CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE AKA SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, AND THOMAS AKERS

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
12/18/85 DONALD M. MOSLEY DEPT. XIV M. HARMON, DDA M. COOPER, DPD (Flanagan) M. POSIN, ESQ. (Moore) L. BAZAR, CLERK S. THIELMAN, RPTR.	CONTINUED can go to State prison. This Court will entertain any arguments one way or the other. Mr. Cooper advised there was no objection. Mr. Posin advised there was no objection. State agreed. There being no objection by counsel, COURT ORDERED, the Count I sentence is hereby ordered to run concurrent with those other counts, Counts II through VII; Counts II through VII to remain consecutive to each other. State inquired if the file contained a judgment of conviction. Court advised it did not. State requested permission to present an amended judgment of conviction order as to both defendants for the Court's signature. COURT ORDERED, permission granted; such order to supersede the original if one has been in the system. Order signed in open court. CUSTODY	
2/19/86 DONALD M. MOSLEY DEPT. XIV R. BLOXHAM, DDA R. HANDFUSS, ESQ. R. PIKE, ESQ. L. BAZAR, CLERK S. THIELMAN, RPTR.	RANDALL PIKE, MURRAY POSIN, ROBERT HANDFUSS, AND WILLIAM SMITH'S MOTION FOR EXCESS FEES State represented by Ronald Bloxham, DDA. Defendants not present. Robert Handfuss, Esq., present on behalf of himself and William Smith, Esq., and Murray Posin, Esq., who were not present. Randall Pike, Esq., present on his own behalf. Mr. Pike advised he had spoken to Johnnie Rawlings, DDA civil, and she advised she was not going to appear or file any negative response to the motions. Mr. Bloxham concurred. Court stated its findings. COURT ORDERED, motion is granted as to all counsel. CUSTODY	
2/21/86 DONALD M. MOSLEY DEPT. XIV R. O'NEALE, DDA L. BAZAR, CLERK S. THIELMAN, RPTR.	MURRAY POSIN'S MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANT MOORE State represented by Robert O'Neale, DDA. Defendant Moore neither present nor represented by counsel, Murray Posin. COURT ORDERED, matter is continued to Wednesday. CUSTODY	2/26/86 @ 9:00 A.M. MURRAY POSIN'S MOT TO WITHDRAW AS CO FOR DEFENDANT MOORE
2/26/86 DONALD M. MOSLEY DEPT. XIV R. BLOXHAM, DDA J. JIMMERSON, ESQ. L. BAZAR, CLERK S. THIELMAN, RPTR.	MURRAY POSIN'S MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANT MOORE State represented by Ron Bloxham, DDA. Defendant Moore neither present nor represented by counsel, Murray Posin. Court advised this matter is on for the withdrawal of Mr. Posin and the assumption of that appointment by Mr. James Jimmerson, who is present to confirm as counsel. Mr. Jimmerson confirmed as counsel. COURT ORDERED, motion to withdraw is granted. CUSTODY (NSP)	

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE A SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, AND THOMAS AKERS

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
1/21/87 DONALD M. MOSLEY DEPT. XIV D. SMITH, DDA J. JIMMERSON, ESQ. T. LEEDS, ESQ. L. BAZAR, CLERK P. GRAF, CLERK S. THIELMAN, RPTR.	JAMES J. JIMMERSON'S MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANT RANDOLPH MOORE State represented by Doug Smith, DDA. Defendant Moore not present and represented by James Jimmerson, Esq. State advised there was no objection to the motion. Tom Leeds, Esq., also present and advised he was prepared to assume responsibility as counsel of record in this matter. COURT ORDERED, motion to withdraw is granted. Mr. Leeds inquired if the entire record on appeal was available. Court advised it did not know, but it would aid him in anyway possible to obtain it. Upon Mr. Leeds inquiry, Mr. Jimmerson advised the time constraints as to this particular defendant had never begun. CUSTODY	
5/04/87 MIRIAM SHEARING DEPT. XV for XIV M. O'CALLAGHAN,DDA M. COOPER, DPD L. BAZAR, CLERK A. SALISBURY, RPTR	DEFENDANT'S PRO PER MOTION FOR THE REMOVAL AND SUBSTITUTION OF APPOINTED ATTORNEY OF RECORD State represented by Michael O'Callaghan, DDA. Defendant Flanagan not present and represented by Marcus Cooper, DPD, who requested matter be continued to Wednesday. There being no objection, COURT SO ORDERED. CUSTODY (NSP)	5/06/87 @ 9:00 A.M. DEFT'S PRO PER MOTION FOR THE REMOVAL AND SUBSTITUTION OF APPOINTED ATTORNEY OF RECORD
5/06/87 DONALD M. MOSLEY DEPT. XIV T. MOREO, DDA R. MILLER, DPD L. BAZAR, CLERK S. THIELMAN, RPTR.	DEFENDANT'S PRO PER MOTION FOR THE REMOVAL AND SUBSTITUTION OF APPOINTED ATTORNEY OF RECORD State represented by Tom Moreo, DDA. Defendant Flanagan not present and represented by Robert Miller, DPD. Court advised the defendant feels he should have more contact with his attorney. Mr. Miller advised he had been up to Carson City twice and had telephonic communication several times. Mr. Miller further advised that the matter was scheduled to be argued in the Supreme Court on Monday and he was ready to go. COURT ORDERED, motion is denied. CUSTODY (NSP)	
11/16/87 MIRIAM SHEARING DEPT. XV for XIV K. GRANT, DDA G. CARTER, DPD L. BAZAR, CLERK J. HUFF, CLERK B. SHAVALIER,RPTR	DEFENDANT'S MOTION FOR FEES IN EXCESS OF STATUTORY ALLOWANCE State represented by Tom Fitzpatrick, DDA. Defendant McDowell not present; represented by George Carter, Esq., who advised he had spoken to Judge Mosley and he had said that $7,000 to $7,500 was not unreasonable. Court advised it did not want to make a decision for Judge Mosley, but it he had agreed. State advised the statute allowed $2,500 and counsel was asking for three times that	

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE AKA SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, and THOMAS AKERS

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
6/22/88 DONALD M. MOSLEY DEPT. XIV K. VAN DE POL, DDA D. WALL, DPD (Flanagan) E. AYERS, ESQ. (Moore) L. BAZAR, CLERK S. THIELMAN, RPTR.	REMITTITUR RECEIVED FROM SUPREME COURT; SET PENALTY HEARING DATE State represented by Karen Van De Pol, DDA. Defendant Flanagan not present; represented by David Wall, DPD. Defendant Moore not present; represented by Earl Ayers, Esq., who advised he had been retained by the defendant. COURT ORDERED, pursuant to discussions in chambers earlier, the Jury Trial for the Penalty Phase is set on January 23, 1989 at 10:00 A.M. Mr. Wall is to look into the propriety of the Public Defender's Office representing defendant Flanagan. This Court would ask counsel to enlighten the Court if there is a conflict. CUSTODY	1/23/89 @ 10:00 A.M. JURY TRIAL - PENALTY PHASE --- 1/18/88 @ 9:30 A.M. CALENDAR CALL
1/18/89 DONALD M. MOSLEY DEPT. XIV F. PONTICELLO, DDA S. DAHL, DPD (Flanagan) E. AYERS, ESQ. (Moore) L. BAZAR, CLERK S. THIELMAN, RPTR.	CALENDAR CALL (J.T. - Penalty Phase) State represented by Frank Ponticello, DDA. Defendant Flanagan not present; represented by Steven Dahl, DPD. Defendant Moore not present; represented by Earl Ayers, Esq. Murray Posin, Esq., also present. Court advised that there was a conference in chambers with Dan Seaton, DDA, there was a difficulty in that David Gibson, DPD, has taken ill and Eugene Martin, DPD, is substituting in for him. Court advised that the soonest this Court could entertain the matter would be July 10, 1989. Court inquired if that would be a problem for Mr. Posin. Mr. Ayers advised he had been retained as counsel for defendant Moore for further proceedings. Mr. Posin concurred and advised he had withdrawn as counsel. There being no objection, COURT ORDERED, matter is set on July 10, 1989 for the penalty phase; with calendar call on July 5, 1989. CUSTODY (BOTH)	7/10/89 @ 10:00 A.M. JURY TRIAL - PENALTY PHASE --- 7/05/89 @ 9:30 A.M. CALENDAR CALL
4/3/89 DONALD M. MOSLEY DEPT. XIV E. ALVAREZ CLERK S. THIELMAN REPORTER	AT REQUEST OF COURT: APPOINTMNET OF COUNSEL State represented by Pandora Ryder, DDA. Defendant Moore not present, represented by Mark Blaskey, DPD. Also present was David Schieck, Esq. The Court advised this matter was remanded to appoint counsel for Deft. Moore due to previous counsel, Mr. Earl Ayer's limitation from practice; thereafter, BY THE COURT ORDERED, Mr. David Schieck appointed as counsel for Defendant Moore. Further, Mr. Schieck inquired if Mr. Ayers directed appeal, whereby, the Court advised Mr. Schieck to contact Mr. Ayers to obtain necessary documents as to this matter.	

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE AKA SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL and THOMAS AKERS

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
6/19/89 DONALD M. MOSLEY DEPT. XIV E. JORGENSON, DDA D. SCHIECK, ESQ. (Moore) S. DAHL, DPD (Flanagan) L. BAZAR, CLERK S. THIELMAN, RPTR.	DEFENDANT'S MOTION FOR ORDER TO TRANSPORT DEFENDANT DEFENDANT'S MOTION FOR DISCOVERY (7/05/89 CC & 7/10/89 J.T. Penalty Phase) State represented by Eric Jorgenson, DDA. Defendant Moore not present; represented by David Schieck, Esq. Defendant Flanagan represented by Stephen Dahl, DPD, who advised he had been made aware of the hearing and would request that he be allowed to join in on the motion for transport in behalf of defendant Flanagan. COURT SO ORDERED. Mr. Schieck argued in support of his motion for discovery. State advised it would be more comfortable if the assigned deputy, Dan Seaton, responded to the motion. Mr. Dahl advised he had spoken to Mr. Seaton and he believed he would be willing to cooperate. COURT ORDERED, motion is granted; if there is substantial disagreement, the State will not be precluded from voicing its objection. State requested reciprocal discovery. COURT SO ORDERED, Mr. Schieck advised there was one additional matter which was not on calendar; he would move to sever for the penalty hearing. COURT ORDERED, absent anything new to consider, the ruling would be the same. FURTHER ORDERED, both defendants to be transported no later than June 26, 1989. CUSTODY	
7/05/89 DONALD M. MOSLEY DEPT. XIV D. SEATON, DDA S. DAHL, DPD (Flanagan) D. SCHIECK, ESQ. (Moore) L. BAZAR, CLERK S. THIELMAN, RPTR.	DEFENDANT MOORE'S MOTION FOR INDIVIDUAL SEQUESTERED VOIR DIRE CALENDAR CALL (7/10/89 J.T. PENALTY PHASE) State represented by Dan Seaton, DDA. Defendant Flanagan present in custody; represented by Stephen Dahl, DPD. Defendant Moore present in custody; represented by David Schieck, Esq. Mr. Dahl joined in on the motion for individual voir dire on behalf of defendant Flanagan. Mr. Seaton advised the State had no objection. Following representations of counsel, COURT ORDERED, this Court thinks counsels' points are well-taken; we will evolve a process on Monday, when we begin, we will poll the prospective jurors as a group. Then we will sit together in chambers and discuss a procedure and whatever we agree on, we will utilize. Mr. Seaton advised there was another matter; inasmuch as a trial has already occured and the majority of the aggravating circumstances arose out of that trial, it puts the State in a little bit of a dilemna as to what witnesses they could put on. There were certain things they could inform or should not inform the jury about. Therefore he would ask if the Court would be willing to meet with all three counsel sometime today, tomorrow or Friday to work out those potential problems prior to trial. Court agreed. Upon Court's inquiry, Mr. Seaton advised his case would take approximately three to four days. Mr. Dahl advised his would take another day. Mr. Schieck advised his would take a day also. COURT ORDERED, this Court will be in touch with counsel this week and would work something	

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DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
7/10/89 DONALD M. MOSLEY DEPT. XIV D. SEATON, DDA S. DAHL, DPD (Flanagan) D. SCHIECK, ESQ. (Moore) L. BAZAR, CLERK S. THIELMAN, RPTR.	PENALTY PHASE State represented by Dan Seaton, DDA. Defendant Flanagan present in custody; represented by Stephen Dahl, DPD. Defendant Moore present in custody; represented by David Schieck, Esq. Outside presence of prospective jury panel, Mr. Schieck made oral motion in limine regarding the State's intent to relate certain information regarding gang activity and a cult. Mr. Dahl joined on the motion on behalf of his client. Following arguments of counsel, COURT ORDERED, Mr. Schiek suggests that black and white magic would be prejudicial, but in a penalty phase the character is at issue. This Court expects the evidence in this penalty phase will track that in the previous penalty phase. This Court will allow mention of magic and gangs as was mentioned in the prior proceeding. In this Court's view, it is appropriate to sift out evidence if it was an error at the prior proceeding, but neither the prosecutor nor the defense can take another bite of the apple. This Court will allow them to the extent they were allowed in the prior proceeding. Mr. Seaton advised assuming a witness, not asked before had brought in new information, he would expect to bring it out. He would make it known to the Court. COURT ORDERED, as a rule, this Court thinks it appropriate if it is reasonable and feasible, and that evidence deviates from that in the prior guilt phase, it is to be brought to this Court's attention. Mr. Dahl objected to preserve the record. Mr. Dahl requested the State provide a list of witnesses as they intend to call them. Mr. Seaton agreed. Mr. Schieck advised he intended to preserve all the objections throughout the last guilt phase; without having to raise them again, which would include Angela Saldana. Court inquired if he would be subscribing to those objections and endorsing them as if they were his own. Mr. Schieck concurred. Mr. Seaton asked, given that, could they assume the Court's ruling would be the same today. Court concurred. 11:20 A.M. - Prospective jury panel summoned. Clerk called roll of prospective jury. Jury selection began. 5:00 P.M.: COURT ORDERED, matter is continued to July 11, 1989 at 10:00 A.M.	
7/11/89	10:00 A.M. Appearances as noted above. Court clerk called roll of prospective jurors. Jury and alternate selected and sworn. COURT ORDERED, matter continued to July 12, 1989 at 10:00 A.M.	
7/12/89	10:00 A.M. Appearances as noted above. Outside presence of jury: defense counsel advised they had agreed they would have to inform the jury why the penalty phase was five years after the fact. COURT ORDERED, this Court agrees that the jury should be informed as to why we are here and what occurred four years or so ago. The Jury need not concern themselves on what the sentence was. They would be advised there were irregularities in the process and it has been returned to Court for one more penalty hearing. Mr. Schieck advised the State had advised they were going to call Roy McDowll in the hearing. He did not testify in the first hearing. They would ask any documents or statements be furnished and they would like to talk to	

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE AKA SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL AND THOMAS AKERS

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
7/12/89 DONALD M. MOSLEY DEPT. XIV D. SEATON, DDA S. DAHL, DPD (Flanagan) D. SCHIECK, ESQ. (Moore) L. BAZAR, CLERK S. THIELMAN, RPTR.	PENALTY PHASE CONTINUED Mr. McDowell. They would ask the Court to allow them to talk to Mr. McDowell tonight rather than today. Mr. Dahl advised the chief issue was what the State's purpose was in calling co-defendant McDowell. State advised it did not think defendant McDowell was going to testify, they had instructed the jail, at the first opportunity to send him back to Carson City. COURT ORDERED, we will proceed on the belief he will not testify and if he changes his mind, this Court will entertain the matter at that time. 10:32 A.M. - Jury summoned. Clerk called roll of jury. Court advised jury that there was a penalty phase hearing about four years ago and there was a sentence imposed. The Supreme Court in reviewing the transcript determined there were irregularities in those proceedings and set aside the sentence and asked that we conduct a new penalty phase. Court advised the jurors that they should not be concerned of the penalty phase hearing in the past. This was a whole new decision and up to you twelve individuals to make the decision at this time. Opening statement by Mr. Seaton. Opening statement by Mr. Dale in behalf of defendant Dale Flanagan. Opening statement by Mr. Schieck on behalf of defendant Randolph Moore. Witnesses sworn and testified. Outside presence of jury, Mr. Dahl objected to State's Exhibit 119. Following arguments of counsel, COURT ORDERED, objection overruled. Mr. Dahl's continuing objection to the reference to devil worship that the State was using it as an aggravating argument is so noted. State advised for the record that State's exhibit was coming in to show character, nothing more. Jury summoned. Counsel stipulated that all members of the jury were present and properly seated. Witnesses sworn and testified and exhibits offered and admitted per attached worksheets. Outside presence of jury, Mr. Dahl advised there were certain things Mr. Seaton wanted to use Mel Harmon, DDA, for, which they objected to. There were two problems, (1) he is using Mr. Harmon to bring in Mr. Luckett's testimony. Mr. Dahl thought they should, if desired, have a right of confrontation. Different information might be brought out with Mr. Luckett. Their other objection would be the sentences imposed on the other defendants at the trial. Mr. Schieck joined on the objection. State argued that the laws in a penalty hearing say that hearsay, as long as it is trustworthy and reliable, can be brought in. Mr. Luckett has appellant things going on right now and may not want to help the State, we put him in prison. Mr. Harmon has read the transcript to make sure his testimony does not deviate from the transcript. The sentences of the others, he says, are not relevant. The jury has been apprised of all the deeds these gentlemen have done together, they should be apprised of the sentences. COURT ORDERED, concerning the question of Mr. Luckett's testimony, we are not trying anew the guilt phase of this proceeding. If Mr. Harmon intends to essentially parrot what Mr. Luckett's testimony is, there is no objection. The alternative would be to admit the transcript, but that would be more time consuming. This Court sees nothing	

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DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
7/12/89 DONALD M. MOSLEY DEPT. XIV L. BAZAR, CLERK S. THIELMAN, RPTR.	PENALTY PHASE CONTINUED inappropriate, but it does have some hesitancy concerning the sentences of Mr. Luckett and Mr. McDowell as far as the jury is concerned. Following further arguments of counsel, COURT ORDERED, this Court does not know that the jury should not have the information regarding the co-defendants' sentences. This Court thinks a cautionary instruction is warranted. Jury summoned. Counsel stipulated that all members of the jury were present and properly seated. Melvin T. Harmon, DDA, sworn and testified for the purpose of reading the testimony of Johnny Ray Luckett from the trial transcript. COURT ORDERED, matter is continued to July 13, 1989 at 10:00 A.M.	
7/13/89	10:00 A.M. Appearances as noted above. Clerk called roll of jury. Witnesses sworn and testified and exhibits offered and admitted per attached worksheets. Mr. Dahl and Mr. Schieck read into the record the testimony from the last trial of Ronald Jims, supervisor, from prior hearing on September, 1984. Recess for lunch. Reconvene at 1:15 P.M.	
	Counsel stipulated that all members of the jury were present and properly seated. Court advised there had been a suggestion there had been certain discussions in the hallway by other persons, spectators. Court inquired of jury if anyone had heard any discussions of that kind. No indication by the jury. Witnesses sworn and testified and exhibits offered and admitted per attached worksheets. 3:20 P.M.: Outside presence of the jury, Court advised defendants of their rights not to be compelled to testify in this case in their own behalf. Jury summoned.	
	Counsel stipulate that all members of the jury were present and properly seated. Court advised that the defendants had elected to make what is known as an unsworn statement. The prosecutor under the law cannot cross-examine the defendants. 3:23 P.M. - Dale Flanagan made an unsworn statement. 3:28 P.M. - Randolph Moore made an unsworn statement. Defense rested. 3:30 P.M.- court recessed. COURT ORDERED, matter is continued to July 14, 1989 at 10:00 A.M. Counsel moved to proceed in the absence in their clients' absence for the limited purposes of settling jury instructions. Jury Instructions 1 through 16 settled in open court. Court adjourned.	
7/14/89	10:00 A.M. Appearances as noted above. Outside presence of jury. Defense asked to reserve the right to sur-rebuttal regarding the penalty. COURT ORDERED, this Court will leave that open to possibility. Defense counsel argued there was no evidence introduced regarding dissension and arguments between grandparents and he did not bring that out. State argued that there had been talk by one of the witnesses about some dissatisfaction, unhappiness between Dale and the grandparents. COURT ORDERED, in this Court's view if there is a discrepancy as Mr. Dahl suggests, it would not amount to a basis for a mistrial because it is minor in this Court's view. This Court understands that your closing remarks must track the evidence in this hearing. The jury needs to hear only the argument regarding evidence in this matter. This Court quite frankly does not recall any mention of dissension between the defendant and his	

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DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
7/14/89 DONALD M. MOSLEY DEPT. XIV L. BAZAR, CLERK S. THIELMAN, RPTR.	PENALTY PHASE CONTINUED grandparents. If Ms. Saldana or any other witness has to be impeached, they should have been impeached from the stand. 10:44 A.M. - Jury summoned. Clerk called roll of jury. 10:45 A.M. - Court read Jury Instructions 1 through 18 to the Jury. 10:55 A.M. - Closing arguments by Mr. Seaton. Recess for lunch. 1:15 P.M. - Closing arguments by Mr. Dahl on behalf of defendant Flanagan. 1:55 P.M. - Closing argument by Mr. Schieck on behalf of defendant Moore. 2:23 P.M. - Rebuttal argument by Mr. Seaton. 3:00 P.M. - Bailiff sworn and matter submitted to the jury for deliberation. 6:32 P.M. - Court reconvened. Appearances as noted above. Jury returned with a verdict of death as to Counts VI and VII as to defendants Flanagan and Moore. COURT ORDERED, continued for confirmation of the jury's verdict and imposition of sentence. Court thanked and excused the jury. Defendants remanded to the custody of the jail. Outside presence of jury: Defense counsel advised that when they approached the bench at the finish of State's rebuttal argument, they had requested surrebuttal argument. They had made the motion earlier in the case and the Court denied it at the bench. They just wished to put it on the record. State argued that it was not up to the State to put on mitigating circumstances. COURT ORDERED, as this Court had mentioned rather hurriedly, admittedly at the bench, it was this Court's view that although Mr. Seaton had suggested there was a burden on the defense to show reasonable doubt as to mitigating circumstances, he explained that and it was corrected with the jury. There was no need to recover on rebuttal in that area and that is why the motion was denied. CUSTODY (BOTH)	7/31/89 @ 9:00 A.M. CONFIRMATION OF JURY's VERDICT AND IMPOSITION OF SENTENCE AS TO COUNTS VI & VII (SET EXECUTION DATE)

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DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
7/31/89 DONALD M. MOSLEY DEPT. XIV D. SEATON, DDA S. DAHL, DPD (Flanagan) D. SCHIECK, ESQ. (Moore) L. BAZAR, CLERK C. JOHNSON, RPTR.	CONFIRMATION OF JURY'S VERDICT AND IMPOSITION OF SENTENCE AS TO COUNTS VI & VII (SET EXECUTION DATE) State represented by Dan Seaton, DDA. Defendant Flanagan present in custody; represented by Stephen Dahl, DPD. Defendant Moore present in custody; represented by David Schieck, Esq. The Court inquired of defendant Flanagan if there was any reason why judgment should not be pronounced against him. Defendant answered in the negative. COURT ORDERED, by virtue of the jury's findings in the matter concerning the two capital counts of "Murder with Use of a Deadly Weapon" (F); that finding being the imposition of the death penalty; this Court acknowledges that finding. Statement by Mr. Flanagan condemning the judicial system and waiving his appeal for the death penalty and requesting he be executed upon the date set. Court inquired of defendant if he had seriously considered waiving his appeal. Defendant concurred. Court further canvassed the defendant with regard to his decision. Mr. Dahl requested that independant counsel be appointed to talk to the defendant about the case, because in his statement, part of his dissatisfaction was with the Public Defender's Office. Court inquired of the defendant if he felt Mr. Dahl's advise was somewhat slanted and if he wanted someone else to assist him. Defendant said no. State asked that the record reflect that in observing the defendant he seemed to be quite calm and rational. Court agreed with the State's observation with regard to the defendant's demeanor. COURT ORDERED, record to so reflect. COURT ORDERED, in accordance with the law of the State of Nevada, this Court confirms the jury's verdict of death; defendant Flanagan will be taken to an appropriate place and put to death through lethal injection on October 23, 1989. The Court inquired of defendant Moore if there was any reason why judgment should not be pronounced against him. Defendant answered in the negative. COURT ORDERED, by virtue of the jury's verdict concerning the two capital counts of "Murder with Use of a Deadly Weapon" (F); the defendant is adjudged guilty. Statement by Mr. Moore. No statement by counsel. Court inquired of Mr. Moore if he was contemplating giving up his right of appeal. Defendant advised he did not and wished to preserve that right. COURT ORDERED, in accordance with the law of the State of Nevada, this Court confirms the jury's verdict of death; defendant Moore will be executed on October 23, 1989. Mr. Schieck advised defendant had the right to an automatic appeal and would be agreeable to his representing him. Court inquired if Mr. Schieck had advised him of the ramifications of having the same attorney represent him on the appeal. Mr. Schieck concurred. Defendant concurred. COURT ORDERED, Mr. Schieck is appointed as appellant counsel. Mr. Dahl advised his client had requested he not file notice of appeal, but he did not know how the Supreme Court would view that. Mr. Dahl made an oral motion to withdraw. COURT ORDERED, motion to withdraw is granted; but this Court would ask Mr. Dahl to stand by in case defendant Flanagan would wish to communicate with him. State advised the Supreme Court	

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DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
7/31/89 DONALD M. MOSLEY DEPT. XIV D. SEATON, DDA S. DAHL, DPD (Flanagan) D. SCHIECK, ESQ. (Moore) L. BAZAR, CLERK C. JOHNSON, RPTR.	CONTINUED would still look at this case with an eye toward the propriety of the death sentence. They would think it would be a good idea to ask Mr. Dahl to remain counsel of record. They were going to need the record up there. He should make inquiries of the Supreme Court to see what their desire is. COURT ORDERED, under the circumstances, this Court thinks it appropriate to give Mr. Dahl leave to withdraw with the understanding, first, that he would be available to receive any communication from Mr. Flanagan should he change his mind, and second, that he see the necessary documents are forwarded to the Supreme Court. Mr. Dahl concurred and acknowledged. CUSTODY	
10/02/89 DONALD M. MOSLEY DEPT. XIV F. PONTICELLO,DDA J. GRAVES, ESQ. L. BAZAR, CLERK R. SILVAGGIO,RPTR.	DEFENDANT'S PRO PER MOTION FOR POST-CONVICTION APPOINTMENT OF COUNSEL DEFENDANT'S PRO PER MOTION TO COMPEL TRANSFER OF RECORDS FROM PREVIOUS COUNSEL; MOTION FOR PRODUCTION OF TRANSCRIPTS OF RECENT HEARINGS State represented by Frank Ponticello, DDA. Defendant Luckett not present; represented by John Graves, Esq. Court stated its findings. COURT ORDERED, motion for post-conviction relief not being timely filed, denied. Defendant's motion for attorney would be moot as would the motion for transfer of records and production of transcripts. Mr. Graves advised he was prepared to send the materials to the defendant, but it would cost $8.29. Defendant was so advised. COURT ORDERED, this Court does not see Mr. Graves position as inappropriate, if the defendant wishes they be sent to him, he can defray expenses. CUSTODY NSP	
10/9/89 DONALD M. MOSLEY DEPT. XIV CAROL GREEN (CLERK) RENEE SILVAGGIO (REPORTER)	AT REQUEST OF DISTRICT ATTORNEY: APPOINTMENT OF COUNSEL State represented by Dan Seaton, DDA. Deft. **Flanagan** not present, reprsented by counsel, Stephen Dahl, Esq. and Lee McMahon, Esq. Mr. Dahl advised that waiver has been properly filed with the Supreme Court. Ms. McMahon confirmed. **COURT ORDERED,** Ms. McMahon appointed to review validity of Waiver of Appeal. CUSTODY (NSP)	

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

06/24/91 09:00 AM 00 ALL PENDING MOTIONS (6/24/91)

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: LOIS BAZAR, Court Clerk
DONNA LITTLE, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	N
	002028	Booker, Gary R.	Y
	001 D1	Flanagan, Dale E	N
	001484	Hill, Judith D.	Y
	002 D	Moore, Randolph	N
	000824	Schieck, David M.	Y

STATE'S MOTION FOR THE COURT TO ISSUE SUPPLEMENTAL WARRANT OF EXECUTION (FLANAGAN).....STATE'S MOTION FOR THE COURT TO ISSUE SUPPLEMENTAL WARRANT OF EXECUTION (MOORE)

Ms. Hill argued that defendant Flanagan would ask the Court to dismiss the supplemental warrant of execution as it was too early. Argument by Mr. Schieck on behalf of defendant Moore, that it was a waste of time as it was just 30 days after the remittitur was issued. He would suggest the matter be continued two to three weeks. Following arguments of counsel, COURT ORDERED, a warrant of execution will issue and an execution date will be set on July 15, 1991 as to each of the defendants; Flanagan and Moore.

CUSTODY (NSP)

02/24/93 09:00 AM 00 ALL PENDING MOTIONS (2/24/93)

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: LOIS BAZAR, Court Clerk
DONNA LITTLE, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	004312	Ledebohm, Karl M.	Y
	002 D	Moore, Randolph	N
	000824	Schieck, David M.	Y

ORAL REQUEST OF DISTRICT ATTORNEY: SCHEDULE NEW PENALTY HEARING (FLANAGAN AND MOORE).....
Mr.Schieck advised Ms. McMahon had filed a motion to withdraw which was set on March 1, 1993. State requested matter be taken off calendar, because they hadn't received a copy of the remittitur. Court advised it had. Mr. Schieck advised he would be willing to accept reappointment. There being no objection, COURT ORDERED, Mr. Schieck is reappointed. This matter is

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CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 001

continued to Monday.

CUSTODY (NSP) (BOTH) ...3/01/93 @ 9:00 A.M. AT ORAL REQUEST OF DISTRICT ATTORNEY: SCHEDULE NEW PENALTY HEARING (FLANAGAN AND MOORE)

03/01/93 09:00 AM 00 ALL PENDING MOTIONS (3/01/93) (1 & 2)

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: LOIS BAZAR, Court Clerk
DONNA LITTLE, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	000862	Harmon, Melvyn T.	Y
	001 D1	Flanagan, Dale E	N
	001765	McMahon, Lee E.	Y
	002 D	Moore, Randolph	N
	000824	Schieck, David M.	Y

AT ORAL REQUEST OF DISTRICT ATTORNEY: SCHEDULE NEW PENALTY HEARING...LEE ELIZABETH MCMAHON, ESQ.'S MOTION TO WITHDRAW AS ATTORNEY OF RECORD AND APPOINT COUNSEL FOR REPRESENTATION OF DEFENDANT IN THE DEATH PENALTY HEARING

Court inquired if there was an objection to Ms. McMahon's motion to withdraw as counsel of record for defendant Flanagan. Mr. Harmon he had no objection. COURT ORDERED, motion granted. Court inquired if Stephen Dahl, DPD, had represented defendant Flanagan prior. Ms. McMahon concurred. Court asked if it would not be appropriate to ask Mr. Dahl to resume the responsibility in this new penalty phase. Mr. Schieck advised he had no objection. Court advised it would take it up with Mr. Dahl. COURT ORDERED, matter is continued for confirmation of counsel and to set the penalty hearing.

CUSTODY (NSP) (BOTH) ...3/10/93 @ 9:00 A.M. CONFIRMATION OF COUNSEL (FLANAGAN)...SCHEDULE NEW PENALTY HEARING (FLANAGAN AND MOORE)

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CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 002

03/10/93 09:00 AM 00 ALL PENDING MOTIONS (3/10/93) (1 & 2)

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: LOIS BAZAR, Court Clerk
DONNA LITTLE, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	004288	Hill, Steven	Y
	002 D	Moore, Randolph	N
	000824	Schieck, David M.	Y

CONFIRMATION OF COUNSEL (FLANAGAN)...SCHEDULE NEW PENALTY HEARING (FLANAGAN AND MOORE)

Stephen Dahl, DPD, present. Court asked Mr. Dahl if he confirmed as counsel. Mr. Dahl advised at the end of the last penalty hearing defendant Flanagan expressed unhappiness with the representation. He thought it would be best to have Mr. Flanagan present. COURT ORDERED, this Court is going to have to pass the setting of the penalty hearing. The D.A. for the State would have to approve. It looked like Mr. Harmon would be the prosecutor. Both defendants' are being held in Ely State Prison. Upon Court's inquiry, counsel advised they transported prisoners every other week. COURT ORDERED, this Court will have the secretary call the state prison and find out and will set the matter on next Monday, or a week from next Wednesday and counsel will be noticed. Mr. Schieck suggested his client, defendant Moore also being transported. COURT ORDERED, under the circumstances, this Court will order both defendant Moore and defendant Flanagan be transported. The D.A. and counsel will be contacted on the date.

1:20 P.M. - Secretary having contacted Ely State Prison and having been apprised that next transport date would be March 18, 1993, COURT ORDERED, the hearing date would be set March 22, 1993. Court clerk contacted D.A. and P.D. Records and Mr. Schieck.

CUSTODY (NSP)(BOTH)...3/22/93 @ 9:00 A.M. CONFIRMATION OF COUNSEL (FLANAGAN) ...SCHEDULE NEW PENALTY HEARING (FLANAGAN AND MOORE)

CONTINUED ON PAGE: 004

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 003

03/22/93 09:00 AM 00 ALL PENDING MOTIONS (3/22/93) (1 & 2)

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: LOIS BAZAR, Court Clerk
SHARON THIELMAN, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	000346	Mitchell, Scott S.	Y
	001 D1	Flanagan, Dale E	Y
	PUBDEF	Public Defender	Y
	001069	Dahl, Stephen J.	Y
	002 D	Moore, Randolph	Y
	000824	Schieck, David M.	Y

CONFIRMATION OF COUNSEL (FLANAGAN)...SCHEDULE NEW PENALTY PHASE (FLANAGAN AND MOORE)

Mr. Mitchell advised he had been provided with a copy of Mr. Harmon's schedule for the year. Court asked defendant Flanagan if he had a problem with Mr. Dahl handling the responsibility of his case. Defendant Flanagan stated he had none. After consulting counsel concerning their court schedules, COURT ORDERED, date for the penalty hearing is confirmed for September 7, 1993 at 10:00 A.M.

CUSTODY (NSP)(BOTH) ...PENALTY HEARING 9/07/93 @ 10:00 A.M./C.C. 9/01/93 @ 9:30 A.M.

05/03/93 09:00 AM 00 MOTION FOR ORDER FOR PAYMENT OF FEES

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: LOIS BAZAR, Court Clerk

PARTIES:			
		STATE OF NEVADA	Y
	004312	Ledebohm, Karl M.	Y

Court advised it was Ms. McMahon's motion and was somewhat unnecessary since a stipulation had been sent over and signed. In any case, her request had been agreed to and the Court signed the order reflecting that. COURT ORDERED, motion granted.

CUSTODY (NSP) (BOTH)

CONTINUED ON PAGE: 005

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 004

07/14/93 09:00 AM 00 MINUTE ORDER RE: RESET 9/01/93 HEARING (1 & 2)

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: LOIS BAZAR, Court Clerk

PARTIES: NO PARTIES PRESENT

COURT ORDERED, due to this Court's absence, the hearing set on September 1, 1993 is hereby vacated and reset on August 31, 1993 at 9:30 A.M. Court clerk noticed D.A. Records, P.D. Records, and counsel.

08/31/93 09:30 AM 00 ALL PENDING MOTIONS (8/31/93) (1 & 2)

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: LOIS BAZAR, Court Clerk
RUSSELL GARCIA, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	000862	Harmon, Melvyn T.	Y
	001 D1	Flanagan, Dale E	N
	PUBDEF	Public Defender	Y
	001069	Dahl, Stephen J.	Y
	002 D	Moore, Randolph	N
	000824	Schieck, David M.	Y

CALENDAR CALL (PENALTY PHASE 9/07/93)...DEFENDANT FLANAGAN'S MOTION TO CONTINUE TRIAL DATE

Upon Court's inquiry, Mr. Dahl advised he had called to stop transportation of the defendants from Nevada State Prison because they were continuing the trial date. Defense counsel waived the presence of defendants Flanagan and Moore for the purpose of the hearing. Court noted it was a motion to continue the setting of the penalty phase. Mr. Schieck acquiesced. Mr. Harmon advised he had no objection. Court noted the date of April 4, 1994 had been suggested. Mr. Dahl concurred. Court inquired if that was agreed universally. Counsel concurred. COURT ORDERED, motion granted.

CUSTODY (NSP) (BOTH) ...PENALTY PHASE 4/04/94 @ 10:00 A.M./C.C. 3/30/94 @ 9:30 A.M.

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CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 005

02/03/94 09:00 AM 00 ALL PENDING MOTIONS FOR 2-3-94

HEARD BY: Addeliar D Guy, III, Judge; Dept. 11

OFFICERS: TINA HURD, Court Clerk
PATRICIA LOFFT, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	000862	Harmon, Melvyn T.	Y
	001 D1	Flanagan, Dale E	N
	PUBDEF	Public Defender	Y
	004065	Blaskey, Rebecca A.	Y
	002 D	Moore, Randolph	N
	000824	Schieck, David M.	Y
	000460	Wolfbrandt, William L.	Y

Court advised a penalty hearing has been previously set in April and this Court is not ready to hear it. Court advised it has received no order for a three-judge panel. State advised the hearing will take approximately one week. COURT ORDERED, MATTER SET FOR PENALTY HEARING ON OCTOBER 3 AND WILL HAVE A STATUS CHECK ON JUNE 9. APRIL 4 AND MARCH 30 DATES ARE VACATED. Conference at the bench.

CUSTODY (BOTH)

6-9-94 9:00 A.M. STATUS CHECK

10-3-94 10:00 A.M. PENALTY HEARING

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CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 006

04/14/94 09:00 AM 00 MOTION TO RESET TRIAL DATE

HEARD BY: Addeliar D Guy, III, Judge; Dept. 11

OFFICERS: TINA HURD, Court Clerk
PATRICIA LOFFT, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	000862	Harmon, Melvyn T.	Y
	001 D1	Flanagan, Dale E	N
	PUBDEF	Public Defender	Y
	001069	Dahl, Stephen J.	Y
	002 D	Moore, Randolph	N
	000824	Schieck, David M.	Y

Mr. Dahl advised, prior to this penalty hearing being set, counsel were before Judge Sobel on a death penalty case and were told very strongly to protect the trial date of October 10 in that case at all costs. State concurred. Court suggested counsel provide the Court with the dates they will be available and the Court will attempt to find a date compatible with the Court's and counsel's calendars. Mr. Dahl advised this penalty hearing will probably take 2 full weeks as it is to be heard before a jury and jury selection alone could take several days due to the length of time this case has been around and the publicity it has received. COURT ORDERED, matter continued one week; counsel to provide dates today.

CUSTODY (NDP)

CONTINUED TO: 04/21/94 09:00 AM 01

CONTINUED ON PAGE: 008

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 007

04/21/94 09:00 AM 00 ALL PENDING MOTIONS (4/21/94)

HEARD BY: Addeliar D Guy, III, Judge; Dept. 11

OFFICERS: NANCY BANKS, Court Clerk
PATRICIA LOFFT, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	002028	Booker, Gary R.	Y
	001 D1	Flanagan, Dale E	N
	PUBDEF	Public Defender	Y
	001069	Dahl, Stephen J.	Y
	002 D	Moore, Randolph	Y
	000824	Schieck, David M.	Y
	000460	Wolfbrandt, William L.	Y

The Court advised the best date the Court can give is the first Monday in January. COURT ORDERED, status check is vacated as well as the Penalty Hearing. This matter continued for a Penalty Hearing.

CUSTODY (NDP) (FLANAGAN AND MOORE)

1/3/95 @ 10:00 A.M. - PENALTY HEARING (FLANNAGAN AND MOORE)
12/29/94 @ 9:00 A.M. - CALENDAR CALL

CONTINUED ON PAGE: 009

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 008

12/01/94 09:00 AM 00 DEFENDANT'S MOTION TO CONTINUE PENALTY HEARING

HEARD BY: Addeliar D Guy, III, Judge; Dept. 11

OFFICERS: TINA HURD, Court Clerk
ANITA SPRINGS-WALKER, Reporter/Recorder

PARTIES:		
	STATE OF NEVADA	Y
000862	Harmon, Melvyn T.	Y
001 D1	Flanagan, Dale E	N
PUBDEF	Public Defender	Y
001069	Dahl, Stephen J.	Y
004065	Blaskey, Rebecca A.	Y
002 D	Moore, Randolph	N
000824	Schieck, David M.	Y
000460	Wolfbrandt, William L.	Y

Mr. Dahl advised defts. FLANAGAN and MOORE are in the Nevada Dept. of Prisons and would waive their presence today. Court advised it wants the waiver in writing due to the circumstances in this case. Court advised the record will reflect that Mr. Dahl has been elected as Justice of the Peace in North Las Vegas, to take office on January 3 and Ms. Mounts has just been given this case. This is a voluminous file and Ms. Mounts cannot be ready by January 3. State advised he understands the circumstances and it is apparent the date must be vacated, however, State would request a date as early as possible as this case is ten years old and there have already been four separate penalty hearings. Ms. Mounts advised counsel have conferred and would request a date in June. COURT ORDERED, matter CONTINUED two weeks for counsel to obtain a waiver from the defts. for a continuance to the June date; Court advised he will not vacate the January date until he receives the waiver; matter set for penalty hearing in June.

NDP (BOTH)

12-15-94 9:00 AM STATUS CHECK: WAIVER (BOTH)

6-8-95 9:00 AM CALENDAR CALL (BOTH)

6-12-95 10:00 AM PENALTY HEARING (BOTH)

CONTINUED ON PAGE: 010

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 009

12/15/94 09:00 AM 00 ALL PENDING MOTIONS

HEARD BY: Addeliar D Guy, III, Judge; Dept. 11

OFFICERS: TINA HURD, Court Clerk
ANITA SPRINGS-WALKER, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	004610	Gardner, Gerald J.	Y
	001 D1	Flanagan, Dale E	N
	PUBDEF	Public Defender	Y
	004065	Blaskey, Rebecca A.	Y
	002 D	Moore, Randolph	N
	000824	Schieck, David M.	Y

Deft. Flanagan's waiver FILED IN OPEN COURT. Mr. Schieck advised he has already filed a waiver with the Court for deft. Moore. COURT ORDERED, defts FLANAGAN and MOORE's presence will be waived today and at all hearings up to, but not including, the Calendar Call; January dates are VACATED and hearing date STANDS.

CUSTODY (BOTH)

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CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 010

05/25/95 09:00 AM 00 MINUTE ORDER RE: HEARING MOTIONS

HEARD BY: Addeliar D Guy, III, Judge; Dept. 11

OFFICERS: JOYCE BROWN, Court Clerk

PARTIES:			
		STATE OF NEVADA	Y
	000862	Harmon, Melvyn T.	Y
	002473	Seaton, Daniel M.	Y
	001 D1	Flanagan, Dale E	N
	002805	Wall, David T.	Y
	002 D	Moore, Randolph	N
	000824	Schieck, David M.	Y

Court met with Counsel in Chambers and advised motions will be heard on June 1, and June 6. Mr. Schieck moved to have all his motions heard on the same date. COURT ORDERED, motion GRANTED and Mr. Schieck chose June 6.

NDP (BOTH)

CLERK'S NOTE: After further consultation with the Court, Court advised to place ALL the motions to be heard prior to the penalty hearing on June 6. th

CONTINUED ON PAGE: 012

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 011

06/06/95 09:00 AM 00 ALL PENDING MOTIONS 6-6-95

HEARD BY: Addeliar D Guy, III, Judge; Dept. 11

OFFICERS: JOYCE BROWN, Court Clerk
ANITA SPRINGS-WALKER, Reporter/Recorder

PARTIES:		
	STATE OF NEVADA	Y
000862	Harmon, Melvyn T.	Y
001 D1	Flanagan, Dale E	N
002805	Wall, David T.	Y
004065	Blaskey, Rebecca A.	Y
002 D	Moore, Randolph	N
000824	Schieck, David M.	Y
000460	Wolfbrandt, William L.	Y

DEFT FLANAGAN'S MOTION FOR NEW TRIAL IN VIEW OF UNITED STATES SUPREME COURT DECISION IN DAWSON V. DELAWARE...DEFT FLANAGAN'S MOTION FOR INDIVIDUALIZED VOIR DIRE AND FOR SUBMISSION OF JURY QUESTIONNAIRE...DEFT MOORE'S PETITION FOR WRIT OF HABEAS CORPUS...DEFT MOORE'S MOTION TO STRIKE DEATH PENALTY... DEFT MOORE'S MOTION TO DISCLOSE INDUCEMENTS, PROMISES, AND PAYMENTS TO PROSPECTIVE STATE WITNESSES AND MEMORANDUM IN SUPPORT THEREOF... DEFT MOORE'S MOTION IN LIMINE TO PRECLUDE REFERENCE TO THE SENTENCES OF THE CO-DEFENDANTS...DEFT FLANAGAN'S MOTION TO PROHIBIT TESTIMONY OF DISTRICT ATTORNEY TO SUMMARIZE WITNESS' PRIOR TESTIMONY OR IN THE ALTERNATIVE TO DISQUALIFY DISTRICT ATTORNEY'S OFFICE...DEFT FLANAGAN'S MOTION FOR DISCLOSURE TO INFORMATION REGARDING STATE WITNESS' EXPECTATIONS OF BENEFITS OF TESTIMONY...DEFT FLANAGAN'S MOTION IN LIMINE TO PROHIBIT EVIDENCE OF DEVIL WORSHIP...DEFT FLANAGAN'S MOTION TO JOIN CO-DEFENDANT RANDOLPH MOORE'S MOTION IN LIMINE TO PRECLUDE REFERENCE TO SENTENCES OF CO-DEFENDANTS... DEFT FLANAGAN'S MOTION TO AMEND DEFENDANT FLANAGAN'S PREVIOUSLY FILED MOTION FOR NEW TRIAL TO REFLECT PETITION FOR WRIT OF HABEAS CORPUS, OR IN THE ALTERNATIVE MOTION TO JOIN DEFENDANT MOORE'S PETITION FOR WRIT OF HABEAS CORPUS...DEFT FLANAGAN'S PETITION FOR WRIT OF HABEAS CORPUS... DEFT FLANAGAN'S MOTION TO STRIKE DEATH PENALTY...DEFT MOORE'S MOTION TO STRIKE DEATH PENALTY

At Court's inquiry as to why the Defendants were not present, Schieck advised that throughout these proceedings, the Defendants have not desired to be present because of the housing situation at Ely. He further stated the Defendants always asked their presence be waived and is true of this proceeding. Mr. Wall stated the same on behalf of Mr. Moore. COURT ORDERED motion waiving Defendants' presence GRANTED. Court read entire list of motions. Mr. Wall advised four motions - DEFT FLANAGAN'S MOTION TO AMEND DEFENDANT FLANAGAN'S PREVIOUSLY FILED MOTION FOR NEW TRIAL TO REFLECT PETITION FOR WRIT OF HABEAS CORPUS, OR IN THE ALTERNATIVE MOTION TO JOIN DEFENDANT MOORE'S PETITION FOR WRIT OF HABEAS CORPUS; DEFENDANT FLANAGAN'S PETITION FOR WRIT OF HABEAS CORPUS; DEFT FLANAGAN'S MOTION FOR NEW TRIAL IN

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VIEW OF UNITED STATES SUPREME COURT DECISION IN DAWSON V. DELAWARE; AND DEFT MOORE'S PETITION FOR WRIT OF HABEAS CORPUS could be argued together if Deft Flanagan's Motion to Amend Deft Flanagan's Previously Filed Motion for New Trial is granted first. No objection by State. COURT ORDERED, motion GRANTED. Schieck advised he would be filing a Joinder in Motions later joining in all the motions. These four motions were argued together. COURT ORDERED Deft Flanagan's Motion For New Trial in View of United States Supreme Court Decision in Dawson V. Delaware DENIED; Deft Flanagan's Petition for Writ of Habeas Corpus DENIED; and Deft Moore's Petition for Writ of Habeas Corpus DENIED.

As to DEFT FLANAGAN'S MOTION FOR INDIVIDUALIZED VOIR DIRE AND FOR SUBMISSION OF JURY QUESTIONNAIRE, COURT ORDERED Individualized Voir Dire is DENIED, but Court will consider Mr. Harmon's questions of Jury as a whole. As to a Jury Questionnaire, Court has no problem with that and if all three parties come in with a stipulated set of questions by tomorrow or Thursday, it may be used. Court instructed Counsel to see Jury Services today about deadlines.

As to DEFT MOORE'S AND DEFT FLANAGAN'S MOTIONS TO STRIKE DEATH PENALTY, Argument by Counsel and COURT ORDERED both motions DENIED. As to DEFT MOORE'S MOTION TO DISCLOSE INDUCEMENTS, PROMISES AND PAYMENTS TO PROSPECTIVE STATE WITNESSES AND MEMORANDUM IN SUPPORT THEREOF and DEFT FLANAGAN'S MOTION FOR DISCLOSURE TO INFORMATION REGARDING STATE WITNESS' EXPECTATIONS OF BENEFITS OF TESTIMONY, Court advised Mr. Harmon says there are none. Court further advised there are always payments of travel and motel expenses for State witnesses. COURT ORDERED both motions DENIED, but will grant leeway in questioning at depth.

As to DEFT FLANAGAN'S MOTION TO JOIN CO-DEFENDANT RANDOLPH MOORE'S MOTION IN LIMINE TO PRECLUDE REFERENCE TO SENTENCES OF CO-DEFENDANTS, COURT ORDERED, motion GRANTED.

As to DEFT MOORE'S MOTION IN LIMINE TO PRECLUDE REFERENCE TO THE SENTENCES OF THE CO-DEFENDANTS, argument by Harmon that Jury is asked to set punishment on two out of six Defendants and they need to help the Jury as much as possible. Argument by Schieck and Wall, who joined in the motion, that Co-Defendants' sentences bear no relevance as to what these two Defendants should receive. Court read from the Statutes and ORDERED motion DENIED.

As to DEFT FLANAGAN'S MOTION TO PROHIBIT TESTIMONY OF DISTRICT ATTORNEY TO SUMMARIZE WITNESS' PRIOR TESTIMONY OR IN THE ALTERNATIVE TO DISQUALIFY DISTRICT ATTORNEY'S OFFICE, Mr. Wall argued that Mr. Seaton will be prosecutor and Mr. Harmon will summarize the testimony of four or five witnesses and they object to having this done. Argument by Harmon. COURT ORDERED, this motion CONTINUED until Thursday morning and instructed Counsel to get together and stipulate to witnesses' testimony being summarized or else they would be reading testimony from transcripts. Wall asked to table this until Thursday. Court advised if Counsel are not able to stipulate, Court sees no other way but to read the trial testimony and extricate the

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unnecessary garbage; but that is time consuming. Harmon stated he did not feel the parties would be able to work out a stipulation. Court stated they could let him know Thursday morning.

As to DEFENDANT FLANAGAN'S MOTION IN LIMINE TO PROHIBIT EVIDENCE OF DEVIL WORSHIP, Schieck joined in the motion, Wall argued that the Coven was never involved in any way in the decision to commit the crime and is used as character evidence; and is not proper character evidence. He further argued the Defendants have been involved in Christian activities and Bible study classes since then. Harmon stated he did not intend to intruduce this in their case in chief, but does not want State's hands tied. Court read his findings into the record and ORDERED motion DENDIED WITHOUT PREJUDICE. Wall requested they revisit this motion on Thursday and COURT GRANTED the REQUEST.

The last motion, DEFT MOORE'S MOTION TO STRIKE DEATH PENALTY is a duplicate and already ruled upon.

Mr. Schieck presented a Joinder in Motions of Co-Defendant Flanagan to the Court. COURT ORDERED, motion GRANTED, and it was FILED IN OPEN COURT. Mr. Wall requested transcripts of todays proceedings by tomorrow. Request GRANTED and Court Recorder stated they would be ready. Counsel advised unfinished business consists of unavailability of witnesses and Devil worship in rebuttal.

NDP (BOTH)

6-8-95 9:00 AM DEFT FLANAGAN'S MOTION TO PROHIBIT TESTIMONY OF DISTRICT ATTORNEY TO SUMMARIZE WITNESS' PRIOR TESTIMONY OR IN THE ALTERNATIVE TO DISQUALIFY DISTRICT ATTORNEY'S OFFICE

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CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 014

06/08/95 09:00 AM 00 ALL PENDING MOTIONS 6-8-95

HEARD BY: Addeliar D Guy, III, Judge; Dept. 11

OFFICERS: JOYCE BROWN, Court Clerk
ANITA SPRINGS-WALKER, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	002473	Seaton, Daniel M.	Y
	001 D1	Flanagan, Dale E	Y
	PUBDEF	Public Defender	Y
	004065	Blaskey, Rebecca A.	Y
	000556	Kohn, Philip J.	Y
	002 D	Moore, Randolph	Y
	000824	Schieck, David M.	Y
	000460	Wolfbrandt, William L.	Y

DEFT. FLANAGAN'S MOTION TO PROHIBIT TESTIMONY OF DISTRICT ATTORNEY TO SUMMARIZE WITNESS' PRIOR TESTIMONY OR IN THE ALTERNATIVE TO DISQUALIFY DISTRICT ATTORNEY'S OFFICE...CALENDAR CALL

Ms. Mounts advised that Mr. Wall is in Supreme Court this morning. Mr. Seaton advised Mr. Harmon is not connected with the case. Court advised he met with Counsel in Chambers yesterday and assumes everyone is ready to go to trial. Mr. Seaton announced State is ready, and Court advised unless the Supreme Court rules otherwise, this case will go to trial. Court advised he will permit the Devil Worship issue by State in rebuttal if the transcript of Corine Lopez is read or she takes the stand. Ms. Mounts argued this will eliminate three-fourths of defense witnesses. Court read a portion of the Lopez testimony. Argument by Schieck. Court advised he will hear what they plan to present outside the presence of the Jury. Mr. Seaton advised he would like to suggest how unavailable witnesses are going to be put on; there are about five lay witness people who knew the Defendants and testified in the penalty hearing. He further advised they had found four of them; but have not found Akers, and plan to put on the ones they do have in the same fashion as in the last penalty hearing. Mr. Seaton suggested they strike "Mr. Harmon" and make no reference to Devil Worship and have it read to the Jury by someone else; that way the Jury would not know it was a prosecutor's testimony. Court advised anything Defense can agree to, in 90% of the time the Court will go along with. Mr. Seaton stated credible hearsay can be used in death penalty cases and they would remove everything not germane here. Court advised if Counsel cannot agree on Mr. Harmon's testimony, then witnesses' testimony in the guilt phase will be used. Mr. Seaton advised they would work together and may put in Aker's testimony. COURT ORDERED, use of prior testimony GRANTED and Deft. Flanagan's Motion To Prohibit Testimony of District Attorney to Summarize Witness' Prior Testimony Or In The Alternative to Disqualify District Attorney's Office is CONTINUED until Monday morning. Mr. Schieck requested an additional table

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for Counsel and Court stated he would see what he could do.

NDP (BOTH)

6-12-95 9:00 AM DEFT. FLANAGAN'S MOTION TO PROHIBIT TESTIMONY OF DISTRICT ATTORNEY TO SAUMMARIZE WITNESS' PRIOR TESTIMONY OR IN THE ALTERNATIVE TO DISQUALIFY DISTRICT ATTAORANEY'S OFFICE

06/12/95 09:00 AM 00 ALL PENDING MOTIONS - PENALTY HEARING

HEARD BY: Addeliar D Guy, III, Judge; Dept. 11

OFFICERS: TINA HURD, Court Clerk
ANITA SPRINGS-WALKER, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	002473	Seaton, Daniel M.	Y
	001 D1	Flanagan, Dale E	Y
	PUBDEF	Public Defender	Y
	002805	Wall, David T.	Y
	004065	Blaskey, Rebecca A.	Y
	002 D	Moore, Randolph	Y
	000824	Schieck, David M.	Y
	000460	Wolfbrandt, William L.	Y

Court advised defts. filed a Writ which was denied; defts. then filed a Writ of Mandamus last week and the Supreme Court denied that. Court read from the Writ of Mandamus. Court stated he understands a Notice of Appeal was filed on Friday with the Supreme Court on the Writs of Habeas Corpus as they are independently appealable. Counsel have indicated today that this Court no longer has jurisdiction based upon Robertson. Court stated it was decided some time ago that a Writ of Habeas Corpus is appealable but not until the end of a case. The State may file an immediate appeal if a Writ is granted as the case is then out of Court and the State would suffer irreparable harm. Court read NRS 34.575.1 and advised this matter is before the Court on a penalty hearing and no judgment has been entered. There is no written motion but the Court does have an oral motion before it. Mr. Schieck concurred. Mr. Wall advised deft. Flanagan has no oral motion and contends the filing of the Notice of Appeal divests jurisdiction. Court FINDS the notice is defective. Court advised he has nothing from the Supreme Court. In the meantime, this Court has a phone call into the Supreme Court and, if they wish to stay this matter, this Court has no problem with that. Mr. Schieck argued the convictions in the other charges are final and the Writ went as to all charges in the case in the guilt phase. Court advised, unless this Court is ordered to stay by the Supreme Court, we will proceed. Mr. Wall advised the Writ of Mandamus was filed on June 8 and the opinion that came down that afternoon stated, in essence, that the Writ of Mandamus

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was improper. This Court has said NRS 34.575.1 does not apply and four days ago the Supreme Court advised it did and directed us to file a Notice of Appeal. Court advised that statute states "if there is no criminal action pending". Mr. Wall stated the Supreme Court advised an appeal on the Writs of Habeas Corpus is proper instead of an extraordinary Writ. Mr. Wall quoted from the Robertson case. Court advised counsel have made their record and, if counsel wish, they may call the Supreme Court and advise them that this Court intends to proceed despite the notice that has been filed. State agreed with the Court and stated there are no judgments as there are no sentences on these charges and the State believes both of those provisions are applicable. Court stated, if everything was stayed on a Notice of Appeal of a Writ, it would happen everyday. COURT ORDERED, counsel have until 10:30 a.m. to get a stay. Court adjourned at 9:30 a.m.

LATER: Court advised, due to the process with the Supreme Court, COURT ORDERED, this matter will reconvene at 1:45 p.m.

2:22 P.M.--Clerk called roll of the jury panel. COURT ORDERED, Order to Show Cause to issue for badge numbers 495 and 547 who were not present. Court advised there are some minor technicalities that the Supreme Court partially took care of last week and they are, unfortunately, hearing oral arguments today and we are waiting to hear from them on other matters. Court advised the jury will be excused for the afternoon and will reconvene at 9:00 a.m. tomorrow morning. Court advised he will take no legal actions today as the defts. are not present at this time and they must be present for all proceedings. Jury excused for the day at 2:31 p.m. OUTSIDE THE PRESENCE OF THE JURY PANEL, colloquy between Court and juror 540 reference a hardship. Outside the presence of this juror, counsel advised they have no objection to excusing this juror and would waive any defect in the defts. not being present. Juror 540 present and COURT ORDERED, juror 540 EXCUSED. State's Motion to Use Reported Testimony FILED IN OPEN COURT. Court adjourned at 2:37 p.m.

CUSTODY (BOTH)

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CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 017

06/13/95 09:00 AM 00 ALL PENDING MOTIONS - PENALTY HEARING

HEARD BY: Addeliar D Guy, III, Judge; Dept. 11

OFFICERS: TINA HURD, Court Clerk
ANITA SPRINGS-WALKER, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	002473	Seaton, Daniel M.	Y
	001 D1	Flanagan, Dale E	Y
	PUBDEF	Public Defender	Y
	002805	Wall, David T.	Y
	004065	Blaskey, Rebecca A.	Y
	002 D	Moore, Randolph	Y
	000824	Schieck, David M.	Y
	000460	Wolfbrandt, William L.	Y

9:30 A.M.--Pursuant to a conference in chambers between the Court and counsel, defts. Flanagan and Moore taken back to the jail to shower and shave.

10:03 A.M.--Mr. Wall stated he believes the Court has received notice from the Nevada Supreme Court denying the Writs of Prohibition and request for stay. Secondly, there is an issue that has come up with Rusty Havens, one of the State's witnesses, who has acquired a new case and apparently absconded and was arrested last week. Mr. Wall advised it appears the Public Defender's office represented Mr. Havens before he absconded and it further appears the Public Defender's office has, to some extent, negotiated a deal for him on his new charges. Mr. Wall advised Mr. Havens case is on this morning before Judge Huffaker on the bench warrant return and he has left word with that deputy that he is a witness for the State and we should withdraw this morning. Mr. Wall advised, when he became aware Mr. Havens was a Public Defender client, he did not review the file and did not represent Mr. Havens in Justice Court and further believes Ms. Mounts also did not represent him. Mr. Wall advised he wanted to bring the Court's attention to the conflict and advised he does not know what we need to do to preserve the record. State concurred and advised he had not yet spoken with Mr. Havens and has not spoken with any of the deputies in his office reference the case. State advised he was informed this morning by Ms. Robinson that a deal had been struck by Ms. Maxson but he believes that deal has fallen through. State advised he has seen this sort of conflict arise before and it has always been resolved by the Public Defender getting off the case and he believes that should be done this morning. State advised he has no problem with Mr. Wall cross-examining Mr. Havens. COURT ORDERED, Rusty Havens to be brought over at 8:45 a.m. tomorrow morning and requested the State prepare a written order during the lunch hour. Arguments by counsel as to Deft. Flanagan's Motion to Prohibit Testimony of District Attorney to Summarize Witness' Prior Testimony or in the Alternative to

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Disqualify District Attorney's Office. Mr. Wall stated he believes this has already been determined. State advised he believes the Court has informally indicated he was going to take testimony from prior witnesses in prior penalty hearings and the State has sanitized the transcript and believes counsel have agreed to what can be used. Ms. Mounts concurred and stated it was her understanding that the Court has ruled he was going to accept that testimony and we wanted to preserve our record. Ms. Mounts advised they object to Mr. Harmon's testimony being read and advised they have confrontation rights to those witnesses. Court advised what he ruled is that the testimony of the witnesses Mr. Harmon summarized would be used if defense counsel make those objections; if it cannot be agreed upon, we will use those testimonies where there was cross-examination. Mr. Schieck joined in Ms. Mounts objections and advised it is more acceptable to use what they have agreed upon. Court stated he understands defense counsel object to Mr. Harmon's testimony and the Court has no problem with that and will sustain that objection and will use the whole testimonies of those witnesses. Mr. Schieck advised counsel have agreed to use the testimony of Mr. Harmon with Mr. Harmon's name withdrawn. Colloquy between Mr. Wall, Ms. Mounts and deft. Flanagan. Court advised he received a fax from the Supreme Court on June 12 and read the decision into the record. Ms. Mounts advised, after conferring with their client, they too will agree to use the prior testimony of Mr. Harmon that we have agreed upon, with Mr. Seaton withdrawing Mr. Harmon's name and will withdraw the objection to that testimony. Mr. Schieck advised they will also withdraw their objection. As to State's Motion to Use Reported Testimony, Court advised both sides have some people they cannot locate and, if there are no objections, the Court will grant the motions for both sides. No objections by counsel. COURT ORDERED, motion GRANTED for the State and the defense. Mr. Wall stated, apparently, the jail is under the impression that these defts. are under a sentence of death and are housed in a section that does not allow them to shower and shave. The jail has indicated if they knew from some authority that these defts. are not under a sentence of death, they would house defts. accordingly. Mr. Wall requested the Court order the jail to allow these defts. to shower and shave and be presentable for Court. Court directed the Court Services officers to advise the officials at the jail that the Supreme Court has reversed the prior sentence of death and that is why we are here, to determine their sentences and they are to shower and shave and be presentable for Court. State requested to be allowed to expand his introduction to the jury slightly so if anything triggers the jury, they will be able to answer appropriately during voir dire. State advised he will not mention the death phase, only that these defts. have been found guilty by a prior jury. 10:31 a.m.--Clerk called roll of the jury panel. Court again directed the bailiff to speak with the Jury Commissioner and have an Order to Show Cause issue as to jurors 495 and 547 who were not present when called and were not present yesterday either. Introductions by counsel. Jury selection proceeded. OUTSIDE THE PRESENCE OF THE JURY PANEL, colloquy between Court and Mr. Wall as to the question asked by Mr. Wall as to whether a juror had an opiniion of the criminal justice system and why the Court stopped that line of questioning. Court adjourned for lunch at 12:22 p.m. 1:48 p.m.--Clerk called roll of the jury panel. Jury selection

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continued. Court admonished the panel not to talk during proceedings. Jury admonished and excused for the evening at 4:18 p.m. to reconvene at 9:00 a.m. tomorrow morning. OUTSIDE THE PRESENCE OF THE JURY, Court advised counsel not to ask the same questions the Court does, however, sometimes counsel hears something in a voice the Court does not hear and that may be pursued but do not go down the same list of questions. Colloquy between Court and counsel as to jury instructions. Court advised he wants jury instructions on Thursday morning. Court advised counsel to be here at 8:45 a.m. on the Havens issue. Court adjourned at 4:20 p.m.

CUSTODY (BOTH)

06/14/95 09:00 AM 00 ALL PENDING MOTIONS - PENALTY HEARING

HEARD BY: Addeliar D Guy, III, Judge; Dept. 11

OFFICERS: TINA HURD, Court Clerk
ANITA SPRINGS-WALKER, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	002473	Seaton, Daniel M.	Y
	001 D1	Flanagan, Dale E	Y
	PUBDEF	Public Defender	Y
	002805	Wall, David T.	Y
	004065	Blaskey, Rebecca A.	Y
	002 D	Moore, Randolph	Y
	000824	Schieck, David M.	Y
	000460	Wolfbrandt, William L.	Y

Court convened at 9:05 a.m. OUTSIDE THE PRESENCE OF THE JURY, witness Rusty Havens present in custody with a District Attorney investigator. Mr. Wall advised they were aware Mr. Havens was going to testify and gave a chronology of events. Mr. Wall advised the Public Defender had represented Mr. Havens before the bench warrant was issued in Dept. IX. The Public Defender negotiated the case and Mr. Havens was scheduled to plead guilty when he failed to appear and a bench warrant was issued. Mr. Havens was in Dept. IX on a bench warrant return earlier this week and Mr. Wall advised he had instructed the Deputy Public Defender to withdraw from the case and he believes they did withdraw yesterday and Mike Davidson was appointed. Mr. Wall advised there could be the appearance of a conflict of interest and one of the areas of cross-examination would be the benefits of his testimony. Mr. Wall advised he was not present when the case was negotiated and does not know the underlying facts of the case. Upon Court's inquiry, Mr. Wall advised, to his knowledge, there is nothing in this case that has anything to do with the case before Judge Huffaker and he believes they are fairly recent charges. Court advised he does not see any conflict, however, COURT ORDERED, matter CONTINUED to tomorrow morning at 8:45 a.m. and Mr. Havens to

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be present with his attorney, Mike Davidson, and we will take up any conflict issues at that time. State advised there was a motion brought by the defense asking the State to divulge any favorable treatment any witnesses have received and, as to this witness, State would concur with what Mr. Wall stated. State advised he learned about Mr. Havens' arrest late last week and, prior to that time, he had never spoken to Mr. Havens or any deputy in his office reference that case. State further advised he believes a deal was struck down in Justice Court and no deputy was aware of Mr. Havens' preparedness to testify in this matter as he was not subpoenaed yet. State advised he has instructed the other deputies, whether Mr. Havens adheres to this deal or the case is redealt, they are not to take this case into consideration and, if this witness makes himself unavailable, the State will use his transcript testimony. Court requested the DA's investigator contact Mr. Davidson as to the hearing tomorrow. Investigator acknowledged. Juror 496-Pearlstein met with the Court prior to the other panelists being brought in and was excused for cause. 9:22 a.m.--Clerk called roll of the jury panel; counsel stipulated to the presence thereof. Jury selection continued. Court reconvened after the lunch hour at 1:58 p.m. Clerk called roll of the jury panel; Court advised juror 520 is excused due to illness. Counsel stipulated to the presence of the jury panel. Jury selection continued. Court admonished the jury panel and excused them for the evening at 3:52 p.m. to reconvene at 9:00 a.m. tomorrow morning. OUTSIDE THE PRESENCE OF THE JURY, Mr. Schieck renewed his challenge of juror 432-Jacintho and advised he wanted the Court to be clear on his position, especially now that we have the transcript of exactly what he said. Colloquy between Court and Court Recorder reference a typographical error in the transcript. Mr. Schieck directed the Court to the portion of the transcript in question and stated his position is that the juror's answers to his questions are unequivocal and advised he did not have time to get into all the questions the State asked to rehabilitate this juror. COURT ORDERED, Court will meet with counsel at 8:45 a.m. to go over this and that will give the State and the Court time to review it.

CUSTODY (BOTH)

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CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

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06/15/95 08:45 AM 00 ALL PENDING MOTIONS - PENALTY HEARING

HEARD BY: Addeliar D Guy, III, Judge; Dept. 11

OFFICERS: TINA HURD, Court Clerk
ANITA SPRINGS-WALKER, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	002473	Seaton, Daniel M.	Y
	001 D1	Flanagan, Dale E	Y
	PUBDEF	Public Defender	Y
	002805	Wall, David T.	Y
	004065	Blaskey, Rebecca A.	Y
	002 D	Moore, Randolph	Y
	000824	Schieck, David M.	Y
	000460	Wolfbrandt, William L.	Y

Court convened at 8:48 a.m. OUTSIDE THE PRESENCE OF THE JURY. Witness Rusty Havens present in custody with Mike Davidson, ESQ. Court advised he received case law from Ms. Mounts this morning which the Court has read. Mr. Davidson advised he has not confirmed as counsel yet as he just received a call yesterday from Judge Huffaker advising he was appointed and he has not had time to speak with Mr. Havens. Court advised Mr. Havens has testified in the past and the Court wishes to make the record clear of any possible conflict. Upon Court's inquiry, Mr. Davidson advised he can confirm as counsel. Mr. Wall again advised of the circumstances causing the Public Defender to withdraw and, because a possible conflict may appear in the record, he does not know if deft. Flanagan needs to waive any defect. Mr. Davidson advised he has not discussed with Mr. Havens whether he wants to claim a conflict because the Public Defender represented him in the past, however, he does not see a prospective problem. Court advised Mr. Davidson to take some time this morning and discuss it with Mr. Havens. If Mr. Havens does not want to take the stand, the Court needs to know as soon as possible. Court advised Mr. Davidson to inform the Court tomorrow morning; the State has already advised yesterday that there are no deals concerning this case. Mr. Wall stated that is only as to Mr. Seaton's knowledge. Court advised Mr. Wall can ask his people if there were any negotiations concerning this case which requires a yes or no answer and that is not a conflict of interest; you cannot make an intelligent decision in a vacuum. State advised he learned this morning from Kim Maxson, DDA, that she is probably going to offer Mr. Havens the same deal she offered before which is an Attempt Burglary and State will make no recommendation. State advised he instructed her again that no negotiations should be made concerning this case. Conference at the bench. Mr. Davidson left to speak with Mr. Havens in the hall. Court advised he had a renewed motion as to the juror in seat #2, Jacintho, after reading the transcript of what he said. Mr. Schieck read parts of the transcript into the record. Mr. Wall and Ms. Mounts joined in Mr. Schieck's challenge. Court advised he has read some of that

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transcript and, there being no objections, COURT ORDERED, Juror 432-Jacintho excused for cause. 9:09 a.m.--Clerk called roll of the jury panel. Jury selection continued. 11:37 a.m--OUTSIDE THE PRESENCE OF THE JURY, Mr. Davidson appeared and advised Mr. Havens is prepared to testify. Upon Court's inquiry, Mr. Davidson advised he does not know of any negotiations involving this case. Mr. Wall inquired if it is the Court's ruling that there is not a significant conflict in representing deft. Flanagan and cross-examining a former client of the Public Defender's office. Court advised that is his ruling. Mr. Wall advised it has come to his attention that juror 434-Guerra has an outstanding bench warrant right now for contempt of court and he does not have any idea what the facts are. Court directed the State to check into the bench warrant during the lunch hour. Mr. Davidson advised he has spoken with the State as he is concerned with anything his client testifies to being used against him and the State advised they will not be using anything against him and are willing to make that statement on the record. State concurred. Colloquy between Court and counsel as to when Mr. Havens will testify. Court advised he will have the State call when Mr. Havens is up to testify. Court read from the Supreme Court opinion submitted by Ms. Mounts. Court convened after the lunch hour at 1:44 p.m. OUTSIDE THE PRESENCE OF THE JURY. Court advised when we stopped this morning we had information that one of our jurors has a bench warrant outstanding. State advised juror 434-Guerra had a 1982 failure to appear bench warrant that is no longer active and there is nothing in the system for him at this time. Matter submitted by counsel. Court stated, based on what the State informs him, it is a moot question now. 1:50 p.m.--Clerk called roll of the jury panel. Jury selection continued. Court admonished the jury and excused them for the evening at 4:21 p.m. to reconvene at 9:00 a.m. tomorrow morning. OUTSIDE THE PRESENCE OF THE JURY, Mr. Schieck advised, in reviewing the questionnaires, they know that juror 526-Chase belongs to an organization that advocates abolishing the death penalty and the State will probably exercise a challenge for cause. After that is juror 527-Gardner who has advised he spoke with his father who was a juror on the original trial and has the appearance of impropriety. Mr. Schieck stated he believes we are asking for error if he sits on the jury as he has already violated the admonition of the Court not to discuss the case with anyone and his father heard alot of evidence that is improper in this trial and he has also heard the prosecutorial misconduct that has been condemned by the Supreme Court. Mr. Schieck moved the Court to reconsider the challenge of juror 527. Mr. Wall joined in the motion. State advised it is the Court's prerogative, however, he will join in the form of a stipulation. Court stated he believes this case was discussed after the verdict was in when juror 527 was 15 years of age and the Court is sure this juror knows they received the death penalty then and knows it now. Court advised he has no problem with Mr. Schieck's motion. State advised perhaps the Court could also excuse juror 526 who advocates abolishing the death penalty. Mr. Schieck advised he will not stipulate to that as he wants to make sure she has not changed. Colloquy between Court and counsel as to jury instructions. Court adjourned at 4:29 p.m.

CUSTODY (BOTH)

CONTINUED ON PAGE: 024

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 023

06/16/95 09:00 AM 00 ALL PENDING MOTIONS - PENALTY HEARING

HEARD BY: Addeliar D Guy, III, Judge; Dept. 11

OFFICERS: TINA HURD, Court Clerk
ANITA SPRINGS-WALKER, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	002473	Seaton, Daniel M.	Y
	001 D1	Flanagan, Dale E	Y
	PUBDEF	Public Defender	Y
	002805	Wall, David T.	Y
	004065	Blaskey, Rebecca A.	Y
	002 D	Moore, Randolph	Y
	000824	Schieck, David M.	Y
	000460	Wolfbrandt, William L.	Y

Court convened at 9:08 a.m. OUTSIDE THE PRESENCE OF THE JURY. Mr. Schieck inquired how many alternates there will be and how many peremptory challenges they will get and requested each deft. get a challenge. Court advised there will be two alternates and each side will get one peremptory challenge. Mr. Wall joined in Mr. Schieck's motion. State advised statute provides for the defense to get one when there are only two alternates and these defts. should share their challenge. COURT ORDERED, Mr. Schieck's motion is DENIED. Court advised, as to Juror 527, he will be left on the panel until he is called and the Court will inform him that because of his previous voir dire he is going to be excused. Mr. Schieck requested a break be taken after jury selection and prior to witnesses as the evidence is not down here yet and they need to organize it. State advised he received from Mr. Wall this morning a report from Dr. Etcoff and has not had a chance to read much but would note the interview took place as late in the proceedings as last Friday. State advised Mr. Wall has been informing the State what is going on but we did not get a report until today and the State may need to do something in response to this in the form of another medical person. State advised his desire would be to simply cross-examine the psychologist and leave it at that. State advised he needs to know how this will hurt the State's position and will let the Court know Monday morning. Court advised the State to let the Court know today as it would delay the trial 2-3 days if the State needs a medical person to examine deft. Flanagan. State advised he will do his best to work around the problem. COURT ORDERED, based on what the Court just heard, there will be four alternates and each side will get two peremptory challenges. Conference at the bench. 9:16 a.m.--Clerk called roll of the jury panel. Jury selection continued. Jury and alternates sworn. Preliminary instructions given by the Court. Opening statements by counsel. Testimony and exhibits presented. (See worksheets.) Court admonished the jury and excused them for the day at 12:50 p.m. to reconvene at 10:00 a.m. Monday morning. OUTSIDE THE PRESENCE OF THE JURY, Court advised he has been given what purports to be jury instructions and

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returned them to the State to hold until they are needed. State addressed the psychiatric report and advised he has been able to read only about half and one of the problems with this is no questions were asked of the jury as to training in psychiatry that would usually be asked in a defense of insanity. Court advised we will address this issue on Monday morning. Court advised, for the record, new markings will be used on the evidence for this hearing. Court adjourned at 12:54 p.m.

CUSTODY (BOTH)

CONTINUED TO: 6-19-95 10:00 AM

06/19/95 10:00 AM 00 ALL PENDING MOTIONS - PENALTY HEARING

HEARD BY: Addeliar D Guy, III, Judge; Dept. 11

OFFICERS: TINA HURD, Court Clerk
ANITA SPRINGS-WALKER, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	002473	Seaton, Daniel M.	Y
	001 D1	Flanagan, Dale E	Y
	PUBDEF	Public Defender	Y
	002805	Wall, David T.	Y
	004065	Blaskey, Rebecca A.	Y
	002 D	Moore, Randolph	Y
	000824	Schieck, David M.	Y
	000460	Wolfbrandt, William L.	Y

Court convened at 10:10 a.m. OUTSIDE THE PRESENCE OF THE JURY. State advised, at the end of last week, the Court suggested he take the weekend to study Dr. Etcoff's report and be ready to discuss the difficulties. State advised there are some difficulties, however, he believes they are resolvable and he has been made aware that the best thing the State could have is the raw data that came from Dr. Etcoff's examination of deft. Flanagan. Flanagan was given several tests and the State needs the answer sheets to these and also needs the raw data. In essence, the State needs the whole case file including the doctor's notes. State moved the Public Defender obtain that information and turn it over to the District Attorney's office as soon as possible, hopefully by the end of the work day today, and, if he receives this data, the State can go forward. State further advised if there have been any prior examinations from 1984 on, the State needs those to compare and contest. State advised he has been prejudiced greatly by this and believes, if he can obtain this information, the prejudice will be lessened to a degree where the State can go forward. Court advised the allegation of prejudice is the timeliness of it, waiting until the 9th of June, on the verge of trial. Mr. Wall advised it would have been almost

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impossible to have the psychiatrist of choice travel to Ely or to have the deft. travel here for an examination. Further, Mr. Wall advised they have never seen another psychiatric examination, however, deft. Flanagan indicates there may have been a general competency examination done in 1985. As to the raw data, Mr. Wall advised that is not in their possession, however, they can contact Dr. Etcoff over the lunch hour. Court strongly urged the State to serve Dr. Etcoff a subpoena duces tecum to have those records produced by the end of the day. State advised Dr. Etcoff may be hard to get ahold of and requested the Court also order the Public Defender to contact Dr. Etcoff over the noon hour. COURT ORDERED, the Public Defender to call Dr. Etcoff and advise him the Court wants that information. Court also suggested the State have a law clerk, if they have one, go through the Court's file as there may be a report in there if one was ordered. Mr. Schieck advised in the Saturday Review-Journal newspaper there was an article written by Carrie Geer that makes reference to the fact these defts. were sentenced to the death penalty and to the reversal. Mr. Schieck requested the Court inquire of the jurors if they saw the article. Court stated the record will reflect, the Court has a copy of the Saturday, June 17, Review-Journal and appearing on page 9B is the article. Court directed the bailiff to make copies of the article for counsel. Court further advised for the record, the Court did receive a copy of Dr. Etcoff's evaluation that appears to have been dated 6-13-95. 10:31 a.m.--Clerk called roll of the jury; counsel stipulated to the presence thereof. State advised he is going to put on Dr. Green's testimony today and he is out of the jurisdiction. State advised he has brought in two persons from the District Attorney's office to read Dr. Green's testimony from the last hearing and he will show the pictures to the jury that Dr. Green showed during his prior testimony. Further testimony and exhibits presented. Jury admonished and excused for lunch at 11:59 a.m. OUTSIDE THE PRESENCE OF THE JURY, Court advised witness John Lucas to return at 2:00 p.m. and he was excused. Mr. Wolfbrandt advised this witness has advised he had to spend the last seven months he was in prison in lock down because of having a snitch jacket for testifying in this matter and Mr. Wolfbrandt wants to explore this witness's prior convictions as they include lewdness with a minor for which his probation was revoked for soliciting a minor for acts against nature. Ms. Mounts joined in the motion. State argued defense counsel just want to prejudice this witness more than he already is. If they inquire if he had to go into protective custody for any other reason than this case and the answer is no, that is the end of the line of questioning. Ms. Mounts advised this witness did receive a benefit from his testimony in this case, he received probation on a felony offense. COURT ORDERED, the question Mr. Seaton suggested will be allowed. Mr. Wolfbrandt advised the witness advised he had to go into closed custody because of threats. Court advised he will allow a certain lattitude. State advised Mr Davidson is here and Court Services has brought over Mr. Havens and he is the next witness. Mr. Davidson advised he will rearrange his appointments to be here at 2:00 p.m. Court adjourned at 12:08 p.m. for lunch. 2:12 p.m.--Counsel stipulated to the presence of the jury. Further testimony and exhibits. Court admonished the jury and excused them for the day at 3:53 p.m. to reconvene at 10:00 a.m. tomorrow morning. OUTSIDE THE PRESENCE OF

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CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 026

THE JURY, witness John Lucas not being present when called to testify after lunch, Court directed the State to have their investigator attempt to find Mr. Lucas tonight and, if he is not found, the Court expects to have a bench warrant awaiting his signature. Court adjourned at 3:55 p.m.

CUSTODY (BOTH)

CONTINUED TO: 6-20-95 10:00 AM

06/20/95 10:00 AM 00 ALL PENDING MOTIONS - PENALTY HEARING

HEARD BY: Addeliar D Guy, III, Judge; Dept. 11

OFFICERS: TINA HURD, Court Clerk
ANITA SPRINGS-WALKER, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	002473	Seaton, Daniel M.	Y
	001 D1	Flanagan, Dale E	Y
	PUBDEF	Public Defender	Y
	002805	Wall, David T.	Y
	004065	Blaskey, Rebecca A.	Y
	002 D	Moore, Randolph	Y
	000824	Schieck, David M.	Y
	000460	Wolfbrandt, William L.	Y

Court convened at 10:21 a.m. Clerk called roll of the jury; counsel stipulated to the presence thereof. Further testimony and exhibits. Jury admonished and excused for lunch at 11:49 a.m. OUTSIDE THE PRESENCE OF THE JURY, colloquy between Court and counsel as to the reading of certain testimony into the record and the remaining witnesses. 1:53 p.m.--Counsel stipulated to the presence of the jury. Pursuant to prior discussions with the Court, State read the sentencings into the record from the Judgments of Conviction of co-defts. Luckett, Ray and Walsh resulting from the 1985 trial. State rested. Mr. Schieck advised some of the defense witnesses are joint witnesses and pertain to both defts. Court advised counsel to inform the Court if they are a joint or singular witness. State invoked the exclusionary rule. Further testimony and exhibits. Court admonished the jury and excused them for the day at 3:49 p.m. to reconvene at 11:00 a.m. tomorrow morning. OUTSIDE THE PRESENCE OF THE JURY, Court advised counsel the only evidence that will go back to the jury is evidence admitted in this hearing and NOT everything from the trial. State advised he has been operating under the assumption that all the evidence would go back as that happened at the last hearing, however, he will move to admit it all tomorrow in front of the jury. Further, State advised he has provided the Court with Homick and Guy relating to allocution and the State wants counsel to be aware that the law is radically different than it was the last time. State

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moved the Court address the defts. and how they are limited pursuant to Homick. Court advised he will do that tomorrow morning after reading Homick and Guy. Mr. Schieck advised his position will probably be that these cases do not apply as they happened after this case. Court advised he will hear from counsel tomorrow after he has read these cases. Court adjourned at 3:53 p.m.

CUSTODY (BOTH)

CONTINUED TO: 6-21-95 11:00 AM

06/21/95 11:00 AM 00 ALL PENDING MOTIONS - PENALTY HEARING

HEARD BY: Addeliar D Guy, III, Judge; Dept. 11

OFFICERS: TINA HURD, Court Clerk
ANITA SPRINGS-WALKER, Reporter/Recorder

PARTIES:		STATE OF NEVADA	Y
	002473	Seaton, Daniel M.	Y
	001 D1	Flanagan, Dale E	Y
	PUBDEF	Public Defender	Y
	002805	Wall, David T.	Y
	004065	Blaskey, Rebecca A.	Y
	002 D	Moore, Randolph	Y
	000824	Schieck, David M.	Y
	000460	Wolfbrandt, William L.	Y

Court convened at 11:23 a.m. OUTSIDE THE PRESENCE OF THE JURY. Court stated we left last night with a question concerning allocution and as soon as the jury is excused for lunch today we will argue that point. Court further advised he has read Guy and Homick. 11:26 a.m.--Clerk called roll of the jury; counsel stipulated to the presence thereof. Further testimony and exhibits. Jury admonished and excused for lunch at 12:24 p.m. OUTSIDE THE PRESENCE OF THE JURY, Court advised counsel and defts. to be back at 1:30 p.m. to argue the allocution. Colloquy between Court and counsel as to when closing arguments will be. Court adjourned for lunch at 12:27 p.m. Court reconvened at 1:41 p.m. OUTSIDE THE PRESENCE OF THE JURY. Mr. Schieck advised his position is the right of allocution as it existed at the time of the original trial is the law in this case. The Homick and Guy decisions were rendered after the trial and after the second penalty hearing. Mr. Schieck argued it would be a violation of due process to allow the State to benefit from the change in the law. Upon Court's inquiry, both defense counsel advised they do not have any case law. Mr. Wall joined in Mr. Schieck's argument. State argued he believes defts' position is misplaced and the Court should follow the law as it is today. Court read from Homick and Guy decisions into the record. Court advised defts. Flanagan and Moore

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of their right to make a sworn or unsworn statement and advised an unsworn statement may be made as to mercy and other matters that do not attempt to contradict the evidence in the case. Mr. Schieck advised he wishes to make a record as to what deft. Moore would have said if the Court had not ruled in accordance with Homick and would like to do so after deft. has made his statement. Court advised counsel may do that. Upon Court's inquiry, State provided jury instructions to the Court. Court advised there is one instruction objected to. Court read the instruction and advised he does not intend to give that instruction at this time. Mr. Schieck made a record as to why he wanted that instruction. Ms. Mounts joined in with Mr. Schieck. State advised the law in this state is the verdict cannot be influence by sympathy or public opinion; the jury can use its powers of mercy if they want but not sympathy. Court advised he is not going to give that instruction as proffered by the defense. Mr. Wall brought to the Court's attention the instruction that states the jury will receive all the evidence from the trial. Colloquy between Court and State. State advised he had contemplated last night moving to admit all the evidence introduced in this hearing, however, if we move to admit ALL the evidence, we would have to go through it very carefully so as not to introduce evidence that caused the reversal in this case. Mr. Wall suggested the language as to the evidence from the trial be taken out. State argued the jury has heard about all the evidence and he believes they are entitled to all the evidence. Court advised that would mean this case would not go to the jury today and counsel would have to very carefully go through the evidence. State advised he will have one short rebuttal witness, Chaplain Al Fry, from the prison and he will make this witness available to opposing counsel this evening. Further, State advised back in 1984 or 1985 there was no such thing as a victim impact statement and he was not in touch with anyone. In going through the file there was a name, Patricia Campbell, who is deft. Flanagan's aunt, his mother's sister and the victims' daughter, and she is coming from Florida ready to testify and State moved to re-open his case-in-chief. Court reserved ruling on that motion until after defense counsel's case-in-chief. 2:10 p.m.--Counsel stipulated to the presence of the jury. Further testimony and exhibits. OUTSIDE THE PRESENCE OF THE JURY, Court advised the State has suggested he wants to use the mother's sister for a victim impact statement. Court advised counsel to reread Homick from pages 135-136. Court advised he will not hear anything on it today, however, prior to the jury coming back tomorrow, we wil revisit this issue. 3:28 p.m.--Counsel stipulated to the presence of the jury. Further testimony by Dr. Etcoff. Court admonished the jury and excused them for the evening at 4:59 p.m. to reconvene at 10:15 tomorrow morning. OUTSIDE THE PRESENCE OF THE JURY, Court stated he has advised Mr. Schieck he would not allow his client to testify to anything that is not within Homick and Guy. Court advised he will allow Mr. Schieck to put deft. Moore on the stand and say what he would say if the Court let him say whatever he wants. Colloquy between Court and deft. Moore for clarification. Court advised, under Homick, deft. can express remorse and plead for mercy but he cannot attempt to contradict the evidence presented in the case. Mr. Schieck advised the only area of concern is the truthfulness of Wayne Wittig which is contained in the allocution from 1989. Other than that, deft. Moore will only talk about

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mitigation and rehabilitation. Statement by deft. Moore as to what he intends to say in his allocution. Colloquy between Court and deft. Moore. Statement by deft. Moore as to what he would have said about Wayne Wittig and actually catching Wittig in bed with his wife and that the incident with the truck Wittig testified to is made up. COURT ORDERED, this will not be submitted to the jury. Colloquy between Court and Mr. Schieck as to the law on allocution. Mr. Schieck advised he is satisfied with the record. Mr. Wall advised in his discussions on allocution with deft. Flanagan they in no way violate Guy or Homick. Court adjourned at 5:11 p.m.

CUSTODY (BOTH)

CONTINUED TO: 6-22-95 10:15 AM

06/22/95 10:15 AM 00 ALL PENDING MOTIONS - PENALTY HEARING

HEARD BY: Addeliar D Guy, III, Judge; Dept. 11

OFFICERS: TINA HURD, Court Clerk
ANITA SPRINGS-WALKER, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	002473	Seaton, Daniel M.	Y
	001 D1	Flanagan, Dale E	Y
	PUBDEF	Public Defender	Y
	002805	Wall, David T.	Y
	004065	Blaskey, Rebecca A.	Y
	002 D	Moore, Randolph	Y
	000824	Schieck, David M.	Y
	000460	Wolfbrandt, William L.	Y

Court convened at 10:47 a.m. OUTSIDE THE PRESENCE OF THE JURY. Mr. Wolfbrandt advised he intends to make a motion at the end of the trial and the case still has rebuttal. Mr. Wall inquired if the Court wishes to rule this morning on whether the State can re-open its case to introduce victim impact testimony. Court advised he would hear from counsel. State advised this particular witness was not learned about or able to be in town until after the close of the State's case. This witness is the daughter of the couple that was killed and the aunt of deft. Flanagan. State argued he believes this witness has some very cogent things about the family the jury needs to hear. State advised her testimony has rebuttal value as she can comment and expand on the family life of the Gordons and the defense has had plenty of time to find out about her. State advised he has made this witness and Chaplain Fry available to the defense and, whether on the grounds of rebuttal or letting the State re-open its case, the State would request the Court allow this witness to testify. Mr. Wall advised they became aware of this witness at 1:00 p.m. yesterday and do not believe the

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State should be allowed to re-open for a victim impact statement, however, if it is rebuttal, he has no problem with it. Mr. Wall advised, as a victim impact statement, he believes Payne overruled Booth and, because it is new law and prior hearings were reversed because of prosecutorial misconduct and because Judge Mosley allowed improper evidence to come in, Mr. Wall stated he believes this is not admissable now as it was not admissable then. Mr. Schieck joined in Mr. Wall's argument and provided case law in Amunds to the Court. State advised Mr. Wall has disparaged his character and claimed he withheld a powerful witness to the end and advised the circumstances of finding this witness who was reluctant to come. State referred back to the circumstances under which Mr. Wall called Dr. Etcoff who did not examine deft. Flanagan until June 9 and the State did not receive a report until Friday. Court advised he will not permit counsel to make personal comments about each other in his court and advised counsel, if they believe a lawyer is that bad, they should file a complaint with the Bar and get rid of him. Court advised counsel to stick to the law and be professional or get out of the business. COURT ORDERED, State's motion to re-open for a victim impact statement is DENIED as the State is required to give notice. Court advised the State had another motion to re-open to admit all the evidence in light of one of the jury instructions and ORDERED, that will be allowed. Court reminded counsel the exclusionary rule is still in effect and requested counsel police the courtroom for their witnesses. Colloquy between Court and counsel as to jury instructions. 11:18 a.m.--Clerk called roll of the jury; counsel stipulated to the presence thereof. Deft. Randolph Moore made an unsworn statement. Mr. Schieck rested. Deft. Dale Flanagan made an unsworn statement. Mr. Wall rested. State moved to admit all of the evidence that was admitted during the trial stage of this case. Conference at the bench. There being no objections, COURT ORDERED, motion GRANTED. State advised he has copies of the verdicts from the original trial indicating these defts. were found guilty of the various crimes they were charged with and moved for their admission. There being no objections, COURT ORDERED, GRANTED. State rested. OUTSIDE THE PRESENCE OF THE JURY, Jury Instructions settled on the record. 12:12 p.m.--Clerk called roll of the jury; counsel stipulated to the presence thereof. Court read instructions to the jury. Closing arguments by counsel. At the hour of 2:28 p.m. this date, jury retired to deliberate. OUTSIDE THE PRESENCE OF THE JURY, Mr. Wall advised the Court had already ruled on the admissability of the prior sentences of the other defts. and believes of that he did not object when the State raised them in closing arguments but would reserve a contemporaneous objection. Court inquired of defts. Flanagan and Moore if they are satisfied with the services of counsel to which both defts. responded in the affirmative.

LATER: On the record, defts. and counsel not present. Court advised it is now 5 minutes of 8:00 and the jury has not reached a verdict so we will stop for the day. Court admonished the jury and excused them for the evening at 7:55 p.m. to reconvene at 8:45 a.m. tomorrow morning.

CUSTODY (BOTH)

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CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 031

CONTINUED TO: 6-23-95 8:45 AM

06/23/95 08:45 AM 00 ALL PENDING MOTIONS - PENALTY HEARING

HEARD BY: Addeliar D Guy, III, Judge; Dept. 11

OFFICERS: TINA HURD, Court Clerk
DEBRA WINN, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	000281	Koot, William T.	Y
	001 D1	Flanagan, Dale E	Y
	PUBDEF	Public Defender	Y
	002805	Wall, David T.	Y
	004065	Blaskey, Rebecca A.	Y
	002 D	Moore, Randolph	Y
	000824	Schieck, David M.	Y
	000460	Wolfbrandt, William L.	Y

10:46 A.M.--Clerk called roll of the jury; counsel stipulated to the presence thereof. At the hour of 10:46 a.m. this date, jury returned with VERDICTS OF DEATH FOR COUNT VI and DEATH FOR COUNT VII AS TO BOTH DEFTS. FLANAGAN and MOORE. Jury polled at request of the Court. Court thanked and excused the jury at 11:06 a.m. Colloquy between Court and counsel as to a sentencing date. Court advised the State to advise P&P this will only be an update as there are PSI reports on file and defts. have been in prison.

CUSTODY (BOTH)

7-11-95 9:00 AM SENTENCING (BOTH)

CONTINUED ON PAGE: 033

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 032

07/11/95 09:00 AM 00 ALL PENDING MOTIONS 7-11-95

HEARD BY: Addeliar D Guy, III, Judge; Dept. 11

OFFICERS: TINA HURD, Court Clerk
ANITA SPRINGS-WALKER, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	002473	Seaton, Daniel M.	Y
	001 D1	Flanagan, Dale E	Y
	PUBDEF	Public Defender	Y
	002805	Wall, David T.	Y
	004065	Blaskey, Rebecca A.	Y
	002 D	Moore, Randolph	Y
	000824	Schieck, David M.	Y
	000460	Wolfbrandt, William L.	Y

SENTENCING - COUNTS VI & VII (DEFTS. FLANAGAN & MOORE)

John Delvillan of the Division of Parole & Probation present. Court advised he received a call yesterday from Ms. Mounts advising the Court she has not received a PSI report. Ms. Mounts concurred and stated she believes the file was never referred to P&P. Court read from a Supreme Court case that states a supplemental report is not required on a re-sentencing. Court further advised the jury has decided and a PSI report is not required. Mr. Wall advised P&P usually calculates the credit for time served. Court advised these defts. have been in prison for at least ten years and the Court will be happy to give them whatever time they have coming. Court read the Judgment of Conviction and Order of Execution for deft. Flanagan into the record. Mr. Wall advised he has an Order to stay the execution. Court advised he does not usually stay executions, he leaves that to the Supreme Court, however, in this case, the Court will sign it. Stay of Execution for deft. Flanagan signed in open court. COURT ORDERED, matter CONTINUED to August 15 to see if the appeal has been perfected and for the calculation of credit for time served. Court advised defts. need not be present. Deft. Flanagan waived his right to be present for the status check. Ms. Mounts stated she wishes to bring to the Court's attention that they spoke with a number of the jurors and they expressed a distaste that the defts. did not show any remorse. Ms. Mounts advised the defts. have not had a chance to pursue post-conviction relief and they could do little else. Court finding errors in the orders brought to the Court for this hearing, COURT ORDERED, this hearing continued to 11:00 a.m. as to both defts, there being errors in deft. Flanagan's orders also. Court directed the State to contact Mr. Wall and Ms. Mounts and have them back as well.

11:15 A.M.--Matter recalled with all present as before except Mr. Wall. Court advised there were typographical errors in the paperwork stating the convictions were reversed, which they were not, only the penalty was

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reversed and remanded. Court read into the record only the part of the order that was corrected and advised the Warrant of Execution is correct. Ms. Mounts had no objections and waived the reading of the documents over again. Court read the Judgment of Conviction, Order of Execution and Warrant of Execution for deft. Moore into the record. Mr. Schieck advised he will submit a stay of execution this afternoon and moved to be appointed as counsel on appeal. COURT SO ORDERED. Mr. Schieck inquired if the Court needs to rule on concurrent or consecutive time in case a later jury gives them Life. State advised they believe everything should be consecutive. Court advised that has already been determined by prior judges, however, as to these two counts, COURT ORDERED, Counts VI and VII will be CONSECUTIVE. Deft. Flanagan's counsel not being present at this point, State advised this ruling should be the same for deft. Flanagan and perhaps his counsel can raise it on the 15th. Both defts. waived their presence for the hearing on August 15. Judgments of Conviction, Orders of Execution and Warrants of Execution as to both defts. signed and FILED IN OPEN COURT.

NDP (BOTH)

8-15-95 9:00 AM STATUS CHECK: CREDIT FOR TIME SERVED AND PERFECTION OF APPEAL (BOTH)

CONTINUED ON PAGE: 035

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 034

08/15/95 09:00 AM 00 ALL PENDING MOTIONS 8-15-95

HEARD BY: James Brennan; Dept. VJ6

OFFICERS: JOYCE BROWN, Court Clerk
DEBBIE WINN, Reporter/Recorder

PARTIES:		
	STATE OF NEVADA	Y
002473	Seaton, Daniel M.	Y
004352	Owens, Steven S.	Y
001 D1	Flanagan, Dale E	N
PUBDEF	Public Defender	Y
002805	Wall, David T.	Y
002 D	Moore, Randolph	N
000824	Schieck, David M.	Y

STATUS CHECK: CREDIT FOR TIME SERVED...PERFECTION OF APPEAL (BOTH)

AS TO DEFENDANT FLANAGAN: Mr. Wall advised appearance of Defendant waived, both Defendants were sentenced to the death penalty on July 11, and execution set for the week of August 27. He further advised the notice of appeal was filed on August 9, the stay has been served, and he received a FAX that they had received the order for stay. Mr. Wall calculated the credit for time served as of July 11, to be 3,866 days that Defendant was in custody. Mr. Owens advised he had not tried to compute the days as he thought the Division of Parole and Probation would do that, and Mr. Seaton advised he would want P & P to do it.

AS TO DEFENDANT MOORE: Mr. Schieck advised he also thought P & P would do the calculating on credit for time served, and Mr. Moore would have thirty days less than Mr. Flanagan. Court read from the minutes that Defense was to figure the Credit For Time Served. Mr. Schieck stated it was his mistake and advised that the stay and appeal have been perfected. COURT ORDERED, matter CONTINUED and Counsel to have correct time calculated.

NCP (BOTH)

CONTINUED TO: 8-17-95 9:00 AM

CONTINUED ON PAGE: 036

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 035

08/17/95 09:00 AM 00 ALL PENDING MOTIONS 8-17-95

HEARD BY: James Brennan; Dept. VJ6

OFFICERS: JOYCE BROWN, Court Clerk
ANITA SPRINGS-WALKER, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	004352	Owens, Steven S.	Y
	001 D1	Flanagan, Dale E	N
	PUBDEF	Public Defender	Y
	004065	Blaskey, Rebecca A.	Y

STATUS CHECK: CREDIT FOR TIME SERVED AND PERFECTION OF APPEAL (FLANAGAN)...
STATUS CHECK: CREDIT FOR TIME SERVED AND PERFECTION OF APPEAL (MOORE)

AS TO DEFENDANT FLANAGAN: Ms. Mounts advised the perfection of appeal was taken care of at the last court date for both Defendants and the Credit For Time Served in the amount of 3,866 DAYS given by Mr. Wall was correct. State concurred. COURT SO ORDERED.

AS TO DEFENDANT MOORE: Mr. Owens stated they were in agreement with the number of days calculated and provided by Mr. Schieck, which is 3,853 DAYS. COURT SO ORDERED.

Presence of Defendants waived as they are in the Nevada Department of Prisons.

NDP

CONTINUED ON PAGE: 037

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 036

06/04/98 09:00 AM 00 ALL PENDING MOTIONS 6-4-98

HEARD BY: Myron E. Leavitt, Judge; Dept. 12

OFFICERS: JOYCE BROWN, Court Clerk
SUZY NICHOLS, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	003813	Silver, Abbi	Y
	001 D1	Flanagan, Dale E	N
	001988	Potter, III, Cal J.	Y
	002 D	Moore, Randolph	N
	000824	Schieck, David M.	Y

DEFT FLANAGAN'S REQUEST FOR APPOINTMENT OF COUNSEL FOR POST-CONVICTION RELIEF...DEFT MOORE'S PETITION FOR WRIT OF HABEAS CORPUS

Mr. Potter advised he had substituted into the case for Defendant Flanagan. COURT ORDERED matter CONTINUED for Judge Douglas.

NDP (BOTH)

CONTINUED TO: 6-11-98 9:00 AM

CONTINUED ON PAGE: 038

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 037

06/11/98 09:00 AM 00 ALL PENDING MOTIONS (06-11-98)

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: SUSAN BURDETTE/sb, Court Clerk
DEBRA WINN, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	005927	De La Garza, Melisa	Y
	001 D1	Flanagan, Dale E	N
	001988	Potter, III, Cal J.	Y
	000836	Miller, Michael L.	Y
	002 D	Moore, Randolph	N
	000824	Schieck, David M.	Y

DEFT FLANAGAN'S REQUEST FOR APPOINTMENT OF COUNSEL FOR POST-CONVICTION RELIEF ... DEFT MOORE'S PETITION FOR WRIT OF HABEAS CORPUS

AS TO DEFT. FLANAGAN'S REQUEST FOR APPOINTMENT OF COUNSEL FOR POST-CONVICTION RELIEF: Deft. not present. David Newell, Esq., present. Mr. Potter stated Mr. Miller was previously counsel for Deft.; he was approached by Mr. Miller pursuant to an ABA Program to get involved in this case and noted David Newell from Oregon will be coming in. He further noted the guilt phase has never been challenged; there are about 25 boxes that counsel will need to go through; he requested six (6) months to review the boxes and file any necessary Petitions. Mr. Miller stated the Motion was filed May 25, and should be in the file. Upon Court's inquiry, Mr. Potter stated his request is only as to Deft. Flanagan. COURT ORDERED, Mr. Potter APPOINTED as COUNSEL for Deft. Flanagan based on representations there would not be a conflict; Mr. Miller RELIEVED as COUNSEL.

AS TO DEFT. MOORE: Mr. Schieck stated he has represented Deft. Moore since 1968; there have been three (3) penalty hearings in this case and three (3) adjudications of death in those penalty hearings; noted Deft. Moore is not concerned with challenging the penalty phase but what happened in the trial, and wishes for him to continue representing him. He further stated that six (6) months is not enough time to review and file Supplemental Petitions. Court found that based on the representations and number of times this matter has gone to the Supreme Court, ORDERED, matter set for STATUS CHECK as to all matters.

NDP (BOTH)

11-25-98 9:00 AM STATUS CHECK: SUPPLEMENTAL MOTIONS/PETITIONS ... DEFT FLANAGAN'S PETITION FOR WRIT OF HABEAS CORPUS ... DEFT MOORE'S PETITION FOR WRIT OF HABEAS CORPUS

CONTINUED ON PAGE: 039

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 038

11/25/98 09:00 AM 00 ALL PENDING MOTIONS (11-25-98)

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: JOYCE BROWN, Court Clerk
CATHY NELSON, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	006056	McDonald, Elizabeth B.	Y
	001 D1	Flanagan, Dale E	N
	001988	Potter, III, Cal J.	Y
	002 D	Moore, Randolph	N
	000824	Schieck, David M.	Y

DEFT FLANAGAN'S REQUEST FOR APPOINTMENT OF COUNSEL FOR POST-CONVICTION RELIEF...DEFT MOORE'S PETITION FOR WRIT OF HABEAS CORPUS...DEFT FLANAGAN'S REQUEST FOR ASSOCIATION OF COUNSEL...DEFT MOORE'S REQUEST FOR ASSOCIATION OF COUNSEL...STATUS CHECK: SUPPLEMENTAL MOTIONS/PETITIONS (BOTH)

Court advised there were a number of things pending; Court did not have a response from State; as to issues before the Court, the primary motion as to appointment of Counsel, Mr. Potter had advised there was no opposition and COURT ORDERED motion GRANTED; Deft Flanagan's Request for Association of Counsel GRANTED. Order signed in open Court. Mr. Potter requested an additional six months as they were trying to get additional information from Juvenile.

As to Deft Moore's Request for association of Counsel, Mr. Schieck advised there was no motion pending. COURT ORDERED matter OFF CALENDAR.

As to Defts' Flanagan and Moore's Petition For Writ of Habeas Corpus, time was needed to file whatever supplemental points were needed. These to be filed by May 26, 1999, and COURT ORDERED matter set for Defts' Submission of Supplemental Points on Writ of Habeas Corpus on May 27, 1999, and they would set a date at that time for the State to respond.

NDP (BOTH)

5-27-99 9:00 AM DEFTS' SUBMISSION OF SUPPLEMENTAL POINTS ON WRIT OF HABEAS CORPUS...DEFT MOORE'S PETITION FOR WRIT OF HABEAS CORPUS...DEFT FLANAGAN'S PETITION FOR WRIT OF HABEAS CORPUS

CONTINUED ON PAGE: 040

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 039

05/17/99 09:00 AM 00 ALL PENDING MOTIONS (05-17-99)

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: SUSAN BURDETTE/sb, Court Clerk
CATHY NELSON, Reporter/Recorder

PARTIES: 001 D1 Flanagan, Dale E N
001988 Potter, III, Cal J. Y

HEARING: DEFT'S EX PARTE MOTION FOR CORONER'S RECORDS ... HEARING: DEFT'S EX PARTE MOTION FOR REIMBURSEMENT AND WAIVER OF COUNTY RECORDS CHARGES ... HEARING: DEFT'S EX PARTE MOTION FOR SOCIAL HISTORIAN INVESTIGATION FUNDS ... HEARING: DEFT'S EX PARTE MOTION FOR PRISON ACCESS ... HEARING: DEFT'S EX PARTE MOTION FOR NEUROPSYCHOLOGICAL EXAMINATION FUNDS ... HEARING: DEFT'S EX PARTE MOTION RELEASE OF JUVENILE RECORDS

Deft. not present. Court noted the nature of these matters and what is being asked for.

AS TO DEFT'S EX PARTE MOTION FOR CORONER'S RECORDS: COURT ORDERED, Motion GRANTED with the exception of the negatives; if that becomes an issue, the Court will reconsider and order the negatives be available for review if determined appropriate by counsel; ALL OTHER INFORMATION, REPORTS AND BENCH NOTES as well as RAW DATA to be AVAILABLE.

AS TO DEFT'S EX PARTE MOTION FOR REIMBURSEMENT AND WAIVER OF COUNTY RECORDS CHARGES: COURT ORDERED GRANTED for REIMBURSEMENT noting the estimated amount of $6,500.00 -- expenditures and search fees of $780.00 and copy fees of $639.00, and for additional copies, the Court will approve an amount NOT TO EXCEED $6,500.00 at this time.

AS TO DEFT'S EX PARTE MOTION FOR SOCIAL HISTORIAN INVESTIGATION FUNDS: COURT ORDERED, Motion GRANTED in an amount NOT TO EXCEED $17,550.00.

AS TO DEFT'S EX PARTE MOTION FOR PRISON ACCESS: COURT ORDERED, Motion GRANTED subject to rules of the prison and if there is a difficulty, the Attorney General's office to be notified; as to UNMONITORED CONTACT BY COUNSEL, the Court found it is appropriate subject to normal security in prison; if there is a problem, counsel to put this back on calendar.

AS TO DEFT'S EX PARTE MOTION FOR NEUROPSYCHOLOGICAL EXAMINATION FUNDS: COURT ORDERED, Motion GRANTED, not to exceed $7,500.00.

AS TO DEFT'S EX PARTE MOTION FOR RELEASE OF JUVENILE RECORDS: COURT ORDERED, Motion GRANTED.

NDP

05-27-99 9:00 AM DEFT'S SUBMISSION OF SUPPLEMENTAL POINTS ON WRIT OF HABEAS

CONTINUED ON PAGE: 041

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 040

CORPUS

05/27/99 09:00 AM 00 ALL PENDING MOTIONS (5-27-99)

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: JOYCE BROWN, Court Clerk
CATHY NELSON, Reporter/Recorder

PARTIES:		STATE OF NEVADA	Y
	003649	Kephart, William D.	Y
	001 D1	Flanagan, Dale E	N
	001988	Potter, III, Cal J.	Y
	002 D	Moore, Randolph	N
	000824	Schieck, David M.	Y

DEFT FLANAGAN'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS...DEFT FLANAGAN'S SUBMISSION OF SUPPLEMENTAL POINTS ON WRIT OF HABEAS CORPUS... DEFT MOORE'S PETITION FOR WRIT OF HABEAS CORPUS...DEFT MOORE'S SUBMISSION OF SUPPLEMENTAL POINTS ON WRIT OF HABEAS CORPUS

Court noted a number of orders had been filed as to Defendant Flanagan. Mr. Potter asked for an additional six months to conclude investigations and file a supplemental. He also needed to go through Discovery. Mr. Schieck advised a continuance would be fine with his client. Mr. Kephart advised State was agreeable to a continuance also. COURT ORDERED matter CONTINUED as requested.

NDP (BOTH

CONTINUED TO: 11-30-99 9:00 AM

CONTINUED ON PAGE: 042

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 041

09/08/99 09:00 AM 00 ALL PENDING MOTIONS (09-08-99)

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: SUSAN BURDETTE/sb, Court Clerk
CATHY NELSON, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	005056	Luzaich, Elissa	Y
	001 D1	Flanagan, Dale E	N
	001988	Potter, III, Cal J.	Y

DEFT FLANAGAN'S MOTION TO ASSOCIATE COUNSEL ... DEFT MOORE'S MOTION TO ASSOCIATE COUNSEL

Neither Deft. Flanagan nor Deft. Moore present. Mr. Potter stated he has submitted the Motion to the State Bar and there is no opposition. There being no opposition, COURT ORDERED, Deft Flanagan and Deft Moore's Motion to Associate Counsel Patricia Lynn McGuire GRANTED. Upon Ms. Luzaich's inquiry, Court stated the Motion is both Deft. Flanagan and Moore. Order signed in Open Court.

NDP (BOTH)

11-30-99 9:00 AM DEFT FLANAGAN'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS ... DEFT FLANAGAN'S SUBMISSION OF SUPPLEMENTAL POINTS ON WRIT OF HABEAS CORPUS ... DEFT MOORE'S PETITION FOR WRIT OF HABEAS CORPUS ... DEFT MOORE'S SUBMISSION OF SUPPLEMENTAL POINTS ON WRIT OF HABEAS CORPUS

CONTINUED ON PAGE: 043

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 042

11/30/99 09:00 AM 00 ALL PENDING MOTIONS 11/30/99

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: AMBER FARLEY, Relief Clerk
CATHY NELSON, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	005056	Luzaich, Elissa	Y
	001 D1	Flanagan, Dale E	N
	001988	Potter, III, Cal J.	Y
	002 D	Moore, Randolph	N
	000824	Schieck, David M.	Y

DEFT FLANAGAN'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS...DEFT FLANAGAN'S SUBMISSION OF SUPPLEMENTAL POINTS ON WRIT OF HABEAS CORPUS...DEFT MORRE'S PETITION FOR WRIT OF HABEAS CORPUS...DEFT MOORE'S SUBMISSION OF SUPPLEMENTAL POINTS ON WRIT OF HABEAS CORPUS

Mr. Schieck stated he needs more time to finish his petition. COURT ORDERED, matter set for status check.

NDP (FLANAGAN, MOORE)

12/20/99 9:00 AM STATUS CHECK: BRIEFING SCHEDULE

CONTINUED ON PAGE: 044

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 043

12/20/99 09:00 AM 00 STATUS CHECK: BRIEFING SCHEDULE

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: JOYCE BROWN/JB, Court Clerk
KATHY STAITE, Relief Clerk
CATHY NELSON, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	005056	Luzaich, Elissa	Y
	001 D1	Flanagan, Dale E	N
	001988	Potter, III, Cal J.	Y
	002 D	Moore, Randolph	N
	000824	Schieck, David M.	Y

AS TO DEFENDANT FLANAGAN, Mr. Potter had filed a supplemental petition and requested a briefing schedule. COURT ORDERED briefing schedule as follows:
01-24-2000 State's Response
02-24-2000 Defendant's Reply
03-09-2000 Argument
Mr. Potter advised he was entitled to written Discovery. Court advised it was a matter of what was being looked at and whether or not an Evidentiary hearing was necessary.
AS TO DEFENDANT MOORE, Mr. Schieck advised he met with Defendant Moore at Ely State Prison and went over in detail the Writ filed by Mr. Flanagan; advised he represented Mr. Flanagan at the Preliminary Hearing; he is convinced he will be a witness in the Flanagan case and can not continue on the case because of this; he had just met with Mr. Moore on Thursday so had not had a chance to inform the Court; he did talk to Jo Nell Thomas; she does not want to take any more of these cases, but agreed to to take it if the Court appointed her. He further advised she was familiar with the case. COURT ORDERED Mr. Schieck relieved; Ms. Thomas appointed; and matter CONTINUED for Confirmation of Counsel and a Status Check. At Counsel's inquiry, Court advised this was not a case this Court would be keeping.

NDP (BOTH)

12-22-99 9:00 AM CONFIRMATION OF COUNSEL (J THOMAS)...STATUS CHECK (MOORE)

03-09-2000 9:00 AM ARGUMENT: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS (FLANAGAN)

CONTINUED ON PAGE: 045

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 044

01/19/00 09:00 AM 00 STATE'S REQUEST FOR EXTENSION OF TIME TO FILE WRIT/RESPONSE

HEARD BY: Kathy Hardcastle, Judge; Dept. 4

OFFICERS: DOROTHY KELLY, Court Clerk
TINA SMITH, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	001 D1	Flanagan, Dale E	N
	001988	Potter, III, Cal J.	Y

Mark Karris, Deputy District Attorney, stated a 60-Day continuance was agreed upon for filing Writ response. COURT ORDERED, Filing due by March 22nd, Response due by May 17th, matter set for argument. Date of March 9th, previously set for argument, vacated.

NDP

05-31-00 9:00 A.M. ARGUMENT: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS

01/31/00 09:00 AM 00 ALL PENDING MOTIONS 01-31-00

HEARD BY: Kathy Hardcastle, Judge; Dept. 4

OFFICERS: DOROTHY KELLY, Court Clerk
TINA SMITH, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	004739	Rutledge, Brian	Y
	001 D1	Flanagan, Dale E	N
	001988	Potter, III, Cal J.	Y
	002 D	Moore, Randolph	N
	000824	Schieck, David M.	Y

DEFT FLANAGAN'S MOTION FOR SEVERANCE...DAVID SCHIEK'S MOTION FOR ATTORNEY'S FEES IN EXCESS OF STATUTORY ALLOWANCE AND FOR EXPENSES

Mr. Rutledge stated this is post-conviction; only Deft Flanagan has filed a Writ; he requested the Motion for Severance be denied as moot. He further stated he does not understand the Motion to Sever. Mr. Potter stated it is his motion; the State has not responded. COURT ORDERED, Deft Flanagan's Motion for Severance is DENIED as MOOT. COURT FURTHER ORDERED, David Schieck's Motion for Attorney's Fees in Excess of Statutory Allowance and for Expenses is GRANTED; Order signed in Open Court. Court instructed that these two defendants not be placed on calendar together.

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CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 045

NDP (BOTH)

05/31/00 09:00 AM 00 ALL PENDING MOTIONS FOR 5/31/00

HEARD BY: Kathy Hardcastle, Judge; Dept. 4

OFFICERS: BILLIE JO CRAIG, Relief Clerk
TINA SMITH, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	000411	Simon, H. L.	Y
	007043	Karris, Mark S.	Y
	001 D1	Flanagan, Dale E	N
	005632	Ence, Matthew D.	Y

ARGUMENT: DEFENDANT FLANAGAN'S PETITION FOR WRIT OF HABEAS CORPUS...DEFENDANT'S MOTION FOR DISCOVERY...DEFENDANT'S MOTION FOR EVIDENTIARY HEARING

Robert Newell, Associate Counsel for Mr. Potter, appearing representing defendant. Arguments regarding effectiveness of counsel at third penalty phase and whether David Wall as a witness will be a conflict of interest. COURT ORDERED, matter CONTINUED for counsel to brief matter. Arguments regarding Motion for Discovery and for Evidentiary Hearing. COURT ORDERED, matter CONTINUED for counsel to file any Motion to Disqualify the District Attorney's Office. Counsel requested a briefing schedule. The Court advised at next Court date it would decide if more time needed.

NDP

6/8/00 9:00 AM ARGUMENT: DEFENDANT'S FLANAGAN'S PETITION FOR WRIT OF HABEAS CORPUS...DEFENDANT'S MOTION FOR DISCOVERY...DEFENDANT'S MOTION FOR EVIDENTIARY HEARING

CONTINUED ON PAGE: 047

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 046

06/06/00 09:00 AM 00 MINUTE ORDER RE: DISQUALIFICATION OF JUDGE HARDCASTLE

HEARD BY: Kathy Hardcastle, Judge; Dept. 4

OFFICERS: DOROTHY KELLY, Court Clerk

PARTIES: NO PARTIES PRESENT

Having reviewed the Petition for Disqualification of Judge, Court disputes having personal knowledge of the case arising out of prior employment. The Court previously disclosed to current counsel employment in the Public Defender's Office at the time of the third penalty hearing in this case and conversations with prior counsel regarding prior counsel's opinions on the imposition of the death penalty in general. The Court holds the highest regard for the legal abilities of all of the prior counsel but had previously expressed the opinion that the affidavit filed in this case lacked factual foundation and was based almost entirely upon prior counsel's opinions and conclusions. Despite this deficiency, the Court had agreed to grant a limited evidentiary hearing to allow current counsel the chance to lay a factual foundation for the affidavit. Current counsel has now raised an issue based on the disclosed prior conversations and employment regarding whether the Court should decide the ineffective assistance of counsel claims being raised in this case. As this is a very serious case, in order to avoid any issues which could be raised in future proceedings and in the interest of justice, the Court does hereby recuse from this case and ORDERS, this matter be REASSIGNED at random.

NDP

CONTINUED ON PAGE: 048

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 047

06/13/00 04:00 PM 00 MINUTE ORDER RE: RECUSAL VI

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: NORA PENA, Court Clerk

PARTIES: NO PARTIES PRESENT

Having reviewed the entire file relating to State of Nevada v Dale Flanagan, the Court feels it cannot properly hear the case due to its prior relationship with the Clark County Public Defender's Office, upon which a majority of the allegations contained within the case concern. Additionally, the Court is of the belief that its relationship to the central witness in the case who is a party in the litigation is of significance.

David Wall is an attorney which this Court has had an ongoing relationship for the last ten months during the pendency of the State of Nevada v. Tabish/Murphy trial. This Court has had numerous conversations with David Wall concerning the death penalty in the Tabish/Murphy case as well as hearing motions concerning his personal integrity. Additionally, this Court is to hear a Motion for New Trial which this Court believes will carry allegations of impunity on the character of Mr. Wall. The present record involves questions of fact upon which much testimony will be presented regarding both Mr. Wall and the Clark County Public Defender's Office. It may develop that the right determination of those questions is so close, the reasons set forth could be an appearance that could impact upon the Court's opinion. Therefore in the interest of justice the Court does hereby recuse from this case and ORDERS, this matter be reaasigned at random.

CONTINUED ON PAGE: 049

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 048

06/22/00 09:00 AM 00 ALL PENDING MOTIONS 6/22/00

HEARD BY: Kathy Hardcastle, Judge; Dept. 4

OFFICERS: AMBER FARLEY, Court Clerk
TINA SMITH, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	006612	Cram, Roger	Y
	001 D1	Flanagan, Dale E	N
	001988	Potter, III, Cal J.	Y

ARGUMENT: DEFT FLANAGAN'S PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S MOTION FOR DISCOVERY...DEFT'S MOTION FOR EVIDENTIARY HEARING...STATE'S MOTION FOR WAIVER OF ATTORNEY-CLIENT PRIVILEGE

Court indicated counsel have agreed to continue matter to next week. COURT ORDERED, matter CONTINUED.

MATTER RECALLED: Mr. Cram advised parties had agreed to continue the matter until after 8/14 and requested the date be reset. COURT SO ORDERED. Mr. Cram stated he would notify all parties.

NDP

ABOVE MOTIONS CONTINUED TO:
8/16/00 9:00 AM

CONTINUED ON PAGE: 050

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 049

08/16/00 09:00 AM 00 ALL PENDING MOTIONS 8-16-00

HEARD BY: Mark Gibbons, Chief Judge; Dept. 7

OFFICERS: CHERYL CASE, Relief Clerk
RENE SILVAGGIO, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	N
	000411	Simon, H. L.	Y
	001 D1	Flanagan, Dale E	N
	001988	Potter, III, Cal J.	Y

ARGUMENT: DEFT FLANAGAN'S PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S MOTION FOR DISCOVERY...DEFT'S MOTION FOR EVIDENTIARY HEARING...STATE'S MOTION FOR WAIVER OF ATTORNEY-CLIENT PRIVILEGE

Bob Newell, out-of-state co-counsel for Defendant, also present. Upon Court's inquiry, Mr. Simon stated a Motion to Disqualify has not been filed. Arguments by Mr. Simon and Mr. Newell regarding disqualification of District Attorney's office, conflict of interest, and Mr. Wall's prior representation of Defendant. Court noted there is no Motion to Disqualify calendared for decision.

Argument by Mr. Newell regarding ineffective assistance of counsel and history of this case. Court noted the Supreme Court has made numerous rulings in this case. Further arugument by Mr. Newell regarding statement by Robert Ramirez, evidence withheld from the defense, Brady violations, and prosecutorial misconduct.

Mr. Newell argued prior Supreme Court rulings are irrelevant as the issue of ineffective assistance of counsel has been raised. Argument by Mr. Potter regarding irregular procedures in Judge Mosley's Court and depositions that should be taken. Argument by Mr. Simon regarding statement by Mr. Ramirez, Supreme Court rulings, and overbroad request for discovery. Further argument by Mr. Simon regarding waiver of attorney-client privilege. Argument by Mr. Newell regarding statements admitted through trial, per se violations, Strickland issue, and ineffectiveness of Mr. Pike.

COURT ORDERED, Motion for Waiver DENIED WITHOUT PREJUDICE. Court noted information can be acquired and questions can be tailored. Court will reconsider its ruling in the event Defendant opens the door at the Evidentiary Hearing. FURTHER, COURT ORDERED, Motion for Evidentiary Hearing GRANTED as to the issue of Ms. Blaskey and conduct of Mr. Wall; Motion is DENIED as to remaining issues.

COURT ORDERED, Motion for Discovery DENIED WITHOUT PREJUDICE at this time pending the Evidentiary Hearing. Court noted discovery request is overbroad.

CONTINUED ON PAGE: 051

CONTINUED FROM PAGE: 050

Court noted thirty claims were raised in Defendant's Petition. COURT ORDERED, RULING DEFERRED on claims pertaining to assertions by Ms. Blaskey regarding conduct of Mr. Wall. COURT ORDERED, remaining claims DENIED. COURT FINDS representation by Mr. Pike was not ineffective. COURT FURTHER FINDS bare allegations on the issues of failure to disclose exculpatory evidence; issue of prosecutorial misconduct by Mr. Seaton was ruled on by the Supreme Court; there were bare allegation regarding remaining issues and those issues are barred by the law of the case through previous appeals to the Nevada Supreme Court.

Colloquy regarding Evidentiary Hearing and discovery issues. COURT ORDERED, matter CONTINUED for Status Check; Mr. Newell's presence at next Court date WAIVED. Court directed parties to determine discovery issues. Mr. Simon advised State will prepare an Order to Transport Defendant Flanagan for the Evidentiary Hearing. Mr. Newell stated parties will not depose Ms. Blaskey; she will be a witness. Mr. Newell further stated Judge Mosley did not preside over the third penalty hearing. COURT ORDERED, allegations pertaining to Judge Mosley DENIED in that they were subject to direct appeal.

NDP

9/13/00 9:00 AM STATUS CHECK: EVIDENTIARY HEARING

09/13/00 09:00 AM 00 STATUS CHECK: EVIDENTIARY HEARING

HEARD BY: Mark Gibbons, Chief Judge; Dept. 7

OFFICERS: AMBER FARLEY, Court Clerk
RENEE SILVAGGIO, Reporter/Recorder

PARTIES:		STATE OF NEVADA	Y
	000411	Simon, H. L.	Y
	001 D1	Flanagan, Dale E	N
	001988	Potter, III, Cal J.	Y

Mr. Simon stated the deposition of Dave Wall is scheduled for 11/9; further, Defendant's lead counsel out of Portland is available for the hearing the weeks of either 1/15 or 1/22. COURT ORDERED, matter set for evidentiary hearing on the remaining issues on the Writ.

NDP

1/26/01 10:00 AM EVIDENTIARY HEARING

CONTINUED ON PAGE: 052

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 051

12/18/00 09:00 AM 00 ALL PENDING MOTIONS 12/18/00

HEARD BY: Mark Gibbons, Chief Judge; Dept. 7

OFFICERS: AMBER FARLEY, Court Clerk
RENEE SILVAGGIO, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	000411	Simon, H. L.	Y
	001 D1	Flanagan, Dale E	N
	001988	Potter, III, Cal J.	Y

DEFT'S MOTION TO SEAL ORDER...DEFT'S MOTION TO CLARIFY AND EXPAND SCOPE OF EVIDENTIARY HEARING

Mr. Potter argued the original Motions were sealed by Order of Judge Douglas, the original Judge hearing this case, and merely wants to ensure that order is continuing. Court stated it doesn't appear to be any statutory authority on this matter. Mr. Simon stated the State has no position, and stated all the State ever received were the Court's Orders, not the applications. Mr. Simon provided same to Mr. Potter in open court. COURT ORDERED, Motion GRANTED; Applications regarding payment of costs are to be SEALED.

Court stated Defendant's Motion to clarify is in essence a Motion for Rehearing. COURT ORDERED, Motion DENIED.

Regarding the 1/26/01 Evidentiary Hearing date, Court stated parties have stipulated to continue that matter to February 9, and COURT SO ORDERED.

NDP

CONTINUED ON PAGE: 053

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 052

04/13/01 10:00 AM 02 EVIDENTIARY HEARING (REMAINING ISSUES ON WRIT)

HEARD BY: Nancy M Saitta, Judge; Dept. 18

OFFICERS: AMBER FARLEY, Court Clerk
KRISTINE CORNELIUS, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	000411	Simon, H. L.	Y
	001 D1	Flanagan, Dale E	N
	001988	Potter, III, Cal J.	Y

Robert Newell, Pro Hoc Vice also present on behalf of Defendant.

Court advised counsel it has a significant working relationship and personal friendship with a key witness in this case, David Wall. Court stated it has already formed an opinion as to Mr. Wall's work ethic and credibility, and as those issues are central to this case, COURT HEREBY RECUSES itself. Court further advised it sits on a panel with Judge Dahl, and further believes that it has been present during conversations regarding this case. Court stated it is inclined to send this matter back to Judge Gibbons as he does not appear to have a significant relationship with any of the parties, and as he is familiar with the facts of this case. Mr. Simon stated he was going to suggest the same. Mr. Newell stated no objection, and stated there should be no problem rescheduling the matter. COURT ORDERED, matter set for status check for Judge Gibbons to determine whether he wants to take this case back, and for rescheduling the evidentiary hearing.

NDP

4/17/01 9:00 AM STATUS CHECK: REASSIGNMENT/EVIDENTIARY HEARING SCHEDULING

CONTINUED ON PAGE: 054

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 053

04/17/01 09:00 AM 00 STATUS CHECK: REASSIGNMENT/ EVIDENTIARY HEARING SCHEDULING

HEARD BY: Mark Gibbons, Chief Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk
GEORGETTE BYRD/GB, Relief Clerk
PATSY SMITH, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	000411	Simon, H. L.	Y
	001 D1	Flanagan, Dale E	N
	001988	Potter, III, Cal J.	Y

COURT ORDERED, defendant's presence is waived. Court further noted it read the minutes and finds there would be a conflict and ORDERED, it will keep the case, and set the evidentiary hearing on remaining issues of the Writ.

NDP

09/12/01 10:00 AM EVIDENTIARY HEARING

09/12/01 10:00 AM 00 EVIDENTIARY HEARING: REMAINING ISSUES ON THE WRIT

HEARD BY: Mark Gibbons, Chief Judge; Dept. 7

OFFICERS: Tina Hurd, Court Clerk
Renee Silvaggio, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	000411	Simon, H. L.	Y
	001 D1	Flanagan, Dale E	N
	005632	Ence, Matthew D.	Y

Mr. Ence advised Mr. Newell was unable to travel here from San Francisco today due to the airports being closed and Mr. Potter is in trial in Oakland. State advised he did speak with Mr. Newell yesterday and discussed times they are both available; further, Mr. Newell has an issue he wants to resolve with the Court, but does not want him to discuss it ex parte. Colloquy regarding a conference call. Mr. Simon advised the issue pertains to the scope of the hearing. Court advised he is amenable to a conference call. Colloquy regarding a continuance date for the hearing. COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 12/17/01 10:00 AM 01

CONTINUED ON PAGE: 055

CRIMINAL COURT MINUTES

85-C-069269-C STATE OF NEVADA vs Flanagan, Dale E

CONTINUED FROM PAGE: 054

02/14/02 09:30 AM 02 EVIDENTIARY HEARING: REMAINING ISSUES ON THE WRIT

HEARD BY: Mark Gibbons, Chief Judge; Dept. 7

OFFICERS: Dina Dalton, Reporter/Recorder

PARTIES:			
		STATE OF NEVADA	Y
	000411	Simon, H. L.	Y
	001 D1	Flanagan, Dale E	N
	001988	Potter, III, Cal J.	Y

Robert Newell, out-of-state counsel for Deft. Flanagan, present also. Upon Court's inquiry, Mr. Newell advised Deft. Flanagan will not be attending. COURT ORDERED, Deft's presence WAIVED. State invoked the exclusionary rule. Colloquy regarding the scope of the hearing. Court stated he believes this hearing is to address any ineffective assistance of counsel that may flow from the conflict between Rebecca Blaskey and David Wall. REBECCA BLASKEY and DAVID WALL sworn and testified. 11:30 a.m.--State advised his next witness is Judge Dahl and, since he has a morning calendar, he has requested to come at 1:30 p.m. COURT ORDERED, court will be in recess until 1:30 p.m.

1:37 P.M.--Court reconvened with all present as before. STEPHEN DAHL sworn and testified. 1:44 p.m.--Mr. Newell requested a chance to get the transcript and prepare briefs. State advised he believes this is a simple issue and can be argued today. Court advised this is a death penalty case and he will allow the defense a chance to brief it. Colloquy regarding the transcript. COURT ORDERED, the court reporter to prepare today's transcript in normal course. Upon Court's inquiry, Mr. Newell advised he can have a brief submitted by the end of March. COURT ORDERED, the defense opening brief to be filed by April 1, 2002; the State's answering brief to be filed by May 1, 2002; the defense reply brief to be filed by May 22, 2002. Colloquy regarding further argument. COURT FURTHER ORDERED, this matter will stand submitted when the reply brief is filed and the Court will issue a written decision; the focus of the briefs will be ineffective assistance of counsel based on the personality conflict between Rebecca Blaskey and David Wall. Hearing concluded.

09/12/02 E X H I B I T S 5:49 PM
CASE NO. 85-C-069269-C CASE STATUS: ACTIVE

STATE OF NEVADA [ ] vs Flanagan, Dale E [E]

NO.	CODE	EXHIBIT DESCRIPTION	SUB	OF/OB	DATE	S
0001	D01	/PETITIONER'S REPLY (VOL I THRU V)	001	/	05/17/00	V

Certification of Copy

STATE OF NEVADA
COUNTY OF CLARK } **SS:**

I, SHIRLEY B. PARRAGUIRRE, the duly elected, qualifying and acting Clerk of Clark County, in the State of Nevada, and Ex-Officio Clerk of the District Court, do hereby certify that the foregoing is a true, full and correct copy of the original:

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF ENTRY OF DECISION AND ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST;

THE STATE OF NEVADA, Plaintiff, vs. **DALE EDWARD FLANAGAN,** Defendant.	D.C. CASE **C69269** DEPARTMENT XI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada, on this the 13 day of September, 2002

SHIRLEY B. PARRAGUIRRE,
CLARK COUNTY CLERK

Nicole McDevitt, Deputy Clerk

FILED

SEP 12 10 47 AM '02

Shirley B. Parraguirre
CLERK

FILED

SEP 18 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY A. Alvarado
DEPUTY CLERK

No. 40232

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Portland, Oregon 97201
Telephone (503) 241-2300

Attorney for Petitioner Dale Edward Flanagan

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DALE EDWARD FLANAGAN, Petitioner, v. THE STATE OF NEVADA, and E.K. McDANIEL, Warden, Ely State Prison, Respondents.	**DEATH PENALTY CASE** Case No. C69269 Dept. No. VII Docket "S"

NOTICE OF APPEAL

Notice is hereby given that Dale Edward Flanagan, petitioner above named, hereby appeals to the Supreme Court of Nevada from the Eighth Judicial District Court, Clark County, from the Order Dismissing Petition for Writ of Habeas Corpus entered in this action on the 9th day of August, 2002 and mailed to the parties on August 16, 2002.

DATED this 12th day of September, 2002.

RECEIVED
SEP 18 2002
CLERK OF SUPREME COURT
By DEPUTY CLERK

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Attorney for Petitioner
Dale Edward Flanagan

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DALE EDWARD FLANAGAN, Petitioner, v. THE STATE OF NEVADA, and E.K. McDANIEL, Warden, Ely State Prison, Respondents.	**DEATH PENALTY CASE** Case No. C69269 Dept. No. VII Docket "S"

PROOF OF FILING AND SERVICE

Pursuant to RAP 3(d) and 25(d), I hereby certify that on September 12, 2002, I filed the original and one copy of the **NOTICE OF APPEAL** by causing them to be hand-delivered to the Clerk of the Eighth Judicial District Court, Clark County, Nevada, Clark County Courthouse, 200 South Third Street, Las Vegas, Nevada 89155.

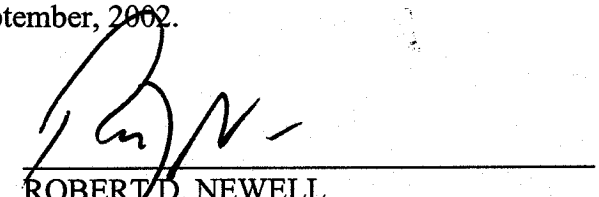
I further certify that on September 12, 2002, I served a true and correct copy of the **NOTICE OF APPEAL** upon the following:

Leon Simon
Deputy District Attorney
Clark County District Attorney's Office
200 South Third Street, 7th Floor
Las Vegas, Nevada 89155

Attorney for Respondents State of Nevada and
E.K. McDaniel, Warden, Ely State Prison

and that said copy was personally delivered to said attorney's last known address as shown above.

DATED this 12th day of September, 2002.



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Attorney for Petitioner
Dale Edward Flanagan

FILED

SEP 12 10 48 AM '02

Shirley B. Parraguirre
CLERK

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DALE EDWARD FLANAGAN, Petitioner, v. THE STATE OF NEVADA, and E.K. McDANIEL, Warden, Ely State Prison, Respondents.	**DEATH PENALTY CASE** Case No. C69269 Dept. No. VII Docket "S"

CASE APPEAL STATEMENT

1. This Case Appeal Statement is filed on behalf of Petitioner-Appellant Dale Edward Flanagan ("Petitioner").

2. Petitioner seeks review of the Order Dismissing Petition for Writ of Habeas Corpus issued by the Honorable Mark Gibbons, on August 9, 2002, and mailed to the parties on August 16, 2002.

3. The parties to the district court proceedings included Petitioner, the State of Nevada and E.K. McDaniel.

4. The parties to this appeal include Petitioner and respondents the State of Nevada and E.K. McDaniel.

5. Petitioner is represented by Robert Newell, Davis Wright Tremaine, LLP, 1300 SW Fifth Avenue, Suite 2300, Portland, Oregon 97201, Telephone 503-241-2300; and Cal J. Potter III, Potter Law Offices, 1125 Shadow Lane, Las Vegas, Nevada 89102, Telephone 702-385-1954. Respondents, the State of Nevada and E.K. McDaniel, are represented by Stewart Bell, District Attorney, 200 S. Third St., Las Vegas, Nevada 89155.

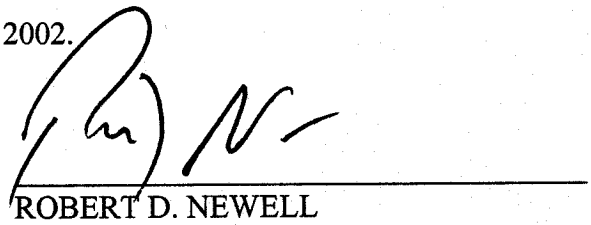
6. Petitioner was represented by appointed counsel in the district court proceedings.

7. Petitioner is represented by appointed counsel on appeal.

8. Petitioner was granted leave to proceed in forma pauperis.

9. This proceeding commenced in the District Court on May 28, 1998.

DATED this 12th day of September, 2002.



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Attorney for Petitioner
Dale Edward Flanagan

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DALE EDWARD FLANAGAN, Petitioner, v. THE STATE OF NEVADA, and E.K. McDANIEL, Warden, Ely State Prison, Respondents.	**DEATH PENALTY CASE** Case No. C69269 Dept. No. VII Docket "S"

PROOF OF FILING AND SERVICE

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I further certify that on September 12, 2002, I served a true and correct copy of the **CASE APPEAL STATEMENT** upon the following:

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Deputy District Attorney
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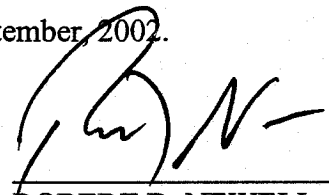
Attorney for Respondents State of Nevada and
E.K. McDaniel, Warden, Ely State Prison

and that said copy was personally delivered to said attorney's last known address as shown above.

DATED this 12th day of September, 2002.



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STATE OF NEVADA [ ] vs Flanagan, Dale E [E]

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004771 Thomas, JoNell
NO. 1 Supreme Court Complex
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003 D Roy McDowell
P O Box 359
Lovelock, NV 89419-0359
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004 D Johnny R Luckett
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Las Vegas, NV 89101

006 D Thomas Akers
001742 Waterman, Charles
NO. 1 630 South Seventh St.
Las Vegas, NV 89101

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0001	02/19/85	COMP/	CRIMINAL COMPLAINT	*D			
0002	02/20/85	ARRN/	INITIAL ARRAIGNMENT	*D		02/25/85	
0003	02/25/85	INFO/	INFORMATION	*D		02/25/85	
0004	04/14/89	SENT/	CONFIRMATION OF VERDICT AND IMPOSITION OF SENTENCE	001 001		07/31/89	
0005	05/17/91	MOT /	MOTION FOR FEES IN EXCESS OF STATUTORY ALLOWANCE	002 002	GR	06/03/91	
0006	05/20/91	ROC /	RECEIPT OF COPY OF MOTION FOR FEES IN EXCESS OF STATUTORY ALLOWANCE BY DA'S OFFICE	002 002		05/20/91	Y
0007	05/31/91	JUDG/	CLERKS CERTIFICATE AND JUDGMENT	*D		05/21/91	
0008	06/06/91	ORDR/	ORDER GRANTING MOTION FOR FEES IN EXCESS OF STATUTORY ALLOWANCE	002 002		06/06/91	
0009	06/10/91	MOT /	MOTION FOR THE COURT TO ISSUE SUPPLEMENTAL WARRANT OF EXECUTION	001 001	GR	06/24/91	
0010	06/10/91	MOT /	MOTION FOR COURT TO ISSUE SUPPLEMENTAL WARRANT OF EXECUTION	002 002	GR	06/24/91	
0011	06/24/91	MOT /	ALL PENDING MOTIONS (6/24/91)	AL		06/24/91	
0012	06/19/91	OPPS/	OPPOSITION TO STATES MOTION FOR SUPPLEMTNAL WARRANT OF EXECUTION	001 001			
0013	06/20/91	RSPN/	AMENDED RESPONSE TO OPPOSITION TO STATES MOTION FOR SUPPLEMENTAL WARRANT OF EXECUTION	001 001			Y
0014	06/20/91	CERT/	CERTIFICATE OF MAILING OF OPPOSITION FOR SUPPLEMENTAL WARRANT OF EXECUTION	001 001		06/20/91	Y

(Continued to page 2)

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
			TO ALL PARTIES				
0015	06/20/91	ROC	/RECEIPT OF COPY OF OPPOSITION TO MOTION	001		06/19/91	Y
			FOR SUPPLEMENTAL WARRANT OF EXECUTION	001			
			BY DA'S OFFICE AND D SCHIECK				
0016	06/21/91	ROC	/RECEIPT OF COPY OF AMENDED RESPONSE TO	001		06/20/91	Y
			OPPOSITION TO MOTION FOR SUPPLEMENTAL	001			
			WARRANT OF EXECUTION BY DA'S OFFICE AND D SCHIECK				
0017	06/24/91	CERT	/CERTIFICATE OF MAILING OF AMENDED	001		06/21/91	Y
			RESPONSE TO OPPOSITION FOR WARRANT	001			
			OF EXECUTION TO M LAWRENCE AND D FLANAGAN				
0018	06/25/91	OTTE	/ORDER TO TRANSPORT FOR EXECUTION	002		06/24/91	
0019	06/25/91	SUPP	/SUPPLEMENTAL ORDER OF EXECUTION	002		06/24/91	
0020	06/25/91	SUPP	/SUPPLEMENTAL WARRANT OF EXECUTION	002			
0021	06/25/91	SUPP	/SUPPLEMENTAL WARRANT OF EXECUTION	001			
0022	06/25/91	OTTE	/ORDER TO TRANSPORT FOR EXECUTION	001		06/24/91	
0023	06/25/91	SUPP	/SUPPLEMENTAL ORDER OF EXECUTION	001		06/24/91	
0024	07/03/91	MOT	/MOTION FOR STAY OF EXECUTION	002	GR	07/10/91	
0025	07/03/91	PET	/PETITION FOR POST CONVICTION RELIEF AND	001			
			STAY OF EXECUTION	001			
0026	07/08/91	ROC	/RECEIPT OF COPY OF MOTION TO STAY	002		07/08/91	
			EXECUTION BY DA'S OFFICE	002			
0027	07/10/91	ORDR	/ORDER TO STAY EXECUTION	002		07/10/91	
0028	07/10/91	NOTC	/NOTICE OF ENTRY OF ORDER	AL			
0029	07/10/91	CERT	/CERTIFICATE OF MAILING OF ORDER TO STAY	002		07/10/91	
			EXECUTION TO ALL PARTIES	002			
0030	10/22/92	SENT	/SENTENCING	003		11/27/85	
0031	04/14/89	SENT	/CONFIRMATION OF VERDICT AND IMPOSITION	002	GR	07/31/89	
			OF SENTENCE	002			
0032	10/22/92	MOT	/PRO PER MOTION TO RELEASE TRIAL	003	GR	11/04/92	
			TRANSCRIPTS	003			
0033	10/22/92	MOT	/PRO PER MOTION FOR LEAVE TO PROCEED IN	003	GR	11/04/92	
			FORMA PAUPERIS	003			
0034	11/06/92	MOT	/ALL PENDING MOTIONS (11-4-92)	003		11/04/92	
0035	02/18/93	MOT	/MOTION TO WITHDRAW AS ATTORNEY OF RECORD	001	GR	03/01/93	
			AND APPOINT COUNSEL FOR REPRESENTATION	001			
0036	02/19/93	ROC	/RECEIPT OF COPY	001		02/19/93	
0037	02/19/93	CERT	/CERTIFICATE OF MAILING	001		02/18/93	
0038	02/19/93	CERT	/CERTIFICATE OF MAILING	001		02/18/93	
0039	02/22/93	HEAR	/ORAL REQUEST OF DISTRICT ATTORNEY	001		03/22/93	
			SCHEDULE NEW PENALTY HEARING	001			
0040	02/22/93	HEAR	/ORAL REQUEST OF DISTRICT ATTORNEY	002		03/22/93	
			SCHEDULE NEW PENALTY HEARING	002			
0041	02/24/93	MOT	/ALL PENDING MOTIONS (2/24/93)	AL		02/24/93	
0042	02/25/93	ORDR	/ORDER APPOINTING COUNSEL	002		02/24/93	
0043	03/01/93	MOT	/ALL PENDING MOTIONS (3/01/93) (1 & 2)	001		03/01/93	
0044	03/01/93	HEAR	/CONFIRMATION OF COUNSEL	001	CM	03/22/93	
0045	03/02/93	ORDR	/ORDER ALLOWING COUNSEL TO WITHDRAW AS	001		03/01/93	
			ATTORNEY OF RECORD	001			
0046	03/03/93	ROC	/RECEIPT OF COPY	001		03/03/93	
0047	03/05/93	CERT	/CERTIFICATE OF MAILING	001		03/04/93	
0048	03/10/93	MOT	/ALL PENDING MOTIONS (3/10/93) (1 & 2)	AL		03/10/93	
0049	03/12/93	JUDG	/NEVADA SUPREME COURT CLERKS CERTIFICATE/	002		02/10/93	
			JUDGMENT - REVERSED AND REMANDED	002			

(Continued to page 3)

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER C
0050	03/16/93	ORDR/	ORDER FOR PRODUCTION OF INMATE	001		03/12/93
			DALE EDWARD FLANAGAN	001		
0051	03/16/93	ORDR/	ORDER FOR PRODUCTION OF INMATE	002		03/12/93
			RANDOLPH MOORE	002		
0052	03/22/93	CALC/	CALENDAR CALL (PENALTY PHASE) (1 & 2)	AL		08/31/93
0053	03/22/93	HEAR/	PENALTY PHASE (1 & 2)(VJ 8/31)	AL	VC	09/07/93
0054	03/22/93	MOT /	ALL PENDING MOTIONS (3/22/93) (1 & 2)	AL		03/22/93
0055	04/20/93	MOT /	MOTION FOR ORDER FOR PAYMENT OF FEES	001	GR	05/03/93
0056	04/21/93	CERT/	CERTIFICATE OF MAILING	001		04/21/93
0057	04/22/93	JUDG/	NEVADA SUPREME COURT CLERKS CERTIFICATE/	001		04/22/93
			JUDGMENT - REVERSED AND REMANDED	001		
0058	04/28/93	ORDR/	STIPULATION AND ORDER GRANTING FEES IN	001		
			EXCESS OF STATUTORY ALLOWANCE	001		
0059	06/10/93	SUBP/	SUBPOENA DUCES TECUM	002	SC	06/11/93
				002	SV	06/10/93
0060	06/10/93	SUBP/	SUBPOENA DUCES TECUM	002	SC	06/11/93
				002	SV	06/10/93
0061	06/11/93	EXPT/	EX PARTE APPLICATION FOR ORDER TO	002		
			PREPARE TRANSCRIPTS	002		
0062	06/15/93	EXPR/	EX PARTE ORDER GRANTING APPLICATION TO	002		
			PREPARE TRANSCRIPTS	002		
0063	06/16/93	EXPT/	EX PARTE MOTION TO APPOINT CO-COUNSEL	002		
0064	06/18/93	ROC /	RECEIPT OF COPY	002		
0065	06/22/93	EXPT/	EX PARTE ORDER GRANTING EX PARTE MOTION	002		
			TO APPOINT CO-COUNSEL	002		
0066	07/14/93	OCAL/	MINUTE ORDER RE: RESET 9/01/93 HEARING	AL		07/14/93
			(1 & 2)	AL		
0067	08/03/93	MOT /	MOTION FOR FEES IN EXCESS OF STATUTORY	002	GR	08/18/93
			ALLOWANCE	002		
0068	08/03/93	ROC /	RECEIPT OF COPY	002		08/03/93
0069	08/05/93	ROC /	RECEIPT OF COPY	002		08/05/93
0070	08/25/93	MOT /	MOTION TO CONTINUE TRIAL DATE		GR	08/31/93
0071	08/25/93	ORDR/	ORDER GRANTING MOTION FOR FEES IN EXCESS	002		
			OF STATUTORY ALLOWANCE	002		
0072	08/31/93	CALC/	CALENDAR CALL (1 & 2) (VJ 2-3-94)	AL	VC	03/30/94
0073	08/31/93	HEAR/	PENALTY PHASE (1 & 2) (VJ 2-3-94)	AL	VC	04/04/94
0074	08/31/93	MOT /	ALL PENDING MOTIONS (8/31/93) (1 & 2)	AL		08/31/93
0075	12/09/93	PET /	LUCKETT'S PRO PER MOTION TO CORRECT AN	004	GR	12/22/93
			ILLEGAL SENTENCE	004		
0076	12/15/93	TRAN/	REPORTER'S TRANSCRIPT	AL		12/15/93
0077	12/20/93	ANSW/	ANSWER IN OPPOSITION TO MOTION TO	004		
			CORRECT AN ILLEGAL SENTENCE	004		
0078	12/23/93	JUDG/	AMENDED JUDGMENT OF CONVICTION - PLEA	004		
0079	01/05/94	ROC /	RECEIPT OF COPY	002		01/05/94
0080	01/05/94	REQT/	MOTION TO DISQUALIFY JUDGE	002		
0081	01/14/94	MOT /	MOTION TO DISQUALIFY JUDGE/COURT	002	GR	01/24/94
0082	01/18/94	ROC /	RECEIPT OF COPY	002		01/14/94
0083	01/19/94	NOTC/	NOTICE OF APPEAL	004	AP	
0084	01/19/94	NOAS/	DESIGNATION OF RECORD ON APPEAL	001		
0085	01/21/94	AFFD/	AFFIDAVIT	002		
0086	01/24/94	PET /	PROPER PERSON PETITION FOR APPOINTMENT	004		02/08/94
			OF COUNSEL ON APPEAL	004		

(Continued to page 4)

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0087	01/25/94	TRAN/	REPORTER'S TRANSCRIPT RE: DEFENDANT'S MOTION TO DISQUALIFY JUDGE			01/24/94	
0088	01/25/94	ASSG/	REASSIGNMENT OF JUDGE MOSLEY TO JUDGE GUY, III				
0089	01/31/94	HEAR/	AT THE REQUEST OF THE COURT CHECK PENALTY HEARING	001 001		02/03/94	
0090	01/31/94	HEAR/	AT THE REQUEST OF THE COURT CHECK PENALTY HEARING	002 002		02/03/94	
0091	02/01/94	ORDR/	ORDER GRANTING MOTION TO DISQUALIFY	002		01/31/94	
0092	02/02/94	NOTC/	NOTICE OF ENTRY OF ORDER GRANTING MOTON TO DISQUALIFY	002 002			
0093	02/03/94	MOT /	ALL PENDING MOTIONS FOR 2-3-94			02/03/94	
0094	02/03/94	OCAL/	STATUS CHECK (VJ 4/21/94)	001	VC	06/09/94	
0095	02/03/94	OCAL/	STATUS CHECK (VJ 4/21/94)	002	VC	06/09/94	
0096	02/03/94	MOT /	ALL PENDING MOTIONS FOR 6-9-94 VJ 4/21/94		VC	06/09/94	
0097	02/03/94	HEAR/	PENALTY HEARING (VJ 4/21/94)	001	VC	10/03/94	
0098	02/03/94	HEAR/	PENALTY HEARING (VJ 4/21/94)	002	VC	10/03/94	
0099	02/03/94	MOT /	ALL PENDING MOTIONS FOR 10-3-94 (VJ 4-21-94)		VC	10/03/94	
0100	02/08/94	MOT /	DEFENDANT'S PRO PER MOTION FOR APPT OF COUNSEL ON APPEAL	004 004	GR	02/17/94	
0101	02/09/94	TRAN/	REPORTER'S TRANSCRIPT AT REQUEST OF COURT: CHECK PENALTY HRG	001 001		02/03/94	
0102	02/09/94	TRAN/	REPORTER'S TRANSCRIPT AT REQUEST OF COURT: CHECK PENALTY HRG	002 002		02/03/94	
0103	02/17/94	OCAL/	STATUS CHECK	004		05/05/94	
0104	03/30/94	MOT /	MOTION TO RESET TRIAL DATE	001	GR	04/21/94	
0105	04/18/94	TRAN/	REPORTER'S TRANSCRIPT DEFT'S MOT RESET TRIAL DATE	001 001		04/14/94	
0106	04/21/94	HEAR/	PENALTY HEARING (VJ 12-1-94)	001	VC	01/03/95	
0107	04/21/94	CALC/	CALENDAR CALL (VJ 12-1-94)	001	VC	12/29/94	
0108	04/21/94	HEAR/	PENALTY HEARING (VJ 12-1-94)	002	VC	01/03/95	
0109	04/21/94	CALC/	CALENDAR CALL (VJ 12-1-94)	002	VC	12/29/94	
0110	04/22/94	EXPT/	EX PARTE APPLICATION FOR TRANSCRIPT ORDER	004 004			
0111	04/22/94	ORDR/	ORDER	004			
0112	04/22/94	TRAN/	REPORTER'S TRANSCRIPT OF DEFENDANT FLANAGAN'S MOTION TO RESET TRIAL DATE AS TO DEFT. FLANAGAN AND MOORE.	001 001		04/21/94	Y
0113	04/29/94	MOT /	MOTION TO RESET TRIAL DATE	002		04/21/94	
0114	04/29/94	MOT /	ALL PENDING MOTIONS (4/21/94)	AL		04/21/94	
0115	05/05/94	OCAL/	STATUS CHECK: TRANSCRIPTS	004	MR	09/15/94	
0116	05/06/94	TRAN/	REPORTER'S TRANSCRIPT DEFT'S PP MOT TO CORRECT ILLEGAL SENT	004 004		12/22/93	
0117	05/09/94	TRAN/	REPORTER'S TRANSCRIPT STATUS CHECK	004		05/05/94	
0118	06/10/94	TRAN/	REPORTER'S TRANSCRIPT DEF FLAN MOT TO CONT TRIAL DATE	001 001		08/31/93	
0119	06/29/94	ORDR/	ORDER FOR PRODUCTION OF INMATE	004			
0120	09/14/94	REQT/	MOTION TO VACATE SENTENCE	004			
0121	09/15/94	OCAL/	FURTHER PROCEEDINGS	004		09/22/94	
0122	09/22/94	ORDR/	ORDER	004			

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0123	09/22/94	JUDG/	SECOND AMENDED JUDGMENT OF CONVICTION	004		09/22/94	
			(JURY TRIAL)	004			
0124	09/27/94	TRAN/	REPORTER'S TRANSCRIPT RE: STATUS CHECK:	004		09/15/94	
			TRANSCRIPTS	004			
0125	11/29/94	MOT /	DEFENDANT'S MOTION TO CONTINUE PENALTY	001		12/01/94	
			HEARING	001			
0126	12/01/94	OCAL/	STATUS CHECK: WAIVER	001		12/15/94	
0127	12/01/94	OCAL/	STATUS CHECK: WAIVER	002	MR	12/15/94	
0128	12/01/94	MOT /	ALL PENDING MOTIONS	AL		12/15/94	
0129	12/01/94	CALC/	CALENDAR CALL	001		06/08/95	
0130	12/01/94	HEAR/	PENALTY HEARING	001		06/23/95	
0131	12/01/94	CALC/	CALENDAR CALL	002		06/08/95	
0132	12/01/94	HEAR/	PENALTY HEARING	002		06/23/95	
0133	12/14/94	WAIV/	WAIVER OF PERSONAL APPEARANCE	002		12/14/94	
0134	12/15/94	WAIV/	WAIVER	001		12/15/94	
0135	12/28/94	TRAN/	REPORTER'S TRANSCRIPT OF DEFENDANT'S	001		12/01/94	
			MOTION TO CONTINUE PENALTY HEARING	001			
0136	05/19/95	MOT /	DEFT'S MOTION FOR NEW TRIAL	002	DN	06/06/95	
0137	05/19/95	MOT /	DEFT'S MOTION FOR INDIVIDUALIZED VOIR	002	DP	06/06/95	
			DIRE AND SUBMISSION OF QUESTIONNAIRE	002			
0138	05/19/95	PET /	PETITION FOR HABEAS CORPUS	002			
0139	05/19/95	PTAT/	POINTS AND AUTHORITIES IN SUPPORT OF	002			
			PETITION FOR WRIT OF HABEAS CORPUS	002			
0140	05/22/95	MOT /	MOTION TO STRIKE DEATH PENALTY	002	DN	06/06/95	
0141	05/22/95	ROC /	RECEIPT OF COPY	002		05/19/95	
0142	05/23/95	MOT /	DEFT'S MOTION IN LIMINE TO PRECLUDE	002	DN	06/06/95	
			REFERENCE TO THE SENTENCES OF DEFTSCE	002			
0143	05/23/95	MOT /	DEFT'S MOTION TO DISCLOSE INDUCEMENTS,	002	DN	06/06/95	
			PROMISES & PAYMENTS TO STATE WITNESSES	002			
0144	05/19/95	PET /	DEFT'S PETITION FOR WRIT OF HABEAS	002	DN	06/06/95	
			CORPUS	002			
0145	05/24/95	MOT /	DEFT'S MOTION TO PROHIBIT TESTIMONY OF	001	MR	06/13/95	
			D.A. TO SUMMARIZE WITNESS' PRIOR TESTIMO	001			
0146	05/24/95	ORDR/	ORDER FOR PRODUCTION OF INMATE	002			
0147	05/24/95	ROC /	RECEIPT OF COPY	002		05/23/95	
0148	05/24/95	ORDR/	ORDER FOR PRODUCTION OF INMATE	002			
0149	05/25/95	OCAL/	MINUTE ORDER RE: HEARING MOTIONS	AL		05/25/95	
0150	05/26/95	MOT /	DEFT'S MTN FOR DISCLOSURE TO INFORMATION	001	DN	06/06/95	
			RE: STATE WITNESS' ESPECTATIONS OF	001			
0151	05/30/95	MOT /	DEFT'S MOTION TO JOIN CO-DEFT MOORE'S	001	GR	06/06/95	
			MOTION IN LIMINE TO PRECLUDE REFERENCE	001			
0152	05/30/95	MOT /	DEFT'S MOTION TO AMEND DEFT'S PREVIOUSLY	001	GR	06/06/95	
			FILED MOTION FOR NEW TRIAL TO REFLECT A	001			
0153	05/30/95	MOT /	DEFT'S MOTION IN LIMINE TO PROHIBIT	001	DN	06/06/95	
			EVIDENCE OF DEVIL WORSHIP	001			
0154	05/31/95	PET /	DEFT'S PETITION FOR WRIT OF HABEAS	001	DN	06/06/95	
			CORPUS	001			
0155	05/31/95	MOT /	DEFT'S MOTION TO STRIKE DEATH PENALTY	001	DN	06/06/95	
0156	05/31/95	MOT /	DEFT'S MOTION TO STRIKE DEATH PENALTY	002	DN	06/06/95	
0157	06/05/95	RSPN/	RESPONSE TO DEFENDANT DALE EDWARD	001			Y
			FLANAGANS MOTION TO PROHIBIT TESTIMONY	001			

OF DISTRICT ATTORNEY

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0158	06/05/95	RSPN/	RESPONSE TO DEFENDANT DALE EDWARD	002			Y
			FLANAGANS MOTION TO PROHIBIT TESTIMONY OF DISTRICT ATTORNEY	002			
0159	06/05/95	ANSW/	ANSWER IN OPPOSITION TO DEFENDANTS DALE	001			
			EDWARD FLANAGANS MOTION FOR NEW TRIAL	001			
0160	06/05/95	ANSW/	ANSWER IN OPPOSITION TO DEFENDANT DALE	002			
			EDWARD FLANAGANS MOTION FOR NEW TRIAL	002			
0161	06/05/95	ANSW/	ANSWER IN OPPOSITION TO DEFENDANT	001			Y
			FLANAGANS PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION	001			
0162	06/05/95	ANSW/	ANSWER IN OPPOSITION TO DEFENDANT	002			Y
			FLANAGANS PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION	002			
0163	06/05/95	ANSW/	ANSWER IN OPPOSITION TO DEFENDANT DALE	001			Y
			EDWARD FLANAGANS MOTION IN LIMINE TO PROHIBIT EVIDENCE OF DEVIL WORSHIP	001			
0164	06/05/95	ANSW/	ANSWER IN OPPOSITION TO DEFENDANT DALE	002			Y
			EDWARD FLANAGANS MOTION IN LIMINE TO PROHIBIT EVIDENCE OF DEVIL WORSHIP	002			
0165	06/05/95	ANSW/	ANSWER IN OPPOSITION TO DEFENDANT DALE	001			Y
			EDWARD FLANAGANS MOTION TO DISCLOSE INFORMATION REGARDING STATE WITNESS EXPECTATION OF BENEFITS OF TESTIMONY	001			
0166	06/05/95	ANSW/	ANSWER IN OPPOSITION TO DEFENDANT DALE	002			Y
			EDWARD FLANAGANS MOTION TO DISCLOSE INFORMATION REGARDING STATE WITNESS EXPECTATION OF BENEFITS OF TESTIMONY	002			
0167	06/05/95	ANSW/	ANSWER IN OPPOSITION TO DEFENDANT DALE	001			Y
			EDWARD FLANAGANS MOTION FOR INDIVIDUALIZED VOIR DIRE AND RESPONSE TO MOTION FOR SUBMISSION OF JURY QUESTIONNAIRE	001			
0168	06/05/95	ANSW/	ANSWER IN OPPOSITION TO DEFENDANT DALE	002			Y
			EDWARD FLANAGANS MOTION FOR INDIVIDUALIZED VOIR DIRE AND RESPONSE TO MOTION FOR SUBMISSION OF JURY QUESTIONNAIRE	002			
0169	06/05/95	ANSW/	ANSWER IN OPPOSITION TO DEFENDANT	001			Y
			RANDOLPH MOORES MOTION TO DISCLOSE INDUCEMENTS PROMISES AND PAYMENTS TO PROSPECTIVE STATE WITNESSES	001			
0170	06/05/95	ANSW/	ANSWER IN OPPOSITION TO DEFENDANT	002			Y
			RANDOLPH MOORES MOTION TO DISCLOSE INDUCEMENTS PROMISES AND PAYMENTS TO PROSPECTIVE STATE WITNESSES	002			
0171	06/05/95	ANSW/	ANSWER IN OPPOSITION TO DEFENDANT MOORES	001			Y
			PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION	001			
0172	06/05/95	ANSW/	ANSWER OPPOSITION TO DEFFENDANT MOORES	002			Y
			PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION	002			
0173	06/05/95	ANSW/	ANSWER IN OPPOSITION TO DEFENDANT	001			Y
			RANDOLPH MOORES MOTION IN LIMINE TO PRECLUDE REFERENCE TO THE SENTENCES OF CO-DEFENDANTS	001			
0174	06/05/95	ANSW/	ANSWER IN OPPOSITION TO DEFENDANT	002			Y
			RANDOLPH MOORES MOTION IN LIMINE TO PRECLUDE REFERENCE TO THE SENTENCES OF CO-DEFENDANTS	002			
0175	06/05/95	ANSW/	ANSWER IN OPPOSITION TO DEFENDANTS	001			
			MOTIONS TO STRIKE DEATH PENALTY	001			

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0176	06/05/95	ANSW/	ANSWER IN OPPOSITION TO DEFENDANTS	002			
			MOTIONS TO STRIKE DEATH PENALTY	002			
0177	06/05/95	ROC /RECEIPT OF COPY		001		06/05/95	
0178	06/05/95	ROC /RECEIPT OF COPY		002		06/05/95	
0179	06/07/95	MOT /ALL PENDING MOTIONS 6-6-95		AL		06/06/95	
0180	06/07/95	REQT/MOTION TO ADMIT PRIOR TESTIMONY OF					
			DEFENSE PENALTY PHASE WITNESSESS				
0181	06/07/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS -		AL		06/06/95	
			DEFENDANTS' MOTIONS	AL			
0182	06/07/95	OTTE/ORDER TO TRANSPORT		001		06/07/95	
0183	06/08/95	MOT /ALL PENDING MOTIONS 6-8-95		AL		06/08/95	
0184	06/06/95	JOIN/JOINDER IN MOTIONS OF CO-DEFENDANT		002			
			FLANANGAN	002			
0185	06/12/95	TRAN/REPORTER'S TRANSCRIPT				06/08/95	
0186	06/09/95	SUBP/SUBPOENA DUCES TECUM		002	SC	06/13/95	
				002	SV	06/08/95	
0187	06/12/95	MOT /STATE'S MOTION TO USE REPORTED TESTIMONY		AL	GR	06/13/95	
0188	06/12/95	TRAN/REPORTER'S TRANSCRIPT OF HEARING RE WRIT		AL		06/12/95	Y
			OF HABEAS CORPUS, COURT'S JURISDICTION,	AL			
ETC.							
0189	06/09/95	NOTC/NOTICE OF APPEAL		001	AP		
0190	06/09/95	NOTC/NOTICE OF APPEAL		002	AP		
0191	06/13/95	TRAN/REPORTER'S TRANSCRIPT OF COURT'S		AL		06/12/95	Y
			DISMISSAL OF PROSPECTIVE JURORS;	AL			
END-OF-DAY PROCEEDINGS							
0192	06/12/95	REQT/MOTION TO USE REPORTED TESTIMONY		001			
0193	06/12/95	REQT/MOTION TO USE REPORTED TESTIMONY		002			
0194	06/14/95	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL--		AL		06/13/95	
			PENALTY PHASE (DAY 1, VOLUME I)	AL			
0195	06/15/95	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL--		AL		06/14/95	
			PENALTY PHASE (DAY 2, VOLUME II)	AL			
0196	06/16/95	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL--		AL		06/15/95	
			PENALTY PHASE (DAY 3, VOLUME III)	AL			
0197	06/19/95	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL--		AL		06/16/95	
			PENALTY PHASE (DAY 4, VOLUME IV)	AL			
0198	06/19/95	SUBP/SUBPOENA DUCES TECUM		002	SC	06/19/95	
				002	SV	06/14/95	
0199	06/19/95	SUBP/SUBPOENA		002	SC	06/20/95	
				002	SV	06/19/95	
0200	06/16/95	JURY/JURY		001			
0201	06/16/95	JURY/JURY		002			
0202	06/20/95	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL--		AL		06/19/95	
			PENALTY PHASE (DAY 5, VOLUME V)	AL			
0203	06/20/95	NOAS/DESIGNATION OF CONTENTS OF RECORD ON		002			
			APPEAL	002			
0204	06/21/95	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL--		AL		06/20/95	
			PENALTY PHASE (DAY 6, VOLUME VI)	AL			
0205	06/21/95	SUBP/SUBPOENA		002	SC	06/20/95	
				002	SV	06/20/95	
0206	06/22/95	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL--		AL		06/21/95	
			PENALTY PHASE (DAY 7, VOLUME VII)	AL			
0207	06/23/95	TRAN/REPORTER'S TRANSCRIPT OF JURY TRIAL--		AL		06/22/95	
			PENALTY PHASAE (DAY 8, VOLUME VIII)	AL			

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0208	06/23/95	TRAN/	REPORTER'S TRANSCRIPT OF JURY TRIAL--	AL		06/23/95	Y
			PENALTY PHASE (DAY 9, VOLUME IX)	AL			
INCLUDING MASTER TRIAL INDEX--PENALTY PHASE							
0209	06/23/95	INST/	INSTRUCTIONS TO THE JURY	001			
0210	06/23/95	INST/	INSTRUCTIONS TO THE JURY	002			
0211	06/23/95	VER /	VERDICT	001		06/23/95	
0212	06/23/95	VER /	SPECIAL VERDICT	001		06/23/95	
0213	06/23/95	VER /	SPECIAL VERDICT	001		06/23/95	
0214	06/23/95	VER /	VERDICT	001		06/23/95	
0215	06/23/95	VER /	SPECIAL VERDICT	001		06/23/95	
0216	06/23/95	VER /	SPECIAL VERDICT	001		06/23/95	
0217	06/23/95	VER /	VERDICT	002		06/23/95	
0218	06/23/95	VER /	SPECIAL VERDICT	002		06/23/95	
0219	06/23/95	VER /	SPECIAL VERDICT	002		06/23/95	
0220	06/23/95	VER /	VERDICT	002		06/23/95	
0221	06/23/95	VER /	SPECIAL VERDICT	002		06/23/95	
0222	06/23/95	VER /	SPCEIAL VERDICT	002		06/23/95	
0223	06/28/95	NOEV/	NOTICE OF EXHIBIT(S) IN THE VAULT			06/12/95	
0224	06/29/95	NOAS/	DESIGNATION OF CONTENTS OF RECORD ON	001			
			APPEAL	001			
0225	06/12/95	MOT /	ALL PENDING MOTIONS - PENALTY HEARING	AL		06/12/95	
0226	06/13/95	MOT /	ALL PENDING MOTIONS - PENALTY HEARING	AL		06/13/95	
0227	06/14/95	MOT /	ALL PENDING MOTIONS - PENALTY HEARING	AL		06/14/95	
0228	06/15/95	MOT /	ALL PENDING MOTIONS - PENALTY HEARING	AL		06/15/95	
0229	06/16/95	MOT /	ALL PENDING MOTIONS - PENALTY HEARING	AL		06/16/95	
0230	06/19/95	MOT /	ALL PENDING MOTIONS - PENALTY HEARING	AL		06/19/95	
0231	06/20/95	MOT /	ALL PENDING MOTIONS - PENALTY HEARING	AL		06/20/95	
0232	06/21/95	MOT /	ALL PENDING MOTIONS - PENALTY HEARING	AL		06/21/95	
0233	06/22/95	MOT /	ALL PENDING MOTIONS - PENALTY HEARING	AL		06/22/95	
0234	06/23/95	MOT /	ALL PENDING MOTIONS - PENALTY HEARING	AL		06/23/95	
0235	06/23/95	SENT/	SENTENCING - COUNTS VI & VII	001	GR	07/11/95	
0236	06/23/95	SENT/	SENTENCING - COUNTS VI & VII	002	GR	07/11/95	
0237	07/05/95	ORDR/	ORDER FOR TRANSCRIPT	001			
0238	07/05/95	ORDR/	ORDER FOR TRANSCRIPT	002			
0239	07/11/95	ORDR/	ORDER	001			
0240	07/11/95	MOT /	ALL PENDING MOTIONS 7-11-95	AL		07/11/95	
0241	07/11/95	OCAL/	STATUS CHECK: CREDIT FOR TIME SERVED	001	GR	08/17/95	
			AND PERFECTION OF APPEAL	001			
0242	07/11/95	OCAL/	STATUS CHECK: CREDIT FOR TIME SERVED	002	GR	08/17/95	
			AND PERFECTION OF APPEAL	002			
0243	07/12/95	NOTC/	NOTICE OF APPEAL	002	AP		
0244	07/11/95	JUDG/	JUDGMENT OF CONVICTION - PLEA	001			
0245	07/11/95	JUDG/	JUDGMENT OF CONVICTION - PLEA	002			
0246	07/11/95	WARR/	WARRANT OF EXECUTION	001			
0247	07/11/95	ORDR/	ORDER OF EXECUTION	001			
0248	07/11/95	WARR/	WARRANT OF EXECUTION	002			
0249	07/11/95	ORDR/	ORDER OF EXECUTION	002			
0250	07/18/95	NOTC/	NOTICE OF ENTRY OF ORDER	001			
0251	07/18/95	ORDR/	STIPULATION AND ORDER FOR PAYMENT OF	002			
			EXCESS FEES	002			
0252	07/18/95	ORDR/	ORDER TO STAY EXECUTION	002			
0253	07/18/95	EMO /	ENTRY OF MINUTE ORDER	001		07/18/95	

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0254	07/18/95	EMO	/ENTRY OF MINUTE ORDER	002		07/18/95	
0255	07/19/95	CERT	/CERTIFICATE OF MAILING	002		07/18/95	
0256	07/19/95	NOAS	/DESIGNATION OF CONTENTS OF RECORD ON	002			
			APPEAL	002			
0257	07/24/95	ORDR	/ORDER OF APPOINTMENT	002			
0258	07/28/95	TRAN	/REPORTER'S TRANSCRIPT			07/11/95	
0259	07/28/95	ORDR	/ORDER	001			
0260	07/28/95	ORDR	/ORDER	002			
0261	08/09/95	NOAS	/DESIGNATION OF CONTENTS OF RECORD ON	001			
			APPEAL	001			
0262	08/09/95	NOTC	/NOTICE OF APPEAL	001	AP		
0263	08/15/95	MOT	/ALL PENDING MOTIONS 8-15-95	AL		08/15/95	
0264	08/17/95	MOT	/ALL PENDING MOTIONS 8-17-95	AL		08/17/95	
0265	08/21/95	TRAN	/REPORTER'S TRANSCRIPT OF STATUS CHECK:			08/17/95	Y
			CRDIT FOR TIME SERVED AND PERFECTION				
OF APPEAL AS TO BOTH DEFENDANT'S (FLANAGAN AND MOORE)							
0266	01/12/96	ASSG	/Reassign Case From Judge GUY, III TO				
			Judge DOUGLAS				
0267	02/02/96	PET	/DEFT'S PRO PER PETITION FOR WRIT OF	004	VC	02/20/96	
			HABEAS CORPUS (VA 02-16-96)	004			
0268	02/02/96	MOT	/DEFT'S PRO PER MOTION FOR LEAVE TO	004	GR	02/20/96	
			PROCEED IN FORMA PAUPERIS	004			
0269	02/02/96	PET	/DEFT'S PRO PER PETITION FOR WRIT OF	004	DN	02/20/96	
			HABEAS CORPUS	004			
0271	02/02/96	AFFD	/AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE	004			
			TO PROCEED IN FORMA PAUPERIS	004			
0272	02/15/96	MOT	/STATE'S MOTION TO DISMISS PETITION FOR	004	GR	02/20/96	
			WRIT OF HABEAS CORPUS	004			
0273	02/15/96	REQT	/NOTICE OF MOTION AND MOTION TO DISMISS	004		02/20/96	Y
			PETITION FOR WRIT OF HABEAS CORPUS	004			
POST-CONVICTION							
0274	02/20/96	MOT	/ALL PENDING MOTIONS (02-20-96)	004		02/20/96	
0275	02/26/96	REQT	/NOTICE OF MOTION AND MOTION FOR	004		03/12/96	
			APPOINTMENT OF COUNSEL	004			
0276	02/26/96	MOT	/DEFT'S PRO PER MOTION FOR APPOINTMENT OF	004	DN	03/12/96	
			COUNSEL	004			
0277	03/14/96	ORDR	/ORDER	004			
0278	03/26/96	OPPS	/OPPOSITION TO MOTION TO DISMISS	004			
0279	03/27/96	ORDR	/ORDER	004			
0280	03/28/96	OPPS	/OPPOSITION TO MOTION TO DISMISS	004			
0281	04/04/96	NOTC	/NOTICE OF APPEAL AND DESIGNATION OF	004	AP		
			RECORD ON APPEAL	004			
0282	12/04/97	CCJA	/NEVADA SUPREME COURT CLERKS CERTIFICATE/	001		12/04/97	
			JUDGMENT - AFFIRMED	001			
0283	12/04/97	CCJA	/NEVADA SUPREME COURT CLERKS CERTIFICATE/	002		12/04/97	
			JUDGMENT - AFFIRMED	002			
0284	02/24/98	NOTC	/NOTICE TRANSCRIPTS ON SHELVES	AL			
0285	02/26/98	NSCO	/NEVADA SUPREME COURT JUDGMENT / ORDERED	004	GR	02/26/98	
			APPEAL DISMISSED	004			
0286	05/20/98	CASO	/CASE (RE)ACTIVATED ON				
0287	05/20/98	MOT	/DEFT'S MOTION FOR FEES IN EXCESS OF	002	GR	06/01/98	
			STATUTORY ALLOWANCE AND FOR EXPENSES	002			

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0288	05/22/98	ROC	/RECEIPT OF COPY	002		05/22/98	
0289	05/28/98	MOT	/DEFT'S REQUEST APPOINTMENT OF COUNSEL	001	GR	06/11/98	
			FOR POST CONVICTION RELIEF	001			
0291	05/27/98	AFFD	/AFFIDAVIT IN SUPPORT OF REQUEST TO	001			
			PROCEED IN FORMA PAUPERIS	001			
0292	05/28/98	PET	/DEFT'S PRO PER PETITION FOR WRIT OF	001	MC	11/30/99	
			HABEAS CORPUS	001			
0293	06/02/98	PET	/DEFT'S PETITION FOR WRIT OF HABEAS	002	MC	11/30/99	
			CORPUS	002			
0294	06/01/98	ORDR	/ORDER GRANTING MOTION FOR FEES IN EXCESS	002			
			OF STATUTORY ALLOWANCE AND FOR EXPENSES	002			
0295	06/02/98	ORDR	/ORDER	001		07/20/98	
0296	06/03/98	CCJA	/NEVADA SUPREME COURT CLERKS CERTIFICATE/	001		06/03/98	
			JUDGMENT - AFFIRMED	001			
0297	06/03/98	CCJA	/NEVADA SUPREME COURT CLERKS CERTIFICATE/	002		06/03/98	
			JUDGMENT - AFFIRMED	002			
0298	06/02/98	PET	/PETITION FOR WRIT OF HABEAS CORPUS	002		06/04/98	Y
			POST-CONVICTION AND APPOINTMENT OF	002			
COUNSEL							
0299	06/03/98	ROC	/RECEIPT OF COPY	002		06/03/98	
0300	06/04/98	MOT	/ALL PENDING MOTIONS 6-4-98	AL		06/04/98	
0301	06/05/98	ROC	/RECEIPT OF COPY	001		06/05/98	
0302	06/11/98	MOT	/ALL PENDING MOTIONS (06-11-98)	AL		06/11/98	
0303	06/11/98	OCAL	/STATUS CHECK: SUPPLEMENTAL	AL		11/25/98	
			MOTIONS/PETITIONS	AL			
0304	06/29/98	REQT	/MOTION FOR PRISON ACCESS AND	001			
			INVESTIGATION AND EXPERT FUNDS	001			
0305	06/29/98	AFFD	/AFFIDAVIT OF ROBERT D NEWELL	001			
0306	07/07/98	EXPR	/EX PARTE PLEADING PROPOSED ORDER	001			Y
			GRANTING PETITIONERS EX PARTE MOTION FOR	001			
INVESTIGATION AND EXPERT FUNDS							
0308	07/17/98	EXPR	/EX PARTE PLEADING PROPOSED ORDER	001			Y
			GRANTING PETITIONERS EX PARTE MOTION	001			
TO ALLOW PRISON ACCESS							
0309	08/05/98	APPL	/VERIFIED APPLICATION FOR ASSOCIATION OF	001			
			COUNSEL UNDER NEVADA SUPREME CRT RULE 42	001			
0310	08/11/98	MOT	/DEFT'S PRO PER MOTION FOR PRODUCTION OF	003	DN	08/24/98	
			DOCUMENTS	003			
0311	08/11/98	NOTC	/NOTICE OF MOTION	003			
0312	08/18/98	APPL	/EX PARTE APPLICATION FOR ORDER TO	002			
			PREPARE TRANSCRIPTS	002			
0313	08/18/98	ORDR	/ORDER APPOINTING ATTORNEY	002			
0314	08/21/98	EXPR	/EX PARTE ORDER TO PREPARE TRANSCRIPTS	002			
0315	08/27/98	ORDR	/ORDER DENYING DEFENDANTS PROPER PERSON	003			
			MOTION FOR PRODUCTION OF DOCUMENTS	003			
0316	09/02/98	CERT	/CERTIFICATE OF MAILING	001		09/02/98	
0317	09/02/98	CERT	/CERTIFICATE OF MAILING	002		09/02/98	
0318	09/02/98	TRAN	/REPORTER'S TRANSCRIPT OF DEFENDANT	AL		06/11/98	Y
			FLANAGAN'S REQUEST FOR APPOINTMENT OF	AL			
COUNSEL FOR POST-CONVICTION RELIEF / DEFENDANT MOORE'S PETITION FOR WRIT OF HABEAS CORPUS							
0319	09/21/98	ROC	/RECEIPT OF COPY OF THE EX PARTE ORDER TO	002		08/31/98	
			PREPARE TRANSCRIPTS	002			

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0320	11/19/98	MOT	/DEFT'S MOTION TO ASSOCIATE COUNSEL	001	GR	11/25/98	
0321	11/19/98	MOT	/DEFT'S MOTION TO ASSOCIATE COUNSEL	002	OC	11/25/98	
0322	11/19/98	ORDR	/NOTICE OF HEARING	001		11/25/98	
0323	11/25/98	MOT	/ALL PENDING MOTIONS (11-25-98)	AL		11/25/98	
0324	11/25/98	MOT	/DEFT'S SUBMISSION OF SUPPLEMENTAL	001	MC	11/30/99	
			POINTS ON WRIT OF HABEAS CORPUS	001			
0325	11/25/98	MOT	/DEFT'S SUBMISSION OF SUPPLEMENTAL	002	MC	11/30/99	
			POINTS ON WRIT OF HABEAS CORPUS	002			
0326	11/18/98	CERT	/CERTIFICATE OF MAILING	001		11/18/98	
0327	11/25/98	APPL	/EX PARTE APPLICATION FOR PERMISSION TO	001			Y
			INSPECT AND COPY ANY AND ALL	001			
JUVENILE RECORDS MAINTAINED BY THE CLERK OF THE COURT PROBATION DEPARTMENT AND IN THE CUSTODY OF JUVENILE AUTHORITIES INCLUDING POLICE REPORTS PSYCHIATRIC AND PSYCHOLOGICAL EVALUATION AND MEDICAL RECORDS							
0328	11/25/98	APPL	/EX PARTE APPLICATION FOR PERMISSION TO	001			Y
			INSPECT AND COPY ANY AND ALL RECORDS	001			
IN THE CUSTODY OF THE DEPARTMENT OF SOCIAL SERVICES ENCOMPASING THE CHILD PROTECTION SERVICE INCLUDING POLICE REPORTS PSYCHIATRIC AND PSYCHOLOGICAL EVALUATION AND MEDICAL RECORDS							
0329	11/25/98	APPL	/EX PARTE APPLICATION FOR PERMISSION TO	001			Y
			INSPECT AND COPY ANY AND ALL JUVENILE	001			
RECORDS MAINTAINED BY THE CLERK OF THE COURT PROBATION DEPARTMENT AND IN THE CUSTODY OF JUVENILE AUTHORITIES INCLUDING POLICE REPORTS PSYCHIATRIC AND PSYCHOLOGICAL EVALUATIONS AND MEDICAL RECORDS							
0330	11/25/98	APPL	/EX PARTE APPLICATION FOR PERMISSION TO	001			Y
			INSPECT AND COPY ANY AND ALL RECORDS	001			
IN THE CUSTODY OF THE DEPARTMENT OF SOCIAL SERVICES ENCOMPASSING THE CHILD PROTECTION SERVICE INCLUDING POLICE REPORTS PSYCHIATRIC AND PSYCHOLOGICAL EVALUATONS AND MEDICAL RECORDS							
0331	11/25/98	ORDR	/ORDER	001			
0332	12/03/98	STAT	/SUPREME COURT RULE 42 STATEMENT	001			
0333	12/31/98	EXPR	/EX PARTE ORDER GRANTING PERMISSION TO	001			Y
			INSPECT AND COPY ANY AND ALL JUVENILE	001			
RECORDS MAINTAINED BY THE CLERK OF THE COURT PROBATION DEPARTMENT AND IN THE CUSTODY OF JUVENILE AUTHORITIES INCLUDING POLICE REPORTS PSYCHIATRIC AND PSYCHOLOGICAL EVALUATIONS AND MEDICAL RECORDS							
0334	12/29/98	NOTC	/NOTICE OF ENTRY OF ORDER	001		12/29/98	
0335	02/08/99	EXPR	/EX PARTE ORDER GRANTING PERMISSION TO	001			Y
			INSPECT AND COPY ANY AND ALL RECORDS	001			
IN THE CUSTODY OF THE DEPARTMENT OF SOCIAL SERVICES ENCOMPASSING THE CHILD PROTECTION SERVICE INCLUDING POLICE REPORTS PSYCHIATRIC AND PSYCHOLOGICAL EVALUATIONS AND MEDICAL RECORDS							
0336	02/24/99	REQT	/EX PARTE MOTION FILED UNDER SEAL	001			
			MOTION FOR INVESTIGATION FUNDS	001			
0337	02/24/99	EXPR	/EX PARTE ORDER GRANTING INVESTIGATON	001			
			FUNDS	001			
0338	05/12/99	MOT	/HEARING: DEFT'S EX PARTE MOTION FOR	001	GR	05/17/99	
			RELEASE OF OF JUVENILE RECORDS	001			
0339	05/12/99	MOT	/HEARING: DEFT'S EX PARTE MOTION FOR	001	GR	05/17/99	
			PRISON ACCESS	001			
0340	05/12/99	MOT	/HEARING: DEFT'S EX PARTE MOTION FOR REIM	001	GR	05/17/99	
			AND WAIVER OF COUNTY RECORDS' CHARGES	001			

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0341	05/12/99	MOT	/HEARING: DEFT'S EX PARTE MOTION FOR	001	GR	05/17/99	
			SOCIAL HISTORIAN INVESTIGATION FUNDS	001			
0342	05/12/99	MOT	/HEARING: DEFT'S EX PARTE MOTION FOR	001	GR	05/17/99	
			NEUROPSYCHOLOGICAL EXAMINATION FUNDS	001			
0344	05/12/99	MOT	/HEARING: DEFT'S EX PARTE FOR CORONER'S	001	GP	05/17/99	
			RECORDS	001			
0345	05/13/99	REQT	/EX PARTE PLEADING-FILED UNDER SEAL	001			
			MOTION FOR PRISON ACCESS	001			
0346	05/13/99	REQT	/EX PARTE PLEADING-FILED UNDER SEAL	001			
			MOTION FOR CORONERS RECORDS	001			
0347	05/13/99	AFFD	/EX PARTE PLEADING-FILED UNDER SEAL	001			
			AFFIDAVIT OF ROBERT D NEWELL	001			
0348	05/13/99	REQT	/EX PARTE MOTION FILED UNDER SEAL MOTION	001			Y
			FOR NEUROPSYCHOLOGICAL EXAMINATION	001			
FUNDS							
0349	05/13/99	REQT	/EX PARTE PLEADING FILED UNDER SEAL	001			Y
			MOTION FOR SOCIAL HISTORIAN	001			
INVESTIGATION FUNDS							
0350	05/13/99	MEMO	/SUPPLEMENTARY MEMORANDUM WITH	001			Y
			DECLARATION OF SCHARLETTE HOLDMAN	001			
IN SUPPORT OF RELEASE OF JUVENILE RECORDS EX PARTE MOTION FILED UNDER SEAL							
0351	05/13/99	REQT	/EX PARTE PLEADING FILED UNDER SEAL	001			Y
			MOTION FOR REIMBURSEMENT AND WAIVER	001			
OF COUNTY RECORDS CHARGES							
0352	05/18/99	MOT	/ALL PENDING MOTIONS (05-17-99)	001	GP	05/17/99	
0353	05/18/99	ORDR	/EX PARTE PLEADING ORDER GRANTING MOTION	001			
			FOR SOCIAL HISTORIAN INVESTIGATION FUNDS	001			
0354	05/18/99	ORDR	/EX PARTE PLEADING-FILED UNDER SEAL	001			Y
			PROPOSED ORDER GRANTING PETITIONERS	001			
EX PARTE MOTION TO ALLOW PRISON ACCESS							
0355	05/18/99	ORDR	/ORDER GRANTING PETITIONERS MOTION FOR	001			
			NEUROPSYCHOLOGICAL EXAMINATION FUNDS	001			
0356	05/27/99	MOT	/ALL PENDING MOTIONS (5-27-99)	AL		05/27/99	
0357	05/27/99	ORDR	/EX PARTE PLEADING ORDER GRANTING MOTION	001			
			FOR CORONERS RECORDS	001			
0358	05/27/99	ORDR	/EX PARTE PLEADING ORDER GRANTING MOTION	001			
			TO LIMIT COUNTY RECORDS CHARGES	001			
0359	06/30/99	NSCO	/NEVADA SUPREME COURT JUDGMENT / ORDERED	004		06/30/99	
			APPEAL DISMISSED	004			
0360	06/29/99	JMNT	/REMITTITUR APPEAL DISMISSED	0004		07/07/99	
0361	08/27/99	MOT	/DEFT'S MOTION TO ASSOCIATE COUNSEL	001	GR	09/08/99	
0362	08/27/99	MOT	/DEFT'S MOTION TO ASSOCIATE COUNSEL	002	GR	09/08/99	
0363	08/27/99	NOTC	/NOTICE OF HEARING	001		09/08/99	
0364	08/27/99	APPL	/VERIFIED APPLICATION FOR ASSOCIATION OF	001			
			COUNSEL UNDER NEVADA SUPREME CRT RULE 42	001			
0365	09/01/99	CERT	/CERTIFICATE OF MAILING	001		09/01/99	
0366	09/08/99	MOT	/ALL PENDING MOTIONS (09-08-99)	AL	GR	09/08/99	
0367	09/08/99	REQT	/MOTION FOR REIMBURSEMENT OF	001			
			INVESTIGATION EXPENSES	001			
0368	09/08/99	ORDR	/ORDER	001			
0369	11/30/99	OCAL	/STATUS CHECK: BRIEFING SCHEDULE	AL		12/20/99	
0370	11/30/99	MOT	/ALL PENDING MOTIONS 11/30/99	AL		11/30/99	

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0371	11/30/99	PET	/SUPPLEMENTAL PETITION FOR WRIT OF HABEAS	001			
			CORPUS (POST-CONVICTION)	001			
0372	11/30/99	CERT	/CERTIFICATE OF MAILING	001		11/29/99	
0373	12/09/99	NOTC	/NOTICE OF ENTRY OF ORDER	001		12/09/99	
0374	12/16/99	ASSG	/Reassign Case From Judge Douglas TO				
			Judge Hardcastle				
0375	12/20/99	HEAR	/CONFIRMATION OF COUNSEL (J THOMAS)	002	CM	12/23/99	
0376	12/20/99	OCAL	/STATUS CHECK	002		12/23/99	
0377	12/20/99	ARGU	/ARGUMENT: DEFT'S PETITION FOR WRIT OF	001	VC	03/09/00	
			HABEOUS CORPUS VJ 1/19	001			
0378	12/22/99	MOT	/ALL PENDING MOTIONS (12-22-99)	002		12/22/99	
0379	12/28/99	MOT	/ALL PENDING MOTIONS			12/23/99	
0380	01/13/00	HEAR	/STATE'S REQUEST FOR EXTENSION OF TIME	001	GR	01/19/00	
			TO FILE WRIT/RESPONSE	001			
0381	01/19/00	MOT	/DAVID SCHIECK'S MOTION FOR ATTORNEY'S	002	GR	01/31/00	
			FEES IN EXCESS OF STATUTORY ALLOWANCE &	002			
0382	01/19/00	ARGU	/ARGUMENT: DEFT'S PETITION FOR WRIT OF	001	DP	08/16/00	
			HABEAS CORPUS	001			
0383	01/19/00	MOT	/DEFT'S MOTION FOR SEVERANCE	001	DN	01/31/00	
0384	01/20/00	CERT	/CERTIFICATE OF MAILING	002		01/20/00	
0385	01/21/00	ROC	/RECEIPT OF COPY	001		01/21/00	
0386	01/31/00	ORDR	/ORDER GRANTING MOTION FOR ATTORNEYS FEES	002			Y
			IN EXCESS OF STATUTORY ALLOWANCE AND	002			
FOR EXPENSES							
0387	02/02/00	MOT	/ALL PENDING MOTIONS 01-31-00	AL		01/31/00	
0388	03/29/00	RSPN	/STATES RESPONSE TO DEFENDANTS PETITION	001			Y
			FOR WRIT OF HABEAS CORPUS	001			
POST-CONVICTION							
0389	05/17/00	MOT	/DEFT'S MOTION FOR DISCOVERY	001	DN	08/16/00	
0390	05/17/00	HEAR	/DEFT'S MOTION FOR EVIDENTIARY HEARING	001	GP	08/16/00	
0391	05/17/00	RPLY	/PETITIONERS REPLY IN SUPPORT OF	001			
			PETITION FOR WRIT OF HABEAS CORPUS	001			
0392	05/18/00	NOTC	/NOTICE OF EXHIBITS TO PETITIONERS			05/17/00	
			REPLY (VOL I THRU V) IN THE VAULT				
0393	05/23/00	MOT	/STATE'S REQUEST CHANGE/SET BRIEFING	002		06/19/00	
			SCHEDULE	002			
0394	05/25/00	RPLY	/SUPPLEMENT TO PETITIONERS REPLY IN	001			Y
			SUPPORT OF PETITION FOR WRIT OF	001			
HABEAS CORPUS							
0395	05/25/00	CERT	/CERTIFICATE OF MAILING	001		05/17/00	
0396	05/25/00	CERT	/CERTIFICATE OF MAILING	001		05/17/00	
0397	05/25/00	CERT	/CERTIFICATE OF MAILING	001		05/17/00	
0398	05/25/00	CERT	/CERTIFICATE OF MAILING	001		05/17/00	
0399	05/31/00	MOT	/ALL PENDING MOTIONS FOR 5/31/00	001		05/31/00	
0400	06/05/00	MOT	/DEFT'S MOTION FOR DISQUALIFICATION OF	001	VC	06/15/00	
			JUDGE VJ 6/6	001			
0401	06/05/00	TRAN	/REPORTER'S TRANSCRIPT OF MAY 31, 2000	001		05/31/00	Y
			ARGUMENT:	001			
DEFENDANT FLANAGAN'S PETITION FOR WRIT OF HABEAS CORPUS, DEFENDANT'S MOTION FOR DISCOVERY, DEFENDANT'S MOTION FOR EVIDENTIARY HEARING							
0402	06/06/00	OCAL	/MINUTE ORDER RE: DISQUALIFICATION OF	001		06/06/00	
			JUDGE HARDCASTLE	001			

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0403	06/09/00	OPPS/	OPPOSITION TO DEFENDANTS MOTION FOR	001			
			DISCOVERY	001			
0404	06/13/00	MOT /	STATE'S MOTION FOR WAIVER OF	001	DN	08/16/00	
			ATTORNEY-CLIENT PRIVILEGE	001			
0405	06/12/00	MEMO/	PETITIONERS MEMORANDUM OPPOSING WAIVER	001			
			OF ATTORNEY-CLIENT PRIVILEGE	001			
0406	06/12/00	CERT/	CERTIFICATE OF MAILING	001		06/09/00	
0407	06/13/00	OCAL/	MINUTE ORDER RE: RECUSAL VI	001		06/13/00	
0408	06/13/00	ASSG/	RECUSAL OF JUDGE Hardcastle REASSIGNED	001			
			TO JUDGE Bonaventure*** Flanagan Only***	001			
0409	06/13/00	ASSG/	RECUSAL OF JUDGE Bonaventure REASSIGNED				
			TO JUDGE Gibbons				
0410	06/13/00	NDR /	NOTICE OF DEPARTMENT REASSIGNMENT			06/13/00	Y
			004771001988FC				
001988004771							
0411	06/19/00	ARGU/	ARGUMENT: DEFENDANT'S PETITION FOR WRIT	002	VC	01/02/01	
			OF HABEAS CORPUS VJ 12/12	002			
0412	06/22/00	MOT /	ALL PENDING MOTIONS 6/22/00	001		06/22/00	
0413	08/03/00	REQT/	MOTION FOR REIMBURSEMENT OF	001			
			INVESTIGATION EXPENSES - UNDER SEAL	001			
0414	08/03/00	AFFD/	AFFIDAVIT OF ROBERT D NEWELL -	001			
			UNDER SEAL	001			
0415	08/14/00	MOT /	DEFT'S PRO PER REQUEST (MOTION) FOR	003	DN	09/28/00	
			APPOINTMENT OF ATTORNEY	003			
0416	08/14/00	PET /	DEFT'S PRO PER PETITION FOR WRIT OF	003	DN	09/28/00	
			HABEAS CORPUS	003			
0417	08/15/00	ORDR/	ORDER RE PETITION FOR WRIT OF HABEAS	003	HG	09/28/00	
			CORPUS	003			
0418	08/16/00	OCAL/	STATUS CHECK: EVIDENTIARY HEARING	001		09/13/00	
0419	08/17/00	MOT /	ALL PENDING MOTIONS 8-16-00	001		08/16/00	
0420	08/17/00	EXPT/	EX PARTE PLEADING FILED UNDER SEAL -	001			
			MOTION FOR EXPERT FUNDS	001			
0421	08/23/00	AFFD/	PETITIONERS SUPPLEMENTAL FINANCIAL	003			
			AFFIDAVIT - CERTIFICATE OF MAILING	003			
0422	08/23/00	CERT/	CERTIFICATE OF MAILING	003		08/23/00	
0423	08/23/00	AFFD/	AFFIDAVIT IN SUPPORT OF MOTION	003			
			REQUESTING APPOINTMENT OF COUNSEL	003			
0424	08/23/00	CRTF/	CERTIFICATE OF INMATES INSTITUTIONAL	003			
			ACCOUNT	003			
0428	08/23/00	AFFD/	AFFIDAVIT IN SUPPORT OF MOTION TO	004			
			PROCEED IN FORMA PAUPERIS	004			
0429	08/23/00	CRTF/	FINANCIAL CERTIFICATE	004			
0430	08/23/00	CERT/	CERTIFICATE OF MAILING	003		08/23/00	
0432	08/23/00	PET /	DEFT'S PRO PER PETITION FOR WRIT OF	004	DN	10/10/00	
			HABEAS CORPUS	004			
0433	08/23/00	MOT /	DEFT'S PRO PER MOTION FOR APPOINTMENT OF	004	DN	10/10/00	
			COUNSE	004			
0434	08/23/00	MOT /	DEFT'S PRO PER MOTION FOR LEAVE TO	004	GR	10/10/00	
			PROCEED IN FORMA PAUPERIS	004			
0435	08/29/00	ORDR/	ORDER RE PETITION FOR WRIT OF HABEAS	004		10/10/00	
			CORPUS	004			
0436	08/29/00	ORDR/	ORDER	001			

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0437	09/07/00	MOT /	DEFT'S PRO PER MOTION FOR APPOINTMENT OF	004	DN	10/10/00	
			COUNSEL	004			
0438	09/13/00	HEAR/	EVIDENTIARY HEARING (REMAINING ISSUES	001	JD	04/13/01	
			ON WRIT)	001			
0439	09/18/00	OPPS/	OPPOSITION TO MOTION TO APPOINT	003			
			COUNSEL	003			
0440	09/18/00	OPPS/	OPPOSITION TO DEFENDANTS PETITION FOR	003			
			WRIT OF HABEAS CORPUS POST-CONVICTION	003			
0441	09/28/00	MOT /	ALL PENDING MOTIONS 9/28/00	003		09/28/00	
0442	09/28/00	ORDR/	ORDER FOR PRODUCTION OF INMATE	001	HG	01/26/01	
0443	09/28/00	ORDR/	ORDER REGARDING EVIDENTIARY HEARING	001		09/28/00	
0444	10/03/00	OPPS/	OPPOSITION TO DEFENDANTS PROPER	004			Y
			PERSON PETITION FOR WRIT OF HABEAS	004			
CORPUS POST-CONVICTION							
0445	10/03/00	OPPS/	OPPOSITION TO DEFENDANTS PROPER	004			
			PERSON MOTION TO APPOINT COUNSEL	004			
0446	10/09/00	NOTC/	NOTICE OF ENTRY OF ORDER	001		10/09/00	
0447	10/10/00	MOT /	ALL PENDING MOTIONS 10/10/00	004		10/10/00	
0448	10/12/00	ORDR/	STIPULATION TO CONTINUE DUE DATE FOR	001		10/12/00	Y
			SUPPLEMENTAL PETITION FOR WRIT OF	001			
HABEAS CORPUS							
0449	10/17/00	RPLY/	REPLY TO OPPOSITIN TO PETITIONERS	004			Y
			PROPER PERSONS PETITION FOR WRIT OF	004			
HABEAS CORPUS POST-CONVICTION							
0450	10/18/00	ORDR/	STIPULATION	001		10/18/00	
0451	10/19/00	JUDG/	FINDINGS OF FACTS, CONCLUSIONS OF LAW	003	HG	09/28/00	
			AND ORDER	003			
0452	10/19/00	JUDG/	FINDINGS OF FACTS, CONCLUSIONS OF LAW	004	HG	10/10/00	
			AND JUDGMENT	004			
0453	10/19/00	NOTC/	NOTICE OF ENTRY OF ORDER	004		10/19/00	
0454	10/30/00	PET /	DEFT'S PRO PER MOTION FOR APPOINTMENT OF	004	DN	11/09/00	
			COUNSEL ON THE APPEAL	004			
0455	10/30/00	NOAS/	PETITIONERS NOTICE OF APPEAL AND MOTION	004	AP		
			FOR APPOINTMENT OF COUNSEL ON THE APPEAL	004			
0456	11/01/00	CASO/	CASE (RE)ACTIVATED ON				
0457	10/31/00	STAT/	CASE APPEAL STATEMENT	004			
0458	10/31/00	REQT/	REQUEST OF TRANSCRIPT OF PROCEEDINGS	001			
0459	11/06/00	OPPS/	OPPOSITION TO PRO PER MOTION FOR	004			
			APPOINTMENT OF COUNSEL ON APPEAL	004			
0460	11/21/00	MOT /	DEFT'S MOTION FOR EXTENSION OF TIME TO	002		12/12/00	
			FILE SUPPLEMENTAL POST-CONVICTION PETITI	002			
0461	11/22/00	ORDR/	ORDER DENYING DEFENDANTS MOTION FOR	004	HG	11/09/00	
			APPOINTMENT OF COUNSEL ON APPEAL	004			
0462	12/02/00	ASSG/	Reassign Case From Judge Gibbons To				
			Judge Saitta				
0463	12/06/00	MOT /	DEFT'S MOTION TO SEAL ORDER	001	GR	12/18/00	
0464	12/06/00	MOT /	DEFT'S MOTION TO CLARIFY AND EXPAND	001	DN	12/18/00	
			SCOPE OF EVIDENTIARY HEARING	001			
0465	12/06/00	REQT/	EX PARTE MOTION FILED UNDER SEAL	001			Y
			RENEWED MOTION FOR EXPERT FUNDS AND	001			
INVESTIGATIVE FUNDS							
0466	12/06/00	NOTC/	NOTICE OF MOTION	001		12/18/00	

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0467	12/06/00	NOTC/	NOTICE OF MOTION	001		12/18/00	
0468	12/06/00	ROC /	RECEIPT OF COPY	001		12/06/00	
0469	12/06/00	ROC /	RECEIPT OF COPY	001		12/06/00	
0470	12/11/00	ORDR/	ORDER	001		12/11/00	
0471	12/12/00	HEAR/	ARGUMENT: DEFT'S PETITION FOR WRIT OF	002		09/18/02	
			HABEAS CORPUS	002			
0472	12/12/00	CMMT/	DEFENDANT RANDOLPH MOORE ASSIGNED TO				
			DEPARTMENT XVII, JUDGE CHERRY				
0473	12/14/00	RSPN/	RESPONSE TO DEFENDANTS MOTION TO SEAL	001			
			ORDER	001			
0474	12/14/00	OPPS/	OPPOSITION TO MOTION TO CLARIFY AND	001			
			EXPAND SCOPE	001			
0475	12/14/00	ORDR/	ORDER FOR PRODUCTION OF INMATE	001		02/09/01	
0476	12/18/00	MOT /	ALL PENDING MOTIONS 12/18/00	001		12/18/00	
0477	12/26/00	ORDR/	ORDER DENYING DEFENDANTS MOTION TO	001	HG	12/18/00	Y
			CLARIFY AND EXPAND THE SCOPE OF THE	001			
EVIDENTIARY HEARING AND ORDER GRANTING DEFENDANTS MOTION TO SEAL ORDER							
0478	01/23/01	LIST/	NOTICE OF WITNESSES	001			
0479	01/31/01	TRAN/	REPORTER'S TRANSCRIPT STATUS CHECK	001		09/13/00	
			EVIDENTIARY HEARING	001			
0480	01/29/01	TRAN/	REPORTER'S TRANSCRIPT MOTIONS HEARING	001		08/16/00	
0481	02/11/01	REQT/	MOTION TO JOIN AND OR CONSOLIDATE	003			
			PETITIONS FOR WRITS OF HABEAS CORPUS	003			
0482	02/11/01	REQT/	REQUEST MOTION FOR APPOINTMENT OF	003			
			ATTORNEY	003			
0483	02/11/01	AFFD/	AFFIDAVIT IN SUPPORT OF REQUEST TO	003			
			PROCEED IN FORMA PAUPERIS	003			
0484	02/11/01	REQT/	MOTION FOR LEAVE TO PROCEED IN FORMA	003			
			PAUPERIS	003			
0485	02/11/01	CRTF/	CERTIFICATE OF INMATES INSTITUTIONAL	003			
			ACCOUNT	003			
0486	02/20/85	REQT/	MEDIA REQUEST	001		02/20/85	
0487	02/20/85	REQT/	MEDIA REQUEST	AL		02/20/85	
0488	02/20/85	ORDR/	ORDER GRANTING ENTRY OF MEDIA PERMISSION	AL		02/19/85	
0489	02/20/85	REQT/	MEDIA REQUEST	001		02/20/85	
0490	02/28/85	ORDR/	ORDER	001		02/25/85	
0491	03/01/85	REQT/	MEDIA REQUEST	AL		05/20/85	
0492	03/01/85	ORDR/	ORDER GRANTING ENTRY OF MEDIA	AL		02/28/85	
			PERMISSION	AL			
0493	03/20/85	PET /	PETITION FOR A WRIT OF HABEAS CORPUS	004		03/20/85	
0494	03/21/85	REQT/	MOTION TO WITHDRAW AS COUNSEL	AL		04/01/85	
0495	03/22/85	PET /	PETITION FOR A WRIT OF HABEAS CORPUS	005		03/22/85	
0496	03/25/85	ORDR/	ORDER	004		03/22/85	
0497	03/26/85	WRIT/	WRIT OF HABEAS CORPUS	004		04/08/85	
0498	03/29/85	ORDR/	ORDER	005		05/25/85	
0499	04/03/85	WRIT/	WRIT OF HABEAS CORPUS	005		04/15/85	
0500	04/05/85	REQT/	MOTION TO WITHDRAW AS COUNSEL OF RECORD	005		04/10/85	
			FOR DEFENDANT	005			
0501	04/17/85	PET /	PETITION FOR A WRIT OF HABEAS CORPUS	006		04/17/85	
0502	04/24/85	REQT/	MEDIA REQUEST	001		05/20/85	
0503	04/24/85	REQT/	MEDIA REQUEST	AL		05/20/85	
0504	04/24/85	REQT/	MOTION FOR APPOINTMENT OF PSYCHIATRIST	AL		05/06/85	
			FOR EXAMINATION OF DEFENDANT	AL			

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0505	04/29/85	CERT/	CERTIFICATE OF MAILING	005		04/29/85	
0506	04/29/85	NOTC/	NOTICE OF MOTIONS	005		04/29/85	
0507	04/29/85	REQT/	MOTION TO FILE ADDITIONAL MOTIONS UPON RECEIPT OF DISCOVERY MATERIAL AND FOLLOWING EVIDENTIARY HEARINGS	005 005		04/29/85	Y
0508	04/29/85	REQT/	MOTION FOR APPOINTMENT OF PSYCHIATRISTS FOR EXAMINATION OF DEFENDANT	005 005		04/29/85	Y
0509	04/29/85	REQT/	MOTION FOR DISCOVERY EXAMINATION OF EVIDENCE AND PRODUCTION OF ALL EVIDENCE FAVORABLE TO DEFENDANT	005 005		04/29/85	Y
0510	04/29/85	REQT/	MOTION FOR SEVERANCE	005		04/29/85	
0511	04/29/85	REQT/	MOTION IN LIMINE (REGARDING CO-DEFENDANTS STATEMENTS)	005 005		04/29/85	
0512	05/03/85	WRIT/	RETURN TO WRIT OF HABEAS CORPUS	004		05/03/85	
0513	05/03/85	WRIT/	RETURN TO WRIT OF HABEAS CORPUS	006		05/03/85	
0514	05/03/85	WRIT/	RETURN TO WRIT OF HABEAS CORPUS	005		05/03/85	
0515	05/06/85	ORDR/	ORDER	AL		05/06/85	
0516	05/06/85	STIP/	STIPULATION	AL		05/06/85	
0517	05/16/85	ORDR/	ORDER FOR APPOINTMENT OF PSYCHIATRIST FOR EXAMINATION OF DEFENDANT	005 005		05/16/85	
0518	05/17/85	NOTC/	NOTICE OF ENTRY OF ORDER FOR APPOINTMENT OF PSYCHIATRIST FOR EXAMINATION OF DEFT	005 005		05/17/85	
0519	05/21/85	ANSW/	ANSWER IN OPPOSITION TO MOTION FOR SEVERANCE	005 005		09/18/85	
0520	05/21/85	RSPN/	RESPONSE TO RETURN TO WRIT OF HABEAS CORPUS	004 004		05/21/85	
0521	05/31/85	REQT/	MEDIA REQUEST	001		06/26/85	
0522	05/31/85	ORDR/	ORDER GRANTING ENTRY OF MEDIA PERMISSION	001		05/29/85	
0523	06/19/85	REQT/	PRELIMINARY MOTION FOR SEVERANCE	004		06/19/85	
0524	06/19/85	REQT/	MOTION IN LIMINE REGARDING CO-DEFENDANTS STATEMENTS; REQUEST FOR EVIDENTIARY HEARING	004 004		06/19/85	Y
0525	06/19/85	REQT/	MOTION REQUESTING LEAVE OF COURT TO FILE ADDITIONAL MOTIONS UPON RECEIPT OF DISCOVERY	004 004		06/19/85	Y
0526	06/19/85	REQT/	MOTION FOR DISCOVERY EXAMINATION OF EVIDENCE AND PRODUCTION OF ALL EVIDENCE FAVORABLE TO DEFENDANT	004 004		06/19/85	Y
0527	06/19/85	REQT/	MOTION FOR IMMEDIATE DISCLOSURE OF TURNCOAT WITNESSES	004 004		06/19/85	
0528	06/26/85	REQT/	MOTION TO PLACE ON CALENDAR	004		06/26/85	
0529	07/02/85	REQT/	MEDIA REQUEST	001		08/07/85	
0530	07/02/85	ORDR/	ORDER GRANTING ENTRY OF MEDIA PERMISSION	001		06/28/85	
0531	07/02/85	REQT/	MEDIA REQUEST	001		09/23/85	
0532	07/02/85	ORDR/	ORDER GRANTING ENTRY OF MEDIA PERMISSION	001		06/28/85	
0533	07/03/85	REQT/	MOTION TO DISMISS	003		07/03/85	
0534	07/09/85	SUPP/	FIRST SUPPLEMENT TO MOTION IN LIMINE REGARDING CO-DEFENDANTS STATEMENTS REQUEST FOR EVIDENTIARY HEARING AND PRELIMINARY MOTION FOR SEVERANCE	004 004		07/09/85	Y
0535	07/10/85	BREF/	OPENING BRIEF OF DEFT MICHAEL WALSH	005			
0536	07/19/85	ANSW/	ANSWER TO MOTIONS IN LIMINE AND FOR SEVERANCE OF TRIALS	AL AL			

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0537	07/17/85	ANSW/	ANSWER IN OPPOSITION TO MOTION FOR	004			Y
			DISCOVERY EXAMINATION OF EVIDENCE AND	004			
PRODUCTION OF ALL EVIDENCE FAVORABLE TO DEFENDANT							
0538	07/22/85	REQT/	ADDITIONAL MOTION FOR SPECIFIC DISCOVERY	004		07/22/85	
0539	07/22/85	RSPN/	RESPONSE TO ANSWER IN OPPOSITION TO	004			Y
			MOTION FOR DISCOVERY EXAMINATION OF	004			
EVIDENCE AND PRODUCTION OF ALL EVIDENCE FAVORABLE TO DEFENDANT							
0540	07/22/85	RSPN/	RESPONSE TO ANSWER TO MOTIONS IN LIMINE	004			
			AND FOR SEVERANCE OF TRIALS	004			
0541	08/01/85	REQT/	MOTION FOR SEVERANCE OF TRIAL FROM	003		08/12/85	
			CO-DEFENDANTS	003			
0542	08/01/85	NOTC/	NOTICE OF JOINDER IN CO-DEFENDANT	003			Y
			LUCKETTS ADDITIONAL MOTION FOR SPECIFIC	003			
DISCOVERY							
0543	08/05/85	ORDR/	ORDER	001		08/01/85	
0544	08/07/85	ANSW/	ANSWER IN OPPOSITION TO MOTION FOR	003			
			SEVERANCE OF TRIAL FROM CO-DEFENDANTS	003			
0545	08/13/85	EXPT/	EX PARTE APPLICATION FOR APPOINTMENT OF	005			
			INVESTIGATOR	005			
0546	08/14/85	NOTC/	NOTICE OF JOINDER IN CO-DEFENDANT	005		08/14/85	Y
			LUCKETTS ADDITIONAL MOTION FOR	005			
SPECIFIC DISCOVERY							
0547	08/14/85	SUPP/	SUPPLEMENT TO DEFENDANT WALSHS MOTION	005		08/30/85	
			FOR SEVERANCE OF TRIAL FROM CODEFENDANTS	005			
0548	08/14/85	CERT/	CERTIFICATE OF MAILING	005		08/14/85	
0549	08/15/85	ORDR/	ORDER FOR APPOINTMENT OF INVESTIGATOR	005		08/15/85	
0550	09/04/85	ORDR/	ORDER	001		09/03/85	
0551	09/05/85	EXPT/	EX PARTE ORDER TO TRANSPORT	004		09/13/85	
0552	08/23/85	REQT/	MEDIA REQUEST	AL		09/23/85	
0553	09/03/85	SUBP/	SUBPOENA	005	SV	08/29/85	
0554	09/03/85	SUBP/	SUBPOENA	005	SV	08/29/85	
0555	09/03/85	AFFD/	AFFIDAVIT OF ATTEMPTED SERVICE	005		08/29/85	
0556	09/03/85	SUBP/	SUBPOENA	005			
0557	09/03/85	SUBP/	SUBPOENA	005		08/27/85	
0558	09/09/85	REQT/	MOTION TO DISMISS COUNSEL AND APPOINT	002		09/23/85	
			DIFFERENT COUNSEL	002			
0559	09/09/85	REQT/	MOTION FOR SEVERANCE AND CHANGE OF	001		09/18/85	
			VENUE	001			
0560	09/09/85	REQT/	MOTION FOR DISCLOSURE OF OTHER BAD	001		09/09/85	Y
			ACTS AND MOTION IN LIMINE FOR	001			
EXCLUSION OF SAID EVIDENCE							
0561	09/09/85	REQT/	SPECIFIC REQUEST FOR EXCULPATORY	001		09/18/85	
			EVIDENCE	001			
0562	09/09/85	REQT/	MOTION FOR PRODUCTION OF STATEMENTS	001		09/18/85	
			UNDER JENCKS ACT	001			
0563	09/09/85	REQT/	MOTION FOR SEVERANCE OF DALE FLANAGAN	001		09/18/85	
0564	09/09/85	REQT/	MOTION TO RETAIN AND PRODUCE ROUGH	001		09/18/85	
			NOTES	001			
0565	09/17/85	NOTC/	NOTICE OF AGGRAVATING CIRCUMSTANCES	AL			
0566	09/17/85	JUDG/	JUDGMENT OF CONVICTION - PLEA	006		09/16/85	
0567	09/18/85	ANSW/	ANSWER TO SPECIFIC REQUEST FOR	001			
			EXCULPATORY EVIDENCE	001			

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0568	09/18/85	ANSW/	ANSWER TO MOTION FOR DISCLOSURE OF OTHER	001			Y
			BAD ACTS AND MOTION IN LIMINE FOR	001			
EXCLUSION OF SAID EVIDENCE							
0569	09/18/85	ANSW/	ANSWER IN OPPOSITION TO MOTION FOR	001			Y
			PRODUCTION OF STATEMENTS UNDER THE	001			
JENCKS ACT							
0570	09/18/85	ANSW/	ANSWER IN OPPOSITION TO MOTION FOR	001			
			SEVERANCE OF DALE FLANAGAN	001			
0571	09/18/85	ANSW/	ANSWER IN OPPOSITION TO MOTION TO RETAIN	001			
			AND PRODUCE ROUGH NOTES	001			
0572	09/18/85	ANSW/	ANSWER IN OPPOSITION TO MOTION FOR	001			
			SEVERANCE AND CHANGE OF VENUE	001			
0573	09/18/85	INFO/	MOTION AND NOTICE OF MOTION TO ENDORSE	001		09/23/85	
			NAMES OF INFORMATION	001			
0574	09/19/85	EXPT/	EX PARTE APPLICATION FOR APPOINTMENT OF	005			
			INVESTIGATOR	005			
0575	09/20/85	NCA /	PROPOSED VOIR DIRE QUESTION	001			
0576	09/20/85	INFO/	MOTION AND NOTICE OF MOTION TO ENDORSE	001		09/24/85	
			NAMES OF INFORMATION	001			
0577	09/23/85	REQT/	MOTION TO USE REPORTED TESTIMONY	AL		09/23/85	
0578	09/24/85	NCA /	DEFENDANTS REQUESTED VOIR DIRE QUESTIONS	004			
0579	09/24/85	ORDR/	ORDER TO ENDORSE NAMES ON INFORMATION	001		09/24/85	
0580	09/24/85	ORDR/	ORDER TO ENDORSE NAMES ON INFORMATION	001		09/24/85	
0581	09/25/85	REQT/	MEDIA REQUEST	AL		09/25/85	
0582	09/25/85	ORDR/	ORDER GRANTING ENTRY OF MEDIA PERMISSION	AL		09/25/85	
0583	09/25/85	REQT/	MEDIA REQUEST	AL		09/26/85	
0584	09/25/85	ORDR/	ORDER GRANTING ENTRY OF MEDIA PERMISSION	AL		09/24/85	
0585	09/25/85	NCA /	LIST OF CO-CONSPIRATOR DECLARATIONS	AL			
0586	09/30/85	LIST/	JURY LIST	AL			
0587	10/03/85	ORDR/	ORDER	001		10/03/85	
0588	10/04/85	ORDR/	ORDER	AL		10/04/85	
0589	10/11/85	INST/	INSTRUCTIONS TO THE JURY	AL		10/09/85	
0590	10/11/85	VER /	VERDICT	004		10/11/85	
0591	10/11/85	VER /	VERDICT	004		10/11/85	
0592	10/11/85	VER /	VERDICT	004		10/11/85	
0593	10/11/85	VER /	VERDICT	004		10/11/85	
0594	10/11/85	VER /	VERDICT	001		10/11/85	
0595	10/11/85	VER /	VERDICT	001		10/11/85	
0596	10/11/85	VER /	VERDICT	001		10/11/85	
0597	10/11/85	VER /	VERDICT	001		10/11/85	
0598	10/11/85	VER /	VERDICT	001		10/11/85	
0599	10/11/85	VER /	VERDICT	001		10/11/85	
0600	10/11/85	VER /	VERDICT	001		10/11/85	
0601	10/11/85	VER /	VERDICT	003		10/11/85	
0602	10/11/85	VER /	VERDICT	003		10/11/85	
0603	10/11/85	VER /	VERDICT	003		10/11/85	
0604	10/11/85	VER /	VERDICT	003		10/11/85	
0605	10/11/85	VER /	VERDICT	003		10/11/85	
0606	10/11/85	VER /	VERDICT	003		10/11/85	
0607	10/11/85	VER /	VERDICT	003		10/11/85	
0608	10/11/85	VER /	VERDICT	002		10/11/85	
0609	10/11/85	VER /	VERDICT	002		10/11/85	

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER C
0610	10/11/85	VER	/VERDICT	002		10/11/85
0611	10/11/85	VER	/VERDICT	002		10/11/85
0612	10/11/85	VER	/VERDICT	002		10/11/85
0613	10/11/85	VER	/VERDICT	002		10/11/85
0614	10/11/85	VER	/VERDICT	002		10/11/85
0615	10/11/85	ORDR	/ORDER	AL		10/10/85
0616	10/14/85	ORDR	/ORDER	AL		10/11/85
0617	10/15/85	REQT	/MOTION TO WITHDRAW AS COUNSEL OF	AL		10/28/85
			RECORD	AL		
0618	10/17/85	INST	/INSTRUCTIONS TO THE JURY	AL		10/14/85
0619	10/17/85	VER	/SPECIAL VERDICT	001		10/17/85
0620	10/17/85	VER	/SPECIAL VERDICT	002		10/17/85
0621	10/17/85	VER	/SPECIAL VERDICT	004		10/17/85
0622	10/17/85	VER	/SPECIAL VERDICT	003		10/17/85
0623	10/17/85	VER	/VERDICT	001		10/17/85
0624	10/17/85	VER	/VERDICT	002		10/17/85
0625	10/17/85	VER	/VERDICT	003		10/17/85
0626	10/17/85	VER	/VERDICT	004		10/17/85
0627	10/21/85	REQT	/MOTION FOR NEW TRIAL	003		11/04/85
0628	10/24/85	REQT	/MEDIA REQUEST	AL		11/18/85
0629	10/24/85	ORDR	/ORDER GRANTING ENTRY OF MEDIA PERMISSION	AL		10/23/85
0630	10/29/85	EXPT	/EX PARTE CONTACT VISITATION ORDER	004		10/29/85
0631	11/04/85	JUDG	/JUDGMENT OF CONVICTION - PLEA	006		10/29/85
0632	11/04/85	REQT	/MOTION TO RECONSIDER ORDER GRANTING	004		11/06/85
			NUMEROUS CONTACT VISITS	004		
0633	11/05/85	AFFD	/AFFIDAVIT OF SERVICE	004	SV	11/04/85
0634	11/06/85	PTAT	/POINTS AND AUTHORITIES IN SUPPORT OF	003		
			MOTION FOR NEW TRIAL	003		
0635	11/07/85	PTAT	/POINTS AND AUTHORITIES IN SUPPORT OF	001		
			DEFT FLANAGANS MOTION FOR A NEW TRIAL	001		
0636	11/08/85	ORDR	/ORDER ADMITTING DEFENDANT TO PROBATION	006		11/07/85
			AND FIXING THE TERMS THEREOF	006		
0637	11/08/85	ANSW	/ANSWER IN OPPOSITION TO MOTION FOR NEW	003		
			TRIAL	003		
0638	11/12/85	RSPN	/RESPONSE IN SUPPORT OF MOTION FOR NEW	003		
			TRIAL	003		
0639	11/18/85	ORDR	/ORDER FOR CONTACT VISIT	001		11/15/85
0640	11/19/85	ORDR	/ORDER	001		11/19/85
0641	11/19/85	ORDR	/ORDER	003		11/19/85
0642	11/20/85	NOTC	/NOTICE OF APPEAL	AL		
0643	11/27/85	JUDG	/JUDGMENT OF CONVICTION	001		11/27/85
0644	11/27/85	ORDR	/ORDER OF EXECUTION	001		11/27/85
0645	11/27/85	WARR	/WARRANT OF EXECUTION	001		
0646	11/27/85	ORDR	/ORDER OF EXECUTION	002		11/27/85
0647	11/27/85	ORDR	/ORDER TO TRANSPORT	001		11/27/85
0648	11/27/85	WARR	/WARRANT OF EXECUTION	002		
0649	11/27/85	JUDG	/JUDGMENT OF CONVICTION	002		11/27/85
0650	11/27/85	ORDR	/ORDER TO TRANSPORT	002		11/27/85
0651	12/04/85	AFFD	/AFFIDAVIT IN SUPPORT OF ORDER ALLOWING	001		
			TRAVEL EXPENSES	001		
0652	12/09/85	NOAS	/DESIGNATION OF RECORD ON APPEAL	004		
0653	12/05/85	NOAS	/NOTICE OF APPEAL	004		

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0654	12/10/85	ORDR/	ORDER FOR TRANSCRIPTS FROM COURT REPORTER	004 004		12/09/85	
0655	12/10/85	REQT/	REQUEST FOR TRANSCRIPT FROM COURT REPORTER	004 004			
0656	12/11/85	NOTC/	NOTICE OF ENTRY OF ORDER	004		12/10/85	
0657	12/18/85	JUDG/	JUDGMENT OF CONVICTION	002		12/18/85	
0658	12/18/85	JUDG/	JUDGMENT OF CONVICTION	001		12/18/85	
0659	12/19/85	NOAS/	DESIGNATION OF RECORD ON APPEAL	001			
0660	12/19/85	NOAS/	NOTICE OF APPEAL	001			
0661	12/20/85	NOAS/	NOTICE OF APPEAL	AL			
0662	12/23/85	ORDR/	ORDER	001		12/19/85	
0663	12/27/85	NOAS/	DESIGNATION OF ADDITIONAL CONTENTS OF RECORD ON APPEAL	001 001			
0664	01/10/86	ORDR/	ORDER	004		01/09/86	
0665	01/10/86	JUDG/	JUDGMENT OF CONVICTION	003		01/09/86	
0666	01/14/86	NOTC/	NOTICE OF ENTRY OF ORDER	004		01/13/86	
0667	01/27/86	NOAS/	DESIGNATION OF RECORD ON APPEAL	AL			
0668	01/28/86	ORDR/	ORDER	001		07/27/86	
0669	01/29/86	ORDR/	ORDER FOR TRANSCRIPTS FROM COURT REPORTER	AL AL		01/28/86	
0670	01/29/86	JUDG/	JUDGMENT OF CONVICTION	004		01/28/86	
0671	01/29/86	JUDG/	JUDGMENT OF CONVICTION - PLEA	005		01/28/86	
0672	02/14/86	REQT/	MOTION FOR EXCESS FEES	AL			
0673	02/14/86	EXPT/	EX PARTE PETITION FOR ORDER SHORTENING TIME	AL AL			
0674	02/14/86	ORDR/	ORDER SHORTENING TIME	AL		02/19/86	
0675	02/24/86	ORDR/	ORDER	AL		02/21/86	
0676	04/28/86	JUDG/	AMENDED JUDGMENT OF CONVICTION	004		04/28/86	
0677	07/10/86	NOAS/	DESIGNATION OF RECORD ON APPEAL	AL			
0678	01/08/87	REQT/	MOTION TO WITHDRAW AS COUNSEL	AL		01/21/87	
0679	01/09/87	ROC /	RECEIPT OF COPY	AL		01/09/87	
0680	04/23/87	REQT/	MOTION FOR THE REMOVAL AND SUBSTITUTION OF APPOINTED ATTORNEY OF RECORD	001 001		05/04/87	Y
0681	05/05/87	RSPN/	RESPONSE IN OPPOSITION TO MOTION FOR THE REMOVAL AND SUBSTITUTION OF APPOINTED ATTORNEY OF RECORD	001 001			Y
0682	05/13/87	ORDR/	ORDER	001		05/11/87	
0683	07/28/87	NSCO/	NEVADA SUPREME COURT JUDGMENT / ORDERED APPEAL DISMISSED	004 004		06/25/87	
0684	10/29/87	REQT/	MOTION FOR FEES IN EXCESS OF STATUTORY ALLOWANCE	AL AL		11/16/87	
0685	11/13/87	OPPS/	OPPOSITION TO MOTION FOR FEES IN EXCESS OF STATUTORY ALLOWANCE	AL AL			
0686	11/17/87	NSCO/	NEVADA SUPREME COURT JUDGMENT / ORDERED APPEAL DISMISSED	003 003		10/19/87	
0687	11/25/87	ORDR/	ORDER GRANTING MOTION FOR FEES IN EXCESS OF STATUTORY ALLOWANCE	AL AL		11/24/87	
0688	06/10/88	CCJV/	NEVADA SUPREME COURT CLERKS CERTIFICATE/ JUDGMENT -AFFIRMED IN PART AND REVERSED IN PART	002 002		05/18/88	Y
0689	06/10/88	CCJV/	NEVADA SUPREME COURT CLERKS CERTIFICATE/ JUDGMENT -AFFIRMED IN PART AND REVERSED	001 001		05/18/88	Y

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER C
IN PART						
0690	06/15/88	JUDG/	AMENDED JUDGMENT OF CONVICTION	003		06/15/88
0691	04/17/89	ORDR/	ORDER APPOINTING COUNSEL	001		04/13/89
0692	06/05/89	REQT/	NOTICE OF MOTION AND MOTION FOR	002		06/19/89
			DISCOVERY	002		
0693	06/05/89	REQT/	MOTION FOR ORDER TO TRANSPORT DEFENDANT	002		06/19/89
0694	06/06/89	EXPT/	EX PARTE MOTION TO APPOINT PRIVATE	002		
			INVESTIGATOR	002		
0695	06/19/89	EXPT/	EX PARTE APPLICATION AND ORDER FOR	001		
			TRANSPORT OF DEFENDANT	001		
0696	06/21/89	REQT/	MOTION FOR INDIVIDUAL SEQUESTERED VOIR	002		07/05/89
			DIRE	002		
0697	06/21/89	ORDR/	ORDER TO TRANSPORT DEFENDANT	002		06/20/89
0698	06/21/89	ORDR/	ORDER	002		06/20/89
0699	06/21/89	NOTC/	NOTICE OF ENTRY OF ORDER	002		06/21/89
0700	06/26/89	ORDR/	ORDER FOR PRODUCTION OF INMATE	002		06/22/89
0701	06/26/89	ORDR/	ORDER FOR PRODUCTION OF INMATE	001		06/22/89
0702	06/29/89	ORDR/	ORDER FOR PRODUCTION OF INMATE JOHN	001		06/28/89
			MICHAEL LUCAS	001		
0703	07/10/89	ORDR/	ORDER FOR PRODUCTION OF INMATE ROY	001		07/07/89
			MCDOWELL	001		
0704	07/12/89	LIST/	JURY LIST	001		
0705	07/12/89	REQT/	MEDIA REQUEST	001		07/10/89
0706	07/12/89	ORDR/	ORDER GRANTING PERMISSION OF MEDIA ENTRY	001		07/06/89
0707	07/14/89	INST/	INSTRUCTIONS TO THE JURY	001		07/14/89
0708	07/14/89	VER /	SPECIAL VERDICT	002		07/14/89
0709	07/14/89	VER /	SPECIAL VERDICT	001		07/14/89
0710	07/14/89	VER /	SPECIAL VERDICT	001		07/14/89
0711	07/14/89	VER /	SPECIAL VERDICT	002		07/14/89
0712	07/14/89	VER /	VERDICT	002		07/14/89
0713	07/14/89	VER /	VERDICT	001		07/14/89
0714	07/31/89	JUDG/	JUDGMENT OF CONVICTION	002		07/31/89
0715	07/31/89	ORDR/	ORDER OF EXECUTION	002		07/31/89
0716	07/31/89	WARR/	WARRANT OF EXECUTION	002		
0717	07/31/89	ORDR/	ORDER TO TRANSPORT	002		07/31/89
0718	07/31/89	JUDG/	JUDGMENT OF CONVICTION	001		07/31/89
0719	07/31/89	WARR/	WARRANT OF EXECUTION	001		
0720	07/31/89	ORDR/	ORDER OF EXECUTION	001		07/31/89
0721	07/31/89	ORDR/	ORDER TO TRANSPORT	001		07/31/89
0722	08/04/89	NOAS/	NOTICE OF APPEAL	002		
0723	08/04/89	NOAS/	DESIGNATION OF CONTENTS OF RECORD ON	002		
			APPEAL	002		
0724	08/04/89	EXPT/	EX PARTE MOTION FOR STAY OF EXECUTION	002		
0725	08/04/89	EXPT/	EX PARTE APPLICATION FOR ORDER TO	002		
			PREPARE TRANSCRIPT	002		
0726	08/09/89	ORDR/	ORDER APPOINTING COUNSEL	002		08/07/89
0727	08/09/89	EXPT/	EX PARTE ORDER TO PREPARE TRANSCRIPT	002		08/07/89
0728	08/09/89	EXPT/	EX PARTE ORDER TO STAY EXECUTION	002		08/07/89
0729	08/11/89	ORDR/	ORDER	001		08/10/89
0730	08/16/89	ROC /	RECEIPT OF COPY	002		08/14/89
0731	08/24/89	NOTC/	NOTICE OF ENTRY OF ORDER	002		08/24/89
0732	08/24/89	ROC /	RECEIPT OF COPY	002		08/24/89

(Continued to page 23)

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0733	08/29/89	ORDR/	ORDER	001		08/25/89	
0734	08/29/89	ORDR/	ORDER	001		08/25/89	
0735	08/29/89	NOAS/	DESIGNATION OF RECORD OF PROCEEDINGS	001			
0736	08/30/89	NOTC/	NOTICE OF WAIVER OF APPEAL	001			
0737	09/12/89	EXPT/	EX PARTE MOTION FOR EXTENSION OF TIME TO	002			
			FILE RECORD ON APPEAL	002			
0738	09/13/89	ORDR/	ORDER TO EXTEND TIME TO FILE RECORD ON	002		09/13/89	
			APPEAL	002			
0739	09/19/89	AFFD/	AFFIDAVIT IN SUPPORT OF REQUEST TO	004			
			PROCEED IN FORMA PAUPERIS	004			
0740	09/19/89	REQT/	MOTION TO COMPEL TRANSFER OF RECORDS	004		09/19/89	Y
			FROM PREVIOUS COUNSEL AND MOTION FOR	004			
PRODUCTION OF TRANSCRIPTS OF RECENT HEARINGS							
0741	09/19/89	NOTC/	NOTICE OF INTENT TO FILE POST-CONVICTION	004			Y
			PETITION AFFIDAVIT OF GOOD CAUSE FOR	004			
DELAY NRS 177.315(3) MOTION FOR POST-CONVICTION APPOINTMENT OF COUNSEL							
0742	09/19/89	REQT/	NOTICE OF MOTIONS AND MOTIONS	004		10/02/89	
0743	10/12/89	ORDR/	ORDER	001		10/10/89	
0744	10/16/89	CERT/	CERTIFICATE OF MAILING	001		10/12/89	
0745	10/16/89	EXPT/	EX PARTE MOTION FOR EXTENSION OF TIME TO	002			
			FILE RECORD ON APPEAL	002			
0746	10/17/89	ORDR/	ORDER	004		10/16/89	
0747	10/18/89	EXPT/	EX PARTE ORDER	001		10/19/89	
0748	10/19/89	ORDR/	ORDER TO EXTEND TIME TO FILE RECORD ON	002		10/17/89	
			APPEAL	002			
0749	10/24/89	CERT/	CERTIFICATE OF MAILING	001		10/23/89	
0750	09/21/90	ORDR/	PETITION AND ORDER HONORABLY DISCHARGING	006		09/19/90	
			PROBATIONER	006			
0751	10/20/92	AFFD/	AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE	003			
			TO PROCEED IN FORMA PAUPERIS	003			
0752	10/20/92	CRTF/	FINANCIAL CERTIFICATE	003			
0753	05/22/95	ROC /	RECEIPT OF COPY	002		05/22/95	
0754	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF FEB 25 1985	AL		02/25/85	
			ARRAIGNMENT	AL			
0755	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF APRIL 1 1985	AL		04/01/85	
			MOTION TO WITHDRAW	AL			
0756	02/28/86	TRAN/	REPORTER'S TRANSCRIPT OF APRIL 10, 1985	004		04/10/85	
0757	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF MAY 6, 1985	AL		05/06/85	
			APPOINTMENT OF PSYCHIATRIST	AL			
0758	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF MAY 8 1985	AL		05/08/85	
			STATUS CHECK	AL			
0759	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF MAY 13 1985	AL		05/13/85	
			MOTION FOR DISCOVERY	AL			
0760	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF MAY 20 1985	AL		05/20/85	
			WRIT OF HABEAS CORPUS	AL			
0761	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF MAY 24 1985	AL		05/24/85	
			WRIT OF HABEAS CORPUS	AL			
0762	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF JUNE 26 1985	AL		06/26/85	
0763	07/02/85	TRAN/	REPORTER'S TRANSCRIPT OF JUNE 26 1985	AL		06/26/85	
0764	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF JUNE 28 1985	AL		06/28/85	
			MOTION FOR SEVERANCE	AL			
0765	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF AUG 5 1985	AL		08/05/85	
			MOTION TO WITHDRAW	AL			

(Continued to page 24)

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC SCH/PER C
0766	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF AUG 7 1985	AL	08/07/85
			CONFIRMATION OF COUNSEL	AL	
0767	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF AUG 12 1985	AL	08/12/85
			MOTION FOR SEVERANCE	AL	
0768	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF AUG 29 1985	AL	08/29/85
			CHANGE OF PLEA	AL	
0769	09/03/85	TRAN/	REPORTER'S TRANSCRIPT OF AUG 30 1985	AL	08/30/85
			EVIDENTIARY HEARING	AL	
0770	09/19/85	TRAN/	REPORTER'S TRANSCRIPT OF SEPT 17 1985	AL	09/17/85
			EVIDENTIARY HEARING	AL	
0771	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF SEPT 18 1985	AL	09/18/85
			MOTION FOR SEVERANCE	AL	
0772	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF SEPT 24 1985	AL	09/24/85
			CHANGE OF PLEA	AL	
0773	09/26/85	TRAN/	REPORTER'S TRANSCRIPT OF SEPT 24 1985	AL	09/24/85
			EVIDENTIARY HEARING	AL	
0774	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF SEPT 26 1985	AL	09/26/85
			JURY TRIAL	AL	
0775	10/03/85	TRAN/	REPORTER'S TRANSCRIPT OF SEPT 30 1985	AL	09/30/85
			OPENING STATEMENTS	AL	
0776	10/03/85	TRAN/	REPORTER'S TRANSCRIPT OF SEPT 30 1985	AL	09/30/85
			CROSS EXAMINATION OF RUSTY DEON HAVENS	AL	
0777	10/03/85	TRAN/	REPORTER'S TRANSCRIPT OF OCT 1 1985	AL	10/01/85
			DIRECT EXAMINATION OF THOMAS L. AKERS	AL	
0778	10/10/85	TRAN/	REPORTER'S TRANSCRIPT OF OCT 4 1985	AL	10/04/85
			DIRECT EXAMINATION OF JOHNNY RAY LUCKETT	AL	
0779	10/14/85	TRAN/	REPORTER'S TRANSCRIPT OF OCT 7 & 8 1985	AL	10/07/85
			TESTIMONY OF SCOTT ALAN SLOANE	AL	
0780	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF OCT 30 1985	AL	10/30/85
			MOTION TO WITHDRAW	AL	
0781	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF NOV 4 1985	AL	11/04/85
			MOTION FOR NEW TRIAL	AL	
0782	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF NOV 13 1985	AL	11/13/85
			MOTION FOR NEW TRIAL	AL	
0783	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF NOV 18 1985	AL	11/18/85
			SENTENCING	AL	
0784	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF NOV 22 1985	AL	11/22/85
			SENTENCING	AL	
0785	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF NOV 27 1985	AL	11/27/85
			SENTENCING	AL	
0786	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF DEC 4 1985	AL	12/04/85
			CONFIRMATION OF COUNSEL	AL	
0787	02/14/86	TRAN/	REPORTER'S TRANSCRIPT OF DEC 18 1985	AL	12/18/85
			CLARIFICATION OF SENTENCE	AL	
0788	09/08/89	TRAN/	REPORTER'S TRANSCRIPT OF JULY 5 1989	001	07/05/89
			CALENDAR CALL	001	
0789	09/08/89	TRAN/	REPORTER'S TRANSCRIPT OF JULY 10 1989	001	07/10/89
			JURY TRIAL	001	
0790	09/08/89	TRAN/	REPORTER'S TRANSCRIPT OF JULY 11 1989	001	07/11/89
			JURY TRIAL	001	
0791	09/08/89	TRAN/	REPORTER'S TRANSCRIPT OF JULY 12 1989	001	07/12/89
			JURY TRIAL	001	

(Continued to page 25)

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0792	09/08/89	TRAN/	REPORTER'S TRANSCRIPT OF JULY 13 1989	001		07/13/89	
			JURY TRIAL	001			
0793	09/08/89	TRAN/	REPORTER'S TRANSCRIPT OF JULY 14 1989	001		07/14/89	
			JURY TRIAL	001			
0794	08/25/89	TRAN/	REPORTER'S TRANSCRIPT OF JULY 31 1989	001		07/31/89	
			SENTENCING	001			
0795	03/27/85	TRAN/	REPORTER'S TRANSCRIPT OF FEB 11 1985	AL		02/11/85	
			PRELIMINARY HEARING	AL			
0796	02/21/01	ORDR/	STIPULATION	001		02/21/01	
0797	02/21/01	ORDR/	STIPULATION	001		02/21/01	
0798	02/23/01	ORDR/	ORDER FOR PRODUCTION OF INMATE	001		04/06/01	
			DALE EDWARD FLANAGAN BAC #21853	001	HG	04/13/01	
0799	02/11/01	PET /	PETITION FOR WRIT OF HABEAS CORPUS	003			
			(POST-CONVICTION)	003			
0800	02/28/01	OPPS/	OPPOSITION TO DEFENDANTS PROPER	003			
			PERSON MOTION TO APPOINT COUNSEL	003			
0801	02/28/01	OPPS/	OPPOSITION TO DEFENDANTS PROPER	003			Y
			PERSON MOTION TO JOIN AND OR	003			
CONSOLIDATE PETITIONS FOR WRIT OF HABEAS CORPUS							
0802	04/13/01	OCAL/	STATUS CHECK: REASSIGNMENT/ EVIDENTIARY	001		04/17/01	
			HEARING SCHEDULING	001			
0803	04/17/01	HEAR/	EVIDENTIARY HEARING: REMAINING ISSUES	001	DF	02/14/02	
			ON THE WRIT	001			
0804	04/17/01	ASSG/	REASSIGNMENT OF JUDGE Saitta TO JUDGE				
			Gibbons				
0805	05/03/01	TRAN/	REPORTER'S TRANSCRIPT EVIDENTIARY	001		04/13/01	
			HEARING (REMAINING ISSUES ON WRIT)	001			
0806	05/17/01	TRAN/	REPORTER'S TRANSCRIPT OF STATUS CHECK:	001		09/13/00	
			EVIDENTIARY HEARING	001			
0807	01/29/01	TRAN/	REPORTER'S TRANSCRIPT OF PROCEEDINGS	001		08/16/00	
			MOTIONS HEARING	001			
0808	01/31/01	TRAN/	REPORTER'S TRANSCRIPT OF PROCEEDINGS	001		09/13/00	
0809	02/11/01	CRTF/	CERTIFICATE OF INMATES INSTITUTIONAL	003			
			ACCOUNT	003			
0810	02/11/01	REQT/	MOTION FOR LEAVE TO PROCEED IN FORMA	003			
			PAUPERIS	003			
0811	02/11/01	AFFD/	AFFIDAVIT IN SUPPORT OF REQUEST TO	003			
			PROCEED IN FORMA PAUPERIS	003			
0812	02/11/01	REQT/	REQUEST MOTION FOR APPOINTMENT OF	003			
			ATTORNEY	003			
0813	05/30/01	EXPR/	EX PARTE ORDER APPOINTING ATTORNEY IN A	001			
			DEATH PENALTY MATTER	001			
0814	01/23/01	NOTC/	NOTICE OF WITNESS	001			
0815	06/22/01	TRAN/	REPORTER'S TRANSCRIPT DEFENDANT'S PRO	003		09/28/00	
			PER MOTIONS/PETITIONS	003			
0816	07/20/01	TRAN/	REPORTER'S TRANSCRIPT OF DEFENDANT'S	004		10/10/00	
			PRO PER MOTIONS	004			
0818	02/11/01	PET /	DEFT'S PRO PER PTN FOR WRIT OF HABEAS	003	DN	10/04/01	
			CORPUS	003			
0819	08/28/01	ASSG/	REASSIGNMENT OF JUDGE Gibbons TO JUDGE				
			Douglas				
0820	02/11/01	MOT /	DEFT'S PRO PER MTN FOR APPOINTMENT OF	003	DN	10/04/01	
			ATTORNEY	003			

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NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0821	02/11/01	MOT /	DEFT'S PRO PER MOTION TO PROCEED IN	003	GR	10/04/01	
			FORMA PAUPERIS	003			
0822	08/28/01	ORDR/	ORDER RE PETITION FOR WRIT OF HABEAS	001	HG	10/04/01	
			CORPUS	001			
0823	09/17/01	SUPP/	SUPPLEMENT TO ORIGINAL MOTION	003			
0824	09/17/01	REQT/	MOTION TO DISMISS MOTION TO	003			Y
			CONSOLIDATE WITH CO DEFENDANT MR DALE	003			
FLANAGAN							
0825	09/17/01	MOT /	DEFT'S PRO PER MTN TO DISMISS MTN TO	003	DN	10/04/01	
			CONSOLIDATE WITH CO-DEFT FLANAGAN/173	003			
0826	09/28/01	MOT /	DEFT'S PRO PER MTN TO JOIN/CONSOLIDATE	003	DN	10/04/01	
			FOR WRITS OF HABEAS CORPUS	003			
0827	09/27/01	ORDR/	ORDER	001			
0828	03/29/01	RSPN/	PETITIONER'S RESPONSE TO THE STATE'S	003			Y
			OPPOSITION TO DEFT'S PRO PER MOTION	003			
TO JOIN AND/OR CONSOLIDATE PETITIONS FOR WRIT OF HABEAS CORPUS AND MTN IN OPPOSITION OF PETITIONER'S REQUEST FOR APPT. OF COUNSEL							
0829	10/01/01	OPPS/	OPPOSITION TO DEFENDANTS PROPER	003			Y
			PERSON PETITION FOR WRIT OF HABEAS	003			
CORPUS POST-CONVICTION							
0830	10/05/01	MOT /	ALL PENDING MOTIONS 10-04-01	003		10/04/01	
0831	10/18/01	JUDG/	FINDINGS OF FACTS, CONCLUSIONS OF LAW	003		10/04/01	
			AND ORDER	003			
0832	10/29/01	NOED/	NOTICE OF ENTRY OF DECISION AND ORDER	003			
0833	11/02/01	NOAS/	NOTICE OF APPEAL	003	AP		
0834	11/06/01	STAT/	CASE APPEAL STATEMENT	003			
0835	12/11/01	CASO/	CASE (RE)ACTIVATED ON				
0837	01/17/02	JMNT/	CLERK'S CERTIFICATE JUDGMENT AFFIRMED	0004		01/18/02	
0838	01/24/02	EXPT/	EX PARTE CLAIM FOR INTERIM COMPENSATION	002			
			AND MOTION FOR EXCESS FEES	002			
0839	02/11/02	ORDR/	ORDER AUTHORIZING INTERIM PAYMENT OF	001			
			EXCESS FEES AND COSTS	001			
0840	02/19/02	TRAN/	REPORTER'S TRANSCRIPT OF PROCEEDINGS	001		02/14/02	
0841	04/02/02	ARGU/	PETITIONERS CLOSING ARGUMENT	001			
0842	04/23/02	REQT/	EX PARTE MOTION TO APPOINT PRIVATE	002			Y
			INVESTIGATOR AND EX PARTE MOTION FOR	002			
EXCESS FEES							
0843	04/25/02	ORDR/	ORDER APPOINTING PRIVATE INVESTIGATOR	002			
			AND AUTHORIZING INTERIM PAYMENTS	002			
0844	05/01/02	RSPN/	STATES RESPONSE TO DEFENDANTS CLOSING	001			
			ARGUMENT	001			
0845	06/19/02	ORDR/	ORDER	001			
0846	07/09/02	FUS /	EX PARTE PLEADING - FILED UNDER SEAL -	001			Y
			MOTION FOR WAIVER OF COPYING AND	001			
CERTIFICATION CHARGES							
0847	08/02/02	APCL/	APPEAL TO SUPREME COURT: CLOSED			07/11/02	
0848	08/06/02	FUS /	FILED UNDER SEAL - EX PARTE PLEADING	001			
0849	08/07/02	ORDR/	STIPULATION AND ORDER RE: FINDINGS OF	001		08/07/02	
			FACT CONCLUSIONS OF LAW & ORDER	001			
0850	08/08/02	CERT/	CERTIFICATE OF MAILING	001		08/05/02	
0851	08/08/02	OBJ /	PETITIONERS OBJECTIONS TO STATES	001			Y
			PROPOSED FINDINGS OF FACT AND	001			

(Continued to page 27)

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER C
CONCLUSIONS OF LAW						
0852	08/09/02	JUDG/	FINDINGS OF FACTS, CONCLUSIONS OF LAW	001	HG	02/14/02
			AND ORDER	001		
0853	08/13/02	JMNT/	CLERK'S CERTIFICATE JUDMGENT AFFIRMED	0003		08/14/02
0854	08/13/02	CCJA/	NEVADA SUPREME COURT CLERKS CERTIFICATE/	001		08/13/02
			JUDGMENT - AFFIRMED	001		
0855	08/16/02	NOED/	NOTICE OF ENTRY OF DECISION AND ORDER	001		08/09/02

ORIGINAL

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CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

DALE EDWARD FLANAGAN, #0737065

Petitioner,

-vs-

THE STATE OF NEVADA, and E.K. McDANIEL, Warden, Ely State Prison,

Defendant.

Case No.. C69269
Dept. No. VII

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: 2-14-02
TIME OF HEARING: 9:30 A.M.

THIS CAUSE having come on for hearing before the Honorable Mark Gibbons, District Judge, on the 14th day of February, 2002, the Petitioner not being present, represented by ROBERT NEWELL, ESQ. & CAL J. POTTER, III, ESQ., the Respondent being represented by STEWART L. BELL, District Attorney, by and through H. LEON SIMON, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Dale Flanagan, hereinafter Defendant, was charged by Information with two counts of First Degree Murder With Use of a Deadly Weapon; two counts of Conspiracy to Commit Murder; one count of Burglary; one count of Conspiracy to Commit Burglary; one count of Robbery With Use of a Deadly Weapon; and one count of Conspiracy to Commit Robbery.

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2. In September, 1985, Defendant's jury trial began before the Honorable Donald M. Mosley, District Judge in the Eight Judicial District Court of the State of Nevada. At the conclusion of the trial, the jury found Defendant guilty on all counts.

3. Following a penalty hearing, the jury returned a sentence of death against Defendant for each of the two convictions for murder.

4. Defendant was sentenced on November 27, 1985 to:

Count I (Conspiracy to Commit Burglary) - one (1) year in the Clark County Jail;

Count II (Conspiracy to Commit Robbery)- six (6) years in the Nevada State Prison;

Count III (Conspiracy to Commit Murder)- six (6) years in the Nevada State Prison;

Count IV (Burglary)- ten (10) years in the Nevada State Prison;

Count V (Robbery)- fifteen (15) years in the Nevada State Prison and an equal and consecutive sentence of fifteen (15) years for the deadly weapon enhancement;

Count VI (First Degree Murder)- death by lethal injection and an equal and consecutive sentence of death for the deadly weapon enhancement;

Count VII (First Degree Murder)- death by lethal injection and an equal and consecutive sentence of death for the deadly weapon enhancement.

The District Court ordered Counts II through VII to be served consecutively to one another and to Count I. Defendant was given three hundred and one (301) days credit for time served.

5. Defendant filed a timely Notice of Appeal on December 19, 1985.

6. On May 18, 1988, the Nevada Supreme Court affirmed Defendant's conviction but reversed the sentence of death and remanded the case to the District Court based on prosecutorial misconduct during the penalty hearing. See Flanagan v. State, 104 Nev. 105, 754 P.2d 836 (1988) (Flanagan I).

7. Upon remand, a second penalty hearing was conducted and Defendant was once again sentenced to death by a jury. Defendant timely appealed his second death sentence to the Nevada Supreme Court.

8. The Nevada Supreme Court affirmed the death sentence imposed in the second penalty hearing. See Flanagan v. State, 107 Nev. 243, 810 P.2d 759 (1991) (Flanagan II).

9. Defendant petitioned the United States Supreme Court with a writ of certiorari which the Supreme Court granted. The Supreme Court vacated Defendant's death sentence and remanded the case to the Nevada Supreme Court for further consideration in light of Dawson v. Delaware, 503 U.S. 159, 112 S.Ct. 1093 (1992).

10. On remand, the Nevada Supreme Court held that the State had impermissibly offered evidence of Defendant's involvement in satanic worship during his second penalty hearing in violation the First Amendment. See Flanagan v. State, 109 Nev. 50, 846 P.2d 1053 (1993) (Flanagan III). The Nevada Supreme Court remanded the case for a third penalty hearing.

11. After the third penalty hearing, a jury once again sentenced Defendant to death.

12. Defendant file a timely Notice of Appeal from the third death sentence.

13. On appeal, the Nevada Supreme Court affirmed the death sentence. See Flanagan v. State, 112 Nev. 1409, 930 P.2d 691 (1996) (Flanagan IV).

14. Defendant filed a Petition for a writ of certiorari to the United State's Supreme Court which was denied. See Flanagan v. State, 523 U.S. 1083, 118 S.Ct. 1534 (1998).

15. On May 28, 1998, Defendant filed the instant Petition for Writ of Habeas Corpus (Post-conviction).

16. In his petition, Defendant made thirty-six claims in support of his request for relief from his conviction and sentence.

17. The following claims raised in Defendant's petition were previously addressed by the Nevada Supreme Court in one of Defendant's direct appeals and are barred by the law of the case: 1) Claim I (a) - allegation that the State coached its witnesses, 2) Claim I (d) - the alleged prosecutorial misconduct during trial, 3) Claim III- the introduction of witchcraft evidence during trial, 4) Claim IV (a)[1] the court-designed exercise of peremptory challenges, 5) Claim IV (a) the adequateness of the jury instruction regarding greater risk, 6) Claim IV (a) the necessity of jury instruction requiring a nexus between robbery and burglary, 7) Claim XII - the validity of the jury instructions dealing with "equal and exact justice" and "guilt or innocence of another

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[1] Defendant sets forth several claims each within IV (a) and IV (c).

person", 8)Claim XIII- the lack of evidence to find Defendant guilty of the aggravator "creating a greater risk of death", 9) Claim XV- that there was insufficient evidence to support the aggravator "murder in the commission of robbery", 10) Claim XVII- that the District Court improperly gave the anti-sympathy jury instruction, 11) Claim XXIX- the District Court's joinder of Defendant's case with his co-defendants, and 12) Claim XXXVI- that Defendant's lengthy confinement prior to the imposition of the death penalty constituted cruel and unusual punishment.

18. The following claims raised in Defendant's petition are naked allegations unsubstantiated by facts: 1) Claim II - the allegation that the State shaped witnesses' testimony with offers of leniency, 2) Claim IV (a) the allegation that Defendant's attorney failed to investigate, the allegation that Defendant had diminished capacity at the time of the crime, the allegation that Defendant was incompetent to stand trial due to his medication, the allegation that Defendant's attorney should have requested investigative funds, the allegation that Defendant's attorney did not cross-examine Wittig effectively, 3) Claim IV (c) the allegation that the Public Defender's office lacked the resources to prepare for the third penalty hearing, 4) Claim VII - the allegation that the jury selection process in Clark County is prejudicial, 5) Claim IX - the allegation that bench conferences impaired Defendant's ability to prepare a defense, 6) Claim XI - the allegation that the Nevada Supreme Court's decisions on death penalty cases are arbitrary, 7) Claim XX - the allegation that the judges who presided over Defendant's trial and three penalty hearings were not impartial, 8) Claim XXIII - the allegation that Defendant was not present during important court appearances, and 9) Claim XXXI - the allegation that jurors saw Defendant in shackles.

19. The following claims raised by Defendant are belied by the record: 1) Claim IV (a) - the allegation that Defendant's attorney did not thoroughly cross-examine the witnesses, 2) Claim V - the allegation that Defendant was incompetent to stand trial due to his medication 3) Claim VI - the allegation that Defendant's attorney failed to request a change of venue, 4) Claim XXII - the allegation that the Information did not appraise Defendant of the charges against him, and 5) Claim XXIV - the allegation that no record was made of any of the conferences at the bench.

20. The following claims raised by Defendant are moot because Defendant received a third penalty hearing: 1) Claim I (c) - the allegation that the State exercised its peremptory challenges in a discriminatory manner during the second penalty hearing, 2) Claim IV (a) the allegation that Defendant's attorney did not conduct an adequate investigation of mitigation evidence for the second penalty hearing, 3) Claim IV (b) - the allegations that Defendant's attorney was ineffective during the second penalty hearing, 4) Claim XVIII - the allegation that the District Court forced Defendant to use a peremptory challenge during the second penalty hearing, 5) Claim XIX - the allegation that the District Court improperly removed a juror during the second penalty hearing, and 6) Claim XXXIII - the allegation that Defendant's attorney failed to challenge some jurors for cause during the second penalty hearing.

21. Defendant failed to demonstrate how the following claims prejudiced him as required by Strickland: 1) Claim IV (c) the fact that Defendant's attorney's turned over raw data from Defendant's mental health examination, the consolidation of Defendant's case with his co-defendant's case, 2) Claim VIII- the allegation that Defendant was forced to exercise peremptory challenges in conjunction with his co-defendants, 3) Claim X - the allegation that Defendant's appellate attorney did not raise every issue in Defendant's petition on direct appeal, and 4) Claim XXXIII- the allegation that Defendant's attorney did not challenge certain jurors for cause.

22. The following claims made by Defendant in his petition are contrary to established Nevada law: 1) Claim XII - that the jury instructions dealing with premeditation/deliberation and reasonable doubt were improper, 2) Claim XIV - that there was insufficient evidence to support the jury's finding of the aggravator "murder in commission of burglary", 3) Claim XVI - that the State improperly used the same facts to convict Defendant of felony murder and an aggravator, 4) Claim XVII - that the anti-sympathy instruction was improperly given, that the State improperly failed to instruct the jury on unanimity of aggravators, that the State improperly failed to instruct the jury there is no requirement to impose the death penalty, and that the commutation instruction was improper, 5) Claim XXI - that the death penalty in Nevada is arbitrary, 6) Claims XXVI & XXVII- that the death penalty statute in Nevada violates the Eighth Amendment, and 7) Claim XXX - that the death penalty statute in Nevada does not provide for

clemency.

23. The following claims raised by Defendant are inappropriate for a petition and should have been raised on direct appeal: 1) Claims XIV & XV - that the aggravators were applied incorrectly in Defendant's case, 2) Claim XVI - that the State improperly used the same facts to convict Defendant of felony murder and prove an aggravator, 3) Claim XVII - that the jury instructions regarding anti-sympathy, unanimity of aggravators, commutation and no requirement to impose the death penalty were not correctly given, 4) Claim XXI - that the death penalty in Nevada is arbitrary, 5) Claims XXVI & XXVII - that the death penalty violates the Eighth Amendment, 6) Claim XXX - that the Nevada death penalty statute does not provide for clemency, and 7) Claim XXXII - that because Nevada judges are elected they are not impartial.

24. Defendant's allegation that the State withheld exculpatory evidence including Defendant's will and his involvement in a group to discourage youth from participation in witchcraft does not amount to a Brady v. Maryland violation as both pieces of evidence were known to Defendant. (Claim I (b))

25. Since none of Defendant's individual claims have merit, all of them taken together do not warrant relief.(Claim XXV)

26. Defendant's claim (Claim XXVIII) in his petition that he may become incompetent to be executed is prematurely raised.

27. The Supreme Court of Nevada has rejected the contention set forth in Defendant's claims XXXIV and XXXV that Nevada's death penalty is unlawful because of International law.

28. On August 16, 2000, this Court denied Defendant's petition as to all of the issues except for those relating to ineffectiveness of counsel arising from lack of communication between Rebecca Blaskey and David Wall, Defendant's attorneys during his third penalty hearing. (Claim IV (c)).

29. This Court held an evidentiary hearing on February 14, 2002, to address Defendant's one remaining claim of ineffective assistance of counsel caused by lack of communication between Rebecca Blaskey and David Wall. On June 19, 2002, this Court issued an order denying Defendant's remaining claim. This Court ruled that Defendant had failed to demonstrate that the

personality conflict and lack of communication between Rebecca Blaskey and David Wall rose to the level of ineffective assistance of counsel as required by Strickland; that ruling is incorporated herein. (See Exhibit One).

30. Defendant received effective assistance of trial counsel and appellate counsel.

CONCLUSIONS OF LAW

1. The Supreme Court has clearly established the appropriate test for determining whether a defendant received constitutionally defective counsel. To demonstrate ineffective assistance of counsel, a convicted defendant must show both that his counsel's performance was deficient, and that the deficient performance prejudiced his defense. Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984).

2. The Nevada Supreme Court has adopted this test articulated by the Supreme Court. Bennett v. State, 111 Nev. 1099, 1108, 901 P.2d 676, 682 (1995).

3. Counsel's performance is deficient where counsel made errors so serious that the adversarial process cannot be relied on as having produced a just result. Strickland, at 686. The proper standard for evaluating an attorney's performance is that of "reasonable effective assistance." Strickland, at 687. This evaluation is to be done in light of all the circumstances surrounding the trial. Id.

4. The Supreme Court has created a strong presumption that defense counsel's actions are reasonably effective:

> Every effort [must be made] to eliminate the distorting effects of hindsight to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. . . .A court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

Strickland, at 689-690.

5. "[S]trategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992).

6. Reasonable assistance of counsel does not require that defense counsel make every conceivable motion no matter how remote the possibilities are of success in order to protect

himself against allegations of inadequacy. Donovan, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978).

7. The Nevada Supreme Court has held that it is presumed counsel fully discharged his duties, and said presumption can only be overcome by strong and convincing proof to the contrary. Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978)

8. It is not enough for a defendant to show deficient performance on the part of counsel, a defendant must also demonstrate that the deficient performance prejudiced the outcome of his case. Strickland v. Washington, 566 U.S. 668, 686, 104 S.Ct. 2052, 2065 (1984).

9. In meeting the prejudice requirement of an ineffective assistance of counsel claim, a defendant must show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 401, 990 P.2d 1263, 1268 (1999); *citing* Strickland, 566 U.S. 668, 687, 104 S.Ct. 2052, 2066 (1984). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. *citing* Strickland, 466 U.S. at 687-89, 694.

10. This same standard of review applies to claims of ineffective assistance of appellate counsel. *See* Strickland, 466 U.S. at 687-688 & 694, 104 S.Ct. at 2065 & 2068; Williams v. Collins, 16 F.3d 626, 635 (5th Cir. 1994); Hollenback v. United States, 987 F.2d 1272, 1275 (7th Cir. 1993); Heath v. Jones, 941 F.2d 1126, 1130 (11th Cir. 1991).

11. The Nevada Supreme Court has held that all appeals must be "pursued in a manner meeting high standards of diligence, professionalism and competence." Burke v. State, 110 Nev. 1366, 1368, 887 P.2d 267, 268 (1994).

12. In order to prove that appellate counsel's alleged error was prejudicial, the defendant must show that the omitted issue would have had a reasonable probability of success on appeal. *See* Duhamel v. Collins, 955 F.2d 962, 967 (5th Cir. 1992); Heath, 941 F.2d at 1132.

13. Counsel is not required to assert frivolous claims on appeal. A defendant does not have the constitutional right to "compel appointed counsel to press nonfrivolous points requested by the client, if counsel, as a matter of professional judgment, decides not to present those points." Id.

14. The Supreme Court has recognized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible; or at most, on a few key issues." Jones v. Barnes, 463 U.S. 745, 751-52, 103 S.Ct. 3308, 3313 (1983). In particular, a "brief that raises every colorable issue runs the risk of burying the good arguments ... in a verbal mound made up of strong and weak contentions." Id. at 753, 3313. The Court has, therefore, held that for judges to second guess reasonable professional judgments and impose on appointed counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy. Id. at 754, 3314.

15. The law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same. Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975). Defendant's assertion that the State committed prosecutorial misconduct when it coached, coerced and intimidated various witnesses while also proffering false and prejudicial testimony before the District Court is barred by the law of the case doctrine. Upon review of Defendant's trial and initial penalty hearing, the Nevada Supreme Court ruled that, based on overwhelming evidence, the prosecutor's conduct did not render Defendant's trial fundamentally unfair. Flanagan I, 104 Nev. at 107. Subsequent appeals regarding further alleged prosecutorial misconduct were summarily rejected by the Nevada Supreme Court under the "law of the case" doctrine as set forth in Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797 (1975). See Flanagan IV, 112 Nev. at 1422. Thus, Defendant is barred from raising these issues.

16. Defendant's claim that the State withheld substantial amounts of exculpatory, impeachment and mitigation evidence including Defendant's will and his planned involvement in a group to discourage youth from participation in witchcraft is not a Brady violation because both were known to Defendant. Brady v. Maryland, 373 U.S. 220, 83 S.Ct. 1194 (1963).

17. The Supreme Court has ruled that the use of peremptory challenges is limited by the Equal Protection Clause. Batson v. Kentucky, 476 U.S. 79, 89, 106 S.Ct. 1712, 1719 (1985). A potential juror may not be removed solely on the basis of race or gender. See Libby v. State, 115 Nev. 45, 49, 975 P.2d 833, 835 (1999); King v. State, 116 Nev. Adv. Op. No. 38, 998 P.2d 1172, 1175 (2000).

18. As long as a peremptory challenge complies with the requirements of the Equal Protection Clause, "a prosecutor ordinarily is entitled to exercise permitted peremptory challenges 'for any reason at all, as long as that reason is related to his view concerning the outcome' of the case." Batson v. Kentucky, 476 U.S. 79, 89, 106 S.Ct. 1712, 1719 (1985). Defendant's contention that the State utilized their peremptory challenges in a racially discriminatory manner during the second penalty hearing is a naked allegation unsupported by any specific facts. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

19. Defendant's claim that the State sought to introduce evidence at trial of Defendant's involvement in witchcraft and satanic worship is belied by the record. Hargrove, at 503. The record of Nevada Supreme Court decisions in Defendant's case shows that a co-defendant actually introduced said satanic evidence. The Nevada Supreme Court found that counsel for co-defendant, Johnny Ray Luckett, called a witness in Luckett's defense to testify regarding Defendant's involvement in witchcraft/satanic worship. Flanagan IV, 112 Nev. at 1412.

20. The Nevada Supreme Court addressed the State's use of evidence regarding satanic worship during the penalty hearings. See Flanagan II, Flanagan III; Flanagan IV. Therefore, the law of the case doctrine would necessarily preclude any further review. Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797 (1975).

21. A defendant seeking post-conviction relief is not entitled to an evidentiary hearing based on naked allegations. Hargrove, at 503. Defendant's allegation that the State unlawfully induced witnesses to testify and fashioned their testimony by offering leniency is a naked allegation. Id. Defendant fails to offer any specific facts to support such allegations other than information that was presented to the jury during the trial. Each witness was thoroughly questioned about the inducements they received or were to receive upon completion of their testimony. (31 Record on Appeal (RA) 944, 948; 33 RA 1242, 1256, 1258, 1275, 1280, 1287, 1289, 1366; 34 RA 1400, 1405, 1411).[1]

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[1]RA refers to Record on Appeal from Defendant's last filed appeal to the Nevada Supreme Court docketed S.C. Case #27320 in which the Court considered Defendant's appeal with that of co-defendant Randolph Moore.

22. In Sheriff v. Humbolt County, 107 Nev. 664, 819 P.2d 197 (1991), the Nevada Supreme Court plainly ruled that any inducement for testimony merely affects the weight of that testimony, but does not preclude its introduction in evidence. See also Leslie v. State, 114 Nev. 8, 952 P.2d 966 (1998). It is the jury's function, not the reviewing court, to assess the weight of the evidence and determine the credibility of witnesses. Walker v. State, 91 Nev. 724, 726, 542 P.2d 438, 438-39 (1975).

23. Defendant's assertion that the State impermissibly used evidence of his affiliation with witchcraft and satanic worship in violation of his Constitutional rights disregards the doctrine of "law of the case" as this issue has already been reviewed and decided by the Nevada Supreme Court. See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975). After the United States Supreme Court reviewed and remanded his case, the Nevada Supreme Court also remanded Defendant's case for a new penalty hearing because the State had improperly argued evidence of Defendant's religious beliefs in satanic worship during the second penalty hearing. Flanagan III, 109 Nev. at 55-57. Further, the Court ruled, in Flanagan IV, that a harmless error analysis was appropriate when considering the admission of such evidence during the trial because of the overwhelming evidence against Defendant. Flanagan IV, at 1418-1421. Thus, Defendant is precluded from raising this issue based on the law of the case.

24. Defendant's allegation that his attorney was ineffective during trial because he failed to conduct any investigation to prepare for trial is a naked allegation and is belied by the record. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). During cross-examination, Defendant's attorney competently highlighted the inconsistencies surrounding the testimony of State witnesses. (33 RA 1121, 1249-50, 1255; 34 RA 1399-1400, 1403-1404, 1407-1410).

25. Defendant's allegations surrounding his attorney's preparation for the first penalty hearing are moot as Defendant was granted a new penalty hearing by the Nevada Supreme Court. See Flanagan I.

26. Defendant's contention that his attorney was ineffective for not investigating or presenting a defense based on diminished capacity is without merit. Defendant's claim that he participated in a three-day drug and alcohol binge immediately preceding the crimes is a naked

allegation. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Without an affidavit or any other specific offer of proof, this allegation does not demonstrate that Defendant's attorney was ineffective.

27. Defendant's allegation that his attorney neglected to conduct any investigation into the details of the crime itself is a naked allegation. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Defendant fails to indicate what inconsistencies existed between the testimony and physical evidence. Further, as the Nevada Supreme Court found the evidence against Defendant was overwhelming, he fails to demonstrate that these inconsistences prejudiced him as required by Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984). See Flanagan IV, 112 Nev. at 1420.

28. Defendant's assertion that his attorney was ineffective for not determining that Defendant was incompetent to stand trial due to the psychotropic medication he was taking is belied by the record. Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984). Defendant appeared competent during his appearances in court. Specifically, during the Petrocelli hearing conducted by the District Court, Defendant clearly and coherently answered the required series of questions illustrating his mentally clarity. (35 RA 1637-1640).

29. Defendant's claim that his attorney was ineffective for not moving to continue the case in order to better prepare for trial is belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984). The record indicates that Defendant's attorney conducted a thorough cross-examination of the State's witnesses indicating he was prepared for trial. (33 RA 1121, 1249-50, 1255; 34 RA 1399-1400, 1403-1404, 1407-1410). As such, Defendant's attorney was not ineffective in not moving to continue.

30. Defendant's claims that his attorney was ineffective for failing to challenge the complaint, for failing to file a motion *in limine* to preclude any witchcraft evidence and for failing to object to the court-designed exercise of peremptory challenges are without merit. A simple check of the record of the case shows that the Complaint, Amended Complaint and Information all charged Defendant with two (2) counts of murder putting him on notice of the charges against him and making a challenge by his attorney unnecessary. (1 RA 138-146; 181-185).

Furthermore, pursuant to Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975), the doctrine of law of the case governs Defendant's claim regarding the witchcraft evidence and Defendant's objection to the court-designed exercise of peremptory challenges as the Nevada Supreme Court has already addressed these issues. See Flanagan I

31. Defendant's argument that his attorney was ineffective because he failed to request investigative funds from the court is a naked allegation. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Further, Defendant has not demonstrated that this failure prejudiced him as required by Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984)[2].

32. Defendant's assertion that his attorney was ineffective because he failed to press the District Court for a change of venue is belied by the record. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984) Defendant's attorney filed a Motion for Change of Venue (2 RA 482-485). Moreover, Defendant's attorney argued before the District Court that a change of venue would be necessary if the jury pool was too small after the jury *voir dire*. (29 RA 81-82). Defendant's attorney acted in compliance with Nevada law that requires such a motion to be made after *voir dire*. Ford v. State, 102 Nev. 126, 717 P.2d 27 (1986); Cutler v. State, 93 Nev. 329, 566 P.2d 809 (1977). Thus, Defendant's assertion is belied and repelled by the record.

33. Defendant's argument that his attorney was ineffective for failing to effectively cross-examine the State's witnesses regarding inconsistencies in their testimony is belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). During cross-examination, Defendant's attorney highlighted the inconsistencies of several of the State's witnesses. (See 33 RA 1121, 1249-50, 1255; 34 RA 1399-1400, 1403-1404, 1407-1410).

34. Defendant fails to demonstrate that his attorney was ineffective for not examining witnesses on key factual issues such as why there were no glass shards found where the defendants broke into the victims' home. Defendant fails to indicate how this failure prejudiced his case. Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984). In light of

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[2] Defendant was represented by the Clark County Public Defender which has a staff of investigators and is funded to defend such cases. Defendant has not shown that additional funds were needed to adequately prepare his defense.

the substantial evidence against Defendant, it is unlikely that this alleged failure affected the outcome of Defendant's case. See Flanagan I.

35. Defendant's contention that his attorney was ineffective for not sufficiently cross-examining Wayne Wittig ("Wittig") to portray Wittig's lack of personal knowledge concerning the facts to which he testified is without merit. Defendant's claim that Wittig gleaned his testimony from the newspapers is a naked allegation. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Defendant provides no affidavits or offers of proof to support this claim. As such, Defendant cannot demonstrate that his attorney was ineffective.

36. Defendant fails to demonstrate that his attorney was ineffective for not investigating Angela Saldana's ("Saldana") criminal record for cross examination purposes. See Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984). Defendant's attorney thoroughly covered inconsistencies in Saldana's testimony during cross examination and elicited testimony regarding Saldana's potential receipt of $2,000 for the information she provided to police. (See 34 RA 1399-1400, 1403-04, 1407-1410). The record indicates that Defendant's attorney sufficiently cross examined Saldana, therefore, Defendant cannot demonstrate that he was prejudiced by his attorney's failure to investigate Saldana's record.

37. In McKenna v. State, 114 Nev. 1044, 968 P.2d 739, 743 (1998), the Nevada Supreme Court concluded that no actual prejudice to the defendant had been shown by the presence of SWAT officers in the courtroom. As such, Defendant's claim that his attorney's failure to object to the presence of armed guards in the courtroom was ineffective assistance of counsel is without merit.

38. Defendant's allegations that his attorney was ineffective for failing to object to the jury seeing Defendant is shackles is a naked allegation. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Defendant provides no proof that any member of the jury saw him in shackles. As such, Defendant cannot demonstrate his attorney was ineffective. See Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984).

39. Defendant's claim that his attorney was ineffective for not conducting an adequate mitigation investigation during the first penalty hearing is moot given that Defendant was

granted two other penalty hearings. See Flanagan I; Flanagan II.

40. Defendant's allegations that his attorney was ineffective for not objecting to and for not offering any jury instructions during the penalty hearing are without merit. Defendant's suggestion that an objection to the "great risk" factor should have been made and an instruction to require a "nexus between the burglary and robbery" should have been requested is contrary to the law of the case. Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797 (1975). The Nevada Supreme Court previously held that the great risk factor was appropriate and that sufficient evidence was presented to support that aggravating factor. Flanagan IV, 112 Nev. at 1421. Moreover, in addressing Defendant's assertion that a "nexus" should have been required between the burglary and robbery the Court ruled that "[w]e see no merit to Flanagan's argument anyway." Id. at 1422. Thus the law of the case doctrine nullifies any claim that Defendant's attorney was ineffective for failing to object to or request such jury instructions.

41. All of Defendant's allegations regarding the second penalty hearing are moot as Defendant was granted a third penalty hearing. See Flanagan III

42. Defendant's allegation that the Public Defender's office allotted inadequate resources to the investigation and preparation for the third penalty hearing is a naked allegation unsubstantiated by any specific facts. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

43. Defendant's claim that his attorney was ineffective in the third penalty hearing for turning over raw data from Defendant's mental health evaluation is without merit. Such information is available to the State under NRS 174.234(2)[3], and therefore the production of this

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[3]NRS 174.234(2) reads in pertinent part:

> If the defendant will be tried for one or more offenses that are punishable as a gross misdemeanor or felony and a witness that a party intends to call during the case in chief of the state or during the case in chief of the defendant is expected to offer testimony as an expert witness, the party who intends to call that witness shall file and serve upon the opposing party, not less than 21 days before trial or at such other time as the court directs, a written notice containing:
> (a) A brief statement regarding the subject matter on which the expert witness is expected to testify and the substance of his

"raw data" cannot be held to be ineffective.

44. Pursuant to NRS 173. 115, criminal offenses may be joined. NRS 173.115 provides:

> Two or more offenses may be charged in the same indictment of information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are:
>
> 1. Based on the same act or transaction; or
>
> 2. Based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

The Nevada Supreme Court has held that when separate crimes are connected together by a continued course of conduct, joinder is appropriate. Tillema v. State, 112 Nev. 266, 914 P.2d 605 (1996). The Nevada Supreme Court has repeatedly held that joinder decisions are within the discretion of the trial court, and will not be reversed absent an abuse of discretion. Robins v. State, 106 Nev. 611, 619, 798 P.2d 558, 563 (1990). Defendant's claim that the public defender's office was ineffective for not severing his third penalty hearing from co-defendant, Randolph Moore is without merit. The District Court has wide discretion in the interests of judicial economy to keep the two hearings together. Furthermore, the Nevada Supreme Court consolidated Defendant's case with co-defendant Moore's case in 1991 for ease of consideration. See Flanagan II.

45. Defendant's claim that his attorney was ineffective for not seeking an evaluation as to Defendant's competency to stand trial because Defendant was under the influence of psychotropic drugs is belied by the record. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Not only does Defendant fail to offer any affidavit or documents which prove he was under substantial doses of psychotropic medications, but the record also indicates Defendant understood the proceedings by the District Court. During the Petrocelli hearing conducted by the District Court, Defendant was able to coherently answer all of the questions posed to him. (35 RA 1637-40). Such clear communication with the court refutes Defendant's contention that he

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> testimony;
> (b) A copy of the curriculum vitae of the expert witness; and
> (c) A copy of all reports made by or at the direction of the expert witness.

was unable to fully comprehend the nature of the charges against him and the magnitude of the penalty he faced. (Supplemental Petition, p. 44). As the record indicates Defendant understood the proceedings, his attorney was not ineffective.

46. Defendant's assertion that his attorney was ineffective for failing to force the District Court to allow a change of venue is belied by the record. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Defendant's attorney did, in fact, file a motion in limine for a change of venue. However, at a pre-trial hearing, Defendant's attorney agreed with the District Court to delay ruling on the motion to determine whether an impartial jury could be attained from the jury venire as required by Nevada case law. (29 RA 81-82). See Ford, 102 Nev. 126, 717 P.2d 27 (1986); Cutler, 93 Nev. 329, 566 P.2d 809 (1977). In doing so, Defendant's attorney gave him a preview of what the prospective jurors were thinking about the case without losing the right to argue for a change of venue. As such, Defendant's attorney was not ineffective.

47. Both the Sixth and the Fourteenth Amendments to the United States Constitution guarantee a defendant the right to a jury selected from a representative cross-section of the community. This right requires that the pools from which juries are drawn do not systematically exclude distinctive groups in the community. Taylor v. Louisiana, 419 U.S. 522, 538, 95 S.Ct. 692, 702 (1975). However, there is no requirement that the jury that is selected actually mirror the population at large. Holland v. Illinois, 493 U.S. 474, 110 S.Ct. 803 (1990).

48. The defendant bears the burden of establishing a prima facie violation of the fair cross-section requirement. In order to demonstrate a prima facie violation, the defendant must show 1) that the group alleged to be excluded is a distinctive group in the community, 2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community and 3) that this under representation is due to systematic exclusion of the group in the jury selection process. Duren v. Missouri, 439 U.S. 357, 364, 99 S.Ct. 664, 668 (1979). This test has been adopted by the Nevada Supreme Court. See Evans v. State, 112 Nev. 1172, 1186, 926 P.2d 265, 274 (1996). Defendant's claim that he received ineffective assistance of counsel because his attorney failed to object to the Clark County jury selection system which systematically excludes African Americans is without

merit. Defendant has failed to meet the test outlined by the Supreme Court. As such, Defendant cannot demonstrate that his attorney's actions were ineffective.

49. Defendant neglects to show how he was prejudiced by his attorney's failure to object to the all White jury that convicted Defendant as Defendant is White. Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984).

50. The Nevada Supreme Court has upheld joint exercises of peremptory challenges based upon NRS 175.015. NRS 175.015(now 175.041) reads in pertinent part:

> When several defendants are tried together, they cannot sever their peremptory challenges, but must join therein.

See also Doyle v. State, 82 Nev. 242, 415 P.2d 323 (1966); Anderson v. State, 81 Nev. 477, 406 P.2d 532 (1965).

51. Defendant's contention that his conviction is invalid because his attorney was forced to jointly exercise peremptory challenges with counsel for the co-defendants and because the District Court failed to grant him an additional peremptory when there was a disagreement about the last challenge to be used is without merit. In United States v. McClendon, 782 F.2d 785 (9th Cir. 1986), two co-defendants were on trial for a series of bank robberies. The Ninth Circuit Court of Appeals has held:

> there is no "right" to additional peremptory challenges in multiple defendant cases...[and that]...[d]isagreement between co-defendant on the exercise of joint peremptory challenges does not mandate a grant of additional challenges unless defendants demonstrate that the jury ultimately selected is not impartial or representative of the community. Id. at 787-88.

Defendant has failed to show that the jury selected was not impartial or representative of the community. In fact, Defendant points out that seven of eight challenges were agreed upon by counsel for all the defendants. Claiming that the exercise of one challenge creates a non-representative jury is tenuous at best.

52. Defendant fails to demonstrate how his attorney's failure to object to the joinder of peremptory challenges prejudiced him as required by Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984).

53. Defendant's allegation that his three appellate attorneys were ineffective for not raising issues regarding his First Amendment rights and prosecutorial misconduct is belied by the record. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). The United States Supreme Court and the Nevada Supreme Court both ruled on Defendant's First Amendment rights in light of the witchcraft evidence introduced at trial and argued during the penalty hearings. See Flanagan v. Nevada, 503 U.S. 931 (1992); Flanagan II; Flanagan III. Further, Defendant's first appellate counsel did raise the issue of prosecutorial misconduct during closing arguments as part of Defendant's first appeal to the Nevada Supreme Court. See Flanagan I.

54. The Supreme Court has recognized the "importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most, on a few key issues." Jones v. Barnes, 463 U.S. 745, 751-752, 103 S.Ct. 3308, 3313 (1983). In particular, a "brief that raises every colorable issue runs the risk of burying the good arguments ... in a verbal mound made up of strong and weak contentions." Id. at 753.

55. The Supreme Court has, therefore, held that for "judges to second guess reasonable professional judgments and impose on appointed counsel a duty to raise every 'colorable' claim suggested by a client would deserve the very goal of vigorous and effective advocacy." Id. at 754, 3314. Beyond that, appellate counsels' tactical decisions not to raise every possible issue on appeal work to enhance the likelihood of success for those meritorious claims that are appealed. See Hollenback, 987 F.2d 1272, 1275 (7th Cir. 1993); Jones, 463 U.S. 745, 103 S.Ct. 3308 (1983). As such, Defendant's allegation that his appellate attorneys were ineffective for failing to raise on appeal many of the claims that he now makes in this petition is without merit.

56. Defendant's allegation that prior opinions by the Nevada Supreme Court on death penalty cases have been consistently arbitrary, unprincipled and result-oriented is a naked allegation unsubstantiated by facts. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

57. The Eighth Judicial District Court lacks jurisdiction to stand in judgment of decisions issued by the Nevada Supreme Court. See Nev. Const. Article 6 Section 6.

58. Defendant's allegation that his counsel was ineffective in not challenging the jury instruction regarding reasonable doubt is without merit. The Nevada Supreme Court has

consistently held that there is no reasonable likelihood that a jury will apply the instruction defining reasonable doubt[4] in an unconstitutional manner where the instruction is accompanied by other instructions regarding the State's burden of proof and the presumption of the defendant's innocence. Bollinger v. State, 111 Nev. 1110, 1114, 901 P.2d 671, 674 (1995). In this case, the jury was given an additional instruction[5] regarding the State's burden of proof.

59. The Nevada Supreme Court has approved the "weighty affairs" language contained in Nevada's reasonable doubt jury instruction. Bollinger, at 1114. The Nevada Supreme Court has held that although it elected not to scrutinize such language, the "proper inquiry is not whether the instruction 'could have' been applied in an unconstitutional manner, but whether there is a reasonable likelihood that the jury did so apply it." Id. at 674 (quoting Victor v. Nebraska, 511 U.S. 1, 114 S.Ct. 1239 (1994)). In the case at bar, the instruction defining reasonable doubt was accompanied by an instruction regarding the State's burden of proof and another instruction regarding the presumption of innocence. As such, there is no reasonable probability that the jury believed the instruction allowed the conviction of Defendant based on a lesser quantum of evidence than is required by the Constitution. See Bollinger, at 1114.

60. Defendant's claim that his attorney was ineffective in not objecting to the jury instruction regarding premeditation/deliberation and implied malice is without merit. The instruction given in this case has been upheld by the Nevada Supreme Court. See Kazalyn v. State, 108 Nev. 67, 825 P.2d 578 (1992). In Kazalyn, the Court determined that the premeditation instruction was distinct from the malice instruction. In holding that the premeditation instruction was distinct,

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[4] The jury instruction for reasonable doubt reads, "A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

[5] The instruction reads, "The defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that a defendant is a person who committed the offense."

the Nevada Supreme Court found the same instruction for premeditation[6] used in Defendant's case to be appropriate: Id. at

61. Further, in Kazalyn the Court specifically noted that the murder instructions adequately met the premeditation/deliberation and malice criteria as set forth in Payne v. State, 81 Nev. 503, 508-509, 406 P.2d 922 (1965).

62. Recently, in Byford v. State, 116 Nev. Adv. Op. 23, p. 19-25 (February 28, 2000), the Nevada Supreme Court reviewed the Kazalyn instruction. In that opinion, the Nevada Supreme Court changed the instructions for all cases in the future. However, at the time that the trial court in the instant case gave the murder instructions, the premeditation instruction was clearly good law. Moreover, in Byford, the Court recognized that it had expressly informed the district courts in prior opinions that the Kazalyn instruction was proper and that the new instruction was not retroactive. Byford, 116 Nev. Adv. Op. 22-23 at 22. Therefore, the District Court's reliance on the express holdings of the Nevada Supreme Court cannot be viewed as plain error. Clearly, the giving of the Kazalyn instruction of premeditation and deliberation was not plain error, and neither trial nor appellate counsel can be held to have been ineffective for not challenging an instruction that had been consistently endorsed by the Nevada Supreme Court.

63. The Nevada Supreme Court has held that the "equal and exact justice" instruction used by the District Court in the instant case is valid. In Leonard v. State, 114 Nev. 1196, 969 P.2d 288, 296 (1998), the Nevada Supreme Court ruled on allegations that the instruction denied the defendant his presumption of innocence. See also McKenna v. State, 96 Nev. 811, 618 P.2d 348 (1980). The Court found that instruction does not concern the presumption of innocence. Id. Further, it ruled that based on other instructions given regarding the burden of proof, the defendant was not denied the presumption of innocence. Id. The District Court in Defendant's case also instructed the jury separately on the issues of burden of proof and presumption of

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[6] Premeditation is a design, a determination to kill, distinctly formed in the mind at any moment before or at the time of the killing. Premeditation need not be for a day, an hour or even a minute. It may be as instantaneous as successive thoughts of the mind. If the jury believes from the evidence that the act constituting the killing has been the result of premeditation, no matter how rapidly the premeditation is followed by the act constituting the killing, it is wilful, deliberate, and premeditated murder. (3 RA 596).

innocence. Therefore, Defendant's assertion that the jury did not give him the benefit of the presumption of innocence or that they convicted him based on a lesser standard of proof is a bare allegation. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

64. The Nevada Supreme Court has concluded that the "guilt or innocence by any other person" instruction given in the instant case is constitutionally sound. See Guy v. State, 108 Nev. 770, 839 P.2d 578 (1992). In Guy, the Court considered the same language used in the instruction in the instant case and rejected the defendant's argument that the instruction confused the jury. Id. at 778. Moreover, the Court went on to find that the challenged instruction sufficiently directed the jury to ignore the co-defendant's culpability when determining whether the defendant was guilty as charged. Id.

65. Defendant's argument that his conviction is invalid because insufficient evidence existed to support the jury's finding of the aggravating factor that the killing was committed by someone who knowingly created a great risk of death to more than one person is precluded by the law of the case. Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975). The Nevada Supreme Court has ruled that substantial evidence existed to support the finding that Defendant knowingly created "a great risk of death to more than one person by means of a weapon and course of action which would normally be hazardous to the lives of more than one person." Flanagan IV, at 1421. Thus, Defendant is precluded from having this court re-hear this same flawed argument under the "law of the case" doctrine. See Hall, at 314.

66. Furthermore, Defendant is precluded from raising his allegation that there was insufficient evidence to convict him of creating a great risk of death as it is the type of claims that should have been raised in any one of Defendant's direct appeals to the Nevada Supreme Court. See Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994).

67. Defendant's claim that insufficient evidence existed to support the aggravating factor of murder while engaged in the commission of burglary is without merit. In Bennett v. State, 106 Nev. 135, 787 P.2d 797 (1990), the Nevada Supreme Court rejected that argument that the aggravating factor of burglary was not supported by the evidence. The Court reasoned that:

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> NRS 200.033(4) only requires that, for burglary to be an aggravating circumstance, the murder must be committed while the person was engaged in the commission of or an attempt to commit or flight after committing or attempting to commit burglary or robbery. This was clearly the case here. Were it otherwise, burglary could be used as an aggravating circumstance only upon the rare occasion of a killing which occurs while the defendant is entering the building.

Id. 106 Nev. at 142. In the instant case, there was uncontroverted evidence that Defendant killed his grandmother during the commission of the burglary while his co-defendants killed his grandfather and therefore, it was an appropriate aggravator. See Flanagan I.

68. Defendant is precluded from raising the contention that there was insufficient evidence to support the aggravating factor of committing murder while in the commission of robbery by the doctrine of law of the case as the Nevada Supreme Court previously considered the issue in Flanagan IV. Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

69. Defendant's claim that his conviction is invalid because the District Court permitted the State to use the same facts to convict him under a felony murder theory and to support one of aggravating factors for the death sentence is meritless. The Nevada Supreme Court has approved the use of the underlying felony in felony murder cases as a valid aggravating circumstance to support the imposition of the death sentence. Atkins v. State, 112 Nev. 1122, 1134, 923 P.2d 1119 (1996) quoting Petrocelli v. State, 101 Nev. 46, 53, 692 P.2d 503 (1985); accord Miranda v. State, 101 Nev. 562, 707 P.2d 1121 (1985), cert. denied 475 U.S. 1031 (1986); Farmer v. State, 101 Nev. 419, 705 P.2d 149 (1985) cert. denied 476 U.S. 1130 (1986).

70. Defendant's claim that his conviction is invalid because the District Court improperly instructed the jury during Defendant's three (3) penalty hearings is precluded from review because it is the type of claim that should have been raised in Defendant's direct appeal. Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994).

71. The anti-sympathy jury instruction has been endorsed as constitutional by the Nevada Supreme Court. Sherman v. State, 114 Nev. 998, 965 P.2d 903 (1998). The Court, in Sherman, decided that as long as the jury is given instruction to consider mitigating circumstances, the anti-sympathy instruction is proper. Id. Therefore, Defendant's contention that the District Court

precluded the jury's consideration of any type of sympathy when it gave the anti-sympathy instruction is without merit. Furthermore, as the Nevada Supreme Court previously considered this issue in Flanagan IV, Defendant is precluded from raising it in his petition by the doctrine of law of the case. Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

72. Defendant's assertion that the District Court failed to properly instruct the jury about unanimity regarding their findings of aggravating and mitigating circumstances contravenes existing case law. The Nevada Supreme Court has clearly ruled that during a penalty hearing, the jury instructions do not have to instill a unanimity requirement to find mitigating circumstances. Jiminez v. State, 112 Nev. 610, 624, 918 P.2d 687 (1996). The Court in Jiminez held that:

> In the end, each juror must have evaluated the juxtaposition of aggravating circumstances and mitigating circumstances in reaching the conclusion that the latter were not sufficient to outweigh the former. ... There was no constraint on the right of individual jurors to find mitigators, such as a requirement of unanimity or proof by a preponderance of the evidence or any other standard.

Id. See also Geary v. State, 114 Nev. 100, 952 P.2d 431 (1998); Hill v. State, 114 Nev. 169, 953 P.2d 1077 (1998).

73. In Bennett v. State, 111 Nev. 1099, 1109, 901 P.2d 676 (1995), the Nevada Supreme Court found that a jury instruction nearly identical to the one in the instant case adequately informed the jury that there was no requirement to impose the death penalty.[7] The Court stated:

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[7]The jury instruction in Bennett read in pertinent part:

> The jury may impose a sentence of death only if it finds at least one aggravating circumstance has been established beyond a reasonable doubt and further finds that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found.
>
> Otherwise, punishment imposed shall be imprisonment in the state prison for life with or without the possibility of parole.

> we conclude that the above jury instruction accurately informed the jury of their statutorily endowed prerogative to decide whether [defendant] would live, regardless of whether aggravating circumstances outweighed mitigating circumstances. "May" is clearly permissive in the context of NRS 175.554(3) and the instruction submitted to the jury.

Id. Thus, the jury instruction adequately instructed the jury in this case.

74. Defendant's challenge to the commutation instruction based on the argument that the jury was too ignorant to understand the plain language of the instruction is a naked allegation unsubstantiated by fact. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

75. Defendant's claim that errors occurred during the jury selection of the second penalty hearing is moot as he was granted a third penalty hearing. See Flanagan III.

76. Defendant's allegations regarding the impartiality of the judges who presided over his trial and penalty hearings are nothing more than a collection of naked allegations for which Defendant fails to provide any proof. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

77. Defendant's allegations regarding the lack of impartiality of the judges who presided over his first and second penalty hearings are moot as Defendant received a third penalty hearing. See Flanagan III

78. Defendant's allegation that Judge Mosley said to counsel "let's get back to work and get these guys executed," is a naked allegation unsubstantiated by any facts or affidavits. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

79. Defendant's allegation that Judge Mosley was ultimately removed from the case because of his bias against Defendant is belied by the record. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). The record of the case clearly indicates that Judge Mosley was found not to be biased or prejudiced against the defendants. After hearing oral arguments, then Chief District Court Judge Nancy Becker ruled that:

> [r]eview of the transcript of the proceedings of June 24, 1991 and the Affidavit of Judge Mosley shows that there is no actual prejudice or bias against any of the parties to this case. The comments of Judge Mosley only evidenced a dissatisfaction with the overall slowness of the appellate process in capital cases. The challenged comments, while not showing actual prejudice or bias, could be construed to give an appearance of prejudice. While

> appearance of prejudice is usually insufficient to require the disqualification of a District Court Judge, the history of this case and the fact that it is a capital case requires that an abundance of caution be exercised.

(5 RA 1324) (Emphasis added). Thus, Defendant's allegation is clearly belied and repelled by the record. Id.

80. Defendant's claims regarding Judge Mosley are precluded from review in his petition as they are the type that should have been raised on direct appeal. Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994).

81. Defendant's claim that Judge Addeliar Guy was somehow biased against Defendant is a naked allegation. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Further, Defendant fails to show how Judge Guy's disposition prejudiced him during the third penalty hearing as required by Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984).

82. Defendant's claim that his death sentence is invalid because the Nevada capital punishment system operates in an arbitrary and capricious manner is without merit. The Nevada Supreme Court has long held that Nevada's use of the death penalty meets both federal and state constitutional requirements. See Ybarra v. State, 100 Nev. 167, 174, 679 P.2d 797 (1984). In Ybarra, the Court reviewed Nevada's death penalty statutes in light of United States Supreme Court opinions regarding similar statutes from Florida and Georgia and ruled that:

> [s]ince our procedure for weighing aggravating and mitigating circumstances provides the sentencer with adequate information and guidance and the accused with sufficient guarantees that the penalty of death will not be imposed arbitrarily and capriciously, the challenged statute passes constitutional muster.

Id. 100 Nev. at 176. See also Hill v. State, 102 Nev. 377, 724 P.2d 734 (1986); Middleton v. State, 114 Nev. 1089, 968 P.2d 296 (1998).

83. The District Court lacks jurisdiction to review decisions made by the Nevada Supreme Court. See Nev. Const. Article 6 Section 6.

84. Defendant's contention that the Amended Complaint did not apprise him of the crimes he was charged with is belied by the record. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). The Amended Complaint filed in open court on February 11, 1984 put Defendant on

notice of the charges against him. (1 RA 141-146). Furthermore, at the subsequent preliminary hearing, Defendant heard all the evidence that was used to bind him up to the District Court on the charges in the Amended Complaint.

85. Defendant's claim that his conviction and sentence are defective because he wasn't present during critical court proceedings is a naked allegation unsubstantiated by specific facts. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Defendant fails to provide evidence that he was, in fact, missing during important court proceedings.

86. A defendant's absence from preliminary matters or hearings does not necessarily prejudice him. See Thomas v. State, 114 Nev. 1127, 967 P.2d 1111 (1998). Thus, Defendant does not demonstrate how his alleged absence from court proceedings prejudiced him as required by Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984).

87. Defendant's claim that his conviction and sentence are invalid because the District Court precluded public access to the trial by failing to have all the proceedings recorded or reported is a naked allegation. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Defendant fails to provide any affidavit or offer of proof to support these allegations. Further, the appellate record is replete with instances in which Defendant's attorney and counsel for the co-defendants created a record of bench conferences. (i.e. 32 RA 915, 33 RA 1081).

88. Defendant's allegations that his death sentence is invalid because it violates both the federal and state constitutional guarantees against cruel and unusual punishment are without merit. The Nevada Supreme Court has ruled that the Nevada death penalty statutes are in conformance with other death penalty statutes that had been upheld by the United States Supreme Court. Bishop v. State, 95 Nev. 511, 517-18, 597 P.2d 273 (1979). The Nevada Supreme Court specifically held that "[t]he imposition of the death penalty...offends neither the United States Constitution nor the Nevada Constitution." Id. at 518. See also Colwell v. State, 112 Nev. 807, 919 P.2d 403 (1996); Bennett v. State, 106 Nev. 135, 787 P.2d 797 (1990); Rogers v. State, 101 Nev. 457, 705 P.2d 664 (1985).

89. Defendant's allegation that his sentence is invalid because he may, at some point in the future, become incompetent to be executed even though he is not presently incompetent is

meritless and improperly raised. In Martinez-Villareal, 118 F.3d 628, 634 (1997), the Ninth Circuit Court of Appeals held that a defendant's competency claims have to be raised in his first **federal** habeas petition. The Ninth Circuit opined that once the state issues a second warrant of execution, then the state court could consider the ripe competency claim which could be followed by federal review of the same issue and only that issue. Id. As this is not the case with Defendant's claim, it is prematurely raised.

90. Defendant's claim that his conviction and sentence are unreliable because of the District Court's failure to sever Defendant's case from his co-defendants' cases resulting in the admission of witchcraft evidence is without merit. In Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975), the Nevada Supreme Court stated that "[t]he law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same". Hall v. State, 91 Nev. 314, 315, 535 P.2d 797 (2000). Defendant's complaint regarding the admission of so-called "witchcraft evidence" introduced by a co-defendant and referenced by the State has already been decided by the Nevada Supreme Court. In Flanagan IV, the Nevada Supreme Court held that a harmless error analysis was appropriate when considering the admission of the so-called "witchcraft evidence" during the trial. Flanagan IV, at 1418-1421. The Court ruled that because there was "overwhelming evidence" against Defendant, any admission of such evidence was harmless at best. Flanagan IV, at 1420.

91. Defendant's contention that his sentence is defective because Nevada has no effective mechanism for clemency in capital cases is without merit. In Colwell v. State, 112 Nev. 807, 812-13, 919 P.2d 403 (1996), the Nevada Supreme Court addressed a related issue when it considered whether NRS 213.085[8] rendered the Nevada death penalty scheme unconstitutional

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[8]NRS 213.085 reads in pertinent part:

> 1. If a person is convicted of murder of the first-degree before, on or after July 1, 1995, the board shall not commute:
> (a) A sentence of death;
> (b) A sentence of imprisonment in the state prison for life without the possibility of parole, to a sentence that would allow parole.

by denying clemency. Finding that clemency encompassed the powers to commute a sentence or to pardon a defendant, the Court ruled that "NRS 213. 085 does not completely deny the opportunity for 'clemency' ....but rather modifies and limits the power of commutation." Id. Therefore, Defendant's "no mechanism for clemency" argument lacks merit as it did in Colwell.

92. Defendant's allegation regarding clemency is precluded in the instant petition as it is the type of claim that should have been raised in any one of Defendant's direct appeals to the Nevada Supreme Court. Franklin v. State, 110 Nev. 750, 877 P.2d 1088 (1994).

93. Defendant's contention that his conviction and sentence are invalid because jurors allegedly saw him in shackles is a naked allegation. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Defendant fails to provide an affidavit or any offer of proof that he was seen by jurors while in shackles. Further, even if Defendant's claims are true, they are without merit. A jury's brief or inadvertent glimpse of a defendant in physical restraints outside of the courtroom has not warranted habeas relief. Rhoden v. Rowland, 172 F.3d 633, 636 (1999) citing United States v. Olano, 62 F.3d 1180, 1190 (9th Cir. 1995).

94. Defendant's argument that the presence of armed guards in the courtroom impermissibly influenced the jury is refuted by the holding in McKenna v. State, 114 Nev. 1044, 968 P.2d 739 (1998). In McKenna, the Nevada Supreme Court concluded that no actual prejudice to the defendant had been shown by the presence of SWAT officers in the courtroom. Id. Similarly, Defendant cannot show he was prejudiced by the mere presence of armed guards as required by Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984).

95. Defendant's claim that his conviction and sentence are invalid because he was denied an impartial tribunal due to the fact that trial and appellate judges in Nevada are elected and not appointed lacks merit is an inappropriate matter to be raised in a post-conviction petition and should have been raised on direct appeal. See Franklin v. State, 110 Nev. 750, 877 P.2d 1088

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2. If a person is convicted of any crime other than murder of the first degree on or after July 1, 1995, the board shall not commute:
(a) A sentence of death;
(b) A sentence of imprisonment in the state prison for life without the possibility of parole, to a sentence that would allow parole.

(1994).

96. Defendant's contest of his sentence based on counsel's failure to challenge, for cause, jurors in the second penalty hearing is moot as Defendant was granted a third penalty hearing. See Flanagan III.

97. Defendant fails to prove his attorney was ineffective with regard to his allegations pertaining to jurors in the third penalty hearing. The record indicates that nearly all of the jurors who expressed strong feelings about the death penalty were removed from the jury via peremptory challenges. Defendant has not demonstrated how the exercise of these peremptory challenges to remove biased jurors prejudiced him during the third penalty hearing as required by Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984).

98. Defendant's allegations in his last three claims that his conviction and sentence are invalid because the State allegedly violated international law are meritless. The treaties cited by Defendant are not controlling authority in Nevada and are therefore irrelevant to a post-conviction petition. Servin v. State, 117 Nev. __, 32 P.3d 1277 (2001) ; Domingues v. State, 114 Nev. 783, 961 P.2d 1279 (1998).

99. A Defendant will not be heard to complain of delays that he has caused. Woods v. State, 94 Nev. 435, 581 P.2d 444 (1978); Williams v. State, 93 Nev. 405, 566 P.2d 417 (1977); Stabile v. Justice Court, 83 Nev. 393, 432 P.2d 670 (1967). Defendant's allegation that the State's pursuit of justice over the past fifteen (15) years, largely because Defendant has sought to exhaust every conceivable remedy under state and federal law, has been cruel and unusual punishment is without merit. Furthermore, Defendant is precluded from raising this issue by the doctrine of the law of the case as the Nevada Supreme Court addressed this issue in Flanagan IV. Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

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ORDER

Based upon the Findings of Fact and Conclusions of Law contained herein, it is hereby:

ORDERED, ADJUDGED, and DECREED that Defendant's Petition for Writ of Habeas Corpus (Post-conviction) is denied.

DATED this 8 day of August, 2002.

DISTRICT JUDGE

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

BY H. Leon Simon
H. LEON SIMON
Deputy District Attorney
Nevada Bar #000411

FILED

JUN 19 9 29 AM '02

Shirley B. Parraguirre
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada Plaintiff, vs. Dale Edward Flanagan, #1013719 Defendant.	)	Case No. C69269 Dept. No. VII

ORDER

THIS MATTER came before the Court for evidentiary hearing of Defendant's allegation of ineffective assistance of counsel based on the alleged personality conflict between Rebecca Blaskey and David Wall as raised in Defendant's Petition for Writ of Habeas Corpus. The Court, after reviewing all briefs submitted, hearing testimony at the evidentiary hearing on February 14, 2002 and reviewing the file, does not find that Defendant's counsel was ineffective under the test enunciated in Strickland v. Washington, 566 U.S. 668, 687 (1984) which was later adopted by the Nevada Supreme Court in Bennett v. State, 111 Nev. 1099 (1995). The test in Strickland requires a defendant to show that counsel's assistance was "deficient" and that the deficiency prejudiced the defense. Id at 687. There is also

EXHIBIT "1"

a strong presumption that defense counsel provided reasonably effective assistance of counsel, which can only be overcome by strong and convincing proof to the contrary. Donovan v. State, 94 Nev. 671 (1978).

The Court does not find that Defendant has presented strong and convincing proof that both Rebecca Blaskey and David Wall were ineffective as counsel for Defendant in preparation for and during his third penalty hearing. While there was some evidence of personality conflicts and lack of communication between Defendant's counsel, these incidents did not rise to the level of ineffective assistance of counsel nor did the Defendant demonstrate that the incidents prejudiced him, which is necessary under the Strickland test.

NOW, THEREFORE, IT IS HEREBY ORDERED that Defendant's Petition for Writ of Habeas Corpus is **DENIED**.

Dated this 19 day of June, 2002.

MARK GIBBONS
Chief District Judge

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PROOF OF SERVICE

4 I hereby certify that on June 19, 2002 I mailed or placed a copy in attorney
5 folder or hand delivered the foregoing Order to the following:

6 Leon Simon, Esq.
7 Deputy District Attorney
200 S. Third St.
8 Las Vegas, NV 89155

9 Cal Potter, Esq.
1125 Shadow Lane
10 Las Vegas, NV 89102

11 Robert D. Newell
12 1300 S.W. Fifth Avenue, Suite 2300
Portland, Oregon 97201
13
14
15 Jason Cook
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Dept 7, Law Clerk
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District Court

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Clark County, Nevada

Shirley B. Parraguirre
CLERK

DALE EDWARD FLANAGAN,

Petitioner,

vs

THE STATE OF NEVADA,

Respondent.

Case No. C69269

Dept. No. VII

NOTICE OF ENTRY OF DECISION AND ORDER

PLEASE TAKE NOTICE that on August 9, 2002, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on August 16, 2002.

SHIRLEY B. PARRAGUIRRE, CLERK OF COURT

By: Noreta Caldwell
Norreta Caldwell, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on the 16 day of August, 2002, I placed a copy of this Notice of Entry of Decision and Order in:

The bin(s) located in the Office of the County Clerk of:
Clark County District Attorney's Office - Appellate Division
Attorney General's Office - Appellate Division
Cal J Potter III - Attorney

☐ The United States mail addressed as follows:

Robert Newell
1300 SW 5 Ave #2300
Portland, OR 97201

Noreta Caldwell
Norreta Caldwell, Deputy Clerk

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FILED
AUG 9 7 58 AM '02
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

DALE EDWARD FLANAGAN,
#0737065

Petitioner,

-vs-

THE STATE OF NEVADA, and E.K. McDANIEL, Warden, Ely State Prison,

Defendant.

Case No.. C69269
Dept. No. VII

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: 2-14-02
TIME OF HEARING: 9:30 A.M.

THIS CAUSE having come on for hearing before the Honorable Mark Gibbons, District Judge, on the 14th day of February, 2002, the Petitioner not being present, represented by ROBERT NEWELL, ESQ. & CAL J. POTTER, III, ESQ., the Respondent being represented by STEWART L. BELL, District Attorney, by and through H. LEON SIMON, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Dale Flanagan, hereinafter Defendant, was charged by Information with two counts of First Degree Murder With Use of a Deadly Weapon; two counts of Conspiracy to Commit Murder; one count of Burglary; one count of Conspiracy to Commit Burglary; one count of Robbery With Use of a Deadly Weapon; and one count of Conspiracy to Commit Robbery.

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2. In September, 1985, Defendant's jury trial began before the Honorable Donald M. Mosley, District Judge in the Eight Judicial District Court of the State of Nevada. At the conclusion of the trial, the jury found Defendant guilty on all counts.

3. Following a penalty hearing, the jury returned a sentence of death against Defendant for each of the two convictions for murder.

4. Defendant was sentenced on November 27, 1985 to:

Count I (Conspiracy to Commit Burglary) - one (1) year in the Clark County Jail;

Count II (Conspiracy to Commit Robbery)- six (6) years in the Nevada State Prison;

Count III (Conspiracy to Commit Murder)- six (6) years in the Nevada State Prison;

Count IV (Burglary)- ten (10) years in the Nevada State Prison;

Count V (Robbery)- fifteen (15) years in the Nevada State Prison and an equal and consecutive sentence of fifteen (15) years for the deadly weapon enhancement;

Count VI (First Degree Murder)- death by lethal injection and an equal and consecutive sentence of death for the deadly weapon enhancement;

Count VII (First Degree Murder)- death by lethal injection and an equal and consecutive sentence of death for the deadly weapon enhancement.

The District Court ordered Counts II through VII to be served consecutively to one another and to Count I. Defendant was given three hundred and one (301) days credit for time served.

5. Defendant filed a timely Notice of Appeal on December 19, 1985.

6. On May 18, 1988, the Nevada Supreme Court affirmed Defendant's conviction but reversed the sentence of death and remanded the case to the District Court based on prosecutorial misconduct during the penalty hearing. See Flanagan v. State, 104 Nev. 105, 754 P.2d 836 (1988) (Flanagan I).

7. Upon remand, a second penalty hearing was conducted and Defendant was once again sentenced to death by a jury. Defendant timely appealed his second death sentence to the Nevada Supreme Court.

8. The Nevada Supreme Court affirmed the death sentence imposed in the second penalty hearing. See Flanagan v. State, 107 Nev. 243, 810 P.2d 759 (1991) (Flanagan II).

9. Defendant petitioned the United States Supreme Court with a writ of certiorari which the Supreme Court granted. The Supreme Court vacated Defendant's death sentence and remanded the case to the Nevada Supreme Court for further consideration in light of Dawson v. Delaware, 503 U.S. 159, 112 S.Ct. 1093 (1992).

10. On remand, the Nevada Supreme Court held that the State had impermissibly offered evidence of Defendant's involvement in satanic worship during his second penalty hearing in violation the First Amendment. See Flanagan v. State, 109 Nev. 50, 846 P.2d 1053 (1993) (Flanagan III). The Nevada Supreme Court remanded the case for a third penalty hearing.

11. After the third penalty hearing, a jury once again sentenced Defendant to death.

12. Defendant file a timely Notice of Appeal from the third death sentence.

13. On appeal, the Nevada Supreme Court affirmed the death sentence. See Flanagan v. State, 112 Nev. 1409, 930 P.2d 691 (1996) (Flanagan IV).

14. Defendant filed a Petition for a writ of certiorari to the United State's Supreme Court which was denied. See Flanagan v. State, 523 U.S. 1083, 118 S.Ct. 1534 (1998).

15. On May 28, 1998, Defendant filed the instant Petition for Writ of Habeas Corpus (Post-conviction).

16. In his petition, Defendant made thirty-six claims in support of his request for relief from his conviction and sentence.

17. The following claims raised in Defendant's petition were previously addressed by the Nevada Supreme Court in one of Defendant's direct appeals and are barred by the law of the case: 1) Claim I (a) - allegation that the State coached its witnesses, 2) Claim I (d) - the alleged prosecutorial misconduct during trial, 3) Claim III- the introduction of witchcraft evidence during trial, 4) Claim IV (a)[1] the court-designed exercise of peremptory challenges, 5) Claim IV (a) the adequateness of the jury instruction regarding greater risk, 6) Claim IV (a) the necessity of jury instruction requiring a nexus between robbery and burglary, 7) Claim XII - the validity of the jury instructions dealing with "equal and exact justice" and "guilt or innocence of another

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[1] Defendant sets forth several claims each within IV (a) and IV (c).

person", 8)Claim XIII- the lack of evidence to find Defendant guilty of the aggravator "creating a greater risk of death", 9) Claim XV- that there was insufficient evidence to support the aggravator "murder in the commission of robbery", 10) Claim XVII- that the District Court improperly gave the anti-sympathy jury instruction, 11) Claim XXIX- the District Court's joinder of Defendant's case with his co-defendants, and 12) Claim XXXVI- that Defendant's lengthy confinement prior to the imposition of the death penalty constituted cruel and unusual punishment.

18. The following claims raised in Defendant's petition are naked allegations unsubstantiated by facts: 1) Claim II - the allegation that the State shaped witnesses' testimony with offers of leniency, 2) Claim IV (a) the allegation that Defendant's attorney failed to investigate, the allegation that Defendant had diminished capacity at the time of the crime, the allegation that Defendant was incompetent to stand trial due to his medication, the allegation that Defendant's attorney should have requested investigative funds, the allegation that Defendant's attorney did not cross-examine Wittig effectively, 3) Claim IV (c) the allegation that the Public Defender's office lacked the resources to prepare for the third penalty hearing, 4) Claim VII - the allegation that the jury selection process in Clark County is prejudicial, 5) Claim IX - the allegation that bench conferences impaired Defendant's ability to prepare a defense, 6) Claim XI - the allegation that the Nevada Supreme Court's decisions on death penalty cases are arbitrary, 7) Claim XX - the allegation that the judges who presided over Defendant's trial and three penalty hearings were not impartial, 8) Claim XXIII - the allegation that Defendant was not present during important court appearances, and 9) Claim XXXI - the allegation that jurors saw Defendant in shackles.

19. The following claims raised by Defendant are belied by the record: 1) Claim IV (a) - the allegation that Defendant's attorney did not thoroughly cross-examine the witnesses, 2) Claim V - the allegation that Defendant was incompetent to stand trial due to his medication 3) Claim VI - the allegation that Defendant's attorney failed to request a change of venue, 4) Claim XXII - the allegation that the Information did not appraise Defendant of the charges against him, and 5) Claim XXIV - the allegation that no record was made of any of the conferences at the bench.

20. The following claims raised by Defendant are moot because Defendant received a third penalty hearing: 1) Claim I (c) - the allegation that the State exercised its peremptory challenges in a discriminatory manner during the second penalty hearing, 2) Claim IV (a) the allegation that Defendant's attorney did not conduct an adequate investigation of mitigation evidence for the second penalty hearing, 3) Claim IV (b) - the allegations that Defendant's attorney was ineffective during the second penalty hearing, 4) Claim XVIII - the allegation that the District Court forced Defendant to use a peremptory challenge during the second penalty hearing, 5) Claim XIX - the allegation that the District Court improperly removed a juror during the second penalty hearing, and 6) Claim XXXIII - the allegation that Defendant's attorney failed to challenge some jurors for cause during the second penalty hearing.

21. Defendant failed to demonstrate how the following claims prejudiced him as required by Strickland: 1) Claim IV (c) the fact that Defendant's attorney's turned over raw data from Defendant's mental health examination, the consolidation of Defendant's case with his co-defendant's case, 2) Claim VIII- the allegation that Defendant was forced to exercise peremptory challenges in conjunction with his co-defendants, 3) Claim X - the allegation that Defendant's appellate attorney did not raise every issue in Defendant's petition on direct appeal, and 4) Claim XXXIII- the allegation that Defendant's attorney did not challenge certain jurors for cause.

22. The following claims made by Defendant in his petition are contrary to established Nevada law: 1) Claim XII - that the jury instructions dealing with premeditation/deliberation and reasonable doubt were improper, 2) Claim XIV - that there was insufficient evidence to support the jury's finding of the aggravator "murder in commission of burglary", 3) Claim XVI - that the State improperly used the same facts to convict Defendant of felony murder and an aggravator, 4) Claim XVII - that the anti-sympathy instruction was improperly given, that the State improperly failed to instruct the jury on unanimity of aggravators, that the State improperly failed to instruct the jury there is no requirement to impose the death penalty, and that the commutation instruction was improper, 5) Claim XXI - that the death penalty in Nevada is arbitrary, 6) Claims XXVI & XXVII- that the death penalty statute in Nevada violates the Eighth Amendment, and 7) Claim XXX - that the death penalty statute in Nevada does not provide for

clemency.

23. The following claims raised by Defendant are inappropriate for a petition and should have been raised on direct appeal: 1) Claims XIV & XV - that the aggravators were applied incorrectly in Defendant's case, 2) Claim XVI - that the State improperly used the same facts to convict Defendant of felony murder and prove an aggravator, 3) Claim XVII - that the jury instructions regarding anti-sympathy, unanimity of aggravators, commutation and no requirement to impose the death penalty were not correctly given, 4) Claim XXI - that the death penalty in Nevada is arbitrary, 5) Claims XXVI & XXVII - that the death penalty violates the Eighth Amendment, 6) Claim XXX - that the Nevada death penalty statute does not provide for clemency, and 7) Claim XXXII - that because Nevada judges are elected they are not impartial.

24. Defendant's allegation that the State withheld exculpatory evidence including Defendant's will and his involvement in a group to discourage youth from participation in witchcraft does not amount to a Brady v. Maryland violation as both pieces of evidence were known to Defendant. (Claim I (b))

25. Since none of Defendant's individual claims have merit, all of them taken together do not warrant relief.(Claim XXV)

26. Defendant's claim (Claim XXVIII) in his petition that he may become incompetent to be executed is prematurely raised.

27. The Supreme Court of Nevada has rejected the contention set forth in Defendant's claims XXXIV and XXXV that Nevada's death penalty is unlawful because of International law.

28. On August 16, 2000, this Court denied Defendant's petition as to all of the issues except for those relating to ineffectiveness of counsel arising from lack of communication between Rebecca Blaskey and David Wall, Defendant's attorneys during his third penalty hearing. (Claim IV (c)).

29. This Court held an evidentiary hearing on February 14, 2002, to address Defendant's one remaining claim of ineffective assistance of counsel caused by lack of communication between Rebecca Blaskey and David Wall. On June 19, 2002, this Court issued an order denying Defendant's remaining claim. This Court ruled that Defendant had failed to demonstrate that the

personality conflict and lack of communication between Rebecca Blaskey and David Wall rose to the level of ineffective assistance of counsel as required by Strickland; that ruling is incorporated herein. (See Exhibit One).

30. Defendant received effective assistance of trial counsel and appellate counsel.

CONCLUSIONS OF LAW

1. The Supreme Court has clearly established the appropriate test for determining whether a defendant received constitutionally defective counsel. To demonstrate ineffective assistance of counsel, a convicted defendant must show both that his counsel's performance was deficient, and that the deficient performance prejudiced his defense. Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984).

2. The Nevada Supreme Court has adopted this test articulated by the Supreme Court. Bennett v. State, 111 Nev. 1099, 1108, 901 P.2d 676, 682 (1995).

3. Counsel's performance is deficient where counsel made errors so serious that the adversarial process cannot be relied on as having produced a just result. Strickland, at 686. The proper standard for evaluating an attorney's performance is that of "reasonable effective assistance." Strickland, at 687. This evaluation is to be done in light of all the circumstances surrounding the trial. Id.

4. The Supreme Court has created a strong presumption that defense counsel's actions are reasonably effective:

> Every effort [must be made] to eliminate the distorting effects of hindsight to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. . . .A court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

Strickland, at 689-690.

5. "[S]trategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992).

6. Reasonable assistance of counsel does not require that defense counsel make every conceivable motion no matter how remote the possibilities are of success in order to protect

himself against allegations of inadequacy. Donovan, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978).

7. The Nevada Supreme Court has held that it is presumed counsel fully discharged his duties, and said presumption can only be overcome by strong and convincing proof to the contrary. Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978)

8. It is not enough for a defendant to show deficient performance on the part of counsel, a defendant must also demonstrate that the deficient performance prejudiced the outcome of his case. Strickland v. Washington, 566 U.S. 668, 686, 104 S.Ct. 2052, 2065 (1984).

9. In meeting the prejudice requirement of an ineffective assistance of counsel claim, a defendant must show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 401, 990 P.2d 1263, 1268 (1999); *citing* Strickland, 566 U.S. 668, 687, 104 S.Ct. 2052, 2066 (1984). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. *citing* Strickland, 466 U.S. at 687-89, 694.

10. This same standard of review applies to claims of ineffective assistance of appellate counsel. *See* Strickland, 466 U.S. at 687-688 & 694, 104 S.Ct. at 2065 & 2068; Williams v. Collins, 16 F.3d 626, 635 (5th Cir. 1994); Hollenback v. United States, 987 F.2d 1272, 1275 (7th Cir. 1993); Heath v. Jones, 941 F.2d 1126, 1130 (11th Cir. 1991).

11. The Nevada Supreme Court has held that all appeals must be "pursued in a manner meeting high standards of diligence, professionalism and competence." Burke v. State, 110 Nev. 1366, 1368, 887 P.2d 267, 268 (1994).

12. In order to prove that appellate counsel's alleged error was prejudicial, the defendant must show that the omitted issue would have had a reasonable probability of success on appeal. *See* Duhamel v. Collins, 955 F.2d 962, 967 (5th Cir. 1992); Heath, 941 F.2d at 1132.

13. Counsel is not required to assert frivolous claims on appeal. A defendant does not have the constitutional right to "compel appointed counsel to press nonfrivolous points requested by the client, if counsel, as a matter of professional judgment, decides not to present those points." Id.

14. The Supreme Court has recognized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most, on a few key issues." Jones v. Barnes, 463 U.S. 745, 751-52, 103 S.Ct. 3308, 3313 (1983). In particular, a "brief that raises every colorable issue runs the risk of burying the good arguments ... in a verbal mound made up of strong and weak contentions." Id. at 753, 3313. The Court has, therefore, held that for judges to second guess reasonable professional judgments and impose on appointed counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy. Id. at 754, 3314.

15. The law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same. Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975). Defendant's assertion that the State committed prosecutorial misconduct when it coached, coerced and intimidated various witnesses while also proffering false and prejudicial testimony before the District Court is barred by the law of the case doctrine. Upon review of Defendant's trial and initial penalty hearing, the Nevada Supreme Court ruled that, based on overwhelming evidence, the prosecutor's conduct did not render Defendant's trial fundamentally unfair. Flanagan I, 104 Nev. at 107. Subsequent appeals regarding further alleged prosecutorial misconduct were summarily rejected by the Nevada Supreme Court under the "law of the case" doctrine as set forth in Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797 (1975). See Flanagan IV, 112 Nev. at 1422. Thus, Defendant is barred from raising these issues.

16. Defendant's claim that the State withheld substantial amounts of exculpatory, impeachment and mitigation evidence including Defendant's will and his planned involvement in a group to discourage youth from participation in witchcraft is not a Brady violation because both were known to Defendant. Brady v. Maryland, 373 U.S. 220, 83 S.Ct. 1194 (1963).

17. The Supreme Court has ruled that the use of peremptory challenges is limited by the Equal Protection Clause. Batson v. Kentucky, 476 U.S. 79, 89, 106 S.Ct. 1712, 1719 (1985). A potential juror may not be removed solely on the basis of race or gender. See Libby v. State, 115 Nev. 45, 49, 975 P.2d 833, 835 (1999); King v. State, 116 Nev. Adv. Op. No. 38, 998 P.2d 1172, 1175 (2000).

18. As long as a peremptory challenge complies with the requirements of the Equal Protection Clause, "a prosecutor ordinarily is entitled to exercise permitted peremptory challenges 'for any reason at all, as long as that reason is related to his view concerning the outcome' of the case." Batson v. Kentucky, 476 U.S. 79, 89, 106 S.Ct. 1712, 1719 (1985). Defendant's contention that the State utilized their peremptory challenges in a racially discriminatory manner during the second penalty hearing is a naked allegation unsupported by any specific facts. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

19. Defendant's claim that the State sought to introduce evidence at trial of Defendant's involvement in witchcraft and satanic worship is belied by the record. Hargrove, at 503. The record of Nevada Supreme Court decisions in Defendant's case shows that a co-defendant actually introduced said satanic evidence. The Nevada Supreme Court found that counsel for co-defendant, Johnny Ray Luckett, called a witness in Luckett's defense to testify regarding Defendant's involvement in witchcraft/satanic worship. Flanagan IV, 112 Nev. at 1412.

20. The Nevada Supreme Court addressed the State's use of evidence regarding satanic worship during the penalty hearings. See Flanagan II, Flanagan III; Flanagan IV. Therefore, the law of the case doctrine would necessarily preclude any further review. Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797 (1975).

21. A defendant seeking post-conviction relief is not entitled to an evidentiary hearing based on naked allegations. Hargrove, at 503. Defendant's allegation that the State unlawfully induced witnesses to testify and fashioned their testimony by offering leniency is a naked allegation. Id. Defendant fails to offer any specific facts to support such allegations other than information that was presented to the jury during the trial. Each witness was thoroughly questioned about the inducements they received or were to receive upon completion of their testimony. (31 Record on Appeal (RA) 944, 948; 33 RA 1242, 1256, 1258, 1275, 1280, 1287, 1289, 1366; 34 RA 1400, 1405, 1411).[1]

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[1]RA refers to Record on Appeal from Defendant's last filed appeal to the Nevada Supreme Court docketed S.C. Case #27320 in which the Court considered Defendant's appeal with that of co-defendant Randolph Moore.

22. In Sheriff v. Humbolt County, 107 Nev. 664, 819 P.2d 197 (1991), the Nevada Supreme Court plainly ruled that any inducement for testimony merely affects the weight of that testimony, but does not preclude its introduction in evidence. See also Leslie v. State, 114 Nev. 8, 952 P.2d 966 (1998). It is the jury's function, not the reviewing court, to assess the weight of the evidence and determine the credibility of witnesses. Walker v. State, 91 Nev. 724, 726, 542 P.2d 438, 438-39 (1975).

23. Defendant's assertion that the State impermissibly used evidence of his affiliation with witchcraft and satanic worship in violation of his Constitutional rights disregards the doctrine of "law of the case" as this issue has already been reviewed and decided by the Nevada Supreme Court. See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975). After the United States Supreme Court reviewed and remanded his case, the Nevada Supreme Court also remanded Defendant's case for a new penalty hearing because the State had improperly argued evidence of Defendant's religious beliefs in satanic worship during the second penalty hearing. Flanagan III, 109 Nev. at 55-57. Further, the Court ruled, in Flanagan IV, that a harmless error analysis was appropriate when considering the admission of such evidence during the trial because of the overwhelming evidence against Defendant. Flanagan IV, at 1418-1421. Thus, Defendant is precluded from raising this issue based on the law of the case.

24. Defendant's allegation that his attorney was ineffective during trial because he failed to conduct any investigation to prepare for trial is a naked allegation and is belied by the record. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). During cross-examination, Defendant's attorney competently highlighted the inconsistencies surrounding the testimony of State witnesses. (33 RA 1121, 1249-50, 1255; 34 RA 1399-1400, 1403-1404, 1407-1410).

25. Defendant's allegations surrounding his attorney's preparation for the first penalty hearing are moot as Defendant was granted a new penalty hearing by the Nevada Supreme Court. See Flanagan I.

26. Defendant's contention that his attorney was ineffective for not investigating or presenting a defense based on diminished capacity is without merit. Defendant's claim that he participated in a three-day drug and alcohol binge immediately preceding the crimes is a naked

allegation. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Without an affidavit or any other specific offer of proof, this allegation does not demonstrate that Defendant's attorney was ineffective.

27. Defendant's allegation that his attorney neglected to conduct any investigation into the details of the crime itself is a naked allegation. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Defendant fails to indicate what inconsistencies existed between the testimony and physical evidence. Further, as the Nevada Supreme Court found the evidence against Defendant was overwhelming, he fails to demonstrate that these inconsistences prejudiced him as required by Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984). See Flanagan IV, 112 Nev. at 1420.

28. Defendant's assertion that his attorney was ineffective for not determining that Defendant was incompetent to stand trial due to the psychotropic medication he was taking is belied by the record. Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984). Defendant appeared competent during his appearances in court. Specifically, during the Petrocelli hearing conducted by the District Court, Defendant clearly and coherently answered the required series of questions illustrating his mentally clarity. (35 RA 1637-1640).

29. Defendant's claim that his attorney was ineffective for not moving to continue the case in order to better prepare for trial is belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984). The record indicates that Defendant's attorney conducted a thorough cross-examination of the State's witnesses indicating he was prepared for trial. (33 RA 1121, 1249-50, 1255; 34 RA 1399-1400, 1403-1404, 1407-1410). As such, Defendant's attorney was not ineffective in not moving to continue.

30. Defendant's claims that his attorney was ineffective for failing to challenge the complaint, for failing to file a motion *in limine* to preclude any witchcraft evidence and for failing to object to the court-designed exercise of peremptory challenges are without merit. A simple check of the record of the case shows that the Complaint, Amended Complaint and Information all charged Defendant with two (2) counts of murder putting him on notice of the charges against him and making a challenge by his attorney unnecessary. (1 RA 138-146; 181-185).

Furthermore, pursuant to Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975), the doctrine of law of the case governs Defendant's claim regarding the witchcraft evidence and Defendant's objection to the court-designed exercise of peremptory challenges as the Nevada Supreme Court has already addressed these issues. See Flanagan I

31. Defendant's argument that his attorney was ineffective because he failed to request investigative funds from the court is a naked allegation. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Further, Defendant has not demonstrated that this failure prejudiced him as required by Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984)[2].

32. Defendant's assertion that his attorney was ineffective because he failed to press the District Court for a change of venue is belied by the record. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984) Defendant's attorney filed a Motion for Change of Venue (2 RA 482-485). Moreover, Defendant's attorney argued before the District Court that a change of venue would be necessary if the jury pool was too small after the jury *voir dire*. (29 RA 81-82). Defendant's attorney acted in compliance with Nevada law that requires such a motion to be made after *voir dire*. Ford v. State, 102 Nev. 126, 717 P.2d 27 (1986); Cutler v. State, 93 Nev. 329, 566 P.2d 809 (1977). Thus, Defendant's assertion is belied and repelled by the record.

33. Defendant's argument that his attorney was ineffective for failing to effectively cross-examine the State's witnesses regarding inconsistencies in their testimony is belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). During cross-examination, Defendant's attorney highlighted the inconsistencies of several of the State's witnesses. (See 33 RA 1121, 1249-50, 1255; 34 RA 1399-1400, 1403-1404, 1407-1410).

34. Defendant fails to demonstrate that his attorney was ineffective for not examining witnesses on key factual issues such as why there were no glass shards found where the defendants broke into the victims' home. Defendant fails to indicate how this failure prejudiced his case. Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984). In light of

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[2] Defendant was represented by the Clark County Public Defender which has a staff of investigators and is funded to defend such cases. Defendant has not shown that additional funds were needed to adequately prepare his defense.

the substantial evidence against Defendant, it is unlikely that this alleged failure affected the outcome of Defendant's case. See Flanagan I.

35. Defendant's contention that his attorney was ineffective for not sufficiently cross-examining Wayne Wittig ("Wittig") to portray Wittig's lack of personal knowledge concerning the facts to which he testified is without merit. Defendant's claim that Wittig gleaned his testimony from the newspapers is a naked allegation. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Defendant provides no affidavits or offers of proof to support this claim. As such, Defendant cannot demonstrate that his attorney was ineffective.

36. Defendant fails to demonstrate that his attorney was ineffective for not investigating Angela Saldana's ("Saldana") criminal record for cross examination purposes. See Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984). Defendant's attorney thoroughly covered inconsistencies in Saldana's testimony during cross examination and elicited testimony regarding Saldana's potential receipt of $2,000 for the information she provided to police. (See 34 RA 1399-1400, 1403-04, 1407-1410). The record indicates that Defendant's attorney sufficiently cross examined Saldana, therefore, Defendant cannot demonstrate that he was prejudiced by his attorney's failure to investigate Saldana's record.

37. In McKenna v. State, 114 Nev. 1044, 968 P.2d 739, 743 (1998), the Nevada Supreme Court concluded that no actual prejudice to the defendant had been shown by the presence of SWAT officers in the courtroom. As such, Defendant's claim that his attorney's failure to object to the presence of armed guards in the courtroom was ineffective assistance of counsel is without merit.

38. Defendant's allegations that his attorney was ineffective for failing to object to the jury seeing Defendant is shackles is a naked allegation. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Defendant provides no proof that any member of the jury saw him in shackles. As such, Defendant cannot demonstrate his attorney was ineffective. See Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984).

39. Defendant's claim that his attorney was ineffective for not conducting an adequate mitigation investigation during the first penalty hearing is moot given that Defendant was

granted two other penalty hearings. See Flanagan I; Flanagan II.

40. Defendant's allegations that his attorney was ineffective for not objecting to and for not offering any jury instructions during the penalty hearing are without merit. Defendant's suggestion that an objection to the "great risk" factor should have been made and an instruction to require a "nexus between the burglary and robbery" should have been requested is contrary to the law of the case. Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797 (1975). The Nevada Supreme Court previously held that the great risk factor was appropriate and that sufficient evidence was presented to support that aggravating factor. Flanagan IV, 112 Nev. at 1421. Moreover, in addressing Defendant's assertion that a "nexus" should have been required between the burglary and robbery the Court ruled that "[w]e see no merit to Flanagan's argument anyway." Id. at 1422. Thus the law of the case doctrine nullifies any claim that Defendant's attorney was ineffective for failing to object to or request such jury instructions.

41. All of Defendant's allegations regarding the second penalty hearing are moot as Defendant was granted a third penalty hearing. See Flanagan III

42. Defendant's allegation that the Public Defender's office allotted inadequate resources to the investigation and preparation for the third penalty hearing is a naked allegation unsubstantiated by any specific facts. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

43. Defendant's claim that his attorney was ineffective in the third penalty hearing for turning over raw data from Defendant's mental health evaluation is without merit. Such information is available to the State under NRS 174.234(2)[3], and therefore the production of this

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[3]NRS 174.234(2) reads in pertinent part:

> If the defendant will be tried for one or more offenses that are punishable as a gross misdemeanor or felony and a witness that a party intends to call during the case in chief of the state or during the case in chief of the defendant is expected to offer testimony as an expert witness, the party who intends to call that witness shall file and serve upon the opposing party, not less than 21 days before trial or at such other time as the court directs, a written notice containing:
> (a) A brief statement regarding the subject matter on which the expert witness is expected to testify and the substance of his

"raw data" cannot be held to be ineffective.

44. Pursuant to NRS 173. 115, criminal offenses may be joined. NRS 173.115 provides:

> Two or more offenses may be charged in the same indictment of information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are:
>
> 1. Based on the same act or transaction; or
>
> 2. Based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

The Nevada Supreme Court has held that when separate crimes are connected together by a continued course of conduct, joinder is appropriate. Tillema v. State, 112 Nev. 266, 914 P.2d 605 (1996). The Nevada Supreme Court has repeatedly held that joinder decisions are within the discretion of the trial court, and will not be reversed absent an abuse of discretion. Robins v. State, 106 Nev. 611, 619, 798 P.2d 558, 563 (1990). Defendant's claim that the public defender's office was ineffective for not severing his third penalty hearing from co-defendant, Randolph Moore is without merit. The District Court has wide discretion in the interests of judicial economy to keep the two hearings together. Furthermore, the Nevada Supreme Court consolidated Defendant's case with co-defendant Moore's case in 1991 for ease of consideration. See Flanagan II.

45. Defendant's claim that his attorney was ineffective for not seeking an evaluation as to Defendant's competency to stand trial because Defendant was under the influence of psychotropic drugs is belied by the record. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Not only does Defendant fail to offer any affidavit or documents which prove he was under substantial doses of psychotropic medications, but the record also indicates Defendant understood the proceedings by the District Court. During the Petrocelli hearing conducted by the District Court, Defendant was able to coherently answer all of the questions posed to him. (35 RA 1637-40). Such clear communication with the court refutes Defendant's contention that he

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> testimony;
> (b) A copy of the curriculum vitae of the expert witness; and
> (c) A copy of all reports made by or at the direction of the expert witness.

was unable to fully comprehend the nature of the charges against him and the magnitude of the penalty he faced. (Supplemental Petition, p. 44). As the record indicates Defendant understood the proceedings, his attorney was not ineffective.

46. Defendant's assertion that his attorney was ineffective for failing to force the District Court to allow a change of venue is belied by the record. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Defendant's attorney did, in fact, file a motion in limine for a change of venue. However, at a pre-trial hearing, Defendant's attorney agreed with the District Court to delay ruling on the motion to determine whether an impartial jury could be attained from the jury venire as required by Nevada case law. (29 RA 81-82). See Ford, 102 Nev. 126, 717 P.2d 27 (1986); Cutler, 93 Nev. 329, 566 P.2d 809 (1977). In doing so, Defendant's attorney gave him a preview of what the prospective jurors were thinking about the case without losing the right to argue for a change of venue. As such, Defendant's attorney was not ineffective.

47. Both the Sixth and the Fourteenth Amendments to the United States Constitution guarantee a defendant the right to a jury selected from a representative cross-section of the community. This right requires that the pools from which juries are drawn do not systematically exclude distinctive groups in the community. Taylor v. Louisiana, 419 U.S. 522, 538, 95 S.Ct. 692, 702 (1975). However, there is no requirement that the jury that is selected actually mirror the population at large. Holland v. Illinois, 493 U.S. 474, 110 S.Ct. 803 (1990).

48. The defendant bears the burden of establishing a prima facie violation of the fair cross-section requirement. In order to demonstrate a prima facie violation, the defendant must show 1) that the group alleged to be excluded is a distinctive group in the community, 2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community and 3) that this under representation is due to systematic exclusion of the group in the jury selection process. Duren v. Missouri, 439 U.S. 357, 364, 99 S.Ct. 664, 668 (1979). This test has been adopted by the Nevada Supreme Court. See Evans v. State, 112 Nev. 1172, 1186, 926 P.2d 265, 274 (1996). Defendant's claim that he received ineffective assistance of counsel because his attorney failed to object to the Clark County jury selection system which systematically excludes African Americans is without

merit. Defendant has failed to meet the test outlined by the Supreme Court. As such, Defendant cannot demonstrate that his attorney's actions were ineffective.

49. Defendant neglects to show how he was prejudiced by his attorney's failure to object to the all White jury that convicted Defendant as Defendant is White. Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984).

50. The Nevada Supreme Court has upheld joint exercises of peremptory challenges based upon NRS 175.015. NRS 175.015(now 175.041) reads in pertinent part:

> When several defendants are tried together, they cannot sever their peremptory challenges, but must join therein.

See also Doyle v. State, 82 Nev. 242, 415 P.2d 323 (1966); Anderson v. State, 81 Nev. 477, 406 P.2d 532 (1965).

51. Defendant's contention that his conviction is invalid because his attorney was forced to jointly exercise peremptory challenges with counsel for the co-defendants and because the District Court failed to grant him an additional peremptory when there was a disagreement about the last challenge to be used is without merit. In United States v. McClendon, 782 F.2d 785 (9th Cir. 1986), two co-defendants were on trial for a series of bank robberies. The Ninth Circuit Court of Appeals has held:

> there is no "right" to additional peremptory challenges in multiple defendant cases...[and that]...[d]isagreement between co-defendant on the exercise of joint peremptory challenges does not mandate a grant of additional challenges unless defendants demonstrate that the jury ultimately selected is not impartial or representative of the community. Id. at 787-88.

Defendant has failed to show that the jury selected was not impartial or representative of the community. In fact, Defendant points out that seven of eight challenges were agreed upon by counsel for all the defendants. Claiming that the exercise of one challenge creates a non-representative jury is tenuous at best.

52. Defendant fails to demonstrate how his attorney's failure to object to the joinder of peremptory challenges prejudiced him as required by Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984).

53. Defendant's allegation that his three appellate attorneys were ineffective for not raising issues regarding his First Amendment rights and prosecutorial misconduct is belied by the record. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). The United States Supreme Court and the Nevada Supreme Court both ruled on Defendant's First Amendment rights in light of the witchcraft evidence introduced at trial and argued during the penalty hearings. See Flanagan v. Nevada, 503 U.S. 931 (1992); Flanagan II; Flanagan III. Further, Defendant's first appellate counsel did raise the issue of prosecutorial misconduct during closing arguments as part of Defendant's first appeal to the Nevada Supreme Court. See Flanagan I.

54. The Supreme Court has recognized the "importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most, on a few key issues." Jones v. Barnes, 463 U.S. 745, 751-752, 103 S.Ct. 3308, 3313 (1983). In particular, a "brief that raises every colorable issue runs the risk of burying the good arguments ... in a verbal mound made up of strong and weak contentions." Id. at 753.

55. The Supreme Court has, therefore, held that for "judges to second guess reasonable professional judgments and impose on appointed counsel a duty to raise every 'colorable' claim suggested by a client would deserve the very goal of vigorous and effective advocacy." Id. at 754, 3314. Beyond that, appellate counsels' tactical decisions not to raise every possible issue on appeal work to enhance the likelihood of success for those meritorious claims that are appealed. See Hollenback, 987 F.2d 1272, 1275 (7th Cir. 1993); Jones, 463 U.S. 745, 103 S.Ct. 3308 (1983). As such, Defendant's allegation that his appellate attorneys were ineffective for failing to raise on appeal many of the claims that he now makes in this petition is without merit.

56. Defendant's allegation that prior opinions by the Nevada Supreme Court on death penalty cases have been consistently arbitrary, unprincipled and result-oriented is a naked allegation unsubstantiated by facts. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

57. The Eighth Judicial District Court lacks jurisdiction to stand in judgment of decisions issued by the Nevada Supreme Court. See Nev. Const. Article 6 Section 6.

58. Defendant's allegation that his counsel was ineffective in not challenging the jury instruction regarding reasonable doubt is without merit. The Nevada Supreme Court has

consistently held that there is no reasonable likelihood that a jury will apply the instruction defining reasonable doubt[4] in an unconstitutional manner where the instruction is accompanied by other instructions regarding the State's burden of proof and the presumption of the defendant's innocence. Bollinger v. State, 111 Nev. 1110, 1114, 901 P.2d 671, 674 (1995). In this case, the jury was given an additional instruction[5] regarding the State's burden of proof.

59. The Nevada Supreme Court has approved the "weighty affairs" language contained in Nevada's reasonable doubt jury instruction. Bollinger, at 1114. The Nevada Supreme Court has held that although it elected not to scrutinize such language, the "proper inquiry is not whether the instruction 'could have' been applied in an unconstitutional manner, but whether there is a reasonable likelihood that the jury did so apply it." Id. at 674 (quoting Victor v. Nebraska, 511 U.S. 1, 114 S.Ct. 1239 (1994)). In the case at bar, the instruction defining reasonable doubt was accompanied by an instruction regarding the State's burden of proof and another instruction regarding the presumption of innocence. As such, there is no reasonable probability that the jury believed the instruction allowed the conviction of Defendant based on a lesser quantum of evidence than is required by the Constitution. See Bollinger, at 1114.

60. Defendant's claim that his attorney was ineffective in not objecting to the jury instruction regarding premeditation/deliberation and implied malice is without merit. The instruction given in this case has been upheld by the Nevada Supreme Court. See Kazalyn v. State, 108 Nev. 67, 825 P.2d 578 (1992). In Kazalyn, the Court determined that the premeditation instruction was distinct from the malice instruction. In holding that the premeditation instruction was distinct,

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[4] The jury instruction for reasonable doubt reads, "A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

[5] The instruction reads, "The defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that a defendant is a person who committed the offense."

the Nevada Supreme Court found the same instruction for premeditation[6] used in Defendant's case to be appropriate: Id. at

61. Further, in Kazalyn the Court specifically noted that the murder instructions adequately met the premeditation/deliberation and malice criteria as set forth in Payne v. State, 81 Nev. 503, 508-509, 406 P.2d 922 (1965).

62. Recently, in Byford v. State, 116 Nev. Adv. Op. 23, p. 19-25 (February 28, 2000), the Nevada Supreme Court reviewed the Kazalyn instruction. In that opinion, the Nevada Supreme Court changed the instructions for all cases in the future. However, at the time that the trial court in the instant case gave the murder instructions, the premeditation instruction was clearly good law. Moreover, in Byford, the Court recognized that it had expressly informed the district courts in prior opinions that the Kazalyn instruction was proper and that the new instruction was not retroactive. Byford, 116 Nev. Adv. Op. 22-23 at 22. Therefore, the District Court's reliance on the express holdings of the Nevada Supreme Court cannot be viewed as plain error. Clearly, the giving of the Kazalyn instruction of premeditation and deliberation was not plain error, and neither trial nor appellate counsel can be held to have been ineffective for not challenging an instruction that had been consistently endorsed by the Nevada Supreme Court.

63. The Nevada Supreme Court has held that the "equal and exact justice" instruction used by the District Court in the instant case is valid. In Leonard v. State, 114 Nev. 1196, 969 P.2d 288, 296 (1998), the Nevada Supreme Court ruled on allegations that the instruction denied the defendant his presumption of innocence. See also McKenna v. State, 96 Nev. 811, 618 P.2d 348 (1980). The Court found that instruction does not concern the presumption of innocence. Id. Further, it ruled that based on other instructions given regarding the burden of proof, the defendant was not denied the presumption of innocence. Id. The District Court in Defendant's case also instructed the jury separately on the issues of burden of proof and presumption of

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[6] Premeditation is a design, a determination to kill, distinctly formed in the mind at any moment before or at the time of the killing. Premeditation need not be for a day, an hour or even a minute. It may be as instantaneous as successive thoughts of the mind. If the jury believes from the evidence that the act constituting the killing has been the result of premeditation, no matter how rapidly the premeditation is followed by the act constituting the killing, it is wilful, deliberate, and premeditated murder. (3 RA 596).

innocence. Therefore, Defendant's assertion that the jury did not give him the benefit of the presumption of innocence or that they convicted him based on a lesser standard of proof is a bare allegation. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

64. The Nevada Supreme Court has concluded that the "guilt or innocence by any other person" instruction given in the instant case is constitutionally sound. See Guy v. State, 108 Nev. 770, 839 P.2d 578 (1992). In Guy, the Court considered the same language used in the instruction in the instant case and rejected the defendant's argument that the instruction confused the jury. Id. at 778. Moreover, the Court went on to find that the challenged instruction sufficiently directed the jury to ignore the co-defendant's culpability when determining whether the defendant was guilty as charged. Id.

65. Defendant's argument that his conviction is invalid because insufficient evidence existed to support the jury's finding of the aggravating factor that the killing was committed by someone who knowingly created a great risk of death to more than one person is precluded by the law of the case. Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975). The Nevada Supreme Court has ruled that substantial evidence existed to support the finding that Defendant knowingly created "a great risk of death to more than one person by means of a weapon and course of action which would normally be hazardous to the lives of more than one person." Flanagan IV, at 1421. Thus, Defendant is precluded from having this court re-hear this same flawed argument under the "law of the case" doctrine. See Hall, at 314.

66. Furthermore, Defendant is precluded from raising his allegation that there was insufficient evidence to convict him of creating a great risk of death as it is the type of claims that should have been raised in any one of Defendant's direct appeals to the Nevada Supreme Court. See Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994).

67. Defendant's claim that insufficient evidence existed to support the aggravating factor of murder while engaged in the commission of burglary is without merit. In Bennett v. State, 106 Nev. 135, 787 P.2d 797 (1990), the Nevada Supreme Court rejected that argument that the aggravating factor of burglary was not supported by the evidence. The Court reasoned that:

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> NRS 200.033(4) only requires that, for burglary to be an aggravating circumstance, the murder must be committed while the person was engaged in the commission of or an attempt to commit or flight after committing or attempting to commit burglary or robbery. This was clearly the case here. Were it otherwise, burglary could be used as an aggravating circumstance only upon the rare occasion of a killing which occurs while the defendant is entering the building.

Id. 106 Nev. at 142. In the instant case, there was uncontroverted evidence that Defendant killed his grandmother during the commission of the burglary while his co-defendants killed his grandfather and therefore, it was an appropriate aggravator. See Flanagan I.

68. Defendant is precluded from raising the contention that there was insufficient evidence to support the aggravating factor of committing murder while in the commission of robbery by the doctrine of law of the case as the Nevada Supreme Court previously considered the issue in Flanagan IV. Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

69. Defendant's claim that his conviction is invalid because the District Court permitted the State to use the same facts to convict him under a felony murder theory and to support one of aggravating factors for the death sentence is meritless. The Nevada Supreme Court has approved the use of the underlying felony in felony murder cases as a valid aggravating circumstance to support the imposition of the death sentence. Atkins v. State, 112 Nev. 1122, 1134, 923 P.2d 1119 (1996) quoting Petrocelli v. State, 101 Nev. 46, 53, 692 P.2d 503 (1985); accord Miranda v. State, 101 Nev. 562, 707 P.2d 1121 (1985), cert. denied 475 U.S. 1031 (1986); Farmer v. State, 101 Nev. 419, 705 P.2d 149 (1985) cert. denied 476 U.S. 1130 (1986).

70. Defendant's claim that his conviction is invalid because the District Court improperly instructed the jury during Defendant's three (3) penalty hearings is precluded from review because it is the type of claim that should have been raised in Defendant's direct appeal. Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994).

71. The anti-sympathy jury instruction has been endorsed as constitutional by the Nevada Supreme Court. Sherman v. State, 114 Nev. 998, 965 P.2d 903 (1998). The Court, in Sherman, decided that as long as the jury is given instruction to consider mitigating circumstances, the anti-sympathy instruction is proper. Id. Therefore, Defendant's contention that the District Court

precluded the jury's consideration of any type of sympathy when it gave the anti-sympathy instruction is without merit. Furthermore, as the Nevada Supreme Court previously considered this issue in Flanagan IV, Defendant is precluded from raising it in his petition by the doctrine of law of the case. Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

72. Defendant's assertion that the District Court failed to properly instruct the jury about unanimity regarding their findings of aggravating and mitigating circumstances contravenes existing case law. The Nevada Supreme Court has clearly ruled that during a penalty hearing, the jury instructions do not have to instill a unanimity requirement to find mitigating circumstances. Jiminez v. State, 112 Nev. 610, 624, 918 P.2d 687 (1996). The Court in Jiminez held that:

> In the end, each juror must have evaluated the juxtaposition of aggravating circumstances and mitigating circumstances in reaching the conclusion that the latter were not sufficient to outweigh the former. ... There was no constraint on the right of individual jurors to find mitigators, such as a requirement of unanimity or proof by a preponderance of the evidence or any other standard.

Id. See also Geary v. State, 114 Nev. 100, 952 P.2d 431 (1998); Hill v. State, 114 Nev. 169, 953 P.2d 1077 (1998).

73. In Bennett v. State, 111 Nev. 1099, 1109, 901 P.2d 676 (1995), the Nevada Supreme Court found that a jury instruction nearly identical to the one in the instant case adequately informed the jury that there was no requirement to impose the death penalty.[7] The Court stated:

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[7]The jury instruction in Bennett read in pertinent part:

> The jury may impose a sentence of death only if it finds at least one aggravating circumstance has been established beyond a reasonable doubt and further finds that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found.
>
> Otherwise, punishment imposed shall be imprisonment in the state prison for life with or without the possibility of parole.

> we conclude that the above jury instruction accurately informed the jury of their statutorily endowed prerogative to decide whether [defendant] would live, regardless of whether aggravating circumstances outweighed mitigating circumstances. "May" is clearly permissive in the context of NRS 175.554(3) and the instruction submitted to the jury.

Id. Thus, the jury instruction adequately instructed the jury in this case.

74. Defendant's challenge to the commutation instruction based on the argument that the jury was too ignorant to understand the plain language of the instruction is a naked allegation unsubstantiated by fact. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

75. Defendant's claim that errors occurred during the jury selection of the second penalty hearing is moot as he was granted a third penalty hearing. See Flanagan III.

76. Defendant's allegations regarding the impartiality of the judges who presided over his trial and penalty hearings are nothing more than a collection of naked allegations for which Defendant fails to provide any proof. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

77. Defendant's allegations regarding the lack of impartiality of the judges who presided over his first and second penalty hearings are moot as Defendant received a third penalty hearing. See Flanagan III

78. Defendant's allegation that Judge Mosley said to counsel "let's get back to work and get these guys executed," is a naked allegation unsubstantiated by any facts or affidavits. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

79. Defendant's allegation that Judge Mosley was ultimately removed from the case because of his bias against Defendant is belied by the record. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). The record of the case clearly indicates that Judge Mosley was found not to be biased or prejudiced against the defendants. After hearing oral arguments, then Chief District Court Judge Nancy Becker ruled that:

> [r]eview of the transcript of the proceedings of June 24, 1991 and the Affidavit of Judge Mosley shows that there is no actual prejudice or bias against any of the parties to this case. The comments of Judge Mosley only evidenced a dissatisfaction with the overall slowness of the appellate process in capital cases. The challenged comments, while not showing actual prejudice or bias, could be construed to give an appearance of prejudice. While

> appearance of prejudice is usually insufficient to require the disqualification of a District Court Judge, the history of this case and the fact that it is a capital case requires that an abundance of caution be exercised.

(5 RA 1324) (Emphasis added). Thus, Defendant's allegation is clearly belied and repelled by the record. Id.

80. Defendant's claims regarding Judge Mosley are precluded from review in his petition as they are the type that should have been raised on direct appeal. Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994).

81. Defendant's claim that Judge Addeliar Guy was somehow biased against Defendant is a naked allegation. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Further, Defendant fails to show how Judge Guy's disposition prejudiced him during the third penalty hearing as required by Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984).

82. Defendant's claim that his death sentence is invalid because the Nevada capital punishment system operates in an arbitrary and capricious manner is without merit. The Nevada Supreme Court has long held that Nevada's use of the death penalty meets both federal and state constitutional requirements. See Ybarra v. State, 100 Nev. 167, 174, 679 P.2d 797 (1984). In Ybarra, the Court reviewed Nevada's death penalty statutes in light of United States Supreme Court opinions regarding similar statutes from Florida and Georgia and ruled that:

> [s]ince our procedure for weighing aggravating and mitigating circumstances provides the sentencer with adequate information and guidance and the accused with sufficient guarantees that the penalty of death will not be imposed arbitrarily and capriciously, the challenged statute passes constitutional muster.

Id. 100 Nev. at 176. See also Hill v. State, 102 Nev. 377, 724 P.2d 734 (1986); Middleton v. State, 114 Nev. 1089, 968 P.2d 296 (1998).

83. The District Court lacks jurisdiction to review decisions made by the Nevada Supreme Court. See Nev. Const. Article 6 Section 6.

84. Defendant's contention that the Amended Complaint did not apprise him of the crimes he was charged with is belied by the record. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). The Amended Complaint filed in open court on February 11, 1984 put Defendant on

notice of the charges against him. (1 RA 141-146). Furthermore, at the subsequent preliminary hearing, Defendant heard all the evidence that was used to bind him up to the District Court on the charges in the Amended Complaint.

85. Defendant's claim that his conviction and sentence are defective because he wasn't present during critical court proceedings is a naked allegation unsubstantiated by specific facts. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Defendant fails to provide evidence that he was, in fact, missing during important court proceedings.

86. A defendant's absence from preliminary matters or hearings does not necessarily prejudice him. See Thomas v. State, 114 Nev. 1127, 967 P.2d 1111 (1998). Thus, Defendant does not demonstrate how his alleged absence from court proceedings prejudiced him as required by Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984).

87. Defendant's claim that his conviction and sentence are invalid because the District Court precluded public access to the trial by failing to have all the proceedings recorded or reported is a naked allegation. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Defendant fails to provide any affidavit or offer of proof to support these allegations. Further, the appellate record is replete with instances in which Defendant's attorney and counsel for the co-defendants created a record of bench conferences. (i.e. 32 RA 915, 33 RA 1081).

88. Defendant's allegations that his death sentence is invalid because it violates both the federal and state constitutional guarantees against cruel and unusual punishment are without merit. The Nevada Supreme Court has ruled that the Nevada death penalty statutes are in conformance with other death penalty statutes that had been upheld by the United States Supreme Court. Bishop v. State, 95 Nev. 511, 517-18, 597 P.2d 273 (1979). The Nevada Supreme Court specifically held that "[t]he imposition of the death penalty...offends neither the United States Constitution nor the Nevada Constitution." Id. at 518. See also Colwell v. State, 112 Nev. 807, 919 P.2d 403 (1996); Bennett v. State, 106 Nev. 135, 787 P.2d 797 (1990); Rogers v. State, 101 Nev. 457, 705 P.2d 664 (1985).

89. Defendant's allegation that his sentence is invalid because he may, at some point in the future, become incompetent to be executed even though he is not presently incompetent is

meritless and improperly raised. In Martinez-Villareal, 118 F.3d 628, 634 (1997), the Ninth Circuit Court of Appeals held that a defendant's competency claims have to be raised in his first **federal** habeas petition. The Ninth Circuit opined that once the state issues a second warrant of execution, then the state court could consider the ripe competency claim which could be followed by federal review of the same issue and only that issue. Id. As this is not the case with Defendant's claim, it is prematurely raised.

90. Defendant's claim that his conviction and sentence are unreliable because of the District Court's failure to sever Defendant's case from his co-defendants' cases resulting in the admission of witchcraft evidence is without merit. In Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975), the Nevada Supreme Court stated that "[t]he law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same". Hall v. State, 91 Nev. 314, 315, 535 P.2d 797 (2000). Defendant's complaint regarding the admission of so-called "witchcraft evidence" introduced by a co-defendant and referenced by the State has already been decided by the Nevada Supreme Court. In Flanagan IV, the Nevada Supreme Court held that a harmless error analysis was appropriate when considering the admission of the so-called "witchcraft evidence" during the trial. Flanagan IV, at 1418-1421. The Court ruled that because there was "overwhelming evidence" against Defendant, any admission of such evidence was harmless at best. Flanagan IV, at 1420.

91. Defendant's contention that his sentence is defective because Nevada has no effective mechanism for clemency in capital cases is without merit. In Colwell v. State, 112 Nev. 807, 812-13, 919 P.2d 403 (1996), the Nevada Supreme Court addressed a related issue when it considered whether NRS 213.085[8] rendered the Nevada death penalty scheme unconstitutional

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[8]NRS 213.085 reads in pertinent part:

> 1. If a person is convicted of murder of the first-degree before, on or after July 1, 1995, the board shall not commute:
> (a) A sentence of death;
> (b) A sentence of imprisonment in the state prison for life without the possibility of parole, to a sentence that would allow parole.

by denying clemency. Finding that clemency encompassed the powers to commute a sentence or to pardon a defendant, the Court ruled that "NRS 213. 085 does not completely deny the opportunity for 'clemency' ....but rather modifies and limits the power of commutation." Id. Therefore, Defendant's "no mechanism for clemency" argument lacks merit as it did in Colwell.

92. Defendant's allegation regarding clemency is precluded in the instant petition as it is the type of claim that should have been raised in any one of Defendant's direct appeals to the Nevada Supreme Court. Franklin v. State, 110 Nev. 750, 877 P.2d 1088 (1994).

93. Defendant's contention that his conviction and sentence are invalid because jurors allegedly saw him in shackles is a naked allegation. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Defendant fails to provide an affidavit or any offer of proof that he was seen by jurors while in shackles. Further, even if Defendant's claims are true, they are without merit. A jury's brief or inadvertent glimpse of a defendant in physical restraints outside of the courtroom has not warranted habeas relief. Rhoden v. Rowland, 172 F.3d 633, 636 (1999) citing United States v. Olano, 62 F.3d 1180, 1190 (9th Cir. 1995).

94. Defendant's argument that the presence of armed guards in the courtroom impermissibly influenced the jury is refuted by the holding in McKenna v. State, 114 Nev. 1044, 968 P.2d 739 (1998). In McKenna, the Nevada Supreme Court concluded that no actual prejudice to the defendant had been shown by the presence of SWAT officers in the courtroom. Id. Similarly, Defendant cannot show he was prejudiced by the mere presence of armed guards as required by Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984).

95. Defendant's claim that his conviction and sentence are invalid because he was denied an impartial tribunal due to the fact that trial and appellate judges in Nevada are elected and not appointed lacks merit is an inappropriate matter to be raised in a post-conviction petition and should have been raised on direct appeal. See Franklin v. State, 110 Nev. 750, 877 P.2d 1088

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2. If a person is convicted of any crime other than murder of the first degree on or after July 1, 1995, the board shall not commute:
(a) A sentence of death;
(b) A sentence of imprisonment in the state prison for life without the possibility of parole, to a sentence that would allow parole.

(1994).

96. Defendant's contest of his sentence based on counsel's failure to challenge, for cause, jurors in the second penalty hearing is moot as Defendant was granted a third penalty hearing. See Flanagan III.

97. Defendant fails to prove his attorney was ineffective with regard to his allegations pertaining to jurors in the third penalty hearing. The record indicates that nearly all of the jurors who expressed strong feelings about the death penalty were removed from the jury via peremptory challenges. Defendant has not demonstrated how the exercise of these peremptory challenges to remove biased jurors prejudiced him during the third penalty hearing as required by Strickland v. Washington, 566 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984).

98. Defendant's allegations in his last three claims that his conviction and sentence are invalid because the State allegedly violated international law are meritless. The treaties cited by Defendant are not controlling authority in Nevada and are therefore irrelevant to a post-conviction petition. Servin v. State, 117 Nev. __, 32 P.3d 1277 (2001) ; Domingues v. State, 114 Nev. 783, 961 P.2d 1279 (1998).

99. A Defendant will not be heard to complain of delays that he has caused. Woods v. State, 94 Nev. 435, 581 P.2d 444 (1978); Williams v. State, 93 Nev. 405, 566 P.2d 417 (1977); Stabile v. Justice Court, 83 Nev. 393, 432 P.2d 670 (1967). Defendant's allegation that the State's pursuit of justice over the past fifteen (15) years, largely because Defendant has sought to exhaust every conceivable remedy under state and federal law, has been cruel and unusual punishment is without merit. Furthermore, Defendant is precluded from raising this issue by the doctrine of the law of the case as the Nevada Supreme Court addressed this issue in Flanagan IV. Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

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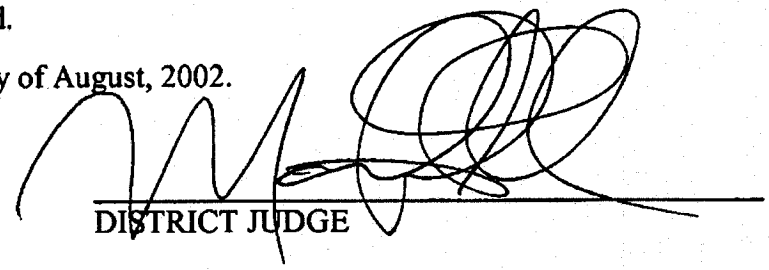
ORDER

Based upon the Findings of Fact and Conclusions of Law contained herein, it is hereby:

ORDERED, ADJUDGED, and DECREED that Defendant's Petition for Writ of Habeas Corpus (Post-conviction) is denied.

DATED this 8 day of August, 2002.



DISTRICT JUDGE

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

BY H. Leon Simon
H. LEON SIMON
Deputy District Attorney
Nevada Bar #000411

FILED

JUN 19 9 29 AM '02

Shirley B. Parraguirre
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada Plaintiff, vs. Dale Edward Flanagan, #1013719 Defendant.	)	Case No. C69269 Dept. No. VII

ORDER

THIS MATTER came before the Court for evidentiary hearing of Defendant's allegation of ineffective assistance of counsel based on the alleged personality conflict between Rebecca Blaskey and David Wall as raised in Defendant's Petition for Writ of Habeas Corpus. The Court, after reviewing all briefs submitted, hearing testimony at the evidentiary hearing on February 14, 2002 and reviewing the file, does not find that Defendant's counsel was ineffective under the test enunciated in Strickland v. Washington, 566 U.S. 668, 687 (1984) which was later adopted by the Nevada Supreme Court in Bennett v. State, 111 Nev. 1099 (1995). The test in Strickland requires a defendant to show that counsel's assistance was "deficient" and that the deficiency prejudiced the defense. Id at 687. There is also

EXHIBIT "1"

a strong presumption that defense counsel provided reasonably effective assistance of counsel, which can only be overcome by strong and convincing proof to the contrary. Donovan v. State, 94 Nev. 671 (1978).

The Court does not find that Defendant has presented strong and convincing proof that both Rebecca Blaskey and David Wall were ineffective as counsel for Defendant in preparation for and during his third penalty hearing. While there was some evidence of personality conflicts and lack of communication between Defendant's counsel, these incidents did not rise to the level of ineffective assistance of counsel nor did the Defendant demonstrate that the incidents prejudiced him, which is necessary under the Strickland test.

NOW, THEREFORE, IT IS HEREBY ORDERED that Defendant's Petition for Writ of Habeas Corpus is **DENIED**.

Dated this 19 day of June, 2002.

MARK GIBBONS
Chief District Judge

PROOF OF SERVICE

I hereby certify that on June 19, 2002 I mailed or placed a copy in attorney folder or hand delivered the foregoing Order to the following:

Leon Simon, Esq.
Deputy District Attorney
200 S. Third St.
Las Vegas, NV 89155

Cal Potter, Esq.
1125 Shadow Lane
Las Vegas, NV 89102

Robert D. Newell
1300 S.W. Fifth Avenue, Suite 2300
Portland, Oregon 97201

Jason Cook
Jason Cook
Dept 7, Law Clerk

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. RANDOLPH MOORE, THOMAS AKERS JOHNNY RAY LUCKETT, MICHAEL WALSH, AND ROY MC DOWELL, DALE EDWARD FLANAGAN

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
:/20/85)ONALD M. MOSLEY)EPT. XIV .. BAZAR, CLERK)OT REPORTED	MINUTE ORDER (Arraignment) COURT ORDERED, matter continued to Monday for arraignment.	2/25/85 @ 9:00 AM ARRAIGNMENT CONT'D
-25-85 ONALD M. MOSLEY EPT. XIV . SEATON, DDA . POSIN, ESQ. Moore) . PHILLIPS, ESQ Akers) . TERRY, ESQ. Luckett) . WAITE, ESQ. Walsh) . HANDFUSS, ESQ McDowell) . CREEL, DPD Flanagan) . HENKEL, CLERK . THIELMAN, RPTR	ARRAIGNMENT CONTINUED Defendant Moore present in custody with Murray Posin, Esq. Defendant Akers present on bail with Dave Phillips, Esq. Defendant Luckett present in custody with William Terry, Esq. Defendant Walsh present in custody with Gerald Waite, Esq. Defendant McDowell present in custody with Robert Handfuss, Esq. Defendant Flanagan present in custody with Craig Creel, DPD. State advised there are five case numbers from Justice Court. State desires to simply have one case against all defendants. State has prepared an information with seven counts listed. Each of the seven counts independently list each defendant associated with each count. This one information reflects the entirety of all counts. At this time State would like to file in open court that information and let the Court decide what case number to go on it.	5-20-85 10 A.M. JURY TRIAL 5-15-85 9:30 A.M. CALENDAR CALL (All Defts)
	State suggested that since there is one number for Flanagan and one number for the other five defendants, perhaps the two numbers can be incorporated into this information. No objection by all counsel. COURT ORDERED, that all other cases be merged into this case C69269. Defendant Moore arraigned and entered a plea of not guilty to Counts I, II, III, IV, V, VI & VII. Deft. Akers arraigned and entered a plea of not guilty to Counts III, IV, VI & VII.	
	Deft. Luckett arraigned and entered a plea of not guilty to Counts III, IV, VI & VII. Deft. Walsh arraigned and entered a plea of not guilty to Counts III, IV, V, VI & VII. Deft. McDowell arraigned and entered a plea of not guilty to Counts I, II, III, IV, V, VI & VII. Deft. Flanagan arraigned and entered a plea of not guilty to Counts I, II, III, IV, V, VI & VII. Deft. Moore advised his legal name is Randolph Smith. COURT ORDERED, the information , by	
	interlination, is to reflect the aka of Randolph Smith. All counsel are confirmed to represent their clients in District Court. CUSTODY BOND (Akers)	

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. RANDOLPH MOORE, THOMAS AKERS, JOHNNY RAY LUCKETT, MICHAEL WALSH, AND ROY MC DOWELL, DALE EDWARD FLANAGAN

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
/01/85 ONALD M. MOSLEY EPT. XIV . BARKER, DDA . FOLEY, ESQ. . GONZALES, ESQ . BAZAR, CLERK .THIELMAN,RPTR	MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR DEFENDANT (Walsh) Defendant Walsh present in custody with George Foley, Esq., who advised he appeared on behalf of Gerald Waite, Esq. Mr. Waite is retiring from practice and requests permission to withdraw as counsel for the defendant. Court inquired of Xavier Gonzales, Esq., if he could confirm as counsel for the defendant. Mr. Gonzales so confirmed. COURT ORDERED, motion to withdraw is granted. Court advised Mr. Gonzales of trial date. CUSTODY	
/05/85 ONALD M. MOSLEY EPT. XIV . BAZAR, CLERK . FOLEY, LAW LERK	MINUTE ORDER Pursuant to request of counsel, COURT ORDERED, hearing on Writ of Habeas Corpus set on April 8, 1985 at 9:00 A.M. is hereby vacated and will be heard on Wednesday, April 10, 1985 at 9:00 A.M. to set Argument on Writ re defendant Luckett. SET TIME CERTAIN: ARGUMENT ON WRIT	4/10/85 @ 9:00 AM SET TIME CERTAIN: ARGUMENT ON WRIT
/10/85 ONALD M. MOSL EPT. XIV . SEATON, DDA . LIPPIS, DPD Flanagan) . POSIN, ESQ. Moore) . TERRY, ESQ. Luckett) . GONZALES, ESQ . KELESIS, ESQ. Walsh) . HANDFUSS, ESQ. McDowell) . BAZAR, CLERK . CLEAVES, RPTR	MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR DEFENDANT WALSH (4/15/85 - Writ-Walsh) Deft. Akers neither present nor represented by D. Phillips; deft. Flanagan present in custody with Debbie Lippis,DPD; deft. Moore present in custody with Murray Posin, Esq.; defendant Luckett present in custody with William Terry, Esq.; defendant McDowell present in custody with Robert Handfuss, Esq., and defendant Walsh present in custody with Xavier Gonzales, Esq. Mr. Gonzales advised he wished to withdraw as counsel for defendant Walsh as his contract does not cover capital offenses. George Kelesis,Esq., present and Court inquired of him if he was willing confirm as counsel for defendant Walsh. Mr. Kelesis agreed. COURT ORDERED, motion to withdraw is granted and Mr. Kelesis is attorney of record for defendant Walsh. Court advised that Mr. Seaton had contacted him re consolidation of writs. Two are presently filed and the Court suggested all defense counsel's briefs be submitted by April 24, 1985 and Mr. Seaton to respond on May 1, 1985. COURT ORDERED, Argument on Writ as to defendant Walsh presently set on April 15, 1985 is vacated, matter is continued to May 8, 1985 for Argument on Writs as to all defendants. CUSTODY BOND (AKERS)	5/08/85 @ 9:00 AM ARGUMENT ON WRITS (All defendants)

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. RANDOLPH MOORE, THOMAS AKERS, JOHNNY RAY LUCKETT, MICHAEL WALSH, AND ROY MC DOWELL, DALE EDWARD FLANAGAN

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
/06/85 ONALD M. MOSLEY EPT. XIV . SEATON, DDA . POSIN, ESQ. Moore) . BAZAR, CLERK . THIELMAN,RPTR	DEFENDANT'S MOTION FOR APPOINTMENT OF PSYCHIATRIST FOR EXAMINATION OF DEFENDANT (ARGUMENTS ON WRITS CO-DEFT. 5/08/85) C.C. 5/15/85 JT 5/20/85 Defendant Moore present in custody with counsel Murray Posin, who requested two psychiatrists be appointed. Court advised it had reviewed the matter and it was not satisfied that there is a reasonable doubt as to the competency of the defendant. COURT ORDERED, with that understanding, will acquiece to the motion that is made, in deference to the defendant, in order to insure a fair trial, but with the understanding that the motion being granted shall in no way delay the proceeding. Nor should it require the County or the State to undergo an expense that is not warranted, therefore, if the defendant is found competent for trial it is possible he would have to pay for the costs of the psychiatrists. COURT ORDERED, matter is set on Wednesday for Status Check, do have matter calendared writs, will tentatively set them on a week from today. O.R.	5/08/85 @ 9:00 AM STATUS CHECK RE TRIAL SETTING (All Defendants) ---------- 5/13/85 @ 9:00 AM ARGUMENT ON WRITS ~~(All Defendants)~~
/08/85 ONALD M. MOSLEY EPT. XIV . SEATON, DDA . NAYLOR, DPD Flanagan) . KELESIS, ESQ. Walsh) . BAZAR, CLERK . THIELMAN,RPTR	ARGUMENTS ON WRITS (All Defts.) Defendant Flanagan present in custody with Jackie Naylor, DPD. Defendant Walsh present in custody with George Kelesis, Esq. Defendants Moore, Luckett and McDowell present without benefit of counsel. Defendant Akers neither present nor represented by counsel. State advised this matter should have been calendared for Status Check re Trial Setting and the Argument on Writs scheduled this date had been vacated and reset on Monday. Court concurred. State advised the reason they are requesting a continuance is the continued absence of Dr. Green, the Coroner, who has suffered a heart attack. After contacting the Coroner's Office he was advised he would be back to work sometime in July. State further advised they had called all counsel and they had agreed to continue this matter for status check in late June, at which time, they could advise when Dr. Green would be available for trial. The stipulation has been circulated among the attorneys, believe Mr. Kelesis is the only one who did not sign it. Mr. Kelesis advised he would sign the stipulation. State advised that all counsel are aware that are involved that the argument on writs are set for next Monday as to defendants Walsh, Luckett and Akers only. COURT ORDERED,	6/26/85 @ 9:00 AM STATUS CHECK: RE TRIAL SETTING

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. RANDOLPH MOORE, THOMAS AKERS, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, AND DALE EDWARD FLANAGAN

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
5/10/85 DONALD M MOSLEY DEPT. XIV . FOLEY, LAW CLERK . BAZAR, CLERK	MINUTE ORDER Having received a telephone call from William Smith, Esq., counsel for defendant Luckett, advising that he has been ordered by a Federal Court judge in Tucson, Arizona to complete a trial, COURT ORDERED, Argument on Writs set for May 13, 1985 at 9:00 A.M. is hereby vacated and reset on May 20, 1985 at 9:00 A.M. All counsel have been so advised by the law clerk.	5/20/85 @ 9:00 AM ARGUMENT ON WRITS (Luckett, Walsh and Akers)
/13/85 ONALD M. MOSLEY EPT. XIV . SEATON, DDA . KELESIS, ESQ. Walsh) . BAZAR, CLERK . THIELMAN,RPTR	DEFENDANT'S MOTION IN LIMINE Defendant Walsh present in custody with counsel, George Kelesis, who advised he and Mr. Seaton had resolved some of the motions. Re the Defendant's Motion in Limine; it would probably depend on the Court's ruling on the writs, it may be repetitive and would be resolved at that time. Re the Defendant's Motion for Severance; Mr. Seaton would like some time to respond to the motion in writing. Re the Defendant's Motion for Discover, they had agreed on points A-E; defendant would not receive those documents or information; re points F-H he would be entitled to any documents or memoranda they have. Re the Defendant's Motionfor Appointment of Psychiatrists, Mr. Seaton has no objection. Re the Defendant's Motion to File Additional Motions, Mr. Seaton has no objection. State concurred with Mr. Kelesis' representations but requested in regard to the motion for appointment of psychiatrists that a psychiatrist be appointed rather that Marv Glovinsky as he is a psychologist. COURT ORDERED, the next psychiatrist on the list will be appointed to examine the defendant. FURTHER ORDERED, the Court will approve motion to file additional motions, but this in no way condones the filing of motions that would delay the trial. FURTHER ORDERED, motion for discovery granted pursuant to stipulations of counsel. Matter continued to May 22, 1985 at 9:00 A.M. for Defendant's Motion in Limine and Defendant's Motion for Severance. CUSTODY	5/22/85 @ 9:00 AM DEFT'S MOTION IN LIMINE DEFT'S MOTION FOR SEVERANCE
-20-85 ONALD M. MOSLEY EPT. XIV . BLOXHAM, DDA . SMITH, ESQ. Luckett) . KELESIS, ESQ. Walsh) . WATERMAN, ESQ	ARGUMENT ON WRITS Defendant Luckett present in custody with William Smith, Esq. Defendant Walsh present in custody with George Kelesis, Esq. Defendant Akers present in custody with Charles Waterman, Esq. Court advised counsel that Mr. Seaton is in Carson City and did not notify this court. Court inquires if Mr. Seaton notified any of the counsel. Counsel were not notified. COURT ORDERED, matter is continued and State to contact the court if Mr. S	5-22-85 @ 9 A.M. ARGUMENT ON WRITS

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. RANDOLPH MOORE, THOMAS AKERS, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, and DALE EDWARD FLANAGAN

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
5/24/85 JUDGE MOSLEY DEPT. XIV S. COOMBES, CLERK	ARGUMENTS ON WRITS (ALL DEFENDANTS) DEFENDANT'S MOTION IN LIMINE (WALSH) DEFENDANT'S MOTION FOR SEVERANCE (WALSH) State represented by Dan Seaton, DDA. Deft. Luckett present with William Smith. Deft. Walsh present with Mark Bailus for George Kelesis. Deft. Akers not present and represented by Charles Waterman who moved to waive Defendant's presence. The Court entertained brief oral arguments on the Writs. The Court stated that it was its decision that the lower court's decision was correct and there was sufficient evidence to bind over with the exception of Mr. Waterman's client who did not exercise sufficient control over the weapon. Therefore, COURT ORDERED, Writ is granted as to Deft. Akers on COUNTS VI and VII as to the enhancement; denied as to the rest. Mr. Smith requested additional specific findings for the purpose of appealing the deniel of the Writ and he requested a copy of today's proceedings. Opposition by Mr. Seaton. COURT ORDERED, additional expense of transcript was not warranted; motion denied. Upon inquiry of counsel, COURT FURTHER ORDERED, Motion In Limine and Motion For Severance will be heard on 6/26/85 at which time trial dates will be set and the Court will hear any additional motions filed. CUSTODY	6/26/85 @ 9 AM DEFENDANT's MTN IN LIMINE(WALSH) DEFENDANT'S MTN FOR SEVERANCE (WALSH) TRIAL SETTING (ALL DEFENDANTS)
-26-85 ONALD M. MOSLEY EPT. XIV . SEATON, DDA . JACKSON, DPD Flanagan) . POSIN, ESQ. Moore) . SMITH, ESQ. Luckett) . KULWIN, ESQ. Walsh) . WATERMAN, ESQ. Akers) . HANDFUSS, ESQ. McDowell) . HENKEL, CLERK . THIELMAN, RPTR	STATUS CHECK AND/OR TRIAL SETTING (ALL DEFTS) DEFENDANT WALSH'S MOTION IN LIMINE DEFENDANT WALSH'S MOTION FOR SEVERANCE Defendants present and represented by respective counsel as noted. Court advised as to the motion in limine for Mr. Kulwin or Mr. Kelesis to set forth in points and authorities to fit statements taken and request the State to respond and will then proceed with the matter. COURT ORDERED, as to the motion to sever finds there is insufficient showing of prejudice to the deft, therefore, motion is denied. With the number of counsel and defts, Court requested any motion to be brought as soon as possible. Arguments by counsel. COURT ORDERED, briefing schedule set, two weeks - 7-10-85, two weeks - 7-24-85, and matter set for argument. BOND (AKERS) CUSTODY (Remaining Defts)	8-7-85 @ 9 A.M. ARGUMENT: MOTION IN LIMINE OR EVIDENTIARY HEARING 9/23/85 @ 10:00 AM JURY TRIAL 9/18/85 @ 9:30 AM CALENDAR CALL

THE STATE OF NEVADA VS. RANDOLPH MOORE, THOMAS AKERS, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL AND DALE EDWARD FLANAGAN

CASE NO. C69269 TITLE

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
6/28/85 DONALD M. MOSLEY DEPT. XIV D. SEATON, DDA W. SMITH, ESQ. (Luckett) L. BAZAR, CLERK S. THIELMAN, RPTR.	DEFENDANT'S MOTION TO PLACE ON CALENDAR Defendant Luckett present in custody with William Smith, Esq. Mr. Smith advised the defendant has a motion for severance and a motion in limine which they would like to have calendared. COURT ORDERED, they will be placed on calendar on August 7, 1985 for argument. Briefing schedule; Mr. Smith to file opening brief by July 10, 1985; State to file responding brief on July 24, 1985. Upon inquiry of the Court, Mr. Smith made an ex-parte offer for the appointment of an investigator. State concurred that one would be necessary. COURT SO ORDERED. Court suggested counsel file an affidavit sealed, if necessary indicating his need. Mr. Smith voiced a concern about a continuance necessitated by a last minute disclosure of a "turn-coat" witness. State objected and advised they would be given notice. Court advised Mr. Smith that it was assuming the State, if it were to obtain an additional witness, would be filing a motion to endorse names prior to the trial. State concurred. CUSTODY	8/07/85 @ 9:00 AM DEFENDANT'S MOTION FOR SEVERANCE DEFENDANT'S MOTION IN LIMINE (Luckett)
8/05/85 DONALD M. MOSLEY DEPT. XIV R. BLOXHAM, DDA D. LIPPIS, DPD C. CREEL, DPD R. PIKE, ESQ. L. BAZAR, CLERK S. THIELMAN, RPTR.	CONFIRMATION OF COUNSEL Defendant Flanagan present in custody with Deborah Lippis, DPD, and Craig Creel, DPD. Randy Pike, Esq. present and advised he had been contacted by Judge Shearing re representing the defendant on this case. Request matter be continued to Wednesday to look over the case. Both Ms. Lippis and Mr. Creel advised there was no opposition to Mr. Pike substituting in as counsel of record. COURT ORDERED, matter is continued to Wednesday for confirmation of counsel. CUSTODY	8/07/85 @ 9:00 AM CONFIRMATION OF COUNSEL
8/07/85 DONALD M. MOSLEY DEPT. XIV M. HARMON, DDA M. COOPER, DPD (Flanagan) R. PIKE, ESQ. W. SMITH, ESQ. (Luckett) M. KULWIN, ESQ. (Walsh) L. BAZAR, CLERK S. THIELMAN, RPTR.	ARGUMENT: DEFENDANT WALSH'S MOTION IN LIMINE OR EVIDENTIARY HEARING DEFENDANT LUCKETT'S MOTION FOR SEVERANCE & MOTION IN LIMINE CONFIRMATION OF COUNSEL (FLANAGAN) Defendant Flanagan present in custody with Marcus Cooper, DPD. Defendant Luckett present in custody with William Smith, Esq. Defendant Walsh present in custody with Michael Kulwin, Esq. Randall Pike, Esq., present. Court inquired if Mr. Pike would be confirming as counsel for defendant Flanagan. Mr. Pike advised he was prepared to confirm if the Court wished to appoint him. Mr. Cooper advised he had no objection to Mr. Pike substituting in as counsel. COURT SO ORDERED. Court advised it was inclined to grant the request for evidentiary hearing. Upon representations of counsel with regard to probable setting for the hearing, COURT ORDERED, all counsel for all defendants to meet with the Court in chambers to discuss and consult the calendar.	
Not Reported L. BAZAR, CLERK	2:00 P.M. Appearances by counsel as noted above. Robert Handfuss, Esq., counsel for defendant McDowell, present. Charles Waterman, Esq., counsel for defendant Akers, present. Murray Posin, Esq., counsel for defendant Moore, present. Following representations of counsel, COURT ORDERED, matter is set on August 30, 1985 at 1:30 P.M. for Evidentiary Hearing; Motions in Limine and Motion to Sever.	8/30/85 @ 1:30 P.M. EVIDENTIARY HEARING (All Defendants) DEFENDANTS' MOTION IN LIMINE DEFT. LUCKETT'S MOTION FOR SEVERANCE

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. RANDOLPH MOORE, THOMAS AKERS, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL AND DALE EDWARD FLANAGAN

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
8/12/85 DONALD M. MOSLEY DEPT. XIV M. HARMON, DDA L. BAZAR, CLERK S. THIELMAN,RPTR.	DEFENDANT'S MOTION FOR SEVERANCE OF TRIAL FROM CO-DEFENDANTS Defendant McDowell present in custody without benefit of counsel, Robert Handfuss. Defendant advised he had spoken to Mr. Handfuss last week. Mr. Harmon inquired if it might be appropriate to continue the matter until the date the court ordered the other matters be calendared. COURT ORDERED, matter is continued to August 30, 1985 with other matters. CUSTODY 4:57 P.M. - Court clerk notified Mr. Handfuss' office of continuance time and date.	8/30/85 @ 1:30 P.M. DEFT'S MOTION FOR SEVERANCE OF TRIAL FROM CO-DEFENDANTS (McDowell)
8/29/85 DONALD M. MOSLEY DEPT. XIV D. SEATON, DDA M. HARMON, DDA C. WATERMAN, ESQ. (Ayers) L. BAZAR, CLERK S. THIELMAN,RPTR.	CHANGE OF PLEA (Closed hearing) State represented by Mel Harmon, DDA and Dan Seaton, DDA. Defendant Akers present with counsel Charles Waterman, Esq. Negotiations: Count VI of the Information will be reduced to Voluntary Manslaughter (F); defendant Ayers will enter a plea of guilty to that charge and at time of sentencing, will waive the P.S.I. and request the Court sentence him this morning. State intends to stand silent; that if the Court is mindful of giving the defendant a sentence of probation; that the Court will sentence defendant to that term this morning; if not,the plea bargain will be null and void. Defendant is to testify truthfully at all stages. Mr. Seaton advised it was their intention to have the defendant come to their office after this proceeding and discuss what his potential testimony is. Tomorrow there will be a hearing having to do with the co-conspirator's rule and it was their intention to have defendant Akers testify at that hearing and at the trial which is scheduled on September 23, 1985. It was their understanding that the defendant was a participant and he intends to testify truthfully. State asked that the Court canvass the defendant as to whether he was aware. Court inquired of the defendant if he understood fully the negotiations. Defendant concurred and asked if it would be possible to have his record sealed. Court and counsel advised that would be addressed at a later time. Defendant Akers allowed to withdraw previous not guilty plea; rearraigned and entered a plea of guilty to Count VI - Voluntary Manslaughter (F). Court accepted plea. Defendant and counsel waived the P.S.I. report and requested sentencing at this time. Defendant adjudged guilty of Count VI - Voluntary Manslaughter (F). State remained silent. Statement by defense counsel. COURT ORDERED, defendant Akers is sentenced to five (5) years NSP; suspended; placed on probation for an indeterminate period not to exceed five (5) years. Conditions: (1) search clause; and (2) obtain G.E.D. Court admonished	

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE AKA SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, AND THOMAS AKERS

DATE JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
8/30/85 DONALD M. MOSLEY DEPT. XIV M. HARMON, DDA D. SEATON, DDA R. PIKE, ESQ. (Flanagan) M. POSIN, ESQ. (Moore) W. SMITH, ESQ. (Luckett) G. KELESIS, ESQ. (Walsh) R. HANDFUSS, ESQ. (McDowell) L. BAZAR, CLERK S. THIELMAN, RPTR.	EVIDENTIARY HEARING (All Defendants) DEFENDANT WALSH'S MOTION IN LIMINE DEFENDANT LUCKETT'S MOTION FOR SEVERANCE & MOTION IN LIMINE DEFENDANT MCDOWELL'S MOTION FOR SEVERANCE Defendant Flanagan present in custody with counsel, Randy Pike. Defendant Moore present in custody with counsel, Murray Posin. Defendant Luckett present in custody with William Smith. Defendant Walsh present in custody with George Kelesis. Defendant McDowell present in custody with Robert Handfuss. Mr. Kelesis requested matter be continued on behalf of defendant Walsh due to the fact counsel was surprised that the State has subpoenaed eight witnesses who did not testify at the Preliminary Hearing. Mr. Smith joined in on the motion on behalf of defendant Luckett, and requested production of any notes which are discoverable with respect to any witnesses the State intends to call in this hearing and at trial, and any written statements they may have made. State argued against the motion and advised that Mr. Akers should be no surprise, counsel had known about him since yesterday. Mr. Handfuss joined in on the motion and moved not to have Mr. Akers testify today due to the lateness. Mr. Pike joined in on the previous objections. Mr. Smith advised that he thought the purpose of the hearing today was to determine whether or not certain statements are permissible at trial and whether or not there will be a severance; that he did not think the question of Mr. Akers' testifying is really all that important to his client, Mr. Luckett, in that the fact is that Mr. Luckett has made no admissions and the other defendants have. The Court has to rule on whether certain statements were made in furtherance of a conspiracy. Court advised, that (1) Mr. Kelesis is concerned about surprise. Prior to this, in chambers, the Court asked counsel to get together and determine what statements would be produced. At that time, no one was particularly concerned about what witnesses would be called. Do not see where the surprise comes in; Mr. Akers certainly has not just recently entered this case. State advised the witnesses on this hearing would be Lisa LaCotta; Wayne Whittig; Rusty Havens; Michelle Gray and Duana Manning. Objections by counsel as to the testimony of Michelle Gray and Duana Manning. COURT ORDERED, with the exception of Ms. Manning and Ms. Gray, Ms. LaCotta, Mr. Wittig, Mr. Haven, Mr. Akers and those witnesses at the Preliminary Hearing will testify. Counsel should not be surprised; defendants are not prejudiced at this time and we will proceed with the hearing. Mr. Kelesis requested, on behalf of his client, defendant Walsh, that all prospective witnesses be excluded and that this matter be transcribed as soon as possible. COURT ORDERED, motion to exclude is granted. Upon request of counsel, Court instructed the bailiff to tell witnesses to restrict their discussion and not to discuss their testimony. State's first witness, Thomas Akers, sworn and testified per attached worksheet. COURT ORDERED, matter is continued to September 17, 1985 at 10:00 A.M. CUSTODY	9/17/85 @ 10:00 A.M. EVIDENTIARY HEARING SAME MOTIONS

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE AKA SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, AND THOMAS AKERS

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
9/17/85 DONALD M. MOSLEY M. HARMON, DDA D. SEATON, DDA R. PIKE, ESQ. (Flanagan) M. POSIN, ESQ. (Moore) W. SMITH, ESQ. (Luckett) S. KELESIS, ESQ. (Walsh) R. HANDFUSS, ESQ. (McDowell) L. BAZAR, CLERK S. THIELMAN, RPTR.	EVIDENTIARY HEARING (ALL DEFTS) DEFENDANT WALSH'S MOTION IN LIMINE DEFENDANT LUCKETT'S MOTION FOR SEVERANCE & MOTION IN LIMINE DEFENDANT MCDOWELL'S MOTION FOR SEVERANCE Defendant Flanagan present in custody with counsel, Randy Pike. Defendant Moore present in custody with counsel, Murray Posin. Defendant Luckett present in custody with counsel, William Smith. Defendant Walsh present in custody with George Kelesis, Esq. Defendant McDowell present in custody with counsel, Robert Handfuss. Court advised that the exclusionary rule had been invoked at the previous hearing and would continue. Witnesses sworn and testified per attached worksheet. COURT ORDERED, the hearing will resume on Monday morning at 10:00 A.M. with the other motions. FURTHER ORDERED, at this juncture the trial is scheduled on Monday morning at 10:00 A.M.; will not summon the jury until the hearing is completed. Counsel to be prepared to go to trial. At request of State, witnesses Melia Moore, Wayne Wittig, Michelle Gray, Lisa Licata and Angela Saldana, summoned and advised by the Court that this matter would continue to Monday morning at 10:00 A.M. and they were directed to be present in the hallway on Monday. CUSTODY	9/23/85 @ 10:00 A.M. EVIDENTIARY HEARING (Flanagan, Moore, Luckett, Walsh and McDowell) DEFT. WALSH'S MOTION IN LIMINE DEFT. LUCKETT'S MOTION FOR SEVERANCE & MOTION IN LIMINE DEFT. MCDOWELL'S MOTION FOR SEVERANCE DO NOT POST
9/18/85 DONALD M. MOSLEY DEPT. XIV D. SEATON, DDA R. PIKE, ESQ. (Flanagan) L. BAZAR, CLERK S. THIELMAN, RPTR.	DEFENDANT FLANAGAN'S MOTION FOR SEVERANCE OF DALE FLANAGAN DEFENDANT FLANAGAN'S MOTION TO RETAIN & PRODUCE ROUGH NOTES DEFENDANT FLANAGAN'S SPECIFIC REQUEST FOR EXCLUPATORY EVIDENCE DEFENDANT FLANAGAN'S MOTION FOR PRODUCTION OF STATEMENTS UNDER JENCKS ACT DEFENDANT FLANAGAN'S MOTION FOR DISCLOSURE OF OTHER BAD ACTS & MOTION IN LIMINE FOR EXCLUSION OF SAID EVIDENCE DEFENDANT FLANAGAN'S MOTION FOR SEVERANCE & CHANGE OF VENUE CALENDAR CALL (J.T. 9/23/85) Defendant Flanagan present in custody with counsel, Randy Pike. Presence of other defendants and counsel waived. Mr. Pike advised that in reference to his motion for disclosure of other bad acts, etc., he had been apprised of whatever information the State has. Following further representations and request of counsel, COURT ORDERED, Defendant's motions for severance and for change of venue are continued to Monday hearing at 10:00 A.M. FURTHER ORDERED, matter is set for Jury Trial on Monday at 10:00 A.M. CUSTODY	9/23/85 @ 10:00 A.M. DEFENDANT FLANAGAN'S MOTION FOR SEVERANCE OF DALE FLANAGAN DEFENDANT FLANAGAN'S MOTION FOR SEVERANCE & CHANGE OF VENUE DO NOT POST 9/23/85 @ 10:00 A.M. JURY TRIAL (Flanagan, Moore, Luckett, Walsh and McDowell)
9/19/85 DONALD M. MOSLEY DEPT. XIV L. BAZAR, CLERK	MINUTE ORDER COURT ORDERED, due to the Court's intended absence on Monday, September 23, 1985, the scheduled hearing is vacated and continued to September 24, 1985 at 10:00 A.M.	9/24/85 @ 10:00 A.M. ALL PENDING MOTIONS (DO NOT POST) 9/24/85 @ 10:00 AM JURY TRIAL

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE AK SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, AND THOMAS AKERS

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
9/19/85 DONALD M. MOSLEY DEPT. XIV L. BAZAR, CLERK	MINUTE ORDER COURT ORDERED, due to the Court's intended absence on Monday, September 23, 1985, the scheduled hearing is vacated and continued to September 24, 1985 at 9:00 AM. Trial date is continued to September 25, 1985 at 10:00 AM. State and counsel notified of continuance date by law clerk and/or secretary this date.	9/24/85 @ 10:00 AM EVIDENTIARY HEARING AND SCHEDULED MOTIONS (All Defts.)
		9/25/85 @ 10:00 AM JURY TRIAL

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE AKA SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, AND THOMAS AKERS

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
9/24/85 DONALD M. MOSLEY DEPT. XIV M. HARMON, DDA & D. SEATON, DDA G. KELESIS, ESQ. (Walsh) L. BAZAR, CLERK S. THIELMAN, RPTR.	PRIOR TO EVIDENTIARY HEARING: State represented by Mel Harmon, DDA, and Dan Seaton, DDA. Defendant Walsh present in custody with counsel, George Kelesis. Negotiations: defendant to enter a plea of guilty to Counts VI and VII - Murder in the First Degree with Use of a Deadly Weapon (F); at time of sentencing would ask for defendant to receive life with the possibility of parole and State will not object; defendant will not be required to testify and there will be no recommendation by the State as to concurrent or consecutive time as to the two murders; and remaining counts would be dismissed at that time. State concurred. Court inquired if the defendant was aware that the enhancement must run consecutively. Defendant concurred Defendant allowed to withdraw previous not guilty plea to Count VI - Murder 1st Degree with Use of a Deadly Weapon (F) and Count VII - Murder 1st Degree with Use of a Deadly Weapon (F); rearraigned and entered plea of guilty to both Counts VI and VII. Court accepted plea. Mr. Kelesis asked the P.S.I. be waived and presented to the Court the certification report from Juvenile Court which certified the defendant as an adult. Court inquired if Mr. Kelesis was requesting the certification report be used in lieu of a P.S.I. Mr. Kelesis concurred and advised it would be more complete than a P.S.I. State advised there was no objection. Defendant adjudged guilty of Count VI - Murder in the First Degree with Use of a Deadly Weapon (F) and Count VII - Murder in the First Degree with Use of a Deadly Weapon (F). State agreed to stipulate that punishment would be life with the possibililty of parole, with respect to whether it would run concurrently or consecutively, they had agreed not to comment pursuant to plea negotiations. Statement by counsel. COURT ORDERED, defendant Walsh sentenced as to Count VI - Life in Prison with the Possiblity of Parole plus consecutive Life in Prison with the Possibility of Parole on the enhancement; Count VII - sentenced to Life in Prison with the Possibility of Parole plus a consecutive Life in Prison with the Possibility of Parole on the enhancement; Counts VI and VII to run concurrently. The attorney will try to determine whether time can be served in a juvenile facility. Credit for time served is granted of 246 days. State moved to dismiss Counts I-V. There being no objection COURT SO ORDERED. CUSTODY	

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE AKA SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, AND THOMAS AKERS

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
9/24/85 DONALD M. MOSLEY DEPT. XIV M. HARMON, DDA D. SEATON, DDA R. PIKE, ESQ. (Flanagan) M. POSIN, ESQ. (McDowell) W. SMITH, ESQ. (Luckett) R. HANDFUSS, ESQ. (McDowell) L. BAZAR, CLERK S. THIELMAN,RPTR.	DEFENDANT FLANAGAN'S MOTION FOR SEVERANCE OF DALE FLANAGAN DEFENDANT FLANAGAN'S MOTION FOR SEVERANCE AND CHANGE OF VENUE EVIDENTIARY HEARING (ALL DEFTS) DEFENDANT WALSH'S MOTION IN LIMINE DEFENDANT LUCKETT'S MOTION FOR SEVERANCE & MOTION IN LIMINE DEFENDANT MCDOWELL'S MOTION FOR SEVERANCE DEFENDANT MOORE'S PROPER PERSON MOTION TO DISMISS COUNSEL & APPOINT DIFFERENT COUNSEL STATE'S MOTION TO ENDORSE NAMES (J.T. 9/25/85) State represented by Mel Harmon, DDA and Dan Seaton, DDA. Defendant Flanagan present with counsel, Randall Pike. Defendant Moore present with counsel, Murray Posin. Defendant Luckett present with counsel, William Smith. Defendant McDowell present with counsel, Robert Handfuss. Defendant Walsh neither present nor represented by counsel, George Kelesis. All defendants present were in custody. Evidentiary hearing continued	9/26/85 @ 10:00 AM EVIDENTIARY HEARING DEFT. FLANAGAN'S MOTION FOR SEVERANCE OF DALE FLANAGAN DEFT. FLANAGAN'S MOTION FOR SEVERANCE AND CHANGE OF VENUE DEFENDANT LUCKETT'S MOTION FOR SEVERANCE & MOTION IN LIMINE DEFT. MCDOWELL'S MOTION FOR SEVERANCE
	Witnesses sworn and testified per attached worksheet. Mehlia Moore, sister of Randolph Moore, present with counsel, Earl Ayers; sworn and testified. Following testimony of witness, Mr. Smith moved to strike Ms. Moore's testimony as being inherently unreliable. Following arguments of counsel, COURT ORDERED, the Court is going to weigh the matter with many of the considerations that the Court is sure counsel will allude to, as it is being evaluated. Evidentiary hearing to resume on Thursday, September 26, 1985.	
	Counsel advised there was no objection to State's Motion to Endorse Names if provided full discovery. COURT ORDERED, motion granted. Upon the Court's inquiry, defendant Moore requested to withdraw his proper person motion to dismiss counsel. COURT SO ORDERED. Defendant Walsh's motion moot. CUSTODY	
9/26/85 DONALD M. MOSLEY DEPT. XIV M. HARMON, DDA D. SEATON, DDA R. PIKE, ESQ. (Flanagan) M. POSIN, ESQ. (McDowell) W. SMITH, ESQ. (Luckett) R. HANDFUSS, ESQ. (McDowell) L. BAZAR, CLERK S. THIELMAN,RPTR.	DEFENDANT FLANAGAN'S MOTION FOR SEVERANCE OF DALE FLANAGAN DEFENDANT FLANAGAN'S MOTION FOR SEVERANCE & CHANGE OF VENUE EVIDENTIARY HEARING (ALL DEFENDANTS) DEFENDANT LUCKETT'S MOTION FOR SEVERANCE AND MOTION IN LIMINE DEFENDANT MCDOWELL'S MOTION FOR SEVERANCE State represented by Mel Harmon, DDA and Dan Seaton, DDA. Defendant Flanagan present in custody with Randall Pike. Defendant Moore present in custody with Murray Posin, Esq. Defendant Luckett present with counsel, William Smith. Defendant McDowell present with counsel, Robert Handfuss. Court advised this hearing is in regard to the examination, characterization and determination of various statements of witnesses. Following arguments of counsel re List of Co-Conspirator Declarations, COURT ORDERED, as to paragraphs 1 through 4, it appears that paragraphs 1, 3 and 4 wherein the modus	

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE AKA SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, AND THOMAS AKERS

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
9/26/85 DONALD M. MOSLEY DEPT. XIV M. HARMON, DDA D. SEATON, DDA R. PIKE, ESQ. (Flanagan) M. POSIN, ESQ. (McDowell) W. SMITH, ESQ. (Luckett) R. HANDFUSS, ESQ. (McDowell) L. BAZAR, CLERK S. THIELMAN,RPTR.	CONTINUED statement under Beasley, but will indicate that it is not in furtherance of a conspiracy and not an exception to the hearsay rule. Re paragraph 5; that will be allowed as in furtherance of a conspiracy. Re paragraph 6; that will be allowed as in furtherance of a conspiracy. Re paragraphs 12 and 13, together; going to allow 11 and 12 on the basis of in furtherance of a conspiracy and coverup. Paragraphs 14 and 15; re 14, that will be allowed as in furtherance of a conspiracy and coverup. Re 15 is disallowed. Paragraph 16; disallowed. Paragraph 17, State conceded. Paragraph 7; allowed. Paragraph 8; Court reserves ruling. Court advised counsel that at this time, the issue is if these statements are determined to be admissible as in furtherance of a conspiracy; and they are subject to a motion in limine as to each defendant at a later time. FURTHER ORDERED, Re paragraph 9; allowed as in furtherance of a conspiracy. Paragraph 10; disallowed. Paragraph 11, allowed. Paragraphs 18, 19, and 20; will not be allowed as an exception to hearsay under the co-conspirators declaration. Re paragraph 21; to be disallowed. Paragraph 22; allowed as an exception to the hearsay rule. Paragraph 23; disallowed. Paragraph 24; State concedes that it would not be admissible. Following further argument re paragraphs 5, 8 and 25. COURT ORDERED, as to paragraphs 5, 8 and 25; they are admissible. Re Defendant Flanagan's motion for severance, defendants Luckett, McDowell and Moore's motions for severance and motions in limine and defendant Flanagan's motion for change of venue. Following arguments of counsel, COURT ORDERED, motions for severance denied. Mr. Handfuss argued in support of his motion on behalf of defendant McDowell to dismiss the with use charge. Following arguments of counsel, COURT ORDERED, will set this aside and will review it. Court advised Mr. Pike's change of venue will be considered and Mr. Smith's motion in limine re Dr. Green's transcript will be considered also during recess. Court recessed. JURY TRIAL Appearances as noted above. Clerk called roll of prospective jurors. Jury selection commenced. COURT ORDERED, matter continued to September 27, 1986 at 10:00 A.M. Prospective jurors admonished and instructed to return at that time.	
9/27/86	10:00 A.M. Appearances as noted above. Clerk called roll of prospective jurors. Outside presence of jury panel, Mr. Pike moved for mistrial based upon being denied voir dire as to Mr. Singer and as to Mr. Elder, and change of venue for Flanagan and severance based upon the fact the the prospective jurors did have knowledge of the offense through the media. COURT ORDERED, the representations by Mr. Singer and Mr. Elder were not of any nature that would have tained the jury. Therefore, motion is denied. Concerning the fact that many of the prospective jurors were familiar with the case to some extent; quote NRS 16;	

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE AKA SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, AND THOMAS AKERS

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
9/30/85 DONALD M. MOSLEY DEPT. XIV M. HARMON, DDA D. SEATON, DDA R. PIKE, ESQ. (Flanagan) M. POSIN, ESQ. (Moore) W. SMITH, ESQ. (Luckett) R. HANDFUSS, ESQ. (McDowell) L. BAZAR, CLERK S. THIELMAN, RPTR.	JURY TRIAL CONTINUED Appearances as noted above. Outside presence of the jury. Re Mr. Handfuss' motion to dismiss the with use counts on the Indictment. Following arguments of counsel, COURT ORDERED, motion is denied at this time. Jury summoned. Clerk called roll of jury. Opening statements by State, Opening statements by Mr. Handfuss, Mr. Pike, Mr. Smith and Mr. Posin. Outside presence of jury, Mr. Pike renewed his motion for severance. Mr. Handfuss and Mr. Posin enjoined on the motion on behalf of their clients. COURT ORDERED, motion denied. Jury summoned. Counsel stipulated that all members of the jury were present and properly seated. Witnesses sworn and testified and exhibits offered and admitted per attached worksheets. COURT ORDERED, matter continued to October 1, 1986 at 10:00 A.M.	
10/01/85	10:00 A.M. Appearances as noted above. Clerk called roll of jury. Witnesses sworn and testified and exhibits offered and admitted per attached worksheets. Outside presence of jury, Mr. Handfuss renewed his motion for severance. Court advised he could make his objection to the reporter at recess. Mr. Pike moved for a mis-trial with reference to another bad act re the burglary of the residence and breaking into residence. Mr. Handfuss joined on the motion. Following arguments of counsel, COURT ORDERED, see no prejudice to any defendant that cannot be cured by a proper admonishment and that has been given. Perhaps an instruction along that line could be sumbitted to the jury. But, burglary is, per se, a bad act. Court declines to grant the motion for mistrial. Jury summoned. Testimony of witnesses continued. COURT ORDERED, matter is continued to October 2, 1985 at 10:00 A.M.	
10/02/85	10:00 A.M. Appearances as noted above. Clerk called the roll of the jury. Witnesses sworn and testified and exhibits offered and admitted per attached worksheets. Mr. Handfuss renewed his objections and renewed prior motions and advised he would argue them at break. Outside pesence of jury. Motion in limine made by Mr. Smith re the evidentiary hearing and what defendant Flanagan told Ms. Saldana that the other defendants did. Mr. Handfuss joined on the motion. All counsel joined on the 6th amendment rule. Following arguments of counsel, COURT ORDERED, motion denied. Jury summoned. Testimony of witnesses continued. COURT ORDERED, matter is continued to October 3, 1985 at 10:00 A.M.	
10/03/85	10:00 A.M. Appearances as noted above. Clerk called roll of jury. Witnesses sworn and testified and exhibits offered and admitted per attached worksheets. Outside presence of jury. Mr. Pike moved for a limiting instruction that the testimony as to the arrest of one defendant does not reflect on Dale Flanagan. Mr. Handfuss joined on on the motion on behalf of defendant McDowell. COURT ORDERED, Court will indicate that this testimony goes to Mr. Moore	

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE AKA SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, AND THOMAS AKERS

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
10/03/85-10/04/85 DONALD M. MOSLEY DEPT. XIV M. HARMON, DDA D. SEATON, DDA R. PIKE, ESQ. (Flanagan) M. POSIN, ESQ. (Moore) W. SMITH, ESQ. (Luckett) R. HANDFUSS, ESQ. (McDowell) L. BAZAR, CLERK S. THIELMAN, RPTR.	JURY TRIAL CONTINUED Jury summoned. Testimony continued. State rested its case. COURT ORDERED, matter is continued to October 4, 1986 at 10:00 A.M. 10:00 A.M. - 10/04/85 Appearances as noted above. Clerk called roll of jury. Defense witnesses sworn and testified and exhibits offered and admitted per attached worksheets. Outside presence of jury: Mr. Posin moved for a mis-trial based upon the hearsay testimony by witness Wayne Wittig. Mr. Pike joined on the motion on behalf of defendant Flanagan. Mr. Handfuss joined in the motion on behalf of defendant McDowell. Following arguments of counsel, COURT ORDERED, this Court would entertain any instruction counsel would offer. This Court thinks that Mr. Luckett's co-defendants are not prejudiced by Mr. Wittig's testimony to the extent to warrant a mis-trial. Motion is denied. Court admonished each of the defendant's of their Fifth Amendment rights not to testify in their own behalf. Each defendant concurred. Jury summoned. COURT ORDERED, matter is continued to Monday, October 7, 1985 at 10:00 A.M. Jury admonished.	
10/07/85	10:00 A.M. Appearances as noted above. Clerk called roll of jury. Johnny Ray Luckett testified in his own behalf. Witnesses sworn and testified and exhibits offered and admitted per attached worksheets. Mr. Smith rested his case on behalf of Mr. Luckett. Witnesses sworn and testified and exhibits offered and admitted per attached worksheets on behalf of defendant McDowell. Case rested on behalf of defendant McDowell. Witnesses sworn and testified on behalf of defendant Flanagan. Case rested. COURT ORDERED, matter is continued to October 8, 1985 at 10:00 A.M.	
10/08/85	10:00 A.M. Appearances as noted above. Clerk called roll of jury. Witnesses sworn and testified and exhibits offered and admitted per attached worksheets on behalf of defendant Moore. Outside presence of jury. Mr. Smith moved for severance and objected to all or part of Exhibit D. Mr. Handfuss joined in the motion and objection. Following arguments of counsel, COURT ORDERED, portions objected to in Exhibit D to be redacted and that exhibit is admitted. Re Mr. Handfuss motion for severance, his argument is without merit; motion denied. Jury summoned. Testimony continued. Defense counsel rested. State advised there would be no rebuttal witnesses for the State. COURT ORDERED, matter is continued to October 9, 1985 at 10:00 A.M.; jury to report at 1:00 P.M.	
10/09/85	10:00 A.M. Appearances as noted above. Outside presence of jury. Jury Instructions 1 - 47 settled in open court. Jury summoned. Clerk called roll of jury. Court read jury instructions to the jury. COURT ORDERED, matter continued to October 10, 1985 at 10:00 A.M. Jury admonished and excused.	

CONTINUED NEXT PAGE

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE AKA SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, AND THOMAS AKERS

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
10/10/85 DONALD M. MOSLEY DEPT. XIV M. HARMON, DDA D. SEATON, DDA R. PIKE, ESQ. (Flanagan) M. POSIN, ESQ. (Moore) W. SMITH, ESQ. (Luckett) R. HANDFUSS, ESQ. (McDowell) L. BAZAR, CLERK S. THIELMAN, RPTR.	10:00 A.M. - JURY TRIAL CONTINUED Appearances as noted above. Clerk called roll of jury. Closing remarks by State. Closing argument by Mr. Smith on behalf of Johnny Ray Luckett. Outside presence of jury, Mr. Posin moved for a mis-trial predicated by Mr. Seaton's statement made in closing remarks. He spoke in terms of no one coming forth to dispute the evidence. Improper argument. Mr. Pike joined on the motion on behalf of defendant Flanagan, statement made objectional when he directed the questions to the defendants that never took the stand. Mr. Handfuss joined with the motion for mis-trial because Mr. Seaton's argument shifted the burden of proof to the defendants. Mr. Smith joined in the motion for mis-trial on behalf of Mr. Luckett. Following arguments of counsel, Court stated its findings. COURT ORDERED, motion for mis-trial denied. Jury summoned. Counsel stipulated that all members of the jury were present and properly seated. Closing arguments by Randall Pike on behalf of defendant Flanagan. Closing arguments by Murray Posin on behalf of defendant Moore. Closing arguments by Mr. Handfuss on behalf of defendant McDowell. Rebuttal argument by State. 7:07 P.M.: Bailiff sworn and case submitted to the jury and they retired for deliberation.	
10/11/85	3:30 P.M. - Jury returned with a verdict. Appearances as noted above. Clerk called roll of the jury. Jury returned with verdicts of guilty as to all defendants as filed herein. At request of defense counsel, Randall Pike and Robert Handfuss, the jury was polled and all answered in the affirmative. COURT ORDERED, matter is set for penalty phase on Monday, October 14, 1985 at 10:00 A.M. Jury admonished and excused.	10/14/85 @ 10:00 AM PENALTY HEARING
10/14/85 DONALD M. MOSLEY DEPT. XIV M. HARMON, DDA. D. SEATON, DDA R. PIKE, ESQ. (Flanagan) M. POSIN, ESQ. (Moore) W. SMITH, ESQ. (Luckett) R. HANDFUSS, ESQ. (McDowell) L. BAZAR, CLERK S. THIELMAN, RPTR.	PENALTY HEARING State represented by Mel Harmon, DDA, and Dan Seaton, DDA. Defendant Flanagan present in custody with Randall Pike, Esq. Defendant Moore present in custody with Murray Posin, Esq. Defendant McDowell present in custody with Robert Handfuss, Esq. Defendant Luckett present in custody with William Smith, Esq. Outside presence of jury. Mr. Pike made a motion to impanel a new jury, for recommendation of sentence. Objection by State. COURT ORDERED, the argument for as second jury is without merit; going to decline to impanel a second jury. Jury summoned. Clerk called roll of jury. State waived opening statement and informed the Court it planed to put on no evidence. Opening statement by Mr. Pike. Witnesses sworn and testified on behalf of defendant Flanagan. Statement by defendant Flanagan, unsworn. Opening statement by Mr. Smith. Witnesses worn and testified on behalf of	

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE AKA SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, AND THOMAS AKERS

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
10/14/85 DONALD M. MOSLEY DEPT. XIV M. HARMON, DDA D. SEATON, DDA R. PIKE, ESQ. (Flanagan) M. POSIN, ESQ. (Moore) W. SMITH, ESQ. (Luckett) R. HANDFUSS, ESQ. (McDowell) L. BAZAR, CLERK S. THIELMAN, RPTR.	PENALTY HEARING CONTINUED Opening statement by Mr. Handfuss on behalf of defendant McDowell. Witnesses sworn and testified on behalf of defendant McDowell. Opening statement by Randall Pike on behalf of defendant Flanagan. Witnesses sworn and testified on behalf of defendant Flanagan. Rested case. Opening statement by Mr. Posin. Witnesses sworn and testified on behalf of defendant Moore. State rested its case. Outside presence of jury. Jury Instructions 1 - 15 settled in open court. Objection by Mr. Smith re the State being allowed two arguments. Mr. Pike joined in the motion. Following arguemnts of counsel, Court stated its findings. COURT ORDERED, motion is rejected. Mr. Pike moved to have the testimony of Mr. Akers rejected and State's Exhibit 118. Following arguments of counsel, COURT ORDERED, motion denied. Mr. Handfuss requested a separate jury panel for Mr. McDowell. Mr. Smith, Mr. Posin, joined in the motion. Following arguments of counsel, COURT ORDERED, motion denied.	
	Jury summoned. Counsel stipulated to all members of the jury being present and properly seated. Court read Instructions 1 - 15 to the jury. Closing arguments by State. Closing arguments by Mr. Pike, Mr. Smith, Mr. Handfuss and Mr. Posin on behalf of their clients. Rebuttal argument by State. At 5:45 P.M. - Bailiff sworn and case submitted to the jury for deliberation. Court admonished the jury and instructed them to report to courtroom at 9:00 A.M. 10/15/85 to begin deliberation.	
	Outside presence of jury: Mr. Pike made a motion for mis-trial and requested that a new jury be impaneled to rehear the penalty phase in this case, in reference to Mr. Seaton's representations of the witnesses not being sworn and the defendant not being sworn. Mr. Posin joined in the motion. Following arguments of counsel, COURT ORDERED, this Court will take the matter under advisement and will inform counsel tomorrow of the decision. Counsel to be present in the morning at 9:00 A.M. Case law, if it is to be submitted, is	
	welcome. At this juncture this Court tends to agree that it is not reversable error. But it in inapplicable to Mr. Smith; he did not join in on the motion and it is not necessary for him to be present.	
10/15/85 DONALD M. MOSLEY DEPT. XIV M. HARMON, DDA D. SEATON, DDA R. PIKE, ESQ. (Flanagan) M. POSIN, ESQ. (Moore) R. HANDFUSS, ESQ. (McDowell) L. BAZAR, CLERK S. THIELMAN, RPTR.	10:00 A.M. State represented by Mel Harmon, DDA, and Dan Seaton, DDA. Defendant Flanagan present in custody with Randall Pike, Esq. Defendant Moore present in custody with Murray Posin, Esq. Defendant Luckett neither present nor represented by counsel, William Smith; their presence having been waived by the Court. Defendant McDowell present in custody with counsel, Robert Handfuss. Court advised that Court had convened to resolve a motion for mis-trial and Mr. Smith did not join in on the motion. Following arguments of counsel, COURT ORDERED, motion for mis-trial is denied. This Court has prepared an admonition to the jury and will read it verbatim at this time and counsel concerned can make the determination whether or not that admonition should	

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE AKA SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, AND THOMAS AKERS

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
10/15/85 DONALD M. MOSLEY DEPT. XIV M. HARMON, DDA D. SEATON, DDA R. PIKE, ESQ. (Flanagan) M. POSIN, ESQ. (Moore) R. HANDFUSS, ESQ. (McDowell) L. BAZAR, CLERK S. THIELMAN, RPTR.	DEFENDANT FLANAGAN'S MOTION FOR MISTRIAL and JOINDERS BY DEFENDANTS MOORE AND MCDOWELL (Continued) After conferring with Mr. Handfuss and Mr. Posin, Mr. Pike reqeusted that the admonition be marked as Court's Exhibit I and that it be included in the record and sent up to the Supreme Court on the appeal. Mr. Pike advised they would not request it be read to the jury. State advised they would not ask it be read. COURT SO ORDERED. The Court advised that at this juncture the bailiff has charge of the jury and there being no objection by counsel; the jury will begin deliberation. CUSTODY (All)	
10/17/85 DONALD M. MOSLEY DEPT. XIV M. HARMON, DDA R. PIKE, ESQ. (Flanagan) M. POSIN, ESQ. (Moore) R. PIKE, ESQ. for W. SMITH, ESQ. (Luckett) R. HANDFUSS, ESQ. (McDowell)	PENALTY PHASE - VERDICT @ 10:27 A.M. State represented by Mel Harmon, DDA. Defendant Flanagan present in custody with counsel, Randall Pike. Defendant Moore present in custody with counsel, Murray Posin. Defendant McDowell present in custody with counsel, Robert Handfuss. Defendant Luckett present in custody with Randall Pike, Esq., who advised he had been contacted by Mr. Smith and had agreed to take the verdict as and for his client. Clerk called roll of jury. Jury returned with verdicts of Death Penalty with Lethal Injection on Counts VI and VII as to defendants Flanagan and Moore; Life with the Possibility of Parole on Counts VI and VII as to defendant McDowell and Life without the Possibility of Parole on Counts VI and VII as to defendant Luckett. COURT ORDERED, matter is continued for Confirmation of Jury's Verdicts and Sentencing in approximately 30 days. Court Services to remove the defendants at this time. Court thanked and excused the jury. CUSTODY (All)	11/18/85 @ 9:00 AM CONFIRMATION OF JURY'S VERDICT and SENTENCING

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE AKA SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, AND THOMAS AKERS

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
10/28/85 MIRIAM SHEARING DEPT. XV for XIV R. O'NEALE, DDA L. BAZAR, CLERK J. NICHOLS, CLERK T. MOSS, RPTR.	MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR DEFENDANT State represented by Roberta O'Neale, DDA. Defendant Moore present in custody without benefit of counsel, Murray Posin. COURT ORDERED, matter is continued to Wednesday. CUSTODY 10:05 A.M. - Clerk called Mr. Posin's office and advised of continuance time and date.	10/30/85 @ 9:00 AM MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR DEFENDANT
10/30/85 DONALD M. MOSLEY DEPT. XIV R. O'NEALE, DDA L. BAZAR, CLERK S. THIELMAN, RPTR.	MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR DEFENDANT State represented by Roberta O'Neale, DDA. Defendant Moore present in custody without benefit of counsel, Murray Posin. Court trailed matter. Later, Mr. Posin not having appeared, Court advised defendant it was the Court's understanding that this matter was put on calendar erroneously, he is seeking to withdraw from the case after sentencing. Defendant acknowledged. COURT ORDERED, motion is continued to November 18, 1985 at 9:00 A.M., which is the date for sentencing. CUSTODY	11/18/85 @ 9:00 AM MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR DEFENDANT
11/04/85 DONALD M. MOSLEY DEPT. XIV M. O'CALLAGHAN, DDA R. HANDFUSS, ESQ. (McDowell) L. BAZAR, CLERK S. THIELMAN, RPTR.	DEFENDANT'S MOTION FOR NEW TRIAL State represented by Michael O'Callaghan, DDA. Defendant McDowell present in custody with counsel, Robert Handfuss. Defendant Flanagan present in custody without benefit of counsel, Randall Pike. Court inquired if Mr. Pike was joining in on the motion in behalf of defendant Flanagan. Mr. Handfuss concurred and advised he was represent defendant Flanagan for Mr. Pike during this hearing. Court acknowledged. Mr. Handfuss advised the points and authorities for this motion are still being typed up. State advised it would need a week to respond. COURT ORDERED, matter is set for argument on the motion a week from Wednesday. Mr. Handfuss advised defendant McDowell would request a contact visit with Mary Lucas, mother of his son. There being no objection, COURT ORDERED, motion granted. CUSTODY	11/13/85 @ 9:00 AM DEFENDANTS' MOTION FOR NEW TRIAL
1/13/85 ONALD M. MOSLEY EPT. XIV . HARMON, DDA . HANDFUSS, ESQ. McDowell) . PIKE, ESQ. Flanagan) . BAZAR, CLERK	DEFENDANT'S MOTION FOR NEW TRIAL State represented by Mel Harmon, DDA. Defendant Flanagan present in custody with Randy Pike, Esq. Defendant McDowell present in custody with Robert Handfuss, Esq. Following arguments of counsel, COURT ORDERED, on balance a fair trial was had, both motions for a new trial is denied. CUSTODY	

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE AKA SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, AND THOMAS AKERS

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
11/18/85 DONALD M. MOSLEY DEPT. XIV M. HARMON, DDA R. BLOXHAM, DDA P. COLEMAN, P&P L. BAZAR, CLERK S. THIELMAN,RPTR.	MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR DEFENDANT MOORE SENTENCING (ALL DEFENDANTS) State represented by Mel Harmon, DDA and Ron Bloxham, DDA. Defendants neither present nor represented by respective counsel. COURT ORDERED, this matter is going to be continued for sentencing to November 20, 1985 in that the P.S.I.'s were not received until late Friday. CUSTODY	11/20/85 @ 9:00 AM MOTION TO WITHDRAW (Moore) SENTENCING (All)
11/20/85 DONALD M. MOSLEY DEPT. XIV R. O'NEALE, DDA L. BAZAR, CLERK S. THIELMAN,RPTR. S. THOMAS, P&P	MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR DEFENDANT MOORE SENTENCING (ALL DEFENDANTS) State represented by Roberta O'Neale, DDA. Defendants Flanagan, Moore, McDowell and Luckett present in custody without benefit of respective counsel. Court advised defendants that there were problems with the P.S.I. reports and it had spoken to their counsel in chambers and they had agreed to continue the matter to Friday to straighten this out. COURT ORDERED, matter continued to Friday. CUSTODY	11/22/85 @ 9:00 AM MOTION TO WITHDRAW (Moore) SENTENCING (All)
1/22/85 ONALD M. MOSLEY EPT. XIV . SEATON, DDA . PIKE, ESQ. Flanagan) . POSIN, ESQ. Moore) . HOOVER, P&P . BAZAR, CLERK . THIELMAN,RPTR.	MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR DEFENDANT MOORE SENTENCING (ALL DEFENDANTS) State represented by Dan Seaton, DDA. Defendant Flanagan present in custody with Randall Pike, Esq. Defendant Moore present in custody with Murray Posin, Esq. Defendants McDowell and Luckett present in custody without benefit of counsel. Court advised that Mr. Handfuss is ill and Mr. Smith was excused from this hearing pursuant to discussion this morning. Matter will be continued for sentencing until Wednesday, November 27, 1985 for appearance of Mr. Handfuss. However, this Court will proceed with the confirmation of the Jury's Verdict as to defendants Flanagan and Moore. Court adjudged defendant Flanagan guilty of Count I - Conspiracy to Commit Burglary (GM); Count II - Conspiracy to Commit Robbery (F); Count III - Conspiracy to Commit Murder (F); Count IV - Burglary (F); Count V - Robbery with Use of a Deadly Weapon (F); Count VI - Murder 1st ° with Use of a Deadly Weapon (F) and Count VII - Murder 1st ° with Use of a Deadly Weapon (F). Court adjudged defendant Moore guilty of Count I - Conspiracy to Commit Burglary (GM); Count II - Conspiracy to Commit Robbery (F); Count III - Conspiracy to Commit Murder (F); Count IV - Burglary (F); Count VI - Murder 1st ° with Use of a Deadly Weapon (F) and Count VII - Murder 1st ° with Use of a Deadly Weapon (F). COURT ORDERED, this Court will continue sentencing until Wednesday in that it is the Court's desire and the majority of counsel to have these	11/27/85 @ 9:00 AM SENTENCING (All)

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE AKA SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, AND THOMAS AKERS

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
11/27/85 DONALD M. MOSLEY DEPT. XIV D. SEATON, DDA R. PIKE, ESQ. (Flanagan) M. POSIN, ESQ. (Moore) R. HANDFUSS, ESQ. (McDowell) W. SMITH, ESQ. (Luckett) L. BAZAR, CLERK S. THIELMAN, RPTR. M. MILLER, P&P	MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR DEFENDANT MOORE SENTENCING (ALL DEFENDANTS) State represented by Dan Seaton, DDA. Defendant Flanagan present in custody with Randall Pike, Esq. Defendant Moore present in custody with Murray Posin, Esq. Defendant McDowell present in custody with Robert Handfuss, Esq. Defendant Luckett present in custody with William Smith, Esq. Court advised defendants Flanagan and Moore had been adjudged guilty at a previous hearing. Defendant McDowell adjudged guilty of Counts I, II, III, IV, V, VI and VII. Defendant Luckett adjudged guilty of Counts III, IV, VI and VII. Upon agreement of counsel, defense counsel made representations on behalf of the defendants first. Statement by defendant Moore. Other defendants declined to speak in their behalf. Statement by State. COURT ORDERED, defendant Flanagan is sentenced on Count I - Conspiracy to Commit Burglary (GM) to one (1) year Clark County Jail; on Count II - Conspiracy to Commit Robbery (F) to six (6) years NSP; on Count III - Conspiracy to Commit Murder (F) to six (6) years NSP; on Count IV - Burglary (F) to ten (10) years NSP; on Count V - Robbery with Use of a Deadly Weapon (F) to fifteen (15) years NSP plus a consecutive fifteen (15) years on the enhancement; on Count VI - Murder of the First Degree with Use of a Deadly Weapon (F) - the Court confirms the jury's verdict and imposes the death penalty to be accomplished by lethal injection; with a similar death penalty on the enhancement; on Count VII - Murder of the First Degree with Use of a Deadly Weapon (F) to death by lethal injection, with a similar death penalty, which by law must run consecutive. Counts I through VII to be served consecutively; execution of death sentence is set for the week of February 2, 1986; credit for time served of 353 days. COURT ORDERED, defendant Moore is sentenced on Count I - Conspiracy to Commit Burglary (GM) to one (1) year Clark County Jail; on Count II - Conspiracy to Commit Robbery (F) to six (6) years NSP; on Count III - Conspiracy to Commit Murder (F) to six (6) years NSP; on Count IV - Burglary (F) to ten (10) years NSP; on Count V - Robbery with Use of a Deadly Weapon (F) to fifteen (15) years NSP plus a consecutive fifteen (15) years on the enhancement; on Count VI - Murder of the First Degree with Use of a Deadly Weapon (F) - the Court confirms the jury's verdict and imposes the death penalty as to each count and and as to each count a consecutive sentence of death by lethal injection. Counts I through VII run consecutively; execution of the death sentence to be set on the week of February 2, 1986; credit for time served of 353 days. COURT ORDERED, defendant McDowell is sentenced on Count I to one (1) year Clark County Jail; on Count II to six (6) years NSP to run concurrent to Count I; on Count III to six (6) years NSP concurrent with Count II; on Count IV to ten (10) years NSP concurrent with Count III; on Count V to fifteen (15) years on Robbery plus consecutive fifteen (15) years on the UDW to run concurrent with	

CASE NO. C69269 TITLE THE STATE OF NEVADA VS. DALE EDWARD FLANAGAN, RANDOLPH MOORE AKA SMITH, JOHNNY RAY LUCKETT, MICHAEL WALSH, ROY MC DOWELL, AND THOMAS AKERS

DATE, JUDGE OFFICERS OF COURT PRESENT	CONTINUED APPEARANCES — HEARING	CONTINUED TO:
11/27/85 DONALD M. MOSLEY DEPT. XIV D. SEATON, DDA R. PIKE, ESQ. (Flanagan) M. POSIN, ESQ. (Moore) R. HANDFUSS, ESQ. ~~(McDowell)~~ W. SMITH, ESQ. (Luckett) L. BAZAR, CLERK S. THIELMAN, RPTR. M MILLER, P&P	on Count VII - Life with Possibility of Parole plus consecutive Life with Possibility on the UDW; to run consecutive with Count VI; 342 days CTS COURT ORDERED, defendant Luckett is sentenced on Count III to six (6) years NSP; on Count IV to six (6) years NSP; on Counts VI and VII, the Court confirmed the jury's verdict of Life without the Possibility of Parole plus on the enhancement a consecutive sentence of Life without the Possibility of Parole on each count. Counts III and IV to run concurrently and concurrently with Count ~~VI; Count VII to run consecutive to Count VI. Credit for~~ time served of 342 days. Mr. Posin asked that the Court defer his motion to withdraw. Court consented. Mr. Pike moved to withdraw as counsel of record for defendant Flanagan and requested the Public Defender's Office be appointed for purposes of appeal. COURT SO ORDERED and requested Mr. Cooper to advise the Public Defender's Office. Mr. Handfuss and Mr. Smith requested permission to withdraw as counsel for their respective clients. Mr. Smith advised ~~he would coordinate the appeal. COURT ORDERED, counsel~~ allowed to withdraw, contract attorneys are appointed for defendants McDowell and Luckett. FURTHER ORDERED, matter is continued one week for confirmation of counsel. CUSTODY (All)	12/04/85 @ 9:00 AM CONFIRMATION OF COUNSEL (Defts. Flanagan, McDowell and Luckett)
11/27/85 DONALD M. MOSLEY DEPT. XIV L. BAZAR, CLERK	MINUTE ORDER Court appointed John Graves, Esq. and Mark Bailus, Esq. as counsel for defendants Luckett and McDowell and advised them as to the confirmation date. Mr. Bailus unable to confirm. George Carter advised of appointment and time.	
12/04/85 DONALD M. MOSLEY DEPT. XIV R. O'NEALE, DDA M. COOPER, DPD (Flanagan) J. GRAVES, ESQ. (Luckett) G. CARTER, ESQ. ~~(McDowell)~~ L. BAZAR, CLERK S. THIELMAN, RPTR.	CONFIRMATION OF COUNSEL State represented by Roberta O'Neale, DDA. Defendant Flanagan present in custody with Marcus Cooper, DPD, who confirmed as counsel for purposes of appeal. Defendant McDowell present in custody with George Carter, Esq., who confirmed as counsel for purposes of appeal. Defendant Luckett present in custody with John Graves, Esq., who confirmed as counsel for purposes of appeal. CUSTODY (All)	
12/18/85 DONALD M. MOSLEY DEPT. XIV M. HARMON, DDA M. COOPER, DPD (Flanagan) M. POSIN, ESQ. (Moore) L. BAZAR, CLERK	AT REQUEST OF COURT: CLARIFICATION OF SENTENCE State represented by Mel Harmon, DDA. Defendant Flanagan not present and represented by Marcus Cooper, DPD. Defendant Moore not present and represented by Murray Posin, Esq. Both defendants' presence waived. Court advised that with regard to the sentence on Count I of one year Clark County Jail, that out of necessity they must serve that jail term before they can serve at NSP. It has been suggested that the sentence be amended to	