

SIMPSON - DIRECT

1 gun up with?

2 A His right hand.

3 Q Okay. And you moved -- you moved your right hand
4 from behind yourself up in a --

5 A The gun was --

6 Q -- vertical motion, is that right?

7 A Yes, sir.

8 Q All right. How far up did he get the gun before you
9 hit him upside the head, to use your expression?

10 A Well, when I seen the barrel of the gun coming up,
11 that's when I hit him.

12 Q Now, did you get a good look at that gun?

13 A Yeah, it was like a -- like a -- like a dull chrome.

14 Q Could you tell whether or not the gun was real or
15 fake?

16 A Oh, it was like -- tell it was real.

17 Q Now when you hit him, what hand did you hit him
18 with?

19 A I'm a southpaw, I hit with my left hand.

20 Q Okay. And you said you hit him on the head?

21 A Right here.

22 Q Okay. You've pointed to the left side right around
23 the temple area?

24 A Right. And when I hit him it would have been on the
25 -- on the right side because the way -- the way he was turned

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1 against the door jam.

2 Q Okay. So you hit him with your left hand right
3 around the right temple area?

4 A Yes, sir.

5 Q And when you hit him, what, if anything, happens to
6 Donte and the gun?

7 A I heard the gun hit the ground, he was basically out
8 and then the security guard grabbed me and pinned me against
9 the wall.

10 Q Okay. So now there's three of you. There's you,
11 Donte, and the security guard?

12 A Yes, sir.

13 Q All right. Were you asked to leave the area that
14 night by the security guard?

15 A As he held me against the wall and I asked him to
16 call Metro 'cause he, Donte, had threatened my life. And when
17 Donte came to he asked Donte what he wanted me to do -- what
18 he wanted him to do and he said, let him go. He says, I'll
19 handle it.

20 Q Okay. So Donte tells the security guard, let him
21 go, meaning let you go --

22 A Right.

23 Q -- and that Donte would handle it?

24 A Right.

25 Q All right. Did the security guard let you go?

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1 A Matter of fact escorted me to the -- to the outside
2 of the gates of the sidewalk and told me not to come back to
3 the property anymore.

4 Q Okay. When he took you to the gates of the property
5 or to the sidewalk, did you come back into the property?

6 A No, sir.

7 Q All right. Where did you go?

8 A I start going west on Fremont towards my room which
9 was at the Purple Sage.

10 Q Okay. How far up the way was your room at the
11 Purple Sage from where this altercation took place? How many
12 blocks?

13 A City blocks, about two, two and a half.

14 Q And how many blocks away from the altercation did
15 you get before you next see Donte Johnson?

16 A A city block.

17 Q One city block?

18 A Yes, sir.

19 Q Now, when you left and got a city block away, were
20 you alone or were you with any -- with anyone else?

21 A I was by myself.

22 Q Okay. Tell me what occurs?

23 A I looked behind me and I see a white Cadillac with
24 green top -- a four-door white Cadillac with a green top
25 coming out of the Las Vegas, turn west on Fremont. Got to

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1 where the gas station is and made a halfway U-turn and pulled
2 up into the driveway of the U-Haul, halfway between the
3 driveway of the U-Haul where I had got to the light pole. And
4 Donte stepped out of the car and he looked around, dragging
5 his hand and when the gun came up, the gun was right here in
6 my face and he shot me.

7 Q Now, how close was the gun to you when Donte shoots
8 you the first time?

9 A About right here.

10 Q And can you give me how many inches that is away
11 from your face?

12 A Less than a foot.

13 Q Okay. Now, what was the lighting like in that area
14 when Donte puts the gun up to you?

15 A I was up under one of those big streetlights.

16 Q Did you get a good look at the gun then?

17 A Yes.

18 Q And how sure are you that the person now aiming the
19 gun at you is, in fact, Donte Johnson, the man in this
20 courtroom?

21 A Uh-uh. I didn't go into shock or anything. When
22 the police came, they asked me who did it. I told 'em Donte
23 Johnson, told 'em which direction that he left in the Cadillac
24 after he shot me in my back, and described the car, described
25 him, and gave 'em his name and his street name.

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1 Q Okay. And as you testify today, how sure are you
2 that Donte Johnson is the man that shot you in the face?

3 A Very sure.

4 Q Okay. Now, the gun goes off the first time, is that
5 correct?

6 A Yes.

7 Q And where did the bullet strike you?

8 A Got me here, it blew my jaw bone out and all my
9 teeth on this side. My body stiffened, I fell off the curb
10 cracking my skull, and I'm looking at him and -- then he
11 shoots me in the back.

12 Q Okay. Now, when you say your body stiffens and you
13 fall and crack your skull, are you still conscious?

14 A Yeah, 'cause I tell 'em, I said -- I told him,
15 before he drove off, I said, punk, you can't kill me. And
16 that's when he jumped in his Cadillac and drove down the
17 street.

18 Q Okay. So after being shot you're still able to
19 communicate, is that right?

20 A Yes.

21 Q Are you still able to be -- to see after you got
22 shot the first time?

23 A Yeah, I'm watching him when he turned back and he
24 looked around and he got back in his Cadillac and he went east
25 on Fremont towards Eastern.

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1 Q Okay. Once you fall to the ground and you look back
2 over your shoulder, what are you seeing now?

3 A Well, when he first shoot me in the face and I fall,
4 I'm locking -- my face is laying down like this, I'm looking
5 up at him, and then he look around and he shoots me in the
6 back and that's when I said, punk, you can't kill me. He gets
7 in his Cadillac and he drive off and so then I hear somebody
8 say, Prophet, are you all right? And so I don't even bother
9 to answer and then a few minutes later the ambulance -- I
10 watched the ambulance pull up -- no, paramedics pull up.

11 Q The second shot, you say, goes into your back. Can
12 you tell me approximately where in your back the second shot
13 enters?

14 A Oh, about five inches from my neck.

15 Q You say five inches from your neck?

16 A Yes, sir.

17 Q All right. Does that bullet go all the way through
18 you and out your chest or not?

19 A No. The bullet is lodged in the upper part of my
20 spine and fragments of it are on the lower -- there's four
21 fragments in the lower part of my spine.

22 Q Okay. So there's a portion of a bullet that's in
23 the upper spine and four that are you in your lower -- lodged
24 in your lower spine?

25 A Yes, sir.

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1 Q Okay. You say after the second shot, what is it
2 that you see Donte Johnson do?

3 A He gets back in his Cadillac. First he looks
4 around, he gets in his Cadillac, he backs the Cadillac out of
5 the driveway and he heads east on Fremont towards -- going
6 towards Eastern.

7 Q Now, had you seen Donte Johnson driving that
8 Cadillac before May 4th of 1998?

9 A Yes.

10 Q Okay. And how often would you see Donte Johnson
11 associated with that white Cadillac?

12 A Well, that one only a couple of days. He had
13 another all white Cadillac but he lost -- they -- I guess he
14 got that one taken or something. But this one was a white
15 four-door Cadillac with a green top.

16 Q You say you next hear someone holler out, Prophet,
17 are you okay? Is Prophet a nickname of yours?

18 A Yes.

19 Q Okay. Did the police get there?

20 A Yes.

21 Q When the police get there, were you able to describe
22 or answer the police's questions?

23 A Yes, sir.

24 Q And did they ask you who it was that shot you?

25 A Yes, sir.

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1 Q And did you answer those questions?
2 A Yes, sir.
3 Q And who did you indicate had shot you?
4 A Donte, better known to me on the street as Deco.
5 Q Did you give the police that information?
6 A Yes, I did.
7 Q And where were you -- where were you taken once the
8 police got there?
9 A They took me to the trauma center at the UMC Medical
10 Center.
11 Q And approximately how long did you stay at UMC
12 Medical Center?
13 A A little bit over a year.
14 Q Now then, you're in a wheelchair today, is that
15 correct?
16 A Yes, sir.
17 Q And why is that?
18 A Because of Donte Johnson shooting me in my face and
19 in my back.
20 Q Do you have the use of your legs?
21 A No, sir.
22 Q Neither of them?
23 A No.
24 Q Okay. How about your upper extremities?
25 A I'm -- now I'm classified as a tri-quad. I'm

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1 partially paralyzed in the left part of my -- in my left arm
2 and left part of my body and I'm paralyzed from my chest down.

3 Q Showing you, Derrick, State's Exhibits 220 through
4 227, I want to just ask you a couple of questions. In 220, is
5 this the area in which you were standing when you got shot?

6 A Yes, I was standing on this driveway that goes into
7 the U-Haul that's next to it, it's got a Economy Lodge, and on
8 this side is a big light pole, that's where -- when he drove
9 up here and when he got out of the car he shot me right there.

10 Q And how close were you to the light pole when you
11 got the shot the first and second time?

12 A I was next to the light pole.

13 Q Okay. The next picture, do you recognize the man
14 that's in Exhibits 221, right there?

15 A Yes, I do. That's me.

16 Q All right. And can you tell me when that picture
17 was taken?

18 A That picture was taken apparently when I was at --
19 right after he had shot me, they -- but, it may have been when
20 they was getting ready to transport me, I looked -- the trauma
21 -- at the trauma center.

22 Q Okay. Now, let me ask you, when you -- you said you
23 were in the hospital for, I think you said a year?

24 A Oh, a little bit over a year.

25 Q Were you conscious or unconscious for that period of

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1 time, that year?

2 A Well, four months -- for four months -- well, when I
3 woke up, I woke up and --

4 MR. FIGLER: Your Honor, at this point, I think
5 we're just going to object to the relevance of any of this
6 testimony. It's being offered as character -- as something
7 that my client allegedly did, anything beyond that is
8 irrelevant to this particular proceeding.

9 JUDGE SOBEL: You know, I think I would have
10 overruled it -- I would have sustained it in front of the jury
11 and I think I did.

12 MR. GUYMON: I'll move on, Judge.

13 JUDGE SOBEL: I was about to say it doesn't bother
14 me as much with judges, but go ahead.

15 MR. GUYMON: I will.

16 BY MR. GUYMON:

17 Q Mr. Simpson, 222 and 220 -- through 224, actually
18 through 225, do you recognize the clothing that's shown there.
19 Is that --

20 A That's my coat.

21 Q Okay. And you indicate that you were shot in the
22 back, is that correct?

23 A Yes, sir.

24 Q And does this show a bullet hole in the back of your
25 jacket after it was torn off your body?

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1 A Yes, sir.

2 Q And do you recognize this item in 224, I believe it
3 is?

4 A Yeah, I believe this is a --

5 Q 225, I'm sorry.

6 A -- I believe this is my -- the -- my shirt that I
7 had on.

8 Q The shirt and it --

9 A Had a bullet hole through the back.

10 Q Also has a bullet hole through the back?

11 A Yes, sir.

12 Q Okay. And lastly, are you able to hold these at
13 all? Do you need this?

14 A Yes. Thank you.

15 Q I'm going to ask you if you recognize photographs --
16 where the car is in 226 and 227?

17 A Yes, I do.

18 Q And how is it you recognize 226 and 227?

19 A That was the car that Donte Johnson was driving when
20 he pulled up and shot me.

21 Q Now then, are you awaiting a jury trial where you
22 are the victim of the charges of attempted murder with use of
23 a deadly weapon and battery with use of a deadly weapon
24 resulting in substantial bodily harm against Donte Johnson?

25 A Yes, I am.

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1 Q And is that case currently scheduled for trial or do
2 you know?

3 A Yes, it is. It was scheduled to start on July 3rd
4 but it was postponed for, I guess the outcome of what was
5 going to transpire in this trial.

6 Q Is there any question in your mind who the man is
7 that shot you on May 4th of 1998?

8 A No, it's not.

9 MR. GUYMON: Pass the witness, Your Honor.

10 JUDGE SOBEL: Any cross of this witness?

11 MR. FIGLER: Thank you, Judge.

12 CROSS-EXAMINATION

13 BY MR. FIGLER:

14 Q Mr. Simpson, you, at this time that we're all
15 talking about, used to reside in the Fremont and Bruce area,
16 is that correct?

17 A Yes, sir.

18 Q Okay. And at that time you've previously described
19 this area as a high drug area, is that correct?

20 A You can consider it the red light district, yes.

21 Q Okay. And by red light district you also mean that
22 there was violence and prostitution in this area quite
23 frequently, is that correct?

24 A Pretty much.

25 Q Okay. And in fact, I believe you testified even

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SIMPSON - CROSS

1 today that you were using crack cocaine pretty much every day?

2 A Yes.

3 Q Okay. Now, you testified on direct that you smashed
4 or punched an individual in the face, a person that you knew
5 as Deco or Donte Johnson?

6 A No, I indicated that my life was threatened by that
7 individual when he raised a gun and then I punched him in his
8 face.

9 Q Okay. At this time you stood about five foot ten,
10 is that correct?

11 A I was five nine and a half.

12 Q Okay. And were about a hundred ninety, two hundred
13 pounds?

14 A A hundred and ninety-five at that time.

15 Q Okay.

16 MR. FIGLER: You want to stand up for a second.
17 Okay. Sit down, please.

18 BY MR. FIGLER:

19 Q Now, you punched the individual that you knew as
20 Deco or Donte Johnson so hard that you caused his face to
21 bleed, isn't that correct?

22 A Yes, I did.

23 Q Okay. Now, you described yourself as a southpaw, is
24 that correct?

25 A That's what I said.

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1 Q Okay. Now, was that the first time that you ever
2 struck an individual in your life before?

3 A In defending myself, no.

4 Q That was the first time that you struck an
5 individual before?

6 A In defending myself, no.

7 Q No. So you had hit men before?

8 A In defending myself, yes.

9 Q Okay. And isn't it true that while you were able to
10 communicate with the police that you never told the police,
11 when they were initially questioning you or taking reports
12 from you later, that this individual that you knew as Deco had
13 threatened you, isn't that true?

14 A That's not true.

15 Q So, if the police made a full accounting of their
16 reports of what you said and that doesn't show in it, that
17 just means they didn't put that in?

18 A Sir, Detective Sharps came to the hospital and
19 questioned me and asked me what had transpired. Him and a
20 lady from Victims of Violent Crimes, and I gave him detailed
21 accounts of everything that transpired. The investigator that
22 came from the district attorney's office, I gave him detailed
23 account from the time that I walked up to Deco's room to the
24 time that he shot me, what had transpired.

25 Q Okay. Now, you used a particular -- well, let me

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1 ask you this first. It is true that after this alleged
2 confrontation that you had with an individual you knew as Deco
3 that you were, in fact, escorted off the property by the
4 security guard, isn't that correct?

5 A Yes, sir.

6 Q Okay. The individual you knew as Deco or Donte
7 Johnson was not escorted off the property, isn't that correct?

8 A No, he wasn't.

9 Q Okay. And you testified today that the statement
10 that was allegedly made to you earlier was, use the "N" word,
11 something along the line that before the night's over I'm
12 gonna kill you, isn't that correct?

13 A He said, punk, I'm not gonna sell you anything. He
14 said, as a matter of fact, nigger, before the night's over I'm
15 gonna kill you.

16 Q Okay.

17 A That's when he raised the gun and that's when I hit
18 him.

19 Q Okay. And that "N" word that you just used, that's
20 the word that you're saying that the person allegedly used
21 that evening, correct?

22 A I didn't say that he allegedly used, that's what he
23 used.

24 Q Okay. And in an earlier proceeding, in fact, you
25 didn't use that "N" word, you used a different word, didn't

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1 you?

2 A No. If he -- no, I did not.

3 Q In an earlier proceeding you said that he said,
4 matter of fact, amigo, before the night's over I'm gonna kill
5 you, didn't you?

6 A Amigo -- do I look like I'm a Mexican?

7 Q You did say that though, didn't you?

8 A No, I did not.

9 Q Okay.

10 MR. FIGLER: No further questions, Your Honor.

11 JUDGE SOBEL: Anything further, Gary?

12 MR. GUYMON: Nothing else, Your Honor.

13 JUDGE SOBEL: Thank you. Call your next witness,
14 please.

15 MR. DASKAS: Judge, can we see if Bryan Johnson or
16 Charla Severs is there?

17 (Pause in the proceedings)

18 MR. DASKAS: And actually, Judge, we are calling
19 Bryan Johnson now.

20 BRYAN JOHNSON, PLAINTIFF'S WITNESS, IS SWORN

21 THE CLERK: Please have a seat. State your full
22 name and spell your last name for the record.

23 THE WITNESS: Bryan Johnson, B-R-Y-A-N
24 J-O-H-N-S-O-N.

25 //

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DIRECT EXAMINATION

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BY MR. DASKAS:

Q Bryan, let me direct your attention to August of 1998. Were you living here in Las Vegas at that time?

A Yes.

Q And sometime around August and prior to that date, did you live at a home at 4815 Everman here in Las Vegas, Clark County, Nevada?

A Before that date, not --

Q You say before August of '98?

A Right.

Q Tell me the time frame in which you lived in the home on Everman?

A I believe it was October of '97 to late June of '98.

Q You moved out of the Everman home sometime around June '98?

A Yes.

Q After you moved out of the Everman home, did you continue to visit the home?

A Yes, sir.

Q You still had friends who lived at the Everman home?

A Yes, sir.

Q Who lived in the home after you left in June of '98?

A Tod Armstrong and Donte Johnson and Red and LaLa.

Q You mentioned Tod Armstrong and Donte Johnson?

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1 A It wasn't right when I moved out but --

2 Q Let me ask you, do you see Donte Johnson seated in
3 court today?

4 A Yes.

5 Q Would you please point to him and describe something
6 he's wearing as he sits in court today?

7 A Khaki suit.

8 MR. DASKAS: If the record would reflect the witness
9 has identified the defendant.

10 JUDGE SOBEL: It will.

11 BY MR. DASKAS:

12 Q Now, if you moved out in June of '98 and you
13 continued to visit the Everman home, when was it that you
14 learned that Donte Johnson began to stay or at least visit the
15 Everman home?

16 A Probably in July.

17 Q Of 1998?

18 A Yes.

19 Q You mentioned the name Red, I believe?

20 A Yes.

21 Q Do you know Red by any other name?

22 A No. No.

23 Q Can you describe Red for me?

24 A African American, heavy set, somewhat.

25 Q Was he a friend of Donte's?

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- 1 A Yes.
- 2 Q And you mentioned the LaLa, and who is LaLa?
- 3 A I don't know her by any other name.
- 4 Q Man or woman?
- 5 A Woman.
- 6 Q And what was her relationship to Donte Johnson?
- 7 A That was his girlfriend.
- 8 Q Okay. Did you know Donte Johnson by any name other
9 than Donte Johnson?
- 10 A Yes, sir.
- 11 Q What other name?
- 12 A Deco and John White.
- 13 Q You testified during the trial of this matter, is
14 that correct?
- 15 A Yes, sir.
- 16 Q And in fact, you testified previously in a penalty
17 hearing, is that true?
- 18 A Yes, sir.
- 19 Q During the first portion of the trial against Donte
20 Johnson you testified about a conversation you had on August
21 15th, 1998, do you recall that?
- 22 A Yes, sir.
- 23 Q And August 15th was a Saturday?
- 24 A Yes, sir.
- 25 Q Why was it that you were at the Everman home on

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1 Saturday morning, August 15th, 1998?

2 A Tod, Ace, and I were getting ready for a job
3 interview we had that day.

4 Q Now, without giving me all the details, since you
5 already testified about that in the trial, tell me briefly
6 what Donte Johnson said that you overheard on the morning of
7 August 15th, 1998 about a quadruple homicide?

8 MR. FIGLER: Your Honor, could we also ask at this
9 time -- first of all we'd object to this as being cumulative
10 and is repetitive of what's in the transcript. Secondly, if
11 the Court is inclined to listen to this, we would ask for who
12 else was present at the time, that sort of thing, a voir dire,
13 or at least foundation.

14 JUDGE SOBEL: Lay a little better foundation.

15 MR. DASKAS: Okay.

16 BY MR. DASKAS:

17 Q On the morning of August 15th, 1998, when you were
18 at the Everman home, who else was present?

19 A Tod Armstrong, Ace Hart, Donte Johnson, Red, and
20 LaLa.

21 Q All right. Why were you at the Everman home on
22 August 15th, that morning?

23 A Because Tod and Ace had to get ready to go to the
24 interview we had that day.

25 Q And where was the interview going to take place?

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1 A Stallion Mountain Golf Course.

2 Q How many people had an interview at Stallion
3 Mountain that morning?

4 A Three, Tod --

5 Q Who were they?

6 A Tod, Ace, and myself.

7 Q And you mentioned that you all three met at the
8 Everman home to go to the interview?

9 A Ace and I had gone over there and Tod was already
10 -- that was his house, that's where he already was.

11 Q At some point that morning before you left for the
12 interview, you overheard Donte Johnson make some statements
13 about a quadruple homicide, is that true?

14 A That's true.

15 Q All right. Now where were you when Donte made those
16 statements?

17 A In the living room.

18 Q And who was present when Donte Johnson made those
19 statements?

20 A Ace Hart, myself were present the whole --
21 throughout the whole conversation but other people had come in
22 and out at various times.

23 Q Do you recall what time your interview was on that
24 Saturday morning?

25 JUDGE SOBEL: You know, I think I'll sustain it on

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1 the cumulative. We've already heard from the detective, we've
2 seen a board here with the exact statements. Move on to
3 another area.

4 BY MR. DASKAS:

5 Q You testified during the penalty hearing against
6 Donte Johnson, is that true?

7 A Yes, sir.

8 Q Now during the penalty hearing you testified about
9 an interview you gave police detectives on August 17th, 1998,
10 is that right?

11 A Yes, sir.

12 Q And you recall what day of the week August 17th was?

13 A Monday.

14 Q During your interview with detectives on August
15 17th, did you explain to detectives about other crimes you
16 were aware of that Donte Johnson had committed?

17 A Yes, sir.

18 Q And I'm only speaking about things that Donte
19 Johnson told you, you understand that?

20 A Yes, sir.

21 Q Did you tell the detectives information about the
22 crime that had occurred at the Longhorn Casino?

23 A Yes, sir.

24 Q Do you know where the Longhorn Casino is located?

25 A It's somewhere off Boulder Highway.

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1 Q Okay. When you were interviewed on August 17th, how
2 far before that did you tell the detectives this crime at the
3 Longhorn had occurred?

4 A Approximately a week.

5 Q That -- in other words, the crime would have
6 occurred sometime around August 10th, 1998?

7 A Correct.

8 Q And what information did you tell detectives that
9 Donte had told you about the Longhorn Casino?

10 A He said that one of the people they were going after
11 had -- they had stolen originally from the people that they
12 were going to the Longhorn to see and --

13 Q Let me stop you. You said -- you said Donte said
14 they had stolen from some people?

15 A Correct.

16 Q Now, first of all, when you say "they had stolen,"
17 who is they?

18 A Donte and Red.

19 Q And Donte said that he and Red had --

20 A And Scale also, I believe. I'm not sure.

21 Q You say Scale?

22 A Yeah.

23 Q Okay. So Donte told you that Donte, Red, and Scale
24 had stolen from somebody?

25 A Yes, sir.

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1 Q And did he tell you from whom they had stolen?

2 A They said it was some Crips.

3 Q And as a result of that did Donte tell you what
4 happened at the Longhorn Casino?

5 A Yeah, he said that they had -- they had been
6 shooting at Scale on Fremont Street so they went to the
7 Longhorn to shoot him.

8 Q Now, again, when you say they, Donte said "they had
9 been shooting at Scale," who was Donte referring to?

10 A The Crips.

11 Q And as a result of these Crips shooting at Scale,
12 what did Donte do?

13 A Him and Red went back to the Longhorn to shoot the
14 other kids.

15 Q And what did Donte tell you happened once he and Red
16 were at the Longhorn?

17 A He said they opened fire and Red shot one of the
18 guys in the head.

19 Q In other words, it was Donte's belief that Red had
20 actually hit somebody with a gun?

21 A Yes, sir.

22 Q All right. Did Donte indicate to you how many
23 people, that is of he and Red, who had guns?

24 A They both did.

25 Q And that's what Donte told you?

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1 A Yes, sir.

2 Q Did Donte indicate to you of he and Red who actually
3 fired the guns?

4 A I don't recollect, I don't remember him saying if he
5 had shot or not. I just remember him saying that Red did.

6 Q Now, during your interview with detectives on August
7 17th, did you speak with the detectives about another crime
8 that Donte had relayed to you?

9 A Yes, sir.

10 Q And you recall the name of the victim, the person
11 involved with that crime?

12 A Yes, sir, it was Snoop.

13 Q You say Snoop?

14 A Yes, sir.

15 Q All right. Did you personally know who Snoop was?

16 A Yes, sir.

17 Q All right. Do you know Snoop's real name?

18 A No, sir.

19 Q All right. Who was Snoop, as far as you knew back
20 on August 17th, 1998?

21 A He lived next door to Donte at a prior residence.

22 Q Now, what information did you learn from Donte
23 Johnson about this person that you've identified as Snoop?

24 A He said that Snoop had stolen a quarter piece of
25 crack cocaine from Scale and they went to the Thunderbird

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JOHNSON - DIRECT

1 Hotel and they had strangled him, choked him out.

2 Q You mention a couple of times now the name Scale, is
3 that right?

4 A Yes, sir.

5 Q Did you ever meet an associate of Donte Johnson's
6 who went by the name -- the street name of Scale?

7 A Yes, sir.

8 Q And to your knowledge was this a friend, an
9 associate of Donte Johnson's?

10 A Yes, sir.

11 Q Was he about the same age as Donte?

12 A Yes, sir, I would say approximately.

13 Q Now you mention Donte told you --

14 A Excuse me.

15 Q -- you mention that Donte told you that this person
16 named Snoop had ripped off some crack cocaine from Scale, is
17 that right?

18 A Yes, sir.

19 Q As a result of that -- as a result of Snoop ripping
20 off Scale what did Donte do in retaliation?

21 A He and Red and Scale went back to the Thunderbird
22 Motel and choked him to death.

23 Q Was this information that Donte Johnson told you?

24 A Yes, sir.

25 Q That he, Red, and Scale went to the Thunderbird

JOHNSON - DIRECT

1 Motel and choked Snoop?

2 A Yes, sir.

3 Q Did Donte Johnson ever indicate to you what was done
4 with Snoop's body after he, Red, and Scale choked Snoop?

5 A Yes, sir, he said they put him in the back of
6 Snoop's car and drove it out the freeway and dropped it off by
7 the Speedway.

8 Q You say by the Speedway?

9 A Yes, sir.

10 Q Do you know where the Speedway's located?

11 A Not off the top of my head.

12 Q Somewhere outside of Las Vegas?

13 A Right.

14 Q And I don't know if you answered this, but did Donte
15 tell you the car that they used to take Snoop's body from the
16 Thunderbird to the Speedway location?

17 A Yeah, it was Snoop's car.

18 Q Now, Bryan, were you ever at the Thunderbird when
19 Donte, Red, and Scale choked Snoop?

20 A No, sir.

21 Q Were you ever with Donte, Red, or Scale when they
22 took Snoop's body to the Speedway?

23 A No, sir.

24 Q And were you with Donte when he and Red did the
25 shooting at the Longhorn Casino?

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JOHNSON - DIRECT

1 A No, sir.

2 Q Let me ask you just one other area. Prior to August
3 of 1998, when you lived at the Everman household, did you use
4 crack cocaine?

5 A Yes, sir.

6 Q How often?

7 A Frequently, six days a week maybe.

8 Q You mentioned you moved out of the Everman home
9 sometime around June of '98, is that true?

10 A Yes, sir.

11 Q Did you begin to use cocaine less frequently once
12 you left the Everman home?

13 A Yes, sir.

14 Q And why was that?

15 A Part of it was it wasn't as accessible because I
16 lived totally on the other end of town and also I didn't have
17 as much money then, so.

18 Q When you left the Everman home in June of '98, where
19 did you begin to live at that point?

20 A At my mother's house.

21 MR. DASKAS: I'll pass the witness, Judge.

22 JUDGE SOBEL: Cross.

23 MR. SCISCENTO: Yes.

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25 //

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JOHNSON - CROSS

CROSS-EXAMINATION

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BY MR. SCISCENTO:

Q Mr. Johnson, you first learned about these murders on what day?

A What --

Q What days did you first learn about these murders?

A Which murders, sir?

Q The murders that happened at the Terra Linda residence?

A August 15th, sir.

Q August 15th. You said you were in the room with Tod, Red, Ace, Donte, and LaLa?

A No, actually Donte and Tod -- and rather, Ace and myself were the only ones in the room and then other people were coming in and out.

Q Was LaLa at -- in the house?

A Yes, sir, I believe so.

Q On the 15th you learned about 'em. You got dressed and you went out to this golf course to interview for a job?

A Correct.

Q You were living up in Summerlin with your mother?

A Yes, sir.

Q Did you know any of the boys that were killed?

A No, sir.

Q On the 16th you then report this to the police?

JOHNSON - CROSS

1 A I believe it was the 17th, sir.

2 Q Okay. So you learn about it on the 15th, in the
3 morning, you don't do anything about it. On the 16th you
4 don't do anything about it. On the 17th, there's a domestic
5 violence or domestic battery charge called, made from your
6 house to the police?

7 A Yes, sir.

8 Q And at that point the police are coming out there to
9 find out what's going on in the domestic violence?

10 A Yes, sir.

11 Q And at that point you, Ace, and Tod decide to tell
12 the police what happened?

13 A Yes, sir.

14 Q Okay. The 15th, though, you didn't -- you didn't
15 want to tell them?

16 A I didn't really want to tell them on the 17th
17 either, to be honest, sir.

18 Q The 16th wasn't a good day either to tell the police
19 about this?

20 A No, sir.

21 Q All of this that happened, all of these shootings
22 and murders that you've been talking about, you were never
23 present at any of them, were you?

24 A No, sir.

25 Q And you're just hearing this second hand from

JOHNSON - CROSS

1 somebody else?

2 A Yes, sir.

3 Q I don't understand this, you said Scale got shot and
4 then Donte retaliated by going there with Red and started
5 shooting?

6 A No, I didn't say he got shot, I said he was shot at.

7 Q Shot at. Scale was shot at and Donte retaliated?

8 A Correct.

9 Q Okay. And then Scale got ripped off and Donte
10 retaliated?

11 A Yes, sir.

12 Q Were they that good of friends, Scale and Donte?

13 A I believe so, sir.

14 Q How close? Closer than you, Tod, and Ace?

15 A Probably similar. I mean --

16 Q Similar, in the sense that you would look out for
17 the other person and do whatever you can for that other
18 person?

19 A I would say so, sir.

20 Q Okay. So, if Tod was being charged with this crime
21 and it was there to help him by saying something different,
22 you think that's the same relationship that you said that Tod
23 -- or that Donte and Scale had? That you and Tod had?

24 A Could you -- could you repeat the question? Yeah,
25 it was a similar relationship we had, yes.

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JOHNSON - CROSS

- 1 Q Out in Summerlin, in order to get out to Summerlin
2 you take the 95 Freeway, correct?
- 3 A I believe so. I get them mixed up.
- 4 Q There's other ways, but --
- 5 A Right.
- 6 Q -- the 95 will take you out there. That's the only
7 freeway that goes there right now?
- 8 A Yes, sir.
- 9 Q It's the same freeway that -- and that's westbound
10 to get out there, right?
- 11 A Yes, sir.
- 12 Q It's the same freeway that Donte and Red were
13 stopped on heading westbound. Do -- did you know that?
- 14 A I heard something about it. I don't know where it
15 was on the freeway here.
- 16 Q Okay. Ace lives out there in that area too, am I
17 correct?
- 18 A His mother actually lives off of like Las Vegas
19 Boulevard and like Wigwam or something, I believe.
- 20 Q You'd mentioned that Donte told you that Red shot
21 somebody in the head at the Longhorn?
- 22 A Yes, sir.
- 23 Q And that he died?
- 24 A I don't remember him saying that.
- 25 Q That's what he told -- is that what he told you,

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JOHNSON - CROSS

1 that he died?

2 A No, I don't believe he told me he was dead.

3 Q And who was it that was shooting at Longhorn and
4 shot the person in the head? Who was that again?

5 A I believe it was Red.

6 Q Did you ever drive out to the Speedway to look at
7 this person named Snoop who was there?

8 A No, sir.

9 Q And this is all information you heard from somebody
10 else, that being Donte?

11 A Yes, sir.

12 MR. SCISCENTO: No further questions.

13 JUDGE SOBEL: Robert, anything more?

14 MR. DASKAS: No redirect, Judge. Thank you.

15 JUDGE SOBEL: Thank you, sir. You're excused.

16 Call your next witness, please.

17 MR. GUYMON: Charla Severs. And Judge, will that be
18 the same admonition regarding admissions --

19 JUDGE SOBEL: Yeah.

20 MR. GUYMON: -- quadruple murder?

21 JUDGE SOBEL: Yeah. Yeah.

22 (Off-record colloquy between Judges)

23 JUDGE SOBEL: Yeah, the same rule then.

24 MR. GUYMON: Okay.

25 JUDGE SOBEL: By a two to one vote. No, I'm just

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SEVERS - DIRECT

1 kidding.

2 CHARLA SEVERS, PLAINTIFF'S WITNESS, IS SWORN

3 THE CLERK: Please have a seat. State your full
4 name and spell your last name for the record.

5 THE WITNESS: Charla Severs, S-E-V-E-R-S.

6 DIRECT EXAMINATION

7 BY MR. GUYMON:

8 Q Ms. Severs, do you know Donte Johnson?

9 A Yes.

10 Q And is he in court today?

11 A Yes.

12 Q Will you point to him and tell me what color he's
13 wearing in court today?

14 A He's sitting over there.

15 Q And what color is he wearing?

16 A Brown.

17 MR. GUYMON: The record reflect identification of
18 the defendant, Your Honor?

19 JUDGE SOBEL: It will.

20 BY MR. GUYMON:

21 Q And without -- just very limited, can you tell me
22 what your relationship was with Donte Johnson in say August of
23 1998?

24 A He was my boyfriend.

25 Q Okay. Did the two of you live together?

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SEVERS - DIRECT

1 A Yeah.

2 Q And can you tell me what your feelings were like for
3 him in August of 1998?

4 A I loved him.

5 Q Okay. Now, did the two of you talk about things
6 that he had done or did in August of '98?

7 A Yeah. Yeah.

8 Q Is that a yes?

9 A Yes.

10 Q Do you know anything about an incident that happened
11 at the Longhorn?

12 A Yes.

13 Q And how is it that you know about an incident that
14 happened at the Longhorn Hotel and Casino?

15 A Because I had -- he had somebody go get the car and
16 he was telling me -- us about it or whatever.

17 Q Okay. Let me ask you a little bit about that. At
18 the time of the Longhorn Casino incident --

19 JUDGE SOBEL: Excuse me, Gary. Charla, could you
20 keep your voice up because we're a little further away from
21 you than the jury was. Could you keep your voice up, please?

22 THE WITNESS: Okay.

23 JUDGE SOBEL: Thanks.

24 BY MR. GUYMON:

25 Q Would it help if you got closer to the microphone

SEVERS - DIRECT

1 and speak real loudly, okay?

2 A Okay.

3 Q Now, when Donte Johnson told you about the Longhorn,
4 where were you staying?

5 A On Everman.

6 Q And was Donte Johnson staying with you?

7 A Yes.

8 Q Who else was staying at Everman with you when the
9 Longhorn incident happened?

10 A Tod and Red and Ace.

11 Q Okay. Tod, Red, and Ace. And Tod Armstrong is the
12 person that was staying at the house and his mother owned it,
13 correct?

14 A Yes.

15 Q And how about Ace Hart, who's Ace Hart?

16 A Tod's friend.

17 Q Okay. And what was the relationship between say
18 Donte Johnson and Terrell Young?

19 A They was cool.

20 Q Okay. And who is Sikia Smith?

21 A He's Donte's friend.

22 Q Okay. And how about a person by the name of Scale
23 or DeWayne Anderson, who is that person?

24 A That's Donte's friend, too.

25 Q Okay. Now then, there was an incident at the

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SEVERS - DIRECT

1 Longhorn. Was that -- was the Longhorn incident before or
2 after the four murders?

3 A Before.

4 Q And how many days before the four murders was the
5 Longhorn incident about?

6 A Maybe like a week or so.

7 Q Okay. Now tell me what Donte Johnson told you about
8 the Longhorn incident?

9 A That he seen some guys that he -- that was like --
10 he like -- he know where they were staying at or whatever.

11 Q Did he tell you why he didn't like the guys that he
12 had seen?

13 A No.

14 Q Okay. Did he tell you where the guys were staying
15 at?

16 A At the Longhorn.

17 Q Okay. And when he said he had seen some guys, what
18 expression did he use about the guys?

19 A That they don't -- they don't know who be watching
20 'em or whatever.

21 Q Okay. But the guy he didn't like, didn't know that
22 Donte had been watching them?

23 A Yeah, that they never know who's watching 'em. They
24 don't know -- you know.

25 Q And what did Donte do or tell you he did after

SEVERS - DIRECT

1 watching these guys?

2 A He went back to the Longhorn and he shot -- he shot
3 them up.

4 Q Okay. And who went to the Longhorn with Donte when
5 he went to get the guys he didn't like?

6 A I think Red and Tiny Bug.

7 Q And you think Red and Tiny Bug went with him?

8 A Yes.

9 Q Okay. And how long was Donte gone when he went over
10 to the Longhorn?

11 A Maybe like ten or fifteen minutes.

12 Q Tell me what happened when Donte comes back, who's
13 he with?

14 A Red and Tiny Bug.

15 Q And what do you -- when you look at Donte, what do
16 you see and what did he tell you?

17 A He told me to go get the car from the casino.

18 Q Did he tell you what happened there at the casino?

19 A Yeah, he was like he -- they shot up -- they shot
20 the guys or whatever.

21 Q Who did he say shot the guys?

22 A He said he thought he had hit somebody.

23 Q Who's "he" thought he had hit somebody?

24 A Deco thought he hit somebody.

25 Q Okay. So Donte -- Deco thought he had hit somebody?

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SEVERS - DIRECT

1 A Yeah.

2 Q And why did Deco think he had hit somebody?

3 A Because they fell.

4 Q The person fell to the ground?

5 A Yeah.

6 Q What did Deco say Sikia was doing when this
7 happened?

8 A I don't remember.

9 Q Okay. And what did Deco say Terrell or Red was
10 doing when this happened?

11 A I just remember he said that Red had dropped his
12 gun.

13 Q Okay. So Donte told you that Red had a gun?

14 A Yeah.

15 Q But that at some point Red dropped his gun?

16 A Yeah.

17 Q Right now, when Donte comes back to the house there
18 at Everman and tells you these things, does Donte now have a
19 gun in his possession?

20 A It was in a -- it was in a -- like a black backpack.

21 Q In a black backpack?

22 A Yeah.

23 Q And what kind of gun was it that was in the black
24 backpack?

25 A I don't remember.

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SEVERS - DIRECT

1 Q Okay. Do you know if there was more than one gun in
2 that black backpack?
3 A Yeah.
4 Q How many guns total were in the black backpack?
5 A Like three of them.
6 Q Okay. Now, when you went to go get the car, where
7 did Donte stay, if you know?
8 A At the house.
9 Q Did the other fellas stay with him?
10 A Yeah.
11 Q Okay. Did you actually go to the Longhorn Casino?
12 A Yeah.
13 Q And when you got there, what did you see?
14 A Like mad police.
15 Q You say mad police?
16 A A lot of police.
17 Q Oh, a lot of police.
18 A Mm-hmm.
19 Q Okay. And what were the police doing?
20 A They were like looking around and checking stuff
21 out.
22 Q Okay. Did you see any guys that had gotten shot
23 there at the scene?
24 A No.
25 Q Okay. And did you see the car that Donte had asked

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SEVERS - DIRECT

1 you to get?

2 A Yeah.

3 Q And what kind of car was it?

4 A Like a white Tempo, I think.

5 Q Do you remember how many doors the white Tempo had?

6 A Four.

7 Q Okay. And did you actually get in the white Tempo
8 and bring it back to the Everman house?

9 A Yeah, after awhile I did.

10 Q Okay. Why did you wait awhile before you got it?

11 A 'Cause I was seeing what was going on, made sure no
12 police was like watching me or nothing like that.

13 Q Were the police watching you?

14 A No.

15 Q So you got in the car?

16 A Yeah.

17 Q Did you drive it back to Everman?

18 A No.

19 Q Why not?

20 A Because the police had pulled behind me and I didn't
21 know if he was gonna pull me over, so.

22 Q So what do you do with the car?

23 A I just left -- pulled the car over in front
24 somebody's house and I got out of it.

25 Q Let me ask you this, do you know about a shooting

SEVERS - DIRECT

1 that happened on Fremont Street by a guy by the name of
2 Prophet or Derrick Simpson?

3 A Yeah.

4 Q How do you know about that?

5 A Because Deco told me about it.

6 Q All right. And what did Deco tell you about a
7 shooting of Prophet or Derrick Simpson?

8 A He just told me he shot the dude because he owed him
9 some crack or something.

10 Q Okay. So, Deco said that Derrick owed him
11 something?

12 A Yeah.

13 Q And what did Deco say about that shooting?

14 A Not -- not much.

15 Q Did he tell you where he shot the man at, what part
16 of his body?

17 A In his face and his back.

18 Q Did Deco tell you what he thought happened to the
19 man?

20 A No.

21 Q And did Deco tell you where that shooting occurs at,
22 what area of town?

23 A Yeah.

24 Q Where was that?

25 A On Fremont.

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SEVERS - DIRECT

1 Q Now, did Donte talk about that shooting more than
2 once with you?

3 A No.

4 Q Okay. Did you and Donte Johnson go to the Fremont
5 area say in July and August of 1998?

6 A Yeah, maybe like a couple of times with him.

7 Q And when you'd go there, what, if anything, would
8 Donte Johnson say about staying or being in the Fremont area?

9 A That he had to hurry up and get away from there
10 because the police was looking for him.

11 Q And what were they looking for him as a result of?

12 A 'Cause he had shot Prophet.

13 Q We talked to you about the Thunderbird Hotel. Are
14 you familiar with that hotel?

15 A Yes.

16 Q And how is it you're familiar with the Thunderbird?

17 A I used to live there with Deco.

18 Q Anyone else live there with you?

19 A Yeah, Red and Ace.

20 Q And you say Red, Deco, you, and Ace. Are we talking
21 about Ace Hart?

22 A No.

23 Q All right. So there's another Ace?

24 A Yeah.

25 Q Okay. Describe -- well, first of all, describe Ace

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SEVERS - DIRECT

1 Hart, the boy who lived at Tod Armstrong's.
2 A He's white.
3 Q Okay. And about what age?
4 A Like twenty.
5 Q Describe this other Ace that lived at the
6 Thunderbird?
7 A He's black.
8 Q And about what age?
9 A Twenty.
10 Q Okay. About the same age as say Donte Johnson was?
11 A Yeah.
12 Q Okay. Now, how long did you stay at the Thunderbird
13 Hotel?
14 A Like -- like a month or two.
15 Q Okay. And why, if you know, did you leave the
16 Thunderbird Hotel? Whose idea was it to leave?
17 A Deco's.
18 Q And why did Deco want to leave the Thunderbird
19 Hotel?
20 A 'Cause some guys was looking for him and the police.
21 Q All right. You say some guys were looking for him
22 and the police?
23 A Yeah.
24 Q What were the police looking for him for?
25 A Well, I think 'cause he shot --

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SEVERS - DIRECT

1 MR. FIGLER: Objection, Your Honor. It's calling
2 for speculation here.

3 JUDGE SOBEL: If you know of your own knowledge --
4 BY MR. GUYMON:

5 Q Did he tell you why the --

6 JUDGE SOBEL: -- from what he told you.

7 MR. GUYMON: I'm sorry. Sorry, Judge.

8 BY MR. GUYMON:

9 Q Did he tell you why the police were looking for him?

10 A No.

11 Q Okay. And you say some guys were looking for him?

12 A Yes.

13 Q How do you know some guys were looking for him?

14 A Because they had called the room earlier that day,
15 before we left.

16 Q Okay. The day -- the day that you left -- the day
17 before you left you say the guys called the room?

18 A Yeah.

19 Q And who were the guys associated with?

20 A Snoop.

21 Q Okay. Now, Snoop is a street name for the guy that
22 died, is that right?

23 A Yes.

24 Q Do you know Snoop's real name?

25 A No.

SEVERS - DIRECT

1 Q Okay. Now, let's talk about what you know about the
2 death of Snoop. Who killed Snoop?

3 MR. FIGLER: Objection, Your Honor, foundation.

4 JUDGE SOBEL: If she knows. This is introductory, I
5 think you've been through it before, Mr. Figler.

6 BY MR. GUYMON:

7 Q I can ask it this way, do you know who killed Snoop?

8 A Yeah.

9 Q And how is it that you know who killed Snoop?

10 A Because he told me.

11 Q Who told you?

12 A Deco.

13 Q What did Deco tell you about the death of Snoop or
14 killing Snoop?

15 A That he killed him 'cause he stole some of his
16 brother's crack.

17 Q And who was Deco's brother? When you said he stole
18 some of Deco's crack, who was Deco's brother?

19 A Scale.

20 Q Scale. DeWayne Anderson?

21 A Yeah.

22 Q All right. Are they -- do you know if they're
23 actual brothers? In other words, do they have the same
24 mother?

25 A They not real brothers.

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SEVERS - DIRECT

- 1 Q They're not real brothers?
- 2 A No.
- 3 Q Do they refer to each other as brothers?
- 4 A Yes.
- 5 Q Okay. Now, Donte told you that Snoop stole Scale's
6 dope?
- 7 A Yeah.
- 8 Q Is that right?
- 9 A Yes.
- 10 Q Okay. And so what did Deco or Donte Johnson tell
11 you he did because of the stealing of that dope?
- 12 A That he made him eat some dope and he choked him
13 out.
- 14 Q Okay. Is that Donte saying he made him?
- 15 A Yes.
- 16 Q So Donte tells you that he made Snoop eat the dope?
- 17 A Yeah.
- 18 Q And did Donte Johnson tell you how much dope he made
19 Snoop eat?
- 20 A No.
- 21 Q Did he tell you where this murder occurred at?
- 22 A Yeah.
- 23 Q And where did it occur at?
- 24 A The Thunderbird.
- 25 Q And did Donte Johnson tell you who all was there in

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SEVERS - DIRECT

1 the Thunderbird?

2 A No.

3 Q Okay. After making Snoop eat the dope, what did
4 Donte Johnson tell you he did to Snoop?

5 A He choked him.

6 Q Did he tell you what he choked him with?

7 A No, I don't remember.

8 Q Okay. Once Snoop was choked, what did Donte tell
9 you he did with Snoop's body?

10 A He wrapped it up in some sheets and put it in a
11 trunk of a car.

12 Q You say he did what?

13 A Wrapped him up in some sheets and put it in the
14 trunk of the car.

15 Q And did Donte tell you what trunk or whose trunk the
16 body was placed in?

17 A No.

18 Q Did he tell you who helped him take that body from
19 the Thunderbird room and place it into that trunk?

20 A No.

21 Q Did he tell you if anyone helped him with getting
22 rid of the body?

23 A Well, he made -- he told me, he said he made Red go
24 with him.

25 Q He said he made Red go with him?

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SEVERS - CROSS

1 A Yeah.

2 Q And is Red the same person that lived at the
3 Thunderbird with you guys and then went to the place on
4 Everman?

5 A Yes.

6 Q Okay. Did he tell you once he made Red go with him,
7 did he tell you where he went to get rid of the body?

8 A No.

9 Q Did he tell you what he did with the body?

10 A No.

11 MR. GUYMON: Court's indulgence. No other
12 questions, pass the witness.

13 JUDGE SOBEL: Cross.

14 CROSS-EXAMINATION

15 BY MR. FIGLER:

16 Q Charla, you're describing a world here filled with
17 dope and guns and killing and prostitution, is that correct?

18 A I ain't describe no prostitution but the rest, yeah.

19 Q Okay. The prostitution's in this world too, isn't
20 that true?

21 A Mm-hmm.

22 Q Is that correct?

23 A Yeah.

24 Q Okay. And you were involved in that, correct?

25 A Yeah.

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SEVERS - CROSS

1 Q Okay. In fact, that's how you got picked up and
2 arrested and brought back to Las Vegas to testify against John
3 White here, isn't that correct?

4 A Yeah.

5 Q Okay. Now, with all these guns around and all this
6 dope that we're talking about, how come you never called the
7 police to tell them that there was all these guns and dope
8 around?

9 A I don't know.

10 Q It's because you were involved in this whole world,
11 isn't that correct?

12 A Yeah.

13 Q I'm sorry?

14 A Yeah.

15 Q Okay.

16 A But I ain't never killed nobody.

17 Q Okay. Now, there came a time when you were living
18 at the Thunderbird Hotel?

19 A Yes.

20 Q And you said in a statement before and today that
21 Ace -- someone named Ace was staying there with you?

22 A Yeah.

23 Q And you described this Ace as a black man who's not
24 Ace Hart, correct?

25 A Yes.

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SEVERS - CROSS

1 Q Okay. But you know that that room was in the name
2 of Ace Hart, right?

3 A Yeah.

4 Q And that Ace Hart got that room for you, right?

5 A Yes.

6 Q Okay. And you've described that Ace Hart is a
7 friend of yours, right?

8 A No, I didn't say he's my friend.

9 Q At that time?

10 A No.

11 Q Now, you admit that you've given very different
12 statements to the police and the prosecutors over a period of
13 time, isn't that correct?

14 A Yes.

15 Q Some which you say that John here had very little or
16 nothing to do with this event, isn't that correct?

17 A Yeah.

18 Q Okay. Some where you said that he wasn't the
19 shooter, isn't that correct?

20 A Yes.

21 Q Okay. And then after you were arrested and put into
22 jail, you gave a different story, correct?

23 A Before I was arrested I had given a different story.

24 Q Okay. Now, you were arrested though, correct?

25 A Yes.

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SEVERS - CROSS

1 Q And they didn't release you on a bond or bail until
2 you testified, isn't that correct?

3 A Yes.

4 Q And you had numerous conversations with the
5 prosecutors, isn't that correct?

6 A When?

7 Q Before you testified on that date when you were in
8 custody?

9 A Yes.

10 Q And you've had conversations with them since then,
11 isn't that correct?

12 A Yes.

13 Q And you're always talking about all these events,
14 correct?

15 A Yes.

16 Q Okay. And you testified that last time that -- that
17 you felt that if you gave the information that you were giving
18 at that hearing that you would be released from custody, isn't
19 that correct?

20 A Yes.

21 Q And in fact, after you testified you were released
22 from custody, isn't that correct?

23 A Yes.

24 Q Okay. Now, you testified earlier that you wanted
25 to, at one point, help John here, correct?

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SEVERS - CROSS

- 1 A Yes.
- 2 Q Okay. But it's also true that you play a lot of
3 games with John, isn't that right?
- 4 A Yeah.
- 5 Q Okay. In fact, at one point you told John that he
6 was the father of your child, didn't you?
- 7 A Yeah.
- 8 Q In fact, you even sent him pictures of a small child
9 saying that that was his child, right?
- 10 A Yeah.
- 11 Q But he never had a child with you, correct?
- 12 A Now, wait. Say that again.
- 13 Q You never gave birth to a child that belonged to
14 John White?
- 15 A That's right.
- 16 Q Okay. In fact, this picture you sent him, that was
17 just something you made up, right?
- 18 A Yeah.
- 19 Q Okay. Because you like to play these little mind
20 games as far as John White's concerned, isn't that true?
- 21 A Just like him, he played mind games, too.
- 22 Q Okay. So were upset at him playing mind games at
23 you, right?
- 24 A Yeah.
- 25 Q Okay. And you have previously told the police and

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SEVERS - CROSS

1 the prosecutors that Tod Armstrong was involved in the
2 planning of a -- of a robbery over at Terra Linda, correct?

3 A Yeah.

4 Q Okay. Have you ever had to testify against Tod
5 Armstrong?

6 A No.

7 MR. FIGLER: Court's indulgence.

8 BY MR. FIGLER:

9 Q Now, it's your story that you were never at the
10 place where the four individuals were killed, correct?

11 A Yes.

12 Q You weren't there?

13 A No, I wasn't.

14 Q Okay. You did tell somebody once that you were but
15 that was a lie, right?

16 A Yeah.

17 Q Okay. And you weren't in the room at this Longhorn,
18 correct?

19 A No.

20 Q And you weren't around when Snoop died, were you?

21 A No.

22 Q Okay. So, every piece of information that you've
23 given us, that's what they call second-hand information,
24 right? You weren't there with your own eyes, right?

25 A Right.

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SEVERS - REDIRECT

1 Q Okay. Now, with regard to Snoop, did you know
2 Snoop?

3 A I went to school with him.

4 Q Okay. Did you know he was involved in drugs and the
5 whole drug world and all that stuff?

6 A Yeah.

7 Q Okay. In fact, pretty much everyone we're talking
8 about, Bryan, Tod, Ace, Snoop, even the guy on Fremont Street,
9 everyone that we've talked about so far are people involved in
10 this whole crazy world of dope and all this other stuff,
11 right?

12 A Yeah.

13 Q Okay.

14 MR. FIGLER: Nothing further, Your Honor.

15 JUDGE SOBEL: Gary?

16 MR. GUYMON: Very briefly.

17 REDIRECT EXAMINATION

18 BY MR. GUYMON:

19 Q Charla, they've talked very briefly about your story
20 changing in this case, is that correct?

21 A Yes.

22 Q At any point in time has the prosecution threatened
23 you with what story you need to tell?

24 A No.

25 Q Have -- at any point in time has a detective with

SEVERS - RE CROSS

1 the Las Vegas Metropolitan Police Department or anyone from my
2 office forced you to say anything that wasn't truthful?

3 A No.

4 Q Did you tell the truth at trial?

5 A Yes.

6 Q On the times when you told a story other than the
7 truth, why is it that you would have told the stories? For
8 instance, why is it that you'd write a letter to Channel 8
9 saying that you were the murderer?

10 A Because I was trying to help Deco and get him out of
11 trouble.

12 Q Did you think that your lies would help Deco?

13 A Yeah.

14 MR. GUYMON: I have no other questions.

15 JUDGE SOBEL: David?

16 MR. FIGLER: I have a very brief follow up.

17 RE CROSS EXAMINATION

18 BY MR. FIGLER:

19 Q It was the prosecutors though, who told you about
20 the black jeans. You testified to that earlier, correct?

21 MR. GUYMON: Judge, that miss --

22 THE WITNESS: Yes.

23 MR. GUYMON: I think it misstates the evidence.

24 JUDGE SOBEL: Well, it may but she's answered the
25 question. You can clear it up if you wish to.

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SEVERS - RE-CROSS

1 MR. GUYMON: Okay.

2 BY MR. FIGLER:

3 Q And finally, if you would have come into the
4 courtroom when you were in custody and said that John never
5 said he was the shooter, do you think that they would have
6 released you from jail that day?

7 MR. GUYMON: Objection as to what she --

8 JUDGE SOBEL: Overruled.

9 BY MR. FIGLER:

10 Q Do you think they would just let you go if you said
11 something other than what you said?

12 A No.

13 Q And you don't want to go back to jail now, do you?

14 A No.

15 Q Okay. In fact, you have a new situation in your
16 life?

17 A Like what?

18 MR. GUYMON: Objection, relevancy.

19 JUDGE SOBEL: Overruled.

20 BY MR. FIGLER:

21 Q Do you have anything new that's going on in your
22 life that wasn't going on a couple of months or a few months
23 back?

24 A Yeah.

25 Q Okay. You're pregnant now?

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SEVERS - FURTHER REDIRECT

1 A Yeah.

2 Q Okay.

3 MR. FIGLER: No further questions, Your Honor.

4 JUDGE SOBEL: Anything further, Gary?

5 MR. GUYMON: Just briefly.

6 FURTHER REDIRECT EXAMINATION

7 BY MR. GUYMON:

8 Q There's a pair of black pants that we've talked a
9 lot about in the trial, is that correct?

10 A Yes.

11 Q Do you remember what you told the grand jury on
12 September 1st, 1998, about those black pants?

13 A I told them that Deco ain't have no black pants.

14 Q Okay. And when you told the grand jury that, what
15 is it that I did in front of all those grand jurors, those
16 seventeen people that were sitting there?

17 A You showed me a picture of some black jeans that
18 have blood on them.

19 Q And did -- what did I ask you, if you remember?

20 A Whose pants were they, I think that's what you asked
21 me.

22 Q Okay. And what did you say about those black pants?

23 A I told you that it was Red's pants.

24 Q Okay. And when I showed you that photograph in
25 front of those seventeen people, was that the first time you'd

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SEVERS - FURTHER REDIRECT

1 seen those pants?

2 A Yes.

3 Q What did you see on those pants?

4 A Blood.

5 Q All right. Now, when you found out there was blood
6 on those black pants, what did you do about that information?

7 A I told Deco that he had -- they show me pants that
8 have blood on them.

9 Q But -- and whose pants did you know those pants to
10 be?

11 A Deco's.

12 Q And why would you tell Deco about the pants you had
13 now seen with blood on them?

14 A Just to let him know that they have, like more stuff
15 on him, whatever.

16 Q More stuff, what do you mean more stuff?

17 A Like evidence.

18 Q Okay. And were you concerned about the evidence the
19 State had against Deco?

20 A Yeah.

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

22 JUDGE SOBEL: Thanks. Anything more, David?

23 MR. FIGLER: Thanks, Judge.

24 //

25 //

SEVERS - FURTHER RECROSS

FURTHER RECROSS EXAMINATION

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BY MR. FIGLER:

Q You did testify earlier that it was your intention all along to wash these pants, isn't that correct?

A Yeah.

Q All right. And it was that intention before you went to the grand jury, right?

A No, I didn't -- I said if I would have known why -- I asked him why he didn't tell me that they had blood on them so I could have washed them.

Q Okay. Let me ask you this, you're admitting today to lying under oath?

A I ain't lie about nothing.

Q Okay.

MR. FIGLER: No further questions.

JUDGE SOBEL: Thank you, Charla. Why don't you put Chandler on and then we'll take a break.

MR. DASKAS: Very well, Judge. Detective Chandler.

ROY CHANDLER, PLAINTIFF'S WITNESS, IS SWORN

THE CLERK: Please have a seat. State your full name and spell your last name for the record.

THE WITNESS: Roy Chandler, C-H-A-N-D-L-E-R.

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CHANDLER - DIRECT

DIRECT EXAMINATION

1

2 BY MR. DASKAS:

3 Q Mr. Chandler, by whom are you employed?

4 A Metropolitan Police Department.

5 Q And what's your job title?

6 A I'm a detective in the homicide detail.

7 Q How long have you held that position with Metro?

8 A I've been in the homicide detail for eight years.

9 Q You work with a partner?

10 A Yes, I do.

11 Q Back in 1998, August of '98, who was your partner?

12 A Detective Ken Hardy.

13 Q Let me direct your attention specifically to the 5th
14 day of August, 1998. Were you assigned a homicide
15 investigation on that date?

16 A Yes, I was.

17 Q Do you recall the name of the victim associated with
18 that investigation?

19 A Darnell Johnson.

20 Q You say Darnell Johnson?

21 A Yes, sir.

22 Q To your knowledge, does Darnell Johnson have any
23 moniker or street names?

24 A He does, but I don't recall it right now.

25 Q Does the name Snoop sound familiar?

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CHANDLER - DIRECT

1 A Yes, it does.

2 Q In fact, is that a moniker or street name of Darnell
3 Johnson?

4 A Yes, it is.

5 Q Tell me how it was that you were assigned or became
6 involved with Darnell Johnson's homicide investigation?

7 A We had received a call that a truck driver had
8 discovered what he thought was a dead body out in the desert
9 area by the speedrome or the raceway out there.

10 Q Where's the Speedrome or Speedway?

11 A It's on Interstate 15 just past Nellis.

12 Q Now did you receive this information on August 5th?

13 A Yes, I did.

14 Q As a result of that information, did you and your
15 partner, Detective Hardy, actually go to the area near the
16 Speedway?

17 A Yes, sir, we did.

18 Q And what, if anything, did you observe when you
19 arrived?

20 A We observed laying in the ravine area, down at the
21 bottom of a hill, was a body wrapped in a sheet.

22 Q Describe -- you mentioned down the hill, describe
23 the terrain there where you found the body wrapped in the
24 sheet?

25 A This is a desert area and the terrain is a desert

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CHANDLER - DIRECT

1 terrain, but it was like a water reservoir, a landfill, if you
2 would, where they were digging dirt out of there, and it was a
3 water reservoir on the side of the work area.

4 Q Where in relation to the freeway was the body found?

5 A It was just north of the freeway.

6 Q Are we talking about Interstate 15?

7 A Yes, sir.

8 Q And, in fact, was the body lower than the freeway
9 itself?

10 A Yes, sir, it was.

11 Q Was there a hill or a slope that led from the
12 freeway down to the location of the body?

13 A There was a slope that -- there was a roadway that
14 went underneath Interstate 15 and -- which was a dirt road,
15 and then the water reservoir was below that and the body was
16 down in the bottom of the reservoir.

17 Q Let me show you briefly what's been admitted at the
18 previous hearing as State's Exhibits 228 through 232. Let me
19 just have you look at those quickly and tell me collectively
20 what's in those photographs 228 through 232?

21 A These are the photographs that were taken. They're
22 photographs of the scene where the body was discovered.

23 Q Those depict the location itself as well as the body
24 wrapped in a sheet?

25 A Yes, sir, it does.

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CHANDLER - DIRECT

1 Q Now after you visited the crime scene or at least
2 the location where the body was found, had you had any
3 suspects at that point?

4 A At that point, no.

5 Q Did you attend an autopsy of Darnell Johnson?

6 A Yes, sir, we did.

7 Q Do you recall when the autopsy was performed?

8 A It would have been the following morning on the 6th.

9 Q You personally attended the autopsy?

10 A Yes, sir.

11 Q I take it that's standard procedure as a homicide
12 detective with Metro?

13 A Yes, sir, it is.

14 Q Do you recall the name of the coroner who performed
15 the autopsy?

16 A I believe it was Dr. Green.

17 Q What significant findings, if any, to your
18 knowledge, did Dr. Green find when he performed that autopsy?

19 A The body was badly decomposed at that time because
20 of the heat and the location that it was found, and Dr. Green
21 performed the autopsy and he was undetermined at that time
22 what the cause of death and the manner of death was.

23 Q To your knowledge, though, did Dr. Green see any
24 injuries on the body of Darnell Johnson during that initial
25 autopsy?

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CHANDLER - DIRECT

1 A I don't believe so, sir. Like I say, the body was
2 decomposed.

3 Q Let me show you what was admitted at the previous
4 hearing as 233 and 234. Tell me if you recognize what's in
5 those two photographs?

6 A This was the clothing that was on Darnell when we
7 took the clothing off at the autopsy itself when he was
8 removed from the body bag.

9 Q Now after you attended the autopsy on August 6th,
10 1998, did you continue your investigation?

11 A Yes, sir, we did.

12 Q Tell me what steps you took during that
13 investigation and where you were led?

14 A We contacted people that were -- had last seen
15 Darnell. We spoke to his mother, we spoke to one of his
16 girlfriends, and that led us onto another person that we spoke
17 with, and the last time that he was seen would have been down
18 at the Thunderbird Motel.

19 Q Now did you actually visit the Thunderbird Motel?

20 A Yes, sir, we did.

21 Q After your investigation continued after August 6th,
22 was the body of Darnell Johnson re-examined?

23 A Yes, sir, it was.

24 Q And did you attend what I would call the second
25 autopsy for examination of Darnell Johnson's body?

CHANDLER - DIRECT

1 A Yes, sir.

2 Q What, if any, significant findings were made by the
3 coroner during the second autopsy?

4 A I met again with Dr. Green, and Dr. Green re-
5 examined the body and found ligature marks on the side of the
6 neck and on the throat area.

7 Q As a homicide detective, what did that indicate to
8 you?

9 A Strangulation.

10 Q Was that now consistent with information you had
11 gathered during your investigation after August 6th?

12 A Yes, sir, it was.

13 Q You mentioned the Thunderbird Motel, that you
14 visited that area, is that true?

15 A Yes, sir.

16 Q Did you learn of an individual who was staying at
17 the Thunderbird Motel who eventually became a suspect in the
18 homicide of Darnell Johnson?

19 A Yes, sir.

20 Q And who was that?

21 A It was Donte Johnson.

22 Q When you say Donte Johnson, is Mr. Johnson seated in
23 Court today?

24 A Yes, he is.

25 Q Please point to him and describe something he's

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CHANDLER - DIRECT

1 wearing?

2 A It's the gentleman sitting at the defense table with
3 the tan colored shirt on.

4 JUDGE SOBEL: The record will reflect
5 identification.

6 MR. DASKAS: Thank you, Judge.

7 BY MR. DASKAS:

8 Q Did you learn whether a room at the Thunderbird was
9 actually rented in the name of Donte Johnson?

10 A There was not a room rented by his name.

11 Q Despite the fact that there was no room rented in
12 the name of Donte Johnson, did you confirm that he was staying
13 at the Thunderbird Motel?

14 A Yes, I did.

15 Q How did you confirm that?

16 A I spoke with the manager and the manager stated that
17 there was a gentleman, a white kid, that had checked into the
18 room by the name of Hart, and once he checked in, she had not
19 seen him any longer, but there were two black guys that were
20 staying in the room at that time. After they rented the
21 initial room, they came down and asked that the room be
22 changed because they didn't want to stay in that room again,
23 so, they moved 'em to another location, and then she moved 'em
24 to a third location because the -- they had asked for weekly
25 rates instead of a daily rate.

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CHANDLER - DIRECT

1 Q The name Hart you mentioned was the name of the
2 person who rented the room at the Thunderbird. Was that Ace
3 Hart?

4 A Yes, it was.

5 Q And I gather, based on what you've testified to,
6 despite the fact that Ace Hart rented the room, two other
7 individuals were staying in that room?

8 A That's correct.

9 Q Did your investigation lead you to any information
10 that suggested how Darnell Johnson's body was transported from
11 the location where he was killed to the Speedway where he was
12 found?

13 A Yes, we did.

14 Q What information did you learn?

15 A We had learned that it was -- he was transported
16 there by his own vehicle, and we had talked to the mother of
17 Darnell and she had given us the person that the car actually
18 belonged to, and stated that her son was in the process of
19 purchasing that vehicle and it still had the license number to
20 the girlfriend.

21 Q At some point did you actually observe or go to a
22 location where that vehicle was located?

23 A The location that I went to was the crime lab
24 because the vehicle had been towed from a private parking lot,
25 and we found out that the vehicle was at the lab and we had

CHANDLER - DIRECT

1 the vehicle processed at the lab at that time.

2 Q Let me show you what was admitted at the last
3 hearing as State's Exhibits 235 through 240. Let me have you
4 look at those and tell me collectively what's depicted in
5 those photographs?

6 A These are photographs of the vehicle that belonged
7 to Darnell.

8 Q Let me have you take a look specifically at State's
9 Exhibit 236. You mentioned that your information suggested
10 that Darnell's body was placed in the trunk of his car and
11 taken to the Speedway location. Is there something in 236
12 that corroborates or confirms that information?

13 A The locking mechanism on the trunk itself had been
14 punched so that the trunk could be opened without a key.

15 Q And that's in Number 236?

16 A That's correct.

17 Q Detective, there's been testimony that perhaps Donte
18 Johnson forced Darnell Johnson, the victim in this case, to
19 ingest cocaine. Are you familiar with the toxicology reports?

20 A Yes, I am.

21 Q Tell us what is a toxicology report?

22 JUDGE SOBEL: We all know what a toxicology report
23 is. Why don't we just get to the results.

24 BY MR. DASKAS:

25 Q Was a --

CHANDLER - DIRECT

1 MR. DASKAS: Thank you, Judge.

2 BY MR. DASKAS:

3 Q Was a toxicology report done as it pertains to
4 Darnell Johnson?

5 A Yes, sir, it was.

6 Q What were the results of that toxicology report?

7 A There was a toxicology report done at the time of
8 the autopsy, and it revealed that he had cocaine in his
9 system. There's two types of cocaine, one of them is
10 metabolic, which means that it has gone through the system,
11 and the other that came up in the test showed that there was
12 cocaine in his system, but it had not gone through the system.

13 Q Now would that be non-metabolized?

14 A Yes, sir. That's correct.

15 Q As a homicide detective, does that -- or would that
16 suggest anything to you that there was non-metabolized cocaine
17 in somebody's system?

18 MR. FIGLER: Object, Your Honor, I think this calls
19 for a medical conclusion.

20 JUDGE SOBEL: Well, I'm going to sustain it and then
21 we'll draw the conclusion.

22 BY MR. DASKAS:

23 Q Let me ask you this, Detective, do you know the
24 level of cocaine in Darnell Johnson's system?

25 A Yes, sir, I do.

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CHANDLER - DIRECT

1 Q What was the level of cocaine in his system at the
2 time the autopsy was performed?

3 A The exact numbers I'd have to refer to my report,
4 but there was in excess of 200 nanograms per milliliter that
5 had metabolized in his system, and there was four thousand two
6 hundred and some odd nanograms per milliliter that had not
7 gone into the system as of yet.

8 Q Based on your experience as a police officer, the
9 non-metabolized level in Darnell Johnson's system, is that a
10 high level or a low level?

11 A I would consider it a high level. Yes.

12 Q As a result of your investigation in this case
13 involving Darnell Johnson as the victim, did you develop a
14 suspect or suspects in this case?

15 A We developed two suspects.

16 Q What are the names of those two suspects?

17 A Darnell Johnson was one of them and a young man by
18 the name of Terrell Young was the other one.

19 Q Okay. I think you said Darnell Johnson was a
20 suspect?

21 A I'm sorry, Donte Johnson.

22 Q The person you identified a few moments ago?

23 A Yes, sir.

24 Q As a result of Donte Johnson and Terrell Young being
25 named as suspects, did you request that warrants be issued for

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CHANDLER - CROSS

1 their arrests?

2 A Yes, sir, I did.

3 Q Did you submit a case against those two individuals
4 to the Clark County District Attorney's Office?

5 A Yes, sir, I did.

6 Q And to your knowledge, where is that case in the
7 system at this point?

8 A To my knowledge, it is still in the district
9 attorney's office in the screening division.

10 Q You say it's still in the screening division of the
11 DA's office?

12 A I haven't received any information as to if the
13 warrant was approved or not.

14 MR. DASKAS: I'll pass the witness, Judge.

15 JUDGE SOBEL: Cross?

16 MR. FIGLER: Thank you, Judge.

17 CROSS-EXAMINATION

18 BY MR. FIGLER:

19 Q Detective Chandler, you were present at the autopsy,
20 correct?

21 A Yes, sir, I was.

22 Q And you were asked on direct examination about the
23 first autopsy. In the first autopsy there were no significant
24 findings with regard to your investigation at all, correct?

25 A Well, the body was decomposed, so we didn't have a

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CHANDLER - CROSS

1 manner and a cause of death.

2 Q Okay. After that, you had received potential
3 information regarding this case and potential strangulation
4 and you reported that information to Doc Green, the coroner,
5 isn't that correct?

6 A That's correct.

7 Q And then you asked him to do yet a second autopsy,
8 isn't that correct?

9 A I believe I asked him to re-examine the neck. Yes,
10 sir.

11 Q Okay. Now you were asked on direct examination what
12 significant findings the coroner achieved on his second
13 autopsy, and do you recall what your answer was on direct
14 today?

15 A I just told you that he found ligature marks or
16 hemorrhaging in the neck.

17 Q Okay. You said ligature marks?

18 A I believe ligature marks.

19 Q All right. Isn't it true that you've -- you've
20 reviewed his autopsy report, isn't that correct?

21 A I haven't seen it in quite awhile, sir.

22 Q So, if that autopsy report said that there was no
23 diagnosis of ligature, that contradicts what you're testifying
24 to today, isn't that correct?

25 A If that's what it says.

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CHANDLER - CROSS

1 Q Okay.

2 MR. FIGLER: May I approach, Your Honor?

3 JUDGE SOBEL: Yeah.

4 BY MR. FIGLER:

5 Q In fact, you've seen autopsy reports before, right,
6 Detective?

7 A That's true.

8 Q Okay. And does this appear to be the autopsy report
9 of Darnell Johnson?

10 A I'm assuming it is. Yes.

11 Q Okay. Now it's your experience that on the front of
12 these autopsy reports under diagnoses, they usually place the
13 relevant findings of the coroner, isn't that correct?

14 A Okay.

15 Q And you'll note that there's nothing about a
16 ligature in the -- in the diagnoses, isn't that correct?

17 A Well, it says, "muscular and soft tissue of the neck
18 had hemorrhaging."

19 Q Hemorrhaging but not ligature, correct?

20 A Correct.

21 Q And I'll refer you to the last page of the autopsy
22 report where it talks about the hemorrhaging in the neck not
23 being diagnosed -- diagnostic, rather, of a ligature
24 strangulation, isn't that correct?

25 A That's what it says. Yes, sir.

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CHANDLER - CROSS

1 Q Okay. Now you were asked in a previous proceeding
2 if the coroner had noted that the stomach was empty, and you
3 responded that it was, do you remember that?

4 A I believe so.

5 Q Okay. In fact, there were no drugs metabolized or
6 otherwise found within the stomach of the person that they did
7 the autopsy on, isn't that correct?

8 A You'd have to refer to his -- to Dr. Green's report.

9 Q Okay. You don't recall specifically Dr. Green on
10 either autopsy number one or autopsy number two indicating
11 that there were any drugs found in the stomach of this
12 individual, do you?

13 A I don't recall that. No, sir.

14 JUDGE SOBEL: Dayvid, was that admitted at trial,
15 the autopsy report?

16 MR. FIGLER: This was a Court's exhibit, Your Honor,
17 Court's Exhibit Number --

18 JUDGE SOBEL: You want it to be made a part of this
19 one?

20 MR. FIGLER: -- 4 and 5. That would be fine, Your
21 Honor.

22 JUDGE SOBEL: Okay. So, without re-marking them,
23 they'll just be received as exhibits in this proceeding.

24 MR. FIGLER: Thank you, Your Honor.

25 JUDGE SOBEL: Go ahead, Dayvid. Anything else?

CHANDLER - CROSS

1 MR. FIGLER: Briefly.

2 BY MR. FIGLER:

3 Q In your investigation of this individual, let me ask
4 you, is it a crime in the state of Nevada if somebody
5 overdoses on drugs like cocaine, to then wrap that body up in
6 a sheet and dump it in the desert?

7 A Is it a crime?

8 Q Yes?

9 A That would be the determination made by the doctor
10 as to the cause. The manner of death, I believe, would be
11 homicide.

12 Q Okay. But assume that if the individual overdosed
13 on their own, without any assistance from anyone, and then did
14 that in the presence of individuals, those individuals
15 deciding that they just, for whatever reason, want to then
16 take that body and put it somewhere else, is that a crime in
17 the state of Nevada?

18 A Per se, no, I don't believe so.

19 Q Okay. It's certainly not the offense of murder,
20 isn't that correct?

21 A That's correct.

22 Q Okay. Now you also investigated an individual named
23 DeWayne Anderson or Scale --

24 A Yeah, I spoke --

25 Q -- is that correct?

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CHANDLER - CROSS

1 A -- I spoke to Scale.

2 Q Okay. And he was a suspect in this homicide
3 investigation that you had too or no?

4 A Everyone was a suspect when we first started.

5 Q Okay. And he gave you some wildly inconsistent
6 statements regarding other information that you had, isn't
7 that correct?

8 A Yes, sir.

9 Q And as we sit here today, you know of no case that
10 has been filed in the Eighth Judicial District Court, justice
11 court, any other court of competent jurisdiction in our area,
12 against John White with regard to the body that was found over
13 by I-15, correct?

14 A I don't know who John White is.

15 Q This individual who's sitting next to me, a person
16 also known as Donte Johnson?

17 A Well, I know him as Donte Johnson.

18 Q Okay.

19 A I don't know who John White is, sir.

20 Q Okay.

21 A I've never heard that name mentioned.

22 Q That's his birth name.

23 A Okay.

24 Q Okay. There's no charges pending against him right
25 now?

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CHANDLER - REDIRECT

1 A Not on my case, sir.

2 Q No charges have been filed?

3 A No, sir.

4 Q Okay. You submitted your case a couple of years
5 ago, is that correct?

6 A I believe I submitted it in November of '98.

7 Q '98?

8 A Yes, sir.

9 Q Okay.

10 MR. FIGLER: Nothing further.

11 JUDGE SOBEL: Anything further, Robert?

12 MR. DASKAS: Very briefly.

13 REDIRECT EXAMINATION

14 BY MR. DASKAS:

15 Q Detective, have you ever submitted a case to the
16 district attorney's office that had been approved some two
17 years after the fact?

18 A Yes, sir, I have.

19 Q I take it it's not common, but it happens on
20 occasion?

21 A Yes, sir, it does.

22 Q Mr. Figler asked you some questions about the
23 autopsy report, you recall those questions?

24 A Yes, sir.

25 Q You pointed to some findings that the coroner made

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CHANDLER - RECROSS

1 with respect to injuries in the neck. Based on your
2 experience were those injuries observed by the coroner and by
3 you, consistent with somebody who had been strangled?

4 A Yes, sir.

5 Q Did the coroner reach an opinion about the manner of
6 death of Darnell Johnson?

7 A Yes, sir.

8 Q And what was his opinion regarding the manner of
9 death of Darnell Johnson?

10 A The manner of death was homicide.

11 MR. DASKAS: I have nothing else.

12 JUDGE SOBEL: Dayvid?

13 RECROSS EXAMINATION

14 BY MR. FIGLER:

15 Q You sure about that?

16 A I'm almost sure. Yes, sir.

17 Q It wasn't something like possibly it was a homicide
18 or probably it was a homicide?

19 A I think it says probably a homicide.

20 Q Okay. In fact, the coroner found that this could be
21 consistent with strangulation or he specifically said or some
22 other thing that's not strangulation, isn't that correct?

23 A That's correct.

24 Q Okay.

25 JUDGE SOBEL: So there can be no doubt in the

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CHANDLER - RECROSS

1 record, the opinion is, and it's right in the exhibit:

2 "It is my opinion that the decedent, Darnell
3 Johnson, came to his death as a result of
4 undetermined cause, possible strangulation, probable
5 homicide."

6 So there can be no question about the record in terms of what
7 the report was.

8 MR. FIGLER: Thank you, Judge.

9 BY MR. FIGLER:

10 Q And whatever the status of the case is, they still
11 don't have enough to even charge, or to your knowledge, no
12 movement has been made on charging Donte Johnson, John White,
13 with this offense, isn't that correct, as we sit today?

14 A I filled out my affidavit and submitted it, I don't
15 know what their decision is on it yet.

16 Q Okay.

17 MR. FIGLER: Nothing further.

18 JUDGE SOBEL: Robert?

19 MR. DASKAS: Nothing else, Judge.

20 JUDGE SOBEL: All right. Let's be in recess 'til
21 twenty minutes of 4:00.

22 (Court recessed at 3:25 p.m. until 3:40 p.m.)

23 JUDGE SOBEL: Please be seated. Go ahead.

24 MR. DASKAS: Juanita Talamantez.

25 MR. FIGLER: Your Honor, at this time we'd renew the

1 objection from before with regard to victim impact not really
2 being appropriate for a three judge panel in getting the
3 aggravators, the mitigators, the weighing, that's really not
4 appropriate. I understand you're going to limit it to four,
5 but we just wanted to make a record that we don't think that
6 victim impact is appropriate.

7 JUDGE SOBEL: Well, wait a minute. Victim -- I
8 don't recall this motion, Dayvid.

9 MR. FIGLER: This is new, Your Honor. This is what
10 I'm saying at this point.

11 JUDGE SOBEL: Well, I thought you were saying this
12 is something we had already had.

13 MR. FIGLER: We had with regard to limitation of it.
14 First --

15 JUDGE SOBEL: So, this isn't in writing, this is a
16 oral motion --

17 MR. FIGLER: This is going --

18 JUDGE SOBEL: -- to not have the victim impact
19 statement specifically in front of a three judge panel?

20 MR. FIGLER: That is correct, Your Honor. I don't
21 think Payne versus Tennessee contemplates it. We had earlier
22 made the motion --

23 JUDGE SOBEL: Well --

24 MR. FIGLER: -- in limine that was granted by Your
25 Honor. At this time we were just asking, in front of this

TALAMANTEZ - DIRECT

1 panel, that that not be necessary. There is the transcript if
2 the Court feels it that necessary to go, they could always go
3 off the transcript as opposed to the live witness testimony.

4 JUDGE SOBEL: And what is your concern, that a group
5 of lawyers who've become judges --

6 MR. FIGLER: I don't think it goes to anything, Your
7 Honor.

8 JUDGE SOBEL: Well, I mean, clearly victim impact
9 statements can be used in front of a jury, and the usual
10 defense objection and the reason I limited it to one family
11 member per was the effect on a jury. Surely whatever undue
12 emotional impact would be somewhat lessened in front of a
13 group of lawyers who've become judges, as even less reason to
14 limit it. And certainly Payne does authorize a brief glimpse
15 into who the people are that died, so, I'm going to overrule
16 your objection and you can put on the witnesses.

17 MR. FIGLER: Thank you, Judge.

18 JUANITA TALAMANTEZ, PLAINTIFF'S WITNESS, IS SWORN

19 THE CLERK: Please have seat. State your full name
20 and spell your last name for the record.

21 THE WITNESS: Juanita Talamantez,
22 T-A-L-A-M-A-N-T-E-Z.

23 DIRECT EXAMINATION

24 BY MR. DASKAS:

25 Q Ma'am, you --

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TALAMANTEZ - DIRECT

1 JUDGE SOBEL: Ma'am, hold on just one second, I'm
2 very sorry, but I've been sneezing back there and coughing and
3 I don't want to just interrupt. Let me see if I can get this
4 under control.

5 (Off-record colloquy)

6 (Pause in the proceedings)

7 JUDGE SOBEL: Go ahead, Robert.

8 MR. DASKAS: Thank you, Judge.

9 BY MR. DASKAS:

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

12 A Yes. That's correct.

13 Q Can you tell us how old was Peter on the day that he
14 was killed?

15 A Seventeen.

16 Q It's my understanding that you lived in California
17 at the time you'd learned of your son's death?

18 A Yes. That's correct.

19 Q Do you have any other children?

20 A Yes. I have two older boys, Robert is twenty-six
21 and Daniel is twenty-three.

22 Q Let me show you what was admitted at the last
23 hearing as State's Exhibit 241, and, ma'am, if you would tell
24 me who is depicted in this photograph, that is, 241?

25 A It's my son, Daniel, and myself and my son, Pete.

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TALAMANTEZ - DIRECT

1 Q Peter is the person seated, if we're looking at the
2 picture on the left hand side?

3 A On the left hand side.

4 Q Is there any particular reason you selected this
5 photograph to share with the members of this three judge
6 panel?

7 A Because it's just very special. We spent special
8 times together when he was alive, and I can't do that any
9 more.

10 Q Now you say that your son, Daniel, is also in that
11 photograph?

12 A Yes.

13 Q Can you explain to the members of this courtroom how
14 Peter's death has affected your other son, Daniel?

15 A It's --

16 MR. FIGLER: Your Honor, I'm not sure if this --

17 THE WITNESS: -- affected them very badly..

18 MR. FIGLER: Your Honor, I'm not sure that this goes
19 into a brief glimpse nor do I think that the pictures are
20 particularly relevant to be introduced at this proceeding.

21 JUDGE SOBEL: Well, of course, part of the ruling
22 that I made that they're -- because we have two Supreme Court
23 cases that upheld, in the discretion of the trial court,
24 multiple victim impact witnesses, three in one case, five in
25 another. Now I've taken the position that it is the lower

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TALAMANTEZ - DIRECT

1 court's discretion, and perhaps the safest thing to do is
2 limit it, in terms of emotional impact, because Payne and
3 other cases have tried to emphasize that we shouldn't base the
4 decision as to whether it's death or life on emotional things,
5 but as I indicated in my ruling then and I did the same thing
6 in Zane Floyd, I will still permit, and especially in a
7 penalty hearing where hearsay is permitted, the one person who
8 is selected from the family to give some glimpse into the
9 effect it has not only on that witness, but other people.
10 Overruled.

11 MR. FIGLER: Thank you, Judge.

12 BY MR. DASKAS:

13 Q Ma'am, my question was would you explain to the
14 members of this Court the effect that Peter's death has had on
15 your son, Daniel?

16 A It's been really difficult. I have two grown sons
17 who suffer from this very deeply. They cry and they miss
18 their baby brother so much. And it affects them daily, it
19 affects them everyday. Everyday they have to know that their
20 brother is not here, and they're grown men and they still cry
21 just like babies.

22 Q Ma'am, when you say they, I assume you're talking
23 about your sons --

24 A Robert and Daniel, my two older sons.

25 Q Has it gotten any easier for your sons as time has

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TALAMANTEZ - DIRECT

1 passed?

2 A No, not at all. It never gets easy. It's never
3 going to get easier. It's always gonna be the same. We don't
4 have somebody in our family. I don't have my son, they don't
5 have their brother. Nothing gets easier.

6 Q Tell me, if you can, about the affect this has had
7 on you personally?

8 A It's totally changed my life. There's days when I
9 just can't function, there's days when I just cry. There's
10 days that I just don't want to come out of the house. It's
11 just very difficult losing my baby.

12 Q Peter was your youngest child?

13 A Yes.

14 Q You mentioned that he was only seventeen years old
15 at the time of his killing?

16 A Yes.

17 Q Did he, however, share some of his goals or dreams
18 with you while he was alive?

19 A He wanted to do a lot of things. He was very
20 interested in electronics. He wanted to go to school. He
21 wanted to do a lot of things. He just was a very outgoing
22 person and he loved life and he loved people and there's
23 nothing that he wouldn't do for anyone -- anyone. He had such
24 a big heart, and now he's gone.

25 Q There was a suggestion or statement made during the

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TALAMANTEZ - DIRECT

1 opening statement that we, that is, the prosecution and the
2 family members, have become intimately familiar with each
3 other since this killing. Did you hear that statement?

4 A Yes.

5 Q It's true that we consider each other friends, isn't
6 it?

7 A Yes.

8 Q Would you, however, prefer that you and I had never
9 met?

10 A It wouldn't be any different whether I met you
11 yesterday or whether I've known you all my life. My son is
12 not alive and it wouldn't make any difference. It wouldn't
13 make any difference.

14 MR. DASKAS: I have nothing else.

15 JUDGE SOBEL: Thank you. Thank you, ma'am, you're
16 excused.

17 By the way, I want to mention that thing that was
18 said in opening. I took that to be sort of an accusation of
19 vouching or something like that, that we're not going to get
20 into in this hearing. What relationship you might have to
21 these folks or what beliefs you might personally have are no
22 more appropriate in front of this panel than they would be in
23 front of a jury. I don't know where Figler was going, but you
24 didn't object, but we're not going to get into that issue in
25 this proceeding. It has no relevance to these proceedings,

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VIAU - DIRECT

1 and if it comes up again in Dayvid's argument, that's going to
2 be the ruling.

3 MR. GUYMON: Okay. I understand that. I think the
4 purpose is that in no way have we been intimate with them.

5 JUDGE SOBEL: Well, I mean, it's to refute something
6 that I thought to be improper in the first place.

7 MR. GUYMON: Okay.

8 JUDGE SOBEL: Call your next witness, please.

9 MR. GUYMON: Sandy Viau.

10 SANDY VIAU, PLAINTIFF'S WITNESS, IS SWORN

11 THE CLERK: Please have a seat. State your full
12 name and spell your last name for the record?

13 THE WITNESS: My name is Sandy Viau. My last name
14 is spelled V-I-A-U.

15 DIRECT EXAMINATION

16 BY MR. GUYMON:

17 Q And, Ms. Viau, tell me, are you the mother of one of
18 the decedents in this case?

19 A I'm the mother of Tracey Gorringe.

20 Q Tell me, if you would, how old Tracey was at the
21 time of his untimely death?

22 A Tracey was twenty years old.

23 Q I have it wrong on the board then when I have him
24 down as twenty-one?

25 A I know.

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VIAU - DIRECT

1 Q Is that right?

2 A That's correct. He's twenty. He was born March
3 8th, 1978.

4 Q My mistake. Tell me, if you will, a little bit
5 about your son's personal qualities and attributes?

6 A I was a single parent. I raised three boys by
7 myself for approximately seventeen years. He was the middle
8 of three boys, I had Spencer, Tracey and Nick. Tracey started
9 to cook for us when he was about ten years old, so, we called
10 him Shay Tray.

11 When he got a little older, he started working in
12 restaurants. Prior to moving to Las Vegas, about May of '98,
13 he was one of the chefs at a restaurant in Sun Valley. Yeah.
14 He was very good. He used to cook for me quite often and he
15 had dreams of attending the culinary school here in Vegas and
16 he and his friend from Sun Valley were going to open a
17 restaurant together.

18 Q As a single parent, tell me at what point in time
19 did you find yourself to be a single parent and until what
20 point of time in Tracey's life?

21 A Tracey was two years old, I had -- Spencer was four,
22 Tracey was two and Nick, I was six months pregnant with my
23 youngest boy when I left their father. Their father had
24 really no involvement in their life. I did have -- my younger
25 brother kind of lived with us for awhile. I had gone back to

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VIAU - DIRECT

1 school and taken my kids with me and raised them on my own,
2 getting different jobs in different areas, relocating about
3 every three to five years.

4 Q As a single parent, tell me did your son, Tracey,
5 confide in you with some regularity throughout the course of
6 his lifetime?

7 A I think the four of us were best friends. We didn't
8 have anybody else to rely on. I mean, I was trying to be both
9 their mother and their father.

10 Q In some of the moments that you had with your son,
11 did he tell you of what his goals were, what his aspirations
12 were other than becoming a chef?

13 A He had kind of toyed with the idea of being an
14 electrician, he loved animals, he always brought home the
15 stray cats and dogs. Everyone liked Tracey. Everyone liked
16 Tracey.

17 Q Showing you a photograph that you provided for us
18 that's been used in prior proceedings. That is a picture of
19 your family, is it not?

20 A This is a picture that we had taken in June of 1998
21 with the extended family. I remarried in April of '96 and
22 this is our Brady Bunch.

23 Q Brady Bunch. In other words, your husband had some
24 children that he brought to now the family, and you had
25 children?

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VIAU - DIRECT

1 A My husband has four children and I had my three
2 children and one dog in this picture, we have several dogs
3 actually.

4 Q If you look at the picture as it's held in front of
5 you, Tracey would be on the far right then?

6 A That's correct.

7 Q The young man with a white T-shirt and a --

8 A The green beads.

9 Q The green beads?

10 A And the dimples.

11 Q Okay. So, Tracey is in the green beads. Nicholas?

12 A Nicholas is his younger brother. Nicholas was
13 actually the fourth roommate of the house. Nicholas was out
14 of town when this murder occurred. When we got ahold of him,
15 we had to tell him that his brother was murdered, that his two
16 roommates were murdered. He came back to town and didn't have
17 a house, didn't have a home to go to. It's totally destroyed
18 his life. I think he carries around a lot of guilt thinking
19 if he could have been there, maybe he could have helped, maybe
20 he could have prevented this.

21 Q You've talked a little bit about the impact this has
22 had on Nicholas feeling guilty and wanting to be there to
23 help, how about Spencer, your oldest son? What was his
24 relationship like with Tracey? He was --

25 A Well, Tracey was always the peacemaker between the

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VIAU - DIRECT

1 three. Having three boys, there's always two that are
2 fighting, and it seemed to be the oldest and the youngest, and
3 Tracey was the peacemaker in between, always trying to make
4 them, you know, behave and do what mom wants them to do.

5 Spencer, after this happened, moved back to Idaho.
6 He came back briefly for the other penalty hearing on this
7 case and probably will never come back to Vegas again. I just
8 -- I have to go to Idaho to see him.

9 Q As you talk about the loss to both Nick and to
10 Spencer, let me talk a little bit about the loss to you as his
11 mother. Can you describe that loss with words?

12 A I think what happens is every morning I wake up and
13 I think of how my son died, my angel, and what must have been
14 going through his head, and when I go to bed at night, I think
15 the same thing. It's affected my performance at work, it's
16 hard to concentrate, it's hard to do anything in life. It's
17 affected my relationship with my extended family. I think I
18 was just starting to build a bond between my stepchildren when
19 this happened. Because of this, I -- basically I push them
20 away, I don't want to get close to them.

21 Q As you reflect upon Tracey's life and you forecast,
22 if you will, as a mother, his contribution to society, is
23 there a societal loss as you look at what Tracey might have
24 offered to others around him?

25 A Oh, yes. I think -- I had a friend that wrote,

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VIAU - DIRECT

1 Tracey had such an endearing nature, and it was true, I mean,
2 everybody that met Tracey loved him, I mean, my husband said
3 it didn't matter how long you knew Tracey, it was that you did
4 know Tracey, just -- he was so kind and so gentle and so
5 willing to help out.

6 Q There's been testimony as you've learned that there
7 was drugs at that particular house, does that change in any
8 way your thoughts of your son?

9 A No. I was young once, I experimented with drugs.
10 Yeah, I don't condone the use of them and I kind of look at my
11 past and say, you know, that was pretty stupid, but I think,
12 you know, a lot of people experiment with them.

13 Q Is there any other loss to the family or to society
14 that you wish to explain to these judges before you conclude?

15 A I just think it's a shame just that four young men
16 lost their lives for nothing.

17 Q Did you know the other boys?

18 A I knew Jeff. Jeff and Tracey -- we were building a
19 house when this happened, and Jeff and Tracey used to come and
20 do the construction cleanup, and Nick and Matt were good
21 friends, and I had met Matt occasionally. So, I was familiar
22 with them, not real close, but -- except for Jeff.

23 MR. GUYMON: I have no other questions.

24 MR. FIGLER: Nothing.

25 JUDGE SOBEL: Thank you. Call your next witness,

BIDDLE - DIRECT

1 please.

2 MR. DASKAS: Marie Biddle.

3 THE CLERK: Please seat and state your full name and
4 spell your last name for the record.

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

6 DIRECT EXAMINATION

7 BY MR. DASKAS:

8 Q Mrs. Biddle, let me hand you what was introduced at
9 the last hearing --

10 A Mm-hmm.

11 Q -- as State's Exhibit 242 and tell me who is in that
12 photograph?

13 A That's Jeff and I on my birthday a couple of years
14 ago.

15 JUDGE SOBEL: Ma'am?

16 BY MR. DASKAS:

17 Q Jeff Biddle was your son?

18 A Yes.

19 JUDGE SOBEL: Ma'am, could you speak up just a
20 little?

21 THE WITNESS: Okay.

22 JUDGE SOBEL: Could you keep your voice up a little?
23 I know it's hard.

24 BY MR. DASKAS:

25 Q And you say Jeff Biddle was your son?

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BIDDLE - DIRECT

1 A Yes, he was.

2 Q How old was your son, Jeff, when he was murdered on
3 August 14th, 1998?

4 A Nineteen.

5 Q Is there a reason you selected this particular
6 photograph to share with these judges?

7 A It shows the closeness that Jeff and I had for each
8 other. We had a wonderful bond, and he was a -- just a warm,
9 loving person, and he was just always there for me and I was
10 always there for him. He knew he could call on me any time of
11 the day or night and I would be there for him. And he just --
12 he was a very good person. He always tried to help people and
13 he'd give away anything he had, he would share his food.
14 Sometimes -- one time he told me he hadn't eaten for three
15 days because he gave away everything he had, and it's just
16 been a tremendous loss for me.

17 I feel like I've put about 300 percent of my time
18 into Jeff and his brother, who is twenty-two months older than
19 Jeff. I made sure that he was into the Little League sports
20 and he was a Cub Scout and he earned every merit award there
21 was, and he went on to be a Boy Scout.

22 I took him to space camp in Huntsville, Alabama, and
23 I think from that he really wanted to be a pilot, he was one
24 of the commanders on one of the ships there. And he had
25 always wanted to be in the military from the time he was a

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BIDDLE - DIRECT

1 little kid, and he always wanted to be a detective. When he
2 was in the ninth grade we -- in Idaho, we -- he had me take
3 him over and talk to the police chief and he wanted to know
4 how he could be a policeman, and they said, well, you're too
5 young, and went through the whole process of what he'd have to
6 do to be a policeman.

7 And when he was in high school, there was -- he was
8 selected to go to the presidential classroom in Washington
9 D.C., and he did that and he came back and he really wanted to
10 be an FBI agent. And also at the high school, there was an
11 elective program of a winter survival course, and Jeff
12 volunteered for that, and they lived in snow caves for a week
13 and he said it was very scary, they didn't know if they'd be
14 attacked by the grizzlies at night. And he -- he appointed
15 himself as ski patrol and his friend to go and, you know, make
16 sure everyone was okay.

17 And in Las Vegas he called an Air Force recruiting
18 officer and was talking to him about joining the Air Force so
19 he could be a pilot. And he also -- he wanted to be an actor.
20 He was just, as you can see, just incredibly handsome and just
21 a fantastic personality and --

22 Q Mrs. -- Mrs. Biddle, let me ask you --

23 A I'm sorry.

24 Q That's okay.

25 A I kind of go --

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BIDDLE - DIRECT

1 Q You described a little bit your relationship that
2 you had with your son, Jeff?

3 A Yes.

4 Q Tell me about the relationship that your husband had
5 with your son?

6 A Oh, he loved him. He just loved him so much. He
7 used to call him "my little blue jay" because Jeff had blue
8 eyes and he just loved him, and --

9 Q Your husband is not here for this proceeding, is he?

10 A No, he isn't here today.

11 Q Tell me about the affect that Jeff's death has had
12 on your husband?

13 A Well, when we first heard about it, we didn't even
14 know Jeff was dead. And we don't get our mail at the house
15 and Jeff was -- at the time Jeff was employed by Green Valley
16 as a security officer, and so the police had gone to the place
17 where we get our mail, and, of course, it was closed because
18 it was the weekend. They went to the security office and it
19 was closed because it was the weekend.

20 And my husband was getting ready to go on a trip to
21 Africa Saturday morning, and about 10:30, these two friends of
22 Jeff's came to the door and I looked through the peephole and
23 I thought, well, what are those girls doing here at this time
24 of the day? And so, I opened the door and hi, how are you and
25 they looked at each other and they said, you don't know, do

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BIDDLE - DIRECT

1 you? And she handed me the newspaper that you've seen here
2 today, and she said, that's Jeff. And then shortly after
3 that, the coroner came and they traced us through Jeff's Idaho
4 driver's license and back through Las Vegas to us.

5 Q And so, you learned of your son's death --

6 A Yes.

7 Q -- when his friends showed you a newspaper article?

8 A Yes, and then when my -- we were all crying and my
9 husband is back in the bedroom and I'm yelling at him to come,
10 Jeff and all his roommates have been killed and he just went
11 right down on the floor on his knees and he -- he said, I want
12 him back, I want him back, he's my son. And then he's go on
13 the patio and, for several times, and just cry and cry, and
14 then he'd come in the house and he'd lay on the bathroom floor
15 and he'd just cry his heart out. And he'd try to drink
16 himself to death. And finally got over that part. And so --
17 and then he would try to travel, and he'd always come back and
18 say, all I could think about was Jeff.

19 And everybody loved Jeff. His friends loved him so
20 much and he -- I don't know if you want me to go into this,
21 but he had so many friends that -- and Tracey that -- and they
22 both were buried in Idaho, and we agreed we'd have the funeral
23 on two separate days, so all the kids could go to the funerals,
24 and there were so many people for Jeff they had to open -- had
25 to open an extra section of the church.

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BIDDLE - DIRECT

1 So, we had Jeff's funeral one day and the next
2 morning we drove a hundred miles to Tracey's funeral.

3 Q You mentioned that Jeff had an older brother, is
4 that right?

5 A Yes.

6 Q Tell me a little bit about the affect or the impact
7 that Jeff's death has had on Jeff's older brother?

8 A Well, it's affecting Jeff the way it's affecting
9 Spencer, doesn't want to come home. And he did happen to come
10 in last night with a friend that he met when he was going to
11 Embry Riddle [phonetic] in Prescott, and that was the first
12 I'd seen him since July 4th. He just -- he can't stand to be
13 there because our house when we bought it, we had a room for
14 Jeff and one for Greg and they happened to be side-by-side and
15 he -- I just don't think he can stand to be in the house.
16 Even Greg's cat has been affected and when this happened, the
17 cat will go in Jeff's room, then he would just howl and howl.
18 And then he would go and stay under Greg's bed for about two
19 weeks.

20 And it's just -- I just can't believe he's gone.
21 Even yesterday or a couple of days ago, my husband said, I
22 just can't come to terms that Jeff is gone. And --

23 Q I take it, it hasn't gotten any easier for your
24 husband or you since --

25 A No.

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MOWEN - DIRECT

1 Q -- August 14th?

2 A No.

3 MR. DASKAS: Nothing else, Judge.

4 MR. FIGLER: Nothing, Your Honor.

5 JUDGE SOBEL: Thank you. Call your next witness,
6 please?

7 MR. DASKAS: David Mowen.

8 DAVID MOWEN, PLAINTIFF'S WITNESS, IS SWORN

9 THE CLERK: Please have a seat. State your name and
10 then spell your last name for the record?

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

12 DIRECT EXAMINATION

13 BY MR. DASKAS:

14 Q Sir, you are Matthew Mowen's father?

15 A Yes, I am.

16 Q There's been some testimony up until this point that
17 your son, sometime before his death, was on tour with a rock
18 band, is that right?

19 A That's correct.

20 Q In fact, I think it was the band, Phish, is that
21 true?

22 A Yes.

23 Q Tell me, Mr. Mowen, what was it that caused Matt to
24 return to Las Vegas when he was here on August 14th, 1998, at
25 the time he died?

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MOWEN - DIRECT

1 A Matt was following a group, a band, before he went
2 off to college. He wanted to enjoy a little bit of life and
3 not have to worry about the stress of school and things like
4 that. He had been gone about six weeks.

5 My wife had had some health challenges, and she was
6 due to go in for some surgery. Matt, the type of person he
7 was, there was no way that was gonna happen until he was back
8 there with her. And my wife goes to bed every night thinking
9 about that, that had that not happened, perhaps this wouldn't
10 have happened and perhaps Matt wouldn't have been there.

11 Q I take it your wife has some guilt because she feels
12 like she's the reason Matt was in Las Vegas when he got
13 murdered?

14 A We all have guilt about this. We all look for
15 reasons that this happened, ways that it could have been
16 avoided. When you lose a child, you second guess a lot of
17 things and you look for anything that could have made a
18 difference.

19 The Thursday night that this happened, we were
20 supposed to go out for dinner. We were going to discuss his
21 college and his plans for the future. He had called me and
22 said, dad, can we do it this weekend? I need to finish up a
23 few things around the house, I'm moving home on Sunday, and I
24 said, okay. Biggest wrong decision I've probably ever made in
25 my life.

I-229

MOWEN - DIRECT

1 Q Was that the last time you spoke with Matt?

2 A I speak to my son everyday. I go down to his grave
3 every morning, sometimes twice and three times a day. It's
4 the last time he's been able to communicate with me.

5 Q You mentioned that your son had some plans to go to
6 college. Tell me if you would about his experiences finishing
7 high school so that he could attend college?

8 A Matt was not the type of person who enjoyed school.
9 Everything came natural to him, he was more interested in the
10 social activities of school. In his senior year, he had come
11 down with an illness that we were not certain of what it was.
12 We spent several months in and out of the hospitals, in and
13 out of clinics, and after a few short weeks in his senior
14 year, we pulled him out of school. It was not until February
15 of his senior year which he had earned no credits at that time
16 that we discover what his challenge was. We were about two
17 weeks away from doing open heart surgery on a perfectly
18 normal, healthy, young man.

19 He was having a reaction to a medication that was
20 prescribed to him for a light acne. The Friday we took him
21 off of that, that we did it against the doctor's wishes, he
22 started improving.

23 Q Did that, however, cause him to miss some school?

24 A Caused him to miss his senior year. He had said to
25 me that he's going to graduate on time. We went back to the

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MOWEN - DIRECT

1 schools and they said it was impossible, nobody has ever come
2 from this far behind and graduated in time.

3 Q Did your son accept that as a challenge?

4 A Yeah. He accepted it as a challenge, not a problem,
5 a challenge.

6 Q Tell me what he did?

7 A He made a little personal bet between himself and
8 myself of which I agreed to because there was no way it was
9 going to happen. It came down to the Friday before graduation
10 for the rest of the kids. Matt was a quarter of a credit
11 short. His mother, Cindy, and him were in the counselor's
12 office and they were talking about it and he just sits back
13 and relaxes like he did, he didn't get too upset about a lot
14 of things, and after about fifteen or twenty minutes of the
15 lecturing and the encouragement from the counselor asking him
16 to continue and get his education this summer, Matt looked at
17 him and smiled and said, I've got a test scheduled for
18 tomorrow morning on Saturday, I'm going to pass it and
19 graduate on Tuesday.

20 Q Is that what happened?

21 A It certainly is. Yeah.

22 Q You mentioned your wife Cindy a few moments ago.
23 Let me show you a photograph --

24 A Yes.

25 Q -- that is Number 244, and ask you, who's in this

I-231

MOWEN - DIRECT

1 photograph?

2 A My best friend, my son, my first born, my angel
3 giving his mother a hug and a kiss which was a very common
4 occurrence from him.

5 Q Your son Matt and your wife were close?

6 A All four of us were. We went from having the white
7 picket fence to a mutilated, destroyed home.

8 Q Tell me if you would a little bit about the impact
9 that your son's murder has had on your wife?

10 A I've come home from work and I've found my wife in
11 the fetal position lying in our bed screaming, kicking,
12 crying, hollering on more than one occasion, and I do
13 everything I can to help her get through that moment; as well
14 as I've seen the same thing from my daughter who is extremely
15 close with her big brother.

16 Q Your daughter is obviously younger than Matt?

17 A My daughter is currently seventeen and a half, she
18 was fifteen and a half when this happened.

19 Q Tell us about the affect, if you can put it into
20 words, that Matt's death has had on your daughter?

21 A Matt wasn't there for her sixteenth birthday when
22 she went down and got her license. At sixteen, that's a big
23 moment. When she graduates from high school, Matt won't be
24 there. When she decides to get married, Matt won't be there.
25 Or when she decides to have children, Matt won't be there.

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MOWEN - DIRECT

1 On June 2nd of this year, it was a Friday night, she
2 was getting ready to go to work, she calls me and says, daddy,
3 I just realized that on Monday when we go to Court I'm going
4 to see the killer of my brother for the very first time.
5 That's what type of an impact it's made in my life.

6 Q Mr. Mowen, was Matt your only son?

7 A Yes, Matt's my only son. He was a son to a lot of
8 his friend's parents. He was that type of individual that
9 thirty seconds after meeting him, he was your best friend,
10 give you the shirt off his back, do whatever he could to help
11 you out, it didn't matter to him. Black, white, Hispanic,
12 Mexican, male, female, he did not care. That's the way we
13 brought him up is to love and respect everybody.

14 Q Is it possible for you to put into words what it's
15 like for a father to lose his only son?

16 A My last two years have been unquestionably the most
17 challenging in my life. People look at marriage as a
18 challenge, I've been married almost twenty-four years, the
19 first twenty-two being quite easy, actually. The last two
20 have been a challenge. Every single thing I do is a
21 challenge. When you go to bed at night and you re-live the
22 pictures that you've seen. I've been to his house, I am the
23 one who went through there and picked up all of the remaining
24 parts of his life. I'm the one that went down to the
25 coroner's office and they handed me a little baggie of his

I-233

MOWEN - DIRECT

1 was shot in the face and shot in the back. All of us have
2 something to contribute to society and we choose how to
3 contribute, some in a good way and some in a bad. Matt was
4 the type of person that enjoyed working with his hands, he
5 enjoyed people, his ambition was to be a chiropractor. He was
6 the type of person that could just -- you would melt in his
7 arms. He could just help you in so many different ways.
8 That's where he was heading off to when this happened. He
9 wanted to make a difference for society, he wanted to help
10 people.

11 This happened on Friday morning, Matt was moving
12 home on Sunday morning, had all his friends lined up, had his
13 plans on life what he wanted to accomplish, he had had his
14 opportunity to go out and enjoy a little bit of the Phish
15 band. He'd spent a week back in Iowa where we're from,
16 visiting friends and family, and thank God he did. He got a
17 chance to visit with my mother, with my sister and her boys,
18 my wife's parents and all the family over there and his
19 friends back there. It's torn a lot of families and a lot of
20 friends apart back there too. This has been hard on a lot of
21 people and it's touched a lot of people.

22 Q Thank you, Mr. Mowen.

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

24 MR. FIGLER: Nothing, Your Honor.

25 JUDGE SOBEL: Thank you, sir, you're excused.

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Does the State rest?

MR. GUYMON: Yes, Your Honor.

JUDGE SOBEL: Okay. Thank you.

Alright, we're going to be in recess after one little housekeeping detail, as I said until 8 o'clock Wednesday morning. That housekeeping detail is, we've gotten certain transcripts from the State. Do you have the transcripts --

MR. GUYMON: We got --

JUDGE SOBEL: -- like of the psychologists?

MR. GUYMON: We do, Your Honor.

JUDGE SOBEL: You do. Okay. Anything else that should come before the Court until Wednesday morning?

MR. GUYMON: No, just as long as you're aware that in the transcripts that each of you have are actually multiple person's testimonies and they're each labeled.

JUDGE SOBEL: Okay. We're in recess until 8:00 o'clock Wednesday morning.

(Court recessed at 4:25 p.m. until Wednesday, July 26, 2000, at 8:00 a.m.)

* * * * *

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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CLARK COUNTY, NEVADA

Jul 25 4 26 PM '00

Christy S. Thompson
CLERK

STATE OF NEVADA	.	CASE NO. C153154
	.	
Plaintiff	.	DEPT. V
	.	DOCKET "H"
vs.	.	
	.	Transcript of
DONTE JOHNSON,	.	Proceedings
aka John Lee White	.	
	.	
Defendant	.	
.....	.	

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE
THE HONORABLE MICHAEL R. GRIFFIN, DISTRICT COURT JUDGE
THE HONORABLE STEVE ELLIOTT, DISTRICT COURT JUDGE

THREE JUDGE PANEL - PENALTY PHASE - DAY 1
MONDAY, JULY 24, 2000
VOLUME I

APPEARANCES:

FOR THE PLAINTIFF:	GARY L. GUYMON Chief Deputy District Attorney ROBERT J. DASKAS Deputy District Attorney
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FOR THE DEFENDANT:	DAYVID J. FIGLER Deputy Special Public Defender JOSEPH S. SCISCENTO
--------------------	---

COURT REPORTER:

CARRIE HANSEN
District Court

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Las Vegas, Nevada 89133-5257
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1 LAS VEGAS, NEVADA, MONDAY, JULY 24, 2000, 9:33 A.M.

2 JUDGE SOBEL: ... State of Nevada versus Donte
3 Johnson.

4 Did you want to bring up something before we get
5 started, guys?

6 MR. GUYMON: Yes, Judge. There's a disclosure I
7 wanted to make sure that I made the defense aware of and that
8 is from early on in this case they filed a motion that we
9 disclose any and all inducements that any witness had
10 received. Because this is the first time that the defense and
11 I have had the opportunity to talk and because this happened
12 on Friday, I need to disclose that Charla Severs, who was
13 brought up here as a material witness, on a material witness
14 warrant, was brought here before this Court, she testified and
15 we released her and sent her back pursuant to --

16 JUDGE SOBEL: Since she was arrested for
17 prostitution and you got it wrapped up back there for her, is
18 that it?

19 MR. GUYMON: Right, she -- The Court knows, 'cause I
20 disclosed to the Court, but Charla Severs was arrested in New
21 York, when she was released and returned to New York, on the
22 charge of suspicion of prostitution. Once the Court indicated
23 that we were going on Thursday, we then notified New York that
24 we needed her released. It was too late to do a material
25 witness warrant. Those charges were dismissed, she was

I-2

1 released and returned here now to Nevada.

2 JUDGE SOBEL: Okay, thanks.

3 MR. SCISCENTO: Your Honor, I do have another
4 problem. I received a phone call from Mr. Guymon indicating a
5 Melvin Royal may testify at this proceeding. My understanding
6 is that Mr. Royal has provided substantial assistance in other
7 matters and, if the District Attorney's Office knows about
8 them, I'd ask that that also be disclosed.

9 MR. GUYMON: That's fine, Judge. If, in fact, we
10 use Melvin Royal, I'll certainly make those disclosures. I
11 don't know that we're gonna use him, Judge.

12 JUDGE SOBEL: Okay.

13 Who's gonna make the opening, Gary?

14 MR. GUYMON: I am, Judge. If I could have just
15 maybe two minutes, Judge.

16 JUDGE SOBEL: Sure.

17 (Pause in the proceedings)

18 MR. GUYMON: May I, Judge?

19 JUDGE SOBEL: Absolutely.

20 MR. GUYMON: Thank you.

21 (Pause in the proceedings)

22 JUDGE SOBEL: Why am I getting this powerful sense
23 of deja vu?

24 MR. GUYMON: Should I start with an apology, because
25 you've already heard it?

1 MR. FIGLER: Your Honor, before we get started, I
2 did want to supplement the legal record with another point
3 before we proceed with the three-judge panel, if I might.

4 JUDGE SOBEL: What's that?

5 MR. FIGLER: Well, with regard to the
6 constitutionality of a three-judge panel, we already submitted
7 the briefs. I also wanted to raise an equal protection
8 question.

9 It's my understanding, and I looked up various
10 cases, including Flannigan, that when there is misconduct or a
11 problem -- prosecutorial misconduct, especially with regard to
12 a jury in the penalty hearing, the remedy that the Nevada
13 Supreme Court gives in those cases is to order a new penalty
14 hearing in front of the jury. That is different from what
15 happens when the jury does not reach unanimity with regard to
16 their verdict. The three-judge panel is ordered by the
17 statute.

18 Substantively it's the same exact thing with regard
19 to the jury not having a proper verdict at the end of whatever
20 deliberations there were. In this case we're treated
21 differently than those individuals who go through the Nevada
22 Supreme Court and are ordered to have a new penalty hearing
23 and so based on those grounds we would submit that it was
24 unconstitutional as well. I just want to make that record.

25 JUDGE SOBEL: Okay, the objection is noted. It's

1 denied.

2 And go ahead, Mr. Guymon.

3 MR. GUYMON: Thank you. Sorry for the delay.

4 PLAINTIFF'S OPENING STATEMENT

5 MR. GUYMON: Good morning.

6 And I understand that the Court has heard this once
7 before and my comments I will try to make brief. It is my
8 intention to give the other two judges, who have not heard the
9 facts of this case, a brief flavor, if you will, about the
10 facts and briefly we'll hear today in the State's case. It's
11 my belief that the State's case will not take longer than say
12 2:00 o'clock today. I think we'll conclude all of our
13 evidence. It's my understanding that we will then recess on
14 Tuesday and come back to the defense's case on Wednesday.

15 My name is Gary Guymon. I'm a prosecutor with the
16 Clark County District Attorney's Office, just by way of
17 introduction, and my partner in this case is Robert Daskas,
18 who is also employed with the Clark County District Attorney's
19 Office.

20 And what each of you now know, and I'm very aware of
21 the fact that Judge Sobel is painfully aware of the facts of
22 this case, but what each of you do know is that on June 9th of
23 2000 the jury in this case returned guilty verdicts on all 14
24 felony charges that the State alleged in this particular case.
25 They returned a guilty verdict of burglary while in possession

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1 of a firearm, conspiracy to commit robbery and/or kidnapping
2 and/or murder, they returned four guilty verdicts on the
3 charges of robbery with use of a deadly weapon, they returned
4 four guilty verdicts on the charges of kidnapping with use of
5 a deadly weapon and they returned four counts of first degree
6 murder with use of a deadly weapon against the defendant,
7 Donte Johnson.

8 You know, by reading the criminal indictment in this
9 case, that Donte Johnson had two main co-defendants who were
10 also charged in this case. Their names are Terrell Young and
11 Sikia Smith. So that you can put a name with the face, I show
12 you what was introduced in the trial as the pictures of all
13 three men that were charged in this case, that being, again,
14 Sikia Smith, Terrell Young and Donte Johnson.

15 You can see, by the indictment in the case, that the
16 four victims in the case are identified as Tracey Gorringer,
17 Matthew Mowen, Jeffrey Biddle and Peter Talamantez and their
18 ages being 21, 19, 19 and 17 respectively.

19 You will learn that the facts in this case clearly
20 indicated that these three young men lived at a home at the
21 Terra Linda address, the 4800 block of Terra Linda. They
22 lived there, they were roommates and they were friends with
23 one another. And you will learn from the evidence that Peter
24 Talamantez would come and visit the home at Terra Linda from
25 time to time and on this particular evening, August 14th, --

1 actually, I should say the early morning hours on August 14th,
2 1998, all three of these men ultimately found themselves at
3 the Terra Linda residence where they were visited by all three
4 of these men, Donte Johnson, Terrell Young and Sikia Smith.

5 You will learn that ultimately it was Donte Johnson
6 and his two partners who armed themselves with deadly weapons,
7 duct tape and a tote bag, which they carried the weapons in,
8 and the three of them go over to the Terra Linda residence and
9 they ultimately find that only two of the three roommates are
10 home. Tracey Gorringer and Matthew Mowen are home at the time
11 that Donte Johnson and his partners arrive. Matthew Mowen and
12 Tracey Gorringer are there and Matthew Mowen's out mowing -- or
13 actually watering the lawn in the early morning hours, perhaps
14 1:00 a.m. in the morning, 2:00 a.m. in the morning, and it's
15 Donte Johnson who orders Matthew Mowen and Tracey Gorringer to
16 get into the house and he orders them, at gunpoint, to do so.
17 It is Donte Johnson and his partners who walk these two young
18 men into their home and lay them down on the ground or order
19 them down to the ground and it is Donte Johnson and his
20 partners who duct tape the two of them with their hands behind
21 their back, feet together and there they lie helplessly as
22 Donte Johnson and his partners thoroughly, thoroughly search
23 the Terra Linda address.

24 You will learn that the evidence in this case
25 clearly indicated that Donte Johnson and his partners believed

1 that these boys had money, that in the Terra Linda home a
2 large sum of money would be found or, at least, based on the
3 beliefs of Donte Johnson. This was about a robbery where
4 Donte Johnson stood to gain a large sum of money, at least in
5 his mind. You will learn that ultimately he did not gain
6 hardly anything. Two hundred and forty dollars (\$240), a VCR,
7 a Nintendo or PlayStation and a pager was the net gain of
8 these four boys' lives.

9 You will learn that while they're duct taped on the
10 ground and lying there helplessly they begin to search the
11 house and you will learn that not a single dollar bill was
12 left at that residence. There was no paper currency left at
13 the Terra Linda residence at the conclusion of Donte Johnson's
14 search of that house.

15 You will learn that while these two boys lay
16 helplessly on the ground the two others arrive, one at a time,
17 Jeffrey Biddle and then Peter Talamantez, and Jeffrey Biddle
18 is greeted at his own home by Donte Johnson and his partners
19 at gunpoint and Jeffrey Biddle is thrown on the ground in that
20 small entry room, what I'm gonna call a TV room, and he too is
21 duct taped, hands behind his back, legs together and lays
22 there helplessly until yet the fourth boy arrives, Peter
23 Talamantez.

24 And when the fourth boy arrives, you'll learn from
25 the evidence in this case, that the fourth boy begins to mouth

1 off to Donte Johnson, to use Donte Johnson's expression. To
2 use Donte Johnson's expression, Peter Talamantez was talking
3 "mess" and it aggravated Donte Johnson and so Donte Johnson
4 begins to pistol whip and beat this young man. And you'll see
5 the bruises from the evidence in this case where Peter
6 Talamantez has a blunt object strike him in the back of the
7 head, where he has some abrasions on his nose and on his
8 elbows where Donte Johnson pushes around the helpless Peter
9 Talamantez as Peter Talamantez is duct taped hands behind his
10 back and ankles together.

11 And Peter Talamantez is taken into the next room off
12 of the first room. You will see the destruction that is left
13 as the three boys lying in the front entry room, the doorway
14 being right here where they lie, there being not enough room
15 to put Peter Talamantez on the ground there and so he's taken
16 to the room just off of the front room, duct taped and bound.
17 And you will learn that after each one of these boys' wallets
18 are removed from their body and emptied, and the house
19 thoroughly searched, it is Donte Johnson who shoots and kills
20 Peter Talamantez because he had been talking mess.

21 You will learn that Peter Talamantez was shot with a
22 .380 semi-automatic and he's shot from close range, perhaps
23 one to two inches away from his head. He's shot directly in
24 the back of the head. And after Peter Talamantez is shot in
25 the back of the head, it is Donte Johnson, with the same gun,

1 the .380, who shoots and kills each one of these boys with a
2 single shot to the back of the head, again, from close range,
3 one to two inches away.

4 Donte Johnson and his partners leave the house,
5 again, with two hundred and forty dollars (\$240), the VCR,
6 that you'll learn was taken -- You'll see a console area here,
7 an entertainment center, and you will learn from the evidence
8 that there were VCR cords and Nintendo/PlayStation cords that
9 were left unattached as though the robbers had lifted those
10 items out of the entertainment center and taken them with
11 them.

12 And the evidence will clearly establish there was a
13 single gun used in this particular robbery. Four cartridge
14 cases were left near the bodies. The four cartridge cases
15 were fired by the same weapon, a .380 semi-automatic, and by
16 the same shooter. It was the State's contention in this case
17 that there was one gun and one shooter and the shooter is in
18 this room. He is Donte Johnson.

19 You will learn that the motive in this case was
20 clearly robbery, as seen by the evidence. You will see
21 countless photographs of the home being ransacked. The
22 bedrooms -- You'll find that the beds are actually taken off
23 the mattresses and shifted. Every drawer in the bedroom is
24 removed and emptied out, the kitchen thoroughly searched and
25 the bathroom is thoroughly searched. You will see just how

I-10

1 thorough the search of this home was as you see each one of
2 the pictures that were admitted into evidence. And I will
3 tell you that there was in excess of a hundred photographs
4 admitted into evidence in this case.

5 You will learn that the verdicts are supported by
6 the defendant's own admissions. He admitted to at least four
7 lay witnesses that he, Donte Johnson, was the killer in this
8 case, that he, Donte Johnson, shot and killed this man because
9 he mouthed off and because he didn't like Mexicans, to use his
10 quote. You will learn that it is Donte Johnson's own
11 admissions, who says that after he killed this one, since he
12 killed one, he had to kill them all and so he killed the other
13 three so as not to leave any witnesses.

14 And you will learn that no masks were worn by the
15 defendant or his partners. You will learn that gloves,
16 however, were worn as they searched this house and you will
17 learn about the lack of fingerprints, but there will be one
18 fingerprint that will become key that identifies Donte Johnson
19 as well. You will learn that it is his admission that he's
20 the shooter.

21 You will learn that Donte Johnson is arrested some
22 four days later after this offense and he is arrested at a
23 residence not far from these boys' residence. And in Donte
24 Johnson's presence, in the residence in which he is arrested,
25 are the proceeds of this robbery, the proceeds, of course, the

I-11

1 two hundred and forty dollars (\$240) not recovered, but the
2 VCR that belonged to Matthew Mowen is found at Donte Johnson's
3 place where he's staying in the front room. You will learn
4 that the PlayStation was found at the very place that Donte
5 Johnson was now staying and you will learn that the pager that
6 I spoke about that was taken from this boy right here during
7 the robbery was also found at the very place that Donte
8 Johnson was staying at in the backyard buried with some keys
9 from the Thunderbird Hotel.

10 And you will learn about the Thunderbird Hotel.
11 Very briefly, you'll learn that Donte Johnson had been staying
12 in the Thunderbird Hotel before he came to stay at the Everman
13 residence. And there are really two residences in this case.
14 There's the Terra Linda residence, where all the destruction
15 was and where the boys were killed, and then there is the
16 Everman residence, which is where Donte Johnson is found some
17 four days after the killings.

18 Not only is it Donte Johnson's admissions that
19 convicted him and the fact that he is in possession of the
20 proceeds, but you'll also hear the ballistics evidence. I
21 told you that there was one gun and it was a .380, four
22 cartridge cases all being fired from the same gun and you'll
23 learn that that gun is not admitted into evidence. The State
24 did not produce a gun in this trial. You will learn, however,
25 from one of the lay witnesses that confessed to this killing -

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1 - or that heard Donte Johnson confess, that the gun was sold
2 days later by Sikia Smith and the gun has never been found,
3 nor has it been admitted into evidence.

4 I told you about the lack of fingerprints, the fact
5 that the evidence established that Donte Johnson wore gloves
6 when he searched the residence. You will learn, however, that
7 his fingerprint is, in fact, found at the scene. Very near
8 one of the boy's feet that were duct taped is a Black & Mild
9 cigar box. A Black & Mild cigar box is about the size of, I'd
10 say, oh, a three by six container. It contains perhaps five
11 cigarettes or cigars and on that particular box a fingerprint
12 was found and that fingerprint was lifted by a crime scene
13 analyst. You will learn that in excess of 80 hours were spent
14 searching or looking for clues by the crime scene analysts and
15 one of the clues they received is Donte Johnson's fingerprint
16 on that Black & Mild cigar box. So his fingerprint is
17 identified or found at the scene.

18 Not only, however, is his fingerprint found at the
19 scene, but Donte Johnson's DNA was found at the scene. You
20 will learn that there were 12 cigarette butts that were
21 impounded and preserved in this case. Some of the cigarette
22 butts came from ashtrays that were left throughout the house,
23 but one cigarette in particular that lie on the ground in the
24 living room area was analyzed and, to no surprise, Donte
25 Johnson's saliva, his DNA, is found on that cigarette butt and

1 also the saliva of a second donor was found on that cigarette
2 butt. The second donor is not identified because the primary
3 DNA was the DNA of Donte Johnson. So it is his fingerprints
4 and his DNA that put him at the crime scene, coupled with his
5 confessions to at least four lay witnesses who testified in
6 this case.

7 You will also learn that a very key piece of
8 evidence in this case was some blood that was found on the
9 back of a pair of black jeans. Each of the four lay witnesses
10 who testified -- and I overstated the evidence, I'm sorry,
11 three of the four lay witnesses who testified testified that
12 Donte Johnson wore black jeans the night that he went to this
13 residence and found at the residence that Donte Johnson was
14 staying at, the Everman residence, was a pair of black jeans.
15 The black jeans had eight human blood drops on the back left
16 lower leg of the jeans and that blood was tested and it was
17 learned that it was human blood. And not only was it learned
18 that it was human blood, but when it was tested through DNA it
19 was the blood of Tracey Gorringer. With absolute certainty,
20 the blood on the back of those pants was Tracey Gorringer's.

21 With the same certainty, absolute certainty, those
22 pants were identified as being Donte Johnson's, because it is
23 through DNA testing that Donte Johnson's identified with those
24 pants because there was some sperm or semen on the front of
25 those pants in the zipper area and you will see a photograph.

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1 On the inside zipper sleeve, for lack of a better word, is
2 some semen and that semen was tested and it is the semen of
3 Donte Johnson. You will learn that those black jeans belonged
4 to Donte Johnson and that he wore those jeans over to this
5 house and that, as you see each one of these boys bled, Tracey
6 Gorringer's blood fell onto the back of Donte Johnson's pants.
7 So you will learn that that DNA clearly supports these
8 convictions and these verdicts.

9 As I indicated to you, there were three suspects
10 arrested in this case and I've identified those for you just
11 so that you could put a name with a face as you begin to
12 listen to the story of this case. You will learn, as I've
13 indicated, that Donte Johnson was arrested on August 18th,
14 1998, Terrell Young was arrested on September 2nd of 1998 and
15 Sikia Smith was arrested on September 8th of 1998. You will
16 learn, as I indicated, that Donte Johnson is the shooter. He
17 is the killer in this case. He is the sole person who
18 confessed to at least four people that he, Donte Johnson,
19 killed them.

20 And you will learn from the evidence that Donte
21 Johnson laughed about it as though it was funny. When he
22 talked about these killings, he talked about how it was funny
23 and he smiled about it and talked about how they bled as
24 though it was like Niagara Falls. And it is Donte Johnson,
25 from the evidence, that was thrilled by the killings because

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1 on September 15th, one day later, Donte Johnson buys a
2 newspaper, the Review-Journal, which is perhaps the most
3 popular newspaper we have here in Clark County, as each of you
4 probably know, and Donte Johnson looks at the front page and
5 on the front page, and you'll see that paper, he says to Sikia
6 Smith, in the presence of Sikia Smith's girlfriend, LaShawnya
7 Wright, "Look, we made the front page." And when LaShawnya
8 Wright was asked about Donte Johnson's demeanor or how that
9 made him feel, she said he was excited, he was thrilled to
10 have made the front page.

11 You will learn that nowhere in the evidence of this
12 case was there any remorse shown by the defendant. None of
13 the four lay witnesses talked about how Donte Johnson was
14 remorseful, because he was not. He was thrilled.

15 I will ask one of the lead detectives in this case,
16 Jim Buczek, to come into this courtroom and under oath testify
17 to what the evidence was in this case. You will learn that
18 Detective Buczek has read the entire guilt transcript and will
19 summarize for you, as I have today, what the facts were in
20 this case and will be able to walk you through many of the
21 photographs and the evidence that was admitted in this case so
22 you get a flavor for the guilt evidence in this particular
23 case.

24 You know by now that we have alleged three
25 aggravators in this case. The first aggravator that's alleged

1 is that the murder was committed during a robbery or a
2 kidnapping or a burglary and clearly the evidence will show
3 you, as you look at, again, the photographs of each one of
4 these boys and you'll see, as you look at other photographs,
5 that each one of these boys has their wallet removed from
6 their person and their wallets are empty. Clearly, that
7 aggravator will be established and you too will learn that
8 these boys were robbed. You can see that they were kidnapped
9 as they were restrained with duct tape and you'll learn that
10 that was the motive in this case.

11 You will also learn that one of the aggravators is
12 that the defendant committed this robbery -- or, excuse me,
13 this killing to avoid lawful arrest or to facilitate escape
14 and it will be the defendant's own admissions that establish
15 that aggravator, because it is the defendant who says,
16 "Because I killed one, I had to kill them all." And you will
17 learn that at least Matthew Mowen knew the defendant, Donte
18 Johnson, and clearly had Matthew Mowen not been killed he
19 would have been able to identify the defendant, because it was
20 Matthew Mowen who had, days earlier, purchased rock cocaine
21 from Donte Johnson. There was a relationship that Donte
22 Johnson had with Matthew Mowen and Matthew Mowen, had he been
23 left to live, could have identified Donte Johnson. That is a
24 second aggravator, to avoid lawful arrest.

25 You will learn, and it will be no secret, that there

1 are drugs -- drug use and drug sales involved in this case.
2 You will learn that there was a controlled substance found in
3 the toxicology, in the blood work and the urine work, of each
4 one of these four boys. They used controlled substances on
5 occasion and you will learn that they purchased controlled
6 substances from Donte Johnson on occasion and you will learn
7 that the defense conceded that Donte Johnson sells rock
8 cocaine.

9 You will also learn that the third aggravator in
10 this case was the fact that there was more than one murder and
11 you can see that there was clearly more than one murder.

12 So beyond a reasonable doubt it is the State's
13 contention that all three of the aggravators will be
14 established.

15 You will also learn what the jury heard about, and
16 what Judge Sobel has previously heard about, as being some of
17 the other crimes that Donte Johnson has --

18 JUDGE SOBEL: Objection, Dayvid?

19 MR. FIGLER: Yes, Your Honor. At this time we
20 object to any character evidence coming in before the panel.
21 Donte Johnson/John White is not eligible for the death penalty
22 until this three-judge panel determines, beyond a reasonable
23 doubt, that at least one of the aggravators exists, so at this
24 time we think it would be premature for the State to present
25 any additional character evidence that doesn't go towards the

1 aggravators.

2 JUDGE SOBEL: So this is sort of the same drift as
3 your argument for a bifurcated hearing in front of the jury,
4 right?

5 MR. FIGLER: Yes, Your Honor.

6 JUDGE SOBEL: Okay, that motion's denied.

7 MR. GUYMON: In short, you will learn what the rest
8 of the story is associated with Donte Johnson. After you hear
9 a summary of the facts, as given to you by the lead detective
10 in this case, Detective Buczek, we will then turn to the
11 defendant's criminal career, if you will. You will learn that
12 he was born on May 27th, 1977, that as he sits in this
13 courtroom today he's approximately 23 years old -- actually,
14 not approximately, he is 23 years old. You will learn by age
15 14 he was engaged in an armed robbery where he attempted to
16 take a vehicle, perhaps what we call a carjacking, and you
17 ultimately will see a pre-sentence investigation report
18 associated with that particular incident.

19 You will learn that he was sent off to a California
20 camp committee placement program in an effort to rehabilitate
21 him, in an effort to turn him around and correct his criminal
22 conduct and that he performed satisfactory at the age of 14 in
23 this particular camp and he was released on probation. You
24 will learn, however, that four months after he was released
25 from probation, from an armed robbery in California, he's now,

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1 once again, in possession of a handgun on a school campus.
2 You will learn, ultimately, that he violated his probation
3 when he took that gun onto a school campus and he again is
4 punished and he's approximately 15 years old when he's
5 punished. And, again, that incident will be reflected in a
6 pre-sentence investigation report that we'll ask each of you
7 to read.

8 You will learn that at age 16, after being punished
9 twice by the California juvenile program, punishment program,
10 you will learn that he ultimately is involved in an armed bank
11 robbery of the Cen-Fed Bank, C-E-N - F-E-D Bank. It is a
12 federal bank in Marina del Rey, California. He is now 16
13 years old. And it is Donte Johnson and three other 16 year
14 olds who ultimately go into that Cen-Fed Bank at approximately
15 1:30 in the afternoon, in broad daylight, covering their faces
16 with bandannas and two of the four are armed with weapons.
17 One has a rifle or a shotgun and the other has a handgun.

18 And by our own admissions or our own -- well, it's
19 an admission, it is not Donte Johnson who's in possession of a
20 handgun. It is his partners. It is not the State's
21 contention that Donte Johnson had a handgun on this occasion,
22 but you will learn that Donte Johnson is one of two people who
23 ultimately jump over the teller bannister, if you will, and
24 order the teller to open her drawer, her desk drawer, and
25 Donte Johnson, as he jumps over the bannister, a gunman jumps

I-20

1 over the bannister and has the teller lay down on the ground
2 and it is Donte Johnson who ultimately receives approximately
3 twelve hundred dollars (\$1,200) from the teller's drawer and
4 leaves with the three other robbers in this particular case.

5 You will learn, ultimately learn, that Donte Johnson
6 is driving a Ryder truck. It's the getaway vehicle from that
7 bank robbery and he and the other three get onto the freeway.
8 LAPD had helicopters up in the air. It's now been broadcast
9 that this is a federal bank robbery. And, in fact, it is
10 Donte Johnson and his partners, when they go into that bank,
11 who say, "This is a robbery, this is a takeover. Everybody
12 down on the ground."

13 You will learn that the bank was reasonably empty on
14 that occasion. There were, however, a couple of customers and
15 a number of employees. And a chase ensues and ultimately
16 Donte Johnson is arrested behind the wheel of that car. The
17 shotgun and the handgun are impounded and the money, twelve
18 hundred and twelve dollars (\$1,212), is found on Donte
19 Johnson's person.

20 And Donte Johnson gives an admission to detectives
21 with the Los Angeles Police Department and says, "Yeah, I did
22 a robbery, yeah, I was with a couple of other guys, but I
23 didn't have the gun. I only took the money."

24 You will receive a transcript of two witnesses. I
25 believe it is Stacy Trammell and Detective Grayson who

1 testified in the penalty phase of this case and you'll receive
2 their testimony in transcription form. You will also receive
3 a transcript of Robert Kaufman, who is the custodian of
4 records, the individual that ultimately held Donte Johnson's
5 California file and who came in this courtroom and provided to
6 the Judge or to the jury in this case, during the penalty
7 phase, the two prior pre-sentence investigation reports that I
8 spoke about.

9 You'll learn that there was a pre-sentence
10 investigation report associated with this armed robbery and
11 that ultimately the defendant, at age 16, is incarcerated with
12 the California Youth Authority for approximately 26 months.
13 He is released and he is released to supervision, parole
14 supervision, where he is to attend a school that is actually
15 at the parole office. And it is Officer Clark or Agent Clark
16 who is the supervisor of Donte Johnson.

17 You will receive Officer Clark's transcribed
18 testimony wherein he says, "For the first couple of months
19 Donte Johnson did quite well on parole. He was under my
20 supervision. Each and every day he reported to me. Each and
21 every day I saw him at the school campus." And you will learn
22 that Agent Clark actually was housed right there at the school
23 campus so got to see Donte Johnson and got to attempt to
24 reprogram, if you will, Donte Johnson's conduct.

25 And you will learn that it is Donte Johnson who

1 ultimately, after about four months of doing well on parole,
2 starts to slough off for the next two months and then turns
3 into an absconder and he's listed as a parolee at large. And
4 you will see that Agent Clark testified that Donte Johnson
5 called and said, "Agent Clark, tell me something. Is there a
6 bench warrant out for my arrest," and Agent Clark says, "Yes."
7 He says, "Where are you at? You need to turn yourself in."
8 And Donte Johnson says, "You won't find me," and hangs up the
9 phone.

10 You will learn that at age 20 it is Donte Johnson in
11 our community, here in Clark County, who shoots Derrick
12 Simpson and you will see and hear from Derrick Simpson.
13 Derrick Simpson is a paraplegic now. He will be wheeled into
14 this courtroom in a wheelchair and Derrick Simpson will tell
15 you that he had been buying rock cocaine from Donte Johnson
16 for some time. In fact, for a long time Derrick Simpson was
17 buying rock cocaine from Donte Johnson. He knew Donte Johnson
18 well and on this particular occasion Derrick Simpson met up
19 with Donte Johnson not far from here, over here on Fremont
20 Street, and attempted to buy rock cocaine. And it is Donte
21 Johnson who tells Derrick Simpson, "Not only am I not selling
22 you rock cocaine, but I'm gonna kill you before the night's
23 over," or something like that.

24 And at the point in time that Donte Johnson tells
25 Derrick Simpson that he's gonna kill him, Donte Johnson goes

1 to reach for a gun and brings the gun up from his waistband
2 and Derrick Simpson, who was an able individual at that point
3 in time, approximately 200 pounds, smacks Donte Johnson right
4 in the face and Donte Johnson drops the gun and Derrick
5 Simpson pushes the gun away from Donte Johnson.

6 Ultimately, this fight or this skirmish, this
7 exchange, altercation, is broke up by a security guard who
8 tells Derrick Simpson, "Just leave. I don't want any further
9 problems. You leave and get out of here." And so Derrick
10 Simpson, in fact, leaves and gets about two blocks away from
11 this skirmish or this altercation and it is Donte Johnson who
12 ultimately grabs that gun, grabs his car and drives down
13 Fremont Street in search of Derrick Simpson and finds Derrick
14 Simpson and approaches him and from close range shoots him
15 straight in the face, the bullet entering in not far from his
16 mouth. And you'll see his deformities as he attempts to speak
17 and you'll see that he speaks in a very odd or peculiar
18 fashion now, from the side of his face.

19 Ultimately, Derrick Simpson is shot once and he
20 falls straight to the ground and Donte Johnson stands over him
21 and shoots him again in the back and Donte Johnson believes
22 that he kills Derrick Simpson, but Derrick Simpson has lived
23 to tell his story. And, again, he'll be wheeled in here and
24 he'll tell you just who shot him and the ramifications, if you
25 will, of that particular incident. That is at age 20.

1 Three months later, by age 21, Donte Johnson is
2 involved in the murder of Darnell Johnson.

3 MR. FIGLER: Your Honor, at this time I just want to
4 make sure that our objections that we made previously pertain
5 to this proceeding as well. If not, I need to renew those.

6 JUDGE SOBEL: Well, I think that for the record all
7 of them can be applied here without you having to restate them
8 each time.

9 MR. FIGLER: Thank you, Your Honor.

10 MR. GUYMON: You will learn a little bit about that
11 particular incident. I told you that in the guilt phase,
12 found with Peter Talamantez' pager, buried in the backyard of
13 the Everman residence, were two keys from the Thunderbird
14 Hotel. And you will learn that in the guilt phase of this
15 case we established that Donte Johnson lived at the
16 Thunderbird Hotel with Terrell Young and with his girlfriend,
17 Charla Severs. Well, you will learn that the murder of
18 Darnell Johnson occurred at the Thunderbird Hotel at the very
19 room that Donte Johnson was staying at.

20 You will learn that Darnell Johnson, similarly to
21 Donte Johnson, was involved in the sale of controlled
22 substances, particularly rock cocaine, and it is Donte Johnson
23 who was upset with Darnell Johnson over a -- over the sale of
24 rock cocaine. And you will learn, by the defendant's own
25 admissions, that he strangled Darnell Johnson, that he

1 suffocated him and that he forced him to eat rock cocaine,
2 that after Donte Johnson killed Darnell Johnson -- and Darnell
3 Johnson, I should tell you, was also referred to as Snoop,
4 S-N-O-O-P, it is Donte Johnson, by his own admissions, who
5 wraps up Darnell Johnson's body in a white sheet and places
6 Darnell Johnson in the trunk of a car. And you will hear
7 testimony that it is Donte Johnson who gets Terrell Young to
8 drive out with Donte Johnson to discard the body of Darnell
9 Johnson up here by the speedway off of I-15 north of town
10 here.

11 You will learn how that body is discovered wrapped
12 in a sheet and that the trunk of Snoop's car -- the lock is
13 punched out. That's the very trunk that Darnell Johnson was
14 placed into. He was placed in his own car in that sheet, now
15 dead, and drove out to the speedway where his body was found.

16 You will hear from a detective, Detective Chandler,
17 who will testify that Darnell Johnson had a very high level of
18 cocaine in his system, consistent with Donte Johnson's
19 confession of making Snoop or making Darnell Johnson eat the
20 rock cocaine before he killed him.

21 MR. FIGLER: Your Honor, I'm gonna object to that.
22 I understand this is argument at this point, but that doesn't
23 reflect, in any regard, the evidence.

24 JUDGE SOBEL: Well, we'll hear it.

25 MR. FIGLER: Thank you.

1 MR. GUYMON: And you will hear that the discovery of
2 the body and the cause and manner of death is consistent with
3 the defendant's own confessions that he talked to Charla
4 Severs about and that he also talked to Bryan Johnson about.
5 You will hear from Charla Severs in these proceedings. That's
6 the girlfriend of Donte Johnson. You'll hear from Bryan
7 Johnson, who was an acquaintance of Donte Johnson. Bryan
8 Johnson bought rock cocaine from Donte Johnson and knew Donte
9 Johnson and Donte Johnson confessed to Bryan Johnson about the
10 killing of Snoop and how it happened.

11 You will also hear that just days, three days,
12 before the quadruple homicide of the four boys that you've
13 seen previously that Donte Johnson arms himself with a gun and
14 with his companions and they go over to the Longhorn Hotel and
15 Casino. You'll learn that they go over there to take care of
16 some business because, to use his expression, quote, "There
17 was some boys that were slipping and they're gonna" -- Donte
18 Johnson and his companions are gonna go shoot those boys and
19 take care of their business. And it is Donte Johnson who
20 attempts to shoot those two fellows that are over at the
21 Longhorn Hotel and Casino because they're, quote, "slipping."

22 And Donte Johnson believes that he actually hit one
23 of those boys. Donte Johnson tells Charla Severs how Red or
24 Terrell Young got scared when the shooting started and that
25 Terrell dropped his gun but that Donte kept firing his. And

1 you will learn that one of the kids that ran out of the back
2 door of the Longhorn Casino actually had a bullet go through
3 his shirt, in and out, without striking his body. You will
4 learn that that young man did not want us to prosecute Donte
5 Johnson. He refused the prosecution.

6 And you will also learn that in the killing of
7 Darnell Johnson a case has been submitted to the District
8 Attorney's Office, but the case has not been approved.

9 You will learn that Donte Johnson knew that he was
10 wanted, at least the police wanted to talk to him about the
11 killing of Snoop, and they also wanted to talk to him about
12 the shooting of "Prophet" or Derrick Simpson. Donte Johnson
13 knew he was wanted and his answer, in trying to avoid the
14 police, was to get some money and get out of town. And it is
15 his own girlfriend who said, who will tell you, that Donte
16 Johnson wanted to get some money and his answer to getting
17 money was to go over to Terra Linda to rob these boys so that
18 he could get money and avoid prosecution or arrest in these
19 two earlier events.

20 In total, this panel will hear that Donte Johnson's
21 actions were not an aberration, but rather a culmination of
22 his criminal career, that he has shown total disregard to the
23 human lives of Derrick Simpson and Darnell Johnson and the
24 four boys in this case, that he is the sole shooter, the
25 person responsible for lodging a bullet in each one of these

1 helpless young men's heads as he leaves with the proceeds and
2 we will ask you ultimately for a punishment that fits this
3 crime, that punishment being the death penalty.

4 And I thank you.

5 JUDGE SOBEL: Thank you.

6 Dayvid or Joe, do you want to make an opening now or
7 Wednesday morning?

8 MR. SCISCENTO: Yes.

9 MR. FIGLER: Yes, Your Honor, at this time.

10 (Pause in the proceedings)

11 DEFENDANT'S OPENING STATEMENT

12 MR. FIGLER: Good morning, Your Honors. My name is
13 Dayvid Figler. I'm a Deputy Special Public Defender, along
14 with my co-counsel, Joe Sciscento, and we are assigned to
15 represent our client, John White, who is also referred to as
16 Donte Johnson, during these proceedings. And now, to steal a
17 line from the prosecutors that they stole from Paul Harvey,
18 "And now the rest of the story."

19 When the jury convened they were presented with
20 alternate theories of criminal liability on the underlying
21 charge of murder. It included a conspiracy once they had
22 emphasized, in no uncertain terms, that the act of one is the
23 act of all under Nevada law. They also alleged an aiding and
24 abetting theory, they also alleged a felony murder theory,
25 that these individuals were killed during the course of a

1 robbery, that the fact that it was a drug robbery is of no
2 moment under Nevada state law, which is an accurate
3 assessment.

4 The State had the option of charging John White
5 solely with being the shooter in this case, with premeditated,
6 deliberate malice, to establish that first degree verdict, but
7 instead chose not to. Thus, we can never be certain that the
8 State proved to that jury the jury verdict that you're guided
9 by in this proceeding, that John White was indeed the shooter
10 in this particular case. That was not established beyond a
11 reasonable doubt. There were no special verdicts.

12 MR. GUYMON: Judge, I'm gonna object if he's gonna
13 talk about residual doubt. I think it's appropriate to talk
14 about what the evidence was in the guilt phase, but to suggest
15 in any way what the jury believed would be improper.

16 MR. SCISCENTO: Your Honor, I think --

17 JUDGE SOBEL: Well, I don't think that he's arguing
18 residual doubt. I don't think what he's saying is improper,
19 but you don't have a jury here. You got a bunch of lawyers
20 who are now judges.

21 Let him go ahead with his argument. It's overruled.

22 MR. FIGLER: Your Honor, I think that there might be
23 a problem right now with the Court Recorder with regard to the
24 air that came on and perhaps we could rectify that.

25 JUDGE SOBEL: Can you hear?

1 MR. FIGLER: Although I'm glad to have the air now.

2 COURT RECORDER: It's pretty bad.

3 JUDGE SOBEL: All right, wait a minute, Dayvid. It
4 usually clicks off after a while.

5 (Pause in the proceedings)

6 JUDGE SOBEL: Better?

7 Go ahead, Dayvid, whenever you're ready.

8 MR. FIGLER: The State had the ability to
9 unequivocally show, beyond a reasonable doubt, to that jury
10 that John White was the shooter and yet they chose not to do
11 that and now we are bound, by the failure of the prosecutor,
12 to not know beyond a reasonable doubt whether he was the
13 shooter. And when the jury, after lengthy and presumably
14 conscientious deliberations, stated that there was no
15 unanimity with regard to death being the only appropriate
16 sentence for John White's transgressions, this three-judge
17 panel was convened.

18 Now it's curious to me that in Nevada, if a jury had
19 felt death the only appropriate verdict, there is no similar
20 provision for a three-judge panel to reconsider that ultimate
21 sentence, for the benefit of the doubt to be given a
22 defendant, yet here we sit today, the State with a second bite
23 at the fruit of the most poisonous tree known to mankind,
24 asking three learned white men with the blue bunting to
25 extinguish the light of a young man, a minority male, raised

1 in the lowest economic strata in our country, having
2 experienced day-to-day horrors throughout his formative years
3 that we cannot imagine, but horrors which were commonplace to
4 him, and this hearing today where the State, the government,
5 asks for your signatures to kill, this hearing is conducted in
6 the name of justice, in front of judges, not a jury.

7 Over the course of the next few days there will be
8 uncontroverted evidence that four individuals were bound and
9 killed and, while vilification is not my goal, I must say that
10 the nature of this crime distinguishes it and you will learn
11 that it is distinguished from cases where the death penalty
12 has been otherwise considered. This is not a case where
13 victims were random citizens shopping in a supermarket,
14 walking down the street only to be intentionally run down by a
15 car. This is not a case of a taxi cab driver or a single mom
16 bartender being killed at work.

17 MR. DASKAS: Judge, I apologize. This is his
18 opportunity to talk about what the evidence will show in this
19 hearing.

20 MR. FIGLER: And the evidence will show that.

21 JUDGE SOBEL: The evidence will show the Zane Floyd
22 case and other murders, Dayvid?

23 MR. FIGLER: Your Honor, we intend to introduce
24 everything under mitigation that we're allowed to present
25 under the law of mitigation.

1 JUDGE SOBEL: And you think the mitigation law
2 allows you to present the facts of other murder cases?

3 MR. FIGLER: Certainly that this case is
4 distinguishable from those other cases where the death penalty
5 was, in fact, considered and which was sought by the State.

6 JUDGE SOBEL: Now in terms of arguing whether it's a
7 just punishment, that's one thing. Are you now saying that
8 you're gonna have witnesses here to talk about other murders
9 or that's your intention, Dayvid?

10 MR. FIGLER: I do believe, Your Honor, that will
11 come through during the course of these proceedings and
12 perhaps through a witness, perhaps even from a witness from
13 their own District Attorney's Office, that in these other
14 cases the death penalty was sought for those reasons and that
15 distinguishes it completely from this case where the death
16 penalty should not have been sought.

17 JUDGE SOBEL: Well, of course, you're not only doing
18 this, but you're talking about cases that arise in Reno, one
19 of them, that you're talking about.

20 MR. FIGLER: I use it as a matter of a hypothetical
21 at this point.

22 JUDGE SOBEL: And to the extent that it all is
23 argument, he's right. I mean, this is the time to tell us
24 what the evidence is going to be. I have, except for a brief
25 reference to Donte's past, heard no factual representations

1 and I think that's well taken.

2 MR. FIGLER: Thank you, Your Honor. If I may
3 continue.

4 This is not a case of a confession to the specific
5 acts alleged. What is continually bandied about by the State
6 as a confession or admissions were not so phrased in front of
7 the jury. These are statements that were allegedly made to
8 individuals, not the police, not recorded, but people knee
9 deep -- neck deep over their heads with their involvement in
10 this particular case, people who had a motive to fabricate,
11 people who gave inconsistent statements with regard to these
12 alleged confessions. So to call them confessions is probably
13 the same hyperbole that John White often engages in when he's
14 dealing with individuals.

15 And I stated that I have no intention whatsoever to
16 vilify the individuals who were killed in this case, but the
17 victims in this case, to call them victims, is somewhat of an
18 overstatement with regard to those other types of situations,
19 because in this case these individuals were, in fact, as the
20 State conceded, drug users. What the State didn't indicate to
21 you is that they were also drug sellers, that they were also
22 involved in drug manufacturing and that they also toted guns
23 with them and the evidence will show all of that.

24 None of this made them deserve to die, and I want to
25 make that point very clear, but none of this makes John White

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1 deserve to die either. And I have to apologize to the
2 families in the audience who must, right now, have a very low
3 opinion of me. We've asked for them to be excluded from these
4 proceedings before.

5 MR. DASKAS: And, Judge, I'm gonna object to this.
6 Is this evidence that he's gonna present in this hearing?

7 MR. FIGLER: Your Honor, --

8 JUDGE SOBEL: Mr. Figler, --

9 MR. FIGLER: -- if I may continue.

10 JUDGE SOBEL: Well, not if you're going to just
11 continue to do things that are not a forecasting to the judges
12 of what you intend to prove.

13 MR. FIGLER: Your Honor, I --

14 JUDGE SOBEL: I mean, you're dealing with your
15 apologies or your feelings about their feelings. That has
16 nothing to do with helping the judges who haven't heard it
17 before know where you're headed.

18 MR. FIGLER: I think it has everything to do, Your
19 Honor, with the consideration of the most dire penalty known
20 to the human race.

21 JUDGE SOBEL: And I disagree with you.

22 MR. FIGLER: Your Honor, the reason I let this all
23 out right now, with regard to the respect and niceties being
24 thrown out the window, is because I am attempting to save this
25 young man's life and all this evidence, which will hopefully

1 come forth, if not through specific direct evidence, which we
2 hope it will, through inference and through the common sense
3 which each of you, as judges, have in your own experiences,
4 that we be allowed to tap into that not only during the
5 opening statement, not only during the presentment of evidence
6 and also at the closing argument --

7 JUDGE SOBEL: And, Dayvid, to the extent you have a
8 little more latitude, this isn't a trial and there are no
9 procedures that are set forth either in the statute or by the
10 Nevada Supreme Court, fine, but I don't think this should be
11 straight argument.

12 MR. FIGLER: Let me ask you this, Your Honor. Mercy
13 is something that this three-judge panel can consider,
14 correct?

15 JUDGE SOBEL: That's what anybody can consider in a
16 death case.

17 MR. FIGLER: And the same thing with forgiveness and
18 compassion, ideals that might --

19 JUDGE SOBEL: But you're talking now about how the
20 victims in the audience feel about you, Dayvid. That has
21 nothing to do with it whatsoever.

22 MR. FIGLER: Well, I think it does, Your Honor,
23 because --

24 JUDGE SOBEL: Move on to another area. I don't
25 agree with you.

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1 MR. FIGLER: Well, the evidence will show that the
2 prosecutors in this case have become intimately, intimately
3 associated with the victims' families in this particular case
4 and that pretty much has guided this call for vengeance and
5 this call for death. And I'd like to address that issue now
6 with regard to the inappropriateness, in a death penalty
7 hearing, to consider the type of hate that might be building
8 within the minds of the family members, because the evidence
9 will show that the death of John White will not accomplish any
10 manner of resolution or healing to their sorrow and their
11 grief at the loss of their children, that there is well-
12 thought literature existing that forgiveness, not vengeance,
13 is the key to these individuals, that the death of John White
14 will not alleviate the suffering of the families, but may
15 indeed guarantee that the suffering will always be present.
16 Acts committed in vengeance are forever carried by the furies
17 of one's conscience.

18 The evidence will show that in this particular case
19 the seeking of vengeance, the seeking of death, is completely
20 inappropriate. The State showed three young minority males as
21 being involved in this case, but the evidence will show that
22 there were five or perhaps seven individuals involved in this
23 robbery, this drug rip-off, the planning and the ultimate
24 engagement of the robbery which ultimately led, alleged to
25 have led, to these individuals death and yet the State did not

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1 present the other two to four individuals.

2 And these are names, Your Honors, that you will hear
3 repeatedly during this penalty phase; Tod Armstrong and Ace
4 Hart, Bryan Johnson, who you will probably see, it was
5 promised to you that you would be presented, but you're not
6 gonna see Ace Hart and you're not gonna see Tod Armstrong. I
7 note just per chance that these individuals don't fit in with
8 the nice three pictures that were shown to you by the State.
9 They happen to be of a different race.

10 And these five to seven people were involved in this
11 crime, but I assure you that only one of these individuals is
12 now eligible for this consideration, that no one else can, at
13 this point, be considered again for the death penalty. Some
14 haven't even been charged. The others cannot receive the
15 death penalty at this point.

16 You'll hear evidence, Your Honors, during the course
17 of this penalty hearing, that the person who is standing to my
18 left here, John White, was never allowed to become a man, a
19 man as we understand it and as we know it, that he was raised
20 in South Central Los Angeles, experiencing those day-to-day
21 horrors, and that somehow, despite the adversities, the
22 adversities of being abandoned by his father, the adversity of
23 a mother who was involved in heavy drug usage and who also had
24 problems dealing with her ability to raise children, who was
25 abandoned and left in a shed with six or seven of his other

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1 siblings with no running water or food, who had to perform
2 their daily routine under these conditions, where a bucket, a
3 regular mop bucket, was their commode, that somehow, despite
4 that and all the pressures of living in that neighborhood at
5 that time, that he was able to resist the constant attempts by
6 the gang members in that neighborhood, and they were present,
7 omnipresent, was able to resist until he was 13 years old
8 going into that environment.

9 And only -- only after his own family members, his
10 cousin, who might as well have been his sister the way that
11 they were raised, who was raped in a bed in the grandmother's
12 home that was supposed to be protecting them, laying right
13 next to him when he was 10, 11 years old and where he was
14 unable to do anything to stop that, when he was 13 years old
15 and gang members in the neighborhood decided that they were
16 going to rape his cousin, sister, and maybe other family
17 members of his, and gave him the option, after beating him up,
18 that now is the time when you could join our gang and your
19 family would be safe or you could go back and everyone's at
20 risk, only then and then did he join, if you can call it
21 joining, only then was he jumped into the gang and began to be
22 socialized with the values of that, of the gang.

23 So no, the evidence will show that John White was
24 never given the opportunity to become a man, but I will tell
25 you this, the evidence will be very clear that when

1 incarcerated and when confronted with authority, police
2 officers, police personnel, jail personnel, that John White is
3 not a combative person, that John White is not a violent
4 person, that John White is not a person that causes fear or
5 consternation in any of these individuals.

6 You will probably hear that Terrell Young, another
7 individual shown to you, is just the opposite; that Terrell
8 Young pulled a gun on a police officer when John White was
9 cooperating with that police officer, that when John White was
10 asked to do anything by police officers during the course of
11 this investigation that he was not combative, that he was
12 cooperative, that while he has received write-ups while in the
13 county facility for the last two years for having too much
14 Kool-Aid, for having more laundry than he's supposed to,
15 sharing a suit with another inmate, that he hasn't had one act
16 of violence, that he has never struck or touched any
17 individual while in there.

18 Sikia Smith, a completely different story. During
19 the course of John White's trial he is handcuffed with --

20 John, come here for a second, please.

21 MR. SCISCENTO: Judge, he wants to have him walk in
22 the well of the court.

23 JUDGE SOBEL: I don't care.

24 MR. FIGLER: And I do note that Bailiff Sewell has
25 not been present during a lot of the proceedings with John

1 White, but the corrections officers, however, have, that they
2 know exactly that I was going to ask for John to come next to
3 me for an introduction to the various judges; to Judge
4 Elliott, who comes up from the north, Judge Sobel, who you
5 know, and Judge Griffin, who also comes from up north. This
6 is John White.

7 Okay, John, thank you.

8 And distinguishing John from other cases, this is
9 not a case where he has confessed to specific acts alleged and
10 you will hear that he is not a volunteer for the death penalty
11 and that he is not someone who, if sentenced to death, would
12 be likely to go up to Ely and commit suicide, that he is a
13 person who cherishes the life that he has and he wants to
14 continue with the life that he has.

15 There is a street culture out there that you will
16 learn about that doesn't translate well into our antiseptic
17 environment of the courtroom, that when you deal with these
18 things in academic terms, when it comes through the mouth of a
19 prosecutor, it is horrific. It scares me and it probably
20 scares everyone in this courtroom, but it is not as scary in
21 that street culture. And in that street culture there is a
22 penchant for hyperbole that is beyond belief, a hyperbole that
23 John White has engaged in because it is a survival skill.
24 Everything that John White has done is a product of the
25 survival skills that he was socialized on at the age of 13,

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1 without a male role model, without a mother or anyone that
2 could guide him, only the street culture, and as a product of
3 that street culture John White made decisions that we hope
4 that no one should ever make and for those decisions John
5 White will be punished.

6 And there are options. The State will present
7 evidence of its aggravators and we will present evidence of
8 substantial mitigating evidence in this particular case. And
9 then the State will present to you bad character evidence,
10 character evidence that does not rely upon any specific
11 proofs. As the State has conceded, it is uncharged, pending.
12 It's been pending for over two years. If there was a charge
13 to be made, it would have been made. If there was a case to
14 be made against John White, it would have been made, but that
15 hasn't happened, that John White's involvement, as portrayed
16 by the State, comes from his alleged admissions and
17 confessions, but you have to consider the source of it and you
18 have to consider the translator of it, because then, and only
19 then, can you fairly assess this type of character evidence.

20 And as I stated before, with regard to this
21 particular offense, there was no determination made beyond a
22 reasonable doubt by the jury, when the jury spoke, with regard
23 to the shooter. In fact, I'm sure there was just the
24 contrary, but under the laws of Nevada --

25 MR. GUYMON: Your Honor, I'm gonna object.

1 JUDGE SOBEL: Come on, we're judges. We can listen
2 to this and sift it out. This isn't a jury.

3 MR. FIGLER: It's difficult to present this evidence
4 in front of three judges, with two of whom I know absolutely
5 nothing about. The third judge presided during this case and
6 I think that he understands the nature of the conflict of the
7 evidence as it was presented during the guilt phase, the
8 nature and the character of many of the witnesses who were
9 presented by the State. And I understand that tomorrow we
10 won't be convening and I would implore the other two judges to
11 take a look at the transcripts of the trial phase that are
12 available and not look at the argument of either the State or
13 the defense, but just purely the facts as they came out, the
14 conflicting evidence, the lack of credibility of a number of
15 the witnesses in regard to the admissions and confessions.

16 I'm not trying to vitiate his ultimate criminal
17 liability for the four murders, but certainly the facts and
18 circumstances of it are not as crystal clean -- are not as
19 clear as the prosecutor would implore you to believe today.
20 Ultimately, I don't know about your feelings of mercy and
21 forgiveness and compassion, your feelings of this case
22 compared to other cases where you may have very well thought
23 the death penalty appropriate or not. I do know that there is
24 a maxim that justice, to really be justice, must be tempered
25 with mercy, with these other concepts, and I wish I knew more

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1 about you so that I could present that type of evidence, know
2 about your backgrounds, your experiences, your core beliefs
3 and values, to present that information to you, but I can't.
4 This process doesn't allow that.

5 So when we do present our evidence and when we do
6 question the State's evidence, I hope that the entire time you
7 will be thinking about the type of process that this is, how
8 it ultimately affects individuals and how the ultimate
9 punishment of death is really something that we, as humanity,
10 should not be tinkering with anyway, but since it is charged
11 in the State of Nevada we have to. Ultimately, there is
12 Nevada law that says that you never have to return the verdict
13 of death in any case and we'd ask you to apply that maxim more
14 so than any other in this particular case and ultimately
15 return the most appropriate verdict for this particular case
16 and, if you think that there's more than one appropriate
17 verdict, to certainly go with the verdict that doesn't put a
18 man to death, that doesn't extinguish the life of a young man
19 and that would be a life sentence.

20 Thank you.

21 JUDGE SOBEL: Thank you.

22 We'll never get through the morning without one
23 break. Why don't we take a break now while you get the
24 detective and we'll come back about a quarter of 11:00.

25 MR. GUYMON: Thank you, Judge.

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1 (Court recessed until 10:47 a.m.)

2 JUDGE SOBEL: You don't like the bunting, Dayvid?

3 MR. FIGLER: It makes me want to vote, Judge.

4 JUDGE SOBEL: Which way, or does that depend on the
5 results?

6 JAMES BUCZEK, PLAINTIFF'S WITNESS, IS SWORN

7 THE CLERK: Please have a seat.

8 State your full name and spell your last name for
9 the record.

10 THE WITNESS: My name is James Buczek, B-U-C-Z-E-K,

11 DIRECT EXAMINATION

12 BY MR. GUYMON:

13 Q Detective Buczek, can I have you --- There you go.

14 Thank you.

15 Detective Buczek, if you could direct your comments
16 to the three-judge panel.

17 A Yes, sir.

18 Q Where are you employed?

19 A With the Las Vegas Metropolitan Police Department.

20 Q And in what capacity?

21 A As a homicide detective.

22 Q And how long have you been a homicide detective with
23 the Las Vegas Metropolitan Police Department?

24 A For approximately three and a half years now.

25 Q And, in total, how long have you been involved in

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1 law enforcement work?

2 A Probably about 18 years.

3 Q Can you tell me briefly if you're familiar with the
4 quadruple homicide that happened in Terra Linda -- at the
5 Terra Linda residence and why it is you're familiar?

6 A On August 14th of 1998 I was contacted by my
7 sergeant, Ken Hefner, and told to respond to 4825 Terra Linda.
8 I did and upon my arrival I met with Sergeant Hefner and my
9 partner, Detective Tom Thowsen. It was determined that
10 Detective Tom Thowsen would handle the crime scene
11 investigation and that I would handle the witnesses,
12 interviews of the witnesses and, if any suspects were
13 developed, I would interview them also.

14 Q Is that what happened in this particular case then?

15 A Yes, it was.

16 Q So Detective Thowsen was your partner and the two of
17 you worked together on this particular investigation?

18 A That's correct.

19 Q And your sergeant would be Sergeant Hefner?

20 A Yes.

21 Q Now are you familiar with this particular
22 investigation?

23 A Yes, I am, very much so.

24 Q All right. Are you also familiar with the evidence
25 that was admitted during the case against Donte Johnson in

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1 this courtroom some weeks ago?

2 A Yes. I was provided with trial transcripts from the
3 District Attorney's Office approximately three weeks ago and
4 I've read each and every page of the trial transcript.

5 Q And so that the judges are aware, you received the
6 guilt phase trial transcripts from all 18 witnesses, I take
7 it?

8 A That would be correct.

9 Q All right. And have you reviewed all the witness'
10 testimony as it was given in this court during the guilt phase
11 of the trial?

12 A Yes, I have.

13 Q All right. Can you tell us just very briefly -- I
14 want to go through that evidence, but before I do can you tell
15 the judges briefly about this particular investigation, what
16 you found, what it revealed and the likes?

17 A Upon our arrival I went into the -- went into the
18 residence and discovered that in the living room there were
19 three boys duct taped and with obvious head trauma from bullet
20 wounds and they were all in the living room area and then
21 continued on into the dining room and there was another boy
22 that was duct taped -- all their hands behind their backs and
23 their ankles taped, and he also had a gunshot wound to his
24 head.

25 And the entire residence was ransacked. Furniture

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1 was upended, things of that nature. There were papers all
2 over. There was some coins laying on the floor of the dining
3 room. However, throughout our entire search of the residence,
4 we were unable to locate any paper currency.

5 The wallets were near the boys. I believe two of
6 the boys had their wallets actually chained to them, but the
7 wallets were emptied and the contents were strewn about on the
8 floor.

9 There was -- It was quite a bloody scene. There
10 were a couple -- There were two puppies in the residence and
11 they trampled through the blood and there were bloody paw
12 prints throughout the entire scene.

13 A few days later we were able to -- we spoke to some
14 witnesses, that would be Tod Armstrong, Bryan Johnson and Ace
15 Hart, and through those witnesses we were able to develop two
16 suspects, one being the defendant, Donte Johnson, and another
17 being an individual by the name of Red. Later we were able to
18 identify who Red was and, by luck, Red was walking by the
19 front of our office and Sergeant Hefner spotted him and we
20 took him into custody.

21 We also, through speaking to Red, we were able to
22 identify a third suspect and his name was Sikia Smith. He was
23 later arrested.

24 Q Was the deadly weapon or the murder weapon in this
25 case ever found through your investigation?

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1 A No, it was not.

2 Q Okay. And are you familiar with the photographs
3 that were associated with this particular trial?

4 A Yes, sir, I am.

5 Q And the evidence that was admitted?

6 A Yes, I am.

7 Q And some time last week did you actually come to the
8 courtroom and in the presence of the Clerk review all of the
9 evidence associated with this case?

10 A Yes, last Thursday afternoon.

11 Q Okay.

12 JUDGE SOBEL: Gary, you know, I don't know how the
13 other judges feel about it, but, of course, because of the
14 scheduling problems both judges --

15 You don't need them now, right?

16 (Colloquy between Judge Elliott and Judge Sobel)

17 JUDGE SOBEL: And both of them are gonna have a full
18 -- somewhere around a day and a half of dead time. I hope
19 you're not gonna get into too much about these photos, because
20 they can look at them at their leisure.

21 MR. GUYMON: I was gonna do it very, very briefly,
22 just simply say Matt -- And I'll be mindful of the time,
23 Judge.

24 JUDGE SOBEL: Thank you.

25 (Pause in the proceedings)

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1 BY MR. GUYMON:

2 Q I want to show you, Detective Buczek, Exhibits 8
3 through 97. They have all previously been admitted. Are
4 those the photographs or some of the photographs that you
5 viewed last Thursday in relationship to this particular case
6 in preparation of your testimony?

7 A Just quickly scanning them, yes, they are.

8 Q All right. And, in short, are these all photographs
9 of the Terra Linda residence, that is, the actual murder
10 scene?

11 A Yes.

12 Q All right.

13 MR. GUYMON: Judge, may I provide them to the Court
14 for the judges?

15 JUDGE SOBEL: Sure.

16 MR. GUYMON: Thank you.

17 BY MR. GUYMON:

18 Q Now, then, you previously mentioned, just for
19 foundation, the three individuals that were arrested in this
20 case, is that correct?

21 A That's correct.

22 Q I'm showing you what has previously been marked as
23 181. Are you familiar with this particular exhibit and does
24 it depict the three individuals that you indicated were
25 arrested as suspects in this case?

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1 A Yes, it does.

2 Q All right. And are they accurately named?

3 A Yes, they are.

4 Q All right. Now then can you tell the judges, very
5 briefly, some of the significant findings that you made from
6 being at the scene there at Terra Linda, that is to say your
7 observations and what was significant as depicted in the
8 photographs?

9 A First of all, again, there was -- the entire house
10 was ransacked. When I first walked into the living room,
11 there was an entertainment center there. There was a stereo
12 and a TV. The TV was moved out of the way. There were some
13 cables that were attached to the TV but were not attached to
14 anything else, indicating that possibly a VCR was there, and
15 there was also cables for a PlayStation, however, the
16 PlayStation, at that point, was missing.

17 Also, going through the house, I believe there was
18 some methamphetamine, some pills that were found on a dining
19 room table. There was some beer cans in the house. There was
20 also an open 12-pack of beer that was next to one of the
21 chairs in the living room. There were four .380 shell
22 casings, three of them in the living area, in the living room,
23 and one in the dining room area. Again, the bedrooms were
24 just thoroughly ransacked.

25 I'm trying to think of -- There were also a few

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1 mushrooms that were located. One was in the dining area,
2 dining room area, and I believe there was a few that were
3 located in one of the bedrooms.

4 Q Okay. And are all of those items of evidence
5 depicted in the actual photographs that I've shown you, that
6 being 8 through 97?

7 A Yes.

8 Q All right. Now let me ask you, you mentioned the
9 actual removal -- or missing VCR and PlayStation.

10 A Yes.

11 Q That's reflected in photographs, is that correct, 54
12 through 59?

13 A I believe those would be the numbers.

14 Q All right. Did you observe the outside of the
15 residence at Terra Linda?

16 A Yes, I did.

17 Q Okay. And that would be depicted in the early
18 photographs, 8 through 20?

19 A Yes.

20 Q Let me ask you, did you note if there was any forced
21 entry to the residence there at Terra Linda?

22 A There was no forced entry.

23 Q And was that significant to you as a detective
24 investigating this case?

25 A Somewhat, yes.

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1 Q And why?

2 A I felt at that point that they probably knew who
3 they -- who their killers were, as far as the victims.

4 Q You mentioned cartridge cases. I take it that
5 that's reflected in the photographs?

6 A Yes.

7 Q And the ransacking of the bedrooms is reflected in
8 the photographs?

9 A Yes, it is.

10 Q And you also mentioned, just so it's real clear for
11 the judges, there was some mushrooms, some methamphetamine and
12 some white pills, I believe you said?

13 A That's correct.

14 Q Okay. The mushrooms are a controlled substance, are
15 they not?

16 A Yes.

17 Q And are the mushrooms reflected in the photographs
18 as well?

19 A Yes, they are.

20 Q The methamphetamine, is it depicted in some of the
21 photographs that the judges have before them?

22 A Yes, it -- Yes, it is.

23 Q And the white pills, were they ultimately identified
24 and, if so, are they also reflected in the photographs?

25 A Yes.

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1 Q Okay. And what were the white pills, if you know?

2 A I believe they were Percocets.

3 Q Okay. So there were three forms of controlled
4 substances there at the Terra Linda residence?

5 A Yes, sir.

6 Q Okay. Now can you tell the judges, just based on
7 being there, and we'll ultimately get to the testimony, from
8 being at the scene were you aware of the fact that there were
9 crime scene analysts that arrived that night to begin to
10 process the scene?

11 A Yes.

12 Q And was there or was there not fingerprint
13 processing that was involved in this particular case?

14 A Yes, there was.

15 Q If you know, were there any fingerprints that were
16 found at the Terra Linda scene that became significant in this
17 investigation?

18 A Yes. There was a cigar box, empty cigar box, that
19 was laying next to one of the victims and it had -- it was
20 Black & Mild cigars. It was -- There was a fingerprint
21 developed on there by Crime Scene Analyst Bradley Grover and
22 it was then identified by Ed Guenther as being a fingerprint
23 of Donte Johnson.

24 Q And is the cigar -- cigarette box, that being a
25 Black & Mild, reflected in 96 and 97?

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1 A Yes.

2 Q Is it also depicted or shown at the feet of one of
3 the decedents in Exhibit Number 66?

4 A Yes, it is.

5 MR. GUYMON: Judge, may I provide those three
6 specifically for the judges to get a visual of that box,
7 please?

8 JUDGE SOBEL: Yes.

9 MR. GUYMON: Thank you.

10 BY MR. GUYMON:

11 Q You say that that cigarette -- or cigar box became
12 important in this investigation. Whose print was identified
13 on that cigar box?

14 A Donte Johnson's.

15 Q Okay. And before I get to the actual testimony as
16 given by each witness, you indicated that Donte Johnson was
17 developed as a suspect after talking to Tod Armstrong, Bryan
18 Johnson and Ace Hart?

19 A Yes, sir.

20 Q And do you recall approximately what day it was that
21 Tod Armstrong, Ace Hart and Bryan Johnson gave their
22 statements to the police?

23 A August 17th, 1998.

24 Q Was there a particular residence that Donte Johnson
25 was identified as being at at the time that those boys made

1 that statement?

2 A 4815 Everman.

3 Q And did you ever go over to 4815 Everman?

4 A Yes, I did.

5 Q And observe that particular scene?

6 A Yes, I did.

7 Q All right. I'm showing you what has been marked as
8 Exhibits 98 through 112. Did you also view those photographs
9 on Thursday in anticipation of your testimony?

10 A Yes.

11 Q All right. And do those photographs, they've all
12 been admitted, do they thoroughly and accurately reflect your
13 observations of the Everman residence?

14 A Some of my observations, yes.

15 Q Okay. Can you tell the judges in short, before we
16 get to the actual testimony, what was significant about the
17 Everman residence?

18 A Tod Armstrong said that he lived at the Everman
19 address. It was owned by his mother. His mother, at that
20 point, was living in Hawaii. Tod used to -- Tod had a
21 roommate there by the name of Ace Hart, who lived with him
22 until August of 1998, and also Bryan Johnson lived with him at
23 that residence until June of 1998. Ace Hart had met Donte
24 Johnson, Red, who is Terrell Young, and Charla Severs and
25 requested that Tod Armstrong allow them to stay at his house.

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1 Eventually, the three moved into the house, with
2 Donte Johnson and Charla Severs staying in the master bedroom.
3 Tod Armstrong stayed in a separate bedroom because a prior
4 renter had left a waterbed there and he didn't want to -- he
5 wanted to sleep in the waterbed, but did not want to move it
6 to the master bedroom.

7 Our understanding was on that night, on August 17th,
8 that Mr. Johnson was going to be there -- excuse me, actually
9 it would have been the early morning of the 18th, so Tod
10 Armstrong gave us a consent to search and we went over there
11 with the SWAT team and took Mr. Johnson into custody.

12 We also -- We asked him and also Charla Severs and
13 another individual by the name of Scale, I believe his last
14 name is Anderson, if they live there and each one said no,
15 they did not, they did not live there. So then, after the
16 house was cleared by SWAT, we went in and actually I
17 eventually took Mr. Johnson to the jail with my partner and we
18 booked him on the charges and Sergeant Ken Hefner and I
19 believe it was Crime Scene Analyst Mark Washington searched
20 the residence for evidence.

21 Q Now, then, prior to the Everman residence being
22 searched, did you receive a consent to search from Tod
23 Armstrong?

24 A Yes, we did.

25 Q Okay. And it was believed, I take it, by your

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1 investigation, that Tod Armstrong was the, for lack of a
2 better word, the supervisor of the house in light of the fact
3 that it was his mother that owned it but did not live there?

4 A That's correct.

5 Q All right. And were there particular items of
6 evidence impounded from the Everman residence that were
7 significant in this particular investigation?

8 A Yes, there was. There was an RCA VCR, there was a
9 bag containing a .22 rifle, some brown hand gloves, they're
10 referred to as "brownies," some duct tape that was with the
11 bag. There was also two keys buried in the backyard that went
12 to the Thunderbird Motel and there was also a blue pager that
13 was also buried in the backyard. There was a pair of black
14 pants that had what appeared to be some blood on one of the
15 black -- on the back of the leg.

16 Q And you mentioned, for starters, in the significant
17 evidence, that there was a VCR. Exhibits 54 through 57 that
18 you previously saw on Thursday show the murder scene with a
19 console there missing a VCR and PlayStation, is that correct?

20 A Yes, sir.

21 MR. GUYMON: If I could present those to the judges.

22 BY MR. GUYMON:

23 Q And that is the Terra Linda residence or the murder
24 scene, correct?

25 A That is correct.

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1 Q Now showing you 99 and 101, that is, in fact, the
2 Everman residence where the VCR was found, is it not?

3 A That's correct.

4 Q And a PlayStation?

5 A And a PlayStation, yes, sir.

6 Q And you say that was significant in your
7 investigation?

8 A Yes, sir.

9 MR. GUYMON: If I could provide those for the
10 judges.

11 BY MR. GUYMON:

12 Q You also had previously testified that in some of
13 the exhibits found in Terra Linda was the Black & Mild cigar
14 box, correct?

15 A Yes.

16 Q At the Everman residence, where Donte Johnson was
17 found, were there other Black & Mild cigar boxes?

18 A Yes, there were.

19 Q And in 103 does it reflect that?

20 A Yes, it does.

21 Q Okay. You mentioned the finding of a bag and some
22 duct tape. Was a bag and duct tape significant in this
23 particular case?

24 A Without a doubt, yes.

25 Q And is that a bag or a tote bag and duct tape

1 reflected in 104?

2 A Yes, it is.

3 MR. GUYMON: I'd like to provide those to the
4 judges.

5 JUDGE SOBEL: Sure.

6 BY MR. GUYMON:

7 Q And you also mentioned a pair of black jeans that
8 were found in the master bedroom of Donte -- where Donte
9 Johnson was located, is that correct?

10 A Yes, sir.

11 Q And I'm showing you what is marked as 105 through
12 107. Are the jeans reflected in those photographs and can
13 you, in fact, see blood on those jeans?

14 A Yes, you can.

15 MR. GUYMON: And provide those to the judges.

16 BY MR. GUYMON:

17 Q Now you mentioned a pager and some keys to the
18 Thunderbird Hotel found buried in the backyard of Everman, is
19 that correct?

20 A Yes, sir.

21 Q I'm showing you what is 108 through 112. Does that
22 reflect the discovery, if you will, of the pager and the keys
23 there at Everman where Donte Johnson was located?

24 A Yes, sir, it does.

25 Q Now, tell me, was the pager significant and why?

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1 A The pager was significant because it was sent off, I
2 believe, to Motorola by Sergeant Ken Hefner and they were able
3 to identify a number that went to the pager and that number
4 was identified as being a number that everyone would contact -
5 - Talamantez, one of the victim's names was Talamantez, they
6 would contact him by using that pager number.

7 Q So the pager actually came back to being the pager
8 used by Peter Talamantez?

9 A Peter, yes.

10 Q All right. I'm showing you what is marked as
11 State's Exhibit 180. Does it accurately reflect Peter
12 Talamantez, Jeffrey Biddle, Tracey Gorringer and Matthew Mowen?

13 A Yes, it does.

14 Q And are they the four decedents in this case?

15 A Yes, they are.

16 Q All right. So the pager that was buried in the
17 backyard of the Everman residence was, in fact, Peter
18 Talamantez' pager?

19 A That's correct.

20 Q All right. Now, then, there was a VCR that was
21 depicted among the pictures of the Everman residence. In your
22 investigation did you learn whose VCR that was?

23 A Yes, I learned that it was a VCR that David Mowen
24 had given to his son, Matt Mowen.

25 Q And how is it that you learned that, if you will?

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1 A I spoke to David Mowen on October 23rd of 1998.
2 David Mowen provided me with a remote control for the VCR that
3 he had given to his son. It was an RCA remote control. We
4 went with the prosecutors on April 20th of 1999 to view the
5 evidence that was at the evidence vault, the evidence to this
6 -- of this crime and we took the VCR and I put some new
7 batteries in the remote control and tried it and the remote
8 control operated the VCR with no problems.

9 Q And on Thursday, and I don't mean to turn my back to
10 the judges, on Thursday did you, in fact, also view the VCR
11 and the remote control that was involved in this particular
12 case?

13 A Yes, I did.

14 Q Admitted into evidence as State's Exhibit 169, as
15 well as 153, is it, in fact, the VCR and remote control that
16 was admitted in this case?

17 A Yes, it is.

18 Q And they're both VCR -- excuse me, RCA in nature?

19 A Yes, they are.

20 Q And this remote control, 169, operated the VCR, 153?

21 A Yes, it did.

22 Q Now was there any additional evidence that was
23 associated with the VCR, that being specifically a palm print
24 or fingerprint?

25 A Yes. There was a palm print that was located

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1 underneath the VCR that was later identified to be that of
2 Sikia Smith.

3 Q And Sikia Smith was one of the three that was
4 arrested in this case?

5 A That's correct.

6 Q You mentioned a blue pager and some Thunderbird
7 keys. Were they admitted into evidence as 154 and the
8 contents therein?

9 A Yes, they were.

10 MR. GUYMON: If I could provide those to the judges.

11 JUDGE SOBEL: Sure.

12 BY MR. GUYMON:

13 Q And the blue pager is the pager of Peter Talamantez
14 then?

15 A Yes, sir.

16 Q Did you also attend the autopsies associated with
17 this particular case?

18 A Yes, sir.

19 Q And are you familiar with the injuries that each one
20 of those boys received?

21 A Yes, I am.

22 Q I'm showing you what has been marked as State's
23 Proposed Exhibit 113, 114 and through 151 that was admitted in
24 evidence. Do those photographs fairly and accurately depict
25 the injuries of each one of those individuals, as well as the

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1 projectiles that were removed from their skulls?

2 A Yes, they do.

3 MR. GUYMON: If I could present that to the Court as
4 well, Your Honor?

5 JUDGE SOBEL: Sure. Don't bother to ask, Gary.
6 Just go ahead.

7 MR. GUYMON: Thank you.

8 BY MR. GUYMON:

9 Q You indicated that upon arriving at the Terra Linda
10 residence you saw wallets removed from the decedents' bodies
11 and each one of those wallets were empty?

12 A That's correct.

13 Q Some of the wallets, however, remained with the
14 decedents when they were taken to the Coroner's Office?

15 A Yes.

16 Q Okay. And do you know why that is?

17 A My understanding is they were attached by chains to
18 the -- to their clothing.

19 Q Okay. And before I get to each individual's
20 testimony, let me also ask you about other evidence found at
21 the Terra Linda residence. Are you familiar with the crime
22 scene analysts preserving or locating and impounding cigarette
23 butts from the residence?

24 A Yes, I am.

25 Q And, in total, how many cigarette butts were

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1 impounded from the Terra Linda residence?

2 A The total would be 12.

3 Q And were any of those cigarette butts significant in
4 this investigation?

5 A Yes. There is one cigarette butt that was found in
6 the dining room area on the floor that was later identified as
7 having DNA from Mr. Johnson on it.

8 Q And are those cigarette butts that were impounded
9 and removed, are they actually found within the photographs 8
10 through I believe it was nearly-- or, excuse me, 98?

11 A Yes.

12 Q Okay. You also mentioned cartridge casings. Was
13 there forensic work that was associated with this particular
14 investigation?

15 A Yes, there was.

16 Q Of the cartridge cases?

17 A Yes, there was. Richard Good, who happens to be our
18 firearms examiner and also one of our lab managers, he looked
19 at the .380 cartridges and he identified them as being fired
20 from the same firearm.

21 Q Were all four of those cartridge cases the same in
22 their make?

23 A Yes, they were.

24 Q And are those cartridge cases found within these
25 admitted photographs?

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1 A Yes, they are.

2 Q And you indicated they were all fired by the same
3 weapon?

4 A That's correct.

5 Q And in your investigation, and in reading the trial
6 transcript, did you learn ultimately what happens to this .380
7 semi-automatic that would have left those cartridge cases?

8 A Yes. Sikia Smith's girlfriend, LaShawnya Wright,
9 testified that approximately -- that she, immediately after
10 the murders, the gun appeared in her apartment where she was
11 staying over on Fremont Street with Mr. Smith and that
12 approximately one to two days later Sikia Smith sold the
13 handgun.

14 Q And let me ask you, if you can, in your
15 investigation did you learn what relationship, if any, that
16 these three individuals, that being Donte Johnson, Terrell
17 Young and Sikia Smith, had with each other?

18 A My understanding is that Donte Johnson and Sikia
19 Smith grew up in the same area of L.A. and that they later met
20 up with Terrell Young here in Las Vegas.

21 Q And can you tell the judges, before we get to the
22 actual testimony of each of those 18 witnesses, what
23 relationship, if any, the four decedents had to one another?

24 A Jeffrey Biddle, Tracey Gorringer and Matthew Mowen
25 all lived together at 4825 Terra Linda and Mr. Talamantez,

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1 Peter Talamantez, was a friend of theirs and would
2 occasionally go over and visit.

3 Q And can you tell me how many bedrooms the residence
4 had at Terra Linda?

5 A Gee, not offhand, two or three.

6 Q All right. Now, then, let me actually go now to the
7 trial testimony. You are familiar with it, are you not?

8 A Yes, I am.

9 Q All right.

10 JUDGE SOBEL: Excuse me, Gary, is it your intention
11 of going through all 18? The guilt's been established.

12 MR. GUYMON: I understand, but I want to make sure
13 that all of the judges are familiar with the evidence in the
14 case and I'll move through it as quickly as I possibly can.

15 MR. FIGLER: We would again suggest that the actual
16 trial transcripts are probably the best way for the judges to
17 get that information, but if this witness wants to talk about
18 his investigation or forensic evidence I guess that's one
19 thing, but we would strenuously object to any summary of
20 witnesses' testimony. I don't think cross-examination cures
21 that. As much as any precautions can be -- Essentially, the
22 reading of the transcript would cure any error that might be
23 in the record.

24 JUDGE SOBEL: Hold on.

25 (Colloquy between three-judge panel)

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1 JUDGE SOBEL: Okay, if you'd summarize it as quickly
2 as possible, we'll overrule the objection. Judge Griffin's
3 already indicated he's going to be reading the transcript.
4 The whole transcript's in my office. If you'd just move
5 through it as quickly as possible and give the flavor of the
6 guilt phase, they'll have the opportunity to supplement that.

7 MR. FIGLER: All right, thank you.

8 BY MR. GUYMON:

9 Q Are you familiar with the testimony of Justin
10 Perkins?

11 A Yes, I am.

12 Q If you could summarize for the judges who Justin
13 Perkins is and what his involvement in the case was.

14 A Justin Perkins is a friend of the individuals that
15 lived over at the Terra Linda address. He was over at the
16 Terra Linda address the night before at approximately 8:00
17 o'clock. As he was leaving, the boys that lived there said
18 that they were gonna be cleaning the place up and there was
19 just a couple of beer cans laying around.

20 On August 14th, at 6:00 o'clock, Justin Perkins
21 again went over to the house to pay a beer debt of twenty
22 dollars (\$20), I believe to Matt Mowen, and upon his arrival
23 he saw that the front gate was a bit open and that the front
24 door was slightly ajar and he thought it was quite odd seeing
25 that. He knew that the boys had the two puppies and thought

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1 that they would have everything secured so the puppies
2 wouldn't get out.

3 Justin opened up the -- opened up the front door and
4 then, when he opened up the front door, he saw his three
5 friends, Matt Mowen, Jeffrey Biddle and Tracey Gorringer,
6 laying face down, taped, duct taped, with quite a bit of blood
7 around them. He immediately went next door to Nicholas
8 DeLucia's address and he made a -- he made a request of Mr.
9 DeLucia to call the police, that he thought his friends had
10 been badly injured and beaten and that they were next door at
11 the house.

12 DeLucia called 911 and then went next door and went
13 over and he saw that one of the boys was duct taped and they
14 stood outside and waited for police and medical to respond.

15 Q Did Justin Perkins testify during the penalty phase
16 -- excuse me, the guilt phase of the console being intact,
17 that is to say the VCR being in place and the PlayStation
18 being in place?

19 A Yes, he did. As a matter of fact, he even made the
20 -- he said that they were playing the game, the video game,
21 the night before.

22 Q So the night before all those things were there?

23 A That's correct.

24 Q And upon his return the next day they're gone?

25 A That's correct.

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1 Q You indicated that Nick DeLucia was the person who
2 lived next door and called the police.

3 A That's right.

4 Q Did Nick DeLucia testify to making any observations
5 the night before, that is, perhaps the night of the murder?

6 A Yes, he did. He said he was first awoken -- he
7 works graveyard shift between the hours of 2:00 and 10:30 in
8 the morning, and he was awoken by some -- by the dogs barking
9 at approximately 12:30. He said at 1:30, as he was leaving,
10 as he was driving away, he looked over and he saw that -- and
11 this is 1:30 in the morning, he saw one of the boys over there
12 with a hose watering the lawn and that there was another one
13 of the boys that was standing over on the driveway area in
14 front of the house.

15 Q Was Nick DeLucia's observations of a boy out
16 watering the lawn significant based upon your investigation
17 and in talking to all the witnesses?

18 A Yes, it was.

19 Q And why?

20 A Some of the witnesses --

21 MR. FIGLER: Your Honor, and this is kind of what we
22 didn't want to get into, is this witness' opinion of trial
23 testimony being significant or not significant. I think
24 that's beyond the purview.

25 JUDGE SOBEL: I think that's inappropriate,

1 obviously.

2 BY MR. GUYMON:

3 Q In your investigation did you learn anything
4 regarding whether or not one of the boys had been watering the
5 lawn that night?

6 A Yes, I did.

7 Q And what is it that you learned about the boy who
8 was watering the lawn?

9 A I learned that Donte Johnson had told Tod Armstrong
10 that when he was approaching the house that there was a boy
11 outside watering the lawn and that they took him into the
12 house at gunpoint.

13 Q The next witness that testified in the case was
14 Sergeant Randy Sutton. Can you tell the judges what part
15 Randy Sutton played in the case?

16 A Sergeant Randy Sutton arrived at the scene. As of
17 that point the house had not been cleared. Officer David West
18 was already there. They, together, entered the house, saw the
19 three boys laying in the residence, saw all the blood. Randy
20 Sutton determined that they had obvious head injuries. Then
21 they went around into the dining area and located the fourth
22 boy, who was Peter Talamantez, and he was duct taped also with
23 a gunshot wound to the head.

24 And they then went in and checked the bedrooms to
25 make sure there weren't any suspects in there and saw that the

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1 bedrooms were also ransacked.

2 Q The next was Tod Armstrong. Are you familiar with
3 Tod Armstrong?

4 A Yes, I am.

5 Q Before we get into Tod Armstrong's testimony, is Tod
6 Armstrong or has he been a suspect in this case?

7 A Tod Armstrong is a suspect in this case.

8 Q Okay. Let's talk about who Tod Armstrong is and
9 then ultimately why he's a suspect. You've indicated that Tod
10 Armstrong lived at the Everman residence.

11 A That's correct.

12 Q Can you summarize Tod Armstrong's testimony as it
13 was given in this courtroom?

14 A Tod Armstrong said that he met Donte Johnson through
15 Ace Hart, along with Charla Severs and Terrell Young, and that
16 eventually they moved into the house. Donte feared them and
17 at times tried to get -- or correction, excuse me, Tod feared
18 them and at times tried to get them out of the house. They
19 would just kind of come and go at times. They would -- They
20 didn't have a key to the residence. They would either knock
21 on the door, I believe it was a side door, and they would --
22 he would allow them in or they would climb in through a broken
23 bathroom window that is attached to the master bedroom, I
24 believe.

25 And he said that on August -- or, I'm sorry,

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1 approximately August -- between August 7th and August 10, I
2 believe it was, that Matt Mowen had come over to purchase some
3 drugs from Donte Johnson and that while he was over there he
4 was talking to them about how he had just been on tour
5 following the band called Phish and that he made a lot of
6 money through the sales of -- I believe it was acid on sheets
7 of paper and it was their understanding that he had
8 approximately ten thousand dollars (\$10,000) in the house.

9 Q It was whose understanding?

10 A I believe it was Tod's understanding and also
11 Donte's understanding that there was approximately ten
12 thousand dollars (\$10,000) in the house over at Terra Linda.

13 Q Okay.

14 A Donte had continually -- well, started asking Tod
15 Armstrong where Matt Mowen lived, however, Matt did not know -
16 - or, I'm sorry, Tod did not know. So then one day they were
17 riding around in the car, it was Donte, Terrell, Ace Hart and
18 Tod Armstrong, and Ace showed them where the boys lived when
19 Donte asked where they lived.

20 Q Now let me -- let's identify Ace Hart for the
21 judges. Are you familiar with Ace Hart?

22 A Yes, I am.

23 Q And approximately how old is Ace Hart?

24 A Approximately 19, 20 years old, somewhere in there.

25 Q And what race?

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1 A He is white.

2 Q And Tod Armstrong what race?

3 A White.

4 Q Are you also familiar with Bryan Johnson?

5 A Yes, I am.

6 Q And what race is Bryan?

7 A White.

8 Q Now did Tod Armstrong testify to Ace Hart and Bryan
9 Johnson being roommates of Tod Armstrong at some point in time
10 prior to Donte Johnson and Charla Severs and Terrell Young
11 moving in --

12 A Yes.

13 Q -- and staying at the residence?

14 A Yes.

15 Q And so the judges understand, what is the
16 relationship between Charla Severs and Donte Johnson?

17 A They are boyfriend/girlfriend.

18 Q All right. And can you describe for the judges,
19 based on your investigation and the testimony of Tod
20 Armstrong, what is the relationship between Tod Armstrong, Ace
21 Hart and Bryan Johnson?

22 A I believe -- I'm sorry, I'm not quite understanding
23 your question.

24 Q Well, did Tod Armstrong, Ace Hart and Bryan Johnson
25 have any particular relationship with each other?

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1 A Yes. Actually, Ace Hart had met Donte Johnson
2 earlier and Ace Hart also was friends with Bryan Johnson and
3 Tod Armstrong and he brought Donte Johnson, Charla Severs and
4 also Terrell Young into the friendship and introduced them to
5 Ace Hart and -- I mean, Bryan Johnson and Tod Armstrong.

6 Q Okay. And did Tod Armstrong testify to the
7 defendant, Donte Johnson, being in possession of any weapons
8 while Donte Johnson stayed at the Everman residence?

9 A Yes, he did. He said that they had a bag and that
10 inside the bag he would -- he had a -- he described it as a
11 sawed-off shotgun, a .22 rifle with a folding stock on it, a
12 revolver and a .380 semi-automatic handgun.

13 Q You indicated testimony of a bag. At 157 there was
14 a bag that was introduced into evidence. It is a duffle bag
15 marked 154 and the outside is 157, for whatever reason, but,
16 nonetheless, is this the bag that was identified and found at
17 the Everman residence?

18 A Yes, it is.

19 Q Now there was also some duct tape depicted with some
20 of the photographs at the Everman residence, was there not?

21 A Yes, there was.

22 Q And was the duct tape similar in color as the duct
23 tape that the boys were bound with?

24 A Yes, it was.

25 Q Tod Armstrong also testified, did he not, to a

1 particular brand of cigarette or cigars that Donte Johnson
2 smoked, is that correct?

3 A Yes. He said they smoked Black & Mild cigars.

4 Q And can you tell me what, if anything, Donte -- or
5 Tod Armstrong said about the VCR and the PlayStation that was
6 depicted in the photographs of the Everman residence?

7 A Yes. He said after Donte and Red returned back to -
8 - back to the Everman address that they had two bags, one
9 which was containing the guns and the other one Red took out a
10 PlayStation and a VCR out of.

11 Q Can you summarize what admissions, if any, that
12 Donte Johnson made to Tod Armstrong about Donte Johnson's
13 involvement in this particular homicide?

14 MR. FIGLER: Your Honor, at this time, based on the
15 testimony of this witness and the establishment of Tod
16 Armstrong as a suspect in this case currently, that any other
17 alleged confessions or admissions or statements that John
18 White made to Tod Armstrong be viewed by this tribunal as
19 accomplice testimony, that Tod Armstrong's testimony be viewed
20 as accomplice testimony.

21 JUDGE SOBEL: Well, accomplice testimony would go to
22 the corroboration needed for a conviction.

23 MR. FIGLER: As well as the weight.

24 JUDGE SOBEL: I understand your point that it goes
25 to how it should be viewed, but go ahead and we'll just hear

1 what he had to say.

2 BY MR. GUYMON:

3 Q Please.

4 A Donte Johnson had told them that they went over to
5 the Terra Linda address and that they had robbed the boys and
6 that they had killed all four. He said that there was -- one
7 of the boys was -- actually, I'm sorry, he said that they
8 entered -- they went over to the house. One of the boys was
9 watering the lawn. He took him by gunpoint into the house and
10 then they didn't have -- there was another boy that was inside
11 there. They had taped them up and they also requested that
12 they contact any of their friends. Supposedly, two of their
13 friends were called in an effort to bring some money to the
14 house.

15 He also said that they ended up -- that one of the
16 boys got mouthy. He killed him. He said that --

17 Q When he said, "He killed 'em," who was he referring
18 to made that admission?

19 A Donte Johnson.

20 He said that he felt bad that he killed Tracey
21 Gorringer because Tracey was -- he liked Tracey and Tracey was
22 being cooperative during the robbery. He said, however, he
23 was high and he had forgotten and he ended up having to kill
24 all four.

25 Q And when you say he had to kill all four, who is it

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1 that is speaking to Tod Armstrong at that time?

2 A Donte Johnson was.

3 Q And are there some particular quotes that come from
4 the trial transcripts of each of the lay witnesses that you
5 have previously reviewed before coming to court today?

6 A Yes, there are.

7 Q You reviewed this quote board prior to testifying
8 today and are the quotes accurately contained in the
9 transcript?

10 A Yes, they are.

11 MR. FIGLER: Can we see it first?

12 (Pause in the proceedings)

13 BY MR. GUYMON:

14 Q I'm showing you what has been marked now as 260.
15 Does this board accurately reflect the quotes that each of the
16 lay witnesses received from Donte Johnson?

17 A Yes, it does.

18 Q All right. And they're contained in the trial
19 transcript?

20 A That's correct.

21 Q Quoting Tod Armstrong, can you read for us the four
22 quotes that Tod Armstrong --

23 JUDGE SOBEL: We can read these ourselves.

24 What is your objection, Dayvid?

25 MR. FIGLER: Well, first of all, I was gonna ask if

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1 I could take voir dire as to where these quotes came from and
2 who prepared this particular document and why these particular
3 quotes were given significance.

4 JUDGE SOBEL: Why don't you take that up on cross.
5 And certainly --

6 MR. FIGLER: Additionally, I would defer to the
7 transcript as opposed to, you know, picking and choosing
8 various --

9 JUDGE SOBEL: Well, the transcript will be available
10 to everybody. This is a way, in about 45 minutes, to at least
11 give an overview of the entire guilt phase, but we can -- the
12 judges can certainly -- I heard it and the judges can read
13 that themselves.

14 MR. GUYMON: May I just put it right here for you to
15 see that?

16 JUDGE SOBEL: Yeah.

17 THE CLERK: Yeah. I'm sorry, but actually it's 245.

18 MR. GUYMON: 245. May I?

19 THE CLERK: Uh-huh.

20 MR. GUYMON: And I'd move for its admission.

21 JUDGE SOBEL: All right, admitted.

22 (Plaintiff's Exhibit No. 245 admitted)

23 BY MR. GUYMON:

24 Q Now, then, who did Tod Armstrong identify as the
25 shooter in this particular case?

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1 A Donte Johnson.

2 Q Did he identify Donte Johnson as the shooter of more
3 than one of the boys?

4 A Yes.

5 Q And how many of the boys did he identify Donte
6 Johnson had killed?

7 A All four.

8 Q All right. Was Tod Armstrong able to give you any
9 insight into the VCR and the PlayStation that was found at the
10 house?

11 A Yes. He said they were not at the house prior to
12 August 14th.

13 Q And the black jeans that were found in the Everman
14 master bedroom where Donte Johnson was staying, who did Tod
15 Armstrong identify those pants as belonging to?

16 A He identified those as belonging to Donte Johnson.

17 Q Did he identify any of the weapons as belonging to
18 anyone in this case?

19 A As to Donte Johnson and Red.

20 Q Okay. And the keys, the Thunderbird keys, or the
21 pager, did he testify to anything associated with those items?

22 A I believe he saw the pager on the counter in the
23 master bedroom, the blue pager.

24 Q Okay. Did he indicate whether or not that pager
25 belonged to him?

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1 A He said no, it did not.

2 Q All right. Let me talk about Tod Armstrong for a
3 minute and the fact that you indicated he is and was a
4 suspect.

5 A Yes, sir.

6 Q Is that correct?

7 A That is correct.

8 Q Can you tell these judges how it is or why it is
9 he's a suspect in this case?

10 A We've received information in this case that,
11 through some of the witnesses, that he may have spoke to Donte
12 Johnson and helped plan the robbery of the Everman -- or,
13 correction, the Terra Linda address, however, our
14 understanding is that he did not go to that address, that he
15 expected to get some of the proceeds from the robbery, maybe
16 some of the money, but definitely the drugs.

17 Q And has Tod Armstrong been given immunity or any
18 promises in this case based on your familiarity with the case?

19 A None whatsoever.

20 Q Let's talk about LaShawnya Wright. Who is LaShawnya
21 Wright, if you know?

22 A LaShawnya Wright is the girlfriend of Sikia Smith.

23 Q And did she testify in this case?

24 A Yes, she did.

25 Q Okay. Can you summarize LaShawnya Wright's

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1 testimony in this case?

2 A LaShawnya Wright said that Donte Johnson and Terrell
3 Young went over to their apartment at the Fremont Plaza and --
4 on the day of August 13th, that they had a bag that was
5 containing some guns, some gloves and she said that they then
6 -- that Terrell Young and Donte Johnson left, however, later
7 returned and were talking to Sikia Smith about doing a robbery
8 and at approximately 11:00 o'clock Donte Johnson, Terrell
9 Young and Sikia Smith left the residence or left the
10 apartment.

11 Q Did she indicate or testify what color clothing
12 Donte Johnson was wearing the night that he left with Sikia
13 Smith and Terrell Young?

14 A She said he was dressed in black.

15 Q Okay. How about Tod Armstrong, did he testify to
16 what color pants Donte Johnson was wearing on the night in
17 question?

18 A Black.

19 Q All right. Now when did Charla -- or, excuse me,
20 LaShawnya Wright testify that she next saw her boyfriend,
21 Sikia Smith?

22 A She said that she next saw him approximately 1:00
23 o'clock in the afternoon on August 14th. He had returned back
24 to the apartment with Donte Johnson and Terrell Young. He was
25 carrying a VCR and a PlayStation.

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1 Q Who was carrying the VCR and PlayStation?

2 A Sikia Smith.

3 Q All right, so 14 hours after leaving Sikia Smith's
4 now carrying a PlayStation and a VCR?

5 A That is correct.

6 Q And who is Sikia Smith with based on her testimony
7 under oath?

8 A It was Donte Johnson and Terrell Young.

9 Q And what does she say about the VCR and the
10 PlayStation?

11 A She said that Donte, at that point, purchased the
12 VCR from Sikia Smith for twenty dollars (\$20).

13 Q Did she give any insight as to any of the weapons
14 that were -- that were seen by her in the duffle bag 14 hours
15 earlier?

16 A She said that there was a -- I believe a handgun and
17 a sawed-off rifle in there.

18 Q In the bag?

19 A Yes.

20 Q Did she testify to what size the handgun was and
21 what happened to that handgun?

22 A Yes. She said that after returning on August 14th
23 that Sikia Smith had a .380 handgun and that eventually, one
24 to two days later, he sold it.

25 Q There was also some testimony of Donte Johnson

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1 seeing the paper on August 15th, the day after these
2 homicides, is that correct?

3 A That is correct.

4 Q Were you familiar with this story coming out in the
5 Review-Journal on August 15th?

6 A Yes, I was.

7 Q And that is State's Exhibit 184. Does it accurately
8 reflect the front page of the newspaper as it was seen, having
9 taken out the actual story words?

10 A Yes.

11 Q All right. Now what did LaShawnya Wright say about
12 Donte Johnson and the newspaper that day on the 15th?

13 A He said to -- He showed it to Sikia Smith and said,
14 "We made the front page," and she described them as being
15 thrilled and excited.

16 Q And can you tell me if anyone was -- Well, were
17 there any named suspects as of August 15th, 1998?

18 A No.

19 Q Were there any suspects named in that particular
20 article?

21 A No, there were not.

22 Q All right. Let me turn next to Charla Severs.
23 You've indicated that Charla -- Well, if I could, before I
24 leave LaShawnya Wright, did LaShawnya Wright testify to
25 receiving any promises in this particular case?

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1 A Not that I'm aware of.

2 Q Okay. Let's talk about Charla Severs. You've
3 indicated that Charla Severs was the girlfriend of Donte
4 Johnson.

5 A That's correct.

6 Q All right. Can you summarize Charla Severs'
7 testimony in this case?

8 A Charla Severs said that they were staying at the
9 Everman address and that Donte and Terrell left some time
10 during the night and that she stayed in the Everman address
11 and so did Tod Armstrong. She said that early in the morning,
12 when it was still dark out, she was awoken by Donte Johnson
13 and they went out into the living room and he had described
14 how he did the robbery over at Terra Linda.

15 Q Okay. Now what, if anything, did Charla Severs
16 testify about, before Donte and she went to stay at the
17 Everman residence, where were they staying, if you recall?

18 A I'm drawing a blank. I'm sorry.

19 Q Okay. Did she testify to what brand of cigarettes
20 or cigars that Donte Johnson smoked?

21 A He smoked Black & Milds.

22 Q And what, if anything, did she say about the duffle
23 bag and whether or not there was any guns in the possession of
24 Donte Johnson?

25 A She said that the duffle bag contained a sawed-off

1 rifle, a .22 rifle and a revolver and also the gloves and the
2 duct tape.

3 Q Okay. So did she testify as to whether or not she
4 was familiar with Matthew Mowen and, if so, how she was aware
5 of Matthew Mowen?

6 A Yes. She said that Matthew Mowen had come over and
7 she said it was, I believe, around the 10th or 11th, somewhere
8 in that time period.

9 Q Of what month?

10 A Of August.

11 Q Okay.

12 A And that they were having a conversation about -- He
13 was actually over there to buy some drugs, Matt Mowen was, and
14 they were talking about his tour with the Phish.

15 Q Now when Donte Johnson returned, what did she say
16 about what Donte Johnson had admitted or told her?

17 A He told her that he had killed someone. He said
18 that he needed to go to sleep, you go to sleep after you kill
19 somebody.

20 Q Did he tell her why he had killed the first person?

21 A Yes. He said he was -- he was a Mexican and he was
22 talking mess.

23 Q And there are some particular quotes on Exhibit 245
24 associated with Charla Severs. Do those quotes come from the
25 actual transcript itself?

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1 A Yes.

2 Q Okay. Who did she indicate was the actual trigger
3 man associated with the four boys that had died at Everman
4 [sic]?

5 A Donte Johnson.

6 Q And did she indicate why he had killed all four of
7 those people?

8 A Because he had killed the one, so he had to kill the
9 rest so they wouldn't identify him.

10 Q Okay. Now, then, has Charla Severs consistently
11 told on Donte Johnson, that is to say that Donte Johnson was
12 the one that did this and his involvement?

13 A Consistently, no.

14 Q Okay. And did she testify to that?

15 A Yes, she did.

16 Q Can you take -- just summarize the evolution of
17 Charla Severs and what she testified to or how she's changed,
18 if you will?

19 A At first she -- I'm sorry, Gary, I wasn't prepared
20 for this part.

21 Q Okay, let me ask you this. You said that Donte
22 Johnson and Charla Severs were boyfriend and girlfriend.

23 A That's correct.

24 Q Are you aware of Charla Severs testifying on
25 September 1st, in front of the Grand Jury, and telling them

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1 that she knew nothing about this?

2 A Yes.

3 Q Okay. Are you aware of the fact that Charla Severs,
4 in fact, wrote letters to Channel 8 News and to the District
5 Attorney's Office saying that Belo Duce did it or that she, in
6 fact, was the killer?

7 A Yes, I'm aware of that.

8 Q Are you aware of the fact that she ultimately left
9 to New York and she was brought back here as a material
10 witness?

11 A Yes.

12 Q Okay. And you're aware of what she testified to?

13 A That is correct.

14 Q Okay. And Bryan Johnson, you indicated, was a
15 friend of Tod Armstrong and Bryan Johnson testified in this
16 case?

17 A That's correct.

18 Q Can you summarize for us Bryan Johnson's familiarity
19 with the facts in this case or what he testified to?

20 A Bryan Johnson said that on August 15th he went over
21 to Tod Armstrong's house and that he had -- was going over
22 there to meet with Ace Hart and Tod Armstrong and that they
23 were gonna go out for a job interview at a golf course, the
24 three of them, and when he arrived over there he was talking
25 to Donte Johnson and Donte had told him how he had killed the

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1 four boys over at the Terra Linda address.

2 Q And are the quotes of Bryan Johnson from Tod
3 Armstrong accurately reflected on 245?

4 A Yes, they are.

5 Q All right. And who did Bryan Johnson say shot and
6 killed the four boys at Terra Linda?

7 A He said that it was Donte Johnson.

8 Q Okay. Did Tod Armstrong testify to anything
9 associated with blood on the defendant's jeans?

10 A Yes, he did.

11 Q And what is it that he said about blood on the
12 defendant's jeans?

13 A He said that Donte had told him that he had gotten
14 blood on his jeans during the incident.

15 Q Okay. And did Charla Severs testify to any blood
16 and jeans owned by Donte Johnson?

17 A Yes, she did.

18 Q And what was her testimony about blood on Donte
19 Johnson's jeans?

20 A She said that she had learned -- that Donte had told
21 her that he had gotten some blood on her jeans -- on his
22 jeans, however, she had forgotten and, if she remembered, she
23 would have washed the jeans to try to rid the evidence of the
24 murder.

25 Q Did Charla Severs testify to wanting to help Donte

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1 Johnson in not being convicted?

2 A Yes.

3 Q Okay. And did Bryan Johnson testify to any guns
4 being in the possession of Donte Johnson while he was at the
5 Everman residence?

6 A Yes, he did.

7 Q And what guns, if you recall?

8 A I believe he said there was the .22 rifle, he
9 described a sawed-off gun and a handgun.

10 Q Okay. Did Bryan Johnson also testify to what the
11 net gain was from this particular robbery?

12 A I believe Bryan Johnson said two hundred and fifty
13 dollars (\$250), a PlayStation and also the VCR.

14 Q And who did he learn that from?

15 A From Donte Johnson.

16 Q Okay. Now did any of the lay witnesses, that is Tod
17 Armstrong, LaShawnya Wright, Charla Severs or Bryan Johnson,
18 identify anybody else in this case as being the shooter of the
19 four boys at Terra Linda?

20 A No, they did not.

21 Q Who did they consistently identify as being the
22 shooter?

23 A Donte Johnson.

24 Q And is Donte Johnson in this room today?

25 A Yes, he is.

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1 Q Can you point to him and describe an article of
2 clothing he's wearing in court?

3 A He's wearing a beige shirt and he's seated beside
4 defense counsel and he's making eye contact with me.

5 Q And Shawn Fletcher is a crime scene analyst, is she
6 not?

7 A Yes, she is.

8 Q And can you tell me how many hours total Shawn
9 Fletcher indicated the crime scene analysts worked on this
10 particular case?

11 A At least 80 hours.

12 Q And are you familiar with State's Exhibit 162 as
13 being a crime scene diagram associated with this particular
14 investigation and case?

15 A Yes, I am.

16 Q All right. And does it fairly and accurately depict
17 the location of the bodies, as well as the location of the
18 evidence as seen by the crime scene analysts?

19 A Yes, it does.

20 MR. GUYMON: I'm gonna show that to the judges.

21 BY MR. GUYMON:

22 Q And this particular exhibit, 162, does not show,
23 however, the cigarette butts, is that correct?

24 A That's correct.

25 Q Are the cigarette butts, however, seen in

1 photographs 8 through 99 -- 98?

2 A If those are the numbers, yes.

3 Q Okay. And you indicated that one of the cigarettes
4 in particular was on the floor rather than in an ashtray.

5 A That's correct.

6 Q And that was the cigarette or the -- excuse me, the
7 cigarette that had Donte Johnson's DNA?

8 A That is correct.

9 Q The photograph that ultimately shows the Black &
10 Mild cigar box is at State's Exhibit 96 and 97 and you
11 indicated that it was lifted by Bradley Grover, a witness in
12 this particular case.

13 A That's correct.

14 Q Okay. And you're familiar with Dr. Bucklin's
15 autopsy 'cause you attended it, is that correct?

16 A Yes, I did.

17 Q Can you summarize for us Dr. Bucklin's testimony in
18 this case?

19 A Dr. Bucklin stated that all four boys died of one
20 gunshot wound each to the head, that it was of similar
21 caliber. He believed it to be approximately a .38 or 9
22 millimeter. Each individual had -- there was a projectile
23 recovered from their heads. Peter Talamantez also had a
24 laceration on the back of his head and a bruise on the bridge
25 of his nose.

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1 Q You mentioned a laceration or bruises on Peter
2 Talamantez. Did you learn, from interviewing or from the
3 testimony of any of the four lay witnesses, how Donte Johnson
4 felt about the Mexican boy or Peter Talamantez?

5 A Charla Severs said that he did not like Mexicans.

6 Q And did any of the witnesses testify to Donte
7 Johnson hurting or inflicting pain on Peter Talamantez other
8 than shooting him in the head?

9 A None that I can recall.

10 Q Okay. Let me ask you about the toxicology of each
11 of the four boys. Did Dr. Bucklin testify to each of the four
12 boys having some controlled substances in their bodies?

13 A Yes.

14 Q Okay. And you indicated that there was controlled
15 substances actually at the resident at Everman -- or, excuse
16 me, at Terra Linda?

17 A That is correct.

18 Q Okay. Now either through the testimony of Dr.
19 Bucklin or from the crime scene analysts, did any of the four
20 boys, and that is to say the four decedents, have any weapons
21 on them or were any weapons found at the Terra Linda
22 residence?

23 A Peter Talamantez had a .45 tucked in his waistband.

24 Q And is that .45 depicted in some of the pictures as
25 Peter Talamantez lay there at the scene?

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1 A Yes, they are.

2 Q Okay. And was that weapon still holstered in the
3 holster?

4 A Yes, it was, and covered by his shirt.

5 Q And did Dr. Bucklin testify to how far or how near
6 this weapon would have been to each of those four boys when
7 they were killed, what distance?

8 A Oh, the firearm that was used was approximately one
9 to two inches away. It was a close -- close range shot.

10 Q Okay. The next witness that was called was a
11 Sergeant Honea. Are you familiar with his testimony?

12 A Yes, I am.

13 Q Who is Sergeant Honea and what did he testify to?

14 A He's a sergeant with the Nevada Highway Patrol and
15 Sergeant Honea said that he was driving down Route 95 and --
16 down 95 and that a vehicle went by him at a high rate of
17 speed. He said that he pulled in behind the vehicle and paced
18 them doing approximately 85 miles an hour. And this was on
19 August 17th around 10:30, 10:40 p.m.

20 He pulled the vehicle over and made contact with the
21 driver, who identified himself as Donte Fletch. He said that
22 he obtained a date of birth from the -- from the driver and
23 ran his name and date of birth and was unable to identify a
24 Donte Fletch in our local system.

25 He then asked the driver to step out to the front of

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1 his vehicle, and he did, and he was talking to him and he
2 asked who the passenger was and he said Red. Excuse me, at
3 that point Red exited the vehicle and he had a handgun in his
4 hand. Sergeant Honea stepped over behind his car door in an
5 effort to protect himself in case something happened and drew
6 his revolver or his weapon and at that point the driver and
7 the passenger quickly fled the scene on foot and they were
8 unable to be located that evening.

9 Q And did Sergeant Honea or any of his responding
10 partners find any weapons in the gun [sic] that Donte Johnson,
11 or Donte Fletch at the time, fled from, as well as Red?

12 A Yes, they were able to -- they located a sawed-off
13 rifle, which was located in the -- near the driver's seat of
14 the vehicle.

15 Q And I'm showing you what's been marked as State's
16 Proposed 196. Is that, in fact, the sawed-off rifle that
17 Sergeant Honea talked about?

18 A Yes, it is.

19 Q Okay. And did the witnesses, that is the four, talk
20 about Donte Johnson having a sawed-off rifle or shotgun in the
21 actual green duffle bag?

22 A Yes, they did.

23 Q Was Sergeant Honea ultimately able to identify the
24 person that had said that he was Donte Fletch?

25 A Yes. My understanding is once Donte was arrested,

1 his photograph was in the paper and he identified him by
2 seeing the photo in the paper.

3 Q So Donte Fletch and Donte Johnson were one in the
4 same person then?

5 A That's correct.

6 Q And Sergeant Hefner was the next to testify. Can
7 you briefly summarize Sergeant Hefner's testimony as it
8 relates to the Everman residence?

9 A Yes. Sergeant Hefner testified that we had received
10 a consent to search from Tod Armstrong and that we went over
11 there and took Mr. Johnson into custody and also spoke to
12 Charla Severs and also an individual, Scale, and he said that
13 they searched -- they searched the house, that they were able
14 to find the pants that had the blood stain on the back of the
15 leg, that they were able to locate, in the backyard, the pager
16 and keys to the Thunderbird Hotel which were buried, actually
17 buried in the backyard, and he said that they also located the
18 guns, the bag and the duct tape.

19 Q And that would be the same pieces of evidence that
20 we've seen in this court or in the photographs?

21 A That is correct.

22 Q And it was Crime Scene Analyst Mark Washington that
23 actually impounded the evidence and testified to the
24 impounding of the evidence?

25 A Yes.

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1 Q Okay. Now, then, Detective Tom Thowsen, you
2 indicated, was your partner in this investigation?

3 A That's correct.

4 Q He testified to what, very briefly?

5 A You're getting -- I'm sorry.

6 Q If I could lead you.

7 A Please.

8 Q Bucco swabs or bucco swabs, --

9 A Yes.

10 Q -- are you familiar with them?

11 A Yes, yes. When we were -- took Donte Johnson to the
12 Clark County Detention Center he consented to allowing us to
13 give him a bucco swab. He rubbed the bucco swab on the inside
14 of his mouth and then it was packaged.

15 Q Okay. And ultimately the bucco swabs of Donte
16 Johnson were testified to by a DNA expert, Tom Wahl, is that
17 correct?

18 A That's correct.

19 Q Can you summarize Tom Wahl's findings based on the
20 DNA in this case?

21 A Tom Wahl testified that the -- he was able to
22 identify the blood on the back of the black jeans as to that
23 of Tracey Gorringer. He also located a stain in the inside of
24 the flap in front of the zipper and it was kind of a white
25 crusty stain. He was able to identify that that was semen

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1 from Donte Johnson. And he also testified that he was able to
2 extract the DNA from the Marlboro -- or, correction, from the
3 cigarette that was found on the dining room floor in the Terra
4 Linda home and he identified that DNA as being Donte
5 Johnson's.

6 Q And was that extraction or that DNA from the
7 cigarette butt also analyzed by an independent lab based on a
8 stipulation of the defense, that being Cellmark?

9 A Yes, it was.

10 Q And did they concur with Tom Wahl's findings?

11 A Yes, they did.

12 Q Tom Wahl used Exhibits 199 through 202 to assist him
13 in testifying to the crusty stain on the inside zipper and to
14 the eight blood droplets, did he not?

15 A Yes, he did.

16 Q And are these photographs that he used, that being
17 199 through 202, to talk about that?

18 A That's my understanding, yes.

19 Q In the photographs there are actual holes in the
20 jeans. How did he tell the jury that those holes got there?

21 A He cut 'em out.

22 Q All right.

23 MR. GUYMON: And I'd like to give those to the
24 judges.

25 (Pause in the proceedings)

1 BY MR. GUYMON:

2 Q And, lastly, we talked about Richard Good's
3 testimony. He is a firearm expert with the Las Vegas
4 Metropolitan Police Department?

5 A Yes.

6 Q He summarized, did he not, the four cartridge cases
7 that were found at the crime scene?

8 A Yes.

9 Q And what was a summary of his testimony?

10 A He stated that the four .380 cartridge cases were
11 fired from the same firearm.

12 Q Now there was testimony from the four lay witnesses
13 about additional guns, was there not?

14 A That is correct.

15 Q Can you describe, other than the sawed-off shotgun,
16 did they give a description of yet an additional rifle or
17 shotgun?

18 A Yes. It was a black .22 rifle with a folding stock.

19 Q And where did they say that black .22 rifle stayed
20 or was kept?

21 A It was normally kept in the bag.

22 Q The same duffle bag that we've shown this Court?

23 A Yes.

24 Q I'm showing you what's been marked as State's
25 Exhibits 168 -- or it looks like it's actually marked 168C.

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1 MR. GUYMON: I'm gonna show that to the judges.

2 BY MR. GUYMON:

3 Q And is that particular gun consistent with the
4 description that Charla Severs, Tod Armstrong and Bryan
5 Johnson gave of the gun?

6 A Yes, it is.

7 Q And how is it that it's consistent? How did they
8 describe it?

9 A They described it as a .22 rifle and it had a
10 folding stock on it.

11 Q Does that have a folding stock?

12 A Yes, it does.

13 Q Okay. And when this gun was actually impounded, was
14 there actually a cartridge case with it?

15 A Yes.

16 Q Or, excuse me, a clip with it.

17 A Yes, there was.

18 Q And what style was the clip?

19 A I believe it was banana style, a banana clip.

20 Q And how did the witnesses describe the banana clip?

21 A As a banana clip.

22 Q And, if you know, was the banana clip loaded?

23 A I don't know.

24 Q All right. And based on the totality of your
25 investigation and the testimony in this case, how many

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1 shooters were identified in this case?

2 A One.

3 Q And who is the shooter in this case?

4 MR. FIGLER: Objection, Your Honor.

5 JUDGE SOBEL: Okay, we've already been over this.

6 I'll sustain it.

7 Go ahead.

8 MR. GUYMON: Pass the witness, Your Honor.

9 JUDGE SOBEL: Is there gonna be cross?

10 MR. FIGLER: Yeah.

11 MR. SCISCENTO: Yes, there is.

12 JUDGE SOBEL: About how long?

13 MR. SCISCENTO: About a half hour maybe.

14 JUDGE SOBEL: Okay, let's take a lunch recess until

15 1:30.

16 THE BAILIFF: Rise, please.

17 JUDGE SOBEL: Thank you.

18 (Court recessed at 12:02 p.m., until 1:35 p.m.)

19 JUDGE SOBEL: Go ahead, Joe.

20 MR. SCISCENTO: Thank you.

21 CROSS-EXAMINATION

22 BY MR. SCISCENTO:

23 Q Detective Buczek --

24 A Yes, sir.

25 Q -- you reviewed the entire transcripts of the guilty

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1 phase of this trial, am I correct?

2 A That's correct.

3 Q Okay. So you're familiar with all the different
4 testimonies given by all the witnesses?

5 A Yes.

6 Q Now, Nick DeLuca, DeLucia said he saw a large white
7 guy in the driveway with somebody who he thought had a
8 ponytail, is that correct?

9 A I don't recall that. I recall someone being in the
10 driveway. You know, I read it once and there's a lot of
11 reading to do.

12 Q Did Nick --

13 A However, I do recall that there was someone in the
14 driveway.

15 Q And Nick said it was a white guy?

16 A I just remember someone being in the driveway, I'm
17 sorry.

18 Q In your investigation on this, you investigated Tod
19 Armstrong?

20 A That's correct.

21 Q And Tod Armstrong is, as you say right now is a
22 suspect?

23 A Yes.

24 Q In your -- during your investigation you heard
25 testimony or you heard evidence from other witnesses that Tod

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1 expected drugs to come from this transaction?

2 A That's correct.

3 Q That he expected cocaine specifically?

4 A That's right.

5 Q That he informed Terrell Young, Sikia Smith, and

6 Donte Johnson that these kids probably had ten thousand

7 dollars (\$10,000)?

8 A That's right.

9 Q That he had information that they probably had the
10 ten thousand dollars (\$10,000)?

11 A That's right.

12 Q Did you speak to a Melvin Royal or did you have a
13 chance to go over any of his testimony? Or -- I'm sorry, any
14 of his statements?

15 A Melvin Royal, the name sounds familiar, I'm just not
16 connecting it.

17 Q You don't recall ever reviewing a statement by Mr.
18 Melvin Royal?

19 A Not that he testified, no.

20 Q No, no. Not that he testified but in your
21 investigation of this, did you investigate and speak to a
22 Melvin Royal?

23 A It's just not -- you have to understand that for
24 this phase I didn't expect to have to review my entire
25 investigation --

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1 Q I understand.

2 A -- and I just reviewed the testimony.

3 Q I understand. If I may.

4 (Off-record colloquy of counsel)

5 BY MR. SCISCENTO:

6 Q Charla Severs, you spoke to Ms. Severs, right?

7 A That's correct.

8 Q And during the trial she indicated that Tod Johnson
9 was expecting cocaine? Or Tod Armstrong, I'm sorry.

10 A That's correct.

11 Q And she also said that Tod Armstrong was in
12 possession of some guns?

13 A A gun.

14 Q A gun. And that Ace Hart was in possession of a
15 gun?

16 A I don't remember Ace Hart, I just remember the
17 description of a shotgun.

18 Q She saw him in possession and she stated she saw him
19 in possession of a gun, that being Ace Hart?

20 A I don't recall that.

21 Q Okay. There -- no, I'm sorry. Now, you had --
22 during the investigation you read the trial transcript where
23 it talked about the Black and Mild which are a form of a
24 cigar, is that right?

25 A That's right.

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1 Q Okay. And they're not like regular cigarettes, am I
2 right?

3 A No, they would be a cigar.

4 Q A form of a cigar. In the trial, Charla Severs said
5 that Donte Johnson had sold crack cocaine to Matt Mowen a few
6 days earlier prior to the killing, right?

7 A I believe so, yes.

8 Q And she also stated that there were times that when
9 he sold crack cocaine he would put it into a Black and Mild
10 box, isn't that correct?

11 A That's correct.

12 Q And the same Black and Mild box, a similar box was
13 found at the Terra Linda residence, am I correct?

14 A A similar, I wouldn't say same. Similar.

15 Q You had information through the trial that stated
16 that Donte Johnson smoked Black and Mild?

17 A That's right.

18 Q Okay. But the cigarette you found with the DNA was
19 a Winston cigarette, isn't that correct?

20 A I don't know the exact brand and I didn't find it.
21 It was located on the dining room floor, I don't -- I wasn't
22 the one who recovered it.

23 Q Do you recall after reading the transcripts by the
24 crime analyst who did pick up those twelve different
25 cigarettes?

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1 A I recall there being a cigarette, the exact brand I
2 didn't recall. I thought there was actually a Marlboro and
3 two unnamed brands.

4 Q But they were not Black and Milds --

5 A That's correct.

6 Q -- we agree on that? So the cigarette that had the
7 DNA of Donte Johnson, in fact, was not a Black and Mild cigar?

8 A That's correct.

9 Q In the trial you had talked to a few people
10 regarding Ace Hart, correct?

11 A Correct.

12 Q And everybody who testified stated that they knew
13 Ace Hart, most of the people that testified?

14 A Right.

15 Q Being Tod, Charla Severs, LaShawnya Wright. Do you
16 recall Lashawnya Wright saying that?

17 A No, I don't.

18 MR. SCISCENTO: Court's indulgence for one moment,
19 Your Honor. I had this marked and now it seems to be missing.

20 MR. GUYMON: Judge, the parties can stipulate that
21 LaShawnya Wright, at some point in time from the witness
22 stand, testified that she, in fact, knew Ace Hart.

23 JUDGE SOBEL: Great.

24 BY MR. SCISCENTO:

25 Q LaShawnya Wright said that she was better friends

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1 with Ace Hart than with anybody else involved in this case,
2 isn't that right -- isn't that correct?

3 A I couldn't answer the first question and I surely
4 can't answer the second one.

5 Q But --

6 JUDGE SOBEL: You know, in terms of stipulating to
7 things because music is being used as a hearsay sponsor of
8 things that happened at trial, rather than cross-examine him,
9 taking the chance he knows some things and not others, would
10 you like to just state those things that you want to bring out
11 to the panel and see if he can stipulate that that was the
12 testimony rather than pursuing that way?

13 MR. SCISCENTO: No -- I'll see if that's easier
14 then, Your Honor.

15 BY MR. SCISCENTO:

16 Q Detective Buczek, you stated earlier to Mr. Guymon
17 that LaShawnya Wright didn't receive any special -- or special
18 assistance from the district attorney?

19 A That I was aware of, that's correct. I've --

20 Q In her testimony though she did mention that she was
21 on a revocation?

22 A I spoke to District Attorney Gary Guymon and he has
23 -- he has told me otherwise. That actually she did receive
24 favorable treatment on a misdemeanor charge that she was in
25 the city jail for that -- when Guymon went to go visit her.

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1 Q When LaShawnya Wright was testifying though, she
2 said that Mr. Guymon made a phone call to the probation
3 officer because she had asked him to, isn't that correct?

4 A Right.

5 Q That is correct?

6 A Correct.

7 Q LaShawnya Wright who was the girlfriend of Sikia
8 Smith, who's a codefendant in this matter, right?

9 A That's correct.

10 Q And LaShawnya Wright said that Sikia Smith had the
11 VCR in his possession and that he sold it to Donte Johnson?

12 A That's right.

13 Q For twenty dollars (\$20)?

14 A Right.

15 Q His palm print, that being Sikia Smith, was found on
16 the VCR?

17 A That's right.

18 Q Okay. Upon reviewing the transcripts of this trial
19 and reviewing specifically what Charla Severs had said, did
20 she -- do you recall her stating that she had seen duct tape
21 in the house, that being the Everman house, prior to August
22 14th in the coffee table -- on the coffee table?

23 A I believe so, yes.

24 Q Tod Armstrong, in your investigation and your
25 statements regarding this case, knew where the pager was at

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1 his house, am I correct?

2 A Correct.

3 Q Knew where the keys were at, am I correct?

4 A I'm not -- I'm not sure on the keys.

5 Q The Thunderbird keys?

6 A I'm not sure -- I'm not sure on the keys.

7 Q Well, in that Tod Armstrong had testified that he
8 provided information -- I'm sorry, I think it was one of the
9 detectives who said he provided -- you were provided
10 information from Tod Armstrong indicating that -- where you
11 could find the pager?

12 A I did --

13 Q That being buried in the backyard?

14 A I don't believe it was Tod Armstrong, I believe it
15 was Bryan Johnson. I'm --

16 Q Bryan Johnson. Tod had nothing -- didn't give any
17 information regarding that?

18 A Not that I recall.

19 Q Okay. I want to make sure I understand this.

20 LaShawnya Wright basically said that Sikia Smith got rid of
21 the gun?

22 A That's correct.

23 Q Sikia Smith was in possession of the VCR?

24 A That's right.

25 Q Okay. Tod Armstrong didn't say anything to the

BUCZEK - CROSS

1 police until four days after this -- these murders happened,
2 isn't that correct?

3 A I believe it was three.

4 Q Three days?

5 A Yes.

6 Q Do you recall exactly which date it was?

7 A August 17th, 1998.

8 Q And this happened on the 13th?

9 A 14th.

10 Q Okay. Now Tod Armstrong had testified that him,
11 B.J., and Ace were very good friends?

12 A That's right.

13 Q Okay. And they testified that the day after the
14 murders they had found out about this, the murders?

15 A I believe actually --

16 Q The night of?

17 A -- Bryan Johnson and Ace Hart found out the day
18 after. I believe Tod Armstrong found out the night of.

19 Q But they didn't make a statement to the police until
20 three or four days later, is that correct, on the 17th?

21 A That's right.

22 Q Okay. And there was no indication why they waited
23 that long, was there?

24 A My understanding was they were afraid.

25 Q Okay. Tod Armstrong had left the house and moved

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BUCZEK - CROSS

1 out during the 14th, 15th, 16th, and 17th, correct?

2 A That's correct.

3 Q Tod Armstrong, Bryan Johnson, and Ace Hart were
4 together in a car driving out to Stallion Mountain Golf Course
5 the day after the murders, where they discussed it, isn't that
6 correct?

7 A Yes.

8 Q They discussed the murders and yet they did nothing
9 about it?

10 A That's right.

11 Q And for the next two days they didn't do anything
12 about it.

13 A That's right.

14 Q They were away from their residence?

15 A Right.

16 Q They were nowhere near Donte Johnson?

17 A Correct.

18 Q And the only time that any statement was made to the
19 police by Tod Armstrong was because B.J., Bryan Johnson, was
20 going to be arrested for domestic battery, isn't that correct?

21 A I don't know if he was going to be arrested for
22 domestic battery. I know that there was an incident at his
23 house where the police were called by his father. I don't
24 know -- I haven't seen anything that suggests that he was
25 going to be arrested.

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BUCZEK - CROSS

1 Q But there was a call out to his house for a domestic
2 violence?

3 A That's correct.

4 Q Normal Metropolitan Police procedure manual of calls
5 for anybody on a domestic violence to be arrested for twelve
6 hours?

7 A Incorrect. If there's anything that suggests that
8 there was domestic violence or battery of domestic violence,
9 yes. However, just because someone has a loud aggressive
10 argument doesn't necessarily mean that there's an arrest made.

11 Q So, if in fact there was a domestic battery though
12 that you would get -- the Metropolitan Police officer had
13 noticed, he most likely would have arrested somebody for a
14 minimum of twelve hours?

15 A If there was, I don't know if there's any evidence
16 that there was.

17 Q Okay.

18 A I'm sorry.

19 Q Tod Armstrong had told you that they, him, Ace Hart,
20 Terrell Young, and Donte Johnson had driven by the house on
21 Terra Linda?

22 A I'm sorry, who told me that?

23 Q Tod Armstrong --

24 A That's correct.

25 Q -- stated that?

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BUCZEK - CROSS

1 A Yes. Yes.

2 Q And that Ace had pointed out where Matt Mowen lived?

3 A That's right.

4 Q And it was Ace that showed 'em that?

5 A That's right.

6 Q Okay. And he said they were just -- that Tod

7 Armstrong said they were just driving by leisurely?

8 A That's right.

9 Q Okay. That street, the Terra Linda house though is
10 not somewhere you would accidently drive by unless you were on
11 your way to some -- on your way to it, would you agree with
12 that?

13 A I think that's fair to say.

14 Q There's a busy street and then there's an apartment
15 complex. In order to get to it it's almost like a cul de sac,
16 it's set off on another street?

17 A That's right.

18 Q Okay. Did that give you any reason to believe that
19 Tod Armstrong or Ace Hart may of had something to do with this
20 murder?

21 A I've always believe that Tod Armstrong has had
22 something to do with this murder.

23 Q Okay. Charla Severs had testified that Tod
24 Armstrong and Ace Hart had done what we consider licks, which
25 are robberies, is that correct?

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BUCZEK - CROSS

1 A Correct.

2 Q And they had talked about doing another lick?

3 A That's right.

4 Q Okay. Which is, as we understand it, a robbery?

5 A Yes.

6 Q Right? Okay. Charla Severs had given five separate

7 -- five different statements regarding this case --

8 A That's correct.

9 Q -- up until the time before she testified, right?

10 A That's right.

11 Q One of them she said Donte wasn't even there, I did

12 it?

13 A Yes.

14 Q One of them was another guy, Belo Duce did it?

15 A Yes.

16 Q One of them said, well, Donte did it but he was

17 wearing shorts?

18 A Yes.

19 Q That was at the grand jury?

20 A Yes.

21 Q This was asked of her at the trial?

22 A Yes.

23 Q Finally, when she admitted that she gave the full

24 story, being that Donte did it and was wearing black pants.

25 That was when she was in custody on a -- on a warrant -- a

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BUCZEK - CROSS

1 material witness warrant, isn't that correct?

2 A Yes.

3 Q And that's when she gave her first statement saying
4 -- stating that Donte did it and he was wearing the black
5 pants?

6 A Yes.

7 Q And she admitted that she wanted to be released that
8 day, that's why she was giving that testimony?

9 A I believe so, yes.

10 Q She basically said that the D.A. wants me to testify
11 and if I do I will be released?

12 A Yes.

13 Q I specifically asked her about the black pants and I
14 asked her who said that, who told you about the black pants.
15 She said, the district attorney or the detective. Do you
16 recall that?

17 A Yes.

18 Q Detective -- oh, I'm sorry. Sergeant Honea --
19 Trooper Honea or Sergeant Honea?

20 A Sergeant.

21 Q Sergeant Honea --

22 A Yes.

23 Q -- was driving down the road, noticed a car
24 speeding, pulled it over, and saw that Donte had gotten out of
25 the car?

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BUCZEK - CROSS

1 A Actually, I believe he --

2 Q He ordered him out?

3 A -- asked Donte to step out of the car.

4 Q Okay. And his statement was Donte was somewhat
5 cooperative? He wasn't combative?

6 A He wasn't combative, right.

7 Q He gave a fake name, I'll give you that.

8 A Yes.

9 Q But he wasn't combative. He provided the officer
10 with information?

11 A False information, yes.

12 Q But it was Red that got out of the car with a gun?

13 A That's right.

14 Q And Red had -- when the officer or the sergeant
15 searched the car he noticed the guns were found on the
16 passenger sides, isn't that correct?

17 A I -- maybe I'm wrong, but I thought it was on the
18 driver's side.

19 Q Do you recall reading Sergeant Honea's testimony?

20 A Yes, I do.

21 JUDGE SOBEL: Do you recall what side it was on,
22 state?

23 MR. GUYMON: Judge, I just asked Mr. Daskas and
24 neither of us recall.

25 MR. SCISCENTO: Okay. We'll have to get to that.

BUCZEK - CROSS

1 (Pause in the proceedings)

2 BY MR. SCISCENTO:

3 Q There was some guns found and I think that Mr.
4 Guymon showed you the guns that were found in that car, am I
5 correct?

6 A The one gun, yes.

7 Q One gun. But it wasn't with the duffel bag, isn't
8 that correct?

9 A No, that's correct.

10 Q Okay. Even though most people stated that the
11 duffel bags contained those guns, wasn't that testimony given
12 at the trial?

13 A Yes, it was.

14 Q Nobody saw exactly what was inside those -- that
15 duffel bag that night when they said Terrell Young and Donte
16 were leaving, isn't that correct?

17 A I believe you're right.

18 Q Charla said that Tod Armstrong was smoking crack
19 heavily during those times that they were there, that being
20 late July or early August?

21 A I believe she said they were all smoking crack
22 there.

23 Q That being Tod and B.J.?

24 A She just said we all were smoking heavily.

25 Q B.J. testified, he admitted that he was also smoking

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BUCZEK - CROSS

1 crack heavily during that period of time?

2 A Yes.

3 Q Thank you. Let's -- if you recall, you read Mr.
4 Wahl's statements regarding the DNA?

5 A Yes.

6 Q All right. Okay. He, in fact, said that there was
7 some semen found which matched Donte Johnson?

8 A Right.

9 Q Okay. But he also said that there was some
10 epithelial cells that were present in the stain found on the
11 black jeans, isn't that correct?

12 A Yes.

13 Q Okay. And that the epithelial cells were from a
14 female?

15 A Yes.

16 Q You recall that? Okay. And that the epithelial
17 cells contained more substance than the DN -- than the semen
18 did?

19 A To be honest with you when I was reading Mr. Wahl's
20 testimony it was -- it was quite scientific and definitely
21 above my head.

22 Q Okay. Would you say -- would you agree though, that
23 I had asked him specifically about a ranking of a one to four
24 and he said that the semen had a one and the other stain, the
25 "K" stain had a one and a half?

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BUCZEK - CROSS

1 A I'm going to be honest --

2 Q You don't --

3 A -- with you, I was confused by his testimony and I
4 just really can't decipher what he said.

5 Q Okay.

6 MR. GUYMON: Judge, if we can, I will stipulate to
7 that being in the transcript.

8 JUDGE SOBEL: That's fine, thank you.

9 BY MR. SCISCENTO:

10 Q You'd also agree that -- or if you recall, Mr. Wahl
11 say that semen could be kept in the vaginal vault for a period
12 of time and then later deposited?

13 A Yes.

14 Q Okay. And that if it is there in the vaginal vault,
15 the semen would start to deteriorate and you would have a
16 reading of less than a four, if you don't --

17 A I'm sorry.

18 Q I understand.

19 MR. GUYMON: I can again stipulate to that, Judge.

20 JUDGE SOBEL: Thank you.

21 BY MR. SCISCENTO:

22 Q You would agree that -- and I'm sure you reviewed
23 the evidence, the black jeans specifically, that the semen was
24 found on the outside of the pants and not the inside?

25 A It was on the outside but the inside of the zipper

1 flap.

2 Q Which is, if I can show you. It would be found on
3 this flap, where I'm pointing here on the inside. I hope I'm
4 not on the camera. So, when I'm pointing this way it is
5 showing the inside of the flap on the outside of pants there.

6 A Yes.

7 Q You agree with that?

8 A Yes.

9 JUDGE SOBEL: I never did see that view when I was
10 up St. George, just to add something to it.

11 MR. SCISCENTO: Most people aren't lucky.

12 JUDGE SOBEL: Only the jury was favored with that
13 before.

14 BY MR. SCISCENTO:

15 Q The guns that you located, the ones that they had
16 found, those had never matched up to any of the ballistics
17 found at the scene of the crime?

18 A Yes, that's correct.

19 Q That's correct that they were not?

20 A You're right.

21 Q Okay.

22 MR. SCISCENTO: Where are your exhibits? May I
23 please have Exhibit 86? Thank you. If I may approach, Your
24 Honor.

25 //

BUCZEK - CROSS

1 BY MR. SCISCENTO:

2 Q Exhibit 86 shows one of the victims, Peter
3 Talamantez?

4 A Yes.

5 Q Okay. And in there is a revolver?

6 A No, it's a --

7 Q I'm sorry.

8 A -- semiautomatic handgun.

9 Q It's a handgun. And what caliber is that?

10 A I believe that was .45.

11 Q Okay. And that was on his possession?

12 A That's right.

13 Q Okay. Now, there was some testimony by, I believe,
14 it was Ms. Fletcher, indicating that she located some white
15 substance which she found out to be methamphetamine?

16 A That's right.

17 Q Okay. And that there was some antifreeze at the --
18 a significant amount of antifreeze containers and butane that
19 was found in the trash, which she indicated was an indication
20 of manufacturing methamphetamines?

21 A That's correct.

22 Q Okay. There was a high significant amount of
23 methamphetamine and cocaine and cocaine metabolism found in
24 the blood of the victims in this case?

25 A Yes.

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BUCZEK - CROSS

1 Q Okay. There was statements given that Matt Mowen
2 was following around a band called the Phish and that was
3 selling -- he was selling acid there?

4 A That is correct.

5 Q Sometimes almost a hundred sheets a day?

6 A That's correct.

7 Q Okay. And that these were an illegal substance,
8 being acid?

9 A That's right.

10 MR. SCISCENTO: Court's indulgence for one moment.

11 (Off-record colloquy of counsel)

12 BY MR. SCISCENTO:

13 Q During the trial there was some testimony asked of
14 it was either Sergeant Hefner or your partner, Detective
15 Thowsen regarding Ace Hart, that he denied ever driving by the
16 Terra Linda residence? You don't recall?

17 A I don't recall that being asked of those two at all,
18 no.

19 Q Okay.

20 A Are you saying in the trial or the sentencing
21 phrase?

22 Q The trial.

23 A I don't -- I don't recall that at all.

24 Q Okay.

25 MR. SCISCENTO: Nothing further, Your Honor.

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1 JUDGE SOBEL: Any redirect?

2 MR. GUYMON: No, Your Honor.

3 JUDGE SOBEL: Thank you, sir. You're excused.

4 Call your next witness, please.

5 MR. GUYMON: Derrick Simpson. And Judge, as we
6 await Derrick Simpson, each of the judges have been given --
7 Matt, some excerpts from the trial. It is specifically
8 Lieutenant Grayson and he is a detective of the Los Angeles
9 Police Department. These are the accompanying photographs
10 that went with Lieutenant Grayson's testimony. It is of the
11 actual Cen-Fed bank robbery. If I can have those go along
12 with the transcript.

13 You also -- each of the judges received the
14 transcript of Stacy Trammell, that Stacy Trammell was the
15 cashier at the bank, the Cen-Fed Bank, and she testifies to
16 her observations and what happened to her. You have that
17 transcript as well and we'd ask each of the judges to read
18 that and consider it as part of the penalty evidence.

19 Also, Your Honor, if I might, associated with the
20 Cen-Fed Bank robbery is a presentence investigation report
21 that were previously admitted and we'd ask the judges to
22 consider both the first armed robbery incident in California
23 at age fourteen and then the Cen-Fed Bank presentence
24 investigation report as well, that is associated with the
25 trial transcripts that you now received.

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1 JUDGE SOBEL: Thank you.

2 MR. FIGLER: Your Honor, while these were admitted,
3 the presentence investigation reports, I think it contains
4 information that's not properly -- even admitted during the
5 course of the penalty hearing. So, there's information here
6 which is hearsay upon hearsay upon hearsay, other information
7 of other acts that probably doesn't have any place in this
8 particular proceeding so I'd ask that that presentence
9 investigation report be not considered at the time by the
10 three-judge panel.

11 JUDGE SOBEL: Well, unless the other judges don't
12 want to let it in, I don't know of a better group to sift out
13 what is reliable and what is not and discard or give little
14 weight to things that are successive layers of hearsays.
15 Anybody want to see -- not see this stuff?

16 JUDGE GRIFFIN: Your ruling is fine.

17 JUDGE SOBEL: Oh, okay -- what?

18 JUDGE GRIFFIN: Your ruling is fine.

19 JUDGE SOBEL: Okay.

20 MR. GUYMON: And these are the redacted copies that
21 we had used previously.

22 JUDGE SOBEL: Right. They'll come in.

23 MR. GUYMON: Thank you.

24 JUDGE SOBEL: Thanks.

25 //

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SIMPSON - DIRECT

1 DERRICK SIMPSON, PLAINTIFF'S WITNESS, IS SWORN

2 THE CLERK: Please state your full name and spell
3 your last name for the record.

4 THE WITNESS: Derrick Charles Simpson. Derrick,
5 D-E-R-R-I-C-K; Charles, C-H-A-R-L-E-S; S-I-M-P-S-O-N.

6 DIRECT EXAMINATION

7 BY MR. GUYMON:

8 Q Derrick, as you testify today how old are you?

9 A Forty-two.

10 Q And you recognize the man that is depicted in
11 State's Exhibit 219?

12 A Yes, I do.

13 Q Who is that?

14 A That's me.

15 Q All right. Can you tell me approximately when this
16 photograph of you was taken?

17 A January of '98, I believe.

18 Q January of '98? And tell me is that what your
19 appearance was like in say January of '98 up until May of
20 1998?

21 A Yes.

22 Q Did something occur to you that has altered your
23 appearance from the picture that we see there?

24 A Yes.

25 Q All right. Tell me just what it is that happened

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SIMPSON - DIRECT

1 that changes your appearance now?

2 A Donte Johnson shot me point blank in the face and
3 then as I fell off the curb he shot me in the back.

4 Q I want to ask you a little bit about that. You
5 mentioned that Donte Johnson is the man that shot you. Is
6 Donte Johnson here in court today?

7 A Yes, he is.

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

10 A Donte Johnson is sitting at the defense table,
11 sitting between the two attorneys with French braids in his
12 hair with a beige'ish/cream shirt on, a long sleeved shirt.

13 JUDGE SOBEL: The record will reflect identification
14 of the --

15 BY MR. GUYMON:

16 Q Now, prior to May of 1998, how long had you known
17 Donte Johnson?

18 A About a year, year and a half.

19 Q And during the year, year and a half, how frequently
20 or infrequently did you see Donte Johnson?

21 A Every day.

22 Q And why is it that you saw Donte Johnson every day
23 for a year or a year and a half?

24 A Because I bought drugs from him.

25 Q And specifically what type of drug would you buy

SIMPSON - DIRECT

1 from Donte Johnson?

2 A Crack cocaine.

3 Q Okay. Now, did you know Donte well enough to
4 recognize him day in and day out?

5 A Yes.

6 Q When you'd purchase rock cocaine with him, would you
7 have conversations with him?

8 A Several times.

9 Q Okay. And was your dealings with Donte Johnson
10 different on May 4th of 1998 than say the other times you'd
11 dealt with him?

12 A Very different.

13 Q Okay. Tell me just where you made contact with
14 Donte Johnson on May 4th of 1998 and what time it was?

15 A About 3:30 in the morning at the Las Vegas Motel on
16 -- basically on Eastern and Fremont next to where the Long
17 Branch Saloon used to be.

18 Q Now, is this a place that you would frequent with
19 some regularity?

20 A Yes.

21 Q Is this where you knew Donte Johnson to stay?

22 A Yes.

23 Q Okay. And when you made contact with Donte Johnson
24 at about 3:30 in the morning, who was present? Were you alone
25 or were you with others?

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SIMPSON - DIRECT

1 A I -- when I went to the Room 12, where he was
2 standing in the doorway, I was by myself but there was other
3 people that were up on the balconies.

4 Q Okay. And when you made contact with Donte Johnson
5 in Room 12, was anyone else with Donte Johnson at Room 12?

6 A At the time, no.

7 Q Okay. Tell me what it is that you said to Donte
8 Johnson then at 3:30 in the morning?

9 A I asked him would he sell me some crack cocaine. He
10 said, punk, I'm not gonna sell you nothing. He said, as
11 matter of fact, nigger, before the night's over I'm gonna kill
12 you.

13 Q Now, had he ever made a threat like that to you
14 before?

15 A No.

16 Q Now, when he said -- called you the "N" word and
17 said I'm gonna kill you before the night's over, tell me what
18 you said?

19 A At that time, he went to raise the gun and when I
20 seen the gun I hit him upside his head.

21 Q Okay. Now, you say at that time he raised the gun.
22 Where did he raise the gun from?

23 A Like he pull it up from the back of him because he
24 was leaning against the door, the door jam.

25 Q Okay. And can you tell me what hand he raised the

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

DONTE JOHNSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

S.C. CASE NO. 65168

Electronically Filed
Jan 09 2015 02:23 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

**APPEAL FROM DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)
EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JUDGE ELISSA CADISH, PRESIDING**

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**APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME XVIII**  
~~~~~

ATTORNEY FOR APPELLANT
CHRISTOPHER R. ORAM, ESQ.
Attorney at Law
Nevada Bar No. 004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
Telephone: (702) 384-5563

ATTORNEY FOR RESPONDENT
CLARK COUNTY DISTRICT ATTORNEY
200 Lewis Avenue
3rd Floor
Las Vegas, Nevada 89101
(702) 671-2500

CATHERINE CORTEZ MASTO
Nevada Attorney General
Nevada Bar No. 0003926
100 North Carson Street
Carson City, Nevada 89701-4717

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

IN THE SUPREME COURT OF NEVADA

DONTE JOHNSON,

CASE NO. 65168

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

OPENING BRIEF APPENDIX

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CERTIFICATE OF SERVICE

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I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 9th day of January, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

- CATHERINE CORTEZ-MASTO
Nevada Attorney General
- STEVE OWENS
Chief Deputy District Attorney
- CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Jessie Vargas
An Employee of Christopher R. Oram, Esq.

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623