I'm sure we'll both have questions for that juror. If the juror doesn't
11 change the juror's position, the juror is challenged, but at that time, not today.

12 THE COURT: Typically that question is an extraordinarily important
13 question. I think that it oftentimes goes to whether or not the prospective juror
14 has already made up their mind. I think it is worthy of evaluation at the time
15 that we learn that information. It may very well be something again that needs
16 to be done outside the presence, but I always allow significant leeway in those
17 instances.

18 So I will note for the record that this is technically being continued
19 until such time as we have a venire where this issue arises.

20 MR. BROOKS: Thank you.

21 THE COURT: Next is Defendant's No. 6. It really is sort of a pretrial
22 *Batson*.

23 Would that be a fair statement, Mr. Brooks?

24 MR. BROOKS: That's correct, Your Honor.

25 THE COURT: The State's response?

1 MR. KANE: Well, in my description of these, and I use shorthand
2 descriptions in my notes, I put pre-empted *Batson* motion. A *Batson* motion
3 has to be made at the time and under the circumstances it arises.

4 THE COURT: *Batson*, being a very significant matter for consideration, I
5 would agree. The simple fact that the conduct of the State, should it occur,
6 where it was determined they were systematically without good cause
7 removing minorities from the jury, would not only result in a *Batson* challenge,
8 but quite frankly largely result in me sustaining that objection, and it would be
9 improper for the State to do so.

10 To the extent that we need to consider *Batson*, we will do so at the
11 time that we believe or find reason to believe that the State is engaging in that
12 inappropriate conduct.

13 MR. BROOKS: Judge, may I ask that if I make a *Batson* objection during
14 jury selection that the motion that I filed here be incorporated into my objection
15 at that time?

16 THE COURT: Absolutely.

17 MR. BROOKS: Thank you.

18 THE COURT: Absolutely.

19 Defendant's No. 7 to bifurcate the penalty phase, any objection to
20 that?

21 MR. KANE: Judge, let me just shorten it up. There's a lot of legal
22 arguments to be made against it, but at this point in this case it doesn't make
23 any sense because the only aggravator that we're going to be pursuing is
24 multiple murders. So in a bifurcated sentencing proceeding, assuming this jury
25 returns a guilty verdict, the State's presentation at the first half of that

1 bifurcated proceeding would be the State rests. I mean, there's nothing to
2 bifurcate. That's what it amounts to.

3 MR. BROOKS: We'll submit this issue, Judge.

4 THE COURT: I will grant it because it appears as if it's going to be
5 something that's happening anyhow. I mean it's just that simple.

6 Defendant's motion to allow the defense to argue last in the
7 penalty phase, what, if any, position does the State take on that?

8 MR. KANE: The State's position is, as it usually is, that the *Whitter* case
9 specifically says you don't do that. It says that we've got the burden of proof
10 throughout a criminal trial. We argue first, we argue last, and it's well-settled
11 law of the Supreme Court.

12 I understand that in a capital case the defense has to file a lot of
13 motions acknowledging that the law's against them, but arguing for an
14 extension or modification of that law, but until the Supreme Court sees fit to do
15 so, we argue last.

16 THE COURT: Actually, as I understand it, Mr. Brooks, your motion really
17 does include argument that suggests that the existing law is inappropriate and
18 that --

19 MR. BROOKS: That's correct, Your Honor. We acknowledge that at this
20 time the law is against us, but we're suggesting that that law should be
21 changed.

22 THE COURT: I will note for the record that I believe the Court's hands
23 are tied when the law of the State, whether it be statutory or by case law, is
24 uncontroverted, as I believe it is in this instance, that I am compelled by my
25 oath to follow the law. The motion is denied.

1 Let's see, the No. 10 motion to prohibit any references in front of
2 the jury to the trial phase of the proceedings as the guilt phase. Typically, I
3 preclude any reference; it's simply the trial.

4 What, if any, position does the State have?

5 MR. KANE: Our position is it's a tempest in a teacup. I see this motion
6 all the time. I've had it granted in departments and two seconds later I've had
7 the judge in voir diring the jury refer to the guilt phase and the penalty phase.
8 It's the type of thing that is going to be said by everyone in this room, probably
9 including Your Honor, just inadvertently. We will make every effort not to and
10 to refer to it as the trial phase.

11 I think the underlying idea of this motion that a jury is going to sit
12 here, they're going to listen to a week's worth of evidence, they're going to get
13 all sorts of instructions on burden of proof and everything, and then they're
14 going to forget all of that and automatically find the defendant guilty because
15 we referred to it as the guilt phase is just so ridiculous that I can't believe we
16 have to deal with this motion all the time. I

17 THE COURT: I call it the --

18 MR. KANE: If we have jurors that are that stupid, they should be
19 excused before we even call them into the box.

20 THE COURT: Sometimes we don't know that.

21 With all due respect, I'm going to grant the motion. It should be
22 called the trial, period.

23 The next motion to strike allegations of certain aggravating
24 circumstances alleged in their notice of intent.

25 MR. BROOKS: Judge, it's my understanding the State has withdrawn the

1 lawful arrest risk or escape from custody --

2 THE COURT: That's what I thought.

3 MR. BROOKS: -- which leaves us only with the three aggravators of
4 there being a killing in the same trial proceeding. It's a technical argument,
5 Judge, we'll submit it. Technically, we think it's an ex post facto situation
6 now because as we stand here today he's not convicted of any murder
7 charges. He would only be convicted of murder charges at the time the jury
8 returns their verdict, and that particular judgment is not even final at the time
9 of the sentencing proceeding. So technically we're arguing it's an ex post
10 facto proceeding.

11 THE COURT: And so it is an argument being made in an effort to
12 perhaps clarify the law again. I mean, because technically the individual stands
13 before or will stand before a jury accused of three murders. The simple fact of
14 the matter is that that by statute is by several reasons or on the basis of
15 several reasons, is enough for the State to say that they intend to seek the
16 death penalty.

17 So I think it again becomes a matter of I have to wait until such
18 time as the law has changed. At this time the reason that the State seeks to at
19 least ask for the death penalty upon conviction in the first part of the trial is
20 what it is. The motion is denied.

21 Number 12, to preclude admission during possible penalty
22 proceeding of evidence about personal character of the victims and the impact
23 of the victims' death on the family; what, if anything, do you wish to add?

24 MR. BROOKS: Yes, Judge. In the State's amended notice of evidence in
25 aggravation, Mr. Kane submits that he intends to present testimony concerning,

1 quote, the personality, character, abilities and talents of the victims, period,
2 unquote. *Payne versus Tennessee* allows that type of evidence; however, that
3 type of evidence introduces an arbitrary element into a death penalty
4 determination.

5 Basically, if a person kills someone who is a real good person, then
6 the chances of a death verdict become higher; whereas if the person kills
7 someone who is not a good person without many talents, the chances of a
8 death penalty verdict becomes less. That is an element of arbitrariness. It is
9 against the very foundation of what the death penalty is all about, and, Judge,
10 we would ask that the Court overturn the United States Supreme Court and
11 rule that that evidence is not admissible.

12 THE COURT: And I will note that Mr. Brooks said that with a smile on
13 his face.

14 Mr. Kane.

15 MR. KANE: I don't think *Payne* could have made it any clearer that this
16 kind of evidence is admissible. *Payne* has been followed by the Nevada
17 Supreme Court in *Hommach*, and it couldn't be any clearer that they are
18 arguing for a reversal of existing law, and we argue the Court is bound by the
19 law as it is now.

20 THE COURT: Again, my oath requires me to, as best I am able, apply the
21 laws of this State, and although I thought it was odd, nobody called me to
22 apply for the vacancies on the U.S. Supreme Court, but until such time as that
23 happens, it would be inappropriate for me to say that they did something
24 wrong.

25 Motion is denied, and I rely primarily upon both *Payne versus*

1 *Tennessee* as well as the *Hommach* case out of our State.

2 Defendant's Motion No. 13, to bar admission of cumulative victim
3 impact evidence. Again, would this not be something that I would be able to
4 rule upon at the time it was presented?

5 MR. BROOKS: That's correct, Your Honor, and I might add that based
6 on the representations of Mr. Kane in chambers this may not be an issue. If
7 there is merely one or two representatives from each family, I can't imagine
8 that being a problem.

9 If, however, we're dealing with multiple family members from each
10 victim's family testifying, that presents a problem for the defense.

11 MR. KANE: I would ask that you defer the ruling until such time as
12 we're in a penalty hearing, Judge, and I would observe for the record that if the
13 defendant wanted a shorter penalty hearing, he should have killed fewer
14 people.

15 THE COURT: With all due respect, I can grant the motion only to the
16 extent that cumulative evidence would be something that the Court can
17 exclude at any time. However, until such time as I know that that is in fact
18 going to be presented or become a problem I can defer ruling. So to the limited
19 extent that the evidentiary rules would allow me to consider excluding
20 cumulative evidence I can do so, but beyond that it remains to be seen whether
21 or not this is absolutely something that will appear in our case.

22 And finally, defendant's motion to dismiss the State's notice of
23 intent because the penalty scheme violates due process.

24 Again, Mr. Brooks, is this a motion that is being filed to preserve
25 rights pursuant to the law of the State of Nevada or the United States Supreme

1 Court take a different view?

2 MR. BROOKS: Right now, Judge, the case law is against us. We are
3 submitting this to the Court.

4 THE COURT: And to Mr. Kane.

5 MR. KANE: I'd only add that in addition to not being legally required
6 the issue is moot in this case because if the defendant was entitled to a
7 probable cause determination he got it. He had a preliminary hearing, and the
8 judge found probable cause to believe that more than one murder was
9 committed in this case, and that's the aggravator.

10 THE COURT: I would agree. The motion is denied.

11 Today is technically our calendar call. I think we have already
12 discussed in chambers that both sides are ready and the anticipated length of
13 this trial; therefore, as we discussed, December 5th at 1:30 will be the start of
14 this trial. However, before any counsel leaves, I do want you to remain in the
15 courtroom for a few moments.

16 Anything further, Mr. Brooks?

17 MR. BROOKS: Yes, Judge. We need a rule on Motion 1.

18 THE COURT: Oh, sorry.

19 MR. BROOKS: And my argument on this can be very brief.

20 THE COURT: Yes. This is the standard motion prohibiting prosecutorial
21 misconduct and certain other authority regarding what constitutes improper
22 argument.

23 Mr. Brooks.

24 MR. BROOKS: Judge, and we're asking only that the Court order that
25 there not be prosecutorial misconduct but also that in the event that I object to

1 what I perceive to be prosecutorial misconduct that the case law cited in this
2 motion will be incorporated into my objection.

3 I want to make it clear there's nothing personal intended in this
4 motion towards Mr. Kane. Some prosecutors contend it's an offensive motion.

5 I've done a death penalty case with Mr. Kane, and I think Mr. Kane
6 probably is as good as it gets in terms of avoiding prosecutorial misconduct;
7 however, in an abundance of caution I have to file the motion.

8 THE COURT: Mr. Kane, do you wish to be heard?

9 MR. KANE: Just briefly.

10 I appreciate the caution that makes counsel file this motion. I don't
11 take it as personally as some prosecutors, but I take it personally to the extent
12 that I think Mr. Brooks would take it personally if I were to file a motion
13 requiring that in this trial he give the defendant efficient and proper and
14 competent legal representation so that I don't have to spend the next ten years
15 answering post-trial writs of habeas corpus.

16 I don't file those kinds of motions because I know I don't have to. I
17 don't have to tell Mr. Brooks how to do his job; I don't think he needs to tell
18 me how to do my job.

19 All of that being said, the real problem I have with the motion is the
20 way it's written it appears to excuse the duty of timely and focused objection.
21 I've got no problem with if Mr. Brooks gets up during my argument and says,
22 This is improper prosecutorial argument because it comments on the
23 defendant's right to remain silent or it does this or that, that all of his points
24 and authorities in his motion are incorporated. However, I don't -- and what
25 I'm asking the Court to do is not to grant the motion to the extent that it allows

1 Mr. Brooks to get up during my closing argument, let's say, and say, I object to
2 that argument and any possible issue covered in this 20 or 30 page motion is
3 included.

4 It does not eliminate the defense's responsibility to make a specific
5 and timely objection, and if that's made incorporating all of this underlying case
6 law it gives me no problem at all, and that's what I'd ask you to rule.

7 THE COURT: Mr. Brooks, you know because you've tried cases in
8 front of me that I require the basis to be stated on the record for any objection.
9 Would you agree that even if I were to grant your motion it would not in any
10 way preclude you from still having to do so?

11 MR. BROOKS: That's correct, Your Honor.

12 And let me say this, my intention here is if Mr. Kane was arguing
13 and he's arguing in a way that I consider to be violating this motion, I intend to
14 say, Objection. Improper argument. I would hope that I would not have to
15 stop the proceedings at that moment and immediately go into the motion and
16 cite the exact case law.

17 THE COURT: You do not.

18 MR. BROOKS: I think at a later time we could perhaps discuss that
19 more fully on the record as far as what the precise aspect was of the
20 argument.

21 MR. KANE: And that's what I anticipated as well, Your Honor.

22 THE COURT: And so I grant this motion, and I grant it not because I
23 expect either of you to either shortcut your responsibilities, Mr. Brooks, or, Mr.
24 Kane, that you would violate what you know to be the law. I grant it with the
25 eternal hope that we could make it all the way through a trial without any legal,

1 lawyerlike misconduct.

2 But regardless, I'm happy to have the people who I have here trying
3 this case. I have no reason to believe that I need to be concerned. But as I
4 said, to be consistent with my prior rulings, I generally grant it and ask that no
5 one -- I make it a reciprocal order -- no one engage in attorney misconduct.
6 And that will be the Court's order.

7 MR. KANE: Judge, one matter of clarification, and I apologize.

8 THE COURT: That's okay.

9 MR. KANE: On Motion 7 to bifurcate the penalty phase, I thought you
10 said that it was granted, and I'm just trying to make sure I understand that and
11 what the consequences of that are because if you bifurcate the penalty phase
12 into an aggravating circumstance and then the rest of it, I'm not going to have
13 anything to present. My presentation is the jury verdict.

14 THE COURT: To the extent that Mr. Brooks intends for me -- you see, I
15 didn't take it that way.

16 That's not what you intended, is it, Mr. Brooks?

17 MR. BROOKS: Actually, technically, the way my motion was written,
18 my actual intent was that we have a hearing and the jury goes and deliberates
19 and decides whether or not the aggravating circumstances outweigh the
20 mitigating circumstances. They come back and render a verdict on that. Then
21 they go -- at the next -- at the next phase of the penalty phase would be the
22 presentation of other evidence beyond just that as to the aggravating,
23 mitigating circumstances, and we get into the other evidence phase.

24 I understand what Mr. Kane is saying. I think the Court -- there is
25 some confusion here because --

1 THE COURT: There isn't any other evidence, is there?

2 MR. BROOKS: Well, my personal position is I would like to see it where
3 we actually have the jury come back and say whether aggravators outweigh
4 mitigators.

5 THE COURT: We just want a record.

6 MR. BROOKS: And then after that, then they are allowed to hear the
7 other evidence which the State would present which would be the victim
8 impact evidence. Then they would decide whether or not the death penalty is
9 the appropriate verdict.

10 MR. KANE: But, see, I think that that unfairly disadvantages the State
11 because in deciding whether aggravators outweigh mitigators they ought to
12 consider all the circumstances.

13 THE COURT: In this case I did misunderstand the purpose or intent of
14 this, and I'm going to deny the motion.

15 THE COURT: You may take the prisoner. However, counsel, I'd ask
16 you to stay for a moment, please.

17 Off the record.

18 -oOo-

19 ATTEST: I DO HEREBY CERTIFY THAT I HAVE TRULY AND CORRECTLY
20 TRANSCRIBED THE AUDIO/VIDEO PROCEEDINGS IN THE
21 ABOVE-ENTITLED CASE TO THE BEST OF MY ABILITY.

22

23

24

25


JANIE L. OLSEN
TRANSCRIBER

1 By eliminating the introduction of evidence regarding the arbitrary character of the victim,
2 the Supreme Court put the focus of a death penalty hearing on the culpability of the defendant, not
3 the arbitrary factors which have nothing to do with the defendant.

4 South Carolina v. Gathers merely extended Booth to cover the arguments made by the
5 prosecutor to the jury in closing argument.

6 **THE DEFENSE OBJECTS TO THE DECISION OF PAYNE V. TENNESSEE**

7 The United States Supreme Court overruled Booth and Gathers in 1991 when it issued the
8 decision of Payne v. Tennessee, 501 U.S. 808 (1991). Payne concludes that the State may
9 introduce evidence of the general character of the victim and the impact of that death on the
10 victim's family during a possible penalty proceeding in a capital murder trial.

11 The probative value of such evidence is always outweighed by its prejudicial effect,
12 because it draws the jury's attention away from the character of the defendant and the
13 circumstances of the crime to considerations of the eloquence of the family regarding their ability
14 to express grief for the deceased. Payne merely reintroduces an element of arbitrariness into the
15 sentencing decision, and therefore makes the sentencing decision less reliable. Therefore, the
16 defense objects to Payne v. Tennessee, and asks this court to not abide by the current law on this
17 issue.

18 DATED this 4 day of October, 2004.

19 PHILIP J. KOHN
20 CLARK COUNTY PUBLIC DEFENDER

21 By

22 
23 HOWARD S. BROOKS, #3374
24 Deputy Public Defender
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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 18th day of October, 2004, at 9:00 a.m.

DATED this 4 day of October, 2004.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By Howard S. Brooks
HOWARD S. BROOKS, #3374
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Motion to Preclude the Admission, During a Possible Penalty Proceeding, of Evidence about the Personal Character of the Victim and the Impact of the Victim's Death on the Family is hereby acknowledged this 4 day of October, 2004.

CLARK COUNTY DISTRICT ATTORNEY

By Judith E. Olney

ORIGINAL

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PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

FILED

OCT 4 3 50 PM '04

Shirley B. Rungius
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

GLENFORD ANTHONY BUDD,

Defendant.

CASE NO. C193182X
DEPT. NO. XVIII
DATE: October 18, 2004
TIME: 9:00 a.m.

**MOTION 14: DEFENDANT BUDD'S MOTION TO DISMISS THE STATE'S NOTICE OF
INTENT BECAUSE NEVADA'S DEATH PENALTY SCHEME VIOLATES DUE
PROCESS GUARANTEES BY FAILING TO REQUIRE A PRE-TRIAL FINDING OF
PROBABLE CAUSE FOR ALLEGED AGGRAVATORS**

COMES NOW Defendant Glenford Budd, by and through Deputy Public Defender
Howard S. Brooks, and moves that this Honorable Court dismiss the State's Notice of Intent to
Seek the Death Penalty.

This motion is based upon the attached Declaration of Howard S. Brooks, the
memorandum of points and authorities, and the United States and Nevada Constitutions.

DATED this 4 day of October, 2004.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER
By *Howard S. Brooks*
HOWARD S. BROOKS, #3374
Deputy Public Defender

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1 **DECLARATION OF HOWARD S. BROOKS**

2 1. I am an attorney licensed to practice law in the State of Nevada; I am a deputy public
3 defender assigned to represent Glenford Budd in this case; I am familiar with the allegations made
4 by the State and the procedural history of the case.

5 2. The State filed a Criminal Complaint against Mr. Budd alleging three counts of murder
6 with a weapon. No aggravating circumstances were alleged in the Complaint. At a preliminary
7 hearing on June 16 and 25, 2003, in Justice Court, Las Vegas Township, the State presented
8 evidence relating to the killing. The Justice of the Peace held Mr. Budd to answer for three counts
9 of murder with use of a deadly weapon. No finding was made regarding probable cause for any
10 aggravating circumstances.

11 3. The State filed an Information on June 26, 2003, and that document included no
12 allegations of aggravating circumstances. Mr. Budd appeared in District Court, Department 18,
13 and plead not guilty. The State filed a Notice of Intent to Seek the Death Penalty on July 25, 2003
14 and alleged two aggravating circumstances: that in the immediate proceeding, Mr. Budd will be
15 convicted of two or more counts of first or second degree murder; and the killing occurred to
16 prevent a lawful arrest or effect an escape from custody.

17 4. The State's Notice of Intent does not describe with particularity what evidence would be
18 presented at a possible sentencing proceeding to support each alleged aggravating circumstance.
19 Nevada Supreme Court Rule 250(4)(c) requires the Notice of Intent to allege "with specificity the
20 facts on which the State will rely to prove each aggravating circumstance." The State's Notice of
21 Intent does not comply with Rule 250(4)(c).

22 5. The magistrate was not asked to find probable cause for the aggravating circumstances
23 the State charged in the Notice of Intent. So there was no probable cause finding that any
24 aggravating circumstance existed.

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1 6. The process used by the State in this case is the same process that has been used in the
2 overwhelming majority of death penalty cases in Clark County since 1995, when this Declarant
3 commenced working on the Murder Team.

4 7. This motion contends the process authorized by Nevada law and custom—and utilized in
5 this case—violates constitutional law because aggravating circumstances are “essential elements” of
6 the State's death penalty murder case, and “essential elements” must be alleged in the pleadings
7 and receive pre-trial scrutiny at a grand jury or preliminary hearing proceeding. When a
8 defendant in a death penalty proceeding is denied the opportunity to litigate the validity of alleged
9 aggravators, the defendant suffers serious obstacles in preparing a defense to the State's charges:
10 first, the defense does not have notice that the State is seeking the death penalty when the case is
11 presented in Justice Court; if the defense had that notice, a defendant might be more likely to
12 appear and testify; second, the State avoids the scrutiny of a neutral magistrate who must hear
13 evidence and ascertain if the alleged aggravator is valid; third, there is no record of evidence from
14 the preliminary proceeding so the defendant can challenge the initial finding through the processes
15 found at **Chapter 34** of the **Nevada Revised Statutes** (commonly called the pre-trial habeas
16 corpus procedure); and four, the procedure for challenging aggravating circumstances prior to a
17 sentencing, or penalty, hearing is extra-statutory, without standards, and without any established
18 procedure. All of these problems become most apparent when, as in this case, the State files
19 Notice of Intent without any specificity as required by Supreme Court Rule 250. Because the
20 procedure in these cases is flawed, violating both Due Process and Equal Protection, the Defense
21 seeks the dismissal of the Notice of Intent filed in this case.

22 8. Similar arguments have been made in **State of Nevada v. Armando Cortinas** (Case
23 No. C192895X), a death penalty murder case currently pending in the Eighth Judicial District
24 Court. When the District Court denied the defendant's motion in that case, the defense filed a
25 Petition for Writ of Prohibition/Mandamus, and the Nevada Supreme Court entered a stay of
26 proceedings while the issue is litigated. A copy of that stay order is attached to this motion.

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1 9. In the event this Court denies this motion, the Defense intends to immediately request a
2 stay of proceedings which will enable the Defense to file a Petition for Writ of
3 Mandamus/Prohibition in this case. Such a stay would enable the Supreme Court to resolve this
4 issue prior to the trial of this death penalty case.

5 EXECUTED this 4 day of October, 2004.

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8 HOWARD S. BROOKS
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MEMORANDUM OF POINTS AND AUTHORITIES

FACTS

A magistrate held Glenford Budd to answer in District Court for three counts of murder with a weapon. The State filed an information reflecting that bindover, and later filed a Notice of Intent to Seek the Death Penalty alleging two aggravating circumstances: that in this case, a jury will convict Mr. Budd of at least two counts of first or second degree murder; and the killing occurred to prevent an unlawful arrest or to effect an escape from custody.

The State did not present to the magistrate evidence supporting a finding of probable cause for the aggravators later alleged in the Notice of Intent. There was no pre-trial scrutiny of these alleged aggravators by any Court before the State filed the Notice of Intent.

Because the State did not allege the aggravators in the Criminal Complaint, because the State did not present evidence of the aggravators at the preliminary hearing, because the Just of the Peace made no ruling on probable cause supporting the aggravators, Mr. Budd did not have the opportunity to challenge the validity of the aggravators through the statutory procedure authorized in **Chapter 34 of the Nevada Revised Statutes** (commonly called the pre-trial habeas corpus procedure). This procedure is available to other criminal defendants facing criminal allegations.

Mr. Budd has motions pending to dismiss certain of the aggravating circumstances through a procedure generally endorsed by Nevada Supreme Court cases, but that procedure is unclear in many ways: Should it be handled prior to trial, or after trial and before a sentencing hearing? What are the standards for reviewing whether an alleged aggravating circumstance can be presented to a jury?

If Mr. Budd may only challenge the validity of the aggravators after the trial proceedings, and before the sentencing proceedings, has he not already suffered prejudice by the Court allowing the State to "death-qualify" a jury when there is substantial opinion that a "death-qualified" jury is more likely to convict a defendant of first degree murder rather than another degree of homicide? See, e.g., the discussion of death qualification in Schoels v. State, 114 Nev. 981, 966 P.2d 735 (1998) (Springer, dissenting).

1 **NEVADA'S DEATH PENALTY SCHEME, BASED ON STATUTE, SUPREME COURT**
2 **RULE, AND HABIT REPRESENTS A PROCEDURAL HODGEPODGE**

3 The sources for the procedures and substantive burdens in a death penalty case derive from
4 a variety of statutes, rules, and customs.

5 The substantive law of murder is found in Chapter 200 of the Nevada Revised Statutes.
6 See, e.g., 200.010 (definition of murder); 200.020 (definition of malice); 200.030 (degrees of
7 murder and penalties); 200.040 (definition of manslaughter); 200.050 (definition of voluntary
8 manslaughter); 200.070 (definition of involuntary manslaughter); 200.080, 200.090 (punishments
9 for manslaughter).

10 Aggravating circumstances are delineated at **NRS 200.033** and mitigating circumstances
11 are identified at **NRS 200.035**.

12 The procedures for a sentencing, or penalty hearing, are set forth at **NRS 175.552 et seq.**

13 The pleading requirements detailing how the government commences a death penalty case
14 are found in **Supreme Court Rule 250**.

15 Provisions detailing what should be included in a Notice of Intent to Seek the Death
16 Penalty are found at **SCR 250(4)(C)**.

17 There are no specific statutory provisions or rules governing how a defendant challenges
18 the validity of aggravating circumstances prior to trial or prior to the sentencing hearing. The
19 burdens of proof are undefined. And because aggravating circumstances are not submitted to a
20 grand jury or magistrate, there exists no record of what evidence the State intends to rely upon to
21 prove an aggravating circumstance. The result of all this chaos is uncertainty and unreliability,
22 and the United States Supreme Court has ruled that the adjudicative process leading to a death
23 sentence must have heightened reliability. Lowenfield v. Phelps, 484 U.S. 231, 238-39 (1988)
24 ("qualitative difference between death and other penalties calls for a greater degree of reliability
25 when the death sentence is imposed." (quoting Lockett v. Ohio, 438 U.S. 586, 604
26 (1978)(plurality opinion))); see also Dobbs v. Zant, 506 U.S. 357, 358 (1993)(emphasizing "the
27 importance of reviewing capital sentences on a complete record").

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1 **FEDERAL AND NEVADA CONSTITUTIONAL LAW REQUIRE THAT A CRIMINAL**
2 **CHARGE GO TO A GRAND JURY OR MAGISTRATE FOR A PROBABLE CAUSE**
3 **DETERMINATION BEFORE A DEFENDANT MUST DEFEND THAT CHARGE AT**
4 **TRIAL BEFORE A JURY.**

5 The Fifth Amendment to the United States Constitution and Article I, Section 8, of the
6 Nevada Constitution provide that no person shall be held to answer to criminal charges without a
7 finding of probable cause by a Grand Jury. The United States Supreme Court has endorsed a
8 probable cause finding by a neutral magistrate at a preliminary hearing as a constitutionally
9 permissible alternative to a Grand Jury indictment. See Hurtado v. California, 110 U.S. 516
10 (1984) (upholding California's preliminary hearing process against a due process challenge).

11 The preliminary hearing process in Nevada requires the State to present legal evidence that
12 a crime occurred and the charged defendant committed the crime. Thedford v. Sheriff, 86 Nev.
13 741, 476 P.2d 25 (1970). If the State fails to meet that burden, the case must be dismissed. NRS
14 171.206. The purpose of requiring a probable cause finding is to ensure that a defendant has the
15 benefit of a pre-trial review of the sufficiency of the evidence before having to confront the same
16 charges at an actual jury trial. Issues can be narrowed, charges and allegations having no basis in
17 fact can be eliminated. The probable cause hearing process has been characterized as a "shielding
18 function" whereby individuals are protected from prosecution by private enemies, political
19 partisans, or vindictive or misguided government officials. Hurtado v. California, 110 U.S. 516,
20 555 (1984)(J. Harlan, dissenting).

21 In the event a criminal charge survives the scrutiny of a Grand Jury or neutral magistrate,
22 and the defendant is bound over to face a criminal charge in district court, Nevada procedure
23 requires the State to file an Information, or Indictment, containing a plain, concise, and definite
24 written statement of the essential facts constituting the offense charged. Sheriff v. Levinson, 95
25 Nev. 436, 596 P.2d 232 (1979). In cases where allegations go beyond a simple crime and allege a
26 set of facts to which different statutes apply, the key inquiry is what facts or allegations must
27 ultimately be proven to a jury beyond a reasonable doubt. If the allegations ultimately require that
28 separate and distinct facts must be proven beyond a reasonable doubt, then a magistrate must make
of robbery with use of a deadly weapon must be alleged in the charging document and both the

1 robbery and the separate and distinct circumstance that a deadly weapon was used during the
2 course of a robbery must be proven to a jury for a conviction to occur. And the magistrate must
3 make a probable cause finding supporting each part of the allegation. See, e.g., *Bartle v. Sheriff*,
4 92 Nev. 459, 552 P.2d 1099 (1976)(Magistrate was required to find some evidence supporting
5 enhancement as well as underlying crime).

6 **AGGRAVATING CIRCUMSTANCES ARE SEPARATE AND DISTINCT FACTUAL**
7 **ELEMENTS OF A DEATH PENALTY MURDER ALLEGATION AND MUST,**
8 **THEREFORE, BE IDENTIFIED IN THE CHARGING DOCUMENTS AND**
9 **SUBMITTED FOR A PROBABLE CAUSE DETERMINATION, BUT NEVADA LAW**
10 **DOES NOT HONOR THIS REQUIREMENT**

11 The probable cause process, by way of the grand jury or preliminary hearing, applies when
12 the State commences a criminal prosecution by filing a charging document. In the preliminary
13 hearing process, the State files a criminal complaint in justice court, then the State files an
14 information in district court after a neutral magistrate has made a probable cause finding
15 supporting the allegations. In the Grand Jury process, the State submits a proposed indictment to
16 the grand jury, and the Grand Jury returns the indictment after finding probable cause for the
17 charges.

18 Prosecutors claim that the charging documents in murder cases need not identify
19 aggravating circumstances because those circumstances are "sentencing factors," not essential
20 elements of the offense. Therefore, by not including aggravating circumstances in the charging
21 documents, the aggravators are not subject to the scrutiny afforded allegations of criminal
22 offenses.

23 No Nevada statute, Supreme Court Rule, or Nevada Supreme Court opinion has ever
24 required the State to subject aggravating circumstance allegations to pre-trial scrutiny for a
25 probable cause finding. When this argument has been made in the past, the Supreme Court has
26 rejected the argument. *Schoels v. State*, 114 Nev. 109, 966 P.2d 735 (1998), reversed on other
27 grounds, 115 Nev. 33, 975 P.2d 1275 (1999). And the Nevada Supreme Court has stated that
28 sentencing factors need not be scrutinized in the same manner as essential facts of the substantive
crime.

1 The procedure commonly used in Nevada in death penalty cases is consistent with the view
2 that aggravating circumstances require no probable cause finding. Nevada Supreme Court Rule
3 250 allows the State to file a Notice of Intent to Seek the Death Penalty and no mention is made of
4 submitting the aggravators to a neutral magistrate or a grand jury.

5 **UNITED STATES SUPREME COURT DECISIONS IN JONES, APPRENDI AND RING**
6 **RENDER THE NEVADA PROCESS UNCONSTITUTIONAL**
7 **BECAUSE FACTS WHICH CHANGE THE PUNISHMENT CONSTITUTE FACTS**
8 **WHICH MUST BE ALLEGED IN THE CHARGING DOCUMENT,**
9 **THEREBY RECEIVING THE APPROPRIATE SCRUTINY**

10 The United States Supreme Court has ruled that the **Due Process Clause** of the **Fifth**
11 **Amendment** and the **Notice and Jury Trial provisions** of the **Sixth Amendment** require the
12 State to allege any fact (other than prior conviction) that increases the maximum penalty for a
13 crime in the Indictment and that fact must be tried before a jury and proven beyond a reasonable
14 doubt. **Jones v. United States**, 526 U.S. 227 (1999).

15 The **Jones** case concerned a federal carjacking statute which had three separate penalties,
16 depending on whether certain facts were proven. If, for example, a defendant was convicted of
17 simple carjacking, the penalty was up to 15 years in prison. But if a defendant was convicted of
18 carjacking resulting in substantial bodily injury or death, then the defendant faced more severe
19 penalties, including life imprisonment. In **Jones**, the government claimed they were not required
20 to allege the sentencing factor, i.e., whether the crime was a simple carjacking or a carjacking
21 resulting in substantial bodily injury or death, because sentencing factors need not be alleged in an
22 Indictment. But the Supreme Court reversed the conviction and ruled that the so-called
23 "sentencing factors" must be alleged in the charging document.

24 The Supreme Court reiterated this holding in **Apprendi v. New Jersey** where the Court
25 rejected a distinction between "sentencing enhancements" and "elements of the offense:"

26 Any possible distinction between an "element of a felony offense
27 and a "sentencing factor" was unknown to the practice of criminal
28 indictment, trial by jury, and judgment by court-as it existed during
the years surrounding our Nation's founding. As a general rule,
criminal proceedings were submitted to a jury after being initiated by
an indictment containing "all the facts and circumstances which
constitute the offense...stated with such certainty and precision, that

1 the defendant... may be enabled to determine the species of offense
2 they constitute, in order that he may prepare his defense
3 accordingly...and that there may be no doubt as to the judgment
4 which should be given, if the defendant is convicted [authority
5 omitted]. The defendant's ability to predict with certainty the
6 judgment from the face of the felony indictment flowed from the
7 invariable linkage of punishment with crime..."

8 **Apprendi v. New Jersey**, 530 U.S. 466 (2000).

9 Under **Jones** and **Apprendi**, the State must allege aggravating circumstances in the
10 Criminal Complaint or proposed Indictment so there can be no doubt "as to the judgment which
11 should be given, if the defendant is convicted." If a factual circumstance must be alleged in an
12 Indictment or other pleading, then that factual circumstance must receive scrutiny at the grand jury
13 or preliminary hearing proceeding. In other words, if the circumstance has to be alleged in the
14 pleadings, then there must be a probable cause determination regarding the alleged circumstance.

15 The final nail in the coffin of the State's argument about sentencing factors not requiring
16 the scrutiny that other factual allegations must survive came in **Ring v. State**, 536 U.S. 584
17 (2002). The Supreme Court in **Ring** ruled that aggravating circumstances are elements of a capital
18 offense and must be proved beyond a reasonable doubt to a jury.

19 Combining the logic of **Jones**, **Apprendi**, and **Ring** results in the conclusion that an
20 aggravating circumstance is a separate element of a capital murder allegation, to be proved beyond
21 a reasonable doubt.

22 Because separate elements of a criminal charge are alleged in the complaint or proposed
23 indictment, the allegation of the separate elements, or aggravating circumstances, must undergo
24 the rigor of scrutiny that all other alleged crimes must experience.

25 Therefore, aggravating circumstances, these "essential elements" of the State's death
26 penalty murder allegation, must be supported by a probable cause finding prior to trial. Such a
27 process becomes mandatory in the setting of death penalty litigation because of the heightened
28 need for reliability. See, e.g., **Lowenfield v. Phelps**, 484 U.S. 231, 238-39 (1988)("qualitative
difference between death and other penalties calls for a greater degree of reliability when the death
sentence is imposed." (quoting **Lockett v. Ohio**, 438 U.S. 586, 604 (1978)(plurality opinion))); see

1 also Dobbs v. Zant, 506 U.S. 357, 358 (1993)(emphasizing "the importance of reviewing capital
2 sentences on a complete record").

3 **THE STATE'S FAILURE TO PRESENT EVIDENCE SUPPORTING AGGRAVATING**
4 **CIRCUMSTANCES AND THE FAILURE OF THE MAGISTRATE TO MAKE A**
5 **PROBABLE CAUSE FINDING REGARDING THE CIRCUMSTANCES DEPRIVES**
6 **THE DEFENDANT OF THE RIGHT TO USE THE PRE-TRIAL HABEAS CORPUS**
7 **PROCEDURE TO CHALLENGE THE FINDINGS BASED ON A RECORD,**
8 **THUS IMPLICATING EQUAL PROTECTION RIGHTS**

9 When a criminal defendant charged with robbery with a weapon is indicted, that defendant
10 has the right to use the procedures in Chapter 34 of the Nevada Revised Statutes and Rule 3.40
11 of the Eighth Judicial District Court Rules to challenge the sufficiency of the evidence
12 introduced at the grand jury proceeding. Ex parte Stearns, 68 Nev. 155, 227 P.2d 971 (1951),
13 overruled on other grounds, Shelby v. Sixth Judicial Dist. Court, 82 Nev. 213, 418 P.2d 132
14 (1966). And the process of challenging the sufficiency of the evidence means examining a
15 transcript and challenging whether the State has presented some evidence supporting each essential
16 fact of the allegation.

17 Mr. Budd is not allowed to use the pre-trial habeas corpus procedure to challenge the
18 existence of aggravating circumstances because Nevada law has not kept pace with the decisions
19 in Jones v. United States, 526 U.S. 227 (1999) (facts which increase a penalty must be alleged in
20 the pleading documents); Apprendi v. New Jersey, 530 U.S. 466 (2000) (the distinction between
21 sentencing factors and essential elements is meaningless; if a fact increases the penalty, that fact
22 must be alleged in the pleadings); and Ring v. State, 536 U.S. 584 (2002) (aggravating
23 circumstances are essential facts of a capital murder allegation); United States v. Robinson, 367
24 F.3d 278, 284 (5th Cir. 2004) ("Ring's Sixth Amendment holding applies with equal force in the
25 context of a Fifth Amendment Indictment Clause challenge, even though the Supreme court has
26 yet to hold as much in a capital case. As a result, the government is required to charge, by
27 indictment, the statutory aggravating factors it intends to prove to render a defendant eligible for
28 the death penalty, and its failure to do so in this case is constitutional error"); United States v.
Higgs, 353 F.3d 281, 298 (4th Cir. 2003)("...aggravating factors which the government intends to

1 rely upon to render a defendant death -eligible... are the functional equivalent of elements of the
2 capital offenses and must be charged in the indictment...")

3 These cases compel the State to allege the aggravating circumstances in the pleading
4 documents and subject the allegations to the rigor of pre-trial probable cause scrutiny. If this
5 process was followed, Mr. Budd would stand in the same place as other criminal defendants and be
6 able to challenge the sufficiency of the probable cause findings through the pre-trial habeas
7 process; but because Nevada's procedure is deficient and unconstitutional, he is denied the same
8 process afforded other criminal defendants.

9 The Equal Protection Clause of the United States and Nevada Constitutions allows the
10 government some discretion when enacting laws affecting groups of citizens differently. But the
11 practice is unconstitutional if the "classification rests on grounds wholly irrelevant to the
12 achievement of the of the State's objective. McGowan v. Maryland, 366 U.S. 420, 425-26
13 (1961). The United States District Court has previously used the Equal Protection Clause to reject
14 parts of Nevada Supreme Court Rule 250 because the Supreme Court imposed requirements on
15 capital murder defendants which were not imposed on other criminal defendants. . Riley v.
16 Nevada Supreme Court, 763 F. Supp. 446, 455 (D. Nev. 1991).

17 Here, Mr. Budd is not only denied rights afford other criminal defendants, but the denial
18 itself constitutes a suspension of the right to habeas corpus, which is prohibited by the United
19 States and Nevada Constitutions.

20 **BECAUSE NEVADA'S PROCEDURE RELATING TO AGGRAVATING**
21 **CIRCUMSTANCES IS UNCONSTITUTIONAL, LITIGANTS LIKE MR. BUDD MUST**
22 **RELY ON AN EXTRA-STATUTORY PROCEDURE WITH NO STANDARDS, NO**
23 **RECORD, AND NO BURDENS OF PROOF.**

24 As Mr. Budd challenges the sufficiency of the aggravating circumstances alleged against
25 him by the State, he confronts a procedural process without any rules or standards. No statute or
26 rule exists to define what he must do to challenge the aggravators. There is also no record.

27 Consider the situation facing Mr. Budd as he seeks to strike the alleged aggravator that the
28 killing occurred to prevent unlawful arrest. There is no record of how the State seeks to prove that
aggravator. There is nothing in the State's Notice of Intent which specifically identifies how the


1 State intends to prove that aggravator. And no neutral magistrate or grand jury has wrestled with
2 figuring out how the State intends to prove that aggravator. All of which leaves Mr. Budd in a
3 legal no-man's land. He can stand before the Court and claim the aggravator does not apply to the
4 killing of which he is accused. But there are no standards or procedures or burdens of proof; it is
5 just Mr. Budd and the allegations of the State, and the law cited in this motion demonstrates that
6 this type of amorphous procedure is just plain wrong.

7 CONCLUSION

8 For all of the reasons discussed in this Motion, the Defense respectfully requests that this
9 Honorable Court dismiss the State's Notice of Intent to Seek the Death Penalty because the
10 procedure upon which that Notice is based is unconstitutional. In the event the Court denies this
11 motion, the Defense respectfully requests a Stay of Proceedings so this matter may be appealed to
12 the Nevada Supreme Court by way of a Petition for Writ of Mandamus.

13 DATED this 4 day of October, 2004.

14 PHILIP J. KOHN
15 CLARK COUNTY PUBLIC DEFENDER

16 
17 By _____
18 HOWARD S. BROOKS, #3374
19 Deputy Public Defender
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● All Brief Due - 9/29 ●

NLL

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARMANDO CORTINAS, JR. A/K/A
ARMANDO BENAVIDES CORTINAS,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND, THE HONORABLE
KATHY A. HARDCASTLE, DISTRICT
JUDGE,

Respondents,

and,

THE STATE OF NEVADA,
Real Party in Interest.

No. 43356

FILED

AUG 30 2004

JANETTE M. LUGG
CLERK OF SUPREME COURT
BY *J. Ruben*
DEPUTY CLERK

ORDER REQUIRING BRIEFS, SCHEDULING
ORAL ARGUMENT, AND GRANTING STAY

This is an original petition for a writ of prohibition or mandamus in a case in which the State seeks a death sentence.

Pursuant to NRAP 21(b), we direct the parties to provide this court with briefs addressing the following question: in cases in which it seeks the death penalty, is the State required to establish probable cause for the alleged aggravating circumstances and to charge them in an indictment or information? We direct petitioner to serve and file an opening brief not longer than 20 pages within 30 days of the date of this order. The State shall serve and file an answering brief not longer than 20 pages within 30 days of service of the opening brief. If he chooses, petitioner may serve and file a reply brief not longer than 10 pages within 20 days of service of the answering brief.

This court has determined that en banc oral argument will assist it in resolving this matter. Accordingly, the clerk of this court shall schedule this matter for argument on the first en banc oral argument calendar available after the briefing schedule set forth above. Argument shall be limited to 30 minutes.

Petitioner has also moved for a stay of the district court proceedings. The motion is unopposed. Cause appearing, we grant petitioner's motion and we stay the proceedings below until further order of this court.

It is so ORDERED.

Becker J.
Becker

Agosti J.
Agosti

Gibbons J.
Gibbons

cc: Hon. Kathy A. Hardcastle, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 18th day of October, 2004, at 9:00 a.m.

DATED this 4 day of October, 2004.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By Howard S. Brooks, #3374
Deputy Public Defender

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RECEIPT OF COPY of the above and foregoing motion is hereby acknowledged
this 4 day of October, 2004.

CLARK COUNTY DISTRICT ATTORNEY

By Smith & Olney

ORIGINAL

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Shirley B. Pennington
CLERK

1 PHILIP J. KOHN, PUBLIC DEFENDER
2 NEVADA BAR NO. 0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
5 (702) 455-4685
6 Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 v.

10 GLENFORD ANTHONY BUDD,

11 Defendant.

CASE NO. C193182X

DEPT. NO. XVIII

DATE: October 18, 2004
TIME: 9:00 a.m.

12 **MOTION 13: DEFENDANT BUDD'S MOTION TO BAR**
13 **THE ADMISSION OF CUMULATIVE VICTIM IMPACT EVIDENCE**
14 **IN VIOLATION OF THE DUE PROCESS LAW**

15 COMES NOW Defendant GLENFORD BUDD, by and through Deputy Public
16 Defender HOWARD S. BROOKS, and moves this Honorable Court to bar the admission of
17 cumulative victim impact evidence in a possible penalty phase proceeding.

18 This Motion is made and based upon the declaration of Howard S. Brooks and the
19 attached memorandum of Points and Authorities.

20 DATED this 4 day of October, 2004.

21 PHILIP J. KOHN
22 CLARK COUNTY PUBLIC DEFENDER

23 By Howard S. Brooks
24 HOWARD S. BROOKS, #3374
25 Deputy Public Defender
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1. I am an attorney licensed to practice law in the State of Nevada; I am a Deputy Public Defender assigned to represent Glenford Budd in this case, and I am familiar with allegations made by the State and the procedural history of this case.

3. There are three alleged victims in this case. All three are young black men, and all three have families.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

Amel S Buol

HOWARD S. BROOKS

POINTS AND AUTHORITIES

FACTS

The Defense anticipates the State may seek to introduce a massive amount of evidence pertaining to the character of the three deceased young men and the impact of their deaths on the community.

ARGUMENT

The United States Supreme Court has held that the Eighth Amendment does not per se bar the admission of certain victim impact evidence during the sentencing phase of a capital case. Payne v. Tennessee, 501 U.S. 808 (1991). The court did, however, acknowledge that victim impact evidence can be so unduly prejudicial as to render the sentencing proceeding fundamentally unfair and violative of the due process clause of the Fourteenth Amendment. *Id.* at 818-20.

The victim impact evidence which the State may produce at the sentencing phase of this case may be so cumulative, redundant and oppressive in nature as to encourage a shifting of the focus of the sentencing proceedings away from the defendant and on to the victims and their families. Such a result was not intended by the court in Payne, which repeatedly reasoned the sentencing authority was entitled to see only “a quick glimpse of the life petitioner chose to extinguish.” *Id.* at 818-22.

The introduction of such cumulative, redundant and oppressive victim impact evidence is so unduly prejudicial, that it violates the principles of fundamental fairness, the Constitutional requirements of the due process clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 8, of the due process clause of the Nevada Constitution.

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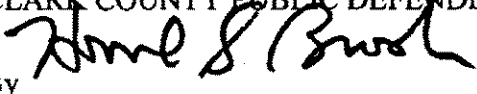
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CONCLUSION

For the reasons expressed above, the Defense respectfully requests that this Honorable Court limit the State to no more than three witnesses to testify about the personal characters of the deceased and the impact of their deaths on family and the community.

DATED this 4 day of October, 2004.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By 
HOWARD S. BROOKS, #3374
Deputy Public Defender

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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 18th day of October, 2004, at 9:00 a.m.

DATED this 4 day of October, 2004.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By Howard S. Brooks
HOWARD S. BROOKS, #3374
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Motion to Bar the Admission of Cumulative Victim Impact Evidence in Violation of the Due Process Law is hereby acknowledged this 4 day of October, 2004.

CLARK COUNTY DISTRICT ATTORNEY

By Judith L. Olney

ORIGINAL

FILED

OCT 4 3 53 PM '04

Philip J. Kohn
CLERK

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

GLENFORD ANTHONY BUDD,

Defendant.

CASE NO. C193182X

DEPT. NO. XVIII

DATE: October 18, 2004

TIME: 9:00 a.m.

**MOTION 11: DEFENDANT BUDD'S MOTION TO STRIKE ALLEGATIONS
OF CERTAIN AGGRAVATING CIRCUMSTANCES ALLEGED IN STATE'S
NOTICE OF INTENT TO SEEK DEATH PENALTY**

DEFENDANT GLENFORD BUDD, by and through Deputy Public Defender HOWARD S. BROOKS, moves this Honorable Court to strike certain allegations in the State's Notice of Intent to Seek Death Penalty filed July 25, 2003.

This motion is made and based on the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article I, Section 8, of the Nevada Constitution, the statutory and common law of the State of Nevada, the law cited in the attached memorandum of points and authorities, and all papers and pleadings on file in this case.

DATED this 4 day of October, 2004.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By *Howard S. Brooks*
HOWARD S. BROOKS, #3374
Deputy Public Defender

COPIES: 2

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2. The State filed an Information on June 26, 2003 alleging Glenford Budd is guilty of three counts of murder with use of a deadly weapon.

4. The Defense seeks the dismissal of each alleged aggravating circumstance; and also seeks the dismissal of the Notice of Intent because the aggravating circumstances alleged in the document are without foundation or are illegal.


HOWARD S. BROOKS

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **FACTS**

3 The State charged Glenford Budd with three counts of murder with use of a deadly weapon
4 in a Criminal Complaint, and a preliminary hearing was held on June 16 and 25, 2003.

5 Lazon Jones testified at the preliminary hearing that he was at his home at the Saratoga
6 Palms Apartments in Las Vegas just before midnight on May 26, 2003 with Derrick Jones, Dajon
7 Jones, Jason Moore, and "A.I.," who is Glenford Budd. Lazon testified they were all friends. He
8 said A.I. left the apartment, came back, then went into the bedroom occupied by Dajon Jones.
9 Lazon heard a gunshot from that room, and got up and ran from the apartment. As he ran away, he
10 heard more gunshots. Other witnesses testified the dead bodies of Derrick Jones, Dajon Jones, and
11 Jason Moore were found in the apartment, and a coroner testified they had all been shot to death.

12 Another witness, a neighbor, testified she saw through the window, when Glenford Budd
13 came into the den from the bedroom, and she saw Glenford Budd shoot one of the two young men
14 in that room.

15 There was also testimony that Budd told one person he had a dream about killing three
16 people over a drug deal, and an uncle, Winston Budd, testified Glenford told him he killed three
17 people because they "ripped him off" in a drug transaction.

18 The Criminal Complaint did not allege any aggravating circumstances, and the magistrate
19 did not make a ruling of probable cause relating to any aggravating circumstances. The State
20 presented no evidence the killing occurred to stop a lawful arrest or to effect an escape from
21 custody.

22 Based on the bindover from Justice Court, the State filed an Information alleging three
23 counts of murder with a weapon. Since the issue of probable cause regarding aggravators was
24 never alleged at Justice Court, the magistrate made no finding regarding aggravating
25 circumstances, and the Information does not allege aggravating circumstances.

26 The State filed a Notice of Intent to Seek the Death Penalty in District Court, and alleged
27 two aggravators: that in this case, more than one killing occurred; and the killing occurred to
28 prevent a lawful arrest or to effect an escape from custody.

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ARGUMENT

**THE COURT HAS THE INHERENT AUTHORITY TO STRIKE ALLEGED
AGGRAVATING CIRCUMSTANCES NOT SUPPORTED BY THE EVIDENCE**

The Nevada Supreme Court has previously ruled that a district court should strike allegations of aggravating circumstances not supported by the evidence. In Witter v. State, 112 Nev. 908, 921 P.2d 886 (1996), the Nevada Supreme Court ruled the District Court should have stricken the aggravating circumstance of "murder committed to avoid or prevent a lawful arrest or to effect an escape from custody" where there were no facts to suggest the defendant killed to prevent his arrest.

Under the factual circumstances that exist in this case, based on the evidence presented to the Justice Court, the Defense submits this District Court has the discretion and duty to strike aggravating circumstances not supported by evidence.

**THE STATE'S CLAIM THE KILLING OCCURRED TO AVOID OR PREVENT A
LAWFUL ARREST HAS NO FACTUAL FOUNDATION AND SHOULD BE DISMISSED**

The State alleges in the Notice of Intent the three killings "were committed to avoid a lawful arrest or effect an escape from custody." NRS 200.033(5).

First, we know Glenford Budd was not in custody when the killing occurred in this case; therefore, the final six words of this alleged aggravating circumstance clearly do not implicate Budd.

The question is whether any evidence supports the allegation the "murder was committed to avoid or prevent a lawful arrest."

How can the State prove the killing was completed to prevent arrest? How can the Defense defend against such an allegation?

The heart of this aggravator is the intent of the defendant. Assuming the defendant did, in fact, kill the alleged victim, what was the intent of the defendant in killing the person?

Most courts have held that an aggravating factor dealing with murder committed for the purpose of avoiding arrest or prosecution, concealing a crime or its perpetrator, eliminating witnesses, and the like is applicable to killings of both law enforcement officers and

1 civilians, and to murders committed to avoid arrest or prosecution
2 for another offense perpetrated in connection with the murder itself,
3 as well as for an unrelated antecedent crime. But since the effect of
4 virtually any murder is to silence the victim as a witness, many
5 courts have declared that where the victim is not a law enforcement
6 officer, the State must clearly show that prevention of detection and
7 arrest for the other offense was the dominant or only motive for the
8 killing...

9 Annotation, *Sufficiency of Evidence for Purposes of Death Penalty, to Establish Statutory*
10 *Aggravating Circumstance That Murder Was Committed to Avoid Arrest or Prosecution, to Effect*
11 *Escape From Custody, to Hinder Governmental Function or Enforcement of Law, and the Like -*
12 *Post-Gregg Cases*, 64 ALR 4th 755, 766 (1988).

13 A statement by the defendant can support the finding of the aggravator. See, e.g.,
14 Leatherwood v. Mississippi, 435 So. 2d 645 (1983)(discussion occurred between defendant and
15 accomplice concerning need to eliminate witnesses to planned robbery of cab driver). But even a
16 statement may not be sufficient when it is a general threat. Commonwealth v. Christy, 511 Pa.
17 490, 515 A.2d 832 (1986)(In a conversation prior to a burglary of a building and the killing of a
18 security guard who confronted him, the defendant made general threats about witnesses, but never
19 said he intended to kill anyone).

20 The classic circumstance proving this aggravator occurs would a defendant kills a police
21 officer as he flees the scene, or he kills a police officer when the officer attempts to arrest him.
22 Eddings v. State, 616 P.2nd 1159 (1980), reversed on other grounds, 455 U.S. 104; Murray v.
23 State, 455 So. 2d 53 (Ala 1983), reversed on other grounds, 455 So.2d 72. This is the most
24 common circumstance for this aggravator, and dozens of cases illustrate this application.

25 Another classic example occurs when a defendant kills a potential witness who was present
26 when the killing occurred. Washington v. Florida, 362 So.2d 658 (1978)(defendant kills a person
27 during a robbery at a house, then kills the victim's three sisters-in-law because they were in the
28 house). Riley v. Florida, 366 So.2d 19 (1978) (defendant robs business, gags owner , owner's
son, and manager, then shot two of them in the head because an accomplice expressed concern
about ability of these victims to identity them).

1 The Nevada Supreme Court has considered this aggravator in the context of a defendant
2 killing a person during the course of a crime. In Witter v. State, 112 Nev. 908, 921 P.2d 886
3 (1996), the defendant confronted a woman in a parking lot of a casino. He entered a car with the
4 woman, and commenced sexually assaulting her. The sexual assault was interrupted by the
5 husband, who knocked on the window and asked what was going on. The defendant stabbed the
6 husband, then resumed the attack on the woman. The Supreme Court ruled there was no evidence
7 the killing occurred to prevent arrest, but rather was done so the defendant could resume his attack
8 on the woman.

9 APPLICABILITY OF LAW TO CURRENT CASE

10 In Witter, the Supreme Court essentially said, look at the evidence that exists and if there
11 is a reason why the crime occurred, then that must be the reason. Witter killed the woman's
12 husband so he could resume his attack on the wife, which is what he was doing before the husband
13 interfered.

14 In the present case, the State introduced evidence why Glenford Budd killed the three dead
15 persons. The State introduced testimony that Budd told a witness he dreamed he killed three
16 people over some drugs. The State also introduced testimony Budd told his uncle he killed three
17 people because they "ripped him off" for drugs. Applying the logic of Witter, the evidence the
18 State introduced rules. The evidence says, Budd killed these three people out of revenge after he
19 perceived they stole from him in some exchange involving drugs. The State cannot now say,
20 ignore the evidence and assume he must have killed these people to avoid lawful arrest.

21 There is no evidence in the record suggesting Budd killed anybody to avoid lawful arrest.
22 The sheer magnitude of the crime, killing three people, obviously suggests he never thought about
23 the consequences of what he was allegedly doing.

24 If the Court allows this allegation to go to a jury, then the Defense is in an impossible
25 situation: how can the allegation be defended against? The State will be asking the jury to assume
26 the killing occurred to prevent a lawful arrest. How can one defend against assumptions?

27 Using the facts from the preliminary hearing transcript, there exists no foundation for this
28 aggravator, and it should be dismissed. If the Court is inclined to sustain the aggravator, then the

1 Defense respectfully requests an evidentiary hearing prior to trial to require the State to show
2 actual real evidence that the killing occurred to prevent a lawful arrest.

3 **THE MULTIPLE KILLING AGGRAVATOR IS UNCONSTITUTIONAL BECAUSE THE**
4 **STATUTE REPRESENTS AN EX POST FACTO PROVISION, VIOLATING**
5 **CONSTITUTIONAL SAFEGUARDS, AND THE CONTROL OVER WHETHER THE**
6 **KILLING IS AGGRAVATED RESTS WITH THE STATE, NOT THE DEFENSE**

7 The language of NRS 200.033(12) details the aggravating circumstance:

8 The defendant has, in the immediate proceeding, been convicted of
9 more than one offense of murder in the first or second degree. For
10 the purposes of this subsection, a person shall be deemed to have
11 been convicted of a murder at the time the jury verdict of guilt is
12 rendered or upon pronouncement of guilty by a judge or judges
13 sitting without a jury.

14 The aggravating circumstance does not target persons who killed more than one person; but
15 rather, those who have been "convicted" of first degree murder for killing more than one person.
16 The fact of conviction, however, occurs after the killing, and therefore mandates an additional
17 punishment for an earlier crime if the State, acting through its agents, and relying on the Court
18 system, "convicts" the defendant of a certain crime. The earlier alleged crime, the killing, does
19 not become an "aggravated killing" until or unless the State decides to prosecute and convict the
20 defendant of first or second degree murder. So the control over whether the earlier crime is
21 aggravated or not rests with the State, not the defendant.

22 By allowing the State to define whether an earlier killing was aggravated, the statute builds
23 an Ex Post Facto provision into its very structure. An Ex Post Facto provision has been defined as
24 the creation of a law that inflicts a penalty, or a greater penalty, on a person for an action; and the
25 enhancement of the penalty occurs after the act has been completed. Black's Law Dictionary at
26 520 (5th Ed 1979). Ex post facto laws are prohibited by Article 1, Section 9, of the United States
27 Constitution. And Article 1, Section 10, of the U.S. Constitution prohibits the states from passing
28 ex post facto laws.

Technically, NRS 200.033(12) is not an ex post facto provision. Because the law itself has
only been applied to events occurring after its passage. But the law codifies an ex post facto
provision which allows the State to retroactively make a killing an "aggravated" killing. A killing

1 should be aggravated or not aggravated, according to the facts, when the killing occurs. To allow
2 the fact of aggravation to be premised on what the prosecutor accomplishes at a later time
3 introduces an arbitrary element into the process, undermining reliability.

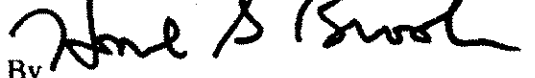
4 Because the statute premises the punishment on later, arbitrary, acts of the government, the
5 statute is unconstitutional and the allegation of this aggravator should be stricken.

6
7 **BECAUSE BOTH ALLEGED AGGRAVATORS SHOULD BE STRICKEN,**
8 **THE NOTICE OF INTENT SHOULD BE DISMISSED**

9 Both aggravating circumstances alleged by the State should be dismissed. Therefore, the Notice of
10 Intent should be dismissed as well.

11
12 DATED this 4 day of October, 2004.

13 PHILIP J. KOHN
14 CLARK COUNTY PUBLIC DEFENDER

15 By 
16 HOWARD S. BROOKS, #3374
17 Deputy Public Defender
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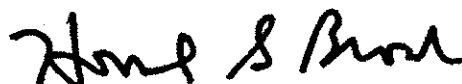
1 **NOTICE OF MOTION**

2 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

3 YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the
4 above and foregoing Motion on for hearing before the Court on the 18th day of October, 2004, at
5 9:00 a.m.

6 DATED this 4 day of October, 2004.

7 PHILIP J. KOHN
8 CLARK COUNTY PUBLIC DEFENDER

9 

10 By Howard S. Brooks, #3374
11 Deputy Public Defender

12 **RECEIPT OF COPY**

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15 RECEIPT OF COPY of the above and foregoing motion is hereby acknowledged
16 this 4 day of October, 2004.

17 CLARK COUNTY DISTRICT ATTORNEY

18
19 By Judith L Olney

Shirley Blumquist
CLERK

OPPS
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
DAVID P. SCHWARTZ
Chief Deputy District Attorney
Nevada Bar #000398
200 South Third Street
Las Vegas, Nevada 89155-2211
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GLENFORD ANTHONY BUDD,
#1900089

Defendant.

CASE NO: C193182
DEPT NO: XVIII

STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PROHIBIT THE
STATE FROM USING PEREMPTORY CHALLENGES TO REMOVE MINORITIES
FROM THE JURY

DATE OF HEARING: 10/18/04
TIME OF HEARING: 9:00 a.m.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
DAVID P. SCHWARTZ, Chief Deputy District Attorney, and hereby submits the attached
Points and Authorities in Opposition to Defendant's Motion in Limine to Prohibit the State
From Using Peremptory Challenges to Remove Minorities From the Jury.

This opposition 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.

1 POINTS AND AUTHORITIES

2 Without question, the Equal Protection Clause in the United States Constitution
3 prohibits the discrimination of jury selection based upon race or gender grounds. Batson v.
4 Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986); J.E.B. v. Alabama, 511 U.S.
5 127, 114 S.Ct. 1419, 128 L.Ed.2d 89 (1994). The same restrictions apply equally to the
6 defense. Georgia v. McCollum, 505 U.S. 42, 112 S.Ct. 2348, 120 L.Ed.2d 33 (1992).

7 Defense counsel is asking this Honorable Court to enter an order prohibiting the State
8 from using peremptory challenges to remove minorities from the jury if the use of such
9 peremptory challenges is racially motivated.

10 The assertion by defense counsel that any prosecutors from the Clark County District
11 Attorney's Office used their peremptory challenges to eliminate all minorities from the jury
12 is an offensive and unsupported allegation, which the State vehemently denies. Defense
13 counsel's citation of cases in his Declaration to establish a "pattern" of activity is particularly
14 inappropriate because it is his own opinion.

15 The State does not intend to exercise its peremptory challenges to excuse jurors based
16 upon their race or gender. In the same vein, the defense may not exercise its peremptory
17 challenges based upon race or gender.

18 Race has absolutely no bearing in this trial. The murders in this case were not racially
19 motivated. All three of the victims and at least one of the witnesses in this case are the same
20 race as Defendant.

21 The instant motion should be denied. It is superfluous for the Court to entertain an
22 order prohibiting illegal conduct. If and when defense counsel observes what it deems to be

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3 the improper exercise of the State's peremptory challenges, defense counsel has the
4 obligation to object and make a record.

5 DATED this 6th day of October, 2004.

6 Respectfully submitted,

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

10

11 BY /s/ DAVID P. SCHWARTZ
12 DAVID P. SCHWARTZ
13 Chief Deputy District Attorney
14 Nevada Bar #000398

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S
MOTION IN LIMINE TO PROHIBIT THE STATE FROM USING PEREMPTORY
CHALLENGES IN RACIALLY DISCRIMINATORY FASHION, was made this 6th
day of November, 2004, by facsimile transmission to:

PUBLIC DEFENDER
FAX#455-5112

BY /s/ M. Beaird
Employee of the District Attorney's Office

/mb


CLERK

NISD
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
DAVID P. SCHWARTZ
Chief Deputy District Attorney
Nevada Bar #000398
200 South Third Street
Las Vegas, Nevada 89155-2211
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GLENFORD ANTHONY BUDD,
#1900089

Defendant.

CASE NO: C193182

DEPT NO: XVIII

AMENDED NOTICE OF INTENT TO SEEK DEATH PENALTY

COMES NOW, the State of Nevada, through DAVID ROGER, Clark County District Attorney, by and through DAVID P. SCHWARTZ, Chief Deputy District Attorney, pursuant to NRS 175.552 and NRS 200.033 and declares its intention to seek the death penalty at a penalty hearing. Furthermore, the State of Nevada discloses that it will present evidence of the following aggravating circumstances:

1. NRS 200.033(12) The Defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree.

The facts on which the State will rely to prove this aggravating circumstance are set forth in the preliminary hearing transcript.

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1 In essence, the State will prove that on May 26, 2003, Defendant shot and killed Jason
2 Moore, DaJon Jones and Derrick Jones.

3 DATED this 7th day of October, 2004.

4 Respectfully submitted,

5 DAVID ROGER
6 Clark County District Attorney
Nevada Bar #002781

7 BY /s/ DAVID P. SCHWARTZ
8 DAVID P. SCHWARTZ
9 Chief Deputy District Attorney
Nevada Bar #000398

10
11 CERTIFICATE OF FACSIMILE TRANSMISSION

12 I hereby certify that service of AMENDED NOTICE OF INTENT TO SEEK
13 DEATH PENALTY, was made this 8th day of October, 2004, by facsimile
14 transmission to:

15
16 PUBLIC DEFENDER
FAX#455-5112

17
18
19 BY /s/ M. Beaird
Employee of the District Attorney's Office

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CLERK

1 **NISD**
2 **DAVID ROGER**
3 Clark County District Attorney
4 Nevada Bar #002781
5 **DAVID P. SCHWARTZ**
6 Chief Deputy District Attorney
7 Nevada Bar #000398
8 200 South Third Street
9 Las Vegas, Nevada 89155-2211
10 (702) 455-4711
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,)

13 Plaintiff,)

14 -vs-)

15 GLENFORD ANTHONY BUDD,)
16 #1900089)

17 Defendant.)

Case No. C193182

Dept No. XVIII

**NOTICE OF EVIDENCE IN SUPPORT OF
AGGRAVATING CIRCUMSTANCES**

18 COMES NOW, the State of Nevada, through DAVID ROGER, Clark County District
19 Attorney, by and through DAVID P. SCHWARTZ, Chief Deputy District Attorney, pursuant
20 to Supreme Court Rule 250, NRS 175.552 and NRS 200.033, and declares its intention to
21 present the following evidence in support of aggravating circumstance at a penalty hearing:

22 In support of the sole aggravating circumstance, the State will introduce evidence that
23 on May 26, 2003, the Defendant shot and killed three young men, Jason Moore, DaJon Jones
24 and Derrick Jones.

25 Dr. Worrell will testify that she performed an autopsy on each of the above-
26 mentioned individuals. She will testify that in her expert opinion each individual died as a
27 result of a gunshot wound.

28 Greg Lewis will testify that the Defendant told him that he (Defendant) was

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1 responsible for the deaths of the three individuals whom he claims ripped off his drugs.

2 Additionally, at the penalty hearing the State will call members of each victim's
3 family (as yet unknown to the State) who will testify regarding the character of the victim
4 and the impact his death has had on them.

5 Additionally, the State may call a Custodian of Records from the Las Vegas
6 Metropolitan Police Department or a correction's officer (as yet unidentified) to testify
7 regarding any disciplinary actions taken against the Defendant while in the Clark County
8 Detention Center.

9 The State may call a Custodian of Records from the Clark County Juvenile Division
10 regarding any arrests Defendant may have incurred as a juvenile.

11 DATED this 7th day of October, 2004.

12 Respectfully submitted,

13 DAVID ROGER
14 Clark County District Attorney
Nevada Bar #002781

15
16
17 BY /s/ DAVID P. SCHWARTZ
18 DAVID P. SCHWARTZ
Chief Deputy District Attorney
19 Nevada Bar #000398

20 **CERTIFICATE OF FACSIMILE TRANSMISSION**

21 I hereby certify that service of NOTICE OF EVIDENCE IN SUPPORT OF
22 AGGRAVATING CIRCUMSTANCES, was made this 8th day of October, 2004, by
facsimile transmission to:

23 PUBLIC DEFENDER
24 FAX#455-5112

25
26 BY /s/ M. Beaird
27 Employee of the District Attorney's Office
28

mb


CLERK

RSPN
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
DAVID P. SCHWARTZ
Chief Deputy District Attorney
Nevada Bar #000398
200 South Third Street
Las Vegas, Nevada 89155-2212
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,)
)
-vs-)
)
GLENFORD ANTHONY BUDD,)
#1900089)
)
Defendant.)

CASE NO: C193182
DEPT NO: XVIII

STATE'S RESPONSE TO DEFENDANT BUDD'S MOTION TO STRIKE
ALLEGATIONS OF CERTAIN AGGRAVATING CIRCUMSTANCES ALLEGED IN
STATE'S NOTICE OF INTENT TO SEEK DEATH PENALTY

DATE OF HEARING: 10/18/04
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
DAVID P. SCHWARTZ, Chief Deputy District Attorney, and hereby submits the attached
Points and Authorities in Opposition to Defendant's Motion To Strike Allegations Of Certain
Aggravating Circumstances Alleged In State's Notice Of Intent To Seek Death Penalty.

This response is made and based upon all the papers and pleadings on file herein, the
attached points and authorities in support hereof, and oral argument at the time of hearing, if
deemed necessary by this Honorable Court.

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2 ARGUMENT

3 WHETHER NRS 200.033(5) IS SUPPORTED BY THE EVIDENCE

4 Initially, the State theorized that the Defendant killed one of his three victim's
5 because that individual had "ripped him off". Thereafter, the Defendant killed the remaining
6 two victim's because they had witnessed the killing, knew the Defendant, and could have
7 identified him. This is essentially what happened in Domingues v. State 112 Nev. 683, 917
8 P.2d 1364 (1996) wherein the Court upheld the aggravating circumstance under NRS
9 200.033(5).

10 However, the State has recently been in contact with a witness, Greg Lewis, who told
11 the police of conversations he had with the Defendant. According to Mr. Lewis, the
12 Defendant told him that he killed the three victims because of a drug rip off and basically
13 lost control.

14 Based upon the newly discovered evidence, the State will withdraw the aggravating
15 circumstance listed in NRS 200.033(5) and file an Amended Notice of Intent to Seek the
16 Death Penalty.

17 NRS 200.033(12) IS CONSTITUTIONAL

18 Defendant cites no authority for his position that NRS 200.033(12) is
19 unconstitutional.

20 However, the Nevada Supreme Court has addressed this issue and upheld the
21 constitutionality of this aggravating circumstance. Green v. State, 113 Nev. 157, 931 P.2d
22 54 (1997). In Greene, supra, the Nevada Supreme Court stated:

23 Greene contends that NRS 200.033(12) is unconstitutionally vague and
24 ambiguous because it cannot be differentiated from NRS 200.033(2).
NRS 200.033 states in pertinent part:

25 The only circumstances by which murder of the first degree may
26 be aggravated are:

27 2. The murder was committed by a person who was
previously convicted of another murder or of a felony involving
the use of threat of violence to the person of another.
28 ...

1 12. The defendant has, in the immediate proceeding, been
2 convicted of more than one offense of murder in the first or
3 second degree. For the purposes of this subsection, a person
shall be deemed to have been convicted of a murder at the time
the jury verdict of guilt is rendered or upon pronouncement of
guilty by a judge or judges sitting without a jury.

4 In fact, the difference between NRS 200.033 subsections 2 and 12 is readily
5 apparent. Under subsection 2, any convictions for murders or crimes of
6 violence *in previous proceedings* can be properly admitted to aggravate first
7 degree murder. Hogan v. Ely State Prison, 109 Nev. 952, 956-57, 860 P.2d
8 710, 714 (1993), *cert. denied*, ___ U.S. ___, 117 S.Ct. 334 (1996); Riley v.
9 State, 107 Nev. 205, 217, 808 P.2d 551, 558 (1991), *cert. denied*, 514 U.S.
10 1052, 115 S.Ct. 1431 (1995). On the other hand, subsection 12 aggravates first
11 degree murder where the accused is convicted of more than one murder *in the*
12 *instant proceeding*. Thus, we conclude that Greene's claim that NRS
200.033(12) is unconstitutional is meritless.

Further, we also conclude that NRS 200.033(12) was constitutional as applied
in this case. Greene was convicted of the murders of both Farris and Payton
and therefore, "in the immediate proceeding, [he has] been convicted of more
than one offense of murder in the first or second degree." Thus, there is
sufficient evidence to support this aggravator.

Based upon the above-cited authority, the State respectfully asks this Honorable Court
to deny the defendant's request to dismiss the aggravating circumstance based upon NRS
200.033(12).

DATED this 7th day of October, 2004.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ DAVID P. SCHWARTZ
DAVID P. SCHWARTZ
Chief Deputy District Attorney
Nevada Bar #000398

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of STATE'S RESPONSE TO DEFENDANT BUDD'S
MOTION TO STRIKE ALLEGATIONS OF CERTAIN AGGRAVATING
CIRCUMSTANCES ALLEGED IN STATE'S NOTICE OF INTENT TO SEEK DEATH
PENALTY, was made this 8th day of October, 2004, by facsimile transmission to:

PUBLIC DEFENDER
FAX#455-5112

BY /s/ M. Beaird
Employee of the District Attorney's Office

/mb


CLERK

OPPS
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
DAVID P. SCHWARTZ
Chief Deputy District Attorney
Nevada Bar #000398
200 South Third Street
Las Vegas, Nevada 89155-2211
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO: C193182
)	
-vs-)	DEPT NO: XVIII
)	
GLENFORD ANTHONY BUDD,)	
#1900089)	
)	
Defendant.)	

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO PRECLUDE THE
INTRODUCTION OF VICTIM IMPACT EVIDENCE PERTAINING TO VICTIM AND
FAMILY MEMBERS CHARACTERIZATIONS

DATE OF HEARING: 10/18/04
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
DAVID P. SCHWARTZ, Chief Deputy District Attorney, and hereby submits the attached
Points and Authorities in Opposition to Defendant's State's Opposition To Defendant's
Motion To Preclude The Introduction Of Victim Impact Evidence Pertaining To Victim
Family Members Characterizations.

This opposition 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.

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POINTS AND AUTHORITIES

ARGUMENT

It is the State's position that anyone can be called as a witness during the Penalty Hearing in a capital case and give testimony regarding the character of the victim. This testimony is not limited to a statement about impact only. In Payne v. Tennessee, 501 U.S. 808, 111 S.Ct. 2597 (1991) the United States Supreme Court overruled Booth v. Maryland, 482 U.S. 805 (1989) and South Carolina v. Gathers, 490 U.S. 805 (1989). Booth and Gathers both proscribed "victim impact evidence during the penalty phase of a capital trial on the grounds that such evidence was per se barred by the Eighth Amendment."

In overruling both Booth and Gathers, the United States Supreme Court in Payne stated:

We thus hold that if the State chooses to permit the admission of victim impact evidence and prosecutorial argument on that subject, the Eighth Amendment erects no per se bar. A State may legitimately conclude the evidence about the victim and about the impact of the murder on the victim's family is relevant to the jury's decision as to whether or not the death penalty should be imposed. There is no reason to treat such evidence differently than other relevant evidence is treated.

Nevada has addressed the Payne decision on several occasions. In Homick v. State, 108 Nev. 127, 825 P.2d 600 (1992) the Nevada Supreme Court stated:

The key to criminal sentencing in capital cases is the ability of the sentencer to focus upon and consider both the individual characteristics of the defendant and the nature and impact of the crime he committed. Only then can the sentencer truly weigh the evidence before it and determine a defendant's just deserts.

The Nevada Supreme Court has further held that the State may legitimately conclude that evidence about the victim and about the impact of the murder on the victim's family is relevant to the jury's decision as to whether or not the death penalty should be imposed. Lane v. State, 110 Nev. 1156, 1165-1166, 881 P.2d 1358, 1365 (1994), cert. denied, 115 S. Ct. 1444 (1995); citing, Payne v. Tennessee, 501 U.S. 808, 827, 111 S. Ct. 2597, 2609 (1991).

1 NRS 175.552(3) states, in part, that "[i]n the [penalty] hearing, evidence may be
2 presented concerning aggravating and mitigating circumstances relative to the offense,
3 defendant or victim and on any other matter which the court deems relevant to sentence,
4 whether or not the evidence is ordinarily admissible." While a victim may address the
5 impact that the crime has had on the victim and the victim's family, a victim can only
6 express an opinion regarding the defendant's sentence in non-capital cases. Witter v.
7 State, 112 Nev. 908, 921 P.2d 886, 896 (1996)(citing, Randell v. State, 109 Nev. 5, 846 P.2d
8 278 (1993)). Thus, statements that emphasize the devastating effect the crime itself, as well
9 as the loss of a loved one, has had on the victim's family are admissible victim-impact
10 statements. Id. (Citing, NRS 175.552(3))¹.

11 DATED this 12th day of October, 2004.

12 Respectfully submitted,

13 DAVID ROGER
14 Clark County District Attorney
Nevada Bar #002781

15
16
17 BY /s/ DAVID P. SCHWARTZ
18 DAVID P. SCHWARTZ
19 Chief Deputy District Attorney
20 Nevada Bar #000398
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26 ¹ NRS 176.015(3) is similar in scope to statutes enacted in Arizona and California. Courts in both states take expansive
27 views of their victim impact statutes, concluding that they are designed to grant victims expanded rights, rather than to
28 limit the rights of victims." Randell v. State, 109 Nev. 5, 7, 846 P.2d 278, 280 (1993) (citations omitted). NRS
176.015 creates in certain defined "victims" the undeniable right to appear and express their views concerning the crime,
the person responsible, and the impact on the victim.
Wood v. State, 111 Nev. 428, 430, 892 P.2d 944, 946 (1995)

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S
MOTION TO PRECLUDE THE INTRODUCTION OF VICTIM IMPACT EVIDENCE
PERTAINING TO VICTIM FAMILY MEMBERS CHARACTERIZATIONS, was made
this 12th day of October, 2004, by facsimile transmission to:

PUBLIC DEFENDER
FAX# 455-5112

BY /s/ M. Beaird
Employee of the District Attorney's Office

/mb


CLERK

1 **OPPS**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781

5 DAVID P. SCHWARTZ
6 Chief Deputy District Attorney
7 Nevada Bar #000398
8 200 South Third Street
9 Las Vegas, Nevada 89155-2212
10 (702) 455-4711
11 Attorney for Plaintiff

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,)

15 Plaintiff,)

16 -vs-)

17 GLENFORD ANTHONY BUDD,)
18 #1900089)

19 Defendant.)

CASE NO: C193182

DEPT NO: XVIII

20 STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISQUALIFY ALL
21 POTENTIAL JURORS WHO WOULD AUTOMATICALLY VOTE FOR THE DEATH
22 PENALTY IN THE EVENT OF A FIRST DEGREE MURDER CONVICTION

23 DATE OF HEARING: 10/13/04
24 TIME OF HEARING: 9:00 A.M.

25 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
26 DAVID P. SCHWARTZ, Chief Deputy District Attorney, and hereby submits the attached
27 Points and Authorities in Opposition to Defendant's Motion To Disqualify All Potential
28 Jurors Who Would Automatically Vote For The Death Penalty In The Event Of A First
Degree Murder Conviction.

This opposition 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.

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2 POINTS AND AUTHORITIES

3 Defendant has requested that the court exclude for cause any potential juror who
4 would automatically vote for the death penalty. It is quite true that a juror that cannot
5 equally consider the full range of punishments should be removed for cause upon the proper
6 objection by either the prosecution or the defense.

7 The United States Supreme Court held in Witherspoon v. Illinois, 391 U.S. 510
8 (1968), that the prosecution could properly ask a potential juror whether that juror would
9 automatically vote against the death penalty regardless of the facts of the case. Likewise, in
10 Morgan v. Illinois, 504 U.S. 719 (1992) the Supreme Court held that the defense was entitled
11 to ask a potential juror whether the juror would automatically vote for death regardless of the
12 facts of the case. It is now well established as a matter of Constitutional law that a juror who
13 would in no case vote for capital punishment, regardless of the instruction, is not an
14 impartial juror. Similarly, a juror who will automatically vote for the death penalty in every
15 case will fail in good faith to consider the evidence of aggravating and mitigating
16 circumstances and must be removed for cause. Both the State and the defense are entitled to
17 a sufficient voir dire examination to inquire whether the views of prospective jurors on the
18 death penalty would disqualify them from sitting.

19 The State has a legitimate interest in obtaining a jury that can impartially decide all
20 the issues in a capital case. As the United States Supreme Court held in Lockhart v. McCree,
21 476 U.S. 162 at 170:

22 The State may challenge for cause prospective jurors whose opposition to the death
23 penalty is so strong that it would prevent them from impartially determining a capital
24 defendant's guilt or innocence. Ipso facto, the State must be given the opportunity to
25 identify such prospective jurors by questioning them at voir dire about their views of the
26 death penalty.

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2 This Court should decide which jurors should be excused for cause because of their
3 views on the death penalty only after voir dire examination.

4 DATED this 21st day of September, 2004.

5 Respectfully submitted,

6 DAVID ROGER
7 Clark County District Attorney
8 Nevada Bar #002781

9
10 BY /s/ DAVID P. SCHWARTZ
11 DAVID P. SCHWARTZ
12 Chief Deputy District Attorney
13 Nevada Bar #000398

14 CERTIFICATE OF FACSIMILE TRANSMISSION

15 I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S
16 MOTION TO DISQUALIFY ALL POTENTIAL JURORS WHO WOULD
17 AUTOMATICALLY VOTE FOR THE DEATH PENALTY IN THE EVENT OF A FIRST
18 DEGREE MURDER CONVICTION, was made this 21st day of September, 2004, by
19 facsimile transmission to:

20 PUBLIC DEFENDER
21 FAX#455-5112

22
23 BY /s/ M. Beaird
24 Employee of the District Attorney's Office
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CLERK

OPPS

STEWART L. BELL
Clark County District Attorney
Nevada Bar #000477
DAVID P. SCHWARTZ
Chief Deputy District Attorney
Nevada Bar #000398
200 South Third Street
Las Vegas, Nevada 89155-2211
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GLENFORD ANTHONY BUDD,
#1900089

Defendant.

CASE NO: C193182

DEPT NO: XVIII

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO
BIFURCATE PENALTY PHASE**

DATE OF HEARING: 10/13/04

TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through DAVID P. SCHWARTZ, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Bifurcate Penalty Phase.

This Opposition 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.

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1 **POINTS AND AUTHORITIES**

2 In the Defendant's Motion to Bifurcate Penalty Phase, he asks the Court to
3 procedurally bifurcate the penalty hearing into two separate proceedings. The hearing would
4 be divided into an "eligibility phase" when a jury would first determine whether one or more
5 aggravating circumstances exist and whether there are any mitigating circumstances
6 sufficient to outweigh the aggravating circumstance. Then the proceeding would move to a
7 "selection phase" where the jury would actually select the appropriate penalty.

8 This peculiar procedure would call for two separate sets of instructions to the jury by
9 the Court, two separate periods of final argument to the jury, including an opening and
10 rebuttal by the State as well as argument by each of the Defendants, and two separate jury
11 deliberations, one after the conclusion of the State's case-in-chief and one at the conclusion
12 of either the Defendants' case-in-chief or the State's rebuttal case. This novel idea is wholly
13 at odds with Nevada's statutory scheme.

14 Section 175.554 of the Nevada Revised Statutes sets forth the charge to a jury in the
15 determination of penalty when a verdict of murder of the first degree is returned:

16 In cases in which the death penalty is sought:

17 1. If the penalty hearing is conducted before a jury, the court
18 shall instruct the jury *at the end of the hearing*, and shall include
19 in its instructions the aggravating circumstances alleged by the
20 prosecution upon which evidence has been presented during the
trial or at the hearing. The court shall also instruct the jury as to
the mitigating circumstances alleged by the defense upon which
evidence has been presented during the trial or at the hearing.

21 2. The jury . . . shall determine: (a) Whether an aggravating
22 circumstance or circumstances are found to exist; (b) Whether a
23 mitigating circumstance or circumstances are found to exist; and
24 (c) Based upon these findings, whether the defendant should be
sentenced to life imprisonment with the possibility of parole, life
imprisonment without the possibility of parole or death.

25 Nev. Rev. Stat. § 175.554 (emphasis added). This Section clearly contemplates one, un-
26 bifurcated penalty hearing. It calls for the instruction of the jury "at the end of the hearing."
27 It logically follows that there be one period of argument and one period of jury deliberation.
28 Any other construction would be wholly at odds with logical thinking.

The absurdity of the Defendant's contention would best be illustrated by its application to the guilt phase of a trial. It would allow for a separate instruction, argument and deliberation at the conclusion of the State's case-in-chief. Only if the jury believed that the State had proven a *prima facie* case of a defendant's guilt beyond a reasonable doubt would the defense be required to even *decide* whether to produce any evidence in mitigation. If then after the defense were to put on a case and a jury determined that the State had not proven his guilty beyond a reasonable doubt, would the State then have an opportunity to put on a rebuttal case to muster up additional evidence for an ensuing third round of instruction, argument and deliberation? No doubt the Defendant would find this not only unfair, but also unconstitutional. Indeed, the repercussions of this slippery slope are endless.

CONCLUSION

The relief sought by the Defendant is supported neither by Nevada's statutory scheme nor by its prevailing case law. Based upon all of the foregoing, the Defendant's Motion to Bifurcate Penalty Phase should be denied.

DATED this 21st day of September, 2004.

STEWART L. BELL
Clark County District Attorney
Nevada Bar #000477

BY /s/ DAVID P. SCHWARTZ
DAVID P. SCHWARTZ
Chief Deputy District Attorney
Nevada Bar #000398

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S
MOTION TO BIFURCATE PENALTY PHAS, was made this 21st day of September,
2004, by facsimile transmission to:

PUBLIC DEFENDER
FAX#455-5112

BY /s/ M. Beard
Employee of the District Attorney's Office

mb


CLERK

OPPS

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
DAVID P. SCHWARTZ
Chief Deputy District Attorney
Nevada Bar #000398
200 South Third Street
Las Vegas, Nevada 89155-2211
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GLENFORD ANTHONY BUDD,
#1900089

Defendant.

CASE NO: C193182

DEPT NO: XVIII

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR JURY QUESTIONNAIRE
TO BE COMPLETED BY JURE VENIRE ONE WEEK PRIOR TO TRIAL

DATE OF HEARING: 10/13/04
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
DAVID P. SCHWARTZ, Chief Deputy District Attorney, and hereby submits the attached
Points and Authorities in Opposition to Defendant's Motion For Jury Questionnaire To Be
Completed by Jure Venire One Week Prior to Trial.

This opposition 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

The State submits that utilizing the method suggested by counsel for Defendant in

1 selecting a jury in the case at bar is not necessary to ensure a fair trial for the Defendant and
2 is not in the interest of judicial economy.

3 NRS 175.031 governs the examination of trial jurors in the Nevada courts. It
4 provides:

5 "The court shall conduct the initial examination of prospective jurors and
6 defendant or his attorney and the district attorney are entitled to supplement the
7 examination by such further inquiry as the Court deems proper. Any supplemental
8 examination must not be unreasonably restricted."

9 The Eighth Judicial District Courts have set forth a procedure to implement the
10 aforementioned statute. Rule 7.70 provides:

11 "The judge shall conduct the voir dire examination of the jurors. Proposed voir
12 dire questions by the parties or their attorneys must be submitted to the court in
13 chambers not later than 4:00 p.m. on the judicial day before the day the trial begins.
14 Upon request of counsel, the trial judge may permit such counsel to supplement the
15 judge's examination by oral and direct questioning of any of the prospective jurors.
16 The scope of such additional questions or supplemental examination shall be within
17 reasonable limits prescribed by the trial judge in his sound discretion."

18 The State submits that the method as set forth in the above statutes is an adequate
19 method of selecting a fair and impartial jury in the case at bar.

20 Counsel for Defendant states that the pre-voir dire questionnaire saves time by
21 eliminating the need to repeat routine background questions. However, this has not been the
22 case when such a questionnaire has been utilized. The jury spends half a day filling it out,
23 and counsel spend a great deal of time repeating the questions set out in these questionnaires.
24 The procedure requested by counsel for Defendant does anything but save time in the
25 selection of a fair and impartial jury.

26 Recently in the case of Summers v. State, 102 Nev. 195, 718 P.2d 676 (1986) the
27 Nevada Supreme Court has held that the scope and method of voir dire examination is
28 subject to the sound discretion of the trial court. A number of other state courts have ruled
on this issue. For the most part, in cases in which there hasn't been a great deal of pre-trial
publicity, the courts have ruled that it was not error for the trial court to deny the defendant's
motion for individual voir dire.

The State submits that this is not a case where the court will preclude the Defendant

1 from submitting or asking questions of the jurors. The District Court Rules give the
2 Defendant the opportunity to submit questions to the court. It is the State's position that by
3 utilizing the statutory procedure in selecting a jury in the case at bar a fair and impartial jury
4 will be selected.

5 Wherefore, the State respectfully asks that the defense Motion for Submission of a
6 Pre- Voir Dire Jury Questionnaire be denied.

7 DATED this 21st day of September, 2004.

8 Respectfully submitted,

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

11
12
13 BY /s/ DAVID P. SCHWARTZ
14 DAVID P. SCHWARTZ
15 Chief Deputy District Attorney
Nevada Bar #000398

16 CERTIFICATE OF FACSIMILE TRANSMISSION

17 I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S
18 MOTION FOR JURY QUESTIONNAIRE TO BE COMPLETED BY JURE VENIRE ONE
19 WEEK PRIOR TO TRIAL, was made this 21st day of September, 2004, by facsimile
20 transmission to:
21

22 PUBLIC DEFENDER
23 FAX#455-5112

24
25 BY /s/ M. Beaird
26 Employee of the District Attorney's Office
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CLERK

1 **NOTC**
2 **DAVID ROGER**
3 Clark County District Attorney
4 Nevada Bar #002781
5 **DAVID P. SCHWARTZ**
6 Chief Deputy District Attorney
7 Nevada Bar #000398
8 200 South Third Street
9 Las Vegas, Nevada 89155-2211
10 (702) 455-4711
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 GLENFORD ANTHONY BUDD,
13 #1900089)

14 Defendant.)

CASE NO: C193182

DEPT NO: XVIII

15 NOTICE OF EXPERT WITNESSES

16 [NRS 174.234 (2)]

17 TO: GLENFORD ANTHONY BUDD, Defendant; and

18 TO: PUBLIC DEFENDER, Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
20 NEVADA intends to call expert witnesses in its case in chief as follows:

21 **LOUISE RENHARD** - This witness is an expert in the field of crime scene analysis
22 and is expected to testify thereto.

23 **DAVID WELCH** - This witness is an expert in the field of DNA analysis and is
24 expected to testify thereto.

25 **JAMES KRYLO** - This witness is an expert in the field of firearm/toolmark analysis
26 and is expected to testify thereto.

27 **MARC WASHINGTON** - This witness is an expert in the field of crime scene
28 analysis and is expected to testify thereto.

1 **DR. REXENE WORRELL** - This witness is expected to testify regarding causing
2 and manner of death of the victims.

3 **DAVID HORN** - This witness is an expert in the field of crime scene analysis and is
4 expected to testify thereto.

5 **THOMAS KERN** - This witness is an expert in the field of crime scene analysis and
6 is expected to testify thereto.

7 The substance of each expert witness' testimony and a copy of all reports made by or
8 at the direction of the expert witness has been provided in discovery.

9 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

10
11 DAVID ROGER
12 DISTRICT ATTORNEY
13 Nevada Bar #002781

14 BY /s/ DAVID P. SCHWARTZ
15 _____
16 DAVID P. SCHWARTZ
17 Chief Deputy District Attorney
18 Nevada Bar #000398

19 **CERTIFICATE OF FACSIMILE TRANSMISSION**

20 I hereby certify that service of NOTICE OF EXPERT WITNESS, was made this
21 28th day of September, 2004, by facsimile transmission to:

22 PUBLIC DEFENDER
23 FAX#455-5112

24 BY /s/ M. Beaird
25 _____
26 Employee of the District Attorney's Office

27 mb
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Curriculum Vitae
Las Vegas Criminalistics Bureau
Statement of Qualifications

Name: Louise Renhard
 SS#: 574-22-3560

P# 5223
 DOH: 07-29-96

Date: 11-24-03

CURRENT CLASSIFICATION		
	<i>Classification</i>	<i>Minimum Qualifications</i>
	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
X	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.

FORMAL EDUCATION		
<i>Institution</i>	<i>Major</i>	<i>Degree/Date</i>
University of Alaska	Police Administration	AA degree/1976

TESTIMONY		
Yes	No	

EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Title</i>	<i>Date</i>
LVMPD	Sr. Crime Scene Analyst	7-29-96

Education

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
12-1977	Police Administration	U of Alaska	Associates Degree 1976

Renhard Louise
 Curriculum Vitae
 LVMPD

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07-29 to 08-16-96	Crime Scene Analyst Academy	LVMPD	105
08-16-96	CAPSTUN for Civilians	LVMPD	1.5
09-18,19 & 09-26-96	Civilian Firearm/Use of Force	LVMPD	21
09-20-96	NCIC - Phase II - Limited Access	LVMPD	4
09-27-96	DT Weaponless Defense/Handcuff	LVMPD	3
09-27-96	Combat Shooting Simulator/FATS	LVMPD	1
09-30-96	Duty Weapon Qualification	LVMPD	2
10-24-96	Driver Training - Level 2	LVMPD	8
11-27-96	Ultraviolet (UV) Light Orientation and Safety Presentation	LVMPD	1
02-25-97 to 02-27- 97	Top Gun Training	LVMPD	21
02-27-97	Moot Court - Video	LVMPD	2
03-05-97	Basic Windows 3.1	LVMPD	4
03-30-97	Duty Weapon Qualification	LVMPD	2
04-07-97	Forensic Science	American Institute of Applied Science (AIAS)	260
06-13-97	NCIC - Phase I - Video	LVMPD	20 Min.
07-02-97	Duty Weapon Qualification	LVMPD	2
09-08 to 09-12-97	Crime Scene Technology Workshop 2	Northwestern University, Traffic Institute	40
09-30-97	Duty Weapon Qualification	LVMPD	2
10-02-97	Critical Procedures Test	LVMPD	2
11-03 to 11-07-97	Courtroom Presentation of Evidence: Effective Expert Witness Testimony Workshop	CAT/NWAFS/SWAFS/S AT Joint Meeting	7
12-15 to 12-19-97	Advanced On-Scene Accident Investigation	LVMPD	40

Renhard Louise
Curriculum Vitae
LVMPD

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12-31-97	Duty Weapon Qualification	LVMPD	2
01-09-98	Combat Shooting Simulator/FATS	LVMPD	1
01-30-98	Domestic Violence	LVMPD	1
02-11-98	Trauma Shooting - Video	LVMPD	30 Min.
02-26-98	Clandestine Lab Dangers - Video	LVMPD	30 Min.
03-06-98	Secondary Devices - Video	LVMPD	30 Min.
03-09-98	Cardio-Pulmonary Resuscitation (CPD)	LVMPD	4
03-31-98	Duty Weapon Qualification	LVMPD	2
05-01-98	Applied Neurolinguistic Programming	LVMPD	7
06-06-98	Duty Weapon Qualification	LVMPD	2
08-24 to 08-28-98	Bloodstain Evidence Workshop I	Northwestern University, Traffic Institute	40
09-10-98	Critical Procedures Test	LVMPD	2
09-25-98	Optional Weapon	LVMPD	
12-07-98	Training - Motor Home Driving	LVMPD	4
12-19-98	Duty Weapon Qualification	LVMPD	2
02-23 to 02-25-99	Latent Print Identification	Law Enforcement Officers Training School, sponsored by LVMPD	24
03-16-99	Award Presentation and PR Photography - LVMPD	LVMPD	2
03-30-99	Duty Weapon Qualification	LVMPD	2
06-15-99	Duty Weapon Qualification	LVMPD	2
08-30 to 09-01-99	Clandestine Laboratory Safety Certification Course, Occasional Site Worker	LVMPD	24
09-21-99	Duty Weapon Qualification	LVMPD	2
08-23 to 08-27-99	Bloodstain Evidence Workshop 2	Northwestern University, Traffic Institute	40
01-20-00	Latent Fingerprint Development Workshop	U.S. Secret Service	8
05-22 to	Practical Homicide Investigation	P.H.I., Investigative	

Renhard Louise
Curriculum Vitae
LVMPD

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05-24-00	(Advanced Course of Instruction)	Consultants, Inc.	24
06-13-00	Crime Scene Analyst Certification (Certificate being sent)	IAI	
08-01 to 08-02-00	C.P.R. Instructor Course	LVMPD	14
09-06 to 09-08-00	Shooting Incident Reconstruction	Forensic Identification Training Seminars	24
04-11 to 04-13-01	3 rd Annual Educational Conference Officer Involved Shootings	NSDIAI	3
"	Expert Witness	"	2
"	Death Investigations	"	2
	04-17-02 *****		
10-08-01	Bloodstain Pattern Analysis - Certificate # 10 - completed proficiency exercises	LVMPD	3
11-13-01	Bloodstain Pattern Analysis - Angle of Impact Proficiency Exercise - Certificate #26	LVMPD - Criminalistics Bureau	3
04-03-02	Documentation of Footwear & Tire Impressions	LVMPD - Criminalistics Bureau	1
04-01-02	Clandestine Laboratory Safety - Fingerprint Processing	LVMPD - Criminalistics Bureau	1
04-02-02	Forensic Anthropology	LVMPD - Criminalistics Bureau	1.5
04-01-02	Chemical Enhancements of Bloodstains, Preliminary Steps	LVMPD - Criminalistics Bureau	1
05-06-02	Major Case Prints	LVMPD - Criminalistics Bureau	3
08-04 to 08-10-02	87 th International Educational Conference - See below	IAI	
"	Forensic Archaeology/Scenes Involving Skeletal Remains	"	8
"	W-11: Forensic Archaeology/Scenes Involving Skeletal Remains (Buried Remains) Field Exercise	"	8

“	W-14: Forensic Archaeology/Scenes Involving Skeletal Remains (Scattered Surface Remains) Field Exercise	“	8
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LAS VEGAS METROPOLITAN POLICE DEPARTMENT FORENSIC LABORATORY STATEMENT OF QUALIFICATIONS

Date: 11-26-02

Name: David Welch P#: 1418 Classification: Criminalist II

Current Discipline of Assignment: DNA Analysis

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances	X	Blood Alcohol	X
Toolmarks		Breath Alcohol	X
Trace Evidence - hairs	X	Arson Analysis	X
Toxicology	X	Firearms	
Latent Prints		Crime Scene Investigations	X
Serology	X	Clandestine Laboratory Response Team	X
Document Examination		DNA Analysis	X
Quality Assurance		Technical Support /	

EDUCATION			
<i>Institution</i>	<i>Dates Attended</i>	<i>Major</i>	<i>Degree Completed</i>
Northeastern University; Boston, Ma	1975 - 1976, 1984	Forensic Chemistry	MS
UNLV; Las Vegas, Nv	1972 - 1975	Biology	BS
USAF	1968 - 1969	Electronics/Navigation Repair	Certified

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Mixture Interpretation Workshop	Arlington, VA	11/02
Perkin Elmer Florida DNA Training Session V	Miami, FL	5/00
Advanced AmpFISTR and 310 Genetic Analyzer	New Iberia, LA	11/98
Forensic Statistics in DNA Analysis	San diego, CA	7/98
Capillary Electrophoresis Workshop	Las Vegas, NV	11/97

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ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Principles of DNA Typing	FBI Academy / Fredricksburg, VA	9/97
Forensic Amplitype PM/DQA1 PCR	Perkin-Elmer / Foster City, Ca	6/96
Forensic Amplitype DQA PCR	California Institute of Criminalistics / Sacramento, Ca	1/96
ETS-Plus training, E.M.I.T.	SYVA Company / San Jose, Ca	8/92
Laboratory Aspects of Forensic Urine Drug Testing	University of Utah, Center for Human Toxicology / Salt Lake City, Utah	11/90
Instrumental Analysis of Explosives and Explosive Residues	FBI Academy / Quantico, Va	4/88
Chromatographic Methods in Forensic Science	FBI Academy / Quantico, Va	5/86
Current concepts in Toxicology	University of Texas / San Antonio, Tx	3/86
Arson Accelerant Detection Course	Bureau of Alcohol, Tobacco, and Firearms / Rockville, Maryland	12/83
Internship - Forensic Laboratory	LVMPD / Las Vegas, Nv	6/75 thru 8/75
Electronics Course/Navigation Repair	United States Air Force / Biloxi, Mi	9/68 thru 5/69
Symposiums:		
8 th CODIS User's Conference	Arlington, VA	11/02
12 th International Symposium on Human Identification (Promega)	Biloxi, Mississippi	10/01
6th International Symposium on Human Identification	Phoenix, Az	10/95
International Symposium on Forensic Toxicology	Quantico, Va	6/92
International Symposium on Controlled Substance	Quantico, Va	3/88
National Symposium on Arson Investigation	Las Vegas, Nv	10/84
Meetings:		
American Academy of Forensic Science	Seattle, WA	02/01
American Academy of Forensic Science	San Francisco, CA	2/98
Joint Meeting: CAT, NWAFS, SWAFS, SAT	Las Vegas, NV	11/97
American Academy of Forensic Science	Seattle, Wa	2/95
International Association for Chemical Testing	Denver, Co	4/94

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Statement of Qualifications

Name: David Welch

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ADDITIONAL TRAINING / SEMINARS

<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Joint Meeting: Society of Forensic Toxicologists & California Association of Toxicologists	Phoenix, Az	10/93
Nevada Judges Winter Seminar	Las Vegas, Nv	1/92
American Academy of Forensic Science	Las Vegas, Nv	2/89
California Association of Toxicologists	Long Beach, Ca	11/88
California Association of Toxicologists	San Francisco, Ca	4/88
American Academy of Forensic Science	Las Vegas, Nv	2/85
American Academy of Forensic Science	Anaheim, Ca	2/84

COURTROOM EXPERIENCE

<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>
United States District Court	Various	_ 10
Clark County District Court	Various	_ 150
Las Vegas Justice Court	Various	_ 300
Clark County District Court	Serology / DNA	_ 25
Various other Courts	Controlled Substance / Toxicology / Alcohol	_ 25
Las Vegas Municipal Court	Toxicology/Alcohol	_ 50
Esmeralda County District Court	Controlled Substance / Toxicology / Alcohol	_ 1
Lincoln County District Court	Controlled Substance / Toxicology / Alcohol	_ 1
Nye County District Court	Controlled Substance / Toxicology / Alcohol	_ 1

EMPLOYMENT HISTORY

<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
Las Vegas Metropolitan Police Department	Criminalist II	1982 - present
University of Nevada, Las Vegas	Staff / Part time - Department of Criminal Justice	1985 - present
Space Flex Corporation, Los Angeles, Ca	Manufacturing Engineer / Project	1980 - 1982

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EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
	Manager	
Las Vegas Metropolitan Police Department	Crime Laboratory - Criminalist I	1976 - 1980
United States Air Force - Nellis AFB	Electronic Navigation Technician	1968 - 1972
PROFESSIONAL AFFILIATIONS		
<i>Organization</i>	<i>Date(s)</i>	
American Academy of Forensic Scientists	1993	
PUBLICATIONS / PRESENTATIONS:		
None		
OTHER QUALIFICATIONS:		
Fellow - American Board of Criminalistics, 1999 - "Certified Molecular Biologist"		
Diplomate - American Board of Criminalistics, 1996 - "Certified Generalist - Criminalistics"		

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
 FORENSIC LABORATORY
 STATEMENT OF QUALIFICATIONS**

Date: 5-12-03

Name: James Krylo P#: 5945 Classification: Firearms / Toolmark Examiner

Current Discipline of Assignment: Firearms / Toolmarks

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Blood Alcohol	
Toolmarks	X	Breath Alcohol	
Trace Evidence		Arson Analysis	
Toxicology		Firearms	X
Latent Prints	X	Crime Scene Investigations	X
Serology		Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	
Quality Assurance		Technical Support /	

EDUCATION			
Institution	Dates Attended	Major	Degree Completed
California State University, Long Beach	9/76 - 12/80	Criminalistics	B.S.

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
CAC / NWAFS Training Seminar - Colt Armorer's Workshop	Reno, NV	4/03
Southwestern Association of Forensic Scientists	Scottsdale, AZ	11/02
Association of Firearm and Tool Mark Examiners - O.F. Mossberg & Sons, Inc "Field Armorer's Course"	San Antonio, TX	5/02
Association of Firearm and Tool Mark Examiners -	San Antonio, TX	5/02

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Statement of Qualifications

Name: James Krylo

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ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Hi-Point Firearms Armorer's Course		
Association of Firearm and Tool Mark Examiners - Ricochet Analysis Workshop	San Antonio, TX	5/02
Association of Firearm and Tool Mark Examiners - 33 rd Annual Training Seminar	San Antonio, TX	5/02
National Integrated Ballistic Information Network - NIBIN Training	Largo, FL	3/02
Techniques in Firearms Identification Course - FBI Academy	Quantico, VA	2/02
Shot Show	Las Vegas, NV	2/02
Southern California Firearms Study Group	San Bernadino, CA	11/01
Digital Imaging Workshop	Las Vegas, NV	10/01
Digital Imaging Workshop	Las Vegas, NV	9/01
Association of Firearm and Tool Mark Examiners Training Seminar	Newport Beach, CA	7/01
Forensic Identification Training Seminars - Advanced Shooting Incident Reconstruction	Las Vegas, NV	9/00
Association of Firearm and Tool Mark Examiners Training Seminar	St. Louis, MO	6/00
Forensic Identification Training Seminars - Shooting Incident Reconstruction	Las Vegas, NV	2/00
Association of Firearm and Tool Mark Examiners Training Seminar	Williamsburg, Va	7/99
National Forensic Science Technology Center Laboratory Auditing	Las Vegas, NV	6/99
NV State Division for the International Association for Identification Conference	Las Vegas, NV	4/99
Washington State Criminal Justice Training Center / Washington State Law Enforcement Firearms Instructors Association Training Seminar	Seattle, WA	1998
FBI Bullet Trajectory and Shooting Reconstruction School	Los Angeles, CA	1998
Remington Armorer's course	Bellevue, WA	1997
Mnemonic Systems Inc. Introduction to "Drugfire"	Washington, DC	1997

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ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Course		
International Association of Bloodstain Pattern Analysts Training Seminar	Seattle, WA	1997
Forensic Technology "IBIS" Training Course	Tacoma, WA	1997
FBI Gunshot Residue School	Marysville, WA	1997
Oehler Ballistics Workshop	Fredricksberg, TX	1996
Heckler & Koch MP5/Rifle Armorer's Course	Tacoma, WA	1996
Washington State Law Enforcement Firearms Instructors Association Training Seminar	Seattle, WA	1995
Washington State Criminal Justice Training Center / Washington State Law Enforcement Firearms Instructors Assoc. Training Seminar	Seattle, WA	1995
Federal Cartridge Co. Law Enforcement Ammunition and Ballistics Seminar	Tacoma, WA	1995
Colt M16 / AR15 Armorer's course	OR	1995
Washington State Law Enforcement Firearms Instructors Assoc. Training Seminar	Seattle, WA	1994
Range Management Services Inc. Managing Lead Hazards in Indoor Firing	Olympia, WA	1994
Glock Armorer's Course	Oregon City, OR	1994
Washington State Criminal Justice Training Center / Washington State Law Enforcement Firearms Instructors Association Training Seminar	Seattle, WA	1993
Smith & Wesson Pistol Armorer's course	Bellevue, WA	1993
SigSauer Pistols Armorer's course	Raleigh, NC	1993
Ruger Revolver Familiarization course	Raleigh, NC	1993
Ruger Armorer's course	Tacoma, WA	1993
Assoc. of Firearm And Toolmark Examiners Annual Training Seminar	Raleigh, NC	1993
Washington State Law Enforcement Firearms Instructors Assoc. Training Seminar	Seattle, WA	1992
Smith & Wesson Revolver Armorer's course	Galt, CA	1992
Oregon State Police Advanced Firearms Training	OR	1992

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Statement of Qualifications

Name: James Krylo

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ADDITIONAL TRAINING / SEMINARS

<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Beretta Armorer's Course	Tacoma, WA	1992
Washoe Co. Sheriff's Office Advanced Crime Scene Reconstruction	Reno, NV	1991
Midwestern Association of Forensic Scientists Blood Spatter Workshop		1990
International Association for Identification Pacific Northwest Division Training Seminar	Yakima, WA	1990
International Assoc. of Bloodstain Pattern Analysts Training Seminar	Reno, NV	1990
Washington State Criminal Justice Training Center Homicide Investigation	Seattle, WA	1989
Kodak/Nikon Law Enforcement Photography	Tacoma, WA	1989
International Association for Identification Pacific Northwest Division Training Seminar	Spokane, WA	1989
Assoc. of Firearm and Toolmark Examiners Seminar	Seattle, WA	1988
Washington State Patrol Leaf Marijuana Identification	Shelton, WA	1987
Washington State Criminal Justice Training Center / FBI Advanced Latent Fingerprint Techniques	Seattle, WA	1986
Loctite Corp. Cyanoacrylate Fuming for Latent Fingerprint Techniques		1985
International Association for Identification Pacific Northwest Division Training Seminar	Olympia, WA	1985
Washington State Criminal Justice Training Center / FBI Fingerprint Identification	Seattle, WA	1984
Association of Firearm and Toolmark Examiners Training Seminar	San Mateo, CA	1983

COURTROOM EXPERIENCE

<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>
Federal - Washington (Tacoma)	Latent Prints	1
Municipal - California (Orange County)	Latent Prints	5
Superior - California (Orange County)	Latent Prints	2
Federal - Nevada (Las Vegas)	Firearms	1

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Statement of Qualifications

Name: James Krylo

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COURTROOM EXPERIENCE

<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>
District - Nevada (Clark County)	Firearms	5
Superior - Washington (King & Pierce Counties)	Latent Prints	11
Coroner's Inquest - Nevada (Clark County)	Firearms	2
Coroner's Inquest - Washington (King County)	Firearms	4
District - Washington (Pacific County)	Firearms	1
Grand Jury - California (Orange County)	Firearms	1
Grand Jury - Nevada (Clark County)	Firearms	1
Grand Jury - Federal (Seattle, WA)	Firearms	1
Justice - Nevada (Las Vegas)	Firearms	1
Juvenile - California (Orange County)	Firearms	1
Juvenile - Washington (Pierce and King Counties)	Firearms	4
Military - USMC (El Toro, CA)	Firearms	1
Superior - California (Orange County)	Firearms	11
Superior - Washington (Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, King, Kitsap, Klicitat, Lewis, Mason, Pacific, Pierce, San Juan, Skamania, Snohomish, and Thurston Counties)	Firearms	105

EMPLOYMENT HISTORY

<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
Las Vegas Metropolitan Police Department	Firearm/Toolmark Examiner	1998 - present
Washington State Patrol	Forensic Scientist	1991 - 1998
Pierce County Sheriff's Department	Identification Officer	1986 - 1991
Seattle Police Department	Identification Technician	1984 - 1986
Orange County Sheriff's Department	Forensic Specialist	1981 - 1984
Anaheim Police Department	Identification Technician	1981

PROFESSIONAL AFFILIATIONS

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Statement of Qualifications

Name: James Krylo

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2

<i>Organization</i>	<i>Date(s)</i>
Association of Firearm and Toolmark Examiners	1993 - present
PUBLICATIONS / PRESENTATIONS:	
<i>BRI 12 GA/.500 Sabot Bullet - AFTE Journal - October 1983</i>	
<i>Trigger Pull Statistics - AFTE Journal - January 1985</i>	
<i>Drop Testing a 45 Auto Colt 1911 - AFTE Journal - Spring 1997</i>	
<i>Cartridge Interchangeability in a Norinco Pistol - AFTE Journal - Summer 2000</i>	
OTHER QUALIFICATIONS:	
Received a State of Washington Vocational Education Certificate to teach "Fingerprint Quality Control Technician"	

Curriculum Vitae

**Las Vegas Criminalistics Bureau
Statement of Qualifications**

Name: Marc Washington

P# 4725

Date: 8-28-03

CURRENT CLASSIFICATION		
	<i>Classification</i>	<i>Minimum Qualifications</i>
	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
X	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.
FORMAL EDUCATION		
<i>Institution</i>	<i>Major</i>	<i>Degree/Date</i>
UNLV	Criminal Justice	Degree 1991
TESTIMONY		
<i>Yes</i>	<i>No</i>	
EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Title</i>	<i>Date</i>
LVMPD	Sr. Crime Scene Analyst	1994

WASHINGTON, MARC

P# 4725

CRIMINALISTICS

BUREAU - FIELD

SENIOR CSA

SS#: 563-04-5327

DOH: 07-05-94

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
1991	Criminal Justice	UNLV	Degree
07-16-94	NCIC Phase I Certification - Video	LVMPD	20 Min.
08-02-94	New Civilian Employee Orientation	LVMPD	7
09-01-94	Driver Training - Level 2	LVMPD	8
09-94	Bloodborne Pathogens - Video	LVMPD	2
02-14-94	Latent Print Development Techniques	LVMPD	7
02-17-95	Latent Print Development Techniques	LVMPD	21
03-17-95	Personal Protection & Self-Defense	LVMPD	4
03-31-95	Duty Weapon Qualification	LVMPD	1
04-11-95	Patrol Response to Clandestine Labs & Biker Gangs	LVMPD	7
05-13-95	Forensic Science (Youngsville, NC)	American Institute of Applied Science	260
08-04-95	Contemporary Issues/Use of Force	LVMPD	7
09-30-95	Duty Weapon Qualification	LVMPD	1
10-16-95	Verbal Judo	LVMPD	7
03-31-96	Duty Weapon Qualification	LVMPD	1
04-15-96	Combat Shooting Simulator/FATS	LVMPD	1
06-06 to 06-07-96	Interview and Interrogation	LVMPD	14
06-11-96	CAPSTUN Training	LVMPD	1.5
07-22-96	Gunshot & Stab Wounds: A Medical Examiner's View	Barbara Clark Mims Associates	8
10-07 to 10-11-96	Fingerprint Classification	Law Enforcement Officers Training School	40
09-23 to 09-27-96	Crime Scene Technology II	Northwestern University, Traffic Institute	40
06-30-96	Duty Weapon Qualification	LVMPD	2
09-30-96	Duty Weapon Qualification	LVMPD	2
10-11-96	Fingerprint Classification		8
01-14, 15, & 01-16-97	Top Gun Training	LVMPD	21

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DATE	CLASS TITLE	AGENCY	CREDIT HOURS
02-27-97	Moot Court - Video	LVMPD	2
03-12 to 03-14-97	Practical Homicide Investigation	P.H.I., Investigative Consultants, Inc.	21
03-13-97	Ultraviolet (UV) Light Orientation and Safety Presentation	LVMPD	1
03-19, 20, & 03-26-97	Civilian Use of Force & Firearm Training	LVMPD	21
03-30-97	Duty Weapon Qualification	LVMPD	2
06-12-97	Critical Procedures Test	LVMPD	
06-13-97	NCIC Phase I - Video	LVMPD	20 Min.
11-21-97	Alternate Weapon Qualification	LVMPD	
11-24-97	Driver Training - Class I	LVMPD	24
12-16-97	Backup Weapon Qualification	LVMPD	
12-19-97	NIK Poly Certification/Academy	LVMPD	4
12-19-97	Completed Basic Police Training Academy - LVMPD Police Officer from 12-97 to 04-98	LVMPD	
01-01-98	NCIC Recertification 2/Guide	LVMPD	1
01-02-98	Evidence Impound	LVMPD	2
03-31-98	Duty Weapon Qualification	LVMPD	2
06-30-98	Duty Weapon Qualification	LVMPD	2
08-24 to 08-28-98	Bloodstain Evidence Workshop I	Northwestern University, Traffic Institute	40
09-21 to 09-25-98	Investigative Photography I	Northwestern University, Traffic Institute	40
09-29-98	Backup Weapon Qualification	LVMPD	
10-06-98	Critical Procedures Test	LMVDPD	2
12-04-98 1999	Active Member in the IAI - Member # 16576 Active Member in the IAI - Member # 16576	IAI IAI	
12-17-98	Duty Weapon Qualification	LVMPD	2
01-13-99	Training - Motor Home Driving	LVMPD	4
03-30-99	Duty Weapon Qualification	LVMPD	2
04-28 to 04-30-99	First Annual Educational Conference JFK-MLK Evidence - NSDIAI	NSDIAI	2
"	Laboratory Photography	NSDIAI	2

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DATE	CLASS TITLE	AGENCY	CREDIT HOURS
"	DNA Evidence	NSDAI	2
"	Latent Prints on Skin	NSDAI	2
05-24-99	Critical Procedures Test	LVMPD	2
06-18-99	Duty Weapon Qualification	LVMPD	2
06-30-99	Optional Weapons	LVMPD	15
08-23 to 08-27-99	Bloodstain Evidence Workshop 2	Northwestern University, Traffic Institute	40
08-3 to 09-01-99	Clandestine Laboratory Safety Certification Course, Occasional Site Worker	LVMPD	24
09-21-99	Duty Weapon Qualification	LVMPD	2
02-16 to 02-18-00	Shooting Incident Reconstruction	Forensic Identification Training Seminars	24
02-21-01	Cultural Awareness	LVMPD	7
04-11 to 04-13-01	NSDAI - 3 rd Annual Educational Conference Florazine	NSDAI	2
"	Bloodstain Report Writing	"	2
"	Footwear Recovery	"	2
10-15-01	Bloodstain Pattern Analysis - Angle of Impact Proficiency Exercise - Certificate #17	LVMPD Criminalistics Bureau	3
02-06-02	Certified as Senior Crime Scene Analyst	International Association for Identification (IAI)	
03-30-02	Documentation of Footwear & Tire Impressions	LVMPD	1
04-02-02	Objective Approach to the Crime Scene	LVMPD	1
04-08-02	Clandestine Laboratory Safety - Fingerprint Processing	LVMPD	1
07-29-02	Write Right Seminar	LVMPD	6
07-30-02	Grammar Follow-up	LVMPD	6
08-04 to 08-10-02	87 th International Educational Conference - See below	IAI	
"	W-39: Intermediate Dye Staining Workshop	"	2
"	W-57: Examination of Bloodstained Clothing	"	4
"	W-60: Impact Pattern Reconstruction	"	2
01-20 to 01-24-03	Ridgeology Science Workshop - Forensic Identification Training Seminars	LVMPD	40

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DATE	CLASS TITLE	AGENCY	CREDIT HOURS
03-03	Accident Photography (Fatal Detail)	LVMPD	
06-04-03	Evidence Impounding - Areas of Concern	LVMPD	3

Curriculum Vitae

RUBY REXENE WORRELL, M.D.

Deputy Medical Examiner
Clark County Coroner/Medical Examiner Office
1704 Pinto Lane
Las Vegas, NV 89106
Phone: (702) 455-3210
Fax: (702)455-3101
REX@co.clark.nv.us

PERSONAL

Single (divorced)
Daughter: Joanna Marie Myers, age 28

EDUCATION

1999-2001 Fellowship in Forensic Pathology, Office of the Medical Examiner,
Cook County
1996-1999 Pathology Resident, Cook County Hospital
1991-1996 Ross university School of Medicine NY (M.D. Feb 1996)
1980-1990 MetroState College, Denver Colorado (B.S. Biology 1990)
1976-1978 St. Anthony's Hospital, Paramedic School (Certification 1978)

LICENSURE

Nevada Medical License #9890 (active)
Illinois Physician and Surgeon's License July (active)

PROFESSIONAL MEMBERSHIPS

American Society of Clinical Pathologists
American Medical Association
College of American Pathologists

HONORS AND AWARDS

Deans List Ross University School of Medicine
Alaskan Native Scholarship Award
Denver Teamsters Award of Excellence
St. Lukes Hospital Paramedic of the Year

EMPLOYMENT

2001-present Office of Clark County Coroner/Medical Examiner, Las Vegas,
Nevada, Deputy Medical Examiner
1999-2001 Office of the Medical Examiner, Cook County Illinois, fellowship
2000-2001 Chicago Medical School (anatomy lab lecture)
1996-2000 Employment Physical and Vaccinations (part-time)
1996-1999 Cook County Hospital, Anatomic Pathology Resident
1978-1991 Denver General Hospital, Senior Paramedic

RUBY R. WORRELL
Curriculum Vitae
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RESEARCH AND PRESENTATIONS

Case Study "My Name is Holly" 2000

Gross Anatomy Lab

(3 hour weekly class for Medical Students, paid position)

Interpretation of Electrocardiograms, basic, 1999-2000

(annual lecture for Family Practice Residents)

Advanced Electrocardiogram Interpretation 1996-2000

(annual lecture for Family Practice Residents)

Traumatic Injuries to the Neck, 1999

Short segment Barrets Esophagitis research, 1999-present

Illinois Registry Presentation, 1997-1998

Illinois Society of Pediatric Pathologists, 1998-1999

Research Assistant, Perforating injuries of the abdomen, Denver General Hospital

Cardiac Arrest Study, retro field study, Denver General Hospital

Curriculum Vitae

Las Vegas Criminalistics Bureau Statement of Qualifications

Name: David R. Horn

P# 1928

Date: 10-5-03

CURRENT CLASSIFICATION		
	<i>Classification</i>	<i>Minimum Qualifications</i>
	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
X	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.

FORMAL EDUCATION		
<i>Institution</i>	<i>Major</i>	<i>Degree/Date</i>
National University	Business Administration	MBA 10-88
U of CA-Riverside	Political Science	BA 12-71
Antelope Valley College	Liberal Arts	AA 6-70

TESTIMONY		
<i>Yes</i>	<i>No</i>	

EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Title</i>	<i>Date</i>
LVMPD	Sr. Crime Scene Analyst	9-12-79

HORN, DAVID

P# 1928

CRIMINALISTICS BUREAU -

FIELD

SENIOR CSA

SS#: 562-84-5461

DOH: 09-12-79

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
6-70	Liberal Arts	Antelope Valley College	AA
12-71	Political Science	U of Ca-Riverside	BA
11-26 to 11-30-79	Fingerprint Classification	LVMPD/F.B.I.	40
03-31 to 04-04-80	Advanced Latent Fingerprint Techniques	LVMPD/F.B.I.	40
08-07-80	Use of Deadly Force Course	LVMPD	8
06-28 to 07-02-82	Advanced Officer Training	LVMPD	40
11-29 to 12-03-82	Advance Crime Scene Investigation	LVMPD	40
03-06-84	Photography & Casting of Tire and Footwear Impressions, Techniques of Processing Bodies for Fingerprints, Measurement of Tire Tracks to Determine Wheel Base, and Blood Evidence Collection	LVMPD	8
08-06-84	Advanced Crime Scene Investigation	LVMPD	3
10-22 to 10-26-84	Advanced Criminal Investigations - Homicide Seminar	LVMPD	20
01-6 to 01-17-86	Homicide Investigation	Southern Police Institute, Louisville, KY	80
01-28-86	Fingerprint Fuming Seminar	Dura Print	8
03-19 to 03-20-87	Homicide Investigation Seminar	N.L.E.I.	16
03-23 to 03-27-87	Latent Print Testimony	FBI	40
10-88	Business Administration	U of CA-Riverside	MBA
09-30-88	Driver Training	LVMPD	8
12-24-90	Drug Testing Film	LVMPD	30 Minutes
09-28-90	Stress Management	LVMPD	4
10-16-90	Child Abuse/Neglect	LVMPD	4
10-29-90	Communication Skills	LVMPD	7
02-28-91	NCIC Level III - Video	LVMPD	1
04-17 to 04-18-91	Polilight	Napa Valley, CA, Police Dept.	16
07-03-91	Gun Shot Wounds - Video	LVMPD	1

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
09-10-91	Asian Gangs	LVMPD	3
09-12-91	Auto Theft	LVMPD	2
09-30-91	Duty Weapon Qualification	LVMPD	1
10-10-91	Victims and Law Enforcement	LVMPD	2
11-20-91	Media Relations	LVMPD	3
12-31-91	Duty Weapon Qualification	LVMPD	1
01-03 to 01-10-92	Drug Recognition, Detection & Evaluation	LVMPD	8
01-16-92	Gangs in Clark County	LVMPD	3
03-31-92	Duty Weapon Qualification	LVMPD	1
05-05-92	NCIC Phase I - Miscellaneous Updates - Video	LVMPD	10 Min.
05-11-92	DOC Footwear Evidence - F/A Evidence	LVMPD	7
06-30-92	Duty Weapon Qualification	LVMPD	1
07-23-92	Driver's Training Level 02	LVMPD	8
07-92	New Pursuit Policy (Video)	LVMPD	1
08-24-92	Bloodborne Pathogens/Communicable Diseases	LVMPD	2
09-30-92	Duty Weapon Qualification	LVMPD	1
10-26 to 10-30-92	International Homicide Investigation Seminar		40
11-17-92	Team Building		6
12-11-92	Powerful Business Writing Skills		6
12-21-92	Vicarious Liability	LVMPD	2
12-23-92	Combat Shooting Simulator/FATS	LVMPD	1
12-31-92	Duty Weapon Qualification	LVMPD	1
02-08-93	Polilight Laser Photography and Chemical Techniques	LVMPD	8
03-11-93	Cultural Awareness & Police Community Relations	LVMPD	8
03-09-93	NCIC Phase I Videotape	LVMPD	20 Min.
03-31-93	Duty Weapon Qualification	LVMPD	1
06-16 to 06-17-93	Advanced Firearms School	LVMPD	14
06-30-93	Duty Weapon Qualification	LVMPD	1
09-17-93	6th Annual Training Seminar (Clandestine Drug Labs)	Clandestine Laboratory Investigators Association	32
09-27-93	Death & Grief Issues	LVMPD	4

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
09-30-93	Duty Weapon Qualification	LVMPD	1
12-31-93	Duty Weapon Qualification	LVMPD	1
01-22-94	Comtemporary Issues - Use of Force	LVMPD	8
02-02-94	Combat Shooting Simulator/FATS	LVMPD	1
03-31-94	Duty Weapon Qualification	LVMPD	1
06-30-94	Duty Weapon Qualification	LVMPD	1
09-30-94	Duty Weapon Qualification	LVMPD	1
09-84	Bloodborne Pathogens (Video)	LVMPD	30 Minutes
12-03-94	Grievances & Contract Interpretation	LVMPD (PPACE)	6
12-07-94	Retirement Seminar	LVMPD	8
02-17-95	Cultural Awareness - LVMPD	LVMPD	6
06-30-95	Duty Weapon Qualification	LVMPD	1
09-11 to 09-13-95	The Detection and Examination of Footwear & Tire Impression Evidence	Maricopa County Sheriff's Office - Phoenix, AZ	24
09-30-95	Duty Weapon Qualification	LVMPD	1
03-31-96	Duty Weapon Qualification	LVMPD	1
05-16-96	Critical Procedures Test	LVMPD	
06-11-96	CAPSTUN Training	LVMPD	1.5
06-30-96	Duty Weapon Qualification	LVMPD	2
07-11-96	Driver Training - Level 2	LVMPD	8
07-12-96	Verbal Judo	LVMPD	7
09-16 to 09-20-96	Bloodstain Evidence Workshop I	Northwestern University, Traffic Institute	40
09-30-96	Duty Weapon Qualification	LVMPD	2
11-02-96	Ultraviolet (UV) Light Orientation and Safety Presentation	LVMPD	1
01-16-97	Interest Based Bargaining	LVMPD	20
02-11-97 to 02-13-97	Top Gun Training	LVMPD	21
02-27-97	Moot Court - Video	LVMPD	2
03/30/97	Duty Weapon Qualification	LVMPD	2
06-12-97	Critical Procedures Test	LVMPD	
06-13-97	NCIC - Phase I Video	LVMPD	20 Minutes
07-02-97	Duty Weapon Qualification	LVMPD	2

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
08-27, 28, & 08-29-97	Train the Trainer - F.T.E.P.	LVMPD	21
09-30-97	Duty Weapon Qualification	LVMPD	2
10-06-97	Combat Shooting Simulator/FATS	LVMPD	1
12-03, 04, & 12-10-97	Civilian Use of Force	LVMPD	21
12-31-97	WordPerfect 6.1 Beginning	ExecuTrain	8
02-11-98	Trauma Shooting - Video	LVMPD	30 Min.
02-23-98	Domestic Violence (Video)	LVMPD	1
03-01-98	Clandestine Lab Dangers - Video	LVMPD	30 Min.
03-05-98	Secondary Devices - Video	LVMPD	30 Min.
03-31-98	Duty Weapon Qualification	LVMPD	2
04-02-98	Critical Procedures Test	LVMPD	2
04-21-98	Duty Weapon Qualification	LVMPD	2
07-13 to 07-17-98	Advanced On-Scene Accident Investigation	LVMPD	35
08-04-98	Optional Weapon	LVMPD	
09-14 to 09-18-98	Crime Scene Technology II	Northwestern University, Traffic Institute	40
10-02-98	Combat Shooting Simulator/FATS	LVMPD	1
10-10-98	Duty Weapon Qualification	LVMPD	2
01-12-99	Training - Motor Home Driving	LVMPD	4
03-30-99	Duty Weapon Qualification	LVMPD	2
04-13-99	Critical Procedures Test	LVMPD	2
04-20-99	Duty Weapon Qualification	LVMPD	2
04-26-99	Latent Fingerprint Workshop of Cyanoacrylate Techniques	Detecto Print	6
04-28 to 04-30-99	First Annual Educational Conference - Opening ceremonies (2), Banquet (3)	NSDIAI	
"	DNA Evidence	NSDIAI	2
"	JFK-MLK Evidence	NSDIAI	2
"	Laboratory Photography	NSDIAI	2
"	Blood Enhancement	NSDIAI	4
"	Unabomber	NSDIAI	2
"	Bombing Scenes	NSDIAI	2

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
"	Child Abuse	NSDIAI	2
"	Latent Prints on Skin	NSDIAI	2
"	Footwear/Tire Tracks	NSDIAI	2
06-30-99	Optional Weapon	LVMPD	
08-23 to 08-27-99	Bloodstain Evidence Workshop 2	Northwestern University, Traffic Institute	40
09-15-99	Combat Shooting Simulator/FATS	LVMPD	1
09-21-99	Duty Weapon Qualification	LVMPD	2
11-16-99	Terrorism/Bomb Threats Class	Clark County District Attorney's Office	4
11-30-00	Driver Training	LVMPD	8
11-23-99	Certification - Senior Crime Scene Analyst	IAI	
01-20-00	Latent Fingerprint Development Workshop	Secret Service	8
05-03 to 05-05-00	Second Annual Educational Conference Polly Klass (Also see items below)	NSDIAI	3
"	Photo FP Tech	NSDIAI	2
"	Child Abuse II	NSDIAI	2
"	Drug Fire/IBIS	NSDIAI	2
"	Gadgets and Gizmos	NSDIAI	2
"	Handwriting	NSDIAI	2
"	Shoebox Labeling	NSDIAI	1
"	WIN-AFIS	NSDIAI	2
06-22-00	ASM 5 - Administrative Duties	LVMPD	7
08-15-00	Firearms Training Simulator	LVMPD	1
09-06 to 09-08-00	Shooting Incident Reconstruction	LVMPD	24
01-22 to 01-26-01	Advanced Ridgeology Comparison Techniques	Forensic Identification Training Seminars, LLC	40
02-12 to 02-14-01	Clandestine Laboratory Safety Certification Course - Occasional Site Worker	LVMPD	24
04-13-01	NSDIAI - 3 rd Annual Educational Conference Child Exploitation - CERTIFICATE	NSDIAI	2
"	Bloodstain Pattern Report Writing - TO BE ISSUED	NSDIAI	2
05-14-01	Proficiency Exercise Presumptive Semen (Acid	LVMPD - Criminalistics	1.5

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
	Phosphatase Test)	Bureau	
07-22 to 07-28-01	86 th International Educational Conference (International Association for Identification)	IAI	(See below)
"	An Update on Daubert Hearings for Fingerprints: Challenges from the Legal and Scientific Arenas	"	1.5
"	Fingerprints and Art	"	1
"	Spectrochemical Analysis of Children's Fingerprints	"	30 Min.
"	Killer on the Railcar	"	1.5
"	Human Identification at a Distance	"	1
"	Photographic Identification of Clothing from Wear-and-Tear, and Manufactured Characteristics	"	1
"	Conducting Research on Latent Prints	"	1
"	Fingerprint Research at the U.S. Secret Service	"	1
"	Courtroom Testimony	"	4
"	John Gacy: Serial Murderer	"	30 Min.
09-20-01	Bloodstain Pattern Analysis - Angle of Impact Proficiency Exercise - Certificate # 03	LVMPD - Criminalistics Bureau	3
12-07-01	Crime Zone 5.0 - Learning Center Tutorial	"	4
01-01-02	Collection of Samples from Biological Fluids/Stains	"	1
03-05-02	Crime Scene Diagraming	"	8
04-01-02	Objective Approach to the Crime Scene	LVMPD - Criminalistics Bureau	1
04-01-02	Chemical Enhancements of Bloodstains, Preliminary Steps	LVMPD - Criminalistics Bureau	1
04-03-02	Documentation of Footwear & Tire Impressions	LVMPD - Criminalistics Bureau	1
04-10-02	Clandestine Laboratory Safety - Fingerprint Processing	LVMPD - Criminalistics Bureau	1
04-15-02	Major Case Prints	LVMPD - Criminalistics Bureau	3
02-06 to 02-08-03	Advanced Shooting Incident Reconstruction - Forensic Identification Training Seminars	LVMPD	24

LAS VEGAS CRIMINALISTICS BUREAU STATEMENT OF QUALIFICATIONS

Name: THOMAS KERN

P# 5220

Date: 10/24/97

CURRENT CLASSIFICATION		
	<i>CLASSIFICATION</i>	<i>MINIMUM QUALIFICATIONS</i>
X	Crime Scene Analyst I	AA degree with major course work in criminal justice, forensic science, physical science or related field, including specialized training in crime scene investigation
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I
	Senior Crime Scene Analyst	2 years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst
	Crime Scene Analyst Supervisor	4 years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a bachelor's degree from an accredited college or university with major course work in criminal justice, forensic science, physical science or related field.

FORMAL EDUCATION		
<i>Institution</i>	<i>Major</i>	<i>Degree/Date</i>
Wright State University	Art	BA 8/84

ADDITIONAL TRAINING/SEMINARS		
<i>Course / Seminar</i>	<i>Hours</i>	<i>Date</i>
Bachelor of Arts – Wright State University	4 years	08/17/84
Ohio Peace Officer Basic Training Program – State of Ohio, Office of the Attorney General – Dayton Police Academy	6 months	10/88 –04/89
Evidence Technician – Miami Valley Regional Crime Laboratory	120	08/26/94
Advanced Color Photography – Ohio Peace Officer Training Academy	40	05/22 –05/26/95
School of Photography Seminar – Nikon School of Photography	16	10/21/95
Hamilton County Police Association Training Committee – Basic Fingerprinting – FBI	40	11/13 –11/17/95
Crime Scene Analyst Academy – LVMPD	105	07/29 –08/16/96
Field Training – LVMPD	11 weeks	08/17 –11/01/96
Civilian Firearm/Use of Force – LVMPD	21	09/18, 19 & 09/25/96
International Association for Identification (Active Member)		01/20/97
Top Gun Training – LVMPD	21	04/01 –04/03/97
Forensic Science – American Institute of Applied Science	260	04/28/97

THOMAS KERN
LVMPD P#5220
Curriculum Vitae

- 1 -
000343

TESTIMONY		
Yes	No	
	X	Eighth Judicial District, Clark County Nevada
	X	Justice Courts of Las Vegas Township
EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Title</i>	<i>Date</i>
Las Vegas Metropolitan Police Department	Crime Scene Analyst	07/96 – Present
Dayton Police Department	Evidence Technician	08/94 – 06/96
Dayton Police Department	Police Officer	04/88 – 06/96
PROFESSIONAL AFFILIATIONS		
<i>Organization</i>	<i>Date(s)</i>	
International Association For Identification	01/97 – Present	
International Association Of Identification		

THOMAS KERN
LVMPD P#5220
Curriculum Vitae

000344


CLERK

1 NOTC
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 DAVID P. SCHWARTZ
6 Chief Deputy District Attorney
7 Nevada Bar #000398
8 200 South Third Street
9 Las Vegas, Nevada 89155-2212
10 (702) 455-4711
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 GLENFORD ANTHONY BUDD,
13 #1900089

14 Defendant.

CASE NO: C193182

DEPT NO: XVIII

NOTICE OF WITNESSES
[NRS 174.234(1)(a)]

17 TO: GLENFORD ANTHONY BUDD, Defendant; and

18 TO: PUBLIC DEFENDER, Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
20 NEVADA intends to call the following witnesses in its case in chief:

21	<u>NAME</u>	<u>ADDRESS</u>
22	BUDD, WINSTON	UNKNOWN ADDRESS
23	COR	LVMPD - DISPATCH
24	JONES, LAZON	C/O REG WEAVER, D.A.'S OFFICE
25	JONES, SHERYL	UNKNOWN ADDRESS
26	KEY, TERRY	UNKNOWN ADDRESS
27	LEWIS, GREG	NDOC
28	PALAU, CELESTE	C/O REG WEAVER, D.A.'S OFFICE

1 RICHARD, TRACEY 1100 CENTER ST., HEND., NV
2 SMITH, KRISSY UNKNOWN ADDRESS
3 SPENCER, P. LVMD #4852
4 VACARRO, J. LVMPD #1480
5 WALLACE, M. LVMPD #4761
6 WASHINGTON, NAKIA UNKNOWN ADDRESS
7 WILDEMAN, M. LVMPD #3516

8 These witnesses are in addition to those witnesses endorsed on the Information and
9 any other witness for which a separate Notice has been filed.

10
11 DAVID ROGER
12 DISTRICT ATTORNEY
13 Nevada Bar #002781
14
15 BY /s/ DAVID P. SCHWARTZ
16 DAVID P. SCHWARTZ
17 Chief Deputy District Attorney
18 Nevada Bar #000398
19

20
21 CERTIFICATE OF FACSIMILE TRANSMISSION

22 I hereby certify that service of NOTICE OF WITNESS, was made this 28th day of
23 September, 2004, by facsimile transmission to:

24 PUBLIC DEFENDER
25 FAX#455-5112

26
27 BY /s/ M. Beaird
28 Employee of the District Attorney's Office

mb

ORIGINAL

FILED

OCT 4 3 48 PM '04

Philip B. Hargrave
CLERK

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

GLENFORD ANTHONY BUDD,

Defendant.

CASE NO. C193182X

DEPT. NO. XVIII

DATE: October 18, 2004
TIME: 9:00 a.m.

**MOTION 12: DEFENDANT BUDD'S MOTION TO PRECLUDE THE ADMISSION,
DURING A POSSIBLE PENALTY PROCEEDING, OF EVIDENCE ABOUT THE
PERSONAL CHARACTER OF THE VICTIMS AND THE IMPACT OF THE VICTIMS'
DEATHS ON THE FAMILY**

COMES NOW Defendant GLENDFORD BUDD, by and through Deputy Public
Defender HOWARD S. BROOKS, and moves that this Honorable Court rule that evidence about
the personal character of the victims and the impact of the victims' deaths on the family may not
be introduced in a possible penalty proceeding in this case.

This Motion is based upon the attached Declaration of Howard S. Brooks and the
case law cited in that declaration.

DATED this 4 day of October, 2004.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By

Howard S. Brooks
HOWARD S. BROOKS, #3374
Deputy Public Defender

000347

2
1 **DECLARATION OF HOWARD S. BROOKS**

2 HOWARD S. BROOKS makes the following declaration:

3 1. I am an attorney licensed to practice law in the State of Nevada; I am a
4 Deputy Public Defender assigned to represent Glenford Budd in this case, and I am familiar with
5 the allegations made by the State and the procedural history of this case.

6 2. The State has charged Glenford Budd with three counts of Murder, and the
7 State has filed a Notice of Intent to Seek the Death Penalty.

8 3. In 1987, the United States Supreme Court issued the decision of Booth v.
9 Maryland, 482 U.S. 496 (1987). Booth prohibited the State, in the penalty proceeding of a death
10 penalty case, from introducing evidence relating to the personal character of the victim and the
11 impact of the victim's death on the family; and evidence pertaining to the victim's family
12 members' characterizations and opinions about the crime, the defendant, and the appropriate
13 sentence.

14 4. In South Carolina v. Gathers, 490 U.S. 805 (1999), the United States
15 Supreme Court prohibited statements made by a prosecutor to a capital sentencing jury regarding
16 the personal qualities of the victim.

17 5. In 1991, the United States Supreme Court overruled parts of both Booth v.
18 Maryland and South Carolina v. Gathers in the case of Payne v. Tennessee, 501 U.S. 808
19 (1991).

20 6. Payne overruled that part of Booth v. Maryland and South Carolina v.
21 Gathers that pertained to evidence relating to the personal character of the victim and the impact
22 of the victim's death on the family. Payne did not address the prior rulings of Booth and Gathers
23 regarding the victim's family members characterizations and opinions about the crime, the
24 defendant and the appropriate sentence. Logically, that second prong of Booth and Gathers
25 remains intact.

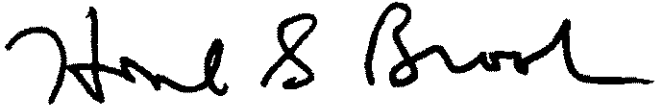
26 7. The purpose of this motion is to argue that Booth v. Maryland and South
27 Carolina v. Gathers are the correct statements of the law regarding evidence pertaining to the
28 personal character of the victim and the impact of the victim's death on the family. The defense

1 objects to the ruling of Payne v. Tennessee, and submits to this Honorable Court, that Payne is an
2 aberration in the law and the evidence allowed by Payne v. Tennessee violates defendant's due
3 process and fair trial rights, while also violating the Eighth Amendment Prohibition against cruel
4 and unusual punishment. Furthermore, the dictates of Payne introduce an element of arbitrariness
5 into the sentencing decision, which violates constitutional safeguards.

6 8. These issues are highly important in this case because there are three
7 victims. While any violent death creates a large amount of grieving and sense of loss, the deaths
8 of three young victims will create a magnified sense of grieving and sense of loss that may well
9 overwhelm the evidence regarding the defendant's background. Consequently, the possibility that
10 the sentence may be influenced by arbitrary factors becomes more real.

11 I declare under penalty of perjury that the foregoing is true and correct. (NRS
12 53.045).

13 EXECUTED this 4 day of October, 2004.

14 

15 HOWARD S. BROOKS
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IN THE SUPREME COURT OF THE STATE OF NEVADA

GLENFORD A BUDD,
Appellant,
vs.
THE STATE OF NEVADA
Respondent.

Supreme Court No.:
District Court Case No.: 03C193182
Electronically Filed
Nov 10 2014 08:55 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S APPENDIX – VOLUME II – PAGES 0248-0442

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FILED

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Attorney for Defendant

2004 SEP 14 P 4: 08

Shirley B. Paragins
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,)
)
v.)
)
GLENFORD ANTHONY BUDD,)
)
Defendant.)

CASE NO. C193182

DEPT. NO. XVIII
DATE: October 18, 2004
TIME: 9:00 a.m.

**MOTION 7: DEFENDANT BUDD'S MOTION
TO BIFURCATE PENALTY PHASE PROCEEDINGS**

Comes Now Defendant GLENFORD ANTHONY BUDD, by and through Deputy Public
Defender HOWARD S. BROOKS, and moves this Honorable Court to Bifurcate the Penalty Phase
Proceedings in this case, should such proceedings occur. This Motion is based upon the Due
Process and Fair Trial guarantees of the United States and Nevada Constitutions, and the
authorities cited in the attached Memorandum of Points and Authorities.

DATED this 14 day of September, 2004.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By *Howard S. Brooks*
HOWARD S. BROOKS, #3374
Deputy Public Defender

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CMC

COUNTY CLERK

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HOWARD S. BROOKS

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **NEVADA STATUTORY LAW PROVIDES FOR ONE SENTENCING HEARING WHEN**
4 **A JURY RETURNS A VERDICT OF FIRST DEGREE MURDER AND THE STATE IS**
5 **ALLOWED TO INTRODUCE EVIDENCE OF NON-STATUTORY AGGRAVATING**
6 **CIRCUMSTANCES AT THAT HEARING**

7 The substantive law governing the burdens of proof in a penalty proceeding following a
8 first degree murder conviction are governed by NRS 200.030 et seq. The procedures for a penalty
9 hearing after a first degree murder conviction are governed by NRS 175.552 et seq.

10 The current law provides for one penalty hearing after a first degree murder conviction.
11 The State is allowed to introduce evidence of aggravating circumstances, see NRS 200.033
12 (detailing aggravators), and the State is also allowed to introduce evidence of non-statutory
13 aggravating circumstances. In Allen v. State, 99 Nev. 485, 665 P.2d 238 (1983), the Nevada
14 Supreme Court ruled that NRS 175.552 allows the State to introduce evidence about other relevant
15 factors to be considered by a jury in imposing a penalty for a capital crime, including "the
16 character and record of the individual offender and the circumstances of the particular offense." 99
17 Nev. 488, 665 P.2d 240 (quoting Woodson v. North Carolina, 428 U.S. 280 (1976)). This type of
18 evidence is called non-statutory aggravating circumstances. Typically, this evidence will include a
19 variety of bad act testimony, and can sometimes be quite broad. For example, as attested in the
20 attached Declaration, bad act evidence has included testimony that a defendant killed a pet bird
21 when he was a child. See also Holloway v. State, 116 Nev. 732, 6 P.3d 987 (2000).

22 The Defense follows the State case by introducing evidence of mitigating circumstances,
23 see NRS 200.035 (detailing mitigators). This evidence is defined as "any circumstance relative to
24 the offense, defendant or victim which a juror considers mitigating..." Holloway v. State, 116 Nev.
25 732, 6 P.3d 987 (2000); Evans v. State, 112 Nev. 1172, 1204, 926 P.2d 265, 285 (1996).

26 So the current scheme allows the jury to hear evidence of statutory aggravating
27 circumstances, statutory mitigating circumstances, and other non-statutory aggravating
28 circumstances in one hearing. Then, after the Court provides instructions, the jury must figure out
which evidence should be considered for which decision, and that is a complicated procedure, as
the following argument will show.

1 **A SENTENCING JURY MUST NOT CONSIDER THE NON-STATUTORY**
2 **AGGRAVATING CIRCUMSTANCES IN DECIDING WHETHER A DEFENDANT IS**
3 **ELIGIBLE FOR THE DEATH PENALTY, CREATING AN IMPOSSIBLE MENTAL**
4 **GYMNASTIC FOR THE CONSCIENTIOUS JURY**

5 Once a death penalty case proceeds to a penalty phase, the jury has a difficult and perhaps
6 impossible burden. Jurors must listen to evidence relating to aggravating circumstances, evidence
7 relating to mitigating circumstances, and evidence of other "bad" things about the defendant as
8 well as victim statements. Then the jury must deliberate.

9 In deliberations, the jury has several tasks.

10 First, the jury must determine whether the state has proved beyond a reasonable doubt the
11 existence of aggravating circumstances. Middleton v. State, 114 Nev. 1089, 1116-17, 968 P.2d
12 296, 314-15 (1998); Hollaway v. State, 116 Nev. 732, 6 P.3d 987 (2000) ("the jury must find
13 unanimously and beyond a reasonable doubt that at least one enumerated aggravating circumstance
14 exists...").

15 Next, the jury must determine whether mitigating circumstances have been proved. These
16 circumstances need not be proven beyond a reasonable doubt or preponderance standard. Any
17 juror believing a single mitigating circumstance has been proven, by whatever standard, may
18 consider the circumstance proved.

19 Then the jury must weigh the aggravators and mitigators. Each juror must determine
20 individually that the aggravators are not outweighed by the mitigators. Hollaway v. State, 116
21 Nev. 732, 6 P.3d 987 (2000) (... "each juror must individually consider the mitigating evidence and
22 determine that any mitigating circumstances do not outweigh the aggravating" citing Geary v.
23 State, 114 Nev. 100, 105, 952 P.2d 431, 433 (1998)). If one juror determines that the mitigators
24 outweigh the aggravators, then the death penalty is not to be considered and the jury must sentence
25 the defendant to a punishment other than death. NRS 200.030(4)(a); NRS 175.554(3).

26 But if every juror decides the mitigators do not outweigh the aggravators, then the jury
27 decides the defendant is eligible for the death penalty. "Even if the jury as a whole finds
28 aggravating circumstances and every juror determines that mitigating circumstances either do not
exist or do not outweigh the aggravating, the defendant is only death-eligible. The jury must then

1 decide on a sentence unanimously and still has discretion to impose a sentence less than death."

2 Hollaway v. State, 116 Nev. 732, 6 P.3d 987 (2000).

3 At that point, and NOT BEFORE, the jury may consider non-statutory aggravating
4 circumstances which includes general character evidence such as whether a defendant has killed a
5 pet bird or whether a defendant has committed other crimes. NRS 175.552(3). Middleton v.
6 State, 114 Nev. 1089, 1116-17, 968 P.2d 296, 314-15 (1998). This evidence can be highly
7 prejudicial to the defense.

8 Normally, NRS 175.552(3) serves to permit the State to introduce
9 evidence against the defendant which goes beyond the enumerated
10 statutory aggravators, but this "other matter" evidence is restricted in
11 its scope and use. It must be relevant, and its danger of unfair
12 prejudice must not substantially outweigh its probative value.
13 McKenna v. State, 114 Nev. 1044, 1051-52, 968 P.2d 739, 744
14 (1998), cert den. 528 U.S. 937 [companion cites omitted]...To be
15 relevant, like mitigating evidence, it must relate "to the offense,
16 defendant or victim." See NRS 175.552(3). Furthermore, under
17 Nevada's statutory sentencing scheme, the State can offer this
18 evidence for only one purpose: for jurors to consider in deciding on
19 an appropriate sentence AFTER THEY HAVE DETERMINED
20 WHETHER THE DEFENDANT IS OR IS NOT ELIGIBLE FOR
21 DEATH. [emphasis added]..."Other matter" evidence is not
22 admissible for use by the jury in determining the existence of
23 aggravating circumstances or in weighing them against mitigating
24 circumstances...

19 Hollaway v. State, 116 Nev. 732, 746, 6 P.3d 987, 997 (2000).

20 So the jury is required to hear a variety of evidence, including highly prejudicial "other act"
21 evidence, and the jury is required to perform some mental gymnastic by which they put out of their
22 mind the highly prejudicial "other act" evidence while evaluating aggravators and also while
23 weighing the aggravators and mitigators.

24 This type of mental discipline is virtually impossible. Courts have commented on the
25 absurdity of this required mental discipline in the context of improper prosecutorial arguments.
26 "There may be instances where such a strong impression has been made upon the minds of the jury
27 by illegal and improper testimony, that its subsequent withdrawal will not remove the effect
28 caused by its admission..." Throckmorton v. Holt, 180 U.S. 552, 567 (1901) . See also U.S. v.

1 Garza, 608 F.2d 659, 666 n. 7 (5th Cir. 1979)("[A]s this Court observed in overturning a conviction
2 because of improper prosecutorial comment, despite a corrective instruction, once such statements
3 are made, the damage is hard to undo: 'Otherwise stated, one 'cannot unring a bell'; 'after the
4 thrust of the saber it is difficult to say forget the wound'; and finally, 'if you throw a skunk into the
5 jury box, you can't instruct the jury not to smell it.")(quoting Dunn v. U.S., 307 F.2d 883, 886 (5th
6 Cir. 1962)); Government of Virgin Islands v. Toto, 529 F.2d 278, 282 (3d Cir. 1976).

7 Here, the jury is being asked to ignore powerful prejudicial evidence, while considering the
8 validity and effect of other, possibly less compelling, evidence. To place this burden on the jury is
9 unrealistic. The jury should not be exposed to evidence of non-statutory aggravating
10 circumstances before the decision has been made about the validity of evidence of aggravating
11 circumstances and also before the process of weighing aggravating and mitigating circumstances.

12 **THE REMEDY TO THIS PROBLEM IS BIFURCATION OF THE PENALTY PHASE**

13 The problems discussed in this motion can be remedied by an Order that the penalty phase,
14 if it occurs, be bifurcated into two parts: first, the State presents evidence of aggravating
15 circumstances and the defense presents evidence of mitigating circumstances. The jury should
16 then deliberate and determine if the State has proven aggravating circumstances beyond a
17 reasonable doubt, and whether the mitigating circumstances outweigh the aggravating evidence. If
18 the jury determines that aggravators exist and that the mitigators do not outweigh the aggravators,
19 then the second phase of the penalty phase should occur. And during that phase, the State can
20 introduce evidence of other, non-statutory aggravating circumstances, and the defense
21 can rebut that evidence. Support for this procedure can be found in Buchanan v. Angelone, 522
22 U.S. 269 (1998) where the United States Supreme Court noted:

23 Petition initially recognizes, as he must, that our cases have
24 distinguished between two different aspects of the capital sentencing
25 process, the eligibility phase and the selection phase. Tulaepa v.
26 California, 512 U.S. 967, 971 (1994) [companion cites omitted]. In
27 the eligibility phase, the jury narrows the class of defendants eligible
28 for the death penalty, often through consideration of aggravating
circumstances. In the selection phase, the jury determines whether
to impose a death sentence upon an eligible defendant.

1 This decision notes the theoretical divide that exists in penalty phase proceedings, but does not
2 mandate bifurcation. But bifurcation would help fix a fundamentally flawed procedure that
3 currently exists.

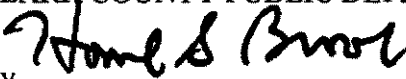
4 CONCLUSION

5 The current penalty phase procedure in death penalty cases is flawed. Jurors must listen to
6 a wide range of evidence, then eliminate some evidence from their minds while considering
7 specific questions which should not be influenced by the ignored evidence. While we may all
8 pretend that jurors can do this, such an assumption is fantasy, and has been recognized as fantasy
9 in other contexts, like prosecutorial misconduct. The current system is fundamentally unfair,
10 constitutionally wrong, and should not be used in the context of the death penalty. The current
11 procedure should be replaced by a bifurcation of the penalty phase proceeding, and Defendant
12 Budd respectfully requests that this Honorable Court issue an order to remedy the current scheme
13 by granting this motion.

14 DATED this 14 day of September, 2004.

15 PHILIP J. KOHN
16 CLARK COUNTY PUBLIC DEFENDER

17 By



18 HOWARD S. BROOKS, #3374
19 Deputy Public Defender
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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 13th of October, 2004, in District Court Department XVIII.

DATED this 14 day of September, 2004.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By Howard S. Brooks
HOWARD S. BROOKS, #3374
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Motion to Bifurcate Penalty Phase Proceedings is hereby acknowledged this 14 day of September, 2004.

CLARK COUNTY DISTRICT ATTORNEY

By Kevin Miller

FILED

12

1 PHILIP J. KOHN, PUBLIC DEFENDER
2 NEVADA BAR NO. 0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
5 (702) 455-4685
6 Attorney for Defendant

2004 SEP 14 P 4:07

Shirley B. Pangloss
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 v.

10 GLENFORD ANTHONY BUDD,

11 Defendant.

CASE NO. C193182

DEPT. NO. XVIII

DATE: October 18, 2004

TIME: 9:00 a.m.

12 **MOTION 8: DEFENDANT BUDD'S MOTION TO ALLOW THE DEFENSE TO ARGUE**
13 **LAST IN A POTENTIAL PENALTY PHASE PROCEEDING**

14 Comes Now Defendant GLENFORD ANTHONY BUDD, by and through Deputy
15 Public Defender HOWARD S. BROOKS, and moves this Honorable Court to Order that the
16 Defense argue last in a penalty phase proceeding, should such proceeding occur.

17 This Motion is made and based upon the Due Process and Fair Trial guarantees of
18 the United States and Nevada Constitutions, and the authorities cited in the attached Memorandum
19 of Points and Authorities.

20 DATED this 14 day of September, 2004.

21 PHILIP J. KOHN
22 CLARK COUNTY PUBLIC DEFENDER

23 By

Howard S. Brooks

24 HOWARD S. BROOKS, #3374
25 Deputy Public Defender

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CMC
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**THE LEGAL AUTHORITY ALLOWING THE STATE TO ARGUE LAST IN PENALTY
PHASE DERIVES FROM STATUTES INTENDED TO GOVERN TRIALS, NOT
PENALTY-SENTENCING HEARINGS**

When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the district attorney, or other counsel for the state, must open and must conclude the argument.

If the indictment or information be for an offense punishable with death, two counsel on each side may argue the case to the jury, but in such case, as well as in all others, the counsel for the state must open and conclude the argument. If it be for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side.

The statutes governing penalty phase, or sentencing, hearings in death penalty cases are found at NRS 175.552 et seq. after the heading entitled, "Penalty Hearing for First Degree Murder." But those statutes offer no guidance regarding this important issue.

000258

1 **THE NEVADA DEATH PENALTY STATUTORY SCHEME BURDENS THE DEFENSE**
2 **WITH PROVING MITIGATING CIRCUMSTANCES OUTWEIGH THE**
3 **AGGRAVATING CIRCUMSTANCES IF THE DEFENSE DESIRES TO AVOID DEATH**
4 **ELIGIBILITY FOR THE DEFENDANT**

5 When a person is convicted of first degree murder, a penalty or sentencing hearing occurs
6 with the same jury deciding which of the possible punishments—a term of years, life in prison with
7 parole eligibility, life in prison with no parole eligibility, or death—is the appropriate punishment.
8 See generally NRS 175.552 et seq. (for procedure) and NRS 200.030(4) (for punishments).

9 No Nevada statute or other law provides when death is the appropriate sentence. However,
10 the law does, in theory, attempt to narrow the class of persons eligible for the death penalty. This
11 is done through consideration of aggravating circumstances, see NRS 200.033, and mitigating
12 circumstances, see NRS 200.035. The State has the burden of proving the existence of each
13 aggravating circumstance beyond a reasonable doubt.

14 The burden on the defense to prove mitigating circumstances is not defined.

15 However, a defendant is "eligible" for the death penalty if, and only if, "one or more
16 aggravating circumstances are found and any mitigating circumstance or circumstances which are
17 found do not outweigh the aggravating circumstance or circumstances." NRS 200.030(4)(a).

18 The logic supporting the state arguing last derives from the fact, in a guilt or trial
19 proceeding, that the State has the burden of proof. The defense, in a guilt or trial proceeding, has
20 no burden at all.

21 In a penalty, or sentencing proceeding, the state and defense both have a burden of proof.
22 The state must prove the existence of aggravating circumstances beyond a reasonable doubt. And
23 the defense must present evidence of mitigating circumstances if the defense hopes to protect the
24 defendant from being eligible for death.

25 The burden of proof problem for the defense becomes more acute because the language of
26 the statute says a defendant is death-eligible if "any mitigating ...circumstances...which are found
27 do not outweigh the aggravating...circumstances." In other words, a defendant IS death-eligible if
28 aggravating and mitigating circumstances are equal.

1 Therefore, because "equal" aggravating and mitigating circumstances allow the jury to
2 impose the death sentence, the Defense is always obligated to "prove" mitigating circumstances
3 that exceed, or outweigh, the aggravating circumstances proven by the State, for the Defense to
4 foreclose the possibility of a death verdict.

5 This statutory scheme clearly places a burden on the Defense.

6 For the statute to place a burden solely on the State, the statute would provide that the State
7 has the burden to prove aggravating circumstances beyond a reasonable doubt, and the statute
8 would provide that the aggravating circumstances must outweigh all mitigating circumstances or
9 evidence. But the statute does not use the necessary language to place the entire burden on the
10 State.

11 Therefore, because there does exist a burden on the defense to produce evidence which
12 outweighs the aggravating evidence produced by the state, the logic behind allowing the state to
13 argue last no longer exists. Because the defense has a burden, the defense should argue last.

14 To place a burden on the defense, and not allow the defense to argue last, is fundamentally
15 unfair and this flawed procedure violates Due Process and Fair Trial guarantees in the United
16 States and Nevada Constitutions. In a death penalty case, where we must recognize that "death is a
17 different kind of punishment than any other which may be imposed in this country," Gardner v.
18 Florida, 430 U.S. 349 (1977), a higher standard of due process is required because of the absolute
19 finality of the punishment. See generally Griffin v. Illinois, 351 U.S. 12, 28 (1956).

20 **A DISTRICT COURT HAS THE DISCRETION TO ALLOW THE DEFENSE TO ARGUE**
21 **LAST BECAUSE A HIGHER STANDARD OF DUE PROCESS IS REQUIRED WHEN**
22 **THE STATE SEEKS TO KILL THE DEFENDANT**

23 The Ohio Supreme Court has ruled that a district court has the discretion to allow the
24 defense to argue last in a penalty proceeding in a death penalty case. State v. Jenkins, 15 Ohio St.
25 3d 164, 214 (1984). Two states, Kentucky and California, allow the defense to argue last in such
26 cases. See Ky Rev Stat. Section 532.025(1)(A) and People v. Bandhauer, 66 Cal. 2d 524, 530
27 (1967). The Nevada Supreme Court has rejected these arguments and ruled that the district court
28 does not have the discretion to allow the defense to argue last. Witter v. State, 112 Nev. 908, 921

1 P.2d 886 (1996); Williams v. State, 113 Nev. 1008, 945 P.2d 438 (1997). Schoels v. State, 114
2 Nev. 981, 966 P.2d 735 (1998)(overruled on other grounds).

3 The Defense respectfully submits that the Nevada Supreme Court's rulings on this matter
4 do not accord the Due Process required by constitutional guarantees, and the Defense respectfully
5 asks this Court to allow the Defense to argue last, should a penalty phase proceeding occur in this
6 case.

7
8 DATED this 14 day of September, 2004.

9 PHILIP J. KOHN
10 CLARK COUNTY PUBLIC DEFENDER

11 By Howard S. Brooks
12 HOWARD S. BROOKS, #3374
13 Deputy Public Defender
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FILED

2004 SEP 14 P 4:07

Shirley B. Pangione
CLERK

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

GLENFORD ANTHONY BUDD,

Defendant.

CASE NO. C193182

DEPT. NO. XVIII
DATE: October 18, 2004
TIME: 9:00 a.m.

MOTION 5: DEFENDANT BUDD'S MOTION TO DISQUALIFY ALL POTENTIAL JURORS WHO WOULD AUTOMATICALLY VOTE FOR THE DEATH PENALTY IN THE EVENT OF A FIRST DEGREE MURDER CONVICTION

COMES NOW Defendant GLENDFORD ANTHONY BUDD, by and through Deputy Public Defender HOWARD S. BROOKS, and moves this Honorable Court for an Order disqualifying from jury service all potential jurors who would automatically vote for the death penalty as a punishment in the event they convict the defendant of first degree murder. This motion is based upon Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article 1 of the Nevada Constitution, applicable state law, all documents on file in this case, and the authorities cited in the attached Memorandum of Points and Authorities

DATED this 14 day of September, 2004.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

Howard S. Brooks
By
HOWARD S. BROOKS, #3374
Deputy Public Defender

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1 **POINTS AND AUTHORITIES**

2 **FACTS**

3 The State has charged Glenford Budd with three counts of Murder with Use of a Deadly
4 Weapon, and the State has also filed a Notice of Intent to Seek the Death Penalty.

5 **ARGUMENT**

6 Nevada law has long recognized that jurors must be free from prejudice or bias. State v.
7 Carrick, 16 Nev. 120 (1881). When a potential juror has formed an opinion of a defendant's guilt
8 or innocence, prior to hearing the evidence, that juror should be disqualified for juror service.
9 State v. McClear, 11 Nev. 39 (1876). Ultimately, the decision whether a juror shall serve is to be
10 decided by the Court. NRS 175.036.

11 Mr. Budd is before this Court on a capital murder charge. The State has indicated its
12 intention to seek the death penalty. Because this is a capital prosecution, exacting standards must
13 be met to assure that it is fair. "The fundamental respect for humanity underlying the Eighth
14 Amendment's prohibition against cruel and unusual punishment gives rise to a special "need for
15 reliability in the determination that death is the appropriate punishment" in any capital case."
16 Johnson v. Mississippi, 486 U.S. 578, 584 (1988) (quoting Gardner v. Florida, 430 U.S. 349,
17 363-64 (1977) (quoting Woodson v. North Carolina, 428 U.S. 280, 305 (1976) (White, J.,
18 concurring))).

19 As a matter of constitutional law, it is now well established that a potential juror is not fit to
20 sit on a capital sentencing jury if that person will automatically vote for the death penalty in the
21 event the defendant is found guilty of capital murder. "A venireman who believes that the death
22 penalty should automatically and in every case flow from conviction of first degree murder must
23 be excused." Bracewell v. State, 506 So. 2d 354, 358 (Ala.Cr.App. 1986) (quoting Alvord v.
24 Wainwright, 564 F.Supp. 459, 487 (M.D. Fla. 1983), aff'd in part, rev'd in part on other grounds,
25 725 F.2d 1282 (11th Cir.), cert. den., 469 U.S. 956 (1984)).

26 The United States Supreme Court has held that a capital defendant may challenge for cause
27 any prospective juror who would automatically vote to impose death if the defendant is convicted
28 of the capital offense. Morgan v. Illinois, 112 S.Ct. 2222 (1992). Thus, those jurors whose views

1 on capital punishment would prevent or substantially impair the performance of their duties should
2 be excused. Adams v. Texas, 448 U.S. 38 (1980). See also Pope v. State, 345 S.E.2d 831 (Ga.
3 1986) (failure to exclude for cause jurors biased in favor of death penalty violates Witherspoon
4 and is reversible error).

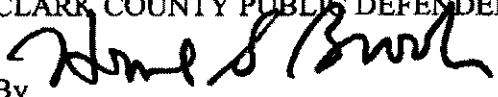
5 Any potential juror who would automatically vote for the death penalty is not qualified to
6 serve on Mr. Budd's capital sentencing jury and must be excluded for cause. Wainwright v. Witt,
7 469 U.S. 810 (1985); Witherspoon v. Illinois, 391 U.S. 510 (1968); Morgan v. Illinois, *supra*.

8 CONCLUSION

9 For the reasons noted above, Defendant Budd respectfully requests that this Honorable
10 Court enter an Order disqualifying from service as jurors all potential jurors who express a desire
11 to impose the death penalty in the event they find Mr. Budd guilty of first degree murder.

12 DATED this 14 day of September, 2004.

13 PHILIP J. KOHN
14 CLARK COUNTY PUBLIC DEFENDER

15 By 
16 HOWARD S. BROOKS, #3374
17 Deputy Public Defender
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2

1 **NOTICE OF MOTION**

2 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

3 YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the
4 above and foregoing Motion on for hearing before the Court on the 13th of October, 2004, in
5 District Court Department XVIII.

6 DATED this 14 day of September, 2004.

7 PHILIP J. KOHN
8 CLARK COUNTY PUBLIC DEFENDER

9
10 By Howard S. Brooks
11 HOWARD S. BROOKS, #3374
12 Deputy Public Defender

13 **RECEIPT OF COPY**

14 RECEIPT OF COPY of the above and foregoing Motion to Disqualify all Potential
15 Jurors who would Automatically Vote for the Death Penalty in the Event of a First Degree Murder
16 Conviction is hereby acknowledged this 14 day of September, 2004.

17 CLARK COUNTY DISTRICT ATTORNEY

18
19 By Kevin Miller
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1 PHILIP J. KOHN, PUBLIC DEFENDER
2 NEVADA BAR NO. 0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
5 (702) 455-4685
6 Attorney for Defendant

FILED 12

2004 SEP 14 P 4:07

Linda B. Paragines
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 v.)

10 GLENFORD ANTHONY BUDD,)

11 Defendant.)

CASE NO. C193182

DEPT. NO. XVIII

DATE: October 18, 2004

TIME: 9:00 a.m.

12 **MOTION 9: DEFENDANT BUDD'S MOTION FOR JURY QUESTIONNAIRE TO BE**
13 **COMPLETED BY JURE VENIRE ONE WEEK PRIOR TO TRIAL**

14 COMES NOW Defendant, GLENFORD ANTHONY BUDD, by and through
15 Deputy Public Defender HOWARD S. BROOKS, and respectfully requests that this Court,
16 pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States
17 Constitution, and Article 1 of the Nevada Constitution, order the jury venire to complete the
18 attached proposed Jury Questionnaire to perspective jurors approximately one week prior to trial.

19 This motion is based upon the attached declaration of Howard S. Brooks and the
20 authorities cited in that declaration.

21 DATED this 14 day of September, 2004.

22
23 PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By *Howard S. Brooks*
24
25 HOWARD S. BROOKS, #3374
26 Deputy Public Defender
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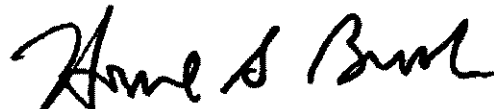
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1 Kemp, 778 F.2d 1487, 1542 (11th Cir. 1995). The Defense believes that a short questionnaire that
2 allows some exploration about the potential juror's background and views would be helpful to
3 allow jury voir dire to move at a more meaningful and rapid pace. Therefore, the Defense submits
4 the attached five-page questionnaire, which the defendant proposes should be completed by the
5 proposed jury one week prior to the trial commencing in this case. If the questionnaires are
6 completed by the proposed jury one week before trial, court services or court administration will
7 be able to photocopy the results and provide them to counsel for the State and the Defense on the
8 Tuesday before trial. That will allow both sides approximately five full days to examine the
9 responses and prepare themselves for the actual voir dire of the jury.

10 10. This particular questionnaire, which is attached, has been used in at least 10
11 other death penalty murder cases in Clark County.

12 I declare under penalty of perjury that the foregoing is true and correct. (NRS
13 53.045).

14 EXECUTED this 14 day of September, 2004.

15 

16 HOWARD S. BROOKS
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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 13th day of October, 2004, at 9:00 a.m. in District Court Department XVIII.

DATED this 14 day of September, 2004.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By Howard S. Brooks
HOWARD S. BROOKS, #3374
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Motion for Jury Questionnaire is hereby acknowledged this 14 day of September, 2004.

CLARK COUNTY DISTRICT ATTORNEY

By Kevin Miller

Badge # _____
I.D.# _____

Juror Questionnaire

Dear Prospective Juror:

You have been placed under oath. Please answer all questions truthfully and completely, as though the questions were being asked of you in open court. If you need more room on any question, use the margins or the last page, which is partially blank. The purpose of this questionnaire is to help the court and the lawyers in their attempt to select a fair and impartial jury. The answers provided by you in this document will be made available to counsel for both the state and defense. Your answers may also become part of the court's permanent record.

A summary of the case allegations and the procedure to be followed in this case are noted below. The fact that these allegations have been made does not mean they are true. The State has the burden of proving the allegations beyond a reasonable doubt.

Remember, you must fill out the questionnaire yourself, and when you are finished, please sign the oath on the last page and leave the questionnaire with a jury assistant.

Summary of Case

On the night of May 26-27, 2003, police found the bodies of three deceased persons at the Saratoga Palms Apartments at 2895 East Charleston Boulevard, Las Vegas. The three deceased persons were Dajon Jones, Derrick Jones, and Jason Moore. The State has charged Glenford Budd with responsibility for the deaths. The media may have covered news about these deaths and the prior court hearings in this matter.

Procedure

This is a murder case where the State is seeking the death penalty.

After the jury is selected, the trial will occur. The purpose of the trial is to determine, based on legally presented evidence, if the State can prove criminal charges beyond a reasonable doubt. Mr. Budd is presumed innocent.

If the jury convicts Mr. Budd of Murder in the First Degree, then the trial is followed by a Penalty hearing where the jury would hear evidence related to punishment. The jury would determine the sentence, and would choose among the following: death; a life sentence in prison with the possibility of parole; a life sentence in prison without the possibility of parole; or a fixed term of years with the possibility of parole.

If the jury finds Mr. Budd not guilty, or guilty of charges other than First Degree Murder, then no penalty hearing will occur. The judge will sentence Mr. Budd if he is convicted of a charge other than first degree murder.

The parties anticipate that the trial of this case could last five to ten days; a possible penalty hearing could last several additional days. All the trial and penalty proceedings in this case could last a total of two to three weeks.

1. Do you have any thoughts, concerns, or questions about this procedure:

2. Are you familiar with this case? Have you read media reports about it? Do you know the defendant or any of the deceased persons?

000271

Questions About You

3. Your full name _____ Race _____

4. Age _____ Place of birth _____ Marital Status _____

5. Children

Age Sex

Education

Occupation

- (a) _____
(b) _____
(c) _____
(d) _____

6. In what part of the county do you live? _____

7. Highest educational grade completed _____

8. Any special schooling or training? _____

9. Any courses or training in a legal field? _____

10. Your occupation and relevant duties for the last ten years: _____

11. What is your spouse's occupation, if you have a spouse? _____

12. Have you ever been in business for yourself? If yes, please explain. _____

13. Ever been a supervisor or boss? If yes, explain. _____

14. Ever served in the military? If yes, please provide details. _____

15. Do you attend religious services? If yes, what church or service, and how often? _____

16. Have you ever changed religions? If so, why? _____

17. Any relatives who are judges or attorneys? If yes, what is your relationship to them and how often do you talk to them? _____

18. Any relatives in law enforcement? If yes, what is your relationship, and how often do you talk to them? _____

19. Ever been a juror before? If yes, what did you think of the experience? _____

20. Have you or any member of your family ever had a drug or alcohol problem? _____

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21. Have you or any members of your family ever been arrested? If so, why? What happened? _____

22. Do you have any bias or ill feeling toward the police or the government or prosecutors as a result of any prior experience with law enforcement? _____

23. Have you or any family members been victims of crime? If so, what happened, and were you satisfied with the way law enforcement agencies or personnel handled matters? _____

Opinions, Interests, & Views

24. What do you think of the criminal justice system? _____

25. What are your hobbies and interests? _____

26. Do you consider yourself to be a leader or a follower? _____ Why? _____

27. What do you like to read? _____

What do you think of each of the following:

28. Defense attorneys _____

29. Public Defenders _____

30. Prosecutors _____

31. Crime victims _____

32. Police officers _____

33. Judges _____

34. The Death Penalty _____

35. The statement: "An Eye for an Eye:" _____

36. The statement: "You Shall Not Kill:" _____

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37. The statement: "If a prosecutor has taken the trouble of bringing someone to trial, then the person must be guilty." _____

38. Do you believe a defendant in a criminal trial should be required to prove his innocence? _____

39. The statement: "The Death Penalty is appropriate in some cases, but not in others." _____

40. The statement: "The Death Penalty is appropriate in all cases where somebody murders somebody." _____

41. Do you feel that a defendant's background, the facts surrounding a killing, or both, should be considered in determining an appropriate punishment? _____

42. More than anything else, what should the attorneys in this case know about you in deciding whether you should be on the jury: _____

43. Do you want to be on the jury? Why yes or Why no? _____

44. If a defendant is convicted of first degree murder, and a penalty hearing is held, would you consider all four possible sentences, those being the death penalty, life without the possibility of parole, life with the possibility of parole, or a fixed term of years with the possibility of parole _____

45. If you believed the evidence warranted the death penalty, could you personally vote to impose the death penalty? _____

46. Are you a member of any organization that advocates or opposes the imposition of the death penalty? _____

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Explanation Area

Feel free to supplement any of your prior answers, or ask any questions which you may have. You may also use the back of this page.

Oath

I swear or affirm that the responses given are true and accurate to the best of my knowledge and belief.

Signature

Date

Admonition

You are instructed not to discuss this questionnaire or any aspect of this case with anyone, including other prospective jurors. You are further instructed not to view, read, or listen to any media account of these proceedings.

Nancy Saitta, District Judge

000275

1 PHILIP J. KOHN, PUBLIC DEFENDER
2 NEVADA BAR NO. 0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
5 (702) 455-4685
6 Attorney for Defendant

FILED

2004 SEP 14 P 4:06

Shirley E. Pangloss
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 v.)

10 GLENFORD ANTHONY BUDD,)

11 Defendant.)

CASE NO. C193182

DEPT. NO. XVIII

DATE: October 18, 2004

TIME: 9:00 a.m.

12 **MOTION 10: DEFENDANT BUDD'S MOTION IN LIMINE TO PROHIBIT ANY**
13 **REFERENCE IN FRONT OF THE JURY TO THE TRIAL PHASE OF THE**
14 **PROCEEDINGS AS THE "GUILT PHASE"**

15 COMES NOW Defendant GLENFORD ANTHONY BUDD, by and through
16 Deputy Public Defender HOWARD S. BROOKS, and respectfully moves that this Honorable
17 Court enter an order that all references by counsel and the court in front of the jury to the trial
18 phase of the proceedings in this case be referred to as the "trial phase" and not the "guilt phase."

19 This motion is based upon the attached declaration of Howard S. Brooks.

20 DATED this 14 day of September, 2004.

21 PHILIP J. KOHN
22 CLARK COUNTY PUBLIC DEFENDER

23 By *Howard S. Brooks*
24 HOWARD S. BROOKS, #3374
25 Deputy Public Defender
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20
CMC
COUNTY CLERK

RECEIVED
SEP 14 2004

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1 8. Consequently, based on all of the above, the Defense respectfully requests
2 that the Court enter an order that the "trial phase" not be referred to as the "guilt phase."

3 I declare under penalty of perjury that the foregoing is true and correct. (NRS
4 53.045).

5 EXECUTED this 14 day of September, 2004.

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8 HOWARD S. BROOKS
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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 13th day of October, 2004, at 9:10 a.m. in District Court Department XVIII.

DATED this 14 day of September, 2004.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By Howard S. Brooks
HOWARD S. BROOKS, #3374
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Motion in Limine to Prohibit Any Reference in Front of the Jury to the Trial Phase of the Proceedings as the "Guilt Phase" is hereby acknowledged this 14 day of September, 2004.

CLARK COUNTY DISTRICT ATTORNEY

By [Signature]

ORIGINAL

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

FILED

2004 SEP 15 P 4:05

DISTRICT COURT
CLARK COUNTY, NEVADA

Shirley B. Pangione
CLERK

THE STATE OF NEVADA,

Plaintiff,

v.

GLENFORD ANTHONY BUDD,

Defendant.

CASE NO. C193182

DEPT. NO. XVIII

DATE: October 13, 2004

TIME: 9:00 a.m.

**CLARK COUNTY PUBLIC DEFENDER'S NOTICE OF QUALIFICATIONS PURSUANT
TO SUPREME COURT RULE 250(2) (g) AND (h)**

COMES NOW the office of the Clark County Public Defender, by and through
Deputy Public Defender HOWARD S. BROOKS, and submits this notice or application pursuant
to Supreme Court Rule 250 (2) (g) and (h).

This notice is contained in the attached declaration of Howard S. Brooks.

DATED this 14 day of September, 2004.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By

Howard S. Brooks

HOWARD S. BROOKS, #3374
Deputy Public Defender

RECEIVED

SEP 15 2004

CLARK COUNTY CLERK

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1 **DECLARATION OF HOWARD S. BROOKS**

2 HOWARD S. BROOKS makes the following declaration:

3 1. I am an attorney licensed to practice law in the State of Nevada; I am a
4 Deputy Public Defender assigned to represent Glenford Budd in this case; I am familiar with the
5 allegations made by the State and the procedural history of the case.

6 2. The State has charged Mr. Budd with three counts of Murder with Use of a
7 Deadly Weapon. A trial is currently set for November 15, 2004. The State has filed a Notice of
8 Intent to Seek the Death Penalty.

9 3. Supreme Court Rule 250 applies to criminal cases in which the death
10 penalty is sought by the State. Rule 2 (g) states:

11 When the District Court appoints an office of a public
12 defender to provide representation in a capital case, any
13 attorney assigned by the office to act as defense counsel shall
14 prepare and file with the court the application form required
by subsection (2) (h) of this rule.

15 4. Subsection (2) subsection (h) of Rule 250 provides as follows:

16 Application forms and list of qualified counsel. Each judicial
17 district shall maintain a list of qualified defense counsel and
18 shall establish procedures to ensure that defense counsel are
19 considered and selected for appointment to capital cases from
20 the list and a fair, equal and consecutive basis. The judicial
21 district shall further arrange for the preparation and
22 distribution of application forms to defense attorneys who
23 wish to be included on the list. The forms must require
24 specific information respecting the attorney's qualifications
25 to act as defense counsel in a capital case and a complete
statement of any discipline or sanctions pending or imposed
against the attorney by any court or disciplinary body.
Before appointing any attorney to act as counsel in a capital
case, the District Court to which the case is assigned shall
carefully consider the information in the attorney's
application form.

26 5. I am not aware of any such application or form promulgated by the District
27 Court. I have never seen such a form, and have never filed any such document.
28

1 6. Nevertheless, for the purposes of post-conviction habeas corpus relief, I
2 believe such information should be available in the file. Therefore, I am providing this
3 information in this declaration.

4 7. I was licensed to practice law in the State of Nevada in 1998. From 1998
5 through early 2000, I practiced in the law firm of Vargas & Bartlett in the area of commercial
6 litigation.

7 8. In July of 1990, I joined the office of the Clark County Public Defender.
8 During the next four and one-half years, I was a track attorney, handling cases ranging from
9 misdemeanor batteries through sexual assault and attempt murder cases.

10 9. During that four and one-half years, I took 25 cases to trial out of the
11 approximate 1300 cases that I handled.

12 10. I also filed approximately 30 appeals during that time period.

13 11. In January of 1995, I was appointed to the murder team of the Clark County
14 Public Defender Office. This team handles only murder cases.

15 12. Since January of 1995, I have worked on approximately 110 murder cases.
16 I have taken 17 of those cases to trial. I have written, or helped write, approximately 24 appeals.

17 13. It is my understanding that this information should merely be available to
18 the court so the court may exercise discretion to determine whether or not an attorney is qualified
19 to handle a capital case. I do not believe a hearing is required for this notice, and I am not
20 requesting such a hearing.

21 I declare under penalty of perjury that the foregoing is true and correct. (NRS
22 53.045).

23 EXECUTED this 14 day of September, 2004.

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25 _____
26 HOWARD S. BROOKS

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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Notice is hereby acknowledged
this 15 day of September, 2004.

CLARK COUNTY DISTRICT ATTORNEY

By 


CLERK

OPPS
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
DAVID P. SCHWARTZ
Chief Deputy District Attorney
Nevada Bar #000398
200 South Third Street
Las Vegas, Nevada 89155-2211
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

GLENFORD ANTHONY BUDD,
#1900089
Defendant.

CASE NO: C193182

DEPT NO: XVIII

STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE FOR ORDER
PROHIBITING PROSECUTION MISCONDUCT IN ARGUMENT; AND FOR ORDER
THAT COURT TAKES JUDICIAL NOTICE OF AUTHORITY CITED IN THIS MOTION
IF DEFENSE OBJECTS AT TRIAL TO IMPROPER ARGUMENT

DATE OF HEARING: 10/14/04
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
DAVID P. SCHWARTZ, Chief Deputy District Attorney, and hereby submits the attached
Points and Authorities in Opposition to Defendant's Motion In Limine For Order to
Prohibiting Misconduct In Argument; and for Order that Court Takes Judicial Notice of
Authority Cited in this Motion if Defense Objects at Trial to Improper Argument.

This opposition 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

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1 hearing, if deemed necessary by this Honorable Court.

2 POINTS AND AUTHORITIES

3 The prosecution does not intend to commit misconduct during the prosecution of the
4 instant case. It is respectfully suggested that defense counsel exercise the same high ethical
5 standards that they espouse in their moving papers to be necessary to the fundamental
6 fairness of proceedings of such magnitude, including compliance with the reciprocal
7 discovery requirements of Chapter 174 of the Nevada Revised Statutes.

8 The instant motion presents no cognizable request for relief and is apparently
9 designed to provide a tome on prosecutorial misconduct and to anticipatorily offend
10 representatives of the State long before the commencement of trial. It carries the identical
11 weight that a motion by the State to bar ineffective assistance of defense counsel at trial
12 would carry with this Court.

13 The undersigned Deputy District Attorney is aware of the ethical obligations inherent
14 in prosecuting criminal cases. If and when experienced defense counsel hears arguments
15 regarded as objectionable, counsel is obligated to object.

16 The instant motion is one made routinely by defense counsel in capital cases. To the
17 extent that the Defendant's motion is expected to provide the Court with a handbook on
18 prosecutorial misconduct, the Court should be aware that the motion does not, in many
19 instances, state the law correctly. The filing of "boiler plate" motions does not relieve
20 counsel of the ethical obligation to state the law correctly and to update these form motions
21 as new law is made.

22 The rules of evidence and procedure are no different in capital cases than in other
23 cases, save for the special procedural requirements of Supreme Court Rule 250. The State's
24 intention to seek the death penalty does not suspend the rules of evidence applying to every

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other criminal case in the system. The prosecution is not required to outline for the defense those arguments that counsel for the State intends to present at time of trial.

DATED this 21st day of September, 2004.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ DAVID P. SCHWARTZ

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

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO BAR IMPROPER PROSECUTORIAL ARGUMENT, was made this 21st day of September, 2004, by facsimile transmission to:

PUBLIC DEFENDER
FAX#455-5112

BY /s/ M. Beaird

Employee of the District Attorney's Office

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CLERK

OPPS
STEWART L. BELL
Clark County District Attorney
Nevada Bar #000477
DAVID P. SCHWARTZ
Chief Deputy District Attorney
Nevada Bar #000398
200 South Third Street
Las Vegas, Nevada 89155-2211
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GLENFORD ANTHONY BUDD,
#1900089

Defendant.

CASE NO: C193182

DEPT NO: XVIII

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO ALLOW
THE DEFENSE TO ARGUE LAST IN A POTENTIAL
PENALTY PHASE PROCEEDING**

DATE OF HEARING: 10/13/04

TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through DAVID P. SCHWARTZ, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Allow the Defense to Argue Last in a Potential Penalty Phase Proceeding.

This Opposition 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.

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1 POINTS AND AUTHORITIES

2 NRS 175.141(5) "When the evidence is concluded . . . the district attorney, or other
3 counsel for the State, must open and must conclude the argument." The Nevada Supreme
4 Court has considered and rejected Defendants argument on several occasions. Witter v.
5 State, 112 Nev. 908, 921 P.2d 886, 896 (1996); Williams v. State, 103 Nev. 1000 (1997),
6 overruled on other grounds by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000); Snow v.
7 State, 101 Nev. 439, 448, 705 P.2d 632 (1985). In rejecting Defendant's argument, the
8 Witter court concluded:

9 Witter contends that NRS 200.030(4) shifts the burden of proof
10 on the Defendant to prove that mitigating circumstances
11 outweigh aggravating circumstances. Witter cites Griffin v.
12 Illinois, 351 U.S. 12 (1956), and argues that the district court
13 should have allowed him to argue last during closing arguments.
14 We disagree.

15 First, we read NRS 200.030(4) as stating that the death penalty is
16 an unavailable punishment only if the state can prove beyond a
17 reasonable doubt at least one aggravating circumstance exists,
18 and that the aggravating circumstance or circumstances outweigh
19 the mitigating evidence offered by the Defendant. The statute
20 does not shift the burden of proof to the Defendant. Second,
21 unless the case is submitted to the jury by one or both sides
22 without argument, NRS 175.141 mandates the district attorney,
23 or other counsel for the state, open and conclude argument.
24 Under NRS 175.141, the district court does not have the
25 authority to grant Witter's request. Moreover, such a concession
26 would unfairly disadvantage the prosecution. Accordingly, we
27 conclude that the district court did not err when it denied
28 Witter's request to argue last during the penalty phase.

21 Witter v. State, 112 Nev. at 923.

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1 Accordingly, the Court does not have the discretion to allow Defendant to argue last.
2 Therefore, Defendant's Motion must be denied.

3 DATED this 21st day of September, 2004.

4 Respectfully submitted,

5 STEWART L. BELL
6 Clark County District Attorney
Nevada Bar #000477

7
8
9 BY /s/ DAVID P. SCHWARTZ
10 DAVID P. SCHWARTZ
11 Chief Deputy District Attorney
12 Nevada Bar #000398
13

14 CERTIFICATE OF FACSIMILE TRANSMISSION

15 I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S
16 MOTION TO ALLOW THE DEFENSE TO ARGUE LAST IN A POTENTIAL PENALTY
17 PHASE PROCEEDING, was made this 21st day of September, 2004, by facsimile
18 transmission to:

19 PUBLIC DEFENDER
20 FAX#455-5112

21
22 BY /s/ M. Beaird
23 Employee of the District Attorney's Office
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CLERK

OPPS

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
DAVID P. SCHWARTZ
Chief Deputy District Attorney
Nevada Bar #000398
200 South Third Street
Las Vegas, Nevada 89155-2212
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GLENFORD ANTHONY BUDD,
#1900089

Defendant.

CASE NO: C193182

DEPT NO: XVIII

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR RECORDING OF ALL
PROCEEDINGS PURSUANT TO SUPREME COURT RULE 250

DATE OF HEARING: 10/13/04
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
DAVID P. SCHWARTZ, Chief Deputy District Attorney, and hereby submits the attached
Points and Authorities in Opposition to Defendant's Motion For Recording Of All
Proceedings Pursuant To Supreme Court Rule 250.

This opposition 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

NRS 3.320 and 3.380 delineate when matters before the court must be duly reported

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1 or recorded. Additionally, the Defense cites Supreme Court Rule 250, which also outlines
2 those times when a trial court is required to report or record the proceedings before it.
3 Neither NRS 3.320 or NRS 3.380, nor Supreme Court Rule 250 require that every
4 conversation between the parties or between the parties and the court be reported or recorded
5 and transcribed. The State agrees that all court proceedings should be reported or recorded
6 and transcribed, and has no objection to making a record concerning any matters deemed
7 appropriate by defense counsel and the court. However, a literal reading of the instant
8 motion would seem to require reporting every comment or conversation regarding this case.

9 Respondent would submit that such a requirement would be unduly burdensome on
10 the Court and is not envisioned by the Nevada Legislature or Supreme Court. Further,
11 Defense has not shown any practical reason as to why such recordation is necessary.

12 Therefore, the State respectfully requests that the Court deny Defendant's motion and
13 order the court reporter and/or court recorder to be present and record all proceedings as
14 outlined under Nevada statutes and Nevada Supreme Court Rules, and any such additional
15 proceedings as the defense requests should be reported or recorded and transcribed.

16 DATED this 21st day of September, 2004.

17 Respectfully submitted,

18 DAVID ROGER
19 Clark County District Attorney
Nevada Bar #002781

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22 BY /s/ DAVID P. SCHWARTZ
23 DAVID P. SCHWARTZ
24 Chief Deputy District Attorney
25 Nevada Bar #000398
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S
MOTION FOR RECORDING OF ALL PROCEEDINGS PURSUANT TO SUPREME
COURT RULE 250, was made this 21st day of September, 2004, by facsimile
transmission to:

PUBLIC DEFENDER
FAX#455-5112

BY /s/ M. Beaird
Employee of the District Attorney's Office

/mb


CLERK

OPPS

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
DAVID P. SCHWARTZ
Chief Deputy District Attorney
Nevada Bar #000398
200 South Third Street
Las Vegas, Nevada 89155-2211
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GLENFORD ANTHONY BUDD,
#1900089

Defendant.

CASE NO: C193182

DEPT NO: XVIII

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISQUALIFY ALL
POTENTIAL JURORS WHO KNEW OR WERE ACQUAINTED WITH THE VICTIM'S
OR THEIR FAMILIES

DATE OF HEARING: 10/14/04
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
DAVID P. SCHWARTZ, Chief Deputy District Attorney, and hereby submits the attached
Points and Authorities in Opposition to Defendant's Motion To Disqualify All Potential
Jurors Who Knew Or Were Acquainted With The Victim's Or Their Families.

This opposition 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.

1 POINTS AND AUTHORITIES

2 Defendant GLENFORD ANTHONY BUDD moves this Court to enter an order
3 excusing any person from jury service who knew or was acquainted with the victims or the
4 victims' families. This Court cannot render such a blanket order; the Court should decide
5 which jurors should be excused for cause due to a potential relationship only after voir dire
6 examination.

7 Based on the above, Defendant's Motion to Disqualify all Potential Jurors who Knew
8 or were Acquainted with the Victims or their Families is premature and should be denied.

9 DATED this 21st day of September, 2004.

10 Respectfully submitted,

11 DAVID ROGER
12 Clark County District Attorney
13 Nevada Bar #002781

14
15 BY /s/ DAVID P. SCHWARTZ
16 DAVID P. SCHWARTZ
17 Chief Deputy District Attorney
Nevada Bar #000398

18 CERTIFICATE OF FACSIMILE TRANSMISSION

19 I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S
20 MOTION TO DISQUALIFY ALL POTENTIAL JURORS WHO KNEW OR WERE
21 ACQUAINTED WITH THE VICTIMS OR THEIR FAMILIES, was made this 21st day
22 of September, 2004, by facsimile transmission to:

23 PUBLIC DEFENDER
24 FAX#455-5112

25
26 BY /s/ M. Beaird
27 Employee of the District Attorney's Office
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/mb


CLERK

1 **OPPS**
2 **DAVID ROGER**
3 Clark County District Attorney
4 Nevada Bar #002781
5 **DAVID P. SCHWARTZ**
6 Chief Deputy District Attorney
7 Nevada Bar #000398
8 200 South Third Street
9 Las Vegas, Nevada 89155-2211
10 (702) 455-4711
11 Attorney for Plaintiff

7 DISTRICT COURT
8
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-)

13 GLENFORD ANTHONY BUDD,
14 #1900089)

15 Defendant.)

CASE NO: C193182

DEPT NO: XVIII

16 STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PROHIBIT ANY
17 REFERENCE IN FRONT OF THE JURY TO THE TRIAL PHASE OF THE
18 PROCEEDINGS AS THE "GUILT PHASE"

19 DATE OF HEARING: 10/14/04
20 TIME OF HEARING: 9:00 A.M.

21 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
22 DAVID P. SCHWARTZ, Chief Deputy District Attorney, and hereby submits the attached
23 Points and Authorities in Opposition to Defendant's Motion In Limine To Prohibit Any
24 Reference In Front of the Jury to the Trial Phase of the Proceedings As The "Guilt Phase".

25 This opposition is made and based upon all the papers and pleadings on file herein,
26 the attached points and authorities in support hereof, and oral argument at the time of
27 hearing, if deemed necessary by this Honorable Court.

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of State's Opposition To Defendant's Motion In Limine To Prohibit Any In Front of the Jury to the Trial Phase of the Proceedings As The "Guilt Phase", was made this 21st day of September, 2004, by facsimile transmission to:

PUBLIC DEFENDER
FAX# 455-5112

/s/ M. Beard
Secretary for the District Attorney's
Office

mb