

David M. Schieck

Attorney At Law  
302 E. Carson Ave., Ste. 600  
Las Vegas, NV 89101  
(702) 382-1844

NOA  
DAVID M. SCHIECK, ESQ.  
NEVADA BAR NO. 0824  
302 E. CARSON, STE. 600  
LAS VEGAS, NV 89101  
(702) 382-1844  
Attorney for Defendant

FILED  
SEP 18 2 51 PM '02  
Shirley S. Rasmussen  
CLERK  
FILED  
SEP 18 2 51 PM '02  
Shirley S. Rasmussen  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \*

No. 40248

THE STATE OF NEVADA,  
Plaintiff,  
vs.  
MARLO THOMAS,  
Defendant.

CASE NO. C136862  
DEPT. NO. XV

NOTICE OF APPEAL

FILED

DATE: N/A  
TIME: N/A

SEP 24 2002

TO: THE STATE OF NEVADA, Plaintiff, herein;  
TO: STEWART BELL, District Attorney, and  
TO: DEPARTMENT FIFTEEN OF THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK:

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY Shirley S. Rasmussen  
DEPUTY CLERK

NOTICE IS HEREBY GIVEN that MARLO THOMAS, by and through  
his attorney DAVID M. SCHIECK, ESQ., hereby appeals to the  
Supreme Court of the State of Nevada from the denial of his  
Petition for Writ of Habeas Corpus (Post Conviction) and the  
Findings of Fact, Conclusion of Law, and Order entered on  
September 6, 2002.

Dated this 18 day of September, 2002.

SUBMITTED BY:

David M. Schieck  
DAVID M. SCHIECK, ESQ.

RECEIVED

SEP 23 2002

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

CERTIFICATE OF MAILING

The undersigned does hereby certify that on the 18 day of September, 2002, I deposited in the United States Post Office at Las Vegas, Nevada, a copy of the Notice of Appeal, postage prepaid, addressed to the following:

District Attorney's Office  
200 S. Third Street  
Las Vegas NV 89155

Nevada Attorney General  
100 N. Carson  
Carson City, NV 89701-4717

Marlo Thomas, No. 50682  
Ely State Prison  
P.O. Box 1989  
Ely NV 89301

Kathleen Fitzgerald  
An employee of David M. Schieck, Esq.

**David M. Schieck**  
Attorney At Law  
302 E. Carson Ave., Ste. 600  
Las Vegas, NV 89101  
(702) 382-1844

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NCA  
DAVID M. SCHIECK, ESQ.  
NEVADA BAR NO. 0824  
302 East Carson, #600  
Las Vegas, NV 89101  
702-382-1844  
Attorney for Defendant

FILED  
SEP 18 2 50 PM '02  
*Shirley S. Ruggins*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \*

THE STATE OF NEVADA,	)	CASE NO. C 136862
	)	DEPT. NO. XV
Plaintiff,	)	
	)	
vs.	)	CASE APPEAL STATEMENT
	)	
MARLO THOMAS,	)	
	)	
Defendant.	)	DATE: N/A
	)	TIME: N/A

1. Appellant filing case appeal statement is Marlo Thomas
2. The Judge issuing the decision was The Honorable Sally Loehrer
3. Petitioner/Defendant was Marlo Thomas  
Respondent/Plaintiff was The State of Nevada
4. Appellant is Marlo Thomas  
Respondent is The State of Nevada
5. Counsel for Appellant: David M. Schieck, Esq.,  
Law Office of David Schieck, 302 E. Carson, #600,  
Las Vegas, NV 89101, 702-382-1844  
  
Counsel for Respondent: Stewart Bell, Esq., District  
Attorney, 200 S. Third St., Las Vegas, NV 89155,  
702-455-4711; and Frankie Sue Del Papa, Esq., Nevada  
Attorney General, 100 N. Carson St., Carson City,  
Carson City, NV 89701, 702-687-4170
6. Thomas was represented by appointed counsel, David M. Schieck, Esq., for his post conviction proceedings.
7. Thomas is represented by appointed counsel, David M.

**David M. Schieck**  
Attorney At Law  
302 E. Carson Ave., Ste. 600  
Las Vegas, NV 89101  
(702) 382-1844

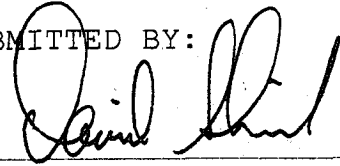
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Schieck, Esq., on appeal from denial of his post conviction proceedings.

8. David M. Schieck, Esq. was appointed on August 21, 2002 to represent Thomas on his appeal.

9. Thomas' Petition was filed on January 6, 2000.

Dated this 18 day of September, 2002.

SUBMITTED BY:  
  
\_\_\_\_\_  
DAVID M. SCHIECK, ESQ.

CERTIFICATE OF MAILING

The undersigned does hereby certify that on the 18 day of September, 2002, I deposited in the United States Post Office at Las Vegas, Nevada, a copy of the Case Appeal Statement, postage prepaid, addressed to the following:

District Attorney's Office  
200 S. Third Street  
Las Vegas NV 89155

Nevada Attorney General  
100 N. Carson  
Carson City, NV 89701-4717

Marlo Thomas, No. 50682  
Ely State Prison  
P.O. Box 1989  
Ely NV 89301

  
\_\_\_\_\_  
An employee of David M. Schieck, Esq.

DATE: 09/19/02  
CASE NO. 96-C-136862-C

I N D E X

TIME 5:28 PM  
JUDGE:Loehrer, Sally

STATE OF NEVADA

[ ] vs Thomas, Marlo

[E]

001 D1 Marlo Thomas

000824 Schieck, David M.  
NO. 1 Schieck & Derke  
302 E Carson #918  
Las Vegas, NV 89101

002 D Kenya K Hall  
P O Box 359  
Lovelock, NV 89419

Pro Se

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0001	07/02/96	CBO /CRIMINAL BINDOVER Fee \$0.00				
0002	07/02/96	ARRN/INITIAL ARRAIGNMENT	001		07/08/96	
0003	07/02/96	HEAR/STATE'S REQUEST RESET ARRAIGNMENT DATE AS TO DEFT HALL	002		07/03/96	
0004	07/02/96	INFO/INFORMATION	001		07/02/96	
0005	07/02/96	INFO/INFORMATION	002		07/02/96	
0006	07/03/96	SENT/SENTENCING/SET TRIAL	002	GR	09/04/97	
0007	07/05/96	NOEV/NOTICE OF EXHIBIT(S) IN THE VAULT			07/02/96	
0008	07/03/96	NISD/NOTICE OF INTENT TO SEEK DEATH PENALTY	001			
0009	07/08/96	ARRN/ARRAIGNMENT CONTINUED	001		07/10/96	
0010	07/10/96	CALC/CALENDAR CALL VJ 12/18/96	001	VC	12/27/96	
0011	07/10/96	JURY/TRIAL BY JURY VJ 12/18/96	001	VC	12/30/96	
0012	08/02/96	TRAN/REPORTER'S TRANSCRIPT OF JUNE 27, 1996 OF PRELIMINARY HEARING	AL		06/27/96	
0013	08/06/96	ORDR/ORDER FOR PRODUCTION OF INMATE	001			
0014	08/27/96	REQT/MEDIA REQUEST	001			
0015	08/27/96	ORDR/ORDER GRANTING PERMISSION OF MEDIA ENTRY	001			
0016	09/04/96	MOT /DEFT'S PRO PER MOTION TO DISMISS COUNSEL/APPOINTMENT OF CO-COUNSEL	001	DN	10/21/96	
0017	09/10/96	BREF/SENTENCING BRIEF AND OPPOSITION TO PRE-SENTENCE REPORT	002			
0018	09/11/96	ANSW/ANSWER IN OPPOSITION TO MOTION TO DISMISS COUNSEL AND OR APPOINTMENT OF CO-COUNSEL	001			Y
0019	09/20/96	ORDR/ORDER FOR PRODUCTION OF INMATE	001			
0020	11/04/96	MOT /STATE'S MOTION TO ENDORSE NAMES ON INFORMATION	001	GR	11/13/96	
0022	11/04/96	INFO/MOTION AND NOTICE OF MOTION TO ENDORSE NAMES OF INFORMATION	001		11/13/96	
0023	11/13/96	ORDR/ORDER TO ENDORSE NAMES ON INFORMATION	001			
0024	11/19/96	ORDR/ORDER FOR MULTIPLE CONTACT VISITS FOR PSYCHO-NEUROLOGICAL EVALUATION	001			
0025	11/20/96	APPL/EX PARTE APPLICATION FOR APPOINTMENT OF EXPERT AND PAYMENT FOR SERVICES	001			
0026	11/20/96	ORDR/ORDER FOR APPOINTMENT OF EXPERT AND PAYMENT FOR SERVICES	001			
0027	12/16/96	MOT /STATE'S REQUEST TO RESET TRIAL DATE	001	GR	12/18/96	
0028	07/02/96	CINF/INFORMATION CORRECTED IN OPEN COURT	001		11/13/96	
0029	12/18/96	CALC/CALENDAR CALL VJ 1/29/97	001	VC	05/09/97	
0030	12/18/96	JURY/TRIAL BY JURY VJ 1/29/97	001	VC	05/12/97	
0031	12/24/96	MOT /STATE'S REQUEST RESET SENTENCING DATE	002		01/06/97	

(Continued to page 2)

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0032	01/17/97	HEAR/DEFT'S REQUEST RESET TRIAL DATE	001		01/29/97		
0033	01/24/97	OTTE/ORDER TO TRANSPORT PRISONER	001		01/24/97		
0034	01/29/97	OCAL/STATUS CHECK: RE-SET TRIAL DATE	001		02/07/97		
0035	01/30/97	TRAN/REPORTER'S TRANSCRIPT DEFENDANTS MOTION TO RESET TRIAL DATE	001		01/29/97		
0036	01/30/97	OTTE/ORDER TO TRANSPORT PRISONER	001		01/30/97		
0037	02/07/97	CALC/CALENDAR CALL	001		06/13/97		
0038	02/07/97	JURY/TRIAL BY JURY	001		06/18/97		
0039	02/10/97	ORDR/ORDER TO RETAIN INMATE IN CLARK COUNTY DETENTION CENTER	001				
0040	04/30/97	MOT /STATE'S MOTION TO ENDORSE NAMES ON INFORMATION	001	GR	05/05/97		
0041	04/30/97	INFO/MOTION AND NOTICE OF MOTION TO ENDORSE NAMES OF INFORMATION	001		05/05/97		
0042	04/30/97	INFO/MOTION AND NOTICE OF MOTION TO ENDORSE NAMES OF INFORMATION	001		04/28/97		
0043	07/02/96	CINF/INFORMATION CORRECTED IN OPEN COURT	001		05/05/97		
0044	05/05/97	ORDR/ORDER TO ENDORSE NAMES ON INFORMATION	001				
0045	05/06/97	TRAN/REPORTER'S TRANSCRIPT STATE'S MOTION TO ENDORSE NAMES ON INFORMATION	001		05/05/97		
0046	05/19/97	OTTE/ORDER TO TRANSPORT PRISONER	001		05/19/97		
0047	05/23/97	MOT /DEFT'S MOTION TO ALLOW JURY QUESTIONNAIRE	001	GR	05/28/97		
0049	05/27/97	ANSW/ANSWER IN OPPOSITION TO MOTION TO ALLOW JURY QUESTIONNAIRE	001				
0050	05/28/97	ORDR/ORDER RELEASING EVIDENCE	001				
0051	05/28/97	REQT/EX PARTE MOTION FOR RELEASE OF EVIDENCE	001				
0052	05/30/97	MOT /JOHN STEFFEN'S MOTION TO WITHDRAW AS COUNSEL	002	GR	08/06/97		
0053	05/30/97	TRAN/REPORTER'S TRANSCRIPT OF MAY 28, 1997 DEFENDANT'S MOTION TO ALLOW JURY QUESTI	001		05/28/97		Y
0054	05/30/97	REQT/MOTION TO WITHDRAW AS ATTORNEY OF RECORD FOR DEFENDANT KENYA KEITA HALL	002				Y
0056	06/03/97	MOT /ALL PENDING MOTIONS	002		06/02/97		
0057	06/09/97	ORDR/ORDER GRANTING PERMISSION OF MEDIA ENTRY	002				
0058	06/09/97	REQT/MEDIA REQUEST	002				
0059	06/11/97	MOT /DEFT HALL'S MOTION TO PREVENT BEING CALLED TO APPEAR/TESTIFY	002	GR	06/16/97		
0060	06/12/97	REQT/MOTION TO USE REPORTED TESTIMONY	001				
0061	06/12/97	INFO/MOTION AND NOTICE OF MOTION TO ENDORSE NAMES OF INFORMATION	001		06/13/97		
0062	06/11/97	REQT/MOTION TO PREVENT CO-DEFENDANT KENYA KEITA HALL FROM BEING CALLED TO APPEAR	002				Y
0063	06/13/97	MOT /STATE'S MOTION TO ENDORSE	001	GR	06/16/97		
0064	06/12/97	MOT /STATE'S MOTION TO USE REPORTED TESTIMONY MOTION	001	GR	06/16/97		
0065	06/13/97	MOT /ALL PENDING MOTIONS	AL		06/13/97		

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0066	06/16/97	HEAR/AT THE REQUEST OF THE COURT				06/18/97	
0067	06/13/97	ORDR/ORDER FOR TRANSCRIPTS		001			
0068	06/16/97	CRJL/CRIMINAL JURY LIST				06/16/97	Y
004390D ST PD D1FC							
D1ST PD D 004390							
0069	06/17/97	MOT /DEFT'S MOTION FOR PROTECTIVE ORDER		002	MT	06/18/97	
0070	06/17/97	MOT /ALL PENDING MOTIONS		AL		06/16/97	
0071	06/18/97	TRAN/REPORTER'S TRANSCRIPT OF JUNE 17, 1997		001		06/17/97	
		JURY TRIAL DAY 2 VOLUME III		001			
0072	06/18/97	JURY/AMENDED JURY		AL			
0073	06/23/97	HEAR/PENALTY HEARING		001		06/25/97	
0074	06/20/97	TRAN/REPORTER'S TRANSCRIPT OF JUNE 16, 1997		001		06/16/97	
		JURY TRIAL DAY I VOLUME I		001			
0075	06/20/97	TRAN/REPORTER'S TRANSCRIPT OF JUNE 18, 1997		001		06/18/97	
		JURY TRIAL DAY III VOLUME IV		001			
0076	06/17/97	TRAN/REPORTER'S TRANSCRIPT OF JUNE 16, 1997		001		06/16/97	
		JURY TRIAL DAY 1 VOLUME II		001			
0078	06/26/97	TRAN/REPORTER'S TRANSCRIPT OF JUNE 13, 1997		001		06/13/97	
		OF CALENDAR CALL		001			
0079	06/26/97	TRAN/REPORTER'S TRANSCRIPT OF JUNE 23, 1997		001		06/23/97	
		JURY TRIAL PENALTY PHASE DAY 1		001			
0080	06/26/97	NOEV/NOTICE OF EXHIBIT(S) IN THE VAULT				06/17/97	
0081	06/27/97	TRAN/REPORTER'S TRANSCRIPT OF JUNE 25, 1997		001		06/25/97	
		JURY TRIAL-PENALTY PHASE-DAY 2		001			
0082	06/25/97	INST/INSTRUCTIONS TO THE JURY		001			
0083	06/25/97	VER /VERDICT		001		06/25/97	
0084	06/25/97	VER /VERDICT		001		06/25/97	
0085	06/25/97	VER /SPECIAL VERDICT COUNT III		001		06/25/97	
0086	06/25/97	VER /SPECIAL VERDICT		001		06/25/97	
0087	06/25/97	VER /SPECIAL VERDICT COUNT II		001		06/25/97	
0088	06/25/97	VER /SPECIAL VERDICT COUNT II		001		06/25/97	
0089	07/01/97	SENT/SENTENCING		001	GR	08/25/97	
0090	06/18/97	INST/INSTRUCTIONS TO THE JURY		001			
0091	06/18/97	VER /VERDICT COUNT IV		001		06/18/97	
0092	06/18/97	VER /VERDICT COUNT II		001		06/18/97	
0093	06/18/97	VER /VERDICT COUNT III		001		06/18/97	
0094	06/18/97	VER /VERDICT COUNT I		001		06/18/97	
0095	06/18/97	VER /VERDICT COUNT V		001		06/18/97	
0096	06/18/97	VER /VERDICT COUNT VI		001		06/18/97	
0097	07/02/96	CINF/INFORMATION CORRECTED IN OPEN COURT		001		06/16/97	
0098	07/07/97	NOTC/NOTICE TRANSCRIPTS ON SHELVES				06/16/97	
0099	06/16/97	ORDR/ORDER TO ENDORSE NAMES ON INFORMATION		001			
0100	07/07/97	NOEV/NOTICE OF TRANSCRIPT ON SHELVES				06/25/97	
0101	07/22/97	EXPR/EX PARTE APPLICATION AND ORDER FOR		001			
		PAYMENT OF EXCESS EXPERT FEES		001			
0102	08/06/97	ARGU/ARGUMENT: DEFT'S REQUEST TO WITHDRAW		002	DN	09/04/97	
		GUILTY PLEA		002			
0103	08/12/97	ORDR/ORDER APPOINTING COUNSEL		002			
0104	08/13/97	CERT/CERTIFICATE OF MAILING		002		08/13/97	
0105	08/21/97	MOT /ALL PENDING MOTIONS 8/21/97		002		08/21/97	
0106	08/26/97	HEAR/AT THE REQUEST OF THE COURT		001		08/27/97	
		CLARIFICATION OF SENTENCE		001			

(Continued to page 4)

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0107	08/25/97		TRAN/REPORTER'S TRANSCRIPT RE: SENTENCING	001		08/25/97	
0108	08/27/97		JUDG/JUDGMENT OF CONVICTION	001		08/27/97	
0109	08/27/97		EMO /ENTRY OF MINUTE ORDER	001			
0110	08/27/97		WARR/WARRANT OF EXECUTION	001			
0111	08/27/97		ORDR/ORDER OF EXECUTION	001			
0112	08/28/97		TRAN/REPORTER'S TRANSCRIPT RE: CLARIFICATION OF SENTENCE	001		08/27/97	
0114	09/09/97		STAT/CASE APPEAL STATEMENT	001			
0115	09/09/97		NOAS/NOTICE OF APPEAL	001	AP		
0116	09/11/97		CASO/CASE (RE)ACTIVATED ON				
0117	09/11/97		MOT /DEFT'S MOTION FOR STAY OF EXECUTION	001	GR	09/23/97	
0118	09/10/97		CERT/CERTIFICATE OF MAILING	001		09/10/97	
0119	09/11/97		ROC /RECEIPT OF COPY	001		09/11/97	
0120	09/11/97		STIP/STIPULATION	002			
0121	09/11/97		ORDR/ORDER	002			
0122	09/15/97		NOAS/NOTICE OF APPEAL	002	AP		
0123	09/15/97		STAT/CASE APPEAL STATEMENT	002			
0124	09/16/97		JUDG/AMENDED JUDGMENT OF CONVICTION - PLEA	001		09/16/97	
0125	09/16/97		JMNT/AMENDED JUDGMENT	0001		09/17/97	
0126	09/16/97		JMNT/ADMINISTRATION/ASSESSMENT FEE	0001		09/17/97	
0127	02/10/97		TRAN/REPORTER'S TRANSCRIPT OF FEBRUARY 7, 1997 OF STATUS CHECK: RE-SET TRIAL DATE	001		02/07/97	
0128	09/17/97		CERT/CERTIFICATE OF MAILING	002		09/16/97	
0129	09/18/97		CERT/CERTIFICATE OF MAILING	001		09/18/97	
0130	09/17/97		ORDR/ORDER FOR TRANSCRIPTS	001			
0131	09/19/97		ROC /RECEIPT OF COPY	001		09/18/97	
0132	06/16/97		LIST/JURY LIST				
0133	09/23/97		ORDR/ORDER TO STAY EXECUTION	001			
0134	09/30/97		CERT/CERTIFICATE OF MAILING	001		09/29/97	
0135	09/30/97		TRAN/REPORTER'S TRANSCRIPT OF DECEMBER 18, 1996	001		12/18/96	
0136	09/26/97		TRAN/REPORTER'S TRANSCRIPT OF SEPTEMBER 23, 1997 MOTION FOR STAY OF EXECUTION	001		09/23/97	
0137	10/01/97		ROC /RECEIPT OF COPY	001		10/01/97	
0138	10/09/97		TRAN/REPORTER'S TRANSCRIPT OF OCTOBER 02, 1996 PROCEEDINGS	001		10/02/96	
0139	10/09/97		JUDG/JUDGMENT OF CONVICTION - PLEA	002		10/09/97	
0140	10/09/97		TRAN/REPORTER'S TRANSCRIPT OF JULY 10, 1996	001		07/10/96	
0141	10/09/97		JMNT/ADMINISTRATION/ASSESSMENT FEE	0002		10/10/97	
0142	10/09/97		TRAN/REPORTER'S TRANSCRIPT SENTENCING	002		09/04/97	
0143	10/09/97		CERT/CERTIFICATE OF MAILING	002		10/09/97	
0144	10/20/97		TRAN/REPORTER'S TRANSCRIPT OF OCTOBER 21, 1996	001		10/21/96	
0145	10/20/97		TRAN/REPORTER'S TRANSCRIPT OF SEPTEMBER 18, 1996	001		09/18/96	
0146	11/03/97		ORDR/ORDER APPOINTING COUNSEL	002			
0147	10/30/97		TRAN/REPORTER'S TRANSCRIPT OF JULY 03, 1996	002		07/03/96	
0148	11/17/97		HEAR/AT THE REQUEST OF THE COURT CONFIRMATION VL 11-18-97	002	VC	11/20/97	
0149	11/18/97		MOT /STATE'S REQUEST SUPREME COURT ORDER: APPOINT COUNSEL	002		11/24/97	
0150	11/17/97		ORDR/ORDER FOR TRANSCRIPTS	001			

(Continued to page 5)



NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0151	11/17/97	ROC	/RECEIPT OF COPY	001		11/17/97	
0152	11/17/97	TRAN	/REPORTER'S TRANSCRIPT DEFT'S MOTION FOR DEFT HALL TO INVOKE FIFTH AMENDMENT	AL AL		06/16/97	Y
RIGHTS							
0153	01/07/98	ORDR	/ORDER APPOINTING COUNSEL	002			
0154	06/05/98	TRAN	/REPORTER'S TRANSCRIPT	002		06/13/97	
0155	06/05/98	CERT	/CERTIFICATE OF MAILING	002		06/05/98	
0156	12/28/98	ASSG	/Reassign Case From Judge Bonaventure TO Judge Loehrer				
0157	01/28/99	MOT	/DEFT'S PRO PER MOTION FOR WITHDRAWAL OF ATTY/TRANSFER RECORDS	002 002	OC	02/09/99	
0158	01/27/99	WOA	/NOTICE OF WITHDRAWAL OF COUNSEL	002		01/27/99	
0159	01/28/99	REQT	/MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS	002 002		02/09/99	
0160	01/27/99	ROC	/RECEIPT OF COPY	002		01/27/99	
0161	02/10/99	NSCO	/NEVADA SUPREME COURT JUDGMENT / ORDERED APPEAL DISMISSED	002 002	GR	02/10/99	
0162	02/10/99	JMNT	/REMITTITUR APPEAL DISMISSED	0001		02/11/99	
0163	03/24/99	APPL	/EX-PARTE APPLICATION FOR FEES IN EXCESS OF STATUTORY MAXIMUM	002 002			
0164	04/09/99	ORDR	/ORDER FOR FEES IN EXCESS OF STATUTORY MAXIMUM	002 002			
0165	10/27/99	MOT	/DEFT'S MOTION FOR STAY OF EXECUTION	001	DN	11/09/99	
0166	10/27/99	CASO	/CASE (RE)ACTIVATED ON				
0167	11/10/99	MOT	/SPECIAL PD'S MOTION TO WITHDRAW AS COUNSEL/MOTION TO APPOINT COUNSEL/STAY	001 001	GR	11/30/99	
0168	11/10/99	REQT	/MOTION TO WITHDRAW AS ATTORNEY OF RECORD MOTION TO HAVE COUNSEL	001 001		11/29/99	Y
APPOINTED FOR POST-CONVICTION PROCEEDINGS AND MOTION FOT STAY OF EXECUTION							
0169	11/04/99	CCJA	/NEVADA SUPREME COURT CLERKS CERTIFICATE/ JUDGMENT - AFFIRMED	001 001		11/04/99	
0170	11/18/99	ORDR	/ORDER DENYING DEFENDANTS MOTION FOR STAY OF EXECUTION	001 001	HG	11/09/99	
0171	11/30/99	HEAR	/CONFIRMATION OF COUNSEL (SCHIECK)	001	CM	12/02/99	
0172	11/30/99	WITH	/ORDER TO WITHDRAW AS ATTORNEY OF RECORD	001		11/30/99	
0173	11/30/99	STAY	/ORDER FOR STAY OF EXECUTION	001			
0174	12/06/99	ORDR	/ORDER APPOINTING COUNSEL	001			
0175	01/06/00	PET	/DEFT'S PETITION FOR WRIT OF HABEAS CORPUS	001 001		01/20/00	
0176	01/10/00	CRTF	/CERTIFICATE OF SERVICE BY MAIL	001		01/10/00	
0177	01/20/00	ARGU	/ARGUMENT AND DECISION	001		11/02/00	
0178	11/02/00	MOT	/SET TIME CERTAIN: ARGUMENT AND DECISION	001		01/29/01	
0179	01/29/01	ARGU	/ARGUMENT AND DECISION: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS VE 6/20	001 001	VC	08/27/01	
0180	01/30/01	ORDR	/ORDER	001			
0181	01/30/01	CRTF	/CERTIFICATE ACKNOWLEDGING TRANSMITTAL OF CERTIFIED TRANSCRIPT TO THE CLERK	001 001		01/30/01	Y
OF THE SUPREME COURT							
0182	01/30/01	TRAN	/REPORTER'S TRANSCRIPT OF SET TIME CERTAIN ARGUMENT AND DECISION	001 001		01/29/01	
0183	04/17/01	MOT	/STATE'S MOTION TO PLACE ON CALENDAR	001		04/30/01	
0184	05/17/01	REQT	/EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEYS FEES IN POST	001 001			Y

(Continued to page 6)

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
CONVICTION PROCEEDINGS						
0185	05/24/01	ORDR/ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEYS FEES	001		05/24/01	
0186	06/20/01	ARGU/ARGUMENT PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION	001	DP	09/26/01	
0187	06/20/01	ORDR/STIPULATION AND ORDER TO VACATE HEARING ON 8-27-01 AND RE-SET BRIEFING SCHEDULE	001		06/20/01	
0188	06/21/01	NOTC/NOTICE OF ENTRY OF ORDER	001		06/21/01	
0189	07/16/01	PET /SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION AND	001			Y
POINTS AND AUTHORITIES IN SUPPORT THEREOF						
0190	08/28/01	OPPS/OPPOSITION TO DEFENDANTS SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS	001			Y
POST-CONVICTION						
0191	09/26/01	HEAR/EVIDENTIARY HEARING	001		03/15/02	
0192	03/27/01	SUBP/SUBPOENA DUCES TECUM	001	SC	03/30/01	
			001	SV	03/26/01	
0193	10/16/01	REQT/EX PARTE MOTION FOR ORDER TO TRANSPORT DEFENDANT	001			
0194	10/22/01	OTTE/EX PARTE ORDER TO TRANSPORT DEFENDANT	001		11/29/01	
0195	10/23/01	ROP /RECEIPT OF CERTIFIED COPIES	001			
0196	12/19/01	OTTE/EX PARTE ORDER TO TRANSPORT PETITIONER	001		01/14/02	
0197	12/21/01	HEAR/EVIDENTIARY HEARING	001	RS	01/22/02	
0198	12/21/01	ROP /RECEIPT OF CERTIFIED COPIES	001			
0199	01/17/02	OTTE/EX PARTE ORDER TO TRANSPORT	001		01/22/02	
0200	01/25/02	ORDR/ORDER TO PREPARE TRANSCRIPT	001			
0201	01/25/02	TRAN/REPORTER'S TRANSCRIPT OF EVIDENTIARY HEARING	001		01/22/02	
0202	01/28/02	ROC /RECEIPT OF COPY	001		01/28/02	
0203	03/12/02	OTTE/EX PARTE ORDER TO TRANSPORT PETITIONER	001		03/15/02	
0204	03/15/02	HEAR/DECISION: EVIDENTIARY HEARING	001		06/05/02	
0205	03/18/02	TRAN/REPORTER'S TRANSCRIPT OF EVIDENTIARY HEARING VOLUME II	001		03/15/02	
0206	03/18/02	ORDR/ORDER	001			
0207	04/11/02	REQT/EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEYS FEES IN POST CONVICTION	001			Y
PROCEEDINGS						
0208	04/15/02	ORDR/ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEYS FEES	001		04/15/02	
0209	06/05/02	HEAR/DECISION	001	MH	08/21/02	
0210	06/13/02	BREF/PETITIONERS POST HEARING BRIEF	001			
0211	07/10/02	BREF/STATES POST HEARING BRIEF	001			
0212	08/22/02	ORDR/ORDER APPOINTING APPELLATE COUNSEL	001	HG	08/21/02	
0213	09/06/02	JUDG/FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER	001	HG	08/21/02	
0214	09/10/02	NOED/NOTICE OF ENTRY OF DECISION AND ORDER	001			
0215	09/18/02	STAT/CASE APPEAL STATEMENT	001			

ORIGINAL

20

1 **ORDR**

2 STEWART L. BELL  
3 Clark County District Attorney  
4 Nevada Bar #000477  
5 DAVID J.J. ROGER  
6 Chief Deputy District Attorney  
7 Nevada Bar #002781  
8 200 South Third Street  
9 Las Vegas, Nevada 89155-2211  
10 (702) 455-4711  
11 Attorney for Plaintiff

FILED

SEP 6 5 48 PM '02

*Sally B. Loehrer*  
CLERK

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA,  
12 Plaintiff,

13 -vs-

14 MARLO THOMAS,  
15 aka Marlow Demitrius Thomas,  
16 #1060797

16 Defendant.

Case No. C136862

Dept No. XV

18 FINDINGS OF FACT, CONCLUSIONS OF  
19 LAW AND ORDER

20 DATE OF HEARING: 8-21-02  
21 TIME OF HEARING: 8:30 A.M.

22 THIS CAUSE having come on for hearing before the Honorable Sally Loehrer,  
23 District Judge, on the 21st day of August, 2002, the Petitioner not being present, represented  
24 by DAVID M. SCHIECK, ESQ., the Respondent being represented by STEWART L.  
25 BELL, District Attorney, by and through DAVID J.J. ROGER, Chief Deputy District  
26 Attorney, and the Court having considered the matter, including briefs, transcripts,  
27 arguments of counsel, and documents on file herein, now therefore, the Court makes the  
28 following findings of fact and conclusions of law:

C. SEP 11 6 2002  
COUNTY CLERK

## FINDINGS OF FACT

1. On July 2, 1996, Marlo Thomas, hereinafter "Defendant", was charged by way of Information with Conspiracy to Commit Murder and/or Robbery (Felony- in violation of NRS 200.010, 200.030, 200.380, 193.480); Two counts of Murder with Use of a Deadly Weapon (Open) (Felony- in violation of NRS 200.010, 200.030, 193.165); Robbery with Use of a Deadly Weapon (Felony- in violation of NRS 200.380, 193.165); Burglary While in Possession of a Firearm (Felony- in violation of NRS 205.060); and First Degree Kidnaping with Use of a Deadly Weapon (Felony- in violation of NRS 200.310, 200.320, 193.165) in connection with the April 15, 1996, stabbing deaths of Matthew Gianakis and Carl Dixon. ~~2~~

The State filed a Notice Of Intent To Seek Death Penalty setting forth numerous aggravating circumstances on July 3, 1996.

2. Defendant entered a plea of not guilty to all charges on July 10, 1996. Subsequently on June 16, 1997, trial commenced before the Honorable Joseph T. Bonaventure, District Court Judge. The jury returned a verdict of guilty of Count I: Conspiracy to Commit Murder and/or Robbery; Count II: Murder of the First Degree with Use of a Deadly Weapon; Count III: Murder of the First Degree with Use of a Deadly Weapon; Count IV: Robbery with Use of a Deadly Weapon; Count V: Burglary While in Possession of a Firearm; and Count VI: First Degree Kidnaping with Use of a Deadly Weapon.

3. A penalty hearing was then held and on August 25, 1997, Defendant was sentenced to Count I: a term of one hundred twenty (120) months maximum with a minimum of forty-eight (48) months; Count II: death; Count III: death; Count IV: one hundred eighty (180) months maximum with a minimum of seventy-two (72) months with an equal and consecutive term of one hundred eighty (180) months maximum with a minimum of seventy-two (72) months for weapon enhancement, consecutive to Count I; Count V: one hundred eighty (180) months maximum with a minimum of seventy-two (72) months, consecutive to Count IV; Count VI: life without the possibility of parole with an equal and consecutive life without the possibility of parole for weapon enhancement consecutive to Count V. The court filed its Judgment of Conviction on August 27, 1997. The court then

1 filed an Amended Judgment of Conviction on September 16, 1997 (adding an  
2 Administrative Fee of \$25).

3 4. Defendant filed his timely Notice of Appeal on September 9, 1997. In it, the  
4 Defendant alleged that: 1) the district court erred by permitting the State to use a peremptory  
5 challenge on an African-American male venire person; 2) the district court erred by  
6 admitting the testimony of a witness who was "unavailable"; 3) the prosecutor committed  
7 misconduct by not granting co-defendant Kenya Hall complete immunity so that Hall would  
8 be able to testify without incriminating himself; 4) NRS 178.388(1) was violated because the  
9 Defendant was not present at the June 13, 1997 hearing; 5) the district court erred by  
10 admitting autopsy photographs of the victims, Gianakis and Nixon; 6) the district court erred  
11 by admitting an enlarged version of a previously admitted diagram depicting Dixon's body;  
12 7) the district court erred by denying Defendant's motion for a mistrial after Defendant's  
13 aunt Emma Nash inadvertently testified that the Defendant had been in jail; 8) insufficient  
14 evidence existed to support the jury's verdict on his conviction for each count and the deadly  
15 weapon enhancement for murder and kidnaping; 9) the district court erred by admitting  
16 certain prison documents; 10) the death penalty was excessive punishment; 11) the district  
17 court erred by admitting cumulative evidence of the Defendant's prior bad acts during the  
18 penalty phase; 12) the district court erroneously instructed the jury during both the guilt and  
19 penalty phases; 13) the district court erred by permitting the jury to be "death qualified"; 14)  
20 the district court erroneously admitted victim impact statements; and 15) the prosecutor  
21 committed misconduct during the penalty phase of closing arguments. The Supreme Court  
22 affirmed the Defendant's conviction and death sentence. The Supreme Court issued its  
23 remittitur on October 26, 1999.

24 5. The Defendant filed a Petition for Writ of Habeas Corpus on January 6, 2000.  
25 Thereafter, defense counsel filed a Supplemental Petition for Writ of Habeas Corpus (Post  
26 Conviction). In ground 1 of defense counsel's Supplemental Petition for Writ of Habeas  
27 Corpus, defense counsel claimed Defendant is entitled to an evidentiary hearing on his  
28 petition. In ground 2, 3, 4, and 5 defense counsel claimed ineffective assistance of counsel.

1 The Defendant claims that defense counsel: 1) failed to make contemporaneous objections  
2 on valid issues thereby precluding meaningful appellate review; 2) failed to make  
3 contemporaneous objections on valid issues during trial and appellate counsel failed to raise  
4 these issues on direct appeal; 3) was not prepared for critical stages of the proceedings and  
5 failed to conduct proper investigation prior to trial; 4) failed to properly prepare jury  
6 instructions, cross-examine witnesses, and present evidence at both the trial and penalty  
7 stages of the proceedings; and 5) failed to file a complete record on appeal and failed to raise  
8 meritorious issues on direct appeal. In ground 6, Defendant claimed that the Nevada  
9 Supreme Court's review of cases in which the death penalty has been imposed is  
10 constitutionally inadequate. In ground 7, Defendant claims that his conviction is invalid  
11 because he was tried by a jury that was under-represented of African Americans.

12 6. On January 22, 2002, and on March 15, 2002, a limited evidentiary hearing was held.

13 7. On August 21, 2002, Defendant's Petition for Writ of Habeas Corpus was denied.

14 8. Trial counsel was not ineffective.

15 9. Appellate counsel was not ineffective.

16 10. This court does not have jurisdiction to review actions of the Nevada Supreme Court.

17 11. Defendant was tried by an impartial jury.

#### 18 CONCLUSION OF LAW

19 1. The Supreme Court of Nevada in Bolden v. State, 99 Nev. 181, 659 P.2d 886 (1983),  
20 held that there should be a hearing on the allegation of ineffective assistance of counsel if the  
21 defendant 1) presents an affidavit, 2) which presents factual allegations of the attorney's  
22 misconduct, and 3) which is outside of the record and thus not reviewable by this court on  
23 appeal.

24 2. State v. Runningeagle, 859 P.2d 169, 173 (Ariz. 1993), cited by the Supreme Court of  
25 Nevada in Browne v. State, 113 Nev. 305, 311, 933 P.2d 187, 190-91 (1997), stands for the  
26 proposition that a defendant is only entitled to an evidentiary hearing when he presents a  
27 colorable claim. A colorable claim is one that, if the allegations are true, might have  
28

1 changed the outcome. Id. The Defendant in the instant case did not present any colorable  
2 claims against trial counsel. The Defendant must show that his counsel's performance was  
3 deficient, and that the deficient performance prejudiced his defense.

4 3. Drake v. State, 108 Nev. 523, 836 P.2d 52 (1992) does not apply to the instant case.

5 4. In Nevada, the appropriate vehicle for review of whether counsel was effective is a  
6 post-conviction relief proceeding. McKague v. Warden, 112 Nev. 159, 912 P.2d 255, 257,  
7 n.4 (1996). In order to assert a claim for ineffective assistance of counsel the defendant must  
8 prove that he was denied "reasonably effective assistance" of counsel by satisfying the  
9 two-prong test of Strickland v. Washington, 466 U.S. 668, 686-687, 104 S.Ct. 2052,  
10 2063-2064 (1984); *see*, State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).  
11 Under this test, the defendant must show first that his counsel's representation fell below an  
12 objective standard of reasonableness, and second, that but for counsel's errors, there is a  
13 reasonable probability that the result of the proceedings would have been different. *See*  
14 Strickland, 466 U.S. at 687-688 & 694, 104 S.Ct. at 2065 & 2068.

15 5. In considering whether trial counsel has met this standard, the court should first  
16 determine whether counsel made a "sufficient inquiry into the information . . . pertinent to  
17 his client's case." Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996); *citing*,  
18 Strickland, 466 U.S. at 690-691, 104 S.Ct. at 2066. Once this decision is made, the court  
19 should consider whether counsel made "a reasonable strategy decision on how to proceed  
20 with his client's case." Doleman, 112 Nev. at 846, 921 P.2d at 280; *citing*, Strickland, 466  
21 U.S. at 690-691, 104 S.Ct. at 2066. Finally, counsel's strategy decision is a "tactical"  
22 decision and will be "virtually unchallengeable absent extraordinary circumstances."  
23 Doleman, 112 Nev. at 846, 921 P.2d at 280; *see also*, Howard v State, 106 Nev. 713, 722,  
24 800 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691, 104 S.Ct. at 2066; State v. Meeker,  
25 693 P.2d 911, 917 (Ariz. 1984).

26 6. Based on the above law, the court begins with the presumption of effectiveness and  
27 then must determine whether or not defendant has demonstrated, by "strong and convincing  
28

1 proof," that counsel was ineffective. Homick v State, 112 Nev. 304, 310, 913 P.2d 1280,  
2 1285 (1996); *citing* Lenz v. State, 97 Nev. 65, 66, 624 P.2d 15, 16 (1981). The role of a court  
3 in considering allegations of ineffective assistance of counsel, is "not to pass upon the merits  
4 of the action not taken but to determine whether, under the particular facts and circumstances  
5 of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State,  
6 94 Nev. 671, 675, 584 P.2d 708, 711 (1978); *citing*, Cooper v. Fitzharris, 551 F.2d 1162,  
7 1166 (9th Cir. 1977).

8 7. This analysis does not mean that the court should "second guess reasoned choices  
9 between trial tactics nor does it mean that defense counsel, to protect himself against  
10 allegations of inadequacy, must make every conceivable motion no matter how remote the  
11 possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711; *citing*, Cooper, 551  
12 F.2d at 1166 (9th Cir. 1977). In essence, the court must "judge the reasonableness of  
13 counsel's challenged conduct on the facts of the particular case, viewed as of the time of  
14 counsel's conduct." Strickland, 466 U.S. at 690, 104 S.Ct. at 2066. .

15 8. Defendant failed to show proof that counsel was ineffective and as a result failed to  
16 satisfy the Strickland standard. Furthermore, Defendant failed to show that but for counsel's  
17 alleged errors, there is a reasonable probability that the result at sentencing would have been  
18 different.

19 9. Pursuant to NRS 175.552, the questions of admissibility during the penalty phase of a  
20 capital murder trial are largely left to the discretion of the trial judge. In addition, the United  
21 States Supreme Court in Woodson v. North Carolina, 428 U.S. 280, 96 S.Ct. 2978 (1976),  
22 held that the relevant factors to be considered by a jury in imposing a penalty for a capital  
23 crime are "the character and record of the individual offender and the circumstances of the  
24 particular offense."

25 10. A jury considering the death penalty may consider victim-impact evidence as it  
26 relates to the victim's character and the emotional impact of the murder on the victim's  
27  
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1 family. Rippo v. State, 113 Nev. 1239, 946 P.2d 1017 (1997); citing Payne v. Tennessee,  
2 501 U.S. 808, 827, 111 S.Ct. 2597 (1991).

3 11. "It is well established in Nevada that evidence of prior convictions is admissible at  
4 penalty hearings when relevant and credible and not dubious and tenuous." Jones v. State,  
5 101 Nev. 573, 707 P.2d 1128 (1985); see also, Biondi v. State, 101 Nev. 252, 699 P.2d 1062  
6 (1985). "Although details of prior crimes undoubtedly have a greater impact on a jury than a  
7 bare record conviction, their admission may aid the trier in assessing the character of the  
8 defendant." Jones, 101 Nev. at 1132.

9 12. A jury considering the death penalty may consider victim-impact evidence as it  
10 relates to the victim's character and the emotional impact of the murder on the victim's  
11 family. Rippo v. State, 113 Nev. 1239, 946 P.2d 1017 (1997); citing Payne v Tennessee,  
12 501 U.S. 808, 827, 111 S.Ct. 2597 (1991).

13 13. A jury considering the death penalty can consider the emotional impact of the murder  
14 on the victim's family. Payne, 501 U.S. 808 (1991).

15 14. In Homick v. State, 108 Nev. 127, 825 P.2d 600 (1992), the Nevada Supreme Court  
16 adopted the holding in Payne, and found that it comported fully with the intendment of the  
17 Nevada Constitution.

18 15. Testimony did not violate the Defendant's constitutional rights. See Wesley v. State,  
19 112 Nev. 503, 916 P.2d 793 (1996); Castillo v. State, 114 Nev. 271, 956 P.2d 103 (1998).

20 16. Trial counsel did not have a good faith basis to object to the penalty hearing  
21 testimony. See Williams v. New York, 337 U.S. 241, 69 S.Ct. 1079 (1949).

22 17. The court begins with the presumption of effectiveness and then must determine  
23 whether or not defendant has demonstrated, by "strong and convincing proof," that counsel  
24 was ineffective. Homick v State, 112 Nev. 304, 310, 913 P.2d 1280, 1285 (1996); citing  
25 Lenz v. State, 97 Nev. 65, 66, 624 P.2d 15, 16 (1981).

26 18. The role of a court in considering allegations of ineffective assistance of counsel, is  
27 "not to pass upon the merits of the action not taken but to determine whether, under the  
28

1 particular facts and circumstances of the case, trial counsel failed to render reasonably  
2 effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978); *citing*,  
3 Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977).

4 19. Defendant failed to show that "but for" trial counsel's ineffectiveness, the result  
5 would have been different. *See Strickland*, 466 U.S. 668, 104 S.Ct. 2052.

6 20. The standard of review for prosecutorial misconduct rests upon the defendant  
7 showing "that the remarks made by the prosecutor were 'patently prejudicial.'" Riker v.  
8 State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (citing Libby v. State, 109 Nev. 905,  
9 911, 859 P.2d 1050, 1054 (1993)). This is based on a defendant's right to have a fair trial,  
10 not necessarily a perfect one. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990).  
11 The relevant inquiry is whether the prosecutor's statements so contaminated the proceedings  
12 with unfairness as to make the result a denial of due process. Darden v. Wainwright, 477  
13 U.S. 168, 181, 106 S.Ct. 2464, 2471 (1986).

14 21. Trial counsel, in the instant case, did not have a good faith basis to object to the  
15 prosecutor's comments. The Defendant must show that the statements violated a clear and  
16 unequivocal rule of law, he was denied a substantial right, and as a result, he was materially  
17 prejudiced. Libby, 109 Nev. at 911, 859 P.2d at 1054.

18 22. The prosecutor did not improperly argue that the jury should send a message to  
19 society. Furthermore, Defendant failed to show that counsel acted unreasonably. The role  
20 of the court is "not to pass upon the merits of the action not taken but to determine whether,  
21 under the particular facts and circumstances of the case, trial counsel failed to render  
22 reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
23 (1978); *citing*, Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977).

24 23. Trial counsel did not have a proper basis to object to the prosecutorial comments and  
25 the Defendant failed to satisfy the first prong of Strickland showing that trial counsel acted  
26 unreasonably.  
27  
28

1 24. The evidence was sufficient for the jurors to reasonably find that before acting to kill  
2 the victims the Defendant weighed the reasons for and against his actions, considered the  
3 circumstances, distinctly formed a design to kill, and did not act simply from a rash,  
4 unconsidered impulse. *See Byford*, 994 P.2d 700; *citing Briano v. State*, 94 Nev. 422, 425,  
5 581 P.2d 5, 7 (1978).

6 25. The Felony-Murder instruction accurately depicted the law of Nevada.  
7 NRS 200.380(1) states:

8  
9 1. Robbery is the unlawful taking of personal property from the person of  
10 another, or in his presence, against his will, by means of force or violence  
11 or fear of injury, immediate or future, to his person or property, or the  
12 person or property of a member of his family, or of anyone in his company  
13 at the time of the robbery. A taking is by means of force or fear if force or  
14 fear is used to:

15 (a) Obtain or retain possession of the property;

16 (b) Prevent or overcome resistance to the taking; or

17 (c) Facilitate escape.

18 The degree of force used is immaterial if it is used to compel acquiescence to  
19 the taking of or escaping with the property. A taking constitutes robbery  
20 whenever it appears that, although the taking was fully completed without the  
21 knowledge of the person from whom taken, such knowledge was prevented by  
22 the use of force or fear.

23 26. In *Wesley v. State*, 112 Nev. 503, 916 P.2d 793 (1996), the Supreme Court of Nevada  
24 stated: "[a] district court may instruct the jury not to consider sympathy during a capital  
25 penalty hearing, as long as the court also instructs the jury to consider mitigating factors. *Id.*;  
26 *see also Lay v. State*, 110 Nev. 1189, 1193, 886 P.2d 448, 450-51 (1994). The court further  
27 stated: "[i]n the present case, the district court instructed the jury to consider 'any aspect of  
28 the defendant's character or record and any of the circumstances of the offense that the  
defendant proffers as a basis for a sentence less than death.'" *Wesley*, 112 Nev. at 519.

29 27. Defendant's claim is nothing more than a naked and unsubstantiated claim belied by  
the record. *Hargrove v. State*, 100 Nev. 498, 686 P.2d 222 (1984).

1 28. Trial counsel doesn't have to make every conceivable motion no matter how remote  
2 the possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711; *citing*, Cooper,  
3 551 F.2d at 1166 (9th Cir. 1977). Once trial counsel makes a decision on how to proceed,  
4 the court should consider whether counsel made "a reasonable strategy decision on how to  
5 proceed with his client's case." Doleman, 112 Nev. at 846, 921 P.2d at 280; *citing*,  
6 Strickland, 466 U.S. at 690-691, 104 S.Ct. at 2066.

7 29. The role of a court in considering allegations of ineffective assistance of counsel, is  
8 "not to pass upon the merits of the action not taken but to determine whether, under the  
9 particular facts and circumstances of the case, trial counsel failed to render reasonably  
10 effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978); *citing*,  
11 Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977). Therefore, the Defendant failed  
12 to show that trial counsel acted unreasonably.

13 30. NRS 200.030(4)(a) states: "A person convicted of murder of the first degree is guilty  
14 of a category A felony and shall be punished: (a) By death, only if one or more aggravating  
15 circumstances are found and any mitigating circumstance or circumstances which are found  
16 do not outweigh the aggravating circumstance or circumstances."

17 31. "The use of both robbery and burglary as aggravating factors does not infringe upon a  
18 defendant's due process or double jeopardy rights." Sherman v. State, 114 Nev. 998, 1012;  
19 965 P.2d 903 (1998); Homick v. State, 108 Nev. 127, 825 P.2d 600 (1992); Wilson v. State,  
20 99 Nev. 362, 664 P.2d 328 (1983).

21 32. The prosecutor may outline his case and propose facts he intends to prove. Rice v.  
22 State, 113 Nev. 1300, 1308, 949 P.2d 262, 270 (1997). Even if the prosecutor overstates  
23 what he is later able to prove, misconduct is not present unless he does so in bad faith. Id.  
24 In Browne v. State, 113 Nev. 305, 311, 933 P.2d 187, 190-91(1997), the Nevada Supreme  
25 Court held that reference to a defendant as a "selfish and cruel man" did not rise to the level  
26 requiring reversal. See People v. Benson, 802 P.2d 330, 353-54 (Cal. 1990) (holding  
27  
28

1 prosecutor's comment "this crime is perhaps the most brutal, atrocious, heinous crime," was  
2 merely a comment on the nature of the offense and was permissible);

3 33. In State v. Runnigeagle, 859 P.2d 169, 174 (Ariz. 1993), the Supreme Court of  
4 Arizona held: "The words were a mere characterization of the evidence. The evidence would  
5 show horror. The evidence would show evil behavior. These were reasonable inferences to  
6 be drawn from the evidence. That inferences were made at the beginning of the case, rather  
7 than at the end of the case where they belonged, does not warrant a new trial."

8 34. An ineffective assistance of counsel claim premised upon a theory of a failure to  
9 investigate requires that "[a] defendant who alleges [a] failure to investigate ... must allege  
10 with specificity what the investigation would have revealed and how it would have altered  
11 the outcome of the trial." United States v. Porter, 924 F.2d 395, 397 (1st Cir. 1991)  
12 (quoting United States v. Green, 882 F.2d 999, 1003 (5th Cir. 1989). Furthermore, it is well  
13 established that a claim of ineffective assistance of counsel alleging a failure to properly  
14 investigate will fail where the evidence or testimony sought does not exonerate or exculpate  
15 the defendant. Ford v. State, 105 Nev. 850, 784 P.2d 951 (1989). In examining Defendant's  
16 numerous allegations of failures to investigate, the relevant inquiry was whether counsel's  
17 decisions were reasonable under the circumstances at the time the decision was made.

18  
19 Judicial scrutiny of counsel's performance must be highly deferential. It is all  
20 too tempting for a defendant to second guess counsel's assistance after  
21 conviction or adverse sentence, and it is all too easy for a court, examining  
22 counsel's defense to conclude that a particular act or omission of counsel was  
23 unreasonable.

24 Strickland, 466 U.S. at 689, 104 S.Ct. at 2065 (citing Engle v. Issac, 456 U.S. 107, 133-134,  
25 102 S.Ct. 1558, 1574-75 (1982)).

26 35. Defense counsel's decisions regarding the instructions to be presented to the jury is a  
27 tactical decision which cannot be overturned absent extraordinary circumstances. See,  
28 Doleman, 112 Nev. at 846, 921 P.2d at 280; see also, Howard, 106 Nev. at 722, 800 P.2d at  
180; Strickland, 466 U.S. at 691, 104 S.Ct. at 2066. A jury instruction will be presumed  
valid unless Defendant can show that a "different result would have been obtained had the

1 proposed instruction been given." Barron v. State, 105 Nev. 767, 777, 783 P.2d 444, 451  
2 (1989).

3 36. NRS 200.030(4)(a) states: "A person convicted of murder of the first degree is guilty  
4 of a category A felony and shall be punished: (a) By death, only if one or more aggravating  
5 circumstances are found and any mitigating circumstance or circumstances which are found  
6 do not outweigh the aggravating circumstance or circumstances."

7 37. Defense counsel's decisions regarding the instructions to be presented to the jury is a  
8 tactical decision which cannot be overturned absent extraordinary circumstances. See,  
9 Doleman, 112 Nev. at 846, 921 P.2d at 280; see also, Howard, 106 Nev. at 722, 800 P.2d at  
10 180; Strickland, 466 U.S. at 691, 104 S.Ct. at 2066. A jury instruction will be presumed  
11 valid unless Defendant can show that a "different result would have been obtained had the  
12 proposed instruction been given." Barron v. State, 105 Nev. 767, 777, 783 P.2d 444, 451  
13 (1989).

14 38. Pursuant to NRS 200.030(4)(a), the jury was to weigh the aggravating circumstances  
15 with any mitigating circumstances.

16 39. Once the decision on how to proceed to trial is made, the court should consider  
17 whether counsel made "a reasonable strategy decision on how to proceed with his client's  
18 case." Doleman, 112 Nev. at 846, 921 P.2d at 280; citing, Strickland, 466 U.S. at 690-691,  
19 104 S.Ct. at 2066. Finally, counsel's strategy decision is a "tactical" decision and will be  
20 "virtually unchallengeable absent extraordinary circumstances." Doleman, 112 Nev. at 846,  
21 921 P.2d at 280; see also, Howard v State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990);  
22 Strickland, 466 U.S. at 691, 104 S.Ct. at 2066; State v. Meeker, 693 P.2d 911, 917 (Ariz.  
23 1984).

24 40. The United States Supreme Court has held that there is a constitutional right to  
25 effective assistance of counsel in a direct appeal from a judgment of conviction. Evitts v.  
26 Lucey, 469 U.S. 395, 397, 105 S.Ct. 830, 836-837 (1985); see also, Burke v. State, 110 Nev.  
27 1366, 1368, 887 P.2d 267, 268 (1994). The federal courts have held that in order to claim  
28

1 ineffective assistance of appellate counsel the defendant must satisfy the two-prong test of  
2 Strickland v. Washington by demonstrating that: (1) counsel's representation fell below an  
3 objective standard of reasonableness; and (2) but for counsel's errors, there was a reasonable  
4 probability that the result of the proceedings would have been different. *See Strickland*, 466  
5 U.S. at 687-688 & 694, 104 S.Ct. at 2065 & 2068; Williams v. Collins, 16 F.3d 626, 635  
6 (5th Cir. 1994); Hollenback v. United States, 987 F.2d 1272, 1275 (7th Cir. 1993); Heath v.  
7 Jones, 941 F.2d 1126, 1130 (11th Cir. 1991).

8 41. Further, there is a strong presumption that counsel's performance was reasonable and fell  
9 within "the wide range of reasonable professional assistance." *See, United States v. Aguirre*,  
10 912 F.2d 555, 560 (2nd Cir. 1990); *citing Strickland*, 466 U.S. at 689, 104 S.Ct. at 2065.  
11 The Nevada Supreme Court, although not yet affirming the decision of the federal courts,  
12 has held that all appeals must be "pursued in a manner meeting high standards of diligence,  
13 professionalism and competence." Burke v. State, 110 Nev. 1366, 1368, 887 P.2d 267, 268  
14 (1994).

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

19 43. Defendant did not preserve Defendant's alleged appealable issues at trial. In order to  
20 preserve appellate review, objections to alleged errors must be lodged at trial. McCullough  
21 v. State, 99 Nev. 72, 74, 657 P.2d 1157, 1158 (1983); *see also State v. Taylor*, 114 Nev.  
22 1071, 1077, 968 P.2d 315, 320 (1998), Emmons v. State, 107 Nev. 53, 61, 807 P.2d 718, 723  
23 (1991). "When an appellant fails to specifically object to questions asked or testimony  
24 elicited during trial, but complains about them, in retrospect upon appeal, we [the Supreme  
25 Court of Nevada] do not consider his contention a proper assignment of error." Greene v.  
26 State, 113 Nev. 157, 931 P.2d 54, 65-6 (1997) (reversed on other grounds) (*quoting Wilson*  
27 *v. State*, 86 Nev. 320, 326, 468 P.2d 346, 350 (1970)).  
28

1 44. Defendant has the ultimate authority to make fundamental decisions regarding his  
2 case. Jones v. Barnes, 463 U.S. 745, 751, 103 S.Ct. 3308, 3312 (1983). However, the  
3 defendant does not have a constitutional right to "compel appointed counsel to press  
4 nonfrivolous points requested by the client, if counsel, as a matter of professional judgment,  
5 decides not to present those points." Id. In reaching this conclusion the Supreme Court has  
6 recognized the "importance of winnowing out weaker arguments on appeal and focusing on  
7 one central issue if possible, or at most on a few key issues." Jones, 463 U.S. at 751 -752,  
8 103 S.Ct. at 3313. In particular, a "brief that raises every colorable issue runs the risk of  
9 burying good arguments . . . in a verbal mound made up of strong and weak contentions."  
10 Jones, 463 U.S. at 753, 103 S.Ct. at 3313. The Court has therefore held that for "judges to  
11 second-guess reasonable professional judgments and impose on appointed counsel a duty to  
12 raise every 'colorable' claim suggested by a client would deserve the very goal of vigorous  
13 and effective advocacy." Jones, 463 U.S. at 754, 103 S.Ct. at 3314.

14 45. Similar to the standards of ineffective assistance regarding trial counsel, appellate  
15 counsel has the right and discretion to employ his professional knowledge and tactics in  
16 constructing a defendant's appeal. Unless the defendant can demonstrate that counsel did not  
17 provide "reasonably effective assistance" appellate counsel's professional conduct will be  
18 upheld as effective. See Strickland, 466 U.S. at 687, 104 S.Ct. at 2064; Love, 109 Nev. at  
19 1138, 865 P.2d at 323.

20 46. The Nevada Supreme Court "'possesses inherent power to prescribe rules necessary  
21 or desirable to handle the judicial functioning of the courts' and is charged with the  
22 governance of the district courts, not vice versa." Evans v. State, 117 Nev. Adv. Op. 50  
23 (2001).; citing State v. District Ct., 116 Nev. 953, 963, 11 P.3d 1209, 1215 (2000). See also,  
24 Nevada Constitution Article 6 Section 6.

25 47. Defendant's statistical arguments do not surpass the burden of showing purposeful  
26 discrimination and the State's selection of the jury pool at the time of Defendant's trial was  
27 constitutionally legitimate. The court has held that a jury selection process violates a  
28




1 defendant's due process and equal protection rights only if it can be shown that "members of  
2 appellant's race were excluded systematically from jury duty." Bishop v. State, 92 Nev. 510,  
3 515, 554 P.2d 266, 270 (1976). Purposeful discrimination may not be assumed or merely  
4 asserted, it must be proved. Bishop, 92 Nev. at 515, 554 P.2d at 270; see also, Batson v.  
5 Kentucky, 476 U.S. 79, 93-100, 106 S.Ct. 1712, 1721-1725 (1986). Further, the court has  
6 stated that "[t]he absence of members of one's race on a petit jury may occur. If so, it is not  
7 error. It is the systematic exclusion of members of a race or class that spoils the makeup of  
8 the jury." Bishop, 92 Nev. at 515, 554 P.2d at 270; citing, Collins v. State, 88 Nev. 9, 13,  
9 492 P.2d 991, 993 (1972).

10 **ORDER**

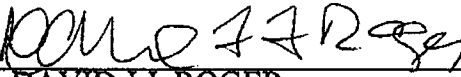
11 Based upon the Findings of Fact and Conclusions of Law contained herein, it is  
12 hereby:

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

15 DATED this 6<sup>th</sup> day of September, 2002.

16  
17   
18 DISTRICT JUDGE

19  
20 STEWART L. BELL  
21 Clark County District Attorney  
22 Nevada Bar #000477

23 BY   
24 DAVID J.J. ROGER  
25 Chief Deputy District Attorney  
26 Nevada Bar #002781  
27  
28

ORIGINAL

5

NOED

FILED

District Court

Clark County, Nevada

SEP 10 2 31 PM '02

*Shirley B. Paraguirre*  
CLERK

MARLO THOMAS,

Petitioner,

Case No. C136862

vs

Dept. No. XV

THE STATE OF NEVADA,

Respondent.

NOTICE OF ENTRY OF  
DECISION AND ORDER

PLEASE TAKE NOTICE that on September 6, 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 September 10, 2002.

SHIRLEY B. PARRAGUIRRE, CLERK OF COURT

By: *Norreta Caldwell*

Norreta Caldwell, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on the 10 day of September, 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  
Attorney - David Schieck Esq.

☐ The United States mail addressed as follows:

Marlo Thomas  
% David M Schieck Esq.

*Norreta Caldwell*  
Norreta Caldwell, Deputy Clerk

Notice of Entry of Decision and Order/2-01/jh

COUNTY CLERK

SEP 10 2002

RECEIVED

1 **ORDER**

2 STEWART L. BELL  
3 Clark County District Attorney  
4 Nevada Bar #000477  
5 DAVID J.J. ROGER  
6 Chief Deputy District Attorney  
7 Nevada Bar #002781  
8 200 South Third Street  
9 Las Vegas, Nevada 89155-2211  
10 (702) 455-4711  
11 Attorney for Plaintiff

FILED  
SEP 3 3 10 PM '02  
CLERK

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

11 THE STATE OF NEVADA, )

12 Plaintiff, )

13 -vs- )

14 MARLO THOMAS,  
15 aka Marlow Demetrius Thomas,  
16 #1060797 )

Defendant.

Case No. C136862

Dept No. XV

18 **FINDINGS OF FACT, CONCLUSIONS OF**  
19 **LAW AND ORDER**

20 DATE OF HEARING: 8-21-02

21 TIME OF HEARING: 8:30 A.M.

22 THIS CAUSE having come on for hearing before the Honorable Sally Loehrer,  
23 District Judge, on the 21st day of August, 2002, the Petitioner not being present, represented  
24 by DAVID M. SCHIECK, ESQ., the Respondent being represented by STEWART L.  
25 BELL, District Attorney, by and through DAVID J.J. ROGER, Chief Deputy District  
26 Attorney, and the Court having considered the matter, including briefs, transcripts,  
27 arguments of counsel, and documents on file herein, now therefore, the Court makes the  
28 following findings of fact and conclusions of law:

## FINDINGS OF FACT

1  
2 1. On July 2, 1996, Marlo Thomas, hereinafter "Defendant", was charged by way of  
3 Information with Conspiracy to Commit Murder and/or Robbery (Felony- in violation of  
4 NRS 200.010, 200.030, 200.380, 193.480); Two counts of Murder with Use of a Deadly  
5 Weapon (Open) (Felony- in violation of NRS 200.010, 200.030, 193.165); Robbery with Use  
6 of a Deadly Weapon (Felony- in violation of NRS 200.380, 193.165); Burglary While in  
7 Possession of a Firearm (Felony- in violation of NRS 205.060); and First Degree Kidnaping  
8 with Use of a Deadly Weapon (Felony- in violation of NRS 200.310, 200.320, 193.165) in  
9 connection with the April 15, 1996, stabbing deaths of Matthew Gianakis and Carl Dixon. 2.

10 The State filed a Notice Of Intent To Seek Death Penalty setting forth numerous  
11 aggravating circumstances on July 3, 1996.

12 2. Defendant entered a plea of not guilty to all charges on July 10, 1996. Subsequently  
13 on June 16, 1997, trial commenced before the Honorable Joseph T. Bonaventure, District  
14 Court Judge. The jury returned a verdict of guilty of Count I: Conspiracy to Commit Murder  
15 and/or Robbery; Count II: Murder of the First Degree with Use of a Deadly Weapon; Count  
16 III: Murder of the First Degree with Use of a Deadly Weapon; Count IV: Robbery with Use  
17 of a Deadly Weapon; Count V: Burglary While in Possession of a Firearm; and Count VI:  
18 First Degree Kidnaping with Use of a Deadly Weapon.

19 3. A penalty hearing was then held and on August 25, 1997, Defendant was sentenced to  
20 Count I: a term of one hundred twenty (120) months maximum with a minimum of forty-  
21 eight (48) months; Count II: death; Count III: death; Count IV: one hundred eighty (180)  
22 months maximum with a minimum of seventy-two (72) months with an equal and  
23 consecutive term of one hundred eighty (180) months maximum with a minimum of  
24 seventy-two (72) months for weapon enhancement, consecutive to Count I; Count V: one  
25 hundred eighty (180) months maximum with a minimum of seventy-two (72) months,  
26 consecutive to Count IV; Count VI: life without the possibility of parole with an equal and  
27 consecutive life without the possibility of parole for weapon enhancement consecutive to  
28 Count V. The court filed its Judgment of Conviction on August 27, 1997. The court then

1 filed an Amended Judgment of Conviction on September 16, 1997 (adding an  
2 Administrative Fee of \$25).

3 4. Defendant filed his timely Notice of Appeal on September 9, 1997. In it, the  
4 Defendant alleged that: 1) the district court erred by permitting the State to use a peremptory  
5 challenge on an African-American male venire person; 2) the district court erred by  
6 admitting the testimony of a witness who was "unavailable"; 3) the prosecutor committed  
7 misconduct by not granting co-defendant Kenya Hall complete immunity so that Hall would  
8 be able to testify without incriminating himself; 4) NRS 178.388(1) was violated because the  
9 Defendant was not present at the June 13, 1997 hearing; 5) the district court erred by  
10 admitting autopsy photographs of the victims, Gianakis and Nixon; 6) the district court erred  
11 by admitting an enlarged version of a previously admitted diagram depicting Dixon's body;  
12 7) the district court erred by denying Defendant's motion for a mistrial after Defendant's  
13 aunt Emma Nash inadvertently testified that the Defendant had been in jail; 8) insufficient  
14 evidence existed to support the jury's verdict on his conviction for each count and the deadly  
15 weapon enhancement for murder and kidnaping; 9) the district court erred by admitting  
16 certain prison documents; 10) the death penalty was excessive punishment; 11) the district  
17 court erred by admitting cumulative evidence of the Defendant's prior bad acts during the  
18 penalty phase; 12) the district court erroneously instructed the jury during both the guilt and  
19 penalty phases; 13) the district court erred by permitting the jury to be "death qualified"; 14)  
20 the district court erroneously admitted victim impact statements; and 15) the prosecutor  
21 committed misconduct during the penalty phase of closing arguments. The Supreme Court  
22 affirmed the Defendant's conviction and death sentence. The Supreme Court issued its  
23 remittitur on October 26, 1999.

24 5. The Defendant filed a Petition for Writ of Habeas Corpus on January 6, 2000.  
25 Thereafter, defense counsel filed a Supplemental Petition for Writ of Habeas Corpus (Post  
26 Conviction). In ground 1 of defense counsel's Supplemental Petition for Writ of Habeas  
27 Corpus, defense counsel claimed Defendant is entitled to an evidentiary hearing on his  
28 petition. In ground 2, 3, 4, and 5 defense counsel claimed ineffective assistance of counsel.

1 The Defendant claims that defense counsel: 1) failed to make contemporaneous objections  
2 on valid issues thereby precluding meaningful appellate review; 2) failed to make  
3 contemporaneous objections on valid issues during trial and appellate counsel failed to raise  
4 these issues on direct appeal; 3) was not prepared for critical stages of the proceedings and  
5 failed to conduct proper investigation prior to trial; 4) failed to properly prepare jury  
6 instructions, cross-examine witnesses, and present evidence at both the trial and penalty  
7 stages of the proceedings; and 5) failed to file a complete record on appeal and failed to raise  
8 meritorious issues on direct appeal. In ground 6, Defendant claimed that the Nevada  
9 Supreme Court's review of cases in which the death penalty has been imposed is  
10 constitutionally inadequate. In ground 7, Defendant claims that his conviction is invalid  
11 because he was tried by a jury that was under-represented of African Americans.

12 6. On January 22, 2002, and on March 15, 2002, a limited evidentiary hearing was held.

13 7. On August 21, 2002, Defendant's Petition for Writ of Habeas Corpus was denied.

14 8. Trial counsel was not ineffective.

15 9. Appellate counsel was not ineffective.

16 10. This court does not have jurisdiction to review actions of the Nevada Supreme Court.

17 11. Defendant was tried by an impartial jury.

### 18 CONCLUSION OF LAW

19 1. The Supreme Court of Nevada in Bolden v. State, 99 Nev. 181, 659 P.2d 886 (1983),  
20 held that there should be a hearing on the allegation of ineffective assistance of counsel if the  
21 defendant 1) presents an affidavit, 2) which presents factual allegations of the attorney's  
22 misconduct, and 3) which is outside of the record and thus not reviewable by this court on  
23 appeal.

24 2. State v. Runningeagle, 859 P.2d 169, 173 (Ariz. 1993), cited by the Supreme Court of  
25 Nevada in Browne v. State, 113 Nev. 305, 311, 933 P.2d 187, 190-91 (1997), stands for the  
26 proposition that a defendant is only entitled to an evidentiary hearing when he presents a  
27 colorable claim. A colorable claim is one that, if the allegations are true, might have  
28

1 changed the outcome. Id. The Defendant in the instant case did not present any colorable  
2 claims against trial counsel. The Defendant must show that his counsel's performance was  
3 deficient, and that the deficient performance prejudiced his defense.

4 3. Drake v. State, 108 Nev. 523, 836 P.2d 52 (1992) does not apply to the instant case.

5 4. In Nevada, the appropriate vehicle for review of whether counsel was effective is a  
6 post-conviction relief proceeding. McKague v. Warden, 112 Nev. 159, 912 P.2d 255, 257,  
7 n.4 (1996). In order to assert a claim for ineffective assistance of counsel the defendant must  
8 prove that he was denied "reasonably effective assistance" of counsel by satisfying the  
9 two-prong test of Strickland v. Washington, 466 U.S. 668, 686-687, 104 S.Ct. 2052,  
10 2063-2064 (1984); *see*, State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).  
11 Under this test, the defendant must show first that his counsel's representation fell below an  
12 objective standard of reasonableness, and second, that but for counsel's errors, there is a  
13 reasonable probability that the result of the proceedings would have been different. *See*  
14 Strickland, 466 U.S. at 687-688 & 694, 104 S.Ct. at 2065 & 2068.

15 5. In considering whether trial counsel has met this standard, the court should first  
16 determine whether counsel made a "sufficient inquiry into the information . . . pertinent to  
17 his client's case." Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996); *citing*,  
18 Strickland, 466 U.S. at 690-691, 104 S.Ct. at 2066. Once this decision is made, the court  
19 should consider whether counsel made "a reasonable strategy decision on how to proceed  
20 with his client's case." Doleman, 112 Nev. at 846, 921 P.2d at 280; *citing*, Strickland, 466  
21 U.S. at 690-691, 104 S.Ct. at 2066. Finally, counsel's strategy decision is a "tactical"  
22 decision and will be "virtually unchallengeable absent extraordinary circumstances."  
23 Doleman, 112 Nev. at 846, 921 P.2d at 280; *see also*, Howard v State, 106 Nev. 713, 722,  
24 800 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691, 104 S.Ct. at 2066; State v. Meeker,  
25 693 P.2d 911, 917 (Ariz. 1984).

26 6. Based on the above law, the court begins with the presumption of effectiveness and  
27 then must determine whether or not defendant has demonstrated, by "strong and convincing  
28

1 proof," that counsel was ineffective. Homick v State, 112 Nev. 304, 310, 913 P.2d 1280,  
2 1285 (1996); *citing* Lenz v. State, 97 Nev. 65, 66, 624 P.2d 15, 16 (1981). The role of a court  
3 in considering allegations of ineffective assistance of counsel, is "not to pass upon the merits  
4 of the action not taken but to determine whether, under the particular facts and circumstances  
5 of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State,  
6 94 Nev. 671, 675, 584 P.2d 708, 711 (1978); *citing*, Cooper v. Fitzharris, 551 F.2d 1162,  
7 1166 (9th Cir. 1977).

8 7. This analysis does not mean that the court should "second guess reasoned choices  
9 between trial tactics nor does it mean that defense counsel, to protect himself against  
10 allegations of inadequacy, must make every conceivable motion no matter how remote the  
11 possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711; *citing*, Cooper, 551  
12 F.2d at 1166 (9th Cir. 1977). In essence, the court must "judge the reasonableness of  
13 counsel's challenged conduct on the facts of the particular case, viewed as of the time of  
14 counsel's conduct." Strickland, 466 U.S. at 690, 104 S.Ct. at 2066. .

15 8. Defendant failed to show proof that counsel was ineffective and as a result failed to  
16 satisfy the Strickland standard. Furthermore, Defendant failed to show that but for counsel's  
17 alleged errors, there is a reasonable probability that the result at sentencing would have been  
18 different.

19 9. Pursuant to NRS 175.552, the questions of admissibility during the penalty phase of a  
20 capital murder trial are largely left to the discretion of the trial judge. In addition, the United  
21 States Supreme Court in Woodson v. North Carolina, 428 U.S. 280, 96 S.Ct. 2978 (1976),  
22 held that the relevant factors to be considered by a jury in imposing a penalty for a capital  
23 crime are "the character and record of the individual offender and the circumstances of the  
24 particular offense."

25 10. A jury considering the death penalty may consider victim-impact evidence as it  
26 relates to the victim's character and the emotional impact of the murder on the victim's  
27  
28



1 family. Rippo v. State, 113 Nev. 1239, 946 P.2d 1017 (1997); citing Payne v. Tennessee,  
2 501 U.S. 808, 827, 111 S.Ct. 2597 (1991).

3 11. "It is well established in Nevada that evidence of prior convictions is admissible at  
4 penalty hearings when relevant and credible and not dubious and tenuous." Jones v. State,  
5 101 Nev. 573, 707 P.2d 1128 (1985); see also, Biondi v. State, 101 Nev. 252, 699 P.2d 1062  
6 (1985). "Although details of prior crimes undoubtedly have a greater impact on a jury than a  
7 bare record conviction, their admission may aid the trier in assessing the character of the  
8 defendant." Jones, 101 Nev. at 1132.

9 12. A jury considering the death penalty may consider victim-impact evidence as it  
10 relates to the victim's character and the emotional impact of the murder on the victim's  
11 family. Rippo v. State, 113 Nev. 1239, 946 P.2d 1017 (1997); citing Payne v Tennessee,  
12 501 U.S. 808, 827, 111 S.Ct. 2597 (1991).

13 13. A jury considering the death penalty can consider the emotional impact of the murder  
14 on the victim's family. Payne, 501 U.S. 808 (1991).

15 14. In Homick v. State, 108 Nev. 127, 825 P.2d 600 (1992), the Nevada Supreme Court  
16 adopted the holding in Payne, and found that it comported fully with the intendment of the  
17 Nevada Constitution.

18 15. Testimony did not violate the Defendant's constitutional rights. See Wesley v. State,  
19 112 Nev. 503, 916 P.2d 793 (1996); Castillo v. State, 114 Nev. 271, 956 P.2d 103 (1998).

20 16. Trial counsel did not have a good faith basis to object to the penalty hearing  
21 testimony. See Williams v. New York, 337 U.S. 241, 69 S.Ct. 1079 (1949).

22 17. The court begins with the presumption of effectiveness and then must determine  
23 whether or not defendant has demonstrated, by "strong and convincing proof," that counsel  
24 was ineffective. Homick v State, 112 Nev. 304, 310, 913 P.2d 1280, 1285 (1996); citing  
25 Lenz v. State, 97 Nev. 65, 66, 624 P.2d 15, 16 (1981).

26 18. The role of a court in considering allegations of ineffective assistance of counsel, is  
27 "not to pass upon the merits of the action not taken but to determine whether, under the  
28

1 particular facts and circumstances of the case, trial counsel failed to render reasonably  
2 effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978); *citing*,  
3 Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977).

4 19. Defendant failed to show that "but for" trial counsel's ineffectiveness, the result  
5 would have been different. *See Strickland*, 466 U.S. 668, 104 S.Ct. 2052.

6 20. The standard of review for prosecutorial misconduct rests upon the defendant  
7 showing "that the remarks made by the prosecutor were 'patently prejudicial.'" Riker v.  
8 State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (citing Libby v. State, 109 Nev. 905,  
9 911, 859 P.2d 1050, 1054 (1993)). This is based on a defendant's right to have a fair trial,  
10 not necessarily a perfect one. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990).  
11 The relevant inquiry is whether the prosecutor's statements so contaminated the proceedings  
12 with unfairness as to make the result a denial of due process. Darden v. Wainwright, 477  
13 U.S. 168, 181, 106 S.Ct. 2464, 2471 (1986).

14 21. Trial counsel, in the instant case, did not have a good faith basis to object to the  
15 prosecutor's comments. The Defendant must show that the statements violated a clear and  
16 unequivocal rule of law, he was denied a substantial right, and as a result, he was materially  
17 prejudiced. Libby, 109 Nev. at 911, 859 P.2d at 1054.

18 22. The prosecutor did not improperly argue that the jury should send a message to  
19 society. Furthermore, Defendant failed to show that counsel acted unreasonably. The role  
20 of the court is "not to pass upon the merits of the action not taken but to determine whether,  
21 under the particular facts and circumstances of the case, trial counsel failed to render  
22 reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
23 (1978); *citing*, Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977).

24 23. Trial counsel did not have a proper basis to object to the prosecutorial comments and  
25 the Defendant failed to satisfy the first prong of Strickland showing that trial counsel acted  
26 unreasonably.  
27  
28

1 24. The evidence was sufficient for the jurors to reasonably find that before acting to kill  
2 the victims the Defendant weighed the reasons for and against his actions, considered the  
3 circumstances, distinctly formed a design to kill, and did not act simply from a rash,  
4 unconsidered impulse. See Byford, 994 P.2d 700; citing Briano v. State, 94 Nev. 422, 425,  
5 581 P.2d 5, 7 (1978).

6 25. The Felony-Murder instruction accurately depicted the law of Nevada.  
7 NRS 200.380(1) states:

8  
9 1. Robbery is the unlawful taking of personal property from the person of  
10 another, or in his presence, against his will, by means of force or violence  
11 or fear of injury, immediate or future, to his person or property, or the  
person or property of a member of his family, or of anyone in his company  
at the time of the robbery. A taking is by means of force or fear if force or  
fear is used to:

12 (a) Obtain or retain possession of the property;

13 (b) Prevent or overcome resistance to the taking; or

14 (c) Facilitate escape.

15 The degree of force used is immaterial if it is used to compel acquiescence to  
16 the taking of or escaping with the property. A taking constitutes robbery  
17 whenever it appears that, although the taking was fully completed without the  
knowledge of the person from whom taken, such knowledge was prevented by  
the use of force or fear.

18 26. In Wesley v. State, 112 Nev. 503, 916 P.2d 793 (1996), the Supreme Court of Nevada  
19 stated: "[a] district court may instruct the jury not to consider sympathy during a capital  
20 penalty hearing, as long as the court also instructs the jury to consider mitigating factors. Id.;  
21 see also Lay v. State, 110 Nev. 1189, 1193, 886 P.2d 448, 450-51 (1994). The court further  
22 stated: "[i]n the present case, the district court instructed the jury to consider 'any aspect of  
23 the defendant's character or record and any of the circumstances of the offense that the  
24 defendant proffers as a basis for a sentence less than death.'" Wesley, 112 Nev. at 519.

25 27. Defendant's claim is nothing more than a naked and unsubstantiated claim belied by  
26 the record. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).  
27  
28

1 28. Trial counsel doesn't have to make every conceivable motion no matter how remote  
2 the possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711; *citing*, Cooper,  
3 551 F.2d at 1166 (9th Cir. 1977). Once trial counsel makes a decision on how to proceed,  
4 the court should consider whether counsel made "a reasonable strategy decision on how to  
5 proceed with his client's case." Doleman, 112 Nev. at 846, 921 P.2d at 280; *citing*,  
6 Strickland, 466 U.S. at 690-691, 104 S.Ct. at 2066.

7 29. The role of a court in considering allegations of ineffective assistance of counsel, is  
8 "not to pass upon the merits of the action not taken but to determine whether, under the  
9 particular facts and circumstances of the case, trial counsel failed to render reasonably  
10 effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978); *citing*,  
11 Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977). Therefore, the Defendant failed  
12 to show that trial counsel acted unreasonably.

13 30. NRS 200.030(4)(a) states: "A person convicted of murder of the first degree is guilty  
14 of a category A felony and shall be punished: (a) By death, only if one or more aggravating  
15 circumstances are found and any mitigating circumstance or circumstances which are found  
16 do not outweigh the aggravating circumstance or circumstances."

17 31. "The use of both robbery and burglary as aggravating factors does not infringe upon a  
18 defendant's due process or double jeopardy rights." Sherman v. State, 114 Nev. 998, 1012;  
19 965 P.2d 903 (1998); Homick v. State, 108 Nev. 127, 825 P.2d 600 (1992); Wilson v. State,  
20 99 Nev. 362, 664 P.2d 328 (1983).

21 32. The prosecutor may outline his case and propose facts he intends to prove. Rice v.  
22 State, 113 Nev. 1300, 1308, 949 P.2d 262, 270 (1997). Even if the prosecutor overstates  
23 what he is later able to prove, misconduct is not present unless he does so in bad faith. Id.  
24 In Browne v. State, 113 Nev. 305, 311, 933 P.2d 187, 190-91(1997), the Nevada Supreme  
25 Court held that reference to a defendant as a "selfish and cruel man" did not rise to the level  
26 requiring reversal. See People v. Benson, 802 P.2d 330, 353-54 (Cal. 1990) (holding  
27  
28

1 prosecutor's comment "this crime is perhaps the most brutal, atrocious, heinous crime," was  
2 merely a comment on the nature of the offense and was permissible);

3 33. In State v. Runnigeagle, 859 P.2d 169, 174 (Ariz. 1993), the Supreme Court of  
4 Arizona held: "The words were a mere characterization of the evidence. The evidence would  
5 show horror. The evidence would show evil behavior. These were reasonable inferences to  
6 be drawn from the evidence. That inferences were made at the beginning of the case, rather  
7 than at the end of the case where they belonged, does not warrant a new trial."

8 34. An ineffective assistance of counsel claim premised upon a theory of a failure to  
9 investigate requires that "[a] defendant who alleges [a] failure to investigate ... must allege  
10 with specificity what the investigation would have revealed and how it would have altered  
11 the outcome of the trial." United States v. Porter, 924 F.2d 395, 397 (1st Cir. 1991)  
12 (quoting United States v. Green, 882 F.2d 999, 1003 (5th Cir. 1989). Furthermore, it is well  
13 established that a claim of ineffective assistance of counsel alleging a failure to properly  
14 investigate will fail where the evidence or testimony sought does not exonerate or exculpate  
15 the defendant. Ford v. State, 105 Nev. 850, 784 P.2d 951 (1989). In examining Defendant's  
16 numerous allegations of failures to investigate, the relevant inquiry was whether counsel's  
17 decisions were reasonable under the circumstances at the time the decision was made.

18  
19 Judicial scrutiny of counsel's performance must be highly deferential. It is all  
20 too tempting for a defendant to second guess counsel's assistance after  
21 conviction or adverse sentence, and it is all too easy for a court, examining  
22 counsel's defense to conclude that a particular act or omission of counsel was  
23 unreasonable.

24 Strickland, 466 U.S. at 689, 104 S.Ct. at 2065 (citing Engle v. Issac, 456 U.S. 107, 133-134,  
25 102 S.Ct. 1558, 1574-75 (1982)).

26 35. Defense counsel's decisions regarding the instructions to be presented to the jury is a  
27 tactical decision which cannot be overturned absent extraordinary circumstances. See,  
28 Doleman, 112 Nev. at 846, 921 P.2d at 280; see also, Howard, 106 Nev. at 722, 800 P.2d at  
180; Strickland, 466 U.S. at 691, 104 S.Ct. at 2066. A jury instruction will be presumed  
valid unless Defendant can show that a "different result would have been obtained had the

1 proposed instruction been given." Barron v. State, 105 Nev. 767, 777, 783 P.2d 444, 451  
2 (1989).

3 36. NRS 200.030(4)(a) states: "A person convicted of murder of the first degree is guilty  
4 of a category A felony and shall be punished: (a) By death, only if one or more aggravating  
5 circumstances are found and any mitigating circumstance or circumstances which are found  
6 do not outweigh the aggravating circumstance or circumstances."

7 37. Defense counsel's decisions regarding the instructions to be presented to the jury is a  
8 tactical decision which cannot be overturned absent extraordinary circumstances. See,  
9 Doleman, 112 Nev. at 846, 921 P.2d at 280; see also, Howard, 106 Nev. at 722, 800 P.2d at  
10 180; Strickland, 466 U.S. at 691, 104 S.Ct. at 2066. A jury instruction will be presumed  
11 valid unless Defendant can show that a "different result would have been obtained had the  
12 proposed instruction been given." Barron v. State, 105 Nev. 767, 777, 783 P.2d 444, 451  
13 (1989).

14 38. Pursuant to NRS 200.030(4)(a), the jury was to weigh the aggravating circumstances  
15 with any mitigating circumstances.

16 39. Once the decision on how to proceed to trial is made, the court should consider  
17 whether counsel made "a reasonable strategy decision on how to proceed with his client's  
18 case." Doleman, 112 Nev. at 846, 921 P.2d at 280; citing, Strickland, 466 U.S. at 690-691,  
19 104 S.Ct. at 2066. Finally, counsel's strategy decision is a "tactical" decision and will be  
20 "virtually unchallengeable absent extraordinary circumstances." Doleman, 112 Nev. at 846,  
21 921 P.2d at 280; see also, Howard v State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990);  
22 Strickland, 466 U.S. at 691, 104 S.Ct. at 2066; State v. Meeker, 693 P.2d 911, 917 (Ariz.  
23 1984).

24 40. The United States Supreme Court has held that there is a constitutional right to  
25 effective assistance of counsel in a direct appeal from a judgment of conviction. Evitts v.  
26 Lucey, 469 U.S. 395, 397, 105 S.Ct. 830, 836-837 (1985); see also, Burke v. State, 110 Nev.  
27 1366, 1368, 887 P.2d 267, 268 (1994). The federal courts have held that in order to claim  
28

1 ineffective assistance of appellate counsel the defendant must satisfy the two-prong test of  
2 Strickland v. Washington by demonstrating that: (1) counsel's representation fell below an  
3 objective standard of reasonableness; and (2) but for counsel's errors, there was a reasonable  
4 probability that the result of the proceedings would have been different. See Strickland, 466  
5 U.S. at 687-688 & 694, 104 S.Ct. at 2065 & 2068; Williams v. Collins, 16 F.3d 626, 635  
6 (5th Cir. 1994); Hollenback v. United States, 987 F.2d 1272, 1275 (7th Cir. 1993); Heath v.  
7 Jones, 941 F.2d 1126, 1130 (11th Cir. 1991).

8 41. Further, there is a strong presumption that counsel's performance was reasonable and fell  
9 within "the wide range of reasonable professional assistance." See, United States v. Aguirre,  
10 912 F.2d 555, 560 (2nd Cir. 1990); citing Strickland, 466 U.S. at 689, 104 S.Ct. at 2065.  
11 The Nevada Supreme Court, although not yet affirming the decision of the federal courts,  
12 has held that all appeals must be "pursued in a manner meeting high standards of diligence,  
13 professionalism and competence." Burke v. State, 110 Nev. 1366, 1368, 887 P.2d 267, 268  
14 (1994).

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

19 43. Defendant did not preserve Defendant's alleged appealable issues at trial. In order to  
20 preserve appellate review, objections to alleged errors must be lodged at trial. McCullough  
21 v. State, 99 Nev. 72, 74, 657 P.2d 1157, 1158 (1983); see also State v. Taylor, 114 Nev.  
22 1071, 1077, 968 P.2d 315, 320 (1998), Emmons v. State, 107 Nev. 53, 61, 807 P.2d 718, 723  
23 (1991). "When an appellant fails to specifically object to questions asked or testimony  
24 elicited during trial, but complains about them, in retrospect upon appeal, we [the Supreme  
25 Court of Nevada] do not consider his contention a proper assignment of error." Greene v.  
26 State, 113 Nev. 157, 931 P.2d 54, 65-6 (1997) (reversed on other grounds) (quoting Wilson  
27 v. State, 86 Nev. 320, 326, 468 P.2d 346, 350 (1970)).  
28

1 44. Defendant has the ultimate authority to make fundamental decisions regarding his  
2 case. Jones v. Barnes, 463 U.S. 745, 751, 103 S.Ct. 3308, 3312 (1983). However, the  
3 defendant does not have a constitutional right to "compel appointed counsel to press  
4 nonfrivolous points requested by the client, if counsel, as a matter of professional judgment,  
5 decides not to present those points." Id. In reaching this conclusion the Supreme Court has  
6 recognized the "importance of winnowing out weaker arguments on appeal and focusing on  
7 one central issue if possible, or at most on a few key issues." Jones, 463 U.S. at 751 -752,  
8 103 S.Ct. at 3313. In particular, a "brief that raises every colorable issue runs the risk of  
9 burying good arguments . . . in a verbal mound made up of strong and weak contentions."  
10 Jones, 463 U.S. at 753, 103 S.Ct. at 3313. The Court has therefore held that for "judges to  
11 second-guess reasonable professional judgments and impose on appointed counsel a duty to  
12 raise every 'colorable' claim suggested by a client would deserve the very goal of vigorous  
13 and effective advocacy." Jones, 463 U.S. at 754, 103 S.Ct. at 3314.

14 45. Similar to the standards of ineffective assistance regarding trial counsel, appellate  
15 counsel has the right and discretion to employ his professional knowledge and tactics in  
16 constructing a defendant's appeal. Unless the defendant can demonstrate that counsel did not  
17 provide "reasonably effective assistance" appellate counsel's professional conduct will be  
18 upheld as effective. See Strickland, 466 U.S. at 687, 104 S.Ct. at 2064; Love, 109 Nev. at  
19 1138, 865 P.2d at 323.

20 46. The Nevada Supreme Court "'possesses inherent power to prescribe rules necessary  
21 or desirable to handle the judicial functioning of the courts' and is charged with the  
22 governance of the district courts, not vice versa." Evans v. State, 117 Nev. Adv. Op. 50  
23 (2001).; citing State v. District Ct., 116 Nev. 953, 963, 11 P.3d 1209, 1215 (2000). See also,  
24 Nevada Constitution Article 6 Section 6.

25 47. Defendant's statistical arguments do not surpass the burden of showing purposeful  
26 discrimination and the State's selection of the jury pool at the time of Defendant's trial was  
27 constitutionally legitimate. The court has held that a jury selection process violates a  
28



1 defendant's due process and equal protection rights only if it can be shown that "members of  
2 appellant's race were excluded systematically from jury duty." Bishop v. State, 92 Nev. 510,  
3 515, 554 P.2d 266, 270 (1976). Purposeful discrimination may not be assumed or merely  
4 asserted, it must be proved. Bishop, 92 Nev. at 515, 554 P.2d at 270; see also, Batson v.  
5 Kentucky, 476 U.S. 79, 93-100, 106 S.Ct. 1712, 1721-1725 (1986). Further, the court has  
6 stated that "[t]he absence of members of one's race on a petit jury may occur. If so, it is not  
7 error. It is the systematic exclusion of members of a race or class that spoils the makeup of  
8 the jury." Bishop, 92 Nev. at 515, 554 P.2d at 270; citing, Collins v. State, 88 Nev. 9, 13,  
9 492 P.2d 991, 993 (1972).

10 **ORDER**

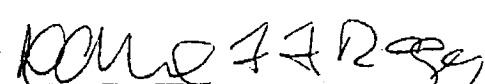
11 Based upon the Findings of Fact and Conclusions of Law contained herein, it is  
12 hereby:

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

15 DATED this 6<sup>th</sup> day of September, 2002.

16  
17   
18 \_\_\_\_\_  
19 DISTRICT JUDGE

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

23 BY   
24 DAVID J.J. ROGER  
25 Chief Deputy District Attorney  
26 Nevada Bar #002781  
27  
28

## CRIMINAL COURT MINUTES

96-C-136862-C      STATE OF NEVADA      vs Thomas, Marlo

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07/08/96    09:00 AM    00    INITIAL ARRAIGNMENT

HEARD BY: Joseph S. Pavlikowski; Dept. VJ30

OFFICERS: PONDA MEADOR, Court Clerk  
          JAMES HELLESO, Reporter/Recorder

PARTIES:            STATE OF NEVADA  
          000862    Harmon, Melvyn T.  
  
          001 D1    Thomas, Marlo  
          PUBDEF    Public Defender

Y  
Y  
  
Y  
Y

Defendant represented by Richard Palma, Deputy State Public Defender. At request of State Public Defender's Office, COURT ORDERED, matter CONTINUED.

CUSTODY

7/10/96 9:00 AM ARRAIGNMENT CONTINUED

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07/10/96    09:00 AM    00    ARRAIGNMENT CONTINUED

HEARD BY: Joseph S. Pavlikowski; Dept. VJ30

OFFICERS: LINDA VIGIL, Relief Clerk  
          JAMES HELLESO, Reporter/Recorder

PARTIES:            STATE OF NEVADA  
          000862    Harmon, Melvyn T.  
  
          001 D1    Thomas, Marlo  
          PUBDEF    Public Defender  
          003754    Laporta, Peter R.

Y  
Y  
  
Y  
Y  
Y

DEFENDANT THOMAS ARRAIGNED, ENTERED A PLEA OF NOT GUILTY AND WAIVED HIS RIGHT TO A SPEEDY TRIAL. State advised the Court that they intend to seek the death penalty. COURT ORDERED, matter SET for trial.

CUSTODY

12-27-96 9:00 A.M.    CALENDAR CALL

12-30-96 10:00 A.M.    TRIAL BY JURY

## CRIMINAL COURT MINUTES

96-C-136862-C STATE OF NEVADA vs Thomas, Marlo

CONTINUED FROM PAGE: 001

09/18/96 09:00 AM 01 DEFT'S PRO PER MOTION TO DISMISS  
COUNSEL/APPOINTMENT OF CO-COUNSEL

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

OFFICERS: JEAN McKINLEY, Court Clerk  
LAURET HENRY, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000862	Harmon, Melvyn T.	Y
001 D1	Thomas, Marlo	N
PUBDEF	Public Defender	Y
005480	Savage, Jordan S.	Y

Court Services Officer advised defendant is in Nevada State Prison and needs to be transported. Mr. Savage advised Pete LaPorta will be 1st chair and he will be 2nd chair. COURT ORDERED, motion continued to have defendant transported.

CUSTODY

CONTINUED TO: 10/02/96 09:00 AM 02

10/02/96 09:00 AM 02 DEFT'S PRO PER MOTION TO DISMISS  
COUNSEL/APPOINTMENT OF CO-COUNSEL

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

OFFICERS: JEAN McKINLEY, Court Clerk  
TAMMY BREED, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004902	Adams, Danae	Y
001 D1	Thomas, Marlo	Y
ST PD	State Public Defender	Y
003754	Laporta, Peter R.	Y

Mr. LaPorta advised he needs defendant to remain in the Clark County Detention Center for trial preparation. Defendant stated he has not spoken with Mr. LaPorta. Mr. LaPorta stated he has been in numerous trials and can now devote the time needed to defendant Thomas. Mr. LaPorta requested defendant's motion be continued. COURT SO ORDERED.

CUSTODY

12-27-96 9:00 AM CALENDAR CALL

## CRIMINAL COURT MINUTES

96-C-136862-C STATE OF NEVADA

vs Thomas, Marlo

CONTINUED FROM PAGE: 002

12-30-96 9:45 AM JURY TRIAL

CONTINUED TO: 10/21/96 09:00 AM 03

10/21/96 09:00 AM 03 DEFT'S PRO PER MOTION TO DISMISS  
COUNSEL/APPOINTMENT OF CO-COUNSEL

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

OFFICERS: LINDA VIGIL, Relief Clerk  
LAURET HENRY, Reporter/Recorder

PARTIES: STATE OF NEVADA  
004352 Owens, Steven S.  
  
001 D1 Thomas, Marlo  
PUBDEF Public Defender  
005480 Savage, Jordan S.

Y  
Y  
  
Y  
Y  
Y

Statement by Defendant. State opposed motion and argued that there is not enough time for new counsel to prepare for trial. Court stated its findings and ORDERED, Deft's motion DENIED.

CUSTODY

12/27/96 9:00 A.M. CALENDAR CALL

12/30/97 9:45 A.M. TRIAL BY JURY

11/13/96 09:00 AM 00 STATE'S MOTION TO ENDORSE NAMES ON  
INFORMATION

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

OFFICERS: LINDA VIGIL, Relief Clerk  
JENNIFER CLARK, Reporter/Recorder

PARTIES: STATE OF NEVADA  
001398 Bloxham, Ronald C.  
  
001 D1 Thomas, Marlo  
PUBDEF Public Defender  
003754 Laporta, Peter R.

Y  
Y  
  
Y  
Y  
Y

There being no opposition, COURT ORDERED, motion GRANTED. Mr. LaPorta stated he had no objection to the list of witnesses on the condition that he is provided all discovery. COURT SO ORDERED. Trial date STANDS.

CONTINUED ON PAGE: 004

## CRIMINAL COURT MINUTES

96-C-136862-C STATE OF NEVADA

vs Thomas, Marlo

CONTINUED FROM PAGE: 003

## CUSTODY

12/27/96 9:00 A.M. CALENDAR CALL

12/30/96 9:45 A.M. TRIAL BY JURY

1/13/97 9:00 A.M. SENTENCING (HALL)

12/18/96 09:00 AM 00 STATE'S REQUEST TO RESET TRIAL DATE

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

OFFICERS: LINDA VIGIL, Relief Clerk  
DANELLE REDDY, Reporter/Recorder

PARTIES: STATE OF NEVADA

002781 Roger, David J.

001 D1 Thomas, Marlo

001765 McMahon, Lee E.

Y

Y

Y

Y

Mr. Rogers stated that due to the holidays, it is difficult to schedule witnesses. Ms. McMahon stated that there was no opposition to resetting this matter and stated that Mr. LaPorta joins in. COURT ORDERED, trial date of 12/30/96 is hereby VACATED and RESET.

## CUSTODY

5/9/96 9:00 AM CALENDAR CALL

5/12/96 9:45 AM TRIAL BY JURY

## CRIMINAL COURT MINUTES

96-C-136862-C STATE OF NEVADA vs Thomas, Marlo

CONTINUED FROM PAGE: 004

01/29/97 09:00 AM 00 DEFT'S REQUEST RESET TRIAL DATE

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

OFFICERS: LINDA VIGIL, Relief Clerk  
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
001802	Jorgenson, Eric G.	Y
001 D1	Thomas, Marlo	Y
001765	McMahon, Lee E.	Y
003754	Laporta, Peter R.	Y

Ms. McMahon advised the Court of the conflicts in counsels schedules and requested a new trial date be set. Mr. LaPorta concurred. Court provided counsel with a tentative schedule of 4/14/97 for Jury Trial with a Calendar Call and jury selection on 4/11/97. Counsel agreed that would be a good date and would advise Mr. Rogers. Defendant Thomas stated that he did not want that date and requested the trial be moved to a later date. COURT ORDERED, Defense counsel to confer with the Defendant and ORDERED, matter CONTINUED for status check and VACATED calendar call date of 5/9/97 and Jury Trial date of 5/12/97.

CUSTODY

2/7/97 9:00 AM STATUS CHECK: RESET TRIAL DATE

02/07/97 09:00 AM 00 STATUS CHECK: RE-SET TRIAL DATE

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

OFFICERS: LINDA VIGIL, Relief Clerk  
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
002805	Wall, David T.	Y
001 D1	Thomas, Marlo	Y
ST PD	State Public Defender	Y
001765	McMahon, Lee E.	Y

Pursuant to conference in chambers with Mr. David Rogers and Ms. Lee McMahan, COURT ORDERED, matter set for trial. COURT FURTHER ORDERED, Defendant to remain in custody at the Clark County Detention Center for the next week.

CUSTODY

## CRIMINAL COURT MINUTES

96-C-136862-C STATE OF NEVADA

vs Thomas, Marlo

CONTINUED FROM PAGE: 005

05/2/97 8:45 AM SENTENCING (HALL)

06/13/97 8:45 AM CALENDAR CALL

6/16/97 9:30 AM TRIAL BY JURY

05/05/97 08:45 AM 00 STATE'S MOTION TO ENDORSE NAMES ON  
INFORMATION

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

OFFICERS: JEAN McKINLEY, Court Clerk  
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004434	Givens, Yolanda T.	Y
001 D1	Thomas, Marlo	N
ST PD	State Public Defender	Y
003754	Laporta, Peter R.	Y

Defendant Thomas not present as he is in State Prison. Mr. LaPorta advised he has no objection as long as proper Discovery is provided. COURT ORDERED, GRANTED. Discovery to be provided. Trial date stands.

CUSTODY

6-13-97 8:45 AM CALENDAR CALL

6-16-97 9:45 AM JURY TRIAL

## CRIMINAL COURT MINUTES

96-C-136862-C STATE OF NEVADA vs Thomas, Marlo

CONTINUED FROM PAGE: 006

05/28/97 08:45 AM 00 DEFT'S MOTION TO ALLOW JURY  
QUESTIONNAIRE

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

OFFICERS: JEAN McKINLEY, Court Clerk  
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
002781	Roger, David J.	Y
001 D1	Thomas, Marlo	N
ST PD	State Public Defender	Y
001765	McMahon, Lee E.	Y

Statement by Mr. Roger. COURT ORDERED, Motion GRANTED. Counsel to have jury questionnaire to Court's secretary by tomorrow.

CUSTODY

6-13-97 8:45 AM CALENDAR CALL

6-16-97 9:45 AM JURY TRIAL

06/13/97 08:45 AM 00 ALL PENDING MOTIONS

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

OFFICERS: JEAN McKINLEY, Court Clerk  
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
002781	Roger, David J.	Y
001 D1	Thomas, Marlo	Y
ST PD	State Public Defender	Y
001765	McMahon, Lee E.	Y
002 D	Hall, Kenya K	Y
006132	Stockton II, Glenn T.	Y

CALENDAR CALL (THOMAS)...DEFET'S MOTION TO PREVENT CO-DEFENDANT KENYA KEITA HALL FROM BEING CALLED TO APPEAR AND TESTIFY AND ALLOW COUNSEL FOR KENYA KEITA HALL TO INVOKE FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION ON HIS CLIENT'S BEHALF AND ORDER SHORTENING TIME ...STATE'S MOTION TO ENDORSE...STATE'S MOTION TO USE REPORTED TESTIMONY OF KENYA HALL

Counsel advised ready to go to trial as to Marlo Thomas. Jury questionnaires have been reviewed. COURT ORDERED, trial set to commence 6-16-97 @ 8:45 AM.

CONTINUED ON PAGE: 008



## CRIMINAL COURT MINUTES

96-C-136862-C STATE OF NEVADA

vs Thomas, Marlo

CONTINUED FROM PAGE: 007

Mr. Steffen presented motion to prevent Kenya Hall from testifying. Defendant stated he would invoked his fifth amendment right. Court advised needs Mr. Thomas here for this motion. COURT ORDERED, CONTINUED. Mr. Roger stated there are two other motions not calendared today. One is a motion to endorse and the other is motion to use reported testimony of Kenya Hall. COURT ORDERED, will hear both motions prior to commencement of trial. Defendant Thomas to be dressed for trial when he is brought down at 8:30 for motions.

CUSTODY (BOTH)

6-16-97 8:45 AM ALL PENDING MOTIONS

6-16-97 9:30 AM JURY TRIAL

06/16/97 08:45 AM 00 ALL PENDING MOTIONS

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

OFFICERS: JEAN McKINLEY, Court Clerk  
ROBERT MINTUN, Reporter/Recorder

PARTIES: STATE OF NEVADA  
002781 Roger, David J.  
000398 Schwartz, David P.  
  
001 D1 Thomas, Marlo  
001765 McMahon, Lee E.  
003754 Laporta, Peter R.

Y  
Y  
Y  
  
Y  
Y  
Y

DEFT'S MOTION TO PREVENT CO-DEFENDANT KENYA KEITA HALL FROM BEING CALLED TO APPEAR AND TESTIFY AND ALLOW COUNSEL FOR KENYA KEITA HALL TO INVOKE FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION ON HIS CLIENT'S BEHALF AND ORDER SHORTENING TIME....STATE'S MOTION TO ENDORSE NAMES ON INFORMATION...STATE'S MOTION TO USE REPORTED TESTIMONY

Counsel presented arguments. COURT ORDERED, Motion to endorse GRANTED. No objection to the motion to amend. COURT ORDERED, motion to amend GRANTED. Arguments regarding motion to use reported testimony. Statement by Kenya Hall who stated he will not testify. Argument by Mr. LaPorta. COURT ORDERED, will not order defendant Hall to testify as he has invoked his fifth amendment. State's motion to use testimony is GRANTED.

## CRIMINAL COURT MINUTES

96-C-136862-C

STATE OF NEVADA

vs Thomas, Marlo

CONTINUED FROM PAGE: 008

06/16/97 09:15 AM 00 TRIAL BY JURY

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

OFFICERS: JEAN McKINLEY, Court Clerk  
CINDY HORTON/CH, Relief Clerk  
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
002781	Roger, David J.	Y
000398	Schwartz, David P.	Y
001 D1	Thomas, Marlo	Y
003754	Laporta, Peter R.	Y
001765	McMahon, Lee E.	Y

Jury Selection. Outside the presence of the jury at 2:45, State moved for dismissal of juror #350, Defense objected. Following argument by counsel, Court stated findings and ORDERED, PREMPATORY CHALLENGE GRANTED AS TO JUROR #350. Jury selection resumed at 2:55. Twleve jurors and two alternates sworn at 3:25. Court instructed the jury as to the procedure the trial will take. Information read to the jury. Outside the presence of the jury at 3:35, Mr. LaPorta made a motion for mistrial. Response by State. COURT ORDERED, MOTION DENIED. Counsel stipulated as to the presence of the jury at 3:50. Opening statement by counsel.

CONTINUED TO: 06/17/97 08:30 AM 01

06/17/97 09:15 AM 01 TRIAL BY JURY

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

OFFICERS: LINDA VIGIL, Court Clerk  
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
002781	Roger, David J.	Y
000398	Schwartz, David P.	Y
001 D1	Thomas, Marlo	Y
003754	Laporta, Peter R.	Y
001765	McMahon, Lee E.	Y

Testimony continued as per worksheet. OUTSIDE THE PRESENCE OF THE JURY: Following statements by counsel, COURT ORDERED, exhibits 23, 40, 50 and 53 will be removed. Mr. LaPorta moved for a mistrial and argued that a witness stated he new the Defendant had been incarcerated. Mr. Roger opposed. COURT ORDERED, motion DENIED. Kenya Hall's testimony was read to the Court from the Preliminary Hearing Transcript. Court stated its findings and

CONTINUED ON PAGE: 010

## CRIMINAL COURT MINUTES

96-C-136862-C STATE OF NEVADA

vs Thomas, Marlo

CONTINUED FROM PAGE: 009

ORDERED, Deft's Motion To Consider DENIED, Court will allow the transcript to be read to the Jury. Exhibits offered and admitted as per worksheet. Testimony continued as per worksheet. 5:35 PM - Court admonished jurors and ORDERED recess for the evening. OUTSIDE THE PRESENCE OF THE JURY: Court advised the Defendant of his right to testify. Counsel stipulated to exhibit #82 being an accurate copy.

CUSTODY

CONTINUED TO: 06/18/97 09:15 AM 02

06/18/97 09:15 AM 02 TRIAL BY JURY

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

OFFICERS: JEAN McKINLEY, Court Clerk  
ROBERT MINTUN, Reporter/Recorder

PARTIES: STATE OF NEVADA  
000398 Schwartz, David P.  
002781 Roger, David J.  
  
001 D1 Thomas, Marlo  
001765 McMahon, Lee E.  
003754 Laporta, Peter R.

Y  
Y  
Y  
  
Y  
Y  
Y

Outside presence of the Jury, Jury Instructions were settled and stipulated to. Mr. LaPorta advised defendant will not testify. Defense rested and waived their Opening statement. Jury Instructed by the Court. Closing arguments.

11:55 AM-Jury began deliberations.

2:50 PM-Jury returned with Verdicts finding defendant Thomas GUILTY-COUNT I-CONSPIRACY TO COMMIT MURDER AND/OR ROBBERY.

GUILTY-COUNT II-MURDER FIRST DEGREE WITH USE OF A DEADLY WEAPON (Carl Dixon)

GUILTY- COUNT III-MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON (Matthew Gianakis) GUILTY-COUNT IV- ROBBERY WITH USE OF A DEADLY WEAPON. GUILTY-COUNT V-BURGLARY WHILE IN POSSESSION OF A FIREARM. GUILTY-COUNT VI-FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON. Jury polled per request of defense counsel. COURT ORDERED, Defendant having been found guilty, remanded to custody. Court gave the Jury admonishment and ORDERED, they appear for the Penalty Hearing on 6-23-97 @ 9:15 AM.

CLERK'S NOTE: An error was made identifying the docket letter on the Original Jury List, therefore, an Amended Jury List was prepared using the appropriate docket letter. No other changes were made as the Jury Panel

CONTINUED ON PAGE: 011

## CRIMINAL COURT MINUTES

96-C-136862-C STATE OF NEVADA

vs Thomas, Marlo

CONTINUED FROM PAGE: 010

remains intact.

06/25/97 09:15 AM 01 PENALTY HEARING

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

OFFICERS: JEAN McKINLEY, Court Clerk  
LINDA VIGIL/PM, Relief Clerk  
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000398	Schwartz, David P.	Y
002781	Roger, David J.	Y
001 D1	Thomas, Marlo	Y
001765	McMahon, Lee E.	Y
003754	Laporta, Peter R.	Y

Witnesses sworn and testified. Jury Instructions settled and stipulated.  
Court Instructed Jury. Closing arguments of counsel.

1:40 PM - Bailiff sworn and Jury began deliberations.

6:40 PM - Jury returned with Verdict. Clerk read Special Verdicts and  
Verdicts with the Defendant receiving DEATH AS TO COUNT II - MURDER OF THE  
FIRST DEGREE (F) AND DEATH AS TO COUNT III - MURDER OF THE FIRST DEGREE (F).  
At the request of Ms. McMahon and Mr. LaPorta, Jury was polled by the Clerk.  
Court thanked and excused the Jury. Court referred matter to the Department  
of Parole and Probation for a Pre-sentence Investigative Report and ORDERED  
matter set for sentencing.

CUSTODY

8/25/97 8:45 AM SENTENCING

## CRIMINAL COURT MINUTES

96-C-136862-C

STATE OF NEVADA

vs Thomas, Marlo

CONTINUED FROM PAGE: 011

08/25/97 08:30 AM 00 SENTENCING

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

OFFICERS: LINDA VIGIL, Court Clerk  
 ROBERT MINTUN, Reporter/Recorder

PARTIES: STATE OF NEVADA  
 000398 Schwartz, David P.  
 001 D1 Thomas, Marlo  
 001765 McMahon, Lee E.  
 003754 Laporta, Peter R.

Y  
 Y  
 Y  
 Y  
 Y

Officer Duane DeMay of the Department of Parole and Probation present. State represented by Mr. David Schwartz, Chief Deputy District Attorney. Defendant in custody and present with Ms. Lee McMahon, DPD, and Mr. Peter LaPorta, DPD. By virtue of Jury's verdict, Court ADJUDGED DEFENDANT GUILTY of COUNT I - CONSPIRACY TO COMMIT MURDER AND/OR ROBBERY (F); COUNT II - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON (F); COUNT III - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON (F); COUNT IV - ROBBERY WITH USE OF A DEADLY WEAPON (F); COUNT V - BURGLARY WHILE IN POSSESSION OF A FIREARM (F); COUNT VI - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (F). Defendant declined to make a statement to the Court. COURT ORDERED, whereas on the 25th day of June, 1997, a Jury unanimously rendered written Special Verdicts and written Verdicts both signed by the Foreman, and whereas in the Special Verdicts the Jury found beyond a reasonable doubt that there were aggravating circumstances existing in the commission of said murder's; set the penalty to be imposed upon the Defendant, Marlo Thomas, at Death for Count II and Death for Count III, and therefore by reason of the Verdicts dated the 18th day of June, 1997 and the Special Verdicts dated the 25th day of June, 1997, the Court does hereby SENTENCE the Defendant, Marlo Thomas to a \$25.00 Administrative Assessment Fee; Count I - ONE HUNDRED TWENTY (120) MONTHS maximum with a minimum of FORTY-EIGHT (48) MONTHS; Count II - DEATH; Count III - DEATH in the manner prescribed by law, and the Clerk of the above entitled Court is hereby directed to enter Judgment of Sentence of Death as part of the record. Count IV - ONE HUNDRED EIGHTY (180) MONTHS maximum with a minimum of SEVENTY-TWO (72) MONTHS, with an EQUAL AND CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS maximum, SEVENTY-TWO (72) MONTHS minimum, CONSECUTIVE to COUNT I; Count V - ONE HUNDRED EIGHTY (180) MONTHS maximum and SEVENTY-TWO (72) MONTHS minimum with an EQUAL AND CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS maximum, SEVENTY-TWO (72) MONTHS minimum for WEAPON ENHANCEMENT, CONSECUTIVE TO COUNT IV; Count VI - LIFE WITHOUT THE POSSIBILITY OF PAROLE, with an EQUAL AND CONSECUTIVE LIFE WITHOUT THE POSSIBILITY OF PAROLE for WEAPON ENHANCEMENT, CONSECUTIVE to COUNT V; and Count VII - LIFE WITHOUT THE POSSIBILITY OF PAROLE with an EQUAL AND CONSECUTIVE LIFE WITHOUT THE POSSIBILITY OF PAROLE for WEAPON ENHANCEMENT, CONSECUTIVE TO COUNT VI. CREDIT FOR TIME SERVED of Four Hundred Ninty-Five (495) Days.

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## CRIMINAL COURT MINUTES

96-C-136862-C STATE OF NEVADA

vs Thomas, Marlo

CONTINUED FROM PAGE: 012

CLERK'S NOTE: 8/25/97 - Clerk contacted Kathy Hinkley, Mr. David Schwartz' secretary, to inquire about the Judgment and Warrant of Execution which is to be filed in Open Court. Ms. Hinkley advised the Clerk that Mr. Schwartz noted a discrepancy in the PSI as to Count V - the equal and consecutive term for weapon enhancement and Count VII - which does not exist. Being that the Court followed the recommendations from the Department of Parole and Probation, Clerk advised the Court's secretary of the discrepancies on the PSI.

08/27/97 08:30 AM 00 AT THE REQUEST OF THE COURT  
CLARIFICATION OF SENTENCE

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

OFFICERS: LINDA VIGIL, Court Clerk  
ROBERT MINTUN, Reporter/Recorder

PARTIES: STATE OF NEVADA  
002781 Roger, David J.  
001 D1 Thomas, Marlo  
ST PD State Public Defender  
001765 McMahon, Lee E.

Y  
Y  
Y  
Y  
Y

Officer Roy Evans of the Department of Parole and Probation present. Mr. Roger stated there were a few discrepancies on the Pre-sentence Investigative Report that need to be clarified. Mr. Roger stated Count V does not impose a consecutive term of weapon enhancement and Count VII does not exist. Clarification of sentence is as follows: COUNT I - ONE HUNDRED TWENTY (120) MONTHS maximum with a minimum of FORTY-EIGHT (48) MONTHS; COUNT II - DEATH; COUNT III- DEATH; COUNT IV - ONE HUNDRED EIGHTY (180) MONTHS maximum with a minimum of SEVENTY-TWO (72) MONTHS and an EQUAL AND CONSECUTIVE TERM OF ONE HUNDRED EIGHTY (180) MONTHS maximum, SEVENTY-TWO (72) MONTHS minimum for Weapon Enhancement CONSECUTIVE to Count I; COUNT V - ONE HUNDRED EIGHTY (180) MONTHS maximum with a minimum of SEVENTY-TWO (72) MONTHS, CONSECUTIVE to Count IV; COUNT VI - LIFE WITHOUT THE POSSIBILITY OF PAROLE with an EQUAL AND CONSECUTIVE LIFE WITHOUT THE POSSIBILITY OF PAROLE for the Weapon Enhancement, CONSECUTIVE TO Count V. State filed a JUDGMENT OF CONVICTION; WARRANT OF EXECUTION AND ORDER OF EXECUTION IN OPEN COURT. Court admonished the Department of Parole and Probation for the discrepancies in the PSI. COURT ORDERED the Count V weapon enhancement and Count VII stricken from the sentencing procedures. COURT FURTHER ORDERED, pursuant to said verdicts of the Jury and there being no legal cause why said verdicts and said Judgment of Sentence of Death should not be executed ORDER that the Director of the Department of Prisons shall execute the Judgement of Sentence of Death imposed upon the Defendant by an injection of a lethal drug, within the limits of the State of Nevada, in the presence of the Director of the Department of Prisons. COURT FURTHER ORDERED, that the

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## CRIMINAL COURT MINUTES

96-C-136862-C STATE OF NEVADA

vs Thomas, Marlo

CONTINUED FROM PAGE: 013

County shall execute in triplicate under the seal of the court, certified copies of the WARRANT OF EXECUTION and the JUDGMENT OF SENTENCE OF DEATH, and of the entry in the MINUTES of the Court. The original of the triplicate copies of the JUDGMENT AND WARRANT OF EXECUTION AND ENTRY in the minutes shall be filed in the office of the County Clerk, and two triplicate copies shall be immediately delivered by the Clerk to the Sheriff. The Sheriff is directed to take charge of the Defendant and transport and safely deliver him to the Director of the Department of Prisons of the State of Nevada.

09/23/97 08:30 AM 00 DEFT'S MOTION FOR STAY OF EXECUTION

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

OFFICERS: LINDA VIGIL, Court Clerk  
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004352	Owens, Steven S.	Y
001 D1	Thomas, Marlo	N
ST PD	State Public Defender	Y
003754	Laporta, Peter R.	Y

There being no opposition, COURT ORDERED, motion GRANTED.

NDP

11/09/99 08:30 AM 00 DEFT'S MOTION FOR STAY OF EXECUTION

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: CINDY HORTON, Court Clerk  
MARY BETH COOK, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
001648	Barker, David B.	Y
001 D1	Thomas, Marlo	N
ST PD	State Public Defender	Y
005103	Richards, Daren B.	Y

Court advised cannot find the writ in the file. Mr. Richards advised he does not have a copy of the writ. Court advised there is no further date pending and ORDERED, MOTION DENIED.

NDP

CONTINUED ON PAGE: 015

## CRIMINAL COURT MINUTES

96-C-136862-C STATE OF NEVADA vs Thomas, Marlo

CONTINUED FROM PAGE: 014

11/30/99 08:30 AM 00 SPECIAL PD'S MOTION TO WITHDRAW AS  
COUNSEL/MOTION TO APPOINT COUNSEL/STAY

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: MELISSA DAVIS, Court Clerk  
LISA MAKOWSKI, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
006612	Cram, Roger	Y
001 D1	Thomas, Marlo	N
ST PD	State Public Defender	Y
001765	McMahon, Lee E.	Y

Defendant not present. Ms. Mahon advised that defendant's direct appeal was denied and now needs counsel for post conviction relief. COURT ORDERED, as to Motion for Stay of Execution, that is GRANTED until further notice. As to the remainder of the motion, COURT ORDERED, motion GRANTED and matter to be set for Confirmation of Counsel and Mr. Schieck to be notified for possible appointment.

NDP

12/02/99 08:30 AM 00 CONFIRMATION OF COUNSEL (SCHIECK)

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: MELISSA DAVIS, Court Clerk  
LISA MAKOWSKI, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
006122	Shimon, Randal D.	Y
001 D1	Thomas, Marlo	Y
000824	Schieck, David M.	Y

Court advised Mr. Schieck that defendant was represented by Ms. McMahon in the Special Public Defender's office and that the direct appeal has been denied. Upon Court's inquiry, Mr. Schieck advised he could confirm as counsel. COURT ORDERED, MR. SCHIECK APPOINTED AS COUNSEL AND ORDER SIGNED IN OPEN COURT.

NDP



## CRIMINAL COURT MINUTES

96-C-136862-C STATE OF NEVADA vs Thomas, Marlo

CONTINUED FROM PAGE: 015

01/20/00 08:30 AM 00 DEFT'S PETITION FOR WRIT OF HABEAS  
CORPUS

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: CINDY HORTON, Court Clerk  
MARY BETH COOK, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
006029	Lawson, Tamara F.	Y
001 D1	Thomas, Marlo	N
000824	Schieck, David M.	Y

Mr. Scheick requested a briefing schedule. COURT ORDERED OPENING BRIEF TO  
BE FILED BY 4/20/00, STATE'S RESPONSE TO BE FILED BY 5/25/00, ANY REPLY TO  
BE FILED BY 6/14/00 AND MATTER IS SET FOR ARGUMENT AND DECISION ON 6/28/00.

NDP

6/28/00 10:30 A.M. ARGUMENT AND DECISION

06/28/00 10:30 AM 00 ARGUMENT AND DECISION

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: MELISSA DAVIS, Court Clerk  
LISA MAKOWSKI, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004963	Daskas, Robert J.	Y
001 D1	Thomas, Marlo	N
000824	Schieck, David M.	Y

Mr. Schieck requested additional time, to which the State has no objection.  
COURT ORDERED, Supplemental Points and Authorities DUE BY 8/30/00 and State  
to respond by 9/30/00 and matter CONTINUED.

NDP

CONTINUED TO: 11/02/00 08:30 AM 01

## CRIMINAL COURT MINUTES

96-C-136862-C STATE OF NEVADA

vs Thomas, Marlo

CONTINUED FROM PAGE: 016

11/02/00 08:30 AM 01 ARGUMENT AND DECISION

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: THERESA LEE, Court Clerk  
LISA MAKOWSKI, Reporter/RecorderPARTIES: STATE OF NEVADA  
004963 Daskas, Robert J.  
001 D1 Thomas, Marlo  
000824 Schieck, David M.Y  
Y  
N  
Y

The Court has been informed the Defense is not ready to proceed today. Mr. Schieck concurred, and stated he reviewed the Points and Authorities and needs to return to Ely, Nevada to have the Deft sign the Affidavit. Colloquy between Court and Mr. Schieck re the billing process through Court Administration. COURT ORDERED, Mr. Schieck has until 12/1/00 to file his Points and Authorities, the State will have until 1/2/01 at 5:00 P.M. to reply, Mr. Schieck will have two weeks thereafter until 1/19/01 to file a final reply. Mr. Schieck stated on 1/29/01 he will be asking this court to set an evidentiary hearing.

NDP

1/29/01 8:30 A.M. SET TIME CERTAIN: ARGUMENT AND DECISION

01/29/01 08:30 AM 00 SET TIME CERTAIN: ARGUMENT AND DECISION

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: MELISSA DAVIS, Court Clerk  
MARY BETH COOK, Reporter/RecorderPARTIES: STATE OF NEVADA  
003801 Robinson, Lynn M.  
001 D1 Thomas, Marlo  
000824 Schieck, David M.Y  
Y  
N  
Y

Defendant not present as he is housed at the Nevada Department of Prisons. Mr. Schieck requested an additional 45 days to supplement the brief and COURT SO ORDERED. Mr. Schieck to have until 3/19/01; State to respond by 4/19/01 and defense to reply by 5/7/01. COURT ORDERED, matter set for two weeks after reply is due. Court advised Mr. Schieck that if defendant's presence is requested, an Order to Transport must be presented to this Court at least two weeks prior to hearing.

NDP

## CRIMINAL COURT MINUTES

96-C-136862-C      STATE OF NEVADA      vs Thomas, Marlo

CONTINUED FROM PAGE: 017

04/30/01 08:30 AM 00 STATE'S MOTION TO PLACE ON CALENDAR

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: GEORGETTE BYRD/GB, Relief Clerk  
LISA MAKOWSKI, Reporter/RecorderPARTIES:                      STATE OF NEVADA  
000411 Simon, H. L.  
001 D1 Thomas, Marlo  
000824 Schieck, David M.Y  
Y  
N  
Y

Counsel requested a briefing schedule. COURT ORDERED, briefing schedule set and argument and decision set for 5/21/01 vacated and reset.

NDP

DEFT'S OPENING BRIEF DUE ON 5/30/01

STATE'S RESPONSE DUE ON 7/30/01

DEFT'S REPLY DUE ON 8/15/01

08/27/01 8:30 AM ARGUMENT/DECISION: DEFT'S PETITION FOR WRIT OF HABEAS  
CORPUS09/19/01 08:30 AM 00 ARGUMENT PETITION FOR WRIT OF HABEAS  
CORPUS POST CONVICTION

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: Melissa Davis, Court Clerk  
Lisa Makowski, Reporter/RecorderPARTIES:                      STATE OF NEVADA  
000370 Ponticello, Frank M.N  
Y

Defendant not present as he is housed at the Nevada Department of Corrections. Court noted Mr. Schieck had requested a one week continuance and COURT SO ORDERED.

NDC

CONTINUED TO: 09/26/01 08:30 AM 01

## CRIMINAL COURT MINUTES

96-C-136862-C

STATE OF NEVADA

vs Thomas, Marlo

CONTINUED FROM PAGE: 018

09/26/01 08:30 AM 01 ARGUMENT PETITION FOR WRIT OF HABEAS  
CORPUS POST CONVICTION

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: Theresa Lee, Relief Clerk  
Mary Beth Cook, Reporter/Recorder

PARTIES: STATE OF NEVADA  
002781 Roger, David J.  
001 D1 Thomas, Marlo  
000824 Schieck, David M.

Y  
Y  
N  
Y

Mr. Schieck stated he will submit the matter on the pleadings. With respect to some of the other issues, he would like an evidentiary hearing. Argument by Mr. Schieck re Deft.'s petition alleging that trial counsel failed to call a number of witnesses at the penalty hearing. Argument by Mr. Roger. COURT ORDERED, Mr. Schieck to bring in Ms. McMahon and Mr. LaPorta to testify at the evidentiary hearing. Colloquy between Court and counsel re other issues, i.e., first issue, trial counsel failed to object to cumulative bad act evidence at the penalty phase, 20 witnesses called, only three victim impact. Deft. argues the State could have shown bad character with less witnesses. Arguments by counsel. COURT ORDERED, the Court DOES NOT FIND that trial counsel was ineffective for failure to object to bad character evidence. The Court does not find merit on that issue. Second issue, Deft. alleges trial counsel failed to limit victim impact statements. Surviving family member testified and read statements of other family members. Arguments by counsel. COURT ORDERED, the Court DOES NOT FIND that trial counsel was ineffective assistance of counsel. Third issue, Deft. argues prosecutorial misconduct at closing argument of penalty phase by appealing to the passions and denigrating mitigators. Arguments by counsel. The Court feels it is fair comment for the prosecutor and defense counsel to ask the jury to make a decision. Fourth issue, the trial court erred in admitting the premeditation and deliberation felony murder, equal and exact justice, anti-sympathy, reasonable doubt and unanimous instructions. Arguments by counsel. COURT ORDERED, the Court DOES NOT FIND ineffective assistance of counsel to predict what the Supreme Court would do in the future. Fifth issue, trial counsel failed to object to a witness comment Deft. was "back in jail". Arguments by counsel. Court stated counsel did object. COURT ORDERED, the Court DOES NOT FIND ineffective assistance of counsel on that issue. Sixth issue, trial counsel failed to object to overlapping aggravating circumstances and appellate counsel failed to raise the issue. Arguments by counsel. COURT ORDERED, Supreme Court states the State can come up with three aggravators on the same act. Counsel can preserve that if they go to the Federal Court on that issue. Seventh issue, trial counsel failed to object to inflammatory opening statements and appellate counsel failed to raise the issue on direct appeal. Arguments by counsel. Although, the Court feels defense counsel should have objected to it, COURT ORDERED, the Court DOES NOT FIND it is of such magnitude to

CONTINUED ON PAGE: 020

## CRIMINAL COURT MINUTES

96-C-136862-C STATE OF NEVADA

vs Thomas, Marlo

CONTINUED FROM PAGE: 019

require a new trial. EIGHTH ISSUE, trial counsel failed to object to prosecutorial misconduct at the penalty phase. Arguments by counsel. COURT ORDERED, the Court will address this issue at the EVIDENTIARY HEARING. The Court will ask trial counsel about this matter. NINTH ISSUE, trial counsel made improper arguments. Arguments by counsel. COURT ORDERED, this issue will be heard at the EVIDENTIARY HEARING and ask trial counsel about this matter. TENTH ISSUE, trial counsel was not prepared. Arguments by counsel. Court inquired of counsel if Deft. confessed to the crimes. Counsel concurred. COURT ORDERED, the Court will reserve this issue for EVIDENTIARY HEARING. The Court will ask counsel re their trial preparation. Eleventh issue, trial counsel failed to offer a jury instruction on theory of mitigation. Arguments by counsel. COURT ORDERED, the Court DOES NOT FIND ineffective assistance of counsel on this issue. Twelfth issue, trial counsel failed to object to the jury being instructed on commutation of sentence. Arguments by counsel. COURT ORDERED, the Court DOES NOT FIND ineffective assistance of counsel. Thirteenth issue, trial counsel failed to request an instruction properly defining character evidence. Arguments by counsel. COURT ORDERED, the Court DOES NOT FIND ineffective assistance of counsel. Fourteenth issue, Appellate counsel failed to raise error in the malice instruction. Arguments by counsel. COURT ORDERED, Deft.'s argument is overruled and FINDS no merit to this issue. Fifteenth issue, Appellate counsel failed to object to the jury being instructed on commutation. Arguments by counsel. COURT ORDERED, the Court FINDS this issue is without merit. Sixteenth issue, Nevada Supreme Court did not conduct fair and adequate appellate review under NRS 177.055(2). COURT ORDERED, request to return to Supreme Court for review is DENIED. Seventeenth issue, fair trial based on race. Arguments by counsel. COURT ORDERED, the Court DOES NOT FIND any systematic exclusion of anyone. Jury selection is random selection through several methods by the Jury Commissioner. COURT ORDERED, the Court DOES NOT FIND ineffective assistance of counsel because it was raised by counsel at time of trial. Court directed both counsel to contact Ms. McMahon and Mr. LaPorta and coordinate their schedules. COURT ORDERED, Mr. Schieck to serve Ms. McMahon and Mr. LaPorta with subpoenas. Upon Court's inquiry, Mr. Schieck stated Deft. will probably want to be present, however, he will check with him.

NDC

10/12/01 1:30 P.M. EVIDENTIARY HEARING

## CRIMINAL COURT MINUTES

96-C-136862-C      STATE OF NEVADA      vs Thomas, Marlo

CONTINUED FROM PAGE: 020

10/12/01    03:30 PM    00    EVIDENTIARY HEARING

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: Melissa Davis, Court Clerk

PARTIES:    NO PARTIES PRESENT

COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO:    11/29/01    10:00 AM    01

01/14/02    09:00 AM    00    EVIDENTIARY HEARING

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: Melissa Davis, Court Clerk

PARTIES:                    STATE OF NEVADA

002781    Roger, David J.

001 D1    Thomas, Marlo

000824    Schieck, David M.

Y

Y

N

Y

Defendant having not been transported for Nevada Department of Corrections,  
COURT ORDERED, matter CONTINUED.    FURTHER, Mr. Schieck to prepare another  
Transport Order.

NDC

CONTINUED TO:    01/22/02    10:00 AM    01

CONTINUED ON PAGE: 022

## CRIMINAL COURT MINUTES

96-C-136862-C STATE OF NEVADA

vs Thomas, Marlo

CONTINUED FROM PAGE: 021

01/22/02 10:00 AM 01 EVIDENTIARY HEARING

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: Melissa Davis, Court Clerk  
Lisa Makowski, Reporter/RecorderPARTIES: STATE OF NEVADA  
002781 Roger, David J.  
001 D1 Thomas, Marlo  
000824 Schieck, David M.Y  
Y  
Y  
Y

Court and counsel noted the issues that need to be addressed are #8, #9 and #10. Lee McMahon sworn and testified. Mr. Schieck advised Mr. LaPorta was to be here, but had to serve as Judge pro tem in Henderson and upon calling will not be available today. COURT ORDERED, matter to be rescheduled upon checking with Mr. LaPorta's schedule. Court directed Corrections Officers from Nevada Department of Corrections to have Defendant remain at High Desert Correctional facility.

NDC

03/15/02 08:00 AM 02 EVIDENTIARY HEARING

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: Keith A. Reed, Relief Clerk  
Mary Beth Cook, Reporter/RecorderPARTIES: STATE OF NEVADA  
002781 Roger, David J.  
001 D1 Thomas, Marlo  
000824 Schieck, David M.Y  
Y  
Y  
Y

Witness Richard LaPorta SWORN & TESTIFIED. Testimony presented. COURT ORDERED, closing arguments to be submitted in writing; matter set for DECISION without argument. Mr. Schieck requested a copy of the transcript of Mr. LaPorta's testimony and a briefing schedule. Court reporter advised counsel the transcript would be ready on Monday. FURTHER ORDERED; briefing schedule as follows: Defense brief due 4-15-02; state's response due 5-13-02; Defense reply due 5-24-02; matter set for DECISION. Court stated counsel need not be present if they do not desire as no argument will be allowed.; Deft's presence WAIVED.

NDC

6-5-02 8:30 AM DECISION: EVIDENTIARY HEARING

CONTINUED ON PAGE: 023

## CRIMINAL COURT MINUTES

96-C-136862-C STATE OF NEVADA vs Thomas, Marlo

CONTINUED FROM PAGE: 022

06/05/02 08:30 AM 00 DECISION: EVIDENTIARY HEARING

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

OFFICERS: Theresa Lee, Court Clerk  
Tina Hurd/th, Relief Clerk  
Mary Beth Cook, Reporter/Recorder

PARTIES: STATE OF NEVADA  
007866 Peterson, Seth W.

Y  
Y

Court advised he has not seen Deft's counsel David Schieck and ORDERED, Deft. Thomas's presence WAIVED as he is in the Nevada Department of Corrections (NDC). COURT ORDERED, briefing schedule set as follows:

Deft's opening brief to be filed by June 24;  
State's answering brief to be filed by July 24;  
Deft's reply brief to be filed by August 5;  
matter set for decision on August 14.

NDC

8-14-02 8:30 AM DECISION

08/14/02 08:30 AM 00 DECISION

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

OFFICERS: Carole D'Aloia, Court Clerk  
Tom Mercer, Reporter/Recorder

PARTIES: STATE OF NEVADA  
003649 Kephart, William D.

Y  
Y

At the request of Mr. Kephart, COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 08/21/02 08:30 AM 01



## CRIMINAL COURT MINUTES

96-C-136862-C STATE OF NEVADA

vs Thomas, Marlo

CONTINUED FROM PAGE: 023

08/21/02 08:30 AM 01 DECISION

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: Keith Reed/kar, Court Clerk  
Alan Castle, Relief Clerk  
Lisa Makowski, Reporter/Recorder

PARTIES: STATE OF NEVADA  
006204 Digiacomo, Sandra  
001 D1 Thomas, Marlo  
000824 Schieck, David M.

Y

Y

N

Y

Upon review of the case, the Court does not find there was ineffective assistance of counsel; state to prepare the order. Mr. Schieck noted he needs to be served with the order when it is entered and inquired if the Court will appoint counsel to handle the appeal. COURT ORDERED, Mr. Schieck APPOINTED as appeal counsel based upon the denial for post conviction relief.

NDC

09/19/02

## E X H I B I T S

5:28 PM

CASE NO. 96-C-136862-C

CASE STATUS: ACTIVE

STATE OF NEVADA

[ ] vs Thomas, Marlo

[E]

NO.	CODE	EXHIBIT DESCRIPTION	SUB	OF/OB	DATE	S
0001	P	/JUSTICE COURT EXHIBITS	S	/	99/99/99	V
0002	P-1	/AERIAL BACK PARKING LOT (LONE STAR)	S	AD/	06/17/97	V
0003	P-2	/AERIAL FRONT OF LONE STAR	S	AD/	06/17/97	V
0004	P-3	/DIAGRAM OF LONE STAR	S	AD/	06/17/97	V
0005	P-4	/4 THUR 25 PHOTOS	S	AD/	06/17/97	V
0006	P-26	/EVIDENCE IMPOUND REPORT - SCENE	S	AD/	06/17/97	V
0007	P-27	/EVIDENCE PACKAGE	S	AD/	06/17/97	V
0008	P-28	/28 THRU 31 PHOTO	S	AD/	99/99/99	V
0009	P-32	/EVIDENCE IMPOUND REPORT	S	AD/	99/99/99	V
0010	P-33	/EVIDENCE PACKAGE	S	AD/	06/17/97	V
0011	P-33A	/JEAN SHORTS	S	AD/	06/17/97	V
0012	P-34	/EVIDENCE PACKAGE	S	AD/	06/17/97	V
0013	P-34A	/NIKE SHOE - LEFT	S	AD/	06/17/97	V
0014	P-34B	/NIKE SHOE - RIGHT	S	AD/	06/17/97	V
0015	P-36	/EVIDENCE PACKAGE	S	AD/	06/17/97	V
0016	P-36A	/KNIFE	S	AD/	06/17/97	V
0017	P-37	/EVIDENCE PACKAGE	S	AD/	06/17/97	V
0018	P-37A	/S & W REVOLVER	S	AD/	06/17/97	V
0019	P-38	/BODY CHART - CARI DIXON	S	AD/	06/17/97	V
0020	P-39	/39 THRU 50 PHOTOS CARL DIXON	S	AD/	06/17/97	V
0021	P-51	/BODY CHART - MATHEW GIANAKIS	S	AD/	06/17/97	V
0022	P-52	/52 THRU 55 PHOTOS GIANAKIS	S	AD/	06/17/97	V
0023	P-56	/EVIDENCE IMPOUND REPORT	S	AD/	06/17/97	V
0024	P-57	/EVIDENCE BAG SEROLOGY KIT	S	AD/	06/17/97	V
0025	P-58	/EVIDENCE BAG DNA KIT	S	AD/	06/17/97	V
0026	P-59	/NEVER RECEIVED	S	/	99/99/99	
0027	P-60	/NEVER RECEIVED	S	/	99/99/99	
0028	P-61	/61 THRU 65 PHOTOS - VEHICLE	S	AD/	06/17/97	V
0029	P-66	/EVIDENCE IMPOUND REPORT - VEHICLE	S	AD/	06/17/97	V
0030	P-67	/EVIDENCE PHOTO VEHICLE	S	AD/	99/99/99	V
0031	P-68	/EVIDENCE PHOTO - VEHICLE	S	AD/	99/99/99	V
0032	P-69	/WITHDRAWN	S	/	99/99/99	
0033	P-70	/EVIDENCE PACKAGE	S	AD/	06/17/97	V
0034	P-70A	/ALBERTSONS GROCERY BAG	S	AD/	06/17/97	V
0035	P-70B	/DARK BLUE PILLOW CASE	S	/	99/99/99	V
0036	P-72	/EVIDENCE PACKAGE	S	AD/	06/17/97	V
0037	P-72A	/CONTENTS/5857	S	/	99/99/99	V
0038	P-73	/EVIDENCE BAG SEROLOGY KIT	S	AD/	06/17/97	V
0039	P-74	/EVIDENCE BAG SEROLOGY KIT	S	AD/	06/17/97	V
0040	P-75	/SEROLOGY CHART	S	AD/	06/17/97	V
0041	P-76	/WITHDRAWN	S	/	99/99/99	
0042	P-77	/77 THRU 80 PHOTOS	S	AD/	06/17/97	V
0043	P-80	/MIRANDA CARD	S	AD/	06/17/97	V
0044	P-82	/VIDEO TAPE DEFT	S	AD/	06/17/97	V
0045	P-83	/EVIDENC ENVILOPE	S	AD/	99/99/99	V
0046	P-84	/BODY DIAGRAM (DIXON)	S	AD/	06/17/97	V
0047	P/D	/ PENALTY HEARING	S	/	99/99/99	
0048	P-85	/85 THRU 108 / DOCUMENTS	S	AD/	06/23/97	V
0049	D-A	/CHART	001	/	99/99/99	V

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; EXHIBIT LIST;

**THE STATE OF NEVADA,**

Plaintiff,

**VS.**

**MARLO THOMAS,**

Defendant.

**D.C. CASE C136862**  
**DEPARTMENT XV**

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 19 day of September, 2002

SHIRLEY B. PARRAGUIRRE,  
CLARK COUNTY CLERK

Johnna Walker, Deputy Clerk