

1                    JUSTIN PERKINS,  
2                    being called as a witness on behalf of the  
3 State, was first duly sworn and testified as  
4 follows:

5  
6                    DIRECT EXAMINATION

7 **BY MR. DASKAS:**

8            Q        Justin, I want to direct your attention  
9 back to the summer of 1998.

10                    How old were you back then?

11            A        I was 20.

12            Q        You lived here in Las Vegas?

13            A        Yes.

14            Q        You had some friends that lived at 4825  
15 Terra Linda; is that correct?

16            A        Yes, I did.

17            Q        That address is in Las Vegas, Clark  
18 County, Nevada?

19            A        Yes.

20            Q        Give us the general description or  
21 location of where that house is located.

22            A        It's located behind some apartment  
23 buildings right off of Tropicana Road.

24            Q        Who was it that you knew who lived in that  
25 home on Terra Linda?

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1           A       I knew Tracey Gorringer, Jeff Biddle, Matt  
2 Mowen and Tracey brother's Nick Gorringer.

3           Q       Tracey's brother also lived in the house?

4           A       Yes, he did.

5           Q       All of you were roughly the same age back  
6 in the summer of '98?

7           A       We were all roughly the same age. Tracey  
8 was a little older.

9           Q       Did you also know a man named Peter  
10 Talamentez?

11          A       Yes, I did.

12          Q       How is it that you knew Peter?

13          A       I knew him from school, but I actually  
14 became acquainted with him when I met him at the  
15 house.

16          Q       He was a couple of years younger than you  
17 and your friends?

18          A       Yes, he was.

19          Q       I want to direct your attention  
20 specifically to August 13th of 1998.

21                 Can you tell us if you went to the Terra  
22 Linda home on that day?

23          A       Yes. I had just recently gotten a tattoo  
24 on my arm, and I wanted to show it off to my  
25 friends; so, I had gone over there that night.

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1 Q What time do you think it was when you  
2 showed up on August 13th to the Terra Linda home?

3 A I would say it was around  
4 7:30/8:00 o'clock.

5 Q In the evening time?

6 A In the evening, yes.

7 Q Did you go alone or with other people?

8 A I had two friends with me.

9 Q Do you recall who those two friends were?

10 A Eric and Joe.

11 Q When you arrived at the Terra Linda home  
12 on the 13th, who was there?

13 A It was Matt Mowen, Tracey Gorringer and  
14 Jeff Biddle.

15 Q What was everyone doing when you were at  
16 the house on the 13th?

17 A They were just hanging out. They had a  
18 video game -- a new video game they were playing,  
19 just lounging around, nothing special.

20 Q Was that typical when you would go visit  
21 your friends at the Terra Linda home?

22 A Yeah, usually. I mean, we would just hang  
23 out there, you know, and have fun, play video games,  
24 watch movies.

25 Q In the living room or family room where

( )

1 you spent the time playing video games, can you  
2 describe what was in that room?

3 A Just the entertainment center, VCR, TV,  
4 their PlayStation, you know, their couches, the  
5 plant in the corner.

6 Q The components you mentioned -- the  
7 stereo, the TV, the VCR, the PlayStation, those were  
8 inside the entertainment center?

9 A Yes, they were.

10 Q What was the condition of the inside of  
11 the home like when you were there on the 13th?

12 A It was a little messy. You know, they  
13 were all a bunch of bachelors -- wrappers here and  
14 there, maybe a couple of beer cans, but nothing bad.

15 Q How long did you stay at the house on the  
16 13th?

17 A I know I didn't stay long. I didn't feel  
18 very good after my tattoo, but I hung out for a  
19 while, and I just -- you know, I didn't feel very  
20 good, and I wanted to leave, so -- my friends had to  
21 be at another friend's house before 9:00 o'clock, so  
22 I know we left before 9:00.

23 Q You mentioned that you had just gotten a  
24 tattoo.

25 Did you take some pills while you were at

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1 the Terra Linda home on the 13th?

2 A Yeah. Matt had a zip-lock bag of muscle  
3 relaxers and he offered me some and I had taken two.

4 Q What did those muscle relaxers look like?

5 A They were just white round pills in a  
6 zip-lock baggie.

7 Q You said you left around 9:00 o'clock.

8 Did the two friends that you arrived with  
9 leave with you?

10 A Yes, they did.

11 Q Who was remaining at the Terra Linda home  
12 when you left on the night of the 13th?

13 A It was Matt Mowen, Jeff Biddle and Tracey  
14 Gorringer.

15 Q Did you ever see Tracey's brother Nick  
16 there that night on the 13th?

17 A No, I did not.

18 Q And what did your friends plan on doing  
19 once you left on the night of the 13th?

20 A They said they were going to clean up,  
21 start cleaning up the cans and whatnot, straighten  
22 up.

23 Q I want to jump ahead now to the following  
24 day, August 14th of 1998. Tell me what you did that  
25 day.

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1           A       That day I had slept in. I was staying  
2 with my girlfriend at the time, and I knew I had to  
3 go to the bank because I slept in so late I knew my  
4 bank closed around 6:00, so I went to the bank and I  
5 had to get a new ATM card and I left roughly before  
6 6:00 o'clock.

7           Q       When you left the bank on the 14th, where  
8 did you plan on going?

9           A       To Matt and Jeff and Tracey's house.

10          Q       Were you alone or with your friends?

11          A       I was by myself.

12          Q       You say you stopped at the bank.

13                   Was there any particular reason you  
14 stopped at the bank first?

15          A       I owed Matt 20 bucks for a beer debt. He  
16 spotted me, I spotted him.

17          Q       This was typical?

18          A       As friends do. We always did that for  
19 each other.

20          Q       What time do you think it was when you  
21 pulled up to the Terra Linda home on the 14th?

22          A       Roughly around 6:00 o'clock.

23          Q       In the evening?

24          A       In the evening, yes.

25          Q       Did you notice anything unusual when you

1 parked near the home on the 14th?

2 A They had a gate that wrapped around their  
3 yard, and the gate closed over their driveway, and I  
4 noticed that the gate was open.

5 Q Why was that unusual?

6 A They -- usually, it's never open, but they  
7 also have dogs, little puppies, and they just  
8 guarded them and didn't want them to run away,  
9 especially -- someone could take them, especially  
10 that young; so, they would always have the gate  
11 closed.

12 Q Did you see any vehicles in the driveway  
13 of the Terra Linda home?

14 A Yeah. Tracey's car was in the driveway.

15 Q Do you recall where it was parked?

16 A Yeah. It was underneath the carport.

17 Q Was there anything unusual about that?

18 A Yeah. He never parks his car under the  
19 carport. He likes to park just in front of the door  
20 so he can jump out of his truck and walk to the door  
21 and go inside.

22 Q Despite those two unusual things that you  
23 noticed, did you get out and approach the front  
24 door?

25 A Yes, I did.

1 Q Did you notice anything unusual when you  
2 approached the front door of the Terra Linda home?

3 A When I got near the door, I noticed the  
4 door was cracked open a little bit, and I thought  
5 that was really odd because of the puppies inside  
6 and the front gate down below open -- it just  
7 didn't -- it was just weird.

8 Q Despite those unusual things, did you  
9 either enter the house or at least look inside the  
10 front door?

11 A Yeah, I did.

12 Q I want you to tell me what you saw.

13 A I walked up, and I pushed the door up, and  
14 right when I pushed the door open, I found Jeff  
15 laying face first tied up with blood all around his  
16 head, and as I looked in more, I saw Tracey laying  
17 face down tied up in front of the couch, and then as  
18 I looked in, I seen Matt Mowen laying down face  
19 first, also tied up. I noticed Matt Mowen, because  
20 it said "Mowen" tattoo on his back, on his lower  
21 back.

22 Q Matt wasn't wearing a shirt?

23 A No, he wasn't.

24 Q You say they were tied up.

25 What did you see that led you to conclude



1 they were tied up?

2 A They were duct taped with their hands  
3 behind their backs.

4 Q Describe where you saw the duct tape.

5 A I saw the duct tape on their wrists and on  
6 their ankles.

7 Q Were they all face down?

8 A Yes, they were.

9 Q You mention you saw blood around --

10 A All of their heads.

11 Q Did you see blood anywhere else?

12 A There was blood that the dogs had tracked  
13 everywhere. The dogs had tracked it all over the  
14 carpet; they had tracked it on the couches. The  
15 inside of the house was tore apart. The cushions  
16 were off the couches; the plant was ripped out of  
17 the planter. There were just papers and cards  
18 and -- it was just trashed.

19 Q Let me ask what might seem like an obvious  
20 question.

21 Was the home in that condition when you  
22 were there one day earlier?

23 A No, not even close.

24 Q What did you do when you saw your friends  
25 in the condition you just described?

1           A       I ran to the house next door, and I banged  
2 on the door, and no one was home, so I went to the  
3 next house to the other side, and I banged on the  
4 door, and I told the people please call the police,  
5 that my friends had been robbed.

6           Q       You mention your friends had been robbed.  
7 I need you to answer out loud. I'm sorry.

8           A       Yes.

9           Q       What did you do after that?

10          A       I went back over to the doorway, and I had  
11 stood in the doorway and I tried to call the dogs  
12 outside. As the dogs came towards me, they were  
13 just covered in blood. I got it on me and outside,  
14 and I started calling my friends' names, and they  
15 didn't answer. The neighbors came back outside, and  
16 I told them to call an ambulance, that I think my  
17 friends are dead.

18          Q       You say you called your friends' names.  
19 Did you call out loud each one of their names?

20          A       Yes, I did. I looked to see if they were  
21 breathing, but I didn't see anything, no movement,  
22 no nothing.

23          Q       Did you ever actually enter the house on  
24 the 14th?

25          A       Yeah. When I went back, I had walked

1 inside a few steps, at least three steps inside. I  
2 looked around, and I became scared.

3 Q What do you mean you "became scared"?

4 A I didn't know if somebody was still  
5 inside. I had no idea what was going on; I was just  
6 terrified, and I came back out and I just stood  
7 there in the doorway. I had stared at them until  
8 the ambulance came.

9 Q Once the ambulance showed up, did you see  
10 the paramedics enter the house?

11 A Yeah. The paramedics came, and I flagged  
12 them down. They came over, and they all walked  
13 inside, and I started to follow them in, and that's  
14 when they all just turned around and grabbed a hold  
15 of me and pushed me back out of the door, and we all  
16 walked out to the sidewalk. I asked them what was  
17 going on, why aren't they helping my friends, and he  
18 had told me that they were all dead.

19 Q Now, you describe how you saw three of  
20 your friends in the living room at some point on the  
21 14th.

22 Did you learn that there was another  
23 person in the house?

24 A Yeah, I did.

25 Q Tell me how you learned that.

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1       A       One of the police officers that was there  
2 on the scene asked me if I knew who another female  
3 was inside the house, and I didn't know what he was  
4 talking about. I said no. And then later on, he  
5 informed me that there was another guy inside in the  
6 kitchen.

7       Q       Did you fill out a voluntary statement  
8 that night, that is, the 14th, while the police were  
9 there?

10      A       I did immediately afterwards.

11      Q       Where did you go once you left the home?

12      A       I went to my mother's house. I wanted to  
13 tell her what had happened, and I just wanted to  
14 give her a hug -- just happy to still be here.

15      Q       Did you see anyone else before you left to  
16 go to your mom's house?

17      A       Yeah, I did.

18      Q       Who did you see?

19      A       When I was walking to my car, I saw Matt  
20 Mowen's dad, and he didn't know what was going on,  
21 and he had asked me if his son was inside, and I had  
22 to tell him that his son was dead.

23      Q       You mentioned earlier that it wasn't  
24 unusual for the occupants and visitors of the Terra  
25 Linda home to have beer.

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1           Would you also see drugs there on  
2 occasion?

3           A     The only times drugs would really be there  
4 would be at parties when a large amount of people  
5 were there. I mean, it was their house, you know.  
6 We were kids.

7           **MR. DASKAS:** Thank you, Justin.

8           We'll pass the witness, Judge.

9           Cross.

10          **MR. WHIPPLE:** Thank you, your Honor.

11

12                           CROSS-EXAMINATION

13 **BY MR. WHIPPLE:**

14          Q     Mr. Perkins, you had made mention about  
15 some muscle relaxers.

16                   Do you recall that?

17          A     Yes, sir.

18          Q     Do you now recall what kind of muscle  
19 relaxers they were?

20          A     No, sir, I don't.

21          Q     Do you know if there was a prescription  
22 for those muscle relaxers?

23          A     No, I don't.

24          Q     You don't know if they were Percocets?

25          A     That would be my guess, but -- I would

1 call them Percocets, but I really don't know the  
2 brand.

3 Q Do you remember testifying about Percocets  
4 at a prior hearing?

5 A Yes, I do.

6 Q Is it fair to say you testified that they  
7 were transported from Tijuana, Mexico?

8 A Yes.

9 Q Who had brought the Percocets up from  
10 Mexico?

11 A Matt Mowen had them.

12 Q You were asked in a prior hearing what  
13 kind of drugs did they normally do at that  
14 residence.

15 Do you remember that question?

16 A Yes, sir.

17 Q You had answered "beer mostly" --

18 A Yes, sir.

19 Q -- "and also cocaine."

20 Do you remember that?

21 A Yes, I remember that. Cocaine wasn't, --

22 it wasn't like beer; it wasn't an everyday thing.

23 At parties, that would be when it was around,

24 otherwise, that really wasn't the drug of choice, it  
25 was alcohol.

1           **MR. WHIPPLE:** Court's indulgence.  
2           Nothing further, your Honor.  
3           Anything else?  
4           **MR. DASKAS:** No, sir.  
5           All right.  
6           You're excused, sir. Thank you very much.  
7           Call your next witness.  
8           **MR. STANTON:** The State would  
9 call Detective Tom Thowsen, your Honor.  
10           May I use the lecturn?  
11           Yes.  
12           **THE BAILIFF:** Remain standing and face the  
13 clerk.  
14           **THE CLERK:** Raise your right hand.  
15           (Oath administered.)  
16           **THE WITNESS:** I do.  
17           **THE CLERK:** Please be seated. When you're  
18 seated, state your name and then spell your name.  
19           **THE WITNESS:** It's Thomas D. Thowsen, T,  
20 as in Tom, H-O-W-S-E-N.  
21  
22                            DIRECT EXAMINATION  
23 **BY MR. STANTON:**  
24           Q     Detective, how are you employed?  
25           A     I'm a homicide detective with the

1 Las Vegas Metropolitan Police Department.

2 Q How long have you been in that form of  
3 employment?

4 A I've been in homicide for about -- a  
5 little over 13 years, and I've been with Metro for  
6 about 27-and-a-half years.

7 Q And did you have any duty assignments  
8 prior to being a detective with the homicide  
9 division?

10 A Yes.

11 Q What kind of duty assignments have you had  
12 here in Las Vegas as an officer of Metro?

13 A I began as a patrol officer assigned to  
14 the Patrol Division. From there, I went to the  
15 Canine Section for several years. From the Canine  
16 Section, I transferred to the training staff of the  
17 Police Academy. I worked there for approximately  
18 three years. From the Police Academy, I went to the  
19 Detective Bureau working a year in the Investigative  
20 Surveillance Unit, about three years in the Robbery  
21 Section, and the remainder in the Homicide Section.

22 Q In your tenure, Detective Thowsen, as a  
23 homicide detective, approximately how many death  
24 scenes have you been involved in either as the  
25 primary case detective or as an assistant capacity

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1 with other detectives?

2 A It would have to be somewhere -- 500 to  
3 800, I would guess. I don't keep an accurate track.

4 Q And during your time as homicide  
5 detective, you work as a team?

6 A That's correct.

7 Q And could you explain how that process  
8 works?

9 A There is normally two of the detectives  
10 that work as a team. One of the detectives would be  
11 assigned to be in charge of witnesses or suspect  
12 interviews; the other detective would be working  
13 with the crime scene analyst to examine the crime  
14 scene itself and make sure that all the proper  
15 things are being gathered and kind of touching base  
16 back and forth with your partner as new information  
17 is learned. For example, as you're searching a  
18 scene, you may find something -- a piece of evidence  
19 that you need to inform your partner so they can  
20 direct their interviews towards a certain aspect of  
21 that evidence that's been located or vice versa.

22 Q Would it be fair to say that homicide  
23 scenes are never the same?

24 A That would be fair to say.

25 Q In the course of your tenure, do you work

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1 active in what's commonly referred to as "cold  
2 cases"?

3 A Yes. Because I've been there for 13  
4 years, some of my older cases would be considered  
5 "cold cases." Occasionally, you'll have --  
6 something will come up on a case that's ten years  
7 old that you would activate and start working on  
8 again. Other than that, I'm a detective that's  
9 on-call to be called out at the time of a homicide  
10 or an officer-involved shooting based on a rotation  
11 that we have.

12 Q In this case back in August 1998,  
13 specifically on the 14th of August, who was assigned  
14 to what ultimately became a quadruple murder at 4825  
15 Terra Linda?

16 A On that particular date, I was working  
17 with my partner at the time, Detective James Buczek.  
18 Detective Buczek was assigned to interview witnesses  
19 and/or suspects, and I was responsible for the crime  
20 scene.

21 Q And would you and Detective Buczek have  
22 been responsible for the investigation of this case  
23 from its inception when Metro was notified on the  
24 14th of August 1998 until today's date?

25 A Yes.

1 Q Detective, I want to go back to that day  
2 in August.

3 Based upon your previous testimony, you  
4 physically responded to the Terra Linda residence?

5 A Yes.

6 Q And besides the initial scene, were  
7 witnesses or people that detectives wanted to talk  
8 to in the neighborhood the first people that were  
9 interviewed?

10 A Yes.

11 Q Does the name "Nicholas DeLucia" ring a  
12 bell?

13 A Yes, it does.

14 Q Who is he in this investigation?

15 A Nicholas DeLucia was the next-door  
16 neighbor of the victims.

17 **MR. STANTON:** Your Honor, I have a blown  
18 up exhibit that I've shown to defense counsel. It  
19 was not admitted in the first trial. I'd asked if  
20 we can mark that next in order.

21 **THE CLERK:** Exhibit 246.

22 (State's Exhibit 246 was marked for  
23 identification.

24 **MR. STANTON:** May I approach, your Honor?

25 Yes.

1           **MR. STANTON:** Your Honor, may I  
2 approach Detective Thowsen?

3           Yes.

4 **BY MR. STANTON:**

5           Q       Showing you what's been marked as  
6 Exhibit 246 and ask you to look at that and tell me  
7 if you're familiar with what's contained in that  
8 exhibit.

9           A       Yes, I am.

10          Q       Does it truly and accurately depict those  
11 various geographic locations here in Clark County?

12          A       Yes, it does.

13               **MR. STANTON:** I'd move for 246 into  
14 evidence.

15               **MR. WHIPPLE:** No objection, your Honor.

16               Admitted.

17               (State's Exhibit 246 was admitted into  
18 evidence.)

19 **BY MR. STANTON:**

20          Q       Detective, if you could just hold that up  
21 there for me for my next series of questions.

22               Pursuant to your investigation -- initial  
23 investigation, 4825 Terra Linda was the address  
24 where four victims were found?

25          A       That's correct.

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1 Q Skipping ahead sometime chronologically  
2 about how things developed, you were also, several  
3 days later, advised that 4815 Everman was a place of  
4 interest in this investigation.

5 Would that be accurate?

6 A That's correct.

7 Q Thank you.

8 Those are located and fairly and  
9 accurately depicted on that photograph as far as  
10 their distance?

11 A Yes.

12 Q It looks like it's close on that aerial  
13 photograph.

14 What would be the driving time by vehicle  
15 from the Terra Linda address to the Everman home?

16 A I believe it's about two to three minutes.  
17 It's eight-tenths of a mile according to MapQuest.

18 Q Thank you, Detective. You could just put  
19 that down next to you someplace convenient.

20 Mr. DeLucia lived next door to Terra  
21 Linda?

22 A Yes.

23 Q In August 1998, how was he employed, do  
24 you remember?

25 A I believe he was an electrician.

1 Q And he had somewhat of an unusual work  
2 schedule, did he not?

3 A Yes.

4 Q What was the shift that he would be  
5 working during August of 1998?

6 A It was a graveyard shift. If I remember  
7 correctly, it would have been from 2:00 o'clock in  
8 the morning until 10:30 in the morning.

9 Q During his interview and as he testified  
10 in the jury trial back in 2000, did he go to work on  
11 the evening of August -- I guess it would be the  
12 morning of August 14th?

13 A Yes. I'm not sure if it would actually be  
14 the 13th into the 14th.

15 Q Okay.

16 He indicated that he got up at 12:30 in  
17 the morning. I guess that would be just after  
18 midnight and technically into the 14th.

19 A Correct.

20 Q He started work at 2:00 a.m.; is that  
21 about right?

22 A That sounds correct, yes.

23 Q When he went to work in the early morning  
24 hours, 12:30 a.m., he would, by his route to work,  
25 go near or by -- directly by the 4825 Terra Linda

1 address?

2 A Yes, he would.

3 Q And was there anything that he told you  
4 and fellow detectives about what he observed that  
5 morning, late that night when he went to work?

6 A Yes. He mentioned that as he was driving  
7 by, he noticed someone with a hose washing off the  
8 driveway.

9 Q And did he describe him generally as a  
10 white male adult?

11 A Yes.

12 Q Was he very knowledgeable about who lived  
13 next door and what their names were?

14 A Not as I recall.

15 Q You indicated that he worked until 10:30.  
16 Did he return home after working his shift  
17 that day?

18 A Yes, he did.

19 Q And was there anything that he observed  
20 unusual when he drove by 4825 Terra Linda the next  
21 morning approximately 11:00 a.m.?

22 A No, there was not.

23 Q At approximately 6:00 o'clock, what did  
24 Mr. DeLucia tell you and other detectives occurred  
25 that was unusual at 6:00 p.m. the evening of

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1 August 14th?

2 A He said that Justin had come by and was  
3 extremely upset indicating that his friends next  
4 door had been robbed and tied up.

5 Q And Mr. DeLucia had a girlfriend that also  
6 lived with him?

7 A Yes.

8 Q And as a result of Mr. Perkins coming over  
9 there in that state of mind, what did he and his  
10 girlfriend do?

11 A They contacted 911 to phone the call in to  
12 the police.

13 Q And Detective, would that have been the  
14 first formal notification of this event to Metro  
15 police?

16 A Yes.

17 Q Did Justin then leave Mr. DeLucia's home  
18 or his property and then come back later?

19 A Yes, he did.

20 Q What did he do and say to Mr. DeLucia when  
21 he came back the second time?

22 A He was apparently very upset and asked  
23 that they also contact the paramedics because of the  
24 bleeding and non-response, I believe.

25 Q Now, at this point, police officers --



1 Metro units are responding pursuant to the 911 call  
2 to the Terra Linda location?

3 A Yes.

4 Q Are you familiar with a Sergeant Randy  
5 Sutton and an Officer David West as it involves  
6 their interaction with Terra Linda on August 14th?

7 A Yes, I am.

8 Q Who were they?

9 A Officer West is one of the officers that  
10 had responded to the scene; Sergeant Sutton was the  
11 first supervisor that responded to the scene, and  
12 the two of them together cleared the residence to  
13 make sure there were no suspects inside or any other  
14 wounded individuals.

15 Q Now, when a police officer comes to the  
16 scene and observes what ultimately was inside the  
17 Terra Linda home, you indicated that there was a  
18 process of clearing a home?

19 A Yes.

20 Q Is that a term that police officers  
21 commonly use as far as their police duties and as it  
22 relates to officer safety?

23 A Yes, it is.

24 Q Now, the officers that first arrived on  
25 the scene, specifically Sergeant Sutton, how long

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1 had he been a Metro officer, do you know?

2 A He had, I believe at that time, a total of  
3 about 24 years total combined police experience with  
4 probably about 18 years with Metro.

5 Q As Sergeant Sutton and Officer West  
6 arrived on the scene, they're in a little bit of a  
7 difficult situation. Would that be a fair statement  
8 as far as what they want to do inside the home and  
9 what they don't want to do?

10 A That's correct.

11 Q Could you describe that conflict that  
12 exists with them and any officer that arrives on the  
13 scene such as this?

14 A Based on what they can see immediately  
15 upon reaching the front doorway, it's a major crime  
16 scene with people that are apparently dead which  
17 would indicate to them that it's going to be a  
18 homicide scene. They want to make sure they don't  
19 destroy any evidence whatsoever, but they also have  
20 a duty that they have to make sure there's not  
21 someone still alive that could be resuscitated if  
22 they had immediate help or if there was a suspect  
23 still on the property.

24 Q Now, relative to Officer West and Sergeant  
25 Sutton's performance of the duties as you just

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1 described it, did they clear the home?

2 A Yes, they did.

3 Q And as a result of them clearing the home,  
4 what did they find out about two things -- one,  
5 whether or not anybody was still alive in the home,  
6 and number two, were there any suspects in the home?

7 A They did not find anyone else alive. They  
8 found a total of four individuals that were dead and  
9 did not locate any suspects.

10 MR. STANTON: Miss Clerk, if I could have  
11 Exhibits 8 and 11 through 19.

12 BY MR. STANTON:

13 Q Detective, while those exhibits are being  
14 pulled, I'd like to ask you the next series of  
15 questions regarding the Terra Linda home.

16 When you and other officers arrived at the  
17 scene, you have a discussion with Sergeant Sutton  
18 and Officer West about what they did inside the home  
19 and what they observed?

20 A Yes.

21 Q Why is it important for you to know what  
22 the officers did, with precision, inside that home?

23 A We want to make sure that they haven't  
24 touched or disturbed anything, or if they have, how  
25 it was before they disturbed it. If a person's body

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1 was moved, if a piece of evidence or a weapon is  
2 moved, we need to know about that right away and/or  
3 if they touched something.

4 Q And as a result of your interaction with  
5 Sergeant Sutton and Officer West, what were you able  
6 to ascertain about the integrity of the crime scene  
7 at Terra Linda?

8 A That they maintain the integrity of the  
9 crime scene without disturbing anything other than  
10 physically walking through it, basically.

11 Q Detective, I'm going to put a series of  
12 photographs up on the overhead here.

13 Can you see that screen fine from there?

14 A Yes, I can.

15 MR. STANTON: For the record, Exhibit

16 No. 8.

17 BY MR. STANTON:

18 Q Would you describe what we're seeing in  
19 Exhibit No. 8?

20 A This would be the mailbox at 4825 Terra  
21 Linda.

22 Q These photographs were all taken by crime  
23 scene analysts?

24 A That's correct.

25 Q State's Exhibit 11.

1           A       This is a view of the front of the  
2 residence if you were standing from the street and  
3 looking up the driveway; part of the driveway goes  
4 straight, part of it curves to the right to where  
5 you see the vehicle parked under the carport. The  
6 front door is going to be in the left side of the  
7 picture.

8           Q       And all these photographs in this series  
9 all fairly and accurately depict how the home  
10 generally looked when you were at the scene and when  
11 officers originally arrived at the scene?

12          A       Yes, they do.

13          Q       State's Exhibit 12.

14          A       This, again, is a view looking from the  
15 street, looking up the driveway. You can see a  
16 little bit more to the left than the first picture  
17 showed you with the fence separating the two houses,  
18 some trash cans out front, and that's the front door  
19 that is open (indicating) that you can see there on  
20 the wall.

21          Q       State's Exhibit 13.

22          A       This photograph is showing the front door  
23 of that same residence after it has been closed. It  
24 had a seal placed on it by the crime scene analyst  
25 and what's referred to as a "lockout" on the

1 doorknob that would keep somebody from turning the  
2 knob to open it.

3 Q Could you describe why that is done in a  
4 crime scene such as this, both the taping and the  
5 lockout?

6 A Many times, especially with very involved  
7 crime scenes, it takes many, many hours, if not many  
8 days to process the scene. Sometimes it's not  
9 always possible for the crime scene analyst to stay  
10 there around the clock to continue working.  
11 Sometimes it's advantageous to have them work for  
12 several hours and seal the crime scene where the  
13 doors and windows are secured. Tape is placed  
14 across them where you could tell someone would break  
15 the tape by opening the door. And additional  
16 information is learned at a later time, such as from  
17 the autopsy, then the crime scene analyst would  
18 return at that later date and reenter the structure  
19 and be able to tell that it was intact.

20 Q Now, the distinction between the condition  
21 of the door in that photograph and the next one,  
22 State's Exhibit 14, there appears to be a series of  
23 levels of charcoal striations across the door.

24 This, once again, is the front door of the  
25 Terra Linda home?

1           A       Yes, it is.

2           Q       What is the difference that has occurred  
3 between that front door from the previous photograph  
4 to this photograph?

5           A       You can see the residue of fingerprint  
6 powder where the crime scene analyst has applied  
7 fingerprint powder to the exterior part of the door  
8 to see if they can locate fingerprints that might be  
9 there.

10          Q       Is that typical based upon the nature of  
11 this scene?

12          A       Yes, it is.

13          Q       Detective, inside the Terra Linda home,  
14 how many bodies were ultimately found deceased?

15          A       A total of four.

16          Q       Based upon your training and experience  
17 and the experience of Las Vegas Metro homicide as an  
18 entire unit, is a quadruple homicide unusual?

19                 **MR. WHIPPLE:** Judge, I'm going to object.  
20 It's relevance at this point.

21                 **MR. STANTON:** The relevance, your Honor,  
22 is based upon what the officer or the detective is  
23 going to testify as to what they do next and the  
24 nature of the investigation -- what they were going  
25 to do both at the crime scene as well as following

1 up with additional suspects.

2           **MR. WHIPPLE:** And I'll respond, I don't  
3 think it matters if it's one or two or three or  
4 four. It's the same investigation.

5           Sustained.

6           **MR. STANTON:** Thank you.

7           Can he testify to what he did without  
8 having to....

9 **BY MR. STANTON:**

10          Q     Relative to the interior of the Terra  
11 Linda home, what was the primary focus once officers  
12 from Homicide Division arrived at Terra Linda?

13          A     What we want to do is make sure that  
14 plenty of time is taken, and as carefully as  
15 possible, everything is documented and evidence is  
16 collected.

17          Q     There were a series of a number of items  
18 that were seized at the scene; would that be a fair  
19 estimate or statement?

20          A     Yes.

21          Q     At the time that you impound items, do you  
22 know, to some extent, what evidentiary value those  
23 items have or do you sometimes not know?

24          A     Sometimes you know right away, and  
25 sometimes you have something that is important that

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1 you don't realize it's important until later.

2 Q Can you give me an example at this scene  
3 those items that were immediately apparent to you  
4 that were relevant evidence at the crime scene  
5 versus those items that you did not know but  
6 ultimately became quite important?

7 A An example of evidence at a scene like  
8 this and at this particular scene that was important  
9 right from the beginning were the shell casings.  
10 There were four shell casings or cartridge casings  
11 located in the residence. We were able to tell  
12 looking at the victims' bodies that they have what  
13 appear to be gunshot wounds; and we find shell  
14 casings next to the bodies, that would indicate it's  
15 probably going to be connected and very important.

16 Q And, in the fact that you saw shell  
17 casings in the generalized area of each of the  
18 victims; is that fair to say?

19 A Yes.

20 Q The nature of the shell casings themselves  
21 gave rise to you to have some indication of what  
22 type of weapon was used or potentially used, at  
23 least initially, in your assessment in the execution  
24 murder of each one of these victims --  
25 semi-automatic versus a revolver.

1           What did that mean to you and how did you  
2 have some generalized idea that it was probably a  
3 semi-automatic?

4           A     With a semi-automatic, when the weapon is  
5 fired, the empty shell casing is ejected from the  
6 weapon. With a revolver, when the weapon is fired,  
7 the cylinder rotates and the shell casing remains  
8 inside the revolver unless a person physically opens  
9 up the cylinder, dumps out the empty casings  
10 themselves.

11          Q     Once again, Detective, I'm going to show  
12 you a series of photographs which were previously  
13 admitted in the trial in 2000 regarding the interior  
14 of the Terra Linda home. Exhibit 21 -- if you could  
15 describe with each one of these photographs what  
16 we're looking at.

17          A     This would be in the dining room area,  
18 looking across a table at the wall and the open  
19 pantry.

20          Q     Exhibit 22.

21          A     This would be looking from the direction  
22 of the dining room, looking back towards the front  
23 door of the residence. That would be the same front  
24 door from the inside view that we've seen the  
25 outside view of.

1           Q     The one that I'm pointing to right here  
2 (indicating)?

3           A     That's correct.

4           Q     Was there any sign of forced entry to that  
5 door?

6           A     No, there was not.

7           Q     Twenty-three.

8           A     I believe that one is sideways.

9           Q     Pardon me?

10          A     This appears to be a view looking down the  
11 hallway, I believe, from the living room.

12          Q     Twenty-four.

13          A     This would be the living room couch. You  
14 can see the back cushions, and you can see that the  
15 bottom cushions have been removed, and there are  
16 items spread out that normally wouldn't be laying on  
17 somebody's couch.

18          Q     There was a portion of the crime scene  
19 assessment that involved a series or a number of  
20 cigarette butts at the crime scene. Were they  
21 important to you as far as the crime scene  
22 homicide detective, and if so, why?

23          A     Cigarette butts are often very important  
24 to us, because many times we're able to extract DNA  
25 from the remaining cigarette butt that someone has

1 smoked and discarded.

2 Q These photographs depict a number of  
3 cigarette butts that were in the home starting with  
4 25 and then here in 26 (indicating).

5 A Yes.

6 Q All of these were impounded for DNA  
7 analysis?

8 A That is correct.

9 Q State's Exhibit 27 -- what are we looking  
10 at in that photograph?

11 A This is a container for a plant that was  
12 sitting in the corner of the living room. You can  
13 see it has some dirt in it, and off to the left of  
14 the picture, you can see a portion of the plant  
15 where somebody has taken the plant and completely  
16 ripped it out of the dirt in their effort to ransack  
17 this house looking for items.

18 Q And ultimately, you were able to  
19 determine, through your investigation, that one of  
20 the motives for the defendant and the two other  
21 co-defendants in this case, Sikia Smith and Terrell  
22 Young, to go to this home was to find money and  
23 drugs?

24 A That's correct.

25 Q And would the searching of the potted

1 plant be consistent with that based upon your  
2 training and experience?

3 A That was someone that was very motivated  
4 in looking everywhere.

5 Q For narcotics and money?

6 A Yes.

7 Q Exhibit 28.

8 A This is a photograph of one of the  
9 bedrooms. You can see the drawers had been pulled  
10 out and dumped everywhere.

11 Q Twenty-nine.

12 A Again, I'd say this is one of the bedroom  
13 floors with items just pulled out and dumped on top  
14 of each other.

15 Q Thirty.

16 A This is the same room, larger view where  
17 you can see more of the ransacking and items  
18 overturned.

19 Q Would it be fair to say that the home had  
20 been thoroughly ransacked in each and every room?

21 A Yes.

22 Q Exhibit 32, specifically right by the  
23 cone, that black item, that item pointing to right  
24 here, Detective (indicating), do you recognize  
25 what's contained in that? I can bring the actual

1 photograph to you, if it would help.

2       A     You may need to. I can see some black  
3 items.

4           **MR. STANTON:** May I approach, your Honor?  
5           Yes.

6           (Approached the witness.)

7           **THE WITNESS:** This (indicating) item is  
8 one of the wallets recovered.

9 **BY MR. STANTON:**

10       Q     In the Terra Linda home?

11       A     In the Terra Linda home.

12       Q     And item 33.

13       A     It's another one of the wallets recovered  
14 in the home completely void of any cash.

15       Q     Would it be fair to say after your entire  
16 crime scene analysis of the interior of that home  
17 whether or not there was one dollar of U.S. currency  
18 found in that home?

19       A     Not in cash, only some coins.

20       Q     Exhibit 37 -- I'll approach with it --  
21 next to the cone.

22           Do you recognize that?

23       A     I'm not sure specifically which item next  
24 to the cone.

25       Q     I'll use the crime scene diagram for that.

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1           A       Okay. Thank you.

2           Q       State's Exhibit 40, what appears to be an  
3 office area, was that the condition that you found  
4 this portion of the home in?

5           A       Yes. Again, you can see all the drawers  
6 are pulled out. Everything is ransacked and dumped  
7 over.

8           Q       Exhibit 38.

9           A       This would be the bathroom area with  
10 items, once again, pulled open and everything dumped  
11 out.

12          Q       Exhibit 43 in reference to this bedroom  
13 and the bed depicted in there, what gave you an  
14 impression from looking at that scene that that  
15 bedroom and specifically the mattress area was  
16 tossed?

17          A       You can see that the sheets had been  
18 completely pulled free from the mattress itself so  
19 that someone could check under the sheets, between  
20 the mattresses and pretty much any place you would  
21 be able to hide something there.

22          Q       State's Exhibit 49.

23          A       This is showing the floor with just  
24 numerous items and clothing and baseball cards just  
25 dumped out.

1           Q     This is from the closet area of one of the  
2 bedrooms?

3           A     I would say yes, that would be correct.

4           Q     State's Exhibit 54. I apologize. What  
5 are we looking at there, Detective?

6           A     This is the entertainment center in the  
7 living room. If you look on the large bottom shelf,  
8 you can see the television set has been turned  
9 completely sideways. There's some wires coming out  
10 and a few extra wires that aren't hooked up to  
11 anything, and a big empty place next door to the  
12 television to the left.

13          Q     Ultimately, as you were there observing  
14 this portion of the scene, what interest did you  
15 have in this area and why?

16          A     We could see that somebody had clearly  
17 removed something. Commonly when you have something  
18 removed in an area like this, it would be something  
19 involving like a television set, a VCR, a record  
20 player, PlayStations -- items like that. That is  
21 important to us, because oftentimes a suspect will  
22 keep that item for themselves, and we can locate it  
23 at a later time and reconnect it back to the scene.

24          Q     The next exhibit up there, 59, is a closer  
25 view of that section of the home.



1           Was this an area that was of high  
2 concentration regarding forensic testing by crime  
3 scene analysts?

4           A     Yes.

5           Q     Could you explain what a crime scene  
6 analyst is and how many were involved in this case?

7           A     There were several. There's normally  
8 several crime scene analysts as well as a crime  
9 scene supervisor. These are all civilian employees  
10 that are highly trained in documenting,  
11 photographing, collecting and preserving evidence.  
12 They're the ones that come and actually, physically  
13 look for the evidence that use special equipment and  
14 tools and follow certain protocols to make sure that  
15 they have the greatest chance of preserving the  
16 evidence without causing any harm to it.

17          Q     And is there a sequence or an order in  
18 which this crime scene is processed as far as what  
19 areas to go to first and how is the scene  
20 memorialized?

21          A     With a complex scene such as this one  
22 here, especially where there is a body or numerous  
23 bodies involved, the first thing that is done is  
24 photographs are taken so they can see exactly how  
25 everything is before anything gets picked up, moved

1 or changed as it's collected as evidence. They will  
2 try to do as much as they can without disturbing the  
3 actual body so that when it's time to remove the  
4 body, that no evidence will be lost by the actual  
5 removal of the body.

6 Q State's Exhibit 70, specifically what's in  
7 that photograph right there (indicating) as a  
8 relationship to the victim.

9 A That is the empty wallet that has no money  
10 in it.

11 Q And 69 is a close-up of the same  
12 photograph?

13 A That's correct.

14 Q Same area.

15 State's Exhibit 65, is that what you  
16 observed when you were at the scene as part of  
17 preserving the integrity of the interior of Terra  
18 Linda?

19 A Yes, it is.

20 Q And does the items depicted in there, as  
21 far as the debris surrounding these victims' bodies,  
22 accurately indicate those items that you observed  
23 there and that were ultimately, at least some of  
24 them, taken by forensic analysts?

25 A Yes.

1           Q     State's Exhibit 66, specifically we  
2 reference this wallet here to the bottom portion of  
3 66, Detective Thowsen. I'd now like to direct your  
4 attention to this item by the feet.

5                     Do you see this item?

6           A     Yes, I do.

7           Q     Are you familiar with what that item was  
8 there at the scene and what it ultimately became in  
9 this case?

10          A     Yes.

11          Q     What was that?

12          A     That item right next to the body was a  
13 Black and Mild cigar box.

14          Q     Is it depicted in a closer view here on  
15 No. 67?

16          A     Yes, it is.

17          Q     On approximately August 18th, did there  
18 become a significant development in this case?

19          A     Yes.

20          Q     What was that?

21          A     We made contact with several individuals  
22 that had some information about who had done this  
23 and where those people were.

24          Q     And would those have been three young  
25 males?

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1           A       Yes.

2           Q       And would there names have been Todd  
3 Armstrong, Bryan Johnson and Ace Hart?

4           A       That's correct.

5           Q       Do you know the circumstances of how they  
6 came initially to homicide and police officers'  
7 attention?

8           A       Yes.

9           Q       And what was that?

10          A       Initially, the police were called to the  
11 home of Bryan Johnson over a matter, and when the  
12 police began talking with him, he explained that he  
13 had some information concerning this. At that  
14 point, the patrol officers immediately separated all  
15 three of these young men to be spoken with  
16 separately and determined that they had information  
17 on a homicide and took them directly to the homicide  
18 office.

19          Q       Can you explain why it's a procedure  
20 that's utilized by officers, and particularly  
21 homicide detectives, that when a situation that you  
22 just described occurred, that separating these  
23 parties would be a critical and important thing to  
24 do?

25          A       It's extremely critical. If you're

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1 talking to numerous witnesses, you wouldn't want to  
2 speak with them in front of each other, because you  
3 want to find out exactly what each individual knows  
4 on their own without picking something up from  
5 another person. If you were to try to talk to them  
6 all together and one person tells you a story, then  
7 you go to another witness and that person tells you  
8 the same story, you don't really know at that point  
9 whether or not the information came from the person  
10 that you're speaking with or they got it from the  
11 first person that they heard talk.

12 Q The interaction that Metro arrived on was  
13 something that had occurred between one of these  
14 three individuals and their mother in a commonly  
15 referred to as "domestic dispute"?

16 A That's correct.

17 Q As a result of that incident, did you and  
18 homicide detectives contact and interview Todd  
19 Armstrong?

20 A Yes.

21 Q And Todd Armstrong testified in June of  
22 2000 in this case?

23 A That's correct.

24 Q At my request, Detective, did you bring  
25 the transcripts of the testimony of various

1 individuals in the trial in this case in June of  
2 2000?

3 A I did. I have them in these two binders  
4 right here (indicating).

5 Q If at any time you need to refer to the  
6 actual transcript, if you could just let me know.

7 A Thank you.

8 Q I'd like to summarize the testimony of  
9 Mr. Armstrong.

10 In the summer of 1998, where did he live?

11 A He lived at the address on Everman that  
12 was located on the same exhibit that we looked at  
13 previously here.

14 Q Okay.

15 And that would be 4815 Everman?

16 A That's correct.

17 Q Who was the legal owner of that home?

18 A That would be Todd Armstrong's mother.

19 Q And who else did he live with at Everman?

20 A With Ace Hart at that point.

21 Q And it would be fair to say that during  
22 this time period, Ace Hart, Bryan Johnson and Todd  
23 Armstrong were all friends?

24 A Yes.

25 Q Did there come a time where Mr. Armstrong

1 testified that a bunch of or several other people  
2 moved into his mother's home in early August of  
3 1998?

4 A Yes.

5 Q And who were those individuals?

6 A Those individuals were Donte Johnson, a  
7 person known as "Red," who is Terrell Young, and a  
8 person known as La-La who is Charla Severs, the  
9 girlfriend of Donte Johnson.

10 Q And did Donte Johnson, other than that  
11 name, also go by any other names that you're aware  
12 of?

13 A By the nickname of Deko and by the name of  
14 John White.

15 Q So, in early August, Red -- Terrell Young;  
16 Deko, the defendant; and La-La, his girlfriend  
17 Charla Severs were living at the Everman home?

18 A That's correct.

19 Q Now, during this interview where you find  
20 out what Todd Armstrong, Bryan Johnson and Ace Hart  
21 ultimately tell you and other detectives, you then,  
22 as part of your investigation, do what at the  
23 Everman home?

24 A We obtain a consent to search the Everman  
25 home from Todd Armstrong. We then go to the Everman

1 home to see if we can locate these other  
2 individuals, and we have SWAT go there because of  
3 the high probability that we'll contact some armed  
4 suspects.

5 Q At that point, can you describe how  
6 Everman, as a crime scene, as far as processing  
7 goes, is viewed by you and homicide detectives in  
8 contrast to Terra Linda? Is it as important?

9 A It's important, but because the actual  
10 crime didn't occur there, you wouldn't normally  
11 expect to find as much physical evidence at that  
12 scene.

13 Q Is it processed in the same or similar  
14 fashion as you previously described?

15 A Yes, it is.

16 Q Did Mr. Johnson tell you how he knew the  
17 defendant -- how he first got to know him?

18 A Mr. Armstrong?

19 Q Yes.

20 A He met through Ace.

21 Q Ace Hart?

22 A Yes.

23 Q And how did it come about that the  
24 defendant ended up living at the Everman residence?

25 A I believe he explained that Ace Hart



1 brought them there and pretty much just brought them  
2 in.

3 Q And how long did Mr. Johnson tell them he  
4 was going to stay; do you recall?

5 A Mr. Johnson?

6 Q Yes. How long did he tell Ace Hart and  
7 Todd Armstrong he was going to stay at the Everman  
8 home when he first asked to reside there; do you  
9 recall?

10 A I don't recall exactly, only that it was a  
11 brief period.

12 Q Okay.

13 If you could, Detective, for me, go to the  
14 first volume before you, and I want to go to Volume  
15 No. 2, page 148. At the bottom, you'll be  
16 referenced by the Roman Numeral No. II-148. It  
17 should be at the rear of that book.

18 A I'm in Volume II, 148.

19 Q Yes.

20 If you could reference the question and  
21 answer on lines 18 through 20.

22 How long did the defendant say he wanted  
23 to stay at the Everman home?

24 A Two or three days.

25 Q And the living arrangements at that

1 home -- do you recall what Todd Armstrong said where  
2 each of the individuals that were living there lived  
3 inside Everman?

4 A I believe so.

5 Q Okay.

6 Could you describe each person and where  
7 they resided in the Everman home?

8 A Donte Johnson and Charla Severs were  
9 occupying the master bedroom. Todd Armstrong was  
10 occupying a different bedroom, apparently because it  
11 had a waterbed that was in that room that he wanted  
12 to utilize and didn't want to actually move the bed.  
13 Ace Hart was in a bedroom, and Red or Terrell Young  
14 was in the living room.

15 Q After four or five days after the  
16 defendant had moved in, did Mr. Armstrong see any  
17 firearms with the defendant and Terrell Young?

18 A Yes, he did.

19 Q And could you describe what Mr. Armstrong  
20 testified as to the weapons that he saw and what  
21 type of weapons they were?

22 Referring to pages starting at 152 -- let  
23 me see if I can do this, Detective.

24 MR. STANTON: It's between pages 152 and  
25 157, Counsel.

1 BY MR. STANTON:

2 Q Did he ultimately identify three guns that  
3 he had seen with the defendant?

4 A Yes, he did.

5 Q They were a .380 -- .380 caliber pistol,  
6 black in color with gold diamonds on it; a revolver,  
7 medium-sized, appeared to be a six-shot revolver;  
8 and a .22 caliber rifle that was new, looked like a  
9 sawed-off shotgun with a folding stock and a banana  
10 clip?

11 A That's correct.

12 Q Did Mr. Armstrong indicate where he had  
13 seen the defendant keep those guns?

14 A In a duffel bag.

15 Q And that would be a black and green duffel  
16 bag?

17 A Yes, it would.

18 Q Was that ultimately found at the Everman  
19 home during that search?

20 A Yes, it was.

21 Q Mr. Armstrong indicated what ultimately  
22 became three important pieces of evidence that was  
23 not found at the Terra Linda home that you  
24 detectives knew that was possible stolen merchandise  
25 from that home; is that a fair statement?

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1 A Yes, it is.

2 Q A VCR and a PlayStation.

3 You previously had described and testified  
4 to the condition of the Terra Linda home what  
5 appeared to be removal of electronic equipment.

6 Were you able to identify that VCR at the  
7 Everman location?

8 A Yes.

9 Q How were you able to determine that the  
10 VCR at Everman was indeed Matthew Mowen's VCR?

11 A We had the remote control for Matthew  
12 Mowen's VCR and was able to control that VCR with  
13 the remote.

14 Q That was provided to you by Matthew  
15 Mowen's father?

16 A Yes.

17 Q The PlayStation that had been identified  
18 as being at the Terra Linda home, was that found at  
19 Everman?

20 A Yes.

21 Q There was a blue pager.

22 Do you recall this (indicating)?

23 A Yes.

24 Q Where was the -- strike that.

25 When the Everman home was ultimately

1 processed and investigated, was there something  
2 unusual about the condition of the backyard that  
3 gave you and other homicide detectives some  
4 suspicion that something was in the backyard?

5 A Yes.

6 Q What was that?

7 A Some of the soil had been disturbed.

8 Q What did that mean to you when you were  
9 processing that scene?

10 A That something could be buried there.

11 Q Did you and other detectives retrieve  
12 those items?

13 A Yes, we did.

14 Q What were those items that you retrieved?

15 A There were two keys to the Thunderbird  
16 Motel and a blue pager.

17 Q This is buried in the backyard?

18 A Buried in the backyard.

19 Q Did it appear, from it's physical  
20 condition, at least, the burial site to be something  
21 of a recent vintage that it had been buried  
22 recently?

23 A Yes.

24 Q The pager that was found there, did that  
25 ultimately become of interest to you?

1           A     It did.

2           Q     Why is that?

3           A     By checking the number that was related to  
4 that pager, we were able to determine that that was  
5 the number that Peter Talamentez's friends to call  
6 to page him on to have him contact them.

7           Q     And that was done through the pager  
8 company and the manufacturer once you return it?

9                   **MS. JACKSON:** I'm sorry, Counsel.

10           Your Honor, I recognize that we're doing  
11 summaries here, but I would object to the form. I  
12 think that Counsel has to ask the detective the  
13 question and have him answer rather than Counsel  
14 giving testimony and having the witness say that  
15 that's correct; so, my objection would be as to  
16 form, your Honor.

17                   **MR. STANTON:** I apologize. I'll -- in an  
18 attempt to try and summarize, I'll try and not do  
19 that anymore.

20                   All right.

21 **BY MR. STANTON:**

22           Q     Based upon the investigation itself of the  
23 pager itself, whose pager was that?

24           A     Peter Talamentez.

25           Q     Did Todd Armstrong tell you anything about

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1 what the defendant smoked, if anything?  
2 A Yes, he did.  
3 Q What did he tell you?  
4 A Black and Mild cigars.  
5 Q Did he mention to you with what degree of  
6 frequency he smoked Black and Milds?  
7 A I know it was often. I don't remember the  
8 exact.  
9 Q Okay.  
10 If you would turn, Detective, to page 160.  
11 If you would review Mr. Armstrong's testimony  
12 beginning on line 14 and ending on line 17.  
13 (Witness reviewing document.)  
14 **BY MR. STANTON:**  
15 Q What was his response?  
16 A "All the time."  
17 Q I'd like to direct your attention to  
18 page 165 of the trial transcript. I'd like you to  
19 read, Detective, Mr. Armstrong's testimony, question  
20 and answers, regarding -- starting at line 11 and  
21 concluding at line 17. Read that to yourself.  
22 A I'm sorry. To myself?  
23 Q Yeah, just to yourself.  
24 (Witness reviewing document.)  
25 **THE WITNESS:** Okay.

1 BY MR. STANTON:

2 Q Initially, pursuant to Mr. Armstrong's  
3 statement and trial testimony an indication that his  
4 mother owned the home, but that through Ace Hart,  
5 the defendant, Donte Johnson, had asked to come and  
6 stay at the home and, in fact, did. The permission  
7 was for two to three days.

8 How long did Todd Armstrong say they  
9 ultimately stayed? Was it past the two to three  
10 days?

11 A It was past the two to three days.

12 Q Up until the time of the murder when you  
13 effectuated the services on it pursuant to a SWAT  
14 entrance on the 18th of August?

15 A Yes.

16 Q Did there come an explanation about why  
17 Todd Armstrong did not want -- was not able to get  
18 them out of the home beyond two to three days?

19 A Yes.

20 Q What was that?

21 A He said that he was scared of them.

22 Q Scared of them?

23 A Yes.

24 Q Did there come a time -- page 166 to  
25 167 -- where Mr. Armstrong had made up or had made a

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1 statement to the defendant in an attempt to get him  
2 out of the home?

3 If you could read the bottom of page 166  
4 to the top of 167.

5 **THE COURT:** Let's call a short recess for  
6 about five minutes.

7 The jury is admonished not to discuss this  
8 case among themselves or with anyone else, listen to  
9 any radio reports or television or commentary about  
10 the case or newspapers, and don't express any  
11 opinion about the case or about anyone who has  
12 anything to do with it.

13 **THE BAILIFF:** All rise.

14 (Recess taken.)

15 **THE BAILIFF:** Be seated, come to order.  
16 Court is again in session.

17 **THE COURT:** All right.

18 Let the record reflect the presence of all  
19 the parties, all the attorneys and all the members  
20 of the jury.

21 **MR. STANTON:** Thank you, your Honor.

22 **BY MR. STANTON:**

23 Q Detective Thowsen, at the time we last  
24 broke, I was asking you a series of questions  
25 regarding what Todd Armstrong said and testified at

1 trial regarding the presence of the defendant and  
2 Mr. Young at his home.

3 I want to go to a portion of  
4 Mr. Armstrong's testimony where he made up a story  
5 about his mother.

6 Do you recall that?

7 A Yes, I do.

8 Q What did Todd Armstrong testify to about  
9 getting the defendant out of his house regarding  
10 this story?

11 A He told the defendant that he was going to  
12 have to leave the home because Mr. Armstrong's  
13 mother was returning from Hawaii to the house.

14 Q And Mr. Armstrong made up that story for  
15 what reason?

16 A So that the defendant would leave.

17 Q And did he?

18 A No, he did not.

19 Q And that was not a true story, according  
20 to Mr. Armstrong?

21 A That was not a true story.

22 Q Did Mr. Armstrong testify as to how the  
23 defendant got into the home, as far as when he  
24 wasn't there?

25 A Mr. Armstrong had the only key to the

1 residence. However, there was a broken bathroom  
2 window that the defendant would be able to climb  
3 through to get into the house.

4 Q Okay.

5 Detective, I'd like to direct your  
6 attention to page 169 of Mr. Armstrong's testimony,  
7 and specifically, Mr. Armstrong's testimony as it  
8 relates to a day when Matt Mowen came to the Everman  
9 home.

10 Do you see that portion?

11 A Yes.

12 Q What time did Todd Armstrong say Matt  
13 Mowen came over to his residence at Everman?

14 A Somewhere between the 7th and the 10th of  
15 August.

16 Q There was a conversation or statement made  
17 by Matt Mowen in that time period in front of  
18 several people; is that correct?

19 A That's correct.

20 Q Who was present when Matt Mowen came over  
21 and made the statement?

22 A I believe it was Mr. Armstrong, the  
23 defendant, Red and La-La.

24 Q What did Matt say when he was over at the  
25 Everman home and in the presence of those

1 individuals?

2           A       He made mention that he had been following  
3 the Fish Tour, which is a musical group, and that he  
4 had made a lot of money selling acid.

5           Q       And according to Mr. Armstrong, at the  
6 Everman home right after that statement was made --  
7 if you could refer to page 173 -- actually, at the  
8 bottom of page 172 -- my apologies, Detective -- the  
9 question at line 25, the bottom of 172 going over to  
10 Mr. Armstrong's answer at the top of 173, what did  
11 he say occurred after Matt Mowen made that  
12 statement?

13           A       He said that the defendant looked around  
14 at Red, Ace and Mr. Armstrong, and he looked at them  
15 like he had an idea.

16                   **MR. WHIPPLE:** Judge, I'm going to object.  
17 There's an objection here in the transcript.

18                   **THE COURT:** So?

19                   **MR. STANTON:** The objection, your Honor, I  
20 believe went to the latter portion of the answer by  
21 Mr. Armstrong. I'd have no objection to that being  
22 stricken, but the first part of the answer I believe  
23 was not that portion that was objected to or  
24 sustained by the trial court.

25                   **MR. WHIPPLE:** That's fine.

1           **THE COURT:** All right.

2           **MR. STANTON:** If I could have just a  
3 little leeway, your Honor.

4           **THE COURT:** All right.

5 **BY MR. STANTON:**

6           Q       The answer by Mr. Armstrong that "He,"  
7 being Donte Johnson, "kind of like looked around,  
8 like, at Red, Ace and I."

9                   Is that what Mr. Armstrong testified?

10          A       That's correct.

11          Q       Then there came a time -- if you could go  
12 to when -- Matt Mowen left the home after making  
13 that statement, correct?

14          A       Yes, he did.

15          Q       On page 174, Detective, going towards the  
16 bottom beginning at lines 18 -- and if you would  
17 read to line 23 just to yourself.

18                   (Witness reviewing document.)

19 **BY MR. STANTON:**

20          Q       After Matt Mowen had made this statement  
21 and within the next several days after making that  
22 statement, how many times did the defendant, Donte  
23 Johnson, ask Todd Armstrong where Matt Mowen had  
24 lived?

25          A       Probably a dozen times.

1 Q Showing you State's Exhibit 181 at trial,  
2 did Todd Armstrong identify each one of those  
3 individuals depicted in that poster board by the  
4 names that's listed underneath?

5 A Yes, he did.

6 Q And when we reference Donte Johnson and  
7 Terrell Johnson as "Red" living in the Everman home,  
8 that's these two people in the center and on the  
9 right of this poster board?

10 A That's correct.

11 Q Page 175 of the testimony -- did Todd  
12 Armstrong know where Matt Mowen lived?

13 A No, he did not.

14 Q And did Todd Armstrong testify as to a  
15 circumstance, specifically an event involving an  
16 automobile where Matt Mowen lived was pointed out to  
17 the defendant?

18 Do you recall that?

19 A Yes.

20 Q Can you describe what occurred in this  
21 incident in an automobile?

22 A Basically, there was a point where  
23 Mr. Armstrong was in an automobile with Ace Hart and  
24 the defendant, and Ace Hart pointed out where the  
25 residence of Mr. Mowen was.

1 Q The Terra Linda home?

2 A The Terra Linda home.

3 Q And this occurred on August 10th to the

4 12th, sometime in there, according to Mr. Armstrong?

5 A That's correct.

6 Q We've been describing a residence as the

7 Everham (sic) residence. I'm going to put a series

8 of photographs up on the viewer here, Detective, and

9 if you could describe what we're looking at with

10 each photograph --

11 A Okay.

12 Q -- beginning with State's Exhibit 98.

13 A This will be the front door of the 4815

14 Everman residence.

15 Q And the time that this took place about

16 processing Everman by the police, what day was that,

17 do you recall?

18 A I believe it was still on the 18th, if not

19 the early morning of the 19th.

20 Q Okay.

21 This is after Todd Armstrong, Ace Hart and

22 Bryan Johnson had been interviewed?

23 A Yes.

24 Q What was the procedure utilized by Metro

25 police and homicide detectives to contact 4815, and

1 what precautions were taken?

2       A     We contacted the Metro SWAT Unit to have  
3 them make entrance, if necessary, into the home.  
4 What they did in this particular case is made a  
5 secure perimeter so no one would be able to go in or  
6 out of the residence, and then rather on, say,  
7 "storming," for a better word, the residence, they  
8 would call into the house on a bullhorn advising any  
9 occupants inside to come out now prior to SWAT  
10 having to make a forced entry of the home.

11       Q     And there were several people that were  
12 physically inside Everman when SWAT made that  
13 announcement?

14       A     Yes.

15       Q     Ultimately, the interior of Everham (sic)  
16 was processed pursuant to your previous testimony;  
17 is that correct?

18       A     Yes, it was.

19       Q     I want to show you State's Exhibit 101 and  
20 also 99.

21               What is it that we're looking at and where  
22 is this?

23       A     This is inside one of the rooms of the  
24 Everman home, and we're looking at a PlayStation  
25 down in the lower portion right here.



1 Q Right there (indicating)?  
2 A Yes.  
3 Q The lower central portion of that?  
4 A Yes.  
5 Q And the same or similar photograph in  
6 Exhibit 99?  
7 A Yes, that's correct.  
8 Q Specifically in the bedroom, the master  
9 bedroom of Everman -- showing you State's Exhibit  
10 104, do you recognize the contents of that  
11 photograph?  
12 A Yes.  
13 Q And what's contained in there that  
14 highlighted a specific item of evidentiary value to  
15 you as a homicide detective?  
16 A In looking at the bag that's opened in the  
17 middle of the picture, you can see a roll of duct  
18 tape. That is duct tape as was used on the victims.  
19 Q Is that right here that I'm pointing at in  
20 the center of the photograph (indicating)?  
21 A Yes.  
22 Q Showing you State's Exhibit 107, once  
23 again, is this the master bedroom at Everman?  
24 A Yes, it is.  
25 Q And what items of evidentiary value are

1 depicted there in that photograph?

2       A       There is a .22 caliber rifle at the lower  
3 portion (indicating). The barrel is pointing up and  
4 to the left. It has a folding stock on it, as well  
5 as some black jeans that are present there.

6       Q       We'll get to the jeans in just a moment.

7               That .22 caliber folding stock rifle that  
8 I'm pointing at here (indicating) in the center of  
9 that photograph, was that impounded as evidence?

10       A       Yes, it was.

11               **MR. STANTON:** Your Honor, I've requested,  
12 with permission of your bailiff, to display this  
13 weapon to the detective and also to the jury and ask  
14 that he could make the weapon safe for purposes in  
15 the courtroom.

16               **THE COURT:** All right.

17 **BY MR. STANTON:**

18       Q       Detective, if you could reference the  
19 exhibit number on the tag that's on the weapon  
20 before you.

21       A       168c.

22       Q       Is that the weapon that we see in this  
23 photograph that we just discussed?

24       A       Yes, it is.

25       Q       In addition, 16a, do you recognize that

1 item?

2 A Yes, I do.

3 Q What is that?

4 A This is the magazine containing ammunition  
5 that was located in the weapon.

6 Q Okay.

7 That clip that you're holding in your  
8 hand, is this clip in the photograph that was in the  
9 weapon at the time that you and the officers from  
10 SWAT made entry?

11 A That's correct.

12 Q So, the condition of that weapon is more  
13 precisely reflected in the photograph than obviously  
14 here in court as it was originally found?

15 A Yes.

16 Q What caliber weapon is that?

17 A Twenty-two long rifle.

18 Q Is there any caliber that indicates that  
19 any of the victims were shot with that type of  
20 weapon at the Terra Linda home?

21 A No.

22 Q Thank you, Detective.

23 A You're welcome.

24 Q Exhibit 104 that you previously  
25 testified, Detective, I ask you to look into the

1 contents of State's Exhibit 155 and ask you if you  
2 recognize and/or are familiar with the contents of  
3 that bag?

4 A Yes.

5 Q And what is 155?

6 A This is the roll of duct tape that was  
7 recovered in the bag seen here in this photograph at  
8 4815 Everman.

9 Q Detective, previously we've testified or  
10 you've testified regarding the exterior backyard of  
11 4815 Everham (sic).

12 You were indicating about some freshly dug  
13 portion of the earth?

14 A Yes.

15 Q In this Photograph 108, what are we  
16 looking at in that photograph?

17 A It appears to be the keys right here  
18 (indicating) and I can't see from this distance the  
19 other items.

20 Q If I hand that to you -- directly to  
21 you -- is that photograph consistent with the  
22 overall area of what you previously testified as  
23 freshly dug portion of the earth?

24 A Yes.

25 Q State's Exhibit 109, is that a closer

1 photograph of what's the center of the photograph  
2 you just reviewed?

3 A Yes.

4 Q One ten -- what are we looking at in that  
5 photograph?

6 A In this photograph here, we can see the  
7 two motel keys and the blue pager right here  
8 (indicating).

9 Q And briefly, 111 is a close-up of the  
10 keys?

11 A Yes.

12 Q And 112 -- what's the new item in there?

13 A The blue pager.

14 Q Okay.

15 Do you actually have the pager with  
16 you, Detective?

17 A I have it contained in this bag.

18 Q Could you refer to the exhibit numbers on  
19 each one of those items?

20 A The pager itself is 154b, as in "boy," and  
21 the pager case is 154a, as in "Adam."

22 Q And that's Peter Talamentez's pager that  
23 was dug up behind the Everman home?

24 A That's correct.

25 Q I'd like to go to the testimony of Todd

1 Armstrong and his statement where he indicated what  
2 occurred as he witnessed events after the murder on  
3 the evening of August 13th into the morning of  
4 August 14th. Okay, Detective?

5 A Yes.

6 Q Beginning on page 178 of his trial  
7 testimony, I want to lay a foundation about where  
8 certain people were in the home.

9 Who resided or stayed in the Everman home  
10 when the defendant and Terrell or Red left the home  
11 earlier that evening?

12 A La-La was there.

13 Q And Todd Armstrong?

14 A And Todd Armstrong.

15 Q Where was La-La or Charla Severs staying  
16 while the defendants had left the home that night;  
17 do you recall?

18 A In the master bedroom.

19 Q And Todd Armstrong awoke early in the  
20 morning when who came home into the residence?

21 A Donte Johnson.

22 Q And he was accompanied by...?

23 A Red -- Terrell Young.

24 Q What did Todd Armstrong see, if anything,  
25 that both the defendant, Donte Johnson, and Terrell

1 Young were carrying when they came back into the  
2 Everman home that morning?

3 A He saw they were carrying duffel bags.

4 Q And who -- was he ultimately able to see  
5 what was in each duffel bag as far as each  
6 individual -- what they were carrying?

7 A Yes.

8 Q And what was that?

9 A Mr. Johnson was carrying a duffel bag  
10 containing the guns and duct tape, and Red or  
11 Terrell Young was carrying a duffel bag that had a  
12 VCR and a PlayStation in it.

13 Q And according to Mr. Armstrong, did it  
14 appear that the bag that he had previously seen guns  
15 in it that the defendant was carrying was empty or  
16 full?

17 A Full.

18 Q After Mr. Johnson -- Donte Johnson came  
19 into the home, where did he go immediately after  
20 coming into the home?

21 A He went into the bedroom, the master  
22 bedroom.

23 Q Where Miss Severs was sleeping?

24 A Yes.

25 Q After he went in there, how much time

1 elapsed until he came back out of the room,  
2 approximately?

3 A A short time.

4 Q And did he come out of the room with  
5 Miss Severs?

6 A Yes.

7 Q Detective, I want to go to page 185 of  
8 Mr. Armstrong's testimony. I would like you to look  
9 at -- I'm sorry, page 183. My apologies.

10 MR. WHIPPLE: I'm sorry?

11 MR. STANTON: One eighty-three, Counsel,  
12 line five through line ten.

13 BY MR. STANTON:

14 Q Detective, there is a question that begins  
15 on line five, and the answer goes to line ten. I'd  
16 like you to read out loud and verbatim the question  
17 and answer reflected on those lines of the  
18 transcript.

19 A "Question: Tell me what happens  
20 once Donte and La-La -- do they sit  
21 down in the living room?

22 "Answer: I'm not sure if they  
23 sat down. It was pretty much just  
24 everybody was in the living room.  
25 They just told me that they went to

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1 Matt's house and that they ended up  
2 killing four out of the four people."  
3 Q And same page, line 16 through 21. Could  
4 you read out loud and verbatim the question and  
5 answer reflected in the transcript?  
6 A "Question: Okay. Tell me what  
7 you recall Deko saying that night  
8 about where he had been.  
9 "Answer: Just that they were  
10 over there, and that he ended up  
11 killing one of the guys because he  
12 was, like, mouthing off or didn't,  
13 like, listen to him or something. He  
14 was just being obnoxious."  
15 Q And the next question there and the  
16 answer.  
17 A "And did -- that was Deko saying  
18 that?  
19 "Answer: Yes."  
20 Q On the next page, page 184, if you could  
21 read the question beginning at line two, and after  
22 that question, if you could just read the answer  
23 portions through line nine.  
24 A "Question: Who did Deko say  
25 killed the person that mouthed off?

1 "Answer: Oh, he said that he  
2 killed the person -- Deko. He said he  
3 shot him in the head."  
4 Q And that last answer (sic) was -- "Did  
5 Deko say how he killed the person?" And the answer  
6 was, "He had shot him in the head"?  
7 A Yes.  
8 Q Once again on page 184, if you could look  
9 at the question and answer from lines 15 through 17.  
10 What did Donte Johnson say the morning  
11 after coming back from the murder that the person  
12 they had first encountered at the Terra Linda home  
13 was doing?  
14 A He said they were watering the lawn.  
15 Q And after he arrived while this person was  
16 watering the lawn, what did the defendant do to that  
17 person?  
18 A I know that he forced him into the house.  
19 Q Okay.  
20 When you say "he forced him," how did he  
21 force that person into the home?  
22 A Can you tell me what line you're referring  
23 to?  
24 Q Certainly.  
25 It's a little bit later in the transcript.

1 I'll have to come back to it in just a second.

2           There was an indication that they had made  
3 the person go inside the home; is that correct?

4           A     Yes, that's correct.

5           Q     What happened, according to Mr. Johnson,  
6 after these persons were forced inside the home  
7 according to the defendant the following morning?

8                   Do you recall?

9           A     I'm not sure, specifically.

10          Q     Okay.

11                   If you could go to page 185.

12                   Let me go to this portion of  
13 Mr. Armstrong's testimony at lines four through  
14 seven of his testimony.

15                   This part -- the question is posed to  
16 Mr. Armstrong about who was doing the talking at the  
17 Everman home about what had occurred at Terra Linda,  
18 and what was Mr. Johnson's statement between the  
19 defendant Donte Johnson and Terrell Young as to who  
20 was making the comments?

21          A     Deko.

22          Q     And he says it's pretty much all Deko  
23 that's doing the talking?

24          A     Yes.

25          Q     And what did the defendant say they were

1 looking for inside the Terra Linda home?

2 I direct you to lines 13 through 14.

3 A Money.

4 Q On lines -- once again, same page, lines  
5 18 through 22, according to the defendant, what  
6 transpired after they had forcibly made the person  
7 watering the lawn go inside the home?

8 A After they had that person inside the  
9 home, another two individuals eventually showed up.

10 Q According to Mr. Armstrong, these two  
11 people didn't show up at the same time, did they?  
12 They arrived at separate times?

13 A Correct.

14 Q Directing your attention to  
15 page 186, Detective, what I'd like you to do here is  
16 from line 22 on page 186, I'd like you to read the  
17 question and the answer verbatim to the bottom of  
18 that page, then on page 187, the entirety of that  
19 page save and except for the extracurricular matters  
20 outside the testimony that's reflected on lines 21  
21 through 23 and then picking up with the last line on  
22 that page, line 24 and then reading to page 188 all  
23 the way down to the answer on line six verbatim,  
24 question and answer, please.

25 A "Question: As a result of that

1 person thinking it was a joke, what  
2 did Deko then tell you he did?

3 "Answer. He said he took him,  
4 to, like, a back room somewhere, and  
5 shot him in the head.

6 "Question: After Deko told you  
7 he shot that person, what did Deko say  
8 he did next?

9 "Answer. "He said that since he  
10 killed one, that he had to kill  
11 everybody else, but he didn't want to  
12 kill Tracey because he was, like,  
13 really nice, and like, cooperating,  
14 and just everything he said. But he  
15 said he forgot which one he was cause  
16 he was, like, high; so, he just shot  
17 them all.

18 "Question: So, in total, how  
19 many people did Deko say he shot that  
20 night?

21 "Answer: Four.

22 "Question: Did Deko describe  
23 what, if anything, happened to the  
24 kids as he shot them?

25 "Answer: He said that one of

1           them made, like, a noise, like a  
2           grunt, I guess.

3           "Question: Did he describe or  
4           make a noise like a grunt?

5           "Answer: Yeah, like an --  
6           like -- unh, I guess, just unh, just  
7           like --

8           "Question: Now, can you tell me  
9           what Donte's demeanor was like, how he  
10          was acting as he was telling you these  
11          things?

12          "Answer: Laughing. He was  
13          laughing -- thought it was funny.

14          "Question: Did you think it was  
15          funny?

16          "Answer: No.

17          "Question: Now, with him  
18          laughing, did you believe it was true  
19          since he was laughing?

20          "Answer: Yes."

21          Q       Showing you State's Exhibit 81, Detective,  
22          in the testimony that we just were involved in from  
23          Todd Armstrong, there was an indication that the  
24          last person in the house had mouthed off or had said  
25          something to the defendant.

1           Who is this in this photograph  
2 (indicating)?

3           A     This is a photograph of Peter Talamentez.

4           Q     And he was located separate and apart from  
5 the three other victims in this case?

6           A     Yes, he was.

7           Q     And what ethnic background was  
8 Mr. Talamentez?

9           A     Hispanic.

10          Q     The pair of black pants that were in the  
11 photograph along with the .22 caliber firearm, were  
12 those pants impounded?

13          A     Yes, they were.

14          Q     And were those items requested by homicide  
15 detectives to be forensically examined for DNA?

16          A     Yes.

17          Q     How does that process work regarding DNA  
18 testing in a homicide case, just generally?

19          A     In general, if we have an article, say,  
20 pants like this that we have impounded and we want  
21 it checked for DNA, the item will be called up by  
22 the scientist that actually works in the DNA  
23 laboratory who will then take samples of anything  
24 that he can locate that would appear -- that would  
25 have DNA in it, such as more commonly blood or semen

1 or items like that that you can locate. Once he  
2 locates an item, then he tries to break it down to  
3 determine if it contains DNA in the first place. If  
4 DNA is located, then we would then try to see if we  
5 can match that DNA to a specific source.

6 Q In this case involving the three suspects  
7 that we see in that poster board and the four  
8 victims in this case, how was DNA reference samples  
9 obtained from these seven individuals?

10 A I'm not sure I understand your question.

11 Q A reference sample is -- what does that  
12 mean to you?

13 A A sample can be taken by actually cutting  
14 a piece of clothing or material or by swabbing it.

15 Q And in the cases of the victims, how,  
16 normally, is DNA taken for reference samples to use  
17 to determine the victim's DNA that may be at various  
18 different scenes?

19 A With victims, if it's a case of a  
20 homicide, normally, we draw blood and we often will  
21 do a buccal swab that you can get DNA from as well.

22 Q And that's done at a medical procedure  
23 commonly referred to as an "autopsy"?

24 A That's correct.

25 Q Was that done in this case as it relates



1 to the four victims you previously testified to?

2 A Yes, it was.

3 Q And the same question, Detective, are  
4 reference samples obtained or were they obtained in  
5 this case involving those three individuals  
6 reflected on State's 181?

7 A Yes.

8 Q I'd like to refer now to the testimony of  
9 Bryan Johnson.

10 Who was Bryan Johnson, as far as your  
11 knowledge, and how did his name come to light in the  
12 investigation?

13 A Ryan Johnson?

14 Q Bryan Johnson.

15 A Bryan Johnson was a friend of Ace Hart and  
16 Todd Armstrong.

17 Q If you could refer, Detective, to the next  
18 volume of transcripts.

19 MR. STANTON: Counsel, this would be  
20 Volume III.

21 BY MR. STANTON:

22 Q Mr. Johnson, along with Todd Armstrong and  
23 Ace Hart, were involved or first came to light as a  
24 result of this domestic violence incident that you  
25 previously testified to; is that correct?

1 A A domestic dispute, yes.

2 Q Domestic dispute.

3 And after that, they were interviewed  
4 separately and individually after the homicide?

5 A Yes.

6 Q He testified, Mr. Johnson did, in June of  
7 2000 in this trial?

8 A Yes, he did.

9 Q If you could begin referencing on  
10 page 134, line three.

11 At the time Bryan Johnson testified in  
12 this matter -- actually, it's on page 133. I  
13 apologize, Detective.

14 How old was Bryan Johnson?

15 A Twenty years old.

16 Q And did he have any connection, as far as  
17 residence occurs, with the 4815 Everman home?

18 A He lived there for a brief time.

19 Q Who did he live there with when he did  
20 live at Everman?

21 A With Todd Armstrong.

22 Q And Ace Hart?

23 A And Ace Hart.

24 **MS. JACKSON:** Excuse me. That's not what  
25 he -- I'm sorry, Counsel.

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1           According to my volume, he says he lived  
2 there from October '97 through June '98 with Todd  
3 Armstrong and Joel Valesquez, V-A-L-E-S-Q-U-E-Z, at  
4 line 14.

5           **MR. STANTON:** I think it's at page 134.  
6           What page are you quoting from?

7           **MS. JACKSON:** Page 134.

8           **THE COURT:** Line 14.

9           **MS. JACKSON:** At about line 13, 14.

10           "At the time he lived at that address, who  
11 were your roommates?

12           "Answer: Todd Armstrong and Joel  
13 Valesquez."

14           **MR. STANTON:** Court's indulgence one  
15 moment.

16           **MS. JACKSON:** Thank you, your Honor.

17 **BY MR. STANTON:**

18           Q     I'd like to direct your attention to when  
19 he moved out -- Mr. Johnson, that is, Bryan Johnson,  
20 when he moved out of the Everman home. Directing  
21 your attention to page 134, lines seven through  
22 eight.

23           When did Mr. Johnson move out of the  
24 Everman home?

25           A     I don't think our lines are the same

1 number.

2 Q Is there a question on line seven -- "Tell  
3 me what month you lived in Everman?"

4 A Yes.

5 Q Let me just phrase it that way.

6 When did Mr. Johnson say he lived at the  
7 Everman home from when he began living there to when  
8 he stopped living there?

9 A Approximately October '97 to June '98.

10 Q After he left the home, moved out of the  
11 Everman home in June of 1998 -- directing your  
12 attention to page 135, line 18 through 20 -- what,  
13 if anything, did Mr. Johnson's contact exist with  
14 Everman after he moved out in June through August?

15 A He would continue to visit the home.

16 Q Mr. Johnson -- did he have any knowledge  
17 of the defendant, Terrell Young and Charla Severs?

18 I direct your attention to page 136, lines  
19 five through seven.

20 A Yes.

21 Q And did he know all three of those  
22 individuals?

23 A Yes.

24 Q Page 138, lines two through six,  
25 specifically, Detective, what Mr. Johnson's

1 knowledge and testimony was regarding where the  
2 defendant, Donte Johnson, Terrell Young and Charla  
3 Severs lived at in the Everman home and whether or  
4 not they had any possessions in the home.

5 A Yes.

6 Q Where did they keep their belongings?

7 A In the master bedroom.

8 Q Pardon me?

9 A In the master bedroom.

10 Q Page 138, lines 14 through 16.

11 According to Mr. Bryan Johnson, how often  
12 did he go to the Everman home?

13 A Three or four times a week.

14 Q And did he ever see the defendant, Donte  
15 Johnson, smoke?

16 A Yes, he did.

17 Q And what did he smoke?

18 A Black and Mild cigars.

19 Q Did there come a time when there was a --  
20 on Saturday, August 15th, 1998 -- referencing  
21 page 139 -- when Bryan Johnson went to the Everman  
22 home, and what purpose did he go to the Everman home  
23 on that morning?

24 A He went to go to a job interview at the  
25 Stallion Mountain Golf Course.

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1 Q Who did he meet at the Everman home to  
2 accomplish that task?

3 A Todd Armstrong and Ace Hart.

4 Q All three of them were going to go for an  
5 interview?

6 A Yes.

7 Q Who was present? I'll reference you to  
8 page 142 to 143.

9 Did there come a time that Bryan Johnson  
10 heard statements about a crime?

11 A Yes.

12 Q And referencing to page 142, line ten --  
13 actually, beginning at line six -- according to  
14 Mr. Johnson, Bryan Johnson, who was present in the  
15 Everman home when these statements were made?

16 A After Bryan Johnson, there was Ace, Todd,  
17 Red and La-La.

18 Q Ace Hart, Todd Armstrong, Terrell Young,  
19 Charla Severs and the defendant, Donte Johnson?

20 A And Donte Johnson, correct.

21 Q And did Donte Johnson make any statements  
22 regarding what had occurred involving this crime?

23 A Yes, he did.

24 Q Beginning at page 142, I want to go  
25 through the statements that Donte Johnson

1 specifically made in the presence of Bryan Johnson.

2 First of all, Detective, what did  
3 Mr. Johnson say how they got to the Terra Linda  
4 home? Line 21.

5 A They drove to the house.

6 Q And what did they say that they were  
7 looking for at the home?

8 A For money and/or drugs.

9 Q Page 144, lines three through nine.

10 What did Mr. Johnson say they saw and did  
11 when they first arrived at the Terra Linda home?

12 A They saw somebody outside drinking beer  
13 and continued toward the person with guns and told  
14 them to go inside. Once inside the house, they  
15 found two other individuals and started to duct tape  
16 them and asked where the money was. Someone knocked  
17 on the door, and they brought him into the house and  
18 duct taped him also.

19 Q Going down the same page, what did the  
20 defendant, Donte Johnson, tell everybody in that  
21 home on August 15th about how many victims he  
22 brought into the house and how many he duct taped?

23 A Four.

24 Q On the bottom of page 144 beginning at  
25 line 21, what did Bryan Johnson say, as far as who

1 had guns when they initially confronted the person  
2 outside the Terra Linda home upon their initial  
3 arrival?

4 A Deko and Red.

5 Q "Deko" being the nickname of Donte  
6 Johnson; "Red" being the nickname of Terrell Young?

7 A Correct.

8 Q At line --

9 MR. STANTON: Page 145, Counsel, line five  
10 through eight.

11 BY MR. STANTON:

12 Q At this point of Mr. Johnson's testimony,  
13 he's describing what happened when one of the  
14 victims showed up that might have had an attitude.

15 Could you read verbatim lines five through  
16 eight beginning with the question on line five?

17 A "Question: Tell me what Deko  
18 said.

19 "Answer: One of the victims was  
20 getting smart with him or back  
21 talking, and he -- excuse my  
22 language -- he acted like it was -- he  
23 said he acted like it was a fucking  
24 joke."

25 Q Now, that's the person who Donte is saying



1 acted like it wasn't any big deal, the victim?  
2 A Correct.  
3 Q Next -- same page, question and answer,  
4 lines 11 through 13.  
5 A Aloud or --  
6 Q Aloud. I'm sorry.  
7 A "Question: All right. Did Deko  
8 say anything about the race or  
9 nationality of the person who was  
10 acting like it was a joke?  
11 "Answer: He said he was  
12 Mexican."  
13 Q And if you could read the next question  
14 and answer out loud, lines 14 through 17.  
15 A "Question. "And did Deko say  
16 anything about what Deko did as a  
17 result of the Mexican acting like it  
18 was a joke?  
19 "Answer: Yes, sir. He said he  
20 took him in the back room and shot him  
21 in the head."  
22 Q Page 146, if you could read just to  
23 yourself lines nine through 15.  
24 (Witness reviewing document.)  
25 / / / / /

1 BY MR. STANTON:

2 Q Did the defendant, Donte Johnson, make any  
3 statement in front of these several individuals  
4 regarding after he shot one or more than one of the  
5 victims?

6 A Yes.

7 Q What was that?

8 A He said one of them made a loud noise.

9 Q Did Donte Johnson imitate that noise in  
10 front of everybody?

11 A Yes.

12 Q If you could, Detective, on page 146, line  
13 21 through 24, please read verbatim the question and  
14 answer.

15 A I'm sorry. Page 146 still?

16 Q Page 146, lines 21 through 24.

17 A Was that verbatim, out loud?

18 Q Verbatim, out loud, yes, please.

19 A "Question: Did he say anything  
20 else about the reaction or what  
21 happened when these people were shot?

22 "Answer. He said, 'blood  
23 squirted up. It looked like Niagara  
24 Falls.'"

25 Q And on page 147, if you could read the

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1 question and answer, lines three through four.  
2 A "Question: Did you believe Deko  
3 when he said these things?  
4 "Answer: Yes, sir."  
5 Q And could you read on line five through  
6 eight the question and answer out loud and verbatim?  
7 A "Question: Did Deko mention  
8 anything on the morning of August 15th  
9 about the clothes he was wearing when  
10 he and Red committed these crimes?  
11 "Answer: He mentioned that he  
12 got some blood on his pants."  
13 Q Meaning the defendant, Donte Johnson, said  
14 that out loud?  
15 A Yes.  
16 Q Who is LaShawnya Wright?  
17 A LaShawnya Wright is the girlfriend of  
18 Sikia Smith also known as Tiny Bug.  
19 Q And was she interviewed by homicide  
20 detectives?  
21 A Yes, she was.  
22 Q And did she testify in this trial?  
23 A Yes, she did.  
24 MR. STANTON: Counsel, Volume II.  
25 / / / / /

1 BY MR. STANTON:

2 Q Detective, if you could begin with  
3 page 259.

4 A That's Roman Numeral II, 259?

5 Q Yes, Detective. I'd just like you to  
6 generally refer to the bottom of 259 and the top of  
7 260.

8 Detective, just as a foundational basis,  
9 Miss Wright, the girlfriend of Sikia Smith, how long  
10 were they boyfriend and girlfriend during the summer  
11 of 1998?

12 A Three months.

13 Q That would have been during the  
14 summertime, June, July and August?

15 A Correct.

16 Q I want to direct your attention to  
17 page 261. In her testimony on those pages, 261 and  
18 262, once again referring to the three individuals  
19 depicted in State's Exhibit 181 -- Sikia Smith,  
20 Donte Johnson, Terrell Young -- did Miss Wright know  
21 each one of those individuals by their nicknames?

22 A Yes.

23 Q Page 264 to 265 represented on page 263 --  
24 the question is referencing Miss Wright to  
25 August 13th of 1998, and the question was whether or

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1 not she had seen Deko and Terrell Young on that day.

2 Had she?

3 A Yes.

4 Q And what time of the day on the 13th did  
5 Miss Wright see those two individuals?

6 A In the afternoon.

7 Q When the defendant, Donte Johnson, left  
8 her apartment on that day, who did she leave with --  
9 who did he leave with?

10 A With Red.

11 Q Terrell Young?

12 A Yes.

13 Q And what, if anything, did Miss Wright see  
14 in the defendant, Donte Johnson's, hand when he was  
15 leaving?

16 A He had a duffel bag, a dark colored duffel  
17 bag.

18 Q And on page 265, lines eight and nine, the  
19 question was posed to Miss Wright whether she knew  
20 what was in that duffel bag.

21 What was her answer?

22 A A rifle, some duct tape and some Browning  
23 gloves.

24 Q What does Browning gloves mean to you  
25 based upon the nature of this case and what you

1 found at the various scenes?

2 A Something like cloth work gloves that a  
3 gardener would use or in cases of criminal activity  
4 sometimes people would use so they don't leave  
5 fingerprints behind.

6 Q On page 271, for a frame of  
7 reference, Detective, this point of Miss Wright's  
8 testimony, the question is referencing the  
9 defendant's and Terrell Young's presence at her  
10 apartment on August 13th, 1998, and the question  
11 posed at line ten was, "What, if anything, those two  
12 individuals, Donte Johnson and Terrell Young were  
13 talking about inside her apartment."

14 On line 12, what was the answer to that  
15 question?

16 A They were talking about getting a lick.

17 Q Lick, L-I-C-K?

18 A L-I-C-K.

19 Q Have you ever heard that term before?

20 A Yes.

21 Q What is a "lick"?

22 A A "lick" is a slang term used for doing a  
23 robbery.

24 Q And is that, indeed, what Miss Wright knew  
25 it to be as well?

1           A       Yes.

2           Q       On page 275 -- frame of  
3 reference, Detective -- in this portion of the  
4 testimony, it's a question and answer regarding  
5 Miss Wright's knowledge of events that occurred at  
6 her apartment some 14 hours after she had last seen  
7 her then boyfriend Sikia Smith. There was a  
8 question on line two through three to Miss Wright  
9 about how he appeared when she saw him 14 hours  
10 later.

11                   And the question at line ten, "How did he  
12 appear? Was he still dressed the same?"

13                   What was Miss Wright's response?

14           A       That he was dressed the same.

15           Q       And if you could read the question and  
16 answer, lines 12 and 13.

17           A       "He was scared."

18           Q       Who was scared?

19           A       Sikia Smith.

20           Q       On page 275 at the bottom, there was a  
21 question about Tiny Bug walking into the house  
22 before Donte Johnson and Red, and the question was,  
23 "Was he carrying anything?"

24                   If you could read the answer and the  
25 question on lines one through three.

1           A       Aloud or to myself?

2           Q       Out loud -- yes.

3           A               "Question: What is Bug carrying?

4                       "Answer: A Nintendo and a VCR."

5           Q       If you could go to page 280.

6 Now, Detective, before I get to the content of

7 Miss Wright's testimony in this area, I'd like to

8 ask some general questions regarding the

9 investigation.

10                   Based upon the results of the autopsy in

11 this case and the crime scene, did you have a

12 feeling or an opinion during this generalized time

13 period that you knew the caliber and the type of gun

14 that was the murder weapon in this case?

15           A       Yes.

16           Q       And what was that and how did you come to

17 that conclusion?

18           A       We believe that the weapon used was a

19 .380 caliber semi-automatic handgun.

20           Q       What was the primary basis for that both

21 at autopsy and at the scene?

22           A       We found the four shell casings that were

23 all .380 caliber all from the same headstamp,

24 meaning the same manufacturer, and at the autopsy

25 the projectiles were similar as well and consistent



1 with .380.

2 Q So, the size, weight and general shape of  
3 those weapons was consistent with a .380?

4 A Of the bullets, yes.

5 Q Is a .380 caliber same or similar to a  
6 9-millimeter?

7 A Yes, it is.

8 Q Now, how important is it in a homicide  
9 investigation to find, quote, unquote, "the murder  
10 weapon"?

11 MR. WHIPPLE: Judge, I'm going to object  
12 at this point. It's speculation. What's the  
13 relevance?

14 MR. STANTON: The relevance is to add some  
15 context to this investigation. I'm sure it's a  
16 relevant inquiry to find out what happened and what  
17 these detectives did to ascertain the whereabouts of  
18 the murder weapon.

19 THE COURT: All you have to do is ask them  
20 how to do it. I don't know how difficult it is.

21 Sustained.

22 MR. WHIPPLE: Thank you.

23 BY MR. STANTON:

24 Q Would it be fair to say you wanted to find  
25 the murder weapon?

1 A Yes.

2 Q Directing your attention to Miss Wright's  
3 testimony, Volume II, page 280, I'd ask you to read  
4 lines six through 12 and also lines 16 through 18.

5 (Witness reviewing document.)

6 **BY MR. STANTON:**

7 Q According to Miss Wright, what happened to  
8 a .380 caliber handgun as far as what was told to  
9 her by Sikia Smith and Donte Johnson in her  
10 apartment?

11 A It was sold by Bug on the 15th or the  
12 16th.

13 Q Of August?

14 A Of August.

15 Q Nineteen ninety-eight?

16 A Nineteen ninety-eight.

17 **MR. STANTON:** Miss Clerk, if I could have  
18 Exhibit 184.

19 **BY MR. STANTON:**

20 Q Detective, I'd like you to turn to  
21 page 282. Specifically, if you could read out loud  
22 lines two through six, the questions and the answers  
23 verbatim.

24 A "Question: When Deko bought the  
25 RJ" --

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1 Q Let me just stop you there.

2 What does "RJ" mean?

3 A Review Journal, newspaper.

4 Q Okay.

5 A "Question: When Deko bought the  
6 RJ, what, if anything, did Deko say  
7 about the RJ?

8 "Answer: He said, quote, 'We  
9 made front page,' end quote.

10 "Question: Who did he say,  
11 quote, 'We made front page,' end  
12 quote, to?

13 "Answer: Bug."

14 Q Showing you State's Exhibit 184, do you  
15 recognize what that is?

16 A Yes, I do.

17 Q What is that?

18 A This is a reduced-in-size copy of the  
19 Las Vegas Review Journal's newspaper dated Saturday,  
20 August 15th, 1998.

21 Q Is that, indeed, the front page?

22 A Yes.

23 **MR. STANTON:** Your Honor, at this time,  
24 I'd like to publish Exhibit 184 to the jury.

25 **MR. WHIPPLE:** No objection, your Honor.

1           **THE WITNESS:** All right. You may do so.

2           (Exhibit 184 published to the jury.)

3 **BY MR. STANTON:**

4           Q       Detective, I'd like to refer to page 284  
5 of Miss Wright's testimony. I'd like you to read  
6 out loud on the question and answer beginning at  
7 line ten and concluding at line 14.

8           A       "Question. Can you tell me how  
9                   Donte was acting, what he did when he  
10                  looked at that paper and said that?  
11                  How did he act about that newspaper?

12                   "Answer: He was excited."

13          Q       This is a reference Miss Wright is making  
14 to how she observed the defendant, Donte Johnson,  
15 after reviewing that newspaper article?

16          A       That is correct.

17          Q       If you could turn to page 285. If you  
18 could read verbatim, out loud the question and  
19 answer, lines four through six and then 11 through  
20 18, same page.

21          A       "Question: What do you mean by  
22                   'excited'? You used the word  
23                   'excited.'

24                   "Answer: 'Excited.'

25                   "Question: Can you use another

1 word other than 'excited' to describe  
2 Donte Johnson's reaction when he made  
3 the statement about the paper?

4 "Thrilled."

5 Q And 17 and 18.

6 A "Question: The word was  
7 'thrilled'?

8 "Answer: Yes."

9 Q Detective, I'd like to switch gears a  
10 bit.

11 MR. STANTON: Counsel, going to Volume  
12 III, the testimony of Shawn Fletcher.

13 BY MR. STANTON:

14 Q Who is Shawn Fletcher?

15 A Shawn Fletcher is a crime scene analyst  
16 with the Las Vegas Metropolitan Police Department.

17 Q I believe you testified they're  
18 specialized, trained individuals?

19 A Yes, they are.

20 Q Did Miss Fletcher have a role and  
21 involvement with the Terra Linda home in the  
22 homicide investigation?

23 A Yes, she does.

24 Q What was her responsibilities in a general  
25 fashion at Terra Linda?

1           A       A general fashion, her responsibility as a  
2 crime scene analyst would be to photograph, document  
3 and collect evidence.

4           Q       There, I believe, is an exhibit to your  
5 immediate right in a poster board that is  
6 Exhibit 162.

7                   Are you familiar with that exhibit?

8           A       Yes, I am.

9           Q       And what is that exhibit?

10          A       This is what we would refer to as a crime  
11 scene diagram.

12          Q       And does it truly and accurately depict  
13 key pieces of evidence found at the Terra Linda  
14 home?

15          A       Yes, it does.

16          Q       If you could lift that up so members of  
17 the jury can see, can you describe what we see  
18 depicted in that crime scene diagram?

19          A       You can see by the legend over here  
20 (indicating) Item No. 1 is referring to Jeffrey  
21 Biddle; No. 2 is Tracey Gorringer; No. 3 is Matthew  
22 Mowen; No. 4 is Peter Talamentez; No. 5 is a  
23 location of a cartridge case that's recovered; No. 6  
24 is the location of a cartridge case recovered; No. 7  
25 is a location of a cartridge case recovered; No. 8

1 is the location of a cartridge case recovered, and  
2 No. 10 is the location of a cigar box recovered.

3 Q Who is Richard Goode, to your knowledge?

4 A Richard Goode is a firearms and tool mark  
5 examiner now retired, at that time currently  
6 employed for the Metro Police Department.

7 Q And does he specifically make analysis --  
8 forensic analysis regarding firearms and casings?

9 A Yes, he does.

10 Q As it relates to his findings in this  
11 case, what was his determination regarding the empty  
12 casings found at Terra Linda as to whether or not  
13 they were or were not fired from the same gun?

14 A Richard Goode, after testing the four  
15 shell casings, made a determination that they were  
16 all four fired from the same weapon.

17 Q And what markings on a shell casing can an  
18 expert, such as Mr. Goode, make that determination?  
19 Where, physically, on the casings would he look for  
20 identifiers?

21 A He would look on the outer wall of the  
22 casing. He would look on the face itself where the  
23 headstamp would be. As the weapon is fired and the  
24 case expands, it's causing friction between various  
25 parts where a firearm that has a little burr here or

1 there or a misshape in part will impart a mark that  
2 is consistent with each shell casing that goes  
3 through it.

4 Q And in the case of a semi-automatic, is  
5 there something called an "extractor arm" and what  
6 kind of mark does that leave on the casing that  
7 Mr. Goode can analyze?

8 A On the case of a semi-automatic, there is  
9 an extractor and an ejector. An extractor is like a  
10 little hand that would reach up along the rim, and  
11 after the casing has been fired, it grabs that rim  
12 and pulls it backwards out of the chamber. As it  
13 does that, it can leave marks on the cartridge case  
14 itself. It will also hit an ejector which is a  
15 stationery object that the case bumps into, causing  
16 it to flip out of the chamber.

17 Q And are those marks generally unique or  
18 identifiable to one particular gun when you compare  
19 a same caliber gun by different manufacturers or  
20 even the same manufacturer?

21 A Yes, in general terms.

22 Q And that was done in this case by  
23 Mr. Goode, as far as examining all four casings  
24 found at the Terra Linda home?

25 A Yes.



1           Q     I want to go through a couple summary  
2 items of testimony by Shawn Fletcher regarding the  
3 processing of the Terra Linda home.

4                     Do you know approximately how many hours  
5 in total Miss Fletcher spent at Terra Linda  
6 processing it from a forensic perspective?

7           A     I believe she spent more than 80 hours  
8 processing the scene.

9           Q     Did one of the items that she collected  
10 involve a cigarette butt that ultimately had DNA  
11 that was sent out to an independent lab?

12          A     Yes.

13          Q     Was she able to find a VCR or PlayStation  
14 at the Terra Linda home?

15          A     No.

16          Q     There was, in previous photographs shown  
17 to this jury, a Black and Mild cigar box found at  
18 the feet of Tracey Gorringer.

19                     Do you recall that photograph?

20          A     Yes.

21          Q     Was that box processed for the presence of  
22 prints?

23          A     Yes, it was.

24          Q     Who is Bradley Grover?

25          A     Bradley Grover is another crime scene

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1 analyst.

2           **MR. STANTON:** Miss Clerk, if I could have  
3 Exhibit 96 and 188.

4 **BY MR. STANTON:**

5           Q     Can you describe to this jury the process  
6 of print examination and what a latent print -- how  
7 it's lifted in general terms?

8           A     What the crime scene analyst will do is  
9 using one of many chemicals, sometimes it's the  
10 powder, sometimes it's super glue, they will try to  
11 activate portions of a latent fingerprint. If a  
12 person touches something -- say this was glass  
13 rather than foam like it is -- it will leave a  
14 fingerprint there. They utilize this other material  
15 to highlight the area of the fingerprint, then they  
16 would take a piece of tape, clear tape and actually  
17 lift it off of the object and place it on a piece of  
18 cardboard or paper so it can be analyzed later.  
19 From that point, the fingerprint recovered is  
20 checked against known fingerprints of various  
21 individuals until a comparison is made based on  
22 locating several points.

23           Q     And Bradley Grover is who, as far as his  
24 involvement and expertise as a crime scene analyst?

25           A     He is another individual that would

1 process, collect and recover document evidence.

2 Q In your hypothetical where you touched a  
3 cup, once again assuming it's not Styrofoam but  
4 another nonporous surface such as glass, what is the  
5 print that's lifted off that glass called?

6 A A latent fingerprint.

7 Q And how is the comparison between that  
8 latent print done with a known person?

9 A The known person would complete a  
10 fingerprint card where the person's hand would be  
11 inked and then applied to a piece of paper in  
12 various directions so that they can get various  
13 aspects of the fingerprints. Once those cards are  
14 obtained, the person comparing the fingerprints will  
15 look at the fingerprint of the latent print and  
16 compare it with the knowns until they're able to  
17 match up the same shape and actually be able to say  
18 if this latent print was left by this individual.

19 Q And in the case of the Black and Mild box  
20 at the Terra Linda home that was found at the foot  
21 of Tracey Gorringer, was that compared by Mr. Grover  
22 to a known print of the defendant, Donte Johnson?

23 A I don't recall if it was specifically that  
24 individual that made the comparison.

25 Q Would Ed Guenther?

1           A       Ed Guenther would be the person that would  
2 make the comparison.

3           Q       So, Bradley Grover would remove the  
4 prints, and then he would present both the known  
5 print and the latent print to Mr. Guenther?

6           A       That's correct.

7           Q       Let me show you State's Exhibit 188 and  
8 ask if you recognize the two items contained in that  
9 packet?

10          A       Yes.

11          Q       What are those items contained in that  
12 packet?

13          A       One of them appears to be a latent print  
14 from Donte Johnson, and the other appears to be  
15 Sikia Smith.

16          Q       And is the known print from Donte Johnson  
17 the one that was compared to the latent print lifted  
18 off the Black and Mild box?

19          A       I believe this is the latent print lifted  
20 off the Black and Mild cigar box.

21          Q       So, that's the actual print itself?

22          A       That's the actual print itself.

23          Q       And that tape -- how does that tape work  
24 to get the magnetic dust there?

25          A       The fingerprint powder would be applied to

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1 the surface. Once they can see the actual  
2 fingerprint that there's a fingerprint there, they  
3 will take a roll of tape designed specifically for  
4 this, break off a piece, apply it, lift it up, and  
5 that fingerprint is now stuck to the adhesive side  
6 of the tape. They then take that and apply it to  
7 one of these special cards so that if somebody  
8 touched the outside, it wouldn't alter what's on the  
9 inside on the adhesive portion of it.

10 Q By using that tape, does it preserve the  
11 print in its condition as it was actually lifted off  
12 that Black and Mild box?

13 A Yes, it does.

14 MR. STANTON: Counsel, Volume III  
15 beginning page 318.

16 BY MR. STANTON:

17 Q As it relates to this investigation, did  
18 it come to your attention an incident involving a  
19 Nevada Highway Patrol sergeant?

20 A Yes.

21 Q Does the name Sergeant Robert Honea --  
22 Miss Reporter, H-O-N-E-A -- ring a bell?

23 A Yes, it does.

24 Q I'd like you to refer beginning  
25 approximately page 317, the testimony at trial in

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1 June of 2000 of Sergeant Honea.

2 On August 17th, 1998 --

3 **MS. JACKSON:** Your Honor -- excuse me,  
4 Counsel.

5 Your Honor, may I approach? We need to  
6 approach and ask a question that I'm not real sure  
7 on.

8 (Sidebar conference outside the presence  
9 of the court reporter.)

10 **THE COURT:** We're going to call our  
11 evening recess.

12 During this recess, you're admonished not  
13 to discuss this case among yourselves, and don't  
14 read any newspaper articles, don't watch any  
15 television reports, don't listen to any radio  
16 reports, don't do any investigation on the case and  
17 don't express an opinion about the case or about  
18 anyone who has anything to do with it.

19 We're going to start up tomorrow morning  
20 at about 9:30.

21 All right?

22 **THE BAILIFF:** Ladies and gentlemen, leave  
23 your books in your seat and take your badge with  
24 you; 9:30 downstairs.

25 All rise.

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1 (Outside the presence of the jury.)

2 **THE COURT:** Proceed.

3 **MS. JACKSON:** Your Honor, my issue was  
4 that Trooper, Sergeant Robert Honea -- H-O-N-E-A --  
5 did testify at the original hearing that he  
6 attempted to effectuate a traffic stop on a vehicle.  
7 The date of that stop -- anyway, I think it was a  
8 few days before the homicide. Judge, I apologize.

9 **THE COURT:** Was it before the homicide?

10 **MS. JACKSON:** August 17th of 1998 between  
11 10:30 and 10:40 p.m. he attempted to do what we call  
12 a routine traffic stop for speeding. He stopped the  
13 driver of the vehicle. The person gave him a name  
14 of Donte Fletch -- F-L-E-T-C-H. The person was  
15 asked to get out of the car, did come up to the  
16 front of the trooper vehicle and waited there. The  
17 trooper could not find such an individual in his  
18 computer, became concerned, and right about that  
19 time, the other passenger in the car who was  
20 identified by the driver as "Red," jumped out. He  
21 said he saw a gun, and that both of the people ran.

22 It's our position that this certainly came  
23 in in the first trial, but nowhere have I been able  
24 to find was it ever subjected to any type of  
25 pretrial scrutiny. We would contend that it was a

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1 bad act; that it was error to let it in in the first  
2 place, and the State contends that because there was  
3 a weapon that was found in this vehicle that was  
4 later to be determined to be connected to one of the  
5 guns in the duffel bag, we would say that's  
6 irrelevant. And had the original trial judge had a  
7 Petrocelli hearing -- because it is clearly a prior  
8 bad act, Judge, because this weapon -- it wasn't the  
9 murder weapon. They said there's no argument, if  
10 you will, that the murder weapon was a .380. This  
11 is not the murder weapon, so we think that just to  
12 bring this in -- it's just a felony to run from a  
13 police officer and to possess a weapon and things of  
14 that nature, but what its connection between that  
15 and this case would be our issue, and we think just  
16 because the other attorneys let it in -- of course,  
17 you can't catch everything, but we think it would  
18 compound the error to allow it to come into this  
19 rehearing.

20 **THE COURT:** Of course, this is not a  
21 trial, this is in terms of the guilt phase. This is  
22 the penalty hearing. There's a little distinction  
23 there.

24 **MS. JACKSON:** That's true, Judge, but I  
25 just wanted to have the record reflect.



1           **THE COURT:** I don't know what the  
2 relevance is if it had anything to do with this  
3 murder case.

4           **MS. JACKSON:** But it's also other evidence  
5 that this Court has previously ruled would come  
6 in -- our other evidence is going to come in the  
7 second part of our penalty hearing when --  
8 essentially, this is a bad act that they're hearing  
9 about in the guise of during the trial phase.

10          **THE COURT:** I think the key -- like I  
11 said, this isn't the guilt phase. The damage coming  
12 in here wouldn't be as great.

13          **MR. DASKAS:** Judge, may I?

14          **THE COURT:** I want to know what the  
15 relevance is.

16          **MR. DASKAS:** The relevance is this: There  
17 is a nexus between the sawed-off gun that the  
18 trooper impounded -- which I'd like your bailiff to  
19 hand me with the Court's permission, because I want  
20 to provide a description from Charla Severs -- and I  
21 want to show you the gun, Judge, if I might.

22                 Judge, I'm referring to Charla Severs'  
23 testimony from the trial itself in June of 2000,  
24 pages 23 through 26, approximately. She's  
25 describing -- that is the defendant's girlfriend --

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1 guns kept in the duffel bag that were taken to the  
2 murder scene, and she describes, quote, "a  
3 sawed-off-looking gun." Later on she's describing a  
4 curved part she says, quote, at page 24, line 13,  
5 "the handle part," Judge, and I direct your  
6 attention to State's Exhibit 189. She describes the  
7 length of the gun -- "The handle part being maybe  
8 like 6 inches" -- that's a quote, and "The barrel  
9 part like 12 or 13 inches." That's a quote. She,  
10 at some point, describes the gun as being wood or  
11 wooden, and she makes a distinction, your Honor,  
12 which is very important between this gun, No. 189  
13 (indicating), and the rifle with a banana clip in it  
14 which was already admitted. All three of these  
15 guns, that is, the rifle with the banana clip, the  
16 wooden gun I'm holding that's sawed off and the .380  
17 murder weapon were taken in the duffel bag to the  
18 murder scene, Judge. That's the relevance. There's  
19 a nexus between this gun --

20           **THE COURT:** Did she ever identify this  
21 gun?

22           **MR. DASKAS:** She describes the gun.

23           **THE COURT:** Did she identify it?

24           **MR. DASKAS:** She wasn't shown this gun,  
25 nor was she shown in court the gun with the folding

1 stock, but that was admitted as well, Judge.

2 **THE COURT:** Anyway, I don't think it's  
3 relevant to this portion. I think it's relevant to  
4 the second portion; so, I'll sustain the objection.

5 **MS. JACKSON:** Thank you, your Honor.

6 **THE COURT:** It wasn't used in the murder,  
7 and she never did identify it, and it was prior to  
8 the murders when it was confiscated.

9 **MR. STANTON:** It was actually --

10 **MS. JACKSON:** After.

11 **MR. STANTON:** -- subsequent to the  
12 murders, your Honor.

13 **MS. JACKSON:** This was the 17th, Judge.

14 **THE COURT:** You had said, Miss Jackson, it  
15 was before -- a couple days before.

16 **MS. JACKSON:** I corrected myself, your  
17 Honor. I beg the Court's pardon.

18 **THE COURT:** Anyway --

19 **MR. DASKAS:** The other point I would like  
20 to make, for the record, there were three defendants  
21 participating in this murder, and all three of the  
22 defendants -- Donte Johnson, Terrell Young and Sikia  
23 Smith -- had guns that were pointed at and used to  
24 order the victims in the house, and it's our  
25 position and it's been our position this was one of

1 those guns, and I believe there's a nexus and it is  
2 relevant.

3 **THE COURT:** It's tenuous. Like I said,  
4 you can bring it in in the second part. In this  
5 part I don't agree.

6 I'll see you guys at 9:30 in the morning.

7 **MS. JACKSON:** Very well, your Honor.

8 Thank you.

9 (Evening recess taken at 4:44 p.m.)

10 \* \* \* \* \*

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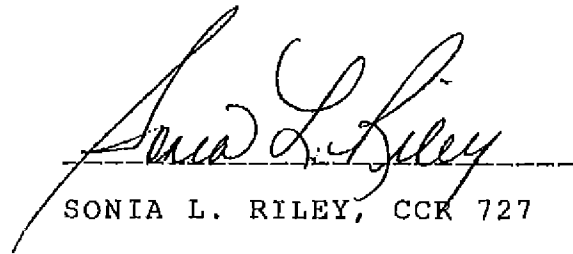
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REPORTER'S CERTIFICATE

STATE OF NEVADA)  
:SS  
COUNTY OF CLARK)

I, SONIA L. RILEY, CERTIFIED COURT  
REPORTER, DO HEREBY CERTIFY THAT I TOOK DOWN IN  
STENOTYPE ALL OF THE PROCEEDINGS HAD IN THE  
BEFORE-ENTITLED MATTER AT THE TIME AND PLACE  
INDICATED, AND THAT THEREAFTER SAID STENOTYPE NOTES  
WERE TRANSCRIBED INTO TYPEWRITING AT AND UNDER MY  
DIRECTION AND SUPERVISION AND THE FOREGOING  
TRANSCRIPT CONSTITUTES A FULL, TRUE AND ACCURATE  
RECORD TO THE BEST OF MY ABILITY OF THE PROCEEDINGS  
HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO  
SUBSCRIBED MY NAME IN MY OFFICE IN THE COUNTY OF  
CLARK, STATE OF NEVADA.

  
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1 a week ago that there were four people that had been  
2 murdered in this case, so that's not any new  
3 evidence to you here today.

4 A No.

5 Q Now, the question here is the fact that  
6 more than one person is killed is, as I stated  
7 before, an aggravation. It can be used by you and  
8 other jurors as a basis to impose the death penalty;  
9 it cannot be the basis. So, the question I have for  
10 you is would you keep an open mind as to all four  
11 potential punishments even knowing that four people  
12 have already been murdered and that the defendant  
13 was convicted of that?

14 A Yes.

15 Q Now, in the statement that Mr. Whipple was  
16 asking you was would you automatically be leaning  
17 toward the death penalty, and you said, "Well, if  
18 the death penalty was an option." If I interjected  
19 the mitigation portion of this and the instructions  
20 by law that you're required as a juror to consider  
21 mitigating evidence, would you then keep your mind  
22 open until all that evidence was presented to you?

23 A Exactly. I'd have to hear the evidence  
24 and everything.

25 Q Would that be important to you to know

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1 about the defendant, who he is, where he came from,  
2 what happened in this case, what he's all about?  
3 Would that be important to you?

4 A I think what would be important is what  
5 led up to this situation that caused the murders.

6 Q Okay.

7 Would you like to know a little bit about  
8 the defendant, maybe a lot about him, who he is, his  
9 family, stuff like that?

10 A Well, after the Judge stated what he did  
11 before, what he said before about regarding the  
12 questionnaire, yes, I do need to know some  
13 information.

14 Q So, that's an instruction of law that  
15 indeed in the State of Nevada you have to be open  
16 and consider that.

17 What you do with that is obviously up to  
18 you, but would you consider it?

19 **PROSPECTIVE JUROR:** Yes, sir.

20 **MR. STANTON:** Your Honor, I believe that  
21 she qualifies.

22 **MR. WHIPPLE:** Your Honor, may we approach?

23 **THE COURT:** No.

24 I'm going to grant the challenge.

25 You're excused, ma'am.

1           **PROSPECTIVE JUROR:** Thank you.

2           **THE COURT:** Who is next?

3           **THE CLERK:** Theresa Knight.

4  
5           VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 309

6           **THE COURT:** Miss Knight, in your  
7 questionnaire, you stated that you were worried  
8 about just starting a new job and your boss.

9                   Did you get that taken care of?

10           **PROSPECTIVE JUROR 309:** Yes.

11           **THE COURT:** Huh?

12           **PROSPECTIVE JUROR:** Yes.

13           **THE COURT:** You talked to your boss?

14           **PROSPECTIVE JUROR:** Yes.

15           **THE COURT:** You're not going to get  
16 harassed?

17           **PROSPECTIVE JUROR:** No.

18           **THE COURT:** What kind of work do you do?

19           **PROSPECTIVE JUROR:** I am a superintendent  
20 on a construction site.

21           **THE COURT:** You have five kids?

22           **PROSPECTIVE JUROR:** Yes, sir.

23           **THE COURT:** You're a busy lady.  
24 They're all in school too?

25           **PROSPECTIVE JUROR:** Yes, sir.

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1           **THE COURT:** Your husband -- what kind of  
2 work does your husband do?  
3           **PROSPECTIVE JUROR:** He works for the Gold  
4 Coast properties. He's the Sports Book supervisor.  
5 We're separated.  
6           **THE COURT:** Separated?  
7           **PROSPECTIVE JUROR:** Um-hmm.  
8           **THE COURT:** Who keeps all those kids for  
9 you?  
10          **PROSPECTIVE JUROR:** Well, they're in  
11 school right now.  
12          **THE COURT:** So, they're all in school?  
13          **PROSPECTIVE JUROR:** Yeah.  
14          **THE COURT:** Now, your son you said was  
15 charged with taking a vehicle without owner's  
16 consent, something like that.  
17          **PROSPECTIVE JUROR:** Yes. He took my  
18 vehicle.  
19          **THE COURT:** How long ago was that? Is  
20 that the one in high school?  
21          **PROSPECTIVE JUROR:** Yeah. He actually is  
22 out of high school. He took his GED.  
23          **THE COURT:** Okay.  
24          **PROSPECTIVE JUROR:** It was in March.  
25          **THE COURT:** You thought he was treated

1 fairly?

2           **PROSPECTIVE JUROR:** Yes. He's  
3 incarcerated right now.

4           **THE COURT:** What now?

5           **PROSPECTIVE JUROR:** He's incarcerated  
6 right now.

7           **THE COURT:** For what, for the car?

8           **PROSPECTIVE JUROR:** Yes.

9           **THE COURT:** In the county jail?

10           **PROSPECTIVE JUROR:** Yes, sir. He's on a  
11 list to go up to Harris Springs.

12           **THE COURT:** Harris Springs?

13           **PROSPECTIVE JUROR:** Yes.

14           **THE COURT:** Who was the judge?

15           **PROSPECTIVE JUROR:** I don't know. I  
16 wasn't able to make court because I had just started  
17 that job.

18           **THE COURT:** Okay.

19           Now, this case here, we're trying to pick  
20 a jury to decide the punishment for the defendant,  
21 and from the questionnaire, you know that the  
22 defendant has already been convicted of four counts  
23 of first-degree murder; is that correct?

24           **PROSPECTIVE JUROR:** Correct.

25           **THE COURT:** So, the law requires that you

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1 be able to consider four possible punishments and  
2 then pick the best one or not the best one but the  
3 appropriate one based on the facts and circumstances  
4 of the case. The four possible sentences are the  
5 death penalty, life imprisonment without the  
6 possibility of parole, life imprisonment with the  
7 possibility of parole and a definite term of 50  
8 years with the possibility of parole after 20 years,  
9 and of course, those terms are doubled because a  
10 deadly weapon was used. So, the definite term would  
11 be actually -- would actually be 100 years with  
12 parole after 40 years, and the life imprisonment  
13 with the possibility of parole would be a possible  
14 life sentence with parole eligibility after 40  
15 years, and of course, this would apply to each count  
16 or each charge.

17 Do you understand that?

18 **PROSPECTIVE JUROR:** Yes.

19 **THE COURT:** Now, in your questionnaire,  
20 you said you generally oppose the death penalty, but  
21 you said you would consider it if the defendant had  
22 demonstrated no remorse, no conscience, I guess.

23 **PROSPECTIVE JUROR:** Conscientiousness.

24 **THE COURT:** Is there a word such as  
25 "conscientiousness"?

1           **MR. WHIPPLE:** It works for me.  
2           **PROSPECTIVE JUROR:** Thank you.  
3           **THE COURT:** I understand what you're  
4 saying.  
5           Your point is that you could consider it  
6 in some circumstances?  
7           **PROSPECTIVE JUROR:** Yes.  
8           **THE COURT:** Depending on the gravity and  
9 the severity of the crime; is that correct?  
10          **PROSPECTIVE JUROR:** Correct.  
11          **THE COURT:** And you could consider life in  
12 prison with or without parole --  
13          **PROSPECTIVE JUROR:** Yes.  
14          **THE COURT:** -- as well as a hundred years  
15 with parole after 40 if you thought it was  
16 appropriate?  
17          **PROSPECTIVE JUROR:** Yes.  
18          **THE COURT:** So, you're open to all of  
19 them?  
20          **PROSPECTIVE JUROR:** Yes.  
21          **THE COURT:** Is that correct?  
22          **PROSPECTIVE JUROR:** Yes, sir.  
23          **THE COURT:** Can you be fair and impartial  
24 in this case?  
25          **PROSPECTIVE JUROR:** Yes, sir.

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1           **THE COURT:** Can you follow the Court's  
2 instructions on the law?

3           **PROSPECTIVE JUROR:** Yes, sir.

4           **THE COURT:** Can you wait until you've  
5 heard all the evidence before you make up your mind?

6           **PROSPECTIVE JUROR:** Yes.

7           **THE COURT:** State.

8           **MR. STANTON:** Thank you, your Honor.

9

10                           EXAMINATION BY THE STATE

11 **BY MR. STANTON:**

12           Q     Good morning.

13           A     Good morning.

14           Q     Your son -- your oldest son, is his name  
15 Ryan?

16           A     Yes.

17           Q     Was he prosecuted by the Clark County  
18 D.A.'s office?

19           A     Yes.

20           Q     As a result of that, do you harbor any  
21 resentment towards the Clark County D.A.'s office?

22           A     No. They asked me what I wanted to do,  
23 and I said that he needed to be punished.

24           Q     Okay.

25                   Do you believe that the District

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1 Attorney's office handled your son's case fairly?

2 A Yes.

3 Q And the fact that he's incarcerated now  
4 you think is part of the just nature of his conduct?

5 A Yes.

6 Q You indicated on your questionnaire some  
7 familiarity with the case, but it was only the  
8 defendant's name only.

9 A It's not on the questionnaire. Well,  
10 yeah, I have heard his name, but today when you told  
11 me about the case, I remember it. I lived close by,  
12 and one of the victims involved had a younger  
13 brother that was a friend of my son Travis, and I  
14 remember that child not coming to school that day  
15 and Travis asking. I just remember some things  
16 about it.

17 Q Is there anything about the nature of what  
18 you know about the case that causes you a problem  
19 with being fair and impartial if you were selected  
20 as a juror in this case?

21 A I think I can be fair and impartial. I  
22 don't know what kind of things would come up in the  
23 sentencing end of it.

24 Do you go over the case itself, what  
25 happened?

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1           Q     That's a fair question. Let me just give  
2 you a brief overview. There will be presentation,  
3 summarization to some extent by a homicide detective  
4 about the underlying murder itself. There will be  
5 testimony from individuals, actual individual  
6 witnesses at the original trial that will come in  
7 and discuss testimony highlighting certain aspects  
8 of the murders and the defendants involved in those  
9 murders.

10                   Does that cause you any difficulty?

11           A     No. Any knowledge I have would be similar  
12 to what would be stated before we would decide on  
13 sentencing.

14           Q     Part of that testimony and facts and  
15 evidence would be photographs of the crime scene,  
16 and I'll represent to you that a fair statement of  
17 that is that they are violent photographs in what  
18 they depict, and there, most reasonable  
19 compassionate people would consider them to be  
20 somewhat difficult to look at.

21                   In the context of a jury proceeding in  
22 this hearing, that evidence would be presented to  
23 you as evidence.

24                   Can you look at evidence like that or  
25 verbal testimony as well as photographs and look at

1 them for what they are, evidence in this case, as  
2 opposed to being overwhelmed by the emotional  
3 aspect?

4 A I don't know. I've never seen pictures  
5 like that or evidence like that, so this would be  
6 the first time I've ever seen anything.

7 Q That's a fair statement.

8 You presume that never having seen a  
9 photograph of a violent crime scene?

10 A No.

11 Q These photographs would be of the crime  
12 scene itself, four young men murdered in a home, and  
13 what would be commonly referred to as "execution  
14 style."

15 Is that something that you think you could  
16 look at and keep your role as a juror in perspective  
17 after having looked at that evidence?

18 A I don't know.

19 Q I appreciate that; unfortunately, now is  
20 the time that we have to have some sort of  
21 definitive answer from you.

22 A I know me, and I tend to be emotional, so  
23 I don't know if I can look at that and not become  
24 emotional.

25 Q I think that's a fair assessment. The



1 question here then becomes -- and I think that's  
2 probably human nature to have some sort of a motor  
3 response to that.

4           The question then is can you consider your  
5 role as a juror and go past the emotion at some  
6 point after seeing it and go back to your role as a  
7 juror and focus on it as evidence?

8           A     I believe so, yes.

9           Q     Thank you.

10           I'd like to talk to you briefly about some  
11 comments you made about the death penalty in the  
12 questionnaire and the questions you answered to  
13 Judge Gates' question. You said you're generally  
14 opposed to the death penalty, and you mentioned in  
15 another section that you have religious beliefs in  
16 that regard.

17           Could you explain your feelings about  
18 that?

19           A     I'm a Christian, and I think it's playing  
20 God sentencing somebody else to death, although I  
21 did state on the emotional that if something  
22 happened to my own child, I wouldn't want the death  
23 penalty for the person that killed my own child, so,  
24 you know, never being put in that position, I don't  
25 know how I would react.

1           Q     I would like to break down your response  
2 in just a couple of areas. The first one is the  
3 religious beliefs. The Judge asked specifically  
4 about whether or not your religious beliefs would  
5 inhibit you to perform your function of what you now  
6 know it would be.

7                     Your answer would be no?

8           A     I don't think it would inhibit.

9           Q     The instructions of law and anybody that  
10 would be sitting and selected as a juror in this  
11 case must, as a matter of law, be able to consider  
12 all four sentencing options, obviously one of those  
13 being the death penalty.

14          A     Right.

15          Q     You could consider that, and, in fact,  
16 impose it if you felt it was appropriate?

17          A     Yes.

18          Q     And your religious beliefs would not  
19 violate any legal instruction to you in that regard?

20          A     No.

21          Q     Now, relative to the second part of your  
22 statement beyond the religious aspect, could you  
23 tell me more about the emotional, I think is what  
24 you told me, about your feelings and about your own  
25 child being a victim? Obviously, that's not the

1 situation here. You're not sitting in judgment of  
2 someone that has murdered any of your children.

3 A Right.

4 Q In this case, there are four victims, and  
5 the punishment that needs to be allocated by the  
6 jury in this process is the just punishment for each  
7 one of those victims.

8 Do you understand that concept and are you  
9 comfortable with it?

10 A Yes.

11 Q Your verdict may be -- I'm not saying it  
12 will be or should be, but it may be that the  
13 punishment may be different for each victim.

14 Could you see and are you comfortable with  
15 that type of situation?

16 A Yes.

17 Q The discussion about your feelings about  
18 the death penalty both on the questionnaire and  
19 probably here in court today have been all generally  
20 philosophical in nature. My last question to you,  
21 ma'am, is the reality of that situation as you find  
22 yourself here potentially very closely and sitting  
23 on this jury.

24 My question to you, ma'am, is this: In  
25 the process of jury deliberations, the jury picks

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1 someone to be the foreperson, and there's very  
2 little instructions of law on how that person is  
3 selected. It's collectively up to the jury who that  
4 foreperson is.

5 If you're selected as the foreperson in  
6 this case and after careful deliberation of all the  
7 facts and evidence in this case, you and your fellow  
8 jurors feel that the appropriate and just verdict in  
9 this case is death, would you, as the foreperson,  
10 affix your signature to that verdict form that puts  
11 that man, Donte Johnson, to death?

12 A Yes.

13 MR. STANTON: One moment, your Honor.

14 BY MR. STANTON:

15 Q You indicated some knowledge through your  
16 sons of one of the victim's brothers in this case?

17 A Right.

18 Q Do you know that person's name?

19 A No.

20 Q Would the name Nick Gorringer ring a bell  
21 with you?

22 A No. It was a while ago.

23 Q I'm sorry?

24 A It was a while ago. My son may remember.

25 Q If that is, indeed, a person that comes in

1 here and testifies in this proceeding --

2 A I may recognize him.

3 Q -- would that be a problem to you?

4 A Probably.

5 Q In what way?

6 A Just bringing it more personal. I mean,  
7 the person that didn't make it to school that day my  
8 son had a relationship with, and I would bring him  
9 home, and we drove by the house, and it was taped  
10 off, so maybe at that point I could recognize him.  
11 I don't know. I don't know.

12 Q And let's say that indeed you recognized  
13 him, would you have the ability or would it concern  
14 you when you deliberate, the fact that some day you  
15 might encounter that person and have to discuss your  
16 verdict in this case and that you would be  
17 prejudiced by those feelings?

18 A That's a good point. That's a  
19 possibility, yes.

20 Q And do you think that fairly and honestly  
21 as you look at yourself that might affect your  
22 deliberations in this case?

23 A Thinking that I may have to speak to them  
24 again, yes, it may.

25 MR. STANTON: I appreciate your honesty,

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1 ma'am.

2 Court's indulgence one moment.

3 Your Honor, may counsel approach?

4 **THE COURT:** Yes.

5 (Sidebar conference outside the presence  
6 of the court reporter.)

7 **THE COURT:** Ma'am, do you know the  
8 brother's name? Are you sure it's this case?

9 **PROSPECTIVE JUROR 309:** Yes, but no, I  
10 don't know the brother's name.

11 **THE COURT:** All right.

12 Would that affect -- you said that it  
13 might affect you. How so?

14 **PROSPECTIVE JUROR:** Well, obviously -- not  
15 obviously -- I don't know how the family thinks or  
16 feels or the victims think or feel towards them  
17 but -- I don't know. I've never been a juror. I've  
18 never been on a case like this.

19 **THE COURT:** This is the first time for  
20 most people.

21 What I want to know is is that going to  
22 prevent you from being impartial?

23 **PROSPECTIVE JUROR:** I don't think so.  
24 Emotional, yes, impartial, no.

25 **THE COURT:** A lot of times this is

1 emotional because these kind of cases involve people  
2 and individuals and just the very nature of the  
3 case.

4 **PROSPECTIVE JUROR:** Right.

5 **THE COURT:** It's going to be emotional and  
6 probably for everybody involved, but we want to  
7 know -- we want people to make reasonable decisions  
8 that are not based on bias or anything like that but  
9 just based on the facts and the law and the  
10 circumstances of the case.

11 **PROSPECTIVE JUROR:** Right.

12 **THE COURT:** So far it appears that you're  
13 a pretty reasonable, impartial and unbiased person  
14 and can be fair, but at the last there, you were  
15 stating that your son may have known the brother of  
16 one of the victims. It's not like you're related to  
17 them or anything like that.

18 **PROSPECTIVE JUROR:** No.

19 **THE COURT:** What we want to know is  
20 basically, because of that connection there, would  
21 you be inclined to be biased towards the State  
22 because they represent the victims -- they represent  
23 the State but they're going to have the victims as  
24 the witnesses? Are you going to be biased towards  
25 the State and do what they want because of that?

1           **PROSPECTIVE JUROR:** I think I can be fair.  
2 I think I most likely would be emotional, but I  
3 think I can be fair.

4           **THE COURT:** That's all we want.  
5 All right.

6  
7                           EXAMINATION BY THE DEFENSE

8           **MR. WHIPPLE:** Thank you, your Honor.

9 **BY MR. WHIPPLE:**

10           Q       I guess it's good afternoon.

11                   I realize you're a very busy individual,  
12 and thank you for your time.

13                   Miss Knight, I appreciate you being fair,  
14 and that's what this all comes down to. This is an  
15 unusual circumstance. This is not like TV where my  
16 client is presumed innocent. It's not like TV where  
17 they have to prove his guilt beyond a reasonable  
18 doubt. Mr. Johnson took the life of four young  
19 adults, and we're not here to ever try to suggest  
20 there was an excuse or justification or that they  
21 somehow deserve it or anything to that range. It's  
22 a terrible, terrible thing. We just want  
23 individuals who can be fair, and what we ask, before  
24 you provide sentence, is you be willing to listen to  
25 us.

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1           At some point, you'll hear instructions  
2 from the Court that the death penalty is never  
3 required. In fact, there are reasons to give life  
4 sentences, and we'll discuss some of those reasons.  
5 Basically, we describe those reasons, Miss Jackson  
6 and I -- Miss Jackson, of course, is my  
7 co-counsel -- as mitigating reasons, mitigating  
8 experiences or mitigating information, and  
9 essentially, we wrap all that information into one  
10 short word sentence, and that is, "A reason to give  
11 life."

12           Now, I note that the Court asked you if  
13 you would be willing to consider a defendant's  
14 background mitigating circumstances such as  
15 defendant's health, mental status, age, childhood  
16 experience, education, and it asked, "Do you feel  
17 you would consider those types of factors?" and you  
18 put, "Very much." In fact, there was an option  
19 here, "Not at all."

20           Why did you strike the "Very much" option?

21       A     Wait.

22       Q     Let me just show you. It's No. 38.

23       A     I need my glasses.

24       Q     It's the last page, Question No. 38.

25       A     Are you saying it was inconsistent?

1 Q I'm just curious as to why you said "Very  
2 much." Why is that important to you?

3 A I just believe that -- like I said before,  
4 if this was a crime that was committed of hatred and  
5 no remorse, no conscientiousness -- if that's a  
6 word --

7 Q It is now.

8 A -- that should be taken into consideration  
9 for punishment.

10 Q How about possibly a person's background,  
11 their life experiences, the differences  
12 including the lifestyles, would you be willing to  
13 consider that type of information as well?

14 A Yes.

15 Q Now, if there comes a situation where you  
16 feel that a particular sentence is appropriate,  
17 either a life sentence or maybe not even a life  
18 sentence but you found other individuals that  
19 differed from yourself, how would you resolve it  
20 when other people have differences of opinion with  
21 regard to yours?

22 **PROSPECTIVE JUROR:** I don't know. Are we  
23 allowed to look at any other cases where maybe  
24 certain sentences were applied in certain cases? Is  
25 that anything?

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1           Q     Actually, what will happen -- and I am  
2 giving you information in a vacuum, but what will  
3 happen is you will be given a lot of information  
4 from both sides, and the Court will give you  
5 instructions, and those instructions are what you  
6 can use to apply the information that we give to  
7 you, but clearly a mitigating circumstance or  
8 mitigating information, sometimes it's just a gut  
9 feeling. Sometimes it's just merely mercy that you  
10 listen to our client's mother and listen to a call  
11 for a plea for her life and you believed in that and  
12 maybe other people didn't. Are you a person that  
13 can stand by their guns and stick with an opinion  
14 that you might have?

15           A     Yes.

16           Q     Why do you say that?

17           A     I'm just an opinionated person, and I'm  
18 able to speak what's on my mind and verbalize what  
19 my convictions are.

20           Q     Are you able to respect other people's  
21 opinions even if they differ from your own?

22           A     Sure.

23           Q     And again, why is that?

24           A     Well, everyone is entitled to their  
25 opinion, and maybe they have convictions that enter

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1 theirs too.

2 Q And if their opinions differ from yours,  
3 would you expect them to respect your opinion?

4 A Yes.

5 Q I note that you're a superintendent of a  
6 construction site. Obviously, you're very much in a  
7 leadership position out there.

8 A Yes.

9 Q Do you consider yourself a leader?

10 A I hope so. I guess it depends upon if  
11 anyone is following me.

12 Q That's fair enough.

13 **MR. WHIPPLE:** I thank you very much for  
14 your time, Miss Knight.

15 Pass for cause, your Honor.

16 **THE COURT:** Ma'am, wait outside, would you  
17 please?

18 **PROSPECTIVE JUROR 309:** Sure.

19 (Sidebar conference outside the presence  
20 of the court reporter.)

21 **THE COURT:** At this time, the defense can  
22 exercise their one and only peremptory of the  
23 alternates.

24 **MS. JACKSON:** Mr. Branton, No. 0296, your  
25 Honor.

1           **THE COURT:** All right. He's excused.  
2           Who's next?  
3           **MR. STANTON:** Mr. Mercado, 311.  
4  
5           VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 311  
6           **THE COURT:** Mr. Mercado?  
7           **PROSPECTIVE JUROR 311:** Yes.  
8           **THE COURT:** Good afternoon there.  
9           **PROSPECTIVE JUROR:** Good afternoon.  
10          **THE COURT:** You're from the Bronx in  
11 New York, originally; is that right?  
12          **PROSPECTIVE JUROR:** Yes, I am.  
13          **THE COURT:** Do you speak Spanish?  
14          **PROSPECTIVE JUROR:** I do.  
15          **THE COURT:** You've been here approximately  
16 a little over six years; is that right?  
17          **PROSPECTIVE JUROR:** A little over six  
18 years.  
19          **THE COURT:** Are you married?  
20          **PROSPECTIVE JUROR:** No, I'm not.  
21          **THE COURT:** What kind of work do you do?  
22          **PROSPECTIVE JUROR:** I'm a realtor.  
23          **THE COURT:** Have you ever served on a jury  
24 before?  
25          **PROSPECTIVE JUROR:** No, I haven't.

1           **THE COURT:** Have you or anyone in your  
2 family ever been charged with a crime before?  
3           **PROSPECTIVE JUROR:** Yes, they have.  
4           **THE COURT:** Who was that?  
5           **PROSPECTIVE JUROR:** Various cousins.  
6           **THE COURT:** Are any of them charged with  
7 murder, assault, anything like that -- violent  
8 crimes?  
9           **PROSPECTIVE JUROR:** No.  
10           **THE COURT:** Would the fact that some of  
11 your cousins have been charged with crimes, would  
12 that affect your ability to be fair and impartial  
13 here?  
14           **PROSPECTIVE JUROR:** No.  
15           **THE COURT:** Do you have any animosity  
16 towards prosecutors or Deputy District Attorneys or  
17 police officers because they prosecute cases?  
18           **PROSPECTIVE JUROR:** No, I don't.  
19           **THE COURT:** Now, you were in the Coast  
20 Guard for four years?  
21           **PROSPECTIVE JUROR:** Four years.  
22           **THE COURT:** And you were -- what was your  
23 job in the Coast Guard?  
24           **PROSPECTIVE JUROR:** I was a cook.  
25           **THE COURT:** Have you had any friends or

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1 relatives who have been the victim of a crime?

2 **PROSPECTIVE JUROR:** Yes.

3 **THE COURT:** Who was that?

4 **PROSPECTIVE JUROR:** Well, besides myself,  
5 various family members.

6 **THE COURT:** Specifically, you. What kind  
7 of crime was perpetrated against you?

8 **PROSPECTIVE JUROR:** I was beaten in  
9 New York a couple of times and robbed quite often.

10 **THE COURT:** Quite often?

11 **PROSPECTIVE JUROR:** Quite often.

12 **THE COURT:** Armed robberies or just  
13 handguns, knives, what?

14 **PROSPECTIVE JUROR:** Both.

15 **THE COURT:** Both.

16 **PROSPECTIVE JUROR:** Hands and weapons.

17 **THE COURT:** Would that affect your ability  
18 to be fair and impartial in this case?

19 **PROSPECTIVE JUROR:** I don't think so.

20 **THE COURT:** Now, you understand that in  
21 this case, we are picking a jury to decide the  
22 penalty for the defendant.

23 Do you understand that?

24 **PROSPECTIVE JUROR:** I do.

25 **THE COURT:** He's already been convicted of

1 four counts of first-degree murder, and according to  
2 the laws of the State of Nevada, the jury that  
3 sentences him will have to look at four possible  
4 punishments and pick the most appropriate one.

5 Do you understand that?

6 **PROSPECTIVE JUROR:** I do.

7 **THE COURT:** The four forms of punishment  
8 are the death penalty, life in prison without the  
9 possibility of parole, life in prison with the  
10 possibility of parole or for a definite term of 50  
11 years with the possibility of parole after 20 years,  
12 and of course, that term is doubled if a deadly  
13 weapon is used. So, in actuality, the definite term  
14 would be a hundred years with parole after 40 years  
15 and life in imprisonment with the possibility of  
16 parole would be a possible life sentence on the  
17 maximum end with parole eligibility after 40 years  
18 had been served.

19 Do you understand that?

20 **PROSPECTIVE JUROR:** I do.

21 **THE COURT:** Now, could you consider all  
22 four forms of punishment?

23 **PROSPECTIVE JUROR:** I would honestly say  
24 that before -- earlier when we were all sworn in, I  
25 did not have a problem with any one of them, but now

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1 knowing that the defendant has children, because I'm  
2 a father myself, I might have a problem with the  
3 death penalty.

4           **THE COURT:** Tell me this here: Are there  
5 any circumstances under which you could impose it?  
6 Given the fact that he has kids, can you envision  
7 some circumstances under which you can impose the  
8 death penalty?

9           **PROSPECTIVE JUROR:** Oh, definitely.

10           **THE COURT:** So, you're saying -- you're  
11 not ruling it out, but you're saying it would be  
12 difficult?

13           **PROSPECTIVE JUROR:** Right.

14           **THE COURT:** Wouldn't you want to listen to  
15 the facts of the case and the circumstances and the  
16 people involve and everything before you make your  
17 decision?

18           **PROSPECTIVE JUROR:** Definitely.

19           **THE COURT:** Even after that, if you found  
20 that it was appropriate, you could impose it?

21           **PROSPECTIVE JUROR:** I definitely could.

22           **THE COURT:** The law doesn't require that  
23 you give any particular sentences; you have to  
24 listen to the facts, the background, the parties  
25 involved, the law, listen to the witnesses, the

1 evidence and the facts surrounding the case, then  
2 you are to pick the most appropriate sentence.

3 Do you understand that?

4 **PROSPECTIVE JUROR:** Right, I do.

5 **THE COURT:** You don't have a lot of  
6 information to work with now, so we'll give you a  
7 lot more information and then you will be in a  
8 better position.

9 Do you understand that?

10 **PROSPECTIVE JUROR:** I do.

11 **THE COURT:** Are you married?

12 **PROSPECTIVE JUROR:** I'm not.

13 **THE COURT:** You're not married.

14 How many kids do you have?

15 **PROSPECTIVE JUROR:** Two.

16 **THE COURT:** Do they live here in Nevada or  
17 New York?

18 **PROSPECTIVE JUROR:** They live in Virginia.

19 **THE COURT:** Virginia. Okay.

20 How old are they?

21 **PROSPECTIVE JUROR:** My daughter is 16, and  
22 my son is seven.

23 **THE COURT:** State, you may examine.

24 **MR. STANTON:** Thank you, your Honor.

25

1 EXAMINATION BY THE STATE

2 **BY MR. STANTON:**

3 Q Good afternoon, Mr. Mercado.

4 A Good afternoon.

5 Q I'd like to start off with some questions  
6 regarding your experiences in New York which I  
7 gather from your questionnaire and from your  
8 statements here today may not have always been  
9 positive experiences.

10 Is that a fair statement?

11 A Right.

12 Q Is that one of the reasons that caused you  
13 to move to Las Vegas?

14 A Not particularly. I was in the military,  
15 and after the military just came to Vegas.

16 Q So, the military kind of broke that up.  
17 You weren't fleeing from New York because  
18 you had been beaten or robbed on numerous times?

19 A No. I was very young when that happened.

20 Q What was the ethnicity of the people that  
21 attacked you in these events?

22 A I would say it was a mixture. It wasn't  
23 just one ethnicity.

24 Q What ethnicity was it a mixture of, all  
25 types?

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1           A       Blacks, whites, Hispanics.

2           Q       You made mention of a situation with the  
3 defendant having children when you heard that today?

4           A       Um-hmm.

5           Q       And that it was harder for you to consider  
6 the death penalty.

7                   Is that a fair assessment?

8           A       That would be definitely something I would  
9 have to weigh.

10          Q       Why does that make a difference to you?

11          A       Because I'm a father and I lost my father,  
12 and I know what it's like for a child to lose a  
13 parent.

14          Q       Knowing that the defendant has fathered  
15 children, you answered Judge Gates' question, even  
16 knowing that, you still would consider the death  
17 penalty.

18          A       Like the Judge said, I haven't heard all  
19 the circumstances, so....

20          Q       Precisely.

21                   But as you sit here today not knowing all  
22 the facts and circumstances, would there be  
23 situations where a person that has fathered  
24 children, you could impose the death penalty if you  
25 heard certain facts and circumstances?

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1           A       Definitely.

2           Q       Give me some examples of facts and  
3 circumstances that you would consider in imposing,  
4 somebody who had fathered children but yet deserved,  
5 the death penalty?

6           A       One that comes directly to mind, and I  
7 have a strong conviction against, rape.

8           Q       Okay.

9           A       So, if a father, regardless if he has  
10 children -- a man, regardless if he has children or  
11 not, raped another person, I would not -- the fact  
12 that they have children doesn't justify -- I don't  
13 know. I'm having a hard time explaining it.

14          Q       I understand that.

15          A       That's something I have strong feelings  
16 about.

17          Q       Okay.

18                   Any other factors that you would consider  
19 in giving somebody who had fathered children the  
20 death penalty?

21          A       Well -- reasons. People commit crimes all  
22 the time, but the reasons behind the crime would  
23 definitely be something to consider.

24          Q       You would want to know that?

25          A       Definitely.

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1           Q     As we sit here as the State, you've  
2 indicated that you have strong feelings about the  
3 death penalty with somebody who has fathered  
4 children; you would keep an open mind and be fair to  
5 the State in this case?

6           A     That statement you just said is not what I  
7 said.

8           Q     Okay. I'm sorry. Correct me then. What  
9 am I misstating?

10          A     The fact that he has children is something  
11 that I would have to definitely weigh; I can't just  
12 say give him death.

13          Q     Okay. I understand that, and that's not  
14 what the State's position in this case is.

15               Clearly what I'm trying to inquire about  
16 is whether or not the fact that he has fathered  
17 children -- and you have to consider all the facts  
18 and evidence in this case -- could you be fair to  
19 the State's position in this case?

20          A     Oh, I think so.

21          Q     You haven't closed your mind to any  
22 possibilities in this case?

23          A     My mind is never closed.

24          Q     Where were you stationed when you were in  
25 the Coast Guard?

1 A Virginia and Massachusetts, Boston.

2 Q Was that Norfolk?

3 A Portsmouth.

4 **THE COURT:** I have a question. Let me  
5 interrupt.

6 You said that you lost your father. How  
7 did you lose your father?

8 **PROSPECTIVE JUROR:** I did not lose him to  
9 crime; I lost him to diabetes.

10 **THE COURT:** He died?

11 **PROSPECTIVE JUROR:** I just lost him right  
12 before I came out to Vegas, actually.

13 **THE COURT:** Okay.

14 **PROSPECTIVE JUROR:** And just going through  
15 that experience, that's not something I can do.

16 **THE COURT:** I see what you're saying. All  
17 right.

18 **BY MR. STANTON:**

19 Q Sir, you indicated some family members, I  
20 believe you said cousins had been involved in some  
21 criminal activity?

22 A Yes.

23 Q Did you think they were treated fairly?

24 A Yes.

25 Q Where, physically, as far as a city and a

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1 state, did those crimes that your cousins were  
2 charged with occur?

3 A Most of them in Puerto Rico.

4 Q And were they -- were any of your cousins  
5 convicted as a result of those charges?

6 A Yes, they were.

7 Q Were any of them incarcerated?

8 A Yes, they were.

9 Q Are any of them still incarcerated?

10 A No, they're not.

11 Q As a result of that experience and your  
12 relationship with them, is there anything that would  
13 cause you a problem in sitting as a juror in this  
14 case?

15 A No.

16 Q If you came back with a verdict, whatever  
17 it might be in this case, there's no problem with  
18 you discussing that with your cousins and saying,  
19 "This is what I did and this is my verdict"? You  
20 would have no problem there?

21 A Not at all.

22 Q In this case, a prior jury has found the  
23 defendant guilty beyond a reasonable doubt of four  
24 counts of first-degree murder.

25 Do you have a problem accepting that



1 jury's verdict in your deliberations in this case,  
2 because you'll be required as a matter of law to  
3 indeed accept their verdict.

4 Any problem with that?

5 A No.

6 Q Now, you're going to hear some evidence of  
7 the murders, the underlying quadruple homicide that  
8 occurred in this case. There is no part of this  
9 function that deals with you reviewing guilt or  
10 innocence.

11 Are you comfortable with that?

12 A Yes.

13 Q Even comfortable in determining a life or  
14 death decision in this case?

15 A Yes.

16 Q Comfortable?

17 A Um-hmm.

18 Q Now, we've talked about the death penalty  
19 in kind of philosophical terms here, and I guess as  
20 you sit there now answering all these questions and  
21 waiting out in the hallway thinking about this, it's  
22 more of a realistic situation to you.

23 I want to ask you this final question,  
24 sir. If you're selected on this jury and during the  
25 course of this matter being presented to you, you go

1 back in your deliberative process, the jury selects  
2 you as the foreperson, and after all the facts and  
3 evidence in front of you, you along with the rest of  
4 the 11 jurors that comprise this jury collectively  
5 believe that the true and just punishment in this  
6 case is the death penalty, you as the juror would  
7 have to sign the verdict form.

8           If you believe that with your fellow  
9 jurors, sir, could you affix your signature to that  
10 verdict form that puts that defendant, Donte  
11 Johnson, to death?

12           A     Definitely.

13           **MR. STANTON:** Thank you.

14           Pass the prospective juror.

15           **MR. WHIPPLE:** Thank you, your Honor.

16

17                   EXAMINATION BY THE DEFENSE

18   **BY MR. WHIPPLE:**

19           Q     Mr. Mercado, you have to forgive our  
20 little chuckle over here talking about getting  
21 robbed in New York. I think one of your  
22 predecessors mentioned that she had grew up in  
23 New York and mentioned that she had got robbed a  
24 couple of times, so we had a little chuckle.

25           A     It's not uncommon.

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1 Q Did you grow up in the Bronx, South Bronx?

2 A In the Bronx.

3 Q Were you in the Coast Guard?

4 A Yes.

5 Q Did you go to any school or did you just  
6 go directly into the Coast Guard from high school?

7 A Actually, I was in college before I went  
8 to the Coast Guard.

9 Q Did you enjoy the Coast Guard?

10 A Very much.

11 Q I guess you served in Virginia and  
12 Massachusetts?

13 A Um-hmm.

14 Q How is it that you came to Nevada from --  
15 including your time in the Coast Guard?

16 A My girlfriend at the time, we met in the  
17 Coast Guard, and she has family here, so she had  
18 already decided to move out here, and a couple  
19 months later, I came out to see what it was like and  
20 haven't left, and I'm not planning to.

21 Q That's great.

22 You're aware that this is simply a penalty  
23 phase as Mr. Johnson is convicted of killing four  
24 individuals. I want to make you aware that  
25 Miss Jackson and I are not here to offer an excuse

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1 or justification for those behaviors.

2 Do you understand that?

3 A Um-hmm, I do.

4 Q We're here in good conscience to ask for a  
5 life sentence. That's all.

6 **MR. WHIPPLE:** Thank you for your time.  
7 Your Honor, pass for cause.

8 **THE COURT:** This is what the Court is  
9 going to do. We're going to pick one more  
10 alternate; I'm going to give you each one peremptory  
11 challenge.

12 You can wait outside, sir.

13 **MR. WHIPPLE:** Judge, I just want to  
14 clarify the preempt. Is that just for one upcoming  
15 person?

16 **THE COURT:** Right, for the additional  
17 alternate we're going to pick.

18 **MR. WHIPPLE:** Thank you.

19 **THE COURT:** That's in case one of the  
20 other jurors don't show up so we'll have enough.

21 What was his number?

22 **MR. STANTON:** His number, your Honor, was  
23 0311.

24 **THE COURT:** Who's next?

25 /////

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1 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 314

2 **THE COURT:** Mr. Martinez?

3 **PROSPECTIVE JUROR 314:** Yes.

4 **THE COURT:** How are you doing this  
5 afternoon?

6 **PROSPECTIVE JUROR:** Fine.

7 **THE COURT:** Pardon me?

8 **PROSPECTIVE JUROR:** I'm fine.

9 **THE COURT:** Mr. Martinez, how long have  
10 you lived in Nevada?

11 **PROSPECTIVE JUROR:** How long?

12 **THE COURT:** Right.

13 **PROSPECTIVE JUROR:** Three years.

14 **THE COURT:** Three years?

15 **PROSPECTIVE JUROR:** Yes.

16 **THE COURT:** Where did you live before  
17 that?

18 **PROSPECTIVE JUROR:** In Chicago.

19 **THE COURT:** Chicago?

20 **PROSPECTIVE JUROR:** Chicago.

21 **THE COURT:** Mr. Martinez, how far did you  
22 go in school, sir?

23 **PROSPECTIVE JUROR:** About six years.

24 **THE COURT:** You went six years.

25 Did you go here or in Mexico?

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1           **PROSPECTIVE JUROR:** Yes, sir.

2           **THE COURT:** A lot of these -- some of  
3 these questions you didn't fill out.

4           Is there a reason why? You did not  
5 understand?

6           **PROSPECTIVE JUROR:** I don't know how to  
7 write good English, and I don't speak very well.

8           **THE COURT:** Your English is not very good?

9           **PROSPECTIVE JUROR:** No.

10          **THE COURT:** You guys.

11          **MR. DASKAS:** We would not oppose and  
12 excuse him, your Honor.

13          **MS. JACKSON:** That would be our --

14          **THE COURT:** You stipulate too?

15          **MS. JACKSON:** Yes, sir.

16          **THE COURT:** We're going to excuse you,  
17 sir.

18          **PROSPECTIVE JUROR:** Pardon me?

19          **THE COURT:** You can go. Thank you.

20          **MR. STANTON:** Your Honor, the next juror  
21 is 0315, Miss Kelly, who has expressed rather strong  
22 feelings about race and the death penalty, just to  
23 highlight the Court.

24          **THE COURT:** Not only that, she said  
25 something about some kind of medical or something.

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1     VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 315

2             **THE COURT:** You said you're opposed to the  
3 death penalty under any circumstance?

4             **PROSPECTIVE JUROR 315:** Yes, sir.

5             **THE COURT:** All right. You're excused,  
6 ma'am.

7             **PROSPECTIVE JUROR:** Thank you.

8             **THE BAILIFF:** Miss Martel did not show up  
9 today either.

10            **THE COURT:** Order to show cause will issue  
11 for her.

12            Alfred Melton.

13

14     VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 320

15            **THE COURT:** Was Mr. Melton in here when we  
16 swore them in?

17            **MR. STANTON:** No, he was not.

18            **THE COURT:** How many are out there now?

19            **THE BAILIFF:** About ten.

20            **THE COURT:** Bring in about four.

21            Have a seat, Mr. Melton.

22            Go get four more.

23            **MR. STANTON:** Your Honor, based upon the  
24 number, shall we bring all ten in?

25            (Recess taken.)

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(A.M. session was adjourned at 12:54 p.m.)

\* \* \* \* \*

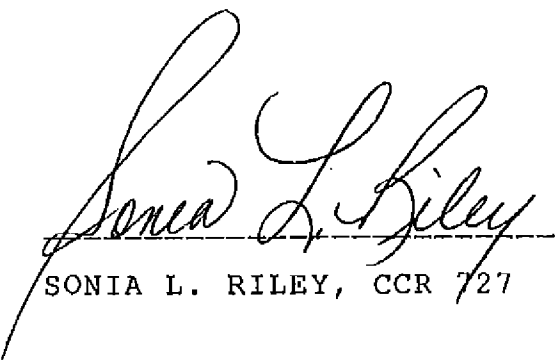


REPORTER'S CERTIFICATE

STATE OF NEVADA)  
:SS  
COUNTY OF CLARK)

I, SONIA L. RILEY, CERTIFIED COURT  
REPORTER, DO HEREBY CERTIFY THAT I TOOK DOWN IN  
STENOTYPE ALL OF THE PROCEEDINGS HAD IN THE  
BEFORE-ENTITLED MATTER AT THE TIME AND PLACE  
INDICATED, AND THAT THEREAFTER SAID STENOTYPE NOTES  
WERE TRANSCRIBED INTO TYPEWRITING AT AND UNDER MY  
DIRECTION AND SUPERVISION AND THE FOREGOING  
TRANSCRIPT CONSTITUTES A FULL, TRUE AND ACCURATE  
RECORD TO THE BEST OF MY ABILITY OF THE PROCEEDINGS  
HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO  
SUBSCRIBED MY NAME IN MY OFFICE IN THE COUNTY OF  
CLARK, STATE OF NEVADA.

  
SONIA L. RILEY, CCR 727

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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FILED

ORD

ORIGINAL

2005 APR 25 P 12:54

DISTRICT COURT  
CLARK COUNTY, NEVADA

*Casey [Signature]*  
CLERK

STATE OF NEVADA

Plaintiff,

vs.

DONTE JOHNSON,

Defendant.

CASE NO. C153154  
DEPT. NO VIII

ORDER TO PREPARE TRANSCRIPT

IT IS HEREBY ORDERED that SONIA L. RILEY, CCR 727, prepare a transcript in the above-captioned matter heard on 4-21, P.M. 4-22, A.M., 2005.

FURTHER ORDERED, that said transcript shall be prepared pursuant to Supreme Court Rule 250 and at State's expense with cost and fees assessed according to NRS 3.370.

DATED THIS 25 DAY OF April, 2005.

*[Signature]*  
DISTRICT COURT JUDGE

Sg

SONIA L. RILEY, CCR 727  
455-3610

Page: 6229

1

COUNTY CLERK

APR 25 2005

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## THE STATE OF NEVADA v. JOHNSON

FILED

DISTRICT COURT  
CLARK COUNTY, NEVADA

2005 APR 25 A 8:56

ORIGINAL

THE STATE OF NEVADA, )

Plaintiff, )

-vs- )

DONTE JOHNSON, )

Defendant. )

Case No. C153154

Dept No. VIII

Docket H

VOLUME IV-B

PENALTY PHASE

BEFORE THE HONORABLE LEE A. GATES

FRIDAY, APRIL 22, 2005, 1:08 P.M.

COUNTY CLERK

APR 22 2005

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## APPEARANCES:

For the State:

ROBERT J. DASKAS, ESQ.

DAVID STANTON, ESQ.

Deputies District Attorney

For the Defendant:

ALZORA JACKSON, ESQ.

BRETT WHIPPLE, ESQ.

Deputies Public Defender

S8

REPORTER: KRISTINE MOORE, CCR 273

Laurie Webb & Associates  
Phone: 702-386-9322

Fax: 702-386-9825

4-25-2005  
www.lauriewebb.com

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## THE STATE OF NEVADA v. JOHNSON

## I N D E X

\* \* \* \* \*

## VOIR DIRE EXAMINATION

NO.	PROSPECTIVE JUROR	COURT	STATE	DEFENSE
0347	MR. PERRY	9	14	17

\* \* \* \* \*

## CHALLENGES FOR CAUSE

NO.	PROSPECTIVE JUROR	PARTY	PAGE
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\* \* \* \* \*

## PEREMPTORY CHALLENGES

PARTY	NO.	BADGE NO.	NAME	SEAT	PAGE
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## THE STATE OF NEVADA v. JOHNSON

1 LAS VEGAS, NEVADA, FRIDAY, APRIL 22, 2005, 1:08 P.M.

2 \* \* \* \* \*

3 THE COURT: All right. Bring in the last  
4 juror.

5 Mr. Milton, No. 320, he was sitting  
6 in here. The Defendant wanted to use the restroom. The  
7 guards put him in handcuffs and shackles in front of Mr.  
8 Milton. We didn't want him to be seen in that condition.

9 We are excusing Mr. Milton since he  
10 saw him in that condition. All right?

11 MS. JACKSON: Yes, your Honor.

12 THE COURT: Bring them in so we can swear  
13 them in. I thought that's what we were going to do.

14 THE COURT: Miss Clerk, swear in the panel.

15 (WHEREUPON, THE VENIRE WAS

16 SWORN BY THE CLERK.)

17 THE COURT: All right. Folks, we have to  
18 pick a couple more jurors. This process we are about to  
19 engage in, we refer to as, voir dire. It's an  
20 opportunity for the lawyers to ask questions to ascertain  
21 if you can be fair and impartial in this case.

22 We don't know you. We will try and  
23 find out about you by asking you some questions. All of  
24 the questioning is done under oath. We want you to be  
25 perfectly honest and open in your answers.

## THE STATE OF NEVADA v. JOHNSON

1                   The reason is, if you withhold  
2                   information from us or make misrepresentations, then the  
3                   verdict will be thrown out. We have to have a new trial.  
4                   It's time consuming and costly. I will have the Deputy  
5                   District Attorneys introduce themselves and tell you the  
6                   names of the witnesses and people involved in this case,  
7                   and after that the Defense attorneys will introduce  
8                   themselves to you and give you the name of the people  
9                   involved, and after that, we will have a few questions,  
10                  pertaining to your questionnaire, and make a decision.  
11                  All right.

12                         MR. DASKAS: Thank you, Judge. Good  
13                   afternoon, everyone. This is David Stanton. I am Robert  
14                   Daskas. We are Deputy D.A.'s with the Clark County DA's  
15                   Office. We are assigned the prosecution of the case  
16                   against Donte Johnson.

17                         As you gathered from the  
18                   questionnaire, you are not here to decide if he is guilty  
19                   that has been decided by another jury. He has been found  
20                   guilty of First Degree Murder, with use of a deadly  
21                   weapon. Your role is in deciding his penalty as it  
22                   relates to that conviction.

23                         I will mention some facts of the  
24                   case. The case received some publicity, when it happened  
25                   back in '98. If you recognize the facts of the case or

## THE STATE OF NEVADA v. JOHNSON

1 the names I mentioned, let the Judge know. He will have  
2 additional questions for you.

3 The quadruple homicide happened on  
4 August 13th, 1998, on a street called, Terra Linda, a  
5 single family home, just off Tropicana in Las Vegas.

6 There were four victims. Their names  
7 are Tracy Gorringer, Matthew Mowen, Jeffrey Biddle, and  
8 Peter Talamentez. They were 19, 20 years old. The  
9 youngest victim was 17 years old.

10 There were two other Defendants in  
11 this case, originally, other than Donte Johnson. There  
12 names are Terrell Young and Sikia Smith. If you are  
13 selected to hear this case, we will call a detective who  
14 was assigned to the case to highlight the testimony from  
15 the first trial and explain the evidence against Donte  
16 Johnson.

17 That detective is Tom Thowsan from  
18 the Metropolitan Police Department. Some of the names he  
19 will mention during his testimony will be Justin Perkins,  
20 Charla Severs, Bryan Johnson, Todd Armstrong, Ace Hart.  
21 Sergeant Robert Honea, NHP. Ed Guenther is a fingerprint  
22 examiner with Metro, as well as, Tom Wahl, W-A-H-L. Dr.  
23 Robert Bucklin performed the autopsies in this case. He  
24 has since passed away.

25 You will hear from crime scene

## THE STATE OF NEVADA v. JOHNSON

1 analysts, Shawn Fletcher, Las Vegas Metropolitan Police  
2 Department. Also a couple witnesses from the Detention  
3 Center, corrections officers will testify, Ian Ritchie  
4 and Alex Gonzalez.

5 A lieutenant from the Los Angeles  
6 Police Department, Lieutenant Grayson will testify. You  
7 will hear from a couple probation officers, Robert  
8 Haufman, Craig Clark and two other witnesses from Los  
9 Angeles Police Department, including Grace Garcia and  
10 Steve Bursiatti (phonetic).

11 If you recognize this case or the  
12 witnesses, let the Judge know. I appreciate your time  
13 very much.

14 MS. JACKSON: Your Honor, may I?

15 THE COURT: Yes.

16 MS. JACKSON: Good morning, ladies and  
17 gentlemen. My name is Alzora Jackson. I work for the  
18 Clark County Special Public Defender's Office here in Las  
19 Vegas. I am working with Mr. Brett Whipple on the case.

20 MR. WHIPPLE: Good morning.

21 MS. JACKSON: Our client is Donte Johnson.

22 THE DEFENDANT: Good afternoon.

23 MS. JACKSON: We will present reasons for  
24 giving Mr. Johnson life. We will do that through  
25 witnesses. We will call them from the LA South Central



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1 area, mostly his family members, his grandmother, Jane  
2 Edwards; his mother, Eunice Cain; sister, Johnnisha White  
3 her husband, Moises Zamura; Eunisha White, John White;  
4 another sister, Eunisha White, another sister.

5 Mr. Johnson has two minor children,  
6 Anijah and Alan White, and you will hear from them. You  
7 will hear from his aunt, Wanda Fay Johnson, and possibly  
8 from a young man working in the area, Craig Clark.

9 You may also here from a group of  
10 individuals we call experts, depending how the first part  
11 of the proceedings go, a local psychologist, Dr. Thomas  
12 Kinsora may talk to you. An individual, a professor at  
13 University of Cal Berkley, Martin Jankowski may come in,  
14 have a few things to say to you, and Mr. James Esten.  
15 These are people termed as experts.

16 You will probably here from Ms.  
17 Navarro, a local attorney in town. She works with the  
18 civil division of the Clark County District Attorney's  
19 Office.

20 You will hear from another group of  
21 witnesses, correctional officers from the detention  
22 center, Johnson and Perez. Nancy Hunterton, I don't know  
23 if she still does, she administrated the life skills  
24 program at the facility.

25 The final body of witnesses you may

## THE STATE OF NEVADA v. JOHNSON

1 hear from would include Reginald Johnson, no relation to  
2 my client; Jose Vigoa; George Day; Jermaine Lytle; and  
3 possibly Sikia Smith.

4 That will be the extent. I mentioned  
5 Mr. Clark. That will be the extent of the witnesses you  
6 may hear from on behalf of Mr. Johnson.

7 Thank you for your time and  
8 attention.

9 THE COURT: Do any of you know the District  
10 Attorneys, Mr. Stanton and Mr. Daskas? Raise your hand.

11 (NO RESPONSE FROM THE VENIRE.)

12 THE COURT: Do any of you know the Defense  
13 lawyers, Ms. Jackson and Mr. Whipple?

14 (NO RESPONSE FROM THE VENIRE.)

15 THE COURT: Do any of you know the  
16 Defendant?

17 (NO RESPONSE FROM THE VENIRE.)

18 THE COURT: Do any of you recognize the  
19 names of the people involved in this case, especially the  
20 victims or the victim's family?

21 (NO RESPONSE FROM THE VENIRE.)

22 THE COURT: Do you recognize the people,  
23 know them from any place?

24 (NO RESPONSE FROM THE VENIRE.)

25 THE COURT: Let me know by raising your

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1 hands.

2 PROSPECTIVE JUROR NO. 347: Excuse me, your  
3 Honor. Would that exclude hearing of the case when that  
4 happened?

5 THE COURT: We will discuss that with you.  
6 We will ask the rest of you to wait outside. Mr. Perry  
7 is next.

8 Everyone else remain outside; except  
9 for Mr. Perry.

10  
11 VOIR DIRE EXAMINATION (Resumed)

12  
13 VOIR DIRE EXAMINATION OF PROSPECTIVE ALTERNATE JUROR NO.3

14 THE COURT: Mr. Perry, you said you are a  
15 truck driver?

16 PROSPECTIVE ALTERNATE JUROR NO. 3: I am.

17 THE COURT: Does your wife work?

18 PROSPECTIVE ALTERNATE JUROR NO. 3: She is  
19 a school teacher for Clark County.

20 THE COURT: You said you drive to Phoenix  
21 and back twice a week; is that right?

22 PROSPECTIVE ALTERNATE JUROR NO. 3: I do.

23 THE COURT: You said, serving on the jury  
24 would be a hardship for you; is that correct?

25 PROSPECTIVE ALTERNATE JUROR NO. 3: It

## THE STATE OF NEVADA v. JOHNSON

1 would be -- I am not sure. They have never told me. I  
2 have not read the contract to see what they pay, how they  
3 compensate for jury duty. It would be interesting, but  
4 we will get by it.

5 THE COURT: You have been in Las Vegas 18  
6 years?

7 PROSPECTIVE ALTERNATE JUROR NO. 3: Yes.

8 THE COURT: You are from Salt Lake City,  
9 originally?

10 PROSPECTIVE ALTERNATE JUROR NO. 3: Born  
11 and raised.

12 THE COURT: Did you move from Utah to Las  
13 Vegas?

14 PROSPECTIVE ALTERNATE JUROR NO. 3: No. I  
15 went from Utah to Wyoming, six years Wyoming, nine months  
16 in Montana, before moving down here.

17 THE COURT: Okay. Your wife teaches  
18 special-ed?

19 PROSPECTIVE ALTERNATE JUROR NO. 3: She has  
20 a class of pre-school autistic kids. She has four or  
21 five kids she teaches.

22 THE COURT: You have five kids of your own?

23 PROSPECTIVE ALTERNATE JUROR NO. 3: I do.

24 THE COURT: Are they all grown?

25 PROSPECTIVE ALTERNATE JUROR NO. 3: My

THE STATE OF NEVADA v. JOHNSON

1 youngest is 17.

2 THE COURT: You said you had a nephew  
3 convicted of a crime?

4 PROSPECTIVE ALTERNATE JUROR NO. 3: Yes.

5 THE COURT: Doing 20 years in Utah State  
6 Prison.

7 PROSPECTIVE ALTERNATE JUROR NO. 3: Yes.

8 THE COURT: What crime did he commit?

9 PROSPECTIVE ALTERNATE JUROR NO. 3: He has  
10 been committed 20 years for rape with a weapon.

11 THE COURT: With a weapon?

12 PROSPECTIVE ALTERNATE JUROR NO. 3: That's  
13 why they threw away the key.

14 THE COURT: You said one of your daughters  
15 had been raped; is that right?

16 PROSPECTIVE ALTERNATE JUROR NO. 3: My  
17 eldest daughter. It wasn't a violent rape.

18 THE COURT: All of it is violent and  
19 against the will. Where did it happen?

20 PROSPECTIVE ALTERNATE JUROR NO. 3: Near  
21 Las Vegas.

22 THE COURT: The person was not prosecuted?

23 PROSPECTIVE ALTERNATE JUROR NO. 3: No.

24 THE COURT: Did she file charges against  
25 him, report it to the police?

## THE STATE OF NEVADA v. JOHNSON

1 PROSPECTIVE ALTERNATE JUROR NO. 3: It got  
2 lost in the shuffle. She didn't pursue it. We didn't  
3 push it. She ended up giving the child up for adoption.

4 THE COURT: Was this a person you knew?

5 PROSPECTIVE ALTERNATE JUROR NO. 3: I  
6 didn't like the kid, but yes, I knew him. I guess, part  
7 of the reason it wasn't prosecuted, we didn't push it, to  
8 some extent, she was a willing participant.

9 THE COURT: Sort of like a date rape kind  
10 of deal?

11 PROSPECTIVE ALTERNATE JUROR NO. 3: Yes.

12 THE COURT: You understand we are picking a  
13 jury to decide punishment for the Defendant. He has been  
14 convicted of four Counts of First Degree Murder?

15 PROSPECTIVE ALTERNATE JUROR NO. 3: Yes.

16 THE COURT: Jury will have four penalties  
17 to choose from: Death penalty; life imprisonment with  
18 the possibility of parole; life imprisonment without the  
19 possibility of parole; or 50 years imprisonment, fixed,  
20 eligible for parole after 20 years.

21 It's doubled because a deadly weapon  
22 was used. In actuality, it would be doubled. It would  
23 be 100 years, parole eligibility after 40 years,  
24 consecutive to another life -- I got that wrong.

25 It is life imprisonment with the

## THE STATE OF NEVADA v. JOHNSON

1 possibility of parole after 20 years, plus a consecutive  
2 life sentence, parole after 20 years, possibility after  
3 20 years. Minimum he would have to do is 40 years up to  
4 life; and then, of course, life without the possibility  
5 of parole, which means, no parole; and then the death  
6 penalty.

7 According to that, one has to be able  
8 to consider all four forms punishment. Can you do that?

9 PROSPECTIVE ALTERNATE JUROR NO. 3: Yes.

10 THE COURT: Will you listen to the  
11 evidence, facts and circumstances of the case, pick out  
12 the appropriate sentence? Do you think you can do that?

13 PROSPECTIVE ALTERNATE JUROR NO. 3: Yes, I  
14 do.

15 THE COURT: Now, you are L.D.S.; is that  
16 correct?

17 PROSPECTIVE ALTERNATE JUROR NO. 3: I am.

18 THE COURT: I got that impression from No.  
19 35, that murder is the only sin a person can't be  
20 forgiven for is murder. If one forfeits his own life, he  
21 can receive, at best, some kind of redemption. Is that  
22 the word?

23 PROSPECTIVE ALTERNATE JUROR NO. 3: Yes.

24 THE COURT: Can you be fair to both sides?

25 PROSPECTIVE ALTERNATE JUROR NO. 3: I

THE STATE OF NEVADA v. JOHNSON

1 believe I can.

2 THE COURT: Can you follow the Court's  
3 instructions on the law?

4 PROSPECTIVE ALTERNATE JUROR NO. 3: I  
5 believe I can.

6 THE COURT: State.

7

8 EXAMINATION BY THE STATE

9 BY MR. STANTON:

10 Q Good afternoon, Mr. Perry. I want to begin  
11 with your comments about knowing Judge Cory. You have  
12 not seen him for years?

13 A We went to church together when we first  
14 moved to the City. I have not had dealings with him for  
15 about 12 years. I put it on there.

16 Q You indicated that sometime, approximately  
17 four, five years ago, you were an alternate juror for the  
18 Clark County Grand Jury?

19 A Yes.

20 Q Did you sit and hear cases?

21 A No. I went through the field trip, up to  
22 the forensic laboratory, and so forth and went through  
23 the process in the courtroom of being selected as being  
24 alternate, but was never called to sit.

25 Q Nothing about the experience that would



THE STATE OF NEVADA v. JOHNSON

1 cause you not to be fair and impartial in this case?

2 A No.

3 Q The nephew you mentioned, the Judge asked  
4 you questions about, do you believe he was treated  
5 fairly?

6 A I do.

7 Q You paused a little bit thinking about  
8 that.

9 A I would have locked him up a lot sooner.

10 Q If you had known about it?

11 A Yes. It was a fair sentence for him.

12 Q Fair to say that nothing about the  
13 experience carries over into this case, your potential  
14 role as a juror in this case that would cause you to be  
15 anything but fair and impartial, both to the State and  
16 Mr. Johnson; is that a fair statement?

17 A I would say so.

18 Q Ultimately, what we are looking for, sir,  
19 is someone who will keep an open mind to the sentencing  
20 alternatives that Judge Gates mentioned to you, an open  
21 mind, not prejudging what you might sentence someone to  
22 based upon the facts, you know, or a selected group of  
23 facts presented to you, but you will keep an open mind  
24 until all the evidence is given to you, and you are  
25 formally given the case, and told as a matter of law, you

## THE STATE OF NEVADA v. JOHNSON

1 can deliberate on the case.

2 Are you that type of person who can  
3 sit as a juror and keep an open mind to all sentencing  
4 options, until it is presented to you?

5 A I believe I could.

6 Q You indicated on the questionnaire about  
7 whether or not you would automatically vote for the death  
8 penalty or automatically not vote for the death penalty.  
9 Do you remember those questions?

10 A Yes.

11 Q Your answer to the questions about you  
12 would automatically vote for the death penalty, knowing  
13 now what the circumstances are, and your role as a juror,  
14 do you have a different opinion about that or understand  
15 it a little better?

16 A I guess I was copping an attitude when I  
17 was filling out the questionnaire. I think I can be fair  
18 about it.

19 Q You indicated that considering all forms of  
20 punishment, would you reserve ruling until all the  
21 evidence was presented, you said, yes, but it would be a  
22 hard sell.

23 Is that still what you are talking  
24 about, when you filled out the questionnaire, you feel a  
25 little different now, the way things are explained to you

## THE STATE OF NEVADA v. JOHNSON

1 now.

2 A Yes.

3 Q You understand, I am certain you do, that  
4 the decision the jury will make in this case is an  
5 important and very grave, serious decision?

6 A It is.

7 Q You appreciate the importance of that?

8 A Yes.

9 Q The least Mr. Johnson faces is 40 years in  
10 prison before he is eligible for parole. You consider  
11 that a severe punishment, don't you?

12 A Yes, I will.

13 Q Sir, there is a requirement by the law that  
14 you keep an open mind and consider all options until the  
15 evidence is presented to you, you stated you feel  
16 comfortable doing that and you would abide by the  
17 instructions; is that correct?

18 A I think I could.

19 MR. STANTON: Thank you. I pass the  
20 prospective juror.

21

22 EXAMINATION BY THE DEFENSE

23 BY MR. WHIPPLE:

24 Q I want to follow-up on questions in the  
25 questionnaire. Some of the questions Mr. Stanton had, I

## THE STATE OF NEVADA v. JOHNSON

1 want to make you are aware, I know you understand there  
2 is no right or wrong answers right now. This is a very  
3 unique type of situation.

4 We are asking these questions. This  
5 job is not for everybody. We have already excused a lot  
6 of people who said they couldn't consider the death  
7 penalty in any circumstances and excused a lot of people  
8 who said they are automatically giving the death penalty  
9 if somebody takes a life.

10 There is all kinds of bodies of law,  
11 the United States Supreme Court law is you can't be  
12 substantially impaired by your belief in the death  
13 penalty, or you don't believe it should be applied. In  
14 other words, we want fair people.

15 A All right.

16 Q There is nobody I have ever talked to that  
17 considers themselves unfair. It's a relative thing.  
18 Only you know what's inside yourself, only you, and when  
19 I see comments on here, I would automatically apply the  
20 death penalty, I am, of course, concerned. Mr. Stanton  
21 brought that out with you.

22 What is your opinion on the death  
23 penalty?

24 A There are times that the death penalty is  
25 the right approach to take when a life has been taken.

## THE STATE OF NEVADA v. JOHNSON

1 There are times that it may not be. It depends on the  
2 circumstances. It depends on several different avenues.  
3 It's not something to be taken lightly.

4 My questionnaire, the first half of  
5 the questionnaire wouldn't indicate that, but when I got  
6 further into it, I started to dig a little deeper in  
7 myself. There is times that it may not be appropriate.

8 Q I appreciate that. I know as the father of  
9 children, nobody is perfect. People do make mistakes.  
10 In this situation I want to give you some information.  
11 You are going to learn this was a quadruple homicide,  
12 four innocent individuals were killed.

13 Ms. Jackson and myself are never  
14 going to stand up here and say there was any excuse or  
15 justification or reason to do something like that.  
16 Conviction of first degree murder means, there is no  
17 excuse or justification.

18 But in this situation we had these  
19 four -- three were Caucasian, one Hispanic -- young  
20 adults, same age as my client, and your youngest child --  
21 bound with duct tape behind their back, arms and feet,  
22 laid down on the floor. At some point a gun was taken  
23 and a bullet was shot through each of their heads, one by  
24 one.

25 I know you know, no facts or

## THE STATE OF NEVADA v. JOHNSON

1 circumstances about Mr. Johnson. It is a fact those  
2 people were killed with their face in the carpet and  
3 their hands duct taped behind their back. Only you know  
4 what you are thinking.

5 Could you consider the possibility of  
6 a life sentence with just the facts I have given you?

7 MR. STANTON: I will interpose an  
8 objection. It's improper. It doesn't aggregately state  
9 the process, the juror would deliberate the evidence in  
10 the case.

11 THE COURT: Overruled.

12 THE WITNESS: Just the evidence or just  
13 what you told me here, I would have to really think hard.  
14 Depending on the evidence that has not been presented  
15 yet, I would have to consider it. It was just that  
16 little bit you told me, it would be very hard to call it  
17 a life sentence.

18 BY MR. WHIPPLE:

19 Q I understand that and appreciate your  
20 honesty. The law will require you to consider life with  
21 the possibility of parole, something even less than what  
22 you are leaning to now. That's where we need jurors to  
23 consider, all four.

24 Mr. Stanton made a good point. You  
25 gave him a black and white situation, no mitigation. You

## THE STATE OF NEVADA v. JOHNSON

1 will hear mitigation about Mr. Johnson, if you are chosen  
2 to serve on this jury, you will learn that Mr. Johnson  
3 was raised very poor, no father, mother on drugs,  
4 abandoned, very distraught, very, very, very, poor  
5 background.

6 Will that make a difference?

7 A It might, but I don't think so.

8 Q Why?

9 A Just the process of growing up, learning  
10 and being part of the community, fitting in with a  
11 community. Now, if there was, if the circumstances were  
12 such that it became a game amongst the four, however many  
13 Defendants were there, that would be something I would  
14 have to look at, too, I would have to think about.

15 Q You will hear that drugs were part of it.  
16 Seems like they always are. There was a bit of a drug  
17 culture that involved all the individuals, the victims  
18 and Mr. Johnson.

19 Would that affect your opinion, cause  
20 you to lean one way or another.

21 A Not being involved in the drug culture, to  
22 be honest, probably it would be a strike against them.

23 Q My client, the victims, or both?

24 A Against the whole situation. Probably your  
25 client. That's the direction I would have to lean, where

## THE STATE OF NEVADA v. JOHNSON

1 I right now would be leaning.

2 Q I understand. How do you feel about the  
3 things I said? How do you feel being in judgement of  
4 another human being with these things contemplated by  
5 you?

6 A I would have to dig real deep, but I think  
7 I could look at it from all sides, be fair about it. I  
8 am not looking forward to it, but I think I can handle  
9 it.

10 Q Do you want to be on the jury? Would you  
11 like to be in contemplation of another human being's  
12 life?

13 A I have done some thinking since, in the  
14 last four visits down here, back and forth. I don't know  
15 what my feelings are there. There are times I would like  
16 to be in the jury box, and as far as being in the jury  
17 box to determine someone's life, I would if I am asked to  
18 do it. I will sit in the box and try to be fair about  
19 it, but it's not something I have grown up looking at as  
20 being a goal in life.

21 Q This is where we are at, sir, only you,  
22 again, know where you are coming from, what your view  
23 point is.

24 If you feel as though you are  
25 substantially impaired or impaired with your favoritism



## THE STATE OF NEVADA v. JOHNSON

1 towards the death penalty, now is the time to tell me,  
2 and I am going to come up, as well, with the issue of  
3 mitigation.

4 The issue of mitigation, the law will  
5 require you consider mitigation, and I am not even sure  
6 what you put here. There is a question that asked you if  
7 you could consider mitigation, like, Defendant's health,  
8 mental status, age, childhood experience, education.

9 The law requires you to consider that  
10 type of background when you determine a person's fate.  
11 Do you feel you would be fair, and, again, do you think  
12 you are the appropriate person for what we are asking you  
13 to do?

14 A I don't think my prejudice would get in the  
15 way. By prejudice, I mean, my background, not race,  
16 creed, or anything. That's not the prejudice I am  
17 referencing. As far as looking forward to the process, I  
18 wouldn't be looking forward to it. I think I could look  
19 at it from both sides and be fair about it.

20 Q That's all I will ask, and I thank you.

21 MR. WHIPPLE: Pass for cause, your Honor.

22 THE COURT: Wait outside.

23 State can exercise their one and only  
24 peremptory challenge.

25 MS. JACKSON: Your Honor, we have only voir

## THE STATE OF NEVADA v. JOHNSON

1 dired one person since you said we were going to get the  
2 extra one.

3 THE COURT: How many did you think you can  
4 voir dire?

5 MR. DASKAS: I guess our question is, it's  
6 a bit unorthodox here. Technically, there are three  
7 alternates seated. You were gracious enough to give us  
8 one more because of our concern. My question is, if we  
9 exercise this peremptory challenge, can we exercise  
10 against any of the jurors the peremptory challenge.

11 That's the fair thing to do.

12 THE COURT: I don't know if that's what I  
13 was doing. I thought we accepted those.

14 MS. JACKSON: That's our understanding.

15 MR. WHIPPLE: Yes, your Honor.

16 THE COURT: I was giving you one additional  
17 alternate.

18 MS. JACKSON: Since that time there is one  
19 person to choose from.

20 (DISCUSSION AT BENCH.)

21 THE COURT: State, what do you want to do?

22 MR. DASKAS: The question is, Judge,  
23 whether we are bringing in another alternate. Both sides  
24 can see what we have to choose from to exercise the  
25 challenge. That gives the Defense the advantage of

THE STATE OF NEVADA v. JOHNSON

1 striking this person with their challenge.

2 THE COURT: I gave you guys an extra one.

3 All right. So we had closed it. Everyone was picked. I  
4 decided to give you an additional one. Why would I bring  
5 up the other ones. This is how we strike the ones.

6 You are saying I should bring up  
7 three jurors and let you strike two of them?

8 MR. DASKAS: No, no. What I am suggesting  
9 and what the Defense suggested, maybe I heard them wrong,  
10 is we bring in another potential alternate right now,  
11 both sides do what we do.

12 MS. JACKSON: Right now we have one.

13 THE COURT: All we need is one.

14 If nobody objects to him, we keep  
15 him.

16 MR. DASKAS: When we waive it --

17 THE COURT: Fine. We won't pick another  
18 one. I was trying to be generous. We have two. We will  
19 keep it at two. Fine. What do you want to do?

20 I am going to bring in the jurors.  
21 Bring them in.

22 MR. DASKAS: What about Mr. Perry?

23 THE COURT: We will keep him here. Right.

24 MR. STANTON: Is there a status on Ms.  
25 Batts, your Honor?

## THE STATE OF NEVADA v. JOHNSON

1 THE COURT: I don't know where she is.

2 (BREAK IN PROCEEDINGS

3 1:45 TO 2:01 P.M.)

4 THE COURT: Folks, be seated. You are the  
5 folks that will be impaneled to hear this case. We have  
6 some pre-trial motions to do today, but we will start up  
7 on Monday, 10:30 in the morning. When we come in, they  
8 will be allowed to make their opening statements and  
9 start the evidence, and we will get the thing started and  
10 try to get through it.

11 Hopefully, they will finish in a  
12 week. I don't want you to do any investigation on your  
13 own. I don't want you to go to the scene. Don't discuss  
14 the case with anyone. Don't talk to anyone about the  
15 case. Don't do any of that.

16 What we will do is we will give you  
17 further detailed instructions when you come back Monday  
18 morning. I don't want you to read any newspaper articles  
19 about the case. Don't listen to any television reports  
20 or internet reports about the case or do anything, and we  
21 will see you Monday morning.

22 PROSPECTIVE JUROR NO. 309: We come here or  
23 jury services?

24 THE COURT: Jury services.

25 MS. JACKSON: Your Honor, you had given us

## THE STATE OF NEVADA v. JOHNSON

1 permission for the Regent thing Monday morning, if you  
2 recall that.

3 THE COURT: I don't remember that. 10:30.

4 THE BAILIFF: All rise.

5 THE COURT: Let me tell you guys something,  
6 we spend a whole week picking the jury. We are going  
7 ahead and moving on with the case now. I have given you  
8 all the time in the world and you still -- we are going  
9 through the case and get started. I am not going to be  
10 fooling around anymore. Whatever this is you want to do,  
11 you got the rest of the afternoon to get together, see  
12 how to do it. If you can't resolve it, how you will  
13 handle it, let me know your proposals, and I will decide.  
14 I expect you to spend the next few hours doing it. Be in  
15 recess.

16 \* \* \* \* \*

17 (END OF PROCEEDINGS 2:05 P.M.)

18  
19 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF  
20 PROCEEDINGS.

21 

22 KRIS MOORE, CCR 273  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

**ORIGINAL**

**FILED**

2005 APR 26 A 8 56

*Callie J. Riley*  
Clerk

THE STATE OF NEVADA, )

PLAINTIFF, )

VS. )

CASE NO.: C153154

DONTE JOHNSON, A )

DEFENDANT. )

REPORTER'S TRANSCRIPT

OF

TRIAL BY JURY

(VOLUME V - P.M.)

BEFORE THE HONORABLE JUDGE LEE A. GATES  
DISTRICT COURT JUDGE  
DEPARTMENT VIII

DATED MONDAY, APRIL 25, 2005

FOR THE PLAINTIFF: ROBERT J. DASKAS, ESQ.  
DAVID STANTON, ESQ.

FOR THE DEFENDANT: ALZORA B. JACKSON, ESQ.  
BRET WHIPPLE, ESQ.

REPORTED BY: SONIA L. RILEY, CCR NO. 727

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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APR 26 2005

CLERK

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 ROBERT J. DASKAS, ESQ.  
4 DAVID STANTON, ESQ.  
5 DISTRICT ATTORNEY'S OFFICE  
6 200 South Third Street  
7 Las Vegas, Nevada 89101  
8 (702) 455-4711

8 FOR THE DEFENDANT:

9 ALZORA B. JACKSON, ESQ.  
10 SPECIAL PUBLIC DEFENDER'S OFFICE  
11 333 South Third Street  
12 Second Floor  
13 Las Vegas, Nevada 89155  
14 (702) 455-6265

15 BRET O. WHIPPLE, ESQ.  
16 229 S. Las Vegas Blvd.  
17 Suite 205  
18 Las Vegas, Nevada 89101  
19 (702) 257-9500

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SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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I N D E X

PAGE

STATE'S CASE-IN-CHIEF

4

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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W I T N E S S E S

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E X H I B I T S

<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>MKD.</u>	<u>ADM.</u>
246	Poster board diagram of crime scene	25	26

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P R O C E E D I N G S

\* \* \* \* \*

**THE BAILIFF:** All rise. Court is again in session. Be seated and come to order.

Let the record reflect the presence of all the parties, all the attorneys and all members of the jury.

Call your first witness.

**MR. DASKAS:** Judge, the State calls Justin Perkins, please.

STATE'S CASE IN CHIEF

**THE BAILIFF:** Remain standing and face the clerk.

**THE CLERK:** Raise your right hand.

(Oath administered.)

**THE WITNESS:** I do.

**THE CLERK:** Please be seated. When you're seated, state your name and then spell your name for the record.

**THE WITNESS:** My name is Justin Perkins, J-U-S-T-I-N, P-E-R-K-I-N-S.

/////

DISTRICT COURT

FILED

CLARK COUNTY, NEVADA 2005 APR 25 A 9:06

ORIGINAL

*[Signature]*  
CLERK

THE STATE OF NEVADA,

PLAINTIFF,

VS.

CASE NO.: C153154

DONTE JOHNSON,

DEFENDANT.

REPORTER'S TRANSCRIPT

OF

TRIAL BY JURY

(VOLUME IV - P.M.)

BEFORE THE HONORABLE JUDGE LEE A. GATES  
DISTRICT COURT JUDGE  
DEPARTMENT VIII

DATED FRIDAY, APRIL 22, 2005

FOR THE PLAINTIFF: ROBERT J. DASKAS, ESQ.  
DAVID STANTON, ESQ.FOR THE DEFENDANT: ALZORA B. JACKSON, ESQ.  
BRET WHIPPLE, ESQ.

REPORTED BY: SONIA L. RILEY, CCR NO. 727

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SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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COUNTY CLERK

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 ROBERT J. DASKAS, ESQ.  
4 DAVID STANTON, ESQ.  
5 DISTRICT ATTORNEY'S OFFICE  
6 200 South Third Street  
7 Las Vegas, Nevada 89101  
8 (702) 455-4711

8 FOR THE DEFENDANT:

9 ALZORA B. JACKSON, ESQ.  
10 SPECIAL PUBLIC DEFENDER'S OFFICE  
11 333 South Third Street  
12 Second Floor  
13 Las Vegas, Nevada 89155  
14 (702) 455-6265

15 BRET O. WHIPPLE, ESQ.  
16 229 S. Las Vegas Blvd.  
17 Suite 205  
18 Las Vegas, Nevada 89101  
19 (702) 257-9500

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SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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I N D E X

PAGE

VOIR DIRE (RESUMED)

4

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

3

1                    VOIR DIRE EXAMINATION (RESUMED)

2  
3                    **THE BAILIFF:** All rise. Department VIII  
4 is now in session, Judge Lee Gates presiding.

5                    Please be seated and come to order.

6                    **THE CLERK:** Will you please stand and  
7 raise your right hand to be sworn?

8                    (Prospective jurors sworn.)

9                    **THE CLERK:** Thank you.

10                   **THE COURT:** Folks, you guys weren't here  
11 the other day, and we're still picking a jury. We  
12 have a couple more to go. What we're going to do is  
13 we're going to be asking you some questions to try  
14 to find out whether or not you can be fair and  
15 impartial in this case. There are no right answers,  
16 there are no wrong answers; we just want to see what  
17 kind of attitude you have and whether or not this is  
18 the right kind of case for you to sit on.

19                   If you don't understand a question or you  
20 need more information, don't hesitate to ask us to  
21 repeat it or clarify or explain it.

22                   All of the questioning is done under oath.  
23 It's very important that you be completely open and  
24 honest in your answers, and the reason for that is  
25 if you withhold information from us or make

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1 misrepresentations, then the verdict will have to be  
2 thrown out, and we'll have to start all over with a  
3 new trial. That's very time-consuming and costly,  
4 so for that reason, we ask that you be honest and  
5 truthful in your answers.

6 I suspect this case might be two weeks, so  
7 I just want you to be aware of that. Of course, it  
8 might not be, because a lot of it has to do with us  
9 picking a jury. We've been here all week picking a  
10 jury.

11 You received the questionnaire. We're  
12 going to be asking you questions about that, but if  
13 there's something that you feel we should know --  
14 whether or not we ask a question -- that may have an  
15 impact on your ability to be fair and impartial, you  
16 let us know. If you know any of the people  
17 involved, any of the witnesses or the lawyers or the  
18 defendant or the victim, we want you to let us know.

19 In a minute, I'm going to have the lawyers  
20 tell you who the people are involved in this case,  
21 and I want you to let me know if you know anything  
22 about them. Also, I want to know what you heard  
23 about the case, also, if you heard anything in the  
24 newspapers or talked to neighbors or any other  
25 people that told you any information about the case,

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1 we want to know that also.

2 State, do you want to tell them where this  
3 occurred and who the people are involved --

4 **MR. DASKAS:** I will, Judge. Thank you.

5 **THE COURT:** -- the witnesses.

6 **MR. DASKAS:** Good morning. This is David  
7 Stanton (indicating), and my name is Robert Daskas.  
8 We are Deputy District Attorneys with the Clark  
9 County D.A.'s Office, and we are assigned the  
10 prosecution of this case against the defendant Donte  
11 Johnson. As the Judge mentioned, as the  
12 questionnaire mentioned, this is a little different  
13 situation. You're not called upon to determine  
14 guilt or innocence. Donte Johnson has been  
15 convicted by a jury of four counts of First-degree  
16 Murder with Use of a Deadly Weapon, and you'll be  
17 called upon to determine the appropriate punishment  
18 if you're selected as jurors.

19 I want to mention just briefly about the  
20 facts of the case. If you've heard of the case or  
21 you've read about it, let the Judge know, and he'll  
22 have some additional questions. The case was a  
23 quadruple homicide that occurred on August 14th,  
24 1998 in a home off Tropicana Avenue on a street  
25 called Terra Linda Avenue in East Las Vegas. There

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1 were four young men who lost their lives: Tracey  
2 Gorringer, Jeff Biddle, Peter Talamentez and Matthew  
3 Mowen. In addition to Donte Johnson being charged,  
4 there were two others charged, Terrell Young and  
5 Sikia Smith.

6           What we're going to do in this hearing is  
7 we're going to call a detective to summarize the  
8 evidence presented at the previous trial, and there  
9 will be a number of witness names mentioned. I'm  
10 going to read some of those names, and as the Judge  
11 said, if you recognize those names or if you know  
12 anybody, let the Judge know, and he will have some  
13 other questions.

14           The detective who would summarize the  
15 testimony is Detective Thowsen from the Las Vegas  
16 Police Department. The witnesses would include  
17 Justin Perkins, Charla Severs, Bryan Johnson, Ace  
18 Hart, Todd Armstrong, Sergeant Robert Honea from the  
19 Nevada Highway Patrol will be mentioned. Ed  
20 Guenther is a fingerprint examiner with Metro; Tom  
21 Wahl is a DNA scientist with Metro; Dr. Robert  
22 Bucklin performed the autopsies in this case, but we  
23 will have someone named Dr. Gary Telgenhoff describe  
24 the findings of autopsy. Shawn Fletcher is a crime  
25 scene analyst. You will hear her name mentioned if

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1 you're selected. She's employed by Metro as well.  
2 There will be potentially a number of witnesses from  
3 out of state -- Grace Garcia and Steve Burciaga from  
4 the Los Angeles Police Department will testify. A  
5 couple of people from probation in Los Angeles  
6 County, Robert Hoffman and Craig Clark, a retired  
7 lieutenant from LAPD is Lieutenant Grayson. We'll  
8 here from him as well. As I said, not all of those  
9 people will testify, but you'll hear their names  
10 mentioned, so if you recognize the case or the  
11 witnesses, let Judge Gates know.

12 Thank you so much.

13 **THE COURT:** Counsel for the defense.

14 **MS. JACKSON:** Thank you, your Honor.

15 Good morning, ladies and gentlemen. My  
16 name is Alzora Jackson, and I'm a Deputy Public  
17 Defender here in Clark County. Bret Whipple is my  
18 co-counsel. He's an attorney here in town.

19 **MR. WHIPPLE:** Good morning.

20 **MS. JACKSON:** Together, we represent  
21 Mr. Donte Johnson, also known as John White. Thank  
22 you.

23 We too will have a chance to present  
24 witnesses in this penalty phase. I hope I can  
25 remember them all. I didn't remember to bring my

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1 sheet. We have some local witnesses. I can start  
2 with one local attorney, Gloria Navarro who used to  
3 work in our office, and she now works with the civil  
4 division in the District Attorney's office. We also  
5 will call a couple of correctional officers from the  
6 Detention Center, Officer Johnson and Officer Perez.  
7 We may also call a lady named Nancy Hunterton, and  
8 she runs the Life Skills program over at the Clark  
9 County Detention Center. The bulk of our witnesses  
10 will come from Southern California which is where  
11 Mr. Johnson is from -- the L.A. area, South Central  
12 L.A., and they are mostly his family members -- his  
13 mother Eunice King, grandmother Jane Edwards, sister  
14 Johnnisha Zamura, Eunisha White, an aunt Wanda Faye  
15 Johnson, Moises Zamura. There are two minor  
16 children you will hear from, those are Donte's  
17 children, Allen and Anijah White, minor children.  
18 Who have I omitted from Los Angeles?

19 Can you think of any of the witnesses?

20 **THE DEFENDANT:** That's about it.

21 **MS. JACKSON:** That's about it.

22 Thank you, Donte.

23 You may hear from Craig Clark who is also  
24 from the Los Angeles area. We have individuals that  
25 you may hear from that are actually serving time

1 here in Nevada, and that list begins with Mr. Jose  
2 Vigoa, Termaine Lytle, George Cotton, Reginald  
3 Johnson, Sikia Smith who is a co-defendant in this  
4 case.

5 Thank you very much for your attention.

6 **THE COURT:** Thank you.

7 **MS. JACKSON:** You're welcome.

8 **THE COURT:** Now, do any of you know either  
9 of the Deputy District Attorneys, Mr. Daskas or  
10 Mr. Stanton? If so, let me know by raising your  
11 hands.

12 I see no hands, so I assume none of you  
13 know them.

14 Do any of you have any friends or  
15 relatives who work for the District Attorney's  
16 office? If so, raise your hands.

17 I see no hands, so I assume the answer for  
18 each of you is no to that.

19 Do any of you know the defendant's  
20 lawyers, Mr. Whipple or Miss Jackson?

21 I see no hands, so I assume you don't know  
22 them.

23 Do any of you know the defendant?

24 I see no hands, so I assume none of you  
25 know the defendant.

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1 Do any of you know any of the victims in  
2 this case?

3 Yes, ma'am. What's your badge number?

4 **PROSPECTIVE JUROR 309:** One one zero three  
5 zero nine. It's an extension of the victim.

6 **THE COURT:** Zero three nine nine?

7 **PROSPECTIVE JUROR:** Three zero nine.

8 **THE COURT:** Three zero nine. All right.

9 **PROSPECTIVE JUROR:** I lived at 5344  
10 Hillsborough. It was about a half a mile away from  
11 the house, and I remember my son's friend not coming  
12 to school that day. It happened in that friend's  
13 house.

14 **THE COURT:** Anyone else?

15 Yes, ma'am. Badge number?

16 **PROSPECTIVE JUROR:** One one zero three  
17 zero five.

18 **THE COURT:** Three zero five -- last three  
19 digits?

20 **PROSPECTIVE JUROR 305:** Yes.

21 **THE COURT:** Yes, ma'am.

22 **PROSPECTIVE JUROR:** I believe, and I'm  
23 almost positive, my husband, through business, knew  
24 one of the victim's fathers. For some reason, it  
25 sounds very familiar.

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1           **THE COURT:** Anyone else?

2           Did any of you recognize the names of any  
3 of the other people which the State or the defendant  
4 said they were calling?

5           I see no hands, so I assume the answer for  
6 each of you is no to that question.

7           How many of you have heard about this case  
8 other than the two people who already answered?  
9 Just about all of you, huh? Okay. We'll explore  
10 that later.

11           This is what we're going to do. We're  
12 going to start off with Mr. -- is it Van Dine  
13 (phonetic)?

14           **PROSPECTIVE JUROR 286:** Yes.

15           **THE COURT:** Okay. The rest of you remain  
16 outside and we'll call you.

17           (Outside the presence of the prospective  
18 jurors.)

19  
20           VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 286

21           **THE COURT:** Mr. Van Dine, I read over your  
22 questionnaire here. A couple of things.

23           Now, you stated that if a lengthy trial is  
24 expected, that your fairness would be compromised  
25 because you want to get out of here rather than lose

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1 money by being here for a length of time.

2 What's a lengthy time for you?

3 **PROSPECTIVE JUROR 286:** The job that I  
4 work in is mostly based on a commission basis, so as  
5 long as the trial goes, it finally would be --  
6 possibly may compromise my fairness.

7 **THE COURT:** So, what you're saying is you  
8 make money by commissions.

9 How long have you been off of work now?

10 **PROSPECTIVE JUROR:** I missed one day.

11 **THE COURT:** You missed one day?

12 **PROSPECTIVE JUROR:** Um-hmm.

13 **THE COURT:** So, a week or two you feel  
14 would be too long for you to stay here; is that  
15 correct?

16 **PROSPECTIVE JUROR:** That is possible, yes.

17 **THE COURT:** What now?

18 **PROSPECTIVE JUROR:** That is possible, yes.

19 **THE COURT:** Possible -- we can't deal with  
20 possible; we have to know. I can understand, but  
21 it's a financial sacrifice for everybody to come  
22 down here.

23 **PROSPECTIVE JUROR:** I understand that, and  
24 I will try to be fair.

25 **THE COURT:** I understand that, but I did

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1 understand you too, if you work on commission and  
2 can't get paid and you're worried about that and  
3 can't concentrate on the trial, that wouldn't be  
4 fair to the defendant, so if that's your posture and  
5 how it would really be, that's what I want to know".

6 **PROSPECTIVE JUROR:** Yes.

7 **THE COURT:** Do you want to question him?

8 **MR. DASKAS:** No, sir.

9 **MS. JACKSON:** No, sir.

10 **THE COURT:** Submit it?

11 **MR. DASKAS:** Yes.

12 **MS. JACKSON:** Yes.

13 **THE COURT:** All right. We'll excuse you,  
14 sir.

15  
16 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 292

17 **THE COURT:** Rita Decelles. Miss Decelles?

18 **PROSPECTIVE JUROR 292:** Yes.

19 **THE COURT:** Miss Decelles, you've been in  
20 Las Vegas four years?

21 **PROSPECTIVE JUROR:** Yes.

22 **THE COURT:** Did you come from Connecticut  
23 or some other place?

24 **PROSPECTIVE JUROR:** San Pedro, California.

25 **THE COURT:** California.

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1           How long did you live in California?  
2           **PROSPECTIVE JUROR:** Four years -- three or  
3 four years. My husband is in the military.  
4           **THE COURT:** What branch?  
5           **PROSPECTIVE JUROR:** Air Force.  
6           **THE COURT:** Air Force. Okay.  
7           What does he do in the Air Force?  
8           **PROSPECTIVE JUROR:** No idea.  
9           **THE COURT:** You don't know what he does?  
10          **PROSPECTIVE JUROR:** It's classified.  
11          **THE COURT:** Oh, okay.  
12          **PROSPECTIVE JUROR:** He's retired now. He  
13 retired here about a year and a half ago.  
14          **THE COURT:** So, he retired about a year  
15 and a half ago here?  
16          **PROSPECTIVE JUROR:** Yeah, he retired about  
17 a year and a half ago here.  
18          **THE COURT:** And you have two sons?  
19          **PROSPECTIVE JUROR:** Yes.  
20          **THE COURT:** Are they living here or are  
21 they out of state?  
22          **PROSPECTIVE JUROR:** My oldest one lives  
23 here, and my youngest one lives in Hawthorne,  
24 California.  
25          **THE COURT:** Which one, the guy who works

1 for Fed Ex?

2 **PROSPECTIVE JUROR:** The oldest one lives  
3 here.

4 **THE COURT:** Timothy?

5 **PROSPECTIVE JUROR:** Yes.

6 **THE COURT:** Is here?

7 **PROSPECTIVE JUROR:** Yes.

8 **THE COURT:** And the other son is in  
9 Hawthorne.

10 What does he do in Hawthorne?

11 **PROSPECTIVE JUROR:** He just got a new job.  
12 He works at the airport.

13 **THE COURT:** Oh, okay.

14 Now, you've never been on a jury before?

15 **PROSPECTIVE JUROR:** No.

16 **THE COURT:** Have you or anyone in your  
17 family ever been charged with a crime?

18 **PROSPECTIVE JUROR:** No.

19 **THE COURT:** Have you or anyone in your  
20 family ever been the victim of a crime?

21 **PROSPECTIVE JUROR:** No.

22 **THE COURT:** Which one of your sons is  
23 married to a Mexican lady?

24 **PROSPECTIVE JUROR:** That was my oldest  
25 son, Timothy. She passed away.

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1           **THE COURT:** Did she die of natural causes?  
2           **PROSPECTIVE JUROR:** She was taking that  
3 Fen Phen --  
4           **THE COURT:** And had a heart attack?  
5           **PROSPECTIVE JUROR:** -- and she died.  
6 Yeah.  
7           **THE COURT:** Do you believe that you can be  
8 fair and impartial in this case?  
9           **PROSPECTIVE JUROR:** Yes.  
10          **THE COURT:** You can follow the Court's  
11 instructions on the law?  
12          **PROSPECTIVE JUROR:** I didn't hear you.  
13          **THE COURT:** Could you follow the Court's  
14 instructions on the law?  
15          **PROSPECTIVE JUROR:** Yes.  
16          **THE COURT:** Can you wait until you've  
17 heard all the evidence before you make up your mind?  
18          **PROSPECTIVE JUROR:** Yes.  
19          **THE COURT:** Now, you understand that --  
20 tell me this here: Have you ever had any close  
21 friends or relatives who have been the victim of a  
22 violent crime?  
23          **PROSPECTIVE JUROR:** The only thing that I  
24 can say is my sister used to -- what do you call  
25 that -- her husband used to beat her up all the

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17

1 time.

2 **THE COURT:** Okay.

3 Domestic violence?

4 **PROSPECTIVE JUROR:** Yeah.

5 **THE COURT:** Where do they live?

6 **PROSPECTIVE JUROR:** Connecticut.

7 **THE COURT:** Connecticut.

8 Was the husband Caucasian?

9 **PROSPECTIVE JUROR:** White, yes.

10 **THE COURT:** Are they still married?

11 **PROSPECTIVE JUROR:** Yes.

12 **THE COURT:** Now, you understand that  
13 you're going to be deciding the penalty for the  
14 defendant in this case.

15 Do you understand that?

16 **PROSPECTIVE JUROR:** That's meaning --

17 **THE COURT:** Punishment.

18 **PROSPECTIVE JUROR:** Right.

19 **THE COURT:** He's already been convicted of  
20 four counts of first-degree murder.

21 Do you understand that?

22 **PROSPECTIVE JUROR:** Um-hmm.

23 **THE COURT:** Is that a "yes"?

24 **PROSPECTIVE JUROR:** Yes. Sorry.

25 **THE COURT:** Now, the State law allows the

1 jury to sentence a person who has been convicted of  
2 first-degree murder to one, the death penalty or  
3 life imprisonment without parole, life imprisonment  
4 with the possibility of parole or for a definite  
5 term of 50 years with the possibility of parole  
6 after 20 years, and those sentences are doubled  
7 because a deadly weapon was used.

8 **PROSPECTIVE JUROR:** Okay.

9 **THE COURT:** So, the definite term would  
10 be -- in actuality would be 100 years with parole  
11 after 40 years.

12 Now, would you be able to consider all  
13 four forms of punishment?

14 **PROSPECTIVE JUROR:** Yes.

15 **THE COURT:** Could you wait until you heard  
16 all the evidence about the background of the people,  
17 the facts of the case, the circumstances of what  
18 happened and listen to the arguments of counsel and  
19 the law and pick the appropriate sentence?

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** You haven't made your mind up  
22 already, have you?

23 **PROSPECTIVE JUROR:** Not really. You know,  
24 when I went through the thing, I read a few things.  
25 I don't think I -- I think I could.

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1           **THE COURT:** You think you could what?  
2           **PROSPECTIVE JUROR:** I think I could be  
3 fair on the judgment, and I was also told that I  
4 needed to tell you that I won't be here next week.  
5           **THE COURT:** Well, if you won't be here  
6 next week, how are you going to serve on a jury?  
7           **PROSPECTIVE JUROR:** I didn't know when to  
8 tell you. This is my first time. I've ever done  
9 this.  
10          **THE COURT:** Where are you supposed to be?  
11          **PROSPECTIVE JUROR:** My daughter-in-law is  
12 having trouble with her pregnancy. She needs  
13 someone to help her. She lives in California.  
14          **THE COURT:** Where is her mom?  
15          **PROSPECTIVE JUROR:** Excuse me?  
16          **THE COURT:** Where is your  
17 daughter-in-law's mother?  
18          **PROSPECTIVE JUROR:** She's going on  
19 vacation that week. She's been taking care of her  
20 the whole other time. Sorry.  
21          **MS. JACKSON:** We will submit it, your  
22 Honor.  
23          **MR. DASKAS:** Submit it, Judge.  
24          **THE COURT:** All right. You're excused.  
25          **PROSPECTIVE JUROR:** Thank you.

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1     VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 296

2             **THE COURT:** Mr. -- is it Branton?

3             **PROSPECTIVE JUROR 296:** Branton, yes.

4             **THE COURT:** Mr. Branton, two things about  
5 your questionnaire caught my eye right off the bat  
6 there -- more than two things. There's a couple of  
7 things. One of them is when they asked you the  
8 question about would the victim's race and the  
9 defendant's race being different make a difference,  
10 and you said, "Yes, it would."

11             What do you mean by that? How would it  
12 alter your judgment?

13             **PROSPECTIVE JUROR:** I expanded on that a  
14 little bit. I said if it was an entire -- what I'm  
15 talking about is if it was a hate crime. I wasn't  
16 sure about the case itself until sitting in here  
17 when I remember parts of it. If it was a hate crime  
18 was what I was thinking of, so more along those  
19 lines where one of the defendant's race was one and  
20 all the victims were another race.

21             **THE COURT:** Because they were different  
22 races, you think that's a hate crime?

23             **PROSPECTIVE JUROR:** In some instances it  
24 is, not across the board.

25             **THE COURT:** In some instances.



1           **PROSPECTIVE JUROR:** We were told not to  
2 speculate on the case. I was just going by what was  
3 written.

4           **THE COURT:** Well, you know what, over here  
5 you said, "I am not 100 percent sure that the system  
6 works. I would not believe that I'm not prejudiced  
7 against anybody, but I'm not sure of that," which is  
8 fine. Everybody is entitled to their own beliefs,  
9 but you can understand that the defendant and his  
10 lawyer don't want someone who is going to be biased  
11 against him because of his race?

12           **PROSPECTIVE JUROR:** I understand that.

13           **THE COURT:** And it appears that you might  
14 have some of that.

15           **PROSPECTIVE JUROR:** No, I don't think so,  
16 not from my perspective I don't feel that way. I  
17 was mainly thinking about hate crimes, not anything  
18 in particular about this particular case.

19           **THE COURT:** I understand that though, but  
20 you said, "I'm not prejudiced against anybody, but  
21 I'm not sure of that." I don't know you, but that's  
22 what you said, so you told us that.

23           **PROSPECTIVE JUROR:** I mean, I'd like to  
24 think I'm not.

25           **THE COURT:** But you said you're not sure;

1 so, what makes you think you're not sure? There's  
2 nothing to be embarrassed about or anything.

3 **PROSPECTIVE JUROR:** No; I --

4 **THE COURT:** We've had I don't know how  
5 many people come in here and say hey, look, I don't  
6 like certain people. I'm prejudiced against this  
7 group or that group which happens all the time.  
8 That's human nature; we just want to know about it.  
9 There's nothing to be embarrassed about or ashamed  
10 about it.

11 **PROSPECTIVE JUROR:** No, I don't feel I'm  
12 prejudiced against anybody in particular about race  
13 or gender or actual preference. Maybe deep down  
14 inside there's something, but on the surface, to the  
15 best of my knowledge, I treat everybody the same.

16 **THE COURT:** Oh, okay. That's all we want  
17 to know. I just saw that statement, so I had a  
18 question about that.

19 And of course, you know, like the  
20 statement said, I think the race of the victim and  
21 the defendants, that's different, but what I want to  
22 know is that's not going to be your determinative --  
23 you're not going to base your decision on that?

24 **PROSPECTIVE JUROR:** No, of course not.

25 **THE COURT:** We want people who are going

1 to be unbiased, impartial and listen to the facts  
2 and make their decision based on the facts and the  
3 law.

4 Can you do that?

5 **PROSPECTIVE JUROR:** I can.

6 **THE COURT:** Now, you state here -- the  
7 punishment. If you're picked to serve on this jury,  
8 you're going to have to decide the punishment, and  
9 there are certain laws regarding that that tells you  
10 how you're supposed to analyze the evidence, and any  
11 kind of laws, which is my job to instruct you on.  
12 But the law is that if you're going to serve on a  
13 jury where a person has been convicted of  
14 first-degree murder, there are four possible  
15 sentences that the jury can impose. One is the  
16 death penalty, life in prison without the  
17 possibility of parole, life in prison with the  
18 possibility of parole or for a definite term of 50  
19 years with the possibility of parole after 20 years,  
20 and those terms are doubled because a deadly weapon  
21 was used. The 50 years in actuality would be  
22 doubled to a hundred years with parole after 40  
23 years, and the same would be true for the life  
24 imprisonment with the possibility of parole.

25 Do you understand that?

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24

1           **PROSPECTIVE JUROR:** Yes.

2           **THE COURT:** So, the law requires that you  
3 be able to consider all four forms of punishment,  
4 and you understand that this is -- the defendant has  
5 already been convicted of four counts of  
6 first-degree murder.

7           **PROSPECTIVE JUROR:** I understand that.

8           **THE COURT:** And these sentences would  
9 apply to each count. He has to be sentenced on each  
10 count.

11           Do you understand that?

12           **PROSPECTIVE JUROR:** Would they be  
13 consecutive terms or are they all at the same time?

14           **THE COURT:** The Court would decide that.

15           **PROSPECTIVE JUROR:** Okay.

16           **THE COURT:** All right.

17           What I want to know is could you consider  
18 all four forms of punishment? Are you open to all  
19 four forms? What I mean by "open to them" or "can  
20 consider them" -- some people come in and say,  
21 "Under no circumstances if somebody kills somebody,  
22 the only punishment that I can impose is the death  
23 penalty." All right? Some people come in and say,  
24 "I don't believe in life in prison without the  
25 possibility of parole, because it cost taxpayers too

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25

1 much money, so the only thing I can impose is either  
2 death or life in prison with the possibility of  
3 parole."

4           What I want to know is do you have any  
5 feelings like that or are you open to all four and  
6 can choose either one of the four if you thought the  
7 facts, the evidence and the circumstances warranted?

8           **PROSPECTIVE JUROR:** Yes.

9           **THE COURT:** Okay.

10           You don't think you would have any  
11 problems following the Court's instructions on the  
12 law?

13           **PROSPECTIVE JUROR:** No.

14           **THE COURT:** Of course, the attorneys are  
15 going to be kind of wondering about this, because in  
16 this one thing you said you're in favor of the death  
17 penalty, but you said, "If it come this far, the  
18 death penalty should be the only option."

19           You know that's not the only option  
20 according to the law.

21           **PROSPECTIVE JUROR:** I understand that.

22           **THE COURT:** Okay.

23           **PROSPECTIVE JUROR:** I understand that.

24           **THE COURT:** State.

25           **MR. DASKAS:** Thank you, Judge.

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EXAMINATION BY THE STATE

**BY MR. DASKAS:**

Q Mr. Branton, good morning, and thank you for your patience. I will represent to you this was not a hate crime.

A Okay.

Q We can dispense with that?

A Yes.

Q You'll accept that representation?

A Yes.

Q I appreciate that.

It's a little different situation in that you, if selected, have to accept the fact that another jury has convicted this defendant.

Can you accept those verdicts even though you didn't sit through the evidence?

A To judge somebody for life or death, I don't know. Now that it's come to this and I'm in here taking somebody else's word, that, I'm not sure of now that I sit here.

Q Let me add two additional factors to that.

Number one, the Judge would instruct you that you're required to accept those verdicts.

Can you follow that instruction?

1 A Yes.

2 Q Number two, we will present to the jury  
3 highlights, if you will, of the murders themselves  
4 and the evidence that implicated, if you will, the  
5 defendant.

6 Would that make you feel more comfortable?

7 A Yes.

8 Q In that situation, you would rely on those  
9 verdicts?

10 A Yes.

11 Q Let's get to the second part, punishment.

12 You realize now your job would be to  
13 impose punishment?

14 A Yes.

15 Q It's a bit unfair in the questionnaire,  
16 because we only tell people this man is a four-time  
17 convicted murderer, can you consider parole, and you  
18 haven't heard all the evidence in the case.

19 A Right.

20 Q You haven't heard what we might present or  
21 the defense might present in this man's background  
22 in what we call "mitigation."

23 Would you consider those things?

24 A Based on other mitigating circumstances,  
25 yes.

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1           Q       That would be important to you in deciding  
2 this man's fate?

3           A       Yes.

4           Q       Can you assure us you will consider all  
5 the evidence we present?

6           A       Yes.

7           Q       Let me kind of forecast for you a scenario  
8 of possibility in this case which is the following:  
9 You're selected as a juror, you've heard all the  
10 evidence presented, you've considered what the  
11 defense presents about this man's background and you  
12 are convinced that the death penalty is appropriate,  
13 can you impose that punishment?

14          A       Yes.

15          Q       One other question.

16                 As a juror, you're required to select a  
17 foreperson. You decide amongst yourselves who  
18 should be the foreperson, and as the foreperson, you  
19 have the same vote as everybody else, but you have  
20 one additional responsibility, and that is, you have  
21 to sign the verdict form that sentences the  
22 defendant to death. If you, as a jury, collectively  
23 agree that death is appropriate, and if the jurors  
24 think you should be the foreperson, could you sign  
25 that verdict?



1           A       I don't know.

2           Q       It's a big responsibility. You would  
3 agree with that?

4           A       Yes. Without hearing everything and  
5 knowing everything, I don't know.

6           Q       Right. Again, my question sort of  
7 requires us to assume a whole bunch of things, so  
8 we're assuming in my question that you've heard all  
9 the evidence, that you're convinced death is the  
10 appropriate punishment and that the jury has  
11 collectively agreed that should be the sentence.

12                   Assuming all those things to be true, do  
13 you think in that situation you could sign the  
14 verdict form?

15           A       Yes.

16           Q       And it may be that you're not selected  
17 foreperson, maybe you don't have the responsibility.

18                   Do you understand that?

19           A       Yes.

20           Q       One final area. There are four victims in  
21 this case, and what that means is as a juror and as  
22 a jury, you have to assign punishment for each of  
23 those four murders.

24                   You recognize that because you asked the  
25 Judge about consecutive time; is that correct?

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1 A Yes.

2 Q Could you consider punishment for each of  
3 those murders, and could you consider at least the  
4 possibility of assigning different punishments for  
5 the different murders?

6 A Based on knowing all the circumstances?

7 Q Exactly.

8 A Yes.

9 **MR. DASKAS:** Thank you. I appreciate it.  
10 We'll pass for cause, Judge.

11 **THE COURT:** Defense Counsel.

12 **MS. JACKSON:** Thank you, your Honor.

13

14 EXAMINATION BY THE DEFENSE

15 **BY MS. JACKSON:**

16 Q Good morning, Mr. Branton. How are you  
17 today?

18 A Good, thank you.

19 Q I was a little bit concerned when the  
20 Judge was talking to you about race. Clearly, my  
21 client is African-American. You're going to find  
22 that the victims in this case look more like you  
23 than they do like him. Three of them are very young  
24 Caucasian men, the other one is Hispanic, very  
25 young, 19. I think the oldest one was 21. When the

1 Judge was talking to you, you said, "Well, I don't  
2 have any prejudice on the surface but deep down  
3 inside."

4           Wouldn't you agree that's usually where  
5 prejudice is?

6           A     Well, of course, that's not necessarily  
7 true, because there are plenty of prejudiced people  
8 that it's really on the surface as well.

9           Q     We're worried about the kind that comes  
10 from deep down inside.

11          A     I understand.

12          Q     Where do you stand on that, sir,  
13 especially when you look at -- you're going to see  
14 photographs of these young men. You're going to see  
15 photographs of them as they appeared in life and  
16 you're going to see photographs after what my client  
17 did to them. They were duct taped back, feet.

18          A     I remember parts of the case.

19          Q     You're going to see photographs. They  
20 look a heck of a lot more like you than they do my  
21 client.

22                Is that fact going to interfere with your  
23 ability to give Mr. Donte Johnson the fair penalty  
24 hearing, sir?

25          A     No.

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1 Q You're sure?

2 A Yes.

3 Q All right.

4 You indicate on your questionnaire that  
5 you were concerned about -- you work two jobs,  
6 financial position.

7 Where are you with that issue? You've  
8 been here a week now?

9 A That is a very large concern of mine  
10 still.

11 Q Tell me a little bit about that. What  
12 type of work do you do?

13 A I'm an engineer, and I work for -- do I  
14 need to get specific what companies I work for?

15 Q Whatever you're comfortable with. We just  
16 want to make sure -- my only concern is can you pay  
17 attention in here or are you going to be so worried  
18 about "My God, I'm running behind in my bills. I'm  
19 going to lose my house"?

20 A That is a very large concern. Neither one  
21 of my jobs would pay me to be here. I would be  
22 losing considerable income to be here.

23 Q Everybody loses income.

24 A I understand that.

25 Q As a citizen, we have a duty.

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1           A     I understand that.

2           Q     If you're going to be worried about losing  
3 your home, then we want to know about that.

4           A     It would be very hard for me to be here.  
5 It would be a financial difficulty for me to be  
6 here. Would that weigh in my mind, of course it  
7 would. Would it affect my judgment, no.

8           Q     Unfortunately, it's the way our system  
9 works. We all have hardships.

10                  Okay, we're cleared those two hurdles  
11 also.

12                  You indicate that your father is a lawyer,  
13 I think?

14          A     That's correct.

15          Q     Does he live here in town, sir?

16          A     Yes, he does.

17          Q     What's his name?

18          A     Gary Branton.

19          Q     What type of law does he practice?

20          A     Corporate stuff.

21          Q     Have you ever talked criminal procedure or  
22 criminal law with your dad?

23          A     No.

24          Q     If you were selected as a juror in this  
25 case, would you feel compelled to go and discuss

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1 that with your father, because you would be  
2 admonished that you can't do that until, of course,  
3 the case is over.

4 A No.

5 Q Was your father an attorney when you were  
6 growing up?

7 A No.

8 Q The Judge has touched on this, but you can  
9 see how I -- before I leave this page, it asked you  
10 did you remember anything about this case, and you  
11 didn't circle -- you did not answer that question.  
12 You've had a chance now, a whole week almost, to  
13 think about the case.

14 Do you remember this case when it occurred  
15 or anything?

16 A I do remember parts of it, yes.

17 Q All right.

18 When you reflect back on those thoughts  
19 that you had, had you made up your mind in terms of  
20 what punishment would be appropriate for my client?

21 A No. I don't remember anything that  
22 clearly, I know.

23 Q It just kind of flashes vaguely?

24 A Yes.

25 Q All right.

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1           Getting down to the real issue at hand  
2 here, your attitude towards the death penalty in  
3 that section of the questionnaire -- it was really  
4 of concern to me, because as the Court has pointed  
5 out, you took the time to write in, "If it has come  
6 this far, the death penalty is the only option."

7           By "this far," I'm assuming you meant that  
8 if he's been convicted of killing four people. Yes?

9           A     I would say that I would lean towards  
10 that, but like I told the Judge, I would be open,  
11 based on mitigating circumstances and hearing all  
12 the information, to the four options.

13          Q     Okay.

14                You did write that that you're leaning  
15 heavily towards the death penalty, and that's fine,  
16 except that right above that, the question was, "Are  
17 your beliefs such that" -- about the -- "about the  
18 death penalty such that you would automatically vote  
19 for the death penalty regardless of the facts and  
20 circumstances?" And again, you checked, "Yes."  
21 When I see that in conjunction with "if it has come  
22 this far, death is the only option," I'm concerned  
23 that you did this questionnaire about a week ago.

24                Are you indicating to me now that your  
25 opinions have changed in that week?

1           A       I'm not saying they've changed, but based  
2 on reflecting on the past week of actually being  
3 here and having time to think rather than just  
4 writing it down last week, I can say truthfully that  
5 my initial impression -- my initial thought would be  
6 that if it has come this far and without knowing any  
7 other circumstances, the death penalty would be my  
8 first option, but there are mitigating circumstances  
9 that I would listen to.

10          Q       Such as -- give me an example of the types  
11 of things you would want to know about this man  
12 before you decide if he lived or died. What would  
13 you like to know?

14          A       Maybe not just about him, but the  
15 entire -- how everything happened.

16          Q       They're going to tell you how everything  
17 happened -- Mr. Daskas.

18          A       That would be beyond the fact of your  
19 client's background and how he is now. The  
20 mitigating circumstances would be the entire events  
21 surrounding what happened.

22          Q       Right.

23          A       That would be what I would be looking for.

24          Q       All right. Thank you for being so candid.  
25                   However, Question 38 says that the law



1 here in the State of Nevada indicates that in  
2 addition to finding out about what happened  
3 surrounding the crime -- and the State will make  
4 sure you know that, I promise you -- the law says  
5 that you must consider mitigating evidence as it  
6 relates to Mr. Johnson, and it gave you some  
7 examples on your questionnaire. It talked about  
8 mental status, age, things of that nature. The law  
9 says that you have to listen to those as well.

10           What do you think about that? Do you  
11 think those are the kind of factors that are  
12 important in a case like this?

13           A     Without knowing anything more, I would say  
14 no.

15           Q     So, you're saying that you cannot consider  
16 mitigating factors, period?

17           A     Not those two you brought up, age and  
18 mental status, no.

19           Q     Give me some example of what mitigation  
20 you would consider, Mr. Branton.

21           A     Background.

22           Q     What about his background that you would  
23 feel was important?

24           A     His family, his family history, his  
25 relationship with his family.

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1 Q Okay.

2 A His relationship with the victims, his  
3 relationship with the other people that were  
4 convicted.

5 Q Those could be aggravators. We're talking  
6 about mitigators. Mitigators -- a good definition  
7 of mitigation is any reason that you could have to  
8 give life. It could even be mercy. It could be  
9 because the defendant's mother takes the stand and  
10 you listen to what she has to say and you can  
11 decide -- after due deliberation, after considering  
12 everything in here, you could decide as an  
13 individual juror that, you know what, I'm not going  
14 to kill that man, because his mother's plea to spare  
15 her son was sufficient for mine -- that's sufficient  
16 mitigation for me.

17 Do you understand that concept?

18 A Yes.

19 Q Mitigation in the law says it's whatever  
20 you think it is.

21 A Okay.

22 Q You will be willing to consider mitigation  
23 in this case, sir --

24 A Yes.

25 Q -- as a reason to give life?

1           A     Yes.

2           Q     Do you think life imprisonment is a severe  
3 punishment?

4           A     Yes.

5           Q     Do you think there are any benefits to  
6 giving a penalty of life imprisonment in this  
7 country? Are there any benefits to that in your  
8 mind, in your estimation?

9           A     Benefits?

10          Q     Benefits.

11          A     No.

12          Q     No benefits.

13                Do you see any benefits in the death  
14 penalty to us as a society?

15          A     Yes.

16          Q     What are those benefits?

17          A     That the defendant is no longer a burden  
18 on society. If it's come to that and there's 12  
19 people that agree that's the ultimate benefit, that  
20 they've been convicted and they were found guilty by  
21 12 people and they were sentenced to death by 12  
22 people, that it's gone through 24 people, the  
23 justice system -- that's a benefit in and of itself.  
24 It shows that the system works.

25          Q     Okay.

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1           As he sits here right now, don't you  
2 really feel in your heart that death penalty is the  
3 way to go? Be honest.

4           **MR. DASKAS:** Judge -- I apologize. This  
5 has been asked and answered. He said countless  
6 times he can consider all the options. I think  
7 we're getting a bit cumulative at this point.

8           **MS. JACKSON:** Your Honor, his  
9 questionnaire says "automatically I will vote for  
10 death."

11           **THE COURT:** You grilled him on it over the  
12 last -- I don't know how many minutes. Sustained.  
13 You asked him that repeatedly.

14 **BY MS. JACKSON:**

15           Q     You're not going to automatically vote for  
16 death?

17           A     No.

18           **MS. JACKSON:** Thank you, sir.

19                 Your Honor, we would pass for cause.

20           **THE COURT:** All right.

21                 Sir, remain outside.

22                 State, you guys decide who you're going to  
23 excuse, and I'll be right back.

24           **MR. DASKAS:** Thank you, Judge.

25                 (Brief pause.)

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1           **THE COURT:** The State may exercise their  
2 one and only peremptory challenge of the alternate.

3           **MR. DASKAS:** Your Honor, we would exercise  
4 our only peremptory on Badge No. 278, I believe it's  
5 pronounced Fladgler (phonetic) -- Fladger.

6           **THE COURT:** All right.

7  
8           VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 300

9           **THE COURT:** What is your name, sir?

10          **PROSPECTIVE JUROR 300:** Floyd Scotton.

11          **THE COURT:** So, you're originally from  
12 Philly?

13          **PROSPECTIVE JUROR:** Yes, sir.

14          **THE COURT:** You've been in Las Vegas about  
15 16 years?

16          **PROSPECTIVE JUROR:** That's correct.

17          **THE COURT:** What kind of work do you do?

18          **PROSPECTIVE JUROR:** I am a mortgage broker  
19 and foreclosure consultant.

20          **THE COURT:** And you went to college in  
21 Michigan?

22          **PROSPECTIVE JUROR:** Correct.

23          **THE COURT:** Did you get -- you got a BS  
24 degree?

25          **PROSPECTIVE JUROR:** Yes, sir, Bachelor of

1 Science.

2 **THE COURT:** In what?

3 **PROSPECTIVE JUROR:** Agriculture, with a  
4 major in ornamental horticulture.

5 **THE COURT:** Did you ever work in that  
6 area?

7 **PROSPECTIVE JUROR:** Actually, I did for 22  
8 years.

9 **THE COURT:** Who did you work for?

10 **PROSPECTIVE JUROR:** I worked for a private  
11 company, Environmental Care, and I was transferred  
12 out here, and then I went to work for the casinos --  
13 Lady Luck, Sam's Town and Stratosphere.

14 **THE COURT:** You went to National  
15 University. What did you get there?

16 **PROSPECTIVE JUROR:** I didn't finish,  
17 because I was transferred out here. I was working  
18 on my master's.

19 **THE COURT:** What were you working on?

20 **PROSPECTIVE JUROR:** Master's in business.

21 **THE COURT:** Master's in business?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** Are you married?

24 **PROSPECTIVE JUROR:** Divorced.

25 **THE COURT:** What kind of work did your

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1 ex-wife do?

2           **PROSPECTIVE JUROR:** She used to be an  
3 operator for an escort service.

4           **THE COURT:** Okay.

5           I'm looking at your questionnaire here,  
6 and Question No. 16 asked if you had already formed  
7 an opinion about this case, and it says, "I believe  
8 the maximum penalty for" -- I can't read that --  
9 "taking these lives are justified."

10           So, what opinion have you formed as to  
11 what the punishment should be?

12           **PROSPECTIVE JUROR:** If he was convicted of  
13 the four deaths, unfortunately, there must have been  
14 enough evidence presented.

15           **THE COURT:** He's already convicted. He's  
16 convicted of four counts of first-degree murder.  
17 That's a given. We're here for you to decide the  
18 punishment, and that's what this jury will have to  
19 do is decide the punishment and what it should be,  
20 and that's why we're going to have a trial. The  
21 State is going to present evidence, the defense is  
22 going to present evidence, and the jury has to make  
23 a decision as to the appropriate punishment.

24           Now, I'm trying to find out if you already  
25 have a preconceived idea of what the punishment

1 should be or what it is already.

2 **PROSPECTIVE JUROR:** Yes, I did.

3 **THE COURT:** And what's that?

4 **PROSPECTIVE JUROR:** I feel like he should  
5 be -- his penalty should be death as well.

6 **THE COURT:** What now?

7 **PROSPECTIVE JUROR:** His penalty should be  
8 death as well.

9 **THE COURT:** Death. Okay.

10 You've already decided death before you  
11 heard any evidence of mitigation.

12 Would that change your mind?

13 **PROSPECTIVE JUROR:** I don't think so, sir.

14 **THE COURT:** So, that's the only thing you  
15 can consider is death?

16 **PROSPECTIVE JUROR:** Four lives taken,  
17 unfortunately, that's all I can think of.

18 **THE COURT:** Well, the law in the State of  
19 Nevada is that life imprisonment without parole,  
20 life imprisonment with the possibility of parole or  
21 for a definite term of 50 years with the possibility  
22 of parole, and those are doubled, so in actuality,  
23 it's a hundred years for the definite term with  
24 parole after 40 years, and that would apply to each  
25 count, but you could only consider death, is that

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1 what you're telling me?

2           **PROSPECTIVE JUROR:** Yeah, but I don't see  
3 why somebody needs to sit around and think about  
4 that. Unfortunately, those penalties are -- that's  
5 just a waste right there. That's a waste.

6           **THE COURT:** Counsel?

7           **MS. JACKSON:** Challenge for cause, your  
8 Honor.

9           **MR. DASKAS:** We'll submit it, Judge.

10          **THE COURT:** All right.  
11 You're excused.

12          **MS. JACKSON:** Your Honor, may I inquire if  
13 Miss Quillen is not here?

14          **THE COURT:** I don't know.

15          **MS. JACKSON:** We seem to have skipped her.

16          **MR. STANTON:** She's Juror 298.

17          **THE COURT:** Is there a Jean Quillen out  
18 there?

19          **THE BAILIFF:** She's not there.

20          **THE COURT:** Where is she?

21          **THE BAILIFF:** She didn't show up.

22          **THE COURT:** All right.

23 Order to show cause.

24          **THE BAILIFF:** She hadn't answered when I  
25 came down.

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1  
2 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 304

3 **THE COURT:** Ma'am, on your questionnaire,  
4 you were saying you were having some medical tests  
5 done?

6 **PROSPECTIVE JUROR 304:** Yes, I did.

7 **THE COURT:** You have to have surgery?

8 **PROSPECTIVE JUROR:** I have to get a biopsy  
9 done next week. I'm scheduled for Wednesday.

10 **THE COURT:** For Wednesday at what time?

11 **PROSPECTIVE JUROR:** At 2:45.

12 **THE COURT:** All right. We'll excuse you  
13 then. All right?

14 **PROSPECTIVE JUROR:** Thank you.  
15

16 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 305

17 **THE COURT:** Miss Knight (sic)?

18 **MR. STANTON:** Your Honor, I believe this  
19 is Juror 0305, Miss Nissen-Stephens.

20 **THE COURT:** What now?

21 **MR. STANTON:** 0305, Michelle --

22 **THE COURT:** This is Miss Nissen-Stephens?

23 **MS. JACKSON:** Yes.

24 **PROSPECTIVE JUROR 305:** Yes, sir.

25 **THE COURT:** Now, you're the one who said

1 your husband knew or may have known one of the  
2 victim's father?

3 **PROSPECTIVE JUROR:** Correct.

4 **THE COURT:** You don't remember any name?

5 **PROSPECTIVE JUROR:** I heard you say it  
6 before. I think it's Mowen.

7 **THE COURT:** Who is it now? What name?

8 **PROSPECTIVE JUROR:** Mowen, something like  
9 that.

10 **THE COURT:** State?

11 **MR. DASKAS:** It's Matthew Mowen is the  
12 victim, and his father is David Mowen, M-O-W-E-N.

13 **PROSPECTIVE JUROR:** It just sounds vaguely  
14 familiar that my husband discussed it.

15 **THE COURT:** You don't remember any  
16 details?

17 **PROSPECTIVE JUROR:** Not at all, sir.

18 **THE COURT:** Where does your husband know  
19 him from?

20 **PROSPECTIVE JUROR:** My husband works -- I  
21 think he was a salesman that my husband dealt with.  
22 For some reason that sounds familiar. I could be  
23 totally wrong.

24 **THE COURT:** What kind of work does your  
25 husband do?

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1           **PROSPECTIVE JUROR:** He works for a car  
2 rental agency.  
3           **THE COURT:** Is he still there?  
4           **PROSPECTIVE JUROR:** My husband -- yes.  
5           **THE COURT:** What's the name of the rental  
6 agency?  
7           **PROSPECTIVE JUROR:** Avis Rent-A-Car.  
8           **THE COURT:** What's your husband's name?  
9           **PROSPECTIVE JUROR:** Scott Stephens.  
10          **THE COURT:** Come here, State.  
11          (Sidebar conference outside the presence  
12 of the court reporter.)  
13          **THE COURT:** You said your husband had  
14 talked about this.  
15          When did your husband start talking about  
16 this?  
17          **PROSPECTIVE JUROR:** When we read it in the  
18 newspaper. If I'm right, we read it in the paper,  
19 and he mention that he had knew that name, that it  
20 was somebody he dealt with.  
21          **THE COURT:** How many times did you guys  
22 discuss it?  
23          **PROSPECTIVE JUROR:** Probably about once or  
24 twice.  
25          **THE COURT:** How does it make you feel that

1 your husband knew the father of one of the victims?

2           **PROSPECTIVE JUROR:** If I am correct, I've  
3 got no feeling on it, you know, because it's not  
4 somebody that I knew.

5           **THE COURT:** Okay.

6           Let's say, for instance, the father of the  
7 victim came in here and testified, do you think you  
8 would feel like some obligation or something to  
9 accept the father's request or do something to try  
10 to render a verdict to try to please him?

11           **PROSPECTIVE JUROR:** No, sir.

12           **THE COURT:** Do you understand if you're  
13 picked as a juror, you couldn't discuss this case  
14 with your husband or ask him for his advice or  
15 opinion or even discuss the facts with him?

16           Do you understand that?

17           **PROSPECTIVE JUROR:** Yes, sir.

18           **THE COURT:** You would be able to refrain  
19 from doing that?

20           **PROSPECTIVE JUROR:** I'd have no choice.

21           **THE COURT:** All right.

22           You're from New York, originally?

23           **PROSPECTIVE JUROR:** Yes, sir.

24           **THE COURT:** And you've been in Las Vegas  
25 about 15 years?

1           **PROSPECTIVE JUROR:** Yes, sir.

2           **THE COURT:** And you're married? That's  
3 right, because your husband works at a car rental  
4 place, right?

5           **PROSPECTIVE JUROR:** Yes.

6           **THE COURT:** And you have one child?

7           **PROSPECTIVE JUROR:** Yes.

8           **THE COURT:** And you have a close friend  
9 who works for John Peter Lee?

10          **PROSPECTIVE JUROR:** Yes.

11          **THE COURT:** She's a legal assistant?

12          **PROSPECTIVE JUROR:** Yes.

13          **THE COURT:** Now, the only beef that I see  
14 that you have about the criminal justice system is  
15 that you don't think it's strict enough.

16          **PROSPECTIVE JUROR:** Yes.

17          **THE COURT:** You think -- in which ways is  
18 it that you don't think it's strict? Where should  
19 it be stricter?

20          **PROSPECTIVE JUROR:** Sometimes in  
21 sentencing.

22          **THE COURT:** I understand, but what kind of  
23 cases don't you think people receive -- something  
24 must have made you say it.

25          **PROSPECTIVE JUROR:** Offhand, I can't give

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1 you an example; I just read articles in the paper.  
2 Usually it's got something to do, I would say --  
3 something to do with children, usually a child  
4 abuse.

5 **THE COURT:** Sexual predators?

6 **PROSPECTIVE JUROR:** Yes.

7 **THE COURT:** And then they get out and do  
8 it again?

9 **PROSPECTIVE JUROR:** That I feel we're not  
10 strict enough on.

11 **THE COURT:** Right. I see what you're  
12 saying.

13 You said someone in your family or a  
14 friend has been the victim of a crime and no one was  
15 arrested. Who was that?

16 **PROSPECTIVE JUROR:** I was robbed and  
17 attacked in my car many years ago, but they did not  
18 find anybody.

19 **THE COURT:** Was this in New York?

20 **PROSPECTIVE JUROR:** Yes, sir.

21 **THE COURT:** So, you were -- did you live  
22 in New York City itself?

23 **PROSPECTIVE JUROR:** I lived in one of the  
24 boroughs, Queens.

25 **THE COURT:** You were in your car, and

1 someone came up to you.  
2 Did they have a knife or a gun or what  
3 happened?  
4 **PROSPECTIVE JUROR:** Three people came up  
5 to me --  
6 **THE COURT:** Okay.  
7 **PROSPECTIVE JUROR:** -- and one had a gun;  
8 I don't know what the other two had. When I  
9 realized what was going on, I put -- they took my  
10 bag, I threw my hand on the horn, they took off. I  
11 lived two blocks from the precinct. I just drove  
12 myself to the precinct.  
13 **THE COURT:** They never did catch the  
14 people who did it?  
15 **PROSPECTIVE JUROR:** No.  
16 **THE COURT:** Did you ever recover your  
17 purse or ID?  
18 **PROSPECTIVE JUROR:** Nothing.  
19 **THE COURT:** Tell me this here: What was  
20 the race of the people that robbed you?  
21 **PROSPECTIVE JUROR:** I believe they were  
22 Hispanic.  
23 **THE COURT:** Okay.  
24 **PROSPECTIVE JUROR:** I can't tell you for  
25 sure, but that's what I believe.



1           **THE COURT:** All right.

2           That's the only time that you or anyone in  
3 your family have ever been the victim of a crime?

4           **PROSPECTIVE JUROR:** I was robbed at work  
5 also in New York. Just my luck. Living in New  
6 York, these things happen -- living anywhere.

7           **THE COURT:** What kind of work were you  
8 doing?

9           **PROSPECTIVE JUROR:** I worked for a car  
10 rental agency.

11          **THE COURT:** They came in and robbed for  
12 money or took a car or what?

13          **PROSPECTIVE JUROR:** No; they took the  
14 money out of the cash drawer and did not show a  
15 weapon, just handed us a note and said he had a  
16 weapon.

17          **THE COURT:** What was the race of this guy?

18          **PROSPECTIVE JUROR:** Honestly, I couldn't  
19 tell you. I was in such shock that day that I  
20 just --

21          **THE COURT:** All right. I can understand  
22 that.

23          Now, you understand from reading the  
24 questionnaire that we're picking this jury for the  
25 purpose of deciding the punishment for the

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1 defendant.

2 Do you understand that?

3 **PROSPECTIVE JUROR:** Yes, sir.

4 **THE COURT:** The defendant has already been  
5 convicted of four counts of first-degree murder,  
6 therefore, the jury will have to sentence him, and  
7 they will have four choices according to the laws of  
8 the State of Nevada -- death penalty, life in prison  
9 without the possibility of parole, life in prison  
10 with the possibility of parole or for a definite  
11 term of a hundred years with parole after 40 years,  
12 and the reason it's a hundred years -- it's really  
13 50 years with the possibility of parole after 20  
14 years, but since a deadly weapon was used, that  
15 crime is doubled.

16 Do you understand that?

17 **PROSPECTIVE JUROR:** Yes.

18 **THE COURT:** What I want to know is could  
19 you consider all four forms of punishment?

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** Now, the reason I ask that is  
22 because some people come in here and they say,  
23 "Well, you know, for murder, I believe in an eye for  
24 an eye, and the only thing I can consider or give is  
25 the death penalty." Some people say, "I can give

1 life with the possibility of parole, but I can never  
2 give life without, because that will cost the  
3 taxpayers too much money." Some people say, "I  
4 don't believe in the death penalty, so I could never  
5 sentence anyone to death."

6 Well, what I want to know is if you have  
7 any of those kind of views?

8 **PROSPECTIVE JUROR:** No.

9 **THE COURT:** That's what we want, because  
10 the law requires that you be able to consider all  
11 four forms of punishment and that you listen to the  
12 evidence, the witnesses, listen to the background  
13 information and all the circumstances surrounding  
14 the case and then you pick an appropriate  
15 punishment.

16 Can you do that?

17 **PROSPECTIVE JUROR:** Yes.

18 **THE COURT:** Can you be fair to both sides?

19 **PROSPECTIVE JUROR:** I think so.

20 **THE COURT:** Can you follow the Court's  
21 instructions on the law?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** Of course, in Question No. 38,  
24 the question is, "Could you consider the defendant's  
25 background as mitigating circumstances such as

1 health, mental status, age, childhood experience,  
2 education, et cetera," and you said, "Not at all."

3 Now, why did you write that?

4 **PROSPECTIVE JUROR:** I don't remember  
5 the -- or I took that question wrong.

6 **THE COURT:** Okay.

7 **PROSPECTIVE JUROR:** Mental I can see  
8 taking. I think how I took it -- and I do apologize  
9 if it was wrong -- was that when you read these  
10 articles, they came from a bad family or they did  
11 not have, you know, both parents at home, I still  
12 think that that doesn't -- that's not a reason to go  
13 out and rob a store or do something because your  
14 childhood wasn't perfect.

15 **THE COURT:** Right. They can present  
16 evidence of that. According to the law, they can  
17 present mitigating evidence. It's not an excuse or  
18 rationale for the crime because he's already been  
19 convicted, but you should consider that when you  
20 make your decision in terms of the appropriate  
21 sentence.

22 So, would you be able to consider all that  
23 information before you make your decision or are you  
24 just going to say, "I don't want to hear anything"?

25 **PROSPECTIVE JUROR:** Oh, no, I can consider

1 it -- yes.

2 **THE COURT:** Okay.

3 State.

4 **MR. STANTON:** Thank you, your Honor.

5

6 EXAMINATION BY THE STATE

7 **BY MR. STANTON:**

8 Q Good morning.

9 A Good morning.

10 Q A couple of questions I have regarding the  
11 questionnaire that you filled out.

12 As a result of the victims or being a  
13 victim of crimes in New York, is there anything  
14 about how the police handled the case that would  
15 cause you to be anything but fair and impartial in  
16 this case?

17 A No.

18 Q As the Judge indicated, there has been  
19 already a jury that has found, pursuant to trial  
20 testimony, facts and evidence, the defendant guilty  
21 beyond a reasonable doubt of four counts of  
22 first-degree murder. Your function would be to  
23 determine the punishment, not guilt or innocence.

24 Are you comfortable doing that?

25 A Yes.

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1 Q And you can accept that jury's verdict and  
2 not question the integrity of that verdict?

3 A Yes.

4 Q Now, John Peter Lee -- do you know what  
5 type of law --

6 A I think it's more business.

7 Q Do you discuss with your close friend  
8 legal issues, work, the cases that they handle?

9 A No, not at all.

10 Q Regarding the death penalty, ma'am, what  
11 we are looking for here is prospective jurors that  
12 would keep an open mind until all the facts and  
13 evidence and instructions of law by Judge Gates is  
14 given to the jury until they formally deliberate.  
15 There is clearly evidence before you now that four  
16 people were murdered, terrible set of facts and an  
17 aggravated situation. In fact, that's part of the  
18 aggravators recognized by Nevada law is that more  
19 than one death is a basis to death-qualify somebody,  
20 and also for the death penalty. But beyond that,  
21 it's the issue of whether or not you can consider  
22 all options until the matter is formally submitted  
23 to you.

24 Do you feel comfortable with keeping your  
25 mind open until everything is presented?

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1           A     Yes.

2           Q     You have not formed an opinion that one of  
3 the four options is what should occur in this case?  
4 Would that be a fair statement?

5           A     Yes.

6           Q     Now, in that regard, you will -- part of  
7 the State's presentation -- we will go back and give  
8 highlights of the actual quadruple murder. Part of  
9 that include some very graphic photographs of the  
10 crime scene.

11                   Can you, based on your personality and  
12 character, look at those type of photographs  
13 specifically as what they represent as evidence in  
14 the case as opposed to being emotionally overwhelmed  
15 by that?

16          A     Good question. I would have to say yes.

17          Q     In this case, there were four victims, and  
18 the law recognizes that your function and duty in  
19 this particular case is to render a just verdict as  
20 it relates to each victim.

21                   Do you think you can do that?

22          A     Yes.

23          Q     Your verdict may be different for reasons  
24 based upon the facts or your assessment of the facts  
25 and your feelings about the case after hearing the

1 defense presentation of mitigation evidence that the  
2 verdicts may be different for each victim.

3 Are you comfortable with that process or  
4 that concept?

5 A Can you repeat that, please?

6 Q Certainly, and it was poorly worded.

7 There are four victims in this case.

8 A Right.

9 Q The jury's legal obligation is to impose a  
10 just verdict as you unanimously decide that to be  
11 for each victim and that your decision may not or it  
12 may be that the verdict or the punishment be  
13 different for each victim based upon the presented  
14 facts.

15 Are you comfortable with that concept?

16 A Yes.

17 Q And we talked about, philosophically, your  
18 feelings about the death penalty, and what you've  
19 stated here today is that you would keep an open  
20 mind as to all punishments. My question to you now  
21 is kind of a realistic instead of a theoretical  
22 discussion of the death penalty.

23 If you were on this jury and you were  
24 selected and through a process that the jurors  
25 themselves do, you're selected as the foreperson,

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1 you deliberate after hearing the entire presentation  
2 to you with your fellow jurors and come to the  
3 conclusion unanimously and collectively that the  
4 death penalty is the appropriate punishment, ma'am,  
5 could you affix your signature to the jury verdict  
6 form, which is what the foreperson does, to put that  
7 man, Donte Johnson, to death?

8 A Yes.

9 MR. STANTON: Thank you.

10 Pass the prospective juror.

11 THE COURT: Defense Counsel.

12 MR. WHIPPLE: Thank you, your Honor.

13

14 EXAMINATION BY THE DEFENSE

15 BY MR. WHIPPLE:

16 Q Is it Miss Stephens or Mrs. Stephens?

17 A Mrs. Stephens.

18 Q Mrs. Stephens, my name is Bret Whipple,  
19 and I represent Mr. Johnson. I have some follow-up  
20 questions.

21 You were in Queens where you spent the  
22 majority of your life?

23 A I was born and raised there, yes.

24 Q Where in Queens?

25 A Forest Hills and in Flushing.

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1 Q Now, I'm not sure if you were told this.  
2 We're searching for some individuals -- this is not  
3 a job for everybody, you can imagine.

4 A Yes.

5 Q We need individuals who are pretty much in  
6 the middle of the pack as possible and as unbiased  
7 as possible. So, this is an opportunity for you to  
8 speak to us, and all we're asking is for you to  
9 speak your heart which you clearly have. There's no  
10 right answers, there's no wrong answers; it's just  
11 an opportunity for us to speak back and forth and  
12 see if you would be appropriate for this type of  
13 situation.

14 The first thing that causes concern is  
15 your potential connection with the victim's family.

16 Do you think it would be appropriate for  
17 the victim's family to be on the jury? In other  
18 words, somebody's young adults were killed. Would  
19 it be appropriate for parents and their siblings to  
20 be on the jury? Do you think that would be  
21 appropriate?

22 A A victim's parent, no.

23 Q Why not?

24 A Because then there would be a biased  
25 opinion.

1 Q And why that?  
2 A They cannot come up with an honest answer.  
3 Q Because...?  
4 A Because they've already made a decision.  
5 Q Because they're so closely tied?  
6 A Exactly. Also, I think if it was my  
7 child, it's "Don't you ever do anything to my child.  
8 My child is my life."  
9 Q Sure.  
10 A So yes, I can see why I wouldn't -- yes,  
11 that would be a terrible thing for a parent to be on  
12 a jury that their child was the victim.  
13 Q You could imagine if a person -- if you  
14 have the opportunity to sit on this jury, you'll  
15 hear testimony -- at some point you potentially  
16 could hear testimony from some of the victims'  
17 families, and you could imagine how difficult it  
18 would be to re-live and hear that type of  
19 information.  
20 Would you agree with that?  
21 A Oh, absolutely.  
22 Q My concern is -- I know you want to be  
23 fair.  
24 A Right.  
25 Q But if you have a connection with an

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1 individual who is actually a family member of the  
2 victim and you hear them speak, how could you  
3 continue to be fair?

4       A       Because I really don't have a connection.  
5 First of all, I could be totally wrong, and it's not  
6 a connection I have. If I'm correct, it's somebody  
7 that I've never met. If they were in the room right  
8 now, I couldn't even tell you, so I can be fair when  
9 it comes to -- it's nobody I know.

10       Q       Okay.

11       A       I can keep that separated, because I could  
12 be wrong, and since I can't ask my husband, I don't  
13 know if I'm right or wrong.

14       Q       Sure. What happens if all of a sudden  
15 this person is in front of you and they testify and  
16 you recognize -- "Oh, my goodness, I was right.  
17 This is somebody I know through my husband."

18               Do you see why I would be concerned about  
19 that?

20               **MR. STANTON:** Your Honor, I'm going to  
21 object. That's not what the witness has stated and  
22 I don't think that situation can occur. She's  
23 already stated that she doesn't know the person.

24               **THE COURT:** She doesn't even know him  
25 through her husband.

1                   **PROSPECTIVE JUROR:** That's what I was  
2 going to say. I wouldn't even know if they were in  
3 here.

4                   **THE COURT:** You need to rephrase the  
5 question. She doesn't know him through her husband.

6 **BY MR. WHIPPLE:**

7           Q       Sure. If the witness said something on  
8 the stand that makes you realize, "Oh, my goodness.  
9 This is the same person that I realize or I thought  
10 it would be" --

11          A       Again, I have no connection to this  
12 person. If my husband bought milk from somebody  
13 once at a grocery store, where is my connection to  
14 that person because he bought milk from somebody?  
15 And it could be the same thing about this situation,  
16 but when the Judge stated, "Do you have any  
17 connection at all" with everything he was saying, I  
18 had to be honest to tell him that I believe my  
19 husband knows this person, because if I did not say  
20 that and he did afterwards, well then, I was wrong,  
21 and that can cause a problem.

22          Q       And --

23          A       That's why I figured I should open up, I  
24 hope not a can of worms, but to be honest so I don't  
25 cause a problem later.

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1 Q I very much appreciate it, and that's all  
2 we're asking is for you to be honest.

3 The key, I think, is when you said your  
4 husband knows him.

5 A "I believe," I said.

6 Q You believe he knows him.

7 When you say you believe he knows him, is  
8 it somebody that he bought milk from or is it  
9 somebody that he knows in the sense they do  
10 business?

11 A See, that's it. Since I totally don't  
12 recall -- I think it was a salesperson that he dealt  
13 with. I don't even know if he still does, and  
14 that's all I remember about it.

15 Q So, you're just doing it out of an  
16 abundance of caution? There's no connection there  
17 that I should be worried about?

18 A No.

19 Q I want to ask you your opinion with regard  
20 to the death penalty.

21 Do you have an opinion with regard to the  
22 death penalty?

23 A I think beyond a reasonable doubt that all  
24 the evidence and everything shows, I do believe in  
25 the death penalty in some cases, yes.

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1 Q So, if an individual was convicted of  
2 first-degree, premeditated, deliberate, cold-blooded  
3 murder without any excuse or justification, could  
4 you consider a life sentence in this situation?

5 A Well, honestly, if the option of the death  
6 sentence was available, I would have to say I do  
7 believe in the death sentence.

8 Q Now, that's with one person. If there  
9 were four individuals and a person killed them,  
10 premeditated, deliberate, cold-blooded, and killed  
11 four innocent individuals, young adults, could you  
12 consider a life sentence?

13 A Again, if the death sentence was  
14 available, I would have to believe the death  
15 sentence.

16 Q And if you learned that four individuals  
17 were duct taped with their hands behind their back,  
18 their feet together, placed on the ground with their  
19 face in the carpet and an individual took a gun and  
20 shot each one of them in the back of the head one by  
21 one, could you consider a life sentence in that  
22 situation?

23 MR. STANTON: Your Honor, once again, I'm  
24 going to object to the pattern of the question. It  
25 doesn't properly present what the juror will be

1 hearing as it doesn't indicate that mitigation  
2 evidence is going to be part of the juror's  
3 deliberation and consideration of the case. Counsel  
4 is presenting unilateral presentation of facts.

5 **THE COURT:** Counsel, you'll have your  
6 chance to talk to her and traverse her if you want  
7 to.

8 Go on.

9 **MR. WHIPPLE:** Thank you, your Honor.

10 **BY MR. WHIPPLE:**

11 Q Do you want me to repeat the question?

12 A No, I remember the question. In all  
13 honesty, I don't think the circumstances is how the  
14 murder occurred, it's just that the murder occurred.

15 Q That's all we're asking.

16 A So, I don't think either handcuffed or  
17 taped or anything makes a difference. I think it's  
18 taking the four lives.

19 Q Could you consider a life sentence in that  
20 situation?

21 A I would have to say if the death sentence  
22 was available, I would go with that.

23 Q And why is that?

24 A Why should we, for the rest of their life,  
25 pay for them in jail when we know -- if there's no



1 reason beyond a reasonable doubt that they  
2 definitely did it, that there's no evidence is going  
3 to turn up years from now, then I honestly do think  
4 of the death sentence.

5 Q Why?

6 A I think in that situation you know he's  
7 guilty, and to me, life in prison -- if it was the  
8 inkling that DNA was going to come back years later,  
9 then that person should have a chance of living the  
10 rest of their life, because hopefully they're going  
11 to realize something, but when there is no  
12 reasonable doubt, I really feel don't waste the  
13 taxpayers' money for the next 50 years or five years  
14 or whatever the case may be.

15 Q This is just a heart-of-hearts type  
16 feeling that you've had?

17 A Yes.

18 Q How long have you had this feeling or this  
19 belief?

20 A I would say most of my adult life.

21 Q Has anybody ever tried to convince you  
22 otherwise?

23 A No.

24 Q How would you handle it if someone tried  
25 to convince you that the death penalty is not what

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1 should be given in a situation like that?

2 A Well, I mean -- "somebody," meaning I'm  
3 having a conversation with a friend?

4 Q Sure.

5 A If I'm having a conversation with a  
6 friend, that's my opinion. Honestly, you're not  
7 going to change -- if it's a conversation between  
8 two friends, you know, you're not going to change.  
9 That's my opinion. You're going to give me your  
10 beliefs and I'm going to give you my beliefs. I  
11 don't think you can change -- I mean, you would have  
12 to have some great evidence or a good reason for me  
13 to change my mind on that.

14 MR. WHIPPLE: I think that -- your Honor,  
15 I think Miss Nissen-Stephens it's probably -- I'm  
16 concerned about you being fair, so I'm going to  
17 challenge for cause with regard to your background.  
18 I'm just concerned about the death  
19 penalty, your Honor.

20 MR. STANTON: I would definitely traverse,  
21 your Honor.

22 THE COURT: All right.

23 /////

24 /////

25 EXAMINATION BY THE STATE

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1 **BY MR. STANTON:**

2 Q What Counsel is not including in his  
3 scenario to you is the fact in this case, it's not  
4 just going to be the evidence of the four people  
5 that were murdered in the fashion that you said, and  
6 you said the fashion didn't make any difference to  
7 you.

8 **MR. WHIPPLE:** I'm sorry. I'm going to  
9 sneak up here, Mr. Stanton.

10 **BY MR. STANTON:**

11 Q But there's going to be mitigation  
12 evidence, evidence presented by the defense in this  
13 case to you as jurors for you to consider in this  
14 case.

15 Now, you said earlier that the punishment  
16 in this case, even the least severe punishment is a  
17 very severe punishment. I think any reasonable  
18 person would assess that, but in your selection of  
19 each of the four, that you would wait until you've  
20 heard all the evidence in this case, and you  
21 indicated that you could.

22 A Yes.

23 Q Is that correct?

24 A That's correct.

25 Q Counsel has told you, and I guess you knew



IN THE SUPREME COURT OF NEVADA

DONTE JOHNSON,

CASE NO. 65168

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

OPENING BRIEF APPENDIX

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19	AMENDED EX PARTE ORDER ALLOWING WITHDRAWAL OF ATTORNEY OF RECORD FOR MATERIAL WITNESS CHARLA SEVERS (FILED 08/24/2000)	4585
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31	APPELLANT'S REPLY BRIEF (FILED 05/25/2006)	7254-7283

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21	5	DEFENDANT'S MOTION TO PROHIBIT THE USE OF PEREMPTORY CHALLENGES TO EXCLUDE JURORS WHO EXPRESS CONCERNS ABOUT CAPITAL PUNISHMENT (FILED 11/29/1999)	1084-1090
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18	2	MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF EXPECTATIONS, OR ACTUAL RECEIPT OF BENEFITS OR PREFERENTIAL TREATMENT FOR COOPERATION WITH PROSECUTION (FILED 06/29/1999)	511-515
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21	3	MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF EXPECTATIONS, OR ACTUAL RECEIPT OF BENEFITS OR PREFERENTIAL TREATMENT FOR COOPERATION WITH PROSECUTION (10/19/1999)	738-742
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24	2	MOTION TO COMPEL THE PRODUCTION OF ANY AND ALL STATEMENTS OF THE DEFENDANT (FILED 06/29/1999)	516-520
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24	6	OPPOSITION TO DEFENDANT'S MOTION FOR DISQUALIFICATION FROM THE JURY VENIRE OF ALL POTENTIAL JURORS WHO WOULD AUTOMATICALLY VOTE FOR THE DEATH PENALTY IF THEY FOUND MR. JOHNSON GUILTY OF CAPITAL MURDER (FILED 12/06/1999)	1380-1382
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16	6	OPPOSITION TO DEFENDANT’S MOTION TO AUTHENTICATE AND FEDERALIZE ALL MOTIONS OBJECTIONS REQUESTS AND OTHER APPLICATIONS AND ISSUES RAISED IN THE PROCEEDINGS IN THE ABOVE ENTITLED CASE (FILED 12/06/1999)	1394-1396
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19	6	OPPOSITION TO DEFENDANT’S MOTION TO BIFURCATE PENALTY PHASE (FILED 12/06/1999)	1359-1361
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3	6	OPPOSITION TO DEFENDANT’S MOTION TO REQUIRE PROSECUTOR TO STATE REASONS FOR EXERCISING PEREMPTORY CHALLENGES (FILED 12/06/1999)	1415-1417
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5	3	OPPOSITION TO MOTION IN LIMINE TO PERMIT THE STATE TO PRESENT “THE COMPLETE STORY OF THE CRIME” (FILED 07/02/1999)	524-528
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5	37	RECORDER'S TRANSCRIPT OF PROCEEDINGS STATUS CHECK: EVIDENTIARY HEARING PETITION FOR WRIT OF HABEAS CORPUS (FILED 03/21/2012)	7794-7797
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9	4	REPLY TO OPPOSITION TO MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS, WEAPONS AND AMMUNITION NOT USED IN THE CRIME (FILED 11/15/1999)	950-955
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12	17	REPLY TO RESPONSE TO MOTION FOR NEW TRIAL (FILED 07/10/2000)	4096-4100
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14	36	REPLY TO THE STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION, DEFENDANT'S SUPPLEMENTAL BRIEF, AND SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS POST CONVICTION (FILED 06/01/2011)	7672-7706
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18	15	REPLY TO STATE'S OPPOSITION REGARDING THREE JUDGE PANEL (FILED 07/18/2000)	4153-4159
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20	7	REPLY TO STATE'S OPPOSITION TO MOTION TO SUPPRESS (FILED 02/16/2000)	1632-1651
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22	19	REPLY TO STATE'S RESPONSE TO MOTION TO SET ASIDE DEATH SENTENCE OR IN THE ALTERNATIVE MOTION TO SETTLE RECORD (FILED 10/02/2000)	4615-4618
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26	35	REPLY TO THE STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION), DEFENDANT'S SUPPLEMENTAL BRIEF, AND SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS POST CONVICTION (FILED 06/01/2011)	7579-7613
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3	2	REPORTER'S TRANSCRIPT OF SEPTEMBER 8, 1998 ARRAIGNMENT (FILED 09/14/1998)	268-270
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1	3	REPORTER'S TRANSCRIPT OF OCTOBER 11, 1999 STATE'S MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS (FILED 10/18/1999)	712-716
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6	4	REPORTER'S TRANSCRIPT OF OCTOBER 21, 1999 STATUS CHECK: FILING OF ALL MOTIONS (FILED 11/09/1999)	821-829
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10	4	REPORTER'S TRANSCRIPT OF OCTOBER 28, 1999 DECISION: WITNESS RELEASE (FILED 11/09/1999)	830-831
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12	4	REPORTER'S TRANSCRIPT OF NOVEMBER 8, 1999 PROCEEDINGS (FILED 11/09/1999)	832-834
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3	7	REPORTER'S TRANSCRIPT OF MAY 18, 2000 PROCEEDINGS (FILED 05/30/2000)	1803-1804
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9	19	REPORTER'S TRANSCRIPT OF SEPTEMBER 7, 2000 PROCEEDINGS (FILED 09/29/2000)	4612-4614
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13	20	REPORTER'S TRANSCRIPT OF APRIL 19, 2005 TRIAL BY JURY- VOLUME I- A.M. (FILED 04/20/2005)	4654-4679
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17	21	REPORTER'S TRANSCRIPT OF APRIL 20, 2005 TRIAL BY JURY- VOLUME I-A.M. (FILED 04/21/2005)	4838-4862
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27	23	REPORTER'S TRANSCRIPT OF APRIL 22, 2005 PENALTY PHASE- VOLUME IV- B (FILED 04/25/2005)	5457-5483
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9	25	REPORTER'S TRANSCRIPT OF APRIL 27, 2005 TRIAL BY JURY- VOLUME VII-P.M. (FILED 04/28/2005)	5854-5949
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26	17	STATE'S OPPOSITION FOR IMPOSITION OF LIFE WITHOUT AND OPPOSITION TO EMPANEL JURY AND/OR DISCLOSURE OF EVIDENCE MATERIAL TO CONSTITUTIONALITY OF THE THREE JUDGE PANEL PROCEDURE (FILED 07/17/2000)	4132-4148
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28	6	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR CHANGE OF VENUE (FILED 12/07/1999)	1421-1424
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7	2	STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION TO WITHDRAW COUNSEL AND APPOINT OUTSIDE COUNSEL (FILED 02/19/1999)	385-387
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11	4	STATE'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF EXPECTATIONS, OR ACTUAL RECEIPT OF BENEFITS OR PREFERENTIAL TREATMENT FOR COOPERATION WITH PROSECUTION (FILED 11/04/1999)	801-815
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15	19	STATE'S RESPONSE TO DEFENDANT'S MOTION TO SET ASIDE SENTENCE OR IN THE ALTERNATIVE MOTION TO SETTLE RECORD (FILED 09/15/2000)	4601-4611
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17	3	STATE'S RESPONSE TO DEFENDANT'S OPPOSITION TO STATE'S MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS	762-768
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19	15	STATE'S RESPONSE TO MOTION FOR NEW TRIAL (FILED 06/30/2000)	3603-3616
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21	2	STIPULATION AND ORDER (FILED 06/08/1999)	457-459
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10	6	SUPPLEMENTAL OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS, WEAPONS AND AMMUNITION NOT USED IN THE CRIME (FILED 12/02/1999)	1314-1336
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1	35	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS/HEARING AND ARGUMENT: DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (FILED 07/06/2011)	7537-7574
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4	35	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE A REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 06/07/2011)	7575-7578
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**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 9<sup>th</sup> day of January, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ-MASTO  
Nevada Attorney General

STEVE OWENS  
Chief Deputy District Attorney

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Jessie Vargas  
An Employee of Christopher R. Oram, Esq.

CHRISTOPHER R. ORAM, LTD.  
520 SOUTH 4<sup>TH</sup> STREET | SECOND FLOOR  
LAS VEGAS, NEVADA 89101  
TEL. 702.384-5563 | FAX. 702.974-0623