

HUNTERTON - DIRECT

1 THE WITNESS: Nancy Sergeant Hunterton,  
2 H-U-N-T-E-R-T-O-N.

3 DIRECT EXAMINATION

4 BY MR. FIGLER:

5 Q Good afternoon, Ms. Hunterton. Can you please tell  
6 the jury what it is that you do for a living?

7 A Okay. I am trained and certified as a reality  
8 therapist and in that capacity I do a number of what are  
9 called psycho-educational programs in and out of jail. I do  
10 five programs at the Clark County Detention Center, one of  
11 which is a forty session, two hours apiece life skills program  
12 which is designed to teach people who are ignorant of choice  
13 or programmed to choice that they can think for themselves.

14 Q And did you administer this program in what we call  
15 the Clark County Detention Center here in Clark County,  
16 Nevada?

17 A Yes.

18 Q Okay. And did you do that over the course of the  
19 last couple of years?

20 A I've done it for three and a half years.

21 Q There?

22 A Yes.

23 Q Okay. Now, you used a term and I want to get into  
24 what your program is, but I think we need to define terms.  
25 You said -- talk about choices and programmed choices, what

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1 does that expression mean programmed choices?

2 A Okay. Life skills is not what it sounds like and so  
3 I was trying to explain it. It's not teaching you how to do a  
4 bank book because many of the people in life skills are going  
5 to be in prison for the rest of their lives so banking is not  
6 the primary life skill they need. Life skills, as it is  
7 presented at the Clark County Detention Center, is learning to  
8 think for yourself and it's really going back and looking at  
9 where the assuming started. Where the just taking on of other  
10 people's values started. Where the just working on automatic  
11 and assuming what a culture might teach started. So, it's  
12 learning to think for one's self and -- well, do you want me  
13 to keep going?

14 Q I think -- I think that's a good start.

15 A Okay.

16 Q We'll get a little bit more into your program. Is  
17 there someone here in the courtroom that you recognize as a  
18 participant in one of your programs?

19 A Yes, there is.

20 Q And who is that individual and how's he known to  
21 you?

22 A Donte Johnson who was in live skills a year ago for  
23 about half of the program.

24 Q Okay. Can you point him out?

25 A Yes, he's sitting at the table there.

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1 MR. FIGLER: Okay. The record will reflect?

2 THE COURT: Yeah.

3 MR. FIGLER: Thank you, Judge.

4 BY MR. FIGLER:

5 Q Now, at the Clark County Detention Center do they  
6 make every person who in custody there take your life skills  
7 program?

8 A No, it is by application on the part of the inmate.  
9 It is done ostensibly where it is just the order in which  
10 someone applies, but they have to write a KITE, they have to  
11 request and it's somewhat difficult to get in because they're  
12 only twenty-five people at a time in a population of thousands  
13 and they have to be available for a full ten weeks. Many  
14 people are not going to be there that long before they're  
15 going onto prison or their short term sentence is up or their  
16 trial is to start. So, they have to really be very persistent  
17 and sometimes request multiple times to get in there.

18 Q Okay. Now, you mentioned another word that I'm sure  
19 these jurors don't know about, you said a KITE, K-I-T-E?

20 A Yeah. It's an official request within the -- within  
21 the jail system. It's a -- it's a piece of paper that looks  
22 like no other piece of paper, it's how an inmate makes a  
23 formal request as opposed to just writing a note and it's  
24 given much more power, much more authority because it's on  
25 this piece of paper.

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1 Q Okay.

2 A The module officer signs off after they sign it.

3 Q And this is really the primary way for someone who's  
4 in custody, like John -- or who you know as Donte, to  
5 communicate to you. He can't just, you know, say, hey, Nancy  
6 or something like that?

7 A Yeah, just to let you know, I don't select who's  
8 going to be in the classes. An officer who is in charge of  
9 programs in the jail does that.

10 Q Okay. So, this person here, Donte Johnson,  
11 voluntarily enrolled in your program?

12 A Right.

13 Q So you had the opportunity to personally observe him  
14 in a voluntary program type situation, correct?

15 A Yes.

16 Q Okay. Tell me what your observations were of this  
17 individual as he participated in the life skills program?

18 A I found him quiet, reflective, supportive of other  
19 people, emotional once in awhile, and primarily in what I  
20 would say was kind of feeling what someone else was feeling --  
21 we use the word empathy, sort of situation. If in this -- in  
22 these classes the incidents of childhood abuse amongst the  
23 people in the classes is often 100 percent and certainly if  
24 not abused, deprivation or whatever. So when people are  
25 hearing each other's stories they are thinking of themselves,

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1 they're thinking of their brothers or sisters or cousins or  
2 things they've actually witnessed or -- and they, there's a  
3 tremendous amount of feeling for one another. I watched Donte  
4 from the beginning show that and saw that often more than he  
5 spoke it. Another piece I saw was that to speak in the -- in  
6 the group or in the class is voluntary, at least initially.  
7 He spoke up the very first day and spoke a theme more often  
8 openly than had ever been done before. Do you want me to  
9 continue?

10 Q Let me ask you this. You have all sorts of  
11 different people in custody awaiting their trials or -- and  
12 people have committed different types of crimes, correct?

13 A Correct.

14 Q Okay. Now, do they all warrant the same care on  
15 your part? I mean as you say, oh, you're worse than this  
16 person, you're worse than that person? Is that how your  
17 program works?

18 A No, I think the program is neutral but like I'm sure  
19 I, like any -- like a teacher, the more seriously and  
20 genuinely I see someone embracing and using it, obviously the  
21 more attention they may get. And I ask, initially, what their  
22 purpose in being there is and some people will acknowledge,  
23 because it is a coed program, that they're simply there to see  
24 someone of the opposite gender because they're tired of living  
25 with only males or only females.

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1 Q Okay. Now, let me ask you this, do -- is there --  
2 are they allowed to break the rules and have intimate conduct  
3 with --

4 A No.

5 Q -- each other at that --

6 A No.

7 Q Okay.

8 A And people would be kicked out of the program if  
9 they were.

10 Q Same thing with if they're being disruptive or  
11 disrespectful to you or the other people in the program? Is  
12 that automatic, they're gone?

13 A Well, no, because we're dealing with people who've  
14 been making bad choices by programming or ignorance or other  
15 things for most of their lives. So, if somebody is rude to me  
16 or rude to a fellow student or group member that isn't gonna  
17 be -- they're not gonna be -- lose their chance right away but  
18 there will be a series of interactions where they have to  
19 learn to communicate appropriately and say, you know, I'm  
20 sorry, I just walked all over you, I apologize. Or, if there,  
21 you know, there was foul language. Another way I could say to  
22 you I'm really angry and charged is the following, so it's a  
23 continually rephrasing thing they're --

24 Q And they're trying to get some sort of new learning,  
25 new behavior, --

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1 A Yeah.

2 Q -- is that fair to say?

3 A Yeah.

4 Q Okay. Now, you said that everyone tells you the  
5 reason why they're there. First of all, let me ask you, did  
6 you know that Donte here, when he came in, that there was a  
7 possibility that some day a jury would be looking at him and  
8 say, you're facing life in prison or the worse, death penalty?  
9 Did he tell you about that at all?

10 A Well, he did. I didn't know that initially.

11 Q Okay.

12 A When I first started this program I was given a list  
13 of the charges or what someone had been indicted for. Now, I  
14 have not had that since I've had a new supervisor at the -- at  
15 the jail and so I don't know. I'm just meeting people. They  
16 give up or tell about the nature of their crime only to the  
17 extent that they identify what they have to learn because  
18 we're not there to get into that jailhouse talk -- it's  
19 jailhouse, it's almost like a bar, you know, where people just  
20 strategize and stuff and it would be pointless. We would  
21 never do any internal growing if people were just talking  
22 about this is how I'm approaching my case and this is how I'm  
23 doing that. So, I absolutely do not allow it.

24 Q Okay. Did Donte tell you if he wanted to help  
25 himself or not?

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1           A     Yes, and what he did say and this was appropriate  
2     and this is what I started to mention before, I'd never had  
3     someone put it out this clearly at the very first time that he  
4     spoke up. He was asked to identify himself and then he said  
5     that he was facing the death penalty and he had heard that  
6     this was a place where he could really evaluate what that mean  
7     -- what that meant and evaluate his life. Frankly, nobody had  
8     ever said that directly to me and I just said to him, isn't  
9     that what we're all here doing? And that really influenced  
10    that particular group profoundly because it really became the  
11    theme for whatever one was doing, no matter what they were  
12    facing.

13           Q     So Donte informed you that the State had filed --

14           A     Absolutely.

15           Q     -- this notice against him? And to --

16           A     Well, in that sense.

17           Q     Yeah.

18           A     In that sense, yes.

19           Q     Okay. Now, what other observations has Donte  
20    perceived through the course and his interactions did you  
21    observe?

22           A     Having heard that, obviously, I -- well, not  
23    obviously, but for me obviously, I was really looking at  
24    empathy. Does this person feel for anybody? I've worked with  
25    an awful lot of people who are in for murder and going on for

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1 murder and Donte's not the first person who've been in that  
2 situation. Just the first person who'd articulated it that  
3 way, spoken of it that way. So, I was looking to see how  
4 totally self-centered, how numb, how limited a range of  
5 feeling he really had.

6 Q And these were the things that you were looking for?

7 A Yeah.

8 Q Not that he exhibited them, but these are the  
9 looking --

10 A Yeah, okay. With those in mind, as I started to  
11 indicate earlier, I was surprised, pleasantly, at the amount  
12 of caring for other people. You know, I wasn't surprised  
13 today to see that he had sisters because he was -- when  
14 females were really in tough situations he really cared about  
15 it. He would -- with a guy who was in the gang process but  
16 not as far as long or whatever, he really would be a good  
17 sounding board, would ask good questions. He really was using  
18 what he had to connect with people and in sharing.

19 Q So was he progressing pretty well at that point?

20 A Yes.

21 Q Okay. Now, you said he only finished half of a  
22 program. Did there come a time when Donte wasn't in the  
23 program anymore?

24 A Yes. Yes.

25 Q Okay. And did you later learn why he wasn't in your

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1 program anymore?

2 A The reputation is a phenomenally powerful thing in  
3 the county jail as in, I guess, everywhere; and my assessment  
4 of what I saw and heard and observed was that Donte walked in  
5 with being -- with the guards and the institution having  
6 figured out in its mind or its collective mind that he was the  
7 biggest and the baddest, so something that was pretty  
8 meaningless would be reacted to really heavily and even in  
9 class, because that's one of the things people will come in,  
10 as they are changing their choices they'll come in and say the  
11 guard yelled at me for this today but instead of saying blank-  
12 blank back, I just stood there quietly or whatever it is. I  
13 mean it's corrective, it's making new choices. And Donte had  
14 a pretty high rate of those, ratios of those.

15 Q Okay. Now, do you think that the guards had  
16 prejudged Donte just based on his charges? I mean is that  
17 your opinion?

18 MR. GUYMON: Objection, speculation.

19 THE COURT: Sustained.

20 BY MR. FIGLER:

21 Q Did you see any of those type of attributes in the  
22 man that you interacted with, the baddest or the worst?

23 A No. No, I did not.

24 Q In fact, you've interacted with people much worse  
25 than Donte Johnson, haven't you? As far as your personal

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1 observation?

2 A People much less interested in growing or that --  
3 who manifest less behaviors that suggested interest in  
4 growing, yeah, a lot.

5 Q People who have committed murder?

6 A Yes.

7 Q People who are cold?

8 A Yeah.

9 Q People who you really felt were going to get no  
10 benefit out of what they were doing in your class?

11 A Absolutely.

12 Q Now, when Donte wasn't in your program anymore, what  
13 did you learn as the reason why he wasn't in your program  
14 anymore?

15 A That he had -- the way the system works, when you  
16 have a certain number of reports, another piece of paper -- an  
17 official piece of paper in the jail, you have a certain number  
18 of them, they put you in a -- they put you in the hole or they  
19 CAB you. Those are terms they use, which just simply mean  
20 you're on a disciplinary module or floor. And he was put  
21 there and I think he cycled out or there was some question in  
22 a -- there's a board, an appeals board, because he did come  
23 back for three more classes, and then they just put him away  
24 and he never surfaced again until --

25 Q When you say "they," you're talking about the jail

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1 personnel --

2 A Right. Right.

3 Q -- put him in a strict disciplinary area, what you  
4 called the hole, and that keeps people away from your program?

5 A Absolutely, they're not allowed to come. They're  
6 freedoms within jail, meaning their ability to go to re -- to  
7 go to recreation, to watch TV and that kind of stuff are  
8 further taken away.

9 Q Okay. And this is just in the jail, we're not  
10 talking about prison. You understand prison to be a worse  
11 place than jail? I'll withdraw that question.

12 A I think that's yeah.

13 Q I'll withdraw the question, you don't have to answer  
14 that.

15 A Okay.

16 MR. DASKAS: I think she already did, Judge.

17 THE COURT: What?

18 MR. DASKAS: I think she already answered it  
19 actually.

20 THE COURT: If she did, I didn't hear her answer but  
21 both the question and if there was an answer are stricken and  
22 should be disregarded.

23 MR. DASKAS: Thank you, Judge.

24 BY MR. FIGLER:

25 Q Now the type of violations, if you know, that could

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1 put somebody in that discipline situation, those would include  
2 things like having soup in your cell, is that correct?

3 A Mm-hmm.

4 Q You have to answer out loud.

5 A Oh, yes, it is. There are things that are not  
6 unlike a teenagers experiences with their parents. You know,  
7 when you're kind of making sure -- when the parent is making  
8 sure that they're in charge. It's often fairly small stuff  
9 that the family battles over, only the parent sometimes thinks  
10 it's really important to prove that they're in control. And  
11 typically and I believe specifically in the ones I saw of  
12 Donte's, it was those kinds of things. They were not big  
13 issues. Big issues would be serious fights with inmates and  
14 those kinds of things. It was much more Jello, drinking too  
15 earlier when the trays were brought out, things that are  
16 really just a matter of establishing exactly who's in control.

17 Q Okay. Some were issues of what the guards like to  
18 call disrespect?

19 A Right.

20 Q And that could just mean looking at someone wrong?

21 A Yes.

22 Q Okay. So, it's these type of things that took him  
23 away from your program, correct?

24 A Right.

25 Q Now, did Donte ever try to communicate with you?

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1 A He wrote --

2 Q Now, first of all, you don't have any knowledge at  
3 all, no one's ever informed you or you reviewed his  
4 disciplinary reports of him being violent in anyway with any  
5 officers, any other inmates, is that correct?

6 A That's correct. And inmates come back to class --

7 THE COURT: That answers the question. Would you  
8 ask another one?

9 BY MR. FIGLER:

10 Q Okay. Was he ever violent with you?

11 A No.

12 Q Was he ever inappropriate with you in a way that you  
13 felt at harm or in harms way?

14 A No.

15 Q Okay. So, Donte did communicate with you to -- for  
16 what purpose after he was gone from the program? First of  
17 all, how did he communicate with you?

18 A He sent me a letter.

19 Q And you brought that letter with you here today?

20 A Yes.

21 Q And basically what did Donte tell you about your  
22 program or its impact on him?

23 A It's just -- it's very positive. It says that the  
24 thoughts and ideas are good, that he wishes everyone well.

25 Q Okay.

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1 MR. FIGLER: Your Honor, I'd ask that she be able to  
2 read her letter that she received from --

3 THE COURT: Any objection?

4 MR. FIGLER: -- Mr. Johnson.

5 MR. GUYMON: I'd like to see it first, Judge. I've  
6 never even seen it. Okay. And yes, Judge, I do actually have  
7 an objection without seeing it. May we approach?

8 THE COURT: Why don't you read it and then, yeah.

9 (Off-record bench conference)

10 MR. GUYMON: I'll withdraw my objection.

11 THE COURT: Let me read it still.

12 (Pause in the proceedings)

13 THE COURT: All right. The position now is -- yes.

14 (Off-record bench conference)

15 THE COURT: The state of the record is right now,  
16 Mr. Figler, you asked a question and the question was can she  
17 read it. They objected. They now withdraw their objection.  
18 Do you wish to pursue that line of questioning?

19 MR. FIGLER: No, Judge. I'm just gonna ask this  
20 witness, generally.

21 THE COURT: Do you -- you've already asked the  
22 generally. What's -- do you have any other areas or do you  
23 pass the witness?

24 MR. FIGLER: One last question, Judge.

25 //

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1 BY MR. FIGLER:

2 Q Based on your experiences with -- with Donte and the  
3 things that he's expressed to you and his hopes, think  
4 specifically in the class that you learned and observed from  
5 him, if someone were to say that someone like Donte is broken,  
6 do you think that his is a life that's worth fixing?

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

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

9 MR. GUYMON: It goes beyond the scope of her  
10 expertise. She did not do a personality testing of him. She  
11 is not a psychologist or psychiatrist that has rendered that  
12 opinion.

13 THE COURT: Okay. Goes to weight, not  
14 admissibility. She may answer it.

15 BY MR. FIGLER:

16 Q Do you think he's a person that can be and is worth  
17 fixing?

18 A Yes.

19 Q Okay. Let me ask you this. You work essentially  
20 for the county, is that correct?

21 A Yes.

22 Q You work for the jail and the jail programs that  
23 they have, correct?

24 A [No audible response].

25 Q And you decided to come in and speak on his behalf,



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1 essentially. I mean, that's what you're doing here, correct?

2 A [No audible response].

3 Q Do you have any regrets about that?

4 A No.

5 Q Do you know about the horrible crimes that he has  
6 been convicted of in this particular case?

7 A Absolutely, I do.

8 Q Okay. Are you focusing just on your observations of  
9 this individual?

10 A I don't think it's possible to be a human being and  
11 not know that other people in this room would have terribly  
12 different views, so yes, I'm focusing on what I think, but I  
13 can't rule out other feelings.

14 Q Knowing what he's been convicted of, in your  
15 position, do you still think that if he's broken, he can be  
16 fixed with help and he wants to be fixed and he wants that  
17 help?

18 A Yes, and I think he has the ability to contribute to  
19 people's understanding how to fix themselves and fix each  
20 other, and I think that might be the most important thing for  
21 someone like Donte.

22 MR. FIGLER: Pass the witness, Your Honor.

23 THE COURT: Cross? Here's your letter back, by the  
24 way.

25 //

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CROSS-EXAMINATION

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BY MR. GUYMON:

Q Good afternoon, Ms. Hunterton. You and I have never met. You will agree that people come to your course for different reasons. In fact -- is that a yes?

A Absolute -- yes.

Q In fact, in your own direct testimony, you indicated some might come because they wanna see females that are in your course.

A Yes.

Q Others might come because they genuinely want to help themselves?

A Yes.

Q And others might come because they want to help their case?

A Yes.

Q And Donte Johnson knew he'd be facing a jury that would make a decision about his life when he came to your course?

A Yes.

Q And you would agree that there is the possibility that he was motivated by wanting to help the outcome of his case, correct? That is a possibility, is it not?

A Yes, it is a possibility.

Q After all, he announced to the class very openly and

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1 kind of peculiarly that he was facing the death penalty, is  
2 that correct? That is what he told you, correct?

3 A It's correct. Not complete, but it's correct.

4 Q All right. But nonetheless --

5 A Yes.

6 Q -- you knew that he knew --

7 A Yes.

8 Q -- he faced the death penalty? And you knew that he  
9 knew he'd face a jury?

10 A Yes.

11 Q And you knew that he knows that if he writes a  
12 letter, there is a document of what he writes?

13 MR. FIGLER: I think that that's a vague question,  
14 Your Honor.

15 THE COURT: She -- she can. I wouldn't --

16 THE WITNESS: Can I --

17 THE COURT: -- sustain it on that objection.

18 MR. FIGLER: Speculative.

19 THE WITNESS: Can I respond?

20 THE COURT: That's more like it. Not 'til -- can I  
21 make a ruling and then --

22 THE WITNESS: Yes. Your Honor, I'm sorry.

23 THE COURT: Sustained.

24 MR. GUYMON: I'll withdraw the question.

25 //

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1 BY MR. GUYMON:

2 Q You indicated that while attending the class, that  
3 there were others in the class that Donte Johnson was in,  
4 correct?

5 A Others in the class?

6 Q Yes.

7 A Yes.

8 Q And that you indicated some of the others were not  
9 as far along in their gangs as Donte Johnson was in his.

10 A Younger kids, yeah.

11 Q And you, in fact, indicated that they weren't as far  
12 along in their criminal conduct as perhaps Donte Johnson was  
13 in his?

14 MR. FIGLER: Objection, misstate the testimony.

15 THE COURT: Let the jury decide that. It's  
16 overruled.

17 BY MR. GUYMON:

18 Q You would agree that there were others in the class  
19 that perhaps didn't have the same criminal background as Donte  
20 Johnson?

21 A Of course.

22 Q That didn't have homicide charges that they were  
23 faced with, correct?

24 A Of course, yes.

25 Q And Donte Johnson is the first one you've ever had

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1 in your class that is facing a quadruple homicide charge?

2 A Not so.

3 Q You've had other persons facing a quadruple homicide  
4 charge?

5 A Yes.

6 Q Oh, man.

7 MR. SCISCENTO: Your Honor, can we approach?

8 (Off-record bench conference)

9 THE COURT: Objection sustained.

10 BY MR. GUYMON:

11 Q You indicated that Donte Johnson came to you and  
12 that you were aware of the fact that he had a reputation in  
13 the jail?

14 A Yes, I became aware of that.

15 Q Okay. And there are leaders in the jail and there  
16 are followers in the jail, is that correct?

17 MR. FIGLER: I'll objection, Your Honor --

18 MR. SCISCENTO: Objection, that exceeds the scope.

19 MR. FIGLER: -- foundation and it does exceed.

20 THE COURT: Well, she can say yes or no.

21 MR. FIGLER: And it's argument.

22 THE COURT: She's in the jail all the time. She has  
23 been given a lot of latitude on direct. It's a yes or no  
24 question.

25 //

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1 BY MR. GUYMON:

2 Q Would you agree that there are those that are  
3 leaders in the jail?

4 A Yes.

5 Q Inmates that actually are leaders --

6 A Yes.

7 Q -- among others?

8 A Yes.

9 Q And there are followers in the jail?

10 A Yes.

11 Q In other words, persons that are incarcerated that  
12 may follow --

13 A Yes.

14 Q -- those with bigger reputations or that are  
15 leaders?

16 A Yes.

17 Q Yes, ma'am?

18 A Yes.

19 Q And as you would agree that a general in the army or  
20 in the military is a leader?

21 MR. FIGLER: Your Honor, I'm gonna object to this.  
22 This calls for speculation --

23 MR. GUYMON: What's going on?

24 MR. FIGLER: -- and this exceeds the area of cross  
25 exam -- or direct.

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1 THE COURT: Sustained.

2 BY MR. GUYMON:

3 Q The letter that Donte Johnson wrote to you, he  
4 signed --

5 MR. FIGLER: Your Honor, I'm gonna object to that  
6 further.

7 THE COURT: Ho -- ho -- ho. Please. Come up to the  
8 bench, please.

9 (Off-record bench conference)

10 THE COURT: ... approach the bench, but whatever it  
11 was, because I'm not sure how much was said and how much  
12 wasn't. To the extent that is humanly possible, you're  
13 instructed -- again, there's reasons for rules of evidence and  
14 I've sustained the objection to Mr. Guymon's question and  
15 you're to disregard it.

16 BY MR. GUYMON:

17 Q You indicated that Donte Johnson showed signs of  
18 compassion in the class?

19 A Yes, sir.

20 Q Signs of caring about others?

21 A Yes, sir.

22 Q And signs of empathy.

23 A Yes, sir.

24 Q Would you be surprised that there is testimony in  
25 front of this jury, that the same Donte Johnson that showed

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1 you those characteristics laughed about the murder of these  
2 four boys?

3 MR. FIGLER: Objection, Your Honor.

4 THE COURT: Overruled.

5 THE WITNESS: No. I see complex and contradictory  
6 things in people often.

7 BY MR. GUYMON:

8 Q Ms. Hunterton, would be surprised if the same Donte  
9 Johnson, who came to your class or volunteered to come to your  
10 class for whatever reason, was thrilled about the killing --

11 MR. FIGLER: Objection, Your Honor.

12 BY MR. GUYMON:

13 Q -- of these four boys?

14 MR. FIGLER: Your Honor, this is calling for  
15 speculation of --

16 MR. SCISCENTO: And the foundation and  
17 argumentative --

18 MR. FIGLER: -- something of this witness who is not  
19 a medical expert --

20 THE COURT: Overruled, I think it --

21 MR. FIGLER: -- who is not --

22 THE COURT: Overruled.

23 MR. FIGLER: -- a psychiatrist and he's asking her  
24 to make a determination on that and that's what he's trying to  
25 impose to the jury.

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HUNTERTON - CROSS

1 THE COURT: Overruled.

2 THE WITNESS: Mr. Guymon, I never saw anything like  
3 that in class.

4 BY MR. GUYMON:

5 Q Ms. Hunterton --

6 A Yes, sir.

7 Q -- the same Donte Johnson who came to your course  
8 for whatever reason, would you be surprised -- was excited  
9 when he made the front page for what he had done?

10 MR. FIGLER: Your Honor, again, I'm gonna object to  
11 this line of questioning as request -- asking this witness for  
12 psychiatric evaluation on something which she is not an expert  
13 in, nor has she been offered as an expert.

14 THE COURT: Overruled.

15 THE WITNESS: Mr. Guymon, that's not a question.  
16 It's a statement to me. I'm acknowledging it to you.

17 BY MR. GUYMON:

18 Q Would you be surprised, though, that the same person  
19 that you saw positive traits in, was excited when he made the  
20 front page for executing four boys?

21 A I'm not meaning to be cute with you. I'm really  
22 not. I didn't see that part of him. Does that mean it's not  
23 there? No. And I'm not denying anything. I'm simply telling  
24 you I saw a different part.

25 Q Would it surprise you that the person who presented

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HUNTERTON - CROSS

1 himself to you, laughed about how blood squirted out of the  
2 head of these four boys? Would that fact surprise you, ma'am?

3 A I see -- as I said before, I see contradictions, so  
4 it's of course possible.

5 Q Would it surprise you, ma'am, that the same person  
6 who submitted himself for your class, for whatever purpose,  
7 was so cavalier that he would kiss his girlfriend and say you  
8 have to go to sleep when you kill someone, let's go to sleep?

9 A Mr. Guymon, I don't know how you want me to answer  
10 these questions.

11 Q I -- there is no -- all I want is the truth, because  
12 you took an oath.

13 A I understand that.

14 Q Would it surprise you, ma'am, that he would exhibit  
15 those characteristics right after, moments after the killing  
16 of four boys?

17 MR. FIGLER: Your Honor, I'm object --

18 THE WITNESS: Surprise is not something --

19 MR. FIGLER: -- to this now as badgering the  
20 witness. He knows these questions -- they're being reframed,  
21 rephrased in different terms, but they're basically the same  
22 question over and over --

23 THE COURT: This question's been asked and answered  
24 now and we get the drift of this area. It think it is  
25 becoming cumulative. Move on to a new area if you have one.

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HUNTERTON - REDIRECT

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

2 THE COURT: Anything on redirect?

3 MR. FIGLER: Thanks, Judge, real quick.

4 REDIRECT EXAMINATION

5 BY MR. FIGLER:

6 Q Ms. Hunterton, you're exposed to individuals who are  
7 in a custodial setting, correct? Is that yes? You have to  
8 say out loud.

9 A Yes, yes.

10 Q Okay. Now, no one wants to put you on the spot or  
11 ask these trick questions. The question is this, are you  
12 testifying today based on your observations of an individual  
13 that you spent time with?

14 A Yes.

15 Q Okay. And is it your experience that you're trying  
16 to help heal, fix, facilitate all of these things with  
17 individuals who come to you?

18 A Absolutely.

19 Q And these individuals have wildly varying  
20 backgrounds, childhoods, experiences, limitations, life  
21 experiences, isn't that true?

22 A Absolutely.

23 Q Things that you're describing is empathy and  
24 compassion in the setting that you're in, do you think that he  
25 was faking that, based on your experiences with these

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HUNTERTON - REDIRECT

1 individuals and your training?

2 A No.

3 MR. GUYMON: Calls for speculation, Judge.

4 THE COURT: Overruled.

5 THE WITNESS: I saw enough different indications  
6 that I think not.

7 BY MR. FIGLER:

8 Q The prosecutor asked you, well, isn't it possible --  
9 but, is that your belief that he was faking these things to  
10 you?

11 A No, I think he was not faking.

12 Q In fact, do you think that the whole class  
13 benefitted from his contributions?

14 A Yes.

15 Q Was it real easy for him? Do you think he had  
16 thought about the things that he was gonna say, to plant them  
17 in your -- in your class, that somehow years later lure you  
18 into a courtroom, do you think that -- was that consistent  
19 with what you saw?

20 A No, that's not consistent with what I saw.

21 Q Do you think it was difficult for him to proceed  
22 through your class and deal with these type of issues, his own  
23 limitations, these type of things?

24 A Mr. Figler, the answer is yes and I would say that  
25 he --

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HUNTERTON - REDIRECT

1 MR. GUYMON: Judge, it answered the question.

2 THE COURT: Thank you.

3 BY MR. FIGLER:

4 Q In your experiences as a facilitator and instructor,  
5 was there a hope that you saw in this individual as he worked  
6 through your class?

7 A Yes.

8 Q Did you have that hope too?

9 A Yes.

10 Q And I understand you have to remain professional,  
11 but sometimes you're affected by your students, is that  
12 true --

13 A Yes, it --

14 Q -- and the experiences that they share with you?

15 A Yes.

16 MR. FIGLER: Pass the witness, Your Honor.

17 THE COURT: Anything further?

18 MR. GUYMON: Nothing else, Your Honor.

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

20 Call your next witness, please.

21 MR. FIGLER: Can we approach?

22 THE COURT: Yeah.

23 (Off-record bench conference)

24 MR. FIGLER: Can we have a -- like a --

25 THE COURT: This foreman has been directing traffic

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1 since voir dire.

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

10           We were gonna go about 15 more minutes, take a break  
11 and do argument, but now we will take about a ten-minute  
12 recess and hear a little more and then go to argument.

13                           (Jury recessed)

14                           (Off-record)

15                           (Jury is not present)

16           THE COURT: On the record, but outside the presence  
17 of the jury.

18           It's been represented at the bench, through the  
19 second gentleman -- it's been represented at the bench, your  
20 lawyers have told me that you have some hesitancy about  
21 whether or not you want to make a statement to the jury.  
22 That's totally your decision. I want you to understand that.

23           MR. SCISCENTO: Your Honor?

24           THE COURT: What?

25           MR. SCISCENTO: I don't know if you question --

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1 THE COURT: Just let me tell him this. You had  
2 something that might help?

3 MR. SCISCENTO: No, I think just -- no. No, Your  
4 Honor.

5 THE COURT: Okay. It's totally your decision, but  
6 it's a decision that has to be made in the next ten minutes or  
7 so. You can't decide this a year and a half from now, and I  
8 wanna be sure that you understand (a), as long as you stick to  
9 the rules, they cannot cross-examine you. You make your  
10 statement and sit down, and you're allowed to make remarks of  
11 remorse as long as they don't contradict the evidence,  
12 apologies, pleas for leniency, plans or hopes for the future,  
13 anything that I said you can do, other than discussing the  
14 issue of guilt or innocence and denying it, because the jury's  
15 already determined that. But if you wanna stand up and read a  
16 statement or make a statement without reading it, they don't  
17 get to cross-examine you. Do you understand this limited  
18 right that Mr. Figler discussed with you?

19 THE DEFENDANT: Yeah, I understand.

20 THE COURT: Okay. You discuss it with your lawyers  
21 and I'm not gonna ask you again. Do you have any questions  
22 you want to address to the Court about this?

23 THE DEFENDANT: [No audible response].

24 THE COURT: Okay. You discuss it with your lawyers  
25 and when we get back together -- because I've indicated just

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1 your grandma's coming in, is that statement and your grandma  
2 and then we're gonna go to reading instructions. At some  
3 point -- we're off the record.

4 (Court recessed at 3:32 p.m. until 3:45 p.m.)

5 (Jury is present)

6 THE COURT: What next from the defense? What next  
7 from the defense?

8 MR. FIGLER: Thank you, Your Honor. At this time,  
9 John White will take the stand for allocution.

10 THE COURT: Go ahead, Mr. Figler.

11 MR. FIGLER: Your Honor, do you have an admonition  
12 for the jurors first or --

13 THE COURT: If you want me to tell them -- do you  
14 want them what it is?

15 MR. FIGLER: Yes, please.

16 THE COURT: Okay. Allocution is an unsworn  
17 statement that the defendant is able to give to you before you  
18 make a decision on penalty.

19 Go ahead.

20 MR. FIGLER: John, this is the time you understand  
21 where you're allowed to speak to the jurors who decide what's  
22 going on and you understand you're disallowed from talking  
23 about the case in order to do this. You understand that?

24 THE DEFENDANT: Yes, sir.

25 MR. FIGLER: Okay. Did you write something --

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1 THE DEFENDANT: Yes, sir.  
2 MR. FIGLER: -- here today?  
3 THE DEFENDANT: Yes, sir, I did.  
4 MR. FIGLER: Okay. This is something that you  
5 wrote?  
6 THE DEFENDANT: Yes, sir.  
7 MR. FIGLER: Tell the jury what you want to tell and  
8 to whoever else you want it to be addressed.  
9 THE DEFENDANT: Well, I've sat throughout this whole  
10 trial and I've observed the overall situation and I do grieve  
11 the families. I do know how it feels to lose a loved one, but  
12 I could only imagine how it feels to lose a child of my own.  
13 The feeling I imagine is for a lot more reasons, impossible to  
14 describe, but I can say one thing, it's not a good feeling. I  
15 don't like to see people cry. In fact, I don't like to cry  
16 myself, but after hearing testimony from yesterday's hearing,  
17 I was escorted back to my single man cell and I found myself  
18 laying on my bed crying. I didn't try to stop the tears from  
19 flowing because it felt good. It only felt good, because I  
20 know after all the allegations that was piled on top of me,  
21 that I am human and I do ask that you let me live.  
22 MR. FIGLER: Thank you, John.  
23 THE COURT: Thank you.  
24 Call your next witness, please.  
25 MR. SCISCENTO: Jane Edwards.

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EDWARDS - DIRECT

1 THE COURT: Was Stony in here when -- wanna go get  
2 Ms. Edwards? I don't know that Stony's here.

3 MR. FIGLER: I'll do it, Judge.

4 (Pause in the proceedings)

5 JANE EDWARDS, DEFENDANT'S WITNESS, IS SWORN

6 THE CLERK: Please have a seat and state your full  
7 name and spell your last name for the record, please.

8 THE WITNESS: My -- my name is Jane Edwards.

9 DIRECT EXAMINATION

10 BY MR. SCISCENTO:

11 Q Ms. Edwards?

12 A Yes.

13 Q Do you know John White?

14 A Yes. My grandson.

15 Q I'm sorry. I didn't hear that.

16 A Yes, he's my grandson.

17 Q You see John White in this courtroom today?

18 A Yes, that's him over there. That's him.

19 Q He's sitting there?

20 A Yes.

21 Q Okay. At one point in your life, you were taking  
22 care of John?

23 A Yes.

24 Q And you were taking care of a few other kids?

25 A Yes.

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EDWARDS - DIRECT

1 Q How many kids at one point in your life were you  
2 taking care of?

3 A At one point was six -- I mean, it was ten.

4 Q Okay. You know that there was a lot of drug abuse  
5 with John's mother?

6 A Yes.

7 Q Let me ask you --

8 MR. SCISCENTO: If I may approach, Your Honor.

9 BY MR. SCISCENTO:

10 Q I have what's marked as Defense Exhibit I and  
11 Defense Exhibit J. Ms. Edwards, do you recognize this  
12 picture?

13 A Yes. This is John.

14 Q And let me ask, do you recognize this picture?

15 A Yes.

16 Q That's Defense Exhibit I.

17 A Mm.

18 Q And Defense Exhibit J, do you recognize this?

19 A Yes, that's John.

20 MR. SCISCENTO: I've shown this previously to the  
21 prosecution.

22 BY MR. SCISCENTO:

23 Q And in this picture of Defense Exhibit J, who does  
24 that represent?

25 A John at home.

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EDWARDS - DIRECT

1 Q And Defense Exhibit I, what does that represent?

2 A John in the choir -- in the choir with the rest  
3 of --

4 THE COURT: Ma'am, you're gonna have to speak up a  
5 little.

6 THE WITNESS: Oh, John was in the choir with the  
7 rest of the children.

8 MR. SCISCENTO: At this time, Your Honor, I'd ask to  
9 have these -- Defense Exhibit J and Defense Exhibit I  
10 admitted.

11 MR. GUYMON: No objection.

12 THE COURT: Received.

13 (Defendant's Exhibits I and J admitted)

14 MR. SCISCENTO: I'd ask to publish this to the jury,  
15 Your Honor.

16 THE COURT: Sure.

17 BY MR. SCISCENTO:

18 Q Defense Exhibit J is what, Ms. Edwards?

19 A That's John in --

20 Q At what age is that John?

21 A I don't know what age he was.

22 Q He's a young child there?

23 A Yes. Right.

24 Q Defense Exhibit I, this is -- where is John located?  
25 Perhaps -- let me stand over here. Show that to the jury.

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EDWARDS - DIRECT

1 A John was right there.

2 Q Okay. And what does this reflect?

3 A They had been to church and they was in a choir and  
4 they worked on the usher board in that -- in that uniform.

5 MR. SCISCENTO: If I may publish this.

6 BY MR. SCISCENTO:

7 Q Do you love John White?

8 A Yes, I love John.

9 (Off-record colloquy)

10 BY MR. SCISCENTO:

11 Q Let me ask you, do you see this video monitor? Can  
12 you see that?

13 A Yes.

14 Q Defense Exhibit N. Let me ask you something very  
15 quickly. Do you recognize this?

16 A Yes.

17 Q Okay. And what is this?

18 A That's a choir at the church.

19 Q And who is depicted in there?

20 A John's in the choir.

21 MR. SCISCENTO: Your Honor, at this time I'd ask to  
22 admit Defense Exhibit N.

23 THE COURT: That's the totality of it?

24 MR. FIGLER: It runs about 20 seconds, Judge.

25 MR. SCISCENTO: It's about 20 seconds.

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EDWARDS - DIRECT

1 THE COURT: Have you seen this?

2 MR. GUYMON: We've not seen it yet, Judge.

3 THE COURT: Maybe you should --

4 (Off-record bench conference)

5 BY MR. SCISCENTO:

6 Q Ms. Edwards, let me direct your attention to the  
7 video monitor. Who's that in the lower right corner?

8 A That's John.

9 Q We're going to zoom in on him in a minute.

10 A Yeah. That's him standing.

11 Q When was that video taken of John?

12 A Oh, in '95 or one of -- I can't remember. Been  
13 awhile.

14 Q Ms. Edwards, you know why you're here today?

15 A Yes.

16 Q It's because John's on trial?

17 A Yes.

18 Q Do you know what he's facing?

19 A Yes.

20 Q Do you have anything to say to the jury, these  
21 members of the jury right here?

22 A I love my grandson and I don't want him to be taken  
23 away completely. If he did all those things, he should be  
24 punished but not death. Please, don't kill my son.

25 MR. SCISCENTO: I have no further questions of this

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1 witness, Your Honor.

2 THE COURT: Any cross?

3 MR. GUYMON: No, Your Honor.

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

5 Does the defense rest?

6 MR. FIGLER: If we could just make sure all our

7 exhibits are --

8 THE COURT: Sure.

9 MR. SCISCENTO: We move --

10 (Off-record colloquy)

11 MR. SCISCENTO: Move for the --

12 THE COURT: Any objection to K?

13 MR. GUYMON: No, Your Honor.

14 THE COURT: Received.

15 (Defendant's Exhibit K admitted)

16 MR. SCISCENTO: The defense would rest at this time,

17 Judge.

18 DEFENDANT RESTS

19 THE COURT: Any rebuttal?

20 MR. GUYMON: May we approach?

21 THE COURT: Sure.

22 (Off-record bench conference)

23 THE COURT: Given that ruling, does the State intend

24 any rebuttal?

25 MR. GUYMON: No, Your Honor.

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1           THE COURT: All right, folks. We're going straight  
2 into instructions and arguments. The good news about  
3 instructions, although they're very important, obviously given  
4 the stakes that's involved in this case, there's about half as  
5 many of them for this phase of the trial than the other, and  
6 some of them are identical to those from the first part.

7                           JURY INSTRUCTIONS

8           THE COURT: It's now my duty, as Judge, to instruct  
9 you in the law that applies to this penalty hearing. It is  
10 your duty as jurors to follow these instructions and to apply  
11 the rules of law to the facts as you find them from the  
12 evidence. You must not be concerned with the wisdom of any  
13 rule of law stated in these instructions, regardless of any  
14 opinion you may have as to what the law ought to be. It would  
15 be a violation of your oath to base a verdict upon any other  
16 view of the law than that given in the instructions of the  
17 Court.

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

25           The trial jury shall fix the punishment for every

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1 person convicted of murder of the first degree. The jury  
2 shall fix the punishment for each count at:

3 (1) a definite term of 100 years with eligibility for  
4 parole beginning when a minimum of 40 years has been  
5 served or,

6 (2) life imprisonment with the possibility of parole with  
7 eligibility for parole beginning when a minimum of 40  
8 years has been served,

9 (3) life imprisonment without the possibility of parole,  
10 which means exactly what it says, that the defendant  
11 shall not be eligible for parole or for death.

12 A prison term of 100 years with eligibility for  
13 parole beginning when a minimum of 40 years has been served,  
14 does not mean that the defendant would be paroled after 40  
15 years, but only that he or she would be eligible for parole  
16 after that period of time.

17 Life imprisonment with the possibility of parole is  
18 a sentence to life imprisonment which provides that the  
19 defendant would eligible for parole after a period of 40  
20 years. This does not mean that he would be paroled after 40  
21 years, but only that he'd be eligible for parole after that  
22 period of time.

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

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

3           In the penalty hearing, evidence may be presented  
4 concerning aggravating and mitigating circumstances relative  
5 to the offense and any other evidence that bears on the  
6 defendant's character. Hearsay is admissible in a penalty  
7 hearing.

8           The State has alleged that aggravating circumstances  
9 are present in this case. The defendants have alleged that  
10 certain mitigating circumstances are present in these -- in  
11 this case.

12           It shall be your duty to determine:

13           (a) whether an aggravating circumstance or  
14 circumstances are found to exist and;

15           (b) whether a mitigating circumstance or  
16 circumstances are found to exist and;

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

19           The jury must find the existence of each aggravating  
20 circumstance, if any, unanimously and beyond a reasonable  
21 doubt. The jurors need not find mitigating circumstances  
22 unanimously.

23           In determining the appropriate sentence, each juror  
24 must consider and weight any mitigating circumstance or  
25 circumstance which that juror -- excuse me -- finds.

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1           The jury may impose a sentence of death only if:  
2           (1) the jurors find unanimously and beyond a reasonable  
3           doubt that at least one aggravating circumstance exists,  
4           (2) each and every juror determines that the mitigating  
5           circumstance or circumstances, if any, which he or she  
6           has found do not outweigh the aggravating circumstance or  
7           circumstances and;  
8           (3) the jurors unanimously determine that in their  
9           discretion a sentence of death is appropriate.

10           The law does not require the jury to impose the  
11           death penalty under any circumstances, even when the  
12           aggravating circumstances outweigh the mitigating  
13           circumstances, nor is the defendant required to establish any  
14           mitigating circumstances in order to be sentenced to less than  
15           death.

16           You're instructed that the following factors are  
17           circumstances by which murder of the first degree may be  
18           aggravated:

19           (1) the murder was committed while the person was engaged  
20           alone or with others, in the commission of or an attempt  
21           to commit or flight after committing, or attempting to  
22           commit any robbery with a deadly weapon and/or burglary  
23           while in possession of a deadly weapon and/or kidnapping  
24           in the first degree and the person charged,

25           (a) killed or attempted to kill the person murdered

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1 or;

2 (b) knew or had reason to know that life would be  
3 taken or lethal force used;

4 (2) the murder was committed to avoid or prevent a lawful  
5 arrest or to effect an escape from custody;

6 (3) the defendant has, in the immediate proceeding, been  
7 convicted of more than one offense of murder in the first  
8 or second degree.

9 For the purposes of this subsection, a person shall  
10 be deemed to have been convicted of a murder at the time the  
11 jury verdict of guilt is rendered or upon pronouncement of  
12 guilt by a judge or judges sitting without a jury.

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

19 In balancing aggravating and mitigating  
20 circumstances, it's not the mere number of aggravating  
21 circumstances or mitigating circumstances that controls.

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

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1 (1) the murder was committed while the defendant was  
2 under the influence of extreme mental or emotional  
3 disturbance.

4 (2) the defendant was an accomplice in a murder committed  
5 by another person and his participation in the murder was  
6 relatively minor.

7 (3) the defendant acted under duress or under the  
8 dominion of another person.

9 (4) the youth of the defendant at the time of the crime.

10 (5) any other mitigating circumstances.

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

15 Stony, you'll notice one of the jurors is hot. I'm  
16 hot. If you'd have him checked.

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

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

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

10           The credibility or believability of a witness shall  
11 be determined by his manner upon the stand, his relationship  
12 to the parties, his fear, motives, interest or feelings, his  
13 opportunity to have observed the matter to which he testified,  
14 the reasonableness of his statements and the strength or  
15 weakness of his recollections.

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

20           Although you are to consider only the evidence in  
21 the case in reaching a verdict, you must bring to the  
22 consideration the evidence, your everyday common sense and  
23 judgment as reasonable men and women. Thus, you're not  
24 limited solely to what you see and hear as the witnesses  
25 testify. You may draw reasonable inferences from the evidence

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1 which you feel are justified in the light of common  
2 experience, keeping in mind that such inferences should not be  
3 based on speculation or guess.

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

8 During your deliberation, you will have all the  
9 exhibits which were admitted into evidence, these written  
10 instructions and forms of verdict, which have been prepared  
11 for your convenience. Your verdict must be unanimous. When  
12 you've agreed upon your verdicts, they should be signed and  
13 dated by your foreperson.

14 Mr. Daskas, you going first?

15 MR. DASKAS: Yes, Judge, and can I get the podium,  
16 please?

17 THE COURT: Sure.

18 (Off-record bench conference)

19 MR. DASKAS: Thank you, Judge.

20 PLAINTIFF'S CLOSING ARGUMENT

21 MR. DASKAS: Just one week ago, during the jury  
22 selection process, Mr. Guymon and I asked each of you if you  
23 had the ability and the capacity to return a sentence of  
24 death, given the appropriate set of circumstances, given the  
25 right defendant, and each of you were selected as jurors

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1 because you indicated that given the right case, you could do  
2 that. It's not an easy task. Certainly nobody envies the  
3 position you're in.

4 But the defense attorney, in his opening statement  
5 yesterday, really attempted to place an unfair burden on each  
6 of you. He told you that you would be burdened with the  
7 responsibility of taking somebody's life. Keep in mind why  
8 you're here. You're here because the Defendant, Donte  
9 Johnson, made decisions and made choices on August 14th, 1998.  
10 It's not your burden. It's Donte Johnson's decision and his  
11 choices that lead you where you are today.

12 The defense attorney, in his opening, also said  
13 something interesting yesterday. He told you that the  
14 defendant can be fixed. This is not a rehabilitation hearing.  
15 This is called a penalty hearing for a reason. You're here to  
16 punish Donte Johnson for the taking of four human lives.  
17 We're talking about the most serious, most tragic crime that  
18 can occur, murder. And we're talking about murder multiplied  
19 times four in this case. And I submit to you that when we  
20 talk about a quadruple murderer, rehabilitation is not an  
21 appropriate topic to consider. It is not your job to fix  
22 Donte Johnson, but it's your duty to punish Donte Johnson.

23 The legislature has determined that only certain  
24 cases are appropriate for death penalty consideration.  
25 Certainly we would agree, I think all of us, that not every

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1 murderer deserves the death penalty. And the legislature and  
2 the Judge, referred to them moments ago, has established  
3 aggravators that must be present before you can even consider  
4 the death penalty as a form of punishment, and those  
5 aggravators are listed for you in an instruction. And keep in  
6 mind, before you can even consider the death penalty in this  
7 case or any case, you have to find unanimously the existence  
8 of at least one of these aggravators.

9           Number one, the murder was committed while the  
10 person was engaged in the commission of a robbery or a  
11 burglary, and I've summarized that, and you have to find that  
12 the defendant either killed or attempted to kill the person  
13 murdered or at least that he knew life would be taken. And I  
14 submit to you that when you returned your verdicts of guilty,  
15 you established aggravator number one. The evidence in this  
16 case was overwhelming that Donte Johnson murdered these four  
17 boys during the commission of a robbery and that Donte Johnson  
18 himself killed each of the persons who were murdered in this  
19 case, aggravator number one.

20           Number two, the murder was committed to avoid or  
21 prevent a lawful arrest or to effect an escape from custody.  
22 You recall the testimony of Charla Severs and/or LaShawnya  
23 Wright, that the three boys in the living room were murdered  
24 because they would be witnesses to the killing of Peter  
25 Talamantez. When Donte Johnson killed those three boys, he

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1 was avoiding arrest. Aggravator number two is satisfied.

2 And there's a third. The defendant has, in this  
3 proceeding, been convicted of more than one offense of murder  
4 in the first or second degree. When you returned your guilty  
5 verdicts of four counts of first degree murder, you  
6 established aggravator number three. All three of these  
7 aggravators have been established beyond a reasonable doubt.  
8 But I mentioned, that's only step one.

9 The next step is to consider mitigators or what we  
10 might call good things about Donte Johnson, and those  
11 mitigators too, are listed in an instruction that you receive  
12 when you deliberated.

13 Mitigator number one, the murder was committed while  
14 the defendant, Donte Johnson, was under the influence of  
15 extreme mental or emotional disturbance. There's been  
16 absolutely no evidence to suggest that he was under extreme  
17 mental or emotional disturbance.

18 Number two, the defendant was an accomplice in a  
19 murder committed by another person and his participation in  
20 the murder was relatively minor. The overwhelming evidence in  
21 this case is that Donte Johnson is the individual who pulled  
22 the trigger four times and killed each of the victims in this  
23 case. Certainly the murder was not committed by somebody else  
24 and obviously his participation was not minor.

25 Mitigator number three, the defendant acted under

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1 the duress or the dominion of another person. Again, there is  
2 no evidence to suggest anybody was controlling Donte Johnson  
3 when he pulled the trigger four times.

4           Number four, the youth of the defendant at the time  
5 of the crime. Donte Johnson was 19 years old on August 14th,  
6 1998, when these murders occurred. From my perspective,  
7 that's a young man, but certainly 19-year-olds know the  
8 difference between right from wrong. Certainly 19-year-olds  
9 know the difference -- know the decisions they make and the  
10 effect and consequences those decisions have. And I  
11 apologize, the defendant was actually 21 years old at the time  
12 he committed the crime. The birthday was 1977. The crime  
13 occurred in 1998.

14           What 21-year-old does not know the consequences of  
15 placing a gun two inches from the skull of a young man and  
16 pulling the trigger? Youth is certainly not something you  
17 should consider as a mitigation in this case.

18           Number five, list any other mitigating circumstance.  
19 And what this tells you as jurors is that if you, either  
20 individually or collectively, come up with any justification  
21 or any mitigation that makes Donte Johnson somehow less  
22 responsible, you are certainly entitled to consider that.

23           Aggravators and mitigators. Step one, consider the  
24 aggravators; step two, consider the mitigators. And finally,  
25 step three is to weigh the aggravators against the mitigators.

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1 You can only consider the death penalty as an option if you  
2 find that there is at least one aggravator and that that one  
3 or more aggravators outweighs or is more serious than any  
4 mitigator you might find.

5 And I'll ask you this question, even if you found  
6 the existence of all five mitigators, even if you come up with  
7 another 15 mitigators, can any of those outweigh the fact that  
8 Donte Johnson killed four young men? That aggravator in  
9 itself, number three, certainly outweighs any mitigator you  
10 might find in this case.

11 And so we know now that this is an appropriate case  
12 for death penalty consideration. That there are aggravators  
13 and that those aggravators outweigh the mitigators. Yes, you  
14 can consider the death penalty in this case and so the  
15 question becomes should you, as jurors, impose the death  
16 penalty? Is this that case and is Donte Johnson that  
17 defendant -- that defendant where the death penalty is the  
18 appropriate form of punishment?

19 I mentioned earlier that I think everybody would  
20 agree that not every person convicted of murder deserves the  
21 death penalty, that it must be reserved for certain unique  
22 cases, for certain heinous crimes and for those extreme cases.  
23 Is this that case and is Donte Johnson that defendant?

24 I posed a couple principles or notions to you during  
25 voir dire and I asked most of you if you agreed with the

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1 notions. And the first notion was the worst possible crime  
2 deserves the worst possible punishment, and everybody I asked  
3 agreed with that notion. And the second notion was the worst  
4 possible criminal deserves the worst possible punishment, and  
5 again, everybody who was asked agreed with that notion. And  
6 then finally I asked, if you have the worst possible crime,  
7 coupled with the worst possible defendant, shouldn't that be a  
8 case where death is appropriate, and again, everybody agreed.

9 And I submit to you that in this courtroom, in this  
10 case, and in this defendant we have both. We have the worst  
11 possible crime and Donte Johnson is the worst possible  
12 defendant.

13 And let me begin with the crime itself, and I  
14 apologize for the photos that you've been subjected to, but as  
15 Mr. Guymon mentioned, we do not apologize for the evidence in  
16 this case that was created by Donte Johnson, the man seated in  
17 this courtroom, because we have an obligation to present to  
18 you the evidence in this case and this is the evidence in this  
19 case. And I submit to you that this -- this crime scene is  
20 the worst possible crime.

21 MR. FIGLER: I object to personal opinion.

22 THE COURT: I don't believe it was expressed in that  
23 way, but neither the prosecutor nor the defense attorneys are  
24 permitted to express their own personal beliefs. If that was  
25 taken to -- if that was intended to be a personal expression

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1 or belief, it's not permitted.

2 MR. DASKAS: Mr. Guymon asked each of you yesterday  
3 what is justice, but that every man get his due, and I ask  
4 you, what is due the man who created this nightmare? What is  
5 due the man who caused these four boys to spend the last hour  
6 of their lives face-down, hands taped behind their backs,  
7 ankles taped together, completely defenseless, with thoughts  
8 of terror racing through their minds that nobody should ever  
9 have to endure?

10 What is due the man that caused Jeff Biddle to lay  
11 on his face defenseless, as he heard the first shot enter his  
12 friend Peter Talamantez' head? And what is due the man who  
13 caused Jeff Biddle to lay face down and defenseless as he  
14 heard the second shot, when Tracey Gorringer took a bullet to  
15 the back of his skull? And what is due the man who caused  
16 Jeff Biddle to suffer the terror that he must've suffered when  
17 he heard the third shot enter the skull of Matt Mowen, his  
18 friend, as he wondered what was gonna happen to him? And what  
19 is due Donte Johnson when those thoughts of terror were  
20 finally erased from Jeff's mind, when a bullet entered his  
21 skull too and finally erased that terror?

22 Is life in prison sufficient for the man who created  
23 this nightmare or is something more required? Is this that  
24 crime that speaks out for the death penalty or do we simply  
25 allow Donte Johnson to live in prison, to have visitors, to

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1 write and receive letters, to wake up every day, three meals a  
2 day? Is that justice in this case for this crime scene or is  
3 something more required? Is this that case where the death  
4 penalty is the only appropriate form of punishment?

5 Is Donte Johnson's life somehow more valuable than  
6 these four lives? Should he be allowed to live when all four  
7 of these boys died? Is Donte Johnson's life somehow more  
8 valuable?

9 The defendant deserves to die because Jeff Biddle  
10 deserved to live. The defendant deserves to die because Matt  
11 Mowen deserved to live. The defendant deserves to die because  
12 Tracey Gorringer deserved to live. The defendant deserves to  
13 die because Peter Talamantez deserved to live.

14 The worst possible crime deserves the worst possible  
15 punishment, and I submit to you that this is the worst  
16 possible crime, that this is that extreme case, this is that  
17 heinous crime where you must impose death.

18 But there's more than just this crime scene.  
19 There's much more than just this crime scene. The second  
20 notion I pose to you is that the worst possible defendant, the  
21 worst possible criminal deserves the worst possible  
22 punishment. And we now know that Donte Johnson is the worst  
23 possible criminal, because August 14th, 1998 was not just a  
24 bad night for Donte Johnson, it was the culmination of a  
25 criminal career that dates back nearly ten years. It was a

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1 consistent night for Donte Johnson, not an aberration.

2           And I'll only touch on the violent crimes you heard  
3 about from that witness stand. June 8th, 1993, an armed bank  
4 robbery. You heard testimony from the bank teller and from  
5 the lieutenant. Donte and his three companions rent a Ryder  
6 van. They arm themselves with a shotgun and a handgun.  
7 They're like something out of a movie, in broad daylight, in  
8 Marina Del Rey, they take over a bank. They jump on the  
9 counters, they order everybody to the ground and Donte Johnson  
10 is caught with twelve hundred dollars (\$1,200) in his pocket  
11 when he's the driver of the van that acted as the getaway  
12 vehicle.

13           May 4th, 1998, the attempt murder of Drick Simpson.  
14 I'm sure that's a vivid recollection for all of you. You  
15 recall Drick who was seated here in his wheelchair? A shot to  
16 the face from Donte Johnson at close range, but that wasn't  
17 enough as Drick lay defenseless, like these boys, face down.  
18 Donte steps over him and fires another shot into his back, the  
19 shot that causes Drick Simpson to sit before you in a  
20 wheelchair and testify about what happened to him. For all  
21 intents and purposes, Donte Johnson killed Drick Simpson like  
22 he killed those four boys, because although Drick Simpson is  
23 still alive, that's certainly not a life that most people  
24 would want to live, half his jaw gone, confined to a  
25 wheelchair. Donte Johnson may as well have killed Drick

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1 Simpson like he killed these four boys.

2           And we learned about the murder of Darnell Johnson  
3 on August 14th -- August 4th, 1998. Not only is August 14th,  
4 1998, not the first crime Donte Johnson committed, it's not  
5 even the first murder Donte Johnson committed. Some ten days  
6 earlier, at the Thunderbird Motel, Donte and his companions  
7 are out for revenge because Darnell Johnson, in Donte's mind,  
8 ripped off some crack cocaine from Donte's friend, and his  
9 solution is to choke Darnell Johnson to death with a bed sheet  
10 or a telephone cord, I'll let you recall the testimony, and he  
11 stuffs Darnell Johnson's body in the trunk of his own car, and  
12 you'll see from the photographs, the key that was removed, the  
13 lock that was removed from the trunk, corroboration of the  
14 testimony from Bryan Johnson and Charla Severs and Detective  
15 Chandler. And the body is driven to the speedway and rolled  
16 down an embankment off the freeway. And you recall the  
17 testimony of both Charla Severs and Bryan Johnson who told you  
18 about those events.

19           And the question is, once again, can you believe  
20 Charla Severs and can you believe Bryan Johnson and I'll ask  
21 you to rely on what you relied on to convict Donte Johnson of  
22 the murders, that is corroboration, 'cause Bryan Johnson told  
23 you what Donte Johnson told him, that Darnell Johnson was  
24 forced to eat cocaine, that he was stuffed in a trunk, wrapped  
25 in a sheet, and dumped somewhere near the speedway. And you

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1 heard Detective Chandler talk about the toxicology report,  
2 that Darnell Johnson had non-metabolized cocaine in his  
3 system, which suggests recent ingestion, corroboration. And  
4 you see the photo of the sheet wrapped around Darnell's body,  
5 corroboration. And you heard about the location where the  
6 body was found, right near the speedway and that too is  
7 corroboration. Another murder ten days before the quadruple  
8 killing. Not his first crime or not even his first murder,  
9 and I ask you; is life in prison sufficient or is something  
10 more required in this case?

11 August 11th, 1998, just three days before the  
12 quadruple homicide, you heard about the shooting at the  
13 Longhorn Casino from Kim Kern the manager there. She thought  
14 she heard firecrackers, 20 or 25 of them. And when she left  
15 her office, she learned otherwise. She saw the bullet holes  
16 in the rooms around checkout time. Guests in the area, maids,  
17 employees, anybody in that hotel was in harm's way when Donte  
18 Johnson opened fire. Is life in prison sufficient for Donte  
19 Johnson or is something more required in this case with this  
20 defendant?

21 And that brings us to this case, the Terra Linda  
22 crime scene and the murder of Peter Talamantez who, according  
23 to all the testimony, was the first one to take the bullet in  
24 the back of his head. Is Donte Johnson's life worth more than  
25 Peter Talamantez' life or is he deserving of the death

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1 penalty?

2           In the murder of Tracey Gorringer. Is Donte  
3 Johnson's life worth more than Tracey Gorringer's life or is he  
4 deserving of the death penalty?

5           Is Donte Johnson's life more valuable, more  
6 important and more significant than Jeffrey Biddle and Matt  
7 Mowen or is the death penalty the appropriate punishment in  
8 this case?

9           For this crime and for this criminal background,  
10 this criminal conduct that dates back nearly ten years, five  
11 murders and for the taking of Drick Simpson's life.

12           The defense attorneys may stand up and suggest to  
13 you that Donte is worth saving, that he can spend the rest of  
14 his life in prison and somehow serve as a role model for other  
15 inmates. Perhaps he can teach other inmates the error in his  
16 ways and they'll ask you to make him a role model. I agree.  
17 Make Donte Johnson a role model. Sentence him to death and  
18 you'll make Donte Johnson a role model for all the would-be  
19 murderers out there who know about his case, so that they  
20 might think twice before they pull the trigger when they're  
21 committing a crime.

22           They might think twice before they agree with their  
23 partners to load up the duffel bag with duct tape and guns, to  
24 tape up four young men, to hold the gun to the back of the  
25 skull of each of those boys and to pull that trigger. I

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1 agree. Make Donte Johnson a role model by sentencing him to  
2 death, because this is the worst possible crime and Donte  
3 Johnson is the worst possible criminal.

4 Thank you.

5 THE COURT: Thank you.

6 Mr. Figler, when the room's set up the way you want  
7 it.

8 MR. FIGLER: Thank you, Judge.

9 (Pause in the proceedings)

10 (Off-record)

11 THE COURT: There are a total of four arguments, as  
12 you may have deduced. Mr. Figler is going to talk to you, as  
13 I understand it, about the law; Mr. Sciscento about the facts;  
14 and then Mr. Guymon's going to speak again and we'll be taking  
15 one break after Mr. Figler.

16 DEFENDANT'S CLOSING ARGUMENT

17 MR. FIGLER: Thank you, Judge.

18 Counsel, John, opposing counsel, people in the  
19 audience here today, and most specifically ladies and  
20 gentlemen of this jury.

21 Don't misconstrue what I'm about to say, because as  
22 much as any other person that I've interacted with, I love  
23 this country. I love the United States and what it stands  
24 for. I love the freedoms that we have, the Constitution of  
25 the United States and the laws that we live by.

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1           But it has to be admitted that there is a certain  
2 arrogance in our country, that we can pretend, in a very  
3 civilized way with suits and ties in a very sterile  
4 environment of a courtroom that someone can come before you  
5 and tell you what the value of a human life is. The question  
6 that has existed from the beginning of time, what is the  
7 meaning of our existence on earth, what is the meaning of  
8 life? There is a certain arrogance to say that 12 individuals  
9 who really don't know a hill of beans about an individual can  
10 say what the value, the weight, compare one human life to any  
11 other number of human lives.

12           Now, there's gonna be two parts to this argument.  
13 The first part is to discuss with you the laws of our country  
14 and I believe in them, and I believe that the laws are what  
15 keep us civilized.

16           When the prosecutor indicated to you that punishment  
17 is not about rehabilitation, I've got to say that that didn't  
18 sound right, because in the history of homo sapiens on earth,  
19 there was barbarism, there was pure vengeance, and we believe  
20 that we have evolved from that into civilization, that our  
21 penal system isn't merely about the vengeance of blood sport,  
22 but it's about all the aspects and the reasons for having a  
23 penal system, that people like Nancy Hunterton, who come in,  
24 do what they do for a reason.

25           One more preface remark. As you all understand,

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1 this is not an academic game here. When the prosecutors ask  
2 you on the verdict forms, when they ask you for death, don't  
3 think that they just wanna piece of paper with your signature  
4 on it, with a checkmark on it, because that's a real  
5 instrument and that surely, as I pointed a gun at this  
6 individual yesterday, and said that the result of a signature  
7 on a piece of paper will result in his death, so too are you  
8 instructed that the death sentence will be carried out. Now,  
9 not to suggest it's by that means, but certainly the end  
10 result has the same impact and if you don't want to see that,  
11 it doesn't matter the manner, because what will happen will be  
12 little blue bullets of death shot into him.

13 MR. GUYMON: Judge, I am gonna object. It's by  
14 lethal injection. It's not little blue bullets. It is  
15 assuming facts not in evidence.

16 THE COURT: Overruled.

17 MR. FIGLER: A liquid death that does as much  
18 destruction as any bullets, that has the same ultimate effect  
19 of instant ending of existence and that would occur, not just  
20 a signature on a piece of paper that you can forget about.  
21 Something that will really happen.

22 The United States Supreme Court, the Nevada Supreme  
23 Court, the Constitution of this country, they thought a lot  
24 about this issue back and forth and they came up with very  
25 specific guidelines and rules. For if killing four people,

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1 five people, more, automatically meant that a person was to  
2 die, we wouldn't have been here for the last seven days. This  
3 we all know is true. That they provided guidelines and  
4 barriers and more barriers for you to even consider the issue  
5 of death and even then, say that you were never, no matter how  
6 heinous a crime, no matter how bad a person you think you're  
7 dealing with, never required to return the death.

8 Now, why is that? What is the functioning? Well,  
9 the jury instructions are your guide, ladies and gentlemen.  
10 The jury instructions tell you what you need to do as you go  
11 through this process.

12 What's different in the penalty phase from the trial  
13 phase is the empowerment, the sheer force of power that is  
14 entrusted, not to you as a collective, but each of you as  
15 individuals. This is a different process and the instruction  
16 indicates that this is a different process than determining  
17 somebody's guilt. You are all handed an individual and unique  
18 key and that key, you're gonna carry with you as you enter a  
19 room, a room that the instruction tells you about.

20 I'm gonna show you an instruction and this is the  
21 one that tells us --

22 Is there another easel? Can you get that?

23 This is the law of the Constitution of the United  
24 States Supreme Court, of the Nevada Supreme Court, it's  
25 Instruction 7(a), and it defines for you the process of these

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1 deliberations. And you will note words in here, and I will  
2 point out some words that show you the individual power that  
3 has been bestowed upon you by all these forces of law in  
4 America, what makes us civilized, what makes us better.

5           The very first thing you do is go into a room, room  
6 number one, one door in. But before you're even allowed to go  
7 into that room, it's like when you come into the courthouse,  
8 you know, when you walk through the metal detector, the big  
9 frame and it beeps and you have to give them things? Well,  
10 before you go into room one, you have to shed certain things  
11 from your person, from your mind, you're required to. Room  
12 number one is the existence of aggravator room. When you're  
13 considering the existence of the aggravators that have been  
14 set forth to you, and there are three of them, you cannot  
15 bring in with you anything that you heard during the  
16 prosecutor's presentation of the last day and a half. You  
17 cannot -- what you have heard, evidence of other crimes,  
18 alleged crimes, things that he has not been convicted of,  
19 things that he is allegedly or might have been proven to have  
20 done, all that is considered to be something called character  
21 evidence. It does not go to whether or not there is an  
22 aggravator. There are three aggravators in this case. So  
23 like walking through the metal detector, you have to pretend  
24 that you didn't hear any of that information about character,  
25 about other crimes, about other criminal activities, as

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1 presented by the prosecutor and, quite frankly, you can't even  
2 listen to anything that we said about what we presented as  
3 evidence of mitigation.

4           The only thing you're allowed to have in this room  
5 is information about the aggravators and, ladies and  
6 gentlemen, I'm gonna make it really simple for you. In this  
7 very first room, you have to determine whether, beyond a  
8 reasonable doubt, those three aggravators that were referenced  
9 to you by the prosecutor exist.

10           MR. DASKAS: Judge, I'll object. They only have to  
11 find one of those three aggravators.

12           MR. FIGLER: That's true. That's true. You have to  
13 find one of the three, but I'm telling you I'm gonna make this  
14 real simple. The three aggravators were multiple homicide  
15 committed to escape and also in the perpetration of another  
16 crime. Your verdict, ladies and gentlemen, in the trial of  
17 this, that's most likely reasonable doubt. So I'll tell you  
18 what, don't even bother with that. The answer is yes. Yes,  
19 there's a reasonable doubt that those aggravators exist. I'm  
20 not gonna challenge that. Your verdict speaks for that.

21           Each of you have a key. There's a second room.  
22 Now, there was one door in, but there is a locked door here  
23 and it only opens up with twelve keys, but I'm telling you,  
24 ladies and gentlemen, you can get out of this room, because  
25 the aggravators exist beyond a reasonable doubt by your

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1 verdict. You each stick your key into the door and you move  
2 into room two. Now, there's a -- someone waiting for you  
3 right there and they hand you the mitigators. This is  
4 aggravator/mitigator room, room number two.

5 Same thing, there's one door in, then they lock it,  
6 and there's a door here that requires, you got it, twelve  
7 keys.

8 Now, room one, this is the instruction, the jurors  
9 find unanimously and beyond reasonable doubt that at least one  
10 aggravating circumstance exists. I'm telling you, you could  
11 by-pass now room one.

12 Room two, each and every juror determines that the  
13 mitigating circumstance or circumstances, if any, which he or  
14 she has found do not outweigh the aggravating circumstance or  
15 circumstances. What is the role in room number two? Well,  
16 you've already got your aggravators with you. You brought  
17 them with you, so that's already been determined. Now, it's  
18 time for you to evaluate what you saw in the defense case  
19 today, what you observed through your own observation that  
20 amounts in mitigation in this particular case.

21 The U.S. Constitution, the Nevada Constitution, the  
22 Nevada legislature tells you that you are required to evaluate  
23 the existence of mitigators and here each of you, holding your  
24 individual key, makes your mind up for yourself, and this is  
25 different, very different from the process that you endured in

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1 the first place. There are four mitigating circumstances that  
2 get you started.

3 Now, I've heard mitigating things called a lot.  
4 I've heard expressions from prosecutors, that they're saying,  
5 oh, this is just the blame game, this is just the abuse  
6 excuse. Little cute rhymes like that. But I've got to tell  
7 you, that specifically the Constitution says that these are  
8 important things, not only important things, but they are  
9 things that need to be considered when you are facing an  
10 appropriate punishment, when you are in room number two.  
11 There are four listed ones and one that says any other  
12 mitigating circumstances.

13 Ladies and gentlemen, in your deliberation room, you  
14 will receive something called a special verdict form. It is  
15 something different from the other verdict forms that you've  
16 seen, because this is a verdict form that reflects the  
17 individuality of each and everyone of you as you sit in room  
18 number two, talking about mitigation.

19 Now, mitigation is not offered as an excuse.  
20 Mitigation is not, despite what anyone tries to characterize  
21 it, pointing blame. What it is, is your requirement to  
22 evaluate, in this particular case, whether you, as an  
23 individual, believe that certain things just exist in the  
24 world. Not that they outweigh yet, not that they do anything  
25 but exist in the world. That is your task at this point in

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1 room two. And any one of you can have the belief that one of  
2 these or more of these exist. There's four that are listed.  
3 The murder was committed while the defendant was under the  
4 influence of extreme mental or emotional disturbance. You've  
5 all heard a lot about his life growing up. Mr. Sciscento will  
6 address that more specifically, but if any of you feel that  
7 the murder was committed while the defendant was under the  
8 influence of extreme mental or emotional distress,  
9 disturbance, then that person indicates to the foreperson, I  
10 think that one's there, and other people can agree or  
11 disagree, but you have to respect each other and if the one  
12 person has the belief that the mitigating circumstance has  
13 been established, the foreperson has an absolute obligation,  
14 under the Constitution, to check the box. This is just a  
15 listing to check the box.

16           The second one is the defendant was an accomplice in  
17 a murder committed by another person and his participation in  
18 the murder was relatively minor. You did find John White  
19 guilty of these offenses. We don't ask you what you felt his  
20 role was. We just ask you if you feel he's criminally liable.  
21 There was a time when I had asked you to write something in  
22 your notebooks before you heard all this other evidence,  
23 because all this other evidence that you heard from the  
24 prosecutors, that's not in room two, not there. It's for you  
25 to decide.

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1 Same thing with the defendant acting under duress,  
2 under dominion of another person. If one of you feels that  
3 that exists, just exists, the foreperson has to check it.

4 The youth of the defendant at the time of the crime.  
5 Youth has been determined by the Constitution, the United  
6 States Supreme Court, to be important enough for a specific  
7 listings and for your consideration and if one of you thinks  
8 that this is a young man, then the foreperson has the absolute  
9 obligation to check that as well. Now, more of you may feel  
10 that. All of you may feel that. Ten of you may feel that.  
11 Eight of you may feel that. But the point is, if one of you,  
12 merely one of you feels that, the foreperson has an obligation  
13 to check that. This is before any weighing.

14 Now, the youth of the defendant, I think, the  
15 prosecutor's pointed on, it's probably someone's relative, but  
16 I will submit this, the people who were killed, who lost their  
17 lives, have been referred to as young people, young men,  
18 people who haven't lived enough life yet, throughout the  
19 course of this trial, and it's also been established that John  
20 White is the same age as those individuals.

21 But now we come to a very special and unique part of  
22 the American justice system. For on the special verdict form,  
23 beyond the four that are listed by the United States  
24 Constitution and Supreme Court in interpreting the  
25 Constitution, any other mitigating circumstances, and as

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1 you'll see, on the last one here, not only is there a check,  
2 but there are about four lines, blank lines, that are drawn  
3 underneath it and those four lines are for the feelings,  
4 creativity, understanding, respect to the individual people  
5 who sit before me as jurors.

6           When we asked, during voir dire, do you think that  
7 everyone should be the same and I think you all agreed that  
8 there should be different people and different opinions of  
9 people who are on a jury. That's what it speaks to, and  
10 ladies and gentlemen, beyond the four that are listed in their  
11 wisdom of our system, they want you to think, is there  
12 anything else that exists in the world. Now I might offer  
13 some to you as suggestions of what the evidence showed in this  
14 particular case.

15           Any other mitigating circumstances means just that,  
16 anything in the world, not as an excuse, not to lessen the  
17 degree of the crime or to diminish the feelings of the poor  
18 victims' families. That's not here yet. You're in room two,  
19 remember. If you feel that John White was abused as a child,  
20 it's not an excuse. Don't let anyone tell you we're saying  
21 that this is an excuse or to blame the parent. That's not the  
22 role in room two. The role for you to determine is it a  
23 limitation that has been placed on John as he went through his  
24 life? Is it something that he carries with him, abuse as a  
25 child? And if one of you thinks so, then the foreperson needs

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1 to write it down in the blank space.

2 Emotional and/or physical abandonment by parents.

3 If that's something that you think we proved, that John White  
4 has had in his life and carried around, just the listing, and  
5 it needs to be listed.

6 Isolation, severe isolation; a life of violence and  
7 chaos; drug addicted parents; absent father; exposure to  
8 violence through domestic violence; exposure to violence and  
9 desensitization through what he saw in the streets. Any of  
10 you think that that exists, you have to list it, because it's  
11 the listing here in room two that's first importance.

12 And then there's that thing called mercy, belief in  
13 humanity, his support system that he had, and it really  
14 strikes me in this case, how you saw such a tale of two  
15 different maternal protection systems. How some young men who  
16 you saw had so much love and so much opportunity and so much  
17 caring that it rips us all apart; and how another man, another  
18 youngster has in his life a maternal system, the mothers Pam  
19 and Eunice, Fay, this comparison, all these things.  
20 Mitigating circumstances.

21 And ladies and gentlemen, let me tell you this: You  
22 heard a lot about growing up. You heard about, a lot about  
23 his lifestyle, about what happened to him, why he did the  
24 things that he did, what were his motivations at an early age,  
25 his impressionableness. Ladies and gentlemen, if these four

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1 lines don't provide you with enough room, you can use the  
2 back, because this is the listing and this is the individual  
3 power that each of you have. And once that is done, there is  
4 the weighing. And this takes place in room two as well.

5 A little scale, weighing.

6 And again, it's different from the first process,  
7 because once you have your list -- you'll have two special  
8 verdict forms; one that has the aggravators and I didn't bring  
9 that up with me, but it does exist. It looks very much like  
10 this, except it says aggravators; and you'll have the  
11 mitigator, and you'll have everything listed on this and  
12 everything listed on that. And that's when the law tells you  
13 in room two that you do weighing.

14 And each of you, as an individual, does their own  
15 weighing. And there's an instruction that says it's not sheer  
16 number, one way or another, and I anticipate that you will  
17 find more than the aggravators. It's not about number. We'll  
18 be fair about that. But it is to you, what's important. This  
19 doesn't have to be unanimous with regard to the mitigator.  
20 Any mitigator, any collection of mitigators on the list that  
21 you found outweigh the aggravators for you, as a person.

22 Eleven of you may feel one way and one person says,  
23 in my belief these mitigators outweigh, and that is the power  
24 of the individual. That is the wisdom of the United States  
25 Government, because once one of you says, I personally

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1 think -- I know you're all trying to convince me, but I have  
2 my belief, I believe that any one of these mitigators here  
3 outweighs the aggravators that we found. Guess what? That's  
4 it. You're in room two forever, because room three is where  
5 you can consider final decision, but I submit to you, ladies  
6 and gentlemen, that if one of you, for whatever personal  
7 reasons and, quite frankly, you don't even have to articulate  
8 it. It doesn't even have to necessarily be there. If you  
9 think that the mitigator exists, that outweighs just one  
10 mitigator. In fact, you don't even have to believe that any  
11 do. But you've got that power to say, I'm not putting my key  
12 -- well, you don't even have to declare it. You just -- your  
13 key disappears.

14           Once you personally have made the decision, there  
15 could be eleven keys in there, ten keys in there, nine keys in  
16 there, it doesn't matter; it takes twelve keys to even  
17 consider the next thing. This is before anything that they've  
18 brought in comes in. All these other things, all these other  
19 alleged crimes and crimes that have been proven, all that  
20 character evidence, that's something that might be waiting for  
21 you down here, but you're not gonna get there if someone, one  
22 of you says, my key's gone, but you can't get there. And in  
23 room two, you decide life with or life without and you know  
24 that there are four counts, four times.

25           Now, if at the end of this weighing process, all

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1 twelve keys go into this final one, that's when pretty much  
2 everything comes in, everything that's left in this particular  
3 case. And I really got to think that -- even there there is a  
4 rule.

5           This is Instruction 7B, this is the room three rule.  
6 Because after room two, where each and every juror determines  
7 that the mitigating circumstance, if any, which he or she has  
8 found, which is your individual power, do not outweigh the  
9 aggravating circumstances, each and every one being the double  
10 power. Then three -- room three, the jurors have to  
11 unanimously determine that in their discretion a sentence of  
12 death is appropriate.

13           If you find yourselves in room three, ladies and  
14 gentlemen, think about Instruction 7B, that the law does not  
15 require the jury to impose the death penalty under any  
16 circumstances, even when the aggravating circumstances  
17 outweigh the mitigating circumstances. Nor is the defendant  
18 required to establish any mitigating circumstance in order to  
19 be sentenced to less than death.

20           And if you find yourself in room three somehow, know  
21 that anything that you talked about before, something as  
22 simple as mercy, as hope, as faith, as compassion. Let me  
23 tell you something about mercy, it's not uncommon to hear an  
24 argument that you should show as much mercy to this  
25 individual, as you believe this individual showed to other

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1 people. But, ladies and gentlemen, is that what you've been  
2 taught what mercy means, what compassion means, is that how  
3 each of you were raised as to what the idea of forgiveness and  
4 mercy mean?

5 But you don't have to get to room three if one of  
6 you thinks that mercy is an important enough factor. If one  
7 of you thinks that any of these other things that you're going  
8 to list before you do the weighing, is an important factor.  
9 And that, ladies and gentlemen, in a nutshell is the way that  
10 the criminal justice system and the consideration of the  
11 penalties that you have available to you exist in this  
12 country. You never have to give death.

13 If there was a law that says the worst of the worst,  
14 if you believe all that, there's no automatic. Why is that?  
15 Because the United States Supreme Court says you have to  
16 individualize each person, know everything about the person  
17 that was a limitation in their life, that was a misfortune in  
18 their life, that was a mitigator in their life, that effects  
19 their moral structure, their value structure as they grew up,  
20 as they came to the point in time, not as blame, not as  
21 excuse, but because the law requires it. So when you have  
22 that special verdict form don't think you're doing someone an  
23 injustice or a service that you're ignoring the family and  
24 stuff, because the law says you can't consider any of that  
25 yet.

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1           It's arrogant yes, that we think that we can -- we  
2 could civilize this whole process of killing a creature that  
3 has been placed here by a higher power. But we do the best  
4 that we can and we love America, I'm sure all of us agree with  
5 that, and America says you go from room one, which I'm telling  
6 you you can to get to room two, but you don't leave room two.

7           Now, to explain more information with regard to the  
8 evidence that was adduced and what it supports, Mr. Sciscento  
9 is going to finish the remainder of the time.

10           I would hope that during this procedure you do read  
11 these instructions, and you understand that it is a real  
12 impact. Everything that you've seen here is real. Every  
13 action that you have will have a response. When you listen to  
14 the facts in this particular case, certainly there's going to  
15 be a lot that's tugging at you, but remember the law is what  
16 keeps it civilized, and the law is what keeps it fair and  
17 right.

18           Thank you for your time.

19           THE COURT: Thank you.

20           We're going to take a recess until 5:20. During  
21 this recess your admonished not to talk or converse among  
22 yourselves or anyone else on any subject connected with this  
23 trial; read, watch or listen to any report of or commentary on  
24 the trial, or any person connected with it by any medium of  
25 information including, without limitation, newspaper,

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1 television or radio; or to form or express any opinion on any  
2 subject connected with the penalty in this case until it's  
3 finally submitted to you.

4 5:20, brief recess.

5 (Court recessed)

6 (Jury is present)

7 THE COURT: Mr. Sciscento, when you're ready.

8 DEFENDANT'S CLOSING ARGUMENT

9 MR. SCISCENTO: Please the Court, opposing counsel,  
10 ladies and gentlemen of the jury. Thank you.

11 I ask you to deliberate last time, and you took the  
12 time to do that. Thank you. Whether I agree with you or not  
13 it's nothing you should [inaudible, not at microphone], it's  
14 behind you. And today I'm going to ask you one thing and one  
15 thing only, don't kill him. That's all I'm asking you,  
16 because it means that much. Life means that much. Whatever  
17 the circumstances are I would do the same anytime, don't kill  
18 him.

19 This morning there was a delay in the process, and I  
20 know you're upset because we got started late. If you want to  
21 be mad at somebody for starting late [inaudible]. Blame me.  
22 You're not going to rush to judgment because the [inaudible].  
23 If you take it out anybody, because it's too important of a  
24 process for us not to take the time.

25 What we're here today about it's not the worth of

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1 the lives of the victims. You've made that determination.  
2 Regardless of how they were killed, how they died they were  
3 wonderful people. It's not how they died that makes them  
4 wonderful people. We heard how great they were, I'm not  
5 taking that away. But today it's not about that. Your  
6 verdict today does not say they're great, they're better, it's  
7 about whether or not we kill him. That's what this is about,  
8 pure and simple. I don't care how you say it, death penalty,  
9 capital punishment, whatever, it's whether or not he dies.  
10 It's whether or not there's something there to save. You've  
11 made the determination already on the worth of everybody. And  
12 if there's nothing worth saving then you mark that death box.

13           You've heard Mr. Figler talk about the aggravations,  
14 the aggravating circumstances, I think there were a few of  
15 them, and they were stated already, what the aggravators were  
16 that -- there were multiple murders, things like that. He's  
17 right about focusing on mitigation.

18           When Dr. Matthews was up there I asked him, right in  
19 the beginning, I don't believe in all the crockery [sic].  
20 You're not here to say as -- say today that a diminished  
21 capacity, he doesn't have the intent to kill or he was acting  
22 under duress or anything. No, that's not what you're here  
23 about. You're here about Donte, to tell the story of John  
24 White and his life, because some of us don't live that life, I  
25 don't think any of us here have lived that life. I've been

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1 down there, but I don't live that life, I don't know what it's  
2 about. Those are the mitigations. The way he grew up. And  
3 he was born to a mother who was a crackhead. You saw it on  
4 the stand. You heard the taunts that they called her,  
5 leprechaun. The leprechaun. Every day he had to hear that.  
6 She's missing teeth. [inaudible]. It may not mean anything  
7 to anybody, but it's a mitigation.

8           He was born to a father who was abusive, didn't help  
9 him. That doesn't excuse what you found him guilty of, but  
10 the reality is, what we set in motion, what society set in  
11 motion had a final ending. Do you really expect anybody from  
12 there to make a choice? To make a choice, like we choose  
13 colleges and we choose cars and where we're gonna live. Those  
14 aren't the choices that these people are faced with. You  
15 can't make a choice about that when you're worried about  
16 whether or not you're gonna live or die. Whether or not the  
17 next day is your last. Whether or not -- whether or not this  
18 one guy is gonna rape your cousin because he wants you in the  
19 gang. Mitigation doesn't take away the murder.

20           Damn it. It's not a normal life he lived. I mean  
21 look at his cousin Keonna. Very articulate. She got up  
22 there, very intelligent, very bright. Why? 'Cause she was  
23 the one person in that family of sixteen who went to a private  
24 school. That was the one thing that they had, and they got  
25 one out of there. The other fifteen, the other ten, or

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1 however many were living in there didn't make it. These are  
2 the things that you focus on in mitigation.

3 I'll show you the pictures, I know we all know  
4 about, pictures of the garage. Ten people living in a garage,  
5 using a bucket. Is it a commode, no, it's a toilet. It's not  
6 a commode, they don't know -- even know what that means.  
7 Because they've never been over to France to know what a  
8 commode is. Pissing in a bucket, ten people. Am I saying  
9 that's terrible? Yes.

10 Where was he going? Where was he going?

11 Back in 1974, I think it was, there was a thing  
12 about Charles Manson, and I remember them saying that society  
13 did this, and I thought that was a bunch of crap. Society's  
14 to blame. I asked doctor -- I asked Mr. Clark about the  
15 programs. Yeah, the programs come after they're in the CYA,  
16 but not beforehand. I'm not saying it excuses it, I'm saying  
17 he had nothing to go -- go to. And there still is nothing  
18 there. And killing him is not going to change anything,  
19 because the programs are not still there. Do you think it's  
20 going to end here? You think if he's out of our lives, if  
21 he's out of our world, you think it's gonna end? No, it's not  
22 gonna end.

23 Twenty-five years the death penalty has been put  
24 back in place. Mr. Daskas talked about, well, let's send a  
25 message out there to -- to tell other murderers, no, let's

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1 stop this. If you get rid of him is it going to end? No, it  
2 is not going to end. We'll be here tomorrow, next week, next  
3 year. We've been here for twenty-five years since they've  
4 reinstated the death penalty.

5 If you want to send a message out, and you want to  
6 say something different, how about this: It's not working.  
7 It's not working. Putting someone to death does not stop the  
8 death of others. It doesn't work, and maybe it's time we tell  
9 them that. If anybody can grasp this, maybe it's time we say  
10 let's get to the cradle.

11 The death penalty is a drastic measure, I'll give  
12 you that. Maybe something else needs to be done. Maybe  
13 another drastic measure. It's not going end anything, it's  
14 not going to bring anybody back.

15 And Mr. Daskas talked about the four lives and the  
16 balance, is this one worth it? Does it really change  
17 anything?

18 And the family that got up here, that we paraded in  
19 front of you today, it was meant to explain to you how bad it  
20 was. And I hope you all heard it. One or two of you may have  
21 been upset about it, and I hope so, because it should upset  
22 you. It should push you to anger. It should set you -- it  
23 should make you say this is not right. Something has got to  
24 end. Something has got to end. And we're not going about it  
25 the right way.

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1 I don't know what the answer is. But if killing him  
2 is an answer, stopping everything, if that's the answer, then  
3 I want to change the questions.

4 You know there's other things that -- that they  
5 talked about, the other murder of Snoop. The coroner could  
6 not even -- could not even agree that that was a death, but  
7 they bring it out to make him look uglier, because the uglier  
8 he is, the easier it is to kill him. The coroner said,  
9 probable, after the second time of reviewing it, probable  
10 strangulation. 4,000 grams of cocaine found in him. Oh,  
11 yeah, they forced him to eat it. What was in his stomach?  
12 The stomach was intact, [inaudible], that's what the officer  
13 said.

14 Drick Simpson, wheeled him in here to get your anger  
15 up, easy to kill somebody that you hate. Drick Simpson is  
16 what, forty-two years old. He forgot to tell the police about  
17 how he beat up Donte, how he smacked him, how he punched him,  
18 and there was blood coming down Donte's face and he had to put  
19 a towel over it because there was so much blood. He couldn't  
20 even move after he was shot, but he was perfectly able to  
21 identify who it was. Well, somebody else said the perpetrator  
22 was six feet tall, and we know John is not six feet tall.  
23 Well, I'm not going to get into the facts of these cases.

24 It's not about anything else other than John. Is  
25 there any mitigation that you can find? Is there anything

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1 that you can say is worth saving?

2 And you have a list, a special verdict form which  
3 asks you to mark any other mitigating circumstances. You're  
4 gonna get this when you go back. There's one more step.  
5 There's got to be other mitigations that you can find. It  
6 doesn't diminish the life of anybody. We don't have to say  
7 he's a saint, and I already told you he's not a saint. The  
8 reality is, trying to save a man's life here. As sure as you  
9 mark that box for death, as sure as it's going to happen.

10 Life without parole. As the Judge told you, it's  
11 life without parole. Lock him up, we put him away. What  
12 happened the last time? Mrs. Hunterton got up here, remember  
13 what she said, he was doing well, the D.A. has tried to  
14 discredit her on that, he was doing well in life skills. She  
15 works for Clark County. She works for the people there in the  
16 prison, in the jail over here. And they said that John White  
17 was doing well, he opened up. The problem is he had to -- he  
18 was there for awhile, then they took him away, why, because he  
19 had twenty-four write-ups, twenty-four infractions.

20 And remember when we asked about those infractions,  
21 what kind of infractions were they? Were they violent  
22 infractions? No. They were infractions of having juice too  
23 soon, having soup in your cell. Being defiant to somebody  
24 else. There's one infraction in there, he stared me down in  
25 the wrong way. They take that one program that he was there

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1 on, the structured environment that he didn't have his entire  
2 life and they take that away, and do you see the animal we've  
3 got. Twenty-four infractions, the worse they can say is he  
4 said motherfucker.

5 Is it so easy to kill? Is it so easy to hate him  
6 and to kill him?

7 The programs that they talk about that he can have.  
8 When he was up in CYA, away from all of that, away from the  
9 violence of the street, away from the problems that he had, he  
10 did well. The records showed that.

11 I can't tell you what's going to happen in the  
12 future. I can't say whether or not he's going to reach  
13 somebody's life. I can't say whether or not, when he's  
14 finally there for the rest of his life, when he reaches a  
15 certain age and he finally decides maybe I can help somebody.  
16 Maybe he can talk to somebody and tell them, let me tell you  
17 about the gang life, the reality of the gang life. Maybe  
18 there's something there.

19 If you turn out that light we will never see it.  
20 Does it mean that he doesn't get punished? The term  
21 punishment is putting somebody in prison. Does it mean we go  
22 light on him, that we forget about his crimes, when you say,  
23 hey, the murders that you were involved in, it's okay. Does  
24 that mean we're being light on him?

25 If you keep doing something over and over and it

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1 keeps going wrong, why do you keep doing it? I mean we can't  
2 kill them fast enough, to get rid of them. They are gonna be  
3 here in our lives. You can't exterminate them any faster than  
4 we're doing now. We need to do something different. I don't  
5 know. Maybe you tell the Legislature no. Go to the cradle,  
6 not at the end result. Not when the District Attorney and the  
7 detectives and the Judge finally get ahold of them, maybe we  
8 go in the beginning, that's what I'm asking you. Maybe we  
9 change something today. Maybe we say it's just not working.

10 The thing that upsets me the most about all this is  
11 the people that were involved who are not sitting at that  
12 table with us. I mean in this death they talk about Snoop,  
13 his heart [inaudible] pops. It was at the Thunderbird Motel  
14 where Ace Hart rented the room. Tod Armstrong gets to go back  
15 to Hawaii. I'm not saying -- you guys found him guilty and  
16 I'm not saying anything different, it just angers me, that's  
17 all.

18 I guess I could keep going on, because I know the  
19 longer I talk the longer he lives. Anywhere else, but I'm  
20 calling to you here.

21 Mr. Guymon is going to get up and he's going to  
22 talk, I'm telling you this before and he's gonna tell you a  
23 lot of things. I don't know what he's gonna say and  
24 [inaudible] and I can't respond, nobody can respond.

25 I would plead for anybody's life, because I believe

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1 in life. Maybe a few years ago I didn't, but it's important,  
2 and I understand that [inaudible] anybody's from [inaudible]  
3 don't kill, because killing is wrong in all instances. Don't  
4 digress.

5 Mr. Guymon is going to talk and I've got to give  
6 leeway to him to talk. I'm so afraid to sit down because I  
7 haven't said half of what I wanted to say. And I haven't  
8 reached some of you in a way I hoped to. And some of you have  
9 already made up your minds [inaudible]. There's got to be  
10 something I can [inaudible]. There's got to be. There's got  
11 to be a change in the [inaudible]. I don't want to  
12 [inaudible] year after year and ask you not to kill him.  
13 Something has got to change.

14 I would plead for anybody's life, and I'm pleading  
15 John White's life right now. This man over here, as bad as  
16 you can paint him, any picture you can paint him, his family  
17 is back on the bus right now going back to L.A., that's his  
18 support. As bad as you can paint him, that's life. That's  
19 life. Change something. You will put him away for the rest  
20 of his life, no matter what you do, he will never see the  
21 outside of that prison. He will never be free again, I  
22 promise you that. The decision you're going to make is going  
23 to put him away forever. Life without parole, will be life  
24 without parole. Life with parole is still going to put him  
25 away because he's going to be in there over eighty years.

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1 Life without parole he's going to be in there forever.  
2 Forever.

3 Look at the mitigations, there's got to be something  
4 there. Please end the killing. Please.

5 THE COURT: Thank you.

6 Mr. Guymon, when you're ready.

7 (Pause in the proceedings)

8 REBUTTAL ARGUMENT BY PLAINTIFF

9 MR. GUYMON: Ladies and gentlemen, I realize that  
10 the hour has grown long and I will try to be brief in my  
11 comments. But nonetheless there are some things that I have  
12 to say and I must respond to. And I begin by saying this, and  
13 that is if our criminal justice system means anything, it  
14 means that the punishment must match the crime. That somehow  
15 there must be just sentences that come from our criminal  
16 justice system. Because if the punishment isn't just, then it  
17 makes a mockery out of the criminal justice system. That  
18 somehow our criminal justice system must appropriately punish  
19 the offenders. And in a first degree murder case it is  
20 different than all other cases because it is you people that  
21 must speak as to what the punishment is. It is your voice  
22 that must say what the punishment is that fits the crime. And  
23 in a first degree murder case where the death penalty is being  
24 sought, you people can consider the death penalty when there  
25 are aggravating circumstances as enumerated by the law from

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1 the Legislature.

2           And it is the defense attorneys who agree with the  
3 prosecution that yes, indeed, there was aggravation in the  
4 very crime scene, in the very crimes that were committed on  
5 August 14th, 1998. And so I ask you on the first aggravator  
6 of robbery and of burglary and of kidnapping, how much  
7 aggravation is it to you, when Donte Johnson and his  
8 companions duct tape young boys hands together, fingers  
9 interlaced behind their backs and duct tape their ankle, and  
10 he makes them suffer as they lay face down on the ground. How  
11 much aggravation is there in that very act? The most cowardly  
12 of acts, as those young helpless boys lie there. You have to  
13 put some weight to that.

14           And on a one to ten scale do you say, I think that's  
15 a ten, that's how much weight I give that, because it is just  
16 so ugly, it is just so awful that a human being could do that  
17 someone and make them suffer as Donte Johnson and his  
18 companions rifled through that house for a long while. And I  
19 tell you that the evidence in the case, you'll see the  
20 pictures again, it proves to you that Donte Johnson and his  
21 companions were there a long time, because the search was  
22 thorough, and those boys remained on the ground helpless. And  
23 so I ask you, how much weight do you give that? How  
24 aggravating is it to you as a jury, because it is your voice  
25 that speaks as to the penalty.

III-296



1           How much aggravation is it when the first boy is  
2 taped up and the second boy is taped up and the third boy and  
3 the fourth. And their wallets and their personal property and  
4 their prize possessions are rifled through with total  
5 disregard to any privacy of those boys and their lives.

6           How much aggravation is it when someone comes into  
7 their home, the place that's supposed to be the most sacred,  
8 where each one of us have our lives and our hopes within those  
9 four walls of a house. How much aggravation is it when a  
10 would be murderer, when a killer comes into the home? Is that  
11 a ten? Is that how much weight you give that?

12           How much aggravation is it to you when the killer  
13 kills the first person, stands over the body and puts the gun  
14 right to his head and shoots him, and then turns to the other  
15 three and realizes that the other three are going to be alive  
16 to be witnesses. And so to avoid escape, pow, pow, pow, and  
17 he leaves. And how much aggravation is it to you?

18           How much aggravation is it to you that there are  
19 four murders in this case? Are those acts, acts that you say  
20 on a one to ten scale I give a weight of a ten or a nine or an  
21 eight, how much weight sits on this scale of aggravation? And  
22 how much weight would you give a bad childhood? Does it  
23 outweigh the duct taping of young helpless boys held at  
24 gunpoint? Does the fact that Donte Johnson didn't have a  
25 father outweigh going into someone's home armed with a gun,

III-297

1 with your companions? How much weight will you give  
2 mitigation? And where does the scales tip?

3 I would suggest to you that the evidence in this  
4 case clearly tips the aggravation as high as one can go, that  
5 there is nothing that outweighs the acts of the defendant on  
6 the night in question. It was not the Six Deuce Brim gang  
7 that did this, it was not the streets of South Central L.A.  
8 that did this. And while it may be some mitigation that he  
9 grew up in that very area, certainly that does not outweigh  
10 the aggravation in this offense.

11 At the very start, in Mr. Figler's opening statement  
12 in this case, he asked you to do something, and that was he  
13 asked you to open up your notebooks and write down whether or  
14 not you thought that Donte Johnson was the trigger man in this  
15 case, to somehow raise a question that maybe someone other  
16 than Donte Johnson pulled the trigger in this case. And I  
17 submit to you that every piece of evidence that you've heard  
18 in this case clearly points to the shooter as Donte Johnson.  
19 He wasn't just part of a felony murder, he was the one who  
20 premeditated the deliberate killing of these boys. And it  
21 should be of no consequence, it should be of no concern of  
22 yours that somehow that blood is on the back of Donte  
23 Johnson's pants, because as he shot the first boy Peter  
24 Talamantez, you'll realize that the front door is between  
25 Peter Talamantez and the other boys. And so he steps over

III-298

1 Peter Talamantez and he shoots him in the head after beating  
2 him with a gun, and I ask you how aggravating is that, and how  
3 much weight might you give it?

4 And then he steps over Matthew Mowen, because  
5 Matthew is between the escape, the great escape, where he and  
6 his partners will run out like hoodlums in the night and leave  
7 the crime scene so that they can avoid being caught, and  
8 shoots Matthew Mowen. And then he steps over Peter  
9 Talamantez, and between Peter Talamantez -- excuse me, Tracey  
10 Mowen, between Tracey Mowen -- or Tracey Gorringer, my mistake,  
11 I'm sorry, lies yet Jeffrey Biddle. And it is the defendant  
12 who now has the door in front of him and has Peter -- excuse  
13 me, Tracey Gorringer that sits there, and he shoots him, and  
14 the door's over here, and here's his left leg, and now he  
15 drags his left leg --

16 MR. FIGLER: Your Honor, I'm going to object to the  
17 speculating that's being done, the rule -- is that.

18 THE COURT: Overruled.

19 MR. GUYMON: He lifts his left leg, aiming now  
20 toward the door, and you see the diagram that lays out, and it  
21 is Tracey Gorringer who lived upwards of ten minutes, according  
22 to the testimony, and as Tracey's heart beats, his blood  
23 pumps, and it is Donte Johnson's left rear leg as he's now  
24 walking forward to the door that stands behind Tracey  
25 Gorringer, as his heart beats and his blood pumps and as the

1 blood hits the killer's jeans. And he now walks right over  
2 Jeffrey Biddle, because Jeffrey Biddle is the last person that  
3 stands in the way of that door. And Donte Johnson walks off.

4           There is no question who the killer is in this case.  
5 The question is what punishment fits the crime. It was Tod  
6 Armstrong who told you, he, Donte Johnson, said he took him to  
7 a back room somewhere and shot him in the head. Is there any  
8 question in your mind? And what punishment do we give the  
9 person that shot Peter Talamantez in the back of the head, in  
10 the most cowardly of acts as the boy laid there helplessly.  
11 He said that since he killed one that he had to kill everyone,  
12 and that's an aggravator. And clearly that is proven. So he,  
13 Donte Johnson, just shot them all. What punishment do we give  
14 to the man that shot them all? What punishment to the man --  
15 do we give the man that said that one of them made a noise  
16 like a grunt and he was laughing and he thought it was funny.  
17 What punishment fits the killer that thinks this crime is  
18 funny? Do we fix Donte Johnson, or do we punish him?

19           This is a penalty hearing, not a rehabilitation  
20 hearing, not a hearing of can we fix him, he's not a car that  
21 we're attempting to fix in these proceedings. He is a killer  
22 that we are attempting to punish, and punish justly.

23           To LaShawn'ya Wright that Donte Johnson buys the  
24 paper and says we made the front page, and I ask you what do  
25 we give the killer that is thrilled by the killing of four

III-300

1 helpless boys. The killer that was excited.

2           To Charla Severs, he told me he killed someone. No  
3 question in Charla's mind who the killer was. I know he told  
4 me he killed a Mexican, a Mexican dude because he didn't like  
5 Mexicans. He was talking mess and shot him in the back of the  
6 head. What do we give the killer for shooting the Mexican boy  
7 because he didn't like Mexicans, and didn't like that the boy  
8 would talk back to him, as Peter Talamantez lays there  
9 helpless.

10           What punishment do we give the killer that then, in  
11 the words of Charla Severs said he shot them, each one of them  
12 in the back of the head. And then the callous, cold act of  
13 the killer when he says, he just told me that you -- that we  
14 have to go to sleep, because you have to go to sleep after you  
15 kill somebody.

16           And I contrast the thrill that Donte Johnson got,  
17 the laughter he got from this killing, the fact that he would  
18 go to sleep as though nothing had happened. I contrast that  
19 with the social worker's testimony, the woman that wants to  
20 fix people, after all it is her job, who says Donte Johnson  
21 came to my program and he openly says to me, hi, I'm facing  
22 the death penalty and I'm here to better myself. And I ask  
23 you what was Donte Johnson's motives when he makes that  
24 announcement and he attends that class? His motives proven  
25 clearly moments after the shooting.

III-301

1           Spoken to people that he never thought would come to  
2 court, never dreamed that his loved one, his girlfriend, the  
3 woman that he slept with would tell on him. His friend who  
4 wept openly as she was forced to tell on him. And Tod  
5 Armstrong, someone he thought would never come forward. And I  
6 ask you if you begin to see the heart and mind of the killer  
7 in this courtroom.

8           Bryan Johnson, one of the victim who was getting  
9 smart with him, or back talking, and excuse my language, he  
10 just acted like -- he acted like it was a fucking joke. He  
11 said he took him in the back room and shot him in the head.

12           How much aggravation is it, ladies and gentlemen of  
13 the jury? Are each one of those three aggravators so  
14 aggravating to you that they are tens on a one to ten scale?  
15 And how much mitigation, how much discount are you going to  
16 give him because of his childhood?

17           You know it was interesting as I sat there and  
18 listened to Mr. Zamora, and perhaps it is true that no one  
19 would want to grow up in the streets of South Central, but  
20 it's also true that not every child that grows up in the  
21 streets of South Central becomes a quadruple killer. Not  
22 every person does a quadruple homicide because they want to  
23 leave town after killing Snoop. His answer to avoiding the  
24 police when the police begin investing in the Thunderbird is  
25 to kill four more boys, to get some more money so that he can

III-302

1 avoid having to stand trial on the Snoop case, Darnell  
2 Johnson. Kind of a sick thought.

3 MR. FIGLER: Your Honor, I would object and move to  
4 strike, not only was it speculation, but that's improper  
5 argument for closing.

6 THE COURT: Sustained.

7 MR. GUYMON: It is not the program's fault, the fact  
8 that somehow in Southern California that the program is dried  
9 up and that there wasn't a lot of money to start Boy's Club  
10 and Girl's Club in the -- in the area, it is not California's  
11 fault. It is not California Youth Authority's fault that they  
12 couldn't rehabilitate this man that sits right here. After  
13 all, in the presentence investigation reports, and I invite  
14 you to read them, you will read that Donte Johnson exhausted  
15 his remedies, he was sent to camp in order to rehabilitate  
16 him, and he was released on probation. Given another chance.  
17 Given another chance, go out on probation and thrive young  
18 man, we sent you to camp, we've given you some skills, go  
19 thrive. And in thriving Donte Johnson enters into a bank at  
20 1:40 in the afternoon, and he jumps over the counter with  
21 another gunman and they rob the bank. Donte Johnson thriving  
22 in the face of camp's teachings.

23 Donte Johnson is asked in the presentence  
24 investigation report, what should happen to you, what should  
25 we do, you've exhausted your remedies, and he says give me

III-303

1 another chance. And he's sent off to prison, California Youth  
2 Authority Institution where he again is given chances, he's  
3 given training, and he's released on parole, and he's asked  
4 for thirteen months, Mr. John White you need to behave  
5 yourself, you need to live the rules and you need to go to  
6 school and you need to go to rehabilitation and you need to  
7 address your violence. And we're going to reward you Mr. John  
8 White, we're going to give you two hundred dollars (\$200) a  
9 month for going to some life skills classes. Mr. John White  
10 attends for three months, in the fourth month unsatisfactory.  
11 And then basically calls and says catch me if you can.

12 And Donte Johnson, a criminal in training, comes to  
13 Las Vegas. He didn't leave the gang mentality and the streets  
14 of South Central, he tried to bring them to Las Vegas. He was  
15 different than Mr. Zamora. Mr. Zamora told you he got out.  
16 Not everyone that grows up there becomes a killer, times four.  
17 But Donte Johnson, perhaps a little different breed, a killer  
18 times four.

19 Each one of you made a promise in this case, I  
20 called upon it about a week ago and I call upon it again.  
21 Each one of you indicated that you promised that you would  
22 consider each of the four penalties in this case. Each one of  
23 you acknowledged that it would be difficult to impose the  
24 death penalty. And I don't suggest for a minute that it is an  
25 easy task, I suggest however that the death penalty is a just

III-304



1 penalty for Donte Johnson. It is a punishment that fits the  
2 crime. What is justice, but that every man gets his due.  
3 What is due Donte Johnson? And for some -- in some strange  
4 ways the defense may suggest that we bring in the character  
5 evidence of Donte Johnson to somehow prejudice you, that we  
6 wheel Drick Simpson in to the courtroom to prejudice you. It  
7 was not the State that chose how Drick Simpson would come into  
8 this courtroom, it was Donte Johnson who chose how Drick  
9 Simpson would come into this courtroom. There was no one  
10 there that night to tell Donte Johnson to shoot Drick Simpson  
11 in the face, and to shoot him again in the back. It wasn't  
12 the streets of South Central that made Donte Johnson do that.  
13 It wasn't Terrell Young and it wasn't Sikia Smith. It was  
14 Donte Johnson acting on his own, just as he acted as he pulled  
15 the trigger stepping over each one of those bodies, and having  
16 blood of Tracey Gorringer, pumped from Tracey's body onto his  
17 pants.

18 MR. SCISCENTO: Your Honor, I'm going to object to  
19 that, Mr. Guymon is well aware that there's no evidence of  
20 blood spatter, blood contact, or anything of that effect.

21 THE COURT: I think it's argument, overruled.

22 MR. GUYMON: Lastly it is the defense that says save  
23 his life, make a change. Make a change and save his life.  
24 And I would submit to you that sending him off to prison for  
25 the killing of four boys is a reward to Donte Johnson, it

III-305

1 allows him to hope, it allows him the chance to write letters,  
2 to hope for another day, to hear from family, to see friends  
3 in prison. I would submit to you that that's not a just  
4 penalty. And it sends a wrong message to other would be  
5 killers, other youngsters if you will.

6           You remember it was the social worker who came to  
7 this courtroom and said something about Donte Johnson's  
8 reputation in the prison, that there were younger kids that  
9 looked to Donte Johnson, people that hadn't quite accomplished  
10 as much as Donte Johnson had in the criminal justice system.  
11 And the message is this, the message is if you enter into  
12 someone's home, and you duct tape them, and you make them lie  
13 on the ground --

14           MR. FIGLER: Your Honor, I'm going to object to the  
15 message testimony.

16           THE COURT: Sustained.

17           MR. GUYMON: The message to other would be killers  
18 -- and Judge?

19           THE COURT: Maybe I didn't -- just go ahead.

20           MR. GUYMON: The message to other would be killers  
21 is that you too in the State of Nevada will take your chances  
22 with the jury, and you too will face the death penalty, and  
23 that the death penalty is a just verdict.

24           How many chances must we give Donte Johnson? I call  
25 upon your promise, I ask you to return a verdict that tells

III-306

1 connected with this trial; or read, watch or listen to any  
2 report of or commentary on the trial, or any person connected  
3 with it by any medium of information including, without  
4 limitation, newspaper, television or radio; or to express any  
5 opinion on any subject connected with the trial until you're  
6 in deliberations tomorrow morning.

7 Deliberations in no sense are to begin until  
8 tomorrow morning. We will be in session briefly outside your  
9 presence.

10 (Jury recessed at 6:10 p.m.)

11 (Off-record)

12 THE COURT: Jury is gone. Mr. Figler, you had  
13 objected prior to the use by Mr. Guymon of the exhibit, which  
14 we'll have marked. You had indicated you thought it was  
15 unduly prejudicial, the Court ruled that these were exhibits  
16 that had been introduced to the jury during the trial, and I  
17 see nothing wrong whatsoever with allowing Mr. Guymon to  
18 juxtapose for in -- in the impressive persuasion how he  
19 chooses to, those pictures. Anything you want to add to that?

20 MR. FIGLER: No, Judge.

21 THE COURT: Thank you. See you tomorrow.

22 MR. GUYMON: Do you want to have the record reflect  
23 what number it's marked as, Judge?

24 THE COURT: Yeah, what's it going to be?

25 MR. FIGLER: Court's exhibit --

III-308

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(Off-record colloquy of clerk)

MR. FIGLER: And that doesn't go back to the jury.

THE CLERK: Correct.

(Court adjourned at 6:11 p.m., until the following day,  
June 15, 2000, at 8:00 a.m. for jury deliberations)

\* \* \* \* \*

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INDEX

NAME	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
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PLAINTIFF'S WITNESSES

None

DEFENDANT'S WITNESSES

Eunice Cain	7	24	31	--	--
Keonna Bryant	34	--	--	--	--
Johnnisha White	70	110	--	--	--
Zakee Matthews	112	161	172	181	--
Moses Zamora	183	200	207	--	--
Nancy Hunteerton	209	226	235	--	--
Jane Edwards	242	--	--	--	--

EXHIBITS

DESCRIPTION	ADMITTED
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PLAINTIFF'S EXHIBITS

None

DEFENDANT'S EXHIBITS

B	Photograph of John White as baby	13
C	Photo of shack at 52nd and Compton	46
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CERTIFICATION

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

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SIGNATURE OF TRANSCRIBER

6/15/00  
DATE

ORIGINAL

WHITE - DIRECT

1           A     If you live or die.  
2           Q     Why?  
3           A     If you can come in certain neighborhoods.  
4           Q     In my neighborhood I could wear anything I want and  
5 why is it different in your neighborhood?  
6           A     That's South Central L.A. It's different.  
7           Q     And what is different about it?  
8           A     There's more gangbangers. There's more poor people,  
9 people with no money.  
10          Q     If I walk in with red down in your neighborhood,  
11 what would happen to me?  
12          A     You probably would get shot or beat up.  
13          Q     And why is that?  
14          A     Because you have on the wrong color.  
15          Q     What if I walked in with blue?  
16          A     You would blend in with the colors that you walking  
17 into.  
18          Q     And black?  
19          A     Black is more neutral.  
20          Q     Or gray and green?  
21          A     Gray is more neutral, but they still called gang  
22 colors, gangster colors, and either/or can wear it.  
23          Q     These choices that we have, was there anybody there  
24 as a male adult for John growing up?  
25          A     No.

III-107

WHITE - DIRECT

1 Q How many years of education do you have?  
2 A Nine.  
3 Q When you were faced in school with choices or make a  
4 decision, make a wrong decision in arithmetic when you were in  
5 school, was there somebody there, the teachers, to correct  
6 you?  
7 A No.  
8 Q Let me get it at this. There was always an answer,  
9 a right and wrong answer, --  
10 A Yes.  
11 Q -- to the arithmetic. Would you agree with that?  
12 A Yes.  
13 Q Because one plus one is always gonna equal two?  
14 A Uh-huh.  
15 Q Are these the same easy choices that you find  
16 growing up in South Central L.A.?  
17 A No.  
18 Q Why are they different choices?  
19 A Because that's math, that's school, and it's -- you  
20 can't compare that together though. South Central L.A. is  
21 just crazy.  
22 Q So an 18 year old kid making a decision about what  
23 college to go to, --  
24 A Uh-huh.  
25 Q -- that's a choice, right?

III-108



WHITE - DIRECT

1           A     Yes.

2           Q     Isn't that the same kind of choice that you have or

3 John has or anybody growing up in your neighborhood as to

4 whether or not to join a gang?

5           A     No, not really, no.

6           Q     Why?

7           A     Because they looking to make their gang bigger.  If

8 they want you in their gang, they can put you in it if they

9 want to.

10          Q     Is it a choice about life or death?

11          A     Yes.

12          Q     About whether your family is gonna walk the streets?

13          A     Is in harm, yes.

14          Q     And it's not the same kind of choices?

15          A     Uh-uh.

16          Q     Do you see John over there?

17          A     Yes.

18          Q     Do you still love John?

19          A     Yes, I do.

20          Q     Do you know why you're here today?

21          A     Yes.

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

23                THE COURT:  Any cross?

24                MR. GUYMON:  Very briefly.

25                       (Pause in the proceedings)

III-109

WHITE - CROSS

CROSS-EXAMINATION

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BY MR. GUYMON:

Q Johnnisha, --

A Uh-huh.

Q -- when Deco was about 19 years old he left South Central L.A. and he came to Las Vegas. Did you know that?

A I didn't find out for a long time.

Q Okay, but there came a point in time that you learned that he was up here in Vegas, is that right?

A Yes.

Q Did you hear from him at all when he was in Vegas?

A Sometimes he would call.

Q Okay. And he was no longer -- I mean, he stayed up here in Vegas, didn't he?

A Yes.

Q Did you learn about the things that he was doing here in Vegas and the trouble he was getting in?

A No.

Q Did he tell you anything about shooting a guy in the face here in Las Vegas?

A No.

Q Did he tell you about being involved in duct taping four young boys and laying 'em on the ground, face down, and shooting 'em in the head?

A No.

III-110

WHITE - CROSS

1 MR. SCISCENTO: Your Honor, I object to that.

2 THE COURT: Sustained.

3 BY MR. GUYMON:

4 Q Did you hear from him or know what he was doing when  
5 he was here in Vegas?

6 A No.

7 MR. GUYMON: No other questions.

8 THE COURT: Anything on redirect?

9 MR. SCISCENTO: The Court's indulgence.

10 (Pause in the proceedings)

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

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

13 Who's going to ask the direct questions of Dr.

14 Matthews?

15 MR. SCISCENTO: I will, Your Honor.

16 THE COURT: How long would you anticipate the  
17 direct's going to be, Joe?

18 MR. SCISCENTO: The Court's indulgence for one  
19 moment..

20 (Pause in the proceedings)

21 MR. SCISCENTO: How long do I think it's gonna be,  
22 Your Honor? Half hour to 45 minutes.

23 THE COURT: Okay, because we've been at it two  
24 hours. We're going to hear the direct examination. We'll  
25 hear the cross-examination after lunch, but we're gonna hear

III-111

MATTHEWS - DIRECT

1 30 to 45 minutes of a Dr. Matthews before lunch, so let's take  
2 a recess, a brief recess.

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

11 We'll be in recess 'til 20 minutes of 12:00.

12 (Court recessed at 11:28 a.m. until 11:42 a.m.)

13 (Jury is present)

14 THE CLERK: Please raise your right hand.

15 DR. ZAKEE MATTHEWS, DEFENDANT'S WITNESS, IS SWORN

16 THE CLERK: Please be seated and state your full  
17 name and spell your last name for the record.

18 THE WITNESS: My name is Zakee, Z-A-K-E-E, Matthews,  
19 M-A-T-T-H-E-W-S.

20 DIRECT EXAMINATION

21 BY MR. SCISCENTO:

22 Q Dr. Matthews?

23 A Yes.

24 Q How are you today?

25 A Fine. And yourself?

III-112

MATTHEWS - DIRECT

1 Q Fine.

2 Doctor, what is your point of education? What are  
3 you schooled in?

4 A I'm a child and adolescent psychiatrist.

5 Q Could you please explain to the jury your education?

6 A Are you referring to the schools that I've attended?

7 Q Yes.

8 A Okay. I attended the University of California at  
9 Santa Cruz. Prior to that I went to several junior colleges.  
10 I finished my undergraduate training at the University of  
11 California at Santa Cruz in biology, molecular biology. I  
12 went on to complete medical school at the University of  
13 Missouri, Columbia, and then I went on and trained in general  
14 psychiatry at the University of California, San Francisco.  
15 And then I went on to do a fellowship in child and adolescent  
16 psychiatry at Stanford University Medical School, Department  
17 of Child and Adolescent Psychiatry.

18 Q Do you have any other education after Stanford?

19 A No.

20 Q Are you medical licensed and board certified?

21 A Yes, I am, medical licensed and board eligible.

22 Q Okay. And where is that at?

23 A In California.

24 Q And you're eligible in psychiatric and neurological  
25 studies?

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MATTHEWS - DIRECT

1           A     Yes.

2           Q     And psychiatric and neurological studies of child?

3           A     Yes.

4           Q     And the Academy of Child and Adolescent Psychiatry?

5           A     Yes.

6           Q     And you're also certified with the American Medical

7 Association?

8           A     Yes.

9           Q     Okay. What kind of appointments, academic

10 appointments, have you had?

11          A     I've served as clinical faculty at the University of

12 California's -- excuse me, at Stanford.

13          Q     Okay, anywhere else?

14          A     Pretty much there.

15          Q     At Stanford University in California?

16          A     Yes.

17          Q     What kind of professional appointments have you had?

18          A     I've served as an instructor there, I've been

19 medical director of the substance abuse program for

20 adolescents, I've also been medical director for the partial

21 hospitalization program there and I've worked in the counsel

22 and liaison program there as well and also medical director

23 for the trauma clinic.

24          Q     Okay. Have you ever provided any lectures on child

25 psychiatry?

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MATTHEWS - DIRECT

1 A Yes, I have.

2 Q Will you please explain to the jury what kind and  
3 when, if you remember, that is?

4 A When may be a little bit more difficult, but much of  
5 the discussions that I present are around the area of trauma  
6 and abuse with adolescents, early childhood until adulthood.  
7 My work involves looking -- Let me step back. I talk about a  
8 developmental aspect to the trauma when I give these  
9 presentations.

10 I also have given talks along the line of disruptive  
11 behaviors, AD/HD, espalosa venimenten [phonetic] disorder,  
12 substance abuse presentations on various substances. I work  
13 with the fellows in training at the med school in the  
14 Psychiatry Department to talk with them about issues that will  
15 arise during their training in working with adolescents and  
16 working with children.

17 Q Let me stop you there, doctor.

18 A Sure.

19 Q Do you have any kind of publications?

20 A I have a publication in the American Academy of  
21 Child and Adolescent Psychiatry addressing these issues on  
22 trauma, I think March of 1997, and I also have an article in  
23 treating adolescents, with Dr. Hans Steiner, looking at the  
24 effects of trauma and PTSD.

25 Q And do you have any other kind of abstracts? Well,

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MATTHEWS - DIRECT

1 I guess first we should -- What is an abstract?

2 A An abstract is a publication that's in process or a  
3 discussion of a research design that may not have gone on to  
4 publication, but was initiated.

5 Q Okay. Doctor, where is your area of expertise?

6 A My area of expertise has to do with trauma and on  
7 child development, mainly trauma.

8 Q All right. Have you ever been certified as an  
9 expert to testify in any courts?

10 A Yes, I have.

11 Q And where is that at?

12 A In California and Oklahoma.

13 Q And what were you certified, in California and  
14 Oklahoma, what were you certified as an expert of?

15 A I'm not sure if I understand your question.

16 Q Were you certified as a Doctor of Psychiatry?

17 A Yes.

18 Q And specifically child psychiatry?

19 A Yes.

20 Q In California and Oklahoma?

21 A Yes.

22 MR. SCISCENTO: At this time, Your Honor, I'd ask  
23 that this Court find that Dr. Matthews is certified as an  
24 expert to talk and discuss the aspects of child psychiatry.

25 THE COURT: Any traverse?

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MATTHEWS - DIRECT

1 MR. GUYMON: I'll submit it, Judge.

2 THE COURT: Okay, he'll be recognized as an expert.

3 As I've told you on three or four or five other  
4 occasions, that just means, because he has been labeled an  
5 expert, he can state his testimony in the form that laypeople  
6 cannot, which is in the form of opinions. What weight you  
7 give those opinions is your provence.

8 Go ahead, Mr. Sciscento.

9 BY MR. SCISCENTO:

10 Q Dr. Matthews, --

11 A Yes.

12 Q -- do you know a person named John White?

13 A Yes.

14 Q Do you see him present here today in court?

15 A Yes, I do.

16 Q And where is he sitting at?

17 A He's sitting to my far right.

18 Q Okay.

19 A At the table in front of me.

20 Q Did there come a time that you interviewed Mr.  
21 White?

22 A Yes, I did.

23 Q Please explain when you interviewed him and how  
24 long.

25 A I saw him, I believe, May 11th and 12th and I saw

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MATTHEWS - DIRECT

1 him roughly three and a half to four hours each day.

2 Q So about seven to eight hours maybe?

3 A Yes.

4 Q Have you had a chance to speak with his family?

5 A Yes, I spoke with the family.

6 Q And what family -- Who was that? Do you recall?

7 A I spoke with his sister, Johnnisha, his cousin  
8 Keonna, his mother and his grandmother.

9 Q Okay. Doctor, just so I can clear this up, you're  
10 not here today to tell us that Mr. White is suffering from  
11 insanity, are you?

12 A No, I'm not.

13 Q And you're not here today to say that he has a  
14 diminished capacity not to know right from wrong?

15 A No, I'm not.

16 Q Okay. And you're not here to say that he's a  
17 psychopath or something to that effect?

18 A No, I'm not.

19 Q Your investigation, your studies with Mr. White,  
20 revolved around social issues?

21 A Yes.

22 Q And you talked to the family members?

23 A Yes.

24 Q Did you review any documents?

25 A I reviewed some school documents, social history,

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MATTHEWS - DIRECT

1 reports from the California Youth Authority.

2 Q And why did you review those documents?

3 A I reviewed those documents to better understand the  
4 nature of Mr. White's earlier development and the various  
5 traumatic events that have occurred in his life and to get a  
6 sense of some of the impact of that.

7 Q And when we talk about early developments, do you  
8 mean mental developments or social developments?

9 A I'm talking about both.

10 Q Okay. And if you could describe that to the jury --

11 A Sure.

12 Q -- with what you're looking for when you interview  
13 and you review documents.

14 A What I'm trying to get a sense of is normal  
15 development. There is a progression in one's development from  
16 childhood up to adulthood. If you think about your own -- or  
17 if any of you are parents and you think about raising your  
18 children and the various stages that those kids go through,  
19 there are natural stages that they traverse through as they  
20 approach adulthood.

21 There is an attachment, a bonding, that occurs very  
22 early on, between particularly the mother and the child. It  
23 also includes the father. The mother is the one who is  
24 spending much more time and has a lot more direct contact, so  
25 I'm looking at that. I'm looking at that interface. I'm

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MATTHEWS - DIRECT

1 looking at how this individual is fitting and viewed in the  
2 family, what's their emotional temperament, how do they manage  
3 information in their environment, what are the kinds of  
4 support and the nature and structure of their environment, is  
5 there two parents present, is there -- is this a nurturing  
6 environment, do they provide the kind of stability and support  
7 that you would normally see in a child's growth to adulthood.

8 Q All right, doctor, let me stop you there.

9 A Sure.

10 Q And this is important, to determine the development  
11 of a child, knowing all this information?

12 A This is important in gaining an understanding,  
13 exactly.

14 Q And with that understanding you interviewed  
15 witnesses -- you spoke to John White and family members and  
16 went over some documents?

17 A Yes.

18 Q Okay. Now does not having a strong social family  
19 structure, does that have an effect on a child?

20 A Certainly.

21 Q What kind of effect would that have?

22 A If I could step back for a moment. The family  
23 provides protective factors. We think in terms of protective  
24 factors for children in their development, protective factors  
25 being a two-parent family or a significant individual in the

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MATTHEWS - DIRECT

1 family that is very connected and important to this child's  
2 development.

3 We look at the growth of this child emotionally to  
4 try to get a sense of the temperament, how this child manages  
5 with stress, is there -- are there -- the environment, the  
6 nature of that family environment where the child lives, is it  
7 one where it supports and provides nourishment, both emotional  
8 and physical nourishment, and also protection, is it a stable  
9 environment, are the members of that family structure, are  
10 they individuals who are consistent in providing the type of  
11 connection that we normally see in what we call,  
12 quote/unquote, "normal families."

13 Q Let me stop you there and go on.

14 You reviewed evidence or you reviewed all this  
15 documentation about Donte -- or John White growing up. Did  
16 you get any information about John's mother?

17 A Yes, I did.

18 Q Can you explain to the jury what information you  
19 found out about John's mother?

20 A Let me say that in reviewing the records what I  
21 found is that -- what the mother reported is that her  
22 development in growing up she thought was extremely difficult  
23 -- a difficult child, but what later happened, later on in her  
24 life, she started having more difficulties, especially around  
25 the area of substance abuse. And the mother subsequently

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MATTHEWS - DIRECT

1 received a diagnosis of mildly mentally retarded, which the  
2 family, the mother's mother, has tried to really provide an  
3 environment to support her, but unfortunately, because of the  
4 mother's drug use, which was pretty severe, really  
5 incapacitated her.

6 Q The mother in this case is Eunice Cain?

7 A Exactly.

8 Q Okay. And she was here earlier today testifying.

9 A Okay.

10 Q The father, John White, Sr., --

11 A Yes.

12 Q -- what information did you gather about him?

13 A Mr. White, Sr., that's a bit more difficult in terms  
14 of the amount of information I gained on him. We didn't have  
15 many records on him. It appears that the father was starting  
16 to -- the father has a history of, I guess I could say,  
17 emotional instability, becomes very explosive at times,  
18 especially when he gets angry, has also a substance abuse  
19 problem that has interfered majorly with the functioning of  
20 the family, has, at times, become very threatening and  
21 physically assaultive with various family members, someone  
22 who's had peripheral contact with Mr. White, Jr., as well as  
23 the other siblings.

24 Actually, I was told that Mr. White, Jr. hasn't seen  
25 the father since 1977, so it sort of tells you how peripheral

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MATTHEWS - DIRECT

1 the father has been in his development.

2 Q What about the drug use of both -- There was drug  
3 use of both the mother and father?

4 A Yes.

5 Q And you've reviewed documents that show that?

6 A Yes.

7 Q How significant is drug use in the family when it's  
8 done by the mother and father?

9 A How significant is the drug use?

10 Q Especially in this case.

11 A Extremely significant. There are reports that the  
12 mother was using drugs just prior to his birth, prior to being  
13 pregnant with Mr. White, Jr. The mother denies any drug use  
14 during the pregnancy, but interestingly enough, shortly after  
15 his birth, drug use was restarted and so it's sort of hard to  
16 figure out what was going on at that time and if there was any  
17 drugs on board. That certainly is a question.

18 The mother's use of drugs have, in Mr. White's own  
19 words, has really taken his mother down, at one point saying  
20 that he thinks the mother likes drugs more than she likes the  
21 family. And this mother, in terms of her drug use, which  
22 includes alcohol, marijuana, cocaine and PCP, phencyclidine,  
23 which is a hallucinogen, the severity of her drug use reached  
24 the point such that the home environment became very unstable.  
25 Mom would, and dad, would go away from time to time

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MATTHEWS - DIRECT

1 separately.

2           There were brief -- There were periods when money  
3 would come into the house, and a substantial amount to support  
4 them, but then two days to a week all of that money was gone  
5 and the family, at later points, began to move around from  
6 household to household living with various family members and  
7 living in other unstable and oftentimes unclean environments  
8 with the children.

9           Q     All right. Was there a lot of violence in the  
10 house?

11          A     There was a great deal of violence in the house.  
12 The father was extremely physically abusive towards the mom.  
13 In fact, this abuse, this physical abuse, was also directed at  
14 Mr. White, Jr. as well as he was developing.

15          Q     And this is -- There was violence from the father,  
16 John White, Sr., and John White, Jr.?

17          A     Right.

18          Q     Okay.

19          A     But also violence directed particularly at the  
20 mother.

21          Q     Okay. You had mentioned that John White, Sr. hadn't  
22 seen John White, Jr. since 1977?

23          A     Yes.

24          Q     Is that correct, '77?

25          A     Yes. That's what I remember.

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MATTHEWS - DIRECT

1 Q Or was it in 1987?

2 MR. DASKAS: Objection, Judge, leading.

3 THE COURT: Overruled.

4 BY MR. SCISCENTO:

5 Q Well, do you know when John White was born?

6 A May 27th, 19 -- Oh, okay, '77. That's right.

7 Q Okay, so the correct date would have been --

8 A '87.

9 Q Okay. Upon reviewing the documentation and speaking  
10 to people, what was life like for John White growing up in  
11 this home?

12 A As a child, from zero to five, it was pretty -- zero  
13 to seven and a half, I should say, it was pretty scary from  
14 what I reviewed in the records. I mean, this is a family  
15 where at times he -- He reported an incident where there  
16 wasn't food in the house and so what the father did was took  
17 he and John and other members out to a trash bin behind a  
18 grocery store to find food, which he took out bread and meat,  
19 wiped off any contaminants and had the kids and the other  
20 members eat this food.

21 Q And this is something that happened to John at an  
22 early age?

23 A Yes.

24 Q And was this a one-time happening?

25 A It sounded as if this happened on various occasions,

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MATTHEWS - DIRECT

1 but he recalled this one incident.

2 Q Was there any violence in the house? And you  
3 described a little, but --

4 A There was a situation where he reported being in the  
5 tub at age five and hearing a ruckus in the living area. They  
6 were living in a hotel at this time and there was a ruckus in  
7 the living room -- I mean, in the living area of the room. He  
8 comes out of the tub and sees his father, who is handcuffed,  
9 and his mother choking his father and he's confused, 'cause  
10 the father's telling him to go get someone to help and his  
11 mother is looking and saying don't do anything, stay out of  
12 this.

13 So he sits there on the bed for a minute confused  
14 and then he runs to get someone to come in and help the  
15 family.

16 Q What's the impact of the parents' drug use in the  
17 family?

18 A Excuse me?

19 Q What's the impact of the parents' drug use on the  
20 family?

21 A Well, the impact of the drug use can interfere with  
22 their ability certainly to be supportive as stable parents and  
23 nurturing parents. It certainly can interfere with their  
24 ability to bond with their child, because they may oftentimes  
25 misunderstand cues that the child is presenting to them when

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MATTHEWS - DIRECT

1 they're growing up because they're seeing it through the cloud  
2 of the drugs, so they misinterpret and aren't able to respond  
3 in a way that's nurturing and supporting of that individual.

4 It also interferes with their ability to provide  
5 food, clothing and shelter if money is being directed towards  
6 the drugs. If much of the attention is spent trying to secure  
7 and procure drugs, there's not much time for the family, the  
8 children.

9 They oftentimes were moved from place to place and  
10 other family members would come in periodically to try to  
11 shore up the family, which they really couldn't.

12 Q Does John White -- You spoke with him, John White,  
13 over here?

14 A Yes.

15 Q You spoke with him numerous times for a long --  
16 eight hours about. Does he recall any of the drug use and the  
17 violence in the house?

18 A Yes, he does.

19 Q Okay. Does he remember with some specificity?

20 A He does, particularly in terms of the parents' drug  
21 use with other family members and how that -- and seeing that  
22 at a -- so at the age of 13 becoming more apparent of what the  
23 parents were doing.

24 Q Would you agree that there was a breakdown of the  
25 family unit at one point?

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MATTHEWS - DIRECT

1 A Certainly.

2 Q And some agencies came in to take over the family?

3 A Yes.

4 Q Or to take control of the situation?

5 A Right. What happened was because the parents were -  
6 - the mother and father had separated shortly after the last  
7 child was born and Mr. White, Jr. was seven and a half years  
8 old at this time and so the mother and -- mother and the kids  
9 were moving from household to household and they would spend  
10 time with the great-grandmother living inside of a garage  
11 attached to her house and they would spend several days and  
12 sometimes several weeks living in this garage, the four of  
13 them.

14 Now the problem with that, not just living in the  
15 garage, which wasn't a garage that was adapted to allow  
16 individuals to live in there -- It was just a regular garage.  
17 There wasn't any utilities or running water, et cetera. There  
18 was only one bed. The other thing is is that another family  
19 member and her siblings were also living in the garage, so at  
20 one point it was anywhere from eight to ten people living in  
21 this garage, all sleeping in one bed.

22 Q Doctor, we've had a lot of testimony from family  
23 members or some testimony from family members indicating this  
24 very thing that you talked about.

25 A Yes.

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MATTHEWS - DIRECT

1           Q     What is the effect of that kind of environment on a  
2 child growing up?

3           A     Well, when we look at Mr. White, Jr., one thing  
4 you're struck by when you review the records is that once he  
5 is removed from the care of his mother, that situation I just  
6 described in the garage, when CPS got involved and he was then  
7 placed with the grandmother, he tended to settle down somewhat  
8 and began to describe feeling much better, to some degree,  
9 about the events. However, in moving to the household where  
10 the grandmother lived, there were still roughly ten to 11  
11 individuals living in this house, though they had different  
12 areas. Crowding became a major issue.

13                I think the big picture here is one of a child's  
14 identity that's evolving, how they look at the world, how they  
15 view themselves, what, in the environment, reflects something  
16 positive about them and their growing up subsequent to these  
17 events. And I think that that was very difficult for him, for  
18 certainly the earlier years of his life.

19                When we look at -- In talking with the family  
20 members, clearly there emerged behavioral problems secondary  
21 to one not seeing the father for a long period of time and  
22 when contact was made, which was fairly infrequent, the father  
23 would place ideas about the grandparents not really loving the  
24 child. And so the child had this -- was getting these mixed  
25 messages from supposedly individuals who were there to protect

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MATTHEWS - DIRECT

1 him and those individuals weren't able to protect him. The  
2 father wasn't there, the mother was off and on coming to the  
3 home and she wasn't there to protect him and so, as a result,  
4 that self-image that evolved was one of a child who did not --  
5 felt they didn't belong or had difficulty expressing their  
6 emotions.

7 Most of the time, some of the family members said,  
8 he was very guarded about his feelings and quiet, but, when he  
9 was upset, he was upset and I think that is the result of the  
10 trauma that he was experiencing, the lack of connection within  
11 the family, and so it had this underlining drive of anxiety  
12 and emotion that, from a personality profile, his defense  
13 mechanisms were overwhelmed by this.

14 And so you would hear this and see this in school  
15 where he started having problems managing his behavior and his  
16 academic progress began to decline.

17 Q Okay. So now we're describing up to the age of  
18 seven, about seven and a half?

19 A Seven and on, yes.

20 Q Okay, prior to that -- prior to that, was there,  
21 when you talk about trauma in his life, was there a lot of  
22 trauma up to age seven?

23 A I'm describing trauma in the sense of acts that are  
24 normally considered not normal, that a normal person would  
25 experience. I'm also including, in those traumatic events,

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MATTHEWS - DIRECT

1 maltreatment, particularly neglect, at this age that could be  
2 very devastating to the developing individual.

3 Q In the case of John White, --

4 A Yes.

5 Q -- to age seven and a half, was there constant  
6 trauma, as you describe it, in his life?

7 A There was a substantial amount.

8 Q Okay, more than most people his age?

9 MR. DASKAS: Judge, I'll object as to the  
10 foundation. I don't know that he knows most people this young  
11 man's age.

12 THE COURT: Well, he's been qualified as an expert.  
13 He can say if he does and, if he doesn't, he'll tell us.

14 MR. SCISCENTO: All right.

15 I'm sorry, Your Honor, you sustained that?

16 THE COURT: No. It would just be that is automatic.

17 MR. SCISCENTO: I'll move on.

18 THE COURT: No, I didn't sustain it, Joe. I said if  
19 he wants to answer it as an expert he can and if not he --

20 MR. SCISCENTO: I'll move on to my response that --

21 THE COURT: Oh, okay.

22 MR. SCISCENTO: I don't want the contempt.

23 BY MR. SCISCENTO:

24 Q Dr. Matthews, I'm sorry. I got all this other stuff  
25 going on.

MATTHEWS - DIRECT

1 A Could you restate your question?

2 Q I'm gonna restate the question.

3 A Sure.

4 Q And I'm gonna apologize, because this is very  
5 important and I've got to focus on you and you've got to focus  
6 on the jury.

7 You described earlier that John White had constant  
8 trauma in his life up to the age of seven, it was always  
9 there, it was always present, correct?

10 A A fair amount of trauma, yes.

11 Q Fair amount of trauma in his life up until the age  
12 of seven that we know about?

13 A Uh-huh.

14 Q And that's where we just focused.

15 A Uh-huh.

16 Q And is that consistent with the same kind of trauma  
17 that other children grow up with?

18 A It's consistent with children in that kind of  
19 environment.

20 Q Okay. Would this be more -- And have you reviewed a  
21 lot of children from that environment?

22 A I've seen, I mean, working in the California Youth  
23 Authority, I see a fair number of children who have been  
24 exposed to that type of trauma in that kind of environment.

25 Q Okay. And so the children who are there in that



MATTHEWS - DIRECT

1 environment, some may have this effect with the trauma on them  
2 and some may not have as much?

3 A Yes.

4 Q Okay. Would you say that John White suffered from a  
5 high amount of trauma based on what you know so far?

6 A I would say that he was exposed to a severe amount  
7 of trauma. Whether I can weigh it as high or whatever is not  
8 the way I would categorize it, but severe trauma when it did  
9 occur, I mean, mother not available, physical assaults,  
10 abandoned at times by various adults who were to supervise  
11 him, et cetera.

12 Q Now from age seven and a half he moves to 43rd and  
13 Ascot?

14 A Right.

15 Q Okay. Can you describe that part of his childhood  
16 now?

17 A Ascot, this is where they move right after being in  
18 the shelter and they're living with the grandmother, a  
19 somewhat more stable but yet a sort of difficult environment  
20 as a result of overcrowding, but the grandmother tried to make  
21 best with what she could, with what she had. The problem now  
22 is that he's growing, he's beginning to move and explore the  
23 environment and being a male, and particularly an African-  
24 American male in the environment where he is, one of the big  
25 problems in South Central Los Angeles is the impact of gangs.

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MATTHEWS - DIRECT

1 And so on a fairly consistent basis that was a  
2 constant threat in the environment as well, so one had to  
3 become more vigilant about where he was and what he was doing.

4 Q And at 43rd and Ascot he was exposed to this, the  
5 gang elements?

6 A Yes, from what I reviewed and from what the family  
7 has stated.

8 Q Okay. And as he's getting older -- He hasn't, up to  
9 this time, really had any parental supervision up to age seven  
10 and a half?

11 A Not by his -- Not significantly by his mom and  
12 certainly not significantly by his father.

13 Q So at age seven, when we're at Ascot, now we're  
14 trying to get some controls in there?

15 A Right, the grandmother is attempting to and the  
16 grandfather.

17 Q At age seven is it significant for a boy to have,  
18 around that age, to have a male role model?

19 A Yes, and even before then, but certainly during  
20 those periods.

21 Q In the beginning years, the tender years, it's  
22 usually the mother who provides some guidance and then, as a  
23 male matures, the father's role comes in, the male roles come  
24 in?

25 A It becomes more apparent, the need for the male

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MATTHEWS - DIRECT

1 energy, exactly, involvement.

2 Q At seven and a half, at Ascot and 43rd, was there  
3 that male role that you described?

4 A The only male role model involved in his life at  
5 that time, in a limited capacity, was his grandfather, his  
6 step-grandfather.

7 Q Okay. Did his step-grandfather like him?

8 A Well, there's some question about there being  
9 concerns about the grandfather being upset with all the kids  
10 in the house, but, when you talk with Mr. White, he talks  
11 about going fishing with him and doing various activities.

12 Q Was there any bonding going on?

13 A I think so.

14 Q Okay, significant bonding?

15 A As much as could be.

16 Q Okay, but then there's a chance -- a time then that  
17 they moved from 43rd and Ascot to another house.

18 A To 60th.

19 Q Okay. And you found out about 60th through your  
20 investigation, through your questioning of the family of Donte  
21 and within the documents?

22 A Right.

23 Q All right, describe to me about 60th Street.

24 A Excuse me?

25 Q Describe to me 60th Street.

III-135

MATTHEWS - DIRECT

1           A     Well, 60th Street was a real difficult period. This  
2 is the age of around 13 to 18 and by this time there clearly  
3 was gang activity. To the extent that you walk out the door  
4 of the house, the way it's described, there are groups of male  
5 individuals on the corner, around the house, very visible, to  
6 the point that the school that they were attending was only a  
7 few blocks away, but, because of the gang influence and  
8 activities, -- This was Blood territory.

9                     Should I explain that? I'm sorry.

10          Q     Explain the Bloods and the Crips, I guess.

11                     THE COURT: We've heard this from him before.

12                     THE WITNESS: Okay. Okay, I just wanted to make  
13 sure.

14 BY MR. SCISCENTO:

15          Q     Okay, I think they do understand the difference,  
16 that there are rival gangs.

17          A     Right, the rival gangs. And even within those gangs  
18 are various groups and the group that was pretty prominent in  
19 that area was the 62nd Brim. And these individuals, some of  
20 these individuals, took notice of his family, particularly the  
21 female members of his family.

22          Q     Now Donte at this -- John at this age is -- at this  
23 time is what age?

24          A     He's 13.

25          Q     Now any male role models he has are coming from

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MATTHEWS - DIRECT

1 where now?

2 A Pretty much from outside of the household.

3 Q Okay.

4 A 'Cause now, developmentally, what he's doing is  
5 trying to, even though it's delayed, his developmental growth  
6 has somewhat been delayed by the earlier events, he's now  
7 trying to separate himself from the adults and move into his  
8 peer group.

9 Q And the only person he could turn to then, for male  
10 guidance, is whom or what?

11 A Well, the individual that he started --

12 Q Excuse me.

13 A The individuals that he found himself with mostly  
14 during that period were gang members.

15 Q Okay. Now, I'm sorry, I interrupted you. You were  
16 talking about some effect or the 62nd Brim, I think you called  
17 them?

18 A Yes.

19 Q They were taunting -- or dealing with his family.

20 A Right.

21 Q And please explain about that.

22 A What I understand and learned from reading reports  
23 and talking with Mr. White, Jr. and his sisters -- sister,  
24 excuse me, and cousin, is that Keonna became the attention of  
25 one of the major gang players in the area and this individual

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1 decided that he wanted her to be his girlfriend and she  
2 resisted that. And, unfortunately, he kept taunting them as  
3 they went to school and so part of what it seems that Mr.  
4 White was trying to do is intervene in a way that would move  
5 the attention from her to him, i.e., spending more time with  
6 the members in the gang, which he did.

7           Unfortunately, during one of -- as he became more  
8 involved, they became more interested because he was at the  
9 ripe age to be brought into the gang. And so one day, when he  
10 was with them, they decided to jump him in, meaning -- it's an  
11 initiation process that they go through to bring new members  
12 into the gang, but it is a severe beating which they gave him  
13 that particular day.

14           Q     Before we go on to the gangs, --

15           A     Sure.

16           Q     -- let's back up a little.

17           A     Sure.

18           Q     He's on 60th Street. What kind of -- What was the  
19 grandmother trying to do, if you know, to ensure the safety of  
20 the children?

21           A     Well, many -- It's probably strange to hear us  
22 talking about this environment, 'cause it sounds like probably  
23 an environment on Mars or something and it's so different from  
24 what most of us are accustomed to, but, in fact, many inner-  
25 cities are struggling with this. And certainly in the CYA you

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1 see a lot and you hear and you come to really understand this  
2 in ways that prior to my work in the CYA I had no idea how  
3 difficult -- the pervasiveness of this problem.

4 Q Which I believe --

5 MR. DASKAS: I apologize. It's non-responsive.

6 THE COURT: Overruled.

7 THE WITNESS: So the grandmother, as would many  
8 mothers in this environment, decided, one, that she would  
9 dress the kids in neutral colors, because they wouldn't draw  
10 any attention and would be able to move a little more freely  
11 along the streets.

12 The other thing the grandmother would do is  
13 oftentimes there were shotgun -- gunshots that erupted at  
14 night, so what she would do is try to -- would tell the kids  
15 to get down on the floor, remain on the floor, turn the lights  
16 off, until everything settles down, I mean, as if they're in a  
17 war zone. And this was on a pretty frequent basis.

18 BY MR. SCISCENTO:

19 Q So every -- Well, a couple of times a week, or maybe  
20 a couple of times a month, they would hear the gunfire going  
21 off?

22 A Right.

23 Q And this -- And John was telling you about this and  
24 the other family members?

25 A Right.

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MATTHEWS - DIRECT

1 Q Okay. Is that a traumatic experience on a person?

2 A It would be for me, certainly. I mean, I don't --  
3 Many of us don't live in those kind of environments where  
4 we're hearing shotguns going off on a regular basis.

5 Q You said that after this there came point that John  
6 joined the gang, the 62nd Brim?

7 A Yes.

8 Q Okay, you keep saying CYA. That's California Youth  
9 Authority, right?

10 A Yes.

11 Q And you work with them or you work in that system?

12 A I am a consultant to the California Youth Authority.  
13 That means that I am not a -- I am only a contracted person  
14 for them. I'm not officially a part of their structure.

15 Q And what is it exactly that you do for them?

16 A I am -- I run a cycle farm clinic. What that means  
17 is I am the person that -- they would send kids to me if  
18 they're having major difficulty while they're in the prison  
19 setting. If the child has been on medication before or  
20 they're presenting with psychiatric symptoms, that may  
21 indicate that they need to be tried on a medication. If the  
22 child and I can agree to that, that's what would occur, if we  
23 feel it clinically necessary.

24 Q All right, so you, in part, work with the California  
25 Youth Authority?

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1 A Yes.

2 Q And if someone like John White were to be sent  
3 there, he may pass through you?

4 A Possibly.

5 Q Okay. You see them though after they've been  
6 admitted to the California Youth Authority, right?

7 A Mainly, yes.

8 Q Okay. And, I mean, maybe parents send their  
9 children to you outside of this, but what I'm talking about is  
10 the kids are sent to you from the state after they've  
11 committed problems -- or had problems, am I right?

12 A Yes.

13 Q Okay. You're not sent out to families who have  
14 little children who are not in trouble yet, who haven't  
15 committed crimes, and try to help them?

16 A You mean through the California Youth Authority?

17 Q Yes.

18 A No.

19 Q Okay. Now let's get on to the involvement with  
20 gangs. We've admitted that John White was involved with the  
21 62nd Brim.

22 A Yes.

23 Q Why did he choose that gang?

24 A I don't know if choice is really the correct term.

25 Q Is that the gang that was in his neighborhood?

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MATTHEWS - DIRECT

1           A     That's the gang that was in his neighborhood.  If it  
2 had been a Crip gang or another, it probably would have been  
3 him being initiated in one of those.

4           Q     It's not a choice that you make about which gang you  
5 join?

6           A     No.

7           Q     It's the one that's controlling the place you live?

8           A     Oftentimes it's where you are, exactly, at that  
9 particular age and time and point.

10          Q     What kind of environment do the gangs create in a  
11 neighborhood?

12          A     Could you be a bit more specific with that?

13          Q     All right.  Well, we had some testimony earlier that  
14 it was tough for them to walk to school because there was  
15 always constant threats and being made fun of, there were  
16 fights, bullies, gunfire and stuff like that.  What does the  
17 gang provide to the environment now to the person involved in  
18 the gang and his family, if you know?

19          A     Well, it provided, in this case, it provided  
20 security and some stability, because once Mr. White became a  
21 part of the gang, what various family members report, is that  
22 the threats directed at the family, at the females and the one  
23 male family member that was living in the area, Floyd, all of  
24 those threats subsided and they were able to move somewhat --  
25 I mean, if I could use that term, somewhat more freely.  I

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MATTHEWS - DIRECT

1 don't think it was totally ever free, but at least they didn't  
2 have that kind of taunting going on.

3 Q What have the other family members said about John  
4 joining the gang?

5 A What did they say?

6 Q Yes.

7 A Some of them really -- Many of them didn't know this  
8 was going on. The younger ones, that were closer to his age,  
9 realized what was going on, but the older ones weren't aware  
10 of it and they were concerned about him. His sister was  
11 really upset because once he joined he spent very little time  
12 at home. He was -- They would come to the house, it sounded  
13 like a ritual, and take him away for several hours, several  
14 days, and then he would return for only a brief period.

15 Q Okay. Now reviewing all the documents, speaking  
16 with John White and speaking with his family, what need did  
17 John need to join a gang -- or what need did he have to join  
18 the gang?

19 A I'm not sure if he was aware of it, but I think,  
20 from a developmental standpoint, he was trying to be in an  
21 environment where he, one, could be respected, supported.  
22 Adults, in his world, and many of the youth that I meet in the  
23 CYA, will express this, that they don't see adults as being,  
24 for the most part, individuals that can protect them and  
25 oftentimes, because of the nature of the environment they're

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MATTHEWS - DIRECT

1 in, they feel uncomfortable and certainly unwilling to reveal  
2 or seek adults out for protection, but they're willing to do  
3 that with their own peers.

4 And so the gang provides that kind of experience for  
5 them and provides them sort of a surrogate or substitute  
6 family that they buy into.

7 Q Now in your interviews and research you came across  
8 that John was at the California Youth Authority?

9 A Right.

10 Q There were a couple of places he was at?

11 A Right.

12 Q And he was at Kilpatrick?

13 A Exactly.

14 Q Explain to me about Kilpatrick. How did John do at  
15 Kilpatrick?

16 A It seems that from the reports I reviewed that he  
17 did well. This is a community camp that he attended, and  
18 attended school there as well, and he was able to function  
19 there.

20 Q Now that, we would consider, a structured  
21 environment, right?

22 A Yes.

23 Q How structured is it?

24 A It seemed, from what I understand, fairly  
25 structured. It probably isn't as structured as maybe the

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1 Youth Authority is.

2 Q Okay, but it does provide somebody with knowing when  
3 to leave, when to go and things like that?

4 A Right.

5 Q Some kind of structure that John was missing in his  
6 childhood?

7 A Well, in his immediate environment.

8 Q Okay. There's another California Youth Authority  
9 called Paso del Robles?

10 A Paso Robles.

11 Q Paso Robles?

12 A Right.

13 Q And you interviewed records from there?

14 A Yes.

15 Q Okay. And what did you make of those records?  
16 Please explain to the jury.

17 A They saw him as a fairly immature young man who  
18 could benefit, they felt, by the programs that they offered at  
19 the Youth Authority at that time, victim awareness, small  
20 group settings to address anger management, education, those  
21 kinds of activities.

22 He was placed in a school and kitchen group and it  
23 seemed that he did, from their description, he did reasonably  
24 well. He wasn't a major behavior problem during that time.

25 Q He responded well while he was at Las Robles.

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MATTHEWS - DIRECT

1           A     Yeah, Paso Robles.  
2           Q     Paso Robles.  
3                   How long was he in there for? Do you know?  
4           A     I believe nine months.  
5           Q     Okay. And you mentioned that he worked in the  
6 kitchen?  
7           A     Yes.  
8           Q     So now he's having some -- And there was positive  
9 output by him?  
10          A     It seems that. I think the fact that he was in this  
11 structured environment and that there were -- And you see this  
12 sometimes in the wards who come into the CYA. They call the  
13 adolescents, the children that come into the CYA, they call  
14 them wards, I guess an abbreviated term for wards of the  
15 state, but many of the kids, when they come in, are very  
16 reactive at first, meaning they're everywhere, and then they  
17 settle down over time. And it seems that for him, the reports  
18 that I've reviewed, indicate that he was able to settle down  
19 and not be a major discipline problem.  
20          Q     Okay. Now, Doctor, you've reviewed -- At this age  
21 in Paso Robles --  
22          A     Uh-huh.  
23          Q     -- how old is John White?  
24          A     He's 15.  
25          Q     Okay. And when is he released?

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MATTHEWS - DIRECT

1 A I'm trying to remember that date.

2 Q Do you remember the age he was?

3 A I believe he was 16 when they released him.

4 Q Okay. Now up to this time, from birth to 16, you  
5 reviewed records?

6 A Uh-huh.

7 Q And spoke to family members?

8 A Yes.

9 Q Okay. And you saw the kind of childhood that Mr.  
10 White was brought up in. Is that conducive to a healthy  
11 lifestyle, his childhood?

12 A No.

13 Q There's a lot of problems growing up in that kind of  
14 childhood?

15 A True.

16 Q What kind of problems are there?

17 A The problems that he'd face, again, as I mentioned,  
18 from a developmental aspect, identity, who am I gonna be, how  
19 do I look at this world, how do I develop a healthy view of  
20 myself. In terms of moral development, looking at the various  
21 examples that's been presented to him in the environment by  
22 the family, et cetera.

23 The traumatic events, I think, generated a certain  
24 level of anxiety internally. That sort of perpetuates a  
25 certain response when he's out of those structured

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MATTHEWS - DIRECT

1 environments that cause him to be somewhat reactive and  
2 oftentimes misinterpret what's going on in the environment.

3 Q Your review of his documents and his records and  
4 past CYA, California Youth Authority, records --

5 A Yes.

6 Q -- show that when he was in a structured environment  
7 everything was okay with him?

8 A I mean, reasonably okay, as well as we could say  
9 that.

10 Q He would have still some infractions though?

11 A Yeah.

12 Q Maybe stealing Kool-Aid or something like that?

13 A That's a possibility, yes.

14 Q Okay, but there was never any violence?

15 A Not that they -- not that I saw.

16 Q So minor infractions of maybe stealing Kool-Aid,  
17 giving bad looks or talking back may just be a normal  
18 response?

19 A It could be.

20 Q Okay, but there was never any violence shown?

21 MR. DASKAS: That's been asked and answered, Judge.

22 THE COURT: Overruled.

23 MR. SCISCENTO: Just reiterating.

24 BY MR. SCISCENTO:

25 Q But there was never any violence shown?

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1 A Not that I recall in those institutions.

2 MR. SCISCENTO: The Court's indulgence for one  
3 moment.

4 (Pause in the proceedings)

5 MR. SCISCENTO: If I may approach, Your Honor.

6 THE COURT: Sure.

7 MR. SCISCENTO: Can I have this marked as Defense  
8 Exhibit --

9 (Colloquy between Mr. Sciscento and Clerk)

10 BY MR. SCISCENTO:

11 Q Dr. Matthews, I'm handing you what's marked as  
12 Defendant's Proposed Exhibit M.

13 A Okay.

14 Q Have you seen this document before?

15 A Yes, I have.

16 MR. SCISCENTO: The prosecution knows what I'm  
17 referring to?

18 MR. GUYMON: We do, Your Honor.

19 MR. SCISCENTO: All right, thank you.

20 BY MR. SCISCENTO:

21 Q Have you reviewed this document before?

22 A Yes.

23 Q What document is this?

24 A This is a CPS report that was generated shortly  
25 after the children were removed from the mother.

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MATTHEWS - DIRECT

1 Q And CPS is what?

2 A Oh, I'm sorry, Child Protective Services.

3 Q Okay. And this provides some information about the  
4 family?

5 A This provides information about the family, what the  
6 observed regarding the family. An interview with the children  
7 after they had been removed from the mother's care

8 Q Okay. And this basically confirms what was stated  
9 before by other witnesses about the -- the living conditions  
10 of John?

11 A Yes.

12 Q Okay. And the mental retardation of the mother?

13 A Yes.

14 Q To some degree, I mean she had an --

15 A To some degree this is --

16 Q -- an IQ of --

17 A Yes.

18 Q -- of 61?

19 A Yes.

20 Q Which that puts her in which kind of range?

21 A The mild range.

22 Q Okay. And it talks about the drug use?

23 A Yes.

24 Q Okay. In there it also talks about Johnny being  
25 beaten, little Johnny being beaten?

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MATTHEWS - DIRECT

1 A Yes.

2 Q Okay. It talks about the family strength, on the  
3 second page, am I right? It talks about family members can be  
4 counted on to provide care and nurturing as long as the  
5 parents don't intervene and sabotage?

6 A Yes.

7 Q Was there a lot of that going on?

8 A It seems to be, the --

9 Q That being the sabotaging of the parents on the  
10 relationship that the family tried to provide to John?

11 A The grandparents --

12 Q The grandparents.

13 A -- were trying to provide.

14 Q Okay. It talks about the part that the mother,  
15 Eunice, had no real contact?

16 A For periods of time, yes.

17 MR. SCISCENTO: Your Honor, at this time I move for  
18 the admissions of State's Exhibit M -- or Defense Exhibit M.

19 MR. DASKAS: Subject to the discussion we had,  
20 Judge.

21 THE COURT: So you do object to it?

22 MR. DASKAS: Yes, Judge.

23 THE COURT: Okay. He's testified to it, I don't  
24 know of any authority for an expert to introduce the very  
25 things that he relied on. We haven't had that with any of the

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1 other experts who went with this, I think we've covered it.

2 Anything else, Mr. Sciscento?

3 MR. SCISCENTO: If I may just finish very briefly,  
4 Your Honor?

5 THE COURT: Sure.

6 BY MR. SCISCENTO:

7 Q Dr. Matthews, based on your research and your  
8 investigation and research of all the documentation, what is  
9 your feeling about John White? What is your -- what have you  
10 determined about John White and his childhood?

11 A Well, if -- in reviewing his childhood I found it to  
12 be very -- a very deprived -- emotionally deprived environment  
13 and one which certainly would have lasting effects on him as  
14 he grows into his adulthood.

15 Q This doesn't excuse any action though, am I right?

16 A No, I'm not saying this is terms of excusing his  
17 behavior.

18 Q This shows the problems he had growing up?

19 A The difficulty that he was exposed to.

20 Q And these difficulties are difficulties not exposed  
21 to everybody growing up? I mean, it's not a decision of what  
22 movie you see, right? The decision that he had to make.

23 MR. DASKAS: Judge, I'm going to object to the  
24 leading nature of the -- of the question.

25 THE COURT: Sustained.

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1 BY MR. SCISCENTO:

2 Q All right. In your review of John White's life, it  
3 wasn't -- the problems he had were different than problems of  
4 other children?

5 A In some cases, yes.

6 Q Other children in different neighborhoods not in  
7 South Central L.A., right?

8 A Yes.

9 Q Okay. And those problems are significant --

10 MR. DASKAS: Judge, same objections. He can  
11 certainly ask this Doctor's opinion or conclusion but he's  
12 really leading him to the answers.

13 THE COURT: Well, if his expert wants to be lead, go  
14 ahead.

15 BY MR. SCISCENTO:

16 Q Tell me about the ability for John White to make  
17 decisions?

18 A I think the decision making ability of Mr. White is  
19 really influenced by his environment and very much influenced  
20 by his past experiences which color the choices that are  
21 available to him.

22 Q Okay. And the choices that he has growing up that  
23 you observed, are not the same kind of choices that most  
24 children make?

25 A Well, the choices that he has growing up would

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1 certainly be different from those of us who did not live in  
2 that type of environment. If we lived in that type of  
3 environment here in Las Vegas, if that existed, then we would  
4 probably have very -- some very similar different selection as  
5 well.

6 Q Did you provide a diagnosis of John White?

7 A I wasn't ask to provide a diagnosis.

8 Q Let me ask you this very briefly, you've been  
9 brought in by the defense, by my office, which is the Clark  
10 County Special Public Defender's office, correct?

11 A Yes.

12 Q Your time is valuable, I'm assuming?

13 A Well, everyone's time is, yeah.

14 Q You're being paid by the county?

15 A Yes.

16 Q Okay. They're going to provide a check to you for  
17 testifying, for providing all this information, for doing the  
18 research, and the time you spent on this case?

19 A Yes.

20 Q Okay. How much is that?

21 A Per hour?

22 A Per hour do you charge?

23 A Two fifty.

24 Q Okay. With your degrees that you've had, your  
25 teachings at Stanford, if I promised to pay you additional

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1 money would you say anything I wanted you to say?

2 A I'm not sure if I understand that question.

3 Q If I pay you more money would you change your  
4 testimony?

5 A No, I'm not here because you're paying me per se,  
6 that's not --

7 Q You wouldn't put your professional reputation on the  
8 line?

9 MR. DASKAS: Judge, I'm going to object, he's  
10 vouching for the witness's credibility.

11 THE COURT: And bolstering. Sustained.

12 MR. DASKAS: Thank you.

13 BY MR. SCISCENTO:

14 Q Were you asked to come up with a specific diagnosis?

15 A No, I was not.

16 Q Were you asked to come up with a mitigation of  
17 anything?

18 A I was asked to come and evaluate this case, to look  
19 at the impact of the trauma and the developmental issues that  
20 arose from the result of what this young man had experienced  
21 in his upbringing.

22 Q Was any of the information that you were provided  
23 was it made up or false?

24 A I hope not.

25 Q You investigated that though, correct?

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1 A Yes.

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

3 THE COURT: Thank you. We'll take our lunch recess.

4 During this recess you're admonished not to talk or  
5 converse among yourselves or with anyone else on any subject  
6 connected with this trial; read, watch or listen to any report  
7 of or commentary on the trial or any person connected with it  
8 by any medium of information including, without limitation,  
9 newspaper, television or radio; or to form or express any  
10 opinion on any subject connected with this penalty hearing  
11 until it's finally submitted to you.

12 If you will report back to Stony at twenty minutes  
13 of 2:00, we will try to start exactly at 1:45, which is when  
14 we will need you back here, Doctor.

15 THE WITNESS: Okay.

16 THE COURT: Yes.

17 (Off record colloquy)

18 THE COURT: Go ahead folks.

19 THE WITNESS: Do I leave as well?

20 THE COURT: Sure.

21 (Court recessed at 12:40 p.m. until 1:57 p.m.)

22 (Jury is not present)

23 THE COURT: Okay. We are here to settle jury  
24 instructions. State and defense stipulate I can read them  
25 before rather than after argument?

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1 MR. DASKAS: Yes, Your Honor.

2 MR. SCISCENTO: Yes.

3 THE COURT: And I have seventeen instructions that  
4 include one or two "As" and "Bs" and from our discussion in  
5 chambers, after modifying and replacing some of the  
6 instructions from the original packet of these, I take it that  
7 the State does not object to the giving of any of these  
8 instructions?

9 MR. DASKAS: No, Judge.

10 THE COURT: And the defense does not object to the  
11 giving of any of these instructions?

12 MR. SCISCENTO: Your Honor, did we -- everything is  
13 worked out with Mr. Figler, 17 and the Judge has -- this Court  
14 has agreed on the ones that I really was concerned about, was  
15 the Gary instruction --

16 THE COURT: Right, those are all in here now.

17 MR. SCISCENTO: -- which set forth --

18 THE COURT: Right.

19 MR. SCISCENTO: -- and the ones that were provided  
20 that's going to be given, okay? And the other one that I  
21 provided which was the three, four line one? It's three or  
22 four lines, --

23 THE COURT: 7B, the law does not require the jury to  
24 impose the death penalty under any circumstance?

25 MR. SCISCENTO: Yes.

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1 THE COURT: Okay. And you don't -- so, which way  
2 did I ask it? Did you --  
3 MR. SCISCENTO: We have no objections.  
4 THE COURT: Okay. You don't offer anything that  
5 isn't in this package, Ms. Daskas?  
6 MR. DASKAS: No, Judge.  
7 THE COURT: And do you, Mr. Sciscento?  
8 MR. SCISCENTO: No, Your Honor.  
9 THE COURT: Okay. And you've reviewed the verdicts,  
10 one of which we have replaced, the special verdict on  
11 mitigation with the form suggested by you --  
12 MR. SCISCENTO: Which -- if I may follow up on it.  
13 Which allows lines after mitigation, so they can write in the  
14 mitigations they find.  
15 THE COURT: Right.  
16 MR. SCISCENTO: Yes.  
17 THE COURT: And so, you agree that the verdict forms  
18 are appropriate, Mr. Sciscento, on behalf of the State and --  
19 on behalf of the defense?  
20 MR. SCISCENTO: With the understanding that the  
21 lines will be in there, yes. We have no objection.  
22 THE COURT: Okay.  
23 (Off-record colloquy)  
24 THE COURT: What do you prefer to be called, White?  
25 Mr. White, is that what you prefer to be called?

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1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Okay. I'm gonna discuss briefly with  
3 you, in case you exercise your right of allocution. I take it  
4 you've discussed with your lawyers what that means, right?

5 MR. SCISCENTO: Can he just sit during the --

6 THE COURT: Yeah, he can sit.

7 Have you discussed that with either Mr. Figler, Mr.  
8 Sciscento or both of them and that is your right to make a  
9 statement to the jury that's unsworn?

10 THE DEFENDANT: Yes.

11 THE COURT: And you understand that under the laws  
12 of the State of Nevada, it's not unlimited what you say. For  
13 example, you can't go back and say you're innocent of the  
14 charges, do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: And you have the right to state, in an  
17 unsworn manner, anything that you feel would be important to  
18 discuss with the jury in mitigation of sentence, however  
19 you're instructed this right of yours is not without bounds,  
20 as I just indicated. Can't discuss guilt or innocence and if  
21 you do or if you lie, if you express remorse in a way which  
22 contradicts the facts, should you be going beyond the bounds  
23 of the proper statement, the prosecution's going to be able to  
24 comment, they may even be allowed to reopen their case. Those  
25 are the sorts of things that happen if you exceed the bounds.

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1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you feel comfortable you've been  
4 explained by Mr. Figler, Mr. Sciscento, or both of them, what  
5 the limits are of this unsworn statement?

6 THE DEFENDANT: Yeah.

7 THE COURT: Okay. Do you have any questions about  
8 it?

9 THE DEFENDANT: No.

10 THE COURT: And you did, for the record, have that  
11 kind of a conversation, without getting into the details of  
12 it, Mr. Figler, with your client?

13 MR. FIGLER: Yes, for about one hour of time, Your  
14 Honor.

15 THE COURT: Thank you. Is that sufficient in your  
16 mind?

17 MR. FIGLER: Yes, Your Honor. We -- we --

18 THE COURT: Apparently we don't view time always the  
19 same way.

20 MR. FIGLER: That's correct, Your Honor, we  
21 thoroughly discussed it.

22 THE COURT: Okay. Stony, let's roll.

23 (Off-record colloquy)

24 (Jury is present)

25 THE COURT: For the reasons discussed in chambers,

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MATTHEWS - CROSS

1 I'm going to reverse my ruling and admit into evidence  
2 Defendant's Proposed Exhibit M.

3 Cross, Mr. Daskas.

4 (Defendant's Exhibit No. M admitted)

5 MR. SCISCENTO: Your Honor, what was your ruling on  
6 that one? I'm sorry.

7 THE COURT: I said I just reversed it and it's  
8 admitted.

9 MR. SCISCENTO: It's what?

10 THE COURT: It's admitted.

11 MR. SCISCENTO: Thank you.

12 MR. DASKAS: May I proceed, Judge?

13 THE COURT: Sure.

14 CROSS-EXAMINATION

15 BY MR. DASKAS:

16 Q Doctor, there are some questions about the fact that  
17 you're being paid for testifying today. Just to clarify, you  
18 were --

19 A Sure.

20 Q -- retained by the defense counsel in this case, is  
21 that correct?

22 A Yes.

23 Q In other words, this Court did not appoint you to  
24 testify?

25 A Exactly.

III-161

MATTHEWS - CROSS

1 Q All right. You would agree with the notion that  
2 it's important for somebody, such as yourself, to gather as  
3 much information as possible in order to make an accurate  
4 opinion, diagnosis, or conclusion in any particular case?

5 A True.

6 Q All right. Did you ever speak with the defendant's  
7 biological father in this case?

8 A No, I didn't.

9 Q Did you ever speak with the defendant's grandfather  
10 in this case?

11 A No, I didn't.

12 Q Did you ever speak with any of the staff members of  
13 the California Youth Authority?

14 A No, I did not.

15 Q Did you ever speak with any staff members at the --  
16 I believe you called it the Paso Robles Camp?

17 A Paso Robles.

18 Q Did you speak with staff members there?

19 A No, I did not.

20 Q All right. You relied on what Mr. White told you,  
21 the defendant?

22 A I relied on my conversation with him as well as the  
23 records that I received.

24 Q You would agree, wouldn't you, that somebody in Mr.  
25 White's situation maybe motivated to be less than truthful

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MATTHEWS - CROSS

1 when speaking with somebody such as yourself?

2 A Yes, that's --

3 Q That possible?

4 A -- a possibility. Yes.

5 Q And if he's less than truthful, that might effect or  
6 impact the conclusion you reach in this case?

7 A It could, yes.

8 Q Let me see if I understand exactly what your opinion  
9 is in this case. It's your opinion that because of the  
10 defendant's background and his exposure to gangs and violence  
11 it has effected his decision making?

12 A Yes.

13 Q All right. It's your testimony that he is more apt  
14 to make poor decisions than somebody who grew up in a better  
15 environment?

16 A I'm not going to say he would be more apt to make  
17 poor decisions but his decisions will be based on his  
18 experiences in whatever environment he is from.

19 Q And those decisions might be bad decisions?

20 A They may be.

21 Q You would agree that it was a bad decision on John  
22 White's part to gather up guns, gloves and duct tape and --

23 MR. SCISCENTO: Your Honor, I'm going to object to  
24 this.

25 THE COURT: What is the objection?

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MATTHEWS - CROSS

1 MR. SCISCENTO: The objection is this witness has  
2 not been -- is not determining whether or not he can decide  
3 right from wrong or anything of that nature. And basically  
4 whether or not it's a right or wrong choice, we didn't ask him  
5 to do a diagnosis but to do a social history.

6 THE COURT: Sustained.

7 BY MR. DASKAS:

8 Q It's your testimony that his background has effected  
9 his decision making?

10 MR. SCISCENTO: Objection, asked and answered.

11 THE COURT: Overruled.

12 THE WITNESS: Could you repeat your question?

13 BY MR. DASKAS:

14 Q It's your testimony that his background, his  
15 upbringing has some effect, some impact on his decision  
16 making?

17 A Yes.

18 Q You would agree, wouldn't you, that you have  
19 interacted with young men who have similar backgrounds to this  
20 defendant?

21 A Yes.

22 Q Not all of them made the same decisions this  
23 defendant made?

24 A That's true.

25 Q All right. Can you estimate for me how many youths

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MATTHEWS - CROSS

1 that have had problems similar to this defendant you've  
2 interacted with?

3 A Well, if I look at the California Youth Authority,  
4 they have a program called social thinking skills and let's  
5 say the majority of those who become a part of that system are  
6 oftentimes enrolled in that system because it's in part --  
7 it's thought that their -- part of their decision making  
8 strategy is flawed from those early experiences.

9 Q My question though was, can you estimate for me how  
10 many -- how many youths at CYA or otherwise have you  
11 interacted with who have had similar upbringing, similar  
12 backgrounds?

13 A Oh, I'm sorry. I misunderstood your question. I  
14 would say a significant number, I would say at least -- well  
15 over 35 percent of young men that I see there.

16 Q And certainly not all of those individuals made the  
17 same decisions this defendant made?

18 A No.

19 Q You would agree that the majority of people  
20 incarcerated made bad decisions?

21 A Along the way, yes.

22 Q The majority of people on death row are there  
23 because they made bad decisions along the way?

24 MR. SCISCENTO: Your Honor, I object to this.  
25 Again, the same reason.

III-165

MATTHEWS - CROSS

1 THE COURT: I believe it's also argumentative and  
2 we'll get to argument in about an hour or so. Sustained.

3 BY MR. DASKAS:

4 Q You would agree that this defendant knows the  
5 difference between right and wrong?

6 MR. SCISCENTO: Now, Your Honor, I will object to  
7 that, based on the argument or the -- the objection I made  
8 before. He's not here giving a diagnosis whether or not he  
9 can make a right or wrong decision.

10 THE COURT: Was it your understanding that you  
11 hadn't asked him that question?

12 MR. SCISCENTO: No, I asked his -- his --

13 THE COURT: Because that's what I don't recall.

14 MR. SCISCENTO: We have him for a social history  
15 only and not whether or not he can make bad --

16 THE COURT: I -- what I'm saying, Joe, is I don't  
17 recall that well, I thought that you had said something about  
18 right and wrong.

19 MR. SCISCENTO: I asked him --

20 THE COURT: Is it nothing more than to say --

21 MR. SCISCENTO: He knows the difference between  
22 right and wrong is what I asked.

23 THE COURT: Okay. And that's why I was -- all I  
24 hear is him asking the same question. Overruled.

25 THE WITNESS: Question?

III-166

MATTHEWS - CROSS

1 BY MR. DASKAS:

2 Q You would agree that this defendant knows the  
3 difference between right and wrong?

4 A I would say that this defendant, based on his skills  
5 and his experience, has some understanding what right and  
6 wrong is.

7 Q You reviewed some records for the -- from the  
8 California Youth Authority?

9 A Yes.

10 Q You're aware that he was given opportunities to  
11 attend behavior modification courses, is that true?

12 A You're referring to Paso Robles?

13 Q Well, let's rephrase it. Of all the records you  
14 reviewed --

15 A Mm-hmm.

16 Q -- any situation where he was incarcerated, was he  
17 given the opportunity to attend behavior modification courses?

18 A Oh, you asked if he was given the opportunity.

19 Q Yes.

20 A Normally that is an -- that's an opportunity that's  
21 extended to individuals who come into the CYA, that's Board  
22 ordered and I didn't see his board order cover to see if he  
23 specifically given that opportunity.

24 Q Based on your affiliation with the California Youth  
25 Authority, you have some familiarity with those programs

III-167

MATTHEWS - CROSS

1    though?

2           A     Yes.

3           Q     You would agree that they are good programs?

4           A     They're decent programs.

5           Q     If an individual either is ordered to attend those  
6 programs or decides on his own to attend those programs, he  
7 may get some benefit from those programs?

8           A     Given his motivation and participation in that, yes.

9           Q     There's been some testimony about the area in which  
10 the defendant grew up. Did you personally visit the home that  
11 we saw pictures of where the defendant was raised?

12          A     No, I did not.

13          Q     Any of the homes?

14          A     No, I did not.

15          Q     You mentioned that between the ages of thirteen and  
16 eighteen he had some problems, some interactions with gangs.  
17 You're aware that for a period of more than two years, during  
18 that age group, he was incarcerated?

19          A     Yes.

20          Q     It is not your testimony that he is manifesting any  
21 psychiatric symptoms, is it?

22          A     That's -- in terms of a diagnosis?

23          Q     Yes.

24          A     I'm not -- no, I'm not giving him a diagnosis.

25          Q     There was another camp that you mentioned, the

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MATTHEWS - CROSS

1 Kilpatrick Community Camp?

2 A Right.

3 Q Did you interview the staff members there?

4 A No, I did not.

5 Q You mentioned you reviewed some disciplinary reports  
6 from the California Youth Authority, is that true?

7 MR. SCISCENTO: I objection, Your Honor, I don't  
8 think he said he reviewed them, I think he said there was none  
9 present.

10 THE COURT: He's an expert, if he isn't satisfied  
11 with the way it's phrased I'm sure he'll tell us. Overruled.

12 THE WITNESS: I did not review any -- the question I  
13 remember being asked was about infractions --

14 BY MR. DASKAS:

15 Q Right.

16 A -- and people receiving refractions and I didn't see  
17 any notation in what I reviewed, that indicated that he had  
18 received any infractions.

19 Q But you're also not certain whether you received all  
20 the disciplinary reports that exist?

21 A There could be.

22 Q So it's possible there are some violent disciplinary  
23 infractions you're not aware of?

24 MR. SCISCENTO: Your Honor, I object to this unless  
25 Mr. Daskas specifically has some of these records.

III-169

MATTHEWS - CROSS

1 THE COURT: Sustained. Move on to a new area..

2 MR. SCISCENTO: And I move to strike that, Your  
3 Honor. There's no basis for making that statement.

4 THE COURT: It's stricken, the jury will disregard  
5 it.

6 BY MR. DASKAS:

7 Q You mentioned on direct that his decision making is  
8 influenced by his -- that is, the defendant's, environment.  
9 Would you agree with that?

10 A Yes.

11 Q Particularly the environment that was riddled with  
12 gangs, is that true?

13 A Yes.

14 Q Do you have any information to believe that when  
15 Donte Johnson, the defendant, moved to Las Vegas he was in a  
16 similar environment as he was in Los Angeles?

17 MR. SCISCENTO: And, Your Honor, I would object to  
18 that. I think what we --

19 THE COURT: Honestly, I was looking at some people  
20 that just came in, I didn't hear it. What was the question?

21 MR. DASKAS: My question was and I need to give you  
22 the preface first, he testified on direct that his decision  
23 making is effected by his environment --

24 THE COURT: Right.

25 MR. DASKAS: -- particularly the gang environment.

III-170

MATTHEWS - CROSS

1 THE COURT: Okay. What was the next question?

2 MR. DASKAS: My question was, do you have any  
3 information to believe that when Donte Johnson moved to Las  
4 Vegas he was in a similar gang infested environment?

5 MR. SCISCENTO: Your Honor, my objection is on  
6 direct we specifically asked him, up until the age of fifteen  
7 or sixteen. That's what Dr. Matthews focused on.

8 THE COURT: Okay. Overruled.

9 BY MR. DASKAS:

10 Q Do you recall the question?

11 A No. You can say it again, please.

12 Q All right. Do you have any information to believe  
13 that when the defendant moved to Las Vegas that he was in a  
14 environment similar to the environment in Los Angeles, that is  
15 riddled or infested with gangs?

16 A You mean a community that pretty much resembled --

17 Q Correct.

18 A -- the community that he came from?

19 Q That's correct.

20 A No, I don't.

21 Q All right.

22 A From what I've reviewed and from he's stated to me.

23 Q You would agree that individuals who grew up in  
24 settings similar to this defendant's sometimes do well?  
25 Sometimes prosper?

III-171

MATTHEWS - REDIRECT

1 A Yeah.

2 Q That's a possibility.

3 A That's -- that is.

4 Q In fact, individuals with backgrounds worse than  
5 this defendant's sometimes prosper, sometimes do well?

6 A Sometime prosper, sometime does well.

7 Q Okay.

8 MR. DASKAS: I'll pass the witness, Judge.

9 THE COURT: Anything on redirect?

10 MR. SCISCENTO: Yes, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. SCISCENTO:

13 Q Dr. Mathis -- Matthews, were you aware that -- the  
14 District Attorney asked you if you interviewed the grandfather  
15 of John White and you answered, no. Correct?

16 A Right. Yeah.

17 Q Did you know that he's dead?

18 A Right, I know.

19 Q Okay.

20 A But actually, we're talking about the step-  
21 grandfather.

22 Q Okay. Further, the District Attorney asked you  
23 whether or not the investigation you had, whether it was a  
24 complete investigation or did you rely upon the statements of  
25 Mr. John White and the family when, in fact, there was other

III-172



MATTHEWS - REDIRECT

1 documents which supported the statements that they gave you,  
2 isn't that correct?

3 A What? I'm sorry, I didn't hear all of that  
4 question.

5 Q There were other documents that you relied upon  
6 which corroborated the statements given to you by the -- by  
7 Mr. White and by other witnesses or other family members, am I  
8 right?

9 A Yes.

10 Q Okay. Those being the CPS reports, the CYA reports?

11 A Yes.

12 Q Okay. California Youth Authority, California  
13 Protective Services?

14 A Right.

15 Q Okay. As a matter of fact, if I may have --

16 MR. SCISCENTO: -- Your Honor, this has been moved  
17 into evidence.

18 (Off-record colloquy)

19 BY MR. SCISCENTO:

20 Q As a matter of fact, Dr. Matthews, you reviewed this  
21 one by CPS, which is the California Protective Services and  
22 this document that we talked about, which was written by  
23 somebody unrelated to this case or unrelated to the family  
24 wrote back in -- I don't know if you know what year that was?

25 A Actually it was 19 -- I believe, 1984.

III-173

MATTHEWS - REDIRECT

1 Q Okay. And that document, documents the abuses and  
2 the living conditions of Donte Johnson?

3 A Yes.

4 Q Okay.

5 MR. SCISCENTO: If I may, Your Honor, may I publish  
6 this with the jury?

7 THE COURT: Sure.

8 MR. SCISCENTO: Thank you.

9 BY MR. SCISCENTO:

10 Q And in that document it does take about the drug use  
11 of the mother?

12 A Yes, it does.

13 Q The living conditions, living in a shack?

14 A Living in the garage, yes.

15 Q The beatings that John White suffered?

16 A Yes.

17 Q And it talks about all of the problems that were --  
18 you were talking about that you investigated what was done by  
19 somebody unrelated to the family whatsoever?

20 A Yes.

21 Q A neutral party?

22 A Yes, a --

23 Q Okay. You're familiar with CPS, California  
24 Protective Services?

25 A Right.

III-174

MATTHEWS - REDIRECT

1 Q If there's a problem in the home they come in there  
2 and they try to document what's going on?

3 A Right.

4 Q Okay. You're also familiar with California Youth  
5 Authority 'cause you, in a sense, work --

6 A Yes.

7 Q -- for them? Their records now -- their records,  
8 would you consider them very well kept? In other words, if  
9 you have somebody who comes to visit or somebody who's  
10 incarcerated there they keep pretty good records of it?

11 A For the most part, yes.

12 Q Okay. Would you be surprised if you knew that any  
13 information was missing from those records?

14 A If it's the records from the California Youth  
15 Authority?

16 Q They're pretty well intact?

17 A They're pretty well intact.

18 Q And they maintain them pretty well, am I right?

19 A Yes.

20 Q Okay. Maybe this an area that you don't know, if a  
21 probation officer from California who was a keeper of the  
22 records, the criminal records of John White, was present here  
23 he'd probably have the entire records of this California Youth  
24 Authority, too?

25 MR. DASKAS: Judge, I'll object. That calls for

III-175

MATTHEWS - REDIRECT

1 speculation.

2 THE WITNESS: I would hope for him to do that.

3 THE COURT: Sustained.

4 MR. SCISCENTO: Your Honor, he works for California  
5 Youth Authority --

6 THE COURT: Where's this going?

7 MR. SCISCENTO: -- he knows -- what Mr. Daskas asked  
8 him why he didn't review -- or asked him about records that he  
9 didn't review and whether or not they were there. He works  
10 for California Youth Authority, he knows the kind of records  
11 they have, he knows where the records go, and they put a  
12 witness on here that specifically said, I'm the keeper of the  
13 record of John White for criminal matters. Now, CYA is also  
14 part of those records and they should have them and they made  
15 a comment that there was some violence infractions going on  
16 and I want to show that in fact it there was not.

17 THE COURT: That's already been stricken. That's  
18 already been stricken. That was pure speculation that --

19 MR. SCISCENTO: Well, the bell has been rung, Your  
20 Honor.

21 THE COURT: -- should not be considered.

22 MR. SCISCENTO: I can still hear it. I apologize.

23 BY MR. SCISCENTO:

24 Q Dr. Matthews, you're familiar with South Central  
25 L.A.?

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MATTHEWS - REDIRECT

1 A Yes.

2 Q You've been there a few times?

3 A Yes.

4 Q How many times have you been down there in the last  
5 ten years?

6 A Probably in the last ten years maybe six or eight  
7 times. Maybe more.

8 Q And the area that we're talking about, Sixtieth and  
9 Normandy, Vermont, those areas, Figueroa --

10 A Mm-hmm.

11 Q -- down further. I'm trying to remember all the  
12 streets down there, you've been in that area, am I right?

13 A Mm-hmm.

14 Q That's a yes?

15 A Yes.

16 Q And those are pretty much similar to where John  
17 White grew up? Some worse than others?

18 A Right.

19 Q Would you agree that a person's personality or the  
20 problems he's had -- the personalty makeup is set by a certain  
21 age?

22 MR. DASKAS: Judge, I'll object. He's really  
23 leading the witness now. We're beyond the scope of cross-  
24 examination.

25 MR. SCISCENTO: Your Honor, specific --

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MATTHEWS - REDIRECT

1 THE COURT: Overruled.

2 BY MR. SCISCENTO:

3 Q Do you want me to ask again?

4 A Yes.

5 Q Would you say that a person's personality and makeup  
6 is set by a certain age?

7 A Yes.

8 Q Okay. And so the problems that he has or the  
9 environment that he has, affects him -- affects that person  
10 and will probably stay with him for his life?

11 A In terms of the time in which he was exposed to this  
12 environment and the trauma is gonna -- is gonna be seen  
13 throughout -- it can be seen in his adult life in some degree.

14 Q And the choices that Mr. Daskas talked about,  
15 sometimes the choices are not the same that we think about in  
16 making a choice of right or wrong, am I right? As in  
17 relationship to Mr. White?

18 A Right. I think, again, the experience that this  
19 person has in life, their educational level, their experience  
20 in life, and then the environment, how they learn to deal with  
21 conflict and what have you, all of that is gonna be played out  
22 in terms of the environment they're from.

23 Q And so these choices are not simple choices, some of  
24 them are life or death choices?

25 A Some of them are.

III-178

MATTHEWS - REDIRECT

1 Q Safety choices?

2 A Yes.

3 Q Choices of whether or not you're gonna eat that day?

4 A Yes.

5 Q Mr. Daskas asked you about programs and California  
6 Youth Authority where the people are available for them and  
7 you being part of this California Youth Authority, there are  
8 programs like that, right?

9 A There are programs like that.

10 Q Are there programs that you know of, in place, that  
11 help out the people who are not in trouble, who are living  
12 below or who are living in a shack and not in trouble, I mean  
13 are there numerous program now for those kind of people?

14 A Are you saying out of the CYA system?

15 Q Out of the CYA system?

16 A No, there're not numerous programs.

17 Q And Mr. Daskas is talking about rehabilitation  
18 programs, correct?

19 A That's what I'm understanding, I was -- him saying.

20 Q Okay. Back in the 70's -- 60's and early 70's there  
21 were programs, after school programs and latch key programs to  
22 help these children, correct?

23 A Yeah.

24 Q And you've seen it -- have you, in your experience  
25 working with California Youth Authority and the juvenile

III-179

MATTHEWS - REDIRECT

1 offenders, have you seen a diminished amount of programs for  
2 the non-offending minor juveniles?

3 A Are you saying -- this is what I need to understand.  
4 Are you saying those juveniles who are say on parole and  
5 not --

6 Q Not parole, I'm talking about people who have not  
7 had infractions and not have trouble with the law. Are there  
8 programs, any significant programs out there which can help  
9 them before they get in trouble?

10 A Oh, that's sponsored by the CYA?

11 Q Sponsored by anybody?

12 A Oh, there are programs available.

13 Q Okay. Have they increased the numbers or decreased  
14 the numbers in the years?

15 A If you talk with many of the individuals working  
16 with adolescents they'll tell you those programs are not as  
17 plentiful or not nearly as much as --

18 Q As they used to be?

19 A Yes. Or, as they're needed.

20 Q Okay. And those programs, not to rehabilitate but  
21 to provide nurturing and guidance are not intact as it used to  
22 be, isn't that correct?

23 A I guess that question needs -- that question  
24 certainly depends on the environment you're in, because if you  
25 live in maybe an affluent environment that may not be the

III-180



MATTHEWS - RECROSS

1 case.

2 Q All right. Let's just get specific. How about  
3 South Central L.A.?

4 A I'm sure there's some -- there's probably major  
5 limitations in those areas.

6 Q Back in 1978 when Prop 13 came in, a lot of programs  
7 were thrown out, am I right?

8 A A lot of programs lost money.

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

10 THE COURT: Anything further?

11 MR. DASKAS: One question.

12 RECROSS EXAMINATION

13 BY MR. DASKAS:

14 Q Based on your expertise and your experience, if you  
15 would have received information about this defendant's  
16 background, say a year ago, two years ago, three years ago --

17 A Yes.

18 Q -- could you have predicted what his behavior would  
19 have been?

20 A Could you give me a little more -- could you restate  
21 that?

22 Q Assume you have the background information you now  
23 have about Donte Johnson --

24 A Mm-hmm.

25 Q -- only three years ago, could you have predicted

MATTHEWS - RECROSS

1 the situation he would find himself in today?

2 A I don't know if I could predict him being in the  
3 situation he's in today, but certainly would say he would be  
4 some -- identify him as someone who's at risk.

5 MR. DASKAS: Nothing else, Judge.

6 THE COURT: Anything further?

7 MR. SCISCENTO: Nothing.

8 THE COURT: Thank you, Doctor. You're excused.

9 Call your next witness, please.

10 MR. FIGLER: Moses Zamora.

11 THE COURT: Okay. Well --

12 MR. SCISCENTO: Your Honor --

13 THE COURT: -- while Mr. Zamora's coming in, I just  
14 want to make something very clear. Mr. Zamora, why don't you  
15 just have a seat here for a second.

16 Why don't you swear him in and then he can have a  
17 seat.

18 MOSES ZAMORA, DEFENDANT'S WITNESS, IS SWORN

19 THE CLERK: Please have a seat and spell -- state  
20 your full name and spell your last name for the record.

21 THE WITNESS: Moses Zamora, Z-A-M-O-R-A.

22 THE COURT: Okay. Just the final word on this  
23 question that Mr. Daskas asked Dr. Matthews, to which I  
24 sustained an objection and Mr. Sciscento had some additional  
25 words on when he was getting back to redirect. And the

ZAMORA - DIRECT

1 question was something about maybe there were some incidents  
2 at CYA involving violence that he hadn't seen. There's  
3 reasons for rules of evidence. The reason for this particular  
4 rule of evidence is, there is no evidence that Mr. White ever  
5 did anything violent in CYA. And you're not to speculate that  
6 he did and you're not to base your decision on the possibility  
7 that he did because there's absolutely no evidence of that.  
8 That's why I sustained the object and there are instructions  
9 that you received before that you're not to speculate about  
10 things like that. There's absolutely no reason to believe  
11 that he ever did anything of a violent nature in CYA and I'm  
12 specifically admonishing you and instructing you not to  
13 speculate that those things exist which have never been  
14 proven.

15 Go ahead.

16 MR. FIGLER: Thank you.

17 DIRECT EXAMINATION

18 BY MR. FIGLER:

19 Q Moses, do you know somebody who's present here in  
20 the courtroom today?

21 A Yes.

22 Q And who do you know?

23 A John.

24 Q Okay. This person right here, John White?

25 A Yes.

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ZAMORA - DIRECT

1 Q And what is your connection with John White?  
2 A His brother -- well, his sister's boyfriend.  
3 Q Okay. And that's his sister, Johnnisha?  
4 A Yes.  
5 Q And she was the one who came in and talked to this  
6 jury earlier today?  
7 A Correct.  
8 Q Okay. And do you have any children with Johnnisha?  
9 A Yes.  
10 Q Okay. How many?  
11 A One.  
12 Q Now, let me ask you, how old are you?  
13 A Twenty-three.  
14 Q Twenty-three?  
15 A Well, I'll be twenty-three in July.  
16 Q So you're twenty-two right now?  
17 A Yes.  
18 Q Okay. So, you're just a little bit older than John  
19 here?  
20 A Yes.  
21 MR. GUYMON: Actually younger, he's twenty-three.  
22 THE WITNESS: Well, actually he's a little bit older  
23 than me.  
24 BY MR. FIGLER:  
25 Q Okay. So you guys are around the same age?

III-184

ZAMORA - DIRECT

1 A Yes.

2 Q Okay. Where did you grow up?

3 A South Central Los Angeles.

4 Q And were you raised there?

5 A Yes.

6 Q Okay. Were -- did you go to elementary school in  
7 that area?

8 A Yes.

9 Q And junior high and high school, too?

10 A Yes.

11 Q Moses, the reason that we asked you here is to  
12 inform us about what exists in the streets as it relates to a  
13 young man around this age. Do you think that you could share  
14 some of your experiences with us in that regard?

15 A I think I can.

16 Q Okay. Let me ask you this, what were some of the  
17 problems? Let's focus on the problems for a second, being an  
18 elementary school student in South Central Los Angeles?

19 A One of the main problems was older kids harassing  
20 you, whether you had to walk to school, sometimes you have to  
21 walk through their neighborhoods. Sometimes they would try to  
22 rob you for your money, a lot of times they would just pick on  
23 you just out of -- just for them to have some fun. They --  
24 sometimes they wouldn't harm you physically, emotionally.  
25 Like I remember one time we were walking to school and an

III-185

ZAMORA - DIRECT

1 older guy --

2 MR. GUYMON: Judge, I'm going to object to relevance  
3 as to his experiences now, unless John was there.

4 THE COURT: Would you approach the bench, please.

5 (Off-record bench conference)

6 THE COURT: Overruled.

7 MR. FIGLER: Thank you, Judge. I can continue?

8 THE COURT: Yeah.

9 BY MR. FIGLER:

10 Q You were telling us about an incident?

11 A There was an incident where me and my little  
12 brother, at the time he was about five, and at the time my dad  
13 worked, we didn't have a car where my mom could drive us to  
14 school so we had to walk. And a guy comes up and he puts a  
15 gun to my brother's face and asked us for money. We didn't  
16 have any money so he eventually left us alone.

17 Q Now, based on your living in that neighborhood --  
18 you still live there?

19 A My mother does, but I still live blocks away from  
20 there.

21 Q Okay. Based on your experiences do you think that  
22 was a unique thing that only happened to you or do you think  
23 that's pretty common in that neighborhood?

24 A I think it's -- it's pretty common, I don't think  
25 it's just -- I don't think it's isolated.

III-186

ZAMORA - DIRECT

1 Q Is that the common feeling in your neighborhood that  
2 those type of things happen to you while you're walking  
3 around?

4 A At certain times, yes.

5 Q Now, let's speed up a little bit, getting a little  
6 older around twelve, thirteen, fourteen. Generally, do the  
7 problems go away, get worse, change, you tell us?

8 A I think they get worse for a teenager because gangs  
9 are always looking for more people and if they feel they can  
10 harass you and harass you and you're in their neighborhood  
11 eventually you'll give into them and a lot of kids do. A lot  
12 of kids don't have a choice as to whether they can avoid it or  
13 take a different route for example.

14 Q Okay. When you say take a different route, what do  
15 you mean by that?

16 A Going around them, taking a different street. But  
17 it's kind of hard because everywhere you go, on every street  
18 you find them.

19 Q Now, let me ask you as a young man living in this  
20 neighborhood, were you ever approached or any interactions  
21 that the gang people would have with you at this time frame?  
22 A young man in your teens?

23 A There were times where they would try to persuade me  
24 to join a gang or they would, you know, tell you about all the  
25 lifestyle or they would tell you if you didn't they would harm

III-187

ZAMORA - DIRECT

1 you or they would harm your family.

2 Q Was there a name for this type of ritual, them doing  
3 this to you?

4 A Recruiting, courting.

5 Q Recruiting or courting?

6 A Yes.

7 Q Courting, do you mean like when --

8 A Courting means --

9 Q -- boys going for girls?

10 A -- four or five guys going squared up with you and  
11 basically beating you up.

12 Q Now, you say that they told you about a lifestyle at  
13 the same time that they were threatening you, correct?

14 A Correct.

15 Q What kind of promises or ideas were they trying to  
16 convey to you in addition to the threats of brutality?

17 A Money, protection, nice cars, houses, girls. You  
18 name it.

19 Q Okay. And as a young man, did you actually see them  
20 with those type of things?

21 A Yes.

22 Q And living in those -- that area of South Central,  
23 did those type of things appeal to most young men your age?

24 A It appealed to most of the Black kids.

25 Q Okay.

III-188



ZAMORA - DIRECT

1           A     But there were -- there was a percentage of Latin  
2 kids, too, of Hispanic origin.

3           Q     And so in addition to the beatings, they're  
4 promising you protection and easy money and good things. All  
5 that sort of good stuff?

6           A     Correct.

7           Q     Did you hold out from this courting ritual?

8           A     For a little while, yes.

9           Q     Okay. And eventually you did it?

10          A     No choice.

11          Q     Okay. So, I take it then that a gang had you come  
12 into their fold and made you a member of their gang?

13          A     Correct.

14          Q     Now, how did you pick what gang you were going to be  
15 involved with? Did you -- did you go around and interview all  
16 the different gangs or how did that work?

17          A     The gang you lived closer to, in your neighborhood,  
18 automatically got first dibs on you.

19          Q     Okay. So, was there a gang in your neighborhood  
20 that was the -- was the gang that took you in?

21          A     Yes.

22          Q     Tell me about life in that environment?

23          A     Sometimes you're blind to it. You don't realize  
24 what you're doing. It may seem fun at some points, sometimes  
25 you're forced to do things. You get caught up a lot.

III-189

ZAMORA - DIRECT

1 Q Let me stop you right there for a second. You say  
2 you're forced to do things?

3 A Yes.

4 Q Who forces you to do these things?

5 A The older gang members that have been there the  
6 longest.

7 Q So they tell you to do certain things that maybe you  
8 don't otherwise want to do?

9 A Correct.

10 Q Well, don't you have a choice? Can't you just say I  
11 choose not to engage in this bad behavior or whatever it is  
12 they want you to do?

13 A It's either you do it or they'll do it to you.

14 Q So what would they have the younger people -- what  
15 kind of things did you observe that younger people had to do?

16 A Rob innocent people, shoot other gangs, jump other  
17 kids into your gang.

18 Q Now, I mean, you seem like a very articulate young  
19 man. At this time when this is all going on in your life,  
20 don't you know that shooting other gangs or -- is a wrong  
21 thing to do?

22 A When you have a lot of gang members with you, it's  
23 either you or the next man in their eyes and in your eyes at  
24 that time. They poison you with the thought that if you don't  
25 kill them they're gonna kill you, and sometimes there's

III-190

ZAMORA - DIRECT

1 nothing we can do about that.

2 Q Let me ask you this, Moses. When you're in that  
3 environment and you're having thoughts about what's good and  
4 bad and right and wrong, do you distinguish between going  
5 into, you know, other people's neighborhoods and those things  
6 versus doing other violence on other gang members? I mean is  
7 it less hard to do violence on other drug dealers or gang  
8 members or that thing, is that what's taught to you?

9 A It's hard both ways. It's hard to hurt -- it's hard  
10 to hurt your enemy and it's hard to hurt innocent people but  
11 like I said before, if you don't do it then they'll do it to  
12 you.

13 Q Is it more expected or not, in your environment,  
14 that violence will occur on your rivals or your enemies, that  
15 sort of thing?

16 A Yes.

17 Q That's -- goes without saying?

18 A Yes.

19 Q Okay. Now, tell me about being involved in a gang  
20 or something like that and walking around your own  
21 neighborhood. Do they have -- I'm kind of -- they call them  
22 turfs or neighborhoods or areas?

23 A Yeah, turf.

24 Q Turf. Now, compare being a member of a gang to not  
25 being a member of that gang and walking around the designated

III-191

ZAMORA - DIRECT

1 turf. Is it harder or easier?

2 A From a standpoint of regular normal people that  
3 don't gang-bang, it's -- it's kind of hard. They don't --  
4 it's something like they don't really see you. But being from  
5 a gang, if you're walking in your own turf then everyone's  
6 really like afraid of you. You feel safer, you feel you own  
7 this, you feel my boys can watch me, I can walk where I want  
8 to walk, you know. And I don't have to worry about guys  
9 harassing me like they used to when I wasn't gang-banging.

10 Q How about if you wander into another neighborhood  
11 where you have to walk a far distance, what's that like?

12 A It's having to watch your back constantly. It's  
13 having to wonder who's watching me, you know. It's having to  
14 wonder who's driving the car coming behind you.

15 Q Maybe if you give us a personal experience, can you  
16 think of a time when you found yourself far away from your own  
17 home area or home turf in a rival gang's turf? Do you have  
18 any experiences like that?

19 A Yes, I was --

20 MR. GUYMON: Judge, I would object, it's the same  
21 objection.

22 THE COURT: Overruled.

23 THE WITNESS: I was picked up in 1990 -- I believe  
24 it was '98, I was picked up on a assault charge and the police  
25 picked me up and at first I was arrested. I told I was gonna

ZAMORA - DIRECT

1 go get booked, take down to the station, go to court or  
2 whatever. As we drove, I guess they changed their mind so  
3 they drove far, about -- I stayed in the sixties, closer to  
4 the seventies, and they drove me and dropped me off in the  
5 thirties, which is about three or four miles from house. And  
6 of course, over there was rival gangs, gangs that we didn't  
7 get along with 'cause of color, and that's just the way it  
8 was. They would -- they took my money --

9 Q Who did?

10 A Police did.

11 Q Okay.

12 A So I couldn't make a phone call, dropped me off, and  
13 basically left you there for whoever found you. If the rival  
14 gang found you, it wasn't on them.

15 Q Okay. Was this an experience that you think, again  
16 was extremely unique to you or had you heard that this was  
17 something that happened in your community?

18 A It happened to other members of my gang and I'm  
19 pretty sure it happened to other people.

20 Q At least that's the feeling in your community?

21 A Yes.

22 Q So I take it that if some kind of violence was  
23 imposed on you or people near you that the police wouldn't be  
24 the first people that you turn to?

25 A No, of course not.

III-193

ZAMORA - DIRECT

1 Q Now, you know all the places where Johnnisha lived  
2 during her life? Your girlfriend Johnnisha?

3 A I'm familiar with some of the areas, yes.

4 Q Okay. And you knew her brother, John, over here.  
5 You've meet him before, right?

6 A Yes.

7 Q Now, you know -- or it's come to your attention that  
8 he was involved in another gang that wasn't the same gang as  
9 yours?

10 A Correct.

11 Q Those are called the Brims or something like that?

12 A From my knowledge, yes.

13 Q Okay. Do you have any personal knowledge of John or  
14 anything that John did while he was in a Brim gang?

15 A No, none.

16 Q Okay. Have you heard that there was a reputation  
17 that the Brims were violent people or something like that?

18 A It goes around. You hear of different gangs but you  
19 really don't focus on the gang like -- we really didn't focus  
20 on Brims --

21 Q Okay.

22 A -- even though they were Bloods and we were Crips.

23 Q Okay.

24 A We really didn't focus on them, we had to focus on  
25 the Bloods that were close to us.

III-194

ZAMORA - DIRECT

1 Q Now, in any particular gang, yours because you know  
2 about it, are there some people who are more violent than  
3 other people?

4 A Yes.

5 Q Okay. And that's probably your common experience  
6 that in anyone that you interact with, any other gang or  
7 something like that, some are more violent than others?

8 A Yes.

9 Q Okay. And everybody's a little bit different?

10 A Correct.

11 Q Now, are you still active in that kind of life  
12 today?

13 A No.

14 Q Okay. So you got away from that?

15 A Yes.

16 Q How long did it take you after starting -- before  
17 how many years before you got away from that?

18 A From when I got courted on?

19 Q Yeah.

20 A Close to four years.

21 Q Okay. And how did you -- did you just hand them a  
22 letter of resignation or something and say I'm not a member of  
23 your gang anymore? Is that the way it works?

24 A No.

25 Q What did you have to do?

III-195

ZAMORA - DIRECT

1 A I had to leave everything behind.  
2 Q Can you tell -- I'm sorry.  
3 A Everything means me, my friends, and my family.  
4 Q Did you tell people where you were going?  
5 A No.  
6 Q You just left?  
7 A Yes.  
8 Q Now, you've seen your family since that time, right?  
9 A Yes.  
10 Q Okay. So some time passed, some months or something  
11 like that?  
12 A Yeah, that's correct.  
13 Q Okay. And when you got back didn't they say, oh, we  
14 wondered where you were, how come you're not back or something  
15 like that? How did that work?  
16 A Well, when I got back most of the guys that were  
17 gang-banging when I was there were locked up or moved away to  
18 -- with their families. If like say they moved to like  
19 Chicago or something or some of them ended up dead.  
20 Q And now you've moved away from there all together as  
21 far as that neighborhood goes?  
22 A That's correct.  
23 Q Okay. And you've had the ability to have some  
24 education?  
25 A Yes.

III-196



ZAMORA - DIRECT

1 Q You went to college?

2 A Correct.

3 Q Okay. Did you complete that?

4 A I took a full year in mass media.

5 Q A year?

6 A Yes.

7 Q Okay. Now, I know you're trying to make a life with  
8 Johnnisha and your child, do you think that your particular  
9 experience in this lifestyle helped you, hurt you, messed you  
10 up, I mean what is it?

11 A At that time I didn't think about it. Now, I look  
12 back on it and I feel I missed out on a lot. I was basically  
13 almost held against my own will, but it wasn't against my own  
14 will, it was just out of fear. Fear that my gang would try to  
15 hurt my family if I tried to walk away from it or try to hurt  
16 me because they felt I was doing a good job for them or, you  
17 know, stuff like that.

18 Q Let me ask you, growing up did you have a dad?

19 A Yes.

20 Q And do you have close bonds with your dad?

21 A To a certain extent.

22 Q Okay. When you're a little kid and things like  
23 that, your dad was there for you?

24 A Yeah.

25 Q Let me ask you this, Moses, are you familiar with

III-197

ZAMORA - DIRECT

1 once you get into a gang, common practice, sometimes, that one  
2 of the gang members there has interaction with the new person  
3 that they brought in?

4 A Yes.

5 Q Okay. And just generally speaking, how does -- how  
6 does that work? What happens there?

7 A As far as the members that are there already?

8 Q With the new people, yeah.

9 A The new people are like recruits so what it is is if  
10 it's a big gang then the older members have a -- have a  
11 decision to make. You can either be your own or you can be a  
12 second to them, which is like a baby to them.

13 Q Okay.

14 A Which means whatever they require of you you have to  
15 do.

16 Q So if there was people talking about -- I don't want  
17 to be specific, if there was a Joe, if there was someone named  
18 Joe in the gang and there'd be a Joe and a baby Joe, is that  
19 what you're saying perhaps?

20 A Yes, a Baby Joe or a Joe II.

21 Q Joe II? So, like a -- well, I'll just use the  
22 example we've all been talking about, if someone came in and  
23 they gave them the Deco, he would also be known as Deco II or  
24 maybe Baby Deco, something like that?

25 A It would be like a battle between -- it all depends

III-198

ZAMORA - DIRECT

1 on the individual joining the gang, but --

2 Q Well, let me just ask you this. If there is -- I  
3 don't want to call it a mentor, because I think that's joke to  
4 humanity, but if you called it -- someone in the gang who  
5 decides that you belong to them or you're their second for a  
6 new recruit --

7 A Mm-hmm.

8 Q -- would it be common for them to make you adopt the  
9 same name?

10 A Yeah, you had to.

11 Q Okay. Okay. And they basically became the main  
12 authority figure for you in the gang, is that correct?

13 A Exactly.

14 Q Okay. So they're the one that are guiding you and  
15 teaching you --

16 A Everything they know.

17 Q -- everything they know?

18 A Yes.

19 Q About what you do, correct?

20 A Yes.

21 Q What the laws are?

22 A Yes.

23 Q What you're required to do, what's right to do,  
24 those type of things they're telling you?

25 A Along with the other OGs, yes.

III-199

ZAMORA - CROSS

1 Q Okay. But there's usually one person that takes a  
2 role, is that your --

3 A Yes.

4 Q Okay. And the impressionable new kid who comes in,  
5 he doesn't say I want that one or I want that one or I want  
6 that one, does he?

7 A No, you don't have a choice.

8 Q It goes the other way?

9 A Yes.

10 MR. FIGLER: Pass the witness.

11 MR. GUYMON: Judge, may we approach?

12 THE COURT: Sure.

13 (Off-record bench conference)

14 THE COURT: Cross.

15 CROSS-EXAMINATION

16 BY MR. GUYMON:

17 Q Mr. Zamora, I take it that you grew up in a -- in a  
18 rough area?

19 A Correct.

20 Q In many ways had a rough childhood?

21 A In some ways, yes.

22 Q You didn't grow up in a particularly affluent  
23 neighborhood or with a lot of money?

24 A No.

25 Q You didn't grow up in a big home or have a lavish

III-200

ZAMORA - CROSS

1 lifestyle?

2 A Correct.

3 Q That at some point in time you were jumped into the  
4 gang?

5 A Correct.

6 Q You indicated that in many ways you were blind to  
7 it, perhaps forced?

8 A Correct.

9 Q There were times however that gang life looked fun?

10 A It was -- that's the way they made it seem.

11 Q Okay. And through your experience you learned that  
12 it wasn't so fun?

13 A Sometimes.

14 Q You learned a pretty good bit about gang life once  
15 you became a gang member?

16 A Correct.

17 Q You didn't know Donte Johnson on the streets of Los  
18 Angeles though, did you?

19 A No.

20 Q You had heard of the Six Deuce Brims, that  
21 particular gang, a Blood gang, a rival gang from yours?

22 A It had been brought about.

23 Q Excuse me?

24 A It lingered in the area.

25 Q Okay. And in fact, Harvard Park's an area there

III-201

ZAMORA - CROSS

1 that the Six Deuce Brims claimed?

2 A I'm not sure about that.

3 Q Are you familiar with Harvard Park?

4 A I'm familiar with Harvard Park.

5 Q You know the area?

6 A Yes.

7 Q Is that an area that was very near to where Donte  
8 grew up or do you even know where Donte grewed [sic] up --  
9 grew up?

10 A I knew -- I say about a couple blocks, yes.

11 Q Okay.

12 A Harvard Park was more on the main street.

13 Q And tell me, based on your knowledge, was there a  
14 lot of Bloods in the area that Donte Johnson grew up at?

15 A I didn't go around that area.

16 Q Okay. Because that wasn't your area, you were a  
17 Crip?

18 A Correct.

19 Q And the Bloods stayed in one area in one  
20 neighborhood and the Crips stayed in another because they were  
21 rivals?

22 A Yes.

23 Q Okay. And you would agree that with this gang life  
24 there were innocent people that got hurt behind the gangs?

25 A Yes.

III-202

ZAMORA - CROSS

1 Q That were wounded by gunfire because of gangs?

2 A Yes.

3 Q Innocent persons robbed because of gang members?

4 A Yes.

5 Q And the youngsters that get recruited ultimately  
6 begin to commit acts of violence because that's part of the  
7 gang family and doing what's asked of you?

8 A Correct.

9 Q And the youngsters begin to move up the ranks within  
10 the gang organization?

11 A Yes.

12 Q Someone that's a baby gangster somehow gets stripes  
13 as they commit more crimes?

14 A That would only go if you're a bigger, like in his  
15 case he said Deco. That would only be decided by big Deco.

16 Q Okay. But Baby Deco by doing criminal acts can  
17 somehow become more than just the little youngster?

18 A He would be -- he would be required to do things and  
19 it would -- it would be where the bigger guys would be like  
20 well, he's doing a good job. It's almost like playing ball  
21 and you're scoring like thirty points. You're like ahead of  
22 the game.

23 Q Okay. And as you're scoring thirty points you're  
24 becoming the head of the game?

25 A Not necessarily, you still got your coach.

III-203

ZAMORA - CROSS

1 Q Okay. But at some point in time you become sort of  
2 the MVP of the group --

3 A Depends.

4 Q -- if we talk about points and scoring and so forth?

5 A Depends.

6 Q There are such things as soldiers in the gang life,  
7 is there not?

8 A Well, mostly all of them are considered soldiers.

9 Q Okay. And at some point in time you become a  
10 general?

11 A Not necessarily.

12 MR. SCISCENTO: Your Honor, I'm going to object to  
13 this.

14 THE COURT: What is the objection?

15 MR. SCISCENTO: Well, I don't see the relevancy, I  
16 don't see the area that we've talked about on direct  
17 examination and I know where Mr. Guymon's going on this and --

18 THE COURT: Overruled.

19 BY MR. GUYMON:

20 Q Soldiers can become generals, can't they?

21 A Like I said, not necessarily.

22 Q But they can, correct?

23 A Maybe.

24 Q And, in fact, people become perhaps more known in  
25 their gang by how crazy they are on the streets?

III-204



ZAMORA - CROSS

1 A Not all the time, sometimes, yes.

2 Q By how violent they are?

3 A True.

4 Q By making a name for their -- themselves and for  
5 their gang?

6 A No, you're really making a name for your bigger guy.

7 Q All right. For your bigger guy. But as you make a  
8 name for your bigger guy, you're gonna go -- you're gonna be  
9 noticed within your gang?

10 A Your bigger guy will put you out there.

11 Q Okay. And you have no personal knowledge that Deco  
12 even had a bigger guy, do you?

13 A Like I said at the time, I didn't know Deco.

14 Q Okay. And you don't know that Deco was acting under  
15 the direction of a bigger guy, do you?

16 A I didn't know Deco then.

17 Q And Deco's gang is down in South Central Los  
18 Angeles, correct?

19 A Correct.

20 Q It is not located here in Las Vegas, Nevada? This  
21 is not his gang territory?

22 A Gangs travel, with time.

23 Q Okay. Do you have personal knowledge that somehow  
24 Deco brought his gang out here?

25 MR. SCISCENTO: Objection, Your Honor.

III-205

ZAMORA - CROSS

1 THE WITNESS: No.

2 THE COURT: Overruled.

3 BY MR. GUYMON:

4 Q You have no knowledge of that, do you?

5 A No.

6 Q You would agree that there are those in your  
7 neighborhood, such as yourself, that made -- that have made a  
8 success out of themselves?

9 A As far as?

10 Q Well, you left the gang life?

11 A Correct.

12 Q You're not -- you said you're not banging anymore,  
13 right?

14 A Correct.

15 Q Okay. You left it behind?

16 A Correct.

17 Q It was tough to do?

18 A Not at the time it wasn't tough to do, it was just I  
19 didn't wanna die.

20 Q Okay. And you left?

21 A I ran away, true.

22 Q You put it behind you?

23 A Along with my family and friends.

24 Q All right. And Donte Johnson left South Central Los  
25 Angeles and came to Las Vegas, didn't he?

III-206

ZAMORA - REDIRECT

1 A I didn't know him then.

2 MR. GUYMON: I have no other questions.

3 THE COURT: Any redirect?

4 MR. SCISCENTO: May we approach, Your Honor?

5 THE COURT: Sure.

6 (Off-record bench conference)

7 THE COURT: Do you have any redirect, Mr. Sciscento?

8 MR. FIGLER: I'll just do some -- brief, Judge.

9 THE COURT: Oh, I'm sorry, it was you, David. Okay.

10 REDIRECT EXAMINATION

11 BY MR. FIGLER:

12 Q A lot of kids come into this lifestyle, correct?

13 A Correct.

14 Q It's all around you in South Central, right?

15 A True.

16 Q They all have different backgrounds, different  
17 limitations, correct?

18 A Yes.

19 Q Different experiences that they come in with, right?

20 A Some, yes.

21 Q Okay. Would you agree that in general, no matter  
22 how hard you try to pull out or do what you do that being  
23 drawn in to and having to live that lifestyle messes people  
24 up?

25 A Some yes.

III-207

ZAMORA - REDIRECT

1 Q Okay. Depends on the individual?

2 A Correct.

3 Q People react differently to different stimulus they  
4 say in the world?

5 A Exactly.

6 Q You have a child yourself?

7 A Yes.

8 Q Are you going to do everything that you can to keep  
9 that child away from this lifestyle?

10 A Of course.

11 Q It's going to be hard though, isn't it?

12 A It will be. That's something -- it's a challenge  
13 for me.

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

15 MR. GUYMON: Court's indulgence. No other  
16 questions, Your Honor.

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

18 Call your next witness, please.

19 THE WITNESS: Thank you.

20 MR. FIGLER: Thank you, Your Honor. Nancy  
21 Hunterton.

22 (Off-record colloquy)

23 NANCY HUNTERTON, DEFENDANT'S WITNESS, IS SWORN

24 THE CLERK: Please have a seat. State your full  
25 name and spell your last name for the record.

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ORIGINAL

297

FILED IN OPEN COURT

JUN 19 2000

DISTRICT COURT  
CLARK COUNTY, NEVADA

SHIRLEY B. PARRAGUIRRE, CLERK

\*\*\*\*\*

BY *Carol D'Alora*

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 2 - P.M. SESSION  
WEDNESDAY, JUNE 14, 2000  
VOLUME III

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANT:

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JOSEPH S. SCISCENTO

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District Court

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produced by transcription service.

CE

1 LAS VEGAS, NEVADA, WEDNESDAY, JUNE 14, 2000, 8:12 A.M.

2 (Jury is present)

3 THE COURT: Call your first witness, please.

4 MR. FIGLER: Your Honor, can I ask for a five-minute  
5 continuance before we call the first witness?

6 THE COURT: It's gonna be five minutes?

7 MR. FIGLER: Five minutes.

8 THE COURT: And have the jury go back out yet again.  
9 Let me have the admonition.

10 MR. FIGLER: I could -- I could leave, Your Honor.

11 THE COURT: What?

12 MR. FIGLER: I could go outside, if you don't want  
13 to --

14 THE COURT: Oh, so you got a witness to call?

15 MR. FIGLER: I have a witness -- No, no. What I'm  
16 saying is that I can go out for five minutes and you don't  
17 have to unsettle the jury.

18 THE COURT: No, I mean, I don't want them just  
19 sitting there.

20 During this recess you're admonished not to talk or  
21 converse among yourselves or with anyone else on any subject  
22 connected with this trial, read, watch or listen to any report  
23 of or commentary on the trial, or any person connected with  
24 it, by any medium of information, including, without  
25 limitation, newspaper, television and radio, or to form or

III-2

1 express any opinion on any subject connected with the trial  
2 until it's finally submitted to you.

3 Mr. Figler represents five minutes and we hope  
4 that's what it will be.

5 (Jury recessed at 8:13 a.m.)

6 THE COURT: Okay, the jury's outside the room. Did  
7 you want to put something on the record, Mr. Figler?

8 MR. FIGLER: Yes, Judge. I can represent to the  
9 Court that myself and Mr. Sciscento and our investigative  
10 staff were together with the victim's family working on  
11 various matters on this case until well past midnight last  
12 night.

13 THE COURT: What's well past midnight? As an  
14 officer of the Court, I assume you're gonna tell me the truth,  
15 not being under oath. How late?

16 MR. FIGLER: I got back home at 12:40, so well --  
17 minutes past midnight.

18 THE COURT: I don't know where you live, Mr. Figler.  
19 What time did you and your staff stop working?

20 MR. FIGLER: I can represent to the Court that I was  
21 with John here 'til about 11:15 and then went back over to the  
22 office and continued working on various jury instructions in  
23 preparation for today.

24 The main problem that we've had is --

25 THE COURT: The question I asked you was you

III-3

1 asserted well past midnight. All I asked you was a simple  
2 question.

3 MR. FIGLER: Between 12:00 and 1:00 o'clock, Your  
4 Honor, is when I finally got home.

5 THE COURT: Well, 12:01 is between 12:00 and 1:00.  
6 Can you do better than that?

7 MR. FIGLER: About 12:40, Your Honor.

8 THE COURT: Thank you. Go ahead.

9 MR. FIGLER: And I'm not sure how late I left our  
10 investigator working, but she was with the family and Mr.  
11 Sciscento as well. The thing is that the family, they're not  
12 -- they don't know about flying, they've never flown, so they  
13 had to bus in. This is all --

14 THE COURT: They arrived Sunday, right?

15 MR. FIGLER: No, Your Honor, they didn't. They  
16 arrived on --

17 MR. SCISCENTO: Monday night.

18 MR. FIGLER: Monday, Monday night?

19 MR. SCISCENTO: Monday night.

20 MR. FIGLER: Monday night. We started going over  
21 things with them then and we've been preparing as much as we  
22 can. The thing is that we asked the Court in chambers for a  
23 one-hour continuance to be able to review the dailies, because  
24 they're just prepared --

25 THE COURT: What does the dailies have to do with

III-4



1 your side of the case, which you knew was going to be today,  
2 about, oh, 3:00 o'clock on Friday?

3 MR. FIGLER: You know, Your Honor, when I went back  
4 to the office yesterday is when we had to digest what was  
5 going on, what case was presented by the prosecution. This is  
6 the time when you do strategy and this sort of thing. We got  
7 back there after 5:00, 5:30. Mr. Kohn stayed 'til 8:00  
8 o'clock with us. While we were going through that material,  
9 we had to keep pushing off the family.

10 THE COURT: What do you need this extra 45 minutes  
11 to an hour to do, Mr. Figler, that you haven't done,  
12 regardless of whether you're blame-worthy for doing it or not?  
13 What do you need it for?

14 MR. FIGLER: We need to craft our closing, we need  
15 to review the daily, we need to see what Mr. Craig actually  
16 said, we need to do additional strategy with regard to, when  
17 we're talking about instructions, because of the instructions  
18 that are presented to us and, most importantly, we need to  
19 just sit down with our witnesses and go over a lot of the  
20 pictures to make sure -- for the smooth and efficient  
21 procedure in Court, that we've got the right witness for the  
22 right picture that's gonna come in and the right piece of  
23 information. We haven't arranged for a video camera to come  
24 in.

25 THE COURT: Yeah, I don't want to waste a lot of

III-5

1 extra time, Dayvid, lecturing you, but I tried cases too and I  
2 usually got up at 4:00 in the morning and, if I needed to talk  
3 to a witness who was gonna start at 8:00, I talked to them at  
4 6:00, but this is a death case. Whether you did it the way I  
5 would do it, I told you and Joe and Gary and Bob that the jury  
6 shouldn't be inconvenienced, that if you needed additional  
7 time, or hearings outside the presence of the jury, you got my  
8 home number, call me before a second -- certain hour. We got  
9 all these people down here and now, at 8:10, you waltz in and  
10 say you need another hour.

11 Tell the jury there's some things that we've got to  
12 do. 9:30. Thank you.

13 (Court recessed at 8:25 a.m. until 9:28 a.m.)

14 (Jury is present)

15 THE COURT: Folks, I want to just make a little  
16 comment. Obviously, had I known yesterday evening that we  
17 were going to come in and then go out for an hour and a half,  
18 I wouldn't have had you come down here before 8:00 o'clock,  
19 nor, frankly, would I have been down here before 9:00 o'clock,  
20 but these are very serious matters and we try to do the best  
21 we can in terms of planning the schedule. And in these cases,  
22 where the stakes are so high, we don't always make the  
23 appropriate or correct guess as to how the schedule's gonna go  
24 and I apologize.

25 As I said, these are serious matters and it was

III-6

CAIN - DIRECT

1 unanticipated and necessary and I'm sorry for the  
2 inconvenience and hope it doesn't in any way interfere with  
3 your mood for seeing the rest of this done as fairly as  
4 possible.

5 Who's your first witness, Mr. Figler, first witness  
6 for the day?

7 MR. FIGLER: Eunice Cain, Your Honor.

8 THE CLERK: Please remain standing and raise your  
9 right hand.

10 EUNICE CAIN, DEFENDANT'S WITNESS, IS SWORN

11 THE CLERK: Please have a seat.

12 And state your full name and spell your last name  
13 for the record.

14 THE WITNESS: My name is Eunice Cain. My last name  
15 is spelled C-A-I-N.

16 DIRECT EXAMINATION

17 BY MR. FIGLER:

18 Q Good morning, Ms. Cain.

19 A Good morning.

20 Q Are you related to somebody that's in this courtroom  
21 right now?

22 A Yes, I am.

23 Q And who is that person?

24 A John Lee White, Jr.

25 Q Okay. And can you point him out for us so everyone

III-7

CAIN - DIRECT

1 knows who we're talking about?

2 A Yes. He's sitting to the right.

3 Q Okay. And how are you related to him?

4 A I'm his mother.

5 Q You're his natural mother? You gave birth to him?

6 A Yes, I gave birth to him.

7 Q Okay. Ms. Cain, I want to start from the beginning  
8 and perhaps you could tell the jurors how or when you met  
9 John's father.

10 A I met John's father like when I was at the age of  
11 17, that's when I met his father, younger, maybe a little  
12 younger than that.

13 Q Okay. And John White was --

14 A He was very abusive to me and --

15 Q Well, let me -- let me hold you up for a second.

16 A Uh-huh.

17 Q So you're saying John White, who is senior, was John  
18 White's father?

19 A Yeah, John's father, yeah.

20 Q Okay. And you're saying he was some years older  
21 than you?

22 A Yes, he was ten years older than me.

23 Q Now tell me about -- You did marry him, correct?

24 A Yes, I did.

25 Q Tell me about the process of when you were going to

III-8

CAIN - DIRECT

1 marry him or what you were gonna do when you were gonna marry  
2 him. When did you first talk about marriage with him?

3 A When I was -- I was trying to marry him, get married  
4 to him at a younger age, but it did not happen because I had  
5 to wait until I turned 18. And after then, after I turned 18,  
6 they let -- they were gonna let me marry him.

7 And he was a good guy. He was good to me and was  
8 taking care of me until after I got married to him and then,  
9 after I got married to him, he became abusive to me, you know,  
10 and my children used to sit and see him have at me then, jump  
11 on me and stuff, you know, and I think -- I was thinking that  
12 that could have had a lot to do with my son, because my son  
13 seen a whole lot of things, bad things, happen to me.

14 Q Let me hold you up there.

15 A Uh-huh.

16 Q How many children did you have with John White?

17 A Three.

18 Q Okay. And where were you living during the first  
19 few years of your marriage?

20 A I stayed on 52nd and Compton. From there I moved --

21 Q You were in Compton, California?

22 A Yeah.

23 Q Okay.

24 A Compton Avenue.

25 Q Oh, okay. And how long were you there?

III-9

CAIN - DIRECT

1           A     I would say about -- maybe about five years or  
2 something like that.

3           Q     Okay. Now you say that after --

4           A     I couldn't say --

5           Q     I'm sorry, I don't want to interrupt you.

6                     After you got married to John's father you said he  
7 became abusive to you?

8           A     Yeah.

9           Q     Can you explain what you mean by that?

10          A     Well, he used to jump on me, you know, we started  
11 fighting after I got with him, and my son, my kids, used to  
12 see it, you know.

13          Q     So you're saying your children were there when the  
14 abuse was going on?

15          A     Yeah.

16          Q     Okay.

17          A     Yeah. And so after then I separated from him, I  
18 left him. I had to get away from him due to the fact that he  
19 was doing harm in front of my children and it was very  
20 upsetting to them, you know.

21          Q     Okay, now --

22          A     And my --

23          Q     I'm sorry.

24                     Was there a time when you moved away from that first  
25 location on -- I think you said 52nd and moved to a different

III-10

CAIN - DIRECT

1 place?

2 A Yes.

3 Q Okay, why did you move to a bigger place -- or a  
4 different place?

5 A That's because I only had one child and then I had  
6 two more children after I moved. I needed a bigger place.

7 Q Okay. Now tell me what it was like and what your --  
8 how your children would react when your husband was being  
9 abusive to you. For instance, what would John do?

10 A Johnnie, well, he would always try to help me by  
11 either --

12 MR. GUYMON: Judge, could I get a foundation for the  
13 time period we're talking about, the age?

14 BY MR. FIGLER:

15 Q About how old -- You're gonna tell me about an  
16 instance or something like that. Let me ask you this. About  
17 how old is John when you're talking about right now?

18 A He probably was no more than about six, five or six,  
19 something like that.

20 Q So about 1982, 1983?

21 A Yeah.

22 Q When he's five or six?

23 A Yeah.

24 Q Okay. So what would John hear -- do when your  
25 husband was being abusive to you? How would he react?

III-11

CAIN - DIRECT

1           A     Well, at one time he was trying to -- I had went  
2 back to him and he tried to throw me out of the Frontier Hotel  
3 and, my son, he ran for help for me and by him opening the  
4 door and going there for me I ran out behind him. And I got  
5 him and we both went to my mother's and I got help. I called  
6 the policemen there and they took me back to get my other two  
7 kids. And after they -- after I got my two kids, they took  
8 him to jail.

9                     And then on another statement that I had, that I was  
10 saying, that when we was staying in the projects I always  
11 wanted to move from there with my kids when they was little.  
12 You know, I didn't want 'em to grow up over there. And he was  
13 abusive to me there also, you know, and so I finally -- Well,  
14 I was more or less made to like move from there because he  
15 kept harassing me while I was there, you know, so I moved from  
16 there with my children due to the fact he came through my  
17 window with a homemade cocktail.

18           Q     Let me slow you down for a second. Let me tell you,  
19 'cause I forgot to do this, I want to show you a picture --

20           A     Uh-huh.

21           Q     -- that's been marked as Proposed Defense Exhibit B.

22           A     Uh-huh.

23                     MR. FIGLER: And I'm showing it to counsel.

24 BY MR. FIGLER:

25           Q     Do you recognize who's in this picture?

III-12



CAIN - DIRECT

1 A Yes, I do. That's my baby.

2 Q That's your baby, John White?

3 A Yes.

4 Q And this is what he looked like when he was --

5 A When he was born, yes.

6 Q Okay.

7 MR. FIGLER: Your Honor, I'd move for the admission  
8 of Defense Proposed Exhibit B.

9 MR. GUYMON: Submitted, Your Honor.

10 THE COURT: Admitted.

11 (Defendant's Exhibit B admitted)

12 BY MR. FIGLER:

13 Q That's your baby there?

14 A Yes, it is.

15 Q Okay. So now, Ms. Cain, we were talking about your  
16 husband and did you say he was physically abusive to you too?  
17 Would he hit you or anything like that?

18 A Yeah, also, yeah, 'til he left a scar and like then  
19 knocking out both of my teeth that I don't have now.

20 Q I'm sorry, he knocked out your teeth?

21 A Yes, he did.

22 Q Okay. When John saw your husband beating on you,  
23 you indicated that sometimes he would leave the house to go  
24 get help.

25 A Yeah, he would.

III-13

CAIN - DIRECT

1 Q Is there any time he stayed there?

2 A Yes, yes, when he could not get to the door or  
3 something, he did. He always tried to help his mom though.

4 Q Okay. And what would he physically do if he stayed  
5 in the house?

6 A He would try and pick up something -- He was very  
7 short. He was so little. You know, he was a short kid, you  
8 know, and he was a very -- he was a very smart kid, you know,  
9 very smart when it came to knowing right from wrong and to  
10 help when he see that I needed help, you know.

11 Q Okay. Now did he physically do anything? Did he  
12 try to stop your husband or anything like that?

13 A No. He would just always try to get help, you know.

14 Q Now you were talking about an instance, after your  
15 husband had left, and he came in through the window. Why  
16 don't you tell the jury about that.

17 A Yes, he had -- he had -- Me and him had separated  
18 after he had knocked my teeth out. He came back to the house  
19 and he -- I was standing over the stove cooking and he came  
20 down through the -- got up through the vent. We had like  
21 little vents and he came through there with a cocktail, which  
22 was homemade by him.

23 Q Okay, let me stop you there. What do you mean when  
24 you say a cocktail?

25 A It was a bomb, but it was homemade. It was made --

III-14

CAIN - DIRECT

1 It looked like a bottle.

2 Q Have you heard -- Like a Molotov?

3 A Yeah, yeah, that's what it --

4 Q Is that --

5 A Yeah, that's what --

6 Q Okay, so your husband, when you were separated, came  
7 in through this vent and he's got this bottle way up in there?

8 A Yeah. Then he come and he said that if I didn't --  
9 He said that if I have sex with him he would leave me alone,  
10 he wouldn't bother me and my kids no more. He said that he  
11 would go and then leave me alone, so I did. And after I did  
12 that, that night he was -- well, he was talking about blowing  
13 -- if I didn't, what he would do is take me and my kids' life,  
14 so what I did is I had sex with him and after then I left  
15 there, the next day. I sold all my stuff and I took my kids  
16 and moved with my mom from there.

17 Q Okay. Now were your children home when all of this  
18 was going on?

19 A Yes, they were. They were sleeping, except for  
20 John. My girls were asleep, but John was woke.

21 Q Okay, so John saw this go on?

22 A Yeah.

23 Q Now you had two other children. What were their  
24 names, besides John, the two girls, the names of your two  
25 other children?

III-15

CAIN - DIRECT

1           A     Johnnisha, Johnnisha White, Johnnisha Denise White  
2 and Eunnisha Faye White.

3           Q     Okay. Now how was your husband to say Eunnisha?

4           A     Johnnisha's his kid.

5           Q     Johnnisha --

6           A     But Eunnisha -- Eunnisha he would always say it was  
7 not his baby, which was his baby, you know. All three of my  
8 children are his, but he would always hurt me into saying that  
9 that was not his baby and she looks just like him. You know,  
10 all three of my children were his. I didn't know no other men  
11 but him at that time.

12          Q     Now would you say that most of the time, when there  
13 was violence in your house from your husband, that your  
14 children were around?

15          A     Yes, they was.

16          Q     Now I want to talk a little bit about your life.

17          A     Uh-huh.

18          Q     Was there a time in John's life over here --

19          A     Uh-huh.

20          Q     -- that you had some problems being a parent for  
21 him?

22          A     Yes, I did, after me and his father separated. You  
23 know, things got harder for me, so --

24          Q     Let me ask you this. How many times did you get  
25 back together again with John's father after the violence

III-16

CAIN - DIRECT

1 started?

2 A Let's see, I think maybe like twice, twice, and that  
3 last time, that was it.

4 Q Okay.

5 A The last time from the Frontier.

6 Q So now after you're finally separated from him, you  
7 were gonna tell us something about your ability to parent and  
8 what was that?

9 A Well, I started using drugs.

10 Q Okay.

11 A Due to the fact that I was having problems with my  
12 living, you know. I needed --

13 Q Let me ask you this, Ms. Cain.

14 A Uh-huh.

15 Q What kind of drugs were you using at this time?

16 A I was using Sherm and PCP then.

17 Q Okay, what is Sherm?

18 A PCP.

19 Q Okay, is there something special about the PCP?

20 A It's just a drug, something, you know, like a  
21 cigarette.

22 Q Okay. Do you know if Sherm means that it's dipped  
23 in something?

24 A Yeah.

25 Q What's it dipped in?

III-17

CAIN - DIRECT

1           A     I don't know. I don't know how to say it, but I  
2 know they calls it water.

3           Q     Is it --

4           A     You know, some kind of water with a chemical.

5           Q     A chemical?

6           A     Yeah.

7           Q     And do you know if it's embalming fluid?

8           A     Yeah.

9           Q     Does that sound right?

10          A     Yeah.

11          Q     Okay. So what were you doing with the Sherm? How  
12 do you use it?

13          A     We would smoke it.

14          Q     You would smoke Sherm?

15          A     Uh-huh.

16          Q     So you started smoking Sherm around this time.

17                How old is John at this time when you're starting to  
18 smoke the Sherm?

19          A     He was -- He should have been about eight or  
20 something like that. Well, during that time he was like  
21 removed from me, you know.

22          Q     So was that a time when he was removed from you,  
23 when he was still young?

24          A     Yeah, but I was always -- you know, I would always  
25 see him, but we was like not together.

III-18

CAIN - DIRECT

1 Q Tell me more how smoking this PCP dipped in  
2 embalming fluid affected you. What did it do to you?

3 A It had me crazy. You know, it had me to -- you  
4 know, I was already having problems and it just made it worse,  
5 you know, more --

6 Q How did it make you crazy? What are you talking  
7 about?

8 A More thinking harder, more pressure. You know; it  
9 was a high, but it also was pressure to me, you know.

10 Q And why were you using the Sherm now?

11 A Problems, trouble, I mean, things were on my mind.  
12 I wanted to be with my kids and I couldn't. You know, I was  
13 going to see 'em and then I had a stepfather who was like -- I  
14 would go there to see my babies and he would like tell me and  
15 he would say -- like say I see my child doing something wrong  
16 and I would go to discipline the child and he would say,  
17 "That's not your child no more, they're not your kids no more  
18 and you can't, you know, tell 'em that." In other words, I  
19 can't chastise 'em and they're in my mother's custody, so I  
20 won't be getting 'em back.

21 You know, so all that stuff just, you know, built up  
22 and I would be thinking about it and I would go away, I would  
23 leave there mad, you know. Every time I'd go there he would,  
24 you know, have me upset when I leave about my kids. I was  
25 hurting enough without being there with 'em, you know.

III-19

CAIN - DIRECT

1 Q So now at this time you had sisters of your own?

2 A Yes, yeah.

3 Q Now how were they involved with your PCP use?

4 A Well, there was one that, after a certain amount of  
5 time, I wouldn't stay with her. Well, when I first -- To keep  
6 from going and staying with my mom, now this is like before I  
7 started using heavy, to keep from going to my mom's I would go  
8 to my sister's. I was paying her rent to stay there with her,  
9 but I wouldn't stay because she had children, so I would.--

10 Q And what's your sister's name that you're talking  
11 about?

12 A Her name was Wanda Faye.

13 Q Faye?

14 A Yeah. And so I would go and stay with my other  
15 sister.

16 Q And what's her name?

17 A I would go over to her house because -- Her name was  
18 Pam. They had -- They had children, like maybe about three or  
19 four boys or something like that and I would like -- and she  
20 was with her husband, so I would like go to Pam's house with  
21 my kids, you know, to be out of the way of her, you know, not  
22 to be so much pressure on her. And I would also go over there  
23 because I know me and Pam would, you know, sometimes we would  
24 smoke, you know, but this was not --

25 Q Smoke the PCP?

III-20



CAIN - DIRECT

1           A     Yeah, we would leave, yeah, and go, but -- and that  
2 became the time when one night I went and then she was already  
3 having trouble there anyway, because she was supposed to be  
4 moving from there, so one night I went and that's when they  
5 removed John from me and I have to go -- I was trying my best  
6 to tell them that me and my babies was not staying there. We  
7 were visiting there, but they said that I shouldn't have been  
8 there with the kids, so that night they took 'em from me.

9           Q     Okay, so you were --

10          A     And they --

11          Q     Were you lying to the authorities 'cause you knew  
12 that they were actually living there?

13          A     No, we wasn't.

14          Q     Okay. There were periods of time though where you  
15 were completely away from your children and you don't really  
16 know what was going on with them, isn't that true?

17          A     Yeah.

18          Q     Okay. And how often would you say you were using  
19 these drugs like PCP and Sherm at this time?

20          A     I couldn't say. I really couldn't say.

21          Q     A lot?

22          A     You know, I was using a lot, but I couldn't say  
23 exactly -- I mean, you know, like how much, how long, you  
24 know, because that happened a while. I switched then to  
25 another drug now, so, you know.

III-21

CAIN - DIRECT

1 Q Okay, let me ask you this. How old are you as you  
2 sit here today?

3 A I'm 40.

4 Q 40 years old?

5 A Uh-huh.

6 Q And do you get money from some source or --

7 A Yes.

8 Q And what's that?

9 A My eligibility for Social Security.

10 Q And what makes you eligible for Social Security?

11 A I was born with premature lungs.

12 Q Now when your children --

13 A And also, excuse me, also I have a little slowness  
14 into my appearance and thinking, okay?

15 Q Okay. When your children were ultimately taken away  
16 by the police, --

17 A Uh-huh.

18 Q -- and you were using these drugs at that time, what  
19 sort of impact did that have on you? How did that make you  
20 feel?

21 A Oh, it was awful, real awful. I mean -- I mean, I  
22 was very upset, very hurt over that.

23 Q Did you have any hope?

24 A Of them being away from --

25 Q Did you have any hope?

III-22

CAIN - DIRECT

1           A     Yes, I did. I did. I just knew that I was gonna  
2 get my babies back, but I didn't never get 'em back, no.

3           Q     And you were still using --

4           A     I tried.

5           Q     You were still using drugs?

6           A     Yeah, yeah, and the pressure was -- I tried. I did  
7 everything I could, you know. I went to school for a while,  
8 and I got of there, you know, but I did what I could to get  
9 'em back, but it didn't work.

10           MR. FIGLER: The Court's indulgence.

11                     (Pause in the proceedings)

12 BY MR. FIGLER:

13           Q     Ms. Cain, you haven't see John for some time, isn't  
14 that true?

15           A     Yes.

16           Q     Okay. Have you had a chance to see him -- I don't  
17 want to put this in your way.

18           A     No, no, I haven't.

19                     (Pause in the proceedings)

20           Q     Now let me ask you this.

21           A     Yes.

22           Q     You said just now that after the PCP and the Sherm  
23 that you changed to a different drug?

24           A     Yes.

25           Q     And what drug was that?

III-23

CAIN - CROSS

1 A Cocaine.

2 Q And what kind of cocaine were you using, what form?

3 A Rock.

4 Q Crack, rock cocaine?

5 A Yeah.

6 Q And were you using that to ease your pain or  
7 something or why were you using that?

8 A Yes, the same reason.

9 Q And you know that John here is in a real serious  
10 situation?

11 A Yes, I do.

12 Q Okay. And have you been honest with us today about  
13 your life?

14 A Yes, I have.

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

16 THE COURT: Any cross?

17 MR. GUYMON: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. GUYMON:

20 Q Good morning, Mrs. Cain.

21 A Good morning.

22 Q I take it that you have three children who you love  
23 very dearly?

24 A Yes, I do.

25 Q And you love John just like you love your other two

III-24

CAIN - CROSS

1 children?

2 A Yes, I do.

3 Q And you tried, did you not, to teach your children  
4 right from wrong?

5 A Yes, I did.

6 Q And John, at a young age, learned right from wrong?

7 A Yes, he did.

8 Q In fact, John was the kind of child that would help  
9 you when something wrong was happening to you?

10 A Yes.

11 Q Okay. It is true that John knows right from wrong?

12 A Yes.

13 Q And John was able to make choices just like your  
14 other children could make choices, isn't that true?

15 A Yes.

16 Q And some of the choices he made were right and some  
17 of the choices he made were wrong as a child?

18 A Yes.

19 Q There was choices that he made that you were unhappy  
20 with him about making?

21 A Yes, there was, very much.

22 Q And --

23 A But I didn't -- and actually didn't know about, so -

24 -

25 Q Okay, some of his wrong choices you didn't know

III-25

CAIN - CROSS

1 about?

2 A Yeah.

3 Q Okay. You would say that's probably true of all  
4 children and mothers. Sometimes children do things that they  
5 don't want their mothers to know about.

6 A Yes.

7 Q That's the same with all children and all parents.  
8 You'd agree?

9 A Yes.

10 Q Okay. Now there came a point in time when, because  
11 of your problem with Senior, your husband, --

12 A Uh-huh.

13 Q -- that you left the house and you began to use some  
14 drugs?

15 A Yes.

16 Q And you regret those choices that you made, is that  
17 true?

18 A Yes, I do.

19 Q And even while you were using the drugs, you still  
20 let John and the other children know that you loved them?

21 A Yes, always.

22 Q And John always had the love of his mother?

23 A Yes, he did.

24 Q He also always had the love of his grandmother,  
25 didn't he?

III-26

CAIN - CROSS

1 A Yes.

2 Q Your grandmother -- Your mother is a good woman?

3 A Yes, she is.

4 Q And, in fact, when you lost the children, when you  
5 lost John, ultimately John went to your mother's house?

6 A Yes.

7 Q And, in fact, you and your mother lived very near to  
8 one another for many years?

9 A Yes.

10 Q So while John was now being raised by your mother,  
11 you got to see John regularly?

12 A Yes, I did.

13 Q Okay.

14 A Yes, I did.

15 Q And you would agree that your mother did the best  
16 she could to raise you?

17 A Yes.

18 Q She loved you and she taught you right from wrong?

19 A Yes.

20 Q Would you agree that the same teachings that your  
21 mother taught you she tried to teach her grandson, who she  
22 loved?

23 MR. FIGLER: Your Honor, foundation. I mean, she  
24 wasn't in that household. I don't think she knows. She was  
25 kept away.

CAIN - CROSS

1 THE COURT: Overruled.

2 BY MR. GUYMON:

3 Q You would agree that your mother wanted to teach you  
4 and her other children right from wrong?

5 A Yes.

6 Q She's a loving woman?

7 A Yes, she is.

8 Q A woman that you love dearly?

9 A Yes.

10 Q Okay. And you would agree that your mother loved  
11 her grandbabies?

12 A Yes.

13 Q Very much so?

14 A Yes, she does.

15 Q Would you agree that -- And, in fact, you saw the  
16 love that your mother had for John?

17 A Yes, when I was there, yes.

18 Q Okay. And tell me, when John went to your mother's  
19 house, your mother's house and your house, the house that you  
20 stayed at, were right next door to one another?

21 A Yes, for a while.

22 Q Okay. And for how long a while did --

23 A I can't remember exactly, but it was for a while,  
24 because they moved away.

25 Q Okay.

III-28



CAIN - CROSS

1 A They moved farther.

2 Q When you lived next to your mother, you got to see  
3 John daily?

4 A Yes, when he was there, yeah.

5 Q Okay. And how old was John when you got to see him  
6 daily living next door to you at grandma's?

7 A He was around seven or eight.

8 Q And would you say seven or eight and maybe even up  
9 to nine or ten before he moved?

10 A Yeah.

11 Q Okay. When your grandmother -- Now let me ask you  
12 this. From seven to ten then, right around that age, your  
13 grandma tried to teach John right from wrong?

14 A Yes.

15 Q And tried to help him?

16 A Yes.

17 Q Okay. And, in fact, she was good to John, wasn't  
18 she?

19 A Yes, she was.

20 Q And there was a house over John's head and clothing  
21 and food and things like that for John?

22 A Yes.

23 Q So that he could grow up well?

24 A Yes.

25 Q Okay. In fact, your mother would make sure that

CAIN - CROSS

1 John would go to school so that he could be taught like other  
2 kids?

3 A Yes, yes, she did.

4 Q And there were kids in that neighborhood that did  
5 well, didn't they?

6 A Not that I know of. Most of 'em were bad.

7 Q Most of the kids, you say, were bad kids?

8 A Correct, yeah, uh-huh.

9 Q They started making -- The kids started making bad  
10 choices then?

11 MR. FIGLER: Argumentative, Your Honor.

12 THE COURT: Overruled.

13 BY MR. GUYMON:

14 Q The kids in the neighborhood made choices that were  
15 wrong then, true?

16 A Yes.

17 Q Okay. Now you say that your grandmother moved and  
18 John went with her then too, didn't he?

19 A Yeah.

20 Q Okay. And how often would you see John at grandma's  
21 house once John and grandma moved?

22 A It was very -- not very much once they moved.

23 Q Okay.

24 A Not very much.

25 Q And you would agree, though, that your grandmother

CAIN - REDIRECT

1 continued to try to do the best she could for John?

2 A Yes.

3 Q She continued to try to help him?

4 A Yes.

5 Q And John, nonetheless, made choices though that your  
6 mother didn't agree with?

7 MR. FIGLER: Your Honor, lack of foundation.

8 THE COURT: Sustained.

9 MR. GUYMON: Okay.

10 BY MR. GUYMON:

11 Q And John was able to make his choices as he grew up,  
12 is that true?

13 A Yes.

14 MR. GUYMON: The Court's indulgence.

15 (Pause in the proceedings)

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

17 THE COURT: Any redirect?

18 MR. FIGLER: Thank you.

19 REDIRECT EXAMINATION

20 BY MR. FIGLER:

21 Q Ms. Cain, I'm sorry, I didn't tell you that you would  
22 be asked questions by the prosecutors. I didn't think that  
23 was gonna happen and I apologize for that.

24 A Uh-huh.

25 Q Let me ask you, you said something, when I was

III-31

CAIN - REDIRECT

1 talking to you first, --

2 A Uh-huh.

3 Q -- that you felt that John was affected by the  
4 things that he saw, is that correct?

5 A Yes, uh-huh.

6 Q Do you think that that interfered with his ability  
7 to make choices?

8 A Yes, I do. Yes, I do.

9 Q Okay. And I kind of softened it before, but you  
10 know exactly what's going on here today, right?

11 A Yes.

12 Q Okay. And you're aware what some people want to do  
13 to John now, correct?

14 A Yes, I do.

15 MR. GUYMON: Judge, goes beyond the scope of my --

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

17 BY MR. FIGLER:

18 Q Does that scare you?

19 A Yes, it does, very much.

20 Q Was it a long way for you to get here from  
21 California?

22 A Yes.

23 Q You didn't fly?

24 A No, bus.

25 Q You hadn't been on a plane before?

III-32

CATN - REDIRECT

1 A No.

2 MR. GUYMON: Objection, irrelevant.

3 THE COURT: Overruled.

4 BY MR. FIGLER:

5 Q So you took the bus to come?

6 A Uh-huh.

7 Q Is it worth it for you for John?

8 A Yes, it is.

9 Q I'm sorry, that probably goes without asking.

10 MR. FIGLER: I don't have any further questions.

11 THE COURT: Any recross?

12 MR. GUYMON: Nothing, Your Honor.

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

14 THE WITNESS: Uh-huh.

15 THE COURT: Call your next witness, please.

16 MR. SCISCENTO: Your Honor, could we approach --

17 THE COURT: Sure.

18 MR. SCISCENTO: -- while the witness is coming in?

19 THE COURT: Sure.

20 (Off-record bench conference)

21 MR. FIGLER: Our next witness is gonna be Keonna

22 Bryant.

23 THE COURT: Hold on one second.

24 (Pause in the proceedings)

25 THE COURT: Would counsel approach the bench? I

III-33

BRYANT - DIRECT

1 wasn't quite through.

2 MR. FIGLER: I'll be right with you, ma'am.

3 (Off-record bench conference)

4 THE CLERK: Ma'am, please raise your right hand.

5 KEONNA BRYANT, DEFENDANT'S WITNESS, IS SWORN

6 THE CLERK: Please state your full name and spell  
7 your last name for the record.

8 THE WITNESS: My name is Keonna, K-E-O-N-N-A, last  
9 name Bryant, B-R-Y-A-N-T.

10 DIRECT EXAMINATION

11 BY MR. FIGLER:

12 Q Good morning, Ms. Bryant.

13 A Good morning.

14 Q Is there someone in the courtroom here that you are  
15 related to?

16 A Yes.

17 Q And who is that person and what is your relation?

18 A John White and he's my cousin.

19 Q Okay. Is he your first cousin?

20 A Yes.

21 Q Can you identify him in the courtroom?

22 A He's sitting right there.

23 MR. FIGLER: The record will reflect --

24 THE COURT: It will.

25 (Pause in the proceedings)

III-34

BRYANT - DIRECT

1 BY MR. FIGLER:

2 Q The woman who just walked out of the courtroom, you  
3 know her, of course?

4 A Yes.

5 Q And what's her relation to you?

6 A She's my aunt.

7 Q Okay, so your mother and her mother are sisters?

8 A Yes.

9 Q Keonna, how old are you today?

10 A I'm 26 years old.

11 Q And where do you live?

12 A I live in Los Angeles.

13 Q Now do you know how many years older you are than  
14 John?

15 A About three.

16 Q And how many brothers and sisters do you have?

17 A I have four sisters and one brother.

18 Q And what are their names?

19 A Kennita Bryant and Floyd McGowan [phonetic], Lynette  
20 Love, Kierra Cain and Kishinette [phonetic] Cain.

21 Q And what's your relative -- Are you the oldest, the  
22 youngest, in the middle? Where are you?

23 A I'm the oldest of all my siblings.

24 Q Okay. And how about your cousins too?

25 A I'm not the oldest, but I'm the second oldest.

III-35

BRYANT - DIRECT

1 Q Now do you have any other special relationship with  
2 any of your siblings?

3 A Special relationship?

4 Q Would you have anything with any of your sisters or

5 --

6 A Well, we're all close.

7 Q Okay. Do you have custody of any of them?

8 A Yes, I have custody of my youngest sister.

9 Q Okay. And when did you begin to have custody of  
10 your youngest sister?

11 A Since she was born, at birth.

12 Q And why do you have to have custody of your sister?

13 A I have custody of my sister because my mom has a  
14 drug problem and when my sister was born she was born with  
15 drugs in her system and she also was born with syphilis.

16 Q I don't mean to embarrass her, or do anything like  
17 that, you understand.

18 A I understand.

19 Q I just need to ask.

20 Now there was some talk that Eunice just gave about  
21 relationships with people. I drew up a little chart and,  
22 since you're pretty much the oldest sibling, I think that  
23 maybe you can help us with this.

24 (Pause in the proceedings)

25 And there's a lot of names on here, but I think this

III-36



BRYANT - DIRECT

1 will probably help everyone figure out who's who. Keonna,  
2 maybe you could come down here.

3 Okay, now there's one name that's up above here  
4 above the rest and what's that name?

5 A Jane Edwards.

6 Q And who is she?

7 A She's my grandma.

8 Q Okay. Now your grandmother gave birth to some  
9 children and, yeah, maybe you could use the pointer and point  
10 to it. Can you tell who the children are and who's your mom  
11 and who's John's mom, that sort of thing?

12 A Here we have Faye. I believe this is Faye.

13 Q Okay.

14 A No, this isn't Faye. Faye is here.

15 Q Okay.

16 A And Debra's here.

17 Q Right.

18 A Lolita's here.

19 Q Right.

20 A And Eunice is here. These are my aunts and  
21 Shermatta [phonetic] is my aunt.

22 Q Okay.

23 A And Jamie is my uncle and Pam is my mom.

24 Q Okay. Now all those are the children of Jane  
25 Edwards, correct?

III-37

BRYANT - DIRECT

1 A Correct.

2 Q Okay, now your mom is Pam?

3 A Pam, uh-huh.

4 Q Okay. And now what children did Pam have?

5 A She had me, Keonna, she had Kennita, my sister,

6 Floyd, my brother, Kierra, my sister, Kishinette, my other

7 sister and then there's one missing and her name is Lynette.

8 Q Okay. And she's the baby?

9 A She's not the baby. Kishinette is the baby.

10 Q Kishinette is the baby, okay.

11 Now Eunice had some children too.

12 A Uh-huh.

13 Q And those are your first cousins, correct?

14 A Yes.

15 Q Okay. And point out who those are.

16 A It says Donte here.

17 Q Do you know him as Donte?

18 A I know him as John.

19 Q Okay.

20 A And then there's Johnnisha, his sister, she's my

21 cousin, and Eunnisha, his sister, and she's also my cousin.

22 Q Okay. Now were there some other -- Let me ask you

23 this. Who are some of these people over here? Do you know

24 them?

25 A These's are my cousins, Tish, Leckia [phonetic] and

III-38

BRYANT - DIRECT

1 Donna.

2 Q Okay. And you have some other cousins over there?

3 A Yes, we have Cornelius, Willie, Sam, Trevon and

4 Donnisha.

5 Q And those are Faye's children?

6 A Yes.

7 Q Okay. I want you to take your seat again.

8 Now when you were growing up, you had a lot of  
9 contact with your cousins and your sisters?

10 A Yes.

11 Q Now what were your -- Let's take you to when you're  
12 -- What are your earliest recollections of all your family  
13 members?

14 A I can remember pretty much far back as to six, but  
15 like the more painful things, ten.

16 Q Okay. Why don't you tell me how you interact with  
17 them. First of all, what did you know about John and his  
18 brothers -- I'm sorry, John and his sisters?

19 A When you say --

20 Q Well, what are your first memories of John and his  
21 sisters?

22 A First memories?

23 Q Or what do you know about their family life?

24 A Basically we all had problems, just put it -- put it  
25 like that. We all had issues. Their mom had issues. My mom

III-39

BRYANT - DIRECT

1 had issues. They were on drugs and basically they just --

2 Q Was there a time when John and his sisters used to  
3 come over to your mom, Pam's, house?

4 A Yes.

5 Q And what were the occasions for that? Why would  
6 they come over?

7 A They didn't have any place to stay.

8 Q Now how about your house with your mom, how was she  
9 at this time when John and Johnnisha and Eunnisha would come  
10 over to the house? What was her role? What did she do?

11 A My mom?

12 Q Yeah.

13 A Her and Eunice, that's John's mom, they would try  
14 and find food for us to eat, because we had no money and no  
15 place to stay, so they would leave us at home alone and go out  
16 and do the best that they could to provide food for us.

17 Q Did there come a time, when you were young, when  
18 they weren't doing their best for you?

19 A A lot of times.

20 Q Well, you had some other -- What about your Aunt  
21 Faye, was she around at this time too?

22 A Yeah, she was around.

23 Q Okay. And how were they -- What is it that makes  
24 you say that they weren't doing the best they could for you  
25 little kids at that time?

III-40

BRYANT - DIRECT

1           A     Well, Faye, Eunice and my mom, Pam, they all had  
2 drug problems.

3           Q     What kind of drug problems?

4           A     They started with a drug called Sherm, they call it  
5 Sherm, and then they turned to crack cocaine.

6           Q     Now you said they had a problem with it. What  
7 information do you have that Pam and Eunice and Faye had a  
8 problem with Sherm and crack cocaine?

9           A     They used to take us, at times, they used to take us  
10 on like runs to buy their dope.

11          Q     Runs?

12          A     Yeah.

13          Q     What does that mean?

14          A     That means that whenever they needed a hit or they  
15 wanted to get high and if they had to take us they would.

16          Q     Did they ever use the drugs, actually use them; in  
17 front of you and the kids?

18          A     They didn't know -- They didn't know that we were  
19 watching, but at times we were playing like in the living room  
20 or something and it's not closed off from the kitchen and, you  
21 know, we could sit and watch whatever they were doing.

22          Q     And was John included in that group of kids?

23          A     Yes, he was.

24          Q     Okay. How did these drugs, the crack, the Sherm,  
25 how did that affect your -- how your moms were behaving or

III-41

BRYANT - DIRECT

1 interacting with you?

2 A The drugs --

3 Q It made them -- Did it make them sleepy, happy,  
4 mean, fighting, what?

5 A They fought a lot.

6 Q Fought?

7 A With each other or with their spouses, boyfriends or  
8 whoever they were involved with.

9 Q Under the influence of these drugs?

10 A Yes.

11 Q In front of the kids?

12 A Yes.

13 Q All right. And how did that affect you and the rest  
14 of the kids?

15 A I mean, it hurts, you know. Being little kids, you  
16 don't know what's really going on with -- what's the argument  
17 about. You don't understand why they're fighting or why  
18 they're arguing and the only thing we could do is sit and  
19 watch or sit and cry.

20 Q So you would cry?

21 A Yes.

22 Q And did they do anything about that when they were  
23 using the drugs?

24 A Basically they would just grab the kids up and  
25 leave, I guess, you know, head in different directions.

III-42

BRYANT - DIRECT

1 Q And there were times when they just left you there?

2 A Yes.

3 Q Now about how old are you when you have a  
4 recollection of this going on?

5 A Ten.

6 Q About ten years old?

7 A Uh-huh.

8 Q So you're ten and John's three years younger than  
9 you, so he's about seven?

10 A Uh-huh.

11 Q And his sister's six, Johnnisha?

12 A Yes.

13 Q And your sisters and brothers are around too?

14 A Yes.

15 Q And sometimes Faye's kids are around too?

16 A Yes.

17 Q Now Eunice told us there was a time when she wasn't  
18 with her kids, that they were living somewhere else.

19 A Uh-huh.

20 Q Was there a time when Pam's kids, you and your  
21 siblings over there, weren't living with your mom?

22 A Yes.

23 Q Okay. Were you living -- Who were you living with?  
24 Who were you and your siblings living with?

25 A My grandmother.

III-43

BRYANT - DIRECT

1 Q Okay. Was John there and his siblings?

2 A Yes.

3 Q Okay. The first thing I want to do is show you a  
4 picture. It's been marked Proposed Defense Exhibit D. Do you  
5 recognize the people in that picture?

6 A Yes.

7 Q Okay, do you know about how old you are in that  
8 picture? I'm sorry, who does this --

9 A Actually, this is my sister.

10 Q That's your sister?

11 A Uh-huh.

12 Q Okay.

13 A Kennita and this is John.

14 Q Okay. Do you know about how old everyone is in that  
15 picture?

16 A This looks like when we first moved with our  
17 grandmother, so she's about eight and he's probably about  
18 seven.

19 Q Okay.

20 A Uh-huh.

21 Q And that's what they looked like at that time?

22 A Yes.

23 Q Okay.

24 MR. FIGLER: Move for its admission, Your Honor.

25 MR. GUYMON: No objection, Your Honor.

III-44



BRYANT - DIRECT

1 THE COURT: Received.

2 (Defendant's Exhibit D admitted)

3 MR. FIGLER: I'm gonna publish it really briefly to  
4 the jury.

5 (Pause in the proceedings)

6 BY MR. FIGLER:

7 Q Now let me ask you, there came a time -- there came  
8 a time when you and your siblings and John and his siblings  
9 were all living in one area?

10 A Yes.

11 Q Okay, can you describe where it is that you were all  
12 living together the first time?

13 A I call it a shack, 'cause basically that's what it  
14 was. It was --

15 Q There was some sort of --

16 A It was located -- would be in the back of my great-  
17 grandmother's house.

18 Q Okay, so this isn't Jane Edwards. This is someone  
19 even --

20 A Her mother.

21 Q -- older than Jane Edwards?

22 A Yes, her mother.

23 Q Now you've described this place as a shack and I  
24 want to get into it a little bit more. I want to show you a  
25 picture first. Do you recognize what's depicted in this

III-45

BRYANT - DIRECT

1 particular picture?

2 A This is where we were living.

3 Q Okay. And does that reflect how it looked when you  
4 lived there?

5 A Yes.

6 Q Okay. And this is -- Do you know the area that this  
7 is in?

8 A Yes.

9 Q What area is that?

10 A That's Los Angeles.

11 Q Okay. Do you have anything more specific on it?

12 A It's right in back of my grandmother's -- my great-  
13 grandmother's house.

14 THE COURT: Outside where?

15 THE WITNESS: 52nd and Compton.

16 MR. FIGLER: Okay. Move for its admission, Your  
17 Honor.

18 THE CLERK: What exhibit is that, counselor?

19 MR. FIGLER: Sorry. It's Proposed Exhibit C.

20 MR. GUYMON: No objection, Your Honor.

21 THE COURT: Received.

22 (Defendant's Exhibit C admitted)

23 BY MR. FIGLER:

24 Q Okay, so now this is what we're calling the shack or  
25 what you're calling the shack. Is it much bigger than what's

BRYANT - DIRECT

1 depicted here in the picture?

2 A Not really.

3 Q Okay.

4 A You probably have like half of it in the photo.

5 Q At least half of it, if not more?

6 A At least half of it is in the photo.

7 Q Now why don't you describe -- About how old are you  
8 when you're living in here?

9 A Ten.

10 Q Ten.

11 And who else is living in this space at this time?

12 A My sister, my brother, that's Kennita and Floyd, and  
13 then there was my mom, my stepdad stayed there for a short  
14 period and then -- and then my mom separated. Then there was  
15 John, Johnnisha and Eunnisha and Eunice.

16 Q Okay. Now was there a time when there were no  
17 adults living in that house and just the kids?

18 A Yes.

19 Q Okay. Now why don't you describe, because we don't  
20 have a picture of the inside, can you tell us what it was like  
21 inside this, what you're calling the shack?

22 A My mom had lost her job and we needed a place to  
23 stay, so we had moved all our furniture inside, couches,  
24 refrigerator, stove, beds, clothing, drawers, everything, and  
25 the space was very small and we had a space where we just kept

III-47

BRYANT - DIRECT

1 the bed where we all slept in and --

2 Q You all slept in the one bed?

3 A In one bed.

4 Q Okay. What about -- You mentioned there was a  
5 stove. So you did a lot of cooking in there?

6 A There was no place to hook up a stove and there was  
7 no place to hook up a refrigerator.

8 Q So those things were just sitting in there?

9 A Yes.

10 Q Okay, how about -- Was there a bathroom in there?

11 A No.

12 Q Was there any running water in there?

13 A No.

14 Q Okay, is this place where you spent most of your  
15 time?

16 A Yes, every day.

17 Q Okay. Now you said that your great-grandmother  
18 lived right behind there. How come you didn't just live in  
19 your great-grandma's house? Why were you in that place?

20 A There wasn't enough space in her house anyway and,  
21 being that she wanted my mom to do the right thing and get on  
22 her feet and take care of her kids the right way, you know, I  
23 guess she felt that she had to give her hard love, you know,  
24 and --

25 Q Hard love?

III-48

BRYANT - DIRECT

1 A Tough love you could call it.

2 Q At the expense of you kids?

3 A Exactly. She's the one who called the police and  
4 told them that we were living back there by ourselves.

5 Q Okay, let's hold on a second.

6 A Okay.

7 Q Now your mom and John's mom, I mean, they have  
8 responsibility for you at this time, correct?

9 A Uh-huh.

10 Q But is this the time when they're using the drugs  
11 and all this too?

12 A Yes.

13 Q And is this the time when they're just leaving you  
14 there?

15 A Yes.

16 Q To basically take care of yourselves?

17 A Yes.

18 Q Now who is the oldest of all the siblings in there?  
19 Well, I guess we could figure it out.

20 You were the oldest of all the people that you  
21 mentioned --

22 A Uh-huh.

23 Q -- in that shack at that time?

24 A Yes, I am.

25 Q Okay. Did that mean that you had any extra

III-49

BRYANT - DIRECT

1 responsibilities?

2       A     Well, I had to make sure they weren't getting into  
3 any trouble, leaving out of the shack and running around in  
4 the front yard or in the streets, you know, things like that.  
5 And at nighttime, when we were left alone, I had to make sure  
6 the door stayed locked and that all the kids were sitting in  
7 one spot where we wouldn't get into any trouble.

8       Q     Okay. And how old are you at this time when you  
9 have all these responsibilities?

10      A     I was ten.

11      Q     Ten years old?

12      A     Uh-huh.

13      Q     And there were one, two, three, four, five -- at  
14 least six of you in there, kids?

15      A     Yes.

16      Q     Now I mentioned running water before. Was there  
17 something in that shack that you used for a bathroom  
18 sometimes?

19      A     A bucket.

20      Q     I'm sorry?

21      A     A bucket.

22      Q     And this was just a regular -- like a bucket you mop  
23 in or something like that?

24      A     My mom had a, yeah, a bucket in the back of the room  
25 where we all would just go. Whenever we had to go and use it,

III-50

BRYANT - DIRECT

1 we used the bucket.

2 Q Now you mentioned an incident when your great-  
3 grandmother called the police.

4 A Uh-huh.

5 Q And told the police that there were a bunch of kids  
6 living alone in the shack, is that --

7 A Yes.

8 Q Okay, why don't you tell me about the day when the  
9 police came to the shack.

10 A My mom had left, and at the time it was just me, my  
11 sister and my brother, and she left. She told me she was  
12 going to get something to eat and, you know, keep the door  
13 locked and don't open it. And so then next Eunice came over  
14 with John, Eunnisha and Johnnisha and she asked me where my  
15 mom was and I told her she went to go get something to eat, so  
16 she told her kids to go in, sit down, watch TV and wait 'til  
17 she comes back. And so by the time they got back the police  
18 were already at the door.

19 Q And what did the police do with you?

20 A They questioned us first and asked us where our  
21 parents were and we told them they went to get something to  
22 eat. And so when my mom and Eunice walked up, they were  
23 trying to explain to them that they were just gone for a few  
24 minutes and they just went to get us something to eat, but  
25 there was nothing that they could say or do, you know, to keep

III-51

BRYANT - DIRECT

1 us there, because we were left alone.

2 Q Were they lying to the police?

3 A Yes.

4 Q They had left you there for very lengthy periods of  
5 time?

6 A Yes.

7 Q Days, weeks sometimes?

8 A Not really.

9 Q Okay, tell me.

10 A I can remember just a lot of times we were there for  
11 like a day or so and then we'd go up to my grandmother's -- or  
12 my great-grandmother's house, like if we were hungry or needed  
13 to use the restroom.

14 Q Where did the police take you?

15 A They took us to the police station first and they  
16 questioned us. They called Children Services and our parents  
17 came down and they questioned our parents and from there we  
18 went to McClarren Hall.

19 Q Okay. And what's McClarren Hall?

20 A McClarren Hall is like -- it's a foster home for  
21 children.

22 Q And how many kids are in this foster home?

23 A I couldn't give you a number, but there were a lot.  
24 I could say there were like over 50 kids in the dorm where I  
25 slept and it was just with girls from like ages six to like

III-52



BRYANT - DIRECT

1 maybe 17.

2 Q Was it a nice place?

3 A It was -- It wasn't home.

4 Q What were some of the problems that you encountered  
5 at McClarren Hall?

6 First of all, was John at McClarren Hall too?

7 A Yes, he was.

8 Q What were some of the problems that you encountered  
9 at McClarren Hall?

10 A There would be like different things going on as far  
11 as the rest of the kids there besides us, fights, kids  
12 throwing temper tantrums in the middle of the night. There  
13 was a girl who was sick right in the room next door to us.  
14 She had -- I believe she had sickle-cell and she had to be in  
15 and out of the hospital a lot. And Johnnisha -- There was a  
16 closet, a big closet space, where we all had to go out and  
17 pick our clothes from and everybody inside the dorm shared  
18 those same clothes. They got washed and everything, but, you  
19 know, we had to do our duties, wash 'em, fold 'em and put 'em  
20 back in the closet and we all shared the clothes. All the  
21 girls in the dorm shared those clothes.

22 Q Okay. What about any kind of disease or ailments or  
23 anything else like that running around?

24 A Well, I can recall Johnnisha having ringworms from  
25 like just different things around there.

III-53

BRYANT - DIRECT

1 Q Now when the police are asking all these questions  
2 to all you kids, were they asking you about the drugs and all  
3 that stuff too?

4 A Yes.

5 Q Now there came a time, after you were in McClarren,  
6 where your grandmother took you out of that facility?

7 A Yes.

8 Q And that's Jane Edwards?

9 A Uh-huh.

10 Q Okay. She took all of you kids?

11 A Yes, all six of us.

12 Q Now how long do you think you were in McClarren?

13 A We were there for about two months.

14 Q Two months.

15 A Maybe less.

16 Q Now when you went to your grandmother's house, were  
17 there any other kids that were there?

18 A At the time it was just us six kids and then, my  
19 aunt, she also lived with my grandmother and she had one son.  
20 And then she also had another daughter living there and that  
21 was Debra, so Debra and Lolita also stayed in the house with  
22 us.

23 Q Okay. And did Lolita have any kids?

24 A She had one son at the time.

25 Q Okay. Now you all lived in one bedroom at that

III-54

BRYANT - DIRECT

1 time?

2 A Yes.

3 Q You and all -- John?

4 A Six of us --

5 Q All six of you?

6 A -- lived in one bedroom.

7 Q Okay. Now what about any of -- You have an Uncle  
8 Jamie. Did he ever live there?

9 A Yes. He was in and out a lot of times. Sometimes  
10 he stayed with girlfriends and then, whenever he'd break up  
11 with his girlfriend, he'd come in and stay with my grandmother  
12 and us.

13 Q Now during this time your grandmother is trying to  
14 show love and care for all the kids?

15 A Yes.

16 Q 'Cause she's basically in charge?

17 A Yes.

18 Q Okay, what kind of things would she do? Would she  
19 take you to church and that sort of stuff?

20 A Yeah. She made sure we were in school. She made  
21 sure we went to church every Sunday. We were in the choir and  
22 Usher Board.

23 Q Now where are all the moms during this time that  
24 you're in Jane Edward's house?

25 A I couldn't tell you where they were staying, but --

III-55

BRYANT - DIRECT

1 Q Do you know what they were doing?

2 A Yes.

3 Q And what were they doing?

4 A Supporting their habit.

5 Q Would there be some times when Eunice would try to  
6 come over to visit John --

7 A Yes.

8 Q -- and Johnnisha and Eunnisha?

9 A Yes.

10 Q And did you know what she said she was there for?

11 A Sometimes she came, like if she ran out of money and  
12 she needed something to eat, she'd come and ask for food or  
13 sometimes she'd come and ask for money. It depends on if she  
14 needed a hit or if she just needed someplace to lay her head.

15 Q Okay. Now what street did Jane Edwards live on in  
16 this area, Central?

17 A 43rd and Ascot.

18 Q 43rd?

19 A Uh-huh.

20 Q Okay. Tell me about 43rd, the neighborhood, growing  
21 up there. What was that like?

22 A There was a lot of gangs around. We had the Bloods  
23 and we had the Crips and we had -- there were like two more --  
24 two to three more gangs around, but we never like were out of  
25 the yard, because my grandmother tried to keep us away from

III-56

BRYANT - DIRECT

1 all that stuff.

2 Q Now what would -- What else were these gangs doing?  
3 What were they involved with that you saw or you knew about?

4 A Drugs, drive-bys, robberies.

5 Q How about just other kids in the neighborhood, were  
6 they nice kids or kids that weren't involved with the gangs?

7 A Not really. We did get picked on a lot and, you  
8 know, harassed by men.

9 Q By men?

10 A Yes.

11 Q Now your grandmother couldn't keep you in that house  
12 all the time, could she?

13 A No.

14 Q You had to go to school, for instance?

15 A We had to go to school or sometimes we needed to go  
16 to the store or the market to get something to eat.

17 Q And that typically was walking to --

18 A Yes.

19 Q -- those various places?

20 Okay, now was there any problem that the  
21 neighborhood kids gave you because you stayed in the house all  
22 the time too?

23 A It wasn't because we stayed in the house. It was  
24 just because they were bullies and they liked to pick on  
25 people.

III-57

BRYANT - DIRECT

1 Q Now you talked about there being drugs and problems  
2 in that neighborhood. Let me ask you if you've ever witnessed  
3 any violence on 43rd Street growing up there.

4 A Yes.

5 Q Okay. And this was the same time that John was  
6 there?

7 A Yes.

8 Q Okay. Maybe you could give me an example of some of  
9 the violence that you saw.

10 A Well, I can remember the house across the street  
11 they had raided, the police raided the house across the  
12 street, and they ended up in a shootout with the guy who was  
13 held up inside the house and he was inside the attic. And  
14 they exchanged gunfire and the guy was shot.

15 Q Did he live or --

16 A I can't recall if he lived or died.

17 Q Now what about the house itself, was Jane Edwards'  
18 house pretty much a safe haven where nothing bad ever  
19 happened?

20 A No.

21 Q What kind of bad things -- What kind of bad things  
22 happened while you were in Jane Edwards' house?

23 A We had break ins.

24 Q Were you ever home when there was a break-in?

25 A Yes.

III-58

BRYANT - DIRECT

1 Q Tell me about that.

2 MR. GUYMON: Could we approach?

3 THE COURT: Sure.

4 (Off-record bench conference)

5 BY MR. FIGLER:

6 Q About how old are you at this time?

7 A About 13.

8 Q 13?

9 A Yes.

10 Q So John's about ten?

11 A Yes.

12 Q Is John around the house at this time when we're  
13 talking about?

14 A Yeah. We were all sleeping in the same room at the  
15 time.

16 Q All in the same room?

17 A Yes.

18 Q Okay, why don't you tell me what happened.

19 A There was a window that you could easily crawl  
20 through and someone broke in and he came into the room and we  
21 were all asleep. And he came in and he -- and he touched me  
22 in my private parts.

23 Q And all you kids are in the bed when this is going  
24 on?

25 A Yes.

III-59

BRYANT - DIRECT

1 Q Did the police ever come?

2 A No, 'cause by the time everybody was aware of what  
3 happened he was already gone, but later on we found out who it  
4 was and he went up to my cousin John and he told him, "You  
5 almost had me, huh?"

6 Q He told that to John here?

7 A Yes.

8 Q Okay.

9 (Pause in the proceedings)

10 Now you have no doubt that Jane Edwards, your  
11 grandmother, loves you, right?

12 A No doubt.

13 Q And she wanted to do the best she could to protect  
14 all you kids?

15 A All the time.

16 Q There's a lot of kids there, though, right?

17 A Yes.

18 Q Now there came a time when grandma saved up some  
19 money so you could go to a different school?

20 A Yes, I went to a private school.

21 Q A safer --

22 A Yeah.

23 Q Okay. Did all the kids get to go to that safer  
24 school?

25 A She couldn't afford to send us all.

III-60



BRYANT - DIRECT

1 Q So who got to go?

2 A I was the only one who got to go.

3 Q You were the oldest?

4 A Yes.

5 Q Do you know if it was expensive or not?

6 A The tuition was a hundred and ninety dollars (\$190)  
7 a month for the first year that I went and then for the second  
8 year the tuition went up to two hundred and ten dollars  
9 (\$210).

10 Q Was that a lot of money for your grandma at that  
11 time?

12 A Yes, it was.

13 Q Did there come a time when Jane lost her house on  
14 43rd?

15 A The owner sold the house and we had to move.

16 Q So they didn't own, they were just renting?

17 A Yes.

18 Q And where did you move to?

19 A We moved to 60th and Normandy.

20 Q Okay. And that's a -- Is that another house or is  
21 that an apartment?

22 A It was an apartment.

23 Q And Jane moved the whole crew into this apartment on  
24 60th?

25 A Yes. At the time, there were ten of us.

III-61

BRYANT - DIRECT

1 Q Ten of you?

2 A Ten.

3 Q And about how old are you at this time?

4 A I was about 16.

5 Q Tell me what living on 60th Street was like compared  
6 to living on 43rd Street.

7 A There were gangs on 43rd, but they didn't hang out  
8 in front of our door and when we moved to 60th they hung right  
9 out in front of our apartment, so there was like no way of  
10 getting to the store or to the school without having to pass  
11 'em up.

12 (Pause in the proceedings)

13 Q Keonna, I'm gonna show you a picture that's been  
14 marked Proposed Defendant's Exhibit H. Do you recognize  
15 what's depicted in this picture?

16 A Yes. That's the apartment we lived in.

17 Q And that's on 60th?

18 A Yes.

19 Q And does it look in the condition that it looked  
20 back when you lived there?

21 A There were no bars when we lived there.

22 Q Okay, so the bars have been added?

23 A Yes.

24 Q Okay.

25 MR. FIGLER: With that caveat, I'd move for its

III-62

BRYANT - DIRECT

1 admission.

2 MR. DASKAS: Submitted, Judge.

3 THE COURT: Admitted.

4 (Defendant's Exhibit H admitted)

5 MR. FIGLER: Publish to the jury.

6 BY MR. FIGLER:

7 Q So since then somebody decided to put some bars on  
8 the windows, correct?

9 A Yes.

10 Q But you didn't have those back when you were living  
11 there?

12 A No.

13 Q Okay, so now there were ten kids living there on  
14 60th when you were about 16 years old, right?

15 A Uh-huh.

16 Q So John was about 12, 13 around that time?

17 A Yes.

18 Q Okay. And he was there with you?

19 A Yes.

20 Q Now were there ever any other children that Grandma  
21 Jane brought into this apartment complex?

22 A Well, before we even moved there, she also had  
23 Faye's kids.

24 Q Faye's kids?

25 A Yes.

III-63

BRYANT - DIRECT

1 Q Okay, so that is Cornelius, Willie, Sam and Trevon?  
2 A Trevon, uh-huh.  
3 Q Okay. So now there's four more of you in there?  
4 A Yes.  
5 Q Now you were saying that the difference between 43rd  
6 and 60th was something to do with the gangs. What was the  
7 difference with the gangs on 60th Street?  
8 A They hung right out in front of our apartment.  
9 Q Okay, is this -- Can you tell me how --  
10 A That's just the driveway there and like in front --  
11 there's like more room in front of the apartment where they  
12 hung out outside the gate.  
13 Q Okay. And what would they do when they hung out  
14 there?  
15 A They sold drugs.  
16 Q Now were there any kind of parks near there?  
17 A Yeah, there was a park, maybe about two or three  
18 blocks away.  
19 Q Okay, did you ever play in that park?  
20 A No.  
21 Q Why not?  
22 A I was afraid to go there.  
23 Q Now give me an idea of the degree of violence on  
24 60th compared to 43rd. Was it more, less, about the same?  
25 A It was about the same except that, you know, they

III-64

BRYANT - DIRECT

1 hung right out in front of the door, so there was no way of  
2 getting past them. And there was a store right on the corner,  
3 so, you know, if we had to go to the store or anything, there  
4 they were right there in our face either harassing us or  
5 picking on us.

6 Q And when you say harassing us, you mean you and John  
7 too?

8 A Yes.

9 Q And John was kind of smaller, wasn't he?

10 A Yes.

11 Q The kids at that time -- Did you ever see guns or  
12 violence or anything like that?

13 A Yes.

14 Q And what did you see?

15 A There was a time when there was a feud between the  
16 guys who sold the drugs in front of our apartment and,  
17 basically, it was like the Blacks against the Mexicans and who  
18 wanted to sell their drugs right in front of our apartment.  
19 And so one day there was a guy on a bike, he rode down the  
20 street with a shotgun and they were right in front of our door  
21 arguing with guns and stuff.

22 Q Do you know if the police were trying to stop this  
23 going on?

24 A No, nobody called the police.

25 Q Now were there any gang members that specifically

III-65

BRYANT - DIRECT

1 harassed you at this time?

2 A Yes.

3 Q Do you know that person's name?

4 A They called him Sonny.

5 Q Sonny?

6 A Uh-huh.

7 Q And what did Sonny do?

8 A Like I said, there were times when we needed to go  
9 to the store and I could be standing at the counter paying for  
10 my stuff and he'd come up and hit me on my behind or just grab  
11 me or something.

12 Q And did he make any comments to you?

13 A He just really always pressured me for sex.

14 Q Did John know about this?

15 A Yes.

16 Q Now were these -- Sonny was in some kind of gang?

17 A Yes.

18 Q Okay. Now did you ever see Sonny, or any of his  
19 gang, harassing or talking or doing anything with John?

20 A One day we were all in the house and John and  
21 Cornelius, that's our cousin, they were walking down the  
22 street and Sonny approached him and he socked him.

23 Q He did what?

24 A He punched him.

25 Q He punched him?

III-66

BRYANT - DIRECT

1           A     Uh-huh.

2           Q     Now at this time you know that John was starting to  
3 hang around with the gang kids? Do you know that?

4           A     That was the day that he told John if he didn't join  
5 the gang that he would rape me.

6           Q     And John knew that?

7           A     Yes.

8           Q     And you knew that?

9           A     I didn't find out 'til later.

10          Q     Now was there a time when you saw John beat up by  
11 the gang people?

12          A     It was that day.

13          Q     Okay. After that day did you start seeing less of  
14 John?

15          A     Yes.

16          Q     What would happen? How would that occur?

17          A     They'd come by in the morning, early in the morning,  
18 and they'd say they were gonna take him to school or they were  
19 gonna hang out or something and they'd just leave with John.

20          Q     Now your grandma's still living there, Jane Edwards,  
21 right?

22          A     Yes.

23          Q     And they're telling her this information too?

24          A     Yes. They made it seem as if they were just gonna  
25 watch movies or something.

III-67

BRYANT - DIRECT

1 Q Just as ordinary friends?

2 A Yes.

3 Q Was John real vocal at this time or was he a quiet  
4 kid or what was going on?

5 A He didn't tell us much about what was happening. He  
6 tried to keep -- He tried to keep them away from the house.

7 (Pause in the proceedings)

8 Q Let me ask you this. Was it a choice of yours to  
9 take care of all these kids when you were ten years old?

10 A No.

11 Q But it was something that you decided to do as a ten  
12 year old, right?

13 A Yes.

14 Q Okay. Was it just something that you felt you were  
15 in a position where you just had to do what you had to do?

16 A There was no one else there.

17 Q Now your grandma made a choice to use that money to  
18 send you to a safer school?

19 A Uh-huh.

20 Q And that was a school far away?

21 A Yes, it was in Hawthorne. I had to catch the bus,  
22 the school bus, there.

23 Q Okay. Was that better for you?

24 A Yes.

25 Q That helped you?

III-68



BRYANT - DIRECT

1 A Yes.

2 Q But you know your grandma had to make a choice to  
3 spend those family monies for that, right?

4 A Yes.

5 Q And you know, if she had all the money, she probably  
6 would have sent all the kids away, huh?

7 A Yeah.

8 Q But she had to make a choice?

9 A Yes.

10 Q Now you still make choices in your everyday life,  
11 right?

12 A Yes, I do.

13 Q Do you think that your experiences, getting away  
14 from this neighborhood, getting away from walking to those  
15 schools, do you think that has helped you with your ability to  
16 make good choices in this world?

17 A Most definitely.

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

19 THE COURT: Any cross?

20 MR. GUYMON: Nothing, Judge.

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

22 THE WITNESS: Thank you.

23 THE COURT: Before you call your next witness, could  
24 I see counsel at the bench?

25 (Off-record bench conference)

III-69

WHITE - DIRECT

1 THE CLERK: Would you please remain standing and  
2 raise your right hand?

3 JOHNNISHA WHITE, DEFENDANT'S WITNESS, IS SWORN

4 THE CLERK: Would you please state -- Have a seat  
5 and state your full name and spell your last name for the  
6 record?

7 THE WITNESS: My name is Johnnisha White, W-H-I-T-E.

8 DIRECT EXAMINATION

9 BY MR. SCISCENTO:

10 Q Johnnisha?

11 A Uh-huh.

12 Q How are you today?

13 A Fine.

14 Q Can you move up a little to the microphone?

15 (Pause in the proceedings)

16 Are you a little nervous to be here today?

17 A Yes.

18 Q Why are you nervous to be here today?

19 A I'm afraid.

20 Q What are you afraid about?

21 A Of how the victims' family feel.

22 Q You're afraid of the victims' family?

23 A Yes.

24 Q And I explained to you, in this world, there's no  
25 retaliation against family. You understand that?

III-70

WHITE - DIRECT

1 A Yes.

2 Q Do you still believe it?

3 A Yes.

4 Q Okay. And after you testify today, what is your  
5 intentions?

6 A Say it again.

7 Q Do you want to go home as soon as you testify today?

8 A Yes, I do.

9 Q And where do you live?

10 A In L.A.

11 Q What part of L.A. do you live in?

12 A In South Central.

13 Q I guess first you should introduce yourself. Your  
14 name is Johnnisha White?

15 A Yes.

16 Q And you are?

17 A John's sister.

18 Q Okay. And you see John over here?

19 A Yes.

20 Q And where is he at?

21 A He's right there.

22 MR. SCISCENTO: For the record, I think, Your Honor,  
23 it's the identification of Mr. White.

24 THE COURT: Right.

25 (Pause in the proceedings)

III-71

1 BY MR. SCISCENTO:

2 Q Do you know a person named Eunice Cain?

3 A Yes, I do.

4 Q Who's Eunice Cain?

5 A My mother.

6 Q Tell me a little bit about your relationship -- Tell  
7 the jury here a little about the relationship you had with  
8 your mother when you were growing up.

9 A It wasn't no relationship. My mother, she, first of  
10 all, was on drugs. She was always worried about -- and not  
11 focusing on how to raise us.

12 Q Tell me, there was an incident about that ghost.

13 A Uh-huh.

14 Q Do you remember that?

15 A Yes.

16 Q Explain to the jury about the ghost.

17 A He's the -- He's the honess [phonetic]. We'd look  
18 and he would be in the mirror, but we would never see no -- we  
19 would never see nobody. My mom used to lock us in the closet  
20 and she would go out and you'd just hear her scream.

21 Q So your mom would say that there's ghosts out there?

22 A Uh-huh.

23 Q And to protect you she'd put you in the closet?

24 A Put us in the closet, yeah.

25 Q And then you would be in the closet and what would

WHITE - DIRECT

1 you hear?

2 A Hear her screaming.

3 Q And how old were you when this was happening?

4 A Four.

5 Q And how old was John?

6 A About six or seven.

7 Q How many years older than you is he?

8 A I think two, three.

9 Q Growing up would you say that you were close with  
10 John?

11 A Yes.

12 Q Physically and emotionally?

13 A Uh-huh.

14 Q There was mention about -- Well, do you remember  
15 living in a shack?

16 A Yes, I do.

17 MR. SCISCENTO: Can I see the exhibits, please?

18 (Pause in the proceedings)

19 BY MR. SCISCENTO:

20 Q What's been marked as Defense Exhibit C, do you  
21 recognize this?

22 A Uh-huh.

23 Q What is that?

24 A A shack where we lived.

25 Q What is that normally? Is it a garage?

III-73

WHITE - DIRECT

1 A A garage.

2 Q How many people lived in there?

3 A It was about -- at least about ten of us in there.

4 Q In and out there were different people?

5 A Different people.

6 Q And that was connected to your great-grandmother's  
7 house?

8 A Yes, it was.

9 Q Do you think your great-grandmother loved you?

10 A Yes, she did.

11 Q But there came a time that the police showed up at  
12 that --

13 A Yes.

14 Q -- that shack that you people were living in.

15 Explain to the jury about that.

16 A Well, my grandmother, she warned my mamma about  
17 leaving us back there, 'cause there wasn't no running water,  
18 wasn't no tub. And so one day they left us in there by  
19 ourself, and they didn't believe her, so she called the  
20 police. And the police came and put us in their car and  
21 that's when my mamma and my daddy and my auntie showed up and  
22 they was trying to get the police not to take us, but they  
23 wanted to put us in a process, so then that's when they took  
24 us to the police station.

25 Q Okay, let me stop you there.

III-74

WHITE - DIRECT

1 A Uh-huh.

2 Q During the time that you were living in this garage  
3 with these other people, what was your physical relationship  
4 with your mother? How many times a day would you see her?

5 A One time she was gone for like a week.

6 Q Do you know where she was?

7 A No.

8 Q Did you ever see your mother do any kind of drugs?

9 A Yes, I did.

10 Q What kind of drugs did you see her do?

11 A Crack cocaine.

12 Q Okay, what did you, you personally, see?

13 A I seen her and my auntie, when we were staying in  
14 the projects, I seen them smoking crack cocaine in the  
15 kitchen.

16 Q And how were they doing that?

17 A Out of a pipe.

18 Q Okay, explain -- I mean, explain the process to me.

19 A They was --

20 Q What did you see?

21 A I seen them put -- roll something up, drop it in the  
22 inside of the pipe hole and then they'd light the top of the  
23 pipe and then they would suck off the little horn part of the  
24 pipe.

25 Q And you viewed this?

III-75

WHITE - DIRECT

1 A Yes, I did.

2 Q How old were you when you were seeing this?

3 A At least about five.

4 Q Okay. You were aware, during your childhood, that  
5 your mother was on drugs?

6 A I didn't really know what it was. I just thought it  
7 was a thing to do.

8 Q Okay. After you were taken away from the garage and  
9 brought to the police station, you went to another place.  
10 What was that called?

11 A McClarren Hall.

12 Q All right. Explain your -- Explain about McClarren  
13 Hall, your experience there.

14 A My nose used to bleed every night. I used to get  
15 ringworms. I used to have to -- There used to be one big  
16 closet and we used to have to all wear the same clothes.

17 Q How many people lived in there?

18 A It was at least -- It was three in each room.

19 Q Okay, who were you there with, your family members?

20 A Keonna and Kennita, my cousins. They looked over  
21 me.

22 Q And John was also taken to McClarren Hall?

23 A Yes, he was. We was separated. He wasn't in the  
24 same dorm as us. He was with the guys.

25 Q He had to go to another dorm?

III-76



WHITE - DIRECT

1 A Uh-huh.  
2 Q All right. Was there any males with him that he  
3 knew?  
4 A No.  
5 Q I mean, no family members?  
6 A No, not in the same part as him.  
7 Q Okay, so he was separated from you and you were put  
8 over to -- in separate sides?  
9 A Yes.  
10 Q You were allowed to keep one of the babies with you,  
11 though, and he was a male, right?  
12 A Uh-huh.  
13 Q And why was that?  
14 A Why? 'Cause he was -- It was like an age. They go  
15 by the different ages. So they put my sister, my younger  
16 sister, and my younger cousin together, 'cause they was one  
17 and two, so they had to stay with the babies.  
18 Q There came a time that you left McClarren Hall.  
19 A Yes.  
20 Q When was that? Do you remember?  
21 A I don't even remember the exact year, but my --  
22 Q How old were you? Do you remember?  
23 A I was seven.  
24 Q Okay. And how did you come about leaving McClarren  
25 Hall?

III-77

WHITE - DIRECT

1           A     We went to court one day and then my grandmother --  
2 they gave legal custody to my grandmother.

3           Q     Okay. And who's your grandmother?

4           A     Jane Edwards.

5           Q     And then what happened? You moved into Jane  
6 Edwards' house?

7           A     Yeah, we moved to her new house on 43rd and Ascot.

8           Q     Okay, 43rd and Ascot.

9           A     Uh-huh.

10          Q     Explain to me the living conditions at 43rd and  
11 Ascot.

12          A     It was a five-bedroom house and me and my sister  
13 share rooms and Keonna and Kennita share rooms and John and  
14 Floyd slept in the dining room. Then there was my auntie and  
15 her boyfriend and my other auntie and her boyfriend and my  
16 grandmother and my grandfather.

17          Q     So how many people were living there?

18          A     At that time it was about ten.

19          Q     Okay. And there came a time that more people moved  
20 in?

21          A     Uh-huh.

22          Q     When was that?

23          A     That was like two years after my grandmother got  
24 custody of us. Then she got custody of four more boys and  
25 then she got -- then my cousin ran away and came and stayed

III-78

WHITE - DIRECT

1 with us.

2 Q So about 16 people now are --

3 A Yeah.

4 Q -- living there?

5 A Uh-huh.

6 Q All living together?

7 A Yes.

8 Q Okay. And during this time your mother, Eunice,  
9 what was your relationship with her?

10 A The same. It wasn't gonna never change. When she'd  
11 come, the only thing she would come for is to try to sell  
12 something to my grandmother to help support her habit.

13 Q All right, let's talk about trying to sell something  
14 to your grandmother. Explain to me about that.

15 A She would go to a church and they gave you free  
16 cheese, free peanut butter and beans and rice. And she would,  
17 instead of her giving it to my grandmother, she would sell it  
18 to my grandmother for drugs.

19 Q Okay. And you'd see her do this?

20 A Uh-huh.

21 Q And this is your mother, Eunice, that we're talking  
22 about?

23 A Yes.

24 Q But you still love your mother, Eunice?

25 A I love her, yes, I do.

III-79

WHITE - DIRECT

1 Q Growing up there was a -- there was a grandfather  
2 that lived there on 43rd and Ascot, right?

3 A Yes, there was.

4 Q But it's not your natural grandfather?

5 A Uh-uh.

6 Q He was married to Jane Edwards?

7 A Yes, he was.

8 Q What was your relationship with him?

9 A He wasn't neither, 'cause he couldn't -- he couldn't  
10 stand my mamma 'cause of the way she was. And then it was  
11 like he didn't know how to show love to us because he wasn't  
12 there all the time or, if he was there, he would be drunk. He  
13 would drink.

14 Q Okay. Was John living there at the time too?

15 A Uh-huh.

16 Q Was there any interaction between the grandfather  
17 and John?

18 A No.

19 Q Was your grandfather upset that you people were --  
20 that you were living there?

21 A I kind of felt he was, but he didn't really show it  
22 show it, but he didn't really show us no attention.

23 Q Let me show you what's been marked as Defense  
24 Exhibit F.

25 A Uh-huh.

III-80

WHITE - DIRECT

1 Q Do you recognize this picture?

2 A Yes, I do.

3 Q And what is that a picture of?

4 A The yard on 43rd and Ascot.

5 Q 43rd and Ascot?

6 A Uh-huh.

7 Q Where you lived with 16 of your siblings?

8 A Yes.

9 Q Okay. Let me show you also what's been marked as  
10 Defense Exhibit E. Do you recognize this picture?

11 A Yes.

12 Q What is that a picture of?

13 A The front yard on 43rd and Ascot.

14 MR. SCISCENTO: Move for admissions as to Defense  
15 Exhibit F and Defense Exhibit E.

16 MR. GUYMON: No objection, Your Honor.

17 THE COURT: Received.

18 (Defendant's Exhibits E, F admitted)

19 BY MR. SCISCENTO:

20 Q During the time that you lived --

21 MR. SCISCENTO: If I can also publish this. I'm  
22 sorry, Your Honor.

23 BY MR. SCISCENTO:

24 Q During the time that you lived at 43rd and Ascot, --

25 A Uh-huh.

III-81

WHITE - DIRECT

1 Q -- let me stand over here, was it a safe place to  
2 live?

3 A No.

4 Q Okay. And you were told you were supposed to stay  
5 in the yard?

6 A Yeah.

7 Q What does the yard consist of?

8 A Not going out that gate.

9 Q Okay, but I'm saying the physical. This is a  
10 picture of the yard?

11 A Uh-huh.

12 Q So all you had to -- If you could show to the jury  
13 where you played, where the 16 of you played.

14 A Right there and in the back part of that.

15 Q And how big is the back part?

16 A Just as big as the front.

17 Q And why weren't you allowed -- Why weren't you  
18 allowed to go out and visit or go out and play in the streets?

19 A 'Cause it was -- the gang -- There was too many  
20 gangbangers.

21 Q There were some parks there though, wasn't there?

22 A Uh-huh.

23 Q And what about those parks, --

24 A They --

25 Q -- did you play in those parks?

WHITE - DIRECT

1 A No.

2 Q Why not?

3 A 'Cause they hung out there too.

4 Q Did you see families walking family members out  
5 there? Did you ever go by the park at all?

6 A Uh-uh. I don't even remember the park.

7 Q Okay. Your grandmother, Jane Edwards, loved you a  
8 lot?

9 A Yes, she did.

10 Q And she tried to guide you?

11 A Uh-huh.

12 Q Would you agree?

13 A Yes.

14 Q Do you think she tried to guide the other children?

15 A Yes.

16 Q Okay, but how many children were there again?

17 A It was like 16 of us and there never was no one-on-  
18 one contact.

19 Q It was just her --

20 A And when she showed love and affection, it was with  
21 all of us, not just one of us.

22 Q Okay. Eunice, your mother, --

23 A Uh-huh.

24 Q -- is she still using drugs today?

25 A Yes, she do.

III-83

WHITE - DIRECT

1 Q And she has a mental illness that know about?

2 A Yes.

3 Q And what is that?

4 A She have -- I don't even know what it's called.

5 Q A reaction or the symptoms that she --

6 A She have -- She has seizures and she have asthma and  
7 she have --

8 Q Is she receiving aid for --

9 A Yeah, she get aid.

10 Q -- because of her IQ?

11 A Uh-huh, she get Social Security.

12 Q Because she's been diagnosed as what, mentally  
13 retarded?

14 A Uh-huh.

15 Q Okay. Growing up there was a name that the boys in  
16 the neighborhood would say about your mother.

17 A Uh-huh.

18 Q And it was said to John numerous times?

19 A Yes.

20 Q What was that name?

21 A Leprechaun.

22 Q And why would they call her leprechaun?

23 A That's what they said she looked like.

24 Q Because of the physical appearance?

25 A Because of her face, the way her lips and her nose

III-84



WHITE - DIRECT

1 is.

2 Q And the lips and the nose are caused from what?

3 A One was from the accident and one was from my daddy.

4 Q What did your daddy do to her?

5 A He used to beat her up.

6 Q And she lost her teeth because of it?

7 A Uh-huh.

8 Q And she gained the name of Leprechaun because of it?

9 A Yes.

10 Q And growing up you would hear the boys --

11 A And the girls.

12 Q -- taunt you and John?

13 A Uh-huh. They used to chase me and John from school.

14 They was called -- It was Ray-Ray and Tazma [phonetic]. They  
15 used to chase us from school and throw rocks at us.

16 Q And what would they say to you?

17 A They used to just call -- say my mamma a crackhead,  
18 your mamma the leprechaun.

19 Q Did this upset you?

20 A Uh-huh.

21 Q And did it upset John, do you know?

22 A Yes.

23 Q Okay. Sometimes when your mother, Eunice, would  
24 come to visit you at 43rd and Ascot, she was under the  
25 influence?

III-85

WHITE - DIRECT

1 A Uh-huh.

2 Q Of what?

3 A Of crack cocaine and alcohol.

4 Q Okay. And what would she -- she came to visit and  
5 was under the influence what would happen?

6 A My grandfather would argue and fuss and try to make  
7 her leave.

8 Q And would she willingly go?

9 A It would be hard, but she is -- he would push her  
10 away. They would just stand and argue.

11 Q Your mother received some money from disability  
12 though, right?

13 A Uh-huh, every month.

14 Q Okay. Do you know what she did with that money  
15 every month?

16 A When she'd get it on the 1st, it's like -- She'd get  
17 like seven hundred dollars (\$700), she'd get it on the 1st, it  
18 would be gone on the 2nd or the 3rd and she don't have no  
19 bills.

20 Q Do you know your father, John White?

21 A Yeah, I know him.

22 Q How many times have you met him in your lifetime?

23 A I can count on my hand, no more than ten.

24 Q And how many times have you seen him in contact with  
25 your brother, John?

III-86

WHITE - DIRECT

1 A I haven't.

2 Q Okay. Was there any trips that John would take with  
3 him?

4 A He would take him to the park.

5 Q Did he ever take him outside of South Central L.A.?

6 A No.

7 Q And would he ever try to give him guidance or  
8 anything like that?

9 A No, not that I know of.

10 Q Did he ever help him with his schoolwork?

11 A No.

12 Q Did he ever --

13 A Nobody helped us with our schoolwork.

14 Q You were on your own basically?

15 A Yeah.

16 Q Was there any emotional bonds between John and his  
17 father?

18 A No.

19 Q How about between you and your father?

20 A No.

21 Q And it's the same person, correct?

22 A Yes.

23 Q Okay. After you moved from Ascot and 43rd, you  
24 moved to another house, right?

25 A Uh-huh.

III-87

WHITE - DIRECT

1 MR. SCISCENTO: If I may approach.

2 BY MR. SCISCENTO:

3 Q Defense Exhibit G, do you recognize this?

4 A Yes.

5 Q Okay. And what do you -- What is this a picture of?

6 A That's a picture of -- That's on Ascot and 43rd and  
7 that's the vacant lot, the little auto place that was vacant  
8 where we found -- where they found this lady dead in there.

9 Q Okay, let me stop you there for a second. Let me go  
10 through this. This is --

11 MR. SCISCENTO: Your Honor, I'd move for its  
12 admittance, Defense Exhibit G.

13 MR. GUYMON: No objection.

14 THE COURT: Received.

15 (Defendant's Exhibit G admitted)

16 BY MR. SCISCENTO:

17 Q This is the street, at 43rd and Ascot, before you  
18 moved to 60th Street, right?

19 A Yes.

20 Q And you had described some things in there. Why  
21 don't you have -- Why don't you come down here, if you can,  
22 come right here for a second.

23 (Pause in the proceedings)

24 This is the neighborhood that you grew up in?

25 A Yes.

III-88

WHITE - DIRECT

1 Q All right. And I want you to show to the jury the  
2 kind of neighborhood that you grew up in. Explain different  
3 aspects of this neighborhood.

4 MR. GUYMON: Judge, --

5 THE WITNESS: This was the place where they found  
6 the lady dead. She was -- She was white and she had a pole  
7 stuck up her privacy. And this is the corner we stood on and  
8 watched 'em pull her body out.

9 Q Okay. How far away is this street from where you  
10 lived, the house that we just saw?

11 A We stayed right next door to the apartments there,  
12 right here.

13 Q Okay. Did John -- Was John there when this lady's  
14 body was pulled out?

15 A Uh-huh.

16 Q Okay. And what else did you view on this street?

17 A Right across the street from here there was a heavy-  
18 set man and the police chased the man and he got up in the  
19 attic and he got stuck and the way they brought him down --  
20 they shot him and they killed him, but they broke the whole  
21 wall down and pulled his body out.

22 MR. SCISCENTO: Your Honor, I'm sorry.

23 COURT RECORDER: I'm having a hard time picking her  
24 up when she's facing that away.

25 MR. SCISCENTO: Johnnisha, I'm sorry, we need you to

III-89

WHITE - DIRECT

1 talk into that mike a little bit louder.

2 BY MR. SCISCENTO:

3 Q Show me other -- Show the jury other aspects of the  
4 street that you grew up on.

5 A This was the apartments and sometimes guys hung out  
6 in front of there.

7 Q Okay, what kind of guys?

8 A Gangbangers.

9 Q Okay. Did they taunt you?

10 A They wouldn't mess with me.

11 Q Okay, what about John?

12 A They would mess with him.

13 Q Okay. Tell me more about this street, the street  
14 that you called home for how many years?

15 A For like four or five years.

16 Q Okay, tell me some more about this. Did you see any  
17 drive-by shootings?

18 A Yeah.

19 Q How many?

20 A A lot, like --

21 Q Some guy on a bicycle with a shotgun?

22 A Yeah.

23 MR. GUYMON: Judge, I'm gonna object to the leading  
24 nature. I mean, if she can answer the question is one thing,  
25 but for him to suggest it is another.

III-90

WHITE - DIRECT

1 THE COURT: I'll permit some leading. Overruled.

2 BY MR. SCISCENTO:

3 Q Tell me what other kinds of acts of violence that  
4 you witnessed on this street that you lived on for four and a  
5 half years.

6 A We used to hear shooting and my grandmother used to  
7 make us get down on the ground.

8 Q Okay. Any other kind of violence you saw there?

9 A No.

10 Q Have a seat. You can go back to the --

11 MR. SCISCENTO: The Court's indulgence for one  
12 moment, Your Honor.

13 (Pause in the proceedings)

14 BY MR. SCISCENTO:

15 Q Now at 43rd and Ascot, you lived there at what age?

16 A 43rd and Ascot I was seven and eight.

17 Q Okay, you were seven --

18 A Seven, eight, nine, ten.

19 Q So you lived there for about four years?

20 A Uh-huh.

21 Q And John lived there with you?

22 A Yes.

23 Q Okay. Did you ever see any crack cocaine being sold  
24 out there?

25 A Right in front of the store.

III-91

WHITE - DIRECT

1 Q Okay. I'm gonna to show what's been marked as  
2 Defendant's Exhibit Proposed -- as Proposed Exhibit L. It's a  
3 videotape.

4 A Uh-huh.

5 (Pause in the proceedings)

6 Q Do you recognize this, Johnnisha?

7 A Yes, yes.

8 Q What is this?

9 A Where we lived on 43rd and Ascot.

10 Q Is that -- Does this tape adequately represent where  
11 you lived?

12 A Yes, it do.

13 Q Okay. And what is that a picture of right now that  
14 you're looking at?

15 A The house that we stayed in.

16 Q Okay. That's your grandmother's house?

17 A Yes.

18 Q Okay. And that's where 16 of you stayed?

19 A Yes.

20 Q Okay. Now there are some more pictures that are  
21 coming and I want you to describe what you see here.

22 A Okay.

23 Q And that house, the picture that we just saw of the  
24 house, adequately describes what is presently there and where  
25 you lived?

III-92



WHITE - DIRECT

1           A     Yes, it's the same right now today.  
2           Q     Okay, what is this?  
3           A     That's on 45th. That's going down Ascot.  
4           Q     And that's the neighborhood you grew up in?  
5           A     Yes.  
6           Q     Explain to me, you've seen different houses in  
7 here, --  
8           A     Uh-huh. And that's the school we attended.  
9           Q     Okay, let me back you up a little. These houses --  
10 This is the school that you went to?  
11          A     Yes.  
12          Q     Okay, which school is that?  
13          A     Ascot Elementary School.  
14          Q     Tell me about that school. Is it a private school  
15 or public school?  
16          A     Public.  
17          Q     Okay. Was it a violent place to be at?  
18          A     The only thing was wrong with Ascot is you really  
19 didn't get no help from the teachers.  
20          Q     Walking to school --  
21          A     Walking to and from school, we used to get chased by  
22 Ray-Ray and Tazma.  
23          Q     And they're the ones that called your mother  
24 leprechaun?  
25          A     Yes.

III-93

WHITE - DIRECT

1 Q Okay. As we go through this tape, explain to me  
2 what we're seeing there.  
3 A That's the school we attended.  
4 Q And it looks the same today --  
5 A Uh-huh.  
6 Q -- as it did back when you were there?  
7 A Yes.  
8 Q Okay. What about that market right there?  
9 A They just put that there.  
10 Q I'm sorry?  
11 A They just put that there. That wasn't there.  
12 Q So that market isn't there?  
13 A Uh-uh.  
14 Q What is this? Do you recognize this?  
15 A That's all going down Ascot.  
16 Q Okay. That's right by where you lived?  
17 A Uh-huh.  
18 Q This is what you grew up in?  
19 A Yeah.  
20 Q Did you see any violence on these streets?  
21 A Yeah. That's the place where the lady got killed.  
22 Q That's the place where the lady got killed?  
23 A Uh-huh.  
24 Q The one you described about with the --  
25 A Yeah.

III-94

WHITE - DIRECT

1 Q I forgot what you said.  
2 A A pole.  
3 Q A pole?  
4 Do you know who put it there?  
5 A No.  
6 Q Okay. And what is this?  
7 A That's the other neighborhood, 43rd and Ascot.  
8 Q Okay. So you grew up in here?  
9 A Yes.  
10 Q And this is what you saw every day?  
11 A Yes.  
12 Q Was John living with you?  
13 A Yes, he was.  
14 Q Some abandoned carts out there?  
15 A Uh-huh, baskets and --  
16 Q Tell me more --  
17 A -- all kind of stuff.  
18 Q Go ahead, explain.  
19 A Baskets with cans the baseheads have.  
20 Q Baseheads?  
21 A Baseheads is people with no home on crack cocaine,  
22 don't got nowhere to live, live on the street.  
23 Q So there's people called baseheads?  
24 A Yes.  
25 Q All right, explain to me what a basehead is.

III-95

WHITE - DIRECT

1           A     I used to call my mamma that too. A basehead is  
2 somebody that don't have a home, somebody that uses drugs,  
3 somebody that don't get no income or even sometimes they could  
4 get income and blow it all off.

5           Q     Okay. And so there's pictures in those -- in there  
6 there is baskets?

7           A     The carts, yes.

8           Q     And the baseheads live in there?

9           A     Yeah, in them apartments where you see the carts  
10 parked at.

11          Q     Okay. Did you see a lot of baseheads around where  
12 you lived?

13          A     Yes.

14          Q     Okay, let me go on. Do you recognize this?

15          A     Yes. That's one of the liquor stores, the second  
16 liquor store.

17          Q     Okay. And does this adequately represent the  
18 neighborhood you grew up in?

19          A     Yes.

20          Q     And this was actually the neighborhood of these  
21 pictures -- or the neighborhood as it is today, right?

22          A     Yes.

23          Q     Has it changed since you lived there?

24          A     No.

25          Q     Okay, so this pretty much looks like it was --

III-96

WHITE - DIRECT

1           A     It's still the same.  
2           Q     -- nine years ago?  
3           A     Uh-huh.  
4           Q     What are we looking at here?  
5           A     43rd and Ascot.  
6           Q     What is this building?  
7           A     No, that's where the baseheads stay, where the  
8 basket's at.  
9           Q     Okay. This is the neighborhood that you grew up in?  
10          A     Yeah.  
11          Q     And this is also --  
12          A     That's the store, yeah.  
13          Q     That's the store?  
14          A     The liquor store where the gangbangers hang at. And  
15 that's the school we attended.  
16          Q     This is another school?  
17          A     That's still Ascot.  
18          Q     And this is the one you had to walk to --  
19          A     Walk from --  
20          Q     -- with Taz and Ray-Ray?  
21          A     Walk from there to home, from Vernon to 43rd and  
22 Ascot.  
23          Q     How far a walk was this?  
24          A     About six, seven blocks.  
25          Q     And was it safe walking through there?

III-97

WHITE - DIRECT

1 A No.

2 Q And every day you had to do this?

3 A Yeah, every day.

4 Q And what we see here is still Ascot?

5 A Uh-huh.

6 MR. SCISCENTO: Your Honor, I'd move for the  
7 admittance of State's [sic] Exhibit -- What number was that?

8 THE CLERK: L.

9 MR. SCISCENTO: L?

10 MR. GUYMON: And the only problem I have is I  
11 understand there's some possible -- some additional stuff on  
12 the tape. If they want to duplicate -- delete the remaining,  
13 that's fine.

14 THE COURT: Is there more stuff on there?

15 MR. SCISCENTO: There is additional stuff that this  
16 witness is not privy to.

17 MR. GUYMON: May we approach?

18 (Off-record bench conference)

19 THE COURT: Admitted subject to that limitation.

20 (Defendant's Exhibit L admitted)

21 BY MR. SCISCENTO:

22 Q Johnnisha, there's a time that you moved away from  
23 43rd and Ascot, right?

24 A Yes.

25 Q Okay. And where did you move to at that time?

III-98

WHITE - DIRECT

1 A 60th and Normandy.

2 Q All right. From 43rd and Ascot to 60th and  
3 Normandy?

4 A Yes.

5 Q Explain to me about 60th and Normandy.

6 A 60th and Normandy, when we first moved over there,  
7 my grandmother checked us into school. John attended John  
8 Muir. I attended Berlong [phonetic] Elementary. We used to  
9 walk to school. We used to walk by gangbangers. And they  
10 didn't mess with John while we were together. They would just  
11 look at him and sometimes, when he was by himself, they used  
12 to tell him that they was gonna put him on and he'd used to  
13 ignore 'em.

14 Q Okay. Was 60th and Normandy more violent than 43rd  
15 and Ascot?

16 A Yes.

17 Q Why did you guys move there then?

18 A 'Cause we didn't have -- They was selling the house  
19 and that was the only thing available to our -- for my  
20 grandmother's price range.

21 Q Okay. And how many people were living with you on  
22 60th and Normandy?

23 A About 19 people. It was a five-bedroom house.

24 Q On 60th and Normandy?

25 A Uh-huh.

III-99

WHITE - DIRECT

1 Q Your cousin, Keonna, had a chance to go to a  
2 different school.  
3 A Uh-huh.  
4 Q What kind of school?  
5 A She attended Valley Alternative, I think.  
6 Q Okay. And did you have an opportunity to attend?  
7 A No.  
8 Q Why not?  
9 A Because of the -- You had to have -- You had to get  
10 certain grades to go there.  
11 Q Was it a private school?  
12 A Uh-huh.  
13 Q And did it cost money?  
14 A Yeah.  
15 Q Now do you know a person named Sonny, a gang member  
16 named Sonny?  
17 A Yes.  
18 Q Sonny what? What was his name?  
19 A Baby Sonny.  
20 Q Baby Sonny?  
21 A Uh-huh.  
22 Q And Baby Sonny had some connection with Keonna,  
23 right?  
24 A Yes.  
25 Q Explain to the jury about that connection.

III-100



WHITE - DIRECT

1           A     He used to -- Every time he seen her, he used to  
2 always hit her on her butt. She used to be mad, but she  
3 couldn't do nothing about it. And then one day he seen -- he  
4 seen John and he told John that he was gonna rape her if he  
5 didn't get in the gang.

6           Q     Did John tell you this?

7           A     No, my friend.

8           Q     Your friend heard this?

9           A     'Cause where they jumped him on, it was in front of  
10 my friend's house, by my friend's house.

11          Q     And so did John tell you why he did what he did?

12          A     No, I found out later through Keonna.

13          Q     Why he joined?

14          A     Yeah.

15          Q     And what was the reason why?

16          A     Because they said they was gonna rape Keonna if he  
17 didn't.

18          Q     Okay, so he did it as protection for the family?

19          A     As protection.

20          Q     Okay. After John joined the gang, what was the  
21 gang's reaction to the family, your family?

22          A     It was like they was like protection, but then, in a  
23 way, it wasn't, 'cause they hung out in front of the house all  
24 the time or they always come and get John early in the morning  
25 and take him away.

III-101

WHITE - DIRECT

1 Q But was anybody hassling you anymore now?

2 A No.

3 Q So once John joined the gang, the hassles stopped  
4 with you?

5 A Yeah.

6 Q You were more protected in the neighborhood?

7 A Yes.

8 Q Okay. And was that a direct correlation because  
9 John joined the gang?

10 A Yes.

11 Q And he did that -- Do you know why he did that?

12 A For his family.

13 Q So in the form of protection, he went in to join the  
14 gang?

15 A Yes.

16 Q Okay. And the gang members left the rest of the  
17 family alone?

18 A Yes, they did.

19 Q And then what would happen after that? How old was  
20 John at this point?

21 A About 14, 15.

22 Q 14 or 15?

23 A Uh-huh.

24 Q What was happening to your relationship at that  
25 point with John?

III-102

WHITE - DIRECT

1           A     John was always quiet. When they come and get him,  
2 he would say nothing and if he wouldn't -- didn't want to go,  
3 we wouldn't know 'cause he wouldn't say nothing and, if he  
4 come back, he still wouldn't say nothing.

5                     Big Deco used to always tell my grandmother that --  
6 He would get some movies from my grandmother and say they  
7 gonna watch movies.

8           Q     And Big Deco was who?

9           A     Johnny's bigger friend.

10          Q     And he's the one that took John under his wings in  
11 the gang?

12          A     Yes.

13          Q     There was a time that John was in the California  
14 Youth Authority.

15          A     Yes.

16          Q     He was then placed on parole. Do you remember that?  
17 Well, was there a time that he had to come and visit the  
18 family and he couldn't at 60th and Normandy?

19          A     Yeah. Well, when he couldn't come on 68th and  
20 Broadway, he couldn't come over there.

21          Q     Okay. And why not?

22          A     Because there was a different gang from where he  
23 from.

24          Q     And he was told by a gang member what about visiting  
25 there?

III-103

WHITE - DIRECT

1           A     That next time he come over there he was gonna kill  
2 him.

3           Q     Were you there when that happened?

4           A     I was just coming outside. It was him and my  
5 cousin, Cornelius, standing by the car and --

6           Q     And you heard --

7           A     Keonna or Kennita, one of them, was standing by the  
8 car and he passed by and saw them there.

9           Q     And so basically this gang member told John, "You  
10 can't come back here"?

11          A     Yes.

12          Q     And if he does what happens?

13          A     He was gonna kill him.

14          Q     Johnnisha, tell me about your life now. You've had  
15 bouts with violence?

16          A     Yes.

17          Q     Explain to the jury what happened.

18          A     I was walking to the store one day on 68th and  
19 Broadway and there was a drive-by and I had -- they had shot  
20 me in my leg.

21          Q     When did this happen?

22          A     This happened in '94, '95.

23          Q     Anything else happen?

24          A     Then one day I was walking to the store and there  
25 was two guys and a girl. She asked me what was my name and

III-104

WHITE - DIRECT

1 then I told her my name and she stabbed me in my head and ran.

2 Q Why?

3 A I never knew why.

4 Q Did the police do anything about it?

5 A Yeah, they -- we drove around and looked for 'em  
6 after I got out of the hospital, but we never found out why.

7 They didn't ever look into it and it was just left at that.

8 Q Growing up in your neighborhood with these drive-bys  
9 and stabbings, --

10 A Yeah.

11 Q -- was that a rare occasion?

12 A That was the first time it happened to me really  
13 experiencing it, but it isn't rare.

14 Q It happens a lot?

15 A Yeah.

16 Q How many times a week does it happen?

17 A I would say at least about twice.

18 Q So you're under this constant, in the places that  
19 you grew up, that you lived with John, --

20 A Uh-huh.

21 Q -- you were always under this constant threat --

22 A Yes.

23 Q -- of violence?

24 A Yes.

25 Q It was always there?

III-105

WHITE - DIRECT

1 A Yes.

2 Q Do you know people growing up in your neighborhood?

3 A Uh-huh.

4 Q Are they faced with the same problems?

5 A Yes, they are.

6 Q Have you known any of 'em to get out of there?

7 A No.

8 MR. SCISCENTO: The Court's indulgence for one  
9 moment.

10 (Pause in the proceedings)

11 BY MR. SCISCENTO:

12 Q Let me ask you this. There's been a lot of talk  
13 about choices. The choice to walk to school and whether or  
14 not to be jumped is a tough choice to go to school, right?

15 A Yes.

16 Q Okay. And it's not the same choice of whether or  
17 not you're going to buy a car or not buy a car, right?

18 A Is not.

19 Q As a matter of fact, it's a life choice?

20 A Yes.

21 Q Are you constantly bombarded with these choices of  
22 live or die?

23 A Yes.

24 Q The choice of the color of clothes you wear  
25 determines what?

III-106

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IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \* \*

DONTE JOHNSON,

S.C. CASE NO. 65168

Appellant,

Electronically Filed  
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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 XVI  
~~~~~

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IN THE SUPREME COURT OF NEVADA

DONTE JOHNSON,

CASE NO. 65168

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

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**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 9<sup>th</sup> day of January, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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