

1 burglary while in possession of a firearm, that this  
2 aggravator was established.

3 And the aggravator goes on, that the person charged,  
4 that is, Donte Johnson, either killed or attempted to kill the  
5 person murdered or at least that he knew or had reason to know  
6 that life would be taken or lethal force would be used.

7 You, by now, have all reviewed the transcripts from  
8 the trial in this case and certainly the evidence was  
9 overwhelming that it was Donte Johnson himself who pulled the  
10 trigger four times and took the lives of those four young men.  
11 And it is that testimony, coupled with the verdicts returned  
12 by the jury, that establishes aggravator number one, beyond a  
13 reasonable doubt.

14 And there's a second aggravator: that the murder  
15 was committed to avoid or prevent a lawful arrest or to effect  
16 an escape from custody.

17 I'd ask you to recall the testimony of two witnesses  
18 in this case that you heard from on the witness stand and in  
19 the transcript, and the first was Tod Armstrong. On June 6th  
20 of 2000, he testified, and it's reflected in Volume II of the  
21 transcripts, and he was referring to Donte Johnson when Tod  
22 testified that he, Donte Johnson, said that since he killed  
23 one, he had to kill everybody else.

24 And Tod was referring to Peter Talamantez because  
25 Peter was the first victim in this case, taken to a back room,

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1 by himself, duct taped, lay face down, defenseless, and shot  
2 in the back of the head by Donte Johnson. And Donte Johnson  
3 understood that the other three victims in this case would  
4 have been witnesses to a murder and to a robbery and to a  
5 kidnapping. And so Donte Johnson executed the other three  
6 victims in this case because he knew he had to avoid the  
7 potential of being arrested, so, he eliminated all the  
8 witnesses in this case.

9           It also came from the mouth of Charla Severs, the  
10 defendant's ex-girlfriend. On June 7th, 2000, in front of a  
11 jury, she testified that Donte Johnson had to kill the other  
12 people because they knew who we were. Donte Johnson's words.  
13 Donte Johnson understood that he couldn't leave any witnesses  
14 alive, and so he killed those people to avoid a lawful arrest.  
15 That's aggravator number two.

16           And finally, the third aggravator alleged by the  
17 State, the defendant has, in this proceeding, been convicted  
18 of more than one offense of murder in the first or second  
19 degree. And certainly you, as Judges, understand and  
20 appreciate that when the jury in this case returned four  
21 guilty verdicts of first degree murder with use of a deadly  
22 weapon, that that aggravator also was established beyond a  
23 reasonable doubt.

24           Three aggravators in this case, and you appreciate  
25 that the process doesn't end there. That the next step is to

1 consider any mitigating circumstances that were offered by the  
2 defendant in this case, and those two are outlined in an  
3 instruction, and I'll briefly discuss those. Obviously, those  
4 are for your consideration, and it's not my position to tell  
5 you whether you believe those mitigators have any impact in  
6 this case.

7           They suggest that the murder was committed while  
8 Donte Johnson was under the influence of extreme mental or  
9 emotional disturbance. And I think most people would agree  
10 that in looking at this crime scene, it's difficult to  
11 understand the mentality of a person who's capable of doing  
12 something like that. But that's different from suggesting he  
13 was under the influence of emotional distress or disturbance.

14           You have heard absolutely no evidence to suggest  
15 that he was under the influence of distress when he committed  
16 this crime. No evidence whatsoever.

17           The second mitigating circumstance that could  
18 possibly lessen his culpability in this case, the defendant  
19 was an accomplice in a murder committed by somebody else and  
20 his participation, that is, Donte Johnson's was relatively  
21 minor. And again, you've reviewed the transcripts and you  
22 understand that the overwhelming evidence in this case is that  
23 it was Donte Johnson, himself, who pulled the trigger four  
24 times on August 14th. Certainly his participation in this  
25 case was not minor, although he did have two accomplices.

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1 Mitigator number three, the defendant acted under  
2 the duress or domination of another person. Again, no  
3 evidence whatsoever, proffered by anybody, that Donte Johnson  
4 acted at somebody else's request or under somebody else's  
5 dominion and control. It was Donte Johnson who pulled the  
6 trigger each time.

7 Mitigator number four, the youth of the defendant at  
8 the time of the crime. Donte Johnson was born in 1977 and was  
9 twenty-one years old at the time this crime was committed.  
10 From where most of us sit or stand, twenty-one years old is a  
11 young man, but I think we all appreciate that even a twenty-  
12 one year old understands the consequences of pointing a gun  
13 one inch to the back of the head of another human being and  
14 pulling the trigger. Certainly his age does not mitigate his  
15 conduct in this case.

16 And you, of course, as Judges, understand and  
17 appreciate that you can consider any other mitigating  
18 circumstance that you think is appropriate. Things like mercy  
19 and compassion, and the fact that he grew up in South Central  
20 LA. And I don't minimize that that was probably a difficult  
21 childhood, and that's not a childhood that anybody should have  
22 to endure, but common sense tells us that not everybody who  
23 grew up in South Central LA finds themselves convicted of  
24 quadruple murder. Not everybody who grew up in South Central  
25 LA has killed five people like Donte Johnson has. And not

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1 everybody who grew up in South Central LA has the capacity and  
2 the character to hold a gun inches from the face of another  
3 human being and pulling the trigger. And you saw the  
4 devastation of that when Derrick Simpson testified from a  
5 wheelchair in this courtroom. It's not a childhood any of us  
6 would want, but it doesn't excuse Donte Johnson's criminal  
7 conduct in this case.

8           And, of course, your goal at that point, your job  
9 and your duty is to weigh those mitigators against these  
10 aggravators that we've established beyond a reasonable doubt.  
11 And it's not my position to tell you the weight you should  
12 give each of those aggravators or each of those mitigators.  
13 But I would simply point out that even if you accept each of  
14 their mitigators as being established, none of those  
15 mitigators, not even all those mitigators collectively  
16 outweigh the fact that this man has been convicted of a  
17 quadruple killing in this proceeding.

18           And so, the only remaining question is should you --  
19 should you impose the death penalty in this case? We  
20 understand that this is an appropriate case for death penalty  
21 consideration, but should you impose the death penalty? It's  
22 probably been said too many times that the worst possible  
23 crime deserves the worst possible punishment, but there's some  
24 truth to that statement, and this is certainly the worst  
25 possible crime.

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1           And I ask you, is life in prison sufficient for  
2 Donte Johnson who created this nightmare for these young men  
3 or is something more required in this case? Does this crime  
4 speak out for the death penalty, or do we allow Donte Johnson  
5 to continue to live in prison, to continue to wake up each  
6 morning, be provided with three meals a day, continue to visit  
7 his friends and family, write letters and read magazines?

8           We heard from David Mowen yesterday, the father of  
9 Matt, who tried to explain to us and articulate for us what it  
10 is like for a father to lose his only son and how he must  
11 visit his son each morning at the grave site. Is life in  
12 prison sufficient for Donte Johnson or is something more  
13 required in this case?

14           Mr. Figler suggested in his opening statement  
15 yesterday that these four young men are not the victims. He  
16 told you they're not victims because they're drug users,  
17 they're drug sellers and their gun toters, to use his labels.  
18 And I'm certain that you, as Judges, who sit on the bench  
19 every single day and hear from victims and witnesses --

20           JUDGE SOBEL: Hold on one minute, Robert, would you?

21                   (Pause in the proceedings)

22           JUDGE SOBEL: Go on, Bob -- Robert.

23           MR. DASKAS: Certainly you understand, as Judges,  
24 that victims of crimes come in all shapes and sizes. They're  
25 represented by all races. They are varying degrees of age,

1 and they come from various backgrounds. Victims are victims  
2 regardless of the choices they make, choices that perhaps you  
3 and I don't agree with. And I find it somewhat contradictory  
4 that Mr. Figler suggests that because these four boys had  
5 drugs in their system at the morgue, that you should punish  
6 them and view them not as victims, yet, on the other hand, Mr.  
7 Figler wants you to excuse Donte Johnson's conduct. And you  
8 heard testimony about the fact that he sold drugs. You're  
9 supposed to excuse that conduct because of the fact that he  
10 grew up in South Central LA, and I find that somewhat  
11 contradictory.

12 Certainly, these boys made bad choices when they  
13 decided to use drugs, but it doesn't make them any less the  
14 victims in this case.

15 I wonder if Peter Talamantez felt like a victim when  
16 he was accosted by those three men, Donte and his companions,  
17 when he knocked on the door on August 14th? I wonder if Peter  
18 felt like a victim when he was duct taped, ankles together,  
19 wrists behind his back and laid face down on the carpet? I  
20 wonder if Peter felt like a victim when he had the barrel of  
21 the gun placed an inch from the back of his skull? I'm  
22 certain that he felt victimized.

23 And I wonder if Matt when he, too, was laid face  
24 down in the carpet in his own home, as Donte and his  
25 companions ransacked that home? I wonder if Matt Mowen felt

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1 like a victim as Matt heard the gunshots that killed his  
2 friends? And I wonder if Matt felt like a victim as he  
3 wondered when would his turn come?

4 The fact that these boys had drugs in their system  
5 on August 14th is of no consequence. They are no less victims  
6 in this case.

7 Donte Johnson deserves to die because Peter  
8 Talamantez deserved to live. And Donte Johnson deserves to  
9 die because Matt Mowen deserved to live. And Donte Johnson  
10 deserves to die because Jeff Biddle and Tracey Gorringer  
11 deserved to live.

12 But there's more than just this case. There's much,  
13 much more than just the crime of August 14th, 1998. We now  
14 know that Donte Johnson's criminal history dates back nearly  
15 ten years. We understand now that August 14th was not just a  
16 bad night for Donte Johnson, it was simply the culmination of  
17 a criminal career that dates back nearly ten years.

18 You heard testimony and you'll read the transcripts  
19 about an armed bank robbery that occurred back in 1993. Donte  
20 Johnson's sixteen years old, he and his companions were in a  
21 Ryder van, and in the middle of the day, like something out of  
22 a movie, armed themselves with a shotgun and a handgun and  
23 take over the Cen-Fed Bank in Marina del Rey, as Donte Johnson  
24 jumps on the counter and orders the teller to give him all the  
25 money. And it was Donte Johnson who was caught as the driver

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1 of the getaway van with twelve hundred dollars (\$1200), all  
2 the proceeds from the bank robbery in his pocket.

3 August 14th, 1998, was not just a bad night, it was  
4 a consistent night for Donte Johnson. And you saw Derrick  
5 Simpson come and testify. May 4th, 1998, he places a gun  
6 inches from the face of Derrick Simpson and pulls the trigger.  
7 And you saw the devastation in Derrick Simpson, a man who is  
8 now confined to a wheelchair for the rest of his life because  
9 of the person seated in this courtroom.

10 It was Donte Johnson who, after Derrick Simpson fell  
11 to the ground face down, stepped over Derrick Simpson just  
12 like he stepped over Peter Talamantez, Jeff Biddle, Matt  
13 Mowen, Tracey Gorringer, and it was Donte Johnson who fired  
14 another shot into the back of Derrick Simpson just like he  
15 fired gunshots into the boys in this case.

16 And I ask you to punish Donte Johnson not for the  
17 color of his skin, but for the content of his character, a  
18 character that enables him to do the acts that he's committed  
19 that date back nearly ten years.

20 And I wonder if Derrick Simpson felt like a victim  
21 because we've heard that Derrick Simpson used drugs, and I  
22 wonder if he feels like a victim now, confined to a wheelchair  
23 for the rest of his life? Or do we accept what Mr. Figler  
24 said is true and conclude that Derrick is no victim simply  
25 because he made bad choices?

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1           Darnell Johnson, August 4th, 1998, you now know that  
2 not only was August 14th, 1998, the first crime Donte Johnson  
3 committed, it wasn't even the first murder that this man  
4 committed, as he and his companions, Terrell Young, the co-  
5 defendant in this very case, go to the Thunderbird Motel to  
6 seek revenge from Darnell Johnson who stole two hundred  
7 dollars (\$200) worth of crack cocaine as they choke him to  
8 death with a bed sheet and place his body in the trunk of his  
9 own car and dump him somewhere near the Speedway. And I  
10 wonder if Darnell Johnson felt like a victim because we know  
11 that he, too, used drugs.

12           And do we discount that crime, according to Mr.  
13 Figler, simply because Darnell Johnson chose to use drugs, or  
14 do we punish Donte Johnson for his criminal conduct despite  
15 the fact that his victims used drugs?

16           And we understand, as we looked at his criminal  
17 history, that his conduct continues to escalate from a bank  
18 robbery to an attempt murder to a murder. And ultimately,  
19 until we get to August 14th, 1998, when he commits a quadruple  
20 homicide. And I ask you, is life in prison sufficient for  
21 Donte Johnson or is something more required when we understand  
22 the crimes he's committed throughout his life?

23           On behalf of the State of Nevada, I call upon your  
24 good judgment, as Judges who have been selected, chosen by  
25 members of this community and by the citizens of this state,

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1 chosen to administer laws and dispense punishment every single  
2 day, and we call upon you to punish Donte Johnson, not based  
3 on the color of his skin, but based on the content of his  
4 character and for the crimes that he has chosen to commit that  
5 date back nearly ten years.

6           What is justice but that every man get his due, and  
7 what is due Donte Johnson? And I submit to you that Donte  
8 Johnson is due the death penalty, not for the color of his  
9 skin, but for the crimes he's committed since 1993, and for  
10 the crime he committed on August 14th, 1998.

11           Thank you.

12           JUDGE SOBEL: Thank you, Robert.

13           Dayvid, when you're ready.

14                   DEFENDANT'S CLOSING ARGUMENT

15           MR. FIGLER: Your Honors, during the opening  
16 statement I said some regrettable things about the four  
17 victims in this case. There are four victims in this case. I  
18 tried to apologize to the families of these young men, but I  
19 guess it wasn't the right time to do that.

20           I said some regrettable things about four young men  
21 that I know precious little about, except that, which I've  
22 read I've reports and testimony that doesn't reflect the  
23 character of these four men, I'm sure, and in some respects, I  
24 guess it's my job, as a defense attorney, to pour through  
25 records, to find those things about individuals that do, in

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1 fact, distinguish them from purely random, and for lack of a  
2 better word, innocent parties, and I found some things in that  
3 record to try to convince you that this is not a death penalty  
4 case. And in the process, I realize that my actions added to  
5 the suffering of these young men's families. A suffering that  
6 should never be. A suffering that I certainly wish wasn't  
7 there or that could be gone.

8 About a year and a half ago, I was in a nightclub  
9 here in Las Vegas and some people who I met indicated that  
10 they knew some of the victims in this case. And what they  
11 told me was that they were great guys. That these people I  
12 met were deeply saddened by the deaths of these young men.  
13 They didn't talk about the things that I referenced in my  
14 opening statement. Why would they? Why should they?

15 These people in the nightclub asked me if I was  
16 representing the people who were accused of the killing, and I  
17 said, no, because at that time I wasn't, not yet. They said,  
18 good. The conversation moved on. And at that time, I didn't  
19 know John White. I said, good, too. Now I know John White.  
20 I've talked at length with John White, and I think, as much as  
21 human being can, I've begun to understand the limitations on  
22 his ability to grow or know how to turn his life around to  
23 this point. And now I know that it is good that I represent  
24 him, for despite the terror that he has been a part of, there  
25 is a person there to be saved.

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1           There's another case in our office, in the office of  
2 the special public defender, where I know -- knew the victim.  
3 I had many conversations with that individual, that victim.  
4 Ran into him a couple of days after the birth of his child and  
5 we have many friends in common, and because of that  
6 connection, I am walled off in my office from his case. I  
7 don't have to represent that person accused of murder. It's a  
8 capital case. And if that case goes to trial, it, too, will  
9 be a full courtroom, and if I choose to watch, which I  
10 probably will, I will witness my colleagues, most likely get  
11 into a discourse on probable other suspects, likely based on  
12 the lifestyle of my friend. And while I'm sure most of what  
13 they'll say is true, I certainly don't want that individual  
14 remembered for the negative things in his life.

15           As has been stated in this courtroom, we all have  
16 done negative things in our life, but I will probably be in  
17 the minority in that courtroom, in that audience. I'll be  
18 asking for a conviction if the evidence supports it, but also  
19 fully understand that what is being done is only being done in  
20 the name of justice for that defendant, because the death  
21 penalty is as loaded as any gun is. That the seeking of the  
22 death penalty by a state that allegedly represents all  
23 citizens of the state, forces a debate of philosophy, of  
24 religion, of morality and law. That the imposition of death,  
25 from one human being to another, in the name of the citizens

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1 is fraught with the same vulnerabilities and flaws that each  
2 of us as humans are created with. And until we can show that  
3 we are infallible in judgment, we must not engage in a course  
4 of conduct where our bad judgment results in a human being's  
5 life. Results in death.

6 I don't know, Your Honors, why any young person  
7 would inject themselves into this crazy world of drugs and  
8 violence, especially if those young people would have all this  
9 love and support from their families? All this respect. Why  
10 would they?

11 I wish that this crazy world of drugs and guns and  
12 violence did not exist. I wish that world doesn't impact my  
13 world where I'm safe in my apartment far away from it all. I  
14 wish that world wouldn't affect my friends. I wish that John  
15 White never met these boys. I wish that these families could  
16 take their children into their arms and take them away from  
17 all this, to bring them back, that John's family had the  
18 skills and the resources and the chance to do the same.

19 I wish that Jane Edwards, who you saw here, had  
20 twenty arms to hug all her children, but she only had two. I  
21 wish that none of these people that we've been talking about  
22 was introduced to that crazy world.

23 If I had to represent a boy who was accused of  
24 selling drugs, whatever they be, to another boy who overdosed  
25 or died as a result of using those drugs, I'd do whatever I

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1 could to ensure that a fair penalty was imposed, no matter  
2 what the clamor for the maximum sentence was. And I'm sure  
3 that my client's family would appreciate that, to ensure that  
4 the crazy world of drugs does not take another casualty. And  
5 I may be saying regrettable things, and I may have said  
6 regrettable things, but I will never advocate my important  
7 role in this process.

8           After listening to Carla Severs testify, after  
9 seeing a seemingly clean-cut lad like Bryan Johnson talk about  
10 his ascent into this crazy world, I think we were all sickened  
11 by the prospect. I think we weep for all of our children.  
12 And then it goes too far, and the plot and plans, not of three  
13 boys, but of five boys, Sikia Smith, Terrell Young, John  
14 White, Tod Armstrong, and Ace Hart. These plans go horribly  
15 awry and young men with potential become casualties.

16           And I think we all want this suffering to end. We  
17 want the suffering to end for the victims' families. At the  
18 same time, we don't want to impose suffering on John's family,  
19 and there is one way to do that today. The way to end the  
20 suffering from everyone is to give John a life sentence.  
21 Simply stated, a life sentence ends it. No more hearings, no  
22 more waiting, no more torture, no more killing and no more  
23 death.

24           You may or may not find aggravators in this case. I  
25 suggest that you will find a multitude of mitigating factors.

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1 I'm sure you'll analyze these factors in accordance with the  
2 law, but the law says you don't have to give death even if you  
3 found a hundred aggravator. Even if you found no mitigators.

4           The prosecutors say that not everyone who has had  
5 the life that John White has, have gone out and committed  
6 multiple homicides. I suggest to you that many have. I  
7 suggest to you that if you were to pluck an individual out of  
8 South Central LA, who had the same limitations and life  
9 experiences as John White had and put them in that situation  
10 -- this situation, that the results would most likely be the  
11 same.

12           Should he have been in that situation? Should he  
13 have done those things? Of course not. No one is condoning  
14 that behavior. But is he distinguished from those other  
15 individuals? I'd suggest common sense says, no.

16           The District Attorney of Clark County, Nevada,  
17 himself, in this very courtroom, seven days ago asked for the  
18 death penalty, and he got it. He said that that defendant  
19 deserved the death penalty because it wasn't a dope deal gone  
20 bad or a robbery gone violent. He distinguished, himself,  
21 death cases, from those that are not death cases. And his co-  
22 counsel, the chief deputy of the major violators, of the  
23 murder team in Clark County, argued that that defendant didn't  
24 have real mitigation, mitigation that the chief deputy listed,  
25 poverty, mother on drugs, father in prison, no chance at real

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1 life. The State therefore concedes that cases where that type  
2 of mitigation exists distinguishes the imposition of the death  
3 penalty. They concede that mitigation in this case exists  
4 overwhelmingly.

5 The prosecutors are calling for death, but are they  
6 really thinking of justice? Well, just last week in another  
7 courtroom in this courthouse, Mr. Daskas and his co-counsel,  
8 Stacy Collins, called the defendant in that case --

9 MR. GUYMON: Judge, I'm going to object to facts  
10 that are not in evidence. We're not going to try --

11 JUDGE SOBEL: Well, you know, this is a little  
12 different. There are no rules for it. It's not like arguing  
13 in front of a jury, and it's the sort of things that we hear  
14 all the time in sentencing. Go ahead.

15 MR. FIGLER: They called that defendant the worst of  
16 the worst.

17 MR. DASKAS: I'm going to object, Judge, because  
18 that is not what happened. That is mischaracterizing the  
19 argument in that case.

20 MR. SCISCENTO: It was stated in the RJ, Your Honor,  
21 in the caption.

22 JUDGE SOBEL: Oh, boy, now there is an infallible  
23 source.

24 MR. SCISCENTO: That's what they tell me.

25 JUDGE SOBEL: Why don't you have Gary address it.

1 As I said, it's not -- you know, although this is called a  
2 penalty hearing and we are now taking the place of a jury, it  
3 is still the sentencing proceeding. And in front of judges,  
4 we hear all sorts of things that a jury might not hear.

5 Go ahead, make your arguments and they can rebut it.

6 MR. FIGLER: Your Honor, the point is that the  
7 prosecutors in Clark County have lost their credibility. They  
8 gave a well educated, upper class white man who raped and  
9 killed an innocent eight year old black girl the chance at a  
10 life sentence, but not John White. They have already received  
11 the accountability that they have sought by way of jury  
12 verdict. John White will be severely punished. If they want  
13 swift justice as they proclaim, they should be advocating for  
14 the very serious and very real punishment of life in prison.

15 And the same goes for this three judge panel. The  
16 moral buck, it stops here. If you want justice to be imposed  
17 now, then now you must impose life. Start the real sentence  
18 for this man.

19 It has been suggested to me that there may be a  
20 thought that what you, as a three judge panel do today is  
21 meaningless, that the constitutionality of even this three  
22 judge panel is tenuous, that it may all be called back some  
23 day, but for the sake of the families and for the sake of the  
24 families of John White, don't make everyone go through this  
25 yet another time. I pray that that is not a thought amongst

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1 this three judge panel, that you end this now with the  
2 appropriate sentence. And there is no way you can say death  
3 is the only appropriate sentence.

4 If you think that this process that we're doing  
5 right now, is in any way unconstitutional, you have a duty to  
6 impose a sentence other than death.

7 Justice Harry Blackman, who is a long time supporter  
8 of the death penalty, in 1994 had an epiphany. He said:

9 "From this day forward, I shall no longer tinker  
10 with the machinery of death. I feel morally and  
11 intellectually obligated to simply concede that the  
12 death penalty experiment has failed. It is  
13 virtually self-evident to me now that no combination  
14 of procedural rules or substantive regulations can  
15 ever save the death penalty from its inherent  
16 constitutional deficiencies."

17 Good Judges, if you in any way think that this  
18 procedure we're doing today may some day be considered  
19 unconstitutional, please do not tinker with John White's life.  
20 Do not tinker with these families life with the hope that a  
21 reversal of the law someday will cross the finish line before  
22 John White is executed. If any of you think that you should  
23 not be doing even this procedure, then stop the potential  
24 killing machine now.

25 I suggest that if one person comes forward saying,

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1 do not kill John, you must give that position credence. You  
2 had a succession of people, related, not related, people who  
3 work in the prison. You had a jury, and that jury was in the  
4 position to give death or not, and we know there was voice in  
5 that jury room that said, death is not the only appropriate  
6 sentence. There was a jury of peers, of community members in  
7 there, who failed to reach to required unanimity of thought  
8 that death is the only appropriate sentence. That voice of an  
9 alternative must be given credence by this panel. That voice  
10 of death penalty opponents must be given credence. That voice  
11 of morality and mercy and the world of theology must be given  
12 credence that death is not appropriate.

13 Judge Sobel, I have been in this courtroom when  
14 others facing the death penalty have been combative with you,  
15 have shown disrespect to you, have shown disrespect to the  
16 authority of this courtroom, of the law inside this courtroom.  
17 That's not John White. You've observed John White. You've  
18 observed John White and can compare him to the others that you  
19 have seen, as they behaved, as they respect in the courtroom.  
20 John White did not attempt to attack this Judge and jury  
21 during the trial.

22 John White has never physically touched a  
23 corrections officer, let alone choke one. John White has not  
24 pulled a gun on an officer. You heard testimony that Terrell  
25 Young did. Terrell Wright [sic] has not struck his attorneys,

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1 he has shown respect for everyone in this process at this  
2 point. John White did not have to be equipped with a stun  
3 belt, and that stun belt did not have to be engaged.

4 The state talks about John being the shooter, but  
5 I'd submit to you that if the prosecutors were so confident  
6 that they could prove, beyond a reasonable doubt to a jury,  
7 that John White was the shooter and sole shooter, that they  
8 could have charged him in a way that would have removed all  
9 ambiguity from a jury's verdict. He could have been charged  
10 as the sole shooter. And if they felt so confident they could  
11 have proved it, they should have, but they didn't. For  
12 whatever reason, they did not, and now therefore, they cannot  
13 say that he was the shooter.

14 Terrell Young did not get the death penalty. Sikia  
15 Smith did not get the death penalty. Tod Armstrong and Ace  
16 Hart have not even been charged in this case. John White may  
17 be eligible for numerous punishments, but if something other  
18 than death can fit, then that must be imposed.

19 The prosecutors have introduced evidence that has  
20 nothing to do with aggravators or mitigators. Bad character  
21 evidence, most of which has not been charged. How fair is  
22 that in our system of justice?

23 Additionally, two of those acts allegedly involved  
24 Terrell Young. And apart from the bank robbery there, when he  
25 was sixteen years old, and the State concedes it did not have

1 the weapon, the one thing that this whole Snoop affair, if  
2 believed, and Derrick Simpson has is, yes, indeed, it involved  
3 that crazy world of drugs and violence. And if John is  
4 charged or convicted of any of these offenses, I'm sure he  
5 will be punished and punished appropriately. But to punish  
6 him twice?

7           There's been discourse in the public that a majority  
8 of Americans support the death penalty. I've heard the  
9 statistic range from 60 percent to two-third of the  
10 population. I read yesterday in the paper that Nevada's  
11 population is up to 2 million already. I guess that means  
12 that about six hundred to eight hundred thousand people in  
13 Nevada don't think that John White should be killed. I  
14 suggest that if one person says that they recognize the  
15 precious gift that God has given John White, that to kill that  
16 human being is not the right thing to do.

17           Now there are tales of God extinguishing entire  
18 cities when three good men could not be found. Three men  
19 willing to uphold his law, to uphold his commandments. And I  
20 stand now before three men telling you that I know the man  
21 whose life you can extinguish is a power that only God should  
22 have.

23           I stand before you three men and I know that you  
24 will not succumb to the pressures of the majority and kill, to  
25 show that killing is wrong, that you will dig deep into your

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1 core values and recognize that even the consideration of the  
2 death penalty is clear evidence that we have lost our struggle  
3 with violence, that we have been seduced by violence, that our  
4 culture is so thoroughly saturated with violence, that even as  
5 we all suffer from it, consider ourselves victims of it and  
6 hate it. That we nonetheless believe that it is redemptive,  
7 that it can make bad situations better, that it can achieve  
8 the goals we desire. Violence is so persuasive that we are  
9 blind to any other alternative.

10 Judges, are we somehow convinced that the evil that  
11 is destroying us is the very power that can somehow save us?  
12 Violence is a lie. Violence is an idol that cannot create, it  
13 can only destroy. It feeds on itself and produces only more  
14 violence. When we are violent, all we touch with it is  
15 injured. There is no healing when the cycle of violence is  
16 perpetuated. Nothing is restored to the way it was. When we  
17 are violent, whether as individuals or as a society, our very  
18 souls are assaulted, poisoned and wounded.

19 You are now asked to pull the lever on John White's  
20 life. And I ask you to ask yourselves, would the people that  
21 you respect in the world, whoever they be, your clergy, the  
22 great leaders in history, Gandhi, Mahatma Gandhi, Martin  
23 Luther King, Jesus, would they sign the death warrant? Would  
24 they vote for death?

25 John White deserves to be punished, there's no doubt

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1 about that. John White also deserves the ability to repent,  
2 to turn his life around, to be a better person than he was,  
3 and if that must be done in the confines of a maximum security  
4 prison for the rest of his natural life, so be it. That's why  
5 we have maximum security prisons.

6 We need to pray for the healing of the victims'  
7 families in this case. And we need to pray for John's family.  
8 And instead of vengeance, instead of another life sacrificed,  
9 we need to pray for John's redemption, and that would be for  
10 the redemption of us all.

11 JUDGE SOBEL: Thank you, Dayvid.

12 Joseph, what would you like to add.

13 MR. SCISCENTO: Some heat to the room.

14 JUDGE SOBEL: What?

15 MR. SCISCENTO: Some heat to the room.

16 (Off-record colloquy)

17 JUDGE SOBEL: Joe, why don't you just wait a minute  
18 or two and see how long the facilities takes to get here and  
19 play around with our aging systems.

20 (Pause in the proceedings)

21 DEFENDANT'S CLOSING ARGUMENT

22 JUDGE SOBEL: Go ahead.

23 MR. SCISCENTO: May it please this Court, opposing  
24 counsel. Your Honors, we're here today -- reality is one of  
25 you has made a decision to kill John White, one of you is

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1 afraid to make that decision and one of you has an open mind  
2 and a compassionate heart. Without any notes, I will speak to  
3 that person.

4           The reality of this, killing a man will end the  
5 suffering. Killing a man will bring back our loved ones.  
6 Killing a man will end the violence of this world, I submit to  
7 you, kill me because I can think of no greater cause to die  
8 for than peace on this earth. I speak no more truth than I've  
9 spoken this very moment, and that cause I'd be glad to go for.

10           I know what it's like to be angry. 90 percent of my  
11 life was consumed by anger and hatred. And many a times I  
12 wanted to pull a trigger. No matter what I achieved in my  
13 life, anger consumed me.

14           The statement I made about killing me may seem  
15 absurd, but it is no more absurd than to think by killing him  
16 something will change. The absurdity of teaching somebody  
17 that killing is wrong by killing them. It's irrelevant, it's  
18 apparent right there. It doesn't change anything. It never  
19 has. Twenty-five years ago we implemented the death penalty  
20 and nothing has changed.

21           I say hate consumes and Mr. Figler mentioned it. I  
22 know about the hatred. There was one point when I forgave  
23 three years ago and my life has changed and I know that. And  
24 I only speak of Spain as the most beautiful place in the  
25 world, it's because that's when I finally learned to forgive

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1 and finally felt love and peace. And I sit here and tell you  
2 what I felt must be felt by all. It has to, because it frees  
3 you, it changes you, and I know that, and I'm here to beg for  
4 a man's life. I'm here to ask you, please do not kill and  
5 that one of you is going to help me.

6 We're here to talk about mitigators, I'll get back  
7 on the subject on that. You know about aggravators and  
8 mitigators. Did we really think, having him born in a life  
9 that he had that anything different was gonna happen. I mean  
10 for God's sake, he lived in a shack with twelve people. No  
11 running water, no electricity. I thought I had a tough life,  
12 and we all think we have tough lives, but that's got to be a  
13 mitigator. It's not excusing, you know this. It's not  
14 excusing the deaths or his guilt. It doesn't excuse that.

15 The jury has spoken and found him guilty. The jury  
16 has spoken and said that these four victims are worth  
17 something. The decision today is whether or not he is to die.  
18 That's all it is. And there are many mitigators to look at.

19 He was forced to join a gang because the one cousin  
20 that he looked up to, that helped him raise his siblings, was  
21 going to be raped. Now that may seem absurd to you, but none  
22 of you have ever been down to 101 Street, 101st Street and  
23 Central Avenue, 96th and Watts, Figueroa and 98th Street,  
24 maybe even 28th and Stewart. We're trying to put our minds  
25 into the mind that he grew up in. The place that he grew up

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1 and we can't.

2           There's no way in the world that we can understand  
3 that, but it happens. The reality is that he -- where he was  
4 born, where he grew up, there's a hundred more like that.

5           And we dress ourselves up in suits and black robes  
6 and uniforms and we meet him at the end of the line and we  
7 say, for the good of society, we kill him. The good of  
8 society? Maybe if we started back here. Maybe if we'd of  
9 started back here, he's not going to be the president of the  
10 world back here, there's no doubt. Maybe if we'd of started  
11 back here, we could have stopped this. I don't want to see  
12 anymore killings. I don't want to live here because I don't  
13 like the killings. I've seen what I want to be. I don't want  
14 to see any more killings.

15           I would stand on any corner, anywhere in this world  
16 and say, stop the killing, and that is what I'm doing here  
17 today. I don't want death anywhere. That may be a pipe  
18 dream, it might just be a dream that's out there in some fairy  
19 tale, but change something, please.

20           I'm going to be here next week, next year and the  
21 year after that, so will you, and so will they and so will the  
22 detectives and so will the marshals. I'm going to doing the  
23 same thing over and over and over and over.

24           The mitigations he had, Detective Buczek got up on  
25 the stand and talked about being remorseful, remember that?

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1 That slipped everybody's mind, and I wrote it down because it  
2 slipped my mind in the first trial. He said Mr. Johnson was  
3 remorseful. He felt bad. That he was high on drugs. I'd  
4 submit to you that's a mitigator. It doesn't do away with the  
5 killing.

6           Let's look at his life. The totality of his life.  
7 There was other people involved and I know Mr. Figler and I  
8 maybe get upset, we may call it a racist thing, but if you  
9 would have seen, if you would have heard the testimony of Tod  
10 Armstrong when he was here earlier, about this big six foot,  
11 middle class white kid who ran to his mom in Hawaii after the  
12 situation went off.

13           In the transcripts, Severs, Carla Severs says, he  
14 expected cocaine and money from his transactions, but he's not  
15 being charged, and that just upsets us. It's not right. The  
16 world we live in and the world we come from is different.  
17 It's not the world that they see.

18           I go down there and we take pictures and I see the  
19 family, I talk to the family. You want to know an amazing  
20 thing? I went down there to talk to Ms. Edwards and Eunice,  
21 Eunice didn't even show up the two times I went down there  
22 because she was busy getting crack cocaine. And I was at this  
23 apartment and I was talking to the family and asking them  
24 about the life of John, and next door were people playing  
25 music loud. And I went up there and knocked on the door and

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1 showed them my badge and said, listen, I'm talking to these  
2 people, I'm trying to save their son from the death, he's  
3 going in on a trial in a death penalty. Fourteen year old  
4 girl, you know what she said to me? "Fuck him, the nigger  
5 probably did it." I can't comprehend that. As bad as we can  
6 think our lives are, we don't live in that life.

7           If we want to ask for forgiveness, we must give  
8 forgiveness first. Forgive our trespasses as those who  
9 trespass against us. I felt that. We all say we're gonna be  
10 tough on crime and that's a very important thing, right?  
11 We're gonna be tough on crime. It's easy to be tough on  
12 crime. It's easy to hate, I assure you. There are times that  
13 I could hate for the rest of my life.

14           It's easy to be angry. That's the easiest thing in  
15 the world. The hardest thing is to forgive and to move on. I  
16 assure you it was not easy when I had asked forgiveness. When  
17 I had to tell somebody who I wanted to kill, that I forgave  
18 him. That's not easy. But it was worth it. You want to be  
19 tough? Stand up and say, it's time to end the killing and  
20 show forgiveness.

21           Back on the mitigators, Ace Hart, another kid,  
22 another white class driving BMW, driving white kid, who's not  
23 sitting here at the defense table and never will. He's the  
24 one that drove them by this house and showed them where the  
25 drugs were. And that upsets us, too, because this is not

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1 getting down to the end. There are people who are never going  
2 to face the death penalty, people who are never going to even  
3 face a trial, and you want to blame it all on John White. I  
4 mean, there are so many people involved, and it's so easy to  
5 hate him.

6 Ace Hart knew everybody. I mean, the transcripts  
7 show that out. And I ask you, please, a man's life is at  
8 stake. I can't ask any more than this. I can't. I mean,  
9 this is so surrealistic to me, a blue bunting around the  
10 table. The reality is, I'm asking you not to kill and every  
11 couple of minutes it floods my mind. I'm here to say stop to  
12 the killing. I'm here to say don't -- please don't kill.

13 I would have stood at the Terra Linda house and  
14 begged 'em not to kill. I will stand anywhere and ask someone  
15 not to kill because it's not right, no matter what  
16 circumstances, no matter how much we sterilize the situation,  
17 no matter how much we tell those that this is the intellectual  
18 thing to do. We hand down the verdicts and we wash our hands  
19 of it and move on. It doesn't make it right.

20 Not until you can say you tried to do everything to  
21 stop it. Not until you say we went in there at the cradle and  
22 tried to stop it. I defy everybody in this courtroom to find  
23 somebody who needs help at an early age to try to save them.  
24 Maybe that's the thing to do.

25 I'm going to get back on the mitigators. Charla

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1   Severs had motivations, complete motivations herself. We  
2   talked about the DNA stuff and how a vaginal cream was found,  
3   a vaginal semen was found on the outside of the pants and it  
4   contained more than the semen contained. And that was  
5   significant because they're saying that the blood that was  
6   found on the pants came from the victim, but the blood was on  
7   the back of the pants. And the doctor said he shot up close  
8   from an inch away. It is significant because it cannot tell  
9   you, beyond a reasonable doubt, who the shooter was, which  
10   acts as a mitigator, because we know three other people were  
11   there.

12           The DNA evidence that was there is very important,  
13   and I'd ask you to please review it, it was the last testimony  
14   given, it was by Mr. Wahl. And you'll see the significance,  
15   and you as lawyers and now as judges have had to argue issues,  
16   and so, it makes it easier. So, I'm asking you, don't rush to  
17   judgment. Don't rush to judgment on this.

18           Does it matter if you wait long, another day to  
19   review the transcripts and to argue it out as attorneys would?  
20   That's all I'm asking you.

21           Ms. Hunterton got up here and she testified. She  
22   said how well he did when he was in this program. Also on  
23   evidence that we submitted, Mr. White did well in custody. In  
24   a structured environment, he did right, he did well. And they  
25   took him away from that, that program in prison because he had

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1 too much Jello or he gave Kool-Aid to somebody else. The  
2 infractions he had was he called a guard a dirty name or  
3 something to that effect. There's no violence there, and  
4 that's important.

5 At twenty-one, I acted and thought as a child, at  
6 thirty-five, I put away those childish things and started  
7 thinking like a man and taking responsibility. And I'm paying  
8 for the past mistakes, but to think that we can place him in  
9 the death penalty and hold him to the high standard that you  
10 hold everybody else to is ridiculous because we're all to  
11 blame for things like this. It may sound absurd, society is  
12 to blame for him? Until you take a step to correct it, until  
13 you do everything you can to stop it, we have no right to  
14 condemn.

15 I stand before you after rambling -- closing  
16 argument I think you know about. It would be easier to read  
17 off a paper. This is coming from the heart. I don't want the  
18 killing to continue. I cannot say that enough. And when I  
19 sit down, the district attorney gets up and he makes a  
20 statement. And I go back and the verdict comes down. There's  
21 one of you amongst the three who knows killing is wrong. Who  
22 knows it's not going to change anything. I'm asking you to  
23 act in the present, there are mitigations and mitigations.  
24 I've been sent here to save a man's life and so have you. You  
25 know who you are and why we're here. Please, please do not

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1 kill. Please.

2 JUDGE SOBEL: Thank you, Joe.

3 Gary?

4 MR. GUYMON: Thank you.

5 PLAINTIFF'S REBUTTAL ARGUMENT

6 MR. GUYMON: Let me begin in addressing Mr. Dayvid  
7 Figler's comments as well as Joe Sciscento's comments on the  
8 charging document, the indictment in this case. It is  
9 certainly true that when this case was presented to the grand  
10 jury, that there were a number of theories of criminal  
11 culpability that were charged against Donte Johnson. He was  
12 charged with premeditated and deliberate murder of these four  
13 boys, he was charged as a co-conspirator as well. He was  
14 charged with being an aider and abettor. Under three theories  
15 of liability he was charged.

16 But at no time has the state proceeded with any  
17 other theory, other than the fact that Donte Johnson is the  
18 killer. It is plain and simple. At no time in the case of  
19 Terrell Young or in Sikia Smith did the state allege that  
20 Sikia Smith or Terrell Young were the killer.

21 At no time in the proceedings of the guilt phase was  
22 it suggested that anyone other than Donte Johnson was the  
23 killer in this case. Whether or not we charge the defendant  
24 with three theories of criminal culpability should have no  
25 consequence in your mind because it is the testimony and the

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1 evidence that establishes that Donte Johnson was the killer,  
2 and I renew my request for each of you to consider the  
3 testimony of the four lay witnesses. You've now read it, and  
4 what you now know is the quotes that appear on this board are  
5 the very quotes that came into evidence before the jury.  
6 Donte Johnson is the killer in this case. He is the sole  
7 person who used that single .380 weapon and who stood over  
8 those boys and lodged a bullet in their head as they lie there  
9 helplessly. Pow. Pow. Pow. Pow.

10           And for a moment, we begin to understand how real  
11 the crime was, and you know from the evidence who the killer  
12 was, and it should be of no consequence that there is blood on  
13 the back of Donte's pants versus the front of Donte's pants,  
14 because if you reason through the evidence and you see the  
15 diagram, what you know is that the door to the house is behind  
16 Donte Johnson. So, if Donte Johnson walks out of the house as  
17 he shoots one, two, three, four, he never turns his back on a  
18 person that would be bleeding.

19           But if you use your common sense, what you realize  
20 is the door is now behind us and the first boy's shot and the  
21 second boy's shot, and to get to the door, you need to talk  
22 behind the dead person, the person that you've now shot and  
23 killed. And so, Donte Johnson had to shoot, turn his back on  
24 Tracey Gorringer to get to the door unless he walks out  
25 backwards. But to navigate that walk over bodies, he's got to

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1 face the door. And when he turns his back on the man he's  
2 killed, he gets blood on his pants. On no one else's pants,  
3 not on Terrell Young's pants, not on Sikia Smith's pants was  
4 blood found, the blood of Tracey Gorringer, but on the  
5 defendant's pants because he is the man who stood over those  
6 boys and shot and killed them.

7           None of the evidence suggests that anyone other than  
8 Donte Johnson is the killer in this case. And while we hear  
9 at great lengths that killing is wrong, what we also know, as  
10 in the state of Nevada, there is a death penalty. And each  
11 you have taken an oath that you will uphold the law. And the  
12 law permits you to consider the death penalty because of the  
13 aggravators that are present, and I would suggest to you that  
14 all three of those aggravators are present as established by  
15 the evidence in this case. And so, so long as it is the law  
16 that you can consider, we ask you to consider it, and we call  
17 upon your oath to consider it.

18           Each of you know something about proportionality and  
19 we've heard a lot about other people that have gotten it,  
20 we've heard about people that haven't got it. I want to talk  
21 about proportionality just for a minute because, as each of  
22 you know, somehow there's got to be meaning in the sentences  
23 you hand down, and you do it everyday. That some people that  
24 stand before you deserve the maximum punishment, whether  
25 that's a term of years and how long that term of years is, is

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1 what the statute provides.

2 And each of you have got to fix, in your mind, who  
3 should get the maximum punishment, which offenders. For  
4 instance, for a burglary should get a four to ten year  
5 sentence, and which that do a burglary should only get a one  
6 to four year sentence or whatever the range might be. And I  
7 ask you, has Donte Johnson earned the maximum sentence because  
8 of his conduct?

9 If Terrell Young, from a jury, received life without  
10 the possibility of parole times four, for his participation as  
11 he searched that house, what should the killer get? Should  
12 the killer get something more than Terrell Young got? Or  
13 should the actual shooter be rewarded with the same thing that  
14 the person who searched the house did?

15 If Sikia Smith got life without the possibility of  
16 parole times four, for his participation as he searched the  
17 bedrooms, shouldn't the killer receive something more?  
18 Shouldn't the very man that stood over those boys and from  
19 close range chose to fire that weapon, chose to kill them,  
20 shouldn't that man get something more if we're going to be  
21 just and fair in the administration of punishment? I suggest  
22 we should. I suggest the killer should get something more  
23 than those who didn't shoot and kill.

24 And I would submit to you that that is why there is  
25 a range in punishments, and we call upon your judgment to

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1 apply that range and what Donte Johnson should receive for his  
2 participation.

3 I would submit to you that quadruple homicides are  
4 not all that common here in Clark County. And I understand  
5 the Court, Judge Sobel, has sat through a number of quadruple  
6 homicide cases. Visha [phonetic], who the Court is very  
7 familiar with, did not receive the death penalty for a  
8 quadruple homicide, but the death penalty was not the law at  
9 the time, we didn't have the death penalty in our state at the  
10 time that Visha was tried for a quadruple homicide.

11 The Smith case, which was tried in this Court, was a  
12 quadruple homicide, I believe, and Mr. Smith received the  
13 death penalty.

14 JUDGE SOBEL: It was only three, Gary.

15 MR. GUYMON: I stand corrected. He still received  
16 the death penalty.

17 I know for certain that part -- or the Evans and  
18 Parnell [sic] case, is it Parnell Evans? Or Evans was a  
19 quadruple homicide tried in this courtroom, he received the  
20 death penalty. Floyd tried in this courtroom, quadruple  
21 homicide, received the death penalty. Those are the only  
22 quadruple homicide cases that I'm familiar with in Clark  
23 County, Nevada. Donte Johnson now has the distinction, along  
24 with the others, of being responsible, being the actual killer  
25 in a quadruple homicide, and I would submit to you, when you

1 apply a proportionality, that Donte Johnson deserves the same  
2 punishment as the others that have gone forth who committed a  
3 quadruple homicide.

4           There is a continuum that one must apply in order to  
5 pick the sentence that fits, and I would submit that Donte  
6 Johnson has truly earned the distinction that permits the  
7 maximum sentence. This was not an isolated incident, this was  
8 not a moment in time where Donte Johnson just did something  
9 that was inconsistent with his conduct, but rather, it is the  
10 culmination of his conduct that brings him in front of you,  
11 accountable for the homicides and worthy of the death penalty,  
12 truly worthy for shooting and killing those boys.

13           And I submit to you it is painfully unfair for  
14 Terrell Young and Sikia Smith to receive -- or for Donte  
15 Johnson to receive the same punishments that they got when  
16 they weren't the shooters, and so, I ask for a just sentence  
17 and proportionally applying the punishments here.

18           Much has been made about the fact that Tod Armstrong  
19 and Ace Hart haven't been charged nor have they, however,  
20 received any immunity. And if there is sufficient evidence  
21 that would truly bring about a conviction for either one of  
22 them, they, too, will be charged and they will be accountable  
23 for their conduct. And a jury will have to make a  
24 determination as to whether or not their conduct gives rise to  
25 their guilt or their innocence.

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1 But I would submit to you that Tod Armstrong, by --  
2 there is no evidence nor is there any account of the fact that  
3 Tod Armstrong was there that night. You've read the  
4 transcript and you realize that Charla Severs, who once said,  
5 hey, Donte was there, but Tod Armstrong was there, too, she  
6 testified to that in front of the grant jury the second time  
7 she appeared in front of the grand jury, but ultimately, she  
8 recanted and said, no, that's not true. I'm just upset that  
9 Tod Armstrong is not being punished, because after all, he was  
10 in on the planning of this.

11 Tod Armstrong, by his own admission, says, I went by  
12 the house and the house was pointed out at that point in time.  
13 Is that sufficient evidence to merit a criminal conviction? I  
14 don't know that it is.

15 Is Ace -- Ace Hart's participation, the fact that  
16 Tod Armstrong says that he was in the car and that Ace Hart  
17 pointed out the house, is that sufficient to bring about a  
18 criminal conviction for four homicides, kidnapping, robbery  
19 and burglary? And I don't know that it is.

20 Well, what we do know is that Ace Hart and Tod  
21 Armstrong were not in the house on the night in question.  
22 They were not the searchers, they were not the persons who  
23 took the property out of the house and they certainly weren't  
24 the killer. They were not the sole person who shot and killed  
25 those boys and sent them into eternity.

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1           Something was said about my partner's last  
2 prosecution, Fernando Hernandez. Again, using a continuum of  
3 proportionality, some of you who are not from our jurisdiction  
4 should know that -- or do not know but may know now, after I  
5 tell you, that Fernando Hernandez was a person who had no  
6 criminal background, there was one victim, his ex-wife, and he  
7 got the death penalty.

8           And in that case, I attended the closing arguments,  
9 and Mr. Daskas did not say that Fernando Hernandez was the  
10 worst of the worst. He said that his conduct was the worst of  
11 the worst as he displayed a picture of the ex-wife, the  
12 victim, who now had a butter knife lodged up inside of her  
13 vagina on the 8th -- the day of their 8th anniversary. That  
14 conduct would be among the worst of the worst, but at no time  
15 did Mr. Daskas indicate that that defendant was the worst of  
16 the worst because he had no criminal background.

17           That is very unlike Donte Johnson, however. Donte  
18 Johnson's criminal career, and perhaps the day of August 14th,  
19 1998, was forecast in the presentence investigation report you  
20 people have now received. You will read in the presentence  
21 investigation reports, as a result of his federal bank robbery  
22 at page 12, the writer of that report indicated that Donte  
23 Johnson displayed no remorse for his criminal conduct. At  
24 page 13, that he had no respect for authority. At page 14,  
25 that the rehabilitation efforts of the state of California

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1 have failed. That his grandmother couldn't control him at  
2 page 12. Nor could the criminal justice system control him,  
3 at page 12, 13 and 14.

4 And perhaps in 1993, there was a forecasting or a  
5 prediction that Donte Johnson would sit in this courtroom or  
6 in a courtroom for yet greater criminal offenses.

7 And while Mrs. Hunterton would like to change Donte  
8 Johnson's conduct, there is no promise that she or anyone else  
9 can change his conduct, and I would submit to you that the  
10 testimony that was submitted to you by Agent Clark certainly  
11 makes that clear as does the defendant's prior presentence  
12 investigation report, because the state of California  
13 attempted, in every way, when they sent him to the youth  
14 camps, when they sent him to the California Youth Authority,  
15 they attempted to re-program him, to have him engage in  
16 courses that would rehabilitate him, and he thumbed his nose  
17 at them.

18 The first time, he elected, while on probation and  
19 while receiving that programming, he elected to bring a  
20 handgun to a school and re-violates. And yet while on  
21 probation, he elects to join his partners and go into a bank  
22 and do a federal bank takeover. He's placed into custody in  
23 an incarceration position for twenty-six months, and he's  
24 released, and then for four months, while he continues his  
25 programming, he does well, but thumbs his nose at that --

II-133

1 those rehabilitation efforts when he ultimately becomes a  
2 parolee at large and tells his parole officer, you'll never  
3 find me.

4 Well, the criminal justice system found Donte  
5 Johnson. Donte Johnson found Peter Talamantez, he found Matt  
6 Mowen, he found Tracey Gorringer, and he found Jeffrey Biddle.  
7 A jury has found that he is guilty of those crimes, and the  
8 evidence establishes him and only him as the killer in the  
9 case.

10 What is justice but that every man get his due. I  
11 submit to you that it is painfully unfair for the non-shooters  
12 to receive the same penalty as the shooter. The shooter in  
13 this case has earned the dubious honor of the maximum penalty,  
14 the harshest penalty that the state of Nevada has, and while  
15 some may not like the fact that in this state we have the  
16 death penalty, the truth is, we do.

17 And I would submit to you that the harshest penalty,  
18 the most severe penalty, is due the defendant for a horrific  
19 offense, an offense wherein boys were held helplessly in their  
20 own home, where they were shot and killed for as little as two  
21 hundred and forty dollars (\$240). The transcript reads, as  
22 much as two hundred and fifty dollars (\$250) at times by Bryan  
23 Johnson, a VCR and a PlayStation.

24 While the defense would have you believe that  
25 somehow Donte Johnson had some remorse when he said, I felt

1 bad about killing Tracey Gorringer because Tracey Gorringer was  
2 cooperating. The truth is, he laughed about these killings as  
3 he talked about how these boys bled like Niagara Falls or  
4 blood squirted out of their head like Niagara Falls; as he was  
5 excited to have made the front page, thrilled by the killings.

6 I submit to you, that very man, Donte Johnson,  
7 deserves the harshest penalty, and we ask you to impose it.

8 JUDGE SOBEL: Thank you. Anything more to come  
9 before the Court before we recess for deliberations?

10 MR. FIGLER: I have those copies as promised, Your  
11 Honor.

12 JUDGE SOBEL: Thank you.

13 MR. FIGLER: I'd like to mark it.

14 JUDGE SOBEL: Okay. We're going to be in recess.  
15 By the way, guys, make sure that Carol knows where you are.  
16 We have sort of tentative plans for the rest of the time, but  
17 make sure we know where to reach you in case we decide to go  
18 through the lunch hour. Okay.

19 MR. FIGLER: I give you these --

20 THE COURT: Carol, bring us those when you're -- are  
21 they ready?

22 (At 11:25 a.m., the Judges retire to deliberate)

23 \* \* \* \* \*

24 (At 1:21 p.m., the Judges returned with their verdict)

25 (Off-record colloquy)

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1 JUDGE SOBEL: Okay. Everybody can remain seated.  
2 This isn't like the return of a jury verdict. There's a lot  
3 of people in the room with very strong emotions, please  
4 maintain for the few minutes we're going to be here,  
5 appropriate decorum.

6 As I said, this isn't a jury verdict, I'm not going  
7 to have it read in the usual dramatic fashion that jury  
8 verdicts with multiple decisions are usually read.

9 To start out with, the verdict in each case is  
10 death.

11 I'm going to read one of those verdicts.

12 "The jury in the above entitled case, having found  
13 the defendant, Donte Johnson, guilty of Count Eleven, murder  
14 in the first degree with use of a deadly weapon, and we, the  
15 three judge panel, having found that the aggravating  
16 circumstance or circumstances outweigh any mitigating  
17 circumstance or circumstances, impose a sentence of death."

18 In each of the other counts, twelve, thirteen and  
19 fourteen, there's the identical findings and the identical  
20 penalty.

21 In terms of the special verdicts, the special  
22 verdicts are each identical to each other, in that they both  
23 find in terms of an aggravating circumstance; the first and  
24 third aggravating circumstances, the panel did not find,  
25 beyond a reasonable doubt, the finding -- a second aggravator.

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1 They did find that the murder was committed while the person  
2 was engaged, alone or with others in the commission of or an  
3 attempt to commit or flight after committing or attempting to  
4 commit any robbery, arson in the first degree, burglary,  
5 invasion in the home or kidnapping in the first degree, and  
6 the person charged, killed or attempted to kill the person  
7 murdered or knew or had reason to know that life would be  
8 taken or lethal force used. And the third, the defendant has  
9 in the immediate proceeding been convicted of more than one  
10 offense of murder in the first or second degree.

11 Each of those special verdicts, as I said, were  
12 identical to the other.

13 In terms of mitigators, the panel found and checked  
14 the youth of the defendant at the time of the crime and as any  
15 other mitigating circumstances as to each count, also checked  
16 his horrible childhood.

17 That's the verdict of the three judge panel. Each  
18 of the verdicts is appropriately signed by the Judges and will  
19 be lodged with the clerk of the court.

20 Would you set the sentencing date for formal  
21 sentencing on these counts and the others of which the jury  
22 convicted Mr. Johnson or Mr. White.

23 THE CLERK: Sentencing date will be September 7 at  
24 9:00 a.m.

25 JUDGE SOBEL: Mr. Figler, Mr. Sciscento, anything

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1 else that must come before the Court now?  
2 MR. FIGLER: We'd like to poll each Judge to say  
3 that, in fact, was their verdict in this particular case,  
4 Judge.  
5 JUDGE SOBEL: I don't know if there's any precedent  
6 for that, I have no problem with it.  
7 Judge Elliott, is that your verdicts as read?  
8 JUDGE ELLIOTT: Yes.  
9 JUDGE SOBEL: Judge Griffith, are those your  
10 verdicts as read?  
11 JUDGE GRIFFITH: Yes, sir.  
12 JUDGE SOBEL: And they are my verdicts as read.  
13 Anything else, Dayvid?  
14 MR. FIGLER: No. Just that the record was noted  
15 that we believe that this three judge panel is completely  
16 unconstitutional and we're not surprised by the verdict.  
17 JUDGE SOBEL: Well, your lack of surprise is noted,  
18 Mr. Figler.  
19 We are in recess.  
20 PROCEEDINGS CONCLUDED AT 1:25 A.M.  
21 \* \* \* \* \*  
22  
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INDEX

NAME	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
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PLAINTIFF'S WITNESSES

None

DEFENDANT'S WITNESSES

Eunice Cain	3	16	--	--	--
Keonna Bryant	17	46	--	--	--
Johnnisha White	48	64	--	--	--
Nancy Hunterton	66	76	--	--	--
Jane Edwards	80	--	--	--	--

EXHIBITS

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

PLAINTIFF'S EXHIBITS

None

DEFENDANT'S EXHIBITS

None.

II-139

CERTIFICATION

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

NORTHWEST TRANSCRIPTS, INC.  
LAS VEGAS DIVISION  
P.O. BOX 35257  
LAS VEGAS, NEVADA 89133-5257  
(702) 658-9626

GAYLE MARTIN-LUTZ  
FEDERALLY CERTIFIED OWNER

*Gayle M. Lutz*  
MANAGER

*Gayle M. Lutz*  
SIGNATURE OF TRANSCRIBER

7/27/00  
DATE

ORIGINAL



EXPR

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

FILED 17

AUG 24 10 30 AM '00

*Shirley M. Higgins*  
 CLERK

## DISTRICT COURT

## CLARK COUNTY, NEVADA

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

vs.

DANTE JOHNSON, aka John White,  
 ID# 1586283,

Defendant.

Case No. :C153154

Dept. No. :V

**AMENDED EX PARTE ORDER ALLOWING WITHDRAWAL OF  
 ATTORNEY OF RECORD FOR MATERIAL WITNESS CHARLA SEVERS**

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

**IT IS HEREBY ORDERED** that JAY L. SIEGEL, of Wolfson and Glass, is allowed to withdraw as attorney of record, for the material witness, CHARLA SEVERS, in the above-captioned case, and his appointment as same is terminated as of the date of the filing of this Amended Order.

DATED this 24 day of August, 2000.

  
 DISTRICT COURT JUDGE

Respectfully submitted by:

WOLFSON &amp; GLASS

By

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

RECEIVED

AUG 24 2000

COUNTY CLERK

336

FILED

SEP 5 1 49 PM '00

*Shirley L. Thompson*  
CLERK

0001  
PHILIP J. KOHN  
SPECIAL PUBLIC DEFENDER  
Nevada Bar #0566  
JOSEPH S. SCISCENTO  
DEPUTY SPECIAL PUBLIC DEFENDER  
Nevada Bar #4380  
DAYVID J. FIGLER  
Nevada Bar # 4264  
309 South Third Street, 4th Floor  
Las Vegas, Nevada 89155-2316  
(702) 455-6265

Attorney for Defendant

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Case No. C153154

Dept. No. V

Hearing Date: 9-7-00  
Hearing Time: 9 A.M.

MOTION TO SET ASIDE DEATH SENTENCE OR IN  
THE ALTERNATIVE MOTION TO SETTLE RECORD

COMES NOW, Defendant, DANTE JOHNSON, by and through his attorneys, PHILIP J. KOHN, Special Public Defender, JOSEPH S. SCISCENTO, Deputy Special Public Defender, and DAYVID J. FIGLER, Deputy Special Public Defender, and requests this Honorable Court to set aside the death penalty pursuant to the Nevada Supreme Court's decision in *Hollaway v. State*, 116 Nev. Adv. Op. No. 83 (August 23, 2000) or in the alternative settle the record pursuant to NRAP 10(c).

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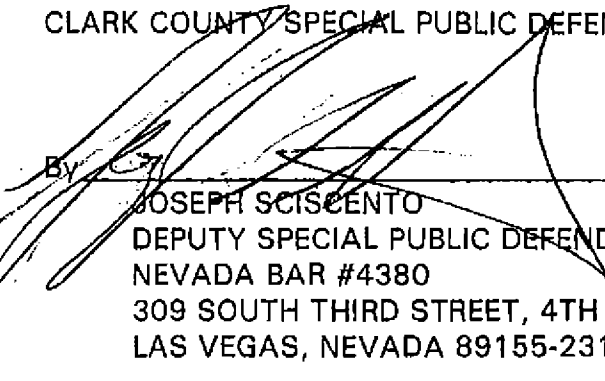
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1 This Motion is made and based upon the attached Points and Authorities, pleadings  
2 and papers on file herein, together with any such oral or documentary evidence which this  
3 court may adduce at the hearing on this matter.  
4

5 DATED this 5 day of September, 2000.

6 PHILIP J. KOHN  
7 CLARK COUNTY SPECIAL PUBLIC DEFENDER

8  
9 By   
10 JOSEPH S. SCISCENTO  
11 DEPUTY SPECIAL PUBLIC DEFENDER  
12 NEVADA BAR #4380  
13 309 SOUTH THIRD STREET, 4TH FLOOR  
14 LAS VEGAS, NEVADA 89155-2316

15 **NOTICE OF MOTION**

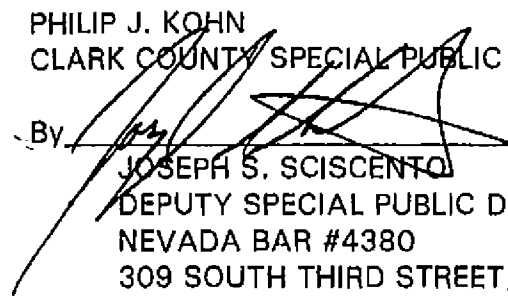
16 TO: STATE OF NEVADA, Plaintiff; and

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

18 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and  
19 foregoing **MOTION TO SET ASIDE DEATH VERDICT** on the 7th day of September, 2000,  
20 at the hour of 9 A.M., in Department No. V of the above-entitled Court, or as soon  
21 thereafter as counsel may be heard.

22 DATED this 5 day of September, 2000.

23 PHILIP J. KOHN  
24 CLARK COUNTY SPECIAL PUBLIC DEFENDER

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

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7 present during the guilt phase. (Trans. 7-24-00, pp. 68).

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10 The defense now alleges that it was error for Judge Elliot to fail to review the  
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12 While defense counsel certainly hopes that it provides as much relevant information  
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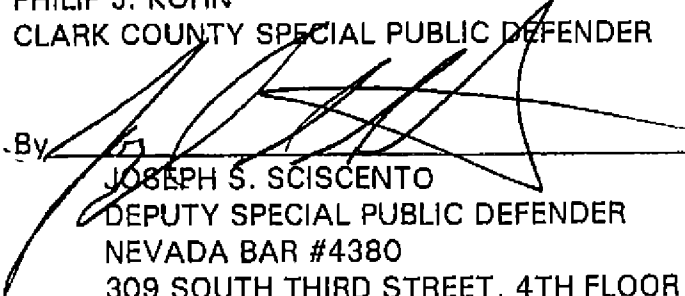
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5 Form of Jury). The three-judge panel found only two.

7 It would be a manifest injustice and a clear violation of the law and due process to  
8 allow the death sentence to go forward when at least one of the judges did not read the  
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12 In the alternative, an off-the-record colloquy does exist and there is a clear  
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16 of desire to read the transcripts and any information regarding Judge Griffith's reading or  
17 non-reading of the transcripts in their entirety. NRAP 10(c).

19 WHEREFORE, Defendant prays that this Honorable Court set aside the death  
20 sentence or in the alternative settle the record.

22 Respectfully submitted,  
23 PHILIP J. KOHN  
24 CLARK COUNTY SPECIAL PUBLIC DEFENDER

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON,

Defendant.

Case No. C153154  
Dept. No. V  
Docket H

SPECIAL  
VERDICT

We, the Jury in the above entitled case, having found the Defendant, DONTE JOHNSON, Guilty of COUNT XIII- MURDER OF THE FIRST DEGREE, designate that one or more jurors have found that the mitigating circumstance or circumstances checked and/or written below have been established.

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

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

☐ The Defendant acted under duress or under the dominion of another person.

☒ The youth of the Defendant at the time of the crime.

☒ Any other mitigating circumstances witness to father's physical & emotional abuse of mother  
witness to drug abuse of parents and close relatives  
abandonment by parents

DATED at Las Vegas, Nevada, this 15 day of June, 2000.

John C. Young  
FOREPERSON

- poor living conditions while at great grandmother's
- turned in to police by great grandmother
- crowded living conditions while at grandmother's house
- very violent neighborhood
  - witness to various acts of violence in neighborhood
  - had to live a guarded life
  - grandmother's second house even more crowded
  - no way to avoid gangs at second house
  - gang intimidation
  - could not comply with parole conditions - other gang territories
  - indications he may have wanted to return to parole school
  - lack of positive male role model
  - lifestyle of victims
  - no eyewitness to identity of shooter
- killings happened in a relatively short period of time -  
more isolated incident than pattern
  - no indication of any violence while in jail
  - appears to excel in structured environment of jail
  - joined gang to protect family



FILED

SEP 5 1 49 PM '00

*Shirley L. Longenecker*  
CLERK

0001  
PHILIP J. KOHN  
SPECIAL PUBLIC DEFENDER  
Nevada Bar #0566  
JOSEPH S. SCISCENTO  
DEPUTY SPECIAL PUBLIC DEFENDER  
Nevada Bar #4380  
DAYVID J. FIGLER  
Nevada Bar # 4264  
309 South Third Street, 4th Floor  
Las Vegas, Nevada 89155-2316  
(702) 455-6265

Attorney for Defendant

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,  
  
vs.  
  
DONTÉ JOHNSON,  
  
Defendant.

Case No. C153154

Dept. No. V

Hearing Date: 9-7-00  
Hearing Time: 9 A.M.

**MOTION TO SET ASIDE DEATH SENTENCE OR IN  
THE ALTERNATIVE MOTION TO SETTLE RECORD**

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CE42

CE52

MC

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8  
9 By 

10 JOSEPH SCISCENTO  
11 DEPUTY SPECIAL PUBLIC DEFENDER  
12 NEVADA BAR #4380  
13 309 SOUTH THIRD STREET, 4TH FLOOR  
14 LAS VEGAS, NEVADA 89155-2316

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25 By 

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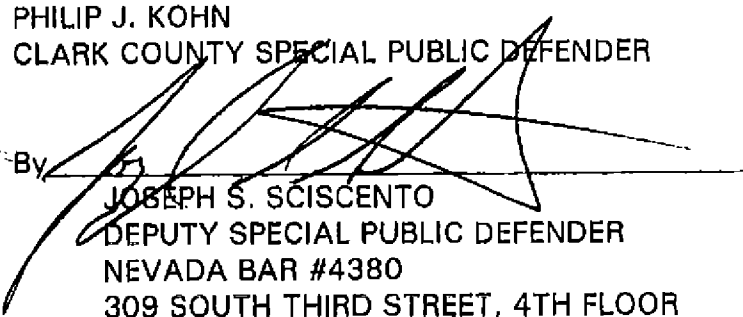
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25 By   
26 JOSEPH S. SCISCENTO  
27 DEPUTY SPECIAL PUBLIC DEFENDER  
28 NEVADA BAR #4380  
309 SOUTH THIRD STREET, 4TH FLOOR  
LAS VEGAS, NEVADA 89155-2316

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON,

Defendant.

Case No. C153154  
Dept. No. V  
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SPECIAL  
VERDICT

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☒ The youth of the Defendant at the time of the crime.

☒ Any other mitigating circumstances witness to father's physical &

emotional abuse of mother

witness to drug abuse of parents and close relatives

abandonment by parents

DATED at Las Vegas, Nevada, this 15 day of June, 2000.

John C. Young  
FOREPERSON

- poor living conditions while at great grandmother's
- turned in to police by great grandmother
- crowded living conditions while at grandmother's house
- very violent neighborhood
  - witness to various acts of violence in neighborhood
  - had to live a guarded life
  - grandmother's second house even more crowded
  - no way to avoid gangs at second house
  - gang intimidation
  - could not comply with parole conditions - other gang territories
  - indications he may have wanted to return to parole school
  - lack of positive male role model
  - lifestyle of victims
  - no eyewitness to identity of Shooter
- killings happened in a relatively short period of time - more isolated incident than pattern
  - no indication of any violence while in jail
  - appears to excel in structured environment of jail
  - joined gang to protect family

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

FILED

SEP 6 1 50 PM '00

*Stewart L. Bell*  
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

13 THE STATE OF NEVADA,

) Case No. C153154

14 )  
15 Plaintiff,

) Dept. No. V

16 vs.

17 DONTÉ JOHNSON,

) Hearing Date:

) Hearing Time:

18 )  
19 Defendant.

20  
21 RECEIPT OF COPY

22 RECEIPT OF COPY of the foregoing MOTION TO SET ASIDE DEATH PENALTY is  
23 hereby acknowledged this 5 day of September, 2000.

24  
25 *Stewart L. Bell*  
26 STEWART L. BELL

District Attorney

200 S. Third Street

Las Vegas, NV 89155

Attorney for Plaintiff

COUNTY CLERK

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SEP 11 6 2000



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20

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

SEP 15 2 18 PM '00

*Christy M. Thompson*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,  
#1586283

Defendant.

Case No. C153154  
Dept. No. V  
Docket H

STATE'S RESPONSE TO DEFENDANT'S MOTION TO SET ASIDE DEATH  
SENTENCE, OR IN THE ALTERNATIVE MOTION TO SETTLE RECORD

DATE OF HEARING: 10/12/00  
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through  
GARY L. GUYMON, Chief Deputy District Attorney, and files this State's Response to  
Defendant's Motion to Set Aside Death Sentence, or in the Alternative Motion to Settle Record.

This Response is made and based upon all the papers and pleadings on file herein, the  
attached points and authorities in support hereof, and oral argument at the time of hearing, if

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COUNTY CLERK

SEP 15 2000

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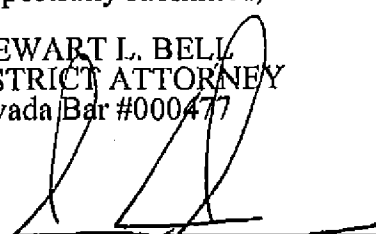
CLERK

1 deemed necessary by this Honorable Court.

2 DATED this 14 day of September, 2000.

3 Respectfully submitted,

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

7 BY   
8 GARY L. GUYMON  
9 Chief Deputy District Attorney  
10 Nevada Bar #003726

11 **STATEMENT OF THE CASE**

12 On September 2, 1998, Donte Johnson, hereinafter, Defendant, was charged by  
13 Information with Count I - Burglary While in Possession of a Firearm; Count II - Conspiracy to  
14 Commit Robbery and/or Kidnapping and/or Murder; Counts III, IV, V & VI - Robbery With Use  
15 of a Deadly Weapon; Counts VII, VIII, IX & X - First Degree Kidnapping With Use of a Deadly  
16 Weapon; and Counts XI, XII, XIII & XIV - Murder of the First Degree with Use of a Deadly  
17 Weapon. A trial by jury convened on June 9, 2000 and ultimately returned verdicts of guilty on  
18 all charges.

19 A penalty hearing began on June 13, 2000. After deliberation a hung jury was declared  
20 and the court released the jury. On July 24, 2000, pursuant to NRS 175.556, a three-judge panel  
21 consisting of The Honorable Jeffrey D. Sobel, The Honorable Michael R. Griffin, and The  
22 Honorable Steve Elliott conducted a penalty hearing for those charges in which the death penalty  
23 was sought (Counts XI, XII, XIII & XIV). The three-judge panel returned death verdicts on all  
24 four counts, having found that the aggravating circumstances outweighed any mitigating  
25 circumstances. The panel also entered special verdicts in which they found, beyond a reasonable  
26 doubt, the existence of the first aggravating circumstance - that the murder was committed while  
27 the person was engaged, alone or with others, in the commission of or an attempt to commit or  
28 flight after committing or attempting to commit any robbery, arson in the first degree, burglary,  
invasion in the home or kidnapping in the first degree, and the person charged, killed or

1 attempted to kill the person murdered or knew or had reason to know that life would be taken  
2 or lethal force used - and the third aggravating circumstance - that the defendant had in the  
3 immediate proceeding been convicted of more than one offense of murder in the first or second  
4 degree. The panel also found the following mitigators: the youth of the defendant at the time  
5 of the crime and the defendant's horrible childhood. On September 5, 2000, Defendant filed the  
6 instant Motion to Set Aside the Death Sentence or in the Alternative Motion to Settle Record.

#### 7 MEMORANDUM OF POINTS AND AUTHORITIES

8 Defendant alleges that the three-judge panel committed error by determining whether  
9 mitigating or aggravating circumstances existed when Judge Griffin and Judge Elliott allegedly  
10 failed to review the trial transcripts in their entirety. In support of this contention, Defendant  
11 makes reference to portions of the penalty hearing transcript and cites Hollaway v. State, 116  
12 Nev. Adv. Op. 83 (August 23, 2000), in which the Nevada Supreme Court directed the following  
13 jury instruction be given in all future cases where the death penalty is sought:

14 In determining whether mitigating circumstances exist, jurors  
15 have an obligation to make an independent and objective analysis  
16 of all the relevant evidence. Arguments of counsel or a party do  
17 not relieve jurors of this responsibility. Jurors must consider the  
18 totality of the circumstances of the crime and the defendant, as  
established by the evidence presented in the guilt and penalty  
phases of the trial. Neither the prosecution's nor the defendant's  
insistence on the existence or nonexistence of mitigating  
circumstances is binding upon the jurors.

19 Defendant asserts this instruction creates an absolute obligation for each member of the three-  
20 judge panel to review and consider all evidence from the guilt phase. Defendant's argument  
21 fails both factually and legally.

#### 22 A. The Penalty Phase Transcript Gives No Indication that Three- 23 Judge Panel Did Not Intend to Review Trial Transcript

24 Defendant has provided nothing more than sheer speculation as to what took place during  
25 the deliberations of the three-judge panel. At no point in the penalty phase transcript does Judge  
26 Sobel indicate that any of the judges would *not* be reviewing the transcript of the guilt phase.  
27 Instead, upon objection by defense counsel to the testimony of Detective Buczek, Judge Sobel  
28 ruled:

1 Okay, if you'd summarize [the evidence] as quickly as possible,  
2 we'll overrule the objection. Judge Griffin's already indicated  
3 he's going to be reading the transcript. The whole transcript's in  
4 my office. If you'd just move through it as quickly as possible  
5 and give the flavor of the guilt phase, they'll have the opportunity  
6 to supplement that.

7 (Trans., July 25, 2000, pg. I-68).

8 Again, after objection by defense counsel as to the use of certain quotes from the trial,  
9 Judge Sobel ruled:

10 Well, the transcript will be available to everybody. This is a way,  
11 in about 45 minutes, to at least give an overview of the entire guilt  
12 phase, but we can -- the judges can certainly -- I heard it and the  
13 judges can read that themselves.

14 (Trans., July 24, 2000, pg. I-79).

15 Additionally, both the State and the defense introduced certain portions of the trial  
16 transcript during the penalty hearing. The State specifically introduced the trial transcripts of  
17 Stacey Trammell, Lieutenant Grayson, Robert Hoffman, Kim Kern, and Officer Clark. (Trans.,  
18 July 24, 2000, pg. II-2). The defense introduced the trial transcripts of Dr. Matthews (Trans.,  
19 July 26, 2000, pg. II-2), Moses Samora (Trans., July 26, 2000, pg. II-3) and the Defendant's  
20 allocution statement (Trans., July 26, 2000, pg. II-86). In fact, the defense must have anticipated  
21 the judges were intending to read the transcripts because they affirmatively elected not to call  
22 Moses Samora as a live witness during the penalty hearing, "for the time element," and instead  
23 chose to provide the transcripts to the panel. (Trans., July 26, 2000, pg. II-3).

24 In further support of his argument, Defendant implies that the court must conclude the  
25 panel did not read the transcript of the guilt phase simply because the three-judge panel found  
26 only two mitigators, when the previous jury found twenty-four (24) mitigators. *See* Def. P&A,  
27 pg. 5. However, it is important to note that the jury's finding of mitigating circumstances in a  
28 capital penalty hearing does not have to be unanimous. *See Mills v. Maryland*, 486 U.S. 367,  
374-82, 108 S.Ct. 1860, 1865-69, 100 L.Ed.2d 384 (1988); *Jimenez v. State*, 112 Nev. 610, 918  
P.2d 687 (1996). In addition, in cases where the jury is unable to reach a unanimous verdict  
upon the sentence to be imposed, NRS 175.556 provides a three-judge panel will "conduct the  
penalty hearing to determine the presence of aggravating and mitigating circumstances, and give

1 sentence accordingly." A such, the three-judge panel is conducting the penalty hearing anew and  
2 is not bound by the previous findings of the jury.<sup>1</sup> Furthermore, although the panel members  
3 may view evidence as a positive factor, it is "under no obligation to accord it substantial  
4 currency in the form of a mitigating circumstance . . ." Gutierrez v. State, 112 Nev. 788, 793,  
5 920 P.2d 987, 990 (1996). Thus, the panel is free to reject any of the Defendant's proposed  
6 mitigators after deliberation.

7 Furthermore, the Defendant was given every opportunity to present any evidence of  
8 mitigating circumstances to the three-judge panel and did, in fact, present evidence of all the  
9 mitigating circumstances previously found by the jury. Specifically, Defendant presented  
10 testimony of Eunice Cain, his mother (Trans., July 26, 2000, pp. II-3 - II-16); Keonna Bryant,  
11 his cousin (Trans., July 26, 2000, pp. II-17 - II-47); Johnnisha White, his sister (Trans., July 26,  
12 2000, pp. II-48 - II-65); and Jane Edwards, his grandmother (Trans., July 26, 2000, pp. II-80 -  
13 II-85), all of whom testified in detail regarding the youth of the Defendant at the time of the  
14 crime, the Defendant's witness to his father's physical and emotional abuse of his mother, the  
15 drug abuse of his mother and relatives, his abandonment by his parents, the poor and crowded  
16 living conditions at his grandmother's first and second house, the fact that his grandmother  
17 called the police regarding children being left unsupervised, the violence of the neighborhood,  
18 the gang intimidation of the neighborhood, the fact that he joined a gang to protect his family,  
19 the impact of the gang on his parole, and the lack of a positive male role model. In fact,  
20 although the three-judge panel did not make a finding of a mitigating circumstance on each of  
21 these individual items, they specifically made a special finding that the Defendant's horrible  
22 childhood was a mitigating circumstance. That finding clearly encompasses most of what the  
23 previous jury found.

24 Additionally, the Defendant presented testimony from Nancy Hunterton who testified  
25 how well he was performing in the Life Skills Program. (Trans., July 26, 2000, pg. II-68).

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26  
27 <sup>1</sup>The three-judge panel also rejected one of the State's aggravating circumstances despite  
28 the fact that the previous jury found the aggravator existed. (Trans., July 26, 2000, pp.  
II-136 - II-137).

1 Moreover, the Defendant cross-examined Detective Buczek regarding the identify of the  
2 shooter, the lifestyle of the victims, and the short period of time in which the killings occurred  
3 (Trans., July 24, 2000, pp. I-101 - I-122), based on his investigative findings and his review of  
4 the trial transcript. Ultimately, the three-judge panel heard all the evidence necessary to make  
5 findings regarding the existence of the mitigating circumstances proposed by Defendant. The  
6 fact that the panel rejected the mitigating circumstances or chose to include them all in a single  
7 mitigator such as a horrible childhood, provides no evidence that the panel erred in their review  
8 of the evidence.

9 Additionally, although Defendant cites the jury instruction from Hollaway, the State  
10 contends this instruction is inapplicable to the instant case. The basis for the Nevada Supreme  
11 Court to direct this new jury instruction was to give the jury further guidance regarding its  
12 responsibilities in assessing the evidence during the penalty phase. Hollaway v. State, 116 Nev.  
13 Adv. Op. 83 (August 23, 2000).

14 In Hollaway, the defendant refused to present any case in mitigation. Id. The defendant's  
15 only statement to the jurors was, "As far as the special verdict for the mitigating circumstances,  
16 defense is not alleging any mitigating circumstances, so I don't see that you need to bother with  
17 that at all." Id. The prosecution argued no mitigators existed and in final closing argument told  
18 the jurors, "If you determine that there are not mitigating circumstances, and he has offered none  
19 and told you there are none, simply sign the form with no checks in any of the boxes or on any  
20 of the lines." Id. The court was concerned that "due to Hollaway's refusal to present any case  
21 in mitigation, the prosecutors' arguments, and the jury instructions, jurors may have erroneously  
22 concluded they were not required or even permitted to determine for themselves whether any  
23 mitigating circumstances existed." Id.

24 In the case at hand, a three-judge panel, fully cognizant of the law, was hearing the  
25 evidence, not an inexperienced jury. In such a situation, the danger identified in Hollaway does  
26 not exist. Therefore, Defendant's reliance on Hollaway for the point of law asserted is  
27 misplaced.

28 The Defendant has provided no evidence that the three-judge panel erred in any way in

1 their review of the evidence and no evidence that any judge failed to review the transcript of the  
2 trial. Accordingly, this motion should be denied.

3 **B. A Correction of the Record is Not Warranted**

4 Defendant requests, in the alternative, a correction of the record pursuant to NRAP 10(c).  
5 See Def. P&A, pg. 5. NRAP 10(c) provides:

6 If any difference arises as to whether the trial court record truly  
7 discloses what occurred in the district court, the difference shall  
8 be submitted to and settled by that court and the trial court record  
9 made to conform to the truth. Questions as to the form and  
10 content of the appellate court record shall be presented to the  
11 Supreme Court.

12 Here, Defendant asserts "there is a clear indication that one of the three judges did not  
13 read the entirety of the transcripts." See Def. P&A, pg. 5. The State disagrees. At no point in  
14 the penalty phase transcript do any of the three judges indicate a lack of desire to read the trial  
15 transcript. This conclusion by Defendant is speculative. While the State agrees there were off-  
16 the-record colloquies between the three panel members, Defendant does not appear to be  
17 requesting those colloquies be made part of the record, but instead, for the panel members to  
18 provide additional evidence as to whether or not they actually reviewed the trial transcript during  
19 their deliberative process. The deliberative process is not part of the record of the proceedings  
20 and should not be made so through the correction method outlined in NRAP 10(c).

21 **C. Defendant's Right to Be Present Was Not Violated**

22 Finally, in a footnote the Defendant suggests that the law requires he be present during  
23 the reading of the transcripts. See Def. P&A, pg. 4. NRS 178.388 provides the defendant must  
24 be present at every stage of the trial. "This right to be present is rooted in the Confrontation  
25 Clause and the Due Process Clause of the Federal Constitution." Kirksey v. State, 112 Nev. 980,  
26 1000, 923 P.2d 1102 (1996). "The confrontation aspect arises when the proceeding involves the  
27 presentation of evidence." Id., citing United States v. Gagnon, 470 U.S. 522, 526-27 (1985).  
28 "The due process aspect has been recognized only to the extent that a fair and just hearing would  
be thwarted by the defendant's absence." Id., citing United States v. Gagnon, 470 U.S. 522, 526-  
27 (1985). "The right to be present is subject to harmless error analysis." Id., citing Rushen v.

1 Spain, 464 U.S. 114, 118 n.2 (1983).

2 In this case, Defendant argues his right to be present was violated when the three-judge  
3 panel reviewed the trial transcript without his presence. Under these circumstances, the three-  
4 judge panel was convened to conduct the penalty hearing. In doing so, the panel would find it  
5 necessary to review the trial transcript to determine what happened in the guilt phase of the trial.  
6 As such, the panel was not introducing any new evidence, but simply reviewing what evidence  
7 had already been admitted in the form of the trial transcript. At the time the evidence was  
8 originally admitted, Defendant and defense counsel were present and had the opportunity to  
9 cross examine the witnesses. This situation can be likened to that of introducing any  
10 documentary evidence. There is no requirement that the documentary evidence be read into the  
11 record and no requirement that the jury review the documentary evidence in the presence of the  
12 Defendant. Instead, the review of the evidence is done during the closed session deliberative  
13 process. Likewise, the three-judge panel was free to review the trial transcript during their  
14 deliberations. Under the circumstances, Defendant's right to be present was not violated and his  
15 penalty phase case was not prejudiced in any way.

#### 16 CONCLUSION

17 Defendant has failed to demonstrate any error by the three-judge panel in reviewing  
18 the evidence during the penalty phase. Additionally, he has asserted an insufficient basis to  
19 warrant any correction of the record pursuant to NRAP 10(c). Finally, Defendant's right to  
20 be present at all critical stages of the trial was not violative of NRS 178.388 or the  
21 Confrontation Clause when the three-judge panel reviewed the trial transcript during their

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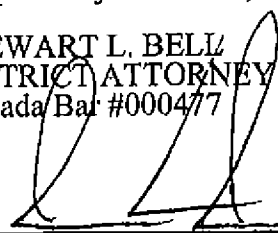


1 deliberations and outside of Defendant's presence. Accordingly, the Defendant's motion  
2 should be denied.

3 DATED this 14 day of September, 2000.

4 Respectfully submitted,

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

8 BY   
9 GARY L. GUYPON  
10 Chief Deputy District Attorney  
11 Nevada Bar #003726  
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1 CERTIFICATE OF FACSIMILE TRANSMISSION

2 I hereby certify that service of STATE'S RESPONSE TO DEFENDANT'S MOTION  
3 TO SET ASIDE DEATH SENTENCE OR IN THE ALTERNATIVE MOTION TO  
4 SETTLE RECORD, was made this 15<sup>th</sup> day of September, 2000, by facsimile transmission  
5 to:

6 JOSEPH SCISCENTO  
7 DAYVID FIGLER  
8 DEPUTY SPECIAL PUBLIC DEFENDERS  
9 SPECIAL PUBLIC DEFENDER'S OFFICE  
10 ATTORNEYS FOR DEFENDANT  
11 FAX #455-6273

*P. Manis*

Secretary for the District Attorney's Office

28 \BURKEM:pm

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 \*\*\* TX REPORT \*\*\*  
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TRANSMISSION OK

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 RESULT OK

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

DISTRICT COURT  
 CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,  
 9 Plaintiff,

10 -vs-

11 DONTE JOHNSON,  
 12 #1586283

13 Defendant.  
 14

Case No. C153154  
 Dept. No. V  
 Docket H

15 STATE'S RESPONSE TO DEFENDANT'S MOTION TO SET ASIDE DEATH  
 16 SENTENCE, OR IN THE ALTERNATIVE MOTION TO SETTLE RECORD

17 DATE OF HEARING: 10/12/00  
 18 TIME OF HEARING: 9:00 A.M.

19 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through  
 20 GARY L. GUYMON, Chief Deputy District Attorney, and files this State's Response to  
 21 Defendant's Motion to Set Aside Death Sentence, or in the Alternative Motion to Settle Record.

1 TRAN

2  
3 ORIGINAL

4 DISTRICT COURT  
CLARK COUNTY, NEVADA

5 \* \* \* \* \*

SEP 29 9 33 AM '00

6 STATE OF NEVADA,  
7 PLAINTIFF,

FILED  
CASE NO. C153154

8  
9 DONTÉ JOHNSON, aka  
10 JOHN WHITE,

DEPT. V

11 DEFENDANT.  
12

Transcript of Proceedings

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

14 DEFENDANT'S MOTION TO SET ASIDE DEATH SENTENCE  
OR MOTION TO SETTLE RECORD

15 SENTENCING

16 THURSDAY, SEPTEMBER 7, 2000, 8:15 A.M.

17 APPEARANCES:

18 FOR THE STATE:

GARY GUYMON, ESQ.  
BRIAN KOCHAEVER, ESQ.  
DEPUTY DISTRICT ATTORNEYS

20 FOR DEFENDANT JOHNSON:

DAYVID FIGLER, ESQ.  
DEPUTY SPECIAL PUBLIC  
DEFENDER

22 COURT RECORDER:

SHIRLEE PRAWALSKY

RECEIVED

SEP 29 2000

COUNTY CLERK

CE12

1 LAS VEGAS, NEVADA, THURSDAY, SEPTEMBER 7, 2000, 8:15 A.M.

2 THE COURT: Let's call Donte Johnson. I know you probably don't  
3 have the file, but we'll let the other guys know.

4 I discussed scheduling with them yesterday on the Motion to  
5 Set Aside the Death Sentence or Motion to Settle Record and they asked  
6 for a week to answer what was filed a couple of days ago.

7 Do you think, in the ordinary course of things, Mr. Sciscento is  
8 going to want to file a reply, or do you have any idea?

9 MR. FIGLER: It depends on how they respond to it. I don't think  
10 they would oppose the second part of the record. I think, obviously, the  
11 first part, they would. We're relying on Holloway and that language -

12 THE COURT: I read it. I read it, Dayvid.

13 MR. FIGLER: Yeah, I don't think that there's going to be much of a  
14 reply if any, maybe just if there's a factual correction or something.

15 THE COURT: Okay. Let's make it two weeks to file an opposition,  
16 one week to file, possibly, a reply, a decision on it. Where would that  
17 come out? I want to make sure we're not in some murder trial.

18 (Conference between Court and clerk, not recorded)

19 THE COURT: Let's make decision on that and in case it's denied,  
20 sentencing, on the 12<sup>th</sup> of October.

21 MR. FIGLER: October 12<sup>th</sup> for sentencing rendering of decision on the  
22 other?

23 THE COURT: Right.

24 MR. FIGLER: Thank you, Judge.

25 THE COURT: Thank you.

\* \* \* \*

THE COURT: On Johnson, Gary, the date for the opposition is?

THE CLERK: The date for the opposition to be filed is September 21<sup>st</sup>.

THE COURT: They're then going to file a reply and the sentencing  
date, if we deny the motion, is?

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THE CLERK: October 12<sup>th</sup> at 9:00 a.m.

THE COURT: There will be a decision on the motion and sentencing right after it if the motion is denied.

MR. GUYMON: Judge, can we move the sentencing up by one day in the event that the motion is denied?

THE COURT: Yeah, sure. What's the 12<sup>th</sup> on?

THE CLERK: October 12<sup>th</sup> is a Thursday.

THE COURT: How about Tuesday?

MR. GUYMON: That's fine.

THE CLERK: The Tuesday before October 10<sup>th</sup>.

THE COURT: Would you notify Figler and Sciscento and I will also direct Carole to. And between the two of you, somebody will get them here?

MR. GUYMON: Absolutely.

THE COURT: Thank you.

(Proceedings concluded)

\* \* \* \*

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

  
SHIRLEE PRAWALSKY, COURT RECORDER

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FILED

OCT 2 2 13 PM '00

*Philip S. Sciscento*  
CLERK

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

14 Attorney for Defendant

15 DISTRICT COURT  
16 CLARK COUNTY, NEVADA

17 THE STATE OF NEVADA,

18 Plaintiff,

19 vs.

20 DONTE JOHNSON,  
21 ID# 1060268

22 Defendant.

Case No. C153154

Dept. No. V

Hearing Date: 10/3/00  
Hearing Time: 9:00 a.m.

23 REPLY TO STATES RESPONSE TO MOTION TO SET ASIDE DEATH SENTENCE  
24 OR IN THE ALTERNATIVE MOTION TO SETTLE RECORD

25 COMES NOW the Defendant, DONTE JOHNSON, by and through his attorneys,  
26 PHILIP J. KOHN, Special Public Defender, and DAYVID J. FIGLER and JOSEPH S.  
27 SCISCENTO, Deputy Special Public Defenders, and hereby submits this Reply to the  
28 State's Response to Defendant's Motion to Set Aside Death Sentence, or in the  
29 Alternative Motion to Settle Record.

30 //

31 //

32 //

33 //

RECEIVED

OCT 07 2000

CLERK

1 This Reply is based upon the Points and Authorities incorporated herein, all papers  
2 and pleadings on file and any argument at the time of the hearing on this matter.

3 DATED this 2nd day of October, 2000.

4 PHILIP J. KOHN  
5 CLARK COUNTY SPECIAL PUBLIC DEFENDER

6 By 

7 JOSEPH S. SCISCENTO  
8 DEPUTY SPECIAL PUBLIC DEFENDER  
9 Nevada Bar #4380  
309 South Third Street, 4th Floor  
Las Vegas, Nevada 89155-2316  
10 (702) 455-6265

11 **POINTS AND AUTHORITIES**

12 The State misinterprets the decision in Halloway. In Halloway the Court specifically  
13 states that the jury must consider the totality of the circumstances and include the guilt  
14 phase in determining whether the Defendant should receive the death penalty. A 20  
15 minute overview of the guilt phase does not allow the trier to see the totality of the  
16 circumstances. The trier does not see the character of the witnesses, nor is all of the  
17 information provided to the trier. Further the State responds by saying that the defense  
18 has the ability to, and in fact, provided information to the three-judge panel for mitigation.  
19 Halloway, specifically, says that the trier must make an independent analysis of the facts  
20 and not rely upon the arguments of counsel to relieve them of this responsibility. So the  
21 States argument that the Defense had the opportunity to make these arguments to the  
22 three-judge panel, is rejected by Halloway. See State's Response, Page 5, lines 7-10.

23 A summarization of a four day trial does not meet the requirements of Halloway,  
24 and never will. To pretend that this satisfies Halloway, is akin to painting flames on the  
25 side of a Pinto and calling it a race car.

26 It was error of constitutional magnitude not to have the guilt phase re-litigated or  
27 in the least to have the judges simply read the transcripts.

28 // //



\*\*\* Structural error is a defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself. \*\*\*. Because the entire conduct of the trial is affected, structural error defies analysis by "harmless-error". Manley v. State, 1999 Nev. Lexis, 979 P.2d 703 (June 1999).

In the case at bar it was a structural error not to have the three judge panel review the entire transcript. Halloway, has indicated how the trial is to be constructed, and what must take place in determining whether to issue the death penalty. This is not some violation where a wrong statement is made to the jury and a cautioning word from the Judge can remedy it. This violation is akin to the jury being informed that they need not deliberate on the case. It is how the trial is to be held, and what is required of the trier of fact.

## CONCLUSION

In the case at bar there is no evidence that the three-judge panel reviewed the guilt phase in its entirety nor considered the evidence presented in the guilt phase when they determined the Mr. Johnson must die for his crimes. It is a requirement that a trier review this information and consider the same when determining the penalty of death. It is a constitutional violation not to review and consider the guilt phase evidence.

If in fact the three-judge panel did not consider this evidence, then a new trial must be granted. SEE Manley. Since there is no evidence that all of the members of the three-judge panel reviewed the transcript in the least, a hearing should be held to determine if, in fact, this was done.

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1 In Manley, the Court reiterated the rule as set forth in Supreme Court Rule 250,  
2 that "we further note that Supreme Court Rule 250 currently requires the district court  
3 to ensure that all capital cases are reported and transcribed."

4 In the case at bar this was not done when the Defense asked if all members were  
5 going to review the trial transcript . At the least a hearing should be held wherein this  
6 determination can be made.

7 DATED this 2nd day of October, 2000.

8 Respectfully submitted,

9 PHILIP J. KOHN  
10 CLARK COUNTY SPECIAL PUBLIC DEFENDER

11 By 

12 JOSEPH S. SCISCENTO  
13 DEPUTY SPECIAL PUBLIC DEFENDER  
14 Nevada Bar #4380  
15 309 South Third Street, 4th Floor  
16 Las Vegas, Nevada 89155-2316  
17 (702) 455-6265

18  
19  
20  
21 RECEIPT OF A COPY of the foregoing **Reply to State's Response to Motion to Set**  
22 **Aside Death Sentence or in the Alternative Motion to Settle Record** is hereby  
23 acknowledged this 2nd day of October, 2000.

24 STEWART L. BELL  
25 CLARK COUNTY DISTRICT ATTORNEY

26 By   
27  
28

375  
**ORIGINAL**

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

**FILED**

OCT 3 4 22 PM '00

*Shirley E. Rungius*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 DONTE JOHNSON,  
12 #1586283

13 Defendant.

Case No. C153154  
Dept. No. V  
Docket H

14  
15 **JUDGMENT OF CONVICTION**

16 WHEREAS, on the 17th day of September, 1998, Defendant, DONTE JOHNSON,  
17 entered a plea of Not Guilty to the crimes of COUNT I - BURGLARY WHILE IN  
18 POSSESSION OF A FIREARM (Felony - NRS 205.060, 193.165); COUNT II - CONSPIRACY  
19 TO COMMIT ROBBERY AND/OR KIDNAPING AND/OR MURDER (Felony - NRS  
20 199.480, 200.380, 200.310, 200.320, 200.010, 200.030); COUNTS III, IV, V & VI - ROBBERY  
21 WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380, 193.165); COUNTS VII, VIII,  
22 IX, & X - FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON (Felony -  
23 NRS 200.310, 200.320, 193.165); and COUNTS XI, XII, XIII & XIV - MURDER WITH USE  
24 OF A DEADLY WEAPON (Open Murder) (Felony - NRS 200.010, 200.030, 193.165); and

25 WHEREAS, the Defendant DONTE JOHNSON, was tried before a Jury and the  
26 Defendant was found guilty of the crimes of COUNT I - BURGLARY WHILE IN  
27 POSSESSION OF A FIREARM (Felony - NRS 205.060, 193.165); COUNT II - CONSPIRACY  
28 TO COMMIT ROBBERY AND/OR KIDNAPPING AND/OR MURDER (Felony - NRS

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1 199.480, 200.380, 200.310, 200.320, 200.010, 200.030); COUNTS III, IV, V & VI - ROBBERY  
2 WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380, 193.165); COUNTS VII, VIII,  
3 IX, & X - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (Felony -  
4 NRS 200.310, 200.320, 193.165); and COUNTS XI, XII, XIII & XIV - FIRST DEGREE  
5 MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165),  
6 and the Jury verdict was returned on or about the 9th day of June, 2000. Thereafter, a Three-  
7 Judge Panel, deliberating in the penalty phase of said trial, in accordance with the provisions of  
8 NRS 175.552 and 175.554, found that there were two (2) aggravating circumstances in  
9 connection with the commission of said crime, to-wit:

10 1. The murder was committed while the person was engaged, alone or with others, in the  
11 commission of or an attempt to commit or flight after committing or attempting to commit, any  
12 robbery, arson in the first degree, burglary, invasion of the home or kidnaping in the first degree,  
13 and the person charged:

14 (a) Killed or attempted to kill the person murdered;

15 (b) Knew or had reason to know that life would be taken or lethal force used.

16 2. The defendant has, in the immediate proceeding, been convicted of more than one  
17 offense of murder in the first or second degree. For the purposes of this subsection, a person  
18 shall be deemed to have been convicted of a murder at the time the jury verdict of guilt is  
19 rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

20 That on or about the 26th day of July, 2000, the Three-Judge Panel unanimously found,  
21 beyond a reasonable doubt, that there were no mitigating circumstances sufficient to outweigh  
22 the aggravating circumstance or circumstances, and determined that the Defendant's punishment  
23 should be DEATH as to COUNTS XI, XII, XIII & XIV - MURDER OF THE FIRST DEGREE  
24 WITH USE OF A DEADLY WEAPON in the Nevada State Prison located at or near Carson  
25 City, State of Nevada.

26 WHEREAS, thereafter, on the 3rd day of October, 2000, the Defendant being present in  
27 court with his counsel, JOSEPH SCISCENTO, Deputy Special Public Defender, and DAYVID  
28 J. FIGLER, Deputy Special Public Defender, and GARY L. GUYMON, Chief Deputy District

1 Attorney, also being present; the above entitled Court did adjudge Defendant guilty thereof by  
2 reason of said trial and verdicts and, in addition to the \$25.00 Administrative Assessment Fee,  
3 the Defendant is sentenced as follows:

4 COUNT I - a Maximum term of ONE HUNDRED EIGHTY (180) months with a Minimum  
5 parole eligibility of FORTY (40) months in the Nevada Department of Prisons for BURGLARY  
6 WHILE IN POSSESSION OF A FIREARM;

7 COUNT II - a Maximum term of SEVENTY-TWO (72) months with a Minimum parole  
8 eligibility of SIXTEEN (16) months in the Nevada Department of Prisons for CONSPIRACY  
9 TO COMMIT ROBBERY AND/OR KIDNAPPING AND/OR MURDER, to run consecutive  
10 to Count I;

11 COUNT III - a Maximum term of ONE HUNDRED EIGHTY (180) months with a Minimum  
12 parole eligibility of FORTY (40) months in the Nevada Department of Prisons for ROBBERY  
13 plus an equal and consecutive Maximum term of ONE HUNDRED EIGHTY (180) months with  
14 a Minimum parole eligibility of FORTY (40) months in the Nevada Department of Prisons for  
15 USE OF A DEADLY WEAPON, to run consecutive to Count II;

16 COUNT IV - a Maximum term of ONE HUNDRED EIGHTY (180) months with a Minimum  
17 parole eligibility of FORTY (40) months in the Nevada Department of Prisons for ROBBERY  
18 plus an equal and consecutive Maximum term of ONE HUNDRED EIGHTY (180) months with  
19 a Minimum parole eligibility of FORTY (40) months in the Nevada Department of Prisons for  
20 USE OF A DEADLY WEAPON, to run consecutive to Count III;

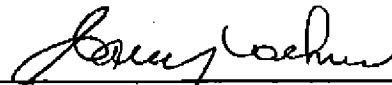
21 COUNT V - a Maximum term of ONE HUNDRED EIGHTY (180) months with a Minimum  
22 parole eligibility of FORTY (40) months in the Nevada Department of Prisons for ROBBERY  
23 plus an equal and consecutive Maximum term of ONE HUNDRED EIGHTY (180) months with  
24 a Minimum parole eligibility of FORTY (40) months in the Nevada Department of Prisons for  
25 USE OF A DEADLY WEAPON, to run consecutive to Count IV;

26 COUNT VI - a Maximum term of ONE HUNDRED EIGHTY (180) months with a Minimum  
27 parole eligibility of FORTY (40) months in the Nevada Department of Prisons for ROBBERY  
28 plus an equal and consecutive Maximum term of ONE HUNDRED EIGHTY (180) months with

1 a Minimum parole eligibility of FORTY (40) months in the Nevada Department of Prisons for  
2 USE OF A DEADLY WEAPON, to run consecutive to Count V;  
3 COUNT VII - LIFE WITHOUT THE POSSIBILITY OF PAROLE in the Nevada Department  
4 of Prisons for FIRST DEGREE KIDNAPPING plus an equal and consecutive LIFE WITHOUT  
5 THE POSSIBILITY OF PAROLE in the Nevada Department of Prisons for USE OF A  
6 DEADLY WEAPON, to run consecutive to Count VI;  
7 COUNT VIII - LIFE WITHOUT THE POSSIBILITY OF PAROLE in the Nevada Department  
8 of Prisons for FIRST DEGREE KIDNAPPING plus an equal and consecutive LIFE WITHOUT  
9 THE POSSIBILITY OF PAROLE in the Nevada Department of Prisons for USE OF A  
10 DEADLY WEAPON, to run consecutive to Count VII;  
11 COUNT IX - LIFE WITHOUT THE POSSIBILITY OF PAROLE in the Nevada Department  
12 of Prisons for FIRST DEGREE KIDNAPPING plus an equal and consecutive LIFE WITHOUT  
13 THE POSSIBILITY OF PAROLE in the Nevada Department of Prisons for USE OF A  
14 DEADLY WEAPON, to run consecutive to Count VIII;  
15 COUNT X - LIFE WITHOUT THE POSSIBILITY OF PAROLE in the Nevada Department of  
16 Prisons for FIRST DEGREE KIDNAPPING plus an equal and consecutive LIFE WITHOUT  
17 THE POSSIBILITY OF PAROLE in the Nevada Department of Prisons for USE OF A  
18 DEADLY WEAPON, to run consecutive to Count IX;  
19 COUNT XI - DEATH for FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON,  
20 and pay \$33,605.95 Restitution jointly and severally with co-offenders Sikia Lafayette Smith and  
21 Terrell Cochise Young;  
22 COUNT XII - DEATH for FIRST DEGREE MURDER WITH USE OF A DEADLY  
23 WEAPON;  
24 COUNT XIII - DEATH for FIRST DEGREE MURDER WITH USE OF A DEADLY  
25 WEAPON;  
26 COUNT XIV - DEATH for FIRST DEGREE MURDER WITH USE OF A DEADLY  
27 WEAPON.  
28 Credit for time served 776 days.

1        THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this  
2 Judgment of Conviction as part of the record in the above entitled matter.

3        DATED this 3 day of October, 2000, in the City of Las Vegas, County of Clark,  
4 State of Nevada.

5  
6   
7 DISTRICT JUDGE  
8 *for Judge Jeffrey Sobel GB*  
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26 DA#98-153154X/kjh  
27 LVMPD EV#9808141600  
28 BURG W/WPN; CONSP ROBB/  
KIDNAP/MURDER; 1° KIDNAP  
W/WPN; 1° MURDER W/WPN - F

ORIGINAL

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

FILED IN OPEN COURT

OCT - 3 2000

20

SHIRLEY B. PARRAGUIRRE, CLERK

BY *Carole D'Aloia*

CAROLE D'ALOIA

DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,  
#1586283

Defendant.

Case No. C153154  
Dept. No. V  
Docket H

WARRANT OF EXECUTION

A JUDGMENT OF DEATH was entered on the 26th day of July, 2000, against the above named Defendant DONTE JOHNSON as a result of his having been found guilty of Counts XI, XII, XIII & XIV - Murder of the First Degree With Use of a Deadly Weapon, by a duly and legally impaneled Jury of twelve persons. The Jury, with the Honorable Jeffrey D. Sobel presiding, after determining Defendant's guilt to the crime of COUNTS XI, XII, XIII & XIV - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, in violation of NRS 200.010, 200.030, 193.165, returned said guilty verdict on or about the 9th day of June, 2000. Thereafter, a Three-Judge Panel then proceeded to hear evidence and deliberated on the punishment to be imposed as provided by NRS 175.552 and 175.554. Thereafter, the Three-Judge Panel returned with the sentence that the Defendant should be punished by Death, and found that there were two (2) aggravating circumstances connected with the commission of said crime, to-wit:

1. The murder was committed while the person was engaged, alone or with others, in the

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1 commission of or an attempt to commit or flight after committing or attempting to commit, any  
2 robbery, arson in the first degree, burglary, invasion of the home or kidnaping in the first degree,  
3 and the person charged:

4 (a) Killed or attempted to kill the person murdered;

5 (b) Knew or had reason to know that life would be taken or lethal force used.

6 2. The defendant has, in the immediate proceeding, been convicted of more than one  
7 offense of murder in the first or second degree. For the purposes of this subsection, a person  
8 shall be deemed to have been convicted of a murder at the time the jury verdict of guilt is  
9 rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

10 That on or about the 26th day of July, 2000, the Three-Judge Panel unanimously found,  
11 beyond a reasonable doubt, that there were no mitigating circumstances sufficient to outweigh  
12 the aggravating circumstance or circumstances, said verdict having been returned in the County  
13 of Clark, State of Nevada. The Court at this time, having determined that no legal reason exists  
14 against the execution of the Judgment.

15 IT IS HEREBY ORDERED that the County Clerk of the County of Clark, State of  
16 Nevada, shall forthwith, execute, in triplicate, under the Seal of the Court, certified copies of the  
17 Warrant of Execution, the Judgment of Conviction, and of the entry thereof in the Minutes of  
18 the Court. The original of the triplicate copies of the Judgment of Conviction, Warrant of  
19 Execution, and entry thereof in the Minutes of the Court, shall be filed in the Office of the  
20 County Clerk, and two of the triplicate copies shall be immediately delivered by the Clerk to the  
21 Sheriff of Clark County, State of Nevada.

22 IT IS FURTHER ORDERED that one of the triplicate copies be delivered by the Sheriff  
23 to the Director of the Department of Prisons or to such person as the Director shall designate.  
24 The Sheriff is hereby directed to take charge of the said Defendant, DONTE JOHNSON, and  
25 transport and deliver the prisoner, forthwith, to the Director of the Department of Prisons at the  
26 Nevada State Prison located at or near Carson City, State of Nevada, and said prisoner, DONTE  
27 JOHNSON, is to be surrendered to the custody of the said Director of the Department of Prisons  
28 or to such authorized person so designated by the Director of the Department of Prisons, for the

1 imprisonment and execution of the said Defendant, DONTE JOHNSON, in accordance with the  
2 provisions of this Warrant of Execution.

3 IT IS FURTHER ORDERED that in connection with the above facts and pursuant to the  
4 provisions of NRS 176.345, 176.355 and 176.357, the Director of the Department of Prisons,  
5 or such person as shall by him be designated, shall carry out said Judgment and Sentence by  
6 executing the said DONTE JOHNSON, by the administration to him, said Defendant, DONTE  
7 JOHNSON, an injection of a lethal drug, the drug or combination of drugs to be used for the  
8 execution to be selected by the Director of the Department of Prisons after consulting with the  
9 State Health Officer. Said execution to be within the limits of the State Prison, located at or near  
10 Carson City, State of Nevada, during the week commencing on the 25th day of December, 2000,  
11 in the presence of the Director of the Department of Prisons, and notify those members of the  
12 immediate family of the victim who have, pursuant to NRS 176.357, requested to be informed  
13 of the time, date and place scheduled for the execution, and invite a competent physician, the  
14 county coroner, a psychiatrist and not less than six reputable citizens over the age of 21 years  
15 to be present at the execution. The director shall determine the maximum number of persons  
16 who may be present for the execution. The director shall give preference to those eligible  
17 members or representatives of the immediate family of the victim who requested, pursuant to  
18 NRS 176.357, to attend the execution.. The execution must take place at the state prison and a  
19 person who has not been invited by the director may not witness the execution.

20 DATED this 3<sup>rd</sup> day of October, 2000.

21  
22   
23 DISTRICT JUDGE  
24  
25  
26  
27  
28

**ORIGINAL**

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

FILED IN OPEN COURT

OCT - 3 2000 20

SHIRLEY B. PARRAGUIRRE, CLERK

 BY Carole D'Alodia  
 CAROLE D'ALDIA DEPUTY

DISTRICT COURT  
 CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 DONTE JOHNSON,  
 #1586283

13 Defendant.

Case No. C153154  
 Dept. No. V  
 Docket H

**ORDER OF EXECUTION**

16 A JUDGMENT OF DEATH having been entered on the 26th day of July, 2000, against  
 17 the above named Defendant, DONTE JOHNSON, as a result of his having been found guilty  
 18 of Counts XI, XII, XIII & XIV - Murder of the First Degree with Use of a Deadly Weapon, by  
 19 a duly and legally impaneled Jury of twelve persons; and

20 WHEREAS, this Court has made inquiry into the facts and found no legal reasons against  
 21 the execution of the Judgment of Death.

22 IT IS ORDERED that the Director of the Department of Prisons shall execute the  
 23 Judgment of Death, during the week commencing on the 25th day of December, 2000.

24 DATED this 3 day of October, 2000.

26 Aleey Cochran (20)  
 DISTRICT JUDGE for Judge Jeremy Sobel

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FILED IN OPEN COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

OCT 3 2000

SHIRLEY B. PARRAGUIRRE, CLERK  
BY Carole P. Aloia

DEPUTY  
CAROLE D'ALOIA

CASE NO. C153154

DEPT. NO. V

THE STATE OF NEVADA

To the Sheriff of Clark County, and the Warden or Officers in charge of the State Prison of the State of Nevada,

GREETINGS:

WHEREAS

DONTE JOHNSON

Having entered a plea of Not Guilty to the crimes of Counts XI, XII, XIII & XIV - Murder With Use of a Deadly Weapon, and the Defendant having been found guilty by the Jury of the crimes of Counts XI, XII, XIII & XIV - Murder of the First Degree With Use of a Deadly Weapon, and judgment having been pronounced against him that he be punished by the imposition of the Death Penalty by the administration of an injection of a lethal drug or combination of drugs.

All of which appears of record in the Office of the Clerk of said Court and a certified copy of the Judgment being attached hereto and made a part hereof.

Now this is to command you, the said Sheriff, to safely deliver the said DONTE JOHNSON, into the custody of the said Warden or his duly authorized representative, when requested to do so,

and this is to command you, the said Warden, or your duly authorized deputy, to receive from the said Sheriff, the said DONTE JOHNSON, to be sentenced as aforesaid, and that the said DONTE JOHNSON be put to death by an injection of a lethal drug or combination of drugs.

And these presents shall be your authority to do so. HEREIN FAIL NOT.

WITNESS, Honorable JEFFREY D. SOBEL, Judge of the said District Court at the Courthouse, in the County of Clark, this 3 day of October, 2000.

Witness my hand and the Seal of said Court,  
the day and year last above written.

Shirley B. Parraguirre (CP)  
Clerk

COUNTY CLERK

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OCT 5 9 32 AM '00

*Stewart L. Bell*

DISTRICT COURT CLERK  
CLARK COUNTY, NEVADA

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

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 DONTÉ JOHNSON,  
13 #1586283

14 Defendant.

Case No. C153154  
Dept. No. V  
Docket H

15 EX PARTE MOTION FOR RELEASE OF EVIDENCE

16 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through  
17 ROBERT DASKAS, Deputy District Attorney, and moves this Honorable Court for an Order  
18 Releasing certain evidence held in the custody of the Clark County Clerk under Case No.  
19 C153154 consisting of State's Exhibit #241, a photograph depicting Juanita Talamantez, Daniel  
20 Talamantez, and Pete Talamantez, to be released to a representative of the District Attorney's  
21 Office for the purpose of being returned to its rightful owner, Juanita Talamantez.

22 DATED this 28 day of September, 2000.

23 STEWART L. BELL  
24 DISTRICT ATTORNEY  
25 Nevada Bar #000477

26 BY *Robert Daskas*  
27 ROBERT DASKAS  
28 Deputy District Attorney  
29 Nevada Bar #004963

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*Shirley S. Ruggione*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,

12 -vs-

13 DONTÉ JOHNSON,  
14 #1586283  
15 Defendant.

Case No. C153154  
Dept. No. V  
Docket H

16 **ORDER FOR RELEASE OF EVIDENCE**

17 Upon the ex parte application and representation of STEWART L. BELL, Clark County  
18 District Attorney, by and through ROBERT DASKAS, Deputy District Attorney, and good cause  
19 appearing therefor,

20 IT IS HEREBY ORDERED that the evidence in the custody of the Clark County Clerk  
21 under Case No. C153154, consisting of State's Exhibit #241, a photograph depicting Juanita  
22 Talamantez, Daniel Talamantez, and Pete Talamantez, to be released to a representative of the  
23 District Attorney's Office for the purpose of being returned to its rightful owner, Juanita  
24 Talamantez.

25 DATED this 29 day of September, 2000.

*[Signature]*  
DISTRICT JUDGE

26 STEWART L. BELL  
27 DISTRICT ATTORNEY  
28 Nevada Bar #000477

29 BY *[Signature]*  
30 ROBERT DASKAS  
31 Deputy District Attorney  
32 Nevada Bar #004963

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*Shirley L. Thompson*  
CLERK

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON,  
#1586283

Defendant.

Case No. C153154  
Dept. No. V  
Docket H

JUDGMENT OF CONVICTION

WHEREAS, on the 17th day of September, 1998, Defendant, DONTE JOHNSON, entered a plea of Not Guilty to the crimes of COUNT I - BURGLARY WHILE IN POSSESSION OF A FIREARM (Felony - NRS 205.060, 193.165); COUNT II - CONSPIRACY TO COMMIT ROBBERY AND/OR KIDNAPING AND/OR MURDER (Felony - NRS 199.480, 200.380, 200.310, 200.320, 200.010, 200.030); COUNTS III, IV, V & VI - ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380, 193.165); COUNTS VII, VIII, IX, & X - FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON (Felony - NRS 200.310, 200.320, 193.165); and COUNTS XI, XII, XIII & XIV - MURDER WITH USE OF A DEADLY WEAPON (Open Murder) (Felony - NRS 200.010, 200.030, 193.165); and

WHEREAS, the Defendant DONTE JOHNSON, was tried before a Jury and the Defendant was found guilty of the crimes of COUNT I - BURGLARY WHILE IN POSSESSION OF A FIREARM (Felony - NRS 205.060, 193.165); COUNT II - CONSPIRACY TO COMMIT ROBBERY AND/OR KIDNAPPING AND/OR MURDER (Felony - NRS

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1 199.480, 200.380, 200.310, 200.320, 200.010, 200.030); COUNTS III, IV, V & VI - ROBBERY  
2 WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380, 193.165); COUNTS VII, VIII,  
3 IX, & X - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (Felony -  
4 NRS 200.310, 200.320, 193.165); and COUNTS XI, XII, XIII & XIV - FIRST DEGREE  
5 MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165),  
6 and the Jury verdict was returned on or about the 9th day of June, 2000. Thereafter, a Three-  
7 Judge Panel, deliberating in the penalty phase of said trial, in accordance with the provisions of  
8 NRS 175.552 and 175.554, found that there were two (2) aggravating circumstances in  
9 connection with the commission of said crime, to-wit:

10 1. The murder was committed while the person was engaged, alone or with others, in the  
11 commission of or an attempt to commit or flight after committing or attempting to commit, any  
12 robbery, arson in the first degree, burglary, invasion of the home or kidnaping in the first degree,  
13 and the person charged:

14 (a) Killed or attempted to kill the person murdered;

15 (b) Knew or had reason to know that life would be taken or lethal force used.

16 2. The defendant has, in the immediate proceeding, been convicted of more than one  
17 offense of murder in the first or second degree. For the purposes of this subsection, a person  
18 shall be deemed to have been convicted of a murder at the time the jury verdict of guilt is  
19 rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

20 That on or about the 26th day of July, 2000, the Three-Judge Panel unanimously found,  
21 beyond a reasonable doubt, that there were no mitigating circumstances sufficient to outweigh  
22 the aggravating circumstance or circumstances, and determined that the Defendant's punishment  
23 should be DEATH as to COUNTS XI, XII, XIII & XIV - MURDER OF THE FIRST DEGREE  
24 WITH USE OF A DEADLY WEAPON in the Nevada State Prison located at or near Carson  
25 City, State of Nevada.

26 WHEREAS, thereafter, on the 3rd day of October, 2000, the Defendant being present in  
27 court with his counsel, JOSEPH SCISCENTO, Deputy Special Public Defender, and DAYVID  
28 J. FIGLER, Deputy Special Public Defender, and GARY L. GUYMON, Chief Deputy District



1 Attorney, also being present; the above entitled Court did adjudge Defendant guilty thereof by  
2 reason of said trial and verdicts and, in addition to the \$25.00 Administrative Assessment Fee,  
3 the Defendant is sentenced as follows:

4 COUNT I - a Maximum term of ONE HUNDRED EIGHTY (180) months with a Minimum  
5 parole eligibility of FORTY (40) months in the Nevada Department of Prisons for BURGLARY  
6 WHILE IN POSSESSION OF A FIREARM;

7 COUNT II - a Maximum term of SEVENTY-TWO (72) months with a Minimum parole  
8 eligibility of SIXTEEN (16) months in the Nevada Department of Prisons for CONSPIRACY  
9 TO COMMIT ROBBERY AND/OR KIDNAPPING AND/OR MURDER, to run consecutive  
10 to Count I;

11 COUNT III - a Maximum term of ONE HUNDRED EIGHTY (180) months with a Minimum  
12 parole eligibility of FORTY (40) months in the Nevada Department of Prisons for ROBBERY  
13 plus an equal and consecutive Maximum term of ONE HUNDRED EIGHTY (180) months with  
14 a Minimum parole eligibility of FORTY (40) months in the Nevada Department of Prisons for  
15 USE OF A DEADLY WEAPON, to run consecutive to Count II;

16 COUNT IV - a Maximum term of ONE HUNDRED EIGHTY (180) months with a Minimum  
17 parole eligibility of FORTY (40) months in the Nevada Department of Prisons for ROBBERY  
18 plus an equal and consecutive Maximum term of ONE HUNDRED EIGHTY (180) months with  
19 a Minimum parole eligibility of FORTY (40) months in the Nevada Department of Prisons for  
20 USE OF A DEADLY WEAPON, to run consecutive to Count III;

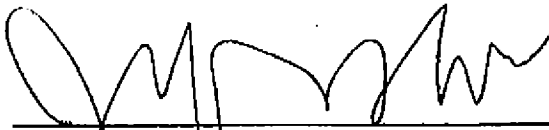
21 COUNT V - a Maximum term of ONE HUNDRED EIGHTY (180) months with a Minimum  
22 parole eligibility of FORTY (40) months in the Nevada Department of Prisons for ROBBERY  
23 plus an equal and consecutive Maximum term of ONE HUNDRED EIGHTY (180) months with  
24 a Minimum parole eligibility of FORTY (40) months in the Nevada Department of Prisons for  
25 USE OF A DEADLY WEAPON, to run consecutive to Count IV;

26 COUNT VI - a Maximum term of ONE HUNDRED EIGHTY (180) months with a Minimum  
27 parole eligibility of FORTY (40) months in the Nevada Department of Prisons for ROBBERY  
28 plus an equal and consecutive Maximum term of ONE HUNDRED EIGHTY (180) months with

1 a Minimum parole eligibility of FORTY (40) months in the Nevada Department of Prisons for  
2 USE OF A DEADLY WEAPON, to run consecutive to Count V;  
3 COUNT VII - LIFE WITHOUT THE POSSIBILITY OF PAROLE in the Nevada Department  
4 of Prisons for FIRST DEGREE KIDNAPPING plus an equal and consecutive LIFE WITHOUT  
5 THE POSSIBILITY OF PAROLE in the Nevada Department of Prisons for USE OF A  
6 DEADLY WEAPON, to run consecutive to Count VI;  
7 COUNT VIII - LIFE WITHOUT THE POSSIBILITY OF PAROLE in the Nevada Department  
8 of Prisons for FIRST DEGREE KIDNAPPING plus an equal and consecutive LIFE WITHOUT  
9 THE POSSIBILITY OF PAROLE in the Nevada Department of Prisons for USE OF A  
10 DEADLY WEAPON, to run consecutive to Count VII;  
11 COUNT IX - LIFE WITHOUT THE POSSIBILITY OF PAROLE in the Nevada Department  
12 of Prisons for FIRST DEGREE KIDNAPPING plus an equal and consecutive LIFE WITHOUT  
13 THE POSSIBILITY OF PAROLE in the Nevada Department of Prisons for USE OF A  
14 DEADLY WEAPON, to run consecutive to Count VIII;  
15 COUNT X - LIFE WITHOUT THE POSSIBILITY OF PAROLE in the Nevada Department of  
16 Prisons for FIRST DEGREE KIDNAPPING plus an equal and consecutive LIFE WITHOUT  
17 THE POSSIBILITY OF PAROLE in the Nevada Department of Prisons for USE OF A  
18 DEADLY WEAPON, to run consecutive to Count IX;  
19 COUNT XI - DEATH for FIRST DEGREE MURDER plus an equal and consecutive DEATH  
20 for USE OF A DEADLY WEAPON, and pay \$33,605.95 Restitution jointly and severally with  
21 co-offenders Sikia Lafayette Smith and Terrell Cochise Young;  
22 COUNT XII - DEATH for FIRST DEGREE MURDER plus an equal and consecutive DEATH  
23 for USE OF A DEADLY WEAPON;  
24 COUNT XIII - DEATH for FIRST DEGREE MURDER plus an equal and consecutive DEATH  
25 for USE OF A DEADLY WEAPON;  
26 COUNT XIV - DEATH for FIRST DEGREE MURDER plus an equal and consecutive DEATH  
27 for USE OF A DEADLY WEAPON.  
28 Credit for time served 776 days.

1        THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this  
2 Judgment of Conviction as part of the record in the above entitled matter.

3        DATED this 09 day of October, 2000, in the City of Las Vegas, County of Clark,  
4 State of Nevada.

5  
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7 DISTRICT JUDGE  
8 **JEFFREY D. SOBEL**  
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26 DA#98-153154X/kjh  
27 LVMPD EV#9808141600  
28 BURG W/WPN; CONSP ROBB/  
KIDNAP/MURDER; 1° KIDNAP  
W/WPN; 1° MURDER W/WPN - F

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TRAN

**ORIGINAL**

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

FILE

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

CASE NO. C153154

DEPT. V

Transcript of  
Proceedings

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

SENTENCING

TUESDAY, OCTOBER 3, 2000, 9:00 A.M.

APPEARANCES:

FOR THE STATE:

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

FOR DEFENDANT JOHNSON:

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

FOR THE DEPARTMENT OF  
PAROLE AND PROBATION:

ERICKA WILLIAMS

COURT RECORDER: SHIRLEE PRAWALSKY

COUNTY CLERK

OCT 13 2000

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1 LAS VEGAS, NEVADA, TUESDAY, OCTOBER 3, 2000, 9:00 A.M.

2 THE COURT: All right. And, Gary, I expect that you do not, on  
3 Johnson, have any speakers because we sent out a letter saying that we  
4 would have a special time if you did, right?

5 MR. GUYMON: That's correct, Judge.

6 THE COURT: All right. Let's do the sentencing, then, on Johnson.

7 Before sentencing the motion regarding a new penalty hearing  
8 or to settle the record is denied.

9 MR. FIGLER: You're not going to settle the record, Judge? You're not  
10 going to settle the record? Is that what you're saying right now?

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

12 MR. FIGLER: Your Honor, this has to be on the record.

13 THE COURT: Okay. Okay. Can you hear, Mr. Figler?

14 MR. FIGLER: Yes, Your Honor.

15 THE COURT: Thank you. Sit down.

16 MR. FIGLER: Yes, Your Honor.

17 THE COURT: The motion is denied. With reference to the record, it's  
18 going to stand the way it is. I don't know whether the judges read the  
19 transcript or not. As the record already indicates, they had ample  
20 opportunity and expressed the desire to read the record. I know that  
21 because there had been a miscommunication in the Public Defender's office,  
22 that we had to chop the hearing up, that the judges actually had more time  
23 than usual to read the transcript.

24 I don't read Holloway the way, apparently, Mr. Siscento and  
25 you do, Mr. Figler. But Mr. Siscento authored the Points and Authorities.  
We have had, in this state for many years, remands for penalty hearings  
and three-judge panels where I would assume that neither the new jury  
who is only hearing the penalty phase -- and this has been for many  
decades -- never heard all of the guilt evidence. And I think probably the  
judges here had more of an examination of the record than normally would

1 take place either on a remand or before a three-judge panel. For those  
2 reasons and the reasons stated in the opposition, it's denied.

3 Are you ready for sentencing?

4 MR. SCISCENTO: Your Honor, may I at least address an issue on the  
Holloway matter?

5 THE COURT: You've had ample opportunity to do it in writing and  
6 you've done it in writing, both on your motion and in your reply.

7 MR. SCISCENTO: This will take a few minutes.

8 THE COURT: I don't care whether it's a matter of minutes, Joe.  
What are you going to add -

9 MR. SCISCENTO: I just want to say that -

10 THE COURT: - to what you filed yesterday?

11 MR. SCISCENTO: What you had said before is that in previous  
12 occasions that we've had three-judge panels and we never had this  
13 problem. Well, Holloway was decided August - it was decided recently, a  
few months ago.

14 THE COURT: And I don't read it as really changing the law. It sets  
15 forth a new jury instruction that has to be given in cases where, I take it  
16 the jury is hearing both. As Judge Maupin - or Justice Maupin noted in his  
17 dissent, even in Holloway, they're not remanding it for an entire new guilt  
18 phase. They're just referring it to a second jury. And that jury isn't going  
19 to be given a transcript and that jury isn't going to hear the whole guilt  
phase.

20 Now, you've litigated this in writing.

21 MR. SCISCENTO: Now, let me address one brand new issue that  
22 happened this morning.

23 THE COURT: And you can address your other concerns to the  
24 Nevada Supreme Court. You've got seven justices up there. You can  
address your concerns up there.

25 MR. SCISCENTO: Your Honor, also I would ask for an evidentiary

1 hearing based on the fact that –  
2 THE COURT: That's denied.  
3 MR. SCISCENTO: –we received a video tape this morning –  
4 THE COURT: That's denied.  
5 MR. SCISCENTO: –which shows –  
6 THE COURT: That is denied. Denied.  
7 MR. SCISCENTO: –the fact that Mr. – that Judge Elliott –  
8 THE COURT: Denied.  
9 MR. SCISCENTO: –did not review the transcripts.  
10 THE COURT: Denied.  
11 MR. SCISCENTO: All right.  
12 THE COURT: I mean, can the word "denied" not be communicated  
13 to you? You've addressed this in writing. I've told you it's denied.  
14 MR. SCISCENTO: I'm just saying this is new evidence that came in  
15 this morning, Your Honor.  
16 THE COURT: Now, Mr. Sciscento –  
17 MR. SCISCENTO: I'm not trying to be abusive to this Court.  
18 THE COURT: –Mr. Sciscento, in a few minutes –  
19 MR. SCISCENTO: But what I'm telling you, Your Honor –  
20 THE COURT: In a few minutes –what you're telling me is you don't  
21 have any respect for the fact that I've told you there will be no oral  
22 argument, and you have no respect for the fact that I have told you that it's  
23 over, and you have no respect for the fact that I've ruled. And I really,  
24 really question whether we'd have this same discussion under different  
25 circumstances. Now, your record is clear –  
MR. SCISCENTO: That's all I need.  
THE COURT: –and you can address your additional concerns to the  
Nevada Supreme Court.  
MR. SCISCENTO: Thank you.  
THE COURT: Are you ready for sentencing?

1 MR. SCISCENTO: Yes, Your Honor.  
2 THE COURT: Adjudicated guilty of all 14 counts. Does the State  
3 wish to be heard?  
4 MR. GUYMON: No, Your Honor. We'll submit it on the  
5 recommendation of Parole and Probation.  
6 THE COURT: Mr. Johnson, where are you today? It's pretty crowded.  
7 COURT SERVICES OFFICER: He don't want to stand up, Judge.  
8 THE COURT: Okay, you don't have to stand up, Mr. Johnson. This is  
9 your opportunity to say anything that you want, if you want to, about the  
10 appropriate sentence. Is there anything you want to say, Mr. White?  
11 THE DEFENDANT: No.  
12 THE COURT: Okay. Mr. Figler and Mr. Sciscento, is there anything  
13 that you'd like to say relative to sentencing?  
14 MR. SCISCENTO: I'll submit it, Your Honor.  
15 THE COURT: Can I have a copy? Does anybody have the PSI? I  
16 haven't seen it since yesterday. Thanks. Thank you.  
17 As I indicated in another quadruple slaying a couple of weeks  
18 ago, what I do today -  
19 MR. FIGLER: Your Honor, we'd ask you not to incorporate other  
20 proceedings into this proceeding and use the individuality of sentencing  
21 without reference to Zane Floyd or any other proceeding.  
22 THE COURT: Thank you, Mr. Figler, for telling me -  
23 MR. FIGLER: Thank you, Judge.  
24 THE COURT: -what you think. Now I'm going to tell you what I  
25 think about sentencing in this case. And if you could just sit there, just for  
a change and have some respect, just for a change, Mr. Figler. And if you  
- no, just sit down, Mr. Figler.  
MR. FIGLER: You're addressing me, Judge.  
THE COURT: I am.  
MR. FIGLER: And protocol requires me to stand.



1 THE COURT: What I'm saying is I'm tired of what you did  
2 throughout the whole trial which showed to me disrespect, not only to my  
3 position, but the rules of ethical conduct. And I think you're continuing to  
4 do it right today.

5 MR. FIGLER: Your Honor, you had an off-record discussion in violation  
6 of Manley. And you say today that you do not want to settle the record as  
7 to what occurred in that record.

8 THE COURT: What I'm saying, Mr. Figler, is -

9 MR. FIGLER: How can I proceed, Judge, with regard to justice, if you,  
10 Your Honor, with all due respect, refuse to follow the law which is clearly  
11 stated in the cases which we cited. Your Honor, all you have to do is settle  
12 the record. Tell us what secret conversation occurred between you, and  
13 Judge Griffith, and Judge Elliott.

14 If you don't want to do that, if you say you don't remember, we  
15 have to bring Judge Elliott down to ask him.

16 THE COURT: Okay. Okay, fine.

17 MR. FIGLER: As time progresses, Judge, your memory is -

18 THE COURT: Mr. Figler -

19 MR. FIGLER: - going to fade.

20 THE COURT: Mr. Figler, the next remark you make that is not  
21 responsive to what I'm asking you - I've been on the bench for ten years.  
22 I have never held anybody in contempt. But I've never had anybody as  
23 contemptuous as you. Just sit there. If you make one more of these out-  
24 of-line comments, we will start contempt proceedings. You know my  
25 feelings and I communicated them to you in the presence of everyone else.  
You were contemptuous during trial, you violated court rules.

Now, you just sit there and show some lack of contempt for the  
rest of these proceedings.

Now, as I started to say -

MR. FIGLER: I only ask you, Judge, not to hold it against my client.

1 THE COURT: I don't hold it against your client, Mr. Figler.

2 MR. FIGLER: I mean, certainly, I am willing to be held in contempt to  
3 support what I believe is my zealous opportunity as requirement to support  
4 the constitution, Judge.

5 THE COURT: Yes, that's what you say, Mr. Figler. And you know  
6 what? You know my feelings and I've expressed them to you before. And  
7 that is: you're a camera hog. If this camera weren't here, we wouldn't  
8 have this same things.

9 MR. FIGLER: Then I would like to excuse myself, Judge, from the  
10 proceedings so the camera can't see me outside.

11 THE COURT: No, we need - yeah, we need - no, Mr. Figler, we need  
12 two lawyers for this, so have a seat under Rule 250 and just be quiet.

13 MR. FIGLER; Well, Judge -

14 THE COURT: Just sit there and be quiet.

15 MR. FIGLER: - the camera is on me. The camera is on, Judge.

16 THE COURT: Just sit down and be quiet. Can you do that? I told  
17 you: next thing is contempt.

18 As I said a few weeks ago at sentencing in another quadruple  
19 homicide, what I do today isn't going to make much of a difference; the  
20 jury has already settled that the appropriate penalty is death - or the  
21 three-judge panel in this case. And I think it is an appropriate sentence  
22 under the law in the State of Nevada.

23 But I think it's also of limited importance, but I'm going to do it  
24 to make sure that society expresses, in it's rather diminished ability to do  
25 so, how badly it feels about the sorts of things that Donte Johnson, or Mr.  
White, did on the days where these four boys died.

And that calls for the maximum penalty on each count and  
consecutive to each other. So, the verdict - or judgment here today  
pronounced will, in each of the counts, run consecutive to each other. That  
will also ensure that if these penalties relating to the death penalty are ever

1 set aside, that he will be under the maximum terms of incarceration so that  
2 at no point in his life will he again be on the streets to try to inflict the kinds  
3 of damage that he either actually inflicted in this case, or could have been  
4 even worse with respect to the attempted murder that we heard about in  
the penalty phase.

5 On Count I: 40 to 180 months Nevada Department of Prisons,  
6 Count II: 16 to 72 months – excuse me – the Count II was Conspiracy to  
7 Commit Robbery and/or Kidnaping, and/or Murder. They suggest an  
8 alternative punishment. What is appropriate here?

9 MR. GUYMON: Judge, in the abundance of caution, we'd be happy to  
10 have you impose the lesser of the two.

11 THE COURT: Sixteen to 72 months for Conspiracy to Commit  
12 Robbery and/or Kidnaping, Count III: 40 to 180 months for the substantive  
13 offense, 180 consecutive for the enhancement for Use of a Deadly Weapon,  
14 that is the same for Counts IV, V, VI. Count VII and VIII, and IX, and X, it  
15 will all be a life sentence without the possibility of parole for the substantive  
16 offensive. And an equal and consecutive term of life without the possibility  
17 of parole for the Use of the Deadly Weapon. Counts XII, XIII, and XIV,  
18 First Degree Murder with Use of a Deadly Weapon will be death in each  
19 case. And as I indicated, the time will run consecutive to each other on  
20 each count. Credit in this matter is 776 days time served.

21 Do you have a warrant?

22 MR. GUYMON: I do, Your Honor. Judge, just so that the record is  
23 clear, did you also order on Count XI that it is death as to number XI/  
24

25 THE COURT: If I didn't I will.

MR. GUYMON: Okay. I have presented to you a warrant of execution  
and an order of execution, Judge.

THE COURT: And without necessity of making formal application, the  
defendant is entitled to an automatic stay for the appeal that is coming up.  
We will stay it subject to the receipt of a written order to that effect.

1 MR. GUYMON: And, Judge, lastly as to Count XI, were you going to  
2 order restitution as well for the judgment of conviction?

3 THE COURT: Yes, how much was that?

4 MR. GUYMON: It is recorded at \$33,605.95.

5 THE COURT: That will be ordered. Thank you..

6 MR. GUYMON: May I file it in open court?

7 MR. FIGLER: With regard to the appeal, Judge, we'd ask that you  
8 recuse yourself for the inevitable remand as well as an habeas proceedings  
9 which may occur.

10 Thank you, Your Honor. Your silence will be accepted.

11 \* \* \* \* \*

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

14 

15 SHIRLEE PRAWALSKY, COURT RECORDER  
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8 STATE OF NEVADA,

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Plaintiff(s),

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vs

Case No. C153154

11

DONTE JOHNSON

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Defendant(s).

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RECEIPT OF EXHIBITS

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19

I do hereby acknowledge that I have received the following exhibits which were heretofore admitted into evidence in the above-entitled action and are being released in accordance with the Order of the Court dated October 5, 2000.

20

21

EXHIBITS: State's Exhibit #241 (photograph)

22

23

DATED: This 18<sup>th</sup> day of October, 2000.

24

25

Signed Sue Lopez  
Print Sue Lopez  
Agency DA-Victim Witness

26

27

28

1 **ORDR**  
 2 PHILIP J. KOHN  
 3 CLARK COUNTY SPECIAL PUBLIC DEFENDER  
 4 Nevada Bar #0556  
 5 DAYVID J. FIGLER  
 6 Deputy Special Public Defender  
 7 Nevada Bar #4264  
 8 309 South Third Street, 4th Floor  
 9 Las Vegas, Nevada 89155  
 10 (702) 455-6265

11 Attorney for Defendant

12 **DISTRICT COURT**  
 13 **CLARK COUNTY, NEVADA**

14 THE STATE OF NEVADA,  
 15  
 16 Plaintiff,

17 vs.

18 DONTÉ JOHNSON,  
 19  
 20 Defendant.

Case No. C153154  
 Dept. No. V

21 **ORDER FOR STAY OF EXECUTION**

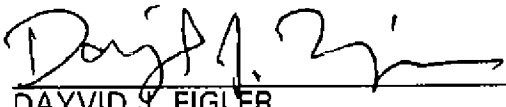
22 Defendant, DONTÉ JOHNSON, having been convicted of burglary while in  
 23 possession of a firearm, conspiracy to commit robbery and/or kidnapping and/or murder,  
 24 robbery with use of a deadly weapon, first degree kidnapping with use of a deadly  
 25 weapon, murder of the first degree with use of a deadly weapon and having been  
 26 sentenced thereon to death by lethal injection;

27 IT IS HEREBY ORDERED that the execution of Defendant Donte Johnson be stayed  
 28 pending resolution of his direct appeal proceedings.

DATED this 24 day of October, 2000.

  
 DISTRICT COURT JUDGE

PHILIP J. KOHN  
 SPECIAL PUBLIC DEFENDER

  
 DAYVID J. FIGLER  
 Deputy Special Public Defender  
 Nevada Bar #4264

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OCT 26 2 03 PM '00

COUNTY CLERK

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 Oct 26 2 03 PM '00  
*Shirley L. Thompson*  
 CLERK

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PHILIP J. KOHN

CLARK COUNTY SPECIAL PUBLIC DEFENDER

Nevada Bar #0556

DAYVID J. FIGLER

Nevada Bar #4264

309 South Third Street, 4th Floor

Las Vegas, Nevada 89155-2316

(702) 455-6265

Attorney for Defendant

FILED

Nov 8 10 48 AM '00

CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON,

Defendant.

Case No. C153154

Dept. No. V

NOTICE OF APPEAL

TO: THE STATE OF NEVADA

STEWART BELL, DISTRICT ATTORNEY, CLARK COUNTY, NEVADA and  
DEPARTMENT V OF THE EIGHTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK.

NOTICE is hereby given that DONTE JOHNSON, presently  
incarcerated in the Nevada State Prison, appeals to the Supreme Court  
of the State of Nevada from the judgment entered against said  
Defendant on the 3rd day of October, 2000, whereby he was convicted  
of count I - burglary while in possession of a firearm and sentenced  
to a minimum of forty (40) months to a maximum of one hundred eighty  
(180) months in the Nevada State Prison; count II - conspiracy to  
commit robbery and/or kidnapping and/or murder and sentenced to a  
minimum of sixteen (16) months to a maximum of seventy-two (72) months

COUNTY CLERK

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SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

1 to run consecutive to count I; count III - robbery with use of a  
2 deadly weapon and sentenced to a minimum of forty (40) months to a  
3 maximum of one hundred eighty (180) months on the robbery charge plus  
4 a consecutive minimum of forty (40) months to a maximum of one hundred  
5 eighty (180) months for use of a deadly weapon to run consecutive to  
6 count II; count IV - robbery with use of a deadly weapon and sentenced  
7 to a minimum of forty (40) months to a maximum of one hundred eighty  
8 (180) months on the robbery charge plus a consecutive minimum of forty  
9 (40) months to a maximum of one hundred eighty (180) months for use  
10 of a deadly weapon to run consecutive to count III; count V - robbery  
11 with use of a deadly weapon and sentenced to a minimum of forty (40)  
12 months to a maximum of one hundred eighty (180) months on the robbery  
13 charge plus a consecutive minimum of forty (40) months to a maximum  
14 of one hundred eighty (180) months for use of a deadly weapon to run  
15 consecutive to count IV; count VI - robbery with use of a deadly  
16 weapon and sentenced to a minimum of forty (40) months to a maximum  
17 of one hundred eighty (180) months on the robbery charge plus a  
18 consecutive minimum of forty (40) months to a maximum of one hundred  
19 eighty (180) months for use of a deadly weapon to run consecutive to  
20 count V; count VII - first degree kidnapping with use of a deadly  
21 weapon and sentenced to life without the possibility of parole on the  
22 first degree kidnapping charge plus a consecutive life without the  
23 possibility of parole for use of a deadly weapon to run consecutive  
24 to count VI; count VIII - first degree kidnapping with use of a deadly  
25 weapon and sentenced to life without the possibility of parole on the  
26 first degree kidnapping charge plus a consecutive life without the  
27 possibility of parole for use of a deadly weapon to run consecutive  
28 to count VII; count IX - first degree kidnapping with use of a deadly

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA



1 weapon and sentenced to life without the possibility of parole on the  
2 first degree kidnapping charge plus a consecutive life without the  
3 possibility of parole for use of a deadly weapon to run consecutive  
4 to count VIII; count X - first degree kidnapping with use of a deadly  
5 weapon and sentenced to life without the possibility of parole on the  
6 first degree kidnapping charge plus a consecutive life without the  
7 possibility of parole for use of a deadly weapon to run consecutive  
8 to count IX; count XI - first degree murder with use of a deadly  
9 weapon and sentenced to death plus \$33,605.95 restitution jointly and  
10 severally with co-offenders Sikia Lafayette Smith and Terrell Cochise  
11 Young; count XII - first degree murder with use of a deadly weapon and  
12 sentenced to death; count XIII - first degree murder with use of a  
13 deadly weapon and sentenced to death; count XIV - first degree murder  
14 with use of a deadly weapon and sentenced to death; credit for time  
15 served in the amount of 776 days.

16 DATED this 8th day of November, 2000.

17 PHILIP J. KOHN  
18 CLARK COUNTY SPECIAL PUBLIC DEFENDER

19 By



20 DAYVION J. FIGLER  
21 DEPUTY SPECIAL PUBLIC DEFENDER  
22 NEVADA BAR #4264  
23 309 SOUTH THIRD STREET, 4TH FLOOR  
24 LAS VEGAS, NEVADA 89155-2316  
25 (702) 455-6265  
26  
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SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

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14 I declare under penalty of perjury that the foregoing is  
15 true and correct.

DONNA POLLOCK

23 STEWART L. BELL  
CLARK COUNTY DISTRICT ATTORNEY

By

CAS  
 PHILIP J. KOHN  
 CLARK COUNTY SPECIAL PUBLIC DEFENDER  
 Nevada Bar #0556  
 DAYVID J. FIGLER  
 Deputy Special Public Defender  
 Nevada Bar #4264  
 309 South Third Street, 4th Floor  
 Las Vegas, Nevada 89155  
 (702) 455-6265  
 Attorney for Defendant

FILED

Nov 8 10 48 AM '00

*Shirley B. Thompson*  
 CLERK

DISTRICT COURT  
 CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	Case No. C153154
	)	
Plaintiff,	)	Dept. No. V
	)	
vs.	)	
	)	
DONTE JOHNSON,	)	
	)	
Defendant.	)	

CASE APPEAL STATEMENT

1. Appellant filing this case appeal statement: Donte Johnson.
  2. Judge issuing the decision, judgment, or order appealed from: Jeffrey Sobel.
  3. All parties to the proceedings in the district court (the use of et al. To denote parties is prohibited): The State of Nevada vs. Donte Johnson.
  4. All parties involved in this appeal (the use of et al. To denote parties is prohibited): Donte Johnson, Appellant; The State of Nevada, Respondent.
- // //

RECEIVED

NOV 8 2000

COUNTY CLERK

SPECIAL PUBLIC DEFENDER

CLARK COUNTY NEVADA

5. Name, law firm, address, and telephone number of all  
counsel on appeal and party or parties whom they represent:

PHILIP J. KOHN  
Clark County, Nevada  
Special Public Defender  
309 South Third Street, 4th Floor  
Las Vegas, Nevada 89155

STEWART L. BELL  
Clark County, Nevada  
District Attorney  
200 South Third Street  
Las Vegas, Nevada 89155

Attorney for Appellant

FRANKIE SUE DEL PAPA  
Attorney General  
Nevada Bar No. 000192  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(702) 687-3538

Counsel for Respondent

6. Whether appellant was represented by appointed or  
retained counsel in the district court: Appointed.

7. Whether appellant is represented by appointed or  
retained counsel on appeal: Appointed.


8. Whether appellant was granted leave to proceed in  
forma pauperis, and the date of entry of the district court order  
granting such leave: N/A

9. Date proceedings commenced in the district court  
(e.g., date complaint, indictment, information, or petition was  
filed): September 3, 1998.

DATED this 8th day of November, 2000.

PHILIP J. KOHN  
CLARK COUNTY SPECIAL PUBLIC DEFENDER

By

  
DAYVIE J. FIGLER  
DEPUTY SPECIAL PUBLIC DEFENDER  
NEVADA BAR #4264  
309 SOUTH THIRD STREET, 4TH FLOOR  
LAS VEGAS, NEVADA 89155-2316  
(702) 455-6265

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

1 RECEIPT OF A COPY of the foregoing Case Appeal Statement  
2 is hereby acknowledged this 8th day of November, 2000.

3 STEWART L. BELL  
4 CLARK COUNTY DISTRICT ATTORNEY

5  
6 By *Madeline M. Mulkey*  
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SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

322

1 VER

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

FILED IN OPEN COURT

JUL 26 2000 11:25 AM 20

SHIRLEY B. PARRAGUIRRE, CLERK

BY Carole D'Aloia  
CAROLE D'ALOIA DEPUTY

4 THE STATE OF NEVADA,

5 Plaintiff,

6 -vs-

7 DONTE JOHNSON

8 Defendant.  
9  
10

Case No. C153154  
Dept. No. V  
Docket H

11 VERDICT

12 The Jury in the above entitled case, having found the Defendant, DONTE JOHNSON,  
13 Guilty of COUNT XI - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY  
14 WEAPON, and we, the Three-Judge Panel, having found that the aggravating circumstance or  
15 circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

16 \_\_\_\_\_ A definite term of 100 years imprisonment, with eligibility for parole beginning  
17 when a minimum of 40 years has served,

18 \_\_\_\_\_ Life in Nevada State Prison With the Possibility of Parole.

19 ☒ Life in Nevada State Prison Without the Possibility of Parole.

20 ☒ Death.  
21

22 DATED at Las Vegas, Nevada, this 26th day of July, 2000

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CE52

323  
1 VER

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

FILED IN OPEN COURT

JUL 26 2000 at 12:50 PM 20

SHIRLEY B. PARRAGUIRRE, CLERK

BY Carole D'Aloia  
CAROLE D'ALOIA DEPUTY

4 THE STATE OF NEVADA,

5 Plaintiff,

6 -vs-

7 DONTÉ JOHNSON

8 Defendant.  
9  
10

Case No. C153154  
Dept. No. V  
Docket H

11 VERDICT

12 The Jury in the above entitled case, having found the Defendant, DONTÉ JOHNSON,  
13 Guilty of COUNT XII - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY  
14 WEAPON, and we, the Three-Judge Panel, having found that the aggravating circumstance or  
15 circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

16 \_\_\_\_\_ A definite term of 100 years imprisonment, with eligibility for parole beginning  
17 when a minimum of 40 years has served,

18 \_\_\_\_\_ Life in Nevada State Prison With the Possibility of Parole.

19 \_\_\_\_\_ Life in Nevada State Prison Without the Possibility of Parole.

20 ☒ Death.  
21

22 DATED at Las Vegas, Nevada, this 26th day of July, 2000

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24 [Signature]  
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26 [Signature]  
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CE52

329  
1 VER

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

FILED IN OPEN COURT  
JUL 26 2000 01:25 PM 20

SHIRLEY B. PARRAGUIRRE, CLERK

BY Carole D'Aloia  
CAROLE D'ALOIA DEPUTY

4 THE STATE OF NEVADA,

5 Plaintiff,

6 -vs-

7 DONTÉ JOHNSON

8 Defendant.  
9  
10

Case No. C153154  
Dept. No. V  
Docket H

11 VERDICT

12 The Jury in the above entitled case, having found the Defendant, DONTÉ JOHNSON,  
13 Guilty of COUNT XIII - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY  
14 WEAPON and we, the Three-Judge Panel, having found that the aggravating circumstance or  
15 circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

16        A definite term of 100 years imprisonment, with eligibility for parole beginning  
17 when a minimum of 40 years has served,

18        Life in Nevada State Prison With the Possibility of Parole.

19        Life in Nevada State Prison Without the Possibility of Parole.

20   ✓   Death.  
21

22 DATED at Las Vegas, Nevada, this 26th day of July, 2000

23  
24 [Signature]  
25 [Signature]  
26 [Signature]  
27  
28 Michael R. Smith

CE52



325  
1 VER

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED IN OPEN COURT  
JUL 26 2000 1:25 PM

SHIRLEY B. PARRAGUIRRE, CLERK

BY Carole D'Aloia  
CAROLE D'ALOIA DEPUTY

2  
3  
4 THE STATE OF NEVADA,

5 Plaintiff,

6 -vs-

7 DONTÉ JOHNSON

8  
9 Defendant.  
10

Case No. C153154  
Dept. No. V  
Docket H

11 VERDICT

12 The Jury in the above entitled case, having found the Defendant, DONTÉ JOHNSON,  
13 Guilty of COUNT XIV - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY  
14 WEAPON, and we, the Three-Judge Panel, having found that the aggravating circumstance or  
15 circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

16 \_\_\_\_\_ A definite term of 100 years imprisonment, with eligibility for parole beginning  
17 when a minimum of 40 years has served,

18 \_\_\_\_\_ Life in Nevada State Prison With the Possibility of Parole.

19 \_\_\_\_\_ Life in Nevada State Prison Without the Possibility of Parole.

20 ☒ Death.  
21

22 DATED at Las Vegas, Nevada, this 26th day of July, 2000  
23

24 [Signature]  
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26 [Signature]  
27 [Signature]  
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326  
1 VER

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

FILED IN OPEN COURT  
JUL 26 2000 01:25 PM 20

SHIRLEY B. PARRAGUIRRE, CLERK

BY *Carole D'Aloia*

CAROLE D'ALOIA DEPUTY

Case No. C153154  
Dept. No. V  
Docket H

4 THE STATE OF NEVADA,

5 Plaintiff,

6 -vs-

7 DONTÉ JOHNSON

8 Defendant.  
9  
10

11 SPECIAL  
12 VERDICT

13 The Jury in the above entitled case, having found the Defendant, DONTÉ JOHNSON,  
14 Guilty of COUNT XI - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY  
15 WEAPON, and we, the Three-Judge Panel, designate that the aggravating circumstance or  
16 circumstances which have been checked below have been established beyond a reasonable  
17 doubt.

18 ☒ The murder was committed while the person was engaged, alone or with  
19 others, in the commission of or an attempt to commit or flight after  
20 committing or attempting to commit, any robbery, arson in the first degree,  
21 burglary, invasion of the home or kidnaping in the first degree, and the  
22 person charged:

23 (a) Killed or attempted to kill the person murdered;

24 (b) Knew or had reason to know that life would be taken or lethal force  
25 used.

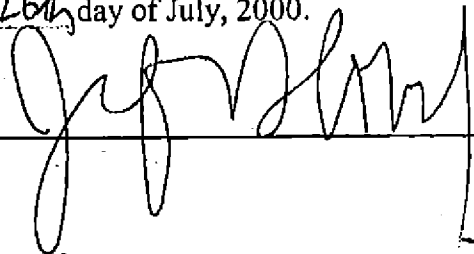
26 \_\_\_\_\_ The murder was committed to avoid or prevent a lawful arrest or to effect  
27 an escape from custody.  
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✓

The defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree. For the purposes of this subsection, a person shall be deemed to have been convicted of a murder at the time the jury verdict of guilt is rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

DATED at Las Vegas, Nevada, this 26<sup>th</sup> day of July, 2000.

  
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327

1 VER

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED IN OPEN COURT

JUL 26 2000 11:25 AM '00

4 SHIRLEY B. PARRAGUIRRE, CLERK

5 BY Carole D'Aloia  
6 CAROLE D'ALOIA DEPUTY

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 DONTE JOHNSON

11 Defendant.

Case No. C153154  
Dept. No. V  
Docket H

12 SPECIAL  
VERDICT

13 The Jury in the above entitled case, having found the Defendant, DONTE JOHNSON,  
14 Guilty of COUNT XII - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY  
15 WEAPON, and we, the Three-Judge Panel, designate that the mitigating circumstance or  
16 circumstances which have been checked below have been established.

17 ☐ The murder was committed while the Defendant was under the influence of  
18 extreme mental or emotional disturbance.

19 ☐ The Defendant was an accomplice in a murder committed by another person and  
20 his participation in the murder was relatively minor.

21 ☒ The Defendant acted under duress or under the domination of another person.

22 ☒ The youth of the Defendant at the time of the crime.

23 ☒ Any other mitigating circumstances horrible childhood

24  
25  
26 DATED at Las Vegas, Nevada, this 26th day of July, 2000.

27  
28 [Signature]

[Signature]

Michael R. [Signature]

CE52

328  
1 VER

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED IN OPEN COURT

JUL 26 2000 1:25 PM '00

SHIRLEY B. PARRAGUIRRE, CLERK

BY Carole D'Aloia

CAROLE D'ALOIA

DEPUTY

5 THE STATE OF NEVADA,

6 Plaintiff,

7 -vs-

8 DONTE JOHNSON

9  
10 Defendant.

Case No. C153154  
Dept. No. V  
Docket H

11  
12 SPECIAL  
VERDICT

13 The Jury in the above entitled case, having found the Defendant, DONTE JOHNSON,  
14 Guilty of COUNT XIII - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY  
15 WEAPON, and we, the Three-Judge Panel, designate that the mitigating circumstance or  
16 circumstances which have been checked below have been established.

17 ☐ The murder was committed while the Defendant was under the influence of  
18 extreme mental or emotional disturbance.

19 ☐ The Defendant was an accomplice in a murder committed by another person and  
20 his participation in the murder was relatively minor.

21 ☐ The Defendant acted under duress or under the domination of another person.

22 ☒ The youth of the Defendant at the time of the crime.

23 ☒ Any other mitigating circumstances horrible childhood

24  
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26 DATED at Las Vegas, Nevada, this 26 day of July, 2000.

27  
28 [Signature]

[Signature]

Michael R. Smith

CE52

329  
1 VER

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

FILED IN OPEN COURT

JUL 26 2000 2:25 PM '20

SHIRLEY B. PARRAGUIRRE, CLERK

BY Carole D'Aloia  
CAROLE D'ALOIA DEPUTY

4 THE STATE OF NEVADA,

5 Plaintiff,

6 -vs-

7 DONTÉ JOHNSON

8 Defendant.  
9  
10

Case No. C153154  
Dept. No. V  
Docket H

11 SPECIAL  
12 VERDICT

13 The Jury in the above entitled case, having found the Defendant, DONTÉ JOHNSON,  
14 Guilty of COUNT XIV - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY  
15 WEAPON, and we, the Three-Judge Panel, designate that the aggravating circumstance or  
16 circumstances which have been checked below have been established beyond a reasonable  
17 doubt.

18 ✓  
19 The murder was committed while the person was engaged, alone or with  
20 others, in the commission of or an attempt to commit or flight after  
21 committing or attempting to commit, any robbery, arson in the first degree,  
22 burglary, invasion of the home or kidnaping in the first degree, and the  
23 person charged:

24 (a) Killed or attempted to kill the person murdered;

25 (b) Knew or had reason to know that life would be taken or lethal force  
26 used.

27 \_\_\_\_\_ The murder was committed to avoid or prevent a lawful arrest or to effect  
28 an escape from custody.

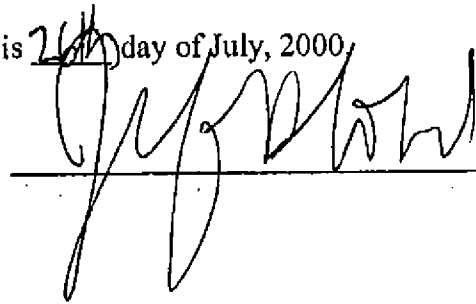
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✓

The defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree. For the purposes of this subsection, a person shall be deemed to have been convicted of a murder at the time the jury verdict of guilt is rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

DATED at Las Vegas, Nevada, this 26<sup>th</sup> day of July, 2000.

  
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330

1 VER

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

FILED IN OPEN COURT  
JUL 26 2000 01:25 PM 20

SHIRLEY B. PARRAGUIRRE, CLERK

4 BY Carole D'Alvin  
5 CAROLE D'ALOIA DEPUTY

6 THE STATE OF NEVADA,

7 Plaintiff,

8 -vs-

9 DONTÉ JOHNSON

10 Defendant.

Case No. C153154  
Dept. No. V  
Docket H

11  
12 SPECIAL  
VERDICT

13 The Jury in the above entitled case, having found the Defendant, DONTÉ JOHNSON,  
14 Guilty of COUNT XI - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY  
15 WEAPON, and we, the Three-Judge Panel, designate that the mitigating circumstance or  
16 circumstances which have been checked below have been established.

17 ☐ The murder was committed while the Defendant was under the influence of  
18 extreme mental or emotional disturbance.

19 ☐ The Defendant was an accomplice in a murder committed by another person and  
20 his participation in the murder was relatively minor.

21 ☐ The Defendant acted under duress or under the domination of another person.

22 ☒ The youth of the Defendant at the time of the crime.

23 ☒ Any other mitigating circumstances horrible childhood.

24  
25  
26 DATED at Las Vegas, Nevada, this 26<sup>th</sup> day of July, 2000.

27  
28 [Signature]

[Signature]

Michael R. Smith

CE52



331

1 VER

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

FILED IN OPEN COURT  
JUL 26 2000 2:25 PM '00

4 SHIRLEY B. PARRAGUIRRE, CLERK

5 BY Carole D'Aloia  
6 CAROLE D'ALOIA DEPUTY

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 DONTE JOHNSON

11 Defendant.

Case No. C153154  
Dept. No. V  
Docket H

12 SPECIAL  
13 VERDICT

14 The Jury in the above entitled case, having found the Defendant, DONTE JOHNSON,  
15 Guilty of COUNT XII - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY  
16 WEAPON, and we, the Three-Judge Panel, designate that the aggravating circumstance or  
17 circumstances which have been checked below have been established beyond a reasonable  
18 doubt.

19 ✓

20 The murder was committed while the person was engaged, alone or with  
21 others, in the commission of or an attempt to commit or flight after  
22 committing or attempting to commit, any robbery, arson in the first degree,  
23 burglary, invasion of the home or kidnaping in the first degree, and the  
24 person charged:

25 (a) Killed or attempted to kill the person murdered;


26 (b) Knew or had reason to know that life would be taken or lethal force  
27 used.

28 The murder was committed to avoid or prevent a lawful arrest or to effect  
an escape from custody.

CE52

The defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree. For the purposes of this subsection, a person shall be deemed to have been convicted of a murder at the time the jury verdict of guilt is rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

DATED at Las Vegas, Nevada, this 26th day of July, 2000.



*Sam P. Elmer*

Michael R. Smith

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VER

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED IN OPEN COURT  
JUL 26 2000 *cliam* 20

SHIRLEY B. PARRAGUIRRE, CLERK

BY *Carole D'Alon*  
CAROLE D'ALOIA DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONTE JOHNSON

Defendant.

Case No. C153154  
Dept. No. V  
Docket H

SPECIAL  
VERDICT

The Jury in the above entitled case, having found the Defendant, DONTE JOHNSON, Guilty of COUNT XIII - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, and we, the Three-Judge Panel, designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

✓ The murder was committed while the person was engaged, alone or with others, in the commission of or an attempt to commit or flight after committing or attempting to commit, any robbery, arson in the first degree, burglary, invasion of the home or kidnaping in the first degree, and the person charged:

(a) Killed or attempted to kill the person murdered;

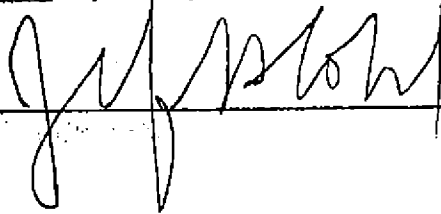
(b) Knew or had reason to know that life would be taken or lethal force used.

       The murder was committed to avoid or prevent a lawful arrest or to effect an escape from custody.


✓

1 The defendant has, in the immediate proceeding, been convicted of more  
2 than one offense of murder in the first or second degree. For the purposes  
3 of this subsection, a person shall be deemed to have been convicted of a  
4 murder at the time the jury verdict of guilt is rendered or upon  
5 pronouncement of guilt by a judge or judges sitting without a jury.  
6

7 DATED at Las Vegas, Nevada, this 26 day of July, 2000.

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333

1 VER

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

FILED IN OPEN COURT  
JUL 26 2000 at 1:25 PM '00

4 SHIRLEY B. PARRAGUIRRE, CLERK

5 BY Carole D'Aloia  
6 CAROLE D'ALOIA DEPUTY

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 DONTE JOHNSON

11 Defendant.

Case No. C153154  
Dept. No. V  
Docket H

12 SPECIAL  
13 VERDICT

14 The Jury in the above entitled case, having found the Defendant, DONTE JOHNSON,  
15 Guilty of COUNT XIV - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY  
16 WEAPON, and we, the Three-Judge Panel, designate that the mitigating circumstance or  
17 circumstances which have been checked below have been established.

18 ☐ The murder was committed while the Defendant was under the influence of  
19 extreme mental or emotional disturbance.

20 ☐ The Defendant was an accomplice in a murder committed by another person and  
21 his participation in the murder was relatively minor.

22 ☐ The Defendant acted under duress or under the domination of another person.

23 ☒ The youth of the Defendant at the time of the crime.

24 ☒ Any other mitigating circumstances Horrible childhood

25  
26 DATED at Las Vegas, Nevada, this 26 day of July, 2000.

27 [Signature]  
28 [Signature]  
[Signature]

CE52

FILED

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

JUL 28 9 51 AM '00

*Shirley M. Thompson*  
CLERK

STATE OF NEVADA

Plaintiff

vs.

DONTE JOHNSON,  
aka John Lee White

Defendant

CASE NO. C153154

DEPT. V  
DOCKET "H"

Transcript of  
Proceedings

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

THREE JUDGE PANEL - PENALTY PHASE - DAY 2 and VERDICT  
WEDNESDAY, JULY 26, 2000  
VOLUME II

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANT:

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

COURT REPORTER:

CARRIE HANSEN  
District Court

TRANSCRIPTION BY:

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

Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

RECEIVED  
JUL 28 2000  
CLARK COUNTY CLERK

1 LAS VEGAS, NEVADA, WEDNESDAY JULY 26, 2000, 8:11 A.M.

2 JUDGE SOBEL: Could we, before you call your first  
3 witness, tell us, just for the record -- of course, the  
4 transcript will be available when it comes up, but tell us,  
5 for the record, what transcripts the State gave us, and then  
6 the defense, to read, if you would, either Mr. Daskas or Mr.  
7 Guymon.

8 MR. DASKAS: As I recall, we provided the Court with  
9 four or five transcripts. One was from Stacey Trammell, last  
10 name is T-R-A-M-M-E-L-L, she was the victim of the bank  
11 robbery, Lieutenant Grayson, G-R-A-Y-S-O-N, who was the  
12 lieutenant who investigated that bank robbery, Robert Hoffman,  
13 who is a parole agent, I believe, with the California Youth  
14 Authority, Kim Kern, last name K-E-R-N, who was the manager at  
15 the Longhorn Casino or Super 8 Motel where the shooting  
16 occurred on August 11th and, finally, I believe was Officer  
17 Clark, who is also with parole in California with the Youth  
18 Authority.

19 JUDGE SOBEL: Thank you.

20 Mr. Figler or Mr. Sciscento, who did you give us?

21 MR. SCISCENTO: We provided Dr. Matthews, Your  
22 Honor.

23 JUDGE SOBEL: All right, thank you.

24 You ready, defense?

25 (Pause in the proceedings)

II-2

CAIN - DIRECT

1 MR. SCISCENTO: Your Honor, also, I think for the  
2 benefit of time, we're going to not call one of our witnesses  
3 that we called before, that being Moses Samora. We have made  
4 copies of those transcripts. We decided last night, for the  
5 time element, we won't call him. We do have copies of those  
6 transcripts. Since you've already heard that, I've made two  
7 copies.

8 Can I approach?

9 JUDGE SOBEL: This was the boyfriend of --

10 MR. SCISCENTO: Yes, Your Honor.

11 JUDGE SOBEL: -- one of the Johnsons?

12 MR. SCISCENTO: Here's two copies. Thank you.

13 JUDGE SOBEL: All right, call your first witness  
14 then.

15 MR. SCISCENTO: The defense calls Eunice Cain.

16 (Pause in the proceedings)

17 EUNICE CAIN, DEFENDANT'S WITNESS, IS SWORN

18 THE CLERK: Okay, please have a seat and state your  
19 full name and spell your last name for the record.

20 THE WITNESS: My name is Eunice Cain. My last name  
21 is spelled C-A-I-N.

22 DIRECT EXAMINATION

23 BY MR. SCISCENTO:

24 Q Ms. Cain, how are you today?

25 A Okay.



CAIN - DIRECT

1 Q Do you want to move the microphone a little closer  
2 to you?

3 A Yeah.

4 (Pause in the proceedings)

5 Q Do you know a person in here -- in court today? Do  
6 you know a person in court today?

7 A Yes, I do.

8 Q Who do you know here sitting in court?

9 A My son.

10 Q Okay. And what's his name?

11 A John Lee White.

12 Q And where is John Lee White sitting?

13 A He's sitting there.

14 Q Okay, he's in the middle -- he's sitting over here  
15 at the defense table in the white shirt?

16 A Yes.

17 Q Okay. And that's your son you know as John White?

18 A Yeah.

19 MR. SCISCENTO: The record will reflect that she's  
20 identified her son.

21 JUDGE SOBEL: It will.

22 BY MR. SCISCENTO:

23 Q When was Mr. John White born?

24 A He was born May the 27th, 1977.

25 Q And whereabouts was he born?

CAIN - DIRECT

1 A White Memorial Hospital here in L.A.

2 Q Okay. And during this pregnancy were you taking any  
3 kind of drugs or anything like that?

4 A No, not during that time.

5 Q Prior to that were you taking any kind of drugs?

6 A After he was born.

7 Q Okay, what kind of drugs were you taking?

8 A I was using PCP.

9 Q I'm sorry?

10 A PCP.

11 Q PCP?

12 A Yeah, I took it, yeah.

13 Q And were you taking any other kind of drugs, sherms?

14 A That's what I was freaking on.

15 Q Okay. John's father, what's his name?

16 A John Lee White, Senior.

17 Q Okay. And where's John Lee White, Senior today?

18 A I don't know.

19 Q Okay. Did Johnnie Lee White, Senior have any help -  
20 - or did he provide any assistance in the raising of John  
21 White?

22 A No.

23 Q Okay. Why don't you explain the early childhood, if  
24 you can remember, of John White.

25 A Well, when he was a baby, I had problems, more

CAIN - DIRECT

1 problems with his father. His father was the type that liked  
2 to fight with me and John was always there trying to look out,  
3 but he was only a baby himself. And his father used to jump  
4 on me and at one point he jumped on me and knocked my teeth  
5 out.

6 Q Okay, so there was physical violence where you  
7 actually lost your teeth?

8 A Uh-huh.

9 Q Okay.

10 A Yeah.

11 Q And was there any other physical violence to you?

12 A Yes, where he came through the window with a  
13 cocktail, homemade cocktail.

14 Q Okay, let me stop you there. What do you mean by a  
15 cocktail?

16 A He made one of those cocktail bombs and he came  
17 through a window.

18 Q All right, I'm gonna stop you there. In my world a  
19 cocktail is a mixture of a drink you drink after 4:00 o'clock.

20 A Well, I don't know. I don't -- This is what they --

21 Q Why don't you explain what, in your world, what a  
22 cocktail means.

23 A It's like a bottle or something, you know, their own  
24 homemade bomb, you know, explosion.

25 Q It's a homemade bomb?

II-6

CAIN - DIRECT

1           A     Explosion, yeah.

2           Q     Okay. So now you're saying that John White, Senior  
3 came to your house with this homemade bomb?

4           A     Yeah, uh-huh, and also -- he also -- I was staying  
5 downtown and he tried to push me out the Frontier Hotel window  
6 and, my son, he opened the door and ran out. He opened the  
7 door and ran out. And, if he hadn't have ran out, he was the  
8 one that saved my life from this. You know, he opened the  
9 door and ran out.

10          Q     Now you've described some incidents of violence to  
11 yourself and to your home.

12          A     Uh-huh.

13          Q     During those times was John White present?

14          A     Yes.

15          Q     How old was he during those times, that being John  
16 White?

17          A     He was about five, maybe four or five.

18          Q     Okay. What about this time that your husband hit  
19 you in the mouth and you lost your teeth, how old was John  
20 White?

21          A     He was about six maybe, maybe not that old, maybe  
22 about -- maybe about three or something like that. He was  
23 pretty young.

24          Q     Tell me about your living environment. What houses  
25 or apartments did you live in while he was a child?

CAIN - DIRECT

1           A     I stayed in the Pueblo [phonetic] projects while he  
2 was a baby and then, from there, -- well, the first place I  
3 stayed was, when he was born, I stayed on 52nd and Compton in  
4 the back house, in the back of my -- across the street from my  
5 mother and my grandmother.

6           Q     Okay, now you stayed in the back of the house?

7           A     Uh-huh, I stayed in the back -- There was a front  
8 house and a back house. I stayed in the back house on 52nd  
9 and Compton when he was born and then --

10          Q     Was Mr. -- Did Mr. John White, Senior provide you  
11 any financial support?

12          A     Yes.

13          Q     What kind?

14          A     Yes.

15          Q     How much?

16          A     Like he would work every week and at the end of the  
17 week he get paid. He would do that much, yeah, uh-huh. I  
18 don't --

19          Q     What did you do with the money?

20          A     Buy clothes and --

21          Q     What did you do with the money?

22          A     Buy the kids clothes or whatever they needed.

23          Q     Would you ever spend any of that money on crack  
24 cocaine?

25          A     I wasn't using then.

CAIN - DIRECT

1 Q Okay.

2 A I wasn't on PCP then.

3 Q Okay. Ms. Cain, you have a physical deformity  
4 losing your teeth and I believe the bridge of your nose was  
5 broken?

6 A Yeah.

7 Q Okay. And you also have a mental deficiency, is  
8 that correct?

9 A Yes, I do.

10 Q Explain to the judges here what kind of mental  
11 deficiency you have.

12 A Well, for one, I am slow and, two, sicknesses like  
13 you can tell me something and I can forget and then, not only  
14 that, and my speech is kind of slow and, let's see, I also  
15 have a nervous condition, you know, with that.

16 Q Where are you currently living now?

17 A I'm living on Vermont.

18 Q And that's in L.A.?

19 A Yes.

20 Q Okay. There came a time in your life that you lost  
21 custody of your children. Let me stop you first. How many  
22 children do you have?

23 A Three.

24 Q Three, and John's one of them.

25 A Yes.

CAIN - DIRECT

1 Q Who else?

2 A Johnnisha and Eunnisha.

3 Q Johnnisha and Eunnisha.

4 A Uh-huh.

5 Q Who's the oldest?

6 A John.

7 Q John?

8 A Uh-huh.

9 Q And the middle child is --

10 A Johnnisha.

11 Q Okay. And the youngest one is Eunnisha?

12 A Uh-huh.

13 Q Okay. You lost custody of those children?

14 A Yes, I did.

15 Q And when I say lost custody, the State came in and  
16 took them from you.

17 A Yes.

18 Q Why?

19 A Because I was on drugs.

20 Q Okay, you were on drugs?

21 A Yeah.

22 Q And where were they living at, that being John and  
23 his children -- his sisters?

24 A We were staying with my sister.

25 Q And where were you living with your sister?

II-10

CAIN - DIRECT

1           A     We were staying on Long Beach Avenue, the back  
2 portion there.

3           Q     Let me -- What's been admitted already as Defense  
4 Exhibit B, do you recognize this photograph?

5           A     That's my baby.

6           Q     Okay.

7                     MR. SCISCENTO: And if I can publish it.

8 BY MR. SCISCENTO:

9           Q     About what year was this taken, if you remember?

10          A     I can't remember exactly the time.

11          Q     The neighborhood that John grew up in as a child,  
12 how would you describe that neighborhood?

13          A     It was pretty much violent, you know, for him, until  
14 I really wished I hadn't of stayed there.

15          Q     Have you ever heard a statement that the kids used  
16 to call you? Do you know the name they used to call you?

17          A     Pinky.

18          Q     Okay. Do you know if any -- the schoolyard kids,  
19 the nickname that they would have you and they would -- have  
20 of you and tell John?

21          A     Say it again.

22          Q     Did you ever hear of the name "the leprechaun"?

23          A     Yeah. Yes, I did.

24          Q     And that was a statement about you?

25          A     Yes, it was.

II-11



CAIN - DIRECT

1 Q About your physical deformities?  
2 A Yes, it was.  
3 Q And they would say that to John every day?  
4 A Yes. Yes, they would, yes.  
5 Q And John would come crying home to you some days --  
6 A Yes.  
7 Q -- when they had called you that?  
8 A Yes.  
9 Q And the older kids at school would pick on him and  
10 tell him that?  
11 A Yes.  
12 Q Tell him that his mother was a crackhead?  
13 A Yeah.  
14 Q And that she looked like a leprechaun?  
15 A Yes, they did.  
16 Q And making fun of your mental deficiencies?  
17 A Yes, they did.  
18 Q And every day he had to endure that?  
19 A Yeah. Yes, he did.  
20 Q And your response to that was what?  
21 A I'd be upset, you know, but there wasn't nothing I  
22 could do, you know, about the kids saying stuff to him because  
23 they was kids.  
24 Q When did your crack cocaine use increase?  
25 A Let's see, it's been about -- I mean, I'm still on

II-12

CAIN - DIRECT

1 it off and on, you know, but it's, you know, not as bad as it  
2 was then.

3 Q You love --

4 A I can't remember exactly.

5 Q You love your children?

6 A Yes, I do.

7 Q And you tried to teach them right from wrong?

8 A Yes, I did, when I was with them, yes.

9 Q And you tried to love them as best as you could?

10 A Yes, I did.

11 Q Did you have any assistance from anybody?

12 A My mom.

13 Q And your mom is who?

14 A Ms. Edwards.

15 Q Jane Edwards?

16 A Uh-huh.

17 Q As a matter of fact, Jane Edwards finally took  
18 custody of the children.

19 A Yes, she did.

20 Q The State finally gave custody of the children.

21 A Yes.

22 Q And as you're sitting here today, you still love  
23 your son, John?

24 A Yes, I do, yes.

25 Q Tell the judges a little about the childhood of John

II-13

CAIN - DIRECT

1 growing up. Was it easy for him?

2 A No, it wasn't. No, it wasn't, because of the father  
3 that he had. You know, he always wanted to be with his father  
4 and his father didn't have time for him and, you know, he  
5 would like -- he would like be crying. He wanted to, you  
6 know, go with him places. And then, after we separated, he  
7 would like tell him he's coming to get him and then he  
8 wouldn't -- he wouldn't come and get him. You know, he used  
9 to be cruel to him, you know, so -- I mean, I tried to give  
10 him the love that I could while I was with him, but it was  
11 kind of hard for me because I was the mother and the father,  
12 you know.

13 Q Let me ask you, --

14 A And I didn't know much myself.

15 Huh?

16 Q Ms. Cain, were there any male -- adult male roles  
17 that John could follow in that house? I mean, was there  
18 anybody there he could look up to as a male role model?

19 A No.

20 Q He was the oldest boy?

21 A Uh-huh.

22 Q How many -- There was, at one point, when he lived  
23 with what, 10 children, 12 children?

24 A Yes. Oh, you mean --

25 Q In one house.

II-14

CAIN - DIRECT

1 A Oh, you mean when he was with me?  
2 Q Yes.  
3 A No, there was nobody -- It wasn't then, no.  
4 Q How many children did he live with at one point? Do  
5 you remember?  
6 A Oh, it was about 12 or something.  
7 Q And how many males were in that group of 12  
8 children?  
9 A Oh, all males.  
10 Q All males?  
11 A It was about three boys and all the rest males.  
12 Q Okay.  
13 A All the rest females rather.  
14 Q Females, meaning women?  
15 A Yeah.  
16 Q The girls?  
17 A Uh-huh.  
18 Q And males being the boys.  
19 A Yeah.  
20 Q Okay, so there were three boys?  
21 A Uh-huh.  
22 Q And John was the oldest --  
23 A Yeah.  
24 Q -- of the boys?  
25 A Uh-huh.

II-15

CAIN - CROSS

1 Q Okay. And Keonna Bryant, --

2 A Uh-huh.

3 Q -- do you know her?

4 A Yeah, that's my niece.

5 Q She was the oldest of the girls?

6 A Yeah.

7 Q Okay.

8 A Uh-huh.

9 Q And they, the 12 children, all lived together in a  
10 room?

11 A Yes, they did.

12 Q Okay. And those 12 children make up the family of  
13 you and your two sisters?

14 A Yes.

15 Q Okay. And so there was nobody for John to turn to  
16 for any kind of guidance?

17 A No, no, not there, no.

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

19 JUDGE SOBEL: Any cross?

20 MR. GUYMON: Very briefly.

21 CROSS-EXAMINATION

22 BY MR. GUYMON:

23 Q During the time frame that John lived with 11 other  
24 siblings, it was -- he was with your mother, is that correct?

25 A Yes.

BRYANT - DIRECT

1 Q Okay. And your mother tried to do the best that she  
2 could in order to help John and the other children?

3 A Yes.

4 MR. GUYMON: No other questions, Judge.

5 JUDGE SOBEL: Thank you.

6 MR. SCISCENTO: Nothing further, Your Honor.

7 JUDGE SOBEL: Thank you.

8 Thank you, ma'am.

9 THE WITNESS: Uh-huh.

10 JUDGE SOBEL: You're excused. Thank you.

11 (Pause in the proceedings)

12 JUDGE SOBEL: Is Johnnisha White next?

13 MR. SCISCENTO: We'll call Keonna Bryant, Your  
14 Honor.

15 JUDGE SOBEL: Okey-doke.

16 (Pause in the proceedings)

17 KEONNA BRYANT, DEFENDANT'S WITNESS, IS SWORN

18 THE CLERK: Have a seat and state your full name and  
19 spell your last name for the record, please.

20 THE WITNESS: Keonna Bryant, last name B-R-Y-A-N-T.

21 DIRECT EXAMINATION

22 BY MR. SCISCENTO:

23 Q Keonna, how are you today?

24 A I'm fine. How are you?

25 Q Okay.

II-17

BRYANT - DIRECT

1 Do you see somebody in the courtroom today that you  
2 recognize as a family member?

3 A Yes.

4 Q And who's that?

5 A John.

6 Q Will you please point him out and describe an  
7 article of clothing that he's wearing?

8 A He's sitting right there with kind of like a beige  
9 shirt on.

10 JUDGE SOBEL: The record will -- The record will  
11 reflect the identification of Mr. White.

12 BY MR. SCISCENTO:

13 Q Ms. Bryant, what's your relationship with John  
14 White?

15 A He's my cousin.

16 Q Okay. And you're the oldest -- Describe the  
17 cousins. You know what, this might be the best thing to do at  
18 this point.

19 We had a diagram that you used the last time, which  
20 was Exhibit -- Defense Exhibit K. Do you recognize this --

21 A Yes.

22 Q -- from last time?

23 A Yes.

24 Q All right. If you could please -- Let me move that  
25 closer to you. Describe to the judges this family tree.

II-18

BRYANT - DIRECT

1 A Well, up at the top up, up here, --

2 Q You can stand up if it's easier for you.

3 A Up top here is my grandmother, Jane Edwards, and  
4 then I have an aunt, that's Faye, Shamata, that's another  
5 aunt, Jamie, my uncle, Pam, that's my mom, Eunice, that's my  
6 aunt and John's mom and then I have Faye, another aunt, Debra,  
7 another aunt, and Lolitta.

8 Q Okay, now let me stop you there. Eunice is the lady  
9 that just testified today.

10 A Yes.

11 Q All right, just a few minutes ago. And that's Donte  
12 Johnson's or John White's mother?

13 A Yes.

14 Q Okay. And how many children did Eunice have?

15 A She had John, Johnnisha and Eunnisha.

16 Q Okay. And Pam is your mother?

17 A Yes.

18 Q And how many children did Pam have?

19 A She had six kids. And that's me, I'm the oldest, my  
20 sister, Kannita, my brother, Floyd Kiera, and my sister,  
21 Keisha May. And I have another sister who's not up here and  
22 that is Lynette.

23 Q Okay. And then Faye, who's also a sister of Eunice  
24 and Pam, has some more children?

25 A Yes, she has --



BRYANT - DIRECT

1 Q Okay, please describe -- Please describe to the  
2 judges those -- or name off those children.

3 A There's Cornelius, Willie, Sam, Travon and Donisha.

4 Q Okay. How many males are in that group of -- I  
5 guess we'll call them grandchildren of Jane Edwards?

6 A There's seven.

7 Q Seven males?

8 A Yes.

9 Q The grandchildren I'm speaking of.

10 A Yes.

11 Q And that being Willie, Sam, Donte, Floyd --

12 A And Nakeia.

13 Q Okay. Now at one point, and you can have a seat, at  
14 one point in your life you lived with these children down  
15 here.

16 A Yes.

17 Q You all lived together?

18 A Yes.

19 Q Okay, where did you live at?

20 A We stayed with my grandmother on 43rd and Ascot.

21 Q Okay. And 43rd and Ascot was located where?

22 A South Central Los Angeles.

23 Q And what kind of house was that that you lived in on  
24 43rd and Ascot?

25 A It was a -- It was a pretty nice sized -- It was a

BRYANT - DIRECT

1 nice sized house.

2 Q Okay. Did there come a time that you left 43rd and  
3 Ascot?

4 A Yes, and we moved to 60th and Normandy.

5 Q Okay. Prior to that, though, was there a time that  
6 you lived in a garage?

7 A Yes.

8 Q Okay. And what year was that that you lived in a  
9 garage?

10 A That was about '85 or '86.

11 Q Okay. And how old were you then?

12 A I was ten.

13 Q Was John White with you?

14 A Yes.

15 Q Okay. And how old was he then?

16 A He was about seven or eight.

17 Q Okay. Now please explain -- Defense Exhibit C, do  
18 you recognize this?

19 A Yes.

20 Q And what is it a picture of?

21 A That's a picture of the shack that we lived in.

22 Q Okay. You call it a shack, but most people call it  
23 a garage?

24 A It was pretty much a shack to me because -- I mean,  
25 there was no space for a car 'cause there was so much -- so

II-21

BRYANT - DIRECT

1 much inside.

2 (Colloquy between Mr. Sciscento and Judge Sobel)

3 BY MR. SCISCENTO:

4 Q Keonna, let me ask you then, that shack that you're  
5 talking about, how big was that?

6 A It was probably like the size of this here, from  
7 that wall to this wall, not including that back part.

8 Q So the record will reflect that you've showed what  
9 we call the well of the courtroom.

10 A Uh-huh.

11 Q You consider that the -- that room was about that  
12 size when you --

13 A Yes.

14 Q Half the size of this entire courtroom?

15 A Yes.

16 Q Okay. And how many people stayed in that room?

17 A Eight.

18 Q Okay, can you name off the people that stayed there?

19 A There was me, my brother Floyd, my sister Kannita  
20 and --

21 Q Okay, so these people. Please point them out as you  
22 mention them.

23 A That's me, Kannita, Floyd, then there was John,  
24 Johnnisha, Eunnisha and then there was Eunice and Pam.

25 Q So there was all together seven people?

II-22

BRYANT - DIRECT

1 A That's eight.

2 Q Eight people?

3 A Uh-huh.

4 Q Living in that room.

5 What kind of electricity -- Did you have any  
6 electricity going through there?

7 A There were electrical cords connected like overhead  
8 where we slept for like the TV and like a little light bulb  
9 for us to have light.

10 Q This garage or shack, as you call it, was located in  
11 the back of your great-grandmother's house?

12 A Yes.

13 Q Okay, on her property?

14 A Yes.

15 Q Did you have a toilet or any running -- a toilet in  
16 that room?

17 A No.

18 Q Any running water?

19 A No.

20 Q Was there a stove?

21 A No.

22 Q Okay, was there a refrigerator?

23 A No.

24 Q And how many children were in there at that point?

25 A Six.

II-23

BRYANT - DIRECT

1 Q Six children were living in there and Pam and  
2 Eunice?

3 A Yes.

4 Q Pam being your mother and Eunice?

5 A Yes.

6 Q Was Pam and Eunice around all the time during that  
7 time?

8 A No.

9 Q Where would they go?

10 A Sometimes they told us that they were going off to  
11 get us something to eat and they'd stay gone for like an hour  
12 or maybe longer.

13 Q And where would they go, if you knew?

14 A Well, from the looks of it, it was -- it appeared  
15 that they had went off to get high.

16 Q What do you mean get high?

17 A Use drugs.

18 Q And what kind of drugs were they using?

19 A Cocaine.

20 Q Okay, any other -- any kind of cocaine?

21 A Crack cocaine.

22 Q All right. And Eunice was smoking crack cocaine?

23 A Yes.

24 Q Did you ever see her actually smoke crack cocaine?

25 A Years before, when we was like a little smaller, it

II-24

BRYANT - DIRECT

1 was like all the sisters got together and I guess they'd go  
2 and get their fix and then they'd sit around in the kitchen  
3 while the kids are in the living room or in their room playing  
4 and they'd get high.

5 Q Let me ask you then, you said the sisters. Who are  
6 the sisters you're talking about?

7 A Pam, Eunice and Faye.

8 Q Okay, Pam, Eunice and Faye would go out and you'd  
9 see them actually smoke crack cocaine?

10 A They weren't aware that we were watching.

11 Q Okay. Did there ever come a time that you'd see  
12 them purchase cocaine?

13 A Yes.

14 Q When was that?

15 A On a number of occasions they'd take us to like  
16 different spots where they'd go and buy their drugs.

17 Q Was there ever a male person present, an adult male,  
18 who could provide some guidance in this shack that you're  
19 talking about?

20 A No.

21 Q How did you survive day to day? How did you eat?

22 A If my great-grandmother or my grandmother didn't  
23 feed us, then sometimes we wouldn't eat.

24 Q How many -- How long would you go without eating?

25 A Like a day, at least.

BRYANT - DIRECT

1 Q Okay. And how long did you live in that shack?

2 A We stayed there -- Well, my sister and my brother  
3 and my mom, we were there for like about a year before Eunice  
4 and them came.

5 Q Okay. And then, when Eunice moved in, how long were  
6 you staying in there with Eunice and her three children?

7 A Like a couple of months.

8 Q Okay. And there came a time that you were removed  
9 from that shack?

10 A Uh-huh.

11 Q Explain to the judges that situation.

12 A Well, my mom left and she said that she was going to  
13 get us something to eat and while she was away the police came  
14 knocking at the door. And so I didn't know if I should open  
15 the door, because she told me don't open the door for anybody,  
16 but I opened the door anyway 'cause they said it was the  
17 police at the door. So I opened the door and they asked us  
18 where my mom was and I told them that she had went to get us  
19 something to eat.

20 Q Was that truthful? Did she actually go out and get  
21 you something to eat?

22 A When she came back, she didn't have anything to eat.

23 Q Do you have any idea where she went?

24 A Most likely to get high.

25 Q Okay. So the police show up and there are how many

BRYANT - DIRECT

1 children in this shack?

2 A Six.

3 Q Six people.

4 A Yes.

5 Q What did you use for a toilet?

6 A A bucket.

7 Q All right. So then what did the police do at that  
8 point?

9 A They asked us a couple of questions and at that  
10 point my mom and Eunice were walking up and they were trying  
11 to convince the police not to take us away, but there was  
12 nothing they could do, 'cause we were left unattended.

13 Q Who called the police?

14 A My great-grandmother.

15 Q And that was your great-grandmother that you were  
16 staying on the property?

17 A Yes.

18 Q And why did she do that?

19 A Because we were staying back there a long time and  
20 then a lot of times we weren't being taken care of the way we  
21 was supposed to be, so she was fed up. I mean, she don't --  
22 she couldn't care for us herself, so she just called the  
23 police.

24 Q So she was trying to have somebody from the State  
25 intervene to help you?

II-27



BRYANT - DIRECT

1 A Yes.

2 Q Was there a great-grandfather or somebody -- a male  
3 figure that lived in the house?

4 A Yes, but we didn't have much contact with him.

5 Q Why not?

6 A We were told to stay inside 'cause there was like a  
7 lot of conflict between my great-grandmother and my mom for us  
8 being back there so long.

9 Q And I guess there was a lot of tension going on.

10 A Yes.

11 Q How old were you at this time?

12 A Ten.

13 Q Okay. And then you were removed from the shack?

14 A Yes.

15 Q At what age, ten years old?

16 A Ten.

17 Q And how old was John?

18 A John was about seven or eight.

19 Q Okay. And what happened after the police got there  
20 and they removed you? Where did they take you?

21 A First they took us to the police station, they  
22 questioned us and they waited for our parents to come, then  
23 they questioned them and then they had a social worker come in  
24 and speak with us and our parents and then they took us to  
25 McClaren Hall.

BRYANT - DIRECT

1 Q To McClaren Hall?

2 A Yes.

3 Q Describe, if you will, what McClaren Hall is.

4 A It's like a foster home for kids, you know,  
5 mistreated, abused, neglected, things like that.

6 Q And so -- Describe the inside of McClaren Hall.

7 A It was a large facility where they had the boys  
8 sectioned off from the girls and the toddlers and the infants  
9 sectioned off. In the living quarters we all had like three  
10 bunks in a room, three beds in a room.

11 Q How many children were in McClaren Hall, if you  
12 know?

13 A I couldn't give you a number.

14 Q Were there more than 20?

15 A Way more than 20.

16 Q More than a hundred?

17 A Probably so, yes.

18 Q What kids from that shack -- what kids were taken  
19 there?

20 A There was me, Kannita, Floyd, John, Johnnisha and  
21 Eunnisha.

22 Q Okay. And how old was Floyd at the time?

23 A Floyd was four years old.

24 Q Okay. And were you and John and Johnnisha and  
25 everybody together in McClaren Hall?

BRYANT - DIRECT

1           A     No, we weren't together. We were all -- Well,  
2 Johnnisha and Kannita and I, we were all together, and the  
3 rest of them, they were separated from us.

4           Q     So John was separated from you?

5           A     Yes. By him being the oldest boy, he had to go and  
6 stay in the boy section.

7           Q     Did you have any contact with him?

8           A     Maybe like once.

9           Q     During the time at McClaren Hall?

10          A     Yes.

11          Q     Okay. Describe to me the physical structure of  
12 McClaren Hall.

13          A     They had -- They had a school. They had a kitchen  
14 facility. They had a play area for us.

15          Q     There was some illnesses that went around McClaren  
16 Hall, is that right?

17          A     Yes.

18          Q     Describe for the judges those illnesses.

19          A     In the room next to us there was -- well, there was  
20 a girl and she had sickle cell and she stayed sick a lot and  
21 she had ringworms, all kinds of like different diseases and  
22 stuff.

23          Q     As a matter of fact, Johnnisha got ringworm.

24          A     Yes.

25          Q     Okay. And most of the kids there were sick, is that

BRYANT - DIRECT

1 right?

2 A Yes.

3 Q Tell me the sleeping conditions at night. Was it  
4 easy to sleep in McClaren Hall?

5 A No.

6 Q Describe to the judges what it was like sleeping  
7 there.

8 A There was one girl who always like ran up and down  
9 the halls yelling and screaming and throwing herself against  
10 the wall and on the floor at night, all through the night.

11 Q And you'd witness this?

12 A Yes.

13 Q How long did you stay in McClaren Hall?

14 A We stayed for about two or three weeks.

15 Q And where were your parents at this time?

16 A I have no idea.

17 Q There came a time when you finally left McClaren  
18 Hall.

19 A Yes.

20 Q And how did you get to leave McClaren Hall?

21 A My great -- My great-grandmother brought my  
22 grandmother to come and pick us up.

23 Q Okay, so the great-grandmother that called the  
24 police --

25 A Yes.

II-31

BRYANT - DIRECT

1 Q -- on you guys then brought her daughter?

2 A Yes.

3 Q That being Jane Edwards.

4 A Uh-huh.

5 Q To McClaren Hall --

6 A To pick us up.

7 Q -- to come pick up the six children?

8 A Yes.

9 Q Okay. And that's Jane Edwards?

10 A Yes.

11 Q And then what happened? You guys moved out?

12 A Yeah, we -- that's when we moved to 43rd and Ascot.

13 Q Okay, 43rd and Ascot.

14 A Yes.

15 Q And how old were you at that time?

16 A I was ten.

17 Q And how old was John?

18 A He was about seven or eight.

19 Q And then you moved to 43rd and Ascot. How many

20 people lived there at 43rd and Ascot?

21 A In the beginning it started out with six kids, then  
22 there was my grandfather, my grandmother and their two  
23 daughters and then my aunt, she had one child at the time, so  
24 that's about 10 or 11 people.

25 Q Okay. Did there come a time that the population of

BRYANT - DIRECT

1 that house swelled up to more?

2 A Yes.

3 Q How many people?

4 A When Faye, my Aunt Faye, she left her kids  
5 unattended one time and the police came and got 'em, so they  
6 brought 'em to my grandmother's.

7 Q And how many kids did they bring over?

8 A It was three at the time.

9 Q So we're up to about 15 children living there?

10 A Yes.

11 Q And how many adults?

12 A It was about four.

13 Q Okay. And that being Pam, Eunice and Jane?

14 A Pam wasn't even there. It was like she came -- they  
15 came off and on. They didn't live with us. It was Jane, my  
16 grandmother, and my grandfather, Sam Edwards, and then there  
17 was Debra Edwards and Lolitta Edwards. Those were the four  
18 adults living there.

19 Q And during this time was Eunice still using drugs?

20 A Yes.

21 Q You saw her on drugs during that time?

22 A Yes.

23 Q Did John ever see her on drugs?

24 A Yes.

25 Q Did she ever come over when she was high?

BRYANT - DIRECT

1 A Yes.

2 Q Would she come over trying to sell anything to your  
3 grandmother?

4 A Sometimes clothing or sometimes food.

5 Q Okay, explain to the judges now about, you know,  
6 about the selling. Explain to the judges about that.

7 A Well, there were times where they were carrying like  
8 bags of clothes or somebody would give 'em some clothes for  
9 themselves and they would try and come and sell it to my  
10 grandmother for us.

11 Q What about the food?

12 A The food, they'd probably get it free from like one  
13 of the free clothing and food places. Like the churches, they  
14 give away free clothes and free food.

15 Q And --

16 A So they'd come and sell it to us.

17 Q Eunice would come and sell it to Jane Edwards?

18 A Yes.

19 Q Her mother?

20 A Yes.

21 Q And Jane would give her money for that?

22 A Yes.

23 Q And then where would Eunice go?

24 A To get high.

25 Q What about John White, Senior. Did you ever see him

BRYANT - DIRECT

1 around?

2 A Not much.

3 Q Did he ever come by and drop off a paycheck once a  
4 week?

5 A No.

6 Q Did he ever drop off money?

7 A No, not that I know of.

8 Q So when Eunice said, "Oh, he'd bring by money,"  
9 that's not true?

10 A Not that I know of.

11 Q And Eunice, the entire time, was using drugs?

12 A Yes.

13 Q And you're sure about that?

14 A Yes.

15 Q Okay. And Pam, your mother, --

16 A Yes.

17 Q -- was also using drugs?

18 A Uh-huh.

19 Q Describe the neighborhood at 43rd and Ascot.

20 A There were a lot of -- a lot of gangs in the  
21 neighborhood. We had Bloods, we had Crips and then we had  
22 Hispanic gangs also.

23 Q Was it a violent neighborhood?

24 A Yes.

25 Q Did you see -- Did you witness any violence there?

II-35



BRYANT - DIRECT

1 A Lots of times.

2 Q Explain to the judges how it is in --

3 A There were car --

4 Q Explain to the judges how it is in L.A.

5 A There were carjackings. A guy got carjacked.

6 MR. GUYMON: Judge, I'm gonna -- I'm gonna

7 interrupt. I'm gonna object to that unless it's something

8 that she can testify that Donte Johnson --

9 JUDGE SOBEL: Overruled.

10 BY MR. SCISCENTO:

11 Q I'm sorry, go ahead and explain to these judges how  
12 it is growing up in Compton and L.A.

13 A Oh, it's hard.

14 Q Describe the violence that you saw, that you  
15 witnessed every day.

16 A Well, when you're not used to -- When you watch TV,  
17 you see a lot of violence on TV and when you're at home you  
18 don't expect to see that same violence in your neighborhood,  
19 but it went on in our neighborhood all the time.

20 Q What kind of violence went on in your neighborhood?

21 A Carjackings, police raids, gang shootouts, stuff  
22 like that.

23 Q Did you witness -- Have you ever witnessed anybody  
24 being shot in the streets?

25 A Yes. A guy got --

II-36

BRYANT - DIRECT

1 Q Describe to the judges about that.

2 A We stayed across the street from the guys that --  
3 they dealt drugs a lot and they had, in and out all the time,  
4 a lot of people coming in and out to buy drugs and do  
5 different things and once they were raided and a guy ran up  
6 inside the attic and he was up there for some time before he  
7 started to shoot at the police and the police shot back and  
8 they shot him.

9 Q Okay. And this was taking place while you were  
10 living on 43rd and Ascot?

11 A Yes.

12 Q With John White?

13 A Yes.

14 Q And the rest of the children?

15 A Yes.

16 Q Okay. And then you moved to a different  
17 neighborhood, 60th and Normandy?

18 A Yes.

19 Q Would you describe 60th and Normandy as more violent  
20 than 43rd and Ascot?

21 A Well, because we were older then, you know, it was -  
22 - it was harder to deal with the gangs and things around us.

23 Q When did you move to 60th and Normandy?

24 A We stayed on 43rd for about six years, so I'd say I  
25 was about 17 when we moved over there.

II-37

BRYANT - DIRECT

1 Q And 60th and Normandy's also located in L.A.?  
2 A Yes.  
3 Q Was it a violent neighborhood?  
4 A Yes.  
5 Q Describe the violence you saw at 60th and Normandy.  
6 A It was pretty much the same as 43rd and Ascot. It  
7 was just a different neighborhood and different gangs.  
8 Q Did John White, Senior -- Did John move with you,  
9 John White, Junior, move with you?  
10 A Yes.  
11 Q Did John White, Senior ever come by and drop off a  
12 check or money?  
13 A I don't think I ever saw him on 60th and Normandy.  
14 Q He never came by and dropped off any money?  
15 A No.  
16 Q And never taking care of his children?  
17 A I never saw him.  
18 Q What about Eunice, where was Eunice? Did Eunice  
19 live with you at 60th and Normandy?  
20 A She was barely seen, barely seen.  
21 Q She was doing drugs at that time?  
22 A Yes.  
23 Q And it was increasing?  
24 A Yes.  
25 Q And your mother, Pam, was doing it too?

II-38

BRYANT - DIRECT

1 A Yes.

2 Q Why did you move to 60th and Normandy?

3 A They sold the house on 43rd and Ascot, so our  
4 grandmother had to find another place for us to stay.

5 Q So the landlord who owned the house on 43rd and  
6 Ascot sold it and your mother had to -- grandmother had to  
7 move?

8 A Yes.

9 Q There were a lot of gangs out there on 60th and  
10 Normandy?

11 A Yes.

12 Q There was a particular gang out there and a gang  
13 member named Sonny, am I right?

14 A Yes.

15 Q Explain to the judges about Sonny.

16 A Sonny was the one who initiated John into the gang.

17 Q And Sonny had a certain affection for you, didn't  
18 he?

19 A Yes.

20 Q Explain to the judges about that.

21 A He used to kind of like harass me all the time.  
22 Like when I walked to the store, to and from the store, he'd  
23 chase me up and down the street, hit me on my butt and stuff  
24 like that.

25 Q Did he ever taunt you for sex?

BRYANT - DIRECT

1 A Yes.

2 Q And ask you -- sometimes try to force you?

3 A Yes.

4 Q There was a time that somebody had broken into your  
5 house when --

6 A Yes.

7 Q -- you were sleeping?

8 A Yes.

9 Q Was that at 60th and Normandy?

10 A That was at 43rd and Ascot.

11 Q Okay, I'm sorry, I forgot about that. Explain to  
12 the judges about that.

13 A 43rd and Ascot?

14 Q About the time somebody broke into your house.

15 A One night we were all asleep, it was about probably  
16 2:00 or 3:00 in the morning, and somebody came in through the  
17 window and I was laying like between our beds on the floor, we  
18 were watching TV, so we fell asleep with the TV on and so I  
19 guess he could see in through the window so, when he came in,  
20 he came in and he kind of like touched me in my private area.

21 Q Okay. And John was there at this time?

22 A Yes.

23 Q And what happened next?

24 A We all got up and went in the living room and slept  
25 in the living room and my grandmother went out to see if she

II-40

BRYANT - DIRECT

1 could find the person who did it.

2 Q You jumped up startled, screaming, 'cause this guy  
3 had just grabbed you --

4 A Yes.

5 Q -- and touched you?

6 A Yes.

7 Q And John was there and he woke up?

8 A Yes. I woke everybody in the house up 'cause I was  
9 screaming.

10 Q And John later on met that man that came into your  
11 house?

12 A Yes.

13 Q And what happened?

14 A He was riding on a bike and he rode past my -- he  
15 rode past John and he told him, "You almost had me, but you  
16 all didn't get me."

17 Q So he told John, "I broke into your house and  
18 fondled your cousin," right?

19 A He basically admitted it.

20 Q And during the years growing up did you and John  
21 have a close relationship?

22 A Yes.

23 Q And you grew very close?

24 A Yes.

25 Q 'Cause you were the oldest and he was the oldest

BRYANT - DIRECT

1 boy, were you guys in charge of taking care of these children?

2 A Yes.

3 Q Let's get back to 60th and Normandy. This boy,  
4 Sonny, this gang member who taunted you for sex all the time,  
5 there came a time that he made a proposition to John, is that  
6 right?

7 A Yes.

8 Q What was that proposition?

9 A He told John that if he didn't -- if he didn't join  
10 the gang that he would rape me.

11 Q He told John if he didn't join the gang, that being  
12 John, that he would rape you?

13 A Yes.

14 Q Is Sonny a violent man?

15 A Yes.

16 Q Did you ever see Sonny with guns and knives?

17 A Not too often, maybe like once or twice.

18 Q But you feared Sonny?

19 A Yes.

20 Q So Sonny went up to John and said, "Join the gang or  
21 otherwise I'm going to rape your cousin."

22 A Your cousin.

23 Q After he joined the gang, what happened next?

24 A Well, --

25 Q Let me stop you there. Let me show you what's been

II-42

BRYANT - DIRECT

1 marked as Exhibit H. Do you recognize this photograph?

2 A Yes.

3 Q And what's that a photograph of?

4 A That's a photo of our apartment on 60th and  
5 Normandy.

6 Q And these bars were not there at the time you lived  
7 there?

8 A No.

9 Q And how big was this room?

10 A The apartment was -- it was a five-bedroom, two  
11 bath.

12 Q Five bedrooms, two baths?

13 A Yes.

14 Q Let me show you what's been marked as Defense  
15 Exhibit E. Do you recognize this?

16 A That's 43rd and Ascot.

17 Q And there's a fence around here and a little yard.

18 A Uh-huh.

19 Q Okay, so 43rd and Ascot is where you lived. Were  
20 you allowed to go outside of that yard?

21 A No.

22 Q And why not?

23 A Because of all the violence that occurred in the  
24 neighborhood, my grandmother wanted us to stay inside the  
25 gate.

II-43



BRYANT - DIRECT

1 Q So how many people actually lived in this house?

2 A About 14 or 15.

3 Q 14 or 15.

4 And most of them young children?

5 A Yes.

6 Q Defense Exhibit D, do you recognize this?

7 A Yes.

8 Q Who is that?

9 A That's a picture of John and my sister Kannita.

10 Q Your sister.

11 Okay, how old is John at that time?

12 A He was about eight years old.

13 Q About eight years old?

14 After John agreed with Sonny to enter the gang, what  
15 was his relationship then with the family?

16 A We saw very little of him.

17 Q What was your relationship, though, in the  
18 neighborhood in general? Were you protected now?

19 A As long as he was in the gang, they stayed away from  
20 the house.

21 Q So by entering the gang he protected you guys?

22 A Yes.

23 Q That being you and the other children?

24 A Yes.

25 Q And he stopped you from possibly being raped?

II-44

BRYANT - DIRECT

1 A Yes.

2 Q And after this you started seeing less and less of  
3 John?

4 A Yes.

5 Q And then you moved again after 60th and Normandy?

6 A I moved out 'cause it was just kind of like  
7 overcrowded.

8 Q Now these children that are living there, Jane  
9 Edwards made a decision about one of those children's  
10 education, is that right?

11 A Yes.

12 Q What decision did she make?

13 A She sent me to private school.

14 Q She sends you to private school?

15 A Yes.

16 Q Why didn't she send the rest of the children to  
17 private school?

18 A The tuition was too high.

19 Q So why did she choose you?

20 A I guess because I was the oldest.

21 Q So you went to a private school and you received a  
22 very good education?

23 A Yes.

24 Q What about the rest of the children, where did they  
25 go?

II-45

BRYANT - CROSS

1 A They stayed in public schools.

2 Q Was the public school a violent place?

3 A I never really attended it, but, from their stories,  
4 they always told me how they were scared to go to school  
5 because they were being picked on.

6 Q So you were the one person that was allowed to go to  
7 the private school and gain that good education?

8 A Yes.

9 Q But nobody else could make that?

10 A No.

11 Q They couldn't afford it?

12 A No.

13 (Pause in the proceedings)

14 MR. SCISCENTO: I have no further questions, Your  
15 Honor.

16 JUDGE SOBEL: Any cross of this witness?

17 MR. DASKAS: Very briefly, Judge.

18 CROSS-EXAMINATION

19 BY MR. DASKAS:

20 Q I'm sorry, ma'am, I can't see you.

21 You mentioned the shack and were showed a photograph  
22 of the garage. Do you recall that?

23 A Uh-huh.

24 Q Is that a yes?

25 A Yes.

II-46

BRYANT - CROSS

1 Q And I think you mentioned that you and John and some  
2 other of your cousins stayed in there for about two weeks?

3 A No, that was McClaren Hall.

4 Q Okay. You mentioned that John, though, stayed in  
5 the shack, I guess, was it two months?

6 A Well, it was a couple of months.

7 Q Couple of months, okay.

8 A Yes.

9 Q About 60 days you think?

10 A Yes, and maybe more.

11 Q And then in McClaren Hall, when you were all taken  
12 away and stayed in McClaren Hall, John was there for about two  
13 months you said -- I'm sorry, two weeks?

14 A Two to three weeks.

15 Q Two weeks, okay.

16 And did I hear you correctly, the apartment that you  
17 stayed in at one point was a five-bedroom apartment?

18 A 60th and Normandy, yes.

19 Q And that had five bedrooms?

20 A Yes.

21 MR. DASKAS: Nothing else.

22 JUDGE SOBEL: Anything further, Joe?

23 MR. SCISCENTO: Nothing further, Your Honor.

24 JUDGE SOBEL: Thank you, ma'am, for your testimony.

25 Call your next witness, please.

WHITE - DIRECT

1 MR. SCISCENTO: The next witness is Johnnisha White.

2 MR. GUYMON: Judge, if I might inquire, is it the  
3 Court's desire to have the witnesses sit here next to the  
4 witness stand?

5 JUDGE SOBEL: Yeah. One of the judges didn't really  
6 have a good line of sight to some of the witnesses.

7 MR. GUYMON: Okay.

8 (Pause in the proceedings)

9 JOHNNISHA WHITE, DEFENDANT'S WITNESS, IS SWORN

10 THE CLERK: Please have a seat.

11 State your full name and spell your last name for  
12 the record.

13 THE WITNESS: Johnnisha White, W-H-I-T-E.

14 DIRECT EXAMINATION

15 BY MR. SCISCENTO:

16 Q Ms. White, do you recognize somebody in court that  
17 you're related to?

18 A Yes.

19 Q Who is that?

20 A My brother, John.

21 Q This is your brother, John?

22 A Yes.

23 Q Can you please describe for the Court --

24 JUDGE SOBEL: Let's just skip that. We know that  
25 they're sister and brother. Thanks.

II-48

WHITE - DIRECT

1 BY MR. SCISCENTO:

2 Q How old are you, Johnnisha?

3 A 21.

4 Q 21.

5 Tell me a little -- We spoke with your cousin,

6 Kannisha [sic]. No, I said that wrong, Keonna.

7 A Keonna.

8 Q And we spoke to your mother, Eunice.

9 A Uh-huh.

10 Q And that is your natural mother, Eunice?

11 A Yes.

12 Q Okay. And your father, do you know your father?

13 A Yes.

14 Q What's his name?

15 A John White.

16 Q John White, Senior?

17 A Uh-huh.

18 Q When was the last time you saw John White, Senior?

19 A I ain't seen in some years.

20 Q You haven't seen him in years.

21 Do you remember Keonna brought us -- told us about  
22 growing up on 43rd and Ascot. Do you remember that  
23 neighborhood?

24 A Yes.

25 Q Okay, what did you see in that neighborhood?

II-49

WHITE - DIRECT

1 Describe that neighborhood to us.

2 A 43rd and Ascot we used to always see gangs hanging  
3 out and one time we seen this man get killed in an attic. He  
4 was running from the police and --

5 Q Let me ask you -- Keonna covered that pretty much.

6 A Uh-huh.

7 Q Let me ask you about your mother.

8 A Uh-huh.

9 Q You know that she uses drugs?

10 A Yes.

11 Q How long has your mother been using drugs?

12 A Since we was born.

13 Q As long as you can remember?

14 A Yeah.

15 Q You saw her -- And physically she has some  
16 deformities?

17 A Uh-huh.

18 Q Do you know how she lost her teeth?

19 A My daddy knocked 'em out.

20 Q Okay. Did you ever witness the violence of your  
21 father against your mother?

22 A Yes.

23 Q How many times?

24 A Like no more than three times.

25 Q Okay. And finally John White, Senior just left?

II-50

WHITE - DIRECT

1 A Yes.

2 Q Did he ever come by and drop off money on a weekly  
3 basis?

4 A No.

5 Q Did he ever come by with his paycheck and drop it  
6 off to your mother?

7 A No.

8 Q And if your mother would have received any money,  
9 most likely what would she have done?

10 A Buy drugs or beer.

11 Q Did you ever see her take money that she had for the  
12 family and use it for drugs?

13 A Yes.

14 Q While you were going to school, children used to  
15 make fun of your mother?

16 A Uh-huh.

17 Q What did they call her?

18 A Leprechaun.

19 Q And why would they call her the leprechaun?

20 A 'Cause of the way her mouth and stuff is.

21 Q Because of the deformities that she has.

22 Was that a term of endearment? Was that a nice term  
23 to call her?

24 A No.

25 Q And it was meant to what?

II-51



WHITE - DIRECT

1 A To insult her.  
2 Q To insult her.  
3 And what else would they call her? Do you remember?  
4 A Basehead.  
5 Q I'm sorry?  
6 A Basehead. A basehead is somebody --  
7 Q Basehead?  
8 A Yeah.  
9 Q And basehead is what?  
10 A Someone that uses drugs and don't take care  
11 theirself.  
12 Q She was on drugs?  
13 A Yeah.  
14 Q So somebody who doesn't take care of herself and  
15 uses drugs is a basehead?  
16 A Uh-huh.  
17 Q If you were walking to court -- to school with John,  
18 what would the children chant to you?  
19 A They would throw rocks at us, chase us and talk  
20 about my mamma.  
21 Q And what would they say?  
22 A "Your mamma a basehead, your mamma look like a  
23 leprechaun."  
24 Q So every day walking to school you endured this kind  
25 of abuse?

II-52

WHITE - DIRECT

1 A Yes.  
2 Q And John was with you the entire time?  
3 A Yes.  
4 Q Okay. There came a time that you lived in what  
5 Keonna described as a shack.  
6 A Uh-huh.  
7 Q Do you recognize this?  
8 A Yes.  
9 Q What is that?  
10 A Well, what they called the house, but it wasn't no  
11 house. It was a shack.  
12 Q Was it a garage?  
13 A Yes.  
14 Q Was there running water?  
15 A No.  
16 Q Electricity?  
17 A No.  
18 Q Toilets?  
19 A No.  
20 Q Was anybody there to give you guidance?  
21 A No.  
22 Q Who was there to take care of you?  
23 A Basically, nobody. It was just the kids, just us.  
24 Q And this was -- This was in the middle of the city  
25 of Los Angeles?

II-53

WHITE - DIRECT

1 A Yes.

2 Q You guys were removed from there?

3 A Yes.

4 Q From that shack and you were brought to McClaren  
5 Hall?

6 A Yes.

7 Q Describe your experiences in McClaren Hall.

8 A My nose used to bleed every day. I had ringworms.

9 JUDGE SOBEL: Johnnisha, you have a very soft voice.

10 Would you keep it up a little, because this air vent is old  
11 and it's making a lot of noise. Thanks.

12 THE WITNESS: Okay.

13 My nose used to bleed every night, I had ringworms  
14 and I used to cry all the time and we didn't get to see John.  
15 We was all separated.

16 BY MR. SCISCENTO:

17 Q And why didn't you get to see John?

18 A We didn't.

19 Q Why didn't you?

20 A Because he was on another side from us.

21 Q We've already been through most of it with Keonna  
22 and so I won't belabor the point, but do you recognize Defense  
23 Exhibit G?

24 A Yes.

25 Q What is this?

II-54

WHITE - DIRECT

1 A That's the corner of 43rd and Ascot.

2 Q 43rd and Ascot where you lived with how many  
3 children?

4 A Like -- It was like 16 of us.

5 Q Describe -- Well, you know what, why don't we  
6 describe a little about this nice neighborhood at 43rd and  
7 Ascot. Did you see a lot of violence occur around here?

8 A Yes.

9 Q Tell the judges what kind of violence would occur --  
10 or you'd see almost on a daily basis.

11 A Right there in that --

12 MR. GUYMON: Same objection as to whether John White  
13 didn't see.

14 JUDGE SOBEL: Yeah. And for the same reason I  
15 overruled those kinds of objections at the original trial,  
16 without showing each thing was known to him I think, in terms  
17 of, (a), any mitigator and, (b) the opportunity to show the  
18 general area that he grew up in being the identical area she  
19 grew up in, in the interest of going to things -- letting  
20 those sort of things at least be heard, it's overruled.

21 BY MR. SCISCENTO:

22 Q Johnnisha, there's some stories with each of these  
23 houses or buildings, right?

24 A Yes.

25 Q Would you explain to the judges some of the various

WHITE - DIRECT

1 stories of violence that you witnessed when you were growing  
2 up in L.A.

3 A In that abandoned auto shop the police --

4 Q Why don't you stand up --

5 A Right here?

6 Q -- and point it out.

7 A Right there, that's where the police had found this  
8 lady dead in there and she was naked and had a pole shoved up  
9 her privacy.

10 Q So she was dead and had a pole shoved up her?

11 A Yes.

12 Q And the police found her?

13 A Yes.

14 Q How far away from your house was that?

15 A Our house is right there on the corner. There's  
16 some apartments right there. Our house was the next one on  
17 the other side of the apartments.

18 Q Describe a little more about the violence you saw on  
19 this street.

20 A In the other house over there, that's where gangs  
21 hung out at. Then, on the other side of the street, is where  
22 they found that heavyside man they had killed up in the attic.

23 Q Did you ever see gang members riding their bikes up  
24 and down here?

25 A Yes.

II-56

WHITE - DIRECT

1 Q And driving their cars?

2 A Yes.

3 Q Explain that. There was one time you saw somebody  
4 driving or riding a bicycle --

5 MR. GUYMON: Judge, I'm gonna object to the leading  
6 nature. She can explain it.

7 JUDGE SOBEL: Overruled.

8 BY MR. SCISCENTO:

9 Q Explain any violence you saw or use of guns or  
10 anything like that, if you recall.

11 A They used to drive by and shoot and my grandmother  
12 used to make us go in the house and get down on the floor.

13 Q So you'd hear shooting and you'd go down --

14 A On the floor.

15 Q How many times a year would you hear this?

16 A Constantly.

17 Q How many times a month?

18 A Constantly.

19 Q How many times a week?

20 A Constantly.

21 Q Almost on a daily basis?

22 A Yes.

23 Q Did you see gang members driving up and down the  
24 street?

25 A Yes.

II-57

WHITE - DIRECT

1 Q Describe that, please.

2 A They'd just drive by, do all the gang signs up and  
3 that's it.

4 Q You witnessed a lot of violence on this street?

5 A Yes.

6 Q As a matter of fact, you were the victim of  
7 violence.

8 A Yes.

9 Q Explain to the judges the violence as it occurred to  
10 you.

11 A One day I was going to the store and I got shot in  
12 my leg.

13 Q Why did you get shot?

14 A Just a drive-by.

15 Q Was it a stray bullet?

16 A Yes.

17 Q You were in the wrong place at the wrong time?

18 A Yes.

19 Q So, in other words, walking down the street to go to  
20 the store in your neighborhood in the middle of the day --

21 A Uh-huh.

22 Q -- is the wrong place at the wrong time?

23 A Yes. And then another time I was walking and I got  
24 stabbed in the head.

25 Q They stabbed you in the head? Why were you stabbed

II-58

WHITE - DIRECT

1 in the head?

2 A I don't know. I was just walking and this girl and  
3 these other two guys came up and did it.

4 Q Did they take any money from you?

5 A No.

6 Q What did they do? Why would they come up and stab  
7 you?

8 A I never had no idea why.

9 Q Did you tell the police about this?

10 A Yes.

11 Q And did they come and -- What did the police do?

12 A They made a report and everything and rode around  
13 and looked for 'em, but they didn't ever find 'em.

14 Q Did you have to go to the hospital for that?

15 A Yes.

16 Q Did the police come and patrol this area all the  
17 time?

18 A No.

19 Q What was the racial makeup of this neighborhood?

20 A It was both.

21 Q Both? Both what?

22 A Hispanics, blacks.

23 Q It was black and --

24 A Hispanics.

25 Q Hispanics and blacks, so there were both?

II-59



WHITE - DIRECT

1 A Yes.

2 Q Okay. And there wasn't any -- a lot of white people  
3 growing up there?

4 A None.

5 Q You know, you said something earlier about wrong  
6 place at the wrong time walking down the street and getting  
7 shot. Where was the right place to be at the right time in  
8 that neighborhood?

9 A In the house.

10 Q In the house.

11 This is a picture of Defense Exhibit F. Do you  
12 recognize this?

13 A Yes.

14 Q And what is this?

15 A That's the yard where we played at.

16 Q And on what street?

17 A On 43rd and Ascot.

18 Q Were you allowed to go outside of this chain-link  
19 fence?

20 A No.

21 Q And why is that?

22 A 'Cause there was too much stuff going on.

23 Q There was too much what?

24 A Too much -- Too many bad things going on and she  
25 didn't want us out the gate.

II-60

WHITE - DIRECT

1 Q Too many bad things going on.

2 You knew about a guy named Sonny on -- I'm gonna  
3 move quickly to 60th and Normandy.

4 A Yes.

5 Q You knew about a guy named Sonny?

6 A Yes.

7 Q Who was Sonny?

8 A A person that always bullied John and said that if  
9 he didn't join the gang what he would do to my cousin.

10 Q He was gonna what?

11 A What he would do to my cousin.

12 Q What was he, Sonny, gonna do to your cousin to make  
13 -- And when we say cousin, it's Keonna?

14 A Keonna.

15 He told her that he -- that he was gonna rape her if  
16 he didn't join the gang.

17 Q Do you think Sonny was bluffing?

18 A No.

19 Q Why not?

20 A 'Cause that's the type of person he was.

21 Q So what did John do in response?

22 A One day they jumped him on.

23 Q They jumped him on. You mean they brought him into  
24 the gang?

25 A Yes.

II-61

WHITE - DIRECT

1 Q In a violent way?

2 A Yes.

3 Q They beat him?

4 A Yes.

5 Q He came home and you saw the bruises?

6 A Yes.

7 Q After that, what was your life like with the gang  
8 members?

9 A It was --

10 Q I mean, were you left alone by them?

11 A Yes.

12 Q And why do you think that is?

13 A 'Cause they got what they wanted.

14 Q 'Cause what?

15 A They got what they wanted, John.

16 Q They got what they wanted, John.

17 Growing up, we've heard from Keonna about all these  
18 different places that you lived and the number of people  
19 living with you. At one time it was six and sometimes it  
20 would be up to 15?

21 A Uh-huh.

22 Q 15 children?

23 A Yes.

24 Q In one room?

25 A Yes.

II-62

WHITE - DIRECT

1 Q Was there a male figure there to give guidance?

2 A No.

3 Q Was there anybody from the State who would come in  
4 and protect you, do something for you?

5 A No.

6 Q Was there any kind of -- Was there somebody you  
7 could turn to to ask for help?

8 A No.

9 Q Your dreams and aspirations, what kind of dreams and  
10 aspirations would you have growing up in this neighborhood?

11 A None.

12 Q And why is that?

13 A 'Cause there ain't nobody to look up to and nobody  
14 to guide you to go the right way and to do the right things.

15 Q When you see your brother John here today, do you  
16 love him?

17 A Yes.

18 Q Do you wish the best for him?

19 A Yes.

20 Q Your grandmother, Jane Edwards, --

21 A Uh-huh.

22 Q -- she basically raised you?

23 A Yes.

24 Q She raised you and how many other people?

25 A Like 16 of us.

II-63

WHITE - CROSS

1 Q And she allowed Keonna to go to a private school?

2 A Yes.

3 Q Did anybody else go to private school?

4 A No.

5 Q Where are you living at now?

6 A On 11th Ave. and Florence.

7 Q Did you ever make it out of L.A.?

8 A No.

9 Q If there's one thing you want to say to these judges  
10 now about this proceeding, what would you want to say?

11 A That don't give my brother the death penalty.

12 MR. SCISCENTO: Nothing further, Your Honor.

13 JUDGE SOBEL: Any cross?

14 CROSS-EXAMINATION

15 BY MR. DASKAS:

16 Q Ma'am, you mentioned that at one point there were  
17 about 16 of you and your cousins living in this area of South  
18 Central L.A., is that true?

19 A Yes.

20 Q And I'm assuming that you and John and all your  
21 cousins were exposed to the violence that we saw, is that  
22 true?

23 A Yes.

24 Q And of you and John and all your 16 cousins who were  
25 all exposed to the same violence, how many of those cousins

II-64

WHITE - CROSS

1 have been convicted of a quadruple murder?

2 MR. SCISCENTO: Object, Your Honor.

3 JUDGE SOBEL: Sustained. Why don't you --

4 THE WITNESS: There's another one, if you want to  
5 know.

6 MR. SCISCENTO: Object.

7 JUDGE SOBEL: That's all right.

8 Why don't you just talk about those things, if you  
9 think it's appropriate, in argument, which will be fairly  
10 soon.

11 MR. DASKAS: Very well, Judge. Nothing else.

12 JUDGE SOBEL: Anything else, Joe?

13 MR. SCISCENTO: Nothing, Your Honor.

14 JUDGE SOBEL: Thank you, ma'am. You're excused.  
15 Call your next witness, please.

16 (Pause in the proceedings)

17 MR. SCISCENTO: I'm gonna see if Ms. Hunterton's out  
18 there.

19 (Colloquy between Judge Sobel and Clerk)

20 MR. FIGLER: Ready, Your Honor?

21 JUDGE SOBEL: Yeah.

22 MR. FIGLER: The defense will call Nancy Hunterton  
23 to the stand.

24 NANCY HUNTERTON, DEFENDANT'S WITNESS, IS SWORN

25 THE CLERK: Please have a seat.

II-65

HUNTERTON - DIRECT

1 State your full name and spell your last name for  
2 the record.

3 THE WITNESS: My name is Nancy Sergeant Hunterton,  
4 H-U-N-T-E-R-T-O-N.

5 DIRECT EXAMINATION

6 BY MR. FIGLER:

7 Q Good afternoon, Ms. Hunterton.

8 Can you please tell the judges here what you do for  
9 a living?

10 A I am a Certified Reality Therapist and I do, among  
11 other things, groups in jail, one of which is a 40 session/2  
12 hour session life skills course which is about changing  
13 attitudes.

14 Q Okay. And do you administer these programs in the  
15 Clark County Detention Center?

16 A Yes, I do.

17 Q Okay. And that's just right down the street, right?

18 A Right.

19 Q And that's the place where they house people  
20 awaiting trial and that sort of thing?

21 A Yes.

22 Q Okay. And how long have you been doing that over  
23 there?

24 A Three and a half years.

25 Q Okay. Now can you get into a little bit more of

II-66

HUNTERTON - DIRECT

1 what it is that you do and the programs that you administer at  
2 the Detention Center, give a little more specificity?

3 A Okay, I'm gonna speak particularly about the life  
4 skills program, which is designed to get people to notice that  
5 they either, because of ignorance or programming, don't think  
6 for themselves and don't think clearly and independently,  
7 morally, properly, so it's to really help them learn to  
8 examine their own thinking.

9 Q So it's one of those programs that are typically  
10 referred to as helping people help themselves, that sort of  
11 thing?

12 A Right, it's a psycho-educational program.

13 Q Okay. And this is done in a group setting?

14 A Yes, it is. There are 25 students from the  
15 facility.

16 Q Okay. And at this time the students are all  
17 interacting with each other and with you?

18 A Yes.

19 Q That's the nature of the program?

20 A Yes.

21 Q And do you recognize someone in the courtroom today  
22 as being a participant in one of your programs?

23 A Yes.

24 Q And who is that?

25 A The gentleman I know as Donte Johnson.

II-67



HUNTERTON - DIRECT

1 Q Okay. And when Donte Johnson was in your program,  
2 you had the opportunity to, well, first of all, observe him?

3 A Yes.

4 Q Observe his participation in this program?

5 A Right.

6 Q Observe his interaction with other people and  
7 yourself?

8 A Yes.

9 Q Okay. Now is the life skills program required for  
10 everyone that's in the Clark County Detention Center to take?

11 A No, it's voluntary and an inmate is admitted by a  
12 paper request called a "KITE" which is submitted to the  
13 Director of Programs within the facility.

14 Q Okay. So now John here was admitted into your  
15 program and he participated in the life skills program?

16 A Correct.

17 Q Now can you give me your observations of him as an  
18 individual in your program?

19 A In the program he was quiet, listened well, did  
20 react, respond in appropriate ways, was sensitive to other  
21 people in pain and facing things that they were responsible  
22 for, things that had gone on in their families, family  
23 problems they might be facing, say someone with children  
24 outside of the facility that they were obviously not taking  
25 care for -- taking care of. I'm sorry.

II-68

HUNTERTON - DIRECT

1 Q Okay, any other reflections on his participation in  
2 the program?

3 A He was --

4 Q Well, how did he --

5 A He was respectful and appropriate in all senses.

6 Q And how did he interact with the other people who  
7 were there for the life skills benefit?

8 A He was, again, appropriate, respectful, insightful  
9 at times in responding to things that they said, would ask  
10 thoughtful questions. He was very present and appropriate  
11 with them, missed when he was not there and very much  
12 appreciated when he was present.

13 Q Okay. Is there a desire that you see in some of  
14 your students to essentially turn their lives around?

15 A Yes.

16 Q Okay. And part of that process is this interaction  
17 with each other, is that correct?

18 A Absolutely. They are often more effective, in that  
19 respect, than I am of them.

20 Q Okay. And was this person, who's sitting next to  
21 me, was he helpful to the other parties in that life skills  
22 program in getting to their goals?

23 A Yes, he was.

24 Q Okay. And what do you think it is about him that  
25 made him helpful to the other people in that setting?

II-69

HUNTERTON - DIRECT

1           A     Well, I think a couple of things. I think one is  
2 the reflection he was going through because of the severity of  
3 what he faced and he was open about that immediately in the  
4 class. I asked, during the first couple of sessions, what  
5 people are really there for and he was quite honest about  
6 knowing that he was facing the death penalty and wanting to  
7 come to terms with what that meant. So that would be the  
8 first piece. I think he had one of the most severe issues to  
9 deal with of anybody in the group.

10                Beyond that, he is a listener. He's quiet and he's  
11 a thoughtful listener and so he would hear someone's whole  
12 story and then be able to ask succinct and thoughtful  
13 questions that really would help someone get to the essence of  
14 what they were saying.

15           Q     And there are, of course, other students that you've  
16 had that don't exhibit those qualities, isn't that correct?

17           A     Absolutely.

18           Q     Okay. And you know that he is also facing a  
19 possibility of life in jail --

20           A     Right, right.

21           Q     -- for the rest of his life?

22           A     Right.

23           Q     And those are issues you deal with as well in your  
24 course?

25           A     Exactly, exactly.

II-70

HUNTERTON - DIRECT

1 Q Okay. Now do you come and testify in every one of  
2 your students' cases?

3 A No, no.

4 Q Is it a regular thing or is it somewhat irregular?

5 A It's somewhat irregular. I've only done it a few  
6 times.

7 Q Okay. Now there came a time when John or Donte  
8 wasn't in your program after having gone to numerous sessions  
9 and programs, is that correct?

10 A Correct.

11 Q Now you found out why he was no longer in the  
12 program?

13 A My understanding was that he had accumulated a  
14 number of minor infractions within the jail system, which  
15 meant that he was not allowed. I did have a chance to see the  
16 reports, the summary of them, and they were extremely minor.  
17 They were primarily things like having jello in his cell, I  
18 mean, things that, in a place where understandably the  
19 officers need to maintain complete control or issues, but  
20 they're not the larger issues that we often deal with with  
21 inmates.

22 Q Did you see if he had any acts of physical violence  
23 on anyone?

24 A None.

25 Q Okay. Any acts of physical violence on any other

II-71

HUNTERTON - DIRECT

1 inmates?

2 A No.

3 Q Okay. Did he ever act in a physically violent way  
4 within your class, under your observation?

5 A No, never physically, never verbally. There were no  
6 threats of any sort.

7 Q Okay. Did you ever feel intimidated --

8 A No.

9 Q -- when John or Donte was in your setting?

10 A No.

11 Q Okay. So is it your position then that because of  
12 the accumulation of the minor infractions he was punished not  
13 only -- Well, do you know how he was punished?

14 A He was removed from the class and he was "cabbed,"  
15 which means put in a more isolated section of the jail and not  
16 allowed the same number of privileges, like recreation and  
17 things like that, that the general population is allowed.

18 Q And they consider this program, where people can  
19 turn their lives around, to be a privilege?

20 A That is not for all people, but for the majority of  
21 people in the facility, yes. To the people and the officers,  
22 that does seem to be the attitude there.

23 Q When they're cabbed, is there a place -- is there a  
24 name for the place where they put them?

25 A They call it "the hole."

II-72

HUNTERTON - DIRECT

1 Q The hole.

2 Now I would imagine that you get asked this question  
3 quite a bit. People who are accused of and convicted of very  
4 serious offenses, murders, multiple murders, these type of  
5 things, they're eligible for your programs, is that correct?

6 A Yes, that is true.

7 Q Why do we even want to have programs for these  
8 people if they've done such bad things outside of the jail or  
9 prison facility?

10 A Well, I think the question you just asked, whether  
11 it's a privilege, is exactly the right question to ask, but  
12 the philosophy behind it is that it's never too late to give  
13 someone the opportunity to become who they really could  
14 become, as opposed to -- I used the term "programmed" before,  
15 assuming a role they were kind of programmed for.

16 We never, in life skills, or in any of these  
17 programs, take responsibility away from the person. They are  
18 truly responsible for what they've done, but they are also  
19 given the opportunity to become responsible for being  
20 different, which is powerful no matter what their future will  
21 be.

22 Q You get paid by the County presumably. Why should  
23 the people of the State of Nevada pay for people like you to  
24 help people like this?

25 A Actually, to be accurate, I am paid by the inmates.

II-73

HUNTERTON - DIRECT

1 There is an inmate account, which is what I am paid for. The  
2 decision is made by the County.

3 Q And it's administered by the County?

4 A It is administered by the County, correct.

5 Q Okay.

6 A But the funds do come from the inmates.

7 Q And my question?

8 A And your question then --

9 Q Why should we waste money on people like this.

10 A Okay, why should the inmate money be wasted on that?

11 Q Sure.

12 A Okay, because it does produce different results.

13 People who spend their life in prison do different things than  
14 they would have done without going into the program. I get  
15 letters on a regular basis from people who are getting more  
16 education, who are writing teenagers and saying, "Don't go  
17 where I've gone," who are taking roles in their families as  
18 parents, as friends, or just doing things that they would not  
19 have done. They are choosing to have a life under very  
20 restricted circumstances, but they're choosing to have a life,  
21 a productive life.

22 Q You personally observed John, had conversations with  
23 John, seen him in this setting that's in this jail or prison  
24 world. Do you think, based on your experiences, your  
25 training, your observations, that there is worth to him, that

II-74

HUNTERTON - DIRECT

1 he can, in fact, some day perhaps turn his life around?

2 A Yes, I do. I said the last time I was here that I  
3 think he has the ability, because of his intelligence and  
4 because of his self-awareness, actually to help understand and  
5 provide methods for -- more methods for change for people who  
6 have gone exactly the course he's gone.

7 Q Now you understand he has been convicted --

8 A Yes.

9 Q -- of a role regarding the death of four young men,  
10 correct? Does any of that, these crimes that he has  
11 committed, does that change your observations or opinion of  
12 the value of his life and his worth?

13 A It intensifies my belief that, if he really chooses  
14 to, he can do something that -- nothing erases or discounts  
15 that, but that pulls some value from that and I think he is of  
16 the character where he could do that, yes.

17 Q Are there other people who you don't think have the  
18 same abilities that John has in your observations? Have you  
19 seen people who just don't have that same potential that you  
20 see in John?

21 A Yes.

22 MR. FIGLER: I have no further questions, Your  
23 Honor.

24 JUDGE SOBEL: Any cross?

25 (Pause in the proceedings)

II-75



HUNTERTON - CROSS

CROSS-EXAMINATION

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BY MR. DASKAS:

Q Good morning, ma'am.

You mentioned a few moments ago that you considered John to be intelligent, is that true?

A Yes, sir.

Q All right. And you say that if he chooses to do so, John could actually turn his life around while he's in prison?

A Yes, sir.

Q Is that a yes?

A Yes.

Q Okay. You would acknowledge that he has the ability to make choices then, is that true?

A Yes, sir.

Q All right. I think you mentioned that people who come to your program often do so for that very reason, that is to turn their lives around. Would you agree with that?

A Yes.

Q You would also agree that individuals who enroll in your program may be motivated by different reasons, four different reasons, is that true?

A Yes, sir.

Q If, in fact, Mr. White joined your program to turn his life around, it was obviously after he was incarcerated, is that true?

II-76

HUNTERTON - CROSS

1           A     Well, he chose to join my program after he was  
2 incarcerated, yes.

3           Q     Do you have any information to suggest that while  
4 John White was out on the street, say some time after May 4th,  
5 1998, that he self-enrolled in a program to turn his life  
6 around?

7           A     No, sir, obviously.

8           Q     All right. There's been testimony in this hearing  
9 that on May 4th, 1998 John White shot somebody in the face.  
10 Do you have any information to believe that John White said to  
11 himself at that point, "Gee, I should really turn my life  
12 around," and so he enrolled in a program?

13           MR. SCISCENTO: Your Honor, I'll object to that. It  
14 calls for ridiculous speculation on the part of what Mr. White  
15 was thinking at the time.

16           JUDGE SOBEL: Yeah, I think it's very argumentative,  
17 Robert, and in just a few minutes you're gonna get a chance to  
18 argue this case.

19           MR. DASKAS: I understand.

20 BY MR. DASKAS:

21           Q     You mentioned that Mr. White was kicked out of your  
22 program because he had incurred a number of minor infractions.  
23 Is that your word, minor infractions?

24           A     Yes. He was not kicked out of the program. He was  
25 put in this other status which prevented his coming.

II-77

HUNTERTON - CROSS

1 Q Okay.

2 A Just to be clear.

3 Q And those infractions, you personally considered  
4 those to be minor infractions?

5 A Well, I think I just said they're necessary in a  
6 facility where control is essential, but they are certainly  
7 minor if you look at the level of infractions that people do  
8 within the facility.

9 Q And would you agree that to a corrections officer,  
10 perhaps, some of the infractions that Mr. White had might not  
11 seem minor, to a corrections officer?

12 A I know it would be difficult. I'm not a corrections  
13 officer, but I know that corrections officers, like me, take  
14 violence much more seriously than they do jello.

15 Q You also understand that of the violations of the  
16 infractions that Mr. White had, in some cases he was already  
17 in the hole, to use your expression, and then incurred other  
18 violations while he was already in the hole. Are you aware of  
19 that?

20 A No.

21 Q All right. Is it at least a possibility, ma'am,  
22 that Mr. White would have enrolled in your class because he  
23 thought it might help the outcome of this penalty hearing?

24 MR. SCISCENTO: I'm gonna object to that again, Your  
25 Honor. That calls for speculation.

II-78

HUNTERTON - CROSS

1 JUDGE SOBEL: Overruled.

2 BY MR. DASKAS:

3 Q Would you acknowledge that's, at least, a  
4 possibility?

5 A Sure, it's a possibility, yeah.

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

7 JUDGE SOBEL: Anything further, Dayvid?

8 MR. FIGLER: No, Judge.

9 JUDGE SOBEL: Thank you, ma'am. You're excused.  
10 Call your next witness.

11 MR. SCISCENTO: The defense calls Jane Edwards, Your  
12 Honor.

13 JUDGE SOBEL: I don't recall how long it took with  
14 her. She was a very brief witness, wasn't she?

15 MR. SCISCENTO: Very brief.

16 JUDGE SOBEL: How many more people are you going to  
17 want us to hear from after this witness, John?

18 MR. SCISCENTO: How many more will it take?

19 JUDGE SOBEL: What?

20 MR. SCISCENTO: I think this is it, Your Honor.

21 MR. GUYMON: How many more? I'm sorry?

22 MR. SCISCENTO: I think this is it.

23 JANE EDWARDS, DEFENDANT'S WITNESS, IS SWORN

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

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EDWARDS - DIRECT

1 THE WITNESS: My name is Jane Edwards and my last  
2 name is Edwards, E-D-W-A-R-D-S.

3 DIRECT EXAMINATION

4 BY MR. SCISCENTO:

5 Q Ms. Edwards, do you recognize somebody in court that  
6 you're related to?

7 A Yes.

8 Q Who's that?

9 A My grandson.

10 Q Your --

11 A My grandson.

12 Q Okay.

13 JUDGE SOBEL: The record will reflect the  
14 relationship.

15 BY MR. SCISCENTO:

16 Q And you know him as what? How do you know him, by  
17 what name?

18 A Oh, John White.

19 Q John White, okay.

20 You, at one point, were taking care of quite a  
21 number of children.

22 A Yes.

23 Q Okay, how many children did you take care of?

24 A Ten.

25 Q Ten?

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EDWARDS - DIRECT

1 A Uh-huh.

2 Q And they weren't your children per se. They were  
3 your grandchildren?

4 A Yes.

5 Q Your children, who would be Eunice and Faye, had  
6 some problems?

7 A Yes.

8 Q With drugs?

9 A Yes.

10 Q And they still have problems with drugs?

11 A Yes.

12 Q Okay. Nevertheless, do you still love your  
13 children?

14 A Yes.

15 Q Eunice and everybody?

16 A Yes.

17 Q Okay. While growing up -- While John was growing  
18 up, did you witness any violence against your daughter Eunice  
19 by her husband, John White, Senior?

20 A Yes.

21 Q What kind of violence did you see?

22 A He was, you know, he was just mean sometimes, but  
23 you couldn't hardly tell.

24 Q Let me show you what has been marked as Defense  
25 Exhibit I. Do you recognize this?

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EDWARDS - DIRECT

1 A Yes.

2 Q What is that?

3 A That's the children in usher uniforms.

4 Q Usher uniforms?

5 A Uh-huh.

6 Q Okay. And is somebody in there -- John's in there?

7 A Yes.

8 Q Where's he at?

9 A He's right here.

10 Q Okay. And Keonna is in there?

11 A Yes.

12 Q And where's she at?

13 A She's right there.

14 Q And Gannisha [sic]?

15 A Johnnisha, right there.

16 Q And these are the kids --

17 JUDGE SOBEL: Let me see it, would you, Joe?

18 MR. SCISCENTO: I could produce the rest of them for  
19 you, Judge.

20 JUDGE SOBEL: Yeah, just some I saw at trial and  
21 some were just sort of -- I didn't.

22 BY MR. SCISCENTO:

23 Q And those are the children that you helped raise?

24 A Yes.

25 Q And the neighborhood that you raised them in, would

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EDWARDS - DIRECT

1 it have been a violent neighborhood?

2 A Some would, yeah.

3 Q I'm gonna show you Defense Exhibit J. Do you  
4 recognize this?

5 A Yeah.

6 Q And who is that?

7 A That's John.

8 Q And where is this taken?

9 A It was taken at my house.

10 Q At your house?

11 A Yes.

12 Q How old was John there?

13 A He was about, what, seven.

14 JUDGE SOBEL: Ms. Edwards, you have a very soft  
15 voice and we have this vent right above us.

16 THE WITNESS: Oh, okay.

17 JUDGE SOBEL: Would you just keep it up a little?

18 THE WITNESS: Okay.

19 JUDGE SOBEL: Thanks.

20 THE WITNESS: Thank you.

21 He was about seven, I guess.

22 BY MR. SCISCENTO:

23 Q Seven years old?

24 A Maybe.

25 Q And last time we were here we showed you a videotape



EDWARDS - DIRECT

1 of John that was taken while he was in church.

2 A Yes.

3 Q Do you remember that?

4 A Yes.

5 Q That's Defendant's N and I moved that into  
6 admission.

7 You cared about all your children?

8 A Yes.

9 Q And all the grandchildren you took care of?

10 A Yes.

11 Q Did you do the best you could?

12 A Yes.

13 Q And you tried to love them all?

14 A Yes. I still do.

15 Q Do you know why we're here today?

16 A Yes.

17 Q The reason is is the State is asking to put John  
18 White, your grandson, to death.

19 A Yes.

20 Q And you know the crime that he's been charged with  
21 and was found guilty of?

22 A I didn't know if he was found guilty, but --

23 Q Well, you know he's been found guilty here.

24 A Yes.

25 Q And the proceeding in here today is whether or not

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EDWARDS - DIRECT

1 he's to die. You understand that?

2 A Yeah.

3 Q Do you have anything to tell the judges about that  
4 decision?

5 A I can't tell the judges. All I can say is I'm sorry  
6 for what happened and I don't want 'em to do nothing to him,  
7 like kill him, not put him to death.

8 MR. SCISCENTO: We have nothing further, Judge.

9 JUDGE SOBEL: Any cross?

10 MR. GUYMON: No, Your Honor.

11 JUDGE SOBEL: Thank you, ma'am. You're excused.  
12 Any other sworn or unsworn witnesses?

13 MR. FIGLER: At this time, Your Honor, we'll take --  
14 we'd ask for a break, Your Honor. We have possibly one more  
15 witness at this time.

16 JUDGE SOBEL: Okay, let's take a ten-minute recess  
17 'til ten minutes of 10:00.

18 (Court recessed at 9:40 a.m., until 9:52 a.m.)

19 (Off-record colloquy)

20 JUDGE SOBEL: Anything further, Mr. Figler, Mr.  
21 Sciscento?

22 MR. FIGLER: Your Honor, at this time, the defense  
23 has no further live witness testimony, however, there are a  
24 couple of things we'd like to introduce into the record.

25 Mr. White had made an allocution at the last penalty

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1 hearing, and speaking with Mr. White about it, he wants that  
2 to be given to all the Judges so they could see his thoughts  
3 and his expressions on that.

4 JUDGE SOBEL: Yeah, because I didn't remember him  
5 doing it. Thanks.

6 MR. FIGLER: Additionally, Your Honor -- I'll let  
7 you read that.

8 (Pause in the proceedings)

9 MR. FIGLER: Additionally, Your Honors, we'd ask  
10 that this Court take judicial notice that there was an entry  
11 of life without sentence in the case of Sikia Smith and  
12 Terrell Young as well.

13 JUDGE SOBEL: That's interesting.

14 MR. GUYMON: Judge, do you have --

15 JUDGE SOBEL: Didn't you make a -- didn't you make a  
16 motion that was, I don't recall how it was ultimately  
17 resolved, but I had thought that I was inclined to grant it  
18 and then for some reason it was withdrawn.

19 What's your position on that, Mr. Guymon?

20 MR. GUYMON: Well, Judge, their motion was is that  
21 -- was for the jury not know --

22 JUDGE SOBEL: Right. That's what I'm saying.

23 MR. GUYMON: -- that those two parties did it, and  
24 we said we would stipulate. We presented the Court with some  
25 case law that said it was a discretionary matter, but we

1 stipulated to their motion.

2 JUDGE SOBEL: Well, let me exercise my discretion in  
3 favor of that because I don't know that it's fair, for  
4 whatever weight it be given, that I know, because I live here,  
5 what the conclusion was in the other cases, and two of us,  
6 unless I tell them in deliberations, wouldn't know. Let's  
7 take judicial notice of what is readily capable of  
8 verification under the statute and without question, and that  
9 is that both of the other defendants received life without the  
10 possibility of parole.

11 MR. FIGLER: Thank you, Judge. Finally, there was  
12 one document which is lengthy, and which is being copied as we  
13 speak, which I wanted to introduce into the record. That  
14 document is known in capital circles now as the Leadman  
15 [phonetic] report. The Leadman report was a thorough analysis  
16 which was commissioned by Columbia University with regard to  
17 the status of the death penalty, the application of the death  
18 penalty, and a breakdown by state, including Nevada, with  
19 regard to the death penalty as it exists in the country today.  
20 It involved initially, a review of the habeas --

21 JUDGE SOBEL: I'm sure we all know what it is. Why  
22 do you think that's relevant to our decision?

23 MR. FIGLER: Well, if the Leadman report is correct  
24 in that the imposition of the death penalty is fraught with  
25 error and that each state has, and especially Nevada, has

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1 certain limitations with regard to the appropriate sentencing  
2 of individuals to death in this country as we sit today, then  
3 certainly that would be a mitigating factor with regard to the  
4 very difficult decision to put another human being to death.  
5 It's a very well thought out, very well documented, very well  
6 footnoted report and study, and we'd like that to be part of  
7 this record and part of your consideration with regard to not  
8 only mitigation as it exists, but with regard to any decisions  
9 to actually impose the death penalty in Nevada in the year  
10 2000.

11 JUDGE SOBEL: Well, I don't -- I can't speak for the  
12 other two Judges and what weight they would give to it. I  
13 know, frankly, what weight I think that report is in  
14 establishing the proper sentence here, but be as we're not  
15 dealing with a jury and we're dealing with Judges, we will  
16 allow it to come in as an exhibit for whatever weight it is  
17 given.

18 Anything else, Dayvid?

19 MR. FIGLER: No. At this time, Your Honor --

20 JUDGE SOBEL: When is this very length document  
21 going to be ready? It came out months ago.

22 MR. FIGLER: It's three hundred pages, Your Honor.  
23 We're making a copy of it. I believe it should be here, I'm  
24 hoping it will be here within the next thirty minutes, if not,  
25 sooner.

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1 JUDGE SOBEL: All right. Okay. Anything else?  
2 MR. FIGLER: There were some videotapes, Your Honor,  
3 that were admitted the first time. What is a --  
4 JUDGE SOBEL: Trip through LA and the other one  
5 shows him singing in church.  
6 MR. FIGLER: That's correct, Your Honor. We'd like  
7 those to be considered as part of this record as well.  
8 In addition, there was a report regarding young John  
9 White and his family that was prepared some years back, that  
10 we attempted to introduce at the last hearing. It was marked  
11 as an exhibit. I'm not sure if it actually came in, but we  
12 ask that that be considered part of this record as well.  
13 JUDGE SOBEL: What -- for the letter -- for the  
14 record, what is it? I mean, what number was it?  
15 MR. FIGLER: It was Defense Exhibit M.  
16  
17 THE CLERK: It was admitted.  
18 JUDGE SOBEL: It was admitted? Fine.  
19 MR. FIGLER: It was not --  
20 MR. SCISCENTO: No, it was initially objected to,  
21 the Court took a recess, came back and admitted it.  
22 JUDGE SOBEL: It'll be admitted here for whatever  
23 weight it has.  
24 MR. FIGLER: Thank you, Judge.  
25 JUDGE SOBEL: Anything else, Mr. Figler?

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1 MR. FIGLER: No. At this time, the defense would  
2 rest their penalty phase presentation.

3 JUDGE SOBEL: Thank you. Who will argue for the  
4 State?

5 MR. DASKAS: Judge, I'll argue first. And if I  
6 might have a couple of moments, I need to see if we have the  
7 charts that we used last time.

8 MR. SCISCENTO: Your Honor, we would address the  
9 issue, too, as we did in the first case. Mr. Figler and I  
10 broke up the arguments, again we wanted to do the same thing,  
11 unless there's no problem with this and we'd argue --  
12 procedure in this forum.

13 (Off-record colloquy)

14 MR. FIGLER: Before the counsel presents the closing  
15 argument, I understand it's different in front of a jury, and  
16 certainly the three of you know the law better than all of us  
17 combined, so.

18 JUDGE SOBEL: That's unusual to hear you say  
19 something like that, Dayvid. You don't have to say that just  
20 because we're in open court.

21 MR. FIGLER: I think -- certainly, Judge, with  
22 regard to any improper argument that may exist, I know that  
23 Your Honors are going to be able to disregard that and not  
24 apply that. So, at this point, really, I don't want to  
25 interrupt the prosecution in making their argument, so, I'm

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1 probably not going to and just defer to the three judge panel  
2 with regard to --

3 JUDGE SOBEL: That's up to you, how that --

4 MR. FIGLER: Well, that is our position.

5 JUDGE SOBEL: How that will be viewed, I have no  
6 idea.

7 MR. FIGLER: I understand, Your Honor, but --

8 JUDGE SOBEL: Does that mean we're not going to hear  
9 about the rooms, Dayvid?

10 MR. FIGLER: Yes, Your Honor.

11 JUDGE SOBEL: Oh, excellent. Good.

12 (Off-record colloquy)

13 MR. DASKAS: May I proceed, Judge?

14 JUDGE SOBEL: Sure.

15 PLAINTIFF'S CLOSING ARGUMENT

16 MR. DASKAS: It was the great philosopher Aristotle  
17 who said, "What is justice but that every man get his due,"  
18 and that really is the question before the three of you that  
19 we pose today. What justice is due Donte Johnson for the  
20 nightmare that he created on August 14th, 1998?

21 And I ask each of you, is life in prison sufficient  
22 for the man who created this nightmare, or is something more  
23 required in this case? What punishment is due Donte Johnson  
24 in the destruction that he left at this home on August 14th?

25 And I ask you to keep that in mind. That is, what

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1 is the punishment due for his conduct on August 14th, because  
2 when Mr. Figler said in opening that this prosecution is  
3 somehow driven by the color of Donte Johnson's skin, it was  
4 offensive. It was offensive when he said it weeks ago, and it  
5 was offensive when he said it on Monday, that the punishment  
6 we seek is somehow based on the color of Donte Johnson's skin.

7 We ask you not to punish him for the color of his  
8 skin, but for his conduct on August 14th and for the content  
9 of his character, not the color of his skin.

10 And as offensive and as horrific as this nightmare  
11 is from the Terra Linda home, you, as Judges, certainly  
12 understand that that does not automatically entitle us to seek  
13 the death penalty against Donte Johnson because we all know  
14 that something more is required. That there must be the  
15 existence of at least one aggravating circumstance before the  
16 death penalty can even be considered as an option. And I  
17 don't mean to belabor the point, but I would like to briefly  
18 touch on the aggravators in this case.

19 The State has alleged three aggravators: the first  
20 one is that murder was committed while the person, that is,  
21 Donte Johnson, was engaged, either alone or with his  
22 companions, in the commission of a robbery, a burglary or a  
23 first degree kidnapping. And you certainly understand that  
24 when the jury returned its verdicts of first degree  
25 kidnapping, of robbery with use of a deadly weapon, and of

IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \* \*

DONTE JOHNSON,

S.C. CASE NO. 65168

Appellant,

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Tracie K. Lindeman  
Clerk of Supreme Court

vs.

THE STATE OF NEVADA,

Respondent.

APPEAL FROM DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS  
(POST-CONVICTION)  
EIGHTH JUDICIAL DISTRICT COURT  
THE HONORABLE JUDGE ELISSA CADISH, PRESIDING

~~~~~  
APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME XIX  
~~~~~

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IN THE SUPREME COURT OF NEVADA

DONTE JOHNSON,

CASE NO. 65168

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

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**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 9<sup>th</sup> day of January, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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