

1 THE COURT: Okay. May or June. It certainly -- it's not the whole
2 time, and --
3 MR. FIGLER: That's correct.
4 THE COURT: -- you, Joseph, have come to the office September the
5 7th and --
6 MR. SCISCENTO: Correct.
7 THE COURT: -- you don't get assigned until September the 20th,
8 which means --
9 MR. SCISCENTO: I'm assuming, yes. That was --
10 THE COURT: -- with the current trial date, you would have been on
11 this case in the neighborhood of four months?
12 MR. SCISCENTO: That's right. Yes.
13 THE COURT: Okay. Now, have you divided the work on this case?
14 MR. SCISCENTO: Yes, Dayvid was responsible for certain motions and
15 for certain witnesses or things of that effect and --
16 THE COURT: So you haven't divided it guilt/penalty?
17 MR. SCISCENTO: No.
18 MR. FIGLER: No.
19 THE COURT: Okay. Now, I take it from reading the motion, although
20 there's only your affidavit, Mr. Sciscento, as lead counsel, you two are
21 standing before the Court as officers of the Court telling me I keep this trial
22 date -- and, of course, the Rule 250 memo, which we don't get until later --
23 you're going to be asserting to the Court today and in that 250 memo if I
24 keep that trial date, you cannot provide effective assistance of counsel under
25

1 the Sixth Amendment and under the Strickland case that you quoted, Mr.
2 Sciscento?

3 MR. SCISCENTO: Specifically, as to the penalty phase, Your Honor,
4 no. And as towards the guilt phase, also I think it's -- the answer to that
5 would be no. There were three -- or there were two prior cases in this case
6 -- or trials which involved the same witnesses. There is grand jury
7 testimony. There is independent witness statements, which I need more
8 time to go over than that too. And that goes specifically for the guilt phase.
9 So as to both phases, I don't think we're adequately prepared, specifically on
10 the penalty phase.

11 THE COURT: Now, almost all the questions, Mr. Daskas, are going to
12 be for them if you want to have a seat for a second.

13 MR. DASKAS: I understand, Judge. Thank you.

14 THE COURT: Mr. Figler, do you concur in that conclusion that you
15 can't give effective assistance of counsel under the Sixth Amendment if we
16 keep this trial date?

17 MR. FIGLER: It's my assessment, knowing what I do know about the
18 case and having observed the other trials and in discussions now with Mr.
19 Sciscento, which is more productive than prior, that that is an accurate
20 assessment, that we would be ineffective going forward at the earlier date.

21 THE COURT: Okay. Let me get into some more detailed questions.
22 I'll tell you why. I think, you know, you guys -- and it's primarily Mr. Daskas
23 and Mr. Sciscento -- do a certain amount of finger pointing at each other
24 trying to say who's to blame for whatever situation I'm going to find exists

25

1 or doesn't exist now. And it's not my job, the way I see it, to assess blame
2 on either part. The public has an interest in maintaining, I think, in general --
3 and the legal community does -- trial dates. I think the -- there is a legitimate
4 public interest in seeing that charges this serious have an ending as quickly
5 as possible. My job is, though, to make sure that the defendant has
6 effective assistance of counsel under the Sixth Amendment to the United
7 States Constitution.

8 And in reading the motion and the points and authorities,
9 although I've asked you to preface my questions by the general conclusion,
10 which is your conclusion that it's not, I still have some questions before I
11 reach a conclusion in my own mind. What is the situation with the DNA and
12 the ballistics? Are these going to an independent lab, the same lab?

13 MR. FIGLER: No, Your Honor.

14 THE COURT: Okay. Because I couldn't tell that. So what's the
15 situation with the ballistics and with the DNA?

16 MR. FIGLER: Okay. There was -- there's two aspects of this, Your
17 Honor. One is our desire to retest the results that were achieved through the
18 State's initial investigation.

19 THE COURT: In terms of DNA or ballistics or both?

20 MR. FIGLER: Both, Your Honor.

21 THE COURT: Okay.

22 MR. FIGLER: And, in addition, fingerprints.

23 THE COURT: I was going to get to fingerprints in a minute, but you
24 can discuss them all at the same time. All right.

25

1 MR. FIGLER: Okay. We have contracted with an independent
2 laboratory, and pursuant to a couple of stip and orders that Your Honor has
3 signed, that data has been sent to our independent laboratory.

4 THE COURT: For all three?

5 MR. FIGLER: Well, for the --

6 THE COURT: Okay. We got DNA --

7 MR. FIGLER: For the DNA. Let's just say --

8 THE COURT: I take it tests have been done that show Mr. Johnson's
9 DNA in some relevant fashion. What are we talking about?

10 MR. GUYMON: What we're talking about, Judge, is the Las Vegas
11 Metropolitan Police Department did DNA testing on a black pair of pants.
12 They found defendant Donte Johnson's semen on the front of the pants.
13 They found the blood of Tracey Gorringer on the back of the pants. They
14 further tested the cigarette butt that was found at the crime scene. They
15 found Donte Johnson's saliva to be on that cigarette butt. The defense
16 asked to retest the cigarette butt, and we agreed by way of a stipulation that
17 we had this Court make a ruling on that that cigarette butt would be sent to
18 Cell-Mark for further testing. Those results have come back. The defense
19 has those results as well for the cigarette butt.

20 MR. FIGLER: That's correct, Your Honor. I was going to get to that.

21 THE COURT: Okay. So why do you need additional --

22 MR. GUYMON: Now, Judge, if I can just finish. They then said we
23 want to retest the pants, and so in early June the pants were given to the
24 defense, swatches from the pants, the back and the front of the pants, for
25

1 them to send it to their independent laboratory to have those pants analyzed
2 and tested.

3 THE COURT: Okay. Let's take these three things one at a time. The
4 DNA, --

5 MR. FIGLER: Okay. So --

6 THE COURT: -- where are we with that?

7 MR. FIGLER: We have not received results of the testing, although we
8 have spoken with our independent laboratory and I believe we stated in the
9 motion --

10 THE COURT: To me, I couldn't tell from the motion whether it's one
11 lab or two labs or --

12 MR. FIGLER: We're dealing with one lab right now. The cigarette
13 butt, because the amount of extraction was so small, there would be --

14 THE COURT: And you say also you won't know about it until the first
15 week in February of 2000.

16 MR. FIGLER: That would be --

17 THE COURT: These are all different things, so when --

18 MR. FIGLER: That's a different thing, Your Honor.

19 THE COURT: When will you find out the DNA?

20 MR. FIGLER: We would hope to receive the DNA results before the
21 end of this year.

22 THE COURT: Okay.

23 MR. FIGLER: Okay. That's the DNA.

24 THE COURT: So the present trial date, assuming that these results are
25

1 not different from their results -- because they're either different or they're
2 the same. If they're the same, we don't need a delay. If they're different,
3 we probably don't need a delay. Have you talked to the people at your
4 independent lab about their availability if their testimony is relevant to the
5 defense during the week of this trial date?

6 MR. FIGLER: That has not been specifically worked out yet though,
7 Your Honor, because --

8 THE COURT: But you have no reason to believe they wouldn't be
9 available?

10 MR. FIGLER: That is -- well, I can't make that representation. I'll
11 make that inquiry today with regards to the availability.

12 THE COURT: Okay. But so -- so at least in terms of the DNA, if it's
13 unfavorable, we don't have to worry about a continuance. If it's favorable,
14 the only question is whether they're going to be available, and you don't
15 know that at this point?

16 MR. FIGLER: With regard to that, that's correct, Judge.

17 THE COURT: Okay. Now, the next thing --

18 MR. FIGLER: Okay. So that's --

19 THE COURT: -- is the fingerprints.

20 MR. FIGLER: That's one aspect of the DNA. The other one is the --

21 THE COURT: That's the pants.

22 MR. FIGLER: That would be the pants --

23 THE COURT: Yeah.

24 MR. FIGLER: -- specifically. The cigarette butt, the extraction was
25

1 done, and Cell-Mark in this case is being deemed to be an independent third
2 lab. It's not the lab that they used initially; they used the Metro lab. And
3 it's not the lab that we're using; we're using this lab in San Francisco. So
4 that result just came in, I believe, Thursday or Friday to us -- Thursday
5 perhaps -- and what it is is raw data. And now we today are sending out
6 that raw data for some comparisons with our laboratory, but again they said
7 that that shouldn't take too much time to do just in terms --

8 THE COURT: Okay. So the DNA, except for a possible witness from,
9 isn't a basis --

10 MR. FIGLER: Right. That's why I lead you through it. There are two
11 different places where that --

12 THE COURT: All right. How about the fingerprints?

13 MR. FIGLER: All right. The fingerprints, there's been a stipulation --
14 and I don't know if the order has been signed yet, but it certainly has been
15 submitted to Your Honor, I believe, on Friday -- that the State has entered in
16 with us regarding retesting the latent prints which were recovered during the
17 investigation by the police. This again is our retesting. The history of that
18 was there is a matter of discourse between the State and the defense with
19 regard to how we would do it, what we would do, what we would really
20 need, and so it just kind of got pushed off for a while. Ultimately, though,
21 now we've agreed on the stipulation. This information, as I stated -- or as
22 Mr. Sciscento stated in the affidavit, if we can get that information from
23 Metro, in other words, if Metro is served properly with the order when
24 signed and then that stuff is shipped out to San Francisco for retesting, the
25

1 lab has indicated that they could do that by the first week in February -- that
2 they could do the comparisons.

3 THE COURT: A fingerprint comparison? I've seen people stand out in
4 the hall and do a fingerprint comparison in the last 30 years --

5 MR. FIGLER: Well, I don't know if it has something to do with their
6 time commitments or the fact that it's the holidays and the new year, but
7 they've indicated that if we could get it to them before Christmastime that
8 they could have it to us by the first week in February. And that's regarding
9 the full retesting, and there's quite a few of those. And that would assume
10 that Metro can do what it is, and we'll try to come up with the minimum
11 burden on Metro, which is essentially to just --

12 THE COURT: So -- but the triggering thing is me signing an order,
13 which I can sign in 30 minutes when we're through with this calendar.
14 Metro, you would facilitate them getting it.

15 MR. GUYMON: Well, sure, Your Honor. You mean the order itself?

16 THE COURT: I mean you would facilitate them getting what they need
17 to send to this lab.

18 MR. GUYMON: Absolutely. I will ask them to do it expeditiously, to
19 do it immediately, so that we can get this on, Judge.

20 THE COURT: Okay. Ballistics, what's the problem with that?

21 MR. FIGLER: Okay. The ballistics, initially we had requested two
22 things by stip and order. One was the bullets recovered or the fragments
23 thereof, and the other was cartridges from an automatic weapon that were
24 recovered as well. That was served upon Metro lab --
25

1 THE COURT: Gary, have a seat because it just -- you're in my line of
2 sight here. I'm trying to concentrate.

3 MR. FIGLER: That was sent to Metro lab. The bullets then were sent
4 to -- or the bullet fragments were sent to our lab for independent testing and
5 the casings were not, and we didn't realize that they were not. In following
6 up, apparently the ballistics --

7 THE COURT: Is it the same lab in San Francisco?

8 MR. FIGLER: That is correct.

9 THE COURT: Okay.

10 MR. FIGLER: We're using one lab for our convenience as well.

11 THE COURT: I thought you had said you were using two earlier.

12 MR. FIGLER: No, the only other lab was that Cell-Mark --

13 THE COURT: The Cell-Mark thing. Okay. Go on.

14 MR. FIGLER: -- for that one aspect. For whatever reason, the casings
15 weren't sent. When we finally tracked it down recently, the problem was
16 that Metro, they're kind of broken into little sections. And the ballistics
17 people, Richard Good, who's probably testified in front of Your Honor a
18 number of times, was in charge of the -- at least it's been represented to us
19 -- was in charge of the bullets itself but didn't have the casings. The casings
20 were in Metro evidence, and so they were never sent even though an order
21 was served upon Metro. That now we believe has been rectified, and those
22 casings will be forwarded to our lab. It's my understanding that that's what
23 Metro's -- that was their intention, and certainly if the State's going to help
24 us in getting the fingerprints expeditiously, to make sure that those casings
25

1 are sent expeditiously as well --

2 THE COURT: But you think they may have already been sent.

3 MR. FIGLER: It's quite possible because we clarified the error with
4 them. Again, our lab says if they receive that information before Christmas
5 that they could get it by the first week in February.

6 THE COURT: Have you ever said to this lab we don't want to rush you
7 and we understand you're professionals and you have other things to do, but
8 we have a trial date January the 10th; now we won't need maybe to call
9 you as witnesses on July (sic) the 10th, but we've had this sort of firm trial
10 date and is there any way -- because DNA can take awhile in the early
11 stages. From my understanding of it, the end of this, the comparison, that's
12 just a visual sort of thing that's very quick. The ballistics and the fingerprint
13 stuff in my understanding also, unless the science has advanced in the last
14 several months beyond my knowledge, is also something very quick. Have
15 you ever just gotten somebody on the phone and said look, we're not getting
16 any -- you know, any benefit here probably unless we can absolutely prove --
17 I don't mean benefit -- we're not going to get a continuance unless we can
18 absolutely prove we need it; can't you folks rearrange things with a month to
19 go to get this done? Have you done that?

20 MR. FIGLER: I certainly have explained to them when it was, and we
21 were thinking that we would have everything done before then.
22 Unfortunately, because of different things that have come up and because
23 some things weren't sent and some things were, this is the dates that
24 they're giving me. And, you know, I could press them as much as I can
25

1 short of me saying okay; let's just go to another lab and start all over again.
2 I mean we're basically stuck with the lab that we have, and they seem to be
3 doing fine work, except this is the time frames that they've given us.

4 THE COURT: Yeah, but you see if --

5 MR. FIGLER: Yeah, I understand and I wish I could, you know, go
6 back in time and make sure all the fires were under everybody's, you know,
7 actions as much as possible, but that's not where we're at right now. And
8 where we're at right now is --

9 THE COURT: Well, we may be in the near future.

10 MR. FIGLER: Well -- and that is possible, but what I'm saying is that,
11 you know, I've indicated it to them. I can only make that indication more
12 strong if Your Honor is inclined to grant us whatever continuance and explain
13 to them that there won't be any more continuances and that all the work
14 that we need to be done needs to be done by a certain date, that they need
15 to indicate to us whether or not there are different results. If there are, then
16 we may need to come back before the Court immediately, perhaps in
17 camera, and tell you what's going on with regard to that aspect of it. You
18 know, I will indicate that to them as strongly as I can, Your Honor, and you
19 have my word as far as that goes. But that's where we're at right now with
20 the representations made.

21 THE COURT: Okay. Now, in terms of Mortillaro, I'm at -- I'm sort of
22 mystified by what the problem is. Now, I read about it in the newspaper
23 when it happened and, you know, the courthouse is filled with people -- and
24 I'm one of them -- that talk to each other and you get sort of a -- you know,
25

1 a rumor-based understanding of things, which often prove to be not correct.
2 I have real trouble -- unless it's just Mr. Johnson saying I don't trust this guy
3 because he testified against a co-defendant -- I have a problem seeing any
4 conflict where Dr. Mortillaro couldn't do it, number one. And that just might
5 be an attitude problem on behalf of Mr. Johnson, or I can certainly
6 understand why he might have a certain distrust. But even if he does, I
7 can't see with three weeks to go why another person cannot interview him.
8 So there's really two things that puzzle me: One, why Mortillaro can't
9 continue on in this case; and, secondly, if he can't, why you can't get
10 somebody else by the penalty phase of this matter, if we're going to have
11 one, which is probably going to be around the 17th of January.

12 MR. SCISCENTO: Well, Your Honor, basically Mortillaro's actions
13 were, in my understanding, in violation of professional ethics as to a
14 psychiatrist. If I was on this case initially, I would have had him removed.
15 It's the appearance of impropriety. We all know that this case, if we lose
16 this case, there's going to be appeals.

17 THE COURT: But that --

18 MR. SCISCENTO: Federal public defenders are going to come in and
19 they're going to --

20 THE COURT: What is the problem? I mean he testifies --

21 MR. SCISCENTO: They're going to question that --

22 THE COURT: He testifies in the guilt phase against a co-defendant.

23 MR. SCISCENTO: Against a co-defendant after --

24 THE COURT: Now -- just hear me out and then answer my question.
25

1 Now he comes in in a penalty phase in favor of a defendant. What is the
2 conflict?

3 MR. SCISCENTO: Well, based on the fact that he had conversations
4 with Mr. Donte Johnson prior to him testifying in Sikia Smith or whoever he
5 testified to and --

6 THE COURT: Now, that's a questionable thing, right? I mean do you,
7 according to your opposition, believe that didn't happen that way?

8 MR. DASKAS: That is absolutely false, Judge.

9 THE COURT: Now, but Figler watched this --

10 MR. DASKAS: Yes.

11 THE COURT: -- and you were both there, --

12 MR. DASKAS: Yes, Judge.

13 THE COURT: -- so we're just at factual odds as to this and we don't
14 have a transcript, at least not in what I've read?

15 MR. GUYMON: Actually there is a transcript, Judge.

16 THE COURT: But it's not attached to anything I've had to read.

17 MR. GUYMON: There was a hearing in camera with the Court --

18 THE COURT: I'm just saying there is -- there wasn't something that I
19 could read attached to this.

20 MR. DASKAS: There was not, Judge. That's true.

21 THE COURT: Okay. So we have a different understanding. Let's
22 assume your understanding is correct. So what?

23 MR. SCISCENTO: He receives specific information from Pete LaPorta
24 and from Mr. Donte Johnson regarding this case and the Sikia Smith case.
25

1 Now, just looking at that from an outsider's point of view, that's an
2 appearance of impropriety. I can't believe that he doesn't rely on some
3 information that he receives, whether consciously or unconsciously -- or
4 subconsciously he receives it.

5 THE COURT: So what? What are you going to say, that he will not be
6 believed as a witness for the defense in the Donte Johnson case because the
7 jury will say or they will impeach him?

8 MR. SCISCENTO: No, then his actions then cause Mr. Johnson not to
9 trust him and figure that he's just working for the State. And so everything
10 that we've worked towards, we need to have a psychiatrist in here for the
11 penalty phase. Now Mr. Johnson doesn't want to work with him --

12 THE COURT: So then it's what I thought, which is that Mr. Johnson
13 has lost confidence in him.

14 MR. SCISCENTO: Yes, and he has a legitimate reason for it, Your
15 Honor, specifically --

16 THE COURT: Well, he does maybe if your understanding of the facts
17 are as -- are correct. If what Mr. Daskas and Mr. Guymon assert is correct,
18 which is he hadn't had an interview yet at that time, then his lack of
19 confidence would be misplaced, so that's something that could still be
20 cleared up. So let's go to the next question, which is if Mortillaro, you're
21 not going to use him, why can't you get somebody else in three or four
22 weeks?

23 MR. SCISCENTO: We can get somebody else, Your Honor, but the
24 person that we have decided to get has extensive tests, not just one or two
25

1 tests that Dr. Mortillaro is going to perform. There are numerous tests,
2 including possible -- well, Your Honor, this person that we have contacted,
3 that we've spoken with, is going to be doing numerous tests, which are
4 probably going to exceed a month or two. We probably will not --

5 MR. FIGLER: And we can talk about that in camera.

6 MR. SCISCENTO: We probably will not get a report from this person
7 for at least two or three months. The tests take time. The tests that we
8 anticipate doing --

9 THE COURT: Neurological testing?

10 MR. SCISCENTO: There's numerous tests that we intend to do, Your
11 Honor.

12 THE COURT: See, the problem is -- and why would this be in
13 chambers, Mr. Figler, --

14 MR. FIGLER: Well --

15 THE COURT: -- because it's giving away your defense?

16 MR. SCISCENTO: Exactly.

17 MR. FIGLER: I think so, Your Honor. I think parts of the defense don't
18 have to be revealed to the State at this juncture and --

19 THE COURT: Even if they're the basis for a continuance?

20 MR. FIGLER: Well, you know, that would be up to Your Honor
21 whether or not it would be in any way a violation. I mean certainly we could
22 waive that and give it up, but --

23 THE COURT: Don't you have to give it to them anyway before trial?
24 What is the problem?

25

1 MR. SCISCENTO: Not unless we decide --

2 MR. FIGLER: Not unless we decide to use it, Your Honor. And you
3 know that's the way that it works. I mean that's the -- the aspect of
4 discovery is that we are trying to put on our defense; we don't have to
5 reveal what our defense is going to be to the State. I mean that's an
6 absolute, correct? So if you go from that point, if we do certain
7 investigation that turns out to be --

8 THE COURT: No, I think you do shortly before trial have to reveal your
9 defense in the sense that you have to hand everything over.

10 MR. SCISCENTO: We intend to, Your Honor, and we will.

11 MR. FIGLER: As far as giving notice of expert witness and --

12 THE COURT: Right.

13 MR. FIGLER: -- that sort of thing, yes.

14 THE COURT: Right.

15 MR. FIGLER: That's correct, Your Honor.

16 THE COURT: So either it's not something that's going to be helpful
17 and nobody's going to use it, or it's going to be helpful and you've got to
18 give it over anyway.

19 MR. FIGLER: Right. So we're just trying to say in a couple weeks. I
20 mean yeah, certainly there would be the broad spectrum of the type of
21 evidence that a psychologist can provide. I mean as broad as one can get,
22 we're trying to engage an expert who could do each and every aspect of it.
23 I just want it clear for the record that there's two aspects to Dr. Mortillaro
24 being retained by the State, and the first one I think we've now covered with

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1 regard to Mr. Johnson's confidence in this type of discovery or production of
2 evidence or however you want to phrase it with regard to the defense's
3 case. The second aspect is that you have an individual who received
4 information about our client from Mr. LaPorta. Mr. LaPorta had
5 conversations with Dr. Mortillaro. Then there was certain engagement from
6 Dr. Mortillaro's office with Mr. Johnson. Whether or not Dr. Mortillaro
7 actually met with Mr. Johnson -- you know, Dr. Mortillaro is saying that he
8 did not specifically meet with him at the time that, you know, this issue
9 came up over in the other trial.

10 THE COURT: But the issue, as I understand it, at least based on the
11 representation, is the mental status of -- was it Sikia Smith --

12 MR. DASKAS: Yes, Judge.

13 MR. GUYMON: That's correct.

14 THE COURT: -- as an idiot or not an idiot in that trial. What in the
15 world does that have to do with what he may say that benefits Donte
16 Johnson in his trial?

17 MR. FIGLER: Well, as a leader or not a leader, as a person primarily
18 responsible or not responsible. I mean all these aspects of Sikia Smith's
19 mental makeup are -- can be impugned to many things in this case. In other
20 words, when you have Dr. Mortillaro trying to figure out basically through his
21 testimony who was responsible for what, who had the ability to say what
22 did what and who did what, and all this type of discourse on that subject
23 matter. Do you understand? That type of testimony that Dr. Mortillaro was
24 retained by the State to do. First of all, it clearly was a breach of the rules
25

1 of professional conduct as it relates to Dr. Mortillaro's field. And Dr.
2 Mortillaro should have contacted us or did something before he was retained
3 by the State. Dr. Mortillaro had conversations --

4 THE COURT: And I don't argue with that, Dayvid. I just --

5 MR. FIGLER: Well -- and Dr. Mortillaro --

6 THE COURT: But those things may have nothing to do with this trial
7 date.

8 MR. FIGLER: Well -- and Dr. Mortillaro certainly had conversations
9 with the State, these two prosecutors or one of these prosecutors, prior to
10 testifying and that goes without saying. Whatever could have been
11 suggested with regard to Dr. Mortillaro's analysis of Sikia Smith, as it may
12 have been based on his knowledge of Donte Johnson's role or Donte
13 Johnson's mental state, you know, if any of that infected it -- and the thing
14 is we have to assume that it did -- that's the whole thing about an
15 appearance of impropriety, that the burden is not to show that there was an
16 impropriety --

17 THE COURT: But who? To who is this appearance of impropriety
18 important?

19 MR. FIGLER: Because Dr. Mortillaro may have --

20 THE COURT: I'm saying who; is it to the jury? To who? I mean yes,
21 maybe he should be disciplined by the psychiatric board. I don't know.
22 Let's just assume he should because of some appearance of impropriety in
23 his booking both sides of this or two aspects of this, but how does that
24 impact on the --

25

1 MR. SCISCENTO: We're not --

2 THE COURT: -- his use as an expert?

3 MR. SCISCENTO: We're not trying to vilify --

4 THE COURT: You're not going to impeach him.

5 MR. SCISCENTO: -- Dr. Mortillaro. Basically what we're saying is Mr.
6 Johnson has not -- doesn't have any confidence in him. Mr. (sic) Mortillaro
7 should have been removed immediately upon that as soon as he -- as soon
8 as this was found out.

9 THE COURT: Well, maybe Mr. Johnson is wrong about that.

10 MR. SCISCENTO: Well, it's his -- whether or not he cooperates with
11 this expert witness is what we need. He's not going to cooperate with Dr.
12 Mortillaro because he doesn't trust him.

13 THE COURT: Well, maybe you need to convince him to cooperate with
14 him. All right. I've heard enough. Let me tell you a few things -- just have
15 a seat -- by way of preface. There is a big concern at least by some people
16 in the media that -- and some politicians and some lawyers -- I'm not sure
17 whether you're some of them -- that we just rush into these death penalty
18 cases and then the trial is over, and the latest statistics are it takes ten years
19 to carry out the penalty in a country which is overwhelmingly for the death
20 penalty -- over ten years from conviction to the carrying out of the penalty.

21 If we take a few more months, I guess I don't share the concern
22 that you demonstrate, Mr. Daskas, in your opposition, whether it's January,
23 February, or June. On the other hand, I said we were going to have this trial
24 date, and it's the second time I've said we're going to have a trial date. I'm

25

1 not convinced at this point, and I'll tell you after I talk to the prosecutors
2 what additional things -- well, I'll tell you now. I'm not convinced on this
3 showing that they're entitled to a continuance, and if you still oppose the
4 continuance, I'm going to ask them to do some additional things.

5 For example, the DNA is no problem. In terms of the fingerprints
6 and the ballistics, I'm going to order them either before Thursday or Monday
7 of next week, keeping the present trial date, to contact this lab orally --
8 somebody in control of the lab -- tell them they're having extreme difficulty
9 getting a continuance, that unless it is demonstrated in detail and in affidavit
10 form from the lab that they cannot be ready before the middle of February,
11 that the case is going to go now. I'm going to ask them to secure an
12 affidavit -- and I don't know whether if we take that up, whether it's going
13 to be in camera or not -- from the new expert. I can't imagine what's going
14 to take three months for what is probably a neurologist to come up with
15 things.

16 Now, we can continue to do this -- and it doesn't bother me at
17 all -- until I am convinced that we're going to go to trial on January the 10th
18 or until I am convinced that it's going to be postponed for some period of
19 time. I don't know what burden you have -- but I assume it's fairly high -- to
20 get a case ready, and I would assume you're already subpoenaing this case.

21 MR. GUYMON: Absolutely, Judge.

22 THE COURT: Do you wish to accede to a continuance to some date
23 either -- I've already said February the 15th or it would probably be in June.
24 Having heard all of this, do you wish to accede to it or do you wish to go to
25

1 my next step, which is having them get ahold of the lab and have them get
2 ahold of their new expert and get more detailed information to us?

3 MR. DASKAS: Judge, here's our concern: As you mentioned, this
4 would now be the third what we'd call a firm trial setting, and I appreciate
5 it's not your fault, Judge. Our concern is --

6 THE COURT: I don't think it's anybody's fault.

7 MR. DASKAS: Right. Well, our concern is if we set now a third trial
8 date, what assurances do we have that we get to keep now the third trial
9 date? If this Court can --

10 THE COURT: Never have it. What I'm saying to you, Bob, is you're a
11 lawyer and you've been through two of the trials in this. You have had
12 murder cases, both you and Gary. You've heard this record now. Are you
13 comfortable with this trial date?

14 MR. DASKAS: No, Judge, because they used the magic words -- and I
15 appreciate that -- that they would be ineffective. And there's nothing that
16 Mr. Guymon and I can do to change that, and that's why they say those
17 words. And so we're asking the Court, Judge, do what you can to make
18 sure we get now a firm trial, that if it means setting status check dates to
19 make sure they've done everything they can to effectively represent Mr.
20 Johnson, then let's do that. But no, do I feel comfortable with this trial date
21 after they made this record today? No, Judge, I don't.

22 THE COURT: I appreciate your candor.

23 MR. DASKAS: And, unfortunately, there's nothing that we can do
24 about that because they know the buzz words to use.

25

1 THE COURT: Well, the buzz words -- and, you know, the problem
2 really is if you have somebody -- and at some point that has to be the
3 Court's call, and I'm not saying these are the gentlemen -- at some point
4 you're going to have a person either so fearful of the consequences of the
5 trial and/or so opposed to the death penalty that they will say those words
6 forever. I guess I am not convinced by this showing, but I know what's
7 going to go in that 250 memo is going to be a lot more detailed and is going
8 to come up down the road. And I've always had the feeling that if you wait
9 one year or two years and you do it once right, in the nine years that I've
10 been on the bench, we have been fortunate -- whether you believe in the
11 death penalty or you don't believe in the death penalty -- that we've only had
12 one come back out of many death penalties.

13 If we set a new trial date, I'm really not inclined to make it
14 February the 15th because I think that's only one month. I've looked at your
15 schedules. I know you can't predict which of these many trials are not going
16 to go. Is there a date, because we know that we can't have -- where is the
17 major case list? How long is the Webb trial going to be, Mr. Figler? That's
18 in here.

19 MR. FIGLER: That's going to be with Ms. Monroe, and I would
20 imagine that would be a one and a half week trial at the outside, probably
21 only a one week trial.

22 THE COURT: But we have very short trials in here. This trial won't
23 take more than two weeks I guaranty you.

24 MR. FIGLER: Ms. Monroe happens to be here, and I think she agrees
25

1 with that assessment.

2 MS. MONROE: I'm going to say one to two weeks. That's usually
3 what our cases are running on these kinds of cases.

4 THE COURT: Okay. Well, it would be one week in here. What about
5 June the 5th?

6 MR. GUYMON: Judge, I understand you're working with difficult
7 schedules. My concern is that because we have Charla Severs, who's on
8 house arrest right now, and there is contact between Donte Johnson and
9 Charla Severs as recently as last week, I am concerned that if we postpone it
10 to June that, you know, we're not going to have her. I'm very concerned
11 about that.

12 THE COURT: Well, of course, --

13 MR. GUYMON: Can we go any sooner than that, Judge?

14 THE COURT: No, I'll tell you why not, but I -- you know, I heard the
15 testimony that is now videotaped. I mean she -- if I were Donte Johnson, I
16 would probably do everything I could to have her here for trial if I had any
17 control over her, because it's not going to get -- it's not going to get worse
18 than just having the videotape for him. That's the worst that could happen.

19 MR. GUYMON: I understand.

20 THE COURT: So I don't see a problem with that. The problem we
21 have in here is on March the 6th, we have the Albertson murder trial, which
22 is a quadruple murder. Then Mr. Bedard and Pete Christiansen and I and Mr.
23 Schwarz are going to savor his trial on April the 3rd. And then we have the
24 Escobar murder on 4/17, the Werth/Pradera murder trial on 5/8, and the

25

1 Webb murder trial on 5/19. Now, if I had a crystal ball, three out of five of
2 those aren't going to go, but you never know until the last minute. That
3 June date is as firm as anything can be. I mean I'm ready. And, frankly, in
4 terms of my schedule, I would rather try this January the 10th because I've
5 had this blocked out. Now, I don't ever have it blocked out like some of the
6 other judges have done over the years, which is I still book smaller cases
7 behind it because these things -- it doesn't matter whether you say firm or if
8 you don't say firm; something always happens. But I can see absolutely
9 nothing that would prevent us from trying this on the first week in June, can
10 you?

11 MR. SCISCENTO: No.

12 MR. FIGLER: No, Your Honor.

13 THE COURT: How often would you think these status checks are
14 appropriate?

15 MR. GUYMON: At the rate we're going, Judge, I'd say every two
16 weeks. I don't mean to be flip with the Court, but honestly at some point in
17 time, I think the Court needs the assurances and the State needs the
18 assurances that we're going to hold a firm setting.

19 THE COURT: All right. Let's set this for the first week in June. This
20 is June the 5th. The calendar call is what?

21 THE CLERK: May 30th.

22 THE COURT: All right. Let's talk about motions. Despite the
23 expectations that we had, you filed a lot more motions than you had
24 anticipated. Have you now filed all of them?

25

1 MR. SCISCENTO: I can't say for sure, Your Honor, that we have.
2 Again, going through --

3 THE COURT: When are you going to know -- when are you going to
4 be able to reliably have all your motions in? I know now you're going to be
5 litigating some of these other five or six murder cases that you have.

6 MR. SCISCENTO: Well --

7 THE COURT: I don't -- I'm not saying be unreasonable. Give me a
8 time --

9 MR. SCISCENTO: If we have --

10 THE COURT: -- well in advance of the trial date that you can have all
11 your motions in.

12 MR. SCISCENTO: Assuming, Your Honor -- you know, I'm viewing the
13 motions as legal point; I mean the facts of the case. I don't know about the
14 DNA testing or anything like that, if we have to make motions according to
15 that. But probably reviewing the transcripts of the trials and the police
16 reports, maybe two more months I would know if I have any more motions
17 to suppress, motions to exclude, motions in limine, anything to that effect, I
18 think would be enough.

19 THE COURT: All right. So, first of all, are you doing all the legal work,
20 Mr. Daskas?

21 MR. DASKAS: Judge, we divide it, but I handle most of the motions.

22 THE COURT: He just dazzles the jury or --

23 MR. DASKAS: We divide the motions.

24 THE COURT: So who's going to be answering the raft of motions that
25

1 have already been filed?
2 MR. DASKAS: We already did, Judge.
3 THE COURT: Oh. They haven't been filed yet.
4 MR. DASKAS: Yeah. I believe we filed 22 of 23 responses.
5 THE COURT: Okay.
6 MR. DASKAS: I think just the suppression motion is the last one.
7 THE COURT: I want a reply -- I don't want to mean to say that I won't
8 take it as serious unless I see a reply, but it's very likely with this amount
9 that sincerity will be implied to some degree by a reply. I'll give you until the
10 end of January to file a reply in support of any motions that you choose to,
11 Mr. Figler. I think you filed almost all of these, didn't you?
12 MR. FIGLER: That's correct, Your Honor. Mr. Sciscento did file some
13 too.
14 THE COURT: Okay. Both of you will have until the end of January to
15 file replies in support of these.
16 THE CLERK: January 31st.
17 THE COURT: Okay. And let's have a date the middle of February for
18 our first status check and a decision on all the motions currently on file on a
19 Thursday.
20 THE CLERK: Okay. That date will be February 17th at 9:00 a.m.
21 MR. SCISCENTO: So the 27th is vacated, Your Honor, the hearing on
22 the 27th?
23 THE COURT: Yes.
24 MR. SCISCENTO: Do you want to leave that as a status -- well --
25

1 THE COURT: February what?
2 MR. FIGLER: February 17th.
3 THE CLERK: 17th or do you want the 24th?
4 THE COURT: The 17th is fine. February the 17th for a status check.
5 Now -- relative to this?
6 MR. GUYMON: Yeah, I did have one question, Judge. That was I
7 think you indicated the Werth and Pradera case is set for May 8th?
8 THE COURT: That's what my thing says. Is that an error?
9 MR. GUYMON: No, it's not an error. That's a case I'm very, very
10 familiar with, Judge. Let me ask you just is there a way that we could have
11 this case on May and set over Werth and Pradera until the June date?
12 THE COURT: Who's involved in it? I don't remember.
13 MR. GUYMON: I can tell you that it is the Special Public Defender's
14 office as to one client, I think.
15 THE CLERK: And Bill Terry for the other.
16 MR. GUYMON: Bill Terry as to the other.
17 THE COURT: The problem is that he then has his Webb trial the week
18 after. He would have to vacate the Webb trial because he couldn't possibly
19 do it.
20 MR. GUYMON: Actually, you know what? It's the Public Defender's
21 office. My mistake. It was Phil Kohn's case.
22 THE COURT: I don't think there would be any problem with them
23 vacating it because it's been vacated before, but he has the Webb trial on
24 5/19 and that would leave him no time in between.
25

1 MR. GUYMON: Is Webb likely to go?

2 MR. FIGLER: Vicki just left. I could represent to the Court that there
3 hasn't been any talk of negotiations in that case yet.

4 THE COURT: All right. Let's leave this date in June. Now, when -- do
5 you need a couple of months to get your motions in?

6 MR. SCISCENTO: Again, just reviewing the facts, I'm not going to say
7 there's any motions done, but --

8 THE COURT: All right. Let's do this. We will set a final drop-dead
9 date for motions when we come back on the 17th of February. You'll know
10 better by then what's going on.

11 Yes, Robert?

12 MR. DASKAS: Judge, there was one additional motion to suppress
13 they filed. We have not yet filed an opposition.

14 THE COURT: Does it require an evidentiary hearing in --

15 MR. DASKAS: It will.

16 THE COURT: -- your opinion and that's --

17 MR. DASKAS: Yes.

18 THE COURT: -- why you haven't?

19 MR. SCISCENTO: Yes.

20 MR. DASKAS: Yes, Judge.

21 THE COURT: Which one is that?

22 MR. SCISCENTO: Motion to suppress I believe.

23 THE COURT: Which -- about where on the page here? Oh, you don't
24 have a calendar? What's its title, motion to suppress?

25

1 MR. FIGLER: Yeah.

2 MR. DASKAS: Judge, it may not be on this calendar because they
3 filed it after these 22 or 23 motions were filed. We received it, the motion
4 to suppress, about one week later.

5 THE COURT: Okay. I'll pull it out and --

6 MR. FIGLER: It's on here, Your Honor. It's that one right there, I
7 believe, about six --

8 THE COURT: Where is it about?

9 MR. FIGLER: Six lines from the bottom on the --

10 MR. DASKAS: Defendant's motion to suppress evidence.

11 THE COURT: And what evidence is that?

12 MR. FIGLER: That would be the pants.

13 THE COURT: And what were the -- what is your understanding of
14 where they were seized?

15 MR. DASKAS: They were seized from the -- what we call the Everman
16 residence, inside of a bedroom.

17 THE COURT: That's the one that's -- Charla testified they were living
18 at?

19 MR. DASKAS: That's correct, Judge. They were staying there, yes.

20 THE COURT: And how many witnesses do you think you're going to
21 need for that?

22 MR. DASKAS: For the suppression hearing, I would say just one.

23 THE COURT: One?

24 MR. DASKAS: Yes.
25

1 THE COURT: Is this ready for the hearing?
2 MR. DASKAS: Judge, possibly two witnesses. I apologize.
3 THE COURT: Is this ready for hearing? Do you think it's going to
4 require any witnesses from you?
5 MR. SCISCENTO: Probably one or two.
6 THE COURT: One or two? How about January the 6th at --
7 MR. DASKAS: And, Judge, what I meant to say was we haven't filed
8 a written opposition yet. I can have it filed --
9 THE COURT: Because you want to do it after you hear the evidence,
10 right?
11 MR. DASKAS: That's fine, Judge.
12 THE COURT: How about 10:45 on January the 6th?
13 MR. DASKAS: That's fine, Judge.
14 THE COURT: All right. And if we have to go into the lunch hour a
15 little bit, we'll just finish it before we go to lunch.
16 MR. FIGLER: So we're going to have an evidentiary hearing on that
17 prior to their filing an opposition?
18 THE COURT: Right. Right. Then they can file if they wish to based
19 on the facts, and you'll have a chance to reply. And then we'll make a
20 decision on that other date.
21 MR. FIGLER: Great.
22 ///
23 ///
24 ///
25

1 THE COURT: Okay. Thank you. Motion to continue granted obviously
2 if it wasn't clear from the record for anything else.

3 (Whereupon the proceedings concluded.)

4 * * * *

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

7 Jeri Anderson
8 JERI ANDERSON,
9 COURT TRANSCRIBER

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FILED

1 Donte Johnson #1586283
 2 defendant
 3 ~VS~
 4 State of Nevada
 5 Plaintiff

Dec 29 8 34 AM '99
 Case NO. C158154
 Clerk Shirley M. Bergman
 Dept NO. _____
 CLERK
 Docket H

11 RECEIVED
 12 DEC 28 1999
 13 COUNTY CLERK

14 Memorandum To
 15 The Court

16 Comes Now the defendant, Donte Johnson, by and through this Memorandum to
 17 the court, giving rise and making record of defendants request to Special Publi-
 18 c Defenders, Dayvid Figler and, Joseph S. Sciscento, to file the following motions:
 19 (A. Motion to allow the defense to argue Last at the penalty phase).

20 In people VS Bandhaver 66 Cal. 2d 524 530-531 (1967) The court stated: Equal oppor-
 21 tunity to argue is....consistent with the Legislatures strict neutrality in
 22 governing the jury's choice of penalty accordingly, hereafter the prosecution should
 23 be the first to open and the defense respond. The prosecution may then argue in
 24 rebuttal and the defense close in surrebuttal.

25 (B. Motion in Limine to prohibit introduction at trial of uncorroborated accomp-
 26 lice Testimony).

27 Defendant, Donte Johnson, asserts that at this point it is unknown whether the testimony of

1 any alleged accomplice at the defendants trial will be used. IF this does not occur, the
2 instant motion is moot. Therefore, the defendant, Donte, request that this motion
3 be filed to persue an order to the prosecution to reveal any such testimony and/or accomplice
4 & and to prohibit the state from introducing at trial any uncorroborated accomplice
5 testimony.

6 (C. Motion to provide counsel with a list of jurors in advance of trial)
7 wherefore the failure to order the disclosure would violat defendants right to due process,
8 to present a defense, to fair trial, to fair and impartial jury, compulsory process, confrontation
9 of witness him, Effective assistance of counsel and, unvers against cruel and unusual
10 punishment under the fifth, sixth, and eighth, and fourteenth Amendments of the
11 U.S.C. and article one section eight of the Nevada constitution.

12 (D. Motion to require prosecutor to state reasons for Exercising preemptory challenges)
13 wherefore, the failure to require the prosecutor to state reasons for his challenges would
14 violate Defendants rights to due process, to present a defense, to a fair trial, fair and
15 impartial jury, compulsory process, confrontation of a witness against him, effective
16 assistance of counsel, and against cruel and unusual punishment under the fifth,
17 sixth, eighth, and fourteenth Amendments to the United States constitution and
18 article one sections three and eight of the Nevada constitution.

19 (E. Motion to prohibit the prosecution from arguing and the court from giving
20 Instructions Regarding Statutory Mitagating Factors Not Raised by the Defense)
21 NRS 200.033 and 200.035/Maggard -VS- State 399.50 2d 873 (FIA 1981) certiorari denied
22 454 U.S. 1059 (1981) The Florida Supreme court held that the trial court erred in allowing the
23 state to present evidence of past criminal activity.

24 (F. Motion to preclude the District Attorney From improperly quantifying the
25 Definition of Reasonable Doubt)

26 It is respectfully requested that this motion be filed to preclude the prosecutor from
27 attempting to quantify the concept of reasonable doubt for the jury at any stage of

the proceedings, including, but not limited to closing arguments. Reasonable doubt is a subjective state of near certitude. McCullough -VS- State, 99 Nev. 62, 75, 657, p.2d 1157, 1158 (1993). However, when prosecutors attempt to phrase (rephrase) the reasonable doubt standard, they venture into troubled waters. Howard -VS- State, 106 Nev. 713, 721, 800 P.2d 175, 180 (1990). See also, Wesley -VS- State, 112 Nev. 503, 916 P.2d, 793 (1996).

(G. Motion in limine to prohibit any references to the First Phase as "The Guilt Phase")

The terms "evidentiary stage," ~~trial~~ "Trial stage, or the fact finding stage," would be appropriate. "Guilt Phase" makes no more sense than referring to the trial as the "innocence Phase." Article one, section eight, of the Nevada constitution, as well as the Fifth Amendment, also the sixth and fourteenth Amendments to the United States Constitution, guarantee every criminal defendant the right to a fair trial.

(H. Motion for in-camera review of all pre-sentence Reports)

The pre-sentence reports of any State witness should be examined by the court for exculpatory and/or impeaching information. If the reports contain such information, it should be disclosed to the Defendant consistent with due process clause of the Fifth Amendment to the constitution of the United States of America.

(I. Motion in Limine to Prohibit or Preclude admission of Photo's)

This motion need be filed to preclude the admission of any photographs whose probative value is outweighed by prejudicial impact and any photographs not relevant or duplications. It is requested that such a hearing be held prior to trial or outside the presence of the jury before the photos are offered into evidence. It is well established that where the prejudicial effect of photographs outweigh their probative value, they should not be admitted. Caylor -VS- State 353 So2d. 8 (ALA CR. APP. 1977) see also, Commonwealth -VS- Sacramuizzino 317 A.2d

225, 226 (PA. 1974) "Photograph of a wound on the back of the ear with the hair pulled away." Too prejudicial! State VS. Clawson 270 S.E. 2d 659, 671 (W. VA. 1980) (citing cases); Accord: McCullough - VS - State 341 (ILL. APP. CT 1983); Brown - VS - State 302 S.E. 2d 347 (GA. 1983); Commonwealth - VS - Richmond. 358 N. E. 2d 999, 1001 (Mass. 1976); State - VS - Childers 536 P2d 1349, 1354 (Kan. 1975); People - VS - Burn 241 P2d 308, 318 (Cal. APP. 1952).

Submitted Respectfully
Donte Johnson
Donte Johnson

Special Public Defenders
Joseph S. Sciscento
and
David Tigler

Dated: 12-22-99

MOT
WOLFSON & GLASS
Jay L. Siegel, Esq.
Nevada State Bar No. 4748
601 South 7th Street
(702) 385-7227
Las Vegas, Nevada 89101
Attorney for Defendant

ORIGINAL FILED

JAN 11 1 41 PM '00

Shirley B. Ruppel
CLERK

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

DANTE JOHNSON, aka John White,
ID# 1586283,

Defendant.

Case No. :C153154
Dept. No. :V

**MOTION FOR OWN RECOGNIZANCE RELEASE
OF MATERIAL WITNESS CHARLA SEVERS**

COMES NOW, the material witness, CHARLA SEVERS, by and through her attorney of record JAY L. SIEGEL, ESQ., and moves this honorable court for an own recognizance release in lieu of house arrest. This motion is made and based upon the attached Affidavit of Jay L. Siegel, the papers and pleadings on file herein, together with the arguments of counsel to be heard at the time of the hearing on this matter.

DATED this 10th day of January, 2000.

WOLFSON & GLASS

By

Jay L. Siegel
JAY L. SIEGEL, ESQ.
Nevada State Bar No. 4748
601 South 7th Street
Las Vegas, Nevada 89101
Attorney for Charla Severs

RECEIVED
JAN 1 26 2000
CLERK
CMC

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff; and
TO: STEWART BELL, Clark County District Attorney

YOU AND EACH OF YOU will please take notice that a **MOTION FOR OWN
RECOGNIZANCE RELEASE OF MATERIAL WITNESS CHARLA SEVERS** will come on for
hearing before the above-entitled Court on the 18 day of Jan, 2000, at the
hour of 9 a.m. in Department #V.

DATED this 10 day of January, 2000.

By. 

JAY L. SIEGEL, ESQ.
Nevada State Bar No. 4748
601 South 7th Street
Las Vegas, Nevada 89101
Attorney for Material Witness Severs

POINTS AND AUTHORITIES

N.R.S. 174.175 (2) states:

If a witness is committed for failure to give bail to appear to
testify at a trial or hearing, the court on written motion of the witness
and upon notice to the parties may direct that his deposition be
taken. After the deposition has been subscribed the court may
discharge the witness.

Further, N.R.S. 174.215 addresses the use of a deposition at a trial. This section states in pertinent
part:

1. At the trial or upon any hearing, a part or all of a
deposition, so far as otherwise admissible under the rules of
evidence, may be used if it appears:

(a) That the witness is dead;

(b) That the witness is out of the State of
Nevada, unless it appears that the absence of the
witness was procured by the party offering the
deposition;

1 (c) That the witness cannot attend or
testify because of sickness or infirmity;

2 (d) That the witness has become of
3 unsound mind; or

4 (e) That the party offering the deposition
5 could not procure the attendance of the witness by
subpoena.

6 On October 26, 1999, the deposition of the material witness, CHARLA SEVERS, was taken
7 as ordered by this Court. Subsequently, this Court issued a sealed release order on October 29,
8 1999, ordering Ms. Severs to be held under house arrest, and to contact the District Attorney's
9 Office three (3) times per week as directed by the District Attorney. Since that time, Ms. Severs has
10 complied with all requirements of this court and appeared to testify at an evidentiary hearing on
11 January 6, 2000. Ms. Severs has also kept in contact with Counsel during this time period as well.

12 Therefore, due to the compliance of Ms. Severs with the orders of this Court, as well as the
13 videotaped deposition taken on October 26, 1999, Counsel respectfully requests that this Court
14 rescind the house arrest order issued on October 29, 2000, and grant her an own recognizance
15 release.

16 DATED this 10 day of January, 2000.

17 WOLFSON & GLASS

18 By

19 JAY L. SIEGEL, ESQ.

20 Nevada State Bar No. 4748

21 601 South 7th Street

22 Las Vegas, Nevada 89101

23 Attorney for Material Witness Severs

AFFIDAVIT OF JAY L. SIEGEL

STATE OF NEVADA)
COUNTY OF CLARK) ss:

JAY L. SIEGEL, ESQ., being first duly sworn, deposes and says:

1. That I am a licensed attorney practicing law in the State of Nevada and that I represent the material witness, CHARLA SEVERS, in the above-entitled case.

2. That I have personal knowledge of the facts contained in this Affidavit and am competent to testify as to those facts.

3. That the material witness, CHARLA SEVERS, was released on house arrest on October 29, 1999, with the condition that she maintain contact with the District Attorney's Office at least three (3) times per week, at times predetermined by the District Attorney's Office.

4. That material witness, CHARLA SEVERS, has appeared in court as required, and kept in contact with the District Attorney's Office and Counsel in this matter, and currently has a status check set for January 11, 2000.

5. That material witness, CHARLA SEVERS, respectfully requests that the house arrest be terminated, and that she be granted an own recognizance release.

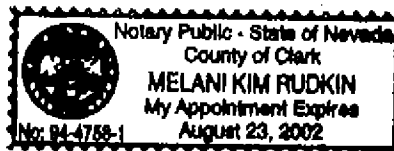
6. That she is not a flight risk, and has cooperated fully with all necessary agencies and this Court.

FURTHER, your affiant sayeth not.

JAY L. SIEGEL

SUBSCRIBED AND SWORN to before me
this 10 day of January, 2000.

NOTARY PUBLIC, in and for said
County and State



1 ROC

2 WOLFSON & GLASS

3 Jay L. Siegel, Esq.

4 Nevada State Bar No. 4748

5 601 South 7th Street

6 (702) 385-7227

7 Las Vegas, Nevada 89101

8 Attorney for Defendant

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA,)

12 Plaintiff,)

13 vs.)

14 DANTE JOHNSON, aka John White,)
15 ID# 1586283,)

16 Defendant.)

17 Case No. :C153154

18 Dept. No. :V

19 RECEIPT OF COPY

20 RECEIPT OF A COPY of the foregoing MOTION FOR OWN RECOGNIZANCE RELEASE

21 OF MATERIAL WITNESS CHARLA SEVERS, is hereby acknowledged this _____ day

22 of _____, 2000.

23 _____
24 DISTRICT ATTORNEY

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ROC
WOLFSON & GLASS
Jay L. Siegel, Esq.
Nevada State Bar No. 4748
601 South 7th Street
(702) 385-7227
Las Vegas, Nevada 89101
Attorney for Defendant

ORIGINAL
FILED

JAN 11 2 03 PM '00

Shirley D. Thompson
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
DANTE JOHNSON, aka John White,)
ID# 1586283,)
)
Defendant.)
_____)

Case No. :C153154
Dept. No. :V

RECEIPT OF COPY

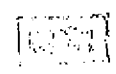
RECEIPT OF A COPY of the foregoing MOTION FOR OWN RECOGNIZANCE RELEASE
OF MATERIAL WITNESS CHARLA SEVERS, is hereby acknowledged this 11th day
of January, 2000.

Lemi Elliott
SPECIAL PUBLIC DEFENDER

RECEIVED

JAN 11 9 00 AM

CLERK



FILED

JAN 12 2 43 PM '00

Shirley S. Higgins
CLERK

ROC
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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DANTE JOHNSON, aka John White,
ID# 1586283,

Defendant.

Case No. :C153154
Dept. No. :V

RECEIPT OF COPY

RECEIPT OF A COPY of the foregoing MOTION FOR OWN RECOGNIZANCE RELEASE
OF MATERIAL WITNESS CHARLA SEVERS, is hereby acknowledged this 12 day
of Jan, 2000.

Teresa Schmidt
DISTRICT ATTORNEY

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DISTRICT COURT
Shirley L. Panagiotou
CLARK COUNTY, NEVADA CLERK.

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6 THE STATE OF NEVADA,)

7 Plaintiff,

CASE NO. C153154

8 vs.

DEPT. NO. V

9 DONTÉ JOHNSON, aka
10 JOHN LEE WHITE,

11 Defendant.

12 BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT JUDGE

13 THURSDAY, JANUARY 6, 2000

14 RECORDER'S TRANSCRIPT RE:
15 DEFENDANT'S MOTIONS

16 APPEARANCES:

17 For the State:

ROBERT DASKAS, ESQ.
Deputy District Attorney

18
19 GARY GUYMON, ESQ.
Deputy District Attorney

20
21 For the Defendant:

DAYVID FIGLER, ESQ.
Special Public Defender

22
23 JOSEPH SCISCENTO, ESQ.

24
25 Recorded by: DEBRA VAN BLARICOM
Court Transcriber

COUNTY CLERK

JAN 12 2000

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I N D E X
O F
W I T N E S S E S

**State's
Witnesses**

	Direct	Cross	Redirect	Recross
THOWSEN, Thomas	5	18	41	50
HEFNER, Ken	50	71	78	79

**Defendant's
Witnesses**

	Direct	Cross	Redirect	Recross
SEVERS, Charolette	82	88	96	--
JOHNSON, Donte	101	103	--	--

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OF
EXHIBITS

State's Exhibits	Identified	Admitted
1 Consent to search card	43	43

1 THURSDAY, JANUARY 6, 2000; 10:45 A.M.

2
3 THE COURT: State versus Donte Johnson. How many witnesses do
4 you guys anticipate?

5 MR. DASKAS: Judge, we have three witnesses and I'm not sure how
6 many the defense plans on calling.

7 THE COURT: Do you have any?

8 MR. SCISCENTO: At least one.

9 THE COURT: All right. Let's go.

10 MR. SCISCENTO: Your Honor, I don't know how this Court wants us to
11 proceed. I think that we have -- we're on the record?

12 THE COURT: Yeah.

13 MR. SCISCENTO: Okay. We have made the motion that Mr. Johnson
14 had an expectation of privacy as to the master bedroom --

15 THE COURT: Was it warrantless?

16 MR. SCISCENTO: I'm sorry?

17 THE COURT: Was it a warrantless search?

18 MR. SCISCENTO: A warrantless search.

19 THE COURT: Oh, they have the burden so they can call witnesses.

20 MR. SCISCENTO: So -- and I'm assuming that you're going to place
21 the burden on them to go first.

22 THE COURT: That's the law. Go ahead.

23 MR. SCISCENTO: Your Honor, we'd ask also to invoke the
24 exclusionary rule on this.

1 THE COURT: It'll be invoked. The exclusionary rule is in effect.

2 MR. SCISCENTO: And then also, your Honor, let also put a objection
3 on, a continuing objection as to hearsay as to the statement of Tod
4 Armstrong, BJ Hart and -- BJ Armstrong and Ace Hart. I understand that
5 they are going to rely upon the statements. I object as to the truth of the
6 matters of those statements. I understand that it goes to the knowledge
7 that the detectives had at the time that they interviewed him. I would allow
8 the statements to come in under that but as to the truth of the matter, I'm
9 objecting to that.

10 THE COURT: What are the statements? What would they say?

11 MR. SCISCENTO: Well, the statements would be whether or not
12 Johnson, Mr. Johnson lived there, whether or not he paid rent, whether or
13 not he had guns in there or things to that matter.

14 But what I'm objecting to is whether or not it's truthful, the
15 truthfulness of it? I understand that we have to show whether they had
16 knowledge and I'm asking, not that it be a truthful statement, we're
17 objecting that -- the truth of the matter, but understand it goes towards the
18 detective's knowledge at the time that they did the search.

19 THE COURT: Right. Okay. Call your first witness.

20 MR. DASKAS: State calls Detective Tom Thowsen.

21 **THOMAS THOWSEN**

22 having been called as a witness by the State, being first duly sworn, testified
23 as follows:

24 THE CLERK: Please state your name and spell your last name for the
25

1 record.

2 THE WITNESS: Thomas D. Thowsen, T-h-o-w-s-e-n.

3 MR. DASKAS: May I proceed, Judge?

4 THE COURT: Sure.

5 MR. DASKAS: Thank you, Judge.

6 **DIRECT EXAMINATION**

7 **BY MR. DASKAS:**

8 Q Mr. Thowsen, you're employed by the Las Vegas Metropolitan
9 Police Department, is that correct?

10 A Yes, sir, that's correct.

11 Q What's your job title?

12 A I'm a homicide detective.

13 Q How long have you been a homicide detective with Metro?

14 A Approximately eight years.

15 Q And how many years in total have you been employed by the
16 Metropolitan Police Department here in Las Vegas?

17 A Approximately 22 ½ years.

18 Q Prior to becoming a homicide detective eight years ago what
19 was your assignment with Metro?

20 A I was a robbery detective.

21 Q Let me direct your attention to the 14th day of August, 1998,
22 did you become involved in a homicide investigation that occurred at a
23 residence on 4825 Terra Linda here in Las Vegas, Clark County, Nevada?

24 A Yes, I did.

25

1 Q At some point did your investigation lead you to another address
2 at 4815 Everman here in Las Vegas, Clark County, Nevada?

3 A Yes, it did.

4 Q And what information, briefly, did you learn that led you to the
5 Everman residence since the homicide occurred at Terra Linda?

6 A I learned that there was an individual named Tod Armstrong that
7 lived at that location and that Mr. Armstrong had some knowledge of the
8 homicide and who the suspects were and where they could be located.

9 Q Do you recall the date on which you responded to that Everman
10 address at 4815 Everman?

11 A That would have been on the 18th.

12 Q Do you recall what time that was?

13 A I believe it was around 3:00 in the morning.

14 Q Okay. So, sometime around 3:00 a.m. on August 18th of '98
15 you respond to the Everman household?

16 A Yes.

17 Q And the information you had learned up to that point was that
18 Tod Armstrong lived in the Everman household?

19 A Yes.

20 Q Who had you spoken to prior to the 18th that led you to that
21 belief that Tod Armstrong lived at Everman?

22 A Tod Armstrong, Ace Hart and Bryan Johnson.

23 Q Did all three of those individuals tell you consistent information
24 about who lived at the Everman address?

25

1 A As far as Tod Armstrong?

2 Q Yes.

3 A Yes.

4 Q Did you learn whether anybody other than Tod Armstrong lived
5 at the Everman household?

6 A I learned that in the past Ace Hart had lived there up until about
7 a week and a half or two weeks prior to the date of our statement. And, I
8 also learned that there was some other people that would come and visit the
9 house occasionally.

10 Q When you responded to the Everman household at 3:30 a.m.
11 on August 18th some suspects were arrested, is that correct?

12 A Some suspects were taken into custody for questioning at that
13 point.

14 Q Okay. Do you see any of those individuals in court today?

15 A Yes, I do.

16 Q First of all tell me the name of the person you see in court who
17 was taken into custody on August 18th at the Everman household.

18 A Donte Johnson.

19 Q And do you see Donte Johnson in court?

20 A Yes, I do.

21 Q Would you please point to Mr. Johnson and describe something
22 he's wearing as he sits in court today?

23 A He's the gentleman wearing the blue shirt sitting at the defense
24 table with no tie.

25

1 MR. DASKAS: Judge, would the reflect the witness has identified the
2 defendant?

3 THE COURT: Yes.

4 MR. DASKAS: Thank you, Judge.

5 You mentioned that you actually spoke personally with Tod
6 Armstrong prior to August 18th, was anybody else present during that
7 conversation?

8 THE WITNESS: Yes.

9 Q (By Mr. Daskas) Who else was present?

10 A Detective Buczek.

11 Q And where did that conversation with Tod Armstrong take
12 place?

13 A At the Las Vegas Metropolitan Homicide office located on West
14 Charleston.

15 Q And did you specifically ask Tod Armstrong questions about
16 who owned the Everman residence?

17 A Yes.

18 Q Do you recall Tod Armstrong's responses to those questions?

19 A Yes.

20 Q What was his response?

21 A Basically, it was that his mother owned the property. She lived
22 in Hawaii and that he lived there.

23 Q In other words, Tod told you that Tod's mother owned the
24 residence on Everman?

25

1 A That's correct.
2 Q And Tod told you that Tod, however, lived at the Everman
3 residence?
4 A Yes.
5 Q Do you recall the name of Tod Armstrong's mother?
6 A Not off the top of my head.
7 Q Okay. Did you ask Tod Armstrong about whether he had a key
8 to that residence on Everman?
9 A Yes.
10 Q And what his response?
11 A He said that he had the only key to the residence.
12 Q At some point did he either provide you or at least show you the
13 key to the household?
14 A Not me, personally, no.
15 Q Do you know if he chose somebody else or provided the key to
16 somebody else with Metro?
17 A Sergeant Hefner.
18 Q When you talked with Tod Armstrong did Donte Johnson's
19 name ever come up in that conversation?
20 A Yes, it did.
21 Q Did Tod Armstrong mention to you that Donte Johnson had any
22 relation or any nexus to that Everman household?
23 A He said that he would sometimes come over.
24 Q In other words, Tod told you that Donte Johnson would
25

1 sometimes come over to the Everman household?

2 A That's correct.

3 Q Did Tod ever tell you that Donte Johnson paid rent at the
4 Everman household?

5 A No, he did not.

6 Q And let me see if I can clarify that, I apologize. Did Tod tell you
7 that Donte did not pay rent or did Tod Armstrong not even mention whether
8 Donte paid rent?

9 A Yes. At some point in our conversation with Tod on that
10 evening we specifically asked him if Donte Johnson paid rent at that location
11 and he said that he did not pay rent.

12 Q Okay.

13 THE COURT: Mr. Daskas --

14 MR. DASKAS: Yes.

15 THE COURT: -- this is a case where we're having this hearing and then
16 you're going to file points and authorities. So I can follow it easier, I take it
17 the State's position, at least at this point, is going to involve standing, are
18 there other things?

19 MR. DASKAS: Actually, Judge, the argument is really twofold.
20 Number one, is that Tod Armstrong had common authority over the premises
21 at Everman and so --

22 THE COURT: So, it's going to be both consent and --

23 MR. DASKAS: Yes, Judge.

24 THE COURT: -- lack of standing?
25

1 MR. DASKAS: And, thirdly, Judge, and just as importantly as that
2 even if Tod Armstrong didn't have the actual authority, certainly they could
3 rely on his apparent authority to search that house.

4 THE COURT: Those are the three?

5 MR. DASKAS: Yes, Judge.

6 THE COURT: Okay. Go ahead.

7 MR. DASKAS: Thank you, Judge.

8 You mentioned that Tod Armstrong said he had the only key to
9 the residence, is that right?

10 THE WITNESS: That's right.

11 Q (By Mr. Daskas) Did Tod tell you how it was that Donte
12 Johnson would come into the residence since he did not have a key?

13 A There was a window that they would use.

14 MR. SCISCENTO: Your Honor, I'm going to object to this. I'd ask the
15 District Attorney to refer specifically to the statement that Tod Armstrong
16 gives, the date and time --

17 THE COURT: What would be the objection, though?

18 MR. SCISCENTO: My objection is I don't believe that Mr. -- unless he
19 can show me that Mr. or Detective Thowsen was present at the hearing,
20 there were numerous times that Mr. Armstrong was interviewed. There was
21 one time when Detective Hefner and Detective Buczek were present and I
22 think Detective Thowsen is referring to those statements and, if such, I don't
23 think he has personal knowledge as to that. If they can direct me as to
24 where this statement was and you can show me that in fact Detective
25

1 Thowsen was present when this was said. He's referring to the statements
2 that Tod Armstrong gives.

3 THE COURT: Whether it was told to him or whether he actually heard
4 it, isn't there always collective knowledge in research situations?

5 MR. SCISCENTO: Well, then I would ask him or I direct -- ask you to
6 direct the District Attorney to lay some foundation as to how he gained
7 knowledge of this?

8 THE COURT: Okay. Go ahead, Mr. Daskas.

9 MR. DASKAS: Thank you, Judge.

10 Detective, my question to you was you learned from Tod
11 Armstrong that Tod had the only key to the residence, is that correct?

12 THE WITNESS: That's correct.

13 Q (By Mr. Daskas) Did you, personally, speak with Tod or hear
14 Tod tell somebody else about how Donte Johnson could gain access to the
15 Everman house since Donte didn't have a key?

16 MR. SCISCENTO: I'm going to object it as leading.

17 THE COURT: Overruled.

18 THE WITNESS: Because I've talked to Tod several different times and
19 read several different statements numerous times over the past two years to
20 refresh my memory. To see exactly where it was I heard it, I'd have to look
21 at a report.

22 Q (By Mr. Daskas) And my question isn't tell me the date and the
23 time that he told you this statement, my question is did Tod tell you how it
24 was that Donte Johnson could gain access to the Everman household since
25

1 Donte did not have a key?

2 A Yes.

3 Q What did Tod tell you about that?

4 MR. SCISCENTO: Your Honor, I'm going to object to this then because
5 I don't think there is proper foundation, what we're focusing on is the
6 knowledge --

7 THE COURT: But that's the question that Bob asked him, if he can
8 answer it, he can answer it, and you can pursue it on cross-examination.

9 MR. SCISCENTO: What I'm saying, though, your Honor, is I don't
10 know if at the time of the 18th we have to know the knowledge that they
11 had.

12 THE COURT: Right.

13 MR. SCISCENTO: And if they were directed to get some foundation as
14 to whether he had knowledge on the 18th --

15 THE COURT: Oh, maybe it was brought and I didn't hear it. Okay.

16 Q (By Mr. Daskas) Okay. And let me be very clear about this,
17 detective. What we're talking about is information you had prior to entering
18 or searching the Everman household, what information you had prior to
19 August 18th at 3:30 in the morning, you understand that?

20 A Yes.

21 Q Okay. And the question I just asked you that you were about to
22 answer, was that information you had gathered from Tod Armstrong prior to
23 August 18th at 3:30 in the morning?

24 A Yes, it was.

25

1 Q And what information did Tod tell you about Donte's ability to
2 access the Everman household since Donte did not have a key to the house?

3 A That he would have to climb in a window.

4 Q All right. Did Tod tell you anything specifically about the
5 window that enabled Donte to climb through that window at the Everman
6 household?

7 A As I recall, it was a window that was not able to be secured.

8 Q All right. Did Tod Armstrong tell you anything about whether
9 Donte Johnson kept any of his personal belongings in the Everman
10 residence?

11 A I believe that he did.

12 Q And did you learn information from Tod Armstrong about what
13 room specifically Donte Johnson may have kept some of his belongings in
14 the Everman residence?

15 A As I recall there were two areas, a living room area and a master
16 bedroom area.

17 Q Did Tod Armstrong ever indicate to you that the door to the
18 master bedroom remained locked when Donte was not in the master
19 bedroom?

20 A Not that I recall, no.

21 Q You mentioned that yourself and Detective Buczek was present
22 when Tod Armstrong conveyed this information to you, is that accurate?

23 A Yes.

24 Q Did you then pass on the information you learned from Tod
25

1 about the Everman household to somebody else at Metro?

2 A Yes.

3 Q And to whom did you pass that information?

4 A My direct supervisor, Sergeant Ken Hefner.

5 Q And was that prior to, in other words did you pass on that
6 information to Sergeant Hefner prior to August 18th at 3:30 a.m.?

7 A Yes.

8 Q Did Tod Armstrong ever tell you any information that led you to
9 believe Donte Johnson lived at the Everman household on a permanent
10 basis?

11 A No.

12 Q Did Tod Armstrong ever tell you any information to lead you to
13 believe that Donte Johnson lived in the Everman household on a temporary
14 basis?

15 A Not that he lived there at all, that he would just show up
16 sometimes.

17 Q Okay. Did you then actually go to the Everman household on
18 August 18th sometime around 3:30 a.m.?

19 A Yes.

20 Q And you mentioned that you saw Donte Johnson outside that
21 residence?

22 A Yes.

23 Q Okay. Were you present when Sergeant Hefner questioned
24 Donte Johnson about his living arrangement at the Everman household?
25

1 A Yes, I was.
2 Q And where did that occur?
3 A That occurred on the curb just around the corner from the
4 Everman house.
5 Q And Donte Johnson wasn't outside I take it?
6 A He was outside sitting on a curb.
7 Q Was anybody else, other than yourself and Sergeant Hefner
8 present in that general area?
9 A Detective Buczek and there was a patrolman whom I don't
10 know who it was.
11 Q Okay. Was anybody else present that had been taken out of the
12 Everman residence?
13 A Yes.
14 Q Who?
15 A Dwain Anderson and Charolette Severs.
16 Q Now, what was it that Sergeant Hefner asked of Donte Johnson
17 or the other two individuals regarding their living arrangements at the
18 Everman household?
19 A He asked them specifically if they lived there.
20 Q And do you recall the response of Donte Johnson?
21 A Yes.
22 Q What was Donte Johnson's response to the question about
23 whether Donte Johnson lived in the Everman residence?
24 A He said that he did not.
25

1 Q And you, personally, heard Donte Johnson say that?
2 A Yes, I did.
3 Q Did Sergeant Hefner ask the other two individuals the same
4 question?
5 A Yes, he did.
6 Q And what was Charolette Severs' response to Sergeant Hefner's
7 question about whether she lived at the Everman residence?
8 A She said that she did not live there.
9 Q And what about the third individual, Dwain Anderson?
10 A Dwain Anderson said that he did not live there also.
11 MR. DASKAS: I'll pass the witness, Judge.
12 THE COURT: Thank you. Cross?

13 **CROSS-EXAMINATION**

14 **BY MR. SCISCENTO:**

15 Q Detective Thowsen, let me ask you, on the 18th at 3:00 in the
16 morning you went over to 4815 Everman house --
17 A Yes.
18 Q -- the residence over there? What was your purpose in going
19 over there?
20 A We had SWAT meet us over there to determine if anybody was
21 inside the residence in a safe manner.
22 Q Who did you expect to find over there?
23 A We expect to find Donte Johnson.
24 Q Did you expect to find some guns in there?
25

1 A Yes.

2 Q And you guys went over there with the specific purpose of
3 putting Mr. Johnson in custody and searching the house?

4 A At least interviewing him at that point, yes.

5 Q And searching the house, is that correct?

6 A Yes.

7 Q And you had a consent to search by Tod Armstrong?

8 A That's correct.

9 Q Okay. So, with -- your purpose of going over there was, in fact,
10 to search the house, correct?

11 A That's correct.

12 Q And if Donte Johnson would have told you at that point that he
13 owned the house would you have stopped, or that he lived in the house and
14 had a expectation of privacy as to the bedroom, would you have stopped the
15 search?

16 A Absolutely.

17 Q Absolutely? With all those people over there you had no -- you
18 would have just stopped the search at that point?

19 A Yes.

20 Q Okay. Mr. Johnson was placed in handcuffs, is that correct?

21 A In flex cuffs, originally, yes.

22 Q And he was out on the curb?

23 A That's correct.

24 Q And during this time there were other people from the
25

1 Metropolitan Police Department which were inside the house, is that correct?

2 A That's correct. SWAT was going through the house to make
3 sure there were no other persons inside.

4 Q So, in fact, they were in the house searching already?

5 A No, they were not. They were making sure that the house was
6 clear and safe.

7 Q Well, they were searching for people, right?

8 A For safety reasons only, not searching for evidence.

9 Q You were present when Ace Hart was interviewed, is that
10 correct?

11 A Yes.

12 Q And that was on 8/17 and 1825 hours, is that correct?

13 A There were several different times that I spoke to him, there
14 was I think an earlier time that Sergeant Hefner was with Detective Buczek,
15 so I believe at that time, yes, I was present.

16 Q Okay. And that was probably six or seven hours prior to you
17 going over to the Everman residence, correct?

18 A That's correct.

19 Q And at that time do you remember making a statement or -- you
20 or Detective Buczek making a statement to Ace Hart which said: Okay.
21 Um, did there come a time when you met some people that eventually
22 moved into the house with you? Remember making that statement?

23 A I didn't believe I made that; or, I believe, Detective Buczek may
24 have asked that question.

25

1 Q Were you present when that statement was made?
2 A Yes.
3 Q And you heard the response?
4 A Yes.
5 Q And the response by Ace Hart was? Do you recall what the
6 response was?
7 A Not word for word --
8 Q Okay.
9 A -- without looking at.
10 Q If I may approach, your Honor. If I may -- thank you. Let me
11 just show you (indicating).
12 A The response is: Yeah.
13 Q Okay. So, the question that you asked of Detective Buczek
14 was: Okay. Um, did there come a time when you, you met some people
15 that eventually moved into the house with you? And Ace Hart's response
16 was: Yeah.
17 A That's correct.
18 Q And the house that you were speaking of was 4815 Everman --
19 A That's correct.
20 Q -- is that correct?
21 A Yes.
22 Q Further, on page 5 of that same statement there was a
23 question: All right. Um, could you tell me what happened when they moved
24 in? Do you remember that? You remember that statement -- question? If I
25

1 may approach?

2 A Yes.

3 Q Okay. And when you're talking about when -- can you tell me
4 what happened when they moved in, can you explain to me who they is?

5 A I would have to look prior in that statement to see exactly who
6 is being mentioned.

7 Q Do you want to review that?

8 A Okay.

9 Q That's 1825.

10 A He's referring to a person known as Deko, who I know as Donte
11 Johnson.

12 Q Okay. So, when you're referring to they moved into the house,
13 you're referring to Donte Johnson?

14 A When Detective Buczek is referring to it --

15 Q Yes.

16 A -- that's what he's saying.

17 Q Okay. And this -- how long prior to you arriving on the 18th do
18 you have knowledge of when Donte Johnson lived in that house or was
19 residing in that house?

20 MR. DASKAS: Well, Judge, I'll object to that characterization.

21 MR. SCISCENTO: All right. Let me rephrase that, I know where you're
22 going.

23 MR. DASKAS: Well, if I might, Judge. The answer wasn't that they
24 lived there but that they moved to the house.

25

1 Q (By Mr. Sciscento) Did you gain knowledge of how long Donte
2 Johnson, prior to the 18th, was in that house? I mean the first time he
3 showed up.

4 A As I recall, and I don't recall there's so many of these
5 statements, from one of these statements it was that he first started
6 showing up around there about a month ago as I recall.

7 Q A month prior to the 18th?

8 A Yes.

9 Q And did you gain information that Donte Johnson would sleep
10 there?

11 A Occasionally, yes.

12 Q And would sleep in the master bedroom?

13 A I don't specifically remember that aspect of it.

14 Q Do you remember asking Tod Armstrong on 8/17 around the
15 hour of 1935 or prior to that, in a statement where you're present with
16 Detective Buczek, there was a question: Uh, is there -- is there some other
17 people that are living there with you? Do you remember what Tod
18 Armstrong's answer was?

19 A Again, I'd have to see the specific statement because there was
20 so many here.

21 Q And I'm going to refer to page 3.

22 A What was the question again, please?

23 Q Do you remember there was a question either by you or
24 Detective Buczek which said is there some other people that are living there
25

1 with you?

2 A Yes.

3 Q And do you remember Tod Armstrong's answer? If you want to
4 refresh your recollection, you can read (indicating).

5 A Off and on. They weren't really living -- off and on, yes.
6 Staying there. They weren't really living there, but they'd come in and out
7 of the house.

8 Q Okay. And is -- your next question, either you or Detective
9 Buczek was: Okay?

10 A Okay.

11 Q And then Tod Armstrong's answer to that was?

12 A Something that couldn't be understood, then it says: Day -- I
13 guess considered living there.

14 Q Okay. And he said -- the next question was: Okay. So, they'd
15 come and go as they please? And the answer was --

16 A Pretty much.

17 Q Okay. And the next question was: Okay. And who are they?
18 The answer is?

19 A Um, Deko and Red.

20 Q Okay. Deko, we understand, is Donte Johnson?

21 A Yes.

22 Q So, at that point Tod Armstrong indicates to you that there were
23 some people that he considered living there?

24 MR. DASKAS: Well, and again, Judge, I'll object to that
25

1 characterization that's not what the statement says.

2 MR. SCISCENTO: Well, the statement does say: Blank day, I guess
3 considered living there.

4 THE COURT: I'll let him ask in that form.

5 Q (By Mr. Sciscento) Is that correct?

6 A That's not my understanding from our total conversation with
7 Tod Armstrong, no.

8 Q Okay. Your question to him, though: Is there some other
9 people that are living there with you? And his answer is: On -- off and on,
10 yes, staying there. And I'll complete it: They weren't really living there but
11 they'd come and go out of the house. Is that correct?

12 A That's correct. But that was Detective Buczek's question again.

13 Q And you were present when this was --

14 A Yes, I was.

15 Q Do you know how many bedrooms were in the Everman house?

16 A I was only in there briefly, I believe it was a two bedroom home
17 as I recall.

18 Q Court's indulgence. Do you know if, in fact, there were three
19 bedrooms there?

20 A Like I said, I was in there just very briefly.

21 Q Do you know what statement that Tod made on that day -- on
22 page 14, I'm referring to -- on 8/17 that says: I don't know. I really don't.
23 I just go into my room or in Ace's room pretty much, now, 'cause my room
24 is flooded with water 'cause his bed is still, you know, you can lay on -- I

25

1 just go in my room and just nothing. I don't know. I don't want to know.
2 Do you remember Tod Armstrong making that statement?

3 A I would need you to refresh my memory with the statement, if
4 you wouldn't mind?

5 Q (Provides statement)

6 A That's correct.

7 Q Okay. Now, let's put this in perspective. Basically, the
8 question I guess from you, is TT, is you Tom Thowsen?

9 A That's me.

10 Q Do you know how they get around that night? And I'm
11 assuming you're saying Deko and Red? How they got around that night?

12 A Yes.

13 Q Okay. And Tod's answer was: I don't know. I really don't. I
14 just go in my room or in Ace's room pretty much now, 'cause my room is
15 flooded with water 'cause his bed is still, you know, you can lay on -- I just
16 go in my room and just uh, nothing. I don't know. I don't want to know.

17 Did Tod Armstrong ever indicate to you that he never stayed in
18 or that he didn't stay in the master bedroom, but he stayed in another
19 bedroom?

20 A I don't believe it was ever made clear in my mind whether his
21 room was the master bedroom or a different room.

22 Q Didn't you state earlier that the master bedroom was the one
23 where Deko or Donte Johnson stayed?

24 A I said that's where he could be found at times was in the master
25

1 bedroom or found in the living room.

2 Q Okay. So, he could be found in the master bedroom. And who
3 told you that?

4 A I believe it was Tod.

5 Q And that was told to you prior to the 18th at 3:00 in the
6 morning?

7 A Yes, sir, that's correct.

8 Q After you had this information you went over with the SWAT --
9 you were present when the SWAT arrived at 4815 Everman?

10 A Yes.

11 Q Okay. And your purpose was to secure the house and to search
12 the house?

13 A Yes.

14 Q Did you ever attempt to secure a search warrant for the house?

15 A No, I did not.

16 Q This was at 3:00 in the morning?

17 A Yes.

18 Q Have you ever in your years as a detective or as a police officer
19 ever secured a search warrant in the middle of the night?

20 A Yes, often.

21 Q Sometimes 1:00 or 2:00 in the morning?

22 A Yes.

23 Q Sometimes 3:00 in the morning?

24 A Yes.

25

1 Q And how do you go about doing that?
2 A More recently it's done over the telephone with a telephonic
3 search warrant, it's very easily obtained.
4 Q And how long does that take?
5 A About an hour.
6 Q You first gained this information on the 18th that Deko, also
7 known as Donte Johnson, may be present at the 4815 Everman residence,
8 you obtained that information about seven hours prior to going to the
9 residence?
10 A Yes.
11 Q And when you got to the residence was anybody outside?
12 A Initially?
13 Q Initially, when you first arrived?
14 A Just the SWAT officers that had the place surrounded.
15 Q Okay. All right. And people were inside the house?
16 A We didn't know at first until the people came out of the house.
17 Q Eventually, you learned that people were inside the house?
18 A Yes.
19 Q And that was Dwain Anderson, Charolette Severs and Donte
20 Johnson?
21 A Yes, sir, that's correct.
22 Q Did you do the initial search of the house?
23 A No, I did not.
24 Q Do you know who did?
25

1 A Sergeant Hefner. And that was only after confirming from Mr.
2 Johnson that he did not live there.

3 Q I'm sorry, your Honor. Let me ask you, there was a second time
4 that Tod Armstrong was interviewed on -- let me ask you this, at 8/17 you
5 mentioned something that Tod Armstrong told you there was a key? And
6 you said that he gave you that statement on 8/17, am I correct?

7 A That would be correct, yes.

8 Q Okay. Can you please -- and I'm showing you 8/17 in a
9 interview with Tod Armstrong -- the ending hour is 1935. I don't really see
10 beginning hour here. But can you show me in here where it says that Tod
11 Armstrong had the only key? That would be on 8/17.

12 MR. DASKAS: And I'll object to the characterization, Judge. I don't
13 believe the testimony was there was a recorded statement necessarily but
14 that he learned information from Tod Armstrong that Tod had the only key to
15 the residence.

16 THE COURT: We'll just let him answer it.

17 MR. DASKAS: Thank you, Judge.

18 THE WITNESS: That's absolutely true. These are merely taped state-
19 ments that we take from the individuals after having lengthy conversations
20 and trying to find out what they know. Everything that we glean from them
21 does not always get reflected back when we refer back to the taped
22 statement.

23 Q (By Mr. Sciscento) Okay. Well, can you show me if anywhere
24 in that statement it says that Tod Armstrong said that it was the only key.

25

1 That he had the only key.

2 A In this particular statement?

3 Q Yes.

4 THE WITNESS: Do you want me to read through this 21 page
5 statement now, your Honor?

6 THE COURT: Do you want to just agree that it's not in this or do you
7 know?

8 MR. GUYMON: Judge, we'll stipulate that I was not part of the taped
9 conversation.

10 THE COURT: Fine, fine. Thank you.

11 Q (By Mr. Sciscento) Prior, on 8/17/98, what information did you
12 have to where Mr. Donte Johnson may be residing?

13 A I didn't know where he was residing, I just knew where he was
14 supposed to be on that particular day.

15 Q Did anybody give you information that he was living in some
16 other residence, other than 4815 Everman?

17 A Not that I recall.

18 Q Did anybody give you any information that he may be found at
19 some apartment?

20 A No.

21 Q Did he give you any information that you could find him sleeping
22 on the side of a road somewhere?

23 A No.

24 Q Did they give you any information on that date, that 8/17/98 he
25

1 was living in some hotel room?

2 A No.

3 Q So, the only information that you had is that he most likely will
4 be found at 4815 Everman, correct?

5 A That's where they knew he was on that particular day.

6 Q Okay. And, basically, the reason they knew that is because Mr.
7 Armstrong had been there, I'm sorry, Mr. Johnson had been there for the
8 previous three weeks to a month?

9 MR. DASKAS: Objection, Judge, calls for speculation about what
10 those people knew.

11 MR. SCISCENTO: I'm asking what he --

12 THE COURT: I'm just going to let him answer.

13 THE WITNESS: That was based on as far as -- I understand that that's
14 where Mr. Johnson was when they left him there at the house that day.

15 Q (By Mr. Sciscento) Were you present when BJ Armstrong, I'm
16 sorry, when BJ gave a statement?

17 A Bryan Johnson?

18 Q Bryan Johnson?

19 A Yes, sir.

20 Q You were present?

21 A I believe so, yes.

22 Q Okay. It doesn't reflect that you were there, it was Detective
23 Buczek.

24 A I think if you look in there I think you see the TT portion where
25

1 it's -- my question is being asked and he just did not mention my name when
2 he started the tape.

3 Q Okay. So, on 8/17/98 at 2100 hours when the statement with
4 Bryan Christopher Johnson was made and it does reflect to -- that you were
5 present there?

6 A Yes, sir.

7 Q And this is a clerical mistake that your name wasn't there?

8 A Yes, sir.

9 Q Okay. In there that you heard the statements given by Bryan
10 Christopher Johnson?

11 A Yes, sir.

12 Q And there was a question -- you'll refer to page 2 -- okay, that
13 was given I'm assuming either by Detective Buczek or yourself that said:
14 Okay. And would that be during the time period where uh, uh, Deko and
15 Red were staying and Bryan Christopher Johnson's answer was yes sir. You
16 remember that?

17 A Might I refresh my memory?

18 Q Yeah.

19 A (Reviewing statement) That's correct. That's with the question
20 posed by Detective Buczek --

21 Q Okay.

22 A -- unless there a TT it would be Detective Buczek.

23 Q Okay.

24 THE COURT: Excuse me. David is Chip still out there?
25

1 MR. FIGLER: Yes, he is. He's going to stay, your Honor.
2 THE COURT: Maybe right after cross we can resolve why he would be
3 here.
4 Chip, you're just here to check on the status of Carla?
5 MR. SIEGEL: Yeah.
6 THE COURT: And she's here, right? Isn't she your third witness?
7 MR. DASKAS: She's here, Judge.
8 MR. SCISCENTO: I called Mr. Siegel indicating that we were going to
9 probably put Miss Severs on.
10 THE COURT: Oh, she's going to be your witness? Is that the one
11 witness you're talking about?
12 MR. SCISCENTO: Yes, yes.
13 THE COURT: Oh, okay.
14 MR. SCISCENTO: And I just let him know that, if he wanted to be
15 present during that.
16 MR. SIEGEL: Honoring her subpoenas, ready to appear.
17 THE COURT: Why don't you -- we can't hear you on the record for
18 this. Let's resolve -- she was supposed to be around the 4th and then that --
19 we didn't have a calendar that day. She's been in contact with you?
20 MR. DASKAS: Yes, Judge.
21 THE COURT: Okay. Let's just continue things the way they are with
22 her and so Chip can get out of here and just order that she be here in
23 addition on the calendar call on this case.
24 MR. SIEGEL: Is she still going to be subject to house arrest? That's
25

1 what she's on now.

2 THE COURT: Unless you file a motion, yeah.

3 MR. SIEGEL: Then it's my understanding you guys are calling her?

4 MR. SCISCENTO: Yes, we --

5 MR. SIEGEL: I don't know if I even need to be here for meeting
6 purposes.

7 MR. SCISCENTO: We talked to him about this. I talked to Mr. Siegel
8 about this indicating that because he represents Miss Severs he may want to
9 be present during the time that we cross-examine her.

10 MR. SIEGEL: Yeah, I don't know what for, I have no idea what --

11 THE COURT: It's up to you. And she's going to be your witness
12 (indicating), so she's not one of yours (indicating)?

13 MR. GUYMON: We do not plan on calling her, Judge.

14 THE COURT: Who are your witnesses?

15 MR. DASKAS: Actually, it'll just be Detective Thowsen and Sergeant
16 Hefner, Judge.

17 THE COURT: Oh, because I thought you had said three. So -- okay.
18 So, maybe another 20 minutes.

19 You're almost through, right Joe?

20 MR. SCISCENTO: Pretty much; yes, your Honor. I think a couple of
21 more questions.

22 THE COURT: Go ahead.

23 Q (By Mr. Sciscento) Let me refer back to Bryan Christopher
24 Johnson's statement on 8/17 at 2100 hours. There's a question posed:

25

1 Okay. Have you been over to Tod's house in the past -- page 2 -- is that
2 correct? And that was posed to BJ or Bryan Christopher Johnson?

3 A Yes.

4 Q Okay. And his answer was?

5 A A couple of times briefly, not for an extended period of time.

6 Q And the next question was, apparently from Detective Buczek
7 was?

8 A Okay. And would that be during the time period where uh, uh,
9 Deko and Red were staying there?

10 Q And the answer was?

11 A Yes, sir.

12 Q So, Bryan Christopher Johnson indicates on 8/17/98 at 2100
13 hours that Donte Johnson was staying at that residence, 4815 Everman, is
14 that correct?

15 A Based on that, yes.

16 Q Yes. And that was -- that information was given to you prior to
17 you going to the residence at 4815 Everman?

18 A Yes, it was.

19 Q In your years as a detective when you go to arrest or place
20 somebody in custody is it your belief that the people placed in custody
21 always give truthful answers?

22 A No.

23 Q So they, in fact, sometimes lie?

24 A Yes.

25

1 Q Most of the times they lie to cover up a crime they've
2 committed?

3 A Yes.

4 Q Okay. So, when Donte Johnson told you I don't live at this
5 house, you were assuming he was telling you the truth?

6 A Yes.

7 Q Why is that?

8 A Because we posed the question directly to him, that we weren't
9 asking him if he committed a crime only if lived there or not.

10 Q Okay. But if there was fruits of a crime inside there you expect,
11 on your knowledge as a police officer, you would expect these people to lie
12 to you?

13 MR. DASKAS: Objection, calls for speculation, Judge.

14 THE COURT: Overruled.

15 Q (By Mr. Sciscento) You would expect them to lie to you about
16 information?

17 A I can't guess what they're going to say on any given point.

18 Q Okay. But it's -- consider it human nature to try to hide a crime,
19 is that correct?

20 A I'd say that would be fair.

21 Q So, if he's telling you he doesn't live there so that you don't
22 apply the evidence you find in there to him, that may just be a lie to cover
23 up the fact that he was committing a crime?

24 A I guess that's one of the possibilities.
25

1 Q There's no --

2 THE COURT: Which, if any, of the weapons found in the search is
3 alleged to be the murder weapon?

4 MR. DASKAS: None of them, Judge.

5 THE COURT: These are in the bag, the satchel bag or the cloth bag
6 supposedly?

7 MR. DASKAS: Yes, Judge. And actually Sergeant Hefner can clarify
8 what was found in what room of that house, Judge, but none of those were
9 the murder weapon.

10 THE COURT: But the murder weapon was found somewhere else?

11 MR. DASKAS: The murder weapon has not been found, Judge.

12 THE COURT: I see. Okay.

13 Q (By Mr. Sciscento) There was information given to you on
14 8/17/98 that you may be locating a duffle bag containing weapons, is that
15 correct?

16 A That's correct.

17 Q And they told you that the duffle bag belonged to either Red or
18 Deko, that being Donte Johnson?

19 A Yes.

20 Q And that was given to you by Tod Armstrong?

21 A Yes, I believe so.

22 Q And he indicated to you that that would be found in the master
23 bedroom, correct? Is that correct?

24 A I don't recall specifically without referring.
25

1 Q BJ, I'm sorry, Ace Hart also indicated to you that he had viewed
2 a duffle bag containing weapons, is that correct?

3 A That's correct.

4 Q And he indicated that those duffle bags belonged to either Red
5 or Deko?

6 A As I recall, yes.

7 Q That being Donte Johnson?

8 A Yes.

9 Q And he indicated to you that they could be found inside the
10 master bedroom?

11 A Again, I'd need to refer to the statement because there are so
12 many.

13 Q If I could have the Court's indulgence for one moment, your
14 Honor?

15 Let me ask you, when you arrived there, when you arrived at
16 the house, that being at 4815 Everman at 3:00 in the morning, three people
17 are placed into custody, correct? Let me rephrase that, they were placed
18 into handcuffs?

19 A They were placed in flex cuffs, yes, sir.

20 Q Which is, basically, handcuffs; they weren't -- their hands
21 weren't free to --

22 A They were restrained, yes.

23 Q And they were placed on the curb --

24 A Yes.

25

1 Q -- in front of the house?
2 A Actually, it was around the corner on the adjacent street.
3 Q Okay. And during this time a SWAT team was inside the
4 house?
5 A Yes.
6 Q Okay. And was anybody else inside the house, other than
7 members of the SWAT team?
8 A Just the SWAT team.
9 Q Okay. And they were looking for?
10 A Any other persons that might be hiding in there.
11 Q Was there any audio tape of the statements that Mr. Johnson
12 gave regarding whether or not he lived in the house?
13 A No.
14 Q Was there any written statements that Donte Johnson gave
15 regarding whether or not he lived in the house?
16 A Only the written documentation done by Sergeant Hefner at the
17 time.
18 Q Who else present -- and the three people in handcuffs you said
19 were Dwain Anderson, Charolette Severs and Donte Johnson?
20 A Yes, sir.
21 Q Okay. And they were within earshot of each other?
22 A Yes.
23 Q And were probably a foot away from each other sitting on the
24 curb?
25

1 A Fair to say.

2 Q And when these questions were posed to them, they could all
3 hear the questions, assuming that they could hear?

4 A Yes.

5 Q Because they were close enough within earshot?

6 A Yes.

7 Q Who else was present when that statement is made that Donte
8 Johnson did not live in the house?

9 A I was present, Detective Buczek, Sergeant Hefner who was
10 asking the question and an unknown patrol officer.

11 Q Who else was present at the time of the search, other than the
12 members of the SWAT team? Other than the members that you just
13 mentioned, that being Detective Hefner, Detective Buczek, yourself, a patrol
14 officer I think you said and the SWAT team; was anybody else present?

15 A For the search of the house?

16 Q At that moment when you were talking to Donte Johnson, Carla
17 Severs or Dwain Anderson?

18 A At the moment that Sergeant Hefner was asking them that
19 question --

20 Q Yes.

21 A -- the SWAT team was still clearing the house making sure there
22 was nobody inside.

23 Q Okay. And the other -- the only other people present to hear
24 that conversation was Detective Buczek, yourself, detective --

25

1 A Sergeant Hefner.

2 Q -- Sergeant Hefner and you said a patrol officer?

3 A Yes, sir.

4 Q And anybody else?

5 A No, not that I recall.

6 THE COURT: The people in restraint were in an area where they could
7 have heard each other's answers?

8 THE WITNESS: That's correct. Yes, Your Honor.

9 Q (By Mr. Sciscento) And how far away from the front door were
10 these people placed, that being Donte Johnson, on the curb?

11 A It was a pretty good distance because the SWAT team had
12 actually taken them out front, put them in flex cuffs and put them around
13 the corner to a place where if there would have been somebody inside that
14 would have engaged with firearms these people would not have been in
15 danger. So, it was around the corner.

16 MR. SCISCENTO: No further questions, your Honor.

17 THE COURT: Any redirect?

18 MR. DASKAS: Yes, Judge. Thank you.

19 **REDIRECT EXAMINATION**

20 **BY MR. DASKAS:**

21 Q It's true, isn't it, that you did not obtain a search warrant for
22 4815 Everman?

23 A That's correct.

24 Q Why didn't you obtain the search warrant?

25

1 A Because we did not need one.

2 Q And --

3 MR. SCISCENTO: I would object to that, your Honor, that's a legal
4 conclusion.

5 THE COURT: Well, we'll make that legal conclusion one way or the
6 other later, I understand the purpose of the question. You were certainly
7 asking things like the expediency of getting one, I think it's at least a proper
8 question and a proper answer.

9 MR. DASKAS: Thank you, Judge.

10 THE COURT: I take it it's the beginning of something or are you going
11 to pursue it?

12 MR. DASKAS: That's correct, Judge.

13 You say you didn't need a search warrant and you say that
14 based on what?

15 THE WITNESS: Based on our conversations with Tod Armstrong and,
16 later, with Donte Johnson.

17 Q (By Mr. Daskas) And, in fact, Tod Armstrong gave consent to
18 search the Everman residence, is that correct?

19 A That's correct.

20 Q Is there some sort of a form that he signed that memorialized his
21 consent?

22 A Yes, he signed a consent to search card.

23 MR. DASKAS: May I approach the witness, Judge?

24 THE COURT: Sure.

25

1 MR. DASKAS: And let me show defense counsel --

2 THE COURT: And of course they refer to the consensual or alleged
3 consensual nature of it in their motion

4 MR. DASKAS: Judge, for the record I'm going to have a copy of that
5 consent to search card marked as State's Proposed Exhibit 1 for this
6 hearing. Judge, I've shown defense counsel what's been marked as State's
7 Proposed Exhibit 1.

8 And, detective, let me hand you what's been marked State's
9 Proposed Exhibit 1 and ask you if you recognize this document?

10 THE WITNESS: Yes. This is a Las Vegas Metropolitan Police
11 Department consent to search card dated 8/17/98, signed by Tod Armstrong
12 for the consent to search of 4815 Everman Street and witnessed by myself.

13 Q (By Mr. Daskas) And, again, this was signed by Tod Armstrong
14 sometime prior to August 18th at 3:30 in the morning?

15 A Yes, it was.

16 Q Is this a true and correct copy of the consent to search card
17 including Tod Armstrong's signature and the date that appears on that card?

18 A Yes, it is.

19 MR. DASKAS: Judge, I'd move for the admission of State's Proposed
20 1.

21 MR. SCISCENTO: No objection, your Honor.

22 THE COURT: Received.

23 MR. DASKAS: Thank you, Judge.

24 You were asked some questions about information you learned
25

1 from Tod Armstrong regarding the only key to residence, you recall those
2 questions?

3 THE WITNESS: Yes.

4 Q (By Mr. Daskas) And, in fact, defense counsel showed you a
5 transcript of a statement from Tod Armstrong dated August 17th and
6 established that that statement did not appear in the transcribed statement,
7 you recall that?

8 A Yes.

9 Q Despite the fact that there's nothing in the transcribed state-
10 ment from August 17th about the key, is it your testimony that you did learn
11 that information prior to August 18th at 3:30 in the morning?

12 A Yes.

13 Q In fact, you met with Tod Armstrong sometime after August
14 18th in Hawaii, is that correct?

15 A I did not. Detective Buczek and Sergeant Hefner met with him
16 in Hawaii.

17 Q Do you know if there was a conversation that was tape
18 recorded with Tod Armstrong during that meeting in Hawaii?

19 A Yes.

20 Q And have you reviewed that statement?

21 A Some time ago.

22 Q Do you know whether there was any discussion confirming the
23 information about the only key to the residence?

24 MR. SCISCENTO: Your Honor, I'm going to object to that, I think that
25

1 it calls for speculation as to whether they're confirming. Detective Thowsen
2 was not present there at that time. The question, the way it probably was
3 posed, is based on some knowledge that either Detective Hefner or
4 Detective Buczek, I think he was present there, had. I think he's going to
5 speculate as to that and, further, this was on 9/17.

6 MR. DASKAS: Judge, I'll clear it up with Sergeant Hefner.

7 THE COURT: Overruled.

8 MR. DASKAS: Thank you.

9 Had Donte Johnson told you that he actually lived in the
10 Everman residence when he was seated on the curb, what steps would you
11 have taken?

12 THE WITNESS: We would have obtained a search warrant prior to
13 searching the residence and Sergeant Hefner would have overseen that.
14 Detective Buczek and I would have continued on with what we were going
15 to do and interview the people that we had on the curb there.

16 Q (By Mr. Daskas) Is it common practice for a homicide detective
17 or sergeant with Metro to obtain search warrants?

18 A Yes, it is.

19 Q Fairly standard?

20 A Yes, it is. When needed, yes.

21 Q You were asked some questions about information you had
22 gleaned from Tod or, I'm sorry, from Ace Hart prior to August 18th, you
23 recall those questions?

24 A Yes.

25

1 Q Some of those conversations were tape recorded?

2 A Yes.

3 Q Do you recall Ace Hart's specific answer to a question about
4 who lived at the Everman residence? Do you recall Ace Hart's specific
5 answer?

6 A I believe his --

7 MR. SCISCENTO: Could I ask the District Attorney to refer me to --

8 MR. DASKAS: I apologize. Judge, I'm looking at page 2 of Ace Hart's
9 statement dated 8/17/98 at 1825 hours, page 2.

10 Do you recall Ace Hart being asked who lived at the Everman
11 residence?

12 THE WITNESS: Yes.

13 Q (By Mr. Daskas) And do you recall Ace Hart's answer?

14 A As I recall Ace said that it was Tod and Tod's girl friend.

15 Q Okay. And that would be reflected in the transcribed statement
16 of Ace Hart's conversation with yourself?

17 A Yes.

18 Q You were asked several questions about Tod Armstrong's
19 statements, those tape recorded statements, you recall some of those
20 questions?

21 A Yes.

22 Q At some point Tod Armstrong was asked whether people other
23 than Tod Armstrong lived at the Everman house, you recall those questions
24 of Tod Armstrong?

25

1 A Yes.

2 Q And you refer to various portions of that statement and Tod's
3 answer. Do you recall Tod's answer to the first time you asked him who,
4 other than Tod Armstrong lived at the Everman house?

5 A His first answer --

6 Q Yes.

7 A -- time wise?

8 Q Yes.

9 A I would need to refresh my memory with the statement.

10 Q And would it refresh your memory if I showed you that
11 statement?

12 A Yes, it would.

13 MR. DASKAS: Counsel, I'm referring to page 3 of Tod Armstrong's
14 statement, 8/17/98.

15 MR. SCISCENTO: 1825, page -- what page?

16 MR. DASKAS: Page 3.

17 And let me direct your attention, detective, about seven lines
18 down. I don't want you to read it out loud but tell me if you read the
19 answer that Tod gave to the question about who else was living there, does
20 that refresh your memory about what Tod said?

21 THE WITNESS: Yes.

22 Q (By Mr. Daskas) All right. Let me take that back. Now, if you'll
23 tell me what Tod said in response to the question about who, other than
24 Tod, lived at the Everman residence?

25

1 A He said they weren't really staying there, they were just coming
2 and going.

3 Q Okay. And he, Tod, was referring to Donte Johnson and Red?

4 A Yes.

5 Q Court's indulgence. Detective, what was the purpose of having
6 SWAT at the Everman household prior to searching the house for evidence?

7 A Because we were dealing with a quadruple homicide we felt
8 there was a great chance of danger and/or shots being fired by potential
9 suspects.

10 Q Was SWAT's purpose on August 18th at 3:30 in the morning at
11 the Everman house to search for items of evidence?

12 A Not at all.

13 Q You mentioned that they were there to clear the house and for
14 safety purposes, is that true?

15 A That's correct.

16 Q Can you tell us what steps they took to ensure that the house
17 was cleared and that nobody was in danger?

18 A Yes. First what they did after maintaining or setting up on the
19 house in various positions of safety and to their advantage, they called into
20 the house to order anybody inside to come out. After three people came
21 out, the SWAT officers put those people in flex cuffs to make sure that there
22 were no weapons and nobody would go for any weapons, then took them
23 around the corner to us. That the SWAT officers went tactically room to
24 room, clearing each room as they went looking for any armed suspect that
25

1 may be hiding in there.

2 Q Now, while SWAT was inside the residence at Everman where
3 were you located?

4 A Right around the corner on the side street.

5 Q Outside of the residence?

6 A Outside of the residence.

7 Q Where was Detective Buczek?

8 A Right next to me.

9 Q Outside the residence?

10 A Yes.

11 Q And where was Sergeant Hefner?

12 A Same place, outside the residence.

13 Q Once SWAT cleared and secured the Everman residence did
14 they convey that information to you or Detective Buczek or Sergeant Hefner?

15 A Yes, they did.

16 Q To whom did they convey information?

17 A To all of us.

18 Q In the meantime, had you heard Sergeant Hefner ask Donte
19 Johnson if he lived in the residence?

20 A Yes.

21 Q And his response was?

22 A No.

23 Q Was it at that point that Sergeant Hefner began to search the
24 residence?

25

1 A Yes.

2 MR. DASKAS: Nothing else, Judge. Thank you.

3 THE COURT: Anything further, Joe?

4 MR. SCISCENTO: Yes.

5 MR. FIGLER: I'm going to just do a brief follow up, if that's all right,
6 your Honor.

7 THE COURT: Yeah, but don't do this at trial.

8 **RECROSS-EXAMINATION**

9 **BY MR. FIGLER:**

10 Q Officer, I'm sorry, detective when you went over to the
11 Everman residence it was your intention to conduct a search at the Everman
12 residence, isn't that true?

13 A It was not my specific intent, it was the intent of the homicide
14 section to eventually search the residence but to also see if we could locate
15 Donte Johnson and any other suspects that might be there.

16 Q Okay. So, it is a fair characterization that it was the intention of
17 your division, homicide division, to search that residence when you went
18 over there?

19 A Yes, sir, that's correct.

20 Q Okay. And you also indicate that had Mr. Johnson stated that
21 he lived there that you would have sought a search warrant, is that correct?

22 A Yes, sir, that's correct.

23 Q That's your testimony?

24 A Yes, it is.

25

1 Q Okay. So, what you would have done at that point would be to
2 order all the SWAT people out of the house, everyone else out of the house
3 until you obtained that search warrant, is that your testimony?

4 A What the SWAT people would have done is they would not --
5 see the SWAT people are not searching for evidence, they are merely
6 clearing the residence for safety purposes to make sure that nobody is going
7 to come running out with a gun and shoot somebody that's standing outside
8 there. Once that is done the house would have been sealed by police
9 officers waiting on the outside. Detective Buczek and myself would have
10 gone with the three individuals to the detective bureau to interview them.
11 And Sergeant Hefner would have obtained a search warrant. And then once
12 he had the search warrant in hand would have gone back and done a search
13 of the residence.

14 Q Okay. So, that's quite a process, right, of what you would have
15 to do then if you decided that you were going to obtain a search warrant,
16 isn't that correct?

17 A That's what we normally do if we have to obtain a search
18 warrant, yes.

19 Q Okay. Now, in your experience as both detective and as officer,
20 you've interacted with the SWAT team before?

21 A Yes.

22 Q Okay. And it's true that the SWAT team has retrieved items out
23 of a house before pursuant to their entry, isn't that correct, items of
24 evidentiary value?
25

1 A Not that I ever seen, no.
2 Q You've never seen SWAT come out with anything at all?
3 A Absolutely not.
4 Q Okay. Not a gun, not a bag of contraband, nothing like that?
5 A Never when I've been there.
6 Q Okay. So, if they saw something like that what would they do?
7 MR. DASKAS: Objection, calls for speculation, Judge.
8 MR. FIGLER: Well, what's the process?
9 THE COURT: Don't ask what the procedure is, where's this leading
10 Dayvid?
11 MR. FIGLER: Well, I just want to just go into -- he says that he would
12 have sought a search warrant, I just want to know he would have gone
13 about doing it to see the reasonableness of it.
14 THE COURT: I think he's answered that. I think he's answered that.
15 You're now into this area of what the SWAT team might have done had they
16 seen something.
17 MR. FIGLER: Okay. I can move on.
18 Now, you said that you would have obtained a search warrant
19 had he said the simple word yes instead of no, that's your testimony?
20 THE WITNESS: That's correct.
21 Q (By Mr. Figler) Okay. Why is that?
22 A Because we want to make sure that we have all the bases
23 covered and if there's the slightest hint that he has standing there that is
24 reasonable then we'll get a search warrant. But after speaking to him
25

1 specifically and learning that he did not live there and after our interviews
2 specifically with Tod Armstrong, the person that truly lives in the house, and
3 verifying from him that Mr. Johnson did not live there, that he would merely
4 show up sometimes and hang out and he was too afraid to ask him to leave
5 because the guy had guns and talked about the things that he did to people.

6 Q Okay. Did you -- were you able, detective, to obtain information
7 from any of the people that you interviewed where Donte Johnson then was
8 staying?

9 A No.

10 Q If not the Everman house you didn't have any other information
11 of where his residence was, is that correct?

12 MR. DASKAS: Objection, asked and answered, Judge.

13 THE COURT: Certainly was the last line of questions by Joe, it's
14 exactly what you're now asking.

15 MR. FIGLER: Okay.

16 And you did -- it would be a fair characterization of your
17 testimony here today that you had at least conflicting evidence or
18 information with regard to who was and who wasn't residing in this house,
19 isn't that correct?

20 THE WITNESS: That's correct.

21 Q (By Mr. Figler) Final question, when you approached the
22 Everman residence you had in your hand this consent to search form that
23 was signed by Tod Armstrong, isn't that correct?

24 A Absolutely, yes, sir.
25

1 MR. FIGLER: Okay. I have no further questions.
2 THE COURT: Anything further?
3 MR. DASKAS: No, Judge. Thank you.
4 THE COURT: Thanks. You're excused. Call your next witness, please.
5 MR. GUYMON: Sergeant Hefner
6 THE WITNESS: May I leave this here for Sergeant Hefner, your Honor?
7 THE COURT: Sure.
8 MR. FIGLER: And this witness knows not to discuss testimony with --
9 THE COURT: I'll bet he does.
10 THE WITNESS: Yes, your Honor.
11 MR. FIGLER: Okay.

12 **KEN HEFNER**

13 having been called as a witness by the State, being first duly sworn, testified
14 as follows:

15 THE CLERK: Please state your name and spell your last name for the
16 record.

17 THE WITNESS: Ken Hefner, H-e-f-n-e-r.

18 THE COURT: Go ahead.

19 **DIRECT EXAMINATION**

20 **BY MR. GUYMON:**

21 Q Are you a sergeant with the Las Vegas Metropolitan Police
22 Department?

23 A Yes, I am.

24 Q And how long have you been a sergeant.
25

1 A Nine -- ten years now.

2 Q And can you tell us what division or bureau you're with
3 currently?

4 A I'm in the homicide section.

5 Q And how long have you been in the homicide section?

6 A Five years.

7 Q And prior to being in the homicide section where were you?

8 A I spent about four years in the robbery section, prior to that I
9 spent several years in property crimes.

10 Q And in total how long have you been with the Las Vegas
11 Metropolitan Police Department or law enforcement?

12 A This is my 20th year.

13 Q Now, then, directing your attention to August of 1998, did you
14 become involved in a quadruple homicide investigation?

15 A Yes.

16 Q Was this a homicide that occurred on August 14th, 1998, here
17 in Las Vegas, Clark County, Nevada?

18 A Yes.

19 Q As a result of your involvement did you gain information on the
20 17th during the late night hours of August, 1998, which brought you to the
21 address of 4815 Everman?

22 A Yes.

23 Q Now, can you tell me briefly was Detective Thowsen and
24 Buczek, detectives that worked under your supervision?

25

1 A Yes.

2 Q How many detectives in total work under your supervision?

3 A Right now, it's four.

4 Q And in August of 1998 how many was it?

5 A Four.

6 Q Was Detective Thowsen and Buczek specifically assigned to this

7 particular investigation, that is the homicide that occurred at the Terra Linda

8 residence?

9 A Yes.

10 Q And were you aware of the fact that they were conducting a

11 investigation relating to that quadruple homicide at the Terra Linda

12 residence?

13 A Yes.

14 Q Now, is it common for detectives who work under your

15 supervision to share information with you about their investigation?

16 A Yes.

17 Q Why is that?

18 A To keep me advised. To coordinate any other responses we

19 might want to bring to play, if we need more personnel, other resources, so

20 that I can monitor and evaluate the course of the investigation and supervise

21 it.

22 Q So, I take it by your answer you monitor and supervise

23 investigations?

24 A Yes.

25

1 Q Did you do that on the 17th of August, 1998?
2 A Yes.
3 Q All right. Now, then, taking you to the actual address of 4815
4 Everman did you, in fact, go to that particular address?
5 A Yes.
6 Q And why?
7 A We went there after interviewing several witnesses to hopefully
8 effect the arrest of several homicide suspects, including the defendant, and
9 perhaps to recover some property related to the crime that might be there.
10 Q Tell me specifically did you interview any persons associated
11 with this case on August 17th, 1998, prior to going to the Everman
12 residence?
13 A I did not participate in the interviews, no.
14 Q And do you have knowledge as to whether or not persons were
15 interviewed on the 17th prior to going to the Everman residence?
16 A Yes, I do.
17 Q All right. And who would have conducted those interviews?
18 A Detectives Thowsen and Buczek.
19 Q And they share the information that they receive from those
20 interviews to you --
21 A Yes.
22 Q -- or with you?
23 A Yes.
24 Q All right. Now, can you tell me what knowledge you had prior
25

1 to going to the Everman address on the late night -- I take -- was it the late
2 night hours of August 17th or was it the early morning hours of the 18th?

3 A It began the evening hours of the 17th and then carried on into
4 the early morning hours of the 18th.

5 Q Using the times and the dates of the 17th and 18th, can you tell
6 me what information you now have received from your detectives who you
7 supervise associated with this particular residence and what the purpose of
8 going there was?

9 MR. SCISCENTO: Your Honor, I'm going to object to this, it's hearsay
10 and cumulative. We had Detective Thowsen in here who's testified --

11 THE COURT: I take that it's going to be brief and it's collective, what
12 they told him, to his state of knowledge. Go ahead. Overruled.

13 THE WITNESS: We'd gathered information from several witnesses
14 regarding the identity of suspects that had been involved in the quadruple
15 homicide and a prospective possible current location for those individuals
16 staying in the house of Tod Armstrong and what evidence might perhaps be
17 in that house or in the surrounding area.

18 Q (By Mr. Guymon) Based on the information you had received
19 what was your belief as to who the owner of the house was?

20 A It was my belief, based on what I was told, and in a conversa-
21 tion with Tod Armstrong that the house belonged to Tod Armstrong's
22 mother. That he was living there, perhaps at that time with Ace Hart. He
23 provided me with a key to the residence. And when he gave me that key I
24 asked him if there were any other keys and he told me this was the one and
25

1 only key to the house.

2 MR. SCISCENTO: Your Honor, I'm going to object to this now as
3 hearsay.

4 THE COURT: Well, he was saying it as direct, overruled.

5 Q (By Mr. Guymon) Now, who told you that it was the one and
6 only key?

7 A Ace Hart, I'm sorry, Tod Armstrong.

8 Q All right. So, Tod Armstrong tells you that?

9 A Yes.

10 Q Was that an important piece of information to you?

11 A Yes.

12 Q Why?

13 A One, it established that perhaps the doors would not be locked
14 when we went up there. Two, it told me that nobody else would have
15 control or access to the house. Since he had the only key, if he left and
16 locked the doors, how would anybody else get in?

17 Q I might ask you was it important to you as to who the owner of
18 the house was and who was staying at the house?

19 A Yes. It solidified for me the information that his mom owned
20 the house but Tod was -- and she lived out of state -- Tod was the only one
21 here in this house -- in this city that had control and custody of the house
22 and the only key to the house, there were no other keys outstanding.

23 Q And tell me, based on the information you received, what was
24 your understanding as to who lived at that address on the date of the 17th
25

1 and 18th of August?

2 A Tod Armstrong and Ace Hart.

3 Q Now, then, was it important for you to determine who was
4 living at the house?

5 A Yes.

6 Q Why?

7 A Since the potential of recovering evidence was there if -- I
8 wanted to know exactly who had control of the house, who had access to
9 the house, perhaps who had any expectations there at the house and who
10 could give a valid consent to search the house.

11 Q Did you feel as though, based on the information you received,
12 that you learned who could give consent to search that house?

13 A Yes.

14 Q And who was it, based on the information you received as the
15 supervisor of this investigation, as to who could consent to search that
16 house?

17 A Tod Armstrong.

18 Q All right. Did you, in fact, receive consent to search that house?

19 A Yes.

20 Q Was that important to you?

21 A Yes.

22 Q Why?

23 A It allows us to proceed properly on a legal foundation and
24 footing to pursue our investigation and obtain evidence if it's there. It gives
25

1 us legal access to go to the house and allows us to perform our job.

2 Q And showing you what has been marked as State's Proposed
3 Exhibit 1, actually State's Exhibit 1, is this in fact a consent to search that
4 was signed by Tod Armstrong on the night in question?

5 A Yes.

6 Q All right. Now, with -- and were you aware of the fact that this
7 had been signed and the Las Vegas Metropolitan Police Department had
8 received this form and the consent of Tod Armstrong to search that house?

9 A Yes, I was aware of it.

10 Q Now, with consent to search that house and the form being
11 filled out by who you believed was the person that owned and lived at the
12 house, did you feel as though you needed a search warrant?

13 A No.

14 Q And tell me why?

15 A The person that could give valid consent did give a valid
16 voluntary consent to allow us to go to that house to potentially effect the
17 arrest of suspects that were there that we had probable cause to arrest and
18 to recover items in that house.

19 MR. SCISCENTO: Your Honor, I'm going to object to that, it calls for
20 legal speculation, I move to strike all of it.

21 THE COURT: Overruled.

22 Q (By Mr. Guymon) Now, let me ask you if you as a supervisor,
23 sergeant, believed that other persons lived at the house, what would you
24 have done?

25

1 A We have to take into account their interest and ultimately the
2 easiest way to deal with that is to get a search warrant.

3 Q Okay. Now, did you believe that anyone else lived at that house
4 when you approached the house on the 18th, I guess now of August, 1998?

5 A No.

6 Q All right. Were you satisfied that the detectives that you
7 supervised had been thorough in collecting the information associated with
8 who stayed at that house?

9 A Yes.

10 Q Can you tell me -- when you got to the house apparently SWAT
11 was there, is that correct?

12 A Yes.

13 Q All right. And what was the purpose of having SWAT there,
14 very briefly?

15 A To gain a tactical entry for safety purposes, to -- because of the
16 situation.

17 Q Were there safety concerns that you and your people had?

18 A Right. Safety concerns at the arrest of a homicide suspect or
19 suspects.

20 Q Now, then, when SWAT was there did they actually call either
21 into the house one way or another in order to get persons or people to come
22 out of the house?

23 A That's correct.

24 Q All right. And did persons come out of the house?
25

1 A Yes.

2 Q And how many?

3 A Three.

4 Q Do you know who those persons were?

5 A The defendant, Charolette Severs and a person who initially

6 identified himself as Willie Coleman who we later learned was Dwain

7 Anderson.

8 Q All right. And you say the defendant is he here in court today?

9 A Yes.

10 Q The person who walked out of the house?

11 A Yes.

12 Q Will you point to him, describe an article of clothing he's

13 wearing in court today?

14 A He's sitting to my right. He's wearing a blue jump suit from the

15 jail, he's got some handcuffs on his front.

16 MR. GUYMON: Record reflect the identification of the defendant, your

17 Honor.

18 THE COURT: It will.

19 MR. GUYMON: Thank you. Now, then, did you subsequently learn the

20 defendant's name on the night in question?

21 THE WITNESS: Yes.

22 Q (By Mr. Guymon) All right. And his name is Donte Johnson?

23 A Correct.

24 Q Now, then, did you have any information prior to going over to

25

1 the house that Donte Johnson lived at that residence?

2 A No.

3 Q Had you had that belief what would you have done?

4 A I would have gotten a search warrant.

5 Q All right. Now, did you have any conversation whatsoever with
6 Donte Johnson on the night in question?

7 A Yes.

8 Q And can you tell me how that came about?

9 A As the SWAT officers were making an announcement over the
10 public address speaker of their vehicle for anybody else to come out of the
11 house, all three of the people that were there sitting on the curb began to
12 chuckle. I then asked each one of these people, including the defendant --

13 MR. SCISCENTO: Your Honor, I'm going to object at this point and I'd
14 like to ask to take this sergeant on voir dire just to see whether or not my
15 client was placed in custody, whether or not he had the right to leave and
16 whether or not he was entitled to Miranda rights.

17 THE COURT: Pursue it in cross. Answer the question.

18 THE WITNESS: I asked all three of the people there if they lived in the
19 house and I asked each one individually and each one individually responded
20 to me in the negative that, no, they didn't live there.

21 Q (By Mr. Guymon) All right. Now, why would you ask Donte
22 Johnson if he lived at that house?

23 A Just -- I was double checking is about the best way to say it,
24 double checking just to make sure.

25

1 Q When you asked him do you live here, did you annunciate that
2 question clearly?
3 A Yes.
4 Q And did Donte Johnson respond?
5 A Yes.
6 Q And what was Donte's response?
7 A No.
8 Q Was his response clear to you?
9 A Yes.
10 Q Unequivocal?
11 A Yes. He responded promptly and clearly.
12 Q And his response was?
13 A No.
14 Q All right. Now, at that point in time was Donte Johnson under
15 arrest?
16 A He had been detained by the SWAT officers. He had been flex
17 cuffed behind his back. He had not been placed under arrest by us at that
18 point but he had been detained.
19 Q Okay. Did you ask Charolette Severs if she lived at that
20 residence?
21 A Yes.
22 Q And her response?
23 A She said no.
24 Q Did you ask Willie Coleman if he lived at that response --
25

1 A Yes.

2 Q -- that address?

3 A Yes and he also said no.

4 Q Now, then, when you asked the question of Donte Johnson

5 where was Charolette Severs and Willie Coleman in relationship to Donte

6 Johnson?

7 A They were all sitting beside each other on the curb, if not

8 shoulder to shoulder, practically shoulder to shoulder. They were all next to

9 each other.

10 Q And who did you ask the question to first?

11 A I can't recall. I can't recall which one first. I asked them one

12 right after the other there, spoke to them.

13 Q Now, had any of the three of them indicated that they lived at

14 that address?

15 A No.

16 Q What if they had? If Donte Johnson, Charolette Severs or Willie

17 Coleman said I live at this address, what if anything would you have done?

18 A I would have evaluated the situation with them, determine their

19 concerns and more than likely based on the situation we were involved in I

20 would have obtained a search warrant.

21 Q And why? If Donte Johnson says, yes, I live here, why would

22 you get a search warrant?

23 A About the only other way we could continue our investigation

24 with the eye of recovering that property would be with his consent. It's

25

1 been my experience that I -- with a defendant -- I would not want to go
2 through the battle of determining whether that consent was free and
3 voluntarily given, it's easier in the long run to just get a search warrant.

4 Q Okay. So, I take it by that answer that even if Donte Johnson
5 would have said, I consent; I live here but I'll consent to you searching it,
6 would you accept that consent?

7 A I would have gotten a search warrant.

8 Q Okay. And why is that?

9 THE COURT: He just said.

10 Q Okay. Let me move on then. What assurance, if any, did Donte
11 Johnson with the other two saying, no, they don't live there, provide for you
12 as you were going to now proceed?

13 A That that wasn't where they were living.

14 Q Can you tell me what information -- now, you indicated that
15 there was only one key to the house, can you tell me what information, if
16 any you had received regarding how others that weren't living there but
17 would visit the place would actually make entry into that residence?

18 A I learned that they made entrance often through the --

19 MR. SCISCENTO: I'm going to object to this, your Honor. Now I think
20 the information he's relating comes later on, 9/17, when they interview Tod
21 Armstrong. I don't think, unless he can specifically say on the 18th --

22 THE COURT: Well, let's put it in context of what he knew at that
23 point.

24 MR. GUYMON: My apologies, Judge.
25

1 As a foundation, on the August 17th, 1998, what information,
2 if any, did you have as to how others that would visit the residence would
3 actually get into the residence if there was only one key?

4 THE WITNESS: I didn't have any specific knowledge regarding that and
5 I can't recall as to exactly when I did learn later on regarding the window.

6 Q (By Mr. Guymon) Okay. Now, then, once the three persons
7 that walked out of the residence told you they didn't live there did you
8 proceed with a search of the residence based on Tod Armstrong's consent
9 to search that house?

10 A Yes.

11 Q And can you tell me who then searched the house, based on the
12 consent to search?

13 A Myself and Crime Scene Analyst Washington, I believe his
14 supervisor, Perkins, was there; primarily the three of us.

15 Q And did you find any items that you believe had evidentiary
16 value in this case in the house?

17 A Yes.

18 Q Can you tell us briefly what items of evidence you found and
19 where those items were located?

20 A In the living room area of the house I found a gym bag
21 containing a partial roll of duct tape and a VCR and a handgun adjacent to
22 the television and a pair of black jeans.

23 In the bedroom, which would be the back left bedroom of the
24 house I found several other pair of jeans, including one that contained or had

25

1 what appeared to be a bloodstain on it, a rifle and some shoes, I believe.

2 THE COURT: And when you say a bedroom are we talking the master
3 bedroom, what it looked to be?

4 THE WITNESS: It would -- yes, it would be the master bedroom in that
5 it had a bathroom attached.

6 THE COURT: Go ahead.

7 Q (By Mr. Guymon) Okay. And tell me did you find a duffle bag
8 at any point in time in this particular residence?

9 A Yes. That's what I referred to as the gym bag, it was in the
10 living room.

11 Q All right. Can you tell me -- you say that was in the living room
12 next to the master bedroom. Can you tell me how many other bedrooms, if
13 any, there were in this house?

14 A The house had three bedrooms.

15 Q Now, could you tell whether or not the three bedrooms were
16 lived in in any way or any manner?

17 A Yes.

18 Q All right. Describe what you mean by that.

19 A Well, the two bedrooms that weren't the master bedroom
20 appeared to be lived in in that they had beds, furniture, clothing, which we'd
21 normally expect to find in a bedroom. The master bedroom, however, did
22 not have any furniture, no bedding and the things that were in there were
23 just -- it looked kind of like a storage room or a junk room. The stuff was
24 just in there and some of it was in the middle of the floor, some of it was
25

1 pushed over in the corner and clothes kind of strewn about. It just looked
2 like a storage room or a junk room.

3 Q Was that significant to you?

4 A Yes.

5 MR. SCISCENTO: I'm going to object to this, your Honor, again; now I
6 think that we're referring to after the time of the search. Once they go in
7 there, once they start searching, the issue -- the knowledge that they have is
8 insignificant.

9 THE COURT: We'll hear it and we'll reflect on that later when we get
10 points and authorities, overruled.

11 Q (By Mr. Guymon) And tell me why that was significant to you.
12 Once you make entry into the master bedroom and you see what you see,
13 what if anything does that either confirm for you or provide to you?

14 A It confirmed for me that no one was living in this bedroom. No
15 one was using it as a regular bedroom, as the other two appeared to be
16 being used regularly or normally.

17 Q Now, if it would have been the inverse, that is to say if you
18 enter into that bedroom and you find that it's set up, I guess based on your
19 observations as a bedroom with items that you don't identify with say Tod
20 Armstrong, what if anything would you have done?

21 MR. SCISCENTO: You know, again, your Honor, I'm going to object,
22 this all goes to after the fact.

23 THE COURT: I understand your point. It's not going to be of any major
24 significance, just let him answer the question, overruled.

25

1 THE WITNESS: I would have re-evaluated the situation if it appeared
2 that we'd been given bad information.

3 MR. GUYMON: Court's indulgence, your Honor. Pass the witness,
4 your Honor.

5 THE COURT: Any cross?

6 MR. SCISCENTO: Thank you.

7 **CROSS-EXAMINATION**

8 **BY MR. SCISCENTO:**

9 Q Sergeant Hefner, on the 18th, I'm sorry, on the 17th, most of
10 the information learned was either from Ace Hart, Tod Armstrong or a
11 person named BJ, right?

12 A Correct.

13 Q Bryan Christopher Johnson. You were not present during any of
14 those interviews, is that correct?

15 A I wasn't in the room when the interviews were conducted, I was
16 at the office when they were doing the interviews.

17 Q You indicated that you gained this information, though, through
18 your detectives, that being Detective Thowsen and Detective Buczek,
19 correct?

20 A Primarily through them, yes.

21 Q Okay. And you indicated that you said Ace Hart lived there at
22 the time of the 18th and the 17th, is that right?

23 A It was my understanding that Ace Hart and Tod Armstrong lived
24 at the house.

1 Q But, in fact, Ace Hart had told your detectives that he moved
2 out a few weeks earlier, isn't that correct?
3 A If he had told them that I was not aware of that.
4 Q You stated that based on the information that you had from Tod
5 Armstrong and Ace Hart that you were going over to the residence, the
6 4815 residence to arrest Mr. Johnson, is that correct?
7 A Mr. Johnson and/or Red as we knew him at that point.
8 Q Okay. You stated earlier that you had probable cause to arrest
9 Mr. Johnson as you were going over to the 4815 residence, isn't that
10 correct?
11 A Yes.
12 Q So, when you got there, prior to getting there Tod Armstrong
13 described what Mr. Johnson looked like, isn't that correct, to the detectives
14 or to you?
15 A I think so, yes, we knew --
16 Q Okay. You had a picture of Mr. Johnson which he picked out,
17 that being Armstrong?
18 A I don't recall. But, yes, I would agree we knew what he looked
19 like or had a description.
20 Q He described him, his physical build, his tattoos, is that correct?
21 A Here, again, I don't recall the specifics but I believe we had his
22 identification information.
23 Q And so you knew who you were looking for?
24 A Yes.
25

1 Q And when Donte Johnson came out of the house at that point
2 you knew it was Donte Johnson or Deko?
3 A Well, he identified himself as such.
4 Q Okay. And you had probable cause to arrest him and you
5 placed him in handcuffs at that point, correct?
6 A No. He was placed under arrest for some outstanding warrants
7 after we took custody of him from the SWAT officers.
8 Q Okay. So, the SWAT officers brought him out, brought him
9 where?
10 A To the curb.
11 Q And they -- then you placed him in flex cuffs?
12 A They placed him in flex cuffs.
13 Q Okay. So, he was in flex cuffs when he came to you --
14 A Yes.
15 Q -- when you first spoke to him? And your intention of going
16 over there that morning, at 3:00 in the morning, was to arrest Donte
17 Johnson, correct?
18 A Among other things, yes.
19 Q Because you had probable cause to?
20 A Among other things, yes.
21 Q And you were not going to let him go?
22 A Correct.
23 Q And Donte Johnson placed in those flex cuffs sitting on the curb
24 was not entitled to leave, was he?
25

1 A Well, at the point that we initially made contact with him the
2 discovery of the outstanding warrant happened about 10 or 15 minutes
3 later. There were some patrol officers there assisting us and SWAT, I
4 believe one of them ran Mr. Johnson so we could get an ID number or some
5 specifics on the ID. Then we learned that he had an outstanding warrant.

6 Q But your intention as you were driving over there on that
7 morning, at 3:00 in the morning on the 18th, was to locate and arrest Donte
8 Johnson based on the probable cause you had?

9 A Yes.

10 Q So, when he was placed in flex cuffs and he was in your
11 custody or your view, your intention was not ever to let him go at that
12 point?

13 A Well, like I said at that point we were going to take custody of
14 him, he had been detained by other officers.

15 Q So, he was, in fact, detained?

16 A Yes.

17 Q Was he ever read his Miranda rights?

18 A I don't know.

19 Q Were you present with him when he was brought by the SWAT
20 officers and placed on the ground?

21 A No. They had brought him out for some time, put him there,
22 then they asked us to come in so that they could relieve their man who was
23 watching them.

24 Q And you never read his Miranda rights, is that correct?
25

1 A I didn't, no.

2 Q The master -- there were three bedrooms, correct?

3 A Yes.

4 Q Tod Armstrong told you that he stayed in one bedroom, not the

5 master bedroom because the master bedroom was flooded, I think, isn't that

6 correct?

7 A I don't believe the master bedroom being flooded was the issue.

8 I think his bedroom at one time might have been flooded or perhaps he may

9 have even changed bedrooms because of some flooding problem. Here,

10 again, I wasn't involved directly in that conversation so I don't know. But

11 he was --

12 Q There were three bedrooms, though, and --

13 A Yes.

14 Q -- one of them contained -- the master bedroom contained some

15 clothes on there -- in there?

16 A There were some clothing items in there, yes.

17 Q There were some blankets laid on the ground, is that correct?

18 A I don't seem to recall any blankets, there was something in the

19 middle that I remember putting the pants on when we took a photograph, I

20 don't remember what made that pile.

21 Q Were there any blankets? You don't recall if there were any

22 blankets laying around?

23 A I don't recall anything -- no, no blankets; could have been but I

24 don't recall.

25

1 Q You went over there with a consent to search form signed by
2 Tod Armstrong with the intent of searching for evidence as to the murder
3 weapon, correct -- as to a murder, correct?

4 A Yes.

5 Q At what time did Tod Armstrong sign that consent form, do you
6 recall?

7 A It was before we left the office during the course of his
8 interview. I don't know when that happened, before, during or after the
9 interview.

10 Q Initially your first conversation with Tod Armstrong was on 8/17
11 at about ten hundred, is that correct?

12 A Sounds correct.

13 Q Around that time --

14 A Yes.

15 Q -- so about seven hours prior, five hours prior to you going to
16 the 4815 Everman residence?

17 A Right.

18 Q Okay. How long would it have taken -- how long have you been
19 a sergeant with the Metropolitan Police Department?

20 A Ten years.

21 Q Okay. Last year with electronic devices being what they are
22 how long does it take normally to secure a search warrant?

23 A I can get a telephonic search warrant very quickly, half hour --

24 Q Okay.

25

1 A -- twenty minutes.

2 Q On 8/17/98 or 8/18/98, how long would it have taken you to
3 get a search warrant?

4 A There, again, probably around the same time frame.

5 Q Okay. And if you had any inclination that Donte Johnson
6 resided in that house you indicated to the District Attorney that you would
7 have secured a search warrant, correct?

8 A Yes.

9 Q And any inclination that you had was so that you could preserve
10 the evidence, right?

11 A Yes.

12 Q So that you would follow the proper procedure?

13 A Correct.

14 Q So, what slight inclination would you need in order for you to
15 then get a search warrant? What would you consider slight inclination?

16 A Well, anything that would lead me to believe that I'd have to
17 protect somebody's Fourth Amendment rights.

18 Q Okay. So, if a statement of the person who lived there at the
19 house and owned the house said that they lived there, they stayed there for
20 a couple of weeks, would that be an inclination?

21 A If the defendant, you mean, in that regards? Yeah, if a
22 defendant told me that he lived in a particular place that we were intending
23 to search --

24 Q I'm sorry, let me strike that. My question really was the owner
25

1 of the house. Let me ask you this specifically, if the owner of the house
2 was asking is there some other people that are living there with you and his
3 answer was: Off and on, yes, staying there. They weren't really living there
4 but they come in and out of the house? Okay. Answer: Blank day, I guess,
5 considered living there. Would that give you an inclination that these people
6 may be living in that house?

7 A If that question were asked of me I would dwell further.

8 MR. SCISCENTO: Okay. No further questions, your Honor.

9 THE COURT: Anything further, Mr. Guymon?

10 **REDIRECT EXAMINATION**

11 **BY MR. GUYMON:**

12 Q Based on the totality of the information you received were the
13 suspects living at this particular house, the suspects that you were
14 interested in arresting?

15 A No.

16 Q Was there anyone associated with this case in the investigation,
17 based on the information you had, living at that house on the night in
18 question?

19 A No.

20 Q And based on the totality of the information you had who was it
21 that lived at that house?

22 A Tod Armstrong and Ace Hart.

23 Q And did you receive permission to search the house from the
24 person living or the owner of that house?

1 A Yes.

2 Q Court's indulgence. If I might ask, other than the one question
3 asked of Donte Johnson as he sat on the curb, was he asked any other
4 questions, other than whether or not he lived at that residence?

5 A I don't believe so, no.

6 Q Okay. Was he interrogated in any way about the facts of the
7 quadruple homicide --

8 A No.

9 Q -- in your presence --

10 A No.

11 Q -- while seated there?

12 A No, he wasn't.

13 THE COURT: Anything further, Mr. Sciscento?

14 MR. SCISCENTO: Very briefly, your Honor.

15 **RECROSS-EXAMINATION**

16 **BY MR. SCISCENTO:**

17 Q You had information on 8/18/98 at 3:00 in the morning that
18 when you arrived at 4815 Everman that you would, in fact, find Donte
19 Johnson present there, isn't that correct?

20 A That he might be there.

21 Q Yes.

22 A Or he was there several hours earlier.

23 Q And that he was there for the prior three weeks at some time?

24 A No, that's not correct.

25

1 Q You didn't have that information?

2 A No.

3 Q How did you come about even talking to Tod Armstrong or Ace
4 Hart regarding this case?

5 A I believe I talked to Tod that night when I asked for a key to the
6 residence, thinking that if -- when we left we'd have to secure it.

7 Q Let me go back a little further. How did it come about that Tod
8 Armstrong became involved in this investigation?

9 A In the first place?

10 Q In the first place.

11 A I'm not quite sure. One of the three young men that you've
12 named made mention to, I believe, his father regarding some information that
13 they had and then that father contacted a police officer, perhaps he knew
14 him or maybe just the police in general and then that culminated in the father
15 bringing the three young men down for interview.

16 Q Okay. And Tod Armstrong at one point indicated that there was
17 some people at his house who he believed were involved in the murder?

18 A Not to me.

19 Q But to one of your detectives?

20 A The information was is that while at his house people that were
21 visiting and talking to him, staying there, I don't know how he phrased it but
22 that he had come in contact with these people at his house and learned the
23 following information.

24 Q And on the 18th when you went over there you intended to find
25

1 some guns located there, correct, based on Tod Armstrong's statements?

2 A Based on what we'd been told, yes.

3 Q And they said that those guns first came into the house about
4 three weeks earlier?

5 A Not to my knowledge. I don't know.

6 Q Do you know that -- if Tod Armstrong is involved in this murder?
7 Do you have any inclination that he is?

8 MR. DASKAS: Objection, relevance, Judge.

9 THE COURT: Let him answer.

10 THE WITNESS: We're not quite sure at this point, it's an evolving
11 issue.

12 Q (By Mr. Sciscento) When you interviewed him on the 17th, a
13 month later after you searched the house, you indicated that you believed he
14 was lying, isn't that correct?

15 A I'm sorry?

16 Q You indicated to Mr. Armstrong that you believed he was lying?

17 MR. GUYMON: This is a month later, I'm going to object, Judge, what
18 does it have to do with a suppression hearing?

19 THE COURT: Sustained.

20 MR. SCISCENTO: One other question, your Honor, I'll be done.

21 Why did you wait until 3:00 in the morning to go over to the
22 4815 Everman residence?

23 THE WITNESS: Well, we finished up with the interviews and our things
24 at the office. We went down to the vicinity, then we had a delay for the
25

1 availability of SWAT and for them to deploy and do what they do.

2 Q (By Mr. Sciscento) What time did you -- how long was the
3 delay for?

4 A Several hours.

5 MR. SCISCENTO: Okay. No further questions, your Honor.

6 THE COURT: Anything further?

7 MR. GUYMON: (Nods)

8 THE COURT: Thank you, sir. You're excused.

9 That's your only witnesses?

10 MR. GUYMON: Yes, your Honor.

11 THE COURT: Call your witness, if you intend to.

12 MR. FIGLER: Court's indulgence for one second.

13 MR. SCISCENTO: We will call Charolette Carla Severs, your Honor.

14 Your Honor, I would make a motion to suppress any statements
15 given by Donte Johnson after he was placed in the handcuffs.

16 THE COURT: What, for the purposes of the search?

17 MR. SCISCENTO: Purposes of the search and the knowledge that they
18 have.

19 THE COURT: Okay. Well, I tell you what, after they file their points
20 and authorities you can make that a part of your reply, very interesting.

21 MR. SCISCENTO: Well, I don't know what else was said, I mean.

22 **CHAROLETTE SEVERS**

23 having been called as a witness by the Defense, being first duly sworn,
24 testified as follows:

1 THE CLERK: Please state your name and spell your last name for the
2 record.

3 THE WITNESS: Charolette Severs, S-e-v-e-r-s.

4 **DIRECT EXAMINATION**

5 **BY MR. SCISCENTO:**

6 Q Miss Severs, you know the address 4815 Everman?

7 A Yes.

8 Q Okay. You know the residence of 4815 Everman, is that
9 correct?

10 A Yes.

11 Q Yes?

12 A Yes.

13 Q Did you ever live there?

14 A I stayed there a couple of days, yeah.

15 Q How many days did you stay there?

16 A Like maybe 14 days.

17 Q Maybe 14 days. And what -- give me a time frame of the 14
18 days you were there.

19 A I forgot. I don't know.

20 Q You don't know

21 A Like in, I guess --

22 Q Was it -- well, let me give you a time frame. There was a time
23 that you were arrested. Well, there was a time that the SWAT team came in
24 and pulled everybody out of that house, correct?

25

1 A Yeah.
2 Q And that would be on the 18th of August of '98?
3 A Yeah.
4 Q Okay. Now, from that date backwards how many days?
5 A Fourteen days.
6 Q Fourteen days. Did you sleep there every night?
7 A Yeah.
8 Q Did somebody else sleep there with you? Was it -- Donte
9 Johnson stay there with you?
10 A Yeah.
11 Q Yes?
12 A Yes.
13 Q Yes. And for at least 14 days prior to that date, that being the
14 17th or 18th of August?
15 A Huh? What did you say?
16 Q Prior to the 18th, the 14 days that you're talking about, Donte
17 Johnson also stay there?
18 A Yes.
19 Q Okay. Donte Johnson was providing some kind of drugs to Tod
20 Armstrong to stay there?
21 MR. GUYMON: Objection, leading.
22 THE COURT: Most of these have been leading, if they're getting to
23 some important issue.
24 MR. SCISCENTO: Your Honor, but I -- your Honor, then I would say
25

1 that Miss Severs is a hostile witness. I intend --

2 THE COURT: Today or --

3 MR. SCISCENTO: Well, if I can have a little leeway here, your Honor. I
4 contacted Mr. Siegel indicating that I wanted to talk to her regarding this
5 case. I've been provided with a taped conversation of Carla Severs where,
6 in fact, she says she did not want to talk to me. So, I would ask her to be
7 treated as a hostile witness.

8 THE COURT: Okay. It'll also make it faster. Let him ask -- it's leading
9 questions. Because last time I saw Miss Severs she did seem sort of more
10 on their side then your side.

11 MR. SCISCENTO: You know, the world didn't end, so nothing has
12 changed.

13 It's true that Donte Johnson was providing drugs to Tod
14 Armstrong to stay in that house, isn't that correct?

15 THE WITNESS: Yes.

16 Q (By Mr. Sciscento) Okay. And that was a way of him paying
17 rent, isn't that correct?

18 A Yeah.

19 Q So, there was some kind of compensation that Donte Johnson
20 was giving to Tod Armstrong to stay in that house?

21 A Yeah.

22 Q And where would Donte Johnson stay while he was in that
23 house?

24 A In the bedroom.

25

1 Q Which bedroom is that? Would that be the master bedroom?
2 A Yes.
3 Q Did he have his clothes in there?
4 A Some of them. The clothes that he had.
5 Q Did he have --
6 A The clothes that he had, yeah, he had them there.
7 Q So, almost everything that he had was in that master bedroom?
8 A Yes.
9 Q Okay. There was a lock on that master bedroom?
10 A Yes.
11 Q Would Donte Johnson ever lock that door?
12 A No. Only just maybe like when me and him was doing
13 something.
14 Q So, when you guys were inside he may have been -- he may
15 lock the door?
16 A Yeah.
17 Q To keep other people out?
18 A Yeah.
19 Q Okay. Would he consider that -- did you consider that Donte
20 Johnson's bedroom?
21 A No.
22 Q Why not?
23 A Because it wasn't his house.
24 Q But that's where he was -- that's where he slept?
25

1 A Yes.
2 Q He sleep there every night?
3 A Some nights he sleep on the couch.
4 Q Okay. But most of the time he would sleep in that bedroom?
5 A Yeah.
6 Q Where would Tod Armstrong sleep?
7 A On the couch.
8 Q On the couch. And would he sleep anywhere else?
9 A No.
10 Q Is there another bedroom that Tod Armstrong would sleep in?
11 A No. It was busted because it was a water bed.
12 Q Were there three bedrooms there?
13 A Yeah.
14 Q Did you have any of your personal stuff in that bedroom?
15 A Yeah.
16 Q Okay. Personal clothes and maybe some makeup and things like
17 that?
18 A Yes.
19 Q Okay. Would you allow anybody in that house to go through
20 your personal stuff in that room?
21 A No, I wouldn't allow nobody to go through my stuff.
22 Q Okay. If somebody was going through your personal stuff in
23 that room you'd be upset?
24 A Yeah.
25

1 Q Okay. And you placed it in that -- your personal stuff in that
2 room why? Did you consider it your space?
3 A Yeah.
4 Q And you there with Johnson, Donte Johnson, at his request?
5 He asked you to come into the house?
6 A Yeah.
7 Q He asked you to come sleep with him?
8 A It wasn't -- it's not like he asked me --
9 Q I don't mean in a sexual way, I meant he meant for you to come
10 in and stay with him?
11 A Yeah.
12 Q Okay. Did you consider that Donte Johnson was living there?
13 A No, it was like a spot, where he'd just go chill out for awhile.
14 Q All right. For those 14 days prior to the 18th, how many nights
15 did Donte Johnson sleep in that house?
16 A Everyday, all those 14.
17 MR. SCISCENTO: No further questions, your Honor.
18 THE COURT: Who, if anyone from the State, wishes to pursue this?
19 MR. GUYMON: Thank you. Very briefly.

20 **CROSS-EXAMINATION**

21 **BY MR. GUYMON:**

22 Q Miss Severs, the -- back in August the police didn't know that
23 Donte was trading Tod Armstrong rock cocaine to use that spot, did they?
24 MR. SCISCENTO: I'm going to object, your Honor, it's total
25

1 speculation.

2 THE COURT: Yes, it is.

3 MR. GUYMON: Okay.

4 You said that that was like a spot to you, is that correct?

5 THE WITNESS: Yes.

6 Q (By Mr. Guymon) Place you go and just chill?

7 A Yeah.

8 Q Kick it?

9 A Yeah.

10 Q And do you recall last week on the 28th explaining to Mr.
11 Daskas and myself that you didn't consider yourself living at that residence?

12 MR. SCISCENTO: I'm going to object to this, your Honor, too.

13 THE COURT: On what basis?

14 MR. SCISCENTO: Well, this is information that comes out -- I just
15 received a copy of the transcript that she provided, I guess on the 21st, I
16 haven't had a chance to go over it. But I think we need to focus specifically
17 on the date of the 17th, what she thought at that time, not which has
18 occurred afterwards.

19 THE COURT: Well, let's get in this and we'll see about it later. Go
20 ahead.

21 Q (By Mr. Guymon) You indicated, did you not, that you didn't
22 consider yourself living at that place but rather that was just a flop place?

23 A Yeah.

24 Q A place where you and friends and others would visit?

25

1 A Yeah.
2 Q Is that correct?
3 A Yes.
4 Q And do you recall talking to the police on August 18th of 1998,
5 about whether or not you were living at the house or simply staying there?
6 A Do I recall talking to any of them?
7 Q Yes.
8 A Yeah.
9 Q Okay. And it's true on the 18th SWAT came and you were at
10 the house?
11 A Yeah.
12 Q Donte was at the house?
13 A Yeah.
14 Q And Scale (phonetic) was at the house?
15 A Yeah.
16 Q And that night after SWAT went into the house you were
17 questioned, were you not, by the police?
18 A Yeah.
19 Q And they tape recorded the statement?
20 A Yeah.
21 Q And do you recall being asked: Have you been staying over at
22 the house or just visiting? Do you recall that question?
23 A And I -- yeah.
24 Q Okay. And do you recall your answer?
25

1 A Yeah.
2 Q Okay. And do you recall what it was?
3 A I told them I stayed there a couple of nights.
4 Q Okay. That you'd stayed there a couple of nights?
5 A Yeah.
6 Q And in that interview the police said: You have a regular
7 address, do you not? And you said: Yes?
8 A Yeah.
9 Q And, in fact, you told them that the address that you were living
10 at was your mother's address?
11 A Yeah.
12 Q You referred to the Everman house as a house you had just
13 stayed at for a couple of nights, correct?
14 A Yeah.
15 Q And isn't it true that while you stayed at that house for a couple
16 of nights Donte Johnson stayed there?
17 A Yeah.
18 Q Other people would come and sleep there?
19 A Yeah.
20 Q Stay there one night or two nights?
21 A Yeah.
22 Q And leave?
23 A Yeah.
24 Q And isn't it true that the master bedroom -- all the persons that
25

1 would come into that house could go into the master bedroom, is that true?

2 A Yeah.

3 Q Tod Armstrong commonly went into that master bedroom?

4 A Yeah, he went in there.

5 Q Ace Hart commonly went into the master bedroom?

6 A Yeah.

7 Q Other persons that visited the house commonly went into the

8 master bedroom?

9 A Yeah.

10 Q People or persons would kind of hang out in the master

11 bedroom?

12 A Sometimes, yeah.

13 Q Use the stereo there?

14 A Yeah.

15 Q And come and go as they pleased in and out of that room?

16 A Yeah.

17 Q Sometimes Donte was there and sometimes he wasn't?

18 A That's right.

19 Q And it is also true that Tod Armstrong kept his clothing in the

20 master bedroom's closet --

21 A Yeah.

22 Q -- correct?

23 A Yeah.

24 Q Ace Hart kept his clothing in the master bedroom closet?

25

1 A Yeah.
2 Q Donte had a few things in the master bedroom?
3 A Yeah.
4 Q You had some things in the master bedroom?
5 A Yeah.
6 Q Red had some things in the master bedroom?
7 A Yeah.
8 Q It's also true that you all would leave stuff in say the living room
9 of the house too?
10 A Yeah.
11 Q You would --
12 A Not like -- not clothes or anything like that.
13 Q But say a pack of cigarettes or those kind of items?
14 A Yeah.
15 Q Donte might leave them in the living room and Red would?
16 A Yeah, everybody.
17 Q Now, Tod Armstrong was the owner of that house, is that
18 correct?
19 A I think his mother.
20 Q All right. His mother. But Tod was the one that was living
21 there and had the key --
22 A Yeah.
23 Q -- correct?
24 A Yeah.
25

1 Q Did you have a key?
2 A No.
3 Q Did Donte have a key?
4 A No.
5 Q Did Red have a key?
6 A No.
7 Q And how is it that you would come and go from that house?
8 A Sometimes I go through the back room window or some people
9 -- sometimes people -- Tod be at home a lot, so.
10 Q Excuse me?
11 A Tod was at home a lot, so it's not like you needed a key.
12 Q Okay. So, if Tod was home other people would come and go in
13 the house?
14 A Yeah.
15 Q Now, people that would come and go, would other people come
16 and go that didn't sleep there at all?
17 A Yeah.
18 Q Friends of Tod's?
19 A Yeah.
20 Q Friends of Red's?
21 A No.
22 Q How about Deko's friends --
23 A Yeah.
24 Q -- any of his friends come and go out of there?
25

1 A Yeah.

2 Q And tell me something. There was a door on the master
3 bedroom, was there not?

4 A Yeah.

5 Q It wasn't locked very often, was it?

6 A No.

7 Q Perhaps how often would it be locked and for what period of
8 time?

9 A Like maybe once. Like once a day or something like that.

10 Q Okay. And --

11 A Just when we be doing whatever we was doing.

12 MR. SCISCENTO: Your Honor, could we get a clarification of who we
13 were?

14 THE WITNESS: Me and Donte.

15 MR. SCISCENTO: Thank you.

16 Q (By Mr. Guymon) And when you and Donte were doing private
17 things it would be locked during that period of time?

18 A Yeah.

19 Q Other than that were people free to come and go in and out of
20 that room?

21 A Yeah.

22 Q And they commonly did that, didn't they?

23 A Yeah.

24 Q Okay. Court's indulgence. Night that SWAT came do you recall
25

1 being placed on the curb?
2 A Yeah.
3 Q And when Detective Hefner or Sergeant Hefner asked you if you
4 were staying there at that residence do you recall telling him no?
5 A I don't remember but I'm pretty sure I did.
6 Q Pretty sure you told him yes or no?
7 A That I didn't stay there.
8 Q Okay. And did he ask you if you lived there?
9 A Yeah.
10 Q And what do you believe you told him?
11 A That I didn't stay there.
12 Q Okay. And are you sure that he asked you that question?
13 A Yeah.

14 MR. GUYMON: All right. Pass the witness, your Honor.

15 THE COURT: Mr. Sciscento.

16 **REDIRECT EXAMINATION**

17 **BY MR. SCISCENTO:**

18 Q Tod Armstrong owned the house, correct, or his mother did?
19 A Yeah.
20 Q That's information you had?
21 A Yeah.
22 Q But you also had information that Donte Johnson was staying
23 there?
24 A Yes.

25

1 Q He was staying at the house?
2 A The same amount of time I was staying there.
3 Q Okay. And there were three bedrooms there?
4 A Yes.
5 Q One, Ace Hart used to live in --
6 A Yes.
7 Q -- or used to stay in?
8 A Yes.
9 Q But Ace Hart moved out, correct?
10 A I don't know. I don't know if he moved out.
11 Q But he stopped staying there, isn't that right?
12 A Yeah.
13 Q Okay. And Tod would sometimes sleep in that bedroom, isn't
14 that correct?
15 A I don't know. I don't recall. I just remember him laying on the
16 couch all the time.
17 Q Okay. When you would go to bed, when Donte would go to
18 bed, where would you most of the time sleep; you and Donte?
19 A On the little couch, sofa couch or whatever.
20 Q What about in the master bedroom?
21 A Yeah, we used to sleep there sometimes.
22 Q Would anybody else come in there and sleep? Would Tod
23 Armstrong come in there and sleep in that bedroom with you?
24 A No.
25

1 Q He would sleep somewhere else?
2 A Yes.
3 Q Okay. And so when you guys went into that bedroom to go to
4 sleep you would only be -- you'd be the only ones in there unless you or
5 Donte invited somebody else in, isn't that correct?
6 A Red come in there sometimes.
7 Q Okay. Because Donte asked him to come in?
8 A I don't know if he asked him.
9 Q Well, Donte asked Red to come into the house, correct?
10 A Oh, yes.
11 Q Okay. And, so, Donte also asked Red to come into -- he could
12 sleep in the bedroom, isn't that correct?
13 A I don't know if he said he could. I just know he came in there.
14 Q Who did you consider staying in that -- who did you consider at
15 that time on the 18th of August that would live in that bedroom?
16 MR. GUYMON: Objection, relevancy, Judge, because the standard
17 really is what the police had knowledge of and what they believed.
18 THE COURT: We'll let it in.
19 You recall the question?
20 THE WITNESS: Oh, no, I'm sorry.
21 THE COURT: Ask it again.
22 Q (By Mr. Sciscento) On the 18th of August, 1998, who did you
23 consider living in the back master bedroom?
24 A Me and Donte and Red.
25

1 Q You were staying there for about three weeks, isn't that
2 correct?

3 MR. GUYMON: It was asked and answered the first time and the
4 answer was two weeks.

5 THE WITNESS: Fourteen days I think is two weeks.

6 Q (By Mr. Sciscento) When Mr. Guymon asked you back on
7 December 21st, 1999, how long did you stay at the Everman residence your
8 answer was: For like three weeks. Is that correct?

9 A I don't remember.

10 MR. SCISCENTO: If I may approach, your Honor?

11 THE COURT: We'll assume she said it at that point. Ask your next
12 question.

13 MR. SCISCENTO: Have nothing further, your Honor.

14 THE COURT: Anything further, Mr. Guymon?

15 MR. GUYMON: Nothing else, your Honor.

16 THE COURT: Thank you, ma'am. We'll see you back here when you're
17 supposed to be. You have one more witness Mr. --

18 MR. SIEGEL: When is the next time she's supposed to be here?

19 THE COURT: Calendar call.

20 MR. SIEGEL: Which is?

21 THE COURT: Summerish.

22 MR. SIEGEL: Summerish, okay.

23 THE COURT: We'll get you an exact date.

24 THE CLERK: May 30th.

25

1 MR. SIEGEL: Well, we'll be back on calendar for -- okay. Thank you.
2 THE COURT: You think you will. We'll have some special blocking out
3 of the computer, disappoint you.
4 You have one more witness, Joe?
5 MR. SCISCENTO: Can we approach for a moment, Judge.
6 MR. FIGLER: I don't think we need --
7 MR. SCISCENTO: Well, I want to.
8 (Whereupon a bench conference
9 was held)
10 THE COURT: Call your next witness, please.
11 What we discussed at the bench was, of course, Mr. Johnson
12 has the right to testify in this hearing without the statements that he is
13 making in a motion to suppress hearing being used against him substantively
14 at trial. That was the seminal case maybe 30 years ago.
15 What I heard you saying at the bench was, Mr. Daskas, which I
16 wasn't aware of, that was the question in my mind, there is if he took the
17 stand the right of the State to use those statements in cross-examination to
18 impeach him, as you understand the law?
19 MR. DASKAS: That's our understanding, Judge, absolutely.
20 THE COURT: But you of course concede you couldn't use them other
21 than that?
22 MR. DASKAS: That's correct, Judge.
23 THE COURT: Okay. Go ahead.
24 Call your witness then Mr. Figler.
25

1 MR. FIGLER: Thank you, your Honor. The defense would call Donte
2 Johnson to the stand for purposes of this evidentiary hearing alone.

3 THE COURT: Thank you.

4 **DONTE JOHNSON**

5 the Defendant herein, having been called as a witness on his own behalf,
6 being first duly sworn testified as follows:

7 THE CLERK: Please state your name.

8 THE WITNESS: Donte Johnson, J-o-h-n-s-o-n.

9 THE COURT: Go ahead, Dayvid.

10 MR. FIGLER: Thanks.

11 **DIRECT EXAMINATION**

12 **BY MR. FIGLER:**

13 Q But is that the name that you were given at your birth?

14 A No.

15 Q And what was the name of your birth?

16 A John White.

17 Q Okay.

18 A John Lee White.

19 Q John Lee White. Okay. At -- do you recall August 18th, 1998,
20 that the day we've all been talking about?

21 A Yeah.

22 Q Okay. And were you arrested on that date by the police?

23 A Yes.

24 Q Okay. Now, I want to direct your attention to sitting outside on
25

1 the curb, do you remember that time frame?
2 A Yes.
3 Q Okay. This was after SWAT had entered this Everman
4 residence that we've all been talking about?
5 A Yes.
6 Q Okay. Now, can you tell me where your hands were at that
7 time that you were on the curb?
8 A Behind my back.
9 Q Okay. And were they free? Were they restrained? What was
10 the story?
11 A I was handcuffed.
12 Q Okay. Now, you heard testimony from Detective Thowsen and
13 Sergeant Hefner that they had made an inquiry of you, do you remember
14 that testimony?
15 A Yes.
16 Q Okay. What is your recollection from that evening? Do you
17 remember them asking you whether or not you lived in the house?
18 A No, I don't remember them asking me if I lived in the house or
19 not.
20 Q Okay.
21 A They was mostly asking me my name.
22 Q Okay. Were you, in fact, living at the Everman residence on
23 August 18th, 1998?
24 A Yes.
25

1 Q Okay. Was Ace Hart living there at that time or had he moved
2 out?
3 A He moved out.
4 Q Okay. And how long had you been staying at the Everman
5 residence?
6 A About close to a month.
7 MR. FIGLER: I have no further questions, your Honor.
8 THE COURT: Thank you.
9 MR. DASKAS: Very briefly, Judge.
10 **CROSS-EXAMINATION**
11 **BY MR. DASKAS:**
12 Q You were asked whether Sergeant Hefner asked you on August
13 18th if you lived in the Everman residence, you recall that question?
14 A Yeah.
15 Q Now, is it your testimony that you don't know if you were
16 asked that question or you were not asked that question?
17 A I don't remember being asked that question.
18 Q It's possible, though, that Sergeant Hefner did ask you on
19 August 18th if you lived in the Everman household, isn't it?
20 MR. FIGLER: Object as argumentative.
21 THE DEFENDANT: Yes. It's possible that he didn't.
22 THE COURT: Overruled.
23 Q (By Mr. Daskas) You say it's possible that he did ask you?
24 A It's possible that he didn't too.
25

1 Q Okay. Did you have a key to the Everman residence?
2 A Sometimes.
3 Q Sometimes?
4 A Yeah.
5 Q Who gave you that key?
6 A Tod Armstrong.
7 Q And how many keys were there to the Everman residence, if
8 you know?
9 A One.
10 Q Just one key?
11 A Yeah.
12 Q On August 18th at 3:30 in the morning who had the key to that
13 residence?
14 A I didn't have it.
15 Q You did not have it?
16 A No.
17 Q When was the last time you had seen the key to the residence,
18 say prior to August 18th at 3:30 a.m.?
19 A I don't remember when it was but it was a time when he went
20 to his girl friend's house.
21 Q You say it was a time when Tod went to his girl friend's house?
22 A Yeah.
23 Q And did Tod give you the key?
24 A Yeah.
25

1 Q Okay. At some point, though, you gave that key back to Tod,
2 didn't you?
3 A Right.
4 Q And that was prior to August 18th at 3:30 in the morning,
5 wasn't it?
6 A Yes.
7 Q You mentioned a few minutes ago that you were handcuffed as
8 you sat on the curb?
9 A Yeah.
10 Q Describe the handcuffs for me.
11 A They were --
12 Q Were they plastic or metal?
13 A Plastic.
14 Q Those were the cuffs that SWAT put on you, is that right?
15 A Right.
16 Q So, they ordered you out of the house and put those plastic
17 cuffs on you?
18 A Right.
19 MR. DASKAS: Nothing further.
20 THE COURT: Anything further, Dayvid?
21 MR. FIGLER: No, nothing.
22 THE COURT: Thanks, sir. You can return to your seat.
23 Any other witnesses?
24
25

1 MR. SCISCENTO: No, your Honor.

2 THE COURT: All right. How long will it take the State to get a
3 response to their motion or opposition to their motion on file with the goal of
4 having it decided the same day as 2/17 that we've got many of these other
5 motions?

6 MR. DASKAS: Judge, ten days would be fine.

7 THE COURT: All right. Ten days to file a opposition or, a response.

8 THE CLERK: That will be January 18th.

9 THE COURT: And how long for you gentlemen to get it to me at least
10 a week prior to the 2/17 hearing?

11 MR. FIGLER: 2/10.

12 MR. DASKAS: Well, Judge --

13 THE COURT: You may want something more on some other occasion
14 that you want to save this favor for, Mr. Figler.

15 MR. SCISCENTO: Well, I think the rule is five days but we were going
16 to have a little leeway on that.

17 THE COURT: What were you going to say?

18 MR. DASKAS: I was about to say that perhaps we should wait until
19 we have a transcript prepared of the testimony --

20 MR. FIGLER: Yeah, that would probably be --

21 THE COURT: Well, that's real quick, right?

22 THE RECORDER: (Nods)

23 MR. GUYMON: Yeah, we should be in dailys.

24 THE COURT: Yeah.
25

1 MR. DASKAS: Okay. Thank you, Judge.

2 THE COURT: So, you really want to use your one and only favor in the
3 course of this litigation now, Mr. Figler, for your reply?

4 MR. FIGLER: This is a vital motion, your Honor, and we want to make
5 sure that we get it correct. You know, it really depends on what type of
6 opposition is filed by the State. If it is consistent with some of the other
7 oppositions, it shouldn't take too much time. If it's a little more in depth,
8 then certainly we would want to take that extra time, so I want to be more
9 on the side of safety.

10 THE COURT: Let's -- what was their date?

11 THE CLERK: January 18th.

12 THE COURT: January 18th. So, let's make it two weeks from that.

13 MR. FIGLER: Thank you, your Honor.

14 THE CLERK: That's February 1st.

15 THE COURT: It's not Groundhog Day, that's the day before Groundhog
16 Day. Did you enjoy what will probably be your one and only opportunity to
17 cross-examine, Mr. Johnson?

18 MR. DASKAS: Absolutely, Judge.

19 THE CLERK: And then the continuance date will be February 7th.

20 (Whereupon the proceedings concluded)

21 * * * * *

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

24 *Debra Van Blaricom*
25 DEBRA VAN BLARICOM
Court Transcriber

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 Attorneys for Defendant

FILED

Nov 30 3 06 PM '99

Shirley E. Pangburn
 CLERK

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

RECEIPT OF COPY

RECEIPT OF A COPY of the following listed motions is hereby acknowledged this
 29th day of November, 1999.

1. Motion for Jury Questionnaire;
2. Motion to Bifurcate Penalty Phase;
3. Motion to Require Prosecutor to State Reasons for Exercising Peremptory Challenges;
4. Defendant's Motion to Dismiss State's Notice of Intent to Seek Death Penalty Because Nevada's Death Penalty Statute is Unconstitutional;
5. Donte Johnson's Motion in Limine to Preclude the Introduction of Victim Impact Evidence;

RECEIVED

NOV 30 1999

COUNTY CLERK

CE52

- 1 6. Motion for Change of Venue;
- 2 7. Motion for Disclosure of Any Possible Basis for Disqualification of District
- 3 Attorney;
- 4 8. Motion to Exclude Autopsy Photographs;
- 5 9. Motion to Preclude Evidence of Alleged Co-Conspirators Statements;
- 6 10. Motion to Prohibit the Use of Peremptory Challenges to Exclude Jurors who
- 7 Express Concerns About Capital Punishment;
- 8 11. Motion to Authenticate and Federalize all Motions, Objections, Requests and
- 9 Other Applications and Issues Raised in the proceedings in the Above
- 10 Entitled Case;
- 11 12. Motion for disclosure of Exculpatory Evidence Pertaining to the Impact of the
- 12 Defendant's Execution Upon Victim's Family Members;
- 13 13. Motion for discovery and Evidentiary Hearing Regarding the Manner
- 14 and Method of Determining in Which Murder Cases the Death Penalty Will be
- 15 Sought;
- 16 14. 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
- 18 Guilty of Capital Murder;
- 19 15. Motion for Inspection of Police Officers' Personnel Files;
- 20 16. Motion for Permission to File Other Motions;
- 21 17. Motion in Limine to Prohibit any References to The First Phase as the "Guilt
- 22 Phase";
- 23 18. Motion to Allow the Defense to Argue Last at the Penalty Phase;
- 24 19. Motion to Apply Heightened Standard of Review and Care in This Case
- 25 Because the State is Seeking the Death Penalty;
- 26 ////
- 27 ////
- 28 ////

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- 20. Motion in Limine for Order Prohibiting Prosecution Misconduct in Argument;
- 21. Motion in Limine Regarding Co-Defendants' Sentences.

STEWART L. BELL
CLARK COUNTY DISTRICT ATTORNEY

By *James Schmedt*
Nov. 29, 1999

ORIGINAL

FILED

DEC 2 1 35 PM '99

Shirley M. Johnson
CLERK

OPPS
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,
#1586283

Defendant.

Case No. C153154
Dept. No. V
Docket H

SUPPLEMENTAL OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO
PRECLUDE EVIDENCE OF OTHER GUNS, WEAPONS AND
AMMUNITION NOT USED IN THE CRIME

DATE OF HEARING: 12/27/99
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
ROBERT J. DASKAS, Deputy District Attorney, and files this Supplemental Opposition to
Defendant's Motion in Limine to Preclude Evidence of Other Guns, Weapons and Ammunition
Not Used in the Crime.

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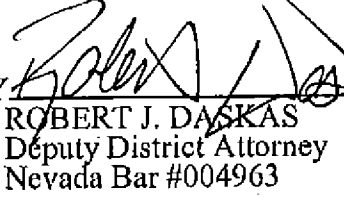
CE52

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

4 DATED this 2 day of December, 1999.

5 Respectfully submitted,

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

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

13 POINTS AND AUTHORITIES

14 I.

15 STATEMENT OF FACTS

16 On August 13, 1998, Donte Johnson, Terrell Young, and Sikia Smith executed a plan to
17 rob the occupants of 4825 Terra Linda Avenue. Armed with a Ruger .22 caliber rifle ("Ruger"),
18 a Universal Enforcer .30 caliber carbine rifle ("Enforcer"), and a .380 caliber semi-automatic
19 handgun, the conspirators drove a stolen vehicle to the Terra Linda residence for the purpose of
20 robbing its occupants. Four young men were ultimately killed during the robbery.

21 Prior to the quadruple homicide, Johnson, Young, and Charla Severs stayed at 4815
22 Everman, just blocks from the Terra Linda household. Johnson and Young kept their personal
23 belongings, including a duffel bag which contained the Ruger and Enforcer rifles, in the master
24 bedroom.

25 On August 17, 1998, Sergeant Honea of the Nevada Highway Patrol stopped the stolen
26 Ford vehicle that was driven to the scene of the quadruple murder nights earlier. A search of the
27 car, which was being driven by Donte Johnson, revealed the Enforcer rifle which the
28 conspirators had used during the commission of the Terra Linda robbery. A fifteen round
magazine of ammunition was in the rifle, and an additional thirty round magazine was found in

1 a backpack in the rear seat of the stolen Ford.

2 On August 18, 1998, Sgt. Hefner of the Las Vegas Metropolitan Police Department found
3 the Ruger rifle in the master bedroom of the Everman house. This, of course, was the same
4 Ruger rifle that Terrell Young had used to act as look-out as he stood over the quadruple
5 homicide victims.

6 II.

7 DISCUSSION

8 The Defendant is charged with various offenses arising out of the events that occurred
9 on August 14, 1998, including burglary, robbery, kidnaping and murder, all with use of a deadly
10 weapon. During the trial of these offenses, the State seeks to introduce, *inter alia*, evidence
11 regarding the recovery of the Ruger and Enforcer rifles.

12 On November 18, 1999, this Court expressed it's inclination to permit the State to
13 introduce the Enforcer and Ruger rifles provided the following conditions can be met:

14 (1) the State must elicit testimony from witnesses who can sufficiently describe the
15 weapons; and

16 (2) the State must establish that the Defendants left the Everman residence on August 13,
17 1998 with the duffel bag that commonly contained weapons.

18 The State can meet both of these requirements.

19 A. NUMEROUS WITNESSES WILL DESCRIBE THE UNIQUE CHARACTERISTICS
20 OF THE RUGER AND ENFORCER RIFLES

21 Various witnesses saw the Enforcor and Ruger rifles at the Everman residence prior to
22 August 13, 1998, and all of the witnesses describe the guns in a similar fashion.

23 Tod Armstrong described several guns in the Defendant's possession, including the Ruger
24 and Enforcer rifles. Armstrong described the Ruger as a .22 automatic that "looks like a
25 machine gun" with a "folding stock" and a "banana clip." Voluntary Statement, 8/17/98, p. 7.
26 Armstrong also described the Enforcer rifle as a weapon between 1 ½ - 2' long, made out of
27 wood with "no pistol grip" and "big bullets." Voluntary Statement, 8/17/98, p. 8.

28 Ace Hart described the Ruger in a similar fashion, as a ".22 big rifle" and a .22 with a

1 "pistol grip and then the thing would come out of the side" with a "banana clip." Voluntary
2 Statement, 8/17/98, p. 6. Hart depicted the Enforcer as "some 30-30, some real big gun with a
3 big banana clip on it." Voluntary Statement, 8/17/98, p. 6. He also stated the Defendant and his
4 partners carried the guns in a duffel bag. Voluntary Statement, 8/17/98, p. 7.

5 Similarly, Bryan Johnson referred to a duffel bag in the master bedroom that contained
6 guns. Voluntary Statement, 8/17/98, p. 2. He described a shotgun and an automatic weapon.
7 Voluntary Statement, 8/17/98, p. 2.

8 The Defendant's ex-girlfriend, Charla Severs, has also provided statements and testimony
9 regarding the Ruger and Enforcer rifles. Ms. Severs' descriptions of the weapons are entirely
10 consistent with the other witnesses. For instance, she described the Ruger rifle as "a black .22"
11 with a "banana clip." Grand Jury Transcript ("GJT") pp. 24, 173. Severs portrayed the Enforcer
12 rifle as "long" with "holes in it" and "a clip that you put in ... the bottom." GJT p. 24.

13 Finally, the co-defendants (both of whom have been tried, convicted and sentenced in this
14 matter) gave voluntary statements in which they, too, described the Ruger and Enforcer rifles.
15 Sikia Smith described the .22 rifle that Red used to act as the look-out. Voluntary Statement,
16 9/8/98, p. 16. Moreover, Terrell Young described the Enforcer rifle as "a big 30, 30 something"
17 that took "30 caliber bullets." Voluntary Statement, 9/2/98, p. 13. Terrell Young explained that
18 this was the same gun the NHP Trooper impounded during the automobile stop on August 17,
19 1998. Voluntary Statement, 9/2/98, p. 13. Terrell indicated he had a .22 caliber Ruger rifle at
20 the Terra Linda residence which he used to act as the look-out. Voluntary Statement, 9/2/98, p.
21 14.

22 B. THE STATE WILL ELICIT TESTIMONY TO ESTABLISH THAT THE
23 DEFENDANTS LEFT THE EVERMAN RESIDENCE ON AUGUST 13, 1998 WITH
24 THE DUFFEL BAG

25 Witness testimony will also establish that the Defendant and his partners left the Everman
26 residence with the green/brown duffel bag that commonly contained weapons. Testimony will
27 also be elicited to establish that the Defendant and his partners returned with the same bag. For
28 instance, Charla Severs has previously testified that the conspirators left the house on August

1 13, 1998 with the green and brown duffel bag. GJT, p. 23. Tod Armstrong told Detectives that
2 the co-conspirators returned to the Everman house with the bag. Voluntary Statement, 9/17/98,
3 p. 44. Likewise, Charla Severs indicated the defendants returned with the loaded duffel bag.
4 GJT, p. 32. Sikia Smith acknowledged that Red brought a "gym-type bag" to the Terra Linda
5 household which contained guns. Voluntary Statement, 9/8/98, pp. 3-4, 14. Terrell Young also
6 described the green and brown duffel bag that he and his partners brought to the Terra Linda
7 residence. Voluntary Statement, 9/2/98, p. 15.

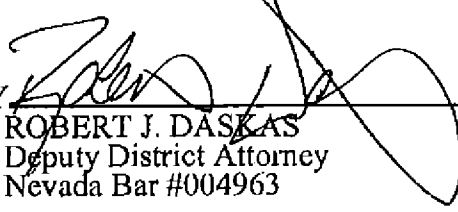
8 CONCLUSION

9 As illustrated by the sample of statements above, the State can easily meet the threshold
10 requirements necessary to admit the Ruger and Enforcer rifles. Accordingly, the State
11 respectfully requests that this Court permit the State to introduce the Ruger and Enforcer rifles
12 in the trial of this matter.

13 DATED this 2 day of December, 1999.

14 Respectfully submitted,

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

18 BY 
19 ROBERT J. DASKAS
20 Deputy District Attorney
21 Nevada Bar #004963
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LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 7

EVENT: 980814-1600

ARMSTRONG, TOD ALLEN

Q: Did they say what they happened to get from there?

A: They didn't say anything what they got.

Q: Alright.

A: I know that they left the speed there. How like, they said like a half ounce of speed that they left there and pills.

Q: And pills?

A: Pills.

Q: Okay. Uh, did they happen to...were they carrying bags in?

A: Yeah.

Q: What would they carry the bags for?

A: Their guns. And then whatever if they got anything from 'em or whatever.

Q: How many, how many guns did they have?

A: Um, like five.

Q: Could you describe them?

A: Uh, one like a .22 automatic, uh, kind of looks like a machine gun, I guess, with the, I don't know how...what...how you explain it but the thing that pops out that...

TT: Like a folding stock?

A: Yeah, there you go...a folding stock that pops out. Uh, looks brand new. Uh, and a banana clip type of thing, a deal. And then the other is a, a wood...it looks like a

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 8

EVENT: 980814-1600

ARMSTRONG, TOD ALLEN

piece of wood with a metal ____ and _____, two feet long...about a foot and a half long...about so long long, about a foot and half long. No pistol grip or anything, so, you know...with big bullets. And then, uh, there was a couple of pistols, small pistols.

Q: Okay.

A: Not like a 9 or anything like big. Well, they had a revolver.

Q: Okay. Uh, when they, when they...

A: A six shot...six shot revolver.

Q: Okay. When they came back into the house that night there, how many bags were they carrying, do you know?

A: I don't know. They usually carry around two or three bags and _____.

Q: Okay. Uh, did they say anything else about what happened at the scene?

A: Uh, no.

Q: Did they say why, why they killed 'em?

A: No. They didn't even say why they killed them but prob..., but oh yeah, actually, they, they saw 'em before so whatever they went there to do, I guess probably to rob 'em,...

Q: Okay. Did you, did you...

6-21-1990 2:00PM FROM LVPD HOMICIDE 223 3101

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 6

EVENT: 980814-1600

HART, ACE RAYBURN

A: Uh, they were just...they were kind of quiet but they were always walking around with all their guns, smoking weed and, uh, watched the news all the time about what was going on and they, they'd just have their buddies come over and they were just acting weird like they was _____, like pace the floor and just be like "are you guys ready? Are you guys ready?" And they just were like "yeah" and they'd just leave.

Q: Okay.

A: They've got about six guns, though.

Q: Did you eventually move out?

A: Yes. I moved out not too long after that. I've been staying over at B.J.'s house.

Q: Okay. What kind of guns did they have?

A: Uh, they had a bunch of little pistols. They had like four pistols. Then they, I remember, they had a .22 big rifle like a hunting rifle.

Q: Uh huh.

A: Uh, then they had a little .22 like where the...it was a pistol grip and then the thing would come out off the side...

Q: Uh huh.

A: And it had a little banana clip on it and then, uh, some 30-30, some real big gun with a big banana clip on it.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 7

EVENT: 980814-1600

HART, ACE RAYBURN

Q: Okay. Um, how long ago did you see those guns?

A: About two weeks ago.

Q: Okay. Did they happen to carry 'em in a bag at all?

A: Yeah. They had 'em all in one bag.

Q: What kind of bag?

A: It was just like a big, black duffel bag. It was pretty...It was like a big duffel bag. They'd just carry them all around in there.

Q: Okay. Did they carry anything else in there that you know of?

A: Uh, I _____ went through their stuff.

Q: Okay. Um, did you eventually move out?

A: Yes.

Q: When did you move out?

A: About two weeks ago.

Q: Why'd you move out?

A: Just because it just didn't seem right because they were talking about something that happened at the Thunderbird and when our phone was hooked up at that time, uh, they had called the Thunderbird room that I had rented for them and the homicide detectives were there. And they said something about the homicide detectives. And then, uh, that's when I started thinking something was wrong

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 2

EVENT: 980814-1600

JOHNSON, BRYAN CHRISTOPHER

Q: Okay.

A: Johnson.

Q: Okay. And uh, have you been over to Tod's house in the past?

A: A couple of times briefly not for an extended period of time.

Q: Okay. And would that be during the time period where, where, uh, uh, Deco and, and Red were staying there?

A: Yes sir.

Q: Okay. And when you were there, did you happen to see a, a duffel bag by any chance?

A: Yes sir.

Q: What color was the duffel bag?

A: Black.

Q: What did it contain?

A: Uh, approximately four guns, sir.

Q: Where were they...where was the bag located?

A: In the master bedroom in the back.

Q: Okay. Did you happen to see what kind of guns they were?

A: Uh, I think two handguns, a shotgun and an automatic weapon, a 9 mil.

Q: Okay. How...did you happen to know whose guns these were?

1 A. Because I seen. That's all they carry
2 in the bag.

3 Q. Had you seen the bag on other
4 occasions?

5 A. Yeah.

6 Q. And what was in the bag on those
7 occasions?

8 A. Guns.

9 Q. Now, when Red was carrying the bag,
10 could you tell if something was in the bag or not?

11 A. Yeah.

12 Q. Did the bag look empty to you?

13 A. It looked empty, but it seemed heavy.
14 He was carrying it.

15 Q. Do you know what the guns looked like
16 that were in the bag?

17 A. Yeah.

18 Q. Can you describe the guns, the three
19 guns, please?

20 A. Think one of them was a little caliber
21 gun kind that spin around that you play Russian
22 roulette. The other one was like a black .22 or
23 something like that, and another one was -- it was
24 long, and it had holes in it. On the top of it it
25 had a clip that you put in, put in the bottom.

1 A. No.

2 Q. While at the Everman house did Red or
3 Deko have any weapons at that house?

4 A. Yes.

5 Q. Approximately how many weapons?

6 A. It was like two of them. It was two of
7 them.

8 Q. Describe the two guns.

9 A. One of them was like -- it was long,
10 black, and had like a banana clip. You could see
11 like about 32 bullets in it.

12 Q. What was the other style gun?

13 A. The other one was like a little bitty
14 chrome gun, silver chrome.

15 Q. Did you only see two guns at the
16 residence during that period of time?

17 A. Yes.

18 Q. And where -- whose guns were they?

19 A. I don't know because all of them
20 were -- they would hold it, you know.

21 Q. Who's "all of them"?

22 A. Pass it around.

23 Ace, and Tod, and Deko, and Red.

24 Q. Who brought the guns to the house? Was
25 it Deko that brought the guns?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 16

EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

- A. I think... I think it was three eighty, but--
- TT. Okay.
- A. --I'm no sure.
- TT. And what kind a gun did Red have?
- A. He had a .22 rifle.
- TT. Okay. So, when the guys were taped, Donte's coverin', Red's tapin'?
- A. Yeah.
- TT. How exactly were their hands taped?
- A. Like, they were taped, uh, to the back.
- TT. Okay.
- A. And they had their hands behind their back and... and taped behind 'em.
- TT. Okay. Do you know if their hands were palms together or backs together?
- A. I think it was palms together.
- TT. How were the fingers?
- A. Mmm, I... I'm not sure.
- TT. Okay. Were they taped anyplace else?
- A. Uh, their feet.
- TT. Okay. And who taped their feet?
- A. Red.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 13

EVENT: 980814-1600

YOUNG, COCHISE TERRELL

A: In the driveway. In the driveway.

Q: And who was there at the house?

A: The guy that was watering the grass.

Q: What he look like?

A: About my height. Kind of fat guy.

Q: Was he wearing a shirt or no shirt?

A: No shirt.

Q: And what happened once you pulled up?

A: Then Deco...Deco got out the car. He, he wasn't surprised to see Deco 'cause he knew Deco and stuff, so...and Deco got out the car but when he seen the gun Deco's like "get your ass in the house."

Q: What gun did Deco have at that point?

A: The big gun, a big 30, 30 something. It take 30 caliber bullets. I don't know what kind of gun it was.

Q: Is that the one that the highway patrolman got in the car?

A: Yes. That was...

Q: Stolen car?

A: Under the seat.

Q: And, what gun did you have?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 14

EVENT: 980814-1600

YOUNG, COCHISE TERRELL

A: I had a Ruger rifle.

Q: What caliber?

A: .22.

Q: And what did Tiny Bug have?

A: He had a handgun.

Q: What kind of handgun did he have?

A: Um, I don't know.

Q: You don't know what kind it was?

A: Un un.

Q: Was it a semi-automatic or was it a revolver?

A: A semi-automatic.

Q: Do you know what caliber it was?

A: No.

Q: Do you know whose it was?

A: It was Tiny Bug's.

Q: Do you know where he got it?

A: No.

Q: Okay. So did you take anything else in the house besides the guns when you first went in the house?

1 A. They were in the living room.

2 Q. And tell me what was said in the living
3 room.

4 A. When, before they went?

5 Q. Before the boys left.

6 A. Nothing. They just packed the stuff
7 and left.

8 Q. Who packed what stuff?

9 Let's first talk about Donte.
10 What did Donte pack?

11 A. I didn't see nobody pack nothing. I
12 just know they had guns in the bag.

13 Q. Who was carrying the bag?

14 A. I think Red.

15 Q. You think Red?

16 A. Uh-huh.

17 Q. And what color was the bag?

18 A. It was like green and tan or brown,
19 something like that.

20 Q. And did you know what was in the bag?

21 A. Some guns.

22 Q. How many bags total, ma'am?

23 A. About three.

24 Q. How did you know there was guns in the
25 bag?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 44

EVENT: 980814-1600

TOD ARMSTRONG

A: Yeah, no. No. The only thing, the only thing I could think of where they, anybody would get that is from me selling drugs before.

Q: Well yeah, that's exactly what I'm saying.

A: Yeah, but I never said that I would sell any of their stuff for 'em.

Q: Did they ever come to you and say "hey, if we get this stuff, you'll help us move it"?

A: No.

Q: And, and you may have just said "yeah, yeah" because now I understand you're, you're somewhat afraid of these guys...you don't want to offend them.

A: No. I don't remember them ever asking me to move any of their drugs. I don't even think they were going for drugs. They just mainly wanted money.

Q: Now that we're on a little more honest tact here, do you know how the VCR and Play Station got to your house?

A: They brought it. That, I... I mean, yeah. It came up that night that they came back.

Q: Did you see them returning with those things?

A: They returned the bags.

Q: Okay. So again we're back to they showed up, this thing has happened and now all of a sudden there's a VCR and a Play Station at your house that weren't there before.

1 A. Just -- they was just talking about
2 what they -- about -- I don't know. I don't
3 remember.

4 Q. Do you remember what the topic was that
5 they were talking about?

6 A. I don't remember.

7 Q. Do you remember anything about the
8 conversation?

9 A. No, not that night.

10 Q. Okay. Now, let me ask you, you said
11 earlier at about 9:00 o'clock when Red left he was
12 wearing gloves. At 3:00 o'clock now in the Everman
13 house in the living room was Tod or, excuse me, was
14 Red still wearing gloves?

15 A. I'm not sure.

16 Q. Were any of the four boys now wearing
17 gloves at 3:00 o'clock in the morning?

18 A. No.

19 Q. The bag that you saw them leave with
20 six hours earlier, where was the bag at now?

21 A. In the corner next to the couch.

22 Q. Could you tell if there was anything in
23 that bag?

24 A. Yeah.

25 Q. How could you tell, ma'am?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 3

EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

A. Todd and Donte were talkin' about, um, you know, these guys was supposed to have a lot of money and drugs over there. And that they wanted... that Todd wanted the drugs, you know.

Q. Okay. Okay, uh, did Todd ever take you guys over there and show you where the house was located?

A. Um, never. Never when I was around.

Q. Okay. How did you guys know where to go?

A. Dante knew where to go.

Q. All right. So, what was Todd wanting to get out of the... out of the house? What was... What was he looking for?

A. Um, he was lookin' for rock. Cocaine.

Q. Okay. Did he tell you what other types of drugs would be found in the house?

A. No.

Q. Okay. So, you guys decide to... on August 14th, to go over and do it. Was there any particular reason why that night?

A. No.

Q. Okay. So you... you were gonna leave the house. Do you bring anything with you?

A. No.

Q. You didn't bring a bag?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 4

EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

A. I didn't.

Q. Okay.

A. They did.

Q. Did someone bring--

A. Yeah.

Q. --a bag with them?

A. Red brought the bag.

Q. What was the bag... What did it look like?

A. It was a brown, like, tote bag. Like a... Like a, uh... uh, can't really... like a... like a bag, like.

Q. Kinda like a gym bag type thing?

A. Yeah.

Q. Okay.

A. Kinda like a gym bag.

Q. Okay. And what was inside the bag?

A. It was... it was some guns inside the bag.

Q. Anything else?

A. Mmm, some duct tape.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 14

EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

TT. As you were searching, and as the other... Donte and... was Red searching also?

A. No, he was in there. He was seated in there.

TT. You're pointing to the--

A. To--

TT. --main living room?

A. Yeah, to the main living room.

TT. What was he seated in there for?

A. He... just make sure they... I guess they don't go anywhere or--

TT. Okay.

A. --anything.

TT. So it was mostly you and Donte doin' all the searchin' for the money and the drugs?

A. Yeah.

TT. Did you have any idea where you were supposed to look?

A. No.

TT. Just anyplace.

A. Yeah.

TT. Did you take anything down when you looked or were you very neat? Were you clean about lookin'?

A. No, we were... took... we... we weren't neat.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 15

EVENT: 980814-1600

YOUNG, COCHISE TERRELL

A: A duffel bag.

Q: What color was that?

A: I think that be a black one or either it was the green and black one, green and brown one. 'Cause there was two duffel bags at the house. There was a black one and then there was a green and brown one...an all green bag with brown edges.

Q: And what was in the duffel bag?

A: Tape, gloves.

Q: What kind of tape and what kind of gloves?

A: It was brown gloves, brown cotton gloves.

Q: Okay.

A: And it was grey duct tape.

Q: And what did everybody do with the cotton gloves?

A: Put 'em on.

Q: Who put gloves on?

A: Everyone.

Q: Which would be who?

A: Tiny Bug, Deco and me.

Q: And then what happened with the duct tape?

A: Deco taped them up.

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SPECIAL PUBLIC DEFENDER'S OFFICE
ATTORNEY FOR DEFENDANT

Y Leri Elliott / for.
309 S. Third St., Suite 400
Las Vegas, Nevada 89101

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Shirley B. Rungius
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

DANTE JOHNSON, aka John White,
ID# 1586283,

Defendant.

Case No. :C153154
Dept. No. :V

ORDER APPOINTING COUNSEL FOR MATERIAL WITNESS
CHARLA SEVERS

This Court, finding it necessary to appoint counsel for a material witness in the above captioned case;

IT IS HEREBY ORDERED that Jay L. Siegel, Esq., be appointed to represent the CHARLA SEVERS, throughout this court's proceedings.

DATED this 15th day of October, 1999.

[Signature]
DISTRICT COURT JUDGE

Respectfully Submitted,

WOLFSON & GLASS

By *[Signature]*
JAY L. SIEGEL, ESQ.
Nevada Bar No. 4748
302 E. Carson, #400
Las Vegas, Nevada 89101

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Shirley B. Langston
CLERK

1 **ORDR**
2 PHILIP J. KOHN
3 Special Public Defender
4 Nevada Bar No: 0556
5 JOSEPH S. SCISCENTO
6 Deputy Special Public Defender
7 Nevada Bar No: 4380
8 DAYVID J. FIGLER
9 Deputy Special Public Defender
10 Nevada Bar No: 4264
11 309 South Third Street, Fourth Floor
12 Las Vegas, NV. 89155-2316
13 Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

12	THE STATE OF NEVADA,)	
13)	
14	Plaintiff,)	CASE NO: C153154
15)	DEPT NO: V
16	vs.)	
17)	
18	DONTE JOHNSON aka)	
19	JOHN WHITE,)	
20)	
21	Defendant.)	

ORDER

Date of Hearing: 10/21/99
Time of Hearing: 9:00 a.m.

22 This matter having come on for hearing on the 21st day of October, 1999, on
23 Defendant's Motion In Limine to Preclude Evidence of Other Crimes or Bad Acts, GARY
24 GUYMON, Deputy District Attorney, appearing on behalf of the Plaintiff, and JOSEPH S.
25 SCISCENTO, Deputy Special Public Defender appearing on behalf of the Defendant, and
26 the Court having heard oral argument and after having examined the records and
27 documents on file in the above-entitled matter and being fully advised in the premises, and
28 good cause appearing therefore,

COUNTY CLERK

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DEFENDER
CLARK COUNTY
NEVADA

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1 IT IS HEREBY ORDERED that Defendant's Motion In Limine to Preclude Evidence
2 of Other Crimes or Bad Acts through Defendant CHARLA SEVERS shall be, and the same
3 is hereby granted; and

4 IT IS FURTHER ORDERED that the State is precluded from presenting any evidence
5 of other charged or uncharged crimes, prior bad acts or wrongs, charged or not charged,
6 through witness CHARLA SEVERS.

7 DATED this 21 day of October, 1999.

8
9
10 
11 DISTRICT COURT JUDGE *e*

12 SUBMITTED BY:

13
14 
15
16 JOSEPH S. SCISCENTO
17 DEPUTY SPECIAL PUBLIC DEFENDER
18 State Bar No. 004380
19 309 S. Third Street, Fourth Floor
20 Las Vegas, NV 89101
21 (702) 455-6265
22 Attorney for Defendant
23
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SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

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0001
PHILIP J. KOHN
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309 South Third Street, Fourth Floor
Las Vegas, NV. 89155-2316
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

DONTE JOHNSON, aka
John White, ID No. 1586283,

Defendant.

CASE NO: C153154
DEPT NO: V

MOTION AND NOTICE OF MOTION TO SUPPRESS
EVIDENCE ILLEGALLY SEIZED

Date of Hearing: December 27, 1999
Time of Hearing: 9:00 a.m.

COMES NOW, the Defendant, DONTE JOHNSON, aka John White, by and through
his counsel of record PHILIP J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO,
Deputy Special Public Defender and DAYVID J. FIGLER. Deputy Special Public Defender,
and moves this Court for an Order suppressing all evidence recovered from the bedroom
at the Everman residence. This Motion is based upon the attached Memorandum of

...

...

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CLARK COUNTY
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COUNTY CLERK




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1586283

1 Points and Authorities, the file herein, and any argument that this court may hear in
2 support of this Motion.

3 Dated this 3rd day of December, 1999.

4 PHILIP J. KOHN
5 SPECIAL PUBLIC DEFENDER

6
7 
8 JOSEPH S. SCISCENTO
9 Deputy Special Public Defender
10 Nevada Bar No. 004380
11 309 S. Third Street, Fourth Floor
12 Las Vegas, Nevada 89101
13 (702) 455-6265

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 AND NOTICE OF MOTION TO SUPPRESS EVIDENCE ILLEGALLY**
17 **SEIZED** on the 27th day of December, 1999, at the hour of 9:00 a.m., in Department No.
18 **V** of the above-entitled Court, or as soon thereafter as counsel may be heard.

19 DATED this 3rd day of December, 1999.

20 PHILIP J. KOHN
21 SPECIAL PUBLIC DEFENDER

22
23 
24 JOSEPH S. SCISCENTO
25 Deputy Special Public Defender
26 Nevada Bar No. 004380
27 309 S. Third Street, Fourth Floor
28 Las Vegas, Nevada 89101
(702) 455-6265

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 STATEMENT OF FACTS

3 Mr. Johnson is being charged by way of indictment with the following charges of;
4 Murder, Robbery and Burglary. The alleged crimes took place on August 13, 1998.

5 On or about August 17, 1998, Detective Buzack and Detective Thowsen,
6 interviewed Todd Armstrong and Ace Hart, in regards to the crimes that occurred at the
7 Terra Linda residence. The Detectives were informed by both Ace Hart and Todd
8 Armstrong, that Donte Johnson resided at the Everman residence, the same residence
9 where Todd Armstrong resided.

10 Both Ace and Todd gave information to the Detectives that implicated Donte
11 Johnson in the crimes that occurred at the Terra Linda residence. Further, the Detectives
12 were given information that weapons which may have been used in the crimes were still
13 located at the Everman house and that these weapons might be found in the bedroom of
14 Donte Johnson.

sp 15 On or about August 18, 1999, the police, pursuant to a consent to search card
16 signed by Todd Armstrong, searched the residence located at 4815 Everman. The police
17 learned from Tod Armstrong, that the residence was owned by his mother and that Todd
18 was a co-tenant with Donte Johnson. It was also learned that Todd Armstrong and Donte
19 Johnson did not share a common bedroom.

20 When the police arrived at the residence they requested that the occupants of the
21 residence remove themselves from the residence. Charla Severs was the first to exit the
22 residence, and she was immediately placed in handcuffs. Subsequently, Dwain Anderson
23 and Donte Johnson exited from the residence and they were immediately placed in
24 handcuffs. The police, pursuant to the consent to search signed by Todd Armstrong,
25 searched the Everman residence. At the residence the police located a pair of black
26 jeans, which appeared to have blood on them, and they also seized several weapons,
27 including but not limited to, a .22 Ruger rifle model 10/22 Serial No: 233-12826 and a
28 .32 caliber automatic handgun. The black jeans with the alleged blood splatters were

1 located in the bedroom located in the southwest area of the house. This is the bedroom
2 that Donte Johnson used, but not Todd Armstrong.

3 Mr. Johnson was residing in the southwest bedroom for a few weeks prior to the
4 search of the residence. At no time did Mr. Johnson give any consent to have the
5 bedroom searched.

6 LEGAL ARGUMENT

7 THE POLICE VIOLATED MR. JOHNSON'S FOURTH AMENDMENT RIGHT TO PRIVACY

8 The United States Constitution Fourth Amendment states as follows:

9 "The right of the people to be secure in their persons, houses, papers and
10 effects, against unreasonable searches and seizures, shall not be violated
...".

11 A search of a persons effects without a warrant is generally "per se unreasonable"
12 under the Fourth amendment of the United States, Katz v. U.S., 389 U.S. 347 (1967).

13 An exception to the warrantless search is consent by a person with authority.
14 Schneckloth v. Bustamonte, 412 U.S. 218 (1973).

15 1. A third-party's consent to search must be shown to have actual authority to
16 search the residence.

17 In order for a third-party to give consent to search a place in the residence the third-
18 party must have authority to allow the police to search the place being searched. In other
19 words the place being searched must be one that the third-party has consent to be in and
20 the defendant does not have an expectation to privacy as to that place.

21 A roommate of a residence does not have the authority to allow a search of a
22 bedroom in which another person is residing in.

23 When a third-party consents to a search of the defendant's property, the
24 consenting party must have joint access or control over the property for most purposes,
25 so that the third party can consent to the search in his own right. U.S. v. Matlock 415
26 U.S. 164 (1974).

27 In Matlock, the Supreme Court declared

28 "that common authority is not to be implied from mere property interest a

1 third-party has in the property, for the authority which justifies the third-
2 party consent does not rest upon the law of property, but rather on mutual
3 use of the property by persons generally having joint access or control for
4 most purposes so that it is reasonable to recognize that any of the co-
habitants has the right to permit the inspection in his own right and that the
others have assumed the risk that one of their number might permit the
common area to be searched." Matlock.

5 In the case of United States v. Duran, 957 F.2d 499 (7th Cir. 1992) the Court of
6 Appeals held:

7 "[I]t would be incorrect to treat spouses ... the same as any two individuals
8 sharing living quarters. Two friends inhabiting a two-bedroom apartment
9 might reasonably expect to maintain exclusive access to their respective
bedrooms, without explicitly making this expectation clear to one another.
... In the context of a more intimate marital relationship, the burden upon the
government [to prove common authority] should be lighter. U.S. v. Duran

10
11 Relationships involving roommates or cotenant generally receive more protection
12 than those involving intimate relationships like husband and wife and child parents.

13 In State v. Hacker 209 SE2d 569, (1974), the court held that an individual who
14 was presumably the landlord of the defendant, who had consented to the warrantless
15 search of the accused's bedroom in a house, was shown not to have common authority
16 over the bedroom searched and therefore could not properly consent to a search.

17 In State v. Warfield, 198 NW 854 (1924), the Court held that a warrantless search
18 of the accused's room in a rooming house and the seizure of a flashlight, reflector,
19 clothing, jewelry, and other articles of personal property were held to be invalid and the
20 evidence therefore inadmissible in a prosecution for burglary where the only authority the
21 officers had for searching the room was the rooming housekeepers consent. In State v.
22 Tucker, 574 P.2d 1295 (Ar. 1978), the Court held that a warrantless search was invalid
23 and the evidence seized therefore inadmissible at the Defendant's prosecution for murder,
24 where the accused had exclusive possession of the bedroom and the sole authority. The
25 police had to conduct the search emanated from the consent of the accused's cotenant.

26 In Tucker the Court recognized that the bedroom was used as a sleeping quarter
27 and a storage room by the accused; there was no evidence that it was used for any other
28 purposes. As such, the court related, even though the consenting cotenant was a co-

1 owner of the house, it could not be held that she had joint access or control within the
2 meaning of Matlock.

3 In the case of State v. Matias, 451 P.2d 257 (1969) the Court held that a
4 warrantless search of the bedroom of an overnight guest consented to by the tenant of
5 the premises, was invalid, and the consent of the tenant operated only to waive the
6 tenant's own right to protection from an unreasonable search and seizure.

7 In the case of People v. Douglas, 213 N.W.2d 291 (1973), the court held that a
8 confession was invalid when the confession was based upon illegally seized evidence
9 when the police searched a bedroom of a co-tenant based on the consent to search of the
10 co-tenant.

11 In the case at bar the police, upon the consent of Todd Armstrong, searched the
12 area of the bedroom where Donte Johnson resided. Mr. Armstrong did not have the
13 authority to allow a search of the bedroom and as a result the search violated Mr.
14 Johnson's right to privacy.

15 As a non-related co-tenant, Mr. Johnson had an expectation of privacy as to the
16 bedroom in which he resided.

17 CONCLUSION

18 Mr. Johnson, as a resident and co-tenant of the Everman house has an expectation
19 of privacy, as to the most secure place, that is his home and more specifically his
20 bedroom. The essence of the right of free people is to be secured in their homes. This
21 right is secured in the Fourth Amendment of the United States of America. This Fourth
22 Amendment right is one of the original ten Bill of Rights. A home may be no more than
23 a shack to one person but it is his home nonetheless. Mr. Johnson lived at Everman
24 address and considered his bedroom a sacred place and had the same expectation of
25 privacy as any other person.


26 The police violated Defendant Johnson's rights, when they relied upon the consent
27 of a co-tenant of the house who did not have the right to consent inasmuch as Mr.
28 Armstrong did not share Mr. Johnson's bedroom. Further, the police had an opportunity

1 to secure a search warrant yet they failed to do so. More easily they could have
2 requested consent from Mr. Johnson to search his bedroom.

3 For these above reasons Mr. Johnson requests that this Honorable Court suppress
4 all evidence seized from the bedroom at the Everman residence.


5 Dated this 3rd day of December, 1999.

6 PHILIP J. KOHN
7 SPECIAL PUBLIC DEFENDER

8
9 
10 JOSEPH S. SCISCENTO
11 Deputy Special Public Defender
12 Nevada Bar No. 004380
13 309 S. Third Street, Fourth Floor
14 Las Vegas, Nevada 89101
15 (702) 455-6265

16 RECEIPT OF COPY

17 RECEIPT OF COPY of the foregoing MOTION AND NOTICE OF MOTION TO
18 SUPPRESS EVIDENCE ILLEGALLY SEIZED is hereby acknowledged this 3 day of
19 December, 1999.

20
21 
22 STEWART L. BELL
23 District Attorney
24 200 S. Third Street
25 Las Vegas, NV 89101
26 Attorney for Plaintiff
27
28

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

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DISTRICT COURT
CLARK COUNTY, NEVADA

Shirley B. Prawlsky
CLERK

STATE OF NEVADA,)
)
PLAINTIFF,)
VS.)
)
DONTÉ JOHNSON, aka JOHN LEE)
WHITE,)
DEFENDANT.)

CASE NO. C153154
DEPT. V

Transcript of
Proceedings

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

DEFENDANT'S MOTION TO REVEAL THE IDENTITY OF INFORMANTS AND
REVEAL ANY BENEFITS, DEALS, PROMISES, OR INDUCEMENTS

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

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

DEFENDANT'S REPLY TO OPPOSITION TO MOTION IN LIMINE
TO PRECLUDE EVIDENCE OF OTHER GUNS, WEAPONS, AMMUNITION

DEFENDANT'S MOTION IN LIMINE TO PRECLUDE EVIDENCE
OF WITNESS INTIMIDATION

THURSDAY, NOVEMBER 18, 1999, 9:30 A.M.

APPEARANCES:

FOR THE STATE:	GARY GUYMON, ESQ. ROBERT DASKAS, ESQ. DEPUTY DISTRICT ATTORNEYS
FOR DEFENDANT JOHNSON:	JOSEPH SCISCENTO, ESQ. DEPUTY SPECIAL PUBLIC DEFENDER
COURT RECORDER: SHIRLEE PRAWALSKY	

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CLARK COUNTY

1 LAS VEGAS, NEVADA, THURSDAY, NOVEMBER 18, 1999, 9:00 A.M.

2 THE COURT: Johnson on page 34.

3 Some of these motions appear on calendar more than once so we'll go
4 from the top. The last—the two up from the bottom are just repeated and the last
5 one is just a reply to another motion.

6 Let's go in order. Motion in Limine to Preclude Evidence of Witness
7 Intimidation denied in part, granted in part. It's granted only in the sense that there's
8 a continuing obligation to give any new evidence. I find under the case law and
9 statute the State has already done everything it needs to do up until now regarding
10 that motion.

11 Motion to Compel Disclosure of Existence and substance of Expectations
12 or Actual Receipt of Benefits or Preferential Treatment for Cooperation with the
13 Prosecution, the agree to provide and have attached a transcript that reveals
14 accommodation given to at least four or five witnesses. I grant it to the extent that
15 I affirm that there's a continuing duty to give anything new that comes up and I deny
16 it insofar as I find that they've given all existing information up to this point.

17 Third: the Motion to Compel the Production of Any and All Statements
18 of the Defendant. I take it from the response that you've given full access of the file
19 to them?

20 MR. DASKAS: That's correct, Judge.

21 THE COURT: There has been some discussion in some of these pleadings of
22 an obligation to also give—it was either in this or maybe it was in the Sands case that
23 I've already ruled on this morning. There is some continuing obligation to give things,
24 not only in your file, but from what I recall the case law to be in the detective's file.
25 Have they also seen the detective's file?

26 MR. DASKAS: Judge, I'll tell you that we copied both of the detectives' files.
27 Whatever they have, we have. And certainly the defense has access to our files and
28

1 they've seen our files.

2 THE COURT: Okay. So I'll grant it only as to the future.

3 MR. SCISCENTO: Your Honor, my understanding, then, what Mr. Daskas is
4 saying is that he has access to the officer's files-

5 THE COURT: Right.

6 MR. SCISCENTO: -the detectives' files. Therefore, in a sense, we also have
7 access to-

8 THE COURT: Correct.

9 MR. SCISCENTO: -the discovery policy?

10 THE COURT: Correct.

11 MR. SCISCENTO: And we'll set a time up where we can meet Mr. Daskas and
12 look through that.

13 THE COURT: Okay. All right. The last motion is the Motion in Limine to
14 Preclude Evidence of Other Guns and Ammunition Not Used in the Crime. The fact
15 that this gun-these guns, and I can't tell from the pleadings whether there were three
16 or four other weapons that you're talking about, whether it's-there's something
17 about a .50 millimeter and I couldn't tell whether that's a fourth gun. But the mere
18 fact that these guns were not used as the murder weapon is obviously not
19 controlling.

20 What is-the inquiry of the Court is: is there reason to believe as Mr.
21 Daskas signs onto that the guns in the opposition he refers at pages 3 and 4 to the
22 allegation that the Ruger, the Enforcer, that these guns were used by the co-
23 defendants. And I think, clearly, if the co-defendants allegedly used these guns,
24 what do you base that on? Now, I was listening to Carla Severs, but I wasn't
25 particularly paying attention to what she was saying about the various guns. Is it her
26 testimony that you believe forms the foundation for believing that these weapons
27 that you have pictures of and have discovered in either the search of Donte-or the

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1 car he was allegedly driving, or the residence of this other fellow, is it her testimony,
2 or is there additional stuff that forms the foundation in your mind for saying, "These
3 were the guns that were probably in that knapsack,"—not knapsack, what do you call
4 it, duffle bag?

5 MR. DASKAS: Duffle bag, Judge. Judge, it's really a combination of
6 witnesses. There will be testimony from Ace Hart that he saw the duffle bag and
7 those guns in that duffle bag on other occasions.

8 THE COURT: Now, when you say "those guns," how—you've been through
9 two trials with this, right?

10 MR. DASKAS: Yes, yes.

11 THE COURT: Those are not attached to your opposition, but I would take it
12 there would be daily transcripts on those because those were also cases where you
13 sought the death penalty.

14 MR. DASKAS: That's correct, Judge.

15 THE COURT: So, you could give me before trial in this case which isn't till
16 January, transcripts from the other cases that would indicate—because, as I said, I
17 think the fact that it's not a murder weapon is absolutely—it's certain relevant, but
18 it's not dispositive. If these weapons are identified in these other cases and therefore
19 we have reason to expect they're going to be identified again, I'm not even going to
20 have a hearing outside the presence of the jury if I'm convinced that's going to be the
21 flow of the evidence.

22 MR. DASKAS: Yes, sir.

23 THE COURT: So, you say this Ace fellow—

24 MR. DASKAS: Ace Hart is one witness, Judge. And, Judge, I should tell you
25 it's not necessarily in the transcripts from the trials. It's also in discussions that
26 we've had with these witnesses in our offices at pre-trial. As well as Brian Johnson,
27 Charla Severs said she knew about it. And, of course, both of the co-defendants

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1 who have been tried and convicted gave statements indicating these guns were
2 involved. I appreciate, Judge, any potential Bruton problems. However, there is
3 really no fifth amendment privilege at this point. We can certainly subpoena those
4 co-defendants now that they've been adjudicated and sentenced and call them to the
5 stand. I'm not suggesting we'll do that.

6 THE COURT: Yeah, what you're going to get from them may be absolutely
7 nothing. But, at least there's three witnesses, you represent, who, whether they've
8 already testified or they're going to testify, you're convinced are going to make
9 identifications of those weapons as the weapons that were in the duffle bag. And,
10 of course, how clear those identifications are is, again, something to me that more
11 goes to weight than it does admissibility. But you can't supplement your opposition
12 to show me those statements and to give me those transcripts.

13 MR. DASKAS: And I'll tell you these are very distinct looking guns. One of
14 them has a muzzle with holes in it and that's how witnesses describe it. The other
15 one is a collapsable stock on the gun and that's how witnesses describe it. So,
16 certainly, their descriptions, I'm sure, would satisfy the Court that these are the guns
17 that everybody is referring to.

18 THE COURT: Well, if I'm satisfied by that and you can file a supplemental
19 opposition within about two weeks with those things in it. And if you want to
20 answer and have the last word under admissibility, you can file two weeks after that.
21 What would it be? Hold on, one second, Joe. Oh, before we give you a date, what
22 did you want to say?

23 MR. SCISCENTO: Well, the problem I have is whether they identified the guns
24 as being in that duffle bag, being there a week before, a day before, after. The issue
25 that they need to show whether these were used in any crime at all, if they were
26 actually the guns used that night.

27 THE COURT: It satisfies me that if they were in that house and that duffle
28

1 bag left on the night of the alleged crime, they're coming in.

2 MR. SCISCENTO: Well, what I would ask then is a Petrochelli hearing of some
3 sort where they could show a clear and convincing evidence because that's the
4 standard of proof that we need in order to bring that in. We can then cross--

5 THE COURT: Oh, no, because then it's not evidence of other crimes, it is
6 evidence of--if the co-defendants have these guns, I don't care whether they were
7 not used as the .38 that allegedly caused the murder. The fact they leave the house
8 in the company of the alleged co-defendants and co-perpetrators, is going to be
9 enough to get them in for me without a Petrochelli hearing.

10 MR. SCISCENTO: I understand that, Your Honor. But, Your Honor, what they
11 need to show, they need to show that, in fact, they were used that night in some
12 way. Not as a murder weapon, but presented. And there is no evidence--

13 THE COURT: I don't know that they even have to show that. They leave the
14 house as part of this conspiracy that is alleged to commit murder. That's going to
15 enough for this Court--you can argue it if there's a conviction, in front of more
16 justices at a higher level. But it's not going to convince me, Joe.

17 MR. SCISCENTO: Let me at least put this out there. When I say "Petrochelli
18 hearing," I don't mean it for prior bad acts. What I mean is that we need an
19 evidentiary hearing prior to it with the standard being clear and convincing.

20 THE COURT: Well, hear me out. Okay. What are these two dates?

21 THE CLERK: Supplemental opposition to be filed by December 2nd, reply to be
22 filed by December 16th.

23 THE COURT: Okay. I will decide on the calendar call, which is January the
24 4th, isn't it, and it's also the day Ms. Severs has to come in?

25 MR. DASKAS: That's correct, Judge.

26 THE COURT: I will decide whether we're going to have an evidentiary hearing
27 prior to the jury or whether I'm just going to rule based on that.

28

1 Now, last time we were here there was discussion of additional motions
2 and not being able to get them in by now. What are those motions, how long it's
3 going to take to get them filed?

4 MR. SCISCENTO: I would need probably another week to file a motion which
5 may be dispositive to the case.

6 THE COURT: You're hoping it will be dispositive of the case? You mean if
7 granted it would be?

8 MR. SCISCENTO: The constitution applies to it.

9 THE COURT: I see. Which amendment?

10 MR. SCISCENTO: One through six.

11 THE COURT: I see.

12 Let's have through the 25th for filing of the motion. We have the holiday
13 coming up after that. So, do you want about two weeks to file this possibly
14 dispositive motion?

15 MR. SCISCENTO: That's fine.

16 THE COURT: You don't want to try this for the third time, do you?

17 MR. DASKAS: Well, this will be the third time.

18 THE COURT: You may just flick it in, right?

19 Two weeks to answer, one week to reply for Joe and we'll hear it
20 without argument for decision on that day before the New Year's holidays. Are you,
21 going to be, one of you at least and one of you at least, in town between--on the
22 Monday between Christmas and New Year's?

23 MR. GUYMON: Yes, Your Honor.

24 THE COURT: Okay. And you?

25 MR. FIGLER: Yes, Your Honor. So, what's the hearing date?

26 THE COURT: The 27th, is it?

27 THE CLERK: The 28th, I believe. Oh, no, the 27th; you're right.

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1 THE COURT: Yes.
2 MR. FIGLER: Of December?
3 THE COURT: Yes.
4 MR. DASKAS: And, I'm sorry, I didn't get the date we need to answer.
5 THE CLERK: Answer to be filed by December 9th.
6 MR. DASKAS: Thank you.
7 THE CLERK: Reply by December 23rd.
8 THE COURT: We're not going to call it an opposition because it may just be
9 a response that is--if the constitution applies.
10 MR. FIGLER: So, the balance of our motions down by the 25th, all will be heard
11 by the 27th of December?
12 MR. DASKAS: And, Judge, just for clarification, are they saying they're going
13 to file one additional motion?
14 THE COURT: It sounds like just one. But Dayvid is going beyond that I hear.
15 MR. SCISCENTO: My understanding is Dayvid is going to be filing some
16 additional motions. We're working as a team on this and he's got some motions that
17 we're going to file. We'll probably talk to the district attorney today regarding those
18 motions.
19 THE COURT: Is there going to be a change of the spelling of the first name
20 so that we can have some--or are you going to leave this first name the same for
21 trial?
22 MR. FIGLER: It depends, Your Honor, on what your information is. What first
23 name are we talking about, my own or--
24 THE COURT: D-A-Y-V-I-D? That's a questionable spelling.
25 MR. FIGLER: Yes, Your Honor. There's an entire lineage if you'd like to have
26 a bench conference on that.
27 THE COURT: Well, maybe it's like--who's going to give final argument on this
28

1 case? Are you both going to argue because it's--where they're seeking the death
2 penalty?

3 MR. FIGLER: There may be a motion with regard to that request, Your Honor.

4 THE COURT: Well, I mean, if both of you--I'm sure that this would be of
5 interest at some appropriate time, Mr. Figler.

6 MR. FIGLER: Thank you, Your Honor.

7 THE COURT: Do you talk about it during your play?

8 MR. FIGLER: No, Your Honor.

9 THE COURT: So, this would be a new thing?

10 MR. FIGLER: Never the twain shall meet, Your Honor.

11 THE COURT: I see. Thanks.

12 MR. DASKAS: This is a motion--and I apologize--that we had filed for evidence
13 regarding the stolen vehicle and gang affiliation.

14 THE COURT: Right. Has that ever been answered?


15 MR. DASKAS: There was an opposition filed and I don't know that we ever
16 set it for hearing, Your Honor.

17 THE COURT: Okay, I'll make a decision on that. I could make a decision right
18 now, but I don't want to--the Thanksgiving turkey may not taste as sweet.

19 MR. DASKAS: Understood, Judge. Thank you.

20 * * * * *

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

23 
24 SHIRLEE PRAWALSKY, COURT RECORDER
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 Attorney for Plaintiff

FILED

Dec 6 3 24 PM '99

DISTRICT COURT
 CLARK COUNTY, NEVADA

CLERK

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,
 #1586283

Defendant.

Case No. C153154
 Dept. No. V
 Docket H

**OPPOSITION TO DEFENDANT'S MOTION FOR PERMISSION
 TO FILE OTHER MOTIONS**

DATE OF HEARING: 12-27-99
 TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
 ROBERT J. DASKAS, Deputy District Attorney, and hereby submits the attached Points and
 Authorities in Opposition to Defendant's Motion for Permission to File Other Motions.

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

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COUNTY CLERK

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POINTS AND AUTHORITIES

Donte Johnson, hereinafter the Defendant, is charged with first degree murder and various other offenses. The Defendant maintains that he has a right under the United States and Nevada Constitutions to file additional motions due to the seriousness of the charges he faces.

It is the State's position that additional motions may only be raised when a meritorious legal question arises. Defense Counsel has the duty to provide the Defendant effective assistance of counsel. See, Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985); Bennett v. State, 111 Nev. 1099, 1108, 901 P.2d 676, 682 (1995); Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996); Mazzan v. State, 105 Nev. 745, 783 P.2d 430 (1989); Ford v. State, 105 Nev. 157, 784 P.2d 951 (1989). However Defense Counsel is also an officer of the court and has an ethical responsibility to ensure the fair and impartial administration of justice. (Nevada Supreme Court Rule 174 (3): "A lawyer shall not engage in conduct intended to disrupt a tribunal."; Rule 203 (4) "It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.") It is the State's strongly held conviction that the only motions that should be filed are those which contain meritorious claims of fact and law. The filing of frivolous motions should be considered a violation of counsel's professional responsibility.

To assist the Court in assessing whether or not a motion is frivolous, the State wishes the Court to consider the tort of Abuse of Process as its framework for analysis. "The abuse of process claim consists of two elements: (1) an ulterior purpose other than resolving a legal dispute, and (2) a willful act in the use of process not proper in the regular conduct of the proceeding," Dutt v. Kemp, 111 Nev. 567, 575-76, 894 P.2d 354, 360 (1995).

Our symbol for justice is of a blind goddess faithfully weighing the issues on a balanced scale. The entitlement of a defendant to "more justice" based upon a sliding scale that is guided only by how atrocious the defendant's acts are perceived, or how harsh the consequences might be, is an affront to our concept of equal protection of the law. Defendants are entitled to full protection of the law regardless of the types of crimes they have committed. The Defendant should not be entitled to abuse of any legal procedure merely at the suggestion that the

1 consequences of his alleged acts are "grave". This position is contrary to our jurisprudence and
2 as such motions not having at least an element of merit should be denied.


3 **CONCLUSION**

4 For the above cited reasons the ability for the Defendant to file additional motions
5 should be monitored and curtailed.

6 DATED this 2 day of December, 1999.

7 Respectfully submitted,

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

10
11 BY 
12 ROBERT J. DASKAS
13 Deputy District Attorney
14 Nevada Bar #004963
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8 Attorney for Plaintiff

FILED

DEC 6 3 28 PM '99

Shelly A. Longoria
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 **DONTE JOHNSON,**
12 #1586283

13 Defendant.

Case No. C153154
Dept. No. V
Docket H

15 **OPPOSITION TO DEFENDANT'S MOTION TO**
16 **BIFURCATE PENALTY PHASE**

17 DATE OF HEARING: 12-27-99
18 TIME OF HEARING: 9:00 A.M.

19 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
20 ROBERT J. DASKAS, Deputy District Attorney, and hereby submits the attached Points and
21 Authorities in Opposition to Defendant's Motion to Bifurcate Penalty Phase.

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

POINTS AND AUTHORITIES

24 Defendant's request for a bifurcated penalty phase hearing is unwarranted. Any
25 character evidence that may be presented, would be presented to the jury after they have
26 considered any aggravating circumstances. Additionally, if the jury finds the Defendant guilty
27 of the burglary count during the trial phase, proof of the lone aggravating circumstance will
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1 have been satisfied. Therefore, Defendant's concern that character evidence may be used to
2 determine whether Defendant is death eligible is unfounded.

3 It is a prevailing principle of our capital punishment jurisprudence that evidence of
4 defendant's character is admissible in the penalty phase of a capital murder case. NRS 175.552;
5 Middleton v. State, 114 Nev. Ad. Op. ___, 968 P.2d 296 (Nev., Nov. 25, 1998) (NO. 31499);
6 Rogers v. State, 101 Nev. 457, 466, 705 P.2d 664 (1985); Allen v. State, 99 Nev. 485, 665 P.2d
7 238 (1983). NRS 175.552(3) reads:

8 In the penalty phase hearing, evidence may be presented concerning aggravating or
9 mitigating circumstances relative to the offense, the Defendant or the victim and on any other
10 matter which the court deems relevant to sentence, whether or not the evidence is ordinarily
11 admissible. When a jury has sentencing responsibilities in a capital trial, many issues that are
12 irrelevant to the guilt-innocence determination step into the foreground and require
13 consideration at the sentencing phase. Simmons v. South Carolina, 512 U.S. 154, 160, 114
14 S.Ct. 2187, 2193 (1994). The defendant's character, prior criminal history, mental capacity,
15 background and future dangerousness may be considered in fixing an appropriate punishment.
16 Id. (citing Lockett v. Ohio, 438 U.S. 586, 98 S.Ct. 2954 (1978); Eddings v. Oklahoma, 455 U.S.
17 104, 110, 102 S.Ct. 869, 874 (1982)). "Once the jury finds that the defendant falls within the
18 legislatively defined category of persons eligible for the death penalty . . . the jury then is free
19 to consider a myriad of factors to determine if death is the appropriate punishment." Tuilaepa
20 v. California, 512 U.S. 967, 976, 114 S.Ct. 2630, 2639 (1994) (citing California v. Ramos, 463
21 U.S. 992, 1008, 103 S.Ct. 3446, 3457 (1983)). The parameters of the state statutory scheme do
22 not limit the myriad of factors that can be considered to determine whether death is the
23 appropriate punishment. Ramos, 463 U.S. at 1008, 103 S.Ct. at 3457.

24 The Nevada Supreme Court has held that the admissibility of evidence during the penalty
25 phase of a capital murder trial is largely left to the discretion of the trial judge. Lane v. State,
26 110 Nev. 1156, 1166, 881 P.2d 1358, 1365 (1994) (citing Milligan v. State, 101 Nev. 627, 636,
27 708 P.2d 289, 295 (1985)). In reviewing the evidence the court must look to see that the
28 evidence is relevant and more probative than prejudicial. Pellegrini v. State, 104 Nev. 625, 631,

1 764 P.2d 484, 488 (1988)(citing NRS 48.035; Crump v. State, 102 Nev. 158, 716 P.2d 1387
2 (1986)). Further, the trial court's decision will not be overturned absent an abuse of discretion.
3 Pellegrini, 104 Nev. at 631, 764 P.2d at 488 (citing Milligan v. State, 101 Nev. 627, 708 P.2d
4 289, cert. denied, 479 U.S. 870, 107 S. Ct. 238 (1986)). Because a sentencing proceeding is not
5 a second trial, the court "is privileged to consider facts and circumstances that would not be
6 admissible at trial." Denson v. State, 112 Nev. 489, 915 P.2d 284 (1996); See also, Silks v.
7 State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


8 Defendant's reliance on Buchanan v. Angelone, 522 U.S. 269, 118 S.Ct. 757 (1998), for
9 the proposition that the United States Supreme Court supports a bifurcated penalty phase is
10 misplaced. The United States Supreme Court did not specifically state that a bifurcated penalty
11 phase hearing was necessary. Rather, that Court distinguished the different phases of a penalty
12 phase hearing when it stated, "our cases have distinguished between two different aspects of
13 the capital sentencing process, the eligibility phase and the selection phase." Id. at 272, 118
14 S.Ct at 760. Ironically enough, Defendant quotes this passage in his motion, yet he seems to
15 have misinterpreted its meaning.

16 Defendant's argument is not supported by statute or by prevailing case law, therefore this
17 Court should deny his motion.

18 DATED this 2 day of December, 1999.

19 Respectfully submitted,

20 STEWART L. BELL
21 DISTRICT ATTORNEY
22 Nevada Bar #000477

23 BY 
24 ROBERT J. DASKAS
25 Deputy District Attorney
26 Nevada Bar #004963
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FILED

DEC 6 3 27 PM '99

Shirley J. Williams
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

DONTE JOHNSON,
#1586283

Defendant.

Case No. C153154
Dept. No. V
Docket H

**OPPOSITION TO DEFENDANT'S MOTION FOR INSPECTION
OF POLICE OFFICERS' PERSONNEL FILES**

DATE OF HEARING: 12-27-99
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through ROBERT J. DASKAS, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion for Inspection of Police Officers Personnel Files.

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

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1 POINTS AND AUTHORITIES

2 The Defendant, without any showing of materiality or relevance, has requested that the
3 personnel files of all police officers who participated in the investigation of the instant case,
4 whether scheduled to testify or not, be provided to the defense or to the Court for *in camera*
5 review.

6 As support for this contention, the Defendant cites the Court to United States v. Henthorn,
7 931 F.2d 29 (9th Cir. 1991), a brief opinion in which the Ninth Circuit held that the prosecution
8 has a duty to review the personnel files of testifying police officers (note that the instant motion
9 requests personnel files for even non-testifying officers) for exculpatory evidence and/or
10 evidence material to the defense. Id.

11 Other jurisdictions have refused to follow the Henthorn rationale, satisfied that the
12 interests of justice and fairness are served by the long-standing requirement that the defense must
13 make some type of *prima facie* showing of materiality before police personnel files are combed.

14 In the instant case, the Defendant has made no offer to support the bare contention that
15 the requested personnel files of all participating police officers would be of significance to the
16 defense of the charged offenses. As such, there is no basis upon which for this Court to grant
17 the request.

18 Certainly, Due Process mandates the disclosure of favorable evidence, material for
19 impeachment or exculpatory purposes, to an accused upon request. Brady v. Maryland, 373 U.S.
20 83 (1963), but the evidence must be material for one of those purposes in order for Brady to
21 apply. United States v. Pitt, 717 F.2d 1334, 1339 (11th Cir. 1983). In Pitt, the defense requested
22 the personnel file of the chief case agent to search for impeachment information, without any
23 showing that evidence material to the defense would be found in that file (painfully similar to
24 the request in the instant motion). The Court there stated:

25 We fail to see how, and the appellant has failed to
26 show us how, the contents of FBI Agent Lewis'
27 personnel file would likely contain anything
28 material to an alleged threat against Pitt, especially
when the official records show that the agent was
out of town on the day the alleged threat was made.

1 The request for the agent's personnel file, under the
2 facts of this case, was frivolous. Pitt was entitled to
fish, but not with this thin a pole.

3 Id at 1339 [emphasis supplied].

4 Other jurisdictions have refused to follow the isolated Henthorn rationale. See, United
5 States v. Quinn, 123 F.3d 1415, 1422 (11th Cir. 1997); United States v. Andrus, 775 F.2d 825,
6 843 (7th Cir. 1985)("Mere speculation that a government file may contain Brady material is not
7 sufficient to require...*in camera* inspection...."); United States v. Driscoll, 970 F.2d 1472, 1482
8 (6th Cir. 1992). All of these jurisdictions follow the long-standing rule that the defense must
9 make some showing of materiality before such a broad and over-reaching discovery request can
10 be entertained.

11 Most importantly, and most conveniently omitted from the Defendant's authorities, is the
12 fact that the Nevada Supreme Court has recently ruled on this issue. In Sonner v. State, 112
13 Nev. 1328, 930 P.2d 707 (1996), the defense requested the personnel file of the Nevada
14 Highway Patrol Trooper who was allegedly shot by the defendant. The Nevada Supreme Court
15 emphatically stated:

16 Although the State may not withhold evidence
17 favorable to the accused and material to either guilt
18 or sentence, the State is under no obligation to
19 accommodate a defendant's desire to flail about in
20 a fishing expedition to try to find a basis for
21 discrediting a victim. See State v. Blackwell, 120
22 Wash.2d 822, 845 P.2d 1017, 1021 (1993)
23 ("Defense counsel's broad unsupported claim that
24 the police officers' personnel files may lead to
material information does not justify automatic
disclosure of the documents.") As the Washington
Supreme Court observed: "A defendant must
advance some factual predicate which makes it
reasonably likely that requested file will bear
information material to his or her defense. A bare
assertion that a document 'might' bear such fruit is
insufficient."

25 Id. at 1340-41 [emphasis supplied].

26 Based on Nevada law, the Defendant in the instant case is required to advance a
27 foundation that the personnel files of all participating officers are likely to bear information

28 //

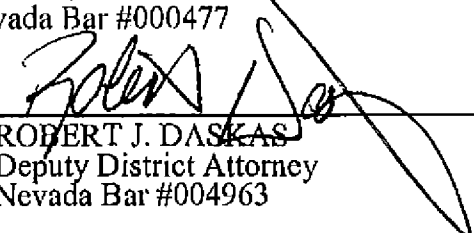
1 material to the defense. Notwithstanding the fact establishing such a foundation is unlikely, the
2 fact remains that it has not even been attempted. As a result, the instant motion should be
3 denied.

4 DATED this 3 day of December, 1999.

5 Respectfully submitted,

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

9 BY

10 
11 ROBERT J. DASKAS
12 Deputy District Attorney
13 Nevada Bar #004963
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8 Attorney for Plaintiff

FILED

DEC 6 3 27 PM '99

Shirley L. Long
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 DONTÉ JOHNSON,
12 #1586283

13 Defendant.
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Case No. C153154
Dept. No. V
Docket H

15
16 **OPPOSITION TO DEFENDANT'S MOTION FOR DISCLOSURE**
17 **OF ANY POSSIBLE BASIS FOR DISQUALIFICATION**
18 **OF DISTRICT ATTORNEY**

19
20 DATE OF HEARING: 12-27-99
21 TIME OF HEARING: 9:00 A.M.

22 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
23 ROBERT J. DASKAS, Deputy District Attorney, and hereby submits the attached Points and
24 Authorities in Opposition to Defendant's Motion for Disclosure of Any Possible Basis for
25 Disqualification of District Attorney.

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

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1 POINTS AND AUTHORITIES

2 In the instant motion Defendant "moves that the District Attorney consider every possible
3 basis for disqualification, and disclose such facts as may raise any inference of bias or pre-
4 judgment so that the Defendant may determine whether to seek the disqualification of the
5 District Attorney." (Defendant's Motion for Disclosure of Any Possible Basis for
6 Disqualification of District Attorney hereinafter "Motion", p. 10). The instant motion does not
7 assert any actual basis for disqualification exists, but "suggests certain facts" the defense asserts
8 would require disqualification of the District Attorney's Office, or certain individuals or staff
9 members. (See Defense Motion, p. 4).

10 Emphasizing that this is a capital case, and that both the process and result should be
11 both fair and just, the defense suggests reasons why the District Attorney's Office as a whole,
12 or members of the staff should be disqualified. With due respect for defense counsel most of
13 the instant motion consists of a lecture on prosecutorial ethics. The undersigned Deputy District
14 Attorney is keenly aware of the role of a public prosecutor and his duty to be both vigorous and
15 fair. There is no question but that the prosecutor's duty is to see that justice is done. Unlike
16 other lawyers, a prosecutor must stifle the natural inclination of all trial lawyers to win in favor
17 of seeing that justice is done. The undersigned does not need a lecture from defense counsel
18 in the form of a motion which delineates "examples of conduct requiring disqualification"
19 suggesting the prosecution has a duty: (1) to be honest and fair; (2) refrain from engaging in a
20 unethical conduct; and (3) refrain from engaging in racial discrimination.

21 The prosecution acknowledges, however, that the appearance of impropriety is a
22 recognized grounds for disqualification, and that all lawyers are ethically obligated to avoid the
23 appearance of impropriety.

24 United States v. Hobson, 672 F.2d 825 (11th Cir. 1982) established a two prong test for
25 disqualification under the ABA Canon requiring a lawyer to avoid even the appearance of
26 impropriety as follows:

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1 First, although proof of actual wrongdoing is not required, there
2 must exist a reasonable possibility that some specifically
3 identifiable impropriety did in fact occur. Second, the likelihood
4 of public suspicion or obloquy must outweigh the social interests
5 that will be served by the attorney's continued participation in the
6 case.

7 672 F.2d at 828.

8 In Parker v. Conner Steel Co, 855 F.2d 1510 (11th Cir. 1988), a case cited by the defense
9 in its moving papers, the 11th Circuit articulated an objective test to promote confidence in the
10 judiciary by avoiding even the appearance of impropriety. Although the issue there was
11 whether the trial judge was required to recuse himself because his law clerk was the son of a
12 partner in one of the firms involved in the litigation, the court articulated the objective standard
13 as follows:

14 The test is whether an objective, disinterested, lay observer fully
15 informed of the facts underlying the grounds on which recusal was
16 sought would entertain a significant doubt about the judge's
17 impartiality. 855 F.2d at 1524.

18 The defendant's motion requests that the Clark County District Attorney's Office
19 disclose any possible basis for the vicarious disqualification of the entire office. Generally, a
20 prosecutor is disqualified from personally acting in a criminal case if he has previously
21 represented the accused in the same or a similar matter. Brinkman v. State, 95 Nev. 220, 221,
22 592 P.2d 163 (1979). See also, 31 A.L.R. 3d 953 (1970).

23 Additionally, while lawyers are associated in a "firm," none of them shall knowingly
24 represent a client when any one of them practicing alone would be prohibited from doing so.
25 Supreme Court Rule 160(1).

26 However, the Nevada Supreme Court has also stated that while the above principle of
27 vicarious disqualification is strictly enforced in the context of civil actions conducted by private
28 law firms, it is less strictly applied to government agencies. Collier v. Legakes, 98 Nev. 307,
310, 646 P.2d 1219 (1982), quoting, State v. Tippecanoe County Court, 432 N.E. 2d 1377,
1379 (Ind. 1982).

The Nevada Supreme Court specifically dealt with the issue of vicarious disqualification

1 of a district attorney's office in Attorney General v. Eighth Judicial District Court, 108 Nev.
2 1073, 844 P.2d 124 (1992). In Attorney General, a public defender's office investigator
3 transferred to the district attorney's office after having worked on the defendant's case. The
4 district attorney's office assured the district court that the investigator subject to a conflict of
5 interest had been completely screened from participating in the prosecution of the defendant.
6 However, the district court vicariously disqualified the entire district attorney's office.


7 The Supreme Court reversed, stating that "district courts may only disqualify district
8 attorney's offices after conducting a full evidentiary hearing and considering all of the facts and
9 circumstances." Attorney General, at 1075.

10 One of the circumstances that must be weighed heavily by the district court in
11 determining whether vicarious disqualification is justified is whether a disqualified prosecutor
12 has been screened from participating in his former client's matter. The Supreme Court stated,
13 in Attorney General, that "[vicarious] disqualification based on an 'appearance of impropriety'
14 (i.e. where screening has been implemented) is warranted only in 'extreme' cases where the
15 appearance is so great that the public trust and confidence in our criminal justice system could
16 not be maintained without such action." Attorney General, at 1075. Additionally, a district
17 court must make a determination that such an "extreme" case exists before it can properly
18 disqualify an entire prosecutor's office. Attorney General, at 1075.

19 DATED this 2 day of December, 1999.

20 Respectfully submitted,

21 STEWART L. BELL
22 DISTRICT ATTORNEY
23 Nevada Bar #000477

24 BY 
25 ROBERT J. DASKAS
26 Deputy District Attorney
27 Nevada Bar #004963
28

ORIGINAL

FILED

DEC 6 3 27 PM '99

Shirley L. Bell
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,
#1586283

Defendant.

Case No. C153154
Dept. No. V
Docket H

**OPPOSITION TO DEFENDANT'S MOTION TO APPLY
HEIGHTENED STANDARD OF REVIEW AND CARE IN THIS CASE
BECAUSE THE STATE IS SEEKING THE DEATH PENALTY**

DATE OF HEARING: 12-27-99
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through ROBERT J. DASKAS, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Apply Heightened Standard of Review and Care in this Case Because the State is Seeking the Death Penalty.

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

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COUNTY CLERK

DEC 06 1999

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The Defendant asserts that "death is different" and as such heightened scrutiny and reliability in the guidance and exercise of the sentencing discretion. The state legislature agrees with the general proposition of the Defendant's argument and enacted NRS 200.033 establishing the circumstances that constitute aggravating first degree murder. The State is required to establish one of the aggravating factors before a sentence of death can be considered. The Defendant is allowed to present evidence of mitigation and if he is able to establish that his mitigators outweigh the aggravators then a death sentence is precluded. The statutory scheme defining aggravators addresses the Defendant's concern that the "death sentence be based on reason rather than caprice or emotion" (Defendant citing Gardner v. Florida, 430 U.S. 349, 358 (1977)).

NRS 200.033 also addresses the Defendant's concern on limiting the discretion upon which the death penalty may be imposed. The statute defines the enumerated circumstances by which first degree murder may be aggravated and if proven would allow for the levying of the death penalty against the Defendant.

The Defendant asserts that sentencing juries must be carefully and adequately guided in their deliberations. However this point is premature because the guilt of the Defendant's has yet to be established. Defense Counsel will be given ample opportunity to participate in the jury instructions in the sentencing phase should the Defendant be found guilty.

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1 The Defendant contends that a "a sentence of death must be based upon an
2 individualized determination of its appropriateness for the particular defendant upon whom it
3 is imposed. Toward that end, the sentencer must be allowed to consider any relevant mitigating
4 factor, not just those specified by the State's death penalty." NRS 200.035 lists the
5 circumstances that mitigate first degree murder. The mitigator include no significant history of
6 prior criminal activity; the defendant was under the influence of extreme mental or emotional
7 disturbance; the defendant was an accomplice and his role was relatively minor; etc.. Of
8 particular importance to the Defendant's argument is NRS 200.035(7) that specifically allows
9 "*Any other mitigating circumstances*" (emphasis added). Based on the statutory language it
10 would appear the defendant's concerns about the introduction of mitigators is completely
11 hollow.

12 The Defendant finally asserts that death as a punishment must be proportionate to the
13 crime for which it is imposed. The statutory use of aggravators versus mitigators ensures this
14 requirement is met. Furthermore NRS 177.055 provides the Defendant with an automatic
15 appeal to the Nevada Supreme Court ensuring the Defendant's sentence is reviewed for fairness
16 and proportionality. Unless the Defendant waives his appeal right, NRS 177.055 requires the
17 Supreme Court to review on the record (1) any errors enumerated by way of appeal; (2) Whether
18 the evidence supports the finding of an aggravating circumstance or circumstances; (3) Whether
19 the sentence of death was imposed under the influence of passion, prejudice or any arbitrary
20 factor; and (4) Whether the sentence of death is excessive, considering both the crime and the
21 defendant.

22 The statutory safeguards imposed by the Nevada legislature ensure that the Constitutional
23 and humanitarian rights of the Defendant are met. The Defendant's concerns about "heightened
24 review" as exemplified by the authorities cited in the Defendant's motion are clearly alleviated
25 by the Nevada statutes.

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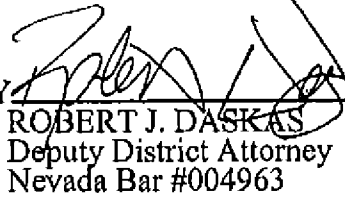
CONCLUSION

The "heightened review" for death penalty cases that the Defendant appears to seek is already established by Nevada statutes. The motion he brings is therefore moot.

DATED this 2 day of December, 1999.

Respectfully submitted,

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

BY 
ROBERT J. DASKAS
Deputy District Attorney
Nevada Bar #004963

ORIGINAL

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FILED

DEC 6 3 26 PM '99

Shirley J. Higgins
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,
#1586283

Defendant.

Case No. C153154
Dept. No. V
Docket H

**OPPOSITION TO DEFENDANT'S MOTION TO PRECLUDE
EVIDENCE OF ALLEGED CO-CONSPIRATORS STATEMENTS**

DATE OF HEARING: 12-27-99
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through ROBERT J. DASKAS, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Preclude Evidence of Alleged Co-Conspirators Statements.

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

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1 POINTS AND AUTHORITIES

2 The Defendant has moved this Court for an Order precluding the State from introducing
3 evidence of the statements of the Defendant's co-conspirators. For this conclusion, the
4 Defendant cites the Court to Bruton v. United States, 391 U.S. 123 (1968) and Nevada case law
5 interpreting Bruton. The Defendant's Motion, and the authority cited therein, have absolutely
6 no application to the instant case.

7 Bruton, as this Court is doubtless aware, stands for the proposition that *in a joint trial*,
8 evidence of an incriminating statement by one defendant that expressly refers to another
9 defendant violates the second defendant's rights under the Confrontation Clause of the Sixth
10 Amendment. Id. at 127-28. The tenets of Bruton sometimes require severance of defendants
11 at trial, since the confession of one may not be used against another, since the non-confessing
12 defendant has no opportunity to cross-examine the confessing defendant.

13 Therefore, the instant motion has no application to the instant case.

14 Defendant Johnson is one of three defendants in the instant case, but is not involved in
15 a joint trial with the other defendants. Neither Bruton nor its progeny from the Nevada Supreme
16 Court prohibit the introduction of statements of co-conspirators who testify at trial.

17 Nevada Revised Statutes section 51.035 states in pertinent part as follows:

18 "Hearsay" means a statement offered in
19 evidence to prove the truth of the matter asserted
unless:

20 ... 2. The declarant testifies at trial or hearing
21 and is subject to cross-examination concerning the
statement, and the statement is:

22 (a) Inconsistent with his testimony;
23 (b) Consistent with his testimony and
offered to rebut an express or implied charge
24 against him of recent fabrication or improper
influence or motive;

25 ... 3. The statement is offered against a party
and is:

26 (a) His own statement, in either his
individual or a representative capacity;

27 ...

28 //

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1 (e) A statement by a coconspirator of a party
2 during the course and in furtherance of the
3 conspiracy.

4 [Emphasis supplied].

5 The law is clear that the statements of Defendant Johnson's co-conspirators are
6 admissible whether they come from the co-conspirators themselves on the witness stand or from
7 other witnesses who heard the co-conspirators make statements during and in furtherance of the
8 conspiracy. NRS 51.035(3)(e); Fish v. State, 92 Nev. 272, 549 P.2d 338 (1976).

9 **CONCLUSION**

10 Neither Bruton nor any of the other authority offered by the Defendant stands for the
11 exclusion of the confessions of the Defendant's co-conspirators, who are expected to testify in
12 the State's case in chief. In light of the authority expressly allowing this evidence, the
13 Defendant's motion must be denied.

14 DATED this 3 day of December, 1999.

15 Respectfully submitted,

16 STEWART L. BELL
17 DISTRICT ATTORNEY
18 Nevada Bar #000477

19 BY 

20 ROBERT J. DASKAS
21 Deputy District Attorney
22 Nevada Bar #004963
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Attorney for Plaintiff

FILED

DEC 6 3 26 PM '99

Shirley D. Johnson
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,
#1586283

Defendant.

Case No. C153154
Dept. No. V
Docket H

**OPPOSITION TO DEFENDANT'S MOTION TO EXCLUDE
AUTOPSY PHOTOGRAPHS**

DATE OF HEARING: 12-27-99
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
ROBERT J. DASKAS, Deputy District Attorney, and hereby submits the attached Points and
Authorities in Opposition to Defendant's Motion to Exclude Autopsy Photographs.

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

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1 POINTS AND AUTHORITIES

2 The decision to admit autopsy photographs as evidence lies within the sound discretion
3 of the court. Turpen v. State, 94 Nev. 576, 583 P.2d 1083 (1978). Such a decision of the trial
4 court will not be reversed absent a showing of abuse of discretion. Ybarra v. State, 100 Nev.
5 167, 679 P.2d 797 (1984) cert. denied 470 U.S. 1009 (1984). Williams v. State, 113 Nev. Slip
6 Op. 28394 (August 28, 1997), (crime scene photos of two elderly victims were not
7 unnecessarily and extraordinarily gruesome); Paine v. State, 110 Nev. 609, 617, 877 P.2d 1025,
8 1029 (1994), cert. denied, 115 S.Ct. 1405 (1995); Green and Winfrey v. State, 113 Nev. Adv.
9 Op. 931 P.2d 54 (January 4, 1997); Domingues v. State, 112 Nev. 683, 917 P.2d 1364 (1996).

10 In Robins v. State, 106 Nev. 611, 623, 798 P.2d 558 (1990), the court upheld the trial
11 judge's decision to allow autopsy photographs of a badly beaten little girl. The court held:

12 We have reviewed the challenged photographs and although they
13 are indeed graphic and troubling to human sensibility, they were
14 not prejudicial. The photographs depicted exactly what Dr.
15 Hollander described and were undoubtedly helpful in assisting the
16 jury to understand the nature and the gravity of the wounds
17 inflicted upon Brittany by Robins. The trial court did not abuse its
18 discretion; the photographs were properly admitted into evidence.

16 In the instant case, numerous photographs were taken of the victim during all stages of
17 the autopsy. These photographs included those of the victim with massive amounts of blood
18 covering his body. They also include photographs of the victim's organs. Additionally,
19 photographs of the victim's skullcap and brain were also taken.

20 Defendant's Motion to Exclude Autopsy Photographs is premature. The defense has no
21 idea which photographs the prosecution intends to introduce at time of trial. Moreover, any
22 objections to such photographs would be most properly lodged at time of trial when the State
23 seeks to introduce such photographs.

24 Additionally, this Court denied without prejudice the identical motion filed by the co-
25 defendant, Steven Acosta, preserving the co-defendant's right to object to the admission of any
26 photographs at trial.

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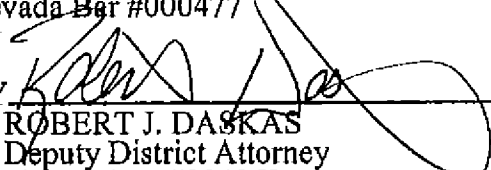
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1 Defense counsel can be assured that the prosecution will be very selective in the
2 photographs that it seeks to admit at time of trial. Only those photographs that are least
3 offensive to human sensibilities will be offered. Accordingly, Defendant's Motion should be
4 held in abeyance until time of trial.

5 DATED this 2 day of December, 1999.

6 Respectfully submitted,

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

10 BY 
11 ROBERT J. DASKAS
12 Deputy District Attorney
13 Nevada Bar #004963
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Attorney for Plaintiff

FILED

DEC 6 3 26 PM '99

Shirley S. Williams
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,
#1586283

Defendant.

Case No. C153154
Dept. No. V
Docket H

**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**

DATE OF HEARING: 12-27-99
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
ROBERT J. DASKAS, Deputy District Attorney, and hereby submits the attached Points and
Authorities in 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.

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

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DEC 06 1999

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The United States Supreme Court held in Witherspoon v. Illinois, 391 U.S. 510 (1968), that the prosecution could properly ask a potential juror whether that juror would automatically vote against the death penalty regardless of the facts of the case. Likewise, in Morgan v. Illinois, 504 U.S. 719 (1992) the Supreme Court held that the defense was entitled to ask a potential juror whether the juror would automatically vote for death regardless of the facts of the case. It is now well established as a matter of Constitutional law that a juror who would in no case vote for capital punishment, regardless of the instruction, is not an impartial juror. Similarly, a juror who will automatically vote for the death penalty in every case will fail in good faith to consider the evidence of aggravating and mitigating circumstances and must be removed for cause. Both the State and the defense are entitled to a sufficient voir dire examination to inquire whether the views of prospective jurors on the death penalty would disqualify them from sitting.

The State has a legitimate interest in obtaining a jury that can impartially decide all the issues in a capital case. As the United States Supreme Court held in Lockhart v. McCree, 476 U.S. 162 at 170:

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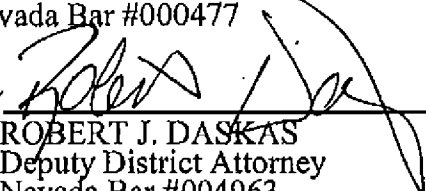
1 This Court should decide which jurors should be excused for cause because of their
2 views on the death penalty only after voir dire examination.

3 Additionally, this Court considered and denied the identical motions filed by the co-
4 defendants.

5 DATED this 2 day of December, 1999.

6 Respectfully submitted,

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

10 BY 
11 ROBERT J. DASKAS
12 Deputy District Attorney
13 Nevada Bar #004963
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Attorney for Plaintiff

FILED

DEC 6 3 26 PM '99

Shirley C. Hargrave
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,
#1586283

Defendant.

Case No. C153154
Dept. No. V
Docket H

**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**

DATE OF HEARING: 12-27-99
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
ROBERT J. DASKAS, Deputy District Attorney, and hereby submits the attached Points and
Authorities in 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.

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

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1 disproportionality. NRS §177.055(2). Since our procedure for
2 weighing aggravating and mitigating circumstances provides the
3 sentencer with adequate information and guidance and the accused
4 with sufficient guarantees that the penalty of death will not be
imposed arbitrarily and capriciously, the challenged statute passes
constitutional muster."

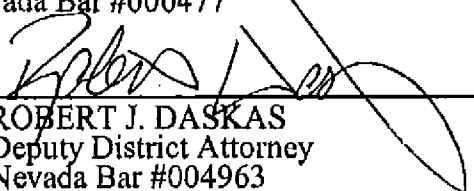
5 There exists neither a statutory nor constitutional formula with which the prosecuting
6 authority must be guided in the decision-making process of when to or not to file a Notice of
7 Intent to Seek the Death Penalty. Indeed, the prosecutor would be acting within both statutory
8 and constitutional authority if in each and every case wherein an aggravating factor existed, a
9 Notice of Intent to Seek Death were filed.

10 Prior to the present administration, the Deputy assigned to prosecute the case had the
11 ultimate responsibility for filing the appropriate notice. Under the present administration, a
12 committee consisting of Senior Deputies in the office make the decision. In response to the
13 identical motion filed by the co-defendant, Steven Acosta, this Court ordered that any written
14 guidelines provided to members of the committee of Senior Deputies District Attorney, if such
15 written guidelines existed, be provided to the co-defendant.

16 DATED this 2 day of December, 1999.

17 Respectfully submitted,

18 STEWART L. BELL
19 DISTRICT ATTORNEY
Nevada Bar #000477

20 BY 
21 ROBERT J. DASKAS
22 Deputy District Attorney
Nevada Bar #004963

ORIGINAL

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Attorney for Plaintiff

FILED

DEC 6 3 25 PM '99

Shirley J. Higgins
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

DONTE JOHNSON,
#1586283

Defendant.

Case No. C153154
Dept. No. V
Docket H

**OPPOSITION TO DEFENDANT'S MOTION TO ALLOW
THE DEFENSE TO ARGUE LAST AT THE PENALTY PHASE**

DATE OF HEARING: 12-27-99
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through ROBERT J. DASKAS, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Allow the Defense to Argue Last at the Penalty Phase.

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

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1 POINTS AND AUTHORITIES

2 NRS 175.141(5) "When the evidence is concluded . . . the district attorney, or other
3 counsel for the State, must open and must conclude the argument." The Nevada Supreme Court
4 has considered and rejected Defendants argument on several occasions. Witter v. State, 112
5 Nev. 908, 921 P.2d 886, 896 (1996); Williams v. State, 103 Nev. Slip Op. 238.94 (August 26,
6 1997); Snow v. State, 101 Nev. 439, 448, 705 P.2d 632 (1985). In rejecting Defendant's
7 argument, the Witter court concluded:

8 Witter contends that NRS 200.030(4) shifts the burden of proof on
9 the Defendant to prove that mitigating circumstances outweigh
10 aggravating circumstances. Witter cites Griffin v. Illinois, 351 U.S.
12 (1956), and argues that the district court should have allowed
him to argue last during closing arguments. We disagree.

11 First, we read NRS 200.030(4) as stating that the death penalty is
12 an unavailable punishment only if the state can prove beyond a
13 reasonable doubt at least one aggravating circumstance exists, and
14 that the aggravating circumstance or circumstances outweigh the
15 mitigating evidence offered by the Defendant. The statute does not
16 shift the burden of proof to the Defendant. Second, unless the case
17 is submitted to the jury by one or both sides without argument,
18 NRS 175.141 mandates the district attorney, or other counsel for
the state, open and conclude argument. Under NRS 175.141, the
district court does not have the authority to grant Witter's request.
Moreover, such a concession would unfairly disadvantage the
prosecution. Accordingly, we conclude that the district court did
not err when it denied Witter's request to argue last during the
penalty phase.

19 Witter v. State, *supra*, 112 Nev. at 923.

20 Accordingly, the Court does not have the discretion to allow Defendant to argue last.
21 Therefore, Defendant's Motion must be denied.

22 Supreme Court Rule 172 mandates that a lawyer shall disclose controlling authority
23 directly adverse to his position and not disclosed by opposing counsel. Moreover, Supreme
24 Court Rule 170 prohibits a lawyer from asserting a frivolous position unless there is "A good
25 faith argument for an extension, modification or reversal of existing law." Additionally, the
26 identical motion filed by the co-defendant, Steven Acosta, was denied by this Court.

27 ///

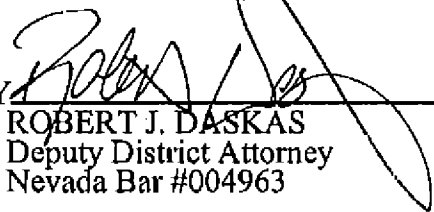
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1 In the instant case, Defendant's boilerplate motion has been rejected by a higher court
2 on several occasions. Defendant does not alert the court of the authority adverse to his position.
3 Moreover, Defendant does not argue that the law should be reversed. Accordingly, Defendants
4 Motion is frivolous and sanctions should be ordered.

5 DATED this 2 day of December, 1999.

6 Respectfully submitted,

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

10 BY 
11 ROBERT J. DASKAS
12 Deputy District Attorney
13 Nevada Bar #004963
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FILED

Dec 6 3 25 PM '99

Shirley A. Higgins
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

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

THE STATE OF NEVADA,
Plaintiff,

-vs-

DONTE JOHNSON,
#1586283

Defendant.

Case No. C153154
Dept. No. V
Docket H

**OPPOSITION TO DEFENDANT'S MOTION TO PROHIBIT
THE USE OF PEREMPTORY CHALLENGES TO EXCLUDE JURORS
WHO EXPRESS CONCERNS ABOUT CAPITAL PUNISHMENT**

DATE OF HEARING: 12-27-99
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through ROBERT J. DASKAS, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Prohibit the Use of Peremptory Challenges to Exclude Jurors Who Express Concerns about Capital Punishment on the grounds that it is perfectly permissible for the prosecution to exercise its peremptory challenges for any reason subject only to the limitation that it may not systematically exclude prospective jurors solely on the basis of their race.

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

10/30/99

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POINTS AND AUTHORITIES

The bottom line is that the present issue raised by the defense has been squarely analyzed and rejected under constitutional scrutiny by the Nevada Supreme Court. Leonard v. State, 114 Nev. Adv. Op. 127, 969 P.2d 288 (December 9, 1998).

The defense seems determined in these proceedings to emasculate the legitimate exercise of the prosecution's peremptory challenges. Historically the exercise of peremptory challenges by parties to a criminal proceeding has been unfettered. Presently, it is limited only by the prohibition against systematically excluding prospective jurors based solely upon race or sex. See Batson v. Kentucky, 106 S.Ct. 1712, 476 U.S. 79 (1986); J.E.B. v. Alabama, 511 U.S. 127, 114 S.Ct. 1419 (1994); and, Walker v. State, 113 Nev. 853, 944 P.2d 762 (1997). Defense attorneys are subject to the same non-discriminatory jury selection restrictions. Georgia v. McCollum, 505 U.S. 42, 112 Sup.Ct. 2348 (1992)

The defense cites no legal authority in support of its effort to expand the list of jury selection restrictions. Creating such a limitation would contradict one of the most essential purposes of the jury selection process: obtaining a jury capable of following the law of the State of Nevada.

The defense opines that the solution to their imagined dilemma would be for the court to prohibit asking prospective jurors if they have conscientious scruples against the death penalty. The defense thereafter contends that "... the juror's general attitude toward the death penalty is irrelevant to the person's qualification for jury service." That posture is absurd. A prospective juror's attitude and predilection towards any of the punishments provided by law in this State for first degree murder is highly relevant. It is certainly a factor which the parties are legitimately permitted to exploit during the exercise of peremptory challenges. The deck is not stacked against the defense. There may be jurors who would not automatically vote for the death penalty, but who are leaning towards the death penalty in premeditated murder cases the defense would be desirous of excusing pursuant to a peremptory challenge. Apparently defense seeks a double standard in the jury selection process whereby only the defense can profile the attitudes and predilections of prospective jurors.

1 There can be no double standard in the jury selection process. While the defense is
2 entitled to challenge for cause any juror who would automatically vote for the death penalty
3 irrespective of the evidence or jury instructions, Morgan v. Illinois, 504 U.S. 719, 112 S.Ct.
4 2222 (1992), the prosecution can challenge for cause any juror who would not truly consider
5 the death penalty as an option, Wainwright v. Witt, 469 U.S. 412, 105 S.Ct. 844 (1985). See
6 Walker v. State, 113 Nev. 853, 944 P.2d 762 (1997) citing both Morgan and Witt. Even an
7 improper challenge for cause on death penalty opinion grounds will not create grounds for
8 setting aside a conviction or penalty. See Ross v. Oklahoma, 487 U.S. 81, 108 S.Ct. 2273
9 (1988).

10 Prospective jurors whose opposition to the death penalty is strong do not constitute a
11 constitutionally cognizable group in the community. Furthermore, the United States Supreme
12 Court has emphasized that the requirement of a representative cross section of the community
13 applies only to venires and not to petit juries. Petit juries do not have to reflect the composition
14 of the community at large. See Buchanan v. Kentucky, 107 S.Ct. 2906 at 2913 (1987) and
15 Lockhart v. McCree, 476 U.S. 162, 106 S.Ct. 1758 (1986).

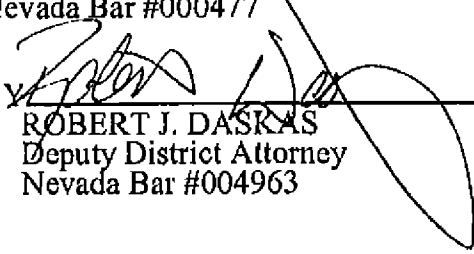
16 Additionally, the identical motion filed by the co-defendant, Steven Acosta, was denied
17 by this Court.

18 Accordingly, the defense motion to prohibit the use of peremptory challenges to exclude
19 jurors who express concerns about capital punishment should be denied.

20 DATED this 2 day of December, 1999.

21 Respectfully submitted,

22 STEWART L. BELL
23 DISTRICT ATTORNEY
Nevada Bar #000477

24 BY 
25 ROBERT J. DASKAS
26 Deputy District Attorney
27 Nevada Bar #004963
28

ORIGINAL

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FILED

Dec 6 3 25 PM '99

Shirley D. Longoria
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

OPPS
STEWART L. BELL
DISTRICT ATTORNEY
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Las Vegas, Nevada 89155
(702) 455-4711
Attorney for Plaintiff

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTÉ JOHNSON,
#1586283

Defendant.

Case No. C153154
Dept. No. V
Docket H

**OPPOSITION TO DEFENDANT'S MOTION IN LIMINE
TO PROHIBIT ANY REFERENCES TO THE FIRST PHASE
AS THE "GUILT PHASE"**

DATE OF HEARING: 12-27-99
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through ROBERT J. DASKAS, Deputy District Attorney, and suggests to the court and counsel that it is highly improbable the jury resolution of this case will hinge upon the semantical subtleties of phrases like "evidentiary stage", "fact-finding stage", or "guilt phase". Respondent has considerably more faith in the conscientiousness of jurors in general and in the integrity of the jury system than to presuppose that life and death decisions in a capital case are going to be influenced by semantics.

The term "guilt phase" is a part of our legal vocabulary. Indeed, counsel for the defense has used this phrase in several places in motions on file.

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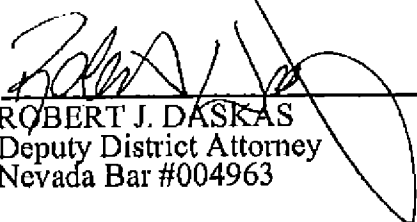
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1 However, respondent will attempt not to use the phrase "guilt phase" when addressing
2 the jury or when making any types of comments in the presence of the jury during the guilt
3 phase of these proceedings. Presumably, if a penalty hearing is necessary in this case the
4 defense will not object to "guilt phase" references during that stage of these proceedings.

5 DATED this 2 day of December, 1999.

6 Respectfully submitted,

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

10 BY 
11 ROBERT J. DASKAS
12 Deputy District Attorney
13 Nevada Bar #004963

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Attorney for Plaintiff

FILED

Dec 6 3 28 PM '99

Shirley D. Hoggins
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,
#1586283

Defendant.

Case No. C153154
Dept. No. V
Docket H

**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**

DATE OF HEARING: 12-27-99
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
ROBERT J. DASKAS, Deputy District Attorney, and hereby submits the attached Points and
Authorities in 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.

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

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POINTS AND AUTHORITIES

It is difficult for the State to determine a position on the instant Motion, since it states no prayer for relief and concomitantly no grounds for relief. The most appropriate position would be to move this Court to strike the Motion in its entirety.

The Motion's title seems to be a request to "Federalize" all motions, objections and requests in the case and/or to "Authenticate" same. Nowhere within the body of the motion, or the single page of United States Supreme Court citations, are the terms "Federalize" and "Authenticate" defined or the nature of the motion's prayer revealed.

None of the nineteen (19) string citations direct the reader to a particular page, such that one might attempt to ascertain a particular holding in any of the cases which might assist in determining the purpose of the Defendant's motion.

The Points and Authorities in the Defendant's Motion begins with the phrase, "With regard to all of the foregoing..." (See Motion to Authenticate and Federalize All Motions, Requests and Other Applications, p.3), even though there is nothing that precedes that paragraph. It goes on to assert that "...Defendant Johnson relies upon the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution...." The purpose for which those Amendments are relied upon is absent.

The Motion then states that Defendant Johnson "...asserts all applicable grounds with regard to each and every motion, objection, exemption, request and other application..." in the instant case. Finally, Defendant Johnson "...asserts a continuing objection throughout trial to all matters upon which the court has ruled adverse to him...."

There is no other prayer for relief in the Motion, and it is difficult to imagine the content of any proposed Order granting the instant Motion. It appears to be a motion objecting to everything, on any and all grounds, asserting all cases and laws, and asking that the objection be a continuing one throughout trial. If granted, it may have the effect of rendering all other motions superfluous and moot, since all of the other pretrial motions filed by Defendant Johnson would necessarily be subparts of the instant Motion. It also appears to render defense counsel's duty to object at trial null and void, since the instant Motion asserts a continuing objection to

1 everything.

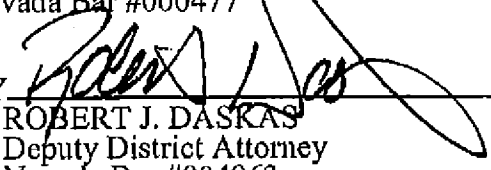
2 Continuing objections are inappropriate even for particularized and delineated issues,
3 since it prevents the Court from ameliorating any perceived prejudice by administering a curative
4 instruction. To request an Order of this Court for silent objections to anything perceived to be
5 prejudicial is contrary to any legal authority and to the fair administration of justice.

6 As such, the State requests that the Court strike the instant Motion as frivolous, overbroad
7 and indefinite.

8 DATED this 3 day of December, 1999.

9 Respectfully submitted,

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

13 BY 
14 ROBERT J. DASKAS
15 Deputy District Attorney
16 Nevada Bar #004963
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Attorney for Plaintiff

FILED

DEC 6 3 28 PM '99

Shirley D. L. Jones
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

DONTE JOHNSON,
#1586283

Defendant.

Case No. C153154
Dept. No. V
Docket H

**OPPOSITION TO DEFENDANT'S MOTION IN LIMINE
FOR ORDER PROHIBITING PROSECUTION MISCONDUCT
IN ARGUMENT**

DATE OF HEARING: 12-27-99
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through ROBERT J. DASKAS, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion in Limine for Order Prohibiting Prosecution Misconduct in Argument.

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

POINTS AND AUTHORITIES

The prosecution does not intend to commit misconduct during the prosecution of the instant case. It is respectfully suggested that defense counsel exercise the same high ethical

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standards that they espouse in their moving papers to be necessary to the fundamental fairness of proceedings of such magnitude, including compliance with the reciprocal discovery requirements of Chapter 174 of the Nevada Revised Statutes.

The instant motion presents no cognizable request for relief and is apparently designed to provide a tome on prosecutorial misconduct and to anticipatorily offend representatives of the State long before the commencement of trial. It carries the identical weight that a motion by the State to bar ineffective assistance of defense counsel at trial would carry with this Court.

The undersigned Deputy District Attorney is aware of the ethical obligations inherent in prosecuting criminal cases. If and when experienced defense counsel hears arguments regarded as objectionable, counsel is obligated to object.

The instant motion is one made routinely by defense counsel in capital cases. To the extent that the Defendant's motion is expected to provide the Court with a handbook on prosecutorial misconduct, the Court should be aware that the motion does not, in many instances, state the law correctly. The filing of "boiler plate" motions does not relieve counsel of the ethical obligation to state the law correctly and to update these form motions as new law is made.

The rules of evidence and procedure are no different in capital cases than in other cases, save for the special procedural requirements of Supreme Court Rule 250. The State's intention to seek the death penalty does not suspend the rules of evidence applying to every other criminal case in the system. The prosecution is not required to outline for the defense those arguments that counsel for the State intends to present at time of trial.

The Defendant has also requested a blanket "continuing objection" to any perceived misconduct, thereby absolving defense counsel of the responsibility to make timely objections or offers of proof generally necessary to create a cogent and concise record on appeal. Counsel for the defense is essentially arguing that once the State makes known its intention to seek the death penalty, the defense no longer has any obligation to object to preserve the record. This argument has no basis in law.

Objections to evidence or argument are necessary to provide the Court with the

1 opportunity to make a ruling on the objection based upon the arguments of counsel and relevant
2 case law, instruct the jury on the ruling and, if necessary, admonish the jury with an appropriate
3 curative instruction. Instead, the defense is requesting a "continuing objection," effectively
4 denying the Court an opportunity to preserve the record and conduct the trial based on
5 appropriate precedent.

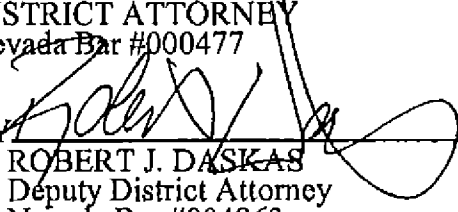
6 Generally, objections must be made contemporaneous with the admission of evidence
7 or argument complained of and must reasonably indicate the appropriate rules of evidence as
8 reasons for the objection. McCormick on Evidence, 2nd Ed., section 52, p. 115 (1972); 1
9 Wigmore, Evidence, section 18(c)(1) and (2). Continuing objections are generally reserved for
10 objections to the same type of evidence presented in a cumulative fashion, all such objections
11 necessarily made on the same legal grounds. 6 Am Jur Trial, section 620 (1967). The
12 continuing objection is not appropriate when the defense has outlined a dozen or more different
13 types of purported objectionable conduct.

14 Based upon the foregoing, the instant motion should be denied. This Court can not
15 anticipatorily sustain objections never made to evidence or arguments not yet presented.
16 Likewise, a "continuing objection" to prosecutorial misconduct is inappropriate and nowhere
17 supported by case authority. It also prevents the court from conducting a fair trial by usurping
18 the Court's authority to rule on objections, strike certain portions of evidence or argument and
19 instruct the jury based upon the Court's rulings.

20 DATED this 2 day of December, 1999.

21 Respectfully submitted,

22 STEWART L. BELL
23 DISTRICT ATTORNEY
Nevada Bar #000477

24 BY 
25 ROBERT J. DASKAS
26 Deputy District Attorney
Nevada Bar #004963

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FILED

DEC 6 3 28 PM '99

Shirley D. Johnson
CLERK

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

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 DONTÉ JOHNSON,
12 #1586283

13 Defendant.

Case No. C153154
Dept. No. V
Docket H

16 **OPPOSITION TO DEFENDANT'S MOTION IN LIMINE**
17 **TO PRECLUDE THE INTRODUCTION OF**
18 **VICTIM IMPACT EVIDENCE**

19 DATE OF HEARING: 12-27-99
20 TIME OF HEARING: 9:00 A.M.

21 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
22 ROBERT J. DASKAS, Deputy District Attorney, and hereby submits the attached Points and
23 Authorities in Opposition to Defendant's Motion in Limine to Preclude the Introduction of
24 Victim Impact Evidence.

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

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1 POINTS AND AUTHORITIES

2 In Payne v. Tennessee, 501 U.S. 808, 111 S.Ct. 2597 (1991) the United States Supreme
3 Court overruled Booth v. Maryland, 482 U.S. 805 (1989) and South Carolina v. Gathers, 490
4 U.S. 805 (1989). Booth and Gathers, both proscribed "victim impact evidence during the
5 penalty phase of a capital trial on the grounds that such evidence was per se barred by the
6 Eighth Amendment.

7 In overruling both Booth and Gathers, the United States Supreme Court in Payne stated:

8 We thus hold that if the State chooses to permit the admission of
9 victim impact evidence and prosecutorial argument on that subject,
10 the Eighth Amendment erects no per se bar. A State may
11 legitimately conclude the evidence about the victim and about the
12 impact of the murder on the victim's family is relevant to the jury's
13 decision as to whether or not the death penalty should be imposed.
14 There is no reason to treat such evidence differently than other
15 relevant evidence is treated.

16 Nevada has greeted the Payne decision with enthusiasm in several recent decisions.
17 In Homick v. State, 108 Nev. 127, 825 .2d 600 (1992), the Nevada Supreme Court stated
18 the following:

19 The key to criminal sentencing in capital cases is the ability of the
20 sentencer to focus upon and consider both the individual
21 characteristics of the defendant and the nature and impact of the
22 crime he committed. Only then can the sentencer truly weigh the
23 evidence before it and determine a defendant's just deserts.

24 In Wesley v. State, 112 Nev. Adv. Op. 71, 916 P.2d 793 (1996), the Nevada Supreme
25 Court stated:

26 According to the United States Supreme Court's holding in Payne
27 v. Tennessee, 501 U.S. 808, 823 (1991), the admission of victim
28 impact evidence during a capital penalty hearing does not violate
the Eighth Amendment and is relevant to show each victim's
"uniqueness as an individual human being". Further, this Court has
held that individual's outside the victim's family can present victim
impact evidence. Lane v. State, 110 Nev. 1156, 1166, 881 P.2d
1358 (1994).

29 The above case law clearly outlines what constitutes permissible victim impact evidence.
30 The Defense has provided this Court with no authority whatsoever which would permit the

1 Court to conduct a pre-trial judicial review of all of the victim impact evidence.

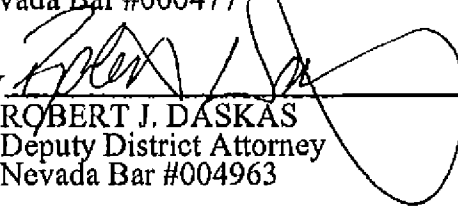
2 The Defense's motion suggests that the State wishes to break the law and admit
3 impermissible victim impact evidence. To the contrary, the Defense's motion does nothing
4 more than re-victimize the surviving family members in the case before this Court and provide
5 the Defense with an opportunity to add insult to injury and traumatize the victims further.

6 The State assures this Court that the State will advise the surviving family members of
7 what is permissible and what is not in order to stay within the parameters as outlined above.

8 DATED this 2 day of December, 1999.

9 Respectfully submitted,

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

13 BY 
14 ROBERT J. DASKAS
15 Deputy District Attorney
16 Nevada Bar #004963

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18

1 **OPPS**

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

FILED

DEC 6 3 29 PM '99

Shirley J. Jones
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 DONTÉ JOHNSON,
12 #1586283

13 Defendant.

Case No. C153154
Dept. No. V
Docket H

14
15
16 **OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**
17 **STATE'S NOTICE OF INTENT TO SEEK DEATH PENALTY**
18 **BECAUSE NEVADA'S DEATH PENALTY STATUTE**
19 **IS UNCONSTITUTIONAL**

20 DATE OF HEARING: 12-27-99
21 TIME OF HEARING: 9:00 A.M.

22 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
23 ROBERT J. DASKAS, Deputy District Attorney, and hereby submits the attached Points and
24 Authorities in Opposition to Defendant's Motion to Dismiss State's Notice of Intent to Seek
25 Death Penalty Because Nevada's Death Penalty Statute is Unconstitutional.

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

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1 POINTS AND AUTHORITIES

2 I.

3 THE FILING OF A NOTICE OF INTENT TO SEEK THE DEATH PENALTY
4 DOES NOT UNCONSTITUTIONALLY PREJUDICE THE DEFENSE DURING
5 JURY SELECTION, TRIAL AND SENTENCING

6 The defense argues that the filing of a Notice of Intent to Seek Death changes the nature
7 of a murder case because the State and Defense must seat a "death qualified" jury. The defense
8 cites only one case in an attempt to establish this untenable position, and even that case offers
9 no support for this argument.

10 In Lockhart v. McCree, 476 U.S. 162, 168, 106 S.Ct. 1758, 1762 (1986), the Supreme
11 Court considered the argument of whether the "death qualification" process produced
12 "conviction-prone" juries. The court discredited the fifteen (15) social science studies presented
13 by the defense at the trial phase to support defendant's argument. Lockhart, 476 U.S. at 168-
14 169, 106 S.Ct. at 1762. For support, the Court quoted its earlier decision of Witherspoon v.
15 Illinois, 391 U.S. 510, 517-518, 88 S.Ct. 1770, 1774-1775 (1968), in which they considered
16 three of these studies and held that the data was

17 "...too tentative and fragmentary to establish that jurors not
18 opposed to the death penalty tend to favor the prosecution in the
19 determination of guilt. We simply cannot conclude, either on the
20 basis of the record now before us or as a matter of judicial notice,
21 that the exclusion of jurors opposed to capital punishment results
22 in an unrepresentative jury on the issue of guilt or substantially
23 increases the risk of conviction. In light of the presently available
24 information, we are not prepared to announce a *per se*
25 constitutional rule requiring the reversal of every conviction
26 returned by a jury selected as this one was." Lockhart, 476 U.S. at
27 170-171, 106 S.Ct. at 1763.

28 The Court went on to announce that "[i]t goes without saying that if these studies were
29 'too tentative and fragmentary' to make out a claim of constitutional error in 1968, the same
30 studies, unchanged but for having aged 18 years, are still insufficient to make out such a claim
31 in this case." Lockhart, 476 U.S. at 171, 106 S.Ct. at 1763-1764. The Court was willing to
32 assume, for the sake of argument, that the "death qualification" process produced somewhat
33 more "conviction-prone" juries than non-death-qualified juries. Lockhart, 476 U.S. at 173, 106
34 S.Ct. at 1764. However, the Court conclusively held that the Constitution did not "prohibit the

1 States from 'death-qualifying' juries in capital cases." *Id.* Because the United States Supreme
2 Court has upheld the constitutionality of the death-qualification process, the Defendant's
3 argument should be dismissed.

4 II.

5 **NOTICE OF INTENT TO SEEK DEATH DOES NOT**
6 **CONSTITUTE AN AMENDMENT OF THE INFORMATION**
7 **AND THEREFORE IS NOT UNCONSTITUTIONAL**

8 The defense argues that the Notice of Intent to Seek Death constitutes an amendment to
9 the Information and therefore all aggravating circumstances must be established by probable
10 cause in the preliminary hearing. In *Sheriff v. Levinson*, 95 Nev. 436, 437, 596 P.2d 232, 233
(1979), this court defined an "information" as

11 "...the first pleading by the state in a criminal action (see NRS
12 173.015) and must contain 'a plain, concise and definite written
13 statement of the essential facts constituting the offense charged.'
14 NRS 173.075(1). In the information, the prosecution is required to
15 make a definite statement of facts constituting the offense in order
16 to adequately notify the accused of the charges and to prevent the
prosecution from circumventing the notice requirement by
changing theories of the case. See, *Simpson v. District Court*, 88
Nev. 654, 503 P.2d 1225 (1972)." *Levinson*, 95 Nev. at 437, 596
P.2d at 233.

17 The United States Supreme Court has further stated that an indictment must contain first, the
18 "elements of the offense intended to be charged" sufficient to apprise the defendant of what he
19 must be prepared to meet, and second, the record must show "with accuracy to what extent [the
20 defendant] may plead a former acquittal or conviction" in case any other proceedings are taken
21 against him for a similar offense. *Russell v. United States*, 369 U.S. 749, 763-764, 82 S.Ct.
22 1038, 1047 (1962); see, *Cochran and Sayre v. United States*, 157 U.S. 286, 290, 15 S.Ct. 628,
23 630 (1895); *Rosen v. United States*, 161 U.S. 29, 34, 16 S.Ct. 434, 480 (1896); *Hagner v.*
24 *United States*, 285 U.S. 427, 431, 52 S.Ct. 417, 419 (1932); *Potter v. United States*, 155 U.S.
25 438, 445, 15 S.Ct. 144, 146 (1894); *Bartell v. United States*, 227 U.S. 427, 431, 33 S.Ct. 383,
26 384 (1913); *Berger v. United States*, 295 U.S. 78, 82, 55 S.Ct. 629, 630 (1935); *United States*
27 *v. Debrow*, 346 U.S. 374, 377-378, 74 S.Ct. 113, 115-116 (1953). Because the aggravators are
28 not "elements of the offense to be charged" they cannot be considered part of the information.

1 In addition, the State is required during the penalty phase to prove the aggravators (as
2 defined in NRS 200.033) to the jury beyond a reasonable doubt. See, NRS 175.554(2); Supreme
3 Court Rule 250(II)(A)(2). Clearly, the definition of an aggravator, and the fact that aggravators
4 are not required to be proven until the penalty phase of the hearing establish that aggravators
5 are not part of the offense to be charged, but rather constitute an element of the penalty process
6 to be decided *after* a defendant has been found guilty at the trial phase. As such, the notice of
7 intent to seek death cannot be considered an amendment to the information.

8 The defense also alludes to the argument that the death penalty is a type of sentence
9 enhancement, and thus must be established by probable cause in the preliminary hearing. By
10 definition, an enhancement "increases or makes greater" an original sentence. The American
11 Heritage Dictionary 454 (Second College Edition, 1991). Thus, if a defendant was found guilty
12 of murder with use of a deadly weapon he would be sentenced to two consecutive and equal
13 sentences. See, NRS 200.030; NRS 193.165. However, according to the statutory scheme for
14 the punishment of murder, the death penalty does not enhance a particular penalty, but instead
15 is a penalty in and of itself. See, NRS 200.030(4)(a). As such, one cannot be convicted of
16 murder, sentenced to death, then sentenced to death again as an enhancement. Since the death
17 penalty is not an enhancement it is not subject to the proof requirements of an enhancement.
18 Consequently, the State does not have to prove the existence of the aggravating circumstances
19 at the preliminary hearing as it would an enhancement, in order to later file a Notice of Intent
20 to Seek the Death Penalty. Based on these arguments, the court should dismiss as untenable the
21 Defendant's argument that the Notice of Intent to Seek the Death Penalty should be considered
22 an amendment to the information or as an enhancement to the underlying charge.

23 III.

24 **THE DEATH PENALTY PROCEDURE IS CONSTITUTIONAL** 25 **BECAUSE ADEQUATE REMEDIES EXIST TO CHALLENGE THE** 26 **EXISTENCE OF AGGRAVATING CIRCUMSTANCES**

27 The defense argues that the State should be required to prove the aggravators at a
28 preliminary hearing or before a grand jury so that the defense could challenge the sufficiency
of the evidence by way of a petition for writ of habeas corpus. The State asserts that under

1 Supreme Court Rule 250 and NRS 175.554 the State is ultimately required to prove all
2 aggravators beyond a reasonable doubt at the penalty phase of the proceedings, after a defendant
3 has been adjudicated guilty of the underlying crime. After the imposition of sentence the
4 defense clearly has ample avenues available to contest the findings at the guilt and penalty phase
5 of the proceedings through petitions for post-conviction relief and appeals. As such, a request
6 to challenge aggravators pre-trial, before a defendant has even been adjudicated guilty of the
7 underlying crime, creates an additional and superfluous burden on the judicial process and
8 should not be required by this court.

9 In addition, the Defendant cannot claim that he has been denied his rights to due process
10 of law. The State is required to file the Notice of Intent to Seek the Death Penalty fifteen (15)
11 days before the trial date. See, Supreme Court Rule 250(II)(A)(3). The Nevada Supreme Court
12 has loosely interpreted this rule so that a defendant who had actual knowledge of the
13 aggravating circumstances two and one-half weeks before the commencement of the *penalty*
14 *hearing* was determined to have had sufficient time to prepare a challenge to this aggravator and
15 was not denied due process of law. Rogers v. State, 101 Nev. 457, 466-467, 705 P.2d 664, 670-
16 671 (1985). As such, the Notice filed in this case, sufficiently prior to the commencement of
17 the guilt phase of the proceedings, satisfies all requirements of due process of law. In sum, the
18 Defendant's argument regarding the constitutionality of the death penalty procedure and
19 remedies available to the Defendant should be dismissed.

20 IV.

21 THE DEATH PENALTY PROCEDURE DOES NOT UNCONSTITUTIONALLY 22 DENY THE DEFENDANT OF EQUAL PROTECTION OF THE LAW

23 The defense argues that defendants facing the death penalty are treated differently, in
24 violation of their rights to equal protection of the law, because the State is permitted to prove
25 aggravating factors at the penalty phase without a probable cause determination. Again, the
26 death penalty procedure requires that the defendant be given sufficient notice of all aggravators
27 the State intends to prove up, and the State is required to prove these aggravators to the jury
28 beyond a reasonable doubt. See, NRS 175.554(2)(c). The jury thereafter determines whether

1 the aggravators outweigh the mitigators such that the death penalty should be imposed, a
2 procedure previously determined to be constitutional. See, NRS 175.554; Bennett v. State, 106
3 Nev. 135, 144, 787 P.2d 797, 802 (1990); see also, Gallego v. State, 101 Nev. 782, 789-790,
4 711 P.2d 856, 862 (1985); Snow v. State, 101 Nev. 439, 448, 705 P.2d 632, 639 (1985); Ybarra
5 v. State, 100 Nev. 167, 174-176, 679 P.2d 797, 800-803 (1984); Profitt v. Florida, 428 U.S.
6 242, 247-260, 96 S.Ct. 2960, 2964-2970 (1976) (similar sentencing procedure found
7 constitutional). The Defendant is therefore not denied equal protection because at the penalty
8 phase all defendants in capital cases are sufficiently protected by the requirement that the State
9 prove each aggravator beyond a reasonable doubt. See, NRS 175.554(2)(c). As such, this
10 argument by the Defendant has no merit and should be dismissed by this court.

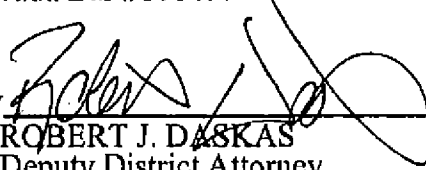
11 **CONCLUSION**

12 Based on the above arguments, the State requests the denial of Defendant's Motion to
13 Strike State's Notice of Intent To Seek Death Penalty Because Nevada's Death Penalty
14 Scheme is Unconstitutional.

15 DATED this 2 day of December, 1999.

16 Respectfully submitted,

17 STEWART L. BELL
18 DISTRICT ATTORNEY
Nevada Bar #000477

19
20 BY 
21 ROBERT J. DASKAS
22 Deputy District Attorney
23 Nevada Bar #004963
24
25
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FILED

Dec 6 3 29 PM '99

Shirley D. Thompson
CLERK

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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,
#1586283

Defendant.

Case No. C153154
Dept. No. V
Docket H

OPPOSITION TO DEFENDANT'S MOTION FOR DISCLOSURE
OF EXCULPATORY EVIDENCE PERTAINING TO THE
IMPACT OF THE DEFENDANT'S EXECUTION
UPON VICTIM'S FAMILY MEMBERS

DATE OF HEARING: 12-27-99
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
ROBERT J. DASKAS, Deputy District Attorney, and hereby submits the attached Points and
Authorities in Opposition to Defendant's Motion for Disclosure of Exculpatory Evidence
Pertaining to the Impact of the Defendant's Execution upon Victim's Family Members.

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

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1 victim is an individual whose death represents a
2 unique loss to society and in particular to his
3 family." Booth, 482 U.S., at 517, 107 S.Ct. at 2540
(White, J., dissenting).

4 Payne, 501 U.S. at 825.

5 The Nevada Supreme Court has interpreted NRS 175.552 to include the admission of
6 victim impact testimony in a capital sentencing hearing. See, Smith v. State, 110 Nev. 1094,
7 1106, 881 P.2d 649 (1994).

8 Since the admission of victim impact testimony is designed to allow the jury to receive
9 a more accurate portrait of the victim for the purpose of establishing the particular defendant's
10 moral culpability and blameworthiness, the opinions of the victim's family members regarding
11 the death penalty are immaterial and irrelevant. It is certainly not "exculpatory."

12 The decision to file the Notice of Intent to Seek Death Penalty in any case is not made by
13 the family members of the victim. The effect of the Defendant's execution among family
14 members is not a relevant consideration for the jury who would ultimately impose sentence.

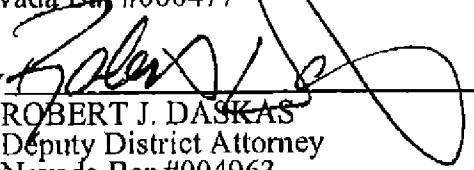
15 The Defendant seeks disclosure of the victim's family members' feelings is noteworthy;
16 any "anxiety, guilt, depression, distress, blame, trepidation, doubt or moral indignation"
17 information sought by the Defendant's Motion with regard to the Defendant's execution is
18 undoubtedly outweighed by the same emotions suffered as a consequence of the Defendant's
19 premeditated acts.

20 The Defendant's Motion should be denied as meritless, devoid of legal authority,
21 irrelevant and impertinent.

22 DATED this 3 day of December, 1999.

23 Respectfully submitted,

24 STEWART L. BELL
25 DISTRICT ATTORNEY
Nevada Bar #000477

26 BY 
27 ROBERT J. DASKAS
28 Deputy District Attorney
Nevada Bar #004963

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DEC 6 3 30 PM '99

Shirley C. Johnson
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7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 DONTÉ JOHNSON,
12 #1586283

13 Defendant.

Case No. C153154
Dept. No. V
Docket H

15 STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE
16 REGARDING CO-DEFENDANTS' SENTENCES

17 DATE OF HEARING: 12/27/99
18 TIME OF HEARING: 9:00 A.M.

18 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
19 ROBERT J. DASKAS, Deputy District Attorney, and files this State's Opposition to
20 Defendant's Motion in Limine Regarding Co-Defendants' Sentences.

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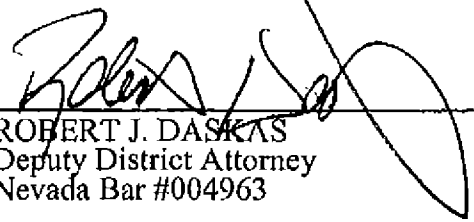
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1 This opposition is made and based upon all the papers and pleadings on file herein, the
2 attached points and authorities in support hereof, and oral argument at the time of hearing, if
3 deemed necessary by this Honorable Court.

4 DATED this 3 day of December, 1999.

5 Respectfully submitted,

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

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

13 POINTS AND AUTHORITIES

14 DISCUSSION

15 Defendant seeks to preclude the State from introducing evidence regarding the co-
16 defendants' sentences in the penalty hearing of this matter. To support this contention,
17 Defendant states that "[s]uch is unauthorized by case or statute and would clearly be violative
18 of not only NRS 48.035 but also the fundamental due process rights of a defendant secured by
19 the Fourteenth Amendment." Motion at p. 3.

20 Despite Defendant's suggestion to the contrary, there is in fact a Nevada Supreme Court
21 case and statute that expressly permits the State to do that which the Defendant seeks to preclude
22 the State from doing. The Defendant's attorney, of course, has failed to bring either the case or
23 statute to the Court's attention despite an ethical obligation to do so.

24 In Flanagan v. State, 107 Nev. 243, 810 P.2d 759 (1991), Flanagan, Moore and four other
25 co-defendants killed Flanagan's grandparents to obtain insurance proceeds and an inheritance.
26 At the penalty hearings of Flanagan and Moore, the prosecution introduced testimony that the
27 co-defendants' received four consecutive sentences of life without the possibility of parole. 247,
28 762. Following their respective penalty hearings, both Flanagan and Moore were sentenced to
death.

1 On appeal, appellants argued that it was improper for the jury to hear evidence regarding
2 the co-defendants' sentences. Specifically, they argued that the district court's allowance of
3 testimony regarding the sentences of the others violated their Eighth Amendment rights to have
4 the jury consider their individual characters and records and the circumstances of their particular
5 crimes. 247, 761.

6 The Supreme Court of Nevada disagreed. It held that the evidence was admissible under
7 NRS 175.552 as "any other matter which the court deems relevant..." 248, 762. Moreover, the
8 Court recognized that "it was proper and helpful for the jury to consider the punishments
9 imposed on the co-defendants." Id. (citation omitted).

10 Clearly, therefore, testimony regarding the sentences received by Terrell Young and Sikia
11 Smith are admissible during the penalty hearing of Donte Johnson.

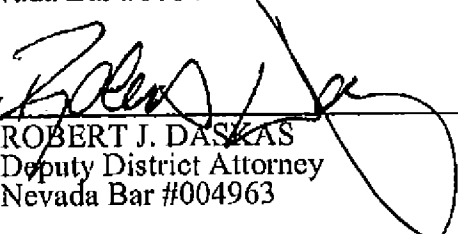
12 CONCLUSION

13 Based on the foregoing, the State of Nevada respectfully requests that this Court permit
14 the State to introduce evidence regarding the sentences of the co-defendants.

15 DATED this 3 day of December, 1999.

16 Respectfully submitted,

17 STEWART L. BELL
18 DISTRICT ATTORNEY
19 Nevada Bar #000477

20 BY 
21 ROBERT J. DASKAS
22 Deputy District Attorney
23 Nevada Bar #004963
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Attorney for Plaintiff

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Dec 6 3 29 PM '99

DISTRICT COURT
CLARK COUNTY, NEVADA

Shirley D. Longoria
CLERK

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,
#1586283

Defendant.

Case No. C153154
Dept. No. V
Docket H

**OPPOSITION TO DEFENDANT'S MOTION TO REQUIRE
PROSECUTOR TO STATE REASONS FOR EXERCISING
PEREMPTORY CHALLENGES**

DATE OF HEARING: 12-27-99
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through ROBERT J. DASKAS, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Require Prosecutor to State Reasons for Exercising Peremptory Challenges.

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

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The defense fails to appreciate the practical impossibility of providing each criminal defendant with a truly representative trial jury. The United States Supreme Court has explained on various occasions that only the prospective jury venire from which the trial jury is chosen must reflect a representative cross section of the community. The trial jury does not have to reflect the composition of the community at large. The high court provided instructive language in *Lockhart v. McCree*, 106 S.Ct. 1758 at 1765, 476 U.S. 162 (1986):

The only cognizable limitation upon a party's exercise of its peremptory challenges in a criminal proceeding involves the systematic exclusion of prospective jurors on the basis of race. The use of the peremptory challenge to exclude otherwise qualified and unbiased persons from a trial jury solely by reason of their race is prohibited by the equal protection clause of the constitution. It is also now apparent that racial identity between particular criminal defendants and specific members of the trial jury is not required as a basis for the assertion of a systematic racial exclusion challenge. Prospective jurors have a right not to be excluded from jury service

1 on the basis of race. See Powers v. Ohio, 111 S.Ct. 1364 (1991) and Batson v. Kentucky, *supra*.
2 Indeed, in Georgia v. McCollum, 505 U.S. 42, 112 S.Ct. 2348 (1992) the Court held that a
3 criminal defendant is held to the same standards as the prosecution and that a defendant may not
4 exercise a peremptory challenge based upon race.

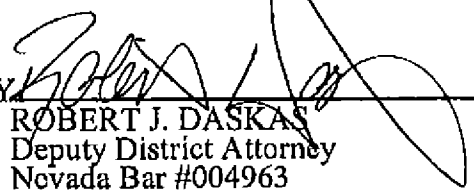
5 Thus, when it appears that a Powers/Batson issue is involved, it is the belief of
6 respondent that both parties should be required to state legally sufficient racially neutral grounds
7 as a basis for the use of peremptory challenge prior to the excuse of the targeted juror.

8 Accordingly, the defense motion to require the prosecution to state on the record its
9 reasons for exercising every peremptory challenge is not supported by any legal authority, it is
10 illogical and represents an unfair encroachment upon the legitimate exercise of the prosecution's
11 peremptory challenges. Whatever the court orders should be done in a manner which is even
12 handed and fair to both parties. Thus, the motion to require the prosecutor to state the reasons
13 for exercising all peremptory challenges should be denied.

14 DATED this 2 day of December, 1999.

15 Respectfully submitted,

16 STEWART L. BELL
17 DISTRICT ATTORNEY
Nevada Bar #000477

18
19 BY 
20 ROBERT J. DASKAS
21 Deputy District Attorney
22 Nevada Bar #004963
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DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

Dec 6 3 24 PM '99

Shirley M. Longine
CLERK

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,
#1586283

Defendant.

Case No. C153154
Dept. No. V
Docket H

RECEIPT OF COPY

DATE OF HEARING: 12-27-99
TIME OF HEARING: 9:00 A.M.

RECEIPT OF COPY of the following is hereby acknowledged this 6th day of
December, 1999.

1. OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PROHIBIT ANY REFERENCES TO THE FIRST PHASE AS THE "GUILT PHASE";
2. OPPOSITION TO DEFENDANT'S MOTION TO PROHIBIT THE USE OF PEREMPTORY CHALLENGES TO EXCLUDE JURORS WHO EXPRESS CONCERNS ABOUT CAPITAL PUNISHMENT;
3. OPPOSITION TO DEFENDANT'S MOTION TO ALLOW THE DEFENSE TO ARGUE LAST AT THE PENALTY PHASE;
4. OPPOSITION TO DEFENDANT'S MOTION FOR DISCOVERY AND

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EVIDENTIARY HEARING REGARDING THE MANNER AND METHOD OF DETERMINING IN WHICH MURDER CASES THE DEATH PENALTY WILL BE SOUGHT;

5. 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;

6. OPPOSITION TO DEFENDANT'S MOTION TO EXCLUDE AUTOPSY PHOTOGRAPHS;

7. OPPOSITION TO DEFENDANT'S MOTION TO PRECLUDE EVIDENCE OF ALLEGED CO-CONSPIRATORS STATEMENTS;

8. OPPOSITION TO DEFENDANT'S MOTION TO APPLY HEIGHTENED STANDARD OF REVIEW AND CARE IN THIS CASE BECAUSE THE STATE IS SEEKING THE DEATH PENALTY;

9. OPPOSITION TO DEFENDANT'S MOTION FOR DISCLOSURE OF ANY POSSIBLE BASIS FOR DISQUALIFICATION OF DISTRICT ATTORNEY;

10. OPPOSITION TO DEFENDANT'S MOTION FOR INSPECTION OF POLICE OFFICERS' PERSONNEL FILES;

11. OPPOSITION TO DEFENDANT'S MOTION TO BIFURCATE PENALTY PHASE;

12. OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PRECLUDE THE INTRODUCTION OF VICTIM IMPACT EVIDENCE;

13. OPPOSITION TO DEFENDANT'S MOTION FOR ORDER PROHIBITING PROSECUTION MISCONDUCT IN ARGUMENT;

14. 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;

- 1 15. OPPOSITION TO DEFENDANT'S MOTION FOR DISCLOSURE OF
2 EXCULPATORY EVIDENCE PERTAINING TO THE IMPACT OF THE
3 DEFENDANT'S EXECUTION UPON VICTIM'S FAMILY MEMBERS;
4 16. OPPOSITION TO DEFENDANT'S MOTION FOR PERMISSION TO FILE
5 OTHER MOTIONS;
6 17. OPPOSITION TO DEFENDANT'S MOTION TO DISMISS STATE'S NOTICE
7 OF INTENT TO SEEK DEATH PENALTY BECAUSE NEVADA'S DEATH
8 PENALTY STATUTE IS UNCONSTITUTIONAL;
9 18. OPPOSITION TO DEFENDANT'S MOTION TO REQUIRE PROSECUTOR
10 TO STATE REASONS FOR EXERCISING PEREMPTORY CHALLENGES;
11 19. OPPOSITION TO DEFENDANT'S MOTION IN LIMINE REGARDING CO-
12 DEFENDANTS' SENTENCES;
13

14 SPECIAL PUBLIC DEFENDER'S OFFICE

15
16 BY Leni Elliott / for
17 309 S. Third St., #401
18 Las Vegas, Nevada 89155
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Shirley S. Ruggina
CLERK

1 OPPTS
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4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 DONTE JOHNSON,
12 #1586283

13 Defendant.

Case No. C153154
Dept. No. V
Docket H

15 STATE'S OPPOSITION TO DEFENDANT'S MOTION
16 FOR CHANGE OF VENUE

17 DATE OF HEARING: 12/27/99
18 TIME OF HEARING: 9:00 A.M.

18 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
19 ROBERT J. DASKAS, Deputy District Attorney, and files this State's Opposition to
20 Defendant's Motion for Change of Venue.

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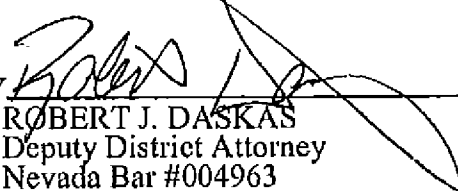
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1 This opposition is made and based upon all the papers and pleadings on file herein, the
2 attached points and authorities in support hereof, and oral argument at the time of hearing, if
3 deemed necessary by this Honorable Court.

4 DATED this 7 day of December, 1999.

5 Respectfully submitted,

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

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

13 POINTS AND AUTHORITIES

14 DISCUSSION

15 Defendant's Motion for Change of Venue is premature. N.R.S. 174.455 provides that "an
16 application for removal of a criminal action shall not be granted by the court until *after* the voir
17 dire examination has been conducted..." Thus, Defendant should renew his motion after the
18 venire has been questioned.

19 To support his premature Motion for Change of Venue, Defendant has attached copies
20 of newspaper articles regarding this case and the co-defendants' trials. The Nevada Supreme
21 Court, however, has cautioned that

22 considerations compelling a venue change are not necessarily coextensive with the degree
23 and nature of media coverage accorded the underlying criminal act. The preeminent issue
24 in a motion seeking a transfer of trial is whether the ambiance of the place of the forum
25 has been so thoroughly perverted that the constitutional imperative of a fair and impartial
26 panel of jurors has been unattainable.

27 Ford v. State, 102 Nev. 126, 129, 717 P.2d 27, 29 (1986) (citation omitted). The Nevada
28 Supreme Court further explained that

the net concern of a criminal defendant is whether the community hosting the trial will

1 yield a jury qualified to deliberate impartially and upon competent trial evidence, the guilt
2 or innocence of the accused. This, of course, implicates the jury selection process and
3 explains why a motion for change of venue must be presented to the court *after voir dire*
4 *of the venire*. NRS 174.455.

5 Id.

6 The Ford case involved a woman who intentionally drove her automobile onto a crowded
7 sidewalk in Reno, Nevada, on Thanksgiving Day where she struck and killed six people and
8 injured countless others. Significantly, the Nevada Supreme Court recognized that virtually
9 every juror had some pretrial awareness of the facts surrounding the incident on Thanksgiving
10 Day. In fact, the Court acknowledged that news coverage of the crime reached a high percentage
11 of Nevada residents, both in Reno, where the crime occurred, and elsewhere throughout the
12 State. Id. at 130, 29. Moreover, newspaper articles referred to the crime as the "Thanksgiving
13 Day Massacre," labeled the defendant's automobile "the death car," and called the scene a
14 "battlefield." Id. Nevertheless, the Court opined as follows:

15 Given the realities of our age, it is unlikely that a high-profile criminal defendant will be
16 presented with a venire of uninformed individuals from which to select a jury. * * * To
17 hold that the mere existence of any preconceived notion as to the guilt or innocence of
18 an accused, without more, is sufficient to rebut the presumption of a prospective juror's
19 impartiality would be to establish an impossible standard. It is sufficient if the juror can
20 lay aside his impression or opinion and render a verdict based on the evidence presented
21 in court.

22 Id. at 130, 30 (citation omitted). The Court recognized that venue determinations are left to the
23 sound discretion of the trial judge and will remain undisturbed on appeal absent a clear
24 demonstration of an abuse of discretion. Id. No such demonstration was presented in the Ford
25 case; accordingly, Ford's appeal was denied.

26 //

27 //

28 //

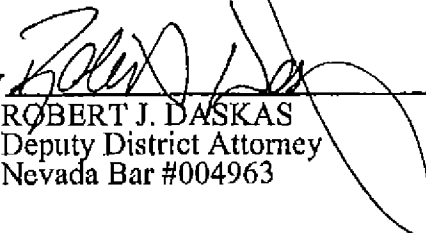
1 **CONCLUSION**

2 Defendant's Motion for Change of Venue is premature; accordingly, the Motion must be
3 denied.

4 DATED this 7 day of December, 1999.

5 Respectfully submitted,

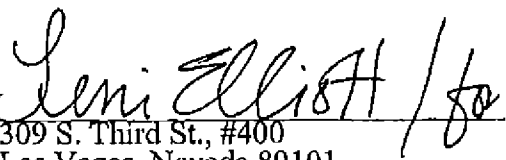
6 STEWART L. BELL
7 DISTRICT ATTORNEY
8 Nevada Bar #000477

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

13 RECEIPT OF COPY

14 RECEIPT OF COPY of the above and foregoing State's Opposition to Defendant's
15 Motion for Change of Venue is hereby acknowledged this 7th day of December, 1999.

16 SPECIAL PUBLIC DEFENDER'S OFFICE
17 ATTORNEY FOR DEFENDANT

18 BY 
19 309 S. Third St., #400
20 Las Vegas, Nevada 89101

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28 98F11830X/sbs

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Allyson J. Jones
CLERK

1 NOTC
2 PHILIP J. KOHN
3 Special Public Defender
4 Nevada Bar No. 000556
5 JOSEPH S. SCISCENTO
6 Deputy Special Public Defender
7 Nevada Bar No. 004380
8 DAYVID J. FIGLER
9 Nevada Bar No. 004264
10 309 S. Third Street, Fourth Floor
11 Las Vegas, Nevada 89155-2316
12 (702) 455-6265
13 Attorneys for Defendant

8
9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 vs.

15 DONTE JOHNSON,

16 Defendant.

)
) CASE NO. C153154
) DEPT NO. V
) DOCKET H
)
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)
)
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)

17
18 NOTICE OF WITNESSES

19 [NRS 174.234 (1)(b)]

20 TO: STEWART BELL, DISTRICT ATTORNEY, Attorney for Plaintiffs

21 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the CLARK COUNTY
22 SPECIAL PUBLIC DEFENDER intends to call the following witnesses in its case in chief:

23 NAME

ADDRESS

Dewayne Anderson

c/o District Attorney Investigator
Alexia Conger

Todd Armstrong

c/o District Attorney Investigator
Alexia Conger

Jeff Lynn Bates

4745 Terra Linda
Las Vegas, NV 89120

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1	Dr. Robert Bucklin	Clark County Medical Examiner 1704 Pinto Lane Las Vegas, NV 89106
2		
3	James Buczek, Jr., P#3702	LVMPD
4	Luis Amado Cabrera	4801 E. Tropicana, Bldg. 15, Apt. 33 Las Vegas, NV 89121
5		
6	COR	LVMPD Communications
7	Nicholas De Lucia	4815 Terra Linda Las Vegas, NV 89102
8		
9	Shawn Fletcher, P#5221	LVMPD
10	Carlton J. Fruge, P#1460	LVMPD
11	B. C. Grover, P#4934	LVMPD
12	Edward Guenther, P#5891	LVMPD
13	Ace Hart	c/o District Attorney Investigator Alexia Conger
14	Ken Hefner, P#2185	LVMPD
15	David Horn, P#1928	LVMPD
16	Bryan C. Johnson	c/o District Attorney Investigator Alexia Conger
17	Shawn McLain, P#5221	LVMPD
18	Debra McCracken, P#2542	LVMPD
19	Sheree Norman, P#3110	LVMPD
20	James E. O'Donnell, P#5709	LVMPD
21	Justin Ulrich Perkins	310 Redondo Street Henderson, NV 89014
22		
23	Michael Perkins, P#4242	LVMPD
24	Melvin E. Royal	3503 Mercury, #E North Las Vegas, NV
25	Charla (La La) Severs	c/o District Attorney Investigator Alexia Conger
26		
27	James Stolk, Jr., P#2550	LVMPD
28	Randy Sutton, P#3239	LVMPD

1 Albert Talamantez

5840 Medallion Dr., #202
Las Vegas, NV 89122

2 Thomas Thowsen, P#1467

LVMPD

3 Gregory Travis

1605 E. Fremont, Rm. #15
Las Vegas, NV 89101

4 M. Washington, P#4725

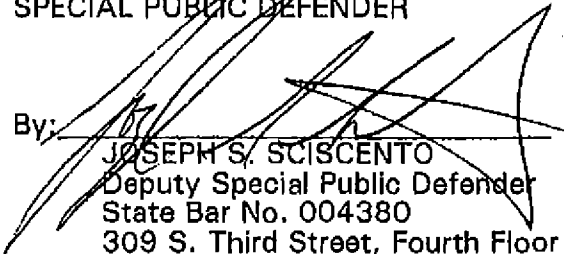
LVMPD

5 David L. West, P#4338

LVMPD


6
7
8 DATED this 7 day of December, 1999.

9
10 PHILIP J. KOHN
SPECIAL PUBLIC DEFENDER

11
12 By: 
13 JOSEPH S. SCISCENTO
14 Deputy Special Public Defender
15 State Bar No. 004380
16 309 S. Third Street, Fourth Floor
17 Las Vegas, NV 89155
18 Attorney for Defendant

19
20
21
22
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25
26
27
28
RECEIPT OF COPY

RECEIPT OF COPY of the foregoing **NOTICE OF WITNESSES** is hereby
acknowledged this 8 day of December, 1999.


STEWART L. BELL
District Attorney
200 S. Third Street
Las Vegas, NV 89155
Attorney for Plaintiff

FILED

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Christy A. Thompson
CLERK

1 AFFT
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

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 ****

17 THE STATE OF NEVADA,

18 Plaintiff,

CASE NO: C153154
DEPT. NO: V

19 vs.

20 DONTE JOHNSON, aka
21 John White, ID # 1586283,

22 Defendant.

23 AFFIDAVIT OF JOSEPH S. SCISCENTO
24 IN SUPPORT OF THE MOTION TO CONTINUE

25 STATE OF NEVADA)
26) ss
27 COUNTY OF CLARK)

28 COMES NOW, JOSEPH S. SCISCENTO, being duly sworn deposes and states as follows:

1. That I am a duly licensed attorney in the State of Nevada and am the attorney of record for DONTE JOHNSON; that I make this Affidavit based upon my own personal knowledge and as to those matters based on information and belief I believe

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SPECIAL PUBLIC DEFENDER
CLARK COUNTY NEVADA

1 them to be true and correct;

2 2. That I am currently employed by the Office of the Special Public Defenders,
3 and pursuant to Supreme Court Rule 250 I am lead counsel in the case of Donte Johnson
4 and that DAYVID FIGLER is additional counsel on this case;

5 3. That I began as a Deputy Special Public Defender on or about September
6 7th, 1999;

7 4. On or about September 20th, 1999, I was assigned the case of State v.
8 Johnson, that the case consisted of no less than eight (8) expandex files of pleadings,
9 arrest reports, witness statements, evidence, crime reports, autopsy reports, trial
10 transcripts reports, as well as over 300 photographs;

11 5. That I had begun to review each item in the expandex files, on September
12 20, 1999, and for the next two weeks I embarked upon the task of reviewing the entire
13 file of Donte Johnson;

14 6. That there was no 250 memorandum by prior counsel in regards to previous
15 work done on the Donte Johnson matter;

16 7. That certain Motions that should have been drafted were not done so, nor
17 was any legal research done on any of these motions. These Motions are specific to this
18 case only and were not so called "boiler-plate" motions.

19 8. That a Motion was filed by the D.A. to take the deposition of a witness in
20 which we had to file an opposition and further had to prepare for the taking of the
21 deposition of this witness, all of which took time away from the investigations of this
22 case;

23 9. That there were no memos as to prior witness statements and interviews
24 from prior counsel, and as a result I had to start from the beginning with no prior
25 knowledge of previous work done.

26 10. That as of the present date, we are still awaiting the results of the ballistic
27 testing and DNA testing.

28 11. That for reasons unbeknownst to our office, the shell casings ordered by this

1 Honorable Court to be released to our independent science lab were never sent by the Las
2 Vegas Metropolitan Police Department though they had been served with said Order.

3 12. That our office was unable to reach a stipulation with the District Attorney
4 regarding the re-testing of fingerprint evidence. It is imperative that this testing be done
5 to protect the rights of my client. Further, that a stipulation had not been reached as of
6 the date of this Affidavit.

7 13. That discussions with the independent science lab we have engaged have
8 revealed that if they receive all materials prior to December 25, 1999, the amount of time
9 it would take to complete all testing would be the first week in February in the year 2000.
10 That any later receipt of the testing materials would correspondingly lengthen the
11 completion date for testing.

12 14. That in addition to the Donte Johnson case I had been assigned five (5) other
13 murder cases including two (2) death penalty cases, in which I had to prepare, and
14 further, that one death penalty case involved taking the deposition of a witness in which
15 I had to prepare for.

16 15. That I have the following caseload through May, 2000:

- 17 a. Trial - murder case - Anthony Gallego - scheduled to begin January
18 24, 2000.
- 19 b. Trial - murder case - Michael Ellis - scheduled to begin February 28,
20 2000.
- 21 c. Trial - murder case - Adam Aguilar - scheduled to begin March 27,
22 2000.
- 23 d. Trial - murder case - Ramses Escobar - scheduled to begin April 17,
24 2000.
- 25 e. Trial - murder case - John Butler - scheduled to begin March 20th,
26 2000.

27 17. That my co-counsel, Dayvid Figler, has the following caseload through May,
28 2000:

- 1 a. Supreme Court Reply Brief - Johnny Walker - due December 15,
- 2 1999.
- 3 b. Supreme Court Reply Brief - James Cross - due December 27, 1999.
- 4 c. Supreme Court Reply Brief - Brandon Parish - due December 28,
- 5 1999.
- 6 d. Trial - murder case - Johnny Walker - scheduled to begin February 14,
- 7 2000.
- 8 e. Trial - capital murder case - Keith Shanley - scheduled to begin
- 9 February 28, 2000.
- 10 f. Trial - battery by a prisoner - Johnny Walker - scheduled to begin
- 11 March 13, 2000.
- 12 g. Trial - murder by child abuse - Kevin Camp - scheduled to begin April
- 13 17, 2000.
- 14 h. Trial - murder by child abuse - Jacquin Webb - scheduled to begin
- 15 May 15, 2000.

16 17. That in October 1999, I began a week long murder trial and had to prepare
17 for the penalty phase of the murder trial;

18 18. That on December 2nd to the 5th, I had to leave to go to Los Angeles to
19 prepare for the Donte Johnson trial to interview witnesses; further that any prior
20 information regarding witness interviews in Los Angeles was never recorded, nor was any
21 pertinent mitigating evidence was not preserved and as a result I had to do everything
22 over again;

23 19. That on September 20th 1999 I had sent a request to the D.A's office
24 requesting certain notes on fingerprints examinations so that the same could be delivered
25 to a possible expert witness, that as of today's date I have not received the notes;

26 20. That the Special Public Defenders Office had hired an expert witness, to-
27 wit; Dr. Mortillaro, to examine Mr. Johnson;

28 21. That upon my appointment to this case, I learned that the main mitigation

1 witness employed by this office, to wit: Dr. Louis Mortillaro had incredulously been
2 retained, by the prosecution even though he had already been retained by this office. The
3 prosecution then used Dr. Mortillaro in its case against Mr. Johnson's Co-Defendant, Sikia
4 Smith. That as a result of this prosecutor's actions - numerous time consuming
5 problems were created including the expenditure of countless months trying to rehabilitate
6 the relationship between our office and the client, between client and doctor, as well as
7 the inherent difficulties which arose *prima facie* concerning the appearance of impropriety
8 and the potential and improper conveying of privileged information both direct and indirect
9 by our expert to the prosecutor in this case. It is my belief that the prosecutor's actions
10 set us far behind in preparation of the present case both concerning the trial phase and
11 the potential penalty phase.

12 22. That Donte Johnson has informed me that he did not trust Dr. Mortillaro
13 because he testified against his Co-defendant and as a result, a proper investigation was
14 not conducted;

15 23. That from the standpoint of providing effective assistance of counsel, the
16 discovery of the actions of the State and Dr. Mortillaro required an immediate diminishing
17 of the role of Dr. Mortillaro and the retention of a new mitigation expert. This was not
18 done.

19 24. That the penalty phase of this case is very important and without the help
20 of the client and a psychiatrist a report can not be useful;

21 25. That I have been informed that Dr. Mortillaro needed to perform additional
22 test and that those tests can not be performed until around Christmas time.

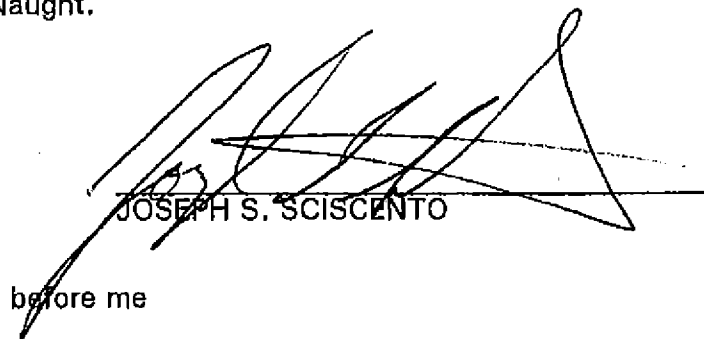
23 26. That as a result of the problem with Dr. Mortillaro, counsel has inquired into
24 hiring a different doctor to examine Donte Johnson, and as a result the examination will
25 take additional months to complete;

26 27. That it is my belief, based on my experiences as an attorney, that in order
27 to provide Donte Johnson with effective assistance of counsel, as required by the United
28 States Supreme Court, the Nevada Supreme Court, and the applicable Rules of


1 Professional Conduct, that a continuance of no shorter than three (3) months be granted
2 and that the purpose of the present Motion to Continue is not for delay but so that Donte
3 Johnson's counsel can honestly prepare a defense and mitigation of penalty for Mr.
4 Johnson.

5 28. That I know of no true prejudice to the State that would result from such a
6 modest continuance.

7 Further Affiant Sayeth Naught.

8
9
10 
11 JOSEPH S. SCISCENTO

12 SUBSCRIBED AND SWORN to before me
13 this 14th day of December, 1999.

14
15 
16 NOTARY PUBLIC, In and for the
County of Clark, State of Nevada



PATRICIA S. FLOOD
Notary Public - Nevada
My appt. exp. Sep. 1, 2000
No. 02-3783-1

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SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

ORIGINAL

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Shirley E. Ruyter
CLERKDISTRICT COURT
CLARK COUNTY, NEVADA

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

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON, aka John White,
#1586283

Defendant.

Case No. C153154
Dept. No. V
Docket H

OPPOSITION TO MOTION TO CONTINUE TRIAL

DATE OF HEARING: 12/20/99
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
ROBERT DASKAS, Deputy District Attorney, and files this Opposition to Defendant's Motion
to Continue Trial.

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COUNTY CLERK

DEC 16 1999

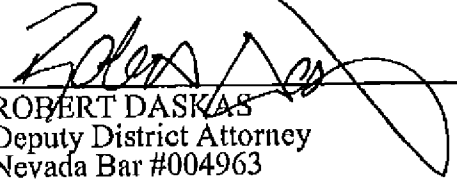
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1 This Opposition is made and based upon all the papers and pleadings on file herein, the
2 attached points and authorities in support hereof, and oral argument at the time of hearing, if
3 deemed necessary by this Honorable Court.

4 DATED this 16 day of December, 1999.

5 Respectfully submitted,

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

9 BY 
10 ROBERT DASKAS
11 Deputy District Attorney
12 Nevada Bar #004963
13

14 STATEMENT OF FACTS

15 On August 14, 1998, Matthew Mowen, Tracey Gorringer, Peter Talamentez and Jeffrey
16 Biddle were murdered.

17 On August 18, 1998, Donte Johnson was arrested for the murders. A true bill was
18 returned against Mr. Johnson on September 15, 1998, for the murders and other related crimes.
19 He appeared in District Court on September 17, 1998, and waived his right to a speedy trial. The
20 State requested a firm and expeditious trial setting. A trial date was scheduled for July 5, 1999,
21 thereby providing the defense attorneys, Dayvid Figler and Pete LaPorta of the Special Public
22 Defender's Office, ten (10) months to prepare for trial. The defense attorneys assured this Court
23 that they would be prepared for trial in July 1999.

24 On June 29, 1999, the parties appeared in court for calendar call. The State of Nevada
25 announced that it was prepared for trial. The defense attorneys, Dayvid Figler and Pete LaPorta
26 of the Special Public Defender's Office, requested a continuance which was granted over the
27 State's objection. The State once again requested a firm and expeditious trial setting. A trial
28 date was set for January 10, 2000, thereby providing the defense attorneys *an additional* six (6)

1 months to prepare for trial. The defense attorneys assured this Court that they would be prepared
2 for trial in January 2000.

3 On November 18, 1999, the parties appeared in this Court before the Honorable Judge
4 Sobel regarding numerous motions filed by the defense. The State of Nevada and Mr. Johnson's
5 attorneys, Dayvid Figler and Joe Sciscento of the Special Public Defender's Office, announced
6 they would be prepared for trial on January 10, 2000. Moreover, this Court granted Mr.
7 Sciscento's request to file one (1) additional motion prior to trial. The defense has since filed
8 twenty-three (23) additional motions. Nevertheless, the State has filed responses to those
9 motions to ensure that Mr. Johnson's January trial setting was not continued.

10 On December 16, 1999, despite their previous assurances to this Court that they were
11 prepared for trial, and despite the fact that the Special Public Defender's Office has had sixteen
12 months to prepare for trial, the defense attorneys filed a Motion to Continue Trial. The attorneys
13 now suggest that they will be "ineffective" if they are forced to begin trial on January 10, 2000,
14 *seventeen (17) months after Donte Johnson was arrested.*¹

15 16 DISCUSSION

17 A. DEFENSE COUNSEL WAS NOT PREJUDICED BY THE PROSECUTION'S
18 RETENTION OF DR. MORTILLARO BECAUSE HE NEVER ACQUIRED ANY
PRIVILEGED INFORMATION ABOUT DONTÉ JOHNSON

19 The gist of the defense Motion to Continue appears to be that they need to retain an expert
20 for mitigation at the penalty phase of Donte Johnson's trial. See Motion at 3. Specifically, the
21 defense indicates that their expert in mitigation, Dr. Mortillaro, was retained by the prosecution
22 in the trial of Sikia Smith, Mr. Johnson's co-defendant. See Affidavit of Joseph S. Sciscento In
23 Support of the Motion to Continue at pp. 4-5. Moreover, the defense suggests that Dr.
24 Mortillaro conveyed privileged information regarding Donte Johnson to the prosecutors. Id.

25 Defense counsel's suggestions are baseless. Indeed, Dr. Mortillaro did testify on behalf
26 of the prosecution during the *guilt phase* of Sikia Smith's trial. Dr. Mortillaro's testimony,

27
28 ¹Significantly, Terrell Young and Sikia Smith, Mr. Johnson's co-conspirators, were
arrested *after* Mr. Johnson yet went to trial *before* Mr. Johnson.

1 however, was limited to the issue of whether Sikia Smith fell within the legal definition of
2 "idiot" pursuant to N.R.S. 194.010. In fact, Dr. Mortillaro was called as a rebuttal witness only
3 after a defense expert testified that Sikia Smith was an "idiot" and, consequently, could not be
4 held responsible for his actions. The defense in this case, of course, retained Dr. Mortillaro to
5 testify in the *sentencing phase* of Donte Johnson's trial.

6 More importantly, Dr. Mortillaro informed Judge Joseph Pavlikowski, the presiding judge
7 in Sikia Smith's case, that Dr. Mortillaro *never had a conversation with Donte Johnson* as of the
8 date he testified in the guilt phase of Sikia Smith's trial. Dr. Mortillaro also informed Judge
9 Pavlikowski that his only contact with Donte Johnson was seeing Donte Johnson in Dr.
10 Mortillaro's office on one occasion when Donte Johnson took a series of tests administered by
11 Dr. Mortillaro's assistant. Dr. Mortillaro neither administered those tests nor did he review the
12 test results as of the date Dr. Mortillaro testified in the guilt phase of Sikia Smith's trial. Thus,
13 for defense counsel to suggest in his Affidavit that privileged information has been conveyed
14 by Dr. Mortillaro to the prosecution in this case is disingenuous. See Affidavit at p. 5. Indeed,
15 Dr. Mortillaro had no information whatsoever to convey to anyone regarding Donte Johnson and
16 the prosecution has had no conversations with Dr. Mortillaro since Sikia Smith's trial.

17
18 B. THE DEFENSE ATTORNEYS HAVE HAD SEVEN MONTHS TO RETAIN AN
19 EXPERT IN MITIGATION OF THE DEATH PENALTY

20 Significantly, Mr. Johnson's attorney, Dayvid Figler, was present in the courtroom during
21 Sikia Smith's trial when Dr. Mortillaro made the representations outlined above. Therefore, Mr.
22 Johnson's attorneys were aware of the fact that Dr. Mortillaro never had a conversation with
23 Donte Johnson and had learned no privileged information. Moreover, if defense counsel truly
24 perceived a problem with retaining Dr. Mortillaro on behalf of Donte Johnson, they were aware
25 of the problem *as of June 23, 1999*, the date Dr. Mortillaro testified. Certainly seven (7) months
26 was ample time for defense counsel to retain a different expert for the mitigation phase of Donte
27 Johnson's trial.

28 //

1 C. THE PROSECUTION HAS ACCOMMODATED DEFENSE COUNSEL IN EVERY
2 POSSIBLE WAY TO ENSURE THAT DEFENSE COUNSEL WAS PREPARED FOR
3 TRIAL

4 Throughout the Motion to Continue Trial, defense counsel intimates that neither the
5 District Attorney's Office nor the Las Vegas Metropolitan Police Department has complied with
6 defense requests for stipulations and/or requests for information pertaining to this case. Nothing
7 could be further from the truth.

8 In fact, the prosecution has signed each and every stipulation prepared by defense counsel
9 and provided to the prosecution concerning this case. Moreover, the prosecution has assisted
10 the defense attorneys in the gathering and analyzation of various information from Metro. For
11 example, the defense team wished to obtain an independent DNA analysis of a blood stain found
12 on pants belonging to Donte Johnson. The prosecution contacted an independent laboratory to
13 conduct the test, assisted in obtaining a swatch from the pants from the Crime Lab at Metro,
14 ensured that the swatch was analyzed in an expeditious manner, and provided the results to the
15 defense as soon as the prosecution received them. Thus, the prosecution and Metro have assisted
16 the defense in every manner possible to ensure both that Donte Johnson receive a fair trial and
17 that the trial take place as soon as possible.

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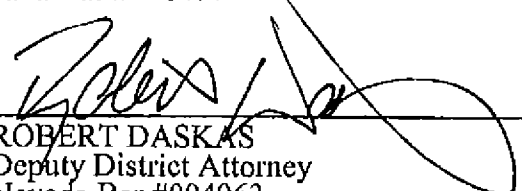
1 CONCLUSION

2 Based on the foregoing, the State of Nevada respectfully requests that this Court deny the
3 Motion to Continue Trial. Alternatively, if this Court is inclined to continue the January 10,
4 2000 trial date, the State of Nevada requests that this Court set frequent status checks to ensure
5 that the defense attorneys are prepared to effectively represent Donte Johnson for the future trial
6 date.

7 DATED this 16 day of December, 1999.

8 Respectfully submitted,

9 STEWART L. BELL
10 DISTRICT ATTORNEY
Nevada Bar #000477

11
12 BY 
13 ROBERT DASKAS
14 Deputy District Attorney
Nevada Bar #004963

15
16
17
18
19 CERTIFICATE OF FACSIMILE TRANSMISSION

20 I hereby certify that service of Opposition to Motion to Continue, was made this 16th
21 day of December, 1999, by facsimile transmission to:

22 JOSEPH SCISCENTO, Deputy Special Public Defender
23 (702) 455-6273

24
25 BY 
26 Employee of the District Attorney's Office

27
28 RD/tgd

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 0648
CONNECTION TEL 4556273
SUBADDRESS
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ST. TIME 12/16 15:28
USAGE T 03'30
PGS. SENT 6
RESULT OK

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

DISTRICT COURT
CLARK COUNTY, NEVADA

8 **THE STATE OF NEVADA,**

9 **Plaintiff,**

10 **-vs-**

11 **DONTE JOHNSON, aka John White,**
12 **#1586283**

13 **Defendant.**

Case No. C153154
Dept. No. V
Docket H

15 **OPPOSITION TO MOTION TO CONTINUE TRIAL**

16 **DATE OF HEARING: 12/20/99**
17 **TIME OF HEARING: 9:00 A.M.**

18 **COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through**
19 **ROBERT DASKAS, Deputy District Attorney, and files this Opposition to Defendant's Motion**
20 **to Continue Trial.**

21 **//**

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ORIGINAL

1 0056
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

FILED IN OPEN COURT
DEC 16 1999 19
SHIRLEY B. PARRAGUIRRE, CLERK
BY Carole D'Aloia
CAROLE D'ALOIA DEPUTY

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

10 *****

11 THE STATE OF NEVADA,)
12)
13 Plaintiff,)
14 vs.)
15 DONTE JOHNSON, aka)
16 John White, ID # 1586283,)
17 Defendant.)

CASE NO: C153154
DEPT. NO: V

18 **MOTION TO CONTINUE TRIAL**

19 Date of Hearing: 12/20/99
20 Time of Hearing: 9:00 a.m.

21 COMES NOW, Defendant, DONTE JOHNSON, by and through his counsel, PHILIP
22 J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO, Deputy Special Public
23 Defender and DAYVID J. FIGLER, Deputy Special Public Defender, and hereby submits
24 this Motion to Continue Trial.

25 This Motion is made and based upon the papers and pleadings on file herein, the
26 ...
27 ...
28 ...

COUNTY CLERK

DEC 16 1999

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SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 Points and Authorities which follow, attached affidavit of counsel and any arguments of
2 counsel entertained by the Court the hearing of said Motion.

3 DATED this 15 day of December, 1999.

4 PHILIP J. KOHN
5 SPECIAL PUBLIC DEFENDER

6
7 JOSEPH S. SCISCENTO
8 Deputy Special Public Defender
9 Nevada Bar No. 004380
10 309 S. Third Street, Fourth Floor
11 Las Vegas, Nevada 89155-2316
12 Attorney 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 CONTINUE TRIAL** on the 20th day of December, 1999, at the hour
18 of 9:00 a.m., in Department No. V of the above-entitled Court, or as soon thereafter as
19 counsel may be heard.

20 DATED this 12 December, 1999.

21 PHILIP J. KOHN
22 SPECIAL PUBLIC DEFENDER

23 By: JS
24 JOSEPH S. SCISCENTO
25 Deputy Special Public Defender
26 State Bar No. 004380
27 309 S. Third Street, Fourth Floor
28 Las Vegas, NV 89155
Attorney for Defendant

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 POINTS AND AUTHORITIES

2
3 LEGAL ARGUMENT

4 It is long recognized that a Defendant has an absolute right to a fair trial. Roever
5 v. State, 111 Nev. 1052 (1995). Further, this right is so paramount, that the court even
6 has the duty, sua sponte, to intervene to protect this right. See Flanagan v. State, 112
7 Nev. 1409 (1996).

8 In Strickland v. Washington, 466 U.S. 668; 104 S.Ct. 3562; 1984 U.S. Lexis
9 321;82 L.Ed.2d 864; 52 U.S.L.W. 3920, (1984 the court provided a litany test to
10 determine if counsel is ineffective in death penalty cases. The court stated that:

11 A convicted defendant claimed that his counsel's assistance was so
12 defective as to require the reversal of a conviction or death sentence has to
13 components, each of which the defendant must show in order to set aside
the conviction or death sentence

14 (1) That counsel's performance was deficient, which requires a
15 showing that counsel was not functioning as the counsel guaranteed the
defendant by the Sixth Amendment;

16 (2) That the deficient performance prejudiced the defense, which
17 requires a showing that counsel's errors were so serious as to deprive the
defendant of a fair trial, a trial whose result is reliable.

18 Further, the court went on to hold:

19 A capital sentencing proceeding which involves a hearing with a right to an
20 advisory jury, with argument by counsel and findings of aggravating and
mitigating circumstances, insufficiently, like a trial in its adversarial format
21 and in the existence of standards for decision, that counsel's role in the
proceeding is comparable to counsel's role at trial for the purposes of
22 determining constitutionally effective assistance of counsel.

23 In other words what the Strickland, court is saying is that the penalty phase of the
24 trial is as important as the guilt phase of the trial and counsel needs to effective as to
25 both phases. In the case at bar, the defense is hampered by the use of Dr. Mortillaro and
26 the defense needs an expert for mitigation at the penalty phase. Failure on behalf of the
27 defense to get an expert who is not biased by the prosecution is ineffective assistance
28 of counsel and under Strickland the case at bar will be reversed.

1 In the case at bar, Defense counsel has faced numerous difficulties which
2 necessitate this request for a continuance. (See Affidavit of counsel attached hereto and
3 incorporated by reference) .

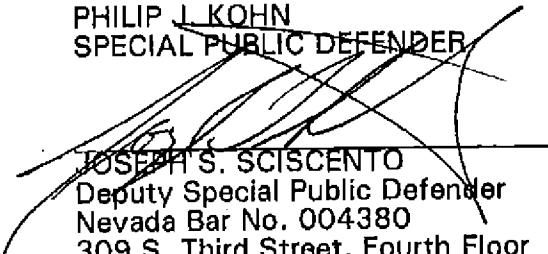
4 DCR 14 provides for the granting of a continuance upon a showing of good faith
5 and that the purpose of the application is not for delay. In the attached affidavit, counsel
6 makes these representations.

7 **CONCLUSION**

8 Based on the foregoing, Defendant Johnson prays that an Order be entered by this
9 court vacating the present trial date, and continuing the trial to a new date.

10 DATED this 15 day of December, 1999.

11 PHILIP J. KOHN
12 SPECIAL PUBLIC DEFENDER

13 
14 JOSEPH S. SCISCENTO
15 Deputy Special Public Defender
16 Nevada Bar No. 004380
17 309 S. Third Street, Fourth Floor
18 Las Vegas, Nevada 89155-2316
19 Attorney for Defendant
20
21
22
23
24
25
26
27
28

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 In the case at bar, Defense counsel has faced numerous difficulties which
2 necessitate this request for a continuance. (See Affidavit of counsel attached hereto and
3 incorporated by reference) .

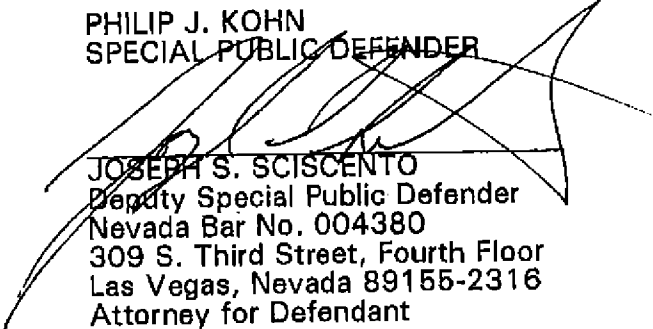
4 DCR 14 provides for the granting of a continuance upon a showing of good faith
5 and that the purpose of the application is not for delay. In the attached affidavit, counsel
6 makes these representations.

7 CONCLUSION

8 Based on the foregoing, Defendant Johnson prays that an Order be entered by this
9 court vacating the present trial date, and continuing the trial to a new date.


10 DATED this 15 day of December, 1999.

11 PHILIP J. KOHN
12 SPECIAL PUBLIC DEFENDER

13 
14 JOSEPH S. SCISCENTO
15 Deputy Special Public Defender
16 Nevada Bar No. 004380
17 309 S. Third Street, Fourth Floor
18 Las Vegas, Nevada 89155-2316
19 Attorney for Defendant

20 RECEIPT OF COPY

21 RECEIPT OF COPY of the foregoing Motion to Continue is hereby acknowledged
22 this 15 day of December, 1999.

23 
24 STEWART L. BELL
25 District Attorney
26 200 South Third Street
27 Las Vegas, Nevada 89155
28 Attorneys for Plaintiff

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 **AFFT**
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

FILED

DEC 14 2 19 PM '99

Shirley S. Higgins
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 vs.

15 DONTE JOHNSON, aka
16 John White, ID # 1586283,

17 Defendant.

CASE NO: C153154
DEPT. NO: V

AFFIDAVIT OF JOSEPH S. SCISCENTO
IN SUPPORT OF THE MOTION TO CONTINUE

21 STATE OF NEVADA)
22)ss
23 COUNTY OF CLARK)

24 COMES NOW, JOSEPH S. SCISCENTO, being duly sworn deposes and states as
25 follows:

26 1. That I am a duly licensed attorney in the State of Nevada and am the
27 attorney of record for DONTE JOHNSON; that I make this Affidavit based upon my own
28 personal knowledge and as to those matters based on information and belief I believe

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 them to be true and correct;

2 2. That I am currently employed by the Office of the Special Public Defenders,
3 and pursuant to Supreme Court Rule 250 I am lead counsel in the case of Donte Johnson
4 and that DAYVID FIGLER is additional counsel on this case;

5 3. That I began as a Deputy Special Public Defender on or about September
6 7th, 1999;

7 4. On or about September 20th, 1999, I was assigned the case of State v.
8 Johnson, that the case consisted of no less than eight (8) expandex files of pleadings,
9 arrest reports, witness statements, evidence, crime reports, autopsy reports, trial
10 transcripts reports, as well as over 300 photographs;

11 5. That I had begun to review each item in the expandex files, on September
12 20, 1999, and for the next two weeks I embarked upon the task of reviewing the entire
13 file of Donte Johnson;

14 6. That there was no 250 memorandum by prior counsel in regards to previous
15 work done on the Donte Johnson matter;

16 7. That certain Motions that should have been drafted were not done so, nor
17 was any legal research done on any of these motions. These Motions are specific to this
18 case only and were not so called "boiler-plate" motions.

19 8. That a Motion was filed by the D.A. to take the deposition of a witness in
20 which we had to file an opposition and further had to prepare for the taking of the
21 deposition of this witness, all of which took time away from the investigations of this
22 case;

23 9. That there were no memos as to prior witness statements and interviews
24 from prior counsel, and as a result I had to start from the beginning with no prior
25 knowledge of previous work done.

26 10. That as of the present date, we are still awaiting the results of the ballistic
27 testing and DNA testing.

28 11. That for reasons unbeknownst to our office, the shell casings ordered by this

1 Honorable Court to be released to our independent science lab were never sent by the Las
2 Vegas Metropolitan Police Department though they had been served with said Order.

3 12. That our office was unable to reach a stipulation with the District Attorney
4 regarding the re-testing of fingerprint evidence. It is imperative that this testing be done
5 to protect the rights of my client. Further, that a stipulation had not been reached as of
6 the date of this Affidavit.

7 13. That discussions with the independent science lab we have engaged have
8 revealed that if they receive all materials prior to December 25, 1999, the amount of time
9 it would take to complete all testing would be the first week in February in the year 2000.
10 That any later receipt of the testing materials would correspondingly lengthen the
11 completion date for testing.

12 14. That in addition to the Donte Johnson case I had been assigned five (5) other
13 murder cases including two (2) death penalty cases, in which I had to prepare, and
14 further, that one death penalty case involved taking the deposition of a witness in which
15 I had to prepare for.

16 15. That I have the following caseload through May, 2000:

- 17 a. Trial - murder case - Anthony Gallego - scheduled to begin January
18 24, 2000.
- 19 b. Trial - murder case - Michael Ellis - scheduled to begin February 28,
20 2000.
- 21 c. Trial - murder case - Adam Aguilar - scheduled to begin March 27,
22 2000.
- 23 d. Trial - murder case - Ramses Escobar - scheduled to begin April 17,
24 2000.
- 25 e. Trial - murder case - John Butler - scheduled to begin March 20th,
26 2000.

27 17. That my co-counsel, Dayvid Figler, has the following caseload through May,
28 2000:

- 1 a. Supreme Court Reply Brief - Johnny Walker - due December 15,
- 2 1999.
- 3 b. Supreme Court Reply Brief - James Cross - due December 27, 1999.
- 4 c. Supreme Court Reply Brief - Brandon Parish - due December 28,
- 5 1999.
- 6 d. Trial - murder case - Johnny Walker - scheduled to begin February 14,
- 7 2000.
- 8 e. Trial - capital murder case - Keith Shanley - scheduled to begin
- 9 February 28, 2000.
- 10 f. Trial - battery by a prisoner - Johnny Walker - scheduled to begin
- 11 March 13, 2000.
- 12 g. Trial - murder by child abuse - Kevin Camp - scheduled to begin April
- 13 17, 2000.
- 14 h. Trial - murder by child abuse - Jacquin Webb - scheduled to begin
- 15 May 15, 2000.

16 17. That in October 1999, I began a week long murder trial and had to prepare
17 for the penalty phase of the murder trial;

18 18. That on December 2nd to the 5th, I had to leave to go to Los Angeles to
19 prepare for the Donte Johnson trial to interview witnesses; further that any prior
20 information regarding witness interviews in Los Angeles was never recorded, nor was any
21 pertinent mitigating evidence was not preserved and as a result I had to do everything
22 over again;

23 19. That on September 20th 1999 I had sent a request to the D.A's office
24 requesting certain notes on fingerprints examinations so that the same could be delivered
25 to a possible expert witness, that as of today's date I have not received the notes;

26 20. That the Special Public Defenders Office had hired an expert witness, to-
27 wit; Dr. Mortillaro, to examine Mr. Johnson;

28 21. That upon my appointment to this case, I learned that the main mitigation

1 witness employed by this office, to wit: Dr. Louis Mortillaro had incredulously been
2 retained, by the prosecution even though he had already been retained by this office. The
3 prosecution then used Dr. Mortillaro in its case against Mr. Johnson's Co-Defendant, Sikia
4 Smith. That as a result of this prosecutor's actions - numerous time consuming
5 problems were created including the expenditure of countless months trying to rehabilitate
6 the relationship between our office and the client, between client and doctor, as well as
7 the inherent difficulties which arose *prima facie* concerning the appearance of impropriety
8 and the potential and improper conveying of privileged information both direct and indirect
9 by our expert to the prosecutor in this case. It is my belief that the prosecutor's actions
10 set us far behind in preparation of the present case both concerning the trial phase and
11 the potential penalty phase.

12 22. That Donte Johnson has informed me that he did not trust Dr. Mortillaro
13 because he testified against his Co-defendant and as a result, a proper investigation was
14 not conducted;

15 23. That from the standpoint of providing effective assistance of counsel, the
16 discovery of the actions of the State and Dr. Mortillaro required an immediate diminishing
17 of the role of Dr. Mortillaro and the retention of a new mitigation expert. This was not
18 done.

19 24. That the penalty phase of this case is very important and without the help
20 of the client and a psychiatrist a report can not be useful;

21 25. That I have been informed that Dr. Mortillaro needed to perform additional
22 test and that those tests can not be performed until around Christmas time.

23 26. That as a result of the problem with Dr. Mortillaro, counsel has inquired into
24 hiring a different doctor to examine Donte Johnson, and as a result the examination will
25 take additional months to complete;

26 27. That it is my belief, based on my experiences as an attorney, that in order
27 to provide Donte Johnson with effective assistance of counsel, as required by the United
28 States Supreme Court, the Nevada Supreme Court, and the applicable Rules of

1 Professional Conduct, that a continuance of no shorter than three (3) months be granted
2 and that the purpose of the present Motion to Continue is not for delay but so that Donte
3 Johnson's counsel can honestly prepare a defense and mitigation of penalty for Mr.
4 Johnson.

5 28. That I know of no true prejudice to the State that would result from such a
6 modest continuance.

7 Further Affiant Sayeth Naught.

8

9

10

11

12 SUBSCRIBED AND SWORN to before me
13 this 14th day of December, 1999.

14

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27

28

JOSEPH S. SCISCENTO



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

Patricia S. Flood

NOTARY PUBLIC, in and for the
County of Clark, State of Nevada

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

Shirley B. Blaricom
DEC 20 1 46 PM '99

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON aka
JOHN LEE WHITE,

Defendants.

FILED

CASE NO. C153154

DEPT. NO. V

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT JUDGE

THURSDAY, DECEMBER 16, 1999

RECORDER'S TRANSCRIPT RE:
AT REQUEST OF COURT RE: MOTIONS

APPEARANCES:

For the State:

BRAD TURNER, ESQ.
Deputy District Attorney

For the Defendant:

JOSEPH SCISCENTO, ESQ.

Recorded by: DEBRA VAN BLARICOM
Court Transcriber

1 THURSDAY, DECEMBER 16, 1999; 9:00 A.M.

2
3 MR. SCISCENTO: Your Honor, also in another matter, the Donte
4 Johnson matter which was supposed to be on today, is continued till
5 Monday.

6 THE COURT: Right.

7 MR. SCISCENTO: This Court requested that I file a motion to continue,
8 attempted to file with the clerks, they would not accept it because of the
9 date I have on it.

10 THE COURT: All right. That's the 8:00 case, we'll file it in Open Court
11 and it's continued to 8:30 on Monday.

12 MR. SCISCENTO: Thank you, your Honor. I have provided a copy to
13 the District Attorney's office and to your chambers.

14 THE COURT: Thank you.

15 (Whereupon the proceedings concluded)

16 * * * * *

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

19 Debra Van Blaricom
20 DEBRA VAN BLARICOM
21 Court Transcriber
22
23
24
25

FILED

DEC 22 2 03 PM '99

Shirley A. Simpson
CLERK

1 **STIP**
2 PHILIP J. KOHN
3 Special Public Defender
4 Nevada Bar No. 000556
5 JOSEPH S. SCISCENTO
6 Deputy Special Public Defender
7 Nevada Bar No. 004380
8 DAYVID J. FIGLER
9 Nevada Bar No. 004264
10 309 S. Third Street, Fourth Floor
11 Las Vegas, Nevada 89155-2316
12 (702) 455-6265
13 Attorneys for Defendant

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

13 THE STATE OF NEVADA,

14 Plaintiff,

15 vs.

16 DONTÉ JOHNSON,

17 Defendant.

CASE NO. C153154
DEPT NO. V
DOCKET H

19 **STIPULATION AND ORDER**

20 IT IS HEREBY STIPULATED AND AGREED by and between the parties that this
21 Honorable Court issue an Order instructing the Las Vegas Metropolitan Police Department,
22 Crime Lab Division to provide to Michelle Fox of Forensic Analytical, 3777 Depot Road,
23 Suite 409, Hayward California 94545 the following:

24 1. A complete set of photographs of all recovered latent prints retrieved from
25 4825 Terra Linda, Las Vegas, Nevada under Event No. 98 0814-1600 for the purpose of
26 analyzing the same.

27 2. A complete copy of all fingerprint examiner notes and testing regarding any
28

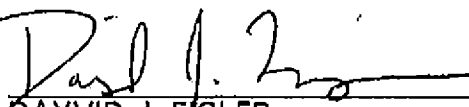
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DEC 22 1999
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SPECIAL PUBLIC
DEFENDER
CLARK COUNTY
NEVADA


1 fingerprints under Event No. 98 0814-1600 for the purpose of analyzing the same.

2 3. All print cards for John L. White, aka Donte Johnson, Terrell C. Young, Sikia
3 L. Smith, Jeffrey Biddle, Tracey Gorringer, Matthew Mowen, Peter Talamantes, Nicholas
4 Gorringer, Joseph Haefs, Tod Allen Armstrong and Charla Severs.

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

10 DATED this 14th day of December, 1999.

11
12 
13 DAYVID J. FIGLER
14 Nevada Bar No. 004264
15 Deputy Special Public Defender
16 309 S. Third Street, Fourth Floor
17 Las Vegas, Nevada 89155-2316
18 (702) 455-6265
19 Attorney for Defendant

11
12 
13 GARY L. GUYMON
14 Nevada Bar No. 003726
15 Deputy District Attorney
16 200 S. Third Street
17 Las Vegas, Nevada 89155
18 (702) 455-2716
19 Attorney for Plaintiff

20 ORDER

21 Upon the Stipulation of the parties and good cause appearing,

22 IT IS HEREBY ORDERED that the Las Vegas Metropolitan Police Department, Crime
23 Lab Division provide to Michelle Fox of Forensic Analytical, 3777 Depot Road, Suite 409,
24 Hayward California 94545 the following:

25 1. A complete set of photographs of all recovered latent prints retrieved from
26 4825 Terra Linda, Las Vegas, Nevada under Event No. 98 0814-1600 for the purpose of
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28 2. A complete copy of all fingerprint examiner notes and testing regarding any
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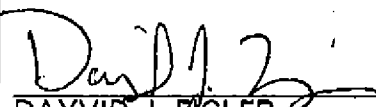
1 3. All print cards for John L. White, aka Donte Johnson, Terrell C. Young, Sikia
2 L. Smith, Jeffrey Biddle, Tracey Gorringer, Matthew Mowen, Peter Talamantes, Nicholas
3 Gorringer, Joseph Haefs, Tod Allen Armstrong and Charla Severs. The Defendant has
4 hereby waived all challenges to the chain of custody issues solely related to the transport
5 contemplated and contained in this Order.

6 IT IS FURTHER ORDERED that this Order shall be complied with within ten (10)
7 days from the signing of the Stipulation and Order.

8 DATED this 20 day of December, 1999.

9
10
11 
12 DISTRICT COURT JUDGE

13 SUBMITTED BY:

14
15 
16 DAYVID J. RYGLER
17 Deputy Special Public Defender
18 Nevada Bar No. 004264
19 309 Third Street, Fourth Floor
20 Las Vegas, Nevada 89155-2316
21 (702) 455-6265
22 Attorneys for Defendant
23
24
25
26
27
28

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

212

FILED

DEC 22 8:48 AM '99

Shirley H. Higgins
CLERK

1 Donte Johnson

2 Defendant

3 ~VS~

4 State of Nevada

5 Plaintiff

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12 RECEIVED

13 DEC 21 1999

14 COUNTY CLERK

Memorandum To
The Court

15 comes now Defendant, Donte Johnson, by and through this memorandum to
16 the court to make record of Defendants request to counsel's.
17 Defendant, Donte Johnson, has requested to counsels, Dayvid Figler and Joseph S.
18 Sciscanto, to file a motion of suppression against witness Charla Severs,
19 due to the fact that Charla Severs has testified against the Defendant
20 in exchange for leniency.

21 on July 1, 1998 before Seymour, Chief Judge, Ebel, and Kelly, circuit
22 Judges; this Law against leniency was passed.

23 Section 201(c)(2) of title 18 of the United States Code prohibits giving, offering,
24 or promising anything of value to a witness in return for her testimony.

25 Defendant, Johnson, feels that a motion should be filed for the suppression
26 and ~~exclusion~~ exclusion of witness, Charla Severs, through any further
27 proceeding pertaining this homicide case. Also, what should be brought up in

1 this motion is (1) whether the government's conduct was prohibited either by
2 § 201 (c)(2) or Kansas Rule of professional conduct 3.4 (B);

3 United States of America, Plaintiff-Appelle

4 V.

5 Sonya Evette Singleton, defendant - Appellant.

6 No. 97-3178.

7 United States Court of Appeals,

8 Tenth Circuit.

9 July 1, 1998

10 on October 26, 1999 a videotape Deposition of Charla Severs was ~~allowed~~
11 taken ~~to use~~ as evidence against defendant. During that videotaped deposition
12 it was clearly proven, by cross-examination, that the witness was ~~not~~ recieving
13 leniency for her testimony.
14
15

16 Donte Johnson

17 Donte Johnson #1586283

18 Special Public Defenders

19 Joseph S. Sciscento

20 Dayvid Figler
21

22 Dated: 12-9-99
23
24
25
26
27

ORIGINAL

TRAN

FILED

DEC 29 11 12 AM '99

DISTRICT COURT
CLARK COUNTY, NEVADA*Shirley J. Anderson*
CLERK

STATE OF NEVADA,

PLAINTIFF,

VS.

DONTE JOHNSON, a/k/a
JOHN LEE WHITE,

DEFENDANT.

CASE NO. C153154

DEPT. NO. V

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT JUDGE

MONDAY, DECEMBER 20, 1999; 8:30 A.M.

RECORDER'S TRANSCRIPT RE:
AT REQUEST OF COURT

APPEARANCES:

FOR THE STATE:

GARY L. GUYMON, ESQ.
CHIEF DEPUTY DISTRICT ATTORNEYROBERT J. DASKAS, ESQ.
DEPUTY DISTRICT ATTORNEY

FOR THE DEFENDANT:

DAYVID J. FIGLER, ESQ.
JOSEPH S. SCISCENTO, ESQ.
DEPUTY SPECIAL PUBLIC DEFENDERS

RECORDED BY: JERI ANDERSON, COURT RECORDER

1532

1 MONDAY, DECEMBER 20, 1999; 8:30 A.M.

2
3 THE COURT: Okay. State vs. Johnson on page 1. All right. I read
4 the motion and the opposition. I guess I have a bunch of questions still.
5 The preface is I gather you gentlemen are standing there, one of you
6 relatively new to the case, one of you second chair since its inception; right,
7 Mr. Figler?

8 MR. FIGLER: No, Your Honor. I was only assigned to this case in mid-
9 summer, around July, Your Honor, before we came in. June, July.

10 THE COURT: Okay. I thought I had read something that was --

11 MR. FIGLER: That was Mr. Daskas' opposition, which was inaccurate.

12 THE COURT: Okay. So he has only been on it since the summer; is
13 that right, Bob, as far as you understand it?

14 MR. DASKAS: Our understanding, Judge, is since the Special PD's
15 office was assigned, Mr. Figler was assigned to the case. He's been at all
16 the court appearances, sat in on the other two trials, so I can only tell you
17 that I've seen him at every appearance on this case thus far.

18 THE COURT: But, in fact, it's been since the summer.

19 MR. FIGLER: Since the beginning of summer. It was June or maybe
20 even late May, but I believe that I first became involved in the case as
21 second chair to Mr. LaPorta in June. That's my recollection, Your Honor.

22 THE COURT: Okay.

23 MR. GUYMON: He advised me in May that he was on the case
24 because that's when I tried Sikia Smith, Your Honor.

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

DONTE JOHNSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

S.C. CASE NO. 65168

Electronically Filed
Jan 09 2015 11:34 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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 VI  
~~~~~

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
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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 9th day of January, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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