

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

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SHAWN RUSSELL HARTE

Appellant,

v.

STATE OF NEVADA

Respondent.

---

Electronically Filed  
Dec 02 2019 02:57 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**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

---

**JOINT APPENDIX VOLUME 7**

---

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## **INDEX TO JOINT APPENDIX VOLUME 7**

<i><b>Document</b></i>	<i><b>Date</b></i>	<i><b>Vol.</b></i>	<i><b>Page</b></i>
Answer to Petition and Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)	03.19.18	6	0982
Information	01.15.98	1	0001
Judgment	05.07.99	1	0009
Judgment	02.02.15	6	0895
Jury Instructions	02.02.15	6	0872
Motion in Limine to Admit Evidence Of Co-Defendants' Sentence During Penalty Phase	09.18.14	1	0011
Motion in Limine Regarding Individualized Sentencing	09.18.14	1	0017
Motion to Dismiss Petition and Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)	03.19.18	6	0985
Notice of Appeal	06.10.19	7	1101
Notice of Entry of Order Dismissing Post-Conviction Petitions	05.15.19	7	1094
Notice of Voluntary Dismissal of Ground One of Petition, Supplemental Petition, and Second Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) and Request for Final Decision	05.03.19	7	1087

**INDEX TO JOINT APPENDIX VOLUME 7 (continued)**

Opposition to Motion to Dismiss Petition and Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)	04.13.18	6	0990
Order Dismissing Post-Conviction Petitions	05.15.19	7	1096
Order Granting Motion in Limine to Admit Evidence of Co-Defendant's Sentences During Penalty Phase & Denying Defendant's Motion in Limine	01.21.15	1	0046
Petition for Writ of Habeas Corpus (Post-Conviction)	05.05.17	6	0897
Second Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)	08.09.18	7	1018
Supplemental Petition for Writ of Habeas Corpus (post-Conviction)	02.01.18	6	0907
Transcript of Proceedings – Hearing on Jury Instructions	01.16.15	1	0023
Transcript of Proceedings – Motion to Dismiss Petition and Supplemental Petition	06.21.18	6	0998
Transcript of Proceedings – Resolution of Outstanding Matters Prior to Jury Trial	01.21.15	1	0052
Transcript of Proceedings – Trial (Penalty Phase) Day 1	01.26.15	1	0106
Transcript of Proceedings – Trial (Penalty Phase) Day 2	01.27.15	2 3	0122-0371 0373-0390

**INDEX TO JOINT APPENDIX VOLUME 7 (continued)**

Transcript of Proceedings – Trial (Penalty Phase) Day 3	01.28.15	3	0391
Transcript of Proceedings – Trial (Penalty Phase) Day 4	01.29.15	4	0537
Transcript of Proceedings – Trial (Penalty Phase) Day 5	01.30.15	5	0693
Transcript of Proceedings – Trial (Penalty Phase) Day 6	02.02.15	5	0790
Verdict (Murder)	03.19.99	1	0006
Verdict (Robbery)	03.19.99	1	0008
Verdict of Penalty	02.02.15	6	0894

Code: 4100

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**IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE**

SHAWN RUSSELL HARTE,	)	CASE NO. CR98-0074A
	)	
Petitioner,	)	DEPT. NO. 4
	)	
vs.	)	
	)	
STATE OF NEVADA,	)	
	)	
Respondent.	)	

**SECOND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS**  
**(POST-CONVICTION)**

COMES NOW, Petitioner, SHAWN RUSSELL HARTE, by and through appointed counsel, CAROLYN "LINA" TANNER, Esq., and files this Second Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) pursuant to NRS 34.750. For purposes of appeal, Petitioner incorporates his Petition for Writ of Habeas Corpus (Post-Conviction) originally filed May 5, 2017, and the Supplemental Petition for Writ of Habeas Corpus filed February 1, 2018, by reference as though fully set forth herein.

**PROCEDURAL HISTORY**

1. On March 25, 1998, the State charged Petitioner Shawn Russell Harte ("Mr.

1 Harte”), codefendant Latisha Babb, and codefendant Weston Sirex, with murder with the use of a  
2 deadly weapon, and robbery with the use of a firearm. Indictment, March 25, 1998.

3 2. Each defendant faced the death penalty at trial. Second Notice of Intent to Seek  
4 Death, August 20, 1998.

5 3. Each defendant was convicted by a jury on both counts. As to Mr. Harte, the  
6 jury recommended a sentence of death for the murder. The codefendants each received a sentence of  
7 life without the possibility of parole. The Court entered a judgment of conviction on May 7, 1999.  
8

9 4. In Harte v. State, 116 Nev. 1054, 13 P.3d 420 (2000), the Nevada Supreme Court  
10 affirmed the conviction and death sentence on his direct appeal.

11 5. In McConnel v. State, 120 Nev. 1043, 102 P.3d 606 (2004), the Nevada Supreme  
12 Court held that it is impermissible under the United States and Nevada Constitutions to base an  
13 aggravating circumstance in a capital prosecution on the felony upon which a felony murder is  
14 predicated.  
15

16 6. In State v. Harte, 124 Nev. 969, 194 P.3d 1263 (2008), the Nevada Supreme  
17 Court upheld this Court’s order granting Mr. Harte’s petition for writ of habeas corpus vacating Mr.  
18 Harte’s death penalty and ordering a new penalty phase trial. The codefendants’ sentences remained  
19 unaffected.  
20

21 7. On January 26, 2015, a penalty phase hearing began (the “Penalty Hearing”), and the jury  
22 ultimately returned a penalty verdict of life without the possibility of parole. Verdict of Penalty,  
23 February 2, 2015. The Court sentenced Mr. Harte for murder to a term of life without the possibility of  
24 parole, with credit for 6,293 days for time served, and a consecutive like term for the use of a deadly  
25 weapon. The Court also sentenced Mr. Harte to a concurrent term of 72 to 180 months in prison for the  
26 robbery, and a like consecutive term for the use of a firearm. Judgment of Conviction, February 2,  
27 2015.  
28

1 8. In *Harte v. State*, 132 Nev. Adv. Op. 40, 373 P.3d 98 (June 2, 2016), the Nevada  
2 Supreme Court upheld his conviction.

3 9. On May 5, 2017, Mr. Harte filed a petition for writ of habeas corpus (post-  
4 conviction) in this case.

5 10. On February 1, 2018, Mr. Harte filed a supplemental petition for writ of habeas  
6 corpus (post-conviction).

7 11. Mr. Harte incorporated the Appellant's Opening Brief in Nevada Supreme Court  
8 Docket No. 67519, Exhibit 1 hereto, as if fully set forth herein.

9 12. Mr. Harte incorporated the Appellant's Reply Brief in Nevada Supreme Court  
10 Docket No. 67519, Exhibit 2 hereto, as if fully set forth herein.

11 13. The State filed a motion to dismiss the Petition and Supplemental Petition on March 19, 2018.

12 14. On June 21, 2018, the Court heard argument on the State's Motion to Dismiss Petitioner's  
13 Petition and Supplemental Petition for Writ of Habeas Corpus. The Court granted the State's Motion to  
14 Dismiss on Grounds Two, Three, Four, Five, and Six. The Court denied the Motion as to Ground One  
15 and granted Petitioner the opportunity to file this Second Supplemental Petition as to Ground One only.

### 16 **GROUND ONE**

17 Mr. Harte's sentence is invalid under the State and Federal constitutional guarantees  
18 of due process, equal protection of the laws, and a reliable sentence due to the ineffective assistance of  
19 counsel, for failing to adequately prepare and rehabilitate his expert witness, Dr. Melissa Piasecki. U.S.  
20 Const. V, VI, VIII, & XIV.

### 21 **Supporting Facts:**

22 1. During the Penalty Hearing, the jury was presented evidence of a felony shooting incident that  
23 took place in Churchill County, and that involved Mr. Harte prior to his arrest on the charges in the  
24 instant case.  
25  
26  
27  
28

1           2. Dr. Melissa Piasecki, M.D., a forensic psychiatrist, testified on behalf of Mr. Harte at the  
2 Penalty Hearing. *See* Exhibit 1, Transcript of Proceedings, January 30, 2015, pp. 3 – 55.

3           3. Counsel for Mr. Harte questioned Dr. Piasecki on direct examination and they discussed the  
4 moral development of Mr. Harte, specifically at the time of the incident and in contrast to his  
5 development as he sat before the Penalty Hearing jury. Dr. Piasecki testified that while at the time of  
6 the crime, Mr. Harte was intellectually advanced, his moral development was delayed. Exhibit 1 at 14.  
7 Dr. Piasecki testified that Mr. Harte had a “sort of developmental catch up in that area in his mid-  
8 twenties.” *Id.* Dr. Piasecki testified that based upon her interview with Mr. Harte, he appeared to only  
9 recognize and process empathy at about twenty-three years old. *Id.* at 15.

11           4. Dr. Piasecki reviewed the factors that would lessen a person’s propensity for violence and  
12 danger towards others over time. As to Mr. Harte as he sat before his Penalty Hearing jury, he had aged  
13 out of the range for peak violence in adolescent males of 17 – 21. *Id.* at 16. He increased his  
14 educational attainment, interpersonal functioning, and was able to build and sustain relationships with  
15 other people. *Id.* at 17. His increased moral development was also a factor. *Id.*

17           5. In preparation for her evaluation of Mr. Harte, Dr. Piasecki reviewed the Nevada Department of  
18 Corrections institutional file. *Id.* at 7. She reviewed a psychological assessment and a psychiatric  
19 evaluation of Mr. Harte conducted when he was originally facing trial on the charges. *Id.* at 28. She  
20 reviewed the presentence report prior to interviewing Mr. Harte, which included a copy of a letter he  
21 had written in custody to his then girlfriend. She reviewed a letter of support of Mr. Harte written by a  
22 fellow inmate who he had helped. She interviewed Mr. Harte, and she interviewed Mr. Harte’s wife.  
23 *Id.* at 30 – 31.

25           6. On cross-examination, the State elicited from Dr. Piasecki that she had not reviewed the police  
26 reports in the instant case, nor the transcript of Mr. Harte’s interview with the police at the time of his  
27 arrest. *Id.* at 31.  
28

1       7. In questioning Dr. Piasecki about her conclusions, the State asked, “And you stated that there  
2 was one episode of horrific behavior is what I wrote down?” To which she answered “Yes.” *Id.* at 34.  
3 She testified that there was no history of prior aggression outside of “that cluster of very, very violent  
4 behavior.” *Id.* at 35. She confirmed that she was discussing the instant case, of “another incident  
5 involving shooting and it was in Fallon, Nevada, but I don’t have the exact information with me on  
6 that.” *Id.* She acknowledged that she had not reviewed any reports on the Fallon incident. She did not  
7 discuss the Fallon incident with Mr. Harte. *Id.*

8  
9       8. The State confirmed that Dr. Piasecki had no knowledge of how long prior to the incident that  
10 Mr. Harte had discussions of killing other people or carrying out other armed robberies. *Id.* at 36.

11       9. Dr. Piasecki had not reviewed and had limited knowledge of the evidence of a prior bad act  
12 felony shooting that occurred in Fallon, Nevada prior to Mr. Harte’s arrest on the charges in this case.  
13 *Id.* at 35 – 36. Dr. Piasecki was unaware of literature located in Mr. Harte’s home at the time of his  
14 arrest that addressed the type of killing committed. *Id.* at 40. Dr. Piasecki’s report concluded that Mr.  
15 Harte still had some interpersonal difficulties, including some narcissistic traits, but they did not rise to  
16 a level of a pervasive personality disorder. *Id.* at 45.

17  
18       10. On redirect, defense counsel clarified with Dr. Piasecki that one who has narcissistic traits is  
19 not necessarily dysfunctional. *Id.* at 47. Mr. Harte’s traits did not interfere with him being able to  
20 maintain good relationships. *Id.* at 48.

21  
22       11. Dr. Piasecki testified that the “most important way I can be confident [in her conclusions] is  
23 looking at other sources of information in addition to my interview with Mr. Harte. *Id.* at 50.

24       12. While counsel had Dr. Piasecki clarify that the “extraordinarily bad behavior” Mr. Harte  
25 exhibited in 2001 – 2002 did not change the fact that there was a consistent trajectory towards  
26 predominately good behavior, counsel never gave Dr. Piasecki a chance to rectify the importance of  
27 reviewing as much outside information as possible with the fact that she was clearly not provided with  
28

1 all of the information about Mr. Harte available to defense counsel. *Id.* at 49.

2 13. Counsel for Mr. Harte was ineffective in failing to properly prepare Dr. Piasecki fully by  
3 providing all relevant information for her review, including all police reports contemporaneous to the  
4 incident in the instant case, and the additional extraneous information available to the defense regarding  
5 evidence of Mr. Harte's thoughts of violence prior to the incident. Upon information and belief, counsel  
6 for Mr. Harte spent no more than two hours preparing Dr. Piasecki for her testimony in this first-degree  
7 murder Penalty Hearing.  
8

9 14. Counsel for Mr. Harte was ineffective in failing to properly rehabilitate Dr. Piasecki in regards  
10 to the value of the information that she was not granted the opportunity to review.

11 15. If this Court should determine that counsel acted below the standard of reasonableness in  
12 this regard, as well as others alleged throughout, the prejudice may and should be adjudged from a  
13 "cumulative error" perspective.  
14

15 **Standard of Review.**

16 The question of whether a defendant has received ineffective assistance of counsel is one of both  
17 law and fact and is reviewed *de novo*. *Strickland v. Washington*, 466 U.S. 668, 698, 80 L. Ed. 2d 674,  
18 104 S. Ct. 2053 (1984). The legality of a sentence is reviewed *de novo*. *U.S. v. Hanna*, 49 F.3d 572,  
19 576 (9<sup>th</sup> Cir. 1995).  
20

21 **Argument.**

22 An attorney's actions related to witnesses, both in preparation and in trial, are subject to scrutiny  
23 under an objective standard of reasonableness. *See e.g. Brown v. State*, 110 Nev. 846 (1994) (court  
24 found ineffective assistance of counsel for failure to cross examine witness properly); *Davis v. State*,  
25 107 Nev. 600, 817 P.2d 1169 (1991), *overruled on other grounds by Means v. State*, 120 Nev. 1001,  
26 103 P.3d 25, (2004) (Court considered issue of preparation of witness under *Strickland* standard). Here,  
27 the expert witness testified that the most accurate way for her to be confident in her conclusion that Mr.  
28

1 Harte would not pose a danger to society were he to be given a sentence with life with the possibility of  
2 parole is to review other sources of information about him. Dr. Piasecki stated:

3 My job is to come into the courtroom and to take an oath and to give the triers of fact or  
4 the people making decisions an honest opinion. And so, I can't do that without  
5 considering *all of the information that is available to me including the past records,*  
6 *including the institutional records, including information other people can give me.* So,  
7 my job is not to limit myself to talking just to the individual but to obtain and evaluate  
8 all of that collateral information. . . and do an analysis or answer the questions that have  
9 come to me from the retaining office or attorney and to integrate all of that. So, it is a  
10 long way of saying I rely a lot through outside information.

11 *Id.* at 11 – 12 (emphasis added). First, defense counsel should have presented this information to Dr.  
12 Piasecki to analyze in her evaluation. Second, even without this information, defense counsel should  
13 have given Dr. Piasecki the opportunity to opine on whether her lack of review of this information  
14 would have led her to a different conclusion on the pivotal issue of whether Mr. Harte, if given a  
15 sentence of life with the possibility of parole, would be a danger to the community in which he would  
16 be released.

17 There is a reasonable probability that, but for defense counsels' errors in failing to properly  
18 prepare, and to properly rehabilitate, this pivotal witness, the result of the Penalty Hearing would have  
19 been different. See Strickland, 466 U.S. at 694. The jury had two choices in sentencing Mr. Harte: life  
20 with the possibility of parole, or life without the possibility of parole. Dr. Piasecki testified not once  
21 but twice that the most important aspect of her evaluation was to review outside information about Mr.  
22 Harte. On cross-examination, it was apparent that Dr. Piasecki was not provided with all of the outside  
23 information available to defense counsel. Further, defense counsel failed to rehabilitate the witness by  
24 not questioning her about how that information may or may not have affected her conclusion that Mr.  
25 Harte would not be a danger to the community were he to be granted a sentence of life with the  
26 possibility of parole. That Dr. Piasecki was not afforded an opportunity to review all available  
27 information on Mr. Harte allowed the jury to discount her testimony entirely. A reasonable probability  
28

1 exists that had had Dr. Piasecki been allowed to digest the available information and come to the same  
2 conclusion, the jury would have rendered a verdict of life with the possibility of parole.

3 **CONCLUSION**

4 WHEREFORE, Shawn Russell Harte prays that the Court grant him relief to which he is entitled  
5 to in this proceeding.  
6

7 **AFFIRMATION PURSUANT TO NRS 239B.030**

8 The undersigned does hereby affirm that the preceding document does not contain the Social  
9 Security Number of any person.

10  
11 DATED this 9th<sup>st</sup> day of August, 2018.

12 By: /s/ Carolyn Tanner  
13 CAROLYN "LINA" TANNER, ESQ.  
14 Attorney for Petitioner Alberto Torres  
15  
16  
17  
18  
19  
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21  
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28

1 **CERTIFICATE OF SERVICE**

2  
3 I hereby certify that I am an employee of the Tanner Law & Strategy Group, Reno, Washoe  
4 County, Nevada, and that on this date I forwarded a true copy of the foregoing document addressed to:

5  
6 Joseph Plater, CDA (via e-flex)  
Washoe County District Attorney's Office

7  
8 Shawn Russell Harte  
Northern Nevada Correctional Facility

9  
10 DATED this 9th day of August, 2018.

11 By: /s/ Carolyn Tanner  
12 CAROLYN "LINA" TANNER, ESQ.

## **EXHIBIT 1**

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. )

CASE NO. CR98-0074A

) DEPARTMENT NO. 4

14 SHAWN RUSSELL HARTE, )

15 Defendant. )

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

FOR THE PLAINTIFF:           OFFICE OF THE DISTRICT ATTORNEY  
  
                                  BY:   ZACH YOUNG, EQ.  
  
                                  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

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I N D E X

WITNESSES:	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
MELISSA PIASECKI	3	24	46	51
			53	53
ANTHONY M. CASTRO	56			

<u>EXHIBITS:</u>	<u>Marked for Identification</u>	<u>Admitted into Evidence</u>
58-a, 5-b		62
59-a, 59-b		60
69	72	

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.

Code: 2585  
VICTORIA T. OLDENBURG  
OLDENBURG LAW OFFICE  
P.O. Box 17422  
Reno, Nevada 89511  
Telephone: (775) 971-4245

Attorney for Petitioner

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

SHAWN RUSSELL HARTE,

Petitioner,

Case No.: CR98-0074A

vs.

Dept. No.: 4

THE STATE OF NEVADA,

Respondent.

NOTICE OF VOLUNTARY DISMISSAL OF GROUND ONE OF PETITION,  
SUPPLEMENTAL PETITION, AND SECOND SUPPLEMENTAL PETITION FOR WRIT OF  
HABEAS CORPUS (POST CONVICTION), AND REQUEST FOR FINAL DECISION

Petitioner Shawn Russell Harte ("Petitioner"), through his appointed counsel Victoria T. Oldenburg, hereby files the following Notice of Voluntary Dismissal of Ground One of the Petition, Supplemental Petition, and Second Supplemental Petition for Writ of Habeas Corpus (Post Conviction), and Request for Final Decision on the remaining grounds in the Petition and Supplemental Petition for Writ of Habeas Corpus (Post-Conviction). This Notice is based upon the Declaration of Shawn Russell Harte, attached hereto as Exhibit I, and all pleadings and papers on file herein.

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The undersigned affirms that this Notice of Voluntary Dismissal of Ground One of the Petition, Supplemental Petition, and Second Supplemental Petition for Writ of Habeas Corpus (Post Conviction) and Request for Final Decision does not contain the social security number of any person.

/s/ Victoria T. Oldenburg  
Victoria T. Oldenburg  
Nevada Bar No. 4770  
OLDENBURG LAW OFFICE  
P.O. Box 17422  
Reno, Nevada 89511  
Telephone: (775) 303-8877

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I am over the age of eighteen years, a member of Oldenburg Law Office in the County of  
e, State of Nevada, and I am not a party to this action.

Marilee Cate, Appellate Deputy  
Washoe County District Attorney's Office  
P.O. Box 11130  
Reno, NV 89520

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LIST OF EXHIBITS

**Exhibit 1**

**Declaration of Shawn Russell Harte**

**2 pages**

# EXHIBIT 1

# EXHIBIT 1

DECLARATION OF SHAWN RUSSELL HARTE IN SUPPORT OF VOLUNTARY  
DISMISSAL OF GROUND ONE OF THE PETITION, SUPPLEMENTAL, AND SECOND  
SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

I, Shawn Russell Harte, the Petitioner in the matter of the Petition for Writ of Habeas Corpus (Post-Conviction) filed on May 5, 2017, the Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) filed on February 1, 2018, and the Second Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) filed on August 9, 2018 in the matter of *Shawn Russell Harte v. State of Nevada*, CR98-0074A, upon information and belief, declare as follows:

1. I have been informed that the district court has dismissed all claims in my Petition, and Supplemental Petition for Writ of Habeas Corpus (post-conviction) with the exception of Ground One of my Petition, Supplemental Petition, and Second Supplemental Petition for Writ of Habeas Corpus (Post-Conviction). In Ground One I raised a claim of ineffective assistance of counsel in violation of my constitutional rights under the U.S. Constitution, Amendments V, VI, VIII, and XIV. Specifically, I have alleged that during my new penalty phase jury trial which commenced on January 26, 2015, trial counsel failed to adequately prepare and rehabilitate my expert witness, Dr. Melissa Piasecki.

2. I further understand that the district court has ordered the parties to set an evidentiary hearing on Ground One.

3. On April 9, 2019, I had a telephone conference with my newly appointed attorney, Victoria Oldenburg, regarding Ground One of the Petition, Supplemental Petition, and Second Supplemental Petition for Writ of Habeas Corpus (Post-Conviction). I requested that Ms. Oldenburg submit a Notice of Voluntary Dismissal of Ground One as I no longer wanted to proceed with the claim that trial counsel failed to adequately prepare and rehabilitate my expert

witness, Dr. Melissa Piasecki. I had also made this request in a letter to Ms. Oldenburg dated April 2, 2019.

4. During the April 9, 2019 telephone conversation with Ms. Oldenburg, Ms. Oldenburg fully advised me regarding my request to dismiss Ground One of my Petition, Supplemental Petition, and Second Supplemental Petition for Writ of Habeas Corpus (Post-Conviction). Ms. Oldenburg informed me that if I dismissed Ground One, under the existing facts and law, I would not be able to later raise and refile Ground One in a State or Federal post-conviction habeas proceeding. Ms. Oldenburg advised me to think about my decision. However, I informed Ms. Oldenburg that my decision to dismiss Ground One of my Petition, Supplemental Petition, and Second Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) was final and that I did not need additional time to think about my decision.

5. I fully understand that by directing Ms. Oldenburg to submit a voluntary dismissal of Ground One of the Petition, Supplemental Petition, and Second Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) that, under the existing facts and law, I will not be able to raise and refile Ground One at a later time in either State or Federal court, and that I have given up my constitutional right to file a Petition for Writ of Habeas Corpus (Post-Conviction) raising the ineffective assistance of counsel claim as set forth in Ground One. My decision to dismiss Ground One of the Petition, Supplemental Petition, and Second Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) is knowing and voluntary.

I make this declaration under penalty of perjury under the laws of the State of Nevada this

25<sup>TH</sup> day of April, 2019.

  
Shawn Russell Harte

1 **CODE 2540**

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5 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
6 **IN AND FOR THE COUNTY OF WASHOE**  
7

8 **STATE OF NEVADA,**

9 **Plaintiff,**

**Case No: CR98-0074A**

10 **vs.**

**Dept. No: 4**

11  
12 **SHAWN RUSSELL HARTE,**

13 **Defendant.**  
14 \_\_\_\_\_/

15 **NOTICE OF ENTRY OF ORDER**  
16

17 PLEASE TAKE NOTICE that on May 15, 2019 the Court entered a decision or order  
18 in this matter, a true and correct copy of which is attached hereto.

19 You may appeal to the Supreme Court from the decision or Order of the Court. If  
20 you wish to appeal, you must file a Notice of Appeal with the Clerk of this Court within  
21 thirty-three (33) days after the date this notice is mailed to you.  
22

23 Dated May 15, 2019.  
24

25 JACQUELINE BRYANT  
26 Clerk of the Court

27 /s/N. Mason  
28 N. Mason-Deputy Clerk

1 **CERTIFICATE OF SERVICE**

2 Case No. CR98-0074A

3 Pursuant to NRCP 5 (b), I certify that I am an employee of the Second  
4 Judicial District Court; that on May 15, 2019, I electronically filed the Notice of Entry of  
5 Order with the Court System which will send a notice of electronic filing to the following:

6  
7 CAROLYN TANNER, ESQ. for SHAWN RUSSELL HARTE

8 JENNIFER P. NOBLE, ESQ. for STATE OF NEVADA

9 JOHN REESE PETTY, ESQ. for SHAWN RUSSELL HARTE

10 MAIZIE WHALEN PUSICH, ESQ. for SHAWN RUSSELL HARTE

11 JEREMY T. BOSLER, ESQ. for SHAWN RUSSELL HARTE

12 ZACH YOUNG, ESQ. for STATE OF NEVADA

13 MATTHEW LEE, ESQ. for STATE OF NEVADA

14 VICTORIA THIMMESCH OLDENBURG, ESQ. for SHAWN RUSSELL HARTE

15  
16 I further certify that on May 15, 2019, I deposited in the Washoe  
17 County mailing system for postage and mailing with the U.S. Postal Service in Reno,  
18 Nevada, a true copy of the attached document, addressed to:

19  
20 Attorney General's Office  
21 100 N. Carson Street  
22 Carson City, NV 89701-4717

23 Shawn R. Harte (#61390)  
24 NNCC  
25 P. O. Box 7000  
26 Carson City, NV 89702

27 The undersigned does hereby affirm that pursuant to NRS 239B.030 and NRS 603A.040, the  
28 preceding document does not contain the personal information of any person.

Dated May 15, 2019.

/s/N. Mason  
N. Mason- Deputy Clerk

1 CODE No. 3370

2  
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \*

9 SHAWN RUSSELL HARTE,

10 Petitioner,

11 v.

Case No. CR98-0074A

12 THE STATE OF NEVADA,

Dept. No. 4

13 Respondent.

14 \_\_\_\_\_/

15 ORDER DISMISSING POST-CONVICTION PETITIONS

16 **I. Procedural History**

17 On May 5, 2017, Petitioner Shawn Russell Harte ("Petitioner") filed a *Petition for Writ of*  
18 *Habeas Corpus (Post-Conviction)* ("Petition"). Thereafter, counsel was appointed and filed a  
19 *Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)* ("Supplemental Petition")  
20 on February 1, 2018. The State filed a *Motion to Dismiss Petition and Supplemental Petition*  
21 *for Writ of Habeas Corpus (Post-Conviction)* ("Motion to Dismiss") on March 19, 2018.  
22 Petitioner filed an *Opposition to Motion to Dismiss Petition and Supplemental Petition for Writ*  
23 *of Habeas Corpus (Post-Conviction)* ("Opposition") on April 13, 2018. On June 21, 2018, the  
24 Court heard argument on the Motion to Dismiss.

25 At the conclusion of the arguments, the Court granted the State's Motion to Dismiss with  
26 respect to grounds two through six, and ordered Petitioner to file a supplemental petition to

1 provide specific details to support Ground One and that the claim would then be set for an  
2 evidentiary hearing. On August 9, 2018, Petitioner filed a *Second Supplemental Petition for*  
3 *Writ of Habeas Corpus (Post-Conviction)* (“Second Supplemental Petition”).

4 Thereafter, the Court allowed counsel for Petitioner to withdraw and new counsel was  
5 appointed. On March 27, 2019, the Court held an administrative hearing with counsel for  
6 Petitioner and the State. The Court ordered the State to file a response to the Second  
7 Supplemental Petition within 45 days and that the parties would set the evidentiary hearing on  
8 ground one within 120 days. On May 3, 2019, Petitioner filed a *Notice of Voluntary Dismissal*  
9 *of Ground One of Petition, Supplemental Petition, and Second Supplemental Petition for Writ*  
10 *of Habeas Corpus (Post Conviction), and Request for Final Decision* (“Notice of Voluntary  
11 Dismissal”).

## 12 **II. The State’s Motion to Dismiss**

13 The State moved to dismiss all grounds raised in the Petition and Supplemental  
14 Petition. There were four Grounds raised in the Petition. The Supplemental Petition raised the  
15 same four grounds with more specificity and asserted two additional Grounds. Each will be  
16 discussed in turn.

17 Ground One in the Petition and Supplemental Petition asserted that counsel failed to  
18 adequately prepare its expert witness, Dr. Piasecki. The State argued that dismissal was  
19 appropriate because it was based on a subjective standard and Petitioner failed to plead  
20 specific facts to demonstrate that Dr. Piasecki’s testimony would have been different even with  
21 more preparation. At the conclusion of oral arguments, this Court determined that the claim  
22 was a bit vague; however, the Court denied the State’s Motion to Dismiss with respect to  
23 Ground One and concluded that an evidentiary hearing was appropriate for Ground One.

24 This Court also concluded that Grounds two through five were barred by the law of the  
25 case doctrine because they have been decided by the Nevada Supreme Court on appeal. See  
26 *Pellegrini v. State*, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001); *Hill v. State*, 91 Nev. 314, 535

1 P.2d 797 (1975) (“The law of a first appeal is the law of the case on all subsequent appeals in  
2 which the facts are substantially the same”) (citations omitted). Ground Two<sup>1</sup> asserted error  
3 with respect to this Court’s decision to allow the jury to hear the sentences of Petitioner’s co-  
4 defendants. Ground Three alleged that the sentence was excessive and amounted to cruel  
5 and unusual punishment. Ground Four concerned the order that the parties argued during  
6 closing arguments. Ground Five appeared in the Supplemental Petition and primarily raised  
7 arguments already asserted in Ground Two regarding the jury learning about the sentences for  
8 Petitioner’s co-defendants. These issues have been decided by the Nevada Supreme Court.  
9 While each of the Grounds included additional detail or a more focused argument, the law of  
10 the case doctrine barred the claims. *See Hill*, 91 Nev. at 316, 535 P.2d at 799 (“The doctrine  
11 of law of the case cannot be avoided by a more detailed and precisely focused argument  
12 subsequently made after reflection upon the previous proceedings”). Thus, this Court granted  
13 the State’s Motion to Dismiss Grounds Two through Five. Ground Six in the Supplemental  
14 Petition alleged cumulative error, which was unsupported because Petitioner’s only surviving  
15 claim was Ground One. As such, this Court dismissed Ground Six.

### 16 **III. Notice of Voluntary Dismissal**

17 Based on the Court’s ruling on the Motion to Dismiss, the Court planned to have an  
18 evidentiary hearing on Ground One, which was raised in the original Petition, discussed in the  
19 Supplemental Petition, and clarified in the Second Supplemental Petition. However, Petitioner  
20 voluntarily dismissed Ground One on May 3, 2019. Based on the Declaration from Petitioner,  
21 this Court finds that Petitioner has been advised of the consequences of voluntarily dismissing  
22 his claim and has chosen to do so knowingly, intelligently, and voluntarily. Pursuant to  
23 Petitioner’s Notice of Voluntary Dismissal, this Court finds that there are no remaining claims  
24 ///

---

25  
26 <sup>1</sup> Unless otherwise noted, the claims discussed appear in both the original Petition and Supplemental Petition.

1 for an evidentiary hearing. Ground One of the Petition, Supplemental Petition, and Second  
2 Supplemental Petition are dismissed.

3 IT IS HEREBY ORDERED that the State's Motion to Dismiss is GRANTED in its  
4 entirety.

5 IT IS HEREBY FURTHER ORDERED that the claims raised in the Petition,  
6 Supplemental Petition, and Second Supplemental Petition are DISMISSED.

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9 DATED this 14 day of May, 2019.

10  
11 Connie J. Steinheimer  
12 DISTRICT JUDGE  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 15<sup>th</sup> day of May, 2019, I filed the attached document with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

       Personal delivery to the following: [NONE]

X Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the efile User Agreement:

Marilee Cate, Esq.  
Deputy District Attorney

Victoria Oldenburg, Esq.  
Attorney at Law

X Deposited in the Washoe County mailing system in a sealed envelope for postage and mailing with the United States Postal Service in Reno, Nevada:

Shawn Harte  
Inmate no. 61390  
NNCC  
P.O. Box 7000  
Carson City, Nevada 89702

       Placed a true copy in a sealed envelope for service via:

       Reno/Carson Messenger Service – [NONE]

       Federal Express or other overnight delivery service – [NONE]

       Inter-Office Mail – [NONE]

DATED this 15<sup>th</sup> day of May, 2019.

Maureen

Code: 2515  
VICTORIA T. OLDENBURG  
OLDENBURG LAW OFFICE  
P.O. Box 17422  
Reno, Nevada 89511  
Telephone: (775) 971-4245

Attorney for Petitioner

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

SHAWN RUSSELL HARTE,  
Petitioner,

Case No.: CR98-0074A

vs.  
THE STATE OF NEVADA,  
Respondent.

Dept. No.: 4

**NOTICE OF APPEAL**

Notice is hereby given that Petitioner/Appellant Shawn Russell Harte hereby appeals to the Supreme Court of Nevada from this Court's *Order Dismissing Post-Conviction Petitions* entered on May 15, 2019.

**AFFIRMATION PURSUANT TO NRS 239B.030**

The undersigned does hereby affirm that this Notice of Appeal does not contain the Social Security Number of any person.

DATED THIS 10<sup>th</sup> day of June, 2019.

By: /s/ Victoria T. Oldenburg  
Victoria T. Oldenburg  
Nevada Bar No. 4770

Oldenburg Law Office  
P.O. Box 17422  
Reno, NV 89511  
(775) 971-4245  
Attorney for Petitioner/Appellant

**CERTIFICATE OF SERVICE**

I, Victoria T. Oldenburg, hereby declare and state as follows:

I am over the age of eighteen years, a member of Oldenburg Law Office in the County of Washoe, State of Nevada, and I am not a party to this action.

On the 10<sup>th</sup> day of June, 2019, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

Jennifer P. Noble  
Chief Appellate Deputy  
Washoe County District Attorney's Office

/s/ Victoria T. Oldenburg  
Victoria T. Oldenburg  
Nevada Bar No. 4770