

1 Accordingly, Defendant Donte requests that  
2 this honorable court appoint different counsel  
3 (outside of the Special Public Defenders office)  
4 to fulfill the responsibility of embracing the  
5 duties of proper and effective counsel on case  
6 # C153154 For Defendant Donte due to the  
7 current conflict of interest which dwells between  
8 Defendant Donte and the entire special Public Defenders  
9 office.

10  
11 Date This 3<sup>rd</sup> Day of February, 1999.

12  
13 Respectfully Submitted,

14  
15 Donte Johnson

16 Donte Johnson #1586283

17 C.C.D.C.

18 330 Casino Center

19 Las Vegas, Nev. 89101

20 (Defendant)

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22  
23  
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25  
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-3-

1 Donte Johnson, The defendant in the above cited case through this,  
 2 (Motion to withdraw counsel and Appoint outside counsel) to the  
 3 court, giving rise to court appointed counsel's failure to file any  
 4 pretrial motions, writs, or petitions to challenge the chain of custody of  
 5 evidence; evidence illegally seized; inspection of all physical and exculpatory  
 6 evidence, has failed to personally interview witnesses in this case; discuss  
 7 any defense in this case; investigate any defense that may mitigate  
 8 or reduce charges against the defendant; challenge the issue of the  
 9 actual search warrant; has failed to gain any medical reports or  
 10 examinations, D.N.A. testing results; counsel has failed to file any pretrial  
 11 motions to gain access to evidence; The burden of showing such  
 12 materiality and exculpatory nature of evidence which is not  
 13 properly identified or presented by the prosecution rests on the  
 14 defense as stated in (State v. Havas, supra. 601 P.2d 1197 (Nev. 1979)  
 15 and in (Sparks v. state, 759 P.2d 180 (Nev. 1988)).

16 Due to counsels failure's, a conflict of interest has developed  
 17 between counsel and defendant.

18 Donte Johnson, Defendant, now requests in this motion that this  
 19 court appoint different counsel (other than the Special Public Defenders  
 20 Office) Due to the fact that there is a conflict of interest that  
 21 stands and exists.  
 22  
 23  
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 27

CeRTIFICATE of Service BY Mail

I, Donte Johnson, hereby certify that a true and correct copy of Defendants Motion to Withdraw Counsel and Motion to appoint outside counsel (other than the special Public Defenders Office), was mailed to the following interested parties at the following addresses:

STEWART L. Bell

Clark County District Attorney

200 South third street

Las Vegas, Nev. 89155

clerk of courts

200 south third street

P.O. Box # 551601

Las Vegas, NV. 89155

Donte Johnson

Donte Johnson #1586283

C.C.D.C

330 Casino Center

Las Vegas, Nev. 89101

(Defendant)

Sworn and subscribed be me this 3rd day of February 1999.

Donte Johnson

-4-

ORIGINAL

*Shirley B. Rung*

FEB 19 9 34 AM '99

FILED

DISTRICT COURT  
CLARK COUNTY, NEVADA

OPPS  
STEWART L. BELL  
DISTRICT ATTORNEY  
Nevada Bar #000477  
200 S. Third Street  
Las Vegas, Nevada 89155  
(702) 455-4711  
Attorney for Plaintiff

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,  
#1586283

Defendant.

Case No. C153154  
Dept. No. V  
Docket H

STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION TO  
WITHDRAW COUNSEL AND APPOINT OUTSIDE COUNSEL

DATE OF HEARING: 02/23/99  
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through  
ROBERT DASKAS, Deputy District Attorney, and files this State's Opposition to Defendant's  
Pro Per Motion to Withdraw Counsel and Appoint Outside Counsel.

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

4 DATED this 18 day of February, 1999.

5 Respectfully submitted,

6 STEWART L. BELL  
7 DISTRICT ATTORNEY  
8 Nevada Bar #000477

9 BY   
10 ROBERT DASKAS  
11 Deputy District Attorney  
12 Nevada Bar #004963

13 POINTS AND AUTHORITIES

14 The Sixth Amendment of the United States Constitution guarantees an accused the  
15 effective assistance of counsel. It does not guarantee a meaningful relationship between attorney  
16 and client. Morris v. Slappy, 461 U.S. 1, 103 S.Ct. 1610 (1983).

17 The right to counsel of one's own choosing is not absolute. In Junior v. State, 91 Nev.  
18 439, 537 P.2d 1204 (1975), for example, the defendant was represented by the State Public  
19 Defender at his preliminary hearing. At trial, defendant asked the court to discharge the State  
20 Defender and appoint private counsel. Id. at 440. The trial court refused, offering the defendant  
21 three alternatives: he could continue receiving the services of the State Public Defender; he  
22 could hire private counsel; or he could defend himself. Id. The Nevada Supreme Court agreed  
23 with the trial court's decision. It held:

24 A defendant is not entitled to reject his court-appointed counsel and  
25 request substitution of other counsel at public expense absent a  
26 showing of adequate cause for such a change.

27 Id. citing People v. Ginther, 212 N.W.2d 922 (Mich. 1973); see also Thomas v. State, 94 Nev.  
28 605, 584 P.2d 674 (1978) (recognizing that the right to counsel of one's own choosing is not  
absolute).

A decision as to whether adequate cause exists to justify a change of attorney is left to

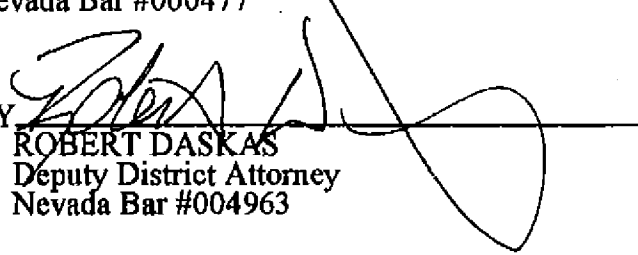
1 the sound discretion of the trial court and such a decision will not be disturbed absent a showing  
2 of clear abuse of discretion. Thomas v. State, 94 Nev. 605, 584 P.2d 674 (1978). Personality  
3 conflicts or disagreements over defense strategy is not sufficient to allow a defendant to  
4 discharge his court appointed attorney. Johnson v. State, 556 P.2d 1285 (Okla.Crim. 1976).  
5 Moreover, a defendant cannot force the termination of his court appointed counsel by refusing  
6 to cooperate with the attorney. Shaw v. United States, 403 F.2d 528 (8th Cir. 1968).

7 In the instant case, Defendant has been provided with the services of a highly competent  
8 and respected criminal defense attorney. The attorney's qualifications and prior experience in  
9 defending persons accused of crimes is substantial. Finally, Defendant has failed to demonstrate  
10 adequate cause for change of counsel. Accordingly, Defendant's Pro Per Motion to Withdraw  
11 Counsel and Appoint Outside Counsel should be denied.

12 DATED this 18 day of February, 1999.

13 Respectfully submitted,

14 STEWART L. BELL  
15 DISTRICT ATTORNEY  
16 Nevada Bar #000477

17 BY   
18 ROBERT DASKAS  
19 Deputy District Attorney  
20 Nevada Bar #004963

21 RECEIPT OF COPY

22 RECEIPT OF COPY of the above and foregoing State's Opposition to Defendant's Pro  
23 Per Motion to Withdraw Counsel and Appoint Outside Counsel is hereby acknowledged this  
24 18th day of February, 1999.

25 SPECIAL PUBLIC DEFENDER'S OFFICE  
26 ATTORNEY FOR DEFENDANT

27 BY   
28 309 S. THIRD STREET, SUITE 401  
LAS VEGAS, NEVADA 89101

DASKR/sbs

33  
**ORIGINAL**

*Shirley B. Paragium*

FEB 26 3 59 PM '99

**FILED**

1 **NISD**  
2 **STEWART L. BELL**  
3 **DISTRICT ATTORNEY**  
4 Nevada Bar #000477  
5 200 S. Third Street  
6 Las Vegas, Nevada 89155  
7 (702) 455-4711  
8 Attorney for Plaintiff

9  
10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 **THE STATE OF NEVADA,**  
13  
14 **Plaintiff,**

15 **-vs-**

16 **DONTE JOHNSON,**  
17 **#1586283**

18 **Defendant.**

Case No. C153154  
Dept No. V  
Docket H

19 **SUPPLEMENTAL NOTICE OF INTENT TO SEEK DEATH PENALTY**  
20 **PURSUANT TO AMENDED SUPREME COURT RULE 250**

21 **COMES NOW, the State of Nevada, through STEWART L. BELL, Clark County District**  
22 **Attorney, by and through GARY L. GUYMON and ROBERT J. DASKAS, Deputy District**  
23 **Attorneys, pursuant to the Order Amending Supreme Court Rule 250 filed on December 30,**  
24 **1998, N.R.S. 175.552 and N.R.S. 200.033, and declares its intention to seek the death penalty**  
25 **at a penalty hearing. Furthermore, the State of Nevada discloses that it will present evidence of**  
26 **the following aggravating circumstances at a penalty hearing:**

27 1. The murder was committed by a person who knowingly created a great risk of death to  
28 more than one person by means of a weapon, device or course of action which would  
normally be hazardous to the lives of more than one person. N.R.S. §200.033(3).

The murders were committed by Defendant and/or Sikia Smith and/or Terrell Young  
firing at least four shots from a .380 caliber firearm while inside the residence at 4825 Terra

1 Linda. Three of the four murders occurred in a single room inside the residence. Moreover, a  
2 total of possibly seven persons were present inside the residence during the killings. Those  
3 present in the house included the Defendant and his co-conspirators (Sikia Smith and Terrell  
4 Young), as well as the victims (Jeffrey Biddle, Tracey Gorringer, Mathew Mowen and Peter  
5 Talamentez). The Defendant knew, or should have known, that multiple persons were present  
6 inside the residence when shots were fired.

7  
8 2. The murder was committed while the person was engaged, alone or with others, in the  
9 commission of or an attempt to commit or flight after committing or attempting to  
10 commit, any robbery, arson in the first degree, burglary, invasion of the home or  
11 kidnaping in the first degree, and the person charged (a) killed or attempted to kill the  
12 person murdered or (b) knew or had reason to know that life would be taken or lethal  
13 force used. N.R.S. §200.033(4).

14 Defendant and/or Sikia Smith and/or Terrell Young entered the residence at 4825 Terra  
15 Linda with the intention of stealing controlled substances and/or money and/or personal  
16 property. Once inside the residence, Defendant and/or Sikia Smith and/or Terrell Young  
17 brandished firearms, demanded controlled substances and/or money and/or personal property  
18 from the victims, and bound each victim at the ankles and wrists with gray duct tape. The items  
19 taken from the victims and/or the residence included approximately \$240.00, a video cassette  
20 recorder and/or Nintendo Play Station, and a pager. The victims were killed, at least in part,  
21 because some or all of the victims would be able to identify Defendant and/or Sikia Smith and/or  
22 Terrell Young.

23  
24 3. The murder was committed to avoid or prevent a lawful arrest or to effect an escape from  
25 custody. N.R.S. §200.033(5).

26 As alleged above, some or all of the victims recognized Defendant and/or Sikia Smith  
27 and/or Terrell Young. Consequently, the murders were committed in an effort to prevent the  
28 victims from identifying the Defendant and/or Sikia Smith and/or Terrell Young as the



1 perpetrators of crimes which, in turn, could lead to the arrest of Defendant and/or Sikia Smith  
2 and/or Terrell Young.

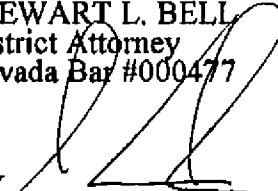
3 4. The defendant has, in the immediate proceeding, been convicted of more than one  
4 offense of murder in the first or second degree. N.R.S. §200.033(12).

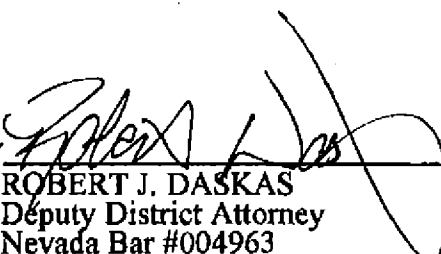
5 In the instant offense, Defendant is charged by way of Indictment with, *inter alia*, four  
6 counts of Murder With Use Of A Deadly Weapon (Open Murder). It is anticipated that the jury  
7 in the instant case will convict Defendant of First Degree Murder With Use Of A Deadly  
8 Weapon for the killings of Jeffrey Biddle, Tracey Gorringer, Mathew Mowen and Peter  
9 Talamentez.

10 DATED this 26 day of February, 1999.

11 Respectfully submitted,

12 STEWART L. BELL  
13 District Attorney  
14 Nevada Bar #000477

15 BY   
16 GARY L. GUYMON  
17 Chief Deputy District Attorney  
18 Nevada Bar #003726

19 BY   
20 ROBERT J. DASKAS  
21 Deputy District Attorney  
22 Nevada Bar #004963  
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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Supplemental Notice of Intent to Seek  
Death Penalty Pursuant to Amended Supreme Court Rule 250 is hereby acknowledged this  
Ninth day of February, 1999.

SPECIAL PUBLIC DEFENDER  
ATTORNEY FOR DEFENDANT

BY Philip J. Kahn  
309 S. THIRD STREET, SUITE 400 (rd)  
LAS VEGAS, NEVADA 89101

98F11830X/sbs

*Shirley B. Pung...*

MAR 16 2 42 PM '99

**FILED**

1 **ORDR**  
 2 PHILIP J. KOHN  
 3 Special Public Defender  
 Nevada Bar No. 000556  
 4 PETER R. LaPORTA  
 Deputy Special Public Defender  
 Nevada Bar No. 003754  
 5 DAYVID J. FIGLER  
 Nevada Bar No. 004264  
 309 S. Third Street, Fourth Floor  
 6 Las Vegas, Nevada 89155-2316  
 (702) 455-6265  
 7 Attorneys for Defendant

10 **DISTRICT COURT**  
 11 **CLARK COUNTY, NEVADA**

13 THE STATE OF NEVADA,

14 Plaintiff,

15 vs.

16 DONTÉ JOHNSON,

17 Defendant.

CASE NO. C153154  
 DEPT NO. V  
 DOCKET H

19 **ORDER TO TRANSPORT**

20 TO: Clark County Detention Center  
 330 S. Casino Center  
 21 Las Vegas, Nevada 89101

22 This matter having come on by Ex Parte Application, the matter having been fully  
 23 reviewed, and good cause appearing therefor,

24 IT IS HEREBY ORDERED that the Clark County Detention Center transport  
 25 Defendant, DONTÉ JOHNSON, to the Offices of his court-appointed psychologist, Dr.  
 26 Louis Mortillaro, Ph.D, for purpose of performing a psychological exam ;

27 ...

SPECIAL PUBLIC  
 DEFENDER

CLARK COUNTY  
 NEVADA

*[Stamp]*

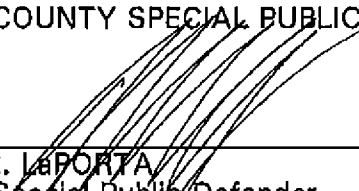
1 IT IS FURTHER ORDERED that the Defendant, DONTE JOHNSON be taken to Dr.  
2 Louis Mortillaro's offices located at 501 S. Rancho, #F37, Las Vegas, NV 89106 on  
3 March 18, 1999 at 1:30 p.m.

4 DATED this 16<sup>th</sup> day of March, 1999.

5  
6   
DISTRICT COURT JUDGE

7 SUBMITTED BY:

8 CLARK COUNTY SPECIAL PUBLIC DEFENDER

9  
10  
11   
PETER R. LAPORTA  
12 Deputy Special Public Defender  
State Bar No. 003754  
13 309 S. Third Street, Fourth Floor.  
Las Vegas, NV 89155  
14 Attorney for Defendant  
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SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

*Anthony B. Pungione*

Donte Johnson #1586283  
330 S. Casino Center 9-C-7  
Las Vegas, Nev. 89101

MAR 23 12 01 PM '99

Case NO: C153154

Dept. NO: V

Docket NO: H

State of Nevada

~VS~

Donte Johnson

Memorandum To  
The Court

Comes now, the defendant, Donte Johnson in this above cited case through this memo to the court making a record and giving rise to the district court to take notice of the Attorney's of Record failure to file the defendants following motions. The motions contained here listed athrun are fundamental motions that defendant Johnson has forwarded to his Attorney's of Record and thus were the center of attention on 3-13-99 on the above case number. The Defendant now pray's that the motions listed and spoke of on record (which counsel has copies of) will now diligently be filed on the Defendants behalf to insure his rights are protected as well as he recieve a fair and unprejudiced trial with due process of the law.

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1. The Defendant Respectfully request that the Attorney's of record file the following motions to preserve his legal rights.

A. Motion for permission to file other motions. The request is pursuant to the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendment's of the U.S.C. and article 1 of the Nevada constitution. These motions will be needed as issues arise and/or new legal precedent is established or made known.

B. Motion to reveal any identities of informant's and reveal any deals, promise's or inducements. This request should be a full ~~explanation~~ explanation of the revealing of any and all threats or inducements. This motion should also contain the definition of all state organizations as well as county agencies and all entitle's involved. A hearing should also be requested. This motion will insure due process pursuant to the 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> amendments of the U.S.C.

C. Motion for full recordation of all proceedings. This motion should contain a respectfull request to direct the court reporter to record and transcribe all of the proceedings in all of the phase's, including pre-trial hearings, legal arguments, Voir Dire, selection of jury, in chambers, at bench conferences, any discussions regarding jury instructions and all matters during trial. This will insure the right's to full review on appeal and assistance of counsel in post-conviction.

D. Motion in limine to bar improper prosecutorial arguments. This motion should as requested contain the courts to enter an order in limine prohibiting the state from engaging in improper argument before the jury and from violating my constitutional rights in the ways discussed listed below or any way that may prejudice the Defendant before the jury or the court. This should stop undue attention to my counsel by making numerous objections during the opening statement and closing argument.

Defendant also ask that attorney's of record request to the court they be allowed to make formal objections to any misconduct outside the presence of the jury at every opportunity. The Defendant prays that his attorney's of record also include relevant law and argument in the following areas to protect his rights under the 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> amendments. 1. Misleading the jury as to the law. 2. Misstating the law on intent. 3. Misstating the law concerning the corroboration of accomplice testimony. 4. Reducing the states burden of establishing guilt beyond a reasonable doubt. 5. Inflaming the passions and prejudices of the jury. 6. Victim impact argument. 7. conscience of the community. 8. all inflammatory arguments. 9. Misleading the jury as to responsibility. 10. arguing facts not in evidence. 11. commenting - expressly or by implication - on the defendants failure to testify and call witnesses. 12. Asserting prosecutorial expertise. 13. - expressing personal opinions. 14. Arguing deterrance. 15. General appeals to prejudice. 16. claims of intimidation. 17. Referring to Defendants Right to a trial free of any prosecutorial misconduct.

E. Motion in limine to preclude state from ~~introducing~~ introducing evidence of any uncharged misconduct, also to protect the defendant by being notified in advance to prepare for a petrocelli hearing. In addition, to allow the state to inform any and all witnesses from engaging in this misconduct.

F. Motion and notice for the prosecution to produce Grand jury records to assure that the Grand jury was not selected in a discriminatory manner. The Defendant prays the attorney's of record will make this request to the court for the state to produce the records concerning the gender and racial make-up of the Grand jurors selected to sit for the years of 1985 - 1999 Clark county Grand Juries. As well as those who were potential jurors not selected through the same years. The Defendant request this under the equal protection clauses, The due process clauses of the U.S.C.

1 and the 6<sup>th</sup> amendment as well.

2 G. Motion to dismiss states notice of intent to seek Death Penalty because  
3 Nevada's Death Penalty is unconstitutional. The Defendant prays his attorneys  
4 research Nevada's Death Penalty statutory scheme and realize that it fails  
5 to marginally narrow the categories of persons eligible. Therefore, concluding that  
6 it is unconstitutional. Nevada's Death Penalty scheme is unconstitutional due  
7 to its lack to create meaningful distinction between 1<sup>st</sup> degree and 2<sup>nd</sup>  
8 degree murder. also, the Death Penalty is cruel and unusual punishment and  
9 is prohibited by the 8<sup>th</sup> amendment of the U.S.C. as well as article 1,  
10 section 6 of the Nevada State constitution.

11 H. Notice of assertion of right to be present

12 The Defendant gives notice to the attorney's of record to file this notice  
13 invoking his right to be present every step of the way of his trial.  
14 Pursuant to the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> amendments of the U.S.C. and articles  
15 1 and 8 of the Nevada State constitution.

16 I. Motion to compel state to disclosure of witnesses. (List) This  
17 motion is pursuant to the 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> amendments of the U.S.C. and  
18 through the 14<sup>th</sup> amendment of Nevada's state constitution to disclose  
19 all witnesses for trial and any known rebuttal.

20 J. Motion to control prejudicial publicity.

21 The Defendant pray that his attorney's research and produce case law  
22 to enter this motion to protect the trial from anymore publicity that may  
23 taint or prejudice potential jurors as was done before the Grand Jury indictment.  
24 This motion should be made so that anyone related to the prosecution should be  
25 prohibited from releasing any information in any way, shape, or form concerning  
26 this case. Pursuant to the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> amendments of the U.S.C. and  
27 article 1 of the Nevada State constitution.



K. Motion for disclosure of juvenile records of the state's witnesses. This motion would be beneficial for ~~the~~ thorough research and preparation for effective cross-examination of the state's witnesses. NRS 62.360 governs the release of those records for this purpose.

L. Motion for disclosure of any possible basis for disqualification of the District attorney the Defendant would ask the attorney's of record pursuant to the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> amendments of the U.S.C., article 1 of Nevada's state constitution and the Nevada Supreme Court Rules, that a request be made to order the Clark county District attorney to reveal on record any and all possible basis for his recusal or his office. This being a capital case, exact standards are to be met to provide a fair trial and prosecution with due process of the law.

M. Motion for discovery of institutional records and all files necessary to a fair trial. The Defendant request the attorney's of record pursuant to NRS. 174.235 Et section 9, article 1 of the Nevada State constitution, the 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> amendments to the U.S.C. and relevant case law, that the attorney's of record will outline and file this motion in order to be fully prepared, informed, aware and vividly effective on Defendants case arguments and pleadings from expotion to conclusion.

N. Motion for list of names and addresse's of persons who may have evidence favorable to the Defendant and for disclosure of all other discovery material. The attorney's of record should request this order requiring the prosecution to search and furnish documents, files, names, and addresse's of persons known to them which may be favorable to the Defendant or present any inconsistencies to the prosecution's theory in this case.

1 This motion should contain relevant case law so that the defendant's  
2 rights are protected under the U.S.C. and Nevada's state constitution  
3 and laws. This motion will insure a fair trial and total awareness of  
4 all possible circumstances and scenarios surrounding the crimes that  
5 the defendant is charged with.

6 In conclusion, Defendant, Donte Johnson, prays that by expressing  
7 his request to the court and his attorney's of record, that it shall  
8 be recognized that his best interests has been filed with the court  
9 within this memorandum. Also, that he request that all of the above  
10 listed motions be filed on his behalf to insure all of his rights  
11 are protected under the law so he may recieve a fair and  
12 unprejudiced trial with due process of the law.

13  
14  
15 Respectfully Submitted,  
16 Donte Johnson  
17 Donte Johnson  
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Henry B. Parsons.

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FILE

**Attorneys for Defendant**

**CLARK COUNTY, NEVADA**

Defendant.

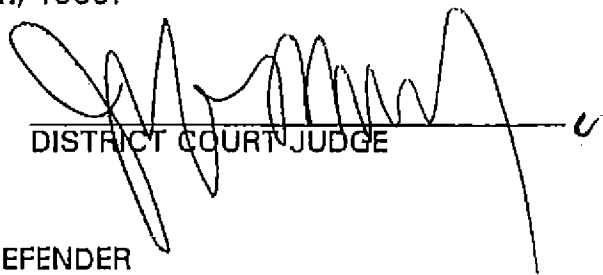
CASE NO. C153154  
DEPT NO. V  
DOCKET H

• • •

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1 IT IS FURTHER ORDERED that the Defendant, DONTE JOHNSON be taken to Dr.  
2 Louis Mortillaro's offices located at 501 S. Rancho, #F37, Las Vegas, NV 89106 on April  
3 1, 1999 at 1:30 p.m.

4 DATED this 28<sup>th</sup> day of March, 1999.

5  
6   
DISTRICT COURT JUDGE

7 SUBMITTED BY:

8 CLARK COUNTY SPECIAL PUBLIC DEFENDER

9  
10   
11 PETER R. LaPORTA  
12 Deputy Special Public Defender  
13 State Bar No. 003754  
14 309 S. Third Street, Fourth Floor  
15 Las Vegas, NV 89155  
16 Attorney for Defendant  
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SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

1 **ROC**  
 2 PHILIP J. KOHN  
 3 Special Public Defender  
 4 Nevada Bar No. 000556  
 5 PETER R. LaPORTA  
 6 Deputy Special Public Defender  
 7 Nevada Bar No. 003754  
 8 DAYVID J. FIGLER  
 9 Nevada Bar No. 004264  
 10 309 S. Third Street, Fourth Floor  
 11 Las Vegas, Nevada 89155-2316  
 12 (702) 455-6265  
 13 Attorneys for Defendant

*Shirley B. Johnson*

MAR 29 2 41 PM '99

FILED

10 **DISTRICT COURT**  
 11 **CLARK COUNTY, NEVADA**

13 THE STATE OF NEVADA,	)		
	)	CASE NO.	C153154
14 Plaintiff,	)	DEPT NO.	V
	)	DOCKET	H
15 vs.	)		
	)		
16 DONTE JOHNSON,	)		
	)		
17 Defendant.	)		
	)		

19 **RECEIPT OF COPY**

20 RECEIPT OF COPY of the foregoing **ORDER TO TRANSPORT** is hereby  
 21 acknowledged this 26 day of March, 1999.

24 *Day 2071*  
 CLARK COUNTY DETENTION CENTER

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

38 Donte Johnson #1586293  
330 S. Casino Center  
Las Vegas Nev. 89101

Adriana B. Pennington

APR 1 7 33 AM '99

Case no: C153154

FILED

Dept. no: V

Docket No. H

1 State of Nevada

2 Plaintiff

3 ~VS~

4 Donte Johnson

5 Defendant

6 #1586283

District Court  
Clark County, Nevada

7  
8 Time of Hearing:

9 Date of Hearing:

4-17-99

10  
11 Motion to Dismiss Counsel  
12 And  
13 Appointment of Alternate  
14 Counsel

15 Comes now, The Defendant, Donte Johnson and moves this  
16 Honorable Court to dismiss Counsel, Special Public Defender  
17 Peter LA Porta and appoint other counsel to Represent  
18 this Defendant.

19 This motion is based on upon all papers pleadings  
20 and documents on file, Factual statements set forth in the points  
21 and authorities contained herein dated this 29<sup>th</sup> day of March, 1999

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## Points and Authorities

It is respectfully requested of this Honorable court to grant this motion to Dismiss counsel for the reason's listed below:

### 1. Procedural Background

Since Peter LA Porta was appointed as counsel on the late month of August in the year of 1998, Defendant Donte Johnson has been, and suffered Manifest Injustice based on counsel Refusal or failure to:

1. Personally interview witnesses in this case.
2. Discuss any defense as to this case.
3. Thoroughly investigate this case.
4. File any pretrial motions to a defense.
5. Investigate any defense that may mitigate or reduce charges against this defendant.
6. Find factual basis as to why defendant was charged initially as to the information filed in this case.
7. Fails to file motion for independent expert's for defense.
8. Fails to file motion to have state's witnesses evaluated for prior inconsistent statement's, Drug addiction, Prior felony arrest.
9. Fails to give defendant complete discovery.
10. Defendant has been requesting discovery since early september of 1998 finally receiving it late in the month of Feb. of 1999, but still only receiving half of it. The half that's missing is the alleged Physical evidence and a few statement's, against defendant.
11. Defendant has called Lee McMahon on the phone numerous times and each time was hung up on.
12. Defendant feels he is being coerced and does not trust -

special Public defenders, Pete LA Porta and Lee McMahon.

## 2. Argument

Defendant Donte Johnson asserts he is being denied his right to effective Representation due to wholly inadequate actions of his court appointed counsel.

Further, counsel's unate action's comport to nothing more than a violation of petitioners due process right.

## Note #

Since Pete LA Porta has been my Lawyer he has failed to gain accesses to the original search warrants, reports, Document's, test results, or investigate my side of the story. He also has no intentions on fighting this case to win my freedom; Pete LAPorta has promised me a conviction, and his only focus is on a penalty phase.

Defendant has an unqualified right to Legal assistance, and assistance ~~of~~ that expresses loyalty to the defendant. "The right to counsel is the right to effective assistance of counsel." Cuyler VS Sullivan 100 S. Ct. 1708 (1980) Trazler VS. U.S. 18 F. 3d. 778 (9th. Cir. 1994) The constitutions guarantee of assistance of counsel cannot be satisfied by mere formal appointment. Avery VS Alabama 306. U.S. 444. 446. (1940). Thus, the adversarial process protected by the sixth amendment requires that the accused have "counsel acting in the role of an advocate" Andres VS California, 386 U.S. 738. 743 (1967).



A party whose counsel is unable to provide effective of adequate assistance is no better than one who has no counsel at all and any appeal would be a futile gesture. *Evitts vs. Lucey* 105 S.Ct. 830 (1985); *Douglas vs. California*, 83 S.Ct. 814 (1963) appointed counsel for this Defendant has done nothing to represent him since appointed and this alone is a viable claim as to ineffective counsel.

*Crandel vs. Bunnell* no. 925530 D.C. NO. CV-90-6419-  
- WJR (S), Filed May 25, 1994 9th Cir.

Defendant contends that although counsel has been appointed in this case, the actions of counsel, or lack thereof, have created unfair prejudice and obstacles which do not comport with the ~~former~~ fair procedures owed to the defendant.

The plurality opinion in *Evitts* and *Douglas*, *Infra*, made it very clear that: There is lacking that equality: Demanded by fourteenth amendment where the richman enjoys the benefit of counsel's examination into the record, Research of the argument on his behalf, while the ~~indigent~~ indigent, Burdened by a preliminary determination that his case is without merit, is forced to shift for himself. 105 S.Ct. 842; 83 S.Ct. At. 816-17

Notwithstanding, the strong policy favoring autonomy, "Ethical, professional and constitutional principals," Establish Counsel's control in any given case, especially the dueth standards owed to his client. See: Professional Responsibility Code (CPR), American Bar Association (ABA). A conflict of interest now exist between counsel and Defendant, as all faith and trust has been diminished as a result of counsel's actions-

1 - or lack thereof, and a showing of conflict of interest  
2 requires no showing of prejudice. Mathis VS. Heed, 927 F.2d  
3 790. 795 (2nd cir. 1991); and Cuyler VS. Sullivan, 100 S.ct.  
4 at 1717 The law addresses itself to actualities. adjudication  
5 is not a mere mechanical process, nor Does it compel  
6 any either or determination. Griffin VS. Illinois, 76 S.ct. 585,  
7 592-94 (1950) Fundamental fairness requires the Abolition  
8 of prejudice which defendant is presently suffering.

9  
10 This is an actuality the law must address.  
11 Anything short of abdication would further Manifest  
12 Injustice The effective assistance of counsel is an  
13 individual's most fundamental right, for without it,  
14 every other right he has to assert becomes affected.

15  
16 Dated this 29<sup>th</sup> day of March 1999

17  
18 Respectfully Submitted  
19 Donte Johnson  
20 Donte Johnson  
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= PRAYER =

1  
2 Based on the above and foregoing Defendant  
3 Donte Johnson pray's this honorable court will  
4 dismiss Special Public Defender Peter LA Porta as  
5 counsel, and appoint outside counsel to represent  
6 defendant in the cause of action before this court.  
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11 Respectfully Submitted  
12 Donte Johnson  
13 Donte Johnson  
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4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA

\*\*\*\*\*

6 STATE OF NEVADA, )

7 PLAINTIFF, )

8 VS. )

CASE NO. C153154

9 DEPT. V

10 DONTE JOHNSON, aka JOHN LEE  
WHITE, )

11 DEFENDANT. )

Transcript of  
Proceedings

12  
13 BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

14 DEFENDANT'S PRO PER MOTION TO DISMISS COUNSEL  
15 AND APPOINTMENT OF ALTERNATE COUNSEL

16 THURSDAY, APRIL 15, 1999, 9:30 A.M.

17 APPEARANCES:

18 FOR THE STATE:

NO DISTRICT ATTORNEY PRESENT

19  
20 FOR DEFENDANT JOHNSON:

PETER LAPORTA, ESQ.  
DAYVID FIGLER, ESQ.  
DEPUTY SPECIAL PUBLIC  
DEFENDERS

21  
22  
23  
24  
25  
26 COURT RECORDER: SHIRLEE PRAWALSKY

1 LAS VEGAS, NEVADA, THURSDAY, APRIL 15, 1999, 9:30 A.M.

2 THE COURT: State versus Johnson.

3 Now, Mr. Johnson, I guess the first thing that I want you to know is I feel a little  
4 uncomfortable doing this without the district attorney, but I think it's necessary to do it because  
5 we're going to talk, to some extent, about the defense involved in the guilt phase of your trial.

6 Did you write this motion to dismiss counsel, or did you have somebody else do  
7 it for you?

8 THE DEFENDANT: I wrote it.

9 THE COURT: You wrote it? This is your handwriting?

10 THE DEFENDANT: Yeah.

11 MR. LAPORTA: It is, Your Honor. Mr. Johnson is very capable and bright individual  
12 and I have no doubt that he wrote this motion himself.

13 THE COURT: How old are you, Mr. Johnson?

14 THE DEFENDANT: Twenty-one.

15 THE COURT: And how far did you go in school?

16 THE DEFENDANT: To the eleventh grade.

17 THE COURT: Number 7 says, "Fails to file motion for independent experts for the  
18 defense." What independent experts do you think they should be hiring that you believe they're  
19 not?

20 THE DEFENDANT: Fingerprint experts for my fingerprints.

21 THE COURT: Okay. Is there any DNA things in this case?

22 THE DEFENDANT: Yeah.

23 THE COURT: And you don't believe they're hiring experts?

24 THE DEFENDANT: No.

25 THE COURT: Well, let's start—that's a very basic thing and my experience is the  
26 Special Public Defender is very willing—it's very hard for most private lawyers to afford hiring  
27 independent experts. My personal feeling is that a lot of lawyers, over the years, who were hired  
28

1 to represent defendants, skimped, didn't spend the money they should have on experts. My  
2 feeling, just going into this is the Special Public Defender has a genuine willingness in order to  
3 help defendants that they represent that they put out the money for experts. Let's start with that  
4 because it's a basic, simple thing to discuss.

5 Is there plans to hire fingerprint experts?

6 MR. LAPORTA: We have hired--as I explained to Mr. Johnson a number of months  
7 ago--we don't have to file motions when it comes to experts. We just need to decide--

8 THE COURT: Right, they just need--

9 MR. LAPORTA: --and get it approved.

10 THE COURT: --to spend their own money.

11 MR. LAPORTA: I told him we had hired a fingerprint expert. Those exemplars and all  
12 the discovery went out just recently. We brought in a DNA expert as soon as I got the report  
13 from the district attorney which was just a matter of a few days ago, within 24 hours we had a  
14 DNA expert hired. Those--all that discovery went up to the Northern California area for the  
15 DNA expert.

16 he third expert that we've hired is a psychologist who is a mitigation expert. Mr.  
17 Johnson, we've sent him to twice. The first time he created a little bit of a problem by refusing  
18 to further the tests, or complete the tests. I talked to him and he went back and he did complete  
19 the tests the second time.

20 Judge, there may be another expert or two that we need to hire, but that will --

21 THE COURT: Do you have any estimate? I mean, this must run thousands and  
22 thousands of dollars. I don't know if that's your part, but it sounds like that would have to cost  
23 thousands.

24 MR. LAPORTA: Judge, I hesitate because, at this point it's a guess. I anticipate hiring  
25 additional experts over the next few weeks, to 30 days. That will be borne out of our hiring the  
26 three experts we have on board now. They may recommend some people.

27 THE COURT: But we're talking--it's got to be thousands of dollars.  
28

1 MR. LAPORTA: At this point, I'd say we've probably spent upwards of six or seven  
2 thousand dollars. And we're probably going to go, just with these experts, probably I'd say 10  
3 to 15 thousand dollars.

4 THE COURT: That's the kind of money that courts might not even authorize. Some  
5 of the courts are real stingy. If you're represented by an appointed lawyer, a lot of courts in this  
6 building say, "Well, you don't really need that much money," or "You don't really need that  
7 expert." If you retain your own lawyer just to represent you, most courts are going to say that's  
8 got to come out of the retainer. You're better off, just starting with item number 7, not only are  
9 you factually incorrect--and I know you know what the word "factual basis" means because you  
10 use it in 6. Well, your factual basis for 7, "Failed to file a motion for independent experts for  
11 defense," is that they should file motions. A: they don't need to, your assumption is that they're  
12 not getting the experts. You hear they are.

13 I read this and you know what, I'll tell you, Mr. Johnson, what I hear is a  
14 suspicion--two things, a suspicion because you're having some communication problems with  
15 Mr. LaPorta who very often is probably the bearer of bad news for Mr. Johnson and you have  
16 some suspicion that develops out of that.

17 And, secondly, if I can read between the lines here, you get a feeling that the guilt  
18 phase of your trial isn't going as well as you like and they seem to be spending a lot of time  
19 focusing on whether or not you should get the death penalty.

20 And I'll tell you that's the position that most defendants feel they're in. I'm sure  
21 Mr. LaPorta is working--and you know what we're talking about. I can tell by the motion, the  
22 difference between the guilt phase and the penalty phase, right?

23 THE DEFENDANT: (nods head)

24 THE COURT: I'm sure they're doing with they can do or they wouldn't be hiring DNA  
25 experts and fingerprints experts because they're chasing down the possibilities of where they can  
26 defend you. You and I both know there's at least one co-defendant who is going to testify  
27 against you. They've got to work both sides. They've got to do everything they can to put  
28



1 themselves in a position where they can try to get you not guilty. But they also have to keep in  
2 mind, at the same time, that they're asking to take your life and they want to be ready for that,  
3 too.

4           There are even times--and I'm not saying that's this kind of case, I don't know  
5 enough about it--there are even times when essentially, not literally, but essentially, your lawyer,  
6 whether it's the best lawyer in the country, stands up and essentially says to the jury, "We're not  
7 going to lose our credibility with you, jury," I'm not saying this is your case, I don't know  
8 enough about your case, but perfectly good lawyers, the best lawyers in the country will  
9 sometimes stand in front of a jury in the guilt phase and essentially say, "We're not going to  
10 destroy our credibility with your folks now. We want you to listen to us when we say don't kill  
11 Defendant X. Don't kill this person. We want you to be listening when we say that. So, we're  
12 not going to insult your intelligence by saying Defendant X didn't commit the crime."

13           I'm not saying that's what's happening in this case, but that actually happens in  
14 some cases. What I hear Mr. LaPorta saying in this case, just in that one limited area of experts  
15 is, "We're still pursuing what we can do to save Mr. Johnson even should he be found guilty in  
16 phase one."

17           Is that the drift of what you're doing?

18           MR. LAPORTA: Yes, Your Honor, that is. And just so Mr. Johnson can hear this in  
19 this particular setting. The Court brought up the two co-perpetrators in this matter. We have  
20 written letters to their lawyers and requested that we be allowed to interview them with their  
21 lawyers present. That's an unusual step. We're still waiting to hear back from the lawyers. But  
22 that addresses his one issue and that was there were inconsistent statements that those co-  
23 perpetrators have given. So, we're going to attempt to interview them. But that's something  
24 that we deal with at trial.

25           THE COURT: Yes, and they may not be able to interview them, but they'll say on the  
26 witness stand, you know, "This is your earlier statements."

27           MR. LAPORTA: And as far as the motions go, Your Honor, Mr. Figler and I have sat  
28

1 down and we've discussed them preliminarily and we are getting ready to begin to file those  
2 motions over then next--

3 THE COURT: Well, the trial isn't until June, right?

4 MR. LAPORTA: That's right. We're going to start filing them over the next 30 days or  
5 so.

6 THE COURT: They don't have to file those motions--and usually it's a bad idea, really,  
7 strategically, to file them too early. They don't have to file these motions, any of them, until  
8 shortly before the trial.

9 You say, number one, as your first problem with them that they don't personally  
10 interview the witnesses in this case. I'm sure they know the obligation as well as I do to either,  
11 through themselves investigating, or through their investigators, interviewing important  
12 witnesses.

13 There's a case in this state that says that if they don't do that and you get  
14 convicted, you get a new trial. If those witnesses are important. I decided that case. It went to  
15 the Nevada Supreme Court. I set aside somebody's murder conviction about five years ago  
16 based on ineffective assistance of counsel. The Supreme Court upheld me and the guy got a  
17 new trial.

18 Every defense lawyer in the state knows it's their duty to investigate a case.  
19 They probably knew it before I made that decision and the Supreme Court sided with me. But  
20 they clearly know it now. You have professional investigators, I'm sure, working this case right  
21 now, right?

22 MR. LAPORTA: That's right, Judge. In fact, we began to interview some of the  
23 witnesses early on, some of the young men that lived in the house where Donte was staying. Our  
24 efforts were only partially successful; some of those people are being a little evasive. As typical,  
25 they don't want to get involved. And so we're having a little trouble tracking them down. But  
26 we'll find them, even through the district attorney's office or through our own office. But we  
27 recognize the importance of interviewing those people and we will continue to make our efforts  
28

1 to interview those we haven't been able to so far.

2 Judge, there's one additional matter here. And that is that I hope we can gain  
3 Mr. Johnson's cooperation in this matter. Simply, he has--this is a closed hearing and we can be  
4 frank here. He's, in the last week, refused to cooperate with us in one or two matters. And one  
5 of those being a release form that we needed to have signed so that we can get his Youth  
6 Authority records. And the investigator went over, because she was going to go personally to  
7 pick those up when we made a trip down to Southern California to talk to his family. But he's  
8 so far refused to sign that form. And I encourage him, at this point, to please sign that. It's most  
9 important for him and for his own role in the defense.

10 THE COURT: Well, I'm not going to get into the details of what he is or isn't doing  
11 with you. But I'll tell you this, Mr. Johnson, these people--the Special Defender's office was set  
12 up to give the best quality of representation when the Public Defender can't represent you. It is  
13 headed by one of the defense lawyers that I personally admire the most in terms of wanting  
14 defendants to get the very best quality representation they can regardless of not having money,  
15 regardless of race, regardless of what they may have done. And he has people in place that I am  
16 convinced are doing a very good job.

17 I'm not going to tell you, you know, I don't know anything about the release. I  
18 know they probably want it to be able to pursue things that would help you if you should be  
19 found guilty at phase one. It will help the mitigation experts. But, in general, without getting  
20 into that specific, you can't come back later, if you get convicted, and complain that something  
21 didn't happen because you wouldn't help them out.

22 So, it's usually in your best interests to keep the lines of communication open and  
23 realize these people really have nothing else in mind except trying to help you. They may not be  
24 able to try to help you. They may not be successful in helping you. If you helped kill these  
25 people on the day that's in question, maybe no one can help you. Maybe you'll get convicted  
26 and maybe you'll be sentenced to death. I have no idea; I'll know better in June.

27 But what I know in my heart is: these people are working hard for you. And if  
28

1 something can be done, they're going to make their best efforts and be successful, given the  
2 system we have, in doing their best for you. And to the degree to which you can help them, it's  
3 in your own best interest.

4 I've had two people in the last two years who sat right where you are who were  
5 actively seeking the death penalty. They were suicidal; they were what's called "volunteers," up  
6 on the death penalty--on death row. They didn't care if they died. I don't sense you're one of  
7 these volunteers. If you want to be found not guilty and have your best chance at that, work  
8 with these people.

9 If you should be found guilty, which isn't a pleasant prospect, and don't want to  
10 die, maybe it's not in the cards, who knows. It's a terrible situation where four people have  
11 been killed. And I don't think that's going to be disputed: four people were killed by somebody.  
12 But to the extent to which it's humanly possible to save you from the death penalty if you're  
13 convicted of murder, that's what these people are trying to do.

14 I mean, there's no DA s in here. If we took a vote, I would imagine among the  
15 lawyers, people who are admitted to the bar who have practices--who are licensed to practice  
16 law, I doubt very many of us would even be for the death penalty. So, we're not looking to get  
17 the death penalty for you, the majority of these lawyers. They're trying to do their best to save  
18 you from that.

19 Without telling you how I feel about the death penalty--I'm going to follow the  
20 law--these people are going to follow the canons of ethics and we'll see what happens. But it  
21 will be in your best interest to help them help you.

22 The Motion to--

23 MR. LAPORTA: Judge, one thing?

24 THE COURT: --Dismiss Counsel is denied.

25 Yes, Mr. LaPorta?

26 MR. LAPORTA: Just one final point. And this is more for Mr. Johnson's comfort level  
27 with is. We're ready, willing, and able and want to help him in this particular matter. And my  
28

END OF  
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DOCUMENT

42  
**ORIGINAL**

1 **EXPT**  
2 STEWART L. BELL  
3 DISTRICT ATTORNEY  
4 Nevada Bar #000477  
5 200 S. Third Street  
6 Las Vegas, Nevada 89155  
7 (702) 435-4711  
8 Attorney for Plaintiff

FILED

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*Shirley A. Ruggiana*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 DONTE JOHNSON  
12 #1586283

13 Defendant.

Case No. C153154  
Dept No. V  
Docket H

14  
15 EX PARTE APPLICATION FOR ORDER REQUIRING  
16 MATERIAL WITNESS TO POST BAIL

17 COMES NOW, STEWART L. BELL, Clark County District Attorney, by and through  
18 GARY L. GUYMON, Chief Deputy District Attorney, and makes application to the above-  
19 entitled Court that an Order be entered herein requiring CHARLA SEVERS be taken into  
20 immediate custody as a material witness for the purpose of posting bail for her appearance in  
21 the jury trial of the above-entitled matter for the said reason of attempting to avoid testifying  
22 before the Eighth Judicial District Court.

23 Further application is made that the Court set bail in the amount of \$10,000.00 and if the  
24 said witness fails to post bail in the amount of \$10,000.00 for her appearance as a witness in this  
25 matter that the Court further direct and order that said witness be delivered into the custody of  
26 the Sheriff of Clark County, pending final disposition of the jury trial in the above entitled  
27 matter on or until further Order of this Court.


28 //

SENT

1        This application is made pursuant to the provision of NRS 178.494 and is based upon  
2 Affidavits attached hereto which are incorporated herein by this reference.

3        DATED this 22 day of April, 1999.

4                               STEWART L. BELL  
5                               DISTRICT ATTORNEY  
6                               Nevada Bar #000477

7                               BY   
8                               GARY L. GUYMON  
9                               Chief Deputy District Attorney  
10                               Nevada Bar #003726

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**GARY L. GUYMON, being first duly sworn deposes and says:**

This matter has been set for jury trial, said hearing to commence at or about 9:00 a.m. on \_\_\_\_\_ day of July, 1999 in said Court.

Your affiant will further advise the Court on information and belief that said witness is presently testifying before the Eighth Judicial District Court in which she is a material and competent witness.

On or about September 1, 1998, Charla Severs testified before the Grand Jury and provided false statements on the behalf of her co-defendants Donte Johnson, Terrell Young and Sikia Smith's behalf in the quadruple homicide.

On or about September 15, 1998, Charla Severs testified before the Grand Jury under oath and provided information in which incriminated defendants Donte Johnson, Terrell Young and Sikia Smith in the quadruple homicide.

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1 Investigator Alexia Conger, with the Clark County District Attorney's Office determined that Ms.  
2 Severs has been declared missing by her mother, Vernell Dyess. A missing persons report was filed with  
3 the Las Vegas Metropolitan Police Department on April 12, 1999. Prior to this date efforts to locate Ms.  
4 Severs have included telephone number and address verification which have met with negative results.  
5 Prior residences have been checked and are negative as well. Ms. Severs has not been arrested and is not  
6 in custody at this time. Ms. Severs family members have been interviewed and are concerned that she  
7 is not willing to come to Court. Further attempts to locate Ms. Severs include verification of employment  
8 and credit history. Several weekly/daily rental motels in the downtown area have been checked as well  
9 with negative results.

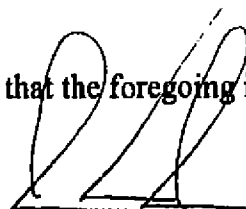
10 Charla Severs has been to the jail on numerous occasions to visit Donte Johnson. Charla Severs  
11 has previously indicated that she is the girlfriend of said Donte Johnson, and more importantly has  
12 testified to the same.

13 Based on the facts we believe her to be an adverse witness who is attempting to avoid service of  
14 process.

15 THEREFORE, your affiant would respectfully pray that this Honorable Court under the  
16 authority of NRS 178.494 issue an Order directing that any police officer of this State shall  
17 forthwith take the said CHARLA SEVERS, ID#1421158 into custody and forthwith convey her  
18 to the jail of the County of Clark, State of Nevada, for incarceration to insure her presence  
19 before the Eighth Judicial District Court.

20 I declare under penalty of perjury that the foregoing is true and correct.

21  
22 Executed on 4-22-99  
(Date)

  
\_\_\_\_\_  
(Signature)

43  
**ORIGINAL**

1 **ORDR**  
2 STEWART L. BELL  
3 DISTRICT ATTORNEY  
4 Nevada Bar #000477  
5 200 S. Third Street  
6 Las Vegas, Nevada 89155  
7 (702) 455-4711  
8 Attorney for Plaintiff

FILED

APR 30 9 28 AM '99

*Shirley L. Rappina*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 DONTE JOHNSON,  
12 #1586283

13 Defendant.

Case No. C153154  
Dept. No. V  
Docket H

14  
15 ORDER REQUIRING MATERIAL WITNESS TO POST  
16 BAIL OR BE COMMITTED TO CUSTODY

17 STATE OF NEVADA }  
18 COUNTY OF CLARK } ss:

19 TO: Any Sheriff, Constable, Marshal,  
20 Policeman or Peace Officer in  
the State of Nevada

21 An ex parte application upon sworn affidavit having been presented to this Court pursuant  
22 to NRS 178.494, wherein it appears that the testimony of CHARLA SEVERS, ID#1421158 is  
23 material to the jury trial in the above-entitled matter, and it further appearing to the Court by the  
24 way of affidavit that the attendance of said witness in the jury trial of this matter by subpoena  
25 is impracticable;

26 YOU ARE THEREFORE commanded forthwith to place said witness in your immediate  
27 custody for the purpose of said witness posting bail with the above entitled court in the amount  
28 of \$10,000.00 in order to secure the attendance of said witness CHARLA SEVERS, ID#1421158

1 before the Court on the 5th day of July, 1999, at 9:00 a.m., in the jury trial of the above entitled  
2 matter.

3 IT IS FURTHER ORDERED and directed that if said witness CHARLA SEVERS,  
4 ID#1421158 fails to post bail in the sum of \$10,000.00 to secure her attendance as a witness in  
5 the jury trial in the above-stated matter as above provided, then you are further commanded to  
6 deliver said witness into the custody of the Sheriff of Clark County pending final disposition of  
7 the jury trial in the above-entitled matter or until further Order of this Court.

8 YOU ARE FURTHER ORDERED to direct the Sheriff of the County of Clark, State of  
9 Nevada, to make the said CHARLA SEVERS, ID#1421158 available in custody in the Eighth  
10 Judicial District Court of the State of Nevada, in and for the County of Clark at 9:00 a.m. on the  
11 5th day of July, 1999, for the testimony in the captioned matter and further disposition by this  
12 Court.

13 The arresting officer is further authorized, in the event that further communication  
14 indicates that the said CHARLA SEVERS, ID#1421158 will appear at the jury trial at the time  
15 above stated without the necessity of incarceration in the Clark County Jail or the posting of the  
16 bond above described, to make arrangements for food and lodging for the said CHARLA  
17 SEVERS for the night of the 4th day of July, 1999.

18 DATED this 29<sup>th</sup> day of April, 1999.

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21 DISTRICT JUDGE  
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FILED  
May 3 11 20 AM '99

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*\*

STATE OF NEVADA,

PLAINTIFF,

VS.

DONTE JOHNSON, aka JOHN LEE  
WHITE

DEFENDANT.

CASE NO. C153154

DEPT. V

Transcript of  
Proceedings

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

DEFENDANT'S PRO PER MOTION TO DISMISS COUNSEL  
AND APPOINTMENT OF ALTERNATE COUNSEL

MONDAY, APRIL 12, 1999, 8:30 A.M.

APPEARANCES:

FOR THE STATE:

GARY GUYMON, ESQ.  
ROBERT DASKAS, ESQ.  
DEPUTY DISTRICT ATTORNEYS

FOR DEFENDANT JOHNSON:

PETER LAPORTA, ESQ.  
DEPUTY SPECIAL PUBLIC  
DEFENDER

COURT RECORDER:

SHIRLEE PRAWALSKY

CE11

1 LAS VEGAS, NEVADA, MONDAY, APRIL 12, 1999, 8:30 A.M.

2 THE COURT: All right. Are we ready on Johnson? That's Donte Johnson on  
3 page 14. I had had some discussions when I saw this on calendar with Mr. Kohn,  
4 the Special Defender, just as to procedural matters, Mr. Guymon, over the weekend.  
5 It's his suggestion in terms of procedure, heading the office and working on this case  
6 to some degree with Mr. LaPorta, that if there is no substantive objection to this, I  
7 hear this matter without the presence of the district attorney in a closed courtroom  
8 and try to see if we can work things out in a way that's going to move this case  
9 along. Do you have any objection to that?

10 MR. GUYMON: Well, Judge, he had spoken to me about that late on Friday  
11 prior to me reading the motion. His indication was that he wanted you to be able to  
12 canvass the defendant as what the defendant wanted counsel to do.

13 Quite honestly, the defendant lists each and every motion very  
14 succinctly. I don't know what the necessity of that is to be quite candid with the  
15 Court.

16 THE COURT: Well, I also raised with Mr. Kohn that I just don't know that I  
17 feel comfortable with the Court doing that. On the other hand, I'd love to see this  
18 move towards trial in a fashion that's productive to everybody. I know, from  
19 personal experience that Mr. Kohn and Mr. LaPorta are providing adequate counsel.  
20 But perhaps there's some degree of miscommunication that I can have some impact  
21 on.

22 What were you going to say, Mr. Guymon?

23 MR. GUYMON: Judge, you indicated that you wanted to go forward. I'll  
24 remind the Court that we asked for a date that was going to be certain for all the  
25 parties. And that's why we put it off as far as we could. So, I'll just renew my  
26 interest with the Court in making sure we stay on track as well.

27 THE COURT: All right. I'm not sure I see a great harm to getting involved in  
28

1 this. I'm not sure it's going to be very productive anyway. But I don't see any harm  
2 in that.

3 Would you folks approach the bench?

4 (Whereupon a bench conference was held, not recorded)

5 MR. GUYMON: Judge, while we're here on calendar, is the Court inclined to  
6 set a briefing schedule of some sort so that we can stay on track with the trial date?

7 THE COURT: A briefing schedule for what?

8 MR. GUYMON: Well, for whatever--for whatever motions that are going to be  
9 filed so that we're not going to be filing them on the eve of trial.

10 THE COURT: Well, I mean, we have rules. Now, do you anticipate filing some  
11 motions?

12 MR. LAPORTA: Judge, Mr. Figler and I, at present, have been going through  
13 the case from a standpoint of strategically as to motions and we'll probably have  
14 those done within the next 30 days.

15 THE COURT: Well, you understand that anything that's going to delay the  
16 trial--

17 MR. LAPORTA: Oh, no, Judge. We don't--they're not going to have any  
18 problems delaying the trial as a result of motions or anything of that nature.

19 THE COURT: Then make sure that everything is filed, instead of the normal  
20 two weeks, because of the nature of this case, let's have everything filed, every  
21 motion that you're going to file by no less than three weeks before the trial date  
22 which is the 6th which makes it about a week before the calendar call. Because,  
23 hopefully, we can resolve these things on the calendar call.

24 MR. LAPORTA: All right, Judge. That will be fine.

25 THE COURT: But we'll see you Thursday at nine o'clock.

26 THE CLERK: April 15th.

27 MR. LAPORTA: Okay, thank you.

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THE COURT: Thank you.

\* \* \* \*

ATTEST: I do hereby certify that I have truly and correctly transcribed  
the sound recording of the proceedings in the above case.

  
SHIRLEE PRAWALSKY, COURT RECORDER

44

District Court  
Clark County, Nevada

ORIGINAL FILED

State of Nevada,  
Plaintiff

MAY 6 9 52 AM 1999 No. 153154

Shirley Dept. No. V  
CLERK Packet No. H

VS

Donte Johnson  
#1586283

Defendant

5-17-99  
9:00 Am

Motion to Proceed Pro-Per with  
Co-Counsel and investigator

Comes NOW the Defendant, Donte Johnson, in Proper Person Requesting an order by this court to Proceed in Pro-Se and be given co-counsel as aid in legal tactics, and appoint a investigator to Aid in Research.

This motion upon the attached pleadings on file herein, points and authorities and any oral argument this court may deem necessary.

Dated this Day May 3, of 1999,

Respectfully Submitted,

Donte Johnson

Donte Johnson





### Points and Authorities

Defendant Donte has the unqualified right to represent himself so long as his waiver of counsel is intelligent and voluntary. Tankley v. State, 113 Nev. AD. op. 112 (1997). See also Faretta v. California, 422 U.S. 806, 836 (1975). And Maldonado Vs. Penno, 348 F.2d 12, 15 (2nd Cir. 1965) (The right of a Defendant in a criminal case to act as his own Attorney is unqualified if invoked prior to the start of the trial).

Supreme court rule 253 invokes guidelines and procedures to be followed in self-representation cases.

Based on the above, the Defendant requests that the court grant this motion and allow the defendant to proceed pro-se with counsel of choice if present counsel does not wish to proceed as co-counsel.

Defendant Further request the court to honor Defendants "Application for order to produce inmate" so Defendant can appear before the court to be properly canvassed as to his request for self-representation.

### In Addition

The Defendant respectfully request that an order pursuant to NRS. 7.135 be granted, appointing Ralph Dyement of Dyement investigation as investigator for the above entitled matter.

### Points and Authorities

NRS. 7.135 states in pertinent part, as follows:

The Attorney or Attorneys appointed by a magistrate or District court to represent a Defendant are entitled, in addition to the fee provided by law for their services, to be reimbursed for expenses reasonably incurred by him

or them in representing the Defendant and may employ, subject to the prior approval of the magistrate or the District Court in an ex-Parte application, such investigative, expert or other services as may be ~~now~~ needed for adequate defense.

Defense counsel contends that an investigator is necessary for the investigation of certain elements of the defense to be raised by Defendant herein. It is necessary to locate and interview people and or physical evidence which may in all likelihood, lead to certain exculpatory evidence to aid Defendant. Therefore, Defendant respectfully request that this honorable court Allow the appointment of Ralph Dymont, investigator for the above entitled matter and authorize the payment of fees therefore in the case in excess of the statutory limit of two thousand (\$ 2,000.00) Five hundred (\$ 500.00) Dollars and not to exceed this amount without Further court approval.

order

This matter coming on upon the Ex-Parte application of the defendant and the court finding good cause:

It is hereby ordered that Ralph Dymont, of Dymont investigations be appointed to investigate the facts and circumstances surrounding this case.

It is further ordered that the court approves the fees to the investigator in excess of the statutory limit of Two thousand Five hundred Dollars, and that the fees will be paid by the state of Nevada pursuant to NRS 177.345 (2).

Dated this May day of 3 1999,

Respectfully submitted, Donte Johnson  
Donte Johnson

~1~

F

Donte Johnson,  
defendant  
~VS~  
The state of Nevada,  
Plaintiff

May 12 3 01 PM '99 case NO C153154  
Dept. NO V  
Docket NO H

RECEIVED

MAY 12 1999

Memorandum for Production of  
Exculpatory Evidence

Comes now Defendant, Donte Johnson, through himself, respectfully moves this court for entry of an order requiring the Government to preserve and to provide him within a time to be therein specified, and any or all actual and potential exculpatory evidence relating to the issues of guilt or punishment as currently known to the Government, its agents and representatives, or which may become known to them by the exercise on their part of due diligence. Such evidence shall include, but is not limited, to the following:

1. evidence from any informants or other sources that the Defendant was not a participant in any of the events alleged by this indictment.
2. Any and all statements, reports, tape recordings, and the like made by or for law enforcement agents, state or federal of any informants, cooperating witnesses, unindicted co-conspirators, or other persons or entities having any knowledge of

the fact of the case or relationship to this case and do not show the defendant's involvement in or relation to any of the allegations contained in the indictment which are exculpatory in nature.

3. Whether any informant, unindicted co-conspirator, or other nonpolice individual who supplied any information or performed any role whatsoever concerning any aspect of the offenses charged herein was at that time or now is an agent of the Drug Enforcement Agency, the United States or any other governmental unit, foreign or domestic.

4. As to those agents, informants, unindicted co-conspirators, cooperating individuals and the like, who may be called to testify in this case then state:

A. Whether or not such agents or individual was suspected, apprehended, or convicted of the commission of any crime or offense at the time he was solicited to gather information or performed other duties on behalf of the United States or any other governmental unit including crimes to which he or they confessed or which were admitted by them during any debriefing, Grand Jury testimony or the like or in which they were implicated by other

B. What crime or crimes and giving specific details, including whether such individual was suspected of, or apprehended for, or convicted of said offense at the time he was solicited to gather or provide information on behalf of either local, state, or federal authorities.

C. Whether or not any potential or actual criminal charges against, or sentences of, sanctions against such individuals were abandoned, reduced, deferred or discontinued or otherwise mitigated or foregone upon agreement of and for the benefit of any such individual or any close friend or relative of such person or persons in exchange for their testimony and/or cooperation in this case on behalf of the Government and the details of same.

3

1 D. The financial arrangements if any, and all ~~arrangements~~ which existed between said  
2 individuals and/or their close friends and/or relatives and the Government.

3 5. The prior criminal records of any and all witnesses, informants, unindicted  
4 co-conspirators, and cooperating individuals who will be used as witnesses  
5 against the Defendant and in preparation of this case for arrest, search and  
6 seizure, indictment, trial, pretrial motions, or involvement on part of such individuals  
7 as known or may become known to the Government by the exercise of due  
8 diligence on its part.

9 6. The substance of any plea bargains entered into by any other unnamed  
10 participants in or witnesses to the offenses alleged herein whose information  
11 or cooperation aided in the investigation and/or prosecution of this case and who  
12 potentially may or are intended to testify or cooperate in any way with the  
13 prosecution of this case including whether said plea bargain was entered into  
14 by the prosecutor or any other governmental unit, foreign or domestic, federal,  
15 state or local and regardless of whether or not the individual is charged herein  
16 including therewith, the authority at the individuals involved in making such  
17 bargains or arrangements.

18 7. Any and all orders of assistance, plea bargains, or the like as well as  
19 job or employment offers, agreements to forego prosecution, assistance and offers  
20 of assistance regarding prison officials, boards of parole, and probation offices,  
21 as well as offers of aid and assistance regarding sentencings, decisions to prosecute  
22 and the like insofar as they exist relative to any individual involved in this case  
23 including therewith such as they pertained to the friends, relatives and  
24 assistants to any individual participating in this case as witnesses or otherwise  
25 for the Government.  
26  
27

( ● 4 ~ )

1 8. A copy of any and all notes of investigative agencies, public or private, state or  
2 federal, local or otherwise involving the investigation of this case which tends to  
3 exculpate the Defendants as to either guilt or punishment. This includes  
4 debriefing notes, tapes of interviews, and conversations with informants,  
5 cooperating individuals, unindicted co-conspirators and the like which notes  
6 or tapes conflict with the Government's witnesses' version of events  
7 directly or by omission.

8 9. Any and all information regarding any informant or potential witness  
9 to be called to testify by the Government in its case who is presently  
10 or has ever been dependent upon any schedule or non-schedule narcotic  
11 or controlled substance and the extent of said dependency; when and where  
12 said dependency insofar as it is or could lead to information beneficial to  
13 the defense.

14 10. The names and addresses of any individuals confronted by the  
15 Government or anyone acting on its behalf in any manner who, when so  
16 confronted, stated that the Defendant was in no way connected with the  
17 allegations set forth in the indictment herein or who gave statements  
18 or information mitigative in nature.

19 11. Whether or not any individual alleged to be a witness, to the  
20 allegations contained in the indictment herein has ever been or is now  
21 a paid Government informant.

22 12. As to all individuals named in paragraph 11, state the nature  
23 of any remuneration paid to the individual, the date it was paid, and the  
24 purpose for which it was paid.

25 13. Whether the Government has filed any I.R.S. forms for any  
26 individuals who have given information to the Government in this case and  
27 were paid informants. If such exists, please produce them for inspection by the  
28 Defendant.

1 14. The names and last known addresses of each individual approached by the  
2 Government as set forth in paragraphs 11 and 25 for cooperation or testimony  
3 in the investigation and preparation for trial of this case.

4 15. IF any individual was threatened in any way or given any kind of  
5 offer in any way in order to secure his cooperation in any way regarding this  
6 case ~~then~~ then name the individual who made the threat or offer and the  
7 exact nature of the threat or offer as well as the date, time, and location at  
8 which such was made and the identity and last known address of any other  
9 individual present.

10 16. Copies of all IRS 1040 forms and related tax schedules filed by any  
11 informants or cooperating individuals not charged in this indictment and who aided  
12 the Government in this case in any way. Such request is for the years of 1990  
13 through 1999.

14 17. Produce copies of all Government ~~documents~~ provided W-2 forms relative  
15 to this case, to any Government paid informant or witnesses or potential witnesses  
16 (chemists and law enforcement officers excepted) relating to this case.

17 18. Indicate the length or time all Government informants in this case  
18 have worked for any Government department, agency, or unit and how many times  
19 they have been utilized by same and for what total compensation if any.

20 19. Whether any Government witness or informant who were participants in  
21 the crimes alleged, although not charged in the indictments, have ever been known  
22 by the Government or its agents to have:

- 23 a. Stolen anything (what and when);
- 24 b. Made any false reports;
- 25 c. distributed or used any controlled substance
- 26 (the above request is made notwithstanding whether or not said actions
- 27 were prosecuted).

20. Have any of the law enforcement officers involved in this investigation or prosecution, whether state, federal, or otherwise, ever been the subject of any adverse internal departmental investigation relating to honesty or veracity.

21. If the answer to paragraph number 20 is yes, then what were the results of such investigations; were polygraph examinations taken, and if so what were the results; were reports actions taken, if so, what?

22. How many witnesses or potential witnesses to this case took or refused to take the polygraph examination with respect to anything relating to this case and if so, please produce for examination by the defendant the test results, materials, questions and the like.

23. State whether or not any case involving testimony of any law enforcement officers, whether federal, state, or otherwise, participating in the investigation of the instant case has already been dismissed because of alleged misconduct or untruthfulness on the part of the said law enforcement officer.

24. If the answer to paragraph number 23 is yes, please give all details relating thereto.

25. What is the name and address of each and every individual who was present during and/or witness to the conduct of the Defendant that the Government alleges constitutes the offense set forth in the indictment herein. and designate which, if any, have been subjected to hypnosis regarding this case.

26. State whether any regulation, operating order, circular, letter, or other official instruction or guideline was violated or breached by the conduct of any individual covered by the same during the course of their official or unofficial involvement in this case.

27. Give the name and address of each individual who has handled evidentiary items in this case.



● — 7 —

28. what is the extent of drug use, past and present, of all Government agents, witnesses, informants, cooperating individuals, and co-defendants if any, who were used to obtain evidence which will be presented against the Defendant by the Government to prove its case, as such is known, or can become known by the exercise of due diligence on the part of the Government insofar as such information relates to those individuals' ability to see, hear, and relate to those facts which occur in their presence.

29. The ~~the~~ psychiatric records and/or history of such person described in the above paragraphs numbers 4, 5, 6, and 28, that relate to each such individual's ability to be truthful, forthright, and honest as a witness and to know, hear, see, tell and relate facts done in their presence as such is known or can become known by the exercise of due diligence on the part of the Government.

30. Any and all evidence of any nature, type or description which indicates lack of knowledge, intent, or capability by the Defendant in allegations set forth here or which would be mitigative to his involvement and would operate to his benefit on the issue of punishment.

Wherefore, Defendant requests this court grant this motion and such other further relief as may be deemed just including direction that any requested item not ordered be preserved and maintained in tact for future consideration.

Respectfully Submitted,

Donte Johnson

Donte Johnson

Date:

Attorney,

Pete La Porta

-8-

## Authority

By this motion, the defendant seeks, under *Brady v. Maryland*, 373 U.S. 83 (1963), a broad array of potentially exculpatory evidence. The United States Supreme Court has held that the Government has an ongoing obligation to turn over evidence which is favorable to the accused. *Pennsylvania v. Ritchie*, 480 U.S. 49 (1987).

The Sixth Amendment specifically guarantees a defendant the right to be confronted with the "witnesses against him;" *Pointer v. Texas*, 380 U.S. 400, 403 (1965); *Brookhart v. Janis*, 384 U.S. 1, 3 (1966), and to impeach with prior inconsistent statements. *Kirby v. United States*, 174 U.S. 47, 55 (1899). That right attaches when a witness offers testimony that is "damaging," *Brookhart v. Mladene*, 385 U.S. 363, 365 (1966), or has material bearing on his case. In *United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375, 3384 (1985), the Supreme Court made it absolutely plain that the suppression of impeachment or other exculpatory evidence amounts to constitutional error that requires reversal if such evidence is material in the sense that its suppression might affect the outcome of trial. (*Blackmun, J.*)

(The reviewing court should assess "with awareness of the difficulty of reconstructing in a post-trial proceeding the course that the defense and the trial would have taken had the defense not been misled by the prosecutor's incomplete response"). *Id.*

## Conclusion

Based upon the foregoing, the Defendant respectfully urges this Honorable court to enter an order granting the relief requested and for such other and further relief as this court deems necessary and proper.

Respectfully Submitted,

Donita Johnson

Donita Johnson

Pete LaPorta Attorney for Defendant.

Dated: \_\_\_\_\_

ORIGINAL

District court  
Clark County, Nevada

FILED

State of Nevada,

Plaintiff

-VS-

Donte Johnson

#1586283 Defendant

MAY 13 9 58 AM '89  
CASE NO. C153154

CLERK Dept. No. V

Docket No. H

5-17-99

Motion for Discovery

Comes now the defendant, Donte Johnson by and through his self, and moves this Honorable court for and order requiring the District Attorney's office to supply to the defendant or make available all information and material favorable to a defense of this case (including all books, papers, records, documents and object and all facts or information of whatever source or form in the possession of, or known to, the state, the existence of which is known or by the exercise of due diligence may become known to the district attorney), which material and information are or may become of benefit to the Defendant, either on the merits of this case or on the credibility of witnesses.

Further, Defendant request the court to enter and order requiring the plaintiff to furnish Defendant with (1) a list of witnesses known to the plaintiff to have knowledge of the cause favorable to the defense, and a copy of the statement of any such witnesses, (2) a list of persons interviewed by the plaintiff relating to this case but who will not be called as witnesses by the District Attorney, (3) all documents relating to the investigation of this case of this Defendant which will not be introduced into evidence by the plaintiff and, (4) a list of all former or present agent of District Attorney who have participated to any extent in the investigation and prosecution of this case who will

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1 not be called as states witnesses.  
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15 Defendant states that said inspection, information, and statements are necessary  
16 for the preparation of his defense and for the Defendant to obtain a fair trial  
17 and constitution due process of law.  
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21 Respectfully submitted  
22 By Donte Johnson  
23 Donte Johnson  
24 Defendant  
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26  
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# Points and Authorities

1. NRS 174.235. Defendant statements or confessions; reports of examinations and tests. Upon motion of a defendant the court may order the District Attorney to permit the Defendant to inspect and copy or photograph any relevant: (1) written or recorded statements or confessions made by the Defendant, or copies thereof within the possession, custody or control of the state, the existence which is known, or by due diligence may become known to the district attorney and (2) Results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession, custody or control of the state, the existence which is known, or by exercise of due diligence may become known to the district attorney. 2. NRS 174.245. other books, papers, documents, tangible objects or places. Upon motion of a Defendant the court may order the District Attorney to permit the Defendant to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places; or copies or portions thereof which are within the possession, custody, or control of the state, upon a showing of materiality to the preparation of the defense and that request is reasonable. Except as provided in subsection 2 of NRS 174.235 and NRS 174.087, this section does not authorize the ~~discovery~~ discovery or inspection of reports, memoranda or other internal state documents made by state agents in connection with the investigation or prosecution of the case, or of statements made by witnesses or prospective, state witnesses (other than Defendant) to <sup>agents</sup> of the state. 3. The prosecution has the duty to disclose all exculpatory evidence. Brady vs. Maryland, 383 U.S. 83 (1966). See also Giles vs. Maryland, 386 U.S. 66 (1967); Dennis vs. U.S. 384 U.S. 855, 873 (1966).

4. A Defendant has the right to any prior statements given by witnesses who testify against him, Mears vs. State, 83 Nev. 342, 2 P.2d 230 (1967). The better practice is to furnish the Defendant with the statements prior to avoid trial delay and disorientation, Mears vs. State supra. 5. The trial court has wide discretion in permitting the discovery see Marshall vs. District Court, 79 Nevada 280, 382 P.2d 214 (1963). We therefore request that the above discovery be provided. Dated 22 day of Jan, 1999

1. Accordingly, good cause being shown in this filing of Motion,  
2. Defendant prays this Honorable court to grant this Motion forth  
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14. Dated this ~~January~~ day of 22 1999  
15. I Donte Johnson, do solemnly swear, under the penalty of perjury, that  
16. the above Motion is accurate, correct and true to the best of my knowledge.  
17. NRS. 171.102 and NRS. 208.165  
18.  
19.  
20.

21. Respectfully submitted  
22. By Donte Johnson  
23. Donte Johnson  
24. Defendant.  
25.  
26.  
27.

EXPT  
 PHILIP J. KOHN  
 Special Public Defender  
 Nevada Bar No. 000556  
 PETER R. LaPORTA  
 Deputy Special Public Defender  
 Nevada Bar No. 003754  
 DAYVID J. FIGLER  
 Deputy Special Public Defender  
 Nevada Bar No. 004264  
 309 S. Third Street, Fourth Floor  
 Las Vegas, Nevada 89155-2316  
 (702) 455-6265  
 Attorneys for Defendant

MAY 14 2 42 PM '99

*Shirley A. Williams*  
 CLERK

DISTRICT COURT  
 CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON,

Defendant.

CASE NO. C153154  
 DEPT NO. V  
 DOCKET H

Date of Hearing:  
 Time of Hearing:

**EX-PARTE APPLICATION AND ORDER TO PRODUCE JUVENILE RECORDS**

COMES NOW, PETER R. LaPORTA, Deputy Special Public Defender, and submits his Ex-Parte Application requesting this court issue an Order allowing him to obtain the juvenile records from California Youth Authority, including but not limited to, institutional records, medical psychological, juvenile probation, disciplinary and scholastic records of the above Defendant.

...

...

SPECIAL PUBLIC  
 DEFENDER

CLARK COUNTY  
 NEVADA

1 This Ex-Parte Application is made and based upon the Points and Authorities  
2 attached hereto and the Affidavit of Peter R. LaPorta, Deputy Special Public Defender .

3 DATED this \_\_\_\_ day of May, 1999.

4 PHILIP J. KOHN  
5 SPECIAL PUBLIC DEFENDER

6  
7  
8 PETER R. LaPORTA  
9 Nevada Bar No. 003754  
10 Deputy Special Public Defender  
11 309 S. Third Street, Fourth Floor  
12 Las Vegas, Nevada 89155-2316  
13 (702) 455-6265  
14 Attorneys for Defendant

15 **POINTS AND AUTHORITIES**

16 NRS 62.370(7) provides:

17 The court may upon application of a district attorney or an attorney  
18 representing a defendant in a criminal action, order an inspection of the  
19 records for the purpose of obtaining information relating to persons who  
20 were involved in the incident recorded.

21 **CONCLUSION**

22 Based on the foregoing Points and Authorities and the Affidavit of Peter R. LaPorta,  
23 Deputy Special Public Defender attached thereto, it is respectfully requested that this  
24 court issue an order requesting that the California Youth Authority.

25 PHILIP J. KOHN  
26 SPECIAL PUBLIC DEFENDER

27 PETER R. LaPORTA  
28 Nevada Bar No. 003754  
Deputy Special Public Defender  
309 S. Third Street, Fourth Floor  
Las Vegas, Nevada 89155-2316  
(702) 455-6265  
Attorneys for Defendant

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA



AFFIDAVIT OF PETER R. LaPORTA

STATE OF NEVADA )  
COUNTY OF CLARK ) ss.

PETER R. LaPORTA, being first duly sworn according to law, deposes and states as follows:

1. I am an attorney duly licensed to practice law in the State of Nevada and am a Deputy Special Public Defender with the Office of the Special Public Defender. I make this Affidavit based upon my own knowledge except as to those matters stated upon information and belief, and as to those personal matters I believe them to be true.

2. That Affiant is the court appointed defense counsel for DONTE JOHNSON, in Case No. C153154.

3. That Defendant is charged with First Degree Murder with Use of Deadly Weapon with said trial scheduled to begin on July 6, 1999.

4. That the Affiant in the course of preparing for this trial, has discovered that there are juvenile records located at the California Youth Authority, Sacramento, CA and that these records are vital to the defense to properly represent said Defendant.

Further Affiant sayeth naught.

PETER R. LaPORTA

SUBSCRIBED AND SWORN to before me  
this 6th day of May, 1999.

Patricia S. Flood  
NOTARY PUBLIC, in and for the  
County of Clark, State of Nevada



PATRICIA S. FLOOD  
Notary Public - Nevada  
My appt. exp. Sep. 1, 2000  
No. 92-3783-1

ORDER

Upon the application of PETER R. LaPORTA, Deputy Special Public Defender and good cause appearing,

IT IS HEREBY ORDERED that the California Youth Authority produce the juvenile records including but not limited to, institutional records, medical, psychological, juvenile probation, disciplinary and scholastic records for the Defendant JOHN LEE WHITE, aka DONTE JOHNSON, SS No. 558-47-7670, DOB 05/27/77 to the Clark County Special Public Defender within thirty days (30) days from the date of this Order.

May 14, 1999

DISTRICT COURT JUDGE

SUBMITTED BY:

PETER R. LaPORTA  
Nevada Bar No. 003754  
Deputy Special Public Defender  
309 S. Third Street, Fourth Floor  
Las Vegas, Nevada 89155-2316  
(702) 455-6265  
Attorneys for Defendant

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

1 EXPT  
 2 PHILIP J. KOHN  
 3 Special Public Defender  
 4 Nevada Bar No. 000556  
 5 PETER R. LaPORTA  
 6 Deputy Special Public Defender  
 7 Nevada Bar No. 003754  
 8 DAYVID J. FIGLER  
 9 Deputy Special Public Defender  
 10 Nevada Bar No. 004264  
 11 309 S. Third Street, Fourth Floor  
 12 Las Vegas, Nevada 89155-2316  
 13 (702) 455-6265  
 14 Attorneys for Defendant

FILED

MAY 21 9 55 AM '99

*John P. Johnson*  
 Clerk

DISTRICT COURT  
 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,	)	CASE NO.	C153154
	)	DEPT NO.	V
15 Plaintiff,	)	DOCKET	H
	)		
16 vs.	)		
	)		
17 DONTE JOHNSON,	)	Date of Hearing:	
	)	Time of Hearing:	
18 Defendant.	)		

**EX-PARTE APPLICATION AND ORDER TO PRODUCE JUVENILE RECORDS**

21 COMES NOW, PETER R. LaPORTA, Deputy Special Public Defender, and  
 22 moves this Honorable Court pursuant to NRS 432B.290(4), for an Order allowing him to  
 23 inspect the school records, including but not limited to, institutional records, medical  
 24 psychological, disciplinary and scholastic records of the above referenced person.

25 ...

26 ...

27

28

SPECIAL PUBLIC  
 DEFENDER

CLARK COUNTY  
 NEVADA

CE43

1 This Ex-Parte Application is made and based upon the Points and Authorities  
2 attached hereto and the Affidavit of Peter R. LaPorta.

3 DATED this 19th day of May, 1999.

4 PHILIP J. KOHN  
5 SPECIAL PUBLIC DEFENDER

6  
7  
8 PETER R. LAPORTA  
9 Nevada Bar No. 003754  
10 Deputy Special Public Defender  
11 309 S. Third Street, Fourth Floor  
12 Las Vegas, Nevada 89155-2316  
13 (702) 455-6265  
14 Attorneys for Defendant

15 **POINTS AND AUTHORITIES**

16 NRS 62.370(7) provides:

17 The court may upon application of a district attorney or an attorney  
18 representing a defendant in a criminal action, order an inspection of the  
19 records for the purpose of obtaining information relating to persons who  
20 were involved in the incident recorded.

21 **CONCLUSION**

22 Based on the foregoing Points and Authorities and the Affidavit of Peter R. LaPorta,  
23 Deputy Special Public Defender attached thereto, it is respectfully requested that this  
24 court issue an order requesting that the John Muir Middle School produce the juvenile  
25 records including but not limited to, institutional records, medical, psychological, juvenile  
26 probation, disciplinary and scholastic records including those records for Ascot Elementary  
27 ...  
28 ...

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

1 School which are in the possession of John Muir Middle School, for the Defendant JOHN  
2 LEE WHITE, aka DONTE JOHNSON, SS No. 558-47-7670, DOB 05/27/77 to the Clark  
3 County Special Public Defender.

4 PHILIP J. KOHN  
5 SPECIAL PUBLIC DEFENDER

6  
7  
8 PETER R. LaPORTA  
9 Nevada Bar No. 004264  
10 Deputy Special Public Defender  
11 309 S. Third Street, Fourth Floor  
12 Las Vegas, Nevada 89155-2316  
13 (702) 455-6265  
14 Attorneys for Defendant

15 **AFFIDAVIT OF PETER R. LaPORTA**

16 **STATE OF NEVADA** )  
17 ) **ss.**  
18 **COUNTY OF CLARK** )

19 PETER R. LaPORTA, being first duly sworn according to law, deposes and states  
20 as follows:

21 1. I am an attorney duly licensed to practice law in the State of Nevada and am  
22 a Deputy Special Public Defender with the Office of the Special Public Defender. I make  
23 this Affidavit based upon my own knowledge except as to those matters stated upon  
24 information and belief, and as to those personal matters I believe them to be true.

25 2. That Affiant is the court appointed defense counsel for DONTE JOHNSON,  
26 in Case No. C153154.

27 3. That Defendant is charged with First Degree Murder with Use of Deadly  
28 Weapon with said trial scheduled to begin on July 6, 1999.

1 That the Affiant in the course of preparing for this trial, has discovered that  
2 there are juvenile records located at the John Muir Middle School which includes records

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

1 from Ascot Elementary School in Los Angeles, California and that these records are vital  
2 to the defense to properly represent said Defendant.

3 Further Affiant sayeth naught.

4  
5  
6 PETER R. LaPORTA

7 SUBSCRIBED AND SWORN to before me  
8 this 19th day of May, 1999.

9  
10 Patricia S. Flood  
11 NOTARY PUBLIC, In and for the  
County of Clark, State of Nevada



PATRICIA S. FLOOD  
Notary Public - Nevada  
My appt. exp. Sep. 1, 2000  
No. 92-3783-1

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SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

ORDER

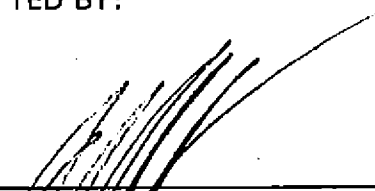
Upon the application of PETER R. LaPORTA, Deputy Special Public Defender and good cause appearing,

IT IS HEREBY ORDERED that the John Muir Middle School located at 5929 S. Vermont Avenue, Los Angeles, California, produce the school records including but not limited to, institutional records, medical, psychological, disciplinary and scholastic records, including those records for Ascot Elementary School currently in your possession for the Defendant JOHN LEE WHITE, aka DONTE JOHNSON, SS No. 558-47-7670, DOB 05/27/77 to the Clark County Special Public Defender within thirty (30) days from the date of this Order.

DATED this 20 day of May, 1999.

  
DISTRICT COURT JUDGE

SUBMITTED BY:

  
PETER R. LaPORTA  
Deputy Special Public Defender  
Nevada Bar No. 003754  
309 Third Street, Fourth Floor  
Las Vegas, Nevada 89155-2316  
(702) 455-6265  
Attorneys for Defendant

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

18

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*[Handwritten signature]*

**ORDR**  
 PHILIP J. KOHN  
 Special Public Defender  
 Nevada Bar No. 000556  
 PETER R. LaPORTA  
 Deputy Special Public Defender  
 Nevada Bar No. 003754  
 DAYVID J. FIGLER  
 Deputy Special Public Defender  
 Nevada Bar No. 004264  
 309 S. Third Street, Fourth Floor  
 Las Vegas, Nevada 89155-2316  
 (702) 455-6265  
 Attorneys for Defendant

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,	)	CASE NO.	C153154
	)	DEPT NO.	V
Plaintiff,	)	DOCKET	H
	)		
vs.	)		
	)	Date of Hearing:	
DONTE JOHNSON,	)	Time of Hearing:	
	)		
Defendant.	)		

**EX-PARTE APPLICATION AND ORDER TO PRODUCE EVIDENCE**

COMES NOW, PETER R. LaPORTA, Deputy Special Public Defender, and requests this Honorable Court for an Order instructing the Las Vegas Metropolitan Police Department, Crime Lab Division to produce to the Office of the Special Public Defender

...  
 ...  
 ...  
 ...



1 any DNA evidence wherein the above-named Defendant is identified presumptively or  
2 conclusively. This Ex-Parte Application is made and based upon the Affidavit of Peter R.  
3 LaPorta.

4 DATED this 19th day of May, 1999.

5 PHILIP J. KOHN  
6 SPECIAL PUBLIC DEFENDER

7  
8  
9 PETER R. LaPORTA  
10 Nevada Bar No. 003754  
11 Deputy Special Public Defender  
12 309 S. Third Street, Fourth Floor  
13 Las Vegas, Nevada 89155-2316  
14 (702) 455-6265  
15 Attorneys for Defendant

16 **AFFIDAVIT OF PETER R. LaPORTA**

17 **STATE OF NEVADA** )  
18 ) **ss.**  
19 **COUNTY OF CLARK** )

20 PETER R. LaPORTA, being first duly sworn according to law, deposes and states  
21 as follows:

22 1. I am an attorney duly licensed to practice law in the State of Nevada and am  
23 a Deputy Special Public Defender with the Office of the Special Public Defender. I make  
24 this Affidavit based upon my own knowledge except as to those matters stated upon  
25 information and belief, and as to those personal matters I believe them to be true.

26 2. That Affiant is the court appointed defense counsel for DONTE JOHNSON,  
27 in Case No. C153154.

28 3. That Defendant is charged with First Degree Murder with Use of Deadly  
Weapon with said trial scheduled to begin on July 6, 1999.

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

1           4.     That the Las Vegas Metropolitan Police Department, Crime Lab Division will  
2 not release any evidence to the Office of the Special Public Defender without a court order  
3 and this information is vital to the defense to properly represent the Defendant.

4           Further Affiant sayeth naught.

5  
6  
7           PETER R. LaPORTA

8 SUBSCRIBED AND SWORN to before me  
9 this 12th day of May, 1999.

10  
11           Patricia S. Flood  
12 NOTARY PUBLIC, In and for the  
13 County of Clark, State of Nevada




PATRICIA S. FLOOD  
Notary Public - Nevada  
My appt. exp. Sep. 1, 2000  
No. 92-3/83-1

ORDER

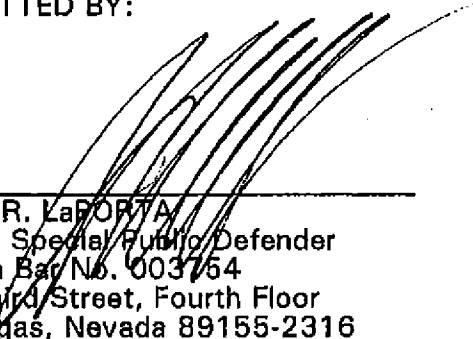
Upon the application of PETER R. LaPORTA, Deputy Special Public Defender and good cause appearing,

IT IS HEREBY ORDERED that the Las Vegas Metropolitan Police Department, Crime Lab Division provide to the Office of the Special Public Defender any DNA evidence wherein the above-named Defendant is identified presumptively or conclusively.

DATED this 20 day of May, 1999.

  
DISTRICT COURT JUDGE

SUBMITTED BY:

  
PETER R. LaPORTA  
Deputy Special Public Defender  
Nevada Bar No. 003764  
309 Third Street, Fourth Floor  
Las Vegas, Nevada 89155-2316  
(702) 455-6265  
Attorneys for Defendant

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

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JUN 18 1988 19

SHIRLEY B. PARRAGUIRRE, CLERK

BY Alona Candito

DEPUTY

ALONA CANDITO

1 STIP  
2 PHILIP J. KOHN  
3 Special Public Defender  
4 Nevada Bar No. 000556  
5 PETER R. LaPORTA  
6 Deputy Special Public Defender  
7 Nevada Bar No. 003754  
8 DAYVID J. FIGLER  
9 Nevada Bar No. 004264  
10 309 S. Third Street, Fourth Floor  
11 Las Vegas, Nevada 89155-2316  
12 (702) 455-6265  
13 Attorneys for Defendant

10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

13 THE STATE OF NEVADA,

14 Plaintiff,

15 vs.

16 DONTE JOHNSON,

17 Defendant.

CASE NO. C153154  
DEPT NO. V  
DOCKET H

19 STIPULATION AND ORDER

20 IT IS HEREBY STIPULATED AND AGREED by and between the parties that this  
21 Honorable Court issue an Order instructing the Las Vegas Metropolitan Police Department,  
22 Crime Lab. Division to produce to Michelle Fox of Forensic Analytical, 3777 Depot Road,  
23 Suite 409, Hayward California 94545 all of the lead fragments recovered from the crime  
24 scene and heads of the victims for the purpose of analyzing the same as well as the black  
25 jeans upon which both the blood of the victim and the purported DNA of the Defendant  
26 appears.

27 ...

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

1 IT IS FURTHER STIPULATED AND AGREED that the Defendant by and through his  
2 attorneys hereby waive any challenge to the chain of custody related only to the transport  
3 of said evidence to Michelle Fox of Forensic Analytical, 3777 Depot Road, Suite 409,  
4 Hayward California 94545 and the return to the Las Vegas Metropolitan Police  
5 Department.

6 IT IS FURTHER STIPULATED AND AGREED that the District Attorney's office will  
7 inform the Las Vegas Metropolitan Police Department to allow the office of the Special  
8 Public Defender to photograph this evidence prior to transport and that the office of the  
9 Special Public Defender will photograph the evidence and provide copies of the  
10 photographic prints to the District Attorney's office.

11 DATED this 2<sup>nd</sup> day of June 1999.

12  
13  
14  
15 PETER R. LAPORTA  
16 Nevada Bar No. 003754  
17 Deputy Special Public Defender  
18 309 S. Third Street, Fourth Floor  
19 Las Vegas, Nevada 89155-2316  
20 (702) 455-6265  
21 Attorney for Defendant  
22  
23  
24  
25  
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12  
13  
14  
15 GARY L. GUYMON  
16 Nevada Bar No. 003726  
17 Deputy District Attorney  
18 200 S. Third Street  
19 Las Vegas, Nevada 89155  
20 (702) 455-2716  
21 Attorney for Plaintiff  
22  
23  
24  
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26  
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SPECIAL PUBLIC  
DEFENDER

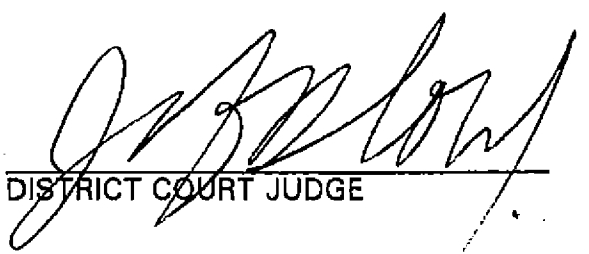
CLARK COUNTY  
NEVADA

ORDER

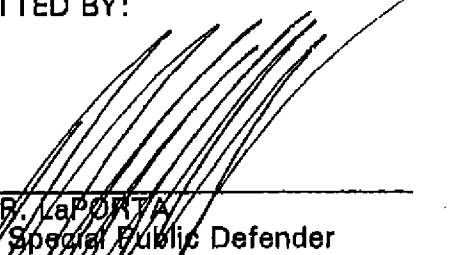
Upon the Stipulation of the parties and good cause appearing,

IT IS HEREBY ORDERED that the Las Vegas Metropolitan Police Department, Crime Lab Division provide to Michelle Fox of Forensic Analytical, 3777 Depot Road, Suite 409, Hayward California 94545 all of the lead fragments recovered from the crime scene and heads of the victims and the black jeans upon which both the blood of the victim and the purported DNA of the Defendant appears for the purpose of analyzing the same. The Defendant has thereby waived all challenges to the chain of custody issues solely related to the transport contemplated and contained in this Order.

DATED this \_\_\_\_ day of June, 1999.

  
DISTRICT COURT JUDGE

SUBMITTED BY:

  
PETER B. LaPORTA  
Deputy Special Public Defender  
Nevada Bar No. 003754  
309 Third Street, Fourth Floor  
Las Vegas, Nevada 89155-2316  
(702) 455-6265  
Attorneys for Defendant

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

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1 **NOTC**  
2 **STEWART L. BELL**  
3 **DISTRICT ATTORNEY**  
4 Nevada Bar #000477  
5 200 S. Third Street  
6 Las Vegas, Nevada 89155  
7 (702) 455-4711  
8 Attorney for Plaintiff

9  
10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 **THE STATE OF NEVADA,**

13 **Plaintiff,**

14 **-vs-**

15 **DONTE JOHNSON,**  
16 **#1586283**

17 **Defendant.**

Case No. C153154  
Dept. No. V  
Docket H

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

20 COMES NOW, the State of Nevada by Clark County District Attorney STEWART L.  
21 BELL, through GARY L. GUYMON, Chief Deputy District Attorney, and ROBERT J.  
22 DASKAS, Deputy District Attorney, pursuant to the Order Amending Supreme Court Rule 250  
23 filed on December 30, 1998, N.R.S. §175.552 and N.R.S. §200.033, and declares its intention  
24 to present the following evidence in support of aggravating circumstances in a penalty hearing:

25 1. The statements of TERRELL YOUNG that were given on September 2, 1998, to  
26 Detectives J. Buczek, T. Thowsen, R. Chandler and K. Hardy of the Las Vegas Metropolitan  
27 Police Department. TERRELL YOUNG'S statements, which will be offered through the  
28 testimony of the Detectives, will establish that the murders were committed by Donte Johnson  
and/or Terrell Young and/or Sikia Smith, who knowingly created a great risk of death to more  
than one person by means of a weapon (.380 caliber pistol and/or rifle(s) and/or shotgun(s)) or

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1 course of action (shooting a person or persons in the midst of several other persons who were  
2 present in the residence at 4825 Terra Linda) which would normally be hazardous to the lives  
3 of more than one person. The statements will also establish that Donte Johnson was the  
4 individual who fired the shots that killed Matthew Mowen, Jeffrey Biddle, Tracey Gorringer, and  
5 Peter Talamantez. Additionally, the statements will offered to establish Donte Johnson's  
6 involvement in a shooting that occurred at the Super 8 Motel located at 5288 Boulder Highway,  
7 Las Vegas, Nevada on or about August 11, 1998. The Las Vegas Metropolitan Police  
8 Department event number associated with the case is 980811-0995. The statements will also  
9 be offered to establish Donte Johnson's involvement in a homicide in which Darnell Lamont  
10 Johnson was murdered at the Thunderbird Hotel in Las Vegas, Nevada on or about the 4th day  
11 of August, 1998. The Las Vegas Metropolitan Police Department event number associated with  
12 the homicide is 980805-1240.

13 The statements of TERRELL YOUNG have been provided to defense counsel in  
14 discovery.

15  
16 2. The statements of SIKIA SMITH that were given on August 26, 1998 and  
17 September 8, 1998, to Detectives James Buczek and Thomas Thowsen of the Las Vegas  
18 Metropolitan Police Department. SIKIA SMITH'S statements, which will be offered through  
19 the testimony of Detectives Buczek and Thowsen, will establish that the murders were  
20 committed by Donte Johnson and/or Terrell Young and/or Sikia Smith, who knowingly created  
21 a great risk of death to more than one person by means of a weapon (.380 caliber pistol and/or  
22 rifle(s) and/or shotgun(s)) or course of action (shooting a person or persons in the midst of  
23 several other persons who were present in the residence at 4825 Terra Linda) which would  
24 normally be hazardous to the lives of more than one person. The statements will also establish  
25 that Donte Johnson was the individual who fired the shots that killed Matthew Mowen, Jeffrey  
26 Biddle, Tracey Gorringer, and Peter Talamantez. Additionally, the statements will offered to  
27 establish Donte Johnson's involvement in a shooting that occurred at the Super 8 Motel located  
28 at 5288 Boulder Highway, Las Vegas, Nevada on or about August 11, 1998. The Las Vegas



1 Metropolitan Police Department event number associated with the case is 980811-0995.

2 The statements of SIKIA SMITH have been provided to defense counsel in discovery.  
3

4 3. The State may rely on the testimony of Sikia Smith and/or Terrell Young. This  
5 testimony will establish that the murders were committed by Donte Johnson and/or Terrell  
6 Young and/or Sikia Smith, who knowingly created a great risk of death to more than one person  
7 by means of a weapon (.380 caliber pistol and/or rifle(s) and/or shotgun(s)) or course of action  
8 (shooting a person or persons in the midst of several other persons who were present in the  
9 residence at 4825 Terra Linda) which would normally be hazardous to the lives of more than one  
10 person.

11 The statements given by Sikia Smith and Terrell Young have been provided to defense  
12 counsel in discovery.  
13

14 4. The testimony of Crime Scene Analyst Shawn Fletcher who recovered certain  
15 items of evidence from the residence at 4825 Terra Linda, including, but not limited to, four (4)  
16 .380 caliber cartridge cases and bullet fragments. CSA Fletcher's testimony will establish that  
17 the murders were committed in a manner that created a great risk of death to more than one  
18 person by means of a weapon (.380 caliber pistol and/or rifle(s) and/or shotgun(s)) or course of  
19 action (shooting a person or persons in the midst of several other persons who were present in  
20 the residence at 4825 Terra Linda) which would normally be hazardous to the lives of more than  
21 one person.

22 Any report(s) generated by CSA Fletcher has been provided to defense counsel in  
23 discovery.  
24

25 5. The testimony of Crime Scene Analyst Sheree Norman, who attended the  
26 autopsies of the four (4) victims in this case and recovered bullet fragments from the victims'  
27 bodies. CSA Norman's testimony will establish that the murders were committed in a manner  
28 that created a great risk of death to more than one person by means of a weapon (.380 caliber

1 pistol and/or rifle(s) and/or shotgun(s)) or course of action (shooting a person or persons in the  
2 midst of several other persons who were present in the residence at 4825 Terra Linda) which  
3 would normally be hazardous to the lives of more than one person.

4 Any report(s) generated by CSA Norman has been provided to defense counsel in  
5 discovery.

6  
7 6. The testimony of Crime Scene Analyst David Horn, who will describe the  
8 residence at 4825 Terra Linda and the location of the victims. CSA Horn's testimony will  
9 establish that the murders were committed in a manner that created a great risk of death to more  
10 than one person by means of a weapon (.380 caliber pistol and/or rifle(s) and/or shotgun(s)) or  
11 course of action (shooting a person or persons in the midst of several other persons who were  
12 present in the residence at 4825 Terra Linda) which would normally be hazardous to the lives  
13 of more than one person.

14 Any report(s) generated by CSA Horn has been provided to defense counsel in discovery.

15  
16 7. The victim impact testimony of the parents and/or siblings of Tracey Gorringer,  
17 Mathew Mowen, Peter Talamentez and Jeffrey Biddle.

18  
19 8. The testimony of Detective James Buczek, Detective Thomas Thowsen, Charla  
20 Severs, Ace Hart, Bryan Johnson, Tod Armstrong, Sikia Smith, and Terrell Young who,  
21 collectively, will testify that Donte Johnson went to 4825 Terra Linda with Terrell Young and/or  
22 Sikia Smith with the intention of stealing drugs and/or money and/or personal property from the  
23 occupants of the residence.

24 Reports and/or statements of these witnesses have been provided to defense counsel in  
25 discovery.

26  
27 9. The testimony of Charla Severs, Ace Hart, Bryan Johnson, Tod Armstrong, Sikia  
28 Smith, and Terrell Young who, collectively, will testify that the victims were murdered, at least

1 in part, because some or all of the victims recognized Sikia Smith and/or Donte Johnson and/or  
2 Terrell Young.

3 Statements of these witnesses have been provided to defense counsel in discovery.  
4

5 10. The State anticipates relying on the verdict(s) and/or verdict forms that will be  
6 returned by the jury in the instant case to establish that the Defendant has, in the immediate  
7 proceeding, been convicted of more than one offense of murder in the first or second degree.  
8

9 11. The juvenile records of DONTE JOHNSON.

10 A copy of DONTE JOHNSON's juvenile criminal history has been provided to defense  
11 counsel in discovery; however, in light of confidentiality concerns, a copy has not been attached  
12 to his Notice. Rather, the State of Nevada requests an *in camera* inspection of such records to  
13 determine their admissibility.  
14

15 12. Evidence regarding Las Vegas Justice Court case number 98F02775X in which  
16 Donte Johnson is charged with one count of Possession of a Controlled Substance With Intent  
17 to Sell. The Las Vegas Metropolitan Police Department event number associated with the case  
18 is 980225-2093.

19 Copies of any and all witness statements and reports associated with the above-referenced  
20 event have been provided to defense counsel.  
21

22 13. Evidence of a shooting that occurred at the Super 8 Motel located at 5288 Boulder  
23 Highway, Las Vegas, Nevada on or about August 11, 1998. The Las Vegas Metropolitan Police  
24 Department event number associated with the case is 980811-0995. The participants in the  
25 shooting included TERRELL YOUNG, DONTE JOHNSON and SIKIA SMITH. The evidence  
26 will be introduced through the testimony of witnesses listed in the discovery associated with  
27 event number 980811-0995.  
28 //

1 Copies of any and all witness statements and reports associated with the above-referenced  
2 event have been provided to defense counsel.

3  
4 14. Evidence regarding a homicide in which Darnell Lamont Johnson was murdered  
5 at the Thunderbird Hotel in Las Vegas, Nevada on or about the 4th day of August, 1998. The  
6 Las Vegas Metropolitan Police Department event number associated with the homicide is  
7 980805-1240. The evidence will be introduced through the testimony of witnesses listed in the  
8 discovery associated with event number 980805-1240.

9 Copies of any and all witness statements and reports associated with the above-referenced  
10 event have been provided to defense counsel.

11  
12 15. Testimony and records of Corrections Officers/Jail Personnel from the Clark  
13 County Detention Center pertaining to Donte Johnson's conduct while incarcerated at the Clark  
14 County Detention Center.

15 Copies of any and all records obtained to date from the Clark County Detention Center  
16 have been provided to defense counsel. The records indicate the names of the Corrections  
17 Officers/Jail Personnel the State intends to call as witnesses at the penalty hearing.

18  
19 16. Testimony of Dante Tromba (or designee), a Gang Intelligence Officer employed  
20 by the Las Vegas Metropolitan Police Department, who will provide testimony concerning the  
21 activities and purposes of the "Six Deuce Brims" gang. The State will also introduce evidence  
22 to establish that Donte Johnson is a member of the "Six Deuce Brims" gang.

23  
24 17. Evidence regarding Las Vegas Justice Court case number 98F06789X in which  
25 Donte Johnson is charged with one count of Attempted Murder With Use of a Deadly Weapon  
26 and one count of Battery With Substantial Bodily Harm. The Las Vegas Metropolitan Police  
27 Department event number associated with the case is 980504-0265. The victim in the case is  
28 Derrick Simpson.

1 Copies of any and all witness statements and reports associated with the above-referenced  
2 event have been provided to defense counsel.

3 DATED this \_\_\_\_\_ day of June, 1999.

4 STEWART L. BELL  
5 DISTRICT ATTORNEY  
6 Nevada Bar #000477

7 BY \_\_\_\_\_  
8 GARY L. GUYMON  
9 Chief Deputy District Attorney  
10 Nevada Bar #003726

11 STEWART L. BELL  
12 DISTRICT ATTORNEY  
13 Nevada Bar #000477

14 BY \_\_\_\_\_  
15 ROBERT J. DASKAS  
16 Deputy District Attorney  
17 Nevada Bar #004963

18  
19 RECEIPT OF COPY

20 RECEIPT OF A COPY of the above and foregoing Notice of Evidence in Support of  
21 Aggravating Circumstances is hereby acknowledged this 11<sup>th</sup> day of June, 1999.

22  
23 SPECIAL PUBLIC DEFENDER'S OFFICE  
24 ATTORNEY FOR DEFENDANT

25 BY Donna Talbot  
26 309 S. THIRD STREET, SUITE 400  
27 LAS VEGAS, NEVADA 89101

28 98F12556X/sbs

ORIGINAL

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FILED  
JUN 14 2 03 PM '99  
Shirley B. Thompson  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,  
#1586283

Defendant.

Case No. C153154  
Dept. No. V  
Docket H

NOTICE OF MOTION AND MOTION IN LIMINE TO PERMIT THE STATE  
TO PRESENT "THE COMPLETE STORY OF THE CRIME"

DATE OF HEARING: 06/29/99  
TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through  
GARY L. GUYMON, Chief Deputy District Attorney, and ROBERT J. DASKAS, Deputy  
District Attorney, and files this Notice of Motion and Motion in Limine to Permit the State to  
Present "The Complete Story of the Crime".

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

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SW

CE42

CE43

1 NOTICE OF HEARING

2 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will  
3 bring the foregoing motion on for setting before the above entitled Court, in Department V  
4 thereof, on Thursday, the 29th day of June, 1999, at the hour of ~~8:30~~ 9 o'clock a.m., or as soon  
5 thereafter as counsel may be heard.

6 DATED this 11<sup>TH</sup> day of June, 1999.

7 STEWART L. BELL  
8 DISTRICT ATTORNEY  
9 Nevada Bar #000477

10 BY [Signature]  
11 GARY L. GUYMON  
12 Chief Deputy District Attorney  
13 Nevada Bar #003726

14 STEWART L. BELL  
15 DISTRICT ATTORNEY  
16 Nevada Bar #000477

17 BY [Signature]  
18 ROBERT J. DASKAS  
19 Deputy District Attorney  
20 Nevada Bar #004963

21 STATEMENT OF FACTS

22 Introduction

23 In the months preceding August of 1998, Tod Armstrong and Ace Hart resided at 4815  
24 Everman Drive in Las Vegas, Nevada. The home was actually owned by Tod Armstrong's  
25 mother, Cheryl Stevens. In early August 1998, Donte Johnson (a.k.a. "Deko"), Charla Severs  
26 (a.k.a. "LaLa") and Terrell Young (a.k.a. "Red") occasionally stayed at the Everman residence.  
27 Charla Severs was the girlfriend of Donte Johnson. Johnson, Young and Severs stayed in the  
28 master bedroom of the house, which is also where they kept their personal belongings. Neither

1 Johnson nor Young nor Severs ever had a key to the residence,

2 Matthew Mowen, Tracey Gorringer and Jeffrey Biddle lived in a residence located at  
3 4825 Terra Linda, also in Las Vegas, during this time-frame. The Everman residence and the  
4 Terra Linda residence were within blocks of one another.

5 Sometime in August of 1998, Matthew Mowen visited the Everman residence to purchase  
6 rock cocaine from Donte Johnson. Shortly after Mowen left the Everman residence, it was  
7 suggested to Donte Johnson that Mowen and his roommates kept a large sum of cash and a large  
8 amount of controlled substances in the Terra Linda home. Subsequently, Donte Johnson, Terrell  
9 Young and Sikia Smith (a.k.a. "Tiny Bug") formulated a plan to rob the occupants of the Terra  
10 Linda residence.

#### 11 The Crimes

12 On August 13, 1998, during the late evening hours, Donte Johnson, Terrell Young, and  
13 Sikia Smith (collectively "Defendants" or "conspirators") executed their plan. Armed with guns,  
14 gloves and duct-tape, the three conspirators drove a stolen vehicle to the Terra Linda residence  
15 for the purpose of robbing its occupants. The car -- a white, four-door, 1994 Ford -- had been  
16 stolen from Axis Rent-a-Car in North Las Vegas, Nevada.

17 Matthew Mowen was outside the Terra Linda residence when Johnson, Young, and Smith  
18 arrived in the stolen car. Mowen was confronted by all three conspirators who ordered Mowen  
19 into the house at gunpoint. A second resident, Tracey Gorringer, was also ordered into the house.

20 Mowen and Gorringer were both ordered to lie face down. The Defendants then bound  
21 the two young men with duct-tape by their ankles and wrists and began searching the Terra  
22 Linda residence for money and any other items of value. Meanwhile, a third Terra Linda  
23 resident, Jeffrey Biddle, arrived home in his pickup truck. He was immediately confronted at  
24 gunpoint by Donte Johnson. Biddle was also ordered to the ground in a prone position. He, too,  
25 had his wrists and ankles duct-taped together while held at gunpoint. Mowen, Gorringer, and  
26 Biddle were now all lying side-by-side in the living room -- face down, duct-taped and  
27 defenseless -- awaiting their destiny.

28 The Defendants ransacked the Terra Linda residence, emptied the wallets of all three



1 victims and, apparently unsatisfied with their spoils, demanded more money. One of the victims  
2 informed the Defendants that a fourth individual, Peter Talamantez, owed him a sum of money;  
3 consequently, the Defendants demanded that the victims contact Peter Talamantez to lure him  
4 to the Terra Linda home. Talamantez was contacted on his pager. He eventually arrived at the  
5 Terra Linda residence, in all likelihood in the early morning hours of August 14, 1998, where  
6 he was greeted at gunpoint by the Defendants. Talamantez, like his friends before him, was  
7 ordered to lie face down and his ankles and wrists were bound with duct-tape.

8 Peter Talamantez offered resistance and began to "disrespect" Donte Johnson. In fact,  
9 Talamantez referred to Donte Johnson, a "Blood" gang member, as "cuz." The term "cuz" is  
10 extremely offensive to members of the "Blood" gang; therefore, Donte Johnson was particularly  
11 insulted by Talamantez's comment. Consequently, Talamantez was struck in the back of the  
12 head with the butt of a handgun and carried into the kitchen by the Defendants. Donte Johnson  
13 then walked to a stereo that was located in the living room, turned up the volume to muffle the  
14 sound from any gunfire, and returned to the kitchen where Talamantez lie helpless in a fetal  
15 position. Johnson ultimately shot Talamantez execution-style in the back of the head.  
16 Talamantez died of a single gunshot wound from a .380 caliber bullet.

17 Matthew Mowen, Tracey Gorringer and Jeffrey Biddle were still alive to hear the gunshot  
18 that killed their friend, and to ponder their fate as they lay helpless in the living room, still bound  
19 with duct-tape at their feet and hands.

20 Donte Johnson and his partners returned to the living room. The Defendants realized that  
21 they could not leave any of the remaining three young men alive as they were potential witnesses  
22 to the killing of Talamantez. Accordingly, Johnson methodically fired a single bullet into the  
23 back of each of the heads of Mowen, Gorringer and Biddle. Each died from a single gunshot  
24 wound from a .380 caliber bullet.

25 Twenty-one (21) year old Jeffrey Biddle, nineteen (19) year old Matthew Mowen,  
26 nineteen (19) year old Tracey Gorringer and seventeen (17) year old Peter Talamantez all lay  
27 lifeless in the Terra Linda residence.

28 The Defendants left the Terra Linda residence in the stolen Ford and returned to the

1 Everman residence with their guns, duct-tape and minor ill-gotten gains: approximately \$200  
2 in cash, a blue pager, a Video Cassette Recorder and a Nintendo Play Station. Charla Severs,  
3 Donte Johnson's girlfriend, was at the residence when the Defendants returned sometime around  
4 3:00 a.m. on August 14, 1998. Donte walked to the master bedroom where Charla slept, kissed  
5 Charla on the cheek and told her he was "tired." The following day, at Donte's insistence,  
6 Charla watched a report of the quadruple homicide on the news. Charla recognized Matthew  
7 Mowen and expressed her concern over the incident. Donte told Charla "not to worry about it."  
8 Donte also indicated to Charla that he killed Talamantez because he was "talking shit" and he  
9 "doesn't like Mexicans anyway." Donte said the others had to be killed because "they knew  
10 who we were."

11 Discovery of the Victims

12 Justin Perkins was a friend of Matthew Mowen. On Saturday, August 14, 1998, Justin  
13 decided to stop at the Terra Linda residence to see Matthew. He arrived at approximately 6:00  
14 p.m.

15 Justin initially noticed that the gate to the yard was unlatched and Jeffrey Biddle's truck  
16 was under the carport, both unusual occurrences at the home. Nevertheless, Justin walked to the  
17 front door, which he noticed was slightly open, and peeked inside the residence.

18 Justin first noticed his friend, Jeffrey Biddle, lying on the floor face down, his hands tied  
19 behind his back with duct-tape and his ankles secured in the same manner. Justin next saw  
20 Tracey Gorringer lying next to Jeffrey, taped in the same fashion. Finally, Justin saw the friend  
21 he came to visit, Matthew Mowen, lying face down on the opposite side of Gorringer, similarly  
22 duct-taped.

23 Justin noticed that all three boys appeared to be blue, a condition which he mistakenly  
24 attributed to being beaten.

25 Justin ran to a neighbor's house where he frantically pounded on the door. Nobody  
26 answered. Justin then ran to the home at 4825 Terra Linda where Nick DeLucia and his  
27 girlfriend resided. Justin pleaded with the residents to call the police, suggesting to them that  
28 his friends had been beaten and robbed. Justin had not yet realized that, in fact, his friends were

1 dead.

2 Justin returned to the murder scene to help his friends. As he called each of their names,  
3 he now noticed the large pools of blood underneath the head of each victim, much of which had  
4 been soaked up by the carpet. He was particularly struck by the fact that the owners' puppies  
5 had remained in the home with their dead owners. The puppies were wandering throughout the  
6 home covered in their owners' blood, tracking blood on the floor of the Terra Linda residence.  
7 Justin ultimately came to the realization that all of his friends had been murdered. He remained  
8 at the house until police arrived.

9 Officers' Arrival

10 Detectives and Crime Scene Analysts with the Las Vegas Metropolitan Police  
11 Department responded to the Terra Linda home during the early evening hours on August 14,  
12 1998. They processed the bloody scene and collected evidence, including four expended .380  
13 caliber cartridge cases, one near each victim. Significantly, no paper currency was found in the  
14 residence or on any of the victims.

15 Crime Scene Analysts also processed the crime scene for fingerprints. A fingerprint  
16 belonging to Donte Johnson was found on a "Black and Mild" cigar box which was lying near  
17 one of the boys.

18 A number of cigarette butts were also found in the Terra Linda residence. This evidence  
19 was analyzed for DNA and, as a result of the analysis, Donte Johnson's saliva was identified on  
20 a cigarette butt.

21 Recovery of the Stolen Vehicle

22 On August 17, 1998, at approximately 10:40 p.m., Sergeant Honea of the Nevada  
23 Highway Patrol was traveling northbound on U.S. 95 near Charleston Boulevard. He paced a  
24 white, four-door Ford traveling at 85 m.p.h. in the posted 65 m.p.h. zone. Sergeant Honea  
25 activated his overhead lights to make what he thought was a routine traffic stop.

26 As he approached the car, Sergeant Honea noticed it was occupied by two young men.  
27 Sergeant Honea asked the driver for his license, registration and proof of insurance. The driver  
28 was unable to produce any of the requested documents. Sergeant Honea asked the driver to exit

1 the vehicle and inquired about his name and date of birth. The driver responded that his name  
2 was "Donte Fletch," that his date of birth was 05/27/78<sup>1</sup> and that he could not recall his social  
3 security number. Sergeant Honea asked "Donte" the name of the passenger. "Donte" responded  
4 that he did not know the passenger's actual name; however, his nickname was "Red."

5 Sergeant Honea approached "Donte" with the intention of placing him in custody until  
6 a backup unit arrived. Honea then observed the passenger door of the Ford open and saw the  
7 passenger exit the car with a handgun at his side. The sergeant aimed his gun at the passenger  
8 and ordered him to drop his weapon; however, both the driver and the passenger ran toward the  
9 Charleston Boulevard off-ramp.

10 Neither the driver nor the passenger were captured that night. A search of the Ford  
11 revealed an "Enforcer" .30 caliber Carbine rifle with the stock portion removed. A fifteen round  
12 magazine of ammunition was in the rifle, and an additional thirty round magazine was found in  
13 a backpack in the rear seat of the stolen Ford.

#### 14 The Arrest of Donte Johnson

15 On August 18, 1998, at approximately 3:00 a.m., members of the Las Vegas Metropolitan  
16 Police Department ("LVMPD") arrived at the Everman residence. They ordered all of the  
17 occupants of the Everman residence out of the house, including Donte Johnson, Charla Severs  
18 and Dwain Anderson. Sergeant Ken Hefner asked all three individuals if they lived at the  
19 Everman residence. Each responded that they did not. Shortly thereafter, Donte Johnson was  
20 arrested and transported to the LVMPD Detective Bureau.

21 Sergeant Hefner learned from Tod Armstrong that Tod's mother owned the Everman  
22 residence and that Tod possessed the only key to the residence; therefore, Sergeant Hefner  
23 obtained written consent-to-search the house from Tod Armstrong. Sergeant Hefner had  
24 previously learned from Tod that, on those occasions when Donte stayed in the Everman house,  
25 Donte stayed in the master bedroom. During a search of the Everman residence, the Detective  
26 found in the master bedroom: (1) women's clothing that belonged to Charla Severs; (2) men's  
27

---

28 <sup>1</sup> Donte Johnson's actual date of birth is 05/27/79.

1 shoes that belonged to Donte Johnson and Terrell Young; and (3) two pair of men's black jeans.  
2 Significantly, on the pant leg of one pair of black jeans, Detectives noticed a blood stain.  
3 Subsequent DNA tests revealed that the blood matched the blood of a victim from the Terra  
4 Linda residence. Moreover, Detectives found on the zipper area of those same jeans a white,  
5 crusty substance. The substance was later identified as semen, and subsequent DNA tests  
6 revealed that the donor of the semen was Donte Johnson.

7 Officers also searched the back yard of the Everman house for evidence. Significantly,  
8 a blue Motorola pager and two motel room keys were located. The Motorola pager was  
9 identified as Peter Talamantez's, and the motel room keys belonged to a room at the  
10 Thunderbird Motel where Donte Johnson previously stayed.

11 The Arrests of Terrell Young and Sikia Smith

12 On September 2, 1998, and September 8, 1998, respectively, Terrell Young and Sikia  
13 Smith were arrested in connection with the Terra Linda quadruple homicide. Subsequently, both  
14 conspirators were informed of their Miranda rights, both acknowledged that they understood  
15 their rights, and each agreed to waive his rights and speak with Detectives. Both co-offenders  
16 gave tape-recorded, voluntary statements wherein they admitted their involvement and  
17 participation in the robbery at the Terra Linda residence. Both Smith and Young identified  
18 Donte Johnson as the "trigger-man" in the murders.

19 II.

20 DISCUSSION

21 The Defendants are charged with various offenses arising out of the events that occurred  
22 on August 14, 1998, including conspiracy, burglary, robbery, kidnaping and murder. During the  
23 trial of these offenses, the State seeks to introduce, *inter alia*, evidence that (1) Donte Johnson  
24 was a member of the "Blood" gang and (2) the Defendants were in possession of a stolen  
25 vehicle, acts which are not charged in the Indictment. Of course, this court's determination to  
26 admit or exclude evidence is to be given great deference and will not be reversed absent manifest  
27 error. Kazalyn v. State, 108 Nev. 67, 825 P.2d 578 (1992).

28 //

1 A. EVIDENCE REGARDING THE DEFENDANTS' POSSESSION OF A STOLEN  
2 VEHICLE IS ADMISSIBLE PURSUANT TO THE "COMPLETE STORY OF THE  
3 CRIME" DOCTRINE

4 As illustrated in the Statement of Facts, the Defendants drove a stolen vehicle to the Terra  
5 Linda residence where they committed the homicides. Defendants also returned to the Everman  
6 residence in that same car. Moreover, on the night of August 17, 1998, Donte Johnson and  
7 Terrell Young were pulled over in the same stolen Ford and fled from a Nevada Highway  
8 Patrolman. A search of the car revealed an "Enforcer" rifle. Of course, none of the Defendants  
9 are charged with Possession of a Stolen Vehicle; however, the evidence is nevertheless  
10 admissible pursuant to N.R.S. 48.035(3), which provides:

11 Evidence of another act or crime which is so closely related to an act in controversy or  
12 a crime charged that an ordinary witness cannot describe the act in controversy or the  
13 crime charged without referring to the other act or crime shall not be excluded, but at the  
14 request of an interested party, a cautionary instruction shall be given explaining the  
15 reason for its admission.

16 This, of course, is commonly referred to as the "complete story of the crime" doctrine.  
17 The statute, and the cases interpreting it, hold that the State is entitled to present a full and  
18 accurate account of the circumstances of the commission of the crime, even if such an account  
19 also implicates the defendant in the commission of other uncharged crimes. *See e.g., Dutton v.*  
20 *State*, 94 Nev. 461, 581 P.2d 856 (1978); *see also Shults v. State*, 96 Nev. 742, 616 P.2d 388  
21 (1980) (recognizing that the state is entitled to present a full and accurate account of the  
22 circumstances surrounding a crime).

23 In *Walker v. State*, 113 Nev. 853, 944 P.2d 762 (1997), for example, Walker was charged  
24 with the first degree murder and robbery of Kevin Marble. On April 14, 1992, the body of  
25 Marble was discovered in an alleyway in Las Vegas. *Id.* at 855, 766. Marble had stab wounds  
26 in the neck and chest, and a survival-type knife lay on the nearby sidewalk where Marble was  
27 discovered, and *Id.*

28 At trial, the state sought to introduce evidence involving the theft of a van in Blythe,  
California for which the defendant was not charged. *Id.* at 861, 772. Specifically, the state  
adduced that on April 11, 1992, a Suburban van used by the National Oceanic and Atmospheric  
Administration ("NOAA") was stolen in Blythe, California. *Id.* Four days later, the van was

1 recovered in Las Vegas and a survival-type knife and its sheath were missing from a box inside  
2 the van. Id.

3 Walker argued that the trial court erred in admitting evidence of the theft in Blythe of the  
4 NOAA van and property. Id. He argued that the evidence did not fall within the "complete  
5 story of the crime" doctrine because Marble's murder could be explained without reference to  
6 the van theft. Id.

7 The Supreme Court disagreed. It concluded that the evidence was admissible pursuant  
8 to NRS 48.035(3). Walker was in Blythe before Marble's murder. Id. at 861, 772. The van was  
9 found a few blocks from Marble's body. Id. The Blythe van theft, it reasoned, served as a link  
10 in the sequence of events between the time that Walker left Blythe, California and the time that  
11 he was ultimately arrested. Id. at 861, 772. Thus, evidence of the theft was "closely related"  
12 to the instant offense. Id. Accordingly, the trial court properly admitted the evidence pursuant  
13 to N.R.S. §48.045(3).

14 Similarly, evidence regarding the stolen Ford in the instant case is also admissible  
15 pursuant to NRS 48.045(3). Testimony regarding the stolen automobile serves as a link in the  
16 sequence of events in the instant case. The Defendants drove the car from the Everman  
17 residence to the Terra Linda residence where the murders occurred. Moreover, Donte Johnson  
18 and Terrell Young were stopped in the stolen car days later when they fled from Sergeant  
19 Honea. The weapon located in the stolen car matches the description of a gun witnesses saw  
20 in the Defendants' possession prior to the murder. In short, witnesses cannot describe the events  
21 surrounding the murders without referring to the stolen car utilized by the Defendants to arrive  
22 at the scene, depart from the scene, and flee from the Highway Patrolman. The state is entitled  
23 to present a full and accurate account of the events surrounding the quadruple homicide. *See*  
24 Shults v. State, 96 Nev. 742 (1980) (holding that the state was entitled to present evidence of a  
25 prior robbery in a first degree murder prosecution in order to provide a full account of the  
26 circumstances surrounding the murder). Consequently, the evidence is admissible pursuant to  
27 the "complete story of the crime" doctrine.

28 //

1 B. EVIDENCE REGARDING DONTE JOHNSON'S GANG AFFILIATION IS  
2 ADMISSIBLE BECAUSE IT ESTABLISHES JOHNSON'S MOTIVE TO KILL PETER  
3 TALAMANTEZ

4 Donte Johnson is a member of the "Blood" gang. One of the most insulting terms to a  
5 Blood gang member is the word "cuz." Testimony will establish that seventeen year old Peter  
6 Talamantez referred to Johnson as "cuz" moments before Talamantez's demise at the hands of  
7 Donte Johnson. The evidence is admissible, not to prove Johnson's character as a gang member,  
8 rather to establish that he had a motive to kill Talamantez.

9 In Lay v. State, 110 Nev. 1189, 886 P.2d 448 (1994), for example, Kevin Lay was  
10 charged with the murder of Richard Carter. Lay was a member and leader of the "Piru Bloods,"  
11 a Las Vegas gang patterned after the Los Angeles Bloods. Id. at 1192, 449-450. The state  
12 introduced, among other gang-related evidence, the following items during the guilt phase of  
13 Lay's trial: (1) Lay was the leader of the Piru Bloods; (2) one of Lay's friends, who was also a  
14 Piru Blood, had been killed recently; (3) Bloods and Crips were rival gangs; and (4) Carter was  
15 a Crip. Id. at 1195, 452.

16 Following a conviction of first degree murder with use of a deadly weapon, Lay argued  
17 that the trial court improperly admitted evidence regarding Lay's gang affiliation with the  
18 "Blood" gang. Id. at 452, 1195. The Nevada Supreme Court disagreed. It recognized that such  
19 evidence was relevant pursuant to NRS 48.045(2) which provides:

20 Evidence of other ... acts is not admissible to prove the character of a person in order to  
21 show that he acted in conformity therewith. It may, however, be admissible ... as proof  
22 of motive..."

23 The Lay Court explained that all of the gang evidence was offered to show motive in that  
24 it may have explained why Lay and the members of his set shot randomly at a group of young  
25 men, including Carter. 110 Nev. at 1195, 452. Further, the Court concluded that the evidence  
26 was extremely probative and not unfairly prejudicial. Id. at 1196, 452. Finally, the Nevada  
27 Supreme Court recognized that other state and federal courts have found gang-affiliation  
28 evidence relevant and not substantially outweighed by unfair prejudice when it tends to prove  
29 motive. Id., citing United States v. Rodriguez, 925 F.2d 1049 (7th Cir. 1991); United States v.  
Silverstein, 737 F.2d 864 (10th Cir. 1984); People v. Dominguez, 121 Cal.App.3d 481 (1981);



1 People v. Connally, 105 A.D.2d 797 (1984). Accordingly, the gang related evidence was  
2 admissible pursuant to NRS 48.045(2).

3 Similarly, evidence regarding Donte Johnson's gang affiliation is admissible pursuant to  
4 N.R.S. 48.045(2) in the instant case. The testimony will establish that Donte Johnson was a  
5 member of the "Blood" gang, and that the term "cuz" is an insult to a "Blood" gang member.  
6 Thus, when Peter Talamantez referred to Donte Johnson as "cuz," Donte Johnson became  
7 enraged and shot and killed Talamantez. Accordingly, Donte Johnson's gang affiliation is  
8 relevant to establish his motive to kill Peter Talamantez. As such, the evidence is admissible  
9 pursuant to NRS 48.045(2) and the cases interpreting the statute.

10 III.

11 CONCLUSION

12 The Defendants' possession of the stolen vehicle is inextricably intertwined with the  
13 circumstances surrounding the homicides. Moreover, Donte Johnson's gang affiliation is  
14 pertinent to establish his motive to kill Peter Talamantez. Accordingly, the State respectfully

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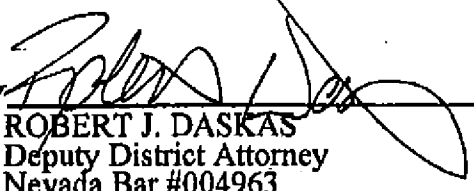
1 requests that this Court permit the State to present evidence concerning these acts during the trial  
2 of the instant offense.

3 DATED this 11<sup>TH</sup> day of June, 1999.

4 STEWART L. BELL  
5 DISTRICT ATTORNEY  
6 Nevada Bar #000477

7 BY   
8 GARY L. GUYMON  
9 Chief Deputy District Attorney  
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**SPECIAL PUBLIC DEFENDER'S OFFICE**  
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JUN 16 2 30 PM '99

*Philip J. Kohn*  
CLERK

0026  
PHILIP J. KOHN  
Special Public Defender  
Nevada Bar No. 000556  
PETER R. LaPORTA  
Deputy Special Public Defender  
Nevada Bar No. 003754  
DAYVID J. FIGLER  
Nevada Bar No. 004264  
309 S. Third Street, Fourth Floor  
Las Vegas, Nevada 89155-2316  
(702) 455-6265  
Attorneys for Defendant

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON,

Defendant.

CASE NO. C153154  
DEPT NO. V  
DOCKET H

MOTION TO CONTINUE TRIAL

Date of Hearing: 6-29-99  
Time of Hearing: 9 AM

COMES NOW, the Defendant, DONTE JOHNSON, by and through his attorneys of record PHILIP J. KOHN, Special Public Defender, PETER R. LaPORTA, Deputy Special Public Defender and DAYVID J. FIGLER, Deputy Special Public Defender, and hereby moves this Honorable Court for a continuance of the July 6, 1999 trial date presently set in Department V for said Defendant.

This Motion is made and based upon the Affidavit of counsel and any argument at

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

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1 the time of hearing.

2 DATED this 16th day of June, 1998.

3 PHILIP J. KOHN  
4 SPECIAL PUBLIC DEFENDER

5  
6 By: \_\_\_\_\_

PETER R. LAPORTA, ESQ.  
Deputy Special Public Defender  
State Bar No. 003754  
309 South Third Street, 4th Floor  
P.O. Box 552316  
Las Vegas, Nevada 89155  
(702) 455-6265  
Attorneys for Defendant

11 **NOTICE OF MOTION**

12 TO: STATE OF NEVADA, Plaintiff; and

13 TO: STEWART L. BELL, District Attorney, Attorney for Plaintiff

14 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and  
15 foregoing **MOTION TO CONTINUE TRIAL** on the 29 day of June, 1999,  
16 at the hour of 9:45 m., in Department No. V of the above-entitled Court, or as  
17 soon thereafter as counsel may be heard.

18 DATED this 16th day of June, 1999.

19 PHILIP J. KOHN  
20 SPECIAL PUBLIC DEFENDER

21  
22 PETER R. LAPORTA  
23 Deputy Special Public Defender  
24 State Bar No. 003754  
25 309 S. Third Street, Fourth Floor  
26 Las Vegas, NV 89155  
27 Attorney for Defendant  
28

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

**AFFIDAVIT OF PETER R. LAPORTA**

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

PETER R. LAPORTA, being first duly sworn according to law, deposes and states as follows:

1. I am an attorney duly licensed to practice law in the State of Nevada and am a Deputy Special Public Defender with the Office of the Special Public Defender. I make this Affidavit based upon my own personal knowledge except as to those matters stated upon information and belief, and as to those matters I believe them to be true.

2. I am court appointed counsel for Defendant DONTE JOHNSON.

3. That in the present case the District Attorney has filed Notice to Seek the Death Penalty.

4. Affiant has received, in the past few weeks, the statement of confidential informant Melvin Royal and a background investigation needs to be conducted on Mr. Royal.

5. That Affiant is informed by Gary Guymon, Clark County Deputy District Attorney, that another confidential informant exists and that his/her identify will be eventually revealed to us. As of this date, that confidential informant's identify has not been revealed to Affiant.

6. That new fingerprint evidence has come to light as a result of the Defendant's review of the file of the Clark County District Attorney's office.

7. That this new fingerprint evidence has never been forwarded to the Defendant and it comes as a surprise.

8. That the Clark County District Attorney's office has given notice and discovery on two (2) new pieces of aggravation evidence. They are an additional murder and an additional attempted murder and that the discovery on this new evidence has just been received by the Defendant.

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

1           9.     That as a result, the Defendant will need to conduct an investigation into this  
2 additional murder and additional attempted murder. Said investigation will require  
3 additional time.

4           10.    That the defense is currently looking for witness Charla Severs who was the  
5 girlfriend of Defendant Johnson at the time of the alleged homicides.

6           11.    That Charla Severs will give critical testimony that Defendant Johnson was  
7 not there at the time of the crime. As of this date, defense does not know of Ms. Severs  
8 whereabouts and is requesting adequate time to locate her.

9           12.    The testing required from the independent DNA experts has involved more  
10 time than anticipated by the defense. The defense will not have a review and report of  
11 the completed DNA testing for at least another thirty (30) to forty (40) days.

12           13.    That Affiant will not be prepared to go to trial on July 6, 1999 and if forced  
13 to do so will be ineffective in its defense of Mr. Donte Johnson at his quadruple homicide  
14 trial.

15           FURTHER Affiant sayeth naught.

16           DATED this 16th day of June, 1999.

17  
18  
19  
20  
21 SUBSCRIBED AND SWORN to before me,  
22 this 16th day of June, 1999.

23 Patricia S. Flood  
24 NOTARY PUBLIC, in and for the  
25 County of Clark, State of Nevada  
26  
27  
28

PETER R. LAPORTA



PATRICIA S. FLOOD  
Notary Public - Nevada  
My appt. exp. Sep. 1, 2000  
No. 92-3783-1

1 ROC  
2 PHILIP J. KOHN  
3 Special Public Defender  
4 Nevada Bar No. 000556  
5 PETER R. LaPORTA  
6 Deputy Special Public Defender  
7 Nevada Bar No. 003754  
8 DAYVID J. FIGLER  
9 Nevada Bar No. 004264  
10 309 S. Third Street, Fourth Floor  
11 Las Vegas, Nevada 89155-2316  
12 (702) 455-6265  
13 Attorneys for Defendant

FILED

JUN 16 2 40 PM '99

*Shirley L. Higgins*  
CLERK

10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

13 THE STATE OF NEVADA,

14 Plaintiff,

15 vs.

16 DONTE JOHNSON,

17 Defendant.

CASE NO. C153154  
DEPT NO. V  
DOCKET H

19 RECEIPT OF COPY

20 RECEIPT OF COPY of the foregoing MOTION TO CONTINUE TRIAL is hereby  
21 acknowledged this 16<sup>th</sup> day of June, 1999.

*Stewart L. Bell*

24 STEWART L. BELL  
25 District Attorney  
26 200 S. Third Street  
27 Las Vegas, NV 89155  
28 Attorney for Plaintiff

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

CE43



1 **ORDER**  
 2 PHILIP J. KOHN  
 3 CLARK COUNTY SPECIAL PUBLIC DEFENDER  
 4 Nevada Bar #0566  
 5 DAYVID J. FIGLER  
 6 DEPUTY SPECIAL PUBLIC DEFENDER  
 7 Nevada Bar #4264  
 8 309 South Third Street, 4th Floor  
 9 Las Vegas, Nevada 89155-2316  
 10 Attorney for Defendant Donte Johnson

FILED

JUN 16 10 48 AM '99

*William R. Higgins*  
 CLERK

DISTRICT COURT  
 CLARK COUNTY, NEVADA

10	THE STATE OF NEVADA	)	Case No. C153154
11		)	
12	Plaintiff,	)	Dept. No. III
13		)	
14	vs.	)	
15		)	
16	DONTE JOHNSON,	)	
17		)	
18	Defendant.	)	

ORDER FOR TRANSCRIPTS

19 Upon ex-parte application, DAYVID J. FIGLER, Deputy Special  
 20 Public Defender, court appointed counsel for DONTE JOHNSON, in the  
 21 above-entitled matter, and good cause appearing therefor,

22 IT IS HEREBY ORDERED that the certified court reporter for  
 23 District Court, Department III, prepare at State's expense, a copy of

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SPECIAL PUBLIC  
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 CLARK COUNTY  
 NEVADA

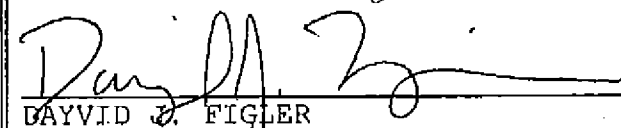
CE52

1 the daily transcripts in the case of SIKIA SMITH, co-defendant of  
2 DONTÉ JOHNSON in the above-entitled case

3 DATED this 15 day of June, 1999.

4   
5 DISTRICT JUDGE

6 PHILIP J. KOHN  
7 SPECIAL PUBLIC DEFENDER

8  
9   
10 DAVID J. FIGLER  
11 Deputy Special Public Defender  
12 Nevada Bar No. 4264  
13 309 South Third Street, Fourth Floor  
14 Las Vegas, Nevada 89155  
15 (702) 455-6265  
16 Attorneys for Defendant Donte Johnson  
17  
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SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

1 **STIP**  
 2 PHILIP J. KOHN  
 3 Special Public Defender  
 4 Nevada Bar No. 000556  
 5 PETER R. LaPORTA  
 6 Deputy Special Public Defender  
 7 Nevada Bar No. 003754  
 8 DAYVID J. FIGLER  
 9 Nevada Bar No. 004264  
 10 309 S. Third Street, Fourth Floor  
 11 Las Vegas, Nevada 89155-2316  
 12 (702) 455-6265  
 13 Attorneys for Defendant

FILED

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*William J. Higgins*  
 Clerk

10 **DISTRICT COURT**  
 11 **CLARK COUNTY, NEVADA**

13	THE STATE OF NEVADA,	)		
14		)	CASE NO.	C153154
	Plaintiff,	)	DEPT NO.	V
15	vs.	)	DOCKET	H
16	DONTE JOHNSON,	)		
17		)		
	Defendant.	)		

19 **STIPULATION AND ORDER**

20 IT IS HEREBY STIPULATED AND AGREED by and between the parties that this  
 21 Honorable Court issue an Order instructing the Las Vegas Metropolitan Police Department,  
 22 Crime Lab Division to produce to Michelle Fox of Forensic Analytical, 3777 Depot Road,  
 23 Suite 409, Hayward California 94545 all of the cartridge casings retrieved from 4825  
 24 Terra Linda, Las Vegas, Nevada under Event No. 98 0814-1600 and all the cartridge  
 25 casings recovered from 3000 Las Vegas Boulevard South, Room 4911, Las Vegas,  
 26 Nevada under Event No. 98 0607-2264 and/or 98 0814-1600 for the purpose of  
 27 analyzing the same.

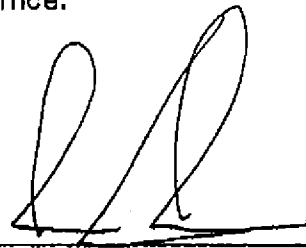
1 IT IS FURTHER STIPULATED AND AGREED that the Defendant by and through his  
2 attorneys hereby waive any challenge to the chain of custody related only to the transport  
3 of said evidence to Michelle Fox of Forensic Analytical, 3777 Depot Road, Suite 409,  
4 Hayward California 94545 and the return to the Las Vegas Metropolitan Police  
5 Department.

6 IT IS FURTHER STIPULATED AND AGREED that the District Attorney's office will  
7 inform the Las Vegas Metropolitan Police Department to allow the office of the Special  
8 Public Defender to photograph this evidence prior to transport and that the office of the  
9 Special Public Defender will photograph the evidence and provide copies of the  
10 photographic prints to the District Attorney's office.

11 DATED this 14<sup>th</sup> day of June, 1999.

12  
13 

14 DAYVID J. FIGLER  
15 Nevada Bar No. 004264  
16 Deputy Special Public Defender  
17 309 S. Third Street, Fourth Floor  
18 Las Vegas, Nevada 89155-2316  
19 (702) 455-6265  
20 Attorney for Defendant

21  
22 

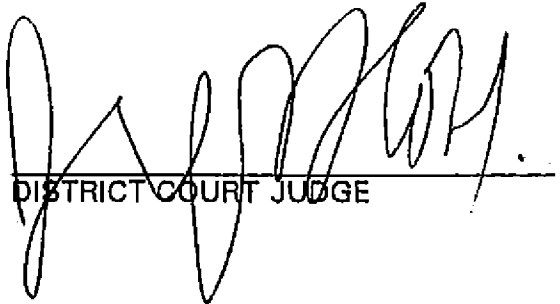
23 GARY L. GUYPON  
24 Nevada Bar No. 003726  
25 Deputy District Attorney  
26 200 S. Third Street  
27 Las Vegas, Nevada 89155  
28 (702) 455-2716  
Attorney for Plaintiff

ORDER

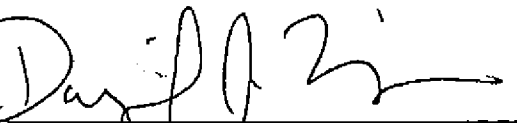
Upon the Stipulation of the parties and good cause appearing,

IT IS HEREBY ORDERED that the Las Vegas Metropolitan Police Department, Crime Lab Division provide to Michelle Fox of Forensic Analytical, 3777 Depot Road, Suite 409, Hayward California 94545 all of the cartridge casings retrieved from 4825 Terra Linda, Las Vegas, Nevada under Event No. 98 0814-1600 and all the cartridge casings recovered from 3000 Las Vegas Boulevard South, Room 4911, Las Vegas, Nevada under Event No. 98 0607-2264 and/or 98 0814-1600 for the purpose of analyzing the same. The Defendant has thereby waived all challenges to the chain of custody issues solely related to the transport contemplated and contained in this Order.

DATED this 15<sup>th</sup> day of June, 1999.

  
DISTRICT COURT JUDGE

SUBMITTED BY:

  
DAYVID J. FIGLER  
Deputy Special Public Defender  
Nevada Bar No. 004264  
309 Third Street, Fourth Floor  
Las Vegas, Nevada 89155-2316  
(702) 455-6265  
Attorneys for Defendant

SPECIAL PUBLIC  
DEFENDER

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TRAN

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**FILED**

JUN 17 3 28 PM '99

*Shirley D. Prawalsky*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*\*

STATE OF NEVADA,

PLAINTIFF,

DONTE JOHNSON aka JOHN LEE  
WHITE,

DEFENDANT.

CASE NO. C153154

DEPT. V

Transcript of  
Proceedings

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

AT REQUEST OF COURT

TUESDAY, JUNE 8, 1999, 9:00 A.M.

APPEARANCES:

FOR THE STATE:

GARY GUYMON, ESQ.  
DEPUTY DISTRICT ATTORNEY

FOR DEFENDANT JOHNSON:

DAYVID FIGLER, ESQ.  
DEPUTY SPECIAL PUBLIC  
DEFENDER

COURT RECORDER:

SHIRLEE PRAWALSKY

**CE43**

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LAS VEGAS, NEVADA, TUESDAY, JUNE 8, 1999, 9:00 A.M.

THE COURT: Dayvid, what do you have, Johnson?

MR. FIGLER: Page 16, Your Honor.

THE COURT: Johnson. I asked that this be put on calendar--I was just handed a stipulation and order. Does this take care of the chain of custody?

MR. GUYMON: It does, Your Honor.

THE COURT: All right. The examination that is requested is ordered pursuant to the stipulation. Here's a signed copy if you want one.

MR. FIGLER: Thank you, Your Honor.

THE COURT: Thanks.

\* \* \* \*

ATTEST: I do hereby certify that I have truly and correctly transcribed the sound recording of the proceedings in the above case.

  
\_\_\_\_\_  
SHIRLEE PRAWALSKY, COURT RECORDER

62  
ORIGINAL

FILED

JUN 18 2 25 PM '99

*Shirley E. Higgins*  
CLERK 7

1 ANTHONY P. SGRO, ESQ.  
Nevada Bar No. 003811  
2 PATTI & SGRO  
300 E. Charleston Blvd, Suite 105  
3 Las Vegas, Nevada 89104  
(702) 384-9800  
4  
5 PETER CHRISTIANSEN, ESQ.  
Nevada Bar No. 005254  
KAJIOKA CHRISTIANSEN & TOTI  
6 810 South Casino Center Blvd.  
Las Vegas, Nevada 89101  
7 (702) 366-1528

8 Attorneys for Defendant

9  
10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 v

15 SIKIA LAFAYETTE SMITH,

16 Defendant.

CASE NO: C153154  
DEPT NO: III  
DOCKET NO: E

17  
18 EX-PARTE APPLICATION TO APPOINT DR. JAMES JOHNSON

19 AS EXPERT, AND FOR FEES IN EXCESS OF

20 STATUTORY MAXIMUM

21 COMES NOW, Defendant SIKIA LAFAYETTE SMITH, by and through his court-  
22 appointed attorneys, ANTHONY P. SGRO, ESQ., and PETER CHRISTIANSEN, ESQ., and  
23 requests this Honorable Court issue an Order, pursuant to N.R.S. 7135, appointing Dr. James  
24 Johnson as expert, who will submit a memorandum and testify regarding the urban, social  
25 geography of the inner city, the spatial demography of the ethnic minority groups and urban  
26 poverty and public policy on behalf of the defendant. Defendant also requests that an Order  
27 authorizing payment in excess of the statutory maximum Three Hundred Dollars (\$300.00), not to  
28 exceed Six Thousand Dollars (\$6,000.00), unless prior Court approval is granted.

CE43



1 This Ex-Parte Application is based upon the Points and Authorities and Affidavit of  
2 Anthony P. Sgro, Esq., attached hereto.

3 DATED this 17 day of June, 1999.

5 Respectfully Submitted By

6  
7  
8 ANTHONY P. SGRO, ESQ.  
9 Nevada Bar No. 003811  
10 PATTI & SGRO  
11 300 E. Charleston Blvd., Suite 105  
12 Las Vegas, Nevada 89104  
13 (702) 384-9800

14  
15 PETER CHRISTIANSEN, ESQ.  
16 Nevada Bar No. 003254  
17 KAJI OKA CHRISTIANSEN & TOTI  
18 810 South Casino Center Blvd.  
19 Las Vegas, Nevada 89101  
20 (702) 366-1528

21 Attorneys for Defendant  
22  
23  
24  
25  
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1 POINTS AND AUTHORITIES

2 Nevada Revised Statutes 7.135 states:

3 **Reimbursed for expenses; employment of investigator expert or other services:**

4 The Court appointed by a magistrate of District Court represent a  
5 defendant is entitled, in addition to the fee provided by N.R.S. 7135  
6 for his services to be reimbursed for expenses reasonably incurred  
7 by him in representing the Defendant and may employ, subject to  
8 the prior approval of the magistrate or the District Court in and Ex-  
9 Parte Application, such investigative, expert or other services as  
may be necessary for an adequate defense. Compensation to any  
person furnishing such investigative, expert or other services must  
not exceed \$300, exclusive of reimbursement for expenses  
reasonably incurred, unless payment in excess of the limit is...

- 10 2. Approved by the presiding judge of the judicial district in which the  
attorney is appointed...

11 In the case at bar, ANTHONY P. SGRO, ESQ., and PETER CHRISTIANSEN, ESQ.,  
12 were appointed by this Honorable Court to act as counsel and co-counsel for the Defendant,  
13 SIKIA LAFAYETTE SMITH, who was charged with Burglary While in Possession of a Firearm,  
14 Conspiracy to Commit Robbery and/or Kidnapping and/or Murder, Robbery with Use of a Deadly  
15 Weapon, First Degree Kidnapping with Use of a Deadly Weapon, Murder With Use of A Deadly  
16 Weapon. Due to the fact that the prosecution asked for the death penalty in the instant case, it  
17 was necessary in order to effectively represent Mr. SMITH, for the defense counsel to seek a  
18 thorough evaluation of Mr. SMITH's past and present.

19 Mr. SMITH, is in custody and is financially unable to obtain the required experts services  
20 necessary to his defense. The services provided by Dr. James Johnson are absolutely necessary  
21 for adequate representation of the defendant.

22 ....

23 ....

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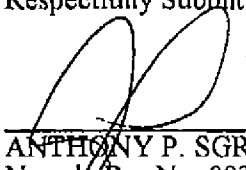
27 ....

28

1 WHEREFORE for the foregoing reasons, it is respectfully requested that this Honorable  
2 Court appoint Dr. James Johnson as expert in the above-captioned case.

3 DATED this 17 day of June, 1999.

4  
5 Respectfully Submitted By

6  
7   
8 ANTHONY P. SGRO, ESQ.  
9 Nevada Bar No. 003811  
10 PATTI & SGRO  
11 300 E. Charleston Blvd., Suite 105  
12 Las Vegas, Nevada 89104  
13 (702) 384-9800

14   
15 PETER CHRISTIANSEN, ESQ.  
16 Nevada Bar No. 005254  
17 KAJIOKA CHRISTIANSEN & TOTI  
18 810 South Casino Center Blvd.  
19 Las Vegas, Nevada 89101  
20 (702) 366-1528

21 Attorneys for Defendant  
22  
23  
24  
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26  
27  
28

**AFFIDAVIT OF ANTHONY P. SGRO, ESQ., IN SUPPORT OF**  
**EX-PARTE APPLICATION TO APPOINT DR. JAMES JOHNSON AS EXPERT**

STATE OF NEVADA        )  
                                  :       ss  
COUNTY OF CLARK        )

ANTHONY P. SGRO, ESQ., being duly sworn, deposes and states:

1. That your affiant is a duly licensed attorney in the District Court for the State of Nevada, County of Clark.

2. That your affiant had full knowledge of all matter contained herein and is competent to testify thereto of his own personal knowledge.

3. That your affiant is the court-appointed counsel for Defendant SIKIA LAFAYETTE SMITH,

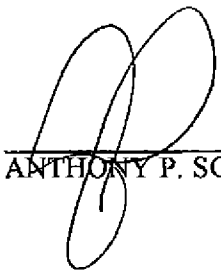
4. Due to the fact that the prosecution has filed a Notice of Intent to Seek the Death Penalty in the instant case, it is necessary in order to effectively represent Mr. SMITH, for defense counsel to seek a through evaluation of Mr. SMITH past and present.

5. That your affiant has contacted Dr. James Johnson and he has agreed to prepare a memorandum and testify regarding urban, social geography of the inner city, spatial demography of the ethnic minority groups, and urban poverty and public policy on behalf of the defendant SIKIA LAFAYETTE SMITH. The law firm of Patti & Sgro advanced to Dr. Johnson the sum of Fifteen Hundred Dollars (\$1,500.00) in anticipation of trial, which sum should be paid to the firm of Patti & Sgro by the Court..

6. As such, Dr. James Johnson has estimated that his fees will go well beyond the statutory maximum Three Hundred Dollars (\$300).

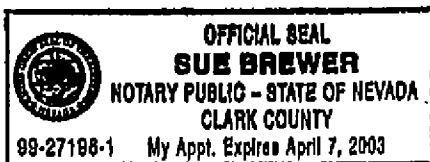
1 .....  
2 .....  
3 7. Mr. SMITH is in custody and is financially unable to obtain the required expert  
4 services necessary to his defense. The services provided by Dr. James Johnson are necessary for  
5 adequate representation of the Defendant.

6 FURTHER YOUR AFFIANT SAYETH NAUGHT.  
7  
8

  
\_\_\_\_\_  
ANTHONY P. SGRO, ESQ.

9  
10 SUBSCRIBED and SWORN before me  
this 17 day of ~~April~~, 1999.

11 *June*  
  
12 NOTARY PUBLIC in and for said  
13 County and State



FILED

JUN 28 2 22 PM '8866 NO. C158154

Shirley S. Thompson Dept. No. V  
CLERK Docket No. H

Donte Johnson

1596283

Defendant

VS

State of Nevada

Plaintiff

COUNTY CLERK

JUN 28 1999

RECEIVED

Memorandum To  
The Court

Comes now Defendant, Donte Johnson, through and by himself, with this memorandum to the court, making record and giving rise to court appointed counsel's, failure to file the requested and required motions to pursue a fair trial on the Defendant's behalf.

The elements required under the sixth Amendment, clearly <sup>verifies</sup> ~~shows~~ that every accused has a right to effective counsel, (which is in the above cited case clearly violated).

This Memorandum is being Ailed to make record on counsel's failure to file the following motions:

1. A motion for permission to personally interview witnesses in this case.
2. Discuss any Defense to impeach co-defendants inconsistent statements.
3. File any motions to have co-defendants statements impeached.
4. Thoroughly investigate the reality of my defensive evidence.

CE52

-2-

(Fails to)

5. Investigate any defense to mitigate or reduce charges against defendant.
6. Find factual basis as to why defendant was charged initially as to the information filed in this case.
7. Fails to file motion to have state's witnesses evaluated for prior inconsistent statements, drug addiction, prior felony arrest.
8. Fails to give defendant complete discovery as was asked for several different times prior to this memorandum.
9. Motion to reveal any identities of informant and reveal any deals, promises or inducements.
10. Motion in limine to bar improper prosecutorial arguments.
11. Motion in limine to preclude state from introducing evidence of any uncharged misconduct.
12. Fails to file Motion and notice for the prosecution to produce Grand jury records to assure that the Grand jury was not selected in a discriminatory manner.
13. Failed to file motion to dismiss states notice of intent to seek the death penalty because Nevada's death penalty is unconstitutional.
14. Has failed to file Motion to control prejudicial publicity, this Motion should have been filed so that anyone related to the prosecution would be prohibited from releasing any information in any way, shape, or form concerning this case. Pursuant to the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 8<sup>th</sup> Amendments, "Not to forget article 1 of the Nevada state constitution along with the 14<sup>th</sup> Amendment."
15. Has failed to file motion for disclosure of juvenile records of state's witnesses, which could have been beneficial for thorough research and preparation for effective cross-examination of the states witnesses.

NRS 62.360 governs the release of those records for this purpose.

16. Fails to file Motion for disclosure of any possible basis for disqualification of the District Attorney.

17. Has failed to file Motion for discovery of institutional records and all files for a possible fair trial.

18. Fails to file Motion for list of names and addresses of persons who may have evidence favorable to the Defendant and for disclosure of all other discovery material.

19. Has failed to file Motions for "possible" prosecutorial misconduct.

20. Fails to file Motion to pursue the actual search warrant.

21. Continuously fails to file Motion for suppression of physical evidence.

22. Fails to file Motion for suppression of co-defendants statements.

23. Counsel has failed to correct altered voluntary statements as requested by the defendant. Required pursuant to NRS.171.198 (Reporting testimony of witnesses) Line (3).

24. Counsel has failed to challenge uncorroborated testimony that was presented before the Grand Jury as required to NRS 175.291

25. Fails to file motions to void accomplice plea agreement for false testimony as required in (NRS.175.291) (174.061).

26. Counsel has failed to give defendant a copy of all transcripts and documented evidence. Pursuant to NRS.171.198

27. Counsel has failed to comply with supreme court rules professional conduct. (Rule 151)

28. Has failed to comply with (Rule 154)<sup>#1</sup> "A lawyer shall keep a client reasonably informed about the status of matter ~~promptly~~ promptly comply with reasonable request for information."

29. Has failed to comply with (Rule 154)<sup>#2</sup> a lawyer shall explain a matter



~4~

to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Added and was effective March 28, 1986.

30. Has violated Supreme Court (Rule 153) "A lawyer shall act with reasonable diligence and promptness in representing a client." counsel has failed to do so.

31. Has failed to file motions to reveal any ~~informants~~ informants or other sources that the defendant was not a participant in any of the events alleged by the indictment.

32. Has failed to file motion for production of unindicted co-conspirators, plea bargains for exchange of testimony's.

33. Has failed to file Motion for exculpatory evidence.

Respectfully submitted

Donte Johnson

Donte Johnson

Attorney at Fault

Pete R. LaPorta

Dated: \_\_\_\_\_

- 5 -

## Authority's Violated

Through ~~the~~ this Memorandum the defendant has found that in *Brady v. Maryland*, 373 U.S. 83 (1963), The Supreme Court clearly holds that the Government has an ongoing obligation to turn over evidence which is favorable to the accused. *Pennsylvania v. Ritchie*, 480 U.S. 49 (1987) has been violated because of unproduced exculpatory evidence.

The Sixth Amendment specifically guarantees a defendant the right to be confronted with the witnesses against him, *Pointer v. Texas*, 380 U.S. 400, 403 (1965); *Brookhart v. Janis*, 384 U.S. 1, 3 (1966), and to impeach with prior inconsistent statements. Sixth Amendment's guarantee was violated because voluntary statements are only partially produced.

(That right also attaches when a witness offers testimony that is damaging), *Brookhart v. Gladden*, 385 U.S. 363, 365 (1966) or has material bearing on his case.

In *United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375, 3384 (1985) The Supreme Court made it clear that the suppression of impeachment or other exculpatory evidence amounts to constitutional error that requires reversal if such evidence is material in the sense that its suppression might effect the outcome of trial. (*Blackmun, J.*)

Due to the evidence being material either to guilt or punishment, suppression by prosecution of evidence favorable to accused upon request violated due process, irrespective of good faith or bad faith of prosecution. *Brady v. Maryland* 373 U.S. 83 (1963) *U.S. v. Bagley* 105 S.Ct. 3375 (1985) *Roberts v. State* 981 P.2d (Nev. 1994) and *Hornick v. State* 913 P.2d 1280 (Nev. 1996).

~~Also~~ violated, are Supreme Court rules that are listed as follows: Rule (151), Rule ~~151~~, Rule (153).

6  
~ Note ~

Government's failure to assist defendant, by disclosing information that might have been helpful in conducting cross-examination amounts to a constitutional violation; because it deprives the defendant of a fair trial, constitutional error occurs and conviction must be reversed, only if evidence is material in the sense that suppression undermines confidence in the outcome of the trial, as stated in Roberts V. State 181 P.2d 1 (Nev. 1994).

The defendant in this case as every other case in the United States is entitled to a fair and impartial trial. The defendant is aware he has the right to the inspection of all exculpatory evidence in the possession of the prosecution.

Respectfully submitted  
Donte Johnson  
Donte Johnson

Dated: 6-23-99

FILED

JUN 29 9 29 AM '99

*Christy B. Ruggian*  
CLERK

0001  
 PHILIP J. KOHN  
 Special Public Defender  
 Nevada Bar No. 000556  
 PETER R. LaPORTA  
 Deputy Special Public Defender  
 Nevada Bar No. 003754  
 DAYVID J. FIGLER  
 Nevada Bar No. 004264  
 309 S. Third Street, Fourth Floor  
 Las Vegas, Nevada 89155-2316  
 (702) 455-6265  
 Attorneys for Defendant

DISTRICT COURT  
 CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON,

Defendant.

CASE NO. C153154  
 DEPT NO. V  
 DOCKET H

**MOTION TO REVEAL THE IDENTITY OF INFORMANTS  
 AND REVEAL ANY BENEFITS, DEALS, PROMISES OR INDUCEMENTS**

DATE OF HEARING:  
 TIME OF HEARING: 9:00 A.M.

COMES NOW the Defendant, DONTE JOHNSON, by and through his attorneys,  
 PHILIP J. KOHN, Special Public Defender, PETER R. LaPORTA, Deputy Special Public  
 Defender, and DAYVID J. FIGLER, Deputy Special Public Defender, and hereby moves this  
 Honorable Court for an Order compelling the District Attorney to disclose the identity of  
 any and all informants in this case and the nature of all benefit, deals, promises and/or

...

...



SPECIAL PUBLIC  
 DEFENDER

CLARK COUNTY  
 NEVADA

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1 inducements and/or the like to such informants. This Motion is based upon the  
2 Memorandum of Points and Authorities, and argument of counsel at the time set for  
3 hearing on the Motion.

4 DATED this 25 day of June, 1999.

5 Respectfully submitted,

6 PHILIP J. KOHN  
7 SPECIAL PUBLIC DEFENDER

8   
9 DAYVID J. FIGLER  
10 Deputy Special Public Defender  
11 Nevada Bar No. 4264  
12 309 S. Third Street, Fourth Floor  
13 Las Vegas, Nevada 89155  
14 (702) 455-6265

15 **NOTICE OF MOTION**

16 TO: Stewart Bell, District Attorney

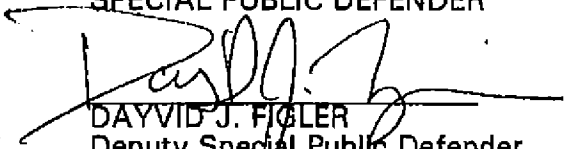
17 TO: Gary Guymon, Chief Deputy District Attorney

18 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will  
19 bring the foregoing Motion on for hearing before the above-entitled Court on the 13  
20 day of July at 9:00 a.m.,

21 Department V, or as soon thereafter as counsel may be heard.

22 DATED this 25 day of June, 1999.

23 PHILIP J. KOHN  
24 SPECIAL PUBLIC DEFENDER

25   
26 DAYVID J. FIGLER  
27 Deputy Special Public Defender  
28 Nevada Bar No. 4264  
309 S. Third Street, Fourth Floor  
Las Vegas, Nevada 89155  
(702) 455-6265

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

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2  
3 MEMORANDUM OF POINTS AND AUTHORITIES

4 The capital Defendant, Donte Johnson, respectfully moves this Court for an Order  
5 directing the prosecution to reveal the identity of all confidential Informants, to produce  
6 any statements or information provided by these confidential informants, reveal any  
7 promises or understandings (explicit or implicit) with any witness or informant, and to  
8 reveal whether any threats or inducements of any nature whatsoever have been made  
9 regarding any witness or informant.

10 This Motion is made pursuant to the Sixth, Eighth, and Fourteenth Amendments  
11 to the United States Constitution and Article I of the Nevada Constitution.

12 I. DEFINITIONS

13 Unless the context indicates otherwise, the terms listed below are defined and used  
14 herein as follows:

15 1. The "state" means nay and all of the following organizations: County of  
16 Clark, Clark County District Attorney's Office, Las Vegas Metropolitan Police Department,  
17 Nevada Attorney General's Office, and the Nevada Highway Patrol. The "state" also  
18 means: (a) all present and former agents, officers, investigators, consultants, employees,  
19 and staff members of organizations or officials named above in this paragraph; (b) any  
20 other person or entity acting on the behalf of any of these organizations or officials or on  
21 whose behalf such person or entity has acted in the past; or (c) any other person or entity  
22 otherwise subject to the control of any of these organizations or officials.

23 2. "Relating to" means discussing, describing, referring to, reflecting,  
24 containing, analyzing, studying, reporting on, commenting on, evidencing, constituting,  
25 setting forth, considering, recommending, concerning, relevant to, bearing on, or  
26 pertaining to, in whole or in part.

27 3. "All" means "any and all."

28 4. "Any" means "any and all."

1 5. "Each means "any and all."

2 6. "And" means "and/or."

3 7. "Or" means "and/or."

4 II. INSTRUCTIONS

5 1. References to the singular shall be construed to include the plural, and  
6 references to the plural shall be construed to include the singular.

7 2. All verbs shall be construed to include all tenses.

8 3. Each request is continuing in nature and additional responsive information  
9 should be revealed as soon as it occurs.

10 III. INFORMATION TO BE REVEALED

11 The Defendant asserts that he has a right to disclosure of the informants utilized  
12 in this case pursuant to the rationale set forth in the seminal case of Rovario v. U.S., 353  
13 U.S. 53, 62, 77 S.Ct. 623, 628, 1 L.Ed. 2d 639 (1957). The Court in Rovario held that:

14 A further limitation on the applicability of the privilege arises from the  
15 fundamental requirements of fairness. Where the disclosure of an informer's  
16 identity, or of the contents of his communications, is relevant and helpful to  
the defense of the accused, or is essential to a fair determination of a cause,  
the privilege must give way.

17 Id. at 60, 77 S.Ct. at 628.

18 Although the prosecution's claim of privilege is entitled to consideration, the claim  
19 does not end the inquiry. One of the more basic limitations on the scope of the privilege  
20 was recognized by the Supreme Court in Rovario:

21 "[w]here the disclosure of an informer's identity, or of the contents of his  
22 communications, is relevant and helpful to the defense of an accused, or is  
23 essential to a fair determination of the cause, the privilege must give way...  
24 As such, the Government's mere assertion of a colorable claim for privilege  
does not end the trial court's inquiry, for the court must determine whether  
the potential helpfulness of informant's testimony to the defendant warrants  
a conclusion that the defendant cannot be tried fairly absent disclosure."

25 U.S. v. Brodie, 871 F.2d 125, 128 (D.C. Cir. 1989) (citing Rovario, supra).

26 NRS 5 49.335 codifies the common law police privilege against disclosure of the  
27  
28

1 identities of informants. However, the Nevada Supreme Court has recognized that  
2 disclosure of the identity of an informant should be ordered where "the confidential  
3 informant could supply information to substantiate a defense or rebut an element of the  
4 offense." Twigg v. Sheriff, 95 Nev. 112, 114, 590 P.2d 630 (1979); Sheriff of Washoe  
5 County v. Vasile, 96 Nev. 5, 604 P.2d 809 (1980).

6 In determining the relevant balance between the competing interests, courts  
7 consider three factors.

- 8 (1) the degree of the informant's involvement in the criminal activity;
- 9 (2) the relationship between the defendant's asserted defense and the  
10 likely testimony of the informant; and
- 11 (3) the government interest in nondisclosure.

12 U.S. v. Gonzalo Beltran, 915 F.2d 487, 489 (9th Cir. 1990)

13 The capital Defendant moves this Court to order the state to reveal the following  
14 facts and information:

15 1. The full name and address of each confidential Informant upon whose  
16 statements relate to the investigation of the accused and all the information that was  
17 related to law enforcement officials, including, but not limited to, the names, addresses  
18 and substance of information of the confidential informants who advised investigating  
19 officers that the Defendant had committed this offense.

20 2. The full nature and extent of all immunity, express or implied, granted to  
21 each informant and to any witness (whether she or he testified at trial or not), including  
22 the nature and detail of all crimes for which immunity was granted;

23 3. The full nature of any consideration that has been given or promised to any  
24 individual by the State that relates to the investigation and prosecution of this crime,  
25 including the nature and details of any consideration given or promised;

26 4. Whether any threats, force, promises, inducements, or any other such  
27 devices were used to make or induce any individual to relate information to the State that  
28



1 relates to the investigation and prosecution of this crime, including the nature and details  
2 of any such devices used; and

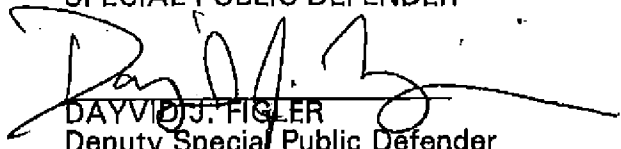
3 5. All records, notes, memoranda, and documents in the possession of the  
4 State relating to the grant of immunity, promises, consideration, threats or any other  
5 inducements to any individual to obtain information or testimony about this crime by the  
6 State and any of its law enforcement or other agencies.

7 Due process requires that the aforementioned items be revealed to the defense.  
8 Giglio v. U.S., 405 U.S. 150 (1972); Napue v. Illinois, 360 U.S. 264 (1959); Brady v.  
9 Maryland, 373 U.S. 83 (1963); United States v. Pitt, 717 F.2d 1334 (11th Cir. 1983).

10 Dated this 25 day of June, 1999.

11 Respectfully submitted,

12 PHILIP J. KOHN  
13 SPECIAL PUBLIC DEFENDER

14   
15 DAYVID J. FIGLER  
16 Deputy Special Public Defender  
17 Nevada Bar No. 4264  
18 309 S. Third Street, Fourth Floor  
19 Las Vegas, Nevada 89155  
20 (702) 455-6265  
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SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

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*Christy B. Longoria*  
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0001  
PHILIP J. KOHN  
Special Public Defender  
Nevada Bar No. 000556  
PETER R. LaPORTA  
Deputy Special Public Defender  
Nevada Bar No. 003754  
DAYVID J. FIGLER  
Nevada Bar No. 004264  
309 S. Third Street, Fourth Floor  
Las Vegas, Nevada 89155-2316  
(702) 455-6265  
Attorneys for Defendant

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON,

Defendant.

CASE NO. C153154  
DEPT NO. V  
DOCKET H

**MOTION TO COMPEL DISCLOSURE OF EXISTENCE  
AND SUBSTANCE OF EXPECTATIONS, OR ACTUAL RECEIPT OF  
BENEFITS OR PREFERENTIAL TREATMENT FOR  
COOPERATION WITH PROSECUTION**

Hearing Date:  
Hearing Time:

COMES NOW the Defendant, DONTE JOHNSON, by and through his attorneys,  
PHILIP J. KOHN, Special Public Defender, PETER R. LaPORTA, Deputy Special Public  
Defender, and DAYVID J. FIGLER, Deputy Special Public Defender, and hereby moves this  
Honorable Court for an Order compelling the State to disclose all evidence of any other  
confidential informant's expectations of, or actual receipt of benefits for cooperation with  
the prosecution and/or any law enforcement agency of the State of Nevada, and/or any



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DEFENDER  
CLARK COUNTY  
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1 state, country, or local law enforcement agency. Such orders should include the  
2 requirements to disclose any promises, favors, deals, bargains, special treatments,  
3 leniency, housing or consideration of any kind, or expectation of the same paid, given,  
4 offered, or held out by the prosecution or law enforcement agency in exchange for  
5 testimony, evidence, and/or law enforcement agency in exchange for testimony, evidence,  
6 and/or information, whether or not it is intended to be used by the prosecution.

7 This motion is based upon the Due Process Clause of the Fifth Amendment to the  
8 United States Constitution, the Federal Rules of Criminal Procedure, all papers and  
9 pleadings on file herein, and the attached Memorandum of Points and Authorities.

10 DATED this 25 day of June, 1999.

11 Respectfully submitted,

12 PHILIP J. KOHN  
13 SPECIAL PUBLIC DEFENDER

14   
15 DAYVID J. FIGLERO  
16 Deputy Special Public Defender  
17 Nevada Bar No. 4264  
18 309 S. Third Street, Fourth Floor  
19 Las Vegas, Nevada 89155  
20 (702) 455-6265  
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SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

1 NOTICE OF MOTION


2 TO: Stewart Bell, District Attorney

3 TO: Gary Guymon, Chief Deputy District Attorney

4 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will  
5 bring the foregoing Motion on for hearing before the above-entitled Court on the 13  
6 day of July at 9:00 a.m.,  
7 Department V, or as soon thereafter as counsel may be heard.

8 DATED this 25 day of June, 1999.

9  
10 PHILIP J. KOHN  
11 SPECIAL PUBLIC DEFENDER

12   
13 DAYVID J. FIGLER  
14 Deputy Special Public Defender  
15 Nevada Bar No. 4264  
16 309 S. Third Street, Fourth Floor  
17 Las Vegas, Nevada 89155  
18 (702) 455-6265

17 MEMORANDUM OF POINTS AND AUTHORITIES

18 On information and belief, the Defendant, DONTE JOHNSON, believes that  
19 informants and/or others were offered incentives by the prosecution to provide evidence  
20 against the him. Additionally, some of that information has already been produced.

21 Any additional evidence showing that the State has made promises of leniency,  
22 immunity, or other preferential treatment in exchange for witness information or testimony  
23 is discoverable under the Brady rule. The definition of leniency should include promises  
24 to house individuals in Federal prison, to dismiss charges pending against loved ones and  
25 to house defendants under false names. The United States Supreme Court held that  
26 evidence that could lead to the impeachment of a witness by showing that witness has  
27 a bias or interest falls within the Brady rule. Giglio vs. United States, 405 U.S. 150, 92

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CLARK COUNTY  
NEVADA

1 S.Ct. 763, 31 L.Ed.2d 104 (1972).

2 Furthermore, the Court stated that evidence of any understanding or agreement  
3 attached to future or present prosecution would be relevant to the witnesses' credibility.

4 The Court reaffirmed this principle in United States vs. Bagley, 473 U.S. 667, 105  
5 S.Ct. 3375, 85 L.Ed.2d 481 (1985). In Bagley, the Court indicated that the failure to  
6 disclose such evidence might affect trial strategy and result in ineffective assistance of  
7 counsel. Id. at 682, 683.

8 In Roberts v. State, 110 Nev. 1121 (1994), the court concluded that the proper  
9 standard for analyzing whether a Brady violation has occurred after a specific request is  
10 whether there exists a reasonable possibility that the claimed evidence would have  
11 affected the judgment of the trier of fact, and thus the outcome of the case. Roberts, at  
12 1132.

13 In the present case, numerous witnesses have criminal records. Justice requires  
14 that such information must be furnished to the defendant. The Ninth Circuit, in  
15 reconsidering Bagley on remand under the new Bagley standard, found that nondisclosure  
16 of evidence that would have been used to impeach the government's key witness in an  
17 effective manner undermined confidence in the outcome of Bagley's trial, and was  
18 therefore material. See Bagley v. Lumpkin, 798 F.2d 1297 (9th Cir. 1986), Roberts, at  
19 1131. The Roberts, court further stated that evidence that would enable effective cross-  
20 examination and impeachment may be material and nondisclosure of such evidence may  
21 deprive an accused of a fair trial. Id. at 1133.

#### 22 CONCLUSION

23 The Defendant respectfully requests this Honorable Court to enter its order  
24 requiring the State to disclose any promises or expectations of immunity, leniency, or

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SPECIAL PUBLIC  
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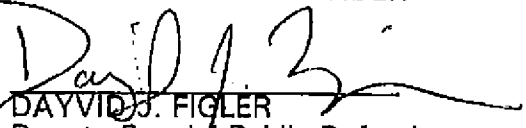
CLARK COUNTY  
NEVADA

1 other preferential treatment or benefits in exchange for testimony or information  
2 concerning the Defendant charged in this case.

3 Dated this 25 day of June, 1999.

4 Respectfully submitted,

5 PHILIP J. KOHN  
6 SPECIAL PUBLIC DEFENDER

7   
8 DAYVID J. FIGLER  
9 Deputy Special Public Defender  
10 Nevada Bar No. 4264  
11 309 S. Third Street, Fourth Floor  
12 Las Vegas, Nevada 89155  
13 (702) 455-6265  
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SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

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*Shirley S. Augustine*  
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0001  
PHILIP J. KOHN  
Special Public Defender  
Nevada Bar No. 000556  
PETER R. LaPORTA  
Deputy Special Public Defender  
Nevada Bar No. 003754  
DAYVID J. FIGLER  
Nevada Bar No. 004264  
309 S. Third Street, Fourth Floor  
Las Vegas, Nevada 89155-2316  
(702) 455-6266  
Attorneys for Defendant

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON,

Defendant.

CASE NO. C153154  
DEPT NO. V  
DOCKET H

MOTION TO COMPEL THE PRODUCTION OF ANY AND  
ALL STATEMENTS OF THE DEFENDANT

DATE OF HEARING:  
TIME OF HEARING: 9:00 A.M.

COMES NOW the Defendant, DONTE JOHNSON, by and through his attorneys,  
PHILIP J. KOHN, Special Public Defender, PETER R. LaPORTA, Deputy Special Public  
Defender, and DAYVID J. FIGLER, Deputy Special Public Defender, and hereby moves this  
Honorable Court for an Order compelling the District Attorney to produce any and all  
statements of the defendant including those contained in other statements of other  
witness and those procured through "attorney work-product." This Motion is based upon  
the Memorandum of Points and Authorities, and argument of counsel at the time set for



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DEFENDER

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1 hearing on the Motion.

2 DATED this 25 day of June, 1999.

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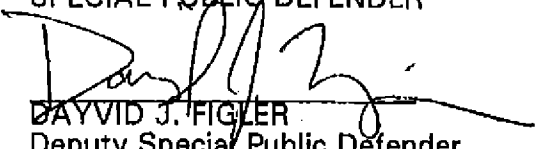
Respectfully submitted,

5

PHILIP J. KOHN  
SPECIAL PUBLIC DEFENDER

6

7

  
DAYVID J. FIGLER  
Deputy Special Public Defender  
Nevada Bar No. 4264  
309 S. Third Street, Fourth Floor  
Las Vegas, Nevada 89155  
(702) 455-6265

8

9

10

11

**NOTICE OF MOTION**

12

TO: Stewart Bell, District Attorney

13

TO: Gary Guymon, Chief Deputy District Attorney

14

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will

15

bring the foregoing Motion on for hearing before the above-entitled Court on the 13

16

day of July at 9:00 a.m.,

17

Department V, or as soon thereafter as counsel may be heard.

18

DATED this 25 day of June, 1999.

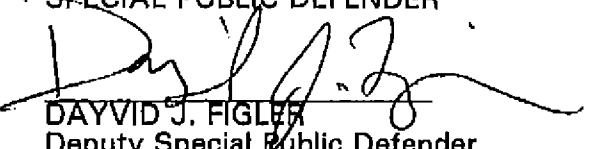
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PHILIP J. KOHN  
SPECIAL PUBLIC DEFENDER

21

22

  
DAYVID J. FIGLER  
Deputy Special Public Defender  
Nevada Bar No. 4264  
309 S. Third Street, Fourth Floor  
Las Vegas, Nevada 89155  
(702) 455-6265

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DEFENDER

CLARK COUNTY  
NEVADA





1 disclosure any statements made by the Defendant to them. The Courts have long held  
2 that the government is responsible for the conduct of such persons as though they were  
3 themselves law enforcement personnel. See Sherman v. U.S., 356 U.S. 369, 373-74  
4 (1958); See also U.S. v. Perl, 584 F.2d 1316, 1322 n.5 (4th Cir. 1978); U.S. v. Graves,  
5 584 F.2d 1319 (5th Cir. 1977); U.S. v. Mosley, 496 F.2d 1012, 1016 n. 4 (5th Cir.  
6 1974).

7 With respect to the Defendant's statements allegedly communicated to and  
8 received by someone who was not a law enforcement agent or working in conjunction  
9 with law enforcement at the time of the communication, courts have recognized that  
10 there is "fundamental fairness" involved in "granting the accused equal access to his own  
11 words, no matter how the Government came by them." U.S. v. Caldwell, 543 F.2d  
12 1333, 1353 (D.D.C. 1974). It is difficult to see why a Defendant's statement to persons  
13 not law enforcement agents should be discoverable as of right if they were tape-recorded,  
14 but not if recorded in a witness's statement to a Government lawyer, District Attorney  
15 or other investigator. See U.S. v. Gee, 695 F.2d 1165 (9th Cir. 1983).

#### 16 CONCLUSION

17 For the above stated reasons it is respectfully requested that this Court enter an  
18 Order requiring the prosecution to provide the following:

- 19 1. Any relevant written or recorded statements maybe by the Defendant, or  
20 copies thereof, within the possession, custody, or control of the State, the  
21 existence of which is known to the prosecution. The Defendant further  
22 requests the substance of any oral statement allegedly made by him,  
23 whether or not the State intends to offer the same into evidence at the trial,  
24 and regardless of whether it intends to do so in its case-in-chief, on cross-  
25 examination of the Defendant/defense witnesses, or so in rebuttal.
- 26 2. So as to insure that the Defendant has the benefit of the guarantee of the  
27 Sixth Amendment to the Constitution of the United States of America that  
28 he shall be provided with effective assistance of counsel, any materials  
and/or information in the possession of the State that shall be used by the  
State or shall act as the basis for the State seeking introduction of any of  
the following at the trial of this case:
  - (a) Any statement by the Defendant in his representative capacity as the  
same is understood within the context of NRS § 51.035(3)(a);

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
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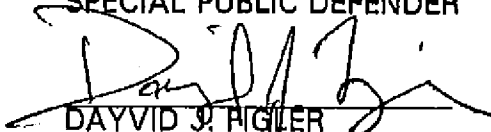
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- (b) Any statement to which the Defendant manifested his adoption or belief as to the truth as the same is included and understood within NRS § 51.035(3)(b);
  - (c) Any statements made by another which were purportedly authorized by the Defendant as the same is understood within the context of NRS § 51.035(3)(c);
  - (d) Any statement by an agent or servant of the Defendant concerning a matter within the scope of their agency or employment and made during the existence of such a relationship as the same is understood with NRS § 51.035(3)(d);
  - (e) Any statement of any person whom the State claims to be a co-conspirator with the Defendant which were made by said person during the course of and in furtherance of the alleged conspiracy as the same is understood within NRS § 51.035(3)(c).
3. Any oral statements allegedly made by the Defendant to any person who elicited the statements at the request of agents of the State. In this category, the Defendant includes any telephone conversations which he may have had with another person who consented to the recording of the conversation with or without the Defendant's knowledge. The Defendant also includes in this request any recorded telephone conversations between any person the State will maintain or contend was a co-conspirator, aider and abettor, accomplice, or joint venturer with the Defendant in some conduct relevant to the instant case trial, or an agent, servant, or employee of the Defendant at the time of the conversation, if the State will maintain that the conversation was made within the scope of the agency, employment, or servant relationship and in furtherance thereof.

Dated this 25 day of June, 1999.

Respectfully submitted,

PHILIP J. KOHN  
SPECIAL PUBLIC DEFENDER

  
DAYVID J. RIGLER  
Deputy Special Public Defender  
Nevada Bar No. 4264  
309 S. Third Street, Fourth Floor  
Las Vegas, Nevada 89155  
(702) 455-6265

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4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA

\*\*\*\*\*

6 STATE OF NEVADA,

7 PLAINTIFF,

8 VS.

CASE NO. C153154

9 DONTÉ JOHNSON, aka JOHN LEE  
10 WHITE,

DEPT. V  
DOCKET: H

11 DEFENDANT.

Transcript of  
Proceedings

12 BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

13 ARRAIGNMENT

14

15

16

17 TUESDAY, SEPTEMBER 8, 1998, 9:00 A.M.

18 APPEARANCES:

19 FOR THE STATE:

GARY GUYMON, ESQ.  
DEPUTY DISTRICT ATTORNEY

20

21 FOR DEFENDANT JOHNSON:

LEE E. MCMAHON, ESQ.

22

23

24

25 COURT RECORDER:

SHIRLEE PRAWALSKY

26

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CE42

1 LAS VEGAS, NEVADA, TUESDAY, SEPTEMBER 8, 1998, 9:00 A.M.  
2 THE COURT: What else do you have, Lee?  
3 MS. McMAHON: Your Honor, on page 10 of your calendar, Donte Johnson.  
4 MR. GUYMON: Good morning, Your Honor.  
5 THE COURT: Good morning.  
6 So, are you going to represent Mr. Johnson, Ms. McMahon?  
7 MS. McMAHON: Yes, that's correct, Your Honor.  
8 THE COURT: Is the State going to file a Notice of Intent to Seek the Death  
9 Penalty, or do you know that yet?  
10 MR. GUYMON: I anticipate that we will in the very near future, Judge.  
11 THE COURT: Okay. Is Donte Johnson your name? It shows John Lee White  
12 also. Which is your name, or is it some other name? What's your name, sir?  
13 THE DEFENDANT: Donte Johnson.  
14 THE COURT: Okay. Mr. Johnson, how old are you?  
15 THE DEFENDANT: Twenty-one.  
16 THE COURT: Lee, would you move one way or the other? I can't see him.  
17 MS. McMAHON: I'm sorry, Your Honor. Before you canvass Mr. Johnson, I'd  
18 like to advise the Court this is a grand jury indictment. We'd like--our office would  
19 like to continue arraignment until such time as we have the transcript. Perhaps--  
20 THE COURT: Do you know when that will be, about?  
21 MR. GUYMON: I've checked on the transcript, Judge. It should be next week,  
22 next Tuesday.  
23 THE COURT: Okay. Let's make it Thursday of next week just to make sure  
24 it is. We'll pass this, then, until the 17th at 9:00 for arraignment and further  
25 proceedings.  
26 ///   
27 ///   
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MS. McMAHON: Thank you, Judge.

THE COURT: Thank you.

\* \* \* \*

ATTEST: I do hereby certify that I have truly and correctly transcribed  
the sound recording of the proceedings in the above case.

  
SHIRLEE PRAWALSKY, COURT RECORDER

10  
ORIGINAL

24  
FILED

SEP 15 1 59 PM '98

*Christina B. ...*

CLERK

1 NISD  
2 STEWART L. BELL  
3 DISTRICT ATTORNEY  
4 Nevada Bar #000477  
5 200 S. Third Street  
6 Las Vegas, Nevada 89155  
7 (702) 455-4711  
8 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 DONTE JOHNSON, #1586283

12  
13 Defendant.  
14

Case No. C153154  
Dept No. V  
Docket H

15 NOTICE OF INTENT TO SEEK DEATH PENALTY

16 COMES NOW, the State of Nevada, through STEWART L. BELL, Clark County District  
17 Attorney, by and through GARY L. GUYMON, Deputy District Attorney, pursuant to NRS  
18 175.552 and NRS 200.033 and declares its intention to seek the death penalty at a penalty  
19 hearing. Furthermore, the State of Nevada discloses that it will present evidence of the  
20 following aggravating circumstances:

- 21 3. The murder was committed by a person who knowingly created a great risk of death to  
22 more than one person by means of a weapon, device or course of action which would  
23 normally be hazardous to the lives of more than one person.
- 24 4. The murder was committed while the person was engaged, alone or with others, in the  
25 commission of or an attempt to commit or flight after committing or attempting to  
26 commit, any robbery, arson in the first degree, burglary, invasion of the home or  
27 kidnaping in the first degree, and the person charged:

28 (a) Killed or attempted to kill the person murdered;

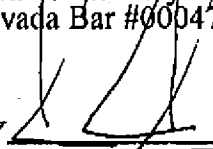
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5. The murder was committed to avoid or prevent a lawful arrest or to effect an escape from custody.
12. The defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree. For the purposes of this subsection, a person shall be deemed to have been convicted of a murder at the time the jury verdict of guilt is rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

DATED this 14 day of September, 1998.

Respectfully submitted,

STEWART L. BELL  
District Attorney  
Nevada Bar #000477

BY   
GARY L. GUYPON  
Deputy District Attorney  
Nevada Bar #003726



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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing NOTICE OF INTENT TO SEEK  
DEATH PENALTY is hereby acknowledged this 15<sup>th</sup> day of September, 1998.

LEE ELIZABETH MCMAHON, ESQ.  
ATTORNEY FOR DEFENDANT

By Lee Elizabeth McMahon  
309 S Third Street #400  
Las Vegas, Nevada 89155

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED

SEP 15 1 51 PM '98

Plaintiff,

vs.

Dante Johnson

Defendant.

*Henetta Thompson*

CLERK

Case No. CI 53154  
Dept. No. 5  
Docket No. 4

MEDIA REQUEST

Caren Benjamin, of The Review-Journal hereby  
requests permission to broadcast, record, photograph or televise proceedings  
in the above-entitled case in the courtroom of Department 5, Judge  
Sobel, commencing on the 8 day of Sept  
1998.

I certify that I am familiar with the contents of Nevada Supreme  
Court Rule 230 and Standards of Conduct and Technology ADKT 26.

I also understand that this form must be submitted to the Court  
at least seventy-two (72) hours before the proceeding commences unless good  
cause can be shown.

DATED this 4 day of September, 19 98.

Caren Benjamin  
MEDIA REPRESENTATIVE

455-4845  
MEDIA PHONE NUMBER

1111 W. Bonanza  
MEDIA ADDRESS

12

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED

SEP 15 1 51 PM '98

*Patricia [unclear]*  
CLERK

Plaintiff,

vs.

Dante Johnson

Defendant.

)  
)  
)  
)  
)  
) Case No. C153154  
) Dept. No. 5  
) Docket No. 4

ORDER GRANTING PERMISSION OF MEDIA ENTRY

Upon written request of Caran Benjamin, of Review Journal, for written permission to broadcast, record, photograph or televise proceedings in the above-entitled case in the courtroom of Department 5, and being satisfied that approval of this request would not distract participants, impair the dignity of the proceedings or otherwise materially interfere with the achievement of a fair trial or hearing herein.

IT IS HEREBY ORDERED that permission is granted as requested for each and every hearing on the above-entitled case unless otherwise notified. The Media Request is in accordance with Nevada Supreme Court Rule 230 and the Nevada Standards of Conduct and Technology ADKT 26.

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

DATED this 14<sup>th</sup> day of Sept, 1998.

*[Signature]*  
DISTRICT JUDGE

Attorney(s) of record:

Plaintiff

Defendant

FILED

SEP 15 1 51 PM '98

DISTRICT COURT

CLARK COUNTY, NEVADA *Lawton D. ...*

CLERK

Plaintiff,

vs.

DONTE JOHNSON

Defendant.

Case No. C 153154

Dep't. No. V

Docket No.

MEDIA REQUEST

HEIDI CARTER

of KTNV-TV, 13

hereby requests permission to broadcast, record, photograph or  
televise proceedings in the above-entitled case in the courtroom  
of Department V, Judge SOBEL, commencing  
on the 8 day of SEPTEMBER, 1998.

I certify that I am familiar with the contents of  
Nevada Standards of Conduct and Technology ADKT 25.

I also understand that this form must be submitted  
to the Court at least seventy-two (72) hours before the proceeding  
commences unless good cause can be shown.

DATED this 3 day of SEPTEMBER, 1998.

HEIDI CARTER

MEDIA REPRESENTATIVE

257-8411

MEDIA PHONE NUMBER

3355 S. Valley View

MEDIA ADDRESS

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED

SEP 15 1 51 PM '98

*Lonetta H. ...*  
CLERK

Plaintiff,  
vs.  
DONTÉ JOHNSON  
Defendant.

Case No. C 153154  
Dept. No. V  
Docket No.

## ORDER GRANTING PERMISSION OF MEDIA ENTRY

Upon written request of HEIDI CARTER, of  
KTNV-TV, 13 for written permission to broadcast,  
record, photograph, or televise proceedings in the above-entitled  
case, in the courtroom of Department V, and being satisfied that  
approval of this request would not distract participants, impair  
the dignity of the proceedings or otherwise materially interfere  
with the achievement of a fair trial or hearing herein.

IT IS HEREBY ORDERED that permission is granted as requested  
for each and every hearing on the above-entitled case unless  
otherwise notified. The Media Request is in accordance with  
Nevada Standards of Conduct and Technology ADKT 26.

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

DATED this 14 day of Sept, 19 98.

  
DISTRICT JUDGE

FILED

SEP 16 1 06 PM '98

ORIGINAL

1 IND  
2 STEWART L. BELL  
3 DISTRICT ATTORNEY  
4 Nevada Bar #000477  
5 200 S. Third Street  
6 Las Vegas, Nevada 89155  
7 (702) 455-4711  
8 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,  
11 -vs-  
12 DONTE JOHNSON,  
13 #1586283, John Lee White  
14 Defendant(s).

Case No. C153154  
Dept. No. V  
Docket H

**SUPERSEDING  
INDICTMENT**

16 STATE OF NEVADA }  
17 COUNTY OF CLARK } ss.  
18

19 The Defendant(s) above named, DONTE JOHNSON aka John Lee White, accused by the  
20 Clark County Grand Jury of the crimes of **BURGLARY WHILE IN POSSESSION OF A**  
21 **FIREARM (Felony - NRS 205.060, 193.165); CONSPIRACY TO COMMIT ROBBERY**  
22 **AND/OR KIDNAPING AND/OR MURDER (Felony - NRS 199.480, 200.380, 200.310,**  
23 **200.320, 200.010, 200.030); ROBBERY WITH USE OF A DEADLY WEAPON (Felony -**  
24 **NRS 200.380, 193.165); FIRST DEGREE KIDNAPING WITH USE OF A DEADLY**  
25 **WEAPON (Felony - NRS 200.310, 200.320, 193.165); and MURDER WITH USE OF A**  
26 **DEADLY WEAPON (Open Murder) (Felony - NRS 200.010, 200.030, 193.165);** committed  
27 at and within the County of Clark, State of Nevada, on or about the 14th day of August, 1998,  
28 as follows:

[C1531]

1 COUNT I -BURGLARY WHILE IN POSSESSION OF A FIREARM

2 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,  
3 then and there wilfully, unlawfully, and feloniously enter, while in possession of a firearm, with  
4 intent to commit larceny and/or robbery and/or murder, that certain building occupied by  
5 MATHEW MOWEN and TRACEY GORRINGE and JEFFREY BIDDLE, located at 4825  
6 Terra Linda Avenue, Las Vegas, Clark County, Nevada; the Defendant aiding or abetting  
7 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and  
8 encouragement and by entering into a course of conduct whereby the said Defendant arrived at  
9 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
10 SMITH; the said Defendant entering the residence with TERRELL COCHISE YOUNG and/or  
11 SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or  
12 SIKIA LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or  
13 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding MATHEW  
14 MOWEN and TRACEY GORRINGE and JEFFREY BIDDLE and PETER TALAMENTEZ, and  
15 placing them on the floor of the residence; then Defendant and/or TERRELL COCHISE  
16 YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the body of the said  
17 MATHEW MOWEN and TRACEY GORRINGE and JEFFREY BIDDLE and PETER  
18 TALAMENTEZ with a firearm.

19 COUNT II - CONSPIRACY TO COMMIT ROBBERY AND/OR KIDNAPING  
20 AND/OR MURDER

21 did then and there meet with TERRELL COCHISE YOUNG, SIKIA LAFAYETTE  
22 SMITH and/or another unknown individual, and between themselves, and each of them with  
23 the other, wilfully, unlawfully, and feloniously conspire to commit a crime, to wit: robbery  
24 and/or kidnaping and/or murder, and in furtherance of said conspiracy, Defendant did commit  
25 the acts as alleged in Counts III thru XIV of this indictment, together with TERRELL COCHISE  
26 YOUNG and/or SIKIA LAFAYETTE SMITH, which acts are incorporated herein by this  
27 reference as though fully set forth.

28 //

1 COUNT III - ROBBERY WITH USE OF A DEADLY WEAPON

2 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,  
3 then and there wilfully, unlawfully, and feloniously, take personal property, to wit: lawful money  
4 of the United States, from the person of JEFFREY BIDDLE, or in his presence or company, by  
5 means of force or violence, or fear of injury to, and without the consent and against the will of  
6 the said JEFFREY BIDDLE, said Defendant using a deadly weapon, to wit: a firearm, during  
7 the commission of said crime; the Defendant aiding or abetting TERRELL COCHISE YOUNG  
8 and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and by entering into a  
9 course of conduct whereby the said Defendant arrived at 4825 Terra Linda Avenue with  
10 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said Defendant  
11 entering the residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
12 SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
13 SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE  
14 YOUNG and/or SIKIA LAFAYETTE SMITH binding the said JEFFREY BIDDLE and placing  
15 him on the floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG and/or  
16 SIKIA LAFAYETTE SMITH taking lawful money of the United States from the person of  
17 JEFFREY BIDDLE and/or other persons in his presence or company; then Defendant and/or  
18 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the  
19 body of the said JEFFREY BIDDLE with a firearm.

20 COUNT IV - ROBBERY WITH USE OF A DEADLY WEAPON

21 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,  
22 then and there wilfully, unlawfully, and feloniously, take personal property, to wit: lawful money  
23 of the United States, from the person of TRACEY GORRINGE, or in his presence or company,  
24 by means of force or violence, or fear of injury to, and without the consent and against the will  
25 of the said TRACEY GORRINGE, said Defendant using a deadly weapon, to wit: a firearm,  
26 during the commission of said crime; the Defendant aiding or abetting TERRELL COCHISE  
27 YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and by entering  
28 into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda Avenue with



1 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said Defendant  
2 entering the residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
3 SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
4 SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE  
5 YOUNG and/or SIKIA LAFAYETTE SMITH binding the said TRACEY GORRINGE and  
6 placing him on the floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG  
7 and/or SIKIA LAFAYETTE SMITH taking lawful money of the United States from the person  
8 of TRACEY GORRINGE and/or other persons in his presence or company; then Defendant  
9 and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into  
10 the body of the said TRACEY GORRINGE with a firearm.

11 COUNT V - ROBBERY WITH USE OF A DEADLY WEAPON

12 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH  
13 then and there wilfully, unlawfully, and feloniously, take personal property, to wit: lawful money  
14 of the United States, from the person of MATHEW MOWEN, or in his presence or company,  
15 by means of force or violence, or fear of injury to, and without the consent and against the will  
16 of the said MATHEW MOWEN, said Defendant using a deadly weapon, to wit: a firearm,  
17 during the commission of said crime; the Defendant aiding or abetting TERRELL COCHISE  
18 YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and by entering  
19 into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda Avenue with  
20 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said Defendant  
21 entering the residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
22 SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
23 SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE  
24 YOUNG and/or SIKIA LAFAYETTE SMITH binding the said MATHEW MOWEN and  
25 placing him on the floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG  
26 //  
27 //  
28 //

1 and/or SIKIA LAFAYETTE SMITH taking lawful money of the United States from the person  
2 of MATHEW MOWEN and/or other persons in his presence or company; then Defendant and/or  
3 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the  
4 body of the said MATHEW MOWEN with a firearm.

5 COUNT VI - ROBBERY WITH USE OF A DEADLY WEAPON

6 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH  
7 then and there wilfully, unlawfully, and feloniously, take personal property, to wit: lawful money  
8 of the United States, from the person of PETER TALAMENTEZ, or in his presence or company,  
9 by means of force or violence, or fear of injury to, and without the consent and against the will  
10 of the said PETER TALAMENTEZ, said Defendant using a deadly weapon, to wit: a firearm,  
11 during the commission of said crime; the Defendant aiding or abetting TERRELL COCHISE  
12 YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and by entering  
13 into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda Avenue with  
14 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said Defendant  
15 entering the residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
16 SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
17 SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE  
18 YOUNG and/or SIKIA LAFAYETTE SMITH binding the said PETER TALAMENTEZ and  
19 placing him on the floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG  
20 and/or SIKIA LAFAYETTE SMITH taking lawful money of the United States from the person  
21 of PETER TALAMENTEZ and/or other persons in his presence or company; then Defendant  
22 and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into  
23 the body of the said PETER TALAMENTEZ with a firearm.

24 COUNT VII - FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON

25 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH  
26 wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice,  
27 decoy, abduct, conceal, kidnap, or carry away JEFFREY BIDDLE, a human being, with the  
28 intent to hold or detain the said JEFFREY BIDDLE, against his will, and without his consent,

1 for the purpose of committing robbery and/or murder, said Defendant and/or TERRELL  
2 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH using a deadly weapon, to wit: a  
3 firearm during the commission of said crime; the Defendant aiding or abetting TERRELL  
4 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and  
5 by entering into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda  
6 Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said  
7 Defendant entering the residence with TERRELL COCHISE YOUNG and/or SIKIA  
8 LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
9 LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL  
10 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the said JEFFREY BIDDLE  
11 and placing him on the floor of the residence for the purpose of committing robbery and/or  
12 murder; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
13 SMITH shooting at and into the body of the said JEFFREY BIDDLE with a firearm.

14 COUNT VIII - FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON

15 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,  
16 wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice,  
17 decoy, abduct, conceal, kidnap, or carry away MATHEW MOWEN, a human being, with the  
18 intent to hold or detain the said MATHEW MOWEN, against his will, and without his consent,  
19 for the purpose of committing robbery and/or murder, said Defendant and/or TERRELL  
20 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH using a deadly weapon, to wit: a  
21 firearm during the commission of said crime; the Defendant aiding or abetting TERRELL  
22 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and  
23 by entering into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda  
24 Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said  
25 Defendant entering the residence with TERRELL COCHISE YOUNG and/or SIKIA  
26 LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
27 LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL  
28 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the said MATHEW MOWEN

1 and placing him on the floor of the residence for the purpose of committing robbery and/or  
2 murder; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
3 SMITH shooting at and into the body of the said MATHEW MOWEN with a firearm.

4 COUNT IX - FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON

5 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,  
6 wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice,  
7 decoy, abduct, conceal, kidnap, or carry away TRACEY GORRINGE, a human being, with the  
8 intent to hold or detain the said TRACEY GORRINGE, against his will, and without his consent,  
9 for the purpose of committing robbery and/or murder, said Defendant and/or TERRELL  
10 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH using a deadly weapon, to wit: a  
11 firearm during the commission of said crime; the Defendant aiding or abetting TERRELL  
12 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and  
13 by entering into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda  
14 Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said  
15 Defendant entering the residence with TERRELL COCHISE YOUNG and/or SIKIA  
16 LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
17 LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL  
18 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the said TRACEY  
19 GORRINGE and placing him on the floor of the residence for the purpose of committing  
20 robbery and/or murder; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
21 LAFAYETTE SMITH shooting at and into the body of the said TRACEY GORRINGE with a  
22 firearm.

23 COUNT X - FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON

24 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,  
25 wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice,  
26 decoy, abduct, conceal, kidnap, or carry away PETER TALAMENTEZ, a human being, with  
27 the intent to hold or detain the said PETER TALAMENTEZ, against his will, and without his  
28 consent, for the purpose of committing robbery and/or murder, said Defendant and/or TERRELL

1 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH using a deadly weapon, to wit: a  
2 firearm during the commission of said crime; the Defendant aiding or abetting TERRELL  
3 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and  
4 by entering into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda  
5 Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said  
6 Defendant entering the residence with TERRELL COCHISE YOUNG and/or SIKIA  
7 LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
8 LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL  
9 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the said PETER  
10 TALAMENTEZ and placing him on the floor of the residence for the purpose of committing  
11 robbery and/or murder; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
12 LAFAYETTE SMITH shooting at and into the body of the said PETER TALAMENTEZ with  
13 a firearm.

14 COUNT XI - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER) .

15 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,  
16 then and there wilfully, feloniously, without authority of law, and with premeditation and  
17 deliberation, and with malice aforethought, kill JEFFREY BIDDLE, a human being, by shooting  
18 at and into the body of said JEFFREY BIDDLE, with a deadly weapon, to wit: a firearm, the  
19 said Defendants being responsible under the following theories of criminal liability, to wit: 1)  
20 Premeditation and Deliberation; 2) Felony Murder, Defendant and/or TERRELL COCHISE  
21 YOUNG and/or SIKIA LAFAYETTE SMITH committing the murder in the perpetration or  
22 attempted perpetration of kidnaping and/or robbery; 3) Aiding or Abetting, the Defendant aiding  
23 or abetting TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and  
24 encouragement and by entering into a course of conduct whereby the said Defendant arrived at  
25 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
26 SMITH; the said Defendant entering the residence with TERRELL COCHISE YOUNG and/or  
27 SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or  
28 SIKIA LAFAYETTE SMITH were in possession of a firearm; Defendant and/or TERRELL

1 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the victim and placing him  
2 on the floor of the residence; Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
3 LAFAYETTE SMITH shooting at and into the body of the said JEFFREY BIDDLE with a  
4 firearm; 4) Conspiracy, by the said Defendant acting pursuant to a conspiracy to commit robbery  
5 and/or kidnaping and/or murder with TERRELL COCHISE YOUNG and/or SIKIA  
6 LAFAYETTE SMITH, whereby the said Defendant entered the residence with TERRELL  
7 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL  
8 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were in possession of a firearm or  
9 firearms; Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
10 SMITH binding the said JEFFREY BIDDLE and placing him on the floor of the residence; then  
11 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting  
12 at and into the body of the said JEFFREY BIDDLE with the firearm or firearms.

13 COUNT XII - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

14 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,  
15 then and there wilfully, feloniously, without authority of law, and with premeditation and  
16 deliberation, and with malice aforethought, kill TRACEY GORRINGE, a human being, by  
17 shooting at and into the body of said TRACEY GORRINGE, with a deadly weapon, to wit: a  
18 firearm, the said Defendant being responsible under the following theories of criminal liability,  
19 to wit: 1) Premeditation and Deliberation; 2) Felony Murder, Defendant and/or TERRELL  
20 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH committing the murder in the  
21 perpetration or attempted perpetration of robbery and/or kidnaping; 3) Aiding or Abetting, the  
22 Defendant aiding or abetting TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
23 SMITH by counsel and encouragement and by entering into a course of conduct whereby the  
24 said Defendant arrived at 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or  
25 SIKIA LAFAYETTE SMITH; the said Defendant entering the residence with TERRELL  
26 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL  
27 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were in possession of a firearm;  
28 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding

1 the victim and placing him on the floor of the residence; Defendant and/or TERRELL COCHISE  
2 YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the body of the said  
3 TRACEY GORRINGE with a firearm; 4) Conspiracy, by the said Defendant acting pursuant to  
4 a conspiracy to commit robbery and/or kidnaping and/or murder with TERRELL COCHISE  
5 YOUNG and/or SIKIA LAFAYETTE SMITH, whereby the said Defendant entered the  
6 residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while  
7 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were  
8 in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE YOUNG and/or  
9 SIKIA LAFAYETTE SMITH binding the said TRACEY GORRINGE and placing him on the  
10 floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
11 LAFAYETTE SMITH shooting at and into the body of the said TRACEY GORRINGE with the  
12 firearm or firearms.

13 COUNT XIII - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

14 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,  
15 then and there wilfully, feloniously, without authority of law, and with premeditation and  
16 deliberation, and with malice aforethought, kill MATHEW MOWEN, a human being, by  
17 shooting at and into the body of said MATHEW MOWEN, with a deadly weapon, to wit: a  
18 firearm, the said Defendant being responsible under the following theories of criminal liability,  
19 to wit: 1) Premeditation and Deliberation; 2) Felony Murder, Defendant and/or TERRELL  
20 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH committing the murder in the  
21 perpetration or attempted perpetration of kidnaping and/or robbery; 3) Aiding or Abetting, the  
22 Defendant aiding or abetting TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
23 SMITH by counsel and encouragement and by entering into a course of conduct whereby the  
24 said Defendant arrived at 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or  
25 SIKIA LAFAYETTE SMITH; the said Defendant entering the residence with TERRELL  
26 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL  
27 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were in possession of a firearm;  
28 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding

1 the victim and placing him on the floor of the residence; Defendant and/or TERRELL COCHISE  
2 YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the body of the said  
3 MATHEW MOWEN with a firearm; 4) Conspiracy, by the said Defendant acting pursuant to  
4 a conspiracy to commit robbery and/or kidnaping and/or murder with TERRELL COCHISE  
5 YOUNG and/or SIKIA LAFAYETTE SMITH, whereby the said Defendant entered the  
6 residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while  
7 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were  
8 in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE YOUNG and/or  
9 SIKIA LAFAYETTE SMITH binding the said MATHEW MOWEN and placing him on the  
10 floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
11 LAFAYETTE SMITH shooting at and into the body of the said MATHEW MOWEN with the  
12 firearm or firearms.

13 COUNT XIV - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

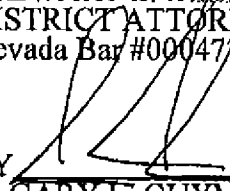
14 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,  
15 then and there wilfully, feloniously, without authority of law, and with premeditation and  
16 deliberation, and with malice aforethought, kill PETER TALAMENTEZ, a human being, by  
17 shooting at and into the body of said PETER TALAMENTEZ, with a deadly weapon, to wit: a  
18 firearm, the said Defendant being responsible under the following theories of criminal liability,  
19 to wit: 1) Premeditation and Deliberation; 2) Felony Murder, Defendant and/or TERRELL  
20 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH committing the murder in the  
21 perpetration or attempted perpetration of robbery and/or kidnaping; 3) Aiding or Abetting, the  
22 Defendant aiding or abetting TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE  
23 SMITH by counsel and encouragement and by entering into a course of conduct whereby the  
24 said Defendant arrived at 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or  
25 SIKIA LAFAYETTE SMITH; the said Defendant entering the residence with TERRELL  
26 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL  
27 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were in possession of a firearm;  
28 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding



1 the victim and placing him on the floor of the residence; Defendant and/or TERRELL COCHISE  
2 YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the body of the said PETER  
3 TALAMENTEZ with a firearm; 4) Conspiracy, by the said Defendant acting pursuant to a  
4 conspiracy to commit robbery and/or kidnaping and/or murder with TERRELL COCHISE  
5 YOUNG and/or SIKIA LAFAYETTE SMITH, whereby the said Defendant entered the  
6 residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while  
7 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were  
8 in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE YOUNG and/or  
9 SIKIA LAFAYETTE SMITH binding the said PETER TALAMENTEZ and placing him on the  
10 floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA  
11 LAFAYETTE SMITH shooting at and into the body of the said PETER TALAMENTEZ with  
12 the firearm or firearms.

13 DATED this 15<sup>th</sup> day of September, 1998.

14 STEWART L. BELL  
15 DISTRICT ATTORNEY  
16 Nevada Bar #000477

17 BY   
18 GARY L. GUYMON  
19 Deputy District Attorney  
Nevada Bar #003726

20 ENDORSEMENT: A True Bill

21   
22 Foreperson, Clark County Grand Jury  
23

24 //

25 //

26 //

27 //

28 //

1 Names of witnesses testifying before the Grand Jury:  
2 ACE HART, C/O DISTRICT ATTORNEY INVESTIGATOR ALEXIA CONGER  
3 TOD ARMSTRONG, C/O DISTRICT ATTORNEY INVESTIGATOR ALEXIA CONGER  
4 NICHOLAS DE LUCIA, 4815 TERRA LINDA, LVN 89120  
5 DR. ROBERT BUCKLIN, CCME, 1704 PINTO LANE, LVN 89106  
6 SHAWN FLETCHER, P#5221, LVMPD  
7 B.C. GROVER, P#4934, LVMPD  
8 EDWARD GUENTHER, P#5891, LVMPD  
9 KEN HEFNER, P#2185, LVMPD  
10 CHARLA (LA LA) SEVERS, C/O DISTRICT ATTORNEY INVESTIGATOR ALEXIA  
11 CONGER  
12 BRYAN C. JOHNSON, C/O DISTRICT ATTORNEY INVESTIGATOR ALEXIA CONGER  
13 JUSTIN ULRICH PERKINS, 310 REDONDO ST., HENDERSON, NV 89014  
14 DEWAYNE ANDERSON, C/O DISTRICT ATTY INVESTIGATOR ALEXIA CONGER  
15 Additional witnesses known to the District Attorney at the time of filing this Indictment:  
16 CARLON J. FRUGE, P#1460, LVMPD  
17 THOMAS THOWSEN, P#1467  
18 DAVID HORN, P#1928, LVMPD  
19 DEBRA MCCracken, P#2542, LVMPD  
20 JAMES STELK, JR., P#2550, LVMPD  
21 RANDY SUTTON, P#3239, LVMPD  
22 JAMES BUCZEK, JR., P#3702, LVMPD  
23 MICHAEL PERKINS, P#4242, LVMPD  
24 DAVID L. WEST, P#4338, LVMPD  
25 SHAWN MCLAIN, P#5221, LVMPD  
26 JAMES E. O'DONNELL, P#5709, LVMPD  
27 SHEREE NORMAN, P#3110  
28 COR LVMPD COMMUNICATIONS  
LUIS AMADO CABRERA, 4801 E. TROPICANA, BLDG. 15, APT 33, LVN 89121

1 JEFF LYNN BATES, 4745 TERRA LINDA, LVN 89120  
2 GREGORY TRAVIS, 1605 E. FREMONT, RM.#15, LVN 89101  
3 ALBERT TALAMANTEZ, 5840 MEDALLION DR., #202, LVN 89122  
4 M. WASHINGTON, P#4725, LVMPD  
5 MELVIN E. ROYAL, 3503 MERCURY, #E, NLVN

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LVMPD EV#9808141600  
BURG WDW; CONSP ROBB/KIDNP/MURD;  
26 MURD WDW; RWDW; 1ST KIDNP WDW - F

27

28

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED

SEP 28 8 32 AM '98

Plaintiff,

vs.

Donte Johnson

Defendant.

Case No. C153154  
Dept. No.  
Docket No.

## MEDIA REQUEST

Keith Groteluschen, of KLAS-TV

hereby requests permission to broadcast, record, photograph or  
televisе proceedings in the above-entitled case in the courtroom of  
Department 5, Judge Sobel, commencing  
on the 8 day of September, 19 98.

I certify that I am familiar with the contents of Nevada  
Standards of Conduct and Technology ADKT 26.

I also understand that this form must be submitted to the  
Court at least seventy-two (72) hours before the proceeding commences  
unless good cause can be shown.

DATED this 3 day of September, 19 98.

Keith Groteluschen  
MEDIA REPRESENTATIVE

650-1989  
MEDIA PHONE NUMBER

3228 Ch 8 Drive  
MEDIA ADDRESS

FILED

SEP 20 8 32 AM '98

VB.

YB.  
Donte Johnson

Defendant

Case No.  
Dept. No.  
Docket No.

Upon written request of Keith Grodzinski of KLAS

DATED this 24 day of Sept, 1971

DISTRICT JUDGE

Attorney(s) of record

**Defendants**

ORIGINAL

FILED

OCT 5 3 16 PM '98

*Peter LaPorta*  
CLERK

0001  
MICHAEL A. CHERRY, ESQ.  
SPECIAL PUBLIC DEFENDER  
State Bar No. 001238  
PETER R. LaPORTA, ESQ.  
DEPUTY SPECIAL PUBLIC DEFENDER  
State Bar No. 003754  
LEE-ELIZABETH McMAHON, ESQ.  
DEPUTY SPECIAL PUBLIC DEFENDER  
State Bar No. 001765  
309 South Third Street, Fourth Floor  
P.O. Box 552316  
Las Vegas, NV 89155  
(702) 455-6265  
Attorney for Defendant JOHNSON

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,  
vs.  
DONTÉ JOHNSON,  
Defendant.

CASE NO. C153154  
DEPT NO. V  
DOCKET H

Hearing Date:  
Hearing Time:

*10/8/98*  
*9 PM*

DEFENDANT JOHNSON'S MOTION TO SET BAIL

COMES NOW, Defendant DONTÉ JOHNSON (hereinafter "JOHNSON"), by and through his attorneys PETER R. LaPORTA, Deputy Special Public Defender, and LEE-ELIZABETH McMAHON, Deputy Special Public Defender, and respectfully requests this Court to grant Defendant's Motion To Set Bail.

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CE42

1 This Motion is made and based upon the Points and Authorities and Affidavits  
2 attached hereto, all the pleadings and papers on file herein and the oral argument of  
3 counsel, if any, at the time of the hearing of the Motion.

4 DATED this 5<sup>th</sup> day of October, 1998.

5 MICHAEL A. CHERRY  
6 SPECIAL PUBLIC DEFENDER

7  
8 By: PETER R. LAPORTA, ESQ.  
9 Deputy Special Public Defender  
10 State Bar No. 003754  
11 309 S. Third Street, Fourth Floor  
12 P.O. Box 552316  
13 Las Vegas, NV 89155  
14 (702)455-6265  
15 Attorneys for Defendant JOHNSON

16 **NOTICE OF MOTION**

17 TO: STATE OF NEVADA, Plaintiff; and

18 TO: STEWART L. BELL, District Attorney, Attorney for Plaintiff

19 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and  
20 foregoing MOTION on the 8 day of October, 1998, at the hour of 9 A M.,  
21 in Department No. V of the above-entitled Court, or as soon thereafter as counsel may be  
22 heard.

23 DATED this 5<sup>th</sup> day of October, 1998.

24 MICHAEL A. CHERRY  
25 SPECIAL PUBLIC DEFENDER

26 By: PETER R. LAPORTA, ESQ.  
27 Deputy Special Public Defender  
28 State Bar No. 003754  
309 S. Third Street, Fourth Floor  
P.O. Box 552316  
(702)455-6265  
Las Vegas, NV 89155  
Attorneys for Defendant JOHNSON

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

## POINTS AND AUTHORITIES

The United States Supreme Court held in Stack v. Boyle, 342 U.S. 1 (1952) that the Eighth Amendment to the United States constitution which provides that "excessive bail shall not be required" shall be interpreted to mean bail set at a figure higher than an amount reasonably calculated to provide assurance that the accused will be present at trial was excessive. Additionally, the constitution of the State of Nevada, Article 1, Section 6, states that excessive bail shall not be required. Bail is excessive and within the prohibition of the Constitution if the amount is more than the accused can reasonably be expected to give under the circumstances. The factors that should be constitutionally considered are:

1. Financial ability of the accused;
2. The atrocity of the offense, or the turpitude of the crime; and
3. The punishment of the crime.

Ex Parte Malley, 50 Nev. 248, 256 P.2d 512 (1927); In the Matter of Toczulowski, 69 Nev. 194, 245 P.2d 1004 (1952).

NRS 178.4853 lists the following factors for consideration of release without bail as follows:

1. The length of his residence in the community;
2. The status and history of his employment;
3. His relationship with his spouse and children, parents or other members of his family and with his close friends;
4. His reputation, character and mental condition;
5. His prior criminal record, including any record of his appearing or failing to appear after release on bail or without bail;
6. The identity of responsible members of the community who would vouch for the defendant's reliability;
7. The nature of the offense with which he is charged, the apparent probability of conviction and the likely sentence, insofar as these factors relate to the risk of his not appearing;
8. The nature and seriousness of the danger to any person or the community that would be posed by the person's release;



1 9. The likelihood of more criminal activity by the person after he is  
2 released; and

3 10. Any other factors concerning his ties to the community or bearing on  
4 the risk that he may willfully fail to appear."

5 Factors to be considered by the Court in setting bail were set forth by the  
6 Legislature in NRS 178.498 as follows:

7 "If the Defendant is admitted to bail, the bail must be set at an amount  
8 which in the judgment of the magistrate will reasonably ensure the  
9 appearance of the Defendant and the safety of other persons and of the  
10 community, having regard to:

- 11 1. The nature and circumstances of the offense charged;
- 12 2. The financial ability of the Defendant to give bail;
- 13 3. The character of the Defendants; and
- 14 4. The factors listed in NRS 178.4853."

#### 15 ARGUMENT

16 It is respectfully submitted that JOHNSON is entitled to have bail set in a  
17 reasonable amount. The factor to be considered by the Court as applied to JOHNSON is  
18 as follows:

- 19 1. Length of residence: JOHNSON has lived in lived in Las Vegas for two years.

#### 20 CONCLUSION

21 It is respectfully requested that this Court, based on all of the information herein  
22 contained, grant DONTE JOHNSON bail in a reasonable amount.

23 DATED this 5<sup>th</sup> day of October, 1998.

24 MICHAEL A. CHERRY  
25 SPECIAL PUBLIC DEFENDER

26 By: \_\_\_\_\_

27 PETER B. LAPOSTOLLE, ESQ.  
28 Deputy Special Public Defender  
State Bar No. 003754  
309 S. Third Street, Fourth Floor  
P.O. Box 552316  
Las Vegas, NV 89155  
Attorneys for Defendant JOHNSON

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

26.  
ORIGINAL

FILED

OCT 5 3 36 PM '98

*For the Clerk*  
CLERK

1 ROC  
2 MICHAEL A. CHERRY, ESQ.  
3 SPECIAL PUBLIC DEFENDER  
4 State Bar No. 001238  
5 PETER R. LaPORTA, ESQ.  
6 DEPUTY SPECIAL PUBLIC DEFENDER  
7 State Bar No. 003754  
8 LEE-ELIZABETH McMAHON, ESQ.  
9 DEPUTY SPECIAL PUBLIC DEFENDER  
10 State Bar No. 001765  
11 309 South Third Street, Fourth Floor  
12 P.O. Box 552316  
13 Las Vegas, NV 89155  
14 (702) 455-6265  
15 Attorney for Defendant JOHNSON

16  
17 DISTRICT COURT  
18 CLARK COUNTY, NEVADA

19 THE STATE OF NEVADA,  
20  
21 Plaintiff,

22 vs.

23 DONTE JOHNSON,

24 Defendant.

CASE NO. C153154  
DEPT NO. V  
DOCKET H

Hearing Date:  
Hearing Time:

25 RECEIPT OF COPY

26 RECEIPT OF COPY of the foregoing DEFENDANT JOHNSON'S MOTION TO SET  
27 BAIL is hereby acknowledged this 5<sup>th</sup> day of October, 1998.

28 STEWART L. BELL  
DISTRICT ATTORNEY

By: *Gary L. Guymon*

GARY L. GUYMON, ESQ.  
Deputy District Attorney  
200 South Third Street  
Las Vegas, Nevada 89155  
Attorneys for Plaintiff

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

25

**ORIGINAL**

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

**FILED**

OCT 6 2 34 PM '98

1  
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4  
5 **STATE OF NEVADA,**

6 **Plaintiff,**

7 **VS.**

8 **DONTE JOHNSON,**  
9 **aka JOHN LEE WHITE,**

10 **Defendant.**

**Case No.: C153154**

**Dept. No.: XI**

**Docket: S**

11 **BEFORE THE HONORABLE MICHAEL L. DOUGLAS, DISTRICT JUDGE**

12 **RECORDER'S TRANSCRIPT RE:**

13 **GRAND JURY INDICTMENTS RETURNED IN OPEN COURT**

14 **WEDNESDAY, SEPTEMBER 2, 1998**

15  
16  
17  
18 **APPEARANCES:**

19 **For the Plaintiff:**

**VALERIE P. ADAIR**  
**Chief Deputy District Attorney**

20  
21 **Foreperson:**

**KEITH YOERGER**

22  
23  
24 **Recorded By: CATHY NELSON, Special Reporter/Transcriber**

CE42

1 WEDNESDAY, SEPTEMBER 2, 1998

2  
3 THE COURT: We have matters to be presented to the Court this  
4 morning?

5 MS. ADAIR: Yes, we do, Your Honor. The following Indictment is the  
6 result of the Grand Jury session held yesterday, September 1st, 1998.  
7 Present with me here today is Keith Yoerger, the foreperson of the Tuesday  
8 Grand Jury.

9 The first case is Grand Jury Case Number 97BGJ184X, which  
10 charges Donte Johnson, also known as John Lee White, with the crimes of  
11 Burglary while in possession of a firearm, four counts of murder with use of  
12 a deadly weapon, four counts of robbery with use of a deadly weapon, and  
13 four counts of first degree kidnaping. The Indictment is signed by Gary  
14 Guymon on behalf of the State and by Keith Yoerger on behalf of the Grand  
15 Jury. May I approach?

16 THE COURT: Please approach. And for the record, Mr. Yoerger, did at  
17 least twelve members of the Grand Jury concur in finding a true bill on each  
18 count as to the defendant, Mr. Donte Johnson?

19 FOREPERSON YOERGER: Yes, Your Honor.

20 THE COURT: Very well, then. It will be filed and received by the  
21 District Court, given Case Number C153154, Department Number Five,  
22 Docket H.

23 As to this matter, additional requests as to a warrant or  
24 summons?

1 MS. ADAIR: Your Honor, this defendant is presently in custody. We're  
2 asking for a warrant. Bail has been set at no bail. This is the murder of four  
3 young people. We would ask that the bail status remain at no bail and that  
4 we have a felony arraignment date.

5 THE COURT: That will be the order of the Court. Can we have a date,  
6 please, as to that?

7 THE CLERK: September 8th at nine o'clock.

8 THE COURT: Additionally, do we have lodgings with the Court as to  
9 exhibits or other documents?

10 MS. ADAIR: Yes, Your Honor, we do. I would request that Exhibits  
11 Number 1 through 31 be lodged with the clerk of the court. Exhibits  
12 Number 32, 33 and 34 have been returned to the Las Vegas Metropolitan  
13 Police Department.

14 THE COURT: Then it is appropriate that is ordered and lodged with the  
15 court.

16 MS. ADAIR: Thank you, Your Honor.

17 (Whereupon the proceedings concluded)

18 \* \* \* \*

19 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
20 sound recording of the proceedings in the above-entitled case.

21   
22 ARLENE BLAZI,  
23 Transcriber/Special Reporter  
24  
25

ORIGINAL

FILED

OCT 7 2 03 PM '98

*Jonathan L. Bell*  
CLERK

1 **OPPS**  
2 STEWART L. BELL  
3 DISTRICT ATTORNEY  
4 Nevada Bar #000477  
5 200 S. Third Street  
6 Las Vegas, Nevada 89155  
7 (702) 455-4711  
8 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 DONTÉ JOHNSON,  
12 #1586283

13 Defendant.

Case No. C153154  
Dept. No. V  
Docket H

15 STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SET BAIL

16 DATE OF HEARING: 10-8-98  
17 TIME OF HEARING: 9:00 A.M.

18 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through  
19 GARY L. GUYMON, Deputy District Attorney, and files this Opposition to Defendant's  
20 Motion to Set Bail.

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

24 **STATEMENT OF FACTS**

25 Prior to early August, 1998, witness Todd Armstrong and Ace Hart resided at a home located  
26 at 4815 Everman Street. In early August 1998, an acquaintance of Ace Hart (Donte Johnson) began to  
27 stay occasionally at the Everman residence. Staying with Donte Johnson at the Everman residence was  
28 Charla Severs and Terrell Young (co-offender). During August of 1998, Matthew David Mowen, Tracy

1 Albert Gorringer and Jeffery Charles Biddle (all now deceased) were staying at a house on 4825 Terra  
2 Linda. The Everman residence and the Terra Linda residence were within blocks of one another.

3 During the month of August Matthew Mowen visited the Everman residence in an effort to  
4 purchase rock cocaine from Donte Johnson. Shortly after Matthew Mowen left the Everman residence,  
5 Donte Johnson and Terrell Young began to engage in a conversation with others at the Everman  
6 residence about their desire to rob the individuals who were staying at the Terra Linda residence.

7 On August 13, 1998, during the evening hours, Donte Johnson, Terrell Young, and Sikia Smith  
8 armed themselves with guns and duct tape and drove over to the Terra Linda residence in an effort to  
9 rob the individuals staying there.

10 Defendant Johnson and his co-offenders (Terrell Young and Sikia Smith) immediately confronted  
11 two of the Terra Linda residents ordering them into the house at gunpoint. Defendant Terrell Young and  
12 his co-offenders began duct taping the two Terra Linda residents hands and feet as they lie on the ground  
13 face down while the Defendant and his co-offenders began rifling through the Terra Linda residence in  
14 an effort to find monies and other items of value.

15 While Defendant Johnson and his co-offender searched the house, a third Terra Linda resident  
16 came home and was immediately confronted at gunpoint by Defendant Johnson and his co-offenders.  
17 This third individual was immediately ordered to the ground face down and had his arms and legs duct  
18 taped together.

19 After having rifled through the Terra Linda residence and having emptied the three victim's  
20 wallets, Defendant Donte Johns and his co-offenders began to demand additional monies. One of the  
21 victim's suggested that a fourth individual (Peter Talamantez) owed him a large sum of money and that  
22 perhaps if Peter Talamantez was contacted he could provide Defendant Johnson and his co-offenders  
23 additional monies. Peter Talamantez was paged to the Terra Linda residence and responded at which time  
24 Peter Talamantez was immediately greeted at gunpoint by Defendant Johnson and his co-offenders and  
25 ordered to the ground. Peter Talamantez offered resistance and began to "disrespect" Donte Johnson.  
26 Peter Talamantez was immediately struck in the back of the head with a handgun by one of the three  
27 wrong doers and taken into a different room than the other three victims where Peter Talamantez was  
28 ordered down to the ground face first while his hands and legs were bound together with duct tape.

1 Defenders rifled through Peter Talamantez's wallet and also took monies from Talamantez.

2 Unhappy with the small amount of monies which the Defendant and his companions had profited  
3 from their dastardly deeds and upset with Peter Talamantez's "disrespecting" Donte, Donte turned up  
4 the house stereo and stood over the body of Peter Talamantez and shot him in the head. After shooting  
5 Peter Talamantez, Donte Johnson returned to the room where the other three victims helpless laid and  
6 shot those three individuals in the head.

7 The Defendant and his companions immediately left the Terra Linda residence and returned to  
8 the Everman residence with their guns, duct tape and ill gotten gains.

9 Detectives and crime scene analysts with the Las Vegas Metropolitan Police Department  
10 responded to the Terra Linda on August 14, 1998, during the early evening hours where they processed  
11 the bloody scene and collected evidence. No U.S. paper currency was found in the residence or on the  
12 four deceased persons. Four matching spent casing were found at the crime scene, (one near each of the  
13 deceased).

14 Crime scene analysts with the Las Vegas Metropolitan Police Department attempted to process  
15 the crime scene for fingerprints and found a fingerprint belonging to Donte Johnson on a Black and Mild  
16 cigar box lying near one of the deceased.

17 Also found at the crime scene were a number of cigarette butts which were analyzed for DNA.  
18 As a result of the DNA analysis, Defendant Donte Johnson's DNA was found to be on a cigarette butt  
19 located at the crime scene.

20 On August 18, 1998, at approximately 3:00 a.m., police personnel ordered all of the occupants  
21 of the Everman residence out of the house. At the time Donte Johnson, Charla Severs and Willie  
22 Coleman exited the residence. Sergeant Hefner asked each of the three individuals individually if they  
23 lived at the residence to which they responded no. Donte Johnson was arrested and transported to the  
24 Detective Bureau shortly after he had indicated that he did not live at the Everman residence.

25 Sergeant Hefner obtained a written consent to search from Todd Armstrong who indicated that  
26 the residence was his mother's and that he had the only key to the residence. Todd Armstrong had  
27 previously told Sergeant Hefner that when Donte Johnson stayed at the house, he stayed in the master  
28 bedroom. Donte Johnson stayed in the master bedroom because this is the bedroom that Todd's mother



1 had previously occupied prior to leaving the state and Todd did not want to move out of his bedroom  
2 and into his mother's bedroom.

3 During a search of the Everman residence, the Detectives entered into the master bedroom where  
4 they found women's clothing identified as belonging to Charla, as well as male shoes belong to Donte  
5 Johnson and Terrell Young. Two pair of black male jeans were also found in the master bedroom. On  
6 the leg of one of the black pair of jeans was blood which has been positively identified through DNA tests  
7 as having the blood of one of the deceased from the Terra Linda residence.

8 The black jeans which has the blood of one of the deceased on it also was found to have semen  
9 in the front zipper area of the pants. To no surprise, the semen has been identified through DNA testing  
10 to be the semen of Donte Johnson.

11 Co-offenders Terrell Young and Sikia Smith were subsequently arrested and read their Miranda  
12 rights. Both co-offenders have given voluntary statements wherein they admit their involvement in the  
13 Terra Linda residence and identify the sole killer in the case as Donte Johnson.

#### 14 POINTS AND AUTHORITIES

#### 15 **DEFENDANT DONTE JOHNSON DOES NOT HAVE** 16 **A CONSTITUTIONAL RIGHT TO BAIL.**

17 NRS 178.484 states: Right to bail before conviction; conditions; exceptions.

18 1. Except as otherwise provided in this section, a  
19 person arrested for an offense other than murder in the  
20 first degree must be admitted to bail . . .

21 3. A person arrested for murder of the first degree may  
22 be admitted to bail unless the proof is evident or the  
presumption great by any competent court or magistrate  
authorized by law to do so in the exercise of discretion  
given due weight to the evidence and the nature and  
circumstances of the offense.

23 A preliminary reading of NRS 178.484 makes it clear that Defendant Johnson is not entitled to  
24 bail, but "may be admitted to bail" pursuant to this court's discretion. NRS 178.484 provides that this  
25 court, however, consider the proofs of this case and consider the weight of the evidence and the nature  
26 and circumstances of the offense. The nature and circumstances of the offense are quite clear in this case.  
27 Four young men senselessly lost their lives as a result of the Defendant and his companions desire to rob  
28 them of their monies.

1 Ace Hart has previously testified before the grand jury that the morning after the killing Donte  
2 Johnson confessed to robbing and killing the four individuals at the Terra Linda residence. During his  
3 admissions to Ace Hart, Defendant Johnson talked about the excessive blood shed describing it like it was  
4 "the Niagra Falls". Defendant Donte told Ace Hart that he killed the Mexican boy (Talamantez) first  
5 because the Mexican had "disrespected him". Defendant Johnson indicated that he had to kill the other  
6 three because they could identify him.

7 Within days after Defendant Johnson's arrest, Defendant Johnson contacted local news stations  
8 and provided them with taped interviews wherein he indicated that he had never been to the Terra Linda  
9 residence. Physical evidence contradicts Defendant Johnson's self serving media moment. Defendant  
10 Johnson's fingerprints were found at the scene as was his DNA which was found on cigarettes at the  
11 Terra Linda residence.

12 The blood of one of the deceased was found on pants worn by Defendant Johnson.

13 Defendant Johnson's girlfriend, Charla Severs, testified before the grand jury that she watched  
14 her boyfriend and his companions arm themselves with firearms, duct tape and gloves and leave the  
15 Everman residence in an effort to go rob the guys over at the Terra Linda residence. Charla Severs  
16 indicated that she had seen Matthew Mowen over at the Everman residence days earlier. Charla Severs  
17 testified that her boyfriend, Donte Johnson, returned hours later to the Everman residence with Terrell  
18 Young and Sikia Smith. She testified that Donte Johnson and his companions were all hyped up upon  
19 their return. Charla Sever testified that the next morning her boyfriend was insistent that she watch the  
20 news at which time she saw a picture of Matthew Mowen as being one of the four persons that had been  
21 murdered. She immediately began to further questions Donte Johnson who admitted to her that he had  
22 robbed and killed the four young men.

23 A pager was found buried in the back yard of the Everman residence along with keys from the  
24 Thunderbird Motel where the Defendant had previously stayed. The pager has been identified as  
25 belonging to one of the deceased (Peter Talamantez).

26 NRS 178.498 states:

27 Amount. If the Defendant is admitted to bail, the bail  
28 must be set at an amount which in the judgment of the  
magistrate will reasonably assure the appearance of the

1 Defendant and the safety of other persons and of the  
2 community having regard to: 1. The nature and  
3 circumstances of the offense charged; 2. The financial  
4 ability of the Defendant to give bail; 3. The character of  
5 the Defendant; and 4. The factors listed in NRS  
6 178.4853.

7 In the instant case, the "nature and circumstances of the offense with which the Defendant is  
8 charged" have been discussed above. The Defendant, when convicted of the crime of murder with use  
9 of a deadly weapon, faces at a minimum multiple non-probation life sentences and more than likely the  
10 death penalty.

11 The "character of the Defendant" is perhaps illustrated by his gang affiliation, the use of three  
12 alias', two birth dates, multiple arrests in the short time that he has been in the state of Nevada, as well  
13 as his failure to appear for his court appearances.

### 14 CONCLUSION

15 In short, the evidence overwhelmingly suggests that Defendant Donte Johnson is the killer in this  
16 case. He is criminally liable for the death of four young men. His conviction is nearly certain and as such  
17 he should be held without bail.

18 DATED this 2 day of October, 1998.

19 Respectfully submitted,

20 STEWART L. BEZL  
21 DISTRICT ATTORNEY  
22 Nevada Bar #000477

23 BY [Signature]  
24 GARY L. GUYMON  
25 Deputy District Attorney  
26 Nevada Bar #003726  
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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Opposition to Defendant's Motion to  
Set Bail is hereby acknowledged this 7th Day of October, 1998.

MICHAEL CHERRY, Esq.  
ATTORNEY FOR DEFENDANT

BY John R. Labonte / s  
309 S Third Street, 4th Floor  
Las Vegas, Nevada 89155

ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

FILED

OCT 20 8 19 AM '98

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID

DISTRICT COURT

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON

aka John Lee White  
#1586283

Defendant.

Case No. C153154  
97BGJ184X

) Burglary While In  
) Possession Of A  
) Firearm; Conspiracy  
) To Commit Robbery  
) And/Or Kidnapping  
) And/Or Murder;  
) Murder With Use Of  
) A Deadly Weapon;  
) Robbery With Use Of  
) A Deadly Weapon;  
) etc.

Taken at Las Vegas, Nevada

Tuesday, September 15, 1998

1:10 P.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SUPERSEDING INDICTMENT

CF09

Reported by: Brenda Anne Lee, C.C.R. No. 198

1 GRAND JURORS PRESENT ON SEPTEMBER 15, 1998:

2  
3 KEITH YOERGER, Foreman

4 EDMOND AZLYN, Deputy Foreman

5 JO ANN OSCARS, Secretary

6 COLLEEN HILLIARD, Assistant Secretary

7 CARL CHENCHICK

8 W. IRVIN COUSINS

9 RALPH DERNEHL

10 CAROL FREY

11 MARYILYN GREEN

12 JUDITH MASSEY

13 EDWARD M. OLSON

14 WARDELL OWENS

15 ROBERTA PENDERCRAFT

16 JOHN POLASKO (did not deliberate and vote)

17 BERNARD SHERMAN

18 KAREN ZEIGLER (did not deliberate and vote)

19  
20 Also present at the request of the Grand Jury:

21 GARY L. GUYMON and ROBERT DASKAS,  
22 Deputy District Attorneys

INDEX OF WITNESSESExamined

CHARLA SEVERS

11

INDEX OF EXHIBITSGrand Jury ExhibitsIdentified

1 - photograph of Deko	16
2 - photograph of Red	16
3 - photograph of Tiny Bug	16

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1 LAS VEGAS, NEVADA, SEPTEMBER 15, 1998, 1:10 P.M.

2  
3  
4 MR. GUYMON: With your permission, Gary  
5 Guymon here on behalf of the District Attorney's  
6 Office, as well as Robert Daskas.

7 We are here today to present  
8 some additional evidence on the Donte Johnson matter  
9 which is a case that you instructed us to prepare an  
10 Indictment on on September 1st of this year.

11 We are going to ask with your  
12 permission to allow us to present to you a  
13 superseding indictment as it relates to Donte  
14 Johnson. I'm going to elicit one witness. A  
15 witness that I previously had testify is going to  
16 return now and tell you a little bit more about what  
17 she failed to tell you the first time.

18 At the conclusion of her  
19 testimony I'm going to give you some additional  
20 instructions as it relates to accomplice testimony  
21 because there will be some testimony from Lala or  
22 Charla Severs which may implicate a witness that  
23 appeared before you previously by the name of Tod  
24 Armstrong.

25 Once she testifies I'll ask you

1 to consider her new testimony now coupled with her  
2 testimony and all of the other testimony that was  
3 given to you on September 1st as it relates to Donte  
4 Johnson with the understanding that I also need to  
5 instruct you on what an accomplice is. I'll give  
6 you that instruction. That's one of the things I  
7 wish to do today with you folks on the superseding  
8 Indictment associated with Donte Johnson.

9 I also am going to have  
10 testimony elicited on two other Indictments. I'm  
11 going to number these Indictments just as we proceed  
12 to talk about these. I'll number Donte Johnson  
13 Number 1, Terrell Young Number 2, and Sikia Smith  
14 Number 3. So when we refer to where you will apply  
15 the testimony I'll tell you what Indictment this  
16 witness actually is going to be addressing.

17 In other words, Lala Severs will  
18 give testimony as to Indictment Number 1, Number 2  
19 and Number 3 and likewise as we go through the  
20 witnesses I'll clean that up because I see some  
21 blank stares.

22 THE SECRETARY: You're keeping these  
23 separate?

24 MR. GUYMON: They're three separate  
25 Indictments.

1                   The reason why they're three  
2       separate Indictments is because these cases have  
3       been pretracked into different courts. I cannot  
4       court shop. I cannot forum shop. And because  
5       they're already pretracked into different court  
6       rooms they are different Indictments.

7                   Yes, ma'am?

8                   THE SECRETARY: But you're going to be  
9       talking about them at one time?

10                  MR. GUYMON: Some of the witnesses  
11       their testimony will apply to all three Indictments.  
12       Other witnesses their testimony will only apply to  
13       one Indictment. I'll let you know.

14                  THE SECRETARY: So I'll have to have  
15       all these things ready at the same time, or are you  
16       going to do one and then go to the next one?

17                  MR. GUYMON: The first witness will  
18       address all three Indictments. Thereafter, each  
19       witness will go in -- now only Indictment Number 2  
20       and then only Indictment Number 3.

21                  Does that make sense so far?

22                  THE JURY: (in unison) Yes.

23                  MR. GUYMON: What I'd like to do, and I  
24       guess we haven't even called the case, but once we  
25       call the case -- after we call the case I would like

1 to call roll, and I only would like those persons,  
2 at least 14 that were present on September 1st, vote  
3 on the superseding Indictment. So what I'll do is  
4 I'll turn the case back over to the Foreman, and  
5 I'll ask him to call the case and we'll have a roll  
6 call.

7 THE FOREMAN: The matter of the State  
8 of Nevada versus Donte Johnson.

9 All those who were present on  
10 September 1st, please raise your hand.

11 There is 14 present today that  
12 were present on September the 1st that heard  
13 testimony of Donte Johnson.

14 MR. GUYMON: And will the persons  
15 present on the 1st be noted in the record by name  
16 which I believe is the 15th? Will that appear?  
17 Will that appear on the record?

18 THE COURT REPORTER: Yes.

19 MR. GUYMON: With that, do you have a  
20 proposed superseding indictment as it relates to  
21 Donte Johnson?

22 THE FOREMAN: Yes.

23 THE JURY: (in unison) Yes.

24 MR. GUYMON: I'll ask you to look at  
25 the language of the superseding Indictment. It has

1 changed slightly from the first Indictment. There  
2 is one additional count that's been added to the  
3 superseding Indictment which is conspiracy to commit  
4 robbery and/or kidnapping and/or murder.

5 Do each one of you also have  
6 Indictments in the case captioned State of Nevada  
7 versus Terrell Young, as well as State of Nevada  
8 versus Sikia Smith?

9 THE FOREMAN: Yes.

10 MR. GUYMON: What I would like to do,  
11 with your permission, is I would like to recall now  
12 Charla Severs who testified on September 1 of this  
13 year in the matter of State of Nevada versus Donte  
14 Johnson.

15 THE FOREMAN: Yes, you may.

16 MR. GUYMON: All right. Thank you.

17 THE FOREMAN: Ma'am, please raise your  
18 right hand and be sworn in.

19 You do solemnly swear that the  
20 testimony that you are about to give upon the  
21 investigation now pending before this Grand Jury  
22 shall be the truth, the whole truth and nothing but  
23 the truth, so help you God?

24 MS. SEVERS: Yes.

25 THE FOREMAN: You are here today to

1 give testimony in the investigation pertaining to  
2 the offenses of burglary while in possession of a  
3 firearm, conspiracy to commit robbery and/or  
4 kidnapping and/or murder, murder with use of a  
5 deadly weapon, robbery with use of a deadly weapon,  
6 and first degree kidnapping while in the use of a  
7 deadly weapon involving Donte Johnson, and also  
8 burglary while in possession of a firearm,  
9 conspiracy to commit robbery and/or kidnapping  
10 and/or murder, murder with use of a deadly weapon,  
11 robbery with use of a deadly weapon, first degree  
12 kidnapping with use of a deadly weapon involving  
13 Terrell Cochise Young, and also burglary while in  
14 possession of a firearm, conspiracy to commit  
15 robbery and/or kidnapping and/or murder, murder with  
16 use of a deadly weapon, robbery with use of a deadly  
17 weapon, and first degree kidnapping with use of a  
18 deadly weapon involving Sikia Lafayette Smith as set  
19 forth in the proposed Indictments.

20 Do you understand the reason  
21 you're here to testify?

22 MS. SEVERS: Yes.

23 THE FOREMAN: Thank you.

24 Please speak up into the  
25 microphone so we can hear. The acoustics are rather

1 bad in here.

2  
3 CHARLA SEVERS,

4 having been first duly sworn by the  
5 Foreman of the Grand Jury to testify to  
6 the truth, the whole truth and nothing  
7 but the truth, testified as follows:

8  
9 EXAMINATION

10  
11 BY MR. GUYMON:

12 Q. Will you state your full name and spell  
13 your last name, please?

14 A. Charla Severs, S-e-v-e-r-s.

15 Q. And Miss Severs, some two weeks ago on  
16 September 1st of 1998, do you remember appearing in  
17 front of these people, the Grand Jurors, and  
18 testifying in a case captioned State of Nevada  
19 versus Donte Johnson?

20 A. Yeah.

21 Q. And at that time did you understand  
22 that you were under oath?

23 A. Yeah.

24 Q. You had come in here and sworn to tell  
25 the truth; is that correct?

1 A. Yeah.

2 Q. And as you sit here today do you  
3 understand that you are also under oath and have  
4 been sworn to tell the truth?

5 A. Yeah.

6 Q. Now, two weeks ago when you appeared  
7 before the Grand Jury, did you tell them all of the  
8 information you knew?

9 A. No.

10 Q. Is there a reason why you didn't?

11 A. No.

12 Q. Did you have concerns about telling  
13 them everything you knew?

14 A. I guess.

15 Q. What were those concerns, ma'am?

16 A. I don't know.

17 Q. Were you afraid that you might get  
18 people in trouble if you told everything you knew?

19 A. Yeah.

20 Q. Who were you afraid you might get in  
21 trouble?

22 A. Deko.

23 Q. Deko?

24 A. Uh-huh.

25 Q. And is Deko also known to you as Donte



1 Johnson?

2 A. Yeah.

3 Q. Did you feel as though you had  
4 information that might get other people in trouble  
5 other than Deko?

6 A. Yeah.

7 Q. Is there a reason why you would want to  
8 protect Deko and not share the information two weeks  
9 ago when you were here?

10 A. No.

11 Q. What was your relationship two weeks  
12 ago with Deko?

13 A. My boyfriend.

14 Q. And your relationship today, is it the  
15 same?

16 A. A little, yeah.

17 Q. Excuse me?

18 A. Yeah.

19 Q. And how many times in the last two  
20 weeks do you think it's been that you've seen Deko?

21 A. About five times.

22 Q. And about how many times have you  
23 spoken to him on the phone since then?

24 A. About 10, 20 times.

25 Q. Does he want you to testify here today?

1 A. It don't matter. He don't care.

2 Q. Have you talked or spoken with any of  
3 the other defendants?

4 A. No.

5 Q. Terrell or Mr. Smith?

6 A. No.

7 Q. Terrell Young or Mr. Smith?

8 A. No.

9 Q. Now, then, do you recall some two weeks  
10 ago at the conclusion of your testimony indicating  
11 that you had some additional information that you  
12 wished to share at which time you left the room and  
13 I inquired of you outside of the Grand Jurors'  
14 presence what that information was?

15 A. Yes.

16 Q. And who was that information about?

17 A. Tod.

18 Q. All right. Now, since that time have  
19 you and I spoken in my office about Tod Armstrong  
20 and his potential involvement, as well as Deko, Mr.  
21 Young and Mr. Smith?

22 A. Yes.

23 Q. And during that conversation were you  
24 completely honest and forthright about the things  
25 you told the detectives, Detective Thowsen and

1 Detective Hart?

2 A. I think so, yeah.

3 Q. Was I there for part of that  
4 conversation?

5 A. Yeah.

6 Q. During that conversation some week and  
7 a half ago, did anyone threaten you in any way?

8 A. No.

9 Q. Did anyone make any promises to you in  
10 any way?

11 A. No.

12 Q. Do you have any expectation of what is  
13 going to happen today if you testify truthfully?  
14 What do you think might happen?

15 A. I don't care, but nothing.

16 Q. Do you have an understanding, however,  
17 that if you don't testify truthfully what would  
18 happen?

19 A. Yeah.

20 Q. And what would happen, ma'am?

21 A. I go to jail.

22 Q. Did the detectives again talk to you  
23 about the importance of telling the truth?

24 A. Not just now, but --

25 Q. But when they spoke to you in my

1 office, did they talk to you about telling the  
2 truth?

3 A. Yeah.

4 Q. All right. Did they again explain to  
5 you what perjury was?

6 A. Yeah.

7 Q. I want to show you three pictures just  
8 so we have an identification of each person.

9 Showing you what is marked as  
10 Number 1. Who appears in Photograph Number 1?

11 A. Deko.

12 Q. And in Number 2?

13 A. Red.

14 Q. And in Number 3?

15 A. Tiny Bug.

16 Q. Now, I want to talk to you about the  
17 events of August 13th, 1998, that Thursday evening.

18 Tell me, prior to that Thursday  
19 evening had Tod talked to those three individuals or  
20 any of those three individuals about moneys over at  
21 the Terra Linda residence?

22 A. Yes.

23 Q. What had Tod Armstrong said?

24 A. That it was \$10,000, and they had  
25 mushrooms and everything.

1 Q. That there was \$10,000?

2 A. Uh-huh, and mushrooms.

3 Q. And what are mushrooms, if you know?

4 A. Some kind of drug. I don't know what  
5 you do with it.

6 Q. Now, how many days prior to the murder  
7 did Tod say these things?

8 A. Like three. Three days, something like  
9 that.

10 Q. Where was this conversation at?

11 A. In the living room.

12 Q. And who was present?

13 A. Deko, Red, myself, and Tod.

14 Q. So four people total?

15 A. Yeah.

16 Q. Now, when -- why is it, if you know,  
17 that Tod said that these kids had \$10,000?

18 A. Why is what?

19 Q. Why did Tod say that to Deko and Red?

20 A. I guess to let them know that somewhere  
21 that they could bust a lick.

22 Q. What does "bust a lick" mean?

23 A. Go rob somebody, get some money.

24 Q. Had Deko and Red talked to Tod about  
25 busting a lick before this time?

1 A. No. He talked to me, but not them. I  
2 don't think. I didn't hear him talk to them.

3 Q. Who talked to you about busting a lick  
4 before that conversation?

5 A. Tod.

6 Q. And what had Tod said to you about  
7 busting a lick then?

8 A. He's upset because Ace hadn't come home  
9 because him and Ace supposed to go do it together.  
10 He hadn't come home that day.

11 Q. And do you know what lick they were  
12 supposed to do together, Tod and Ace?

13 A. No, I don't.

14 Q. You don't know who the victim was going  
15 to be in that lick?

16 A. No.

17 Q. Some three days before the murder when  
18 Tod told Donte and Red that these kids had \$10,000,  
19 what did Donte say?

20 A. Nothing.

21 Q. Did he ask where the kids lived?

22 A. Not around -- I didn't hear him.

23 Q. Did Red ask where the kids lived or  
24 where the house was?

25 A. I didn't hear that either. I didn't

1 hear anyone ask that.

2 Q. What, if anything, did Donte and Red do  
3 after Tod announced that these kids had a lot of  
4 money?

5 A. I'm not sure. Nothing.

6 Q. Tell me, if you would, three days  
7 before the murder, what prompted Tod to say anything  
8 about this in the first place?

9 A. Because everybody was broke and didn't  
10 have no money, and that's all they dwell on is  
11 robbing people.

12 Q. That's what who dwells on?

13 A. All of them.

14 Q. When you say "all of them" --

15 A. Tod, Ace, Deko, Honey, Red.

16 Q. So all five of them had been dwelling  
17 on doing robberies?

18 A. Yeah.

19 Q. And being broke?

20 A. Yeah.

21 Q. Now, when Tod made this conversation or  
22 said this to Deko and Red, had one of the boys from  
23 the Terra Linda residence been over at the house  
24 just prior to that?

25 A. Yes.

1 Q. Which boy?

2 A. Matt.

3 Q. And did you meet Matt on that day?

4 A. Yeah.

5 Q. And what had Matt come over to the  
6 house to do, if you know?

7 A. To buy some crack.

8 Q. Now, when Matt was over at the house,  
9 did Matt say anything? Did he talk to the boys?

10 A. Yeah.

11 He just showed us some little  
12 pills that look like valiums. He said it gets you  
13 real stoned, and he said they're better than  
14 valiums. That was about it. And he was asking  
15 where some crack was at, and that was it.

16 Q. All right. And were any of the  
17 fellows, any of the boys that were at the house when  
18 Matt was asking this able to tell Matt where to find  
19 crack?

20 A. No.

21 Q. So I understand Matt's at the house,  
22 you're there, Tod is there, Deko's there, and Red's  
23 there; is that correct?

24 A. Yes.

25 Q. And Red is in Picture Number 2 and Deko



1 is in Picture Number 1, am I right?

2 A. Yes.

3 Q. And how long was Matt over to the house  
4 total?

5 A. About ten minutes, five minutes, ten  
6 minutes. Something like that.

7 Q. To your knowledge, did Matt ever come  
8 back over to the house --

9 A. No.

10 Q. during the next three days prior to  
11 his death?

12 A. No.

13 Q. Now, tell me in the next three days  
14 what talk you heard, if any, from Donte, Deko --  
15 excuse me -- Deko, Red, or Tod about doing a  
16 robbery?

17 A. I didn't hear no more about it after  
18 that day.

19 Q. Okay. The night of the murder were you  
20 home --

21 A. Yeah.

22 Q. -- at the Everman house?

23 A. Yes.

24 Q. And while at the Everman house, who all  
25 was at the house just prior to them leaving?

1           A.     Just myself. Oh, you mean before they  
2 left?

3           Q.     Before they left.

4           A.     Tod, Tiny Bug, Red, and Deko, and  
5 myself.

6           Q.     Okay. And is Tiny Bug the person in  
7 Picture Number 3?

8           A.     Yes.

9           Q.     So we all know, how long have you known  
10 Tiny Bug for?

11          A.     I only know for a couple of weeks. I  
12 don't know him for that long.

13          Q.     Who was Tiny Bug friends with?

14          A.     It was Deko's friend.

15          Q.     Do you know if Tiny Bug knew Deko for  
16 very long?

17          A.     I think he did. He know him from  
18 California.

19          Q.     Was Tiny Bug also friends with Red?

20          A.     He just met him when I met him.

21          Q.     Was Tiny Bug friends with Tod?

22          A.     No. He just met him too.

23          Q.     Okay. Now, do you remember what room  
24 you all were in, yourself, Tod, Deko, Red, and Tiny  
25 Bug at the Everman house when you all were talking?

1 A. They were in the living room.

2 Q. And tell me what was said in the living  
3 room.

4 A. When, before they went?

5 Q. Before the boys left.

6 A. Nothing. They just packed the stuff  
7 and left.

8 Q. Who packed what stuff?

9 Let's first talk about Donte.  
10 What did Donte pack?

11 A. I didn't see nobody pack nothing. I  
12 just know they had guns in the bag.

13 Q. Who was carrying the bag?

14 A. I think Red.

15 Q. You think Red?

16 A. Uh-huh.

17 Q. And what color was the bag?

18 A. It was like green and tan or brown,  
19 something like that.

20 Q. And did you know what was in the bag?

21 A. Some guns.

22 Q. How many bags total, ma'am?

23 A. About three.

24 Q. How did you know there was guns in the  
25 bag?

1           A.     Because I seen. That's all they carry  
2     in the bag.

3           Q.     Had you seen the bag on other  
4     occasions?

5           A.     Yeah.

6           Q.     And what was in the bag on those  
7     occasions?

8           A.     Guns.

9           Q.     Now, when Red was carrying the bag,  
10    could you tell if something was in the bag or not?

11          A.     Yeah.

12          Q.     Did the bag look empty to you?

13          A.     It looked empty, but it seemed heavy.  
14    He was carrying it.

15          Q.     Do you know what the guns looked like  
16    that were in the bag?

17          A.     Yeah.

18          Q.     Can you describe the guns, the three  
19    guns, please?

20          A.     Think one of them was a little caliber  
21    gun kind that spin around that you play Russian  
22    roulette. The other one was like a black .22 or  
23    something like that, and another one was -- it was  
24    long, and it had holes in it. On the top of it it  
25    had a clip that you put in, put in the bottom.

1 Q. Now, the gun that was long, is that a  
2 rifle or a shotgun style gun?

3 A. I don't know the difference.

4 Q. Okay. Were some of the guns handguns?  
5 In other words, were they guns that you hold in one  
6 hand and you shoot?

7 A. Yeah. Two of them were.

8 Q. Two of the guns were handguns?

9 A. Yeah.

10 Q. The gun that was longer, how would you  
11 tend to snoot, if you know?

12 A. I think you hold it right here and hold  
13 this right here because it go like that.

14 Q. The witness has held up both hands  
15 holding one hand in front of the other hand and then  
16 she said it goes like that. She showed, I guess, a  
17 jerking motion?

18 A. Yeah.

19 Q. Other than Red having the bag did any  
20 of the other boys have anything?

21 A. No.

22 Q. Did you see any gloves that night?

23 A. Yeah.

24 Q. Where did you see the gloves?

25 A. On their hands.

1 Q. And who was wearing the gloves?

2 A. Deko, Red, and Bug.

3 Q. Deko was wearing gloves?

4 A. I think so.

5 Q. I need to know how sure you are about

6 that?

7 A. I'm not too sure, but I think. I'm

8 not -- I don't know.

9 Q. Not too sure about Deko wearing gloves?

10 A. Huh-uh.

11 Q. How about Red, was he wearing gloves?

12 A. Yes.

13 Q. Are you sure of that, ma'am?

14 A. Yes, I'm sure.

15 Q. And how about -- let's see. That was

16 Red. How about Tiny Bug? Was Tiny Bug wearing

17 gloves?

18 A. I'm not too sure if Tiny Bug was

19 wearing gloves.

20 Q. Do you think he was or not?

21 A. Yeah, I think he was.

22 Q. Let me ask you, why aren't you too sure

23 about Tiny Bug and Deko?

24 A. Because Red always wears gloves and

25 Deko. I know he came and said bye to me before he

1 left, and I know he didn't have gloves on.

2 Q. Let me ask you about Tod. Did Tod have  
3 any gloves on?

4 A. No.

5 Q. What was Tod doing as the boys loaded  
6 up the guns and put on the gloves?

7 A. He was waiting to leave.

8 Q. And how many people left the Everman  
9 house that night?

10 A. Four.

11 Q. Did they leave together or did they  
12 leave separately?

13 A. Together.

14 Q. Who were those persons that left the  
15 Everman house?

16 A. Tod, Bug, Red, and Deko.

17 Q. Do you know what they were going to do?

18 A. No, I didn't.

19 Q. Did you have some feelings about what  
20 they were going to do?

21 A. Yeah.

22 Q. Were those feelings as they left, did  
23 those feelings cause you any concern?

24 A. No.

25 Q. Did you think they were going to go do

1 something wrong, or did you think they were going to  
2 go out and play sports?

3 A. Do something wrong.

4 Q. Now, did you -- how many pair of gloves  
5 total did you see prior to the guys -- before the  
6 guys left the Everman house? How many gloves did  
7 you see over at the Everman house?

8 A. Like about three or four pair.

9 Q. And what, can you describe the style of  
10 gloves they were?

11 A. They were brown. They had like net in  
12 front or something.

13 Q. They had net in front?

14 A. Yeah. Kind of like the microphone. It  
15 looked like that in the front.

16 Q. You pointed to the microphone. You  
17 said that was on the front part, you mean the palm  
18 of the hands?

19 A. Yeah.

20 Q. Were these gardening style gloves?

21 A. No, huh-uh. They was like -- they were  
22 like working -- I don't know. I never seen them  
23 before. They was like gloves people rob people  
24 with.

25 Q. They were brown gloves. Did they have



1 four fingers and a thumb?

2 A. Yeah.

3 Q. And how far down the arms did the  
4 gloves go?

5 A. About right here.

6 Q. You're pointing to about how many  
7 inches below your wrist, ma'am?

8 A. About three inches, four inches.

9 Q. And what were the gloves? Could you  
10 tell what kind of material the gloves were made of?

11 A. Cloth material. The front part that  
12 looked like this, it was like leather.

13 Q. So the front was kind of a weaved  
14 leather and the back was a different kind of cloth?

15 A. Yeah.

16 Q. How long were these four boys gone from  
17 the house?

18 A. They left like around 9:00 o'clock.  
19 They came back around 3:00 o'clock.

20 Q. You say they left 9:00 o'clock in the  
21 nighttime?

22 A. Yes.

23 Q. They came back about 3:00 o'clock in  
24 the morning?

25 A. Yes.

1 Q. Now, for those next six hours where did  
2 you stay? Where did you go?

3 A. I stayed in the house.

4 Q. Which house are we talking about?

5 A. On Everman.

6 Q. And did any -- during those six hours  
7 did any of those four boys come back to the house on  
8 Everman?

9 A. No.

10 Q. Did you fall asleep at some point?

11 A. Yes.

12 Q. About how many hours after the boys  
13 left did you fall asleep?

14 A. About an hour, two hours.

15 Q. Two hours.

16 What room did you fall asleep  
17 in?

18 A. In the master bedroom.

19 Q. Now, at about 3:00 o'clock or in the  
20 morning hours did you awake?

21 A. Yeah.

22 Q. What caused you to wake?

23 A. Deko.

24 Q. What did Deko do?

25 A. He kissed me.

1 Q. Did he come back in the back room to  
2 kiss you?

3 A. Yeah.

4 Q. Was anyone else with Deko when he came  
5 back in the back room?

6 A. No.

7 Q. After Deko kissed you did you wake up?

8 A. Yes.

9 Q. What did you do?

10 A. I got up and went in the front room,  
11 the living room.

12 Q. When you came into the living room, was  
13 there anyone else in the Everman house?

14 A. Yes.

15 Q. Who else was in the Everman house?

16 A. Tod, Red, and Tiny Bug.

17 Q. Now, is this the same Red, Tod, and  
18 Tiny Bug that had left six hours earlier?

19 A. Yes.

20 Q. Can you tell me how Tod, Red, and Tiny  
21 Bug were acting there in the living room at the  
22 Everman --

23 A. Just all loud and talking.

24 Q. And what were these four people talking  
25 about?

1           A.     Just -- they was just talking about  
2     what they -- about -- I don't know. I don't  
3     remember.

4           Q.     Do you remember what the topic was that  
5     they were talking about?

6           A.     I don't remember.

7           Q.     Do you remember anything about the  
8     conversation?

9           A.     No, not that night.

10          Q.     Okay. Now, let me ask you, you said  
11     earlier at about 9:00 o'clock when Red left he was  
12     wearing gloves. At 3:00 o'clock now in the Everman  
13     house in the living room was Tod or, excuse me, was  
14     Red still wearing gloves?

15          A.     I'm not sure.

16          Q.     Were any of the four boys now wearing  
17     gloves at 3:00 o'clock in the morning?

18          A.     No.

19          Q.     The bag that you saw them leave with  
20     six hours earlier, where was the bag at now?

21          A.     In the corner next to the couch.

22          Q.     Could you tell if there was anything in  
23     that bag?

24          A.     Yeah.

25          Q.     How could you tell, ma'am?

1           A.     Well, I couldn't tell. I just knew  
2     what was in the bag.

3           Q.     How did you know?

4           A.     Because that's what they left with.

5           Q.     Did you see anybody holding the bag  
6     before it was in the corner?

7           A.     No, not that I remember.

8           Q.     As the bag lay in the corner did it  
9     look to you as though the bag was empty, or did it  
10    look as though something was in the bag?

11          A.     It looked like something in the bottom,  
12    like the top was smashed down, but the bottom looked  
13    like something was in it.

14          Q.     Now, let me ask you, had you ever seen  
15    duct tape over at the Everman house prior to the  
16    night when the four fellows left?

17          A.     Yes.

18          Q.     Where had the duct tape been kept?

19          A.     Under the coffee table.

20          Q.     About how many days had the duct tape  
21    been there?

22          A.     Ever since we moved, like about a  
23    couple of weeks or so.

24          Q.     Now, you mentioned ever since you moved  
25    and then you cut yourself off. Had you and Deko

1 moved into the Everman house?

2 A. Yes.

3 Q. About four days after the murder when  
4 SWAT came out to the house and arrested Deko, do you  
5 remember what you told the police when you asked --  
6 when they asked you if you lived at the Everman  
7 house?

8 A. Yeah. Well, yeah.

9 Q. What did you tell them?

10 A. I told them no.

11 Q. Specifically, did Sergeant Hefner ask  
12 you if you lived at the Everman house?

13 A. I don't know who Sergeant Hefner is.

14 Q. My mistake.

15 Do you remember a police officer  
16 asking you if you lived at the house?

17 A. No.

18 Q. Do you remember telling someone with  
19 law enforcement that you didn't live at the house?

20 A. I might have. I don't remember.

21 Q. If you told him you didn't live at the  
22 house, why is it that you'd tell them that?

23 A. Why did I do what?

24 Q. If you told them you didn't live at the  
25 house the night Deko got arrested, why would you

1 have told them that?

2 A. Because -- I don't know.

3 Q. Were you trying to protect someone that  
4 night?

5 A. No.

6 Q. Is there a reason why that night you  
7 didn't give them Deko's real name?

8 A. Because that's the name that they gave  
9 them so I told them that's his name.

10 Q. Were you wanting to help Deko that  
11 night?

12 A. No. Because I really did not know what  
13 they were there for.

14 Q. Let me now ask you, you indicated that  
15 that night when all four of the kids came back they  
16 were loud, but you don't remember their  
17 conversation; is that right?

18 A. Yes.

19 Q. The next day was their conversation  
20 about this homicide?

21 A. Yeah.

22 Q. How did that conversation start?

23 A. Watch -- they say, "Watch the news.  
24 Watch the news."

25 Q. Who said "watch the news, watch the

1 news"?

2 A. Deko.

3 Q. Had you ever watched the news with Deko  
4 before then?

5 A. Yeah.

6 Q. Was there something different about  
7 Deko wanting you to watch the news this time?

8 A. Yeah. They cut off my Nintendo game to  
9 watch the news.

10 Q. Had they ever cut off your Nintendo  
11 game to watch the news?

12 A. No.

13 Q. Who was there when Deko wanted you to  
14 watch the news?

15 A. Just Red.

16 Q. You, Red, and Deko, right?

17 A. Yeah.

18 Q. Did you think something was unusual  
19 about Deko wanting you to watch the news this time?

20 A. No.

21 Q. Was he more or less anxious for you to  
22 watch the news this time than say any other day?

23 A. More. More anxious.

24 Q. Did you watch the news?

25 A. Yeah.



1 Q. And what did you see on the news?

2 A. Matt. And seeing people pulling bodies  
3 out of the house and stuff.

4 Q. Did the news show a picture of Matt?

5 A. Yeah.

6 Q. Did you recognize Matt?

7 A. Yeah.

8 Q. How many bodies in total did you see  
9 them pulling out of the house?

10 A. I seen them -- the news was pushing one  
11 body out on the news. That's it.

12 Q. Now, had you ever been over to the  
13 Terra Linda house before?

14 A. No.

15 Q. So did you recognize the house?

16 A. No.

17 Q. But you recognized the boy?

18 A. Yes.

19 Q. When you recognized the boy did you say  
20 something?

21 A. Yes.

22 Q. What is it that you said?

23 A. I think I said that boy was just at our  
24 house the other day.

25 Q. And how did you feel about the fact

1       that the boy had been at the house and now he was  
2       dead?

3               A.     I was trippin'. I was shocked.

4               Q.     And when you were trippin', or when you  
5       were shocked, did Donte or Red say anything?

6               A.     Yeah.

7               Q.     What did Donte or Red say?

8               A.     Donte told me don't worry about it.  
9       Don't worry about it. He told me to calm down and  
10      don't worry about it.

11              Q.     Did you calm down?

12              A.     No. I got upset, and I went in the  
13      back.

14              Q.     When you went in the back where did  
15      Donte go?

16              A.     He came --- he stayed in the living room  
17      for a minute and then he came behind me.

18              Q.     Did you and Donte talk about this?

19              A.     Yeah.

20              Q.     What did Donte tell you?

21              A.     He just said I had -- they had to kill  
22      them for just \$200.

23              Q.     Did Donte say anything else about it?

24              A.     I don't remember.

25              Q.     Let me ask you, did Donte tell you

1 anything about who shot the first boy?

2 A. I don't remember.

3 Q. Do you recall talking to the detectives  
4 about this?

5 A. Yeah.

6 Q. And do you know what you told them when  
7 they talked to you about it?

8 A. No.

9 Q. Let me show you, Charla, a statement  
10 that has your name on it, and it is dated September  
11 3rd, 1998, three days or two days after you  
12 testified in front of the Grand Jury the first time.

13 Do you remember talking to the  
14 detectives in my office a couple of days later?

15 A. Yeah.

16 Q. And when you spoke to the detectives,  
17 did they tell you that they were going to tape  
18 record what it is you were telling them?

19 A. Yeah.

20 Q. Do you remember seeing the tape  
21 recorder?

22 A. Yeah.

23 Q. I want you to look at the answers here  
24 just real briefly and tell me if that appears to be  
25 your answers as you gave it to them that night or

1       that day?

2               A.     This right here?

3               Q.     Yeah.

4               A.     Yeah.

5               Q.     Are those your answers?

6               A.     Yeah.

7               Q.     Okay. And is this your name right here  
8       at the top?

9               A.     Yeah.

10              Q.     Your Social Security number?

11              A.     Yeah.

12              Q.     Do those things appear to be right?

13              A.     Yeah.

14              Q.     When you talked to the detective,  
15       Detective Thowsen in my office, were you telling him  
16       the truth?

17              A.     Yeah.

18              Q.     Let me turn to page 24. Do you  
19       recall -- and I want you to just read this question  
20       here at the top and then the answer just to  
21       yourself.

22                     Okay. And then next I want you  
23       to turn to page 25. Actually let me turn back to  
24       page 20 and ask you to read from this question in  
25       the middle of the page on down, and I'll have you

1 read the top answer and question on the next page.

2 A. To where?

3 Q. Just to maybe the first --

4 A. All right.

5 Q. Okay. Now, does reading that, does  
6 that refresh your recollection of what you told the  
7 detectives on the 3rd of September?

8 A. Yeah.

9 Q. And what, did you tell them the truth  
10 then?

11 A. Yeah.

12 Q. Now, during your conversation with  
13 Donte after seeing the news back in the back living  
14 room when you were trippin' or back in the back  
15 bedroom when you were trippin' out, do you recall  
16 what Donte told you about who shot the first boy?

17 A. Yeah.

18 Q. What did Donte tell you?

19 A. I asked him why they killed him, and he  
20 said because he was talking mess, that one of the  
21 boys was talking a lot of mess.

22 Q. Talking a lot of mess?

23 A. Uh-huh.

24 Q. Did you ask because that boy was  
25 talking mess what Donte did to him?

1 A. Yeah.

2 Q. What did Donte tell you?

3 A. That he killed him.

4 Q. Did he tell you how he killed him?

5 A. He shot him in the back of the head.

6 Q. Okay. Now, did he say something about  
7 what nationality that boy was, what race?

8 A. Mexican.

9 Q. And did Donte say anything about the  
10 boy being Mexican?

11 A. Yeah.

12 Q. What did he say?

13 A. He just said he was Mexican. He said I  
14 don't like Mexicans anyway.

15 Q. After Donte told you he shot the first  
16 boy because he used a lot of mess, did he tell you  
17 who shot the next three boys?

18 A. No.

19 Q. Did you ask?

20 A. No.

21 Q. Do you recall what you said to Donte  
22 when he said I shot that Mexican boy in the back of  
23 the head?

24 A. I asked him what he sounded -- what did  
25 he do after he shot him in the back of the head?

1       What noise did he make?

2               Q.     What did Donte say?

3               A.     He said (unintelligible sound). That's  
4       what he said when he got shot.

5               Q.     When Donte told you these things how  
6       was Donte acting about it?

7               A.     He was acting normal.

8               Q.     You know Donte pretty well?

9               A.     Yeah.

10              Q.     Did you get the feeling that Donte was  
11       bragging about it?

12              A.     No.

13              Q.     Did you get the feeling that Donte was  
14       telling you the truth?

15              A.     Yes.

16              Q.     Why do you say that?

17              A.     I don't know why he would lie.

18              Q.     Did you know Donte well enough to know  
19       when he was lying to you?

20              A.     Yeah.

21              Q.     On this occasion was he lying to you,  
22       or did you think he was telling you the truth?

23              A.     I believed him.

24              Q.     Now, believing him that these things  
25       had happened, did it make you scared?

1 A. No.

2 Q. Did it make you nervous?

3 A. No.

4 Q. Why is it that you wouldn't be scared  
5 or nervous?

6 A. I just wasn't.

7 Q. Donte tell you how much money they got  
8 total?

9 A. No. He just said -- he just said a  
10 couple -- \$200.

11 Q. Did Donte tell you who all was in the  
12 house with him when this happened?

13 A. Yeah.

14 Q. Who did he tell you was in the house?

15 A. Red and Tiny Bug.

16 Q. Did he ever tell you whether or not Tod  
17 was in the house?

18 A. No.

19 Q. Did he ever tell you where Tod was  
20 during this entire time?

21 A. Yeah.

22 Q. Where did Donte say Tod was?

23 A. In the car.

24 Q. Now, what car did you believe them to  
25 have taken there?



1           A.     This white car. This little white car,  
2     a four-door.

3           Q.     And is that a car that Donte commonly  
4     drove?

5           A.     No.

6           Q.     Do you know anything about that little  
7     white car?

8           A.     No.

9           Q.     How many doors?

10          A.     Four doors.

11          Q.     And where did Donte keep it in  
12     relationship to the Everman house? Did he park it  
13     in the Everman driveway?

14          A.     Sometimes no, but he didn't leave it  
15     there.

16          Q.     On that Thursday night when the fellows  
17     left the house and went to the car, where was the  
18     car parked that night?

19          A.     In these apartments across from the  
20     house.

21          Q.     Now, did Deko tell you what Red did  
22     while Deko was in the house and Red was in the house  
23     with him?

24          A.     He didn't say what everybody did  
25     specifically. He just said what happened.

1 Q. Was Deko worried about what he had  
2 done?

3 A. No.

4 Q. Now, after Deko got done talking to you  
5 in the back bedroom, did you walk back out of the  
6 bedroom?

7 A. Yeah.

8 Q. Okay. And did you talk to Red about  
9 these things?

10 A. No.

11 Q. Did you ever hear Red talk about what  
12 had happened?

13 A. No.

14 Q. Did you ever hear Tiny Bug talk about  
15 what had happened?

16 A. No. Tiny Bug left.

17 Q. When did Tiny Bug leave the house?

18 A. The same night.

19 Q. At 3:00 in the morning?

20 A. It was -- it was when I woke up the  
21 next morning he wasn't there so he left sometime  
22 that night.

23 Q. Now, let me talk to you about 3:00 in  
24 the morning.

25 What were the boys wearing when

1 Deko came back into the house at 3:00 in the morning  
2 and kissed you the night of the murders? What did  
3 Deko have on?

4 A. Some red and tan plaid shorts, and I  
5 think he had a black shirt on. I'm not sure. And  
6 Tiny Bug had on some brown dickeys.

7 Q. Brown dickeys?

8 A. Yeah. They're like slacks like that.  
9 And a black heady that had a hood on it like a  
10 sweater, and Red had on some black jeans and a black  
11 shirt.

12 Q. What did Tod wear?

13 A. I think he had some blue jeans on, I  
14 think, and a white shirt. I'm not sure.

15 Q. And you mentioned black jeans. Where  
16 did Red keep his clothing over at the Everman house?

17 A. Wherever he threw them off, but they  
18 mainly were in the back, in the master bedroom.

19 Q. Red mainly kept his clothes in the  
20 master bedroom?

21 A. Uh-huh.

22 Q. How about Deko?

23 A. Yeah, he did too.

24 Q. Now, I'm just asking you, okay, did you  
25 tell us the truth about Deko not owning any black

1 pants?

2 A. Yeah.

3 Q. And you and I have talked about that  
4 before, right?

5 A. Yes.

6 Q. Did Deko own any black pants?

7 A. No.

8 Q. Did Red own more than one pair of black  
9 pants?

10 A. I'm not sure.

11 Q. Did Tiny Bug store any of his clothes  
12 at the Everman house?

13 A. No.

14 Q. Did Tiny Bug keep any of his belongings  
15 at the Everman house?

16 A. No.

17 Q. Now, do you know if Deko kept any of  
18 the \$200 from the murders?

19 A. He didn't have no money. He didn't  
20 have any money.

21 Q. The next day did he have any money?

22 A. No.

23 Q. Did Red have any money the next day?

24 A. Yeah.

25 Q. Let me ask you, the day before the

1 murders did Red have any money?

2 A. No.

3 Q. The day after you say Red had some  
4 money?

5 A. Yes.

6 Q. How do you know that?

7 A. Because he bought some Sonic Burger.  
8 He bought something to eat.

9 Q. And who paid for the Sonic Burger that  
10 day?

11 A. Red.

12 Q. Did you get something to eat that day?

13 A. Yes.

14 Q. Who paid for yours?

15 A. Red.

16 Q. And did Donte go to Sonic Burger and  
17 have something to eat?

18 A. Yes.

19 Q. Who paid for Donte's?

20 A. Red.

21 Q. Did Donte say something to you about  
22 not smarting off to him because he had money?

23 A. Not Donte, Red did.

24 Q. I'm sorry, my mistake.

25 What did he say?

1           A.     He told me my mom always told me never  
2     bite the hand that feeds you.

3           Q.     Did you say anything about that?

4           A.     I just told him to shut up. That's it.

5           Q.     Was it unusual for Red to buy you and  
6     Donte's food, or did that normally happen?

7           A.     Yeah. He -- he usually bought us  
8     something to eat most of the time.

9           Q.     The day after the murder did anybody  
10    give you new clothes, one or two days after?

11          A.     I think Red. Red had a couple -- a new  
12    shirt.

13          Q.     What kind of shirt?

14          A.     It was a Fubu shirt.

15          Q.     Fubu stuff cheap or expensive, or do  
16    you know?

17          A.     Expensive.

18          Q.     Any other new merchandise purchased by  
19    these four fellows?

20          A.     No. I just -- no. I think Red had  
21    some black Fubu shoes, some new black Fubu shoes.  
22    I'm not sure.

23          Q.     Now, let me ask you, I want to take you  
24    back just for a minute, Charla, and ask you when you  
25    and Donte were back in the back bedroom after

1 watching the news and he told you about having to  
2 shoot the Mexican boy, did he say why the other  
3 three boys had to die too?

4 A. No. He didn't say, but I'm just --  
5 they would have known it was witnesses.

6 Q. Did Donte tell you that?

7 A. No.

8 Q. Let me show page 22 of your statement  
9 when you talked to the police. I'll ask you if you  
10 recognize it. If you'll read this question and the  
11 next answer.

12 All right. Now, during that  
13 conversation after telling you that the Mexican boy  
14 was talking smack, did he tell you why the other  
15 three had to die?

16 A. Yeah.

17 Q. All right. Now, who told you why the  
18 other three had to die?

19 A. Deko.

20 Q. Where was Deko at when he told you  
21 that?

22 A. I think we were in the room.

23 Q. Which room?

24 A. The master bedroom.

25 Q. And why did the other three have to

1 die?

2 A. Because they knew -- they knew who they  
3 were.

4 Q. And lastly, when Deko told you about  
5 all four having to die, did he tell you where Tod  
6 was at when the four were shot and killed?

7 A. In the car.

8 Q. Now, are the things that you've told us  
9 the truth about where Tod was at and what his  
10 involvement was?

11 A. Yes.

12 Q. Is there anything else you can tell us  
13 about Tod being in on this?

14 A. No.

15 Q. Anything else you can tell us about  
16 Tiny Bug's involvement?

17 A. No.

18 Q. How about Red's involvement?

19 A. No.

20 Q. And Deko's involvement?

21 A. No.

22 Q. Is this the complete truth now, or is  
23 there anything else we need to know?

24 A. Yeah. That's it.

25 Q. Is that all?



1 A. Yeah.

2 Q. Now, can you tell us why you couldn't  
3 tell us this two weeks ago or why you wouldn't tell  
4 us?

5 A. No. I have no explanation.

6 Q. Did anyone threaten you in any way to  
7 tell us this?

8 A. No.

9 Q. Do you still feel the same way about  
10 Deko as you did two weeks ago?

11 A. Yes.

12 Q. Do you love him?

13 A. Yes.

14 Q. And what would you want to have happen  
15 for Deko?

16 A. To come home.

17 Q. Even though you know these things are  
18 true?

19 A. Yep.

20 MR. GUYMON: I have no other  
21 questions for this witness.

22 BY THE FOREMAN:

23 Q. When you said you moved into the house  
24 on Everman, where did you come from or where were  
25 you staying before that?

1           A.     Thunderbird Hotel on Las Vegas  
2 Boulevard and Charleston.

3           Q.     And again when you -- and also you  
4 testified that Tod, Tiny Bug, Red, and Deko, and  
5 yourself were in the living room before they left  
6 the night of the slayings, and just for  
7 clarification, can you tell me who all returned to  
8 the house at 3:00 o'clock in the morning or after  
9 3:00 a.m. in the morning?

10          A.     Yeah. Deko, Red, Tiny Bug, and Tod.

11          Q.     So the same people returned that left?

12          A.     Yes.

13          Q.     And that white car, did you have any  
14 idea whose car that was or who usually drove that  
15 car?

16          A.     No. I don't know whose car it was.

17          Q.     You don't know who actually drove that  
18 car?

19          A.     No.

20          Q.     Was that car always at the house?

21          A.     No, not always. Not until a couple --  
22 like about a week later, a week after we moved in.

23          Q.     So it wasn't there when you actually  
24 moved in?

25          A.     No.

1 THE FOREMAN: Any other questions?

2 BY A JUROR:

3 Q. When the four of them came back did you  
4 see blood on anyone's clothes or bodies?

5 A. No.

6 BY A JUROR:

7 Q. When they came back and you said that  
8 they were talking loud, did you hear any of the guys  
9 names that were killed? Did you hear any of their  
10 names that were mentioned?

11 A. No. Because I didn't know. I didn't  
12 know nobody's name at the time.

13 Q. Did you hear any names mentioned?

14 A. No.

15 Q. You didn't hear any names that night,  
16 you just heard them laughing and talking?

17 A. Yes.

18 BY THE FOREMAN:

19 Q. Now, of the four individuals that were  
20 killed that night, did you know any of the others or  
21 recognize the name of any of the others other than  
22 Matt who had been at the house?

23 A. No.

24 Q. Had you ever heard the names of any of  
25 the others?

1 A. No.

2 Q. You said you were staying at the  
3 Thunderbird before you moved into this house. Had  
4 Matt or any of these people come to see you at the  
5 Thunderbird?

6 A. No.

7 Q. Do you know how it happened that you  
8 moved into the house at Emerson (sic.)? What was  
9 the connection with that outfit that you moved into  
10 there from the Thunderbird?

11 A. You mean why did we move over there?

12 Q. Yeah.

13 How did you know about the house  
14 on Emerson or Everman?

15 A. Ace came to pick us up on the night we  
16 moved out. He said he had a friend we could stay  
17 at. He was cool. We just give crack. We didn't  
18 have to pay. He just smoked.

19 Q. This Ace, do you know what his given  
20 name is?

21 A. Ace.

22 Q. Just Ace. You just know him as Ace?

23 A. Yes.

24 Q. Do you know another individual by the  
25 name of Ace?

1 A. Yeah.

2 Q. So this Ace that told you about moving  
3 over to this other house, was he a white man or  
4 black man?

5 A. White man.

6 Q. You said you know another individual by  
7 the name of Ace also?

8 A. Yes.

9 Q. Another white man, or is he a black  
10 man?

11 A. It's a black guy.

12 Q. So you know an Ace that is white and  
13 one that is also black; is that correct?

14 A. Yes.

15 BY MR. GUYMON:

16 Q. Mr. Foreman, just for clarification, is  
17 Ace the white male that you know as Ace, was he here  
18 two weeks ago to testify?

19 A. Yes.

20 Q. Okay. And the person you've talked  
21 about, Tod Armstrong, was he here two weeks ago to  
22 testify?

23 A. Yes.

24 BY A JUROR:

25 Q. When you woke up at 3:00 o'clock in the

1 morning, and you gave a really good description, I  
2 thought it was a very good description on what  
3 everybody was wearing, but you can't remember what  
4 they were talking about. You must remember the gist  
5 of the conversation.

6 A. Yeah. They were just talking loud  
7 like --- because I know how they are when they finish  
8 robbing somebody. They were talking loud like they  
9 just got through doing something, and then that's  
10 it.

11 BY A JUROR:

12 Q. May I ask how long you and Donte have  
13 been a couple?

14 A. Like two months.

15 BY A JUROR:

16 Q. Are you saying that they had robbed  
17 someone before and talked like this?

18 MR. GUYPON: You know, I'm --- so that  
19 we keep only admissible evidence, I'm going to ask  
20 her not to answer that question.

21 BY THE FOREMAN:

22 Q. Now, in your testimony when you was  
23 talking about the guns and describing the guns that  
24 were in the bag, you gave a motion and indication of  
25 a shooting of a rifle or a shotgun type thing.

1                   Had you ever been involved in  
2     the handling of those guns or been around when those  
3     guns were fired?

4           A.     No.

5           Q.     How did it happen -- how do you know  
6     what the actions of the gun are?

7           A.     Because I asked -- I asked them, first  
8     time I seen that gun I asked them how that -- how  
9     does that gun sound. What does it do when it  
10    shoots?

11          Q.     They shot it for you then?

12          A.     No.

13          Q.     So you never actually saw that gun  
14    fired?

15          A.     No.

16          Q.     And you never saw the action of that  
17    gun and response of that gun when it's fired?

18          A.     No.

19          Q.     But yet you knew what happened when you  
20    fired it?

21          A.     Well, I watched TV, and it looked --  
22    and the way he said the gun was I figured that's how  
23    it goes off.

24          Q.     But you were never with them when they  
25    went out?

1 A. No.

2 Q. With those guns or ever saw them fire  
3 them?

4 A. No.

5 THE FOREMAN: Any other questions?

6 MR. GUYMON: I have two additional  
7 questions, if I might?

8 THE FOREMAN: Yes, you may.

9 MR. GUYMON: Thank you.

10 BY MR. GUYMON:

11 Q. When you had that conversation with  
12 Donte after seeing the news in the back bedroom, did  
13 Donte tell you whether or not any of these kids were  
14 restrained or held down in any way?

15 A. They were tied up.

16 Q. Did he tell you how they were tied up?

17 A. No.

18 Q. Did he tell you what was used to tie  
19 them up?

20 A. No.

21 Q. Did you -- did he tell you what  
22 position they were in once they were tied up?

23 A. Yeah.

24 Q. What position were the kids in?

25 A. Laying on their face.



1 Q. Face down?

2 A. Yeah.

3 THE FOREMAN: Any other questions?

4 BY MR. GUYMON:

5 Q. Right after the shooting happened did  
6 Donle tell you if he did anything before pulling the  
7 trigger?

8 A. Not that I remember.

9 Q. Did you talk to him about somebody  
10 hearing gun shots?

11 A. Oh, I asked him. I asked him could  
12 any -- I just said did any -- how do you know nobody  
13 didn't hear the gun go off? And he said because  
14 they turned the music up real loud.

15 Q. Did he tell you who it was that turned  
16 the music up real loud?

17 A. No.

18 Q. Let me show you on page 21 when you're  
19 talking to the detective, your answer.

20 A. Oh, okay.

21 Q. Do you recall telling the detective  
22 about turning the music up real loud that he said he  
23 turned the music up real loud?

24 A. Yeah. I probably said that.

25 Q. And who did you mean when you said he

1           turned the music up real loud?

2           A.     Deko.

3           Q.     Is that who you'd been talking about  
4           earlier, the person that shot the first shot?

5           A.     Yeah.

6           Q.     Who was the person that shot the first  
7           shot?

8           A.     I think Deko.

9           Q.     Okay.

10           MR. GUYMON: I have nothing else.

11           THE FOREMAN: Any other questions from  
12           the panel?

13                               (No response.)

14           THE FOREMAN: Hearing no more  
15           questions, by law, these proceedings are secret, and  
16           you are prohibited from disclosing to anyone  
17           anything that transpired before us including  
18           evidence presented to the Grand Jury, any event  
19           occurring or a statement made in the presence of the  
20           Grand Jury, or information obtained by the Grand  
21           Jury.

22                               Failure to comply with this  
23           admonition is a gross misdemeanor, punishable by a  
24           year in the Clark County Detention Center and a  
25           \$2,000 fine. In addition, you may be held in

1 contempt of court punishable by an additional \$500  
2 fine and 25 days in the Clark County Detention  
3 Center.

4 Do you understand this  
5 admonition?

6 THE WITNESS: Yes.

7 THE FOREMAN: You may be excused.

8 (Witness excused.)

9 MR. GUYMON: Now, with that, that is  
10 the only additional witness I wish to present  
11 regarding the superseding Indictment associated with  
12 Donte Johnson. I have presented that evidence,  
13 because as I understand the law to be, I have an  
14 obligation that if or when I learn that there's  
15 potentially a co-conspirator and accomplice that  
16 testified before you people, I need to instruct you  
17 on what the law is.

18 I have provided to each of you a  
19 copy of the prior transcript, and I'm going to ask  
20 you if you need to review it that you're welcome to  
21 review it. I'll submit this case now with the  
22 transcript in it's entirely coupled now with Charla  
23 Severs' testimony as it relates to Tod and the  
24 others, and I will give you an instruction that I'll  
25 ask that it be marked.

1                   The first one being conspiracy  
2           and what conspiracy is, since I added one additional  
3           count, and secondly, I have given three instructions  
4           on an accomplice to the secretary of the Grand Jury  
5           here. They are three instructions that talk about  
6           what an accomplice is.

7                   I will tell you that if, in  
8           fact, you conclude or find that Tod Armstrong is an  
9           accomplice in these acts, any one of them or all of  
10          them, then what has to happen, you have to find that  
11          there is sufficient corroborating evidence outside  
12          of Tod Armstrong's evidence in order to have me  
13          actually have a true bill returned on this case or  
14          the superseding indictment as it is.

15                   The instruction I think on  
16          accomplice testimony is very clear. I've given you  
17          three. I might ask, have you had instructions on  
18          accomplice testimony previously?

19                   THE FOREMAN: Yes.

20                   MR. GUYMON: You understand accomplice  
21          testimony has to be corroborated by testimony  
22          independent of an accomplice?

23                   THE FOREMAN: Yes.

24                   MR. GUYMON: I've also provided  
25          instructions that I'll ask you to apply in this case

1 as it relates to the other counts, on what a  
2 burglary is, just as I did last times, what burglary  
3 is, what robbery is, what murder is.

4 My understanding is that all of  
5 you have heard cases involving a burglary?

6 THE FOREMAN: Yes.

7 MR. GUYMON: Involving robbery  
8 conspiracies?

9 THE FOREMAN: Yes.

10 MR. GUYMON: With that instruction, and  
11 I'd rather be safe than sorry, I have one more  
12 admonition.

13 As you consider the testimony  
14 now if there's testimony that you heard about drug  
15 sales or usage and whatnot, I ask that you not take  
16 that into consideration as it relates to the  
17 probable cause findings of the actual charges that  
18 we have before us, that those are other acts that  
19 should not be considered for guilt or innocence as  
20 to the actual acts themselves that we've alleged in  
21 the actual superseding Indictment.

22 Now, I will ask --

23 THE SECRETARY: Are you going to number  
24 these?

25 MR. GUYMON: However you'd like to.

1 With that, are there any other  
2 questions?

3 A JUROR: In the other superseding  
4 Indictments we only have to vote on the new count?  
5 Do you want us to revote on all the counts?

6 MR. GUYMON: Yes, on all the counts  
7 I'd like to focus your vote is there independent  
8 corroboration on accomplice. In other words, Tod  
9 was here two weeks ago today and testified as to  
10 each and every count.

11 What I'd like you to do is say  
12 to yourself, do we have independent evidence as to  
13 each and every count in your findings because  
14 obviously I have to corroborate Tod's testimony. If  
15 you find that Tod is an accomplice, I have to  
16 corroborate with testimony that's independent of his  
17 testimony.

18 A JUROR: Do you recall where Tod was  
19 when this murder happened? Where did he say he was?

20 MR. GUYMON: Tod had previously  
21 testified, and it will be based on your review of  
22 the transcript if you need to review. I believe  
23 Tod's testimony was he was at the house on Everman  
24 with Lala. That was his clear testimony, and I  
25 guess that's on page 65 is what I just hear from one

1 of the Grand Jurors.

2 And lastly, one of the  
3 instructions I gave you, Mr. Daskas is correct, that  
4 the independent corroboration doesn't have to come  
5 from the testimony, but also the physical evidence  
6 such as the fingerprints and the like.

7 With that, are there any other  
8 questions?

9 A JUROR: What fingerprints are you  
10 talking about?

11 MR. GUYMON: There was some fingerprint  
12 testimony two weeks ago wherein --

13 A JUROR: On this transcript?

14 MR. GUYMON: That's correct.

15 A JUROR: I thought you were talking  
16 about now.

17 MR. GUYMON: I'd ask you to consider  
18 the testimony from two weeks ago coupled with this  
19 testimony today.

20 Okay. Thank you.

21

22 (All persons other than members  
23 of the Grand Jury left the room at 2:10  
24 p.m. and returned at 2:35 p.m.)  
25

1 THE FOREMAN: We're back on the record.

2 Mr. District Attorney, by a vote  
3 of 12 or more Grand Jurors a true bill has been  
4 returned against the defendant, Donte Johnson,  
5 charging the crimes of burglary while in possession  
6 of a firearm, conspiracy to commit robbery and/or  
7 kidnapping and/or murder, murder with use of a  
8 deadly weapon, robbery with use of a deadly weapon,  
9 and first degree kidnapping with the use of a deadly  
10 weapon in Grand Jury Case Number 97BGJ184X, and we  
11 instruct you to prepare an Indictment in conformance  
12 with the proposed Indictment previously submitted to  
13 us.

14 MR. GUYMON: Very well. I'll do that.

15  
16 (End of proceedings.)

17  
18 ---o0o---



## REPORTER'S CERTIFICATE

STATE OF NEVADA       )  
                              ; SS  
COUNTY OF CLARK       )

I, Brenda A. Lee, C.C.R. 198, do hereby  
certify that I took down in Shorthand (Stenotype)  
all of the proceedings had in the before-entitled  
matter at the time and place indicated and  
thereafter said shorthand notes were transcribed at  
and under my direction and supervision and that the  
foregoing transcript constitutes a full, true and  
accurate record of the proceedings had.

Dated at Las Vegas, Nevada, October 2, 1998.

  
BRENDA A. LEE, C.C.R. No. 198

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2 STEWART L. BELL  
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FILED

OCT 20 9 40 AM '98

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 DONTÉ JOHNSON,  
12 #1586283

13 Defendant.  
14

Case No. C153154X  
Dept No. V  
Docket H

15 ORDER DENYING DEFENDANT'S MOTION TO SET BAIL

16 DATE OF HEARING: 10-9-98  
17 TIME OF HEARING: 9:00 A.M.

18 THIS MATTER having come on for hearing before the above entitled Court on the 8th  
19 day of October, 1998, the Defendant being present, represented by PETER LAPORTA, Special  
20 Public Defender, the Plaintiff being represented by STEWART L. BELL, District Attorney,  
21 through GARY L. GUYMON, Deputy District Attorney, and the Court having heard the  
22 arguments of counsel and good cause appearing therefor,

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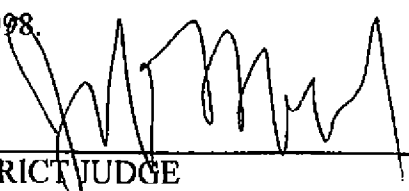
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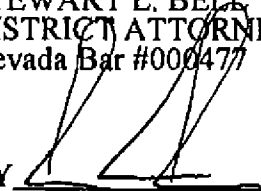
28 //

1 IT IS HEREBY ORDERED that the Defendant's Motion to Set Bail, shall be, and it is  
2 denied.

3 DATED this 10 day of October, 1998.

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5   
6 DISTRICT JUDGE

7  
8 STEWART L. BELL  
9 DISTRICT ATTORNEY  
10 Nevada Bar #000477

11 BY   
12 GARY L. GUYMON  
13 Deputy District Attorney  
14 Nevada Bar #003726  
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28 msr

ORIGINAL

Shirley B. R.

Donte Johnson

FEB 10 9 36 AM

Inmate #1586283

C.C.D.C.

FILED

330 Casino Center

Las Vegas, Nev. 89101

COUNTY CLERK

FEB 10 1999

RECEIVED

District Court

Clark County, Nevada

2.23.99

Donte Johnson,

District Court Case NO. C153154

Defendant.

Dept. NO. V

-VS.-

Docket NO. H

The State of Nevada,  
PlaintiffMotion to withdraw counsel  
and Appoint outside counsel

Comes NOW Defendant Donte Johnson, Requesting that  
counsel be withdrawn from this case due to a conflict of  
interest with entire clark county special Public Defenders Office.

### Statement of Facts

In August of 1998, Defendant Donte Johnson was  
appointed the Special Public Defenders office as counsel  
for case #C153154. From the time which has transpired  
from August of 1998, until February 3<sup>rd</sup>, 1999, a conflict  
of interest has developed between Defendant Donte  
Johnson and Special Public Defenders office. A conflict of  
interest which affects the effectiveness of counsel and

CNC

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1 the ability for Defendant Donte to receive a fair  
2 and impartial trial with due process of the law.  
3  
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5

### 6 Conclusion

7 Defendant Donte NOW makes a request in this  
8 motion that this court appoint different counsel  
9 (Other than the Special Public Defenders Office) due to the  
10 fact that there is a conflict of interest that exists  
11 between this Defendant, Donte, and the Clark County Special  
12 Public Defenders Office. A conflict of interest which may  
13 give birth to an ineffective counsel and a prejudiced trial.  
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IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \* \*

DONTE JOHNSON,

S.C. CASE NO. 65168

Appellant,

Electronically Filed  
Jan 09 2015 11:33 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

vs.

THE STATE OF NEVADA,

Respondent.

APPEAL FROM DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS  
(POST-CONVICTION)  
EIGHTH JUDICIAL DISTRICT COURT  
THE HONORABLE JUDGE ELISSA CADISH, PRESIDING

~~~~~  
APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME II  
~~~~~

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IN THE SUPREME COURT OF NEVADA

DONTE JOHNSON,

CASE NO. 65168

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

OPENING BRIEF APPENDIX

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10	36	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS/HEARING AND ARGUMENT: DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (FILED 07/06/2011)	7630-7667
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19	33	TRANSCRIPT OF PROCEEDINGS STATUS CHECK: BRIEFING/FURTHER PROCEEDINGS (FILED 06/22/2010)	7430-7432
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1	35	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS/HEARING AND ARGUMENT: DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (FILED 07/06/2011)	7537-7574
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9	19	VERDICT (COUNT XI) (FILED 07/26/2000)	2595-2600
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**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 9<sup>th</sup> day of January, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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