

CLARK - REDIRECT

1 services that you're talking about. Is it -- is it diminished  
2 or am I just asking you a common sense question?

3 A I didn't understand your question.

4 Q Well, if a mother or the person or the caretaker of  
5 the small children is ravaged by the drugs, that would pretty  
6 much diminish their ability to help those kids in your  
7 experiences?

8 A Yeah.

9 Q You kind of chuckled, that goes without saying,  
10 isn't that true?

11 A Yes.

12 Q Okay. Now, you knew about John's mom?

13 A Yes.

14 Q Okay. Does she fit into that profile?

15 A I never met her but from what I read and what I  
16 recall, yeah.

17 Q Okay.

18 MR. FIGLER: Court's indulgence. Pass the witness,  
19 Your Honor.

20 THE COURT: Mr. Guymon, redirect and in your other  
21 function because of the status of this witness, cross.

22 MR. GUYMON: Thank you.

23 REDIRECT EXAMINATION

24 BY MR. GUYMON:

25 Q Mr. Clark, there is no information that you have

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CLARK - REDIRECT

1 that indicates that Donte Johnson's grandmother was using  
2 drugs, is there?

3 A No, sir.

4 Q And there's no indication that Donte Johnson's  
5 grandmother's house didn't have a door on it, is there?

6 A No, sir.

7 Q There is no indication that his grandmother didn't  
8 have food on her shelves, is there?

9 A No, sir.

10 Q There is no indication that Donte Johnson, who lived  
11 at his grandmother's house had needles on the floor where  
12 Donte Johnson could step on, is there?

13 A No, sir.

14 Q Donte Johnson was given a chance to succeed in the  
15 program, wasn't he?

16 A Yes, sir.

17 Q Donte Johnson could make choices when he was at  
18 school, couldn't he?

19 A Yes, sir.

20 Q He could chose -- choose to attend in a timely  
21 fashion?

22 A Yes, sir.

23 Q He could choose to learn from what was offered to  
24 him?

25 A Yes, sir.

CLARK - REDIRECT

1 Q You're proud of the programs there at the Watts'  
2 campus, aren't you?

3 A Yes, sir.

4 Q And one can succeed if they choose to succeed with  
5 the help of professionals such as yourself?

6 A Yes, sir.

7 Q And in fact, there are competent teachers who take  
8 an interest in students and attempt to alter their lives?

9 A Yes, sir.

10 Q Students can choose to benefit from that?

11 A Yes, sir.

12 Q They can benefit from your guidance, couldn't they?

13 A Yes, sir.

14 Q Could Donte Johnson benefit from your guidance?

15 A Yes, sir.

16 Q You are one that could be an example to him, aren't  
17 you?

18 A Yes, sir.

19 Q A male figure that grew up in the area and that has  
20 succeeded?

21 A I didn't grow up in the area, but yes.

22 Q Okay. Nonetheless, he could look to you as an  
23 example?

24 A Yes, sir.

25 Q And in fact, other gang members can make choices,

II-110

CLARK - REDIRECT

1 can they not?  
2 A Yes, sir.  
3 Q In fact, many of the gang members that you deal with  
4 everyday make choices?  
5 A Yes, sir.  
6 Q They make choices to succeed?  
7 A Yes, sir.  
8 Q Make choices to change their lives?  
9 A Yes, sir.  
10 Q Make choices to get jobs?  
11 A Yes, sir.  
12 Q And to live productive lives?  
13 A Yes, sir.  
14 Q That is their choice?  
15 A Yes, sir.  
16 Q Donte Johnson had the ability to do that, didn't he?  
17 A Yes, sir.  
18 Q And in fact, he had a mind where he could learn?  
19 A Yes, sir.  
20 Q He could be taught?  
21 A Yes, sir.  
22 Q He knew right from wrong?  
23 A Yes, sir.  
24 Q And you know he knew that?  
25 A Yes, sir.

II-111

CLARK - REDIRECT

1 Q He chose to drop out of that program?  
2 A Yes, sir.  
3 Q He chose to be late?  
4 A Yes, sir.  
5 Q He chose to fail in the help that was given him?  
6 A Yes, sir.  
7 Q He chose to become a parole at large?  
8 A Yes, sir.  
9 Q You indicated that there were some powerful gangs in  
10 the area?  
11 A Yes, sir.  
12 Q Isn't it -- and in fact, you indicated that an  
13 opposing gang, a gang that was opposite his was in that area?  
14 A Yes, sir.  
15 Q That his gang and the other gang members didn't get  
16 along?  
17 A Yes, sir.  
18 Q And they ask you about gangs first, I did not speak  
19 to you about it, did I?  
20 A Right. Yes, sir.  
21 Q Okay. His gang was the Six Deuce Brims [phonetic]?  
22 A Yes, sir.  
23 Q A particularly violent gang in the area, isn't that  
24 true?  
25 A They were violent.

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CLARK - REDIRECT

1 Q And it is -- we talked about gang members and you  
2 used the word respect. It is true that gang members get  
3 respect by the crimes they commit often times, isn't that  
4 true?

5 A Often times that's true.

6 Q That you gain your stripes or move up in gang life  
7 by committing heinous crimes?

8 A Yes, sir.

9 Q Not every gang member commits a quadruple homicide,  
10 do they?

11 MR. FIGLER: Objection, Your Honor.

12 THE COURT: What is the basis of the objection?

13 MR. FIGLER: Well, you know, what Your Honor, I'll  
14 bring out a lot of this on my recross, redirect but I think  
15 that he's asking this particular witness to talk about things  
16 that extend beyond the scope of his -- we're not talking about  
17 that particular event and I don't have that detail. And I  
18 don't think --

19 THE COURT: I'll sustain it on the basis it's  
20 argumentative.

21 MR. FIGLER: Thank you, Judge.

22 THE COURT: Move on to your next area.

23 BY MR. GUYMON:

24 Q Gang members are human beings?

25 A Yes, sir.

II-113

CLARK - RECROSS

1 Q That also can make choices?

2 A Yes, sir.

3 Q You are not suggesting that anyone forced Donte  
4 Johnson to make the choices he made in this case, are you?

5 A No sir, I'm not.

6 Q You're not suggesting that anyone forced him to make  
7 his choices on August 14th, 1998, are you, sir?

8 MR. FIGLER: Again, Your Honor, the same objection.

9 THE COURT: Sustained.

10 BY MR. GUYMON:

11 Q And with regards to his participation in the  
12 program, you're not suggesting that others forced him to leave  
13 the school and the program?

14 A No, sir.

15 Q And to become a parolee at large?

16 A No, sir.

17 Q You know personally about people that have succeeded  
18 under your program and at your direction?

19 A Yes, sir.

20 MR. GUYMON: I have no other questions.

21 THE COURT: Mr. Figler.

22 MR. FIGLER: Thank you, Judge.

23 RECROSS EXAMINATION

24 BY MR. FIGLER:

25 Q Let's talk about choices a little bit, Mr. Clark.

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CLARK - RECROSS

1 Sometimes these kids are faced with the choice between a rock  
2 and a hard place, isn't that correct?

3 A Yes.

4 Q And it's a very difficult decision making process,  
5 isn't that correct?

6 A It can be.

7 Q Okay. Family support is one of the greatest factors  
8 in allowing the success of these individuals, isn't that  
9 correct?

10 A Yes, sir.

11 Q You emphasize that to the individuals, isn't that  
12 correct?

13 A Yes, I do.

14 Q Now, there's some questions posed to you in very  
15 rapid fire by the prosecutor and I want to follow up on them.  
16 About anyone forcing John to do anything or making him choose  
17 to do something. Would you agree that young children who  
18 don't have a family structure are somewhat impressionable?

19 A Yes, I would.

20 Q And would you agree that these older gang members  
21 prey on the younger kids because they have the ability to  
22 influence them?

23 A Yes.

24 Q They get the respect from these little kids who  
25 don't know any better, isn't that correct?

II-115



1 A Yes.

2 Q Okay. Now, when someone moves up, as Mr. Guymon  
3 says, the gangs just don't come out of nowhere, it's a self-  
4 perpetuating horror, isn't it?

5 A That's how it seems.

6 Q Yeah, it -- no matter how hard you try the problem  
7 just doesn't go away, isn't that correct?

8 A Hasn't gone away yet.

9 Q But it's also true that if someone is socialized  
10 very young into this type of support group, the gang life,  
11 when they were just an impressionable kid, this is the only  
12 values that they were taught during their formative years,  
13 isn't that correct?

14 A I would say so, yes.

15 Q And that's a -- that's a huge problem with our  
16 society, isn't that true?

17 A Yes.

18 Q Do you thing that John is someone who could come to  
19 understand the error of his ways someday?

20 MR. GUYMON: Objection, calls for speculation --

21 MR. FIGLER: Based on your observation.

22 MR. GUYMON: -- future, nor is he a physic, Judge.

23 THE COURT: Sustained.

24 BY MR. FIGLER:

25 Q You interacted with him during these times and with

1 these programs?

2 A Yes.

3 Q He really wanted to try to better himself?

4 MR. GUYMON: Asked and answered.

5 THE COURT: Overruled.

6 THE WITNESS: Yes.

7 BY MR. FIGLER:

8 Q And he was -- do you have any doubt at all that if  
9 there wasn't a warrant out for him that he would try to come  
10 back in and try again?

11 MR. GUYMON: Objection, calls for speculation.

12 THE COURT: Sustained.

13 BY MR. FIGLER:

14 Q Now, there's some questions about John's  
15 grandmother's house. You know that John's grandma had lots  
16 and lots and lots of kids to deal with, correct?

17 A That's -- yes, that's my understanding.

18 Q And you know that all her daughters had real bad  
19 problems with the drugs and that's why grandma was taking care  
20 of all these little kids, isn't that correct?

21 A I didn't know that for a fact.

22 Q Okay. Now, do you know about his early upbringing  
23 in the -- in the one room garage or shack?

24 A No.

25 Q Okay. Do you know about his mom's drug habits at

CLARK - RECROSS

1 that time?

2 A No.

3 Q Do you know about the carefree usage of hard drugs,  
4 like crack and those things in front of the little children?

5 A No.

6 Q Okay. Would you agree that in your experience --  
7 exposure to those type of things can be detrimental from a  
8 first -- first from a formative child?

9 A Yes.

10 Q Now, when you take all these things cumulatively,  
11 would you not agree that when people, after having been  
12 exposed to all this during their formative years are facing  
13 choices, that those choices are probably a lot more difficult  
14 than the choices that I or you might be facing?

15 A Yes, I would agree.

16 Q And that's really hard to get into these kids that  
17 you're in charge of because of the horrors that they may have  
18 witnessed or seen, isn't that correct?

19 A Yes.

20 Q A lot of these kids have seen violence in the  
21 streets, isn't that true?

22 A Yes.

23 Q A lot of these kids -- in fact, it would probably be  
24 the norm instead of the exception that a lot of these kids  
25 have seen people shot right in front of them, isn't that true

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CLARK - RECROSS

1 in this neighborhood?

2 A I would say a large percentage of them have.

3 Q Or have friends or family members who have been shot  
4 or killed by the time they're not even ten years old, isn't  
5 that true?

6 A At some point in their lives, they've been exposed  
7 to somebody in their family or in their immediate vicinity  
8 that has been a victim of some kind of violence.

9 Q Okay. Now, a lot of the members of the jury here,  
10 I'm sure, haven't been to that area and so we're counting on  
11 you to kind of paint the picture for them. You work there,  
12 you tirelessly devote your time there. This is not a place  
13 that you'd want to raise a family?

14 A No, it's not.

15 Q In fact, you place -- you wish that places like  
16 this, like the neighborhoods we're talking about, weren't like  
17 the way that they are, isn't that true?

18 A This is true.

19 Q And if they were better in the -- in terms of the  
20 money that might be there or programs or parks or anything for  
21 the kids that your job might necessarily be eliminated or at  
22 least reduced, huh?

23 A It might be changed.

24 Q Might be changed. For the better, right?

25 A Yes.

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CLARK - FURTHER REDIRECT/FURTHER RECROSS

1 MR. FIGLER: I'll pass the witness, Your Honor.

2 THE COURT: Anything further, Mr. Guymon?

3 MR. GUYMON: One last thing.

4 FURTHER REDIRECT EXAMINATION

5 BY MR. GUYMON:

6 Q Agent Young -- or, I'm sorry, Clark. I apologize.  
7 There was an additional condition for Donte Johnson when he  
8 came to you on parole and that was that he was to have no gang  
9 affiliation, is that correct?

10 A Yes.

11 Q And he received counseling about gang involvement,  
12 did he not?

13 A Yes.

14 Q And you had discussions with him about his gang  
15 involvements, did you not?

16 A Yes.

17 Q You attempted to remedy or help him so that he would  
18 not continue to participate in gang involvement, did you not?

19 A Yes.

20 MR. GUYMON: I have no other questions. Thanks,  
21 Judge.

22 FURTHER RECROSS EXAMINATION

23 BY MR. FIGLER:

24 Q Did John White choose to be born into the life that  
25 he was ultimately subjected to?

CLARK - FURTHER RECROSS

1 MR. GUYMON: Judge, I'm going to object. It calls  
2 for speculation.

3 THE COURT: I'll sustain it.

4 BY MR. FIGLER:

5 Q You, yourself, saw a shooting right in front of your  
6 very office, isn't that true, sir?

7 MR. GUYMON: Objection, goes beyond the scope of  
8 my --

9 THE COURT: It does but I'll permit it.

10 THE WITNESS: Yes.

11 BY MR. FIGLER:

12 Q Kids that are twelve, thirteen, fourteen, these are  
13 the kids that you deal with?

14 A No.

15 MR. GUYMON: Asked and answered, Judge.

16 THE COURT: He also answered it, no.

17 BY MR. FIGLER:

18 Q And they're a little older?

19 A The youngest kid we've dealt with has been fifteen  
20 and we keep them until their twenty-first birthday.

21 Q Okay. And you call them kids because that's what  
22 they are, they're kids, right?

23 A I call them kids because I'm older than all of them,  
24 but, yes.

25 Q And there's even younger kids that you're aware of

CLARK - FURTHER RECROSS

1 in these neighborhoods who are having very similar problems  
2 that -- what we've all been talking about today, isn't that  
3 true?

4 A Yes.

5 Q Those kids don't deserve that, do they?

6 A No.

7 MR. FIGLER: Pass, Your Honor.

8 MR. GUYMON: Nothing else, Judge.

9 THE COURT: Anything further, Mr. Guymon?

10 MR. GUYMON: No, Your Honor.

11 THE COURT: Thank you -- thank you, sir. You're  
12 excused. Called your next witness, please.

13 MR. GUYMON: Officer Ritchie.

14 THE COURT: Just for your information, folks, this  
15 is going to be a fairly short witness, then we'll take that  
16 second recess, briefly. And then we're going to hear from the  
17 last four witnesses from the prosecution who'll probably be  
18 ten to fifteen minutes each, so we're running on time.

19 IAN RITCHIE, PLAINTIFF'S WITNESS, IS SWORN

20 THE CLERK: Please be seated. State and spell your  
21 name for the record, please.

22 THE WITNESS: Ian Ritchie, I-A-N R-I-T-C-H-I-E.

23 MR. GUYMON: Judge, counsel has asked to approach.

24 (Off-record bench conference)

25 THE COURT: Go ahead.

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RITCHIE - DIRECT

DIRECT EXAMINATION

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BY MR. GUYMON:

Q And Officer Ritchie, can you tell me who you're employed with?

A Las Vegas Metropolitan Police Department, Detention Services Division.

Q And very briefly, what are your responsibilities there at the Clark County Detention Center?

A Presently I'm assigned to the training staff. I'm responsible for the training of all new recruits, future officers of the Detention Center.

Q And being housed over there in the Clark County Detention Center or working there, do you have contact with the inmates from time to time?

A Yes, sir.

Q Are you familiar with an inmate by the name of Donte Johnson?

A Yes, sir.

Q Is he in court today?

A Yes, sir.

Q Will you point to him and describe an article of clothing that he's wearing in court today?

A Has the gray shirt on.

MR. GUYMON: The record --

//

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RITCHIE - DIRECT

1 BY MR. GUYMON:

2 Q What color shirt?

3 A Gray, tan.

4 MR. GUYMON: The record reflect the identification  
5 of the defendant, Your Honor.

6 THE COURT: It will.

7 BY MR. GUYMON:

8 Q And tell me, when did you first have contact, in  
9 other words, when did you meet Donte Johnson?

10 A I first met him when he walked in the doors of the  
11 Detention Center, I was one of the initial ones to book him  
12 in.

13 Q For the arrest of the quadruple homicide, that being  
14 August 17th, 1998?

15 A I believe that was the date, yes, sir.

16 Q Okay. And have you had subsequent contact with him  
17 other than just that very day when he was booked?

18 A Personally, yes, one -- one other personal contact.

19 Q Okay. I want to talk about that. Let me first of  
20 all, before I talk about that contact though, are there rules  
21 and regulations that each inmate must live by or follow?

22 A Yes, sir.

23 Q And who writes those rules?

24 A The staff operations bureau. Each inmate is issued  
25 a blue handbook and they're required to read and abide by

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RITCHIE - DIRECT

1 those rules at all times.

2 Q Okay. Is it important that inmates follow the rules  
3 of the Clark County Detention Center?

4 A Yes, sir.

5 Q And why?

6 A Without the rules it could create some chaos.

7 Q Now, when an inmate violates a rules over at the  
8 Clark County Detention Center, is a report actually written  
9 documenting that violation?

10 A Generally, yes, sir.

11 Q And as an officer, do you become familiar with those  
12 inmates that violate rules?

13 A Yes, sir.

14 Q In this particular case has Donte Johnson violated  
15 any of the rules there at the Clark County Detention Center?

16 A Yes, sir.

17 Q And have those violations been documented in the  
18 form of reports?

19 A Yes, sir.

20 Q And in -- have you familiarized yourself with all of  
21 the reports?

22 A Not all of them. In front of me I have  
23 approximately twenty-one reports, I know there's about twenty-  
24 one to twenty-five on record.

25 Q And tell me of this, are you familiar with that

II-125

RITCHIE - DIRECT

1 which has been documented in the twenty-one reports that you  
2 have before you?

3 A Yes, sir.

4 Q Okay. And are those reports kept, say, in a room or  
5 in a file where all the officers there at the Clark County  
6 Detention Center can review those reports in order to  
7 familiarize themselves with the type of person that is housed  
8 in any given location at the Clark County Detention Center?

9 A Yes, they are on file in the computer system.

10 Q Okay. Tell me of the twenty-one reports are one of  
11 those reports actually your report?

12 A Yes, sir.

13 Q That documents a violation?

14 A Yes, sir.

15 Q Okay. Can you describe the violation that you  
16 personally observed and then I'll just quickly run through  
17 some of the others?

18 A I believe it was for disrespect last year some -- or  
19 the year before.

20 Q Okay. And give me a date when you had contact with  
21 Donte Johnson that you noted as being disrespectful and why?

22 A May I refer to the report?

23 Q Please.

24 A Okay.

25 MR. FIGLER: And a date, please?

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RITCHIE - DIRECT

1 THE WITNESS: Yes, sir. Dated September 30th, 1998,  
2 approximately 10:25 a.m.

3 BY MR. GUYMON:

4 Q So Donte Johnson had been there about forty-five  
5 days at the point in time that you documented this report?

6 A Yes, sir.

7 Q Okay. And tell me what your observations were?

8 A At that time he was under a CAB, which we call  
9 conduct adjustment report, which means he had been in trouble  
10 before and he was locked down in his room. Describe the  
11 incident?

12 Q Please.

13 A Okay. All the inmates are tagged on the control  
14 room as to who's on lock down. I called all the inmates on  
15 lock down to come out and get their chow, their lunch. They  
16 came out; Mr. Johnson came out to get his lunch. His  
17 roommate, Inmate Hudson -- I asked Mr. Hudson if he was on  
18 lock down, he just turned to me and said, "no". At that time,  
19 Mr. Johnson turned to me and said, "no, mother fucker, he's  
20 not on lock down". At that time I told him he lost his next  
21 free time. He began to be belligerent so I had him gather up  
22 his linen, and all his belongings, took him across the hall to  
23 maximum disciplinary.

24 Q Now at the time are you in uniform?

25 A Yes, sir.

II-127

RITCHIE - DIRECT

1 Q So you're able to be identified as an authority  
2 figure there in the jail?

3 A Yes, sir.

4 Q Now, why would turning and saying, "no, mother  
5 fucker, he's not on lock down", why would that be a violation?

6 A It's disrespect to a staff member.

7 Q And what concern, if any, does that cause a staff  
8 member, such as yourself, when an inmate disrespects an  
9 authority person?

10 A Basically, it breaks down authority in the module.  
11 The officer has a certain amount of authority bestowed upon  
12 them, when inmates disrespect them flagrantly in front of  
13 other inmates, they're trying to break that officer down.

14 Q Tell me, just in general, the twenty-one reports,  
15 are there other similar reports associated with disrespect of  
16 authority there in the Clark County Detention Center where  
17 Donte Johnson's housed?

18 A I believe most of them are -- consist of that.

19 Q Okay. Contained within the reports are there  
20 threats to officers?

21 A No.

22 Q I take it just --

23 A Not to my knowledge.

24 Q -- just disrespect then to other officers?

25 A Yes, sir.

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RITCHIE - CROSS

1 Q Okay. And authority personnel? Now, it is true, is  
2 it not, that Donte Johnson has not, during his stay at the  
3 Clark County Detention Center, has not struck an officer, is  
4 that correct?

5 A No, he has not.

6 Q He's not done bodily harm to an official there in  
7 the jail?

8 A No, sir.

9 Q Not been in any say fights with officers or other  
10 inmates?

11 A None that we know of.

12 Q Okay. But nonetheless, twenty-one violations that  
13 you are aware of?

14 A Yes.

15 Q Associated with rules there in the Clark County  
16 Detention Center?

17 A Yes, sir.

18 MR. GUYMON: I'd pass the witness.

19 CROSS-EXAMINATION

20 BY MR. FIGLER:

21 Q As a corrections officer, you take all violations  
22 very seriously, isn't that true, sir?

23 A Yes, sir.

24 Q In fact, he basically used profanity to you and he  
25 had to pay the penalty for that type of disrespect, isn't that

RITCHIE - CROSS

1 correct?

2 A Yes, sir.

3 Q You put him in a maximum lock down situation,  
4 correct?

5 A Not for that offense. He was already, like I said  
6 before, CAB'd, which is a lock down --

7 Q Well, let me ask you this.

8 A Yes.

9 Q So they're accumulative. Everything, every rule  
10 violation no matter how major or minor, is going to follow an  
11 inmate around for their entire stay within your facility,  
12 correct?

13 A Yes, sir.

14 Q And so accumulatively you are going to be able to  
15 look at other write ups in determining what punishment to give  
16 a particular inmate for not following a rule, is that correct?

17 A Certain informal rule violations require a twenty-  
18 four hour lock down where other formal rule violations is a  
19 conduct adjustment report to where they are rehoused in  
20 maximum disciplinary.

21 Q Okay. And I'm sure it's no pleasure being anywhere  
22 in that county facility, but maximum lock down is even more of  
23 a constricted area?

24 A Yes.

25 Q Okay. Now, in this particular case, you also have

RITCHIE - CROSS

1 the ability to take away any free time that he may  
2 particularly have, based on him using this profane word in  
3 your presence and maybe the presence of other people, correct?

4 A Yes, sir.

5 Q And that's a judgment call on the part of the CO,  
6 the corrections officer, correct?

7 A It's a standard practice, yes sir.

8 Q Okay. Now, the corrections officer always has the  
9 ability to determine whether or not they feel they've been  
10 disrespected, correct?

11 A Yes, sir.

12 Q Now you would agree that that's subjective. If I  
13 said something to you or I said something to someone else, the  
14 two people may have a different opinion whether or not I'm  
15 disrespecting them, isn't that correct?

16 A To a degree, not to this degree though.

17 Q Okay. Well, I'm not asking about this, I'm asking  
18 general.

19 A I understand.

20 Q However, if I take swing at you, there's no getting  
21 around that I took a swing at you, right?

22 A Correct.

23 Q And if I push you or lay hands on you, there's no  
24 getting around that, that's objective, correct?

25 A Correct.

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RITCHIE - CROSS

1 Q And you stated on direct that John White has never  
2 done anything like that, that you've never seen or heard of  
3 him touching an officer or punching an officer or hitting an  
4 officer, anything like that?

5 A No, sir.

6 Q Most certainly, if he had there would have been a  
7 write up about that, correct?

8 A He would have been re-booked, yes sir.

9 Q Okay. Charge him with a new offense, correct?

10 A Correct.

11 Q Now, within these twenty-one -- how many rules would  
12 you say that there are in your facility in ballpark number?

13 A Ballpark number, formal rule violations which could  
14 have you rehoused into maximum disciplinary, there are between  
15 fifty and fifty-five.

16 Q Okay.

17 A Informal rule violations between twenty to thirty.

18 Q Okay. And then within that there's gray area where  
19 there's some subjective intent, like what you just said, I was  
20 disrespected in this particular way and there's an infinite  
21 ways that you feel that you could be disrespected, correct?

22 A Not in that way.

23 Q Okay.

24 A That was direct.

25 Q In general they could call you a profane thing, they

RITCHIE - CROSS

1 could give you a certain look that you didn't like, all these  
2 things could qualify to you as being disrespect, correct?

3 A Which it is, yes, sir.

4 Q Okay. Now, also if you take juice out of the juice  
5 jug, that could be a violation, isn't that correct?

6 A Yes, sir.

7 Q Okay. And in fact, John White took some Kool-Aid  
8 that he wasn't supposed to take during chow time and he was  
9 written up and put in lock down for twenty-four hours for  
10 that, isn't that true?

11 A Is this the September 1st?

12 Q That's correct.

13 A He was locked down in his cell for twenty-four  
14 hours, yes, sir.

15 Q Okay. And in fact, the officer at that time told  
16 him he was cutting John a break with that light sentence,  
17 isn't that correct?

18 A Yes, sir.

19 Q Okay. And in fact, there's other food violations in  
20 here, too. Keeping soup in your room, that was a violation,  
21 right?

22 A I believe it was the passing of soup.

23 Q Oh, giving someone else soup?

24 A After directed not to do so.

25 Q Okay. And that's another one of these twenty-one

RITCHIE - REDIRECT

1 write ups?

2 A Disobeying, yes.

3 Q Disobeying. So you guys are equipped to deal with  
4 all that disobeying in there, correct?

5 A Are we equipped to deal with?

6 Q You do --

7 A We deal with it.

8 Q Okay. You write people up and you impose  
9 punishments on them, correct?

10 A Yes, sir.

11 Q Now, you've observed inmates who have crossed that  
12 line and have struck inmate -- inmates or officers in your  
13 line of work, isn't that correct?

14 A Yes, sir.

15 Q People just really out of control that you  
16 continually are disciplining with re-booking, giving new  
17 charges to, all that stuff, correct?

18 A Yes, sir.

19 Q John White's not one of those people at all, is he?

20 A No.

21 MR. FIGLER: Pass, Your Honor.

22 THE COURT: Anything further?

23 REDIRECT EXAMINATION

24 BY MR. GUYMON:

25 Q The disrespecting an officer, however, which was the

RITCHIE - REDIRECT

1 majority of 'em, deals with the safety of officers, does it  
2 not?

3 A Correct.

4 Q Whereas the disobeying of rules does not address  
5 safety violations?

6 A Disobeying a rule violation?

7 Q Right.

8 A Disrespecting an officer is a rule violation, yes,  
9 sir.

10 Q Okay. And disrespecting an officer goes right to  
11 the safety of officers?

12 A Yes.

13 MR. GUYMON: I have no other questions.

14 MR. FIGLER: No questions.

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

16 THE WITNESS: Okay.

17 THE CLERK: During this recess you're admonished not  
18 to talk or converse among yourselves or with anyone else on  
19 any subject connected with this trial; or read watch or listen  
20 to any report of or any commentary on the trial or any person  
21 connected with this trial by any medium of information  
22 including, without limitation, newspaper, television, and  
23 radio; or form or express any opinion on any subject connected  
24 with the penalty until the case is finally submitted to you.

25 THE COURT: Be in recess until ten minutes of 5:00.

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TALAMANTEZ - DIRECT

1 Can I see counsel briefly in chambers.

2 (Court recessed at 4:35 p.m. until 4:50 p.m.)

3 (Jury is present)

4 THE COURT: Call your next witness, please.

5 MR. DASKAS: Juanita Talamantez.

6 JUANITA TALAMANTEZ, PLAINTIFF'S WITNESS, IS SWORN

7 THE CLERK: Please be seated.

8 THE WITNESS: Thank you.

9 THE CLERK: State your name for the record, please.

10 THE WITNESS: My name is Juanita Talamantez.

11 DIRECT EXAMINATION

12 BY MR. DASKAS:

13 Q Ma'am, you're the mother of Peter Talamantez, is  
14 that correct?

15 A Yes.

16 Q Can you tell us how old was your son at the time of  
17 his death?

18 A Seventeen.

19 Q You brought with you to court today a photo of your  
20 son, is that right?

21 A Yes, I did.

22 Q Let me hand you what we've marked as State's  
23 Proposed Exhibit 241. Tell me, who's in that photograph?

24 A It's me and Pete and my other son, Daniel.

25 Q Is Peter also in that photograph?

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TALAMANTEZ - DIRECT

1 A Yes, he is.

2 Q Is he the person on the left side?

3 A In the black shirt.

4 MR. DASKAS: I move for the admission of 241, Your  
5 Honor.

6 MR. FIGLER: No objection.

7 THE COURT: Received.

8 (Plaintiff's Exhibit No. 241 admitted)

9 BY MR. DASKAS:

10 Q Juanita, can you tell me if there's a reason you  
11 selected that particular photograph of your son, Peter?

12 A It's my favorite. We spent time here in Las Vegas a  
13 couple of years ago and we just had such a good time and the  
14 smile is just so beautiful.

15 Q I think you mentioned that Peter's brother is also  
16 in that picture?

17 A Yes.

18 Q Other than Daniel, did Peter have any other brothers  
19 or sisters?

20 A Yes, I have an older son who's twenty-six.

21 Q Can you tell us the effect or the impact that the  
22 death of Peter has had on you and his siblings and his father?

23 A It's been a nonstop twenty-two month long roller  
24 coaster ride. We've gone up and down and up and down. I have  
25 two grown adult children who cry for their brother, who cry

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TALAMANTEZ - DIRECT

1 like babies because they miss him so much. And for myself,  
2 there's no words that can explain what this has done to me.  
3 It's taken away seventeen years of my life and it just -- it  
4 just doesn't stop. It doesn't stop.

5 Q Can you tell us, if you know, what some of Peter's  
6 aspirations -- what some of Peter's dreams were?

7 A He wanted to do electronics. He was real interested  
8 in electronics and he was very good at it. But I know that  
9 most of all, he just wanted to see -- he wanted to see  
10 tomorrow. He wanted to be alive, that's what Pete wanted to  
11 do, be alive. And now he's not.

12 Q When was the last time you saw Peter prior to his  
13 murder?

14 A In May of -- of the year he died. He came to my  
15 house and we spent a beautiful day together. But he called me  
16 all the time on the phone. Always called me.

17 Q And was May of 1998 the last time you saw your son,  
18 Peter, alive?

19 A Yes.

20 MR. DASKAS: I'll pass the witness, Your Honor.

21 THE COURT: Cross?

22 MR. FIGLER: No questions.

23 THE COURT: Thank you, ma'am. You're excused.

24 Call your next witness please.

25 MR. DASKAS: Sandy Vio [phonetic].

VIO - DIRECT

1 SANDY VIO, PLAINTIFF'S WITNESS, IS SWORN

2 THE CLERK: Please be seated. State your name for  
3 the record, please.

4 THE WITNESS: My name is Sandy Vio.

5 DIRECT EXAMINATION

6 BY MR. DASKAS:

7 Q Ma'am, you're the mother of Tracey Gorringer, is that  
8 right?

9 A That's right.

10 Q You, too, brought a particular photograph to court  
11 today of your son?

12 A Yes, I did.

13 Q Let me hand you what we've marked as State's Exhibit  
14 243 and ask you what's depicted in that particular photograph?

15 A We had a family photo taken in June of '98 and this  
16 is the photo that I've brought to court today.

17 Q Where in the photograph is Tracey -- your son,  
18 Tracey pictured?

19 A Tracey's in the back row on the far right.

20 Q Is there a particular reason that you selected this  
21 photograph to share with the members of the jury?

22 A I wanted to see what was taken away from us, and  
23 what he had, and what type of a family he was from.

24 MR. DASKAS: Judge, I move for the admission of 243.

25 MR. FIGLER: No objection, Your Honor.

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VIO - DIRECT

1 THE COURT: Received.

2 (Plaintiff's Exhibit No. 243 admitted)

3 BY MR. DASKAS:

4 Q There's been some testimony in this case that one of  
5 your other sons, Nick, lived at the Terra Linda home, is that  
6 true?

7 A That's right. Nick was the one that was friends  
8 with Matt. I think both boys, Nick and Tracey, knew Jeff from  
9 Idaho. It was Nick who originally got into the house with  
10 Matt and Jeff and one of the other boys moved out and so  
11 Tracey moved in. He had just moved to town in late May of  
12 '98, so he hadn't been here very long.

13 Q How has Tracey's death affected your son, Nick?

14 A Nick really can't get on with his life. He doesn't  
15 know what to do. He lost his three best friends in that house  
16 and I think he feels guilty that he wasn't there because he  
17 thinks if he was there --

18 MR. FIGLER: Your Honor --

19 THE WITNESS: -- he could have done something.

20 MR. FIGLER: -- on this I think it goes beyond the  
21 scope --

22 THE COURT: Overruled.

23 BY MR. DASKAS:

24 Q What's the age difference in Tracey and Nick?

25 A Tracey was my middle son. I have an older boy and

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VIO - DIRECT

1 then there was Tracey and then Nick, and they're all two and a  
2 half years apart. I was a single parent, I raised my children  
3 alone for sixteen years, moving them around so we weren't just  
4 from one hometown. I went wherever my work was.

5 Q Tell me the impact, the effect that your son's death  
6 has had on the other siblings, other than Nick?

7 A Spencer had moved to Vegas in about February of '98  
8 and that's kind of why Tracey moved here, too, so that we  
9 could be together as a family again. After this happens,  
10 Spencer moved back to Idaho and today is the first time he's  
11 been back since. Needless to say, I don't see him very often.  
12 When I do go to Idaho, I go to where my son is buried and cry.  
13 I just was remarried in '96 and I was just establishing a  
14 relationship with my new family. My husband has four children  
15 who live with us, those are the four other ones in the -- in  
16 the photo. I think to build a relationship with stepchildren  
17 is a challenge and since this has happened, it totally  
18 destroyed what I did have. I'm trying to build it back up,  
19 but it's so hard. I feel so bad.

20 Q And what were some of your son Tracey's aspirations  
21 or his dreams or goals in life?

22 A Tracey was an excellent chef. He started cooking  
23 crepes when we -- he was ten years old. We called him Che-  
24 Tray [phonetic]. When he was in high school, he worked at a  
25 restaurant for approximately five years. The manager at the

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VIO - DIRECT

1 restaurant told me he was very responsible, reliable, he could  
2 call on him to do anything he wanted. Tracey would, you know,  
3 willingly oblige. He was very courteous. He always had a  
4 smile on his face. He was very dependable. My husband told  
5 me when I -- when I told him that I needed to give a victim  
6 impact statement, my husband said, the one thing about Tracey  
7 was it wasn't how long you knew him but that you did know him.  
8 I had another friend that wrote, Tracey had such an endearing  
9 nature about him.

10 He came to Vegas to try to discover what he wanted  
11 to do. I know we had talked about him going into the Culinary  
12 Union or the Electricians Union. He was kind of at a  
13 crossroads in his life.

14 Q You've told us about the impact Tracey's death has  
15 had on your husband and his siblings, what effect has it had  
16 on your life?

17 A It's destroyed my life. You wake up every day and  
18 you think, did it really happen? You know, how could this  
19 happen to my son who was the peace maker, who everybody loved,  
20 who everybody cared for? It makes it hard to concentrate. It  
21 makes it hard to take everyday.

22 Q How old was Tracey when he was murdered?

23 A Tracey was twenty. He was born in March of '78.

24 MR. DASKAS: I have nothing else, Judge.

25 MR. FIGLER: No questions, Your Honor.

BIDDLE - DIRECT

1 THE COURT: Thank you.

2 THE WITNESS: Thank you.

3 THE COURT: Ma'am, you're excused. Call your next  
4 witness.

5 MR. FIGLER: Can we approach?

6 THE COURT: Yes.

7 (Off-record bench conference)

8 THE COURT: Okay. Call your next witness, please.

9 MR. DASKAS: Marie Biddle.

10 MARIE BIDDLE, PLAINTIFF'S WITNESS, IS SWORN

11 THE CLERK: Please be seated. State your name for  
12 the record, please.

13 THE WITNESS: Marie Biddle, B as in boy, I-D-D-L-E.

14 DIRECT EXAMINATION

15 BY MR. DASKAS:

16 Q You're the mother of Jeffrey --

17 A Jeff.

18 Q -- Biddle, is that correct?

19 A Uh-huh. Yes.

20 Q How old was Jeffrey when he was murdered?

21 A Nineteen.

22 Q Jeffrey have other brothers or sisters?

23 A He has an older brother.

24 Q And how much older is the older brother?

25 A Twenty-two months.

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BIDDLE - DIRECT

1 Q Close in age?

2 A Very close.

3 Q Have you observed the effect that this has had on  
4 Jeff's older brother, Jeff's murder?

5 A Yes.

6 Q Can you explain the effect it's had on his older  
7 brother?

8 A It's coming out in anger. He doesn't want to come  
9 home anymore. Doesn't want to talk about it. He wonders why  
10 I'm putting myself through this pain of going to these three  
11 trials and I tell him that I was always there for Jeff and the  
12 other families are here for their children and I feel that I  
13 should be here for Jeff, too. And my husband, he was here.  
14 He can't stand to be here and so that's how he deals with it.  
15 And I don't know how long it will take Greg to settle down or  
16 whatever. He's trying to go to school and it's just very  
17 difficult. It hurts me very badly that he isn't coming home  
18 as often as I'd like him to and he lives about -- just ten  
19 minutes away from us, but I don't think he can stand to see  
20 Jeff's room at our house, right beside his, and all of Jeff's  
21 clothes. I have -- I still have to deal with Jeff's clothes.  
22 I have them in bags and trying to deal with St. Jude's Ranch  
23 for Children on that. And Nick has taken a couple of Jeff's  
24 things. Nick and Jeff always wore each other's clothes when  
25 they'd go out and it's -- it's a very, very bad situation and

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BIDDLE - DIRECT

1 it just -- it's just eating away at me.

2 Q Let me show you what's been marked as State's  
3 Exhibit 242.

4 A Yes.

5 Q And tell me who is depicted in that photograph?

6 A It's Jeff and I on my birthday a couple years ago.  
7 And Jeff is a very warm, loving person. He was so handsome  
8 and it just -- he had just such a sparkle about him, it just  
9 made you feel good to look at him. And we were very close to  
10 each other and I always hugged him like this so tightly, and  
11 I'd tell him I loved him. And he would always say I love you  
12 too moms.

13 Q Is there a reason why you selected this photograph  
14 to show to the jury?

15 A It was -- it was a very loving picture, and I wanted  
16 them to see what a nice young man he was.

17 MR. DASKAS: Move for the admission of 242, Judge.

18 MR. FIGLER: No objection, Judge.

19 THE COURT: Received.

20 (Plaintiff's Exhibit No. 242 admitted)

21 BY MR. DASKAS:

22 Q You mentioned that Nick and Jeff would sometimes  
23 wear each other's clothes, were you referring to Nick  
24 Gorringer?

25 A Yes.

BIDDLE - DIRECT

1 Q Tracey's brother?

2 A Yes, Tracey's brother. Jeff was friends with Nick,  
3 and they were at our house a lot, and they would barbecue.  
4 Jeff lived with us for awhile, he had been in Idaho for a  
5 bit and then he came to Las Vegas to live with us, and then  
6 they --

7 Q Did Jeff have a lot of young friends?

8 A Yes, he did.

9 Q Can you share with us some of Jeff's friends'  
10 thoughts that have been conveyed to you since his death, or  
11 even at the time of his funeral?

12 MR. FIGLER: Judge, I think that exceeds.

13 THE COURT: Exceeds what?

14 MR. FIGLER: The scope of Payne.

15 THE COURT: Overruled.

16 THE WITNESS: They're a wonderful group of kids, and  
17 they come and hug me like Jeff did, and they tell me they love  
18 me. They are so upset they don't know what to do with  
19 themselves. And they offer to help me in any way at all that  
20 they possibly can. And they come to see me sometimes. And in  
21 the wintertime when it snows his friends in Idaho, I've been  
22 told they shovel a path to his grave, and he keeps -- they try  
23 to keep his -- the snow off his grave because they love him so  
24 much. And I talk to different people, and I was just there  
25 for Memorial Day and the lady that are from the florists that

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BIDDLE - DIRECT

1 does the flowers, she tells me that when she goes over there,  
2 there's five and six kids at a time just sitting on Jeff's  
3 grave. And they're just really having a very difficult time,  
4 and Jeff just had -- he had just had so many friends and no  
5 enemies. And everybody loved him. He always shared  
6 everything he had with his friends. And he'd give them his  
7 clothes, sometimes his food. Sometimes I'd find out he hadn't  
8 eaten for three days because he gave away everything he had.  
9 And he loved all his friends no matter what they had or what  
10 they didn't have.

11 BY MR. DASKAS:

12 Q You mentioned that your husband, Jeff's father, has  
13 not attended this trial, is that correct?

14 A Right.

15 Q Has the loss of Jeff been particularly hard on your  
16 husband, his father?

17 A He can't stand it. And when this -- when this first  
18 happened he would sit out in the patio and he'd cry. He'd  
19 come in the house and go to the bathroom and lay on the floor  
20 and cry his heart out. And it's taking a really bad toll.  
21 And it's just extremely stressful. He said when he thinks  
22 about Jeff he would -- he could just throw up, you know, 'he is  
23 so sick about it.

24 Q Is that one of the reasons he's not here today?

25 A Right. He thinks if he -- if he doesn't get to

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MOWEN - DIRECT

1 close to it he can deal with it and somehow get past it, but  
2 it's not working, it's just not happening for him.

3 MR. DASKAS: I have nothing else, Judge.

4 MR. FIGLER: No questions, Judge.

5 THE COURT: Thank you, ma'am, you're excused.

6 Call your next witness please.

7 MR. DASKAS: Cindy Mowen.

8 CINDY MOWEN, PLAINTIFF'S WITNESS, IS SWORN

9 THE CLERK: Be seated. State your name for the  
10 record please.

11 THE WITNESS: Cindy Mowen, M-O-W-E-N.

12 DIRECT EXAMINATION

13 BY MR. DASKAS:

14 Q You're Matt Mowen's mother, correct?

15 A Yes, I am, always will be.

16 Q Let me show you State's Exhibit 244. Tell me what's  
17 in that photograph?

18 A That's my big guy giving me a big hug. It was --  
19 and a big kiss on the cheek. It was one of the days that he  
20 was getting ready to go to one of his many proms and Sadie's  
21 dances and homecoming things that he went to. And his great  
22 uncle was in town that day, and he said to me, go over and  
23 stand beside that handsome looking gentleman, so I did. And  
24 just as I stood there Matthew reached around and grabbed me  
25 and gave me a big hug and kiss on the cheek, he was always

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MOWEN - DIRECT

1 doing things like that. It's one of my favorite pictures. I  
2 miss those hugs so much.

3 MR. DASKAS: Judge, I'd move for the admission of  
4 244.

5 MR. FIGLER: No objection, Judge.

6 THE COURT: Received.

7 (Plaintiff's Exhibit No. 244 admitted)

8 BY MR. DASKAS:

9 Q Do you have any sons other than Matt?

10 A No, Matthew was my only son. My only son.

11 Q Do you have any other children, however?

12 A Yes, I have a daughter, a beautiful seventeen year  
13 old. She was fifteen and a half at the time that this  
14 happened. She went from a very innocent, young fifteen year  
15 old little girl to a thirty year old adult now. To talk to  
16 this child, she's lost her childhood. She's grown up into a  
17 young woman. She's lost her best friend.

18 Q Were there things that she looked forward to,  
19 growing up and having an older brother to share with?

20 A She shared everything with Matt. She's lost her  
21 main confident person that she could talk to. There's always  
22 things that kids won't share with their parents, boyfriends,  
23 problems in school, whatever, she always shared all of these  
24 things with him. One of her biggest pains is that he wasn't  
25 there when she turned sixteen to get her license and drive her

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MOWEN - DIRECT

1 first car, that was a big thing. Because of course when he  
2 got his license the first one he took for a ride was Jennifer.  
3 When he moved out of the house the first one he brought to the  
4 apartment to show where he lived was Jennifer. They were  
5 very, very close. He won't be there for her graduation from  
6 school, and he won't be there for her wedding, he won't be  
7 there for her first child. There's all these things that she  
8 looked forward to, to have with her only brother. And she now  
9 will not have those things.

10 Q Your husband's name is David, is that correct?

11 A Yes, it is.

12 Q Matt obviously was David's only son?

13 A Yes. Yes.

14 Q Can you attempt to describe to this jury, or explain  
15 to the jury the effect that Matt's death has had on your  
16 husband?

17 A Oh, it's devastating my husband. Is a very strong  
18 individual, but he was extremely strong before this, he would  
19 stand tall, and you could see it in him, the pride that he had  
20 in his son. And now when I hug my husband his shoulders are  
21 slumped. It has just beaten him down. It's just taken the  
22 life right out of him. This weekend is father's day of  
23 course, and this one is going to be so hard because the last  
24 one that my husband had with his son, his son called him and  
25 said, dad, let's go out for dinner, came by the house, picked

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MOWEN - DIRECT

1 him out, took him down, they had steak and lobster, and had a  
2 wonderful evening, it was a male bonding thing. And I'm so  
3 glad he had that. But this weekend again we face that,  
4 another holiday without your child.

5 MR. FIGLER: Your Honor, we'd move --

6 MR. DASKAS: I'll move on, Judge.

7 BY MR. DASKAS:

8 Q We talked about the effect this has had on your  
9 daughter --

10 A Mm-hmm.

11 Q -- and on your husband, what effect has Matt's death  
12 had on you personally?

13 A On me personally, I go to a little safe spot when I  
14 have my breakdowns, which I have breakdowns probably once a  
15 month now. They were daily at first, and then it got to be  
16 less and less. But when I have these breakdowns I go to this  
17 favorite spot that I had. During visitation services, the  
18 family visitation, I had a half hour alone with my son, my  
19 husband had to take the family back home. I had this half  
20 hour where I could touch him and I could talk to him and I  
21 could spend time with him. And when I have these breakdowns I  
22 go back to that spot. My arms ache so bad, I find myself  
23 rocking and just holding my arms, my arms hurt so bad for my  
24 child. They hurt so bad. I've had a terrible time working,  
25 you can't concentrate on work. I have gone through so much

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MOWEN - DIRECT

1 therapy and so much medication that I could even sit here and  
2 talk. It has destroyed my life. It's destroying my parents.  
3 My father has aged to the point I probably won't see him  
4 again. It's devastating my relationships with my friends.  
5 They're all going through graduation ceremonies and weddings  
6 and such now. I'm here.

7 Q Matt's murder happened on August 14th, 1998, why was  
8 Matt in town on that particular day?

9 A Matt had been on tour following the band across the  
10 country, I had had some surgeries in late '97, early '98, and  
11 in July of '98 they determined I was going to have to have  
12 another major surgery. And he called all the time from the  
13 road, it was always collect, but he always called us. And we  
14 told him I had to have this surgery, and his first words were  
15 I'm coming back. He wanted to be here for me when I went  
16 through this surgery. I picked him up at the airport on  
17 August 5th. I also paid his last month's rent at that house,  
18 I should have just taken him home with me at that time because  
19 he was coming home to take care of me, I was scheduled for  
20 surgery the next month. And then he was going off to school  
21 as soon as I got done. So I had this tremendous guilt that I  
22 paid the last month's rent and that the child got off of the  
23 tour and came home to take care of me. That's the kind of kid  
24 he was though, anything for his mom. He loved me very much.

25 Q If you could say anything to Matt, what would you

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1 tell him?

2 MR. FIGLER: Your Honor, that goes beyond --

3 THE WITNESS: I talk to Matt all the time.

4 MR. FIGLER: Your Honor.

5 THE COURT: Sustained.

6 BY MR. DASKAS:

7 Q If you know, what were some of Matt's character  
8 traits, his aspirations, and what contribution do you think  
9 your son would have made in society if he had the opportunity  
10 to grow old?

11 A Oh, he made contributions to society at his young  
12 age. It was shown to us over the years, he was such a loving  
13 and giving person. In fact, at his funeral one of the young  
14 men gave his eulogy and said that Matt was the best host that  
15 he'd ever seen. If there was four people somewhere and there  
16 was only three of something, Matt would be the one that would  
17 give up and let everyone else have it.

18 The only thing that a parent wants for their  
19 children is to know that they've touched somebody in the  
20 world, that they've made a difference. And I know Matthew did  
21 that. It was shown to us after he was killed, it was shown to  
22 us before he was killed. He was a very loving, loving person.  
23 Would do anything for anyone.

24 Q Any other thoughts about your son that you'd like to  
25 share with the jury?

MOWEN - DIRECT

1           A       Just that he was a tremendous young man, he really  
2 was, strong, smart, he had great goals in life. I keep  
3 looking for him on the streets when I see different people to  
4 measure them up to see if they're the same size so I could go  
5 crawl in their arms and get a hug. I constantly hug his  
6 friends looking for that feel, and I can't find it, I'll never  
7 find it again. Never.

8           MR. DASKAS: Nothing else, Judge.

9           MR. FIGLER: No questions, Judge.

10          THE COURT: Thank you, ma'am, you may take your seat  
11 again.

12          The State rest?

13          MR. DASKAS: Yes, Your Honor.

14          THE CLERK: During this recess you're admonished not  
15 to talk or converse among yourselves or with anyone else on  
16 any subject connected with this trial, or read, watch or  
17 listen to any report of or commentary on the trial, or any  
18 person connected with this trial by any medium of information  
19 including, without limitation, newspaper, television and  
20 radio; or form or express any opinion on any subject connected  
21 with the penalty until the case is finally submitted to you.

22          THE COURT: Okay. Folks, as you may remember when  
23 we talked right after the verdict, tomorrow's schedule is the  
24 same as last Wednesday's, which is meaning that we're going to  
25 start, if everybody is assembled, at 8:00 a.m. If you'd

1 report to Stony no later than somewhere between ten and five  
2 minutes of 8:00, we're going to go right at 8 o'clock. I have  
3 no calendar in front of it which I did have today. So we'll  
4 see you tomorrow at 8:00.

5 I'm still hopeful we're going to have the defense  
6 evidence and arguments of counsel, and your decision -- your  
7 deliberations tomorrow, but we'll play it by ear and we'll  
8 see.

9 Have a nice evening. We'll remain in session  
10 outside your presence.

11 (Jury recessed)

12 THE COURT: And, Mr. Figler, I know it's difficult  
13 to make objections while the mothers are testifying, and  
14 frankly, in trying to hear what you were saying, it wasn't  
15 clear to me, although I felt it was clear what my duty was, I  
16 wasn't sure what your objection was, except for the last one  
17 which I sustained. What, for the record, is it?

18 MR. FIGLER: Well, Your Honor, of course I didn't  
19 want to object at all, but we all know that the allowance of  
20 victim impact has really taken an evolution through the years,  
21 and Payne versus Tennessee, P-A-Y-N-E, prescribes some of that  
22 and so does the Nevada Revised Statute. The last thing in the  
23 world I want to do is interrupt, but you know I have to.

24 THE COURT: And what is the objection?

25 MR. FIGLER: The objection is that whenever victims'



1 get into information of people who are not statutory listed as  
2 victims, that runs afoul of the limitations that the Nevada  
3 Legislature want to place on the very tenuous use of victim  
4 impact during a penalty phase anyway. So that was just simply  
5 the objection.

6 And the only time I objected was when I felt that  
7 these individuals were going beyond their own family impact,  
8 the people listed in the statute and going into other people  
9 outside of the type of information. In other words, those  
10 people certainly wouldn't be allowed to testify.

11 THE COURT: I didn't realize, maybe you're right  
12 that the -- that it's been litigated that that is an exclusive  
13 list of who may testify.

14 MR. FIGLER: The NRS is very specific, but I --

15 THE COURT: No, no, it says who is those who are in  
16 a position of victim, but I don't know that it precludes, and  
17 there is one case of course in front of a judge rather than a  
18 jury, that says it's still discretionary with the Court.

19 MR. FIGLER: I think you've made --

20 THE COURT: My understanding --

21 MR. FIGLER: I'm sorry.

22 THE COURT: -- of Payne is that it allows a glimpse  
23 of the loss that is suffered, and that would include to me  
24 friends and certainly the father, who the last witness wanted  
25 to talk about, in terms of confining the glimpse, as I think

1 Payne envisions, but I guess that will play out over a period  
2 of decades.

3 I did limit the number of people speaking to one per  
4 family. I did, from the proffered numerous pictures that the  
5 State wished to show to the four ladies who testified here  
6 this afternoon, I did restrict the number of pictures. But my  
7 understanding of the law as it is now is that you can show who  
8 was lost. And I think the impact it would have on somebody's  
9 friends is something that is lost, as with other family  
10 members. And the way I read the law that's permissible.

11 When it was asked what she would say to him, I  
12 envisioned this would be the kind of answer that would go  
13 beyond what Payne envisioned. So the law -- I just wanted the  
14 record to reflect your objections, that's my understanding how  
15 it should be.

16 MR. FIGLER: Thanks, Judge, and you know that I just  
17 have to make my record and I don't want to argue.

18 THE COURT: I understand what you got to do.

19 MR. DASKAS: And, Judge --

20 THE COURT: You want to add anything to that?

21 MR. DASKAS: Well, if I might. The statute, the  
22 NRS, the case law specifically permits statements regarding  
23 the loss of the victim to society, that obviously includes  
24 friends, family and relatives, and that's what we elicited,  
25 Judge.

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THE COURT: Yeah. Okay.

MR. FIGLER: Okay.

THE COURT: Off the record.

(Court adjourned at 5:22 p.m., until the following day,

June 14, 2000)

\* \* \* \* \*

II-158

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Charla Severs	12	25	--	--
Bryan Johnson	29	33	--	--
Roy Chandler	36	48	--	--
Kim Kern	54	62	--	--
Craig Clark	63	85	108/120	114/120
Ian Ritchie	123	129	--	--
Juanita Talamantez	136	--	--	--
Sandy Vio	139	--	--	--
Marie Biddle	143	--	--	--
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EXHIBITS

<u>DESCRIPTION:</u>	<u>ADMITTED</u>
---------------------	-----------------

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DEFENDANT'S EXHIBITS

None

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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6/14/00  
DATE

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277  
1 INST

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED IN OPEN COURT  
JUN 16 2000 20

SHIRLEY B. PARRAGUIRE, CLERK

BY *Alona Candito*  
ALONA CANDITO DEPUTY

2  
3  
4 THE STATE OF NEVADA,

5 Plaintiff,

6 -vs-

7 DONTÉ JOHNSON

8 Defendant.  
9  
10  
11

Case No. C153154  
Dept. No. V  
Docket H

12 INSTRUCTIONS TO THE JURY

13 (INSTRUCTION NO. 1)

14 MEMBERS OF THE JURY:

15 It is now my duty as judge to instruct you in the law that applies to this penalty hearing.  
16 It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as  
17 you find them from the evidence.

18 You must not be concerned with the wisdom of any rule of law stated in these  
19 instructions. Regardless of any opinion you may have as to what the law ought to be, it would  
20 be a violation of your oath to base a verdict upon any other view of the law than that given in  
21 the instructions of the Court.  
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INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

INSTRUCTION NO. 3

The trial jury shall fix the punishment for every person convicted of murder of the first degree.



The jury shall fix the punishment for each Count at:

- (1) A definite term of 100 years, with eligibility for parole beginning when a minimum of 40 years has been served; or
- (2) Life imprisonment with the possibility of parole, with eligibility for parole beginning when a minimum of 40 years has been served;
- (3) Life imprisonment without the possibility of parole, which means exactly what it says, that the defendant shall not be eligible for parole;
- (4) Death.

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A prison term of one hundred years with eligibility for parole beginning when a minimum of forty years has been served does not mean that the defendant would be paroled after forty years but only that he or she would be eligible for parole after that period of time.

Life imprisonment with the possibility of parole is a sentence to life imprisonment which provides that the defendant would be eligible for parole after a period of forty years. This does not mean that he would be paroled after forty years but only that he would be eligible for parole after that period of time.

Life imprisonment without the possibility of parole means exactly what it says, that the defendant shall not be eligible for parole.

If you sentence the defendant to death, you must assume that the sentence will be carried out.

In the penalty hearing, evidence may be presented concerning aggravating and mitigating circumstances relative to the offense, and any other evidence that bears on the Defendant's character.

Hearsay is admissible in a penalty hearing.

INSTRUCTION NO. 7

The State has alleged that aggravating circumstances are present in this case.

The Defendants have alleged that certain mitigating circumstances are present in this case.

It shall be your duty to determine:

(a) Whether an aggravating circumstance or circumstances are found to exist;

and

(b) Whether a mitigating circumstance or circumstances are found to exist; and

(c) Based upon these findings, whether a defendant should be sentenced to life imprisonment or death.

The jury must find the existence of each aggravating circumstance, if any, unanimously and beyond a reasonable doubt.

The jurors need not find mitigating circumstances unanimously. In determining the appropriate sentence, each juror must consider and weigh any mitigating circumstance or circumstances which that juror finds.

The jury may impose a sentence of death only if:

(1) The jurors find unanimously and beyond a reasonable doubt that at least one aggravating circumstance exists;

(2) Each and every juror determines that the mitigating circumstance or circumstances, if any, which he or she has found do not outweigh the aggravating circumstance or circumstances; and

(3) The jurors unanimously determine that in their discretion a sentence of death is appropriate.

The law does not require the jury to impose the death penalty under any circumstances, even when the aggravating circumstances outweigh the mitigating circumstances. Nor is the Defendant required to establish any mitigating circumstances in order to be sentenced to less than death.

You are instructed that the following factors are circumstances by which Murder of the First Degree may be aggravated:

1. The murder was committed while the person was engaged, alone or with others, in the commission of or an attempt to commit or flight after committing or attempting to commit, any robbery with a deadly weapon and/or, burglary while in possession of a deadly weapon, and/or kidnaping in the first degree, and the person charged:
  - (a) Killed or attempted to kill the person murdered, or
  - (b) Knew or had reason to know that life would be taken or lethal force used.
2. The murder was committed to avoid or prevent a lawful arrest or to effect an escape from custody.
3. The defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree. For the purposes of this subsection, a person shall be deemed to have been convicted of a murder at the time the jury verdict of guilt is rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

INSTRUCTION NO. 9

Mitigating circumstances are those factors which, while they do not constitute a legal justification or excuse for the commission of the offense in question, may be considered, in the estimation of the jury, in fairness and mercy, as extenuating or reducing the degree of the Defendant's moral culpability.

In balancing aggravating and mitigating circumstances, it is not the mere number of aggravating circumstances or mitigating circumstances that controls.



Murder of the first degree may be mitigated by any of the following circumstances, even though the mitigating circumstance is not sufficient to constitute a defense or reduce the degree of the crime:

(1) The murder was committed while the Defendant was under the influence of extreme mental or emotional disturbance.

(2) The Defendant was an accomplice in a murder committed by another person and his participation in the murder was relatively minor.

(3) The Defendant acted under duress or under the dominion of another person.

(4) The youth of the Defendant at the time of the crime.

(5) Any other mitigating circumstances.

INSTRUCTION NO. 11

The burden rests upon the prosecution to establish any aggravating circumstance beyond a reasonable doubt and you must be unanimous in your finding as to each aggravating circumstance.

INSTRUCTION NO. 12

A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

INSTRUCTION NO. 13

The jury is instructed that in determining the appropriate penalty to be imposed in this case that it may consider all evidence introduced and instructions given at both the penalty hearing phase of these proceedings and at the trial of this matter.

INSTRUCTION NO. 14

In your deliberation you may not discuss or consider the subject of guilt or innocence of a Defendant, as that issue has already been decided. Your duty is confined to a determination of the punishment to be imposed.

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

INSTRUCTION NO. 16

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. When you have agreed upon your verdicts, they should be signed and dated by your foreperson.

*Given this 14th Day  
of June, 2000  
Jeffery*



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FILED

JUN 20 11 47 AM '00

Shirley S. [unclear]  
CLERK

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*

THE STATE OF NEVADA,

Plaintiff,

vs.

DANTE JOHNSON, aka John White,  
ID# 1586283,

Defendant.

Case No. C153154  
Dept. No. V

EX PARTE MOTION TO WITHDRAWAL AS ATTORNEY OF RECORD  
FOR MATERIAL WITNESS CHARLA SEVERS

COMES NOW, JAY L. SIEGEL, ESQ., of Wolfson & Glass, and hereby moves this  
Honorable Court for an Order allowing him to withdraw as attorney for materlal witness, CHARLA  
SEVERS, as her participation in this case is now complete.

This Motion is made and based on the pleading and papers on filed herein, and the affidavit  
of counsel attached hereto.

DATED this 15<sup>th</sup> day of June, 2000.

WOLFSON & GLASS

By

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

RECEIVED

JUN 20 2000

COUNTY CLERK

**AFFIDAVIT OF JAY L. SIEGEL**

STATE OF NEVADA        )  
                                  ) ss:  
COUNTY OF CLARK        )

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

1. That I am a duly licensed and practicing attorney of the State of Nevada at the offices of Wolfson & Glass, located at 601 South 7th Street, Las Vegas, Nevada and I am competent to testify to the facts set forth herein.

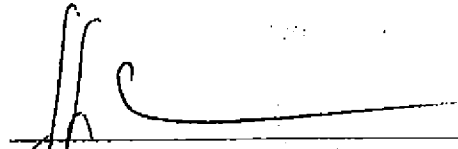
2. That Affiant was appointed by the above-entitled Court as counsel for the material witness, CHARLA SEVERS.

3. That Affiant is requesting that this Honorable Court grant his motion to withdraw as attorney of record, as her participation in this case is now complete.

4. That according to N.R.S. Rule 46, Affiant may be allowed to withdraw anytime after the completion, judgment or final determination upon the filing of a withdrawal.


5. That Affiant was appointed, and feels that it would be best to obtain a court order granting the withdrawal in this matter.

FURTHER, your affiant sayeth not.

  
\_\_\_\_\_  
JAY L. SIEGEL

SUBSCRIBED AND SWORN to before me

this 15<sup>th</sup> day of June, 2000.

  
\_\_\_\_\_  
NOTARY PUBLIC, in and for said  
County and State



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FILED

JUN 20 11 48 AM '00

*Shirley S. Ruggins*  
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

vs.

DANTE JOHNSON, aka John White,  
ID# 1586283,

Defendant.

Case No. C153154  
Dept. No. V**EX PARTE ORDER ALLOWING WITHDRAWAL OF ATTORNEY OF RECORD  
FOR MATERIAL WITNESS CHARLA SEVERS**

Upon the Ex Parte Motion of JAY L. SIEGEL, and good cause appearing therefore,

**IT IS HEREBY ORDERED** that JAY L. SIEGEL, of Wolfson and Glass, is no longer attorney of record, for the material witness, CHARLA SEVERS, in the above-captioned case, and his appointment as same is terminated as of the date of the filing of this Order for the purposes of payment of fees in accordance with N.R.S. 7.145.

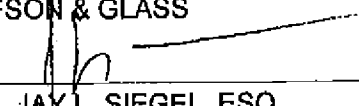
DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

  
 DISTRICT COURT JUDGE

Respectfully submitted by:

WOLFSON &amp; GLASS

By

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

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JUN 20 2000

COUNTY CLERK

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**ORIGINAL**

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

*Shirley B. Prawalsky*

JUN 21 3 11 PM '00

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

CASE NO. C153154

DEPT. V

Transcript of  
Proceedings

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

STATUS CHECK: THREE JUDGE PANEL

TUESDAY, JUNE 20, 2000, 9:00 A.M.

APPEARANCES:

FOR THE STATE:

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

FOR DEFENDANT JOHNSON:

JOSEPH SISCENTO, ESQ.  
DAVID FIGLER, ESQ.  
DEPUTY SPECIAL PUBLIC  
DEFENDERS

COURT RECORDER: SHIRLEE PRAWALSKY

**CE15**

1 LAS VEGAS, NEVADA, TUESDAY, JUNE 20, 2000, 9:00 A.M.

2 THE COURT: I think everybody is here on Donte Johnson.

3 Johnson, page 15. All right. The first date that I had  
4 suggested was sometime in the week of 7/24. And I could do it either the  
5 first three days or the last two days of 7/24. Is there a problem on the  
6 State's behalf?

7 MR. GUYMON: Judge, the State was perhaps - the first three days.  
8 I'm going to be in British Columbia the last -

9 THE COURT: But that week works?

10 MR. GUYMON: Right.

11 THE COURT: Okay. How about the defense?

12 MR. SCISCENTO: The days we're looking at are the 24<sup>th</sup> of July, Your  
13 Honor?

14 THE COURT: Yeah, the 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup>.

15 When are you leaving, Gary?

16 MR. GUYMON: That Thursday, Judge, the day is the 27<sup>th</sup>.

17 THE COURT: And, of course, you know, somebody has to name a  
18 date first and we're going to name a date. And whether we can get judges  
19 for this, they tell me it's not too hard, but. How does the 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup>  
20 look for you guys?

21 MR. FIGLER: Well, Your Honor, I think we indicated before that  
22 anything before September was going to be burdensome for the office.  
23 Once the three-judge panel is appointed, depending on how it was done,  
24 the composition of it, we may have to file between two to five motions with  
25 regard to that.

1 THE COURT: Are these motions you filed in other three-jury cases -  
2 three-

3 MR. FIGLER: Some would be - some would be unique to this case.  
4 There has been no real indication on exactly how those other two judges  
5 are selected. And I think that that's quite interesting when you're analyzing  
6 it in the context of the due process rights.

7 THE COURT: Well, that same interesting thing has existed as long as  
8 we've had a three-judge panel, Mr. Figler.

9 MR. FIGLER: Right, Judge. And I -

10 THE COURT: I think it is very interesting in the sense that, as I  
11 understand it, I don't know that if I were an appellate judge I would feel  
12 that it was a constitutional system, but I'm not an appellate judge.

13 MR. FIGLER: At any rate -

14 THE COURT: Is there a concrete problem with 7/24, 7/25, 7/26?

15 MR. FIGLER: Beyond the fact that I do have another death penalty  
16 case that is beginning in the middle of August and which I've had to put off  
17 my preparation and efforts because of these schedules.

18 THE COURT: Well, I don't think it's going to take much more  
19 preparation to go through this a second time on your part and you're  
20 second lead - second chair here.

21 Now, do you have any particular problem with those dates,  
22 Joseph?

23 MR. SCISCENTO: No, Your Honor, other than I do have an August 7<sup>th</sup>  
24 starting a murder case.

1 THE COURT: Okay, 7/24, 25, and 26. I will notify the Supreme  
2 Court today and ask them to designate two other judges as quickly as  
3 possible and I'm going to set - if we can find out by the next couple of days  
4 who the other judges are and whether those dates are available, I'm going  
5 to set a time to file motions to challenge the three-judge panel if you intend  
6 to. Monday, July the 10<sup>th</sup> with any oppositions to be filed by July the 14<sup>th</sup>.

7 Now, while you're looking at other things, I got fairly close once  
8 to a three-judge panel in the sense that we had judges assigned, but I  
9 don't know, it never really seemed very real. I had the feeling that it was  
10 going to be negotiated prior to the time that we had the three-judge panel,  
11 and it was. So, I wasn't thinking about it, perhaps, as seriously as I do this  
12 case where, clearly, there's not going to be any negotiations.

13 And while you're pondering other things to file, perhaps you  
14 could, both sides, if you feel like it, give me some kind of memorandum  
15 that indicates what you think my duty and the other judges who come  
16 down here are in these three-judge panel cases.

17 I'm going to give each of you the jury oath to try a case which  
18 is somewhat different than the standard oath that the judges take. Now, I  
19 understand, just like the jury, I have to find aggravators. But, Mr. Figler  
20 has conceded that we, at least, have an aggravators in his argument to the  
21 jury there. And I assume he will probably do something like that.

22 And so, we get onto the mitigators and then we weigh them.  
23 And I take it that a judge, just like a juror that is discussed in Bennett, and  
24 I believe that's where one of those jury instructions, 7A or 7B comes from  
25

1 through the State courts, never in a particular case has the duty to impose  
2 the death penalty.

3 But I'm wondering if anybody has considered -- and if so, I'd  
4 like that authority. But if not, I'd like the litigants best analysis of the duty  
5 of a judge at the three-judge panel. Is it the same as a juror? Or does a  
6 judge, who has been sitting for 10 years and develops certain philosophies  
7 of punishment and their own feelings about whether deterrents matters,  
8 and what the proper role of pure punishment is, and their feelings about  
9 incapacitation, and who, in normal sentencing tries to strike some rough  
10 equality between sentences, what my role should be there.

11 And, frankly, in part, what I'm saying is: I have litigated, as a  
12 lawyer, murder cases for 22 years, parts of which we had the death  
13 penalty, but not much.

14 And now I've sat for 10 years where we've had the death  
15 penalty. And I've probably sat over, I don't know, somewhere around four  
16 or five dozen murder cases. This is, I believe, the fourth quadruple murder  
17 that I've had. And I've seen an awful lot of death penalties handed out.  
18 And I've seen cases where death penalties weren't handed out.

19 And certainly you can't sit up here and listen to a whole trial  
20 and not be struck with where this particular case stands in relationship to  
21 other cases. And if it is a permissible -- if we're going to be honest about it  
22 -- the thing for a judge to do when they're sitting as part of a three-judge  
23 panel, to use their own experience and to try to strike some rough balance,  
24 obviously, Mr. Johnson is at the far end of the continuum for eligibility for  
25



1 the death penalty.

2 So, if you have any thoughts about what the proper role for a  
3 judge is in a three-judge panel who is a sitting judge with some experience,  
4 share those with me because I'm not like a juror who comes in here and  
5 sits here without having heard numerous other murder cases. And both as  
6 a judge and a human being, you tell a jury they come in with their common  
7 experiences and their common sense.

8 Well, I have a history, too, and my history certainly does not  
9 automatically make me impose the death penalty on Mr. Johnson. But,  
10 certainly, I might be more likely if I use my history than would an average  
11 juror; I don't know what an average juror is. But, certainly I have a history  
12 that an average juror does not. And if you have any feelings about how  
13 that should properly play into the decision that I'm going to make along  
14 with two other judges in July, fine.

15 Now, you mentioned something about the selection process.  
16 It's my understanding, for the record, Mr. Figler, I give them names and  
17 mysteriously - I give them a date; names come back. Now, that's my  
18 understanding of the three-judge panel. How those names are selected, I  
19 have no idea. If they tell me how they're making the selection, I will make  
20 that a part of the record.

21 It's my experience in the other three-judge panel: I give them  
22 a date; names come back. And it's, you know, remarkably unlike what we  
23 do with voir dire. I mean, in voir dire we explore the - both parties explore  
24 the potential jurors' feelings about the death penalty.

1 Here, the Supreme Court could pick out two conscientious  
2 objectors to the death penalty, if they could be found in this western state,  
3 and send down here for the death penalty. Or they could send two people  
4 down here who would be excluded for cause by the defense because they  
5 almost invariably would give the death penalty. And I don't know. And it  
6 doesn't seem like that could be inquired into, which is one of the many  
7 reasons that I think perhaps I would give more pause than perhaps has  
8 been done so far to the constitutionality of the legislative scheme.

9 I don't know that they have it in a lot of states. And, as I said  
10 before, I don't know that we should, constitutionally, but I don't decide a  
11 constitutional issue adversely to the ruling of the Supreme Court. And I  
12 believe they have ruled in each of these cases.

13 Just for your - whatever it may do, here are the oaths that  
14 jurors get. And give it to them, David, too. Here's the oaths that they get.

15 Anything else to come before the Court on Johnson this  
16 morning?

17 MR. FIGLER: Yes, Your Honor. At the close of the penalty  
18 deliberations on Friday, the jurors had handed you their verdict forms, the  
19 special verdict forms, that had parts of the deliberation with regard to  
20 mitigators and aggravators listed upon those. And I would ask, at this  
21 time, to make those part of the record.

22 THE COURT: Yeah, I certainly don't know that they would be a  
23 legitimate basis for any further action, especially in light of your position  
24 relative to the thought processes of jurors. But, certainly, you're entitled,  
25

1 as much as I am, to read what they had. As a matter of fact, the one that I  
2 had taken home to look at, I think, Elana has already run off a copy for you  
3 if you want to step through there while we're finishing the calendar.

4 MR. FIGLER: Thank you, Your Honor. So, that will be made part of  
5 the record?

6 THE COURT: Yeah.

7 MR. FIGLER: Thank you.

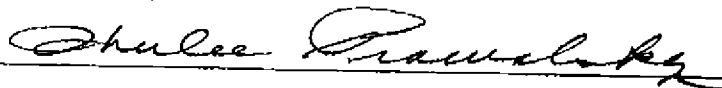
8 THE COURT: Anything else, Dave?

9 MR. FIGLER: That's it at this time.

10 THE COURT: Let's get back to the calendar.

11 \* \* \* \* \*

12 ATTEST: I do hereby certify that I have truly and correctly transcribed  
13 the sound recording of the proceedings in the above case.  
14

15  
16 

17 SHIRLEE PRAWALSKY, COURT RECORDER  
18  
19  
20  
21  
22  
23  
24  
25

**ORIGINAL****ORDER**

JUDGE JEFFREY D. SOBEL  
 District Court Judge - Dept. V  
 200 South third Street  
 Las Vegas, Nevada 89155  
 (702)455-4655

*Shirley B. [illegible]*  
 JUN 22 2 13 PM '00

FILED

DISTRICT COURT  
 CLARK COUNTY, NEVADA

\*\*\*\*\*

STATE OF NEVADA,

PLAINTIFF,

VS.

CASE NO. C153154

DEPT. V

DONTE JOHNSON aka John Lee White,

DEFENDANT.

**ORDER**

Pursuant to Supreme Court Rule 250, It is hereby ordered the Jury Trial and Penalty Hearing transcripts in the above-entitled case beginning on June 5, 2000, and continuing through June 15, 2000 be prepared on a daily basis.

Daily transcripts are to be prepared by NORTHWEST TRANSCRIPTS on a daily basis at state expense, filed with the County Clerk, and are to be furnished to the District Attorney's office and the Special Public Defender's office.

DATED this 22<sup>nd</sup> day of June, 2000.

*[Signature]*  
 DISTRICT JUDGE

0031

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**ORIGINAL**

*Shirley B. [illegible]*

DISTRICT COURT  
CLARK COUNTY, NEVADA

Jul-22 2 13 PM '00

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FILED

STATE OF NEVADA,

PLAINTIFF,

VS.

CASE NO. C153154

DEPT. V

DONTE JOHNSON aka John Lee  
White,

DEFENDANT.

**PAGE VERIFICATION SHEET**

I certify that the page numbers as stated below in the above-entitled jury trial, beginning June 5 and ending on June 15, 2000, are true and correct:

Date	Volume	Number of Pages
June 5, 2000	Day 1, Volume 1	<u>378</u>
June 6, 2000	Day 2, Volume 2	<u>306</u>
June 7, 2000	Day 3, Volume 3	<u>395</u>
June 8, 2000	Day 4, Volume 4	<u>256</u>
June 9, 2000	Day 5, Volume 5	<u>8</u>
June 13, 2000	Day 1, Volume 1 - Penalty	<u>128/159</u>
June 14, 2000	Day 2, Volume 2,3 - Penalty	<u>310</u>
June 15, 2000	Day 3, Volume 4 - Penalty	<u>90</u>

Verified by:

*Alona Candito*

Alona Candito, Deputy District Court Clerk, Department V

**ALONA CANDITO**



284  
**ORIGINAL**

**FILED**

JUN 23 2 29 PM '00

*Shirley E. Ruggins*  
CLERK

1 0031  
2 PHILIP J. KOHN  
3 SPECIAL PUBLIC DEFENDER  
4 Nevada Bar #0566  
5 JOSEPH S. SCISCENTO  
6 DEPUTY SPECIAL PUBLIC DEFENDER  
7 Nevada Bar #4380  
8 DAYVID J. FIGLER  
9 Nevada Bar # 4264  
10 309 South Third Street, 4th Floor  
11 Las Vegas, Nevada 89155-2316  
12 (702) 455-6265

13 Attorney for Defendant

14 DISTRICT COURT  
15 CLARK COUNTY, NEVADA

16 THE STATE OF NEVADA,

17 Plaintiff,

18 vs.

19 DONTE JOHNSON,

20 Defendant.

Case No. C153154

Dept. No. V

Hearing Date: 7.6.00  
Hearing Time: 9:00

21 **MOTION FOR NEW TRIAL**  
22 (Request for Evidentiary Hearing)

23 COMES NOW, Defendant, DONTE JOHNSON, by and through his attorneys, PHILIP  
24 J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO, Deputy Special Public  
25 Defender, and DAYVID J. FIGLER, Deputy Special Public Defender, and requests this  
26 Honorable Court to conduct an evidentiary hearing and thereafter order a new trial  
27 pursuant to **NRS 176.515**.

RECEIVED  
JUN 29 2000

COUNTY CLERK



CE42

1 This Motion is made and based upon the attached Points and Authorities, pleadings  
2 and papers on file herein, together with any such oral or documentary evidence which this  
3 court may adduce at the hearing on this matter.

4 DATED this 23rd day of June, 2000.

5 PHILIP J. KOHN  
6 CLARK COUNTY SPECIAL PUBLIC DEFENDER

7 By 

8 JOSEPH S. SCISCENTO  
9 DEPUTY SPECIAL PUBLIC DEFENDER  
10 NEVADA BAR #4380  
11 309 SOUTH THIRD STREET, 4TH FLOOR  
12 LAS VEGAS, NEVADA 89155-2316

13 **NOTICE OF MOTION**

14 TO: STATE OF NEVADA, Plaintiff; and

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

16 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and  
17 foregoing **MOTION FOR A NEW TRIAL** on the 6 day of July, 2000, at the  
18 hour of 9a M., in Department No. V of the above-entitled Court, or as soon  
19 thereafter as counsel may be heard.

20 DATED this \_\_\_\_ day of June, 2000.

21 PHILIP J. KOHN  
22 CLARK COUNTY SPECIAL PUBLIC DEFENDER

23 By 

24 JOSEPH S. SCISCENTO  
25 DEPUTY SPECIAL PUBLIC DEFENDER  
26 NEVADA BAR #4380  
27 309 SOUTH THIRD STREET, 4TH FLOOR  
28 LAS VEGAS, NEVADA 89155-2316

**POINTS AND AUTHORITIES**

Donte Johnson was convicted by a jury of four counts of murder as well as  
burglary, robbery and conspiracy counts on or about June 9, 2000. The prosecutor

1 proceeded upon multiple theories of criminal liability and it will never be known which  
2 theory was the prevailing one, nor if there was unanimous belief the Donte Johnson (aka  
3 John White) was, beyond a reasonable doubt, even proven to be the shooter. Prior to  
4 trial, Defendant had filed motion to suppress the contents of a search done in his  
5 residence, that being the master bedroom in at the Everman address. That Motion was  
6 denied by Order of this Court. (See Decision and Order of District Court, April 18, 2000).  
7 Subsequent to that ruling, however, the prosecutors conceded through multiple reference  
8 that contrary to the position taken in their Opposition to Motion to Suppress, that the  
9 Everman address was the residence of Defendant. (See Transcript, June 8, 2000, pp.  
10 213, 214, 215, 216, 217).

11 During the penalty phase two additional items came to the court's attention. First,  
12 Juror Kathleen Bruce sent a note to the court which related an incident which was  
13 reported to have occurred during the guilt phase where she encountered an African-  
14 American individual and became quite afraid. (See Transcript, June 16, 2000, pp. 73-74).

15 Second, it was brought to the Court's attention that a victim's family member was  
16 in the restricted jury lounge at least once. (See Transcript, June 16, 2000, pp. 68-70).

17 Finally, after the jury was dismissed and while discussing the case with counsel,  
18 Juror Kathleen Bruce also indicated that she was discussing the case with an outside  
19 party while still empaneled on this jury and that she was also aware of news accounts of  
20 this highly publicized trial. Juror Connie Patterson also implied that she had been  
21 discussing the matter and was aware of the media accounts. (See attached affidavit of  
22 Kristina M. Wildeveld).

23 These four points are the grounds for Defendant's motion for a new trial.

24 **ARGUMENT**

25 Nevada Revised Statutes provides for the granting of a new trial as follows:

26 **NRS 176.515 New trial: Grounds; time for filing motion.**

27 1. The court may grant a new trial to a defendant if required  
28 as a matter of law or on the ground of newly discovered  
evidence.



1 2. If trial was by the court without a jury the court may vacate  
2 the judgment if entered, take additional testimony and direct  
the entry of a new judgment.

3 3. A motion for a new trial based on the ground of newly  
4 discovered evidence may be made only within 2 years after the  
verdict or finding of guilt.

5 4. A motion for a new trial based on any other grounds must  
6 be made within 7 days after verdict or finding of guilt or within  
such further time as the court may fix during the 7-day period.

7 In Oliver v. State, 85 Nev. 418, 456 P.2d 431 (1969) the Nevada Supreme Court  
8 set out the criteria granting a new trial:

9 . . . Consideration by the trial court in granting or denying a  
10 new trial has been clearly set down in several recent cases.  
11 Pacheco v. State, 81 Nev. 639, 408 P.2d 715 (1965); Burton  
12 v. State, 84 Nev. 191, 437 P.2d 861 (1968); State v.  
13 Crockett, 84 Nev. 516, 444 P.2d 896 (1968). The statute  
14 governing the granting of new trials was amended by the 1967  
15 legislature and appears as NRS 176.515. Appellant contends,  
16 and we agree, that in seeking a new trial the newly-discovered  
17 evidence must be (1) newly discovered, (2) material to  
18 movant's defense, (3) such that it could not with reasonable  
diligence have been discovered and produced for the trial, (4)  
not cumulative, and (5) such as to render a different result  
probable upon retrial. To which we add (6) that it does not  
attempt only to contradict a former witness or to impeach or  
discredit him, unless witness impeached is so important that a  
different result must follow, Whise v. Whise, 36 Nev. 16, 131  
P. 967 (1913); and (7) that these facts be shown by the best  
evidence the case admits, People v. Sutton, 15 P. 86 (Cal.  
1887); People v. Beard, 294 P.2d 29 (Cal. 1956).

19 Id. At 424.

20 In the instant matter, counsel orally made Motion for A New Trial based on the new  
21 position taken by the State that the Everman residence was "Donte's house and room."  
22 (See Transcript June 8, 2000, page 221). The oral motion was denied by the court. The  
23 Defendant raises this Motion anew with the following written points and authorities and  
24 asks the Court to take it in consideration cumulatively with the juror and witness  
25 misconduct issues in ruling on the present motion.

26 "It is well established that when no new significant evidence comes to light a  
27 prosecutor cannot, in order to convict two defendants at separate trials, offer inconsistent  
28 theories and facts regarding the same crime." Thompson v. Calderon, 120 F.3d 1045 (9<sup>th</sup>

1 Cir. 1997) reversed on other grounds 523 U.S. 538 (1998). In United States v. Kojayan,  
2 8 F.3d 1315, 1323 (9th Cir. 1993), the 9<sup>th</sup> Circuit stated: "While lawyers representing  
3 private parties may - indeed, must - do everything ethically permissible to advance their  
4 clients' interests, lawyers representing the government in criminal cases serve truth and  
5 justice first. The prosecutor's job isn't just to win, but to win fairly, staying well within  
6 the rules." citing United States v. Kattar, 840 F.2d 118, 127 (1st Cir. 1988) (stating that  
7 the function of the prosecutor "is not merely to prosecute crimes, but also to make certain  
8 that the truth is honored to the fullest extent possible"). In the present case, it is  
9 improper to allow prosecutors to change position within the SAME TRIAL in contravention  
10 of the truth by advancing that Donte Johnson after the Motion to Suppress had been  
11 denied to then take the position that Donte Johnson was actually living in the Everman  
12 residence. Such should allow the Defendant a new trial.

13 Juror misconduct raises serious concerns in evaluating Motion for a New Trial.  
14 First, a Juror who admits an unreasonable fear of black men would not be properly seated  
15 in the jury. The fact that this Juror harbored this fear for a week and only revealed it to  
16 the Court after guilt deliberations, and then only when she thought that the information  
17 may help unseat a conscientious juror who did not want to impose the death penalty is  
18 highly prejudicial to the Defendant in the present matter. Second, this same juror  
19 admitted that she, despite the admonition to the contrary, was discussing the trial with  
20 her husband and was additionally discussing news accounts especially those relating to  
21 the debate over a hung penalty jury. Third, Juror Connie Patterson indicated that she  
22 "heard" that people (obviously not the jurors) were postulating that she was "the hold out  
23 since she was emotional." This clearly implies that Juror Patterson was aware of media  
24 accounts and discussions about such.

25 To serve on a jury, a juror must be free of all bias, including racial bias. See N.R.S.  
26 175.036. The right of a citizen accused to challenge jurors for actual bias is axiomatic.  
27 See Darbin v. Nourse, 664 F.2d 1109 (9<sup>th</sup> Cir. 1981), State v. McClear, 11 Nev. 39  
28 (1876). Juror Bruce was not free of bias, and was not forthright with this tribunal in a

1 timely fashion when an obvious incident occurred.

2 Compounding the error, this Juror admitted to discussing the matter with others  
3 in contravention of statute and gaining knowledge of media accounts. N.R.S, 175.401.

4 The Nevada Supreme Court has established a review procedure for juror  
5 misconduct, to wit:

6 We have established certain considerations which are relevant to the  
7 decision of whether the error is harmless or prejudicial. These include  
8 whether the issue of innocence or guilt is close, the quantity and character  
9 of the error, and the gravity of the crime charged.

10 Hui v. State, 103 Nev. 321 (1987) citing Big Pond v. State, 101 Nev. 1, 3 (1985).

11 In the present case, it cannot be disputed that the gravity of the crime charged  
12 could be no more serious under any circumstances. This alone should be the decisive  
13 factor in determining prejudice. Additionally, however, the jury did deliberate for a  
14 substantial period of time on the issue of guilt and since the case was greatly covered in  
15 the media, especially with regard to the horrific impact on the victims, any exposure to  
16 the media is necessarily grounds for a new trial.

17 Finally, there can be no justification for family members of the victim to be in the  
18 restricted area of the jury lounge. Irrespective of a family member's belief that they are  
19 allowed to go "wherever they wish" the jury must be free from this prejudicial encounter  
20 in the jury-only designated areas. The fact that one instance was revealed is sufficient  
21 to question whether there were more unreported instances, and since the gravity of the  
22 charges and the other misconduct was apparent, the mere fact of one transgression by  
23 the victim's family with regard to jury room contamination must give the Court pause to  
24 evaluate the propriety of the entire proceeding in light of the Federal and State due  
25 process rights of the Defendant in addition to the standards set forth in Big Pond, supra.

26 In the case at bar, the new position of prosecutor coupled with the juror and  
27 victim's family misconduct supports that a different result would have occurred if the trial  
28 was free from these errors.

...

...

1 WHEREFORE, Defendant prays that this Honorable Court conduct an evidentiary  
2 hearing on this matter for new a trial.

3 Respectfully submitted,

4 PHILIP J. KOHN  
5 CLARK COUNTY SPECIAL PUBLIC DEFENDER

6  
7 By 

8 JOSEPH S. SCISCENTO  
9 DEPUTY SPECIAL PUBLIC DEFENDER  
10 NEVADA BAR #4380  
11 309 SOUTH THIRD STREET, 4TH FLOOR  
12 LAS VEGAS, NEVADA 89155-2316  
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**AFFIDAVIT OF KRISTINA M. WILDEVELD**

STATE OF NEVADA       )  
                                  )  
COUNTY OF CLARK     )       ss.

KRISTINA M. WILDEVELD, being first duly sworn according to law, deposes and states as follows:

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

2. That on June 16, 2000, I was present immediately after the jury in the Donte Johnson trial was discharged and was present when the jury spoke with counsel regarding the deliberations on both penalty and guilt phase.

3. That I was present in the Courtroom when Juror Kathleen Bruce indicated that she had a fear of an African-American in an elevator during the course of the trial.

4. That I noted that the same Juror, Kathleen Bruce, had asked both the State and the Defense attorneys if the media was referring to her on last night's news account when it was related that a "hold-out" juror was a woman.

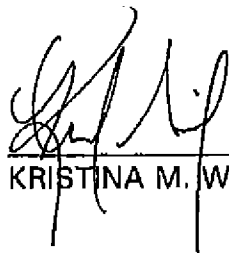
5. That I watched the evening news the night before and in fact there was an account that the jury was hung and that the "hold-out" was a woman juror.

6. That Juror Bruce brought this fact out on her own without any prompting or previous discussion from anyone in the room.

7. That upon asking the question, Mr. Dayvid Figler, counsel for Donte Johnson, inquired how she would know what was on television regarding this matter, and that Juror Bruce nervously responded that she had discussed the matter with her husband, however, it appeared to me that she had full and complete personal knowledge of the entirety of the news account. Juror Bruce also indicated that she felt that she was being singled out by the media as the "hold out."


8. At that time, another female juror, number 11, Connie Patterson, indicated "Really, I heard everyone thought it was me since I was emotional during the return of the verdict."

Further Affiant sayeth naught.

  
\_\_\_\_\_  
KRISTINA M. WILDEVELD

SUBSCRIBED AND SWORN to before me

this 23rd day of June, 2000.

  
\_\_\_\_\_  
NOTARY PUBLIC, In and for the  
County of Clark, State of Nevada



PATRICIA S. FLOOD  
Notary Public - Nevada  
My appt. exp. Sep. 1, 2000  
No. 02-87031





1 do that, logically we might as well take up whatever you have  
2 to tell us. And I'm in receipt of a note that's signed by you  
3 -- you are Kathleen Bruce?

4 JUROR BRUCE: Right.

5 THE COURT: It says, "I have an incident that  
6 occurred last week that I need to bring to your attention as  
7 soon as possible." So we've cleared the courtroom, there's no  
8 one else around, the cameras are off. Don't worry about it,  
9 just tell us what you felt you have to tell us.

10 JUROR BRUCE: Okay. A week ago last Wednesday when  
11 we all were dismissed, we all left for the evening, we went to  
12 the normal parking garage. Most of the group went to the  
13 first elevator; my car was on the other side, so I went to the  
14 other elevator. I was standing there, didn't realize somebody  
15 was standing behind me. I got startled, I turned around, it  
16 was Tim, Juror Number 7. I said, oh, you scared me. He says,  
17 oh, I -- he says, I sneak up on people a lot, and he laughed.

18 Okay. We were waiting for the elevator to come down  
19 from the roof, we were talking a little bit. It finally came  
20 down to the first floor, everybody got out of the elevator  
21 except one African -- African-American man; he had some kind  
22 of a bag with him. It was the day of the duffel bag and the  
23 guns and everything, so it kind of startled me at first, that  
24 he was on the elevator, did not get off at 1. But I thought  
25 for a second, Tim's here, okay, I'll get in -- I'll get in the

IV-73

1 elevator.

2 At that point I asked -- I pushed number 3, for the  
3 third floor, I asked Tim what floor he was on. He said, I'm  
4 on 3. I said, oh, you're on 3, too. And he said, yeah. And  
5 I said, okay.

6 Well, it got to 3, I got off. My car was right in  
7 the handicapped spot right there. He didn't get off, he  
8 stayed on the elevator. I was rifling around in my purse for  
9 stuff, I called my husband to let him know I was coming home.  
10 About a minute later the elevator opened again, and he got  
11 off.

12 I don't know, it just was very odd --

13 THE COURT: Okay.

14 JUROR BRUCE: -- that he said he was on 3 and then  
15 he stayed on the elevator with the other gentleman and then  
16 got off on 3 later.

17 THE COURT: Okay. Thank you very much. We'll see  
18 you in a minute or two.

19 JUROR BRUCE: Okay.

20 THE COURT: Matter of fact, just stay there in your  
21 seat. And just --

22 JUROR BRUCE: Oh, okay.

23 THE COURT: -- bring the other jurors in.

24 (Off-record colloquy)

25 MR. SCISCENTO: Don't we have another note?

IV-74



1 Point number seven, Donte's fingerprint at the crime  
2 scene. We've alluded to this, the Black and Mild cigar box.  
3 Charla told us, Bryan told us that Donte smokes Black and  
4 Milds. 100 percent positive that is Donte Johnson's  
5 fingerprint. Corroboration, scientific evidence that the  
6 witnesses who testified are telling the truth.

7 Point number eight, Matt's VCR at Donte's house.  
8 The VCR was found at the Everman home shortly after Donte was  
9 arrested. The VCR didn't appear there until August 14th,  
10 1998, the morning following the murders. And what do we know  
11 about that VCR? The remote control that is kept by Matt's  
12 father turned on that VCR, proof that that is Matt's VCR in  
13 the defendant's home. And we know that Donte's co-  
14 conspirator, Sikia Smith, held that VCR, you recall the  
15 testimony again of Ed Guenther. And we also have  
16 corroboration of LaShawnya's testimony, she told us that Sikia  
17 bought -- I'm sorry, Sikia sold the VCR to Donte for twenty  
18 dollars (\$20). We know Sikia's palm print is on there, we  
19 know the VCR turned up at Donte's home. Scientific evidence  
20 that corroborates LaShawnya Wright.

21 Point number nine, Pete's pager at Donte's house.  
22 Pager found buried in the backyard of the Everman home where  
23 Donte Johnson stayed. You heard the stipulation that that  
24 Peter [sic], in fact, belonged to Peter Talamantez.  
25 Corroboration of all the witnesses in this case when they told

IV-213

1 you Donte confessed to committing these crimes, to killing  
2 Peter Talamantez because he doesn't like Mexicans. Scientific  
3 corroboration. Physical corroboration when the pager is  
4 buried in the defendant's backyard.

5 Point number nine, gun in Deco's car. You saw the  
6 enforcer rifle that Sergeant Honea impounded after he stopped  
7 Donte and Terrell just three days after the quadruple murders.  
8 Charla, Tod and LaShawnya all identified that gun as a gun  
9 that was commonly kept in the tote bag, and we know that the  
10 tote bag left the Everman home shortly before Donte committed  
11 the crimes. Corroboration.

12 Point number nine, gun in Deco's room. When  
13 Sergeant Hefner searched the Everman home after arresting  
14 Donte Johnson he found the collapsible Ruger rifle that  
15 everybody described in this case. Just three days after the  
16 murder it's recovered. And Charla and Tod described that gun  
17 as the gun that was commonly kept in the tote bag, and the  
18 tote bag left the Everman home the night that Donte Johnson  
19 killed these boys.

20 Point number twelve, duct tape in Deco's room. All  
21 four victims in this case restrained with duct tape. You saw  
22 the photographs. And isn't it interesting that there's a  
23 partial roll of duct tape recovered from the room where Donte  
24 Johnson's stays, sitting in the duffel bag that everybody  
25 testified about in this case. And doesn't that evidence

IV-214

1 corroborate the testimony you heard from the witness stand,  
2 the witnesses who said Donte told them about the victims being  
3 taped up with duct tape.

4 Twelve points, if you will, that establish Donte  
5 Johnson's guilt.

6 Now, I suppose it's possible we can take each one of  
7 these points and explain it away. I guess Charla Severs is  
8 lying, perhaps Tod Armstrong is lying, Bryan Johnson he must  
9 be lying too.

10 MR. FIGLER: Your Honor, they objected during the  
11 course as to that terminology, we would have to object at this  
12 time for that as well.

13 THE COURT: I think he's saying in terms of argument  
14 what might be anticipated, as such it's overruled.

15 MR. DASKAS: And if Donte Johnson is not guilty then  
16 LaShawnya Wright must be lying too. So Charla is lying, Tod  
17 is lying, Bryan is lying and LaShawnya Wright is lying. And  
18 apparently somehow the victims' blood just turned up on Donte  
19 Johnson's pants. Somebody -- the true killer apparently wore  
20 Donte Johnson's pants to the crime scene and then returned  
21 those pants to Donte Johnson's bedroom before the police  
22 showed up. And let's not forget that somebody must have  
23 deposited Donte Johnson's semen on his own pants.

24 Deco's DNA at the murder scene. Apparently  
25 somebody, for Donte Johnson to be found not guilty, took a

IV-215

1 cigarette butt that Donte Johnson had smoked and placed it at  
2 the crime scene. Unlucky for Donte Johnson.

3           Deco's fingerprint at the murder scene. For Donte  
4 Johnson to be found not guilty you must conclude that somebody  
5 took the cigar box holding his fingerprint, and they planted  
6 it at the crime scene. Unlucky Donte Johnson.

7           Matt's VCR at Deco's house. For Donte Johnson to be  
8 found not guilty, apparently somebody took Matt's VCR from the  
9 Everman home -- from the Terra Linda and placed it in the home  
10 where Donte Johnson stayed. Is that reasonable to believe?

11           Peter's pager at Deco's house. For Donte Johnson to  
12 be found not guilty you must conclude, speculate that somebody  
13 else buried the pager in Donte's backyard, along with all  
14 these other speculations you must conclude.

15           The Ruger in Deco's room. Isn't it interesting that  
16 all these witnesses described the guns that Donte had  
17 possession of, and sure enough we find the Ruger rifle in his  
18 -- in his room. I guess somebody planted that. The Enforcer  
19 rifle in Donte's car, you heard the testimony about the fact  
20 that that gun was kept in the duffel bag, the duffel bag left  
21 the night of the murders, and it just happened to be found in  
22 his room -- in his car rather, three nights after the  
23 homicides.

24           And the duct tape in Deco's room. Apparently the  
25 true killer, for you to find Donte Johnson not guilty, placed

IV-216

1 a partial roll of duct tape in Donte Johnson's room before the  
2 police showed up.

3 I suppose it's possible to explain away each of  
4 these points, but the thing about reasonable doubt is, it must  
5 be reasonable. And is it reasonable to conclude that all  
6 these witnesses are lying, that the evidence was planted, that  
7 the guns were planted in his car. Is it reasonable to  
8 conclude that Donte Johnson is not guilty?

9 This evidence does not point to Ace Hart, and the  
10 evidence does not point to Bryan Johnson as having committed  
11 these crimes, and no, the evidence does not even point to Tod  
12 Armstrong in this case. The evidence points to one person and  
13 only one person, Donte Johnson. And you must find him guilty  
14 of all the crimes with which he's charged, including four  
15 counts of first degree murder with use of a deadly weapon.

16 Thank you.

17 THE COURT: Thank you.

18 Would counsel approach the bench please.

19 MR. FIGLER: Can we pull the screen down?

20 THE COURT: Why don't we do it in the order -- this  
21 order that I'm going to suggest.

22 MR. FIGLER: Note for the record, it's still up.

23 (Off-record bench conference)

24 THE COURT: Okay. Take the screens out and turn  
25 them off please.

IV-217





1 Figler?

2 MR. SCISCENTO: We'll submit it, Your Honor. I  
3 don't know what you're asking. We've provided --

4 THE COURT: What I'm asking you is, I indicated to  
5 you that I'd appreciate some assistance with reference to the  
6 Allen charge. Yesterday, I believe around 3 o'clock, my  
7 question is very simple is, do you have anything that might  
8 assist me if this comes up. Not submitted.

9 MR. FIGLER: No, Judge, there's nothing --

10 THE COURT: I'm asking you, did you do any research?

11 MR. FIGLER: -- there's nothing further. If an  
12 Allen charges does come forward.

13 THE COURT: I want to ask you is --

14 MR. FIGLER: Our research is the same as theirs.

15 THE COURT: Okay . Thank you.

16 MR. GUYMON: Judge, being that we all agree, do you  
17 want any of the cases? I didn't --

18 THE COURT: No. No. That's my thinking too.

19 ATTORNEYS: Thank you, Judge. Thank you, Your  
20 Honor.

21 (Court recessed)

22 THE COURT: And before we start them deliberating,  
23 let's go back on the record.

24 The final issue, which to me is a non-issue, it is  
25 my understanding that, at some point late in the day, the

IV-68

1 victim -- some member of the one of the victim's families  
2 found themselves in the jury lounge where this magazine was  
3 sitting. Now, Stony has represented to me they -- they sit in  
4 the jury lounge where they are all assembled and then they  
5 start deliberating, that he didn't see this, whatever that's  
6 worth, in the morning. To me it's a non-issue.

7 I mean there is (a), no doubt that for the last six  
8 months at least, there's been a pretty raging controversy in  
9 this country about the propriety of the death penalty if you  
10 have a -- any degree in the news -- of interest in news at  
11 all, you know that the State of Illinois has a moratorium on  
12 the death penalty now and you know that it's an issue in the  
13 presidential campaign with Bush. And you know that there's  
14 been daily newspaper articles for the last week, not  
15 concerning Mr. White, but concerning the death penalty  
16 practice in Nevada and if people are exposed to this it has  
17 nothing to do with this case particularly, of course. In  
18 part, because the major emphasis is cases can be a bad result  
19 because they didn't use DNA evidence. We had, at least  
20 according to the State positive DNA evidence in this case, to  
21 me it's a non-issue. Does anybody wish to pursue it?

22 MR. DASKAS: No, Judge.

23 MR. FIGLER: No, Judge, I mean I'm curious as to why  
24 a victim's family member would be in the jury lounge, but.

25 THE COURT: Well, I would say Mr. Figler, because if

1 you've been around this courthouse longer, you would form the  
2 perception that his courthouse has many problems with it. One  
3 of them is that there's no real segregation of the jurors,  
4 from the witnesses, from the family members, from the lawyers  
5 and in the new courthouse it's gonna be remedied. But that is  
6 a problem. People are free, thinking that they are taxpayers  
7 to wander almost anywhere in this building.

8 They should be deliberating.

9 (Court recessed at 10:10 a.m., until 11:35 a.m.)

10 (Jury is not present)

11 THE COURT: All right. As you know, we have a note  
12 -- well, we have two.

13 "We find ourselves stalemated. There does not  
14 appear to be any possibility of movement by either side."  
15 That came out about 11:00 o'clock.

16 And about the same time we get from Juror Number 1,  
17 Kathleen Bruce, "I have an incident that occurred last week  
18 that I need to bring to your attention as soon as possible."  
19 I have no idea what Kathleen Bruce, it's signed Juror Number  
20 1, wants to tell us, but I would assume, as long as we're  
21 doing everything on the record, I'm -- I have the feeling it's  
22 nothing that's going to in any way impact on this, but I  
23 gather we should hear from her before we hear from the others.  
24 Don't you think?

25 MR. GUYMON: I would think that'd be appropriate,

IV-70



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*Shirley B. Rungtine*  
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DECS  
JUDGE JEFFREY D. SOBEL  
District Court Dept. V  
200 South Third Street  
Las Vegas, Nevada 89155  
(702) 455-4655

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

STATE OF NEVADA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
DANTE JOHNSON, )  
)  
Defendant. )

Case No. C153154  
Dept No. V  
Docket No. H

DECISION AND ORDER

Defendant has moved to suppress evidence seized by police in a warrantless search of premises at 4815 Everman in August 1996.

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

Todd consented to the search in writing. T pp42-43. Johnson

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

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

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

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

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

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

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

9 I think Johnson's contacts with Everman are on the extreme  
10 low end of a continuum one could construct. Surely, given the  
11 passage of time and the different facts that time might have  
12 brought, Johnson might have eventually moved along the continuum  
13 to a point where he was a legitimate co-tenant (perhaps with a  
14 key of his own). Those facts were not present here on August 18,  
15 1998.  
16

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1 Where the facts are as I find them, and Todd Armstrong  
2 consents to a search of premises Johnson disclaims an interest in,  
3 the police acted properly and the Motion to Suppress should be and  
4 is denied. See United States v. Matlock, 415 US 164 (1974);  
5 United States v. Sanders, 130 F3d 1316 (8<sup>th</sup> Cir.1998); United States  
6 v. Manqum, 100 F3d 164 (CADDC Cir. 1996); People v. Welch, 20 Cal  
7 4<sup>th</sup> 701, 976 P2d 754 (1999); Snyder v. State, 103 Nev 275, 738 P2d  
8 1303 (1997).

10 DATED and DONE this 18<sup>th</sup> day of April, 2000.

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14 DISTRICT COURT JUDGE JEFFREY D. SOBEL  
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FILED AFTER HOURS

JUN 23 2000

ROC 0031  
 PHILIP J. KOHN  
 SPECIAL PUBLIC DEFENDER  
 Nevada Bar #0566  
 JOSEPH S. SCISCENTO  
 DEPUTY SPECIAL PUBLIC DEFENDER  
 Nevada Bar #4380  
 DAYVID J. FIGLER  
 Nevada Bar # 4264  
 309 South Third Street, 4th Floor  
 Las Vegas, Nevada 89155-2316  
 (702) 455-6265

2000 JUN 23 P 2:46

Attorney for Defendant

DISTRICT COURT  
 CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON,

Defendant.

Case No. C153154

Dept. No. V

Hearing Date:  
 Hearing Time:

RECEIPT OF COPY

RECEIPT OF COPY of the foregoing MOTION FOR A NEW TRIAL is hereby  
 acknowledged this 23<sup>rd</sup> day of June, 2000.

*Stewart L. Bell*

STEWART L. BELL  
 District Attorney  
 200 S. Third Street  
 Las Vegas, NV 89155  
 Attorney for Plaintiff

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

JUN 28 11 34 AM '00

*Shirley B. Buzgier*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*

THE STATE OF NEVADA,  
Plaintiff,

vs.

DANTE JOHNSON, aka John White,  
ID# 1586283,  
Defendant.

Case No. :C153154  
Dept. No. :V

EX PARTE MOTION TO ALLOW FEES IN EXCESS OF STATUTORY MAXIMUM FOR  
ATTORNEY ON COURT APPOINTED CASE FOR MATERIAL WITNESS CHARLA SEVERS

COMES NOW, appointed counsel, JAY L. SIEGEL, ESQ., of Wolfson & Glass, and hereby  
moves this Honorable Court for an Order Allowing Attorney Fees in Excess of Statutory Maximum,  
in the above-captioned case.

This Motion is made and based on the pleading and papers on filed herein, and the affidavit  
of counsel attached hereto.

DATED this 21<sup>st</sup> day of June, 2000.

WOLFSON & GLASS

By

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

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4. If the appointing court because of:

- (a) The complexity of a case or the number of its factual or legal issues;
- (b) The severity of the offense;
- (c) The time necessary to provide an adequate defense; or
- (d) Other special circumstances,

**AFFIDAVIT OF JAY L. SIEGEL**

STATE OF NEVADA )  
COUNTY OF CLARK ) ss:

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

1. That I am a duly licensed and practicing attorney of the State of Nevada at the offices of Wolfson & Glass, located at 601 South 7th Street, Las Vegas, Nevada and I am competent to testify to the facts set forth herein.

2. That Affiant has been appointed by the above-entitled Court as counsel for the material witness in the above-captioned case, CHARLA SEVERS.

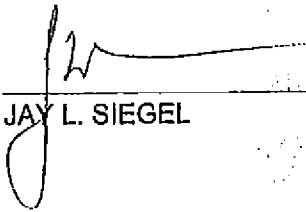
3. That Affiant believes that the amount of attorney's fees in this case was necessary and reasonable.

4. That Affiant's total bill in this matter is TWO THOUSAND SEVEN HUNDRED AND SEVENTY-TWO DOLLARS AND SEVENTY-FIVE CENTS (\$2,772.75), and exceeds the statutory maximum.

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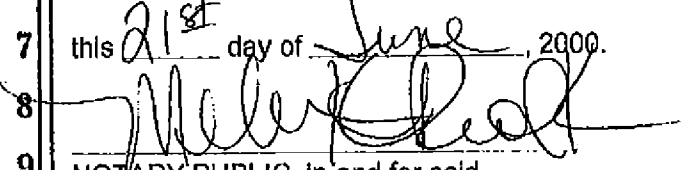
5. That Affiant believes that the services performed by him were necessary and reasonable to protect Ms. Severs rights, and ensure her appearance at the trial for the State.

FURTHER, your affiant sayeth not.

  
JAY L. SIEGEL

SUBSCRIBED AND SWORN to before me

this 21<sup>st</sup> day of June, 2000.

  
NOTARY PUBLIC, in and for said  
County and State



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*Shirley D. Longoria*  
CLERK

1 **EXPR**  
2 **WOLFSON & GLASS**  
3 **Jay L. Siegel, Esq.**  
4 **Nevada State Bar No. 4748**  
5 **601 South 7th Street**  
6 **Las Vegas, Nevada 89101**  
7 **(702) 385-7227**  
8 **Attorney for Defendant**

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

11 \* \* \*

12 THE STATE OF NEVADA,  
13  
14 Plaintiff,

15 vs.

16 DANTE JOHNSON, aka John White,  
17 ID# 1586283,

18 Defendant.

Case No. :C153154  
Dept. No. :V

19 **EX PARTE ORDER ALLOWING FEES IN EXCESS OF STATUTORY MAXIMUM FOR**  
20 **ATTORNEY ON COURT APPOINTED CASE FOR MATERIAL WITNESS CHARLA SEVERS**

21 Upon the Ex Parte Motion of court appointed counsel, JAY L. SIEGEL, ESQ., and good  
22 cause appearing therefore,

23 **IT IS HEREBY ORDERED** that this fee is both reasonable and necessary and payment in  
24 the amount of TWO THOUSAND SEVEN HUNDRED AND SEVENTY-TWO DOLLARS AND  
25 SEVENTY-FIVE CENTS (\$2,772.75) to JAY L. SIEGEL, ESQ., the court appointed attorney, be  
26 allowed in excess of the statutory maximum.

27 DATED this 27 day of June, 2000

28 *[Signature]*  
DISTRICT COURT JUDGE

Respectfully submitted by:

WOLFSON & GLASS

By

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

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JUN 28 2000

COUNTY CLERK

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*Shirley B. Thompson*  
CLERK

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

DONTE JOHNSON, aka John White,  
#1586283,  
  
Defendant.

Case No. C153154  
Dept. No. V

STATE'S RESPONSE TO MOTION FOR NEW TRIAL

DATE OF HEARING: 07/06/00

TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through  
ROBERT DASKAS, Deputy District Attorney, and files this State's Response To Motion For  
New Trial.

This Response is made and based upon all papers and pleadings on file herein, the

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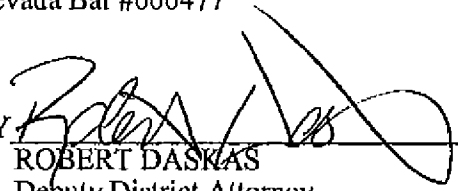
COUNTY CLERK

1 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
2 deemed necessary by this Honorable Court.

3 DATED this 28 day of June, 2000.

4 Respectfully submitted,

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

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

12 **POINTS AND AUTHORITIES**

13 Donte Johnson was convicted of murder, burglary, robbery and conspiracy on June 9,  
14 2000. At the time that the crimes were committed, Donte Johnson was staying at 4815 Everman  
15 in Las Vegas. (Trial Transcript (TT), 6/6/00, II-148). The Defendant and his girlfriend, Charla  
16 Severs, slept in the master bedroom. (TT, 6/6/00, II-151). An evidentiary hearing was held on  
17 January 6, 2000, pursuant to Defendant's Motion to Suppress Evidence, to determine if evidence  
18 was lawfully seized from the master bedroom of the residence by detectives. (Transcript of  
19 Evidentiary Hearing (TR), 1/6/00). It was determined at the hearing that Tod Armstrong was the  
20 primary resident at 4815 Everman; the residence was owned by Tod Armstrong's mother, Cheryl  
21 Stevens, (TR pp. 9, 58); and Tod Armstrong had the only key to the residence. (TR pp. 10, 58,  
22 103). Detectives Thowsen and Buczek, who were assigned to the case, through their  
23 investigation into the crimes were able to ascertain that Tod Armstrong had the authority to  
24 consent to a search of the residence. (TR at 62). The detectives obtained a consent-to-search  
25 card for 4815 Everman, Las Vegas, Nevada prior to searching the home. (TR at 43). Evidence



1 connecting the Defendant to the crimes was obtained in the master bedroom of the Everman  
2 home. Defendant's Motion to Suppress Evidence was denied. (Decision and Order of District  
3 Court, April 18, 2000).

4 During the closing arguments for the guilt phase of the trial, the prosecution referred to  
5 the Everman residence as the Defendant's home and the master bedroom of the home as the  
6 Defendant's room. (TT, 6/8/00, IV-213, 214, 215, 216, 217). This is the label given to the  
7 locations by the prosecution, because it was clearly established at trial that, during the two weeks  
8 leading up to the crimes, the Defendant was staying in the master bedroom of the home at 4815  
9 Everman and nowhere else. (TT, 6/6/00, II-151; TT, 6/7/00, III-8). It was also established at  
10 trial that other people used the master bedroom of the Everman home during this time. (TT,  
11 6/6/00, II-151).

12 The defense cites four examples of incidents that occurred concerning jurors, two of  
13 which were brought to the court's attention during the penalty phase after it was determined that  
14 the jury could not reach a decision as to sentencing. The first incident was brought to the  
15 attention of the judge by a note from Juror Kathleen Bruce, and discussion of the matter was  
16 placed on the record. (Penalty Phase Transcript (PPT), 6/16/00, IV-73-74). Bruce mentioned  
17 going to the parking garage one evening during the guilt phase of the trial and noticing a  
18 suspicious African-American man carrying a bag riding the elevators. (PPT, 6/16/00, IV-73).  
19 The incident occurred following a day of testimony involving the defendant carrying around a  
20 duffel bag full of guns. (TT, 6/7/00, III-23-27, 41, 149). The second incident involved a  
21 member of one of the victim's families being in the jury lounge during the penalty phase, and  
22 discussion of the incident is on the record. (PPT, 6/16/00, IV-68-70).  
23  
24  
25

1 The other two incidents of alleged jury misconduct were drawn out by counsel after the  
2 jury had been dismissed and were submitted by affidavit. (See Defense Affidavit of Kristina M.  
3 Wildeveld (Affidavit)). The Affidavit is a sworn statement of a Deputy Special Public Defender,  
4 who was not involved in the case and was present when the jury spoke with counsel immediately  
5 after being discharged. It does not contain actual statements by the jurors. Juror Kathleen Bruce  
6 is reported as stating in the Affidavit that she watched the news the evening before the jury's  
7 dismissal, and heard that there was one hold-out juror that was a woman. (Affidavit p. 1). She  
8 also reported discussing the news with her husband. (Affidavit p. 2). Juror Connie Patterson  
9 also reported hearing that everyone thought that she was the hold out. (Affidavit p. 2)  
10

#### 11 12 ARGUMENT

13 The Defendant has cited NRS 176.515 in his motion as a basis for the granting of a new  
14 trial. NRS 176.515 sets forth the grounds for the granting of a new trial as "if required as a  
15 matter of law or on the ground of newly discovered evidence."  
16

17 The Defendant has not alleged newly discovered evidence, nor any of the attenuating  
18 requirements for a new trial based upon such grounds. Therefore, the granting of a motion for  
19 new trial could not be had under NRS 176.515. Funches v. State, 113 Nev. 916 (1997); Walker  
20 v. State, 113 Nev. 853 (1997); D'Agostino v. State, 112 Nev. 417 (1996); and Simmons v. State,  
21 112 Nev. 91 (1996).

22 Donte Johnson was convicted beyond a reasonable doubt, unanimously by a lawfully  
23 selected jury, of four counts of murder, burglary, robbery and conspiracy on June 9, 2000. That  
24 the jury articulate the specific theory presented by the prosecution upon which they made their  
25 decision is neither required by law, nor a topic of speculation properly presented before the

1 court. The jury need not be unanimous on the means or the theory of criminal liability in  
2 arriving at their verdict. Walker v. State, 113 Nev. 853 (1997); Evans v. State, 113 Nev. 885  
3 (1997). Whatever the theory of criminal liability employed, the jury found sufficient evidence to  
4 support the conviction. Defense statements regarding this matter in the Points and Authorities  
5 of their Motion for New Trial are improper.

6 Furthermore, it is not required that the jury determine the Defendant to be the actual  
7 shooter to convict him of first-degree murder. One of the theories by which the Defendant was  
8 charged and convicted was that of felony murder, which does not require that the Defendant  
9 actually do the shooting, but that the murder occurred during the commission of one of the  
10 enumerated felonies under NRS 200.030. The defendant was convicted of burglary and  
11 robbery, among other things, during which a murder was committed. Both burglary and robbery  
12 are enumerated under NRS 200.030(b). Defense statements regarding this matter in the Points  
13 and Authorities of their Motion for New Trial are also improper.

15 Defendant's Motion to Suppress Evidence Illegally Seized from 4815 Everman was  
16 properly denied because the person determined to be in sole control of the residence gave  
17 permission to Detectives to search the home. (TR at 43). That the prosecution referred to the  
18 home and the master bedroom of the home as the Defendant's during closing arguments is not  
19 the introduction of new material evidence, but merely a matter of semantics. It was clearly  
20 established at trial that the home belonged to Tod Armstrong's mother, and Tod Armstrong was  
21 the primary resident of the home. Several other people, including the Defendant, his girlfriend,  
22 and codefendant Terrell Young would use the master bedroom of the Everman residence to sleep  
23 in and temporarily store personal belongings. (TT, 6/6/00, II-151; TT, 6/7/00, III-138). The  
24 door to the master bedroom was rarely locked, except when being used by the Defendant and his  
25

1 girlfriend for "private" relations. (TR at 95). By referring to the master bedroom as the  
2 Defendant's room and the Everman residence as the Defendant's home, the prosecution is  
3 merely implying that, if the Defendant had a home at all, it would be the master bedroom of the  
4 Everman residence. The evidence at trial, that clearly establishes the transient nature of the  
5 occupancy of the master bedroom of the Everman home, cannot be undone by the label given to  
6 it by the prosecution in closing arguments. The prosecution has not changed its position to claim  
7 that the Everman home or the master bedroom of the Everman house belong to, or were in  
8 exclusive control of, the Defendant. Any evidence obtained from the master bedroom can be  
9 construed by the jury to belong to anyone who may have had access to the room. The jury is free  
10 to determine whether the evidence, seized under properly obtained consent, creates any link  
11 between the Defendant and the crimes absent any possessory interest in the room.  
12

13 The fact that the prosecution, in their closing argument, labeled the Everman residence as  
14 the Defendant's home, or the master bedroom as his room does not present new evidence that the  
15 Defendant was not aware of at trial. The Defendant knew where he was staying during the  
16 weeks leading up to the crimes, and several witnesses testified to the fact. (TT, 6/6/00, II-151;  
17 TT, 6/7/00, III-8, 138). All such information was available to the Defendant from the outset of  
18 the trial.

19 The standard for the granting of a new trial under NRS 176.515 has been articulated by  
20 the Nevada Supreme Court in Sanborn v. State, 107 Nev. 399, 406 (1991), in which the Court  
21 held as follows:  
22

23 A district court may grant a new trial on the ground of newly discovered evidence. NRS  
24 176.515(1). The grant or denial of a new trial on this ground is within the trial court's discretion  
25 and will not be reversed absent its abuse. McCabe v. State, 98 Nev. 604 (1982). To establish a

1 basis for a new trial on this ground, the evidence must be (1) newly discovered, (2) material to  
2 the defense, (3) such that even with the exercise of reasonable diligence it could not have been  
3 discovered and produced for trial, (4) non-cumulative, (5) such as to render a different result  
4 probable upon retrial, (6) not only an attempt to contradict, impeach, or discredit a former  
5 witness, unless the witness is so important that a different result would be reasonably probable,  
6 (7) and the best evidence the case admits. McLemore v. State, 94 Nev. 237 (1978).

7  
8 If any one of these criteria is absent, the defendant is not entitled to a new trial and the  
9 trial court should deny the motion for a new trial. See U.S. v. Wright, 625 F.2d 1017, 1019 (1st  
10 Cir. 1980)(citing Rule 33 of the Federal Rules of Criminal Procedure).

11 Motions for a new trial on the ground of newly discovered evidence are viewed with  
12 disfavor by the courts. Taylor v. Illinois, 484 U.S. 400, 414, 108 S. Ct. 646, 655 (1988). The  
13 movant bears a heavy burden of showing exactly how the newly discovered evidence rises to the  
14 level of meriting a new trial. Immigration and Naturalization Service v. Abudu, 485 U.S. 94,  
15 109, 108 S. Ct. 904, 914 (1988). Bare allegations regarding compliance with each element are  
16 insufficient. Pacheco v. State, 81 Nev. at 640 (1965).

17 Whether the Everman residence was the Defendant's home or the master bedroom his  
18 room are not, in this case, material to his defense. It was already established at trial that the  
19 Defendant stayed in the master bedroom of the Everman house and temporarily kept his  
20 belongings there by the time closing arguments were made. Actual ownership is not a necessary  
21 component to establishing presence. Therefore, since no new evidence was introduced by the  
22 prosecution during closing arguments, Defendants Motion For New Trial under NRS 176.515  
23 should be denied on his first point of contention.  
24  
25

1 The Defendant's contention that the information regarding the Jurors Kathleen Bruce and  
2 Connie Patterson constitutes newly discovered evidence or is grounds for a new trial is without  
3 merit.

4 The Defendant is seeking a new trial for alleged jury misconduct, which rests entirely on  
5 the sacrosanct mental processes of the jury evaluating the evidence. NRS 176.515 has not been  
6 used as a vehicle for granting a new trial based upon alleged jury misconduct. The only statute  
7 remotely applicable is NRS 175.121(4), which allows a judge to declare a mistrial for very  
8 specific reasons that are not alleged by the Defendant in this case. NRS 175.121(4) states that,  
9 "if it appears that the juror has declared any fact relating to the case to his fellow jurors as of his  
10 own knowledge, or that his vote was influenced by such knowledge undisclosed, the judge shall  
11 declare a mistrial." The incidents involving jurors cited in the Defendant's motion are  
12 insufficient to constitute misconduct, and are certainly not grounds for a new trial.

14 Juror Bruce's concern about her personal safety when a suspicious man is riding the  
15 elevators in the parking garage, following a day of traumatic testimony of the kind that was  
16 given in this trial, was perfectly understandable. Because the man happened to be African  
17 American, does not mean that the juror has a predisposed "unreasonable fear of black men" as  
18 suggested by the defense. One of the purposes and values of having a jury is that they are not  
19 emotionless automatons, but human beings that apply feeling and compassion to reason. The  
20 average law-abiding person, such as Juror Bruce, has probably not been exposed to the kind of  
21 violence that occurred in this case. To have a heightened awareness of her surroundings  
22 following a day of testimony regarding the facts such as were presented in this case is certainly  
23 reasonable for any juror.

1       The second incident, where one of the victim's family members was found in the jury  
2 lounge, was considered to be a "non-issue" by the court. (PPT, 6/16/00, IV-69). The layout of  
3 the District Courthouse is such that victims, family members and witnesses will come into  
4 contact with jurors from time-to-time in the halls, in the restroom or in the snack bar. Absent  
5 absolute sequestration of the jury, contact with any number of people from the outside world is  
6 likely. The court issues an admonishment every time the jurors leave the courtroom not to  
7 discuss the case with anyone, including other jurors. The Defendant has presented no evidence  
8 that this admonishment was violated at the time that the victim's family member was found in  
9 the jury lounge. The defense speculates that if this incident occurred, others may have. As is  
10 well established in American law, cases are not considered on evidence that may exist or  
11 possibly could exist. The evidence that does exist is that a single family member wandered into  
12 the jury lounge, believing the area to be of free access. There is no evidence that any  
13 communication occurred between the family member and any of the jurors in this instance or any  
14 other.  
15

16       The Defendant's third allegation of jury misconduct, the fact that Juror Kathleen Bruce  
17 watched the news and discussed it with her spouse after the jury was unable to reach a decision  
18 as to sentencing is a moot issue. The jury did not deliberate beyond that point, and the jury was  
19 ultimately dismissed from the sentencing phase. The fact that Juror Bruce watched the news at  
20 this time does not provide any indication that she watched the news or discussed the case  
21 throughout the course of the guilt phase of the trial. Juror Bruce has been forthcoming with any  
22 information she has deemed to be relevant to the deliberations of the jury, and there is no  
23 evidence of misconduct on her part during the course of the trial.  
24  
25

1 The Defendant's final allegation of juror misconduct, Juror Connie Patterson's comment  
2 that she heard that she was the single hold out during the penalty phase, does not in any way rise  
3 to the level of misconduct. As previously stated, where the jurors are not under absolute  
4 sequestration, they will be exposed to other people, and they will hear things that people say.  
5 The jurors took an oath to weigh the evidence as presented at trial. Regardless of what she heard  
6 outside of the courtroom, there is no indication that it had any effect on her deliberations in the  
7 jury room. Furthermore, the incident occurred during the penalty phase of the trial after the jury  
8 was unable to reach a decision as to sentencing. Since the sentencing decision has been taken  
9 away from the jury, the issue is moot.  
10

11 The Defendant in his motion correctly cites Hui v. State, 103 Nev. 321 (1987) as the  
12 Nevada Supreme Court's established review procedure for juror misconduct. The court in Hui  
13 states that the factors to be weighed in determining whether an error is harmless or prejudicial is  
14 "whether the issue of innocence or guilt was close, the quantity and character of the error, and  
15 the gravity of the crime charged." Jury misconduct raises a presumption of prejudice that may  
16 be rebutted by proof that no prejudice actually resulted. People v. Cooper, 809 P.2d 865, 902  
17 (Cal. 1991). The presumption of prejudice may be rebutted by reviewing the court's  
18 determination below, and upon examining the entire record, that there is no substantial likelihood  
19 that the complaining party suffered actual harm. People v. Hardy, 825 P.2d 781, 833 (Cal.  
20 1992). The time and character of the jurors' conduct in this case was such that it had no effect  
21 on the decision by the jury on the guilt or innocence of the Defendant. The issue of guilt or  
22 innocence was not close in this case, as evidenced by the relatively short period of deliberation  
23 by the jurors. The record is replete with evidence to support the Defendant's guilt. The  
24 Defendant fails to demonstrate how the incidents as reported by the jurors constitute misconduct  
25



1 or, if they were misconduct, how they so unduly prejudiced the proceedings as to constitute a  
2 mistrial.

3 None of the evidence presented by the Defendant meets the criteria for new evidence  
4 requiring a new trial under NRS175.515. There is an insufficient basis to support the suggestion  
5 that juror misconduct occurred or prejudiced the Defendant at trial, and similarly, an insufficient  
6 basis to hold an evidentiary hearing into the occurrences. It is discretionary with the court  
7 whether to hold an evidentiary hearing when there is an allegation of juror misconduct. People  
8 v. Cabrera, 230 Cal.App.3d 300, 306, 281 Cal.Rptr. 241 (1991). The court, quoting People v.  
9 Hadgcock, 51 Cal.3d 395, 415-416 (1990), noted:

11 "This does not mean ... that a trial court must hold an evidentiary hearing in every  
12 instance of alleged jury misconduct. The hearing should not be used as a 'fishing  
13 expedition' to search for possible misconduct, but should be held only when the  
14 defense has come forward with evidence demonstrating a strong possibility that  
15 prejudicial misconduct has occurred." Cabrera, 230 Cal.App. at 306, 281  
16 Cal.Rptr. at 242.

17 Where there are allegations of jury misconduct, "the test is whether or not the misconduct  
18 has prejudiced the defendant to the extent that he has not received a fair trial." United States v.  
19 Conn, 716 F.2d 550, 551 (9th Cir. 1983), quoting United States v. Klee, 494 F.2d 394, 396 (9th  
20 Cir. 1974). Here, the Defendant has come forward with no evidence suggesting that there was  
21 prejudicial misconduct requiring an evidentiary hearing.

22 ///

23 ///

24 ///

25 ///

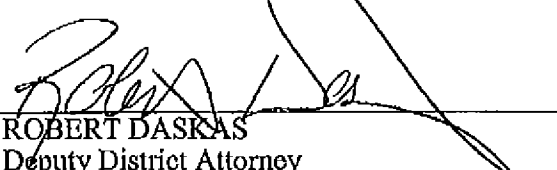
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CONCLUSION

Based on the foregoing, the State of Nevada respectfully requests that this court deny,  
both the Defendant's Motion for a New Trial and request for an evidentiary hearing.

Respectfully submitted,

STEWART L. BELL  
DISTRICT ATTORNEY  
Nevada Bar #000477

BY   
ROBERT DASKAS  
Deputy District Attorney  
Nevada Bar #004963

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of STATE'S RESPONSE TO MOTION FOR NEW TRIAL,  
was made this 30<sup>th</sup> day of June, 2000, by facsimile transmission to:

JOSEPH SCISCENTO  
DAYVID FIGLER  
DEPUTY SPECIAL PUBLIC DEFENDERS  
SPECIAL PUBLIC DEFENDER'S OFFICE  
ATTORNEYS FOR DEFENDANT  
FAX #455-6273

Patti Morais  
Secretary for the District Attorney's Office

pm

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DISTRICT COURT  
CLARK COUNTY, NEVADA  
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SHIRLEY 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 - P.M. SESSION  
TUESDAY, JUNE 13, 2000  
VOLUME II

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

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produced by transcription service.

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BURGESS - DIRECT

1 LAS VEGAS, NEVADA, TUESDAY, JUNE 13, 2000, 1:25 P.M.

2 (Jury is present)

3 (Off-record bench conference)

4 THE COURT: Call your next witness, Mr. Guymon.

5 MR. GUYMON: Officer Burgess.

6 CHARLES BURGESS, PLAINTIFF'S WITNESS, IS SWORN

7 MR. FIGLER: Your Honor, could we approach on this  
8 matter?

9 THE COURT: Sure.

10 THE CLERK: State your name for the record, please.

11 (Off-record bench conference)

12 THE CLERK: Would you state your name please and  
13 spell it.

14 THE WITNESS: Charles Burgess, B-U-R-G-E-S-S.

15 DIRECT EXAMINATION

16 BY MR. GUYMON:

17 Q Officer Burgess, are you employed with the Las Vegas  
18 Metropolitan Police Department?

19 A Yes, sir, I am.

20 Q And directing your attention to May 4th, 1998, we've  
21 learned that at approximately 4:00 o'clock in the morning  
22 there was a shooting that occurred in the Fremont Street area,  
23 is that correct?

24 A Yes, sir, it is.

25 Q Were you the first responding officer?

II-2

BURGESS - DIRECT

1 A Yes, I was.

2 Q And do you know what time it was that you responded?

3 A As I recall, it was 04:14 hours.

4 Q Okay. And can you briefly give us what your  
5 observations are as you responded to the scene?

6 A The call came out and I arrived on the scene less  
7 than one minute after the initial call. When I arrived there,  
8 I observed a black male laying face down in the roadway about  
9 six feet north of the south sidewalk in front of the U-Haul  
10 rental area. When I originally arrived there, the male, who I  
11 later found out was to be -- his street name was Prophet, was  
12 motionless and, to be quite honest with you, I thought he was  
13 deceased. How --

14 Q You indicated that his name was Prophet. Did you  
15 also learn his name to be Drick Simpson?

16 A Yes, sir, that is correct.

17 Q All right. You thought the male was deceased, why?

18 A Because he was totally motionless and just the body  
19 position. Anybody that would [sic] injured, may be crying out  
20 in pain or whatever, but there was no sounds, no movement, no  
21 anything.

22 Q Believing him to be deceased, what is it that you  
23 did?

24 A Well, reaction just told me to speak to him and see  
25 if he could hear me, even though I thought he was deceased.

II-3

BURGESS - DIRECT

1 Then, to my surprise, he actually answered me.

2 Q He was able to answer your questions?

3 A Yes, he was.

4 Q Did you ask him if he could tell you what had  
5 happened to him?

6 A Yes, I did.

7 Q Was he able to answer that?

8 A Yes, he was.

9 Q Did you inquire as to actually who the person was --  
10 he told you he had been shot, is that correct?

11 A Yes, he did.

12 Q Did you ask him who shot him?

13 A Yes, I did.

14 Q Was he able to answer that?

15 A Yes, he was.

16 Q And who did he tell you had shot him?

17 A He give me the street name of Deco.

18 Q And at the point in time that he told you Deco or  
19 Deco, did he describe this person?

20 A Yes. I questioned him further as to a physical  
21 description and he responded that it was a black male. As I  
22 recall, he said he was like in his twenties, 5'6" tall, with  
23 black braided hair.

24 Q Now, at that point in time had you -- were you  
25 familiar with the Fremont area?



BURGESS - DIRECT

1 A Yes, I am.

2 Q Is that an area that you'd been patrolling for some  
3 time?

4 A Yes, it is.

5 Q Did you know a person by the name of Deco that  
6 frequented the Fremont Street area?

7 A Yes, I did.

8 Q Did the description that Drick Simpson give you fit  
9 the person that you knew to be Deco?

10 A Yes, it did fit the physical characteristics.

11 Q Did you pursue your line of questioning with Drick  
12 Simpson in order to ascertain all of the facts associated with  
13 this case?

14 A As best I could in between AMR, helping him out in  
15 the need for expeditiously transporting him to UMC trauma.

16 Q So AMR was the medical personnel that arrived along  
17 with you?

18 A They arrived shortly after I got there, yes, sir.

19 Q Okay. And did you actually accompany Drick Simpson  
20 to the hospital that night?

21 A Yes, sir, I did.

22 Q Did you obtain other information about Drick Simpson  
23 and what had happened to him?

24 A I asked him basically the same questions a second  
25 time before he was sedated and he responded with the exact

II-5

BURGESS - CROSS

1 same description and version of events as he had when I  
2 initially contacted him on the roadway.

3 Q All right. Showing you what has been marked as  
4 Exhibits 220 through 225. Let me have you briefly look at  
5 those and tell me if those photographs fairly and accurately  
6 depict the location and the scene as you saw it, as well as  
7 Drick Simpson as he began to receive medical treatment.

8 A Yes, sir, they are.

9 Q All right. And after your investigation in this  
10 particular incident, did you learn that an arrest warrant was  
11 issued for the arrest of John White, also known as Donte  
12 Johnson or Deco, for the offenses that had occurred on Drick  
13 Simpson, that being attempted murder with use of a deadly  
14 weapon and battery with use of a deadly weapon, resulting in  
15 substantial bodily harm?

16 A Yes, sir, I did.

17 MR. GUYMON: I pass the witness, Your Honor.

18 MR. FIGLER: Thank you, Judge.

19 CROSS-EXAMINATION

20 BY MR. FIGLER:

21 Q Officer Burgess, so you have all that information  
22 about this particular case from reviewing reports and things  
23 of that nature?

24 A Yes, sir.

25 Q Okay. And it's very common for you to review other

BURGESS - CROSS

1 reports created by officers involved in the same case that  
2 you're involved with. There's nothing unusual about that,  
3 right?

4 A No.

5 Q Okay. Now, do you know who Officer Wicks is?

6 A Well, I know one Officer Wicks. I'm not sure which  
7 one.

8 Q Okay. An Officer C. Wicks, who was involved in the  
9 investigation of this case?

10 A If you're referring to a Cliff Wicks, yes I do know  
11 a Cliff Wicks.

12 Q Okay. If I were to show you some documents, do you  
13 think it would refresh your memory whether or not Officer  
14 Cliff Wicks was involved in this particular case?

15 A Well, if it's associated with the event number, I'd  
16 have to say yes.

17 Q Okay. Can -- I'm gonna approach you right now. Let  
18 me show you some statements that were taken at the scene of  
19 Prophet's shooting and see there's an event number reference  
20 up in the top?

21 A Mm-hmm.

22 Q And --

23 A Yes, sir.

24 Q -- here's the other one. Now, does that refresh  
25 your memory -- is that the same -- first of all, is that the

II-7

BURGESS - CROSS

1 same event number that we're all talking about here?

2 A I believe it is.

3 Q Okay. Now, at the bottom does it indicate who the  
4 other officer involved in this investigation was?

5 A It says C. Wicks.

6 Q Okay. So, you don't have any reason to believe that  
7 that isn't the C. Wicks who you know as an officer, correct?

8 A Actually, I believe it is --

9 Q The same?

10 A -- Cliff Wicks. I do believe it is.

11 Q Okay. Now, let me ask you, these are statements  
12 that are taken from -- well, this first one appears to be  
13 someone named Williams Tungate, who's a security officer.  
14 Does that ring a bell with regard to this investigation?

15 A Yes, it does.

16 Q Okay. I'm gonna have you -- it's a very short  
17 statement. Why don't you just read that to yourself real  
18 quickly and I want to ask you a question about it. You can  
19 hang on to it. Let me ask you this. This is the security  
20 guard who basically escorted Prophet off of the property? Is  
21 that who we're talking about here?

22 A I believe so, but I'm not with 100 percent  
23 certainty.

24 Q Okay. That's what's reflected in the report,  
25 though, correct?

BURGESS - CROSS

1 A Yes, that's what the report would indicate.

2 Q Okay. Now, nowhere in that report does it say that  
3 Prophet told the security guard that Deco had threatened to  
4 kill him, isn't that correct, earlier in the day or any time?

5 A There's nothing in this voluntary statement to  
6 indicate that.

7 Q Okay. Let me have that back. Now, there is another  
8 person who is interviewed, a taxi driver named Greg Bradford?  
9 Looking at this document here, does that refresh your memory  
10 as part of this investigation that a taxi driver named Greg  
11 Bradford was investigated or was asked to give his statement?

12 A It appears so, but I -- I need to clarify something  
13 for you. Because I was the first one on the scene and I rode  
14 there to UMC trauma in the ambulance --

15 Q Right.

16 A -- I wasn't there for the initial investigation when  
17 all these voluntaries were being taken from witnesses --

18 Q Okay.

19 A -- so.

20 Q But --

21 A Just so we understand that.

22 Q That's fine. Now, there's no reason to believe that  
23 those aren't the actual voluntary statements in this  
24 particular case that were taken, correct?

25 A Oh, no. They look valid.

BURGESS - REDIRECT

1 Q Okay. Why don't I have you turn to the second page  
2 there. Now Mr. Bradford, who is independent of all this,  
3 described the shooter that he saw that day, isn't that  
4 correct?

5 A Well, he seems to describe it here, yes, sir.

6 Q Okay. And can you give that description to the  
7 jury, please.

8 A He wrote, "The shooter appeared to be a medium build  
9 black male about 6 feet tall. He wore dark clothing, perhaps  
10 a jacket or something long-sleeved with long pants."

11 Q Thank you, sir.

12 MR. FIGLER: I have no further questions, Your  
13 Honor.

14 THE COURT: Anything on redirect?

15 MR. GUYMON: Yes.

16 REDIRECT EXAMINATION

17 BY MR. GUYMON:

18 Q As to Mr. William Tungate, when you saw his  
19 handwritten statement, he gave a description of the shooter as  
20 being 5'6" and 120 pounds, braided hair, correct?

21 A That is correct, sir.

22 Q In the box where it asks can William Tungate  
23 identify the person, can you tell me if he said yes or no?

24 A He checked off the box, yes, he could identify the  
25 suspect.

BURGESS - RECROSS

1 Q And the taxicab driver; in the box where he's asked,  
2 based on his observations and what he saw, did he answer yes  
3 or no?

4 A The cab driver indicated he could not identify the  
5 suspect.

6 Q And in fact, in the investigation, did you learn  
7 that the hotel security guard had had contact with Deco  
8 earlier in the evening and had been part of settling a dispute  
9 between Deco and Drick Simpson?

10 A Yes. Later on I was advised of that by the other  
11 officers who assisted in the incident.

12 Q When you spoke to Drick Simpson, both as he lie  
13 [sic] there on the street and in the hospital, was he certain  
14 as to who had perpetrated the crimes on him?

15 A In my opinion, he was 100 percent certain. His  
16 description matched exactly both times and I took 'em probably  
17 20 minutes apart, and he described the sequence of events, as  
18 well as the suspect, exactly the same each and both times.

19 MR. GUYMON: I have no other questions.

20 THE COURT: Anything further, Mr. Figler?

21 MR. FIGLER: Thanks.

22 RECROSS EXAMINATION

23 BY MR. FIGLER:

24 Q And Prophet told you that earlier in the morning  
25 hours, that he had attacked the person that he know [sic] as

II-11

SEVERS - DIRECT

1 Deco, he told you that?

2 A No, sir, he did not.

3 Q Thank you, sir.

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

5 Call your next witness, and while that witness is  
6 coming in, could I see counsel at the bench, please.

7 (Off-record bench conference)

8 CHARLA SEVERS, PLAINTIFF'S WITNESS, IS SWORN

9 THE CLERK: State and spell your name for the  
10 record, please.

11 THE WITNESS: C-H-A-R-L-A S-E-V-E-R-S.

12 DIRECT EXAMINATION

13 BY MR. GUYMON:

14 Q Ms. Severs, I want to talk to you about a couple  
15 other -- couple of things we didn't speak to you about last  
16 time you were here, all right? You had indicated that you and  
17 Donte Johnson stayed at the Thunderbird Hotel with Terrell  
18 Young, is that correct?

19 A Yes.

20 Q Tell me, when you left the Thunderbird Hotel, did  
21 you learn that the police were looking for you and Donte?

22 A Yeah.

23 Q And how did you learn that?

24 A Because they called my -- my mama's house.

25 Q You had indicated previously that Donte, Terrell --

II-12



SEVERS - DIRECT

1 Donte and Terrell wanted to get outta town. They wanted to go  
2 to California, I think you said?

3 A Yes.

4 Q And you wanted to go with them.

5 A Yeah.

6 Q Did you learn why they wanted to get outta town?

7 A Yeah.

8 Q Why did they want to get outta town?

9 A 'Cause they had killed somebody.

10 Q Excuse me?

11 A 'Cause they had killed somebody.

12 Q And who did you learn they had killed?

13 A Snoop.

14 Q Now, before you left the Thunderbird Hotel, did you  
15 learn a little bit about who Snoop was?

16 A What you mean?

17 Q Well, did you talk to Donte about Snoop before you  
18 left the Thunderbird Hotel?

19 A No.

20 Q Okay. Had you talked to Snoop's girlfriend there at  
21 the Thunderbird Hotel?

22 A I didn't talk to her, but she came up there.

23 Q And who did Snoop's girlfriend talk to?

24 A Deco.

25 Q Okay. And what did Deco and Snoop's girlfriend talk

SEVERS - DIRECT

1 about?

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

4 THE COURT: Overruled.

5 BY MR. GUYMON:

6 Q What did Snoop's girlfriend and Deco talk about?

7 A She ask him where Snoop was, 'cause they say that he  
8 was the last one with Snoop.

9 Q Okay. Now, had you ever met Snoop before?

10 A I used to go to school with him.

11 Q Excuse me?

12 A I used to go to school with him.

13 Q And describe Snoop for us, if you would.

14 A He like bright-skinned and he had long hair with  
15 braids in it.

16 Q Say he had braids in his hair?

17 A Yeah.

18 Q And what race is Snoop?

19 A Black.

20 Q And about how old?

21 A Like 20.

22 Q Did Deco like Snoop?

23 A I guess not.

24 Q Well, did Deco tell you he liked him?

25 A No.

II-14

SEVERS - DIRECT

1 Q And why didn't Deco like Snoop?

2 MR. SCISCENTO: Your Honor, I object. She said -- I  
3 don't know if she answered the question that he never said  
4 anything to her --

5 THE COURT: It's not clear at this point.

6 BY MR. GUYMON:

7 Q Did Deco ever tell you whether or not he liked Snoop  
8 or if he was upset with Snoop?

9 A No.

10 Q Okay. Tell me, did you talk to Deco about what  
11 happened to Snoop?

12 A Once.

13 Q Okay, once. And was that before or after Deco's  
14 arrest?

15 A After.

16 Q And what is it that Deco told you that happened to  
17 Snoop?

18 A That he -- that he made him eat some -- some crack  
19 and he choked him.

20 Q Okay. Deco told you he made Snoop eat some crack?

21 A Mm-hmm.

22 COURT RECORDER: Is that yes?

23 THE WITNESS: Yeah.

24 BY MR. GUYMON:

25 Q And did Deco tell you where Snoop was at when Deco

SEVERS - DIRECT

1 made him eat the crack?

2 A In the hotel room.

3 Q And what hotel are we talking about?

4 A Thunderbird.

5 Q Okay. And after Deco made Snoop eat -- we're  
6 talking about crack cocaine?

7 A Yeah.

8 Q What did -- what happened to Snoop next, based on  
9 what Deco told you?

10 A Just that they put him in the trunk.

11 Q All right. Well, before they put him in the trunk,  
12 did Deco tell you if he did anything else to Snoop?

13 A All he said was he made him eat the dope and he  
14 choked him and that's it.

15 Q All right. And did Deco tell you what he choked  
16 Snoop with?

17 A No, not that I remember.

18 Q Okay. Now, did Deco tell you who was there when  
19 Deco made Snoop eat the dope and he choked him?

20 A Scale and Ace.

21 Q Scale and Ace.

22 A Yeah.

23 Q Now, is Scale the same person that was at the house  
24 the night of Deco's arrest?

25 A Yeah.

II-16

SEVERS - DIRECT

1 Q And Ace, are we talking about -- there was two Aces.  
2 There was a black guy by the name of Ace and there was a white  
3 guy by the name of Ace Hart. Which Ace was that?

4 A The black one.

5 Q All right. Now, after Deco told you about having  
6 him eat the dope and strangling him, did he tell you what he  
7 did with the body?

8 A No.

9 Q Okay. Did he tell you where he put the body?

10 A In a trunk.

11 Q Okay. Did he tell you if he wrapped the body up at  
12 all with anything?

13 A Not that I remember.

14 Q Okay. You say he put him in a trunk. Whose trunk,  
15 if you know?

16 A I don't know.

17 Q He didn't tell you whose trunk?

18 A No.

19 Q All right. Now, when you talked with Deco about  
20 those things, was it clear to you what Deco was saying?

21 A Yeah.

22 Q Okay. Did you understand him?

23 A Yeah.

24 Q Now, does Snoop have another name, other than Snoop,  
25 that you know of?

II-17

SEVERS - DIRECT

1 A No.

2 Q All right. You don't know what his real name is  
3 then?

4 A No.

5 Q Okay. And what hotel room or what hotel did this  
6 occur at?

7 A The Thunderbird.

8 Q Okay. Now, before you left the Thunderbird Hotel on  
9 August 4th, was Donte concerned that others were gonna seek  
10 revenge on him?

11 A Yeah. Somebody had called the room and was talking  
12 mess, saying --

13 Q And was this after Snoop's girlfriend had talked to  
14 Donte?

15 A No, it was before.

16 Q It was before?

17 A Yeah.

18 Q Okay. And after that, then, you, Donte and Terrell  
19 leave the Thunderbird?

20 A Yeah.

21 Q Okay. Now, once you get on over to the Everman, you  
22 learn that the police are looking for you or looking for  
23 Donte?

24 A No. I think I had -- I don't -- I don't know when  
25 it was, but I knew that they -- I learned they was looking

II-18

SEVERS - DIRECT

1 for --

2 Q Okay. And you indicated that it was because Donte  
3 had killed somebody?

4 A Yeah.

5 Q All right. Did you learn, during your relationship  
6 with Donte, about a guy by the name of Prophet or Drick  
7 Simpson?

8 A Yeah.

9 Q And how did you learn about Drick Simpson?

10 A He just told me --

11 Q Who told you?

12 A Deco.

13 Q And what did Deco tell you about Drick Simpson?

14 A That he owns him.

15 MR. SCISCENTO: Can we approach, Your Honor?

16 THE COURT: Sure.

17 (Off-record bench conference)

18 BY MR. GUYMON:

19 Q Talk to you about another area. The Longhorn Hotel  
20 and Casino. Did you learn about a crime that occurred at the  
21 Longhorn Hotel and Casino?

22 A Yeah.

23 Q And when did you learn about the Longhorn Hotel and  
24 Casino incident?

25 A Well, I was living -- we was living in the same

II-19

SEVERS - DIRECT

1 house.

2 Q At Everman?

3 A Yeah.

4 Q And tell me, about how many days before the four  
5 boys' murder did the Longhorn Hotel and Casino incident  
6 happen?

7 A Maybe like -- maybe like four or five days.

8 Q All right. And where were you at when it happened?

9 A At home.

10 Q And tell me, while you're at home, who else is home  
11 with you, if you remember?

12 A I don't remember. I think the other white boys, Tod  
13 and --

14 Q Tod, do you think was home?

15 A Yeah.

16 Q How 'bout Ace Hart?

17 A I think so, yeah.

18 Q And how 'bout B.J.? Do you know if he was home or  
19 not?

20 A I think so, yeah.

21 Q Okay. And tell me what happens, that you learn  
22 about it? How do you learn?

23 A 'Cause at first he came home, he said that some --  
24 that some niggers was at the casino slippin' and they don't  
25 even know who be watching them.

II-20



SEVERS - DIRECT

1 Q And who tells you that there's some guys that are  
2 slippin' and that they're watching 'em?

3 A Deco.

4 Q Okay. And what does Deco say after he tells you  
5 those guys are slippin' and he's watching 'em?

6 A That they was gonna go get 'em.

7 Q And who was Deco referring to when he said "we" were  
8 gonna go get 'em?

9 A Red and I think Tiny Bug.

10 Q Okay. Tell me what happens from there.

11 A Then they went down there and then --

12 Q Okay. When they went down there, did they have  
13 guns?

14 A Yeah.

15 Q And what guns did they have, if you know?

16 A I don't remember. I just remember the revolver.  
17 That's it.

18 Q Okay. You remember there was a revolver?

19 A Yeah.

20 Q Do you know if Donte had a gun when he went over to  
21 the Longhorn?

22 A Yeah, but I don't know what kind it was.

23 Q Do you know if Terrell had a gun?

24 A Yeah.

25 Q And do you know if Sikia had a gun?

SEVERS - DIRECT

1           A     Yeah.  
2           Q     Okay. So all three of 'em had guns?  
3           A     Yeah.  
4           Q     All right. Tell me what happens once they get over  
5 there, based on what Donte told you?  
6           A     That he -- that he shot one of 'em and he hit the  
7 floor and then that was it.  
8           Q     Okay. Donte said he shot one of 'em?  
9           A     Yeah.  
10          Q     And the guy hits the floor?  
11          A     Yeah.  
12          Q     Okay. Did Donte thought [sic] he had actually hit  
13 the guy and it'd gone into his body?  
14          A     Yeah.  
15          Q     Okay. And what did Donte say Terrell did when Deco  
16 was shooting?  
17          A     He got scared and he dropped the gun.  
18          Q     Okay. So Donte tells you Terrell dropped his gun?  
19          A     Yeah.  
20          Q     How 'bout Sikia? What was Sikia doing while Donte  
21 was shooting at the guys that were -- that had been slippin'?  
22          A     I don't remember.  
23          Q     Okay. What happens after Donte shoots at 'em there  
24 at the -- the Longhorn Casino?  
25          A     They ran home.

II-22

SEVERS - DIRECT

1 Q Who ran home?  
2 A Deco and Red and Tiny Bug.  
3 Q Where was the white car?  
4 A At the casino still.  
5 Q Okay. Now, where is the casino, the Longhorn  
6 Casino, in relationship to where the Everman house was?  
7 A Like right around the corner.  
8 Q How long would it take you to walk, if you were to  
9 walk?  
10 A Maybe like five, ten minutes.  
11 Q Okay. Did Donte ask you to do anything about the  
12 car?  
13 A He told me to go get it.  
14 Q Did you go get it?  
15 A Yeah.  
16 Q All right. How much time went by from the time  
17 Donte got to the house and told you what happened until you  
18 went and got the car?  
19 A Like maybe ten minutes.  
20 Q Okay. When you got to the Longhorn Casino, tell me  
21 what you saw?  
22 A I seen a lot of police and that's it.  
23 Q Excuse me?  
24 A I seen a lot of police.  
25 Q A lot of police there?

II-23

SEVERS - DIRECT

1           A     Mm-hmm.

2           Q     Is that a yes?

3           A     Yeah.

4           Q     Did you get the car?

5           A     Not at first. I was checking out everything and

6 then I got the car.

7           Q     Okay. Did you bring the car home?

8           A     No.

9           Q     What did you do with the car?

10          A     I left it around the corner.

11          Q     Okay. So you actually got in the car. Did you

12 start to drive it?

13          A     Yeah.

14          Q     Why did you leave it around the -- I mean, you

15 stopped the car?

16          A     Yeah, I stopped and I parked it.

17          Q     Okay. And why would you stop and park it?

18          A     'Cause the police got behind me.

19          Q     Okay. So you got out?

20          A     Yeah.

21          Q     Now, did Donte talk about the things that happened

22 at the Longhorn more than that one time?

23          A     No.

24          Q     Okay. And the things that happened to Snoop, did he

25 talk about it more than the one time that you've now told us

II-24

SEVERS - CROSS

1 about?

2 A No.

3 Q Okay.

4 MR. GUYMON: Court's indulgence.

5 Pass the witness, Your Honor.

6 THE COURT: Cross?

7 CROSS-EXAMINATION

8 BY MR. SCISCENTO:

9 Q Ms. Severs, you still have that felony pending,  
10 which hasn't been dismissed yet by the District Attorney,  
11 isn't that right?

12 A Yes.

13 Q Okay. Tell me about this room at the Thunderbird.  
14 Who rented that room?

15 A Ace.

16 Q Ace who?

17 A Ace Hart.

18 Q And this is a different Ace than the Ace you were  
19 talking about, the black man Ace?

20 A Yeah.

21 Q Okay. At the Thunderbird room, who was there,  
22 Terrell?

23 A Yes.

24 Q Terrell is also known as Red?

25 A Yes.

II-25

SEVERS - CROSS

1 Q Okay. And, well, this conversation you just  
2 mentioned, did this occur in front of Terrell?

3 A What conversation?

4 Q The conversation about the strangulation.

5 A No.

6 Q No? Okay. It was just between you --

7 A He was inside -- yes, he --

8 Q It was just between you and -- and John, here?

9 A Yeah.

10 Q Okay. Now, this thing you're talking about at the  
11 Longhorn, is it the Longhorn Saloon?

12 A Yeah.

13 Q Okay. You went over there to pick up the car?

14 A Yeah.

15 Q And you drove the car away after that?

16 A Yeah.

17 Q And you parked it somewhere else?

18 A Yeah.

19 Q Have you been informed if anybody ever saw you drive  
20 away with that car?

21 A No.

22 Q Nobody ever told you that they saw you behind the  
23 wheel of that car?

24 A No.

25 Q Nobody ever made you a suspect in that case?

SEVERS - CROSS

1 A No.

2 Q Nobody's ever told you that?

3 A No.

4 Q So you're not afraid that because you were driving  
5 the car that allegedly drove the perpetrators there and you  
6 were driving away, you don't -- you're not afraid that you  
7 might be considered a suspect in that case?

8 A I didn't think about it.

9 Q And then you parked the car and left it around the  
10 corner?

11 A Yeah.

12 Q You hid it?

13 A No. I always park it in some -- front of somebody  
14 house.

15 Q Okay. To hide the car, though, right?

16 A Just to get out, so the police wouldn't pull me  
17 over.

18 Q Okay. So you were kinda trying to hide from the  
19 police?

20 A No, I didn't want the police to pull me over.

21 Q That's what I'm saying. You were trying to hide  
22 from the police?

23 A I didn't want them to pull me over.

24 Q Okay. All of this information that you just talked  
25 about, you learned at the Everman house?

II-27

SEVERS - CROSS

1           A     Except for the one about Snoop, I learned when he  
2 was in jail.

3           Q     Okay. And this was all brought up -- when did you  
4 provide this information to the District Attorney?

5           A     I don't remember.

6           Q     Okay. Was it after your grand jury testimony?

7           A     No.

8           Q     Okay. Was it before that?

9           A     I think so, yeah.

10          Q     Do you remember the exact date?

11          A     No. No.

12          Q     No, you don't?

13          A     No.

14          Q     Okay. You weren't there for any of this -- these  
15 incidents, these robberies or anything like that? You weren't  
16 there personally?

17          A     No.

18          Q     You never saw any of this happen?

19          A     No.

20          Q     You never saw this guy Snoop?

21          A     No.

22          Q     You only heard about this?

23          A     Yeah.

24          Q     Okay. And you only heard it secondhand, from  
25 somebody else?



JOHNSON - DIRECT

1 A From Deco.

2 Q Okay. But you didn't actually witness any of this?

3 A No.

4 Q Okay.

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

6 THE COURT: Any redirect?

7 MR. GUYMON: No, Your Honor.

8 THE COURT: Thank you. You're excused.

9 Call your next witness, please.

10 MR. DASKAS: Bryan Johnson.

11 (Off-record bench conference)

12 BRYAN JOHNSON, PLAINTIFF'S WITNESS, IS SWORN

13 THE CLERK: Please be seated. State and spell your  
14 name for the record, please.

15 THE WITNESS: Bryan Johnson, B-R-Y-A-N  
16 J-O-H-N-S-O-N.

17 DIRECT EXAMINATION

18 BY MR. DASKAS:

19 Q Mr. Johnson, you previously testified in front of  
20 this jury that you were interviewed by detectives on  
21 August 17th, is that correct?

22 A Yes, sir.

23 Q All right. Now, August 17th was a Sunday, if I'm  
24 not mistaken, 1998?

25 A I believe it was a Monday.

II-29

JOHNSON - DIRECT

1 Q Okay, Monday. During your interview with police on  
2 August 17th, did you discuss a couple other crimes that Donte  
3 Johnson was involved with that you had knowledge of?

4 A Yes, sir.

5 Q All right. Let me ask you first about an incident  
6 at the Longhorn Casino. Have you ever heard of the Longhorn  
7 Casino?

8 A Yes, sir.

9 Q Do you know where that's located?

10 A I believe off Boulder Highway.

11 Q Did you learn information from Donte Johnson about  
12 an incident that occurred at the Longhorn Casino and can you  
13 tell me how much prior to August 17th, the date of your  
14 interview, did that incident occur?

15 A It was approximately a week before.

16 Q Okay. So one week before the 17th would've been  
17 sometime around August 10th, 1998?

18 A Yes, sir.

19 Q Did you learn from Donte Johnson why it was that he,  
20 Donte, went to the Longhorn Casino around August 10th?

21 A Yes. They had originally stolen some money from  
22 another gang.

23 Q Now, you say -- you say "they." Who are you  
24 referring to?

25 A Donte and Red and Scale, and then they went back to

JOHNSON - DIRECT

1 the -- the kid who they had stole the money from was shooting  
2 at Scale, so they went to the Longhorn to go after him.

3 Q You say that somebody stole money from Scale?

4 A No. They -- Donte and Scale and Red --

5 Q Okay.

6 A -- stole money from another gang member.

7 Q And as a result of that, did those other people do  
8 something to scale?

9 A Yeah. They were shooting at him.

10 Q All right. Scale was a friend of Donte's?

11 A Yes.

12 Q Okay. And I think you mentioned to retaliate or get  
13 back for that, Donte and some other people went to the  
14 Longhorn?

15 A Yes, sir.

16 Q Who, along with Donte, went to the Longhorn around  
17 August 10th?

18 A Red.

19 Q Anybody else that you're aware of?

20 A Not that I recall.

21 Q And did you learn from Donte what happened once he  
22 and Red arrived at the Longhorn around August 10th?

23 A Briefly, yes, sir. She said when they -- when they  
24 went inside, they saw the couple of kids and they started  
25 opening fire.

II-31

JOHNSON - DIRECT

1 Q And that's what Donte told you, that he and Red  
2 opened fire?

3 A Yes, sir.

4 Q Did Donte indicate to you whether he believed he had  
5 hit anybody when he and Red opened fire?

6 A I believe I remember him saying that Red had shot  
7 someone in the head.

8 Q All right. And that's what Donte believed had  
9 happened?

10 A Yes, sir, to my knowledge.

11 Q Let me now ask you about another incident during  
12 your interview with the police on August 17th that you  
13 discussed. Have you ever heard the name Snoop before?

14 A Yes, sir.

15 Q All right. And did you learn information sometime  
16 prior to August 17th from Donte Johnson about somebody named  
17 Snoop?

18 A Yes, sir.

19 Q All right. What specifically did you learn from  
20 Donte Johnson about this person named Snoop?

21 A He had stolen approximately two hundred dollars  
22 (\$200) worth of crack cocaine from Scale and Donte and Red and  
23 Scale went to the -- I'm trying to remember the name of the --  
24 the Thunderbird Hotel and had tied him up in a room and choked  
25 him to death.

JOHNSON - CROSS

1 Q And this is information you learned from Donte  
2 Johnson?

3 A Yes, sir.

4 Q You say that Donte indicated to you that he and Red  
5 and Scale choked to death Snoop?

6 A Yes, sir.

7 Q Did Donte say anything about what was done with  
8 Snoop's body after he was choked to death at the Thunderbird  
9 Hotel?

10 A Yes, sir. They put it into the -- Snoop's car that  
11 they were driving and dumped the body off I-15 near the  
12 speedway.

13 Q Did Donte indicate to you how it was they got  
14 Snoop's body from the Thunderbird to the location near the  
15 speedway?

16 A They drove Snoop's car.

17 MR. DASKAS: I'll pass the witness, Judge.

18 MR. FIGLER: Thank you, Judge.

19 CROSS-EXAMINATION

20 BY MR. FIGLER

21 Q Bryan again, you have no -- you say you have no  
22 personal knowledge of any of the things that you're testifying  
23 about today, correct? You're saying you weren't there, right?

24 A No, sir.

25 Q You weren't at the Longhorn?

JOHNSON - CROSS

1 A No, sir.

2 Q You weren't at the Thunderbird?

3 A No, sir.

4 Q You weren't out at any of these other locations that  
5 you mentioned, correct?

6 A No, sir.

7 Q So everything you're hearing is secondhand  
8 information, correct?

9 A Yes, sir.

10 Q Now, are you familiar with the -- with the word  
11 hype, H-Y-P-E hype?

12 A Yes, sir.

13 Q And what's hype mean?

14 A Well, I've heard in different phrases.

15 Q Okay. Does it mean that sometimes people exaggerate  
16 about things?

17 A Yes, sir.

18 Q Okay. And people in your world, sometimes they  
19 exaggerate about things, isn't that correct, as a general  
20 proposition?

21 A In everybody's world I would say, yeah.

22 Q Now, let me ask you. You seem like a nice kid.  
23 What are you doing hanging around this entire world?

24 A I was just in a bad situation at the time, sir.

25 Q Okay. But you decided that you wanted to be in that

JOHNSON - CROSS

1 world at that time, with all this stuff going on?

2 A I didn't really set out to do that, but it kinda  
3 happened, yes, and it was my fault, I was --

4 Q Where did you grow up?

5 A Las Vegas.

6 Q Just generally, what section of town, what part of  
7 town?

8 A Northwest, near Summerlin.

9 Q Summerlin? And to your knowledge, you and your  
10 buddy, Ace, have not been charged with anything in connection  
11 with any of these things that we've talked about?

12 A That's correct.

13 Q Okay.

14 MR. FIGLER: I'll pass the witness.

15 THE COURT: Anything further?

16 MR. DASKAS: Nothing else, Judge.

17 THE COURT: Thank you. You're excused.

18 Call your next witness, please.

19 MR. DASKAS: Detective Roy Chandler.

20 (Off-record colloquy)

21 ROY CHANDLER, PLAINTIFF'S WITNESS, IS SWORN

22 THE CLERK: Please be seated. State and spell your  
23 name for the record, please.

24 THE WITNESS: Roy Chandler, C-H-A-N-D-L-E-R.

25 //

CHANDLER - DIRECT  
DIRECT EXAMINATION

1  
2 BY MR. DASKAS:

3 Q Mr. Chandler, by whom are you employed?

4 A Metropolitan Police Department.

5 Q And what's your job title?

6 A I'm a detective assigned to the Homicide Section.

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

9 A Homicide detective for a little over eight years.

10 Q And in total, how many years have you been employed  
11 in law enforcement?

12 A Twenty-nine years, four months with Metro.

13 Q Let me direct your attention to August 5th of 1998.  
14 Were you assigned to a homicide investigation that occurred  
15 here in Las Vegas involving the victim by the name of Darnell  
16 Johnson?

17 A Yes, I was.

18 Q And did you learn if Darnell Johnson had a moniker  
19 or a street name?

20 A He went by the street name of Snoop.

21 Q Back in August of '98 did you have a partner that  
22 you worked with?

23 A Yes, I did.

24 Q Who was your partner?

25 A Detective Hardy.

II-36



CHANDLER - DIRECT

1 Q Detective Hardy?

2 A Yes, sir.

3 Q Were you and Detective Hardy collectively assigned  
4 to homicide investigations?

5 A Yes, sir, we were.

6 Q How was it that your investigation was initiated?

7 A We received a call. I believe we were in the office  
8 that day and it was about 12 -- 12:30 or 1:00, we received a  
9 call that a body had been discovered in a water retention  
10 basin out by the speedway.

11 Q The speedway here in Las Vegas off the I-15 freeway?

12 A Yes, sir, north -- north I-15.

13 Q Can you describe -- I assume you responded to that  
14 location?

15 A Yes, sir, we did.

16 Q Did you, in fact, find a body at that location?

17 A Yes, sir, we did.

18 Q Describe the condition of the body and the location  
19 of the body.

20 A The body was in the -- in the bottom of the ravine  
21 and it was down into a gully area, you might say. It was  
22 wrapped in a sheet and the body was also decomposing, so it  
23 had been changing colors due to the heat out there.

24 Q Detective, let me show you and I've shown defense  
25 counsel what's been marked as State's proposed Exhibits 202 to

II-37

CHANDLER - DIRECT

1 211. Let me have you thumb through those and tell me if you  
2 recognize what's depicted in those photographs.

3 A You want me to go each photograph?

4 Q Well, just look at them collectively, if you would.

5 A Yes, sir. That was the same.

6 Q Do those photos, that is 202 to 211, fairly and  
7 accurately depict the scene and the general location where you  
8 found the body of Darnell Johnson?

9 A Yes, it does.

10 MR. DASKAS: Move for the admission of 202 through  
11 211, Judge.

12 MR. FIGLER: Your Honor, I've looked through 'em. I  
13 think there's some cumulative photos in there that perhaps  
14 Your Honor wants to look at.

15 THE COURT: Is that a prediction or --

16 (Off-record colloquy)

17 THE COURT: For the record, 203, 205, 209, 210 and  
18 211 are admitted; the rest are not subject to that objection.

19 (Plaintiff's Exhibit Nos. 202 thru 211 admitted)

20 MR. DASKAS: And, Judge, I apologize. I guess we  
21 need to change the numbers on those exhibits.

22 BY MR. DASKAS:

23 Q Now, Detective, what did you observe there at the  
24 location where the body was found?

25 A We observed the body down in the bottom of the

II-38

CHANDLER - DIRECT

1 retention basin. We also observed where the body had been  
2 rolled down the hill and you could see where it had been,  
3 pushed over the edge.

4 Q You say the body was rolled down the hill. Is there  
5 a slope or a hill from the freeway to where the body was  
6 found?

7 A Well, we were located north of the -- of the freeway  
8 and the slope that I'm speaking of is in the retention basin  
9 itself, so it's a -- an incline or a decline, whichever one  
10 you want to call, down into the retention basin.

11 Q Was a coroner investigator present when you saw  
12 the -- found the body?

13 A We called the coroner after we had arrived.

14 Q And is that standard protocol or procedure with  
15 Metro?

16 A Yes, sir, it is.

17 Q Was the sheet then unwrapped from around the body?

18 A Yes, sir, it was.

19 Q And you mentioned briefly, but let me have you  
20 describe the condition of the body after the sheet was  
21 unwrapped from the body.

22 A The body was changing colors due to the  
23 deterioration and there was skin slippage, which is a --

24 THE COURT: Move on to another area, please.

25 MR. DASKAS: I will, Judge.

CHANDLER - DIRECT

1 BY MR. DASKAS:

2 Q Eventually, did you attend the autopsy of Darnell  
3 Johnson?

4 A Yes, sir, I did.

5 Q That's standard procedure also with Metro?

6 A Yes, sir, it is.

7 Q When you attended the autopsy, did you observe,  
8 personally, any injuries to the body of Darnell Johnson?

9 A When Dr. Green was -- or, I believe it was  
10 Dr. Green -- was doing the autopsy itself, he had pointed out  
11 some hemorrhaging on the side of the head, but he also stated  
12 that that was not enough hemorrhaging to cause the death, and  
13 he continued on with the autopsy.

14 Q Were there any other significant findings or  
15 observations at the time the initial autopsy was performed?

16 A No, sir, there were not.

17 Q After the autopsy, did you continue your  
18 investigation into this homicide?

19 A Yes, sir, we did.

20 Q Did you learn information which caused you to then  
21 ask Dr. Green to reexamine the body of Darnell Johnson?

22 A Yes, sir, we did.

23 Q Did you attend the reexamination of Darnell's body?

24 A Yes, sir.

25 Q And what significant findings were made at that

II-40

CHANDLER - DIRECT

1 point?

2 MR. FIGLER: Your Honor, I'm gonna object at this  
3 time. They're getting into some highly technical medical  
4 information that would be properly submitted by a coroner. If  
5 they want to bring the coroner in here, I won't object to  
6 that, but any type of interpretation of tenuous information,  
7 as presented by a non-science witness would be improper  
8 evidentially.

9 THE COURT: Overruled.

10 BY MR. DASKAS:

11 Q Do you recall the question?

12 A Would you repeat it, please?

13 Q When you attended the reexamination of Darnell  
14 Johnson's body, what significant findings or observations were  
15 made at that time?

16 A Dr. Green noticed some hemorrhaging around the neck  
17 area and coupled with the information that I had supplied, he  
18 stated that there was a possibility that he had been  
19 strangled.

20 Q Was that information consistent with information you  
21 had learned since the initial autopsy of Darnell?

22 A Yes, sir, it was.

23 Q All right.

24 MR. DASKAS: And, Judge, I apologize, can I now  
25 publish these since they've been remarked?

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CHANDLER - DIRECT

1 BY MR. DASKAS:

2 Q At any point, did you locate the car that either  
3 belonged to or at least was associated with Darnell Johnson?

4 A Yes, sir, we did.

5 Q Where was that located?

6 A We were advised by the Records Division of Metro  
7 that the vehicle had been towed on a private tow from a  
8 apartment complex.

9 Q And you say you saw the car where?

10 A At that time, when we were told that, we got in  
11 touch with the Criminalistics Bureau, the vehicle had already  
12 been towed to the tow yard and it was then towed from the tow  
13 yard to the crime lab where it was processed.

14 Q Is that where you then saw the car?

15 A Yes, sir. That was the first time I saw it.

16 Q Did you see any damage to the trunk area of Darnell  
17 Johnson's car?

18 A The lock, where you put the key in to open the  
19 trunk, had been punched out so there was not a lock in that --  
20 in that area.

21 Q Did you determine who the actual registered owner  
22 was of the car that had the damage to the lock of the trunk?

23 A Yes, sir, we did.

24 Q Who was the registered owner?

25 A It was a lady by the name of Victoria Daniels, I

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CHANDLER - DIRECT

1 believe, was her name, or Veronica Daniels, and --

2 Q Did you learn of her association with Darnell  
3 Johnson?

4 A We spoke to Darnell's mother and she told us that  
5 the car actually belonged to Veronica, but Darnell was in the  
6 process of buying it and she had left the plates on it so that  
7 he could drive it.

8 Q During your investigation, did you visit the  
9 Thunderbird Hotel?

10 A Yes, sir, we did.

11 Q You say you did visit the Thunderbird Hotel?

12 A Yes, sir.

13 Q All right. Did you learn of any room that had been  
14 rented by somebody named Ace Hart?

15 A Yes, sir.

16 Q And did you speak with the front desk clerk about  
17 who actually stayed in that room?

18 A Yes, sir, we did.

19 Q What information did you learn?

20 A She told us that there were two black males that  
21 were staying in the room, and that from the day that the room  
22 was rented by Ace Hart she had not seen him in that room after  
23 that.

24 Q Okay. You say, though, that she did describe  
25 somebody who was paying for that room?

CHANDLER - DIRECT

1           A     Yes, sir. She gave us a copy of his driver's  
2 license.

3           Q     And whose -- whose driver's license was that?

4           A     It was Ace Hart.

5           Q     Now, what about a description of the person who was  
6 paying for the room?

7           A     She described them as being black males and Ace Hart  
8 is a white male.

9           Q     Let me ask you one other area about the autopsy that  
10 you attended. Is it common during an autopsy to have a  
11 toxicology report prepared for the victim of a homicide?

12          A     Yes, sir.

13          Q     And what is a toxicology report?

14          A     The blood is removed and it's sent to the toxicology  
15 lab to determine if there's any narcotics or alcohol or  
16 anything in the person's system at the time of death.

17          Q     And what were the findings or conclusions in this  
18 case regarding the toxicology report of Darnell Johnson?

19          A     Darnell Johnson had alcohol in his system and he  
20 also had cocaine in his system.

21          Q     Do you recall the level of cocaine that was in  
22 Darnell Johnson's body?

23          A     To the best of my knowledge, there were two  
24 different levels. One is metabolized cocaine and the other  
25 one is non-metabolized. Metabolized means that it's in the

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CHANDLER - DIRECT

1 system and is going through the system. The non-metabolized  
2 is the cocaine that is in the system but it has not had a  
3 chance to get all the way through the system at that time.

4 Q And would that suggest to you in your experience,  
5 that that cocaine, then, was recently ingested?

6 A Yes, sir.

7 Q And how high was the level of non-metabolized  
8 cocaine in Darnell Johnson's system?

9 A I believe it was in the 4,000 nanogram area.

10 Q Based on your experience of homicides and attending  
11 autopsies, is that a high level or a low level?

12 A It's a high level. It was higher than the  
13 metabolized.

14 Q Can you estimate for me the distance between the  
15 Thunderbird Hotel and the location where you found Darnell  
16 Johnson's body?

17 A It's between 13 and 15 miles, I would say, somewhere  
18 around there.

19 Q As a result of your investigation in this case, did  
20 you develop a suspect or suspects regarding the homicide of  
21 Darnell?

22 A Yes, sir, we did.

23 Q And who are the suspects that you developed?

24 A Suspects were Donte Johnson, a/k/a of Deco, and  
25 Terrell Young, which was an a/k/a of Red.

CHANDLER - DIRECT

1 Q Did you ultimately submit a case to the District  
2 Attorney's office against those two individuals?

3 A Yes, sir, I did.

4 Q And where is that case now in the system, if you  
5 know?

6 A To the best of my knowledge, it's still with the  
7 District Attorney's office waiting for warrants for their  
8 arrest.

9 MR. DASKAS: Judge, can we approach, please?

10 THE COURT: Sure.

11 (Off-record bench conference)

12 BY MR. DASKAS:

13 Q All right. Detective, I apologize. Let me now hand  
14 you what has been marked as State's proposed Exhibits 218 and  
15 219 -- I'm sorry --

16 THE CLERK: The green ones. The green ones.

17 BY MR. DASKAS:

18 Q Let's start with 233 and 234. Do you recognize  
19 what's depicted in those photographs?

20 A In 233 are the clothing that was removed from  
21 Darnell.

22 Q And was that at the autopsy?

23 A Yes, sir.

24 Q Do those photos fairly and accurately depict the  
25 clothing and the condition of the clothing that you observed

1 at Darnell Johnson's autopsy?

2 A Yes, sir.

3 MR. DASKAS: I'd move for the admission of those,  
4 Judge.

5 MR. FIGLER: Submitted, Your Honor.

6 THE COURT: Admitted.

7 (Plaintiff's Exhibit Nos. 218 and 219 admitted)

8 MR. DASKAS: Thank you. May I publish them, Judge?

9 THE COURT: Yeah.

10 BY MR. DASKAS:

11 Q Then finally, Detective, let me hand you what's been  
12 marked as State's proposed Exhibits 235 through 240, ask you  
13 to look at those and tell me if you recognize what's in those  
14 photographs.

15 A Yes, sir. Those are the photos of the vehicle that  
16 was registered to Veronica and that I was told that Darnell  
17 would have been driving.

18 Q Do those photos fairly and accurately depict the  
19 condition of the car when you observed it at the Metro impound  
20 lot?

21 A At the crime lab, yes.

22 Q At the crime lab?

23 A Yes, sir.

24 MR. DASKAS: I'd move for the admission of 235  
25 through 240, Judge.

CHANDLER - CROSS

1 MR. FIGLER: Submitted, Your Honor.

2 THE COURT: Admitted.

3 MR. DASKAS: And actually to 239.

4 (Plaintiff's Exhibit Nos. 235 thru 240 admitted)

5 BY MR. DASKAS:

6 Q Detective, let me ask you specifically about the  
7 photograph number 236. What's depicted in 236?

8 A In 236 is a photograph of the license plate and it's  
9 also a photograph of the -- where you would put the key in to  
10 open the trunk, and you can see it's not there.

11 Q The actual locking mechanism is not on the car  
12 trunk?

13 A No, sir, it is not.

14 MR. DASKAS: I'll pass the witness, Judge.

15 CROSS-EXAMINATION

16 BY MR. FIGLER:

17 Q Detective Chandler, you submitted this case over two  
18 years ago, isn't that correct, or almost two years ago?

19 A I think it's about that, yes, sir.

20 Q Okay. And you know for a fact that this gentleman  
21 who's sitting next to me, John White, who you also call Donte  
22 Johnson or Deco, has not been even arrested for this matter,  
23 isn't that correct?

24 A That's correct.

25 Q We're in the middle of a trial right now, correct?

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CHANDLER - CROSS

1 I mean, that goes without saying?

2 A Yes, sir.

3 Q There is no trial waiting. That hasn't even been  
4 filed as a complaint in the Justice Court or an indictment or  
5 anything against this individual who sits next to me with  
6 regard to this case that you just talked about, isn't that  
7 correct?

8 A I've submitted it for warrants. I don't believe  
9 that there's a case file assigned to it as of yet.

10 Q Okay. Is the standard, the rule, if you will, in  
11 most cases that once it's been submitted, it doesn't take two  
12 years in most every case, and I understand that you can  
13 probably come up with examples to the contrary, but as a  
14 general rule in most cases, it doesn't take that long, isn't  
15 that correct?

16 A I think that's something you'd have to discuss with  
17 the DA's office.

18 Q In fact, sometimes the District Attorney's office  
19 will give you back information saying there's not enough  
20 evidence or something like that. Isn't that possible?

21 A That's possible, yes.

22 Q That happens sometimes, doesn't it?

23 A Yes.

24 Q Okay. And that would be represented by them not  
25 filing the case. Isn't that correct?

II-49

CHANDLER - CROSS

1           A     In my 29 years experience, I've not had one denied  
2 yet, sir.

3           Q     How many have you had that has taken two years after  
4 you submitted your full case to them?

5           A     I could probably count 'em on one hand.

6           Q     Can you give me any names of any of them?

7           A     No, sir, I can't right offhand.

8           Q     Now, Detective Chandler, with regard to the autopsy  
9 that you -- that you attended, it's true that during the first  
10 autopsy Dr. Green, who is the coroner, wasn't really sure what  
11 the cause of death was, isn't that correct?

12          A     He had listed it as undetermined. Yes, sir.

13          Q     Okay. And then you got some information from some  
14 boys like Bryan Johnson, right, and thought that there might  
15 be a strangulation involved here, isn't that correct?

16          A     I don't believe I spoke to Bryan Johnson.

17          Q     Okay. But you had specifically asked Dr. Green to  
18 reexamine and look for any kind of strangulation, isn't that  
19 correct?

20          A     I asked Dr. Green if he would reexamine the body and  
21 see if there was any ligature marks or any trauma in the neck  
22 area, yes.

23          Q     Okay. And he informed you at that time that  
24 whatever small hemorrhages he saw are not diagnostic of a  
25 strangulation, isn't that correct?

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CHANDLER - CROSS

1           A     I don't -- I don't recall if that's his exact words  
2 he used, sir.

3           Q     But that sounds like what he said to you?

4           A     He said that it was possibly strangulation.

5           Q     Or possibly from other causes. He just didn't know,  
6 isn't that correct?

7           A     I don't recall the exact wordage that he used.

8                     (Off-record colloquy)

9           MR. FIGLER: Court's indulgence.

10                    (Off-record colloquy)

11 BY MR. FIGLER:

12           Q     Now, you have with you your information that you  
13 gathered; witness statements. Even the coroner's report is in  
14 that little book that's in front of you, isn't that correct?

15           A     Well, I wouldn't call it a little book --

16           Q     Big book?

17           A     -- but yes, sir. Yes, sir.

18           Q     Okay.

19           THE COURT: What do you call "War and Peace"?

20           MR. FIGLER: "War and Peace."

21 BY MR. FIGLER:

22           Q     Now speaking of war, you had information that this  
23 Snoop character was involved in the drug business, isn't that  
24 correct, involved with drugs?

25           A     I'm sorry?

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CHANDLER - CROSS

1 Q Snoop, the person who you identify as the decedent,  
2 you know that he was involved with drugs, right?

3 A Yes.

4 Q Okay. Now, why don't you look and see if you got  
5 the coroner's report in there, and if you do, then I won't  
6 have to show you mine.

7 A Are you speaking of my report or Dr. Green's report?

8 Q Dr. Green's report.

9 A Okay.

10 THE COURT: You indicating that, okay, you have it?

11 THE WITNESS: Yes, I do have it, yes.

12 BY MR. FIGLER:

13 Q Okay. And as part of your investigation, you're  
14 required as a detective to review documents and, in this  
15 particular case, were required to review the coroner's report,  
16 right?

17 A No, sir, I'm not.

18 Q You're not supposed to even look and see what the  
19 coroner has to say about a particular event?

20 A Well, I go to the autopsy and if Dr. Green has any  
21 questions, such as at the scene or anything, then he consults  
22 with me as to what I saw at the scene or what information I  
23 had that would contribute to what he would be looking at.

24 Q Okay. Now, you know that the stomach in this  
25 particular case of this individual named Snoop whose autopsy



CHANDLER - CROSS

1 you went to, was empty, intact and empty, right?

2 A I don't recall whether it was or not.

3 Q Well, why don't I refer you to page 3 of the  
4 coroner's report and you can look at that for me.

5 A Okay.

6 Q Under the category, "Gastrointestinal tract"?

7 A Mm-hmm.

8 Q Why don't you read that and see if you refreshed  
9 your memory as to what Doc Green was saying about what was in  
10 this guy's stomach.

11 A It states that it appears to be normal.

12 Q Okay. In fact, in says, "intact and empty," isn't  
13 that correct?

14 A Yes, sir.

15 Q Okay. Now, at the end of Dr. Green's coroner's  
16 report, he concludes that the injuries that he observed  
17 could've been strangulation, could've occurred from some other  
18 causes. That's the very last line of his report, isn't that  
19 correct?

20 A Yes, sir.

21 Q So he couldn't determine, with any degree of medical  
22 certainty, at least he didn't express to you, the cause of  
23 death here, isn't that correct?

24 A That's correct.

25 Q Now, you testified on direct about substances in the

KERN - DIRECT

1 body. You understand that the metabolite means that the body  
2 has broken things down, isn't that correct?

3 A That's correct.

4 Q Okay. And the body has to be functioning to break  
5 down metabolites. Do you understand that?

6 A That's correct.

7 MR. FIGLER: Pass the witness, Your Honor.

8 MR. DASKAS: No further questions, Your Honor.

9 THE COURT: Thank you, sir. You're excused.  
10 Call your next witness, please.

11 MR. DASKAS: Kim Kern.

12 KIM KERN, PLAINTIFF'S WITNESS, IS SWORN

13 THE CLERK: Please be seated. State and spell your  
14 name for the record, please.

15 THE WITNESS: Kim Kern. Last name, K-E-R-N.

16 DIRECT EXAMINATION

17 BY MR. DASKAS:

18 Q Ms. Kern, where is it that you work?

19 A At the Super 8 Motel on Boulder Highway.

20 Q What's your job title?

21 A I'm the general manager.

22 Q How long have you worked at the Super 8 Motel?

23 A Seven years now.

24 Q Is the Super 8 Motel somehow associated with the  
25 Longhorn Casino?

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KERN - DIRECT

1           A     Yes, it's adjacent property that're connected.  
2           Q     And you say that's on Boulder Highway here in Las  
3 Vegas, Nevada?  
4           A     Yes.  
5           Q     Let me direct your attention to the 11th day of  
6 August, 1998, sometime around noon. Were you working at the  
7 Super 8 Motel on that date?  
8           A     Yes, I was.  
9           Q     Were you the manager back then in '98?  
10          A     Yes.  
11          Q     And sometime around -- sometime around noon, do you  
12 recall where in the hotel you were working?  
13          A     I'm -- my office is located behind the front desk,  
14 and I was at my desk.  
15          Q     How many levels or stories is that motel?  
16          A     It's a four-story hotel.  
17          Q     And how many rooms are in the Super 8 Motel?  
18          A     150.  
19          Q     Can you estimate for me, if you're able to, the  
20 occupancy rate on August 11th, 1998, sometime around noon?  
21          A     From what I can recall, we had a big military group  
22 in-house and we were approximately anywhere from 75 to 85  
23 percent occupied.  
24          Q     And what time is check-out time at the Super 8  
25 Motel?

II-55

KERN - DIRECT

1           A     Check-out's at 11:00 o'clock.

2           Q     All right. Is it fair to say that at 11:00 o'clock  
3 and shortly thereafter it's a busy time at the front desk?

4           A     Lots of people are checking out and misconstrue the  
5 11:00 check-out for 12:00 checkouts, so there's -- from my  
6 recollection, there wasn't a lot of people at the front desk,  
7 but there was a lot of passing by activity.

8           Q     A lot of activity around noon?

9           A     Yeah. Mostly the checkouts had finished, but there  
10 is business over at the Longhorn, which is connected to the  
11 front desk.

12          Q     As you sat in your office near the front desk  
13 shortly before noon on August 11th, did something startling or  
14 unusual happen?

15          A     Yeah, very startling.

16          Q     What happened?

17          A     Well, from my recollection it appeared to be a bunch  
18 of firecrackers that are going off down the first floor  
19 hallway, which there are inner hallways and, from what I  
20 thought was firecrackers I went to the front of the hallway  
21 and looked down to the left of the hallway and saw one of my  
22 housekeepers running towards me, and at that time I knew that  
23 it wasn't firecrackers, it was actually gunfire.

24          Q     When you initially heard what you believe were  
25 firecrackers, can you estimate for me how many firecrackers

II-56

KERN - DIRECT

1 you thought you heard?

2 A Well, just like from the 4th of July it sounded  
3 like, you know, bundle of 25 going off consecutive, "pow-pow-  
4 pow-pow-pow," just a bunch in consecutive.

5 Q And were the shots or the noises you heard one after  
6 another, real fast?

7 A It was like several of 'em going off at the same  
8 time.

9 Q You say you came out from your office, is that  
10 correct?

11 A Yes.

12 Q And you saw --

13 A I came --

14 Q -- a maid running.

15 A She was running towards me and I was trying to  
16 figure out what was going on. Beyond her in the hallway,  
17 there was, from my recollection, four to five people in the  
18 hallway as she was running towards me, you know, 'cause I  
19 looked to see what she was running from and once I figured it  
20 wasn't firecracker and there was a lot of activity about the  
21 center of the hallway, I pulled her in to behind where my  
22 desk -- where my front area is and closed the door behind.

23 Q After you closed the door behind you, did you hear  
24 any other shots or what you believed to be initially were  
25 firecrackers?

II-57

KERN - DIRECT

1           A     I ran over to the telephone as the activity was  
2 going on and I called 9-1-1 at that point in time.

3           Q     Did you hear any additional shots, however?

4           A     I couldn't tell you. All's I know is it was a bunch  
5 of firecracker sounds and it was apparent from the housekeeper  
6 and her being very distraught that it was gunfire, and I just  
7 ran to the phone. I couldn't tell you if the gunfire  
8 continued or not.

9           Q     Did you ever see any, what I would call, victims or  
10 would-be victims or suspects in the area of the front desk  
11 there, once you ran outside?

12          A     Well, once I pulled the housekeeper back to my  
13 office, as she was running towards me, I saw there was quite a  
14 few people in the center of the hallway, four or five, and I  
15 saw two exiting the rear entrance of the hallway and you can  
16 kind of see, from the front desk area when I pulled her back  
17 to my office, you can view through a door the whole front desk  
18 area where I was on the telephone, squatted down on the floor,  
19 and I saw two gentlemen, two to three gentlemen run as fast as  
20 they could out the front door of the motel.

21          Q     Okay. Now, let me see if I understand. You say you  
22 saw two people exit one of the doorways there?

23          A     Yeah. There was an exit at the rear of the hall as  
24 I was pulling the housekeeper in, that were leaving the center  
25 of the hall, running towards the exit.

II-58

KERN - DIRECT

1 Q Describe those two people.

2 A It was a long distance down the hall. I couldn't  
3 give you a description. It's probably --

4 Q Could you determine what race they were?

5 A They appeared to be black. They were wearing dark  
6 clothing.

7 Q Can you estimate how old or how young those two  
8 people were?

9 A Those two people, I couldn't.

10 Q Were they male or female?

11 A I couldn't tell you, but all the gentlemen in the  
12 hall, just at a quick glance, it looked to be all males in the  
13 hall.

14 Q Now, I think you mentioned you saw two or three  
15 other people running in the opposite direction?

16 A They were actually running behind the front house --  
17 the housekeeper that I pulled in and shut the door, and then I  
18 have a good view, while I was on the telephone, of the exit  
19 door, of the front door of the motel and there was two more  
20 gentlemen that ran out the front of the door.

21 Q Describe those people that you saw.

22 A Those two gentlemen I got a pretty good look at, as  
23 far as them exiting the property, they were in black  
24 sweatshirts, black pants, and they had red bandannas across  
25 their face.

II-59

KERN - DIRECT

1 Q And do you know the race of those people?

2 A They were black.

3 Q Men or women?

4 A Males.

5 Q And can you estimate how old or how young those  
6 people were?

7 A They were anywhere from -- they appeared to be  
8 young, 17, 18, 20, 21, somewhere around that.

9 Q The police eventually arrived?

10 A Yes.

11 Q And you were there when the police arrived?

12 A Mm-hmm. Yes.

13 Q Is that a yes?

14 A Yes.

15 Q All right. When the police arrived, did you ever  
16 see the police speaking with either of the groups of people  
17 you've now described?

18 A When -- after the first two gentlemen that were  
19 dressed in black exited the property, following them were two  
20 more black males that exited the property. I was on the phone  
21 with 9-1-1 as all of 'em passed through the lobby and the  
22 helicopters were going and I actually, after things settled  
23 down, went out to look outside the property to be able to tell  
24 them what direction they went and they were -- they were  
25 walking down Harmon, the second set.

II-60



KERN - DIRECT

1 Q The second set of individuals you described were now  
2 walking down Harmon Street?

3 A Right.

4 Q All right. Did you ever see the police speaking  
5 with those two individuals?

6 A Yes. They actually -- I pointed to them as being  
7 two of the people that exited the property and they actually  
8 brought them back to the property.

9 Q Now, of those two people who were brought back to  
10 the property, who had been walking down Harmon Street, did you  
11 ever see if either of them had been shot?

12 A Neither of them had been shot, but one of the police  
13 officers actually pointed to this big oversized shirt and  
14 said, "Look man, you've been hit," and the guy lifted his arms  
15 up and through the front, underneath his arm, there was a  
16 shot, a hole that went through the front and exited out the  
17 rear of his shirt and it freaked him out. He pulled his shirt  
18 off to see if he had been hit.

19 Q You actually saw the hole going through his shirt?

20 A Mm-hmm, yes.

21 Q Now, what about the other people you described as  
22 running out the door? Did you ever see those people again in  
23 the Super 8 Motel or around the area?

24 A No.

25 Q Once you came out of the office, did you ever

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KERN - CROSS

1 determine whether any bullets had struck the interior of the  
2 motel?

3 A Oh, yeah, quite a few bullets had struck the  
4 interior hallway.

5 Q Can you estimate how many shots hit somewhere in the  
6 hotel?

7 A From counting, gosh, anywhere from 20, 25 bullet  
8 holes were found.

9 MR. DASKAS: I'll pass the witness, Judge.

10 THE COURT: Any cross?

11 MR. FIGLER: Real briefly.

12 CROSS-EXAMINATION

13 BY MR. FIGLER:

14 Q So no ambulance came and no one was carted away?

15 A No, sir.

16 Q Okay. To your knowledge, nobody was actually shot?

17 A No, sir.

18 Q Okay. And you know that the individuals who were in  
19 the room, they didn't press any charges or anything like that.  
20 Do you know that?

21 A The two second gentlemen that came in were the  
22 gentlemen that said that they were occupying the room and  
23 there wasn't any other people that were in the room, but no --  
24 I didn't hear one way or another whether charges were pressed  
25 or not.

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CLARK - DIRECT

1 MR. FIGLER: I have nothing further.

2 MR. DASKAS: No redirect, Judge.

3 THE COURT: Thank you, ma'am. You're excused.

4 Call your next witness, please.

5 MR. GUYMON: Officer Clark. Or Agent Clark.

6 (Off-record colloquy)

7 THE COURT: While that person's coming in, would you  
8 approach the bench.

9 (Off-record bench conference)

10 CRAIG CLARK, PLAINTIFF'S WITNESS, IS SWORN

11 THE CLERK: Please be seated.

12 THE COURT: I want to hear the whole question.

13 THE WITNESS: Sorry.

14 THE CLERK: State your name for the record, please.

15 THE WITNESS: Craig Clark.

16 DIRECT EXAMINATION

17 BY MR. GUYMON:

18 Q And can you tell me with whom are you employed?

19 A I'm employed as a Parole Agent II Specialist with  
20 the California Youth Authority.

21 Q And just what is a Parole Agent II?

22 A A parole agent is a person who supervises the -- a  
23 parolee, a person who's released from one of our institutions  
24 while he's in the community, until his jurisdiction expires,  
25 until he's granted release from parole.

II-63

CLARK - DIRECT

1 Q Okay. And you mentioned the California Youth  
2 Authority. Just what is California Youth Authority?

3 A California Youth Authority is a -- is a juvenile  
4 agency that's -- it's the state-run juvenile agency. It's a  
5 last vestige to help prevent youth from entering into the  
6 adult criminal system. The goal of the Youth Authority is to  
7 prevent further criminal activity from our -- from our  
8 clientele. Our clientele are those individuals who've been  
9 sentenced to our department by the -- either juvenile or  
10 Superior Court.

11 Q Okay. Now, you mentioned that the California Youth  
12 Authority is sort of the last, oh, the last hoop, if you will,  
13 for the youth.

14 A Yes.

15 Q Are there other institutions or organizations in the  
16 state of California that a youth goes through before he gets  
17 to the California Youth Authority program?

18 A Yes. There are other agencies, either private or  
19 county agencies that attempt to address the delinquencies of  
20 youth before they get to the California Youth Authority.

21 Q All right. Can you state what some of those other  
22 institutions are that a youth might be exposed to before he  
23 gets to the California Youth Authority?

24 MR. FIGLER: Your Honor, at this time, just for the  
25 sake of clarity, this officer here had interactions with John

II-64

CLARK - DIRECT

1 White. I don't know which of these they're focusing on that  
2 John was involved with or not. I mean, if he wants to talk  
3 about it generally, it needs to be phrased that way and what  
4 John was, I think that needs to be clarified.

5 THE COURT: I think he just did phrase it generally.

6 MR. GUYMON: I did, Your Honor, and I'm painfully  
7 aware what is involved with Donte Johnson. Before I get to  
8 his actual moment with Donte Johnson, I wanted to give a  
9 preview of what we have there in California.

10 BY MR. GUYMON:

11 Q Tell me specific -- let me go to the, say, the camp  
12 community programs. Is there such a thing in California?

13 A Yes, there are camp community programs run by the  
14 Probation Department.

15 Q And is that -- is those type of programs programs  
16 that a youth would go through before they perhaps entered in  
17 the California Youth Authority program?

18 A Yes, they are.

19 Q Do you know what the goal is for the camp programs?

20 A I don't know specifically what their goal is.

21 Q All right. You said, however, that the specific  
22 goal of the California Youth Authority is to attempt to  
23 perhaps rehabilitate youth to change their behavior patterns?

24 A Yes.

25 Q Tell me specifically, as you understand the

II-65

CLARK - DIRECT

1 California Youth Authority program, what programs are in place  
2 in order to specifically help or change the behavior of a  
3 troubled youth in California?

4 A When a -- when an individual enters the California  
5 Youth Authority, they're first placed in our institutions  
6 where they receive education, treatment and training based on  
7 their needs. Once they've -- once they've mastered that,  
8 their education, treatment and training, they're released to  
9 Parole where we try to provide a continuum of their treatment  
10 and training while in the community.

11 Q Let me ask you. Do you know a person by the name of  
12 John White?

13 A Yes, I do.

14 Q And is he in this courtroom today?

15 A Yes, he is.

16 Q Will you point to him and describe an article of  
17 clothing that he's wearing in court today?

18 A He's the defendant sitting in, I think, it's brown  
19 -- a brown shirt, between two individuals.

20 MR. GUYMON: Record reflect the identification of  
21 the defendant, Your Honor.

22 THE COURT: It will.

23 BY MR. GUYMON:

24 Q And can you tell me how you know John White?

25 A He was one of my parolees under my supervision in

II-66

CLARK - DIRECT

1 1995.

2 Q Okay. Now, do you know how it is he came to your  
3 supervision? In other words, what brought him to you?

4 A He was released from our -- one of our institutions  
5 in Chino, YTS, Youth Training School, and referred to Parole.

6 Q Okay. Now, are you familiar with the Chino  
7 California Youth Authority Institution?

8 A Generally, yes.

9 Q All right. Do you -- do you know if the Chino  
10 institution has any programs for youth who are sent to that  
11 institution in order to try to modify their behavior?

12 A Yes, they do have 'em.

13 Q Okay. Can you tell me if John White was exposed to  
14 those programs and, in fact, attended the programs while he  
15 was institutionalized in the California Youth Authority  
16 program there in Chino?

17 A Yes, he did.

18 Q Okay.

19 A And, yes, he participated in the programs.

20 Q All right. Tell me something. How long, in total,  
21 was John White in the California Youth Authority institution  
22 on the bank robbery of the Cen-Fed Bank?

23 A I think he was there between 19 and 26 months.

24 Q Okay. Now, during the 19 or 26 months -- and do you  
25 have any documents that would verify that?

II-67

CLARK - DIRECT

1 A Not on me, no.

2 Q Okay.

3 MR. GUYMON: Court's indulgence. And, Your Honor,  
4 with the stipulation of opposing counsel, they will stipulate  
5 that he, in fact, was there for 26 months.

6 MR. FIGLER: That's correct, Judge.

7 BY MR. GUYMON:

8 Q Can you accept that -- without going to notes, can  
9 you accept that as a fact?

10 A Yes, of course I can.

11 Q All right. Now, then, can you tell this jury what  
12 programs John White attended while institutionalized in the  
13 California Youth Authority program there in Chino?

14 A I didn't work in YTS, so I'm not particularly sure  
15 about which specific programs he completed, but I know he was  
16 18 so he had to be offered education. He probably was offered  
17 anger management and employability skills. I know they offer  
18 all of those programs there.

19 Q Okay. Now, once he's released from the institution,  
20 he's released on parole, is that correct?

21 A Yes.

22 Q He was released to you, in this case?

23 A Yes.

24 Q Now, did John White come to you with specific  
25 conditions associated with his parole; that is, associated

II-68



CLARK - DIRECT

1 with his release, did he have conditions?

2 A Yes.

3 Q And can you tell us specifically what the conditions  
4 were that John Lee White had once he comes to you as now his  
5 supervising officer?

6 A He had three specific conditions of parole. One of  
7 'em was anti-narcotics testing. One of 'em was -- he had to  
8 attend the Watts Parole School. Another one was -- he had to  
9 participate in the Watts Parenting Program and the Watts Job  
10 Preparation Programs.

11 Q I want to talk a little bit about those programs  
12 first.

13 A Yes.

14 Q You indicated he had to attend the Watts Parole  
15 School.

16 A Yes.

17 Q Just what is the Watts Parole School?

18 A The Watts Parole School is -- is a school  
19 specifically designed for parolees under the California Youth  
20 Authority's jurisdiction.

21 Q And where is the Watt's Parole School located?

22 A It's located in my office at 91st and Central in Los  
23 Angeles.

24 Q All right. So you're housed in the same building  
25 the school is housed?

II-69

CLARK - DIRECT

1 A Yes.

2 Q Tell me, how long did you supervise John Lee White  
3 for, there at the school and in your very office?

4 A John attended school daily. It was mandatory that  
5 he attend daily, so it was Monday through Friday from 9:00  
6 until 3:00.

7 Q And tell me when he came to you, actually.

8 A He came to me on August the 25th, 1995.

9 Q All right. And you say you saw him daily.

10 A I saw him daily, for the most part.

11 Q For about how many months?

12 A For about three and a half months.

13 Q Okay. Now, in total, how long were you supposed to  
14 have John White under your supervision as a parolee?

15 A John -- John was a M number, meaning he belonged to  
16 the Department of Corrections, and his jurisdiction was until  
17 his 25th birthday; however, M numbers have the -- they're able  
18 to get off parole within 13 months if they perform positively  
19 over that period of time.

20 Q Okay. So had John done well, 13 months after his  
21 release he could've gotten off parole?

22 A Yes.

23 Q All right. You said you saw him daily for three and  
24 a half months?

25 A Yes.

II-70

CLARK - DIRECT

1 Q All right. Now, I take it you saw him there at  
2 school daily for three and a half months?

3 A Yes.

4 Q Can you tell me of John's attendance at school, was  
5 it satisfactory?

6 A For the first three and a half months, yes.

7 Q Okay. Tell me what kind of training he was given  
8 academically there on campus where you were housed.

9 A Academically, they -- the school is set up to meet  
10 whatever needs the student has from their IEP, Individual  
11 Education Plan, through their regular high school curriculum,  
12 so whatever his needs were, the teacher had to address.

13 Q Okay. And were you satisfied that the teachers  
14 there at the California Youth Authority School there at Watts  
15 were, in fact, meeting his academic needs?

16 A Yes, I was.

17 Q Okay. You indicated that he also had to attend  
18 behavior modification courses.

19 A Yes.

20 Q Can you tell me what the behavior modification  
21 courses consisted of there at the Watts offices or Watts  
22 campus?

23 A The behavior modification program is a contracted  
24 program where the California Drug Consultants come in and  
25 provide training and treatment for -- for areas like sex

II-71

CLARK - DIRECT

1 education, life skills, behavior modification in general,  
2 anger management, those kinds of things.

3 Q Okay. And did John Lee White attend those courses  
4 to your satisfaction?

5 A Yes. He graduated from that program.

6 Q Okay. And I take it that program would've addressed  
7 attitude, defiance and those type of things?

8 A Yes.

9 Q Are you familiar with the training in that actual  
10 program?

11 A I didn't teach that program. It was a contracted  
12 service, so, no, I don't know specifically everything that  
13 they covered.

14 Q You mentioned parenting courses that were offered  
15 there at the Watts campus. Did John Lee White attend the  
16 parenting courses?

17 A Yes, he did.

18 Q And just what is taught to a parolee such as John  
19 Lee White in the parenting courses?

20 A One focuses on the male's role in parenting,  
21 personal responsibility as a father, female responsibilities  
22 in parenting, the whole gamut.

23 Q Okay. And life skills courses you mentioned that  
24 John Lee White attended, is that correct?

25 A Yes.

II-72

CLARK - DIRECT

1 Q Now, tell me, what is the goal of the life skills  
2 courses?

3 A He attended life skills at another agency, which was  
4 a referral agency called Youth Fair Chance, and that agency  
5 was designed -- that specific course, life skills management,  
6 was designed to help them manage their money, learn the  
7 responsibilities of being a responsible individual, getting to  
8 work on time and organizing your day in your life. And the  
9 incentive -- in addition to that, it provided a fifty dollar  
10 (\$50) a week incentive for continued enrollment in school.

11 Q Okay. So John Lee White received an incentive for  
12 going to school and for attending the life skills program of  
13 fifty dollars (\$50) a week or two hundred dollars (\$200) a  
14 month?

15 A Yes.

16 Q Okay. And do you have personal knowledge that he,  
17 in fact, received two hundred dollars (\$200) a month for his  
18 participation in this parolee program?

19 A Yes.

20 Q Okay. Now, tell me how regularly did you get to  
21 speak with John White?

22 A I spoke with him almost every day.

23 Q Okay. Did you note any difficulties that John was  
24 having there in the program at the Watts campus?

25 A No, I didn't, not during the -- not during the first

CLARK - DIRECT

1 three and a half months, other than an occasional -- he might  
2 leave school early on occasion or he might leave the office or  
3 not complete a class early, but other than that, no.

4 Q Okay. In the subsequent -- after the first three  
5 months, you say you had him under your supervision for an  
6 additional month, is that correct?

7 A Yes.

8 Q During the additional month, the fourth month, did  
9 he begin to show signs of having difficulties?

10 A Yes, in that he started to miss more classes and  
11 leave school earlier and became a little more defiant. When  
12 confronted about it, defiant by his attitude, and to address  
13 that, I gave him work assignments or staff the case with the  
14 supervisor who'd come up with work assignments that he had to  
15 do around the building, you know, cleanup and that kind of  
16 thing.

17 Q Okay. Now, who was the defiance directed at, as you  
18 observed it?

19 A I guess it was just at -- at the rules or maybe --  
20 yeah, just the rules and not wanting to comply, not wanting to  
21 continue to have to come to school every single day and -- and  
22 be told what to do all the time.

23 Q I take it by your comments, then, he began to miss  
24 school?

25 A Yes.

II-74

CLARK - DIRECT

1 Q Appear late to school?

2 A Yes.

3 Q How did his work suffer, if at all, during the  
4 fourth month?

5 A Well, I don't know. I didn't -- I didn't check with  
6 the teacher to find out if his work was suffering or not.

7 Q Okay. How about his attendance to behavior  
8 modification courses and the other programming courses? Did  
9 he continue to attend those satisfactory in the fourth month,  
10 or was that unsatisfactory?

11 A That was unsatisfactory, too.

12 Q All right. Did you speak to him about his  
13 unsatisfactory performance now, in the fourth month? That is  
14 to say, John, you're not in compliance?

15 A Yes.

16 Q And what was John's response when you talked to him?

17 A It was more, well, man, you know, I got other things  
18 to do. Man, you know, I just had to do this or I had to go to  
19 work -- or, I mean not work, but I had something else to do.  
20 I had another appointment, those kinds of things.

21 Q Tell me, did you explain to him the importance of  
22 his successful attendance and completion of parole?

23 A Yes.

24 Q And what is it that you explained to him as he would  
25 tell you of his excuses?

II-75

CLARK - DIRECT

1 A What -- I didn't understand your question.

2 Q What is it that you would tell him about the  
3 importance of his successful compliance with the programs  
4 there on the Watts campus?

5 A That the only way you can get off parole in 13  
6 months is if you comply, and if you fail to comply, you will  
7 go to jail.

8 Q Did you treat him fairly in your admonishments to  
9 him?

10 A Yes.

11 Q Now, you indicated that you noted some defiance.  
12 Did you talk to him about his defiance?

13 A Yes.

14 Q Did you notice any attitude problems in the fourth  
15 month, other than defiance?

16 A No.

17 Q Okay. Tell me what it is, when you note the  
18 defiance, what it is that you talked to him about.

19 A Just general shifting his attitude, becoming more  
20 like -- just not compliant, just not wanting to be -- not  
21 doing what he was doing in the first three months of his  
22 parole, when everybody liked him and he was doing everything  
23 and we can count on him for everything.

24 Q At some point in time, there was a nickname that  
25 John was given, is that correct?

II-76



CLARK - DIRECT

1 A Yes.

2 Q And what was that nickname?

3 A One Punch.

4 MR. FIGLER: Object, Your Honor. Can we approach  
5 for a second?

6 (Off-record bench conference)

7 BY MR. GUYMON:

8 Q Let me ask you, Agent Clark, was his nickname -- was  
9 it given to him because of his talking about violence?

10 A Yeah. It was given to him because of the -- because  
11 in our discussions about how he would handle situations where  
12 he couldn't get his way or somebody was bigger than him, how  
13 he was gonna handle it and he always said, I just knock him  
14 out, and we'd always say, well, look, you kinda small, so  
15 you're not gonna be able to fight and beat everybody up, and  
16 so there's gonna be times when you run across people bigger  
17 than you and badder than you and he would say, don't matter  
18 how big you are, just take one punch and knock him -- and drop  
19 him.

20 Q Did you attempt -- were there programs on the campus  
21 to address violence?

22 A We address violence in every one of our programs.  
23 We don't have a formal program called violence prevention, but  
24 we address it in the decision-making and through every program  
25 that we have.

II-77

CLARK - DIRECT

1 Q Did you talk to John about violence not being a way  
2 to handle the problem?

3 A Yes, we did. \*\*

4 Q Okay. Now then, during the course of your  
5 supervising John for those four months, did you learn about  
6 where he was living at the time?

7 A Yes, I did.

8 Q And how was it that you learned where he was living?

9 A Well, I have his address and I had to make the home  
10 calls and the -- the placement address. When he initially  
11 comes out, at the preplacement, I have to go and visit the  
12 home in order to evaluate the home and see if it's adequate.

13 Q Did you in fact evaluate the home that John Lee  
14 White was staying at, at the time that he was released on  
15 parole?

16 A Yes.

17 Q And can you tell me whose home it was?

18 A I did the preplacement at his grandmother's home.

19 Q Okay. And can you describe his grandmother's home  
20 setting? You indicated it was an adequate setting?

21 A Yes. Adequate meaning there was -- he'd have a  
22 place to stay, a roof -- he'd have food and his needs would be  
23 met.

24 Q And you were -- were you satisfied in fact that his  
25 needs would be met there at his grandmother's house?

II-78

CLARK - DIRECT

1 A Yes, I concurred with the institution staff.

2 Q Okay. Did John Lee -- did his grandmother also have  
3 other children, youth, I should say, living there at the home?

4 A Yes, there were other kids.

5 Q And can you tell me about how many other kids lived  
6 there?

7 A Five years ago. About five or six. I'm not sure.

8 Q Okay. Now, you indicated that ultimately John Lee  
9 White could be -- get off parole in 13 months?

10 A Yes.

11 Q Did he make that 13 month goal?

12 A No.

13 Q Tell me what month he began to completely fail in  
14 any participation whatsoever?

15 THE COURT: Excuse me, Mr. Guymon, Mr. Clark. Let's  
16 take the first of what may be, if we go to 5:30, our first of  
17 two recesses. We'll be in recess for 10 minutes.

18 THE CLERK: During this recess you're admonished not  
19 to talk or converse among yourselves or with anyone else on  
20 any subject connected with this trial; or read watch or listen  
21 to any report of or commentary on the trial or any person  
22 connected with this trial by any medium of information  
23 including, without limitation, newspaper, television or radio;  
24 or form or express any opinion on any subject connected with  
25 the penalty until the case is finally submitted to you.

II-79

CLARK - DIRECT

1 THE COURT: 3:15.

2 (Court recessed at 3:03 p.m. until 3:25 p.m.)

3 (Jury is present)

4 THE COURT: Go ahead, Mr. Guymon.

5 DIRECT EXAMINATION (Continued)

6 BY MR. GUYMON:

7 Q All right. Agent Clark, we left off on the -- at  
8 the conclusion of the fourth month of Donte Johnson being on  
9 parole, is that correct?

10 A Yes.

11 Q You continued to be the agent supervising him?

12 A Yes.

13 Q Now, had you taken a particular interest in Donte  
14 Johnson up until that point in time?

15 A What do you mean a particular interest?

16 Q Well, you saw him daily?

17 A Yes.

18 Q How many other persons or people were you  
19 supervising that you saw daily?

20 A That's hard to say, I had about sixty people on my  
21 case load. Each person has a different contact standard,  
22 based on their performance and because he was relatively new  
23 and I placed him in the school program, I saw him more often.  
24 And that would be consistent with most new people on my  
25 caseload.

II-80

CLARK - DIRECT

1           Q     Okay. Three of the four months he'd been performing  
2 satisfactory, the fourth month unsatisfactory?

3           A     Problems started to occur, yes.

4           Q     Okay. Now, tell me what happens after the fourth  
5 month?

6           A     Well, he went missing on, I think it was 12/18,  
7 meaning he stopped reporting to the office and he didn't  
8 respond to any communiques or -- and he wasn't at home on his  
9 home calls. So, I requested a PAL, a warrant, parolee at  
10 large warrant from the Department of Corrections and I didn't  
11 receive it until May. And then about a week or two later he  
12 called me and -- John called me and asked me, was there a  
13 warrant out for his arrest and I told him, yeah. He wanted to  
14 -- and I told him his parole had been suspended and he wanted  
15 to know if I was gonna lock him up if he came in, I said,  
16 yeah. He told me he was in Gardena but he wasn't gonna tell  
17 me where he was at. So, then he hung up, I couldn't ascertain  
18 where he was so the warrant just stayed in existence.

19          Q     Okay. Let me talk to you a little bit about that.  
20 In John Lee White's circumstances, if his parole was revoked,  
21 in other words, if he failed on parole what was going to  
22 happen to him?

23          A     He would be returned to the Department of  
24 Corrections. I mean he'd go back to state prison for a  
25 maximum of a year.

II-81

CLARK - DIRECT

1 Q Okay. So, if, in fact, he failed on parole, back to  
2 California Youth Authority Institution?

3 A No, he'd go back to the Department of Corrections.

4 Q Okay. In his case he'd then go to the Department of  
5 Corrections, the prison?

6 A Yes, he'd go to prison.

7 Q For a one-year term?

8 A For up to a year.

9 Q All right.

10 A Yes.

11 Q You indicated that in late August of '95, you  
12 received him as a parolee that you were now to supervise.  
13 December 18th, 1995, he ends up missing and you asked for a  
14 warrant to be issued for his arrest?

15 A Yes.

16 Q The purpose of the warrant would be to arrest him so  
17 that he could now be incarcerated for his failure to comply  
18 with parolee conditions?

19 A Yes.

20 Q It took a number of months for that warrant to  
21 actually issue, is that correct?

22 A Yes.

23 Q Is that normal?

24 A Yes. It's normal with the Department of Corrections  
25 because you have two different departments trying to

II-82

CLARK - DIRECT

1 communicate and it's just -- it just worked out that way.

2 Q Okay. Now, once he turns up missing on December  
3 18th, do you attempt to contact him say at his grandmother's  
4 house?

5 A Yes.

6 Q And are you able to locate him at his grandmother's  
7 house?

8 A No.

9 Q Did you have any other addresses where he might be  
10 able to be found?

11 A Yes, I had an address at his aunt's house on, I  
12 think, 43rd -- 43rd Place or Street.

13 Q Did you attempt to reach him at his aunt's place?

14 A Yes.

15 Q Could he be located there?

16 A No.

17 Q All right. Did you have any idea where John Lee  
18 White was then?

19 A No, I didn't.

20 Q Was that a concern of yours?

21 A Yes, it was.

22 Q You say you don't hear from until April of '96, is  
23 that correct?

24 A I think it was June of '96.

25 Q Okay. And it's by phone, is that correct?

II-83

CLARK - DIRECT

1 A Yes.

2 Q He calls in and asks to speak to you?

3 A Yes.

4 Q When he called, he told you that he was in Gardena.  
5 Did you ask him whereabouts in Gardena to give you an address?

6 A Yes.

7 Q Did he give you an address?

8 A No.

9 Q What did he tell you about your ability to find him  
10 in Gardena?

11 A What he said was something to the effect like, let's  
12 see how good you are and see if you can find me 'cause you're  
13 never gonna find me here.

14 Q Okay. I take it that you did not find him in  
15 Gardena?

16 A No, I didn't.

17 Q Okay. Now, did he remain outstanding, as far as you  
18 was concerned, from the time he left in December until when?

19 A He remained outstanding until he was arrested here  
20 and we were made aware of the arrest when -- I think it was  
21 late last year.

22 Q Okay.

23 A I'm not sure which month.

24 Q So, from somewhere around mid-'96 until he's  
25 arrested in August 17th, 1998 he's a parolee at large?

II-84



CLARK - CROSS

1 A Yes.

2 Q And not located until that point in time?

3 A Yes.

4 Q Okay.

5 MR. GUYMON: Court's indulgence.

6 THE COURT: Sure.

7 MR. GUYMON: Pass the witness, Your Honor.

8 THE COURT: Who's gonna do the cross as opposed to  
9 the new direct?

10 MR. FIGLER: That's fine, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. FIGLER:

13 Q Good afternoon, Agent Clark.

14 A Good afternoon.

15 Q First I want to clear up something. The prosecutor,  
16 Mr. Guymon, asked you some questions about other programs that  
17 are available in general in the California system regarding  
18 camps and those type of things. You remember that question?

19 A Yes.

20 Q Do you have any personal knowledge whether or not  
21 John White was afforded any of those opportunities?

22 A No, I don't.

23 Q Do you prefer Agent Clark or Mr. Clark or Officer  
24 Clark? I want to address you correctly.

25 A It doesn't matter.

II-85

CLARK - CROSS

1 Q Okay. Well, what's your favorite one and then I'll  
2 go with that?

3 A Mr. Clark.

4 Q Mr. Clark. Okay, Mr. Clark. You've worked for the  
5 California Youth Authority and your agency for over twenty  
6 years, is that right?

7 A Yes.

8 Q Started in like 1978?

9 A January 1st, 1978.

10 Q So, you were first a youth counselor and then you  
11 became a youth parole officer?

12 A Yes.

13 Q Okay. Now, you're probably the first witness that  
14 we have who has a familiarity with the South Central/Watts  
15 area so I'm going to ask you some questions based on your  
16 observations. Do you think you're comfortable answering those  
17 type of questions?

18 A Yes.

19 Q Okay. And what I really want you to do is just  
20 explain to the jury your own personal observations based on  
21 these questions and then we'll move from the general, just  
22 like the prosecutor did, to specific questions about -- about  
23 John here. Okay?

24 A Yes.

25 Q Okay. Now, obviously working with a lot of youth

CLARK - CROSS

1 offenders you probably -- well, you correct me if I'm wrong,  
2 have some information or knowledge about street gangs and kids  
3 in street gangs, is that correct?

4 A Yes, I work with them every day.

5 Q Okay. Let me ask you, Mr. Clark, can you describe  
6 for me, in general, the sort of situations and events that  
7 would lead a child to becoming a member of or affiliated with  
8 one of these street gangs?

9 A There's a lot of reasons why kids choose to join  
10 street gangs. One of the most popular one is that they get a  
11 lot of respect and these street gang members are like their  
12 family, they'll back 'em up and protect them. Another reason  
13 is that we, as a society, kind of glorify the negative  
14 element. It's almost like we reward negative behavior as  
15 opposed to positive behavior. When a kid does real well,  
16 unless he's in athletics, they're really not noticed and then  
17 we have very few, at least in South Central, we have very few  
18 resources like parks or other facilities that are available to  
19 them without cost. And since the economics are kind of low,  
20 it's kind of difficult for most families to afford their kids  
21 the opportunity to go to those programs that are in place. So  
22 those are all contributing factors.

23 Q Now, you mentioned something about --

24 THE COURT: Excuse me, Mr. Figler, let me see you  
25 all at the bench for just a second, please.

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(Off-record bench conference)

1  
2 BY MR. FIGLER:

3 Q I had asked you a question and you told me something  
4 about how kids find family -- find some sort of family support  
5 system with these type of street gangs. I want to follow up  
6 on that. Do a lot of these kids have no family of their own  
7 or broken up families and that sort of thing in this area?

8 A If you're asking if there are a lot of single parent  
9 homes, yes, there are a lot of kids from single parent  
10 families. Yes.

11 Q How about kids that are left without any adult  
12 supervision at all? I mean is that a normal thing or is that  
13 sort of an abnormal thing?

14 A It's more normal than abnormal.

15 Q Now, can you tell me about the relationship between  
16 these older street gang members and the younger kids that they  
17 interact with? How do the older kids come to the younger kids  
18 or vice versa?

19 A Well, they come a variety of ways. A lot of the  
20 times the older gang members, the OGs, have the respect of the  
21 -- of everybody else in the -- in the group and they recruit  
22 based on their notoriety. A tool that is -- that was really  
23 useful for them was the fact that if a young kid committed a  
24 crime then they were more likely to be sent to the Youth  
25 Authority and not to state prison, so the amount of time that

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CLARK - CROSS

1 they would do would be a lot less than if they went to a state  
2 prison. So, that's one of the tools they use.

3 Q Okay. So, now you're saying that the, and correct  
4 me if I'm wrong, isn't it true that the older kids use the  
5 younger kids and make them commit these type of crimes?

6 A Yeah.

7 Q Is that your observation?

8 A Yes, it is. They earn stripes that way.

9 Q Okay. So, it's the older ones who are bringing  
10 these young impressionable kids into this sort of world, is  
11 that accurate?

12 A Yes, I would say so.

13 Q Okay. Now, you said that there's not a lot of parks  
14 in the area but there are some parks, right?

15 A There are parks in the area but there are very few  
16 that are gang free or safe.

17 Q So, kids, just normal kids in the area are -- you're  
18 saying it's not safe for those kids to even use the parks that  
19 are made for them?

20 A Yes, that's what I'm saying.

21 Q Now, if someone became a member of one of these  
22 gangs, would you agree that that gave them more freedom to  
23 even move around their own neighborhood?

24 A Yes, it gave them a lot of freedom to move in that  
25 neighborhood, but it may not necessarily give them freedom to

1 move in other neighborhoods.

2 Q Okay. But there is, in these kind of neighborhoods,  
3 a lot of pressure if you're not in those gangs to just pretty  
4 much stay locked inside, is that fair?

5 A Yes, stay locked inside or have somewhere specific  
6 to go with adult supervision.

7 Q Now, I want to ask you and maybe you could come up  
8 with specific examples of just sort the dynamic, if you will,  
9 of this neighborhood -- of Donte's -- of John's neighborhood  
10 and what you observed when John was a -- was a teenager. I  
11 mean maybe you could give the jury specific examples of any  
12 type of social tensions or problems around this area, like  
13 '91, '92, that sort of thing?

14 A Well, the area that he lived in was like bordered by  
15 two strong powerful gangs and they're Crip gangs and his gang  
16 was a Blood gang. So, it's like in the middle so it's really  
17 hostile and it's -- you know, it's a pretty hectic area at  
18 times if those factions are warring. But primarily it's --  
19 his area is basically -- while it was violent, it was more  
20 drug related than gang related.

21 Q Now, you indicate that at sometime it came to your  
22 attention that John got caught up in this world as well. Is  
23 that correct?

24 A Did I indicate that?

25 Q That he was -- that he was associated or affiliated

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1 with some type of gang?

2 A Yes.

3 Q Okay. Now, would you say that gangs and the  
4 problems with gangs and gang recruitment and everything else  
5 that we've talking about, how would you describe it in 1994 in  
6 Watts? Was it light? Was it intense? How would you describe  
7 it?

8 A Let's see. '94 and '95 it was pretty intense. It  
9 was -- well, let's see I've been there since '88 so it was one  
10 of the more violent periods. You know, we had the Rodney King  
11 uprising and before that we had the Natasha Harling's  
12 [phonetic] killings.

13 Q And what was the Natasha Harling thing about?

14 A She was a fifteen year old who was killed either  
15 robbing a store or thought to be robbing a store. She was  
16 shot in the back of the head and it caused a lot of uproar in  
17 the community.

18 Q And why is that?

19 A Because the video -- when everybody saw the video --

20 MR. GUYMON: Judge, I'm going to object to the  
21 relevancy of this.

22 MR. FIGLER: Just trying to get a feel of  
23 neighborhood, Your Honor.

24 THE COURT: Will you approach the bench, please.

25 (Off-record bench conference)

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1 THE COURT: Sustained.

2 BY MR. FIGLER:

3 Q Let's get a little more specific, Mr. Clark. Now,  
4 in your facility, where was that located?

5 A 91st and Central.

6 Q And Central?

7 A 91st and Central Avenue --

8 Q Okay.

9 A -- in Los Angeles.

10 Q Now, there was an incident in 1995 when some local  
11 street gang people came into the -- to that facility, correct?

12 A Yes.

13 Q And that's the same facility that John later came  
14 into?

15 A Yes.

16 Q And what happened in 1995 that's of note?

17 MR. GUYMON: Objection, relevance. If John White's  
18 not there, I'm going to object, Judge.

19 THE COURT: This is right in the same place where  
20 he's coming everyday. Overruled.

21 THE WITNESS: We had about -- well, we had a large  
22 number of Grape Street Crip gang members and kids --

23 THE COURT: I hate to interrupt you again, let me  
24 talk to you fellows, one more time at the bench.

25 (Off-record bench conference)

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1           THE COURT: Folks, you notice that most of the time  
2 in the trial the direct examination, the first questions that  
3 are asked, the cross-examination relates directly to what --  
4 to what was asked on the direct examination. This is the  
5 first witness in the trial where we're doing things a little  
6 differently and you notice what Mr. Figler is now getting into  
7 isn't what Mr. Clark testifies about when he was first  
8 examined by Mr. Guymon. The reason for that is simple, just  
9 in case you're wondering what's going on. He's their witness  
10 and he was subpoenaed out of the state of California to be  
11 part of the defense case as well. Tomorrow is going to be the  
12 defense case. Rather than having Mr. Clark come back and be  
13 very strict about these rules, the State is asking what they  
14 want today and then cross-examination by Mr. Figler and Mr.  
15 Figler is also getting into what he would have asked tomorrow,  
16 which is this stuff that he's on right now.

17           Go ahead, Mr. Figler.

18           MR. FIGLER: Thank you, Judge.

19 BY MR. FIGLER:

20           Q     So, you were -- you were asked by the defense to  
21 come out here to assist our defense case with regard to John  
22 White, is that accurate?

23           A     Yes.

24           Q     And you have no problem doing that, correct?

25           A     No.

1 Q Okay. Now, you were telling me about an incident at  
2 this facility in 1995 involving a group you identified as  
3 Crips?

4 A Yes.

5 Q Which Crips was that?

6 A Grape Street.

7 Q And what happened, sir?

8 A I beg your pardon?

9 Q What happened that day?

10 A Oh, one of the -- one of them members had been  
11 arrested for a possible law violation and when the law  
12 violation was dismissed he wasn't released from custody  
13 because of a -- because he was on parole and once a person  
14 that's on parole is arrested they cannot be released before  
15 their -- before their case is heard by the parole board. So,  
16 the members of the -- of that particular gang wanted -- wanted  
17 us to release their person from custody and we refused so they  
18 protested. And they brought about -- close to two hundred  
19 kids to the building and surrounded it.

20 Q And police dressed in SWAT or riot gear responded to  
21 the scene?

22 A Eventually, yeah.

23 Q Now, did you have any fears that the officers might  
24 -- those SWAT type officers might try to come in and do  
25 something with the kids under your charge?

CLARK - CROSS

1           A     Well, I asked the police department to be on standby  
2 because I thought had they -- had they come out in -- for a  
3 riot there would have -- there would have been some kids  
4 killed because you had a large number of one gang in another  
5 gang's territory, so that could have caused a lot of problems.

6           Q     Okay. You were also concerned about the police  
7 interacting with these kids who -- many of whom you probably  
8 knew, is that correct?

9           A     I know a lot of them, yeah.

10          Q     Now, the participants that you're involved with -- I  
11 assume you're not the only parole officer that's working in  
12 your office, correct?

13          A     No, I'm not.

14          Q     It's -- you have sixty of your own and you'd say  
15 it's a -- it's an extraordinarily large case load of people  
16 that your agency is there to deal with?

17          A     In '95 we had -- we had a large population.

18          Q     And a lot of those individuals came from different  
19 gangs and things like that, is that true?

20          A     Yes, it is.

21          Q     Now, I want to focus your attention on John White  
22 here, okay? Now, John was someone who was assigned to you,  
23 right?

24          A     Yes.

25          Q     Okay. So you had the ability to interaction with

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CLARK - CROSS

1 him, I think he came out on a -- pretty much a day to day  
2 basis?

3 A Yes.

4 Q Now, when he enrolled in the day program at your  
5 office, you know he didn't have an automobile, correct?

6 A Yes.

7 Q And he had to walk there, correct?

8 A He didn't have to walk he'd catch the bus or get a  
9 ride from other people.

10 Q But you knew that he had to cross through, on a  
11 typical basis, other gang's territories to get to your office,  
12 isn't that correct?

13 A Yes.

14 Q And would the number of six or seven different gangs  
15 probably be consistent with your recollection of how many  
16 gangs he had to pass through their territory to get to the  
17 youth facility?

18 A Yes.

19 Q Okay. So, would you agree that getting to the  
20 program, just getting to your program that you have, would  
21 require some degree of commitment and vigilance on the part of  
22 the individual?

23 A Yes.

24 Q Okay. Now, we also -- we talked about, I think,  
25 very briefly that if you're identified as belonging to a

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1 different group or a different set or a gang or something like  
2 that, that that could be a problem for you if you wind up in  
3 the wrong neighborhood, correct?

4 A Yes.

5 Q And part of that problem is extreme violence on that  
6 individual?

7 A Yes, that could be one of the outcomes.

8 Q And a lot of these gangs carry guns, is that  
9 correct?

10 A Yes.

11 Q Okay. Now, can you name some of the gangs whose  
12 territory that John had to cross in order to reach the office?  
13 Or, if I were to name some for you that might refresh your  
14 memory?

15 A No, I can name -- I can name them.

16 Q Tell us some of the gangs that he would have to  
17 cross through to get to your day program?

18 A Main Street Crip territory, East Coast Crips, well,  
19 Six Deuces East Coast Crips, Kitchen Crips, Avalon Garden  
20 Crips, Eight-Seven Family Bloods, Florencia Thirteen --

21 Q Bounty Hunters?

22 A Well, he wouldn't have to cross the Bounty Hunter  
23 territory to get to the office.

24 Q Okay.

25 A The Grape Street, Front Street, Hat Gang, yeah,

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1 about those.

2 Q Okay. Now those, as far as racial makeup, are they  
3 made up of one racial group or are these different ones that  
4 you've mentioned?

5 A Those that I named, with the exception of Florencia,  
6 were predominantly Black gangs.

7 Q Okay. Now, are there other Latino gangs in this  
8 area, that sort of thing?

9 A There are a few, yes.

10 Q Okay. And so those are ones that you didn't even  
11 name?

12 A Yes.

13 Q Okay. Now, let's -- I'm going to use an expression  
14 that members of our jury here may not be familiar with, it's a  
15 word -- the word is "home boy," you're familiar with that?

16 A Yes.

17 Q And what's that mean?

18 A Friend.

19 Q Okay. Now, isn't it true that John didn't have any  
20 home boys or friends in your program when he was going there  
21 to the program?

22 A I don't recall him having any, no.

23 Q It's true though that on any given day when he would  
24 come in there, he could find himself in the company of a  
25 number of members of what might be considered on the street as

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CLARK - CROSS

1 enemies or enemy gang sets or something like that?

2 A Yes.

3 Q Okay. Now, there was a school that was housed at  
4 the CYA office?

5 A Yes.

6 Q And it's true that John was one of the first people  
7 to enroll in that school?

8 A Yes.

9 Q And that there was other programs outside the office  
10 as well that you made reference to?

11 A Yes.

12 Q And it's true that John voluntarily entered into  
13 numerous programs, isn't that correct?

14 A Yes, he entered into the Youth Fair Chance Program,  
15 yes.

16 Q And that was voluntarily?

17 A Yes.

18 Q Okay. Now, there are a lot of rules for  
19 participants in the school in the day programs, correct?

20 A Yes.

21 Q And one of those is to not wear your colors or.  
22 colors that are associated with any type of gang activity  
23 while in the program, correct?

24 A That's a rule for parole.

25 Q Okay. And John, he adhered to that rule, didn't he?

CLARK - CROSS

1 A Yes.

2 Q Now, a lot of what John got in trouble for was  
3 ultimately no showing to this? That was his primary  
4 violation, isn't that correct?

5 A Yes.

6 Q Okay. He never actually did commit any actual  
7 violence, striking or hitting any staff members to your  
8 knowledge?

9 A No.

10 Q Other members of the group that were there in the  
11 school, anything like that?

12 A No.

13 Q Okay. In fact, there was that comment about one  
14 punch, isn't it true that that was sort of a joke, for lack of  
15 a better word, within your office? That if anybody got into  
16 it with John that John would be knocked out in one punch?

17 A No. As made reference to how John stated he would  
18 handle his problems when somebody got in his way or confronted  
19 him.

20 Q Okay. But you never actually saw him do anything  
21 like that?

22 A No.

23 Q A lot of braggadocio?

24 A Yes.

25 Q Okay. Hype, that sort of thing?

II-100



1 A Yeah.

2 Q And is that uncommon for kids to basically say more  
3 than they are in this environment?

4 A It's not uncommon for 'em to say that.

5 Q What I'm saying is that just, with your observations  
6 of kids on the street and kids interact with you that there's  
7 a good deal of puffing themselves up for respect or any number  
8 of different reasons. Is that your experience?

9 A Yes.

10 Q Okay. So they may say that they were involved in  
11 things that actually turned out not to be true just so they  
12 could get that respect?

13 A Yes.

14 Q And that's not uncommon at all, is it?

15 A Not uncommon at all.

16 Q Now, you interacted with John quite a bit. I'm sure  
17 that since, you know, you're a paid professional, you try to  
18 remain neutral but let me ask you this question, did you like  
19 John in your interactions with him? Did you have liking for  
20 John?

21 A Yes.

22 Q And did you believe that John really wanted to do  
23 right?

24 A Yes.

25 Q Okay. Would you agree with me that in this

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1 environment that there is a certain, and I'm sure it's  
2 disturbing to you, but a certain degree of hopelessness that  
3 sort of settles in on a lot of the kids in the neighborhood,  
4 would you agree with that?

5 A Yes.

6 Q Okay.

7 A I guess, yeah.

8 Q And it was your impression of John that he really  
9 did want to do right or try to do right?

10 A Yes, during the period of time that I was able to  
11 see him.

12 Q Okay. Now, do you think and, in fact, you've  
13 indicated before that there was a great deal of -- at this  
14 time these other peers and older gang members or things like  
15 that around, and you'd say generally they do have an  
16 influence, in general, on younger or smaller or something like  
17 that kids?

18 A Yes.

19 Q Okay. Now, after John was missing from the program,  
20 he stopped coming in, he was the one that called you, correct?

21 A Yes.

22 Q Okay. And so you don't think that anyone was  
23 holding a -- any kind of force over him to make him call you?  
24 You know he called you voluntarily, right?

25 A I would assume he did, yes.

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1 Q Okay. And he was asking you about if he could come  
2 back to the program what would happen to him, correct?

3 A Correct.

4 Q So, if he's asking you about the consequences could  
5 you figure out from his tone that he was interested in  
6 actually trying to come back to this program?

7 A That was my impression when he called me.

8 Q But you had to be truthful with him, didn't you,  
9 that he was going to be arrested and go into the adult prison?

10 A I told him he was going to be arrested and he had to  
11 go before the board.

12 Q Okay. And that probably scared him, don't you  
13 think?

14 MR. GUYMON: Objection, calls for speculation.

15 THE COURT: Sustained.

16 MR. FIGLER: Okay.

17 MR. SCISCENTO: Court's indulgence for one moment,  
18 Your Honor.

19 BY MR. FIGLER:

20 Q Mr. Clark, I'm sure that as a professional you're  
21 proud of what you do but you only have limited resources,  
22 isn't that correct?

23 A Yes.

24 Q And there is a big caseload in -- in even just your  
25 office, isn't that correct?

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CLARK - CROSS

1 A That was true in '95, yes.

2 Q Okay. Now, you know, or do you that at some point  
3 in the history of California there were more programs and  
4 ultimately were around in the '80's and '90's, isn't that  
5 true?

6 A Yes.

7 Q Why don't you tell the jury about the level of  
8 commitment that California gave previous and compare that to  
9 what it ultimately turned into?

10 A Well, in the early -- in the '70's and early '80's  
11 there was like a lot of -- a number of team posts, almost a  
12 team post facility in just about every community. As a matter  
13 of fact, our parole office used to be a parole center, a youth  
14 center, where kids could come and, you know, participate in  
15 all kinds of activities. Excuse me. There were -- where the  
16 parks were available and there was adequate staffing for  
17 activities like Little League and Pop Warner Football and  
18 those kind of activities that could be done in the community.  
19 And then when, I'm sorry -- when, I guess we had some budget  
20 cuts and the parks lost funding and so they had to cut back on  
21 staff and without staff they couldn't run the activities. And  
22 then the team posts closed and it was like one serving like  
23 seven or eight communities. And then the Boy's Clubs closed,  
24 most of them, so the number of activities were -- dwindled  
25 some.

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CLARK - CROSS

1 Q So at the time that John here was a teenager going  
2 through these problems, you would say that a lot of things  
3 that might have at one time been available, really weren't  
4 available anymore because of things like budget shortfalls and  
5 that sort of thing?

6 A Yes.

7 MR. FIGLER: Court's indulgence.

8 BY MR. FIGLER:

9 Q Now, let me ask you about your knowledge of the  
10 programs that were available for the -- for the younger kids,  
11 like in the mid-'80's and so the, you know, the little tots,  
12 the five, six, seven, eight-year-olds. Was there a lot  
13 around? I mean if a kid found himself in a -- in a really bad  
14 situation was there really a lot, after these budget  
15 shortfalls and whatnot, to really take care of them?

16 A Well, for the -- when you say younger kids, you mean  
17 like tiny tots?

18 Q Well, like seven, eight years old, nine years old?

19 A Well, there's still programs available for those,  
20 they're like Head Start programs. The problem is they are --  
21 the distance, you know. They're located in the community but  
22 unless the family is aware of them then it's hard to put  
23 people in them. But we still have Head Start programs and  
24 Healthy Start programs. We also still have -- if you belong  
25 -- if you're -- if -- this is the problem as I see it. If

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CLARK - CROSS

1 you're a kid that's in trouble then we can find a program for  
2 you. Yeah. But, if you're not in trouble then there's no  
3 diversionary program so to speak.

4 Q So if you're a kid on the bubble and there's just --  
5 they don't treat you as compassionately, for lack of a better  
6 word, than kids that -- well, they know they're in trouble so  
7 they have to deal with them, right?

8 A Yes, exactly.

9 Q Okay.

10 A Whereas the other ones they don't have to.

11 Q Now, you talked a lot about if you have a strong  
12 family or family involvement, an awareness of these programs,  
13 your family can help you get to these programs or support you  
14 through those programs, correct?

15 A Yes.

16 Q Now, there is a problem with drug abuse in that  
17 community, isn't that true?

18 A Yes.

19 Q And a lot of people who have drug addictions --  
20 first of all, have you seen personally the ravages of that  
21 community with regard to drugs?

22 A Yes.

23 Q Can you describe some of that to the jury, what you  
24 personally observed?

25 A Yeah, I could. I've seen homes where there's no

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1 doors and no food, filthy. I've seen needles, needles  
2 everywhere, parks that have needles everywhere. Kids can't go  
3 out because of the needles that might -- they might get stuck  
4 with. Dilapidated conditions, that's basically how to -- the  
5 best way to describe it is, 'cause a lot of dilapidated  
6 conditions.

7 Q Okay. And often times some of these single families  
8 that we were talking about or single parent families or no  
9 parent families, they could be pretty large, large families,  
10 lot of kids?

11 A Yes. Yeah, there can be a lot of kids.

12 Q Sometimes there might be eight, ten, more kids just  
13 in one small room, that sort of thing?

14 A I've only seen that on a few cases. Basically you  
15 have maybe two or three kids or maybe four, you know. You  
16 know, young kids, dirty.

17 Q So when you have upwards of six, eight, ten that's  
18 even more problematic as far as you're concerned with the drug  
19 people and their own children, correct? You'd say that's a  
20 worse situation to have --

21 A I would say that's a worse situation and that would  
22 call for intervention by the Department of Children Services,  
23 so.

24 Q Now, what about the ability of people who are  
25 addicted or involved in drugs to really perform some of these

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CHRISTOPHER R. ORAM, LTD.  
520 SOUTH 4TH STREET | SECOND FLOOR  
LAS VEGAS, NEVADA 89101  
TEL. 702.384-5563 | FAX. 702.974-0623

IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \* \*

DONTE JOHNSON,

S.C. CASE NO. 65168

Appellant,

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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 XV  
~~~~~

**ATTORNEY FOR APPELLANT**

CHRISTOPHER R. ORAM, ESQ.

Attorney at Law

Nevada Bar No. 004349

520 S. Fourth Street, 2nd Floor

Las Vegas, Nevada 89101

Telephone: (702) 384-5563

**ATTORNEY FOR RESPONDENT**

CLARK COUNTY DISTRICT ATTORNEY

200 Lewis Avenue

3rd Floor

Las Vegas, Nevada 89101

(702) 671-2500

CATHERINE CORTEZ MASTO

Nevada Attorney General

Nevada Bar No. 0003926

100 North Carson Street

Carson City, Nevada 89701-4717



IN THE SUPREME COURT OF NEVADA

DONTE JOHNSON,

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Appellant,

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THE STATE OF NEVADA

Respondent.

OPENING BRIEF APPENDIX

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18	15	REPLY TO STATE'S OPPOSITION REGARDING THREE JUDGE PANEL (FILED 07/18/2000)	4153-4159
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21	3	STATE'S RESPONSE TO DEFENDANT'S OPPOSITION TO STATE'S MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS	762-768
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1	35	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS/HEARING AND ARGUMENT: DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (FILED 07/06/2011)	7537-7574
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**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 9<sup>th</sup> day of January, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ-MASTO  
Nevada Attorney General

STEVE OWENS  
Chief Deputy District Attorney

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Jessie Vargas  
An Employee of Christopher R. Oram, Esq.

CHRISTOPHER R. ORAM, LTD.  
520 SOUTH 4<sup>TH</sup> STREET | SECOND FLOOR  
LAS VEGAS, NEVADA 89101  
TEL. 702.384-5563 | FAX. 702.974-0623