

obtain in Nevada. But he advised Johnson to raise the issue so it will be preserved if the case is appealed.

"Just preserve the record so the big boys in the higher courts can rule on it. Just think long-term and all will be well," Amati said.

E-mail this story to a friend:

Your friend's e-mail address:

Your e-mail address:

Submit

Reset

Give us your **FEEDBACK** on this or any story.

1999 BEST OF LAS VEGAS RESULTS

Fill out our Online Readers' Poll

It's About Fame

[[News](#)] [[Sports](#)] [[Business](#)] [[Lifestyles](#)] [[Neon](#)] [[Opinion](#)] [[in-depth](#)]
[[Columnists](#)] [[Help/About](#)] [[Archive](#)] [[Community Link](#)] [[Current](#)
[Edition](#)]

[[Classifieds](#)] [[Real Estate](#)] [[TV](#)] [[Weather](#)]
[[EMAIL](#)] [[SEARCH](#)] [[HOME](#)]

Brought to you by the Las Vegas Review-Journal. Nevada's largest daily newspaper.

For comment or questions, please email webmaster@lvri.com
Copyright © Las Vegas Review-Journal, 1997, 1998, 1999



HOME PAGE

• HEADLINES •

SECTIONS

NEWS

SPORTS

MLB Scoreboard

NFL Coverage

College Football

Betting Line

BUSINESS

Las Vegas Stocks

Currency Calculator

Stock Portfolio

LIFESTYLES

Las Vegas HealthNet

NEON

Dining

Showguide

Nightlife

Transportation

Movies

TV Listings

OPINION

Columnists

FEEDBACK

IN-DEPTH

CLASSIFIEDS

WEATHER

REAL ESTATE

SUBSCRIBE

Recent Editions

Sunday

Monday

Tuesday

Wednesday

Thursday

Friday

Saturday

Archive

Fun Stuff

Comics

Crosswords

Horoscopes

Kids Area

Gallery

Extras

Yellow Pages

Buy Tickets

LV Links

Newspaper

Subscription

News Tips

Work for Us

Contact Us

Rate us

Friday, October 15, 1999

Copyright © Las Vegas Review-Journal

Printable version of
this story

Judge might allow woman's deposition in LV murder trial

By Peter O'Connell
Review-Journal

A judge indicated Thursday he would permit prosecutors to take a videotaped deposition of the former girlfriend of a man charged in a quadruple homicide.

Charla Severs, former girlfriend of Donte Johnson, 19, has been in custody since she was arrested in New York City on a prostitution charge in September.

She currently is being held in Clark County as a material witness in Johnson's capital murder case, which is scheduled to go to trial in January.

She is not accused of participating in the August 1998 robbery in which four young men were bound with duct tape and shot once each in the back of the head.

But prosecutors say she was privy to the conversations and actions of the three men charged in the case, two of whom have been sentenced to life without possibility of parole.

She had left town and was not available to testify at the separate trials of Sikia Smith and Terrell Young. Both men were convicted, in part because they gave taped confessions to police.

"Donte Johnson did not confess, and thus Charla Severs' testimony is crucial in the state's prosecution," Deputy District Attorney Gary Guymon wrote in a court document.

Severs has agreed to give the videotaped deposition, embracing it as her best opportunity to get out of jail. She said she and her family can't make the required \$10,000 bail.

District Judge Jeffrey Sobel will make a final decision on the deposition in court on Oct. 21. "My inclination is I am going to allow that deposition," Sobel said in court Thursday.



Charla Severs, shown during a Monday appearance in District Court, has agreed to provide a videotaped deposition in connection with a quadruple homicide in which her former boyfriend, Donte Johnson, is charged. Photo by Gary Thompson.

Advertiser Directory

Wire AP News
& Info.

doo city.ous die.

THE
VIEWThe Best
100

If the judge permits the deposition, Severs would testify in open court on Oct. 26. Just as in a trial, defense attorneys will have the opportunity to cross-examine the witness.

If she is not available at the time of the trial, prosecutors could play the videotape to the jury.

Deputy Special Public Defender Joseph Sciscento, who represents Johnson, opposed the prosecution's request. "There is nothing to show that Ms. Severs will not be available for trial," he wrote in a court document.

Also, he noted Thursday that Severs in December 1998 sent a local television station a letter in which she said she, not Johnson, accompanied Smith and Young to the robbery at a house on Terra Linda Avenue.

"(Johnson) didn't have anything to do with that," Severs wrote.

If she is an accomplice, Severs cannot give a videotaped deposition, Sciscento said.

Guymon said Severs' letter contradicts all the evidence in the case. He said she told him she fled Southern Nevada after she was threatened by an associate of Johnson.

"Charla Severs was threatened because she did not want to cooperate with Donte Johnson and continue to lie on his behalf," Guymon wrote.

In court Thursday, he said Severs is not an accomplice and will not be charged in the robbery and quadruple homicide.

Attorney Chip Siegel, who represents Severs, asked prosecutors to put these representations in writing.

"There is no need for immunity," Guymon said. "I can't give someone immunity if there is no criminal conduct."

"You could if it made everyone more comfortable," Sobel replied.

Killed in the robbery were Matthew Mowen, 19, Jeffrey Biddle, 19, Tracey Gorringe, 20, and Peter Talamantez, 17.

E-mail this story to a friend:

Your friend's e-mail address:

Your e-mail address:

Submit

Reset

Give us your **FEEDBACK** on this or any story.1999 BEST OF LAS VEGAS RESULTSFill out our Online Readers' Poll



Finally! Internet Access that's



NEWS
SPORTS
WEATHER
OPINION
BUSINESS
CLASSIFIEDS
SUN LIFE

STORIES: ARCHIVE
[Back to SEARCH RESULTS](#)
[Printable text version](#) | [Mail this to a friend](#)

Search terms highlighted: Donte Johnson

October 14, 1999

Slayings witness wants immunity grant in writing

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN



Although a videotaped deposition from an elusive witness in a quadruple homicide appeared inevitable, no formal court order was issued today because her attorney wants prosecutors to formalize a grant of immunity.

Charla Severs is said to be a key witness against her ex-boyfriend, Donte Johnson, who is facing a Jan. 10 trial on charges he fired bullets into the heads of four young men during a robbery in August 1998.

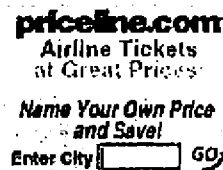
Severs has given statements that she was present when the robbery plot was hatched and named Johnson, 19, as one of those involved.

But she disappeared early this year -- purportedly because of threats to her life if she testifies -- and it wasn't until last month that she surfaced.

Prosecutors repeatedly stated that they have no intention of charging Severs as an accomplice in the execution slayings of four young men, but defense attorney Chip Siegel said that needs to be put in writing.

Although District Judge Jeff Sobel said he was inclined to order the videotaped deposition, he postponed a final decision on the matter until next week to give the sides an opportunity to file court motions.

However, a tentative date of Oct. 26 was set for a sworn statement from Severs that will preserve her testimony to be shown to the jury at Johnson's trial, even if she disappears again.



the coupons

Severs, who is known as "La La," has been sitting in jail since she was arrested on Sept. 17 in Manhattan on prostitution charges. She could stay there on the current material witness warrant until after Johnson's trial if she can't make bail or until Sobel orders her release.

The deposition would ensure her release and Siegel said she wants to give one, but only if immunity is assured.

Deputy District Attorney Gary Guymon has stated in court documents that Severs admitted that she fled Nevada after being threatened by a man with a violent past who was connected to Johnson.

The videotaped deposition not only could be used at Johnson's trial should something happen to her or she again flees and isn't available to testify, but it could help ensure her safety.

Siegel has said that once testimony is taken in a sworn deposition, the death or disappearance of a witness does not prevent the witness' story from coming out in court. That should take away the motivation of a person to harm a witness or persuade that person not to testify.

In addition, Siegel said, the existence of a damaging videotape statement can actually prompt a defendant to want the witness to take the stand at trial in hopes the story will change or the credibility of the witness will be questioned by jurors.

In any event, giving a deposition should result in Sever's release from jail.

Guymon said Severs claimed she fled Las Vegas early this year after she "was threatened because she did not want to cooperate with Donte Johnson and continue to lie on his behalf."

The prosecutor conceded that Severs had given contradictory stories to police and Clark County grand juries.

After implicating Johnson during her Sept. 15, 1998, grand jury testimony in the murders of four young men during an ill-conceived robbery, she attempted to recant the story.

Since her disappearance, two other defendants -- Sikia Smith, 19, and Terrell Cochise Young, 20 -- have been convicted of first-degree murder for their roles in the Aug. 14, 1998, quadruple slaying. Both men were sentenced to life in prison without the

possibility of parole.

The four victims in the house on Terra Linda Avenue were Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17.

[Printable text version](#) | [Mail this to a friend](#)

Search terms highlighted: Donte Johnson

[Las Vegas SUN main page](#)

Questions or problems? [Click here](#).

Read our policy on cookies and privacy. [Click here](#).

All contents copyright 1999 Las Vegas SUN, Inc.

Nevada's largest website

LAS VEGAS REVIEW-JOURNAL

Wednesday, October 13, 1999

Copyright © Las Vegas Review-Journal

Murder suspect to stand trial for other attack

A man accused of killing four young men is now facing charges stemming from a May 1998 shooting.

By Peter O'Connell
Review-Journal

The man accused of executing four young men in August 1998 was ordered Tuesday to stand trial on charges arising from an earlier shooting in which a man was paralyzed.

Derrick Simpson testified from his wheelchair Tuesday that Donte Johnson, 19, shot him in the face and in the back on Fremont Street on May 4, 1998.

Simpson, the right side of his face now badly disfigured, said he bought crack cocaine from Johnson nearly every day. He said he has no idea why Johnson tried to kill him.

"I don't know what's in that man's mind," he said during a preliminary hearing.

At the conclusion of the hearing, Justice of the Peace Marley Robinson found there was sufficient evidence to send Johnson's case to District Court.

He is scheduled to be arraigned before District Judge Donald Mosley on Oct. 25 on charges of attempted murder with the use of a deadly weapon and battery with use of a deadly weapon causing substantial bodily harm.

Johnson is scheduled to be tried in January in connection with the August 1998 slayings of four young men.

Prosecutors say he, Terrell Young and Sikia Smith bound the victims with duct tape, then searched their house. Before the robbers left, Johnson fired a bullet into the skull of each victim, prosecutors say.

Smith and Young each were sentenced to life without the possibility of parole in separate trials in which prosecutors sought the death penalty. Prosecutors also are seeking the death penalty against Johnson in that case.

Simpson testified that he met Johnson about a year before the May 1998 shooting that kept him in a hospital for 10 months.

While being questioned by Deputy District Attorney Gary Guymon, Simpson said he approached Johnson and told him he wanted to buy some drugs.

"I'm not going to sell you nothing," he said Johnson replied while raising a gun. "As a matter of fact, before the night's over I'm going to kill you."

During cross-examination by Deputy Special Public Defender Dayvid Figler, Simpson acknowledged he struck Johnson at that time.

"Of course I was scared. That's why I hit him," he said. "I hit him upside of the head."

Simpson said Johnson shot him on Fremont Street not long after this confrontation. One of the shots struck him in the face at close range. The other then was fired into his back.

Simpson said he was in and out of a coma for three months, and remained hospitalized until March 31.

He said he is paralyzed from the chest down, with limited use of his left arm. He has greater control of his right arm, which he regularly used to punctuate his testimony.

"I'm unable to get around because of the gunshot wound. I'm under constant medical care," Simpson said.

His entire testimony was captured on videotape. Should he not be able to testify at future proceedings, prosecutors could ask a judge for permission to play the tape to the jury.

District Judge Jeffrey Sobel on Thursday is scheduled to decide whether to approve the videotaped deposition of Charla Severs, Johnson's ex-girlfriend.

Severs is being held as a material witness in the quadruple slaying case. Though not charged in the actual crime, authorities believe she was present when it was planned.

She fled Las Vegas rather than testify against Johnson, and has been in custody since she was arrested in New York City last month.

Prosecutors want to take her videotaped deposition so it could be played to the jury if she is not available when Johnson's case goes to trial.

In a court filing, Severs also has suggested a videotaped deposition as a way to gain her release from the Clark County Detention Center.

Attorney Chip Siegel, who represents Severs, said he will ask Sobel to grant Severs' request. He said the unattractive alternative would be for his client to remain in jail pending Johnson's trial.

This story is located at:

http://www.lvrj.com/lvrj_home/1999/Oct-13-Wed-1999/news/12139805.html

http://www.lvrj.com/cgi-bin/printable.cgi?lvvj_home/1999/Oct-13-Wed-1999/news/12139805.html



Finally! Internet Access that's

NEWS
SPORTS
WEATHER
OPINION
BUSINESS
CLASSIFIEDS
SUN LIFE

STORIES: ARCHIVE

[back to SEARCH RESULTS](#)

[Printable text version](#) | [Mail this to a friend](#)

Search terms highlighted: Donte Johnson

October 12, 1999

Videotaping testimony considered in quadruple murder case

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

Prosecutors and an elusive witness in a quadruple homicide may agree that a videotaped deposition of her testimony could be a good idea -- although for different reasons.

Prosecutors want to take a videotape statement from Charla Severs in the event she again vanishes and can't be found to testify at the trial of Donte Johnson, the alleged triggerman in a quadruple murder.

Severs and her newly appointed attorney, Chip Siegel, may agree that she give the sworn statement although it would be to ensure her safety and secure her release from jail.

District Judge Jeff Sobel is scheduled to rule on the issue Thursday as Johnson's Jan. 10 trial date approaches.

Severs is said to have been present when the plot was hatched to rob the victims' home of a cache that was believed to include \$6,000 in cash and a large quantity of drugs.

The Aug. 14, 1998, raid on the house near Nellis Boulevard and Tropicana Avenue netted only about \$200, a VCR, a video game system and a few pills.

Before leaving, one of the bandits -- prosecutors allege it was the 19-year-old Johnson -- stood over each duct-taped and gagged victim and fired single bullets into the back of their heads.

Severs, who is known as "La La," has been sitting in jail for more than three weeks and could stay

priceline.com

Airline Tickets
at Great Prices!

Name Your Own Price
and Save!

Enter City [GO](#)



see the

[click here](#)

vegas
.com

showbiz
tv weekly
community
resorts

there until after Johnson's trial if she can't make bail and Sobel doesn't order her release.

The last time she was free she fled Las Vegas because of what she said was fear for her safety.

She disappeared without a word or a trace, and even her parents believed "the word on the street" that she had been killed to ensure she wouldn't appear to testify against Johnson, her ex-boyfriend.

But on Sept. 17 she surfaced in New York City. Police there arrested her on prostitution charges and notified Las Vegas authorities once they determined her true identity.

Deputy District Attorney Gary Guymon stated in court documents that Severs admitted that she fled Nevada after being threatened by a man with a violent past who was connected to Johnson.

Prosecutors want Severs to give a videotaped deposition that could be used at Johnson's trial should something happen to her or she again flees and isn't available to appear at the trial.

But Sobel indicated Monday he wants Severs to know her rights and appointed Siegel to represent her before Thursday's hearing.

While Siegel said Monday that he hasn't met with his client, he noted that it could be to her advantage to agree to the deposition.

He explained that in such cases, once testimony is taken in a sworn deposition, the death or disappearance of a witness does not prevent the witness's story from coming out in court. That should take away the motivation of a person to harm a witness or persuade that person not to testify.

In addition, Siegel said, the existence of a damaging videotape statement can actually prompt a defendant to want the witness to take the stand at trial in hopes the story will change or the credibility of the witness will be questioned by jurors.

In any event, giving a deposition should result in Severs' release from jail.

Guymon said Severs claimed she fled Las Vegas early this year after she "was threatened because she did not want to cooperate with Donte Johnson and continue to lie on his behalf."

The prosecutor conceded that Severs had given

contradictory stories to police and Clark County grand juries. After implicating Johnson during her Sept. 15, 1998, grand jury testimony in the murders of four young men during the robbery, she attempted to recant the story.

Since her disappearance, two other defendants -- Sikia Smith, 19, and Terrell Cochise Young, 20 -- have been convicted of first-degree murder for their roles in the slayings. Both men were sentenced to life in prison without the possibility of parole.

The four victims in the house on Terra Linda Avenue were Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17.

[Printable text version](#) | [Mail this to a friend](#)

Search terms highlighted: Donte Johnson

[Las Vegas SUN main page](#)

Questions or problems? [Click here](#).

Read our policy on cookies and privacy. [Click here](#).

All contents copyright 1999 Las Vegas SUN, Inc.

Nevada's largest website



**Las Vegas
SUN**



NEWS
SPORTS
WEATHER
OPINION
BUSINESS
CLASSIFIEDS
SUN LIFE

STORIES: ARCHIVE

[back to SEARCH RESULTS](#)

[Printable text version](#) | [Mail this to a friend](#)

Search terms highlighted: Donte Johnson

October 01, 1999

Accused killer's girlfriend found

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

Charla Severs always was considered a key prosecution witness against her ex-boyfriend, the teenager charged as the triggerman in the execution slayings of four young men a year ago.

But early this year the girl known as "La La" disappeared without a word or a trace and even her parents believed "the word on the street" that she had been killed to ensure she wouldn't appear at Donte Johnson's trial.

Severs surfaced in Manhattan on Sept. 17 and now is sitting in the Clark County Detention Center as a material witness for Johnson's Jan. 10 trial.

Deputy District Attorney Gary Guymon stated in court documents filed Thursday that Severs admitted this week that she fled Nevada after being threatened by a man with a violent past who was connected to Johnson.

"Severs believed the threats were serious because she personally knows the persons involved and their deadly capacity," the prosecutor said.

Guymon said he "knows of a prior homicide that (the man) and Johnson participated in together," referring to the slaying of a drug dealer at a Las Vegas Boulevard motel that occurred a few days before the quadruple murder.

Guymon said Severs claimed she fled because she "was threatened because she did not want to cooperate with Donte Johnson and continue to lie on his behalf."

The prosecutor conceded that Severs had given

priceline.com

Airline Tickets
at Great Prices!

Name Your Own Price
and Save!

Enter City [GO](#)



topics

vegas.com

showbiz
in weekly
community
results

contradictory stories to police and Clark County grand juries. After implicating Johnson in the quadruple murder during her grand jury testimony on Sept. 15, 1998, she attempted to recant the story in a letter she authored.

Two months after she testified she sent the letter to a television station claiming that she was the one at the murder scene, not Johnson.

In Thursday's court motion, Guymon asked District Judge Jeff Sobel for permission to videotape a deposition of Severs because of her long disappearance and the evidence of threats against her.

"The purpose is to record, preserve and perpetuate the testimony of Severs in the event that her attendance cannot be obtained for a jury trial," the court motion stated.

A hearing on the issue is set for Oct. 11.

Since her disappearance, two other defendants -- Sikia Smith, 19, and Terrell Cochise Young, 20 -- have been convicted of first-degree murder for their roles in the Aug. 14, 1998, quadruple slaying. Both men were sentenced to life in prison without the possibility of parole.

Smith and Young, however, had confessed to Metro Police homicide detectives.

Johnson hasn't, although he has been connected to the multiple murder through a fingerprint and DNA on a pair of his pants that also carried the blood of one victim.

Severs is said to have been present when the plot was hatched to rob the victims' home of a cache that was believed to include \$6,000 in cash and a large quantity of drugs.

The raid on the house near Nellis Boulevard and Tropicana Avenue netted only about \$200, a VCR, a video game system and a few pills.

Before leaving, one of the bandits -- prosecutors allege it was Johnson -- stood over each duct-taped and gagged victim and fired single bullets into the back of their heads.

Young and Smith, in their confessions, also said Johnson killed the four men, but those statements are not legally admissible at Johnson's trial. Neither Young or Smith would agree to testify against their friend, although offers of leniency were dangled by

prosecutors.

The reason for Severs' disappearance and the reluctance of others to become prosecution witnesses may be evident in letters sent by the murder defendants to each other, according to court documents filed Thursday.

Those letters were seized about two weeks ago from their cells at the county jail because they were considered gang-related contraband.

Court documents indicate there were references to arranged retaliation against any inmates who might come forward or those outside the jail who would testify.

One letter from Johnson stated that he "took care of ... three little white boys" to ensure their silence, although one of those -- Johnson's ex-roommate Ace Hart -- already had testified at Young's trial and is scheduled as a witness at Johnson's trial.

In one letter to Young, Johnson referred to a person he said was working for the police.

Court documents indicate that Johnson told Young not to worry about him because Johnson has "paperwork on him and he is as good as 'dropped off.'"

The four victims in the house on Terra Linda Avenue were Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17.

If Johnson is convicted of first-degree murder for his role, the same jury will have to decide if the appropriate punishment is the death sentence or life in prison with or without the possibility of parole.

Prosecutors also sought the death penalty for Smith and Young, but the juries that convicted them declined to hand down the ultimate penalty for those who didn't fire the fatal bullets.

[Printable text version](#) | [Mail this to a friend](#)

Search terms highlighted: Donte Johnson

[Las Vegas SUN main page](#)

Questions or problems? [Click here.](#)

Read our policy on cookies and privacy. [Click here.](#)

All contents copyright 1999 Las Vegas SUN, Inc.

Nevada's largest website

Return to the referring page.

Photos: Mother reacts | Young hears decision

Las Vegas SUN

September 24, 1999

9 of 12 Young jurors sought death penalty

Prosecutors: Compromise reached to avoid hung jury

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

The jury that sentenced convicted quadruple killer Terrell Cochise Young to life in prison without the possibility of parole had been leaning toward the death penalty, but three jurors could not be persuaded to go along.

It took four days for the jurors to compromise on a verdict that would ensure Young wouldn't set foot again on the streets where he had cut a violent path.

The jurors did not talk publicly, but they did speak to the case's prosecutors, Gary Guymon and Robert Daskas.

The prosecutors, who admitted they are frustrated at not obtaining a death sentence for the 20-year-old defendant, said they were told the jury was deadlocked with nine jurors in favor of death, and three who wanted to put him in prison.

The nine, Guymon said, finally compromised out of fear Young again would be the recipient of leniency from the judicial system if there were a hung jury.

The jury had been told at the trial that Young received probation just two weeks before the murders after pleading guilty to an attempted larceny charge that had been reduced from a robbery count. He also had been given breaks in juvenile court cases when he was younger.

What the jury didn't know was that a hung jury would have resulted in the punishment being decided by a three-judge panel. Such panels hand down the death penalty in about 90 percent of cases.

Guymon said one of the three holdouts simply refused to give a death sentence to a person who wasn't the one to pull the trigger.

Another holdout refused to consider the death penalty because Jeremy Strohmeyer -- whose rape and murder of a girl at a Primm casino made national headlines -- was not given the death penalty, Guymon said.

Strohmeyer actually avoided capital punishment by pleading guilty - the same deal Young was offered and rejected, although the jury was unaware of that.

Guymon said the third holdout declined to give reasons for not joining the majority.

As the compromise verdict was read in District Judge Joseph Pavlikowski's courtroom, Marie Biddle bitterly whispered, "Stupid, stupid" as tears ran down her face. Her son, Jeffrey Biddle, 19, was one of those murdered in the Aug. 14, 1998, robbery that turned deadly.

Cindy Mowen, the mother of victim Matthew Mowen, 19, sobbed openly as she hugged her husband, David Mowen, for comfort from their bitter disappointment.

He lamented later, "What is it going to take to get the death penalty for four murders?"

The Mowen family has attended most of the court sessions as did Sandy Viau, the mother of 20-year-old victim Tracey Gorringer.

She also broke into tears with the announcement that Young was avoiding the death sentence.

The fourth victim was 17-year-old Peter Talamantez.

Young's mother, Willena Warren, let out a wail of anguish as her son was being led back to jail after the hearing, prompting Cindy Mowen to snap, "What are you crying for? Your son is still alive."

Outside the courthouse, Vieu and Cindy Mowen angrily complained that Young's family will be able to visit him throughout his life and express their love for him, but the families of the victims can only visit a cemetery.

"I think justice would be to have his life taken also," Biddle said.

The thoughts of the Mowens also turned to Young's actions once he gets to prison.

"I'm fearful he will kill again, a bailiff or a guard," Cindy Mowen said.

"When will it stop?" David Mowen added. "How many lives will it take before they decide they have to do something (about people like Young). Let's get rid of them."

Young, who had confessed to his involvement in the incident, was not alleged to be the shooter although it was shown he was a key player in the plot to rob the victims.

After court, Guymon told the family, "I'm frustrated that we can't get over the hill" and obtain a death penalty for Young or the first of three defendants to stand trial in the case, 19-year-old Sikia Smith.

He was convicted early this summer of first-degree murder for his relatively minor role in ransacking the victims' house looking for cash and drugs, and was sentenced to life in prison with no chance for parole.

"I could taste this one this time," Guymon said of his chances for the death sentence in the Young case. "But at least he's been held accountable. He'll never get out."

The triggerman is alleged to be Donte Johnson, 19, who is in jail awaiting a Jan. 10 trial.

Like Young, Smith also had confessed to police, but that is not the case with Johnson.

Guymon concedes it will be "an uphill battle" to prove Johnson's guilt, but once that is achieved he predicted it will be "a downhill ride to the death penalty."

While Young and Smith both named Johnson as the gunman who stood over each duct-taped victim and fired single bullets into their heads, their confessions cannot be used against the final defendant and neither has been willing to be a prosecution witness.

Young had smiled as he was brought into the courtroom for Thursday's verdict -- wearing the stun belt and arm restraints that have been part of his attire since he became violent and overturned a table during jury selection -- but he became deadly serious when the verdicts were read.

Even when it was clear he was not going to get the death penalty, the man who had described himself to corrections officers as the "most notorious inmate in the history of Nevada," displayed little emotion.

Barring a reversal of his conviction on appeal, Young knew the he would be spending the rest of his life behind prison walls.

At his trial, Young was shown to have been the one who stood guard, casually sipping a beer, while the others ransacked the house near Tropicana Avenue and Nellis Boulevard expecting to find \$6,000 in cash and a large quantity of drugs.

In the confessions it was noted that only about \$200, a VCR, a video game system and a few pills were located.

Before returning to the county courthouse Thursday, jurors spent 17 hours over three days trying to agree on the sentence and their vote before going home Wednesday night was 9 to 3.

The compromise occurred during less than two hours of deliberations Thursday morning.

It took the same jury five hours of deliberations to convict Young of first-degree murder, despite his confession and a state law that says all persons involved in a robbery where a murder occurs are equally guilty of murder.

Beyond that, the jury was shown that Young had advocated the murders of the four young victims to keep them from being witnesses, and also wanted the their two pit bull puppies killed.

In an unsworn statement to the jury last week, Young asked for leniency and said his whole life shouldn't be judged on "three weeks on the wild side."

That period not only involved the quadruple murder, but also his involvement in disposing of a body from another murder, his shooting at two people in a hotel-casino who owed him money from a drug deal and his pulling a pistol on a Nevada Highway Patrol trooper.

Guymon said it wasn't three weeks, but three years -- dating back to a 1996 incident during which Young and some friends caned a couple of teenage boys to the ground in a supermarket.

Return to the referring page.

Photos: Mother reacts | Young hears decision

Las Vegas SUN main page

Questions or problems? [Click here.](#)

All contents copyright 1999 Las Vegas SUN, Inc.

Return to the [referring page](#).

Las Vegas SUN

September 23, 1999

Jury decides on life without parole for second killer

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

At age 20 Terrell Cochise Young was told today that the rest of his life will be spent in prison with no chance for parole for his role in the execution slayings of four young men during a home robbery.

The jury that had convicted him last week of first-degree murder was in its fourth day of deliberations when jurors finally agreed on the punishment. The other options had been death by lethal injection or life in prison with the possibility of parole.

Young wasn't alleged to be the shooter who stood over the four duct-taped victims and fired bullets into their heads. Those killed were Tracey Gorringer, 20, Jeffrey Biddle, 19, Matthew Mowen, 19, and Peter Talamantez, 17.

Young, who entered the packed courtroom smiling, listened to the verdict without emotion. Some of the victims' family members cried; one muttered, "Stupid, stupid."

Young's sentence was the same as that already given to 19-year-old Sikia Smith, who was the first of three defendants to stand trial and be convicted. At his trial it was shown his participation was limited to ransacking the house near Tropicana Avenue and Nellis Boulevard in search of cash and drugs.

The alleged triggerman, 19-year-old Donte Johnson, is scheduled to stand trial Jan. 10.

Before returning to the County Courthouse today, jurors had already spent 17 hours over three days trying to agree on the sentence.

When asked by District Judge Joseph Pavlikowski on Wednesday afternoon, the forewoman said the last of 10 votes was 7 to 4 with one juror abstaining. While some family members of the victims believed that foretold a hung jury, the forewoman said she believed that further deliberations may be productive.

It took another three hours over two days to hammer out the decision.

Prosecutors urged the death penalty by calling Young "the worst of the worst" for his role in the robbery on Aug. 14, 1998, that ended in the slayings.

Young confessed to police but said his role was limited to guarding the victims while two others ransacked the house in search of what was believed to be \$6,000 in cash and a stash of drugs.

Only about \$200 and a few pills were found, according to Young's confession.

During closing arguments last week, Deputy District Attorney Robert Daskas reminded the jury that Young had advocated the murders of the four young victims to keep them from being witnesses, and wanted their two pit bull puppies killed as well.

While prosecutors during closing arguments repeatedly called Young "the worst of the worst," defense attorney Lew Wolfbrandt said the one-time high school star wrestler "was not even the worst of the worst in this case."

In an unsworn statement to the jury last week, Young asked for leniency and said his whole life shouldn't be judged on "three weeks on the wild side."

That period not only involved the quadruple murder, but also his involvement in disposing of a body from another murder, his shooting at two people in a hotel-casino who owed him money from a drug deal and his pulling a pistol on a Nevada Highway Patrol trooper, according to testimony.

Deputy District Attorney Gary Guymon said it wasn't three weeks but three years, dating back to a 1996 incident during which Young and some friends caned a couple of teenage boys to the ground in a supermarket.

Guymon presented a chart emphasizing how that incident, which resulted in a juvenile conviction, started Young on a slide that resulted in deaths and violence in 1998.

Wolfbrandt lamented that Young didn't qualify for a prison Boot Camp Program after one conviction. Such a program might have turned him away from the path to drugs and death that he chose, the attorney said.

Wolfbrandt argued that if Young were given a life sentence rather than the death penalty, he could act as an example of what happens when a person strays to the "wild side."

Guymon countered that if Young is executed, he would be a better example of the fate that awaits those who commit robberies and murders.

Wolfbrandt conceded that even if given the lightest sentence of life with the possibility of parole, Young would be spending the rest of his life in prison.

"The state just wants you to give him a date" through the death sentence, the attorney said.

His voice cracking with emotion, Guymon responded angrily that "Matthew Mowen didn't have a date with death. None of those boys did."

Guymon said that Young should not be considered for a life prison term because he attacked a county jail corrections officer and beat him to the ground a week ago, just minutes after the jury pronounced him guilty of all charges in the quadruple slaying.

Prison guards, the prosecutor argued, should not have to be exposed to that kind of risk.

"The defendant's conduct has displayed that he is unstoppable, that he is still going to harm others."

Although Young has been animated at some earlier hearings, smiling at jurors when he was pronounced guilty and making obscene gestures at newspaper and television cameras, he was relatively sedate at the closing arguments in the penalty hearing Monday.

During jury selection two weeks ago, Young overturned a table and threw documents around the courtroom before he was subdued by bailiffs.

He was fitted with a stun belt -- in essence a remote controlled stun gun -- for later court sessions, but even that didn't stop him.

When he spit on his own lawyers, whom he had criticized for what he said was an inadequate defense and rare visits, Young was zapped into submission. After that there were no more physical outbursts.

[Return to the referring page.](#)

Las Vegas SUN

September 21, 1999

Young jury continues deliberations

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

Convicted quadruple killer Terrell Cochise Young was proclaimed "the worst of the worst" by prosecutors who asked the District Court jury that convicted him a week ago to punish him with the death penalty.

But after four hours of deliberations Monday, there was no consensus on the fate of the 20-year-old defendant who casually drank a beer as he guarded the four duct-taped victims.

The nine-woman, three-man jury in District Judge Joseph Pavlikowski's courtroom returned today to resume its task.

Deputy District Attorney Robert Daskas reminded the jury that trial evidence showed not only that Young advocated murder of the four young men, but he also wanted their two pit bull puppies killed.

"He has no regard for human life or the lives of animals," Daskas fumed before telling the jury that "this is a case where the death penalty is the only appropriate punishment."

Jurors will decide between that and a sentence of life in prison with or without the possibility of parole.

While prosecutors during closing arguments repeatedly called Young "the worst of the worst," defense attorney Lew Wolfbrandt said the onetime high school star wrestler "was not even the worst of the worst in this case."

Young is the second defendant to be convicted of three charged in the Aug. 14, 1998, slayings during a well executed but poorly conceived robbery of a house near Tropicana Avenue and Nellis Boulevard.

Nineteen-year-old Sikia Smith was sentenced to life in prison with no chance for parole for his relatively minor role as the one who ransacked the house looking for the \$6,000 in cash and quantity of drugs the bandits believed were there. Only about \$200 and a few pills were found, according to the confessions of Smith and Young.

Donte Johnson, 19, is scheduled to stand trial Jan. 10 on charges he was the gunman who stood over each victim and fired bullets into their heads.

Those killed were Tracey Gorringe, 20, Jeffrey Biddle, 19, Matthew Mowen, 19, and Peter Talamantez, 17.

In an unsworn statement to the jury last week, Young asked for leniency and said his whole life shouldn't be judged on "three weeks on the wild side."

That period not only involved the quadruple murder, but also his involvement in disposing of a body from another murder, his shooting at two people in a hotel-casino who owed him money from a drug deal and his pulling a pistol on a Nevada Highway Patrol trooper.

Deputy District Attorney Gary Guymon said it wasn't three weeks, but three years -- dating back to a 1996 incident during which Young and some friends caned a couple of teenage boys in a supermarket.

Guymon presented a chart emphasizing how that incident, which resulted in a juvenile conviction, started Young on a slide that resulted in deaths and violence in 1998.

Wolfbrandt lamented that Young didn't qualify for a prison Boot Camp Program after one conviction that might have turned him away from the path to drugs and death that he chose.

Wolfbrandt argued that if Young were given a life sentence rather than the death penalty, he could act as an example of what happens when a person strays to the "wild side."

Guymon countered that if Young is executed, he would be a better example of the fate that awaits those who commit robberies and murders.

Wolfbrandt conceded that even if given the lightest sentence of life with the possibility of parole, Young would be spending the rest of his life in prison.

"The state just wants you to give him a date" through the death sentence, the attorney said.

His voice cracking with emotion, Guymon responded angrily that "Matthew Mowen didn't have a date with death. None of those boys did."

Guymon said that Young should not be considered for a life prison term because he attacked a county jail corrections officer and beat him to the ground a week ago, just minutes after the jury pronounced Young guilty of all charges in the quadruple slaying.

Prison guards, the prosecutor argued, shouldn't have to be exposed to that kind of risk.

"The defendant's conduct has displayed that he is unstoppable, that he is still going to harm others."

Although Young has been animated at some earlier hearings, smiling at jurors when he was pronounced guilty and making obscene gestures at newspaper and television cameras, he was relatively sedate at the closing arguments in the penalty hearing Monday.

During jury selection two weeks ago, Young overturned a table and threw documents around the courtroom before he was subdued by bailiffs.

He was fitted with a stun belt -- in essence a remote controlled stun gun -- for later court sessions, but even that didn't stop him.

When he spit on his own lawyers, whom he had criticized for what he said was an inadequate defense and rarely visiting him, Young was zapped into submission.

Return to the referring page.
Las Vegas SUN main page

Questions or problems? [Click here.](#)

All contents copyright 1999 Las Vegas SUN, Inc.

Return to the [referring page](#).

Las Vegas SUN

September 20, 1999

Murderer awaits jury's life-or-death decision

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

Terrell Cochise Young, 20, could learn today whether he will live or die for his role in the execution murders of four young men.

After closing arguments, deliberations were scheduled to begin by the nine-woman, three-man jury that convicted Young last week of four counts of first-degree murder and a variety of other counts in the Aug. 14, 1998, slayings during an ill-conceived robbery.

The jury will decide whether to recommend the death penalty, a life sentence without the possibility of parole or a life sentence with parole.

On Friday Young and some of his family urged the jurors in District Judge Joseph Pavlikowski's courtroom to be lenient and merciful.

They all portrayed the defendant as a talented athlete and studious young man on the path to college and a productive life until a fight in his junior year of high school resulted in his arrest. That resulted in his being kicked off the football and wrestling teams.

His life continued on a downward slide until things turned deadly just over a year ago, the jury was told at the penalty hearing.

"Everything went wrong just from one fight," Young told the jury in an unsworn statement.

He argued that the three weeks he spent "on the wild side" shouldn't outweigh the rest of his life -- much of which was spent caring for his younger siblings while their mother was off using drugs.

Young said he "feels sorry" for the families of the victims, but asked the jury, "Would it be just to put another family through that" by sentencing him to death by lethal injection.

His mother, Willena Warren, admitted she had drug and anger problems and didn't do what she should have for her children. But she also told how proud she had been of Young's achievements in athletics and school.

Young's aunt, Marzetta Love, said that the defendant's unselfish care of his four brothers and sisters and willingness to help other family members earned him the nickname "John," after the television character "John Boy" in the defunct series "The Waltons."

Love said Young "doesn't deserve" a sentence of death or life in prison with no parole.

"His life shouldn't be wasted," she told the jury. "He should be given another chance."

The lightest possible sentence of life with an opportunity of parole would still keep him behind bars for 40 years.

Testimony at Young's trial showed his trip to the "wild side" had involved five murders in two incidents and a shooting at a hotel-casino that was intended to result in two other slayings.

While defense attorneys are expected to argue today that Young should not get a death sentence because he wasn't the triggerman in the quadruple murder, prosecutors likely will argue that his willing involvement in the incident is enough to warrant the ultimate punishment.

Evidence that his deadly ways extended before and after the multiple murders refutes any claim that Young was only a minor player in an isolated incident, prosecutors have said.

Most of the damning evidence came from Young's statements to police admitting his role in the robbery, slayings and involvement in the dumping of another murder victim's body near the Las Vegas Speedway.

That occurred 10 days before the quadruple murder, and Young named Donte Johnson as the killer in that case also. He previously told police that Johnson, 19, was the one who stood over the four young men in their home near Tropicana Avenue and Nellis Boulevard and fired single bullets into their heads.

The young men had been duct-taped and gagged while their home was ransacked in search of what the bandits believed to be \$6,000 in cash and a large quantity of drugs. Only about \$200, a VCR, a video game system and a few pills were taken.

The victims were Peter Talamantez, 17, Tracey Gorringer, 20, Jeffrey Biddle, 19, and Matthew Mowen, 19.

While Johnson was named liberally at the trial as the gunman, he does not face a jury until Jan. 10.

A third defendant in the case, Sikia Smith, 19, already has been found guilty of first-degree murder for his role as the one who ransacked the young men's home and has been sentenced to life in prison without the possibility of parole.

Testimony at the trial showed that a few days after the murders, Young and two others went to small hotel-casino in search of a man who owed Young money for drugs. When the pair were spotted, Young is alleged to have opened fire with his pistol -- narrowly missing the targets and sending bullets through walls and into guest rooms.

The jury also heard how Young attacked corrections officers in the Clark County Detention Center shortly after he was pronounced guilty of murder, robbery, kidnapping and conspiracy charges last week. Two of the officers were hospitalized.

Meanwhile another attempt by an attorney hired by Young's family members to get Young's court-appointed attorneys fired was turned down by the Nevada Supreme Court Friday.

The high court warned the lawyer Benjamin Childs he would face sanctions if he kept filing frivolous motions.

Childs, who says he was hired by the extended family of Young, filed a motion Sept. 9 contending that Young's defense lawyers Lew Wolfbrandt and Martin Hastings have not done everything they should in representing Young. Young, 20, can't communicate with the two lawyers, Childs said.

Young's mother Willena "Maria" Warren, was arrested when she hit defense attorney Wolfbrandt claiming he did not do enough to defend her son.

The court denied that motion and noted that the current petition is nearly the same. It said caution attorney Childs that the repetitive filing of what amounts to identical petitions for extraordinary relief will not be tolerated. If it continues, Childs could face sanctions, it

[Return to the referring page.](#)

Las Vegas SUN

September 17, 1999

Victims' families offer emotional testimony

By Kim Smith
LAS VEGAS SUN

Tears streaming down many of their faces, jurors in the murder trial of Terrell Young sat through 90 minutes of heart-wrenching testimony from his victims' families Thursday.

Young's defense attorneys will try to get the same sort of sympathy for their client today by putting his mother, sister and aunt on the stand to testify about his abusive childhood.

The jurors, who convicted Young on Tuesday of four counts of murder and 10 other felonies, were set to resume the trial's penalty phase today. Young could receive the death penalty or life in prison without the possibility of parole.

According to authorities, Young, 20, Sikia Smith, 19, and Donte Johnson, 19, robbed a Terra Linda Avenue home on Aug. 14, 1998, after learning there was supposed to be \$6,000 in cash and drugs in the home.

Four of the five men living in the home, Matthew Mowen, 19, Jeffrey Biddle, 19, Tracey Gorringer, 20, and Peter Talamantez, 17, were bound with duct tape and shot in the head. The fifth man, Gorringer's brother, Nick, was out of town at the time.

The robbers walked away with \$240 in cash and a videocassette recorder.

Smith was sentenced to life in prison without the possibility of parole earlier this summer. Johnson, the alleged gunman, is scheduled for trial in January.

Prosecutors called seven of the victims' family members to the stand Thursday afternoon so jurors could get to know the young men and understand the devastation wrought by their deaths. As they spoke, picture after picture was handed to the jurors.

Jurors learned that as a first grader Biddle set up an altar in his bedroom and offered bread as communion. They also heard about his dreams of joining either the military or the FBI.

Mowen had a habit of hitting his parents up for money whenever he saw a homeless person so he could give it to them and he wanted to one day become a chiropractor so he could help people.

His mother, Cynthia, described the anguish of having to make funeral arrangements for her son and then being told she also had to replace the body bag the funeral home had used at the murder scene.

Talamantez, whose grandfather taught him how to drive, was looking forward to getting his driver's license. He enjoyed life to the fullest and adored his two older brothers.

And Tracey Gorringer, the middle of three boys raised in a single-parent home, was known as a peace-maker who often brought home stray animals as a boy. He wanted to join a culinary union and one day open his own restaurant. He had just gotten a job as a line cook weeks before his death.

Perhaps the most emotional testimony of the day came from Nick Gorringer, who lost his brother and best friends that day. Struggling to maintain his composure at times, Gorringer expressed rage, overwhelming sadness and bewilderment throughout his testimony.

During most of his testimony, Gorringer was doubled over, obviously in emotional pain.

Gorringer said he was in Maine at a rock concert when he got a message about a family emergency.

"I thought it was about my grandmother, anything but this," Gorringer said, his voice cracking.

One year later he is still asking "Why? Why? Why?" Gorringer said, his voice rising.

"We thought everyone loved us. We never disrespected anyone. We never stole from anyone. We never robbed anyone," Gorringer said, wiping his eyes repeatedly. "We were all about love, man. That's all we were about."

Clark County District Judge Joseph Pavlikowski then cleared the courtroom so Young's mother, Willena Warren, could be brought in.

Warren was taken into custody Tuesday evening after she erupted into violence following her son's conviction. She is expected to appear before a justice of the peace today on charges of contempt of court and battery of a peace officer.

Pavlikowski brought her into the courtroom Thursday to find out if she still wanted to testify on her son's behalf and if she would behave if allowed to do so. After making sure she would be allowed to wear civilian clothes, Warren promised to act appropriately.

Pavlikowski warned her however, that she would still be shackled.

More than one dozen court security officers and Metro Police officers stood guard in the courtroom while Pavlikowski conversed with Warren.

Return to the referring page.
Las Vegas SUN main page

Questions or problems? [Click here.](#)

All contents copyright 1999 Las Vegas SUN, Inc.

Return to the [referring page](#).

Photo: [Convicted felon smiles](#)

Las Vegas SUN

September 16, 1999

Corrections officer describes attack by convicted killer

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

His face marred with bruises and welts, a Clark County Detention Center corrections officer told a jury how convicted quadruple killer Terrell Cochise Young took advantage of their one-on-one situation and attacked him in a violent flurry of punches.

The assault came just minutes after Young was convicted of four counts of murder and 10 other charges and was being returned to his jail cell.

The testimony from Officer Greg Reeves on Wednesday came as the first day of Young's penalty hearing ended in District Judge Joseph Pavlikowski's courtroom.

Deputy District Attorney Gary Guymon called Young "the worst of the worst" and said "not even jailers are safe" from the violence that has become almost routine for the 20-year-old defendant.

The jury that convicted Young on Tuesday must decide if the appropriate punishment for his role in the execution-style quadruple murder should be death or life in prison with or without the possibility of parole.

The violent outburst in the jail and other tales of misconduct behind bars would seem to preclude a defense argument -- which has become routine in many death penalty cases -- that the defendant need not be executed because he can function well in the structured society of prison.

Young was not alleged to be the triggerman who methodically gunned down four young men on Aug. 14, 1998, during a robbery of their home, but prosecutors still are seeking the death penalty for him.

Young is the second man to be convicted in the case. The first was 19-year-old Sikia Smith, who was sentenced to life in prison without the possibility of parole earlier this summer for his role in ransacking the victims' home.

The victims were Matthew Mowen, 19, Jeffrey Biddle, 19, Tracey Gorringer, 20, and Peter Talamantez, 17.

As they did at Smith's trial, the families of the victims are expected to testify at Young's penalty hearing about the devastation the murders caused in their lives.

The alleged gunman, Donte Johnson, 19, is scheduled to stand trial Jan. 10.

Guymon said during opening statements that the multiple murder was not an isolated incident in an otherwise productive life. He noted Young's involvement in another murder, a shooting incident in the public hallways of a Las Vegas hotel-casino, and an armed confrontation with a Nevada Highway Patrol trooper -- all within days of the quadruple murder.

Tuesday's incident at the jail wasn't the first episode of violence by Young while he has been incarcerated, but Reeves said the fury of the assault was the worst he has seen in the 13 years he has spent as a corrections officer.

After an outburst in court by Young during jury selection at his trial last week, during which he scattered documents and overturned a table, he was fitted with a security stun belt. When he spit on his own lawyers a short time later, the belt was activated and Young was zapped into submission.

Tuesday's incident occurred shortly after the belt was removed and Young changed from his court clothes into his jail uniform.

Reeves said he was just beginning to place handcuffs on Young before leading him back to his cell when the defendant whirled around and pummeled him to the ground, causing him to cover up as much as he could and call for help.

Corrections Officer Christopher Leyba told how he raced to Reeves' aid and tackled the defendant as he was pounding the fallen officer in the face and head with windmill-style punches.

Leyba said he then became the target of Young's assault, but when the defendant heard other officers approaching, he broke off the attack and fell to the ground with his hands under him.

"I asked him why he did it," Leyba recalled, telling the jury of nine women and three men that Young responded, "I don't give a (expletive) about you people."

Corrections Officer James Peal quoted Young as bragging earlier this summer, "I'm one of the most notorious inmates in the history of Nevada."

Defense attorney Lew Wolfbrandt alleged the altercation was precipitated by a slap to Young's head by Reeves. The officer denied that, but admitted he had slapped Young in the head on an earlier occasion when he refused to follow orders.

Reeves was transported to a hospital for treatment of a concussion and Leyba received treatment for a bruised wrist. Neither was admitted.

Young was convicted primarily on his confession to police after his arrest in September 1998 as he sat at a bus stop outside the Metro Police homicide bureau on West Charleston Boulevard.

The tape-recorded confession was played for the jury last week and more of his statement was played Wednesday. The latest part involves Young's admission that 10 days before the quadruple murder he helped Johnson and another man dispose of a drug dealer who Young said had been beaten, strangled and suffocated by Johnson.

Young said he had been outside the Thunderbird hotel-casino on Las Vegas Boulevard near Charleston Boulevard on Aug. 4, 1998, selling crack cocaine when the murder occurred in the room he shared with Johnson.

The body of Darnel "Snoop" Johnson was found the following day off Interstate 15 at Speedway Boulevard, north of Las Vegas.

That slaying, according to Young's confession, occurred because Johnson had stolen drugs from a third man.

Metro Homicide Det. Roy Chandler said the case has been presented to the district attorney's office for prosecution, but charges have not yet been filed.

In other testimony Wednesday:

NHP Sgt. Robert Honea told how he stopped a stolen car driven by Donte Johnson three days after the quadruple murders and how Young emerged from the passenger side with a pistol at his side. Honea said the pair fled on foot after he pulled his own gun and ordered them to surrender.

Christopher Douthit testified that in 1996, when he was 15, he was beaten with canes by Young and several others after they pursued him into a market. Douthit said he suffered a broken rib and neck injuries.

David Gilbreth, a former manager at a discount clothing store, told how he had stopped Young and another teenager for shoplifting in November 1997 and was attacked by the pair.

Gloria Golberg-Fenster, a juvenile probation officer, said that Young was given probation for the caning and the robbery, but failed to comply with any of the terms. When Young turned 18 and became an adult in 1997, he was sentenced to 30 days in jail and his juvenile probation was terminated.

Return to the referring page.

Photo: Convicted felon smiles

Las Vegas SUN main page

Questions or problems? Click here.

All contents copyright 1999 Las Vegas SUN, Inc.

Return to the referring page.

Photo: Bailiffs subdue Warren

Las Vegas SUN

September 15, 1999

Melee erupts in District Court

Mom, son go on rampage after conviction

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

Taut emotions were released in tears and violence after a jury convicted Terrell Cochise Young on all counts in an ill-conceived robbery that resulted in the executions of four young men.

Young attacked the corrections officers who were ushering him to his cell at the county jail, court officials said. One of them had to be hospitalized, according to staff members in District Judge Joseph Pavlikowski's courtroom.

Meanwhile, Young's mother also was arrested when she slugged defense attorney Lew Wolfbrandt after contending he hadn't done enough to defend her son, who could now receive a death sentence.

Willena "Maria" Warren wasn't present when the nine woman, three man jury pronounced Young guilty of murder, robbery, kidnapping and conspiracy charges, but she walked into the courtroom as her son was being readied for his return trip to jail.

Warren asked Wolfbrandt for the jury verdict, but she didn't seem to understand his answer until Young yelled, "They convicted me of all of it."

Warren then began screaming and punching Wolfbrandt as bailiffs closed in to quell the disturbance while Young was hustled out a back door.

It took several moments to subdue and handcuff Warren before she was dragged kicking and screaming down the same hallway leading to the jail that her son had walked down minutes before.

Wolfbrandt was unhurt and said he did not want charges filed against the woman, but it is not his call since the altercation took place in front of bailiffs who also may have been victims of the attack.

The jury, which took more than five hours to reach the verdict, is expected to hear testimony at today's penalty hearing on the post-verdict violence. It will decide whether to recommend a life sentence with or without the possibility of parole or a death sentence.

Ironically, Warren is scheduled to be a witness for the defense at the hearing.

The altercation didn't dampen the elation and relief at the verdict by the victims' families and friends who held vigil outside the courtroom awaiting the jury decision and then filled the first few rows.

Before the jury was led into the courtroom for the verdict, Young sat for several minutes smiling and staring at those whose friends and family members he had helped kill. The smiles were met with unsympathetic stares from those who had awaited his conviction.

Young then grinned for newspaper and television cameras.

As the guilty verdicts were read on the robbery charges, Young smiled at the jury and nodded in

agreement. He had confessed to police that he was one of the three who barged into the home in eastern Las Vegas to rob the occupants of what was believed to be \$6,000 in cash and a quantity of drugs.

Sikia Smith, 19, already has been convicted of first-degree murder and sentenced to life in prison without the possibility of parole for his relatively minor role as the one who ransacked the home near Tropicana Avenue and Nellis Boulevard in search of valuables.

But the anticipated haul wasn't there, and the bandits left with only about \$200, a VCR, a video game system and a few pills.

Nineteen-year-old Donte Johnson is scheduled to stand trial Jan. 10 on charges he was the one who fired the fatal bullets to prevent the victims from reporting them to police or from retaliating.

During Young's trial, Wolfbrandt and co-counsel Martin Hastings had argued to the jury that the defendant should not be convicted of murder because he was out of the house and no longer involved when the executions occurred.

But as the verdict showed the jury's disagreement, Young's mood quickly turned ugly.

When the jury forewoman smiled nervously as she meekly read the verdicts declaring Young to be guilty of the murders, he snapped at her, "What's funny about it."

The woman broke into tears as did some of the other jurors who appeared to have been crying even before they had entered the courtroom.

Young then made an obscene gesture to the cameras, although his elbows were pinned to his sides by straps from a security belt -- which included a remote-controlled stun gun device -- he was forced to wear after a violent outburst early in the trial.

His smug smiles turned to glares with the realization that the families and friends of the victims had gotten the convictions they sought.

David and Cindy Mowen, the parents of 19-year-old Matthew Mowen, hugged and cried at the verdict, and David Mowen made a quick call on his cellular telephone to announce, "We got him."

In addition to Matthew Mowen, the victims included Jeffrey Biddle, 19, Tracey Gorringer, 20, and Peter Talamantez, 17. Each had been duct taped during the Aug. 14, 1998, robbery and killed with single bullets to the back of the head.

During the penalty hearing, Deputy District Attorneys Gary Guymon and Robert Daskas said they will present evidence of Young's juvenile record and involvement in other crimes.

Guymon said that so far the jurors have only heard about the single deadly incident, but they will hear testimony that Young shot up a small casino and hotel in an effort to kill a young man who purportedly owed him money.

No one was hurt in the incident that previously was related to the jury at Smith's trial.

Daskas said there also will be evidence that Young helped dispose of the body of a man killed at the ~~Thunderbird Hotel, on Las Vegas Boulevard near Charleston Boulevard~~.

The defense attorneys say they will counter with evidence about Young's early life in an abusive household and how his life took a deadly turn after befriending Johnson three weeks before the quadruple murder.

[Return to the referring page.](#)

Las Vegas SUN

September 15, 1999

Second man convicted in quadruple homicide

LAS VEGAS (AP) - A jury on Tuesday convicted Terrell Cochise Young of murdering four young men last year.

After the verdict was read, Young's mother attacked his attorney, striking him with her fists. Bailiffs had to tackle the woman to the ground and put her in handcuffs.

Young, 19, wasn't alleged to have been the triggerman, but prosecutors said he played a significant role in the well-orchestrated robbery.

Young is the second of three defendants to stand trial in the murders during a holdup, which garnered only a couple of hundred dollars, a VCR and a video game.

Each victim - Matthew Mowen, 19, Jeffrey Biddle, 19, Tracey Gorringer, 20, and Peter Talamantez, 17 - was killed with a bullet fired into the back of the head.

The home the victims were in was targeted on Aug. 14, 1998, because a fourth man, who has not been charged, believed there was \$6,000 in cash and a quantity of drugs there, jurors were told.

"In the eyes of the law, the act of one is the act of all," Deputy District Attorney Robert Daskas told the jury Monday.

Defense attorneys contended that Young, who confessed his involvement to police after his arrest, participated only because of his fear of the gunman.

That alleged triggerman, Donte Johnson, 19, is scheduled to stand trial on Jan. 10. The third man, 19-year-old Sikia Smith, already has been convicted of first-degree murder for his role in ransacking the house and been sentenced to life in prison without parole.

The jury in Young's case will begin deliberating Wednesday on whether he should be sentenced to death or life in prison with or without parole.

[Return to the referring page.](#)

[Las Vegas SUN main page](#)

Questions or problems? [Click here.](#)

All contents copyright 1999 Las Vegas SUN, Inc.

Return to the [referring page](#).

Las Vegas SUN

September 14, 1999

Jury deliberates fate of defendant in multiple murder

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

A District Court jury has begun its job of deciding the innocence or guilt of Terrell Cochise Young in the murder of four young men in August 1998.

The case went to the jury Monday afternoon after closing arguments during which jury members were told that although Young isn't alleged to have been the triggerman, his role as a participant in the well-orchestrated robbery is sufficient to convict him of first-degree murder.

Young is the second of three defendants to stand trial in the murders during a holdup, which garnered only a couple of hundred dollars, a VCR and a video game.

Each victim -- Matthew Mowen, 19, Jeffrey Biddle, 19, Tracey Gorringer, 20, and Peter Talamantez, 17 -- was killed with a bullet fired into the back of the head.

The home on Terra Linda Avenue, near Nellis Boulevard and Tropicana Avenue, was targeted on Aug. 14, 1998, because a fourth man, who has not been charged, believed there was \$6,000 in cash and a quantity of drugs there, jurors were told.

"In the eyes of the law, the act of one is the act of all," Deputy District Attorney Robert Daskas told the jury in District Judge Joseph Pavlikowski's courtroom.

Defense attorneys have contended that Young, who confessed his involvement to police after his arrest, participated only because of his fear of the gunman.

That alleged triggerman, Donte Johnson, 19, is scheduled to stand trial on Jan. 10. The third man, 19-year-old Sikia Smith, already has been convicted of first-degree murder for his role in ransacking the house and been sentenced to life in prison without the possibility of parole.

If Young also is convicted of first-degree murder, the jury will decide if the appropriate punishment is death by lethal injection or life in prison with or without a chance for parole.

Defense attorney Martin Hastings reminded the jury that several witnesses testified to Johnson's volatile temper that makes him "go off like a light switch."

During closing arguments Deputy District Attorney Gary Guymon equated the participants in the assault on the victims' house with a team event that can only be successful if everyone cooperates in doing their job.

"Without one, the team is not going to survive," Guymon said.

While the law makes all participants in a robbery responsible for a murder that may result during that crime, defense attorney Lew Wolfbrandt argued that for Young the robbery was over by the time the fatal shots were fired.

"Terrell was a spectator," he said, citing Young's version of events from his confession. "The robbery was over. He was out of the house."

Wolfbrandt said the only one guilty of the murders was the "crazed psycho little guy who in his own sick way ended the lives of four boys."

Prosecutors, however, countered that the robbery wasn't over until the murder weapon was disposed of and the meager booty split up.

And Guymon suggested that Young was in the house at the time of the shootings.

He noted that testimony from a friend who had talked to Young and Johnson after hearing news reports of the murder indicated that there had been a conversation between Young and the gunman about whether to kill two dogs.

Ace Hart had testified that Young commented that there were two puppies in the house and they should have been killed, but Johnson rejected the idea.

Return to the referring page.
[Las Vegas SUN main page](#)

Questions or problems? [Click here](#).

All contents copyright 1999 Las Vegas SUN, Inc.

[Return to the referring page.](#)

Las Vegas SUN

September 10, 1999

Defense to present its case in Young's quadruple murder trial

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

Members of a District Court jury have been told they will begin deliberations Monday into the guilt or innocence of Terrell Cochise Young over his role in the murders of four young men.

It shouldn't be too difficult a call for the jury in District Judge Joseph Pavlikowski's courtroom because Young confessed to police that he was part of the well-planned holdup to steal what was supposed to be \$6,000 in cash and a large amount of drugs.

But the reports of wealth were unfounded and the bandits walked away with only about \$200, a VCR, a video game and a few pills.

The prosecution rested its case Thursday after Deputy Medical Examiner Dr. James Bucklin testified that three of the four victims had traces of methamphetamine and cocaine in their systems. The fourth, who was a visitor to the house near Tropicana Avenue and Nellis Boulevard, had consumed a larger quantity of drugs.

The defense, which had contended during opening statements that the victims were drug sellers, will get its chance Monday morning to present witnesses.

Young was told Thursday by the judge that he has a right to testify in his own defense or can decline to testify and the prosecution cannot comment on his silence during closing arguments.

If the jury convicts Young, 20, of first-degree murder, there will have to be a penalty hearing, and the same jury will be asked to decide if the appropriate punishment should be death by lethal injection or life with or without the possibility of parole.

Young is the second of three defendants to stand trial in the Aug. 14, 1998, murder. Sikia Smith, 19, already has been convicted and sentenced to life in prison without any chance for parole. Donte Johnson, 19, the alleged triggerman, is scheduled to face a jury in January.

The victims were Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17.

[Return to the referring page.](#)

[Las Vegas SUN main page](#)

Questions or problems? [Click here.](#)

All contents copyright 1999 Las Vegas SUN, Inc.

Return to the [referring page](#).

Las Vegas SUN

September 09, 1999

DA rests case against defendant in multiple murder

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

With one last witness today, the prosecution was to rest its case in the trial of Terrell Cochise Young on charges he was a key player in the execution-style murders of four young men.

The four were targeted in the deadly robbery on the mistaken belief that they had large quantities of cash and drugs in their home off Nellis Boulevard and Tropicana Avenue. In reality, there were only a couple of hundred dollars and a few pills, but the deadly course of events already had begun.

The prosecution's only remaining witness was Dr. James Bucklin, a county deputy medical examiner, who was scheduled to show the jury the haunting photographs of the victims' bodies as they lay in pools of blood with their hands duct-taped behind their backs.

The young men's empty wallets lay nearby.

Defense attorneys said that Young, 20, will take the witness stand in his own defense. The jury already has heard his words in a taped confession he gave to Metro Police homicide detectives.

In that statement Young named Donte Johnson, 19, as the actual killer who stood over each victim -- Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17 -- and fired single shots into their heads.

Young expressed remorse for the incident and told police he never intended for anyone to die.

But three days after the Aug. 14, 1998, murder spree, Young and Johnson were back in trouble with the law, and again it involved guns.

Nevada Highway Patrol Trooper Robert Honea testified Wednesday that he stopped a stolen car driven by Johnson as it raced at 85 mph along U.S. 95 near East Charleston Boulevard.

Young was the passenger, but Honea said that before he could take the pair into custody the men fled on foot and efforts to find them failed.

Inside the car Honea found a sawed-off rifle believed to have been carried to the quadruple murder -- but not used -- by Young.

What the jury didn't hear was Honea's story that when Young exited the car, he had a .38-caliber pistol in his hand but chose to drop it and flee rather than engage in a shootout with the trooper. District Judge Joseph Pavlikowski had ruled that evidence of the pistol was not admissible in the trial because it played no role in the multiple murders.

Honea testified that he didn't know the identities of the two men he had stopped, but when Johnson's photo appeared in the Las Vegas Sun after his arrest a few days later on murder charges, the trooper recognized him as the driver of the car.

When Young's picture was broadcast on a television news show after his arrest a couple of weeks later, Honea said, he was positive that was the passenger in the stolen vehicle.

If Young is convicted of first-degree murder for his role, the same jury will have to decide if the appropriate punishment is the death sentence or life in prison with or without the possibility of parole.

A third defendant in the case, 19-year-old Sikia Smith, already has been convicted of murder for his part in the deadly spree.

Smith had confessed that he ransacked the home in search of valuables but did not carry a gun nor participate in the duct-taping of the victims. He was sentenced to life with no chance of parole.

Johnson is scheduled to stand trial Jan. 10.

Return to the referring page.
Las Vegas SUN main page

Questions or problems? [Click here.](#)

All contents copyright 1999 Las Vegas SUN, Inc.



Finally! Internet Access that's



NEWS
SPORTS
WEATHER
OPINION
BUSINESS
CLASSIFIEDS
SUN LIFE

STORIES: ARCHIVE
[back to SEARCH RESULTS](#)
[Printable text version](#) | [Mail this to a friend](#)

Search terms highlighted: Donte Johnson

September 08, 1999

Stunned defendant listens in silence at murder trial

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)
 LAS VEGAS SUN

Before opening statements began in his murder trial, Terrell Cochise Young was allowed to return to the courtroom where his outbursts during jury selection last week had resulted in his removal and a jolt from a security stun belt.

District Judge Joseph Pavlikowski told the 20-year-old defendant that he could participate in his trial if he agreed to behave. If he didn't, he would be hauled off.

Left unspoken was the possibility of another debilitating zap of the stun belt -- in essence a remote-controlled stun gun device.

"Do you understand?" Pavlikowski asked.

"Yes sir," Young replied meekly.

Young is the second of three defendants to stand trial in the murders of four young men during a robbery on Aug. 14, 1998.

At the end of the holdup -- which garnered only a couple of hundred dollars, a VCR and a video game -- each victim was killed with a bullet fired into the back of the head.

Not only was Young fitted with the stun belt for Tuesday's session, but his arms were pinned to his sides with restraints. During his outbursts last week, he scattered papers, overturned the prosecution's table and spit on his own lawyers.

The last incident resulted in his being shocked into submission and then hauled out of court as



priceline.com
 Airline Tickets
 at Great Prices!
 Name Your Own Price
 and Save!
 Enter City **GO**



vegas
 .com

showbiz
 tv weekly
 community
 resorts

bewildered jurors looked on.

Those jurors, who must decide Young's guilt or innocence and might have to decide if he lives or dies, on Tuesday listened to Deputy District Attorney Gary Guymon portray the defendant as a willing participant in the quadruple murder. The home on Terra Linda Avenue, near Nellis Boulevard and Tropicana Avenue, was targeted because a fourth man, who has not been charged, believed there was \$6,000 in cash and a quantity of drugs there.

Guymon said that was the result of one victim, 19-year-old Matthew Mowen, bragging to the fourth man that he had been working on the road with the rock band Phish and had made a lot of money.

"The seed was planted," Guymon told the jury.

He said the three alleged bandits -- Young, Sikia Smith, 19, and Donte Johnson, 19 -- went to the home and forced the two victims there at the time to lie on the floor where they were bound with duct tape and robbed. The third victim arrived a short time later and eventually the fourth victim came to the house.

They also were held at gunpoint and bound while the home was ransacked.

Guymon said confessions to Metro Police detectives by Young and Smith indicated that when the robbery was completed, Johnson turned up the stereo and stood over each victim to fire the fatal shots.

In addition to Mowen, the victims were Jeffrey Biddle, 19, Tracey Gorringer, 20, and Peter Talamantez, 17.

Although Young is not alleged to have been the triggerman, Guymon said he is equally guilty of first-degree murder under the Nevada law that makes every participant in a robbery responsible for whatever may occur.

"The act of one is the act of all," the prosecutor said.

But defense attorney Martin Hastings said Young wasn't a willing participant in the quadruple slaying and was only there because he was ordered to by Johnson, who he described as "the meanest S.O.B. you'll ever hear about in your life."

"Donte was the leader. Donte was in control," Hastings said. "Terrell was afraid of Donte and

operated under duress.

"Don't read half of the book," he cautioned during opening statements.

Guymon countered that Young and Johnson were roommates with the uncharged suspect and laughed about the murders in front of a man who had been a friend of the victims as well as the defendants.

That man, Ace Hart, testified Tuesday that Young admitted he had wanted to kill the victims' puppies also, but Johnson overruled that idea.

Footprints of the puppies in the victims' blood could be seen in many of the police photos of the murder scene.

Hart said he had become upset when he saw a television news report of the multiple murders and realized he knew the victims. He explained the uncharged suspect told him who the killers were and he confronted them about their motives.

Hart testified that Young and Johnson laughed and said if they were going to kill one, they had to kill all of them.

Young glared menacingly at the witness throughout his testimony.

Deputy District Attorney Robert Daskas said the prosecution case could be completed by late Wednesday or early Thursday.

He expects jury deliberations to begin after closing arguments Thursday.

If the jury convicts Young of first-degree murder, it would then have to decide after a penalty hearing whether the appropriate punishment would be life in prison with or without the possibility of parole or death by lethal injection.

The case, however, could end prematurely if Young accepts a plea bargain to avoid the possibility of a death penalty.

Guymon told the judge that the prosecution always has been willing to plea bargain the case, but defense attorney Lew Wolfbrandt said there always has been a condition that Young testify against the fourth suspect.

[Printable text version](#) | [Mail this to a friend](#)

Return to the [referring page](#).

Las Vegas SUN

September 02, 1999

Trial to proceed without suspect

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

The trial of Terrell Cochise Young in the Aug. 14, 1998, execution-style slaying of four young men will go on without him.

After two outbursts by Young on Wednesday during jury selection for his murder trial, District Judge Joseph Pavlikowski ruled that the 20-year-old defendant was determined to disrupt the court and had sacrificed his right to be present.

Prosecutors said that Young, before the proceeding began earlier this week, had vowed to do whatever it took to postpone his trial.

The first outburst Wednesday morning appeared calculated and unprovoked.

As prospective jurors were questioned about their willingness to impose the death penalty if there is a conviction, Young suddenly stood up, scattered documents from atop the defense table and overturned the prosecution's table. Four bailiffs and corrections officers pounced on the 20-year-old defendant as shocked spectators and prospective jurors looked on. He offered no resistance then or as he was being led away in handcuffs.

Before the afternoon session began, Pavlikowski cautioned Young that if there were another outburst, he would be taken back to the Clark County Detention Center and the trial would proceed without him.

But Young wasn't listening. He just repeatedly complained that he couldn't stand trial on the multiple murder and robbery charges with attorneys who he said were biased against him.

After the morning outburst, Young was brought back to court with a stun belt -- in essence a remote-controlled stun gun -- concealed under his white dress shirt to provide an added measure of security. A jail corrections officer sat nearby with his finger on the activating button.

As would-be jurors were questioned, Young sat quietly for several minutes, but he suddenly began spitting on both of his lawyers.

The corrections officer immediately activated the stun belt.

Young tensed in his chair and his head rolled back, but he remained seated. The panel from which the jury will be selected that could decide whether he lives or dies watched as the defendant was led away.

Young is the second of three defendants charged in the quadruple murder to stand trial. The first, 19-year-old Sikia Smith, was convicted of first-degree murder earlier this summer and sentenced to life in prison without the possibility of parole. The alleged triggerman, 19-year-old Donte Johnson, is set to face a jury in January.

Although Young is not alleged to be the triggerman prosecutors still are seeking the death penalty.

Those killed in the Aug. 14, 1998, incident in a house on Terra Linda Avenue, near Nellis Boulevard and Tropicana Avenue, were Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17.

They were found gagged, bound with duct tape and each shot dead with one bullet to the head.

Testimony at Smith's trial indicated the bandits believed a large quantity of drugs and \$6,000 in cash was supposed to be in the house.

Confessions given to police by Smith and Young indicated, however, that only \$240, a VCR, a video game unit and a few pills were found.

Return to the referring page.
Las Vegas SUN main page

Questions or problems? [Click here.](#)

All contents copyright 1999 Las Vegas SUN, Inc.

Return to the [referring page](#).

Las Vegas SUN

August 31, 1999

Confession in slayings will be used at trial

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

In an effort to avoid the most damaging evidence against him in a quadruple murder, Terrell Cochise Young took the witness stand to complain that his confessions were the result of coercion and a beating at the hands of police.

But the legal maneuver to have the taped confessions ruled unlawful and kept from surfacing at the 20-year-old defendant's murder trial failed Monday.

District Judge Joseph Pavlikowski ruled that Young knew what he was doing when he gave up his right to remain silent as Metro Police homicide detectives questioned him about his role in the execution-style slaying of four young men a year ago.

Young is the second of three defendants charged in the slayings to stand trial. The first, 19-year-old Sikia Smith, was convicted of first-degree murder earlier this summer and sentenced to life in prison without the possibility of parole. The alleged triggerman, 19-year-old Donte Johnson, is set to face a jury in January.

Young testified at a pretrial hearing Monday that he hadn't understood his constitutional rights and relied on the interpretation from detectives.

He added that he admitted his role only because those lawmen had promised it would lead to a plea bargain that would return him to the streets in 10 or 15 years.

But police and prosecutors have said they made no such deal with the high school dropout with a history of criminal activity.

Although Young is not alleged to be the gunman -- who fired single bullets into the back of the four victims as they lay gagged and bound with duct tape during an organized and systematic robbery -- prosecutors still are seeking the death penalty.

The audio tape recordings, the judge ruled, support the prosecution's position that Young knew what he was doing when he admitted his involvement in the deadly spree on Aug. 14, 1998.

For the second day, Young's family and supporters paraded protest signs in front of the Clark County Courthouse and chanted such slogans as "No justice, no peace." They handed out fliers and lamented the unwillingness of the justice system to deal fairly with a black man who speaks a street dialect.

In response, the parents of some victims wore T-shirts to the courthouse declaring, "Murder in any language is wrong. They murdered my child."

The four victims of the shootings in the house on Terra Linda Avenue, near Tropicana Avenue and Nellis Boulevard, were Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17.

Young's aunt, Marzetta Love, said she and the others are not protesting in hopes that the defendant will be able to escape accountability, but only to ensure that he gets lawyers who will fight for him.

"I feel he should be held accountable for what he did but not by violating his due process rights," Love said.

Young's supporters have been urging Pavlikowski to remove defense lawyers Lew Wolfbrandt and Martin Hastings from the case, alleging they have all but ignored the defendant for the 11 months he has been in jail.

Young called them "unprofessional, ineffective and lazy" lawyers who have failed to visit him in jail, provide him with information about the case or file necessary motions to dismiss or reduce the charges.

"I filed all the motions that I believed had merit," Wolfbrandt responded.

Pavlikowski disagreed a change is warranted and ordered Young's trial to go forward with jury selection Wednesday.

Love said she has hired two other lawyers to defend Young.

But those attorneys, who say they have the ability to communicate with Young, have been denied that opportunity.

Terence Dickinson is not a Nevada lawyer and his associate, Las Vegas lawyer Ben Childs, is not certified under Nevada Supreme Court rules to handle death penalty cases.

Dickinson said a writ on the issue is being prepared for filing in U.S. Federal Court.

While Young initially told police he had no knowledge of the quadruple murder and did not participate, he later changed his story.

In his final statement, Young said the robbery was planned because a fourth man -- who is not yet charged -- had information that the victims had \$6,000 in cash and a large amount of drugs in the home.

Young admitted in his confession that the bandits left with only a couple of hundred dollars, a VCR, a video game unit and a few pills.

Return to the referring page.
Las Vegas SUN main page

Questions or problems? [Click here.](#)

All contents copyright 1999 Las Vegas SUN, Inc.

Return to the [referring page](#).

Las Vegas SUN

August 30, 1999

Second suspect stands trial in multiple slaying

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

The trial of the second of three teenagers charged in the execution slaying of four young men a year ago is set to begin today, and prosecutors are seeking the death penalty although he is not believed to be the shooter.

Prosecutors charge that Terrell Cochise Young, 19, was a principal player in the drug-driven massacre of the men -- Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17 -- who were bound and gagged with duct tape before single bullets were fired into their heads.

Before jury selection begins, however, District Judge Joseph Pavlikowski must rule on a motion by Young to dismiss the murder charges.

Last week the judge refused to delay the trial or replace defense attorneys because of claims by Young and his supporters -- who protested outside the county courthouse before the court session -- that the defendant can't communicate with the lawyers.

The claim is that Young speaks an African-American dialect similar to ebonics, although the lawyers have not complained that there is a comprehension problem.

The first of the three defendants, 19-year-old Sikia Smith, was convicted in June of first-degree murder for his role in the Aug. 14, 1998, incident in a house on Terra Linda Avenue, near Nellis Boulevard and Tropicana Avenue.

While prosecutors had sought the death penalty for him, testimony at the trial indicated he was of marginal intelligence and only involved in searching the house for the large quantity of drugs and \$6,000 in cash that was supposed to be there.

The jury concluded that Smith deserved a life prison term with no chance for parole.

After his apprehension Smith confessed to police, and that statement had made the question of guilt an easy one for the jury to answer. In his confession, he said the story of a cache of drugs and thousands in cash was untrue, and the bandits walked away with only \$240, a videocassette recorder and a few pills.

Young also has given statements to police admitting his involvement in both the planning and implementation of the robbery and murder scheme, and the jury will hear that confession.

Smith stated to police that death was always intended for the four victims because they knew the bandits and might have retaliated had they been allowed to live.

Smith had detailed how, as the trio was preparing to leave, Johnson turned up the volume on a stereo and then stood over each victim and fired shots with a .380-caliber semi-automatic pistol.

The alleged triggerman, 19-year-old Donte Johnson, is to stand trial early next year.

A fourth suspect, who Young and Smith said was the instigator of the robbery and massacre, has not been charged because of reported problems with evidence.

Johnson was the first to be arrested after his fingerprint was found at the murder scene. Police later recovered a pair of his pants with spatters of blood belonging to one of the victims.

Police then tracked down Smith, which led to the charges against Young, although police did not know where to find him.

But Metro Police homicide detectives struck gold when they walked outside their offices on West Sahara Avenue and spotted Young walking by.

Return to the referring page.
Las Vegas SUN main page

Questions or problems? [Click here.](#)

All contents copyright 1999 Las Vegas SUN, Inc.

Return to the referring page.

Las Vegas SUN

July 06, 1999

Life sentence given participant in multiple murders

By Bill Gang

<gang@lasvegassun.com>

LAS VEGAS SUN

The hopes and dreams of four young men bound with duct tape and shot execution-style last August were extinguished along with their lives, prosecutors at Sikia Smith's trial told jurors.

On Friday, after six hours of deliberations, those District Court jurors told Smith, the first defendant tried in those slayings, that he can forget about any hopes or dreams he might have had for his own future.

But the jury spared Smith's life for his role in the quadruple murder of Matthew Mowen, 19, Jeffrey Biddle, 19, Tracey Gorringe, 20, and Peter Talamantez, 17.

The eight-woman, four-man jury decided that a life prison term with no chance for parole was the appropriate punishment for the 19-year-old defendant.

As the four verdicts were read in District Judge Joseph Pavlikowski's courtroom, Smith grimly rubbed his face. At one point his head dropped to the defense table and he slowly shook it from side to side.

There were no cocky displays that were evident on June 25 when he was pronounced guilty of murder by the same jury that decided his punishment.

At that hearing Smith scowled briefly at the families of the victims, then smiled and shrugged at the jurors.

Last week Smith made an obscene gesture to a television camera at the end of one court session.

But Friday his mood was somber. Jail corrections officers quickly clapped him into handcuffs when the hearing was completed and the jurors were told they were free to go home.

Although the trial was completed -- except for the formal sentencing Aug. 26 -- the families of the victims lingered for several minutes in the courtroom.

They were neither jubilant nor distressed at the sentence and commented only that they were pleased one killer's case was completed.

At the same time, they knew there were two more trials to endure.

A second defendant, Terrell Cochise Young, 19, is scheduled to stand trial Aug. 30 in Pavlikowski's courtroom.

The trial for the third defendant and alleged triggerman, 19-year-old Donte Johnson, will be held early next year.

Johnson is alleged to have been one of the planners of the robbery at a home on Terra Linda Avenue.

In a statement to police played during his trial, Smith said victims were killed because the bandits were known to their victims and there was no other way to avoid apprehension.

Smith's role was to ransack the house near Tropicana Avenue and Nellis Boulevard and find \$6,000 in cash and a large quantity of drugs believed to be there. In the end only about \$200 and a few pills were located, according to Smith's confession to police.

While prosecutors argued that Smith deserved the death penalty for participating in the quadruple murder, defense attorneys portrayed the teenager as a feeble-minded follower who made the bad choice of joining his buddies on a deadly robbery.

In addition to the murder counts, Smith has been convicted of robbery, kidnapping and other charges. The sentences on those charges will be determined by the judge at the August sentencing, although they will have no impact unless the law is changed to let the state Pardons Board commute Smith's life prison sentences.

Return to the referring page.
Las Vegas SUN main page

Questions or problems? [Click here.](#)

All contents copyright 1999 Las Vegas SUN, Inc.

Return to the [referring page](#).

Las Vegas SUN

July 02, 1999

Defense in murder trial: Death penalty 'doesn't seem fair'

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

A District Court jury continued its quest today to decide whether convicted killer Sikia Smith is "the worst of the worst" and deserving of the death penalty or just a feeble-minded follower who made the bad choice of joining his buddies on a deadly robbery.

The jury already has convicted Smith of murder, robbery, kidnapping and other charges for his role in the ill-fated holdup nearly a year ago that ended with four young men being bound with duct tape and executed with bullets in the backs of their heads.

Jurors deliberated about two hours Thursday after closing arguments in the penalty hearing and returned today to decide whether the 19-year-old will live or die.

Although Smith on Wednesday heard the parents of the victims tell of the horror they have endured since their children died, he declined at the last day of the penalty hearing Thursday to apologize or show any remorse for his part in causing their grief.

Convicted killers routinely will give statements at their penalty hearings asking for leniency and apologizing for their acts. At a minimum, murderers usually express sorrow for the suffering their acts have caused, even if they maintain their innocence.

But Smith just continued to sit in detached isolation at the end of the defense table, although he fidgeted more than usual Thursday as prosecutors urged the jury to hand down the death penalty.

The only emotion Smith has shown in court was a brief scowl at the families of the victims and a smile and shrug to the jury when the guilty verdicts were read last week.

While Smith was alleged to have only been involved in the ransacking of the home on Terra Linda Avenue and did not carry a gun, Deputy District Attorney Robert Daskas said he was a key piece in the deadly puzzle.

"But for Smith's willingness to go to the house that day, all four boys would be alive," Daskas told the jury, arguing that without the teenager, the plan could not have been executed.

Testimony at the trial indicated that Smith and three other men believed there was \$6,000 in cash and a quantity of drugs in the home shared by four young men near Tropicana Avenue and Nellis Boulevard.

But the bandits found only about \$200 and a few pills.

A second defendant, Terrell Cochise Young, 19, is scheduled to stand trial Aug. 30 for his part. The alleged triggerman, 19-year-old Donte Johnson, is set to face a jury in January.

A fourth man alleged in statements to police by Smith and Young to have been the mastermind of the deadly holdup has not yet been charged.

As options to the death penalty, the jury in District Judge Joseph Pavlikowski's courtroom can sentence Smith to life in prison without the possibility of parole or 100 years or life in prison with parole possible after 40 years.

Defense attorney Peter Christiansen Jr. told the jury Thursday that even if the lightest sentence is given it likely would mean Smith would die in prison because the judge has the option of making Smith serve his four murder sentences one after the other.

But Daskas argued that even a life sentence with no possibility of parole "is not punishment for someone who has committed four murders."

"The worst possible crime deserves the worst possible punishment," he said.

Christiansen recalled the emotional testimony from the victims' families and warned the jury that if Smith is executed, the defendant's mother "would get to tell the same stories to her friends."

"It's not the same story," Cynthia Mowen whispered in bitter response from her seat in the courtroom where she and her husband have spent most of the last two weeks. They are the parents of 19-year-old Matthew Mowen, who was killed along with Jeffrey Biddle, 19, Tracey Gorringer, 20, and Peter Talamantez, 17.

Christiansen and his co-counsel, Tony Sgro, repeatedly reminded the jury that Smith never fired a shot and shouldn't be punished with the death penalty as if he had.

"Is Sikia the worst of the worst or did he just hang around with people who are the worst of the worst?" Sgro asked.

Deputy District Attorney Gary Guymon responded that "the worst of the worst found each other and carried out the worst of the worst crimes."

"This case was the worst of the worst in the lives of the four boys and their families," Guymon continued, urging the jury to show no mercy.

But Sgro said, "It doesn't seem fair to take a borderline mentally retarded individual who never fired a shot at anyone and kill him."

Guymon responded that "if there is meaning to the lives of the victims, something more than life without the possibility of parole is appropriate."

Return to the referring page.
Las Vegas SUN main page

Questions or problems? [Click here.](#)

All contents copyright 1999 Las Vegas SUN, Inc.

Return to the [referring page](#).

Las Vegas SUN

July 01, 1999

Families of murder victims have jurors in tears

Sentencing phase of Smith trial nears end

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

Convicted murderer Sikia Smith sported a new hairstyle during his penalty hearing Wednesday, but he still exhibited the same detached demeanor he maintained during his trial as he listened to the parents of four young men killed execution-style tell of the devastating aftermath.

Tears streamed down the faces of many jurors whose responsibility now is to determine whether the 19-year-old defendant should be given the death sentence for his role in the quadruple murder or be sent to prison for life.

Some family members sobbed openly during the emotional testimony in District Judge Joseph Pavlikowski's courtroom.

Smith, who has shown little emotion and no remorse for the slayings, was scheduled to give a statement to the jury today asking for leniency and expressing remorse.

Closing arguments from defense and prosecution attorneys were to follow. Then it will be up to the jurors to decide the price Smith will pay for his role in the slayings of Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17, who were bound with duct tape during a robbery and killed with bullets in the backs of their heads.

The four were described by their parents as successful, mainstream young men whose lives were just beginning to blossom, despite occasional mistakes expected of men that age.

The mistakes involved documented drug use that put the victims in contact with Smith, and Donte Johnson and Terrell Cochise Young, who are also charged in their murder, for what was believed to be \$6,000 in cash and a quantity of drugs in their home. Only about \$200 and a few pills were found.

The bodies of the four victims were found the day after the Aug. 14 slayings at 4825 Terra Linda Ave., near Tropicana Avenue and Nellis Boulevard.

Cynthia Mowen, mother of Matthew Mowen, fought back tears as she told how she starts her day by visiting her son's grave to tell him how much she misses him.

She explained the guilt she feels because her son cut short a tour of the country to return to Las Vegas and care for her after cancer surgery. She said that had she not told him of her impending surgery, he would have stayed away and would be alive today.

"This is so tough," Cynthia Mowen said. "There is nothing worse than losing a child and then planning the funeral."

The victim's father, David Mowen, told how his son had been stricken with a heart problem and missed much of his senior year in high school but made up the work through accelerated classes and correspondence schools and managed to graduate on time to the amazement of everyone around him.

David Mowen said his 16-year-old daughter is so devastated by the death that she was unable to attend any of the court hearings for Smith, who is the first of three defendants arrested in the quadruple murder to stand trial.

"He was probably her best friend. He was always there for her," the father lamented. "Now he's not.

"It's a challenge going on with life. It's on my mind 24 hours a day."

Albert Talamantez smiled as he remembered his teenage son, Peter, but told the jury the loss "is something you can't fathom."

Marie Biddle said the murder of her son, Jeffrey, has so devastated the young man's father that she still finds him "lying on the bathroom floor crying his heart out."

The woman said her son is buried in Idaho, which he liked better than Las Vegas and where his childhood friends can visit the grave site daily.

Sandy Viau said she lost her son, Tracey Gorringer, in the murder but was fortunate that another son, Nick, who was the fourth roommate in the home, was out of town at the time of the murders.

She noted, however, that while Nick Gorringer escaped the carnage, he was devastated by losing his brother and two best friends.

Absent from the witness stand Wednesday was Smith's mother, who made a brief appearance during the trial to tell how she had been a prostitute and crack cocaine user who abandoned her son for years.

Defense attorneys had wanted her to again take the witness stand and plead for the life of her son, but she declined.

The defense case focused on psychological testimony reinforcing the contention that Smith has a low intelligence level and was only a follower in the bloody rampage.

Las Vegas psychologist Dr. David Schmidt described Smith as having the intelligence of a 7- or 8-year-old but still knew right from wrong and was responsible for his actions, although he often made bad decisions.

During opening statements attorney Tony Sgro reminded the jury that there was no testimony Smith ever had a weapon.

As part of the prosecution's bid for the death penalty, testimony was presented that Smith participated in a shooting at a Boulder Highway motel with the two other defendants in the quadruple murder case.

The jury listened to a tape recorded statement Smith gave to police detailing how he, Johnson and Young went to the Super 8 Motel on Aug. 11 in search of a man who owed Young money.

Smith stated that when the man was found in a hallway, Young asked the man "Why did you do that to me," and then opened fire with a .38-caliber pistol.

Smith admitted that he knew the intent of the trip was to kill the man, who escaped without injury.

Metro Homicide Detective James Buczek said no charges were pursued in the shooting because the victim refused to press charges.

Return to the referring page.
Las Vegas SUN main page

Families testify about loss at trial's penalty phase



SIKIA SMITH
Convicted murderer

By Peter O'Connell
Review-Journal

As convicted murderer Sikia Smith listened to his victims' families describe their loss Wednesday, the contrast could not have been greater.

Mental health experts have testified Smith grew up in a chaotic environment, the son of a crack addict and a prison inmate. On Wednesday, defense attorney Tony Sgro told jurors they would not hear from the defendant's mother during the penalty phase of the trial.

"She's too busy to come back to ask you to spare her son's life," Sgro said. Smith, who attorneys say is mildly retarded, was just 18 when the killings occurred and he was not accused of personally shooting anyone.

The families of the four victims have attended court for more than two weeks, listening to testimony of how the four young men were bound with duct tape, placed on the floor and shot in

the back of the head. The robbery at 4825 Terra Linda Ave. netted the thieves less than \$300, a VCR and a Nintendo.

On Friday, the victims' families were present as the jury foreman read the verdict in which Smith, 19, was found guilty of four counts of first-degree murder.

On Wednesday, they were present as members of each family told the jury of the impact the Aug. 14 slaying had on their lives. Smith, his previously puffy hair pressed into rows since Friday, listened to the testimony while only rarely looking at the witnesses.

Marie Biddle, mother of 19-year-old Jeffrey Biddle, recalled the time her son cooked shrimp scampi for her birthday, and how the family buried him in his beloved Idaho.

"Last winter, when it started to snow, his friends would go and shovel the snow off his grave," she said. "I just feel like I have a

hole right through me."

Sandra Viau spoke of how her son, 20-year-old Tracey Gorringer, had dimples when he smiled, and how he served as a peace-maker between his siblings.

More ominously, she said another of her sons lived in the Terra Linda home. He happened to be out of town the night his brother and roommates were killed.

"He not only lost his brother, he lost his two best friends. That devastated his life," Viau said.

Albert Talamantez, father of 17-year-old Peter Talamantez, who was visiting his friends' home the night of the slayings, said he wishes he could speak to the son who carried his grandfather's name. "I love him, and I miss him," Talamantez said.

Cindy Mowen, mother of 19-year-old Matthew Mowen, said her husband used to offer her son so much advice the boy took to calling his father "The Professor."

"It has destroyed my husband.

He is aging as I watch him," she said.

David Mowen told the jury an illness in his senior year prevented his son from attending school until February.

"Dad, I'm going to graduate on time," his son told him, though his father warned it was impossible.

David Mowen said his son threw himself into school work and graduated on time. He showed the jury a picture of his son at graduation.

"That's what kind of a person he was," the father said.

Jurors return to the courtroom of District Judge Joseph Pavlikowski this morning. Prosecutors are seeking the death penalty against Smith, who was one of three men charged in the slayings.

Terrell Young and the accused triggerman, Donte Johnson, both 19, await separate capital murder trials in District Court.

Return to the [referring page](#).

Las Vegas SUN

June 30, 1999

Sentencing hearing in quad murders prelude to co-defendants' trial

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

A week after four young men were killed execution-style during a robbery, the three defendants charged in the murders were involved in a motel shooting that sent a bullet whizzing through the clothing of one intended victim, prosecutors have alleged.

Testimony about the Aug. 11 incident will be among the evidence heard beginning today during the penalty hearing of 19-year-old Sikia Smith.

The District Court jury convicted Smith of four counts of first-degree murder last week and now must decide whether his punishment should be death by lethal injection or life in prison with or without the possibility of parole.

Testimony about the shooting at the Super 8 Motel will provide a preview to the evidence that is expected to be presented at the trials of the two other defendants -- Terrell Cochise Young and Donte Johnson, both 19.

Johnson's July trial for the murder of Jeffrey Biddle, 19, Tracey Gorringe, 20, Matthew Mowen, 19, and Peter Talamantez, 17, was postponed Tuesday until Jan. 10. Lawyers from the Clark County special public defender's office complained they haven't had time to prepare defenses for new the allegations.

Young is scheduled to stand trial Aug. 30. All three defendants face the possibility of the death penalty if convicted of first-degree murder.

Johnson and Young also are alleged to have been involved in another slaying on Aug. 5 at the Thunderbird hotel on Las Vegas Boulevard near Charleston Boulevard.

That case -- the strangulation of Darnell Johnson -- has not been approved for prosecution by the district attorney's office, according to Deputy District Attorney Eric Jorgenson.

Deputy District Attorney Robert Daskas said Young and Johnson also are alleged to have been involved in an incident involving a stolen car and a gun drawn on a Nevada Highway Patrol trooper, who stopped the vehicle on U.S. 95 on Aug. 17, the night before Johnson's arrest in the quadruple murder.

The gunmen, who Daskas said were identified as Young and Johnson by the trooper after their arrests in the quadruple murder, escaped on foot.

Additionally, Johnson is facing an Aug. 26 preliminary hearing on an attempted murder charge in the shooting of a paraplegic on Fremont Street.

Although some incidents may not be revealed at Young's and Johnson's trials, the information likely would surface at penalty hearings should they be convicted of first-degree murder.

While Young gave statements to homicide detectives implicating himself in the murders, Johnson declined to cooperate.

Prosecutors, however, have said that blood belonging to one of the murder victims was found on pants belonging to Johnson, and a fingerprint was found at the house on Terra Linda Avenue near Tropicana Avenue and Nellis Boulevard where the four died. That fingerprint led police to the three defendants.

Return to the referring page.
Las Vegas SUN main page

Questions or problems? [Click here.](#)

All contents copyright 1999 Las Vegas SUN, Inc.

[Return to the referring page.](#)

[Las Vegas SUN](#)

June 25, 1999

Sikia Smith convicted in four slayings

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

It took a District Court jury just three hours of deliberations to convict 19-year-old Sikia Smith of first-degree murder for his part in the execution slayings of four young men.

There actually was never a question that Smith was involved in the carefully orchestrated robbery in August that was supposed to net about \$6,000 and a cache of drugs.

Smith admitted his involvement in a statement to Metro Police homicide detectives several days later.

The question for the jury in District Judge Joseph Pavlikowski's courtroom was whether Smith was mentally impaired to the point where he did not understand right from wrong or the consequences of his actions.

The jury today said Smith knew what he was doing.

The same jury will meet next week for a penalty hearing to determine if Smith should be executed by lethal injection or sent to prison for life with or without the possibility of parole.

The defense had argued that Smith's mental limitations meant he could not be held accountable for the murders, but also offered jurors something of a compromise by suggesting a second-degree murder verdict might be appropriate.

Again the jury said, No.

During closing arguments Thursday, Deputy District Attorney Gary Guymon pointed the jury to Smith's tape-recorded confession in which he admitted he and others involved in the case plotted the holdup and conceded that the victims would have to be killed because they knew the bandits.

The four victims were bound with duct tape and laid out on the floor of the home near Nellis Boulevard and Tropicana Avenue while the bandits ransacked the place looking for cash and drugs.

In the end, only about \$200 in cash and a few pills were found.

But before the robbers left, a bullet was fired into the head of each victim -- Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17 -- by the triggerman Smith identified as 19-year-old Donte Johnson.

He and 19-year-old Terrell Cochise Young are awaiting their own murder trials later this year. Prosecutors are seeking the death penalty against each.

[Return to the referring page.](#)

[Las Vegas SUN main page](#)

Questions or problems? [Click here.](#)


For 100% FREE Internet Access...
click the lighted ball!

NEWS
SPORTS
WEATHER
OPINION
BUSINESS
CLASSIFIEDS
SUN LIFE


STORIES: ARCHIVE
[back to SEARCH RESULTS](#)
[Printable text version](#) | [Mail this to a friend](#)

Search terms highlighted: Donte Johnson

June 24, 1999

Judge rejects mistrial in slayings case

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

Closing arguments were scheduled for today in the trial of Sikia Smith on charges he participated in the execution-style murders of four young men.

District Judge Joseph Pavlikowski rejected a motion for a mistrial over the testimony from a Las Vegas psychologist who was the last witness in the two-week trial.

Dr. Louis Mortillaro testified as a prosecution witness against Smith. He has also been retained as a defense expert for 19-year-old Donte Johnson, the alleged triggerman and one of two other defendants in the high-profile murder case.

Because of the apparent conflict, defense attorneys Peter Christiansen Jr. and Tony Sgro asked Pavlikowski to declare a mistrial or at least order that Mortillaro's testimony be removed from the record.

If that is the case, the jury would be instructed to disregard the psychologist's conclusions and prosecutors would be prohibited from mentioning him in their closing arguments.

Sgro argued this morning that had he known Mortillaro was also working for one of the other defendants in the case, he could have raised that issue to test the psychologist's credibility or tried to keep the psychologist from testifying at all. Since he couldn't do that, he believes there should be a mistrial.

Deputy District Attorney Gary Guymon said that whether Mortillaro was working both sides of the case is immaterial and irrelevant. The judge agreed.

Credit Problems?

 Obtain a no-deposit
VISA credit card.

VISA

OK

priceline.com

 Airline Tickets
at Great Prices

 Name Your Own Price
and Save!

 Enter City GO

The judge was told that while Donte Johnson was tested by a staff member of Mortillaro's, the psychologist himself has not seen the test results nor interviewed Johnson and had no personal information that would prove to be an actual conflict. Mortillaro interviewed Smith earlier this week at the Clark County Detention Center.

Mortillaro disputed the defense contention that Smith, 19, is mentally handicapped and was manipulated into participating by those who planned the robbery and murder.

The psychologist testified that from his examination of Smith in the Clark County Detention Center, he concluded the defendant knew right from wrong and understood the consequences of his behavior.

He added that Smith's IQ likely was higher than the 73 established by another psychologist, because standard IQ tests tend to be biased against blacks.

Although Smith is not alleged to have actually shot the victims, prosecutors are seeking the death penalty for him.

Johnson, 19, is charged with being the one who fired bullets into the heads of four duct-taped men who had been robbed of \$240 on Aug. 14. He is scheduled to stand trial later this year and faces the possibility of the death penalty if convicted, as does a third defendant, 19-year-old Terrell Cochise Young. Young's trial was postponed Wednesday until Aug. 30.

The victims have been identified as Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17.

Statements to police by Smith and Young after their arrests indicated they believed that perhaps \$6,000 in cash and a quantity of drugs were in the house on Terra Linda Avenue, near Nellis Boulevard and Tropicana Avenue.

Although a fourth man was alleged to have been involved, no other arrest has been made.

In their statements to Metro homicide detectives, Smith and Young indicated that the fourth man had provided the information that led to the ill-fated robbery.

[Printable text version](#) | [Mail this to a friend](#)

Search terms highlighted: Donte Johnson

Mental health experts offer different

Wednesday, June 23, 1999/Las Vegas Review-Journal/3B

meanings of 'idiot'

By Peter O'Connell
Review-Journal

Mental health experts for the prosecution and the defense offered different answers Tuesday when asked whether capital murder defendant Siktia Smith is an "idiot."

Dr. Tom Bittker, a Reno psychiatrist testifying for the prosecution, said the term no longer is used in the medical field. Years ago, it referred to a person with an IQ below 40. The category was one step below "moron."

The term "idiot" still has a legal application. Criteria of this

legal definition include possession of a weak and feeble mind and an inability to distinguish between right and wrong. The condition must be present from birth.

Psychologist Marty Sapp, a member of the faculty at the University of Wisconsin at Milwaukee, told jurors Smith meets this definition.

Testifying for the defense, Sapp did not dispute a prior witness who said Smith has an IQ of 73, which places him in the category of borderline mentally retarded.

But Sapp said Smith lacks the capacity to deal in abstraction. The defendant exists entirely in the present, and his thoughts and actions derive from his desire to experience pleasure.

"Essentially, at really any cost," Sapp testified.

He said these mental maladies are a life-long affliction. They would still be present had someone spent \$20 million on Smith's education starting when the defendant was about 9 years old, Sapp said.

"It wouldn't essentially change his mental abilities," Sapp said.

Bittker, a former director of the Arizona Division of Mental Services, said Smith does not meet the legal definition of an idiot.

He said the defendant understands notions of morality. Asked to define "betrayal," Smith replied, "If you make a commitment, and you break a promise."

Bittker said Smith functions at a level far beyond that which a true idiot could ever attain. "He knows right from wrong," he said.

Smith, 19, is the first of three men to be tried in the Aug. 14

slayings of Jeffrey Biddle, 19; Tracey Corrige, 20; Matthew Mowen, 19; and Peter Talamantez, 17.

Each victim was bound with duct tape and shot once in the back of the head at 4825 Terra Linda Ave. The robbers made off with less than \$300 and a VCR.

Terrell Cochise Young and Donte Johnson, both 19, await separate capital murder trials in District Court. Johnson is accused of pulling the trigger.

Bittker said he asked Smith how it happened that the victims were killed.

"I guess things just started going wrong," he said Smith replied.

The psychiatrist said he asked Smith how he felt when the killings occurred.

"I didn't feel nothing. It was already done," he said Smith replied.

Defense witnesses testified that Smith was raised in a chaotic environment, the son of a crack addict and a prison inmate.

The trial is scheduled to resume today before District Judge Joseph Pavlikowski.

Indy and David Mowen hug after a jury found Sikia Smith guilty in the slaying of their son, Matthew, 19. Also killed in the Aug. 14 robbery were Jeffrey Biddle, 19, charged in the slayings.



Page: 1255

Robber also cognizant of slayings, jury rules

□ In spite of his reduced mental capacity, a man who knew people would die, an LV jury determines.

By Peter O'Connell
Review-Journal

Sikia Smith was a knowing and willing participant in an August robbery in which four young men were bound with tape and shot in the back of the head, a jury decided Friday.

It was largely uncontested that Smith participated in the robbery and knew those present would be killed.

But defense attorneys argued he was not guilty of the most serious charges against him because his limited mental capacity prevented him from forming the requisite criminal intent.

They sought to sway the jury toward a second-degree murder conviction, which would not carry a potential death sentence.

Prosecutors urged jurors to set aside the "psychobabble" and focus on Smith's conduct. They argued that justice demanded a first-degree murder conviction.

"Second-degree murder is a compromise, and there was no compromise on the night in

question," Deputy District Attorney Gary Guymon told the jury Thursday.

After about three hours of deliberation Thursday afternoon and Friday morning, jurors returned with a verdict. The jury foreman read aloud the verdict forms, one after another, indicating Smith, 19, was guilty of 10 crimes ranging from kidnapping to robbery.

When the foreman prepared to read the verdict on the first murder count, several members of the victims' families tensed or leaned forward.

Upon hearing that Smith was convicted of the slayings, please see CONVICTED/2B

6/26/99

Closing arguments in murder trial focus on man's state of mind

□ The attorneys for Sikia Smith say he lacks mental capacity to form criminal intent.

By Peter O'Connell
Review-Journal

Closing arguments in the capital murder trial of Sikia Smith on Thursday sounded more than a little bit like Psychology 101.

Discussing the evidence in the trial that began June 16, attorneys for the prosecution and the defense reviewed at length the testimony of mental health experts.

Defense attorney Pete Christiansen told jurors the case boils down to a simple question: Should a mentally retarded, natural-born follower be held responsible for the actions of others?

Christiansen and fellow defense attorney Tony Sgro recited the mental maladies with which they say their client, charged in an Aug. 14 quadruple homicide, is afflicted.

They said he is mildly

retarded and evidences organic brain damage. His IQ of 73 is classified as borderline retarded.

In addition to a learning disability, Smith suffers from a disorder that prevents him from forming close relationships with others. This is the natural result of a child growing up the son of a crack addict and a prison inmate, they argued.

The defense attorneys said their client is not guilty of the most serious charges against him because he lacks the mental capacity to form the necessary criminal intent.

Deputy District Attorney Robert Daskas termed much of the expert testimony "psychobabble."

He said Smith knew from the start he couldn't mount a defense on the facts of the case.

In his taped statement to police, Smith said he knew that people were going to die when he and two friends went

Please see TRIAL/4B

4B/Las Vegas Review-Journal/Friday, June 25, 1999

Trial

From 1B

looking for drugs and money at 4825 Terra Linda Ave.

He said each of the four young men was bound with duct tape, placed face down on the floor and executed with a single shot to the back of the head. Killed in the Aug. 14 robbery were Jeffrey Bidle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17.

The defendant's girlfriend, a reluctant witness, admitted Smith left empty-handed that night and came back the following day with a VCR. When authorities located the VCR, they found Smith's palm print on it.

And because the killings occurred during a robbery in which Smith participated, he is just as guilty as the one who pulled the trigger, Daskas said.

Daskas said Smith realized a psychological defense was his only hope.

The robbers made off with less than \$300, a VCR and a Nintendo. Two other men — Terrell Young and the accused triggerman, Dante Johnson, both 19 — await separate capital murder trials in District Court.

Jurors deliberated about 90 minutes without arriving at a verdict Thursday afternoon. They



SIKIA SMITH
Trial defendant

are to resume their deliberations this morning.

Prior to closing arguments Thursday afternoon, District Judge Joseph Pavlikowski denied a defense request for a mistrial.

Defense attorneys had objected to the testimony of psychologist Louis Mortillaro, who on Wednesday testified for the prosecution that Smith is not mentally retarded and does not meet the legal definition of an "idiot."

Sgro said defense attorneys learned after Mortillaro testified that he has been retained to testify on behalf of Johnson.

Convicted

From 18

found guilty of first-degree murder with use of a deadly weapon, some nodded in affirmation while others wept and patted their neighbor's hand.

Afterward, David and Cindy Mowen stood and hugged long after most others had filed out of the courtroom.

"It won't bring him back," David Mowen told his wife, referring to their son, 19-year-old Matthew Mowen, among those killed in the Aug. 14 robbery.

District Judge Joseph Pavlikowski told jurors to return to court at 9 a.m. Wednesday, when they will hear additional testimony and argument before deciding whether Smith should die for his crimes.

Defense attorneys said they likely will present additional evidence of Smith's mental impairments and his tragic life experiences. Smith, who is borderline mentally retarded, was raised by a crack addict mother while his father was in prison.

Prosecutors will present evidence that Smith was a member of a Los Angeles street gang, and that he had prior brushes with the law. Also, the survivors of the victims will describe their loss.

"The jury will now get to hear from the victims' parents, family and friends," Guymon said.

Smith was one of three men charged in the slayings at 4825 Terra Linda Ave. Terrell Young and the accused triggerman, Donte Johnson, both 19, await separate capital murder trials in District Court.

Authorities said the three men hoped to find money and drugs at the house. After searching for more than an hour, they left with less than \$300, a VCR and a Nintendo machine.

In his statement to police, Smith said each of the four victims was bound with duct tape, placed face down on the floor and executed with a single shot to the back of the head.

Killed in the robbery were Mowen, Jeffrey Biddle, 19, Tracey Gorringer, 20, and Peter Talamantez, 17.

Attorneys argue over expert witness

6/24/99



SIKIA SMITH
Capital murder defendant

By Peter O'Connell
Review-Journal

A district judge this morning will decide whether the case of capital murder defendant Sikia Smith will go to a jury.

Closing arguments in the case are scheduled to begin this morning, but District Judge Joseph Pavlikowski first will address the defense attorneys' objections to a prosecution witness.

Psychologist Louis Mortillaro testified Wednesday that Smith is not mentally retarded and does not meet the legal definition of an "idiot." Portions of his testimony contradicted defense witnesses.

"It was extremely damaging," attorney Tony Sgro told the judge.

Sgro said defense attorneys learned after Mortillaro testified that he has been retained to

represent Donle Johnson, one of their clients' co-defendants in the August slaying of four young men.

Johnson and Terrell Young, both 19, await separate capital murder trials in District Court later this year.

Johnson is accused of being the trigger man in the slayings of Jeffrey Middle, 19, Tracey Gorringe, 20, Matthew Mowen, 19, and Peter Talamantez, 17.

Each victim was bound with duct tape and shot once in the back of the head at 4825 Terra Linda Ave. The robbers made off with less than \$380 and a VCR.

Because he has been retained by Johnson's defense team, Mortillaro has an inherent bias against Smith, Sgro argued.

Defense attorneys are seeking a mistrial or an order barring jurors from considering Mortillaro's

testimony. Deputy District Attorney Gary Guymon told Pavlikowski that prosecutors were forced to scramble to find a psychologist who could testify in rebuttal of a surprise defense witness.

Guymon said he met Mortillaro in a parking lot early Wednesday morning for less than two minutes to supply him with relevant reports.

Guymon said that during this brief meeting, he learned Mortillaro had been retained by the Special Public Defender's Office, which represents Johnson.

Guymon said the psychologist told him he had conducted only two tests on Johnson. The prosecutor said he told the witness he did not want to discuss Johnson's case with him.

Pavlikowski ordered prosecutors to have Mortillaro present in court this morning.

[Return to the referring page.](#)

Las Vegas SUN

June 18, 1999

Courthouse security increased after slaying suspects threatened

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

There has been a heightened state of security at the Clark County Courthouse since authorities learned that a friend of the victims in a quadruple murder case wanted to avenge the killings.

Assistant District Court Administrator Rick Loop said that police in Idaho were informed that a 22-year-old man made threats against Sikia Smith and two other defendants in the murder case and was headed for Las Vegas in a stolen Chevrolet.

A picture of the 5-foot-7, blue-eyed, blond-haired man has been distributed to bailiffs and security personnel at the courthouse, Loop said.

"We're ready if he comes here looking for trouble," Loop said.

But he added that the man's criminal past, which involves alcohol and drug problems and a few theft-related counts, does not include violence.

"I suspect that if he comes, he will see our scanning equipment and not bother," Loop said, referring to the metal detectors and X-ray equipment that prevents weapons from being carried into the courthouse.

Since prisoners housed in the Clark County Detention Center travel to and from the courthouse through an underground tunnel, access to the three purported targets outside the courthouse would be impossible.

If the man actually shows up and isn't driving a stolen car or carrying weapons, Loop said, he would be permitted into the courthouse like any other citizen.

Smith's trial over his alleged role in the execution-style slayings of four men during a well-organized robbery in August is expected to conclude next week in District Judge Joseph Pavlikowski's courtroom.

The trial of the second defendant, Terrell Cochise Young, 19, would then begin. The trial of the alleged triggerman, Donte Johnson, will be later this year.

[Return to the referring page.](#)

[Las Vegas SUN main page](#)

Questions or problems? [Click here.](#)

All contents copyright 1999 Las Vegas SUN, Inc.

Return to the [referring page](#).

Las Vegas SUN

June 18, 1999

Jury hears tape of suspect's statement to police

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

A District Court jury that must decide Sikia Smith's fate over the execution slayings of four young men heard the defendant almost casually admit he was part of the deadly plot.

Smith, 19, didn't take the witness stand but his unemotional voice, from a tape-recorded statement he gave to police, was heard by the jury Thursday as part of the prosecution case.

As the tape recording was played, Smith sat quietly in District Judge Joseph Pavlikowski's courtroom.

In the statement, Smith told how he and three other men planned the assault on a home where there was supposed to be about \$6,000 in cash and a quantity of drugs, although few drugs and only about \$200 was found.

Smith admitted that as the plans were finalized it was understood that everyone in the house would have to be killed.

While he named four conspirators, including himself, only the three men who are alleged to have participated in the fatal invasion have been charged. The fourth, a man Smith said he knew only as "Todd," had directed the raid but was not present.

Police and prosecutors have indicated that the case is not closed and a fourth arrest is still a possibility.

Metro Homicide Detective Thomas Thowsen asked Smith who first brought up the subject of multiple murders and was told it was Todd.

"He said that if we were to go over here and do what we're gonna do, that they would have to be killed because ... the guys knew, you know, where he lived and everything," Smith explained in his statement.

"They knew Donte, too," Smith added, referring to 19-year-old Donte Johnson, who is alleged to have fired single bullets into the heads of the four victims as they lay on the floor.

In his statement, Smith said he, Johnson and 19-year-old Terrell Cochise Young drove to the house on Terra Linda Avenue, near Nellis Boulevard and Tropicana Avenue, and pulled their guns on a young man who was watering the front lawn.

They took him inside where a second man was sitting in a chair, and Johnson held a pistol on them while Young bound them with duct tape. Smith began searching for drugs and cash, the statement said.

Young joined in the search, but Smith said, "We didn't find anything. Red found about two hundred and something dollars and that was it."

Eventually two other men came to the house and they also were laid on the floor and duct tape was

wrapped around their wrists and ankles.

Homicide Detective Jim Buczek asked Smith what happened when the unfruitful search was completed and it was time to leave.

He replied that Johnson turned up the stereo "I guess to kill the sound of the gunfire ... and Donte, the victim in the (dining room) he shot, he shot him ... and then he shot the other three victims (in the living room)."

Smith said that none of the four resisted the attack or spoke before they were executed.

Smith said that when the trio returned to Todd's home almost empty-handed and detailed the murders, Todd was angry because the crack cocaine he believed was in the house had not been found.

Thowsen asked if Todd said anything about the murders and Smith replied simply, "No."

If Smith is convicted of first-degree murder for the deaths of the four victims -- Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19 and Peter Salamantez, 17 -- the same jury will have to decide if the appropriate sentence is life in prison with or without the possibility of parole or death by lethal injection.

Although Deputy District Attorney Gary Guymon said during opening statements Wednesday that a VCR also was stolen in the robbery and was found at Todd's house with Smith's palm print on it, Smith denied in his statement that anything other than cash was stolen.

Return to the referring page.

Las Vegas SUN main page

Questions or problems? Click here.

All contents copyright 1999 Las Vegas SUN, Inc.

Return to the [referring page](#).

Las Vegas SUN

June 17, 1999

Friend of victims describes crime scene

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

A friend of four young men who were bound with duct tape and executed with bullets to the head told the jury at Sikia Smith's murder trial of discovering the grisly scene after the Aug. 14 massacre.

Justin Perkins, his voice cracking with emotion, told of opening the door of his friends' home more than half a day after the shooting to see their bodies lying in pools of blood. Perkins said he called their names and vainly looked for signs of life.

He recalled for the jury in District Judge Joseph Pavlikowski's courtroom how the men's puppies scampered outside, leaving red tracks with their blood-soaked feet.

When paramedics arrived Perkins said they entered the home on Terra Linda Avenue, near Nellis Boulevard and Tropicana Avenue, but quickly retreated.

Perkins said he demanded to know why they weren't helping the four victims -- Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17 -- but was told simply, "They're dead."

Perkins was the first witness at the trial of the first of three defendants charged in the murders. All are facing the possibility of the death penalty, although prosecutors have said that only 19-year-old Donte Johnson fired the fatal bullets.

Deputy District Attorney Gary Guymon told the jury during opening statements that Smith, Johnson and 19-year-old Terrell Cochise Young were equally responsible for the execution-style slayings that were the planned conclusion to a well-orchestrated robbery.

Guymon said the plan clicked along with near military precision, with Young holding a gun on the men while Johnson bound them with tape and Smith ransacked the home looking for \$6,000 in cash and a cache of drugs that they believed were there.

But the promise of "an easy score" based on the boasting of one of the eventual victims wasn't fulfilled. The killers left with about \$240, a VCR and perhaps a video game system, Guymon said.

Smith's palm print was found on the VCR that was recovered when Metro Police conducted a raid a few days later on the home on Everman Drive, where Johnson was living.

Guymon told jurors a satchel holding guns and duct tape was recovered from the home, along with a pair of black pants with splatters of blood belonging to one of the victims.

The prosecution's case against Smith, 19, centers around the confession he gave to police after his September arrest, detailing the conspiracy and the murders.

The defense in the case, according to attorney Tony Sgro, is that Smith is an "idiot."

Not an "idiot" in the common vernacular, Sgro noted, but in the clinical psychological sense.

He described Smith as a "mentally retarded -- foolish follower" manipulated by Johnson, whom he described as "evil," into joining the team on the deadly quest.

Sgro told the jury that Smith's father was never around because he had been incarcerated for murder and his mother was a crack addict who turned over the raising of the defendant to his grandmother.

"He is weak and feeble-minded and can't distinguish right from wrong," Sgro said. "And if he does, he can't resist."

Guymon countered that while Smith "may be mentally retarded, he knew right from wrong."

Metro Homicide Detective Thomas Thowsen testified that when he interviewed Smith and helped obtain the confession he saw "nothing to indicate he was retarded."

Deputy District Attorney Robert Daskas said he expects the state to rest its case today after the jury listens to Smith's confession.

Guymon said that in the confession Smith admitted he and the others didn't wear masks because "they each knew the ultimate outcome -- that they were going to kill these kids."

Return to the referring page.
Las Vegas SUN main page

Questions or problems? [Click here.](#)

All contents copyright 1999 Las Vegas SUN, Inc.

6/17/99



Gary Thompson/Review-Journal

Defendant Sikia Smith listens to opening statements Wednesday in his capital murder trial in District Court. He is one of three men charged in a quadruple homicide.

Mental ability of suspect at issue

□ A defense attorney says his client, accused in an August quadruple slaying, is a mildly retarded follower.

By Peter O'Connell
Review-Journal

A defense attorney did not deny Wednesday that capital murder defendant Sikia Smith participated in the August robbery in which four young men were bound and executed.

Instead, attorney Tony Sgro told jurors the case will turn on psychological evidence regarding his client's mental abilities.

He asked jurors to consider whether Smith had the ability to formulate an intent to commit these crimes and whether Smith knew right from wrong.

Sgro said Smith is mildly retarded, evidences brain damage dating from birth, suffers from attention-deficit disorder and used PCP on the night of the slayings. He said a psychologist will testify that Smith belongs to a class of people known as "idiots."

Please see TRIAL/2B

Trial

From 18

"This case is about an individual who is a foolish follower," said Sgro, who never explicitly acknowledged his client participated in the fatal robbery.

Deputy District Attorney Gary Guymon spent little of his opening statement on the mental capacities of the 18-year-old defendant.

He allowed that Smith may well be mildly retarded. But he said Smith was intelligent enough to converse meaningfully with officers during his lengthy confession.

"He knew right from wrong," Guymon said.

The prosecutor spent the bulk of his opening statement discussing the crime and the role Smith is alleged to have played in it.

Smith and two other men have been charged in the Aug. 14 slayings of Jeffrey Biddle, 19; Tracey Gorringer, 20; Matthew Mowen, 19; and Peter Talamantez, 17.

The three older men lived in the home at 4825 Terra Linda Ave., where Talamantez was a visitor. Each victim was bound with duct tape and shot once in the back of the head.

Terrell Cochise Young and Donte Johnson, both 19, await separate capital murder trials in District Court. Johnson is accused of pulling the trigger.

But Guymon said all three

defendants played an integral role in the robbery, which he said was hatched after Mowen purchased some crack cocaine from Johnson in late July. Mowen told Johnson he kept large sums of money at his home.

"At that moment the seed is planted," Guymon said.

He said Johnson recruited Young and Smith, and the three men planned the crime, each accepting a particular role.

Young was to hold the victims at gunpoint, while Johnson taped their hands and feet. Guymon said. Smith's task was to search the home for the cash.

The trio gathered guns, tape and other items and went to the home on Terra Linda.

"They don't bring masks, because they're going to kill the kids. They're not going to leave any witnesses," Guymon said.

Two of the young men were quickly bound and placed shoulder to shoulder on the living room floor.

"Nearly hog-tied, as though these kids were animals," Guymon said.

The third resident soon came home, and was promptly bound and laid beside his friends. When Talamantez arrived a short while later, he was tied up and placed in an adjoining room.

After searching for more than an hour, the three robbers prepared to leave with the loot — about \$200 and a VCR, Guymon said.

Before they left, Johnson shot each victim in the back of the head, starting with Talamantez. "One of the boys whimpered or

cried," the prosecutor said Smith told police.

Authorities found Johnson's fingerprint on a cigar box at the scene. When they arrested Johnson, they found a VCR with Smith's palm print on it, Guymon said.

Prosecutors called several law enforcement witnesses Wednesday. Testimony resumes before District Judge Joseph Pavlikowski this afternoon.

In his opening statement, Sgro told jurors the defense will call psychologists, possibly even a psychiatrist, who will discuss Smith's mental capacities.

He said the mental maladies Smith was dealt at birth were exacerbated throughout his formative years. His father was incarcerated in connection with a killing, and his mother abused crack, Sgro said.

The end result was a young man whose weak and feeble mind could not distinguish between right and wrong, the attorney said. Sgro said his client's weaknesses were exploited by Johnson, whom he described as a natural leader.

"Donte Johnson is an individual who is evil," he said.

One expert interviewed Wednesday said the defense of diminished mental capacity rarely is intended to gain an acquittal.

Rather, it generally is intended to convince a jury that the defendant is not guilty of first-degree murder, said Christopher Slobogin, a professor of law and affiliate professor of psychiatry at the University of Florida.

"The goal is not to acquit the guy completely. What they are doing is going all out to avoid the death penalty," said Slobogin, co-author of "Psychological Evaluations for the Court," a handbook for mental health professionals and lawyers.

Return to the referring page.

Las Vegas SUN

June 16, 1999

Jury seated in trial of suspect in 4 slayings

By Bill Gang

<gang@lasvegassun.com>

LAS VEGAS SUN

A jury of three blacks and nine whites took their seats this morning to hear opening arguments in the murder trial of Sikia Smith in the execution-style slaying of four young men last August.

Before arguments began Smith's attorneys challenged the prosecution's decision to dismiss a black woman from the 12-member jury.

Defense attorney Peter Christiansen Jr. argued that Smith, who is black, is entitled to a jury of his peers and the exclusion of blacks from that panel violates his right. Of the four jurors excluded by the prosecution, he pointed out, two were black.

Pavlikowski disagreed, saying that prosecutors noted that one excluded juror admitted she may not have been able to consider the death penalty and admitted she was swayed more toward rehabilitation than punishment.

Prosecutors are seeking the death penalty for the 18-year-old Smith although he is not alleged to have been the one who actually shot the four victims.

Donte Johnson, 19, is charged with being the triggerman who fired bullets into the heads of four duct-taped men who had been robbed of \$240 on Aug. 14. Johnson is scheduled to stand trial next month and also faces the death penalty if convicted, as does a third defendant, 19-year-old Terrell Cochise Young. Young's trial is scheduled to begin next week in Pavlikowski's courtroom.

Statements to police by Smith and Young after their arrests indicated the suspects believed that perhaps \$6,000 in cash and a quantity of drugs were in the house on Terra Linda Avenue near Nellis Boulevard and Tropicana Avenue, where the killings took place.

Although a fourth man was alleged to have been involved, no other arrests have been made.

In their statements to Metro homicide detectives, Smith and Young indicated that the fourth man had provided the information that led to the ill-fated robbery.

Smith had said the fourth man told them that "if we were going to go over there and do what we're going to do, that they would have to be killed because the guys knew where he lived and everything and knew Donte, too."

When the defendants returned to the home of the fourth man, according to the statements, he was angry because there were no drugs in the home. While Guymon confirmed that autopsy reports showed there were drugs in the systems of the four victims, only a small quantity of drugs was found in the home.

Return to the referring page.

Las Vegas SUN main page

[Return to the referring page.](#)

Las Vegas SUN

June 15, 1999

First of three young defendants goes on trial in slayings of four

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

Jury selection was to continue today in the murder trial of one of three teenagers charged in the robbery and execution-style slayings of four young men last August.

Prosecutors are seeking the death penalty for 18-year-old Sikia Lafayette Smith, although he is not alleged to be the triggerman in the slaying of the four during what was supposed to be a holdup to get several thousand dollars in cash and a large quantity of drugs.

Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17, were killed. A small quantity of drugs and only \$240 in cash were actually in the home.

Evidence at the trial will include a statement Smith gave to police allegedly implicating himself in the murders of the four men, who were bound in duct tape and shot in their heads.

Terrell Cochise Young, 19, who is scheduled to stand trial June 21 for his role in the murders, also gave a statement to police detailing his involvement.

In their statements, Smith and Young said they were told by a fourth man, who is not charged, that perhaps \$6,000 in cash and a quantity of drugs were in the home at 4825 Terra Linda Ave., near Tropicana Avenue and Nellis Boulevard.

Authorities said they also implicated 19-year-old Donte Johnson, who is alleged to be the man who fired the fatal shots after the volume was turned up on a stereo system to mask the noise of the gun.

According to the statements of Smith and Young, the four were killed because they knew Johnson and the fourth man.

[Return to the referring page.](#)

[Las Vegas SUN main page](#)

Questions or problems? [Click here.](#)

All contents copyright 1999 Las Vegas SUN, Inc.

IN BRIEF

Police seek witness in quadruple slaying

Las Vegas police are looking for a witness to the slaying of four young men in August.

Homicide Sgt. Ken Hefner said police want to talk to Charla Cheniqua Severs, 20, who goes by the nickname La-La. Severs is the girl-

friend of Donte Johnson, arrested in connection with the Aug. 14 quadruple slaying.

"She has previously testified," Hefner said. "We need to talk to her again."



SEVERS

Johnson was charged with four counts of murder stemming from the deaths of Las Vegans Jeffrey Biddle, 19; Tracey Gorringer, 20; Matthew Mowen, 19; and Peter Talamantez, 17. The four were tied up with duct tape then shot.

The bodies were found in a home at 4825 Terra Linda Ave., near Tropicana Avenue and Nellis Boulevard. Johnson was arrested at an apartment complex adjacent to the crime scene.

Also arrested were Terrell "Red" Cochise Young, 19, and Sikia Lafayette Smith, 18, both of Las Vegas.

Police said the killings were motivated by a robbery that netted the suspects \$240 and a small amount of drugs.

5/18/99
Johnson

Return to the referring page.

Las Vegas SUN

April 28, 1999

Teen to go on trial in June for murder

By Ed Koch

<koch@lasvegassun.com>

LAS VEGAS SUN

A June 14 trial date has been set for one of three teenagers charged in the robbery/execution-style slayings of four men last August.

However, District Judge Joseph Pavlikowski was asked Tuesday for a second time to consider a motion to have ruled as inadmissible a confession Sikia Lafayette Smith, 18, gave to Metro Police about the killings.

Pavlikowski said he would to rule on the request later this week.

The Smith trial had been set to start Monday. The trial for the second defendant in the case, 19-year-old Terrell Cochise Young, is set for June 21. A July 6 trial is set for the third defendant, Donte Johnson, 19, who prosecutors have alleged was the triggerman.

Police have said Young also gave a statement to police admitting his involvement in the quadruple murder.

The teenagers could get the death penalty if convicted. Other options could be life sentences with or without the possibility of parole.

Four men -- Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17 -- died in the August 1998 execution-style slaying. They had been bound with duct tape and shot in their heads.

At Tuesday's hearing defense attorney Tony Sgro argued that because Smith already had an attorney in relation to drug charges to which he had pleaded guilty, police should have attempted to contact his lawyer before getting the taped confession.

At a prior hearing Pavlikowski ruled that Smith apparently understood his constitutional right to remain silent when he gave his tape-recorded statement to police. Sgro had argued before that ruling that Smith, who had a seventh-grade education, did not understand what he read.

In their confessions, Smith and Young reportedly stated that they were told by a fourth man who is not charged in the crime that \$6,000 in cash and a quantity of drugs were in the home at 4825 Terra Linda Ave., near Tropicana Avenue and Nellis Boulevard.

But the defendants told police that only \$240 in cash was found.

According to the statements of Smith and Young, the four were killed because they knew Johnson and the fourth man and might have retaliated for the robbery.

Return to the referring page.

Las Vegas SUN main page

Return to the [referring page](#).

Las Vegas SUN

April 15, 1999

Slayings suspect's confession will stand

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

Eighteen-year-old Sikia Lafayette Smith, one of three teenagers charged in the robbery and execution slayings of four men over a couple of hundred dollars last summer, has lost his courtroom bid to have his confession to police ruled inadmissible.

The ruling leaves the possibility of the death penalty for Smith if he is convicted of murder at his April 26 trial.

But it also may signal the possibility that his case could end in a plea bargain as soon as Friday, when Smith is scheduled to return to District Judge Joseph Pavlikowski's courtroom.

Prosecutors and defense attorneys said such a deal could occur because Smith is not believed to be the gunman who executed the four in August 1998 after turning up the volume on a stereo to hide the noise of the shots.

A plea bargain may require a sentence that would ensure a life in prison and Smith's testimony against the two other defendants in the case.

After a brief hearing Wednesday, Pavlikowski ruled that Smith apparently understood his constitutional right to remain silent when he gave a tape-recorded statement to police after his arrest.

Smith read the required Miranda warning aloud from a card provided by police, Metro Homicide Detective James Buczek testified.

But defense attorneys Pete Christiansen Jr. and Tony Sgro argued that Smith has only a seventh-grade education and may not have comprehended what he was reading. They added that Smith's waiver of his rights was not part of the tape recording.

Deputy District Attorney Robert Daskas countered that there is no legal requirement that a defendant's consent to speak to police be recorded, and the judge agreed.

The trial for the second defendant in the case, 19-year-old Terrell Cochise Young, is set for June 21. Police have said that he also gave a statement admitting his involvement in the quadruple murder.


A July 6 trial is set for the third defendant, Donte Johnson, 19, who prosecutors have said was the triggerman.

The four victims, who were bound with duct tape and shot in the head, were Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17.

Smith and Young said they were told by a fourth man who is not charged that perhaps \$6,000 in cash and a quantity of drugs were in the home at 4825 Terra Linda Ave., near Tropicana Avenue and Nellis Boulevard.

But the defendants told police that only \$240 in cash was found.

According to the statements of Smith and Young, the four were killed because they knew Johnson and the fourth man, and the victims might have retaliated for the robbery if allowed to live.

 **Return to the referring page.**
Las Vegas SUN main page

Questions or problems? [Click here.](#)

All contents copyright 1999 Las Vegas SUN, Inc.



Saturday, October 10, 1998

Las Vegas REVIEW-JOURNAL

C

IN BRIEF

Suspect in quadruple slaying enters plea

The third of three defendants to be arraigned in a quadruple homicide pleaded innocent Friday to charges that carry a potential death sentence.

A June 6 trial date was set for 19-year-old Terrell Young.

Co-defendant *Donte Johnson*, 19, is set to go before a jury on July 5. Another suspect, *Sikia Smith*, 18, is scheduled to be tried March 15. Both have also pleaded innocent to murder, burglary, robbery, kidnapping and conspiracy charges. All trials are scheduled to be heard by District Judge Joseph Pavlikowski.

The three are charged in connection with the Aug. 14 slayings of Jeffrey Charles Biddle, 19; Tracey Gorringer, 20; Matthew Mowen, 19; and Peter Talamantez, 17.

The four were bound with duct tape then shot in a home near Tropicana Avenue and Nellis Boulevard. The killers made off with about \$240 and a small amount of drugs, prosecutors allege.

According to police and prosecutors, Young and Smith have confessed and have implicated *Johnson*. *Johnson* has said in televised interviews that he couldn't possibly have been the killer, in part because the murders took place at a time when he is normally asleep.

Two private attorneys had asked the judge to be appointed to Young's case because they claimed they could communicate with him in a dialect unique to blacks. The judge refused the request.

Police ID teen slain in North Las Vegas

A teen-ager killed nearly a week ago in North Las Vegas has been identified as Daniel Lagos, 17.

Lagos was shot in the chest on Sunday at 12:30 a.m. in the 3400 block of College View Court, at Pecos Road and Cheyenne Avenue. Witnesses told police that a teen-age boy believed to be the shooter was seen leaving the scene. The Clark County coroner's office on Friday did not where Lagos lived.

Anyone with information on the crime is asked to call police at 633-9111 or Secret Witness at

[Return to the referring page.](#)

[Las Vegas SUN](#)

October 09, 1998

Innocent plea made in quadruple murder

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

Saying he can read, write and understand the English language - seemingly refuting a claim made by two attorneys who wanted a court appointment to represent him - Terrell Cochise Young pleaded innocent today to charges he participated in a quadruple murder.

Judge Joseph Pavlikowski set a June 21 trial date at the brief arraignment hearing for the 19-year-old, who is one of three teenagers facing charges in the case that could put them on death row if convicted.

The others alleged to have been involved in the execution slayings of the four men during a robbery are Sikia Lafayette Smith, 18, and Donte Johnson, 19, who prosecutors have said was the triggerman.

Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17, were bound with duct tape and shot in the head.

Smith and Young have given statements to police admitting their roles in the case and implicating Johnson.

Standing next to Young at today's hearing were his two newly appointed attorneys, Lew Wolfbrandt and Martin Hastings.

Two other attorneys tried for to get appointed by the court because they claimed to understand Young's black dialect. The judge refused.

Pavlikowski ruled that because one of those attorneys, Terence Dickerson, is from out of state and not licensed in Nevada and the other, Benjamin Childs, is not certified to handle death penalty cases, they weren't eligible for the appointment.

The attorneys sought the appointment, stating Young has trouble being understood because he speaks an African-American dialect that is similar to, but not the same as ebonics.

But Young's words at today's hearing cast doubts on that contention, and one of his attorneys said there are no communication problems.

"We seem to understand each other just fine," said Hastings.

[Return to the referring page.](#)

[Las Vegas SUN main page](#)

Questions or problems? [Click here.](#)

All contents copyright 1998 and 1999 Las Vegas SUN, Inc.

[Return to the referring page.](#)

Las Vegas SUN

October 06, 1998

Attorneys rejected in quadruple murder case

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

A bid by two attorneys to represent one of three teenagers charged in a quadruple murder because they can understand the black dialect spoken by the defendant was rebuffed today.

District Judge Joseph Pavlikowski ruled that because one of the attorneys is from out of state and the other is not certified to handle death penalty cases they weren't eligible to be court appointed.

Instead, Terrell Cochise Young, 19, will be represented by Las Vegas attorneys Lew Wolfbrandt and Martin Hastings. His arraignment has been scheduled for Friday.

Attorneys Terence Dickinson and Benjamin Childs sought the appointment, stating Young has trouble being understood because he speaks an African-American English dialect that is similar but not the same as ebonics.

Young is the third teenager alleged to have been involved in the robbery and execution slayings of four men during a robbery.

The others, who also face the possibility of the death penalty if convicted, include Sikia Lafayette Smith, 18, and Donte Johnson, 19, the one prosecutors have alleged was the triggerman.

The four victims were bound with duct tape and shot in the head. They have been identified as Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17.

Smith and Young have given statements to police admitting their roles in the case and implicating Johnson.

[Return to the referring page.](#)

[Las Vegas SUN main page](#)

Questions or problems? [Click here.](#)

All contents copyright 1998 and 1999 Las Vegas SUN, Inc.



Thursday, September 24, 1998

IN BRIEF**Third suspect indicted
in quadruple slaying**

A third suspect was indicted Wednesday in connection with a quadruple homicide in August.

The grand jury charged Sikia Smith, 18, with burglary, conspiracy and four counts each of first-degree kidnapping, robbery with a deadly weapon and murder.

Smith is set to enter a plea Tuesday before District Judge Joseph Pavlikowski.

He was being held without bail at the Clark County Detention Center.

Two others also have been indicted on the same charges in connection with the deaths of Jeffrey Biddle, 19; Tracey Gorringer, 20; Matthew Mowen, 19; and Peter Talamantez, 17.

The four were bound with duct tape then shot execution-style in a home near Tropicana Avenue and Nellis Boulevard.

Donte Johnson was arrested four days after the slaying. He has proclaimed his innocence in television interviews.

Police found a second suspect, Terrell Young, 19, after weeks of searching. Prosecutors have said both Young and Smith have confessed and implicated **Johnson**. The motive was robbery, police have said. Prosecutors have said the killers got \$240 and small amount of drugs.

Prosecutors planned to seek the death penalty for all three suspects. **Johnson** also faced an unrelated attempted murder charge.

**Bull run promoter
appeals judge's fine**

A Phoenix promoter will appeal a judge's decision to fine him for not having a permit to hold this summer's bull run outside Mesquite.

Phil Immordino mailed the appeal Wednesday to Moccasin Justice Court in Moccasin, Ariz.

Immordino, 40, was fined \$5,539 and sentenced to a year's probation last week. He was given a suspended 10-day jail sentence.

Immordino has said he had approval from the county attorney to hold the July 11 event.

Some 6,000 spectators watched 700 runners race

[Return to the referring page.](#)

[Las Vegas SUN](#)

September 22, 1998

DA to seek death penalty in four slayings

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

Prosecutors have decided to seek the death penalty for three teenagers charged in the August execution-style quadruple murder in southeast Las Vegas.

"We think killing four people is worse than killing one," District Attorney Stewart Bell said. "It's simple mathematics."

The district attorney's office earlier this month let 19-year-old Jeremy Strohmeyer escape the death penalty by plea bargaining his murder case to a sentence of life in prison without the possibility of parole.

Donte Johnson, also 19, is charged with being the trigger man who on Aug. 14 shot four duct-taped men -- Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17 -- in the head in what prosecutors believe was an apparent drug money rip-off. The victims were robbed of \$240 and a pager, according to Metro Police.

Statements to police by the two other defendants -- Sikia Lafayette Smith, 18, and Terrell Cochise Young, 19 -- indicated there was a belief that as much as \$6,000 in cash and a quantity of drugs was in the house at 4825 Terra Linda Ave., near Nellis Boulevard and Tropicana Avenue.

Johnson and Young already have been indicted on multiple murder, kidnapping and robbery charges in the case. Smith is expected to be indicted Wednesday.

Authorities have indicated that a fourth arrest is imminent.

In their statements to Metro homicide detectives, Smith and Young indicated that a fourth man had provided the information that led to the ill-fated robbery.

Smith stated the fourth man said that "If we were going to go over there and do what we're going to do, that they would have to be killed because the guys knew where he lived and everything and knew Donte, too."

When the defendants returned to the home of the fourth suspect, according to their statements, he was angry because they had not brought him any of the reported drugs.

While Deputy District Attorney Gary Guymon confirmed that autopsy reports showed there were drugs in the systems of the four victims, only a small quantity of drugs was found in the Terra Linda Avenue home.

[Return to the referring page.](#)

[Las Vegas SUN main page](#)

Questions or problems? [Click here.](#)

The decision means Vinh Sinh Truong will not have to go before a three-judge panel at a penalty hearing and face a possible death sentence.

Truong pleaded guilty in December to killing Lisa Sadie on Oct. 19, 1996.

The 20-year-old Sadie had been studying film at the University of Nevada, Las Vegas during the day and working nights as the head cashier at the Studio Cafe. Friends said her job helped pay for her education.

Truong had been a food server at the restaurant, which is operated by Restaurant Associates, a contract food service company.

He was fired from that job just a few days before the killing.

Rather than go to trial, Truong pleaded guilty without benefit of a plea bargain to all the charges -- murder, burglary and robbery, all with use of a deadly weapon.

In cases like that the defendant goes before a panel of three judges who make a decision after a full sentencing hearing.

In most cases, these panels hand down death sentences. After Truong plead guilty prosecutors offered him life without parole.

Truong will be sentenced Oct. 5 by District Judge Jeffrey Sobel.

Man held in slayings enters innocent plea

9/18/98

The first of three suspects arrested in connection with last month's quadruple homicide pleaded innocent Thursday to charges of murder, robbery, burglary and kidnapping.

A prosecutor also announced the state will seek the death penalty against 21-year-old **Donte Johnson**.

Police say the Las Vegas was responsible for the deaths of Jeffrey Biddle, 19; Tracey Gorringer, 20; Matthew Mowen, 19, and Peter Talamantez, 17. The four were tied up with duct tape then shot execution-style at a home near Tropicana Avenue and Nellis Boulevard. The bodies were found Aug. 14.

Johnson was arrested a few days later. His trial is set for July 5 before District Judge Jeffrey Sobel. He will be represented by the Clark County special public defender's office.

Another suspect in the case, 19-year-old Terrell Young, was indicted Wednesday. A third suspect, Sikia Smith, 18, has also been arrested.

Deputy District Attorney Gary Guymon says Young and Smith have confessed and implicated **Johnson**.

Johnson, however, has told the public in televised

interviews that he couldn't possibly have committed the crimes because they happened when he was usually asleep.

Guymon said the killings were motivated by a robbery that yielded \$240 and a small amount of drugs.

Give us your **FEEDBACK** on this or any story.

Fill out our Online Readers' Poll

[[News](#)] [[Sports](#)] [[Business](#)] [[Lifestyles](#)] [[Neon](#)] [[Opinion](#)] [[in-depth](#)]
[[Columnists](#)] [[Help/About](#)] [[Archive](#)] [[Community Link](#)] [[Current](#)
[Edition](#)]
[[Classifieds](#)] [[Real Estate](#)] [[TV](#)] [[Weather](#)]
[[EMAIL](#)] [[SEARCH](#)] [[HOME](#)] [[INDEX](#)]

Brought to you by the Las Vegas Review-Journal. Nevada's largest daily newspaper.

Return to the [referring page](#).

Las Vegas SUN

September 16, 1998

Details in killings revealed

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

The second of three teenagers alleged to be connected to the execution-style murders of four men was expected to be indicted today by a Clark County grand jury, with the indictment based in part on his own admissions to police.

The third suspect, already behind bars, could be indicted next week, and authorities have indicated that testimony elicited before the grand jury could result in a fourth arrest within a matter of days.

Today's indictment is expected to name Terrell Cochise Young, 19, who already was charged in the quadruple killing after his arrest when he was spotted by homicide detectives walking in front of a police station. The indictment will move the case directly to District Court for trial.

Nineteen-year-old Donte Johnson has already been indicted on charges he was the trigger man in the multiple murder, which was motivated by what two of the defendants admitted was a belief that a large quantity of money and drugs was in the victims' home.

The third defendant in the case, 18-year-old Sikia Lafayette Smith, told Metro police in a taped interview that a fourth man "was telling us that there was some guys he knows that we could rob," court records show.

Smith added that the man said that "if we were to go over there and do what we're going to do, that they would have to be killed because the guys knew where he lived and everything ... and knew Donte, too," the records say.

Sources close to the investigation said the suspects believed that there were promises of \$10,000 in cash and a large quantity of drugs in the house at 4825 Terra Linda Ave., near Tropicana Avenue and Nellis Boulevard.

Young said the figure the fourth man gave him was \$6,080.

The deal was supposed to be that the bandits could keep the money, and the fourth man would get the drugs, the records show.

Deputy District Attorney Gary Guymon said the robbers found only \$240 in the house in which they left the bodies of Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17, with their hands duct-taped behind their backs and bullets in their heads. Also left behind was a small quantity of drugs.

In Young's statement to police, he said the fourth man directed him, Johnson and Smith to the house and then left the trio to do the job.

In the statement, Young said the first victim, believed to be Mowen, who had been watering the front yard, was confronted and taken at gunpoint into the residence, where a second man was sitting in the living room.

The pair was made to lie on the floor and their hands and feet were taped by Johnson -- whose

nickname is "Deco" -- according to Young, who said the trio was armed with two rifles and a pistol that was used to commit the murders.

Another man drove up a few minutes later and, when he came into the house, Smith "grabbed him by the face and told him to get on the floor," Young told police.

He recalled how the house was ransacked, but the only money found was in the pockets of the victims.

Smith told police in a recorded statement that "we searched through the house for the drugs and the money but we didn't find anything. (Young) found about 200 and something dollars and that was it."

"Deco counted all the money, and he was like, 'You haven't got enough money. You haven't got enough money.'" Young said, noting that at the time he was sitting in the living room having a beer and acting as "the lookout."

In an apparent attempt to placate the robbers, one of the victims paged a fourth man who was supposed to have several hundred dollars in his possession, according to the statement.

When that man arrived, he also was bound with duct tape and robbed, but Young said his continual arguing with the bandits resulted in his being hauled into the kitchen and Smith kicking him in the stomach.

Finally, Young said, Johnson turned up the volume on a stereo system and began shooting the victims, firing single shots into their heads.

Young said he already had walked out of the house when the shooting began, but returned to see the last man shot.

"I seen the shot, and I just seen the fool bleeding," he said.

When the trio returned to the home of the fourth unnamed suspect, Smith said the man was angry "because we didn't come back with cocaine."

When asked how he felt about the murders, Young responded, "I feel remorse. I feel that by me saying something (to police), it's like freeing them."

"I didn't want anybody to die, and the whole time I was in there, I didn't even want to be there. I was scared the whole time. I didn't think like they would die."

Young said he was telling his story "because I've been in (jail) so long and I've been thinking about it."

Indictments in the case replace the need for Justice Court preliminary hearings to determine whether there is sufficient evidence to hold defendants for trials in District Court.

Return to the referring page.
Las Vegas SUN main page

Questions or problems? [Click here.](#)

All contents copyright 1998 and 1999 Las Vegas SUN, Inc.

Third man arrested in quadruple slaying

Police on Tuesday arrested a third suspect in connection with a quadruple slaying in Las Vegas. Two of the three men have confessed, authorities said Wednesday.

Page 7B

Police arrest third suspect in

Thursday, September 10, 1998/Las Vegas Review-Journal/7B

Las Vegas quadruple slaying

By Glenn Pult
Review-Journal

Police have arrested a third suspect in connection with an August quadruple slaying in southeast Las Vegas, and two of the three have confessed to the crime, authorities said Wednesday.

Clark County Deputy District Attorney Gary Guymon said Wednesday that blood from one of the victims was found on the pants of a suspect arrested in the case. Guymon said fingerprints from all three suspects were found at the crime scene.

On Aug. 14, the bodies of Las Vegas Jeffrey Charles Biddle, 19, Tracey Gorringer, 20,

Matthew David Mowen, 19, and Peter Talamantez, 17, were found in a home at 4825 Terra Linda Ave., near Tropicana Avenue and Nellis Boulevard. The four were tied with duct tape execution-style.

The day after the bodies were found, three witnesses came forward and told police a man had told them he was involved in the killings. Based on that



SMITH

then shot

information, police arrested Donte Johnson, 19, of Las Vegas and charged him with four counts each of murder, robbery and kidnapping.

A week ago, police arrested a second suspect, Terrell "Red" Co-chise Young, 19, of Las Vegas on murder, robbery and kidnapping charges.

Las Vegas police Sgt. Ken Hefner said police arrested a third suspect, Sikia Lafayette Smith, 18, of Las Vegas, late Tuesday evening. Smith was charged with four counts each of murder, robbery, kidnapping and one count of burglary.

Guymon said Young and Smith have confessed. Guymon also

said the killings were motivated by a robbery that yielded \$240 and a small amount of drugs.

"Both Smith and Young have given confessions that incriminate themselves and Donte Johnson," Guymon said. "There are fingerprints of the defendants that have been recovered, and blood of one of the decedents also was found on one of the defendant's pants."

Guymon would not elaborate on which defendant authorities said had blood on his pants. Guymon said he plans to present the case to a team of Clark County prosecutors this morning to determine if the death penalty should be sought.

Johnson has maintained his innocence in interviews with two Las Vegas television stations. During the interviews, he said he could not have committed the killings because they occurred in the early morning hours, a time when he is usually asleep. He also said that the fact he was arrested in Las Vegas supported his innocence because if he had been involved in the crime, he would have left town.

Attempts to determine if defense attorneys have been assigned to represent either Smith or Young were unsuccessful Wednesday evening. Willard Ewing is representing Johnson.

Gorringer and Biddle had

extensive ties to the Sun Valley, Idaho, area. Mowen and Talamantez previously attended Green Valley High School. Family members of the four have said repeatedly that the victims were not involved in drugs.

Johnson also has been charged with attempted murder in connection with an unrelated May shooting that occurred about two blocks west of the Vegas Motel, 2216 E. Fremont St. He was charged in the Fremont Street shooting after a man shot Derrick Simpson, 40, twice in the face and once in the back. Simpson, who was paralyzed in the attack, identified Johnson as the gunman, police said.

Return to the [referring page](#).

Las Vegas SUN

September 03, 1998

Bizarre second arrest made in four slayings

By Karen Zekan

<karen@lasvegassun.com> and Bill Gang

<gang@lasvegassun.com>

LAS VEGAS SUN

A second suspect in last month's execution-style quadruple murder is behind bars today after he accidentally crossed paths with the Metro Police sergeant who is handling the case.

Sgt. Ken Hefner, who was heading out to lunch when he spotted suspect Terrell Cochise Young, was cut at least once on the neck in a scuffle during the arrest.

Young, 19, remained in Clark County Detention Center this morning without bail. He has been charged with four counts each of using a weapon to commit murder, robbery and kidnapping.

He is also facing a single count of burglary with a weapon in connection with murders of Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19, and Peter Talamantez, 17.

The arrest, which took place 100 yards from homicide headquarters at a bus stop at Rainbow and Charleston boulevards, is perhaps the most unusual development to surface in one of the valley's most gruesome crimes.

Police believe the Aug. 14 killings were committed by at least two men who entered the southeast Las Vegas home at 4825 Terra Linda Ave., bound the victims' hands and feet with duct tape, fatally shot them in their heads, and then fled with \$240 of the victims' money and a pager.

Police for weeks had little more than the street name "Red" to go on in catching their second suspect after three witnesses came forward and told police that Red and another man had been bragging about the killings hours after the bodies were found, according to the arrest report.

The break in the case came Tuesday night when information reached detectives that "Red" was Young, a Las Vegas resident, Hefner said.

Police had a hint that Young could be close by, having learned that the man had relatives living near the Charleston-Rainbow area.

So it seemed logical enough to Hefner that the man he saw standing on the Charleston Boulevard median facing him Tuesday could well be his suspect.

Hefner said he ran back into the office and got to detectives before following the 5-foot-9-inch, 260-pound Young up the street to a bus stop where he was arrested. Young had been walking with two of his younger relatives who were later released to family members.

"It's definitely a first," Hefner said of the bizarre situation where an outstanding suspect almost literally landed on homicide's doorstep.

Young's arrest came a day after his alleged accomplice, 19-year-old Donte Johnson, was indicted by a Clark County Grand Jury on charges that he is responsible for last month's slayings motivated by what prosecutors believed was an apparent drug money rip-off.

Police nab second suspect in quadruple slaying

□ Officers hunting for a man sought in four killings Aug. 14 catch him at a bus stop near a police station.

By Glenn Pult
Review-Journal

For three weeks Las Vegas homicide detectives relentlessly searched for a man they knew only as "Red," the street name for a second suspect wanted in an August quadruple slaying.

The search came to an end Wednesday with what investigators called an incredible stroke of luck. The 19-year-old suspect was apprehended at a bus stop in front of the police Homicide Division on West Charleston and Rainbow boulevards.

Las Vegas police Sgt. Ken Hefner

said a detective investigating the slayings looked out the front door of the office, saw Terrell "Red" Cochise Young in the median and recognized him as the man they had been seeking.

"It was an unusual situation," Hefner said. "Three detectives ended up approaching him when he stopped at a bus stop a few feet down the street from our office."

Young, who police confirmed as "Red" on Tuesday, was taken into custody after a brief struggle. He was being interrogated late Wednesday and was expected to be booked later in the



YOUNG

evening on four counts each of murder, robbery, kidnapping and one count of burglary, Hefner said.

The suspect was wanted in the Aug. 14 killings of Las Vegas Jeffrey Charles Biddle, 19; Tracey Gorringer, 20; Matthew David Mowen, 19; and Peter Talamantez, 17.

Police say the four were bound with duct tape, then shot execution-style in a home at 4825 Terra Linda Ave., near Tropicana Avenue and Nellis Boulevard.

Clark County Deputy District Attorney Gary Guymon said another suspect in the case, Donte Johnson, 19, was indicted Wednesday by a county grand jury on murder, robbery and kidnapping charges. Johnson was arrested four days after the bodies were found.

Guymon said last week the four victims were shot in a bungled robbery that netted just \$240 in cash and a minuscule amount of drugs.

"They (the killers) believed that there was an awful lot of money at this house and maybe some marijuana as well," Guymon said.

"But their focus was the money and not so much the drugs. What they ended up finding was a little bit of controlled substances and \$240."

The break in the case came after three witnesses told authorities Johnson and his acquaintance, known only by the witnesses as "Red," had bragged about killing the four the night of the shooting.

When asked if police had other evidence tying the pair to the crime,

Please see SLAYING/4B

Slaying

From 1B

Hefner said there was.

"There is also physical evidence recovered from the apartment where Johnson was arrested," Hefner said. He did not elaborate.

Hefner said police have not ruled out the possibility others were involved.

"As the investigation continues, we'll see what pops up," Hefner said.

In television interviews conducted shortly after his arrest, Johnson maintained his innocence. He said he couldn't have committed the killings because they occurred in the early morning hours, a time when he is usually asleep.

Johnson also said that if he had been involved in the killings, he wouldn't have been stupid enough to remain in the area.

Hefner said for weeks police were unable to confirm Young's identity until Tuesday.

Guymon added late Wednesday that the district attorney's office is considering combining

"It was an unusual situation. Three detectives ended up approaching him when he stopped at a bus stop a few feet down the street from our office."

**Ken Hefner
Police sergeant**

the cases of Johnson and Young.

"We are anxious to start this prosecution and hopefully we'll be able to consolidate these to expedite justice and mitigate the pain for family members as much as possible," Guymon said.

Victims of quadruple homicide lost lives for \$240, officials say

□ Four young men were shot execution-style for a small amount of cash and drugs, authorities report.

By Glenn Pult
Review-Journal

Four young men found bound and shot in a southeast Las Vegas home two weeks ago were killed for \$240 and a meager amount of drugs, police and prosecutors said Friday.

"Four people lost their lives over \$240," Clark County Deputy District Attorney Gary Guymon said.

The prosecutor also said the prime suspect in the quadruple homicide, Donte Johnson, 19, was apprehended because he bragged of his involvement

in the crime.

"There were three witnesses who came forward and indicated that Johnson was bragging about it," Guymon said.



JOHNSON

On Aug. 14, the bodies of Las Vegans Jeffrey Charles Biddle, 19, Tracey Gorringer, 20, Matthew David Mowen, 19, and Peter Talamantez, 17, were discovered by an acquaintance in a home at 4825 Terra Linda Ave., near Tropicana Avenue and Nellis Boulevard. The four were tied up with duct

Please see SLAYINGS/2A

8/29/98

Slayings

From 1A

tape, then shot execution style. Police said the killings were motivated by robbery and drugs and that Johnson knew at least some of the victims. However, they have refused to elaborate, citing an ongoing investigation.

But Guymon said Friday afternoon that the suspect and at least one accomplice went to the home looking for a large amount of money and possibly narcotics.

"They (the killers) believed that there was an awful lot of money at this house and maybe some marijuana as well," Guymon said. "But their focus was the money and not so much the drugs. What they ended up finding was a little bit of controlled substances and \$240."

Guymon did not expand on what kind of controlled substances were at the residence. Deputy

"They (the killers) believed that there was an awful lot of money at this house and maybe some marijuana as well."

Gary Guymon

Clark County deputy district attorney

Public Defender Willard Ewing, because he had been in the area who is representing Johnson, involved in the crime, they would not be able to return a phone call late Friday afternoon.

Johnson has maintained his innocence in interviews with two Las Vegas television news stations. During the interviews he said he couldn't have committed the killings because they occurred in the early morning hours, a time when he is usually asleep. He also said that the fact he was arrested in Las Vegas supports his innocence.

Clark County deputy district attorney Willard Ewing, because he had been in the area who is representing Johnson, involved in the crime, they would not be able to return a phone call late Friday afternoon.

Talmanez previously attended Green Valley High School. Family members of the four have repeatedly contended that their loved ones were not involved in drugs.

Johnson is charged with four counts each of murder, robbery and kidnapping, all with a deadly weapon, and is currently held at the Clark County Detention Center. Bail is set at \$1 million.

Johnson is also charged with attempted murder in connection with and unrelated May shooting that occurred about two blocks west of the Vegas Motel, 2216 E. Fremont St.

He was charged in the Fremont Street shooting after a man shot Derrick Simpson, 40, twice in the face and once in the back. Simpson, who was paralyzed in the attack, identified Johnson as the gunman, police said.

[Return to the referring page.](#)

Las Vegas SUN

August 29, 1998

Police say four killed over \$250

LAS VEGAS (AP) - Four young men found bound and shot in a southeast Las Vegas home two weeks ago were killed for \$240 and a meager amount of drugs, police and prosecutors said Friday.

"Four people lost their lives over \$240," Clark County Deputy District Attorney Gary Guymon said.

The prosecutor also said the prime suspect in the quadruple homicide, Donte Johnson, 19, was apprehended because he bragged of his involvement in the crime.

"There were three witnesses who came forward and indicated that Johnson was bragging about it," Guymon said.

On Aug. 14, the bodies of Las Vegans Jeffrey Charles Biddle, 19, Tracey Gorringer, 20, Matthew David Mowen, 19, and Peter Talamantez, 17, were discovered by an acquaintance in a home near Tropicana Avenue and Nellis Boulevard. The four were tied up with duct tape, then shot execution-style.

Police said the killings were motivated by robbery and drugs and that Johnson knew at least some of the victims. However, they have refused to elaborate, citing an ongoing investigation.

But Guymon said Friday afternoon that the suspect and at least one accomplice went to the home looking for a large amount of money and possibly narcotics.

"They (the killers) believed that there was an awful lot of money at this house and maybe some marijuana as well," Guymon said. "But their focus was the money and not so much the drugs. What they ended up finding was a little bit of controlled substances and \$240."

Johnson has maintained his innocence in interviews with two Las Vegas television news stations. During the interviews he said he couldn't have committed the killings because they occurred in the early morning hours, a time when he is usually asleep.

Las Vegas Metropolitan Police Homicide Sgt. Ken Hefner said detectives believe at least one other person, possibly more, were also involved in the slayings. Police have a limited description of one of the assailants and are trying to confirm the man's identity.

Johnson is charged with four counts each of murder, robbery and kidnapping, all with a deadly weapon, and is currently held at the Clark County Detention Center. Bail is set at \$1 million.

Johnson is also charged with attempted murder in connection with an unrelated May shooting that occurred about two blocks west of the Vegas Motel.

He was charged in the Fremont Street shooting after a man shot Derrick Simpson, 40, twice in the face and once in the back. Simpson, who was paralyzed in the attack, identified Johnson as the gunman, police said.

[Return to the referring page.](#)

[Las Vegas SUN main page](#)

Suspect in slaying accused in shooting

A suspect in a quadruple homicide that occurred earlier this month in Las Vegas also is accused of shooting and paralyzing a man in May. Police said an arrest warrant was awaiting Donte Johnson, 19, of Las Vegas when officers booked him on the murder counts in connection with the Aug. 14 slayings.

Page 2B

Quadruple killing suspect accused in May shooting

Review-Journal

A suspect in a quadruple homicide that occurred earlier this month in Las Vegas also is accused of shooting and paralyzing a man in May.

Donte Johnson, 19, of Las Vegas was arrested last week on four counts of murder in connection with the Aug. 14 shooting deaths of four people.

Las Vegas police Sgt. Ken Hefner said an arrest warrant, charging Johnson with one count of attempted murder in connection with the May shooting, was waiting for Johnson at the Clark County Detention Center when officers booked him on the murder counts.

Hefner said a security officer split up a fight between Johnson and 40-year-old Derrick Simpson around 4 a.m. on May 4 at the Vegas Motel, 2216 E. Fremont St. The sergeant said Johnson and Simpson knew each other.

A short time later, Simpson was shot twice in the face at close range and once in the back. The shooting occurred about two blocks west of the motel.

Hefner said the victim was

paralyzed as a result of the shooting and identified Johnson as the man who shot him, but the suspect remained at large until his arrest in the murder case.

Johnson's murder counts stem from the deaths of Las Vegas Jeffrey Biddle, 19; Tracey Gorringer, 20; Matthew Mowen, 19; and Peter Talamantez, 17. The four were tied up with duct tape, then shot execution-style.

The bodies were found in a home at 4825 Terra Linda Ave., near Tropicana Avenue and Nellis Boulevard. Johnson was arrested at an apartment complex adjacent the crime scene.

Police have said the killings were motivated by both robbery and narcotics, but they have offered few other details about the case. They said they are pursuing other suspects.

Hefner said Johnson knew at least some of the slaying victims. He said the suspect has no criminal convictions.

Johnson appeared Thursday in Justice Court, where his bail was set at \$1 million. The suspect also faces robbery and kidnapping charges in connection with the quadruple homicide.

[Return to the referring page.](#)

Las Vegas SUN

September 24, 1998

Third teenager indicted in LV quadruple murder

LAS VEGAS SUN

The third teenager alleged to have been involved in the robbery and execution slayings of four men in a southeast Las Vegas home has been indicted by a Clark County Grand Jury.

Wednesday's indictment of Sikia Lafayette Smith, 18, was based in part on a statement he gave to police admitting his involvement in the slayings last month. A similar statement detailing the slayings also was given by another defendant, 19-year-old Terrell Cochise Young, who was indicted last week.

The teenager they claimed was the triggerman, Donte Johnson, 19, was the first to be indicted on the multiple murder charges that could result in death sentences if they are convicted of first-degree murder.

Smith will be arraigned Tuesday in District Judge Joseph Pavlikowski's courtroom.

Not yet charged in the case is a fourth man that Smith and Young told police had guided them to the house at 4825 Terra Linda Avenue, near Tropicana Avenue and Nellis Boulevard.

Smith and Young stated they were told that perhaps as much as \$6,000 in cash and a quantity of drugs were in the home, although only \$240 in cash was found.

The four victims each were bound with duct tape and shot in the head. They have been identified as Jeffrey Biddle, 19, Tracey Gorringe, 20, Matthew Mowen, 19, and Peter Talamantez, 17.

According to the statements of Smith and Young, the four were killed because they knew Johnson and the fourth man and might have retaliated for the robbery.

[Return to the referring page.](#)

[Las Vegas SUN main page](#)

Questions or problems? [Click here.](#)

All contents copyright 1998 and 1999 Las Vegas SUN, Inc.

Return to the [referring page](#).

Las Vegas SUN

August 24, 1998

Man held in four slayings suspected in May attack

By Karen Zekan

[<karen@lasvegassun.com>](mailto:karen@lasvegassun.com)

LAS VEGAS SUN

Metro Police's prime suspect in a southeast Las Vegas quadruple homicide 10 days ago is also the suspected gunman in an execution-style attack that paralyzed a man on Fremont Street May 4.

Police had been looking for Donte Johnson, 19, for more than four months on the attempted-murder charge when he was taken into custody Tuesday in connection with the murders of four young men found bound and shot inside a Terra Linda home Aug. 14.

Johnson, a Las Vegas native known by police to have ties to the West Coast Bloods gang, flashed apparent gang hand signs at the crowd and news photographers during his arraignment Thursday for the murders.

Both cases are set to be heard Sept. 2 by a judge at Johnson's preliminary hearing, a public process designed to determine if enough evidence exists to hold Johnson for trial. Prosecutors handling the quadruple homicide could avoid the hearing by presenting their case directly to a Clark County grand jury.

Johnson has been accused by police of shooting 40-year-old Derrick Simpson in his face, neck and spine during the May dispute in a lower Fremont Street parking lot.

According to the warrant, a security guard broke up a fight between the two men about 4:10 a.m. at the Vegas Motel, 2216 E. Fremont St., and asked Simpson to leave the property. Simpson complied, walking west on Fremont. Johnson, according to police allegations, drove west also, pulling his primer-painted Cadillac into a parking lot a few blocks from the motel and shooting Simpson first in his mouth and then, after he'd fallen, several times in his back.

"It was cold-blooded," said Detective Brian Sharp, who handled the investigation. "He said (to Simpson), 'It's time for you to die,' and then shot him down his spine."

Police suspect Johnson -- also known as John White, Rasheed, and Deko -- left town and returned shortly before the killings at the dilapidated single-story house at 4825 Terra Linda Ave., near Tropicana Avenue and Nellis Boulevard.

An ongoing investigation has led detectives to believe that as many as two killers could have committed the crime, although a second suspect has not been identified.

A friend stopping by to visit discovered the bodies about 6 p.m. Tracey Gorringer, 21, Jeffrey Biddle, 19, Matthew Mowen, 19, and Peter Talamantez, 17, had been shot in their heads, their hands and legs bound with duct tape.

Mowen, Gorringer and Biddle had been renting the house for about a year.

Police believe the killers wanted money when they targeted the Terra Linda home where one of the

roommates allegedly had been selling drugs. Johnson is additionally suspected of having sold drugs to one of the roommates.

Detectives combed the property for clues in the days following the murders and interviewed family, friends and neighbors.

Metro SWAT officers moved in with an arrest warrant Aug. 18, taking Johnson into custody at 3:45 a.m. at a house in the 4800 block of Everman Street, a few blocks from the quadruple murder scene.

Arresting officers said Johnson denied knowing the victims or ever being inside their residence.

Homicide Sgt. Ken Hefner said evidence was found at the Everman house linking Johnson to the crime. Authorities said the evidence included at least one of the victims' possessions found buried in the backyard and a partial roll of duct tape.

Hefner, who is heading the investigation, has declined to comment on the evidence or elaborate on specific elements of the case, fearing that making too many details public will jeopardize the investigation.

Johnson remains booked in Clark County Detention Center with bail set at \$1 million. He is charged with four counts each of murder, robbery and kidnapping, and a single count of burglary.

Return to the referring page.
Las Vegas SUN main page

Questions or problems? [Click here.](#)

All contents copyright 1998 and 1999 Las Vegas SUN, Inc.

Slaying suspect's bail set at \$1 million

Review-Journal

8/21/98
WRT
Bail has been set at \$1 million for a man suspected in last week's quadruple homicide in southeast Las Vegas.

Donte Johnson, 19, is charged with four counts each of murder, robbery and kidnapping, all with the use of a deadly weapon. During a Thursday morning appearance before Justice of the Peace James Bixler, Bixler set bail at \$1 million and the Clark County public defenders office was appointed to represent Johnson.

Johnson was arrested Tuesday in connection with the shooting deaths of Jeffrey Biddle, 19, Tracey Gorringer, 20, Matthew Mowen, 19 and Peter Talamantez, 17. The four were bound and shot Aug. 14 at a 4825 Terra

Linda Ave., near Tropicana Avenue and Nellis Boulevard.

Police have said they believe the motive for the slayings involved both robbery and narcotics. They have given few details of how the killings unfolded.

Las Vegas police Sgt. Ken Hefner said while he can't discuss details of the case, he did say police are confident they have evidence that ties Johnson to the mass slaying.

"We've got evidence that we felt offered sufficient probable cause to arrest him and we are gathering more as we are preparing for trial," Hefner said.

Hefner said police are pursuing other suspects in the case. He refused to elaborate.



DONTE JOHNSON
Suspect in quadruple slaying

[Return to the referring page.](#)

Las Vegas SUN

August 20, 1998

Suspect arraigned in four slayings

By Bill Gang

[<gang@lasvegassun.com>](mailto:gang@lasvegassun.com)

LAS VEGAS SUN

Bail was set today at more than \$1 million for 19-year-old Donte Johnson on charges he is responsible for Friday's quadruple execution-style homicide.

At the arraignment, Justice of the Peace James Bixler set a Sept. 2 preliminary hearing date on the charges that have the potential of resulting in a death sentence if he is convicted.

Johnson is charged with four counts of murder, kidnapping and robbery in Justice Court.

Prosecutors can avoid the public arena of a preliminary hearing by presenting their case directly to a Clark County grand jury. Both processes are designed to determine if there is sufficient evidence to warrant holding Johnson for a trial in District Court.

Johnson was arrested early Tuesday morning at the home of an acquaintance, not far from the house at 4825 Terra Linda Ave. where the bodies of the four bound victims were found Friday. The murder scene is near Tropicana Avenue and Nellis Boulevard.

Metro Police homicide Sgt. Ken Hefner said the four were "bound, gagged and shot helplessly."

The four have been identified as Tracey Albert Gorringer, 21, Jeffrey Charles Biddle, 19, Matthew David Mowen, 19, and Peter Chris Talamantez, 17.

Metro homicide investigators have said that information and items linking Johnson to the murders were found at the home.

Hefner has noted, however, that investigators are pursuing others who may have ties to the crime and that Johnson has not been named by police as the person they believe fired the fatal shots.

Three of the bodies were found in a living room at the front of the house. The fourth was in a room at the rear of the residence. Police said there were no signs of a forced entry.

[Return to the referring page.](#)

[Las Vegas SUN main page](#)

Questions or problems? [Click here.](#)

All contents copyright 1998 and 1999 Las Vegas SUN, Inc.

Teen-ager arrested in connection with quadruple slaying

□ Las Vegas detectives say others are being sought in the execution-style shooting deaths of four young men

By Glenn Fult
Review-Journal

Las Vegas police arrested a teen-ager Tuesday in connection with a quadruple slaying Friday in southeast Las Vegas, and detectives say they are seeking others who may be tied to the crime.

Sgt. Ken Hefner said Donte Johnson, 19, of Las Vegas was arrested at 3:45 a.m. and charged with four counts of murder, robbery and kidnapping, all with a deadly weapon, in each



JOHNSON

and Peter Talamantez, 17. The four were tied up with duct tape, then shot execution-style.

Despite Johnson's arrest at apartments adjacent to the crime scene, police continued to withhold details

of Friday's killings, but about the slayings pending completion of an investigation. Other than the slaying, Hefner said, the killings were motivated by both robbery and narcotics. Hefner offered few details about how the attacks unfolded or what led detectives to Johnson.

"We are still looking into it and pursuing the investigation, so I can't say much," Hefner said. "I will say that there are more people out there that we believe have more information about this. We need those people to call us."

Hefner said Johnson and at least some of the victims were acquaintances. He would not elaborate, but did confirm the two parties had met

previously on a handful of occasions. Detectives searched the residence where Johnson was arrested and found evidence they claim ties Johnson to the killings, Hefner said. The sergeant would not answer questions about the nature of the evidence.

"He was arrested on probable cause," Hefner said. "There were no warrants issued."

He also refused to say whether detectives believe Johnson was the shooter.

"I don't know if that is a safe assumption to make at this point," Hefner said. "As I said earlier, we are still pursuing leads as far as another

Please see ARREST/4A

Arrest

From 1A

suspect or other suspects are concerned."

News of Johnson's arrest did offer some momentary relief for family members of at least one of the victims. However, the Henderson family of Tracey Gorringer said no matter how many people are arrested or punished for the crime, their grief will never go away because their family member cannot be brought back.

"The people who did this are nonhuman," said Gorringer's 18-year-old brother, Nicholas. "Anyone who could do something like this is simply not human."

Gorringer's other brother, 22-year-old Spencer, said his family does not favor the death penalty if anyone is convicted in the case.

"The death penalty would be too good for them," Spencer Gorringer said. "We want the people who did this to spend a miserable existence behind bars for the rest of their lives."

Police were called to the single-story Terra Linda Avenue home at 6:30 p.m. Friday after a male acquaintance found the bodies. Three of the bodies were located in a front living room. The fourth body was found in an undisclosed rear room.

There were no signs of a



MOWEN

break-in at the home. Police sources said a background check showed no record of criminal convictions for Johnson.

Gorringer's family said that despite police contentions that narcotics likely were involved in the slayings, they believe robbery was the primary motive. Gorringer's brothers said Biddle, Mowen and Gorringer partied like most young men, but if they had any ties to narcotics it was on an experimental basis only.

Spencer and Nicholas Gorringer said they could not speak on behalf of Talamantez because they did not know him well enough. Talamantez was the only victim who did not live at the Terra Linda Avenue address.

Tracey Gorringer dreamed of being a master chef and had been employed as a cook at one of the



GORRINGER



TALAMANTEZ

most highly regarded restaurants in Idaho, his loved ones said. He was living in Las Vegas on a temporary basis. Tracey Gorringer and Biddle, nicknamed "Crash,"

both had extensive ties to the Sun Valley, Idaho, area. Mowen and Talamantez previously attended Green Valley High School.

All four victims have been described by those who knew them as people who would not have provoked such a vicious attack. They were described as outgoing, friendly young men who would go out of their way to avoid confrontation.

Nicholas Gorringer said he believes whoever killed his brother might have been under the mistaken assumption that there were large amounts of money in the home.

"This was all about money, and someone was hungry for it so they couldn't walk out and leave these people behind without killing them," he said. "Money is the root of all evil, and that is why these guys are all dead."

LAS VEGAS REVIEW-JOURNAL

Wednesday, August 19, 1998



Teen-ager arrested in connection with quadruple slaying

Las Vegas detectives say others are being sought in the execution-style shooting deaths of four young men.

By Glenn Puit
Review-Journal

Las Vegas police arrested a teen-ager Tuesday in connection with a quadruple slaying Friday in southeast Las Vegas, and detectives say they are seeking others who may be tied to the crime.

Sgt. Ken Hefner said **Donte Johnson**, 19, of Las Vegas was arrested at 3:45 a.m. and charged with four counts of murder, robbery and kidnapping, all with a deadly weapon, in each of Friday's killings.

Found in the home at 4825 Terra Linda Ave., near Tropicana Avenue and Nellis Boulevard, were the bodies of Las Vegas Jeffrey Charles Biddle, 19; Tracey Gorringer, 20; Matthew David Mowen, 19; and Peter Talamantez, 17. The four were tied up with duct tape, then shot execution-style.

Despite **Johnson's** arrest at apartments adjacent to the crime scene, police continued to withhold details about the shootings pending completion of an investigation. Other than reiterating contentions that the killings were motivated by both robbery and narcotics, Hefner offered few details about how the attacks unfolded or what led detectives to **Johnson**.

"We are still looking into it and pursuing the investigation, so I can't say much," Hefner said. "I will say that there are more people out there that we believe have more information about this. We need those people to call us."

Hefner said **Johnson** and at least some of the victims were acquaintances. He would not elaborate, but did confirm the two parties had met previously on a handful of occasions.

Detectives searched the residence where *Johnson* was arrested and found evidence they claim ties *Johnson* to the killings, Hefner said. The sergeant would not answer questions about the nature of the evidence.

"He was arrested on probable cause," Hefner said. "There were no warrants issued."



DONTE JOHNSON:
Arrested in quadruple
slaying.

**Three of the
four victims:**



**TRACEY
GORRINGER**



**MATTHEW DAVID
MOWEN**

"There were no warrants issued."

He also refused to say whether detectives believe *Johnson* was the shooter.

"I don't know if that is a safe assumption to make at this point," Hefner said. "As I said earlier, we are still pursuing leads as far as another suspect or other suspects are concerned."

News of *Johnson's* arrest did offer some momentary relief for family members of at least one of the victims. However, the Henderson family of Tracey Gorringer said no matter how many people are arrested or punished for the crime, their grief will never go away because their family member cannot be brought back.

"The people who did this are nonhuman," said Gorrings's 18-year-old brother, Nicholas. "Anyone who could do something like this is simply not human."

Gorrings's other brother, 22-year-old Spencer, said his family does not favor the death penalty if anyone is convicted in the case.

"The death penalty would be too good for them," Spencer Gorringer said. "We want the people who did this to spend a miserable existence behind bars for the rest of their lives."

Police were called to the single-story Terra Linda Avenue home at 6:30 p.m. Friday after a male acquaintance found the bodies. Three of the bodies were located in a front living room. The fourth body was found in an undisclosed rear room.

There were no signs of a break-in at the home. Police sources said a background check showed no record of criminal convictions for *Johnson*.

Gorrings's family said that despite police contentions that narcotics likely were involved in the slayings, they believe robbery was the primary motive. Gorrings's brothers said Biddle, Mowen and Gorrings partied like most young men, but if they had any ties to narcotics it was on an experimental basis only.

Spencer and Nicholas Gorringer said they could not speak on behalf of Talamantez because they did not know him well enough. Talamantez was the only victim who did not live at the Terra Linda Avenue address.

Tracey Gorringer dreamed of being a master chef and had been employed as a cook at one of the most highly regarded restaurants in Idaho, his loved ones said. He was living in Las Vegas on a temporary basis. Tracey Gorringer and Biddle, nicknamed "Crash," both had extensive ties to the Sun Valley, Idaho, area. Mowen and Talamantez previously attended Green Valley High School.

All four victims have been described by those who knew them as people who would not have



**PETER
TALAMANTEZ**

provoked such a vicious attack. They were described as outgoing, friendly young men who would go out of their way to avoid confrontation.

Nicholas Gorrings said he believes whoever killed his brother might have been under the mistaken assumption that there were large amounts of money in the home.

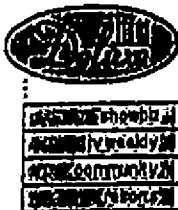
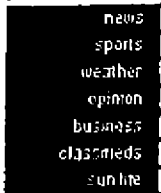
"This was all about money, and someone was hungry for it so they couldn't walk out and leave these people behind without killing them," he said. "Money is the root of all evil, and that is why these guys are all dead."

Give us your **FEEDBACK** on this or any story.

Fill out our Online Readers' Poll

[\[News\]](#) [\[Sports\]](#) [\[Business\]](#) [\[Lifestyles\]](#) [\[Neon\]](#) [\[Opinion\]](#) [\[in-depth\]](#)
[\[Columnists\]](#) [\[Help/About\]](#) [\[Archive\]](#) [\[Community Link\]](#) [\[Current](#)
[Edition\]](#)
[\[Classifieds\]](#) [\[Real Estate\]](#) [\[TV\]](#) [\[Weather\]](#)
[\[EMAIL\]](#) [\[SEARCH\]](#) [\[HOME\]](#) [\[INDEX\]](#)

Brought to you by the Las Vegas Review-Journal. Nevada's largest daily newspaper.



STORIES: CRIME and COURTS

back to LAS VEGAS NEWS

Next: [Contractor, company liable in roof collapse](#) 18 Aug.

10:43:15

[Printable text version of this story](#)

Today: August 18, 1998 at 13:05:48 PDT

Arrest made in four deathsBy Karen Zekan <karen@lasvegassun.com>
LAS VEGAS SUN

A 19-year-old Las Vegas man was arrested early today in connection with Friday's quadruple homicide.

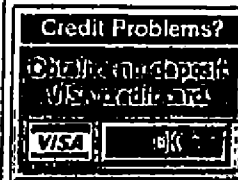
Donte Johnson was arrested by Metro Police homicide investigators at 3:45 a.m. at an acquaintance's home, not far from the house at 4825 Terra Linda Ave. where the bodies of Tracey Albert Gorringer, 21, Jeffrey Charles Biddle, 19, Matthew David Mowen, 19, and Peter Chris Talamantez, 17, were discovered bound and shot about 6 p.m. Friday.

Johnson was booked into the Clark County Detention Center on four counts each of murder with a deadly weapon, robbery, kidnapping and burglary. Formal charges and potential prosecution are pending a review of the case by the district attorney's office.

Homicide Investigators working the case developed information implicating Johnson and recovered several items of evidence at the house where he was arrested this morning. Homicide Sgt. Ken Hefner declined to disclose the nature of the items. Police also remained mum on whether the murder weapon has been found.

"It's always gratifying when a murder investigation is progressing quickly, especially this one," Hefner said this morning. His team worked all night piecing together the case that culminated in Johnson's arrest.

"Given the scale and magnitude of this one, where four people were bound, gagged and shot helplessly, it makes it that much more rewarding. Considering that there are people capable of



committing a crime like this, it's good to know that at least one of them is off the street."

The investigation, however, is not over. Police were continuing to follow up leads this morning that could result in the arrest of other suspects, Hefner said.

Since Friday's murders, police estimate nearly a dozen calls from the community have produced fruitful tips for detectives working the case.

Among those was information leading authorities to Johnson, with whom the victims were at least acquainted, Hefner said.

Police were still trying to narrow down when the killer or killers entered the dilapidated home near Tropicana Avenue and Nellis Boulevard and committed the crimes, tying up the victims before shooting three of them in the living room near the front door and the fourth near the kitchen.

Neighbors interviewed by police did not recall seeing anyone leaving the home or hearing any suspicious sounds. Detectives have an unconfirmed report that the last anyone heard from the victims was an 11 a.m. telephone conversation one of the men had with a friend.

Talamantez was apparently visiting the others, who police said had been sharing the rental house for about a year when he the killings happened.

Homicide investigators remain confident that drugs and robbery motivated the killer. Police found some narcotics at the murder scene, but could not confirm if drugs were being dealt out of the Terra Linda home.

"Generally the two go hand in hand — drug dealing and robbery," Hefner said. "People dealing drugs are potential robbery victims because they have money, but we have not gathered any information to confirm that any (drug dealing activity) was going on at the home."

Friends and family remain in mourning for the slain men.

Mowen, Biddle and Talamantez were students. Gorringer, a native of Burley, Idaho, was employed as a chef and Biddle, born in Santa Monica, Calif., worked as a security guard.

A visitation was scheduled for today from 4 to 7 p.m. at Palm Mortuary, 7600 S. Eastern Ave., for Biddle, Gorringer, and Mowen.

Mowen's funeral will be held at the same location Wednesday at 5 p.m.

Services for Biddle and Gorringer will be out of state.

Plans for Talamantez's services, which will be handled by Davis Funeral Homes, had not been finalized as of this morning.

The last quadruple homicide in the valley happened May 1, 1992. Vernell Ray Evans Jr. now sits on death row for the murders of Samantha Scotti, 24, Lisa Boyer, 26, Jermaine Woods, 19, and Steven Walker, 19. Police believe the killings were planned as revenge against Scotti, who served as a confidential informant to police in a drug case.

Next: Contractor, company liable in roof collapse 18 Aug.
10:43:15

Printable text version of this story

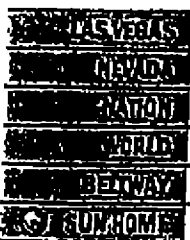
Las Vegas SUN main page

Questions or problems? Click here.

Read our policy on cookies and privacy. Click here.

All contents copyright 1998 Las Vegas SUN, Inc.

Nevada's largest website



news
sports
weather
opinion
business
classifieds
son life



Advertise with us
Real estate
Community
Business

STORIES: CRIME and COURTS

Back to LAS VEGAS NEWS

Previous: Metro Police officer faces another DUI charge 17
Aug. 13:42:10

Next: Federal appeals court rules against county smut law 17
Aug. 13:15:23

[Printable text version of this story](#)

August 17, 1998

Police seek answers in quadruple slayings

By Jace Radke <jace@lasvegassun.com> and
Karen Zekan <karen@lasvegassun.com>
LAS VEGAS SUN

Metro Police homicide investigators today were hoping interviews with friends and family could help them narrow a seven-hour window of time in which a killer entered a Las Vegas home and murdered four young men, apparently for drugs.

The last anyone is believed to have heard from the victims was during what police have been told was a telephone conversation about 11 a.m. Friday.

But what transpired between 11 a.m. and 6 p.m. when a friend of the victims made the gruesome discovery inside 4825 Terra Linda Ave. is a mystery that has yet to unfold.

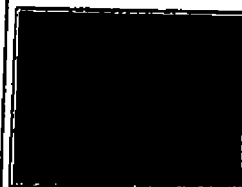
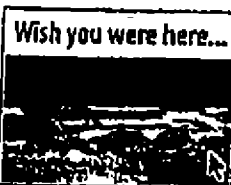
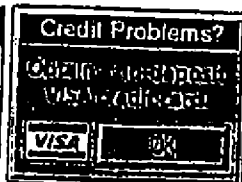
The victims have been identified as Jeffrey Charles Biddle, 19; Tracey Albert Gorringer, 21; Matthew David Mowen, 19, and Peter Chris Talamantez, 17.

The victims were bound and shot, said homicide Sgt. Ken Hefner. Three were found in the living room near the door; the fourth was near the kitchen.

"There was nothing overt," as far as evidence that the murders could have resulted from a home invasion or forced entry, Hefner said, adding that the house was in a very dilapidated condition.

Hefner said drugs were found in the house and possessions were missing.

At least two of the victims were known to have been employed as security guards.



The last quadruple homicide on record in the valley was in 1992 and also drug-related.

Sunday afternoon in the southeast Las Vegas neighborhood near the intersection of Nellis Boulevard and Tropicana Avenue lawns were being mowed, neighbors were playing basketball and children were riding.

Having a normal afternoon was important Sunday to the residents that live around 4825 Terra Linda Ave.

"It has been a circus around here ever since this happened," said an angry Terra Linda resident. "Police and reporters keep rolling through."

The news of the murders quickly spread transforming what residents called a once quiet neighborhood into hotbed of police and media activity.

"This used to be a great neighborhood," said resident Tom Pope, who lives about a block from where the bodies were found. "Something like this is a city-wide problem and puts a damper on the neighborhood. You want to feel safe when you're in your neighborhood."

Pope, who was out mowing his lawn on Sunday, moved into the neighborhood in 1970.

There had been problems with the house at 4825 in the past, he said.

"They had a party about two weeks ago, and there were about 26-28 cars there," Pope said. "In the morning when I drove to work there were broken bottles and beer cans all over. They were definitely parties."

The neighbors are unsure as to what happened to cause the young men's deaths. Police say that they have found evidence that supports a theory that the killings were motivated by robbery and likely involved narcotics. Police have confirmed that items were missing from the house.

"I just want to know what happened," said Russell Driever, who was playing basketball with two neighbors. "Was it drugs, a robbery or something else? I just want to know."

While confused about the causes of the homicides, residents said that the neighborhood would soon quiet back down.

"It has been a real good neighborhood since I

"moved her 10 years ago," a resident who wished to remain anonymous said. "What happened happened."

The resident said that he was not considering a move.

"If it happens again in my house, then I'll move," he said. "Until then I'll stay here."

Homicide Sgt. Ken Hefner today was asking for the public's help, seeking anyone who may have seen or spoken with the victims on Friday. Investigators are trying to pinpoint a more definite time frame for the murders. A \$1,000 reward is being offered for information leading to the arrest and conviction of the killers.

Anyone with information on the slaying is asked to call the homicide section at 229-3521. Anonymous tips can be placed with Secret Witness at 385-5555.

Previous: Metro Police officer faces another DUI charge 17

Aug. 13:42:10

Next: Federal appeals court rules against county smut law 17

Aug. 13:15:23

Printable text version of this story

Las Vegas SUN main page

Questions or problems? [Click here.](#)

Read our policy on cookies and privacy. [Click here.](#)

All contents copyright 1998 Las Vegas SUN, Inc.

Nevada's largest website

Slaying victims identified

8/16/98

□ Police say three teens and a man, 21, were shot to death in a robbery that likely involved narcotics.

By Glenn Pult
Review Journal

Three of four victims bound and shot to death Friday in a mass slaying at a southeast Las Vegas home were teen-agers.

Las Vegas police Sgt. Ken Hefner identified the four Las Vegans as Peter Chris Talamantez, 17, Matthew David Mowen, 19, Jeffrey Charles Biddle, 19, and Tracey Albert Gorrings, 21.

Talamantez and Mowen attended Green Valley High School. Background details on Biddle and Gorrings were not available Saturday.

Their bodies were found Friday evening by a friend inside a home at 4825 Terra Linda Ave., near Nellis Boulevard and Tropicana Avenue.

See SLAYINGS/5B

SLAYINGS/5B

Slayings

From 18

Gortinge and Mowen are said the victims were tied up, then executed. Heifer said detectives have found evidence supporting their theory that the killings were motivated by robbery and likely involved narcotics.

"When you have multiple victims like that all in one home, it is just so obvious that these people (who committed the crime) intended for each and every one of them to die, and they proceeded to carry it out," Heifer said Saturday afternoon. "The magnitude of it was disturbing."

Heifer said police are being



MOWEN



TALAMANTEZ

purposefully "vague" about the intricacies of the crime. Release details of how the young men were restrained, how many times they were shot and whether there were signs of a struggle could jeopardize the ongoing investigation, he said.

Heifer also declined to discuss what led police to believe robbery and narcotics are behind the killings. He confirmed that the victims were missing from the home at this point we are just going to say that they were bound and shot," Heifer said.

Two teen-age girls who identified themselves as close friends of Mowen and Talamantez described the victims as friendly outgoing and the type who would avoid confrontation. They said who would speak only of their names were withheld and they were two young men dabbled in recreational marijuana but that they never used hard drugs.

Those who lived in the home also said marijuana transactions to said Talamantez was viewed as a sort of class clown at Green Valley High School. He said the friends of the victims were in the neighborhood of the victims were in the living room of the house, and Heifer said they were in another undisclosed room. Heifer said police are appealing to anyone who saw or spoke to the victims Friday to call detectives immediately.

We are trying to pin down the time anybody spoke to them," Heifer said.

Sunday, August 16, 1998 Las Vegas Review-Journal/18

Four young men slain in southeast

□ Police believe drugs and robbery led to a quadruple slaying, the Las Vegas Valley's first in six years.

By Glenn Pult
Review-Journal

Four young men were tied up then shot to death in a southeast Las Vegas home Friday, and police speculated robbery and drugs played a part in the quadruple slaying.

Las Vegas police Sgt. Ken Hefner said a male friend of the victims discovered the bodies at 6:30 p.m. Inside the house at 4825 Terra Linda Ave., near Tropicana Avenue and Nellis Boulevard. The men were believed to be in their late teens or early 20s.

Three of the victims were found in the living room and a fourth was discovered elsewhere in the residence. "At this point we are not even sure who they are," Hefner said.

He would not elaborate on how the men had been restrained or if they had any opportunity to fight back.

"All four of my friends live there," said a grief-stricken Jennifer Novak, who arrived for a visit but instead was greeted by a swarm of police officers and crime-scene tape preventing access to the house.

"It should blow people's minds to know something like this happened to these people," Novak said as tears streamed down her face. "They were good people. They were not in a gang or anything like that."

Hefner said police believe robbery was the motive. However, he said officers were just beginning to gather evidence at the scene at 7:30 p.m. and detectives were not ruling anything out.

"It's early on in the investigation," Hefner said as police scoured the

Please see SLAYINGS/2A



Ralph Fountain/Review-Journal
A Las Vegas police officer walks through the living room of a southeast Las Vegas home where four men were found bound and fatally shot Friday.

Slayings

8/15/98

From 1A

yard and driveway of the house searching for clues. "Patrol officers canvassed the area and so far we haven't come across any directly relevant information from the neighbors."

Hefner said the interior of the home was "somewhat dilapidated," but he declined to say whether the residence was ransacked. He said there were no signs of a break-in.

News of the killings petrified those on Terra Linda and in the surrounding neighborhood. Sharon Walker, who lives across the street from the slaying scene in the Wildwood Apartments on East Tropicana, said the house was frequently the site of large parties.

"It's really, really surprising because as a rule they were pretty quiet for their ages," Walker said. "It was calm last night (Thursday), and I saw some of them out front watering their lawn, having a beer."

Hefner said the person who found the bodies was at the home as late as midnight Thursday and there were no problems. The sergeant said it was too early in

"There were people in and out of there all the time. A couple weeks ago two people who were hanging out there came up to me and asked if I wanted to get high, smoke some weed."

Joyce Brown

Teen-ager who lives next to site of quadruple slaying

the investigation to tell when the young men were killed.

Novak said at least two of the people who lived in the house had family ties to Idaho. The young men often would follow the rock group Phish to concert sites across the country, Novak said.

Walker and other neighbors said they often would see large buses sporting "hippie-style" paintings and California license

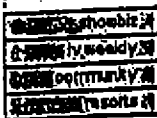
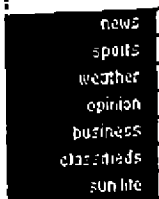
plates parked in front of the home.

"There were people in and out of there all the time," said neighbor Joyce Brown, 14. "A couple weeks ago two people who were hanging out there came up to me and asked if I wanted to get high, smoke some weed." She said she declined the offer.

Late Friday, Hefner made a public appeal at the Terra Linda Avenue scene for anyone who may have observed anything suspicious to call police at 229-3521 or Secret Witness at 385-5555.

The last quadruple homicide in Las Vegas took place May 1, 1992, when rioting in the city following the first Rodney King trial verdicts was used to cover the slayings of Samantha Scotti, 24, Jermaine Woods, 19, Steven Walker, 19, and Lisa Boyer, 26.

Vernell Ray "Lil Ray" Evans was convicted in September 1994 of four counts of first-degree murder and sentenced to death in connection with the killings at 532 Wardelle St. in northeast Las Vegas. Police said the crimes were motivated by retaliation against Scotti for her cooperation with authorities in a narcotics investigation.



STORIES: CRIME and COURTS

back to LAS VEGAS NEWS

Previous: [Prison marks time: 1 year of progress](#) 15 Aug.
18:55:12
[Printable text version of this story](#)

August 15, 1998

Four young men bound, slain in Las Vegas home

LAS VEGAS (AP) - Las Vegas Metro Police are looking for clues in the grisly slaying of four young people in a home on the city's southeast side.

Police say the victims had been tied up and that robbery may have been a motive.

The names of the victims had not been released as of this morning.

The men were believed to have been in their late teens or early 20s.

Police were called to the scene after a friend of the victims found the bodies when he went to the house about 6:30 p.m. Friday.

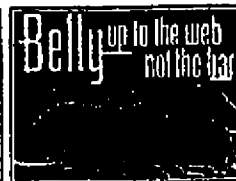
Homicide Sgt. Ken Hefner said officers believe robbery was the motive, but are not ruling anything out.

Three of the victims were found in the living room and a fourth was discovered elsewhere in the residence.

Hefner would not elaborate on how the men had been restrained or if they had any opportunity to fight back.

"All four of my friends live there," said a grief-stricken Jennifer Novak, who arrived for a visit but instead was greeted by a swarm of police officers and crime-scene tape preventing access to the house.

"It should blow people's minds to know something like this happened to these people," she said. "They were good people. They were not in a gang or anything like that."



**THIS PAGE INTENTIONALLY LEFT
BLANK**

ORIGINAL

FILED

NOV 23 3 54 PM '99

Shirley J. Thompson
CLERK

0001
PHILIP J. KOHN
SPECIAL PUBLIC DEFENDER
State Bar No. 000556
JOSEPH S. SCISCENTO
State Bar No. 004380
DAYVID J. FIGLER
State Bar No. 004264
309 South Third Street
P. O. Box 552316
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON, aka
John White, ID # 1586283,

Defendant.

CASE NO: C153154
DEPT. NO: V

Date of Hearing: 12/27/99
Time of Hearing: 9:00 a.m.

**MOTION TO ALLOW THE DEFENSE TO ARGUE
LAST AT THE PENALTY PHASE**

COMES NOW, Defendant, DONTE JOHNSON, by and through his attorneys,
PHILIP J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO and DAYVID J.
FIGLER, Deputy Special Public Defenders, and respectfully requests this Court to allow
the defense to argue last at the penalty phase.

////

////

////

////

RECEIVED
NOV 27 9 28 AM '99
CLERK
CW

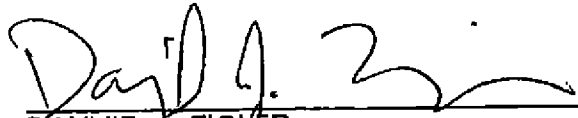
C1531

CE05

1 This motion is made and based upon the attached Points and Authorities, all
2 pleadings and papers on file herein, and any oral argument this Court may deem
3 necessary.

4 DATED this 29 day of November, 1999.

5 PHILIP J. KOHN
6 SPECIAL PUBLIC DEFENDER

7 

8 DAYVID J. FIGLER
9 Deputy Special Public Defender
10 State Bar No. 004264
11 309 South Third Street, Fourth Floor
12 P.O. Box 552316
13 Las Vegas, NV 89155
14 Attorneys for Defendant

15 **NOTICE OF MOTION**

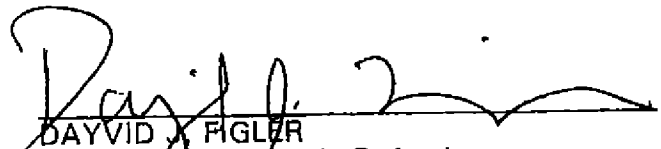
16 TO: THE STATE OF NEVADA, Plaintiff;

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

18 **YOU, AND EACH OF YOU WILL PLEASE TAKE NOTICE** that the undersigned will
19 bring the foregoing Motion to Allow the Defense to Argue Last at the Penalty Phase on
20 for hearing before the above-entitled court on the 27th day of December, 1999 at the
21 hour of 9:00 a.m., in District Court, Department V, or as soon thereafter as counsel
22 may be heard.

23 DATED this 29 day of November, 1999.

24 PHILIP J. KOHN
25 SPECIAL PUBLIC DEFENDER

26 

27 DAYVID J. FIGLER
28 Deputy Special Public Defender
State Bar No. 004264
309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

POINTS & AUTHORITIES

In State vs. Jenkins, 15 Ohio St. 3d 164, 214-215 (1984), the Ohio Supreme Court stated that the decision to allow the defense to open and close final argument in the penalty phase is within the sound discretion of the trial court. Jenkins, makes it clear that the trial court properly may allow the defense the right to argue last to the jury.

Due process considerations support allowing the defense to argue last. A case of this magnitude deserves the maximum judicial consideration to guarantee a fair trial. The United States Supreme Court has recognized that "death is a different kind of punishment, than any other which may be imposed in this country." Gardner vs. Florida, 430 U.S. 349 (1977). It is clear that a higher standard of due process is required in death cases than other cases because of the severity and finality of the punishment which may be involved. The Supreme Court, in considering the scope of due process stated:

[I]t is the universal experience in the administration of criminal justice that those charged with capital offenses are granted special considerations.

Griffin vs. Illinois, 351 U.S. 12, 28 (1956).

Furthermore, the Court has repeatedly held:

[T]he extent to which procedural process must be afforded the recipient is influenced by the extent to which he may be "condemned to suffer grievous loss, . . ."

Goldberg vs. Kelly, 397 U.S. 254 at 262-263 (1970), quoting Joint Anti-Fascist Refugee Committee vs. McGrath, 341 U.S. 123, 168 (1951) (Frankfurter, J. concurring).

N.R.S. 200.033 states that the aggravating circumstances of which the accused was convicted must outweigh the mitigating factors. It might at first glance appear that the prosecution actually bears the burden at the penalty phase. However, a more careful examination of the practical application of the statute indicates that the burden is largely illusory. Once the prosecution proves the specifications, it need do

1 nothing at the penalty phase. If the defense chooses not to put on any mitigating
2 evidence, a death sentence will result.

3 The Defendant has some burden, and bears at least some of the burden in arguing
4 that he should be allowed to live. If Defendant fails to present mitigating factors to
5 create a reasonable doubt in the minds of the jurors, he may well lose his life. The
6 defense should be allowed to argue last since he is the party who would be defeated
7 if no evidence was offered on either side. At least two other jurisdictions have sought
8 to alleviate the inherent unfairness in allowing the prosecution to speak last before the
9 jury. The Kentucky statute which prescribes a penalty phase hearing states:

10 The prosecuting attorney shall open and the defendant shall
11 conclude the argument.

12 Ky. Rev. Stat. Section 532.025(1)(A).

13 California has reached the same result through judicial interpretation. In People
14 vs. Bandhauer, 66 Cal.2d 524, 530-531 (1967), the court stated:

15 Equal opportunity to argue is . . . consistent with the
16 Legislature's strict neutrality in governing the jury's choice of
17 penalty . . . Accordingly, hereafter the prosecution should
18 open and the defense respond. The prosecution may then
19 argue in rebuttal and the defense close in surrebuttal.

20 The essential fairness of this position has application in Nevada. The defense
21 should open with mitigation and the prosecution may then counter. The prosecution
22 should then make a closing statement, followed by the closing statement of the
23 defense.

24 There is something fundamentally unfair about a person facing death and the
25 prosecutor having the last chance to speak to the jury. The Defendant should have the
26 last opportunity to plead for his life. If this Court were doing a sentencing, the Court
27 would certainly approach it this way.

28 ...

...

...

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DATED this 29 day of November, 1999.

DAYVID J. FIGLER

DAYVID J. FIGLER
Deputy Special Public Defender
State Bar No. 004264
309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

ORIGINAL

FILED

NOV 29 3 57 PM '99

CLERK

0071
PHILIP J. KOHN
SPECIAL PUBLIC DEFENDER
State Bar No. 000556
JOSEPH S. SCISCENTO
State Bar No. 004380
DAYVID J. FIGLER
State Bar No. 004264
309 South Third Street
P. O. Box 552316
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON, aka
John White, ID # 1586283,

Defendant.

CASE NO: C153154
DEPT. NO: V

Date of Hearing: 12/27/99
Time of Hearing: 9:00 a.m.

MOTION IN LIMINE TO PROHIBIT ANY REFERENCES TO
THE FIRST PHASE AS THE "GUILT PHASE"

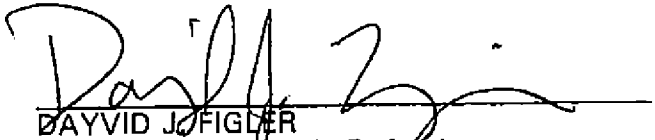
COMES NOW, Defendant, DONTE JOHNSON, by and through his attorneys, PHILIP J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO and DAYVID J. FIGLER, Deputy Special Public Defenders, and hereby respectfully moves this Court for an order in limine to prohibit the State and the defense from referring to the first phase of this matter as the "guilt phase" of the proceedings, or to otherwise use the word "guilt" as an adjective to refer to that state of the proceedings at which Defendant's innocence or guilt is determined.

RECEIVED
NOV 29 8:19 AM
CLERK
SPECIAL PUBLIC
DEFENDER
CLARK COUNTY
NEVADA

1 This Motion is made and based upon the attached Points and Authorities, all
2 pleadings and papers on file herein, and any oral argument this Court may deem
3 necessary.

4 DATED this 29 day of November, 1999.

5 PHILIP J. KOHN
6 SPECIAL PUBLIC DEFENDER

7 
8 DAYVID J. FIGLER
9 Deputy Special Public Defender
10 State Bar No. 004264
11 309 South Third Street, Fourth Floor
12 P.O. Box 552316
13 Las Vegas, NV 89155
14 Attorneys for Defendant

15 **NOTICE OF MOTION**

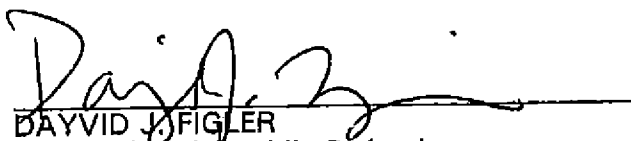
16 TO: STATE OF NEVADA, Plaintiff

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

18 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will
19 bring the foregoing Motion in Limine to Prohibit any References to the First Phase as the
20 "Guilt Phase" on for hearing in the above-entitled Court on the 27th day of December,
21 1999 at 9:00 a.m., Department V, or as soon thereafter as counsel may be heard.

22 DATED this 29 day of November, 1999.

23 PHILIP J. KOHN
24 SPECIAL PUBLIC DEFENDER

25 
26 DAYVID J. FIGLER
27 Deputy Special Public Defender
28 State Bar No. 004264
309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

1 POINTS AND AUTHORITIES

2 Article I, Section 8, of the Nevada Constitution, as well as the Fifth, Sixth and
3 Fourteenth Amendments to the United States Constitution, guarantee every criminal
4 defendant the right to a fair trial. This right requires the court to conduct trial in a manner
5 which does not appear to indicate that a particular outcome of the trial is expected or
6 likely.

7 Although participants, including some defense counsel, have lapsed into referring
8 to the verdict-determination process as the "guilt phase" of a capital proceeding
9 (apparently to distinguish it from the "mitigation" or "punishment" phase), the "guilt" label
10 creates an unfair inference that the very purpose of the evidentiary phase is to find a
11 defendant guilty. The terms "evidentiary stage," "trial stage," or "fact-finding stage"
12 would more appropriately designate that phase of the matter without unfairly predisposing
13 the jury toward assuming Defendant's guilt. Present use of the phrase "guilt phase"
14 makes no more sense than referring to the trial as the "innocence phase".

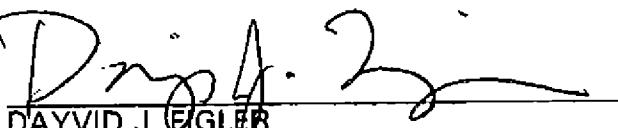
15 The instant motion has been granted in all other proceedings in which it was filed.
16 Therefore, Defendant Johnson does not see any legitimate objection to this request.

17 CONCLUSION

18 WHEREFORE, Defendant Johnson hereby moves this Court for an order in limine
19 to prevent the use of the word "guilt", in general designated reference to this phase of
20 these proceedings.

21 DATED this 29 day of November, 1999.

22 PHILIP J. KOHN
23 SPECIAL PUBLIC DEFENDER

24 

25 DAYVID J. EGLER
26 Deputy Special Public Defender
27 State Bar No. 004264
28 309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 0001
 2 PHILIP J. KOHN
 3 SPECIAL PUBLIC DEFENDER
 4 State Bar No. 000556
 5 JOSEPH S. SCISCENTO
 6 State Bar No. 004380
 7 DAYVID J. FIGLER
 8 State Bar No. 004264
 9 309 South Third Street
 10 P. O. Box 552316
 11 Las Vegas, NV 89155
 12 (702) 455-6265
 13 Attorneys for Defendant

FILED

NOV 23 3 58 PM '99

Shirley J. Thompson
 CLERK

DISTRICT COURT
 CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA,	}	
12	}	
13 Plaintiff,	}	CASE NO: C153154
14	}	DEPT. NO: V
15 vs.	}	
16	}	
17 DONTE JOHNSON, aka	}	
18 John White, ID # 1586283,	}	
19	}	
20 Defendant.	}	

Date of Hearing: 12/27/99
 Time of Hearing: 9:00 a.m.

MOTION FOR PERMISSION TO FILE OTHER MOTIONS

20 COMES NOW, the Defendant, DONTE JOHNSON, by and through his attorneys,
 21 PHILIP J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO and DAYVID J.
 22 FIGLER, Deputy Special Public Defenders, and respectfully requests, pursuant to the
 23 Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution
 24 and Article I of the Nevada Constitution, that he be permitted to file additional motions
 25 as issues arise and/or new legal precedent is established or made known to counsel.

26 ////

27 ////

////

RECEIVED
 NOV 29 1999
 CLERK
 CLARK COUNTY
 NEVADA

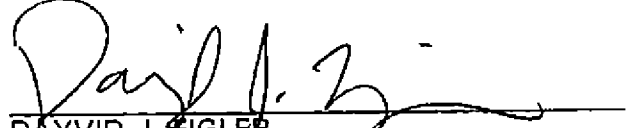
C605

1031

1 This Motion is also based on the attached Points and Authorities, all of the papers
2 and pleadings on file herein, any oral argument on the matter and upon such other and
3 further evidence as may be adduced by the Court in this matter.

4 DATED this 29 day of November, 1999.

5 PHILIP J. KOHN
6 SPECIAL PUBLIC DEFENDER

7 

8 DAYVID J. FIGLER
9 Deputy Special Public Defender
10 State Bar No. 004264
11 309 South Third Street, Fourth Floor
12 P.O. Box 552316
13 Las Vegas, NV 89155
14 Attorneys for Defendant

15 **NOTICE OF MOTION**

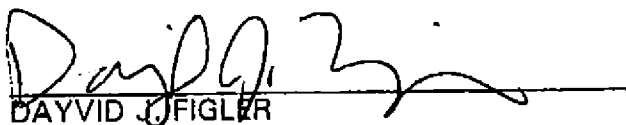
16 TO: THE STATE OF NEVADA, Plaintiff; and

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

18 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the undersigned will
19 bring the foregoing **Motion for Permission to File Other Motions** on for hearing before the
20 above-entitled Court on the **27th** day of **December, 1999**, at the hour of **9:00 a.m.**, in
21 Department **V**, or as soon thereafter as counsel may be heard.

22 DATED this 29 day of November, 1999.

23 PHILIP J. KOHN
24 SPECIAL PUBLIC DEFENDER

25 

26 DAYVID J. FIGLER
27 Deputy Special Public Defender
28 State Bar No. 004264
309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorney for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 POINTS AND AUTHORITIES

2 ARGUMENT

3 Mr. Johnson has been charged with capital murder. The State seeks to kill him
4 through imposition of the death penalty. Since this is a capital prosecution, exacting
5 standards must be met to assure that it is fair. "The fundamental respect for humanity
6 underlying the Eighth Amendment's prohibition against cruel and unusual punishment
7 gives rise to a special "need for reliability in the determination that death is the
8 appropriate punishment" in any capital case." Johnson v. Mississippi, 486 U.S. 578, 584
9 (1988)(quoting Gardner v. Florida, 430 U.S. 349, 363-64 (1977) (quoting Woodson v.
10 North Carolina, 428 U.S. 280, 305 (1976) (White, J., concurring)).

11 Today, Mr. Johnson is filing, contemporaneously with this motion, a number of
12 other motions. For various reasons, other motions may become necessary after today.
13 Additional motions will be necessitated by the fruits of Mr. Johnson's ongoing
14 investigation and as a result of this Court's rulings on the motions he has already filed.

15 Other motions may only become necessary after the litigation of motions filed
16 today. For instance, there is no point in filing additional motions concerning the death
17 penalty if this Court finds that Nevada's death penalty scheme is unconstitutional or if this
18 Court concludes that the death penalty cannot be imposed upon Mr. Johnson based on
19 the unconstitutionality of the application of the death penalty aggravators.

20 In addition, new decisions from the Nevada Supreme Court, the United States
21 Supreme Court and other federal courts may affect the defendant's substantial rights and
22 may require the filing of motions in the future.

23 Particular skills are required of counsel for competent representation in a capital
24 case. As the Florida Supreme Court has observed, death penalty cases involve
25 "extraordinary circumstances and unusual representation." White v. Board of
26 Commissioners, 537 So.2d 1376, 1380 (Fla. 1989) (quoting Makemson v. Martin
27 County, 491 So.2d 1109, 1110 (Fla. 1986)). Such cases "raise complex additional legal
28 and factual issues beyond those raised in an ordinary felony trial." People v. Bigelow, 691

1 P.2d 994 (Cal. 1984). As a result, as one court has held, death penalty litigation "has
2 become highly specialized . . . few attorneys have 'even a surface familiarity with
3 seemingly innumerable refinements put on Gregg v. Georgia . . . and its progeny.'" Irving
4 v. State, 441 So.2d 846, 856 (Miss. 1983) (citing Evans v. State of Mississippi, 441
5 U.S. 520 (Miss. 1983) (Robertson, J., dissenting)). Thus, what may be acceptable in a
6 non-capital case may not pass constitutional muster when death could be imposed.

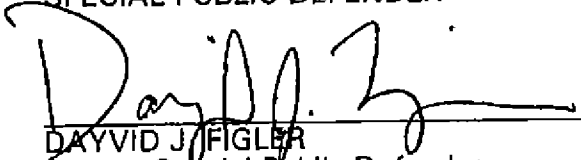
7 To provide effective assistance an attorney must adequately investigate and prepare
8 her client's case. Goodwin v. Balkcom, 684 F.2d 794, 805 (11th Cir. 1982) ("[a]t the
9 heart of effective representation is the independent duty to investigate and prepare"); see
10 also McQueen v. Swenson, 498 F.2d 207, 217(8th Cir. 1974) (attorney who does not
11 seek out all facts relevant to client's case will not be prepared at trial). Counsel cannot
12 be required to file all motions before having completed that investigation.

13 The United States Constitution and the Nevada Constitution command that, under
14 these complex circumstances, Mr. Johnson be allowed to file whatever additional motions
15 he may deem appropriate, despite any local rule concerning timeliness which may be to
16 the contrary.

17 WHEREFORE, Mr. Johnson respectfully requests that this Court: (a) enter an order
18 granting the motion and allowing the defendant to file other motions; and (b) grant any
19 other relief that is just and proper under the circumstances of this motion.

20 DATED this 29 day of November, 1999.

21 PHILIP J. KOHN
22 SPECIAL PUBLIC DEFENDER

23 
24 DAYVID J. FIGLER
25 Deputy Special Public Defender
26 State Bar No. 004264
27 309 South Third Street, Fourth Floor
28 P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

ORIGINAL

FILED

NOV 23 4 00 PM '99

Shirley A. ...
CLERK

0065
PHILIP J. KOHN
SPECIAL PUBLIC DEFENDER
State Bar No. 000556
JOSEPH S. SCISCENTO
State Bar No. 004380
DAYVID J. FIGLER
State Bar No. 004264
309 South Third Street
P. O. Box 552316
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON, aka
John White, ID # 1586283,

Defendant.

CASE NO: C153154
DEPT. NO: V

Date of Hearing: 12/27/99
Time of Hearing: 9:00 a.m.

MOTION FOR INSPECTION OF POLICE OFFICERS' PERSONNEL FILES

COMES NOW, the Defendant, DONTE JOHNSON, by and through his attorneys,
PHILIP J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO and DAYVID J.
FIGLER, Deputy Special Public Defenders, and respectfully moves this Court to conduct
an in camera inspection of the personnel files of all police officers and Clark County
Detention Center officers or employees who will testify at trial or who participated in the
investigation of this case.

////

////

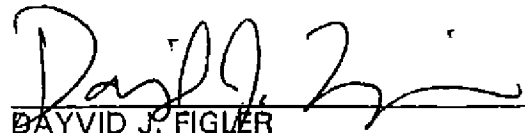
////

RECEIVED
NOV 29 1999
CLARK COUNTY
NEVADA
COUNTY CLERK

1 This Motion is based on the attached Points and Authorities, all of the papers and
2 pleadings on file herein, any oral argument on the matter and upon such other and further
3 evidence as may be adduced by the Court in this matter.

4 DATED this 29 day of November, 1999.

5 PHILIP J. KOHN
6 SPECIAL PUBLIC DEFENDER

7 
8 DAYVID J. FIGLER
9 Deputy Special Public Defender
10 State Bar No. 004264
11 309 South Third Street, Fourth Floor
12 P.O. Box 552316
13 Las Vegas, NV 89155
14 Attorneys for Defendant

15 **NOTICE OF MOTION**

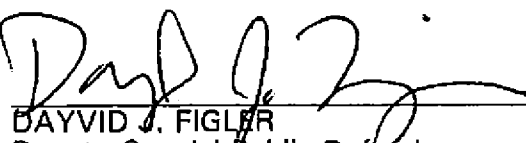
16 TO: THE STATE OF NEVADA, Plaintiff; and

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

18 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the undersigned will
19 bring the foregoing **Motion for Inspection of Police Officers' Personnel Files** on for hearing
20 before the above-entitled Court on the **27th** day of **December, 1999**, at the hour of **9:00**
21 a.m., in Department **V**, or as soon thereafter as counsel may be heard.

22 DATED this 29 day of November, 1999.

23 PHILIP J. KOHN
24 SPECIAL PUBLIC DEFENDER

25 
26 DAYVID J. FIGLER
27 Deputy Special Public Defender
28 State Bar No. 004264
309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 POINTS AND AUTHORITIES

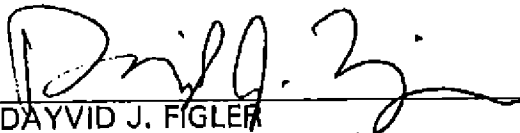
2 ARGUMENT

3 The State has charged Mr. Johnson with First Degree Murder and various other
4 offenses. It seeks to kill him through imposition of the death penalty. He now requests
5 that this Court compel the State to provide this Court with the personnel files of all police
6 officers and Clark County Detention Center employees who will testify at trial, and all
7 police officers who participated in the investigation of this case, and that this Court
8 conduct an in camera inspection of these records. He further requests that if any
9 exculpatory evidence is found within these personnel files that this Court order the
10 disclosure of such evidence to counsel for the accused.

11 The State must "disclose information favorable to the defense that meets the
12 appropriate standard of materiality. . . . If the prosecution is uncertain about the
13 materiality of information within its possession, it may submit the information to the trial
14 court for an in camera inspection and evaluation.'" United States v. Henthorn, 931 F.2d
15 29, 30-31 (9th Cir. 1991) (quoting United States v. Cadet, 727 F.2d 1453, 1467-68 (9th
16 Cir. 1984)). "The government has a duty to examine personnel files upon a defendant's
17 request for their production." Id. Mr. Johnson hereby specifically and respectfully
18 requests that each of the above identified personnel files be produced and inspected by
19 the court, in camera.

20 DATED this 29 day of November, 1999.

21 PHILIP J. KOHN
22 SPECIAL PUBLIC DEFENDER

23 
24 DAYVID J. FIGLER
25 Deputy Special Public Defender
26 State Bar No. 004264
27 309 South Third Street, Fourth Floor
28 P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

156

1 0001
 2 PHILIP J. KOHN
 3 SPECIAL PUBLIC DEFENDER
 4 State Bar No. 000556
 5 JOSEPH S. SCISCENTO
 6 State Bar No. 004380
 7 DAYVID J. FIGLER
 8 State Bar No. 004264
 9 309 South Third Street
 10 P. O. Box 552316
 11 Las Vegas, NV 89155
 12 (702) 455-6265
 13 Attorneys for Defendant

FILED

NOV 23 4 02 PM '99

Shirley...
 CLERK

DISTRICT COURT
 CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO: C153154
 DEPT. NO: V

vs.

DONTE JOHNSON, aka
 John White, ID # 1586283,

Defendant.

Date of Hearing: 12/27/99
 Time of Hearing: 9:00 a.m.

**MOTION FOR DISQUALIFICATION FROM THE JURY VENIRE
 OF ALL POTENTIAL JURORS WHO WOULD AUTOMATICALLY
 VOTE FOR THE DEATH PENALTY IF THEY FOUND
 MR. JOHNSON GUILTY OF CAPITAL MURDER**

COMES NOW, the Defendant, DONTE JOHNSON, by and through his attorneys,
 PHILIP J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO and DAYVID J.
 FIGLER, Deputy Special Public Defenders for the above-captioned individual, and
 respectfully requests, pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments
 to the United States Constitution, Article 1 of the Nevada State Constitution, and
 applicable state law, the disqualification from the jury venire all potential jurors who would
 automatically vote for a sentence of death if they found him guilty of first degree murder.

RECEIVED
 NOV 29 1999
 COUNTY CLERK
 CLARK COUNTY
 NEVADA

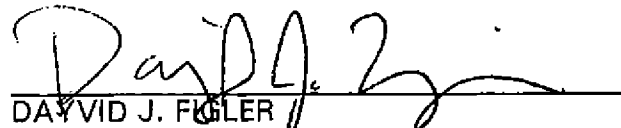
C1531

C15

1 This Motion is also based upon the attached Points and Authorities, all of the
2 papers and pleadings herein, any oral argument on the matter, and upon such other and
3 further evidence as may be adduced by the Court in this matter.

4 DATED this 29 day of November, 1999.

5 PHILIP J. KOHN
6 SPECIAL PUBLIC DEFENDER

7 
8 DAYVID J. FIGLER
9 Deputy Special Public Defender
10 State Bar No. 004264
11 309 South Third Street, Fourth Floor
12 P.O. Box 552316
13 Las Vegas, NV 89155
14 Attorneys for Defendant

12 **NOTICE OF MOTION**

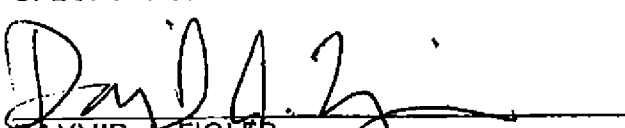
13 TO: STATE OF NEVADA, Plaintiff; and

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

15 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and
16 foregoing **Motion for Disqualification from the Jury Venire of all Potential Jurors Who**
17 **Would Automatically Vote for the Death Penalty if They Found Mr. Johnson Guilty of**
18 **Capital Murder** on the 27th day of December, 1999 at the hour of 9:00 a.m., in
19 Department No. V of the above-entitled Court, or as soon thereafter as counsel may be
20 heard.

21 DATED this 29 day of November, 1999.

22 PHILIP J. KOHN
23 SPECIAL PUBLIC DEFENDER

24 
25 DAYVID J. FIGLER
26 Deputy Special Public Defender
27 State Bar No. 004264
28 309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 POINTS AND AUTHORITIES

2 ARGUMENT

3 Mr. Johnson is before this Court on a charge capital murder. The State has indicated
4 its intention to seek the death penalty. Because this is a capital prosecution, exacting
5 standards must be met to assure that it is fair. "The fundamental respect for humanity
6 underlying the Eighth Amendment's prohibition against cruel and unusual punishment gives
7 rise to a special 'need for reliability in the determination that death is the appropriate
8 punishment' in any capital case." Johnson v. Mississippi, 486 U.S. 578, 584 (1988) (quoting
9 Gardner v. Florida, 430 U.S. 349, 363-64 (1977) (quoting Woodson v. North Carolina, 428
10 U.S. 280, 305 (1976) (White, J., concurring)).

11 As a matter of constitutional law, it is now well established that a potential juror is not
12 fit to sit on a capital sentencing jury if that person will automatically vote for the death penalty
13 in the event the defendant is found guilty of capital murder. "A venireman who believes that
14 the death penalty should automatically and in every case flow from conviction of first degree
15 murder must be excused." Bracewell v. State, 506 So. 2d 354, 358 (Ala.Cr.App. 1986)
16 (quoting Alvord v. Wainwright, 564 F.Supp. 459, 487 (M.D. Fla. 1983), aff'd in part, rev'd in
17 part on other grounds, 725 F.2d 1282 (11th Cir.), cert. den., 469 U.S. 956 (1984)).

18 The United States Supreme Court has held that a capital defendant may challenge for
19 cause any prospective juror who would automatically vote to impose death if the defendant
20 is convicted of the capital offense. Morgan v. Illinois, 112 S.Ct. 2222 (1992). Thus, those
21 jurors whose views on capital punishment would prevent or substantially impair the
22 performance of their duties should be excused. Adams v. Texas, 448 U.S. 38 (1980). See
23 also Pope v. State, 345 S.E.2d 831 (Ga. 1986) (failure to exclude for cause jurors biased in
24 favor of death penalty violates Witherspoon and is reversible error).

25 Any potential juror who would automatically vote for the death penalty is not qualified
26 to serve on Mr. Johnson's capital sentencing jury and must be excluded for cause.
27 Wainwright v. Witt, 469 U.S. 810 (1985); Witherspoon v. Illinois, 391 U.S. 510 (1968); Morgan
28

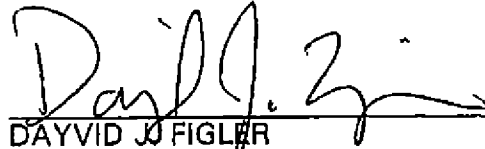
1 v. Illinois, supra.

2 CONCLUSION

3 WHEREFORE, Mr. Johnson respectfully requests that this Court enter an order
4 granting the motion and excusing for cause all potential jurors at the his trial who would
5 automatically vote for the death penalty.

6 DATED this 29 day of November, 1999.

7 PHILIP J. KOHN
8 SPECIAL PUBLIC DEFENDER

9 

10 DAYVID J. FIGLER
11 Deputy Special Public Defender
12 State Bar No. 004264
13 309 South Third Street, Fourth Floor
14 P.O. Box 552316
15 Las Vegas, NV 89155
16 Attorneys for Defendant
17
18
19
20
21
22
23
24
25
26
27
28

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

ORIGINAL

FILED

NOV 23 4 06 PM '99

Shirley J. ...
CLERK

0001
PHILIP J. KOHN, ESQ.
SPECIAL PUBLIC DEFENDER
State Bar No. 000556
JOSEPH S. SCISCENTO
State Bar No. 004380
DAYVID J. FIGLER
State Bar No. 004264
309 South Third Street
P. O. Box 552316
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON, aka
John White, ID # 1586283,

Defendant.

CASE NO: C153154
DEPT. NO: V

Date of Hearing: 12/27/99
Time of Hearing: 9:00 a.m.

MOTION FOR DISCLOSURE OF EXCULPATORY EVIDENCE
PERTAINING TO THE IMPACT OF THE DEFENDANT'S
EXECUTION UPON VICTIM'S FAMILY MEMBERS

COMES NOW the Defendant, DONTE JOHNSON, by and through his attorneys,
PHILIP J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO and DAYVID J.
FIGLER, Deputy Special Public Defenders, and hereby moves this Honorable Court to
compel disclosure of the exculpatory evidence pertaining to the impact of the Defendant's
execution upon the victim's family members.

////

////

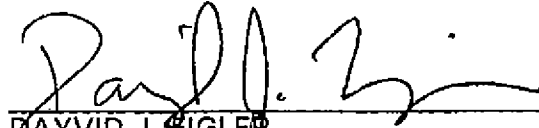
////

RECEIVED
NOV 29 1999
CLARK COUNTY
NEVADA
SPECIAL PUBLIC
DEFENDER
CLERK

1 This Motion is based upon the Memorandum of Points and Authorities set forth
2 herein, and argument of counsel at the time set for hearing on the Motion.

3 DATED this 29 day of November, 1999.

4 PHILIP J. KOHN
5 SPECIAL PUBLIC DEFENDER

6 

7 DAYVID J. FIGLER
8 Deputy Special Public Defender
9 State Bar No. 004264
10 309 South Third Street, Fourth Floor
11 P.O. Box 552316
12 Las Vegas, NV 89155
13 Attorneys for Defendant

14 **NOTICE OF MOTION**

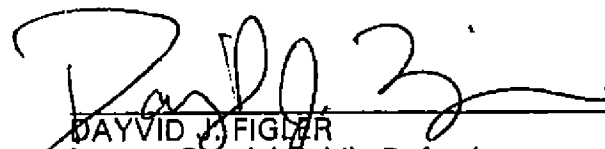
15 TO: STATE OF NEVADA, Plaintiff

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

17 YOU WILL PLEASE TAKE NOTICE that the State Public Defender's Office has
18 set the foregoing **Motion for Disclosure of Exculpatory Evidence Pertaining to the Impact**
19 **of the Defendant's Execution Upon Victim's Family Members** for hearing on the 27th day
20 of December, 1999, at 9:00 a.m. in Department V of the Eighth Judicial District Court.

21 DATED this 29 day of November, 1999.

22 PHILIP J. KOHN
23 SPECIAL PUBLIC DEFENDER

24 

25 DAYVID J. FIGLER
26 Deputy Special Public Defender
27 State Bar No. 004264
28 309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

I.

MEMORANDUM OF POINTS AND AUTHORITIES

Evidence which establishes that a victim's family member would experience anxiety, guilt, depression, blame, trepidation, doubt, or moral indignation in the even that the Defendant was executed for the murder of his/her loved one is exculpatory in nature and tends to mitigate the punishment of the Defendant. Such evidence is admissible substantively during the defense case or in rebuttal as information which tends to counter, refute, negate, or lessen victim impact evidence, should victim impact evidence be allowed in these proceedings.

The case law requiring the prosecution to provide potentially exculpatory evidence to the defense is long and well recognized. See, e.g., Brady v. Maryland, 337 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963); Giglio v. U.S., 405 U.S. 150, 31 L. Ed. 2d 104, 92 S. Ct. 763 (1972); Kyles v. Whitley, ___ U.S. ___, 131 L. Ed. 2d 490 (1995).

The Defendant's right to rebut victim impact evidence was explicitly recognized by the United States Supreme Court in Payne v. Tennessee, 501 U.S. 808, 115 L. Ed. 2d 720, 111 S. Ct. 2597 (1991), wherein the Court stated:

Booth reasoned that victim impact evidence must be excluded because it would be difficult, if not impossible, for the defendant to rebut such evidence without shifting the focus of the sentencing hearing away from the defendant thus creating a "mini-trial" on the victim's character. Booth, supra, at 506-07. In many cases, the evidence relating to the victim is already before the jury at least in part because of its relevance at the guilt phase of the trial. But even as to additional evidence admitted at the sentencing phase, the mere fact that for tactical reasons it might not be prudent for the defense to rebut victim impact evidence makes the case no different than others in which a party is faced with this sort of a dilemma. As we explained in rejecting the contention that expert testimony on future dangerousness should be excluded from capital trials, "the rules of evidence generally extant at the federal and state levels anticipate that relevant unprivileged evidence should be admitted and its weight left to the fact finder, who would have the benefit of cross examination and contrary evidence by the opposing party." Barefoot v. Estelle, 463 U.S. 880, 898 (1983).

Id. at 2607.

1 It is indisputable that a jury who believes that the execution of the defendant will
2 cause sorrow and hardship for a member of the victim's family as a result of his/her
3 beliefs and/or the personal beliefs of the victim may well consider the imposition of a less
4 severe punishment.

5 The prosecution, in its unique relationship with the victim's family, is therefore
6 required to provide the defense, in writing or by way of proffer in open Court, with any
7 information which indicates that the prosecution's decision to pursue the execution of the
8 Defendant has impacted upon a victim's family member in such a way as to cause anxiety,
9 guilt, depression, distress, blame, trepidation, doubt, or moral indignation.


10 II.

11 CONCLUSION

12 For the above stated reasons it is respectfully requested that this Court enter an
13 Order compelling disclosure of the exculpatory evidence pertaining to the impact of the
14 Defendant's execution upon the victim's family members.

15 Dated this 29 day of November, 1999.

16 PHILIP J. KOHN
17 SPECIAL PUBLIC DEFENDER

18 
19 DAYVID J. FIDLER
20 Deputy Special Public Defender
21 State Bar No. 004264
22 309 South Third Street, Fourth Floor
23 P.O. Box 552316
24 Las Vegas, NV 89155
25 Attorneys for Defendant
26
27
28

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

FILED

NOV 29 4 08 PM '99

Shirley A. Jones
CLERK

0001
PHILIP J. KOHN
SPECIAL PUBLIC DEFENDER
State Bar No. 000556
JOSEPH S. SCISCENTO
State Bar No. 004380
DAYVID J. FIGLER
State Bar No. 004264
309 South Third Street
P. O. Box 552316
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON, aka
John White, ID # 1586283,

Defendant.

CASE NO: C153154
DEPT. NO: V

Date of Hearing: 12/27/99
Time of Hearing: 9:00 a.m.

**MOTION TO AUTHENTICATE AND FEDERALIZE ALL MOTIONS,
OBJECTIONS, REQUESTS AND OTHER APPLICATIONS AND
ISSUES RAISED IN THE PROCEEDINGS IN THE ABOVE
ENTITLED CASE.**

COMES NOW, the Defendant, DONTE JOHNSON, by and through counsel, PHILIP J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO and DAYVID J. FIGLER, Deputy Special Public Defenders, and hereby submits the following Points and Authorities

////

////

////

////

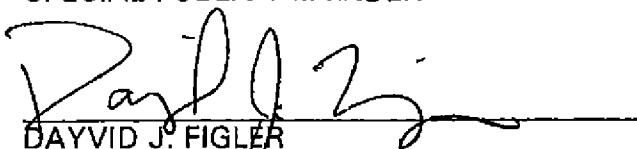
RECEIVED
NOV 29 1999
CLARK COUNTY CLERK

CLERK

1 in support of this Motion to Authenticate and Federalize all Motions, Objections, Requests
2 and Other Applications and Issues Raised in the proceedings in the above entitled case.

3 DATED this 29 day of November, 1999.

4 PHILIP J. KOHN
5 SPECIAL PUBLIC DEFENDER

6 
7 DAYVID J. FIGLER
8 Deputy Special Public Defender
9 State Bar No. 004264
10 309 South Third Street, Fourth Floor
11 P.O. Box 552316
12 Las Vegas, NV 89155
13 Attorneys for Defendant

14 **NOTICE OF MOTION**

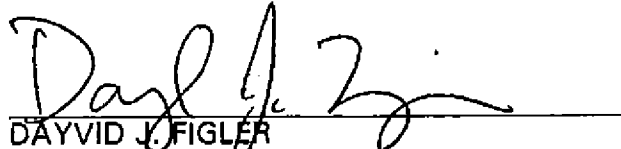
15 TO: STATE OF NEVADA, Plaintiff

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

17 YOU WILL PLEASE TAKE NOTICE that the Clark County Special Public Defender's
18 Office has set the foregoing **Motion to Authenticate and Federalize all Motions,**
19 **Objections, Requests and Other Applications and Issues Raised in the Proceedings in the**
20 **above Entitled Case** for hearing on the **27th day of December, 1999,** at 9:00 a.m. in
21 Department V of District Court.

22 DATED this 27 day of November, 1999.

23 PHILIP J. KOHN
24 SPECIAL PUBLIC DEFENDER

25 
26 DAYVID J. FIGLER
27 Deputy Special Public Defender
28 State Bar No. 004264
309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 POINTS AND AUTHORITIES

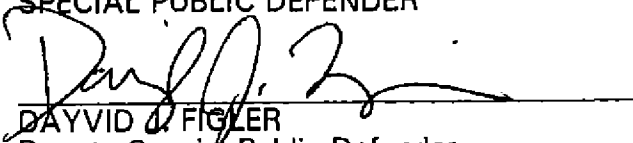
2 With regard to all of the foregoing, Defendant Johnson relies upon the Fourth, Fifth,
3 Sixth, Eighth and Fourteenth Amendments of the United States Constitution (see e.g.,
4 McKoy v. North Carolina, 494 U.S. ____ (1990); Maynard v. Cartwright, 46 U.S. 356
5 (1988); Johnson v. Mississippi, 486 U.S. 578 (1988); Mills v. Maryland, 486 U.S. 367
6 (1988); Hitchcock v. Dugger, 481 U.S. 393 (1987); Gray v. Mississippi, 481 U.S. 468
7 (1987); Batson v. Kentucky, 476 U.S. 79 (1986); Turner v. Murray, 476 U.S. 28 (1986);
8 Caldwell v. Mississippi, 472 U.S. 320 (1985); Frances v. Franklin, 471 U.S. 307 (1985);
9 Eddings v. Oklahoma, 455 U.S. 104 (1982); Godfrey v. Georgia, 446 U.S. 420 (1980);
10 Beck v. Alabama, 447 U.S. 625 (1980); Green v. Georgia, 442 U.S. 95 (1979); Lockett
11 v. Ohio, 438 U.S. 586 (1978); Bell v. Ohio, 438 U.S. 637 (1978); Gardner v. Florida, 430
12 U.S. 349 (1977); Gregg v. Georgia, 428 U.S. 153 (1976); Furman v. Georgia, 408 U.S.
13 328 (1972); Witherspoon v. Illinois, 391 U.S. 510 (1968); Article 1, Sections 3, 6, 8 and
14 18 of the Nevada Constitution, and other implacable laws. Defendant Johnson asserts
15 all applicable grounds with regard to each and every motion, objection, exemption, request
16 and other application made in trial of this case. He does not waive any ground.

17 Defendant Johnson also continues to assert all of those grounds already asserted
18 in pleadings previously filed with this Court.

19 Defendant Johnson asserts a continuing objection throughout trial with regard to
20 all matters upon which the court has ruled adverse to him in response to his pre-trial
21 motions.

22 DATED this 29 day of November, 1999.

23 PHILIP J. KOHN
24 SPECIAL PUBLIC DEFENDER

25 
26 DAYVID A. FIGLER
27 Deputy Special Public Defender
28 State Bar No. 004264
309 South Third Street, Fourth Floor
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

159
ORIGINAL

27

FILED

NOV 23 4 10 PM '99

Shirley M. [unclear]
CLERK

1 0001
2 PHILIP J. KOHN
3 SPECIAL PUBLIC DEFENDER
4 State Bar No. 000556
5 JOSEPH S. SCISCENTO
6 State Bar No. 004380
7 DAYVID J. FIGLER
8 State Bar No. 004264
9 309 South Third Street
10 P. O. Box 552316
11 Las Vegas, NV 89155
12 (702) 455-6265
13 Attorneys for Defendant

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 *****

11 THE STATE OF NEVADA,

12 Plaintiff,

13 vs.

14 DONTE JOHNSON, aka
15 John White, ID # 1586283,

16 Defendant.

CASE NO: C153154
DEPT. NO: V

17
18 MOTION TO PROHIBIT THE USE OF PEREMPTORY
19 CHALLENGES TO EXCLUDE JURORS WHO EXPRESS
20 CONCERNS ABOUT CAPITAL PUNISHMENT

21 Date of Hearing: 12/27/99
22 Time of Hearing: 9:00 a.m.

23 COMES NOW, Defendant DONTE JOHNSON, by and through his attorneys, PHILIP
24 J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO and DAYVID J. FIGLER,
25 Deputy Special Public Defenders, and hereby respectfully moves this Honorable Court for
26 an order prohibiting the State from excluding, through the use of peremptory challenges,
27 all prospective jurors who express concerns over the imposition of the death penalty
28 and/or capital punishment in general.


This motion is made and based upon the attached Points and Authorities, all

RECEIVED
NOV 23 1999
CLERK
SPECIAL PUBLIC
DEFENDER
CLARK COUNTY
NEVADA

1 pleadings and papers on file herein, and any oral argument this Court may deem
2 necessary.

3 DATED this 29 day of November, 1999.

4 PHILIP J. KOHN
5 SPECIAL PUBLIC DEFENDER

6 
7 DAYVID J. EGLER
8 Deputy Special Public Defender
9 State Bar No. 004264
10 309 South Third Street, Fourth Floor
11 P.O. Box 552316
12 Las Vegas, NV 89155
13 Attorneys for Defendant

14 **NOTICE OF MOTION**

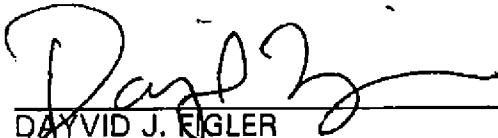
15 TO: STATE OF NEVADA, Plaintiff; and

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

17 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and
18 foregoing Motion to Prohibit the Use of Peremptory Challenges to Exclude Jurors who
19 Express Concerns About Capital Punishment on the 27th day of December, 1999, at the
20 hour of 9:00 a.m., in Department No. V of the above-entitled Court, or as soon thereafter
21 as counsel may be heard.

22 DATED this 29 day of November, 1999.

23 PHILIP J. KOHN
24 SPECIAL PUBLIC DEFENDER

25 
26 DAYVID J. EGLER
27 Deputy Special Public Defender
28 State Bar No. 004264
309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

POINTS & AUTHORITIES

Under present Nevada law, a defendant convicted of First Degree Murder with specifications may be punished by execution. With the State's decision to impose the death penalty, however, goes the enhanced responsibility on the State to ensure that the constitutional rights of capital defendants are meticulously reserved. For as the United States Supreme Court noted in Woodson vs. North Carolina, 428 U.S. 280 (1976), the fact that there is a qualitative difference between the penalty of death and a term of imprisonment, "there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." Id. at 305. When death is a possible penalty, all constitutional safeguards should be scrupulously observed. Keeton vs. Garrison, 578 F. Supp. 1164, 1167 (W.D.N.C. 1984)

One area which has been subjected to constitutional scrutiny since the Supreme Court decision in Witherspoon vs. Illinois, 391 U.S. 510 (1968), has been the means by which a capital jury is selected. The composition of the capital jury is crucial to the fairness of the death penalty. The systematic exclusion of jurors who express opposition to the death penalty implicates a number of constitutional rights, including the Fifth and Fourteenth Amendment inherent in the Sixth and Eighth Amendment guarantees.

One of the most effective means by which the State can exclude "death scrupled" jurors has been through the use of peremptory challenges. The essential nature of the peremptory challenge is that it is one exercised without a reason stated, without inquiry, and without being subject to the court's control. Swain vs. Alabama, 380 U.S. 202, 220 (1964); State vs. Thompson, 68 Ariz. 386; 206 P.2d 1037 (1949); Lewis vs. United States, 146, U.S. 370, 378 (1892). While challenges for cause permit rejection of jurors on a narrowly specified, provable and legally cognizable basis of partiality, the peremptory challenge permits rejection for a real or imagined partiality that is less easily designated or demonstrable. Swain, supra, at 220; Hayes vs. Missouri, 120 U.S. 68, 70 (1887).

The use of peremptory challenges by the prosecution to select a jury which does not oppose and may even favor the death penalty is a common practice. The United

1 States Supreme Court in Gray vs. Mississippi, 481 U.S. 648 (1987), indicated that: "It
2 appears that prosecutors often use peremptory challenges" to "remove all venire members
3 who expressed any degree of hesitation against the death penalty." Such a tactic permits
4 the State to select what the Supreme Court condemned: a "tribunal organized to return
5 a verdict of death." Witherspoon, supra, at 521 (footnote omitted).

6 The removal of prospective jurors for cause whose opposition to the death penalty
7 is so strong that it would prevent or substantially impair performance of their duties as
8 jurors is permitted. Lockhart vs. McCree, 476 U.S. 162 (1986); State vs. Jenkins, 15
9 Ohio St.3d 164 (1984). The Supreme Court, however, has ruled out the removal for
10 cause of potential jurors who merely express general opposition to the death penalty but
11 who are willing to consider the possibility of its imposition in at least some cases and to
12 make an impartial decision on the issue of the accused's guilt. Witherspoon, supra, at
13 522-532, fn. 21.

14 In Witherspoon, the accused was tried pursuant to a statute which gave the jury
15 wide discretion in choosing between life imprisonment and the death penalty, and also
16 permitted the prosecutor to challenge for cause any juror who stated "that he has
17 conscientious scruples against capital punishment, or that he is opposed to the same."
18 The trial court eliminated forty-seven potential jurors because of their opposition to the
19 death penalty. Of those eliminated, only five stated that they would not vote for the
20 death penalty under the appropriate facts despite their general opposition to the death
21 penalty. According to the Supreme Court, this violated one of the "basic requirements
22 of procedural fairness *** that the decision whether a man deserves to live or die must
23 be made on scales that are not deliberately tipped toward death." Witherspoon, supra,
24 at 521-522, fn. 20.

25 The exclusion, by use of peremptory challenges, of jurors who are not subject to
26 removal for cause has precisely the same result as that condemned in Witherspoon.
27 There is more than one way to select a jury "deliberately tipped toward death," and when
28 the prosecutor accomplishes indirectly through use of the peremptory challenge the

1 precise result prohibited in Witherspoon through the use of challenges for cause, the
2 constitutional consequences should be the same.

3 The State's primary interest in the peremptory challenge--the avoidance of jurors
4 biased against the State--is similar to the interest protected in Witherspoon. As in
5 Witherspoon, this interest is fully protected by limiting exclusion in such a way that jurors
6 may not systematically be removed because of their views on capital punishment on "any
7 broader basis than inability to follow the law or abide by their oaths." Adams vs. Texas,
8 448 U.S. 38, 48 (1980). Thus, the purpose of the peremptory challenge--attempting "to
9 obtain a fair and impartial jury to try the case before the court," Swain, supra, at 222--can
10 be preserved while the accused's right to a fair trial is protected.

11 The use of peremptory challenges to exclude "scrupled" jurors creates further
12 unfairness when used in combination with the challenges for cause allowed under
13 Witherspoon. The prosecution has such an initial advantage in being able to exclude a
14 substantial number of death penalty opponents for cause before using its first peremptory
15 challenge. That advantage, designed to protect the State's interest in enforcing its death
16 penalty laws, make the jury more death-prone than the general population. It is unlikely
17 that the defense challenges, even if used exclusively against death penalty advocates, are
18 adequate to offset this initial bias. Further, the prosecution has a higher duty than the
19 defense of assuring a fair trial. United States vs. Agurs, 427 U.S. 97, 110-111 (1976);
20 Berger vs. United States, 295 U.S. 78, 88 (1935). The use of peremptory challenges to
21 systematically remove jurors solely because of death penalty opposition (not rising to the
22 Witherspoon standard) is not justifiable by any State interest in attempting to offset
23 defense peremptory practices.

24 At least one Federal District Court has held that this use of peremptory challenges
25 violates the Sixth Amendment to the United States Constitution. Brown vs. Rice, 693,
26 F.Supp. 381 (W.D. N.C. 1988). While Brown was ultimately reversed in Brown vs.
27 Dixon, 891 F.2d 490 (C.A.4, 1989), only one federal circuit has considered this issue so
28 far. Thus, the State's use of peremptory challenges in this manner ultimately may result

1 in a reversal of any death sentence once the case is appealed to federal court. This Court
2 should prohibit the State from exercising peremptory challenges to "death-qualify" the
3 jury.

4 A solution to abuses in the use of peremptory challenges would be for this Court
5 to restrict the prosecutor's ability to question prospective jurors concerning their attitudes
6 toward the death penalty. Rather than asking whether prospective jurors have
7 conscientious scruples against the death penalty, prosecutors could be restricted to an
8 inquiry of whether any venireperson would "under no circumstances . . . follow the
9 instructions of a trial judge and consider fairly the imposition of a sentence of death . . .
10 ." See, Witherspoon, *supra*; cf. Adams vs. Texas, *supra*. If prospective jurors answer
11 in the negative, no further questioning by the State concerning attitudes on the death
12 penalty should be permitted. Under the statute and Witherspoon, the juror's general
13 attitude toward the death penalty is irrelevant to the person's qualification for jury service.

14 Prosecutorial abuse of the peremptory challenge presents very serious constitutional
15 and ethical concerns, including: the constitutional right to a fair and impartial jury; the
16 constitutional right to be tried by a group of individuals capable of performing the purpose
17 and function of a jury; the constitutional right to be free from cruel and unusual
18 punishment; and the professional responsibility of prosecutors to refrain from using
19 peremptory challenges to intentionally create juries biased in the State's favor. This Court
20 should adopt the suggested procedure proposed by the defense to ensure that his
21 constitutional rights under the Sixth Amendment are protected.

22 CONCLUSION

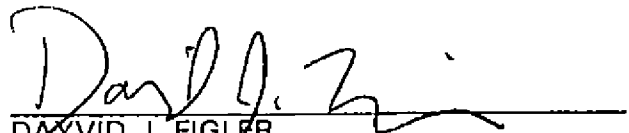
23 WHEREFORE, for the foregoing reasons, Defendant JOHNSON, respectfully moves
24 this Honorable Court for an order prohibiting the State from excluding, through the use
25 of peremptory challenges, all prospective jurors who express concerns over the imposition
26 of the death penalty.

27 The failure to order this prohibition would violate JOHNSON's rights to due process,
28 to present a defense, to fair trial, fair and impartial jury, compulsory process,

1 confrontation of witnesses against him, effective assistance of counsel, and against cruel
2 and unusual punishment under the Fifth, Sixth, Eighth and Fourteenth Amendments to the
3 United States Constitution and Article I Section 8 of the Nevada Constitution.

4 DATED this 29 day of November, 1999.

5 PHILIP J. KOHN
6 SPECIAL PUBLIC DEFENDER

7 

8 DAYVID J. FIGLER
9 Deputy Special Public Defender
10 State Bar No. 004264
11 309 South Third Street, Fourth Floor
12 P.O. Box 552316
13 Las Vegas, NV 89155
14 Attorneys for Defendant
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

FILED

NOV 23 4 12 PM '99

Shirley J. Jones
CLERK

0001
PHILIP J. KOHN
SPECIAL PUBLIC DEFENDER
State Bar No. 000556
JOSEPH S. SCISCENTO
State Bar No. 004380
DAYVID J. FIGLER
State Bar No. 004264
309 South Third Street
P. O. Box 552316
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON, aka
John White, ID # 1586283,

Defendant.

CASE NO: C153154
DEPT. NO: V

Date of Hearing: 12/27/99
Time of Hearing: 9:00 a.m.

**MOTION TO PRECLUDE EVIDENCE OF
ALLEGED CO-CONSPIRATORS STATEMENTS**

COMES NOW, the Defendant, DONTE JOHNSON, by and through his attorneys, PHILIP J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO and DAYVID J. FIGLER, Deputy Special Public Defenders, and respectfully requests that this Court prohibit the State from introducing any evidence concerning statements allegedly made by his alleged co-conspirators that in any way, either expressly or implicitly, involve Mr. Johnson.

This motion is based upon the attached Points and Authorities, all of the papers and pleadings filed herein, any oral argument on the matter and upon such other and further

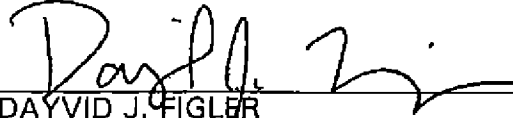
RECEIVED
NOV 9 1999
COUNTY CLERK
SPECIAL PUBLIC
DEFENDER
CLARK COUNTY
NEVADA

CEOS

1 evidence as may be adduced by the Court in this matter.

2 DATED this 29 day of November, 1999.

3 PHILIP J. KOHN
4 SPECIAL PUBLIC DEFENDER

5 
6 DAYVID J. FIGLER
7 Deputy Special Public Defender
8 State Bar No. 004264
9 309 South Third Street, Fourth Floor
10 P.O. Box 552316
11 Las Vegas, NV 89155
12 Attorneys for Defendant

13 **NOTICE OF MOTION**


14 TO: STATE OF NEVADA, Plaintiff; and

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

16 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and
17 foregoing **Motion to Preclude Evidence of Alleged Co-Conspirators Statements** on the
18 **27th day of December, 1999** at the hour of 9:00 a.m., in Department No. V of the above-
19 entitled Court, or as soon thereafter as counsel may be heard.

20 DATED this 29 day of November, 1999.

21 PHILIP J. KOHN
22 SPECIAL PUBLIC DEFENDER

23 
24 DAYVID J. FIGLER
25 Deputy Special Public Defender
26 State Bar No. 004264
27 309 South Third Street, Fourth Floor
28 P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 POINTS AND AUTHORITIES

2 ARGUMENT

3 In its pretrial discovery, the State has provided Mr. Johnson's counsel was
4 statements made by Mr. Johnson's alleged co-conspirators. These statements could be
5 used to attempt to implicate Mr. Johnson in criminal conduct. Mr. Johnson respectfully
6 submits that these statements, and any other statements by his alleged co-conspirators
7 that implicate him in criminal conduct cannot be introduced as evidence during the
8 innocence/guilt phase or penalty phase of this trial.

9 Both the United States Supreme Court and the Nevada Supreme Court have issued
10 recent decisions concerning admission of alleged co-conspirator statements in joint trials.
11 Both courts have concluded that statements similar to those at issue here are not
12 admissible as evidence because the defendant is deprived of his Sixth Amendment right
13 to confrontation. Although Mr. Johnson is not being tried with his co-defendants, the
14 reasoning of the Courts in these cases explains why the statements against Mr. Johnson
15 cannot be used in this trial.

16 In Gray v. Maryland, 118 S.Ct. 1151, 140 L.Ed.2d 294 (1998), the United States
17 Supreme Court explained the historical foundation for this argument:

18 The issue in this case concerns the application of Bruton v.
19 United States, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d
20 476 (1968). Bruton involved two defendants accused of
21 participating in the same crime and tried jointly before the
22 same jury. One of the defendants had confessed. His
23 confession named and incriminated the other defendant. The
24 trial judge issued a limiting instruction, telling the jury that it
25 should consider the confession as evidence only against the
26 codefendant who had confessed and not against the
27 defendant named in the confession. Bruton held that, despite
28 the limiting instruction, the Constitution forbids the use of
such a confession in the joint trial.

25 Id. at 1153.

26 The Gray case differed from Bruton because the prosecutors in Gray redacted the
27 codefendant's confession by substituting for the defendant's name in the confession a
28 blank space or the word "deleted." Id. The Supreme Court held that these substitutions

1 did not make a significant legal difference and that Bruton's protective rule applied. Id.

2 The introduction of an out-of-court confession by a co-defendant at the trial of an
3 accused violates the accused's right, protected by the Sixth Amendment, to cross-
4 examine witnesses. Bruton, 391 U.S. at 137, 88 S.Ct., at 1628. In Richardson v.
5 Marsh, 481 U.S. 200, 203-04, 107 S.Ct. 1702, 95 L.Ed.2d 176 (1987), the Supreme
6 Court limited the Bruton rule to a small extent by holding that a redacted confession could
7 be introduced during a joint trial of two defendants where the redacted confession
8 contained no indication that the non-confessing defendant was involved. In Gray, the
9 Supreme Court limited Richardson by holding that a redacted confession which substitutes
10 the word "deleted" or a symbol for the non-testifying defendant's name still could not
11 be introduced.

12 Bruton, as interpreted by Richardson, holds that certain "powerfully incriminating
13 extrajudicial statements of a codefendant"-- those naming another defendant -- considered
14 as a class, are so prejudicial that limiting instructions cannot work. Richardson, 481 U.S.,
15 at 207, 107 S.Ct., at 1707; Bruton, 391 U.S., at 135, 88 S.Ct., at 1627. Unless the
16 prosecutor wishes to hold separate trials or to use separate juries or to abandon use of
17 the confession, he must redact the confession to reduce significantly or to eliminate the
18 special prejudice that the Bruton Court found. Redactions that simply replace a name with
19 an obvious blank space or a word such as "deleted" or a symbol or other similarly obvious
20 indications of alteration, however, leave statements that, considered as a class, so closely
21 resemble Bruton's unredacted statements that, in our view, the law must require the same
22 result.

23 For one thing, a jury will often react similarly to an unredacted confession and a
24 confession redacted in this way, for the jury will often realize that the confession refers
25 specifically to the defendant. This is true even when the State does not blatantly link the
26 defendant to the deleted name, as it did in this case by asking whether Gray was arrested
27 on the basis of information in Bell's confession as soon as the officer had finished reading
28 the redacted statement. Consider a simplified but typical example, a confession that

1 reads "Bob Smith, along with Sam Jones, robbed the bank." To replace the words "Sam
2 Jones" with an obvious blank will not likely fool anyone. A juror somewhat familiar with
3 criminal law would know immediately that the blank, in the phrase "Bob Smith, along with
4 (blank), robbed the bank," refers to defendant Jones. A juror who does not know the
5 law and who therefore wonders to whom the blank might refer need only lift his eyes to
6 Jones, sitting at counsel table, to find what will seem the obvious answer, at least if the
7 juror hears the judge's instruction not to consider the confession as evidence against
8 Jones, for that instruction will provide an obvious reason for the blank. A more
9 sophisticated juror, wondering if the blank refers to someone else, might also wonder
10 how, if it did, the prosecutor could argue the confession is reliable, for the prosecutor,
11 after all, has been arguing that Jones, not someone else, helped Smith commit the crime.

12 For another thing, the obvious deletion may well call the jurors' attention specially
13 to the removed name. By encouraging the jury to speculate about the reference, the
14 redaction may overemphasize the importance of the confession's accusation--once the
15 jurors work out the reference. That is why Judge Learned Hand, many years ago, wrote
16 in a similar instance that blacking out the name of a codefendant not only "would have
17 been futile.... [T]here could not have been the slightest doubt as to whose names had
18 been blacked out," but "even if there had been, that blacking out itself would have not
19 only laid the doubt, but underscored the answer." United States v. Delli Paoli, 229 F.2d
20 319, 321 (C.A.2 1956), aff'd, 352 U.S. 232, 77 S.Ct. 294, 1 L.Ed.2d 278 (1957),
21 overruled by Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476
22 (1968). See also Malinski v. New York, 324 U.S. 401, 430, 65 S.Ct. 781, 795, 89 L.Ed.
23 1029 (1945) (Rutledge, J., dissenting) (describing substitution of names in confession
24 with "X" or "Y" and other similar redactions as "devices ... so obvious as perhaps to
25 emphasize the identity of those they purported to conceal").

26 Finally, Bruton's protected statements and statements redacted to leave a blank or
27 some other similarly obvious alteration, function the same way grammatically. They are
28 directly accusatory. Evans' statement in Bruton used a proper name to point explicitly to

1 an accused defendant. And Bruton held that the "powerfully incriminating" effect of what
2 Justice Stewart called "an out-of-court accusation," 391 U.S., at 138, 88 S.Ct., at 1629
3 (Stewart, J., concurring), creates a special, and vital, need for cross-examination -- a need
4 that would be immediately obvious had the codefendant pointed directly to the defendant
5 in the courtroom itself. The blank space in an obviously redacted confession also points
6 directly to the defendant, and it accuses the defendant in a manner similar to Evans' use
7 of Bruton's name or to a testifying codefendant's accusatory finger. By way of contrast,
8 the factual statement at issue in Richardson -- a statement about what others said in the
9 front seat of a car -- differs from directly accusatory evidence in this respect, for it does
10 not point directly to a defendant at all. Id. at 1155-56.

11 The Nevada Supreme Court reached the same conclusion when it denied a petition
12 for rehearing in Ducksworth v. State, 114 Nev. Adv. Op. 106, 966 P.2d 165 (1998). In
13 that case, the two Appellants Ducksworth and Martin were each convicted of two counts
14 of first degree murder with a deadly weapon, and various other charges. During the joint
15 trial, the State presented evidence through its witnesses that Ducksworth confessed to
16 his involvement in the murders. Id. at 165. "Ducksworth's confession implicated Martin,
17 but [the witnesses] tailored their testimony to avoid any explicit reference to Martin." Id.
18 at 165-166. Martin's motion to sever the trials was denied. Id. After the district court
19 instructed the jury that Ducksworth's statements were to be considered only with regard
20 to Ducksworth and not to Martin, the jury returned guilty verdicts on all counts against
21 both Ducksworth and Martin. Id. at 166.

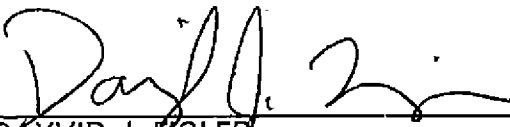
22 On direct appeal, the Nevada Supreme Court reversed Martin's conviction and
23 remanded for a new trial, citing Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620,
24 20 L.Ed.2d 476 (1968), and Stevens v. State, 97 Nev. 443, 634 P.2d 662 (1981). Id.
25 The court concluded that the district court abused its discretion in denying Martin's
26 motion to sever the trial. Ducksworth, 113 Nev. at 795, 942 P.2d at 167 (1997). The
27 State filed a petition for rehearing, which was the subject of Ducksworth II. The Nevada
28 Supreme Court affirmed the reversal. It explained as follows:

1 In Bruton, the United States Supreme Court held that in a
2 joint trial, evidence of an incriminating statement by one
3 defendant which expressly refers to the other defendant
4 violates the Confrontation Clause of the Sixth Amendment
and that a limiting instruction to the jury is not sufficient to
overcome the prejudice. Bruton, 391 U.S. at 127-28, 88
S.Ct. 1620.

5 WHEREFORE, the Defendant respectfully requests that the Court grant his motion
6 in limine and preclude the introduction of any statements of alleged co-conspirators.

7 DATED this 29 day of November, 1999.

8 PHILIP J. KOHN
9 SPECIAL PUBLIC DEFENDER

10 
11 DAYVID J. FIGLER
12 Deputy Special Public Defender
13 State Bar No. 004264
14 309 South Third Street, Fourth Floor
15 P.O. Box 552316
16 Las Vegas, NV 89155
17 Attorneys for Defendant
18
19
20
21
22
23
24
25
26
27
28

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

ORIGINAL

FILED 25

NOV 23 4 13 PM '99

CLERK

0322
PHILIP J. KOHN
SPECIAL PUBLIC DEFENDER
State Bar No. 000556
JOSEPH S. SCISCENTO
State Bar No. 004380
DAYVID J. FIGLER
State Bar No. 004264
309 South Third Street
P. O. Box 552316
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON, aka
John White, ID # 1586283,

Defendant.

CASE NO: C153154
DEPT. NO: V

Date of Hearing: 12/27/99
Time of Hearing: 9:00 a.m.

MOTION TO EXCLUDE AUTOPSY PHOTOGRAPHS

COMES NOW, the Defendant, DONTE JOHNSON, by and through his attorneys, PHILIP J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO and DAYVID J. FIGLER, Deputy Special Public Defenders, respectfully requests that this Court prohibit the prosecution from introducing as evidence certain pictures of the deceased taken during the autopsy, and other gruesome photographs.

This motion is based upon the attached Points and Authorities, all of the papers and pleadings on file

...

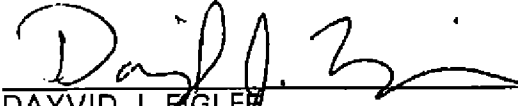
...

RECEIVED
NOV 23 1999
CLARK COUNTY
NEVADA

1 herein, any oral argument on the matter, and upon such other and further evidence as may
2 be adduced by the Court in this matter.

3 DATED this 29 day of November, 1999.

4 PHILIP J. KOHN
5 SPECIAL PUBLIC DEFENDER

6 
7 DAYVID J. FIGLER
8 Deputy Special Public Defender
9 State Bar No. 004264
10 309 South Third Street, Fourth Floor
11 P.O. Box 552316
12 Las Vegas, NV 89155
13 Attorneys for Defendant

14 **NOTICE OF MOTION**


15 TO: THE STATE OF NEVADA, Plaintiff; and

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

17 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will
18 bring the foregoing Motion to Exclude Autopsy Photographs on for hearing before the
19 above-entitled Court on the 27th day of December at the hour of 9:00 a.m., in
20 Department V, or as soon thereafter as counsel may be heard.

21 DATED this 29 day of November, 1999.

22 PHILIP J. KOHN
23 SPECIAL PUBLIC DEFENDER

24 
25 DAYVID J. FIGLER
26 Deputy Special Public Defender
27 State Bar No. 004264
28 309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 POINTS AND AUTHORITIES

2 ARGUMENT

3 The standard to be applied in reviewing the admission of potentially inflammatory
4 photographs was recently set forth in Browne v. State, 113 Nev. Ad. Op. 33, 933 P.2d
5 187 (1997) as "aiding in ascertaining the truth." There can be no such showing in the
6 present case that the autopsy photos will assist the jury in ascertaining any truth that was
7 cannot otherwise be presented to the jury without the same prejudice.

8 Mr. Johnson objects to the use of any and all autopsy photographs, as well as
9 investigatory pictures, that are gruesome. As grounds therefore, Mr. Johnson states the
10 following:


- 11 1. Some pictures referenced herein are highly inflammatory.
- 12 2. They have little or no probative value in that they cannot serve to eliminate
13 any issues that will be before the jury.
- 14 3. There are several other ways in which the State can enter evidence of the
15 cause of death, without utilizing the pictures of the deceased's body.
- 16 4. That the post-mortem autopsy is hideous and has absolutely no relationship
17 to the issues to be presented in this case.
- 18 5. The prejudicial impact of the pictures so outweighs the probative value as
19 to make their use a violation of the Due Process Clause of the Fifth and Fourteenth
20 Amendments to the United States Constitution, and Article I, Section 8 of the Nevada
21 Constitution.

22 There is no relevant evidence to be presented by introduction of this photographic
23 ...
24 ...
25 ...
26 ...
27 ...
28 ...

1 evidence. Accordingly, Mr. Johnson respectfully submits that the evidence must be
2 excluded.

3 DATED this 29 day of November, 1999.

4 PHILIP J. KOHN
5 SPECIAL PUBLIC DEFENDER

6 
7 DAYVID J. FIGLER
8 Deputy Special Public Defender
9 State Bar No. 004264
10 309 South Third Street, Fourth Floor
11 P.O. Box 552316
12 Las Vegas, NV 89155
13 Attorneys for Defendant
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

ORIGINAL

FILED

NOV 29 4 14 PM '99

Shirley J. ...
CLERK

0001
PHILIP J. KOHN, ESQ.
SPECIAL PUBLIC DEFENDER
State Bar No. 000556
JOSEPH S. SCISCENTO
State Bar No. 004380
DAYVID J. FIGLER
State Bar No. 004264
309 South Third Street
P. O. Box 552316
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON, aka
John White, ID # 1586283,

Defendant.

CASE NO: C153154
DEPT. NO: V

Date of Hearing: 12/27/99
Time of Hearing: 9:00 a.m.

MOTION FOR DISCLOSURE OF ANY POSSIBLE BASIS FOR DISQUALIFICATION
OF DISTRICT ATTORNEY

COMES NOW, the Defendant, DONTE JOHNSON, by and through his attorneys,
PHILIP J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO and DAYVID J.
FIGLER, Deputy Special Public Defenders, and respectfully moves this court to order the
State to disclose any possible basis for disqualification of District Attorney.


This Motion is made pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth
Amendments to the United States Constitution, Article 1 of the Nevada Constitution, and
the Nevada Supreme Court Rules to order the Clark County District Attorney to reveal on
the record any possible basis for his recusal or the recusal of his office in this case as well

RECEIVED
NOV 29 1999
CLARK COUNTY CLERK
SPECIAL PUBLIC DEFENDER
CLARK COUNTY
NEVADA

1 as the attached points and authorities, all of the papers and pleadings herein, any oral
2 argument on the matter, and upon such other and further evidence as may be adduced
3 by the Court in this matter.

4 DATED this 29 day of November, 1999.

5 PHILIP J. KOHN
6 SPECIAL PUBLIC DEFENDER

7 
8 DAYVID J. FIGLER
9 Deputy Special Public Defender
10 State Bar No. 004264
11 309 South Third Street, Fourth Floor
12 P.O. Box 552316
13 Las Vegas, NV 89155
14 Attorneys for Defendant

15 **NOTICE OF MOTION**


16 TO: STATE OF NEVADA, Plaintiff

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

18 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will
19 bring the foregoing **Motion for Disclosure of Any Possible Basis For Disqualification of**
20 **District Attorney** on for hearing before the above-entitled Court on the **27th** day of
21 **December, 1999, at 9:00 a.m., Department V, or as soon thereafter as counsel may be**
22 **heard.**

23 DATED this 29 day of November, 1999.

24 PHILIP J. KOHN
25 SPECIAL PUBLIC DEFENDER

26 
27 DAYVID J. FIGLER
28 Deputy Special Public Defender
State Bar No. 004264
309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 **POINTS AND AUTHORITIES**

2 I.

3 **ARGUMENT**

4 Mr. Johnson has been charged with capital murder. The State has announced its
5 intention to seek the death penalty. Since this is to be a capital prosecution, exacting
6 standards must be met to assure that it is fair. "The fundamental respect for humanity
7 underlying the Eighth Amendment's prohibition against cruel and unusual punishment
8 gives rise to a special "need for reliability in the determination that death is the
9 appropriate punishment" in any capital case." Johnson v. Mississippi, 486 U.S. 578,
10 584 (1988) (quoting Gardner v. Florida, 430 U.S. 349, 363-64 (1977) (quoting Woodson
11 v. North Carolina, 428 U.S. 280, 305 (1976) (White, J., concurring)).

12 Mr. Johnson is moving for disclosure of any and all possible bases for the
13 disqualification of the prosecuting attorney in this case for various reasons. To avoid the
14 problems that may occur when possible bases for disqualification of the prosecutor are
15 discovered during or after trial, Mr. Johnson sets forth below the law as it relates to
16 disqualification. He then suggests certain facts --merely by way of example --that would
17 require the disqualification of the District Attorney, one of his staff, or the entire office,
18 should the facts be present in this case.

19 **I. GENERAL DISCUSSION OF THE "APPEARANCE OF IMPROPRIETY" STANDARD**

20 It is well settled that a judicial officer must recuse himself whenever his impartiality
21 might reasonably be questioned because "justice must satisfy the appearance of justice."
22 Parker v. Connors Steel Co., 855 F.2d 1510 (11th Cir. 1988) (quoting Offutt v. United
23 States, 348 U.S. 11, 14 (1954) (emphasis supplied); Wallis v. State, 286 So.2d 909 (Ala.
24 1976) (grounds for disqualification of judge also disqualify district attorney); Sprinkle v.
25 State, 368 So.2d 554 (Ala.Cr.App. 1978) (test regarding misconduct is not whether
26 district attorney's conduct had particular effect, but whether it might have had).

27 A prosecutor has a duty to uphold the dignity of the court and respect its authority,
28 as well as maintain public confidence in the judicial system and the legal profession. U.S.

1 v. State of Alabama, 571 F.Supp. 958 (N.D.Ala.), aff'd, 762 F.2d. 1021 (11th Cir.
2 1985). Accord ABA Standards on the Prosecution Function § 3-1.1(d); Adams v. State,
3 198 So.2d 255 (Ala. 1967) (the primary duties of the office of the District Attorney are
4 to see that justice is done).

5 The role of a public prosecutor has long been recognized as a special one:

6 The responsibility of a public prosecutor differs from that of the
7 usual advocate; his duty is to seek justice, not merely to
8 convict. This special duty exists because: (1) the prosecutor
9 represents the sovereign and therefore should use restraint in
10 the discretionary exercise of governmental powers, such as in
11 the selection of cases to prosecute; (2) during the trial, the
prosecutor is not only an advocate but he also may make
decisions normally made by an individual client, and those
affecting the public interest should be fair to all; and (3) in our
system of criminal justice the accused is to be given the
benefits of all reasonable doubts.

12 ABA Code of Professional Responsibility E.C. 7-13 (1986).

13 Indeed, as the Supreme Court has held, the prosecutor "is the representative not
14 of an ordinary party to a controversy, but of a sovereignty whose obligation to govern
15 impartially is as compelling as its obligation to govern at all; and whose interest, therefore,
16 in a criminal prosecution is not that it shall win a case, but that justice shall be done."
17 Berger v. United States, 295 U.S. 78, 88 (1935).

18 That the public prosecutor has a higher code by which to live does not mean,
19 however, that he is not also governed by the normal rules affecting other members of the
20 bar. "The Disciplinary Rules embodied in the Code of Professional Responsibility set forth
21 the minimum level of conduct below which no lawyer can fall without being subject to
22 disciplinary action and are binding on all lawyers practicing law within the State, including
23 prosecuting attorneys." State v. Locklear, 241 S.E.2d 65, 69 (N.C. 1978) (emphasis
24 supplied). The defense attorney owes a rigorous duty of confidentiality and commitment
25 to the accused. In contrast, "[p]rosecuting attorneys owe honesty and fervor to the State
26 and fairness to the defendant." Locklear, 241 S.E.2d at 69 (emphasis supplied).

27 It is well settled under federal law that the "courts, as well as the bar, have a
28 responsibility to maintain public confidence in the legal profession. This means that a

1 court may disqualify an attorney not only for acting improperly but also for failing to avoid
2 the appearance of impropriety." Gas-A-Tron of Arizona v. Union Oil Co. of California, 534
3 F.2d 1322, 1324-25 (9th Cir. 1976); Richardson v. Hamilton International Corp., 469
4 F.2d 1382 (1972). Of course, it is error for a court to fail to declare disqualification if the
5 facts establish that standards of professional conduct have been violated. International
6 Business Machine Corp. v. Levin, 579 F.2d 271, 279 (3rd Cir. 1978).

7 In considering whether a District Attorney should be disqualified, courts have
8 typically been concerned with responding to any conduct that could erode public
9 confidence in the judicial system or the legal profession. See, e.g., Woods v. Covington
10 City Bank, 537 F.2d 804 (5th Cir. 1978); Spragins v. Huber Farm Service, 542 F.Supp.
11 166, 173 (N.D. Miss. 1982). Consequently "proof of actual wrongdoing is not required."
12 Norton v. Tallahassee Memorial Hospital, 689 F.2d 938, 941 (11th Cir. 1982); see also
13 Woods v. Covington City Bank, 537 F.2d 804, 813 (5th Cir. 1978) ("courts have
14 disqualified attorneys under the appearance of evil doctrine even though the record was
15 free of any evidence of actual wrongdoing").

16 Rule 179 of the Rules of Professional Conduct emphasizes that a prosecutor has
17 special responsibilities. Likewise, the Nevada Supreme Court has held that a prosecutor's
18 primary duty is not to convict but rather to see that justice is done. Williams v. State, 103
19 Nev. 106, 734 P.2d 700 (1987); Jimenez v. State, 112 Nev. 610, 918 P.2d 687 (1996).

20 II. EXAMPLES OF CONDUCT REQUIRING DISQUALIFICATION

21 Following are but samples of the various considerations that might enter into the
22 disqualification of a prosecuting attorney, along with representative case law. Of course,
23 this should not be considered all-inclusive, and if there are other reasons why the District
24 Attorney should be disqualified from this case, they should also be disclosed.

25 A. Honesty and Fairness

26 It is obvious that an attorney should demonstrate candor towards the courts, S.C.R.
27 Rule 172, and fairness to opposing counsel and the defendant, S.C.R. Rule 173. This
28 consideration is particularly true of the District Attorney, since it is he who prosecutes

1 criminals for violations of the law, and he should therefore not be violating the law
2 himself. Arant v. State, 167 So. 540 (Ala. 1936).

3 B. Unethical Conduct

4 Similarly, the courts have recognized that pronounced unethical conduct on the part
5 of a public prosecutor must result in his disqualification or removal from office even where
6 the unethical acts are committed outside the public functions of the office. As one court
7 has observed:

8 Here, also, . . . it seems manifest that wrongs that render a
9 man unfit to hold the office of the district attorney need not be
10 committed in the immediate performance of, but may arise in
11 conduct wholly outside, his official duties. There may thus be
12 revealed defects of character so heinous as to render one
13 utterly unfit to perform the delicate and important functions of
14 a district attorney.

15 Attorney General v. Tufts, 131 N.E. 573, 576 (Mass. 1921) (emphasis supplied); Accord
16 Brumfield v. Mississippi State Bar Assoc., 497 So.2d 800, 807 (Miss. 1986) ("DR 102
17 . . . specifically proscribes any conduct involving dishonesty . . . or . . . any other conduct
18 that adversely reflects on his fitness to practice law") (emphasis in original); Hawaii
19 Supreme Court v. Bergan, 592 P.2d 814, 818 (Hawaii 1979); Moore, et al. v. Strickling,
20 33 S.E. 274, 278 (W.Va. 1899) (prosecuting attorney removed from office for persistent
21 and flagrant immorality).

22 A prosecuting attorney is disqualified from prosecuting a particular case where
23 there are charges of illegal conduct arising in that case or one similar, or where the
24 attorney has engaged in serious misconduct. See, e.g., United States v. Dinitz, 538 F.2d
25 1214 (5th Cir. 1976) (court within its discretion for refusing to permit participation at
26 retrial of counsel who engaged in misconduct at first trial).

27 One specific example of a possible basis for disqualification here would be the
28 District Attorney's intentional violation of the constitutional rights of an accused.
"Affirmative misrepresentation of, and deliberate deception by, the prosecutor cannot be
tolerated and must be dealt with severely." Leonard v. State, 551 So.2d 1143, 1151
(Ala.Cr.App. 1989).

1 C. Intentional Racial Discrimination

2 If the District Attorney intentionally committed acts of racial discrimination, that
3 would provide a reason for disqualification. This might arise from the prosecutor's
4 intentional discrimination in other trials in removing black persons from jury service. See
5 Batson v. Kentucky, 476 U.S. 79 (1986). Under such circumstances, a judicial officer
6 should be recused "if his impartiality might reasonably be questioned [because] our
7 system of 'justice must satisfy the appearance of justice.'" Parker v. Connors Steel Co.,
8 855 F.2d 1510 (11th Cir.1988) (quoting Offutt v. United States, 348 U.S. 11, 14
9 (1954)).

10 Another basis for disqualification of a District Attorney is when he exhibits
11 discrimination in the selection of the defendants whose cases are prosecuted as death
12 penalty rather than life imprisonment cases. Where the District Attorney chooses
13 disproportionately to seek the execution of black persons, or those who kill white persons,
14 he exhibits discrimination in violation of the Eighth and Fourteenth Amendments to the
15 Constitution. McCleskey v. Kemp, 481 U.S. 279 (1987).

16 A prosecutor's racial bias can infect a multitude of aspects of the case, including
17 the various discretionary decisions inherent in every stage of a capital prosecution.

18 Neither may a District Attorney prosecute a case where he is so biased against the
19 accused that the accused is "denied . . . the possibility of a fair-minded exercise of the
20 prosecutor's discretion." Ganger v. Peyton, 379 F.2d 709, 712 (4th Cir. 1967). Where
21 the prosecutor is less concerned with justice and the fair administration of a trial than he
22 is with his professional reputation, his need for a boost in any forthcoming election, see,
23 e.g., Delaney v. United States, 199 F.2d 107, 115 (1st Cir. 1952) (condemning trial
24 infected by prosecutor's electoral concerns), or the accusations of unethical and illegal
25 conduct surrounding him, the prosecutor must disqualify himself.

26 D. Potential Role as Witness in the Case

27 Where one member of the staff of the District Attorney's office could reasonably
28 be called as a witness in a case, this may require recusal of the entire staff. S.C.R. Rule

1 178; see, e.g., Waldrop v. State, 424 So.2d 1345 (Ala. 1983) (reversible error for
2 prosecutor to be main witness against defendant on statements issue); Tarver (Bobby) v.
3 State, 492 So.2d 328 (Ala.Cr.App 1986) (reversal required where prosecutor testified and
4 gave opening and closing arguments); Gilchrist v. State, 466 So.2d 991 (Ala. 1985);
5 Pease v. District Court, 708 P.2d 800, 802-03 (Col. 1985); People v. Conner, 666 P.2d
6 5, 7-9 (Cal. 1983); State v. Donahue, 315 So.2d 329 (La. 1975); Zeidler v. State, 206
7 N.W. 872 (Wis. 1926); see also United States v. Pepe, 247 F.2d 838, 844 (2nd Cir.
8 1957); People v. Janes, 486 N.E.2d 317 (Ill.App. 1985).

9 E. The List of Considerations is not All-Inclusive

10 This brief summary of certain cases serves only to put the District Attorney on
11 notice concerning certain potential biases that could result in his disqualification. It is
12 offered merely by way of illustration of the possible bases for which a prosecutor should
13 be recused. Any other bases for disqualification that are within the knowledge of the
14 prosecutor in this case should also be disclosed.

15 **III. THE PROSECUTOR'S DUTY OF DISCLOSURE**

16 It is up to the prosecutor to disclose such facts as might support a reasonable
17 inference that he be disqualified. S.C.R. Rule 179(4). In any instance, "[w]here a
18 potential issue regarding disqualification exists, the prosecution shares equally with the
19 defendant the duty of bringing the matter to the attention of the trial court." Gray v.
20 State, 469 So.2d 1252, 1255 (Miss. 1985); see also Gilchrist v. State, 466 So.2d 991
21 (Ala. 1985) (duty of prosecutor to bring before court potential need to testify, in order
22 that, if necessary, withdrawal be granted); United States v. Columbia Broadcasting, 497
23 F.2d 107, 109 (5th Cir. 1974) ("The protection of the integrity and dignity of the judicial
24 process from any hint or appearance of bias is the palladium of our judicial system."); cf.
25 Pope v. State, 345 S.E.2d 831, 847 (Ga. 1986); United States v. Murphy, 768 F.2d
26 1518, 1537 (7th Cir. 1985); SCA Services v. Morgan, 557 F.2d 110, 117 (7th Cir.
27 1977); United States v. Amerine, 411 F.2d 1130, 1134 (6th Cir. 1969).

28 ////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

Therefore, Mr. Johnson requests that District Attorney Stewart Bell, Prosecuting Attorneys Gary Guymon and Robert Daskas and other members of the Clark County prosecutorial agency identify all possible bases for their disqualification to Mr. Johnson so that he may make a knowing and intelligent decision about bases for disqualification:

Although a judge may accept a waiver of disqualification . . . the waiver may be accepted [only if] it is preceded by a full disclosure on the record of the basis of the disqualification.

United States v. Murphy, 768 F.2d at 1537 (regarding recusal of judges).

Indeed, with any issue:

Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.

Brady v. United States, 397 U.S. 742, 748 (1970); accord United States v. Tucker, 404 U.S. 443 (1972); Boykin v. Alabama, 395 U.S. 238, 243-44 (1969) ("with a full understanding of what [it] connotes and its consequences"); McCarthy v. United States, 394 U.S. 459, 465 (1969); Burgett v. Texas, 389 U.S. 109 (1967).

Wherefore, Donte Johnson respectfully moves that the District Attorney consider every possible basis for disqualification and disclose such facts as may raise any inference of bias or prejudice so that the Defendant may determine whether to seek the disqualification of the District Attorney.

DATED this 29 day of November, 1999.

PHILIP J. KOHN
SPECIAL PUBLIC DEFENDER



DAYVID J. FIGLER
Deputy Special Public Defender
State Bar No. 004264
309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

ORIGINAL

FILED

NOV 23 4 18 PM '99

Christy J. ...
CLERK

0208
PHILIP J. KOHN, ESQ.
SPECIAL PUBLIC DEFENDER
State Bar No. 000556
JOSEPH S. SCISCENTO
State Bar No. 004380
DAYVID J. FIGLER
State Bar No. 004264
309 South Third Street
P. O. Box 552316
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON, aka
John White, ID # 1586283,

Defendant.

CASE NO: C153154
DEPT. NO: V

Date of Hearing: 12/27/99
Time of Hearing: 9:00 a.m.

DONTE JOHNSON'S MOTION IN LIMINE
TO PRECLUDE THE INTRODUCTION OF VICTIM IMPACT EVIDENCE

COMES NOW, the Defendant, DONTE JOHNSON, by and through his attorneys, PHILIP J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO and DAYVID J. FIGLER, Deputy Special Public Defenders, and respectfully moves this Honorable Court to preclude the introduction of victim impact evidence pertaining to victim family members' characterizations and opinions about the crime, the defendant, and/or the appropriate sentence.

This motion is based upon the Due Process and Equal Protection Clauses of the Nevada and United States Constitutions, the attached Memorandum of Points and

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 Authorities, all of the papers and pleadings on file herein, any oral argument on the
2 matter, and upon such other and further evidence as may be adduced by the Court in this
3 matter.

4 DATED this 29 day of November, 1999.

5 PHILIP J. KOHN
6 SPECIAL PUBLIC DEFENDER

7 By 

8 DAYVID J. FIGLER
9 Deputy Special Public Defender
10 State Bar No. 004264
11 309 South Third Street, Fourth Floor
12 P.O. Box 552316
13 Las Vegas, NV 89155
14 Attorneys for Defendant

15 **NOTICE OF MOTION**

16 TO: STATE OF NEVADA, Plaintiff

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

18 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will
19 bring the foregoing Motion to Preclude the Introduction of Victim Impact Evidence
20 Pertaining to Victim Family Members' Characterizations and Opinions About the Crime,
21 the Defendant, and/or the Appropriate Sentence on for hearing before the above-entitled
22 Court on the 27th day of December, 1999, at 9:00 a.m., Department V, or as soon thereafter
23 as counsel may be heard.

24 DATED this 29 day of November, 1999.

25 PHILIP J. KOHN
26 SPECIAL PUBLIC DEFENDER

27 By 

28 DAYVID J. FIGLER
Deputy Special Public Defender
State Bar No. 004264
309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 POINTS AND AUTHORITIES

2 I.

3 ARGUMENT

4 The Defendant herein is charged with first degree murder and related offenses in
5 the above-captioned matter. The prosecution has filed a Notice of Intent to Seek the
6 Death Penalty.

7 In Booth v. Maryland, 482 U.S. 496 (1987), the United States Supreme Court
8 addressed the admissibility of two distinct forms of victim impact evidence:

- 9 A. Evidence directly relating to the personal character of the
10 victim and the impact of the victim's death on the family; and
11 B. Evidence pertaining to the victim's family members'
12 characterizations and opinions about the crime, the defendant,
and the appropriate sentence.

13 Both forms of victim impact evidence were held to be inadmissible. In Payne v.
14 Tennessee, 501 U.S. 808, 115 L. Ed. 2d 720, 111 S. Ct. 2597, (1991), the High Court
15 held that the Eighth Amendment erects no *per se* bar to the admission of evidence directly
16 relating to the characteristics of the victim in the impact of the victim's death on the
17 victim's family. The Payne Court, however, explicitly did not address the admission of
18 evidence pertaining to the victim's family members' characterizations and opinions about
19 the crime, the defendant, and the appropriate sentence as no evidence of that type was
20 at issue in the case.

21 Thus, to the extent that Booth was not overruled by Payne, the introduction of
22 evidence pertaining to the victim's family members' characterizations concerning the
23 crime, the defendant, and the appropriate sentence remains unconstitutional as a violation
24 of the Eighth Amendment.

25 Furthermore, the introduction of evidence of the victim's family members'
26 characterizations and opinions about the crime, the defendant, and the appropriate
27 sentence would be so prejudicial and inflammatory as to render the sentencing
28 proceedings fundamentally unfair and create an impermissible risk that the sentencing

1 decision would be made in an arbitrary and capricious manner.

2 Justice O'Connor, in her concurring opinion in Payne recognized that evidence
3 which is unduly inflammatory may "so infect[s] the sentencing proceedings as to render
4 it fundamentally unfair" and require the defendant to "seek appropriate relief under the
5 Due Process Clause of the Fourteenth Amendment." Id. at 2612, 115 L. Ed. 2d at 740.

6 In Payne, supra, that Court noted that the traditional guard against the introduction
7 of inflammatory evidence is in the trial judge's authority and responsibility to control the
8 proceeds in a manner consistent with due process. Accordingly, it is incumbent upon the
9 trial court to carefully limit the substance of victim impact evidence only to that which
10 specifically has been held constitutional under the Payne decision.

11 II.

12 **CONCLUSION**

13 For the above stated reasons it is respectfully requested that this Court enter an
14 Order precluding the introduction of victim impact evidence pertaining to victim family
15 members' characterizations and opinions about the crime, the defendant, and/or the
16 appropriate sentence.

17 DATED this 29 day of November, 1999.

18 PHILIP J. KOHN
19 SPECIAL PUBLIC DEFENDER

20 By

21 David J. Figler
22 DAYVID J. FIGLER
23 Deputy Special Public Defender
24 State Bar No. 004264
25 309 South Third Street, Fourth Floor
26 P.O. Box 552316
27 Las Vegas, NV 89155
28 Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

FILED

REV 23 4 20 PM '99

Shirley J. Johnson
CLERK

0056
PHILIP J. KOHN, ESQ.
SPECIAL PUBLIC DEFENDER
State Bar No. 000556
JOSEPH S. SCISCENTO
State Bar No. 004380
DAYVID J. FIGLER
State Bar No. 004264
309 South Third Street
P. O. Box 552316
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON, aka
John White, ID # 1586283,

Defendant.

CASE NO: C153154
DEPT. NO: V

Date of Hearing: 12/27/99
Time of Hearing: 9:00 a.m.

**DEFENDANT'S MOTION TO DISMISS STATE'S NOTICE OF INTENT
TO SEEK DEATH PENALTY BECAUSE NEVADA'S DEATH
PENALTY STATUTE IS UNCONSTITUTIONAL**

COMES NOW, the Defendant, DONTE JOHNSON, by and through his attorneys,
PHILIP J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO and DAYVID J.
FIGLER, Deputy Special Public Defenders, and respectfully moves this court to dismiss the
state's notice of intent to seek death penalty.

This motion is based upon the Eighth Amendment, the Due Process and Equal
Protection Clauses of the Nevada and United States Constitutions, the attached
Memorandum of Points and Authorities, all of the papers and pleadings on file herein, any
oral argument on the matter, and upon such other and further evidence as may be

RECEIVED
NOV 9 1999
CLARK COUNTY
NEVADA

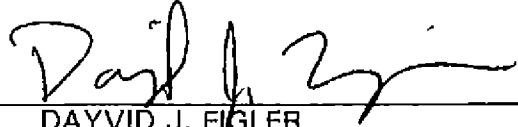
CE31

adduced by the Court in this matter.

DATED this 29 day of November, 1999.

PHILIP J. KOHN
SPECIAL PUBLIC DEFENDER

By


DAYVID J. FIGLER
Deputy Special Public Defender
State Bar No. 004264
309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

NOTICE OF MOTION

TO: STATE OF NEVADA, Plaintiff

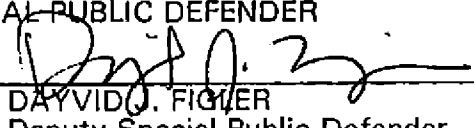
TO: STEWART L. BELL, District Attorney, Attorney for Plaintiff

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Strike Notice of Intent to Seek Death on for hearing before the above-entitled Court on the 27th day of December, 1999, at 9:00 a.m., Department V, or as soon thereafter as counsel may be heard.

DATED this 29 day of November, 1999.

PHILIP J. KOHN
SPECIAL PUBLIC DEFENDER

By


DAYVID J. FIGLER
Deputy Special Public Defender
State Bar No. 004264
309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 POINTS AND AUTHORITIES

2 I.

3 ARGUMENT

4 *"Under contemporary standards of decency, death is viewed as*
5 *an inappropriate punishment for a substantial portion of*
6 *convicted first-degree murderers."*

7 Woodson v. North Carolina, 428 U.S. 280, 296, 96 S.Ct. 2978, 2987, 49 L.Ed.2d 944
(1976).

8 Despite this clear statement of the United States Supreme Court, Nevada law
9 permits imposition of the death penalty for virtually any and all first-degree murderers.
10 Mr. Johnson contends that the Notice of Intent to Seek Death Penalty, which was filed
11 against him by the State of Nevada, must be dismissed because the Nevada death penalty
12 statutes, and case law interpreting those statutes, does not sufficiently narrow the
13 number of people eligible for the death penalty, and are therefore unconstitutional.

14 Nevada Has More Citizens On Death Row Per Capita
15 Than Any Other State

16 It is undisputed that Nevada has more persons on death row per capita than any
17 other state in this country -by far:

Rank	State	1996 Population	1996 Inmates on Death Row	Persons on Death Row Per 100,000 Residents
1.	Nevada	1,603,000	81	5.05
2.	Oklahoma	3,301,000	133	4.02
3.	Alabama	4,279,000	151	3.52
4.	Arizona	4,428,000	121	2.73
5.	Florida	14,400,000	373	2.59
6.	Texas	19,128,000	438	2.28
7.	North Carolina	7,323,000	161	2.19
8.	South Carolina	3,699,000	68	1.83
9.	Missouri	5,359,000	93	1.73
10.	Tennessee	5,320,000	91	1.71
11.	Pennsylvania	12,056,000	203	1.68

12.	Ohio	11,173,000	170	1.52
13.	Louisiana	4,351,000	63	1.44
14.	California	31,878,000	454	1.42
15.	Illinois	11,847,000	161	1.35
16.	Georgia	7,353,000	96	1.30
17.	Mississippi		57	

The statistics are even more disturbing when a comparison is made of states in the western United States:

Rank	Western State	1996 Population	1996 Inmates on Death Row	Persons on Death Row Per 100,000 Residents
1.	Nevada	1,603,000	81	5.05
2.	Arizona	4,428,000	121	3.52
3.	Idaho	1,189,000	19	1.59
4.	California	31,878,000	454	1.42
5.	Montana	879,000	6	.68
6.	Oregon	3,204,000	20	.62
7.	Utah	2,000,000	10	.50
8.	New Mexico	1,713,000	3	.17
9.	Washington	5,533,000	9	.16
10.	Colorado	3,823,000	4	.10
11.	Wyoming	481,000	0	0

The explanation for this great disparity exists in the fact that neither the Nevada statutes defining eligibility for the death penalty nor the case law interpreting these statutes sufficiently narrows the class of persons eligible for the death penalty.

Nevada's Death Penalty Scheme is Established in Chapter 200 of the Nevada Revised Statutes

NRS 200.030(1) defines the crime of first degree murder, and NRS 200.030(4) specifies the penalties for first degree murder. The death penalty is one of four possible punishments for first degree murder.

NRS 200.030(4)(a) specifies that a jury may impose a penalty of death, when the jury has found the defendant guilty of first degree murder, if "one or more aggravating

1 circumstances and any m
2 found do not outvagravati

3 Specific ag: circumsta

4 Possible mcircumsta

5 mitigating circum: not cons

6 that "any other miircumstan

7 NRS 200.0 provides

8 where a jury convandant of

9 that these alterna in prison

10 the possibility of pl a fixed tr

11 may be consideret any "de

12 exist." NRS 200.1.

13 A "penalty wherein a

14 after a conviction agree murt

15 As noted iianion mo

16 Revised Statutes provision

17 aggravating circun Furtherm

18 which was filed ise, and

19 unconstitutionalitya's death

20 but rather by Rulee Nevada

21 the Notice of Intenough it is

22 scheme, because 1 of Intent

23 penalty process.

24 This Court Hscretion, /
25 lar Statut

26 For eighty-rs courts

27 under federal lawshments a

28 down those puniseemed ur

1 349 (1910) (first time that the U.S. Supreme Court invalidated a penalty prescribed by
2 a legislature for a particular offense).

3 By 1947, eight members of the United States Supreme Court considered the law
4 well established that state criminal penalties must pass muster under federal constitutional
5 standards. Louisiana ex rel. Francis, V. Resweber, 329 U.S. 459 (1947).

6 A foundation for this Motion is the premise that this Court has the discretion,
7 authority, and obligation to examine that part of Nevada's statutory penalty for murder
8 which imposes a penalty of death, and determine whether that penalty as administered
9 under Nevada's statutory scheme, is constitutional under the Eighth and Fourteenth
10 Amendments to the United States Constitution and Article 1 of the Nevada Constitution.
11 Furthermore, because the constitutional prohibition against cruel and unusual punishment
12 is "not a static concept, but one that must be continually re-examined in the light of
13 contemporary human knowledge," Robinson v. California, 370 U.S. 660 (1962), the
14 Defense urges this Court to not defer to historic rulings of constitutionality by the Nevada
15 Supreme Court, but rather conduct a fresh appraisal of the validity of this part of
16 Nevada's law. "A penalty that was permissible at one time in our. . . history is not
17 necessarily permissible today." Furman v. Georgia, 408 U.S. 238, 329 (1972). "[S]tare
18 decisis" should "bow to changing values, and the question of the constitutionality of
19 capital punishment at a given moment" should always "remain open." 408 U.S. at 330.

20 **Death Penalty Statutory Schemes Must Truly Narrow the Class of Persons**
21 **Eligible for the Penalty**

22 In 1972, the United States Supreme Court declared Georgia's death penalty
23 statutory scheme to be unconstitutional. Furman v. Georgia, 408 U.S. 238 (1972). In
24 Furman, two justices wrote that the death penalty always violated the Eighth
25 Amendment; four justices declared that the death penalty was not *per se* unconstitutional
26 under the Eighth Amendment; and three justices wrote that the death penalty statute in
27 question in that particular case violated the Eighth Amendment. The precise holding of
28 Furman is difficult to determine because the justices filed six separate opinions in that

1 case.

2 Four years later, in Gregg v. Georgia, the United States Supreme Court upheld
3 Georgia's revised death penalty statutory scheme. Gregg v. Georgia, 428 U.S. 153
4 (1976). Gregg is crucial to death penalty law because the Court took the six separate
5 opinions rendered in Furman and explained precisely what the holding in Furman happened
6 to be:

7 While Furman did not hold that the infliction of the death
8 penalty per se violates the Constitution's ban on cruel and
9 unusual punishments, it did recognize that the penalty of death
10 is different in kind from any other punishment imposed under
11 our system of criminal justice. Because of the uniqueness of
12 the death penalty, Furman held that it could not be imposed
13 under sentencing procedures that created a substantial risk that
14 it would be inflicted in an arbitrary and capricious manner. Mr.
15 Justice White concluded that "the death penalty is exacted
16 with great infrequency even for the most atrocious crimes and
17 . . . there is no meaningful basis for distinguishing the few
18 cases in which it is imposed from the many cases in which it
19 is not." 408 U.S. at 313, 92 S.Ct., at 2764 (concurring).
20 Indeed, the death sentences examined by the Court in Furman
21 were "cruel and unusual in the same way that being struck by
lightening is cruel and unusual. For, of all the people convicted
of (capital crimes), many just as reprehensible as these, the
petitioners (in Furman were) among a capriciously selected
random handful upon whom the sentence of death has in fact
been imposed. . . . (T)he Eighth and Fourteenth Amendments
cannot tolerate the infliction of a sentence of death under legal
systems that permit this unique penalty to be so wantonly and
so freakishly imposed." Id., at 309-310, 92 S.Ct., at 2762
(Stewart, J., concurring). (FN36). Furman mandates that where
discretion is afforded a sentencing body on a matter so grave
as the determination of whether a human life should be taken
or spared, that discretion must be suitably directed and limited
so as to minimize the risk of wholly arbitrary and capricious
action.

22 Gregg, 428 U.S. 188-89.

23 The most important concept in Furman and Gregg is that the sentencing jury's
24 discretion must be limited. That discretion must be limited because a sentencing jury "will
25 have had little, if any, previous experience in sentencing," 428 U.S. at 192, and therefore,
26 any killing, any murder, may seem horrendous to a group of people not experienced in
27 evaluating killings. Realistically, the only way that the jury's discretion can be "limited,"
28 as clearly required by the Constitution pursuant to Furman and Gregg, is for aggravating

1 circumstances to be interpreted in a genuinely restrictive way.

2 Since 1976, the requirements of Furman and Gregg have provided the chief test for
3 determining whether state death penalty statutory schemes are constitutional. In Godfrey
4 v. Georgia, 446 U.S. 420 (1980), the Supreme Court struck down a Georgia death
5 sentence because the aggravating circumstance was vague and failed to guide a jury in
6 distinguishing which cases deserved the death penalty. The Court noted that under
7 Georgia law, "[t]here is no principled way to distinguish this case, in which the death
8 penalty was imposed, from the many cases in which it was not." 446 U.S. at 433.

9 In Zant v. Stephens, 462 U.S. 862 (1983), the U.S. Supreme Court reaffirmed that
10 "an aggravating circumstance must genuinely narrow the class of persons eligible for the
11 death penalty and must reasonably justify the imposition of a more severe sentence on
12 the defendant compared to others found guilty of murder." 462 U.S. at 877.

13 In summary, Furman and Gregg express concern about the freakish and inconsistent
14 imposition of capital punishment. These cases seek to make the death penalty less
15 arbitrary by requiring states to implement carefully drafted statutes that direct the
16 discretion of juries and limit that discretion in such a way that the majority of murder
17 cases, where the death penalty is not appropriate, can be identified and separated from
18 the small minority of murder cases where the death penalty is appropriate.

19 **Nevada's Death Penalty Statutory Scheme, as Adopted by**
20 **the Legislature, Is Unconstitutional Because It Fails to Narrow the**
Categories of Persons Eligible for the Penalty

21 Nevada's legislature has specified that thirteen "circumstances" may be considered
22 "aggravating," and that the existence, beyond a reasonable doubt, of one circumstance
23 in a particular first degree murder case renders that defendant eligible for the death
24 penalty.

25 Even if these thirteen aggravators are applied with the most restrictive
26 interpretation possible, they fail to honor the spirit of Furman and Gregg by not channeling
27 the jury's discretion in such a way as to separate "compellingly bad" murder cases from
28 those that are less offensive. Moreover, it is interesting that the Nevada Legislature

continues to add aggravators to its list, thereby expanding the number of persons eligible for the death penalty, in spite of the Supreme Court's admonishments in Furman and Gregg. See 1995 Nev.St. 2, 138, 1490, 2705; 1997, 1293.

Nevada's statutory scheme is so arbitrary and "freakish" that it serves no useful purpose in channeling a jury's discretion to distinguish the few cases where the penalty is appropriate from the many cases where the death penalty is not appropriate. Under this statutory scheme, virtually all people who kill are eligible for the death penalty. The final decision regarding who should die and who should live is arbitrary and capricious.

Based on the foregoing, the Defense submits that Nevada's statutory scheme for imposing the death penalty is unconstitutional pursuant to Furman and Gregg, and the Notice of Intent in this case should be dismissed.

**Nevada Caselaw Has Affirmatively Expanded the Ambit of the Aggravators.
Rendering the Statutory Scheme Unconstitutional**

When the United States Supreme Court upheld Georgia's death penalty in Gregg v. Georgia, the Court relied on Georgia's statute, which guided and limited a jury's discretion in imposing the death penalty, and the Supreme Court also relied on the Supreme Court of Georgia interpreting the aggravators in such a way that the jury's discretion was not expanded so as to make the aggravators meaningless. See Gregg v. Georgia, 428 U.S. 153, 202 (1976). Justice Stewart cited with approval a specific example of Georgia's Supreme Court acting in a very conservative way to maintain the integrity and restrictiveness of an aggravator's definition. Id. Based on the reasoning of Gregg, any analysis of whether Nevada's statutory scheme is constitutional must take into account how the Nevada Supreme Court has interpreted the aggravators promulgated by the legislature. To comply with the spirit of Gregg and Furman, the Nevada Supreme Court must take a restrictive view of the aggravators. Unfortunately, as will be shown in the following pages, the Nevada Supreme Court has ignored Furman and Gregg, and interpreted the aggravators expansively, thereby rendering the aggravators meaningless in limiting the scope and applicability of Nevada's death penalty. The interpretations by

1 Nevada's highest court guarantee that Nevada's death penalty statutory scheme does not
2 accomplish what it was intended to accomplish, and is therefore unconstitutional.

3
4 **This Court Has Not Used Its Statutory and Inherent Authority To
Remove Defendants From Death Row Who Do Not Belong There**

5 In opinions holding that Nevada's death penalty scheme is constitutional, this Court
6 has considered the statutory scheme presented by the Nevada Legislature, but has not
7 reviewed its own opinions which have broadly construed the aggravating circumstances
8 set forth by the Legislature. See e.g., Colwell v. State, 112 Nev. 807, 919 P.2d 403,
9 407 (1996); Ybarra v. State, 100 Nev. 167, 174, 679 P.2d 797, 801 (1984). In each
10 of these cases, this Court has cited to Proffitt v. Florida, 428 U.S. 242 (1976) as support
11 for its conclusion that the Nevada statutory scheme is constitutional. A review of the
12 Proffitt decision, however, reveals that Nevada's statutory scheme does not perform the
13 narrowing function in a constitutional manner.

14 In Proffitt, the United States Supreme Court concluded that a Florida statute which
15 provided for eight aggravating circumstances (some of which are similar to the Nevada
16 aggravating circumstances, but which do not include a "motiveless and random"
17 aggravator), was constitutional, but only because the Florida Supreme Court has
18 consistently construed the aggravating circumstances in a narrow manner and has not
19 hesitated to vacate a death sentence when it has determined that the sentence should not
20 have been imposed. Id. at 252. The United States Supreme Court found it significant
21 that the Florida Supreme Court had vacated 8 of the 21 death sentences it reviewed prior
22 to the Proffitt decision. Id.

23 A review of this Court's opinions on direct appeal since the enactment of our
24 current death penalty statute reveals that this Court does hesitate in vacating death
25 sentences. In fact of this Courts 88 opinions on direct appeal in death penalty cases, this
26 Court has affirmed the judgment of conviction and sentence of death 79 times. This
27 Court has used its statutory and inherent authority to vacate the sentence of death and
28 impose a sentence of life without the possibility of parole only 4 times. In the remaining

1 5 cases, this Court remanded the matter for a new penalty hearing where the State was
2 free to seek the death penalty again. Thus, this Court's record stands in stark contrast
3 to that of the Florida Supreme Court -- where the Florida Supreme Court carefully
4 reviewed the record and assured that the death penalty was appropriate by vacating the
5 death penalty in 38% of its cases, this Court has mandated a sentence of life without the
6 possibility of parole in less than 5% of its capital cases on direct appeal.

7 An overwhelming majority of capital cases are affirmed by this Court on direct
8 appeal from a judgment of conviction and sentence of death. See Chappell v. State,
9 114 Nev. ___, ___ P.2d ___ (Adv. Opn. 148, 12/30/98); Leonard v. State, 114 Nev. ___,
10 ___ P.2d ___ (Adv. Opn. 127, 12/9/98); Thomas v. State, 114 Nev. ___, ___ P.2d ___
11 (Adv. Opn. 122, 11/25/98); Middleton v. State, 114 Nev. ___, ___ P.2d ___ (Adv. Opn.
12 120, 11/25/98); McKenna v. State, 114 Nev. ___, ___ P.2d ___ (Adv. Opn. 115,
13 11/25/98); Sherman v. State, 114 Nev. ___, 965 P.2d 903 (1998); Bolin v. State, 114
14 Nev. 503, 960 P.2d 784 (1998); Calambro v. State, 114 Nev. 106, 952 P.2d 946
15 (1998); Smith v. State, 114 Nev. 33, 953 P.2d 264 (1998) (affirming death penalty
16 based on conviction for one victim and imposing sentence of life without parole based on
17 conviction for second victim); Leslie v. State, 114 Nev. 8, 952 P.2d 966 (1998); Nika v.
18 State, 113 Nev. 1047, 951 P.2d 1047 (1997); Abeyta v. State, 113 Nev. 1070, 944
19 P.2d 849 (1997); Lisle v. State, 113 Nev. 679, 941 P.2d 459 (1997); Greene v. State,
20 113 Nev. 157, 931 P.2d 54 (1997); Rippo v. State, 113 Nev. 1239, 946 P.2d 1017
21 (1997); Williams v. State, 113 Nev. 1008, 945 P.2d 438 (1997), cert. denied, 119 S.Ct.
22 82 (1998); Jones v. State, 113 Nev. 454, 937 P.2d 55 (1997); Sonner v. State, 112
23 Nev. 1328, 930 P.2d 707 (1996); Colwell v. State, 112 Nev. 807, 919 P.2d 403 (1996);
24 Domingues v. State, 112 Nev. 693, 917 P.2d 1364 (1996); Evans v. State, 112 Nev.
25 1172, 926 P.2d 265 (1996), cert. denied, 117 S.Ct. 1854 (1997); Flanagan and Moore
26 v. State, 112 Nev. 1409, 930 P.2d 691 (1996), cert. denied, 118 S.Ct. 1534 (1998);
27 Gutierrez v. State, 112 Nev. 788, 920 P.2d 987 (1996); Doyle v. State, 112 Nev. 879,
28 921 P.2d 901 (1996); Riker v. State, 111 Nev. 1316, 905 P.2d 706 (1995), cert denied,

1 517 U.S. 1194 (1996); McNelson v. State, 111 Nev. 900, 900 P.2d 934 (1995), cert.
2 denied, 514 U.S. 1038 (1995); Paine v. State, 110 Nev. 609, 877 P.2d 1025 (1994);
3 Canape v. State, 109 Nev. 864, 859 P.2d 1023 (1993), cert. denied, 513 U.S. 862
4 (1994); Libby v. State, 109 Nev. 905, 859 P.2d 1050 (1993), judgment vacated, 516
5 U.S. 1037 (1996); Parker v. State, 109 Nev. 383, 849 P.2d 1062 (1993), cert. denied,
6 512 U.S. 1000 (1993); Echavarria v. State, 108 Nev. 734, 839 P.2d 589 (1992);
7 Leonard v. State, 108 Nev. 79, 824 P.2d 287 (1992); Redmen v. State, 108 Nev. 227,
8 828 P.2d 395 (1992), overruled, Alford v. State, 111 Nev. 1409, 906 P.2d 714 (1995);
9 Powell v. State, 108 Nev. 700, 838 P.2d 921 (1992), vacated 511 U.S. 79 (1994);
10 Riggins v. State, 109 Nev. 178, 808 P.2d 535 (1991), reversed, 112 S.Ct. 1810 (1992);
11 Beets v. State, 107 Nev. 957, 821 P.2d 1044 (1991), cert. denied, 506 U.S. 838
12 (1992); Kirksey v. State, 107 Nev. 499, 814 P.2d 1008 (1991); Doleman v. State, 107
13 Nev. 409, 812 P.2d 1287 (1991); Riley v. State, 107 Nev. 220, 808 P.2d 560 (1991);
14 Emmons v. State, 107 Nev. 53, 807 P.2d 718 (1991); Baal v. State, 106 Nev. 69, 787
15 P.2d 391 (1990); Jimenez v. State, 106 Nev. 769, 801 P.2d 1366 (1990); DePasquale
16 v. State, 106 Nev. 843, 803 P.2d 218 (1990); Bennett v. State, 106 Nev. 135, 787
17 P.2d 797 (1990); Harris v. State, 106 Nev. 667, 799 P.2d 1104 (1990); Flanagan v.
18 State, 105 Nev. 135, 771 P.2d 588 (1989); Lopez v. State, 105 Nev. 68, 769 P.2d
19 1276 (1989); Haberstroh v. State, 105 Nev. 739, 782 P.2d 1343 (1989); Pertgen v.
20 State, 105 Nev. 282, 774 P.2d 429 (1989); Pellegrini v. State, 104 Nev. 625, 764 P.2d
21 484 (1988); Browning v. State, 104 Nev. 269, 757 P.2d 351 (1988); Bejarano v. State,
22 104 Nev. 851, 809 P.2d 598 (1988) (unpublished order dismissing appeal), cited in, 106
23 Nev. 840, 801 P.2d 1388 (1990); Dawson v. State, 104 Nev. 855, 809 P.2d 601
24 (1988) (unpublished order dismissing appeal), cited in, 108 Nev. 112, 825 P.2d 593
25 (1992); Valerio v. State, Docket 19008 (order dismissing appeal, September 6, 1989),
26 cited in, 112 Nev. 383, 915 P.2d 874 (1996); Collier v. State, 103 Nev. 563, 747 P.2d
27 225 (1987), cert. denied, 486 U.S. 1036 (1988); Mazzan v. State, 103 Nev. 69, 733
28 P.2d 850 (1987); Hogan v. State, 103 Nev. 21, 732 P.2d 422 (1987); Williams v. State,

1 103 Nev. 227, 737 P.2d 508 (1987); Howard v. State, 102 Nev. 572, 729 P.2d 1341
2 (1986), cert. denied, 484 U.S. 872 (1987); Cavanaugh v. State, 102 Nev. 478, 729 P.2d
3 481 (1986); Hill v. State, 102 Nev. 377, 724 P.2d 734 (1986); Thompson v. State, 102
4 Nev. 348, 721 P.2d 1290 (1986); Ford v. State, 102 Nev. 126, 717 P.2d 27 (1986),
5 cert. denied, 1986); Crump v. State, 102 Nev. 158, 716 P.2d 1387 (1986), cert. denied,
6 479 U.S. 871 (1986); Sechrest v. State, 101 Nev. 360, 705 P.2d 626 (1985); Snow v.
7 State, 101 Nev. 439, 705 P.2d 632 (1985), cert. denied, 475 U.S. 1031 (1986); Milligan
8 v. State, 101 Nev. 627, 708 P.2d 289 (1985); Cole v. State, 101 Nev. 585, 707 P.2d
9 545 (1985); Gallego v. State, 101 Nev. 782, 711 P.2d 856 (1985), cert. denied, 479
10 U.S. 871 (1986), sentence vacated, 124 F.2d 1065 (9th Cir. 1997); Rogers v. State, 101
11 Nev. 457, 705 P.2d 664 (1985), cert. denied, 476 U.S. 1130 (1986); Neuschafer v.
12 State, 101 Nev. 331, 705 P.2d 609 (1985); McKenna v. State, 101 Nev. 338, 705 P.2d
13 614 (1985), cert. denied, 474 U.S. 1093 (1986); McKague v. State, 101 Nev. 327, 705
14 P.2d 127 (1985); Farmer v. State, 101 Nev. 419, 705 P.2d 149 (1985), cert. denied,
15 476 U.S. 1130 (1986); Ybarra v. State, 100 Nev. 167, 679 P.2d 797 (1984), cert.
16 denied, 470 U.S. 1009 (1985); Wilson v. State, 99 Nev. 362, 664 P.2d 328 (1983),
17 aff'd on reh'g, 101 Nev. 452, 705 P.2d 151 (1985); Deutscher v. State, 95 Nev. 669,
18 601 P.2d 407 (1979); Bishop v. State, 95 Nev. 511, 597 P.2d 273 (1979).

19 This Court has used its statutory and inherent authority to reduce a death sentence
20 of a sentence of life without the possibility of parole on direct appeal in only a few cases
21 during the last twenty years. See Chambers v. State, 113 Nev. 974, 944 P.2d 805
22 (1997); Haynes v. State, 103 Nev. 309, 739 P.2d 497 (1987); Biondi v. State, 101 Nev.
23 252, 699 P.2d 1062 (1985); Harvey v. State, 100 Nev. 340, 682 P.2d 1384 (1984).
24 In a few other cases, this Court has vacated and death sentence and remanded the
25 proceedings for a new penalty hearing in the district court. See Geary v. State, 112 Nev.
26 1434, 930 P.2d 719 (1996), clarified on rehearing, 114 Nev. 100, 952 P.2d 431 (1998)
27 (remanded for new penalty hearing based upon erroneous jury instructions and other
28 issues); Lane v. State, 110 Nev. 1156, 881 P.2d 1358 (1994), vacated on rehearing, in

1 part, 114 Nev. 299, 956 P.2d 88 (1998) (one aggravator not proven, two others
2 duplicative, remanded for a new penalty hearing); D'Agostino v. State, 108 Nev. 1001,
3 823 P.2d 283 (1992) (new penalty hearing ordered because state introduced unreliable
4 evidence by a snitch suggesting that defendant threw two unnamed men off a boat), cert.
5 denied, 506 U.S. 836 (1992); Lord v. State, 107 Nev. 28, 806 P.2d 548 (1991) (new
6 penalty hearing ordered for evidentiary reasons); Allen v. State, 99 Nev. 485, 665 P.2d
7 238 (1983) (based upon fact that jury inadvertently heard evidence linking defendant to
8 other unrelated criminal activity). In the latter group of cases the State remained free to
9 seek the death penalty on remand.

10 Unlike this Georgia and Florida Supreme Courts, this Court has not used its
11 supervisory power to assure that the death penalty is applied in a truly selective narrow
12 class of cases.

13 **Failure To Limit Imposition Of The Death Penalty On Children and**
14 **Mentally Retarded Adults Further Enhances The Broad Scope of The**
Death Penalty Scheme In Nevada

15 Despite repeated requests from persons sentenced to die, the Nevada Supreme
16 Court has refused to limit the application of the death penalty to adults and mentally
17 competent defendants. For example, in Domingues v. State, 114 Nev. ___, ___ P.2d ___
18 (1998), the Nevada Supreme Court concluded that a defendant who was 16 years old at
19 the time of his offense could be executed, despite an international treaty that was signed
20 by the United States which prohibited the execution of children who committed an
21 offense while under the age of 18. In Hill v. State, 114 Nev. ___, 953 P.2d 1077 (1998),
22 the Nevada Supreme Court concluded that the execution of a mentally retarded defendant
23 was not cruel and unusual punishment.

24 **Nevada Jurisprudence Applies a Harmless Error Analysis to the**
25 **Consideration by Sentencing Juries of Invalid Aggravating Circumstances:**
A Harmless Error Analysis Can Never Be Applied To Decisions To Kill A Defendant

26 What happens when the Nevada Supreme Court finds that a sentencing jury
27 improperly considered an aggravating circumstance? In Witter v. State, 112 Nev. 908,
28 921 P.2d 886 (1996), the Nevada Supreme Court concluded that the trial court should

1 have stricken the "prevention of lawful arrest" aggravator which was submitted to the
2 jury and which the jury found to be a valid aggravator. The Supreme Court then ruled that
3 the failure to strike the aggravator was harmless error since the remaining four
4 aggravators, found valid by the jury, outweighed mitigating evidence. The Supreme Court
5 refused to reverse the death sentence imposed by the jury.

6 Similarly, in Lane v. State, 110 Nev. 1156, 881 P.2d 1358 (1994), the Nevada
7 Supreme Court ruled an aggravator invalid, but applied a harmless error analysis and
8 concluded that since no mitigating circumstances were present, the other aggravating
9 circumstances must have outweighed the possible mitigating circumstances, and the
10 death sentence imposed by the jury was left undisturbed. See also Leslie v. State, 114
11 Nev. ___, 952 P.2d 966, 976 (1998) ("Because one of the aggravating circumstances
12 was not supported by substantial evidence and must be vacated, we will reweigh the
13 remaining aggravating circumstances against the mitigating circumstance--that Leslie had
14 no significant criminal history. Because the facts supporting the mitigating circumstance
15 have 'unequal persuasive impact' when compared with those supporting the aggravating
16 circumstances, we affirm Leslie's death sentence.") (citing Witter v. State, 112 Nev. 908,
17 929, 921 P.2d 886, 900 (1996); Libby v. State, 109 Nev. 905, 859 P.2d 1050, (1993),
18 overruled on other grounds by Libby v. Nevada, 516 U.S. 1037, 116 S.Ct. 691, 133
19 L.Ed.2d 650 (1996)).

20 Witter and Lane represent a remarkable usurpation of the sentencing jury's
21 discretion, and these decisions interpret death penalty law in a way that is grossly
22 unconstitutional. The Supreme Court is saying that the consideration by a jury of certain
23 aggravating circumstances was improper, but nevertheless harmless. This analysis can
24 only work if the death penalty must be imposed in every situation where aggravating
25 circumstances outweigh mitigating circumstances. If a jury can find that aggravating
26 circumstances outweigh mitigating circumstances and yet still not impose the death
27 penalty, then any finding that any aggravator was invalid means the case must be
28 resubmitted to a new sentencing jury. Because if any possibility exists that one juror may

1 change a view that the death penalty is appropriate, then harmless error analysis is
2 irrelevant. And since Nevada's statute does not require the jury to impose the death
3 penalty under any circumstance, even when the aggravating circumstances outweigh the
4 mitigating circumstances, nor is the defendant required to establish any mitigating
5 circumstances in order to be sentenced to less than death, Bennett v. State, 106 Nev.
6 135, 787 P.2d 797 (1990), Lane and Witter clearly represent interpretations of Nevada's
7 death penalty scheme that renders that scheme grossly unconstitutional.

8 **The Cumulative Effect of the Expansion of These Aggravators is to Render**
9 **Nevada's Death Penalty Scheme Arbitrary.**

10 The vagueness of the statutory scheme invites abuse of all vague enactments,
11 which is arbitrary and capricious enforcement: since every murder can be a capital one,
12 both charging decisions, and ultimate penalty decisions are likely to be affected by
13 arbitrary and discriminatory factors, because that discretion is not subjected to any real
14 standards. As such, Nevada's death penalty scheme fails to narrow the class of eligible
15 defendants and is impermissibly vague, and is unconstitutional.

16 **Nevada's Death Penalty Statute is Unconstitutionally Vague Since it Allows the**
17 **Use of Unspecified Non-Statutory Aggravating circumstances.**

18 The defense asserts that use of non-statutory aggravating circumstances violates
19 the Defendant's rights under the Due Process Clause and the Eighth Amendment. At trial,
20 the jury will be instructed that they may consider all of the evidence that was presented
21 at trial-during either the guilt or penalty phases. The jury is not advised as to what is and
22 is not appropriate aggravating circumstances.

23 The defense asserts that the failure to instruct the jury as to what does and does
24 not constitute aggravating circumstances renders Nevada's death penalty statutes
25 unconstitutionally vague and results in cruel and unusual punishment.

26 Additionally, the failure to instruct the jury as to the procedure for considering
27 non-statutory aggravating circumstances also renders the statute vague. The Nevada
28 Supreme Court has repeatedly held that the jury must first consider whether there are

1 statutory aggravating circumstances present sufficient to outweigh any mitigating
2 circumstances prior to the consideration of any non-statutory aggravating circumstances.
3 See e.g., Gallego v. State, 101 Nev. 782, 791, 711 P.2d 856 (1985) ("If the death
4 penalty option survives the balancing of aggravating and mitigating circumstances,
5 Nevada law permits consideration by the sentencing panel of other evidence relevant to
6 sentence.") Since the statutes do not provide adequate guidance, the death penalty
7 charge must be stricken.

8 The defense asserts that the failings evident in the statutes, and the application of
9 the statutes, violate the Due Process Clause and the Eighth Amendment.

10 **NRS 200.033 Plainly States That Only the Aggravating Circumstances Set**
11 **Forth in The Statute May be Used as Aggravating Circumstance and Evidence**
12 **at Trial Should be Restricted to Those Circumstances.**

13 NRS 200.033 states that "The only circumstances by which murder of the first
14 degree may be aggravated are: 'the circumstances enumerated therein.'" The Nevada
15 Supreme Court has held that NRS 200.033 does not mean what it says and should be
16 read *in pari materia* with NRS 175.552. The Court has held that NRS 175.552 allows
17 "any other matter which the court deems relevant to sentence" to be admitted during the
18 penalty hearing. The defense asserts that the Court's holding is contrary to the plain
19 language of NRS 200.033. He further asserts that the Court's holding violates his right
20 to Due Process under the United States Constitution.

21 In addition, the Nevada statute, as interpreted by the Supreme Court, permitting
22 introduction at the penalty phase of "evidence outside the areas of aggravating
23 circumstances," Allen v. State, 99 Nev. 485, 488, 665 P.2d 239, 240 (1983), is
24 unconstitutionally vague. The Supreme Court has held that "dubious, tenuous" evidence
25 should not be admitted, Id., and has held that an informer's testimony of an alleged
26 admission by the defendant that he committed another murder, of which there was no
27 other evidence, should not be admitted. D'Agostino v. State, 107 Nev. 1001, 823 P.2d
28 283, 284-285 (1991). Otherwise, the trial court has standardless discretion to admit
"any ... matter which the court deems relevant to sentence, whether or not the evidence

1 is ordinarily admissible," NRS 175.552; Allen v. State, supra, 99 Nev. at 488, 665 P.2d
2 at 240, which the jury may then weigh in making its penalty determination.

3 In Stringer v. Black, 503 U.S. 222 (1992), the Supreme Court held that aggravating
4 factors used in the jury's determination of the appropriate penalty cannot be
5 unconstitutionally vague:

6 "Although our precedents do not require the use of aggravating
7 factors, they have not permitted a State in which aggravating
8 factors are decisive to use factors of vague or imprecise
9 content. A vague aggravating factor employed for the purpose
10 of determining whether a defendant is eligible for the death
11 penalty fails to channel the sentencer's discretion. A vague
aggravating factor used in the weighing process is in a sense
worse, for it creates the risk that the jury will treat the
defendant as more deserving of the death penalty than he
might otherwise be by relying upon the existence of an illusory
circumstance." Id. at 231.

12 The vague, standardless and open-ended discretion of the trial court to admit
13 evidence in the penalty phase results in the same violation of due process and of the right
14 to a reliable sentence which arises from a vague aggravating circumstance used to
15 establish death eligibility. See Maynard v. Cartwright, 486 U.S. 356, 363 (1988). See
16 also Cartwright v. Maynard, 822 F.2d 1477, 1491 (10th Cir. 1987), aff'd, 486 U.S. 356
17 (1988). Accordingly, the Nevada statute, as interpreted by the Supreme Court, is
18 unconstitutional, and the death penalty cannot be imposed upon the defendant.

19 The Defendant's Right to Due Process is Violated by the Failure to Require
20 the Jury to Specify Which Mitigating Circumstances Set Forth in Penalty
21 Phase Jury Instructions Were Considered and Rejected Since This Deprived
22 the Defendant of Effective Appellate Review.

23 The defendant asserts that the failure to require the jury to specify which mitigating
24 circumstances, if any, it considered in his favor violates his right to effective appellate
25 review. As such his rights under the Due Process Clause and the Eighth Amendment will
be violated unless such instructions are given.

26 The defendant further asserts that the failure to require the jury to recite some
27 indication that it has considered the various possible mitigating factors deprives a
28 defendant of due process and meaningful appellate review. While there is no requirement

1 that there be an exhaustive memorialization of the jury's consideration, some
2 documentation is required.

3 The due process clause does not require that the sentencing court exhaustively
4 document its analysis of each mitigating factor as long as a reviewing federal court can
5 discern from the record that the state court did indeed consider all mitigating evidence
6 offered by the defendant. Clark v. Ricketts, 958 F.2d 851, 859 (9th Cir. 1991).

7 Here, all the jury will be required to state is that they found that "there are no
8 mitigating circumstances sufficient to outweigh the aggravating circumstance or
9 circumstances found." The jury will not be required to state if they considered any
10 mitigating circumstances. Contrast the lack of any record here with that provided in
11 Clark.

12 [t]he sentencing court acknowledged the existence of evidence
13 in mitigation concerning Clark's poor work history, poor
14 heterosexual relations; a drug history; heavy drinking with
15 acting out; repeated arrests; excessive physical aggression;
16 sexual promiscuity; suicidal attempts; impulsive behavior with
17 rage, blackouts; severe school problems with acting out things;
18 authority figures; vagrancy and residential instability;
19 magnitude of amniotic complaints that interfere[d] with daily
20 function frequently; pathological lying; lack of friends and close
21 associates; lack of guilt about exploits and crimes including
22 lack of insight, correction, lack of insight full corrective
23 capacity; reckless use with early family indulgence in the use
24 of guns from age 4; and disintegrated brutalized family life.
25 Clark, at 858-9.

26 The defendant asserts that the failure to require the jury to give some specificity
27 as to the mitigation evidence considered renders Nevada's death penalty statute
28 unconstitutional. As such, the death penalty cannot be imposed.

29 **Nevada's Death Penalty Scheme is Unconstitutional Because There is**
30 **No Meaningful Distinction Between First Degree Murder and Second Degree Murder.**

31 Despite the conclusion of the United State Supreme Court that not every person
32 convicted of first degree murder should be eligible to receive the death penalty, in Nevada
33 it is possible for all persons convicted of murder to be eligible for the ultimate sentence.
34 This is because under the Nevada statutes, as interpreted by the Nevada Supreme Court,

1 there is no meaningful distinction between first degree murder and second degree murder.

2 NRS 200.030 provides, in relevant part, the following:

3 1. Murder in the first degree is murder which is:

4 (a) Perpetrated by means of poison, lying in wait, torture
5 or child abuse, or by any other kind of willful, deliberate
6 and premeditated killing;

7 (b) Committed in the perpetration or attempted
8 perpetration of sexual assault, kidnaping, arson, robbery,
9 burglary, invasion of the home, sexual abuse of a child
10 or sexual molestation of a child under the age of 14
11 years; or

12 (c) Committed to avoid or prevent the lawful arrest of
13 any person by a peace officer or to effect the escape of
14 any person from legal custody.

15 2. Murder of the second degree is all other kinds of murder.

16 NRS 200.010 defines murder as "the unlawful killing of a human being, with malice
17 aforethought, either express or implied, or caused by a controlled substance which is sold,
18 given, traded or otherwise made available to a person in violation of chapter 453 of NRS.
19 The unlawful killing may be effected by any of the various means by which death may be
20 occasioned." NRS 200.020(1) defines express malice as "that deliberate intention
21 unlawfully to take away the life of a fellow creature, which is manifested by external
22 circumstances capable of proof." NRS 200.020(2) provides that malice shall be implied
23 "when no considerable provocation appears, or when all the circumstances of the killing
24 show an abandoned and malignant heart."

25 The Nevada Supreme Court has repeatedly concluded that the amount of time a
26 defendant deliberates is immaterial to the issue of whether he is guilty of first-degree or
27 second-degree murder. See State v. Millain, 3 Nev. 409 (1867); Beets v. State, 107 Nev.
28 957, 962, 821 P.2d 1044 (1991); Powell v. State, 108 Nev. 700, 838 P.2d 921 (1992).
As there is no meaningful distinction between first and second degree murder in this
State, the statutory scheme, as interpreted by the Nevada Supreme Court, does not
sufficiently narrow the class of persons eligible for the death penalty.

////

1 The Death Penalty is Cruel and Unusual Punishment in all Circumstances and
2 is Prohibited by the Eighth Amendment to the United States Constitution.

3 The defendant recognizes, of course, that the United States Supreme Court has
4 repeatedly upheld the general constitutionality of the death penalty, as has the Nevada
5 Supreme Court. However, given the fact that the Supreme Court's present adherence to
6 the doctrine of *stare decisis* has become increasingly tenuous, see Walton v. Arizona, 497
7 U.S. 639, 670 (1990) (Scalia, J., concurring), the defendant asserts and preserves the
8 argument that the death penalty is in all circumstances a cruel and unusual punishment
9 under the Eight Amendment.

10 The fatal constitutional infirmity in the punishment of death is that it treats
11 "members of the human race as nonhumans, as objects to be toyed with and discarded.
12 [It is] thus inconsistent with the fundamental premise of the [Cruel and Unusual
13 Punishments] Clause that even the vilest criminal remains a human being possessed of
14 common human dignity." As such, it is a penalty that "subjects the individual to a fate
15 forbidden by the principle of civilized treatment guaranteed by the [Clause]." I therefore
16 would hold, on that ground alone, that death is today a cruel and unusual punishment
17 prohibited by the Clause. "Justice of this kind is obviously no less shocking than the
18 crime itself, and the new "official" murder, far from offering redress for the offense
19 committed against society adds instead a second defilement to the first." Gregg v.
20 Georgia, 428 U.S. 153, 230-31, 49 L.Ed.2d 859, 96 S.Ct. 2909 (1976) (dissenting
21 opinion) (citations and footnote omitted.)

22 The defendant asserts that under modern, evolving standards of decency, it is cruel
23 and unusual punishment for the government to kill its own citizens.

24 The Death Penalty is Unconstitutional Under Article One of the Nevada State
25 Constitution Which Prohibits Cruel Or Unusual Punishment.

26 Article 1, Section 6 of the Nevada Constitution differs from the Eighth Amendment
27 to the United States Constitution in that the operative phrase is written in the disjunctive
28 rather than the conjunctive. Section 6 states that "nor shall cruel or unusual punishment

1 be inflicted" while the Eighth Amendment to the United States Constitution merely
2 prohibits the infliction of punishment which is both "cruel and unusual." Therefore,
3 Article 1, Section 6 offers greater protection than does the Eighth Amendment. "Under
4 this provision, if the punishment is either cruel or unusual, it is prohibited." Mickle v.
5 Henrichs, 262 F. 687, 687 (D.Nev. 1918).

6 The defendant asserts that while the killing of its own citizens is unfortunately not
7 "unusual" in America, it is undeniably "cruel." Therefore, under the Nevada Constitution,
8 a sentence of death is unconstitutional.

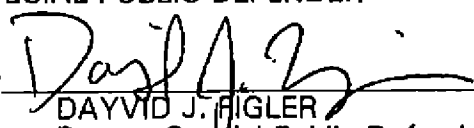
9 **CONCLUSION**

10 For the reasons set forth in this motion, the defendant asserts that Nevada's death
11 penalty statutory scheme is unconstitutional, and he asks this Honorable Court to strike
12 the Notice of Intent to Seek the Death Penalty filed by the State.

13 DATED this 29 day of November, 1999.

14 PHILIP J. KOHN
15 SPECIAL PUBLIC DEFENDER

16 By


17 DAYVID J. FIGLER
18 Deputy Special Public Defender
19 State Bar No. 004264
20 309 South Third Street, Fourth Floor
21 P.O. Box 552316
22 Las Vegas, NV 89155
23 Attorneys for Defendant
24
25
26
27
28

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

FILED

NOV 23 4 21 PM '99

Shirley J. ...
CLERK

0001
PHILIP J. KOHN, ESQ.
SPECIAL PUBLIC DEFENDER
State Bar No. 000556
JOSEPH S. SCISCENTO
State Bar No. 004380
DAYVID J. FIGLER
State Bar No. 004264
309 South Third Street
P. O. Box 552316
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON, aka
John White, ID # 1586283,

Defendant.

CASE NO: C153154
DEPT. NO: V

Date of Hearing: 12/27/99
Time of Hearing: 9:00 a.m.

**MOTION TO REQUIRE PROSECUTOR TO STATE
REASONS FOR EXERCISING PEREMPTORY CHALLENGES**

COMES NOW, the Defendant, DONTE JOHNSON, by and through his attorneys, PHILIP J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO and DAYVID J. FIGLER, Deputy Special Public Defenders, and respectfully moves this court to order the prosecutors to state their reasons, on the record, when they exercise peremptory challenges during this case.

This motion is based upon the Due Process and Equal Protection Clauses of the Nevada and United States Constitutions, the attached Memorandum of Points and Authorities, all of the papers and pleadings on file herein, any oral argument on the

RECEIVED
NOV 28 1999
CLERK
CLARK COUNTY
NEVADA

1 matter, and upon such other and further evidence as may be adduced by the Court in this
2 matter.

3 DATED this 29 day of November, 1999.

4 PHILIP J. KOHN
5 SPECIAL PUBLIC DEFENDER

6 By 

7 DAYVID J. FIGLER
8 Deputy Special Public Defender
9 State Bar No. 004264
10 309 South Third Street, Fourth Floor
11 P.O. Box 552316
12 Las Vegas, NV 89155
13 Attorneys for Defendant

14 **NOTICE OF MOTION**

15 TO: STATE OF NEVADA, Plaintiff

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

17 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will
18 bring the foregoing **Motion to Require Prosecutor to State Reasons for Exercising**
19 **Peremptory Challenges** on for hearing before the above-entitled Court on the **27th** day of
20 **December**, 1999, at **9:00 a.m.**, Department V, or as soon thereafter as counsel may be heard.

21 DATED this 29 day of November, 1999.

22 PHILIP J. KOHN
23 SPECIAL PUBLIC DEFENDER

24 By 

25 DAYVID J. FIGLER
26 Deputy Special Public Defender
27 State Bar No. 004264
28 309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 POINTS AND AUTHORITIES

2 I.

3 ARGUMENT

4 A person accused of a criminal offense has a right to a jury drawn from a representative
5 cross-section of the community. If the State were to utilize its peremptory challenges to
6 purposefully exclude a cognizable group from the jury, it would engage in discrimination and
7 thereby deprive the accused of his right to equal protection of law as guaranteed by the Fourth
8 Amendment to the United States Constitution. Batson v. Kentucky, 476 U.S. 79, 90 L.Ed.2d
9 69 (1986); J.E.B. v. Alabama ex rel. T.B., ___ U.S. ___, 114 S.Ct. 1419 (1994);

10 The harm from discriminatory jury selection extends beyond that inflicted on the
11 accused. Selection procedures that purposefully exclude a cognizable group from juries
12 undermines public confidence in the fairness of our system of justice. Id. The fact that
13 "tokens" may be left upon the jury does not insulate the State's action from constitutional
14 prohibition:

15 Systematic and affirmative racial exclusion of available Black
16 jurors by the State which results in only one Black being seated as
17 a juror is not less constitutionally prohibited than the same
18 procedure which results in the total exclusion of Blacks. We are
19 not unmindful that some attorneys may leave a token Black on the
jury after they are assured that there are no more Blacks available
to be seated. This type of practice does not lessen the
unconstitutionality of the State's initial exclusion of Blacks from the
jury solely because they were blacks.

20 People v. Payne, 106 Ill. App.3d 1034, 436 N.E.2d 1046 (1982).

21 The State may not commit acts of discrimination. The improper use of peremptory
22 challenges bars a person from jury services just as effectively as de jure or de facto methods
23 used to restrain or hinder jury service on the basis of race. Any action of the State to exclude
24 a cognizable group from the jury not only denies the accused's right to equal protection of the
25 law, but also violates the Defendant's right to an impartial jury and a fair trial as protected by
26 the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I,
27 Sections 3 and 8 of the Nevada Constitution.

28 By way of implementing the rights to a fair trial and to a trial by an impartial jury

1 composed of a representative cross-section of the community, the Fourteenth Amendment
2 mandates that the State may not act in an arbitrary, capricious, or irrational manner.
3 Accordingly, the State may not discriminate or take any action on the basis of race. Cf. Ward
4 v. Village of Monroeville, 409 U.S. 57 (1972).

5 Against the constitutional entitlement to equal protection of the law is weighed the
6 statutory procedure of peremptory challenges. The Constitution does not guarantee a right
7 to peremptory challenges. By definition, a peremptory challenge does not require an
8 explanation. In practice, attorneys exercise their peremptory challenges based on only limited
9 information concerning the predispositions and hidden biases of jurors. Consequently, the
10 attorneys rely on stereotypes, intuitions, and unfortunately, common prejudices, in deciding
11 whether a juror with a given age, race, sex, religion, or ethnic background will act impartially
12 toward the accused. Accordingly, the State's privilege to strike individual jurors through
13 peremptory challenges, is subject to the commands of the Equal Protection Clause of the
14 Fourteenth Amendment of the United States Constitution. For example, the Equal Protection
15 Clause forbids a prosecutor to challenge potential jurors solely on account of their race
16 gender. Adherence to the belief that unfettered exercise of the peremptory challenge is
17 essential to the criminal justice system would make "equal protection" as mandated by the
18 Constitution, an empty promise.

19 In order to avoid years of speculation during habeas corpus proceedings concerning
20 the State's use of peremptory challenges, and the guesswork that must surely follow when the
21 prosecutors attempt to remember their justifications, the only equitable action is to require the

22 ////

23 ////

24 ////

25 ////

26 ////

27 ////

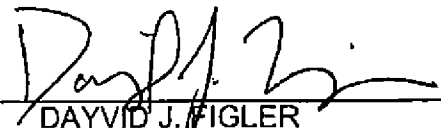
28 ////

1 prosecutors to make a contemporaneous record of the reasons for their peremptory
2 challenges.

3 DATED this 29 day of November, 1999.

4 PHILIP J. KOHN
5 SPECIAL PUBLIC DEFENDER

6
7 By


8 DAYVID J. FIGLER
9 Deputy Special Public Defender
10 State Bar No. 004264
11 309 South Third Street, Fourth Floor
12 P.O. Box 552316
13 Las Vegas, NV 89155
14 Attorneys for Defendant
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

ORIGINAL

FILED

NOV 25 4 22 PM '99

Shirley A. ...
CLERK

0103
PHILIP J. KOHN
SPECIAL PUBLIC DEFENDER
State Bar No. 000556
JOSEPH S. SCISCENTO
State Bar No. 004380
DAYVID J. FIGLER
State Bar No. 004264
309 South Third Street
P. O. Box 552316
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON, aka
John White, ID # 1586283,

Defendant.

CASE NO: C153154
DEPT. NO: V

Date of Hearing: 12/27/99
Time of Hearing: 9:00 a.m.

MOTION TO BIFURCATE PENALTY PHASE

COMES NOW, the Petitioner, DONTE JOHNSON, by and through his attorneys,
and respectfully moves this court for an Order bifurcating the penalty phase of his capital
trial in the event that he is found guilty of first-degree murder.

////

////

////

////

////

////

RECEIVED
NOV 29 1999
COUNTY CLERK
SPECIAL PUBLIC DEFENDER
CLARK COUNTY NEVADA

CLERK

1 This motion is based upon the attached points and authorities, all of the papers and
2 pleadings on file herein, any oral argument on the matter and upon such other and further
3 evidence as may be adduced by the Court in this matter.

4 DATED this 29th day of November, 1999.

5 PHILIP J. KOHN, ESQ.
6 CLARK COUNTY SPECIAL PUBLIC DEFENDER

7 By: 

8 DAYVID J. FIGLER, ESQ.
9 Deputy Special Public Defender
10 State Bar No: 004264
11 309 South Third Street, Fourth Floor
12 P.O. Box 552316
13 Las Vegas, NV 89155
14 Attorneys for Defendant

15 **NOTICE OF MOTION**

16 TO: THE STATE OF NEVADA, Plaintiff; and

17 TO: STEWART BELL, District Attorney,

18 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the undersigned will
19 bring the foregoing **Motion to Bifurcate Penalty Phase** on for hearing before the above-
20 entitled Court on the **27th day of December, 1999**, at the hour of **9:00 a.m.**, in
21 Department V, or as soon thereafter as counsel may be heard.

22 DATED this 29th day of November, 1999.

23 PHILIP J. KOHN
24 CLARK COUNTY SPECIAL PUBLIC DEFENDER

25 By: 

26 DAYVID J. FIGLER
27 DEPUTY SPECIAL PUBLIC DEFENDER
28 NEVADA BAR #4264
309 SOUTH THIRD STREET, 4TH FLOOR
LAS VEGAS, NEVADA 89155-2316
(702) 455-6265

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

20
21
22
23
24
25
26
27
28

28 |

1 considering the statutory aggravating circumstances and mitigating factors -- may the jury
2 consider character evidence against the defendant. Middleton, 968 P.2d at 314. "At this
3 final stage, evidence presented pursuant to NRS 175.552(3) can influence the decision
4 to impose death, but this comes after the narrowing to death eligibility has occurred." Id.

5 Support for a bifurcated penalty phase is also found in a recent decision by the
6 United States Supreme Court. In Buchanan v. Angelone, 522 U.S. 269, 118 S.Ct. 757,
7 760, 139 L.Ed.2d 702 (1998), the Court explained as follows:

8 Petitioner initially recognizes, as he must, that our cases have
9 distinguished between two different aspects of the capital
10 sentencing process, the eligibility phase and the selection
11 phase. Tuilaepa v. California, 512 U.S. 967, 971, 114 S.Ct.
12 2630, 2634, 129 L.Ed.2d 750 (1994). In the eligibility phase,
13 the jury narrows the class of defendants eligible for the death
14 penalty, often through consideration of aggravating
15 circumstances. Id. at 971, 114 S.Ct., at 2634. In the
16 selection phase, the jury determines whether to impose a death
17 sentence upon an eligible defendant. Id. at 972, 114 S.Ct. at
18 2634-2635.

14 CONCLUSION

15 Mr. Johnson respectfully requests that if he is found guilty of first-degree murder,
16 and if this Court permits the State to introduce character evidence that is not relevant to
17 the statutory aggravating circumstances, that the penalty phase be bifurcated into an
18 "eligibility" phase and a "selection" phase.

19 DATED this 29th day of November, 1999.

20 Respectfully submitted,

21 PHILIP J. KOHN
22 CLARK COUNTY SPECIAL PUBLIC DEFENDER

23 By 

24 DAYVID FIGLER, ESQ.
25 DEPUTY SPECIAL PUBLIC DEFENDER
26 State Bar No. 004264
27 309 S. Third Street, Fourth Floor
28 Las Vegas, NV 89101
(702) 455-6265
Attorney for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

ORIGINAL

FILED

NOV 23 4 04 PM '99

Elizabeth J. Jones
CLERK

0001
PHILIP J. KOHN
SPECIAL PUBLIC DEFENDER
State Bar No. 000556
JOSEPH S. SCISCENTO
State Bar No. 004380
DAYVID J. FIGLER
State Bar No. 004264
309 South Third Street
P. O. Box 552316
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON, aka
John White, ID # 1586283,

Defendant.

CASE NO: C153154
DEPT. NO: V

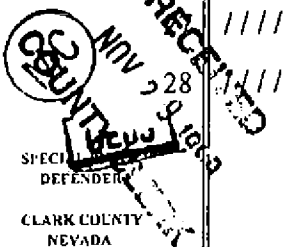
Date of Hearing: 12/27/99
Time of Hearing: 9:00 a.m.

MOTION FOR JURY QUESTIONNAIRE

COMES NOW, the Defendant, DONTE JOHNSON, by and through his attorneys, and respectfully requests that this Court, pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, and Article 1 of the Nevada Constitution, allow him to submit the attached, proposed jury questionnaire to prospective jurors in time to receive completed questionnaires at least three weeks prior to trial. This motion is also based upon the attached points and authorities, all of the papers and pleadings herein, any oral argument

////

////



CE31

13

1 on the matter, and upon such other and further evidence as may be adduced by the Court in
2 this matter.

3 DATED this 29 day of November, 1999.

4 PHILIP J. KOHN, ESQ.
5 SPECIAL PUBLIC DEFENDER

6 By: 

7 DAYVID J. FIGLER, ESQ.
8 Deputy Special Public Defender
9 State Bar No. 004264
10 309 South Third Street, Fourth Floor
11 P.O. Box 552316
12 Las Vegas, NV 89155
13 Attorneys for Defendant

14 **NOTICE OF MOTION**

15 TO: STATE OF NEVADA, Plaintiff; and

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

17 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and
18 foregoing **Motion for Jury Questionnaire** on the 27th day of December, 1999 at the hour
19 of 9:00 a.m., in Department No. V of the above-entitled Court, or as soon thereafter as
20 counsel may be heard.

21 DATED this 29 day of November, 1999.

22 PHILIP J. KOHN, ESQ.
23 SPECIAL PUBLIC DEFENDER

24 By: 

25 DAYVID J. FIGLER, ESQ.
26 Deputy Special Public Defender
27 State Bar No. 004264
28 309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1
2 **POINTS AND AUTHORITIES**

3 **ARGUMENT**

4 Mr. Johnson has been charged with capital murder. The State is seeking the death
5 penalty. Since this is to be a capital prosecution, exacting standards must be met to
6 assure that it is fair. The fundamental respect for humanity underlying the Eighth
7 Amendment's prohibition against cruel and unusual punishment gives rise to a special
8 "need for reliability in the determination that death is the appropriate punishment" in any
9 capital case. Johnson v. Mississippi, 486 U.S. 578, 584 (1988) (quoting Gardner v.
10 Florida, 430 U.S. 349, 363-64 (1977) (quoting Woodson v. North Carolina, 428 U.S.
11 280, 305 (1976) (White, J., concurring)).

12 If Mr. Johnson is to receive a fair trial, it is vital that the information available to
13 the prosecution and the defense concerning potential jurors is accurate and thorough.
14 See, e.g., Coleman v. Kemp, 778 F.2d 1487, 1542 (11th Cir. 1985), cert. denied, 476
15 U.S. 1164 (1986) (voir dire procedures inadequate to uncover prejudice); Jordan v.
16 Lippman, 763 F.2d 1265 (11th Cir. 1985) (jury selection procedures must be adequate
17 to unearth prejudice; failure to expose potential prejudice of jurors requires reversal of
18 conviction).

19 In Nevada, the District Court has discretion to conduct extensive voir dire. NRS
20 175.031 provides that:

21 The court shall conduct the initial examination of prospective
22 jurors, and defendant or his attorney and the district attorney
23 are entitled to supplement the examination by such further
24 inquiry as the court deems proper. Any supplemental
examination must not be unreasonably restricted. (Emphasis
added)

25 "In a criminal case any party to a jury trial has the right to examine prospective
26 jurors on the voir dire." Spillers v. State, 84 Nev. 23, 27, 436 P.2d 18 (1968). The
27 district courts also have the discretion to conduct individual voir dire out of the presence
28 of other jurors. See Summers v. State, 102 Nev. 195, 199, 718 P.2d 676 (1986).

1 Where the district court abuses its discretion or prejudice to the defendant result, the
2 Nevada Supreme Court will reverse for the failure to conduct sequestered voir dire. See
3 Haynes v. State, 103 Nev. 309, 316, 739 P.2d 497 (1987).

4 Moreover, because of the exceptional and irrevocable nature of the death penalty,
5 the Supreme Court held in Turner v. Murray, 476 U.S. 28 (1986) that voir dire must be
6 especially careful, and that the trial court's refusal to allow certain voir dire questions
7 required reversal of the death sentence.

8 Attached to this motion is a proposed juror questionnaire, along with a proposed
9 letter to the venirepersons, that will elicit background information that may be relevant
10 to challenges for cause as well as the intelligent and informed exercise of peremptory
11 challenges. The questionnaire will provide the parties and the Court with responses that
12 may alert them to possible relationships, associations or experiences that may be a source
13 of bias or prejudice and necessitate excusals for cause under NRS 175.035. It will also
14 provide information necessary to ensure that no improper bias or prejudice undermines the
15 Mr. Johnson's rights to a fair trial or otherwise results in arbitrary or prejudicial imposition
16 of the death penalty. The questionnaire will also save substantial time that can be
17 devoted in voir dire to questioning about the extensive and highly prejudicial publicity
18 regarding this case if it is tried in Clark County.

19 Mr. Johnson requests that the questionnaires be served at the same time as the
20 summons, and that jurors be directed to complete the questionnaires within five days and
21 return them in postage-paid envelopes addressed to the Jury Commissioner.

22 CONCLUSION

23 WHEREFORE, Mr. Johnson requests that this Court enter an order granting the
24 motion and directing that:

- 25 (a) the attached, proposed juror questionnaire be sent out
26 with summonses to the venirepersons;
27 (b) prospective jurors be provided with postage-paid
28 envelopes addressed to the Jury Commissioner and be
directed to complete the forms and return them to the

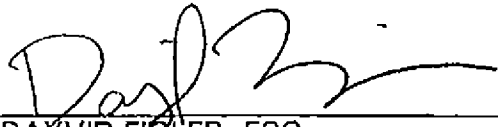
1 Court within five days; and
2

3 (c) the Clerk make copies of all questionnaires and provide them
4 at the same time to counsel for the State and for Mr. Johnson.
5

6 DATED this 29 day of November, 1999.
7

8 Respectfully submitted,
9

10 PHILIP J. KOHN
11 CLARK COUNTY SPECIAL PUBLIC DEFENDER
12

13 
14 DAYVID FIGLER, ESQ.
15 DEPUTY SPECIAL PUBLIC DEFENDER
16 State Bar No. 004264
17 309 S. Third Street, Fourth Floor
18 Las Vegas, NV 89101
19 (702) 455-6265
20 Attorney for Defendant
21
22
23
24
25
26
27
28

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

HARDSHIP FORM

This case is expected to last two weeks.

Please answer the following questions:

1. Are you available to serve as a juror on this trial?

Yes _____ No _____

2. If not, is it because of your employer's pay policy?

Yes _____ No _____

- a. If yes, what is the name of your employer?

- b. What is your employer's policy regarding paying employees while they are serving on jury duty?

3. If you will suffer some other financial or personal hardship, serving for this period of time, please explain:

Whether or not your hardship falls within the Nevada laws for excusing someone from jury duty will be decided by the court. The court cannot excuse you if your hardship does not fall within the statutory guidelines.

EXHIBIT "A"

DEMOGRAPHICS

1. Your full name: _____

a. If you have ever been known by any other name, please so indicate:

2. Your age: _____

3. Your place of birth: _____

4. Your parents' place of birth:

Mother: _____

Father: _____

5. Your marital status (married, divorced, single, separated): _____

How long: _____

6. Children:

Age

Sex

Education

Occupation

a. _____

b. _____

c. _____

d. _____

e. _____

PLACE OF RESIDENCE

7. In what area of town do you live? (City of township)

How long have you lived in that location? _____

8. How long have you lived in the Las Vegas Metropolitan area: _____

II EDUCATION

9. What is the highest grade you have completed? _____

10. Did you attend College or University? _____ If so, please complete the following:

<u>College/ University</u>	<u>Year</u>	<u>Degree</u>	<u>Major/ Concentration</u>
--------------------------------	-------------	---------------	---------------------------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

11. Have you received any other special training or schooling?

If so, explain: _____

12. What is the education level of your spouse or person you are living with?

13. Did he/she attend college or university? _____ Graduate school? _____
If either, what was his/her degree and major area of concentration?

14. Has he/she received any special training? _____ If so, please explain:

15. If you have taken courses or had training in any of the behavioral sciences (e.g. psychology, sociology, counseling or similar areas), please identify such courses/training by title and subject matter:

16. If you have taken courses or had training in any of the legal fields, (i.e. law, administration of justice, corrections, law enforcement), please identify such courses/training by title and subject matter:

17. If you have taken courses or had training in any of the medical sciences, and in particular the medical specialty of psychiatry, please identify such courses/training by subject matter or title:

OCCUPATIONAL/VOLUNTEER WORK

18. Please state your occupation and relevant duties for the past ten year beginning with the most current. If you are retired, provide this information for the ten years preceding your retirement. Please include volunteer work.

<u>Names of Business</u>	<u>Dates</u>	<u>Your Title</u>	<u>Duties</u>
--------------------------	--------------	-------------------	---------------

19. Answer the same questions for your spouse, if applicable:

ff Names of Business Dates Your Title Duties

20. What are the sex, ages and current occupations of your brothers and sisters?

Sex Age Occupation

21. Have you ever been in business for yourself? _____ If so, what type of business(es)?

22. Have you ever been a supervisor or boss? Yes _____ No _____
What were your duties?

MILITARY

23. Have you ever had military experience? _____

24. If so, indicate branch of service, dates of service, position/rank held, and duties:

<u>Branch</u>	<u>Dates</u>	<u>Position/Rank</u>	<u>Duties</u>
---------------	--------------	----------------------	---------------

25. Have you had combat experience? _____ If so, please explain:

26. Were you ever a member of the military police or shore patrol? Yes _____
No _____

27. Were you ever involved in a military court martial? Yes _____ No _____
If yes, please describe your role in the proceedings?

PARTICIPATION IN CLUBS, ORGANIZATIONS, COMMUNITY ACTIVITIES

28. Do you belong to any group or organization active in political matters (e.g. Mothers Against Drunk Drivers, The American Civil Liberties Union, The John Birch society, Amnesty International, etc.) ? _____ If yes, please explain:

29. Do you attend religious services? Yes _____ No _____ If yes, how often?

30. Are you active in church activities of any kind? Yes _____ No _____

LEGAL SYSTEM

31. Do you have any relatives or close friends who are judges or attorneys? _____ If yes, please state your relationship to that person(s) and indicate how often you communicate with them regarding law-related subjects:

32. Do you have any acquaintances who are practicing criminal lawyers? _____ If yes, please give the names and the relationship you have with them:

33. Do you have any relatives or close friends who are now, or have been in the past, involved in law enforcement (police officers, security guard, military police, etc.)? _____ If yes, please state your relationship to that person(s) and indicate how often you communicate with them regarding law-related subjects:

34. Do you believe that your relationship with any of the above persons would affect your ability to be fair and impartial to both sides in this case? _____ If yes, please explain:

JURY SYSTEM/JUROR ROLE

35. If you have ever been a juror before, please state for each case:

<u>Year</u>	<u>Civil</u> or <u>Criminal</u>	<u>Nature</u> of <u>Case</u>	<u>Submitted</u> to <u>Jury</u>	<u>Did you</u> <u>Reach a</u> <u>Verdict</u>
_____	_____	_____	_____	Y____ N____
_____	_____	_____	_____	Y____ N____
_____	_____	_____	_____	Y____ N____

36. Did you find your experience as a juror to be:

Positive _____ Negative _____

37. If you have ever been a juror before, did you talk with the Judge, Prosecutor or Defense Attorney after returning your verdict? _____

38. What types of opinions do you have that could affect your judgment in a criminal law trial?

39. Are you taking any medication regularly that might make it difficult for you to pay attention or concentrate for long periods of time? _____ If yes, please specify the medication, the purpose for which you are taking it, and describe its effects upon your ability to concentrate:

40. Do you have any difficulty with your hearing? _____ If so, might it affect your performance as a juror? _____

41. Do you have a problem with your vision? _____ If yes, please specify the nature of that difficulty and how it might affect your performance as a juror:

42. Have you or any members of your family ever had, or been treated for, mental illness? Yes _____ No _____ If yes, please indicate who had the problem and state the type of problem:

43. Have you or any member of your family ever had a drug or alcohol problem?
Yes _____ No _____ I don't know _____

If yes, please indicate who had the problem and state the type of problem. (If you cannot answer the above question with a simple yes or no, please explain:)

CRIME AND VIOLENCE

44. In general, what are your opinions and feelings about how the criminal justice system works?

45. Have you or any family member or close friend ever been arrested and/or charged with a crime? _____ If yes, please explain (what happened, when did it happen):

46. If you or any family member or close friend has ever been arrested and/or charged with a crime, how has this affected your feelings about the criminal justice system?

47. Have you or any family member or close friend ever been the victim of a crime? _____ If yes, please explain (who was the victim, what happened, and when did it happen):

48. Was there a conviction? _____

49. How has this experience affected your feelings about the criminal justice system?

11

50. Have you or any family member or close friend ever been a witness to a crime? If yes, please explain (what type of crime, when did it happen, did you have to testify in a court proceeding):

51. Do you own any firearms (guns, rifles)? Yes _____ No _____
If yes, what type(s)?

52. If you have ever used a weapon for any purpose other than target, skeet shooting or hunting, please explain:

PERSONAL HABITS, TRAITS, PRACTICES AND CHARACTERISTICS

53. Do you enjoy any of the following:

- | | | |
|----------------------|-----------|----------|
| a. Crossword puzzles | Yes _____ | No _____ |
| b. Word games | Yes _____ | No _____ |
| c. Logic problems | Yes _____ | No _____ |

54. What are your hobbies (if any)?

11

55. What television news program do you watch?

How often?

56. What radio stations do you listen to?

57. How many hours per week do you watch TV?

58. What TV shows do you watch?

59. What types of books do you read, and how often?

60. What magazines do you read, and how often?

61. What newspapers do you read, and how often?

ff

What part(s) do you read?

- a. front page? _____
- b. sports? _____
- c. editorials? _____
- d. crime stories? _____

- e. comics? _____
- f. local news? _____
- g. other? _____

LEGAL EXPERIENCE

62. Have you had any experience working in any legal field? _____ If yes, please explain:

63. Have you ever testified as a witness in any type of matter in a court of law? _____ If yes, please explain?

64. Whether or not you have had any experience with the, what is your opinion of:

- a. Defense Attorneys _____
- b. Public Defenders _____
- c. Prosecutors (State) _____
- d. Prosecutors (Federal) _____

65. Would you have tendency to give more weight or credence to the testimony of a police officer simply because he/she is a police officer? Yes _____ No _____

Why? _____

66. How do you feel the crime problem is handled in your community?

Adequately _____ Inadequately _____ No opinion _____

Please explain:

67. Do you belong to a crime prevention group in your neighborhood? _____
If yes, what is the nature of your participation?

68. Do you believe offenders sometimes do not receive harsh enough sentences?
Yes _____ No _____

Briefly explain your answer:

69. Have you ever felt that judges are too soft on crime? Yes _____ No _____
I don't know _____

Briefly explain your answer:

70. If you had your choice, would you give the police more or less power than they have
now? Yes _____ No _____
If yes, please explain:

71. When a defendant is charged with a crime, do you think he should have to prove his innocence? Yes _____ No _____

If yes, please explain:

PRE-TRIAL PUBLICITY

Based upon the synopsis of the case attached to this questionnaire:

72. Do you recall hearing or seeing anything about this case prior to today?
Yes _____ No _____

If yes, describe what you saw or heard?

73. How would your prior knowledge of the case affect your ability to sit as an impartial juror?

74. As a result of what you have seen or heard, have you formed any opinion as to the guilt or innocence of the defendant(s)? Yes _____ No _____

ATTITUDES REGARDING THE DEATH PENALTY

The defendant(s) in this case has been charged with First Degree Murder. First Degree Murder is defined under Nevada law as the willful, deliberate and premeditated killing of a human being. The Nevada State Legislature has determined that if a person is convicted of First Degree Murder, then a jury must further decide which of three possible punishments provided by law, should be imposed. The three possible punishments are:

A. The death penalty,

- B. Life imprisonment without the possibility of parole;
- C. Life imprisonment with the possible of parole.

The law requires that whenever the District Attorney seeks death as a possible punishment for a charge, prospective jurors must be asked to express their views on both the death penalty and the penalty of life in prison with or without the possibility of parole. Asking about your views at this time is a routine part of the procedure to be followed in all cases in which death is sought as a possible punishment. By asking these questions, the court is not implying that the defendant is guilty or that you will necessarily need to decide the penalty in this case.

This trial will be divided into two phases.

During the first phase the jury will determine if the defendant is guilty or not guilty of First Degree Murder. You will not be concerned with the punishment to be imposed at this phase of the trial. If the defendant is found not guilty, or is found guilty of any offense other than First Degree Murder, the trial will end and you will not be involved in any further proceedings.

If, after listening to all of the evidence presented in the first phase, you and your fellow jurors should find the defendant guilty of first degree murder, then under the laws of the State of Nevada, you would be involved in a second phase of the trial to determine if the penalty will be:

- A. Life imprisonment with the possibility of parole.
- B. Life imprisonment without the possibility of parole.
- C. The imposition of the death penalty.

The law in the State of Nevada further states that before the death penalty may be imposed, a jury must find, beyond a reasonable doubt, that at least one aggravating circumstance exists. In addition, the jury must also find that there are not mitigating circumstances which are sufficient to outweigh the aggravating circumstances which the jury found to exist.

For your information, Nevada statutes contain a list of circumstances which can be considered as aggravating factors in a First Degree Murder case. If a penalty phase is conducted in this case, you would be instructed on which aggravating circumstances the prosecution alleges exist in this case and you would have to decide whether or not the prosecution had proven any aggravating circumstances beyond a reasonable doubt.

Mitigating circumstances include anything in the defendant's background which would support an argument against the imposition of death and for a sentence of life imprisonment with or without the possibility of parole. This can include, but is not limited to, the defendant's age, childhood experiences, health, education, mental illness or intelligence.

In this case life imprisonment with the possibility of parole is a sentence of life imprisonment which provides that a defendant would be eligible for parole after a period of 20 years. This does not mean that he would be paroled after 20 years, but only that he would be eligible after that period of time.

Life imprisonment without the possibility of parole means exactly what it says, that a defendant shall not be eligible for parole.

If you sentence a defendant to death, you must assume that the sentence will be carried out.

Although under certain circumstances and conditions the State Board of Pardons commissioners has the power to modify sentences, it does not have the power to commute a sentence of death or a sentence of life imprisonment without the possibility of parole to a sentence that would allow parole. If selected as a juror, you would not be able to speculate as to whether the sentence you impose may be changed at a later date.

75. Will asking questions concerning your views about the death penalty and the penalty of life in prison with or without the possibility of parole suggest to you that the defendant(s) must be guilty? Yes _____ No _____ If yes, please explain:

76. Do you understand that the defendant(s) maintains his innocence, has pled not guilty, and that the only task you are asked to perform during the first phase of the trial is to judge guilty or innocence? Yes _____ No _____

77. Do you understand that the questions that follow must in no way impact upon your decision regarding guilt or innocence of these defendants? Yes _____ No _____

78. Do you understand that there may never be a penalty phase in this case, and that the asking of these questions is only done to prepare for that possibility? Yes _____ No _____

79. Do you belong to any organization that advocates the abolition of the death penalty? Yes ____ No ____ If yes, what organization:

80. Do you belong to any organization that advocates the death penalty? Yes ____ No ____ If yes, what organization:

81. Do you believe our ll system unduly favors the person accused of the crime, and if so, how?

82. As a juror, would you feel an obligation to reach a verdict because that was the vote of the majority? Yes ____ No ____

83. How would you feel if the jury you sat on was unable to reach a verdict?

84. Would you vote a certain way solely because you wanted to see a unanimous verdict reached in this case? Yes ____ No ____

85. Would you say that you are generally: (circle one)

- a. in favor of the death penalty,
- b. generally opposed to it, or,
- c. never thought about it.

86. Do you believe that you personally could vote to impose the death, if you believed that it was warranted in a particular case? Yes ____ No ____

87. Would you say that you are open to considering all three forms of punishment in a capital case, depending on the evidence presented at the trial and what you learn about the defendant in a penalty phase, should you find him guilty of first degree murder? Yes _____ No _____

88. In your present state of mind, can you, if selected as a juror, consider equally all three possible forms of punishment and select the one that you feel is the most appropriate depending upon the facts and the law? Yes _____ No _____ If no, please explain:

89. What do you think of the Biblical saying "an eye for an eye":

90. If you reach a penalty phase in this case, then in determining whether to return a verdict of:

- a. Life imprisonment with the possibility of parole,
- b. Life imprisonment without the possibility of parole,
- c. Death

you must consider the defendant's background, that is mitigating circumstances, such as the defendant's health, mental status, age, childhood experiences, education, etc. Do you feel you would consider those types of factors:

Very much _____ Somewhat _____ Not at all _____ Not sure _____

91. Do you feel that one convicted of murder in the first degree:

- a. Should be sentenced to death without consideration of background information?

Always _____ Probably _____ Possibly _____ Never _____ Unsure _____

Please explain:

b. Should be sentenced to life in prison without the possibility of parole without consideration of background information?

Always _____ Probably _____ Possibly _____ Never _____ Unsure _____

Please explain:

c. Should be sentenced to life in prison with the possibility of parole without consideration of background information?

Always _____ Probably _____ Possibly _____ Never _____ Unsure _____

Please explain:

92. Overall, in considering general issues of punishment, which do you think might be worse for a defendant:

Death _____ Life in prison without possibility of parole _____

Please explain:

93. Do you understand that, if the jury votes for death, the sentence will be carried out and the defendant will be put to death? Yes _____ No _____ If no, why not?

94. Do you understand that, if the jury votes for life imprisonment without the possibility of parole the sentence will be carried out and the defendant will spend the rest of his life in prison? Yes _____ No _____ If no, why not?

95. Without having heard any evidence in this case, what are your general thoughts about the benefit of imposing a death sentence on a person convicted of murder in the first degree?

96. Without having heard any evidence in this case, what are your general thoughts about the benefit of imposing a sentence of life without the possibility of parole on a person convicted of murder in the first degree?

97. Without having heard any evidence in this case, what are your general thoughts about the benefit of imposing a sentence of life with the possibility of parole on a person convicted of murder in the first degree?

98. Do you feel that life in prison without the possibility of parole is a severe punishment? Yes _____ No _____ Please explain:

99. Indicate your opinion of the following statements:

A. If the prosecutor goes to the trouble of bringing someone to trial, the person is probably guilty.

Strongly Agree _____ Agree _____ Disagree _____

Strongly Disagree _____ No opinion _____

B. A defendant in a criminal trial should be required to prove his or her innocence.

Strongly Agree _____ Agree _____ Disagree _____

Strongly Disagree _____ No opinion _____

C. A person is entitled to a fair and thorough investigation by law enforcement officers before he/she is arrested and charged with a serious crime.

Yes _____ No _____ No Opinion _____

100. If you were convicted beyond a reasonable doubt that the defendant was guilty of first degree murder, would you say that:

A. Your beliefs about the death penalty are such that you would ALWAYS vote for the punishment of life imprisonment and NEVER vote for the death penalty regardless of the facts and circumstances of the case.

Yes _____ No _____

B. Your beliefs about the death penalty are such that you would ALWAYS vote for the death penalty and NEVER vote for life imprisonment regardless of the facts and circumstances of the case.

Yes _____ No _____

EXPLANATION SHEET

15

ORIGINAL

FILED

NOV 23 3 52 PM '99

CLERK

0001
PHILIP J. KOHN
SPECIAL PUBLIC DEFENDER
State Bar No. 000556
JOSEPH S. SCISCENTO
State Bar No. 004380
DAYVID J. FIGLER
State Bar No. 004264
309 South Third Street
P. O. Box 552316
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON, aka
John White, ID # 1586283,

Defendant.

CASE NO: C153154
DEPT. NO: V

Date of Hearing: 12/27/99
Time of Hearing: 9:00 a.m.

MOTION TO APPLY HEIGHTENED STANDARD
OF REVIEW AND CARE IN THIS CASE BECAUSE
THE STATE IS SEEKING THE DEATH PENALTY

COMES NOW, the Defendant, DONTE JOHNSON, by and through his attorneys,
PHILIP J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO and DAYVID J.
FIGLER, Deputy Special Public Defenders, and respectfully requests this Court to
recognize formally that because the State of Nevada is seeking the death penalty, a
heightened standard of care and review must apply to all of these proceedings. State and
federal law require that this Court make extraordinary efforts to protect Mr. Johnson's
rights to a fair trial. Mr. Johnson seeks an order from this Court recognizing the unique
nature of this proceeding and the importance of ensuring that special attention is paid to

CLARK COUNTY
SPECIAL PUBLIC
DEFENDER
CLARK COUNTY
NEVADA

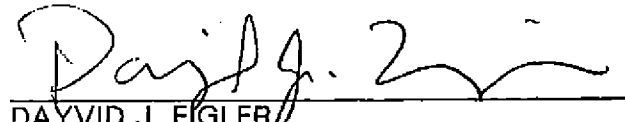
CE31
CE05

1 his constitutional rights.

2 This motion is made pursuant to the Eighth and Fourteenth Amendments to the
3 United States Constitution and the Nevada Constitution as well as the attached points and
4 authorities, all of the papers and pleadings herein, any oral argument on the matter, and
5 upon such other and further evidence as may be adduced by the Court in this matter.

6 DATED this 29 day of November, 1999.

7 PHILIP J. KOHN
8 SPECIAL PUBLIC DEFENDER

9 

10 DAYVID J. FIGLER
11 Deputy Special Public Defender
12 State Bar No. 004264
13 309 South Third Street, Fourth Floor
14 P.O. Box 552316
15 Las Vegas, NV 89155
16 Attorneys for Defendant

14 **NOTICE OF MOTION**

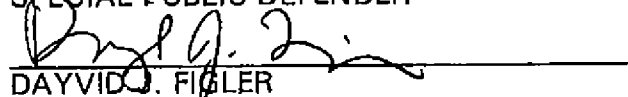
15 TO: THE STATE OF NEVADA, Plaintiff; and

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

17 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the undersigned will
18 bring the foregoing **Motion to Apply Heightened Standard of Review and Care in This Case**
19 **Because the State is Seeking the Death Penalty** on for hearing before the above-entitled
20 Court on the **27th day of December, 1999**, at the hour of **9:00 a.m.**, in Department V,
21 or as soon thereafter as counsel may be heard.

22 DATED this 29 day of November, 1999.

23 PHILIP J. KOHN
24 SPECIAL PUBLIC DEFENDER

25 

26 DAYVID J. FIGLER
27 Deputy Special Public Defender
28 State Bar No. 004264
309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 POINTS AND AUTHORITIES

2 I.

3 "DEATH IS DIFFERENT": THE IMPOSITION OF THE PENALTY OF DEATH
4 REQUIRES, AS A MATTER OF FUNDAMENTAL CONSTITUTIONAL LAW,
5 HEIGHTENED SCRUTINY AND RELIABILITY IN THE GUIDANCE AND EXERCISE
6 OF SENTENCING DISCRETION.

7 As a matter of substantive constitutional law, the imposition of death as a criminal
8 sanction is fundamentally and qualitatively different from every other punishment meted
9 out by a state. It is different substantively from life in prison; it is different substantively
10 from life in prison without possibility of parole. Indeed, death, because of its severity and
11 finality, occupies a constitutional classification that is unique unto itself. As the United
12 States Supreme Court explained in Woodson v. North Carolina, 428 U.S. 280 (1976), the
13 Constitution requires a reliability in capital cases that has no parallel in non-capital cases:

14 [T]he penalty of death is qualitatively different from a sentence
15 of imprisonment, however long. Death, in its finality, differs
16 more from life imprisonment than a 100-year prison term
differs from one of only a year or two. Because of that
qualitative difference, there is a corresponding difference in the
need for reliability in the determination that death is the
appropriate punishment in a specific case.

17 Id. at 305.

18 It is from this fundamental and overriding constitutional concern for the reliability
19 of any sentence of death that most of the standards and principles governing capital
20 punishment emanate. Numerous rules and safeguards have been developed by the courts,
21 including the Nevada Supreme Court and the United States Supreme Court, to
22 circumscribe proceedings where death may be the ultimate penalty. They are far more
23 than procedural niceties. They are substantive safeguards, infused with the recognition
24 that, to be constitutional, a sentence of death must be the result of the exercise of
25 individualized, reasoned and reliable sentencing discretion.

26 Indeed, the Supreme Court has repeatedly recognized that death is such a final and
27 draconian step that its imposition must be attended with constitutional protections
28 designed to ensure both that the courts have reliably identified those defendants who are

1 guilty of a capital crime and for whom execution is the appropriate sanction, see, e.g.,
2 Ford v. Wainwright, 477 U.S. 399 (1986), and that the death sentence is, "and appear[s]
3 to be, based on reason rather than caprice or emotion." Gardner v. Florida, 430 U.S.
4 349, 358 (1977). As the Court stated in Caldwell v. Mississippi, 472 U.S. 320 (1985):
5 This Court has repeatedly said that under the Eighth Amendment "the qualitative
6 difference of death from all other punishments requires a correspondingly greater degree
7 of scrutiny of the capital sentencing determination." Accordingly, many of the limits that
8 this Court has placed on the imposition of capital punishment are rooted in a concern that
9 the sentencing process should facilitate the responsible and reliable exercise of sentencing
10 discretion. Id. at 329 (citations omitted) (quoting California v. Ramos, 463 U.S. 992,
11 998-99 (1983)). See also Eddings v. Oklahoma, 455 U.S. 104 (1982); Lockett v. Ohio,
12 438 U.S. 586 (1978); Gardner v. Florida, 430 U.S. 349 (1977).

13 In his opinion in Spaziano v. Florida, 468 U.S. 447 (1984), Justice Stevens noted
14 that "[i]n the 12 years since Furman v. Georgia, every member of this Court has written
15 or joined at least one opinion endorsing the proposition that because of its severity and
16 irrevocability, the death penalty is qualitatively different from any other punishment, and
17 hence must be accompanied by unique safeguards to ensure that it is a justified response
18 to a given offense." Id. at 468 (Stevens, J., concurring in part and dissenting in part)
19 (citations and footnote omitted). See also Parker v. Dugger, 498 U.S. ___, 111 S.Ct 731,
20 112 L.Ed.2d 812 (1991).

21 The rationale for this well-recognized constitutional distinction between death and
22 every other type of criminal punishment was perhaps best articulated in Justice Brennan's
23 concurrence in Furman v. Georgia, 408 U.S. 238 (1972):

24 Death is truly an awesome punishment. The calculated killing
25 of a human being by the State involves, by its very nature, a
26 denial of the executed person's humanity. The contrast with
27 the plight of a person punished by imprisonment is evident. An
28 individual in prison does not lose "the right to have rights." A
prisoner retains, for example, the constitutional rights to the
free exercise of religion, to be free of cruel and unusual
punishments, and to treatment as a "person" for purposes of
due process of law and the equal protection of the laws. A

1 prisoner remains a member of the human family. Moreover, he
2 retains the right of access to the courts. His punishment is not
3 irrevocable. Apart from the common charge, grounded upon
4 the recognition of human fallibility, that the punishment of
5 death must inevitably be inflicted upon innocent men, we know
6 that death has been the lot of men whose convictions were
7 unconstitutionally secured in view of later, retroactively
8 applied, holdings of this Court. The punishment itself may
9 have been unconstitutionally inflicted, yet the finality of death
10 precludes relief. An executed person has indeed "lost the right
11 to have rights." As one 19th century proponent of punishing
12 criminals by death declared, "When a man is hung, there is an
13 end of our relations with him. His execution is a way of
14 saying, 'You are not fit for this world, take your chance
15 elsewhere.'"

9 Id. at 290 (Brennan, J., concurring) (citation omitted) (quoting Stephen, Capital
10 Punishments, 69 Fraser's Magazine 753, 763 (1864)). See also Furman, 408 U.S. at
11 306 (Stewart, J., concurring) ("The penalty of death differs from all other forms of
12 criminal punishment, not in degree but in kind. It is unique in its total irrevocability. It is
13 unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice.
14 And it is unique, finally, in its absolute renunciation of all that is embodied in our concept
15 of humanity.").

16 II.

17 THE DISCRETION TO IMPOSE DEATH MUST BE LIMITED.

18 As part of the constitutional jurisprudence of death under the Eighth Amendment,
19 the Supreme Court has steadfastly insisted that states meaningfully narrow the class of
20 persons for whom death is an available penalty. Thus, it has been held that a conviction
21 for a crime for which death is an available sentencing option cannot, standing alone,
22 justify the imposition of the penalty from a constitutional standpoint. Rather, the state
23 must specify certain aggravating circumstances, at least one of which must be present,
24 in order for the defendant to become constitutionally death-eligible. Gregg v. Georgia,
25 428 U.S. 153, 192, 196-98, 206-07 (1976).

26 In Zant v. Stephens, 462 U.S. 862 (1983), for example, the Court held that the
27 state "must genuinely narrow the class of persons eligible for the death penalty" by
28 requiring the finding of at least one statutory aggravating circumstance which sets a

1 particular case apart from murders in general. Id. at 877. As Justice White stated in
2 Furman v. Georgia, 408 U.S. 238 (1972), the sentence of death cannot be
3 constitutionally imposed where "there is no meaningful basis for distinguishing the few
4 cases in which it is imposed from the many cases in which it is not." Id. at 313 (White,
5 J., concurring).

6 III.

7 **SENTENCING JURIES MUST BE CAREFULLY AND ADEQUATELY**
8 **GUIDED IN THEIR DELIBERATIONS.**

9 To ensure the heightened reliability that is required of proceedings that may result
10 in the imposition of the death penalty, the jury vested with the authority to impose the
11 sentence must be "carefully and adequately guided" in the exercise of its discretion.
12 Gregg v. Georgia, 428 U.S. at 193. Such guidance will be deemed constitutionally
13 sufficient only if it "channel[s] the sentencer's discretion by 'clear and objective
14 standards' that provide 'specific and detailed guidance,' and that 'make rationally
15 reviewable the process for imposing a sentence of death.'" Godfrey v. Georgia, 446 U.S.
16 420, 428 (1980) (quoting, respectively, Gregg v. Georgia, 428 U.S. at 198; Proffitt v.
17 Florida, 428 U.S. 242, 253 (1976); and Woodson v. North Carolina, 428 U.S. 280, 303
18 (1976)).

19 IV.

20 **A SENTENCE OF DEATH MUST BE BASED UPON AN**
21 **INDIVIDUALIZED DETERMINATION OF ITS APPROPRIATENESS FOR**
22 **THE PARTICULAR DEFENDANT UPON WHOM IT IS IMPOSED. TOWARD**
23 **THAT END, THE SENTENCER MUST BE ALLOWED TO CONSIDER ANY**
24 **RELEVANT MITIGATING FACTOR, NOT JUST THOSE SPECIFIED BY THE**
25 **STATE'S DEATH PENALTY STATUTE.**

26 Having made the determination that the defendant is a member of the narrow class
27 of people eligible for death by virtue of the presence of one or more clearly and objectively
28 defined aggravating circumstances, the sentencer cannot be constitutionally required even
on that basis to impose a death sentence. Woodson v. North Carolina, 428 U.S. at 404.
"The fundamental respect for humanity underlying the Eighth Amendment . . . requires

1 consideration of the character and record of the individual offender and the circumstances
2 of the particular offense as a constitutionally indispensable part of the process of inflicting
3 the penalty of death." Id. at 604. See also Roberts v. Louisiana, 431 U.S. 633 (1977);
4 Roberts v. Louisiana, 428 U.S. 325 (1976).

5 Only through such a process, which requires the sentencer to "consider[] in fixing
6 the ultimate punishment of death the possibility of compassionate or mitigating factors
7 stemming from the diverse frailties of humankind," Woodson v. North Carolina, 428 U.S.
8 at 304, can capital defendants be treated as the Eighth Amendment requires -- "as
9 uniquely individual human beings." Id. Because of this need for individualized treatment,
10 the Court has required that the sentencer be permitted to consider, and in appropriate
11 cases base a decision to impose a sentence short of death upon, any relevant mitigating
12 factor, not just those set forth in the state's death penalty statute. Lockett v. Ohio, 438
13 U.S. 586 (1978). As the Court explained in Eddings v. Oklahoma, 455 U.S. 104 (1982):

14 Lockett followed from the earlier decisions of the Court and from the Court's
15 insistence that capital punishment be imposed fairly, and with reasonable consistency, or
16 not at all . . . By holding that the sentencer in capital cases must be permitted to consider
17 any relevant mitigating factor, the rule in Lockett recognizes that a consistency produced
18 by ignoring individual differences is a false consistency. Id. at 112.

19 V.

20 **DEATH AS A PUNISHMENT MUST BE PROPORTIONATE TO THE**
21 **CRIME FOR WHICH IT IS IMPOSED.**

22 Finally, the requirement that the "punishment fit the crime" -- that death must be
23 imposed consistently and reserved solely for the punishment of individuals and conduct
24 for which the severest criminal sanction is appropriate -- is a requirement of constitutional
25 magnitude. Eddings v. Oklahoma, 455 U.S. 104 (1982); Pulley v. Harris, 465 U.S. 37
26 (1984) (comparative proportionality review constitutionally mandated where part of the
27 state's statutory scheme for imposition of the death penalty).

28 Each death sentence should be reviewed to ascertain whether the crime was in fact


1 one properly punishable by death, whether similar crimes throughout the state are being
2 punished capitally and whether the sentence of death is appropriate in relation to the
3 particular defendant.

4 **CONCLUSION**

5 WHEREFORE, this Court should enter an order recognizing that because the state
6 is seeking the death penalty a heightened standard of review will be applicable to all
7 facets of the case as required by the Eighth and Fourteenth Amendments to the United
8 States Constitution, Nevada state law and the state constitution of Nevada. Mr. Johnson
9 has been charged with capital murder. The State has announced its intention to seek the
10 death penalty. Since this is to be a capital prosecution, exacting standards must be met
11 to assure that it is fair. "The fundamental respect for humanity underlying the Eighth
12 Amendment's prohibition against cruel and unusual punishment gives rise to a special
13 "need for reliability in the determination that death is the appropriate punishment" in any
14 capital case." Johnson v. Mississippi, 486 U.S. 578, 584 (1988) (quoting Gardner v.
15 Florida, 430 U.S. 349, 363-64 (1977) (quoting Woodson v. North Carolina, 428 U.S.
16 280, 305 (1976) (White, J., concurring)).

17 DATED this 29 day of November, 1999.

18 PHILIP J. KOHN
19 SPECIAL PUBLIC DEFENDER

20 
21 DAYVID J. FIGLER
22 Deputy Special Public Defender
23 State Bar No. 004264
24 309 South Third Street, Fourth Floor
25 P.O. Box 552316
26 Las Vegas, NV 89155
27 Attorneys for Defendant
28

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

171

25

ORIGINAL

FILED

1 0317
2 PHILIP J. KOHN, ESQ.
3 SPECIAL PUBLIC DEFENDER
4 State Bar No. 000556
5 JOSEPH S. SCISCENTO
6 State Bar No. 004380
7 DAYVID J. FIGLER
8 State Bar No. 004264
9 309 South Third Street
10 P. O. Box 552316
11 Las Vegas, NV 89155
12 (702) 455-6265
13 Attorneys for Defendant

NOV 23 4 05 PM '99

Shirley M. Johnson
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA,)	
12)	
13 Plaintiff,)	CASE NO: C153154
14)	DEPT. NO: V
15 vs.)	
16)	
17 DONTÉ JOHNSON, aka)	
18 John White, ID # 1586283,)	
19)	
20 Defendant.)	

Date of Hearing: 12/27/99
Time of Hearing: 9:00 a.m.

MOTION FOR DISCOVERY AND EVIDENTIARY HEARING
REGARDING THE MANNER AND METHOD OF DETERMINING
IN WHICH MURDER CASES THE DEATH PENALTY WILL BE SOUGHT

21 COMES NOW, the Defendant, DONTÉ JOHNSON, by and through his attorneys,
22 PHILIP J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO and DAYVID J.
23 FIGLER, Deputy Special Public Defenders for the above-captioned individual, and
24 respectfully request that this Court order the State to provide discovery and participate
25 in an evidentiary hearing concerning the manner and method by which it determines to
26 seek the death penalty.

27 This Motion is based upon the attached Points and Authorities, all of the papers and
pleadings herein, any oral argument on the matter, and upon such other and further

RECEIVED
NOV 29 1999
CLARK COUNTY CLERK
CLARK COUNTY
NEVADA

60537

CE05

1 evidence as may be adduced by the Court in this matter.

2 DATED this 29 day of November, 1999.

3 PHILIP J. KOHN
4 SPECIAL PUBLIC DEFENDER

5 

6 DAYVID J. FIGLER
7 Deputy Special Public Defender
8 State Bar No. 004264
9 309 South Third Street, Fourth Floor
10 P.O. Box 552316
11 Las Vegas, NV 89155
12 Attorneys for Defendant

13 **NOTICE OF MOTION**

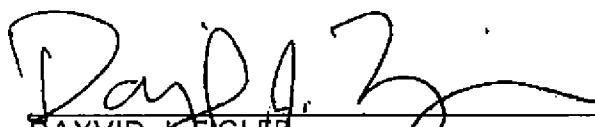
14 TO: STATE OF NEVADA, Plaintiff; and

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

16 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and
17 foregoing Motion for Discovery and Evidentiary Hearing Regarding the Manner and Method
18 of Determining in Which Murder Cases the Death Penalty Will be Sought on the 27th day
19 of December, 1999 at the hour of 9:00 a.m., in Department No. V of the above-entitled
20 Court, or as soon thereafter as counsel may be heard.

21 DATED this 29 day of November, 1999.

22 PHILIP J. KOHN
23 SPECIAL PUBLIC DEFENDER

24 

25 DAYVID J. FIGLER
26 Deputy Special Public Defender
27 State Bar No. 004264
28 309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 POINTS AND AUTHORITIES

2 ARGUMENT

3 The death penalty scheme followed by the Clark County District Attorney's Office
4 violates the prohibition of cruel and unusual punishment of the Eighth Amendment to the
5 United States Constitution and the Nevada Constitution.

6 As set forth in a separately filed motion, the Nevada statute defining aggravating
7 circumstances, NRS 200.233, permits the prosecution to seek the death penalty in
8 virtually any and all murder cases. From this Court's own experience, it is known that
9 murders involving far more culpable conduct by defendants with much more prior criminal
10 conduct have not resulted in the State's decision to seek the death penalty. It is also
11 known that the State has sought the death penalty in cases where the prosecutors clearly
12 knew that it was not appropriate. See Meegan v. State, 114 Nev. Adv. Op. 123 (Nov.
13 25, 1998) (dissenting opinion of Justice Springer noting that the State overcharged the
14 defendant and that the case should not have been tried as a capital case); Schoels v.
15 State, 114 Nev. Adv. Opn. 109, 966 P.2d 735 (1998) (dissenting opinion of Justice
16 Springer) ("This is the objectionable prosecutorial practice that I see being employed in
17 this case and in other murder cases on a fairly regular basis: In murder cases that do not
18 call for the death penalty under the standards of this court and the United State Supreme
19 Court, prosecutors have, nonetheless, adopted the common practice of seeking the death
20 penalty, not because they believe the case is truly a capital case but because they believe
21 that seeking the death penalty will give them a tactical advantage. This practice gives
22 prosecutors an advantage in the plea bargaining process and, if the accused goes to trial,
23 results in an increased likelihood that the jury will return, by way of compromise, the next
24 most severe verdict, life without the possibility of parole. A prosecutor who would
25 knowingly overcharge in this manner is not only violating his oath by prosecuting in bad
26 faith, such a prosecutor is risking the undeserved death of the accused if the jury were
27 to "buy" the prosecutor's affected death penalty argument. . . . Returning to the issue
28 of arbitrary prosecutorial decisions as to who does and who does not have to face the

1 death penalty in homicide cases, Justice Douglas put the problem in proper perspective
2 when he wrote: 'Under these laws no standards govern the selection of the penalty.
3 People live or die, dependent on the whim of one man....' Furman v. Georgia, 408 U.S.
4 238, 253, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) (Douglas, J., concurring). . . [T]he
5 Supreme Court of Nevada Task Force Implementation Committee for the Elimination of
6 Racial, Economic, and Gender Bias in the Justice System made formal findings and
7 recommended the adoption of prosecutorial standards for prosecutors in death cases. I
8 believe that until such standards are adopted in Nevada, we are going to continue to see
9 arbitrary decision-making by prosecutors based on prosecutors' personal, moral or
10 ideological backgrounds and upon a variety of other factors, including the level of public
11 outcry, race and unacceptable political considerations.)"

12 It is critical to determine what factors are involved in the State's determination of
13 whether to seek the death penalty. Mr. Johnson requests discovery and an evidentiary
14 hearing on the following:

15 1. The identity of the person or persons who decided that the death penalty
16 was an appropriate penalty to be sought against Mr. Johnson;

17 2. The identity of the person or persons within the District Attorneys Office
18 who made the recommendations or had input into the decision that the death penalty was
19 an appropriate penalty to be sought against Mr. Johnson;

20 3. The identity of the person or persons outside of the District Attorneys Office
21 who made recommendations or had input into the decision that the death penalty was an
22 appropriate penalty to be sought against Mr. Johnson;

23 4. What criterion was utilized by the Clark County District Attorney's Office in
24 determining that the death penalty was an appropriate penalty to be sought against Mr.
25 Johnson;

26 5. Who determined which aggravating factors should be filed in this case;

27 6. Whether the criteria used by the Clark County District Attorney's Office in
28 determining that the death penalty was an appropriate penalty to be sought against Mr.

1 Johnson is the same criteria used in all other death penalty determinations made by the
2 Clark County District Attorney's Office; and

3 7. Whether there is any written criteria or a policy manual utilized by the Clark
4 County District Attorney's Office in deciding whether the death penalty should be sought
5 in a murder case.

6 Mr. Johnson also requests that this Court compel the State to provide Mr.
7 Johnson's counsel with a list of all murder and manslaughter cases filed during the past
8 three years in Clark County, along with all materials memorializing the decision as to
9 whether or not to seek the death penalty in each of those cases.

10 Support for this motion is also found in the revised version of Nevada Supreme
11 Court Rule 250. SCR 250(9)(a) now provides the following:

12 No later than the first judicial day of February of each
13 calendar year, the district attorney of each county shall file an
14 annual report of murder charges with the clerk of the district
15 court where the action was commenced and with the clerk of
16 the supreme court. The report shall specify the number of
17 murder charges filed by the district attorney in the previous
18 calendar year. The notice must indicate for each case: the
caption and number; the result of the prosecution, if
available; the race or ethnicity of the defendant or defendants
and of the victim or victims; whether notice of intent to seek
the death penalty was filed; and the individual who made the
decision to seek the death.

19 This rule is applicable to this case. SCR 250(12). Accordingly, Mr. Johnson
20 requests that this information be immediately provided by the Clark County District
21 Attorney.

22 DATED this 29 day of November, 1999.

23 PHILIP J. KOHN
24 SPECIAL PUBLIC DEFENDER

25 DAYVID J. EGLER
26 Deputy Special Public Defender
27 State Bar No. 004264
28 309 South Third Street, Fourth Floor
Las Vegas, NV 89155
Attorneys for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

ORIGINAL

FILED

NOV 23 4 16 PM '99

Shirley A. Long
CLERK

0050
PHILIP J. KOHN, ESQ.
SPECIAL PUBLIC DEFENDER
State Bar No. 000556
JOSEPH S. SCISCENTO
State Bar No. 004380
DAYVID J. FIGLER
State Bar No. 004264
309 South Third Street
P. O. Box 552316
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON, aka
John White, ID # 1586283,

Defendant.

CASE NO: C153154
DEPT. NO: V

Date of Hearing: 12/27/99
Time of Hearing: 9:00 a.m.

MOTION FOR CHANGE OF VENUE

COMES NOW, the Defendant, DONTE JOHNSON, by and through his attorneys, PHILIP J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO and DAYVID J. FIGLER, Deputy Special Public Defenders, and respectfully moves this Honorable Court to change the venue in the instant case.

This motion is based upon the Due Process and Equal Protection Clauses of the Nevada and United States Constitutions, the attached Memorandum of Points and Authorities, all of the papers and pleadings on file herein, any oral argument on the matter, and upon such other and further evidence as may be adduced by the Court in this

RECEIVED
NOV 29 1999
CLARK COUNTY
SPECIAL PUBLIC
DEFENDER
CLARK COUNTY
NEVADA

MC


FILED

1 matter.

2 DATED this 29 day of November, 1999.

3 PHILIP J. KOHN
4 SPECIAL PUBLIC DEFENDER

5
6 By


DAYVID J. FIGLER
Deputy Special Public Defender
State Bar No. 004264
309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

10
11 NOTICE OF MOTION

12 TO: STATE OF NEVADA, Plaintiff


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

14 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will
15 bring the foregoing **Motion for Change of Venue** on for hearing before the above-entitled
16 Court on the **27th** day of **December**, 1999, at **9:00 a.m.**, Department **V**, or as soon
17 thereafter as counsel may be heard.

18 DATED this 29 day of November, 1999.

19 PHILIP J. KOHN
20 SPECIAL PUBLIC DEFENDER

21
22 By


DAYVID J. FIGLER
Deputy Special Public Defender
State Bar No. 004264
309 South Third Street, Fourth Floor
P.O. Box 552316
Las Vegas, NV 89155
Attorneys for Defendant

23
24
25
26
27
28
SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 POINTS AND AUTHORITIES

2 I.

3 ARGUMENT

4 Under NRS 13.050(b), the place of a trial may be changed "[w]hen there is reason
5 to believe that an impartial trial cannot be had therein." Where the defendant meets his
6 burden to show that a fair and impartial trial cannot be held in the county, the defendant
7 is entitled to a change of venue. Hale & Norcorss Gold & Silver Mining Co. v. Bajazette
8 & Gloden Era G. & S.M. co., 1 Nev. 322 (1865).

9 NRS § 174.455 provides for change of venue in criminal cases as follows:

10 **Grounds for removal; application not to be granted until after voir dire**
11 **examination; appeal of order changing or refusing to change place of trial.**

12 1. A criminal action prosecuted by indictment, information or complain
13 may be removed from the court in which it is pending, on application of the
14 defendant or state, on the ground that a fair and impartial trial cannot be had
15 in the county where the indictment, information or complaint is pending.

16 2. An application for removal of a criminal action shall not be granted by
17 the court until after the voir dire examination has been conducted and it is
18 apparent to the court that the selection of a fair and impartial jury cannot be
19 had in the county where the indictment, information or complaint is pending.

20 3. An order in a criminal action changing or refusing to change the place
21 of trial is appealable only on appeal from the final judgement.

22 A synthesis of the case law interpreting the aforementioned statute reveals that
23 there are essentially two situations in which a criminal defendant is entitled to a change
24 of venue: (1) where it is impossible to obtain an Impartial jury, Ford v. State, 102 Nev.
25 126, 129, 717 P.2d 27 (1986), or (2) where even an impartial jury would be likely to be
26 intimidated by public excitement against the defendant. Hess v. State, 73 Nev. 175,
27 178, 313 P.2d 432 (1957); State v. Millain, 3 Nev. 409.

28 Both of the aforementioned situations are present in the instant case. In the news
articles/stories printed to date (See attached Exhibit "A", a sampling of the hundred or
more newspaper articles on this case), the Defendant herein has been characterized, inter
alia, as one of the most notorious criminals in Nevada history. The murder has been
continually referred to as an execution of teenagers. There have been live remotes on the

1 all three network news channels of virtual gavel to gavel of the previous two trials
2 wherein every party, the prosecutors, the defense attorneys and the victims' families have
3 placed the blame on the Defendant. Further, both individuals alleged to not be the shooter
4 received multiple life sentences without the possibility of parole. This fact, well known
5 to the public, shows that someone who is allegedly more culpable deserves the only more
6 severe penalty, to wit, death. Thus, it will be next to impossible to empanel a jury in Clark
7 County that is free from extreme bias against the Defendant.

8 The victim's family's have been very vocal in calling for the death penalty for Mr.
9 Johnson. The obvious corollary to this is that any jury empaneled in Clark County will
10 have a natural predisposition against the Defendant, and in favor of a sentence of death.
11 Such violates the Defendant's fundamental rights to Due Process and a fair trial. Thus,
12 under NRS § 154.455 et. seq., the Defendant is entitled to a change of venue.

13 In addition to that set forth above, as a matter of constitutional law, it is well
14 settled that the accused is entitled to a change of venue if he produces evidence of
15 "inflammatory, prejudicial pretrial publicity that so pervades or saturates the community
16 as to render virtually impossible a fair trial by an impartial jury drawn from that
17 community, [since jury] 'prejudice [then] presumed and there is no further duty to
18 establish bias.'" Coleman v. Zant, 708 F.2d 541, 544 (11th Cir. 1983) (quoting Mayola
19 v. Alabama, 623 F.2d 992, 997 (5th Cir. 1980); cert. denied, 451 U.S. 913 (1981)).
20 See also Bideau v. Louisiana, 373 U.S. 723 (1963).

21 It is equally well settled that a change of venue is constitutionally required when
22 it is demonstrated that jurors called for the case entertain an opinion on guilt or
23 punishment and are unable to lay aside their opinions and render a verdict based on the
24 evidence. Irvin v. Dowd, 366 U.S. 717, 723, 727 (1961); Coleman v. Zant, 708 F.2d
25 at 544; Ross v. Hopper, 716 F.2d 1528, 1541 (11th Cir. 1983) (en banc), remanded on
26 other grounds, 785 F.2d 1467 (1986). The Fourteenth Amendment's due process clause
27 safeguards a defendant's Sixth Amendment right to be tried by "a panel of impartial,
28 'indifferent' jurors." Irvin v. Dowd, supra, 366 U.S. at 722. When prejudicial pretrial

1 publicity or an inflamed community atmosphere precludes seating an impartial jury, due
2 process requires the trial court to grant a defendant's motion for a change of venue.
3 Rideau v. Louisiana, supra, 373 U.S. at 723 (1963); See also Whisenant v. State, 370
4 So. 2d 1080, 1096 (Ala. Cr. App.), cert. denied, 370 So. 2d 1106 (Ala. 1979) (case
5 transferred from Mobile to Jefferson County because of extensive pretrial publicity).
6 Where there has been such prejudicial pretrial publicity, voir dire is not adequate to protect
7 the accused's right to a fair trial by an impartial jury. Coleman v. Kemp, 778 F.2d 1487,
8 1542.

9 In the context of a death penalty case, the principle that a defendant is entitled to
10 a fair and impartial jury takes on additional importance because of Eighth Amendment
11 considerations. The jury not only decides the issue of the guilt or innocence of the
12 defendant, but, if he is going to live or die. See Coleman v. Kemp, 778 F.2d at 1541;
13 Woodson v. North Carolina, 428 U.S. 280, 305 (1976); Gardner v. Florida, 430 U.S.
14 349, 357-58 (1977).

15 Moreover, because the accused has the burden of proving to the reasonable
16 satisfaction of the trial judge that an impartial jury cannot be impaneled, the accused has
17 the right to discovery on the issue of pretrial publicity and the right to an evidentiary
18 hearing to prove his claim. Peoples v. State, 510 So. 2d 554, 563 (Ala. Cr. App. 1986),
19 aff'd, 510 So. 2d 574 (Ala. 1987); Coleman v. Zant, 708 So.2d 541 (11th Cir. 1983).

20 As set forth above, the repeated, negative characterizations of the Defendant, the
21 clamoring for a sentence of death, and the negative publicity surrounding the two co-
22 defendants high-profile trials where both non-shooters received multiple consecutive life
23 sentences without the possibility of parole has placed before prospective jurors in Clark
24 County information that is incompetent as evidence and has severely prejudiced the
25 community of Clark County against Donte Johnson.

26 Clearly inadmissible evidence and evidence otherwise outside the province of proper
27 jury consideration at trial has been publicized so extensively and in a manner so prejudicial
28 to the interests of the Defendant that it has inevitably jeopardized his rights to a jury trial,

1 to a trial before a fair and impartial jury, to effective assistance of counsel, to
2 confrontation of witnesses, and to a jury selected from a fair cross section of the
3 community as guaranteed by the Sixth, Eighth and Fourteenth Amendments to the United
4 States Constitution.

5 **CONCLUSION**

6 Therefore, the Defendant respectfully moves this Honorable Court for an Order
7 granting a change of venue in the above-entitled case.

8 DATED this 29 day of November, 1999.

9 PHILIP J. KOHN
10 SPECIAL PUBLIC DEFENDER

11 By 

12 DAYVIB J. FIGLER
13 Deputy Special Public Defender
14 State Bar No. 004264
15 309 South Third Street, Fourth Floor
16 P.O. Box 552316
17 Las Vegas, NV 89155
18 Attorneys for Defendant
19
20
21
22
23
24
25
26
27
28

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

Return to the [referring page](#).

Las Vegas SUN

October 27, 1999

Witness testimony taped in quadruple murder case

Severs implicates boyfriend in killings of four young men over drug money

By Kim Smith
LAS VEGAS SUN

Saying she wanted to get out of jail and get on with her life, a key witness in a quadruple slaying recanted half a dozen earlier statements Tuesday and testified that her boyfriend was responsible for the deaths in August 1998 of four young men.

Charla Severs, 21, spent more than two hours on the stand as a videographer preserved her testimony in the murder case against Donte Johnson.

Although Johnson, 19, isn't expected to go on trial until March, prosecutors asked District Judge Jeffrey Sobel to put Severs on the stand early in case she would be unavailable at that time.

Severs disappeared earlier this year reportedly because she was afraid for her life, and prosecutors wanted to preserve her testimony in the event she disappears again once she is released from custody. She is currently being kept in jail as a material witness.

Johnson will be the third Las Vegas resident to go to trial in the murders of Matthew Mowen, 19, Jeffrey Biddle, 19, Tracey Gorringer, 20, and Peter Talamantez, 17.

Sikia Smith, 19, and Terrell Young, 20, were convicted and sentenced to life in prison without the possibility of parole. Prosecutors had sought the death penalty in their cases and will do so in the Johnson case.

Mowen's parents, David and Cindy, were present throughout the deposition.

Severs, who was crying and visibly shaking throughout her testimony, said that a few days before the killings Mowen came to the house she shared with Johnson, Young and three other men looking for crack cocaine.

After Mowen left, one of her housemates told them that Mowen had \$10,000 stashed at his house.

Severs testified that on the night of Aug. 14, 1998, Johnson, Young and Smith left the house for about six hours carrying a duffel bag containing a revolver, a black automatic pistol and a rifle.

Johnson told her that "he was gonna go get some money," Severs said.

Severs said Johnson woke her up with a kiss to the cheek about 3 a.m. the next morning. She learned about Mowen's death after Johnson told her to watch the TV news. Johnson told her the four were "taken out" because Talamantez had been "disrespecting" him.

Under cross-examination, defense attorney Joe Sciscento asked Severs about the many contradictory statements she provided police and the grand jurors who investigated the case.

Sciscento pointed out that Severs told police that Johnson was wearing shorts on the night of the

murders and yet she testified Tuesday that he was wearing black pants.

"The district attorney wants you to say Donte Johnson was wearing pants doesn't he?" Sciscento asked.

"Yes, because he was wearing black pants," Severs insisted.

According to earlier court testimony, pants believed to have been worn by Johnson that night have blood on them.

He also went over letters Severs has written Johnson and a local TV station since Johnson's arrest.

In them Severs said Johnson wasn't home on the night of the murders and Smith and Young forced her to go with them to rob Mowen and his roommates.

Severs said she went so far as to implicate herself in the murder because she loved Johnson at the time and still has feelings for him.

She and Johnson believed that if she lied, prosecutors would release him and she would be set free if she later claimed that Johnson had threatened her and forced her to lie about her involvement. Eventually, they would have met up again, Severs said.

Severs repeatedly denied her sole motivation in implicating Johnson was her desire to be released from custody.

"I have to tell the truth because I don't want to stay in jail," Severs said.

Sobel said he will decide Thursday if Severs can now be released from custody and, if so, whether she will be placed under house arrest or some other sort of restrictive measures.

Return to the referring page.
Las Vegas SUN main page

Questions or problems? [Click here.](#)

All contents copyright 1999 Las Vegas SUN, Inc.

LAS VEGAS REVIEW-JOURNAL

Tuesday, October 26, 1999
Copyright © Las Vegas Review-Journal

Slaying suspect enters plea in earlier shooting

Review-Journal

A man accused of executing four young men in August 1998 pleaded innocent Monday to charges that stem from an earlier shooting in which a man was paralyzed.

District Judge Donald Mosley scheduled a July 3 trial for Donte Johnson, who faces attempted murder and battery charges in connection with the May 4, 1998, shooting that left Derrick Simpson, 41, injured.

Johnson, 19, is accused of shooting Simpson in the face and back after a confrontation on Fremont Street.

Simpson has testified he bought crack cocaine from Johnson almost every day and had no idea why the man would want to kill him.

Johnson is scheduled to go to trial in January in connection with the slayings of four men in 1998.

Prosecutors allege that he, Terrell Young and Sikia Smith bound the victims with duct tape and searched their house. Before the robbers left, prosecutors allege, Johnson fired a bullet into the skull of each victim.

Young and Smith each were sentenced to life in prison without the possibility of parole after separate trials in which prosecutors sought the death penalty.

Prosecutors are seeking the death penalty against Johnson in that case.

This story is located at:

http://www.lvrj.com/lvrj_home/1999/Oct-26-Tue-1999/news/12222509.html

For comment or questions, please email webmaster@lvj.com
Copyright © Las Vegas Review-Journal, 1997, 1998, 1999

It's About Fame

LAS VEGAS **REVIEW-JOURNAL**

Friday, October 22, 1999

Copyright © Las Vegas Review-Journal

[Printable version of this story](#)



[HOME PAGE](#)

• [HEADLINES](#) •

[SECTIONS](#)

[NEWS](#)

[SPORTS](#)

[MLB Scoreboard](#)

[NFL Coverage](#)

[College Football](#)

[Betting Line](#)

[BUSINESS](#)

[Las Vegas Stocks](#)

[Currency Calculator](#)

[Stock Portfolio](#)

[LIFESTYLES](#)

[Las Vegas HealthNet](#)

[NEON](#)

[Dining](#)

[Showguide](#)

[Nightlife](#)

[Transportation](#)

[Movies](#)

[TV Listings](#)

[OPINION](#)

[Columnists](#)

[FEEDBACK](#)

[IN-DEPTH](#)

[CLASSIFIEDS](#)

[WEATHER](#)

[REAL ESTATE](#)

[SUBSCRIBE](#)

[Recent Editions](#)

[Sunday](#)

[Monday](#)

[Tuesday](#)

[Wednesday](#)

[Thursday](#)

[Friday](#)

[Saturday](#)

[Archive](#)

[Fun Stuff](#)

[Comics](#)

[Crosswords](#)

[Horoscopes](#)

[Kids Area](#)

[Gallery](#)

[Extras](#)

[Yellow Pages](#)

[Buy Tickets](#)

[LV Links](#)

[Newspaper](#)

[Subscription](#)

[News Tips](#)

[Work for Us](#)

[Contact Us](#)

[Rate us](#)

[Advertiser Directory](#)

Two awaiting murder trials bonded by common plight

Letters seized from the jail cell of Tony Amati carry legal advice for Donte Johnson, charged in the killing of four.

By Peter O'Connell
Review-Journal

Donte Johnson and Tony Amati are awaiting separate capital murder trials in which juries will determine whether they killed a total of seven people. But that doesn't mean they can't be pen pals.

Indeed, their common plight seems to have created a bond, as evidenced by letters seized in September from Johnson's cell in the Clark County Detention Center.

"We gotta keep fighting, even when the odds are against us. It don't stop till the casket drop!" wrote Amati, the so-called "thrill killer" who once was included on the FBI's 10 Most Wanted list.

This and another letter from Amati to Johnson were attached to a recent motion filed in Amati's case.

District Judge Joseph Bonaventure on Tuesday granted permission for authorities to obtain handwriting samples from Amati for comparison to the letters, which were signed "Killa Ray" and "Killa Ray-Ray."

Neither of the letters contains any startling admissions. Indeed, most of the 10 pages are consumed by legal advice, such as how to seek a change of venue and which law journals are the most valuable to a capital defendant.

"Those books are powerful and riveting sources of legal knowledge. Books that 'Death Row' achievers like ourselves deserve to have," Amati wrote.

There also is a smattering of jailhouse gossip, such as the expected return of Bryan "B-Mac" Robinson to the Clark County Detention Center.

Robinson, 21, has been convicted in two killings



Tony Amati



Donte Johnson

Advertiser Directory

Wire AP News
& Info

describing the

The
VIEWThe First
100

and is accused of participating in two more deaths. None of them are related to the cases of Amati and Johnson.

"Keep your eyes and ears open for the nutty Makster next month. Because you know, if it ain't about Makkin, ain't nothin crackin'," Amati wrote in his Aug. 15 letter.

There is no connection between the incidents in which Amati and Johnson are charged. Their friendship appears to stem from a prior period in which they were housed together in the Clark County Detention Center before being assigned to separate modules.

Johnson, 19, is scheduled to be tried Jan. 10 in connection with the August 1998 slayings of four young men in a robbery at a house on Terra Linda Avenue. Prosecutors say Johnson fired a single bullet into the back of the head of each victim, all of whom had been bound with duct tape and placed on the floor.

Two other men charged in the incident, Sikia Smith and Terrell Young, were convicted in separate trials earlier this year and sentenced to life without possibility of parole. As with Smith and Young, prosecutors are seeking the death penalty in Johnson's trial.

On the same day the Amati letters were seized, authorities confiscated letters exchanged between the three defendants in the quadruple homicide.

According to excerpts included in court documents filed by prosecutors, these letters contained threats lodged against Charla Severs, Johnson's former girlfriend and a potential witness in his trial.

Threats were not reserved for those who might take the stand.

"One letter by Johnson stated that if he wanted inmate Terrell Young, he would pull Young's adam's apple out himself," prosecutors wrote.

Amati, a 22-year-old former honors student, was arrested in February 1998 in Georgia and charged in three shootings that authorities described as "thrill kills." His arrest came less than a week after his case was featured on the Fox TV show "America's Most Wanted."

He is scheduled to be tried Nov. 2, though the trial could be rescheduled during a hearing next week.

In the letters, Amati sympathizes with Johnson's concern that heavy media coverage of the quadruple homicide could harm his case.

"I must admit that the media is exploiting you and unfortunately crucifying you with negative pre-trial publicity," he wrote.

He cautioned that a change of venue is difficult to

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

DONTE JOHNSON,

S.C. CASE NO. 65168

Appellant,

Electronically Filed
Jan 09 2015 11:34 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 V  
~~~~~

ATTORNEY FOR APPELLANT

CHRISTOPHER R. ORAM, ESQ.

Attorney at Law
Nevada Bar No. 004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
Telephone: (702) 384-5563

ATTORNEY FOR RESPONDENT

CLARK COUNTY DISTRICT ATTORNEY
200 Lewis Avenue
3rd Floor
Las Vegas, Nevada 89101
(702) 671-2500

CATHERINE CORTEZ MASTO
Nevada Attorney General
Nevada Bar No. 0003926
100 North Carson Street
Carson City, Nevada 89701-4717

IN THE SUPREME COURT OF NEVADA

DONTE JOHNSON,

CASE NO. 65168

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

OPENING BRIEF APPENDIX

<u>VOLUME</u>	<u>PLEADING</u>	<u>PAGE NO</u>
7	ADDENDUM TO NOTICE OF EVIDENCE IN SUPPORT OF AGGRAVATING CIRCUMSTANCES (FILED 04/26/2000)	1733-1734
6	AFFIDAVIT OF JOSEPH S. SCISCENTO IN SUPPORT OF THE MOTION TO CONTINUE (FILED 12/14/1999)	1428-1433
19	AMENDED EX PARTE ORDER ALLOWING WITHDRAWAL OF ATTORNEY OF RECORD FOR MATERIAL WITNESS CHARLA SEVERS (FILED 08/24/2000)	4585
7	AMENDED JURY LIST (FILED 06/06/2000)	1823
8	AMENDED JURY LIST (FILED 06/08/2000)	2131
3	AMENDED NOTICE OF MOTION AND MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS (FILED 10/08/1999)	659-681
31	APPELLANT'S OPENING BRIEF (FILED 02/03/2006)	7174-7225
19	CASE APPEAL STATEMENT (FILED 11/08/2000)	4651-4653
42	CASE APPEAL STATEMENT (FILED 03/06/2014)	8200-8202
31	APPELLANT'S REPLY BRIEF (FILED 05/25/2006)	7254-7283

1	3	CERTIFICATE FOR ATTENDANCE OF OUT OF STATE WITNESS CHARLA CHENIQUA SEVERS AKA KASHAWN HIVES (FILED 09/21/1999)	585-606
2			
3	7	CERTIFICATE OF MAILING OF EXHIBITS (FILED 04/17/2000)	1722
4			
5	19	CERTIFICATION OF COPY	
6	7	DECISION AND ORDER (FILED 04/18/2000)	1723-1726
7	2	DEFENDANT JOHNSON'S MOTION TO SET BAIL (FILED 10/05/1998)	294-297
8	6	DEFENDANT'S MOTION AND NOTICE OF MOTION TO SUPPRESS EVIDENCE ILLEGALLY SEIZED (FILED 12/03/1999)	1340-1346
9			
10	5	DEFENDANT'S MOTION FOR CHANGE OF VENUE (FILED 11-29-1999)	1186-1310
11			
12	5	DEFENDANT'S MOTION FOR DISCLOSURE OF ANY POSSIBLE BASIS FOR DISQUALIFICATION OF DISTRICT ATTORNEY (FILED 11/29/1999)	1102-1110
13			
14	5	DEFENDANT'S MOTION FOR DISCLOSURE OF EXCULPATORY EVIDENCE PERTAINING TO THE IMPACT OF THE DEFENDANT'S EXECUTION UPON VICTIM'S FAMILY MEMBERS (FILED 11/29/1999)	1077-1080
15			
16			
17	5	DEFENDANT'S MOTION FOR DISQUALIFICATION FROM THE JURY VENUE OF ALL POTENTIAL JURORS WHO WOULD AUTOMATICALLY VOTE FOR THE DEATH PENALTY IF THEY FOUND MR. JOHNSON GUILTY OF CAPITAL MURDER (FILED 11/29/1999)	1073-1076
18			
19			
20			
21	5	DEFENDANT'S MOTION FOR INSPECTION OF POLICE OFFICER'S PERSONNEL FILES (FILED 11/29/1999)	1070-1072
22			
23	5	DEFENDANT'S MOTION FOR JURY QUESTIONNAIRE (FILED 11/29/1999)	1146-1172
24	15	DEFENDANT'S MOTION FOR NEW TRIAL (FILED 06/23/2000)	3570-3597
25			
26	5	DEFENDANT'S MOTION FOR PERMISSION TO FILED OTHER MOTIONS (FILED 11/29/1999)	1066-1069
27			
28	4	DEFENDANT'S MOTION IN LIMINE FOR ORDER PROHIBITING PROSECUTION MISCONDUCT IN ARGUMENT (FILED 11/29/1999)	967-1057

1	4	DEFENDANT'S MOTION IN LIMINE REGARDING CO-DEFENDANT'S SENTENCES (FILED 11/29/1999)	964-966
2			
3	4	DEFENDANT'S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF WITNESS INTIMIDATION (FILED 10/27/1999)	776-780
4			
5	5	DEFENDANT'S MOTION IN LIMINE TO PROHIBIT ANY REFERENCES TO THE FIRST PHASE A THE "GUILT PHASE" (FILED 11/29/1999)	1063-1065
6			
7	5	DEFENDANT'S MOTION TO ALLOW THE DEFENSE TO ARGUE LAST AT THE PENALTY PHASE (FILED 11/29/1999)	1058-1062
8			
9	5	DEFENDANT'S MOTION TO AUTHENTICATE AND FEDERALIZE ALL MOTIONS, OBJECTIONS, REQUESTS AND OTHER APPLICATIONS AND ISSUES RAISED IN THE PROCEEDINGS IN THE ABOVE ENTITLED CASE (FILED 11/29/1999)	1081-1083
10			
11			
12	5	DEFENDANT'S MOTION TO BIFURCATE PENALTY PHASE (FILED 11/29/1999)	1142-1145
13			
14	5	DEFENDANT'S MOTION TO DISMISS STATE'S NOTICE OF INTENT TO SEEK DEATH PENALTY BECAUSE NEVADA'S DEATH PENALTY STATUTE IS UNCONSTITUTIONAL (FILED 11/29/1999)	1115-1136
15			
16			
17	5	DEFENDANT'S MOTION TO EXCLUDE AUTOPSY PHOTOGRAPHS (FILED 11/29/1999)	1098-1101
18			
19	5	DEFENDANT'S MOTION TO PRECLUDE EVIDENCE OF ALLEGED CO-CONSPIRATORS STATEMENTS (FILED 11/29/1999)	1091-1097
20			
21	5	DEFENDANT'S MOTION TO PROHIBIT THE USE OF PEREMPTORY CHALLENGES TO EXCLUDE JURORS WHO EXPRESS CONCERNS ABOUT CAPITAL PUNISHMENT (FILED 11/29/1999)	1084-1090
22			
23			
24	5	DEFENDANT'S MOTION TO REQUIRE PROSECUTOR TO STATE REASONS FOR EXERCISING PEREMPTORY CHALLENGES (FILED 11/29/1999)	1137-1141
25			
26			
27	19	DEFENDANT'S MOTION TO SET ASIDE DEATH SENTENCE OR IN THE ALTERNATIVE MOTION TO SETTLE RECORD (FILED 09/05/2000)	4586-4592
28			

1	3	DEFENDANT'S OPPOSITION TO STATE'S MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS (FILED 10/06/1999)	650-658
2			
3	3	DEFENDANT'S OPPOSITION TO WITNESS SEVER'S MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS (FILED 10/12/1999)	686-694
4			
5	43	COURT MINUTES	8285 -8536
6	5	DONTE JOHNSON'S MOTION IN LIMINE TO PRECLUDE THE INTRODUCTION OF VICTIM IMPACT EVIDENCE (FILED 11/29/1999)	1111-1114
7			
8			
9	2	EX PARTE APPLICATION AND ORDER TO PRODUCE (FILED 05/21/1999)	453-456
10			
11	2	EX PARTE APPLICATION AND ORDER TO PRODUCE JUVENILE RECORDS (FILED 05/14/1999)	444-447
12			
13	2	EX PARTE APPLICATION AND ORDER TO PRODUCE JUVENILE RECORDS (FILED 05/14/1999)	448-452
14			
15	2	EX PARTE APPLICATION FOR ORDER REQUIRING MATERIAL WITNESS TO POST BAIL (FILED 04/30/1999)	419-422
16			
17	2	EX PARTE APPLICATION TO APPOINT DR. JAMES JOHNSON AS EXPERT AND FOR FEES IN EXCESS OF STATUTORY MAXIMUM (FILED 06/18/1999)	493-498
18			
19	19	EX PARTE MOTION FOR RELEASE OF EVIDENCE (FILED 10/05/2000)	4629
20			
21	15	EX PARTE MOTION TO ALLOW FEES IN EXCESS OF STATUTORY MAXIMUM FOR ATTORNEY ON COURT APPOINTED CASE FOR MATERIAL WITNESS CHARLA SEVERS (FILED 06/28/2000)	3599-3601
22			
23			
24	15	EX PARTE MOTION TO WITHDRAWAL AS ATTORNEY OF RECORD FOR MATERIAL WITNESS CHARLA SEVERS (FILED 06/20/2000)	3557-3558
25			
26	15	EX PARTE ORDER ALLOWING FEES IN EXCESS OF STATUTORY MAXIMUM FOR ATTORNEY ON COURT APPOINTED CASE FOR MATERIAL WITNESS CHARLA SEVERS (FILED 06/28/2000)	3602
27			
28			

1	15	EX PARTE ORDER ALLOWING WITHDRAWAL OF ATTORNEY OF RECORD FOR MATERIAL WITNESS CHARLA SEVERS (FILED 06/20/2000)	3559
2			
3	42	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (FILED 03/17/2014)	8185-8191
4			
5	42	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (FILED 03/17/2014)	8192-8199
6			
7	1	INDICTMENT (FILED 09/02/1998)	1-10
8			
9	10	INSTRUCTIONS TO THE JURY (FILED 06/09/2000)	2529-2594
10	15	INSTRUCTIONS TO THE JURY (FILED 06/16/2000)	3538-3556
11	26	INSTRUCTIONS TO THE JURY	6152-6168
12	19	JUDGMENT OF CONVICTION (FILED 10/03/2000)	4619-4623
13			
14	30	JUDGMENT OF CONVICTION (FILED 06/06/2005)	7142-7145
15	19	JUDGMENT OF CONVICTION (FILED 10/09/2000)	4631-4635
16			
17	7	JURY LIST (FILED 06/06/2000)	1822
18	2	MEDIA REQUEST (FILED 09/15/1998)	274
19			
20	2	MEDIA REQUEST (FILED 09/15/1998)	276
21	2	MEDIA REQUEST (09/28/1998)	292
22			
23	2	MEMORANDUM FOR PRODUCTION OF EXCULPATORY EVIDENCE (FILED 05/12/1999)	432-439
24			
25	3	MEMORANDUM FOR PRODUCTION OF EXCULPATORY EVIDENCE (FILED 09/20/1999)	577-584
26			
27	3	MEMORANDUM IN PURSUANT FOR A CHANGE OF VENUE (FILED 09/07/1999)	570-574
28			

1	4	MEMORANDUM IN PURSUANT FOR A MOTION TO DISMISS INDICTMENT (FILED 11/02/1999)	783-786
2			
3	17	MEMORANDUM IN SUPPORT OF GRANTING STAY (FILED 07/18/2000)	4149-4152
4	17	MEMORANDUM REGARDING A STAY OF THE PENALTY PROCEEDINGS (FILED 07/19/2000)	4160-4168
5			
6	17	MEMORANDUM REGARDING THE THREE JUDGE PANEL (FILED 07/12/2000)	4102-4110
7			
8	2	MEMORANDUM TO THE COURT (FILED 03/23/1999)	394-399
9			
10	2	MEMORANDUM TO THE COURT (FILED 06/28/1999)	499-504
11	6	MEMORANDUM TO THE COURT (FILED 12/22/1999)	1457-1458
12			
13	6	MEMORANDUM TO THE COURT (FILED 12/29/1999)	1492-1495
14	7	MEMORANDUM TO THE COURT (FILED 02/02/2000)	1625-1631
15			
16	7	MEMORANDUM TO THE COURT (FILED 04/04/2000)	1693-1711
17	7	MEMORANDUM TO THE COURT (FILED 04/11/2000)	1715-1721
18			
19	7	MEMORANDUM TO THE COURT FOR REQUEST OF MOTION TO BE FILED (FILED 02/24/2000)	1652-1653
20			
21	4	MEMORANDUM TO THE COURT FOR REQUESTED MOTION TO BE FILED BY COUNSELS (FILED 11/15/1999)	956-960
22			
23	7	MOTION AND NOTICE OF MOTION FOR DISCOVERY OF PROSECUTION FILES, RECORDS, AND INFORMATION NECESSARY TO A FAIR TRIAL (FILED 04/26/2000)	1727-1732
24			
25	3	MOTION AND NOTICE OF MOTION IN LIMINE TO PRECLUDE ANY MEDIA COVERAGE OF VIDEO DEPOSITION OF CHARLA SEVERS (FILED 10/26/1999)	769-775
26			
27			
28	3	MOTION AND NOTICE OF MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER CRIMES OR BAD ACTS (FILED 10/18/1999)	699-704

1	3	MOTION AND NOTICE OF MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS WEAPONS AND AMMUNITION NOT USED IN THE CRIME (FILED 10/19/1999)	743-756
2			
3	2	MOTION FOR DISCOVERY (FILED 05/13/1999)	440-443
4			
5	5	MOTION FOR DISCOVERY AND EVIDENTIARY HEARING REGARDING THE MANNER AND METHOD OF DETERMINING IN WHICH MURDER CASES THE DEATH PENALTY WILL SOUGHT (FILED 11/29/1999)	1181-1185
6			
7			
8	17	MOTION FOR IMPOSITION OF LIFE WITHOUT THE POSSIBILITY OF PAROLE SENTENCE; OR IN THE ALTERNATIVE, MOTION TO EMPANEL JURY FOR SENTENCING HEARING AND/OR FOR DISCLOSURE OF EVIDENCE MATERIAL TO CONSTITUTIONALITY OF THREE JUDGE PANEL PROCEDURE (FILED 07/10/2000)	4019-4095
9			
10			
11			
12	6	MOTION FOR OWN RECOGNIZANCE RELEASE OF MATERIAL WITNESS CHARLA SEVERS (FILED 01/11/2000)	1496-1500
13			
14	5	MOTION TO APPLY HEIGHTENED STANDARD OF REVIEW AND CARE IN THIS CASE BECAUSE THE STATE IS SEEKING THE DEATH PENALTY (FILED 11/29/1999)	1173-1180
15			
16	2	MOTION TO DISMISS COUNSEL AND APPOINTMENT OF ALTERNATE COUNSEL (FILED 04/01/1999)	403-408
17			
18	2	MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF EXPECTATIONS, OR ACTUAL RECEIPT OF BENEFITS OR PREFERENTIAL TREATMENT FOR COOPERATION WITH PROSECUTION (FILED 06/29/1999)	511-515
19			
20			
21	3	MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF EXPECTATIONS, OR ACTUAL RECEIPT OF BENEFITS OR PREFERENTIAL TREATMENT FOR COOPERATION WITH PROSECUTION (10/19/1999)	738-742
22			
23			
24	2	MOTION TO COMPEL THE PRODUCTION OF ANY AND ALL STATEMENTS OF THE DEFENDANT (FILED 06/29/1999)	516-520
25			
26	3	MOTION TO COMPEL THE PRODUCTION OF ANY AND ALL STATEMENTS OF THE DEFENDANT (FILED 10/19/1999)	727-731
27			
28	2	MOTION TO CONTINUE TRIAL (FILED 06/16/1999)	481-484

1	6	MOTION TO CONTINUE TRIAL (FILED 12/16/1999)	1441-1451
2	2	MOTION TO PROCEED PRO PER WITH CO-COUNSEL AND INVESTIGATOR (FILED 05/06/1999)	429-431
3			
4	2	MOTION TO REVEAL THE IDENTITY OF INFORMANTS AND REVEAL ANY BENEFITS, DEALS, PROMISES OR INDUCEMENTS (FILED 06/29/1999)	505-510
5			
6			
7	3	MOTION TO REVEAL THE IDENTITY OF INFORMANTS AND REVEAL ANY BENEFITS, DEALS, PROMISES OR INDUCEMENTS (FILED 10/19/1999)	732-737
8			
9	19	MOTION TO SET ASIDE DEATH SENTENCE OR IN THE ALTERNATIVE MOTION TO SETTLE RECORD (FILED 09/05/2000)	4593-4599
10			
11	2	MOTION TO WITHDRAW COUNSEL AND APPOINT OUTSIDE COUNSEL (02/10/1999)	380-384
12			
13	19	NOTICE OF APPEAL (FILED 11/08/2000)	4647-4650
14			
15	42	NOTICE OF APPEAL (FILED 03/06/2014)	8203-8204
16	7	NOTICE OF DEFENDANT'S EXPERT WITNESSES (FILED 05/15/2000)	1753-1765
17			
18	42	NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (FILED 03/21/2014)	8184
19			
20	2	NOTICE OF EVIDENCE IN SUPPORT OF AGGRAVATING CIRCUMSTANCES (FILED 06/11/1999)	460-466
21			
22	4	NOTICE OF EXPERT WITNESSES (FILED 11/17/1999)	961-963
23			
24	2	NOTICE OF INTENT TO SEEK DEATH PENALTY (09/15/1998)	271-273
25			
26	3	NOTICE OF MOTION AND MOTION TO PERMIT DNA TESTING OF THE CIGARETTE BUTT FOUND AT THE CRIME SCENE BY THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT FORENSIC LABORATORY OR BY AN INDEPENDENT LABORATORY WITH THE RESULTS OF THE TEST TO BE SUPPLIED TO BOTH THE DEFENSE AND THE PROSECUTION (FILED 08/19/1999)	552-561
27			
28			

1	3	NOTICE OF MOTION AND MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS (FILED 09/29/1999)	622-644
2			
3	3	NOTICE OF MOTION AND MOTION TO VIDEOTAPE THE DEPOSITION OF MYSELF CHARLA SEVERS (10/11/1999)	682-685
4			
5	17	NOTICE OF MOTION AND STATE'S MOTION IN LIMINE SUMMARIZING THE FACTS ESTABLISHED DURING THE GUILT PHASE OF THE DONTE JOHNSON TRIAL (FILED 07/14/2000)	4111-4131
6			
7	3	NOTICE OF WITNESSES (FILED 08/24/1999)	562-564
8			
9	6	NOTICE OF WITNESSES (FILED 12/08/1999)	1425-1427
10	4	NOTICE OF WITNESSES AND OF EXPERT WITNESSES PURSUANT TO NRS 174.234 (FILED 11/09/1999)	835-838
11			
12	19	NOTICE TO TRANSPORT FOR EXECUTION (FILED 10/03/2000)	4628
13			
14	31	OPINION (FILED 12/28/2006)	7284-7307
15	6	OPPOSITION TO DEFENDANT'S MOTION FOR DISCLOSURE OF ANY POSSIBLE BASIS FOR DISQUALIFICATION OF DISTRICT ATTORNEY (FILED 12/06/1999)	1366-1369
16			
17			
18	6	OPPOSITION TO DEFENDANT'S MOTION FOR DISCLOSURE OF EXCULPATORY EVIDENCE PERTAINING TO THE IMPACT OF THE DEFENDANT'S EXECUTION UPON VICTIM'S FAMILY MEMBERS (FILED 12/06/1999)	1409-1411
19			
20			
21	6	OPPOSITION TO DEFENDANT'S MOTION FOR DISCOVERY AND EVIDENTIARY HEARING REGARDING THE MANNER AND METHOD OF DETERMINING IN WHICH MURDER CASES THE DEATH PENALTY WILL BE SOUGHT (FILED 12/06/1999)	1383-1385
22			
23			
24	6	OPPOSITION TO DEFENDANT'S MOTION FOR DISQUALIFICATION FROM THE JURY VENIRE OF ALL POTENTIAL JURORS WHO WOULD AUTOMATICALLY VOTE FOR THE DEATH PENALTY IF THEY FOUND MR. JOHNSON GUILTY OF CAPITAL MURDER (FILED 12/06/1999)	1380-1382
25			
26			
27			
28	6	OPPOSITION TO DEFENDANT'S MOTION FOR INSPECTION OF POLICE OFFICERS' PERSONNEL FILES (FILED 12/06/1999)	1362-1365

1	6	OPPOSITION TO DEFENDANT’S MOTION FOR PERMISSION TO FILE OTHER MOTIONS (FILED 12/06/1999)	1356-1358
2			
3	6	OPPOSITION TO DEFENDANT’S MOTION IN LIMINE FOR ORDER PROHIBITING PROSECUTION MISCONDUCT IN ARGUMENT (FILED 12/06/1999)	1397-1399
4			
5	6	OPPOSITION TO DEFENDANT’S MOTION IN LIMINE TO PRECLUDE THE INTRODUCTION OF VICTIM IMPACT EVIDENCE (FILED 12/06/1999)	1400-1402
6			
7			
8	6	OPPOSITION TO DEFENDANT’S MOTION IN LIMINE TO PROHIBIT ANY REFERENCES TO THE FIRST PHASE AS THE “GUILTY PHASE” (FILED 12/06/1999)	1392-1393
9			
10	6	OPPOSITION TO DEFENDANT’S MOTION TO ALLOW THE DEFENSE TO ARGUE LAST AT THE PENALTY PHASE (FILED 12/06/1999)	1386-1388
11			
12			
13	6	OPPOSITION TO DEFENDANT’S MOTION TO APPLY HEIGHTENED STANDARD OF REVIEW AND CARE IN THIS CASE BECAUSE THE STATE IS SEEKING THE DEATH PENALTY (FILED 12/06/1999)	1370-1373
14			
15			
16	6	OPPOSITION TO DEFENDANT’S MOTION TO AUTHENTICATE AND FEDERALIZE ALL MOTIONS OBJECTIONS REQUESTS AND OTHER APPLICATIONS AND ISSUES RAISED IN THE PROCEEDINGS IN THE ABOVE ENTITLED CASE (FILED 12/06/1999)	1394-1396
17			
18			
19	6	OPPOSITION TO DEFENDANT’S MOTION TO BIFURCATE PENALTY PHASE (FILED 12/06/1999)	1359-1361
20			
21	6	OPPOSITION TO DEFENDANT’S MOTION TO DISMISS STATE’S NOTICE OF INTENT TO SEEK DEATH PENALTY BECAUSE NEVADA’S DEATH PENALTY STATUTE IS UNCONSTITUTIONAL (FILED 12/06/1999)	1403-1408
22			
23			
24	6	OPPOSITION TO DEFENDANT’S MOTION TO EXCLUDE AUTOPSY PHOTOGRAPHS (FILED 12/06/1999)	1377-1379
25			
26	6	OPPOSITION TO DEFENDANT’S MOTION TO PRECLUDE EVIDENCE OF ALLEGED CO-CONSPIRATORS STATEMENTS (FILED 12/06/1999)	1374-1376
27			
28			

1	6	OPPOSITION TO DEFENDANT’S MOTION TO PROHIBIT THE USE OF PEREMPTORY CHALLENGES TO EXCLUDE JURORS WHO EXPRESS CONCERNS ABOUT CAPITAL PUNISHMENT (FILED 12/06/1999)	1389-1391
2			
3			
4	6	OPPOSITION TO DEFENDANT’S MOTION TO REQUIRE PROSECUTOR TO STATE REASONS FOR EXERCISING PEREMPTORY CHALLENGES (FILED 12/06/1999)	1415-1417
5			
6	3	OPPOSITION TO MOTION IN LIMINE TO PERMIT THE STATE TO PRESENT “THE COMPLETE STORY OF THE CRIME” (FILED 07/02/1999)	524-528
7			
8			
9	4	OPPOSITION TO MOTION INN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS, WEAPONS AND AMMUNITION NOT USED IN THE CRIME (FILED 11/04/1999)	791-800
10			
11	6	OPPOSITION TO MOTION TO CONTINUE TRIAL (FILED 12/16/1999)	1434-14440
12			
13	6	ORDER (FILED 12/02/1999)	1338-1339
14	15	ORDER (FILED 06/22/2000)	3568
15			
16	17	ORDER (FILED 07/20/2000)	4169-4170
17	6	ORDER APPOINTING COUNSEL FOR MATERIAL WITNESS CHARLA SEVERS (FILED 12/02/1998)	1337
18			
19	2	ORDER DENYING DEFENDANT’S MOTION TO SET BAIL (FILED 10/20/1998)	378-379
20			
21	10	ORDER FOR CONTACT VISIT (FILED 06/12/2000)	2601-2602
22	17	ORDER FOR CONTACT VISIT (FILED 07/20/2000)	4173-4174
23			
24	7	ORDER FOR PRODUCTION OF INMATE MELVIN ROYAL (FILED 05/19/2000)	1801-1802
25			
26	7	ORDER FOR PRODUCTION OF INMATE SIKIA SMITH (FILED 05/08/2000)	1743-1744
27	7	ORDER FOR PRODUCTION OF INMATE TERRELL YOUNG (FILED 05/12/2000)	1751-1752
28			

1	19	ORDER FOR RELEASE OF EVIDENCE (FILED 10/05/2000)	4630
2	19	ORDER TO STAY OF EXECUTION (10/26/2000)	4646
3			
4	3	ORDER FOR TRANSCRIPT (FILED 09/09/1999)	575-576
5	2	ORDER FOR TRANSCRIPTS (FILED 06/16/1999)	486-487
6			
7	2	ORDER GRANTING PERMISSION OF MEDIA ENTRY (FILED 09/15/1998)	275
8	2	ORDER GRANTING PERMISSION OF MEDIA ENTRY (FILED 09/15/1998)	277
9			
10	2	ORDER GRANTING PERMISSION OF MEDIA ENTRY (FILED 09/28/1998)	293
11	7	ORDER GRANTING PERMISSION OF MEDIA ENTRY (FILED 01/13/2000)	1610-1611
12			
13	19	ORDER OF EXECUTION (FILED 10/03/2000)	4627
14	2	ORDER REQUIRING MATERIAL WITNESS TO POST BAIL OR BE COMMITTED TO CUSTODY	
15		(FILED 04/30/1999)	423-424
16	7	ORDER TO PRODUCE JUVENILE RECORDS (FILED 05/31/2000)	1805-1806
17	2	ORDER TO TRANSPORT (FILED 03/16/1999)	392-393
18			
19	2	ORDER TO TRANSPORT (FILED 03/25/1999)	400-401
20	3	ORDER TO TRANSPORT (FILED 07/27/1999)	549-550
21			
22	3	ORDER TO TRANSPORT (FILED 08/31/1999)	567-568
23	3	ORDER TO TRANSPORT (FILED 10/18/1999)	708-709
24			
25	15	PAGE VERIFICATION SHEET (FILED 06/22/2000)	3569
26	2	RECEIPT OF COPY (FILED 03/29/1999)	402
27			
28	2	RECEIPT OF COPY (06/16/1999)	485

1	3	RECEIPT OF COPY (FILED 06/29/1999)	521
2	3	RECEIPT OF COPY (FILED 06/29/1999)	522
3			
4	3	RECEIPT OF COPY (FILED 06/29/1999)	523
5	3	RECEIPT OF COPY (FILED 07/02/1999)	529
6			
7	3	RECEIPT OF COPY (FILED 07/28/1999)	551
8	3	RECEIPT OF COPY (FILED 09/01/1999)	569
9			
10	3	RECEIPT OF COPY (FILED 10/18/1999)	710
11	3	RECEIPT OF COPY (FILED 10/18/1999)	711
12			
13	3	RECEIPT OF COPY (FILED 10/19/1999)	757
14	3	RECEIPT OF COPY (FILED 10/19/1999)	758
15			
16	3	RECEIPT OF COPY (FILED 10/19/1999)	759
17	3	RECEIPT OF COPY (FILED 10/19/1999)	760
18			
19	3	RECEIPT OF COPY (FILED 10/19/1999)	761
20	4	RECEIPT OF COPY (FILED 10/27/1999)	781
21			
22	6	RECEIPT OF COPY (FILED 11/30/1999)	1311-1313
23	6	RECEIPT OF COPY (FILED 12/06/1999)	1418-1420
24			
25	6	RECEIPT OF COPY (FILED 01/11/2000)	1501
26			
27	6	RECEIPT OF COPY (FILED 01/12/2000)	1502
28	7	RECEIPT OF COPY (FILED 03/31/2000)	1692

1	7	RECEIPT OF COPY (FILED 04/27/2000)	1735
2	14	RECEIPT OF COPY (FILED 06/14/2000)	3248
3	15	RECEIPT OF COPY (FILED 06/23/2000)	3598
4	17	RECEIPT OF COPY (FILED 07/10/2000)	4101
5	17	RECEIPT OF COPY (FILED 07/20/2000)	4171
6	17	RECEIPT OF COPY (FILED 07/20/2000)	4172
7	19	RECEIPT OF COPY (FILED 09/06/2000)	4600
8	19	RECEIPT OF EXHIBITS (FILED 10/18/2000)	4645
9	40	RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING (FILED 04/11/2013)	7972-8075
10	41	RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING (FILED 04/11/2013)	8076-8179
11	41	RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING (FILED 04/11/2013)	8180-8183
12	42	RECORDER'S TRANSCRIPT OF HEARING EVIDENTIARY HEARING (FILED 09/18/2013)	8207-8209
13	42	RECORDER'S TRANSCRIPT OF HEARING STATUS CHECK (FILED 01/15/2014)	8205-8206
14	37	RECORDER'S TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO RESCHEDULE EVIDENTIARY HEARING (FILED 10/29/2012)	7782-7785
15	42	RECORDER'S TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO RESCHEDULE EVIDENTIARY HEARING (FILED 04/29/2013)	8281-8284
16	42	RECORDER'S TRANSCRIPT OF PROCEEDINGS EVIDENTIARY HEARING (FILED 06/26/2013)	8210-8280

1	37	RECORDER'S TRANSCRIPT OF PROCEEDINGS STATUS CHECK: EVIDENTIARY HEARING (FILED 10/01/2012)	7786-7788
2			
3	37	RECORDER'S TRANSCRIPT OF PROCEEDINGS STATUS CHECK: EVIDENTIARY HEARING (FILED 07/12/2012)	7789-7793
4			
5	37	RECORDER'S TRANSCRIPT OF PROCEEDINGS STATUS CHECK: EVIDENTIARY HEARING PETITION FOR WRIT OF HABEAS CORPUS (FILED 03/21/2012)	7794-7797
6			
7	37	REPLY BRIEF ON MR. JOHNSON'S INITIAL TRIAL ISSUES (FILED 08/22/2011)	7709-7781
8			
9	4	REPLY TO OPPOSITION TO MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS, WEAPONS AND AMMUNITION NOT USED IN THE CRIME (FILED 11/15/1999)	950-955
10			
11			
12	17	REPLY TO RESPONSE TO MOTION FOR NEW TRIAL (FILED 07/10/2000)	4096-4100
13			
14	36	REPLY TO THE STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION, DEFENDANT'S SUPPLEMENTAL BRIEF, AND SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS POST CONVICTION (FILED 06/01/2011)	7672-7706
15			
16			
17			
18	15	REPLY TO STATE'S OPPOSITION REGARDING THREE JUDGE PANEL (FILED 07/18/2000)	4153-4159
19			
20	7	REPLY TO STATE'S OPPOSITION TO MOTION TO SUPPRESS (FILED 02/16/2000)	1632-1651
21			
22	19	REPLY TO STATE'S RESPONSE TO MOTION TO SET ASIDE DEATH SENTENCE OR IN THE ALTERNATIVE MOTION TO SETTLE RECORD (FILED 10/02/2000)	4615-4618
23			
24	7	REPLY TO STATE'S SUPPLEMENTAL OPPOSITION TO MOTION TO SUPPRESS (FILED 03/30/2000)	1683-1691
25			
26	35	REPLY TO THE STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION), DEFENDANT'S SUPPLEMENTAL BRIEF, AND SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS POST CONVICTION (FILED 06/01/2011)	7579-7613
27			
28			

1	1	REPORTER'S TRANSCRIPT OF SEPTEMBER 1, 1998 PROCEEDINGS (FILED 09/14/1998)	11-267
2	2	REPORTER'S TRANSCRIPT OF SEPTEMBER 2, 1998 RE: GRAND JURY INDICTMENTS RETURNED IN OPEN COURT (FILED 10/06/1998)	299-301
3	2	REPORTER'S TRANSCRIPT OF SEPTEMBER 8, 1998 ARRAIGNMENT (FILED 09/14/1998)	268-270
4	2	REPORTER'S TRANSCRIPT OF SEPTEMBER 15, 1998 SUPERSEDING INDICTMENT (FILED 10/20/1998)	309-377
5	2	REPORTER'S TRANSCRIPT OF PROCEEDINGS OF APRIL 12, 1999 PROCEEDINGS (FILED 05/03/1999)	425-428
6	2	REPORTER'S TRANSCRIPT OF APRIL 15, 1999 DEFENDANT'S PRO PER MOTION TO DISMISS COUNSEL AND APPOINTMENT OF ALTERNATE COUNSEL (FILED AND UNDER SEALED) (FILED 04/22/1999)	409-418
7	2	REPORTER'S TRANSCRIPT OF JUNE 8, 1999 PROCEEDINGS (FILED 06/17/1999)	491-492
8	3	REPORTER'S TRANSCRIPT OF JUNE 29, 1999 PROCEEDINGS (FILED 07/15/1999)	541-548
9	3	REPORTER'S TRANSCRIPT OF JULY 8, 1999 PROCEEDINGS (FILED 07/15/1999)	530-537
10	3	REPORTER'S TRANSCRIPT OF JULY 13, 1999 PROCEEDINGS (FILED 07/15/1999)	538-540
11	3	REPORTER'S TRANSCRIPT OF AUGUST 10, 1999 STATE'S MOTION TO PERMIT DNA TESTING (FILED 08/31/1999)	565-566
12	3	REPORTER'S TRANSCRIPT OF SEPTEMBER 2, 1999 STATE'S MOTION TO PERMIT DNA TESTING (FILED 10/01/1999)	647-649
13	3	REPORTER'S TRANSCRIPT OF SEPTEMBER 30, 1999 STATE'S REQUEST FOR MATERIAL L WITNESS CHARLA SEVERS (FILED 10/01/1999)	645-646
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

1	3	REPORTER'S TRANSCRIPT OF OCTOBER 11, 1999 STATE'S MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS (FILED 10/18/1999)	712-716
2			
3	3	REPORTER'S TRANSCRIPT OF OCTOBER 14, 1999 STATE'S MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS (FILED 10/18/1999)	717-726
4			
5			
6	4	REPORTER'S TRANSCRIPT OF OCTOBER 21, 1999 STATUS CHECK: FILING OF ALL MOTIONS (FILED 11/09/1999)	821-829
7			
8	4	REPORTER'S TRANSCRIPT OF OCTOBER 26, 1999 VIDEO DEPOSITION OF CHARLA SEVERS (FILED UNDER SEAL) (FILED 11/09/1999)	839-949
9			
10	4	REPORTER'S TRANSCRIPT OF OCTOBER 28, 1999 DECISION: WITNESS RELEASE (FILED 11/09/1999)	830-831
11			
12	4	REPORTER'S TRANSCRIPT OF NOVEMBER 8, 1999 PROCEEDINGS (FILED 11/09/1999)	832-834
13			
14	6	REPORTER'S TRANSCRIPT OF NOVEMBER 18, 1999 DEFENDANT'S MOTIONS (FILED 12/06/1999)	1347-1355
15			
16	6	REPORTER'S TRANSCRIPT OF DECEMBER 16, 1999 AT REQUEST OF COURT RE: MOTIONS (FILED 12/20/1999)	1452-1453
17			
18	7	REPORTER'S TRANSCRIPT OF DECEMBER 20, 1999 AT REQUEST OF COURT (FILED 12/29/1999)	1459-1491
19			
20	6	REPORTER'S TRANSCRIPT OF JANUARY 6, 2000 RE: DEFENDANT'S MOTIONS (FILED 01/13/2000)	1503-1609
21			
22	7	REPORTER'S TRANSCRIPT OF JANUARY 18, 2000 PROCEEDINGS (FILED 01/25/2000)	1623-1624
23			
24	7	REPORTER'S TRANSCRIPT OF FEBRUARY 17, 2000 PROCEEDINGS (FILED 03/06/2000)	1654-1656
25			
26	7	REPORTER'S TRANSCRIPT OF MARCH 2, 2000 PROCEEDINGS (FILED 03/16/2000)	1668-1682
27			
28	7	REPORTER'S TRANSCRIPT OF APRIL 24, 2000 PROCEEDINGS (FILED 05/09/2000)	1745-1747

1	7	REPORTER'S TRANSCRIPT OF MAY 8, 2000 PROCEEDINGS (05/09/2000)	1748-1750
2			
3	7	REPORTER'S TRANSCRIPT OF MAY 18, 2000 PROCEEDINGS (FILED 05/30/2000)	1803-1804
4			
5	7	REPORTER'S TRANSCRIPT OF MAY 23, 2000 PROCEEDINGS (FILED 06/01/2000)	1807-1812
6			
7	7	REPORTER'S TRANSCRIPT OF JUNE 1, 2000 PROCEEDINGS (FILED 06/02/2000)	1813-1821
8			
9	11&12	REPORTER'S TRANSCRIPT OF JUNE 5, 2000 JURY TRIAL-DAY-1- VOLUME I (FILED 06/12/2000)	2603-2981
10			
11	8	REPORTER'S TRANSCRIPT OF JUNE 6, 2000 JURY TRIAL- DAY 2- VOLUME II (FILED 06/07/2000)	1824-2130
12			
13	9&10	REPORTER'S TRANSCRIPT OF JUNE 7, 2000 JURY TRIAL-DAY 3- VOLUME III (FILED 06/08/2000)	2132-2528
14			
15	15	REPORTER'S TRANSCRIPT OF JUNE 8, 2000 JURY TRIAL- DAY 4- VOLUME IV (FILED 06/12/2000)	2982-3238
16			
17	14	REPORTER'S TRANSCRIPT OF JUNE 9, 2000 JURY TRIAL (VERDICT)- DAY 5- VOLUME V (FILED 06/12/2000)	3239-3247
18			
19	14	REPORTER'S TRANSCRIPT OF JUNE 13, 2000 JURY TRIAL PENALTY PHASE- DAY 1 VOL. I (FILED 06/14/2000)	3249-3377
20			
21	15	REPORTER'S TRANSCRIPT OF JUNE 13, 2000 JURY TRIAL PENALTY PHASE- DAY 1 VOL. II (FILED 06/14/2000)	3378-3537
22			
23	16	REPORTER'S TRANSCRIPT OF JUNE 14, 2000 JURY TRIAL PENALTY PHASE- DAY 2 VOL. III (FILED 07/06/2000)	3617-3927
24			
25	17	REPORTER'S TRANSCRIPT OF JUNE 16, 2000 JURY TRIAL PENALTY PHASE DAY 3 VOL. IV (FILED 07/06/2000)	3928-4018
26			
27	15	REPORTER'S TRANSCRIPT OF JUNE 20, 2000 STATUS CHECK: THREE JUDGE PANEL (FILED 06/21/2000)	3560-3567
28			

1	17	REPORTER'S TRANSCRIPT OF JULY 13, 2000 DEFENDANT'S MOTION FOR A NEW TRIAL (FILED 07/21/2000)	4175-4179
2			
3	17	REPORTER'S TRANSCRIPT OF JULY 20, 2000 PROCEEDINGS (FILED 07/21/2000)	4180-4190
4			
5	18	REPORTER'S TRANSCRIPT OF JULY 24, 2000 THREE JUDGE PANEL- PENALTY PHASE- DAY 1 (FILED 07/25/2000)	4191-4428
6			
7	19	REPORTER'S TRANSCRIPT OF JULY 16, 2000 THREE JUDGE PANEL- PENALTY PHASE- DAY 2 VOL. II (FILED 07/28/2000)	4445-4584
8			
9	19	REPORTER'S TRANSCRIPT OF SEPTEMBER 7, 2000 PROCEEDINGS (FILED 09/29/2000)	4612-4614
10			
11	19	REPORTER'S TRANSCRIPT OF OCTOBER 3, 2000 SENTENCING (FILED 10/13/2000)	4636-4644
12			
13	20	REPORTER'S TRANSCRIPT OF APRIL 19, 2005 TRIAL BY JURY- VOLUME I- A.M. (FILED 04/20/2005)	4654-4679
14			
15	20	REPORTER'S TRANSCRIPT OF APRIL 19, 2005 TRIAL BY JURY- VOLUME I- P.M. (FILED 04/20/2005)	4680-4837
16			
17	21	REPORTER'S TRANSCRIPT OF APRIL 20, 2005 TRIAL BY JURY- VOLUME I-A.M. (FILED 04/21/2005)	4838-4862
18			
19	21	REPORTER'S TRANSCRIPT OF APRIL 20, 2005 TRIAL BY JURY- VOLUME II- P.M. (FILED 04/21/2005)	4864-4943
20			
21	21 & 22	REPORTER'S TRANSCRIPT OF APRIL 21, 2005 TRIAL BY JURY- VOLUME III-P.M. (FILED 04/22/2005)	4947-5271
22			
23	22	REPORTER'S TRANSCRIPT OF APRIL 21, 200 PENALTY PHASE- VOLUME IV- P.M. (FILED 04/22/2005)	5273-5339
24			
25	23	REPORTER'S TRANSCRIPT OF APRIL 22, 2005 TRIAL BY JURY- VOLUME IV- P.M. (FILED 04/25/2005)	5340-5455
26			
27	23	REPORTER'S TRANSCRIPT OF APRIL 22, 2005 PENALTY PHASE- VOLUME IV- B (FILED 04/25/2005)	5457-5483
28			

1	23	REPORTER'S TRANSCRIPT OF APRIL 25, 2005 TRIAL BY JURY- VOLUME V- P.M. (FILED 04/26/2005)	5484-5606
2			
3	24	REPORTER'S TRANSCRIPT OF APRIL 25, 2005 PENALTY PHASE- VOLUME V-A (FILED 04/26/2005)	5607-5646
4			
5	24	REPORTER'S TRANSCRIPT OF APRIL 26, 2005 TRIAL BY JURY- VOLUME VI- P.M. (FILED 04/27/2005)	5649-5850
6			
7	25	REPORTER'S TRANSCRIPT OF APRIL 26, 2005 PENALTY PHASE- VOLUME VI-A (FILED 04/26/2005)	5950-6070
8			
9	25	REPORTER'S TRANSCRIPT OF APRIL 27, 2005 TRIAL BY JURY- VOLUME VII-P.M. (FILED 04/28/2005)	5854-5949
10			
11	26	SPECIAL VERDICT	6149-6151
12	26	REPORTER'S TRANSCRIPT OF APRIL 27, 2005 PENALTY PHASE - VOLUME VII- A.M. (FILED 04/28/2005)	6071-6147
13			
14	26	REPORTER'S TRANSCRIPT OF APRIL 28, 2005 PENALTY PHASE - VOLUME VIII-C (04/29/2005)	6181-6246
15			
16	26 & 27	REPORTER'S TRANSCRIPT OF APRIL 29, 2005 TRIAL BY JURY- VOLUME IX (FILED 05/02/2005)	6249-6495
17			
18	27 & 28	REPORTER'S TRANSCRIPT OF MAY 2, 2005 TRIAL BY JURY- VOLUME X (FILED 05/03/2005)	6497-6772
19			
20	30	REPORTER'S TRANSCRIPT OF MAY 2, 2005 TRIAL BY JURY (EXHIBITS)- VOLUME X (FILED 05/06/2005)	7104-7107
21			
22	29	REPORTER'S TRANSCRIPT OF MAY 3, 2005 TRIAL BY JURY- VOLUME XI (FILED 05/04/2005)	6776-6972
23			
24	29	REPORTER'S TRANSCRIPT OF MAY 4, 2005 TRIAL BY JURY- VOLUME XII (FILED 05/05/2005)	6974-7087
25			
26	30	REPORTER'S AMENDED TRANSCRIPT OF MAY 4, 2005 TRIAL BY JURY (DELIBERATIONS) VOLUME XII (FILED 05/06/2005)	7109-7112
27			
28	30	REPORTER'S TRANSCRIPT OF MAY 5, 2005 TRIAL BY JURY- VOLUME XIII (FILED 05/06/2005)	7113-7124

1	31	RESPONDENT'S ANSWERING BRIEF (FILED 04/05/2006)	7226-7253
2	3	REQUEST FOR ATTENDANCE OF OUT-OF-STATE WITNESS CHARLA CHENIQUA SEVERS AKA KASHAWN HIVES (FILED 09/21/1999)	607-621
4	4	SEALED ORDER FOR RLEASE TO HOUSE ARREST OF MATERIAL WITNESS CHARLA SEVERS (FILED 10/29/1999)	782
7	33	SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 07/14/2010)	7373-7429
9	19	SPECIAL VERDICT (COUNT XI) (FILED 07/26/2000)	4433-4434
10	19	SPECIAL VERDICT (COUNT XI) (FILED 07/26/2000)	4439
12	19	SPECIAL VERDICT (COUNT XII) (FILED 07/26/2000)	4435
13	19	SPECIAL VERDICT (COUNT XII) (FILED 07/26/2000)	4440-4441
15	19	SPECIAL VERDICT (COUNT XIII) (FILED 07/26/2000)	4436
16	19	SPECIAL VERDICT (COUNT XIII) (FILED 07/26/2000)	4442-4443
18	19	SPECIAL VERDICT (COUNT XII) (FILED 07/26/2000)	4437-4438
19	19	SPECIAL VERDICT (COUNT XIV) (FILED 07/26/2000)	4444
21	2	STATE'S MOTION IN LIMINE TO PERMIT THE STATE TO PRESENT " THE COMPLETE STORY OF THE CRIME" (FILED 06/14/1999)	467-480
23	17	STATE'S OPPOSITION FOR IMPOSITION OF LIFE WITHOUT AND OPPOSITION TO EMPANEL JURY AND/OR DISCLOSURE OF EVIDENCE MATERIAL TO CONSTITUTIONALITY OF THE THREE JUDGE PANEL PROCEDURE (FILED 07/17/2000)	4132-4148
26	6	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR CHANGE OF VENUE (FILED 12/07/1999)	1421-1424
28	6	STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE REGARDING CO-DEFENDANT'S SENTENCES (FILED 12/06/1999)	1412-1414

1	4	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL THE PRODUCTION OF ANY AND ALL STATEMENTS OF THE DEFENDANT (FILED 11/04/1999)	787-790
2			
3	4	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO REVEAL THE IDENTITY OF THE INFORMANTS AND REVEAL ANY DEALS PROMISES OR INDUCEMENTS (FILED 11/04/1999)	816-820
4			
5			
6	2	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SET BAIL (FILED 10/07/1998)	302-308
7			
8	2	STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION TO WITHDRAW COUNSEL AND APPOINT OUTSIDE COUNSEL (FILED 02/19/1999)	385-387
9			
10	7	STATE'S OPPOSITION TO MOTION TO SUPPRESS EVIDENCE ILLEGALLY SEIZED (FILED 01/21/2000)	1612-1622
11			
12	4	STATE'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF EXPECTATIONS, OR ACTUAL RECEIPT OF BENEFITS OR PREFERENTIAL TREATMENT FOR COOPERATION WITH PROSECUTION (FILED 11/04/1999)	801-815
13			
14			
15	34	STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) AND DEFENDANT'S SUPPLEMENTAL BRIEF AND SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (POST-CONVICTION) ON 04/13/2011	7436-7530
16			
17			
18			
19	19	STATE'S RESPONSE TO DEFENDANT'S MOTION TO SET ASIDE SENTENCE OR IN THE ALTERNATIVE MOTION TO SETTLE RECORD (FILED 09/15/2000)	4601-4611
20			
21	3	STATE'S RESPONSE TO DEFENDANT'S OPPOSITION TO STATE'S MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS	762-768
22			
23	15	STATE'S RESPONSE TO MOTION FOR NEW TRIAL (FILED 06/30/2000)	3603-3616
24			
25	2	STIPULATION AND ORDER (FILED 06/08/1999)	457-459
26			
27	2	STIPULATION AND ORDER (FILED 06/17/1999)	488-490
28			
	3	STIPULATION AND ORDER (FILED 10/14/1999)	695-698

1	6	STIPULATION AND ORDER (FILED 12/22/1999)	1454-1456
2	7	STIPULATION AND ORDER (FILED 04/10/2000)	1712-1714
3	7	STIPULATION AND ORDER (FILED 05/19/2000)	1798-1800
4	2	SUPERSEDING INDICTMENT (FILED 09/16/1998)	278-291
5	32	SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 10/12/2009)	7308-7372
6	39	SUPPLEMENTAL EXHIBITS (FILED 04/05/2013)	7880-7971
7	3	SUPPLEMENTAL MOTION TO VIDEOTAPE DEPOSITION OF CHARLA SEVERS (FILED 10/18/1999)	705-707
8	7	SUPPLEMENTAL NOTICE OF EXPERT WITNESSES (FILED 05/17/2000)	1766-1797
9	2	SUPPLEMENTAL NOTICE OF INTENT TO SEEK DEATH PENALTY PURSUANT TO AMENDED SUPREME COURT RULE 250 (FILED 02/26/1999)	388-391
10	6	SUPPLEMENTAL OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS, WEAPONS AND AMMUNITION NOT USED IN THE CRIME (FILED 12/02/1999)	1314-1336
11	7	SUPPLEMENTAL OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS, WEAPONS AND AMMUNITION NOT USED IN THE CRIME (FILED 05/02/2000)	1736-1742
12	7	SUPPLEMENTAL POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO SUPPRESS (FILED 03/16/2000)	1657-1667
13	38	TRANSCRIPT OF PROCEEDINGS STATUS CHECK: EVIDENTIARY HEARING AND PETITION FOR WRIT OF HABEAS CORPUS (FILED 01/19/2012)	7798-7804
14	38	TRANSCRIPT OF PROCEEDINGS STATUS CHECK: EVIDENTIARY HEARING AND PETITION FOR WRIT OF HABEAS CORPUS (FILED 1/01/2012)	7805-7807

1	38	TRANSCRIPT OF PROCEEDINGS ARGUMENT: PETITION FOR WRIT OF HABEAS CORPUS ALL ISSUES RAISED IN THE PETITION AND SUPPLEMENT (FILED 12/07/2011)	7808-7879
2			
3	35	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE A REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 04/12/2011)	7614-7615
4			
5			
6	35	TRANSCRIPT OF PROCEEDINGS: HEARING (FILED 10/20/2010)	7616-7623
7			
8	36	TRANSCRIPT OF PROCEEDINGS DECISION: PROCEDURAL BAR AND ARGUMENT: PETITION FOR WRIT OF HABEAS CORPUS (FILED 07/21/2011)	7624-7629
9			
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
11			
12			
13	36	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE A REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 04/12/2011)	7707-7708
14			
15			
16	36	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE A REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 06/07/2011)	7668-7671
17			
18			
19	33	TRANSCRIPT OF PROCEEDINGS STATUS CHECK: BRIEFING/FURTHER PROCEEDINGS (FILED 06/22/2010)	7430-7432
20			
21	33	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME FOR THE FILING OF A SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS AND TO PERMIT AN INVESTIGATOR AND EXPERT (FILED 10/20/2009)	7433-7435
22			
23			
24	35	TRANSCRIPT OF PROCEEDINGS DECISION: PROCEDURAL BAR AND ARGUMENT: PETITION FOR WRIT OF HABEAS CORPUS (FILED 07/21/2011)	7531-7536
25			
26			
27			
28			

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
2			
3			
4	35	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE A REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 06/07/2011)	7575-7578
5			
6			
7	10	VERDICT (FILED 06/09/2000)	2595-2600
8			
9	19	VERDICT (COUNT XI) (FILED 07/26/2000)	2595-2600
10	19	VERDICT (COUNT XII) (FILED 07/26/2000)	4429
11			
12	19	VERDICT (COUNT XIII) (FILED 07/26/2000)	4430
13	19	VERDICT (COUNT XIV) (FILED 07/26/2000)	4432
14			
15	19	WARRANT OF EXECUTION (FILED 10/03/2000)	4624
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 9th day of January, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ-MASTO
Nevada Attorney General

STEVE OWENS
Chief Deputy District Attorney

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Jessie Vargas
An Employee of Christopher R. Oram, Esq.

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623