

ORDER

Upon the Stipulation of the parties and good cause appearing,

IT IS HEREBY ORDERED that the Clerk of the Court of Clark County, Nevada produce to Michelle Fox of Forensic Analytical, 3777 Depot Road, Suite 409, Hayward California 94545 all of the lead fragments recovered from the crime scene and heads of the victims for the purpose of analyzing the same as well as the black jeans upon which both the blood of the victim and the purported DNA of the Defendant appears. Said above articles were entered into evidence in the case of Terrell Young, Case No. C153461 and Sikia Smith, Case No. C153624.

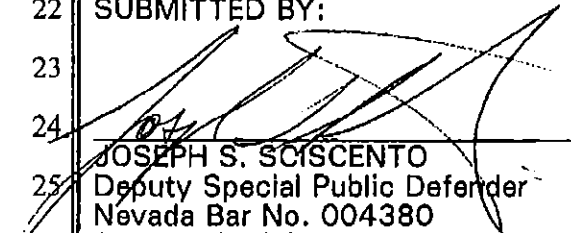
IT IS FURTHER ORDERED that the Defendant by and through his attorneys hereby waives any challenge to the chain of custody related only to the transport of said evidence to Michelle Fox of Forensic Analytical, 3777 Depot Road, Suite 409, Hayward, California 94545 and the return to the Las Vegas Metropolitan Police Department.

IT IS FURTHER ORDERED that the Clerk of the Court allow the office of the Special Public Defender to photograph this evidence prior to transport and that the office of the Special Public Defender will photograph the evidence and provide copies of the photographic prints to the District Attorney's office.

DATED this 4<sup>th</sup> day of March, 2000.

  
DISTRICT COURT JUDGE

SUBMITTED BY:

  
JOSEPH S. SCISCENTO  
Deputy Special Public Defender  
Nevada Bar No. 004380  
309 S. Third Street, Fourth Floor  
Las Vegas, NV 89155-2316  
Attorney for Defendant, Donte Johnson

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

#1.

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Case NO: C153154

*Shirley L. Cunningham*  
Deputy Clerk

Docket NO: H

Donte Johnson #1686283

Defendant

vs.

The State of Nevada

Plaintiff

Memorandum To The Court

Comes NOW, the Defendant, Donte Johnson, by and through this memorandum to the court of records, to make record of Mr. Johnsons request to special Public Defenders, Joseph S. Sciscento and Dayvid J. Figler, to file the following motions:

1. Motion in Limine to preclude  
Evidence of witness intimidation:

Mr. Johnson respectfully submits that the state should not be permitted to suggest in any manner that he has intimidated any potential witnesses against him or that anyone else has done so on his behalf.

A prosecutor's intimations of witness intimidation by a defendant are reversible error unless the prosecutor also presents substantial credible evidence that the defendant was the source of the intimidation. Loy v. State, 110 Nev. 1189, 1193, 886 P.2d 448, 450-51 (1994)

(citing United States v. Rios, 611 F.2d 1335, 1343 (10th Cir. 1979); United States v. Peak, 478 F.2d 1337, 1339 (6th Cir. 1974); United States v. Hayward, 420 F.2d 142, 147 (D.C. Cir. 1969);

Hall v. United States, 419 F.2d 582, 585 (5th Cir. 1969). See also MeeK v. State,

COUNTY CLERK

112 Nev. 1288, 930 P.2d 1104 (1996) ("The prosecutor's reference to witness intimidation was improper, and the district court erred in failing to advise the jury to disregard it."). Likewise, the prosecutor may not imply "the existence of threats that 'in the context of the whole record' specifically 'hinted of violence.' Lay, 886 P.2d at 451 (citing United States v. Muscarella, 585 F.2d 242, 248-49 (7th Cir. 1978); United States v. Love, 534 F.2d 87 (6th Cir. 1976); Peak, 498 F.2d at 1357).

Mr. Johnson respectfully submits this requested motion be filed, so that if the state wishes to introduce evidence suggesting witness intimidation, it must first notify Mr. Johnson and request that this court hold a hearing outside the presence of the jury to determine whether Mr. Johnson is actually the source of the alleged threat and to determine whether the state has met its burden of proof. If the state does not such a hearing, and if the state does not meet its burden, then all reference of any sort, through argument or testimony, must be excluded from the trial.

2. Motion to Keep Psychiatric reports Confidential Until the Completion of the Innocence / Guilt Phase of the Trial

Defendant feels this motion should be filed because generally, the statements of a defendant to a psychiatrist to assist the attorney in preparing a defense are protected by the attorney-client privilege from disclosure to the state. This remains so even after the adoption of reciprocal discovery statutes. NRS 174.234, et. seq. Moreover, these reports are privileged under the psychiatrist-patient privilege until the defendant waives the privilege by presenting evidence. They are also privileged pursuant to the constitutional right against self incrimination. See Brown v. State, 113 Nev. 275, 934 P.2d 235, 243-245 (1997) (error to admit evidence from defendant's psychological evaluation in either guilt phase of trial or during sentencing hearing); Binegar v. Eighth Judicial District Court. 112

1 Nev. 544, 550, 915 P.2d 889, 891-95 (1996) (discovery statute unconstitutional in part because  
 2 of infringement on Fifth Amendment rights); Smith v. State, 111 Nev. 499, 505-06,  
 3 894 P.2d 974, 977-78 (1995) (psychiatric evidence inadmissible as character  
 4 evidence and because of the defendant's Fifth Amendment rights." There  
 5 was no evidence presented that the doctors in question advised Smith  
 6 that any statements he made would be admissible in court and that by  
 7 submitting to a competency examination he was waiving his right against  
 8 self-incrimination."); Esquivel v. State, 96 Nev. 777, 778, 617 P.2d 587 (1980)  
 9 (admission of statements made to psychiatrist over defense objection, violated  
 10 defendant's right not to have his statements to psychiatrist used against him);  
 11 McKenna v. State, 104 Nev. 43, 46, 752 P.2d 761 (1988) ("it was error for the  
 12 defendant's psychiatrist to use the confidential contents of his interview  
 13 with the defendant in order to assist the prosecution in obtaining a  
 14 conviction.") (citing McKenna); Estelle v. Smith, 451 U.S. 454 (1981)

15 The Nevada discovery statutes do not mandate that constitutionally protected statements  
 16 be disclosed to the prosecution. To the contrary, NRS 174.234(6) specifically exempts privileged  
 17 statements from the discovery obligations of defense counsel. Likewise, in Binegar, the  
 18 Nevada Supreme Court found that Nevada's former discovery statute was unconstitutional,  
 19 in part because of the infringement of the constitutional rights of the accused.

20 In In re Spencer, 406 P.2d 33 (1965), the California Supreme Court concluded  
 21 the following:

22 IF, after submitting to an examination, a defendant does not specifically place his  
 23 mental condition into issue at the guilt trial, then the court-appointed psychiatrist  
 24 should not be permitted to testify at the guilt trial. IF defendant does specifically  
 25 place his mental condition into issue at the guilt trial, then the court-appointed  
 26 psychiatrist should be permitted to testify at the guilt trial, but the court should instruct  
 27 the jurors that the psychiatrist's testimony as to defendant's incriminating state —

# 4.

1 ments should not be regarded as proof that such of the facts disclosed by such state-  
2 ments and that such evidence may be considered only for the limited purpose of  
3 showing the information upon which the psychiatrist based his opinion.

4 Accordingly, Donte Johnson, respectfully request that this motion be filed  
5 so that a court order be granted, permitting him to keep all psychiatric  
6 reports confidential until completion of the innocence/guilt phase of the  
7 trial, or until Mr. Johnson raises a defense based on mental state after the  
8 State completes its case in chief.

9 3. Motion For Pretrial Disclosure  
10 OF Hearsay Evidence.

11 Defendant feels that this motion should be filed, so that if a hearsay  
12 statement is permitted to be introduced at trial by the government, then the  
13 defendant, through counsel, has the right to attack the credibility of the declarant  
14 of any such hearsay statement. Included in such an attack on the credibility of  
15 the declarant would be the right of defendant, through counsel, to produce  
16 evidence of a statement or conduct by the declarant at any time which  
17 was inconsistent with the declarant's hearsay statement, without affording  
18 the declarant an opportunity to deny or explain the inconsistency. Furthermore,  
19 defendant, through counsel, would have the right to call the declarant as  
20 a witness at trial, and to examine the declarant regarding the hearsay  
21 statement as if the declarant was under cross-examination. However,  
22 in order for counsel to effectively represent Mr. Johnson in attacking the  
23 credibility of any hearsay declarant, counsel must have advance notice  
24 of the existence of such possible hearsay evidence and the identity  
25 of the declarant. Otherwise, it would be virtually impossible for counsel to  
26 challenge the hearsay evidence when it is offered by the state at trial.  
27 Without some advance notice of such hearsay evidence, it will be difficult

1 for counsel to obtain information to attack the credibility of the declarant,  
2 such as prior criminal record, prior inconsistent statements, bias or prejudice  
3 against the defendant, personal stake or interest in the outcome of the  
4 case, or reputation for lack of truthfulness, as well as to locate the decla-  
5 rant for purposes of trial subpoena.

6 4. Motion For Government Agents And  
7 Attorney To Retain Rough Notes And Writings

8 Defendant requests for this motion to be filed so that the court can order  
9 all state law enforcement officers and agents and government attorneys who inves-  
10 tigated the charges contained in this case, to retain and preserve all rough notes  
11 and writings which are arguably discoverable by defendant or subject to  
12 disclosure under NRS 174.235, NRS 51.035, and the principles enounced in  
13 Brady v. Maryland, 373 U.S. 83, 87 S.Ct. 1194, 10 L.Ed. 2d 215 (1963), and which  
14 may be utilized by the defendant for impeachment purposes, which notes and  
15 writings were made as a part of their investigations, notwithstanding that the  
16 contents of said notes or writings may have been or could be incorporated in official  
17 records or memoranda.

18 Not only may the rough notes and writings come within the purview of NRS 174.  
19 235 and NRS 51.035, they may be discoverable and subject to disclosure under Brady  
20 v. Maryland, supra, as exculpatory or impeachment evidence. See United States v.  
21 Harrison, 524 F. 2d 421 (D.C. Cir. 1975). Therefore, retention and preservation is required  
22 to allow the court to make any determination as to disclosure. United States v.  
23 Harrison, 543 F. 2d 1247 (9th Cir. 1976).

24 The danger inherent in permitting distruction of original notes has been underscored  
25 by the Ninth Circuit. In United States v. Carrasco, 537 F. 2d 372 (9th Cir. 1976), the court  
26 noted at 372 that: "it may be that the agent.... who adapts a final report from preliminary  
27 memoranda will tailor his observations to fit his conclusions."

5.

Motion For List Of Names And Addresses Of  
Persons Who May Have Evidence Favorable To Defendant  
And For Other Discovery Material To Be Disclosed

Defendant, Donte Johnson, feels that this motion should be filed so that the court could order the prosecutor to search for and furnish Mr. Johnson's attorneys with a list of names and addresses of all persons known to any prosecutor, or law enforcement agent who investigated this case who have or may have information which is either favorable to Mr. Johnson, or in any way inconsistent with the State's theory of the case and to provide Mr. Johnson's attorneys with other discovery mandated by the United States and Nevada Constitution and laws, as set forth below.

The United States Supreme Court clarified the State's obligation to provide discovery in criminal cases Kyles v. Whitley, 115 S.Ct. 1555 (1995). In Kyles, the court noted that it has long been the rule that the suppression by the prosecution of evidence favorable to an accused violated the due process clause of the United States Constitution where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution. Id. at 1565 (citing Brady v. Maryland, 373 U.S. 83 (1963)). There is no difference between exculpatory and impeachment evidence. For Brady purposes, Id. at 1565 (citing United States v. Bagley, 473 U.S. 667 (1985)). On appeal, an accused need not show that he would have received a different verdict with the evidence. Rather, the question is whether without the evidence, did "he receive a fair trial, understood as a trial resulting in a verdict worthy of confidence." Id. at 1566. A "reasonable probability" of a different result is shown when the prosecutor's evidentiary suppression undermines confidence in the outcome of the trial. Id. (citing Bagley at 678). The suppressed evidence is to be considered as a whole, rather than piece by piece. Id. Once a Brady - Bagley error is shown, there is no need for harmless error analysis. Id. The con-

viction must be reversed. Id.

Even without this motion, the state is obligated to disclose Brady materials. "The prosecution is obligated by the requirements of due process to disclose material exculpatory evidence on its own motion, without request." Carriger v. Stewart, 132 F.3d 463 (9th Cir. 1997). See also Singh v. Prunty, — F.3d —, 1998 WL 199337 (9th Cir. Apr 27, 1998). Nonetheless, because the Nevada Supreme Court employs a "reasonable possibility" test in evaluating whether a new trial is warranted based upon the state's failure to produce exculpatory evidence following a specific request, rather than the "reasonable probability" test which is applied when either no request or a general request is made by defense counsel, it is important that the specific requests herein be made.

6. Motion - For Production of  
Statements of witness - After testimony  
For Government [18 USC § 3500 (b); FR CrP 47]

Defendant, Johnson, feels that his attorneys should file this motion, pursuant to 18 USC § 3500 (b), for an order directing the government to produce any statements of the witness "Tod Armstrong," who has heretofore testified in this case, and which statements are in the possession of the government and relate to the subject matter of the witness' testimony.

Dayvid J. Figler  
 and  
 Joseph S. Sciscento  
 Attorneys

Donte Johnson  
 Donte Johnson  
 - defendant -

Dated : 4-7-2000



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THE STATE OF NEVADA,

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Plaintiff

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vs

Case No.

C153154

11

DONTÉ JOHNSON

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Defendant(s)

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**CERTIFICATE OF MAILING OF EXHIBITS**

15

16

The undersigned does hereby certify that she mailed the following exhibits in accordance  
with the Order of the Court filed on April 10, 2000 herein:

17

**EXHIBITS FROM CASE NO. C153461/C153624**

18

#156-EVIDENCE ENVELOPE CONTAINING 5 SMALL ENVELOPES WITH LEAD FRAGMENTS  
CONTAINING A BLOOD-LIKE SUBSTANCE

19

20

DATED: This 20 day of April, 2000.

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SHIRLEY B. PARRAGUIRRE, COUNTY CLERK

23

24

By

Cassandra Creelman  
CASSANDRA CREELMAN, Deputy Clerk

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28

ORIGINAL

1 DECS  
2 JUDGE JEFFREY D. SOBEL  
3 District Court Dept. V  
4 200 South Third Street  
5 Las Vegas, Nevada 89155  
6 (702) 455-4655

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*Shirley L. Burges*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

7 \* \* \* \* \*  
8 STATE OF NEVADA, )  
9 )  
10 Plaintiff, )  
11 vs. )  
12 DONTÉ JOHNSON, ) Case No. C153154  
13 Defendant. ) Dept No. V  
14 ) Docket No. H  
15 )

DECISION AND ORDER

16 Defendant has moved to suppress evidence seized by police in  
17 a warrantless search of premises at 4815 Everman in August 1998.

18 The residence was owned by Todd Armstrong's mother and  
19 primarily but not exclusively occupied by Todd (Transcript of  
20 Hearing pp8-10; hereinafter "T"). The resolution of whether  
21 movant, Donte Johnson, was a person with an expectation of privacy  
22 with respect to the living room and master bedroom at Everman is  
23 dispositive of this motion.

24 Todd consented to the search in writing. T pp42-43. Johnson  
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1 had apparently spent parts of at least two to four weeks  
2 immediately preceding the search, visiting and sometimes sleeping  
3 at Everman. Compare T p84 with 103. Sometimes Johnson would sleep  
4 in the master bedroom, sometimes on a couch. T p84, 87. Usually  
5 the bedroom was a place other people would come in and out of;  
6 several people had clothes in it. T p92.

8 Todd had the only key to Everman and Johnson and his  
9 girlfriend would usually gain entry through a rear window. T  
10 pp12;58;94;104.

12 No rent was paid by Johnson for his contact with Everman,  
13 though he may have contributed drugs directly for the privilege of  
14 using Everman as a place to chill and sleep. T p89.

16 When asked immediately prior to the search whether he lived  
17 at Everman, he told two police detectives, unequivocally, that he  
18 did not live at Everman. T p6;p65 Johnson appears not to recall  
19 that question being posed, though he did not deny it could have  
20 been. T p102.

22 The detectives testified if Johnson claimed to reside there  
23 they would have gotten a search warrant for the already secured  
24 premises. T pp19; 64.

26 If the law required a warrant to search premises where police  
27 have consent to search from the only permanent resident; in

1 circumstances where the person now insisting on such a warrant was  
2 first asserting his expectation of privacy in a motion to  
3 suppress, after having denied living there when asked before the  
4 search, and with reference to premises where that person usually  
5 climbed in a window, over a very short period of time, paid no  
6 rent (only occasionally contributing drugs) it would be a very  
7 peculiar law.  
8

9 I think Johnson's contacts with Everman are on the extreme  
10 low end of a continuum one could construct. Surely, given the  
11 passage of time and the different facts that time might have  
12 brought, Johnson might have eventually moved along the continuum  
13 to a point where he was a legitimate co-tenant (perhaps with a  
14 key of his own). Those facts were not present here on August 18,  
15 1998.  
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1 Where the facts are as I find them, and Todd Armstrong  
2 consents to a search of premises Johnson disclaims an interest in,  
3 the police acted properly and the Motion to Suppress should be and  
4 is denied. See United States v. Matlock, 415 US 164 (1974);  
5 United States v. Sanders, 130 F3d 1316 (8<sup>th</sup> Cir.1998); United States  
6 v. Mangum, 100 F3d 164 (CADDC Cir. 1996); People v. Welch, 20 Cal  
7 4<sup>th</sup> 701, 976 P2d 754 (1999); Snyder v. State, 103 Nev 275, 738 P2d  
8 1303 (1997).

10 DATED and DONE this 18th day of April, 2000.

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14 DISTRICT COURT JUDGE JEFFREY D. SOBEL  
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*Philip J. Kohn*  
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1 0317  
2 PHILIP J. KOHN  
3 SPECIAL PUBLIC DEFENDER  
4 Nevada Bar #0566  
5 JOSEPH S. SCISCENTO  
6 DEPUTY SPECIAL PUBLIC DEFENDER  
7 Nevada Bar #4380  
8 DAYVID J. FIGLER  
9 DEPUTY SPECIAL PUBLIC DEFENDER  
10 Nevada Bar #4264  
11 309 South Third Street, 4th Floor  
12 Las Vegas, Nevada 89155-2316  
13 (702) 455-6271

14 Attorney for Defendant

15 DISTRICT COURT  
16 CLARK COUNTY, NEVADA

17 THE STATE OF NEVADA,

18 Plaintiff,

19 vs.

20 DONTE JOHNSON,  
21 ID# 1060268

22 Defendant.

Case No. C153154

Dept. No. V

Hearing Date: 5/8/00  
Hearing Time: 9:00 a.m.

23 MOTION AND NOTICE OF MOTION FOR DISCOVERY OF PROSECUTION FILES,  
24 RECORDS, AND INFORMATION NECESSARY TO A FAIR TRIAL

25 COMES NOW the Defendant, DONTE JOHNSON, by and through his  
26 attorneys of record, PHILIP J. KOHN, Special Public Defender, and JOSEPH S.  
27 SCISCENTO and DAYVID J. FIGLER, Deputy Special Public Defenders, and  
28 respectfully requests this Honorable Court to order the production of the materials  
specified below. Mr. Johnson requests that this Court order the individuals named  
below to produce for inspection and copying the documents specified herein,  
wherever such documents may be located, with such production to be arranged  
with undersigned counsel within ten (10) days from the day that discovery is

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NEVADA

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1 ordered.

## 2 I. DEFINITIONS

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

5 1. The "state" means any and all of the following organizations: the  
6 Clark County District Attorneys' Office, the Nevada Attorney General's Office, the  
7 Las Vegas City Attorneys' Office, the Las Vegas Metropolitan Police Department,  
8 the North Las Vegas Police Department, the Nevada Department of Motor  
9 Vehicles, the Nevada Highway Patrol, and the Nevada Bureau of Prisons. The  
10 "state" also means: (a) all present and former agents, officers, investigators,  
11 consultants, employees, and staff members of organizations or officials named  
12 above in this paragraph; (b) any other person or entity acting on the behalf of any  
13 of these organizations or officials or on whose behalf such person or entity has  
14 acted in the past; or © any other person or entity otherwise subject to the control  
15 of any of these organizations or officials.

16 2. "Document" or "documents" means any writing, record or data  
17 in any form or medium, whether or not privileged, that is in the state's actual or  
18 constructive possession, custody or control. As used herein, a document is  
19 deemed to be within the state's control if the state has a right to obtain a copy of  
20 it. "Document" also includes the original of any document in whatever form or  
21 medium it may exist, and all copies of each such document bearing, on any sheet  
22 or side thereof, any marks (including by way of nonlimiting example: initials,  
23 stamped indicia, or any comment or notation of any character) not a part of the  
24 original text or any reproduction thereof. Examples of documents that must be  
25 produced include, but are not limited to, working papers, preliminary, intermediate  
26 or final drafts, correspondence, transcripts, analyses, studies, reports, surveys,  
27 memoranda, charts, notes, records (of any sort) of meetings, diaries, telegrams,  
28 telexes, faxes, reports of telephone or oral conversations, desk calendars,

1 appointment books, audio or video tape recordings, photographs, films, microfilm,  
2 microfiche, computer tapes, disks or printouts, press releases, and all other  
3 writings or recordings of every kind.

4 3. "Relating to" means discussing, describing, referring to,  
5 reflecting, containing, analyzing, studying, reporting on, commenting on,  
6 evidencing, constituting, setting forth, considering, recommending, concerning,  
7 relevant to, bearing on, or pertaining to, in whole or in part.

8 4. "All" means "any and all."

9 5. "Any" means "any and all."

10 6. "Each" means "any and all."

11 7. "And" means "and/or."

12 8. "Or" means "and/or."

13 9. "Record" means "document" as outline in paragraph 2 above.

## 14 II. INSTRUCTIONS

15 1. References to the singular shall be construed to include the  
16 plural, and references to the plural shall be construed to include the singular.

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

18 3. If any document or portion of any document covered by these  
19 requests is withheld from production, please furnish a list identifying each such  
20 document or portion of document, providing the following information with respect  
21 to each such document or portion: (a) the reason(s) for withholding; (b) the date  
22 of the document; (c) identification by name, job, title, and the last known business  
23 and home address of each person who wrote, drafted or assisted in the preparation  
24 of the document; (d) identification by name, job, title, and the last known business  
25 and home address of each person who received or has had custody of the  
26 document or copies thereof; (e) a brief description of the nature and subject matter  
27 of the document; (f) the length of the document; (g) a statement of the facts that  
28 constitute the basis of any claim of privilege, work product or other grounds for



1 nondisclosure; and (h) the paragraph(s) of these requests to which the document  
2 is responsive.

3 4. Each request is continuing in nature and additional responsive  
4 documents that are obtained or discovered prior to the evidentiary hearing should  
5 be produced as soon as they are obtained or discovered.

6 5. If any document responsive to a request was, but is no longer,  
7 in your possession, custody or control, state whether such document: (a) is  
8 missing or lost, (b) has been destroyed, (c) has been transferred to others, or (d) has  
9 otherwise been disposed of. For each instance, explain the circumstances  
10 surrounding such disposition, identify each person who authorized such  
11 disposition, indicate the dates of such authorization and disposition, and identify  
12 the document and each person or entity that may have custody or control of such  
13 document or any copy thereof.

14 6. If information responsive to a request appears on one or more  
15 pages of a multipage document, produce the entire document.

16 7. Individual responses of more than one page should be stapled or  
17 otherwise separately bound, with each page consecutively numbered.

### 18 III. DOCUMENTS TO BE PRODUCED

19 The accused moves that this Court order the State to disclose to  
20 undersigned counsel, and permit them to inspect, copy and photograph, the  
21 following items:

22 1. Names, addresses and telephone numbers of any and all other  
23 suspects;

24 2. All statements, documents and tangible evidence regarding any  
25 other suspects including witness statements;

26 3. Any statements not produced as to date;

27 4. Any and all police reports regarding the investigation of drug sales  
28 by either or Matthew Mowen, Jeffrey Biddle, Tracey Gorringer, Peter Telamantez;

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**NOTICE OF MOTION**

TO: THE STATE OF NEVADA, Plaintiff; and

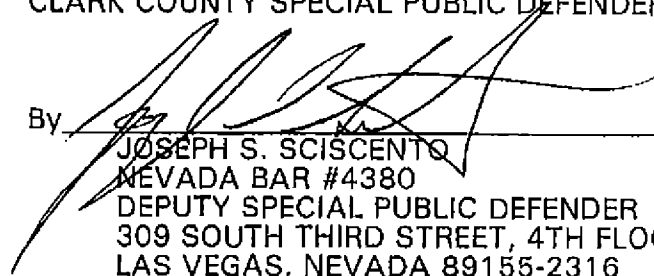
TO: CHRISTOPHER LAURENT Deputy District Attorney

**YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the undersigned will bring the foregoing Motion on for hearing before the above-entitled court on the 8 day of May, 1999 at the hour of 9 a.m., in District Court, Department V, or as soon thereafter as counsel may be heard.

DATED this 26th day of April, 2000.

PHILIP J. KOHN  
CLARK COUNTY SPECIAL PUBLIC DEFENDER

By

  
JOSEPH S. SCISCENTO  
NEVADA BAR #4380  
DEPUTY SPECIAL PUBLIC DEFENDER  
309 SOUTH THIRD STREET, 4TH FLOOR  
LAS VEGAS, NEVADA 89155-2316  
(702)455-6271

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

1           5. Any and all statements, documents or information regarding any  
2 firearm that Peter Telamantez may have owned;

3           This motion is made under the authority of Brady v. Maryland, 373  
4 U.S. 83 (1963); Napue v. Illinois, 360 U.S. 264 (1959); Giles v. Maryland, 386  
5 U.S. 66 (1967); Davis v. Alaska, 415 U.S. 308 (1974); United States v. Pitt, 717  
6 F.2d 1334 (11th Cir. 1983); Kyles v. Whitley, \_\_\_ U.S. \_\_\_, 115 S.Ct. 1555  
7 (1995); Jimenez v. State, 112 Nev. 610, 918 P.2d 687 (1996); and the Fifth,  
8 Sixth, Eighth and Fourteenth Amendments to the United States Constitution and  
9 the equivalent.

10           WHEREFORE, Mr. Johnson respectfully requests that this Court order  
11 the production of the foregoing materials.

12           DATED this 26th day of April, 2000.

13                           Respectfully submitted,

14                           PHILIP J. KOHN  
15                           CLARK COUNTY SPECIAL PUBLIC DEFENDER

16                           By 

17                           JOSEPH S. SCISCENTO  
18                           DEPUTY SPECIAL PUBLIC DEFENDER  
19                           NEVADA BAR #4380  
20                           309 SOUTH THIRD STREET, 4TH FLOOR  
21                           LAS VEGAS, NEVADA 89155-2316  
22                           (702) 455-6271

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SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

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*Shirley S. Thompson*  
CLERK

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

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 ADDENDUM TO NOTICE OF EVIDENCE IN SUPPORT OF  
16 AGGRAVATING CIRCUMSTANCES

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

22 11. The juvenile records of DONTE JOHNSON.

23 A copy of DONTE JOHNSON's juvenile criminal history has been provided to defense  
24 counsel in discovery; however, in light of confidentiality concerns, a copy has not been attached  
25 to this Notice. Rather, the State of Nevada requests an *in camera* inspection of such records to  
26 determine their admissibility.

Specifically, the State of Nevada intends to rely on the testimony of the following  
witnesses regarding four (4) separate juvenile incidents: Robert Hoffman, Franki Ware, Barry

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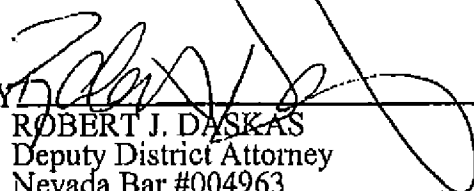
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1 Nidorf, Sharon Thompson, Diane Lubeck, Agent Clark, Rhonda Mayberry, and Harold Kates  
2 (all of whom are employed by the California Department of Parole & Probation); Detective  
3 Grayson (Los Angeles Police Department); Sandra Gatlin, Stacey Trammell, Andrea Davis,  
4 Angela Harris, Devin Reed, Al Rahim (employees of Cen-Fed Bank); Mr. Criddenton (John  
5 Muir Junior High School).

6 Copies of any and all witness statements and reports associated with the above-referenced  
7 events have been provided to defense counsel.

8 DATED this 25 day of April, 2000.

9 STEWART L. BELL  
10 DISTRICT ATTORNEY  
Nevada Bar #000477

11  
12 BY   
13 ROBERT J. DASKAS  
14 Deputy District Attorney  
Nevada Bar #004963

15  
16 RECEIPT OF COPY

17 RECEIPT OF A COPY of the above and foregoing Notice of Evidence in Support of  
18 Aggravating Circumstances is hereby acknowledged this 26th day of April, 2000.

19 SPECIAL PUBLIC DEFENDER'S OFFICE  
20 ATTORNEY FOR DEFENDANT

21 BY  for.  
22 309 S. THIRD STREET, SUITE 400  
23 LAS VEGAS, NEVADA 89101

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1 ROC  
 2 PHILIP J. KOHN  
 3 SPECIAL PUBLIC DEFENDER  
 4 Nevada Bar #0566  
 5 JOSEPH S. SCISCENTO  
 6 DEPUTY SPECIAL PUBLIC DEFENDER  
 7 Nevada Bar #4380  
 8 DAYVID J. FIGLER  
 9 DEPUTY SPECIAL PUBLIC DEFENDER  
 10 Nevada Bar #4264  
 11 309 South Third Street, 4th Floor  
 12 Las Vegas, Nevada 89155-2316  
 13 (702) 465-6271

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*Shirley B. King*  
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8 Attorney for Defendant

9  
 10 DISTRICT COURT  
 11 CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 vs.

15 DONTE JOHNSON,  
 16 ID# 1586283

17 Defendant.

Case No. C153154

Dept. No. V

Hearing Date:  
 Hearing Time: 9:00 a.m.

18  
 19 RECEIPT OF COPY

20 RECEIPT OF A COPY of the foregoing Motion for Discovery of Prosecution  
 21 Files, Records, and Information Necessary to a Fair Trial and Notice of Motion is hereby  
 22 acknowledged this 26<sup>th</sup> day of April, 2000.

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*Stewart L. Bell*  
 STEWART L. BELL  
 CLARK COUNTY DISTRICT ATTORNEY  
 200 S. Third Street  
 Las Vegas, NV 89101

SPECIAL PUBLIC  
 DEFENDER

CLARK COUNTY  
 NEVADA

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*Shirley A. Thompson*  
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 DONTE JOHNSON,  
12 #1586283

13 Defendant.

Case No. C153154  
Dept. No. V  
Docket H

15 SUPPLEMENTAL OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO  
16 PRECLUDE EVIDENCE OF OTHER GUNS, WEAPONS AND  
17 AMMUNITION NOT USED IN THE CRIME

18 DATE OF HEARING: 05/23/00  
19 TIME OF HEARING: 8:00 A.M.

20 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through  
21 ROBERT J. DASKAS, Deputy District Attorney, and files this Supplemental Opposition to  
22 Defendant's Motion in Limine to Preclude Evidence of Other Guns, Weapons and Ammunition  
23 Not Used in the Crime.

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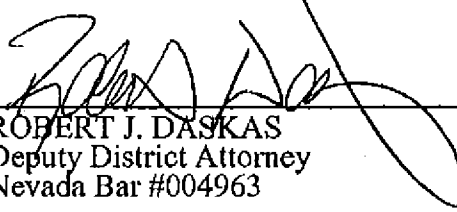
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1 This supplemental opposition is made and based upon all the papers and pleadings on file  
2 herein, the attached points and authorities in support hereof, and oral argument at the time of  
3 hearing, if deemed necessary by this Honorable Court.

4 DATED this 2 day of May, 2000.

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

13 II.

14 DISCUSSION

15 The Defendants are charged with various offenses arising out of the events that occurred  
16 on August 14, 1998, including burglary, robbery, kidnaping and murder, all with use of a deadly  
17 weapon. During the trial of these offenses, the State seeks to introduce, *inter alia*, evidence  
18 regarding the recovery of the Ruger and Enforcer rifles. Of course, this court's determination  
19 to admit or exclude evidence is to be given great deference and will not be reversed absent  
20 manifest error. Kazalyn v. State, 108 Nev. 67, 825 P.2d 578 (1992).

21 A. EVIDENCE REGARDING THE RUGER AND ENFORCER RIFLES IS RELEVANT  
22 TO ALL OF THE CRIMES ASSOCIATED WITH QUADRUPLE HOMICIDE

23 N.R.S. §48.015 defines relevant evidence as:

24 ... evidence having a tendency to make the existence of any fact that is of consequence  
25 to the determination of the action more or less probable than it would be without the  
26 evidence...

27 The Indictment in this case charges Defendant with fourteen (14) felony offenses, one of  
28 which includes the use of a deadly weapon as an element of the crime and several of which

1 allege deadly weapon enhancements. For example, Defendant is charged with Burglary *While*  
2 *In Possession of a Firearm*, Robbery *With Use of a Deadly Weapon*, and Kidnaping *With Use*  
3 *of a Deadly Weapon*. Thus, evidence which tends to prove that the Defendant was in possession  
4 of those deadly weapons -- either before, during, or after the actual crimes -- is obviously  
5 relevant in the trial of the instant matter. Accordingly, testimony that Defendant was in  
6 possession of the very weapons which were brought to the Terra Linda household for the  
7 purpose of committing burglary, robbery, kidnaping and murder is admissible in this trial.

8 Defendant, however, suggests that "[n]one of these guns are alleged to be the murder  
9 weapon, and they have no evidentiary value as to the determination of guilt or innocence of the  
10 Defendant." Motion In Limine To Preclude Evidence Of Other Guns, Weapons and  
11 Ammunition Not Used In The Crime, p. 4. Defendant's argument is belied by the Indictment  
12 in this matter. As illustrated above, Defendant is charged with crimes other than murder.  
13 Moreover, it is the State's position, and the evidence will establish, that both the Ruger and  
14 Enforcer rifles were used *during the robberies and kidnapings* which resulted in the quadruple  
15 homicide. To be sure, the State has never suggested that either of these rifles was the "murder  
16 weapon." Nevertheless, the weapons are relevant because the Defendant is charged with crimes  
17 other than murder, including Burglary *While In Possession of a Firearm*, Robbery *With Use of*  
18 *a Deadly Weapon*, and Kidnaping *With Use of a Deadly Weapon*. Accordingly, the weapons are  
19 relevant pursuant to N.R.S. 48.015.

20 B. NUMEROUS WITNESSES WILL DESCRIBE THE UNIQUE CHARACTERISTICS  
21 OF THE RUGER AND ENFORCER RIFLES AND ESTABLISH THAT THE DUFFEL  
22 BAG CONTAINING THE GUNS LEFT THE EVERMAN RESIDENCE  
IMMEDIATELY BEFORE THE MURDERS

23 This Court has previously expressed its inclination to permit the State to introduce the  
24 Enforcer and Ruger rifles, provided that witnesses can sufficiently describe the weapons and  
25 establish that the Defendants left the Everman residence on August 13, 1998 with the duffel bag  
26 that commonly contained weapons. Various witnesses, all of whom describe the guns in a  
27 similar fashion, saw the Enforcer and Ruger rifles at the Everman residence prior to August 13,  
28 1998. Moreover, these witnesses saw the guns in a duffel bag which was taken from the

1 Everman home prior to the murders.

2 Ace Hart described the Ruger as a ".22 big rifle" and a .22 with a "pistol grip and then  
3 the thing would come out of the side" with a "banana clip." Voluntary Statement, 8/17/98, p.  
4 6. Hart depicted the Enforcer as "some 30-30, some real big gun with a big banana clip on it."  
5 Voluntary Statement, 8/17/98, p. 6. He also stated the Defendant and his partners carried the  
6 guns in a duffel bag. Voluntary Statement, 8/17/98, p. 7.

7 Tod Armstrong described several guns in the Defendant's possession, including the Ruger  
8 and Enforcer rifles. Armstrong described the Ruger as a .22 automatic that "looks like a  
9 machine gun" with a "folding stock" and a "banana clip." Voluntary Statement, 8/17/98, p. 7.  
10 Armstrong also described the Enforcer rifle as a weapon between 1 ½ - 2' long, made out of  
11 wood with "no pistol grip" and "big bullets." Voluntary Statement, 8/17/98, p. 8. Armstrong  
12 told Detectives that the co-conspirators returned to the Everman house on August 14, 1998, after  
13 the murders, with the bag that contained these weapons. Voluntary Statement, 9/17/98, p. 44.

14 Similarly, Bryan Johnson referred to a duffel bag in the master bedroom that contained  
15 guns. Voluntary Statement, 8/17/98, p. 2. He described a shotgun and an automatic weapon.  
16 Voluntary Statement, 8/17/98, p. 2.

17 The Defendant's ex-girlfriend, Charla Severs, has also provided statements and testimony  
18 regarding the Ruger and Enforcer rifles. Ms. Severs' descriptions of the weapons are entirely  
19 consistent with the other witnesses. For instance, she described the Ruger rifle as "a black .22"  
20 with a "banana clip." Grand Jury Transcript ("GJT") pp. 24, 173. Severs portrayed the Enforcer  
21 rifle as "long" with "holes in it" and "a clip that you put in ... the bottom." GJT p. 24. Charla  
22 Severs has previously testified that the conspirators left the house on August 13, 1998 with the  
23 green and brown duffel bag that commonly contained these guns. GJT, p. 23. Likewise, Charla  
24 Severs indicated the defendants returned to the Everman home after the murders with the loaded  
25 duffel bag. GJT, p. 32.

26 These witnesses alone clearly establish the identity of the guns, the fact that the guns were  
27 commonly kept in a duffel bag, and that the Defendant and his partners returned to the Everman  
28 home after the murders with the bag that contained the guns. Donte Johnson's co-defendants

1 (both of whom have been tried, convicted and sentenced in this matter), however, also gave  
2 voluntary statements in which they, too, described the Ruger and Enforcer rifles and the duffel  
3 bag.

4 Sikia Smith described the .22 rifle that Red used to act as the look-out. Voluntary  
5 Statement, 9/8/98, p. 16. Moreover, Terrell Young described the Enforcer rifle as "a big 30, 30  
6 something" that took "30 caliber bullets." Voluntary Statement, 9/2/98, p. 13. Terrell Young  
7 explained that this was the same gun the NHP Trooper impounded during the automobile stop  
8 on August 17, 1998. Voluntary Statement, 9/2/98, p. 13. Terrell indicated he had a .22 caliber  
9 Ruger rifle at the Terra Linda residence which he used to act as the look-out. Voluntary  
10 Statement, 9/2/98, p. 14. Sikia Smith acknowledged that Red brought a "gym-type bag" to the  
11 Terra Linda household which contained guns. Voluntary Statement, 9/8/98, pp. 3-4, 14. Terrell  
12 Young also described the green and brown duffel bag that he and his partners brought to the  
13 Terra Linda residence. Voluntary Statement, 9/2/98, p. 15.

14 CONCLUSION

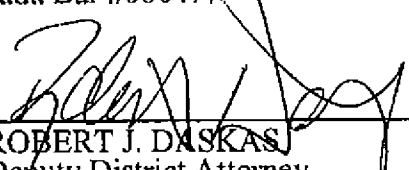
15 As illustrated by the sample of statements above, the State can easily meet the threshold  
16 requirements necessary to admit the Ruger and Enforcer rifles. Accordingly, the State  
17 respectfully requests that this Court permit the State to introduce the Ruger and Enforcer rifles  
18 in the trial of this matter.

19 DATED this 2 day of May, 2000.

20 Respectfully submitted,

21 STEWART L. BELL  
22 DISTRICT ATTORNEY  
23 Nevada Bar #000477

24 BY

25   
26 ROBERT J. DASKAS  
27 Deputy District Attorney  
28 Nevada Bar #004963

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**SPECIAL PUBLIC DEFENDER'S OFFICE  
ATTORNEY FOR DEFENDANT**

BY

309 S. Third St., Suite 400  
Las Vegas, Nevada 89101

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,  
ID#1586283

Defendant.

Case No. C153154  
Dept. No. V  
Docket H

ORDER FOR PRODUCTION OF INMATE  
SIKIA SMITH, BAC #63405

DATE OF HEARING: 06/05/00  
TIME OF HEARING: 12:00 P.M.

TO: GEORGE GRIGAS, Warden, Northern Nevada Correctional Center;

TO: JERRY KELLER, Sheriff of Clark County, Nevada

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEWART L. BELL, District Attorney, through ROBERT J. DASKAS, Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that GEORGE GRIGAS, Warden of Northern Nevada Correctional Center shall be, and is, hereby directed to produce SIKIA SMITH, Witness in Case No. C153154 on behalf of the State of Nevada in the prosecution of the above named Defendant, on charges of BURGLARY WHILE IN POSSESSION OF FIREARM (FELONY); CONSPIRACY TO COMMIT ROBBERY AND/OR KIDNAPING AND/OR MURDER (FELONY); ROBBERY WITH USE OF A DEADLY WEAPON (FELONY); FIRST DEGREE

COUNTY CLERK

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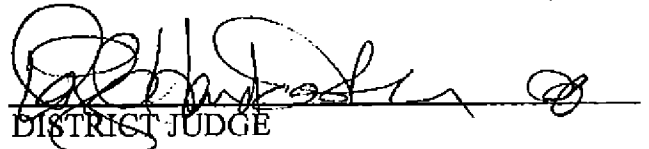
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1 KIDNAPING WITH USE OF A DEADLY WEAPON (FELONY); and MURDER WITH USE  
2 OF A DEADLY WEAPON (OPEN MURDER) (FELONY) wherein THE STATE OF  
3 NEVADA is the Plaintiff, inasmuch as the said Witness is currently incarcerated in the Ely State  
4 Prison located in Ely, Nevada and his presence will be required in Las Vegas, Nevada  
5 commencing on June 5, 2000, at the hour of 12:00 o'clock P.M. and continuing until completion  
6 of the prosecution's case against the said Defendant.

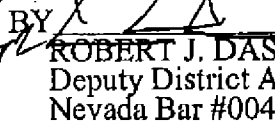
7 IT IS FURTHER ORDERED that JERRY KELLER, Sheriff of Clark County, Nevada,  
8 shall accept and retain custody of the said Witness in the Clark County Detention Center, Las  
9 Vegas, Nevada, pending completion of said matter in Clark County, or until the further Order  
10 of this Court; or in the alternative shall make all arrangements for the transportation of the said  
11 Witness to and from the Nevada State Prison facility which are necessary to insure the Witness's  
12 appearance in Clark County pending completion of said matter, or until further Order of this  
13 Court.

14 DATED this 5<sup>th</sup> day of May, 2000.

15   
16 DISTRICT JUDGE

17 JEFFREY D. SOBEL

18 STEWART L. BELL  
19 DISTRICT ATTORNEY  
20 Nevada Bar #000477

21 BY   
22 ROBERT J. DASKAS  
23 Deputy District Attorney  
24 Nevada Bar #004963

25  
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*Shirley D. Prawalsky*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

PLAINTIFF,

VS.

DONTE JOHNSON, aka JOHN LEE  
WHITE,

DEFENDANT.

CASE NO. C153154

DEPT. V

Transcript of  
Proceedings

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

STATUS CHECK; MATERIAL WITNESS CHARLA SEVERS

MONDAY, APRIL 24, 2000, 9:00 A.M.

APPEARANCES:

FOR THE STATE:

ROBERT DASKAS, ESQ.  
DEPUTY DISTRICT ATTORNEY

FOR DEFENDANT JOHNSON:

NOT REPRESENTED BY COUNSEL

FOR MATERIAL WITNESS SEVERS:

JAY SIEGEL, ESQ.

COURT RECORDER: SHIRLEE PRAWALSKY

CE15

COUNTY CLERK  
MAY 19 2000



1 LAS VEGAS, NEVADA, MONDAY, APRIL 24, 2000, 9:00 A.M.

2 THE COURT: Robert Daskas on Donte Johnson. Do we need to wait for  
3 anybody, or can we do this just with you, Robert?

4 MR. DASKAS: Well, Judge, I think we can handle it. I appreciate you  
5 calling it. Ms. Severs is in court. I believe we sat this, Judge, for a status  
6 check to determine if she's checking in with us.

7 THE COURT: And she is?

8 MR. DASKAS: She is doing that.

9 THE COURT: Do you want to just pass this to the calendar call?

10 MR. DASKAS: That's perfect, Judge.

11 THE COURT: Okay. We're going to move the calendar call, as long as  
12 you're here. And if you'd notify the special defender because I'm going to be  
13 in New York on the original calendar call date. 5/24. That's a Wednesday,  
14 right?

15 THE CLERK: Yes, it is.

16 THE COURT: Okay. We're going to move the calendar call to 5/24.

17 (Conference between Court and Clerk, not recorded)

18 THE COURT: Did we move the calendar call up for some reason?

19 MR. DASKAS: Yes, you did, Judge.

20 THE COURT: All right. Calendar call stays where it is.

21 Would you make sure--where is the questionnaire going? The last  
22 time we were here, there was sort of some changes had been made and it  
23 was floating back and forth.

24 MR. DASKAS: We have one that we used in the other two trials. I think  
25 it will be satisfactory to the defense. We'll meet with them and make  
26 whatever minor changes there are and submit it to you, Judge.

27 THE COURT: Could you have whatever you think is best by 5/19, let's

1 say, at about noon so I can work on it that weekend in case I have anything  
2 I want to add to it?

3 MR. DASKAS: Yes, absolutely.

4 THE COURT: Thank you very much.

5 MR. DASKAS: Thank you, sir.

6 THE COURT: Chip?

7 MR. SIEGEL: I don't know if it's on that case on page 11.

8 THE COURT: Johnson?

9 MR. SIEGEL: Yeah, you had a status check set to make sure that-

10 THE COURT: Yeah, we just continued it to the calendar call.

11 MR. SIEGEL: Which is?

12 THE COURT: 5/23.

13 MR. SIEGEL: Thank you.

14 THE COURT: Thanks.

15 \* \* \* \*

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

19   
20 SHIRLEE PRAWALSKY, COURT RECORDER  
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*Shirley A. Prawalsky*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

PLAINTIFF,

VS.

CASE NO. C153154

DEPT. V

DONTE JOHNSON, aka JOHN LEE  
WHITE,

DEFENDANT.

Transcript of  
Proceedings

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

DEFENDANT'S MOTION FOR DISCOVERY OF PROSECUTION FILES,  
RECORDS, AND INFORMATION NECESSARY FOR A FAIR TRIAL

MONDAY, MAY 8, 2000, 9:00 A.M.

APPEARANCES:

FOR THE STATE:

ROBERT DASKAS, ESQ.  
DEPUTY DISTRICT ATTORNEY

FOR DEFENDANT JOHNSON:

JOSEPH SCISCENTO, ESQ.  
DEPUTY SPECIAL PUBLIC  
DEFENDER

COURT RECORDER: SHIRLEE PRAWALSKY

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1 LAS VEGAS, NEVADA, MONDAY, MAY 8, 2000, 9:00 A.M.

2 THE COURT: Johnson, page 19, Donte Johnson.

3 I just glanced at their motion. Is there going to be opposition to  
4 it?

5 MR. DASKAS: Judge, I spoke with Mr. Sciscento a moment ago. I have  
6 no opposition to items 1, 2, 3, and 5 which they're requesting. My concern,  
7 though, is with item number 4. I informed Mr. Sciscento that we don't have  
8 any reports or arrest records on the victims regarding drug sales. Certainly,  
9 they're free to come to our office and look at our file as they have in the past.  
10 Whatever we have, we'll give to them, Judge.

11 MR. SCISCENTO: Your Honor, I would ask then, also, the issues on the  
12 question is not only Las Vegas Metropolitan Police Department, but also any  
13 federal agency which is local in Nevada. I understand that there was possibly  
14 some investigation as to drug sales.

15 THE COURT: But do you think they have a burden to find this stuff and  
16 give it to you?

17 MR. SCISCENTO: I'm thinking it may be Brady material, Your Honor, in  
18 the sense that it may show a motive for something else.

19 THE COURT: Then why don't you do this: why don't you file, as to that  
20 one item, your position with reference to that. Because trial is coming up so  
21 quickly we won't have a reply. I'll just consider it on the motion and the  
22 opposition. If you get that in by the 15<sup>th</sup>, I'll have a decision on that  
23 Thursday.

24 THE CLERK: Decision date will be May 18<sup>th</sup> at 9:00 a.m.

25 THE COURT: Thank you.

26 THE CLERK: Is the defendant present? He is present?

27 COURT SERVICES OFFICER: Yes, in custody. Stand up.

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THE COURT: Oh, there he is. I see him, okay.

\* \* \* \*

ATTEST:

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

  
SHIRLEE PRAWALSKY, COURT RECORDER

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*Shirley D. Longjumeau*  
CLERK

1 OPI  
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,  
12 ID#1586283

13 Defendant.

Case No. C153154  
Dept. No. V  
Docket H

ORDER FOR PRODUCTION OF INMATE  
TERRELL YOUNG, BAC #63931

DATE OF HEARING: 06/05/00  
TIME OF HEARING: 12:00 P.M.

18 TO: GEORGE GRIGAS, Warden, Northern Nevada Correctional Center;

19 TO: JERRY KELLER, Sheriff of Clark County, Nevada

20 Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEWART  
21 L. BELL, District Attorney, through ROBERT J. DASKAS, Deputy District Attorney, and good  
22 cause appearing therefor,

23 IT IS HEREBY ORDERED that GEORGE GRIGAS, Warden of Northern Nevada  
24 Correctional Center shall be, and is, hereby directed to produce TERRELL YOUNG, Witness  
25 in Case No. C153154 on behalf of the State of Nevada in the prosecution of the above named  
Defendant, on charges of BURGLARY WHILE IN POSSESSION OF FIREARM (FELONY);  
CONSPIRACY TO COMMIT ROBBERY AND/OR KIDNAPING AND/OR MURDER  
(FELONY); ROBBERY WITH USE OF A DEADLY WEAPON (FELONY); FIRST DEGREE

COUNTY CLERK

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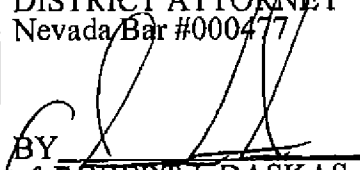
1 KIDNAPING WITH USE OF A DEADLY WEAPON (FELONY); and MURDER WITH USE  
2 OF A DEADLY WEAPON (OPEN MURDER) (FELONY) wherein THE STATE OF  
3 NEVADA is the Plaintiff, inasmuch as the said Witness is currently incarcerated in the Ely State  
4 Prison located in Ely, Nevada and his presence will be required in Las Vegas, Nevada  
5 commencing on June 5, 2000, at the hour of 12:00 o'clock P.M. and continuing until completion  
6 of the prosecution's case against the said Defendant.

7 IT IS FURTHER ORDERED that JERRY KELLER, Sheriff of Clark County, Nevada,  
8 shall accept and retain custody of the said Witness in the Clark County Detention Center, Las  
9 Vegas, Nevada, pending completion of said matter in Clark County, or until the further Order  
10 of this Court; or in the alternative shall make all arrangements for the transportation of the said  
11 Witness to and from the Nevada State Prison facility which are necessary to insure the Witness's  
12 appearance in Clark County pending completion of said matter, or until further Order of this  
13 Court.

14 DATED this 11 day of May, 2000

15  
16   
17 DISTRICT JUDGE

18 STEWART L. BELL  
19 DISTRICT ATTORNEY  
20 Nevada Bar #000477

21 BY   
22 ROBERT J. DASKAS  
23 Deputy District Attorney  
24 Nevada Bar #004963  
25  
26  
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28

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PHILIP J. KOHN, ESQ.  
SPECIAL PUBLIC DEFENDER  
State Bar No. 000556  
JOSEPH S. SCISCENTO  
State Bar No. 004380  
DAYVID J. FIGLER  
State Bar No. 004264  
309 South Third Street  
P. O. Box 552316  
Las Vegas, NV 89155  
(702) 455-6265  
Attorneys for Defendant

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*Shirley D. Langston*  
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

NOTICE OF DEFENDANT'S EXPERT WITNESSES  
[NRS 174.089(2)]

TO: THE STATE OF NEVADA, Plaintiff, and

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

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the Defendant, DONTE JOHNSON, by and through his attorneys, PHILIP J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO, Deputy Special Public Defender, and DAYVID J. FIGLER, Deputy Special Public Defender intends to call expert witnesses in its case in chief as follows:

1. VANORA M. KEAN, PhD., as an expert in forensic pathology.

Dr. Kean, will testify as to the testing and interpretation of DNA. Dr. Kean will

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SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

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1 testify as to the blood pattern found on the black jean

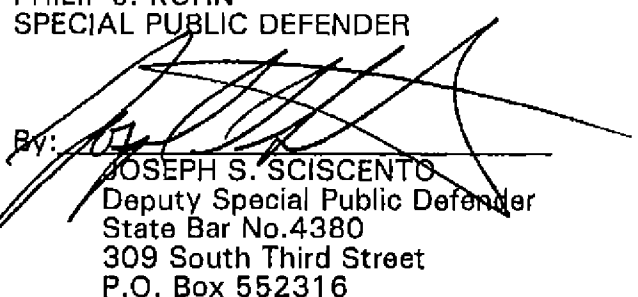
2 2. Dr. JOHN I. THORNTON, is an expert in fingerprint identification. Dr.  
3 Thorton will testify as to the identification and interpretation of the fingerprints found on  
4 the evidence located at the crime scene.

5 The substance of each expert witnesses' testimony and a copy of all reports, if not  
6 already provided, will be provided upon their receipt by the Defendant.

7 A copy of each expert witnesses' curriculum vitae is attached hereto.

8 DATED this 15 day of May, 2000.

9 PHILIP J. KOHN  
10 SPECIAL PUBLIC DEFENDER

11 By:   
12 JOSEPH S. SCISCENTO  
13 Deputy Special Public Defender  
14 State Bar No. 4380  
15 309 South Third Street  
16 P.O. Box 552316  
17 Las Vegas, NV 89155  
18 (702) 455-6265  
19 Attorney for Defendant

20 RECEIPT OF COPY

21 RECEIPT OF COPY of the foregoing NOTICE OF DEFENDANT'S EXPERT  
22 WITNESSES IN ACCORDANCE WITH NRS 174.089, SECTION 2 is hereby  
23 acknowledged this 15 day of May, 2000.

24   
25 STEWART L. BELL  
26 DISTRICT ATTORNEY  
27 200 S. Third Street, Fourth Floor  
28 Las Vegas, Nevada 89155  
Attorney for Plaintiff

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA





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**VANORA M. KEAN, Ph.D.**  
*Curriculum Vitae Continued*

## PROFESSIONAL AFFILIATIONS

California Association of Criminalists  
Northwestern Association of Forensic Scientists  
American Academy of Forensic Sciences  
International Association of Bloodstain Pattern Analysts  
Canadian Society of Forensic Science  
Genetical Society (UK)  
British Society for Cell Biology  
American Society of Human Genetics

## EDUCATION

Ph.D., Genetics, University of Aberdeen, Scotland, UK, 1981.  
B.Sc., Hons., Botany, University of Manchester, England, UK, 1976.

## OTHER PROFESSIONAL EXPERIENCE

Forensic Biologist, BioForensic Solutions, Abbotsford, British Columbia, Canada, 1998.  
Associate Director & Forensic Supervisor, GeneLex Corporation, Seattle, WA, 1995-1998.  
Forensic Biologist, Biology Section, Centre of Forensic Sciences, Toronto, Canada,  
1990-1995.  
Post-Doctoral Research Assistant & Tutor in Molecular Biology, Department of  
Ophthalmic Optics, University of Manchester Institute of Science and Technology,  
Manchester, England, UK, 1985-1987.  
Post-Doctoral Research Associate, 1984 -1985; Post-Doctoral Research Fellow, 1983 -1984;  
& Teaching Assistant, Medical Genetics 1984, Department of Genetics, Hospital for  
Sick Children, Toronto, Canada.  
Post-Doctoral Research Fellow & Tutor in Molecular Biology, Laboratories of Molecular  
Biology, Faculty of Medicine, Memorial University of Newfoundland, Canada  
1981-1983.  
Teaching Assistant in Genetics, Department of Genetics, University of Aberdeen, Scotland,  
UK, 1977-1980.



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**VANORA M. KEAN, Ph.D.**  
*Curriculum Vitae Continued*

**SPECIAL TRAINING & CONTINUING EDUCATION**

Statistics and Population Genetics for Forensic Scientists (by correspondence - still in progress). ST610C Credit Course, Dr. Bruce Weir (tutor), Department of Statistics, North Carolina State University, Raleigh, NC.

American Academy of Forensic Sciences, 52<sup>nd</sup> Annual Meeting, Reno, Nevada;  
February 21-26, 2000.

Forensic Photography Workshop, AAFS Reno, NV; February 22, 2000.

Presenting Scientific Evidence in Court: Meeting the Daubert Standard of Reliability,  
Workshop, AAFS Reno, NV; February 21, 2000.

Advanced 310 Genetic Analyzer & Amp FISTR® Training Course, PE Biosystems, Foster  
City, California; July 6-9 & December 28, 1999.

DNA Study Group Meeting, California Association of Criminalists, Hayward, CA;  
September 14, 1999

The Role of Review and Disclosure in Forensic Science, California Association of  
Criminalists, 93<sup>rd</sup> Semi-Annual Seminar, Oakland, CA; May 12-13, 1999.

DNA Study Group Meeting, California Association of Criminalists, Sacramento, CA;  
March 11, 1999

Trace Evidence Analysis Course, California State University, Fullerton, CA; Nov. 7, 1998.

Firearms Analysis Course, California State University, Fullerton, CA; October 24, 1998.

Oregon Criminal Defense Lawyer's Association Winter Conference, Portland, Oregon;  
December 5-6, 1997.

International Association of Bloodstain Pattern Analysts & The Association of Crime  
Scene Reconstruction Joint Training Conference, Seattle, Washington;  
November 5-8, 1997.

Basic Bloodstain Patterns Workshop, November 7, 1997.

Courtroom Demonstration of Bloodstain Patterns Workshop, November 7, 1997.

Earprints as Evidence, Puget Sound Forensic Science Association Meeting, Seattle,  
Washington; October 1, 1997.

Triple Homicide Case Study, Puget Sound Forensic Science Association Meeting, Everett,  
Washington; May 6, 1997.

Current and Historical Issues in DNA Analysis, Puget Sound Forensic Science Association  
Meeting, Seattle, Washington; February 19, 1997

Interesting Case Studies, Puget Sound Forensic Science Association Meeting, Tacoma,  
Washington; November 6, 1996.

Utah Forensic Science Association and the NorthWest Association of Forensic Scientists  
Joint Fall Conference, Salt Lake City, Utah; September 30 - October 4, 1996.

Population Genetics and Forensic Statistics/Issues Workshop; September 30, 1996.

Advanced DNA Methods Training Workshop, October 1, 1996.

Page 3 of 7 (March 1, 2000)



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**VANORA M. KEAN, Ph.D.**  
*Curriculum Vitae Continued***SPECIAL TRAINING & CONTINUING EDUCATION (continued)**

DNA Interpretation Workshop, October 2, 1996.  
Role of Forensic Scientists as Experts, Puget Sound Forensic Science Association Meeting,  
Seattle, Washington; May 9, 1996.  
Spring Conference of the NorthWest Association of Forensic Scientists, Spokane,  
Washington. Plenary Session, April 25-26, 1996.  
48th Annual Meeting of the American Academy of Forensic Sciences, Nashville,  
Tennessee; February 21-23, 1996.  
Promega's Sixth International Symposium on Human Identification, Scottsdale, Arizona;  
October 12-14, 1995.  
The Forensic Message: Changing Realities, 42nd Annual Conference of the Canadian  
Society of Forensic Science, Toronto, Canada; September 26-30, 1995.  
The Role of Statistics in Forensic Science Workshop, September 27, 1995.  
Prosecution and the Courts, Woodsworth College, University of Toronto, Canada,  
September 1994 - May 1995.  
Clinical Criminology, Woodsworth College, University of Toronto, Canada,  
September 1994 - May 1995.  
Sexual Assault Investigation Training Course for Police Officers Workshop, Grey Bruce  
Regional Health Centre, Owen Sound, Ontario, Canada. June 29-30, 1994.  
Molecular Biology (by correspondence), University of Waterloo, Ontario, Canada,  
January - May 1994.  
Criminal Law and Procedure, Woodsworth College, University of Toronto, Canada,  
September 1993 - May 1994.  
International Association of Bloodstain Pattern Analysts Annual Training Conference,  
Los Angeles, California, October 15-18, 1993.  
Bloodstain Pattern Interpretation, Centre of Forensic Sciences, Toronto, Canada,  
March 16 - April 3, 1992.  
Policing Society, Woodsworth College, University of Toronto, Canada; May - August 1992.  
Introduction to Criminology, Woodsworth College, University of Toronto, Canada,  
May - August 1991.  
Taking Care Conference, organized by the Sexual Assault Care Centre of Women's College  
Hospital, Toronto, Canada. May 30-31, 1991.  
The Sexual Assault Evidence Kit Workshop, May 31, 1991.  
Testifying in Court Workshop, May 31, 1991.  
Legal Terminology and Fundamentals of Canadian Law, George Brown College, Toronto,  
Canada; September - December 1990.

Page 4 of 7 (March 1, 2000)



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**VANORA M. KEAN, Ph.D.**  
*Curriculum Vitae Continued*

## PUBLICATIONS & PRESENTATIONS

"Basic Bloodstain Pattern Interpretation" (2000) Invited Presenter of Workshop for the 2000 Capital Case Defense Seminar "Life over Death", sponsored by the California Attorneys for Criminal Justice & California Public Defenders Association, Monterey, California. February 20, 2000.

"Bloodstain Pattern Interpretation" (1999) Workshop co-presenter, California Association of Licensed Investigators Annual Conference, Reno, Nevada. June 17, 1999.

"Forensic DNA Analysis" (1999) Invited speaker to the Canadian Bar Association, Vancouver Criminal Justice Subsection, Vancouver, B.C., Canada. March 23, 1999.

"Forensic Biology" (1998) Invited speaker at seminar for 2<sup>nd</sup> & 3<sup>rd</sup> year students in Biotechnology, Seattle Central Community College, Seattle, WA. February 10, 1998.

"Forensic Applications of Molecular Biology" (1997) Invited speaker in Autumn Quarter lecture series "Molecular Biology and Public Health" (PBIO-531), Department of Pathobiology, University of Washington, Seattle, WA. October 28, 1997

Riley G.R., A.G. Pace, V.M. Kean, H.C. Coleman and T.H. Aulinskas. (1997) "Validation of the PowerPlex STR Multiplex, Amelogenin Sex Typing and FMBIO II. Fluorescent Scanner in Forensic and Paternity Casework, and High-Throughput Convicted Offender Databanking." Oral presentation by G. Riley at the Eighth International Symposium on Human Identification, Scottsdale, Arizona. September 17-21, 1997.

"Forensic DNA Analysis" (1997) Invited speaker for "Biotechnology for Professionals in the 21<sup>st</sup> Century" Workshop, Institute for Science Training and research, Inc., Seattle, WA. August 23, 1997.

Coleman HC, Riley GR, Kean V, and Aulinskas TH. (1997) "The Impact of Substandard Laboratory Work on the Outcome of Criminal Cases." Oral presentation by H. Coleman at the National Institute of Justice Conference on the Future of DNA. Sacramento, CA. May 1997.

"Forensic Biology and DNA" (1996) Invited speaker to student forum on Biotechnology, Everett High School, Everett, WA. November 14, 1996.

Page 5 of 7 (March 1, 2000)



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**VANORA M. KEAN, Ph.D.**  
*Curriculum Vitae Continued***PUBLICATIONS & PRESENTATIONS (continued)**

Riley G, Johnston T, Kean V, Aulinskas T & Coleman H. (1996) "DNA Analysis by PCR in Forensic Casework." Oral presentation by V. Kean at the Spring Conference of the NorthWest Association of Forensic Scientists, Spokane, WA. Plenary Session April 25-26, 1996.

Kean, VM. (1996) "Amylase Levels in Body Fluid Secretions." Oral presentation at the Spring Conference of the NorthWest Association of Forensic Scientists, Spokane, WA. Plenary Session April 25-26, 1996.

Buceta K, and Kean, VM. (1995) "Determination of the Human Origin of Heat Treated Blood Samples." Poster presentation at the 42nd annual conference of the Canadian Society of Forensic Science, Toronto, Canada. September 26-30, 1995.

"Collection and Preservation of Biological Samples from the Sexual Assault Evidence Kit." (1994) Oral presentation by invitation at the Sexual Assault Investigation Training Course for Police Officers, Grey Bruce Regional Health Center, Owen Sound, Ontario, Canada. June 29-30, 1994.

Newman J, Kern S & Kean V. (1993) "The Wheelchair Murder: Reconstruction of Events at a Homicide Scene using Bloodstain Pattern Analysis." Oral Presentation by V. Kean at the International Association of Bloodstain Pattern Analysts, Los Angeles, California. October 15-18, 1993.

Worton RG, Sutherland J, Bodrug S, Dube I, Duff C, Kean V, Schunickel RD, Sylvester J, Willard H, and Ray PN. (1988) "Human rRNA Genes: Orientation on the Chromosome and Cloning of the Distal Flanking Sequences." *Science* **239**: 64-68

Kean VM, Macleod HL, Thompson MW, Ray PN, Verellen-Dumoulin C, and Worton RG. (1986) "Paternal Inheritance of Translocation Chromosomes in a t(X;21) Patient with X-Linked Muscular Dystrophy." *Journal of Medical Genetics* **23**: 491-493

Worton RG, Duff C, Logan C, Ray PN, Kean V, Thompson MW, Sylvester JE and Schmickel RD. (1986) "Approaching the Duchenne Muscular Dystrophy Gene Through a Translocation Involving Ribosomal RNA Genes." *Molecular Biology of Muscle Development*; pp. 897-901, Alan R. Liss, Inc.



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**VANORA M. KEAN, Ph.D.**  
*Curriculum Vitae Continued*

**PUBLICATIONS & PRESENTATIONS (continued)**

Ray PN, Belfall B, Duff C, Logan C, Kean V, Thompson MW, Sylvester JE, Gorski JL, Schmickel RD and Worton RG. (1985) "Cloning of the Breakpoint of an X;21 Translocation Associated with Duchenne Muscular Dystrophy." *Nature* **318**: 672-675

Kean VM, Fox DP, and Faulkner R. (1982) "The Accumulation Mechanism of the Supernumerary (B-) Chromosome in Picea sitchensis (Bong.) Carr. and the Effects of This Chromosome on Male and Female Flowering." *Silvae Genetica* **31**: 126-131





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**DR. JOHN I. THORNTON**  
**Senior Forensic Scientist**  
**Forensic Science Division**

**PROFESSIONAL EXPERIENCE**

Dr. Thornton has fourteen years of experience in an operational crime laboratory, four of them as a laboratory director, and twenty-four years of experience as a Professor of Forensic Science at the University of California, Berkeley. He has testified as an expert witness on a wide variety of physical evidence cases. He has extensive experience in evidence collection and processing, trace evidence analysis, firearms identification, gunshot residues, wound ballistics, crime scene reconstruction, homicide investigation, and expert testimony. Dr. Thornton works closely with other Forensic Analytical laboratory staff in evidence and case review, as well as the interpretation of findings.

**PROFESSIONAL AFFILIATIONS**

Board Certified, American Board of Criminalistics  
Fellow, American Academy of Forensic Sciences  
California Association of Criminalists  
California Association of Crime Laboratory Directors  
International Wound Ballistics Association

**EDUCATION**

B.S., Criminology, University of California, Berkeley, 1962.  
M.Crim., Criminalistics, University of California, Berkeley, 1968.  
D.Crim., Criminalistics and Forensic Science, University of California, Berkeley, 1974.

**OTHER PROFESSIONAL EXPERIENCE**

1994- : Senior Forensic Scientist, Forensic Analytical Specialties, Inc., Hayward.  
1994- : Emeritus Professor of Forensic Science, University of California, Berkeley.  
1970-1994: Professor of Forensic Science, University of California, Berkeley.  
1963-1972: Criminalist, Contra Costa Sheriff's Department, Martinez, California.

**TECHNICAL PRESENTATIONS**

American Academy of Forensic Sciences  
California Association of Criminalists  
American Chemical Society  
California State Police Academy  
National District Attorney's Association  
International Association of Identification  
FBI Academy Symposium on Forensic Science  
California Public Defender's Association

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**DR. JOHN I. THORNTON**  
*Curriculum Vitae Continued***TECHNICAL PRESENTATIONS- Continued**

Association of Firearms and Toolmark Examiners  
Society for Applied Spectroscopy  
California Association of Licensed Investigators  
Association of Public Health Microbiologists  
International Society for Optical Engineering  
Southwest Association of Forensic Document Examiners  
California District Attorney's Association  
Israel National Police  
Policia Nacional de la Republica de Colombia  
International Wound Ballistics Association

**OTHER RELEVANT INFORMATION**

Board Certified, American Board of Criminalistics, 1993; Board of Directors, American Board of Criminalistics, 1994-1996; Vice President, 1995-1996.  
Consultant to the California Council on Criminal Justice to draw up a Master Plan for a Crime Laboratory System for the State of California, 1970-1971.  
Consultant to the Law Enforcement Assistance Administration, U.S. Dept. of Justice, to evaluate 1974, 1975, 1978, and 1981 Program Plans.  
Member of the Project Advisory Committee, Nationwide Crime Laboratory Proficiency Testing Project, Forensic Science Foundation, 1974-1982.  
President, California Association of Criminalists, 1974-1975.  
Award of Merit, Forensic Sciences Foundation, 1979.  
Ethics Committee, California Association of Criminalists, 1977-1981.  
Criminalistics Section Award (*nee* Paul L. Kirk Award), American Academy of Forensic Sciences, 1979-1980.  
Chairman, Criminalistics Section, American Academy of Forensic Sciences, 1980-1981.  
Representative Assembly of the Academic Senate, Univ. of California, Berkeley, 1980-1981.  
Editorial Review Board, *Journal of Forensic Sciences*, 1981-1984.  
Visiting Professor, University of New Mexico Medical School, Albuquerque, August 1982.  
Vice-Chairman, Dept. of Biomedical and Environmental Health Sciences, Univ. of California, Berkeley, 1981-1985; Acting Chairman, March-August 1984.  
Member of the Graduate Group in Agricultural and Environmental Chemistry, and member of the Graduate Group in Environmental Health Sciences, Univ. of California, Berkeley.  
Biographee, *Who's Who in America*, *Who's Who in the West*, *Directory of Distinguished Americans*, *American Men and Women of Science*

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**DR. JOHN I. THORNTON**  
***Curriculum Vitae Continued*****OTHER RELEVANT INFORMATION *Continued***

Visiting Professor, Southwest China Institute of Political Science and Law, People's Republic of China, March-April 1987.

Member of Advisory Board of the California Criminalistics Institute, Calif. Dept. of Justice, Bureau of Forensic Sciences, 1986-1992.

Certificate of Basic Competency in Criminalistics, California Association of Criminalists, 1989.

Distinguished Member Award, California Association of Criminalists, 1989.

Chair of the Faculty, School of Public Health, University of California, Berkeley, 1989-1990.

Member of Symposium Faculty for physical evidence instruction, Policia Nacional de la Republica de Colombia, Santa Fe de Bogota, Colombia, May 1991.

Visiting Professor, La Escuela de Policia 'General Santander,' Policia Nacional de la Republica de Colombia, Santa Fe de Bogota, Colombia, January 1992.

Member of Symposium Faculty for physical evidence instruction, Universidad Nacional de Mexico, Mexico, D.F., December 1997.

Author of approximately 180 articles in the area of forensic science. This includes the editing of one standard textbook on physical evidence, chapters in half a dozen other texts, with the remainder being journal articles in the forensic science literature, the chemistry literature, the law literature, and an encyclopedia. Dr. Thornton is the principal author of two extensive computer databases of forensic information, the *Firearms Evidence Sourcebook* and the *Sourcebook of Forensic Science Information*, both published by the National Institute of Justice.

Consultant, on an ongoing basis, to various police agencies, public prosecutor's offices, public defender's offices, and attorneys, in connection with criminal and civil litigation. Dr. Thornton has been involved in approximately 800 homicide investigations.

Dr. Thornton has taught physical evidence doctrine and methods in China, Mexico, India, Israel, and Colombia at the request of the governments of those countries.

Dr. Thornton has testified as an expert witness on several hundred occasions on a variety of physical evidence matters. He has testified in Superior Court in California, Alaska, Washington, Arizona, Nevada, Idaho, Colorado, Alabama, Massachusetts, and North Carolina, and in Queen's Court in Canada. He has testified in Federal District Court in Fairbanks, Anchorage, Boise, San Francisco, Oakland, Spokane, Reno, Denver, and Raleigh.

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*Shirley D. King*  
CLERK

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,  
#1586283

Defendant.

Case No. C153154  
Dept. No. VI  
Docket H

SUPPLEMENTAL NOTICE OF EXPERT WITNESSES  
[NRS 174.234 (2)]

TO: DONTE JOHNSON, Defendant; and

TO: JOSEPH SCISCENTO, and DAYVID FIGLER, Deputy Special Public Defenders,  
Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF  
NEVADA intends to call expert witnesses in its case in chief as follows:

THOMAS A. WAHL, CRIMINALIST II LVMPD P#5019

THOMAS WAHL is a Criminalist with the Las Vegas Metropolitan Police Department.  
He is expected to testify regarding hair comparison, serology and DNA of certain evidence  
collected from the various crime scenes including, but not limited to, blood samples.

RICHARD GOOD, FORENSIC LAB MGR LVMPD P#0806

RICHARD GOOD is the Forensic Laboratory Manager of Comparative Analyses with

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1 the Las Vegas Metropolitan Police Department. He will testify regarding ballistics comparisons  
2 he performed on cartridge cases, projectiles, bullet fragments and firearms that were recovered  
3 at the various crime scenes.  
4

5 DR. ROBERT VAN ZANDT BUCKLIN MEDICAL EXAMINER

6 DR. BUCKLIN is a medical doctor who was previously employed by the Clark County  
7 Coroner Medical Examiner. He is an expert in the area of forensic pathology and will give  
8 scientific opinions related thereto. He is expected to testify regarding the cause and manner of  
9 death of the decedents.  
10

11 EDWARD S. GUENTHER LVMPD P#5891

12 MR. GUENTHER is a Latent Print Examiner employed by the Las Vegas Metropolitan  
13 Police Department. He is expected to testify regarding the results of comparisons he made  
14 between latent prints that were lifted from items of evidence at the various crime scenes and  
15 known fingerprints of the Defendant(s), the victims and other individuals.  
16

17 S. FLETCHER LVMPD P#5221

18 S. FLETCHER is a Crime Scene Analyst with the Las Vegas Metropolitan Police  
19 Department. He is expected to testify regarding the processing of the various crime scenes in  
20 this case, as well as the collection and preservation of evidence.  
21

22 S. NORMAN LVMPD P#3110

23 S. NORMAN is a Crime Scene Analyst with the Las Vegas Metropolitan Police  
24 Department. She is expected to testify regarding the processing of the various crime scenes in  
25 this case, as well as the collection and preservation of evidence.  
26

26 ///

27 ///

28 ///

1 M. WASHINGTON LVMPD P#4725  
2 M. WASHINGTON is a Crime Scene Analyst with the Las Vegas Metropolitan Police  
3 Department. He is expected to testify regarding the processing of the various crime scenes in  
4 this case, as well as the collection and preservation of evidence.  
5

6 D. HORN LVMPD P#1928  
7 D. HORN is a Crime Scene Analyst with the Las Vegas Metropolitan Police Department.  
8 He is expected to testify regarding the processing of the various crime scenes in this case, as well  
9 as the collection and preservation of evidence.  
10

11 B. GROVER LVMPD P#4934  
12 B. GROVER is a Crime Scene Analyst with the Las Vegas Metropolitan Police  
13 Department. He is expected to testify regarding the processing of the various crime scenes in  
14 this case, as sell as the collection and preservation of evidence.  
15

16 J. O'DONNELL LVMPD P#5709  
17 J. O'DONNELL is a Crime Scene Analyst with the Las Vegas Metropolitan Police  
18 Department. He is expected to testify regarding the processing of the various crime scenes in  
19 this case, as well as the collection and preservation of evidence.  
20

21 M. PERKINS LVMPD P#4242  
22 M. PERKINS is a Crime Scene Analyst with the Las Vegas Metropolitan Police  
23 Department. He is expected to testify regarding the processing of the various crime scenes in  
24 this case, as well as the collection and preservation of evidence.  
25

26 ///

27 ///

28 ///

1 D. BROTHERSON

LVMPD P#4931

2 D. BROTHERSON is a Crime Scene Analyst with the Las Vegas Metropolitan Police  
3 Department. He is expected to testify regarding the processing of the various crime scenes in  
4 this case, as well as the collection and preservation of evidence.

5  
6 P.M. SCHELLBERG

LVMPD P#5413

7 P.M. SCHELLBERG is a Crime Scene Analyst with the Las Vegas Metropolitan Police  
8 Department. He is expected to testify regarding the processing of the various crime scenes in  
9 this case, as well as the collection and preservation of evidence.

10  
11 G. REED

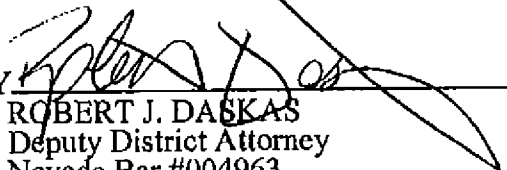
LVMPD P#3731

12 G. REED is a Crime Scene Analyst with the Las Vegas Metropolitan Police Department.  
13 He is expected to testify regarding the processing of the various crime scenes in this case, as well  
14 as the collection and preservation of evidence.

15 The substance of each expert witness' testimony and a copy of all reports made by or at  
16 the direction of the expert witness has been provided in discovery.

17 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

18 STEWART L. BELL  
19 DISTRICT ATTORNEY  
Nevada Bar #000477

20  
21 BY   
22 ROBERT J. DASKAS  
23 Deputy District Attorney  
24 Nevada Bar #004963  
25  
26  
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JOSEPH SCISCENTO  
DAYVID FIGLER  
DEPUTY SPECIAL PUBLIC DEFENDERS  
SPECIAL PUBLIC DEFENDER'S OFFICE  
ATTORNEYS FOR DEFENDANT

BY Philip J. Kohn  
309 S. Third St., 4th Floor  
Las Vegas, Nevada 89155 (JK)

28 pm

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
FORENSIC LABORATORY  
STATEMENT OF QUALIFICATIONS**

Date: 8-15-97

Name: Thomas A. Wahl P#: 5019 Classification: Criminalist II

Current Discipline of Assignment: Serology / DNA Analysis

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Blood Alcohol	
Toolmarks		Breath Alcohol	
Trace Evidence (Hairs)	X	Arson Analysis	
Toxicology		Firearms	
Latent Prints		Crime Scene Investigations	
Serology	X	Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	X

EDUCATION			
Institution	Dates Attended	Major	Degree Completed
University of Wisconsin - La Crosse La Crosse, Wisconsin	1972 - 1977	Medical Technology	BS

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
Advanced Serology Workshop	Illinois Dept. Of Law Enforcement Training Academy / Springfield, IL	8/82
GM-KM Immunoglobulin Allotyping Workshop	Louisiana State Police Academy / Baton Rouge, Louisiana	3/87
Statistics Course	Florida Dept. of Law Enforcement Academy / Orlando, FL	5/87
Isoelectric Focusing Workshop	Florida Dept. Of Law Enforcement Academy / Tallahassee, FL	3/88
Techniques in Gene Manipulation	Graduate School Course ( 3 credits)	May-June 1988
Semen Analysis Workshop	Florida Dept. Of Law Enforcement Academy, Tampa, FL	8/88
Non-Isotopic Detection of DNA Polymorphisms	Allotype Genetic Testing, Inc. Atlanta, GA	8/88

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
Advanced Serology Workshop	Allotype Genetic Testing, Inc. Atlanta, GA	9/88
Non-Isotopic Detection of DNA Polymorphisms with Applications to Forensic & Paternity Testing, Bone Marrow Transplantation	Allotype Genetic Testing, Inc. Atlanta, GA	12/88
Instructor for Basic/Advanced Serology and PCR Workshops	Analytical Genetic Testing Center Denver, CO	1990 - 1993
Non-Isotopic Analysis of Polymorphic Short Tandem Repeats (STR) LocI Workshop	Promega Corp. Madison, WI	10/93
DNA Typing with STRs Workshop	Promega Corp. Madison, WI	5/95
A Workshop in Statistics for Forensic Scientists	National Forensic Science Technology Center / St. Petersburg, FL	1/96
Statistics Workshop; Seventh International Symposium on Human Identification	Promega Corp. Scottsdale, AZ	9/96
COURTROOM EXPERIENCE		
Court	Discipline	Number of Times
19 U.S. Jurisdictions 1 Canadian Jurisdiction	Hairs, Serology, DNA Analysis	>200
EMPLOYMENT HISTORY		
Employer	Job Title	Date
Las Vegas Metropolitan Police Department / Las Vegas, NV	Criminalist II	9/95 - present
Genelex Corp. / Seattle, WA	Forensic Supervisor	6/93 - 8/95
Analytical Genetic Testing Center / Denver, CO	Senior Forensic Geneticist	9/88 - 6/93
Florida Dept. Of Law Enforcement Tampa Regional; Crime Laboratory	Crime Lab Analyst - Serology	11/86 - 9/88
Wisconsin Dept. Of Justice Milwaukee Regional Crime Lab	Crime Lab Analyst - Micro/Serology	1/80 - 2/85

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)
American Academy of Forensic Sciences	1993 - 1997
Midwestern Association of Forensic Scientists	1982-1984 1992-1997
Southwest Association of Forensic Scientists	1991 - 1997
Southern Association of Forensic Scientists	1987 - 1997
PUBLICATIONS / PRESENTATIONS:	
<i>Casework Presentation APOB Amplified Fragment Length Polymorphism</i> Southwest Association of Forensic Scientists Estes Park, Colorado / October 1992	
<i>Forensic Validation Studies on the APOB Amplified Fragment Length Polymorphism</i> American Academy of Forensic Science / Boston, MA February 1993, Dr. Moses Schanfield Presenter, Thomas A. Wahl Co-Author.	
<i>HLA DQA1 Testing of Non-Human DNA,</i> Northwest Association of Forensic Scientists Bend, Oregon / April 1993	
<i>Forensic Validation Studies on the APOB Amplified Fragment Length Polymorphism</i> Northwest Association of Forensic Scientists Bend, Oregon / April 1993	
<i>Qualitative and Quantitative Assessment of DNA Using Alpha Satellite DNA</i> Midwest Association of Forensic Scientists Madison, Wisconsin / October 1993	
<i>Species Specificity Studies using the Amplitype™ Polymarker PCR System</i> Fifth International Symposium on Human Identification Promega Corporation, Scottsdale, Arizona / October 1994	
<i>PCR on Trial</i> Joint Meeting of the Canadian Society of Forensic Science and the Northwest Association of Forensic Scientists Forensic Use of PCR Analysis Workshop Vancouver, B.C. / November 1994	
<i>To Chelex or Not to Chelex, That is the Question</i> American Academy of Forensic Sciences Seattle, Washington / February 1995	
<i>Implementation Studies on the Analysis of the Amplitype Polymarker PCR System</i> American Academy of Forensic Sciences Seattle, Washington / February 1995	

**PUBLICATIONS / PRESENTATIONS:**

*Interpretation of DQA1 and Polymarker Dot Blot Data In Mixed and Partially Degraded Specimens*  
California Association of Criminalists, DNA User's Group Seminar  
Walnut Creek, California / May 1995

*Presentation of DNA Evidence - A View from the Expert's Eyes*  
National College of District Attorneys Forensic Evidence Course  
San Francisco, CA / December 1995

*Demonstration: Cross-Examination of DNA Expert--Issue: Quality Control of Lab/Contamination*  
National College of District Attorneys Forensic Evidence Course  
San Francisco, California / December 1995  
Co-Presenter: George Clarke, Deputy District Attorney, Office of the District Attorney, County of San Diego

*Resource Session: Serological Evidence In Sexual Assault Cases (When DNA Evidence is Not Available)*  
National College of District Attorneys Forensic Evidence Course  
San Francisco, California / December 1995

*Resource Session: Direct Examination: Introduction of Serological Evidence to Prove Criminal Participation*  
National College of District Attorneys Forensic Evidence Course  
San Francisco, California / December 1995  
Co-Presenter: George Clarke, Deputy District Attorney, Office of the District Attorney, County of San Diego

Schanfield, M.S., Wahl, T.A., Latorra, David and Verret, J.H. (1993)  
*Amplified Fragment Length Polymorphisms (AFLPs) and DQA1 for Forensic Identification*, Fourth International Symposium on Human Identification, Promega Corporation, pp. 127-142

Latorra, David, Wahl, Thomas A., Humphreys, Kevin, Schanfield, Moses S. (1993) *Forensic Validation Studies on the APOB Amplified Fragment Length Polymorphism*, Fourth International Symposium on Human Identification, Promega Corporation, pp. 223-224

Charles S. Baker, MS, Moses S. Schanfield, PhD, Thomas A. Wahl, BS, Robin W. Cotton, PhD, Julie A. Cooper, MFS, and Cozette Wheeler, PhD, "Proving Death Without A Body-A Case Using Electrophoresis, DNA RFLP, Gm/Km Allotyping, DNA PCR and Histology", American Academy of Forensic Science, San Antonio, Texas, February 1994

Moses S. Schanfield, PhD, David Latorra, MS, Joey Verrett, MS and Thomas A. Wahl, BS, "Amplified Fragment Length Polymorphisms (AFLP) Inexpensive Environmentally Safe DNA Technology for Forensic Identification", American Academy of Forensic Science, San Antonio, Texas, February 1994

**OTHER QUALIFICATIONS:**

American Board of Criminalistics - Diplomate and Fellow (1994 - 1997) in specialty areas of Forensic Biology, Biochemistry, and Molecular Biology.

Certified Medical Technologist by the American Society of Clinical Pathologists (A.S.C.P.) (1977 - 1997)

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
FORENSIC LABORATORY  
STATEMENT OF QUALIFICATIONS**

Date: August 15, 1996

Name: Richard G. Good, Sr. P#: 806 Classification: Firearm and Toolmark Examiner

Current Discipline of Assignment: Firearms and Toolmark Section

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Blood Alcohol	
Toolmarks	X	Breath Alcohol	
Trace Evidence		Arson Analysis	
Toxicology		Firearms	X
Latent Prints	X	Crime Scene Investigations	X
Serology		Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	

EDUCATION			
Institution	Dates Attended	Major	Degree Completed
University of Nevada at Las Vegas	1968-1972	Zoology	B.S.

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
FBI advanced Latent Fingerprint School	Quantico, Va	1973
Smith & Wesson Academy	Springfield, Mass.	1974
FBI Survey of Glass School	Quantico, VA	1976
FBI Gunpowder and Primer Residue School	Quantico, VA	1979
ATF Bomb School	Henderson, NV	1977
FBI Footwear Comparison School	Quantico, VA	1987
FBI Spec. Techniques In Firearms Identification	Quantico, VA	1989
Computer Fundamentals	LVMPD	1990
Polilight Training	LVMPD	1991
Driving School	LVMPD	1992
ICAT Training	LVMPD	1992

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
Drugfire Training	RENO, NV	1995
Drugfire Training	LVMPD	1996
Drugfire Training (twice)	Orange Co., CA	1996
AFTE Seminars:		
	San Mateo, CA	1986
	Baltimore, MD	1987
	Itasca, IL	1988
	Virginia Beach, VA	1989
	Houston, TX	1991
	Miami, Beach, FL	1992
	Indianapolis, Ind.	1994
	San Diego, CA	1995
	Annapolis, MD	1997
Forensic Ballistics Workshop	Yuma, AZ	1996
Civilian Use of Force & Firearms Training	Las Vegas, NV	1997
Contemporary issues in Forensic Firearms Identification Workshop	UCLA	1997
COURTROOM EXPERIENCE		
Court	Discipline	Number of Times
United States Federal Court	Firearms Identification	
United States Federal Court	Fingerprint Identification	
District Court, Clark County	Firearms Identification	
District Court, Clark County	Fingerprint Identification	
Justice Court, Clark County	Firearms Identification	
Justice Court, Clark County	Fingerprint Identification	
Grand Jury, Clark County	Firearms Identification	
Coroner's Inquests, Las Vegas	Firearms Identification	
District Court, Lincoln County	Firearms Identification	
Justice Court, Lincoln County	Firearms Identification	

COURTROOM EXPERIENCE		
Court	Discipline	Number of Times
District Court, Nye County	Firearms Identification	
Justice Court, Nye County	Firearms Identification	
Circuit Court, Washington County, Utah	Firearms Identification	
District Court, Clark County	Shoeprint/Tire Tread Identification	
District Court, Clark County	Physical Comparisons - glass, tape, cloth, etc.	
		Firearms Identification > 394
		Other appearances > 100

EMPLOYMENT HISTORY		
Employer	Job Title	Date
U.S. Navy 1965 - 68	8404 MOS Combat Corpsman	1965-68
Clark County Sheriff's Office	Identification Specialist	1972-73
Las Vegas Metropolitan Police Department	Identification Specialist	1973-76
Las Vegas Metropolitan Police Department	Firearms & Toolmark Examiner	1976-

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)
International Association for Identification	1978-
Association of Firearms and Toolmark Examiners	1981-
International Wound Ballistics Association	1997-

PUBLICATIONS / PRESENTATIONS:
Homicide by Use of a Pellet gun - Paper, AFTE January 1985



**PUBLICATIONS / PRESENTATIONS:**

Toolmarks in a Gambling Case - Paper, AFTE 1987

**OTHER QUALIFICATIONS:**

Certified Latent Fingerprint Examiner I.A.I., since 1978

CURRICULUM VITAE  
ROBERT VAN ZANDT BUCKLIN, M.D., J.D.

PERSONAL INFORMATION

Address	3255 Lindell Road Las Vegas, Nevada 89102-6926 (702) 248-6013 Fax: (702) 247-9084
Place of Birth	Chicago, Illinois
Citizenship	U.S.A.
Marital Status	Married
Spouse's First Name	Patricia
Number of Children	Five
Social Security No.	322-16-3612

EDUCATION

High School	St. George High School, Evanston, Illinois 1931-1934
College and University	St. Mary's College, Winona, Minnesota, 1934 Loyola University, Chicago, Illinois, 1935-1938, B.S.M., 1938
Medical School	Loyola University School of Medicine Chicago, Illinois, 1937-1940, M.D., 1940
Law School	South Texas College of Law, Houston, Texas 1965-1969, J.D., 1969
Internship	St. Joseph's Hospital, Tacoma, Washington July 1940-June 1941, Rotating
Residency	Tacoma General Hospital, Tacoma, Washington July 1941-September 1942, Pathology

# HONORS AND AWARDS

Violini Medical Society, 1938  
 President of Saginaw County (Michigan) Medical Society, 1960  
 Chairman of Medical Examiner's Committee, Texas Society of  
 Pathologists, 1972  
 Council on Forensic Pathology of American Society of Clinical  
 Pathologists, 1972-1977  
 Committee on Medicine and Law of American Bar Association,  
 1973-1980  
 Sigma XI, 1970-1985  
 Member, Executive Committee, Holy Shroud Guild, 1967-Present  
 Who's Who in the Midwest, 1950  
 Who's Who in Texas, 1966  
 Who's Who in the West, 1987  
 Aaron Brown Memorial Lecturer, Phi Beta Epsilon Medical Fraternity,  
 University of California at Irvine, April 9, 1976  
 Task Force on Medical-Legal Education, American College of Legal  
 Medicine, 1976-1981  
 Forensic Pathology Test Committee, Professional Self-Assessment  
 Program, American Society of Clinical Pathologists, 1978-Present  
 Shroud of Turin Research Project (STURP), 1978-Present  
 Association of Scientists and Scholars International for Shroud of Turin,  
 (ASSIST) 1984-Present  
 Guadalupe Research Project, 1981-1985  
 Thompson Memorial Lecturer, Mississippi State Medical Association,  
 Biloxi, May 2, 1982  
 Technical Consultant, Universal Studios (Quincy), Hollywood, California,  
 1982-1983  
 American Medical Association Physicians Recognition Certificate,  
 1989-1992  
 American Society of Clinical Pathologists Commissioners Medal, 1990

Licensure – Medical	Washington,	1941 (Certificate 252 09) Inactive
	Michigan,	1946 (Certificate 17613 ) Inactive
	Texas,	1964 (Certificate D-1396)
	California,	1974 (Certificate C-35664)
	Nevada,	1975 (Certificate 2934)
Licensure – Law	Texas	(Certificate 03307000)

Board Certification            American Board of Pathology:  
   Pathologic Anatomy, 1947  
   Clinical Pathology, 1948  
   Forensic Pathology, 1959  
  
   American Board of Legal Medicine, 1983

Admitted to Practice of Law by  
   Supreme Court of the United States  
   United States Court of Appeals, 5<sup>th</sup> District  
   United States District Court, Southern District of Texas  
   Supreme Court of Texas

PROFESSIONAL BACKGROUND

Academic Appointments

Clinical Assistant Professor of Pathology, Baylor College of Medicine,  
Houston, Texas, 1965-1968  
Professor of Pathology, University of Texas Medical Branch,  
Galveston, Texas, 1969-1972  
Adjunct Professor of Law, South Texas College of Law,  
Houston, Texas, 1971-1973  
Faculty Advisor, Institute of Clinical Toxicology, Houston, Texas,  
1973-1977  
Clinical Professor of Pathology, University of Southern California,  
Los Angeles, California, 1975-1978 and 1980-1984  
Clinical Associate Professor of Pathology, Baylor College of Medicine,  
Houston, Texas, 1978-1983  
Clinical Professor of Pathology, University of Texas Medical Branch,  
Galveston, Texas, 1979-1989  
Lecturer, Forensic Medicine, University of Garyounis, Benghazi, Libya,  
1979-1983

Nonacademic Appointments

Workshop Director, American Society of Clinical Pathologists, 1972-1977  
Lecturer, Seminars and Symposia, Peru, January 1977  
Lecturer, Seminars and Symposia, Greece, August 1977  
Lecturer, California Department of Justice, 1984-1988

Professional Positions

Pathologist, Moore Clinical Laboratory, Chicago, Illinois, 1946  
Pathologist, Central Laboratory, Saginaw, Michigan, 1946-1947  
Coroner's Pathologist, Saginaw, Michigan, 1946-1963  
Pathologist, Veterans Administration Hospital, Saginaw, Michigan,  
1956-1963  
Pathologist and Director of Laboratories, Saginaw General Hospital,  
Saginaw, Michigan, 1947-1961  
Pathologist and Director of Laboratories, St. Mary's Hospital,  
Saginaw, Michigan, 1961-1963  
Associate Medical Examiner, Harris County, Houston, Texas 1964-1968  
Pathologist, St. Lukes and Methodist Hospitals, Houston, Texas,  
1968-1969  
Chief Medical Examiner, Galveston County, Texas, 1969-1971  
Pathologist and Director, Pathology Laboratories of Houston,  
Houston, Texas, 1972-1973  
Director of Medical-Legal Affairs, Health Communications, Inc.,  
Houston, Texas and San Diego, California, 1973-1974  
Deputy Medical Examiner, Los Angeles County Coroner-Medical  
Examiner, California, 1974-1977  
Vice President and Member of Board of Directors, American Institute of  
Forensic Science, Los Angeles, California, 1975-Present  
Chief Medical Examiner, Travis County, Austin, Texas, 1977-1978  
Deputy Chief Medical Examiner, Harris County, Houston, Texas,  
1978-1980  
Deputy Medical Examiner, Los Angeles County Coroner-Medical  
Examiner, California, 1980-1984  
Acting Chief, Forensic Medicine Division, Los Angeles County  
Coroner-Medical Examiner, May 1982-July 1983  
Forensic Pathologist, San Diego County Coroner, California,  
November 1983-April 1984  
Supervising Pathologist, San Diego County Coroner, California,  
April 1984-April 1987  
Deputy Medical Examiner, San Diego County Coroner, California,  
April 1987-September 1987  
Deputy Medical Examiner, Clark County Coroner-Medical Examiner,  
Las Vegas, Nevada, September 1995-Present  
Private Practice of Forensic Pathology and Medical-Legal Consultations,  
1969-Present

Military Service

50<sup>th</sup> General Hospital and Station Hospital, Camp Carson, Colorado  
September 1942-August 1944  
177<sup>th</sup> General Hospital, Camp Barkley, Texas, England and France,  
August 1944-July 1945  
4<sup>th</sup> Medical Laboratory, France and Germany, July 1945-February 1946  
Rank – Captain

PROFESSIONAL ORGANIZATIONS

Fellow

American College of Physicians  
American Society of Clinical Pathologists  
American Academy of Forensic Sciences  
American College of Legal Medicine

Member

Texas Bar  
National Association of Medical Examiners

RESEARCH ACTIVITIES

Dating of Traumatic Lesions, \$1,000 grant from University of Texas,  
Medical Branch, 1970  
Head and Neck Injuries, Department of Transportation and Los Angeles  
County, 1970  
Shroud of Turin Research, Medical Aspects of Crucifixion of Christ,  
Turin, Italy, and U.S.A., 1950-Present  
Guadalupe Image Research, Mexico, 1981-1985

## **BIBLIOGRAPHY**

### **Journal Articles**

- A Simple Paraffin Embedding Apparatus,  
Am. J. Clin. Path., 14: 5, 58-59, 1944
- Screening for Carcinoma of the Cervix, (N.D. Henderson, V.J. Volk),  
J. Mich. State Med. Soc., 56: 4, 461-64, 1957
- The Medical Aspects of the Crucifixion of Our Lord Jesus Christ,  
Linacre Quarterly, February 1958
- Rupture of Umbilical Arteries, (W.C. Love),  
Ob. and Gyn., 11: 4, 459-62, 1958
- Well Water Nitrates and Methemoglobinemia, (M.K. Myint),  
Burma Med. J., 4: 132-33, 1958
- Unilateral Twin Tubal Pregnancy, (M.K. Myint),  
Am. J. Ob. and Gyn., 77: 6, 1307-8, 1959
- Fatal Methemoglobinemia Due to Well Water Nitrates, (M.K. Myint),  
Ann. Int. Med., 52: 3, 703-5, 1960
- The Medical Aspects of the Crucifixion of Christ,  
Acta Med., At Soc., 3: 69-75, 1963
- Adenoma of Anal Gland,  
J. Mich. State Med. Soc., 62: 8, 747-48, 1963
- Maxillary Extension of Retinoblastoma, (H.L. Hubinger),  
J. Mich. State Med., Soc., 62: 8, 767-68, 1963
- Legal and Medical Aspects of the Trial and Death of Christ,  
Med., Sci. and the Law, 10: 1, 14-26, 1970
- Heart Disease and the Law,  
Southern Med. J., 65: 4, 496-98, 1972

Curriculum Vitae

Robert van Zandt Bucklin, M.D., J.D.

Page 7

Heart Disease and the Law,  
Med. Trials Tech. Quart., 17: 3, 294-301, 1971

Drowning,  
Med. Trials Tech. Quart., 18: 1, 45-49, 1971

The Identification of Human Remains  
Med. Trials Tech. Quart., 18: 4, 438-444, 1972

Liability Trouble Spots and How to Avoid Them,  
Med. Lab., Observers, May-June, 67-76, 1973

Informed Consent – A New Approach to the Problem,  
Proceedings of the 3<sup>rd</sup> World Congress on Medical law, 1973

The Medical Technologist and the Law,  
J. Amer. Med. Technol., 36: 81-87, 1974

Informed Consent – A Problem for the Pathologist?,  
Laboratory Med., 5: 28-30, 1974

Forensic Pathology for Attorneys,  
California Western Law Review, 12: 2, 197-222, 1975

A Pathologist Looks at the Shroud of Turin,  
La Sindone E La Scienze, 115-120, Edizione Paoline, Turin,  
Italy, 1978

Medical Aspects of the Crucifixion,  
Sindon (Turin, Italy), 1979

Postmortem Changes and the Shroud of Turin,  
Shroud Spectrum, Number 14, 1985

The Forensic Pathologist as an Expert Witness,  
Trauma, June 1989, 13-18



Book Reviews

Drugs and the Public, Norman Zimberg and John Robertson,  
S. Texas Law J., 1972

Handbook of Forensic Medicine, C.K. Parikh, Bombay, India,  
Legal Aspects of Medical Practice, December 1977

Principles of Forensic Ballistics, C.K. Parikh, Bombay, India,  
Legal Aspects of Medical Practice, December 1977

Book Chapters

Drowning: A Review of the Physiological, Experimental, and Pathological  
Findings, Legal Medicine Annual, 1972

The Law of Texas Medical Practice: Jim M. Perdue,  
Houston Law Review, 11: 3, 210-218, 1974

Informed Consent: Past, Present and Future,  
Legal Medicine Annual, 1975

Forensic Pathology  
Scientific and Expert Evidence,  
Practicing Law Institute, Second Edition, 1981

Afterword  
Verdict on the Shroud, Servant Books, 1981

The Shroud of Turin: Viewpoint of a Pathologist,  
Legal Medicine, 1982, W. B. Saunders Co.  
Reprinted in Shroud Spectrum Number 5, 1982, and  
Journal of Mississippi State Medical Association, May 1983

Films, Videos, and Television

"Silent Witness", Screenpro Films, London, 1977

"The Mystery of the Sacred Shroud", Andros Film Productions, 1978

"Shroud of Mystery", 700 Club (TV) 1979

"Behold a Mystery: Re-Examination of the Shroud of Turin",  
Ariel Productions, 1991

"Unsolved Mysteries", National Broadcasting Company, 1991

Books

Post Mortem Examination - A Docubook  
Health Communications, Inc., 1974, St. Paul, Minnesota

Miscellany

Clinico-Pathological Conference  
Burma Med. J., 7: 3, 244-247, 1959

Coroner's Case Report  
Medical Times 90: 3, 46A, 1962

Informed Consent - Why All the Concern:  
MAC Argonaut Insurance Company, July 1974  
Reprinted in San Diego Physician, December 1974

Check Sample Program of American Society of Clinical Pathologists  
FP-64 (1974) Alcohol Production in the Dead Body  
FP-69 (1973) Identification of Blood Stains  
FP-81 (1975) A Slight Case of Indiscretion  
FP-90 (1977) Don't Needle Me

Publications in Preparation

Forensic Studies on the Shroud of Turin

# LAS VEGAS CRIMINALISTICS BUREAU STATEMENT OF QUALIFICATION

Name: SHAWN FLETCHER

P# 5221

Date: October 24, 1997

CURRENT CLASSIFICATION		
	CLASSIFICATION	MINIMUM QUALIFICATIONS
X	CRIME SCENE ANALYST I	AA DEGREE WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD, INCLUDING SPECIALIZED TRAINING IN CRIME SCENE INVESTIGATION
	CRIME SCENE ANALYST II	18 MONTHS - 2 YEARS CONTINUOUS SERVICE WITH LVMPD AS A CRIME SCENE ANALYST I
	SENIOR CRIME SCENE ANALYST	2 YEARS AS A CRIME SCENE ANALYST II TO QUALIFY FOR THE PROMOTIONAL TEST FOR SENIOR CRIME SCENE ANALYST
	CRIME SCENE ANALYST SUPERVISOR	4 YEARS CONTINUOUS SERVICE WITH LVMPD AND COMPLETION OF PROBATION AS A SENIOR CRIME SCENE ANALYST. MUST HAVE THE EQUIVALENT OF A BACHELOR'S DEGREE FROM AN ACCREDITED COLLEGE OR UNIVERSITY WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD.

FORMAL EDUCATION		
Institution	Major	Degree/Date
CENTRAL MICHIGAN UNIVERSITY	HEATH/FITNESS/NUTRITION	BAA 8/90
COMMUNITY COLLEGE OF SO. NEVADA	CRIMINAL JUSTICE/LAW ENFORCEMENT	AAS 5/95

TESTIMONY		
Yes	No	
X		Eighth Judicial District, Clark County Nevada
X		Justice Courts of Las Vegas Township

EMPLOYMENT HISTORY		
Employer	Title	Date
LAS VEGAS METROPOLITAN POLICE DEPARTMENT	CRIME SCENE ANALYST	7/96-present
LAS VEGAS METROPOLITAN POLICE DEPARTMENT	OFFICE ASSISTANT 11	11/95-7/96

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)
INTERNATIONAL ASSOCIATION FOR IDENTIFICATION	12/96

**VEGAS CRIMINALISTICS BUREAU**  
**STATEMENT OF QUALIFICATION**

Name: SHEREE NORMAN

P# 3110

Date: October 24, 1997

CURRENT CLASSIFICATION		
	CLASSIFICATION	MINIMUM QUALIFICATIONS
	CRIME SCENE ANALYST I	AA DEGREE WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD, INCLUDING SPECIALIZED TRAINING IN CRIME SCENE INVESTIGATION
	CRIME SCENE ANALYST II	18 MONTHS - 2 YEARS CONTINUOUS SERVICE WITH LVMPD AS A CRIME SCENE ANALYST I
X	SENIOR CRIME SCENE ANALYST	2 YEARS AS A CRIME SCENE ANALYST II TO QUALIFY FOR THE PROMOTIONAL TEST FOR SENIOR CRIME SCENE ANALYST
	CRIME SCENE ANALYST SUPERVISOR	4 YEARS CONTINUOUS SERVICE WITH LVMPD AND COMPLETION OF PROBATION AS A SENIOR CRIME SCENE ANALYST. MUST HAVE THE EQUIVALENT OF A BACHELOR'S DEGREE FROM AN ACCREDITED COLLEGE OR UNIVERSITY WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD.

FORMAL EDUCATION		
Institution	Major	Degree/Date

TESTIMONY		
Yes	No	
x		Eighth Judicial District, Clark County Nevada
x		Justice Courts of Las Vegas Township

EMPLOYMENT HISTORY		
Employer	Title	Date
LAS VEGAS METROPOLITAN POLICE DEPARTMENT	CRIME SCENE ANALYST	12/85 present

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)
INTERNATIONAL ASSOCIATION FOR IDENTIFICATION	1990 present
IAI CERTIFICATION CRIME SCENE ANALYST	1990 present
IAI CALIFORNIA	1986 present

# LAS VEGAS CRIMINALISTICS BUREAU STATEMENT OF QUALIFICATION

NAME: DAVID HORN

P#1928

DATE: OCTOBER 24, 1997

CURRENT CLASSIFICATION		
	CLASSIFICATION	MINIMUM QUALIFICATIONS
	CRIME SCENE ANALYST I	AA DEGREE WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD, INCLUDING SPECIALIZED TRAINING IN CRIME SCENE INVESTIGATION
	CRIME SCENE ANALYST II	18 MONTHS - 2 YEARS CONTINUOUS SERVICE WITH LVMPD AS A CRIME SCENE ANALYST I
X	SENIOR CRIME SCENE ANALYST	2 YEARS AS A CRIME SCENE ANALYST II TO QUALIFY FOR THE PROMOTIONAL TEST FOR SENIOR CRIME SCENE ANALYST
	CRIME SCENE ANALYST SUPERVISOR	4 YEARS CONTINUOUS SERVICE WITH LVMPD AND COMPLETION OF PROBATION AS A SENIOR CRIME SCENE ANALYST. MUST HAVE THE EQUIVALENT OF A BACHELOR'S DEGREE FROM AN ACCREDITED COLLEGE OR UNIVERSITY WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD.

FORMAL EDUCATION		
Institution	Major	Degree/Date
ANTELOPE VALLEY COLLEGE	LIBERAL ARTS	AA 6/70
UNIVERSITY OF CALIFORNIA-RIVERSIDE	POLITICAL SCIENCE	BA 12/71
NATIONAL UNIVERSITY	MBA	MBA 1/88

TESTIMONY		
Yes	No	
X		Eighth Judicial District, Clark County Nevada
X		Justice Courts of Las Vegas Township
X		US DISTRICT COURT
X		GOODSPRINGS TOWNSHIP

EMPLOYMENT HISTORY		
Employer	Title	Date
LAS VEGAS METROPOLITAN POLICE DEPARTMENT	CRIME SCENE ANALYST	9/79 present

# PROFESSIONAL AFFILIATIONS

Organization	Date(s)
NONE	

**U.S. GAS CRIMINALISTICS BUREAU  
STATEMENT OF QUALIFICATION**

NAME: BRADLEY GROVER

P# 4934

DATE: OCTOBER 24, 1997

CURRENT CLASSIFICATION		
	CLASSIFICATION	MINIMUM QUALIFICATIONS
	CRIME SCENE ANALYST I	AA DEGREE WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD, INCLUDING SPECIALIZED TRAINING IN CRIME SCENE INVESTIGATION
X	CRIME SCENE ANALYST II	18 MONTHS - 2 YEARS CONTINUOUS SERVICE WITH LVMPD AS A CRIME SCENE ANALYST I
	SENIOR CRIME SCENE ANALYST	2 YEARS AS A CRIME SCENE ANALYST II TO QUALIFY FOR THE PROMOTIONAL TEST FOR SENIOR CRIME SCENE ANALYST
	CRIME SCENE ANALYST SUPERVISOR	4 YEARS CONTINUOUS SERVICE WITH LVMPD AND COMPLETION OF PROBATION AS A SENIOR CRIME SCENE ANALYST. MUST HAVE THE EQUIVALENT OF A BACHELOR'S DEGREE FROM AN ACCREDITED COLLEGE OR UNIVERSITY WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD.

FORMAL EDUCATION		
Institution	Major	Degree/Date
UNIVERSITY OF NEVADA LAS VEGAS	BIOLOGY	BS 1987

TESTIMONY		
Yes	No	
X		Eighth Judicial District, Clark County Nevada
	X	Justice Courts of Las Vegas Township

EMPLOYMENT HISTORY		
Employer	Title	Date
LAS VEGAS METROPOLITAN POLICE DEPARTMENT	CRIME SCENE ANALYST	4/95-present
ASSOCIATED PATHOLOGISTS LABORATORIES	CERTIFYING SCIENTIST/MASS SPEC OPERATOR	1/88-4/95

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)
INTERNATIONAL ASSOCIATION OF IDENTIFICATION	PENDING

# LAS VEGAS CRIMINALISTICS BUREAU STATEMENT OF QUALIFICATION

NAME: MICHAEL PERKINS

P#4242

DATE: OCTOBER 24, 1997

CURRENT CLASSIFICATION		
	CLASSIFICATION	MINIMUM QUALIFICATIONS
	CRIME SCENE ANALYST I	AA DEGREE WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD, INCLUDING SPECIALIZED TRAINING IN CRIME SCENE INVESTIGATION
	CRIME SCENE ANALYST II	18 MONTHS - 2 YEARS CONTINUOUS SERVICE WITH LVMPD AS A CRIME SCENE ANALYST I
	SENIOR CRIME SCENE ANALYST	2 YEARS AS A CRIME SCENE ANALYST II TO QUALIFY FOR THE PROMOTIONAL TEST FOR SENIOR CRIME SCENE ANALYST
X	CRIME SCENE ANALYST SUPERVISOR	4 YEARS CONTINUOUS SERVICE WITH LVMPD AND COMPLETION OF PROBATION AS A SENIOR CRIME SCENE ANALYST. MUST HAVE THE EQUIVALENT OF A BACHELOR'S DEGREE FROM AN ACCREDITED COLLEGE OR UNIVERSITY WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD.

FORMAL EDUCATION		
Institution	Major	Degree/ Date
PIMA COMMUNITY COLLEGE	Criminal Justice	90 CR.HRS. 1991
UNIVERSITY OF ARIZONA	FORENSIC PATHOLOGY	3 CR.HRS. 1991

TESTIMONY		
Yes	No	
X		Eighth Judicial District, Clark County Nevada
X		Justice Courts of Las Vegas Township

EMPLOYMENT HISTORY		
Employer	Title	Date
LAS VEGAS METROPOLITAN POLICE DEPARTMENT	CRIME SCENE ANALYST	9/91 present
TUCSON POLICE DEPARTMENT	ID TECHNICIAN	7/88-9/91

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)
INTERNATIONAL ASSOCIATION FOR IDENTIFICATION	7/88-present



PROFESSIONAL AFFILIATIONS	
Organization	Date(s)

# STATE OF NEVADA GAS CRIMINALISTICS BUREAU STATEMENT OF QUALIFICATION

Name: DEBORAH BROTHERRSON

P#4931

Date: October 24, 1997

CURRENT CLASSIFICATION		
	CLASSIFICATION	MINIMUM QUALIFICATIONS
	CRIME SCENE ANALYST I	AA DEGREE WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD, INCLUDING SPECIALIZED TRAINING IN CRIME SCENE INVESTIGATION
X	CRIME SCENE ANALYST II	18 MONTHS - 2 YEARS CONTINUOUS SERVICE WITH LVMPD AS A CRIME SCENE ANALYST I
	SENIOR CRIME SCENE ANALYST	2 YEARS AS A CRIME SCENE ANALYST II TO QUALIFY FOR THE PROMOTIONAL TEST FOR SENIOR CRIME SCENE ANALYST
	CRIME SCENE ANALYST SUPERVISOR	4 YEARS CONTINUOUS SERVICE WITH LVMPD AND COMPLETION OF PROBATION AS A SENIOR CRIME SCENE ANALYST. MUST HAVE THE EQUIVALENT OF A BACHELOR'S DEGREE FROM AN ACCREDITED COLLEGE OR UNIVERSITY WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD.

FORMAL EDUCATION		
Institution	Major	Degree/Date
COMMUNITY COLLEGE OF SO. NEVADA	CRIMINAL JUSTICE	AS 5/94
CCSN	GENERAL STUDIES	AA 5/94

Yes	No	
X		Eighth Judicial District, Clark County Nevada
X		Justice Courts of Las Vegas Township

EMPLOYMENT HISTORY		
Employer	Title	Date
LAS VEGAS METROPOLITAN POLICE DEPARTMENT	CRIME SCENE ANALYST	3/95-present
CLARK COUNTY CORONER	MEDICAL EXAMINER/CORONER INV.	8/94-3/95
EG&G ENERGY MEASUREMENTS	PHOTOGRAPHIC	8/81-8/93

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)
INTERNATIONAL ASSOCIATION FOR IDENTIFICATION	PENDING

# LAS VEGAS CRIMINALISTICS BUREAU STATEMENT OF QUALIFICATION

Name: PETER SCHELLBERG

P# 5413

Date: October 24, 1997

CURRENT CLASSIFICATION		
	CLASSIFICATION	MINIMUM QUALIFICATIONS
X	CRIME SCENE ANALYST I	AA DEGREE WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD, INCLUDING SPECIALIZED TRAINING IN CRIME SCENE INVESTIGATION
	CRIME SCENE ANALYST II	18 MONTHS - 2 YEARS CONTINUOUS SERVICE WITH LVMPD AS A CRIME SCENE ANALYST I
	SENIOR CRIME SCENE ANALYST	2 YEARS AS A CRIME SCENE ANALYST II TO QUALIFY FOR THE PROMOTIONAL TEST FOR SENIOR CRIME SCENE ANALYST
	CRIME SCENE ANALYST SUPERVISOR	4 YEARS CONTINUOUS SERVICE WITH LVMPD AND COMPLETION OF PROBATION AS A SENIOR CRIME SCENE ANALYST. MUST HAVE THE EQUIVALENT OF A BACHELOR'S DEGREE FROM AN ACCREDITED COLLEGE OR UNIVERSITY WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD.

FORMAL EDUCATION		
Institution	Major	Degree/Date
SADDLEBACK COMMUNITY COLLEGE	CRIMINAL JUSTICE	AA 5/84

TESTIMONY		
Yes	No	
X		Eighth Judicial District, Clark County Nevada
X		Justice Courts of Las Vegas Township

EMPLOYMENT HISTORY		
Employer	Title	Date
LAS VEGAS METROPOLITAN POLICE DEPARTMENT	CRIME SCENE ANALYST	1/97present
CLARK COUNTY AMINAL CONTROL	AMINAL CONTROL OFFICER 1	12/89-1/97
ORANGE COUNTY SHERIFF-CORONER DEPARTMENT	SPECIAL OFFICER 1	10/81-8/89

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)

# STATE OF NEVADA DEPARTMENT OF CORRECTIONS LABORATORY STATEMENT OF QUALIFICATION

Name: GARY REED

P# 3731

Date: October 24, 1997

CURRENT CLASSIFICATION		
	CLASSIFICATION	MINIMUM QUALIFICATIONS
	CRIME SCENE ANALYST I	AA DEGREE WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD, INCLUDING SPECIALIZED TRAINING IN CRIME SCENE INVESTIGATION
	CRIME SCENE ANALYST II	18 MONTHS - 2 YEARS CONTINUOUS SERVICE WITH LVMPD AS A CRIME SCENE ANALYST I
	SENIOR CRIME SCENE ANALYST	2 YEARS AS A CRIME SCENE ANALYST II TO QUALIFY FOR THE PROMOTIONAL TEST FOR SENIOR CRIME SCENE ANALYST
X	CRIME SCENE ANALYST SUPERVISOR	4 YEARS CONTINUOUS SERVICE WITH LVMPD AND COMPLETION OF PROBATION AS A SENIOR CRIME SCENE ANALYST. MUST HAVE THE EQUIVALENT OF A BACHELOR'S DEGREE FROM AN ACCREDITED COLLEGE OR UNIVERSITY WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD.

FORMAL EDUCATION		
Institution	Major	Degree/Date
WEBER STATE COLLEGE	CRIMINAL JUSTICE/LAW ENFORCEMENT	BS/86

TESTIMONY		
Yes	No	
X		Eighth Judicial District, Clark County Nevada
X		Justice Courts of Las Vegas Township

EMPLOYMENT HISTORY		
Employer	Title	Date
LAS VEGAS METROPOLITAN POLICE DEPARTMENT	CRIME SCENE ANALYST	5/89 present
UTAH COUNTY SHERIFF'S DEPARTMENT	DEPUTY/DETECTIVE	10/83-4/89
FEDERAL BUREAU OF INVESTIGATION	FINGERPRINT EXAMINER	8/77-4/78

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)
CALIFORNIA STATE DIVISION OF IAI	1983
INTERNATIONAL ASSOCIATION FOR IDENTIFICATION	1995

FILED

MAY 19 2 36 PM '00

*Shirley L. Thompson*  
CLERK

1 SAA  
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 -v.s.-

11 DONTÉ JOHNSON,  
12 #1586283

13 Defendant.

Case No. C153154  
Dept No. V  
Docket H

14  
15 STIPULATION AND ORDER

16  
17 IT IS HEREBY STIPULATED AND AGREED by and between Defendant DONTÉ  
18 JOHNSON, represented by DAYVID FIGLER, Deputy Special Public Defender, and JOSEPH  
19 SCISCENTO, Deputy Special Public Defender, and the Plaintiff being represented by  
20 STEWART L. BELL, Clark County District Attorney, through GARY L. GUYMON, Chief  
21 Deputy District Attorney, as follows: that the Exhibits from the State of Nevada vs. Sikia Smith  
22 trial, Case No. C153624, and the State of Nevada vs. Terrell Young trial, Case No. C153461,

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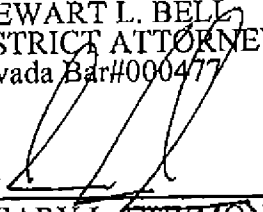
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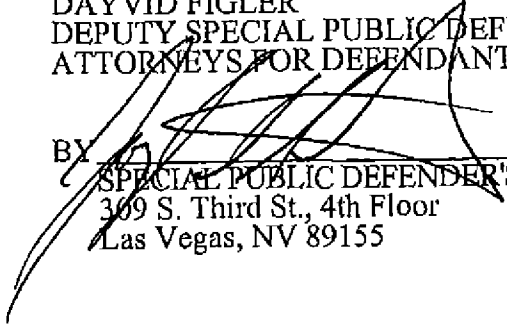
1 be transferred/released to the above-named Defendant's trial.

2 DATED this 10 day of May, 2000. DATED this 12 day of May, 2000.

3 STEWART L. BELL  
4 DISTRICT ATTORNEY  
Nevada Bar #000477

JOSEPH SCISCENTO  
DAYVID FIGLER  
DEPUTY SPECIAL PUBLIC DEFENDERS  
ATTORNEYS FOR DEFENDANT

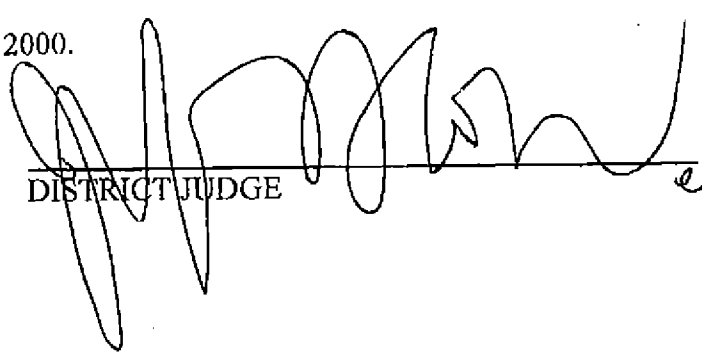
5  
6 BY   
7 GARY L. GUYMON  
Chief Deputy District Attorney  
Nevada Bar #003726

BY   
SPECIAL PUBLIC DEFENDER'S OFFICE  
309 S. Third St., 4th Floor  
Las Vegas, NV 89155

ORDER

IT IS HEREBY ORDERED that the Exhibits from the State of Nevada v. Sikia Smith trial, Case No. C153624, and the State of Nevada v. Terrell Young trial, Case No. C153461, be transferred/released to the above-named Defendant's trial.

DATED this 18 day of May, 2000.

  
DISTRICT JUDGE

pm

ORIGINAL

FILED

MAY 19 5 24 PM '00

*Shirley S. King*  
CLERK

258

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON, aka  
John Lee White, #1586283

Defendant.

Case No. C153154  
Dept. No. V  
Docket H

ORDER FOR PRODUCTION OF INMATE  
MELVIN ROYAL, BAC #64923

DATE OF HEARING: 06/05/00  
TIME OF HEARING: 12:00 P.M.

TO: SHERMAN HATCHER, Warden of the Southern Desert Correctional Center;

TO: JERRY KELLER, Sheriff of Clark County, Nevada

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEWART L. BELL, District Attorney, through ROBERT J. DASKAS, Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that SHERMAN HATCHER, Warden of the Southern Desert Correctional Center shall be, and is, hereby directed to produce MELVIN ROYAL, Witness in Case No. C153154, on behalf of the State of Nevada in the prosecution of the above named Defendant, on a charge of BURGLARY WHILE IN POSSESSION OF FIREARM (FELONY); CONSPIRACY TO COMMIT ROBBERY AND/OR KIDNAPING AND/OR MURDER (FELONY); ROBBERY WITH USE OF A DEADLY WEAPON (FELONY); FIRST DEGREE

COUNTY CLERK

MAY 19 2000

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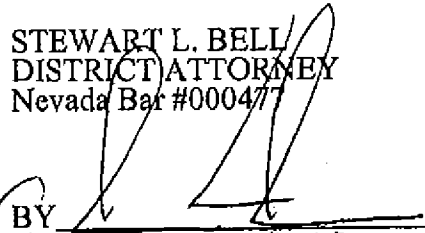
1 KIDNAPING WITH USE OF A DEADLY WEAPON (FELONY); and MURDER WITH USE  
2 OF A DEADLY WEAPON (OPEN MURDER) (FELONY) wherein THE STATE OF  
3 NEVADA is the Plaintiff, inasmuch as the said Witness is currently incarcerated in the Southern  
4 Desert Correctional Center located in Indian Springs, Nevada and presence will be required in  
5 Las Vegas, Nevada commencing on June 5, 2000, at the hour of 12:00 o'clock P.M. and  
6 continuing until completion of the prosecution's case against the said Defendant.

7 IT IS FURTHER ORDERED that JERRY KELLER, Sheriff of Clark County, Nevada,  
8 shall accept and retain custody of the said Witness in the Clark County Detention Center, Las  
9 Vegas, Nevada, pending completion of said matter in Clark County, or until the further Order  
10 of this Court; or in the alternative shall make all arrangements for the transportation of the said  
11 Witness to and from the Nevada State Prison facility which are necessary to insure the Witness's  
12 appearance in Clark County pending completion of said matter, or until further Order of this  
13 Court.

14 DATED this 8 day of May, 2000.

15  
16   
17 DISTRICT JUDGE

18 STEWART L. BELL  
19 DISTRICT ATTORNEY  
20 Nevada Bar #000477

21 BY   
22 ROBERT J. DASKAS  
23 Deputy District Attorney  
24 Nevada Bar #004963  
25  
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28

pm

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ORIGINAL

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DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*\*

*Shirley E. Ruggione*  
CLERK

STATE OF NEVADA, )  
)  
PLAINTIFF, )  
VS. )  
)  
DONTE JOHNSON, aka JOHN LEE )  
WHITE )  
)  
DEFENDANT. )

CASE NO. C153154

DEPT. V

Transcript of  
Proceedings

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

DEFENDANT'S MOTION FOR DISCOVERY OF PROSECUTION FILES,  
RECORDS, AND INFORMATION NECESSARY FOR A FAIR TRIAL

THURSDAY, MAY 18, 2000, 9:00 A.M.

APPEARANCES:

FOR THE STATE:

ROBERT DASKAS, ESQ.  
DEPUTY DISTRICT ATTORNEY

FOR DEFENDANT JOHNSON:

JOSEPH SISCENTO, ESQ.  
DEPUTY SPECIAL PUBLIC  
DEFENDER

CE05

COURT RECORDER: DEBRA VAN BLARICOM

RECEIVED  
MAY 30 2000  
COUNTY CLERK

1 LAS VEGAS, NEVADA, THURSDAY, MAY 18, 2000, 9:00 A.M.

2 THE COURT: And Johnson, did you say we have both sides on that?

3 MR. DASKAS: Yes, Your Honor.

4 THE COURT: Johnson, Donte, on page 23. There is Mr. Johnson.

5 MR. DASKAS: Good morning, Judge.

6 THE COURT: Good morning. Do I take it from no opposition that this  
7 has been worked out?

8 MR. DASKAS: It has, Judge. Mr. Sciscento has agreed to subpoena the  
9 records that he was requesting so the point is really moot at this point.

10 THE COURT: Okay, thanks.

11 Would you guys approach the bench, please?

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

13 THE COURT: All right, so as close to 10:30 as possible. If it gets  
14 closer to noon, I have to be somewhere on the other side of town. We're  
15 going to have to do it at 1:00.

16 MR. DASKAS: All right. Thanks, Judge.

17 THE COURT: Thanks.

18 (Proceedings concluded)

19 \* \* \* \*

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

23   
SHIRLEE PRAWALSKY, COURT RECORDER

ORIGINAL

FILED

MAY 31 2 40 PM '00

*Shirley A. King*  
CLERK

1 **ORDR**  
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

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

11 \*\*\*\*\*

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

18 **ORDER TO PRODUCE JUVENILE RECORDS**

19 Upon the oral argument of counsel JOSEPH S. SCISCENTO, Deputy Special Public  
20 Defender on behalf of the above named Defendant, it is hereby requested that this Court  
21 issue an order instructing the Clark County Family & Youth Services, Juvenile Court  
22 Records, Las Vegas, Nevada to provide to Judge Jeffrey Sobel, District Court Judge,  
23 Eighth Judicial District, Department V, for his in-camera review, all juvenile records and/or  
24 data for the following individuals:

25 JEFFREY CHARLES BIDDLE	SS No. 554-55-9081	DOB: 10/10/78
26 TRACEY ALBERT GORRINGE	SS No. 518-27-5536	DOB: 03/08/78
27 MATHEW MOWEN	SS No. 479-13-6045	DOB: 02/10/78
PETER CHRIS TALAMANTEZ	SS No. 546-91-9652	DOB: 11/21/80
ACE HART	SS No. 318-74-4711	DOB: 11/26/78
BRYAN JOHNSON	SS No. 530-27-7339	DOB: 07/31/79
28 TOD ARMSTRONG	SS No. 530-41-3256	DOB: 03/12/78

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA


C1531

1 and good cause appearing therefore,

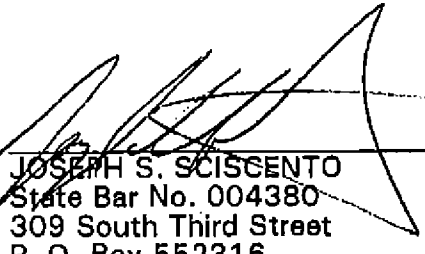
2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Clark County Family  
3 & Youth Services, Juvenile Court Records, Las Vegas, Nevada provide all juvenile records  
4 and/or data to Judge Jeffrey Sobel, District Court Judge, Eighth Judicial District,  
5 Department V, for his in-camera review, upon receipt of this Order for the following  
6 individuals:

7 JEFFREY CHARLES BIDDLE	SS No. 554-55-9081	DOB: 10/10/78
8 TRACEY ALBERT GORRINGE	SS No. 518-27-5536	DOB: 03/08/78
MATHEW MOWEN	SS No. 479-13-6045	DOB: 02/10/78
9 PETER CHRIS TALAMANTEZ	SS No. 546-91-9652	DOB: 11/21/80
ACE HART	SS No. 318-74-4711	DOB: 11/25/78
10 BRYAN JOHNSON	SS No. 530-27-7339	DOB: 07/31/79
TOD ARMSTRONG	SS No. 530-41-3256	DOB: 03/12/78

11 DATED this 18 day of May, 2000.

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DISTRICT COURT JUDGE

SUBMITTED BY:

  
20 JOSEPH S. SCISCENTO  
State Bar No. 004380  
21 309 South Third Street  
P. O. Box 552316  
22 Las Vegas, NV 89155  
(702) 455-6265  
23 Attorneys for Defendant

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

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TRAN

ORIGINAL

DISTRICT COURT  
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

PLAINTIFF,

VS.

DONTE JOHNSON, aka JOHN LEE  
WHITE,

DEFENDANT.

CASE NO. C153154  
DEPT. V

Transcript of  
Proceedings

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

DEFENDANT'S MOTION TO PRECLUDE EVIDENCE  
OF ALLEGED CO-CONSPIRATORS' STATEMENTS

DEFENDANT'S MOTION IN LIMINE REGARDING  
CO-DEFENDANTS' SENTENCES

DEFENDANT'S MOTION IN LIMINE TO PRECLUDE EVIDENCE  
OF OTHER GUNS, WEAPONS, AND AMMUNITION NOT USED IN THE CRIME

STATUS CHECK: MATERIAL WITNESS CHARLA SEVERS

TUESDAY, MAY 23, 2000, 9:00 A.M.

APPEARANCES:

FOR THE STATE:

GARY GUYMON, ESQ.  
DEPUTY DISTRICT ATTORNEY

FOR DEFENDANT JOHNSON:

JOSEPH SCISCENTO, ESQ.  
DEPUTY SPECIAL PUBLIC  
DEFENDER

FOR MATERIAL WITNESS SEVERS:

STEVEN WOLFSON, ESQ

COURT RECORDER: SHIRLEE PRAWALSKY

CE45

1 LAS VEGAS, NEVADA, TUESDAY, MAY 23, 2000, 9:00 A.M.

2 THE COURT: Who's next over there, Joe?

3 MR. SCISCENTO: Your Honor, on page 2, it's the Johnson matter.

4 THE COURT: Oh, there's Gary.

5 Okay, are we ready for trial on 6/5?

6 MR. SCISCENTO: Yes, Your Honor.

7 MR. GUYMON: Yes, Your Honor.

8 THE COURT: All right. We'll start at 9:30. I understand the jury is  
9 coming in tomorrow to fill out the questionnaires.

10 Status check material witness Charla Severs, is she in touch with  
11 you?

12 MR. GUYMON: Yes, Your Honor, she is checking in.

13 THE COURT: Okay. Now, we've got three motions.

14 MR. SCISCENTO: I think the first two are handled, Your Honor. I think  
15 we're going to stipulate, if I'm correct, the defendant's motion to preclude  
16 evidence of co-conspirators' statements, Mr. Guymon agreed that he won't  
17 bring any statements. But they may, at some point, come in through a  
18 witness which, at that point, I would object on hearsay.

19 THE COURT: Okay. So, you'll bring that to my attention before that  
20 happens and it will just be off calendar as resolved on that.

21 What's the resolution on the co-defendant's sentences?

22 MR. SCISCENTO: I think that's going to be excluded.

23 MR. GUYMON: That is correct. They filed a motion to exclude that,  
24 Judge. We'll honor that. It's not our intention to bring that in front of this  
25 jury.

26 THE COURT: Okay. As I had indicated before, I'm not sure which way  
27 it cuts anyway.

1 And then the motion in Ilmine to preclude evidence of other guns,  
2 weapons, and ammunition I noticed on my desk but have not yet had time  
3 to read it, you have just filed some supplement on that, right?

4 MR. GUYMON: Yes, you had asked us, Judge to -

5 THE COURT: Right. Now, do you want me to put this on calendar next  
6 week like Thursday and rule then, or is it good enough to rule right at the  
7 beginning of trial? It's up to you.

8 MR. SCISCENTO: Well, you know, we may, because I think the State  
9 is alleging that they have witnesses who are going to place the weapons in  
10 Mr. Johnson's hands -

11 THE COURT: Right.

12 MS. SCISCENTO: -which would then change the focus of the motions.  
13 So, we may need an evidentiary hearing.

14 THE COURT: Is that discussed in your supplement?

15 MR. GUYMON: No, it's not, Your Honor. And, actually, I would ask you  
16 to put it on calendar, say, on Thursday -

17 THE COURT: Okay. June 1<sup>st</sup>, nine o'clock for a decision on the motion  
18 in Ilmine to preclude evidence of other guns, weapons, and ammunition.

19 MR. SCISCENTO: Well, then if could have an understanding so that I  
20 can prepare for the motions, is the State tells me that, in fact, now they don't  
21 have any evidence that says those are the guns that we placed in the hands  
22 of Mr. Johnson?

23 THE COURT: I doubt that's what they're going to say, but go ahead.

24 MR. GUYMON: Yeah, Judge, actually that's - perhaps I don't understand  
25 the question. But, if the question is: are witnesses going to say that this is  
26 the deadly weapon, the answer is no.

27 MR. SCISCENTO: The other part, then, is are we going to say those  
28



1 were in possession of him during the burglary, robbery, or in these  
2 commissions of the crime?

3 MR. GUYMON: Judge, the evidence will bear out that guns that are  
4 photographed there at the home, at Everman, were, in fact, guns that were  
5 in that bag on the night in question, that those guns were at that house days  
6 and weeks earlier, that they are at the house on the very day of the  
7 homicide, that they were in the bag at the time that the fellows left the house  
8 with that bag.

9 MR. SCISCENTO: Then, Your Honor, I would ask for maybe closer to  
10 trial we have an evidentiary hearing so that witnesses can be here, we can  
11 accommodate the witnesses--

12 THE COURT: Who, besides Charla?

13 MR. GUYMON: Well, Ace Hart has previously testified that. Let's see,  
14 Brian Johnson has testified to that in front of a grand jury. Todd Armstrong  
15 has testified to that in front of a grand jury. That would probably be the  
16 totality of it.

17 THE COURT: Now, those aren't evidence of other bad acts where you  
18 need a Petrochelli hearing. What would be the purpose of the evidentiary  
19 hearing, to see if there's any basic reliability to even get to the jury on that?  
20 Because if they have a witness who says that's the gun, then it, to me, is a  
21 matter of weight and it goes to the jury. Do you have a different feeling  
22 about that?

23 MR. SCISCENTO: It's twofold. One is it's somewhat of a prior bad act  
24 so we've got to see if possession of those--

25 THE COURT: If their witnesses claim those are the guns that left the  
26 house at Everman to go to the other house that night, then it's not evidence  
27 of bad acts, unrelated bad acts, it's evidence of this crime.

1 MR. SCISCENTO: I think we've already seen the deposition of Charla  
2 Severs. Specifically she says she never saw through that bag. And I want  
3 the Court to be reminded of that.

4 THE COURT: Now, you've gone through these two other times. What's  
5 the testimony of Ace Hart and the other person you just referred to?

6 MR. GUYMON: They will identify that the gun that's - I think in  
7 particular there's a gun that's photographed in the master bedroom of the  
8 Everman home. All of the witnesses that I have mentioned have indicated  
9 that that is the very gun, one of the guns, that was brought to the house by  
10 Donte Johnson and that that was one of the guns that was in the bag.

11 THE COURT: Is this the banana gun?

12 MR. GUYMON: Excuse me?

13 THE COURT: The one with the banana clip?

14 MR. GUYMON: Yes. And they all very distinctly describe the banana clip  
15 and the gun.

16 THE COURT: Now, when we discussed this last time, I believe - but  
17 it's just my recollection, not looking at the file again - that I had asked you  
18 to attach their testimony. Is this now attached somewhere?

19 MR. GUYMON: I believe it is. Mr. Daskas is the one that did that motion  
20 and I believe he attached that.

21 THE COURT: All right. Let's put this on June 1<sup>st</sup> and I'll take a look at  
22 it, at nine o'clock.

23 MR. SCISCENTO: Thank you, Judge.

24 THE COURT: And then we will see you in chambers 9:15 on June the  
25 5<sup>th</sup> with the intention, after settling some little housekeeping details, that  
26 we'll start picking the jury at 9:30. And we've already discussed the schedule  
27 for Monday and the rest of the week.

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All right, see you then, thanks.

MR. GUYMON: Judge, could you tell us when the questionnaires will be available?

THE COURT: I really can't. Ask Elana, she talked to them yesterday. I think the jury is coming in tomorrow. When they are going to - just step through there and talk to Elana.

MR. GUYMON: No problem; I'll call her. Thank you, Judge.

THE COURT: Thanks.

\* \* \* \*

THE COURT: Mr. Wolfson, what do you have?

MR. WOLFSON: Your Honor, I'm here for Chip Slegel on a matter that's on page 2. You may have handled it already.

THE COURT: Yeah, everything is fine with Charla.

MR. WOLFSON: Right.

THE COURT: Thank you.

MR. WOLFSON: Thank you.

(Proceedings concluded)

\* \* \* \*

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

  
SHIRLEE PRAWALSKY, COURT RECORDER

(11)

(11)

1 LAS VEGAS, NEVADA, THURSDAY, JUNE 1, 2000, 9:00 A.M.

2 THE COURT: And the folks on Donte Johnson ready?

3 MR. SCISCENTO: Yes, Your Honor.

4 THE COURT: Okay.

5 (Colloquy between Court and counsel, not recorded)

6 THE COURT: My concern is this: I read again what's been  
7 presented, of course, including your supplement. When Gary was here last  
8 time and you weren't, because it was your work, really, I expressed the  
9 same concern that I'd had earlier which is this: to the extent that the  
10 witnesses say that these guns were guns used in the litany of crimes, then  
11 it's not evidence of other crimes; there's no Petrochelli hearing, it has - it  
12 may not be the murder weapon, but that, to me, is obviously, not the  
13 issue.

14 And what I've been saying is: as opposed to voluntary  
15 statements and in the case of one of them, a grand jury statement, surely  
16 these gun identifications must have been attempted to be made in the co-  
17 defendants' cases. And what I keep asking in the interest of having the  
18 whole picture is - because there was not a decision that it wasn't a death  
19 case till the penalty phase, and therefore I take it, there were daillies. And  
20 you must have the transcripts. Can you give me, if these things occurred,  
21 as I assume they must, how it played out in the other trials, not just the  
22 voluntary statements and in one instance, the grand jury transcript?

23 MR. DASKAS: Judge, the difference was we had, as you know, in  
24 those two cases, the co-defendants' confessions. And they both described  
25 the guns they took to the residence where victims were killed.

26 THE COURT: But didn't the people identify them whose voluntary  
27 statements you've referenced in your supplement?



1 a pre-jury trial hearing.

2 So, you've given me the voluntary statements which are  
3 somewhat indicative.

4 MR. DASKAS: Right.

5 THE COURT: And in one case, the grand jury transcript. And of  
6 course, I heard Charla with reference to one of the guns. It never even  
7 came up in the other two trials?

8 MR. DASKAS: Not to this extent, Judge. We had witnesses come in  
9 and identify those guns in court. But one of the witnesses, for instance,  
10 was the trooper who stopped the car that Donte Johnson and Terrell Young  
11 fled from. So, he simply identified that one gun, what I would call the  
12 sawed-off shotgun or rifle.

13 THE COURT: But none of the people who made voluntary  
14 statements were asked at trial to say, "Is this one of the guns?"

15 MR. DASKAS: They were not. Correct. Because we had the co-  
16 defendants' confessions where they described those guns in detail. And  
17 when you see the guns, Judge, there would be no doubt that they were  
18 talking about those two guns.

19 THE COURT: So, as it played out in the other cases, it just wasn't  
20 something that you did?

21 MR. DASKAS: It wasn't necessary, Judge. But I'll represent to the  
22 Court that Charla Severs, at least Charla Severs and other witnesses can  
23 describe those guns and there would be no doubt in anybody's minds that  
24 those are the guns she's describing when the jurors see those guns.

25 MR. SCISCENTO: Your Honor, if I may -

26 THE COURT: Now, do you want to say something for the record?

27 MR. SCISCENTO: Yeah, if I may address the one issue I think that  
28

1 we're missing is the State is arguing that we need to bring in these guns  
2 to show that there was burglary with use of a deadly weapon, robbery with  
3 use of a deadly weapon. Your Honor, I think that is a given.

4 THE COURT: No, I don't think that's what they're saying. I think  
5 they're saying they're entitled to do it, not that they're required to do it.  
6 But that's part of the persuasive package.

7 MR. SCISCENTO: Your Honor, I'm referring, specifically to their  
8 supplemental. "The evidence regarding the Ruger and Enforcer rifles is  
9 relevant to all crimes associated with the quadruple homicide." They go  
10 on further to say, "Burglary while in possession of a firearm, robbery while  
11 in possession of a firearm." Your Honor, that's a given. These men were  
12 killed with a firearm. I mean-

13 THE COURT: It is a given, but that's like saying that in every case  
14 where there's a death by shots you don't have to put in the murder  
15 weapon and that the defense is entitled by appropriate motion to exclude  
16 it.

17 MR. SCISCENTO: No, no. What I'm saying is: they have no proof  
18 whatsoever that these guns were present at that time. But they're saying  
19 we need them to show that it was robbery with use and burglary with use.  
20 But they cannot place those guns at the scene of the crime. They can't  
21 place one gun, which they do not have possession of, but they can say,  
22 "Listen these kids - these boys were killed with this gun."

23 THE COURT: If they can place the guns leaving the house that  
24 night, going towards the other place, I think they're entitled to do it. And  
25 that, to me, is the only issue.

26 MR. SCISCENTO: But the stop was made. The stop that Mr. Daskas  
27 is talking about was made two days later.



1 THE COURT: Right, right.  
2 MR. SCISCENTO: So, it wasn't leaving.  
3 THE COURT: Oh, no, no, no. I'm saying if these guns left - what is  
4 it, Everman?  
5 MR. DASKAS: That's correct, Judge.  
6 THE COURT: To go to - what was it, Loma Linda?  
7 MR. DASKAS: Terra Linda.  
8 THE COURT: Terra Linda, that's enough.  
9 MR. DASKAS: And more Important, Judge -  
10 THE COURT: Okay, the motion in limine is denied.  
11 MR. DASKAS: Thank you, Judge.  
12 THE COURT: We'll see you guys at 9:15 in chambers Monday  
13 morning with the expectation we'll do a little housekeeping. We're going  
14 to start picking that jury at 9:30.  
15 I'm going to have my secretary set up, sometime in the next  
16 day, a conference call with all four. Is Figler in this week?  
17 MR. SCISCENTO: Yes.  
18 THE COURT: All four so we can just touch base on everything that's  
19 going on next week.  
20 MR. DASKAS: Very well, Judge.  
21 THE COURT: Just on procedure.  
22 MR. GUYMON: Judge, we still don't have the jury instructions from  
23 the defense that you requested some time ago. And one other concern is  
24 that much of the evidence that we gave to the defense, we released to the  
25 defense, has not come back yet.  
26 THE COURT: Yeah, I saw your letter on that.  
27 MR. GUYMON: I'm very, very concerned that it be here on Monday. I  
28

1 mean, we start the trial on Monday.

2 THE COURT: Well, I would rather have it get here on Friday and we  
3 can start marking it.

4 MR. SCISCENTO: Your Honor, I contacted the people who have that  
5 in custody, that they told me yesterday -they contacted me and said that  
6 they mailed it out overnight. And I talked to Mr. Daskas this morning.  
7 They should be receiving it today. If there's any problems, if they do not  
8 receive it -

9 THE COURT: Okay. And you are getting together with the clerks  
10 and starting to number?

11 MR. GUYMON: It's already been done, Judge.

12 MR. DASKAS: We've done that, Judge. We've marked -

13 THE COURT: But I mean you'll follow it up with all this other stuff  
14 that comes in. What's the status of the -

15 MR. DASKAS: I haven't set an appointment, but we will.

16 THE COURT: What's going on with the juvenile records?

17 MR. SCISCENTO: I found out that the order was already signed. We  
18 picked it up yesterday, we filed it.

19 THE COURT: I signed it 10 days ago.

20 MR. SCISCENTO: Nobody has contacted us even though there was a  
21 sticky saying, "Please call my office." But we picked it up yesterday, we're  
22 sending it down today. Mr. Guymon has contacted, I believe - or will  
23 contact a DA down there to assist us in this. Hopefully, we'll have it by  
24 this afternoon.

25 MR. GUYMON: I've contacted Frank Ponticello on two occasions now.  
26 Frank Ponticello is awaiting the order. He indicated to me he would  
27 facilitate it as soon as he gets the order. I indicated to him that if there's  
28

1 any problem, please to contact me. But he knows of the urgency.

2 THE COURT: So, we're on track as far as everybody can tell, for  
3 trial Monday morning?

4 MR. GUYMON: Absolutely.

5 MR. SCISCENTO: Your Honor, can I revisit the issue that you -- on  
6 the excluding of the guns. You mentioned that --

7 THE COURT: No; I've ruled on that, Joe.

8 MR. SCISCENTO: Your Honor, I do have one problem, though.

9 THE COURT: All right, go on ahead.

10 MR. SCISCENTO: The statements that they have said is Sikia Smith's  
11 statement and Terrell Young's. Those aren't admissible. And they're not  
12 going to rely upon those statements. Are you saying that regardless--

13 THE COURT: No, I'm not saying that at all. What I'm saying is  
14 there is sufficient evidence, especially with Robert's representation that  
15 she's -- identify the gun, that I'm going to take the chance that when I  
16 hear it from a jury, I say -- in front of the jury, I say, "Yeah, that's enough  
17 to get to the jury."

18 MR. SCISCENTO: So, they still have to present the evidence at the --

19 THE COURT: Of course.

20 MR. SCISCENTO: Okay, thank you.

21 MR. DASKAS: Thank you, Judge.

22 THE COURT: Thank you.

23 Yes, I mean, you can object on the basis of relevance when  
24 they move to introduce that exhibit. And if I say it's irrelevant because  
25 I'm then convinced at trial that they have no reasonable showing that  
26 these are the guns that left Everman that night on the way to Terra Linda,  
27 then we got a problem. Thank you.

28 8

1 MR. GUYMON: Thank you, Judge.

2 (Proceedings concluded)

3 \* \* \* \*

4 ATTEST:

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

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28 SHIRLEE PRAWALSKY, COURT RECORDER

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3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

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*Shirley A. Livingston*  
CLEAR

STATE OF NEVADA,

Plaintiff,)

vs

Donte Johnson

Defendant.)

Case No: 98-C-153154-C

Dept No: V

J U R Y

01. Kathleen M. Bruce

07. Timothy F. Lockinger

02. Ashley M. Bruce

08. James Joseph Juarez

03. Robin Desiree Jenkins

09. John C. Young

04. Hans Alexander Weding

10. Kimberly Erin Cole

05. Anthony T. Campitelli

11. Connie Marie Patterson

06. Monica Leigh Sandoval

12. Keith Brian Chastain

A L T E R N A T E S

1. Bruce M. Mayhew

2. Richard J. Frias

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JUN 06 2000 20

SHIRLEY B. PARRAGUIRRE, CLERK  
BY *Carole D'Altoia*  
CAROLE D'ALTOIA DEPUTY

1 CRJL  
2 JUDGE JEFFREY D. SOBEL  
3 District Court Judge - Dept. V  
4 200 South Third Street  
5 Las Vegas, Nevada 89101  
6 (702) 455-4655

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 \* \* \* \* \*

10 THE STATE OF NEVADA, )

11 Plaintiff, )

12 vs. )

13 DONTE JOHNSON, )

14 Defendant, )

Case No. C153154

Dept No. V

Docket No. H

15 AMENDED

16 J U R Y L I S T

17 1. Kathleen Bruce

2. Timothy F. Lokinger

18 3. Ashley M. Warren

4. James J. Juarez

19 5. Robin Jenkins

6. John C. Young

20 7. Hans A. Weding

8. Kimberly E. Cole

21 9. Anthony T. Campitelli

10. Connie M. Peterson

22 11. Monica L. Sandoval

12. Keith B. Chastain

23 ALTERNATE

24 1. Bruce Mayhew

2. Richard Frias

**ORIGINALLED**DISTRICT COURT  
JAN 13 10 00 AM '00  
CLARK COUNTY, NEVADA

CLERK

Plaintiff,

vs.

Dante Johnson

Defendant.

Case No. C153154

Dept. No. 5

Docket No.

**ORDER GRANTING PERMISSION OF MEDIA ENTRY**

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

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

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

DATED this 3rd day of January, 19 2000

DISTRICT JUDGE

Plaintiff

Attorney(s) of record:

Defendant

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COUNTY CLERK

JAN 13 2000

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8th. JUDICIAL DIST.

ID:1-702-386-9104

APR 22 '98

8:30 No.010 P.03.

DISTRICT COURT  
CLARK COUNTY, NEVADA

Plaintiff,  
vs.  
Dante Johnson

Defendant.

Case No. C153154  
Dept. No.5  
Docket No.

**MEDIA REQUEST**

Megan Reynolds

of KVBC-TV

hereby

requests permission to broadcast, record, photograph or televise proceedings

in the above-entitled case in the courtroom of Department 5, Judge

Sobel

commencing on the 6th day of

January 19, 2000

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

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

DATED this 3rd day of January, 19 2000.

Megan Reynolds

MEDIA REPRESENTATIVE

657-3150

MEDIA PHONE NUMBER

1500 Foremaster Lane Las Vegas, NV 89101

MEDIA ADDRESS



ORIGINAL

FILED  
JAN 21 10 57 AM '00  
CLERK

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON, aka John White,  
#1586283

Defendant.

Case No. C153154  
Dept. No. V  
Docket H

STATE'S OPPOSITION TO MOTION TO SUPPRESS EVIDENCE  
ILLEGALLY SEIZED

DATE OF HEARING: 02/17/00  
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through  
ROBERT DASKAS, Deputy District Attorney, and files this State's Opposition To Motion To  
Suppress Evidence Illegally Seized.

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

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JAN 21 2000

COUNTY CLERK

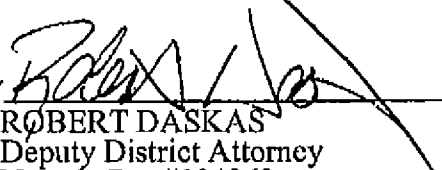
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1 deemed necessary by this Honorable Court.

2 DATED this 20 day of January, 2000.

3 Respectfully submitted,

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

7 BY   
8 ROBERT DASKAS  
9 Deputy District Attorney  
10 Nevada Bar #004963

11 POINTS AND AUTHORITIES

12 STATEMENT OF FACTS

13 In the months preceding August of 1998, Tod Armstrong and Ace Hart resided at 4815  
14 Everman Drive in Las Vegas, Nevada. The home was actually owned by Tod Armstrong's  
15 mother, Cheryl Stevens. Transcript of Evidentiary Hearing (hereinafter "TR"), 1/6/00, pp. 9, 58.  
16 Tod Armstrong possessed the only key to the residence. TR at pp. 10, 58, 103.

17 Sometime in August of 1998, Matthew Mowen visited the Everman residence to purchase  
18 rock cocaine from Donte Johnson. Shortly after Mowen left the Everman residence, it was  
19 suggested to Donte Johnson that Mowen and his roommates kept a large sum of cash and a large  
20 amount of controlled substances in the Terra Linda home. Subsequently, Donte Johnson, Terrell  
21 Young and Sikia Smith formulated a plan to rob the occupants of the Terra Linda residence.

22 On August 13, 1998, during the late evening hours, the conspirators executed their plan,  
23 which culminated in the execution of Matthew Mowen, Tracey Gorringer, Jeffrey Biddle and  
24 Peter Talamentez, all at the hands of Donte Johnson.

25 Detectives developed Donte Johnson as a suspect in the quadruple homicide after  
26 speaking with several witnesses, including Ace Hart, Tod Armstrong and Bryan Johnson.  
27 Detectives learned from these witnesses that in early August 1998, Donte Johnson, Charla  
28 Severs (Donte's girlfriend) and Terrell Young occasionally visited the Everman residence, often  
uninvited. See TR at p. 15. Moreover, officers were advised that Johnson and his associates

1 were possibly at the Everman house on August 18, 1998.

2 Detectives Thowsen and Buczek attempted to ascertain Donte Johnson's nexus to the  
3 Everman home. Consequently, they questioned Tod Armstrong about the living arrangements  
4 at Everman. Tod Armstrong informed the Detectives that Donte Johnson and his associates  
5 "weren't really living there." TR at p. 24. Rather, Johnson would just "come in and out of the  
6 house." TR at p. 24. This information was later corroborated by Charla Severs, who indicated  
7 that Donte Johnson was *not* living in the Everman home; rather, it was a place that "he'd just go  
8 chill out for awhile." TR at p. 88.

9 Moreover, Johnson did *not* pay rent. TR at p. 11. According to Armstrong, Johnson  
10 "would just show up sometimes." TR at p. 16. In fact, Johnson had to climb through a broken  
11 window to gain access to the residence. TR at p. 15. Tod Armstrong never gave officers any  
12 information that led them to believe Donte Johnson lived at the Everman household, either on  
13 a temporary or permanent basis. TR at p. 16.

14 Charla Severs would later confirm that "other people would come and sleep" at the house,  
15 and anybody who visited the home was free to go into the master bedroom. TR at p. 91.  
16 Moreover, both Tod Armstrong and Ace Hart kept personal belongings in the master bedroom.  
17 TR at p. 93. Severs also confirmed that she and Johnson used a broken window to gain access  
18 into the home. TR at p. 94. The door was rarely locked to the master bedroom; in fact, it was  
19 only locked when she and Johnson were engaged in "private" relations. TR at p. 95. Severs also  
20 confirmed that on August 18, 1998, Sgt. Hefner did in fact ask her, Johnson and Anderson if  
21 they lived in the Everman residence. TR at p. 96. Severs' response was that she "didn't stay  
22 there." TR at p. 96.

23 After speaking with Ace Hart, Bryan Johnson and Tod Armstrong, the officers were  
24 satisfied that Donte Johnson did not live at the Everman home, and that Tod Armstrong had the  
25 authority to consent to a search of the Everman household. TR at p. 62. Therefore, they  
26 obtained from Armstrong his signature on a consent-to-search card for 4815 Everman, Las  
27 Vegas, Nevada. TR at p. 43. The form was signed prior to 3:30 a.m. on August 18, 1998. TR  
28 at p. 43. All of the information gathered by Detectives Thowsen and Buczek was conveyed to

1 Sgt. Ken Hefner. TR at pp. 15-16.

2 On August 18, 1998, at approximately 3:00 a.m., members of the Las Vegas Metropolitan  
3 Police Department arrived at the Everman residence. The SWAT team, which was there to clear  
4 the home to ensure the safety of officers, ordered all of the occupants of the Everman residence  
5 out of the house. TR at p. 48. Donte Johnson, Charla Severs and Dwain Anderson exited the  
6 home. TR at p. 48. They were placed in flex-cuffs and sat on a curb near the home. TR at p.  
7 48.

8 Sgt. Hefner asked all three individuals if they lived at the Everman residence. TR at pp.  
9 63, 103. Each responded that they did not. TR at pp. 17, 64. Donte Johnson was not  
10 interrogated in any manner regarding the facts of the quadruple murder. TR at p. 79.

11 Donte Johnson was arrested and transported to the LVMPD Detective Bureau. A  
12 consensual search of the Everman residence was then conducted by Sgt. Hefner with the  
13 assistance of Crime Scene Analysts Marc Washington and Mike Perkins. TR at p. 68. Police  
14 personnel located a gym bag in the living room area of the home which contained a partial roll  
15 of duct tape. TR at p. 68. A VCR, handgun and black jeans were also found in the living room.  
16 TR at p. 68.

17 Sgt. Hefner also searched the master bedroom. Significantly, there was no furniture or  
18 bedding in the master bedroom. TR at p. 69. Sgt. Hefner believed it was a storage or junk room.  
19 TR at p. 69-70. Sgt. Hefner located another pair of black jeans, a rifle and shoes in the master  
20 room. TR at pp. 68-69. The jeans had an apparent blood stain on a pant leg. TR at p. 69.  
21 Subsequent DNA tests revealed that the blood belonged to one of the four quadruple murder  
22 victims. Moreover, Detectives found on the zipper area of those same jeans a white, crusty  
23 substance. The substance was later identified as semen, and subsequent DNA tests revealed that  
24 the donor of the semen was Donte Johnson.

#### 25 DISCUSSION

26 Defendant Donte Johnson has filed the instant Motion to Suppress Evidence Illegally  
27 Seized in which he seeks to "suppress all evidence seized from the bedroom at the Everman  
28 residence." Motion to Suppress at p. 7. Defendant's argument is based on the notion that

1 Johnson did not "give any consent to have the bedroom searched." Motion to Suppress at p. 4.

2  
3 Defendant's argument must fail because: (1) Johnson lacks standing to contest the search  
4 of the Everman residence; (2) Tod Armstrong had authority to give consent to search; and (3)  
5 officers reasonably relied on Tod Armstrong's apparent authority to search the home.  
6  
7

8 I. DONTÉ JOHNSON LACKS STANDING TO CONTEST THE SEARCH OF THE  
9 EVERMAN RESIDENCE

10 Following the arrival of police personnel at the Everman household, Donte Johnson,  
11 Charla Severs and Dwain Anderson were removed from the residence. TR at p. 48. Each was  
12 placed in flex-cuffs for officers' safety and sat on a curb near the home. TR at p. 48. All three  
13 individuals were asked specifically whether they lived in the Everman home. TR at pp. 63, 103.  
14 Donte Johnson told Sgt. Ken Hefner, in the presence of Detective Tom Thowsen, that he, Donte  
15 Johnson, did not live in the Everman house. TR at pp. 17, 64.

16 It is well settled that a denial of ownership or interest in property searched or seized  
17 constitutes an abandonment of the property; consequently, a person has no standing to complain  
18 of its search or seizure.

19 In U.S. v. Veatch, 674 F.2d 1217, 1219 (1981), for example, an automobile was stopped  
20 after officers learned that one of its occupants was involved in a crime. Officers noticed in the  
21 vehicle both a handgun and a wallet where Veatch had been sitting. Id. When asked by the  
22 officer if the wallet was his, Veatch denied any ownership or interest in the wallet. Id. The  
23 officer then examined the interior of the wallet and discovered a sales receipt which implicated  
24 Veatch in the underlying crime. Id.

25 At trial, Veatch sought to suppress the search of the wallet and seizure of the sales receipt  
26 because the officers did not obtain a warrant. Id. at 1220. The appellate court held that Veatch  
27 had no standing to complain of the search or seizure. Specifically, the court held that Veatch's  
28 denial of ownership and interest in the property constituted an abandonment of the property. Id.

1 Consequently, Veatch was left with no reasonable expectation of privacy in the wallet and he  
2 could not object to its search. Id. at 1221.

3 Similarly, in U.S. v. Sanders, 130 F.3d 1316, 1317 (1998), Sanders was detained by  
4 officers during a drug transportation investigation. During the investigation, Sanders disclaimed  
5 any ownership in a brown leather bag officers had located. Id. Officers searched the bag and  
6 found crack cocaine. Id.

7 Before his jury trial, Sanders moved to exclude all evidence discovered in the baggage  
8 search. Id. The district court recognized that Sanders had no reasonable expectation of privacy  
9 and no standing to challenge the search after he indicated he did not own it. Id. at 1317. The  
10 appellate court also held that Sanders surrendered any legitimate expectation of privacy he had  
11 in the bag when he disclaimed ownership. Id. at 1318. Finally, the court rejected Sanders'  
12 argument that the finding of abandonment was erroneous because the officers knew Sanders was  
13 lying when he claimed not to own the bag. Id.

14 When Sanders disclaimed ownership, he surrendered any legitimate expectation of  
15 privacy he had in the bag. The fact that he forfeited his Fourth Amendment guarantee of  
16 privacy was enough to discharge the officers' Fourth Amendment obligation to obtain a  
17 search warrant. The Fourth Amendment only protects privacy. *It does not immunize  
people who, finding themselves in a compromising situation, voluntarily trade their  
interest in privacy for a chance to escape incrimination, no matter how unwise the  
decision may seem in retrospect.*

18 Id. at 1318 (emphasis added). See also, U.S. v. Mangum, 100 F.3d 164 (1996) (defendant lacked  
19 standing where he denied ownership of knapsack in response to officer's question); Bond v.  
20 U.S., 77 F.3d 1009 (1996) (defendant who denied interest in or ownership of suitcase lacked  
21 standing to contest search); U.S. v. Ayila, 52 F.3d 338 (1995) (defendant lacked standing to  
22 object to search of safe in room where defendant denied ownership of safe).

23 Likewise, in the instant case, Donte Johnson lacks standing to object to the search of the  
24 Everman residence. Johnson voluntarily elected to distance himself from the residence. Johnson  
25 was asked specifically by Sgt. Hefner if Johnson lived in the Everman household. Johnson  
26 responded that he did not. He surrendered any legitimate expectation of privacy he had in the  
27 home when he denied an interest in the residence. This is true even if Donte Johnson lied when  
28 he told Sgt. Hefner he did not live in the home. Sanders, 130 F.3d at 1318. Johnson voluntarily

1 traded his interest in privacy for a chance to escape incrimination. Despite the fact that his  
2 decision may seem unwise in retrospect, Johnson cannot now claim he had an expectation of  
3 privacy in the home. Consequently, Defendant's Motion to Suppress must fail.

4 II. TOD ARMSTRONG HAD COMMON AUTHORITY OVER THE PREMISES AND  
5 GAVE VALID CONSENT TO SEARCH THE HOME TO DETECTIVES

6 The Fourth Amendment prohibits unreasonable searches and seizures of individual's  
7 effects. U.S. Const. Amend. IV. A search conducted without a search warrant issued upon  
8 probable cause is considered unreasonable and unconstitutional unless the search falls within a  
9 specific exception to the warrant requirement. See Katz v. United States, 389 U.S. 347, 357, 88  
10 S.Ct. 507 (1967). One such exception is the valid consent of a third party who possesses actual  
11 authority over the premises sought to be inspected. State v. Taylor, 114 Nev. 1071, 968 P.2d 315  
12 (1998), citing United States v. Matlock, 415 U.S. 164, 171, 94 S.Ct. 988 (1974).

13 In Snyder v. State, 103 Nev. 275, 276, 738 P.2d 1303 (1987), for example, Ronnie Lee  
14 Snyder ("Ronnie") robbed a victim of credit cards, cash and car keys. Days later, officers were  
15 called to an apartment on an unrelated matter and found Larry Snyder ("Larry"), Ronnie's  
16 brother, sitting on the curb with a gunshot wound. Id. Larry was transported to the hospital  
17 where he told police they could find marijuana underneath the bed at the apartment. Id. Police  
18 returned to the apartment, knocked on the door, and spoke to Gary Snyder ("Gary"), another of  
19 the defendant's brothers. Id. The police asked if they could search the house and Gary said, "Go  
20 ahead." Id. The police found marijuana as well as credit cards issued in the name of the robbery  
21 victim. Id. Ronnie Snyder was ultimately arrested and charged with, *inter alia*, robbery. Id.

22 Ronnie filed a motion to suppress evidence obtained from the apartment, alleging it was  
23 the product of an illegal search. Id. at 277. Ronnie's brothers -- Terry, Larry, and Gary -- each  
24 filed affidavits stating that the apartment belonged to Ronnie, that they did not live there, and  
25 that they did not have authority or permission to consent to a search. Id. The motion to suppress  
26 was denied by the trial court.

27 On appeal, Ronnie argued that the evidence seized as a result of an illegal, warrantless  
28 search of his apartment should have been suppressed because none of his brothers had the

1 authority to consent to a search of his apartment. *Id.* at 280. The Nevada Supreme Court  
2 disagreed. It reasoned as follows:

3       The Fourth Amendment prohibits searches conducted without a  
4       warrant unless they fall within a "few specifically established and  
5       well-delineated exceptions." [citation omitted.] One such  
6       exception is a search conducted pursuant to proper consent  
7       voluntarily given. [citation omitted.] Valid consent to search can  
8       be obtained from a third party who possesses common authority  
9       over or other sufficient relationship to the premises. [citation  
10       omitted.]

11       *Id.* at 280. The Court held that officers received valid consent from a third party, namely,  
12       Ronnie's brother, Gary; consequently, the evidence was admissible. See also State v. Taylor, 114  
13       Nev. 1071, 968 P.2d 315 (1998) (Court held that Gillis had actual authority over suitcase to give  
14       consent to search where defendant gave Gillis sufficient custody and control over his suitcase  
15       so as to assume the risk that Gillis might consent to a search of it).

16       In the instant case, Tod Armstrong possessed common authority over, or other sufficient  
17       relationship to, the premises to give valid consent. Tod's mother owned the residence. TR at  
18       pp. 9, 58. Tod kept his belongings in the master bedroom. TR at p. 93. Tod possessed the only  
19       key to the residence. TR at pp. 10, 58, 103. In fact, Tod provided to Sgt. Ken Hefner the one  
20       and only key to the household. TR at p. 58. Donte Johnson did not pay rent at the home. TR  
21       at p. 11. Donte Johnson entered the home through a broken window. TR at p. 15. The Everman  
22       home was simply a place for Johnson to "chill out for awhile." TR at p. 88. Clearly, therefore,  
23       Armstrong had actual authority over the Everman premises to consent to its search.  
24       Accordingly, the consensual, warrantless search of the home was valid and the evidence seized  
25       is admissible.

### 26       III. THE OFFICERS REASONABLY RELIED ON TOD ARMSTRONG'S APPARENT 27       AUTHORITY TO SEARCH THE RESIDENCE

28       Assuming, *arguendo*, that Tod Armstrong did not possess actual authority to give consent  
to search, the search was nevertheless valid. Many jurisdictions, including the Nevada Supreme  
Court and the 9th Circuit, hold that a search is not invalidated where a police officer in good  
faith relies on what reasonably, if mistakenly, appears to be a third party's authority to consent



1 to the search. Snyder v. State, 103 Nev. 275, 738 P.2d 1303 (1987). Whether an individual has  
2 apparent authority to consent to a search must be judged against an objective standard, namely,  
3 would the facts available to the officer at that moment warrant a person of reasonable caution  
4 to believe that the consenting party had authority over the premises. State v. Taylor, 114 Nev.  
5 at 322 citing Illinois v. Rodriguez, 497 U.S. 177, 188, 110 S.Ct. 2793 (1990).

6 Whether the basis for authority to consent to a search exists is the sort of recurring factual  
7 question to which law enforcement officials must be expected to apply their judgment;  
and all the Fourth Amendment requires is that they answer it reasonably.

8 Illinois v. Rodriguez, 497 U.S. at 186, 110 S.Ct. 2793.

9 For instance, in Snyder v. State, 103 Nev. 275, 738 P.2d 1303 (1987), the facts of which  
10 are outlined above, Ronnie Snyder sought to suppress evidence that was seized as the result of  
11 a warrantless search of his apartment. The search was conducted after officers received consent  
12 to search the apartment from Gary Snyder, Ronnie's brother. Id. at 280. Gary Snyder filed an  
13 affidavit indicating that the apartment belonged to Ronnie, that Gary did not live in the  
14 apartment, and that Gary did not have authority or permission to consent to a search. Id. at 277.

15  
16 The Nevada Supreme Court denied the suppression motion on two grounds, the first of  
17 which is outlined above. The Court, however, further stated:

18 Many jurisdictions, including the 9th Circuit, hold a search is not invalidated where a  
19 police officer in good faith relies on what reasonably, if mistakenly, appears to be a third  
20 party's authority to consent to the search. [citations omitted.] Based upon the facts of this  
21 case, we hold that the Las Vegas Metropolitan police officers reasonably relied on Gary  
22 and Larry Snyder's apparent authority to consent to a search of the apartment. At 4:00  
23 a.m. the police found Larry Snyder sitting outside the apartment where he had been shot.  
24 He told them they could find marijuana in the apartment. When they returned to the  
apartment that same morning, Gary Snyder opened the door, let them in, and consented  
to a search. Gary was confined to a wheelchair. There is no indication that Gary told the  
police he was just a guest or non-occupant. Under these circumstances, we hold that it  
was *not* unreasonable for the police to assume that Larry and Gary occupied the house.  
Therefore, the district court did not err in denying Ronnie's motion to exclude evidence  
obtained as a result of the search.

25 Id. at 280-281 (emphasis added).

26 Similarly, in the instant case, it was reasonable for the officers to rely on Tod Armstrong's  
27 apparent authority to consent to a search of the house, including the master bedroom. Officers  
28 were told that the home belonged to Tod Armstrong's mother, who lived in Hawaii. TR at p.

1 9. Tod provided officers with the only key to the residence. TR at p. 10, 59. Officers were told  
2 by Donte Johnson that Johnson did not live in the residence. TR at pp. 64-65. There was no  
3 bedding in the master bedroom, which was consistent with the officers' belief that Johnson did  
4 not live there. TR at p. 69. Tod Armstrong informed the Detectives that Donte Johnson and his  
5 associates "weren't really living there." TR at p. 24. Rather, Johnson would just "come in and  
6 out of the house." TR at p. 24. This information was later corroborated by Charla Severs,  
7 Johnson's girlfriend, who indicated that Donte Johnson was *not* living in the Everman home;  
8 rather, it was a place that "he'd just go chill out for awhile." TR at p. 88.

9 Moreover, officers were told that Johnson did *not* pay rent. TR at p. 11. According to  
10 Armstrong, Johnson "would just show up sometimes." TR at p. 16. In fact, officers were  
11 informed that Johnson had to climb through a broken window to gain access to the residence.  
12 TR at p. 15. Tod Armstrong never gave officers any information that led them to believe Donte  
13 Johnson lived at the Everman household, either on a temporary or permanent basis. TR at p. 16.

14 Armed with the information outlined above, it was certainly reasonable for the officers  
15 to rely on Tod Armstrong's apparent authority to consent to the search of the Everman home,  
16 including the bedrooms. Armstrong provided officers with the only key to the home and  
17 consented in writing to a search. Johnson denied living in the home. Under these circumstances,  
18 it was *not* unreasonable for the police to assume that Tod Armstrong was the sole occupant of  
19 the house who possessed the authority to consent to a search. Therefore, the Motion to Suppress  
20 should be denied.

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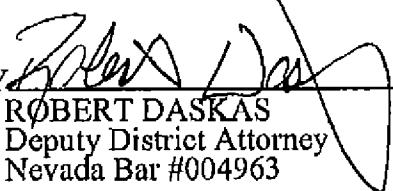
CONCLUSION

Based on the foregoing, the State of Nevada respectfully requests that this Court deny Defendant's Motion to Suppress Evidence Illegally Seized.

DATED this 20 day of January, 2000.

Respectfully submitted,

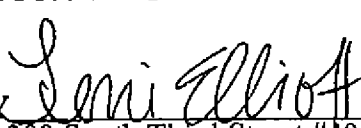
STEWART L. BELL  
DISTRICT ATTORNEY  
Nevada Bar #000477

BY   
ROBERT DASKAS  
Deputy District Attorney  
Nevada Bar #004963

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing STATE'S OPPOSITION TO MOTION TO SUPPRESS EVIDENCE ILLEGALLY SEIZED is hereby acknowledged this 21<sup>st</sup> day of January, 2000.

SPECIAL PUBLIC DEFENDER'S OFFICE  
ATTORNEY FOR DEFENDANT

BY  / for.  
309 South Third Street #400  
Las Vegas, Nevada 89155

RD/ddh

1 TRAN

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FILED

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JAN 25 10 39 AM '00

DISTRICT COURT  
CLARK COUNTY, NEVADA

CLERK

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STATE OF NEVADA,

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PLAINTIFF,

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VS.

CASE NO. C153154

9

DONTÉ JOHNSON, aka JOHN LEE

DEPT. V

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WHITE

11

DEFENDANT.

Transcript of  
Proceedings

12

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

13

MATERIAL WITNESS CHARLA SEVERS' MOTION  
FOR OWN RECOGNIZANCE RELEASE

14

15

TUESDAY, JANUARY 18, 2000, 8:30 A.M.

16

APPEARANCES:

17

FOR THE STATE:

ROBERT DASKAS, ESQ.  
DEPUTY DISTRICT ATTORNEY

18

19

FOR DEFENDANT JOHNSON:

NOT REPRESENTED BY COUNSEL

20

21

FOR MATERIAL WITNESS  
SEVERS:

JAY SIEGEL, ESQ.

22

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COURT RECORDER: SHIRLEE PRAWALSKY

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COUNTY CLERK

JAN 24 2000

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LAS VEGAS, NEVADA, TUESDAY, JANUARY 18, 2000, 8:30 A.M.

THE COURT: Chip and Robert, Donte Johnson on page 20, 21.

MR. DASKAS: Thank you, Judge.

THE COURT: Does the State have a position on this Motion that Mr. Siegel has filed?

MR. DASKAS: Actually, Judge, do we not. We're simply going to submit it to Your Honor.

THE COURT: I'll tell you--

MR. DASKAS: I apologize. With the exception of this, if the Court is inclined to release her from house arrest, it's simply our request that she continue checking in weekly as she has been doing and perhaps we could revisit this issue, say, 30 days before trial and decide whether she should be either locked up or placed back on house arrest pending the trial date, Judge.

THE COURT: Okay. That will be the order. It will be granted conditional on her reporting or staying in contact with the district attorney at any times that they wish, reporting in once a week and we'll revisit this issue regarding her status a month before the trial. The calendar call is 5/30. Let's do it late April, about a month before that 5/30 date.

THE CLERK: It will be April 24<sup>th</sup> at 9:00 a.m.

THE COURT: Thank you.

MR. DASKAS: Thank you, Judge.

\* \* \* \* \*

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

  
SHIRLEE PRAWALSKY, COURT RECORDER

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FILED

FEB 2 10 51 AM '00

*Subidy, M. Thompson*  
CLERK

Case NO: C153154

Dept. NO: V

Docket NO: H

Donte Johnson

Defendant

-VS-

State of Nevada

Plaintiff

Memorandum To  
The Court

Comes now defendant, Donte Johnson, by and through this Memo. to the court. Giving rise and making record of defendants request to counsels, Dayvid Figler and Joseph S. Sciscento, to file a motion pursuing the disqualification of the Honorable Jeffrey Soble as trial judge.

Judge Soble is clearly, extremely, prejudice against the defendant, Donte Johnson. By numerous decisions and unfair comments during different court proceedings; prior court proceeding transcripts would show and prove the unfairness of many comments made by Judge Soble. Also the record could reflect the many unfair decision.

Attached hereto is an article of Judge Sobles decision granting the prosecutions motion, in request to make the videotaped deposition of Charla Severs live testimony against defendant, Donte Johnson.

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FEB 07 2000

CE31

COUNTY CLERK

1 Charla Severs was in custody under a material witness bond. Charla was arrested  
2 in New York under a material witness warrant, in the case of Terrell Young  
3 and "not" Donte Johnson. The state filed a motion to videotape the deposition of  
4 Charla Severs, which was granted by Judge Jeffrey Soble. (see exhibit A for  
5 article). The motion was clearly granted out of the courts fear that Charla Severs  
6 live testimony may not be available for trial if she was released from custo-  
7 dy. The court took no pains to force the state to prove that the witness  
8 was not going to/on could not appear at the trial.

9 Also attached is an article of Floyd's similar situation. Tracie Rose Carter,  
10 21, was released from custody, similar to Charla Severs, Carter was released  
11 with restrictions, such as to call authorities once a week. Carter was relea-  
12 sed in August after pledging to remain in contact with prosecutors in the  
13 capital murder case. Later in the time of November, Tracie Rose Carter was  
14 again, unable to be found by authorities. After disappearing on two occasions,  
15 Carter was again located and taken into custody.

16 Prior to her release the third time, Prosecutors asked Judge, Jeffrey Soble,  
17 for permission to take the videotaped deposition of Carter.

18 In denying the request, Soble said; "videotaped depositions are properly  
19 reserved for more dire circumstances, such as a serious illness that prevents  
20 a person from attending a court proceeding." which I would like to point  
21 out for the record, was not the case at all with Charla Severs. (see exhibit  
22 B for Floyd's article).

23 This is merely one of the many prejudice situations that I would like to  
24 make record of on the behalf of the defendant, Donte Johnson.

25 The defendant believes that in an adversary proceeding, the discharge of  
26 counsels, Dayvid Figler and Joseph S. Sciscento's duties required that they

1 call to the court's attention the possible unconscious resolution of the factual and  
2 legal matters by the court, which in defendant's opinion has interfered with  
3 fundamental due process.

4 upon bringing this matter to the court's attention, the conduct of Judge, Jeffrey  
5 Sobie, has resolved all doubt in the mind of the defendant as to the possibility  
6 of having a fair trial.

7 The State is seeking the Death Penalty. Since this is to be a capital prosecution,  
8 exacting standards must be met to assure that it is fair. "The Fundamental  
9 respect for humanity underlying the 8<sup>th</sup> Amendment's prohibition against  
10 cruel and unusual punishment gives rise to a special 'need for reliability in  
11 the determination that death is the appropriate punishment' in any capital  
12 case." Johnson vs. Mississippi, 426 U.S. 578, 594 (1988) (quoting Gardner vs. Florida,  
13 430 U.S. 349, 363-64 (1977) (quoting Woodson vs. North Carolina, 428 U.S. 280,  
14 305 (1976) (White, J., concurring))).

15 ~~and, the evidence that my father was not guilty of the crime for which he was~~  
16 ~~executed.~~

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19 Dated :  
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(Note)

On the date of 12-13-99 a meeting was held between both ~~parties~~ Prosecuting attorneys, counsel's of the defendant (Dayvid Figler and Joseph S. Sciscento) and Jeffrey Soble, in Sobles chambers. This meeting was off the record and out of the presence of the defendant, (Donte Johnson). Although counsel, (Dayvid Figler) assured me that it was only a small meeting ~~pertaining~~ about a motion, although I was assured that it was a harmless meeting, I would still like to object for the record, to the unrecorded meeting that was held between both District Attorneys, Judge Soble, and the Attorneys of the defendant in this case. Attorneys being Joseph S. Sciscento and Dayvid Figler.

Dated: 1-22-2000

Even the possibility of prejudice on the "part of the Judge... is too high to be constitutionally tolerable." Withrow -VS- United States, 255 U.S. 22, 33-34 (1921); Potashnick -VS- Port City construction Co, 609 F.2d 1101, 1111 (5th Cir. 1980) ("Any question of a Judge's impartiality threatens the purity of the judicial process and its institutions."); Health Services Acquisition Corp. VS. Liljeberg, 796 F.2d 796, 800 (5th Cir. 1986); Chintacha Tribe -VS- Harry L. Laws Co., 690 F.2d 1157, 1165 (5th Cir. 1982); King -VS- State, 271 S.E. 2d 630, 634 (Ga. 1980)

Respectfully Submitted,

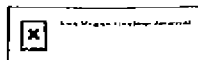
Donte Johnson

Donte Johnson

Defendant

Dated: 1-28-2000

(Exhibit A)



Friday, October 22, 1999  
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## Johnson's ex-girlfriend will testify about deadly robbery

By Peter O'Connell  
Review-Journal

The former girlfriend of a capital murder defendant will testify in court Tuesday morning about a robbery that evolved into a quadruple homicide.

District Judge Jeffrey Sobel on Thursday ruled that prosecutors may take the video deposition of 19-year-old Charla Severs, who has been in custody since she was arrested last month in New York on a prostitution charge.

Sobel said prosecutors demonstrated that Severs' testimony is crucial to the case against her former boyfriend, Donte Johnson, who is scheduled to be tried in January in connection with the August 1998 slayings of four young men during a robbery at a house on Terra Linda Avenue.

The judge also found there is a significant risk that Severs will not be present to testify when the case goes to trial. She has told prosecutors she fled Las Vegas after an associate of Johnson threatened her life.

If Severs is not available to testify, her video deposition will be played to the jury.

"I am hoping that at trial we will have the live testimony," Sobel said.

Severs is not accused of playing any role in the robbery or the killings. She is considered an important witness because prosecutors believe she was privy to the conversations and actions of the three men charged in the case.

Two of those men -- Terrell Young and Sikia Smith -- were convicted in separate trials earlier this year and sentenced to life

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(Exhibit A)

Page: 1629

without possibility of parole.

Severs did not testify at either trial, as she fled Las Vegas and authorities could not find her. Her family said they lost track of her, and her mother filed a missing person report in April.

"The word on the street was that Charla Severs had been killed," prosecutors wrote in a court document.

She was arrested in New York in September and transported to Clark County. Unable to make \$10,000 bail, she embraced a videotaped deposition as the only available means to set her free.

She will take the stand in open court at 9:30 a.m. Tuesday. Johnson, 19, will be present in civilian clothing as Severs answers questions from the prosecution and the defense, just as in an actual trial.

Sobel said it likely will take a week for the proceedings to be transcribed and prepared for Severs' signature. He said he then will consider the custody status of Severs, suggesting he will release her with restrictions designed to assure she is present to testify at the trial.

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

Unlike Johnson, Smith and Young gave police taped confessions in which they detailed the robbery that yielded less than \$300, a VCR and a video game machine.

This story is located at: [http://www.lvrj.com/lvrj\\_home/1999/Oct-22-Fri-1999/news/12200773.html](http://www.lvrj.com/lvrj_home/1999/Oct-22-Fri-1999/news/12200773.html)

For comment or questions, please email [webmaster@lvrj.com](mailto:webmaster@lvrj.com)  
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# Dancer may carry Floyd's baby

□ A witness who says she was raped by a man who is accused of killing four men pregnant when last seen.

By Peter O'Connell  
Review-Journal

The outcall dancer who said Zane Floyd raped her an hour before he killed four Albertsons employees in June can't be located, and authorities believe she may be pregnant with Floyd's child.

Trace Rose Carter, 21, was freed in August after pledging to remain in contact with prosecutors in the capital



murder case that is scheduled to go to trial in March. Carter, considered a key witness in the case, initially kept her promise to

call authorities once a week.

But her calls stopped in mid-November, and authorities have not been able to locate her despite the issuance of a material witness warrant in December.

"We have no idea where she is," Chief Deputy District Attorney Bill Koort said Friday.

Koort said acquaintances of the woman told authorities she was pregnant when they last saw her in Las Vegas.

These accounts suggested Carter became pregnant near the date on which she was summoned to Floyd's home, greeted with a shotgun and sexually

assaulted for about an hour. Floyd did not use contraception.

Koort stresses that whether Floyd is the child's father remains only a possibility based on reasonable inferences drawn from the available facts.

Authorities are distributing posters bearing Carter's picture and a description that mentions she may be pregnant. According to the poster, she also has lived in Oklahoma and Oregon, where she is wanted on a felony drug charge.

Carter was working for Love Brand outcall service when she was sent to

Please see DANCER/3B

## Dancer

From 1B

Floyd's parents' home on Oakley Boulevard at about 4 a.m. on June 3. Outcall businesses dispatch women to strip for customers, typically in a hotel room.

Carter said Floyd spoke of realizing a "sick little fantasy," then sexually assaulted and terrorized her for about an hour before permitting her to leave. She said Floyd told her he planned to kill the first 19 people he encountered.

About 15 minutes after he left his home on foot he entered the Albertsons, now Raley's, at Sahara Avenue and Valley View Boulevard and shot four employees to death and seriously

wounded another, authorities say.

Police confronted Floyd as he left the store with the shotgun to his head, and he later gave a full confession in which he said he had always wondered what it would be like to shoot someone.

Defense attorneys are seeking to have the sexual assault charges heard at a separate trial from the shooting counts.

In opposing this effort, prosecutors contend testimony of Carter is critical in establishing motive and telling the complete story of the crime.

They contend Floyd planned to die that morning, either through suicide or at the hands of police,

after first satisfying his rape and murder fantasies. This plan was revealed in his statements to Carter, prosecutors say.

Prosecutors in August asked District Judge Jeffrey Sobel for permission to take the videotaped deposition of Carter. Defense attorneys would have been permitted to cross-examine her, and the tape could have been shown to the jury if Carter was not available to testify at trial.

District Attorney Stewart Bell told the judge that Carter had pledged to testify against Floyd and, agreed to stay in contact with prosecutors. Yet on two occasions she disappeared without notice, once traveling to the Bahamas, he said.

In denying the request, Sobel said videotaped depositions are properly reserved for more dire circumstances, such as a person's illness that prevents a court proceeding.

Sobel told Carter, who was in custody at the time, that prosecutors had a right to know where she would be at the time of the trial. He reminded her that her testimony would impact the murder case.

"You are a very important witness," he said.

Carter reiterated her promise to be available to testify. "I am not trying to run. I will be here," she said.

(Exhibit 20)

(Exhibit B)

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*allied law firm*  
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1 RPLY  
2 PHILIP J. KOHN  
3 Special Public Defender  
4 Nevada Bar No. 000556  
5 JOSEPH 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

14 DISTRICT COURT  
15 CLARK COUNTY, NEVADA

16 THE STATE OF NEVADA,

17 Plaintiff,

18 vs.

19 DONTE JOHNSON,

20 Defendant.

21 CASE NO. C153154  
22 DEPT NO. V  
23 DOCKET H

24 REPLY TO STATE'S OPPOSITION TO MOTION TO SUPPRESS

25 DATE OF HEARING: 2-17-00  
26 TIME OF HEARING: 9:00 A.M.

27 COMES NOW the Defendant, DONTE JOHNSON, by and through his attorneys, in reply to  
28 the State's Opposition to his Motion to Suppress evidence. This Reply specifically incorporates  
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30 ...  
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34 ...

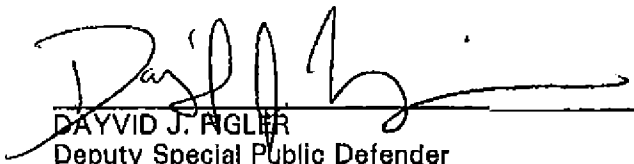
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1 by reference the Motion already on file herein as well as any argument of counsel at the time set  
2 for hearing on the Motion.

3 DATED this 16 day of February, 2000.

4 Respectfully submitted,

5 PHILIP J. KOHN  
6 SPECIAL PUBLIC DEFENDER

7  
8   
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15 ARGUMENT

16 The capital Defendant, Donte Johnson, filed the instant Motion to Suppress jeans illegally  
17 seized from within an area of which he possessed a reasonable expectation of privacy. This  
18 Honorable Court set hearing, whereupon the burden was upon the State to show that a Fourth  
19 Amendment violation did not occur. As such, the State called witnesses to attempt to establish  
20 facts in support of its Opposition to the Defendant's Motion. The Defendant also called witnesses.

21 Subsequent to the hearing, the State filed its Opposition. Herein, the Defendant  
22 supplements the transcript citations offered by the State and in doing so points out the failure by  
23 the State to produce any authority that a residential search of a specific bedroom was authorized  
24 under the traditional precepts of the Fourth Amendment in this case.

25 THE HEARING

26 The State seems to take different positions as it suits the particular needs of the moment.  
27 For example, in the opening statement of the related Sikia Smith trial, prosecutor Gary Guymon  
28 expressed the State's stance on the issue of Donte Johnson's residency at the Everman address  
in no uncertain terms, to wit:

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

1 "You will also learn that sometime in early July, Donte Johnson and Terrell Young moved  
2 into the house there on Everman." (Attached Exhibit "A", Gary Guymon, Trial of Sikia  
Smith, Transcript, 6-16-99, page 13).

3 It is also surprising that the State, in its opposition, relies heavily on the hearsay evidence  
4 of Tod Armstrong. This particular position is peculiar as Tod Armstrong has long been considered  
5 a suspect in the case at issue, as shown by the following commentary made by the State at the  
6 trial of Sikia Smith:

7 "You will learn that Todd Armstrong has not been arrested yet, but you will learn he is a  
8 suspect in this case and that he, too, may be subject to prosecution if and when the  
9 evidence comes forward and is available." (Exhibit "A", Gary Guymon, Trial of Sikia Smith,  
Transcript, 6-16-99, page 23).

10 Finally, the State oversimplifies the testimony given at the hearing, picking and choosing  
11 only those parts that ostensibly support their erroneous position.

12 (A) Donte Johnson lived in the Everman house.

13 According to the live witness testimony of Charla Severs, she and Donte were living and  
14 sleeping every night at the Everman residence for at least two to three weeks. (Charla Severs  
15 testimony at pp. 83-84). Donte was paying rent, albeit in the form of providing drugs to Todd  
16 Armstrong as evidenced by the following exchange:

17 "Q: Isn't it true that Donte Johnson was providing drugs to Tod Armstrong to stay in that  
house, isn't that correct?

18 THE WITNESS: Yes.

19 Q: Okay. And that was a way of him paying rent, isn't that correct?

20 A. Yeah.

21 Q: So there was some kind of compensation that Donte Johnson was giving to Tod  
22 Armstrong to stay in that house?

23 A. Yeah. (Charla Severs testimony, p. 85)

24 The fact the rent, however, was the provision of drugs to Todd Armstrong is of no  
25 moment. For even if the contract could not be enforced per civil law, the implication of  
26 compensation for other purposes, especially those of an evidentiary implication concerning the  
27 Fourth Amendment, cannot be denied. See Guy v. State, 108 Nev. 770 (1992).  
28

1 Finally, Donte Johnson testified that he was living at the Everman house on the night of  
2 the illegal search and staying in the bedroom. (Donte Johnson's testimony, p. 102).

3 The State had the burden of establishing the facts to show that Donte Johnson did not live  
4 at the Everman address on the night of the search. See U.S. v. Linn, 880 F.2d. 209 (9<sup>th</sup> Cir.  
5 1989). However, they produced no credible evidence to show the Donte Johnson lived anywhere  
6 but the Everman address. The following exchange reflects the actual knowledge of the Police  
7 department on the night of the illegal search, to wit:

8  
9 Q: Prior on 8/17/98, what information did you have to where Mr. Donte Johnson may be  
residing?

10  
11 A: I didn't know where he was residing, I just knew where he was supposed to be on that  
particular day.

12  
13 Q: Did anyone give you information that he was living in some other residence, other than  
4815 Everman?

14  
15 A: Not that I recall.

16  
17 Q: Did anybody give you information that he may be found at some apartment?

18  
19 A: No.

20  
21 Q: Did he give you any information that you could find him sleeping on the side of the road  
somewhere?

22  
23 A: No.

24  
25 Q: Did they give you any information on that date, that 8/17/98 he was living in some  
hotel room.

26  
27 A. No." (Testimony of Detective Thomas Thowsen, pp. 30-31)

28  
The is no credibility, therefore, to the assertion by the same Detectives who knew Donte  
Johnson would be at the Everman residence at 3 a.m. in the morning, would claim that they had



1 no knowledge that Donte Johnson was living there.

2 (B) Donte lived in the bedroom.

3 Charla Severs testified as to where Donte lived in the house as referenced in the following  
4 exchange:

5 Q: And where would Donte Johnson stay while he was in that house?

6 A: In the bedroom.

7 Q: Which bedroom is that? Would that be the master bedroom?

8 A: Yes." (Testimony of Charla Severs, page 85).

9 (C) Donte had a reasonable expectation of privacy in his items in the bedroom.

10 Donte Johnson kept his personal effects in the bedroom as referenced by the following  
11 testimony:

12 "Q: Did he have clothes in there?

13 A: Some of them. The clothes he had....

14 Q: So almost everything that he had was in that master bedroom?

15 A: Yes.

16 Q: Okay, There was a lock on that master bedroom?

17 A: Yes. (Testimony of Charla Severs, pp. 85-86)

18 Next, Charla testified that the Donte would lock the door.

19 "Q: So, when you guys were inside he may have been – he may lock the door?

20 A: Yeah.

21 Q: To keep other people out?

22 A: Yeah." (Testimony of Charla Severs, page 86).

1 Finally, Donte Johnson had a clear and unequivocal expectation of privacy in his personal  
2 effects which he kept in the bedroom as evidenced in the following exchange:

3 "Q: Did you have any personal stuff in that bedroom?

4 A: Yeah.

5 Q: Okay. Personal clothes and maybe some makeup and things like that?

6 A: Yes.

7 Q: Okay. Would you allow anybody in that house to go thorough your personal stuff in that  
8 room?

9 A. No, I wouldn't allow nobody to go through my stuff.

10 Q: Okay. If somebody was going through your personal stuff in that room you'd be upset?

11 A: Yeah.

12 Q: Okay. And you placed it in that -- your personal stuff in that room why? Did you  
13 consider it your space?

14 A: Yeah.

15 Q: And you were there with Johnson, Donte Johnson, at his request? He asked you to  
16 come into the house?

17 A: Yeah. (Testimony of Charla Severs, pp. 87-88).

18 (D) The police did not act in accordance with the protections of the Fourth Amendment.

19 The easiest thing in the world for the police to have done in the night at subject was to get  
20 a telephonic search warrant.

21 "Q: Have you ever in your years as a detective or as a police officer ever secured a search  
22 warrant in the middle of the night?

23 A: Yes, often.

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

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A: Yes.

Q: Sometimes 3:00 in the morning?

A: Yes.

Q: And how do you go about doing that?

A: More recently it's done over the telephone with a telephonic search warrant, it's very easily obtained. (Testimony of Detective Thomas Thowsen, pp. 27-28).

Further, the police were disingenuous regarding there desire to protect the Fourth Amendment rights of an individual. On cross-examination, the defense tried to establish what it would take for the police to seek a search warrant. The exchange was as follows:

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

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

Q: Okay.

A: -- twenty minutes.

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

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

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

A: Yes....

Q: ...Let me ask you this specifically, if the owner of the house was asking is there some other people that are living there with you and his answer was: Off an on, yes, staying there. They weren't really living there but they come in and out of the house? Okay. Answer: Blank day (sic), I guess, considered living there. Would that give you an inclination that these people may be living in that house?

1 A: If that question were asked of me I would dwell further." (Testimony of Ken Hefner, pp.  
2 77-78).

3 Finally, the police invaded Donte Johnson's residence with weapons and immediately  
4 cuffed him. (Testimony of Thomas Thowsen, p. 18-19).

5 THE LAW

6 The United States Constitution and the Nevada Constitution both require that all  
7 government searches and seizures be reasonable and that law enforcement agents acquire a  
8 warrant based upon probable cause before proceeding with a search and/or seizure. United States  
9 Constitution, Fourth Amendment; Nevada Constitution, Article I, section 18. The warrant  
10 requirement stems from the need to have a neutral third party authorize and delineate the scope  
11 of a potentially intrusive activity. See Arkansas v. Sanders, 442 U.S. 753, 759 (1979)(citations  
12 omitted). While there are certainly exceptions to the warrant requirement, a search conducted in  
13 a person's sole residence and specifically, the search at issue in this motion to suppress, does not  
14 fall into any recognized exception regarding residential searches.  
15

16 The United States Supreme Court has consistently maintained that the Fourth Amendment  
17 strongly protects privacy interests in a residence. In Welsh v. Wisconsin, 466 U.S. 740, 748  
18 (1984), the Court decreed that "it is axiomatic that the physical entry of the home is the chief evil  
19 against which the wording of the Fourth Amendment is directed." See also, Parkhurst v. Trapp,  
20 77 F.3d 707, 711 (3d Cir. 1996)(Freedom from intrusion into the home or dwelling is the  
21 archetype of the privacy protection secured by the Fourth Amendment); Shalk-Abdi v. McCellan,  
22 37 F.3d 1240, 1243 (7<sup>th</sup> Cir. 1994)(the court speaks of the "overriding respect for the sanctity  
23 of the home"); Ayeni v. Motola, 35 F.3d 680, 684 (2d Cir. 1994) ("the home has properly been  
24 regarded as among the most highly protected zones of privacy.").

25 With due respect to the position of the State, the body of case law regarding abandonment  
26  
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28

1 of personal property is not dispositive in the present matter. The State cites not one case where  
2 a person even has the capacity to effectuate an "abandonment" of where they are staying and  
3 living. In fact, the contrary is true in that a person will typically be afforded the benefit of the  
4 doubt regarding their residence.

5 For example, in Matter of Welfare of D.A.G., 484 N.W.2d 787 (Minn. 1992), a short-  
6 barreled shotgun which had been seized during a warrantless search of the house in which the  
7 accused resided was properly suppressed by the trial judge since, although an absent cotenant  
8 had consented to the search, the accused, present on the premises at the time the police entered  
9 with weapons drawn, did not have a reasonable opportunity to object. The court, in so ruling,  
10 commented that the reasons often given to support searches conducted to a third party's consent  
11 when the accused is absent or unavailable regarding "waiver" or "assumption of the risk" do not  
12 apply when the accused is in fact present. Id. That is, the court elaborated, an absent third  
13 party's consent should not be used to waive another's constitutional rights when that individual  
14 is present at the time of the search to give or withhold consent in his own right. Id.

15 The logic of the Minnesota court is particularly persuasive in the present case. At issue  
16 is a third party, absent from the premises, essentially waiving the Constitutional rights of Donte  
17 Johnson. Donte Johnson was present and actually extracted from his only residence by the police  
18 at weapon point and then placed in handcuffs. It is unreasonable for the Court to entertain that  
19 any reasonable "waiver" could have been effectuated under these circumstances. No rights were  
20 related to Donte Johnson. No Informed request was made by the police of Donte Johnson.

21 Whether or not Sgt. Hefner phrased the alleged question, "Do you live here?" or asked if  
22 "This is your house" Hefner certainly was on notice that late at night Donte Johnson emerged  
23 from the house in which he was sleeping. There was no attempt to ascertain where Donte  
24 Johnson lived if not at the Everman address. There was no query of Donte Johnson to the effect  
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1 "then you don't mind if we go through the items located inside do you?" or any words to that end.  
2 Instead, there is limp effort by the Police to ostensibly justify a desire to sidestep the appropriate  
3 measure of seeking the quick and available search warrant.

4 After the evidentiary hearing, it has been established that Donte Johnson and his girlfriend  
5 had been living in that bedroom for a minimum of two weeks, but more like four weeks in  
6 exchange for contraband compensation, that Donte Johnson kept all his effects in that bedroom,  
7 and that Donte Johnson and his girlfriend had an expectation that no one else in the house would  
8 go through their effects in that bedroom, especially the area in question around the mattress. The  
9 police also knew that Donte Johnson had been staying at the Everman residence, or at a minimum  
10 had a duty to inquire of Todd Armstrong exactly how long Donte Johnson had been staying. For  
11 in the words of the testifying police officers, "if they had any inclination that Donte Johnson was  
12 living in that residence, they would have sought the search warrant." (Testimony of Thomas  
13 Thowsen, p. 18-19). In this case, the Police had ample information that required them to tread  
14 carefully upon the Fourth Amendment rights of Donte Johnson. Weapons drawn and in cuffs, the  
15 alleged response of Donte Johnson that he did not live there cannot under the traditional precepts  
16 of voluntary waiver be considered in light of all the other information the Police knew or should  
17 have known. Instead, the Police proceeded in this case to their own detriment.

18 Warrantless searches are presumptively illegal. Katz v. U.S., 389 U.S. 347 (1967). Only  
19 a few specifically established exceptions, which have been "jealously and carefully drawn," will  
20 justify the admission of evidence obtained from a warrantless search. Jones v. U.S., 357 U.S.  
21 493, 499 (1958).

22 In the present case, the State argues three points to convince the Court that it should  
23 override the Constitutional protections of Donte Johnson in the place of his residence. None  
24 satisfy the State's burden.

1           (1) Standing

2           Again, the State only argues inapplicable automobile and luggage cases, nary a residence  
3 case in sight. The facts, however, support that Donte Johnson lived in that residence. Under the  
4 rubric of standing, the State attempts to suggest that Donte, even if a resident of the Everman  
5 house, somehow waived or abandoned his Fourth Amendment rights with his alleged one word  
6 response to the inquiry by Sgt. Hefner. As stated before, it is asserted that this on its face cannot  
7 constitute a waiver. Nonetheless, if the Court is inclined to treat it as a waiver of Constitutional  
8 rights, the Court must make a determination not only regarding the scope of waiver, but also the  
9 voluntariness of the alleged waiver.  
10

11           Assuming arguendo, that Donte Johnson was asked "do you live here" – and also  
12 assuming the answer was, "no" – what did the police hope to then accomplish by searching the  
13 Everman residence? What personal effects of Donte Johnson would they expect to find in the  
14 Everman residence if Donte Johnson did not live there? Was the search limited to guns, or did the  
15 Police seize clothing items – the same clothing items in the same place that support a finding that  
16 Donte Johnson did in fact live there? The answer is, the Police knew Donte Johnson was living  
17 or staying at the Everman residence, they went in the residence looking for Donte's clothing and  
18 any alleged waiver given by Donte Johnson was a ruse by the Police to violate Donte's  
19 constitutional rights and not spend the extra twenty minutes to get a search warrant.<sup>1</sup>  
20

21           Further, any alleged waiver was not voluntary.

22           "If the government exerts undue pressure or improper means to secure consent, instead  
23  
24

---

25           <sup>1</sup> Not to say that a magistrate would have been a "rubber stamp." Quite the contrary, a  
26 neutral and detached fact finder may not have felt that the representations of Todd Armstrong  
27 were sufficient to search Donte's effects where Donte lived. As such, the Constitutional  
28 interests would have been protected and the present motion would have been unnecessary. See  
generally, U.S. v. Traviano, 724 F.2d 341, 345 (2d Cir. 1983).

1 of obtaining a warrant as it can easily do, it is going to lose cases." U.S. v. De Los Santos Ferrer,  
2 999 F.2d 7, 11 (1<sup>st</sup> Cir. 1993). The court must determine whether considering the totality-of-  
3 circumstances, the alleged consent was unequivocal, specific, and given without duress or  
4 duration. U.S. v. Hathcock, 103 F.3d. 715 (8<sup>th</sup> Cir.), *cert denied*, 117 S.Ct. 2520 (1997); See also  
5 Schneckloth v. Bustamonte, 412 U.S. 218 (1973).  
6

7 As with any totality-of-the-circumstances or consent analysis, courts must assess such  
8 things as the education level, age, maturity, mental competence, impressionability and emotional  
9 state of the person at the time alleged consent was given. Other factors which bear upon the  
10 coerciveness of the encounter include: the number of officers present, whether they were armed  
11 or displayed their weapons, whether the defendant was in custody, the circumstances of the  
12 custody, and whether the "consent" was the product of custodial interrogation. Schneckloth, 412  
13 U.S. at 218 (1973).  
14

15 In the present case, 19-year old Donte Johnson was drawn out in the middle of the night  
16 to the Las Vegas Metropolitan Police SWAT team as well representatives of the Homicide bureau.  
17 He was immediately placed in custody and handcuffed— no Miranda warnings were given.  
18 (Testimony of Sgt. Hefner, pp. 73-74; Testimony of Donte Johnson, pp. 102-103).  
19

20 Based on the circumstances of the custodial inquiry by police of Donte Johnson, no  
21 voluntary waiver or "abandonment" could have been made. In fact, under the conditions of the  
22 custodial inquiry, no inference should be drawn from Donte's alleged response concerning whether  
23 he lived in the home from which he had just emerged.  
24

25 (2) Tod Armstrong's authority to give consent.  
26

27 As stated before, this is a case of a non-present co-tenant giving alleged consent to vitiate  
28 a present co-tenant's Constitutional rights. Common sense dictates that this argument is  
disfavored. More importantly, however, numerous courts have agreed with the Defendant's



1 position.<sup>2</sup> In Tompkins v. Superior Court, 378 P.2d 113 (1968), a joint occupant who was away  
2 from the premises was found to lack the ability to authorize police officers to enter and search the  
3 premises when another joint tenant was present at the time of the attempted search (at least in  
4 those situations where no emergency exists and the officer fails to disclose his purpose to the  
5 occupant who is present or to inform him that he had the consent of the absent occupant to  
6 enter). Id.

7  
8 In Tompkins, the accused's co-tenant, subsequent to his arrest, was asked by the police  
9 whether he had any contraband in his home. The co-tenant purportedly responded in the negative  
10 and gave the officers his keys so that they could confirm his answer for themselves. The police,  
11 without a search warrant, proceeded to the accused's apartment and once confronting the  
12 accused entered the home without warrant and seized the contraband located after a search.

13 The Court in holding the search to be invalid, noted that a joint occupant's right of privacy  
14 in the home is not completely at the mercy of another with whom he shares possession. Id.

15 Similarly, the Police failed to make any representations to Donte Johnson regarding the  
16 interaction with Todd Armstrong. They did not inform Donte Johnson of the alleged consent by  
17 Todd Armstrong, they did not announce their purpose in searching. If believed, the Police did  
18 nothing better than make a custodial inquiry as to whether or not Donte Johnson would admit that  
19 he lived in the Everman house.  
20

21 In another case, State v. Matias, 451 P.2d 257 (Hawaii 1969), reh'g denied, 1969 WL  
22 20091 (1969), the court, in a case involving the warrantless search of the bedroom of an  
23 overnight guest consent to by the tenant of the premises, ruled that the guest had a right to  
24

25  
26 <sup>2</sup> A sampling of State courts follows: Tompkins v. Superior Court of the City and County of San  
27 Francisco, 59 Cal. 2d 65, 378 P.2d 113 (California 1963); Silva v. State, 344 So. 2d 559 (Florida 1977);  
28 Nestor v. State, 221 A.2d 364 (Maryland 1966); Matter of Welfare of D.A.G., 484 N.W.2d 787 (Minnesota  
1992); People v. Douglas, 213 N.W.2d 291 (Michigan 1973).

1 privacy in the apartment and that the consent of the tenant operated only to waive the tenant's  
2 own right to protection from an unreasonable search and seizure. During the search in Matlas,  
3 the police seized a coat lying on the bed in a bedroom occupied by the accused with the  
4 permission of the tenant which was subsequently used in a pre-arrest identification. The court,  
5 on review, reversed and remanded, holding that the search was invalid. The court reasoned that  
6 the Fourth Amendment may be waived only by the individual entitled to the right, such that a  
7 search and seizure under a third party consent is unreasonable and thus violative of the spirit and  
8 meaning of the constitutional prohibition. That is, the court explained, the guest had a right to  
9 privacy in the apartment and therefore had standing to object. Id.

11 Todd Armstrong was not the owner of the house, but merely lived there. He further  
12 subleased the property to Donte Johnson at least in the area of the bedroom. While not a  
13 traditional relationship, Todd Armstrong did not have the authority to allow inspection of a room  
14 that he relinquished to Donte Johnson. Certainly if an overnight guest can have a privacy  
15 expectation, then someone who had been constantly and uninterruptedly living in the bedroom at  
16 Everman would have greater rights.

18 The State sets forth Snyder v. State, 103 Nev. 275 (1987) for the proposition that a  
19 person who possesses common authority or other sufficient relationship can consent to a search.  
20 This case is readily distinguishable. First, the allegedly consenting individual is present at the  
21 residence. Second, the accused is absent from the residence. Finally, the consenting individual  
22 in Snyder was the brother of the accused confined to a wheelchair and therefore exhibited the  
23 indicia that he living there.

25 The facts as they relate to Donte Johnson are exactly opposite. Todd Armstrong is not  
26 present at the time of consent. Donte Johnson, the object of the Police investigation, is present.  
27 Donte Johnson was the only one exhibiting indicia that he was living there.

1        Synder, in other words, follows the logic of an assumption of the risk, whereupon an  
2 absent party risks that a present party who has access to the premises may give consent.

3        If the State wishes to analogize Synder as controlling, then Donte Johnson must take the  
4 role of the wheelchair bound brother at home, and therefore, the request to search the premises  
5 should have been made of Donte Johnson, especially as it related to the bedroom in which Donte  
6 Johnson was exhibiting dominion and control. Further, the Police knew that he had this control,  
7 yet are now trying to sidestep that obvious fact, in order to cure the defective search. They  
8 cannot.

9  
10        The State also cites Taylor v. State, 114 Nev. 1071 (1998). However this is another  
11 distinguishable case on actual authority since it is a luggage case and does not take into account  
12 any of the concerns of residence searches or Constitutional expectations of privacy of a person  
13 present at his residence. Further, in Taylor, the defendant had given over actual control and  
14 possession of the suitcase to the party searched. No such analogy would be appropriate in the  
15 instant matter. In fact, using the logic of Taylor, the Defendant could argue that Todd Armstrong  
16 abandoned his home in allowing Donte Johnson to have actual control and therefore lost all right  
17 to consent. It is thereby untenable to define one person's real property interest by the actual  
18 authority tenets of Taylor. The State's argument must fail.

19  
20        (3) The "good faith" of the police.

21        There is no "good faith" or mistaken belief in the present case. Todd Armstrong did not  
22 have the authority to waive Donte Johnson's expectation of privacy when Donte was home and  
23 was in his room. The police cannot turn a blind eye to the obvious facts that Donte Johnson was  
24 living in the residence and then gloat at the discovery of purportedly incriminating evidence found  
25 in Donte Johnson's bedroom. The police were there to search Donte Johnson's bedroom, it is  
26 disingenuous to state that they mistakenly believed that Todd Armstrong had authority to consent  
27  
28

1 to search that bedroom, when they knew or should have known it was Donte's.

2 The State again cites Synder for the proposition that apparent authority is sufficient, but  
3 this does not hold in a residence where the resident is home. Any representations relied upon by  
4 the Police which came from suspect Todd Armstrong cannot be used at this juncture to belie the  
5 fact that the Police knew Donte was staying there, knew where in the house he was staying,  
6 knew he was there when searching, and knew he had an expectation of privacy in his effects.  
7 The police may have been able to turn the corner with a twenty minute investment.  
8

9 In Derouen v. State, 85 Nev. 637, 640 (1969), the Nevada Supreme Court recognized  
10 the well-settled principle that search warrants for *automobiles* should be obtained whenever  
11 reasonably practicable. In State v. Parent, 110 Nev. 114 (1994), the Court, for the first and only  
12 time to date, expressly approved the concept of anticipatory search warrants. In doing so, the  
13 court stated:

14 "The purposes of the fourth amendment are best served by permitting government  
15 agents to obtain warrants in advance if they can show probable cause to believe  
16 that the contraband will be located on the premises at the time that the search  
17 takes place. . . . Anticipatory search warrants . . . in the proper circumstances,  
18 may be an effective tool, both to fight criminal activity, and to protect individual  
19 fourth amendment rights."

20 Parent, 110 Nev. at 117, 867 P.2d at 1145 (quoting United States v. Garcia, 882 F.2d  
21 699,703(2nd Cir.), cert denied sub nom., Grant v. United States, 493 U.S. 943, 107 L. Ed. 2d  
22 336, 110 S. Ct. 348 (1989)).

23 If the Nevada Supreme Court has set these standards for *automobile* searches, then given  
24 the heightened protections for individuals in the *places where they are living*, the police in the  
25 present case must have failed to adequately acknowledge the Fourth Amendment interests of

26 ...

27 ...

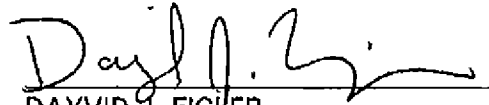
28

1 Donte Johnson. Foolhardy and illogically, they rushed into an illegal search, the fruits of which  
2 must now be suppressed.

3 Dated this 16 day of February, 2000.

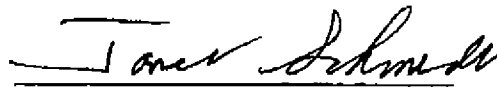
4 Respectfully submitted,

5 PHILIP J. KOHN  
6 SPECIAL PUBLIC DEFENDER

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

14 RECEIPT OF COPY

15 RECEIPT OF COPY of the foregoing **REPLY TO STATE'S OPPOSITION TO MOTION TO**  
16 **SUPPRESS** is hereby acknowledged this 16 day of February, 2000.

17  
18   
19 STEWART L. BELL  
20 District Attorney  
21 200 S. Third Street  
22 Las Vegas, NV 89155  
23 Attorney for Plaintiff  
24  
25  
26  
27  
28

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

**EXHIBIT "A"**

1 friends and roommates were Ace Hart, a young man that will  
2 testify in this courtroom; a boy by the name of Brian  
3 Johnson or B.J.

4 You will also learn that sometime in  
5 the early July Donte Johnson and Terrell Young moved into  
6 the house there at Everman.

7 These two young men moved in with Todd  
8 Armstrong and with Ace Hart and B.J.

9 At one point in time there is about  
10 five or six people living over there at the Everman  
11 address.

12 Also a woman by the name of Charla  
13 Severs or Lala, L-a, L-a.

14 You will learn that ultimately Mathew  
15 Mowen, a boy who lived at Terra Linda, came over and would  
16 visit the guy at the Everman address and, in fact, Mathew  
17 Mowen, according to Ace Hart will tell you that Mowen came  
18 over to Everman house three or four times and he would  
19 purchase rock cocaine from Donte Johnson.

20 You will learn ultimately that in late  
21 July Mathew Mowen came over to the Everman house and he  
22 made a purchase of rock cocaine from Donte Johnson and that  
23 Ace Hart was present when that purchase took place.

24 And ultimately Ace Hart will tell you  
25 there at the Everman house was Donte Johnson and Terrell

1                   You will learn that those boys died  
2 from a single gunshot wound; that the cause of death is  
3 that, a single gunshot wound and that the manner of death  
4 is a homicide and that people or persons are going to be  
5 held responsible for their death.

6                   The wrongdoers, Terrell Young, Sikia  
7 Smith and Donte Johnson, all run off like strangers in the  
8 night leaving the Terra Linda residence with their ill-  
9 gotten gains and they return over to the Everman residence  
10 where Todd Armstrong lives.

11                   You will learn that ultimately all  
12 three of these kids have been arrested, all three of them  
13 to be tried in separate trials.

14                   You will learn Todd Armstrong has not  
15 been arrested yet but you will learn he is a suspect in  
16 this case and that he, too, may be subject to prosecution  
17 if and when the evidence comes forward and is available.

18                   But again, this is Sikia Smith's trial  
19 and no one else's.

20                   Ultimately, the crime is discovered.  
21 No crime is going to be left undiscovered. Sooner or later  
22 murderers are going to be caught and going to be prose-  
23 cuted.

24                   And it is Justin Perkins who ultimately  
25 goes over to the house at 6:00 o'clock on Friday the 14th



230  
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FEB 24 1 53 PM '00

CASE NO: C153154

Dept. NO: CLERK

ROCKET NO: H

1 Donte Johnson

2 Defendant

3 -VS-

4 State of Nevada

5 Plaintiff

6  
7  
8  
9  
10  
11  
12 Memorandum to the  
13 Court for request of  
14 Motion to be filed:

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COUNTY CLERK

15  
16 Comes now the defendant, Donte Johnson, through this memorandum  
17 to the court, requesting that counsel's Dayvid Figler, and/or Joseph S.  
18 Saisento, file a motion for the disclosure of all Police officers past  
19 history records, who participated in any investigation in this case.

20 This motion should be based on the attached point and authorities,  
21 which are held within this memorandum.

22 Facts of case in support of Authorities:

23 The state has charged Mr. Johnson with four counts of open  
24 murder and various other offenses. It seeks to kill Mr. Johnson through  
25 the Death Penalty. He now requests that this memorandum be fulfilled by  
26 counsel. Counsel should file the requested motion, so that the court  
27 could make an order for the state to provide this court with the

1 personnel files of all police officers and Clark County Detention Center  
2 employees, who will testify at trial, and all police officers who participated  
3 in the investigation of this case, and that this court conduct an in  
4 camera inspection of these records. He further request that if any exculpatory  
5 evidence is found within these personnel files that this court order the  
6 disclosure of such evidence to counsel for the accused.

7 "The State 'must' disclose information favorable to the defense that meets  
8 the appropriate standard of materiality... ~~as information~~ if the prosecution  
9 is uncertain about the materiality on information within its possession, it may  
10 submit the information to the trial court for an in camera inspection and  
11 evaluation." United States - VS - Cadet. 727 F.2d 1453, 1467-68 (9th Cir. 1984)

12 (quoted that) "The Government has a duty to examine personnel files  
13 upon a defendants request for their production," also, United States - VS -  
14 Henthorn - 931 F.2d 29, 30-31 (quoted the above statement).

15 I Donte Johnson hereby specifically request that each of the above  
16 identified personnel files be produced and inspected.

17  
18  
19 Dated this day: 2 - 17 - 2000

20  
21  
22 Respectfully Submitted,

23 Donte Johnson

24 Donte Johnson

25 Defendant  
26  
27

1 TRAN

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3 ORIGINAL

DISTRICT COURT  
CLARK COUNTY, NEVADA*Shirley R. Longman*  
CLERK

\*\*\*\*\*

5 STATE OF NEVADA, )

7 PLAINTIFF, )

8 VS. )

CASE NO. C153154

DEPT. V

9 DONTÉ JOHNSON, aka JOHN LEE )  
10 WHITE )

11 DEFENDANT. )

Transcript of  
Proceedings

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

14 ALL DEFENDANT'S PENDING MOTIONS

16 STATUS CHECK: WITNESS CHARLA SEVERS

17 THURSDAY, FEBRUARY 17, 2000, 8:30 A.M.

18 APPEARANCES:

19 FOR THE STATE:

OWEN PORTERFIELD, ESQ.  
DEPUTY DISTRICT ATTORNEY

20 FOR DEFENDANT JOHNSON:

DAYVID FIGLER, ESQ.  
DEPUTY PUBLIC DEFENDER

22 FOR MATERIAL WITNESS SEVERS:

JAY SIEGEL, ESQ.

26 COURT RECORDER: DEBRA VAN BLARICOM

COUNTY CLERK

MAR 06 2000

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CE31

1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 17, 2000, 8:30 A.M.  
2 THE COURT: State versus Donte Johnson, page 13 through 15. As I notified  
3 counsel yesterday, it's going to take me additional time to study these matters and  
4 reach a decision. March the 2<sup>nd</sup>. Where are you, Donte?  
5 THE DEFENDANT: Right here.  
6 THE COURT: Just stay seated. I read your other motion. Discuss it with  
7 your lawyers—having to do with disqualifying me. I don't care if they file that kind  
8 of motion, but you've got it real confused as to why I granted a deposition in your  
9 case and why I didn't in the other case. I've got nothing against you; you're going  
10 to get a fair trial in here. But you've got a concern, you discuss it with your lawyers;  
11 they have to file the motions.  
12 \* \* \* \*  
13 THE COURT: What do you have, Chip?  
14 MR. SIEGEL: Judge, on page 13, the Donte Johnson. I had it on my calender  
15 to appear. Apparently, according to Mr. Figler, it's not on calendar.  
16 THE COURT: Well, it's on calendar, but it's been passed to March the 2<sup>nd</sup> for  
17 decision.  
18 MR. SIEGEL: When is the next time that you want Ms. Savers here, or do you  
19 want me to continue—  
20 THE COURT: I think it's April something.  
21 THE CLERK: The 24<sup>th</sup>.  
22 MR. SIEGEL: Did you want me to continue representing her in the manner I  
23 am?  
24 THE COURT: Yes. April 24<sup>th</sup>.  
25 MR. SIEGEL: Okay. So, the next time she needs to be here is April 24<sup>th</sup>?  
26 THE COURT: Yep.  
27 MR. SIEGEL: Thank you.  
28

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THE COURT: Mr. Figler, you know the date on yours, right?

MR. FIGLER: Yes, Your Honor. I have another matter.

\* \* \* \* \*

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

  
SHIRLEE PRAWALSKY, COURT RECORDER

ORIGINAL

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

FILED

MAR 16 3 13 PM '00

*Stewart L. Bell*

DISTRICT COURT CLERK  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,  
#1586283

Defendant.

Case No. C153154  
Dept. No. V  
Docket H

SUPPLEMENTAL POINTS AND AUTHORITIES IN OPPOSITION TO  
MOTION TO SUPPRESS

DATE OF HEARING: 4/24/00  
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 Supplemental Points and  
Authorities In Opposition to Motion to Suppress.

This Supplemental Points and Authorities In Opposition to Motion to Suppress is made  
and based upon all the papers and pleadings on file herein, the attached points and authorities

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COUNTY CLERK

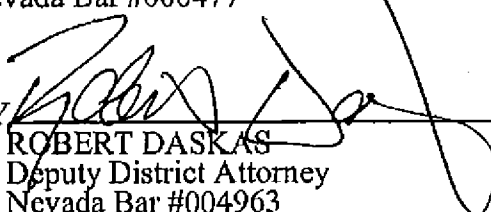
CLERK

1 in support hereof, and oral argument at the time of hearing, if deemed necessary by this  
2 Honorable Court.

3 DATED this 16 day of March, 2000.

4 Respectfully submitted,

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

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

12 POINTS AND AUTHORITIES

13 STATEMENT OF FACTS

14 Tod Armstrong and Ace Hart lived in a house located at 4815 Everman, Las Vegas,  
15 Nevada, in the months preceding August 1998. Transcript of Evidentiary Hearing, January 6,  
16 2000 (hereinafter "TR") at pp. 9, 58. The three bedroom home was owned by Cheryl Stevens,  
17 the mother of Tod Armstrong. TR at pp. 9, 58. Tod possessed the only key to the residence. TR  
18 at pp. 10, 58, 103.

19 There was no furniture or bedding in the master bedroom. TR at pp. 69-70. Both Tod  
20 and Ace kept personal belongings in the master bedroom (even after Ace moved out of the  
21 residence), as did Charla Severs and Terrell "Red" Young. TR at p. 93. Anyone who visited the  
22 home was permitted to go into the master bedroom. TR at pp. 91, 93. Visitors would frequently  
23 enter the master bedroom to listen to the stereo or simply "hang out." TR at p. 92. The door to  
24 the master bedroom was never locked unless Defendant and his girlfriend were engaged in  
25 sexual relations. TR at p. 86.

26 Detectives learned from Tod Armstrong that Donte Johnson and his associates "weren't  
27 really living" at the Everman home, but that Johnson "would just show up sometimes." TR at  
28 pp. 11, 24. Johnson did not pay rent. TR at p 11. This information was later corroborated by  
Charla Severs, Donte's girlfriend, who indicated that Donte Johnson was not living in the

1 Everman home; rather, it was a place that "he'd just go chill out for awhile." TR at p. 88. In  
2 fact, Johnson had to climb through a broken window to gain access to the residence. TR at pp.  
3 15, 94. Moreover, Severs confirmed that the master bedroom was not considered Defendant's  
4 bedroom. TR at 86.

5 Armstrong signed a consent-to-search card for 4815 Everman on August 18, 1998,  
6 sometime prior to 3:30 a.m. TR at p. 43. The Las Vegas Metropolitan Police Department  
7 SWAT team ordered all occupants out of the Everman residence to ensure the safety of everyone  
8 involved. TR at p. 48. Donte Johnson, Charla Severs and Dwain Anderson exited the home.  
9 TR at p. 48. Sgt. Hefner asked all three individuals if they lived at the Everman residence. TR  
10 at pp. 63, 103. Donte Johnson responded that he did not live in the Everman home. TR at pp.  
11 17, 64.

12 A consensual search of the Everman residence, including the master bedroom, was then  
13 conducted by Sgt. Hefner. TR at p. 68. Significantly, there was no furniture or bedding in the  
14 master bedroom and Sgt. Hefner believed it was a storage or junk room. TR at p. 69-70. Sgt.  
15 Hefner located, *inter alia*, a pair of black jeans which had an apparent blood stain on a pant leg.  
16 TR at p. 68-69. Subsequent DNA tests revealed that the blood belonged to one of the four  
17 quadruple murder victims. Moreover, Detectives found on the zipper area of those same jeans  
18 a white, crusty substance. The substance was later identified as semen, and DNA tests revealed  
19 that the donor of the semen was Donte Johnson.

## 20 II.

### 21 PROCEDURAL HISTORY

22 On or about December 3, 1999, Defendant filed a Motion to Suppress Evidence Illegally  
23 Seized. Specifically, Defendant sought to suppress jeans that were seized from the master  
24 bedroom of 4815 Everman. The gist of Defendant's legal argument was that a "roommate of  
25 a residence does not have the authority to allow a search of a bedroom in which another person  
26 is residing." Motion to Suppress Evidence Illegally Seized at p. 4.

27 The State's Opposition to Motion to Suppress Evidence Illegally Seized was filed on or  
28 about January 21, 2000. The Opposition was based on three grounds: (1) Donte Johnson lacked



1 standing to contest the search of the Everman home; (2) Tod Armstrong had actual, common  
2 authority to consent to the search; and (3) officers reasonably relied on Tod Armstrong's  
3 apparent authority to search the Everman home.

4 Defendant's Reply to State's Opposition to Motion to Suppress was filed on or about  
5 February 16, 2000. Defendant relied on three cases to suggest that "an absent third party's  
6 consent should not be used to waive another's constitutional rights when that individual is  
7 present at the time of the search to give or withhold consent in his own right." Reply at 9.

8 This Court requested that the State provide Supplemental Points and Authorities to  
9 Defendant's Reply to State's Opposition to Motion to Suppress.

10 III.

11 DISCUSSION

12 Defendant's Reply relies on three cases, none of which provide precedent to this Court,  
13 to suggest either that Donte Johnson has standing to object to the search or that Tod Armstrong  
14 lacked authority to consent to the search. All of the cases relied upon by the defense are readily  
15 distinguishable from the facts of the matter before this Court.

16 A. THE CASES RELIED UPON BY DEFENDANT ARE INAPPLICABLE BECAUSE  
17 DEFENDANT WAS NOT A CO-TENANT IN THE EVERMAN RESIDENCE

18 At the outset, it should be noted that all of the cases relied upon by Defendant involve a  
19 *tenant* objecting to a *co-tenant* consenting to a search of a residence. In fact, Defendant suggests  
20 to this Court that "this is a case of a non-present co-tenant giving alleged consent to vitiate a  
21 present co-tenant's Constitutional rights." Reply at 12.

22 It is specious at best to suggest that Donte Johnson was a co-tenant in the Everman  
23 household. He did not pay rent. TR at p. 11. He gained access to the bedroom through a broken  
24 window. TR at pp. 15, 94. The master bedroom was *not* considered Defendant's bedroom. TR  
25 at 86. In the words of his girlfriend, Donte Johnson "would just show up [at the Everman home]  
26 sometimes." TR at pp. 16, 88. In fact, the following colloquy took place between Defendant's  
27 attorney and Defendant's girlfriend during the evidentiary hearing:

28 Q. Okay. Did you consider that Donte Johnson was living there?

1 A. No, it was like a spot, where he'd just go chill out for awhile.

2 TR at pp. 16, 88. Clearly, therefore, any cases relied upon Defendant involving a tenant  
3 objecting to a co-tenant's consent-to-search are inapplicable. Moreover, the cases relied upon  
4 by Defendant are distinguishable in several other important respects.

5 1. THE MINNESOTA CASE CITED BY DEFENDANT IS INAPPLICABLE  
6 BECAUSE THE POLICE IN THAT CASE WERE AWARE THE DEFENDANT  
RESIDED IN THE PREMISES SEARCHED

7 In Matter of Welfare of D.A.G., 484 N.W.2d 787 (Minn. 1992), officers were contacted  
8 by Thomas Charles Howard. Id. at 788. Howard informed officers that he had recently moved  
9 into 1002 Hawthorne with D.A.G. and another individual. Id. Howard also informed officers  
10 that there were two pounds of marijuana in the residence, and Howard consented to a search of  
11 the residence. Id.

12 The officers failed to knock and announce their purpose and authority when they entered  
13 the residence; rather, they walked in the home with their guns drawn. Id. D.A.G. was present  
14 when officers entered. Id. D.A.G. never denied living in the home. See id. Officers founds  
15 several baggies of marijuana and a sawed-off shotgun. Id. at 789. D.A.G. admitted he owned  
16 the gun; therefore, he was charged with, *inter alia*, possession of a short-barreled shotgun. Id.  
17 The trial court suppressed the shotgun on the basis of an unreasonable, warrantless search and  
18 seizure and the Supreme Court of Minnesota affirmed.

19 The facts of this case are distinguishable from D.A.G. in at least one very important  
20 respect. In that case, *officers were told by Howard that, in fact, D.A.G. lived in the home they*  
21 *were about to search.* Id. at 788. Howard, the person whom consented to the search, informed  
22 officers that D.A.G. lived in the home. Id. In the instant matter, on the other hand, Detectives  
23 were told just the opposite -- Tod Armstrong informed officers that Donte Johnson did *not* live  
24 in the Everman household. TR at pp. 11, 15, 16, 24, 88. Moreover, D.A.G. did not deny living  
25 in the home as Donte Johnson did in this case. See D.A.G. at 788. In fact, officers in that case  
26 never even inquired of D.A.G.'s nexus to the residence. Conversely, Donte Johnson was  
27 specifically asked by Sgt. Hefner if he resided in the Everman home. TR at pp. 17-64. Johnson  
28 responded that he did not live in the home. TR at pp. 17-64. Moreover, D.A.G. was in fact a

1 tenant in the residence, whereas Donte Johnson was not a tenant in the Everman home. Clearly,  
2 therefore, the instant matter is distinguishable from D.A.G..

3 2. THE TOMPKINS CASE RELIED UPON BY DEFENDANT IS INAPPOSITE  
4 BECAUSE DEFENDANT SOUGHT TO EXCLUDE THE OFFICERS FROM  
5 THE HOME AND TOLD OFFICERS HE LIVED IN THE HOME

6 Defendant also relies on Tompkins v. Superior Ct., 59 Cal.2d. 65, 378 P.2d 113, 27  
7 Cal.Rptr. 889 (1963), to suggest that Johnson has standing in the instant matter to object to the  
8 search of the Everman home. In that case, officers arrested Edward Nieman for possession of  
9 marijuana following an automobile stop. Id. at 69. Nieman told officers that he lived at 700  
10 Shotwell Street, Apt. No. 3. Id. The officers asked Nieman if he had any contraband in his  
11 home; he answered "no" and gave officers the key to confirm his answer for themselves. Id.  
12 Officers responded to the residence and attempted to open the door. Id. Tompkins was in the  
13 residence and *slammed the door shut*. Id. Officers kicked in the door and found Tompkins in  
14 the middle of the room and found marijuana and marijuana seeds. Id. Tompkins *told officers*  
15 *that he lived in the apartment*. Id.

16 Tompkins sought to suppress the marijuana. The Supreme Court of California stated:

17 Accordingly, we hold that one joint occupant who is away from the premises may not  
18 authorize police officers to enter and search the premises *over the objection of another*  
19 *joint occupant who is present at the time*, at least where as in this case, no prior warning  
20 is given, no emergency exists, and the officer fails even to disclose his purpose to the  
21 occupant who is present or to inform him that he has the consent of the absent occupant  
22 to enter.

23 Id. at 69 (emphasis added). Consequently, the marijuana was suppressed.

24 Tompkins, too, is readily distinguishable from the facts of the instant matter. Again, it  
25 is undisputed that Tompkins was a tenant of the apartment whereas Donte Johnson was not a  
26 tenant of the Everman home. Additionally, Tompkins clearly objected to the search of the  
27 apartment when he slammed the door shut on the officers. Tompkins also told officers that he  
28 lived in the apartment. Donte Johnson, on the other hand, did just the opposite; he specifically  
denied living in the home and did not attempt to exclude the officers from the home as did  
Tompkins. Thus, Johnson's reliance on Tompkins to support the notion that he has standing to  
object to the search of the Everman home is misplaced.

1 More importantly, the Supreme Court of California very recently declined to follow the  
2 thirty year old Tompkins case. In People v. Welch, 20 Cal.4th 701, 976 P.2d 754, 85 Cal.Rptr.2d  
3 203 (1999), the defendant and his girlfriend broke down the door of Barbara Mabrey's home in  
4 Oakland and killed six persons as they were sleeping in various rooms. Id. at 722. Following  
5 the killings, defendant went to Beverly Jermany's residence. Id. at 724. Jermany was the second  
6 cousin of the defendant. Id. Jermany eventually notified the police that the defendant was at her  
7 house and he was apprehended. Id.

8 A warrantless search of the home and backyard revealed a pillowcase which contained  
9 the murder weapons. Id. Burned clothing was recovered from the fireplace inside the home.  
10 Id. Tennis shoes were also recovered from the residence; blood found on the shoes matched that  
11 of a victim. Id.

12 The defendant moved to suppress the evidence. The defendant cited the same case relied  
13 upon by Donte Johnson in this case, Tompkins v. Superior Court, 59 Cal.2d 65 (1963), to  
14 suggest that he was a joint occupant of the home and had standing to object to the search. The  
15 Supreme Court of California rejected his argument. Specifically, the Court recognized that  
16 defendant lacked standing to assert his Fourth Amendment rights.

17 Defendant, however, was in no sense a joint occupant, but rather a transient guest, a  
18 critical difference in defining his expectation of privacy. We conclude that Jermany's  
consent rendered the search ... lawful.

19 Id. at 748.

20 Similarly, in the instant matter, Donte Johnson was in no sense a joint occupant of the  
21 Everman home; at most, he, too, was a transient guest. Donte Johnson and his associates  
22 "weren't really living" at the Everman home; rather, Johnson "would just show up sometimes."  
23 Johnson did not pay rent. TR at pp. 11, 24. Charla Severs confirmed that Donte Johnson was  
24 not living in the Everman home; instead, it was a place that "he'd just go chill out for awhile."  
25 TR at p. 88. In fact, Johnson had to climb through a broken window to gain access to the  
26 residence. TR at pp. 15, 94. As a transient guest, Johnson, like the defendant in Welch, does  
27 not have standing to object to a search of the home. Consequently, the Motion to Suppress must  
28 fail.

1           3.     DEFENDANT'S RELIANCE ON MATIAS IS MISPLACED BECAUSE  
2                 MATIAS NEVER DENIED LIVING IN THE SEARCHED APARTMENT AS  
3                 DEFENDANT DID IN THE INSTANT MATTER

4           Finally, the defense also relies on State v. Matias, 51 Haw. 62, 451 P.2d 257 (1969), as  
5           support for the notion that Johnson has standing to object to the Everman search. In that case,  
6           police were looking for the defendant during their investigation of a robbery. Id. 63. Officers  
7           saw defendant on a balcony of an apartment building. Id. Officers did not ask the defendant if  
8           he lived in the apartment, nor did defendant deny living in the home. See id. Rather, officers  
9           obtained permission to enter the apartment from another tenant. Id. Police seized a coat that  
10          was subsequently used in a prearrest identification procedure. Id. The Supreme Court of Hawaii  
11          held that Matias had a right to privacy in the premises of the apartment. Id. at 65.

12          Matias, much like D.A.G. and Tompkins, provides no support for Defendant's position  
13          in this case. Unlike Sgt. Hefner in this case, officers did not ask Matias if he lived in the  
14          apartment that was ultimately searched. Moreover, unlike Johnson in the instant matter, Matias  
15          did not deny living in the apartment. Those key factors mandate a different result in the case  
16          before this Court.

17          B.     COURTS HAVE RECOGNIZED THAT A DEFENDANT DOES NOT HAVE ANY  
18                 EXPECTATION OF PRIVACY IN A RESIDENCE WHEN THE DEFENDANT  
19                 DENIES LIVING IN THAT RESIDENCE

20          In the State's Opposition to Motion to Suppress, the State cited a plethora of cases to  
21          support the notion that a defendant who denies ownership interest in property abandons any  
22          expectation of privacy in that property, thereby losing standing to contest the search. See e.g.,  
23          U.S. v. Veatch, 674 F.2d 1217 (1981) (no standing to contest search of wallet where defendant  
24          denied owning wallet); U.S. v. Sanders, 130 F.3d 1316 (1998) (defendant surrendered any  
25          legitimate expectation of privacy and lacked standing where defendant denied ownership interest  
26          in leather bag). Defendant, however, suggests that this Court must grant his Motion to Suppress  
27          because "the State only argues inapplicable automobile and luggage cases, nary a residence case  
28          in sight." Reply at 11.

          In State v. Banks, 364 S.E.2d 452 (NC 1988), however, the court recognized that a  
defendant's disclaimer of having a possessory interest in a residence served to undermine his

1 credibility regarding his expectations of privacy. There, the police arrested defendant at his  
2 residence and he stated, "I don't have nothing on me. I don't live here." Id. at 453. A  
3 warrantless search<sup>1</sup> revealed cocaine as well as items which connected defendant to the  
4 residence. Id. At trial, defendant sought to suppress the cocaine. The court recognized that:

5 a defendant may object to the admission of evidence obtained through an illegal or  
6 unreasonable governmental search only where defendant can demonstrate legitimate  
7 expectations of privacy to the place or item searched. [citations omitted.] Determination  
8 of whether defendant has sufficient privacy expectations to the area searched depends  
9 upon whether defendant can show that his conduct indicated that he held an actual  
10 expectation of privacy (subjective) and whether defendant sought to preserve an item or  
11 place private and free from governmental invasion. [citations omitted.] And secondly,  
12 defendant must show that his expectation is one society is willing to recognize.

13 Id. at 454 (citations omitted) (emphasis added). The court reasoned that the defendant's  
14 disclaimers of a possessory interest in the residence undermined his claims regarding his  
15 expectation of privacy. Id. at 454. Consequently, the court ruled that he lacked standing to  
16 object to the admission of evidence seized from the residence during the warrantless search. Id.

17 Similarly, in the instant matter, Donte Johnson's conduct belies the argument that he held  
18 an actual expectation of privacy in the Everman household. Johnson denied that he lived in the  
19 Everman home when asked by police. He entered the room through a broken window. He paid  
20 no rent. Any visitor was free to enter the master bedroom of the Everman household for a  
21 variety of reasons. Consequently, Donte Johnson lacks standing to object to the search.

22 C. EVEN IF DONTÉ JOHNSON WERE CONSIDERED A CO-TENANT, TOD  
23 ARMSTRONG HAD COMMON AUTHORITY OVER THE PREMISES TO  
24 CONSENT TO THE SEARCH

25 Assuming, *arguendo*, that this Court found as a matter of fact that Donte Johnson was a  
26 tenant of the Everman home, Defendant's Motion to Suppress still must fail. Defendant's  
27 original argument was that a "roommate of a residence does not have the authority to allow a  
28 search of a bedroom in which another person is residing." Motion to Suppress Evidence  
Illegally Seized at p. 4. This is an incorrect statement of the law. In U.S. v. Matlock, 415  
U.S. 164, 94 S.Ct. 988 (1974), officers recovered proceeds from a bank robbery from the master

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<sup>1</sup> The warrant was ruled defective because it was not executed. Banks at 453.

1 bedroom of a home after defendant's wife consented to a warrantless search. Id. at 166. The  
2 issue was whether the consenting party's relationship to the master bedroom was sufficient to  
3 make her consent to the search valid against the defendant. Id. at 167. Unlike the matter before  
4 this Court, however, it was undisputed that the defendant in fact lived in the home and occupied  
5 the master bedroom.

6 The United States Supreme Court recognized that "the voluntary consent of any joint  
7 occupant of a residence to search the premises jointly occupied is valid against the co-occupant."  
8 Id. at 168. Thus, the prosecution may show that permission to search was obtained from a third  
9 party who possessed common authority over or other sufficient relationship to the premises  
10 inspected. Id. at 171.

11 The authority which justifies the third-party consent ... rests ... on mutual use of the  
12 property by persons generally having joint access or control for most purposes, so that it  
13 is reasonable to recognize that any of the coinhabitants has the right and that the others  
have assumed the risk that one of their number might permit the common area to be  
searched.

14 Id. at 171, fn. 7.

15 Certainly Tod Armstrong had a sufficient relationship to the 4815 Everman home,  
16 including the master bedroom, to grant the officers permission to search. Tod's mother owned  
17 the residence and Tod possessed the only key to the house. Tod (and Ace Hart) kept personal  
18 belongings in the master bedroom, as did Charla Severs. Anyone who visited the home was  
19 permitted to enter the master bedroom. Defendant gained access to the room through a broken  
20 window. Defendant's girlfriend testified that the master bedroom was *not* considered  
21 Defendant's bedroom, nor did she consider that Defendant lived in the home. TR at 86. These  
22 facts clearly illustrate Tod's common authority over the premises. Accordingly, his voluntary  
23 consent to search the premises is valid against Defendant. See Matlock, 415 U.S. 164. Thus,  
24 Defendant's Motion to Suppress must fail.

#### 25 IV.

#### 26 CONCLUSION

27 Each of the cases relied upon by Defendant is distinguishable from the instant matter.  
28 In all of the cases relied upon by Defendant, the individuals who objected to the searches were,

1 in fact, tenants in the premises. Moreover, either (1) the officers were told that the defendant  
2 lived in the residences, (2) the defendant did not deny to the police that he lived in the home that  
3 was searched, or (3) the search was performed over the objection of the defendant. Surely the  
4 result in each of the cases relied upon by Johnson would have been different had those suspects  
5 denied living in the homes that were searched, as Donte Johnson did in the instant matter. Thus,  
6 Defendant's reliance on these cases is misplaced. Accordingly, the State respectfully requests  
7 that this Court deny Defendant's Motion to Suppress Evidence Illegally Seized.

8 DATED this 16 day of March, 2000.

9 Respectfully submitted,


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

13 BY   
14 ROBERT DASKAS  
15 Deputy District Attorney  
16 Nevada Bar #004963

17 RECEIPT OF COPY

18 RECEIPT OF COPY of the above and foregoing SUPPLEMENTAL POINTS AND  
19 AUTHORITIES IN OPPOSITION TO MOTION TO SUPPRESS is hereby acknowledged this  
20 16th day of March, 2000.

21 SPECIAL PUBLIC DEFENDERS OFFICER  
22 ATTORNEY FOR DEFENDANT

23 BY   
24 309 S. Third Street, 3rd Flr.  
25 Las Vegas, Nevada 89101



TRAN

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MAR 16 3 31 PM '00

DISTRICT COURT  
CLARK COUNTY, NEVADA

*Shirley B. Prawlsky*  
CLERK

\*\*\*\*\*

STATE OF NEVADA,

PLAINTIFF,

VS.

CASE NO. C153154

DEPT. V

DONTE JOHNSON, aka JOHN LEE  
WHITE

DEFENDANT.

Transcript of  
Proceedings

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

ALL DEFENDANT'S PENDING MOTIONS

THURSDAY, MARCH 2, 2000, 8:30 A.M.

APPEARANCES:

FOR THE STATE:

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

FOR DEFENDANT JOHNSON:

DAYVID FIGLER, ESQ.  
DEPUTY PUBLIC DEFENDER

COURT RECORDER: SHIRLEE PRAWALSKY

1 LAS VEGAS, NEVADA, THURSDAY, MARCH 2, 2000, 8:30 A.M.

2 THE COURT: Okay, Donte Johnson. All right. Is Mr. Johnson here today?

3 MR. FIGLER: Yes, he is, Your Honor, right behind me.

4 THE COURT: I see, okay. Oh, he's got a new haircut. You don't have to  
5 stand up; don't worry about it. Just everybody have a seat. It's going to take a few  
6 minutes to discuss these various motions.

7 I'm going to go in calendar order. Robert, the State has not filed since  
8 the evidentiary hearing, any additional pleadings. Have you—just sit down, sit down.

9 MR. DASKAS: No, Judge, we have not.

10 THE COURT: I know the State may not believe that the evidence shows that  
11 Donte rises to the level of a co-tenant, but there is extensive and interesting case  
12 law, at least interesting to me, that has been cited in the reply filed February the 16<sup>th</sup>.  
13 I think it's a serious issue. If I had to rule right after the hearing, I guess I would  
14 have held that there was apparent authority of Todd Armstrong and no reason for the  
15 police to believe that Mr. Johnson had an expectation of privacy. But these cases  
16 from around the county, at least, are interesting.

17 And because we have so much time till the trial, I would like the State  
18 to file a memorandum of law dealing with the reply that's been filed. And I will  
19 decide it on the calendar call which I'm moving up because I'm going to grant the  
20 questionnaires and it will work better. Let's move the calendar call up to the  
21 24<sup>th</sup>—let's see, the 23<sup>rd</sup> of May. And I'll decide any unresolved motions that I don't  
22 decide today on that day.

23 So, the Motion to Suppress will go over till that date, a long time. How  
24 long would you reasonably need to get me that memorandum at least a week in  
25 advance of that date?

26 MR. DASKAS: Judge, 10 days, two weeks is fine.

27 THE COURT: You know your calendar; I don't want to press you.

28

1 THE COURT: Is two weeks good?

2 MR. DASKAS: That's fine, Judge, thank you.

3 THE COURT: Two weeks, okay.

4 THE CLERK: That's March 16<sup>th</sup> for the State to answer.

5 THE COURT: Second: Motion to Allow the Defense to Argue Last at the  
6 Penalty Phase: denied.

7 Three: Defendant's Motion for Permission to File Other Motions, I don't  
8 know if there's any you feel strongly about. You can always file whatever you want  
9 that you believe is necessary to litigate the case properly and to give effective  
10 assistance of counsel. And we'll consider them on the merits if they occur and if  
11 there's some reason not to decide them on the merits because of a lack of timeliness,  
12 and the nature of the issues, we'll worry about that now. Do you intend, by the  
13 way, to file any additional motions?

14 MR. FIGLER: As this is an ongoing investigation, Your Honor, we don't know  
15 what other motions we--

16 THE COURT: Okay. The Motion for Disqualification from the Jury Venire of  
17 All Potential Jurors Who Would Automatically Vote for the Death Penalty if They  
18 Found Mr. Johnson Guilty of Murder, though I didn't make any rulings as the State's  
19 opposition refers in the co-defendant's case--that was some other judge, right?

20 MR. FIGLER: I understand that, Judge.

21 THE COURT: I'm going to deny; we'll handle it according to established law  
22 at the time of trial.

23 Now, I mean, I have my ideas as to what the law is in picking a jury.  
24 You guys do it all the time. If you want to file some memorandum of law, brief or  
25 extensive that will further my education and guide me in ruling on your arguments at  
26 the time of trial, I'd be glad to accept it at any time prior to the time we voir dire the  
27 jury.

28

1 Defendant's Motion for Disclosure of Exculpatory Evidence Pertaining  
2 to the Impact of the Defendant's Execution Upon Victim's Family Members, what a  
3 motion. I don't know if this had Pescetta's fingerprints on it from the Federal Public  
4 Defender, but an incredible motion. The imaginative level that it rises to is something  
5 that really piqued my interest. But despite the heightened interest that I had in  
6 reading it, the Motion is denied. And I hope never to see a similar one again.

7 Defendant's Motion to Authenticate and Federalize all Motions,  
8 Objections, Requests, etcetera, I take it, Dayvid, that this is filed in every case now  
9 because I see it every case because the federal courts are making you—at least some  
10 of them—make the objections in federal terms at the time of trial, or they later hold  
11 that you waived them, right?

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

13 THE COURT: I don't want to hear the whole federal grounds here either. I  
14 just don't know what I could as a State District Court Judge that's going to protect  
15 the record. I can say to you, and I do, "It's all federalized." When you say  
16 "hearsay," that means to me, confrontation under the sixth amendment, I'm very  
17 satisfied with that. I give you my federalization, but I'm not a federal court judge.  
18 So, you do what you think you have to given current law to protect the record. I  
19 don't want you to have to make a litany every time you make an objection. I want  
20 to federalize it to shorten things. I don't agree with the way they are handling that,  
21 but I don't know what else I can do.

22 So, I'm not going to really rule on that motion, we're just going to sort  
23 of leave it sitting out there, off calendar and undecided except for what I've just said.

24 Defendant's Motion to Prohibit the Use of Peremptory Challenges to  
25 Exclude Jurors Who Express Concerns About Capital Punishment: denied.

26 Defendant's Motion to Preclude Evidence of Alleged Co-Conspirators'  
27 Statements: in the opposition, Mr. Daskas and Mr. Guymon, you say, "The law is  
28

1 clear that the statements of Defendant Johnson's co-conspirators are admissible  
2 whether they come from the co-conspirators themselves on the witness stand, or  
3 from other witness who heard the co-conspirators make statements during and in  
4 furtherance of the conspiracy."

5 First of all: do you expect the co-conspirators to actually be testifying  
6 in these trials now? Or is that a possibility, do you think?

7 MR. DASKAS: It's a possibility; since they've been convicted and sentenced  
8 they don't have that fifth amendment privilege. We can certainly subpoena them.

9 THE COURT: Okay, now certainly--here's what I guess I feel about when I  
10 read this very brief answer. I mean, we could have statements from the witness  
11 stand, we could have confessions to the police, we could have statements that they  
12 allegedly make when they come back from Terra Linda, we can have all sorts of  
13 different statements, all of which would be governed by different rules.

14 What I'd like is a list from you of expected statements and what  
15 exceptions you think those fit in. Some of them, I can imagine we might even have  
16 to have a hearing about as to whether they're in furtherance of the alleged  
17 conspiracy.

18 MR. DASKAS: Certainly, Judge.

19 THE COURT: So, if you would, at some time convenient to you, file  
20 supplemental points and authorities indicating all the statements that you expect to  
21 try to get in one way or the other, I'm going to have the public defender and special  
22 defender answer that. When would you have that kind of additional memorandum  
23 in?

24 MR. DASKAS: Thirty days, Judge.

25 THE COURT: Thirty days would be?

26 THE CLERK: March 30<sup>th</sup>.

27 THE COURT: And how much time for Mr. Figler and his ongoing investigation  
28

1 to respond to this?

2 MR. FIGLER: Two weeks should suffice, Your Honor.

3 THE COURT: Two weeks.

4 THE CLERK: April 13<sup>th</sup>.

5 THE COURT: And one week for a reply if deemed necessary by the State.

6 THE CLERK: April 20<sup>th</sup>.

7 THE COURT: And it will be decided, as will all other undecided motions, on  
8 the calendar call.

9 By the way, before I forget, there was, months ago, filed a motion to  
10 -by the State for some kind of-it was an alleged statement at the scene of the  
11 alleged crime at Terra Linda having to do with gangs.

12 MR. DASKAS: Yes, Judge.

13 THE COURT: And some indication, as I recall, that the car that was driven  
14 over there was stolen?

15 MR. DASKAS: That's correct.

16 THE COURT: Was that-it somehow has become lost.

17 MR. DASKAS: It has, Judge. It has not yet been decided.

18 THE COURT: Okay. I know it hadn't been decided. Has it been answered?  
19 Do you recall?

20 MR. DASKAS: I don't recall.

21 THE COURT: I'll tell you what: we'll put that motion over. It's  
22 something-what was it called, Motion to Tell Complete Story or something like that?

23 MR. DASKAS: Yes, yes.

24 THE COURT: Find that. If it hasn't been answered, give a date three weeks  
25 from now to answer it.

26 MR. DASKAS: Actually, Judge, it has been answered. I have a copy.

27 THE COURT: It has been answered?

28

1 MR. DASKAS: Yes.

2 THE COURT: Are you going to file a reply?

3 MR. DASKAS: No, Judge.

4 THE COURT: Okay. Can I just see the answer? Because I either read the  
5 answer or had an answer in my mind. I have read this. It was some time ago, quite  
6 a while, it was some time last year. The Motion in Limine to Permit the State to  
7 Present the Complete Story of the Crime is denied.

8 Do you need this copy, Mr. Daskas?

9 MR. DASKAS: Yes, please, Judge. Thanks.

10 THE COURT: Thank you.

11 Defendant's Motion for Disclosure of Any Disqualification of the District  
12 Attorney's Office is denied.

13 Defendant's Motion to Require Prosecutor to State Reasons for  
14 Exercising Peremptory Challenge is denied.

15 Defendant's Motion for Jury Questionnaire, there has been no opposition  
16 filed to this?

17 MR. DASKAS: Yes, Judge.

18 THE COURT: Okay. We're going to grant that with the understanding that  
19 any questionnaire I've ever seen asks so many more questions and gives so much  
20 more information to the defense than they could possibly get by any supplemental  
21 voir dire that would be permitted by this Court in accordance with the law, I'm going  
22 to be very, very strictly limiting anything in addition to the questionnaire information.  
23 Certainly, I'm not going to unreasonably restrict your right to supplement what you  
24 read with some limited additional questions.

25 The law does not give, in my opinion, unlimited time to pursue voir dire.  
26 To me, the benefits of a questionnaire is you can get a lot of information without  
27 taking up court time. You can get a lot of information that you don't have to taint

28

1 other jurors with. I will strictly follow the rules in Eighth Judicial District Court Rule  
2 770 and on my own, if questions have already been asked and answered, and that  
3 includes those in the questionnaires, any questions touching on anticipated  
4 instructions of the law, questions touching on the verdict a juror would return when  
5 based upon hypothetical facts, and questions that are, in substance, arguments of  
6 the case, I will, without objection by the other side, as an exercise of my supervisory  
7 power over the trial, myself, enforce that rule.

8 And in terms of you having to schedule things in your lives, I'm going  
9 to tell you now: we're going to bring in the jury, assuming at the calendar call it's  
10 announced "ready," we're going to bring the jury, not into the courtroom, but into  
11 the jury room and have them fill out the questionnaires on Tuesday, May the 30<sup>th</sup>.

12 Now, before the time for that coming in, I'm going to ask—for example  
13 in the Floyd case, the parties came up with by some meetings and exchanges of  
14 correspondence with a questionnaire that is all but acceptable with a few little  
15 details, to both sides. I want you to meet, confer, and get a questionnaire together  
16 that satisfies you folks by May the 17<sup>th</sup>. Give it to me; I may want to add a few  
17 things.

18 How this ends up is: other than addressing questions to the jury as to  
19 hardship and a few other routine things as a group, I will be asking no individual  
20 questions of the jury. It will go directly to your supplemental voir dire. My part, in  
21 a theatrical sense, will be dramatically reduced, Mr. Figler.

22 So, we're going to start picking the jury at—it's June 5<sup>th</sup>, right? We're  
23 going to start picking the jury on June 5<sup>th</sup> at 9:30 in the morning. Just so you can  
24 plan, we'll set aside June the 5<sup>th</sup> to pick the jury. And we, unless something unusual  
25 will happen, we'll pick the jury by the time June the 5<sup>th</sup> is over. And you should  
26 come prepared to give opening statements. Because if we have some time, we'll  
27 give those too. And we'll start evidence on June the 6<sup>th</sup>.

28



1 I'm going to order you, before you come on June the 5<sup>th</sup>, to meet with  
2 each other physically, all four counsel, and agree, or if it's only necessary one on a  
3 side, agree and number every instruction that you can agree on, one through the end,  
4 reserving for some period during trial, and it may be at the end of the day on June  
5 the 5<sup>th</sup>, any other additional instructions. If you have any additional instructions that  
6 they will not agree to, or you have instructions that he will not agree to, bring them  
7 on June the 5<sup>th</sup> and if we have after we pick a jury and give openings, we're going  
8 to settle instructions right then.

9 June the 6<sup>th</sup> we are going to go from 9:30 in the morning until  
10 somewhere around 5:15 with an hour break for lunch. June 7<sup>th</sup> we are starting at  
11 8:00 a.m., same closing time, same lunch time. Thursday will be the same schedule  
12 as Tuesday. Friday we will again start at 8:00 a.m. I am anticipating we will easily  
13 finish the complete cases of both sides in the guilt phase, which I will talk about in  
14 another motion in a few minutes. And if there is a penalty hearing, it's going to start  
15 on Monday, June the 12<sup>th</sup>.

16 Defendant's Motion for Change of Venue, denied under 174.555. After  
17 the voir dire we'll consider it. Everything I've seen for 32 years as a lawyer and on  
18 the bench indicates to me that we're going to be able to pick a fair and impartial jury  
19 without a change of venue.

20 Defendant's Motion to Dismiss State's Notice of Intent to Seek Death  
21 Penalty Because Nevada's Death Penalty Statutes are Unconstitutional: denied based  
22 on applicable Nevada law as cited by the State.

23 Defendant's Motion for Inspection of Police Officers' Personnel Files  
24 based on Sonner versus State and a lack of a more specific showing here: denied.

25 Defendant's Motion in Limine to Preclude Evidence of Other Guns,  
26 Weapons, and Ammunition Not Used in the Crime. All right, there's an Enforcer rifle  
27 in the car, right?

1 MR. DASKAS: That's right.

2 THE COURT: And the Ruger is at the Everman residence?

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

4 THE COURT: Are there other guns? Because I see reference to other guns.  
5 Are there other guns from this Everman residence that you actually have?

6 MR. DASKAS: No.

7 THE COURT: Okay. So, the only two guns are those two?

8 MR. DASKAS: And those are the only two we plan on introducing.

9 THE COURT: Okay. Now, in the answer that I see, there seems to be a  
10 variety of ways that you're identifying these weapons as the ones used at Terra  
11 Linda. Now, to me, if they're the ones used at Terra Linda, they come in and they  
12 come in without the Petrochelli hearing that you're referring to which would be other  
13 bad acts; these are part of the crime, in my view. But what I couldn't tell was--I  
14 mean, you attach Armstrong's statement. But you also refer to co-defendants'  
15 statements which may or may not come in. How--I cannot really tell when I'm  
16 considering this motion, the real basis for identifying these weapons.

17 Now, I again, because I've talked about it before, recall Charla Severs  
18 saying in her deposition about the bag and it being loaded with guns. She, as I recall,  
19 actually claims to identify the gun with the banana clip, right?

20 MR. DASKAS: That's right.

21 THE COURT: And which is that, the one found at Everman, or the one in the  
22 car?

23 MR. GUYMON: That's found at Everman, Judge.

24 THE COURT: What about the one that is the Enforcer? How do you try to  
25 link that to the crime?

26 MR. DASKAS: Judge, if I recall correctly--and I'd have to refer to the  
27 statements--but I believe Ace Hart at sometime refers to a gun with holes in the

28

1 barrel portion. And that would be the other gun. There are other witnesses,  
2 including LaLa, Charla Severs, I believe who identifies the second gun as well. She  
3 had seen both the guns, I believe—

4 THE COURT: The "second gun" meaning?

5 MR. DASKAS: The Ruger rifle, whichever one did not have the banana clip in  
6 it, the Enforcer.

7 THE COURT: She claims to identify both of them.

8 MR. DASKAS: I believe she does, Judge, yes.

9 THE COURT: Okay. If you can point out, by the time of the calendar call,  
10 where, in her deposition she does, I'll consider that. If you'll just file brief  
11 Supplemental Points and Authorities giving me some indication of where I've already  
12 heard that, I'll be able to make a ruling on that. So, we'll continue the final ruling on  
13 that motion until the calendar call.

14 Defendant's Motion in Limine for Order Prohibiting Prosecution  
15 Misconduct in Argument, I deny this. I agree with everything, frankly, that was said  
16 in the State's opposition here and that there is no cognizable request for relief.

17 Defendant's Motion in Limine to Prohibit Any References to the first  
18 phase as the Guilt Phase: I don't think there's any harm in the shorthand reference  
19 to the first part of this trial as the guilt phase. I don't think it infers that the purpose  
20 of the trial is to find Mr. Johnson guilty, or that there is an increased likelihood of  
21 finding him guilty by merely referring, as we all have in the past, by the shorthand  
22 "guilt phase," and if you want me to specifically tell the jury that, I'll be glad to tell  
23 them that when we begin voir dire if you remind me.

24 Defendant's Motion in Limine Regarding Co-Defendants' Sentences, you  
25 have not filed a reply in this one, have you, Dayvid?

26 MR. FIGLER: No, Your Honor. Would you like us to file a supplemental?

27 THE COURT: Well, I think Flanagan, at least the way I read Flanagan,  
28

1 permits, in my discretion, to allow these things in. I would imagine as heavily  
2 litigated as these issues are in federal court, there must be some federal cases that  
3 might help me decide how I should exercise my discretion. I, frankly, can't see the  
4 harm to your client in letting these things in. I know the State says that he's the  
5 triggerman and therefore might want to argue it's appropriate to give him more than  
6 the co-defendants. I'm not sure it doesn't cut the other way as well that this is  
7 another young man who shouldn't die for these crimes. But I'd like to see if you  
8 could come up with, perhaps in the next month, which would be when?

9 THE CLERK: March 30<sup>th</sup>.

10 THE COURT: Some reply points and authorities that, perhaps elicits some  
11 federal authorities on this issue. So, that motion is continued to the calendar call as  
12 well for final decision.

13 Defendant's Motion to Apply a Heightened Standard of Review: denied.  
14 It's not clear to me what is really being asked of the trial court here. And I can't  
15 think of any relief that I can frame.

16 MR. FIGLER: I could elaborate, Your Honor.

17 THE COURT: That's all right. If you want to elaborate, file a motion to  
18 reconsider.

19 Defendant's Motion for Discovery and Evidentiary Hearing Regarding the  
20 Manner and Method of Determining in Which Murder Case the Death Penalty will be  
21 Sought, I gather some other judge--from your opposition--in responding to this motion  
22 said, if there's some written guidelines, give it to him?

23 MR. DASKAS: That's my understanding of what's been done in this--

24 THE COURT: It sounds like a good idea. I have a feeling that there are no  
25 written guidelines for the committee. But, I think that's a good idea. Other than  
26 providing that to defense counsel, if it exists, the matter is denied. Is Acosta one of  
27 the co-defendants in this case?

1 MR. GUYMON: Excuse me, Judge?

2 MR. DASKAS: No, Judge.

3 THE COURT: Is Acosta one of the co-defendants in this case?

4 MR. FIGLER: No, Your Honor. That's Mr. Shanley's case in front of Judge  
5 Loehrer. That's my case as well.

6 THE COURT: Okay. I know that in preparing these multiple motions and  
7 responses, it's hard, sometimes, to get the secretaries to take out references to other  
8 people, especially with word processors, the way they are.

9 Defendant's Motion to Exclude Autopsy Pictures: denied at this time;  
10 I'll consider them individually at trial.

11 Defendant's Motion in Limine to Preclude the Introduction of Victim  
12 Impact: denied based on both U.S. and Nevada Supreme Court cases as cited by the  
13 State.

14 Defendant's Motion to Bifurcate the Penalty Phase: denied.

15 Defendant's Motion in Limine to Preclude Evidence of Witness  
16 Intimidation. Has that been answered? I've never even seen the motion, by the way.

17 MR. DASKAS: Judge, it has not. In fact, the way the Motion is written, we  
18 agree with it unless we can establish that the threats came from this defendant, we  
19 wouldn't plan on introducing any. So, we're not—

20 THE COURT: It will be grated on that basis. It's somewhere in the files; I've  
21 never even been able to find it.

22 Okay, that takes care of all the motions and the schedule. And we'll see  
23 you later.

24 MR. DASKAS: Judge, if I might bring up one other matter?

25 THE COURT: Sure.

26 MR. DASKAS: We received a handwritten motion from Mr. Johnson. I don't  
27 know if the Court wants to decide it now. But it was a motion—

28

1 THE COURT: What was the name of that motion?

2 MR. DASKAS: He basically wanted to disqualify this Court from hearing the  
3 trial.

4 THE COURT: Okay. That's a pro per motion. It's denied at this time without  
5 prejudice to the Special Defender if they wish to pursue it under the local District  
6 Court Rules. It's mainly a motion to disqualify me. And, as I told you, I guess, while  
7 you were sitting there, but counsel wasn't present, a few weeks ago, Mr. Johnson,  
8 other than that there's quadruple murder allegations in Floyd and this, there's  
9 absolutely no difference--they're totally different cases to me. And I decide different  
10 things on different basis.

11 I have nothing against you. And you're going to, in my opinion, get just  
12 as fair a trial as anybody else. I haven't made any conclusions as to your guilt or  
13 innocence. And if I had, it wouldn't make any difference as to how I handle your  
14 trial. But, it's denied without prejudice to the Special Defender filing something if  
15 they wish to.

16 MR. DASKAS: Thanks, Judge.

17 MR. GUYMON: One last housekeeping matter.

18 THE COURT: Yes?

19 MR. GUYMON: You had indicated you would like us to have all of the jury  
20 exhibits marked before we begin picking the jury. We have, in the last two cases  
21 simply--

22 THE COURT: I don't know what I did, but I think that's a good idea.

23 MR. GUYMON: You actually gave us that admonishment today, I thought.

24 THE COURT: No.

25 MR. DASKAS: Instructions.

26 MR. GUYMON: Oh, I thought you wanted all the exhibits as well. You  
27 indicated you want us to meet.

28

1 THE COURT: I like the idea, but it hadn't occurred to me until you said it.

2 MR. GUYMON: Well, that's certainly what I heard. Perhaps I wouldn't have  
3 stepped-

4 THE COURT: I like the idea, though.

5 MR. GUYMON: Does this Court have any objection to us simply bringing up a  
6 motion to you--an order to you ordering that all the exhibits be brought into this case  
7 number?

8 THE COURT: No, not at all.

9 MR. GUYMON: All right. Very well.

10 (Colloquy between the Court and counsel, not recorded)

11 MR. GUYMON: Thanks.

12 MR. DASKAS: Thank you, Judge.

13 THE COURT: Thank you.

14 \* \* \* \* \*

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

17   
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19 SHIRLEE PRAWALSKY, COURT RECORDER  
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*Shirley E. Thompson*  
CLERK

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DISTRICT COURT  
 CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DANTE JOHNSON,

Defendant.

CASE NO. C153154  
 DEPT NO. V  
 DOCKET H

REPLY TO STATE'S SUPPLEMENTAL OPPOSITION TO MOTION TO SUPPRESS

DATE OF HEARING: 4-17-00  
 TIME OF HEARING: 9:00 A.M.

COMES NOW the Defendant, DANTE JOHNSON, by and through his attorneys, in reply to  
 the State's Supplemental Opposition to his Motion to Suppress evidence. This Reply specifically

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COUNTY CLERK

MAR 30 2000

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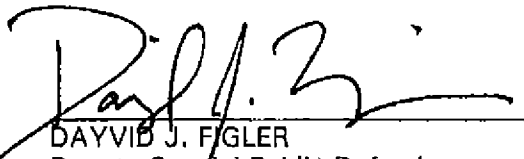


1 incorporates by reference the Motion and Reply already on file herein as well as any argument of  
2 counsel at the time set for hearing on the Motion.

3 DATED this 29 day of March, 2000.

4 Respectfully submitted,

5 PHILIP J. KOHN  
6 SPECIAL PUBLIC DEFENDER

7   
8 DAYVID J. FIGLER  
9 Deputy Special Public Defender  
10 Nevada Bar No. 4264  
11 309 S. Third Street, Fourth Floor  
12 Las Vegas, Nevada 89155  
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12 ARGUMENT

13 Without belaboring the essence of the Defendant's argument that law supports a finding  
14 in his favor, Defendant sets out, here, to point out the inaccuracies which exist within the  
15 Supplemental Points and Authorities submitted by the State on March 16, 2000.

16 The Defendant does not simply rely on three State Supreme court cases set forth in the  
17 original Reply in detail as precedent, but as is traditional in jurisprudence, avers that the analysis  
18 set forth in these other cases is of interest when other courts have been presented with the  
19 complicated area of Fourth Amendment protection. While the State painstakingly attempts to  
20 factually distinguish the present matter from the scenarios in those cases, it does so without truly  
21 giving credence to the underlying precepts of the Fourth Amendment. Additionally, there are  
22 factual oversights that the State chooses simply to ignore.

23 (1) RENT – The State insists that Donte Johnson was not paying rent, and utilizes this fact  
24 as the crux of their argument. ("It is specious at best to suggest that Donte Johnson was a co-  
25 tenant in the Everman household. He did not pay rent." State's Supp. P & A, pp. 4, lines 22-23).  
26 The Defendant has placed into evidence reliable testimony that in fact there was an exchange of  
27 drugs to Tod Armstrong to stay in the Everman residence. (Trans. 01/06/00, pp. 85, lines 13-15).  
28 The failure of the State to even address this issue of drugs-for-housing exposes the inability of the

1 State to challenge this fact. The State has presented no case law, no analysis regarding this issue  
2 in the two written opportunities they have been given to address this point. As such, it should  
3 properly be deemed that the State has conceded that drugs were exchanged to Armstrong for  
4 consideration of housing. As such, the State concedes that there was a co-tenant environment  
5 and they have failed to overcome the burden (which is on the State) that a Fourth Amendment  
6 violation did not occur.

7 (2) EXPECTATION OF PRIVACY- The State offers that the only time Donte Johnson had  
8 an expectation of privacy is when he was with his girlfriend in the master bedroom. (Supp. P &  
9 A, pp. 2, lines 22-24). The State has missed the point, however, that on the night of the search,  
10 Johnson was, in fact, there with his girlfriend at 3 a.m. in the morning. Todd Armstrong, Ace  
11 Hart, B.J. Armstrong - they were all absent while Defendant and Charla Severs were sleeping in  
12 the master bedroom, together, at 3 a.m. in the morning. The State offered no evidence that this  
13 was not the EXACT scenario that they have already conceded exhibited an expectation of privacy  
14 on the part of Defendant.

15 (3) "IT WAS LIKE A SPOT, WHERE HE'D JUST GO TO CHILL OUT A WHILE" - The State  
16 repeats this phrase uttered by Charla Severs time and time again in their Oppositions by Charla  
17 Severs. Apparently the State places great weight on this statement, however, it fails to  
18 acknowledge the statement that came directly next in the testimony. When queried by Defense  
19 counsel, the following exchange is edifying:

20 "MR. SCISCENTO: All right. For those 14 days prior to the 18<sup>th</sup>, how many nights  
21 did Donte Johnson sleep in that house?

22 CHARLA SEVERS: Everyday, all those 14." (Trans. 01/06/00, pp. 88, lines 14-16)

23 In fact, it must be noted that when asked the general question if Donte Johnson was living  
24 in the Everman house, Severs repeatedly answered "no", but when asked about specific facts,  
25 Severs responded in ways that were indicia of a co-tenant relationship, to wit:

26 "MR. SCISCENTO: So, almost everything that he had was in that master bedroom?

27 A: Yes.

28 Q: Okay. Was there a lock on that master bedroom?

1 A: Yes.

2 Q: Would Donte Johnson ever lock that door?

3 A: No. Only just maybe like when we was doing something.

4 Q: So, when you guys were inside he may have been – he may lock the door?

5 A: Yeah.

6 Q: To keep other people out?

7 A: Yeah.

8 Q: Would you consider that – did you consider that Donte Johnson's bedroom?

9 A: No.

10 Q: Why not?

11 A: Because it wasn't his house." (Trans. 01/06/00, pp. 86)

12 Clearly, Ms. Severs was under the mistaken impression that since it was not Donte  
13 Johnson's house, he was not living there. This interpretation is of no moment, and should not  
14 properly be relied upon by the State. Ms. Severs testified that this was the only place Donte  
15 Johnson lived during the salient time frame and that they often would exclude others from this  
16 area. She also confirmed that drugs-for-housing compensation took place. While Donte Johnson  
17 testified that he was living in the Everman residence for over 3 weeks, if the State wants to put  
18 credence in Ms. Severs testimony, then Donte Johnson was living there for at least 2 weeks  
19 including the night of the unlawful search.

20 (4) THE STATE CANNOT CHANGE POSITION – In their supplemental P & A, the State  
21 elected not to respond to the charge that Deputy District Attorney Gary Guymon took the position  
22 in an earlier proceeding that Donte Johnson moved into the Everman residence. It is no surprise  
23 that this was the position taken as there is convincing authority that the State cannot change its  
24 position on material matters to serve its purpose of the moment.

25 "It is well established that when no new significant evidence comes to light a prosecutor  
26 cannot, in order to convict two defendants at separate trials, offer inconsistent theories and facts  
27 regarding the same crime." Thompson v. Calderon, 120 F.3d 1045 (9<sup>th</sup> Cir. 1997) reversed on  
28 other grounds 523 U.S. 538 (1998). In United States v. Kolayan, 8 F.3d 1315, 1323 (9<sup>th</sup> Cir.

1 1993), the 9<sup>th</sup> Circuit stated: "While lawyers representing private parties may - indeed, must - do  
2 everything ethically permissible to advance their clients' interests, lawyers representing the  
3 government in criminal cases serve truth and justice first. The prosecutor's job isn't just to win,  
4 but to win fairly, staying well within the rules." citing United States v. Kattar, 840 F.2d 118, 127  
5 (1st Cir. 1988) (stating that the function of the prosecutor "is not merely to prosecute crimes, but  
6 also to make certain that the truth is honored to the fullest extent possible"). In the present case,  
7 it would improperly allow the prosecutors to change position in contravention of the truth if they  
8 were to, here, advance the opinion that Donte Johnson had not moved into the Everman address.

9 Despite their Oppositions, the State has already conceded the issue.

10 (5) THE IMPACT OF DONTÉ JOHNSON "DENYING" HE LIVES AT EVERMAN - During the  
11 one question inquiry of Donte Johnson after being withdrawn at gun point, handcuffed and not  
12 Mirandized, the State indicates the Donte Johnson "abandoned" the premises and cites one case  
13 for that proposition, State v. Banks, 364 S.E. 2d 452 (North Carolina State Appellate Court 1988).

14 The Banks decision, however, cites Jones v. United States, to wit:

15 "Further, Defendant must show that he has some control or dominion over the area  
16 or thing searched, Jones v. United States, 362 U.S. 257 (1960) (as by having the  
17 owner's permission to reside in place searched *even when defendant resides there*  
18 *temporarily and does not pay rent* - and in addition has key to premises) such may  
19 be sufficient to confer standing to object. (Although the Jones "legitimately on the  
20 premises" test has been significantly circumscribed, the defendant's authorized  
21 presence on the premises searched and control factors are no less valid today)  
22 citing Rakas v. Illinois, 439 U.S. 128 (1978). (emphasis added).

23 While there was admittedly only one key to the entire residence, it does not follow that  
24 Donte Johnson was not residing at the Everman residence. Ace Hart and B.J. Armstrong were  
25 considered by the State to be residing in the Everman residence and clearly they could not have  
26 keys either. Further, Donte Johnson testified that sometimes he was given the key by Todd  
27 Armstrong. (Trans. 01/06/00, pp. 104, lines 21-24).

28 More important, however, as indicia of an expectation of privacy is that Donte Johnson had  
the ability to exclude others in this residence by locking the door so that he and Charla could be  
alone and have security in their person and effects.

Finally with regard to the Banks decision, the Court standard in evaluating the propriety of

1 the search came to whether or not the defendant in that case had a reasonable expectation of  
2 privacy in the "back room" where the contraband was found, when he was staying in the  
3 "bedroom." Even this North Carolina Appellate Court would have agreed that a different ruling  
4 would have resulted had the police conducted a warrantless search in the bedroom where the  
5 Defendant in that case was staying. The State, however, cites Banks for the proposition that a  
6 person can abandon a residence because of "disclaimers of a possessory interest." (Supp. P & A,  
7 pp. 9, lines 9-12). In Banks, however, there were "several" disclaimers of interest in the *entirety*  
8 of the house, and unlike the present case, there was no need for a Miranda analysis.

9 What seems to be lost in the shuffle is that the inquiry of Donte Johnson at 3 a.m. was  
10 the product of a custodial interrogation. It is well settled that "prior to *any* (custodial) questioning,  
11 the person must be warned that he has a right to remain silent, that any statement he does make  
12 may be used as evidence against him, and that he has a right to the presence of an attorney..."  
13 State v. Billings, 84 Nev. 55, 58 (1968) citing Miranda v. Arizona, 384 U.S. at 444, 445  
14 (1966)(emphasis added). It would be hard to dispute that the handcuffed Johnson was not in  
15 custody at the time of the inquiry. The record is further clear that no Miranda warnings were  
16 given. (Trans. 01/06/00, pp. 74-75). The United States Supreme Court has repeatedly set high  
17 standards of proof for the waiver of Constitutional rights, and those rights and standards have  
18 been repeatedly reasserted as applied to in-custody interrogation. See Miranda at 475. Also, e.g.,  
19 Tague v. Louisiana, 444 U.S. 469 (1980)(per curiam)(government failed to show that petitioner  
20 had waived rights where arresting officer could not remember whether he had read rights from a  
21 card, what those rights were, whether he asked petitioner if he understood the rights, or whether  
22 he rendered any tests to determine whether petitioner was literate or otherwise capable of  
23 understanding his rights).

24 The argument could continue how the Detective's one question custodial inquiry should  
25 have no effect. Certainly, the Detective did not inform Donte Johnson the purpose of the question  
26 or whether he was intelligently waiving any search of the premises. Defendant, however, feels  
27 that such further argument would be superfluous. (1) There was no voluntary, informed waiver  
28 of right to remain silent or search and (2) no discussion of waiver of rights is even necessary given

1 that the Police saw Donte and Charla exiting their residence at 3 a.m. in the morning and there  
2 was no evidence in the possession of the police that Donte *lived anywhere but* the Everman  
3 house. In either event, Donte did not exhibit any conduct which legally amounts to an  
4 "abandonment" of a residence, if the concept of abandonment of room of residence is even  
5 possible for these purposes.

6 In conformity with applicable caselaw, Donte Johnson has shown "some" dominion or  
7 control over the bedroom at issue. As such, the burden has not been met by the State to show  
8 that a warrantless search was authorized and the fruits thereof must be suppressed.

9 (6) TOD ARMSTONG HAD COMMON AUTHORITY TO CONSENT TO A SEARCH  
10 IN THE DONTÉ JOHNSON BEDROOM

11 For its final argument, the State submits, *arguendo*, that if the proper caselaw is applied  
12 and Donte Johnson is deemed by this Court that Donte was a co-tenant, that Tod Armstrong's  
13 position vitiates any reasonable expectation of privacy that Donte Johnson can invoke under the  
14 Fourth Amendment. (Supp. P & A, pp. 9). Defendant vehemently disagrees.

15 The State cites the Supreme Court case of U.S. v. Matlock, 415 U.S. 164 (1974). The  
16 Defendant had already set forth the distinguishing characteristics of Matlock and its progeny in  
17 its original Reply brief. The glaring distinction being that in Matlock, both the defendant and the  
18 co-tenant were present when the warrantless search took place. Id. at 166. Defendant sets forth  
19 that this is the cornerstone fact that the United States Supreme Court relied upon in evaluating  
20 the "reasonableness" of the expectation of privacy of a co-tenant. As the State correctly points  
21 out, the Court has conducted a sort of "assumption of the risk" analysis. That assumption is  
22 premised on the fact that "any of the co-inhabitants has the right to permit the inspection in his  
23 own right and that the others have assumed the risk that one of their number might permit the  
24 common area to be searched." Id. at 172. Another way to look at the situation is if the police  
25 have the ability to walk in the shoes of the party giving consent, how far can the police go  
26 without violating the Fourth Amendment. A good comparison would be the plain view doctrine  
27 where it is generally held that if the police have a right to be where they are – was the seized  
28 evidence within plain view. See generally, United States v. Hersh, 464 F.2d 228 (9<sup>th</sup> Cir.

1 1972)(plain view analysis).

2 If this Court looks at the Donte Johnson matter in terms of what did Tod Armstrong  
3 actually have to consent to at 3 a.m., it will clearly rule in favor of Donte Johnson.

4 First, Tod Armstrong was not even present. Thus, Donte Johnson could not have assumed  
5 that Tod Armstrong could have even come into his room.

6 Second, say Tod Armstrong was home at 3 a.m. He certainly could have given authority  
7 to search the common areas, but what about the room where Donte and Charla were sleeping.  
8 Would Tod Armstrong have gone directly into that room at 3 a.m. or would he have knocked first?  
9 Is there a likelihood that the door would have been locked since Donte was in there with Charla?  
10 Would Tod have been able to enter the room and go through Donte and Charla's effects, or as  
11 Charla stated would she have protested. (See Trans. 01/06/00, page 87, lines 14-24).

12 Thus even if the State had provided authority that a *non-present* co-tenant could give  
13 authority to search the bedroom of a present co-tenant (which they have not), it is unlikely that  
14 Tod Armstrong's authority based on the evidence developed at the hearing provides sufficiency  
15 for a finding that he had the actual authority to have his shoes in that bedroom in a place where  
16 the police would be able to find the questioned pants. As such, suppression is mandated.

17 (7) POLICE CONDUCT – As stated in the original Reply, the easiest thing in the world for  
18 the police to have done in the night at subject was to get a telephonic search warrant. The State  
19 has opted to not address this issue in their Supplemental P & A. All parties have to agree,  
20 however, that special protections are afforded to a person in the place where they live and that  
21 has been the cornerstone of Fourth Amendment law since its inception. The law makes no  
22 distinction in its remedy for the violation of this right between innocent citizens and the worst  
23 offenders in the community, the law of suppression applies equally to all.

24 It is clear that suspect Tod Armstrong did not provide the police with the full circumstances  
25 of Donte Johnson staying at his house for about a month. Most likely the reason is because Tod  
26 Armstrong was involved with the drugs and the murder as pointed out by the prosecutors in the  
27 co-defendant's trials. There is no authority for the proposition that the police can close their eyes  
28 to the obvious facts of residence. They had no information that Donte was doing anything but

1 living in that residence at the time of their warrantless search. The part that must be most  
2 frustrating for the State is that there were so many available means for the Police to attempt to  
3 cure what has become an unlawful search. A neutral magistrate may very well have granted a  
4 warrant. A fully informed and Mirandized Donte Johnson may or may not have given consent to  
5 a specific search of his bedroom. However, none of the proper protections were afforded when  
6 the Police entered that bedroom without a warrant. As loud as the State may protest the impact  
7 of the loss, the one and only remedy in the present case is clear. The black jeans and all other  
8 items found in that bedroom, must be suppressed.

9 Dated this 29 day of March, 2000.

10 Respectfully submitted,

11 PHILIP J. KOHN  
12 SPECIAL PUBLIC DEFENDER

13 

14 DAYVID J. FIGLER  
15 Deputy Special Public Defender  
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FILED

MAR 31 8 33 AM '00

*Shirley W. Thompson*  
CLERK

1 ROC  
 2 PHILIP J. KOHN  
 3 CLARK COUNTY SPECIAL PUBLIC DEFENDER  
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 12 Las Vegas, NV 89155-2316  
 13 (702) 455-6265  
 14 Attorney for Defendant

DISTRICT COURT  
 CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,  
 13  
 14 Plaintiff,

CASE NO. C153154  
 DEPT. NO. V

15 vs.

16 DONTE JOHNSON,  
 17 Defendant.

RECEIPT OF COPY

18  
 19 RECEIPT OF A COPY of the forgoing Reply to State's Supplemental  
 20 Opposition to Motion to Suppress is hereby acknowledged this 31<sup>st</sup> day of March, 2000.

21 STEWART L. BELL  
 22 DISTRICT ATTORNEY

23 By *Stewart L. Bell*  
 24  
 25  
 26  
 27  
 28

RECEIVED  
 MAR 31 2000  
 COUNTY CLERK

#1

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APR 4 1 05 PM '00

Shilpa Singh 6153154

CLERK  
Dept. No: V

Docket No: H

Dante Johnson

Defendant

VS

State of Nevada

Plaintiff

RECEIVED

APR 04 2000

COUNTY CLERK

Memorandum TOThe Court

comes now the defendant, Dante Johnson, by and through this memorandum to the court.

The defendant is making record of defendants request to counsels, Dayvid Figler and Joseph S. Sciscento, to argue for the following jury instructions, which the defendant is entitled to; the jury instructions are as follows:

\*(2.) California Jury instruction 2.90 (Presumption of innocence - Reasonable Doubt - Burden of Proof)

"A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether guilt is satisfactorily shown, the defendant is entitled to a verdict of not guilty. This presumption places upon the People the burden of proving him guilty beyond a reasonable doubt.

Reasonable doubt is defined as follows: It is not a mere possible doubt; because everything relating to human affairs is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors

#2.

in that condition that they cannot say the jurors in that condition that they cannot say they feel an abiding conviction of the truth of the charge."

*Note*

An instruction requiring the prosecution to prove guilt beyond a reasonable doubt must be given sua sponte. *People v. Soldavini* (1941) 45 Cal. App. 2d 460, 463-464 [114 P.2d 415, 416].

#(2.) California Jury Instruction 2.60 (Defendant Not Testifying No Inference of Guilt May Be Drawn)

"A defendant in a criminal trial has a constitutional right not to be compelled to testify. You must not draw any inference from the fact that a defendant does not testify. Further, you must neither discuss this matter nor permit it to enter into your deliberations in any way."

*Note*

This instruction must be given if the defendant so requests. (*Carter v. Kentucky* (1981) 480 U.S. 288 [67 L.Ed. 2d 241, 101 S.Ct. 1112].)

#(3.) California Jury Instruction 2.61 (Defendant May Rely on State of Evidence)

"In deciding whether or not to testify, the defendant may choose to rely on the state of evidence and upon the failure, if any, of the People to prove beyond a reasonable doubt every essential element of the charge against him. No lack of testimony on defendant's part will make up for a failure of proof by the people so as to support a finding against him on any such essential element."

*Note*

This instruction should be given if requested by defendant. It should not be given sua sponte except in conjunction with CALJIC 2.60. (*People v. Townsend* (1971) 20 Cal. App. 3d 919, 923-925 [98 Cal. Rptr. 8, 9-11].)

#(4.) Nevada Jury Instruction 1.00 (Duty of the Judge and Jury)

Ladies and Gentlemen of the Jury: "It is my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions

#3.

and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the court.

### Source

Eighth Judicial District Court Civil Jury Instructions.

#(5.) Nevada Jury Instruction 1.01 (Use of Instructions)

"If these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others."

The order in which the instructions are given has no significance as to their relative importance.

### Source

Eighth Judicial District Court Civil Jury Instructions.

#(6.) Nevada Jury Instruction 1.04 (Jurors Forbidden From Making Any Independent Investigation)

"You must decide all questions of fact in this case from the evidence received in this trial and not from any other source. You must not make any independent investigation of the facts or the law, (or consider or discuss facts as to which there is no evidence) This means for example, that you must not on your own visit the scene, conduct experiments, or consult reference works for additional information."

### Source

BAJI 1.00.5. Reprinted with permission; copyright © 1986 West Publishing Co.

#4.

#(7) Nevada Jury Instruction 1.05 (Jurors Must Use Everyday Common Sense; Verdict May Never Be Influenced By Sympathy, Prejudice or Public Opinion)

"Although you are to consider the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law."

#### Source

Eighth Judicial District Court Civil Jury Instruction.

#(8) Nevada Jury Instruction 1.08 (Impartiality Of The Court)

"If, during this trial, I have said or done anything which has suggested to you that I'm inclined to favor the claims or position of any party, you will not be influenced by any such suggestion.

I have not expressed, nor intended to express, nor have I intended to intimate, any opinion as to which witnesses are or are not worthy of belief, what facts are or are not established, or what inference should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it."

#### Source

Previous Nevada Pattern Civil Jury Instruction NO. 1.2.

#(9) Nevada Jury Instruction 2.00 (Direct And Circumstantial Evidence)

"There are two kinds of evidence; direct and circumstantial. Direct evidence is direct proof of a fact, such as a testimony of an eye witness. Circumstantial evidence is

#5.

1 indirect evidence, that is, proof of a chain of facts from which you could find that  
2 another fact exists, even it has not been proved directly. You are entitled to  
3 consider both kinds of evidence. The law permits you to give equal weight to both,  
4 but it is for you to decide how much weight to give to any evidence. It is  
5 not for you to decide whether a fact has been proved by circumstantial  
6 evidence."

### 7 Source

8 Ninth circuit instructions 3.07 and 12.05 (Modified); see also Eighth Judicial  
9 District Court Civil Jury Instructions.

10 # (10) Nevada Jury Instruction 2.01 (Jury to consider all the evidence)

11 "In determining whether any proposition has been proved, you should consider all of  
12 the evidence bearing on the question without regard to which party produced it."

### 13 Source - Note

14 IPI 1.02.

15 The IPI use note to this instruction indicates that it should only be used  
16 when evidence has been received for a limited purpose or is limited to  
17 a particular party or parties. Nev. J.I. 2.02 must also be given.

18 # (11) Nevada Jury Instruction 2.06 (Stipulations AS Evidence)

19 "If counsel for the parties have stipulated to any fact, you will regard that fact as  
20 being conclusively proved, as to the party or parties making the stipulation.

### 21 Source

22 BAJI 1.02 (Modified), reprinted with permission, copyright © 1986 West Publishing company;  
23 Previous Nevada Pattern Civil Jury Instruction 2.2 (Modified).

24 # (12) Nevada Jury Instruction 2.07 (Credibility of witness; Witness That Has  
25 Testified Falsely)

26 "The credibility or 'believability' of a witness should be determined by his or her  
27 manner upon the stand, his or her relationship with the defendant, his or her fears,

#6.

motives, interest or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness of his or her statements and the strength or weakness of his or her recollections.

If you feel that a witness has lied about any material fact in this case, you may disregard the entire testimony of that witness or any portion of this testimony which is not proved by other evidence."

### Source

Eighth Judicial District Court Civil Jury Instructions. See also BAJI 2.22 (modified); Previous Nevada Pattern Civil Jury Instruction 2.32.

### Use

It has been held that the second paragraph of this instruction is improper if it leaves to the jury the task of determining materiality. See for example *McManis v. Johns-Manville Products Corporation*, 81 NE.2d 137 (Ill. 1948). Under this view, such an instruction must specifically direct the jury's attention to the presence of other instructions which set out the material issues.

### Comment

There is some controversy regarding the use of the second paragraph of this instruction. The IPI committee recommends against a similar instruction because it finds it argumentative, an invasion of the province of the jury, and suggestion of the court's belief that a witness has sworn falsely. See IPI 2.04.

~~#~~ (13) California Jury Instruction 5.04 (Compelling Another to Commit Crime)

"A person who, by threat, menace, command or coercion, compels another to commit any crime is guilty of that crime." Pen. Code, § 81.

### Library References:

C.U.S. Criminal Law § 127,998

West's Key No. Digests, Criminal Law → 59,792(3).

# 7.

#(14) California Jury Instruction 3.11 (Testimony of Accomplice Must Be Corroborated)

"You cannot find a defendant guilty based upon the testimony of an accomplice unless that testimony is corroborated by other evidence that tends to connect such the defendant with the commission of the offense.

Testimony of an accomplice includes any out-of-court statement purportedly made by an accomplice received for the purpose of proving that what the accomplice stated out-of-court was true."

*Note*

Pen. Code, § 111; 1, 3 Witkin, Cal. Evidence (3d ed. 1986) §§ 151, 1757-1759, 1763, 5 Witkin, Cal. Criminal Law (2d ed. 1983) § 2948.

#(15) California Jury Instruction 3.12 (Sufficiency of Evidence To Corroborate An Accomplice)

"To corroborate the testimony of an accomplice there must be evidence of some act or fact related to the crime which, if believed, by itself and without any aid, interpretation or direction from the testimony of the accomplice, tends to connect the defendant with the commission of the crime charged.

However, it is not necessary that the evidence of corroboration be sufficient in itself to establish every element of the crime charged, or that it corroborated every fact to which tends to connect the defendant with the commission of the crime.

If there is no independent evidence which tends to connect defendant with the commission of the crime, the testimony of the accomplice is not corroborated.

If there is independent evidence which you believe, then the testimony of the accomplice is corroborated."

*Note*

An instruction as to the sufficiency of corroborative evidence must be given sua sponte. (People v. Bevins (1960) 54 Cal. 2d 71, 76 [4 Cal. Rptr. 504, 507, 357 P.2d 776, 779].)

Instruction approved. (People v. Jenkins (1973) 34 Cal. App. 3d 893, 898-899 [10 Cal. Rptr. 465, 468-469].)



#8.

#(16) California Jury Instruction 3.13 (One Accomplice May NOT Corroborate Another)

"The required corroboration of the testimony of an accomplice may not be supplied by the testimony of any or all of his accomplices, but must come from other evidence."

#(17) California Jury Instruction 3.16 (Witness Accomplice as Matter of Law)

"If the crime of open murder was committed by anyone, the witnesses, Tod Armstrong, and/or Ace Heart, and/or Charla Severs was an accomplice as a matter of law and their testimony is subject to the rule requiring corroboration."

### Comment

"It is well settled that the phrase 'liable to prosecution' in section 1111 means, in effect, properly liable. Any issues of fact determinative of the witnesses factual guilt of the offense must be submitted to the jury. Only when such facts are clear and undisputed may the court determine that the witness is or is not an accomplice as a matter of law (case cited)... People v. Rodriguez (1986) 42 Cal. 3d 730, 759 [230 Cal. Rptr. 667, 684, 726 P.2d 113, 130]."

#(17) California Jury Instruction 3.18 (Testimony of Accomplice To Be Viewed with Distrust)

"You should view the testimony of an accomplice with distrust. This does not mean that you may arbitrarily disregard that testimony. You should give that testimony the weight you think it deserves after examining it with care and caution and in the light of all the evidence in the case."

### Note

If both parties call an accomplice, this instruction must be restricted to prosecution witness only. (People v. Watson (1952) 113 Cal. App. 2d 799, 802-803 [49 P.2d 38, 39-40].)

#(18) California Jury Instruction 3.19 (Burden To Prove corroborating Witness is An Accomplice)

"You must determine whether the witnesses Tod Armstrong and/or Ace Heart and/or

#9.

Charla Severs was an accomplice as I will define that term.

The defendant has the burden of proving by a preponderance of the evidence that Ace Heart and/or Tod Armstrong and/or Charla Severs was an accomplice in the crimes charged against the defendant."

### Note / comment

"Preponderance of the evidence" defined in CAL. J.I.C. 2.50.2.

*People v. Tewksbury* (1976) 15 Cal. 3d 953, 967-969 [27 Cal. Rptr. 135, 145-147, 544 P.2d 1335, 1345-1347].

#(19) California Jury Instruction 3.10 (Accomplice - Defined)

"An accomplice is a person who is/ or was subject to prosecution for the identical offense charged in the numerous counts against the defendant on trial by reason of [aiding and abetting] [or] [being a member of a criminal conspiracy]."

### Note

An instruction defining "accomplice" must be given *sua sponte*. (*People v. Nordon* (1973) 10 Cal. 3d 460, 470 [10 Cal. Rptr. 906, 912, 516 P.2d 298 304]; *People v. Berrino* (1960) 54 Cal. 2d 71, 76 [4 Cal. Rptr. 304, 507 351 P.2d 776, 779].)

#(20) California Jury Instruction 8.83.3 (Testimony of Accomplice Must be Corroborated - Special Circumstance Trial)

"No special circumstance based upon the commission of a crime other than the murders of which the defendant is accused in this case, shall be found true based upon the testimony of an accomplice unless that testimony is corroborated by other evidence which tends to connect the defendant with the commission of the crime."

### Note

This instruction must be supplemented by other accomplice instructions, such as CALJI 3.12 and 3.18.

#10.

#(21) California Jury Instruction 3.20 (Cautionary Instruction-In-Custody-Informant)

"The testimony of an in-custody informant should be viewed with caution and close scrutiny. In evaluating his testimony, you should consider the extent to which it may have been influenced by the receipt of, or expectation of, any benefits from the party calling that witness. This does not mean that you may arbitrarily disregard this testimony, but you should give it weight to which you find it to be entitled in the light of all the evidence in this case."

*Note*

Penal Code section 1127a provides that this instruction must be given, if applicable, at the request of a party.

#(22) California Jury Instruction (2.01) (Sufficiency of Circumstantial Evidence - Generally)

"However, a finding of guilt as to any crime may not be based on circumstantial evidence unless the proved circumstances are not only (1) consistent with the theory that the defendant is guilty of the crime, but (2) cannot be reconciled with any other rational conclusion.

Further, each fact which is essential to complete a set of circumstances necessary to establish the defendant's guilt must be proved beyond a reasonable doubt. In other words, before an inference essential to establish guilt may be found to have been proved beyond a reasonable doubt, each fact or circumstance on which the inference necessarily rests must be proved beyond a reasonable doubt.

Also, if the circumstantial evidence [as to any particular count] permits two reasonable interpretations, one of which points to the defendant's guilt and the other to his innocence, you must adopt that interpretation that points to his guilt.

If, on the other hand, one interpretation of this evidence appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable."

#11.

convinced.

CAL. JIC 2.01 should only be given when circumstantial evidence is "substantially relied upon for proof of guilt." The instruction should not be given when the problem of inferring guilt from a pattern of incriminating circumstances is not present (People v. Williams (1984) 162 Cal. App. 3d 869, 874, 876 [208 Cal. Rptr. 790, 793, 794].)

#(23) California Jury Instruction 2.05 (Efforts other than by Defendant To Fabricate Evidence)

"If you find that an effort to procure false or fabricated evidence was made by another person for the defendant's benefit, you may not consider that effort as tending to show the defendant's consciousness of guilt unless you also find that the defendant authorized the effort, that conduct is not sufficient by itself to prove guilt, and its weight and significance, if any, are for you to decide."

Note

1 Witkin, Cal. Evidence (3d ed. 1986) §660.

People v. Caruso (1959) 174 Cal. App. 2d 624, 640-641 [345 P.2d 282, 291-292]; People v. Perez (1959) 169 Cal. App. 2d 473, 477-478 [337 P.2d 539, 542-543].

#(24) California Jury Instruction 2.09 (Evidence Limited As To Purpose)

"Certain evidence was admitted for limited purpose. At time this evidence was admitted you were instructed that it could not be considered by you for any purpose for which it was admitted."

Do not consider this evidence for any purpose except the limited purpose for which it was admitted."

Note

Upon request, the court must instruct the jury of the limited scope of evidence admitted only for one purpose. Evid. Code, § 355. See, 1 Witkin, Cal. Evidence (3d ed. 1986) §§ 313, 314, 318.

There is no duty, in the absence of a request, to give an instruction limiting the

# 12.

purpose for which evidence may be considered. (People v. Limurus (1970) 10 Cal. App. 3d 299, 311 [89 Cal. Rptr. 1, 9].)

# (25) California Jury Instruction 2.20 (Believability of Witnesses)

"Every person who testifies under oath [or affirmation] is a witness. You are the sole judges of the believability of a witness and the weight to be given the testimony of each witness.

In determining the believability of a witness you may consider anything that has a tendency to prove or disprove the truthfulness of the testimony of the witness, including but not limited to any of the following:

The extent of the opportunity or ability of the witness to see or hear or otherwise become aware of any matter about which the witness testified;

The ability of the witness to remember or to communicate any matter about which the witness testified;

The character and quality of that testimony; The demeanor and manner of the witness while testifying;

The existence or nonexistence of any fact testified to by the witness;

The attitude of the witness toward this action or toward the giving of testimony;

A statement previously made by the witness that is inconsistent with his/her testimony;

The character of the witness for honesty or truthfulness or their opposites;

An admission by the witness of untruthfulness;

The witness's prior conviction of a felony;

Past criminal conduct of a witness amounting to a misdemeanor.

Comment

Evid. Code, § 312; Pen. Code, § 1127.

3 Witkin, Cal. Evidence (3d ed. 1986) §§ 1749-1756.

This instruction catalogs the matters affecting credibility as set forth in evidence code sections 780 and 788.

#13.

#(26)

CALifornia Jury Instruction 2.21.2  
(Witness willfully False)

"A witness, who willfully False in one material part of his former testimony, is to be distrusted in others. You may reject the whole testimony of a witness who willfully has testified falsely as to a material point, unless, from all the evidence, you believe the probability of truth favors his or her testimony in other particulars."

*Comment*

CALJIC 2.21.2 is a correct statement of the Law. (People v. Reyes (1987) 195 Cal. App.3d 957, 966 [240 Cal. Rptr. 752, 757].)

#(27)

California Jury Instruction 2.25  
(Refusal of witness to testify Exercise of privilege against  
Self-Incrimination):

"When a witness refuses to testify to any matter, relying on the constitutional privilege any inference as to the believability of the witness or whether the defendant is guilty or not guilty or any other matter at issue in this trial."

*Comment*

Evidence Code section 913 provides that if a privilege is exercised not to testify, no presumption shall arise because of such exercise and no inference may be drawn therefrom as to the credibility of the witness "or as to any matter at issue" which would include defendant's guilt or innocence. The section further provides that the court must request instruct that no presumption arises and that no inference shall be drawn "as to the credibility of the witness or as to any matter at issue in the proceeding."

#(28)

General Instructions - Civil § 72.15

(Failure to Call Available Witness) such as (Ted Armstrong)

"If a party fails to call a person who possesses knowledge about the facts in issue, and who is reasonably available to him, and who is not equally available to the other party, then you may infer that the testimony of that witness is unfavorable to the party who could have called him and did not."

#14.

## notes

The substance of this instruction and the one which follows are often given in the form of a presumption that the unproduced testimony or evidence would be unfavorable to the party failing to produce it, but its use in the form of a permissible inference is adopted here. See notes to § 17.19.

Sixth Circuit

There is no requirements that the "Missing witness" instruction name the witness or witnesses. *Calhoun v. Baylor*, 646 F.2d 1158, 1163 (6th Cir. 1981).

§ (29.) General Instruction - Civil § 73.03

(Testimony of Perjurer)

"All testimony of an admitted perjurer should always be considered with caution and weighed with great care." Notes (see notes to § 17.05.)

§ (30.) General Instruction - Civil § 73.04

(Impeachment - Inconsistent statements or Conduct -

Falsus in Uno falsus in omnibus)

"A witness may be discredited or impeached by contradictory evidence, or by evidence that at some other time the witness has said or done something, or has failed to say or do something which is inconsistent with the witness' present testimony.

If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

If a witness shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness's testimony in other particulars and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

An act or omission is 'knowingly' done, if voluntarily and intentionally, and not because of mistake or accident or other innocent reason."

## Note

If you believe that any witness has been so impeached then it is your exclusive

province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

Cf.: *Lee Won Sing v. Cotton*, 123 F.2d 169 (D.C. Cir. 1941); *Norfolk and W. Ry. Co. v. McKenzie*, 116 F.2d 632, 635 (6th Cir. 1941); but see: *Virginian Ry. Co. v. Armentrout*, 166 F.2d 400, 405 4 A.L.R.2d 1064 (4th Cir. 1948); III Wigmore, *Evidence* § 1008 (3d ed. 1940).

### #(31.) General Instruction - Civil § 73.06

(Impeachment - Inconsistent statements or conduct - Bad Reputation for Truth and Veracity)

"A witness may be discredited or impeached by contradictory evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness' present testimony, or by evidence that the character of the witness for truthfulness is bad.

If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any as you may think it deserves.

An act or omission is 'knowingly' done, if done voluntarily and intentionally, and not because of mistake or other innocent reason."

*Note*

see Rule 608, Federal Rules of Evidence.

### #(32.) California Jury Instruction - 7.22

(Perjury - Statements Made in Absence of Knowledge)

"An unqualified statement that something is true, when the person making the statement does not know whether it is true or not true, is equal to a knowing false statement."

*Note*

Pen. Code, § 125; 2 Witkin and Epstein, *Cal. Criminal Law* (2d ed. 1988) § 1184.



#16.

#(32.)

### California Jury Instruction 7.24

(Perjury - Willfulness And Knowledge Required)

"Perjury requires that the statement be made willfully by a person who knows that the statement is being made under oath penalty of perjury and who knows or believes that the statement is false or is aware that he or she is ignorant of the truth or falsity of the statement. A statement made under an actual mistake and in a belief that it is true, is not perjury even though the statement is false."

The word "willfully" simply means a purpose or willingness to commit the act or make the omission referred to.

#### Comment:

Pen. Code, § 7, Subd. (1); 2 Witkin and Epstein, Cal. Criminal Law (2d ed. 1988) § 1123.

This instruction approved. (*People v. Jones* (1967) 254 Cal. App. 2d 200 [62 Cal. Rptr. 304]).

*People v. Viniegra* (1982) 130 Cal. App. 3d 577, 586 [81 Cal. Rptr. 848, 853], held that in order for a person to be guilty of perjury he or she must know that he or she is under oath and have the specific intent to testify falsely under oath.

#(33.) California Jury Instruction - 17.12

(Jury May Return partial verdict - Non Homicide - Express Acquittal - First)

"If you are not satisfied beyond a reasonable doubt that a defendant is guilty of the crime of which he is accused in counts, one through thirteen, and you unanimously so find, you may convict him of any lesser crime provided you are satisfied beyond a reasonable doubt that he is guilty of that crime."

You will be provided with guilty and not guilty verdict forms for the crime charged in counts, one through thirteen, and lesser crimes thereto charged in counts, one through thirteen. The crime of accessory is a lesser crime to that of Murder.

Thus, you are to determine whether the defendant is guilty or not guilty of the crimes charged in counts one through thirteen, or of any lesser crimes. In doing so, you may have discretion to choose the order in which you evaluate each crime and consider the evidence pertaining to it. You may find it to be productive to consider and reach tentative conclusions

( ) #17.

on all charges and lesser crimes before reaching any final verdicts."

#(34)

California Jury Instruction 17.11

(Conviction of Lesser Degree)

"If you find the defendant guilty of the crime of murder, but have a reasonable doubt as to whether it is of the first or second degree, you must find him guilty of that crime in the second degree."

Note

See Use Note to CALJIC 17.10.

If proper, this instruction must be given sua sponte. (*People v. Dewberry* (1959) 51 Cal. 2d 548, 555-557 [334 P.2d 852, 856-858].)

#(35)

California Jury Instruction 17.41.

(How Jurors should Approach Their Task)

"The attitude and conduct of jurors at all times are very important. It is rarely helpful for a juror at the beginning of deliberations to express an emphatic opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset a sense of pride may be aroused, and one may hesitate to change a position even if shown it is wrong. Remember that you are not partisans or advocates in this matter. You are impartial judges of the facts."

Comment

*People v. Selby* (1926) 198 Cal. 426, 439 [245 P. 426, 432].

Giving of this instruction in connection with an instruction similar to CALJIC 17.40 held not to be a coercion verdict. (*People v. Moraga* (1966) 244 Cal. App. 2d 565, 569-571 [53 Cal. Rptr. 563, 565-567].)

#(36)

California Jury Instruction 17.47

(Admonition Against Disclosure of Jury Balloting)

"Do not disclose to anyone outside the jury, not even to me or any member of my staff, either orally or in writing, how you may be divided numerically in your

#18.

balloting as to any issue, unless I specifically direct otherwise."

#(37.) California Jury Instruction 17.31

(All Instructions Not Necessarily Applicable)

"The purpose of the court's instructions is to provide you with the applicable law so that you may arrive at a just and lawful verdict, whether some instructions apply will depend upon what you find to be the facts. Disregard any instruction which applies to facts determined by you not to exist. Do not conclude that because an instruction has been given I am expressing an opinion as to the facts."

*Comment*

this instruction may properly be given. (People v. Palmer (1946) 76 Cal. App. 2d, 679, 686-687 [73 P.2d 680, 683-684]; People v. Sprague (1932) 87 Cal. App. 724, 732 [262 P. 795, 799].)

"Conclusion"

The goal for jury instructions is to give jurors an understanding of the law so that they can properly discharge their duty as finders of the facts. Much attention has been focused on the need for careful preparation and proper delivery of jury instructions, stemming in part from traditional complaints by jurors that they do not understand the judge's charge to the jury. ① The art of jury instruction essentially is an educational exercise. As Judge Charles Wyzanski once said, "the object of a charge to a jury is not to satisfy an appellate court that you have repeated the right rigmarole of words, but try to make jurors who are laymen understand what your talking about." ② Instructions to the jury, Judge Jack B. Weinstein has said, should be viewed "as an opportunity to educate the jurors as we would want ourselves educated if we were in their position." ③

Instructions thus should be clear, concise, accurate and impartial statements of the law written and delivered in understandable language. ④

#19.

## Points and Authorities

- ② Playwright Channing Pollock once said that judges' instructions are "grand conglomerations of garbled verbiage and verbal garbage." Quoted in *Janner, Civil Justice and the Jury*, at 139 (1962).
- ③ *Cape Cod Food Productions, Inc. v. National Cranberry Ass'n*, 119 F. Supp. 900, 907 (D. Mass. 1954)
- ④ Weinstein, "The Power and Duty of Federal Judges to Marshall and Comment on the evidence in jury Trials and some suggestions on Charging Juries," 118 F.R.D. 161, 166 (1988).
- ⑤ Proof that such a goal is attainable, even in the most complex case, exists in the charge delivered by Judge Wyzanski and reported in *United States v. Interstate Engineering Corp.*, 288 F. Supp. 402 (D. N. H. 1967).

Dated: 3-31-2000

Respectfully Submitted

Donte Johnson

*Donte Johnson*

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FILED  
 APR 10 11 43 AM '00  
 Shelly S. Longoria  
 CLERK

DISTRICT COURT  
 CLARK COUNTY, NEVADA

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

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 Clerk of the Court of Clark County, Nevada  
 22 to produce to Michelle Fox of Forensic Analytical, 3777 Depot Road, Suite 409, Hayward  
 23 California 94545 all of the lead fragments recovered from the crime scene and heads of  
 24 the victims for the purpose of analyzing the same. Said above articles were entered into  
 25 evidence in the case of Terrell Young, Case No. C153461 and Sikla Smith, Case No.  
 26 C153624.

RECEIVED  
 APR 10 2000  
 COUNTY CLERK  
 SPECIAL PUBLIC  
 DEFENDER  
 CLARK COUNTY  
 NEVADA

1531

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

6 IT IS FURTHER STIPULATED AND AGREED that the Clerk of the Court shall allow  
7 the office of the Special Public Defender to photograph this evidence prior to transport  
8 and that the office of the Special Public Defender will photograph the evidence and  
9 provide copies of the photographic prints to the District Attorney's office.

10 DATED this 4 day of April, 2000.

11  
12  
13  
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CLARK COUNTY  
NEVADA



IN THE SUPREME COURT OF NEVADA

DONTE JOHNSON,

CASE NO. 65168

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

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1	38	TRANSCRIPT OF PROCEEDINGS ARGUMENT: PETITION FOR WRIT OF HABEAS CORPUS ALL ISSUES RAISED IN THE PETITION AND SUPPLEMENT (FILED 12/07/2011)	7808-7879
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3	35	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE A REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 04/12/2011)	7614-7615
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6	35	TRANSCRIPT OF PROCEEDINGS: HEARING (FILED 10/20/2010)	7616-7623
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8	36	TRANSCRIPT OF PROCEEDINGS DECISION: PROCEDURAL BAR AND ARGUMENT: PETITION FOR WRIT OF HABEAS CORPUS (FILED 07/21/2011)	7624-7629
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10	36	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS/HEARING AND ARGUMENT: DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (FILED 07/06/2011)	7630-7667
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13	36	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE A REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 04/12/2011)	7707-7708
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19	33	TRANSCRIPT OF PROCEEDINGS STATUS CHECK: BRIEFING/FURTHER PROCEEDINGS (FILED 06/22/2010)	7430-7432
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1	35	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS/HEARING AND ARGUMENT: DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (FILED 07/06/2011)	7537-7574
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**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 9<sup>th</sup> day of January, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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