

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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SHAWN RUSSELL HARTE

Appellant,

v.

STATE OF NEVADA

Respondent.

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**CASE NO. 78978**

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Appeal from an Order Denying Petition and Supplemental Petition for Writ of  
Habeas Corpus (Post-Conviction) in Case CR98-0074A  
The Second Judicial District Court of the State of Nevada, Washoe County  
Honorable Connie J. Steinheimer, District Judge

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**JOINT APPENDIX VOLUME 5**

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2 JUDITH ANN SCHONLAU

3 CCR #18

4 75 COURT STREET

5 RENO, NEVADA

6  
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9 BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

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11 THE STATE OF NEVADA, )

12 Plaintiff, )

13 vs. )

14 SHAWN RUSSELL HARTE, )

15 Defendant. )

) CASE NO. CR98-0074A

) DEPARTMENT NO. 4

16  
17 TRANSCRIPT OF PROCEEDINGS

18 TRIAL (PENALTY PHASE)

19 FRIDAY, JANUARY 30, 2015, 1:30 P.M.

20 Reno, Nevada

21  
22 Reported By: JUDITH ANN SCHONLAU, CCR #18  
23 NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER  
24 Computer-aided Transcription

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A P P E A R A N C E S

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                                  RENO, NEVADA

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1 RENO, NEVADA; FRIDAY, JANUARY 30, 2015; 1:30 P.M.

2 -oOo-

3 THE COURT: Counsel, do you have anything outside  
4 the presence of the jury?

5 MR. YOUNG: State does not, Your Honor.

6 MS. PUSICH: No, Your Honor.

7 THE COURT: Please bring the jury in. Counsel will  
8 you stipulate to the presence of the jury?

9 MR. YOUNG: State will, Your Honor.

10 MS. PUSICH: Yes, Your Honor.

11 THE COURT: You may call your next witness.

12 MS. PUSICH: Melissa Piasecki.

13 THE COURT: You may proceed.

14

15 MELISSA PIASECKI

16 called as a witness, having been first duly sworn,

17 took the witness stand and testified as follows:

18

19 DIRECT EXAMINATION

20 BY MS. PUSICH:

21 Q Good afternoon, Doctor. Could you please state your  
22 name for the record and spell your last name?

23 A Melissa Piasecki. Last name P-I-A-S-E-C-K-I.

24 Q Doctor Piasecki, I will address you as Doctor, could



1       you please describe your education and training for the jury?

2           A       Sure. So I am a medical doctor which means I went to  
3       medical school. Four years of general medical education.  
4       Following that, I decided I wanted a career in psychiatry, the  
5       medical specialty that works with people having mental and  
6       behavioral problems, so I completed a four year general  
7       psychiatric training program, became certified in general  
8       psychiatry, and began to practice general psychiatry for about  
9       ten years. I decided what I really wanted to do was forensic  
10      psychiatry. I wanted to learn more about the interfacing  
11      between the law and medicine. I completed a one-year forensic  
12      psychiatry fellowship. It is a one-year program of specific  
13      kinds of study, experience, exposure to different kinds of  
14      forensic psychiatry areas. Following that, I became certified  
15      in forensics psychiatry as well.

16          Q       How to you become certified?

17          A       To become certified in forensic psychiatry, you have  
18      to first complete a fellowship, then one year experience, and  
19      then you take an examination and then you maintain your  
20      certification by ongoing educational activities.

21          Q       In the course of your professional career, have you  
22      evaluated people accused of criminal cases?

23          A       Yes.

24          Q       Have you testified both for the State and the

1 defense in various cases?

2 A Yes.

3 Q Do you testify more often for one than the other?

4 A I am retained more often by the defense, so I  
5 testify more often for the defense.

6 Q When you say retained, you are paid for your time,  
7 correct?

8 A I am.

9 Q Are the fees the same whether you are called by the  
10 State or the defense when you are called as an expert?

11 A Yes.

12 Q Was there a time when you interviewed Shawn Harte?

13 A Yes.

14 Q Do you recall approximately when?

15 A It was last May.

16 Q Did you interview him at the Ely State Prison?

17 A I did.

18 Q Where in the prison, in an interview room or in his  
19 cell?

20 A It was in an interview room which had a Plexiglass  
21 divider.

22 Q So you did not have a contact interview with  
23 Mr. Harte?

24 A Correct.

1 Q Do you know how long you spoke to him?

2 A I think about 90 minutes.

3 Q And as part of your assessment, did you review some  
4 documents?

5 A I did.

6 Q Can you please tell us what those were?

7 A Sure. So I reviewed some previous evaluation  
8 documents. I reviewed his Department of Corrections file. I  
9 reviewed some correspondence from Mr. Harte to somebody named  
10 Rameau. I reviewed a letter another inmate wrote regarding  
11 Mr. Harte. I reviewed two articles Mr. Harte had published in  
12 a philosophy journal. I reviewed his transcripts from his high  
13 school and college courses. And I reviewed what is called a  
14 pre-sentence investigation which is something that is produced  
15 as part of a criminal process.

16 Q Okay. Did you also have an order from the court that  
17 let you meet with Mr. Harte in Ely?

18 A I did. I received an order for my evaluation in  
19 April of 2014.

20 Q Turning first to the information that you reviewed  
21 in the Department of Corrections file, would it be fair to say  
22 that there are two broadly defined periods of behavior in  
23 those records?

24 A I would say the records reflect two different

1 situations.

2 Q What was the first that you saw?

3 A The first situation I saw was a situation where an  
4 inmate had some records that reflected some conflict within  
5 the environment in terms of some verbal statements that were  
6 being made and one disciplinary issue.

7 Q Do you remember what the disciplinary issue was for?

8 A The disciplinary issue was over whether or not  
9 Mr. Harte had violated a rule regarding who is on someone's  
10 phone list.

11 Q Do you know if there was any sort of a sanction for  
12 that violation?

13 A Yes. I believe he had one-month segregation as a  
14 result of violating that rule about phones.

15 Q In your review of that first period, first  
16 situation, did you see any incidents of violence by Mr. Harte?

17 A No?

18 Q And you are reviewing prison records, right?

19 A Yes.

20 Q What is the second situation you observed in the  
21 record?

22 A So after the first situation and again looking at  
23 the appeals and so forth from the disciplinary, that is all  
24 kind of one chapter. The next chapter, which is a much longer

1 chapter and most of the records are related to the second  
2 chapter, are requests for books and courses.

3 Q Even though it is a disciplinary file, the bulk of  
4 it is asking for reading material?

5 A Yes. I think more of an institutional file than  
6 disciplinary file. It seems to have covered all the requests  
7 that he made to the institution. Some of them were like  
8 appeals from the disciplinary stuff. The rest appeared to be  
9 related to requests for books and related to educational  
10 courses.

11 Q Do you recall how late in time the information  
12 regarding the telephone infractions occurred?

13 A I believe it was like '99 and 2000.

14 Q Since that time, the information you saw it  
15 primarily had to do with the education and reading materials?

16 A Last fifteen years with material of papers in that  
17 file related to requests for books.

18 Q Okay. During your interview with Mr. Harte, did you  
19 discuss his family background?

20 A I did.

21 Q And did you reach a conclusion whether or not his  
22 family background had any effect on him at the time you were  
23 speaking with him?

24 A Well, our family background, my belief is it affects

1 us throughout our adulthood. So, yes, I did believe his  
2 family background had an effect on him.

3 Q Do you think it had an affect on him in 1997 when  
4 this crime occurred?

5 A Yes, I do.

6 Q As a result of your review of the documents and your  
7 interview with Mr. Harte, did you reach any conclusion whether  
8 or not he's made any progress in dealing with his background?

9 A Yes.

10 Q How do you decide that? What played into your  
11 opinion?

12 A All the information I have about his family  
13 background is it was a pretty dysfunctional family situation  
14 and it promoted dysfunctional ways of thinking and  
15 dysfunctional ways of behaving, especially toward other  
16 people. And what I saw in my review of Mr. Harte's records  
17 and also my interview is that he had made a very deliberate  
18 and conscious effort to learn different ways of responding to  
19 other people and different ways of thinking including  
20 different ways of thinking about himself. So in a very  
21 deliberate way, he identified dysfunctional approaches to  
22 life. He had identified more progressive or functional  
23 approaches to life and had made a conscious decision to change  
24 away from the dysfunctional patterns that he had learned in

1 his family.

2 Q You interviewed Mr. Harte the middle of last year,  
3 approximately, correct?

4 A Yes.

5 Q So he had been in custody at that point for a long  
6 time?

7 A Yes.

8 Q What do you look to when you are relying on things  
9 that come from Mr. Harte or anyone else to make sure that they  
10 are not just telling you what they think you might want to  
11 hear?

12 A So forensic psychiatry is psychiatry and the law.  
13 It is different from clinical psychiatry, because I am not  
14 there to treat that person or to make that person feel better.  
15 My job is to come into the courtroom and to take an oath and  
16 to give the triers of fact or the people making decisions an  
17 honest opinion. And so I can't do that without considering  
18 all of the information that is available to me including the  
19 past records, including the institutional records, including  
20 information other people can give me. So my job is to not  
21 limit myself to talking just to the individual but to obtain  
22 and evaluate all of that collateral information is what we  
23 call that, collateral information and do an analysis or answer  
24 the questions that have come to me from the retaining office

1 or attorney and to integrate all of that. So it is a long way  
2 of saying I rely a lot through outside information.

3 Q Not just what the person you are interviewing tells  
4 you?

5 A Correct.

6 Q During your interview of Mr. Harte, he did not  
7 endorse or tell you about any psychotic symptoms, correct?

8 A Correct.

9 Q Were you aware that at an earlier time he had told  
10 someone he was suffering from hallucinations?

11 A Correct. They did a competency evaluation and  
12 things like that early on, too.

13 Q From what you observed, was his report that he was  
14 not suffering any psychotic symptoms consistent?

15 A Correct. Yes.

16 Q As part of your interview of Mr. Harte and review of  
17 his family background, in your experience, do people try in  
18 public to put for example their best foot forward?

19 A In general, people are trying to make a social  
20 impression. They are trying to be conscious of how they  
21 appear to others. And so often that does include putting your  
22 best foot forward.

23 Q Do you know if families, even ones dysfunctional,  
24 try and do that, too?



1           A     I think dysfunctional families try very hard to not  
2 allow their dysfunction to show outside of the family.

3           Q     Mr. Harte described a circumstances where he had  
4 suffered abuse at the hand of his stepfather, and then the  
5 result was that he was moved to a group home. Would that be  
6 consistent with we dont want anybody outside of the family to  
7 realize was is going on here?

8           A     There is a term sometimes that is used which is  
9 blame the victim in terms of a child in a dysfunctional  
10 family. That it might be an example of dysfunction within all  
11 or part of the family, but only the child is identified as the  
12 problem.

13          Q     Do people mature at different speeds?

14          A     Absolutely.

15          Q     What would be the norm or general, I realize that is  
16 a very broad progression, to mature for a young man?

17          A     So if we look at combined data, instead of saying  
18 one person, because there is a bit of a range, so if we look  
19 at combined data, and if we follow combined data from ten  
20 years old, eleven years old, fourteen years old, eighteen  
21 years old, what we see is a gradual progression of brain  
22 development during adolescence. We notice that brain  
23 development. If you look at an eighteen year old and nineteen  
24 year old, it is actually not a fully mature brain even at that

1 time. In general, individuals have a brain, an adolescent  
2 brain development process that is occurring in adolescents and  
3 finishing, in general, in early twenties. Early adulthood.

4 Q Did Mr. Harte describe to you a progress that he had  
5 experienced toward more mature, more appropriate behavior?

6 A So with Mr. Harte, what is interesting is  
7 intellectually he appears to have had a developmental process  
8 or maturity that was intellectually somewhat advanced. He was,  
9 I believe, a very smart kid and remained a very smart adult.  
10 He didn't have developmental delay in terms of his ability to  
11 use words or math concepts or things like that. I think that  
12 part of his development was on track or advanced.

13 It does appear he had some delays in what we would  
14 call moral development. Moral development is a little bit  
15 more nuanced than whether somebody can get a score on a math  
16 test. It appears that he had some significant lag in ability  
17 to identify some basic things about interpersonal  
18 relationships and about the impact of one's behavior on  
19 another person. And from his history, it appears that he had  
20 sort of a developmental catch up in that area in his mid  
21 twenties.

22 Q Would that be consistent with that maturation  
23 process you described across many people?

24 A It would be. It would represent a little bit of lag

1 in the moral development, being a little later than you may  
2 see in other individuals.

3 Q In your report, there is a discussion of empathy,  
4 correct?

5 A Yes.

6 Q What are you including in empathy?

7 A Empathy is being able to understand what another  
8 person is experiencing. It is different from sympathy.  
9 Sympathy is knowing somebody is having a hard time and feel  
10 bad for them. Empathy is different. Empathy is more having  
11 some kind of connection or resonance with another person's  
12 emotional state.

13 Q In your conversation with Mr. Harte, did he describe  
14 a process where he was able to recognize and develop empathy?

15 A He described sort of discovering feelings that he  
16 hadn't had before and then realizing they were feelings of  
17 empathy. He had a process of, again, sort of a delay in his  
18 awareness of other people's emotional state.

19 Q Do you recall about how old he said he was when that  
20 happened?

21 A About twenty-three.

22 Q So after he's been in custody for a while?

23 A Yes.

24 Q Were you asked to determine whether or not Mr. Harte

1 might me able to progress to the level of not being a future  
2 danger in the community?

3 A I'm not sure that I can answer the question exactly  
4 as you asked it.

5 Q Okay. What could he do in the next 23 years that  
6 would make him less of a danger in the future if he were ever  
7 to be released?

8 A So one of the ways that we look at an individual's  
9 risk is what are their risk factors, their specific risk  
10 factors for dangerousness. One of those risk factors is age.  
11 If we just look at the violence in our society, there is a  
12 huge peak of violence for adolescent males ages 17 to 21.  
13 Just a lot, looking at the demographics, there is a lot of  
14 violence in that group. So one of the things that happens,  
15 people just get older and mature and some of that brain  
16 maturity. And so one of the things that he can and will do is  
17 just continue to mature. Just continue to grow older. And  
18 with increasing age, the risk of violence decreases.

19 Q I am just going to call them protective factors. It  
20 is easy for me to think that way. Clearly there are some  
21 people in our world that have achieved the age of 50, 60, 70  
22 who still have been involved in considerable violence. What  
23 protective factors did you observe in Mr. Harte that would  
24 assure us that is less likely with him?

1           A     Sure. Some of the protective factors are increasing  
2 his educational attainment. Increasing his skills in terms of  
3 interpersonal functioning and building and sustaining  
4 relationships with other people. Those are protective factors  
5 in terms of long term risk of violence. He also has, in terms  
6 of protective factors, and this is something that is related  
7 to what we were talking about earlier which is that increased  
8 moral development. That he has at this time a much more  
9 developed understanding of right and wrong and what is a  
10 meaningful, a meaningful and sustainable way to be in the  
11 world as it relates to other people.

12           Q     The protective factors we discussed, the information  
13 that you got from the institutional file, all those things,  
14 those things have happened while Mr. Harte has been in  
15 custody. Does that mean the only place he can maintain  
16 appropriate behavior is in custody?

17           A     I don't think so.

18           Q     Why not?

19           A     Because I think that the protective factors and the  
20 behaviors that we are talking about, I think they generalize  
21 to other situations as well. I don't think that all of the  
22 maturation that he has had goes away in a different  
23 environment. I don't think that the educational and  
24 interpersonal gains he's made go away when he's in a different

1 environment. I think these are sustained and probably  
2 progressive protective factors in the sense that over time,  
3 the amount of protection that he gives in terms of risk of  
4 dangerousness continue to grow.

5 Q A person who is in a very limited environment learns  
6 to deal with that environment. If Mr. Harte were ever to be  
7 granted parole, he's going to be in a very different  
8 environment. Does he need to have interactions with those  
9 other types of people, not inmates of the Nevada Department of  
10 Corrections, to be able to function with them in the world?

11 A I think that everyone who has spent a lot of time in  
12 a prison environment and transitions into a non-prison  
13 environment needs the opportunity to reorient and to learn  
14 skills that they haven't used in ten, twenty years. When I  
15 think about the technology that has changed in the last ten  
16 years, you can imagine just in terms of that what a big leap  
17 that would be.

18 For Mr. Harte, the same would be true in terms of  
19 developing the skills to manage other environments, but also  
20 the ability to apply what he's learned, has been practicing  
21 inside the prison in terms of his interpersonal and  
22 intrapersonal things that he is working on for his own  
23 personal development. He would need the opportunity to learn  
24 how to use those in a new environment. That is why the

1 transition from a controlled prison environment to the  
2 community often includes specific transitional programing.

3 Q Is it important to your assessment that Mr. Harte  
4 isn't just looking introspectively but tried to help people  
5 beyond himself?

6 A It is important.

7 Q How?

8 A For the purpose of my opinion say today, it is  
9 because other people can tell me that they have experienced  
10 this with him, not just him saying I have been working on  
11 myself and feel I am doing a good job. It is other people  
12 saying he's brought out the best in me. He's been generous and  
13 kind and loving towards me, and as a result of that, I have  
14 gained as a person. So it is helpful to me. It gives me so  
15 much more context for what his impact is and what his -- what  
16 level of skill he has.

17 Q Did you have the opportunity to review a letter from  
18 an inmate that was writing on behalf of Mr. Harte?

19 A Yes.

20 Q Was that Mr. Castillo?

21 A Yes.

22 Q Is that the type of information that is useful to  
23 you in deciding he's reaching out and touching others?

24 A Yes.

1           Q     You mentioned earlier that you had an opportunity to  
2 review a letter to a child named Rameau?

3           A     Yes.

4           Q     Is that also the type of information that plays a  
5 part, in your opinion, he's reaching out and that, hopefully,  
6 he's going beyond himself?

7           A     Exactly. Otherwise, it would be impossible to know  
8 if he had the capacity to do that. But this is evidence that  
9 he does.

10          Q     Have you had an opportunity to speak with Janine  
11 Marshall?

12          A     I have.

13          Q     What effect, if any, does Mr. Harte's relationship  
14 with her have on your assessment of his ability to function if  
15 released?

16          A     It speaks to his ability to create and sustain  
17 meaningful relationships, relationships that are productive  
18 and helpful to other people including people that are not  
19 other inmates. So it is a big leap to go from relating and  
20 supporting somebody in the cell next to you to relating and  
21 supporting somebody who is half a world away.

22          Q     What effect would that have if for some reason the  
23 relationship doesn't survive the next 23 years which would be  
24 the earliest Mr. Harte could apply for parole if he were given



1       that opportunity at all?

2           A       Part of my assessment includes relationship history.  
3       I looked at whether or not this is the only relationship he  
4       had ever had or had previous relationships since incarcerated.  
5       He has had a number of previous relationships I learned that  
6       were also long term, so sustained more than a year, and that  
7       were based on principals of mutual respect and mutual  
8       interests, self discovery, principals of some of the  
9       philosophical principals he's been studying and writing. In  
10      fact, the letter to Rameau you mentioned earlier could be seen  
11      by somebody who was one of these previous relationships.

12          Q       What is the best predictor of future behavior?

13          A       The best predictor of future behavior is past  
14      behavior.

15          Q       In this case, Mr. Harte has both, some horrific past  
16      behavior, that is why we are here, and then a period of better  
17      behavior. How do you weigh those? Is one a better predictor  
18      than the other?

19          A       There is no mathematical way to put that information  
20      and come up with a specific answer. There is no scientific or  
21      mathematical formula that allows us to do that. It becomes  
22      more a question of clinical judgment and weighing the factors  
23      we know are risk and protective factors. There is horrific  
24      violence in this case, but there is only one episode of

1       horrific violence, so it is not a sustained matter that's a  
2       factor.

3           Q       In this case, obviously, Mr. Castro is the primary  
4       victim. He died as a result of Mr. Harte's behavior, but the  
5       jury has learned there was an earlier incident only a few  
6       weeks before where other people were significantly at risk.  
7       Good fortune for all of them, they survived. Does that change  
8       what is not one incident but is a series over a period of  
9       several weeks or months?

10          A       It is more of a cluster effect. This isn't somebody  
11       who has a history of sustained aggression and violence towards  
12       another over a long period of time.

13          Q       What effect does his later letter a year after and  
14       he's been in custody where he's saying outrageously offensive  
15       things and he's talking about being threatening and dangerous  
16       in custody, what effect does that have?

17          A       In terms of his overall risk?

18          Q       Correct.

19          Q       By itself, it is hard to say it has much of an  
20       effect. In the absence of any other evidence that he adheres  
21       to those beliefs, that he acted out on those beliefs, the  
22       absence of anything following that letter sort of diminishes  
23       the effect of that letter. If there was any behavior  
24       consistent with that letter, then it would be a much more

1 important factor.

2 Q What-- how do you view the letter, itself?

3 A When I first read the letter, it was appalling. It  
4 was almost like somebody tried to do their very best to write  
5 the worst possible things possible. Somebody made an effort to  
6 just write the most outrageous and appalling letter possible.  
7 So I was very curious about it. How could this be? What would  
8 lead to this? So I asked Mr. Harte about it.

9 Q And today, how do you view that? What was going on?  
10 How did that even get written?

11 A The understanding I have now, based on talking with  
12 him, looking at the letter and contents, it happened when he  
13 was a young man who at the time had very limited ability to  
14 understand or appreciate the impact his words and actions had  
15 on other people. He was very aware only of his needs at that  
16 time. And when he wrote the letter, I believe he was trying  
17 to position himself as somebody who would do well in prison. I  
18 believe it was a letter that he was trying put on the persona  
19 of a really tough person who was going to do well in prison,  
20 who was going to be so tough, that he was going to survive in  
21 a prison environment.

22 Q So it is for himself?

23 A I think there was a lot of bravado. I think some of  
24 it had to do with not knowing what was going to happen in

1 prison and being very worried about it. The tougher he could  
2 look going in, the more or the tougher he could feel going in,  
3 the better his chances were of surviving in prison.

4 Q And from your review of the institutional file from  
5 the Nevada Department of Corrections, none of the outrageous  
6 things he threatened has happened when he got to prison, ever  
7 happened, correct?

8 A Correct. When I asked him about have you ever  
9 considered any of these behaviors you wrote about, he told me  
10 at this time the letter is an embarrassment to him. He looks  
11 at it and feels embarrassed by it.

12 Q Is consistency important in deciding how a person is  
13 going to behave down the road?

14 A Behavioral consistency is important. Sustaining a  
15 behavior is important, yes.

16 Q Can you give me an example of a circumstance where  
17 the longer someone does something, the more comfortable we are  
18 that is the way they are going to continue to behave?

19 A I think it is better. That is something that  
20 happens all the time. People who smoke and quit smoking, what  
21 is the best predictor they are going to stay away from  
22 cigarettes, tobacco? The length of time. The longer you get  
23 away from your quit date, the more likely it is you are going  
24 to have a sustained life abstinence from tobacco. Another way

1 of looking at the same kind of issue, what is somebody's risk  
2 of lung cancer after they quit smoking? The longer their  
3 period of time is since they quit smoking, the less the risk  
4 of that lung cancer. We know that not just because of the  
5 medical study, but insurance companies and life insurance  
6 companies. If anybody ever applied for life insurance, the  
7 longer they get away having tobacco on their insurance  
8 application, the more likely the rates go down. It is because  
9 the risk goes down over time.

10 Q Is it true when you have someone who has displayed a  
11 long period of nonviolent behavior?

12 A The same is true for sustaining all types of  
13 behavior. So nonviolent behavior would be one of those, yes

14 MS. PUSICH: Thank you, Doctor. Thank you, Your  
15 Honor.

16 THE COURT: Cross-examination.

17 MR. YOUNG: Thank you, Your Honor.

18  
19 CROSS-EXAMINATION

20 BY MR. YOUNG:

21 Q Doctor Piasecki, good afternoon. My name is Zach  
22 Young. One of the prosecutors on the case, okay?

23 A Good afternoon.

24 Q You discussed that you began as a general

1       psychiatrist and then transferred to forensic psychiatry?

2           A       Yes.

3           Q       Could you explain, you discussed forensic psychology  
4 involves the law?

5           A       Correct.

6           Q       How does that differ from just general psychiatry?

7           A       So general psychiatry is the care and treatment of  
8 people, and your goal there is to meet the needs of your  
9 patient. Your duty is to the patient. And so you are a  
10 clinician, and you do your very best to help the patient be  
11 well.

12                   Forensic psychiatry you are an evaluator. You are  
13 no longer focussed on your duty to the patient. You focus on  
14 the duty to the Court, the duty to having an objective opinion  
15 that informs a legal process.

16           Q       I want to talk briefly about clinical psychiatry.

17           A       Sure.

18           Q       Where you are trying to help the patient be well.  
19 Typical, or is it always the patient will come to you seeking  
20 help?

21           A       Typically people self-refer, yes. Sometimes they  
22 get referred by other people. So sometimes a spouse will  
23 bring somebody in or a judge will order somebody into  
24 treatment. Typically, it is self-referred.

1           Q     Let's talk about that typical setting.  If I am  
2     having interpersonal issues or otherwise, I will come and pay  
3     for your services in a clinical setting, and you will help me  
4     do better?

5           A     Right.

6           Q     Okay.  In such a situation, does the patient, is  
7     that the right word?

8           A     Uh-huh.

9           Q     Does the patient have an interest or an incentive to  
10    be honest with you?

11          A     Yes.

12          Q     Specifically, that is because they are their for  
13    there own self- betterment.  They are open to self-growth.  
14    They come to you specifically because they want to be there?

15          A     It is in their interest to tell me the truth, so  
16    that I can do my best to help them.

17          Q     Now with forensic psychiatry, a court order, as in  
18    this case, Dr. Piasecki, you are ordered to go meet with so  
19    and so defendant, in this instance, Shawn Harte, correct?

20          A     Yes.

21          Q     That began, the Court order was based on defense  
22    counsel's request for your involvement, fair?

23          A     Yes.

24          Q     Now when you met with Mr. Harte out at Ely, you said

1       that you were in the same room but it was divided by a  
2       Plexiglass or some sort of a glass divider?

3           A       It is like a booth. The booth has a divider, and  
4       there is also some screened area that allows for being able to  
5       hear each other.

6           Q       So you are not in -- Well, maybe theoretically in  
7       the same room, you are not able to physically touch one  
8       another?

9           A       Correct.

10          Q       Now your report lists a number of items that you  
11       were provided as part of your evaluation, and you discussed  
12       those at the beginning, correct?

13          A       Yes.

14          Q       Okay. The two things I believe you discussed or  
15       mentioned when you were talking about what you were provided  
16       but we really didn't get into, was a psychiatric assessment  
17       back in 2002 and a psychological evaluation in '02 as well,  
18       correct?

19          A       Yes.

20          Q       Both of those were assessments or evaluations of  
21       Shawn Harte?

22          A       Yes.

23          Q       They were from, one was a psychiatrist, one was a  
24       psychologist, but those were different individuals and neither



1 was you?

2 A Correct.

3 Q And did you read those and have that when you did  
4 your assessment in this case?

5 A I did.

6 Q The interview that you did with Mr. Harte personally  
7 when you are talking about through that Plexiglass, was you  
8 said May of 2014, correct?

9 A Yes.

10 Q And that was, as I understand, the only time that  
11 you have had a face-to-face sit down with Mr. Harte?

12 A Correct.

13 Q Now you read, again, as you put in the first page of  
14 your statement, a letter from William Castillo that was  
15 written in I believe June of last year, correct?

16 A I'm not sure. Yes. It was June of last year, yes.

17 Q Did you speak with Mr. Castillo at all in person or  
18 just review the letter?

19 A I just reviewed the letter.

20 Q Okay. Now you were discussing, correct me if I am  
21 wrong, I may have misunderstood you, that it is important to  
22 understand what other people are saying about your client or  
23 your patient to kind of assure some accuracy, if you will.  
24 Did I get that right?

1           A     One small correction I would make.

2           Q     Please.

3           Q     Not my patient, because I am not going to be a  
4     clinician in that role, just an evaluator. So the defendant,  
5     so to speak. But it is important for me to obtain information  
6     from other sources, and typically that is other people writing  
7     things or documents that come from other people.

8           Q     Okay. So in this instance, who did you speak with? I  
9     understand you spoke with Mr. Harte. I understand you spoke  
10    with Ms. Janine Marshall?

11          A     Yes.

12          Q     With Ms. Marshall was that over the phone or  
13    face-to-face?

14          A     Face-to-face.

15          Q     Was that once as well?

16          A     Yes.

17          Q     Other than those two, Mr. Harte and Ms. Marshall,  
18    who did you speak with about your evaluation regarding  
19    Mr. Harte?

20          A     Those are the only people I spoke with.

21          Q     Okay. You didn't speak with any of the prison  
22    guards or officials out at Ely, correct?

23          A     No.

24          Q     You already said you didn't speak with Mr. Castillo,

1 didn't speak with any of the other inmates who regularly are  
2 around Mr. Harte?

3 A Correct.

4 Q Now your report does not reference a review of the  
5 letter that Mr. Harte wrote back in 1998. But as I understand  
6 your testimony, you did read that letter?

7 A Yes. I think it was a letter that existed in the  
8 psychological evaluation, the whole letter, and also in the  
9 pre-sentence investigation.

10 Q That is fine. I just want to know what it was. So  
11 you did read the entire letter or excerpts of it or do you  
12 recall?

13 A I believe it was the whole letter.

14 Q Did you ever read or review the police reports  
15 related to this case?

16 A I don't think I did.

17 Q Did you watch the reported interview of Mr. Harte as  
18 related to this case?

19 A I did not.

20 Q There was a transcript of that interview. Did you  
21 read that?

22 A I did not.

23 Q Now you mentioned you did review the Department of  
24 Corrections file of Mr. Harte over the last 17 years?

1           A     Yes.

2           Q     You mentioned that, as I understand, there was two I  
3 think you used the word situations, two time frames or two  
4 points, the first being there was a conflict in the  
5 environment regarding statements that Mr. Harte had made and a  
6 disciplinary issue?

7           A     Yes.

8           Q     Secondarily, the books, the request for books and  
9 the request for educational opportunity and the like?

10          A     Yes.

11          Q     I want to talk about that first. Saying, for lack  
12 of a better word is that the disciplinary issue was related to  
13 the phone system and some things Mr. Harte did related to  
14 that, correct?

15          A     Yes.

16          Q     And your testimony was that, based on that issue,  
17 the discipline he faced was approximately one month of  
18 solitary segregation, correct?

19          A     Yes.

20          Q     Because of your forensic psychiatry background, are  
21 you familiar with the way the prison system in Nevada is set  
22 up?

23          A     Not entirely.

24          Q     Mr. Harte testified yesterday that a lot of the

1 prison setting is an incentive or reward based environment. In  
2 other words, if you do well, you might have some perks and  
3 privileges that go away if you do things including a  
4 disciplinary punishment related to the phone system, fair?

5 A Yes.

6 Q That makes sense to you, right?

7 A Yes.

8 Q So you stated that this phone disciplinary issue was  
9 I believe you said '99 or 2000?

10 A I believe so, yes.

11 Q And are you aware that, based on when the arrest was  
12 made and when Mr. Harte was first moved to Ely State Prison  
13 was about that time?

14 A Right.

15 Q So early on, Mr. Harte learned, while I am in  
16 prison, if I do things against the rules, there are  
17 consequences to that, fair?

18 A Yes.

19 Q All right. Do you know how Ely is set up as far as  
20 restrictions?

21 A No, I don't.

22 Q Do you know what restrictions are put in place on  
23 Mr. Harte?

24 A I don't. The visitation that I had was a phone

1 contact visit. But my understanding was that it was  
2 noncontact because of the day of the week I was there. I could  
3 have had a contact visit if it had been scheduled on a  
4 different day of the week. That's really all I know.

5 Q It is very structured in the prison setting?

6 A Yes.

7 Q As we kind of discussed with the disciplinary  
8 format?

9 A Yes.

10 Q As far as how many hours one might be out of the  
11 their cell, there has been some testimony to that. You don't  
12 know how many hours a day Mr. Harte is allowed out of his  
13 cell?

14 A No.

15 Q Do you know Ely is a maximum security prison?

16 A Yes.

17 Q Now you mentioned in your testimony that the best  
18 predictor of future behavior is past behavior?

19 A Yes.

20 Q That is exactly what you said, right?

21 A Yes.

22 Q And you stated that there was one episode of  
23 horrific behavior is what I wrote down?

24 A Yes.

1           Q     And you stated that there was, again what I wrote  
2     down, no history with respect to Mr. Harte of aggression?

3           A     No aggression outside of that cluster of very, very  
4     violent behavior.

5           Q     Just so we are clear, what cluster are you talking  
6     about?

7           A     So I'm referring to the shooting in 1997.

8           Q     Which one?

9           A     Of the victim of the --

10          Q     John Castro?

11          A     Of Mr. Castro, and then it has been reported to me,  
12     I am not sure, I think it was in the PSI, I am not sure where  
13     I saw this, I am sorry, of another incident involving shooting  
14     and it was in Fallon, Nevada, but I don't have the exact  
15     information with me on that.

16          Q     Let's talk about that. Did you review the list of  
17     reports related to the Fallon shooting?

18          A     I did not.

19          Q     Or any of the interviews or interview of Mr. Harte  
20     related to the Fallon shooting?

21          A     I don't recall seeing that, no.

22          Q     Did Mr. Harte discuss with you the Fallon shooting  
23     at all?

24          A     No. I don't believe I asked him about it.

1           Q     So to use your word, the cluster is the Fallon  
2 shooting and the murder of Castro here in Reno?

3           A     Yes.

4           Q     Did you know or was it discussed by Mr. Harte about  
5 his thoughts having a shootout with the police again in that  
6 general time frame?

7           A     It wasn't discussed with Mr. Harte. I don't recall  
8 seeing that in my review either.

9           Q     Okay. Did you know that Mr. Harte, other than the --  
10 well, you didn't really know much about the Fallon shooting,  
11 correct?

12          A     Correct.

13          Q     Do you know why it was Mr. Harte was shooting at a  
14 vehicle?

15          A     I believe it was an intended robbery.

16          Q     And did you know Mr. Harte and Ms. Babb and  
17 Mr. Sirex, his co-defendants had discussed and planned out  
18 other armed robberies?

19          A     I don't think I was aware of that.

20          Q     Do you know how long Mr. Harte had had discussions  
21 about or thoughts of killing people?

22          A     No.

23          Q     If I told you Mr. Harte testified that from the age  
24 of 14 until 20 when he was arrested, he had thoughts of



1       killing people. Would that expand the cluster that you were  
2       just describing?

3           A       Typically, when we try and assess risk, we base it  
4       on behavior, so the actual actions that people take more than  
5       their thoughts or ideas or statements. So it is typically more  
6       what is the behavior that was observed.

7           Q       So the fact that he thought of killing people for  
8       six years up until he was incarcerated, that doesn't play any  
9       part in your analysis?

10          A       It doesn't play as much of a part as actual observed  
11       behaviors.

12          Q       All right. The letter, we just keep referring to it  
13       as the letter, just so we are clear, the letter he wrote to  
14       Lanette Bagby about what he had done that you described, we  
15       are talking about the same letter, correct?

16          A       Yes.

17          Q       Your word was "appalling" right?

18          A       Yes.

19          Q       I wrote this down as best as I could. You said he  
20       tried to write the most outrageous and appalling letter  
21       possible. At least I think that is what you testified to.

22          A       I think my testimony was it appeared as though this  
23       was a letter by someone that was trying to write the most  
24       outrage and appalling letter possible. It was such an extreme

1 letter.

2 Q As I understand your testimony, you read that letter  
3 through other reports?

4 A Yes.

5 Q So you didn't discuss that letter with Mr. Harte,  
6 exactly?

7 A I did discuss the letter and the contents of the  
8 letter with him.

9 Q Did you go over with him those parts of the letter  
10 which were true?

11 A I didn't break down the letter into the different  
12 elements.

13 Q Are you aware that the majority of what is contained  
14 in that letter recites and depicts actual events that he did?

15 A Yes.

16 Q And are you aware there was one part that started  
17 talking about no remorse, and it was easy, and it was funny.  
18 I think his exact words were taking out the trash only easier  
19 and funner. Do you recall that line?

20 A Yes.

21 Q Are you aware that at the time he wrote that letter,  
22 I can get that if you need me to, at the time he wrote that  
23 letter his testimony is that is how he actually felt?

24 A Yes.

1           Q     So in at least these instances, he's not trying to  
2     be appalling. He's reciting his actual feelings, fair?

3           A     If that was his testimony. Was that his testimony  
4     during these hearings?

5           Q     Suppose yesterday, hypothetically since you weren't  
6     here, suppose he did testify at the time he wrote the letter  
7     those were his feelings. Now he may have changed off that,  
8     but at the time he wrote that letter, those were his feelings.  
9     So that would not be him simply trying to write the most  
10    outrageous and appalling letter possible, right?

11          A     Right.

12          Q     And you used the word he was trying to make, your  
13    word, a persona for himself as he was going to prison?

14          A     Yes.

15          Q     Mr. Harte used that exact same word when he  
16    testified in this hearing. Was that a word you and he had  
17    discussed when you met with him?

18          A     I don't think so.

19          Q     So it is just coincidence you both used that same  
20    description, it was him trying to establish a persona for  
21    himself?

22          A     I think so.

23          Q     Did you know some of the things in that letter he  
24    wrote, specifically the methods of killing, do you recall

1 reading that?

2 A Yes.

3 Q Did you know he had some literature at his house  
4 that was located during the execution of the Search Warrant  
5 which discussed those exact same four methods of killing?

6 A I don't think I knew that.

7 Q If I told you there was some literature found that  
8 discussed those same four methods, again, that would suggest  
9 that that part was true versus trying to be outrageous and  
10 appalling, right?

11 A Yes.

12 Q Okay. With you, Mr. Harte did not claim, as I  
13 understand your testimony, any psychotic symptoms?

14 A Correct.

15 Q And I believe you testified that you are aware that  
16 previously he had reported psychiatric symptoms?

17 A Correct. What I would like to do is clarify.  
18 Mr. Harte has described, described to me some, they are called  
19 kind of a special kind of phenomenon that happens when people  
20 fall asleep and wake up as a twilight zone. He had described  
21 to me those phenomenon of going to sleep and waking up. They  
22 are actually called hallucinations, but they are not the kind  
23 of hallucinations that cause people when wide awake to have a  
24 break with reality. I want to mention that.

1           Q     I am going to have you repeat that for me. I didn't  
2 quite follow that.

3           A     So there is a psychotic system that means a break  
4 with reality. My understanding is Mr. Harte had a competency  
5 evaluation by Dr. Howle because there was some concern about  
6 his competency way back when this was going on. And I think  
7 that was because there was concern about some psychotic  
8 symptoms. When I met with Mr. Harte, he did not say he was  
9 hearing voices. He did not say -- He denied hearing voices.  
10 He denied having thoughts that were bizarre beliefs, things we  
11 would think of, sort of delusional thoughts. But he described  
12 having what are considered kind of minor hallucinations, the  
13 kind of phenomenon that happens to some people when they fall  
14 asleep and wake up. There is a little bit of hallucination  
15 experience during that twilight zone, not when he's awake, not  
16 when he was talking to me.

17          Q     So in the part between falling asleep and waking up,  
18 literally in those moments a person is waking up?

19          A     Right. They are called hypnopompic and hypnagogic.  
20 It is more a sleep disorder than psychiatric disorder.

21          Q     You mentioned Dr. Howle. You said from a  
22 psychiatric evaluation way back. Are you talking about an  
23 evaluation in about 1997?

24          A     '97, '98, around there, yes.

1           Q     And related to his discharge from the Army?

2           A     No. I think it was a competency evaluation for  
3 competency to stand trial.

4           Q     Are you aware or did Mr. Harte ever share with  
5 you -- Let me back up. That was a terrible start. Are you  
6 aware Mr. Harte served in the Army?

7           A     Yes.

8           Q     Okay. Are you aware of the reason for Mr. Harte's  
9 discharge from the Army?

10          A     I believe I read about that. I don't think I talked  
11 to him about that. But I believe I read it in one of the other  
12 evaluations, yes.

13          Q     That was Dr. Bitker's evaluation?

14          A     Yes. Yes.

15          Q     And what was your understanding -- So you didn't  
16 speak to Mr. Harte. Your knowledge of this is based on Dr.  
17 Bitker's 2002 psychiatric evaluation?

18          A     Yes.

19          Q     What was your understanding of how Mr. Harte  
20 effected his discharge from the Army?

21          A     That he presented to have had hallucinations.

22          Q     So we are not talking about this as your waking up  
23 hallucination. You described it as more of a sleeping  
24 disorder?

1           A     Correct.

2           Q     His report was I am suffering from hallucinations?

3           A     Right.

4           Q     Based on that, you are aware from reading the report  
5     that the evaluation came back that he has some mental issues,  
6     and because of that, he was discharged from the Army?

7           A     Correct.

8           Q     And are you aware that that was not an accurate  
9     representation?

10          A     Correct.

11          Q     So Mr. Harte was able to, in a psychiatric  
12     evaluation, make a self-report of something which was not true  
13     and receive a benefit from it, fair?

14          A     Yes.

15          Q     Now in your evaluation and in your report you  
16     discuss Mr. Harte no longer meets the criteria for a  
17     personality disorder?

18          A     Yes.

19          Q     Then you say but he still does have some  
20     narcissistic traits?

21          A     Yes.

22          Q     Let's break that down into both of them.

23          A     Okay.

24          Q     At one point he was diagnosed as having a

1 personality disorder?

2 A Yes.

3 Q Again, in relying on -- is that relying on Bitker's  
4 and Dr. Moriarte's report from 2002?

5 A Yes.

6 Q Based on -- And you used Dr. Bitker's evaluation in  
7 forming your own opinions in this case?

8 A Yes.

9 Q So what diagnosis did Dr. Bitker make of Shawn  
10 Harte?

11 A So Dr. Bitker made a diagnosis of mixed personality  
12 disorder.

13 Q Okay. He makes a diagnosis of mixed personality  
14 disorder with narcissistic border line obsessive schizoid  
15 schizotypal and antisocial features, correct?

16 A Yes.

17 Q As a lay person talking to me, what does that mean?

18 A It means Dr. Bitker saw Mr. Harte as somebody who  
19 had many maladaptive qualities in terms of interpersonal  
20 relationships.

21 Q Schizoid and schizotypal, what is that?

22 A Schizoid means sort of aloof. Schizotypal means  
23 somebody who has like magical thinking.

24 Q And it is your opinion, after your evaluation, that



1 he no longer, you would no longer diagnose him as that or you  
2 would?

3 A What I wrote in my evaluation at the time of my  
4 assessment, he still had some interpersonal difficulty.  
5 Personality disorders are mainly problems with other people.  
6 Mr. Harte, when I met with him, I thought he still had some  
7 problems with other people. I didn't think it went up to the  
8 level of this kind of pervasive personality disorder.

9 Q Bu he still has narcissistic traits?

10 A Yes.

11 Q Narcissistic is what?

12 A It is a sense of self-being. Somewhat different  
13 than others. Perhaps different in a way that includes, for  
14 different people, could be special in a way. Deserving of  
15 special treatment. Superior to others. Narcissism relating to  
16 having that sort of perhaps inflated sense of self relative to  
17 others.

18 Q And Shawn Harte still feels that way in some ways,  
19 right?

20 A That is my assessment based on all of my records  
21 reviewed and also my interview with him.

22 Q Of course, there is no way to see, away from your  
23 last comment about your analysis based on your contact and  
24 your review, there is no way you can sit here and tell the

1 jury with any certainty that you know Shawn Harte upon release  
2 from prison, if that is what the sentence is, will not engage  
3 in criminal activity, right?

4 A There is no way I could say that about anybody.

5 Q And there is no way that you could say about anybody  
6 or since we are dealing with Shawn Harte, Shawn Harte won't  
7 engage in violent activity should he be released, right?

8 A Again, that is sort of an absolute statement. There  
9 is no way I wouldn't be able to say that about Mr. Harte or  
10 anyone else.

11 Q Right. I am not being facetious here. You are not  
12 a mind reader.

13 A Right.

14 Q There is no way you can predict with any certainty  
15 what anybody including Mr. Harte would do tomorrow or in  
16 twenty-three years or fifty years, fair?

17 A Correct. There is no absolute yes or no prediction.  
18 It is more of a relative risk or a continuum of risks.

19 Q Sure.

20 MR. YOUNG: Court's indulgence, Your Honor?

21 THE COURT: Yes.

22 MR YOUNG: Thank you, Doctor. That's all the  
23 questions I have, Your Honor.

24 THE COURT: Redirect.

1 MS. PUSICH: Thank you, Your Honor.

2

3 REDIRECT EXAMINATION

4 BY MS. PUSICH

5 Q Doctor Piasecki, isn't it true there are groups in  
6 the world that tend to have more narcissistic features than  
7 others?

8 A Groups?

9 Q Doctors and lawyers might be two?

10 A Oh, my. There are narcissistic personality traits  
11 that we see in business people. I think that if we look at  
12 doctors, you would say, well, pediatricians don't seem that  
13 way so much, but surgeons may be a little bit more. So there  
14 is a continuum of narcissistic traits in the general  
15 population.

16 Q Simply having that trait doesn't necessarily tell us  
17 anything pathological about a person, correct?

18 A The trait in itself, by indicating a trait or  
19 identifying it as a trait suggests that it is present. That  
20 may not promote friendships everywhere you go, but it is not  
21 up to the level of disorder where it is causing difficulty and  
22 dysfunction.

23 Q When you talk about observing some of that with  
24 Mr. Harte, is it to the level of causing difficulty and

1       disfunction today?

2           A       In fact, I would say it is sort of the opposite,  
3       because somebody who was really -- How I would think of having  
4       the disorder goes from the trait up to the more intense level  
5       of narcissism of having the disorder. That is somebody who  
6       would have a hard time giving to other people and investing in  
7       other people's welfare. Somebody with a disorder would rather  
8       be expecting other people to invest in their welfare rather  
9       than the other way around. And what I see is Mr. Harte's  
10      narcissism does not get in the way of being able to help  
11      Mr. Castillo have a good relationship with Janine, with things  
12      I am able to see the behavioral evidence of his actions.

13          Q       Is psychiatry like other branches of medicine,  
14      diagnoses may change over time?

15          A       Yes.

16          Q       You described it is not quite psychotic delusion and  
17      twilight. Is that a person starting to wake up and doesn't  
18      know the difference between this is part of my dreaming and  
19      this is part of my life?

20          A       It is very much like that, maybe a little bit more  
21      intense. Again, it is considered within the realm of sleep  
22      disorder rather than psychiatric disorder.

23          Q       Generally, the person wakes up and realizes what is  
24      real?

1           A     Yes. And they have vivid recall of those twilight  
2 dream-like hallucinatory moments.

3           Q     But can function in the world despite them?

4           A     Yes. Because they are not having any kind of  
5 psychotic symptoms during their awake period.

6           Q     The discussion you had with Mr. Young about the  
7 things Mr. Harte had been involved in, the bad things  
8 Mr. Harte had been involved in before his arrest in this case  
9 and shortly after that, that doesn't change your two  
10 situations in the time frame of the prison, correct? We have  
11 extraordinary bad behavior in several different levels before  
12 approximately 2002, 2001 and a long pattern of good behavior  
13 for the last dozen or so years?

14          A     It doesn't change. It is a consistent trajectory.  
15 If you look at the path, it isn't there are intervals of good  
16 and bad. It is all bad then trends to all good.

17          Q     Your review of Mr. Harte's background and  
18 circumstances, he hasn't been given medication or treatment  
19 for any psychiatric condition, correct?

20          A     I haven't seen any evidence of that in the prison  
21 file or the jail file.

22          Q     So the growth and development he has accomplished  
23 after working hard to accomplish those things?

24          A     It has been sort of, we think about counseling and

1 therapy as ways people can change, and this is a form of that  
2 only it is self-administered.

3 Q How can you be confident Mr. Harte wasn't responding  
4 during your interview in a way that was designed to skew your  
5 findings?

6 A The most important way I can be confident is looking  
7 at other sources of information in addition to my interview  
8 with Mr. Harte.

9 Q At the beginning of Mr. Harte's time in the Nevada  
10 Department of Corrections, he had some write-ups for what you  
11 characterize as statements. Isn't it true those statements  
12 were not regarding violence. He got in trouble because they  
13 were disrespectful?

14 A Correct. It was interpersonal conflict based on  
15 statements not any kind of behavior.

16 Q And the distinction you are making between --  
17 Certainly we understand that there is the Churchill County  
18 case and our current case which were just horrible, but there  
19 was a period of time Mr. Young asked you about where there  
20 were expressions of beliefs or writings or research done by  
21 Mr. Harte. And you made a distinction between thought and  
22 actions, correct?

23 A Yes.

24 Q With the actions being more important for your

1 conclusions?

2 A Yes.

3 Q Is it fair to say it is difficult to sustain a false  
4 front to the world over a long period of time or more  
5 difficult to do it over a long period of time?

6 A It is. And we see this in psychiatry. If we  
7 observe somebody for a long period of time, we become much  
8 more confident in our assessment than in a short period of  
9 time. That is one of the reasons that I think this 14 years is  
10 especially significant, because it is just a long period of  
11 time for someone to maintain the behavioral record that he has  
12 but also to develop relationships over that period of time.

13 Q You advised Mr. Young you are not aware of the  
14 specific conditions Mr. Harte is experiencing each day at the  
15 Department of Corrections. But is it fair to say he's subject  
16 to observation every minute of every day?

17 A I believe that if he isn't in a locked room, he's  
18 under direct observation, yes.

19 Q So you didn't get to see him over those fourteen  
20 years but you have access to records from people who did?

21 A Yes.

22 MS. PUSICH: Thank you. Thank you, Your Honor.

23 THE COURT: Anything further.

24 MR. YOUNG: Just a couple of questions.

## RECROSS-EXAMINATION

BY MR. YOUNG:

Q You testified diagnoses may change over time?

A      Yes.

Q And so your diagnoses or diagnosis in 2014 of Mr. Harte differs from the 2002 diagnoses of Dr. Bitker and Moriardi?

A Yes.

Q Mainly that their diagnoses of personality disorder  
you no longer find to be present?

A Yes.

Q Okay. With that, there may be a different diagnosis in another 12 years?

A      There could be.

Q Just the last little part you were testifying with Ms. Pusich there about your confidence Mr. Harte is being accurate with you, straight with you during your analysis, you said if we observe someone for a long time we are more confident in our analysis?

A      Correct.

Q I understand you reviewed some prison records,  
right?

A Yes.

Q Showing Mr. Harte over the last 14 plus years?



1           A     Yes.

2           Q     But your personal observation of Mr. Harte was  
3 limited to one meeting?

4           A     I was referring to the extended period of  
5 observation in the prison not my one meeting, yes.

6           Q     I understand. Your meeting was one time?

7           A     Yes.

8           Q     For how long are we talking?

9           A     About 90 minutes.

10          Q     So an hour and a half?

11          A     Yes. And with what is contained in the prison  
12 records.

13          Q     As a preface, what is contained in the prison  
14 records, you don't know what actions or inactions or  
15 disciplinary measures or otherwise has to be triggered to put  
16 anything in those records, correct?

17          A     I made an assumption it was a complete file. That  
18 would include all disciplinary and medical records as well as  
19 the request for books and so forth. I made the assumption it  
20 was a complete file.

21          Q     So you don't know if somebody -- what leads to, if I  
22 am asking my question correctly, what triggers somebody from  
23 putting any sort of disciplinary action in there or request  
24 for books. That would be up to the prison?

1           A     That would be.

2           MR. YOUNG:   That's all.   Thank you, Doctor.

3           MS. PUSICH:   Court's indulgence, Your Honor.

4           THE COURT:   Okay.

5

6                               REDIRECT EXAMINATION

7       BY MS. PUSICH:

8           Q     Doctor Piasecki, the prison records you were  
9       provided were actually given to me by the District Attorney's  
10      Office.   But in those documents, is it fair to say it is about  
11      two and a half, three inches thick?

12          A     You know, I had it electronically.   It was several  
13      hundred pages.

14          Q     The vast majority is requests for reading material?

15          A     Yes.

16          Q     But included in there is a write-up with respect to  
17      a verbal disagreement?

18          A     Correct, yes.

19          Q     So would you expect that if the prison includes  
20      information about a verbal disagreement, they would also  
21      include any incidents of violence?

22          A     Not only because it appears the verbal agreement was  
23      within the threshold, I have looked at many, many files from  
24      many, many inmates at Ely and other places, and I have seen the

1 kind of behaviors that happen in these environments. And  
2 there is many kinds of bad behaviors that people have in these  
3 environments. And so I know what kind of things could have  
4 been in there and they were not. The only disciplinary issue  
5 that I saw was the phone issue and some of the appeals,  
6 exchanges following that.

7 MS. PUSICH: Thank you very much.

8 MR. YOUNG: Nothing. Thank you, Your Honor.

9 THE COURT: May this witness be excused?

10 MS. PUSICH: Yes, Your Honor.

11 THE COURT: Ma'am, you may step down. You are  
12 excused.

13 THE WITNESS: Thank you.

14 (Witness excused)

15 MS. PUSICH: Your Honor, may we have a moment to  
16 review the exhibit list?

17 THE COURT: Certainly.

18 MS. PUSICH: The defense rests, Your Honor.

19 THE COURT: Counsel.

20 MR. YOUNG: Your Honor, the State has no rebuttal  
21 case, however, pursuant to statute, the State would ask that  
22 the family of John Castro be allowed to address the jury.

23 THE COURT: Okay.

24 MR. YOUNG: In that regard, the State would call

1 Tony Castro.

2 THE COURT: I am sorry, it is almost 3:00 o'clock.  
3 Should we take a short recess first?

4 MR. YOUNG: Whatever the Court's preference.

5 THE COURT: The clerk reminded me maybe it is a good  
6 idea to take a short recess before we start with them.

7 During this break, remember until the trial is over  
8 you are not to discuss the case with anyone else, other family  
9 members or anyone else.

10 You may not allow anyone to speak of the case to  
11 you, this includes discussing the case through internet chat  
12 rooms, internet bulletin boards, Facebook, tweets, e-mails or  
13 text messaging. If any one tries to communicate with you,  
14 please report it to me immediately.

15 Do not read, watch, listen to or view any news media  
16 accounts or any other accounts regarding the trial or anyone  
17 associated with it including any online information. Do not  
18 do any research such as including dictionaries, searching the  
19 internet or any investigation into the case or the parties at  
20 all.

21 Go ahead and go in the jury room. We'll take a  
22 short recess. Court's in recess.

23 (Short recess taken.)

24 THE COURT: Thank you. Please be seated. Are we

1 ready to proceed?

2 MR. YOUNG: Yes, Your Honor.

3 THE COURT: Go ahead and bring in the jury. Counsel,  
4 will you stipulate to the presence of the jury?

5 MR. YOUNG: State would.

6 MS. PUSICH: Yes, Your Honor.

7 THE COURT: Thank you. Please be seated.  
8 Mr. Young.

9 MR. YOUNG: State would call Tony Castro, Your  
10 Honor.

11 THE COURT: Thank you. You may proceed.

12

13 ANTHONY M. CASTRO

14 called as a witness, having been first duly sworn,  
15 took the witness stand and testified as follows:

16

17 DIRECT EXAMINATION

18 BY MR. YOUNG:

19 Q Good afternoon, sir?

20 A Good afternoon.

21 Q Would you state your name for the record and spell  
22 both your first and last name?

23 A Anthony M. Castro. A-N-T-H-O-N-Y. Middle initial M.  
24 C-A-S-T-R-O.

1           Q     Sir, do you know an individual by the name of John  
2     Castro, Jr.?

3           A     Yes. He was my oldest brother.

4           Q     Now do you have another brother?

5           A     Yes, Ronald Castro.

6           Q     You said John is your older brother. Who is the  
7     oldest of the three?

8           A     John.

9           Q     Between you and Ron and John?

10          A     I have a sister, Laverne.

11          Q     In preparation of this hearing, did you prepare, you  
12     collectively with the family, prepare a letter to read to the  
13     jury?

14          A     Yes, I did.

15          Q     Before we get to that, I have a few questions for  
16     you, sir. Can you tell the jury what yours and John's and your  
17     other brother and sister, mother and father's names are?

18          A     I am sorry.

19          Q     Your mom and Dad's name is what?

20          A     John, Sr. And Loretta.

21          Q     Going back to 1997 were both your father and mother  
22     alive?

23          A     Yes.

24          Q     Has your father since passed?

1           A     Yes, he was.

2           Q     Your mother is still alive?

3           A     Yes, she is.

4           Q     How old is she?

5           A     Eighty-three.

6           Q     Eighty-three today?

7           A     Yes.

8           Q     You, sir, are you married yourself?

9           A     Yes, I am.

10          Q     What s your wife's name?

11          A     Cindy Castro.

12          Q     And were you and Cindy married back in 1997?

13          A     Yes, we were.

14          Q     Now you mentioned your brothers. Ronald and Cindy,

15 both of them are in the courtroom as well?

16          A     Yes, they are.

17          Q     If I could have Ronald and Cindy stand up. Thank

18 you. Have all three of you been present throughout the

19 entirety of this hearing this week?

20          A     Yes, we have.

21          Q     I am going to take you back to 19, I guess '99 when

22 the trial of Mr. Harte and Ms. Babb and Mr. Sirex was

23 conducted. Were you here for the trial as well?

24          A     Yes, I was.

1 Q Do you know a young man by the name of Keoni?

2 A Yes, I do.

3 Q For the reporter, could you spell Keoni?

4 A K-E-O-N-I.

5 Q Who is Keoni?

6 A Keoni was my brother John's son.

7 Q Do you know how old Keoni was at the time John was  
8 murdered?

9 A Two months old.

10 Q And who ended up taking care of Keoni?

11 A Cindy and I, my wife.

12 Q He came to live with you?

13 A Came to live us at seven months old.

14 Q Is Keoni still living with you today?

15 A Yes, he is.

16 Q How old is Keoni today?

17 A Seventeen.

18 Q And can you tell the jury just a little bit about  
19 Keoni?

20 A Keoni is a wonderful young man. We are blessed to  
21 have him with us. He's an athlete like his father. He plays  
22 football, baseball, basketball. And he's just one of those  
23 exceptional young men. He just does everything we ask. We  
24 have been blessed to have him, be able to raise him for my



1 brother.

2 Q If I could approach, Your Honor, I am showing you  
3 59-a and b, sir. Take a look at those. Do you recognize  
4 those pictures?

5 A Yes, I do.

6 Q Are those both of Keoni?

7 A Yes, it is.

8 MR. YOUNG: Your Honor, I move for 59-a and b.

9 THE COURT: Any objection?

10 MS. PUSICH: No, Your Honor.

11 THE COURT: Exhibit 59-a and 59-b are admitted.

12 (Exhibits 59-a and 59-b admitted in evidence.)

13 BY MR. YOUNG:

14 Q This is 59-a, sir. Is that a picture of Keoni?

15 A Yes, it is.

16 Q How old is he there?

17 A Approximately seven months old.

18 Q About the time he came to live with you and Cindy?

19 A Yes.

20 Q Now I am going to show you 59-b. A picture of Keoni?

21 A Yes.

22 Q He is holding a football and wearing a jersey. Does  
23 he play football?

24 A Yes, he does.

1 Q Now did John Castro Jr., have any other children?

2 A Yes, he did.

3 Q Do you know how many?

4 A He had five.

5 Q Your letter gets into kind of the impact his death  
6 had on Keoni, correct?

7 A Yes.

8 Q You mentioned in your letter another son named  
9 Christopher?

10 A Yes.

11 Q Collectively, what has John Castro, Jr.'s death had  
12 impact wise on his children, do you know?

13 A The family structure has fallen.

14 Q Yesterday when Mr. Harte was testifying you heard  
15 all that, correct?

16 A Yes, I did.

17 Q And did you hear him when he offered an apology to  
18 you and your family?

19 A Yes, I did.

20 Q Up until that testimony yesterday, had you ever  
21 received an apology from Mr. Harte?

22 A No.

23 Q Did you hear Mr. Harte testify something along the  
24 lines that you or the family had made a post or something

1 similar stating that you did not want Mr. Harte to contact  
2 you?

3 A I believe that that never happened.

4 Q You heard him testify to that, though?

5 A Yes, I did.

6 MR. YOUNG: If I could approach.

7 THE COURT: You may.

8 BY MR. YOUNG:

9 Q I am going to show you 58-a, excuse me, 58-a and  
10 58-b. Again, do you recognize those pictures?

11 A Yes, I do.

12 Q Are those of John Castro Jr.?

13 A Yes, it is.

14 MR. YOUNG: Move for 58-a and 58-b.

15 THE COURT: Any objection?

16 MS. PUSICH: No, Your Honor.

17 THE COURT: Exhibit 58-a and 58-b are admitted.

18 (Exhibit 58-a and 58-b admitted in evidence.)

19 BY MR. YOUNG:

20 Q Show you first 58-a sir. Could you give the jury  
21 some content as to that picture, please?

22 A That was at my parent's house for Christmas.

23 Q Do you know either the approximate year or  
24 approximately how old John Castro was in that picture?

1           A     I don't recall. It has been so long.

2           Q     And show you 58-b. Can you see that, sir?

3           A     Yes.

4           Q     Again, could you give some context to that as well?

5           A     That's my brother, John. He had just got out of  
6 Boot Camp and he was waiting for his orders to go to Vietnam.

7           Q     What branch of the military did John Castro serve?

8           A     He was in the Army.

9           Q     Was he proud to be in the Army?

10          A     Absolutely.

11          Q     Sir, I asked you about a letter. Can I see that,  
12 briefly? Thank you. Would you like to read that letter to the  
13 jury, sir?

14          A     Yes, I would.

15          Q     Go ahead, please?

16          A     "Your Honor and members of the jury: It's been  
17 approximately 17 years since our brother's murder, and yet it  
18 seems as if it was yesterday. When I received the phone call  
19 that my brother had been shot, I could not comprehend what had  
20 happened. Till this day, my family struggles with this. My  
21 father told my brother and I to see that the responsible pay  
22 for the wrongdoing. Since then, my father has passed away,  
23 and we keep all the hearings from my mom to protect her as  
24 she's now eighty-three years old, and she calls and asks me if

1 the responsible ones are still in prison. I tell her yes. She  
2 fears if they get out they could kill again.

3 My brother was a good man. He served in the Army  
4 and was in Viet Nam and had been in heated battles there but  
5 lived through it. He was in some pretty rough situations  
6 there and survived, only to come to his own country he fought  
7 to protect to be murdered by an American on our own land. It  
8 sickens us the way Shawn Harte took his life for \$87 and went  
9 to a Taco Bell and casino and played slot machines. At the  
10 trial, the defendant, Latisha Babb, tried to use sympathy for  
11 herself in that she was sorry for what they did, but Shawn  
12 Harte did not show any remorse or offer anything to the  
13 family. I do believe if he did not get caught, he would have  
14 killed again. He had tried prior to killing my brother, but  
15 was unsuccessful with a freeway shooting.

16 Shawn Harte is a murderer and he should never be  
17 released for any reason.

18 During the trial, I sat and watched his actions and  
19 he was laughing and smiling and passed notes to Latisha Babb  
20 as if nothing even happened. They even at one break point  
21 stood up and hugged each other in front of us all. That  
22 sickened me and my family. One of the comments he wrote in a  
23 letter to his ex-girl friend who turned it over to the D.A.  
24 was shooting my brother was as easy as taking out the trash.

1 My brother is not trash. My brother may not have been perfect,  
2 but he was not trash.

3 My wife and I had the opportunity to take my  
4 brother, John's, two month old son at the time of his murder  
5 and raise him. His name is Keoni. We felt very bad Keoni  
6 would only know his father through pictures and what I could  
7 tell him. We were pleased with Keoni when he came to us. We  
8 have raised him as our own which in our heart he's our child.  
9 We have enjoyed watching Keoni grow and play sports as his  
10 father did in his younger days. Keoni is a Hawaiian name which  
11 means John, who he was named after. John has a son at the age  
12 of eight at that time. His name is Christopher. Christopher  
13 has had a very troubled life after the murder of his father. I  
14 really feel it would have been different if John was still  
15 alive. Maybe not perfect, but better, as John loved his kids.  
16 We did not tell Keoni about his father until he was fifteen. I  
17 mean how do you tell your child, how do you tell your child,  
18 one, that he is not yours biologically, but his father was  
19 murdered? When we told Keoni his father was murdered and  
20 robbed, he said why? I told him I did not have the answer but  
21 the people that did this had been caught and are in prison.  
22 He asked if they would ever get out. He cried because he said  
23 he would never get to know his father. Keoni knows we are his  
24 parents now and forever and my wife and I told Keoni we will

1 always be there for him and we'll see Shawn Harte, Latisha  
2 Babb, Weston Sirex that did this will hopefully remain in jail  
3 for the rest of their lives.

4 I guess what my family doesn't understand is why  
5 would he be able to be a free man again. Why does he have the  
6 right to anything when he took my brother's life, another  
7 human being for absolutely no reason. Shawn Harte took a life,  
8 a son, a brother, a father and an uncle and a friend and a man  
9 who fought for his country that Shawn Harte also fought for  
10 and lives in. Freedom is about choices, and Shawn Harte gave  
11 up his freedom when he made the choice to put the gun to my  
12 brother's head and pull the trigger and take my brother, John  
13 Castro, Jr.'s life. Shawn Harte should have no rights and  
14 should never get out. This letter comes from the whole Castro  
15 family, all of John's loved ones.

16 In closing, I would like to say I am a retired  
17 deputy sheriff, and I do believe in due justice. In March of  
18 1999 the Court found Shawn Harte to be guilty of murder.  
19 Murder is murder. And you should receive the maximum penalty,  
20 especially when it is done willfully and without remorse. He  
21 should receive the harshest sentence which should be never to  
22 get out. He should die within the prison walls. Because  
23 Shawn Harte is hoping to get a lighter sentence for what he  
24 did shows he has no remorse. Does he think the years -- does

1 he think the years he has served should be enough? Well the  
2 years we cannot get back with my brother outweighs his wants,  
3 his rights. My brother had the right to live, the right to  
4 raise his children, the right to be there when his father  
5 died. But that was taken away. So why should Shawn Harte have  
6 the right to try for a lighter sentence to get out possibly  
7 and make a life for himself. As the Castro family, we feel he  
8 doesn't have that right to get out today, tomorrow or forever.

9 Q Two follow-up questions: You mentioned that you are  
10 a retired deputy sheriff?

11 A Yes, I am.

12 Q You didn't work for the County Sheriff's Office?

13 A No, Shasta County.

14 Q In California?

15 A California.

16 Q My last question will we open-ended to you, sir. Is  
17 there anything else you would like to share with this jury  
18 about your brother or your thoughts on Shawn Harte?

19 A In the last 17 years he talks about him being in  
20 there and how tough it has been. Well how about my family?  
21 The suffering that my parents had seeing their first child  
22 murdered. When he was laying on the bed at the hospital brain  
23 dead because of the shot that you gave him to the head, my  
24 parents wept and cried and they couldn't understand it. And I



1 to this day don't understand it. And I had my moment with my  
2 brother when I was saying goodbye with him laying there dead,  
3 brain dead because of your actions. And when I talked to my  
4 brother, I told him the things about life that we had shared  
5 and the fun as we grew up that we won't have anymore. A tear  
6 came up from his eye. And how did that affect me now for  
7 those 17 years that you have done to our family? No one  
8 understands why this was done. Only you and why you pulled  
9 that trigger. And I will take it to my death bed when I die  
10 with that question, why, and I will never have that answer.  
11 And no one should be able in their life to experience this  
12 type of situation, because everybody suffers. My family has  
13 suffered hard for those last seventeen years, and we will  
14 continue to suffer throughout our life until we are all gone.  
15 But my son and someone else will be here if he ever tries  
16 another trial. I am sorry for being emotional, but my family  
17 has been disrupted like this that I feel I have to stand up  
18 and be the man that I am and speak for my family.

19 Thank you, Your Honor. And thank you.

20 MR. YOUNG: Thank you, sir.

21 THE COURT: Any questions?

22 MS. PUSICH: No.

23 THE COURT: Thank you, sir.

24 (Witness Excused.)

1           MR. YOUNG: Your Honor, that is the extent of the  
2 statement. Thank you.

3           THE COURT: Ladies and gentlemen of the jury, that  
4 concludes the evidence we are going to hear in this case.  
5 Because of the hour, it is really too late for you to begin  
6 deliberating, because there are some things that have to  
7 happen. The attorneys have to meet with me and have to finish  
8 the Instructions I am going to read to you about what the law  
9 is that you can apply in this case, and then the attorneys  
10 will make their closing arguments. After they have made their  
11 closing argument, you will begin to deliberate, but it has to  
12 be after that. So we are going to take our weekend recess, and  
13 you are going to come back on Monday morning. Monday morning  
14 you will receive the law that applies to this case and you  
15 will hear closing argument from counsel, and then you will  
16 begin deliberating as to what your penalty verdict will be.

17           So as you go about your business this weekend, there  
18 is something I am going to remind you about not doing, but I  
19 also want you to make sure you make arrangements for Monday,  
20 because you won't be probably going to lunch on Monday. So  
21 you will come at 9:00 o'clock Monday and probably just stay  
22 with me. We will feed you, but you won't be going out to  
23 lunch. So you should just make arrangements with your family  
24 and let them know. And once you begin deliberating, you won't

1 have any communications with anyone until you reach your  
2 verdict, if you can reach it that evening. If not, we'll  
3 take a break and continue the next day. But that is sort of  
4 the schedule, so you know what to look for, what is going to  
5 happen for next week.

6 Now you have gotten this admonition from me at every  
7 break and you probably know it by heart. This weekend it is  
8 even more important, because it is not proper for you to reach  
9 any conclusion about the ultimate outcome of this case. You  
10 cannot do that, and you can't think about what your ultimate  
11 conclusion is going to be until you have heard the law, you  
12 have heard closing argument and then you begin talking about  
13 the case with your fellow jurors. Since you can't talk to your  
14 fellow jurors this weekend until this case is finished and  
15 given to you to deliberate, you may not speak of the case to  
16 anyone else or allow anyone else to talk to you about the  
17 case. You are going to have to think about other things. And  
18 I know it is not the easiest thing to do, but if you are  
19 thinking about it, keep it to yourself and don't form any  
20 solid determinations that you can't get rid of once you hear  
21 what the law is and closing arguments.

22 I am going to read the admonition to you again  
23 before you leave, but we'll let you leave now and you will  
24 come back at 9:00 o'clock Monday morning. Does anyone have

1 any questions about what is going to happen?

2 During this recess that we are about to take,  
3 remember that until the trial is over, you may not discuss the  
4 case with anyone including your fellow jurors, members of your  
5 family, people involved in the trial or any one else. And do  
6 not allow anyone to speak of the case to you. This includes  
7 discussing the case on the internet or in internet chat rooms  
8 or through internet blogs, bulletin boards such as Facebook or  
9 twitter, e-mails or text messaging.

10 As I read that list, I wonder is there something I  
11 am leaving out. So if I have left it out, you have to  
12 complete it. If you anyone tries to communicate with you  
13 about this case, please notify the Court immediately. Do not  
14 read, watch, listen to or view any news media accounts  
15 regarding this case or any other account regarding the trial  
16 or anyone associated with the trial including any online  
17 information.

18 Do not do any research such as consulting  
19 dictionaries, searching the internet or using any other  
20 reference materials, and do not make any investigation into  
21 the facts and circumstances or the persons involved in this  
22 case.

23 I will see you back on Monday morning. Have a nice  
24 weekend.

1           Please be seated. We have some business to get to so  
2 I want to ask you a couple of questions. Are you ready to  
3 talk about Instructions?

4           MS. PUSICH: Yes, Your Honor.

5           MR. YOUNG: Yes, Your Honor.

6           THE COURT: Okay.

7           MR. YOUNG: Just one moment.

8           THE COURT: Sure. Go ahead.

9           MR. YOUNG: Thank you, Your Honor.

10          THE COURT: Why don't we make a record. I think the  
11 clerk marked an exhibit while we were on recess.

12          THE CLERK: Exhibit 69 marked.

13                 (Exhibit 69 marked for identification.)

14          MS. PUSICH: Exhibit 69 is a copy of Dr. Piasecki's  
15 report. We think it is important to be part of the record.  
16 It is not offered in evidence for the jury. The State agreed  
17 I could do that even though I rested, because it is not going  
18 to the jury.

19          THE COURT: Was this disclosed?

20          MS. PUSICH: It was disclosed. We simply want it to  
21 be part of the record moving forward. We don't know what is  
22 going to happen.

23          THE COURT: Okay. All right. It just will be noted  
24 it was marked during the course of the trial just not

1 admitted.

2 MS. PUSICH: Correct.

3 THE COURT: Okay. Ms. Clerk, will you go through,  
4 and start with the exhibits and just read the exhibits you  
5 believe have been admitted and see if anyone disagrees with  
6 this list as she reads it.

7 THE CLERK: Exhibit 1-b and 1-c. 2-a and 2-b, 2-c.  
8 3-a and b. 4-a through c. 5-a through b. I am sorry, through  
9 d. So that is 5-a, b, c, and d. 7-a through c. 7-d and e. 8-d.  
10 9, 11-d, 16, 16-a, 17-a, 17-b, 17-c, 17-d, 7-e, 18-a, 18-b,  
11 18-c, 24, 26, 28, 33, 34-a through l, 35, 36, 38, 38-a, 44-a,  
12 52, 53-a, 54-a. 55, 56, 57 are admitted but will not go to  
13 the jury. They are demonstrative. 58, 58-a, 59-a, 59-b, 60-a  
14 through c. 61, 62, 63, 64, 65, 66 and 68. 69 is not admitted.

15 THE COURT: Okay. Any corrections to make to that  
16 list?

17 MS. PUSICH: No, Your Honor.

18 MR. YOUNG: No. Your Honor.

19 THE COURT: Okay. The dilemma of the exhibits you  
20 are using were admitted in the other trial, the admitted stamp  
21 shows the date that they were admitted which is 1996. Some are  
22 ready to come off the document in some respect. Normally,  
23 well actually we don't know normally because we have never  
24 retried a case in Department 4., Ms. Stone and I. So we don't

1 know what you want to do, because we are concerned about the  
2 record for Ms. Babb and Mr. Sirex. I don't think we are going  
3 to be trying that case again, knock on wood. But we are not  
4 sure about these things. We just want to make a record. Do  
5 you want the clerk to put another admitted stamp with today's  
6 date over it or leave the old admitted stamps?

7 MS. PUSICH: I think we should leave the old  
8 admitted stamps. In the circumstances where they are falling  
9 off, I don't object to the Court replacing them with one with  
10 the same date that takes place with the one falling off. I  
11 don't think we should cover the old one. This jury knows this  
12 is a 1997 case. They have heard there has been a previous  
13 trial. I don't think that is a surprise to them. I think  
14 maintaining the record you have is important.

15 THE COURT: Do you want us to put a new admitted  
16 stamp just on a piece of paper, another admitted stamp that  
17 says admitted today?

18 MS. BOND: I don't think it is necessary because the  
19 record is very clear both in the transcript when things were  
20 admitted and in the clerk's record. And we have all just  
21 confirmed those items that were admitted at some time during  
22 this hearing, so I don't think we need an admitted stamp.

23 THE COURT: Mr. Young?

24 MR. YOUNG: I don't think it is necessary. Would

1 the Court's intention just be on those admitted for this  
2 hearing to put a separate admitted stamp with today's date  
3 next to the other sticker?

4 THE COURT: That is what we are talking about. I  
5 think Ms. Bond and Ms. Pusich say they don't think we even  
6 need to do that. We can do that.

7 MR. YOUNG: I don't think it is necessary. I would  
8 probably suggest we do that just so if any document that has  
9 two exhibit stamps on it, it will be obvious one was used in  
10 the trial and one was used here. I agree with Ms. Pusich, I  
11 certainly would not cover up any of the trial exhibit dates  
12 with our dates here.

13 THE CLERK: The old admitted stamps have all three  
14 names on them whereas this will only have Shawn Harte's name.  
15 That will also make it clear. The others will have all three  
16 names on them.

17 MS. BOND: We have no objection to both being on it.  
18 I just didn't think it was necessary. We have no objection to  
19 putting it there.

20 THE COURT: Okay. That is way the clerk will handle  
21 the exhibits.

22 MR. YOUNG: Thank you.

23 THE COURT: Okay. I think that satisfies those  
24 issues. Let's talk about Jury Instructions. The record



1     should reflect, of course, we are convened outside the  
2     presence of the jury. Mr. Harte is present, and the purpose  
3     of this hearing is to settle the Instructions. I have been  
4     given a packet of Instructions from each of you. I think we  
5     have corrected the typographical errors, maybe not all of  
6     them. If there is more you found, let us know and we can go  
7     through these and determine if this packet will work. They  
8     are tentatively numbered but not finally numbered.

9             One was it is my duty as the Judge.

10            Two is if in these Instructions.

11            Three, all the evidence presented.

12            Four, certain transcripts of prior witness  
13     testimony.

14            Five, certain things are not evidence.

15            Six, you are the exclusive judges of the  
16     credibility.

17            Seven is an Instruction that was specifically  
18     requested by the defense. It starts, in considering the  
19     testimony.

20            Eight, a person is qualified to testify as an  
21     expert.

22            Nine, the defendant in this case has been previously  
23     found beyond a reasonable doubt by a jury verdict to be guilty  
24     of murder in the first degree.

1           Ten, a prison term of fifty years with eligibility.

2           Eleven, any person who uses a firearm or other  
3 deadly weapon. And this Instruction specifically at the end,  
4 the credit, I think counsel has told me they both agree, tell  
5 me if you do, that credit time served goes to the murder of  
6 first degree.

7           MS. PUSICH: Your Honor, if he is given an  
8 opportunity for parole, that is true. If not, it is kind of  
9 academic. It definitely is not being applied to the deadly  
10 weapon which is the consecutive sentence.

11          THE COURT: Okay.

12          Twelve is the Instruction that has one offered I  
13 think by the defense on mitigating circumstances.

14          MS. PUSICH: Yes, Your Honor.

15          THE COURT: Is that correct?

16          MS. PUSICH: It is.

17          THE COURT: Thirteen, you are provided information  
18 through a letter of William Castillo.

19          Fourteen, you have heard evidence the defendant shot  
20 a vehicle. This is the Instruction that was written  
21 originally by I think the defense for pre-evidentiary  
22 presentation and been modified to be included in the packet of  
23 Instructions.

24          MS. PUSICH: Correct.

1           THE COURT: It includes all the other act evidence;  
2 is that correct?

3           MS. PUSICH: It is.

4           THE COURT: Fifteen, in reaching your verdict. I  
5 think there was a discussion about State vs. Flanagan in the  
6 discussion of this Instruction.

7           MS. PUSICH: Your Honor, this was briefed and argued  
8 by both parties pretrial or pre-hearing. In light of your  
9 ruling that the information regarding the sentence could be  
10 presented, we don't object to this Instruction, but we are not  
11 withdrawing our earlier arguments.

12          THE COURT: You are specifically asking for this  
13 Instructions in light of my decision?

14          MS. PUSICH: In light of the ruling, yes.

15          MR. YOUNG: The only thing to add, Your Honor, is  
16 this Instruction was actually drafted by the defense. The  
17 offered Instruction by the State in regards to the limit that  
18 the jury can consider Ms. Babb's and Mr. Sirex' sentences was  
19 slightly different. I included language I tried to take  
20 directly from the Flanagan opinion. Because the Instruction is  
21 for the defense benefit, I deferred to some minor word changes  
22 that they requested. Some of the words are a little different  
23 but the point certainly is the same.

24          THE COURT: The defense knew they were entitled to

1 maybe the exact words that were used in the Flanagan case but  
2 chose these words instead?

3 MS. PUSICH: Correct.

4 HE COURT: That was a strategic decision?

5 MS. PUSICH: It is.

6 THE COURT: Sixteen, in your deliberation you may  
7 not consider the subject.

8 Seventeen, it is your duty.

9 Eighteen, although you are to consider the evidence.

10 Nineteen, now you will listen to the argument of  
11 counsel.

12 MS. PUSICH: Your Honor, nineteen is the one to  
13 which we still have a continuing objection to the language at  
14 line 8, equal and exact justice. It is actually the words  
15 equal and exact we have concerns about. Those words originally  
16 come from the 1801 inaugural address of Thomas Jefferson. I  
17 think he was quite eloquent, however, I don't think they have  
18 a good place in this Instruction and this trial.  
19 Traditionally, they have been approved in some earlier Nevada  
20 cases that were capital, and frequently they have been  
21 presented by the State as a better alternative than an eye for  
22 an eye. However, in the current case, our concern is they will  
23 be used by the jury to impose an equal sentence on Mr. Harte  
24 to his co-defendants. We have had concerns from the inception

1 of the case as the Court knows from the motions that were  
2 filed that a jury that was simply told what the others  
3 received will decide Mr. Harte should get the same sentence,  
4 and that is not the individualized sentencing determination  
5 the Constitution affords him. I think this is another  
6 circumstance in which the State will use the language to argue  
7 this is what they got and this is what you should get and our  
8 entire time spent here this week with all of us will be sort  
9 of a waste of time. I think they need to sentence Mr. Harte  
10 based upon, certainly, the circumstances of the offense which  
11 are horrific, but also his own personal circumstances which  
12 have vastly improved. Under the circumstances, if we do  
13 express to them the sentence should be equal and exact, I  
14 think that is exactly what we'll get, but it won't be an  
15 individualized sentencing determination.

16 THE COURT: Why do you think if it says it is  
17 between the defendant and the State, they would jump to the  
18 conclusion that includes the co-defendants that aren't here?

19 MS. PUSICH: Your Honor, I think my experience is  
20 that juries do take their Instructions serious. They do pay  
21 attention to them. Of course, the Supreme Court indulges a  
22 presumption that is the case except in very rare  
23 circumstances. I think the language, itself, lends to they  
24 should be the same. I don't think that is what we are suppose

1 to be doing.

2 THE COURT: Mr. Lee.

3 MR. LEE: Your Honor, this Instruction has been  
4 given as early as I could find in the early 1900's in Nevada.  
5 It has been challenged a multitude of times up even until I  
6 think 2004 was the last time the Supreme Court, I was unable  
7 to find any Supreme Court decision that went with an objection  
8 to it. Rather, they said the objections to this are  
9 meritless. They haven't done it. The Federal District Court  
10 as well found the exact same way in Nevada. For those reasons  
11 and for the understanding that it is merely calling attention  
12 to both parties to have a fair and equal shot at what we are  
13 requesting, for those reasons the language should stay in as  
14 is proposed in Instruction nine.

15 THE COURT: If the words equal and exact justice  
16 means fair and equal justice between the defendant and the  
17 State of Nevada, I suppose we could use that language as much  
18 as equal and exact. The concern, the only concern I have is  
19 this argument that somehow letting in the co-defendants'  
20 penalties could be misunderstood to include being included in  
21 this Instruction. I think we have adequately instructed the  
22 jury that is a consideration but not controlling and that they  
23 have to accept Mr. Harte, individually. I don't think this  
24 Instruction would be misleading, but I don't see any 9th

1 Circuit cases that are exactly on point for letting the  
2 co-defendants' sentences come in in a case such as this. We  
3 have a case that is unique, and we have found only some old  
4 Nevada cases that support it. And that Nevada case that  
5 supports letting this in did not have the issue of this  
6 Instruction, correct, Mr. Lee?

7 MR. LEE: That's correct, Your Honor. Both Leonard  
8 and Daniel are the decisions from late '90's and 2000 that  
9 approve of this Instruction. But, again, just looking at that  
10 language on the last line, it has nothing to do with any other  
11 co-defendants and with the issue presented here. Rather the  
12 separate Instruction about that I think clarifies that issue  
13 for the jury they re not bound by the other co-defendants'  
14 sentences. This merely says be fair. Be fair to both sides,  
15 and the exact language that has been specifically approved in  
16 Nevada.

17 THE COURT: I am going to overrule your objection.

18 MS. PUSICH: Your Honor, if I might just to complete  
19 the record. I am sorry. I believe Mr. Lee can correct me if  
20 I am wrong, I don't have them in front of me, I believe both  
21 Leonard and Daniel were capital where the jury was also given  
22 the other Instruction we do not have on aggravators and burden  
23 of proof.

24 With respect to equal and exact, if the State's

1 purpose is to instruct the jury they should treat the State  
2 and defense fairly, they communicate the same thing by  
3 removing the words equal and exact.

4 THE COURT: Perhaps, but I don't think that -- I  
5 don't think it is so compelling that we should take it out. I  
6 am going to leave the Instruction since it has been approved.

7 Twenty, during deliberation you will have all of the  
8 exhibits.

9 And then that is the end. That is the last  
10 Instruction. And then we have some verdicts I think that have  
11 been redone.

12 MR. YOUNG: Correct. I provided the Court with the  
13 initial verdict which had included some discussion of  
14 including the firearm enhancement in the verdict. And because  
15 there is a separate Instruction in the packet which advises  
16 the jury it is the Court's obligation to set sentence on  
17 there. The verdict, while saying he's been previously found  
18 guilty of murder in the first degree with the use of a deadly  
19 weapon, the penalty they are setting is only for the  
20 underlying murder conviction not the weapon enhancement.

21 THE COURT: Okay. Ms. Pusich, Ms. Bond, have you had  
22 an opportunity to look at the proposed forms of verdict?

23 MS. PUSICH: Your Honor, we have had an opportunity  
24 to look at them, and I think, because the Court is giving



1       Instruction eleven that advises them you will in fact impose a  
2       like consecutive sentence for the deadly weapon, then that is  
3       no way discretionary, and the Verdict forms are appropriate  
4       for this proceedings.

5               THE COURT:   Okay.  I think Instruction eleven is  
6       actually, the proposed language was proposed by the defense  
7       with regard the Court entering the deadly weapon enhancement  
8       and what it meant.

9               MS. PUSICH:   Correct, Your Honor, that you have to  
10       and you can't change it.  It is going to be exactly the same  
11       thing whatever the jury gives him.

12              THE COURT:   Okay.  Are there any other objections  
13       that the State has to the proposed packet?

14              MR YOUNG:   Not beyond-- No objection.  I really  
15       don't have anything to supplement the record beyond what has  
16       already been discussed on the record.

17              THE COURT:   Ms. Pusich?

18              MS. PUSICH:   Your Honor, we don't have any  
19       objections.  We don't have any other Instructions to offer.  I  
20       will simply note, because I think we may have discussed it in  
21       chambers off-the-record, the defense is not objecting to  
22       Instruction eighteen, the anti-sympathy Instruction because  
23       the court has agreed to give Instruction twelve which is the  
24       mitigation Instruction.

1 THE COURT: Okay. That was a strategic decision the  
2 defense has made in your client's best interest?

3 MS. PUSICH: Yes, Your Honor..

4 THE COURT: Thank you. Then we have rejected  
5 Instructions A and B. They are still part of the record, and  
6 those will be considered having been offered by the defense.  
7 And then other than that, we have no other Instructions.

8 MS. PUSICH: Your Honor, Mr. Young is asking me  
9 about the state of our record on Instruction fourteen, and I  
10 think that we did resolve that on the record previously, but  
11 just in an abundance of caution, Instruction fourteen is  
12 derived from NRS 48.045. As a very a strategic determination,  
13 the defense decided we didn't want a laundry list of alleged  
14 prior bad acts. We wanted the reference to what came out in  
15 the courtroom at length which was Churchill County, and then  
16 any other crimes the jury sentenced him for the murder, rather  
17 than including a list of fraud and other things that were  
18 referenced in his interview and other evidence. So we are  
19 agreeing that fourteen should not have that laundry list. It  
20 should be given as it is written.

21 THE COURT: It was written by the defense.

22 MS. PUSICH: Correct.

23 THE COURT: Okay. Thank you. Mr. Young, are you  
24 comfortable with that?

1           MR. YOUNG: I am fine. I would point out since it  
2 is sentencing, 48.045 doesn't directly apply. Certainly the  
3 principle behind that is the driving force of this  
4 Instruction. So with that, I have no objection to fourteen.

5           THE COURT: Okay. It doesn't directly apply, but it  
6 can't be accepted for anything except for what he's being  
7 sentenced on which is the murder, and that there is lot of  
8 other overriding rules that apply to that.

9           MR. YOUNG: Of course. That is what fourteen I  
10 think adequately points out.

11          THE COURT: Okay. All right. So we have a packet of  
12 Instructions that has been finalized. We have forms of  
13 verdict that have been finalized. The clerk and I -- excuse  
14 me for just a moment. I just wanted to confirm we had resolved  
15 everything we had been talking about. And so on Monday we  
16 will come in and we will bring the jury in. I will read the  
17 Jury Instructions, if you agree and stipulate to them being  
18 read before closing argument.

19          MS. PUSICH: Please.

20          MR. YOUNG: Yes, Your Honor.

21          THE COURT: And then we will begin closing argument.  
22 I know there was some discussion in chambers about the order  
23 of closing argument. I gave it a little bit of thought and  
24 looking at old cases. I am going to go with my conservative

1 nature. We'll do the closing arguments the way we always do  
2 the closing arguments. The State will present their opening  
3 and closing and the defense will present their closing  
4 argument, and the State will conclude their argument.

5 MS. BOND: Can I make a record since we discussed it  
6 off-the-record in chambers?

7 THE COURT: Yes.

8 MS. BOND: The request I made, because this is a  
9 sentencing hearing and not a trial where the State has a  
10 burden of proof, in fact there were extensive discussions in  
11 motion work whether there was a burden or not and ultimately  
12 concluded there wasn't. The State argued they didn't have a  
13 burden. There was additional discussion. We just finalized  
14 some of that with Jury Instruction nineteen, that the whole  
15 purpose of this proceeding was to give everybody, to borrow  
16 Mr. Lee's word discussing Instruction nineteen, "a fair and  
17 equal" shot at what we are requesting. I had requested the  
18 order be the State argue and the defense argue and there be no  
19 rebuttal by the State because that would be a fair and equal  
20 shot for both parties of what they are requesting. Because the  
21 State has no burden that the defense doesn't have here,  
22 neither side has a specific burden, we both simply have a need  
23 to persuade, not, certainly not a burden by any legal  
24 standard, that is exactly the same for both parties, they

1     should get to have primacy and recency. They should get two  
2     shots certainly isn't fair and equal shots when they get two  
3     and we get one and we are sandwiched in the middle. So I ask  
4     this Court allow the State to argue its full argument and  
5     allow the defense to argue and end the proceedings there and  
6     send the jury out. That was based upon the lack of burden,  
7     the fact this is not a trial where there is a burden of proof.  
8     It is not a capital sentencing hearing where the State also  
9     has a burden of proof regarding the aggravators where they  
10    have to prove those beyond a reasonable doubt because the  
11    burden, so to speak, on both parties is exactly the same and  
12    simply a matter of persuasion. The purpose of argument is  
13    merely to explain why the request for each party is the one  
14    that should be imposed. The fair and equal shot for both  
15    parties would be one time each.

16           THE COURT: Mr. Young.

17           MR. YOUNG: To my knowledge there is no case law or  
18    statute directly on point. Both Mr. Lee and I have looked to  
19    see in such a circumstance, to see if there is anything.  
20    Neither were able to find anything directly on point. What I  
21    can direct Your Honor to as a threshold issue, just your  
22    discretion in structuring a format of all hearings, you  
23    certainly have discretion to set up in this case the order as  
24    you feel is appropriate. NRS 175.241 entitled Order of Trial.

1 Again, while the State acknowledges this is a sentencing  
2 hearing, it effectively has been set up like a trial. We  
3 selected a jury. There was opening statements. The State put  
4 on its case in chief followed by the defense case in chief.  
5 Both parties had an opportunity for rebuttal, surrebuttal  
6 respectively, while that was not taken advantage of. We had  
7 Jury Instructions, will have Jury Instructions, and subsection  
8 five of that 175.141, when the evidence is concluded, unless  
9 the case is submitted to the jury on either side or both sides  
10 without argument, the District Attorney or other counsel for  
11 the State must open and must conclude the argument. And it  
12 uses that mandatory language. The only cases I have found,  
13 that have been found, are not directly on point here, because  
14 they discuss death penalty cases. However, they all say  
15 because of the mandatory language in there which is  
16 consistent, very similar to the instance we have here, while  
17 sentencing of a trial, it says that statute and the mandatory  
18 language must control. The only cases, Your Honor, I found,  
19 actually Mr. Lee found is Schoems, S-C-H-O-E-M-S vs. State,  
20 114 Nevada 981. Again, that was a case where it was murder of  
21 the first degree conviction. And while it was a death penalty  
22 case, the defendant was sentenced to life without parole. On  
23 pinpoint page 989, it talks about that same subsection I was  
24 just reading. And while in that paragraph, it later says that

1 subsection five mandates the State argue last during the  
2 penalty phase where the death penalty is involved, the first  
3 two sentences of that paragraph read NRS 175.1141 subsection  
4 five set forth the procedure to follow during a trial. We  
5 concur with the State's argument that because the penalty  
6 hearing is part of the trial, NRS 175.141 subsection five  
7 governs the penalty hearing as well." Then it goes on to say  
8 "The District Attorney must open and conclude the argument."  
9 That is the closest thing I could find. So given the fact you  
10 have discretion in ordering the order of arguments, beyond the  
11 argument, the points I have already made, we would ask the  
12 State close as well.

13 MS. BOND: The only other matter I would address in  
14 response to that is I have looked at the statute he's read.  
15 It is accurate as far as what it does say. This is not a  
16 trial in context because there is no burden of the State, for  
17 the State. They don't have any obligation. Normally, we can  
18 say nothing. We could choose to do that here. It would be  
19 ineffective assistance of counsel. There would be no point in  
20 it. They don't have to prove anything, so this is a penalty  
21 hearing akin to that that would be held before the Court in  
22 any sentencing. This happens to have a jury deciding it, but  
23 there is no relative difference.

24 We had a discussion in chambers about how that

1 typically runs. It is slightly different judge by judge. In  
2 this particular district, it seems to be the prevailing  
3 practice the defense would argue first, State would argue  
4 next. The defense, if they choose, argues after that  
5 reversing that order when it is the Court. The only trial we  
6 were able to find where it has been a a non-capital penalty  
7 hearing to a jury, I believe there was one in Department 7 and  
8 one in Department 6, and they split. In one of the cases, I  
9 believe Department 7, they argued the way everybody has said,  
10 State, defense, State. In the other, they argued the way we  
11 requested where it was State defense and end with no rebuttal  
12 by the State.

13 THE COURT: We have researched that case. We  
14 haven't been able to find where there was a specific order  
15 from the court to do that, and that case had five defendants.

16 MS. PUSICH: Three.

17 THE COURT: Three defendants. And so we don't know  
18 why the Judge did it. We don't find anything in the minutes  
19 of the Court why that happened. We don't know if the  
20 prosecutor waived their closing argument. With the  
21 personality of the particular prosecutor, that might have  
22 been. So I just don't know why he did that.

23 MS. BOND: I don't know either. The minutes don't  
24 show why the prosecutor waived final argument. We just know



1     those two occurred. There haven't been any others we could  
2     find or think of in the time frame we were looking where it  
3     actually went to penalty of a jury where it wasn't capital,  
4     where the State didn't have a burden. It would be our  
5     position the fair and equal shot, what we are requesting and  
6     Mr. Lee said was so important, would be to actually make it  
7     fair and equal for the State and the defendant and they both  
8     get the same number of arguments.

9             I did propose a potential alternative of the State  
10    arguing, defense arguing, State rebuttal argument, defense  
11    having surrebuttal. That wouldn't be my preference, but that  
12    would result in the fair and equal opportunity to respond to  
13    anything made by the other party.

14            THE COURT: I guess since we put it in front of a  
15    judge, in my department defense goes first, State responds,  
16    and the only think that comes after that is an allocution from  
17    the defendant. No more argument. In very rare cases if there  
18    is that argument, sometimes the State stands up and does  
19    another argument. That is sort of the way it happened here. I  
20    don't think that was particularly what you were thinking would  
21    be a good idea.

22            MS. BOND: No, I wasn't particularly -- I would love  
23    it if we went defense, State, defense. I realize I can't  
24    think of any case that has been done in front of a jury.

1           THE COURT: Mr. Harte already testified, so he's not  
2 going to make a statement of allocation.

3           MR. BOND: And if he did, they would be able to come  
4 back and make the final statement. That is not what anyone  
5 contemplated.

6           THE COURT: So that would be the defense argue and  
7 the State argue if you argument is we should do what we do  
8 before a judge?

9           MS. BOND: That is not what I am arguing. I was  
10 merely commenting in a regular sentencing hearing that is in  
11 front of Your Honor, it doesn't go State, defense, State, the  
12 order that we have been talking about. But in this case,  
13 because it is in front of a jury we have gone, State, defense  
14 State, defense, all the way through. It would be awkward to  
15 if we only have one shot each.

16          THE COURT: Unfortunately or fortunately, I have  
17 been practicing law long enough in this district that I  
18 remember back in the day where the prosecutor did go first in  
19 sentencing, defense got to argue, then the prosecutor  
20 finished. Over time, we have shortened that process a lot in  
21 our District Court with the utilization of more specific  
22 pre-sentence investigation reports. That is sort of the first  
23 lobby out there. And we let the defense argue again.  
24 Basically, the pre-sentence report is an arm of the position

1 of the State as stated in the pre-sentence report, then we go  
2 with the State. It seems like we are doing maybe a different  
3 order, but it is just a different way of presenting it. So I  
4 really think we still do it in the old order.

5 The other problem I have, this is a trial. Yes, a  
6 different jury found the defendant guilty, but it is as though  
7 we started the trial after that verdict. And if that had been  
8 the case, we would have done defense would argue, the State  
9 would argue then the defense. I think it is a trial. I think  
10 the rules apply to a trial. And if it isn't a trial, it is  
11 somewhat analogous to a motion. I don't think the defense is  
12 bringing a motion that the defendant not be sentenced. But  
13 the State has brought the motion the defendant be sentenced on  
14 the verdict. If it is a motion, they go first and they go  
15 last. So it is kind of the normal course.

16 With that in mind, I am going to let it go the  
17 regular course. But I know that we are going to have a nice  
18 long argument, Ms. Bond. I know you will be able to get  
19 plenty of time to do that.

20 MS. BOND: Thank you. So I don't have to interrupt  
21 anything on Monday, I would just note our objection to that  
22 procedure and continue through so I don't have to object while  
23 Mr. Young or Mr. Lee are arguing.

24 THE COURT: Certainly if you find some other

1 persuasion, I will be glad to look at it first thing Monday  
2 morning. Otherwise, well do it that way. Okay. Anything else  
3 for this evening?

4 MS. PUSICH: No, thank you.

5 MR. YUNG: Nothing from the State, Your Honor.

6 THE COURT: Okay. Thank you. Court is in recess.

7 (Whereupon, the proceedings were concluded.)

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1 STATE OF NEVADA, )  
2 ) ss.  
3 COUNTY OF WASHOE. )

4 I, Judith Ann Schonlau, Official Reporter of the  
5 Second Judicial District Court of the State of Nevada, in and  
6 for the County of Washoe, DO HEREBY CERTIFY:

7 That as such reporter I was present in Department  
8 No. 4 of the above-entitled court on Friday, January 30, 2015,  
9 at the hour of 1:30 p of said day and that I then and there  
10 took verbatim stenotype notes of the proceedings had in the  
11 matter of THE STATE OF NEVADA vs. SHAWN RUSSELL HARTE, Case  
12 Number CR98-0074.

13 That the foregoing transcript, consisting of pages  
14 numbered 1-97 inclusive, is a full, true and correct  
15 transcription of my said stenotypy notes, so taken as  
16 aforesaid, and is a full, true and correct statement of the  
17 proceedings had and testimony given upon the trial of the  
18 above-entitled action to the best of my knowledge, skill and  
19 ability.

20 DATED: At Reno, Nevada this 18th day of March, 2015.  
21  
22

23 /s/ Judith Ann Schonlau  
24 JUDITH ANN SCHONLAU CSR #18

1 4185

2 JUDITH ANN SCHONLAU

3 CCR #18

4 75 COURT STREET

5 RENO, NEVADA

6  
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9 BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

10 -o0o-

11 THE STATE OF NEVADA, )

12 Plaintiff, )

13 vs. )

14 SHAWN RUSSELL HARTE, )

15 Defendant. )

CASE NO. CR98-0074A

DEPARTMENT NO. 4

16  
17 TRANSCRIPT OF PROCEEDINGS

18 TRIAL (PENALTY PHASE)

19 MONDAY, FEBRUARY 2, 2015, 9:00 A.M.

20 Reno, Nevada

21  
22 Reported By: JUDITH ANN SCHONLAU, CCR #18  
23 NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER  
24 Computer-aided Transcription

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A P P E A R A N C E S

FOR THE PLAINTIFF:           OFFICE OF THE DISTRICT ATTORNEY  
  
                                  BY:   ZACH YOUNG, ESQ.  
  
                                  MATTHEW LEE, ESQ.  
  
                                  DEPUTY DISTRICT ATTORNEY  
  
                                  WASHOE COUNTY COURTHOUSE  
  
                                  RENO, NEVADA

FOR THE DEFENDANT:           OFFICE OF THE PUBLIC DEFENDER  
  
                                  BY:   MAIZIE PUSICH, ESQ.  
  
                                  CHERYL BOND, ESQ.  
  
                                  DEPUTY PUBLIC DEFENDER  
  
                                  350 S. CENTER STREET  
  
                                  RENO, NEVADA

1 RENO, NEVADA; MONDAY, FEBRUARY 2, 2015; 9:00 A.M.

2 -oOo-

3  
4 THE COURT: Good morning. Please be seated. Counsel,  
5 are we ready for the reading of the Instructions and closing  
6 argument?

7 MR. YOUNG: State is, Your Honor.

8 MS. BOND: Yes, Your Honor.

9 THE COURT: Okay. If there are no changes, we'll go  
10 ahead and have the jury come in and I will begin to read the  
11 Instructions.

12 Counsel, will you stipulate to the presence of the  
13 jury?

14 MR. YOUNG: State will, Your Honor.

15 MS. BOND: Yes, Your Honor.

16 THE COURT: Thank you. Good morning ladies and  
17 gentlemen of the jury.

18 As I told you on Friday, you are going to begin your  
19 deliberation on this case today. The first thing that is  
20 going to happen, however, I am going to read you the  
21 Instructions that apply to this case. I wish I could just  
22 discuss this with you and answer any questions you may have,  
23 but the law does not permit me to do that. I must give  
24 specific written Instructions to you. Now as I read these



1 Instructions, do not become concerned if you lose track of  
2 where I am or some Instructions seem more complicated than  
3 another. You will have a set of the Instructions with you in  
4 the jury room during your deliberation. So while I read these  
5 Instructions, please sit back, relax and listen carefully as I  
6 read them.

7 (Whereupon the Jury Instructions were read by the Court.)

8 THE COURT: At this time, the State may make their  
9 opening closing argument.

10 MR. YOUNG: John Castro, Jr., never had a chance. He  
11 was working to support a family. He picked up two seemingly  
12 innocuous people as customers at the Speedway Market and he  
13 drove them from the Neil and Peckham area we saw on the map,  
14 twenty, twenty-five miles out to the Cold Springs area doing  
15 his job. And all the while, these two seemingly innocuous  
16 passengers, Weston Sirex and Shawn Harte were sitting in the  
17 back seat both armed with .22-caliber handguns knowing full  
18 well and all along what was going to happen, what the plan  
19 was, to rob this man who is doing his job. And when they get  
20 out to Cold Springs in front of a residence, Shawn Harte pulls  
21 out his .22-caliber handgun, places the muzzle up to or near  
22 the back of John Castro's head and pulls the trigger. Those  
23 events on October 26th of 1997 is what brings us here last  
24 week and into to today for sentencing.

1           You are instructed that Mr. Harte's guilt has  
2       already been established, and what we are here for is  
3       sentencing. You are asked to decide one of three options. And  
4       you are asked to decide of those three options, what is a  
5       fair, what is a just and what is an appropriate sentence for  
6       Shawn Harte.

7           I know it was mentioned you will have those in the  
8       back. I feel it is in part my obligation to go over them. The  
9       difference is, folks, as was discussed early on in voir dire,  
10      between one and options two and three is effectively does  
11      Shawn Harte deserve an opportunity to be released in the  
12      community on parole. Because number one is life without  
13      possibility of parole. My co-counsel, Mr. Lee, in opening  
14      said that's what the State will be asking you to sentence Sean  
15      Harte to. That is what we are asking you to impose sentence  
16      at. Two and three give Mr. Harte an opportunity for parole.  
17      That is the difference. Exhibit -- not exhibit -- Instruction  
18      ten basically tells you what these sentences mean. Starting at  
19      the bottom paragraph, life without the possibility of parole  
20      means exactly that. Okay. The other two, fifty years or life  
21      both with eligibility after 20 means he's eligible for parole.  
22      It doesn't mean it is guaranteed to happen, but he has the  
23      opportunity. Instruction eleven talks about that the Court by  
24      law will impose a like consecutive sentence for whatever

1 sentence you choose for the underlying murder conviction. So  
2 if you choose life without the possibility of parole, although  
3 it is rather academic, there will be a consecutive life  
4 without parole for the use of a firearm.

5 Options two and three having eligibility for parole  
6 effectively gives him 40 years before he's eligible. I am not  
7 here, Mr. Lee is not here to say that that is insignificant.  
8 I'm not here to say 40 years before you are eligible is not a  
9 big deal. I will agree that that is a long time. But the  
10 question becomes does Shawn Harte even deserve that  
11 opportunity. The State respectfully submits that he does not.

12 Now Instruction eleven, the one we are looking at  
13 right here, carries over to the second page. I want to  
14 explain briefly what this is. The defendant will receive  
15 credit towards the sentence for the period of time for which  
16 the defendant has already been in custody for the crime of  
17 murder of the first degree. Credit for time served effectively  
18 means that the time he has been in jail pending these charges  
19 or in prison for this crime he gets credit. Now, again, we  
20 are talking about being academic. If you impose life without  
21 the possibility of parole, credit for time served again is  
22 rather academic. But if you are to give Mr. Harte in the  
23 imposition of sentence one or the other two alternatives, that  
24 allows him the option or the opportunity for parole. He will

1 have received credit on that first for the twenty, eligibility  
2 for the last seventeen plus years. He will receive credit for  
3 that. So what that means is if, again, one of those options  
4 for parole is given, effectively Mr. Harte will be eligible  
5 for parole on the murder conviction in just under three years.  
6 Now that cycles then into if he is granted parole into the  
7 weapons enhancement, but you impose one of the sentences  
8 giving him an option for parole in just under three years, he  
9 can go to the Parole Board seeking release on the underlying  
10 murder conviction. That is what this paragraph on the second  
11 page of Instruction eleven tells you.

12 So why are we here? Because you heard, obviously,  
13 about the facts underlying the murder. You heard about a  
14 Churchill County shooting. You heard about a few other  
15 things. Instruction fourteen talks about this, and what limits  
16 or in what context you can give some of those other offenses  
17 and crimes that were discussed.

18 You have heard evidence that the defendant shot a  
19 vehicle in Churchill County. And here's what the next line  
20 says: You must refrain from punishing the defendant for that  
21 crime or any crime other than the murder. At first blush that  
22 sounds a little odd, but it means we are here to sentence the  
23 defendant for the murder of John Castro. All the other things  
24 you heard including the Churchill County shooting which is

1 primarily the other evidence you heard in addition to the  
2 planning and the thoughts of killing and the like, you can  
3 consider those things as the last sentence tells you for the  
4 purpose of gaining a fuller assessment of the defendant's  
5 life, health, habits conduct and mental and moral qualities.  
6 So while we are here and you are asked to impose sentence for  
7 the murder, you may certainly consider everything you heard,  
8 all the exhibits that you saw in determining, again, what is  
9 fair and what is just.

10           Let's go through chronologically what happened.  
11 October 14th of 1997 Abraham Lee, with his friend David  
12 Burnett were driving along 95 outside of Fallon. And they are  
13 fired upon while they are driving. Like Mr. Castro, what were  
14 they doing? They were working. Through the search of the  
15 residence of Mr. Harte, later, Exhibits 5-d and 36. This is  
16 the .22-caliber that is Mr. Harte's that he gave to Weston  
17 Sirex to use. This 5-d is the SKS that Shawn Harte used as he  
18 described as the heavy power to shoot at Abe Lee's Jeep. And  
19 do you recall when I was talking to Mr. Lee, Abe Lee, about  
20 what he was driving? Driving my Jeep blue Cherokee. And then  
21 when we were talking to the defendant when he testified, a  
22 Jeep is kind of a small compact area, right? Yeah. You don't  
23 know who is in there. The fact that two people occupied that  
24 Jeep and are not hit and are not killed is amazing. This is

1 the sequence this Exhibit 34, and I ask you to look at them  
2 when you are deliberating. This is 34-g. This is the Jeep. A  
3 relatively small area where there is five bullets that strike  
4 this vehicle occupied by two people. Neither of them,  
5 amazingly, get injured. This is 34=a. This is the vizor clip  
6 which was hit and destroyed which came down and hit Mr. Lee in  
7 the knee, right above his head. It is unbelievable that there  
8 wasn't injury or death during that shooting. It was planned,  
9 it was calculated.

10 There was Ms. Babb in the get-away vehicle. Remember  
11 there was, in the interview of Mr. Harte, she was blacked out.  
12 The lights were off. She had binoculars. We were  
13 communicating. We were using CB hand radios so no one could  
14 hear our full conversation. When they finally get out of there  
15 there is the thought of cellphones and using the scanner,  
16 listening to the police radio traffic, getting off on the side  
17 streets. The whole reason they are doing this is to rob  
18 somebody. They don't even know who is in there. It is the  
19 clothing in the back. It is the transmission fluid directly  
20 underneath Mr. Burnett. That took the majority of that power.  
21 That crime was like so many others that had been discussed and  
22 mapped out to be committed. Mr. Harte goes to the gas station  
23 in Fernley. The elderly man, let's go rob him. That is a  
24 target. But the decision not to rob that elderly man at the

1 gas station was not because of some second thought, you know,  
2 that is not smart, that is dangerous. No. It was because my  
3 car is obvious. The thought of robbing the clerk at the hotel  
4 and going to the hotel as you heard Mr. Harte testify. Did he  
5 have a thought that puts people's life at risk? No. There is  
6 too much light. We are going to get caught.

7 After the shooting in Churchill, did Mr. Harte have  
8 a care or concern for those people? Did he have an epiphany  
9 that now he had actually gone through with some actions that,  
10 whew, that was dangerous? No. We know he didn't, because he  
11 has a newspaper from the following today or two.

12 But 12 days after that, he and Mr. Sirex and Ms.  
13 Babb come to Reno. And why do they come to Reno, folks? You  
14 heard him. Bigger city, more opportunity, less chance of  
15 getting caught. October 26 of 1996 approximately midnight  
16 from the testimony you heard, John Castro was dispatched to  
17 the Speedway Market. Now the fact it was John Castro that  
18 went to the market, that is happenstance. But the fact John  
19 Castro's cab company was called was not. That was planned.  
20 That was decided on because of the lack of GPS. He picks up  
21 two individuals now we know is Weston Sirex and Shawn Harte.  
22 Exhibit 52. Twenty-five miles. They had Mr. Castro drive  
23 twenty-five miles. And you heard in the interview why that  
24 was. Well, Weston Sirex said there is no GPS, just in case,

1 let's drive him all the way out to Cold Springs. Latisha Babb  
2 is following in the get-away car. Shawn Harte is miked up so  
3 she could hear everything. And in front of the residence on  
4 Cold Springs Drive was Shawn Harte directly behind John Castro  
5 Jr. You recall in his interview when asked did you make any  
6 demands for money, he said "I don't remember." On the stand I  
7 asked him that question. What did he say? No, I didn't make  
8 any demands. I didn't say this is a robbery. I didn't say  
9 give me your money. He didn't give Mr. Castro an opportunity  
10 to pass over \$89. He didn't give him a chance. He just pulled  
11 out his gun. Folks, just for your ease of mind, this red tag  
12 means it has been made safe. This wasn't safe on October 26th  
13 in 1997. This is the gun that Shawn Harte pulled out and shot  
14 John Mr. Castro Jr., with, a .22-caliber Smith & Wesson four  
15 inch barrel. You heard the defendant talk about his passion  
16 for this gun his passion for gun ammunition and violence. What  
17 ammunition did you have in here? Stingers. Why was that?  
18 Type of higher velocity. It makes up for the fact this is a  
19 .22. You heard from the pathologist the bullet entered the  
20 back right ear of John Castro's head, passed through both  
21 hemispheres of the brain and ultimately lodged in the back of  
22 John Castro, Jr.'s brain. You saw the fragments that came  
23 from that. You saw the autopsy photographs. I am not going  
24 to show it to you now, but you saw it. Doctor Palosaari



1 defined that black rim of soot being the muzzle was put so  
2 close to John Castro's head, John Castro suffered some orbital  
3 fractures to the front of his face because of the pressure.  
4 After doing that, Shawn Harte reached into the front, grabs  
5 the wallet and other items and they leave. \$89. They go to  
6 Circus Circus. The letter says they got food. They go about  
7 their night. They go about their fun. But what about Mr.  
8 Castro? What happened to John Castro when the defendant takes  
9 off? Seven hours later. Seven hours later people finally  
10 arrive. You recall sergeant Payne-Davis, then a deputy. You  
11 recall Ron Holst, Ronald Holst, the volunteer firefighter  
12 describe we heard this deep breathing. Mr. Holst described it  
13 as a whistling noise coming from John Castro seven hours  
14 later. You recall the interview of Mr. Harte talking about the  
15 .22-caliber, talking about the higher velocity bullets.  
16 Mr. Harte said you can shoot a person in the chest ten times  
17 with a .22-caliber gun and there is a chance they would live.  
18 It is not like the movies. People don't die immediately. You  
19 remember him saying that? Sean Harte shot him in the head and  
20 left. When asked about did you seek medical attention? No, I  
21 didn't. That is John Castro Jr., folks, being worked on seven  
22 hours later. Not right after the shooting, not within an hour,  
23 seven hours later.

24 Now through some rather impressive police work from

1 the Churchill County Sheriff's Department, because remember  
2 the shooting in Fallon happened almost a month before contact  
3 was actually made with Mr. Harte. The murder of Mr. Castro  
4 happened two and a half weeks before contact was ultimately  
5 made with Mr. Harte. You heard we got tire tracks, were going  
6 from business to business and they find the car. They do some  
7 things.

8 On November 12th of 1997 is the traffic stop and  
9 Search Warrant grant for the searching of various places. Does  
10 the violence stop after the murder? We already know it didn't  
11 stop after the shooting of Abe Lee's Jeep. After the murder is  
12 there now an epiphany of how violent, how destructive? No.  
13 Because Sean Harte has a gun lodged into the middle area of  
14 his seat in the center console and says but for Latisha Babb's  
15 infant child in the back, there would have been a shooting. He  
16 testified those were some thoughts he had. There was  
17 discussion about suicide by cop thoughts. It is in the letter  
18 as well. He's just not kind.

19 When he meets with sergeant Steuart, does he come  
20 clean? Does he give anything up? Does he say I have been  
21 meaning to get this off my chest? I feel terrible? No. He  
22 denies. I would never be down there. I have no idea what you  
23 are talking about.

24 Then as the case unfolds and contact is made with

1 Mr. Sirex and then interviewed and contact is made with Ms.  
2 Babb, she's interviewed and things are found in the residence  
3 and in Mr. Harte's car, they take another run at it. Now it  
4 is detective Beltron who interviewed him. You saw the  
5 interviews, two and a half hours long. I am not going to  
6 rehash everything. I certainly trust that you paid attention  
7 to all of it. But what does he do now? He denies. And then  
8 we see this kind of agonizing back and forth.

9 Well, what do you know? Well, I am not going to  
10 tell you. Why don't you tell us. A little more, little more.  
11 It is finally when GPS and body mic is discussed. He says  
12 words to the effect now I know I am caught so I might as well  
13 come clean. It is not until he knows, Shawn Harte knows he's  
14 caught that he decides to talk. And then you see the change  
15 in tone. Again, the passion of violence and the joy in  
16 committing violence is evident in that interview. In the  
17 second part where he starts talking about it, he's talking  
18 about bullets and hyper velocity. And you heard some of the  
19 testimony from individuals who interview him. No remorse.  
20 You heard that from sergeant Joseph or Captain Joseph. You  
21 heard that from the sergeant who made the stop in Churchill,  
22 and you actually saw the interview. You judge for yourself. I  
23 haven't discussed the letter yet. You saw the interview. Did  
24 he show any remorse in that interview?

1           The search of his car reveals the murder weapon, and  
2 while you are certainly, again, not here to rehash guilt or  
3 innocence, Kevin Lattyak, the criminalist through the reading  
4 of the transcript testified how the casing found in the back  
5 of John Castro's cab was discharged from that Smith & Wesson  
6 gun found in Mr. Harte's vehicle that Mr. Harte said is mine.  
7 I don't let people shoot it. The Lorcin that was found at  
8 Mr. Sirex' house, Weston Sirex' gun was excluded as the murder  
9 weapon. And then the search of Mr. Harte's house in addition  
10 to the rifles that they took, there was a discussion about the  
11 newspapers. The date, ladies and gentlemen, again, the search  
12 was conducted November 12th of 1997. The Reno  
13 Gazette-Journal-- Let me backtrack. The Lahonton Valley news  
14 article was dated October 17, 1997 just shy of one month  
15 before the search is actually executed, but only within a  
16 couple of days of the Fallon shooting. The Reno  
17 Gazette-Journal article is dated October 27, 1997, the very  
18 next day after the shooting. Mr. Harte was holding onto those  
19 as a reminder of what he did. He was proud of what he did.  
20 Whenever he saw those articles, did he have this thought of, I  
21 need to go turn myself in? I need to make sure that people  
22 are okay? No. He continued on his ways. The search also  
23 revealed that literature that we discussed. I think it was  
24 Exhibit 9. It was talking about ammunition and the photograph

1 of a bullet, explosives and killing. The four methods.

2 Remember the four methods of killing which coincidentally showed  
3 up in the same letter that was written a year after his arrest  
4 and prior to the trial?

5 Now the letter, itself. Again, all these exhibits  
6 that were discussed you will have with you in the jury room.  
7 What a dark and disturbing letter. Doctor Piasecki testified  
8 it was appalling. Her words, appalling. No remorse. That was  
9 a phrase that he used in this letter. But in context, this  
10 entire letter shows no remorse. And there was discussion,  
11 well, this was a fantasy, me putting on a new persona.  
12 Remember that word? Both the defendant and Dr. Piasecki used  
13 it. New persona. Me going into prison. But it took a while,  
14 but we were able to clear up that the majority, the vast  
15 majority of what is in this letter is not fantasy, folks. It  
16 is truth. It is accurate representations of the crime Shawn  
17 Harte had committed.

18 Now the discussion of a militia never really came to  
19 fruition short of multiple people going out and shooting at a  
20 Jeep and multiple people getting involved in the murder of  
21 John Castro and multiple people planning other armed  
22 robberies. But put the militia conversation to the side. The  
23 passion for weapons and violence is accurate. The description  
24 of what happened in Churchill to Abe Lee's Jeep is accurate.

1     What happened to John Castro is all accurate. And even the  
2     part of no remorse and it was fun.

3             On cross-examination I was asking Mr. Harte about  
4     those comments. He said at the time those were true. When he  
5     wrote those comments, it was not a fantasy. He described it as  
6     exhilarating and morbid satisfaction. This letter is not some  
7     fantastical writing of someone who has these thoughts that  
8     never comes to fruition. This is a letter which lays out  
9     everything that had occurred. And it is, as Dr. Piasecki said,  
10    appalling. Those are the words of Shawn Harte.

11            Now all three, Mr. Harte, Mr. Sirex and Ms. Babb  
12    proceeded to jury trial. They were all convicted and found  
13    guilty by the jury beyond a reasonable doubt of murder of the  
14    first degree with a weapon. And you heard the testimony and  
15    you will receive the actual judgments of conviction as to the  
16    two co-defendants. They both received, ladies and gentlemen,  
17    life without the possibility of parole. Remember that when you  
18    are trying to figure out what is the fair, appropriate and  
19    just penalty for Shawn Harte who pulled the trigger and shot  
20    Mr. Castro.

21            Instruction fifteen tells you you are not bound by  
22    any stretch of the sentences that were imposed on the  
23    co-defendants. Because they got life without doesn't mean it  
24    is an automatic. It doesn't mean you have to do that. All

1       this tells you is that you may consider the sentences for  
2       Weston Sirex and Latisha Babb when determining what is fair  
3       and appropriate for this man.

4               Folks, you heard from Tony Castro, John Castro's  
5       brother. I am going to let his statements and the letter he  
6       read to you speak for themselves, okay? I can't accurately  
7       portray the loss that the family has experienced or the pain  
8       that the family has experienced. I can't accurately depict for  
9       you the thoughts of Keoni who at two months old lost his  
10      father. Never got to know him. Remember Tony Castro's words,  
11      though. Remember the words that he spoke to you and remember  
12      the words, when I asked if there was anything else, and he  
13      looked over to Shawn Harte and spoke to Shawn Harte. You could  
14      see the pain 17 years later that was still exhibited by him.  
15      They have had to deal with that for 17 years. And, you know,  
16      they are going to have to deal with it for the next 17 years  
17      and all the time after that. They lost their brother, a  
18      father and a friend. Remember what Tony Castro told you. As we  
19      discussed earlier, we are here for the sentencing of the  
20      murder. That alone. Mr. Lee and I respectfully submit to you  
21      that alone justifies a sentence of life without the  
22      possibility of parole.

23              Again, as the Instruction tells you, you can  
24      consider all these other things beyond this absolutely cold

1 blooded and calculated killing. The shooting in Churchill.  
2 The letter that he wrote. His discussion of from the age of  
3 14 until 20 I thought of killing. All of that further supports  
4 a sentence of life without. Mr. Harte has not earned, does  
5 not deserve the opportunity to be released from prison.

6           Respectfully, we ask you to impose a sentence of  
7 life without the possibility of parole. The killing of Mr.  
8 Castro was the culmination of all those years of homicidal  
9 thoughts and acts against others, namely Mr. Lee and  
10 Mr. Burnett, which could have been so much more drastic than  
11 it was. The murder unnecessarily took Mr. Castro's life away  
12 too soon while he was doing a job. It was significant. It  
13 should have been significant to the person who killed Mr.  
14 Castro. But as Mr. Harte said, to use his words when  
15 considering what is significant to Mr. Harte, he said this:  
16 "Nothing to it. Just another chore like taking out the trash  
17 except easier and funner."

18           THE COURT: Ms. Bond.

19           MS. BOND: Thank you, Your Honor. Ladies and  
20 gentlemen, you are here to decide what sentence should be  
21 given to Shawn Harte for murder in the first degree. There are  
22 three sentencing options. Mr. Young outlined those for you.  
23 There are a couple of aspects that he didn't bring up for you,  
24 so I am going to just briefly bring those up. There is life



1 without the possibility of parole. That means exactly what it  
2 says. It means if you decide that sentence today there are no  
3 circumstances that can ever occur under which Mr. Harte will  
4 ever be able to ask for parole, your decision today would be  
5 final on that. There is the second choice, life with the  
6 possibility of parole. That is the one we are going to be  
7 asking for. I will discuss that in a minute. Definite term  
8 of fifty years with the possibility of parole after 20 years  
9 has been served, that would be considered the least sentence  
10 because it is not an official life term. He could be  
11 classified differently, viewed differently for parole  
12 eligibility. Not in terms of length of time but in terms of  
13 the fact the jury chose not to give him a life sentence, he  
14 could be viewed differently for classification if he were to  
15 get out of custody. We are not asking you to give the least  
16 sentence. We are not even asking you to consider that. You  
17 are left with the two choices of life without the possibility  
18 of parole, deciding there are never any circumstances in which  
19 he should even be allowed to ask for parole, and the one we  
20 are going to ask you to give which is life with the  
21 possibility of parole. What does that mean?

22 Life with the possibility of parole means, as  
23 Mr. Young initially told you, for the first degree murder,  
24 Mr. Harte would serve 20 years to life. That is it would be a

1 life sentence, but after 20 years has been served, he could  
2 ask for parole. He does get credit for the 17 years he's  
3 already served on this part of the sentence. So does that mean  
4 in three years he would automatically start serving the second  
5 20 to life sentence? No. This is one of the parts that was  
6 left out for you. He can ask for parole if this is the  
7 sentence you give him, three years from now, but there is no  
8 guarantee the Parole Board will ever give it to him. They  
9 don't have to give it to him at 20 years. They can tell him  
10 go away, we are not giving it to you, come back in five years  
11 and ask again. You can try again at twenty-five or thirty or  
12 thirty-five years. It is only at the point where they do, if  
13 ever, they do decide to grant him parole from the first degree  
14 murder sentence that he would then begin serving the second  
15 life sentence requiring 20 years from that point before he  
16 could ask for parole on. That is for the use of a weapon.  
17 You got the Instruction. Mr. Young talked about that. So  
18 what this means is that, if you give him a sentence of life  
19 with the possibility of parole after 20 years has been served,  
20 Mr. Harte will be 60 years old at a minimum. That would be the  
21 earliest at which he could be considered for actual release  
22 from prison.

23 So you are here to decide the sentence for Shawn  
24 Harte. How do you do that? What factors do you consider?

1 Well, first of all there is the murder. You consider the  
2 murder, itself, the facts of it and the facts about it. But  
3 also consider Shawn Harte. You would consider his past. How  
4 did we get to this point to begin with and how did he behave?  
5 Mr. Young talked at length about that, how he behaved at that  
6 time and after it. But you also have to consider Shawn Harte's  
7 future, because he's the person you are sentencing. What will  
8 his behavior be like? This is really a forward looking  
9 contemplation. Doctor Piasecki talked a great deal about the  
10 future dangerousness would he reduced if he is ever released.

11 Lets talk for a moment about the murder, itself.

12 Obviously, there was a first degree murder. John Castro Jr.,  
13 was a family man, doing his job as a cab driver, trying to  
14 support his family including his two month old son. Shawn did  
15 not know him, and there was no justification for killing him.  
16 Shawn said straight out, he told you from that witness stand  
17 yes, he put the gun to the back Mr. Castro's head and pulled  
18 the trigger. John Castro should not have died. His family  
19 misses him. His friends miss him. Society misses him. And  
20 there was no justification for the killing. Those are the  
21 things that make it a first degree murder, and those things  
22 are true in every first degree murder case every single time.  
23 Yet, there are three sentences you have heard about. You have  
24 to choose between the three. If all you had to decide was was

1       there a first degree murder and that's it, and that made an  
2       automatic sentence, then you wouldn't have three choices.  
3       There must be more. There is more about the facts of this  
4       particular case for you to consider.

5               Deputy Candy Payne-Davis testified when she came  
6       upon Mr. Castro, as Mr. Young told you, it was hours later.  
7       She said that it was apparent Mr. Castro had no idea this was  
8       coming. He hadn't moved. There was still papers in his lap.  
9       You saw the photographs, the microphone from the radio, the  
10      other -- the photograph of him sitting in the driver's seat.  
11      The only thing that appeared to have moved were his hands were  
12      down and head was down. She said it was very apparent, even  
13      though he was still breathing, he never knew it was coming.  
14      The State made a point in their closing argument Shawn never  
15      told Mr. Castro this is a robbery, give us your money. Never  
16      gave him any warning of any kind. We have all agreed Mr.  
17      Castro should not have died. Shawn never should have pulled  
18      that trigger. But by not giving him warning, so to speak, not  
19      saying this is a robbery, not taking him somewhere else,  
20      kidnapping him or showing him the gun, Shawn also never caused  
21      John Castro to be terrified for his life. You didn't hear him  
22      talking about his son, pleading or being in fear before he  
23      died. It just happened. He never saw it coming. That  
24      doesn't make his death good, but it does mean he didn't suffer

1       that additional terror, that additional fear. He also never  
2       knew what happened. He didn't die instantly. We know that he  
3       was still breathing when the deputy came upon him. He was not  
4       conscious and didn't respond. He did not struggle or fight  
5       against death. You could tell he hadn't even moved. He  
6       shouldn't have been killed, but he didn't suffer additional  
7       pain, fear or torture. So that makes this specific about this  
8       particular murder, how it happened, how it occurred. It takes  
9       it a little beyond just the fact that it occurred.

10               But what else has to be considered? Well, you have  
11       to consider Shawn Harte's past and his future. Why?  
12       Mr. Young was really talking about the first degree murder.  
13       In fact, he told you straight out at the very end of his  
14       initial closing statement that his position is the fact of the  
15       murder alone. The fact it is a first degree murder alone,  
16       meaning it should be life without the possibility of parole.  
17       You don't have to go farther than that. If so, why do the  
18       Instructions tell you, in fact he even put the Instructions up  
19       on the screen for you, that you are to consider everything  
20       that you have heard, gain a fuller assessment of the  
21       defendant's life, health, conduct and habits, that you are  
22       here to sentence him. Another point he made, you are not here  
23       to just give him the same sentence the other co-defendants  
24       got. You don't know anything about them. You know nothing

1 about their habits, how they got to the point they were  
2 involved in it. You have no idea what they have done since.  
3 Have they been, all those years, continued to be violent or  
4 changing like Shawn Harte, changing themselves? You don't  
5 know. Their sentence was for each of them individually. For  
6 you to decide what is right for Sean Harte, you have to  
7 consider him and it doesn't boil down to just one moment in  
8 time. It doesn't boil down to just one month, one year, one  
9 time frame. It is everything that you know about him. Because  
10 it is his whole life as far as you know it. Now that will  
11 tell you about his life, his health, his conduct, his habits  
12 and his moral qualities. You can't just stop with the writing  
13 of the letter in 1998 and say nothing else matters. It all  
14 matters. You have to consider it all. When I talk about  
15 Shawn's past, it falls into two categories, pre-1999, 2000,  
16 dark, dangerous. It was violent. It was the darkest time in  
17 Shawn's life, and for Mr. Castro and his family, because the  
18 culmination of that all was the killing of Mr. Castro.

19 Then there is the second period after Shawn was sent  
20 to Ely State Prison and begins to understand his long-term  
21 surroundings. Mr. Young wants you to stop right after the  
22 writing of the letter. He specifically emphasized there was no  
23 remorse, and Shawn told you there was very little, from this  
24 witness stand last week, Wednesday and Thursday. He told you

1     there was very little remorse in him at that time. Mr. Young  
2     said there was no remorse immediately. He didn't say I can't  
3     believe I did this. I have to turn myself in. I have to pay  
4     my penalty. If he had, would that be sufficient for him to  
5     get the possibility of parole? He emphasized, again, there  
6     was no remorse a year later. He said that in his letter, no  
7     remorse. Honestly, if he felt more remorse within a year  
8     would that make it appropriate for him to have the possibility  
9     of parole? That is how Mr. Young made it sound, because there  
10    was no remorse when he wrote that letter he should never get  
11    the possibility of parole. When Mr. Harte did feel remorse at  
12    the time, when it finally became something he was capable of  
13    feeling, his brain development had reached that point, he had  
14    begun to gain an understanding. He had his first epiphany  
15    moment where he actually understood other people's feelings.  
16    Why is that not sufficient? He has since felt remorse. Is it  
17    somehow too late, because it is the first time he's able to?  
18    If it is good enough at the time immediately after, if it  
19    would have been good enough a year later, it doesn't really  
20    matter about the time frame. What matters is he can and does  
21    feel it now, on just that one aspect, just the aspect of  
22    remorse. There is so much more for you to consider.

23           You know, he sat there and told you 1997, 1998 he  
24    didn't feel remorse, didn't feel empathy, not for anybody. He

1 didn't even know at that time those things were possible for  
2 him to feel. Doctor Melissa Piasecki testified for you. She  
3 said that she was a forensic examiner in this case. She was  
4 not there to treat Shawn Harte, wasn't there to make him feel  
5 better. She was there as an objective evaluator. Said in  
6 fact she only spent 90 minutes talking to him, not trying to  
7 give you his perspective, not trying to tell you what he wants  
8 you to hear. She said she confirmed with outside sources all  
9 the things he told her. She concluded he was the product of a  
10 pretty dysfunctional family. That was the language she used,  
11 and that family had an effect on Shawn Harte. She told you  
12 about generalized brain development in people. The  
13 development of the brain continues. It is not complete until  
14 somewhere in the early twenties, and that is an average among  
15 most people. She said Shawn's intellectual ability developed  
16 a little earlier. He was a smart kid. She said his moral  
17 development lagged until his mid twenties. Specifically, she  
18 said his understanding of the impact of his actions on other  
19 people was not developed then and didn't develop until later,  
20 in his mid twenties. At that point he was already in Ely  
21 State Prison.

22           Shawn gave many specific instances of what he now  
23 understands was very poor behavior, how that affected the way  
24 he thought of himself and about others.



1           Starting with his childhood and his family. He  
2 talked about his family in general, really focussed on his  
3 mother. She was the only consistent adult in his life. His  
4 older brother was born from a first husband that was not  
5 Shawn's father. Then there was Shawn's father. His mother  
6 and father were married. He was born. His father left. Her  
7 boyfriend moved in. The boyfriend subsequently became the  
8 stepfather. The only consistent adult throughout his entire  
9 childhood was his mother. She was a person whose entire focus  
10 was on pleasing herself. Her only consideration about other  
11 people was what can I get out of them? What can they do for  
12 me? She did not teach her children to care about people.  
13 Didn't teach them to consider in any regard except the way she  
14 did, what can I get? She actually did the opposite of  
15 teaching them. Shawn gave the example of the elderly woman in  
16 the grocery store who dropped her money. Not a violent act by  
17 Shawn or his mother at that time, but definitely a striking  
18 example of complete lack of consideration. Shawn's mother  
19 picked up the money, kept it, split it with her teenage son,  
20 laughed how distressed that poor woman was when she couldn't  
21 pay for her groceries. That is what Shawn's mother taught  
22 him. Other people are good for a laugh when you can cause them  
23 distress and get something out of it for themselves.

24           She continued to fail to teach that, you know,

1 anything about people being trustworthy or people being  
2 something you should consider in any other regard. As soon as  
3 his dad was deployed, she moved her boyfriend into the house.  
4 Shawn learned even his own mother would betray his father,  
5 someone he assumed his mother loved. She married him. Beyond  
6 that, he experienced even worse when his mother chose her  
7 illicit lover over Shawn. Remember Shawn on the telephone  
8 with his girl friend describing the argument he had with his  
9 mother's boyfriend, whether Paul Hogan was Crocodile Dundee.  
10 He grabbed him around the throat, threw him on the ground.  
11 The girlfriend on the phone heard it and Shawn got in trouble,  
12 because now someone outside the family knew about this, knew  
13 there had been some violence. His mother sent him away to a  
14 group of people for troubled kids, for bad kids, because her  
15 boyfriend had been embarrassed. He attacked Shawn while Shawn  
16 was on the phone. Somehow that was Shawn's fault. Even after  
17 Shawn was in jail on the charge for first degree murder, he  
18 sent that 1998 letter to his girl friend through his mother.

19 And all of those violent references to a militia for  
20 the purpose of killing people, she was impressed by that. She  
21 applauded that. She thought that was great. This is the  
22 person who was the one constant in Shawn's life as he was  
23 growing.

24 Then we get to 1997, 1998 the Churchill County

1 shooting. The murder of John Castro, the trial and that  
2 letter. Is it really a surprise after the examples, the  
3 teaching Shawn's mother had given him that when older males in  
4 the Washoe County Jail tell him you have to be proud of your  
5 crime, you have to brag about it, blame everybody else and  
6 show absolutely no remorse, is it surprising he takes their  
7 advice and does that?

8 He took this witness stand for you here last week  
9 and he admitted his actions. He admitted murdering John  
10 Castro. He admitted he had no justification and he admitted  
11 that the justification that he made up back then, that whole  
12 drug dealer justification he tried to use, was a pathetic  
13 attempt to excuse his behavior to himself back then but was no  
14 justification at all. He sat right there and told you he  
15 understood that and that it was true. Mr. Young pointed out in  
16 questioning him he lost his own best friend at gun violence,  
17 yet he did that to John Castro's family. That is exactly what  
18 Shawn told you himself. He was so hate filled, so anger  
19 filled, so miserable, so absolutely lacking in the ability or  
20 any training to consider other people, to consider what his  
21 actions could do to them, that the only thing he knew, the  
22 only way he knew to be in the world was to spread that misery  
23 to other people, spread that hate, spread that anger. He  
24 didn't understand the value inherent in every human being. He

1 didn't value his own life, himself. He didn't value anyone  
2 else's life either. The closest thing that he ever came to  
3 valuing someone else was children. As an example Mr. Young  
4 used as well, Shawn thought suicide by cop. He could have  
5 just come out, he had the gun, pointed it at them and they  
6 would have needed to respond with deadly force. But Latisha  
7 Babb's baby was in the car so he didn't grab the gun that was  
8 right there and engage in any kind of a shootout with police.  
9 That is the closest that he ever came and yet his emotional  
10 and moral development Dr. Piasecki talked about was so  
11 undeveloped, so missing at that time it didn't even occur to  
12 him, even with the concern he had for children, didn't occur  
13 there could have been children in that Jeep he shot at in  
14 Churchill County. He didn't know. He had no idea. That is  
15 all part of who he was at that time. Doctor Piasecki described  
16 that time period as a cluster of violent offenses. There was  
17 some going back and forth Mr. Young tried to make a point she  
18 didn't know about the paperwork Shawn had in his room talking  
19 about explosives and fireworks, firearms, violence, ways of  
20 killing people, that she didn't know about all of the  
21 planning. That corroborates that never actually happened.  
22 What she said was she was trying to consider whether Shawn  
23 Harte would be dangerous in the future.

24 When you are looking at whether someone will engage

1 in deviant behavior, it is their actions. You are looking at  
2 what they actually did. Even if you include all of the  
3 abortive robbery plans, the mapping, maybe checking out places  
4 before rejecting those violent acts, those still all occurred  
5 in a fairly limited time period. All the actions taken in  
6 planning and driving around and trying to consider whether to  
7 rob, when to rob, the shooting and actual murder all occurred  
8 within a month or so time period, maybe two months. The letter  
9 was a year later. Include that in it as well. Mr. Young keeps  
10 reaching a little farther back, 16, 15 now apparently 14 for  
11 Shawn to be thinking violent thoughts, thinking about weapons,  
12 thinking about explosives. He got his first gun as a  
13 teenager, 16, 17 years old. Really not all that surprised a  
14 boy given a gun gets interested in firearms. In Nevada,  
15 firearms are pretty common. It is not really surprising  
16 teenage boys are interested, excited by firearms. Explosives.  
17 It is really not all that surprising a bright kid in his teens  
18 likes things that blowup, likes to think about it. He has an  
19 aptitude for chemistry, science. It is not surprising he's  
20 really interested in explosives. These things, even including  
21 things that are a little surprising, the paperwork about  
22 killing other people, the paperwork more specific about ways  
23 to destructively use firearms or explosives, those things are  
24 a little beyond what a normal teenage kid would be interested

1 in. Of course his mother never noticed. She applauded that  
2 when she found out about it later. Those alone didn't make  
3 Shawn a killer. What is it that went wrong? Really it is the  
4 moral development, the delayed moral development in his brain.  
5 It is the utter lack of training or example by his parents in  
6 empathy, caring and consideration of anyone else. You heard  
7 the transcript of his mother. She testified after he had been  
8 convicted of first degree murder back in 1999. She wasn't  
9 here to testify for you this week. It was done by transcript.  
10 She passed away in 2010. Back then when she testified her son  
11 murdered another human being and she still tried to pretend  
12 everything was perfect with their family, describe him as a  
13 loving and kind good boy. Described herself as a mother who  
14 loved her son very much, and she had no idea how this had  
15 happened. Of course four years later from prison he tried to  
16 get her to change with him asking her to just put down the  
17 bottle. She responded to say stay the fuck out of her life  
18 and never fucking contact her again. That is the last words  
19 to her son, the son she loved so much.

20 Shawn murdered somebody. That is neither loving or  
21 kind. It is not the act of a good boy. His mother exiled her  
22 own son when he embarrassed her boy friend. She applauded  
23 that horrible letter in 1998 and told him to stay the fuck out  
24 of her life when she asked if she could start to change her

1 own behavior. She never communicated with him again. It might  
2 be true she had no idea how this happened, but those aren't  
3 the acts of a loving mother. That is not the kind of person,  
4 the one constant adult in his life who could teach him, who  
5 could encourage that moral development to start earlier, when  
6 she had absolutely none of it of her own. There was that  
7 complete lack of training, that complete lack of example from  
8 his parents as a major indicator of what went wrong with Shawn  
9 Harte. When it is added to delayed moral development, that is  
10 how we get where we are today. That letter from 1998, that is  
11 still during this violent, hateful period of Shawn's life. He  
12 didn't write it with the purpose of hurting someone. He  
13 didn't send it to Mr. Castro's family to make them feel even  
14 worse than they already did. He didn't use it to try to taunt  
15 them. Didn't send it to Weston Sirex so that part Weston  
16 Sirex is going to die would make Weston feel bad or scared. He  
17 sent it to his girl friend via his mother. He and Dr. Piasecki  
18 described it as a letter written as a rehearsal, taking on a  
19 new persona. They both used the term. Doctor Piasecki told you  
20 that is not something they arrived at together. He's not  
21 adopting her term. She's not adopting his. It is coincidence  
22 they use that description. Actually when you think about Shawn  
23 Harte, he read a tremendous amount that included a lot of  
24 books on psychology. That coincidence, those two things show

1 you that that is the impression that was trying to be given by  
2 Shawn. That is what he told you and exactly the impression he  
3 gave Dr. Piasecki. That letter does include facts from Shawn's  
4 life. If you are trying to write out a rehearsal for this  
5 sociopathic killer that you think you need to be in order to  
6 survive in prison, you are going to use things that you know.  
7 So he's going to use references to things that are true. He  
8 did have letters explaining all of those things that Mr. Young  
9 has talked about, killing, some weaponry and explosives. The  
10 militia. The militia was the fantastical aspect of  
11 incorporating that. It was not Latisha, Weston and Shawn. He  
12 said he considered Weston. He never says he considered  
13 Latisha. That was a group that went out in this period and  
14 did these horrible things. That was not the militia. He said  
15 he planned to live a normal life for about a decade and gather  
16 ten people or so and do some training and things like that.  
17 Complete fantastical reference to the militia. His mother  
18 thought it was a great idea, but it never actually happened.  
19 He used facts from his own life to try to create an  
20 exaggerated story of who he was. He had engaged in the  
21 shooting in Churchill County, so he wrote that in. He  
22 included something about stopping a car full of kids that you  
23 never heard any evidence ever happened or ever reported or  
24 ever occurred. He used the murder of John Castro. Those are



1 things he would include in a letter of someone who is trying  
2 to portray this picture of a sociopathic, unrepentant,  
3 unremorseful bragging killer. And that persona was really not  
4 too far off who he was at that time. You saw the interview.  
5 There was no rain of tears. There was no immediate massive  
6 expression of remorse. Frankly, if there had been all you  
7 would have heard about was he was crying for himself. You  
8 heard him talk about Weston. He describes him as a basket  
9 case. Although I don't know if he was remorseful or crying  
10 for himself because he was talking about this. You didn't see  
11 that. You saw him on the interview. He was actually pretty  
12 blank most of the time. There were moments of animation.  
13 Mr. Young picked out one of those moments when he's talking  
14 about firearms and ammunition. Something he's interested in,  
15 he gets a little more animated.

16 After the interview with the Churchill County  
17 detectives, he gets very animated about radio communication,  
18 communication equipment. They all do, start talking at the  
19 same time. It becomes a very animated atmosphere in that  
20 room. When talking about the murder of John Castro, he tends  
21 to get all excited, how great all this was. In fact, what you  
22 see are the tiny little seeds of what eventually grows to  
23 become the development of empathy, remorse Shawn feels today.  
24 When asked by detective Beltron if he thought killing was a

1 thrill, Shawn said no. When Detective Canfield mentioned  
2 Latisha said I dont like this, Shawn said that's right, she  
3 said that to me. I told her no problem, I didn't like it  
4 either. I didn't want to do it. Again those are the tiny  
5 little seeds not developed yet. No true remorse at that point  
6 but ones that would grow later for Shawn. In fact, detective  
7 Beltron is the one in that interview who makes an  
8 inappropriate joke and talks about the pantyhose they were  
9 considering for a disguise of the aborted robbery. One never  
10 occurred, but planned, thought about. Shawn looked at him and  
11 said I didn't think there was a problem. Detective Beltron  
12 says well, you thought you had kind of a partner, but you  
13 would bump heads, right? Shawn has spent most of his  
14 interview looking down, pretty blank. His head jerks. That  
15 was a joke, right? Detective Beltron says, yeah, it was a  
16 joke. Shawn is the one that apologizes. Sorry, it is really  
17 not a joking matter, but I guess you have to add some comedy  
18 where you can. It is always Shawn's fault. Detective Beltron  
19 is inappropriate in the interview and Shawn apologizes. He is  
20 not feeling actual remorse in that interview. He said very,  
21 very little. He told you here this week very, very little.  
22 Those are the seeds that eventually begin to grow and develop  
23 several years later. Those are the bare beginnings of his  
24 feelings, this wasn't right. This wasn't a thrill. It wasn't

1 something you should do. As he put it even in that interview,  
2 somebody shouldn't die for \$80. They shouldn't die for any  
3 amount of money. That was just the barest recognition for  
4 Shawn of how wrong this was. There are some things that  
5 aren't in front of you in that letter. In that letter he  
6 wrote, he wrote he was going to continue to encourage  
7 violence, riots in the prison, all kinds of things. Weston  
8 Sirex is going to die. Not, oh he's a rate. He's all bad.  
9 He is going to die. That never happened. Shawn had several  
10 opportunities. He was face-to-face in person in a holding  
11 cell with Weston Sirex several times after that letter was  
12 written. They talked about it. He and Weston talked about the  
13 letter. No violence happened. No attack happened. Shawn  
14 made no efforts to see that Weston Sirex was going to die. He  
15 even told you about another incident where Shawn was  
16 approached by a member of a violent prison gang who offered to  
17 hurt Weston Sirex for ratting him out. Shawn politely  
18 declined. No thank you. He could have had someone else do it  
19 for him and he didn't. He also talked in that letter about  
20 working on causing riots in the gangs, race of prisons versus  
21 race of guards. Here was a prime opportunity. He has a member  
22 of a violent prison gang approaching him and saying let me  
23 hurt Weston Sirex. He says no, doesn't take the opportunity  
24 to say but I want to work on this other idea with you. I think

1 we need to start working together. He already has a network  
2 standing right there waiting for him to approach. Instead, he  
3 says no thank you and walks away. He had plenty of  
4 opportunity. He told you how violent it is. He's not kept in  
5 a room. He can't communicate with anybody else. None of those  
6 things, none of that violence. How do you know that? Doctor  
7 Piasecki told you she went through the prison record, the  
8 entire file on Shawn Harte. He's been there since at least  
9 the year 1999, 2000. They have got a lot of record on Shawn  
10 Harte. She told you it was several hundred pages. At the  
11 very beginning there was two instances of discipline. The  
12 first was a verbal dispute, not a physical violence. He  
13 didn't grab somebody, punch somebody in the nose. Second, he  
14 had something wrong with people on the phone list, some  
15 problem with the phone list. It is a problem with the phone  
16 list, who he can call from prison. He got a month in the hole  
17 for that. The bulk of the records and all of them after that,  
18 several hundred pages, are requests for permission to buy  
19 books that he wanted to read. These two nonviolent infractions  
20 are in his file and available for Dr. Piasecki to review.  
21 Certainly people engaging in violence, that would be in there.  
22 She told you they do very often, sadly, often contain  
23 incidents of violence. Those would be in the record. She  
24 didn't see any of them here. That is how you know that Shawn

1 Harte has not continued any violent behavior while he's been  
2 in prison the last 15 years.

3 Now Mr. Young on cross-examination of Shawn asked  
4 him several questions along the line, well, you knew once you  
5 got in trouble, got 30 days in the hole for that phone list  
6 issue, you knew that you would be in trouble in prison if you  
7 did anything else that was worse than that. And Shawn said,  
8 well, of course, there are consequences for your actions no  
9 matter where you are.

10 If you step back a second, Shawn Harte knows there  
11 are consequences for what you do outside of prison because  
12 he's in prison based on actions that happened outside. So it  
13 is not only he got the development in prison I will get in  
14 trouble so I will be good here, he has a much greater  
15 understanding than that. And, you know that prison is not a  
16 happy place of sunshine and smiley faces. Mr. Harte described  
17 the drug use, the violence, the isolation. It is not a place  
18 where it is easy to change. And Mr. William Castillo shows  
19 you that. He was a very violent man. He committed multiple  
20 convictions. He committed a murder. He went into,  
21 Mr. William Castillo went into a woman's home, bludgeoned her  
22 to death in her own bed and set her house on fire. He went  
23 into prison and continued with that violence. He got in  
24 trouble, after trouble, after trouble for years. He was the

1 kind of person Shawn Harte said I don't want to be around you.  
2 He did not walk into prison and transform himself.  
3 Mr. Castillo didn't even have the idea to do that for years.  
4 What did Shawn do when he got there? He began to change. Once  
5 he got to the Ely state prison, he realized that the guys with  
6 the tear drops and swastikas, tattoos in jail, didn't really  
7 know what they were talking about at the Ely State Prison. He  
8 could survive without being this horrible violent person. He  
9 changed. He changed. It was lack of that negativity. He  
10 stopped being violent, then he tried to learn whatever he  
11 could. He got his high school diploma, conventional  
12 education, started getting a college education. In the course  
13 of doing that, 2001-2002, he had his first empathetic  
14 experience ever in his life. He had no idea what empathy was  
15 until he saw that little boy break his arm, heard it snap.  
16 And that reaction, he was shocked by it because he had never  
17 felt it. He had no idea he could. That was when he first  
18 began to perceive he was not alone in this dark void, and it  
19 wasn't just only him, that there were other people and other  
20 people mattered. Their pain matters. So he began this  
21 self-therapy that Dr. Piasecki described. He started changing  
22 his reading from the formal education to studying religion,  
23 philosophy, psychology, everything he could get his hands on  
24 to try to see why was he was the way he was, and could he

1     become something else. He spent a lot of time doing that. He  
2     continued through the next year or until 2003. He hit this  
3     moment, Good Will Hunting moment watching that movie. I am  
4     not going to describe it again. That was where the focus came  
5     from for Shawn just trying to learn to try to change who he  
6     was, trying to see how he could interact differently with  
7     other people. When he saw that and had that moment, he  
8     thought it isn't just about me. It is nice to try to change  
9     me, but I have to do more. He went farther on his path out of  
10    that darkness and that destruction. So he continued his study,  
11    went beyond the conventional education and the self-study,  
12    started moving into relationships, began to develop  
13    relationships with other people beyond just what is the  
14    relationship at the moment. You saw evidence of that with  
15    Toni Marie, the lady he wrote back and forth with in Canada.  
16    He sponsored those three children. Shawn is not claiming he  
17    permanently changed the world for those children or he did  
18    something unending for them. He helped them over a period of  
19    a few years. He did that with Toni Marie. Part of his  
20    development with his relationship with her and his reaching  
21    out to other people, people he couldn't get an immediate  
22    effect from. That changed after several years, three years or  
23    so. He and Toni Marie no longer had the relationship. It  
24    dissolved away. She was the one that got money sent to. She

1 was the one that sent the letters to the children. Sponsoring  
2 of the children ended with that relationship with her gone.

3 He reached out further, tried again. He got a  
4 different friend to help him find a micro lending company,  
5 gave that loan to 12 women in India. Shawn Harte did not get  
6 anything out of that loan. You heard that is a three year  
7 loan. They or may not be paid back in those three years. It  
8 has no interest. He doesn't get more money. He didn't get to  
9 contact those women directly. All the women through the Kiva  
10 company. They transferred the money, the correspondence,  
11 communication. He got to choose who he helped, but he had no  
12 direct communication. He didn't get letters from them.  
13 Didn't get any contact with them. No interpersonal anything  
14 from them directly. What he got was the satisfaction of  
15 helping someone who needed it. He got the satisfaction of  
16 helping this group of women who relied upon this farm, helping  
17 them get better material and a better way to do that. Why is  
18 that important? He described it for you. It felt good. It  
19 felt good to help someone else. He likes helping other  
20 people. He likes feeling good about it. He feels that it is  
21 the right thing to do. And isn't that what we as a society  
22 want? Doesn't society want someone who has been so terribly  
23 violent, who has killed someone, engaged in that kind of  
24 dreadful behavior, don't we want them to change and to like



1 helping other people, to realize it is right and it feels good  
2 and that is a much better way to be?

3 Shawn also described for you what he felt was very  
4 important to him and that was helping other inmates. He's in  
5 Ely max. These are violent men that he is trying to help.  
6 William Castillo is not some aberration there. He's the norm.  
7 That is what those people are like, and yet Shawn's own change  
8 inspired William to begin a change of his own, and Shawn  
9 counseled, helped him, and he's continued to help other  
10 inmates. He told you he's had varying degrees of success.  
11 Sometimes no success, sometimes a little success. Some like  
12 William really make drastic changes. And that helping of  
13 others as he gets up to that stage, that is a much more  
14 personal level. He's reached out to children who don't live  
15 in Ely State Prison or the United States. Reached out to the  
16 women's group in India. Even living here now he's reaching  
17 out to people right next to him. It is a much more  
18 interpersonal action and reaction. This is a violent group of  
19 people. This is not pretty please, mother may I people. They  
20 are violent. They are coarse. They are rough. He's able to  
21 interact with them positively, able to deal with negativity,  
22 trying to move something to a better more positive way instead  
23 of acting with his own violence. Shawn tried very, very early  
24 on when he was first beginning the self-study, just moving out

1 of the convention, he tried to get his mother to come along  
2 this journey with him. In one of the phone conversations he  
3 asked her to do that. She responded in that really ugly way.  
4 That could have been a devastating setback for him. Even my  
5 own mother I can't convince her to come along with me. Why  
6 should I bother? It just can't happen. It could have set him  
7 back, could have reverted him back to violence, not trying to  
8 do anything to improve. He didn't stop moving forward. He  
9 kept on going. He tried to contact her a couple more times.  
10 She never responded back, but he kept moving forward. He  
11 didn't let that stop him. So what does all this mean? Is  
12 Shawn Harte a danger to future society if he gets out of the  
13 prison? Will he harm other people? Will he continue on that  
14 violent destructive path of 1997 and 1998? Dr. Piasecki told  
15 you a number of factors that are protective factors that help  
16 prevent someone from doing that or indications someone is not  
17 going to engage in violence.

18 First of all, aging. As people get older, their  
19 violence level decreases. Their violent response decreases.  
20 Shawn went into prison at twenty. He is 37 now. He's been  
21 aging. Before he could ever possibly be released under the  
22 earliest circumstances, he would be at least sixty. That is  
23 specific to Shawn. Increased education helps people respond  
24 better and without violence. Shawn has done a phenomenal

1 amount to increase his education over the course of the last  
2 12 or 13 years. He increased his education formally and  
3 informally by a tremendous amount.

4 Building and sustaining relationships. Doctor  
5 Piasecki told you that was very important that he was able to  
6 have a relationship with Toni Marie. That lasted over a year.  
7 His relationship with Janine Marshall. Sustained  
8 relationships that have been positive. He has the ability to  
9 even be able to handle it when those relationships end. Toni  
10 Marie ended after several years. Shawn kept moving forward,  
11 upward. He's gained a more developed understanding of right  
12 and wrong, how to be in the world without being violent. Dr.  
13 Piasecki said that was something completely missing before  
14 that he's developed. Now that is one of the protective  
15 factors that tell you he has every possibility of being not  
16 violent. Now Mr. Young asked Dr. Piasecki can you guarantee  
17 one hundred percent with absolute certainty Shawn will never  
18 be violent in the future? She said of course not. I can't  
19 guarantee that about anybody. None of us can predict the  
20 future. She can't predict Mr. Young wouldn't be violent. No  
21 one can do that. What you can look at are the factors that  
22 exist, the things you know, the things you know will exist  
23 with the continued age, the things you know do exist. One of  
24 the best predictors of future behavior is past behavior.

1 Shawn's is mixed. We have what she described as the cluster  
2 year or so of actual violent behavior and continued attempts  
3 to appear violent with another year or so of ideas that never  
4 actually happened that he talked about or thought about. And  
5 then you have 14 years of nonviolence and helping others. So  
6 he has a very mixed background. What you see most recently is  
7 that he has been improving, that his progress has been steady  
8 and sustained, continued 14 years so far and been steady. She  
9 said she did not see the up down, up down. He was good, then  
10 violent behavior. You don't see that. You see steady  
11 continual improvement and nonviolence.

12 So will this occur only in prison? Can we not be  
13 safe if he is ever let out? Doctor Piasecki also told you  
14 that those protective factors don't go away depending upon the  
15 environment. Once you achieve them, you always maintain. He  
16 will always get older, increased knowledge, better schools and  
17 interpersonal relationships. It is not a matter of being in  
18 prison. Only prison that will keep it so. She also said she  
19 thought there were some adaptive skills, that he would need  
20 some transitioning so he could integrate, primarily  
21 technological things. Things work differently now. That is  
22 why there are programs that do that transitioning. But as far  
23 as violence or violent responses go, the protective factors  
24 Shawn has been building and occurring for him will still be

1       there. They are not going to change.

2               Will he suddenly revert, this development growing,  
3       growing, growing, suddenly become violent? Will he have he  
4       downward spiral, amount of cluster of violent time that  
5       happened earlier in his life right around the time he was 19,  
6       20, 21?

7               Doctor Piasecki told you that steady progression and  
8       sustained progression is super important in this regard. The  
9       longer you engage in a particular behavior, the more likely it  
10      is to be permanent. That is the longer you remain nonviolent,  
11      the more likely it is you will continue to be nonviolent.  
12      Quitting smoking. Somebody who first quit smoking, sometimes  
13      they go back to it. The longer you go, the more years you  
14      have, the farther away you get from the most recent smoking  
15      episode, the more likely you are not to quit smoking.  
16      Insurance companies even figured the least likely you are to  
17      get cancer the farther you get from when you smoked. It is as  
18      you change your behavior, the more you engage in the current  
19      behavior, stay that way, the more likely it is you will  
20      continue.

21              Shawn Harte has 12 years or more of good, positive  
22      growth and behavior. He has got at least 23 more that he  
23      would have to continue to sustain before he could ever even  
24      ask to be released from prison and into society.

1           Is Shawn Harte the same man that he was at 20, the  
2 man who killed John Castro? He explained to you he's not. He  
3 gave some really lengthy explanation. I am not going to go  
4 through all those. Again, you have to judge the credibility  
5 of what he said. You have to judge his sincerity. That is up  
6 to you to decide. Did he really mean it as he testified about  
7 the growth he experienced about who he has become and still  
8 wants to become? You do have some things that can help you in  
9 investigating that sincerity. For instance, Dr. Piasecki, the  
10 objective evaluator of Shawn, her opinion matches a lot of  
11 things Shawn said. Shawn talked about that time of violence  
12 and that period in his life, just wanting only to hurt people.  
13 In that time frame he didn't know anything else and he has  
14 changed from that. He told you it was a result of everything  
15 he learned and known from his past. He just didn't have any  
16 of the frame of reference. Doctor Piasecki told you she  
17 agreed that period of active violence was heavily influenced  
18 by his past. You can also see it in his brother, Timothy.  
19 Mr. Young asked Shawn if Timothy is getting in trouble. He's  
20 still getting in trouble even with Shawn in prison. That  
21 hasn't stopped Timothy from getting in trouble. He hasn't  
22 killed anyone. Domestic battery. He engages in his own  
23 violent behavior. A different level than Shawn but continues  
24 to do it still. Why? What do they share? Well, they haven't

1 shared the recent past because Shawn has been in Ely. What  
2 they shared was their childhood and past with their family and  
3 that training or lack of it.

4 Also the use of the term persona. Doctor Piasecki  
5 telling you that was a coincidence. It is one more  
6 confirmation that what he's telling you is accurate because  
7 she is an objective evaluator, didn't speak about that  
8 particular topic with Shawn and reached the same conclusion.  
9 Shawn has told you he had to make a determined effort to  
10 change himself. Dr. Piasecki agreed this is not something that  
11 just occurs, doesn't happen with everybody. He had to work  
12 hard. Shawn told you, described it, trying to help other  
13 people become less violent and more positive. He's moved  
14 beyond himself and found that to be very important. Doctor  
15 Piasecki agreed he's done that. Everything in his file and  
16 record shows that. It is very important.

17 Finally, you have confirmation of Janine Marshall  
18 and William Castillo. Both told you he brings out the best in  
19 me. That is not someone who is the same as the person who was  
20 at age 20 who killed John Castro.

21 One more thing. Both of them told you Shawn has not  
22 finished transforming himself yet. He has a long way to go.  
23 But he has a long time to get there. You have been told  
24 several times he cannot get out of prison, actually out until

1 he's at least 60. He has at least 23 more years to go until  
2 2038, the earliest he would get out of prison. He's not  
3 finished. He told you he doesn't always have the exact  
4 responses. We know they haven't been violent. And those  
5 changes he feels he needs to make, he has got the time to make  
6 those.

7           So what is the purpose of a prison sentence then?  
8 You have to decide what is right. Should he have the  
9 opportunity to ask for parole or not? Well, there are several  
10 different purposes behind giving a sentence. One is  
11 punishment. Punishment is an appropriate thing to consider.  
12 Someone's life has been taken. You can't evaluate that Mr.  
13 Castro was worth any certain number of years. You just can't  
14 do that. Everybody's life is invaluable. We can't put a  
15 number of years on payment or as payment, but you can consider  
16 punishment for that act. Even Mr. Young said it is not an  
17 inconsequential amount. Forty years is a long time. Shawn went  
18 into prison at age 20. He can't possibly get out until at  
19 least 60. The prime of everyone's life. Twenty years old,  
20 first time on your own until 60 when you are getting ready to  
21 retire. Those years are going to be spent in prison, at least  
22 those many years. He's being punished. Prison is not a  
23 resort hotel. It is filled with violence, drug, negativity,  
24 very, very strict oversight, doesn't get to decide many things



1       there. And he won't for a very long time. The aspect of  
2       punishment is met by a 40 year minimum sentence up to a  
3       maximum of life.

4               Also the aspect of deterrence. This is considered  
5       two-fold. General deterrence, you heard no evidence about.  
6       Frankly, from everything we have seen, it doesn't appear to  
7       work. People have been to prison for life. It doesn't. There  
8       is also specific deterrence. Will it deter Shawn of  
9       committing another act like this? I think you can see all of  
10      the reasons why that term in prison would.

11             We talked at length about the changes he has made.  
12      You also know there is no guarantee he will ever be paroled.  
13      If there is anything that occurs that indicates to anyone on  
14      the Parole Board he's not a good risk, he might be violent,  
15      he's not ready, he could hurt other people, they don't have to  
16      let him out. They don't ever have to parole him from the  
17      first term into the second let alone let him out after that  
18      into society. He's going to have to continue his good  
19      behavior, that steady upward path he's had for the last 12,  
20      13, 14 years and continue at least 23 more before he's ever  
21      going to be able to convince the Parole Board to let him out.

22             Also the consideration of rehabilitation. Shawn  
23      through his own determined effort changed himself greatly.  
24      He's not there yet, but has made incredible strides. He will

1 have 23 more years at a minimum to continue to become even  
2 closer to the person he's been trying to become in the last 12  
3 years. That is an emotionally, psychologically healthy person,  
4 not only responds well but helps other people respond well and  
5 spread positive feelings, happiness, joy, personal health,  
6 psychological health to others instead of negative violence.

7 So there are at least three choices as you consider  
8 all the factors and you make a determination of what sentence,  
9 which one of these three things will meet the goals for a  
10 sentence, the goal of imprisonment. We are not asking you to  
11 give him that least sentence. Someone has been murdered.

12 John Castro has been. His family misses him greatly and it is  
13 a huge loss. We are not asking you to say that is deserving of  
14 anything less than life in prison. We are also not asking to  
15 you let Shawn Harte out today. We are asking you not o focus  
16 solely on punishment without any room for improvement or  
17 consideration who Shawn can become. That would be life  
18 without the possibility of parole which would be appropriate  
19 if you could sit here today, you know, with absolute certainly  
20 there is no way, no circumstances nothing could happen to ever  
21 merit Shawn to have the opportunity to ask to get out of the  
22 prison. There is no guarantee he will ever get out if you give  
23 to Shawn what we are asking for. The Parole Board will make  
24 that decision in the future. You know, the first opportunity

1 would be three years from now, but that would still keep him  
2 in prison for at least another 20, at least another 20. They  
3 don't ever have to let him out.

4 Because none of us can predict the future, we are  
5 asking you to give the one sentence that allows for that  
6 decision to be made at that time, no earlier than 2038 when  
7 the decision can be made by the Parole Board knowing  
8 everything that they would know about him at that time,  
9 because there is no way to predict what will or won't be  
10 appropriate in the future. He may never get out even with  
11 this sentence. If it is determined he shouldn't, he can't be  
12 out safely, he can be kept in. It is a life sentence. All  
13 this does is give him the ability to ask can I be released on  
14 parole at some point in the future. No earlier than 23 years  
15 from today. That is what we ask you to do.

16 THE COURT: Ladies and gentlemen of the jury, we  
17 have gone two hours now so I think it is appropriate to take a  
18 short recess before the State concludes their argument. During  
19 this break, remember that this case is not over. You are not  
20 to discuss the case amongst yourselves or with any other  
21 person, members of your family or anyone involved in the case.  
22 Should any person try to discuss the case with you, you notify  
23 me immediately.

24 When I say you cannot discuss the case, that

1 includes on the internet, internet chat rooms, internet blogs,  
2 internet bulletin boards, e-mails, texts and messaging. Do  
3 not read, watch or listen to any news media accounts or any  
4 other accounts regarding this case.

5 Do not look up any information about this case,  
6 research it through dictionaries, search the internet or other  
7 reference materials about the trial, the case or the parties  
8 involved.

9 Please go into the jury room and keep this recess at  
10 15 minutes. Thank you. Court's in recess.

11 (Short recess taken.)

12 THE COURT: Let's bring the jury in. Counsel, will  
13 you stipulate to the presence of the jury?

14 MR. YOUNG: State will, Your Honor.

15 MS. BOND: Yes, Your Honor.

16 THE COURT: Thank you. Please be seated. Mr. Young,  
17 you may conclude your argument.

18 MR. YOUNG: Thank you, Your Honor. Ladies and  
19 gentlemen, I will be relatively brief. There is a couple of  
20 things I would like just to address based on what you heard  
21 from Ms. Bond and the defense argument to you. What was  
22 discussed was effectively two things would support your  
23 verdict of life with the possibility of parole, that being  
24 Mr. Harte's childhood and then let's skip over the 1997, 1998

1 time frame, then the 17 years or last 14 years or so forward  
2 until today as justifying the defense's opinion of the  
3 sentence of life with the possibility of parole.

4 Now Mr. Harte's childhood, I will be very brief on  
5 this. I am not going to stand here and try to fool you and  
6 say it was ideal. It didn't sound like it. He conceded,  
7 Mr. Harte conceded that even despite that he had no right to  
8 do what he did to Mr. Castro, Mr. Lee, Mr. Burnett and all the  
9 other things he did. Now there are plenty of people who have  
10 poor childhoods or live in dysfunctional families that don't  
11 resort to the level of violence Mr. Harte did. I'm not trying  
12 to cast away as insignificant his childhood, but the question  
13 becomes does the childhood in part give him an out or that  
14 childhood in part justifies a sentence less than life without  
15 the possibility of parole? It is Mr. Lee's and my position  
16 what we submit to you is that it doesn't.

17 Now the majority of their argument is on what has  
18 happened since 1999 or 2000 and there has been a lot of  
19 reading and writing a couple of articles, some educational  
20 opportunities Ms. Bond mentioned. Well, there has been no  
21 fights. He hasn't killed Weston Sirex, hasn't caused prison  
22 riots and killed others. Ms. Bond said that I want you to stop  
23 considering after the writing of the letter. I don't want you  
24 to do that. You are entitled to consider everything. Consider

1 the last 17 years. The Jury Instruction tells you you can  
2 consider that. I'm asking you to consider the fact the last  
3 17 years where all of these things have occurred of writing  
4 and betterment as the defense calls it has been while the  
5 defendant has been in prison. Consider the fact that up until  
6 17 years ago, the defendant was at liberty in the community,  
7 and look at the actions he did during that time frame. And now  
8 look at what he's done while he has been separated from the  
9 community and in prison. You heard about the environment that  
10 Mr. Harte has been in in the maximum security prison. There  
11 are tiers of prison in the State of Nevada based on a number  
12 of factors. He's been in Ely which is maximum. He told you  
13 he's in a single cell meaning I don't have another inmate with  
14 me. He testified, he being Harte, testified he gets out of his  
15 cell for three to four hours per day and while he's with a  
16 handful of other people, he said up to 15 people at a time.  
17 They are all individuals from his tier. Guards are there to  
18 supervise. So consider the opportunity that the defendant has  
19 had these last 17 years for violence, for taking another's  
20 life versus what his opportunity is out in the community. He  
21 talked about the incentive, I don't want to say program, but  
22 incentive structure, the reward structure. If you do things  
23 in violation of the prison rules or you commit violence or  
24 anything of that nature, some of your privileges get taken

1 away. Mr. Harte learned that very early on with his violation  
2 where he got a month as Ms. Bond testified in the hole or in  
3 segregation. He learned very early on if I do things that are  
4 disastrous to this environment I suffer the consequences. So  
5 not only is his opportunity for these things significant, he  
6 has a personal investment not to do those things.

7 Now the balance of it is effectively Dr. Piasecki.  
8 She came in and she talked about future dangerousness. She  
9 talked about how Mr. Harte is a changed man and his  
10 development has progressed. So let's talk about that. Couple  
11 of Instructions starting with Instructions 6 talks about  
12 credibility. You get to determine the credibility. It is a  
13 two-page Instruction and carries over to the second page and  
14 talks about all the things you can consider in determining  
15 somebody's credibility. Instruction eight talks about expert  
16 witnesses. And Dr. Piasecki qualifies as an expert witness.  
17 The same as Dr. Palosaari who is the coroner. The same as  
18 Kevin Lattyak who is the criminalist who did the ballistics  
19 based on their background, training, education and the like.  
20 Doctor Piasecki, as an expert, can talk about opinions, but  
21 the bottom paragraph there says you are not bound to accept an  
22 expert opinion as conclusive, but give it the weight to which  
23 you find it to be entitled. So just because somebody comes up  
24 and says I'm a Ph.D and you should listen to what I have to

1 say, again, consider what they say, but you don't have to  
2 accept it outright. What did Dr. Piasecki tell you? Her  
3 primary source of information was who? Shawn Harte. She spoke  
4 to two people as part of her report and her opinions. The  
5 defendant for one and a half hours approximately six months in  
6 preparation of this sentencing hearing and Janine Marshall,  
7 who is the defendant's fiance.

8 Let's talk about Ms. Marshall very are briefly. Is  
9 Ms. Marshall an individual who has known Mr. Harte for twenty  
10 years, thirty years, say here is what he's like, here are the  
11 changes I have seen? No. We know Ms. Marshall met Mr. Harte  
12 while he was in prison in February of 2014. So a year ago or  
13 thereabouts. And she wrote him on a Write a Prisoner ad. I  
14 probably don't have the terminology exactly right. That is how  
15 she was first introduced, if you will. After a month, because  
16 of the mail in Australia, he writes back. She doesn't  
17 actually see Mr. Harte until December of last year. A month  
18 ago. Two months ago at best. So she didn't know anything  
19 about Mr. Harte back in 1967, didn't know anything beyond what  
20 Mr. Harte told her about his crime. So the two people that  
21 doctor Piasecki talked to in addition to the defendant, who  
22 certainly has an incentive being he's seeking parole  
23 eligibility, is Ms. Marshall who frankly knows very little  
24 about the defendant. She said that, she being Dr. Piasecki, I



1     rely on outside information, outside sources to get accuracy  
2     and make sure my opinion and my writings are accurate. But we  
3     went over this litany of what did you know beyond talking  
4     about Mr. Harte, beyond talking about Ms. Marshall. She had a  
5     prison packet. Okay. But she didn't talk with any of the  
6     guards or the administrators in the prison. She reviewed a  
7     letter from William Castillo. You heard about his background,  
8     but she didn't ever actually go talk to William Castillo or  
9     any other inmates. I asked her about police reports. She  
10    didn't review those. I asked her about the interview of  
11    Mr. Harte or the transcript. Didn't review those. She didn't  
12    know about the literature that he had engaged in. She didn't  
13    know the literature was made available through the Sterling  
14    Enterprises at his mother's residence. Doctor Piasecki didn't  
15    know about the other plans. I mean she initially said oh,  
16    this is one incident when Ms. Bond or Pusich doing the  
17    questioning. We said there is also this other shooting. She  
18    came off that a little bit when talking about this cluster.  
19    But she didn't know the defendant thought about killing people  
20    from the age of 14, and she tried to explain that as, well, I  
21    am not as concerned about thoughts. Well, folks, I submit you  
22    should be concerned about thoughts. You can consider the fact  
23    that he had homicidal thoughts for six years until his arrest.  
24    And guess what those homicidal thoughts ended in? A murder.

1 The letter that she described as him trying to be as most  
2 appalling and outlandish words to that effect as possible. An  
3 exaggerated version of who he is. What Ms. Bond just said.  
4 Everything that can be confirmed from that letter. In other  
5 words, all the past facts are confirmed because we can say  
6 these things that Mr. Harte is talking about in the past  
7 actually happened. Talking about militia, talking about  
8 riots. Have they happened? No, but, again, we think about  
9 the opportunity because the defendant is in prison. You think  
10 about the incentive not to do those things because he's in  
11 prison. And the best predictor of the future behavior is past  
12 behavior. What was the behavior Mr. Harte engaged in from the  
13 age of 14 to 20? Thoughts of killing, attempted robberies and  
14 the murder of John Castro. That is your best indicator. Not  
15 the last 17 years while he's in an isolated cell short of  
16 three to four hours a day, being supervised by guards 24 hours  
17 7 days a week.

18 She said that it is not a clinical assessment. How  
19 I started my question was what is the difference between  
20 forensic evaluations and clinical. Clinical is where I have  
21 issues with my life or whatever I might be experiencing. I go  
22 and seek out Dr. Piasecki. I typically see her for a number  
23 of sessions, and I have an incentive to be truthful because I  
24 am seeking help for myself.

1           Now contrast that for the evaluation of a forensic  
2       evaluation Dr. Piasecki did to Mr. Harte. It was requested by  
3       his attorneys and ordered by the Court in preparation of the  
4       sentencing. So the incentive, the build-in inherent incentives  
5       in a clinical evaluation were already removed from that. And  
6       Mr. Harte once before in a psychiatric evaluation in his words  
7       lied during evaluation and received a benefit from it. He got  
8       out of the Army. Doctor Piasecki knew that as well. The  
9       difference between these types of evaluations is it is not  
10      Mr. Harte I am coming to you, Dr. Piasecki, for assistance.  
11      It is Dr. Piasecki doing something for courtroom purposes.

12           She does still find he's narcissistic. She described  
13      that as thinking I am above others. Very similar to his  
14      thoughts back in 1997 and 1998. As she testified and Ms. Bond  
15      discussed and I will bring up again, she can't guarantee  
16      anything. She said I can't tell you how Mr. Harte will be upon  
17      release. I can look at these factors. I am going to  
18      disregard his thoughts for six years, but I can't guarantee or  
19      say with any certainty that if Mr. Harte were to be released  
20      he wouldn't revert right to this. She said diagnoses can  
21      change. The personality disorder he was diagnosed with by two  
22      doctors in 2002 she finds not to exist anymore. But she  
23      conceded in another 12 years that may change, because the best  
24      predictor of future behavior is past behavior. Again,

1 consider the past behavior of Shawn Harte when he's not under  
2 a maximum security setting.

3 So, folks, I am not going to rehash what happened in  
4 that, as the defense wants to characterize it as a cluster.  
5 Doctor Piasecki wants to characterize it as a cluster. You  
6 know the facts of what happened. The question becomes, all  
7 right, does the Defendant's childhood, does the last 17 years  
8 provide a basis to giving him an opportunity to be released in  
9 the community? The State would submit, no, it doesn't, based  
10 on what has been discussed. He's been in prison. And, again,  
11 we know what his actions outside of prison are like.  
12 Dangerous and violent. Absolute obsession with firearms and  
13 explosives. He has writings on them. He allows these  
14 writings to be sent to others upon request. Shooting at  
15 vehicles, thoughts of homicide, and then ultimately killing  
16 John Castro. So does those, the childhood and the past 17  
17 years justify anything less than life without the possibility  
18 of parole? No, it doesn't. No.

19 Let me finish with this: Folks, I appreciate your  
20 time and attention this last week. The focus of this hearing  
21 for all last week and today has been what? It has been on  
22 Shawn Harte. We are here because of Shawn Harte's actions. We  
23 have heard testimony about the investigation of Shawn Harte.  
24 We have heard the letter and the interview of Shawn Harte.

1 Everything has been focused on him. And rightfully so. He  
2 put all this into motion. We are here because of Shawn Harte,  
3 and justice would be served based on all those actions to give  
4 him a sentence of life without the possibility of parole. But  
5 I want you, when you are deliberating, to not only focus on  
6 Shawn Harte. I want you to focus on one other thing. I want  
7 you to focus on John Castro Jr. John Castro Jr., has kind of  
8 taken a back seat in this hearing. And, again, understandably  
9 so because we are not here because of anything John Castro  
10 did. He was working to support a family. We are here because  
11 of Shawn Harte's actions. But just as justice demands a  
12 sentence of life without the possibility of parole for the  
13 Defendant's actions, there is justice for John Castro Jr., a  
14 man who had a family. A man who had siblings. A man who you  
15 heard little about from Tony Castro when he was reading his  
16 letter and testifying. We are here because of Shawn Harte's  
17 actions. The large focus should be put on John Castro, Jr.,  
18 and justice for John Castro, Jr., would be life without the  
19 possibility of parole. That is all the State is asking you to  
20 do. I'm not here to say that is insignificant. I understand  
21 what I am asking you to do. Mr. Lee understands what we are  
22 asking you to do. But it is not any of you that caused us to  
23 be here. It is that man who killed a father, a person working  
24 to support his family, and for that Mr. Harte deserves life

1 without. Thank you.

2 THE COURT: Ladies and gentlemen, that concludes the  
3 argument of counsel with regard to this case. We have now  
4 come to the stage in the proceedings when in just a moment I  
5 am going to give the case to you to begin your deliberations.  
6 However, only 12 people deliberate on a case, and we did have  
7 two alternates selected. We have used one of those alternates,  
8 the first alternate when we lost Ms. Connor. We will not be  
9 using the second alternate. It is the person last selected,  
10 Mr. Cunningham, so you are the alternate. Now I say we are  
11 not going to use you, but as quickly as we found out Ms.  
12 Connor couldn't be here, we could have another vacancy on the  
13 jury. So it is essential I keep you as an alternate and I  
14 keep you to the admonition I have given you at all the breaks  
15 until the jury actually reaches their verdict in case someone  
16 would become ill or unable to continue we would substitute you  
17 onto the jury, and then the jury would start deliberating all  
18 over again with you as the 12th person. So it is essential  
19 that we do have you available.

20 Now I can do it two ways. I can let you stay here  
21 in the courthouse and we keep you separate and apart from  
22 everyone, or I can let you go on about your business, leave  
23 the courthouse as long as you agree to notify me and stay in  
24 touch with my office at a phone number where we can reach you

1 at all times and agree to follow the admonition I have given  
2 you at all breaks. That admonition being you can't talk about  
3 the case with anyone. You can't discuss it with anybody at  
4 work or home, any friends. You can't allow anyone to discuss  
5 it with you. You can't form any opinion about the case. You  
6 sort of have to stay in limbo so that you could begin  
7 deliberating with the other jurors if necessary. And it means  
8 you can't look at any news media or any other accounts  
9 regarding the case or make any independent investigation  
10 regarding the case. That means, talking about an  
11 investigation, it includes internet, tweeting, texting,  
12 e-mailing and looking up anything on the internet about the  
13 case or the persons involved.

14 Now will you agree to follow that admonition I have  
15 just given you?

16 THE ALTERNATE JUROR: Yes, ma'am.

17 THE COURT: Will you agree to stay in touch  
18 telephonically at all times?

19 THE JUROR: Yes.

20 THE COURT: That being said, I am going to let you  
21 go into the jury room, gather up your personal belongings.  
22 Leave your note pad with the bailiff. She will keep it  
23 separate and apart and will not look at it herself in case you  
24 do come back to deliberate. Then exit the jury room door and

1 make a hard left and go into my chambers which is my office.  
2 You will find my judicial assistant in there. Please give her  
3 a phone number where you can be reached. We'll let you know  
4 if and when we need you to come back or if jury has reached  
5 their decision. Okay. Thank you.

6 So, ladies and gentlemen of the jury, it will be the  
7 12 of you that will be deliberating in this case. With you in  
8 the jury room will the exhibits that have been admitted to the  
9 penalty hearing as well as the written Instructions that I  
10 read to you and the verdict forms I told you have been  
11 prepared. It may take a few minutes for the clerk to get all  
12 of those items in to you but they will be delivered very  
13 shortly. Once we recess, we are in recess subject to the  
14 jury's call and subject to you notifying us of reaching your  
15 verdict. I know the bailiff will accept your cellphones and  
16 keep them during your deliberations.

17 Ladies and gentlemen of the jury, you may go into  
18 the jury room for deliberation. Wait a minute, wait a minute,  
19 wait a minute. Sorry. We have to swear the officers to take  
20 charge. Chelsea, would you move over a little closer? Thank  
21 you.

22 Ladies and gentlemen, you may go into the jury room.  
23 Please be seated. Counsel, I know it is your  
24 practice, but be sure that you provide the clerk with your



1 telephone numbers where you can be reached. The bailiff will  
2 be ordering food for the jury. They have to fill out their  
3 menus. That will be ordered shortly.

4 In addition, I want to make a record about the  
5 bullets and the gun. It is the practice of this department  
6 that we do not send the bullets in when the gun is in the jury  
7 room so the bullets will be held. If the jury wants the  
8 bullets to see, we will switch it out. Any objection?

9 MR. YOUNG: None from the State.

10 MS. BOND: No, Your Honor.

11 THE COURT: Also with regard to Exhibit 34, I  
12 understand we can't get an admitted sticker without disturbing  
13 the other sticker. It was suggested we could put them in an  
14 envelope and put the new admitted sticker on the outside of  
15 the envelope. Does anybody have any objection to that?

16 MS. BOND: No objection.

17 MR. YOUNG: None. Thank you.

18 THE COURT: The series, 34 series admitted will be  
19 in an envelope with an admitted sticker on the outside.

20 The last thing, we had the videos that were played  
21 and we need to make a record with regard to a clean computer.  
22 Do we have a computer available that does not have anything on  
23 it that will play the DVD?

24 MR. YOUNG: The one here, Mr. Evans from our IT

1 specifically put these computers in without having access to  
2 anything else. I think the only media shown was the interview  
3 of Mr. Harte. That is on a separate disc.

4 THE COURT: That has to be shown through --

5 MR. YOUNG: Shown through this. If the jury needed  
6 to, they could use this exact computer.

7 THE COURT: What is the power point on?

8 MS. PUSICH: Flash drive.

9 THE COURT: And you have that?

10 MS. BOND: I do yes. I have a printout, if you want  
11 a printout of the screen shots.

12 THE COURT: Normally we would put in the record  
13 screen shots what was shown in the power point, but the State  
14 didn't ask for it. I watched it, didn't find anything  
15 objectionable about it, so I think it is fine.

16 MR. YOUNG: I just checked. There is no e-mail  
17 access. It does appear to be -- I don't know if there is even  
18 internet access. There is no icon. There is nothing on there  
19 evidentiary wise that the jury could look at from this  
20 computer beyond inserting the disk of the interview.

21 THE COURT: Would you open Microsoft for me?

22 MR. YOUNG: So, Your Honor, under this local disc C,  
23 Your Honor, is where all of our, the area I put any of my  
24 files on.

1 THE COURT: Right. Okay. Look at the power point  
2 one just to make sure. Just make sure it didn't get saved  
3 somehow.

4 MS. PUSICH: On the bottom of your program.

5 MR. YOUNG: Oh. There is nothing there.

6 MS. BOND: See what it will open because it --

7 THE COURT: It shows several. That isn't a clean  
8 computer.

9 MR. YOUNG: Apparently.

10 MS. BOND: I don't know it would open if you click  
11 on it because the drives not there.

12 MR. YOUNG: This was the defense, because the State  
13 didn't use power point. This is the defense. It doesn't  
14 open.

15 THE COURT: Go back onto the file.

16 MR. YOUNG: Your Honor, the first three I have done,  
17 none of them actually open. Usually we have to put in some  
18 sort of power point or otherwise.

19 THE COURT: Right. I don't even like the title  
20 there. Would you look at the file setting.

21 MR. YOUNG: Sure.

22 MS. BOND: Brad is here. He might be able to delete  
23 all those at this time.

24 THE COURT: Would you go over to the right on the

1 recent places?

2 MR. YOUNG: I am sorry?

3 THE COURT: Go ahead, try to open desktop and see if  
4 there is anything there. Is your IT person here?

5 MR. YOUNG: He's in my office. I can call to have  
6 him here.

7 THE COURT: Well do that. Have it completely  
8 cleared. I think it is important to have a completely cleared  
9 computer. I'd hate for anyone on the jury to start reading  
10 titles, somehow get an idea of any kind.

11 MR. YOUNG: Sure. No problem.

12 THE COURT: But this won't be available to the jury  
13 unless they ask to play the DVD, so we have time. Yes, Ms.  
14 Pusich?

15 MS. PUSICH: I have a question. We didn't check it.  
16 If their IT person is coming, can they make sure they cannot  
17 access the internet through the comments on the screen?

18 THE COURT: They have told me before in other cases.  
19 I think it is a good idea to look at it. I want to try to do  
20 it now.

21 MS. PUSICH: Okay. Good.

22 MR. YOUNG: They do not have access to the internet.

23 THE COURT: We confirmed that also. All right.  
24 Anything else, counsel, before we recess?

1           MR. YOUNG: Would you like me to have Mr. Evans come  
2 over only if there is a request to use the computer?

3           THE COURT: No. Let's get it over and cleaned out.  
4 I know it is the one he uses in the cases anyway. It is  
5 probably a good idea to clean that out in case there is a case  
6 next week in another department it is done. Might as well get  
7 it done. And then, counsel, you are welcome to stay and watch  
8 and double check, but the clerk will double check also.

9           MR. YOUNG: As it is 11:50, whether I can get him  
10 here before lunch, I don't know. I will contact him as soon  
11 as I get back to the office.

12          THE COURT: Okay. Anything further for right now?

13          MR. YOUNG: Not from the State. Thank you.

14          MS. PUSICH: No, Your Honor.

15          THE COURT: Thank you. Court's in recess.

16                Has the jury reached a verdict?

17          THE BAILIFF: Yes, they have, Your Honor.

18          THE COURT: Please be seated. Bring the jury in.

19                The clerk will now call the roll of the jury please  
20 answer here or present.

21          THE CLERK: Counsel you pay be seated.

22                (Whereupon the roll of the jury was called.)

23          THE COURT: The clerk will record the jury is all  
24 present in the minutes of the Court.

1           Mr. D'Alessandris, you have a folder with you. Are  
2 you the foreperson?

3           THE FOREPERSON: Yes.

4           THE COURT: Have you reached a verdict?

5           THE FOREPERSON: Yes.

6           THE COURT: Would you hand the verdict and file to  
7 the bailiff who will hand them to me. The clerk will read the  
8 verdict of the jury.

9           THE CLERK: In the Second Judicial District Court of  
10 the State of Nevada in and for the County of Washoe. The  
11 State of Nevada, Plaintiff versus Shawn Russell Harte,  
12 defendant. Case number CR98-0074A Department 4. Verdict of  
13 Penalty. The defendant, having been previously found guilty  
14 by jury verdict of murder of the first degree with the use of  
15 a deadly weapon, and we the jury duly empaneled to decide and  
16 set penalty now set the penalty to be imposed for murder of  
17 first degree at life in the Nevada Department of Corrections  
18 without the possibility of parole. Dated this 2nd day of  
19 February, Michael D'Alessandris.

20           THE COURT: Is this your verdict say you one, say  
21 you all?

22           THE FOREPERSON: Yes, Your Honor.

23           THE COURT: Does either party wish the jury polled?

24           MS. PUSICH: Yes please, Your Honor.

1 THE COURT: You may be seated. The verdict doesn't  
2 have a year on it. It is dated the 2nd day of February  
3 without a year.

4 THE FOREPERSON: Sorry.

5 THE COURT: Did you sign it today, sir?

6 THE FOREPERSON: Yes.

7 THE COURT: 2014?

8 THE FOREPERSON: Yes.

9 THE COURT: 2015. Okay. Counsel, do you have any  
10 objection to the bailiff providing that to the Foreperson?

11 MS. PUSICH: We do not.

12 THE COURT: The record will reflect that the  
13 Foreperson has now dated and completed the date on the  
14 signature line. Now the clerk will poll the jury.

15 (Whereupon the jury was polled.)

16 THE COURT: The verdict will be recorded in the  
17 minutes of the Court.

18 Ladies and gentlemen, I want to thank you for your  
19 service, and I join with everyone in the courtroom in  
20 appreciating the thoughtfulness and attentiveness you have had  
21 during the entire trial. We have noticed that you have paid  
22 close attention to all the evidence, and we appreciate that.

23 Now the admonition I gave you at all the breaks you  
24 are now released from. You can discuss your jury service with

1 anyone you so desire to talk about it with, however, you are  
2 not required to talk about it with anyone. It is up to you.  
3 And if you have any questions or you want to talk about the  
4 case, you can call me later about it or you can stay. Many  
5 times jurors would like to stay and come into my chambers. If  
6 you want to do that as a group, I would be happy to welcome  
7 you all in my chambers and answer any questions that you might  
8 have. But you are released from the admonition and you may  
9 leave now from the courtroom. We appreciate your service.  
10 Thank you.

11 Counsel, I don't know if we really need a new  
12 pre-sentence investigation or if judgment can just be entered.  
13 I want to have your thoughts.

14 MS. PUSICH: Your Honor, we spoke with Mr. Harte and  
15 with the State earlier. It would be his request not to  
16 prepare a new PSI. The report we have was prepared regarding  
17 this offense. He hasn't spent a moment out of custody since  
18 it was written. There will be an updated calculation for  
19 credit time served. It might take us a few minutes. I spoke  
20 with the State earlier. I believe we will both be asking the  
21 Court impose the same sentence for the robbery that was  
22 previously imposed. If that were to be the case, he can be  
23 sent back to Ely in the next few days.

24 THE COURT: Okay. I don't think I can change, even



1 if you didn't want me to, I don't think I can change his  
2 sentence on the robbery.

3 MS. PUSICH: Your Honor, that part of judgment was  
4 reversed, but I think because no factual circumstances have  
5 changed it probably is the better course not to.

6 THE COURT: Okay.

7 MR. YOUNG: Your Honor, to address all that, if  
8 Mr. Harte does elect to waive his PSI, the State has no  
9 objection to a new PSI, state has no objection to that.  
10 Regarding imposition of the balance of the sentence, obviously  
11 the weapons enhancement per statute, the like consecutive and  
12 the robbery, there are some circumstances by my reading of the  
13 case law which would allow me, the State, to argue for  
14 something different. I am not going to do that in this case.  
15 So my understanding what was imposed previously was 72 to 180  
16 months with a like consecutive with the weapon enhancement but  
17 that running concurrent. And that is what I would, if that is  
18 what was ordered previously, I will stand by that at this  
19 point as well.

20 The only thing to add, I did speak with Mr. Castro's  
21 family. Technically I think they would have a right to  
22 readdress Your Honor. They are going o stand by what was  
23 already presented to the jury. They have nothing further to  
24 present to you.

1 THE COURT: Okay. Is it your desire to go forward  
2 today Ms. Pusich with immediate sentencing?

3 MS. PUSICH: It is.

4 THE COURT: Mr. Harte, do you understand that under  
5 some reading of the statute, you have a right to have another  
6 hearing and a pre-sentence investigation, a new one prepared?

7 THE DEFENDANT: I understand.

8 THE COURT: Are you waiving that?

9 THE DEFENDANT: I am.

10 THE COURT: Everyone is in agreement that we can  
11 waive it?

12 MS. PUSICH: Yes, Your Honor.

13 MR. YOUNG: I have no objection to that, Your Honor.

14 THE COURT: Okay. Then that being said, we can move  
15 forward and I can sentence the defendant. Mr. Harte did you  
16 have anything you wanted to say?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Does anyone else have anything to say to  
19 the Court?

20 MS. PUSICH: Your Honor, we would ask you impose the  
21 sentence that was previously imposed for the robbery and run  
22 it concurrent. The State is correct, for both robbery and  
23 homicide as a matter of law, the deadly weapon runs  
24 consecutive. That is the case because that was the law in

1 effect at the time of the commission of the offense under  
2 Pullen versus State. The only thing I would ask is a few  
3 moments when we are done to figure out credit time served for  
4 your clerk.

5 THE COURT: Okay. The Court would impose sentence  
6 today if there is no cause shown why the defendant, why  
7 judgment should not be entered for the crime of murder in the  
8 first degree with the use of a deadly weapon as charged in  
9 Count I to life in prison without the possibility of parole.  
10 And as to Count II-- as to Count I, a like term of life  
11 without the possibility of parole for the use of a deadly  
12 weapon.

13 And then as to the robbery charge, it is 180 months  
14 with a minimum parole eligibility of 72 months, and previously  
15 he was given credit on that, so based on the Jury  
16 Instructions, do you want the credit to run to the murder or  
17 to the robbery?

18 MS. BOND: They run concurrently. It would run to  
19 both.

20 MS. PUSICH: As a life sentence, it is not going to  
21 run to anything.

22 THE COURT: We'll get the credit from you and then a  
23 consecutive term of a maximum 180 months with minimum parole  
24 eligibility of 72 months with the use of a deadly weapon, and

1       that is to Count II. So the life without with a consecutive  
2       life without for the use of a deadly weapon, and then as to  
3       Count II, 72 months to 180 months with credit for time served.  
4       That will be concurrent to the life but the consecutive does  
5       not get the credit on it, and the consecutive time for the use  
6       of a deadly weapon will be the same.

7               MS. BOND: I think now and I don't know if it  
8       applies, this comes from 1997, the Court has to announce the  
9       aggregate minimum and maximum and the credit begins to run to  
10      all the aggregate minimum. It is academic because there is a  
11      sentence of life without, but I think that is how it runs now  
12      with sentences that are not life without. That would be to  
13      the robbery.

14             THE COURT: So you are thinking it would be 144  
15      months on the bottom end?

16             MS. BOND: To 360 on the top.

17             THE COURT: 360 months on the top end because they  
18      are running consecutive?

19             MS. BOND: The aggregate sentence for Count II.

20             THE COURT: Okay. That will be the order. Now the  
21      clerk may want, she does want the credit for time served,  
22      because I will give him credit for time served, of course, and  
23      I think you should talk to her about the form of the judgment  
24      so that we are sure everyone is in agreement on the judgment

1 form. Okay?

2 MR. YOUNG: Does Your Honor need to impose the  
3 standard fees and everything else?

4 THE COURT: Previously I did, so it was \$750 in  
5 Washoe County Public Defender fees and \$25 administrative  
6 assessment fee and the fee for DNA testing at \$250. There was  
7 not the \$3 fee back then. And so I would impose that one at  
8 this time.

9 MS. PUSICH: If that could be listed as less amounts  
10 already paid. Some of those have been paid while he's been  
11 serving.

12 THE COURT: Yes, we'll do that. Anything further?

13 MR. YOUNG: The only other thing from the State just  
14 to put it on the record, prior to, after the jury returned to  
15 the deliberation room before we broke, there was a discussion  
16 about the computer, what was on there. To my understanding,  
17 the jury never requested to even use it. It is a moot issue,  
18 but Mr. Evans, Brad Evans from our office did come in and  
19 remove anything objectionable if you will, and I believe Ms.  
20 Bond took a look and made sure she was satisfied there was  
21 nothing on the computer that should not have been on there.

22 MS. BOND: That is correct.

23 THE COURT: Also it is my understanding the jury did  
24 not request to view that evidence. Anything further?

1 MR. YOUNG: Not from the State.

2 THE COURT: All right. Thank you. Court's in  
3 recess.

4 (Whereupon, the proceedings were concluded.)

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1 STATE OF NEVADA, )  
2 ) ss.  
3 COUNTY OF WASHOE. )

4 I, Judith Ann Schonlau, Official Reporter of the  
5 Second Judicial District Court of the State of Nevada, in and  
6 for the County of Washoe, DO HEREBY CERTIFY:

7 That as such reporter I was present in Department  
8 No. 6 of the above-entitled court on Monday, February 2, 2015,  
9 at the hour of 9:00 a.m. of said day and that I then and there  
10 took verbatim stenotype notes of the proceedings had in the  
11 matter of THE STATE OF NEVADA vs. SHAWN RUSSELL HARTE, Case  
12 Number CR98-0074.

13 That the foregoing transcript, consisting of pages  
14 numbered 1-82 inclusive, is a full, true and correct  
15 transcription of my said stenotypy notes, so taken as  
16 aforesaid, and is a full, true and correct statement of the  
17 proceedings had and testimony given upon the trial of the  
18 above-entitled action to the best of my knowledge, skill and  
19 ability.

20 DATED: At Reno, Nevada this 18th day of March, 2012.  
21  
22

23 /s/ Judith Ann Schonlau  
24 JUDITH ANN SCHONLAU CSR #18