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JUN 12 2000 20

DISTRICT COURT CLARK COUNTY, NEVADA

SHIRLEY B. PARRAGUIRRE, CLERK

BY

CAROLE D'ALOIA

DEPUTY

STATE OF NEVADA

Plaintiff

vs.

DONTE JOHNSON,
aka John Lee White

Defendant

CASE NO. C153154

DEPT. V
DOCKET "H"

Transcript of
Proceedings

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

JURY TRIAL - DAY 5 - VERDICT
FRIDAY, JUNE 9, 2000
VOLUME V

APPEARANCES:

FOR THE PLAINTIFF:

GARY L. GUYMON
Chief Deputy District Attorney
ROBERT J. DASKAS
Deputy District Attorney

FOR THE DEFENDANT:

DAYVID J. FIGLER
Deputy Special Public Defender
JOSEPH S. SCISCENTO

COURT REPORTER:

SHIRLEE PRAWALSKY
District Court

TRANSCRIPTION BY:

NORTHWEST TRANSCRIPTS, INC.
Las Vegas Division
P.O. Box 35257
Las Vegas, Nevada 89133-5257
(702) 658-9626

Proceedings recorded by electronic sound recording, transcript
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1 LAS VEGAS, NEVADA, FRIDAY, JUNE 9, 2000, 4:05 P.M.

2 (Jury is present)

3 THE COURT: Mr. Young, would you hand the verdicts
4 to Stony, please.

5 (Off-record colloquy)

6 THE COURT: Okay. By the way, Mr. Young, counsel
7 and I did discuss that last note from you, and it doesn't
8 matter whether the names are on some and not others; it all
9 adds up.

10 THE CLERK: "District Court, Clark County, Nevada.

11 "Case Number C153154, Department Number V.

12 "The State of Nevada, plaintiff, versus Donte
13 Johnson, defendant.

14 "VERDICT:

15 "We, the jury in the above-entitled case, find the
16 defendant Donte Johnson as follows:

17 "Count I, Burglary While in Possession of a Firearm:

18 "Guilty of Burglary While in Possession of a
19 Firearm.

20 "We, the jury in the above-entitled case, find the
21 defendant Donte Johnson as follows:

22 "Count II, Conspiracy to Commit Robbery and/or
23 Kidnapping and/or Murder:

24 "Guilty of Conspiracy to Commit Robbery and/or
25 Kidnapping and/or Murder.

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1 "We, the jury in the above-entitled case find the
2 defendant Donte Johnson as follows:
3 "Count III, Robbery With Use of a Deadly Weapon:
4 "Guilty of Robbery With Use of a Deadly Weapon.
5 "We, the jury in the above-entitled case find the
6 defendant Donte Johnson as follows:
7 "Count IV, Robbery With Use of a Deadly Weapon:
8 "Guilty of Robbery With Use of a Deadly Weapon.
9 "We, the jury in the above-entitled case find the
10 defendant Donte Johnson as follows:
11 "Count V, Robbery With Use of a Deadly Weapon:
12 "Guilty of Robbery With Use of a Deadly Weapon.
13 "We, the jury in the above-entitled case find the
14 defendant Donte Johnson as follows:
15 "Count VI, Robbery With Use of a Deadly Weapon:
16 "Guilty of Robbery With Use of a Deadly Weapon:
17 "We, the jury in the above-entitled case find the
18 defendant Donte Johnson as follows:
19 "Count VII, First Degree Kidnapping With Use of a
20 Deadly Weapon (Jeffrey Biddle):
21 "Guilty of First Degree Kidnapping With Use of a
22 Deadly Weapon.
23 "We, the jury in the above-entitled case find the
24 defendant Donte Johnson as follows:
25 "Count VII, First Degree Kidnapping With Use of a

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Deadly Weapon (Matthew Mowen):

"Guilty of First Degree Kidnapping With Use of a
Deadly Weapon.

"We, the jury in the above-entitled case find the
defendant Donte Johnson as follows:

"Count IX, First Degree Kidnapping With Use of a
Deadly Weapon (Tracey Gorringer):

"Guilty of First Degree Kidnapping With Use of a
Deadly Weapon.

"We, the jury in the above-entitled case find the
defendant Donte Johnson as follows:

"Count X, First Degree Kidnapping With Use of a
Deadly Weapon (Peter Talamantez):

"Guilty of First Degree Kidnapping With Use of a
Deadly Weapon.

"We, the jury in the above-entitled case find the
defendant Donte Johnson as follows:

"Count XI, Murder With Use of a Deadly Weapon
(Jeffrey Biddle):

"Guilty of Murder of the First Degree With Use of a
Deadly Weapon.

"We, the jury in the above-entitled case find the
defendant Donte Johnson as follows:

"Count XII, Murder With Use of a Deadly Weapon
(Tracey Gorringer):

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1 "Guilty of Murder of the First Degree With Use of a
2 Deadly Weapon.
3 "We, the jury in the above-entitled case find the
4 defendant Donte Johnson as follows:
5 "Count XIII, Murder With Use of a Deadly Weapon
6 (Matthew Mowen):
7 "Guilty of Murder of the First Degree With Use of a
8 Deadly Weapon.
9 "We, the jury in the above-entitled case find the
10 defendant Donte Johnson as follows:
11 "Count XIV, Murder With Use of a Deadly Weapon
12 (Peter Talamantez):
13 "Guilty of Murder of the First Degree With Use of a
14 Deadly Weapon.
15 "Dated this 9th day of June, 2000.
16 "John C. Young, Foreperson."
17 Ladies and gentlemen of the jury, are these your
18 verdicts as read, so say you one, so say you all?
19 THE JURY: Yes.
20 THE COURT: Will you poll the jury, please.
21 THE CLERK: Kathleen Bruce, are these your verdicts
22 as read?
23 JUROR BRUCE: Yes.
24 THE CLERK: Ashley Warren, are these your verdicts
25 as read?

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1 JUROR WARREN: Yes.
2 THE CLERK: Robin Jenkins, are these your verdicts
3 as read?
4 JUROR JENKINS: Yes.
5 THE CLERK: Hans Weding, are these your verdicts as
6 read?
7 JUROR WEDING: Yes.
8 THE CLERK: Anthony Campitelli, are these your
9 verdicts as read?
10 JUROR CAMPITELLI: Yes.
11 THE CLERK: Monica Sandoval, are these your verdicts
12 as read?
13 JUROR SANDOVAL: Yes.
14 THE CLERK: Timothy Lokinger, are these your
15 verdicts as read?
16 JUROR LOKINGER: Yes.
17 THE CLERK: James Juarez, are these your verdicts as
18 read?
19 JUROR JUAREZ: Yes.
20 THE CLERK: John Young, are these your verdicts as
21 read?
22 JUROR YOUNG: Yes.
23 THE CLERK: Kimberly Cole, are these your verdicts
24 as read?
25 JUROR COLE: Yes.

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1 THE CLERK: Connie Patterson, are these your
2 verdicts as read?

3 JUROR PETERSON: Yes.

4 THE CLERK: Peter [sic] Chastain, are these your
5 verdicts as read?

6 JUROR CHASTAIN: Yes.

7 THE COURT: Okay, folks, as you know from the
8 process thus far, this means that there will be a penalty
9 hearing on those counts that involve first degree murder.
10 Because we're getting finished so late on a Friday, and
11 because both sides need to bring some people in from out of
12 state, we aren't going to get back together on Monday, we're
13 next going to meet on Tuesday.

14 As I told you when you were selected as jurors, the
15 penalty phase is going to last about two days. I expect that
16 if you report to Stony at 9:15 on Tuesday, June the 13th,
17 we'll work our usual hours that day, and then on June the
18 14th, Wednesday, the very next day, we're gonna start again
19 like we did this Wednesday, at -- at 8:00 o'clock in the
20 morning. And I expect it to again be submitted to you for
21 your decisions in the penalty phase probably late Wednesday in
22 the afternoon.

23 So we're going to be in recess, and during this
24 recess -- I'm going to read you something just a little
25 different from what I usually read you -- you're admonished

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1 not to talk or converse among yourselves or with anyone else
2 on any subject connected with this trial, read, watch or
3 listen to any report of or commentary on the trial, or any
4 person connected with it, by any medium of information,
5 including, without limitation, newspaper, television and
6 radio, or to form or express any opinion on any subject
7 connected with the appropriate penalty in this case until it's
8 finally submitted to you.

9 I mean, we're not blind, we can see there's cameras
10 here, it's going to be in the newspapers tonight at -- and
11 tomorrow, and it's gonna be on television. This admonition
12 means that when this is all over you can discuss everything
13 that happens, including what happened today in jury
14 deliberations, with your family and your friends and things
15 like that.

16 Please follow the admonition over the weekend until
17 Tuesday, and do not sit in front of the television and watch
18 about this, don't listen to it on radio, don't read the
19 newspapers. Convey to your family that you're under a very
20 important Court order not to do that. And please avoid all of
21 these things 'til it's over next week.

22 Thank you. We'll be in recess.

23 (Proceedings adjourned until the following Tuesday,
24 June 13th, 2000, at 9:30 a.m. to begin penalty phase)

25 * * * * *

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CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON, aka
John White, ID # 1586283,

Defendant.

CASE NO: C153154
DEPT. NO: V

RECEIPT OF COPY

RECEIPT OF COPY of the foregoing ORDER FOR CONTACT VISIT is hereby
acknowledged this 12 day of June, 2000.

[Signature] 5490 PER SGT. BARRATT
CLARK COUNTY DETENTION CENTER

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

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DISTRICT COURT
CLARK COUNTY, NEVADA

STANLEY B. PARRAGUIRRE, CLERK

BY *Carole D'Aloia*

CAROLE D'ALOIA

DEPUTY

STATE OF NEVADA

Plaintiff

vs.

DONTE JOHNSON,
aka John Lee White

Defendant

CASE NO. C153154

DEPT. V
DOCKET "H"

Transcript of
Proceedings

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

JURY TRIAL - PENALTY PHASE - DAY 1 - A.M. SESSION
TUESDAY, JUNE 13, 2000
VOLUME I

APPEARANCES:

FOR THE PLAINTIFF:

GARY L. GUYMON
Chief Deputy District Attorney
ROBERT J. DASKAS
Deputy District Attorney

FOR THE DEFENDANT:

DAYVID J. FIGLER
Deputy Special Public Defender
JOSEPH S. SCISCENTO

COURT REPORTER:

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1 LAS VEGAS, NEVADA, TUESDAY, JUNE 13, 2000

2 (Jury is not present)

3 THE COURT:to make a record.

4 Relative to the penalty phase, first of all, the
5 motion to sever the -- or bifurcate the penalty hearing has
6 been renewed, in the sense that it is referred to in the one-
7 page summary of points and authority that Mr. Figler tendered
8 by fax over the weekend, is denied. I don't think it's in
9 accord with current Nevada case law.

10 As I see it, we're dealing with four categories of
11 evidence in this penalty phase. For the record, we briefly
12 discussed it with all counsel Friday afternoon after the guilt
13 phase was over and over the weekend Mr. Figler favored us with
14 that fax and, in addition, presented us with a Supreme Court
15 case yesterday about 3:00 in the afternoon from the State of
16 Washington, Bartholomew. The four areas, as I see it, are,
17 first of all, evidence of prior crimes. I have indicated
18 tentatively that the possession of stolen vehicle arrest,
19 which to me has no relevance and is prejudicial in terms of
20 the jury's assessment of whether or not Mr. Donte Johnson
21 should receive the death penalty, life with or life without,
22 is going to be excluded.

23 The major bone of contention, I would take it,
24 relative to the prior crimes, is referred to on the witness
25 list penalty phase as the murder of Darnell Johnson. It is

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1 the contention of the State that the decedent, Darnell
2 Johnson, was strangled to death. They, or Mr. Figler, in
3 arguing against the introduction of it, tendered an autopsy
4 report where the manner of death was not certain, but was
5 deemed to be probably homicidal and probably due to
6 strangulation.

7 The State has indicated, in my recollection, that
8 relative to Darnell Johnson's murder two of the same witnesses
9 who testified as to admissions at trial, Charla Severs, the
10 girlfriend of Mr. Johnson, and the friend of Mr. Johnson, or
11 at least acquaintance, Bryan Johnson, would testify as to
12 details confessed -- or alleged details confessed by Mr.
13 Johnson, including strangulation.

14 Is that about the state of the offer relative to the
15 details pursuant to D'Agostino, Mr. Guymon?

16 MR. GUYMON: Yes, Your Honor, with a couple of extra
17 additional details and that is that both Charla Severs and
18 Bryan Johnson will indicate that that strangulation happened
19 at the Thunderbird Hotel. We will -- We've already introduced
20 into evidence keys of the Thunderbird Hotel where Charla
21 Severs has already told this jury that Donte Johnson was
22 staying, so we believe the location is --

23 THE COURT: And those keys, of course, evidence of
24 the guilt phase showed were buried in the backyard with the
25 pager and the evidence was, at least the State's evidence,

1 that Donte Johnson, inferentially, was the one that had buried
2 them there.

3 MR. GUYMON: That is correct. And so we believe
4 that the keys are also important in the case because they
5 corroborate it.

6 THE COURT: And what is Detective Chandler gonna
7 testify to?

8 MR. GUYMON: Detective Chandler will corroborate, if
9 you will, the confessions of Donte Johnson through Charla
10 Severs and Bryan Johnson because Roy Chandler, Detective
11 Chandler, will indicate that he, in fact, was in charge of the
12 investigation of Darnell Johnson, that Roy Chandler called
13 over to the Thunderbird Hotel at the start of his
14 investigation of the Snoop homicide and that he found Snoop's,
15 who I refer to as Darnell Johnson, body wrapped up in a sheet,
16 consistent with what Charla Severs will tell us and consistent
17 with what Bryan Johnson will tell us, that Roy Chandler made a
18 discovery consistent with the confessions of Donte Johnson of
19 Darnell Johnson's body very near the speedway, which is where
20 the defendant indicated he took Darnell Johnson and disposed
21 of the body.

22 Roy Chandler will, in short, tell the jury of his
23 investigation and in fact establish that Darnell Johnson was,
24 in fact, strangled, pursuant to his investigation, and
25 disposed of.

1 THE COURT: Okay. Now I take it, as to this, you
2 say, in this one-page summary of Nevada law primarily, or
3 maybe it's exclusively Nevada law that you faxed over the
4 weekend, Dayvid, that the defendant intends to raise, on
5 constitutional grounds, that all character evidence submitted
6 by the State violates his right to a fair trial. I guess,
7 then, all of the criminal activity that is being alleged by
8 the State you feel falls under violations to a fair trial,
9 including his conviction for bank robbery and things such as
10 that?

11 MR. FIGLER: Your Honor, none of the proffered, 1,
12 2, now there's one thing that's left, 4, 5, items go to any of
13 the aggravate six, go to any of the aggravators. I think we
14 could all agree on that, that this is merely character
15 evidence. As such, yes, that would be our position.

16 At some point I also want to further discuss the
17 details regarding the D'Agostino determination with regard to
18 the other murder, alleged murder.

19 THE COURT: Okay. And, of course, D'Agostino I
20 think is instructive in several ways. The court there says
21 that past homicidal conduct goes to the very heart of the
22 jury's decision-making process, at page 1004 of our Nevada
23 Reporters, and further observes that past murders are
24 relevant, even vital. Now, of course, the facts of D'Agostino
25 were a cell mate, not a lover, comes in and says that Mr.

1 D'Agostino cut a woman's throat and threw her off a cruise
2 ship. The details in corroboration that were obviously
3 missing in D'Agostino do not appear, to the Court, to be
4 missing here.

5 Now the headnotes loosely say that there has to be a
6 hearing prior to the admission of it. As I read the opinion
7 itself, there needs to be a prior determination, not
8 necessarily a hearing, on the details of the admission, here
9 the strangulation, the autopsy report, the confirmation of
10 Detective Chandler as to it and credible -- or credible
11 evidence as to the admissions. I certainly heard Charla and
12 Bryan at the trial and find that to be credible evidence.

13 You have some additional procedural request with
14 reference to that?

15 MR. FIGLER: Yes, Your Honor. Underlying all of the
16 determination of character evidence, which is treated
17 differently in death cases than evidence which would be
18 offered in support of the aggravating evidence, is a
19 determination of reliability, a weighing of prejudice, a
20 heightened weighing of prejudice under Nevada rules, but,
21 additionally, Your Honor, what we're suggesting -- And I think
22 that the Bartholomew case really does a good job of explaining
23 the tension between bringing in this type of character
24 evidence that doesn't go toward any of the aggravators with
25 regard to the type of concerns that the United State's

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1 Constitution and the various state constitutions require the
2 Court to engage in before this type of extraordinarily
3 prejudicial information is presented to the jury when it
4 doesn't support any of the aggravators. In other words, --

5 THE COURT: Now clearly our Court doesn't follow the
6 Bartholomew standard.

7 MR. FIGLER: Well, you know, no one has had the
8 foresight, at least none of the Nevada cases, have taken it to
9 the next level, as the Supreme Court of Washington has, in an
10 actual challenge of the statute which allows all evidence to
11 come in, including hearsay, or at least gives the discretion
12 to the Court to allow otherwise inadmissible evidence to come
13 into the court. No one has analyzed that in terms of that
14 particular provision being in comport with not only the United
15 State's Constitution, Eighth and Fourteenth Amendments, but
16 any particular state constitution.

17 Now just like Washington, --

18 THE COURT: They've had 16 years to adopt the
19 reasoning of this case. And I've read all the cases you
20 cited, and many others, and it's clear to me that the Supreme
21 Court of the State of Nevada is never going to take the
22 position that uncharged or unconvicted -- clearly they're
23 going to let those in, assuming that the evidence is not
24 impalpable or speculative and --

25 MR. FIGLER: Or dubious or tenuous or unreliable.

1 THE COURT: What is dubious or tenuous about the
2 word of his girlfriend?

3 MR. FIGLER: Well, Your Honor, I think it's the
4 dubiousness and tentativeness -- tenuousness of an
5 individual's proclamation, because we can't get into the
6 mindset of exactly what is going through their mind when
7 they're saying that. What we do have though is the hard data,
8 which is the autopsy report, and I would submit to Your Honor
9 that this autopsy report needs to be made part of the record.

10 THE COURT: Fine.

11 MR. FIGLER: Because if Your Honor's going to allow
12 this evidence to come in, this character evidence, I think you
13 need to be aware of the fact that, not unlike the Binion case,
14 the Coroner initially found no strangulation, no homicide
15 whatsoever. Only after this alleged statement came to the
16 attention of the Coroner did he go and reexamine the body
17 trying to find evidence of strangulation and, quite honestly,
18 he said, "Well, there was some reaction to maybe some iron
19 near his neck, but I can't say that this is strangulation at
20 all. I can't say that this occurred from strangulation or
21 occurred from other causes."

22 Quite frankly, this individual had 4,274 nanograms
23 per milliliter of cocaine in his body when he died, which is
24 clearly, according to our expert, enough to cause an overdose,
25 but when they had this information the Coroner goes back in --

1 THE COURT: But now would that speak to the cause of
2 death or --

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

4 THE COURT: -- the fact that he was strangled?

5 MR. FIGLER: Both.

6 THE COURT: I mean, maybe Mr. Johnson did not cause
7 the death, even though he thought he did, because he was
8 strangling him.

9 MR. FIGLER: Well, Your Honor, then he didn't cause
10 another death and it's a prior crime and it's tenuous.

11 THE COURT: Well, in that --

12 MR. FIGLER: Or Mr. Johnson might have been there --

13 THE COURT: Well, I think the act of strangling him,
14 whether or not it resulted in his death, would be significant
15 to the jury.

16 MR. FIGLER: But it's gonna be presented as a result
17 in his death when the Coroner can't even say that.

18 THE COURT: But that's something you could cross-
19 examine or call the Coroner for.

20 MR. FIGLER: Well, that's what falls into the
21 category of dubious and tenuous, is that if they're allowed to
22 argue that Donte Johnson caused another person's death, when
23 the Coroner in the State of Nevada said that he can't say that
24 this person was even killed, is of the character -- of this
25 type of character evidence.

1 Now if we're in a different case, you know, who
2 knows, but when you're in a death penalty case, when you have
3 the obligation to not only make these determinations of
4 reliability of the evidence that's gonna be presented as
5 character evidence against an individual, but you also have
6 the obligation to apply a higher degree of scrutiny with
7 regard to the prejudice of character evidence in a particular
8 case, then you really run at risk of violating not only the
9 United State's Constitution, but the Nevada Constitution.

10 And as I was gonna say before, as the State of
11 Washington, Nevada has traditionally given more constitutional
12 rights, within its own constitution, than the federal
13 government and I think that everyone would agree with that
14 interpretation of Nevada constitutional law. No one has
15 brought it to the attention yet.

16 THE COURT: It depends on the time and the
17 composition of the courts.

18 MR. FIGLER: No one has brought it to the attention
19 yet, that this particular provision, this type of evidence
20 which is coming in, is a violation of not only the Federal
21 Constitution, but the Nevada State Constitution with regard to
22 our version of a fair trial, our version in the Nevada State
23 Constitution of due process and our idea of cruel and unusual
24 punishment with regard to this type of evidence coming into
25 the case.

1 And that, quite frankly, applies to all of the
2 evidence that's been presented, but more so with the type of
3 uncharged -- And this has gone uncharged for over two years.
4 And quite frankly, Your Honor, I don't think that an offer of
5 proof could be made under D'Agostino that this case could make
6 it pass probable cause at a hearing, because they haven't
7 proved that a crime has occurred.

8 THE COURT: Oh, there's no doubt in my mind it could
9 make it pass probably cause, Mr. Figler.

10 MR. FIGLER: Well, I think we need to bring in the
11 Coroner, Judge, and we need to cross-examine him.

12 THE COURT: What I'm saying is --

13 MR. FIGLER: I think that we need to bring in --

14 THE COURT: -- if you do a lot of preliminary
15 hearings, and I don't know whether the Special Defender does a
16 lot of preliminary hearings, there's no doubt in my mind you
17 could get this over to District Court.

18 MR. FIGLER: Well, you know, Judge, I've never had a
19 preliminary --

20 THE COURT: You do have this marked as an exhibit.

21 MR. FIGLER: Thank you, Judge, and the toxicology
22 report as well.

23 I've never had a preliminary hearing where the
24 Coroner said that he doesn't know if there was a homicide and
25 that went forward as a homicide.

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1 THE COURT: Anything --

2 MR. FIGLER: Certainly that wouldn't have happened
3 in Binion.

4 THE COURT: Anything further you want to make on the
5 record --

6 MR. FIGLER: With regard to --

7 THE COURT: -- relative to Phase I, prior crimes,
8 Mr. Guymon? I saw you on your feet.

9 Okay, all those things that are listed under 1, 4, 5
10 and 6 that relate to prior acts will come in. Let's move on
11 to the next one.

12 The State has indicated it intends, if permitted, to
13 call five witnesses on victim impact. Is there any objection
14 there?

15 MR. FIGLER: Again, Your Honor, Payne versus
16 Tennessee, and the way that it has been interpreted, allows
17 for a quote/unquote, and this is the standard, "brief glimpse
18 into the lives of the victims." By putting on five witnesses,
19 without any time constraint whatsoever, you run afoul of the
20 concept that it just be a very brief thing. So what we would
21 ask Your Honor is to make a time limit on how they could go.

22 Additionally, with regard to the showing of emotion,
23 and some of the other restrictions on victim impact, that the
24 witnesses be specifically admonished. And I don't know what
25 else is going to be introduced other than just their

1 testimony, if there's gonna be some other supplemental
2 evidentiary introductions through these witnesses. What I
3 would like to do is for Your Honor to --

4 THE COURT: What do you -- What do you have in mind
5 there?

6 MR. FIGLER: Well, you know, I've seen cases where
7 the State has brought in those big screens again and run
8 things in slow motion with pictures of the individual -- some
9 other things. It's not a quid pro quo. There are certain
10 restrictions on the prosecutors in these death penalty cases
11 that don't exist on the defendant and that is the wisdom of
12 Furman and its progeny, that that's the way that it has to be.

13 In this particular case, I don't know what they're
14 gonna bring in, if there's, you know, a photo montage or
15 exposition or something like that. I think that that might
16 very well run afoul of Payne in talking about a brief glimpse.
17 We have four victims here, understood. They want to bring in
18 five witnesses, which might be one too many. I don't know how
19 long these witnesses are gonna go and what they're gonna
20 attempt to do, but I would ask that the Court keep those
21 guidelines and restrictions in mind.

22 And I would prefer not to have to object again to
23 it, but, again, I don't know what they're gonna be presenting.

24 THE COURT: You know, of course, Gardner, in
25 addition to the brief glimpse that Payne authorizes, after a

1 tortured history of litigation over the victim impact
2 statements, Gardner, also from the U.S. Supreme Court, says
3 that a death penalty should appear to be based on reason
4 rather than either caprice or emotion.

5 You, Mr. Guymon and Mr. Daskas, have a benefit that
6 the Court doesn't, and Mr. Figler and Sciscento don't, of
7 having seen these witnesses before. You had indicated, when
8 the Court was just reviewing these things informally Friday
9 afternoon, that these individuals, the parents, I take it, of
10 the four dead boys, have been through it before and you've had
11 some discussions with them that might address the concerns Mr.
12 Figler just articulated.

13 MR. DASKAS: Judge, we've been through this, as you
14 know, twice before. Each time we've admonished the relatives
15 to address the Court, that their testimony is limited to the
16 victim's character, the nature and impact of the crime
17 committed and the loss of the victim to the victim's family
18 and society, they've all complied with that admonition, Judge.

19 It's not our intention to put on a photo montage, as
20 Mr. Figler addressed.

21 THE COURT: Well, he had two concerns, at least,
22 that I heard. One was length.

23 MR. DASKAS: Right.

24 Judge, they have been limited to those areas I just
25 mentioned. I can't tell you how long they were each on the

1 stand. It was probably no more than 15 minutes per family
2 member and we don't expect it to last longer in this courtroom
3 than it did in the other two trials.

4 THE COURT: And the other thing that he said he had
5 a concern about was props. Are there any that are being used
6 by these folks?

7 MR. DASKAS: Only photographs that they might want
8 to show the jury, with the Court's permission, but there is no
9 monitor, computer monitor, or television montage, simply
10 photographs they wish to show the jury of their sons in life
11 and I think they're entitled to do that.

12 THE COURT: All right, I had tentatively indicated,
13 if the defense objected, and they do, to having more than one
14 parent per child. Payne, as I said, is the first U.S. Supreme
15 Court case at least that reverses a long string of cases that
16 didn't allow for victim impact statements in front of a jury,
17 because it was thought that who died wasn't the important
18 concern in a death penalty decision, and Payne overruled it,
19 but it did, in the terms that Mr. Figler says, a brief
20 glimpse.

21 To have two parents -- I'm going to, of course, hear
22 the sentencing, regardless of the jury's decision, on
23 everything else and whichever Mowen decides not to testify
24 today, under the Court's ruling, of course, will have an
25 opportunity to speak at a later time, but I will limit it to

1 four parents, one for each of the dead boys.

2 Next is the letters. The letters, to me, as a
3 group, and there's a whole bunch of them, could, depending on
4 where the defense is coming from, be viewed as perhaps helpful
5 to the defense in some instances. What's the defense's
6 position relative to the letters as a group?

7 MR. SCISCENTO: Yeah, we object to the letters. I
8 reviewed the letters that Mr. Guymon says he's going to
9 present and I don't see anything that goes with the
10 aggravation or prior harm to the community. I'd ask that Mr.
11 Guymon at least make an offer of proof as to what section he's
12 gonna focus on and maybe there's a difference between the
13 language and understanding -- what's in the letters and our
14 understanding of the language.

15 THE COURT: Yeah, I read the letters Saturday,
16 before I had again reviewed all of the law in the matter, and
17 I must say that before I read the law I probably would have
18 been inclined to allow the letters in and when reading the law
19 I increasingly became doubtful about it. The letters, as a
20 group, strike me as the -- almost consistently profane, almost
21 rap-type letters between Mr. Johnson and his co-defendant.
22 They're filled with profanity. They are filled with racial
23 epithets. They show, it seems, a fairly intelligent, cocky
24 young man who is still enjoying his life in jail, who maybe
25 doesn't particularly even care if he gets the death penalty,

1 things that the more I thought about it might very well affect
2 the proper consideration of the jury in terms of what they
3 should be focusing on.

4 I believe there was some discussion up in the
5 office, in the presence of all counsel, last Friday that these
6 were indicative of his leadership of the others. I know that
7 some of them are signed General Deco, but some of them, or one
8 of them, is also signed Dick Tracy. I read these as nothing
9 more than profanity-laden communications between three co-
10 conspirators, something that you couldn't take out all the
11 references to "nigger" and all the profanity, and I just don't
12 particularly see any probative value that could outweigh the
13 possible prejudice.

14 Mr. Guymon, are they, as a group, something that you
15 want in or any particular ones where you would disagree with
16 my ruling and want to point something out to me?

17 MR. GUYMON: Judge, with all due respect, I do
18 disagree with your ruling. I understand your concerns,
19 however, the letters clearly speak to one of the mitigators
20 under 200.035, Subsection 5, and that is the defendant acted
21 under the duress or under the dominion of another person.

22 I can tell you that I have now interviewed Agent
23 Clark, who is the parole officer of the defendant's, and he
24 indicated to me that he had told the defense, because they
25 were keenly interested in whether or not Donte Johnson was a

1 follower or a leader, for starters, Judge, I offer the letters
2 because the letters clearly -- And, by the way, it was Agent
3 Clark's opinion that Donte Johnson is a follower and not a
4 leader.

5 THE COURT: And, by the way, is that testimony
6 that's going to come out, as far as you expect, during your
7 phase?

8 MR. SCISCENTO: I'm not sure. I did speak with
9 Officer Clark. I don't know if that's the position that we're
10 gonna be taking. I don't think it is. I don't think that's
11 the mitigated that we're looking at.

12 THE COURT: By the way, I did not have a chance, and
13 it occurred to me over the weekend, and I never had time to
14 look at it, in the death penalty hearings we've had in the
15 last ten years there was never an issue of rebuttal. Is
16 there, in your mind, a right to the State to have rebuttal
17 after?

18 MR. GUYMON: Yes, Your Honor.

19 THE COURT: Okay, so if -- And do you disagree with
20 this, Mr. Figler or Mr. Sciscento? Does the State have the
21 right to rebut things that you put forth in your case, because
22 that can make some difference to how I would rule, obviously,
23 because they are asserting that this would be relative to
24 certain mitigators, which you may never even get to.

25 MR. SCISCENTO: Well, that's the problem that we

1 have, Your Honor. I mean, in some cases they do have rebuttal
2 and in some they don't.

3 MR. FIGLER: But not in Nevada.

4 THE COURT: So you don't -- you don't challenge the
5 fact that they have a right to rebuttal, fair rebuttal, of
6 what you put on?

7 MR. FIGLER: I don't know that the statutes provide
8 for that in the State of Nevada with regard to a death penalty
9 hearing. I think that if there was --

10 THE COURT: That's the thing I did not look at. Do
11 we have a statute -- I mean, we have an order of trial that
12 specifically sets these things forth.

13 MR. FIGLER: But I think that the --

14 THE COURT: Does anybody know if we have an order of
15 penalty hearing that also sets this up?

16 MR. GUYMON: Judge, I can have some research done in
17 about an hour, while I'm still here I'll have someone do it
18 for me, but it's always been my belief that in fact we can --

19 THE COURT: Okay, well, let's assume, for the sake
20 of your argument, that you have a right to rebuttal and put it
21 in that context, because it strikes me that if they go certain
22 places, and it did over the weekend, these letters might have
23 more relevance than I see them as having now. Let's take it
24 in the context that you may have the right to use them in
25 rebuttal.

1 Why is it important to use them in your case that
2 precedes their case?

3 MR. GUYMON: Well, Judge, in our case -- And, by the
4 way, I should tell you that the defense has indicated, because
5 there was great concern that, on behalf of the State, that we
6 not bring in any gang affiliation of Donte Johnson, that --

7 THE COURT: That's the fourth thing we'll discuss.

8 MR. GUYMON: And I have told each of the witnesses
9 do not talk about Donte Johnson's gang affiliation. We have
10 told them and instructed them not to. The defense has
11 indicated to me that, in fact, they -- in fact they indicated
12 to the Court, would use gang evidence or gang affiliation in
13 their mitigation case.

14 THE COURT: Okay, but just about the letters. We'll
15 get to the gangs in a minute.

16 MR. GUYMON: So --

17 THE COURT: Why do you think they, as a group,
18 leaving aside what they may rebut in their case, why as a
19 group, or any individual letter, is it urged by the State it
20 should be permitted in your opening case?

21 MR. GUYMON: As a group, they talk about violence.
22 Repeatedly Donte Johnson talks about if anybody gets flip in
23 the jail he's gonna take care of it. He's the one that's
24 gonna perpetrate violence in the jail on other people, number
25 one, so violence --

1 THE COURT: Okay. And he refers, in one of the
2 letters, to don't worry about the three boys, that must --
3 being Bryan Johnson, Armstrong and the other guy, he's taken
4 care of them. Well, obviously, he hadn't. I mean, there's a
5 lot of young man boasting here that I don't think is important
6 to a jury's determination of whether he lives or dies.

7 Go ahead.

8 MR. GUYMON: Okay. I think they address violence
9 and I think violence clearly is a character trait that this
10 jury can know about. I think, number two, --

11 THE COURT: Oh, I think they know about it by
12 rulings that I've already made. They're gonna hear about an
13 allegation of murder, attempted murder, a bank robbery, plus
14 they've got four murders in the original case.

15 MR. GUYMON: Okay. I think they also talk to
16 leadership, which I've already addressed. It is clear that he
17 is giving instructions to Terrell Young and to Sikia Smith as
18 to what he wants them to do. I think that's clearly what a
19 leader does.

20 More importantly, he indicates that --

21 THE COURT: Yeah, but I don't see why it's relevant,
22 absent their making this a bone of contention, to whether he
23 lives or dies, that he's a leader or a follower.

24 MR. GUYMON: He also talks about living or dying and
25 indicates that he doesn't care because he is now a legend.

1 THE COURT: Right.

2 MR. GUYMON: I think clearly the fact that he's a
3 legend, "whether breathing or dead," and that's a direct
4 quote, is something this jury should know, because it is his
5 legendary status that he boasts of because of what he did. I
6 think that is a -- something that this jury should be entitled
7 to know.

8 THE COURT: I think that's absolutely, extremely
9 prejudicial with having very little probative effect on
10 whether he should live or die.

11 MR. GUYMON: And, lastly, the letters talk about the
12 death of Snoop wherein he talks about taking Snoop -- or he
13 doesn't say Snoop, but he says taking that other guy for a
14 ride and he mentions that in --

15 THE COURT: Yeah. Now which of -- That's the one
16 thing that struck me as possibly corroborative of something
17 else I'm letting in.

18 MR. GUYMON: There are --

19 THE COURT: Which letter is that?

20 MR. GUYMON: Well, Judge, I'd have to go through
21 them to get the date, but there are two letters, actually.
22 One is to Terrell Young wherein he was talking about --

23 THE COURT: Well, these are all to Terrell or Sikia.

24 MR. GUYMON: That's correct. Would you like --
25 Judge, if you'd give me a minute, I'll find it for you.

1 (Pause in the proceedings)

2 MR. GUYMON: All right, Judge, in the letter dated

3 January 25th, 1999 --

4 THE COURT: Is that one where you can actually read

5 the postmark?

6 MR. GUYMON: The postmark is upside down on that

7 particular letter. At the top of that letter is a 1996

8 Atlanta Para-Olympic Games.

9 That's correct. Is your stamp upside down, Judge,

10 post stamp?

11 THE COURT: I guess. It's virtually not visible.

12 Is this the one that says, "What's up with you?"

13 MR. GUYMON: It's what's up with -- "What's up,

14 Dog?" It's about the fourth page --

15 THE COURT: No, no.

16 MR. GUYMON: Third page deep.

17 THE COURT: That's not it then.

18 MR. GUYMON: Judge, may I approach and get it for

19 you?

20 THE COURT: Sure.

21 MR. GUYMON: It looks exactly like this. I think

22 you actually have one, Judge. That's the letter, Judge.

23 THE COURT: Oh, this is the way this one starts,

24 "What's up with you?"

25 MR. GUYMON: Well, the third page deep, Judge, page

1 3, if it's in the same order that I have it, Judge.

2 THE COURT: Where it says, "I first off want to
3 start"?

4 MR. GUYMON: "I first off want to start." Judge, if
5 you'll come to the second paragraph, fourth line of the second
6 paragraph, and I quote, "But don't worry because he's as good
7 as dropped off. Remember how we" -- and this is -- he's
8 speaking to Terrell, "took a long ride one night and dropped
9 off that one" -- or, excuse me, "dropped that one nigger off,"
10 and I quote.

11 THE COURT: Yeah, you can get it out through other
12 witnesses without going through nigger, nigger, nigger,
13 nigger, which sounds like a rap song, and, as I said,
14 introduces to me the problems that you've got.

15 Anything else on the record on this, Mr. Guymon?

16 MR. GUYMON: That would cover the areas in the
17 letter that I think are --

18 THE COURT: Okay, the letters, except for the
19 possibility of rebuttal, will not come in.

20 Now the fourth thing that I wanted to discuss,
21 before we get just to the clean-up category, is gang
22 references. Now essentially what Mr. Guymon has been
23 representing is he would be very careful to avoid gang
24 references, except he believes it's not going to be an issue
25 because you're gonna bring it up anyway.

1 First of all, is he factually correct as to that
2 assumption?

3 MR. SCISCENTO: Yes, Your Honor.

4 THE COURT: So do you care if people that he has
5 refer to the gang membership of Mr. Johnson?

6 MR. SCISCENTO: My understanding is that the
7 information that Mr. Guymon's gonna bring through PSI reports,
8 or pre-sentencing investigations, any reports of probation,
9 are going to reference the gang. We have no objection as to
10 that.

11 THE COURT: Okay. The fifth thing is a catchall.
12 Is there anything I haven't covered, Mr. Figler or Mr.
13 Sciscento, so far that you want to make a record of?

14 MR. FIGLER: Yes, Your Honor, but of course.

15 THE COURT: But of course.

16 MR. FIGLER: In reviewing the State's case, what has
17 now been presented to us, is what penalty information they're
18 gonna bring. At the onset I would note that, if it wasn't
19 already captured in our voluminous pretrial motion, that a
20 close inspection of the aggravating circumstances which the
21 State intends to prove do create somewhat of a constitutional
22 dilemma. More specifically, Aggravator Number 3, which is the
23 knowingly creating a great risk of death to more than one
24 person, and Aggravator 12, has, in the immediate proceeding,
25 been convicted of more than one offense of murder, I think

1 that there is a definite conflict between those two with
2 regard to the cumulative repetitiveness of the particular
3 aggravators.

4 There was no one else present at the Terra Linda
5 residence but for the victims, who were all killed, and would
6 provide for Aggravator Number 12. There was no one else that
7 was there. To say that --

8 THE COURT: Could I see those again, Dave?

9 MR. FIGLER: Sure.

10 THE COURT: They're buried in one of the early
11 files.

12 MR. FIGLER: What I'm showing to you right now is
13 the notice of intent to seek the death penalty submitted by
14 the District Attorney's Office.

15 THE COURT: What about that argument that you strike
16 and it would probably be striking 3 and leaving 12?

17 MR. DASKAS: Judge, in the statute the aggravator
18 makes no distinction between whether it's a victim or whether
19 it's a co-defendant who was also present in that home when
20 bullets are being shot. Certainly, when Donte Johnson pulled
21 the trigger four times, he created a risk of death to the co-
22 defendants as well. Arguably, bullets could have ricocheted
23 off the cement floors, they could have gone through walls and
24 people outside the home could have been injured. Certainly
25 that aggravator is satisfied and that's a separate and

1 distinct aggravator from the last aggravator, that he's
2 convicted of more than one offense of murder.

3 THE COURT: Okay. 12 was added long after 3 and I'm
4 not sure they ever thought of this kind of a situation. I
5 think that the danger of doubling up here is real and I'll
6 strike Aggravator 3.

7 In addition, in a situation like this, where all the
8 evidence was that these boys were killed by bullets at close
9 range coming out of this gun, I think to speculate that there
10 was risk of death to co-defendants is awfully tenuous.

11 3 will be stricken and the others will stand.

12 Anything else, Mr. Figler?

13 MR. FIGLER: One other concern, Judge, and I only
14 bring it to the Court's attention 'cause the Court brought it
15 to our attention. I'm quite familiar with the case holding in
16 Vernell Evans and I understand Your Honor's position. And I
17 think that we all can agree that this is highly emotional for
18 everyone. It's a horrific result here with these four young
19 men. It's also horrific with this young man and what he's
20 facing.

21 I know Your Honor had indicated to us off the record
22 before that you are human, as everyone else, and that you
23 can't avoid the emotion sometimes and I know that it has been
24 made issue before in front of the Nevada Supreme Court. I
25 would ask that Your Honor -- Well, I don't know. If Your

1 Honor could represent to us that that won't happen in this
2 case, then certainly we don't have an issue. I only raise it
3 because Your Honor had indicated to us that you were
4 compelled, by a lot of the facts in this case, and that this
5 might be a very real possibility in the case, that you might
6 be emotional in front of the jury as well.

7 And so my concern is --

8 THE COURT: Yeah. And what you're talking about,
9 because it's sort of not clear from this record, Vernell Evans
10 was also a quadruple murder and we had four family members up
11 here and I did everything in the world to try to avoid any
12 show of emotion and after we had not one, not two, not three,
13 but four parents testify, from a distance from me of about
14 four or five feet, and not because I would have necessarily
15 imposed the death penalty, but because I was very much moved,
16 as a human being, by what befell these parents and what loss
17 they suffered, despite doing all the mathematical equations I
18 could do in my head and all the pinching of my thighs and
19 biting of my cheek, two things happened. One, when the last
20 mother testified, a single tear came down my face, which was
21 litigated later, and my voice shook while I read the
22 admonition.

23 And I told you about a week ago I'm gonna do
24 everything I can, because I don't want the jury to feel one
25 way or the other, it's their decision not mine, nor does my

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1 trying to limit that and to that end I think that that's
2 probably better.

3 THE COURT: Okay. And the other thing I have
4 thought of is if Mr. Guymon or Mr. Daskas will call each
5 succeeding parent without me saying, "Call your next witness."

6 Not only is there this history with the Evans' case,
7 which to me was very minor, but, you know, I've been thinking
8 about this for a year, I've talked to the other judges, I've
9 talked to all of you folks and it's a very, very emotional
10 thing and I guess some people can sit and be stoic more than
11 others and I hope it doesn't happen today.

12 All right, anything else to come before the Court?

13 We'll take a five-minute recess and get started.

14 MR. FIGLER: I just want to make sure that our
15 record is clear that with regard to this character evidence
16 that's coming in that we not only object on the grounds that
17 are set forth by the Nevada statutes in the memorandum which I
18 was able to compose over the weekend, Your Honor, and which we
19 might want to make part of the record, but, additionally,
20 under federal and state constitutional grounds, specifically
21 the Federal Constitution, Sixth, Eighth, Fifth and Fourteenth
22 Amendment, and anything else that has to do with due process
23 or a fair trial and the corresponding rights, which we believe
24 are greater under the Nevada State Constitution.

25 THE COURT: All right, we will make -- You must have

1 a cleaner copy of this that you can make as part of the
2 record.

3 MR. FIGLER: I could offer this one right now, Your
4 Honor.

5 THE COURT: Yeah.

6 Are you gonna be the Clerk all day?

7 THE CLERK: I guess.

8 THE COURT: Okay.

9 MR. FIGLER: May I approach?

10 THE COURT: Yeah.

11 MR. FIGLER: Your Honor, before we go, there is
12 going to be, I think, some issue with regard to instructions.
13 I don't know when you want to deal with that.

14 THE COURT: We'll deal with that, at some point, off
15 the record and then on the record after -- when it's
16 convenient.

17 (Court recessed at 10:00 a.m. until 10:15 a.m.)

18 (Jury is present)

19 THE COURT: Who's going to make the opening for the
20 State?

21 MR. GUYMON: I am, Your Honor.

22 THE COURT: Go ahead.

23 PLAINTIFF'S OPENING STATEMENT

24 MR. GUYMON: Good morning.

25 Some time ago we began this process and we indicated

1 to you that there would be two phases in this case, that there
2 was a guilt phase and that if in fact there was a verdict of
3 guilty for first degree murder that, in fact, there would be a
4 penalty phase and that day has come, that day is today and
5 perhaps the next day. The question for you in this -- in the
6 first phase, of course, was whether or not you'd hold Donte
7 Johnson accountable for the murders of those four boys,
8 Jeffrey Biddle, Tracey Gorringer, Matt Mowen and Peter
9 Talamantez, and by your verdicts you've held him accountable.
10 The question now is what penalty is appropriate.

11 And I begin with a quote and that is, "What is
12 justice but that every man gets his due." It will be your
13 decision to make a determination what is due the defendant for
14 those four execution-style murders, what will be the
15 appropriate penalty. Will he, in fact, receive a term of
16 years, some 40 to a hundred year prison sentence, is he due a
17 sentence of life with the possibility of parole, is he due a
18 sentence of life without the possibility of parole or is he,
19 in fact, due the death penalty for the heinous, heinous crime
20 that you've now learned about?

21 The format will be very similar to what the format
22 was last time and that is that you'll be given a whole bunch
23 of facts in order to assist you in what the proper
24 determination is and after receiving the facts from this
25 courtroom you'll be given the law, just like you were last

1 time and you will be governed by the law and assisted by the
2 facts in choosing the appropriate penalty.

3 You will learn something about what we call
4 aggravators. And while this is not the time to instruct you
5 on the law, in short, an aggravator is what makes this worse
6 than perhaps another murder. You'll also be given some
7 instruction on mitigators, what might lessen the deaths of
8 those four boys. And you will start the process being
9 governed by the law and assisted with the facts in choosing
10 the right verdict.

11 You will learn from the facts that John Lee White
12 was born May 27th, 1977. As he sits here in court, he is 23
13 years old. He was born in Los Angeles and he grew up in
14 inner-cities there in Los Angeles. You will learn that at a
15 young age, perhaps age seven or eight, he left his mother's
16 home and he began to live with his grandmother and his
17 grandfather. He lived his life, if you will, his teenage
18 years, in the inner-cities of Los Angeles.

19 And you will learn that at a young age, like many
20 kids, Mr. John Lee White, also known as Donte Johnson, begins
21 to make choices. You will learn that as a teenager, at age
22 14, on February 16th, 1992, he was arrested for an armed
23 robbery and for taking a vehicle without the owner's consent
24 and that for a period of about six months after that first
25 incident of armed robbery Donte Johnson is placed in a

1 California camp, what they call CCP, Camp Community Placement,
2 and for those six months the State of California attempts to
3 re-guide Donte Johnson, at age 14, give him some direction.

4 Clearly the State of California had an interest to
5 remedy the problem of an armed robbery at age 14 and so they
6 began to put him in programs, schooling, life skill programs,
7 behavior modification programs, in an effort to re-guide him.
8 You will learn that he performed satisfactory in that camp.
9 You will learn he was released on probation after six months
10 of being in camp, however, four months later, after being
11 released from camp and back on probation, you'll learn that he
12 is now, again, in possession of a handgun while on probation
13 on a school campus and he again is returned to camp in order
14 to see if the State of California can't re-guide him, can't
15 somehow solve the problem, before the problem increases itself
16 and gets worse.

17 You will learn that his probation is continued and
18 at age 16 now, 14, 15 and now 16, he, with three others, a
19 total of four, enter into a federal bank, Cen-Fed Bank, in
20 Marina del Rey, California, a quiet town in a nice commercial
21 area, a federal bank, in broad daylight. At 1:40 in the
22 afternoon Donte Johnson and his three teenage companions enter
23 into this bank and two of his companions have handguns. One
24 has a handgun, one has a shotgun and they do a bank takeover.
25 You will learn that tellers are placed on the ground and the

1 bank manager is placed on the ground and Donte Johnson and a
2 gunman jump over the counter and they approach a Stacy
3 Trammell and they ordered Stacy Trammell to open her cash
4 drawer, to give up her keys and Donte Johnson and his
5 companion, after they jump over the counter there where people
6 approach to get money, empty the drawer of one thousand, two
7 hundred and twelve dollars (\$1,212), while yet two of Donte
8 Johnson's companions are waiting in the foyer of the bank
9 holding people at gunpoint and ordering them on the ground,
10 "Don't move, this is a bank takeover."

11 It is Donte Johnson, at age 16, with his three
12 companions, who flee the bank after some, perhaps, five
13 minutes of being in the bank and getting the monies and
14 ordering everyone to the ground, it's Donte Johnson and his
15 three companions who jump in a Ryder van and leave the bank,
16 Donte Johnson driving that van.

17 You'll learn that that bank robbery was reported to
18 the authorities immediately and Donte Johnson, being on
19 probation at that period of time and having been given the
20 opportunity to change his way and modify his behavior, hadn't
21 changed at all as he sped away in that Ryder van and gets on
22 the freeway. And a chase, a police chase, ensues, as
23 helicopters go up in the air and locate Donte Johnson's van
24 with the other three in the van. And ultimately the police
25 are successful in stopping the Ryder van miles away from

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1 Marina del Rey, that very bank, Cen-Fed, and Donte Johnson is
2 arrested behind the steering wheel of that Ryder van.

3 You will learn that Stacy Trammell, the clerk that
4 was so terribly traumatized, actually responds to the very
5 scene that Donte Johnson and the other three have now been
6 apprehended and she identifies Donte Johnson, at age 16, as
7 one of the gunmen who jumped over -- or, excuse me, one of the
8 robbers who jumped over the banister there and robbed her
9 teller -- her money.

10 You will also learn that -- I believe a Stacy Gatlin
11 [phonetic] also responds over to the scene where Donte Johnson
12 is arrested. Stacy Gatlin -- or Sandra Gatlin, I guess, is
13 her name, I'm sorry, was the bank manager and she too got a
14 good look at the four persons or four people, all similar in
15 age, similar in race, similar in their appearance and how they
16 were dressed, and she too identifies John Lee White as one of
17 the four that were involved in that incident.

18 You will learn that Donte Johnson ultimately pled
19 guilty to that armed robbery, to that takeover of a federal
20 bank, and he is sent, incarcerated, if you will, to what we
21 call CYA, California Youth Authority, and he stayed there for
22 approximately 26 months.

23 You will learn that while at the CYA program Donte
24 Johnson is again given opportunities to modify his behavior,
25 given life skills courses, given school courses, given

1 behavior modification courses to address the violence and the
2 other attitude problems that are noted by authorities with the
3 California criminal justice system. After 26 months -- And
4 you should know that Donte Johnson is given a four-year
5 sentence for that takeover bank robbery as a juvenile at age
6 16.

7 He spends approximately two years and two months in
8 the CYA program, incarcerated there, where he is now released
9 on parole. He's released on parole and, again, he has
10 specific conditions on parole and you'll learn what those
11 conditions were. In short, those conditions were placed on
12 Donte Johnson so that somehow the State of California can
13 satisfy themselves that Donte Johnson is not going to be a
14 problem in the future, that somehow they can stop what seems
15 to be a real problem, as it's now increasing, that they could
16 modify this behavior.

17 You will learn that Donte Johnson was to be on
18 parole for 13 months with specific conditions to modify his
19 behavior. You will learn that he was successful for only four
20 of those months. You will learn that while he was successful
21 for four of those 13 months he attended school there at the
22 parole campus. Donte Johnson was released from CYA and was
23 sent to a specific campus where the parole office is so the
24 parole office can keep special watch on Donte Johnson. He
25 attends -- begins to attend school, he begins to work, he

1 begins to attend his programming classes for the first couple
2 of months and he starts to slough off. He starts to show an
3 attitude problem, he starts to show violence, he starts to
4 show all sorts of problems as he violates his conditions of
5 parole and after four months he becomes delinquent yet again
6 and he absconds from parole. He becomes what we call a
7 parolee at large on April 1st, 1996.

8 You will hear from his parole officer, Agent or
9 Officer Keith Clark, who will tell you that Donte Johnson,
10 after showing these propensities for violence and these
11 attitude problems and after failing now to comply with the
12 conditions of parole, Donte Johnson calls Officer Clark and
13 says, "Hey, Officer Clark, I've been gone for a while, I fled
14 from parole, is there a bench warrant out for me?" And Agent
15 Clark says, "Yes, there is." And Agent Clark says, "Where are
16 you," and Donte Johnson says, "I'm in Gardena, California, but
17 you're not gonna find me. I'm not coming in."

18 Agent Clark begs Donte Johnson, "Just turn yourself
19 in. It will make it a lot easier. We're gonna find you."
20 "You're not finding me" and Donte Johnson hangs up the phone.
21 You will learn that Donte Johnson was gone for quite a long
22 while, almost two years, without being apprehended. He knows
23 that he's wanted in the State of California and so he changes
24 his name from John Lee White now to Donte Johnson and he comes
25 to Las Vegas, Nevada.

1 And you will learn on May 4th, 1998 Donte Johnson is
2 nearly 21 years old and he finds himself on Fremont Street
3 selling rock cocaine. You've learned he's a dope dealer. The
4 defense attorneys told you that. And, sure enough, on May
5 4th, 1998 he's dealing dope out of a hotel not far from here.
6 You will hear from a man by the name of Drick Simpson. Drick
7 Simpson will tell you that he had known Donte Johnson for a
8 long, long while. Donte -- or Drick Simpson will tell you
9 that he, Drick Simpson, had a habit and his habit was smoking
10 rock cocaine and that he bought rock cocaine from Donte
11 Johnson on occasion.

12 He will tell you during the early morning hours of
13 May 4th, 1998 Drick Simpson attempted to buy rock cocaine from
14 Donte Johnson and Donte Johnson didn't want to sell him any
15 rock cocaine. And you will learn that as Donte Johnson stood
16 there at the doorway of his hotel, Drick Simpson standing face
17 to face with him, Drick Simpson engages Donte Johnson in
18 conversation. "Why won't you sell any rock cocaine," and
19 Donte Johnson says, "I ain't selling you nothing," and he
20 grabs a gun out of the waistband, he being Donte Johnson,
21 grabs a gun out of the waistband of his pants and Drick
22 Simpson sees this and so immediately Drick Simpson smacks
23 Donte Johnson in the face. Donte Johnson drops the gun and
24 Drick Simpson pushes the gun away, because Drick Simpson's
25 unarmed.

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1 You will learn that a security guard runs up and
2 perhaps rescues, momentarily, Drick Simpson, because that
3 security guard separated these two and cooled down the
4 argument for a while. You will learn that Drick Simpson left
5 Donte Johnson's hotel room that night, he walked away, he was
6 unarmed and he left, and about 10, 15 minutes went by and
7 Drick Simpson walked about a block and a half away.

8 You'll learn that Donte Johnson was unhappy with
9 this exchange and Drick Simpson had not heard the last of
10 Donte Johnson, because it is Donte Johnson who gets into a
11 white Cadillac and drives up Fremont Street to find Drick
12 Simpson, and it is Donte Johnson, at nearly 21 years of age,
13 who drives that Cadillac straight down Fremont Street and
14 stops immediately in front of Drick Simpson and Donte Johnson
15 now confronts Drick Simpson, the unarmed individual, and Donte
16 Johnson puts a gun right up into the face of Drick Simpson and
17 he shoots him, from close range, and Drick Simpson falls dead
18 in his tracks, or straight in his tracks, right to the ground,
19 face first, but Drick Simpson is conscious still. He still
20 can hear and he still can see what's happening around him and
21 he looks over his shoulder to see Donte Johnson step over him
22 and shoot him right in the back.

23 A bullet lodged or went through his back and out his
24 stomach, particles of that bullet lodging in Drick Simpson's
25 spine at the hands of Donte Johnson. There will be no doubt

1 in your minds, as there's no doubt in Drick Simpson's, that
2 Donte Johnson shot Drick Simpson that night. Drick Simpson
3 will come into this courtroom in a wheelchair. He is an
4 incomplete quadriplegic and he will testify to the things that
5 happened to him on May 4th, 1998 and just who shot him.

6 You will learn that some four months later, let's
7 see, June, July, August -- I'm sorry, three months later, to
8 the very day, another man's life was affected and you will see
9 and you will hear that Drick Simpson's life has clearly been
10 affected. His whole world has changed because Donte Johnson
11 shot him with a handgun right in the face and right in the
12 back.

13 You will learn that Darnell Johnson's life changed
14 on August 4th, 1998, Donte Johnson, 21 years old now, Darnell
15 Johnson about the same age. You will learn that on August
16 4th, 1998 Donte Johnson, Terrell Young and one other, you'll
17 hear of a guy by the name of Scale, you've already heard the
18 name once, you will learn that those three, there at the
19 Thunderbird Hotel, were engaged in deadly, deadly conduct,
20 that Donte Johnson, Terrell Young and Scale killed Darnell
21 Johnson right there at the Thunderbird Hotel, the very room
22 that Donte Johnson was staying at. You'll learn that Donte
23 Johnson was unhappy with Darnell Johnson because Darnell
24 Johnson had stole some rock cocaine from Scale or one of Donte
25 Johnson's friends and somehow Donte Johnson wants to teach

1 Darnell a lesson and so Donte Johnson and his companions lure
2 Darnell Johnson over to the Thunderbird Hotel where Donte
3 Johnson and his companions force Darnell to put rock cocaine
4 in his mouth and they strangle Darnell Johnson to death with a
5 cord and with a bed sheet.

6 You will learn that Donte Johnson and his companions
7 wrap Darnell Johnson's body up in a white bed sheet and they
8 take Darnell Johnson for a long ride. Darnell Johnson's now
9 dead and Donte and his friends dispose of the body somewhere
10 very near the speedway up I-15.

11 You will hear from Charla Severs who will tell you
12 about the murder that occurred at the Thunderbird Hotel. She
13 told you that on about August 4th Donte Johnson and Terrell
14 Young left the Thunderbird Hotel. You'll now learn why. You
15 will learn that the police are attempting to locate Donte
16 Johnson because of the death of Darnell Johnson there at the
17 Thunderbird. You should also know that an arrest warrant was
18 issued for Donte Johnson shortly after May 4th for Drick.
19 Simpson, but the police, three months later, still haven't
20 found Donte Johnson. Donte Johnson's still on the loose.

21 And on August 4th the police begin an investigation
22 and they want to find Donte Johnson for both of these violent
23 offenses. You will learn that that's the very reason why
24 Donte Johnson and his friends leave the Thunderbird, because
25 now the five-o are hot on his trail, the police are looking

1 for him.

2 And you will -- you've learned that, from Charla
3 Severs, that Donte Johnson wanted to get out of town. The
4 very reason he wanted to get out of town is because the police
5 were looking for him for two very violent offenses. And you,
6 ultimately, will learn that it's Donte Johnson who wants to
7 get money to get out of town and the solution to getting out
8 of town and getting that money is the death of those four
9 boys.

10 You will learn that just days before those four boys
11 died, four days before they were executed, -- three days, I
12 should say, that Donte Johnson and Terrell Young and yet
13 another, Sikia Smith or Scale, go over to the Longhorn Hotel
14 and Casino. It's not far from Boulder Highway. There's the
15 Longhorn and there's the Super 8 Motel. And Donte Johnson and
16 his companions, yet again, seek to do great bodily harm to
17 others as they shoot at and into a fellow drug dealer's body
18 and the drug dealer receives a bullet through his shirt, but
19 is not struck.

20 It's Donte Johnson that fired that gun on August
21 11th, 1998 and it's Donte Johnson who tells Charla Severs
22 about that incident as Donte Johnson tells Charla Severs, "We
23 went over there to the Longhorn Casino 'cause we were gonna
24 get these guys. They're slipping. They won't even know who
25 did it. We're gonna get 'em." And so Donte Johnson and his

1 companions, yet again, arm themselves with guns and begin to
2 shoot at unsuspecting drug dealers.

3 You will learn that the drug dealers, on August
4 11th, didn't choose to prosecute, but Donte Johnson will be
5 identified as one of the shooters in the Longhorn incident,
6 he'll be identified as the individual who strangled Donte
7 Johnson [sic] by Charla Severs, as she now tells you the
8 additional information she knows and as Bryan Johnson also
9 returns and tells you of Donte Johnson's confessions to the
10 murder of Darnell Johnson and the shooting up of the Longhorn
11 Hotel and Casino.

12 You will learn that, ultimately, August 14th, 1998,
13 was not a -- what can I say, was not just a bad night for
14 Donte Johnson, but rather it was the culmination of a course
15 of conduct, deadly conduct, dangerous conduct and repeated
16 acts of violence which ultimately ended in the destruction --
17 the execution of those four boys.

18 Lastly, you will hear of Donte Johnson's
19 incarceration record. You will learn that he has been
20 incarcerated. He was arrested in August of 1998 and he's been
21 incarcerated until this month, June of 1998 [sic], and you
22 will learn that he has not been without infraction while he's
23 been incarcerated. You'll learn of his discipline problems,
24 the behavior problems, the attitude problems, the defiance
25 while in the jail.

1 In short, ladies and gentlemen of the jury, the
2 evidence will show that the defendant has made a number of
3 choices, that at a young age he chose to engage in very
4 serious criminal conduct and that despite the State of
5 California's best efforts in order to rehabilitate him, and in
6 order to turn his life around, he chose not to and again and
7 again has been given opportunities to modify his behavior and
8 has not. You will learn that ultimately his choices have cost
9 those four boys their lives, cost Darnell Johnson his life and
10 has cost Drick Simpson his life. And, oh, it's true, Drick
11 Simpson is not dead, but you will see that the life he's left
12 with is not much of a life.

13 In the end we will ask you to pick the just and
14 proper sentence. "What is justice but that every man gets his
15 due." We would suggest to you that what is due the defendant
16 for his choices, for his repeated acts of violence, that yes,
17 Donte Johnson is due the death penalty.

18 And I thank you.

19 THE COURT: Thank you.

20 Does the defense intend to make an opening?

21 MR. FIGLER: Yes, Your Honor.

22 THE COURT: Go ahead, Mr. Figler.

23 DEFENDANT'S OPENING STATEMENT

24 MR. FIGLER: Good afternoon, ladies and gentlemen.
25 Mr. Guymon said something at the very beginning of

1 this entire trial. He said to you that he is not going to
2 apologize for the evidence that you will see, for the way that
3 he will present this evidence, for the information that you
4 will learn during the course of the trial and, again, when he
5 did his closing argument, he reaffirmed that he would not
6 apologize. Well, ladies and gentlemen, today I stand before
7 you also not apologizing, not apologizing for representing
8 John White, not apologizing for informing you of what it was
9 like growing up as John White, not apologizing for the type of
10 environment that existed there and not apologizing for
11 defending his life, not one little bit, not during the course
12 of this hearing, not ever will I apologize.

13 There is a quality of humanity that we all discussed
14 during the voir dire, during the initial selection process,
15 and that is something that is gonna come so home to everyone
16 when they hear this penalty phase. Now Mr. Guymon also talked
17 about accountability in the first case and now he has gotten
18 off that because, in essence, you have held John White
19 accountable for his role in the crime that has been charged.

20 So now accountability is done. You've held him
21 accountable. You have guaranteed, by your verdict, that John
22 White will spend the rest of his life in jail, that when he
23 dies he will, in fact, die in prison. No matter what your
24 verdict is here today, you've held him accountable. You've
25 taken him out of society. The question that remains is what

1 is the appropriate penalty in this particular case.

2 Now I want to ask you to do something for me as we
3 go through this process. What you hear now, what you've been
4 presented with from the prosecutor's side, is information that
5 they have. Most of those have not been charged, have not
6 resulted in convictions, haven't even been charged. There's
7 still a presumption in our system that a person is innocent
8 until proven guilty, beyond a reasonable doubt, of every
9 offense. This is not being brought in to say that aggravators
10 exist. It's basically an attempt by the prosecutors to paint
11 as ugly a picture, with information that hasn't even been
12 proven in a court of law, of John White as possible, but you
13 can't paint a young man without painting the entire young man.
14 They want to give you little points, little aspects, but our
15 role is to show you the full young man.

16 So here's the favor that I have to ask of each and
17 every one of you right now. You told us, during the initial
18 selection, that you would follow the law, that you would
19 separate things, that you wouldn't go beyond what the law
20 instructs you to do, so what I'm gonna ask you now to do --
21 And this is each and everyone's opinion and you'll never have
22 to share it with me and you'll never have to share it with the
23 prosecutors or anyone else, anyone else, but you heard the
24 evidence during the trial and you know what your individual
25 decisions were.

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1 There are many theories that the prosecution
2 proceeded upon and I'm sure that during your very thoughtful
3 analysis of this case, something that took a little bit more
4 than seven hours of your time, there were differing opinions
5 as to what had occurred, what the prosecutors had proven
6 beyond a reasonable doubt. I ask you just this one little
7 favor, because it's something that we'll probably refer to
8 later. Because you're gonna hear a lot of information about
9 John White's life, both good and bad, throughout his very
10 short life, I want to ask you now to take a page, maybe the
11 back page of your notebooks that you all have, and write down
12 your own individual, not the group collective, but your own
13 personal opinion of whether or not you believe that the
14 prosecutors here proved beyond a reasonable doubt --

15 MR. GUYMON: Judge, I'm gonna object. This is not
16 proper --

17 THE COURT: Let's hear what he's saying and we'll
18 rule on it afterwards.

19 MR. FIGLER: -- whether or not Donte, who they call
20 Donte Johnson, who we know as John White, was the actual
21 shooter in this particular case, was the person who pulled the
22 trigger.

23 Now it shouldn't have a bearing one way or another
24 when we're ultimately gonna talk about this, but you will be
25 instructed about separating what you hear now from your

1 determinations in that case, in the case that you heard. You
2 can't let what you hear here about John White infect your
3 decision, your ultimate determination that you personally
4 made, each and every one of you, during the first part of this
5 trial. So I ask you please, so that you're not impacted or
6 influenced by what you might possibly hear, to your own
7 personal belief as to whether or not he was the shooter or
8 not, and write that down so that you keep yourself honest to
9 yourself, 'cause that's all we can ask.

10 And that's just one aspect. So if you could just
11 take a moment to write that down to yourself, on there,
12 whether or not you personally believe that the State had
13 proven beyond a reasonable doubt that he was the shooter. I
14 would really appreciate that.

15 MR. GUYMON: And I would renew my objection, Judge.

16 THE COURT: Overruled.

17 MR. FIGLER: So if you could just take a moment to
18 do that, I would thank you.

19 (Pause in the proceedings)

20 THE COURT: Can I see counsel at the bench, please?

21 (Off-record bench conference)

22 MR. FIGLER: Now comes the time when I present to
23 you what, it's our position, will occur and what you will
24 hear, 'cause not only does the prosecutor present information,
25 but we do as well.

1 And Mr. Guymon made a quote at the beginning of his
2 opening that said, "What is justice but that every man get his
3 due," and I want to talk about what the evidence will show
4 with regard to justice, with regard to what a man is due and
5 what kind of promise our society gives to a man.

6 John White was indicated to you, during the
7 prosecution, that he left his mother's home when he was in the
8 single digits. You will hear evidence that he didn't leave
9 his mother's home. You will hear evidence that his mother
10 didn't have a home. You will hear evidence of how John grew
11 up in a life that can't be described as anything but abject
12 poverty. You will hear about a culture of violence, a pattern
13 of despair and absolutely no hope for any individual who was
14 born into this world as John White was.

15 You will hear how left alone, in something that
16 could only be described as a shack with no adults around, a
17 great grandmother of John White's called the police to get rid
18 of these kids, and there was about six of 'em living in this
19 one little shack with no running water, no electricity to
20 speak of, sometimes they used a bucket for their commode, and
21 this was the projects of South Central L.A., that the great
22 grandmother had called the police and the police had come and
23 around the late night hours of that day rounded up all these
24 children and took them away, took them to a life that can only
25 be described as comparable to the shack that they were living

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1 in, a horrible place called McClaren Hall where disease and
2 fear continued to run rampant. I will not apologize for the
3 things that young John White had to see living there and the
4 hope that was taken away from him that he would ever amount to
5 anything but another casualty of that area.

6 The prosecutor indicated that you will hear that
7 John started making choices, that this preteen started making
8 choices. Well, certain choices were made for him. His
9 grandmother, who ultimately took -- not the great grandmother
10 who turned them in to the police, but the -- and toddlers,
11 little kids, kids still in diapers, that his grandmother,
12 ultimately took them in and did the best that she could to
13 make a life for them, to protect them from the streets that
14 were around them, taking them to church, putting them in the
15 choir, but, as you'll hear, a grandmother only has so many
16 arms and they only reach so far and you can't keep an
17 individual in church, in the sanctuary of a grandmother's
18 bosom, 24 hours a day, seven days a week.

19 The prosecutor alluded to choices that this young
20 man made, but with any choice there are implications. When
21 John was very young, walking through his neighborhood was a
22 choice, I guess you could say, but it was always someone
23 else's choice whether or not he would live or die. And when
24 family members of his, the other children, none of whom had
25 any parental supervision, his father long gone by then, were

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1 threatened, I guess they had a choice of what they could do.
2 And when John saw a way to protect his own family members, I
3 guess you could call that a choice too, that if his sister and
4 cousin -- and really, in this situation, you'll learn that
5 sisters and cousins are all pretty much equal siblings in this
6 world, in this other culture that we don't know about, but
7 that I don't apologize for having to expose you to, that when
8 those family members are being threatened with bodily injury,
9 with horrors, with rape, that I guess he had a choice on what
10 to do. He could have ignored it or he could have done what,
11 in his mind, would be right to prevent that from occurring.

12 I guess you could call those choices too. And
13 that's when a very young, very impressionable, no guidance, no
14 family support structure, no nothing but despair, made some
15 choices. What sort of desperation, you will hear, leads a
16 young man at age 16 to try to rob a bank or be involved in a
17 bank robbery? Is that what 16 year olds do? I guess you
18 could say that there's certain choices then too.

19 And the prosecutors also alluded that he was given
20 plenty of opportunities, plenty of chances to rehabilitate,
21 perhaps, or change the path that he was on, but you have to
22 take those in context too, because just as though choices have
23 many sides, so do alleged opportunities. And what hasn't been
24 told to you yet, and what you will learn during the course of
25 this trial, in this part of the trial, is that every

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1 opportunity is attached to an equally important choice and an
2 equally important repercussion from that choice.

3 Let me give you an example. If in a program in the
4 youth authority someone like John White is told family is
5 important, and I think you all agree with that concept, family
6 is important, you need to be with your family, okay, and say a
7 young man takes that to heart and says, "You know, you're
8 right, family is, to have family, that is important and I love
9 my family," and there will be no doubt in your mind that he is
10 very close, would do anything for his family, to help his
11 family, to be with his family, but what that opportunity, that
12 choice, doesn't reveal is how you supposed to get home, how
13 you supposed to walk from the youth authority where you are to
14 your grandmother's house if you have to go through 11 gangs to
15 get there.

16 And what if you're affiliated with -- or thought to
17 be affiliated with one particular gang and you're walking
18 through and you're spotted by people who, in their mind, have
19 determined that you're not wearing the right colored shirt and
20 so you try to sneak in, under cover of night, to your
21 grandmother's house and when you walk out you are confronted
22 by people who deem themselves to be rival gang members somehow
23 and tell you that if you're ever seen here again you will be
24 killed and your family will be killed, is that an opportunity?
25 How do you follow up on the advice that you need to be with

1 your family if you can't get to your family?
2 Opportunities. The California Youth Authority
3 sounds like a very happy place, but I think that the evidence
4 will show that it is a festering cesspool of horrors, that
5 rehabilitation may be a bowl that they give some credence to,
6 but they're not really concerned, because they can't be,
7 because there's too many kids and they can't single them out,
8 but you will also hear how John White is when he's in custody.
9 All these programs that the prosecutor's alluded to, you will
10 hear that they are all voluntary, that every program, life
11 skills, how to better yourself, how to break out of this
12 pattern of despair, this destructiveness that surrounds you
13 and swirls around you like a hurricane, like a tornado that
14 will lift you up and put you down in the worst places, you
15 will hear how you could either voluntarily do those things or
16 just kind of say, "I don't want to do those," but John White
17 is somebody who wants betterment, who wants somehow to figure
18 out a way to break the pattern of everyone he knows, everyone
19 he knows. Not a single sole does he know that has been able
20 to get away from that, well, maybe with the exception of
21 people he sees on TV or hears on the radio, rap stars or
22 sports superstars, but that's not reality and we all know that
23 that's not how we set our goals and attribute our life. So he
24 engages in all these.

25 And you will not hear from any witness that he

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1 didn't want these things, that he didn't perform well,
2 satisfactorily, those are the words the prosecutor used, that
3 he didn't try to do these programs, but these programs are
4 only as good as society will allow them to be applied. And
5 when you're let go from the California Youth Authority, you're
6 right back in it. So when John White is in the system he
7 performs well, he does what he's supposed to do, he does the
8 things to try to better himself physically, mentally,
9 spiritually and when he's thrown out, yes, he's under a term
10 of probation, but probation is not a grandmother's arms around
11 you. Probation is not any kind of authority figure, let alone
12 a male authority figure.

13 Probation is not an automatic infusion of hope.
14 It's not. And that's the part that I'm not apologizing for,
15 of what you're going to have to see. Take yourselves out of
16 the world that you know and see, if only for a brief horrific
17 moment, this type of world, this type of hope.

18 The prosecutors will not present to you any evidence
19 that while in custody John White is a violent person. While
20 he has been two years in the Clark County Detention facility,
21 he has certainly gotten what they call write-ups. A write-up
22 is for any infraction, no matter how small. If you stand in
23 the wrong place for your food line, that is an infraction. If
24 you lip off to someone, that is an infraction. And you will
25 also hear that there are many individuals in those facilities

1 that resort to violence in that society, in the prison
2 society, and John White is not one of those people.

3 John White knows that when you're in custody, yes,
4 you must maintain your individuality, you should have the
5 right to be able to express yourself, you could even say
6 things that might be considered sassy, but you don't hit. You
7 don't strike another person in those situations, because when
8 he's in custody, you will hear evidence, that he does respect
9 the authority to the extent that he's not going to be violent
10 with these people and when he's out of custody he is as lost
11 as anyone in that situation would find themselves to be lost.

12 And you heard evidence, actually, during the first
13 part, of every interaction. Think about every interaction
14 that he had with police and authority. Did he ever pull a
15 weapon on the police? Did he ever make any threats to the
16 police? Did he ever do anything but be respectful to the
17 authority of the police while in those custodial situations?
18 And that will give you a little more reflection on the way
19 that he is able to look at this world.

20 Now the State went through various instances in his
21 life, hopscotching from one to the next, without really asking
22 you to look behind it, without actually looking to evaluate
23 the choices that he had, the desperation, the fears, the
24 anxiety, what is essentially a person who isn't given what it
25 takes to be able to perform in ways that we, in free society,

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1 can and to that end you've held him accountable and you've
2 taken him out of free society and that really should be the
3 end of the discussion, but in this particular case the State
4 is requesting you to put another human being to death.

5 And that goes beyond the pale, because you're
6 looking at this instance and you're looking at what comes to
7 his life, and you'll be instructed about all that, but the
8 evidence will support that there's a lot of information that
9 surrounds, bulges behind, hits on top of, information that you
10 will not be able to avoid when looking at any instance that he
11 has either committed, by your decision, or which there are
12 just mere allegations out there regarding.

13 You'll hear that everyone who John is involved with
14 are not ordinary citizens now, but people who are involved in
15 drugs. There is this bank thing when he was a mere 15, 16
16 years old and nobody was hurt there. Everything else that
17 they want to talk about involves a drug culture, a drug
18 culture that is just as prevalent as the violence culture,
19 that is just as prevalent as the hopelessness that existed in
20 South Central L.A.

21 And here's another point. His family had to keep
22 moving from project to project and it just so happened that as
23 they moved deeper into the numbers in South Central L.A.; from
24 43rd to 60th, and down on the line, things only became worse
25 for everyone because the neighborhoods became worse, because

1 this is where they were. And dealing with drugs and violence
2 and guns, it's something that in our perfect society, that we
3 all talked about, certainly wouldn't be there, but we all know
4 that there are risks involved in that that goes both ways and
5 you'll hear evidence of those risks.

6 Nothing that I'm saying right now is intended to be
7 a justification for the loss of the four young boys. Nothing
8 that I'm saying is an excuse. You will understand, when you
9 hear the instructions and when you see all this evidence, that
10 excuses and justification is not your business right now.
11 Your business right now is to determine what it is about John
12 White that makes you not want to kill him because, ultimately,
13 that is what's going to occur if, ultimately, certain
14 decisions are made, but you will hear, during the course of
15 this trial, that those decisions can never be reached, that in
16 this particular case that is not supposed to be a likelihood.

17 Now there's lots of evidence that we saw of guns.
18 This is a gun that was retrieved. This is the kind of gun
19 that probably is very prevalent in the South Central L.A.
20 It's the kind of gun that can do great destruction, that could
21 do great harm, but you see, if I take this gun and I point it
22 at Donte Johnson, at John White, and I take it and put my
23 finger on the trigger and I fire that weapon, John will
24 immediately die.

25 MR. GUYMON: Judge, I'm gonna object. It's becoming

1 argument. This is the time for opening statement.

2 MR. FIGLER: Know that the death penalty is very
3 real and that shooting someone in the way that I held that gun
4 is what happens to an individual, they --

5 MR. GUYMON: Judge, the same --

6 THE COURT: Sustained.

7 MR. FIGLER: You will hear evidence, during the
8 course of this penalty phase, that it is very real and that if
9 any of you turn your heads away in disgust, not wanting to see
10 me shoot John White, but that's exactly what will occur,
11 because --

12 MR. GUYMON: I am going to object. That is not what
13 will occur.

14 THE COURT: All right, there's going to be a time
15 for argument, Mr. Figler, and I think you're reaching it
16 prematurely.

17 Sustained.

18 MR. FIGLER: There is information that will be
19 conveyed to you during the penalty phase regarding the death
20 penalty. It's a subject, obviously, of very hot contention in
21 this society. Part of that discussion is about innocent men
22 being put to death and part of that --

23 MR. GUYMON: Judge, I'm gonna object.

24 THE COURT: Sustained.

25 MR. FIGLER: Mr. Guymon stated, "What is justice but

1 that every man get his due." This is a young man. You'll
2 hear evidence about the due that he got, the justice in the
3 world, justice regarding a penalty that takes away a human
4 life. You will hear about all these things during the course
5 of this trial.

6 Now ultimately you will learn that some people we
7 just don't want to be in our society anymore, some people
8 that, for whatever circumstances existed in their life,
9 shouldn't be among us. Your decision, as you all know, has
10 pretty much guaranteed that you'll never be, in your
11 neighborhood, never be around anyone, not be the threat
12 anymore that the prosecutors are alluding to with regard to
13 this history, but the history has to be everything. The
14 history has to be everything from the day that John White came
15 out of his mother, a mother -- There's a quote in the Bible
16 about honoring thy mother and father.

17 MR. GUYMON: Judge, I'm gonna object to any biblical
18 references. It's improper.

19 THE COURT: Is that your opinion, Mr. Figler? I
20 don't really know the law on that.

21 MR. FIGLER: Well, the Bible -- Well, I think --

22 MR. GUYMON: May we approach the bench, Your Honor?

23 THE COURT: I know the law of the Bible, Mr. Figler.

24 MR. FIGLER: Well, let's just say that there's a --

25 THE COURT: Would you approach the bench, please?

1 MR. FIGLER: Well, Your Honor, I'll move along.

2 THE COURT: Thank you.

3 MR. GUYMON: Judge, may we approach?

4 THE COURT: Yes.

5 (Off-record bench conference)

6 THE COURT: Go ahead.

7 MR. FIGLER: We could all agree that the
8 implications of imposing this type of penalty on an
9 individual, as you will hear from all the evidence, has
10 implications far and away into the world, implications that
11 are irrevocable.

12 You will hear evidence that certain people belong in
13 a custodial situation for the rest of their lives. You will
14 hear that John White is one of those people. You will hear
15 that John White is a young man, around the same age as every
16 other young man that has come to your attention in this case.
17 They're all young men. They've all been involved in choices
18 and options that have implications beyond what it is that goes
19 to the direct choice or implication, but you also learned that
20 John White -- It's funny how I stand in front of you right
21 now, and I've had these conversations with my friends, with
22 prosecutors, with all sorts of people. I'm not standing and
23 talking out of person, but I'm sitting down over a cup of
24 coffee and talking about all these things, things that I don't
25 know if I'm gonna be able to convey to you either right now in

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1 this opening, during the closing argument or even during the
2 course of the trial. I will try, because it is that
3 important, that there are certain people in our world, and
4 you'll hear evidence that John White is one of them, that can
5 be fixed, that if you deem them to be broken, they can be
6 fixed, that a young man can be fixed.

7 And you're supposed to set aside your emotions and
8 sympathies that go out, and I'm sure from all of us, to the
9 families of the four young boys, but this young boy is the one
10 whose life you're gonna be dealing with now and he can be
11 fixed and he will be in custody for the rest of his life, but
12 something can be made right. Dead boys learn no lessons.

13 Thank you for your attention.

14 THE COURT: Thank you.

15 Call your first witness, please.

16 MR. GUYMON: Lieutenant Grayson.

17 (Pause in the proceedings)

18 JIM GRAYSON, PLAINTIFF'S WITNESS, IS SWORN

19 THE CLERK: Please be seated.

20 THE WITNESS: Thank you.

21 THE CLERK: State and spell your name for the
22 record, please.

23 THE WITNESS: My name is Jim Grayson, J-I-M,
24 G-R-A-Y-S-O-N.

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GRAYSON - DIRECT

DIRECT EXAMINATION

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BY MR. GUYMON:

Q Are you a lieutenant with the Los Angeles Police Department?

A Yes, I am.

Q And how long have you been employed with the Los Angeles Police Department?

A I've been employed with the Los Angeles Police Department for 32 and a half years.

Q And currently what is your assignment with the Los Angeles Police Department?

A Currently, I am the officer in charge of the Robbery Section, Robbery and Homicide Division.

Q And just where is that division located?

A It's located downtown in the Parker Center Administration Building.

Q In Los Angeles, California?

A In Los Angeles, yes.

Q Now directing your attention to June of 1993, do you recall what your assignment was then?

A In 1993, yes, I was in charge of the Bank Robbery Section of the Los Angeles Police Department.

Q All right. Were you also a lieutenant then?

A No, I was a Detective III at that time.

Q A Detective III?

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GRAYSON - DIRECT

1 A Yes.

2 Q And directing your attention to June 8th of 1993,
3 did you conduct an investigation associated with a bank called
4 the Cen-Fed Bank?

5 A Yes, I did.

6 Q And, for the record, that's S -- or Cen-Fed?

7 A Yes.

8 Q Can you tell us where that bank is located, if you
9 would?

10 A That bank is located in Los Angeles in an area
11 called the Marina.

12 Q And describe, if you will, the area called the
13 Marina.

14 A The Marina is a kind of upscale area with shopping
15 centers, some hotels, a lot of boats, a lot of restaurants,
16 very upscale.

17 Q And is the Marina the same thing as Marina del Rey?

18 A Yes.

19 Q All right. This is -- Can you give us an idea of
20 how large the bank is? Is it a small bank or a fairly large
21 bank?

22 A It was a fairly large bank.

23 Q And tell me just what was it that caused you to have
24 to do this investigation? What was the information you
25 received?

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GRAYSON - DIRECT

1 A The information I received, being in charge of the
2 Bank Robbery Section, we handled all -- we handled all the
3 bank robberies in the city of Los Angeles. We'd do the
4 investigation, from the whole scene investigation to the
5 completion of it. I was notified that there was a bank
6 robbery in the West L.A. -- in the Marina area and I, along
7 with some other detectives, responded to that location.

8 When we got to that location, there was two or three
9 other divisions of police units already at the scene.

10 Q Okay, take me from there, if you would.

11 A Okay, when we got to the scene, the uniformed
12 officers that responded to the scene, and there was also
13 several helicopters, and the police officers that was in
14 uniform advised me what had happened, that a robbery had
15 occurred with four male blacks -- I think it was four male
16 blacks in a Ryder van.

17 Q Did you receive information of what the four male
18 blacks did once they got to the bank?

19 A Yes. I was advised that the four males went into
20 the bank, two of 'em assumed a guard position, one went to
21 midway of the lobby with a gun, the other male stood kind of
22 guard at the door with a shotgun and two other subjects
23 vaulted the counter over into the teller area. One of the
24 suspects went to the east end of the teller line behind the
25 teller line and the other one went to the west end and they

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GRAYSON - DIRECT

1 had tellers open the drawer and give 'em money.

2 Q Okay, so two vault the teller area and one of the
3 two takes money, is that correct?

4 A There was two of 'em behind the teller line --

5 Q Okay.

6 A -- getting money. There was several other teller
7 stations that were locked, so they took the money from the
8 ones that they could get money from.

9 Q Now can you tell me, in your investigation, did you
10 learn whether or not the two that vaulted the teller area,
11 over the counter, had weapons?

12 A From the information I received, as best I can
13 remember, the two subjects that was in the lobby area had
14 weapons.

15 Q Okay. Take me from there as you learn the
16 investigation and what you do.

17 A After learning what had occurred at the bank, the
18 responding patrol units was advised by citizens that a robbery
19 had occurred and they gave a description of the suspects and
20 the vehicle and the direction that was taken by 'em. Some of
21 our uniformed officers and helicopters went in that direction,
22 where they subsequently located the Ryder van and the suspects
23 eastbound on the Santa Monica freeway, the I-10 freeway.

24 They activated the lights to try to stop 'em, the
25 suspects continued and they subsequently went off the freeway

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GRAYSON - DIRECT

1 at a street called La Brea, that was La Brea. They took the
2 La Brea exit south and they went to a residential area where
3 they were subsequently stopped. Two of the suspects was
4 captured in the van and two ran in different directions,
5 whereas they was subsequently arrested also.

6 Q All right, can you tell me what the distance is
7 between the bank there in the Marina and the area in which
8 they were stopped? How many miles separate those two
9 locations, approximately?

10 A Approximately eight -- maybe eight miles.

11 Q All right. And you say that two of the four
12 suspects were actually apprehended in the van, the Ryder van?

13 A Yes.

14 Q Can you give me the names of the two suspects that
15 were apprehended in the van?

16 A Not by memory. I can look at my reports that I
17 made.

18 Q All right. Are there reports that you made
19 associated with this investigation?

20 A Yes.

21 Q Would they refresh your recollection, Lieutenant?

22 A Yes, they would.

23 Q Would you please look at them for me? And I know
24 it's been a long time.

25 A Thank you.

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GRAYSON - DIRECT

1 MR. GUYMON: And the record should reflect he's
2 referring to incident reports that the defense has, as well as
3 the State.

4 (Pause in the proceedings)

5 THE WITNESS: One of the subjects was a John Lee
6 White.

7 BY MR. GUYMON:

8 Q And where was John Lee White located there in the
9 Ryder van?

10 A He was the driver of the van.

11 Q Okay.

12 A And I would have to search through here. I think
13 the second suspect that was arrested in the van was a Walton.

14 Q All right. And --

15 COURT RECORDER: Spell that for me.

16 THE WITNESS: W-A-L-T-O-N.

17 BY MR. GUYMON:

18 Q And, Detective, can you tell me -- or Lieutenant, I
19 should say, I'm sorry, Lieutenant, can you tell me what the
20 age of John Lee White was at the time of his arrest?

21 A At that time each one of the subjects, they were 16
22 years of age, as I recall.

23 Q All right, all four were 16?

24 A Approximately, yes.

25 Q And, Lieutenant, in this case were there guns that

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GRAYSON - DIRECT

1 were ultimately found or associated with this case?

2 A As I recall, yes.

3 Q And can you describe the guns that were found?

4 A One of the guns was a blue steel revolver, as I
5 recall, and one was a shotgun.

6 Q All right. Now, Lieutenant, in this investigation
7 did you ultimately interview each of the four individuals that
8 were arrested?

9 A Yes, I personally interviewed each of the four.

10 Q All right. And were each of the four arrestees read
11 their Miranda rights?

12 A Yes, they were.

13 Q And did they agree to speak to you?

14 A Yes, they did.

15 Q In speaking to the four individuals, coupled with
16 your investigation, did you learn which of the four had the
17 two weapons?

18 A Yes.

19 Q Okay. Can you tell me, based on your interview of
20 John Lee White, did John Lee White have a handgun in this case
21 or use a weapon?

22 A From my interview of John Lee White, no, he did not.

23 Q All right. Can you tell me, after Mirandizing John
24 Lee White, what he told you about this particular incident?

25 A Yes.

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GRAYSON - DIRECT

1 Q All right, did you actually note the very comments
2 that he made?

3 A Yes, I documented exactly what he told me.

4 Q Can you tell us, verbatim, what he told you after
5 being read his Miranda rights?

6 A Yes. I can read it from the report.

7 Q Please.

8 (Pause in the proceedings)

9 A Okay, I have a sheet here that says, "Statement of
10 John Lee White, interviewed and advised of his constitutional
11 rights by Detective J. Grayson, Number 14006, at
12 Robbery/Homicide Division."

13 And it says, "After waiver of rights, John White
14 stated the following."

15 "Detective Grayson: Do you want to tell me what
16 happened today?

17 "Subject White: Yes. We robbed a bank. I ran into
18 the bank, jumped the counter and took the money. I didn't
19 have a gun. I was the driver of the van. I don't remember
20 who had the guns, but it was four of us."

21 Q Okay. And, in total, how many people were arrested?

22 A Four.

23 Q Were monies recovered in this particular case?

24 A Yes.

25 Q Can you tell me approximately how much money was

GRAYSON - DIRECT

1 recovered in this case?

2 A Approximately twelve hundred dollars (\$1,200).

3 Q Twelve hundred dollars (\$1,200)?

4 A Somewhere -- I think it was somewhere like twelve
5 hundred dollars (\$1,200).

6 Q And of the four suspects, who had that twelve
7 hundred dollars (\$1,200)?

8 A John White.

9 Q You provided for me three particular exhibits that
10 I've shown counsel previously and I'm now showing you again,
11 on the record, what has been marked as State's Proposed
12 Exhibits 207, 208 and 209.

13 Let me ask you, Lieutenant Grayson, do you recognize
14 those particular exhibits?

15 A Yes, I recognize the exhibits, yes.

16 Q Can you tell me what is depicted there and how it is
17 you recognize them?

18 A Well, it's marked Marina del Rey and I have a
19 notation on here when we talked and interviewed each of the
20 suspects. On this one here it says John White and it shows a
21 male subject going over the counter, the teller counter, and
22 it shows what appears to be a second subject in the
23 background.

24 Q And 207, 208 and 209, are they true and accurate
25 still photos from a video that you obtained from the bank on

GRAYSON - DIRECT

1 the day in question?

2 A Yes. These videos are from a closed circuit video
3 that was located in the bank.

4 Q All right.

5 MR. GUYMON: I'd move for the admission of 207, 208
6 and 209.

7 MR. FIGLER: Submitted.

8 THE COURT: Admitted.

9 (Plaintiff's Exhibit Nos. 207 thru 209 admitted)

10 MR. GUYMON: And I'd ask to be able to publish
11 those.

12 THE COURT: Sure.

13 THE WITNESS: I have the other ones, if you --

14 BY MR. GUYMON:

15 Q Now in your investigation, in total, you indicated
16 that there were two people that jumped over the counter.

17 A Yes.

18 Q And in 207 it shows two people, does it not, there
19 at the counter?

20 A Yes, it does.

21 Q The first one is coming over the counter and then in
22 208 and 209 it shows a second individual actually coming over
23 the counter.

24 A That is correct.

25 Q All right. Did you bring additional still photos of

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GRAYSON - DIRECT

1 the other two persons who remained in the lobby?

2 A Yes, I did.

3 Q Can you provide those for me, Lieutenant Grayson?

4 A Yes.

5 (Pause in the proceedings)

6 Q And, Lieutenant, the additional still photos that
7 you have provided, are they true and accurate copies from the
8 actual tape itself that you received in this particular case?

9 A Yes, they are.

10 Q And do they fairly and accurately depict the other
11 two individuals and their positions in the bank during this
12 takeover robbery?

13 A Yes, they do.

14 MR. GUYMON: And counsel has seen them. They are
15 now marked 210 through 215. I would move for their admission,
16 Your Honor.

17 MR. SCISCENTO: Submitted, Your Honor.

18 THE COURT: Admitted.

19 (Plaintiff's Exhibit Nos. 210 thru 215 admitted)

20 BY MR. GUYMON:

21 Q And in 210, Lieutenant, can you describe the type of
22 weapon that the individual's holding in 210?

23 A It appears that the person in 210 is holding a
24 shotgun.

25 Q All right. And is this consistent with the

GRAYSON - DIRECT

1 information you received, that being that one of the
2 individuals had a shotgun and the other had a handgun?

3 A Yes, it is.

4 Q All right.

5 MR. GUYMON: And I'd ask to be able to publish
6 those, Your Honor.

7 THE COURT: Okay.

8 BY MR. GUYMON:

9 Q Detective, in your -- excuse me, Lieutenant, in your
10 interviews of the other individuals you noted that Donte
11 Johnson indicated that he did not have a gun.

12 A Yes.

13 Q Did two of the other three indicate that they, in
14 fact, had handguns in this case or weapons?

15 A Yes, they did.

16 Q Okay, who indicated that they had a shotgun?

17 A May I read it?

18 Q Please.

19 A Okay.

20 (Pause in the proceedings)

21 One of the subjects known as Melvin Jones. You want
22 me to read his statement?

23 Q Well, let me ask you. Melvin Jones had a gun?

24 A Yes, he did.

25 Q And which weapon did he have, based on your

GRAYSON - DIRECT

1 information and based on his interview with him?

2 A Melvin Jones had a handgun.

3 Q All right. Now let me ask you, was Melvin Jones one
4 of the fellows who stayed in the lobby or is he one of the two
5 that leaps over the counter, or do you know, based on your
6 investigation?

7 A Let's see, I would have to look in -- I would have
8 to read it.

9 Q All right. That's all right. Let me go to the next
10 person.

11 You say Melvin Jones was the one who had a handgun
12 and I take it one of the other two fellows had a shotgun?

13 A Right, that's correct.

14 Q Okay. In your investigation did you learn whether
15 or not these individuals covered their faces in any way?

16 A Several of 'em, I think, and one of 'em had a
17 bandanna.

18 Q All right. Now, then, at the time of Donte
19 Johnson's arrest, did you learn of Donte Johnson's address,
20 the address he provided for you?

21 A Yes, I did.

22 Q It was an address, was it not, of 1332 West 60th
23 Street?

24 A That is correct.

25 Q Is that an area or an address that you're familiar

GRAYSON - CROSS

1 with?

2 A Yes.

3 Q And how is it you're familiar with that area or
4 location?

5 A Well, I've worked the city of Los Angeles for 32 and
6 a half years and I've lived there about 44 years.

7 Q Okay, can you describe --

8 A So I'm pretty familiar with it.

9 Q Can you describe that particular area, 1332 West
10 60th Street, Los Angeles, California?

11 A That particular area is an old neighborhood,
12 somewhere -- it's in kind of an economically-depressed area,
13 old houses, a few apartments here and there, kind of a low-
14 income area.

15 MR. GUYMON: We'd pass the witness, Your Honor.

16 THE COURT: Any cross?

17 MR. SCISCENTO: Yes.

18 CROSS-EXAMINATION

19 BY MR. SCISCENTO:

20 Q Lieutenant Grayson, --

21 A Yes, sir.

22 Q -- you've been on the force for 32 years?

23 A Yes.

24 Q Okay. You indicated that when Mr. White was pulled
25 over, when they were stopped, you read him his Miranda or

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GRAYSON - CROSS

1 somebody read him his Miranda rights and he cooperated?

2 A Subsequently, yes, we did.

3 Q Did he cooperate with the police?

4 A Yes.

5 Q He provided information?

6 A Yes.

7 Q Okay. And you indicated that through your
8 investigation you found out that the two people who had the
9 guns were, in fact, not John White, am I right?

10 A Right, as far as I can recall, yes.

11 Q Okay. Mr. Guymon asked you about South Central L.A.
12 Have you been down to that area lately, in the last year or
13 so?

14 A South Central, oh, yes.

15 Q Yes?

16 A Yes.

17 Q All right. And it's probably one of the worst
18 places in L.A., would you agree, with gang violence and
19 poverty?

20 A Well, the area is not one of the worst areas. There
21 is a lot of gang activity in that particular area, anywhere in
22 the 60s, in the area -- the avenues, the 60s, yes.

23 Q It's not a place that you want to live there though?

24 A I wouldn't, no.

25 Q Okay, let me focus on another aspect. There's a lot

GRAYSON - CROSS

1 of tension between the LAPD and gang members, am I right?

2 Would you agree with that statement?

3 A A lot of tension?

4 Q Yes.

5 A Well, I don't know if I'd call it a lot of tension.

6 Q Well, we're aware of what's been going on lately

7 with the CRASH units.

8 A Yes, uh-huh.

9 Q The CRASH unit has been -- which is a unit of the
10 LAPD, --

11 A Yes.

12 Q -- to rid the streets of the gangs.

13 A Yes.

14 Q We have found, in fact, that they have -- it's been
15 alleged that they have committed murders against gang members,
16 am I right?

17 A I did not -- I didn't hear exactly what you said.

18 Q It's been alleged that members of the CRASH unit
19 have committed murders against gang members?

20 A No, I wasn't aware of that.

21 Q All right. And it's been alleged that they have
22 planted drugs and evidence on gang members?

23 A I've heard that, yes.

24 Q But you haven't been up to date that they have
25 committed violence against other gang members?

GRAYSON - CROSS

1 A Well, I'm pretty much up to date. And I think
2 you're referring to the Rampart corruption case.

3 Q Yes.

4 A Half of my guys worked that case. They're the
5 investigators that's investigating, so I'm pretty much up to
6 date on what's transpiring, yes.

7 Q All right, but you would agree that there is some
8 tension between the LAPD CRASH unit or their -- which, as I
9 understand it, no longer exists, and the gang members?

10 A If you want to phrase it like that, yes.

11 MR. SCISCENTO: No further questions, Your Honor.

12 THE COURT: Anything further?

13 MR. GUYMON: Nothing else, Your Honor.

14 THE COURT: Thank you, sir. You're excused.

15 THE WITNESS: Thank you.

16 THE COURT: Call your next witness, please.

17 MR. GUYMON: Stacy Trammell.

18 MR. SCISCENTO: Your Honor, could we approach for a
19 moment?

20 THE COURT: Sure.

21 (Off-record bench conference)

22 THE CLERK: Remain standing and raise your right
23 hand.

24 STACY TRAMMELL, PLAINTIFF'S WITNESS, IS SWORN

25 THE CLERK: Please be seated.

TRAMMELL - DIRECT

1 State and spell your name for the record, please.

2 THE WITNESS: Stacy Trammell, S-T-A-C-Y,

3 T-R-A-M-M-E-L-L.

4 DIRECT EXAMINATION

5 BY MR. GUYMON:

6 Q Ms. Trammell, tell me, were you a bank teller on
7 June 8th, 1993?

8 A Yes, I was.

9 Q And what bank were you working at?

10 A Cen-Fed Bank.

11 Q Cen-Fed Bank?

12 A Uh-huh.

13 Q And we've learned that bank's here in -- or there in
14 the Marina del Rey area.

15 A That's correct.

16 Q Can you tell me what surrounds the bank area?

17 A It's a shopping center of various stores, a Sav-On.
18 The freeway is very close. It's a shopping center, you know,
19 there's lots of stores in a shopping center, so --

20 Q Tell me this, how long had you been involved in
21 banking prior to June of '93?

22 A About a year and a half, almost two years.

23 Q Okay. And what were your responsibilities on June
24 8th of 1993 there at the Cen-Fed Bank?

25 A I was a customer service rep/teller.

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TRAMMELL - DIRECT

1 Q Okay. And did something unusual happen or something
2 that frightened you?

3 A Yes, we were in a robbery takeover.

4 Q Tell me exactly how you recall it happening as you
5 observed it.

6 A I'm standing at my window, some gentlemen came into
7 the bank and announced that it was a takeover. One guy came
8 to my window, stuck a double-barrel to my face and asked me to
9 give him the cash. He hopped the counter, asked for my keys.
10 I opened up the drawer. He wanted me to open up another
11 drawer, which I didn't have access to, and I told him that, so
12 he ordered me to lay down, you know, face down and I did as
13 he, you know, asked me to do.

14 Q Now you indicate that -- You said some gentlemen
15 came into the bank. How many of these people came into the
16 bank?

17 A I saw three.

18 Q All right, can you describe the three that you saw?

19 A Describe them like their appearance or --

20 Q Well, let's start with age. How old did they appear
21 to be?

22 A Very young, 15, 16, 17 years old, young.

23 Q All right. And can you tell me what race they were?

24 A African-American.

25 Q Can you tell me if they covered their faces in any

TRAMMELL - DIRECT

1 way?

2 A From my recollection, I believe the guy that
3 approached me, if I'm not mistaken, he had a rag around his
4 mouth.

5 Q Okay, you say a rag around his mouth.

6 A Uh-huh.

7 Q How about the other two, did they cover their
8 appearance?

9 A I'm not certain about that.

10 Q Do you recall what any of the three said when they
11 came into the bank?

12 A "This is a robbery. It's a takeover."

13 Q And how many people were in the bank when they
14 announced -- when they announced, "This is a robbery, this is
15 a takeover"?

16 A Two, two customers.

17 Q Two customers?

18 A Uh-huh.

19 Q And about how many employees?

20 A Maybe six or seven.

21 Q Okay. Now had you ever been a teller at a bank that
22 had been robbed before that time?

23 A No.

24 Q All right. And you indicated that they ordered --
25 this person ordered you down to the ground?

TRAMMELL - DIRECT

1 identify?

2 A I was only able to identify one and that was the
3 person that approached me. You know, I had a double-barrel to
4 my face and I wasn't trying to look around the room, you know,
5 so just that one.

6 Q Okay. And of all the people that you identified or
7 were able to identify, or the one you could identify, do you
8 remember the names of anyone that you identified in the case?

9 A No.

10 Q Okay.

11 MR. GUYMON: I'll pass the witness, Your Honor.

12 THE COURT: Any cross?

13 MR. SCISCENTO: No, Your Honor.

14 THE COURT: Thank you, ma'am. You're excused.
15 Would counsel approach the bench?

16 (Off-record bench conference)

17 (Pause in the proceedings)

18 THE COURT: While he's coming in and being sworn,
19 will counsel approach the bench again?

20 (Off-record bench conference)

21 THE WITNESS: Thank you.

22 THE CLERK: Remain standing and raise your right
23 hand.

24 ROBERT HOFFMAN, PLAINTIFF'S WITNESS, IS SWORN

25 THE CLERK: Please be seated.

HOFFMAN - DIRECT

1 State and spell your name for the record, please.

2 THE WITNESS: Robert Hoffman, H-O-F-F-M-A-N.

3 DIRECT EXAMINATION

4 BY MR. GUYMON:

5 Q And can you tell me how you're employed?

6 A I'm a parole agent for the State of California
7 Department of Corrections.

8 Q And if I could approach and remove -- you brought a
9 folder with you, is that correct?

10 A Yes.

11 Q All right. Take that and have a couple things
12 marked by the clerk.

13 You say you're a parole agent?

14 A Right.

15 Q Employed by the State of California, is that
16 correct?

17 A Right. Department of Corrections, bail parole.

18 Q Okay. And are you familiar with John Lee White?

19 A Yes.

20 Q And how or why is it that you're familiar with John
21 Lee White?

22 A This case was transferred to me from California
23 Youth Authority --

24 Q And can --

25 A -- in 1999.

I-88

HOFFMAN - DIRECT

1 Q Okay. Tell me, just what is the California Youth
2 Authority and what it is you do and how they're different.

3 A California Youth Authority and California Adult
4 Parole are both part of the Youth and Corrections Agency.
5 Youth Authority handles juveniles until the maximum age of
6 twenty-five; we handle adults. Juveniles can be committed to
7 the Department of Corrections and be sent to the Youth
8 Authority to be incarcerated until they become eighteen, and
9 they're transferred to an adult prison.

10 In his case there was an administrative change such
11 that his case was transferred to us after he was incarcerated
12 here, and I was assigned the case.

13 Q All right. Once you're assigned the case, do you
14 become the keeper of the record associated with John Lee White
15 and his criminal charges in California?

16 A Yes.

17 Q Okay. And have you in fact provided, or brought
18 that very file with you to court today?

19 A Well, that's what I just handed you, yes.

20 Q All right. Showing you what has been marked as
21 State's Proposed Exhibit, first of all, 216, do you recognize
22 this?

23 A Yes.

24 Q And just what is State's Proposed Exhibit 216?

25 A This is what we would call a P-O-R, or probation

1 officer's report. It says "Superior Court, Juvenile Court,"
2 on John White aka Deco -- aka, also known as -- dated July
3 1st, 1993.

4 Q And is that particular report associated with the
5 offense of carrying a concealed weapon on a campus?

6 A Yes.

7 Q Now, tell me, just what is a probation officer's
8 report. Is it a report that an officer does and prepares to
9 give to the Court for a sentencing of a particular arrest?

10 A Right. A L.A. County probation officer writes a
11 presentencing report, and that's what this is. They recommend
12 to the Judge for disposition as to what should be done for
13 disposition relative to a specific charge.

14 Q Okay. And contained within that report, I take it
15 then, would be not only a recommendation to a judge, but also
16 it would outline the offense, the educational background, the
17 family background and those type of considerations for a judge
18 to take under consideration before making a sentence --

19 A That's --

20 Q -- is that correct?

21 A Exactly, yes.

22 Q And is State's Exhibit 216, a fair and accurate copy
23 of the original report that you are now the keeper of?

24 A This is a copy that I made from my field file.

25 Q Okay.

HOFFMAN - DIRECT

1 A The field file copy that I have is also a copy. The
2 original copy would be in court records in L.A. Superior
3 Court.

4 Q Now, being the individual that was supervising Donte
5 Johnson at the time of this offense, I take it you keep a
6 complete file of his offenses?

7 A That's correct.

8 Q All right.

9 MR. GUYMON: I'd move for the admission of State's
10 Exhibit 216 at this time, Your Honor.

11 MR. FIGLER: We'll submit.

12 THE COURT: Admitted, subject to the discussion at
13 the bench.

14 (Plaintiff's Exhibit No. 216 admitted)

15 MR. FIGLER: Thanks, Judge.

16 BY MR. GUYMON:

17 Q And showing you what has been marked as State's
18 Proposed Exhibit 217, is that also a probation officer's
19 report associated with the armed robbery of Cen-Fed Bank on
20 June, I believe it was 8th, 1993?

21 A Yes.

22 Q And does it -- is it also a true and accurate copy
23 of the report that was prepared for the Judge's review in
24 preparation of sentencing of the defendant?

25 A Yes.

HOFFMAN - DIRECT

1 MR. GUYMON: I'd move for the admission of State's
2 Proposed Exhibit 217, Your Honor.

3 MR. FIGLER: The same, Your Honor.

4 THE COURT: Same ruling, admitted subject to the
5 discussion at the bench.

6 (Plaintiff's Exhibit No. 217 admitted)

7 BY MR. GUYMON:

8 Q Okay. And showing you what has been marked as
9 State's Proposed Exhibit 218, can you tell me what that is?

10 A It's an abstract of judgment committing John Lee
11 White to California Youth Authority in reference to armed
12 robbery while armed, and the specific offense being the same
13 offense previously mentioned, the armed robbery of the Cen-Fed
14 Bank on June 8th, 1993.

15 MR. GUYMON: I'd move for the --

16 THE WITNESS: Same case number.

17 MR. GUYMON: And I'd move for its admission, Your
18 Honor.

19 MR. FIGLER: The same, Your Honor.

20 THE COURT: Admitted.

21 (Plaintiff's Exhibit No. 218 admitted)

22 BY MR. GUYMON:

23 Q Now in the abstract of judgment, does it reflect the
24 sentence that the defendant received for the armed robbery of
25 the Cen-Fed Bank?

I-92

HOFFMAN - DIRECT

1 A Yes.

2 Q And can you tell this jury what sentence the
3 defendant received and where he was sent to?

4 MR. FIGLER: Your Honor, does that exceed what we
5 discussed?

6 THE COURT: I don't think so.

7 MR. FIGLER: Okay.

8 THE WITNESS: He received three years for the armed
9 robbery with a one-year enhancement for being armed, and he
10 was sentenced to California Youth Authority.

11 BY MR. GUYMON:

12 Q All right.

13 A Total of four years.

14 Q Very well.

15 Can you tell us -- you talked a little bit about the
16 California Youth Authority, can you tell me where the
17 California Youth Authority is located and what type of
18 programs the California Youth Authority has?

19 A Well, they have multiple -- multiple offices, and
20 they have multiple -- they're really prisons. SRCC, which is
21 their reception center, is in Chino, California, and the Youth
22 Training Center, which has been renamed, now it's called
23 Herman G. Stark Center, is in Chino, and that's where he was
24 housed.

25 They try to rehabilitate youthful offenders. They

HOFFMAN - DIRECT

1 have group therapy, they have anger management classes, they
2 have programs to complete high school, they have vocational
3 training, they have work experience training, they have on-
4 the-job training in various -- various jobs, ticket -- at one
5 point they were having people be ticket agents for the
6 airlines in one of the Youth Authority facilities.

7 Does that answer your question?

8 Q It does. Let me ask you this, do you -- can you --
9 are you able to tell us, is attendance to these programs that
10 you talk about, is it mandated that each person that attends
11 California Youth Authority mandatorily attends the
12 programming, or is that an option that inmates have?

13 A They go through a testing process, and then based on
14 the testing then they mandate while they'll in custody various
15 programming. Each individual has different programming based
16 on their testing.

17 Q Can you tell us from a review of the file associated
18 with Donte Johnson how many months Donte Johnson spent in
19 total in the California Youth Authority for the offense of the
20 armed robbery of the Cen-Fed Bank?

21 A I think it was less than two years, I don't recall
22 exactly how months. You've got -- you've got the file over
23 there, but I think it was a little less than two years.

24 Q Okay.

25 MR. GUYMON: I'd pass the witness, Your Honor.

HOFFMAN - CROSS

1 THE COURT: Cross?

2 MR. FIGLER: Thank you.

3 CROSS-EXAMINATION

4 BY MR. FIGLER:

5 Q Mr. Hoffman, you're not personally involved with
6 John White, and -- and you've never even met him, right?

7 A That's correct.

8 Q Okay. And with regard to the CYA, you don't work
9 there, do you?

10 A No, I work for CDC, California Department of
11 Corrections; I'm -- I have adult parolees.

12 Q Okay. Do you know that there are programs anywhere,
13 in any type of facility, whether it be in California or other
14 ones that you might be exposed to, that provide the option for
15 people who are incarcerated to take -- to take those courses
16 or do something like that, isn't that correct?

17 A Beg your pardon?

18 Q Well, there are some voluntary programs, isn't that
19 correct?

20 A Yes.

21 Q Okay. So a person incarcerated doesn't have to do
22 every single program that's available to them, it's up to that
23 individual, isn't that correct?

24 A Yes and no. In some cases it's mandatory, and in
25 some cases it's optional.

HOFFMAN - CROSS

1 Q Okay. But the degree of their participation is
2 always gonna be up to the individual, isn't that correct?

3 A Yes.

4 Q Okay.

5 A And the amount -- in the California Youth Authority,
6 the degree of participation and their cooperation determines,
7 to some extent, how much time they do and when they get
8 paroled.

9 Q Some people in there also try and better themselves,
10 isn't that correct?

11 A Oh, definitely.

12 Q Okay. But it's -- there's a lot of real rough
13 people in the CYA, isn't that correct?

14 A That's true.

15 Q Okay. It's not a place that you would want any of
16 your children to be in, isn't that correct?

17 A I don't have any children.

18 Q If you did?

19 A Yes.

20 Q Okay. Thank you.

21 MR. FIGLER: We'll pass the witness.

22 THE COURT: Anything further?

23 MR. GUYMON: No, Your Honor.

24 THE COURT: Thank you, sir, for coming; you're
25 excused.

SIMPSON - DIRECT

1 Call your next witness, please.

2 MR. GUYMON: Drick Simpson.

3 (Pause in the proceeding)

4 THE COURT: Where would be a comfortable place for
5 him to sit?

6 Yeah, if you'd back him up towards you, Mr. Jackson.

7 (Off-record colloquy)

8 THE COURT: Come on up, Dayvid.

9 (Off-record bench conference)

10 THE CLERK: Please raise your right hand.

11 DRICK C. SIMPSON, PLAINTIFF'S WITNESS, IS SWORN

12 THE CLERK: Please state and spell your name for the
13 record, please.

14 THE WITNESS: Drick Charles Simpson, D-R-I-C-K,
15 Charles, C-H-A-R-L-E-S, S-I-M-P-S-O-N.

16 DIRECT EXAMINATION

17 BY MR. GUYMON:

18 Q Mr. Simpson, how are you today?

19 A I'm doing all right.

20 Q I need you to speak as loudly as you can, as near to
21 that microphone as possible. All right?

22 A Yes.

23 Q Does it help if -- are you able to hold the
24 microphone?

25 A Yeah, I can -- I can hold it.

I-97

SIMPSON - DIRECT

1 MR. GUYMON: Would that help the recorders, ladies?

2 BY MR. GUYMON:

3 Q Mr. Simpson, can you tell us how old you are?

4 A I'll be forty-two in July.

5 Q And directing your attention --

6 MR. GUYMON: -- and the record should reflect I'm
7 showing him photographs.

8 BY MR. GUYMON:

9 Q Directing your attention to State's Exhibit 219, do
10 you recognize the fellow that's depicted in that picture?

11 A Yes, I do.

12 Q And who's in this picture?

13 A I am.

14 Q And can you tell me about how long ago this picture
15 was taken?

16 A That picture was taken around January of '98.

17 Q January of 1998?

18 A Yes.

19 Q This is how you looked in January?

20 A Yes.

21 MR. GUYMON: I'd move for the admission of State's
22 Proposed Exhibit 219, and ask to publish the same.

23 MR. FIGLER: Submit it, Your Honor.

24 THE COURT: Admitted.

25 (Plaintiff's Exhibit No. 219 admitted)

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SIMPSON - DIRECT

1 BY MR. GUYMON:

2 Q And, Mr. Simpson, let me ask you, in January of '98,
3 were you in a wheelchair?

4 A No, I wasn't.

5 Q Did you have any injuries to your face?

6 A None at all.

7 Q As you testify today, you're in a wheelchair and you
8 have some injuries, is that correct?

9 A Yes, I do.

10 Q Can you tell me the date that you sustained the
11 injuries that put you in the wheelchair?

12 A May 4th of '98.

13 Q And can you tell me the time that this incident
14 occurred?

15 A 3:30 a.m. in the morning.

16 Q And what area were you at?

17 A I was on Fremont, what they call the model across
18 Bruce street, and down by the U-Haul, about where the
19 Longbranch and the Las Vegas Motel is.

20 Q All right. So Fremont and where the Longbranch
21 Saloon is?

22 A Yes, sir.

23 Q And the cross-street being Fremont and perhaps
24 Eastern?

25 A Yes, it is.

SIMPSON - DIRECT

1 Q All right. And is that an area that you -- that you
2 frequented?

3 A Yes.

4 Q Okay. Tell me, in May of 1998, did you have a
5 particular drug habit, or did you use any drugs?

6 A Yes, I smoked crack cocaine.

7 Q And how long had you been smoking crack cocaine
8 prior to, say, May of 1998?

9 A Probably about like -- what -- like two years.

10 Q Ten years?

11 A Yes, sir.

12 Q And did you know anybody by the name of Donte
13 Johnson or Deco?

14 A Yes.

15 Q And is Deco in this courtroom today?

16 A Yes, I seen him sitting there at the table over
17 there when you rolled me in.

18 Q And you just point behind yourself?

19 A Yes, sir.

20 Q Can you tell me, did you get to see what Donte
21 Johnson or Deco was wearing?

22 A He's wearing a beige-looking shirt with braids in
23 his hair, with hair on his cheek.

24 Q With hair on his cheek.

25 MR. GUYMON: Record reflect the identification of

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SIMPSON - DIRECT

1 the defendant, Your Honor?

2 THE COURT: It will.

3 BY MR. GUYMON:

4 Q And how long had you known Deco prior to May of
5 1998?

6 A About a year, maybe a year and a half.

7 Q Okay. Did you know him pretty well during that
8 year, year and a half?

9 A I thought I did.

10 Q Okay. And how is that you knew Deco?

11 A I used to buy dope from him.

12 Q About how many times prior to May 4th had you bought
13 dope from Deco?

14 A Every day.

15 Q Every day for a year, year and a half?

16 A Just about.

17 Q Now, was your contact with Deco different on May
18 4th, 1998?

19 A Yes, it was.

20 Q Tell me, where is it at 3:30 in the morning that you
21 made contact with Deco at?

22 A At the Las Vegas Motel in Room Number 12.

23 Q Las Vegas Hotel, Room Number 12. And is that on
24 Fremont Street?

25 A Yes, it's on Fremont, right before you get to

I-101

SIMPSON - DIRECT

1 Eastern --
2 Q And who --
3 A -- and the south side of the street.
4 Q Okay. Whose room was that?
5 A Deco's, Donte's.
6 Q Was anyone else staying there with Deco?
7 A Not that I know of.
8 Q Okay. And did you walk over to his house?
9 A Yes, I did.
10 Q Or his hotel room?
11 A Yes, I did.
12 Q And was anyone home there?
13 A Yeah, Deco was standing in the doorway.
14 Q And when you got to the doorway, was anyone with
15 you?
16 A No.
17 Q Now did you have any weapons on you that night?
18 A No.
19 Q Do you recall how you were dressed?
20 A I had a beige coat on, and a blue suit. I had a
21 beige coat on with a blue suit.
22 Q Tell me, what is it that you did once you see Deco
23 in the doorway?
24 A I asked him to serve me for the money that I had,
25 and he --

I-102

SIMPSON - DIRECT

1 Q Okay, now, you -- you said, "I asked him to serve me
2 for the money I had"?

3 A Right.

4 Q What does "serve me" mean?

5 A Sell me something.

6 Q And how much money did you have?

7 A Eight dollars (\$8).

8 Q Okay. Now, how much money would you usually spend
9 with Deco when you bought rock cocaine?

10 A Actually, during the course of a day, going back and
11 forth, a hundred to two hundred a day.

12 Q Two hundred a day?

13 A Well, going back and forth all day.

14 Q And this time you only had eight dollars (\$8)?

15 A Yes.

16 Q Okay. Now, what did Deco say to you when you showed
17 him that you had eight dollars (\$8)?

18 A Told me, he said, punk, I'm not gonna sell you
19 anything. He said, matter of fact, amigo, before the night's
20 over I'm gonna kill you.

21 Q Now when he said, I'm not gonna serve you anything,
22 before the night's over I'm gonna kill you, what did you say
23 to him?

24 A I seen him raising his hand, I seen the light get
25 off the gun, so I clocked him, I hit him in his jaw.

SIMPSON - DIRECT

1 Q Okay. Now, let me ask you, you say the light came
2 off the gun, where did the gun come from?

3 A He was leaning against the doorway, and he musta
4 gone up like this here, and the light reflected off the -- off
5 the barrel when he went to bring it up. I hit him in the jaw.

6 Q Okay. Now what hand, left or right, did he reach
7 for the gun?

8 A No, he -- I guess he had it in his back pocket,
9 'cause the gun came out of his right -- came up in his right
10 hand.

11 Q All right. So from his right hand, you say from his
12 back pocket, the gun starts to come up?

13 A Right.

14 Q And as the gun comes up, where is it pointed?

15 A Well, I already get up too far, soon as I see the
16 gun, I hit him, his head hit the door jam, and he was dazed,
17 and his security guard grabbed me and pinned me against the
18 wall.

19 Q Now when you hit Deco, what happened to the gun?

20 A The gun hit the ground.

21 Q Okay. And once the gun hits the ground, what do you
22 do about the gun being there?

23 A Oh, well, I don't do anything, 'cause the security
24 guard had already grabbed me and pinned me against the wall.

25 Q Okay. How quickly did the security guard get there

SIMPSON - DIRECT

1 after you hit Deco?

2 A When I hit -- seen -- when I hit Deco, I feel him
3 pushing me against the wall like two, three seconds after
4 that.

5 Q Okay. Did the gun stay right there on the ground?

6 A No, the security guard kicked it.

7 Q The security guard kicked the gun?

8 A Yeah.

9 Q And where did the gun go?

10 A Like right here in the -- right there between the
11 door jam and the sidewalk where I was standing.

12 Q Now, what did you hit Deco with when you saw the
13 gun?

14 A My left fist.

15 Q Okay. And whereabouts did your left fist connect
16 with him at?

17 A In the side of his jaw and his temple.

18 Q Now, had Deco ever told you, no, he wasn't gonna
19 sell you dope and that he was gonna kill you before May 4th of
20 '98?

21 A No.

22 Q Had you ever had a dealing with Deco like that
23 before?

24 A Never.

25 Q Had you ever had to hit Deco before?

SIMPSON - DIRECT

1 A No.

2 Q Okay. Once you hit him and the security guard gets
3 there, how long does the security guard stay there with the
4 two of you in the same area?

5 A He keeps me pinned up against the wall like ten,
6 fifteen minutes.

7 Q Okay. And what's Deco doing during that period of
8 time?

9 A When I -- when I looked up at he, I guess he kinda,
10 you know, got his bearings back, he was standing with a bath
11 towel holding it against his face 'cause he was bleeding.

12 Q Okay. You say there was some blood on Deco's face?

13 A A whole bunch of blood, yes.

14 Q Okay. Now, do you leave the parking lot, and if so,
15 why?

16 A Well, first, I tell the security officer, I said,
17 you gotta call Metro, this man's talking about shooting me,
18 and then you're gonna hold me, I said -- and he said, no. So,
19 he said, I'm gonna 86 you off the property. And Deco tell him
20 not to do that, just let him go.

21 Q Okay. So the security guard tells you he's gonna 86
22 you off the property and tell you to leave?

23 A Right.

24 Q And Deco says, no, don't do that?

25 A Right.

I-106

SIMPSON - DIRECT

1 Q What happens from there?

2 A Okay. The security guard walked me to the gate on
3 the front of Las Vegas and tells me not to come back on the
4 property. So I started walking west on Fremont headed back to
5 the Purple Sage to my room.

6 Q Okay. Your room was at the Purple Stage -- Sage
7 there on Fremont?

8 A Yes.

9 Q All right. Now, about how much time has gone by
10 from the time Donte tells you he wants to kill ya until the
11 time you start walking back to the Purple Sage?

12 A From -- the security guard had me pinned about
13 fifteen, twenty minutes against the wall, and the time that I
14 walked from Las Vegas to the U-Haul place, a good twenty,
15 twenty-five minutes.

16 Q All right. Tell me, do you see Deco again that
17 night?

18 A When I looked behind me -- I heard a car and looked
19 behind me and I seen a white Cadillac with a green top coming
20 out of the parking lot of the Las Vegas Club, and it makes a
21 left out of the parking lot and started coming up Fremont
22 going west, and then it gets by the gas station right there on
23 the corner, I think it's 21st, he makes a U-turn and pulls up
24 to the driveway of the U-Haul place and opens the door, and
25 with his right hand, he's like dragging [sic], but he's

I-107

SIMPSON - DIRECT

1 looking around, and he pulls the gun up and shoots me point
2 blank in the face. And then I -- my body stiffen up, I fall
3 off the curb, and blood and bones, and teeth was coming out,
4 and I look at him, and then he shoots me in my back. He look
5 around, get back in the Cadillac and he drives towards
6 Eastern.

7 Q Okay. Now let me ask you, you say -- you see this
8 white Cadillac coming up the road and he swoops around and
9 parks right there by the U-Haul. Could you tell who was
10 driving the Cadillac once the Cadillac stops?

11 A Oh, I knew whose Cadillac it was when he came out of
12 the Las Vegas.

13 Q Okay. And how did you know who it was when he came
14 out of the Las Vegas?

15 A When I seen the color of the car, I knew it was
16 Deco's.

17 Q You knew it was Deco's car?

18 A Yes.

19 Q Okay. Did you get a good look at Deco when he comes
20 out of the car?

21 A Oh, yeah.

22 Q Were you sure it was Deco?

23 A No doubt about it.

24 Q Okay. And you said his right hand was dragging?

25 A Right.

SIMPSON - DIRECT

1 Q What was it dragging on?

2 A Oh, he was -- he was looking around, and he was
3 dragging, he had the gun in his hand when he was pulling
4 across the seat, and he's looking around, make sure there
5 wasn't nobody else around, then he pulled the gun up, and
6 that's when he shot me.

7 Q All right, where you were standing, was anyone with
8 you?

9 A No.

10 Q Was anyone else around?

11 A No, but the security guard, as soon as he shot me,
12 the security guard say, Deco, are you all right, okay.

13 Q Okay. So after the shots were fired, the security
14 guard now runs up to you?

15 A No, I hear his voice in the distance, and he says,
16 are you all right; and he said, I called an ambulance.

17 Q Okay. Now, before we get to that point, you say
18 Deco actually shot you the first time, where did you get hit?

19 A I got hit in the right side of my face, the bullet
20 went in here, below the bone up here the side of my face,
21 below my mandible. I fell off the curb, and then he look
22 around, and 'cause my face is laying like this here, I can see
23 the car and everything but I can't move, and he shoots me
24 again in the back.

25 Q Okay. So the -- you -- the record should reflect

SIMPSON - DIRECT

1 that he pointed to the right side of his face, just about the
2 side of your nostril -- just to the side of your nostril.

3 A Yes.

4 Q Is that where the bullet actually entered into your
5 face?

6 A Right, right to the side of here.

7 Q Okay. Now, you indicated your body stiffed up and
8 you fell straight to the ground?

9 A Yes.

10 Q Your face turns to the side?

11 A Right, I'm laying -- I'm on my face, I'm laying on
12 the right side of my face.

13 Q Okay. Now, as you're laying on the ground, can you
14 still see out of your eyes?

15 A Oh, I can see and when he -- when he backs his car
16 up, I was saying, oh, now, you're gonna run me over. I'm
17 looking at him getting back in the car and everything.

18 Q Okay. When you look back -- well, let me ask you
19 this, when he first shoots you, how far is he from you when he
20 shoots you in the face?

21 A Oh, when he -- when he raised the gun up?

22 Q Mm-hmm.

23 A The gun was right here.

24 Q And how many inches is that from your face?

25 A About five inches.

I-110

SIMPSON - DIRECT

1 Q Did you get a good look at the gun?

2 A Yeah, it was a -- the handle was -- it was black,
3 but it was like the color of this, it looked like chrome like.

4 Q Okay. You say the handle was --

5 A Automatic.

6 Q -- the handle was black?

7 A Right. The grip was black.

8 Q And the rest of the gun was chrome --

9 A All the rest was --

10 Q -- the color of the microphone?

11 A It was chrome colored, like this here.

12 Q Okay. So it was shiny?

13 A Yes.

14 Q You said it was an automatic?

15 A Yes, it was.

16 Q Okay. Could you tell how big or small the barrel
17 was of the gun as you looked at it from five inches away?

18 A No, 'cause he was -- as soon as the gun came up he
19 shot me and I hit the ground.

20 Q Okay.

21 A But he shot me.

22 Q Once you hit the ground, what do you see Deco do
23 next?

24 A He look around, and then he looked at me, and then
25 he shoot me in my back.

I-111

SIMPSON - DIRECT

1 Q Okay. And did you actually get hit in the back?

2 A Yes.

3 Q Okay. And I don't want to make this difficult, but
4 can you describe or point to the area, perhaps on my back,
5 that you got shot at? Can you -- can we use my back?

6 A Yes. I have a bullet lodged in this part of my --
7 the upper part of my back. And it was a hollow point, it's a
8 revolver, and I got one, two, three more fragments in the
9 lower part of my back.

10 Q Okay.

11 MR. GUYMON: The record should reflect that I
12 believe, Judge, he pointed to about the height of my shoulder
13 blades, center portion of my back where the bullet entered,
14 and then pointed to the lower portion around my spine, I
15 guess --

16 THE WITNESS: Yes.

17 MR. GUYMON: -- down the back. Is that accurate,
18 Judge, I -- for the record's reflection?

19 THE COURT: Yeah.

20 MR. GUYMON: All right.

21 BY MR. GUYMON:

22 Q And you say there's bullet fragments in your back?

23 A Yes.

24 Q Are the bullet fragments still in your back today?

25 A Yes, they are, and the -- the -- in the top of my

I-112

SIMPSON - DIRECT

1 back, there's a large bullet in the top of my back, and the
2 fragments are in the center of my spine, the lower part of my
3 spine.

4 Q Okay. And do you have any bullet fragments in your
5 face?

6 A Yeah, I -- the right side of my face I have bullet
7 fragments that are pinching against nerves, and right in here,
8 in the mandible they took some out, but some of 'em they
9 couldn't move because it would stop me from being able to move
10 my head.

11 MR. GUYMON: And counsel was previously shown
12 Exhibits 220 through 227.

13 BY MR. GUYMON:

14 Q Mr. Simpson, let me ask you, and do you -- I want
15 you to look just briefly at all these pictures, I'll -- I'll
16 move them for you, if I can. And I'm gonna ask you if you
17 recognize what's in the pictures?

18 A Yes. Yes. Yes. Yes. Yes, I do.

19 Q All right. You've now seen Exhibits 220 through
20 227, do you recognize each and every one of those photographs?

21 A Each and every one of 'em.

22 Q Do they fairly reflect the area, yourself, the
23 clothing, and the car that you've now talked about?

24 A Very accurately.

25 MR. GUYMON: I'd move for the admission of State's

SIMPSON - DIRECT

1 Proposed Exhibits 220 through 227.

2 MR. FIGLER: Submit it, Your Honor.

3 THE COURT: Admitted.

4 (Plaintiff's Exhibit Nos. 220 thru 227 admitted)

5 BY MR. GUYMON:

6 Q Exhibit 220, can you tell me just very briefly, is
7 that the area of Fremont Street where this occurred?

8 A Yes. Econo-Inn is next door to the U-Haul place,
9 there's an apartment like where the U-Haul place.

10 Q So further down this picture would actually be the
11 U-Haul --

12 A Right. Right across -- okay, this is -- this is the
13 drive for it, right on the other side of here is a light pole
14 like that, right there on the corner.

15 Q All right. And so the jury sees, where would U-Haul
16 be from there?

17 A Okay. This is just a driveway where you pull up
18 your U-Haul, and then a U-Haul is this, right next door.

19 Q Okay. And is that the area that Deco pulled the
20 white Cadillac up into?

21 A His car was parked right here.

22 Q Okay.

23 MR. GUYMON: If I could publish that photograph?

24 BY MR. GUYMON:

25 Q I want to show you next 220 -- well, let's see, 221

I-114

SIMPSON - DIRECT

1 should be right here. 221, do you recognize the individual in
2 221?

3 A That's me.

4 Q Okay. And where are you at in that picture?

5 A I believe I'm in the -- in the ambulance, or in
6 front of the place where they was getting ready to put me in
7 the ambulance.

8 Q Okay. And did you receive medical treatment --

9 A Yes.

10 Q -- for this injury? I'll talk about your medical
11 treatment in a minute. Let me ask you, you talked about
12 wearing a brown jacket or coat, do Exhibits 223 and 224, is
13 that the brown coat you were wearing?

14 A Yes, it is.

15 Q It seems to be torn up the center, now do you know
16 how it got torn up the center?

17 A Yeah, they just cut it off me.

18 Q Okay. And who cut it off you?

19 A The paramedics and the ambulance driver.

20 Q Okay.

21 MR. GUYMON: If I could move -- Judge, could we
22 publish those?

23 BY MR. GUYMON:

24 Q You also talked about wearing something underneath
25 that jacket. Do you recognize that particular --

I-115

SIMPSON - DIRECT

1 A Yes, I do.

2 Q Now, the jacket had a hole in the back of it.

3 A Yes, it did.

4 Q Do you know how that hole got there?

5 A Yeah, when he shot me.

6 Q And how about the shirt, it has a hole in it. Is
7 that the front or the back of the shirt? Or can you tell?

8 A I can't tell the way they got it folded.

9 Q Okay.

10 A It must be the back, he had me in the back, 'cause
11 it went in through -- between this --

12 Q And is that the shirt you were wearing that night?

13 A Yes.

14 Q Okay.

15 MR. GUYMON: Publish the same.

16 BY MR. GUYMON:

17 Q There's also an area there on the ground, that shows
18 a jacket and a shirt.

19 A Yes.

20 Q Do you recognize that particular area? Is that the
21 ground where you fell?

22 A Yeah. And then the curb -- actually I fell off this
23 curb and went down, that's where my face hit.

24 Q Okay. Your face hit where the blunt [sic] is?

25 A Yes.

I-116

SIMPSON - DIRECT

1 MR. GUYMON: I'd like to publish that.

2 BY MR. GUYMON:

3 Q And last, you described the car as a Cadillac, white
4 in color, green top?

5 A Yes, sir. That's the Cadillac.

6 Q All right.

7 MR. GUYMON: And I ask to publish that?

8 BY MR. GUYMON:

9 Q Now then, you indicate that you fall to the ground
10 and you hear the security officer yelling, Deco, are you okay,
11 I called the ambulance?

12 A Yes.

13 Q Or the ambulance.

14 A Yes.

15 Q How long does it take for the ambulance to arrive?

16 A They showed up about five minutes after Deco drive
17 off.

18 Q Now, did the ambulance arrive first, or do the
19 police arrive first?

20 A The ambulance.

21 Q Okay. Do the police get there?

22 A Yes.

23 Q And do the police and ambulance personnel, did they
24 attempt to assist you in some way?

25 A Yeah, the paramedics were working on me, and the

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SIMPSON - DIRECT

1 officers are questioning me about who had shot me.

2 Q Now, when they are -- when the police are
3 questioning you, are you able to speak back to them or answer
4 their questions?

5 A Oh, I'm coherent, I'm still -- I'm awake,
6 everything; I'm looking at all -- everything's that going on.

7 Q Are you able to speak?

8 A Yeah, I was -- I told 'em everything they asked me.

9 Q And what did you tell the police when they asked you
10 who did it?

11 A I told 'em Deco.

12 Q Were you sure that Deco was the one that did it?

13 A Yes.

14 Q And are you sure today?

15 A Yes, I am.

16 Q Now, you were taken to the hospital and you received
17 some treatment, is that correct?

18 A Yes, sir.

19 Q The -- 221 shows you receiving treatment, correct?

20 A Yes, sir.

21 MR. GUYMON: I'd ask to publish the same.

22 BY MR. GUYMON:

23 Q Can you tell me the type of treatment you received
24 as a result of this gunshot --

25 MR. FIGLER: Your Honor --

SIMPSON - DIRECT

1 BY MR. GUYMON:

2 Q -- or these two gunshots?

3 MR. FIGLER: Relevancy.

4 THE COURT: Sustained.

5 BY MR. GUYMON:

6 Q Okay, let me ask you this. The gunshot wound that
7 entered into your back --

8 A Yes, sir.

9 Q -- did it come out your stomach?

10 A No, sir.

11 Q All right. So it went in the back and stayed?

12 A It's lodged in my back --

13 Q All right. And --

14 A -- in my spine.

15 Q -- and can you describe what your injuries are as
16 you sit there. I mean, we know what -- we know where the
17 bullets hit, are you able to use your feet?

18 A No, sir.

19 Q Your legs?

20 A No, sir.

21 Q Your hips?

22 A No, sir.

23 Q And how about your arms?

24 A My right arm, I'm partially paralyzed in my -- in my
25 left.

I-119

SIMPSON - DIRECT

1 Q So you're partially paralyzed in your left arm?

2 A Yes, sir.

3 Q And what do you mean "partially paralyzed"?

4 A I'm -- I'm paralyzed from my chest, chin -- I'm
5 paralyzed from my chest down, and I have limited movement of
6 my left arm.

7 Q Okay. Now your right arm you're able to move, is
8 that correct?

9 A Yes, sir.

10 Q And how would you describe what being paralyzed in
11 your leg and your arm is?

12 A How is it?

13 MR. FIGLER: Your Honor, object to this as
14 relevance.

15 THE COURT: Sustained.

16 MR. FIGLER: Can we approach for a moment on this?

17 THE COURT: I think Mr. Guymon is through, aren't
18 you?

19 (Off-record bench conference)

20 THE COURT: Pass the witness?

21 MR. GUYMON: Yes, Your Honor.

22 THE COURT: How long do you anticipate your cross,
23 Mr. Figler?

24 MR. FIGLER: Less than five minutes, Your Honor.

25 THE COURT: Okay.

SIMPSON - CROSS
CROSS-EXAMINATION

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BY MR. FIGLER:

Q Mr. Simpson, you're familiar with the area of
Fremont and Bruce Street?

A Yes, I am.

Q Okay. That's where all this occurred?

A Yes, sir.

Q Okay. Now would you agree that that is a high drug
area?

A Yeah.

Q Okay. There's also prostitution there?

A Pretty much. Red light district --

Q And violence?

A That's a red light district.

Q Okay. And there's violence there as well?

A Pretty much.

Q Okay. So not a good area of town. Correct?

A Well, that's a matter of opinion.

Q Okay. Now, are you living there at this time?

A No, I am not.

Q Where are you living at this time?

A I'm not going to give you that information, 'cause
I'm not gonna put my life in jeopardy.

Q Okay. Sir, were you living in this area at this
time?

SIMPSON - CROSS

1 A Yes, I was.

2 Q Now, you've already testified on the direct that you
3 punched an individual in the face known to you as Deco that
4 night?

5 A Yes, I did.

6 Q Okay. And you punched him so hard that you caused
7 blood to come from his face?

8 A Yes, I did.

9 Q Okay. Now, there was a picture, a polaroid
10 circulating of you, and that's pretty much how you looked that
11 day before you -- your confrontation with the person you
12 identified as Deco?

13 A That's how I looked --

14 Q Okay.

15 A -- before 3:30.

16 Q Okay, before 3:30. So you were 5 foot 10,
17 approximately 190 pounds?

18 A Then I was.

19 Q Okay. So that's about correct.

20 Now, you said on direct that you told the security
21 guard that this person named Deco had threatened to kill you,
22 is that correct?

23 A Yes, I did.

24 Q Now the security guard's name, does the name William
25 Tulligate [phonetic] sound familiar?

I-122

SIMPSON - CROSS

1 A I know him by Billy.

2 Q Billy? And you're sure you told him that, correct?

3 A Very much so.

4 Q Okay. Isn't it true that Mr. Tulligate, or Billy,
5 had trespassed you off that property after you punched the
6 person that you identified as Deco, isn't that correct?

7 A He told me that he was going to 86 me. I told him
8 to call Metro 'cause Deco had threatened my life. And Deco
9 tells him no don't 86 him. So the security guard walked me to
10 the front gate and told me not to come back on the property.

11 Q He didn't want you on his property?

12 A Well, the people's property that he worked for.

13 Q Okay. Now, are you saying all this happened around
14 3:30 in the morning, correct?

15 A That's right.

16 Q So it's still dark outside, correct?

17 A Pretty much.

18 Q Okay. And then you're saying that you were shot a
19 little bit after 4 o'clock in the morning, isn't that correct?

20 A Say that again.

21 Q You were shot around -- somewhere around 4 o'clock,
22 a little after 4:00, 4:15?

23 A Between 3:30 and 4 o'clock, yes.

24 Q Okay. And at that time a car drove by you; is that
25 correct?

I-123

SIMPSON - CROSS

1 A Didn't drive by me, he drove up, made a U-turn and
2 pulled up in front of me.

3 Q Okay. Now you can't say with any certainty exactly
4 how many people might have been in that car, isn't that
5 correct?

6 A Oh, I can say with certainty there was one person,
7 and that's Donte Johnson.

8 Q Okay. And you were shot pretty quickly after you
9 first saw that car, isn't that correct?

10 A Yeah, as soon as he stepped out of the car he shot
11 me in the face.

12 Q Okay. And it was late at night, isn't that correct?

13 A Yeah, but I'm still looking dead at Donte Johnson
14 when he shot me.

15 Q Okay. Isn't it true that you just assumed that it
16 was Donte who shot you --

17 A No, it's not true --

18 Q -- because you had a --

19 A -- that I assumed. I'm telling you for a fact that
20 Donte Johnson stepped out of that Cadillac with the green top
21 and shot me in my face.

22 Q Okay.

23 MR. FIGLER: I'll pass the witness, Your Honor.

24 THE COURT: Thank you. Any redirect?

25 MR. GUYMON: Very briefly, Your Honor.

SIMPSON - REDIRECT

REDIRECT EXAMINATION

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BY MR. GUYMON:

Q Defense counsel asked you, or indicated that it was late at -- late at night or early in the morning when this happened.

A Yes, sir.

Q What was the lighting like when this happened, in the area?

A It's Fremont Street, we in Las Vegas; it ain't never real dark.

Q Could you see well in the area that you were at when the car pulled up?

A Very much so.

Q Was there anything that obstructed or got in the way of your vision of the person that shot you?

A No, sir.

Q How certain are you of your identification of the man that shot you?

A How certain am I? I'm here, that's how certain I am, because of the fact that it was his room that I went to, it was him that I hit; it was him that the security guard, because of him told me that I couldn't come back on the property, okay. The white Cadillac with the green top was parked in front of his room. That is enough, let him go, okay. And when I seen the green -- when I seen the white

SIMPSON - REDIRECT

1 Cadillac come out, all right, I knew it was Deco. When he
2 stepped out, when he got out of the car, he looked around, he
3 was standing outside the driver's door, he looked around
4 before he even pulled a gun to shoot me, okay. And where he
5 pulled up the car, the pole that was standing there is a big
6 old light pole, and it was all -- everything right there is
7 all illuminated in light.

8 Q Okay. Now is he -- as he's looking around, who are
9 you looking at?

10 A I'm looking at him.

11 Q And are you looking at his face?

12 A Looking at him completely.

13 Q Now, you are certain that it was Donte Johnson?

14 A No doubt in my mind.

15 Q Okay. Now, do you have a case with Donte Johnson
16 where he's been charged with your offense?

17 A He's been -- yes, I go to trial on my birthday, July
18 3rd, in this -- it's coming up in July.

19 MR. GUYMON: Okay. No other questions.

20 THE COURT: Anything further, Mr. Figler?

21 MR. FIGLER: One question.

22 You know what, I'll pass, Your Honor, I don't have
23 to --

24 THE COURT: Okay. Clerk, will you read the jury the
25 admonition. We'll take our lunch break.

1 THE CLERK: During this recess you're admonished not
2 to talk or converse among yourselves or with anyone else on
3 any subject connected with this trial, or read, watch or
4 listen to any report of or commentary on the trial, or any
5 person connected with this trial by any medium of information,
6 including, without limitation, newspaper, television and
7 radio; or form and express any opinion on any subject
8 connection with the penalty until the case is finally
9 submitted to you.

10 THE COURT: Okay, folks. If you'll report back to
11 Stony in one hour at 1:20. If everybody's assembled, we will
12 start at 1:25.

13 In terms of the end of the day, as I told you, we'll
14 be here at least parts of two days, it'll depend on how we're
15 moving and how long your deliberations are, whether you're
16 also be here on Thursday.

17 I have a list of the prosecution's witnesses, and
18 it's hard to estimate from a list, but I would say we will
19 finish today in all likelihood. If we have to, we'll stay
20 here 'til up 'til 5:30 today, approximately, but not later; we
21 may even be through with their case a little before that
22 today.

23 So 1:20 to Stony, 1:25 to start.

24 (Court recessed until 1:25 p.m.)

25 * * * * *

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CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

DONTE JOHNSON,

S.C. CASE NO. 65168

Appellant,

Electronically Filed
Jan 09 2015 02:22 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

vs.

THE STATE OF NEVADA,

Respondent.

APPEAL FROM DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)
EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JUDGE ELISSA CADISH, PRESIDING

~~~~~  
APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME XIV  
~~~~~

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IN THE SUPREME COURT OF NEVADA

DONTE JOHNSON,

CASE NO. 65168

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 9th day of January, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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